

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

APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR THE 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

Volume X (Final Action by the Commission)  
October 19th, 2006

Santa Fe, New Mexico

2006 NOV 2 PM 4 39

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on April 20th-21st, May 4th-6th, May 18th, June 5th, September 21st-22nd, and October 19th, 2006, 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.

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## I N D E X

OCTOBER 19th, 2006 (VOLUME X):  
Commission Hearing  
CASE NO. 13,586

APPEARANCES 1922

FINAL ACTION BY THE COMMISSION 1924

REPORTER'S CERTIFICATE 1958

\* \* \*

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

## FOR THE COMMISSION:

CHERYL BADA  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department  
1220 South St. Francis Drive  
Santa Fe, New Mexico 87505

\* \* \*

## ALSO PRESENT:

ALAN ALEXANDER (Burlington Resources Oil and Gas Company)  
Industry Committee

DALE BALZANO  
Seven Rivers Land Farm

DAVID K. BROOKS, JR.  
Assistant General Counsel  
Energy, Minerals and Natural Resources Department

WILLIAM F. CARR  
New Mexico Oil and Gas Association/Industry Committee

CARL CHAVEZ  
Environmental Engineer, NMOCD

ROSS DUNCAN  
Marbob Corporation

KARIN FOSTER  
IPANM

JOHNNY C. GRAY  
Marbob Corporation

EDWARD HANSEN  
NMOCD

(Continued...)

## ALSO PRESENT (Continued):

GREGORY D. HUFFAKER, Jr.  
Controlled Recovery, Inc.

BRAD JONES  
Environmental Engineer, NMOCD

FRANK KRUGH  
Marathon Oil Company/Industry Committee

CAROL LEACH  
General Counsel  
Energy, Minerals and Natural Resources Department

DONALD A. NEEPER, PhD  
New Mexico Citizens for Clean Air and Water, Inc.

FRED OCHESKY  
Williams

WAYNE PRICE  
Environmental Bureau Chief, NMOCD

JOSÉ DANIEL SANCHEZ  
Compliance and Enforcement Manager, NMOCD

KELLIE SKELTON  
Energen

GLEN VON GONTEN  
Senior Hydrologist, NMOCD

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:05 a.m.:

3           CHAIRMAN FESMIRE: Okay, the main event is Cause  
4   Number 13,586, the Application of the New Mexico Oil  
5   Conservation Division for repeal of existing Rules 709, 710  
6   and 711 concerning surface waste management and the  
7   adoption of new Rules governing surface waste management.

8           At this time we're going to ask, are there any  
9   comments before the Commission continues in this case? Is  
10   there anyone who wants to put any further comments on the  
11   record?

12           Okay, seeing none, the Commission will take up  
13   Cause Number 13,586. The procedural aspects of this case,  
14   I'm going to ask Commission Counsel Bada to bring us up to  
15   speed on where we are.

16           MS. BADA: The Commission deliberated at the last  
17   hearing, and I've drafted a rule and an order pursuant to  
18   their deliberations and instructions at that last hearing.  
19   I believe the Commission has had a chance to review most of  
20   it. There may be a few items they need to discuss  
21   regarding some changes earlier this week.

22           CHAIRMAN FESMIRE: Okay, I'll ask the  
23   Commissioners if you want to work through the items that  
24   Counsel Bada is talking about and discuss them  
25   individually, or is there something specifically that any

1 of the counselors -- any of the Commissioners wants to  
2 bring up?

3 COMMISSIONER BAILEY: Why don't we go through the  
4 draft Rule and address the comments in green and blue,  
5 which are the changes --

6 MS. BADA: Right.

7 CHAIRMAN FESMIRE: Okay.

8 COMMISSIONER BAILEY: -- from previous drafts  
9 that we've seen?

10 CHAIRMAN FESMIRE: Okay. The first change from  
11 the previous drafts that were recommended by one or more of  
12 the Commissioners is on page 5 in -- it's actually section  
13 A.(1).(a) of Rule 53. Commissioner Bailey, did you have a  
14 comment on this?

15 COMMISSIONER BAILEY: The suggested change is  
16 okay with me.

17 CHAIRMAN FESMIRE: Okay. Commissioner Olson, do  
18 you --

19 COMMISSIONER OLSON: It was acceptable to me too.

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER OLSON: I don't see any problems.

22 CHAIRMAN FESMIRE: And it was acceptable to me.  
23 So we'll go ahead and accept that change.

24 The next one is on page 6, A.(2).(j), a major  
25 modification -- the definition of a major modification. We

1 had some question -- or I guess this was my comment -- on  
2 whether or not the wording on this should be changed.

3 COMMISSIONER OLSON: Yeah, I think that was my  
4 proposed change. I see that there's a suggestion that  
5 maybe we should look at doing it based on, instead of  
6 volume for the modifications, as a change in the design  
7 capacity, and I think that's -- seems like a reasonable  
8 suggestion.

9 CHAIRMAN FESMIRE: Okay. Commissioner Bailey, is  
10 that reasonable to you?

11 COMMISSIONER BAILEY: Yes, it is.

12 CHAIRMAN FESMIRE: And I too agree with that  
13 change, so we'll adopt that change to (j), Rule 53,  
14 A.(2).(j).

15 The next suggested change was Rule 53, A.(2).(m),  
16 Poor foundation conditions are features that indicate that  
17 a natural or human-induced event may result in inadequate  
18 foundational support for a surface waste management  
19 facility's structural components.

