

STATE OF NEW MEXICO  
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT  
OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF CONSIDERING: )

CASE NO. 13,586

IN THE MATTER OF THE APPLICATION OF THE )  
NEW MEXICO OIL CONSERVATION DIVISION FOR )  
REPEAL OF EXISTING RULES 709, 710 AND )  
711 CONCERNING SURFACE WASTE MANAGEMENT )  
AND THE ADOPTION OF NEW RULES GOVERNING )  
SURFACE WASTE MANAGEMENT )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

November 10th, 2005

Santa Fe, New Mexico

2005 NOV 17 PM 4 07

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, November 10th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
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## I N D E X

November 10th, 2005  
Commission Hearing  
CASE NO. 13,586

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## SUBMISSIONS NOT OFFERED OR ADMITTED AS EXHIBITS

Submission by NMOGA, et al., not offered or admitted:

Identified

"Comments of the New Mexico  
Oil Gas Association on the  
Oil Conservation Division's  
Proposed Surface Waste  
Management Rules,  
November 10, 2005"

29

\* \* \*

Submission by Controlled Recovery, Inc., not offered or  
admitted:

Identified

Letter dated 10-27-05 to Ms. Florene Davidson  
from Michael H. Feldewert

34

\* \* \*

## A P P E A R A N C E S

## FOR THE COMMISSION:

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FOR NEW MEXICO OIL AND GAS ASSOCIATION, INDEPENDENT  
PETROLEUM ASSOCIATION OF NEW MEXICO, YATES PETROLEUM  
CORPORATION, MARBOB ENERGY CORPORATION, DEVON ENERGY  
CORPORATION, CHEVRON NORTH AMERICA EXPLORATION AND  
PRODUCTION COMPANY, and BURLINGTON RESOURCES OIL AND  
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By: WILLIAM F. CARR

## FOR CONTROLLED RECOVERY, INC.:

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By: MICHAEL H. FELDEWERT

\* \* \*

## ALSO PRESENT:

ALAN ALEXANDER  
Burlington Resources Oil and Gas Company

(Continued...)

ALSO PRESENT (Continued):

ROGER ANDERSON  
Environmental Bureau Chief, NMOCD

PETER V. DOMENICI, JR.  
Attorney at Law

DAN GIRAND  
Mack Energy Corporation

RAYE MILLER  
Marbob Energy Corporation

YOLANDA PEREZ  
ConocoPhillips

\* \* \*

1                   WHEREUPON, the following proceedings were had at  
2                   9:09 a.m.:

3                   CHAIRMAN FESMIRE: The next matter before the  
4                   Commission is Case Number 13,586, in the matter of the  
5                   Application of the New Mexico Oil Conservation Division for  
6                   repeal of existing Rules 709, 710 and 711 concerning  
7                   surface waste management and the adoption of new rules  
8                   governing surface waste management.

9                   At this time the Chair will entertain an entry of  
10                  appearance from the attorneys in the case.

11                  MR. BROOKS: Mr. Chairman, honorable  
12                  Commissioners, I'm David Brooks, Assistant General Counsel  
13                  for the Energy, Minerals and Natural Resources Department,  
14                  representing the Oil Conservation Division.

15                  MR. CARR: May it please the Examiner, my name is  
16                  William F. Carr with the Santa Fe office of Holland and  
17                  Hart, L.L.P. We represent the New Mexico Oil and Gas  
18                  Association, the Independent Petroleum Association of New  
19                  Mexico, Yates Petroleum Corporation, Marbob Energy  
20                  Corporation, Devon Energy Corporation, Chevron North  
21                  America Exploration and Production Company, and Burlington  
22                  Resources Oil and Gas Company.

23                  CHAIRMAN FESMIRE: Is there any --

24                  MR. FELDEWERT: Michael Feldewert with Holland  
25                  and Hart, appearing on behalf of Controlled Recovery, Inc.

1           CHAIRMAN FESMIRE: Is there any other appearance  
2 in the case? Okay.

3           Mr. Brooks, if you'd be so kind as to bring us up  
4 to speed procedurally on where we are in this cause?

5           MR. BROOKS: Yes, Mr. Chairman, I will undertake  
6 to do that. There may be some difficulty involved -- I  
7 guess in accordance with the customs of this -- I stand up  
8 to approach a judicial body just reflexively, but that's  
9 not the custom here, so I shall make my remarks seated.

10           There may be some difficulty, because the  
11 procedure has gotten a little bit intricate. But I believe  
12 that we know where we are, and I will attempt to explain to  
13 those present where we are.

14           The Division undertook a study and review of  
15 existing Rule 711. That has been going -- that process has  
16 been going on over a period of several years. In fact, the  
17 previous Commission a couple of -- about three years ago,  
18 actually, directed the Division to undertake such a study.  
19 But the matter has been considerably accelerated in the  
20 last few months as a result of the general program of the  
21 present director to put our rules in order.

22           We have been aware for some time that there are  
23 some deficiencies in the existing Rules 709 and 710, as  
24 well as Rule 711. I have been asked here not to make a  
25 general opening statement, but merely to deal with the

1 procedural posture, so I will defer my general opening  
2 remarks.

3 The procedural posture -- well, the procedure was  
4 initiated in September of this year, when the Division  
5 filed an application for rulemaking and attached thereto  
6 proposed new Rules 51, 52 and 53, which were drafted as  
7 amended versions of Rules 709, 710 and 711.

8 The initial -- the draft attached to the initial  
9 application, which I will call the first draft, although,  
10 of course, it was the product of much review and study and  
11 many changes in the process, but it was the first draft  
12 that was issued publicly and put in the public domain by  
13 the Division. This was filed, I believe, about the end of  
14 September, I think actually on the 23rd or the 25th,  
15 somewhere in that range, of September. It was filed as an  
16 application for a rulemaking proceeding, and the rulemaking  
17 proceeding was docketed for hearing today, November the  
18 10th, 2005.

19 We then scheduled a stakeholders' meeting. A  
20 stakeholders' meeting was held the first week in October,  
21 and I presided over the stakeholders' meeting.  
22 Representatives of the Environmental Bureau were present,  
23 and a number of stakeholders were also present, including  
24 some who are here today or are represented today, and also  
25 some who are not.



1           We received comments orally at the stakeholders'  
2 meeting. Based on those comments, we redrafted the  
3 proposed rule. And of course the schedule was influenced  
4 by my vacation, as I think everybody here knows, so I guess  
5 I don't prejudice anything by admitting it. Because I was  
6 leaving on vacation on October the 14th, it was necessary,  
7 since I was the principal draftsman, to have the drafting  
8 process completed by October 14th if we were to proceed to  
9 hearing today.

10           In fact, a draft was produced and was filed with  
11 an amended application for rulemaking on October the 14th,  
12 and I will call that the second draft or the October 14th  
13 draft.

14           The meeting being scheduled -- the hearing being  
15 scheduled for today, comments on the October 14th draft  
16 were due last Thursday, November the 3rd. Some people  
17 filed comments early, and sometime during the time that I  
18 was out of the country these comments were received and  
19 were reviewed. And a decision was made that a number of  
20 matters needed to be revisited and that the timing before  
21 the November the 10th hearing was not sufficient to  
22 adequately revisit those matters and publish a third draft  
23 that would incorporate the collective thinking of the  
24 Division on those issues in the light of the comments that  
25 had been received.

