

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: )

APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR REPEAL OF )  
EXISTING RULE 50 CONCERNING PITS AND )  
BELOW GRADE TANKS AND ADOPTION OF A )  
NEW RULE GOVERNING PITS, BELOW GRADE )  
TANKS, CLOSED LOOP SYSTEMS AND OTHER )  
ALTERNATIVE METHODS TO THE FOREGOING, )  
AND AMENDING OTHER RULES TO MAKE )  
CONFORMING CHANGES; STATEWIDE )

CASE NO. 14,015

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

Volume XIX - December 14th, 2007

Santa Fe, New Mexico

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This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Friday, December 14th, 2007, 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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\* \* \*

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	* * *	
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\* \* \*

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

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FOR NEW MEXICO OIL AND GAS ASSOCIATION; CONOCOPHILLIPS COMPANY; DUGAN PRODUCTION CORPORATION; and ENERGEN RESOURCES CORPORATION; and an INDUSTRY COMMITTEE comprised of BP America Production Company, Inc.; Benson-Montin-Greer Drilling Corporation; Boling Enterprises, Ltd.; Burlington Resources Oil and Gas Company; Chesapeake Energy Corporation; Chevron USA, Inc.; ConocoPhillips Company; Devon Production Company; Dugan Production Corporation; Energen Resources Corporation; Marathon Oil Company; Marbob Energy Corporation; Merrion Oil & Gas Corporation; Occidental Permian, which includes OXY USA, Inc., and OXY USA WTP Limited Partnership; Samson Resources Company; J.D. Simmons, Inc.; Williams Production Company, LLC; XTO Energy, Inc.; and Yates Petroleum Corporation:

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(Continued...)

## A P P E A R A N C E S (Continued)

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By: ALLETTA BELIN

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 9:00 a.m.:

3 CHAIRMAN FESMIRE: Let's go back on the record.  
4 It is Friday, December 14th, 2007. This is a  
5 continuation of Case Number 14,015.

6 Mr. Carr, are you the only attorney  
7 representing --

8 MR. CARR: Mr. Huffaker --

9 CHAIRMAN FESMIRE: Oh.

10 MR. CARR: Mr. Huffaker is --

11 CHAIRMAN FESMIRE: -- representing industry.

12 MR. CARR: I'm the only one here for industry,  
13 and Mr. Huffaker is here to keep me honest.

14 CHAIRMAN FESMIRE: Okay. Is Mr. Brooks intending  
15 to --

16 COMMISSIONER BAILEY: He was here.

17 CHAIRMAN FESMIRE: Okay, why don't we wait just a  
18 minute until Mr. Brooks gets here, and we'll go back on the  
19 record at that time.

20 MR. HUFFAKER: Here he is.

21 CHAIRMAN FESMIRE: Really bad timing. Okay,  
22 Let's go back on the record.

23 Let the record reflect again that this is the  
24 continuation of Case Number 14,015 on Friday, December  
25 14th, 2007. The record should reflect that all three

1 Commissioners are present, that while there is a limited  
2 number of attorneys we'll go ahead and record your  
3 appearance on the record because this is the first day of  
4 deliberations in the case.

5 Mr. Brooks, would you like to enter an  
6 appearance?

7 MR. BROOKS: David Brooks for the Oil  
8 Conservation Division.

9 CHAIRMAN FESMIRE: Mr. Carr?

10 MR. CARR: William F. Carr for the industry  
11 committee and the New Mexico Oil and Gas Association.

12 CHAIRMAN FESMIRE: And Mr. Huffaker, who  
13 apparently --

14 MR. HUFFAKER: Gregory Huffaker for Controlled  
15 Recovery, Inc.

16 CHAIRMAN FESMIRE: -- who apparently got the  
17 worst end of a fight, huh?

18 MR. HUFFAKER: A doctor got a scalpel out and --  
19 (Laughter)

20 CHAIRMAN FESMIRE: Let the record also reflect  
21 that the other attorneys had indicated that they would not  
22 be present, and so we will begin the deliberations without  
23 them.

24 The first issue I think we ought to address is  
25 the availability of the transcript. I'm going to ask the

1 court reporter to do something real unique: Go on record  
2 and tell us where we stand with the availability of the  
3 transcript.

4 COURT REPORTER: My best estimate right now is  
5 that the transcript will run six -- five thousand pages or  
6 more, and that it will probably take me until sometime in  
7 March to complete it.

8 CHAIRMAN FESMIRE: Okay. Are you going to be  
9 able to, as you complete the transcript, provide hard copy  
10 for each of the Commissioners and the Commission secretary?

11 COURT REPORTER: I have planned to provide the  
12 usual original and one copy to the Division, as well as a  
13 disc copy, an electronic copy.

14 CHAIRMAN FESMIRE: Okay, but will we be able to  
15 get that as you proceed through the transcript?

16 COURT REPORTER: Oh, yes, sir. As I go, as I  
17 complete each volume, I will bring that in to the Division.

18 CHAIRMAN FESMIRE: Okay. So probably the best  
19 way to proceed is to go through and evaluate some of the  
20 decisions that the Commission has to make -- and evaluate  
21 some of the decisions that the Commission needs to make,  
22 see what we can agree on. All decisions of the Commission  
23 prior to receipt of the transcript will be subject to  
24 review of the transcript by the Commission.

25 Counsel Bada, is that a proper way to proceed in

1 this?

2 MS. BADA: Yes.

3 CHAIRMAN FESMIRE: Okay. So we will try to go  
4 through the proposal and the documents that have been  
5 filed.

6 I have documents from the -- Huffaker and  
7 Moffett, representing CRI; from Mr. Hiser, and his are on  
8 behalf of the New Mexico industry committee.

9 Mr. Carr, did -- you filed some?

10 MR. CARR: No, if you'll look, I have also signed  
11 -- that's a joint filing.

12 CHAIRMAN FESMIRE: Okay.

13 MR. CARR: Mr. Hiser and I filed the industry  
14 committee comments together.

15 You might note that although there are 61 pages,  
16 it's three parts, and the first part is as you directed us,  
17 separately addressing individual issues. And then we have  
18 gone through and given you a whole redline copy, and then  
19 the whole text so you can see things in context. So it's  
20 not as bad as it looks.

21 And Mr. Chairman, I understood the record would  
22 be open this morning if there were any statements or  
23 anything. And I don't have a statement, but during the  
24 course of the ConocoPhillips examination the Commission did  
25 request the sampling plan and the Envirotech information

1 that was obtained by Conoco, as well as copies of the  
2 slides that were presented during that, and I do have  
3 copies for the Commission.

4 With that, I'm hoping that my participation in  
5 this is concluded.

6 CHAIRMAN FESMIRE: Thank you, Mr. Carr.

7 At this time, with the Commission's concurrence,  
8 we'll begin deliberation.

9 COMMISSIONER BAILEY: We have another appearance.

10 CHAIRMAN FESMIRE: Oh, I'm sorry --

11 MS. BELIN: I'm sorry --

12 CHAIRMAN FESMIRE: -- Lettie?

13 MS. BELIN: -- may I file New Mexico Citizens for  
14 Clean Air and Water's redline version?

15 CHAIRMAN FESMIRE: You surely may, ma'am.

16 MR. BROOKS: And on the same subject, the  
17 Division submitted a redline version which was filed with  
18 the Division clerk earlier this morning, with the  
19 Commission clerk earlier this morning.

20 As I explained to the clerk at the time of  
21 filing, because of mechanical difficulties, we only have  
22 three actual redlines. The other copies are in black and  
23 white, which I realize a black and white copy is of very  
24 little use if it's a redline, but I -- hopefully the three  
25 color copies will be available to the Commissioners.

1 CHAIRMAN FESMIRE: Okay. They're in this stack,  
2 okay.

3 Okay, for the last time in this hearing, I hope,  
4 we're going to ask, is there anyone who would like to make  
5 a statement on the record?

6 Seeing none, we will go ahead and proceed with  
7 the deliberations.

8 We will go ahead and formally close the record  
9 and begin the deliberations.

10 (Off the record)

11 COMMISSIONER BAILEY: I think it would be more  
12 organized to go through section by section.

13 CHAIRMAN FESMIRE: I agree. So we should  
14 probably start with the definition section. We have before  
15 us --

16 COMMISSIONER OLSON: Wait a minute.

17 CHAIRMAN FESMIRE: Oh, I'm sorry.

18 (Off the record)

19 CHAIRMAN FESMIRE: We have before us the proposed  
20 -- first of all, the entire testimony from the hearing and  
21 the proposed redlines from, it looks like, five different  
22 parties, including the Oil Conservation Division; the New  
23 Mexico Citizens for Clean Air and Water; the New Mexico  
24 Environmental Law Center representing the Oil and Gas  
25 Accountability Project; Jorden, Bischoff and Hiser, and

1 Holland and Hart, representing the industry committee, et  
2 al., and ConocoPhillips --

3 MS. BADA: Environmental Law Center?

4 CHAIRMAN FESMIRE: Oh, this is their closing  
5 statement. Do we not have -- It doesn't look like they  
6 have filed -- Okay.

7 COMMISSIONER OLSON: So they've included theirs  
8 in their closing statement.

9 CHAIRMAN FESMIRE: Okay, and OGAP has included  
10 theirs in their closing statement, rather than  
11 individually.

12 MR. HUFFAKER: Mr. Chairman, you mentioned  
13 earlier that you had something from me, but you didn't  
14 mention it this time.

15 CHAIRMAN FESMIRE: I'm sorry, we do, Huffaker and  
16 Moffett representing CRI.

17 MR. HUFFAKER: Thank you.

18 CHAIRMAN FESMIRE: We've asked that they --  
19 Pardon?

20 MS. BADA: I don't have the Environmental Law  
21 Center's.

22 CHAIRMAN FESMIRE: It's in the -- it's labeled  
23 closing.

24 MS. BADA: I don't think I have that.

25 COMMISSIONER OLSON: They gave it to us on Friday

1 -- or Monday? I think it was Monday. This is it.

2 CHAIRMAN FESMIRE: So why don't we just start  
3 through, try to keep track of who proposes what? The way  
4 I'm going to proceed is, go to the sections that step  
5 through the proposal, and try to keep track of the sections  
6 where each one of the participants has a proposal. And  
7 it's going to be a little awkward, but we'll try.

8 And unless the Commission has specific concerns,  
9 we'll try to work through it that way.

10 Is that acceptable to you, Commissioner?

11 COMMISSIONER BAILEY: Let's try it.

12 COMMISSIONER OLSON: Yeah, I guess we'll have to  
13 see how it works.

14 CHAIRMAN FESMIRE: Okay. From the documents  
15 filed this morning, under Definitions -- I keep looking for  
16 red on the OCD proposal -- page 6 before we get anything,  
17 so that's probably not the first one.

18 COMMISSIONER BAILEY: I have a small one here on  
19 the first page.

20 CHAIRMAN FESMIRE: On which one?

21 COMMISSIONER BAILEY: On the definition for re-  
22 vegetate. I think we need to look at that again after we  
23 have discussed re-vegetation requirements.

24 CHAIRMAN FESMIRE: That's --

25 COMMISSIONER BAILEY: 19.15.17.7.G, I think we

1 will need to revisit after we've worked out re-vegetation  
2 requirements.

3 CHAIRMAN FESMIRE: Okay. Would it be appropriate  
4 to start with the definition?

5 COMMISSIONER BAILEY: Well, okay.

6 MS. BADA: Actually, I think it would be easier  
7 to work with the section and come back to the definition.

8 CHAIRMAN FESMIRE: Okay. So we'll -- if it's  
9 okay with you, we'll come back to 17.7.G?

10 COMMISSIONER BAILEY: Yes.

11 CHAIRMAN FESMIRE: There is a -- CRI's first  
12 recommendation is page 3.

13 OGAP's first recommendation is 17.9.C.(1).

14 And Citizens for Clean and Water's first  
15 recommendation is 17.9.C.

16 The industry's first recommendation is 17 -- or  
17 15.1 -- looks like that should be 17.7.B, under letter B.

18 Below grade tank shall mean a vessel, excluding  
19 sumps and pressurized dripline traps, where a portion of  
20 the tank's sidewall are below the ground surface and are  
21 not visible.

22 I'm pretty much convinced, after the evidence,  
23 that we need to address this issue. But perhaps we should  
24 mark this and come back and address it in the section on  
25 below grade tanks.

1 And it looks like -- is that in the --

2 COMMISSIONER OLSON: I was just looking for the  
3 OCD's version. I don't see that in there.

4 CHAIRMAN FESMIRE: I don't either.

5 COMMISSIONER BAILEY: This is chapter 15 --

6 CHAIRMAN FESMIRE: Oh.

7 COMMISSIONER BAILEY: -- part 1, under --

8 MS. BADA: It's part 1.

9 COMMISSIONER BAILEY: -- definitions. So it's  
10 not the definition within this rule, it's the definition  
11 within the definitions rule, part 1.

12 CHAIRMAN FESMIRE: Okay, which I think I have

13 COURT REPORTER: Mr. Chairman, may we go off the  
14 record again for just a moment?

15 CHAIRMAN FESMIRE: You may sir.

16 (Off the record)

17 COMMISSIONER OLSON: I think the definition of  
18 below grade tank doesn't appear there.

19 COMMISSIONER BAILEY: No, it is in one of the  
20 proposed rule changes --

21 COMMISSIONER OLSON: Right.

22 COMMISSIONER BAILEY: -- for part 1.

23 CHAIRMAN FESMIRE: Mr. Brooks, in the OCD Exhibit  
24 4, did they propose -- I mean, Exhibit 3, did they propose  
25 -- did the OCD propose changing the definition?

1 MR. BROOKS: Of below grade tanks?

2 CHAIRMAN FESMIRE: Yes.

3 MR. BROOKS: We do not propose changing the  
4 definition from the definition that was proposed in our  
5 original proposal, filed before the beginning of the  
6 hearing. We do propose changing some of the  
7 specifications, and those are -- the new proposal for  
8 specifications is set out in section 10 -- 19.15.17.11.I

9 COMMISSIONER OLSON: But the definition is  
10 proposed changed in part 1?

11 MR. BROOKS: Yes, that definition is proposed --  
12 that is proposed to change the existing definition, but we  
13 did not propose a new definition in our redline.

14 CHAIRMAN FESMIRE: Okay so your redline is still  
15 proposing the change that was proposed in the original.

16 COMMISSIONER OLSON: In the application.

17 MR. BROOKS: Correct.

18 CHAIRMAN FESMIRE: Okay. Okay. Again, why don't  
19 we go ahead and mark this definition to come back?

20 COMMISSIONER OLSON: Okay, we're going to have to  
21 look at this in conjunction with the section on below grade  
22 tanks.

23 CHAIRMAN FESMIRE: Right. This is not going to  
24 be an efficient process.

25 COMMISSIONER BAILEY: Huh-uh.

1 COMMISSIONER OLSON: Huh-uh.

2 CHAIRMAN FESMIRE: Anybody got a better  
3 recommendation? Anybody got one recommendation?

4 MS. BADA: Mine would be that you go and read all  
5 the strikeouts --

6 (Laughter)

7 MS. BADA: -- and come back on Monday.

8 CHAIRMAN FESMIRE: Well, is that something we  
9 want to consider?

10 COMMISSIONER BAILEY: I think even with working  
11 on it away from here, we're still going to have to spread  
12 out and go through what we're doing. While we're here, we  
13 might as well --

14 CHAIRMAN FESMIRE: Okay. Is that okay with you?

15 COMMISSIONER BAILEY: Would you feel more  
16 organized, Bill?

17 COMMISSIONER OLSON: I'd feel more organized when  
18 we've actually been through it and kind of managed to put  
19 our thoughts together a little bit before we start just  
20 going down it, you know? Because a lot of the stuff in  
21 here also comes in especially like in industry's document  
22 here, you'll see they've also got some notes, some things  
23 like that. There's more to it than just the rule itself.  
24 There's descriptions of the rationales for it too.

25 CHAIRMAN FESMIRE: Well, I think the first thing

1 I would do is take the original proposal and go through and  
2 mark on the original proposal where each group has  
3 comments. That way we could go through and, you know, take  
4 those comments as they come up in the original proposal.

5 Would it be worth our time to go ahead and do  
6 that now?

7 COMMISSIONER BAILEY: Sure.

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER BAILEY: But then if we take a  
10 couple days to read through everybody's, we'll probably be  
11 -- have a better decision-making process.

12 COMMISSIONER OLSON: How's everybody's schedule  
13 for Monday?

14 COMMISSIONER BAILEY: Monday is okay with me.  
15 Tuesday is not.

16 CHAIRMAN FESMIRE: Tuesdays you save.

17 COMMISSIONER BAILEY: Uh-huh.

18 COMMISSIONER OLSON: I guess the other thing, I  
19 was wondering if maybe just today maybe we could just talk  
20 about some of the general concepts of what's in the  
21 proposals and -- give us something to think about when we  
22 look at it. Might see some general concepts that we would  
23 be in agreement on when we come back to look at this on  
24 Monday.

25 CHAIRMAN FESMIRE: Okay.

1 COMMISSIONER BAILEY: Okay.

2 CHAIRMAN FESMIRE: I think that's probably a good  
3 idea. So do you want to do that? Like I said, it would  
4 help a lot if, you know, you were to take two of the  
5 proposals, you were to take two of the proposals, and I  
6 would just take one of the proposals, and we go through the  
7 original OCD proposal and mark who has what concerns.

8 It looks like, of course, the two big ones are  
9 going to be the industry, and it doesn't look like the OCD  
10 has a lot of proposed changes.

11 COMMISSIONER OLSON: Their changes appear back in  
12 the below grade tank section. They have some -- That's the  
13 major section. And then there was some on -- again, on  
14 below grade tanks in the operational portion too, and  
15 that's the major section of changes that they have  
16 proposed.

17 So most of it's in line, except for the below  
18 grade tanks, with their original proposal, is what it looks  
19 like.

20 CHAIRMAN FESMIRE: Okay. Anybody -- The most  
21 active one is going to be the industry. Does anybody want  
22 to go through it?

23 COMMISSIONER BAILEY: Sure.

24 CHAIRMAN FESMIRE: Why don't you -- You take the  
25 industry, and it looks like the Citizens for Clean Air and

1 Water have some significant number. Why don't you take CRI  
2 and OGAP, and I'll take the OCD.

3 I guess what I'm -- we'll just start with  
4 19.15.17.7, and I'll keep a -- what I'll do is -- a record  
5 on this, and we'll just step through the entire proposal.

6 Mr. Carr, did you already get bored?

7 MR. CARR: But I will be back.

8 CHAIRMAN FESMIRE: Okay, let's see what we can  
9 get done while he's gone. Okay --

10 COMMISSIONER OLSON: So I make sure I understand  
11 what we're going to do, we're going to go through --

12 CHAIRMAN FESMIRE: I'm going to go through the  
13 original proposal, and in the margins I'm going to note who  
14 has what comments on what procedures --

15 COMMISSIONER OLSON: Okay.

16 CHAIRMAN FESMIRE: -- on what parts. And Jami,  
17 you've got --

18 COMMISSIONER BAILEY: -- industry and --

19 CHAIRMAN FESMIRE: -- industry and --

20 COMMISSIONER BAILEY: -- Clean Air and Water.

21 CHAIRMAN FESMIRE: -- Citizens for Clean Air and  
22 Water. And you've got OGAP and CRI, right?

23 MS. BADA: Where are we starting? With part 1 or  
24 part 2?

25 COMMISSIONER OLSON: With the definitions.

1 MS. BADA: Okay.

2 CHAIRMAN FESMIRE: Is there anything else in part  
3 1 besides the definition of below grade tank that we need  
4 to address?

5 MS. BADA: Yeah, industry has --

6 COMMISSIONER BAILEY: Uh-huh.

7 CHAIRMAN FESMIRE: Okay, why don't we start with  
8 part 1?

9 COMMISSIONER BAILEY: Industry has comments, part  
10 1.

11 CHAIRMAN FESMIRE: Okay, which ones?

12 COMMISSIONER BAILEY: Below grade tank.

13 CHAIRMAN FESMIRE: B?

14 COMMISSIONER BAILEY: Uh-huh.

15 CHAIRMAN FESMIRE: 15.1.7.1?

16 MS. BADA: Yeah.

17 COMMISSIONER BAILEY: 7.B.(5).

18 CHAIRMAN FESMIRE: Okay, 7 -- 7.A --

19 COMMISSIONER BAILEY: -- 7.B --

20 CHAIRMAN FESMIRE: -- 7.B --

21 COMMISSIONER BAILEY: -- (5).

22 CHAIRMAN FESMIRE: -- (5).

23 COMMISSIONER OLSON: That's the below grade tank  
24 definition.

25 MS. BADA: And (3), which is the pit definition.

1 CHAIRMAN FESMIRE: And Mr. Brooks, you didn't  
2 submit any changes in part 1, right?

3 MR. BROOKS: That is correct, your Honor.

4 CHAIRMAN FESMIRE: Okay. Okay, what else do we  
5 have in part 1?

6 COMMISSIONER BAILEY: P.

7 CHAIRMAN FESMIRE: P as in papa?

8 COMMISSIONER BAILEY: P as in papa, (3), pit.

9 CHAIRMAN FESMIRE: Definition of pit?

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: Okay, does anybody else have a  
12 change in --

13 MS. BADA: And they proposed a definition of  
14 subgrade tank.

15 CHAIRMAN FESMIRE: In --

16 COMMISSIONER OLSON: That's coming up.

17 CHAIRMAN FESMIRE: Is that different than below  
18 grade tank?

19 MS. BADA: Yes.

20 COMMISSIONER OLSON: Uh-huh.

21 CHAIRMAN FESMIRE: Okay, so in 15.1.7 --

22 MS. BADA: -- (S) --

23 CHAIRMAN FESMIRE: -- (S) --

24 MS. BADA: Yeah.

25 CHAIRMAN FESMIRE: And what's the subsection

1 number?

2 MS. BADA: They have (8A), but it probably would  
3 be a new (8), and then it would bump everything --

4 CHAIRMAN FESMIRE: (8)? Oh, this is a new  
5 definition?

6 COMMISSIONER OLSON: A new definition proposed by  
7 industry.

8 CHAIRMAN FESMIRE: And it's a new definition for  
9 what?

10 MS. BADA: Subgrade tank.

11 CHAIRMAN FESMIRE: Okay. Is there anything else  
12 in part 1 that we need to change?

13 MS. BADA: No.

14 CHAIRMAN FESMIRE: Okay, so we're going to part  
15 7.

16 MS. BADA: 17.

17 CHAIRMAN FESMIRE: Yeah, 17, subpart 7.  
18 19.15.17.7, definitions, and the first one we need to  
19 address is G, re-vegetate, and that's Commissioner Bailey,  
20 right?