20 That was just a clarification, I think I was the  
21 one that suggested that.

22 Commissioner Bailey, is that acceptable to you?

23 COMMISSIONER BAILEY: Yes, it is.

24 CHAIRMAN FESMIRE: Commissioner Olson?

25 COMMISSIONER OLSON: Yes, that's acceptable.

1 CHAIRMAN FESMIRE: Okay. The next change is in  
2 A.(2).(q), in the definition of karst terrain. I thought  
3 the definition was a little too specific, that karst was a  
4 geologic term, the definition of which is well known, and  
5 that we could simplify it.

6 Commissioner Bailey, did you look at that?

7 COMMISSIONER BAILEY: I didn't see it as a  
8 necessary thing, but I won't object to it.

9 CHAIRMAN FESMIRE: Okay. Commissioner Olson?

10 COMMISSIONER OLSON: Yeah, I have no objections  
11 to it.

12 CHAIRMAN FESMIRE: Okay, we'll adopt that change  
13 also.

14 The next one is on page 8.

15 COMMISSIONER OLSON: And Mr. Chair, I had a  
16 suggestion for that. That sentence as it's -- with that  
17 additional language in there, I think, is -- The language  
18 helps clarify what is needed in the notice, but I think it  
19 would make more sense if we pulled that out and made it its  
20 own separate sentence, so -- That gets to be one -- the  
21 whole -- you get almost a one-sentence paragraph here.

22 So I would maybe suggest that we take that  
23 language and insert it down after that first sentence. I  
24 think it's down on the fourth line from the bottom of that  
25 paragraph, right before the next sentence, where the next



1 sentence starts, The Division may extend.

2 So then we could insert that language that's in  
3 blue there and start it with, The notice shall contain the  
4 information in subparagraph -- subparagraphs of (i) through  
5 (iv) of subparagraph (f) of paragraph (4), of subsection C  
6 of 19.15.2.53 NMAC. So it would be its own separate  
7 sentence there, just clarifying what is -- what type of  
8 information should be included in the notice.

9 CHAIRMAN FESMIRE: Counsel Bada, on the final  
10 draft have you already taken that into account?

11 MS. BADA: Yeah.

12 CHAIRMAN FESMIRE: Okay. Commissioner Bailey, do  
13 you have any objection to that?

14 COMMISSIONER BAILEY: No objection.

15 CHAIRMAN FESMIRE: Nor do I. We'll adopt that  
16 change.

17 On page 9, (4).(g), A person, whether or not such  
18 person has previously submitted comments, may file comments  
19 or request a hearing on the application by filing their  
20 comments in accordance with 19.15.14.1206 NMAC. So this  
21 ties it into the rulemaking rules, and I see nothing wrong  
22 with that at all. In fact, I think that's a good  
23 clarification.

24 Commissioner Bailey?

25 COMMISSIONER BAILEY: I support that change.

1 CHAIRMAN FESMIRE: Commissioner Olson?

2 COMMISSIONER OLSON: I agree.

3 CHAIRMAN FESMIRE: On page 10, C.(6).(d) -- I'm  
4 sorry, C.(6).(e), Review of adequacy of financial  
5 assurance. The Division may at any time not less than five  
6 years after the initial acceptance of financial  
7 assurance... We added the word "initial" there. That was  
8 to clear up any ambiguity that might have been perceived by  
9 the reader over what was acceptance and what was a renewal.

10 Commissioner Bailey, do you have any comment on  
11 that?

12 COMMISSIONER BAILEY: I have no objection to  
13 that.

14 CHAIRMAN FESMIRE: Commissioner Olson?

15 COMMISSIONER OLSON: No objection.

16 CHAIRMAN FESMIRE: Okay, we'll adopt that change.

17 The next is on page 11, E.(1), Depth to  
18 groundwater. No landfill shall be located where  
19 groundwater is less than 100 feet below the lowest  
20 elevation of the design depth at which the operator will  
21 place oilfield waste. No landfarm that accepts soil or  
22 drill cuttings with a chloride concentration that exceeds  
23 500 milligrams per liter shall be located where the  
24 groundwater is less than 100 feet below the lowest  
25 elevation at which the operator will place waste.

1 Less than 100 feet.

2 No landfarm that accepts soil or drill cuttings  
3 with a chloride concentration that is 500 milligrams or  
4 less shall be located where groundwater is less than 50  
5 feet below the lowest elevation at which the operator will  
6 place the oilfield waste.

7 It just dawned on me in reading this that we have  
8 an absolute provision against anything shall be located  
9 where the groundwater is less than 100 feet below the  
10 lowest elevation. What we're trying to do in here is, if  
11 they have a chloride concentration of 1000 milligrams per  
12 liter, not allow that at less than 100 foot to water, but  
13 at 50 milligrams per liter -- I mean, at 500 milligrams per  
14 liter, they can go 50 foot to water. Is that what we're --  
15 is that what this says? Because it looks like there's an  
16 absolute provision there, if it's less than 100 feet.

17 MS. BADA: It would probably be clearer to say  
18 that more than 50 feet.

19 CHAIRMAN FESMIRE: No landfill shall be located  
20 where groundwater is less than perhaps 50 foot below the  
21 lowest elevation, and then if it's -- I don't think this  
22 says what we want it to say, does it, Commissioner? What  
23 we're trying to do is allow 50 foot to groundwater if the  
24 chloride limit is 500 or less, and 100 foot to water if the  
25 chloride limit is 1000 or more.