1           Accordingly, the decision was made to postpone  
2 the formal hearing on these rules until the December the  
3 8th meeting of the Commission. But in order to facilitate  
4 the production of a new draft and in the hope that it would  
5 be definitive, it was felt that the stakeholders should be  
6 given an opportunity in a more formal setting than the  
7 previous stakeholder meeting to respond to their areas of  
8 concern that they have with regard to the rule as it is  
9 developing, and to do so on the record.

10           And accordingly, this meeting is somewhere  
11 between a stakeholders' meeting and a hearing in the sense  
12 that the comments are intended to be informal. However,  
13 unlike the stakeholders' meeting, they're presented  
14 directly, of course, to the Commission here, and also they  
15 will be on the record.

16           And that, I believe, summarizes the -- Well, I  
17 will say that the intent is, after we have filtered the  
18 input from this meeting, and in very short order, by the  
19 middle of next week, that the Commission -- that the  
20 Division will produce a third draft, which will be attached  
21 to a second amended application and will be the subject of  
22 the formal hearing that will be conducted by the Commission  
23 on December the 8th.

24           I believe that concludes my outline of the  
25 procedural status of the situation.

1           CHAIRMAN FESMIRE: Okay. Are you prepared at  
2 this time to give any part of an opening statement? It's  
3 my intention to allow counsel the chance today to give an  
4 opening statement, and a chance at the next hearing to  
5 preface their remarks with what will essentially be an  
6 opening statement. Are you prepared today to give any of  
7 that statement, or would you rather defer that?

8           MR. BROOKS: Mr. Chairman, honorable  
9 Commissioners, I'm prepared to do so today, and I think it  
10 might be helpful if I did so, because I could point out  
11 some of the areas that are pending under study, so that the  
12 other participants can address their remarks to those  
13 issues.

14           CHAIRMAN FESMIRE: Okay. Mr. Carr, Mr.  
15 Feldewert, would you mind if he did that now?

16           MR. CARR: No, would not --

17           MR. FELDEWERT: No.

18           MR. CARR: -- object at all.

19           MR. BROOKS: Very good.

20           Mr. Chairman, honorable Commissioners, as I  
21 indicated, this matter has been under study by the Division  
22 for a considerable period of time, pursuant to the  
23 directive of the previous Commission.

24           The directive was directed specifically at Rule  
25 711. However, when we got into Rule 711 we also determined

1 that there were some things that needed to be modified in  
2 Rule 709 and 710, and we've included that in this  
3 proceeding.

4 I would add that Mr. Feldewert and his client  
5 have assisted us in discovering some of the rough spots in  
6 Rule 711, since we had a certain controversy with them for  
7 a while and we had differing interpretations, and that  
8 highlighted some of the facts -- some of the things that  
9 are perhaps not as clear as they should be in Rule 711. I  
10 don't think Mr. Feldewert would really disagree with that  
11 assertion.

12 Our agenda, however, is to clarify the rule.

13 One of the major deficiencies we have, which we  
14 discovered not so much from the implementation of Rule 711  
15 as we did from the Division's efforts to wrestle with their  
16 new pit rule, Rule 50, is that we have a rule which is  
17 written in fairly broad, general terms, and we have a set  
18 of guidelines which includes a great many specific detailed  
19 provisions. The guidelines, of course, are not *per se*  
20 enforcement.

21 The Division believes generally that its  
22 guidelines are in accordance with the intent of the rule,  
23 although we recognize that some of the things in them are  
24 out of date, and there was a need to update the guidelines.  
25 However, others were of course free to differ with the

1 proposition that the guidelines implemented the rule, and  
2 since the guidelines had never been adopted by the  
3 Commission and were not part of the rule, as I said, they  
4 could not be enforced as such, which left some gaps.

5 So one of the things that -- one of the agendas  
6 of the Division in developing this proposed rule was to  
7 incorporated from the guidelines those provisions which we  
8 felt were desirable to have in a rule, as opposed to in  
9 guidelines. And many of the changes that we're proposing  
10 are a result of that development.

11 Another thing we had encountered was that the  
12 procedures were not entirely adequate. At least, they were  
13 not adequately spelled out. The Division had adopted the  
14 practice of following procedures that were basically  
15 similar to those followed by the Water Quality Control  
16 Commission, and those that are spelled out in our rules  
17 regarding abatement plans. But many of the details of how  
18 those things were to work were omitted in Rule 711, and  
19 there was nothing in our rules which tied these other  
20 procedures in and said they actually applied in Rule 711.  
21 So we had a situation where we had evolved a procedure by  
22 custom, which wasn't really provided for in the rules  
23 specifically as applied to Rule 711 permits.

24 Well, a second point in the agenda of the  
25 Division on this matter is to clarify and specify exactly

1 how the steps in the evaluation of a permit application  
2 occur.

3 A third issue that we attempted to address, of  
4 course, arose out of the March 5th letter. I think  
5 everybody in the room is probably familiar with that, but  
6 in case they are not, the Division has issued permits in  
7 rather unspecific form under Rule 711, and the Division  
8 discovered that permits were being issued for surface waste  
9 management facilities without specifying or limiting the  
10 technology that was to be applied, to assure that the  
11 technology that was applied was appropriate to the type of  
12 waste stream being treated. Specifically, the issue arose  
13 because of treatment of chloride-contaminated materials at  
14 landfarm facilities, which the Division in the March 5th  
15 letter determined was no longer appropriate, although  
16 neither the rule nor the permits that had previously been  
17 issued had taken account of that particular problem.

18 The third important point in developing this rule  
19 has been to tighten up the permitting procedure so that we  
20 will be specifically -- the Division will be specifically  
21 reviewing in each permit application the technology that is  
22 going to be used and the type of waste stream to which it's  
23 going to be applied, and that the permit will be designed  
24 and limited accordingly.

25 I believe those are actually the main thrusts of

1 what we are attempting to do. There are a -- as always  
2 when you revise, a -- well, no, I need to go back and --  
3 there's one other major thrust which deals with Rules 51  
4 and 52, and we tend to overlook those because -- in our  
5 discussions sometimes, because they're relatively  
6 noncontroversial and relatively short, and the main thrust  
7 of our effort has been on 711, and now Rule 53, proposed  
8 Rule 53, but we determined a couple of deficiencies in  
9 Rules 51 and 52 that we thought needed to be addressed.

10 In the first place, it was not clear -- Well,  
11 first of all, and I guess the biggest one, is that those  
12 two rules applied only to produced water. They were  
13 written at a time when the specific waste disposal  
14 authority of the OCD applied only to produced water, which  
15 was the case from 1965 until 1989, and they didn't take  
16 account of the fact that we now have general waste disposal  
17 jurisdiction. So we have revised -- the proposal includes  
18 revision of Rules 709, 710, now to be 51 and 52, to apply  
19 them to oilfield waste generally and not specifically  
20 limited to produced water.

21 The other thing that we attempted to correct in  
22 there was that the way the rules were titled -- not  
23 anything in the substance, but the way the rules were  
24 titled, tended to indicate that they did not govern or  
25 apply to on-lease disposition of wastes. And we had -- the

1 Division had taken the position, and continues to take the  
2 position, that the rules as they presently exist do apply  
3 to on-lease disposition of wastes, however we recognize  
4 that there was some possible ambiguity there and we wanted  
5 to clear that up.

6 Those are the objectives that we're pursuing in  
7 Rules 51 and 52, and I've already outlined the ones we're  
8 pursuing in Rule 53.