21 Okay, what's the next -- next change -- I'll just  
22 go through them.

23 G.

24 H for sump. Is there any proposed change to  
25 that?

1           COMMISSIONER OLSON: Hold on here. Nope, not  
2 from CRI or OGAP.

3           CHAIRMAN FESMIRE: We're on 17.7.H.

4           COMMISSIONER BAILEY: Okay, nothing there, but  
5 let's go back to the very title. The title says pits,  
6 closed loop systems --

7           COMMISSIONER OLSON: Uh-huh.

8           COMMISSIONER BAILEY: -- below grade and subgrade  
9 tanks and sumps --

10          CHAIRMAN FESMIRE: On --

11          COMMISSIONER BAILEY: -- so industry has a  
12 comment there for the title.

13          CHAIRMAN FESMIRE: On the title of part 17?

14          COMMISSIONER OLSON: Uh-huh.

15          COMMISSIONER BAILEY: Yes.

16          MS. BADA: And then also in the objective.

17          COMMISSIONER OLSON: On the objective, and 17.6  
18 as well.

19          MS. BADA: Right.

20          CHAIRMAN FESMIRE: Oh, gee, I wish you'd told me  
21 that.

22                 Okay, so the title to 19.15.17 --

23          MS. BADA: I will point out that if we change the  
24 part name we'll have to ask for State Records' permission.

25          CHAIRMAN FESMIRE: Okay, and --

1 COMMISSIONER BAILEY: -- 6, 17.6, for the  
2 objective.

3 CHAIRMAN FESMIRE: And 17.6, objective?

4 COMMISSIONER OLSON: They're adding subgrade  
5 tanks as a separate category.

6 CHAIRMAN FESMIRE: Okay. And then we go to  
7 19.15.17.7.G, which is the definition of re-vegetate.

8 COMMISSIONER BAILEY: Right.

9 CHAIRMAN FESMIRE: Okay, 17.7.H, is there any  
10 proposal there?

11 COMMISSIONER BAILEY: No.

12 CHAIRMAN FESMIRE: I?

13 COMMISSIONER BAILEY: No.

14 CHAIRMAN FESMIRE: J? Oh, I'm sorry, then we go  
15 to 17.8.

16 COMMISSIONER BAILEY: There's a title change  
17 there, permit or registration required.

18 MS. BADA: I did want to go back to sump. Didn't  
19 IPANM have concerns about the definition of sump during  
20 their testimony? They haven't submitted any proposed  
21 modifications, but I just remember that in their testimony  
22 they raised concerns about --

23 CHAIRMAN FESMIRE: They did, did they not? IPANM  
24 did not sub?

25 MS. DAVIDSON: I haven't seen anything from them.

1 CHAIRMAN FESMIRE: Okay. Well, it's going to be  
2 very difficult to -- And we're sure that they have not  
3 submitted anything?

4 MS. DAVIDSON: Let me --

5 CHAIRMAN FESMIRE: Okay. Okay, so 19.15.17.8,  
6 you were concerned about the definition of sump?

7 COMMISSIONER BAILEY: I believe it was in 7.

8 CHAIRMAN FESMIRE: I'm sorry, 17.7.H, sump. We  
9 would have to have a copy of the transcript to consider  
10 that if they didn't file.

11 COMMISSIONER OLSON: I thought they had filed  
12 their own proposed --

13 CHAIRMAN FESMIRE: I know they intended to.

14 COMMISSIONER OLSON: -- regulations.

15 MS. BADA: I'll see if there's anything in there.

16 CHAIRMAN FESMIRE: The hearing --

17 MS. BADA: Yeah, they did. The stuff they filed  
18 prior to the hearing.

19 CHAIRMAN FESMIRE: So we're going to have to  
20 operate off of their pretrial filing -- their prehearing  
21 filings, huh?

22 MS. BADA: If you'll give me a minute, I'll go  
23 make copies.

24 CHAIRMAN FESMIRE: Okay.

25 COMMISSIONER OLSON: See, the tricky part to this

1 is going to be, how are you going to account now for  
2 written comments on the rule that happened as we went  
3 through this as well, because we do have a number of  
4 different ones that reference language for specific  
5 sections and concepts. I'm not sure it's going to be that  
6 simple to just look at it as a compilation of where there's  
7 changes.

8 CHAIRMAN FESMIRE: Well, you know, all of those  
9 comments are read and considered --

10 COMMISSIONER OLSON: Right.

11 CHAIRMAN FESMIRE: -- and now at the end of the  
12 hearing, the parties that have made specific  
13 recommendations -- I mean, after reading all of those, you  
14 know, some of the concerns were addressed in the -- in the  
15 questioning, and they are part of the record, and they were  
16 read and considered. Most of the ones that you're looking  
17 at are also members of IPANM or the industry committee. So  
18 I'm assuming that the industry committee and IPANM also  
19 took their -- those comments into account when they  
20 submitted their list to us.

21 But if you --

22 COMMISSIONER OLSON: Maybe.

23 CHAIRMAN FESMIRE: If you go through and find  
24 specific comments that we need to address, we will  
25 certainly do that.

1           COMMISSIONER OLSON: I guess I can't tell, like  
2 from this one from Energen, what is different from here.

3           CHAIRMAN FESMIRE: What we should do is  
4 individually go through the comments again, and at a future  
5 meeting bring anything that you consider still in need of  
6 addressing before the Commission at that time.

7           COMMISSIONER OLSON: Okay, that sounds like a  
8 good approach.

9           CHAIRMAN FESMIRE: Okay. Let's see, she --

10          COMMISSIONER OLSON: Did you find, actually,  
11 though, IPANM's --

12          CHAIRMAN FESMIRE: We found their October 22nd  
13 submittal --

14          COMMISSIONER OLSON: -- submittal --

15          CHAIRMAN FESMIRE: -- which has some comments in  
16 it, and one of which is the definition of sump.

17                   Can you think of a better plan?

18          COMMISSIONER BAILEY: Not really. Shall we go  
19 on?

20          CHAIRMAN FESMIRE: We know about sump. We may  
21 have to come back.

22          COMMISSIONER BAILEY: Yeah.

23          CHAIRMAN FESMIRE: So we were at -- we had  
24 covered the recommendation in 19.15.17 title from the  
25 industry committee.

1 COMMISSIONER BAILEY: And then C and D,  
2 proposals, as part of 17.8 from industry concerning single  
3 permits and subgrade tank registration.

4 CHAIRMAN FESMIRE: 17 --

5 COMMISSIONER BAILEY: -- C and D. 17.8.C and D.

6 CHAIRMAN FESMIRE: So 19.15.17.8.C, and that is  
7 the industry committee?

8 COMMISSIONER BAILEY: Yes.

9 CHAIRMAN FESMIRE: And it is --

10 COMMISSIONER BAILEY: -- having to do with single  
11 permits.

12 CHAIRMAN FESMIRE: Registering --

13 COMMISSIONER OLSON: They're adding a new C.

14 COMMISSIONER BAILEY: Adding a new C, adding a  
15 new D also.

16 CHAIRMAN FESMIRE: Okay, and what is D?

17 COMMISSIONER BAILEY: Shall not use a subgrade  
18 tank except after registration.

19 CHAIRMAN FESMIRE: Okay, 19.15.8.

20 Anything else in 19.15.7.8 that needs to be  
21 addressed?

22 COMMISSIONER BAILEY: No.

23 CHAIRMAN FESMIRE: Okay, and the independents  
24 don't have anything in 8.

25 19.15.17.9, permit application?

1 COMMISSIONER BAILEY: I have something in B.

2 CHAIRMAN FESMIRE: So do I, B.(2) definition of  
3 temporary pits.

4 COMMISSIONER BAILEY: No.

5 CHAIRMAN FESMIRE: Or temporary pits, permitting  
6 temporary pits.

7 COMMISSIONER BAILEY: The title of B, the permit  
8 application shall include -- and here's a small but  
9 important change -- rather than saying a detailed  
10 engineering plan, that would be an engineering --

11 CHAIRMAN FESMIRE: Okay, so the independents -- I  
12 mean, the industry committee --

13 COMMISSIONER BAILEY: Industry.

14 CHAIRMAN FESMIRE: -- proposes to change the  
15 title?

16 COMMISSIONER BAILEY: Uh-huh.

17 CHAIRMAN FESMIRE: And what's the other proposal?  
18 19.15.17.9.B?

19 COMMISSIONER BAILEY: -- (2).

20 CHAIRMAN FESMIRE: B.(2), and what's the  
21 proposal?

22 COMMISSIONER BAILEY: To evaluate compliance with  
23 siting standards.

24 CHAIRMAN FESMIRE: And that is again the industry  
25 committee?

1 COMMISSIONER BAILEY: Yes.

2 CHAIRMAN FESMIRE: I'll put in quotes here,  
3 siting standards.

4 Okay, anything in B.3?

5 COMMISSIONER BAILEY: Yes, changing the word  
6 recommendations to the word requirements, in B.3.(3) --

7 CHAIRMAN FESMIRE: B.3.(3).

8 COMMISSIONER BAILEY: -- from manufacturers'  
9 recommendations to manufacturers' requirements.

10 CHAIRMAN FESMIRE: 9.B.3.(3), and that's the  
11 industry committee?

12 COMMISSIONER BAILEY: Yes.

13 COMMISSIONER OLSON: Actually, looking here too  
14 in B.2, IPANM had a proposed change on B.2.

15 CHAIRMAN FESMIRE: I've got it, I'll catch IPANM.

16 COMMISSIONER OLSON: Okay.

17 CHAIRMAN FESMIRE: Okay, and Commissioner Bailey,  
18 let's go back. 19.15.17.9.B.3.(3)?

19 COMMISSIONER BAILEY: Changing the word from  
20 manufacturers' recommendations to manufacturers'  
21 requirements. That's from industry.

22 CHAIRMAN FESMIRE: Okay. And IPANM also has a  
23 recommended change, recommended requirements.

24 Okay. Anything under B.4? Yes, IPANM has a  
25 change under B.4.

1 Anybody else?

2 COMMISSIONER BAILEY: Yes, industry, B.4.(4).

3 CHAIRMAN FESMIRE: B.4 -- B.4.(4) or just B.4? I  
4 think it's just B.4, isn't it?

5 MS. BADA: Yeah.

6 COMMISSIONER BAILEY: Yes.

7 CHAIRMAN FESMIRE: Okay, and the prior one is  
8 B.3. So the industry committee and IPANM and the -- Can  
9 you give me a synopsis -- I mean, just a short title?

10 COMMISSIONER BAILEY: Having to do with siting  
11 standards.

12 CHAIRMAN FESMIRE: Okay. What about C?  
13 19.15.17.9.C?

14 COMMISSIONER OLSON: C.(1).

15 CHAIRMAN FESMIRE: C.(1), closure plans?

16 COMMISSIONER BAILEY: Citizens for Clean Air and  
17 Water also has C.(1) --

18 CHAIRMAN FESMIRE: Okay.

19 COMMISSIONER OLSON: CRI as well.

20 CHAIRMAN FESMIRE: 19.15.17.9.C -- C.(1)

21 COMMISSIONER BAILEY: (1), (2), (3) and (4),  
22 deletions.

23 CHAIRMAN FESMIRE: Okay. And so -- CRI had one?

24 COMMISSIONER OLSON: CRI had a deletion for  
25 C.(1), just deleting all of C.(1). So did OGAP, same

1 thing, the on-site closure method.

2 CHAIRMAN FESMIRE: OGAP.

3 COMMISSIONER BAILEY: Citizens for Clean Air and  
4 Water delete all four, and industry only delete (4).

5 CHAIRMAN FESMIRE: Okay. Well, we'll -- we know  
6 that everybody wants to talk about that one, huh?

7 COMMISSIONER BAILEY: Yup.

8 CHAIRMAN FESMIRE: So Citizens for Clean -- OGAP,  
9 CRI. Did the industry committee have comments on it?

10 COMMISSIONER BAILEY: On C.(4), yes.

11 CHAIRMAN FESMIRE: C.(1) through C.(4), okay,  
12 industry committee. Ironically, the independents didn't.

13 Okay, C.(1), (2), (3) and (4).

14 19.15.17.9.D, any --

15 COMMISSIONER OLSON: Nothing from the --

16 COMMISSIONER BAILEY: Nothing.

17 COMMISSIONER OLSON: -- CRI.

18 CHAIRMAN FESMIRE: Okay, then we go to  
19 19.15.17.10.A.(1).

20 COMMISSIONER BAILEY: Oh, oh, 9.E.

21 CHAIRMAN FESMIRE: 9.E?

22 COMMISSIONER BAILEY: Yes, new section proposed  
23 by industry --

24 CHAIRMAN FESMIRE: Okay. E, new section proposed  
25 by industry.

1 COMMISSIONER BAILEY: -- having to do with  
2 registration of subgrade tanks.

3 CHAIRMAN FESMIRE: Florene, was there anything  
4 from NMOGA?

5 MS. DAVIDSON: No, but do you have IPANM?

6 CHAIRMAN FESMIRE: We've got their October 22nd  
7 version.

8 MS. DAVIDSON: Oh, okay. No, I didn't have  
9 anything from NMOGA.

10 CHAIRMAN FESMIRE: Okay.

11 So we've got 19.15.17.9.E, the industry committee  
12 proposes a new section on subgrade tanks.

13 COMMISSIONER BAILEY: Right.

14 CHAIRMAN FESMIRE: Okay. 19.15.17.10.A?

15 COMMISSIONER BAILEY: (1).(b).

16 CHAIRMAN FESMIRE: Okay, A.(1).(b) here too?

17 COMMISSIONER BAILEY: Industry.

18 CHAIRMAN FESMIRE: 15.17.10.A.(1), industry,  
19 and -- ?

20 COMMISSIONER BAILEY: -- and IPANM.

21 CHAIRMAN FESMIRE: Industry committee, IPANM.

22 And what's the synopsis of it?

23 COMMISSIONER BAILEY: For industry it has to do  
24 with definition of watercourse. IPANM has to do with  
25 distance from watercourse.

1 CHAIRMAN FESMIRE: I've got it --

2 COMMISSIONER BAILEY: Okay.

3 CHAIRMAN FESMIRE: -- if you want.

4 COMMISSIONER BAILEY: I can drop that one and  
5 only look at these two.

6 CHAIRMAN FESMIRE: Okay.

7 COMMISSIONER OLSON: I've got here for A.(1).(b)  
8 also for CRI, had a proposed change. Actually, they had --  
9 I'm sorry, they also had a change in the depth criteria for  
10 (1).(a) as well.

11 CHAIRMAN FESMIRE: CRI?

12 COMMISSIONER OLSON: Yeah. Missed that. They  
13 want to change it from 50 to 100 feet for the siting  
14 criteria for a temporary pit, 100 feet depth to water.

15 CHAIRMAN FESMIRE: Okay, so that's A.(1)?

16 COMMISSIONER OLSON: Right, A.(1).(a).

17 CHAIRMAN FESMIRE: Okay.

18 COMMISSIONER OLSON: They had a change to  
19 A.(1).(b) as well.

20 CHAIRMAN FESMIRE: So 19 -- and Jami, your  
21 changes were all to A.(1).(a)?

22 COMMISSIONER BAILEY: And A.(2).(b).

23 CHAIRMAN FESMIRE: Okay, but we haven't gotten --

24 COMMISSIONER BAILEY: We're not there yet.

25 CHAIRMAN FESMIRE: We're still at 17.15 -- I

1 mean, 19.15.17.10.A.(1).(b), and the independents -- they  
2 want to change it from 200 to 10 feet.

3 And you said --

4 COMMISSIONER OLSON: And CRI had a change on the  
5 approval -- of where the approval occurs in (1).(b) from  
6 the district office to the Environmental Bureau in Santa  
7 Fe.

8 CHAIRMAN FESMIRE: Okay. Okay, what about  
9 A.(1).(c)?

10 COMMISSIONER OLSON: Nothing.

11 CHAIRMAN FESMIRE: Okay, A.(1).(d)?

12 COMMISSIONER BAILEY: Huh-uh.

13 COMMISSIONER OLSON: Nothing.

14 CHAIRMAN FESMIRE: A.(1).(e)?

15 COMMISSIONER BAILEY: I jump to A.(2).

16 CHAIRMAN FESMIRE: Okay.

17 COMMISSIONER OLSON: I've got something here on  
18 A.(1).(g). It's the same issue again, changing the  
19 district office approval to the Environmental Bureau  
20 approval.

21 COMMISSIONER BAILEY: And who's that?

22 CHAIRMAN FESMIRE: CRI.

23 COMMISSIONER OLSON: CRI.

24 CHAIRMAN FESMIRE: A.(1).(g), as in golf?

25 COMMISSIONER OLSON: Uh-huh.

1 CHAIRMAN FESMIRE: Okay. So we -- the next one  
2 that anybody has is A.(2)?

3 COMMISSIONER BAILEY: I have A.(2) --

4 COMMISSIONER OLSON: Sorry, it looks like (h) as  
5 well. Same issue again, the changing from district to  
6 Environmental Bureau approval. A.(1).(h).

7 CHAIRMAN FESMIRE: 17.10.A.(1).(h)?

8 COMMISSIONER OLSON: Uh-huh.

9 CHAIRMAN FESMIRE: CRI? Where approved. Okay?  
10 So now we're ready to go to 19.15.17.10.A.(2)?

11 COMMISSIONER OLSON: A.(2).(a) has a change from  
12 CRI of the depth to groundwater criteria from 50 to 100  
13 feet.

14 CHAIRMAN FESMIRE: A.(2).(a)?

15 COMMISSIONER OLSON: Uh-huh.

16 CHAIRMAN FESMIRE: Depth to groundwater, CRI.  
17 Okay, anything else on A.(2).(a)?

18 COMMISSIONER BAILEY: A.(2).(b), from industry.  
19 Change in distance and definition of significant  
20 watercourse.

21 CHAIRMAN FESMIRE: Industry committee, distance  
22 and definition.

23 COMMISSIONER BAILEY: Uh-huh.

24 CHAIRMAN FESMIRE: Okay, IPANM also has a  
25 proposed change to A.(2).(b), change in distance? Change

1 in distance.

2 Okay, anybody got anything on A.(2).(c), or  
3 anything else in A.(2)?

4 COMMISSIONER OLSON: No.

5 CHAIRMAN FESMIRE: Okay, in A.(3)?

6 COMMISSIONER BAILEY: Got something.

7 CHAIRMAN FESMIRE: Where at?

8 COMMISSIONER BAILEY: Industry change in distance  
9 and definition.

10 CHAIRMAN FESMIRE: On A.(3).(a)?

11 COMMISSIONER BAILEY: Uh-huh.

12 CHAIRMAN FESMIRE: A.(3).(a) to 15.17.10,  
13 A.(3).(a), the industry committee, distance?

14 COMMISSIONER BAILEY: And definition.

15 CHAIRMAN FESMIRE: Okay. Anything else in (a)?

16 COMMISSIONER BAILEY: Huh-uh.

17 CHAIRMAN FESMIRE: Okay, I've got one in  
18 A.(3).(b). A.(3).(b), change in distance, period.

19 COMMISSIONER BAILEY: Who's that? IPA?

20 CHAIRMAN FESMIRE: Yes, ma'am.

21 Okay, anything else in A?

22 COMMISSIONER BAILEY: No.

23 CHAIRMAN FESMIRE: Okay, so we're going to  
24 19.15.17.10.B, one sentence. Any changes?

25 COMMISSIONER BAILEY: No.

1 CHAIRMAN FESMIRE: 19.15.17.10.B?

2 Okay, 19.15.17.10.C, any changes?

3 COMMISSIONER OLSON: I have -- CRI and OGAP want  
4 to strike the entire section.

5 COMMISSIONER BAILEY: So does Citizens for Clean  
6 Air and Water.

7 CHAIRMAN FESMIRE: 10, and that's C?

8 COMMISSIONER OLSON: Uh-huh.

9 CHAIRMAN FESMIRE: And it's --

10 COMMISSIONER OLSON: -- strike all of the on-site  
11 closure methods is what they want.

12 CHAIRMAN FESMIRE: Okay, Citizens for Clean Air  
13 and Water. Who else?

14 COMMISSIONER BAILEY: OGAP and CRI.

15 COMMISSIONER OLSON: And CRI, uh-huh.

16 COMMISSIONER BAILEY: The industry only wants to  
17 change C.2 --

18 CHAIRMAN FESMIRE: I have C.2 also.

19 COMMISSIONER BAILEY: -- for distance and  
20 definition.

21 CHAIRMAN FESMIRE: Okay, so 19.15.17.10.C.2,  
22 industry committee, distance and definition?

23 COMMISSIONER BAILEY: Uh-huh.

24 CHAIRMAN FESMIRE: Independent Association,  
25 distance. Okay.

1 Anything else in C?

2 COMMISSIONER BAILEY: No.

3 CHAIRMAN FESMIRE: Anything else in Section 10?

4 COMMISSIONER BAILEY: No.

5 CHAIRMAN FESMIRE: Okay, moving on to Section  
6 19.15.17.11.

7 COMMISSIONER BAILEY: Industry has in A to add  
8 subgrade tank.

9 CHAIRMAN FESMIRE: A, industry --

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: -- add subgrade tank. To the  
12 title?

13 COMMISSIONER BAILEY: Didn't say so.

14 COMMISSIONER OLSON: There's one in types of  
15 systems, is what they're -- they've added a new --

16 COMMISSIONER BAILEY: Under general  
17 specifications.

18 COMMISSIONER OLSON: Yeah. Overall, they've  
19 added a new classification system for subgrade tanks  
20 throughout the document.

21 CHAIRMAN FESMIRE: Okay, A.

22 11.B, any problems?

23 COMMISSIONER BAILEY: Huh-uh.

24 CHAIRMAN FESMIRE: C?

25 COMMISSIONER BAILEY: Add subgrade tank as a

1 classification and correct the typo.

2 CHAIRMAN FESMIRE: Correct the typo?

3 COMMISSIONER BAILEY: Yeah, it says a person --

4 CHAIRMAN FESMIRE: We've got a --

5 COMMISSIONER BAILEY: -- that a person can  
6 person.

7 CHAIRMAN FESMIRE: -- that a person can person,  
8 okay. That happens to be the Division's deal too, so OCD,  
9 industry committee?