1 COMMISSIONER OLSON: And then if it's between 500  
2 and 1000?

3 CHAIRMAN FESMIRE: Well, that would be the 50-  
4 foot --

5 COMMISSIONER OLSON: Okay.

6 CHAIRMAN FESMIRE: -- I mean, that would be the  
7 500 limit. No --

8 COMMISSIONER BAILEY: Anything more than 500 has  
9 to go to 1000.

10 CHAIRMAN FESMIRE: To 100.

11 COMMISSIONER BAILEY: To 100 feet, yeah.

12 CHAIRMAN FESMIRE: Yeah, and I don't think that's  
13 what this says here, does it?

14 COMMISSIONER OLSON: I think it does.

15 CHAIRMAN FESMIRE: No landfill shall be located  
16 where groundwater is less than 100 foot below the elevation  
17 of the design depth at which the operator will place  
18 oilfield waste.

19 MS. BADA: Basically what they're saying --

20 COMMISSIONER BAILEY: Landfill.

21 CHAIRMAN FESMIRE: Right.

22 MS. BADA: -- they have to be at least 100 feet.

23 COMMISSIONER OLSON: Well, I think it says that,  
24 so if it's -- if it exceeds 500 you can't do it if you're  
25 less than 100 feet. I think that's -- that's the way I was

1 reading it, at least.

2 CHAIRMAN FESMIRE: Okay.

3 COMMISSIONER OLSON: Let me know if I'm not  
4 reading that right. That's the way I interpret that,  
5 though.

6 CHAIRMAN FESMIRE: Okay, landfarm down to 100  
7 feet; landfill 50 -- I mean 500 milligrams or less, 50  
8 foot; landfarm where the concentration exceeds 500, where  
9 groundwater is less than 50 feet. Okay, now --

10 COMMISSIONER BAILEY: A hundred feet.

11 CHAIRMAN FESMIRE: That exceeds 500 milligrams  
12 per liter, okay.

13 COMMISSIONER OLSON: I thought that was reading  
14 okay, but --

15 CHAIRMAN FESMIRE: Yeah, you're right, you're  
16 right, I --

17 COMMISSIONER OLSON: I admit I had to read it  
18 more closely myself.

19 CHAIRMAN FESMIRE: On the third reading it makes  
20 sense.

21 Okay, (d), No small landfarm shall be located  
22 where groundwater is less than 50 foot below the lowest  
23 elevation at which the operator will place oilfield waste,  
24 and no other surface waste management facility shall be  
25 located where groundwater is less than 50 foot below the

1 lowest elevation at which the operator will place oilfield  
2 waste.

3 Okay, is that change acceptable to the  
4 Commissioners?

5 COMMISSIONER BAILEY: Yes.

6 COMMISSIONER OLSON: Yes.

7 CHAIRMAN FESMIRE: Okay, we'll accept that one.

8 The next change we're looking at is on page 12,  
9 (6).(a), Exempt oilfield wastes. The operator shall  
10 require a certification on a farm of its choice --

11 COMMISSIONER OLSON: Shouldn't that be on the  
12 C-138 and not -- That's what I was a little confused on.

13 CHAIRMAN FESMIRE: Counsel Bada, is that the way  
14 it's drafted in the --

15 MS. BADA: Yeah, right now it's drafted as --  
16 given Commissioner Bailey, Commissioner Olson's  
17 preferences, it's drafted to require a C-138 so that we  
18 don't have a conflict with a later provision that requires  
19 it.

20 CHAIRMAN FESMIRE: Okay, is that acceptable to  
21 the Commissioners?

22 COMMISSIONER OLSON: Yes.

23 COMMISSIONER BAILEY: (6).(a) will specify C-138?

24 CHAIRMAN FESMIRE: Right.

25 COMMISSIONER BAILEY: Yes.

1 COMMISSIONER OLSON: Yes, that's acceptable.

2 CHAIRMAN FESMIRE: Okay. Number (10) at the  
3 bottom of page 12, The surface waste management facility  
4 shall have a sign, readable from a distance of 50 foot and  
5 containing the operator's name, surface waste management  
6 facility permit or order number, surface waste management  
7 facility location by unit letter, section, township and  
8 range, and emergency telephone numbers.

9 The note in there is that we require a sign in  
10 Rule 53.(H) for small landfarms but don't require a certain  
11 size or readability standard. Do we want to do that?

12 COMMISSIONER OLSON: I think we should. Makes  
13 sense that everything should be signed so that there's  
14 knowledge of who to contact in emergencies.

15 CHAIRMAN FESMIRE: Okay, so when we get to 53.(H)  
16 do we want to reference this provision?

17 COMMISSIONER BAILEY: It has its own provision in  
18 53.(H).

19 COMMISSIONER OLSON: Yeah.

20 CHAIRMAN FESMIRE: Okay, that's already been  
21 included in the --

22 COMMISSIONER OLSON: Uh-huh.

23 CHAIRMAN FESMIRE: In the change, okay.

24 COMMISSIONER BAILEY: Uh-huh.

25 CHAIRMAN FESMIRE: Okay. Is that acceptable to

1 the Commissioners?

2 COMMISSIONER BAILEY: Yes.

3 COMMISSIONER OLSON: Yes, it is.

4 CHAIRMAN FESMIRE: Okay, the next change is on  
5 page 15, (3).(a), it's on minor specifications. In areas  
6 where no groundwater is present, the operator may propose  
7 an alternative base layer design, subject to Division  
8 approval.