9 Of course, there are a number of minutiae, so I  
10 am hopeful that people will not consider that I am being  
11 disingenuous in view of the fact that some items in the  
12 proposed rules do not come under any of those heads. When  
13 we make our formal presentation on December the 8th, we  
14 intend to have our engineers explain every provision that  
15 differs from current law, but -- current rule, but for the  
16 purposes of this opening statement, such detail, I believe,  
17 is unnecessary.

18 I now want to address the comments that we have  
19 received during the comment process. We have received  
20 formal written comments from Controlled Recovery, Inc.; Oil  
21 and Gas Accountability Project; New Mexico Citizens for  
22 Clean Air and Water, Inc.; Occidental Petroleum, Ltd.;  
23 Devon Energy Corporation; and Yates Petroleum Corporation.  
24 We also -- and from Gandy Marley, Inc.

25 We also received a handwritten comment from an



1 individual citizen. Although the comment was handwritten,  
2 the comment itself was fully intelligible, however I'm  
3 unable to read the signature and her name is not printed  
4 anywhere on the comment, so I can't tell you what her name  
5 is, but the record is on file.

6 I will summarize very briefly the tenor of the  
7 comments we've received to date.

8 Controlled Recovery has commented on both drafts.  
9 Their initial comment on the October the 12th draft, first  
10 they address the issue of what constitutes a major versus a  
11 minor modification, the major modification being one that  
12 requires public notice and possibly a hearing for approval,  
13 and the minor modification requiring merely filing and  
14 review by the Division. The tenor of their comment was  
15 that a modification should not be considered major unless  
16 it changes the footprint of the facility. One of the  
17 things that became apparent from the first draft and then  
18 the second draft and then the comments on the second draft  
19 was that that was not an entirely unambiguous concept, but  
20 I will let them address that if they want to. I'm just --  
21 I'm really trying to not go into detail but to summarize  
22 the comments.

23 Second point, they address the waste-acceptance  
24 criteria for landfarms, suggesting that the 2000-part-per-  
25 million chloride limit that was proposed in the first draft

1 was to high. They questioned the appropriateness of  
2 requiring a plastic cap for enclosing a landfill, suggested  
3 that groundwater monitoring requirements after closure of a  
4 facility should be limited to use of existing wells, and  
5 they suggested some rewriting of the transition provisions  
6 that would govern how the new rule would apply to existing  
7 facilities.

8 In their subsequent comments, they reiterated  
9 some of these previous comments. They also added that  
10 landfarms should be limited to accepting only soils, which  
11 was not the case in the previous drafts, and that we should  
12 have a definition of the term "soils". Specifically  
13 suggested that landfarms should not be allowed to accept  
14 drill cuttings. As an alternative to the 2000-part-per-  
15 million chloride limit for landfarms, they suggested a 250-  
16 part-per-million limit. Since we had introduced in the  
17 second draft the concept of a biopile, which was not in the  
18 first draft, the said we should define that concept.

19 Landfarms should not be allowed to accept free  
20 liquids. The engineering certification that we require on  
21 the application, they suggested, should be by a registered  
22 New Mexico engineer and that he should have certain  
23 specific competency requirements in the field.

24 A list of approved transporters, under Rule 51,  
25 should be published on our website. That's -- And they

1 objected to the proposal to introduce a new waste  
2 certification form, and that was a proposal that was  
3 brought in in the second draft and was not in the first  
4 draft. And they again reiterated their desire to see some  
5 rewriting of the transition provisions as to application of  
6 the new rules to existing facilities.

7           Okay, the Oil and Gas Accountability Project.  
8 The Oil and Gas Accountability Project wanted to maintain  
9 the requirement for storage of produced water in tanks at  
10 injection well sites. We had -- The old rule said they had  
11 to be stored in tanks; the new rule substituted a vaguer  
12 but more flexible provision that said it had to be stored  
13 in such a manner as to protect fresh water and the  
14 environment, or something to that -- words to that effect.

15           The Oil and Gas Accountability Project was  
16 concerned that the distinction between a major and minor  
17 modification is not clear. They want to -- they had  
18 suggested that we should require a contingency plan for  
19 cleanup of spills or leaks. They were concerned that our  
20 revegetation requirements were not extensive enough to  
21 ensure successful revegetation, particularly in an arid  
22 climate, in which we're operating. They thought  
23 evaporation ponds should be monitored weekly, whereas the  
24 draft provided for monthly. And OGAP also, in common with  
25 CRI, was concerned that the requirement for a plastic cap

1 on landfills might not be appropriate.

2 New Mexico Citizens for Clean Air and Water.

3 They also were concerned that the major and minor  
4 modification definition is not adequate. They were  
5 concerned about the tank in the provision requiring netting  
6 of open tanks, and as I understand their comment they  
7 thought that there should not be allowed to be open tanks  
8 because they present a hazard to both birds and other  
9 wildlife. Perhaps they can clarify their comments. I  
10 wasn't totally sure what they were advocating there.

11 They wanted some further siting limitations on  
12 landfills, and they introduced a comment about landfarm  
13 acceptance criteria, that not only should we have a  
14 chloride limitation but we should also have them tested for  
15 metals since metals, like chlorides, would not be  
16 remediated by landfarming. A detailed comment about how  
17 the monitoring of landfarms would be done. They also  
18 didn't like the 2000 p.p.m. chloride limitation and wanted  
19 it to be 500.

20 Evaporation ponds, they wanted some  
21 specifications about the outside of berms. Specifications  
22 that we had in the previous draft related only to the  
23 inside of berms. And they wanted some more extensive  
24 landfill closure and post-closure specifications. They had  
25 some detail on there, but I will not attempt to summarize

1 it.

2 Okay, Occidental Permian did not submit their own  
3 detailed comments. They agreed -- basically agreed with  
4 the other industry comments that were submitted.

5 Devon. Devon suggested that we should put in a  
6 transition provision for approval of C-133 Authorization to  
7 Transport. The new Rule 51 would require approval of that  
8 form, whereas the old rule simply required that a  
9 transporter have it on file, their concern being that it  
10 would take some time to get them approved, and they should  
11 be allowed to use existing transporters during the interim.

12 They further suggested that the operators should  
13 not be responsible for being sure that the transporters  
14 actually did have an approved C-133, which was one of the  
15 provisions of the rule, would make it an infraction for an  
16 operator to allow transportation by a non-approved carrier.

17 Disposal should exclude spills or leaks. The  
18 provision prohibits disposal on the ground, and -- their  
19 concern being that if there was a spill or leak, that would  
20 be an illegal disposal under proposed rules.

21 The Devon comments suggest that the definition of  
22 exempt centralized facilities is not adequate. They don't  
23 disagree with the concept, but they don't -- what they  
24 understand us to say is the same as what they think we  
25 ought to be saying, if I understand them correctly, but

1 they don't think we've said it clearly enough.

2           They want a definition of temporary storage,  
3 which is a concept that's used in Rule 52. And like just  
4 about everybody else, they think the major modification/  
5 minor modification definition is not adequate. They would  
6 suggest that determination of a major modification be based  
7 on a certain percentage of the cost of replacement of the  
8 facility.

9           And one of our concepts of a major modification  
10 is if it changes the nature of the waste stream, and the  
11 say that should be a major modification only if it  
12 increases the toxicity, that if they're going to add some  
13 waste stream that's less toxic than what they're currently  
14 treating, that that should not be a major modification.