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: Change. And what was the  
12 industry proposal?

13 COMMISSIONER BAILEY: Add subgrade tank in the  
14 list.

15 CHAIRMAN FESMIRE: Okay. Anything in D?

16 COMMISSIONER BAILEY: D.1, add subgrade tank.

17 CHAIRMAN FESMIRE: 19.15.17.11.D.1, industry  
18 proposal, add subgrade tank.

19 COMMISSIONER BAILEY: Also the same thing in 2  
20 and in 3 of D.

21 CHAIRMAN FESMIRE: Do you have anything?

22 COMMISSIONER OLSON: No.

23 CHAIRMAN FESMIRE: D.3, add the same thing.

24 Okay, E, netting. Any change?

25 COMMISSIONER BAILEY: I think we need to talk

1 about it, because it's so very broad. We don't know if  
2 they're talking lizards or elk when they talk about  
3 wildlife.

4 CHAIRMAN FESMIRE: Okay, E, I'll put Commission.  
5 Okay. And that will be enough to jog your memory?

6 COMMISSIONER BAILEY: Uh-huh.

7 CHAIRMAN FESMIRE: Okay, F?

8 COMMISSIONER OLSON: Well, the same thing kind of  
9 comes up in some of the fencing, you know, issue. It talks  
10 about excluding wildlife and what kind of wildlife are you  
11 talking about, so --

12 COMMISSIONER BAILEY: Right.

13 COMMISSIONER OLSON: -- I think it's -- would be  
14 on the same issue with netting and fencing. What are we  
15 excluding?

16 CHAIRMAN FESMIRE: Okay.

17 COMMISSIONER OLSON: Because I had that when we  
18 were going through on D.3.

19 CHAIRMAN FESMIRE: Okay, Commission on D.3 --  
20 11.D.3?

21 COMMISSIONER OLSON: Uh-huh.

22 CHAIRMAN FESMIRE: Okay. So on 19.15.17.11.E we  
23 have a Commission issue that we need to talk about.

24 Okay, and on 19.15.17.11.F?

25 COMMISSIONER BAILEY: Industry has one in number

1 1.

2 CHAIRMAN FESMIRE: In Number 1?

3 COMMISSIONER BAILEY: Yes, to ensure confinement  
4 of oil, gas liquids or water.

5 CHAIRMAN FESMIRE: Okay. So they don't want a  
6 pit designed to --

7 COMMISSIONER BAILEY: -- because they're talking  
8 fluids there.

9 CHAIRMAN FESMIRE: Yeah, they don't want a pit  
10 designed to confine gas. Okay.

11 MS. BADA: We understand that.

12 CHAIRMAN FESMIRE: That's F.1. Anything else in  
13 F.1?

14 COMMISSIONER OLSON: F -- not in F.1, but in F.2.

15 CHAIRMAN FESMIRE: In F.2, what have you got?

16 COMMISSIONER OLSON: CRI wants to change the  
17 approval from the district to the Santa Fe office.

18 CHAIRMAN FESMIRE: Okay, IPANM has a concern on  
19 2. They want to strike the last half, the operator shall  
20 construct a temporary pit. They don't like the sloping or  
21 the berming.

22 Okay, anything else in F.2?

23 COMMISSIONER BAILEY: I have a change for F.3.

24 CHAIRMAN FESMIRE: Yeah, lots of folks want to  
25 change F.3, huh? 19.15.17.11.F.3, the IPANM wants to

1 change mil thickness.

2 COMMISSIONER BAILEY: So does industry.

3 CHAIRMAN FESMIRE: The industry committee. Do  
4 they have any other objections?

5 COMMISSIONER BAILEY: Not in 3.

6 CHAIRMAN FESMIRE: Okay. Okay, both of them.  
7 And you've got nothing --

8 COMMISSIONER OLSON: CRI has got a change in 3  
9 again, the exceptions being approved by the Environmental  
10 Bureau instead of the district office.

11 CHAIRMAN FESMIRE: So Mr. Huffaker, we can just  
12 basically say you want everything to come to Santa Fe, huh?

13 MR. HUFFAKER: No, actually that's not true.

14 CHAIRMAN FESMIRE: No?

15 MR. HUFFAKER: No, there are several things that  
16 we leave in the district offices.

17 CHAIRMAN FESMIRE: Okay.

18 MR. HUFFAKER: We've thought about that.

19 CHAIRMAN FESMIRE: Okay, anything else in F.3?  
20 Anything else in F.4?

21 The Division has a change in F.4. They want to  
22 add the sentence, The seams shall be welded.

23 Anything in 5?

24 How about 6?

25 7?

1                   COMMISSIONER BAILEY: Got 7. Industry wants to  
2 delete the sentence about the anchor trench being 18  
3 inches.

4                   CHAIRMAN FESMIRE: Industry committee, anchor  
5 trench. Just the depth, or the anchor trench, period?

6                   COMMISSIONER BAILEY: That whole sentence.

7                   COMMISSIONER OLSON: The whole sentence.

8                   CHAIRMAN FESMIRE: Okay. The independents also  
9 have a concern. They want to delete the whole sentence.  
10 So...

11                   Okay, 8?

12                   9?

13                   COMMISSIONER BAILEY: Got something. Industry  
14 wants to add the term, proper sloping.

15                   CHAIRMAN FESMIRE: Okay. Anybody else?

16                   COMMISSIONER OLSON: No.

17                   CHAIRMAN FESMIRE: 10?

18                   11?

19                   The Division has a change in 11. 11.F.(11), and  
20 they want to add the phrase, The operator shall not allow  
21 freestanding fluids to remain on the unlined part of the  
22 temporary pit used to flare or vent gas.

23                   Okay, we're into G now. Is everybody --

24                   COMMISSIONER BAILEY: Clean Air and Water have  
25 comments --

1 CHAIRMAN FESMIRE: 19 --

2 COMMISSIONER BAILEY: -- about testing the seams.

3 CHAIRMAN FESMIRE: 11.G --

4 COMMISSIONER BAILEY: -- (5).

5 CHAIRMAN FESMIRE: Clean Air and Water. G.(5),  
6 is that the first one we've got to --

7 MS. BADA: Yeah.

8 CHAIRMAN FESMIRE: Okay, G.(5), test seams.

9 Okay, anything else in G?

10 COMMISSIONER BAILEY: Nope.

11 CHAIRMAN FESMIRE: Okay, how about 19.15.17.11.H?

12 COMMISSIONER BAILEY: Nope.

13 COMMISSIONER OLSON: No.

14 CHAIRMAN FESMIRE: Okay, 19.15.17.11.I, OCD has  
15 significant -- this is the below grade tank issue.

16 COMMISSIONER BAILEY: So does industry, so does  
17 Clean Air and Water.

18 CHAIRMAN FESMIRE: 17.11.I, OCD, I.(c).  
19 Ironically, the independents don't.

20 Okay, the OCD, the independent committee, anybody  
21 else?

22 COMMISSIONER BAILEY: Clean Air.

23 COMMISSIONER OLSON: Nothing from CRI.

24 CHAIRMAN FESMIRE: Okay, Clean Air and Water,  
25 significant revisions, I'm just going to put.

1 COMMISSIONER OLSON: Uh-huh.

2 CHAIRMAN FESMIRE: Okay, and that's in (1), (2),  
3 (3), (6), (7) --

4 COMMISSIONER BAILEY: All of --

5 COMMISSIONER OLSON: Throughout it.

6 CHAIRMAN FESMIRE: Yeah.

7 COMMISSIONER BAILEY: Just all of I.

8 CHAIRMAN FESMIRE: Okay, J.

9 COMMISSIONER BAILEY: Got something. Clean Air  
10 and Water wants to strike the entire section.

11 CHAIRMAN FESMIRE: 19.15.17.11 -- that is 11,  
12 right?

13 COMMISSIONER OLSON: Uh-huh.

14 CHAIRMAN FESMIRE: -- I.

15 COMMISSIONER BAILEY: J.

16 COMMISSIONER OLSON: J.

17 CHAIRMAN FESMIRE: J. One of the disadvantages  
18 of being a dyslexic.

19 Okay, J.

20 COMMISSIONER OLSON: Well, you've got CRI and  
21 OGAP, the same thing, they just want to strike the entire  
22 section.

23 CHAIRMAN FESMIRE: Okay. CRI --

24 COMMISSIONER OLSON: Yes, they don't want on-site  
25 burial.

1 COMMISSIONER BAILEY: So you have the three --

2 COMMISSIONER OLSON: Uh-huh.

3 COMMISSIONER BAILEY: -- groups there?

4 CHAIRMAN FESMIRE: Okay, and any specific changes  
5 other than that?

6 COMMISSIONER BAILEY: Yes, industry wants to  
7 change the thickness in J.(4) --

8 CHAIRMAN FESMIRE: Okay, hang on there.  
9 19.15.17.11.J.(4)?

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: Industry committee. They want  
12 to go to, I'm assuming, a 12-mil --

13 COMMISSIONER BAILEY: 12, yes. And also in  
14 J.(10).

15 CHAIRMAN FESMIRE: Same group?

16 COMMISSIONER BAILEY: Same -- industry.

17 CHAIRMAN FESMIRE: Okay. OCD has a proposal in  
18 J.(5) that the seams be welded.

19 Okay, J -- Anything else in J?

20 COMMISSIONER BAILEY: Huh-uh.

21 CHAIRMAN FESMIRE: Okay, that leads us to  
22 19.15.17.12. Anybody got anything in A or A.(1)?

23 COMMISSIONER BAILEY: A.(1), add subgrade tank,  
24 from industry.

25 CHAIRMAN FESMIRE: A.(1), industry committee.

1 Subgrade tank or below grade tank?

2 COMMISSIONER BAILEY: Subgrade.

3 CHAIRMAN FESMIRE: Oh, okay, that's their --

4 COMMISSIONER BAILEY: That's their new --

5 CHAIRMAN FESMIRE: -- definition they're  
6 proposing.

7 COMMISSIONER BAILEY: Yeah.

8 CHAIRMAN FESMIRE: Okay, in -- That's all in  
9 A.(1)?

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: 19.15.17.12.A.(2)?

12 COMMISSIONER BAILEY: Industry wants to add the  
13 words, or dispose.

14 CHAIRMAN FESMIRE: Industry committee, or -- The  
15 Division, believe it or not, has one of the same changes.

16 COMMISSIONER OLSON: And CRI has a change in  
17 A.(2) as well.

18 CHAIRMAN FESMIRE: Okay.

19 COMMISSIONER OLSON: It's different, though.

20 CHAIRMAN FESMIRE: What's the CRI?

21 COMMISSIONER OLSON: Theirs is, Dispose of  
22 drilling fluids in a Division-approved facility, specifying  
23 where it's going to go.

24 COMMISSIONER BAILEY: And this one says, In the  
25 manner approved by Division Rules --

1 COMMISSIONER OLSON: Uh-huh.

2 COMMISSIONER BAILEY: -- so they're  
3 essentially --

4 CHAIRMAN FESMIRE: And this one says, And the  
5 appropriate Division district office approves. So it looks  
6 like we have a problem there.

7 COMMISSIONER BAILEY: Yeah.

8 CHAIRMAN FESMIRE: The industry -- I mean, the  
9 independents have a real similar -- We have consensus.  
10 Was CRI's to A.(2) or A.(3)?

11 COMMISSIONER OLSON: A.(2).

12 CHAIRMAN FESMIRE: Okay. The independents are --  
13 okay, or otherwise dispose.

14 Okay, anything in A.(3)?

15 COMMISSIONER BAILEY: Industry wants to add  
16 subgrade tanks.

17 CHAIRMAN FESMIRE: 12.A.(3)?

18 COMMISSIONER BAILEY: Uh-huh.

19 CHAIRMAN FESMIRE: Subgrade tanks, industry  
20 committee.

21 Okay, anything in A.(4)?

22 COMMISSIONER BAILEY: A.(4), (5) and (6) have  
23 language changes.

24 CHAIRMAN FESMIRE: Industry committee?

25 COMMISSIONER BAILEY: Citizens for Clean Air and

1 Water.

2 CHAIRMAN FESMIRE: And can you generally  
3 characterize it?

4 COMMISSIONER BAILEY: Let's say in (6) they say a  
5 visible ruler satisfies requirement for measurement.

6 CHAIRMAN FESMIRE: Visible ruler?

7 COMMISSIONER BAILEY: Uh-huh.

8 CHAIRMAN FESMIRE: Okay, A.(4), (5) and (6) --

9 COMMISSIONER OLSON: I also had an issue in there  
10 myself, I'm just looking at some of my notes of whether  
11 below grade tanks should be added to the notification.

12 CHAIRMAN FESMIRE: A, specific section, or just  
13 A?

14 COMMISSIONER OLSON: It's in -- it appears in (4)  
15 and (5). It's a notification requirements. I don't  
16 remember seeing it anywhere in here. I brought it up once  
17 during the cross-examination that I didn't see below grade  
18 tank leak notifications in here.

19 CHAIRMAN FESMIRE: Okay.

20 COMMISSIONER BAILEY: And industry wants to  
21 strike A.(6) altogether.

22 CHAIRMAN FESMIRE: A.(6)?

23 COMMISSIONER BAILEY: Uh-huh. And add subgrade  
24 tank to A.(8). That's industry.

25 CHAIRMAN FESMIRE: 19.15.17 --

1           COMMISSIONER OLSON: Did you get (6) too? I  
2 guess it looks like Citizens for Clean Air and Water had  
3 something for (6) too, it looks like.

4           CHAIRMAN FESMIRE: Yeah, I put that --

5           COMMISSIONER OLSON: Is that there? Okay.

6           CHAIRMAN FESMIRE: -- under visible ruler.

7           COMMISSIONER OLSON: Okay.

8           CHAIRMAN FESMIRE: Jami, I missed that last one.

9           A.(8), I think we were talking about.

10           COMMISSIONER BAILEY: Plus subgrade tank, from  
11 industry.

12           CHAIRMAN FESMIRE: Industry committee. Okay,  
13 A.(8).

14           Anything in A.(9)?

15           COMMISSIONER BAILEY: No.

16           CHAIRMAN FESMIRE: Okay, 19.15.17.12.B?

17           COMMISSIONER BAILEY: I have something in 4.

18           CHAIRMAN FESMIRE: I have something in 5.

19           Anything before that?

20           COMMISSIONER OLSON: No, not me.

21           CHAIRMAN FESMIRE: 19.15.17.12.B -- Jami, yours  
22 was first, 4? Industry committee?

23           COMMISSIONER BAILEY: To change the word from  
24 drilling pit to temporary, change the number of days, and  
25 add alternative method.

1 CHAIRMAN FESMIRE: Okay. The independents have  
2 an issue on B.(5).

3 COMMISSIONER BAILEY: Industry wants to strike it  
4 completely.

5 COMMISSIONER OLSON: Is that because it's  
6 covered, I guess, in 4?

7 COMMISSIONER BAILEY: Yeah.

8 COMMISSIONER OLSON: Yeah, that's what it looks  
9 like.

10 CHAIRMAN FESMIRE: And the independents want to  
11 change the number of days.

12 Okay, anything else in B?

13 COMMISSIONER BAILEY: Huh-uh.

14 CHAIRMAN FESMIRE: Anything in C?

15 COMMISSIONER BAILEY: Clean Air and Water want to  
16 add the word additional before requirements.

17 CHAIRMAN FESMIRE: Hang on just a second.

18 19.15.17.12 -- 17.12 -- was that C?

19 COMMISSIONER BAILEY: Uh-huh.

20 CHAIRMAN FESMIRE: -- C.(1)?

21 COMMISSIONER BAILEY: C --

22 MS. BADA: Just C.

23 CHAIRMAN FESMIRE: Oh, C.

24 COMMISSIONER OLSON: Just C.

25 COMMISSIONER BAILEY: -- title --

1 CHAIRMAN FESMIRE: Okay, and --

2 COMMISSIONER BAILEY: -- in accordance with the  
3 following additional requirements.

4 CHAIRMAN FESMIRE: Okay, that's C.  
5 Anything in C.(1) or (2) specifically?

6 COMMISSIONER BAILEY: Huh-uh.

7 COMMISSIONER OLSON: Nope.

8 CHAIRMAN FESMIRE: And we're still on 12, right?  
9 Okay, D. The Division has one, 19.15.17.12.D,  
10 and the Division adds a whole bunch, in fact, six. Okay.

11 COMMISSIONER OLSON: This may take care of my --  
12 some of my concerns. I'm seeing here it looks like they're  
13 adding reporting for releases from below grade tanks, so...

14 CHAIRMAN FESMIRE: Okay, so I'll just  
15 characterize it as reporting.

16 COMMISSIONER OLSON: It's more than that, but  
17 that's -- it's a series of things.

18 CHAIRMAN FESMIRE: Reporting, et cetera.  
19 Okay. Anybody else have anything?

20 There was a section on below grade tanks in the  
21 original, wasn't there?

22 COMMISSIONER BAILEY: No. Right there it's only  
23 a one-liner.

24 COMMISSIONER OLSON: There's just that one line,  
25 yeah, so...

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER BAILEY: Industry's suggesting to  
3 add another subsection F for subgrade tanks, but it's the  
4 same language as in D.

5 COMMISSIONER OLSON: Uh-huh.

6 CHAIRMAN FESMIRE: As in the Division's proposed  
7 D?

8 COMMISSIONER BAILEY: Uh-huh.

9 COMMISSIONER OLSON: In the original proposed D.

10 COMMISSIONER BAILEY: The original proposed D,  
11 below grade tanks, and then industry wants subgrade tanks  
12 with the same kind of language --

13 CHAIRMAN FESMIRE: Oh, okay.

14 COMMISSIONER BAILEY: -- to add in section F.

15 CHAIRMAN FESMIRE: Okay, so that's 12.D and F.

16 Anything on E? I'll take your silence as a no.

17 Okay, so we're to 19.15.17.13, closure

18 requirements. Let's start with A. Anybody have anything  
19 on A?

20 COMMISSIONER BAILEY: A.(1) --

21 CHAIRMAN FESMIRE: Anything on A proper?

22 COMMISSIONER BAILEY: -- industry. No.

23 CHAIRMAN FESMIRE: Okay, so the first one is  
24 19.15.17.13.A.(1) industry committee.

25 COMMISSIONER BAILEY: Within two years after

1 approval of the closure plan.

2 CHAIRMAN FESMIRE: Okay, so they want to change  
3 the --

4 COMMISSIONER BAILEY: Just to specify when that  
5 two years begins.

6 CHAIRMAN FESMIRE: Okay. Anything in A.(2)?

7 COMMISSIONER BAILEY: Yes, same thing, to specify  
8 approval of the closure plan.

9 CHAIRMAN FESMIRE: Industry committee?

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: Okay, A.(3)?

12 COMMISSIONER BAILEY: Yes, same thing, approval  
13 of the closure plan.

14 CHAIRMAN FESMIRE: Okay. A.(4), the Division has  
15 a pretty significant change. Does not comply with the  
16 design and construction requirements as provided in  
17 paragraph (1) or (2) of subsection 1 [sic].

18 The industry -- the independents have a  
19 significant addition. Anybody else? I'm assuming the  
20 industry committee would have something to say about A.(4),  
21 wouldn't they?

22 COMMISSIONER BAILEY: No.

23 CHAIRMAN FESMIRE: No?

24 COMMISSIONER OLSON: No.

25 CHAIRMAN FESMIRE: Okay. Anybody have anything

1 in A. (5)?

2 (6)?

3 (7)?

4 (8)?

5 Okay, B?

6 COMMISSIONER BAILEY: Yes.

7 CHAIRMAN FESMIRE: Be in general?

8 COMMISSIONER OLSON: Yes, in the general portion.

9 CHAIRMAN FESMIRE: 19.15.17.13.B. Bill, what's  
10 your first one?

11 COMMISSIONER OLSON: It's CRI, it's a change from  
12 the approval from the district office to the Environmental  
13 Bureau.

14 CHAIRMAN FESMIRE: Okay. Jami, did you have one  
15 on B?

16 COMMISSIONER BAILEY: B.(1).(b).

17 CHAIRMAN FESMIRE: Okay, we're still on B --

18 COMMISSIONER BAILEY: Okay.

19 CHAIRMAN FESMIRE: -- B itself.

20 The independents want to change -- they want to  
21 add the ability to evaporate under B itself.

22 Okay, so let's go to B.(1).(a). Any questions?

23 COMMISSIONER BAILEY: Huh-uh.

24 CHAIRMAN FESMIRE: The independents have a deal,  
25 they want to eliminate everything --

1 COMMISSIONER OLSON: Everything --

2 CHAIRMAN FESMIRE: -- after B.

3 COMMISSIONER BAILEY: As in all of B.(1)?

4 CHAIRMAN FESMIRE: Anything after B proper,  
5 everything under B.(1) through (G), big (G). Everything  
6 through big (G), everything except -- apparently everything  
7 after the first sentence in B, B proper, starting at B.(1)  
8 and eliminate -- so I'll go ahead and put it here -- B.(1)  
9 to G.(3), independents, eliminate.

10 Okay, so we've got that one.

11 And that's the end of the independents.

12 COMMISSIONER OLSON: And B.(2) --

13 COMMISSIONER BAILEY: Before we leave B.(1), I  
14 have --

15 CHAIRMAN FESMIRE: Yeah. No, we're still at  
16 B.(1).

17 COMMISSIONER OLSON: Okay.

18 CHAIRMAN FESMIRE: Okay, 19.15.17.13.B.(1).  
19 Bill, what you got?

20 COMMISSIONER OLSON: B.(2) I have.

21 CHAIRMAN FESMIRE: Jami has B.(1), though.

22 COMMISSIONER OLSON: Okay.

23 CHAIRMAN FESMIRE: What did you have on B.(1)?

24 COMMISSIONER BAILEY: This is B.(1).(b).

25 CHAIRMAN FESMIRE: B.(1).(b).

1 COMMISSIONER BAILEY: They're changing TPH to  
2 DRO --

3 CHAIRMAN FESMIRE: And this is the industry  
4 committee?

5 COMMISSIONER BAILEY: Yes. -- changing 100  
6 milligrams per kilogram to 2500.

7 CHAIRMAN FESMIRE: Okay. 2500?

8 COMMISSIONER BAILEY: Uh-huh.

9 CHAIRMAN FESMIRE: Okay.

10 COMMISSIONER BAILEY: Changing 250 milligrams per  
11 kilogram to 5000.

12 CHAIRMAN FESMIRE: 5000?

13 COMMISSIONER BAILEY: Uh-huh.

14 CHAIRMAN FESMIRE: Okay.

15 COMMISSIONER BAILEY: Adding a sentence having to  
16 do with testing visually impacted soils so they don't  
17 exceed 5000.