9 Is that change acceptable to the Commissioners?

10 COMMISSIONER BAILEY: Yes.

11 COMMISSIONER OLSON: Yes, it is.

12 CHAIRMAN FESMIRE: Page 18, (G).(1), here we  
13 inserted the Form C-138.

14 MS. BADA: That was actually in there, that's  
15 what was causing the conflict with (6).(a).

16 CHAIRMAN FESMIRE: Okay, so we struck it from  
17 the --

18 MS. BADA: We changed (6).(a) to require a Form  
19 C-138.

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER OLSON: I don't have a problem with  
22 that.

23 CHAIRMAN FESMIRE: Commissioner Bailey?

24 COMMISSIONER BAILEY: That's fine with me.

25 CHAIRMAN FESMIRE: The next one is on page 20,



1 (7).(d), The operator may request approval of an  
2 alternative soil closure standard from the Division,  
3 provided that the operator shall Division-approved --  
4 Division-approved -- public notice of an application for  
5 alternative soil closure standards.

6 And the comment is, there were no requirements  
7 for what notice must be included. Include -- Is it okay to  
8 leave it up to the Division to approve, or are the specific  
9 information that you want the operator to include in the  
10 notice?

11 COMMISSIONER OLSON: I think you have to look at  
12 the remainder of that sentence as well, because it does  
13 talk about -- it'll give public notice of an application  
14 for alternate soil closure standards in the manner provided  
15 in paragraph (4). And I guess the question is, paragraph  
16 (4) of subsection C doesn't specifically a lot about  
17 alternative soil closure. I think that's kind of the  
18 question, but I don't know -- I'm not sure if it's  
19 necessary, I'm just...

20 CHAIRMAN FESMIRE: Whose comment was this?

21 MS. BADA: It was a question I had.

22 CHAIRMAN FESMIRE: Okay.

23 MS. BADA: Because (4) talks about the soil --  
24 the standards in paragraph J, but it doesn't talk about the  
25 specific...

1 COMMISSIONER BAILEY: My thought is that this has  
2 to be a site-specific change, and that we should leave it  
3 to the OCD.

4 CHAIRMAN FESMIRE: Okay, so basically leave it as  
5 drafted -- leave it as drafted before the --

6 COMMISSIONER OLSON: Yeah, Division-approved?

7 COMMISSIONER BAILEY: Uh-huh.

8 CHAIRMAN FESMIRE: Yeah.

9 COMMISSIONER OLSON: Because I was looking at --  
10 when I was coming down to C.(4).(f) and then (vi), it talks  
11 about the types of information provided would be a  
12 description of alternatives, exceptions or waivers, and I  
13 was kind of seeing that as an exception or waiver, so I  
14 think it kind of fits, even though it's not exactly  
15 referencing that portion.

16 CHAIRMAN FESMIRE: Okay.

17 COMMISSIONER OLSON: I think it's covered.

18 CHAIRMAN FESMIRE: I do too.

19 Commissioner Bailey, is that satisfactory to you?

20 COMMISSIONER BAILEY: Yes, it is.

21 CHAIRMAN FESMIRE: Commissioner Olson?

22 COMMISSIONER OLSON: Yes.

23 CHAIRMAN FESMIRE: Okay. The next question we  
24 need to address is on page 21, (2).(d). This is the sign  
25 provision for small landfarm, I believe. Post a sign at

1 the site listing the operator's name, small landfarm  
2 registration number, expiration date and an emergency  
3 contact telephone number.

4 In the draft you included the readable --

5 COMMISSIONER BAILEY: I did.

6 CHAIRMAN FESMIRE: -- and 50 foot. Okay, is that  
7 satisfactory to you, Commissioner Bailey? That would make  
8 the same sign.

9 COMMISSIONER BAILEY: Yes.

10 CHAIRMAN FESMIRE: Commissioner Olson?

11 COMMISSIONER OLSON: Yes.

12 CHAIRMAN FESMIRE: The next one is in Section  
13 (3), immediately following, Oilfield waste management  
14 standards. The operator shall spread and disk contaminated  
15 soils in a single eight-inch or less lift within 72 hours  
16 of receipt.

17 And the question is, we don't state when testing  
18 needs to occur. Should it be --

19 MS. BADA: The following sentence requires it.

20 CHAIRMAN FESMIRE: Oh, okay. Does this apply to  
21 the TPH method, or is this in general, for all --

22 COMMISSIONER OLSON: I believe it's in general,  
23 testing for --

24 MS. BADA: It's for small landfarms.

25 COMMISSIONER OLSON: -- for treatment zones for

1 small landfarms, that's correct.

2 I myself, I'm not sure if I know you need to  
3 specify when testing needs to occur. They've worked on a  
4 lot of landfarms in the past, especially small landfarms  
5 like this, and I always thought it's kind of the operator's  
6 call as to they test it as they feel necessary to show that  
7 they're meeting the closure. The key thing is, on those,  
8 short-term activities, and the key activity is just really  
9 going to be the final closure level. So I don't know that  
10 we need to have a -- specify that they do it, you know,  
11 every quarter or whatever. I think it's -- let the  
12 operator kind of do it as often as they feel they need to  
13 in that case, because the crux of it is the final sampling  
14 and closure.