15           Okay, Yates Petroleum Corporation. One of  
16 Yates's comments is that we ought to coordinate our bad-  
17 actor provisions with those that the Commission determined  
18 to adopt in the rules that it adopted today, and I will  
19 note -- and I think nobody will take issue with this --  
20 that the Division, having the benefit now of the  
21 Commission's wisdom, agrees with that comment.

22           Like Devon, they believe that the operators  
23 should not be responsible for enforcing compliance with the  
24 C-133 requirement by being limited to approved  
25 transporters.

1           They indicate that pits should be exempted from  
2 the definition of surface waste management facility. I  
3 won't attempt to address that comment, because it's a  
4 fairly complicated concept, but -- I believe it's  
5 adequately addressed in the current draft, but I will save  
6 that for the formal hearing.

7           In the definition of a centralized facility, they  
8 believe that needs work. Specifically, it's their view  
9 that it would be limited to a specific corporation  
10 operating the centralized facility, versus operating the  
11 leases that contribute to it, and the corporate structure  
12 of many of the large companies would be more adequately  
13 accommodated if we add an "or affiliates" provision in  
14 there.

15           Major/minor modification, they also did not like  
16 our -- Nobody liked our suggested major/minor modification  
17 section.

18           Revegetation, Yates raised the concept, as CRI  
19 also did at the meeting, although I don't believe it was in  
20 their formal comments, that an owner of land on which a  
21 facility is located should not be required to revegetate if  
22 it's inconsistent with their intended use of the land.

23           And they wanted grandfathering on certain  
24 specific provisions that we introduced with regard to  
25 landfarms that apparently do not conform to -- were not

1 specifically provided in prior law and are not conformed to  
2 in certain centralized facilities.

3           They indicate that landfarming of chlorides  
4 should not be absolutely prohibited, and their comment  
5 states that chloride contaminated materials have been  
6 successfully landfarmed, and they don't go into  
7 technological detail but I assume they're going to be  
8 prepared to present that to us at an appropriate time.

9           In the closure plan procedures, Yates has  
10 indicated that if we want to -- if the Division wants to  
11 impose additional procedures not contemplated in the  
12 closure plan on file, that there should be a provision for  
13 notice and hearing. And they also are concerned about the  
14 adequacy of our transition provisions.

15           Now, I may have bored everybody by enumerating  
16 all those comments, and I'll concede that one of the main  
17 reasons I did so was that I wanted everybody to have the  
18 assurance that their comments had not been overlooked or  
19 ignored in the process.

20           The main issues that we have felt that it was  
21 necessary to reassess, in view of the comments that we have  
22 received, are the major/minor modification distinction.  
23 That has been the subject of objection by almost everyone  
24 who filed comments.

25           The transition provision. Several people are



1 concerned about the transition provisions and there are  
2 internal concerns in the Division that they may not be  
3 adequate to deal with all the problems that may be involved  
4 when applying these new rules to existing facilities.

5 Then there is the issue of operational and  
6 closure requirements for landfarms. Many of the comments  
7 raised issues that pertained to the operational and closure  
8 requirements for landfarms, and in view of those comments  
9 and the things that were raised by them, we also reviewed  
10 the Environment Department's specifications on those  
11 subjects, and based on the comments and on that review, we  
12 think that needs to be revisited.

13 And of course there's this general issue of the  
14 appropriate constituents for landfarms, which has been the  
15 subject of a lot of comments, so we felt like the provision  
16 we had in the October 14th draft needed to be reconsidered  
17 in that area.

18 Those are the main areas. And once again, I hope  
19 people will not hold me to it if the next draft includes  
20 some tweaks here and there that are within those areas.  
21 But I do believe those cover the main areas we need to  
22 address. I did mention, I hope, transition provis- -- yes,  
23 I did, and that's one of the most important things we're  
24 concerned about looking into further.

25 Given the nature of this proceeding, I think that

1 is as much of an opening statement as I can appropriately  
2 make at this time, Mr. Chairman.

3 CHAIRMAN FESMIRE: Thank you, Mr. Brooks.

4 Mr. Carr?

5 MR. CARR: May it please the Commission, with  
6 your permission I think what I'd like to do is provide a  
7 brief comment on the procedural status of this matter, then  
8 give a brief opening statement. And I do have  
9 recommendations from the New Mexico Oil and Gas  
10 Association.

11 Procedurally, following the early October  
12 stakeholders' meeting, the Regulatory Practices Committee  
13 of NMOGA met to review the proposed surface waste  
14 management rules and the pit rule. I frankly had allowed  
15 an hour to look at surface waste management rules, and when  
16 we started to meet -- this is my draft -- we had a few  
17 comments on the rule, and we never got to the pit rule.

18 And we were preparing comments when a -- to file  
19 on the 3rd, when, a week ago Monday, the agency called and  
20 advised that we were not going to have the final hearing  
21 today and that there were going to be amendments to the  
22 rule. And at that time I was under the impression we were  
23 going to get additional rules, I thought, on the 3rd, and  
24 so we stopped our commenting process or our -- preparing  
25 our comments at that time.

1 I was advised on the 2nd by Ms. Leach that, in  
2 fact, the comments -- the new draft wouldn't be out until  
3 after the hearing, and I told her that we would go ahead  
4 and be prepared here today with additional comments on the  
5 rule. So that's why they have not been presented, and so  
6 that's why Mr. Brooks hasn't seen them yet.

7 The way this matter stands today, I think our  
8 only concern is that we're not really sure what your  
9 comments -- what the amendments are going to be in the  
10 third draft, and that we hope that if they do go beyond  
11 where we are today, that there would be an additional  
12 opportunity to provide some written comments, so we don't  
13 sort of come in at the hearing with your not knowing where  
14 we are and our not knowing basically what your reaction is  
15 to anything that may occur between now and then. And so  
16 that is the one procedural concern.

17 And also I think at this time it would be  
18 important to say that the additional time was truly  
19 helpful, because we have been using it to try and  
20 coordinate our comments on these rules. And I recognize  
21 that some people are unhappy when a hearing is scheduled  
22 and then it isn't a hearing, but the time that we were  
23 afforded by this change has been used and has been  
24 beneficial to us, and I think -- and I hope that the  
25 comments that we're going to make are going to be useful to

1 you.

2 Before we get too much farther down the road, it  
3 would be helpful if we had some indication when you think  
4 we're going forward on other things, stakeholder meetings  
5 and the pit rule, because although we've been looking at  
6 three sort of separate rules, we find that they really do  
7 in many ways overlap, and what happens in surface waste  
8 management, we think, will impact the pit rule or needs to  
9 be coordinated with things you're considering there.

10 So in any event, we recognize the logistical  
11 situation and problems that you find yourself in, and I  
12 just want you to know we're trying to accommodate those too  
13 and not be dilatory by not having comments here, because I  
14 did discuss this with the general counsel before we delayed  
15 filing them until today.

16 The opening statement for NMOGA is this, I think:  
17 First of all, I think generally speaking, we speak  
18 regulation of the industry by rule, not by guideline. We  
19 think it works better for us and it works better for you,  
20 and it results in, we believe, a more consistent  
21 implementation of your rules and procedures. And so we  
22 support that and encourage that.

23 Secondly, we think the development of these rules  
24 and the resulting set of rules as we see them evolving is  
25 going to be both in the best interests of the agency and

1 our industry. Specifically, we do support rules that  
2 protect the freshwater resources of the state, we do  
3 protect [sic] rules that encourage the development of oil  
4 and gas resources in a way that protects human health and  
5 the environment.