18 CHAIRMAN FESMIRE: Okay.

19 COMMISSIONER BAILEY: Citizens for Clean Air and  
20 Water, in B.(1).(b) --

21 CHAIRMAN FESMIRE: Okay.

22 COMMISSIONER BAILEY: -- want to change the  
23 language --

24 CHAIRMAN FESMIRE: Hang on, let me get that.  
25 17.13.B.(1).(b).

1 COMMISSIONER BAILEY: -- want to change hot  
2 spots --

3 CHAIRMAN FESMIRE: Okay.

4 COMMISSIONER BAILEY: -- and also to delete on-  
5 site deep-trench burial altogether. That's B.(2)

6 CHAIRMAN FESMIRE: Oh, on B.(2)?

7 COMMISSIONER BAILEY: Oh, okay, there I am.  
8 Yeah.

9 CHAIRMAN FESMIRE: B.(2).

10 COMMISSIONER OLSON: CRI and OGAP have the same  
11 thing on B.(2), just delete the whole section on on-site  
12 burial.

13 CHAIRMAN FESMIRE: Now, that was Citizens? --

14 COMMISSIONER BAILEY: Yes.

15 CHAIRMAN FESMIRE: -- CRI, and OGAP?

16 COMMISSIONER OLSON: Uh-huh.

17 CHAIRMAN FESMIRE: Okay. And that's under B.(2).  
18 Okay, we're --

19 COMMISSIONER BAILEY: Are we through with B.(1)?

20 CHAIRMAN FESMIRE: Yeah, I thought we were.

21 COMMISSIONER BAILEY: Okay, I have something more  
22 for B.(2).

23 CHAIRMAN FESMIRE: Okay, what in B.(2)?

24 COMMISSIONER BAILEY: B.2.(2) --

25 CHAIRMAN FESMIRE: 2?

1 COMMISSIONER BAILEY: Uh-huh, industry.

2 COMMISSIONER OLSON: Just B.(2).

3 COMMISSIONER BAILEY: Yeah B.(2).

4 CHAIRMAN FESMIRE: B.(2). Okay, B.(2). Okay.

5 COMMISSIONER BAILEY: Wants to delete the words,  
6 deep trench.

7 CHAIRMAN FESMIRE: And this is industry?

8 COMMISSIONER BAILEY: Uh-huh.

9 CHAIRMAN FESMIRE: Okay.

10 Okay, anything on B.(3)?

11 Okay, anything on C?

12 COMMISSIONER BAILEY: C.(3).

13 CHAIRMAN FESMIRE: C.(3).

14 Anything on C.(1) or (2)?

15 Okay, so 19.15.17 -- 13, was it? -- 13.C --

16 C -- ?

17 COMMISSIONER BAILEY: -- (3).

18 CHAIRMAN FESMIRE: -- (3)? And what would that  
19 be?

20 COMMISSIONER BAILEY: Fix the language, hot spot.

21 CHAIRMAN FESMIRE: And this is who?

22 COMMISSIONER BAILEY: Citizens for Clean Air and  
23 water.

24 And also to add the words, plus 50 milligrams per  
25 kilogram, at the very end of that sentence, the next to the

1 last sentence.

2 CHAIRMAN FESMIRE: And that's the Citizens for  
3 Clean Air?

4 COMMISSIONER BAILEY: Yeah.

5 CHAIRMAN FESMIRE: Okay. Anything in  
6 19.15.17.13.C.(4)?

7 How about C.(5)?

8 Okay, how about D, closure methods for closed  
9 loop systems.

10 COMMISSIONER BAILEY: C.(5) had --

11 CHAIRMAN FESMIRE: Whoops.

12 COMMISSIONER BAILEY: -- cleanup on the  
13 references from Citizens for Clean Air and Water.

14 CHAIRMAN FESMIRE: C.(5)?

15 COMMISSIONER BAILEY: Uh-huh.

16 CHAIRMAN FESMIRE: Add the word, cleanup, or -- ?

17 COMMISSIONER BAILEY: No, they were just cleaning  
18 up the references from subsection G to subsection F,  
19 because they had deleted certain sections.

20 CHAIRMAN FESMIRE: Oh, so in their version?

21 MS. BADA: Yeah.

22 COMMISSIONER BAILEY: Right.

23 CHAIRMAN FESMIRE: Okay, C.(5).

24 Anything on D?

25 COMMISSIONER BAILEY: Yes.

1 COMMISSIONER OLSON: D.(2).

2 CHAIRMAN FESMIRE: You've got something before  
3 D.(2), Jami?

4 COMMISSIONER BAILEY: No, D.2, delete by Citizens  
5 for Clean Air and Water.

6 COMMISSIONER OLSON: Same for CRI.

7 CHAIRMAN FESMIRE: CRI and Citizens, delete  
8 section.

9 COMMISSIONER OLSON: OGAP missed that one.

10 CHAIRMAN FESMIRE: Proof they didn't just Xerox.  
11 Okay, so D.(2).

12 Anything on D.(3)?

13 Okay, what about E?

14 COMMISSIONER BAILEY: Yes. E.(1).1, and let's  
15 just call it E.(1). Delete the words, all --

16 CHAIRMAN FESMIRE: Who is this, industry?

17 COMMISSIONER BAILEY: Industry.

18 CHAIRMAN FESMIRE: Delete, all?

19 COMMISSIONER BAILEY: Uh-huh.

20 CHAIRMAN FESMIRE: Delete the word, all?

21 COMMISSIONER BAILEY: Delete the word, all, from  
22 all liquids.

23 CHAIRMAN FESMIRE: Okay, as opposed to delete all  
24 the section.

25 COMMISSIONER BAILEY: Exactly.

1 CHAIRMAN FESMIRE: Okay, that's E.(1).

2 Have you got an E.(2)?

3 COMMISSIONER BAILEY: No.

4 CHAIRMAN FESMIRE: E.(3)?

5 COMMISSIONER BAILEY: No.

6 CHAIRMAN FESMIRE: E.(4)?

7 COMMISSIONER BAILEY: Yes. Industry -- similar  
8 changes to the other one where -- replacing TPH with DRO,  
9 changing the EPA method and changing the values, and adding  
10 a line about testing the soils.

11 And Citizens wants to change the term, hot spot.

12 CHAIRMAN FESMIRE: Dr. Neeper didn't like hot  
13 spot, huh?

14 COMMISSIONER BAILEY: No.

15 CHAIRMAN FESMIRE: Did he suggest a replacement?

16 COMMISSIONER BAILEY: That is wet, discolored, or  
17 showing other evidence of release.

18 CHAIRMAN FESMIRE: That's in E.(4), right?

19 COMMISSIONER BAILEY: Uh-huh.

20 CHAIRMAN FESMIRE: Anything in E.(5)?

21 E.(6)?

22 F?

23 COMMISSIONER BAILEY: Uh-huh.

24 CHAIRMAN FESMIRE: F -- F proper?

25 COMMISSIONER OLSON: Yeah, F proper, the entire

1 thing. CRI and OGAP want to just delete --

2 COMMISSIONER BAILEY: And Citizens.

3 COMMISSIONER OLSON: So no on-site closure or no  
4 on-site burial.

5 COMMISSIONER BAILEY: And industry does have  
6 comments within the text of it.

7 CHAIRMAN FESMIRE: Okay. How about F.(1)?

8 COMMISSIONER BAILEY: In F itself --

9 CHAIRMAN FESMIRE: Oh, okay.

10 COMMISSIONER BAILEY: -- to -- on-site closure,  
11 to delete reference to drying pad or temporary pit or deep-  
12 trench burial. It's language deletions there.

13 CHAIRMAN FESMIRE: Delete references to drying  
14 pad --

15 COMMISSIONER BAILEY: Drying pad associated with  
16 the closed loop system or temporary pit, blah, blah, blah,  
17 blah, blah, all the way through that sentence, and then  
18 delete the words, deep trench, from on-site burial.

19 CHAIRMAN FESMIRE: Okay.

20 COMMISSIONER BAILEY: And then I next have  
21 F.(1).(a).

22 CHAIRMAN FESMIRE: 19.15.17.13.F.(1).(a)?

23 COMMISSIONER BAILEY: Industry want the whole  
24 part deleted, F.(1).(a).

25 COMMISSIONER OLSON: That's the hundred-mile

1 radius.

2 CHAIRMAN FESMIRE: Okay, F.(1).(b)?

3 F.(1).(c)?

4 COMMISSIONER BAILEY: Uh-huh, change surface  
5 owner's consent to notification.

6 CHAIRMAN FESMIRE: And that's industry?

7 COMMISSIONER BAILEY: Industry.

8 CHAIRMAN FESMIRE: Okay, anything else on  
9 F.(1).(c)?

10 COMMISSIONER OLSON: Well, I had some issues that  
11 I brought up during the hearing whether the things should  
12 be deed-noticed.

13 CHAIRMAN FESMIRE: Okay, F.(1).(c).

14 F.(1).(d)?

15 F.(1).(e), the Division had a proposed change.  
16 F.(1).(e), to strike, drying pad associated with closed  
17 loop system. Okay.

18 COMMISSIONER BAILEY: Industry wants to  
19 completely delete (e), (f) and (g) of section F.(1).

20 CHAIRMAN FESMIRE: 19.15.17.13.(e), (f) and (g)?

21 COMMISSIONER BAILEY: Uh-huh.

22 COMMISSIONER OLSON: Which is all the sampling  
23 under temporary pits.

24 CHAIRMAN FESMIRE: Industry committee, delete.  
25 Anybody else have any comments on those?

1 COMMISSIONER BAILEY: Huh-uh.

2 COMMISSIONER OLSON: Nope.

3 CHAIRMAN FESMIRE: (e), (f) and (g). The in- --  
4 I mean, the OCD wants to add a section on marking --  
5 -15.17.13. They're going to call it (h).

6 Okay, F.(2)?

7 COMMISSIONER BAILEY: Yeah.

8 CHAIRMAN FESMIRE: We still are on F, aren't we?  
9 Any comment? Not in (a), (b), (c), (d), (e), (f), (g),  
10 (h)?

11 MS. BADA: Over --

12 CHAIRMAN FESMIRE: Pardon? Or (i), on F.(2)?

13 Okay, so we're at 19...17.13.G?

14 COMMISSIONER BAILEY: I have F.(2).

15 CHAIRMAN FESMIRE: Oh --

16 MS. BADA: Did the industry have comments on  
17 F.(2)?

18 COMMISSIONER OLSON: Uh-huh.

19 COMMISSIONER BAILEY: F.(2).(b).

20 CHAIRMAN FESMIRE: F.(2).(b)? Wait a minute.

21 COMMISSIONER BAILEY: Industry --

22 CHAIRMAN FESMIRE: Wait a minute, wait a minute.  
23 Wait a minute, I fouled up here.

24 Okay, we're at 13 --

25 COMMISSIONER OLSON: -- F.(2) --

1 CHAIRMAN FESMIRE: Okay, F.(1) -- okay, (e), (f),  
2 and (g). What was the ones that the industry wanted to be  
3 cited? What was the complete cite on there? 19.15.17?

4 COMMISSIONER BAILEY: Run that by me again.  
5 What's the confusion? (e), (f), and (g) deleted by  
6 industry.

7 CHAIRMAN FESMIRE: And those are under F.(1)?

8 COMMISSIONER OLSON: That's under F.(1).

9 COMMISSIONER BAILEY: Yes.

10 CHAIRMAN FESMIRE: F.(1). And so  
11 19.15.17.13.F.(1).(h). That's right, I fouled up there,  
12 F.(1).(h).

13 Okay, now we're at F.(2). Okay,  
14 19.15.17.13.F.(2). And that was where you had comments,  
15 right, Jami?

16 COMMISSIONER BAILEY: Yes --

17 CHAIRMAN FESMIRE: Okay.

18 COMMISSIONER BAILEY: -- (b), industry, closure  
19 of any drying pad associated with that APD.

20 CHAIRMAN FESMIRE: Okay, F.(2).(b).

21 What's the next thing we've got after F.(2).(b)?

22 COMMISSIONER BAILEY: F.(2).(d).

23 CHAIRMAN FESMIRE: F.(2).(d).

24 19.15.17.13.F.(2).(d) as in dog --

25 COMMISSIONER BAILEY: Uh-huh.

1 CHAIRMAN FESMIRE: -- industry committee.

2 COMMISSIONER BAILEY: Changing TPH to GRO/DRO and  
3 changing values and deleting part of that last few lines.

4 CHAIRMAN FESMIRE: Okay. Okay, F.(2).(e)?

5 COMMISSIONER BAILEY: Okay.

6 CHAIRMAN FESMIRE: Anybody?

7 COMMISSIONER BAILEY: Yeah. It's hard to figure  
8 this out. F.(2) -- quite a few -- Let's just put, added  
9 language --

10 CHAIRMAN FESMIRE: Okay, so 19- --

11 COMMISSIONER BAILEY: -- industry.

12 CHAIRMAN FESMIRE: Okay, 19.15.17.13.F.(2) --  
13 what's the --

14 COMMISSIONER OLSON: Well, they took F and made F  
15 into F.(1). They made like a --

16 COMMISSIONER BAILEY: Uh-huh.

17 COMMISSIONER OLSON: -- a (1), (2), and a (3).

18 MS. BADA: They added --

19 COMMISSIONER OLSON: They added -- it looks like  
20 the sampling requirements that they deleted up above in (1)  
21 and put them down here instead.

22 CHAIRMAN FESMIRE: Well, let me get the correct  
23 cite here. 19.15.17.13- --

24 MS. BADA: -- F --

25 CHAIRMAN FESMIRE: -- F --

1 MS. BADA: -- (2)

2 COMMISSIONER BAILEY: -- (2) --

3 MS. BADA: -- subsections --

4 CHAIRMAN FESMIRE: -- (2) --

5 MS. BADA: -- basically subpar- -- or paragraphs  
6 (2) and (3).

7 CHAIRMAN FESMIRE: Okay, and we're adding a (1)  
8 and (2), not a (2) and (3), right?

9 MS. BADA: Right.

10 CHAIRMAN FESMIRE: And it's the industry  
11 committee?

12 COMMISSIONER OLSON: Uh-huh.

13 CHAIRMAN FESMIRE: Just change.

14 COMMISSIONER BAILEY: Just big change right  
15 through there.

16 COMMISSIONER OLSON: Uh-huh.

17 CHAIRMAN FESMIRE: Okay. So is there anything in  
18 F.(2).(g)?

19 MS. BADA: They added a new F.(3) also.

20 CHAIRMAN FESMIRE: (1), (2) and (3)?

21 COMMISSIONER OLSON: (1), (2) and (3), uh-huh.

22 MS. BADA: Because they added an in-pit burial.

23 CHAIRMAN FESMIRE: Okay. So F.(2).(g), any  
24 change proposals?

25 COMMISSIONER BAILEY: Just a lot of changes all

1 through there from industry.

2 CHAIRMAN FESMIRE: Okay, so F.(2).(g), the  
3 industry committee too?

4 MS. BADA: Doesn't look like they --

5 COMMISSIONER OLSON: I don't have any changes in  
6 there, do they?

7 MS. BADA: Nothing in (g) or (h) --

8 CHAIRMAN FESMIRE: You're still in (f), right? --

9 MS. BADA: -- or (i).

10 CHAIRMAN FESMIRE: -- little tiny (f)?

11 COMMISSIONER OLSON: -- little tiny -- right.

12 CHAIRMAN FESMIRE: You're in F.(2).(f), okay.

13 (h)? F.(2).(h)?

14 F.(2).(i)?

15 Okay, now we're going to big G.

16 COMMISSIONER BAILEY: Yes.

17 MS. BADA: No, they added --

18 COMMISSIONER OLSON: No --

19 MS. BADA: -- an F.(3).

20 COMMISSIONER OLSON: -- they added a new one.

21 CHAIRMAN FESMIRE: An F.(3)?

22 COMMISSIONER OLSON: Uh-huh.

23 CHAIRMAN FESMIRE: Okay, industry added an F.(3).

24 Industry committee, add. Okay? Okay, and then we add an

25 F.(3).

1 Any change to G?

2 COMMISSIONER BAILEY: Yes.

3 CHAIRMAN FESMIRE: 19.15.17.13.G --

4 COMMISSIONER BAILEY: -- (2).

5 CHAIRMAN FESMIRE: -- G -- anything to (1)?

6 COMMISSIONER BAILEY: No.

7 CHAIRMAN FESMIRE: Okay, G.(2). Jami, is this  
8 your stuff?

9 COMMISSIONER BAILEY: Yeah, I have something for  
10 all of G.

11 CHAIRMAN FESMIRE: Okay, we'll just --

12 COMMISSIONER OLSON: Well, G.(2), I have CRI and  
13 OGAP just want to delete the portions -- just delete G.(2),  
14 is what they want.

15 CHAIRMAN FESMIRE: Okay, I put G, Commissioner  
16 Bailey, just for the whole thing --

17 COMMISSIONER BAILEY: Okay.

18 CHAIRMAN FESMIRE: -- and then to get into the  
19 specifics of the -- 19.15.17.13.G.(2)?

20 COMMISSIONER OLSON: Uh-huh, delete from CRI and  
21 OGAP.

22 COMMISSIONER BAILEY: And industry just wants to  
23 delete the words, deep trench.

24 CHAIRMAN FESMIRE: Okay, G.(3)?

25 Okay, what about H, re-vegetation requirements?

1 COMMISSIONER BAILEY: I do.

2 CHAIRMAN FESMIRE: 19.15.17.13.H. Commissioner  
3 Bailey?

4 COMMISSIONER OLSON: And I'll second that. I've  
5 got some issues there too.

6 CHAIRMAN FESMIRE: Anybody else have anything on  
7 that one?

8 COMMISSIONER BAILEY: Huh-uh.

9 CHAIRMAN FESMIRE: What about H.(1) and (2)?  
10 Do you guys want to take a break?

11 COMMISSIONER BAILEY: Sure.

12 COMMISSIONER OLSON: Uh-huh.

13 CHAIRMAN FESMIRE: Why don't we come back in  
14 about 10 minutes?

15 (Thereupon, a recess was taken at 10:45 a.m.)

16 (The following proceedings had at 11:00 a.m.)

17 CHAIRMAN FESMIRE: Let's go back on the record in  
18 Case Number 14,015. Let the record reflect that all the  
19 Commissioners are present and that we are proceeding with  
20 the deliberations.

21 I believe we were at -- in the proposed rule,  
22 Section 19.15.17.13.I. Does anybody have any -- Has  
23 anybody received any comments on Section I?

24 Okay, what about --

25 COMMISSIONER OLSON: Yes.

1 CHAIRMAN FESMIRE: Oh, I'm sorry.

2 COMMISSIONER OLSON: Looks like under I.(1) it's  
3 deleting some of the language from the first sentence.

4 CHAIRMAN FESMIRE: Who is it?

5 COMMISSIONER OLSON: This is CRI, excuse me,  
6 where it talks about -- or where the operator has approval  
7 for on-site closure. It just -- and the same thing happens  
8 in I.(2), I.(1) and (2). It's deletion of that same  
9 language in (2).

10 CHAIRMAN FESMIRE: I.(1) and (2)?

11 COMMISSIONER OLSON: Right.

12 CHAIRMAN FESMIRE: Okay, (1) and (2).  
13 Anything else in I?

14 COMMISSIONER OLSON: Let's see here. No.

15 CHAIRMAN FESMIRE: In J?  
16 Okay, moving on to 19.15.17.14, emergency  
17 actions. Does anybody have any changes to 14?

18 COMMISSIONER BAILEY: Huh-uh.

19 COMMISSIONER OLSON: Nope.

20 CHAIRMAN FESMIRE: Okay. Well, moving right  
21 along to 19.17.15 -- 19.15.17.15, exceptions.

22 COMMISSIONER BAILEY: A.(1).

23 COMMISSIONER OLSON: A.(1) here too.

24 CHAIRMAN FESMIRE: Okay, in A.(1)?

25 COMMISSIONER BAILEY: Citizens want to scratch

1 the language, the closure requirement of the referenced  
2 subsections.

3 COMMISSIONER OLSON: CRI has the same thing.

4 CHAIRMAN FESMIRE: Okay, scratch -- Okay,  
5 characterize that sentence again.

6 COMMISSIONER BAILEY: The closure requirement  
7 references.

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER BAILEY: And industry wants to  
10 change language from, provides equivalent or better  
11 protection, to, prevents the contamination of fresh water,  
12 or protects public health.

13 CHAIRMAN FESMIRE: Okay. Bill, in A.(1) who else  
14 wanted to scratch it besides Citizens?

15 COMMISSIONER OLSON: CRI.

16 CHAIRMAN FESMIRE: Okay. Is that all in A.(1)?

17 A.(2), the OCD has a provision that they want to  
18 scratch, which is pretty unusual for the authors to want to  
19 scratch a whole sentence. It starts with the word, either  
20 the op- -- or with the words, either the operator files,  
21 and ends with, required or.

22 COMMISSIONER OLSON: CRI has a number of changes.

23 CHAIRMAN FESMIRE: In A.(2)?

24 COMMISSIONER OLSON: Uh-huh.

25 CHAIRMAN FESMIRE: Can you characterize them?

1           COMMISSIONER OLSON: They're adding -- in terms  
2 of notification, they're adding subsurface owners and  
3 lessees to the notification requirements.

4           They're also adding a -- it looks like a half-  
5 mile-radius requirement too, for the notification --

6           CHAIRMAN FESMIRE: Okay.

7           COMMISSIONER OLSON: -- and also adding the  
8 county commission and appropriate city officials, and also  
9 federal, tribal or pueblo government agencies.

10          And they also had a sentence at the end about  
11 distributing notice to persons who've requested  
12 notification, and posting it on the website.

13          COMMISSIONER BAILEY: Citizens also have a time  
14 limit for posting on the website.

15          CHAIRMAN FESMIRE: In A.(2)?

16          COMMISSIONER BAILEY: Yes, and distributing  
17 notice, and changing it from director may to director shall  
18 set applications for hearing.