15 CHAIRMAN FESMIRE: Okay.

16 COMMISSIONER BAILEY: But since a small landfarm  
17 is 50 feet to groundwater, what's to prevent an operator  
18 from using that as a dumping ground for high chloride waste  
19 materials that would never meet closure, and then at the  
20 end of three years removing that material? In the  
21 meantime, we've had high chlorides within 50 feet to  
22 groundwater.

23 I'm inclined to require that -- testing at the  
24 acceptance period, and then again at closure.

25 COMMISSIONER OLSON: I guess -- I don't have a

1 problem with that. I was kind of assuming, I guess, that  
2 they'd have to test it initially. Otherwise, how do they  
3 know that they're operating it properly? But I see what  
4 your -- I see what your concern is.

5 COMMISSIONER BAILEY: Is that it has to be  
6 recorded --

7 COMMISSIONER OLSON: Uh-huh.

8 COMMISSIONER BAILEY: -- and reported at time of  
9 acceptance --

10 COMMISSIONER OLSON: Uh-huh.

11 COMMISSIONER BAILEY: -- so that the agency and  
12 the landowner are aware of that chloride content throughout  
13 those three years.

14 COMMISSIONER OLSON: Because in the general  
15 operating rule above in (2).(b) it just talks about that  
16 they can only accept wastes that have a chloride  
17 concentration less than 500 milligrams per kilogram.

18 But you're right, I don't see in there a -- like  
19 a initial testing requirement for that.

20 COMMISSIONER BAILEY: Uh-huh.

21 COMMISSIONER OLSON: Should that really be part  
22 of -- I guess H.(2).(b) where it --

23 CHAIRMAN FESMIRE: Yeah.

24 COMMISSIONER OLSON: -- talks about the  
25 acceptance and -- Because I was seeing G.(3) for the

1 standards as being how you actually operate it, not as much  
2 on the initial acceptance.

3 CHAIRMAN FESMIRE: H.(2).(b) implies that there  
4 will be a need to test it prior -- prior to spreading it,  
5 or prior to acceptance, but it doesn't specifically give a  
6 time.

7 COMMISSIONER BAILEY: And it doesn't require  
8 reporting of that testing.

9 COMMISSIONER OLSON: Well, I think down below in  
10 H.(4), it seems like the intent was that the operator  
11 maintains the records, and then the Division can inspect  
12 them at any time. So I'm -- I haven't looked at this. I'm  
13 assuming that the Division, then, is not wanting to keep  
14 the records on all these facilities if you have that  
15 ability to check that and make sure that it's --

16 COMMISSIONER BAILEY: That's true.

17 COMMISSIONER OLSON: -- being operated  
18 properly --

19 COMMISSIONER BAILEY: That's true.

20 COMMISSIONER OLSON: -- but -- I mean, I could  
21 see where you might be able to add it in H.(2).(b), if you  
22 wanted to, instead of just where it says that they do not  
23 have a chloride concentration exceeding 500 milligram per  
24 kilogram, and maybe say, and where testing shows that they  
25 do not have a chloride concentration exceeding 500

1 milligram per kilogram. I don't know if that helps.

2 COMMISSIONER BAILEY: Yeah, because that does  
3 require --

4 COMMISSIONER OLSON: Uh-huh.

5 COMMISSIONER BAILEY: -- an analysis.

6 COMMISSIONER OLSON: Okay.

7 CHAIRMAN FESMIRE: So --

8 COMMISSIONER OLSON: Does that read correctly,  
9 then, the way I said that? So it would be that they would  
10 pass the paint filter -- should be probably paint filter  
11 test, shouldn't it? Or pass the paint filter. Then where  
12 testing shows they do not have a chloride concentration  
13 exceeding 500 milligram per kilogram.

14 COMMISSIONER BAILEY: And where testing shows  
15 chloride concentrations are below 500.

16 CHAIRMAN FESMIRE: And that change is not in  
17 the --

18 MS. BADA: No, it is not.

19 CHAIRMAN FESMIRE: -- final version, then? Okay,  
20 that's the only one we got so far?

21 MS. BADA: Right.

22 COMMISSIONER OLSON: Let me make sure I got that  
23 right. So it would read, And where testing shows that  
24 chloride concentrations do not exceed 500 milligrams per  
25 kilogram.

1 MS. BADA: Where testing shows chloride  
2 concentrations are below 500 milligrams per kilogram.

3 COMMISSIONER BAILEY: Either way.

4 COMMISSIONER OLSON: Okay. I don't have a  
5 problem with that.

6 CHAIRMAN FESMIRE: Okay, we'll have to make that  
7 change.

8 The next one is on page 26 --

9 COMMISSIONER OLSON: I think we still had comment  
10 there, down on H.(3) -- Oh, that's going to the testing,  
11 that's right.

12 CHAIRMAN FESMIRE: Right.

13 COMMISSIONER OLSON: But I also -- I saw one  
14 other one here, looks like an editing, in that same  
15 section, H.(3), down about -- second line from the bottom,  
16 it talks about does not exceed 500 milligrams per kilogram.  
17 I don't think that's necessary now, is it? Because in the  
18 acceptance they're not allowed to take it, so it's not  
19 really part of a closure standard, is it? Why would you  
20 need it there if you're not allowed to accept it in excess  
21 of 500 milligram per kilogram? It seems like it would --  
22 in that case, they've already tested it up front, you'd be  
23 relying on that testing for the --

24 CHAIRMAN FESMIRE: For the closure?

25 COMMISSIONER OLSON: -- also apply closure? I



1 don't know, it's just a -- I just wasn't sure if that was  
2 really necessary. But if it is only one extra sample at  
3 closure, I don't know it's a big problem either. Just as a  
4 verification that it's still there.