6           However, as you go into this, we think it's  
7 important that you realize that as you develop rules, you  
8 don't impose unnecessary limitations on disposal options,  
9 because we believe those are counterproductive, unnecessary  
10 limitations that reduce the options for many operators, and  
11 I think really not us, although we get branded with  
12 whatever happens in the industry, can cause less scrupulous  
13 operators to ignore and work their way around your rules  
14 and orders. So we think that the rules have to be  
15 appropriate and based on science and on fact.

16           Our principal concerns -- and I think what I  
17 should do is pass out our comments and then tell you  
18 generally what our principal concerns are.

19           Like everyone else, we don't like the distinction  
20 between major and minor modifications.

21           MR. BROOKS: Mr. Carr, do you have a copy for  
22 opposing counsel? Thank you.

23           MR. CARR: You know, Mr. Brooks continues to  
24 refer to us as the opposition and opposing counsel, and I  
25 don't think that's absolutely a necessary way to draw the

1 line.

2 CHAIRMAN FESMIRE: Mr. Carr, just a quick  
3 comment. Shouldn't a document like this come with a table  
4 of contents?

5 MR. CARR: Well, I will tell you, Mr. Chairman,  
6 the table of contents would very closely parallel what you  
7 have before you, since there -- Most of it is actually  
8 bullet points.

9 Our principal concerns, there are four or five.  
10 In the modifications of the proposed amendments to Rule 51,  
11 the Division in the rules will place the responsibility on  
12 operators to be sure that the water haulers they use are in  
13 good standing. Now, if it is our duty to know who they  
14 are, you must realize that you are really the source of  
15 that information, and we think that the rules that are  
16 adopted must contain some provision whereby you can provide  
17 that information to us.

18 And if we're to comply -- We don't think there is  
19 any other way the rule can actually work, and we have  
20 adopted the recommendations made by Yates Petroleum  
21 Corporation in that regard. They proposed certain  
22 amendments to the rules that we think address that  
23 situation.

24 We also have concerns about the definition of  
25 centralized facility. We still are not sure why the

1 definition has to be changed. We believe the current  
2 definition is superior to what is in the rule. We think  
3 the focus of the rule on a single entity is truly  
4 inconsistent with industry practice. Now, operating  
5 entities are often a complex mixture of subsidiaries and  
6 affiliated companies, and we think that the rule as written  
7 may not, in fact, represent what really happens in the  
8 industry, and we think the rule as written could pose a  
9 hardship and operational dislocations for operators.

10 Major/minor modification distinction, we're not  
11 real thrilled with, and so we don't need to go into that.

12 In Rule 53 the Division recommends that the  
13 provisions of -- the rules provide that the level of  
14 geological and hydrological -- a broad -- impose a broad  
15 requirement in terms of the geological and hydrological  
16 data required. And we recommend that this be amended to  
17 limit this data to the shallowest freshwater aquifer or 100  
18 feet below the surface of the ground, whichever is greater.  
19 We think that requiring the data as the rule is written is  
20 expensive, it's difficult to obtain. But more importantly,  
21 we think that with this amendment you still have the data  
22 needed to properly permit a facility.

23 Furthermore, if, because of the characteristics  
24 of that individual facility, more data is needed, under  
25 Rule 53.C you have a right to request that. We're just

1 suggesting that across the board it imposes a substantial  
2 burden without a corresponding benefit to the process.

3 We also believe that there should be additional  
4 concern by the agency in terms of grandfathering existing  
5 facilities, and we have identified in the detailed comments  
6 where we believe modifications should be made.

7 We also are concerned that the new rules for the  
8 first time add TPH as a regulated constituent for soil, and  
9 we think this should be removed. We plan to testify about  
10 that in December. We think its inclusion really violates  
11 common sense and solid science and that the BTEX analysis  
12 that you will receive under the rules provides you with all  
13 the information that you require to appropriately do your  
14 job.

15 Mr. Brooks talked about the minutiae, and --

16 CHAIRMAN FESMIRE: I didn't know there was a  
17 plural to that word.

18 MR. CARR: I didn't either, and I -- Much of what  
19 is in our comments, I think, falls in that category. We've  
20 identified even where we think there's an error in a  
21 citation, things of that nature, and we simply are calling  
22 those to your attention.

23 But that's basically where we stand at this time.  
24 Our comments are before you. We can go through them  
25 individually. What it is, really, is simply a compilation



1 of the comments from the Regulatory Practices Committee  
2 meeting, and it just flags provisions that we think are  
3 either confusing or burdensome to us. And it also, I  
4 think, for you is a roadmap of the issues that we intend to  
5 raise on December the 8th.

6 CHAIRMAN FESMIRE: Thank you, Mr. Carr.

7 Mr. Feldewert, do you have an opening statement?

8 MR. FELDEWERT: Well, I do in the sense that we  
9 have submitted proposed modification language pursuant to  
10 the provision that deals with modifications, as opposed to  
11 the provision that deals with comments. I have a hard time  
12 sometimes distinguishing between the two, but...

13 I think first of all, I would like to say that I  
14 think Mr. Brooks and the Division has done a tremendous  
15 amount of work and have taken a look at some very difficult  
16 concepts and have really gone a long ways towards cleaning  
17 up some of the procedural issues associated with the  
18 permitting process in this new rule, have tried to address  
19 some of the -- clarify, I think, in a very good fashion,  
20 the operational provisions that should be applicable to  
21 these facilities.

22 There are still issues and difficult concepts. I  
23 mean, this major/minor distinction, we took a shot at  
24 trying to draft language that dealt with attempting to  
25 distinguish it based on a change in the footprint in the

1 area, a change in waste stream or a change in process that  
2 is used. Obviously that didn't go over real well, so it --  
3 That's a difficult concept, and it's a very important  
4 concept because it determines what process, permitting  
5 process, you have to go through.

6 We still -- I think there are some issues  
7 remaining as to what landfarms should and should not be  
8 doing, which is what you need to decide with this rule.  
9 And I have copies of what we filed, if I may approach. I  
10 think rather than -- I think it makes sense to do it now,  
11 because our comment -- what I wanted to say here today was  
12 only going to take about five or ten minutes anyway.

13 David, do you want this?

14 MR. BROOKS: Is this the same as the October  
15 27th --

16 MR. FELDEWERT: October 27th.

17 MR. BROOKS: Okay, I already have that.

18 MR. FELDEWERT: I think where I'm going to just  
19 go first is the issue of what you want to do with  
20 landfarms, and that's -- because landfarms, as we've  
21 understood it, and I think as the Division expressed in its  
22 letters, particular letters, is that -- it's my  
23 understanding that you envision these landfarms as being  
24 facilities that are there to remediate hydrocarbon-  
25 contaminated soils, and that the sole purpose of these

1 facilities is not to store waste but to remediate waste.

2 Now, the problem with some of the existing  
3 language is, I think there's some concerns in -- or there's  
4 some statements in Rule 53.B.(2) concerning whether you're  
5 going to allow other types of waste within these facilities  
6 or whether it's just going to be soil. Our proposal is  
7 that it should be soil. That's what they were intended to  
8 deal with. Hydrocarbon-contaminated soils can be  
9 remediated, other types of wastes cannot.