19          Industry wants to completely strike (2) and (3)  
20 altogether.

21          COMMISSIONER OLSON: CRI also goes and breaks out  
22 -- looks like -- actually, it's getting a little confusing.  
23 It looks like they're breaking off in the second part of  
24 (2), where it's talking about granting the exceptions, they  
25 added a -- in between they inserted a new (3), which --

1 CHAIRMAN FESMIRE: Hang on a minute, I've got to  
2 figure out how to put that. 19.15.17.13.A.(2).

3 COMMISSIONER OLSON: Yeah, they broke the half of  
4 it off about the part about approval and inserted in  
5 between that -- and called that now (4), and inserted in a  
6 new (3) about -- which provides for filing comments or  
7 requesting a hearing within 30 days of the notice.

8 And then the second half of (2), which goes  
9 towards granting the exceptions, it comes a new (4).

10 And they also add language about requests for  
11 hearings, then, as part of -- the hearing process, as part  
12 of the exception approval process.

13 CHAIRMAN FESMIRE: Okay. Anything else in A.(2)  
14 and A.(3), except the part that the industry committee  
15 wants to strike it?

16 COMMISSIONER BAILEY: Strike all of (2) or (3).

17 CHAIRMAN FESMIRE: Okay.

18 COMMISSIONER OLSON: And CRI had a change with  
19 (3), is now their (5), and they have the same kind of  
20 hearing language about requests for hearings that go into  
21 that section too, about comments and requests for hearings.

22 CHAIRMAN FESMIRE: Okay. What about  
23 19.15.17.15.B?

24 COMMISSIONER BAILEY: B.(1).

25 CHAIRMAN FESMIRE: Anything in --

1           COMMISSIONER BAILEY: In B.(2).(b), yeah, there's  
2 -- they're striking part of the reference to paragraphs (1)  
3 -- they're striking the reference to and (2).

4           CHAIRMAN FESMIRE: Who's they?

5           COMMISSIONER OLSON: This is CRI, excuse me.  
6 There's a reference to subsection B of 19.15.17.13, and  
7 they're striking --

8           CHAIRMAN FESMIRE: Why don't you give me that  
9 cite again? 19.15- --

10          COMMISSIONER OLSON: It's 19.15.17.13.B. So  
11 they're striking the reference to paragraph (2).

12          CHAIRMAN FESMIRE: Okay.

13          COMMISSIONER OLSON: And they're also striking a  
14 reference to 19.13- -- 19.15.17.13.D, paragraph (2), just  
15 references.

16          CHAIRMAN FESMIRE: Okay. Anything else in  
17 19.15.17.15.B?

18                 Okay, that brings us to 19.15.17.16.

19          COMMISSIONER BAILEY: Well, no --

20          CHAIRMAN FESMIRE: No?

21          COMMISSIONER BAILEY: -- B.(1).

22          CHAIRMAN FESMIRE: B.(1), oh.

23          COMMISSIONER BAILEY: B.(1), industry wants to  
24 change, provides equivalent or better protection, to,  
25 protects.

1 And B.(2) --

2 CHAIRMAN FESMIRE: Hang on, I'm still working on  
3 B.(1).

4 Okay, B.(2)?

5 COMMISSIONER BAILEY: B.(2) changes it to just,  
6 in an approved manner.

7 CHAIRMAN FESMIRE: Okay.

8 COMMISSIONER BAILEY: Then Citizens have a change  
9 in B.(3) deleting the language, treatment using best  
10 demonstrated available technology.

11 CHAIRMAN FESMIRE: Okay. Is that all on B.(3)?

12 COMMISSIONER BAILEY: Uh-huh.

13 CHAIRMAN FESMIRE: Anything on B.(4)?

14 Okay, 19.15.17.16?

15 COMMISSIONER BAILEY: Industry has a comment in

16 A --

17 CHAIRMAN FESMIRE: Any --

18 COMMISSIONER BAILEY: -- providing deadlines for

19 OCD --

20 CHAIRMAN FESMIRE: Industry committee.

21 Okay, anything else in A?

22 How about B?

23 C? I'm on a roll here.

24 D?

25 E?

1 COMMISSIONER BAILEY: Yes.

2 CHAIRMAN FESMIRE: Industry committee?

3 COMMISSIONER BAILEY: Citizens want to add a  
4 sentence saying that any modification that is equivalent to  
5 an exception is subject to the notice and approval  
6 procedures.

7 COMMISSIONER OLSON: And that looks to be the  
8 same for CRI as well.

9 CHAIRMAN FESMIRE: Okay, anything else in E?  
10 F?

11 How about G?

12 COMMISSIONER BAILEY: Yes, industry wants to add,  
13 e-mail or equivalent.

14 CHAIRMAN FESMIRE: Okay. Okay, anything in  
15 19.15.17.17, the transitional provisions?

16 COMMISSIONER BAILEY: Industry wants to add an H  
17 onto 16 --

18 CHAIRMAN FESMIRE: Oh, okay.

19 COMMISSIONER BAILEY: -- talking about how the  
20 hearing on an application should be conducted according to  
21 Rule 1206 through 1215.

22 CHAIRMAN FESMIRE: Okay, through 1215. This  
23 would -- Is that the adjudicatory hearings provisions? --

24 COMMISSIONER BAILEY: Yeah.

25 COMMISSIONER OLSON: Uh-huh.

1 CHAIRMAN FESMIRE: -- as opposed to the -- Okay.  
2 Okay, 19.15.17.17.

3 COMMISSIONER BAILEY: Yes. Industry wants to add  
4 the language, applications for unlined temporary pits.

5 CHAIRMAN FESMIRE: On -- where is that, A?

6 COMMISSIONER BAILEY: 17.A, after effective date  
7 applications for, unlined temporary pits.

8 CHAIRMAN FESMIRE: Anything else on A?

9 COMMISSIONER BAILEY: I've got one for B.

10 CHAIRMAN FESMIRE: Okay, we just happen to be on  
11 B.

12 COMMISSIONER BAILEY: 17.B changes 30 days to 90  
13 days.

14 CHAIRMAN FESMIRE: Industry committee again?

15 COMMISSIONER BAILEY: Uh-huh.

16 CHAIRMAN FESMIRE: How about C?

17 COMMISSIONER BAILEY: Yes, industry wants new  
18 language allowing 180 days for requesting modifications, or  
19 operators to apply for permits, and 18 months to comply.

20 CHAIRMAN FESMIRE: Okay, anything from you on C?

21 COMMISSIONER OLSON: Nope.

22 CHAIRMAN FESMIRE: D?

23 COMMISSIONER BAILEY: Yes, industry wants one  
24 year for operators of below grade tanks to comply with  
25 construction requirements.

1 CHAIRMAN FESMIRE: E?

2 COMMISSIONER BAILEY: Yes, industry wants to add  
3 references to 19.15.17.13 in all of the -- all three, the  
4 first three.

5 CHAIRMAN FESMIRE: (1), (2) and (3)

6 COMMISSIONER BAILEY: Uh-huh. And in (4) to add  
7 reference to part 11. It's 19.15.17.11.

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER BAILEY: And G, change that  
10 reference to 19.15.17.12.

11 COMMISSIONER OLSON: General references given,  
12 rather than trying to add some specificity to it.

13 COMMISSIONER BAILEY: Uh-huh.

14 CHAIRMAN FESMIRE: Okay. That's all?

15 COMMISSIONER BAILEY: Uh-huh.

16 CHAIRMAN FESMIRE: Ten pages.

17 Okay. What I was thinking we'd do now is, given  
18 this, that we would talk about the general direction that  
19 we want to go, what we want to accomplish, and then go  
20 through and review these specific requested changes in  
21 light of the direction that we're trying to go.

22 And let's start with something relatively easy,  
23 below grade tanks?

24 COMMISSIONER BAILEY: Sure.

25 COMMISSIONER OLSON: Uh-huh.

1           CHAIRMAN FESMIRE: I think that industry made,  
2 with respect to at least the ConocoPhillips design, a  
3 pretty good argument that we ought to honor that. I don't  
4 know exactly -- it seems like they accomplished what the  
5 Division was trying to accomplish and spent a lot of money  
6 trying to do it.

7           Any comment?

8           COMMISSIONER BAILEY: Plus in the task force  
9 meetings there was consensus among the members of the task  
10 force to leave the definition in the descriptions of below  
11 grade tanks alone.

12          CHAIRMAN FESMIRE: Bill?

13          COMMISSIONER OLSON: Well, I was going to add, I  
14 was one of the ones that helped set up that, to be an  
15 incentive for them to put in things without actually having  
16 to do it by perm- -- you know, by specificity in the rule.  
17 So I think they need to have an incentive to do it. I  
18 don't have a problem with what they were proposing in those  
19 types of systems.

20                 I think they should probably be permitted,  
21 though, I think that's one place that they fall outside.  
22 And they should just get a permit for them, they don't  
23 necessarily have to retrofit them. That's what I was  
24 looking at.

25          CHAIRMAN FESMIRE: What we want to accomplish is

1 the ability to inspect at the sites and, you know, stop a  
2 leak before it becomes a problem, like --

3 COMMISSIONER OLSON: Right.

4 CHAIRMAN FESMIRE: -- some of the operators have  
5 had.

6 I understand the operators need to get gravity  
7 drainage from the source to the tanks.

8 I think -- from reading OCD's proposals, I think  
9 they were trying to do that.

10 COMMISSIONER OLSON: Well, I think what OCD  
11 wanted to do was still keep -- require that they be  
12 permitted, so they do -- they still fall under the  
13 permitting process.

14 I think the industry's difference was, they  
15 wanted to call them something else to kind of achieve the  
16 same purpose, you know, call them subgrades or not below  
17 grade tanks. I think they're both trying to accomplish the  
18 same thing. They might go about in a little different way.

19 But I don't have a problem with the idea of, you  
20 know, as long as the sides are visible that you can, you  
21 know, not have to retrofit those systems. Because they did  
22 get Division approval for those, you know, they submitted  
23 things and reviewed those things through with the Division  
24 even before they did it. So it seems kind of unfair to  
25 come back now and say, We said it was okay, but now you've

1 got to go spend \$100 million on all this retrofitting --

2 COMMISSIONER BAILEY: I agree with you on that.

3 CHAIRMAN FESMIRE: Okay. So while we may not  
4 have before us exactly the right way to do it, we need to  
5 look at these -- we're pretty much in agreement that the  
6 ConocoPhillips design is satisfactory, that it achieves the  
7 objective, and that anything we do ought to honor that; is  
8 that correct? Is that --

9 COMMISSIONER OLSON: Well, I wonder also about  
10 the ones where, if they had put down some kind of a  
11 membrane, you know, liner and put it on a gravel pad,  
12 whether that's acceptable as well. Because I recall, they  
13 had -- you know, worked those through at least up in the  
14 northwest through -- Denny and I had looked at those things  
15 before too, even when I was back in the Division, and we  
16 thought they were okay.

17 And so as long as you had a testing requirement  
18 that still follows once they're all done to make sure that  
19 it's clean underneath there when they close it out, I don't  
20 think that's probably a real problem. And it would keep a  
21 lot of the systems in there. At least ones that are like  
22 that would be okay. But if it didn't have some kind of a  
23 -- I would think at least a membrane under it and -- so  
24 things would come out the sides, they might have to  
25 retrofit those.

1 CHAIRMAN FESMIRE: Does the Conoco design include  
2 that membrane? I seem to remember that it did.

3 COMMISSIONER OLSON: Yeah, they did it  
4 differently. Instead of putting -- they put the membrane,  
5 and instead of a gravel pad for it they put it on those I-  
6 beams, so that they could -- according to them, they could  
7 actually physically look under it, which is a little  
8 different, you know?

9 CHAIRMAN FESMIRE: So what we're looking to  
10 accomplish is both the sides and the bottom be inspectable,  
11 to determine whether a leak has occurred, right?

12 COMMISSIONER OLSON: I guess I was wondering  
13 about the ones where they have gone and put down a membrane  
14 and, say, a gravel pad. Is that acceptable? Because then  
15 you -- admittedly, you can't inspect the bottom, but --

16 CHAIRMAN FESMIRE: But you can tell --

17 COMMISSIONER OLSON: -- you should see if  
18 something is coming out.

19 MS. BADA: Maybe you could do something where you  
20 grandfather those in and then --

21 COMMISSIONER OLSON: -- and just not allow new  
22 ones, you know?

23 CHAIRMAN FESMIRE: Okay. And the concern that  
24 while it may be technically below grade, as long as the  
25 dirt is not -- the earth is not piled up around it --

1 COMMISSIONER OLSON: Right.

2 CHAIRMAN FESMIRE: -- and it is inspectable, that  
3 it is acceptable, so we'll have to generate either -- and I  
4 think that's what the OCD was trying to do in their  
5 changes.

6 MS. BADA: Yeah. What I would suggest is, over  
7 the weekend looking at both the industry and OCD and see  
8 what you're --

9 COMMISSIONER OLSON: So I think you're going to  
10 have to blend both, probably, of them together a little  
11 bit, because I'm not sure if OCD's goes exactly that way.  
12 And like I said, I may not have -- since we just got it,  
13 haven't had a chance to really dwell on it as much, but...

14 That's kind of what I was wondering, is if we  
15 could maybe more kind of develop kind of some of these  
16 general concepts like this and then give our counsel  
17 direction to actually put it together, and then -- for the  
18 fine points of it. Because I don't think we could do that  
19 today, especially with something like this. This is kind  
20 of complicated.

21 COMMISSIONER BAILEY: No, this is complex, and we  
22 need to really evaluate it --

23 COMMISSIONER OLSON: Right.

24 COMMISSIONER BAILEY: -- like you say, blend  
25 certain ideas.

1 COMMISSIONER OLSON: Right.

2 COMMISSIONER BAILEY: But I think the definition  
3 of below grade tanks as industry proposed, to just say, And  
4 are visible, for the sidewalls, is --

5 COMMISSIONER OLSON: Well, the only thing is, I  
6 think then you still -- I think you could leave the way OCD  
7 is defining it, as long as you have a subset in here that  
8 requires them to be -- get a permit for them, so they don't  
9 have to just submit an application to permit what they've  
10 already got.

11 So -- Because right now, those things aren't even  
12 on record with the Division to know what's out there. So I  
13 can understand that aspect. And I think that's what --  
14 kind of -- industry -- I think that meets what industry was  
15 looking at, because they were talking about just  
16 registering them, which is the same thing, you file -- I  
17 think maybe it could be called --

18 MS. BADA: Yeah, I think you need to look at  
19 whether you want both below grade tanks and subgrade tanks,  
20 or if you think there's --

21 COMMISSIONER OLSON: Yeah.

22 MS. BADA: -- another way to --

23 CHAIRMAN FESMIRE: Well, you know, I think what  
24 industry is trying to do with their definitions of subgrade  
25 tanks is essentially what we're talking about.

1 COMMISSIONER OLSON: Right.

2 CHAIRMAN FESMIRE: They're concerned that our  
3 definition of below grade tank means the surrounding grade  
4 and, you know, that they need the elevation difference to  
5 drain, and so they're not going to -- they're actually  
6 going to sit it below the surrounding grade, but not the  
7 immediate surrounding grades, so that it prevents the  
8 inspection of the sides for leaks.

9 And I think we have to look at, basically,  
10 there's the OCD approach and the industry approach, which  
11 attempts to define a subgrade tank, as opposed to a below  
12 grade tank. That may be a little bit of a complicated way  
13 to do it. I don't know, I'd have to --

14 COMMISSIONER OLSON: I'd have to create -- I just  
15 need to create a new category of tanks, you know. I'd  
16 rather just have them say, Okay, this is a below grade  
17 tank, however, if it's constructed like this it just needs  
18 to be registered, for example, or permitted. They submit a  
19 permit application for it and it gets approved, you know,  
20 as is, and they're -- kind of like a grandfathering, those  
21 are allowed --

22 MS. BADA: Or if you like that design and you  
23 want to allow it in the future.

24 CHAIRMAN FESMIRE: Well, I think -- I like the  
25 design.

1 COMMISSIONER OLSON: Uh-huh.

2 CHAIRMAN FESMIRE: The only -- You know, it's  
3 designed so that if it starts to leak you see it and can  
4 catch and clean it up. It doesn't -- Well, it minimizes  
5 condensation, you know, to prevent external corrosion. So  
6 I think --

7 COMMISSIONER OLSON: And I like the idea too of  
8 kind of permitting it by rule where you still have to put  
9 in a permit application for it, but if you construct it  
10 like this, it's going to be approved, you know. If it  
11 meets this construction criteria, it's not -- that you have  
12 to sit here and -- especially for pre-existing things, that  
13 you don't have to submit an application, you know, that's  
14 got some of the uncertainty that they're looking at, that  
15 it might get denied. You know? So you might have to do  
16 two categories, one for an existing tank, and then for the  
17 new one obviously you're going to need the -- you know, to  
18 actually approve those.

19 But I think for the existing ones there could be  
20 some way it's kind of permitted by rule as --  
21 grandfathering it in, as long as it meets these  
22 requirements.

23 CHAIRMAN FESMIRE: Acceptable?

24 COMMISSIONER OLSON: And that way we don't have  
25 to create a new definition of a different type of tank.

1           CHAIRMAN FESMIRE: So we're not sure how we're  
2 going to specifically do it until we look at the proposals  
3 and study the proposals and perhaps get the transcript.

4           But we're pretty much in agreement on the idea  
5 that we will -- that the current Conoco design is  
6 acceptable, and the idea is, we're not trying to prohibit  
7 tanks that are set below for drainage, we're just trying to  
8 prevent tanks that are buried.

9           COMMISSIONER OLSON: Right.

10          COMMISSIONER BAILEY: Yes.

11          CHAIRMAN FESMIRE: Okay.

12          COMMISSIONER BAILEY: Where you can't see the  
13 sides.

14          CHAIRMAN FESMIRE: Exactly.

15          COMMISSIONER BAILEY: Yes.

16          CHAIRMAN FESMIRE: And we do need some way of  
17 keeping track of them, we do need some way -- some  
18 acceptable means of making sure that the bottom doesn't  
19 leak or testing them. But I think industry pretty much in  
20 their testimony told us that it's essentially impossible,  
21 especially with open-top tanks, to pressure-test that kind  
22 of tank --

23          COMMISSIONER OLSON: Yeah, you can't --

24          CHAIRMAN FESMIRE: -- and -- Okay.

25          COMMISSIONER OLSON: The other thing that I saw

1 in there that I'm not sure if we need to change was the --  
2 it's the old design we had, going back to the '80s, of a  
3 tank sitting in a liner that's then brought up and banded  
4 to it with -- you know, it's sitting on a little base with  
5 slotted pipe and supposedly that's the leak detection.

6 Because I've seen so many of those, and I think  
7 Gregg Wurtz with ConocoPhillips would say the same thing:  
8 There's no practical way you can keep water out of them  
9 because it rains, and then it just gets around the edge of  
10 the band. If you look at them, usually there's some  
11 wrinkles because, of course, you're bringing this liner up  
12 around here, the band comes around, you get a little bit of  
13 moisture on it, and you end up always having moisture in  
14 the leak detection, which is actually going to defeat your  
15 whole purpose, then, of causing corrosion on the bottom of  
16 the tank, you know? So...

17 MS. BADA: How do you feel about the double-  
18 walled tanks if they're buried?

19 COMMISSIONER OLSON: Well, I think that's -- they  
20 either have to go with double-walled tanks or double bottom  
21 if -- you know, however they want to do it. If it's truly  
22 buried, I think it has to have secondary containment and  
23 leak detection to be consistent with the rest of the things  
24 we're doing.

25 But this still gives you an incentive to have

1 more of the open excavation and a way to look at visual  
2 leaks instead, and I think it's good to have an incentive  
3 for them to, you know, accomplish the same thing in a  
4 different way.

5 But I'm just not -- I don't know that I agree  
6 with that one design criteria, because I don't think -- in  
7 practicality, it doesn't -- it has real problems.

8 It was good that we tried doing it in the early  
9 '80s or mid-'80s, you know.

10 CHAIRMAN FESMIRE: Okay, so I think we've agreed  
11 on the direction we're going to go on that one.

12 The hundred-mile radius. Comment?

13 COMMISSIONER BAILEY: We may have to agree to  
14 disagree on that.

15 COMMISSIONER OLSON: Well, maybe not. Maybe we  
16 may not disagree --

17 COMMISSIONER BAILEY: Okay.

18 COMMISSIONER OLSON: -- because I just don't see  
19 any evidence to support the 100-mile radius in the --

20 COMMISSIONER BAILEY: Arbitrary and capricious.

21 COMMISSIONER OLSON: Right. And I think we have  
22 a good chance of losing that if we had it in there.

23 I was thinking more along the lines of doing  
24 something -- which is the way we've done things before, was  
25 more of a prohibition on the burial with exceptions, and

1 this is especially to meet the needs up in the northwest,  
2 you know?

3 COMMISSIONER BAILEY: I think the whole issue can  
4 be boiled down to: What's in that pit? What's the depth  
5 to water?

6 COMMISSIONER OLSON: That's --

7 COMMISSIONER BAILEY: Whether or not it needs to  
8 be removed or allowed to be buried.

9 COMMISSIONER OLSON: That's exactly what --

10 COMMISSIONER BAILEY: And I think those are the  
11 two criteria that we have to judge it all by.

12 COMMISSIONER OLSON: Right.

13 COMMISSIONER BAILEY: Not by distance to a  
14 landfill, but what's in the pit and how deep is it to  
15 water?

16 COMMISSIONER OLSON: I agree.

17 COMMISSIONER BAILEY: I think that we can  
18 probably come up with some kind of agreements on that, if  
19 we look at it as a certain depth to water is so vulnerable,  
20 I don't care where you are --

21 COMMISSIONER OLSON: Uh-huh.

22 COMMISSIONER BAILEY: -- 50 feet to water, to  
23 groundwater, closed loop system, remove the pits, contents,  
24 unless it's absolutely nothing but water and --

25 CHAIRMAN FESMIRE: -- clay.

1 COMMISSIONER BAILEY: -- clay and --

2 CHAIRMAN FESMIRE: That -- what --

3 COMMISSIONER BAILEY: -- cuttings.

4 COMMISSIONER OLSON: At least what I've seen so  
5 far, I think everybody seemed to be in agreement that if  
6 it's less than 50 feet to water, okay, everybody --

7 COMMISSIONER BAILEY: Yes.

8 COMMISSIONER OLSON: -- could see that they could  
9 use no pits in those circumstances, so you wouldn't be  
10 burying anything.