5 COMMISSIONER BAILEY: And that it is capable of  
6 supporting vegetation.

7 COMMISSIONER OLSON: Right, which is the key  
8 issue there.

9 COMMISSIONER BAILEY: So it doesn't hurt just to  
10 leave it there?

11 COMMISSIONER OLSON: Okay.

12 CHAIRMAN FESMIRE: Page 26.

13 COMMISSIONER BAILEY: Page 24, there was a  
14 double-sentence issue --

15 MS. BADA: I took care of that.

16 COMMISSIONER BAILEY: Okay, 26 then.

17 CHAIRMAN FESMIRE: The third line down, the  
18 comment is, Rule 116 requires reporting within 24 hours if  
19 a release is detected and a written report within 15 days.  
20 Do we want this to be different?

21 COMMISSIONER OLSON: Well, I'm just thinking that  
22 that's an issue that would be covered in the permit. The  
23 permits that I've worked on in the past in the Division,  
24 that's usually a condition that's placed within the permit  
25 that they will report any releases pursuant to Rule 116, so

1 I think -- I don't know if it's really necessary to put in  
2 something here about that.

3 CHAIRMAN FESMIRE: Well, if we could standardize  
4 that, but this is a -- you know, a routine sampling, and  
5 it's not necessarily a release.

6 COMMISSIONER OLSON: Well, this is landfill post-  
7 closure requirements. I mean, I've always seen that in  
8 permits. I know we do that same thing in Environment  
9 Department permits, we just place it in there and say that  
10 you'll -- as a condition of the permit, that you'll report  
11 any exceedences of groundwater standards in a monitor well.  
12 In that case we do it pursuant to the spill provision of  
13 the WQCC Regulations.

14 CHAIRMAN FESMIRE: Like I said, it would add  
15 standardization, but is that a burden that we want to put  
16 on the producers or the -- whoever's monitoring the  
17 closure? I guess it is, because it indicates a release  
18 that we need to address, and why should we treat this  
19 release differently than any other, right?

20 COMMISSIONER OLSON: So you want to add some --  
21 just clarifying language to that? So it would say that if  
22 they if they have a release -- if a release is detected or  
23 an exceedence of groundwater standard is detected, it will  
24 be reported to the Division pursuant to Rule 116?

25 CHAIRMAN FESMIRE: Yeah. You know, the routine

1 reports can be submitted under this schedule, but if  
2 there's a release they report it pursuant to 116.

3 COMMISSIONER OLSON: Uh-huh.

4 COMMISSIONER BAILEY: Works for me.

5 MS. BADA: Okay, so we want to add a sentence  
6 that says --

7 COMMISSIONER OLSON: Yeah, that might say, any  
8 exceedence of a groundwater standard discovered during  
9 monitoring shall be reported pursuant to Rule 116. Because  
10 otherwise, they're only reporting once a year --

11 CHAIRMAN FESMIRE: Right.

12 COMMISSIONER OLSON: -- on a calendar-year basis.

13 CHAIRMAN FESMIRE: And that's another one that  
14 we'll have to fix.

15 Okay, the next two are related issues on (e) and  
16 (f) on page 26. It simply adds the word "pit", just to  
17 clarify that that is the closure of the surface waste  
18 management facility, and it has to -- has to be closed to  
19 these standards. The argument is that, you know, this  
20 might be redundant with the pit rule and any changes we  
21 would make in the pit rule. But I think, given the fact  
22 that it isn't addressed now, that perhaps it should be.

23 COMMISSIONER OLSON: Well, I will note, and going  
24 back, I'm not sure exactly where it appears now, but in  
25 other portions prior in the Rule, it did mention pits and

1 ponds. And so I assume just a consistency --

2 CHAIRMAN FESMIRE: So we don't get into a  
3 definition argument.

4 COMMISSIONER OLSON: Right.

5 CHAIRMAN FESMIRE: Commissioner Bailey?

6 COMMISSIONER BAILEY: I don't think we should  
7 have pits included here, because pits is an issue that has  
8 had a lot of previous discussion. We all know that a pit  
9 rule is coming up for -- before the Commission at some  
10 point in the future.

11 I think if we commit ourselves to using the term  
12 "pit" in this Rule that we have already made decisions that  
13 may not be in line with what the testimony is and what the  
14 case is when it's brought up before the Commission as a pit  
15 rule.

16 So I would really rather not have pits included  
17 in here, even though we are saying it is specific to  
18 surface waste management facilities, because it can create  
19 some confusion in people's minds.

20 CHAIRMAN FESMIRE: But if we don't, we end up  
21 having closure requirements for ponds and perhaps different  
22 closure requirements for pits.

23 COMMISSIONER BAILEY: Because that's another case  
24 to be brought before the Commission.

25 COMMISSIONER OLSON: I see it a little

1 differently, I was seeing that this was just a pit at a  
2 surface waste management facility, because I come up here  
3 and there's a definition of surface waste management  
4 facility, and then it's talking about, you know, tanks or  
5 pits -- it's referenced in here where it receives them from  
6 a single well -- this is in part of the exemptions -- which  
7 is implying that if you have a pit that doesn't receive it  
8 from a single well, it is a surface waste management  
9 facility.