10 If you're going to go that route, it seems to  
11 make sense that you need a definition of soils, to make it  
12 very clear as to what these landfarms can and cannot take.  
13 And a perfect example, I think, of some of the confusion in  
14 the existing rule is, if you look at 53.F.(12) of your  
15 proposed rules, the way it's defined is, you talk about  
16 hydrocarbon-contaminated soils but then you start talking  
17 about other wastes. You have a standard in there for  
18 chlorides, which a lot of people have commented upon.

19 We think if you go that route where you're going  
20 to allow other types of wastes, chloride-contaminated  
21 wastes, and you try to use a 2000-parts-per-million  
22 standard, our concern is, when you start stacking that  
23 material out there on landfarms, that you're increasing the  
24 salinity, you're increasing the impact. And I'm not sure  
25 anybody has really thought about what happens when you

1 start stacking wastes that have 2000 parts per million on  
2 top of each other in these landfarms as you progress.  
3 That's why we threw out a 250-parts-per-million standard,  
4 which is used by the Water Quality Control Commission.

5 But again, that standard issue only comes up if  
6 you're going to allow these landfarms to accept something  
7 other than hydrocarbon-contaminated soils, and that's just  
8 a decision that you're going to have to make, depending on  
9 what you want these landfarms to be doing.

10 The other points that we make in here are fairly  
11 isolated. The other -- the two remaining points I think  
12 that we're talking about at this point in time is, there  
13 was a change since the stakeholders' meeting in terms of  
14 the form that was to be used to document the waste streams,  
15 and there was -- there's a proposal to create a new form, a  
16 C-142, as I understand it. So rather than -- in the past  
17 they've used the form of their choice. Apparently your  
18 idea is to possibly use a new form, a C-142.

19 That obviously imposes another record-keeping  
20 problem with a separate form. In a circumstance where a  
21 lot of these facilities already have built within their  
22 trip release, I think is what they call them, this  
23 obligation to identify the waste streams, because they did  
24 it under the forms of their choice -- I think that has  
25 worked. I mean, unless you all have some evidence to the

1     contrary, I think that process has worked.

2             So I don't know if you really need to create  
3     another form and require these facilities to maintain  
4     another form if they've already got a form in place that  
5     they have been using that meets this criteria. So we had  
6     some concern about that.

7             The other point related to this idea -- and this  
8     has already been addressed briefly here today, and that is  
9     whether a C-133 is going to be an appropriate mechanism to  
10    determine whether you have an approved transporter, because  
11    as I understand it -- and I could be wrong -- you issue a  
12    C-133 to an entity, and it's approved, and that entity has  
13    that form.

14            Now, what we don't know as a facility operator is  
15    if that form has subsequently been revoked or whether it's  
16    been suspended. So they can show us a C-133, as I  
17    understand it, but we have no idea whether it's still  
18    valid. It's been approved at one point in time, but we  
19    don't know if it's still valid.

20            So that's why I think you need to have some kind  
21    of a mechanism, maybe possibly a website, that you could  
22    easily go to check before you accept this waste, because  
23    you're putting a tremendous burden on the facility operator  
24    to verify that they are an approved transporter. So if  
25    you're going to do that, please give us a mechanism by

1 which we can meet that obligation in an easy fashion.

2 That's really the high points of what we see  
3 under the existing rule. You know, obviously we can't  
4 comment on what is going to happen with this new rule, but  
5 those were the main concerns. There's some other points in  
6 here, but those are the main concerns as we saw the  
7 existing draft.

8 CHAIRMAN FESMIRE: Are there any other comments  
9 that folks would like to make concerning the amended  
10 proposed rule?

11 Dan, you're grinning, so I assume you've got  
12 something to say.

13 MR. BROOKS: Dan's always grinning.

14 MR. GIRAND: Hardly ever, but...

15 Dan Girand with Mack Energy. Mostly just to  
16 agree with the comments we've heard today and maybe stress  
17 a few things we're concerned about.

18 Also, I don't know that I really agree that Rule  
19 51 in the first few paragraphs there are not controversial,  
20 and you're a little concerned about some of that.

21 And we agree that there is a problem, a serious  
22 problem, with the approval of the C-133 and this change in  
23 your procedure, unless there's some kind of transition,  
24 because we've got literally hundreds of trucks running  
25 around the oilfield. And on the day the rule becomes

1 effective, how do we have -- and know that every single one  
2 of them, every single hauler, is approved by the Division?

3 CHAIRMAN FESMIRE: It's always been our intention  
4 to put that on the website. Will that satisfy the  
5 concerns?

6 MR. GIRAND: That's -- Thank you, Mr. Chairman,  
7 that's another of our concerns, because we're not really  
8 yet satisfied that the websites are up to date, that you're  
9 able to keep up with. We've still got the inactive well  
10 list that needs to be updated and needs to be in good shape  
11 before somebody takes a -- is not allowed to do something,  
12 whatever it may be.

13 And we're adding to your burden, if you're going  
14 to have to keep up with the water haulers also and have an  
15 additional list. We haven't got the other one really  
16 updated and working well, yet you're going to undertake  
17 another one. So we're a little concerned that that might  
18 not be the best thing. And you're taking on quite a burden  
19 there, I think.

20 And then I guess we had the basic issue that -- I  
21 don't know that really operators should be expected to  
22 check the list every day to be sure their haulers are  
23 approved still and haven't gotten in some kind of  
24 difficulty with OCD. I think we probably disagree on who  
25 has that burden, but...

1           We too have a concern that you've heard --  
2 serious concerns that you've heard about these definitions,  
3 about -- is a lightning strike, is an accidental leak or if  
4 somebody shoots a hole in your line, is that -- does that  
5 suddenly bring us under this rule? And that's been  
6 expressed in some other comments. And yes, we see that as  
7 a problem.

8           The definitions we also see as a problem with  
9 centralized facility, and that's been expressed.

10           Also the limits that are in 53 of 50 barrels a  
11 day, 53.A where the centralized facility is defined as  
12 receiving less than 50 barrels a day liquids, and there are  
13 wells that -- single wells that produce more produced water  
14 than that. So we think we need to be sure -- because  
15 that's what's going on in the oilfield today, we need to be  
16 sure that that doesn't put these under the Rule 53 and --  
17 not as being exempted.

18           And I don't know why centralized in that  
19 definition appears again in 53 when we're excluded in 51,  
20 but it -- here it shows up again. It sounds almost like,  
21 well, we're excluded, but, well, maybe you're not excluded.  
22 So what we intend to do should be real clear. Or maybe I'm  
23 just dense. That would open me up.

24           (Laughter)

25           CHAIRMAN FESMIRE: Well, let the record reflect



1 that the Commission did not take advantage of the opening.

2 (Laughter)

3 MR. ANDERSON: We will later.

4 MR. GIRAND: No, he's soon to retire, he's going  
5 to get a chance.

6 (Laughter)

7 MR. GIRAND: And we've always felt that this  
8 bonding was not a good concept, 100-percent bonding is not  
9 a good concept. That gets -- that's -- We see that being  
10 applied to operators, we see it being applied to  
11 facilities, and we think bonding is appropriate as -- not  
12 as insurance but as enough to make somebody do something,  
13 but not 100-percent bonding, which is insurancing. We are  
14 not in favor of that.

15 And that's all I have, Mr. Chairman.

16 CHAIRMAN FESMIRE: Thank you.

17 Is there anyone else that would like to make  
18 comments on the record?

19 Sir? Alan?

20 MR. ALEXANDER: Yes, my name is Alan Alexander  
21 with Burlington Resources, out of the Farmington office.

22 We do agree with the comments discussed by NMOGA  
23 generally, but we have some -- I would like to call to your  
24 attention three or four items that Burlington is interested  
25 in. We'd like to focus on those.