11 COMMISSIONER BAILEY: Yeah.

12 COMMISSIONER OLSON: But I was wondering about  
13 doing it between, say, another section in there, 50 to 100  
14 feet, say, Okay, well, you can use pits but you'd have to  
15 haul those because it has a higher potential for  
16 groundwater contamination --

17 COMMISSIONER BAILEY: Uh-huh.

18 COMMISSIONER OLSON: -- and then over 100 feet to  
19 groundwater you could allow deep-trench burial, which is  
20 going to essentially be most -- especially for the San Juan  
21 Basin, is most of those upper areas that are outside what's  
22 the current vulnerable areas now.

23 COMMISSIONER BAILEY: And the expanded vulnerable  
24 area.

25 COMMISSIONER OLSON: And the expanded vulnerable

1 area, right. And it's going to be mostly the areas that we  
2 are currently were allowing unlined pits into, so those  
3 areas could be allowed for deep-trench burial, and then  
4 just a matter of you have to set a criteria for what --  
5 you're still going to need some kind of concentration  
6 level, I think, to apply to what you blend it to, but...

7 CHAIRMAN FESMIRE: I'm a little confused on this,  
8 because if it's going to be high enough quality stuff for  
9 deep-trench burial, can we not allow it to remain in the  
10 pit? I mean, why -- why -- If it's good enough to leave on  
11 site, you know --

12 COMMISSIONER BAILEY: Just leave it there?

13 CHAIRMAN FESMIRE: So -- And that should probably  
14 be by exception. But you know, the idea should be that the  
15 rule is, you dig and haul unless, you know, we set up the  
16 criteria for the exception.

17 COMMISSIONER OLSON: You mean like the same as  
18 the landfarms? Because the landfarms have criteria for --  
19 you can have those materials directly -- you can just leave  
20 them on the surface. So I would think if you met those  
21 criteria, why do you even have to do a deep-trench burial?

22 COMMISSIONER BAILEY: That's what he's saying --

23 COMMISSIONER OLSON: Right.

24 COMMISSIONER BAILEY: -- you don't even have to  
25 have that if it's greater than 100 feet and meets certain -

1 -

2 CHAIRMAN FESMIRE: But it's got to be --

3 COMMISSIONER BAILEY: -- constituents --

4 CHAIRMAN FESMIRE: -- it's got to be clean  
5 material. I mean, it's --

6 COMMISSIONER BAILEY: Yeah, they have to meet  
7 certain standards, institute standards.

8 CHAIRMAN FESMIRE: Right, and it has to be done  
9 by exception, I think, you know, so that that doesn't  
10 become --

11 COMMISSIONER OLSON: Which I believe is -- for  
12 the landfarms it's 500 --

13 CHAIRMAN FESMIRE: 500 if less than --

14 COMMISSIONER OLSON: -- the chlorides --

15 CHAIRMAN FESMIRE: -- 100 feet and --

16 COMMISSIONER OLSON: -- between 50 and 100, and  
17 then over 100, I think it's 1000, so...

18 COMMISSIONER BAILEY: And then have deep-trench  
19 burial for those --

20 COMMISSIONER BAILEY: For ones that don't meet  
21 those criteria, you could allow -- see, I liked what --  
22 don't entirely like it but, you know, Dr. Thomas was  
23 talking about, he really focused a lot on the SPLP or the  
24 TCLP. He was looking at the 20-to-1 dilution through the  
25 materials that are mixed, that as long as they meet a 250

1 chlorides of the SPLP method, which equates to about 5000  
2 chlorides, that's not going to pose a problem.

3           So if you do a deep-trench burial of that, even  
4 if you have the liner disappear over time, you're allowing  
5 up to 5000 chlorides on a -- of total chlorides on a -- on  
6 a deep-trench burial. And then on those I think they can  
7 go and bury those, because then you don't have to worry  
8 about -- The liner is going to degrade in the future, yeah,  
9 but then we shouldn't be generating a leachate that could  
10 cause an excess -- an exceedence of the standards.

11           CHAIRMAN FESMIRE: I may be seeing this the wrong  
12 way but, you know, down in the southeast they're going to  
13 have to dig and haul. I mean, there's -- I mean, for  
14 almost everything that I've seen down there, they're not  
15 going to be able to reach the landfarm standards --

16           COMMISSIONER BAILEY: Right.

17           CHAIRMAN FESMIRE: -- for the chlorides.

18           COMMISSIONER OLSON: Yeah.

19           CHAIRMAN FESMIRE: In the northwest, if it  
20 reaches the -- if it reaches the standard that we're  
21 looking at for the landfarms, why do we need deep-trench  
22 burial?

23           COMMISSIONER BAILEY: We don't.

24           COMMISSIONER OLSON: We don't, I agree.

25           CHAIRMAN FESMIRE: So why are we talking about

1 deep-trench burial? I guess I don't understand.

2 COMMISSIONER OLSON: Well, you are talking about  
3 it because there may be some circumstances where they might  
4 have -- and I think that showed up in some of the data,  
5 there was some cases where they may have higher  
6 concentrations. I don't think it's going to be as much in  
7 the northwest as -- You might have some areas in the  
8 southeast, if you're over 100 feet to groundwater and you  
9 somehow could blend -- maybe you could blend part of the  
10 materials, maybe haul the rest -- some of the others, off.

11 But you'd -- you know, I was kind of looking at  
12 it that you would be able to deep-trench bury up to 5000  
13 chlorides, which equates to a 250-milligram-per-liter  
14 leachate that would generate from that material, so...

15 COMMISSIONER BAILEY: Because we've recognized  
16 there is no groundwater in certain areas in the southeast.

17 COMMISSIONER OLSON: Right.

18 COMMISSIONER BAILEY: There is absolutely nothing  
19 to protect.

20 COMMISSIONER OLSON: Right.

21 COMMISSIONER BAILEY: So why not allow deep-  
22 trench burial?

23 COMMISSIONER OLSON: Yeah, and I think it might  
24 be better in those areas to allow them by just -- they'd  
25 have to apply for an exception. That's kind of what I

1 was --

2 CHAIRMAN FESMIRE: Yeah.

3 COMMISSIONER OLSON: -- thinking on those, you  
4 know?

5 CHAIRMAN FESMIRE: But the areas you're talking  
6 about, like down around the potash mines, where the  
7 background exceeds what we would have --

8 COMMISSIONER BAILEY: Uh-huh.

9 CHAIRMAN FESMIRE: -- you know, that's -- I think  
10 we need to address that exception in the, you know, or to  
11 background type language that we would have.

12 But I think for the most part I'm -- You know, if  
13 it's good enough to leave in place, it's good enough to  
14 leave at the surface -- or, you know, at the pit depth,  
15 rather than the deep-trench stuff.

16 COMMISSIONER BAILEY: We've agreed to that.

17 COMMISSIONER OLSON: I'm thinking ones that --  
18 I'm still thinking of a category above that where they  
19 could deep-trench bury maybe up to, you know, 5000 total  
20 chlorides if they blend it to, you know, 5000. So they  
21 leave a higher concentration above the -- say the 1000, if  
22 it -- so it's over 100 feet to groundwater, and they're  
23 over 1000, there's no way they're going to be able to blend  
24 that much material into it, to be 1000.

25 But they might be able to do it at 5000, and then

1 allow deep-trench burial just for that.

2 CHAIRMAN FESMIRE: Yeah, but it -- it just gnaws  
3 at me that, you know, we're taking X volume and creating Y  
4 volume --

5 COMMISSIONER OLSON: Right.

6 CHAIRMAN FESMIRE: -- and Z volume to achieve  
7 something that --

8 COMMISSIONER BAILEY: When there is no water and  
9 when background is already so high, so just leave it there.

10 CHAIRMAN FESMIRE: Yeah.

11 COMMISSIONER BAILEY: Works for me.

12 CHAIRMAN FESMIRE: You know, and that kind of --  
13 that is a very rare exception where the -- you know, but  
14 like down there where the potash -- you know, we're not  
15 going to clean that up.

16 COMMISSIONER BAILEY: No.

17 CHAIRMAN FESMIRE: I hate to admit -- I hate --

18 COMMISSIONER OLSON: But there are some areas in  
19 there, protectable water --

20 CHAIRMAN FESMIRE: Right.

21 COMMISSIONER OLSON: -- because I've seen them.  
22 There are stock wells and stuff in there that -- in some of  
23 those areas. Not everywhere, but in other portion -- you  
24 know, the vast portion of it is pretty saline water, a lot  
25 of it just due to the potash disposal that's gone on for

1 years, and -- but there are some areas that -- you know,  
2 within that exempt area that was down there for 3221, that  
3 do have protectable water, so -- not a lot, but there is  
4 some.

5 CHAIRMAN FESMIRE: So I think what we're looking  
6 at is dig-and-haul, with a few except- -- you know, I don't  
7 want to say stringent, because in the northwest it's  
8 probably not going to be an unreachable goal, but with very  
9 defined criteria for exception. Is that --

10 COMMISSIONER BAILEY: We can do it that way, or  
11 we can do it the other way, depending on what kind of  
12 workload that gives the districts and the Environmental  
13 Bureau. I mean --

14 MS. BADA: If there are certain -- if they meet  
15 small landfarm standards, do you really want to have them  
16 go through the exception process?

17 COMMISSIONER BAILEY: Exactly.

18 COMMISSIONER OLSON: You know, want to do it -- I  
19 think what I was thinking of, not called -- not an  
20 exception where they have to come in for, you do it by  
21 exception in the rule. So you put it in to say if you're  
22 between -- in the rule it would say if you're between 50  
23 and -- here's an exception, if you're between 50 and 100  
24 feet to groundwater, then you're going to have to dig and  
25 haul. If you're over 100 feet to groundwater and you meet

1 some of these other criteria -- Or actually I guess if  
2 you're -- potentially -- I don't know if you want to do  
3 that in the 50-to-100-foot criteria, but you could go with  
4 the 500 chlorides. Is that what you were talking about?

5 CHAIRMAN FESMIRE: Uh-huh, because that's -- you  
6 know, we've determined that that's -- in a prior  
7 proceeding, you know, so we could take administrative  
8 notice --

9 COMMISSIONER OLSON: Right.

10 CHAIRMAN FESMIRE: -- of the information there  
11 that, you know, this is protective when spread on the  
12 surface.

13 So why is that less protective if we -- I guess,  
14 why should we shorten the distance to groundwater, whatever  
15 it may be, by deep-trench burying it except -- you know,  
16 because if the liner is -- you know, if we breach the  
17 liner, we've determined that the concentrations that we're  
18 looking at are not -- you know, are not -- and I have to be  
19 very, very careful how I word this -- are acceptable, you  
20 know, spread on the surface. So why shouldn't that --

21 COMMISSIONER OLSON: Because my only concern  
22 would be, as long as we're not allowing -- I wouldn't want  
23 to see deep-trench burial in like 50 to 100 feet to  
24 groundwater --

25 CHAIRMAN FESMIRE: Right.

1 COMMISSIONER OLSON: -- because I think that's  
2 still a shallow --

3 CHAIRMAN FESMIRE: No, I --

4 COMMISSIONER OLSON: -- groundwater area to --

5 CHAIRMAN FESMIRE: -- I think --

6 COMMISSIONER OLSON: I don't have a problem with  
7 allowing something that meets the same landfarm criteria  
8 that we're already putting out there on the surface at that  
9 point. We would allow for a landfarm to have that level of  
10 chlorides, that seems reasonable to do.

11 CHAIRMAN FESMIRE: Maybe because we allow it in  
12 the landfarm, why shouldn't we allow it left in the pit?  
13 The disadvantage --

14 COMMISSIONER OLSON: Now is that a blended  
15 material, though, or is that just if the actual pit  
16 concentrations meet that --

17 COMMISSIONER BAILEY: I'd say blended --

18 COMMISSIONER OLSON: -- standard?

19 COMMISSIONER BAILEY: -- because that's what --

20 COMMISSIONER OLSON: Right.

21 COMMISSIONER BAILEY: -- we're dealing with.  
22 That's what's going to be leaching or not.

23 COMMISSIONER OLSON: Okay.

24 CHAIRMAN FESMIRE: I see the argument, but it  
25 also -- it seems to go against some of the things we're

1 trying to do, if we're expanding the volume of the wastes,  
2 albeit to a point where it's, you know, a relatively benign  
3 waste.

4 MS. BADA: Well, if they're going to bury it on  
5 site --

6 COMMISSIONER OLSON: They still have to --

7 MS. BADA: -- they're going to have to get it  
8 down to where it's not totally soup.

9 CHAIRMAN FESMIRE: Right, you're right --

10 COMMISSIONER BAILEY: They have to blend it --

11 CHAIRMAN FESMIRE: -- they're going to --

12 COMMISSIONER BAILEY: -- anyway.

13 CHAIRMAN FESMIRE: -- stabilize it, they're going  
14 to have to --

15 COMMISSIONER BAILEY: Maybe I'm using the wrong  
16 term, stabilize.

17 CHAIRMAN FESMIRE: So how do we -- you know?

18 MS. BADA: You could talk about what ratio, I  
19 suppose, that you'd allow.

20 CHAIRMAN FESMIRE: Yeah, one of the things that  
21 you want to do is, after it has been stabilized, we don't  
22 want to encourage coming in and actually physically  
23 diluting it, you know, instead of serving the physical  
24 purpose of stabilizing it.

25 MS. BADA: You could probably talk about mix

1 ratio.

2 COMMISSIONER OLSON: You know, that's kind of a  
3 hard thing to enforce.

4 COMMISSIONER BAILEY: Or get.

5 COMMISSIONER OLSON: It's easy -- you can enforce  
6 just go out and taking a sample from it --

7 COMMISSIONER BAILEY: But telling somebody on a  
8 Cat how much he can put in, that's not going to --

9 COMMISSIONER OLSON: Right.

10 CHAIRMAN FESMIRE: Right, he's going to blend it  
11 until it's stable, and then --

12 COMMISSIONER OLSON: Right, which could be  
13 2-to-1, it could be 3-to-1, it could be 4-to-1.

14 COMMISSIONER BAILEY: To consistency, he's not --

15 COMMISSIONER OLSON: Right.

16 COMMISSIONER BAILEY: -- he's not --

17 COMMISSIONER OLSON: Right.

18 COMMISSIONER BAILEY: -- caring on what volume,  
19 he's going to consistency.

20 COMMISSIONER OLSON: Right.

21 CHAIRMAN FESMIRE: And --

22 COMMISSIONER OLSON: The only thing you can  
23 really enforce is to say, Okay, here's the standard of what  
24 you bury in place, because you could then take a sample  
25 from it, and something that's verifiable -- you could

1 actually even come back and -- later on, if it's a problem,  
2 to see if it really did meet the standards, it's something  
3 that's actually enforceable.

4 COMMISSIONER BAILEY: Uh-huh.

5 CHAIRMAN FESMIRE: And, you know, that would be a  
6 scrutiny -- a by-exception, you know, process. I mean, we  
7 want to encourage them to properly dispose of the waste,  
8 and for the southeast that's going to involve -- southeast,  
9 yeah -- dig-and-haul, isn't it? In most cases?

10 COMMISSIONER OLSON: Over the Ogallala, probably  
11 a lot of it would be, because it would be less than -- a  
12 lot of it's less than 100 feet to groundwater --

13 CHAIRMAN FESMIRE: Right.

14 COMMISSIONER OLSON: -- especially in Hobbs and  
15 Jal and Monument and all that's all less --

16 COMMISSIONER BAILEY: That's why depth to water  
17 is --

18 COMMISSIONER OLSON: Yeah, is most important --

19 COMMISSIONER BAILEY: -- one of the --

20 COMMISSIONER OLSON: Uh-huh.

21 COMMISSIONER BAILEY: -- two major criteria.

22 CHAIRMAN FESMIRE: In the northwest, you know,  
23 there's been -- not all of the samples they showed us, but  
24 there is a significant number of the -- a significant  
25 amount of the evidence that was presented that shows that

1 when stabilized, those wastes are -- you know, I'm not  
2 going to use the word benign, but they're going to be  
3 acceptable --

4 COMMISSIONER BAILEY: And so can be left in  
5 place.

6 CHAIRMAN FESMIRE: -- for landfarming. And why  
7 haul them to a landfill, when they would be acceptable --

8 COMMISSIONER BAILEY: Exactly.

9 CHAIRMAN FESMIRE: -- or to another landfarm,  
10 when they would be --

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: -- acceptable for landfarming?

13 COMMISSIONER BAILEY: I think we all agree on  
14 that.

15 CHAIRMAN FESMIRE: Okay. What about -- You know,  
16 one of the things that -- you know, we -- well, I'm not  
17 even going to get into that because --

18 MS. BADA: What about -- I guess the other issue  
19 I have -- and this is not so much with burial, but  
20 cavitation and use of pit disposal?

21 COMMISSIONER OLSON: Uh-huh.

22 CHAIRMAN FESMIRE: I think the evidence -- you  
23 know, as long as they're susceptible to the same kind of  
24 siting requirements that other pits would have, it seems to  
25 me like the waste generated there is, at least from the

1 testimony, relatively minor, if -- compared to the benefit  
2 of the cavitation. How do we --

3 MS. BADA: How do you deal with that in the  
4 siting, if they're 50 foot to groundwater? And that's how  
5 they normally --

6 COMMISSIONER OLSON: Well, for less, I don't know  
7 that you could --

8 CHAIRMAN FESMIRE: Well --

9 COMMISSIONER OLSON: They didn't seem to have a  
10 disagreement if it was less than --

11 MS. BADA: No, but --

12 COMMISSIONER OLSON: -- 50 feet to groundwater,  
13 but --

14 CHAIRMAN FESMIRE: Cavitation with less than 50  
15 feet to groundwater --

16 COMMISSIONER OLSON: -- because you have --  
17 Right.

18 CHAIRMAN FESMIRE: -- and I don't mind it, you  
19 know, because it doesn't seem like the wastes generated  
20 there are the kind of wastes that could get away from them  
21 as long as they, you know, cleaned it up to standards after  
22 -- after the cavitation. You know, they couldn't leave the  
23 waste on site. But it's a relatively small amount of  
24 waste, I think, from the --

25 COMMISSIONER BAILEY: And it's just coal, it's

1 not like there are any additives that go into this kind of  
2 operation.

3 CHAIRMAN FESMIRE: So, you know --

4 COMMISSIONER OLSON: Well, less than 50 feet to  
5 groundwater doesn't protect a whole lot of sites, because  
6 you have to be pretty much right down pretty close to the  
7 river in most of the areas to be less than 50 feet.

8 CHAIRMAN FESMIRE: So --

9 COMMISSIONER OLSON: Well, some of the expanded  
10 vulnerable areas, though, if you're in close to the wash --  
11 depending on when you get later on to what the distances  
12 are from watercourses --

13 COMMISSIONER BAILEY: For a watercourse, yeah,  
14 definition of --

15 COMMISSIONER OLSON: -- that could be a problem  
16 out in those areas. Because there is shallow groundwater  
17 in a lot of the canyon systems, you know, Gallegos, those  
18 major canyon systems, Gallegos Canyon, relatively shallow  
19 groundwater near the channels within, you know, some  
20 distance from them.

21 COMMISSIONER BAILEY: And let's think about the  
22 problem with the drill rigs having to be fixed in order to  
23 allow the -- just the closed loop system. I mean, if they  
24 have to be raised and in the pit -- so that's going to  
25 create a real issue there too.

1           CHAIRMAN FESMIRE: Well, if it's less than 50  
2 foot to water, it's not an issue. It just means that they  
3 have to clean it up. They -- I mean, it's not that it's  
4 prohibited, you know, it's just -- the proposed rule just  
5 has the requirement that they have to dig and haul. Well,  
6 I think, you know, part of the exception could be if their  
7 wastes could be landfarmed they can be left on site, so --

8           MS. BADA: I think part of the issue is whether  
9 they can use a pit.

10          COMMISSIONER BAILEY: And use of closed loop  
11 system, which doesn't easily allow cavitation in these  
12 areas. I think there's a real engineering issue connected  
13 with --

14          COMMISSIONER OLSON: Yeah, but can you allow them  
15 to just use the closed loop system for the drilling, and  
16 then once they go to having the cavitation they could use  
17 it just for the cavitation but not for the drilling? Does  
18 that work?

19          CHAIRMAN FESMIRE: Well --

20          COMMISSIONER OLSON: I'm not an engineer, so...  
21 Or if you could -- you could allow -- what I was  
22 thinking of, you could allow a pit to be used for  
23 cavitating a well, but not for the drilling of it.

24          CHAIRMAN FESMIRE: Well, if it's greater than 50  
25 foot to water --

1 COMMISSIONER BAILEY: Less than.

2 COMMISSIONER OLSON: I'm thinking less than 50  
3 feet --

4 CHAIRMAN FESMIRE: Okay, you're thinking less  
5 than 50 --

6 COMMISSIONER OLSON: -- where it's a problem  
7 area, right.

8 COMMISSIONER BAILEY: Because if we have a flat  
9 rule that says closed loop system for less than 50 feet to  
10 groundwater, then we've created a problem with cavitation  
11 in the coalbed methane wells.

12 COMMISSIONER OLSON: I think -- I don't know,  
13 because -- I was a little confused, though, because it was  
14 my understanding, though, that industry didn't have a  
15 problem with -- you know, they mentioned cavitation could  
16 be a problem. They were still accepting of the 50-foot  
17 criteria --

18 CHAIRMAN FESMIRE: Yes.

19 COMMISSIONER OLSON: -- for closed loop systems.

20 CHAIRMAN FESMIRE: So we would have to create an  
21 exception for a cavitation pit?

22 COMMISSIONER BAILEY: Which is important, both in  
23 the drilling and in the workovers.

24 CHAIRMAN FESMIRE: And it would be an unlined  
25 pit.

1           COMMISSIONER OLSON: Uh-huh, clean it up when  
2 they're done. I still don't really like the idea, I'm just  
3 using it in a shallow groundwater area because you may have  
4 some liquids you get with it too, you know.

5           CHAIRMAN FESMIRE: They're not going to be  
6 hydrocarbon liquids, though. They're going to be minimal  
7 salts, I think, they're going to be --

8           COMMISSIONER BAILEY: Mostly water.

9           CHAIRMAN FESMIRE: -- the formation water.

10          COMMISSIONER OLSON: Mostly water, that's what I  
11 was thinking. Put you in such a shallow groundwater area,  
12 it's sort of a high-threat potential.