10 So there are some pits that are going to qualify  
11 as a surface waste management facility. And it talks about  
12 it again up in (a) -- I don't have this on the computer,  
13 you could just do a word search on it, but I know it  
14 appears -- when I did it before, it was picking it up in  
15 various portions of this Rule where it was referencing pits  
16 as well as ponds at surface waste management facilities.

17 So I was looking at it that it only applied to a  
18 pit at this type of facility, and then we want to make sure  
19 that it's closed, you know, the same as the -- it's being  
20 seen the same as a pond, really, you know, a pit and a pond  
21 are the same -- kind of the same thing.

22 COMMISSIONER BAILEY: Can you clarify for me the  
23 difference between a pit and a pond at a surface waste  
24 management facility?

25 COMMISSIONER OLSON: In all practical purposes

1 they're the same thing to me, so...

2 COMMISSIONER BAILEY: So let's leave out the word  
3 "pit", and that way the public feels like they will have  
4 input into the case when we are specifically talking about  
5 pits. Because if a pit and a pond for all practical  
6 purposes at a surface waste management facility is the  
7 same, I mean, it is a depression that receives fluid.

8 COMMISSIONER OLSON: Uh-huh. I'm just not sure  
9 how that works within the structure of the whole Rule,  
10 because then -- and other definitions within the Rules,  
11 besides the ones we have here. I don't see any -- I mean,  
12 there's not a definition for "pit" in the -- "pit" or  
13 "pond" in any of the stuff that's been given to us here.

14 I know as a practical matter, just out in the  
15 oilfield, they don't think of them as ponds, they think of  
16 them as -- all of them as pits, really.

17 COMMISSIONER BAILEY: Perception is that pits  
18 will be dealt with in another rule. I mean, with all the  
19 discussion that's been going on.

20 COMMISSIONER OLSON: But I was thinking that  
21 that's pits that are not at surface waste management  
22 facilities. It wouldn't -- the pit rule --

23 CHAIRMAN FESMIRE: The pit rule would apply to --  
24 as it's currently written, would apply to any pit, and -- I  
25 mean, drilling pits, workover pits, disposal pits at

1 surface waste management facilities, evaporation pits,  
2 ponds.

3 COMMISSIONER OLSON: Because the way I was  
4 reading this Rule, if you had a pit at a surface waste  
5 management facility, this would be the way you'd want to  
6 close it, so...

7 COMMISSIONER BAILEY: But if the OCD is drafting  
8 a pit rule that applies to pits everywhere, including  
9 surface waste management facilities, then there could  
10 create confusion or contradiction.

11 CHAIRMAN FESMIRE: Well, we're going to create  
12 that confusion by -- if we leave it out, you know, because  
13 we could conceivably have a closure standard -- or closure  
14 requirements for ponds in this Rule, and a closure  
15 requirement for pits in that rule, and if we don't do our  
16 job right, it could be different.

17 COMMISSIONER OLSON: Because I'm thinking if  
18 there is some problem that comes in with the surface waste  
19 management rule, that can be addressed as well under the  
20 surface waste management rule. But I don't like the idea  
21 of leaving a hole in there at the moment to say that, well,  
22 if you have a pit there's no -- how do you close it? It's  
23 not really clear.

24 COMMISSIONER BAILEY: And the pit rule would not  
25 -- would exempt surface waste management facilities?

1           COMMISSIONER OLSON: It could, or it could  
2 include them as well. It could include a reference or a  
3 change to 53, if they think they want to do pits at surface  
4 waste management facilities different than they have in  
5 this Rule, I would think it could be included as part of  
6 that rule.

7           CHAIRMAN FESMIRE: Some of the comments address  
8 this, you know, some of the commenters thought that we  
9 should leave this whole section out for this very reason,  
10 or at least the reference to pits in this section, pits or  
11 ponds in this section.

12           My suggestion would be that we go ahead and leave  
13 it in here, and then when we do promulgate a pit rule, in  
14 that rulemaking amend this to take out the pond and pit --  
15 or at least address the pond and pit closure in that rule,  
16 but in the meantime we have it covered in this Rule.

17           COMMISSIONER BAILEY: That would work for me.

18           CHAIRMAN FESMIRE: Okay. So leave it in there  
19 until --

20           COMMISSIONER BAILEY: -- until such time as we do  
21 have hearings on the pit rule, and then whatever is brought  
22 out in that hearing, in that case, would apply to this by  
23 reference, or should we have something in here?

24           MS. BADA: We can always amend it.

25           COMMISSIONER BAILEY: Okay, but that would be



1 part of the complete package, the amendment of this Rule as  
2 part of that case.

3 COMMISSIONER OLSON: Right.

4 COMMISSIONER BAILEY: Works for me.

5 COMMISSIONER OLSON: We could, if you want,  
6 reference that if you -- I don't know, we could add  
7 something to the order, just to say that we -- you know,  
8 this issue should be looked at as part of the pit rule. I  
9 don't know that we need to.

10 But I would agree, anything we do -- a pit's a  
11 pit, whether it's at a surface waste management facility or  
12 another location. It seems like the criteria for the  
13 closure should be the same, regardless of what you call it  
14 at that point. If it's accepting the same type of waste,  
15 it should have the same type closure requirements.

16 COMMISSIONER BAILEY: But I just don't want a  
17 pre-determined decision by the Commission --

18 COMMISSIONER OLSON: Right.

19 COMMISSIONER BAILEY: -- without having that pit  
20 hearing first.

21 COMMISSIONER OLSON: Right.

22 CHAIRMAN FESMIRE: Okay, for the time being,  
23 then, we'll leave that in there.

24 That was the last of the Commissioners' comments.  
25 Has anybody found anything they think we ought to address

1 in the draft? Anything else they think we ought to address  
2 in the draft?