1 I'll repeat the concern on the C-133. We really  
2 think that's a matter that's a relationship between the  
3 Division and the contractors, and to put the operator in  
4 the middle of that is very problematic. We don't see how  
5 that's going to work very well.

6 We would like to make sure, although we think the  
7 current rule states, that on-site landfarms under 1400  
8 cubic yards are exempted. We do a lot of that up in the  
9 northwest, and we'd like to continue doing that practice,  
10 that those don't become any kind of a permitted facility.

11 We think there is still some major problems  
12 around defining the watercourses, and those are going to  
13 appear in these rules and in the pit rules. We think  
14 they're very subjective, and it's just going to lead to  
15 problems between the Division and industry if we can't come  
16 to some better definition that we can both recognize when  
17 we're out in the field. We want to do what's right, but we  
18 don't want to get out there and have a different  
19 interpretation and then you guys are unhappy with us  
20 because you have a different interpretation of what a  
21 watercourse is. Somehow we've got to more clearly define  
22 that. We did submit some language to you that will  
23 probably be reviewed again in trying to help that  
24 understanding.

25 Another area that we are focused on is, we re-use

1 -- we recycle and re-use our drilling fluids up in the  
2 northwest, which we think is both a benefit to the  
3 environment and to the cost-saving feature that we have up  
4 there. We would not like to see those kinds of fluids  
5 classified as waste, because they're not waste; we're re-  
6 using them. Now, at such time as we may need to dispose of  
7 those, then they would become waste products and they could  
8 fall under the waste categories.

9 Those are the specific items that I would like to  
10 mention and continue working on as we go forward.

11 CHAIRMAN FESMIRE: Okay. Mr. Alexander, talking  
12 about the last item, it certainly isn't our intent to  
13 identify re-usable drilling fluids as waste, as long as the  
14 intent is to re-use them. How can we specifically address  
15 that?

16 MR. ALEXANDER: We realize there's some  
17 opportunity for somebody to try to dispose of these fluids.  
18 We haven't quite worked out -- we will do more work on that  
19 as we progress, on how we can define that. But I  
20 definitely wanted to get the concept in front of you to let  
21 you know that we think that's a valuable resource, and they  
22 should not be defined as waste. We will endeavor to work  
23 into that and potentially come up with a better definition  
24 or procedures on how we can do that.

25 CHAIRMAN FESMIRE: Well, I can't speak for the

1 Commission. I can speak for the Division: We would  
2 appreciate your help in that. I mean, that is not our  
3 intent, to force the disposal of -- in essence, to create  
4 more waste, when we have an ability to re-use those fluids,  
5 so --

6 MR. ALEXANDER: Yes, sir.

7 CHAIRMAN FESMIRE: -- we'd appreciate that a lot.

8 MR. ALEXANDER: All right.

9 CHAIRMAN FESMIRE: Next? Anyone else? Ray, are  
10 you --

11 MR. MILLER: Oh, I always have a few things to  
12 say, Mark, but I'll actually be very short and brief today.

13 We've received the NMOGA comments, and obviously  
14 one of the items in there is discussion about the TPH  
15 factor. I have listened to a lot of the discussion that  
16 they've had at some of these meetings, and I think that  
17 that one item is very important to see if you all or the  
18 Division will actually consider removing that type of  
19 requirement.

20 And I think some of it may relate to the fact  
21 that Chaves County San Andres oil -- you know, some of it  
22 has a fair amount of asphalts -- if it's actually over the  
23 landfarm, you know, might not meet some of your closures if  
24 it was included as a component. And yet, you know, it's a  
25 specific thing. And I'm not a chemist, but anyway I'd ask

1 your folks to look at that carefully because I think it  
2 actually may make some of them very difficult, in the  
3 southeast, at least, to actually meet closure requirements.

4 The other thing that we've had some discussion  
5 about in our organization is the requirement of the  
6 approval for the approved C-133s when we call for disposal.  
7 You know, there's been discussion about having the approved  
8 list on the website. One of the problems that we face  
9 right now just in our industry with the level of activity  
10 is, we call one principal company to actually do our  
11 trucking disposal hauling of produced water -- or fresh  
12 water for drilling and brine water for our drilling rigs.

13 That company, and everybody down there, is  
14 extremely busy. As a result, if all their rigs are working  
15 and they cannot get to it, they actually are calling  
16 another company, or another company or two, to see if they  
17 can catch the job. In other words, some of the water  
18 haulers are actually working together, which -- you know, I  
19 mean, it saves them calling us back saying, well, no, we  
20 can't get it, you'll have to call somebody else. They  
21 actually make the calls and actually set up, and then the  
22 company just direct-bills us when they actually haul.

23 But you know, all of a sudden you're having a  
24 requirement here that, you know, imposes an obligation that  
25 I knew. You know, likewise with the level of activity it

1 may be three or four days before they actually do the haul.  
2 And if I call and they were approved at the time, and then  
3 you unapproved them a day or two later because of some  
4 action that you had pending, and they hauled after that,  
5 based on my previous calls, would I be in violation?

6 I mean, it's just little things, and I don't  
7 think that's your intent. You're trying to, you know, get  
8 us to make sure that we're using reputable folks or  
9 approved folks and that the bad apples are weeded out.

10 One other thing that we've talked about, and it's  
11 obviously a little further beyond what the rule actually  
12 addresses, is, you know, obviously part of the concern is  
13 the dumping-type of issue. It's very difficult to control,  
14 you know, because you don't see folks and we don't have 24-  
15 hour guards at every location.

16 One of the discussions we had, and it's very far-  
17 fetched, is actually looking at having GPS's. There's a  
18 new company, M-Plus GPS, I think, is the dot com. They  
19 have a website. And I think the market is primarily  
20 teenage drivers like my sons used to be, where they install  
21 the device on your car. It gives your computer a map of  
22 every place the car has been so you know where your son's  
23 been. It also tells you how fast he was driving, and it  
24 also allows you to block how far the vehicle could move.  
25 You know, it can let you fence the car into a certain area

1 where he can't go see his girlfriend in Roswell.

2 MR. FELDEWERT: What was that website, Ray?

3 (Laughter)

4 MR. MILLER: It's M-Plus GPS, M-P-l-u-s GPS.com,  
5 and, you know, it's -- but something like that -- I  
6 happened to just be talking with one of the guys that's  
7 involved with it, and he says -- I says, well, you know,  
8 one of our problems is trying to figure out who done it.

9 He says, well, if every truck had it in it, the  
10 agency could put in the location and pull back up the  
11 previous days routes of every vehicle that was on the  
12 system and see which one went to that specific -- he says  
13 they can tell within a parking lot space, is the accuracy,  
14 you're within three meters. But anyway, it's just  
15 something that's different. But I mean, obviously that's  
16 beyond what is probably our scope here, but some of our  
17 technology changes that are out there may be the types of  
18 things that actually work towards solving the problem  
19 better than, you know, what we're trying to do, just  
20 through rulemaking.