13                 I don't see a problem with it over 50 feet to  
14 groundwater.

15          CHAIRMAN FESMIRE: Yeah, but that would be a --  
16 to require a closed loop system to drill the well and then  
17 have them dig a cavitation pit --

18          COMMISSIONER OLSON: You're now making your pad  
19 size bigger.

20          COMMISSIONER BAILEY: Uh-huh.

21          COMMISSIONER OLSON: That one might require some  
22 thought.

23          COMMISSIONER BAILEY: Uh-huh. I think we need to  
24 mull that one.

25          COMMISSIONER OLSON: Uh-huh.

1 CHAIRMAN FESMIRE: Yeah, I'm not...

2 COMMISSIONER OLSON: But I think it's -- if  
3 you're using that 50-foot-depth-to criteria, it does affect  
4 a much smaller subset of all the sites that are out there.  
5 But there are still going to be ones where it's going to be  
6 a problem.

7 CHAIRMAN FESMIRE: Okay.

8 COMMISSIONER OLSON: So I think it's less of a --  
9 less of a problem if you're just keeping it under 50, but  
10 you still some -- need some way to address it.

11 COMMISSIONER BAILEY: Some way to have an  
12 exception for --

13 COMMISSIONER OLSON: Uh-huh.

14 COMMISSIONER BAILEY: -- the 50 foot to  
15 groundwater for workover cavitations and drilling  
16 cavitations.

17 COMMISSIONER OLSON: Uh-huh.

18 CHAIRMAN FESMIRE: Well, we've -- you know, we've  
19 got a basic rule, no unlined pits, dig-and-haul. Then we  
20 start talking about exceptions, and we get to the  
21 cavitation pits, which are going to be unlined pits,  
22 minimum liquids returned, I agree with that.

23 COMMISSIONER OLSON: I thought OCD in theirs made  
24 allowances for that, that you could have a portion where  
25 the liquids would drain, then, to the drilling pit, that

1 that would be --

2 CHAIRMAN FESMIRE: That's the flaring part of the  
3 pit. I mean, you can't have a liner if you're --

4 COMMISSIONER OLSON: Right --

5 CHAIRMAN FESMIRE: -- going to flare it.

6 COMMISSIONER OLSON: -- right.

7 CHAIRMAN FESMIRE: And so this is basically just  
8 a sort of an extension of the idea that you can have a --

9 MS. BADA: Shift the pit to groundwater,  
10 probably.

11 CHAIRMAN FESMIRE: So it would be a flaring or --

12 COMMISSIONER BAILEY: -- or cavitation pit.

13 CHAIRMAN FESMIRE: So an unlined --

14 COMMISSIONER OLSON: Because if you are getting  
15 fluids, you don't want to just leave them there for any  
16 length of time; you still want to drain them off to  
17 something.

18 CHAIRMAN FESMIRE: No free liquids. We would  
19 have to require that they -- Do you guys want to break for  
20 lunch and come back on this after lunch?

21 COMMISSIONER BAILEY: Sure.

22 CHAIRMAN FESMIRE: Okay.

23 COMMISSIONER BAILEY: Short lunch?

24 CHAIRMAN FESMIRE: Sure.

25 COMMISSIONER BAILEY: I mean, we don't need two

1 hours.

2 CHAIRMAN FESMIRE: Not unless we want to -- the  
3 attorneys want to do their closing statements again.

4 How about we come back at one?

5 COMMISSIONER BAILEY: Sounds good to me.

6 CHAIRMAN FESMIRE: Okay, we'll reconvene at one  
7 o'clock.

8 (Thereupon, noon recess was taken at 11:59 a.m.)

9 (The following proceedings had at 1:00 p.m.)

10 CHAIRMAN FESMIRE: Ready to go back on the  
11 record? This is a continuation of Case Number 14,015. The  
12 record should reflect that it is one o'clock on December  
13 14th, 2007. All three members of the Commission are  
14 present, and we were in the process of deliberating on the  
15 proposed pit rule.

16 And we had been talking about the general  
17 direction and what we wanted to do, sort of in general  
18 terms, and I believe, Commissioner Olson, you were talking  
19 about the -- some of the specifics.

20 COMMISSIONER OLSON: Well, we got stuck on the  
21 cavitation for a while --

22 CHAIRMAN FESMIRE: Right.

23 COMMISSIONER OLSON: -- and the tougher part,  
24 when I was thinking about that over lunch, is that we don't  
25 have a whole lot of evidence as to which way to go with it

1 either, you know? Just that it's a problem and that it  
2 needs to be somehow -- we need to have some kind of  
3 allowance for it. So I was kind of wondering if maybe at  
4 least when we come to cavitation maybe we ought to just  
5 leave it for less than 50 feet maybe as is, and everything  
6 over 50 feet then we have an allowance for, you know? So I  
7 wasn't quite sure what to think about that when I was  
8 tossing it about.

9 CHAIRMAN FESMIRE: Okay.

10 COMMISSIONER OLSON: Now I kind of like -- you  
11 know, as a general concept, everybody seems okay with, you  
12 know, closed loop systems less than 50 feet, and then  
13 setting the criteria that we talked about between, you  
14 know, 50 and 100 -- I'm still not really comfortable with  
15 the burial even in the 50 to 100, that's my part, you know.

16 Over 100, I don't have a problem with looking at  
17 what the surface standards are, but to me that's still  
18 shallow groundwater conditions. But at the same time, if  
19 we allow it for landfarming, why wouldn't we allow it for  
20 burial too? There's a logic to that, you know, that we  
21 need to maintain, I think, to be consistent within our own  
22 regulations.

23 CHAIRMAN FESMIRE: So the OCD's proposed  
24 standards, the delineation standard of 250, that's less by  
25 a factor of two than what we would allow on a landfarm,

1 right?

2 COMMISSIONER OLSON: Right.

3 CHAIRMAN FESMIRE: So I guess what is the  
4 justification? If it's okay -- and this gets back to what  
5 you were saying --

6 COMMISSIONER OLSON: Uh-huh.

7 CHAIRMAN FESMIRE: -- it was okay to put in a  
8 landfarm, you know, where they could potentially leave it  
9 in place, we know it's not going to remediate from the  
10 prior testimony, what benefit is there of -- I mean, why  
11 the difference in the standard? I guess I didn't  
12 understand that in the testimony.

13 COMMISSIONER OLSON: Well, you could probably use  
14 the -- you know, overall, if you're looking at -- you could  
15 leave it at that level, you could also use that as a  
16 delineation level too, I would think, you know, so -- if  
17 you wanted to, but -- you know?

18 I mean historically, it's always -- for just --  
19 for delineation purpose. I think that's the point of  
20 confusion that's always come up with industry when I've  
21 worked with them before, is that you tell them that, Okay,  
22 you look at -- if -- whatever -- if you have something  
23 that's over 250, then obviously you've had a release  
24 because there's not that much in the soil, now you need to  
25 delineate it.

1           But if you wanted to set a trigger level at 500  
2 for that, I don't see that that's effectively much  
3 different, you know, because you're allowing -- if you do  
4 the same thing again, allow the waste disposal to go at  
5 500, why don't you have 500 for the trigger too? You could  
6 do that, you know.

7           And the same thing for the deeper zone. You  
8 could use 1000 if you wanted to do that. If you're already  
9 leaving 1000 on the surface, then if you have something  
10 under your pit at the end and it's over 100 you could use  
11 that as the trigger for requiring delineation too.

12           So there's, I think, a lot of ways to link this  
13 whole thing together, is what I see, and to be consistent  
14 again back with the landfarm --

15           COMMISSIONER BAILEY: Uh-huh.

16           COMMISSIONER OLSON: -- requirements, you know.

17           CHAIRMAN FESMIRE: And there -- I mean, we could  
18 take administrative notice of -- While I think in this case  
19 there may have been sufficient evidence to support that, we  
20 can take administrative notice of the evidence that  
21 supported our decision in the surface waste management  
22 rules.

23           COMMISSIONER OLSON: Right. And I asked about it  
24 directly here too, because I was asking about why -- You  
25 know, I don't remember who I asked it of, but I was

1 pointing out that we have these levels for chloride already  
2 set. So if you could have that on the surface, why  
3 couldn't you have it in a pit that you bury? I did ask it  
4 here too, so it is on the record, somewhere in the  
5 transcript, I don't know.

6 CHAIRMAN FESMIRE: So the scenario that we're  
7 looking at is basically dig-and-haul, and 50-foot --

8 COMMISSIONER OLSON: With exceptions in the rule  
9 itself, direct exceptions in the rule. And then there'd  
10 still be, I think, another mechanism for -- if somebody  
11 wants, you know, more of an exception then they'd have to  
12 come to hearing or whatever, in front of the -- or bring it  
13 to the --

14 COMMISSIONER BAILEY: And in the directed  
15 exceptions, should we have some sort of mechanism for  
16 cavitation --

17 COMMISSIONER OLSON: Yeah.

18 COMMISSIONER BAILEY: -- if they can show a  
19 methodology for protection of groundwater --

20 COMMISSIONER OLSON: Right.

21 COMMISSIONER BAILEY: -- so that --

22 CHAIRMAN FESMIRE: But not within 50 foot to  
23 water.

24 COMMISSIONER OLSON: I was thinking that maybe --

25 COMMISSIONER BAILEY: Yeah --

1 COMMISSIONER OLSON: -- keeping 50 --

2 COMMISSIONER BAILEY: -- yeah --

3 COMMISSIONER OLSON: -- within 50 feet --

4 COMMISSIONER BAILEY: -- even with -- even with  
5 50 feet --

6 COMMISSIONER OLSON: -- even with 50 feet --

7 COMMISSIONER BAILEY: -- with a closed loop  
8 system, if they can provide a process which is protective  
9 of groundwater that would allow cavitation and workover  
10 cavitation also, both in drilling and in the workovers, to  
11 have some way for them to present to the Division --

12 COMMISSIONER OLSON: Right.

13 COMMISSIONER BAILEY: -- a mechanism for allowing  
14 that even within the 50 feet, because there's very little  
15 fluid, and if they --

16 COMMISSIONER OLSON: Right.

17 COMMISSIONER BAILEY: -- if they have a procedure  
18 that says, We will do it to an unlined pit, but we will  
19 remove the fluids by sundown that day, you know --

20 CHAIRMAN FESMIRE: What about testing of the pit,  
21 the cavitation pit, to make sure that there's no  
22 contamination?

23 COMMISSIONER BAILEY: After they have cleaned it  
24 up, you know, by sundown the next day, or whatever. You  
25 know, just -- if they can come up with a methodology so

1 that we're not barring cavitation of those Fruitland  
2 wells --

3 COMMISSIONER OLSON: Uh-huh.

4 COMMISSIONER BAILEY: -- then I think that they  
5 should be able to present something if it is protective of  
6 groundwater.

7 CHAIRMAN FESMIRE: Okay.

8 COMMISSIONER OLSON: It's almost like going -- if  
9 it's, you know, 50 feet and over, saying that -- being --  
10 having more express allowance for it, and then having  
11 another procedure maybe that they've got to follow to give  
12 additional protections because it is a shallow groundwater  
13 area. They have to maybe come in and provide the  
14 mechanisms that they're going to take to, you know, ensure  
15 that we don't have problems from it. And maybe later on,  
16 after doing it a number of times, we'll see it's not a  
17 problem and it could be expressly allowed by permit, you  
18 know, by rule later.

19 But I just feel uncomfortable with the 50 feet,  
20 just because if they do produce some liquids, if it's so  
21 shallow -- it could be, you know, less than 10 feet to  
22 water. If they get in some of those areas where it's just  
23 real marshy, the pit will be almost in the water, you know?  
24 That's my only problem. Because especially in the river,  
25 getting close to those rivers, once you dig the pit it's

1 only about, you know, 10 feet to water at most, you know.  
2 Even shallower in some areas.

3 COMMISSIONER BAILEY: But if they remove the  
4 fluids immediately and all the -- all that's left is coal  
5 fines.

6 COMMISSIONER OLSON: Right.

7 MS. BADA: So would you allow one expressly and  
8 one that would come in through the -- and get an actual  
9 exception by certain showing?

10 COMMISSIONER OLSON: Yeah, I think -- I'd like  
11 more to have them have a showing of just, you know, that  
12 they're taking measures to be protective of groundwater in  
13 the less than 50 --

14 MS. BADA: And then the other would just be --

15 COMMISSIONER OLSON: The other would just be more  
16 expressly allowed.

17 COMMISSIONER BAILEY: So we'll have two kinds --  
18 we're using the word exception, but there's two different  
19 ways to use it.

20 COMMISSIONER OLSON: Right.

21 COMMISSIONER BAILEY: One of them is --

22 MS. BADA: In the rule --

23 COMMISSIONER BAILEY: -- specifically within the  
24 rule --

25 COMMISSIONER OLSON: Yeah.

1 MS. BADA: -- if you meet this --

2 COMMISSIONER OLSON: Yeah.

3 COMMISSIONER BAILEY: Yes.

4 MS. BADA: -- it's automatically granted.

5 COMMISSIONER BAILEY: And another one is an  
6 appeal-type exception --

7 MS. BADA: With criteria that they --

8 COMMISSIONER BAILEY: Yeah.

9 MS. BADA: -- can evaluate.

10 COMMISSIONER OLSON: So I think there's going to  
11 be a lot less of those that are in the less-than-50 feet --  
12 you know, 50 feet to groundwater.

13 CHAIRMAN FESMIRE: Now is this a specific  
14 exception for cavitation or --

15 MS. BADA: Yes.

16 COMMISSIONER OLSON: Yeah.

17 COMMISSIONER BAILEY: Yes.

18 CHAIRMAN FESMIRE: Okay.

19 MS. BADA: Because I think there is an exception  
20 in --

21 COMMISSIONER OLSON: Because that way we could at  
22 least get to some kind of level of comfort with it after  
23 it's gone through a couple -- it's brought in a couple  
24 times as to what measures they use for making sure that  
25 they're not --

1           COMMISSIONER BAILEY: Uh-huh.

2           COMMISSIONER OLSON: -- first of all, maybe doing  
3 it right in the groundwater if they've got some liquids  
4 coming out, there's some kind of buffer, how it's cleaned  
5 up, maybe things like that, which weren't really presented  
6 to us here, that's the kind of --

7           COMMISSIONER BAILEY: No, but we can allow them  
8 to --

9           COMMISSIONER OLSON: But we can allow them a  
10 mechanism to come in, right.

11          MS. BADA: Yeah, because you could do something  
12 like you've done in -- they proposed in (1).(b) that allows  
13 them to come in and approve an alternative distance --

14          COMMISSIONER OLSON: Right.

15          MS. BADA: Maybe in (1).(a) you could just put  
16 something in about cavitation and then coming in and  
17 showing.

18          COMMISSIONER BAILEY: Okay. Do we also have a  
19 problem with modification of the drill rigs up in the  
20 northwest that are not big -- rated for deep drilling,  
21 they're small --

22          COMMISSIONER OLSON: Uh-huh.

23          COMMISSIONER BAILEY: -- shallow drilling rigs  
24 that will need to be modified for the closed loop system,  
25 and there's some sort of basement that has to be dug for

1 them.

2 CHAIRMAN FESMIRE: The only place that that's  
3 going to be a problem is less than --

4 COMMISSIONER OLSON: Less than 50 feet.

5 CHAIRMAN FESMIRE: -- the 50-foot zones --

6 COMMISSIONER BAILEY: Right.

7 CHAIRMAN FESMIRE: -- because they're going to be  
8 able to use -- albeit a lined pit, they're going to be able  
9 to use a pit -- pitted system in the depth greater than 50  
10 foot.

11 COMMISSIONER BAILEY: Okay.

12 CHAIRMAN FESMIRE: And from what I heard in the  
13 testimony, and I think from some of the things that Bill  
14 has said, that there's not going to be a significant number  
15 of the shallow coal wells in the less-than-50-foot  
16 groundwater.

17 COMMISSIONER BAILEY: But we're not talking coal,  
18 we're talking -- They may be drilling a Dakota well, which  
19 could be shallow, 1100 feet.

20 COMMISSIONER OLSON: Well, I think the ones they  
21 were talking about, those real small rigs, where coal --

22 CHAIRMAN FESMIRE: Where the shallow coal --

23 COMMISSIONER OLSON: Shallow coal, yeah.

24 CHAIRMAN FESMIRE: Like the ones that Synergy  
25 drills.

1           COMMISSIONER OLSON: Yeah, Tom Mullins was  
2     testifying about --

3           COMMISSIONER BAILEY: Okay.

4           COMMISSIONER OLSON: -- those were coal.

5           COMMISSIONER BAILEY: So we think that that's  
6     taken care of then?

7           COMMISSIONER OLSON: I think so.

8           CHAIRMAN FESMIRE: We think that would be a very  
9     small -- I think that would be a very small number. And,  
10    you know, have a provision in there where if that were  
11    truly the situation there, we may be able to grant an  
12    exception there under, you know, controlled circumstances.

13          COMMISSIONER BAILEY: Okay. So that would be  
14    another --

15          COMMISSIONER OLSON: I'd say after everything we  
16    do, there's still got to be a mechanism that if somebody  
17    can come in and demonstrate they can do it in whatever way  
18    that's protective, there still needs to be a mechanism for  
19    people to do that kind of stuff.

20          COMMISSIONER BAILEY: I agree.

21          COMMISSIONER OLSON: Uh-huh.

22          MS. BADA: What about the need for them to get  
23    closed loop systems up and running? How do you want to  
24    address that?

25          COMMISSIONER OLSON: Well, the best way to

1 address that is more through the time frame --

2 MS. BADA: Yeah.

3 COMMISSIONER OLSON: -- for implementation. That  
4 might be the way to do it.

5 COMMISSIONER BAILEY: Uh-huh.

6 COMMISSIONER OLSON: And the effective dates,  
7 that would be the place to address that. Because you could  
8 give, you know, a year or something, you know, some time  
9 frame --

10 MS. BADA: To allow them --

11 COMMISSIONER OLSON: -- effective --

12 MS. BADA: -- to get it together.

13 COMMISSIONER OLSON: Right.

14 CHAIRMAN FESMIRE: There are some operators, we  
15 heard in the testimony, that have already commissioned  
16 closed loop rigs. I don't think we will make the time  
17 period --

18 COMMISSIONER OLSON: You don't want to make it  
19 that long?

20 CHAIRMAN FESMIRE: -- too long, because those  
21 people are gaining an advantage, I see, by doing it right.  
22 And I would think we would want to support that.

23 COMMISSIONER OLSON: Uh-huh.

24 COMMISSIONER BAILEY: But the more demand there  
25 is, the longer delivery time.

1 COMMISSIONER OLSON: Uh-huh, right.

2 COMMISSIONER BAILEY: So when we get to there,  
3 we'll get to there, but --

4 COMMISSIONER OLSON: Uh-huh.

5 COMMISSIONER BAILEY: -- we have other topics  
6 between now and then.

7 COMMISSIONER OLSON: Uh-huh.

8 CHAIRMAN FESMIRE: Right. Well, we might want to  
9 philosophically at least decide how we're going to do that.  
10 You know, too quick a phase-in is going to create an  
11 unreasonable demand that's going to drive up prices and  
12 drive down the rig --

13 COMMISSIONER OLSON: Because right now it's on  
14 effective date of the rule, if I recall. It is not a  
15 phase-in at the moment.

16 MS. BADA: And you can have different effective  
17 dates for different sections.

18 CHAIRMAN FESMIRE: And again, the thing to  
19 remember is, the only place where you're going to have to  
20 have a closed loop system is less than 50 foot to water.  
21 So what kind of a --

22 COMMISSIONER OLSON: So you shouldn't need phase-  
23 ins for like, you know, dig-and-haul for example, because  
24 that's, you know -- if that's the case, then you could just  
25 do that. You would maybe need it for the closed loop, like

1 for less than 50 feet to groundwater, where it's mandatory.

2 Above that, I don't think you have to worry about  
3 it, because that's optional at that point. But this is  
4 just for the 50 -- the less than 50 feet to groundwater.

5 CHAIRMAN FESMIRE: What I'm worried about is,  
6 we're liable to create a boom in wells less than 50 foot to  
7 water that have been drilled by -- you know, with a pit.

8 COMMISSIONER OLSON: Right. Maybe just have a  
9 shorter phase-in time, I don't know, that's -- six months  
10 or something? I don't know. So there's some time to start  
11 getting the equipment and make some allowance for --  
12 Because I would expect you're probably right, since it's  
13 not using a lot of it, there's going to be a shortage of  
14 equipment, especially if folks start having the demand for  
15 drilling.

16 COMMISSIONER BAILEY: Uh-huh.

17 CHAIRMAN FESMIRE: Well, one of the things that  
18 came from the testimony of the Conoco witnesses, that they  
19 don't necessarily follow their ranking. You know, they  
20 have an MPD ranking, but they don't necessarily follow it  
21 because there are other considerations.

22 So if we didn't have a phase-in, they could be  
23 drilling the wells that are located -- in the northwest,  
24 they could be drilling the wells that are located in the  
25 deeper-to-water areas --

1 COMMISSIONER OLSON: Greater than 50 feet, yeah.

2 CHAIRMAN FESMIRE: -- 50-foot areas --

3 COMMISSIONER OLSON: That's true.

4 CHAIRMAN FESMIRE: -- while they're preparing --

5 COMMISSIONER BAILEY: But some of the factors  
6 that they didn't mention were expiration of leases,  
7 expiration of --

8 COMMISSIONER OLSON: Uh-huh.

9 COMMISSIONER BAILEY: -- farmout agreements,  
10 those kinds of things where they do have deadlines, and  
11 they're not going to get away from the 50 feet. So I mean,  
12 we have to take into account the reality of the fact that  
13 their higher priority has to do with deadlines, and they  
14 can't do what you're suggesting, just go someplace else.

15 COMMISSIONER OLSON: Uh-huh.

16 CHAIRMAN FESMIRE: But we also heard testimony in  
17 the form of, the Mafia has got it locked up. You know, a  
18 lot of these leases are HBP, and that would be a factor.

19 COMMISSIONER BAILEY: But the farmout agreements  
20 will be.

21 CHAIRMAN FESMIRE: That's a good point.

22 COMMISSIONER OLSON: Well, I think the only way  
23 you can probably address that is through the -- through  
24 your phase-in --

25 COMMISSIONER BAILEY: Uh-huh.

1 COMMISSIONER OLSON: -- see what you're going  
2 to -- how you're going to --

3 CHAIRMAN FESMIRE: Okay --

4 COMMISSIONER OLSON: -- do that.

5 CHAIRMAN FESMIRE: -- so how long a period of  
6 time are we talking?

7 COMMISSIONER OLSON: Well, if you start thinking  
8 of when this rule is going to be effective --

9 COMMISSIONER BAILEY: That's what I was thinking,  
10 I mean, because we can't even sign an order until what,  
11 March or April.