3 COMMISSIONER BAILEY: No.

4 CHAIRMAN FESMIRE: Okay. So Counsel Bada, we  
5 have the draft with two changes that you're going to have  
6 to make --

7 MS. BADA: Right. Well, also I have to address  
8 one of the findings in the order that deals with the  
9 testing for small landfarms.

10 CHAIRMAN FESMIRE: Okay. Why don't we take a  
11 break and let you and the secretary address that. Can you  
12 do it in 20 minutes?

13 COMMISSIONER OLSON: Mr. Chair, maybe one thing.  
14 Was there any -- Since they're going to work on that, were  
15 there any comments on the order? I didn't see any -- have  
16 any edits to the order itself. It looked -- we had gone  
17 through one round of edits, and I didn't see any problem  
18 after -- in this latest version --

19 CHAIRMAN FESMIRE: Commissioner Bailey?

20 COMMISSIONER OLSON: -- make sure that they've  
21 got everything at once.

22 COMMISSIONER BAILEY: Finding 191 needs to be  
23 amended.

24 CHAIRMAN FESMIRE: Yeah, and that's the one you  
25 were thinking of?

1 MS. BADA: Right.

2 COMMISSIONER OLSON: Right.

3 COMMISSIONER BAILEY: On page 29.

4 CHAIRMAN FESMIRE: Oh, okay, I've got it on 31 on  
5 the final copy. And how the applicable testing was --  
6 Okay, that has to be changed --

7 COMMISSIONER BAILEY: Yes.

8 CHAIRMAN FESMIRE: -- and that's the only finding  
9 that needs to be changed?

10 COMMISSIONER OLSON: Uh-huh.

11 CHAIRMAN FESMIRE: Commissioner Bailey, is that  
12 all you had?

13 COMMISSIONER BAILEY: Yes.

14 CHAIRMAN FESMIRE: Commissioner Olson?

15 COMMISSIONER OLSON: That's all I have.

16 CHAIRMAN FESMIRE: I had no --

17 COMMISSIONER BAILEY: Well, no, the other finding  
18 referencing the new pit rule.

19 MS. BADA: I would like to make those changes,  
20 because I didn't incorporate the pit in that -- in the  
21 final draft rule, so if you want to include pits, we'll  
22 have to do that.

23 CHAIRMAN FESMIRE: That is something I think the  
24 Commission's decided to do.

25 MS. BADA: Okay.

1 CHAIRMAN FESMIRE: Okay? So at this time we'll  
2 adjourn until 10 minutes after, at which point we'll  
3 reconvene and take a vote on the Rules as proposed.

4 (Thereupon, a recess was taken at 9:51 a.m.)

5 (The following proceedings had at 10:23 a.m.)

6 CHAIRMAN FESMIRE: Let the record reflect that  
7 this is the continuance of Cause Number 13,586, the  
8 Application of the New Mexico Oil Conservation Division for  
9 the repeal of existing Rules 709, 710 and 711 concerning  
10 surface waste management and the adoption of new rules  
11 governing surface waste management.

12 Let the record also reflect that all three  
13 Commissioners, Commissioner Olson, Commissioner Bailey and  
14 Commissioner Fesmire, are present. We therefore have a  
15 quorum.

16 Counsel Bada, it appears to me after looking at  
17 the documents that you prepared, that you made all the  
18 changes we discussed earlier in this meeting; is that  
19 correct?

20 MS. BADA: Yes, we did.

21 CHAIRMAN FESMIRE: And the document before us  
22 represents the will of the Commission in -- and the changes  
23 that we have made to the drafts?

24 MS. BADA: Yes, it does.

25 CHAIRMAN FESMIRE: Okay. At this time the Chair

1 would entertain a mission -- a mission? -- a motion, not  
2 that we're on a mission -- we will entertain a motion to  
3 adopt Order Number R-12,460-B in Case Number 13,586, and  
4 specifically to adopt the Rule that is presented in that  
5 order as Exhibit A. Is there a motion to that effect?

6 COMMISSIONER BAILEY: I so move.

7 COMMISSIONER OLSON: Second.

8 CHAIRMAN FESMIRE: All those in favor?

9 COMMISSIONER BAILEY: Aye.

10 COMMISSIONER OLSON: Aye.

11 CHAIRMAN FESMIRE: Aye.

12 Let the record reflect that Order Number  
13 R-12,460-B in Cause Number 13,586 was unanimously adopted  
14 by the Commission.

15 It will now be signed by all the Commissioners  
16 and conveyed to the Commission secretary.

17 Is there any other business before the Commission  
18 today?

19 With that, the Chair would entertain -- more than  
20 entertain, beg for -- a motion to adjourn.

21 COMMISSIONER BAILEY: I move we adjourn.

22 COMMISSIONER OLSON: Second.

23 CHAIRMAN FESMIRE: All those in favor?

24 COMMISSIONER BAILEY: Aye.

25 COMMISSIONER OLSON: Aye.

1           CHAIRMAN FESMIRE: Let the record reflect that  
2 the Commission meeting was adjourned at 10:25 on Thursday,  
3 October 19th.

4           (Thereupon, these proceedings were concluded at  
5 10:25 a.m.)

6                   \* \* \*

## 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 October 21st, 2006.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2010