21 CHAIRMAN FESMIRE: Okay. Any other comments?

22 Anybody -- Oh, Mr. Carr, I'm sorry.

23 MR. CARR: I'd like to -- I have an error in the  
24 NMOGA comments on page 4 that I'd like to point out. It's  
25 in the proposed Rule 53.C(1)(j), and I make a reference to

1 -- at the end of the first paragraph, to a proposal by  
2 Yates, and I talk about our recommending 100 feet below the  
3 surface of the --

4 CHAIRMAN FESMIRE: -- of the ground water?

5 MR. CARR: But it -- whichever is greater. It  
6 should be whichever is lesser. I just misstated the Yates  
7 comment, it's not my intention.

8 CHAIRMAN FESMIRE: Okay.

9 MR. BROOKS: Did you also intend to say 100 feet  
10 below the surface of the ground, rather than below the  
11 surface of the ground water?

12 MR. CARR: I probably did, yes, sir.

13 CHAIRMAN FESMIRE: Okay.

14 MR. BROOKS: Mr. Chairman, honorable  
15 Commissioners, I don't have anything further by way of  
16 opening statement or observations, but if we're ready to  
17 wrap up I want to make some suggestions about the procedure  
18 that we do from now.

19 CHAIRMAN FESMIRE: Okay, we may be awfully close.

20 Mr. Domenici, did you or your client have  
21 anything to say on these --

22 MR. DOMENICI: Not right now --

23 CHAIRMAN FESMIRE: -- on the record?

24 MR. DOMENICI: -- thank you, though.

25 CHAIRMAN FESMIRE: Okay. Mr. Brooks, I guess you



1 can proceed.

2 MR. BROOKS: Okay. Don't have to stand up.

3 Mr. Chairman, honorable Commissioners, I believe  
4 that the intention of the Division is that the comment  
5 period for written comments will extend till one week  
6 before the formal hearing on December 1. I think there  
7 could possibly -- which would give people two weeks after  
8 we publish the new draft to make comments. I believe we  
9 need the benefit of their comments on the third draft.

10 I think there may be some possible ambiguity  
11 about how this proceeding interrelates with the next  
12 proceeding on December the 8th, and to clarify that I would  
13 suggest that the Commission do two things today. One is to  
14 expressly continue this proceeding until December the 8th.  
15 We do intend to publish new notice, but just in case there  
16 is any flaw in the notice -- which, as you all know, is  
17 something that can't be ruled out as a possibility -- we  
18 would like to have that on the record.

19 The other thing is that the Commission -- to  
20 avoid ambiguity about how the notice requirements apply,  
21 that the Commission expressly extend the notice -- the date  
22 for notice -- for written comments, until December 1,  
23 Thursday, December 1, 2005.

24 MR. FELDEWERT: I'm sorry, does that include a  
25 modif- -- You know, there's a distinction between written

1 comments and modifications of the language? Does it  
2 include modifications?

3 MR. BROOKS: That is true, and I would point that  
4 out also. The new procedural rules have a two-week-before  
5 provision for modifications. Well, that two-week  
6 provision, if -- I do think it should be extended, so  
7 additional modifications. The question is, should it be  
8 any date other than -- should it be other than December 1?  
9 My recommend would tend to be that the time for  
10 modifications be extended to December 1. The reason for  
11 the additional week is to allow people to comment on other  
12 people's proposed modifications.

13 If I thought somebody was going to come in with a  
14 full draft of a different -- alternative rule, I would  
15 think that was important, but I don't get the sense that  
16 that is likely. And there's the further complication that  
17 two weeks before the December 8th hearing is Thanksgiving  
18 day.

19 So taking all things under consideration, I  
20 recommend that the Commission extend the time for filing of  
21 written comments on the Division's new proposals and of  
22 proposed modifications thereof until Thursday, December 1,  
23 2005.

24 CHAIRMAN FESMIRE: And under the new rules can we  
25 do that? Can the --

1 MR. BROOKS: Yes, the Commission can extend at  
2 any time.

3 CHAIRMAN FESMIRE: Would the Commission have any  
4 objection to that?

5 COMMISSIONER BAILEY: None at all.

6 COMMISSIONER OLSON: No objection.

7 CHAIRMAN FESMIRE: Okay, the Chair will so order  
8 that the date for filing of proposed comments and -- or for  
9 comments and proposed revisions be extended until December  
10 1st.

11 MR. BROOKS: December 1st, 5:00 p.m.

12 CHAIRMAN FESMIRE: Is there anything else that --  
13 Mr. Carr?

14 MR. CARR: May it please the Commission, I'm  
15 telling people, and I assume I'm right, that we're not  
16 having a hearing on the pit rule on December the 8th.

17 CHAIRMAN FESMIRE: No, we are not.

18 MR. CARR: And that it's also fair to say that  
19 the schedule in terms of any stakeholder meeting will be  
20 announced; is that fair?

21 CHAIRMAN FESMIRE: Yeah, as soon as this meeting  
22 is over, Mr. Brooks and I are going to sit down and  
23 finalize the schedule, and we'll post it on the website.

24 The other thing that's not going to happen is,  
25 the December 14th meeting on the pit rules will not occur.

1 We're going to postpone that, and I think our best estimate  
2 is sometime early in January, wasn't it?

3 MR. BROOKS: That's what we've been talking  
4 about, is to try to do it between New Year's and the start  
5 of the Session.

6 CHAIRMAN FESMIRE: We will -- Like I said, after  
7 the hearing this morning, Mr. Brooks and I will sit down  
8 and finalize that. We'll post it on the website.

9 And our intention right now is to get a little  
10 bit of the overlap out of the system so that we're only  
11 working on one set of rules at a time substantively, and it  
12 will get folks a little more time, as the industry has  
13 repeatedly asked; we're going to try to accommodate them.

14 MR. CARR: And you'll see in our comments too  
15 that we're concerned that something like -- things like  
16 evaporation pits that fall within surface waste rules  
17 really overlap with pit rules, and in some of those areas  
18 we've suggested that there be some direction from you,  
19 maybe roll it all into the pit rule, but you'll see those  
20 in our written comments.

21 CHAIRMAN FESMIRE: Okay. Are there any --  
22 Yolanda?

23 MS. PEREZ: Mr. Chairman, you're postponing the  
24 pit rules; that also -- the comment period and all of that  
25 will also be moved along with that, right?

1 CHAIRMAN FESMIRE: Yes, ma'am.

2 MS. PEREZ: Okay.

3 CHAIRMAN FESMIRE: Like I said, we will have that  
4 schedule on the website. If it's not on the website today,  
5 it'll be on the website first thing in the morning. Or  
6 first thing Monday, Monday morning. I keep forgetting. If  
7 it put it on first thing tomorrow morning, I have to do it  
8 myself.

9 COMMISSIONER OLSON: It's also a holiday.

10 CHAIRMAN FESMIRE: Yeah. Are there any other  
11 comments on Cause Number 13,586?

12 Okay, with that we will continue Case Number  
13 13,586 until the next regularly scheduled meeting, which  
14 will be December 8th, 2005.

15 (Thereupon, these proceedings were concluded at  
16 10:25 a.m.)

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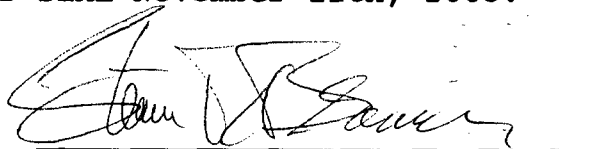
## CERTIFICATE OF REPORTER

STATE OF NEW MEXICO    )  
                              )    ss.  
COUNTY OF SANTA FE    )

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 11th, 2005.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006