12 COMMISSIONER OLSON: Right.

13 CHAIRMAN FESMIRE: Oh, it would be 60 days  
14 after --

15 COMMISSIONER OLSON: And it's effective after  
16 that -- you know --

17 CHAIRMAN FESMIRE: Yeah.

18 COMMISSIONER OLSON: -- after it's published,  
19 which is even -- 30 to 60 days, isn't it?

20 MS. BADA: It's effective as the date of  
21 publication, but you can always delay things. But it  
22 actually can be effective the date of publication.

23 COMMISSIONER OLSON: When you start looking at  
24 that kind of time lag you might say six months so folks  
25 already know it's coming with that -- for those shallow

1 ones. And everybody here was in -- you know, industry  
2 folks were in agreement with the closed loop systems less  
3 than 50, except maybe Mr. Mullins.

4 COMMISSIONER BAILEY: And Merrion.

5 COMMISSIONER OLSON: And Merrion, yeah.

6 CHAIRMAN FESMIRE: And Mr. Dugan.

7 (Laughter)

8 COMMISSIONER OLSON: But it is a smaller portion  
9 of them. So maybe it could be a lesser phase-in time, six  
10 months or something like that. I don't know. Maybe by  
11 January 1, 2009, or something, you know?

12 COMMISSIONER BAILEY: Yeah, because that gives  
13 them about six months.

14 COMMISSIONER OLSON: We wouldn't be done with the  
15 rule until April, maybe.

16 CHAIRMAN FESMIRE: But again, we create a  
17 drilling boom with pitted wells in less than 50 foot.

18 COMMISSIONER OLSON: Well, that's -- it's a  
19 potential for that.

20 COMMISSIONER BAILEY: But that gives them a year  
21 now to do it.

22 COMMISSIONER OLSON: Uh-huh. It's actually only  
23 about six months from when the rule would become effective.

24 I don't know, let's think about it. I mean,  
25 that's --

1 COMMISSIONER BAILEY: Yeah. But a phase-in  
2 period --

3 COMMISSIONER OLSON: Right.

4 COMMISSIONER BAILEY: -- we just need to figure  
5 what that time should be. No earlier than January of --

6 COMMISSIONER OLSON: I would say, yeah, no later  
7 than, maybe. That's --

8 CHAIRMAN FESMIRE: Couldn't we make that part of  
9 the -- I mean, the exception process is going to be kind of  
10 -- you know, a little broader than maybe initially -- make  
11 that a potential for exception. But I still would like to  
12 make it an exception, you know, because if they're going to  
13 drill with a pit in less than 50 foot to water, I still  
14 would like to have it as an exception --

15 COMMISSIONER OLSON: Uh-huh.

16 CHAIRMAN FESMIRE: -- rather than just a blanket  
17 phase-in so we avoid -- you know --

18 MS. BADA: But then you have the exception in  
19 there forever.

20 COMMISSIONER BAILEY: Because that doesn't go  
21 away.

22 COMMISSIONER OLSON: Yeah.

23 MS. BADA: That does not go away --

24 CHAIRMAN FESMIRE: You know --

25 MS. BADA: -- unless you limit that exception for

1 a certain period of time.

2 COMMISSIONER OLSON: Well, let's just say six  
3 months if that's -- you know, if you think there's a better  
4 time frame.

5 CHAIRMAN FESMIRE: Six months from the date of  
6 the --

7 COMMISSIONER OLSON: -- effective date of the  
8 rule.

9 CHAIRMAN FESMIRE: -- effective date of this  
10 rule, we -- you know, OCD would grant an exception if you  
11 could prove that your lease was expiring or something like  
12 that.

13 What I'm trying to avoid is, like I said, that  
14 rush to go out and drill all their locations where it's  
15 less than 50 foot to water.

16 COMMISSIONER BAILEY: Yeah, but if you're asking  
17 them all to come in to OCD for an approval of exception, I  
18 mean, right now how long is it taking APDs?

19 CHAIRMAN FESMIRE: APDs? Well, if it's not in  
20 Galisteo Basin, a week.

21 COMMISSIONER BAILEY: Well, there's one over in  
22 the southwest bootheel that --

23 CHAIRMAN FESMIRE: That's --

24 COMMISSIONER BAILEY: -- that's being held up.

25 CHAIRMAN FESMIRE: That's a --

1           COMMISSIONER BAILEY: I mean, so what I'm saying  
2 is that things get really delayed. And if you have a bunch  
3 of people getting delayed, let's just put six months after  
4 the effective date.

5           COMMISSIONER OLSON: That could happen, you know,  
6 there might all of a sudden be some folks coming in to want  
7 to drill before that effective date, but --

8           COMMISSIONER BAILEY: But you face that with any  
9 rule.

10          COMMISSIONER OLSON: Right. I mean, the same  
11 thing happened with the pit rules of the past, when we had  
12 an effective date in there for submitting, you know,  
13 closure plans for closing these out. And then in the  
14 interim there was a lot of heavy equipment running around  
15 pushing pits in before they had to meet the requirements  
16 then for, you know, closure. So it did happen, so...

17          COMMISSIONER BAILEY: It happens with everything.

18          COMMISSIONER OLSON: It would happen with  
19 anything, yeah. But yeah, I hear you. Then maybe just  
20 make a shorter, you know, time frame, just -- that's all,  
21 if you're worried about that window. You can play with the  
22 window, you know.

23          CHAIRMAN FESMIRE: Okay.

24          MS. BADA: Or if you don't like six months from  
25 the effective date, figure out some in between.

1           COMMISSIONER OLSON: Uh-huh. Because six months  
2 would put it into what, October maybe, something like that,  
3 you know? I don't see a whole lot of difference between  
4 that and the end of the year. It gives some folks time to  
5 get equipment together for those shallower wells. Six  
6 months -- you should be able to do something in six months,  
7 I would think. You know, find some equipment, you know?

8           COMMISSIONER BAILEY: It depends on --

9           COMMISSIONER OLSON: That's true.

10          COMMISSIONER BAILEY: -- manufacturers.

11          COMMISSIONER OLSON: Right. But then at that  
12 point, then they could maybe come in and ask for -- you  
13 know, if there's really a serious problem, they could come  
14 in and ask for an exception. So there should be less of  
15 them.

16          COMMISSIONER BAILEY: See, what I'm trying to do  
17 is to keep stuff --

18          COMMISSIONER OLSON: Right.

19          COMMISSIONER BAILEY: -- out of the offices --

20          COMMISSIONER OLSON: I know.

21          COMMISSIONER BAILEY: -- because that backlog is  
22 just going to get worse and worse and worse. I'm trying to  
23 figure to keep OCD --

24          COMMISSIONER OLSON: Right.

25          COMMISSIONER BAILEY: -- from being overwhelmed

1 with paperwork --

2 COMMISSIONER OLSON: I agree.

3 COMMISSIONER BAILEY: -- and the delays that go  
4 with volumes of paperwork.

5 COMMISSIONER OLSON: I agree.

6 CHAIRMAN FESMIRE: Well, anybody want to do a  
7 recap on what we've agreed to?

8 COMMISSIONER BAILEY: So far?

9 CHAIRMAN FESMIRE: Yeah.

10 COMMISSIONER BAILEY: Okay.

11 COMMISSIONER OLSON: Well, looking at pretty much  
12 the -- where -- on the -- on just the pits?

13 CHAIRMAN FESMIRE: Well, let's --

14 COMMISSIONER OLSON: With the below grade tanks,  
15 I think we kind of went through --

16 CHAIRMAN FESMIRE: Below grade tank issue, we've  
17 agreed that we will -- the Conoco design is acceptable, we  
18 will make it acceptable. The idea is to --

19 COMMISSIONER OLSON: And allow it by rule, and --

20 CHAIRMAN FESMIRE: To allow it by rule --

21 COMMISSIONER OLSON: Uh-huh.

22 CHAIRMAN FESMIRE: -- and the idea is to provide  
23 inspectability on the sites, that it's not necessarily the  
24 grade -- you know, the fact that it's below what would be a  
25 grade is not the deciding factor on what the -- the

1 inspectability of the sites, and to a certain extent the  
2 ability to detect a leak from the bottom, will be the  
3 important part of it. Not whether it's at ground level or  
4 below.

5 COMMISSIONER BAILEY: I agree.

6 MS. BADA: So are you okay with the ones that  
7 have gravel underneath now?

8 CHAIRMAN FESMIRE: As long as there's something  
9 under the gravel that allows it to drain to someplace where  
10 it can be --

11 COMMISSIONER OLSON: Because --

12 CHAIRMAN FESMIRE: -- detected.

13 COMMISSIONER OLSON: -- I believe those were set  
14 up, even those ones like that, with the liner and the  
15 gravel pad. I seem to remember Denny working through with  
16 folks to set those kind of things up, so they were  
17 essentially an approved mechanism by --

18 MS. BADA: So they were --

19 COMMISSIONER OLSON: -- the working --

20 MS. BADA: -- a liner with gravel on top of them?

21 COMMISSIONER OLSON: It was a liner with some  
22 gravel on top, because they just didn't want moisture to be  
23 in direct contact with the tank, that was the idea. But  
24 that would be for the pre-existing systems like that. Or  
25 it's an incentive for folks to, you know, do more of the

1 systems like Conoco --

2 MS. BADA: So on the future then it would be the  
3 ConocoPhillips design or --

4 COMMISSIONER OLSON: Right, where you can  
5 actually --

6 MS. BADA: -- on secondary containment?

7 COMMISSIONER OLSON: Right --

8 CHAIRMAN FESMIRE: Right.

9 COMMISSIONER OLSON: -- where you can actually  
10 physically see -- inspect under the tank.

11 CHAIRMAN FESMIRE: Or determine if it's got a  
12 leak.

13 COMMISSIONER OLSON: Right, you have some way to  
14 visually determine that -- which could be a double-bottom  
15 tank too, if you want to go that way.

16 CHAIRMAN FESMIRE: The 100-mile radius --

17 COMMISSIONER OLSON: The 100-mile radius is --

18 COMMISSIONER BAILEY: Throw it out.

19 COMMISSIONER OLSON: -- is out.

20 CHAIRMAN FESMIRE: -- is out.

21 (Laughter)

22 CHAIRMAN FESMIRE: Let the record reflect that  
23 counsel drew a finger across her throat.

24 COMMISSIONER OLSON: And so then we'd look at the  
25 -- following the Division proposal on what's less than 50

1 feet to groundwater for the closed loop systems. And then  
2 between 50 and 100 feet to groundwater we would allow the  
3 pits to be buried in place -- not deep trench burial;  
4 tacos, I guess -- if they meet the same criteria that we  
5 have for the landfarms, which is 500 --

6 MS. BADA: So you want the small landfarm  
7 criteria?

8 COMMISSIONER OLSON: Yeah --

9 MS. BADA: Okay.

10 COMMISSIONER OLSON: -- which would be --

11 CHAIRMAN FESMIRE: Small landfarm criteria with  
12 respect to chlorides is the same as the --

13 COMMISSIONER OLSON: I think it's the same as the  
14 large commercial ones, yeah.

15 MS. BADA: I thought there was a difference,  
16 right. For the large ones there's the 1000, and then  
17 there's the 500, 1000 if it's over --

18 COMMISSIONER OLSON: It's -- yeah, if --

19 MS. BADA: Okay.

20 COMMISSIONER OLSON: -- it's 500 if it's between  
21 50 and 100 feet to groundwater --

22 MS. BADA: Okay.

23 COMMISSIONER OLSON: -- and then over 100 feet to  
24 groundwater, it would be 1000. I think that's kind of  
25 where we -- And then have an allowance to -- we'll have to

1 create a section for cavitation and allowing those over 50  
2 feet to groundwater and then allowing, you know, them to  
3 make a demonstration if they're less than 50 feet to  
4 groundwater, that it somehow is protective of --

5 MS. BADA: Okay, may be able to do those, just  
6 the siting criteria.

7 COMMISSIONER OLSON: Right. So they'd probably  
8 have to submit something just to make -- as a guarantee  
9 that it's going to be protective of groundwater, make a  
10 demonstration of some sort.

11 MS. BADA: Did you want an exception for pits if  
12 they come in -- the hearing-type exception?

13 COMMISSIONER OLSON: For things in general?

14 MS. BADA: No, for pits. If they don't meet  
15 these criteria, would you want another type of an exception  
16 where they come in and show that it's protective of  
17 groundwater and have a list of criteria that you can  
18 evaluate?

19 CHAIRMAN FESMIRE: I think so.

20 COMMISSIONER BAILEY: Uh-huh --

21 MS. BADA: Okay --

22 COMMISSIONER BAILEY: -- uh-huh, I think  
23 they're --

24 MS. BADA: -- you know, land use within the area,  
25 depth to groundwater --

1 COMMISSIONER OLSON: Uh-huh.

2 MS. BADA: -- distance to disposal facilities,  
3 those type of things.

4 COMMISSIONER BAILEY: No, forget distance to --

5 COMMISSIONER OLSON: I don't think distance --

6 COMMISSIONER BAILEY: -- disposal facilities,  
7 that's no longer a factor --

8 MS. BADA: No, but I --

9 COMMISSIONER OLSON: That's not a factor.

10 MS. BADA: -- mean, in the exception --

11 COMMISSIONER BAILEY: That's still --

12 MS. BADA: Still --

13 COMMISSIONER BAILEY: -- no longer a factor.

14 MS. BADA: Okay.

15 COMMISSIONER OLSON: No. I guess the other thing  
16 I was wondering, though, was whether even in the over 100  
17 feet to groundwater, would you still allow the burrito,  
18 then, for even an intermediate level of contamination?  
19 Because I was thinking that you could allow what Dr. Thomas  
20 was saying, use the leachability levels and say you'll  
21 allow up to, you know, 250 milligrams per liter by  
22 leachate, which is 5000 chlorides, in a burrito above 100  
23 feet to groundwater. Or do you just --

24 CHAIRMAN FESMIRE: I'm not inclined to do that,  
25 Bill.

1 COMMISSIONER OLSON: Uh-huh.

2 CHAIRMAN FESMIRE: That seems like --

3 COMMISSIONER OLSON: -- we're creating too much?

4 CHAIRMAN FESMIRE: Well, if it's a waste that you  
5 can dispose of on the surface, that we have determined is a  
6 safe level to dispose of on the surface, we ought to be  
7 able to use that. More than that, you know, it's -- it  
8 represents -- I think the evidence shows that it represents  
9 a risk that's, you know, not acceptable, that it needs to  
10 be dug and hauled.

11 COMMISSIONER BAILEY: Except like in the  
12 southeast where there's no groundwater. You know, those  
13 areas where --

14 CHAIRMAN FESMIRE: Oh, you mean the --

15 COMMISSIONER OLSON: The potash area --

16 COMMISSIONER BAILEY: Yeah, and those areas where  
17 we've allowed --

18 COMMISSIONER OLSON: Right --

19 COMMISSIONER BAILEY: -- unlined pits --

20 COMMISSIONER OLSON: -- there are --

21 COMMISSIONER BAILEY: -- for the last several  
22 years --

23 COMMISSIONER OLSON: Yeah, uh-huh.

24 COMMISSIONER BAILEY: -- you know, or where the  
25 landfills are now.

1 COMMISSIONER OLSON: Uh-huh.

2 CHAIRMAN FESMIRE: I don't want to, you know -- I  
3 see -- you know, or to background levels might be  
4 acceptable. But other than that, I don't want to get an --

5 COMMISSIONER OLSON: But you're not going to --

6 CHAIRMAN FESMIRE: -- exception --

7 COMMISSIONER OLSON: -- find chloride at that  
8 kind of background levels, just in the soils.

9 CHAIRMAN FESMIRE: In the potash area you will.

10 COMMISSIONER OLSON: In the groundwater you will,  
11 but not in the soils, I don't think you'll see that kind  
12 of --

13 COMMISSIONER BAILEY: Right.

14 CHAIRMAN FESMIRE: Well --

15 COMMISSIONER OLSON: -- chloride levels. Because  
16 I was kind of looking along the lines of, even OCD  
17 acknowledged -- which I am -- kind of like their numbers  
18 they came up with. They still seem pretty high when you  
19 can allow up to 100,000 chlorides in a burrito, just seemed  
20 -- because the -- admittedly, the liner at some point -- I  
21 think everybody agrees, at some point in time the liner is  
22 going to be gone --

23 CHAIRMAN FESMIRE: Right --

24 COMMISSIONER OLSON: -- you know?

25 CHAIRMAN FESMIRE: -- and --

1           COMMISSIONER OLSON:  And I was thinking of it  
2 along the lines that if you left 200 -- if you allowed a  
3 maximum of 5000 chlorides to be in the burrito, by the  
4 leachability it shouldn't be -- it should be below  
5 standards.  And that's over 100 feet -- only allowed over  
6 100 feet to groundwater.  There wouldn't be any burritos  
7 between 50 and 100.  I was kind of thinking a concept like  
8 that --

9           CHAIRMAN FESMIRE:  Well --

10          COMMISSIONER OLSON:  -- which would allow some  
11 potential burial in the southeast, you know.

12          CHAIRMAN FESMIRE:  -- my idea is that at some  
13 point even the highly contaminated water is going to be  
14 flushed out, you know, eventually -- you know, if the salt  
15 content of the soils is not such that it's continuing to  
16 add to the contamination level of the water, you know,  
17 eventually it will be cleaned up.

18          COMMISSIONER BAILEY:  No, it won't.  Connate  
19 water is not going to clean up.

20          CHAIRMAN FESMIRE:  Well, I'm thinking about the  
21 potash area.  It's not being contaminated by the leaching  
22 from surface?

23          COMMISSIONER BAILEY:  Possibly yes, but the  
24 connate water in those areas --

25          COMMISSIONER OLSON:  -- is already --

1 COMMISSIONER BAILEY: -- is already --

2 COMMISSIONER OLSON: Uh-huh.

3 COMMISSIONER BAILEY: -- 100,000. That's not  
4 going to clean up.

5 COMMISSIONER OLSON: Uh-huh. I mean, some of  
6 it's the connate water, and then also you've got the  
7 problems with the potash mines that contributed to it with  
8 all the discharges to the playas out there too, you know?

9 COMMISSIONER BAILEY: There's some water that is  
10 not ever going to be beneficially used.

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: Boy, I hate to admit that.

13 COMMISSIONER OLSON: Well, that level is going up  
14 over what it used to be, because right now, looking at --  
15 especially what Sandoval County is doing with those wells  
16 they're drilling out there by the Rio Puerco, they're  
17 looking at -- they're subverting the State Engineer  
18 requirements, because they're going from deep water, and so  
19 they don't technically need permits when the water quality  
20 is up around --

21 CHAIRMAN FESMIRE: Thirty?

22 COMMISSIONER OLSON: No, I think it's -- it's not  
23 quite that bad. I think it's around 17,000 TDS or  
24 something like that. It's pretty high. But they're  
25 drilling 6000-foot-deep water wells that produce huge

1 volumes, at least initially, so...

2 And now -- so you start looking at that, and  
3 Alamogordo is going the same way now too, look at it using  
4 water well above 10,000 TDS. So the 10,000 level that's  
5 been set out by Steve Reynolds in the past is probably not  
6 as accurate as it is today, as to what's usable, because  
7 you can treat it with reverse osmosis.

8 Costs are starting to get -- right now, the costs  
9 are starting to get where it's getting to be economical to  
10 look at for long-term supplies. There's a lot of it,  
11 you've just got to treat it.

12 COMMISSIONER BAILEY: So if we just call it  
13 beneficial use, rather -- as determined by the State  
14 Engineer, rather than put a 10,000 TDS on it --

15 COMMISSIONER OLSON: It's still in existence  
16 today, though, I mean using the WQCC regs and every place  
17 else. To be consistent, you probably would still need to  
18 keep it at 10,000 just as a consistency.

19 MS. BADA: That's still in your regs, and it  
20 wasn't a subject of the hearing.

21 COMMISSIONER OLSON: Yeah, and it would set out a  
22 few things like the 3221.D and the exceptions that were  
23 done back in the late 1980s on how you get an exception to  
24 3221. It specifically referenced the 10,000 TDS --

25 COMMISSIONER BAILEY: That's right.

1           COMMISSIONER OLSON:  -- waters from the  
2     determinations by Steve Reynolds, so...  I mean, I don't  
3     think you can get away with that.  I'm just kind of  
4     throwing out -- just kind of making a statement that it's  
5     not really -- it's probably going to have to go away  
6     sometime in the future here.  But it would have be -- get  
7     changed concurrently through the WQCC and through OCD so  
8     everybody's --

9           COMMISSIONER BAILEY:  But in the meantime --

10          COMMISSIONER OLSON:  -- consistent.

11          COMMISSIONER BAILEY:  -- there's no reason for  
12     dig-and-haul, or even the deep trench, when it's already so  
13     salty that it's not --

14          COMMISSIONER OLSON:  Well, see, some of those  
15     areas, though, there is protectable water.  Like we've got  
16     some at the WIPP site where there's actually -- there's  
17     shallow protectable water out there.  And so I'd rather do  
18     it through -- I'll give them an allowance for just the  
19     overall exceptions if they can show the area is okay, you  
20     know?

21          CHAIRMAN FESMIRE:  Even that should be done  
22     through a specific exception, right?

23          COMMISSIONER OLSON:  I don't know if it should be  
24     a specific one or if that should be one where they have to  
25     come in and make a demonstration, you know?

1 CHAIRMAN FESMIRE: Well, that's what I mean by --  
2 COMMISSIONER OLSON: Okay.  
3 CHAIRMAN FESMIRE: -- specific, is --  
4 COMMISSIONER BAILEY: So that if they come in and  
5 show that there's no beneficial water, then they could  
6 leave it in place?  
7 COMMISSIONER OLSON: Right, there's not  
8 protectable water --  
9 COMMISSIONER BAILEY: No protectable water, yeah.  
10 MS. BADA: How do we define it? Do we say fresh  
11 water?  
12 CHAIRMAN FESMIRE: We can --  
13 COMMISSIONER OLSON: Isn't that water of no  
14 foreseeable present or --  
15 MS. BADA: Yeah --  
16 COMMISSIONER OLSON: -- foreseeable future use --  
17 MS. BADA: -- what you want?  
18 COMMISSIONER OLSON: -- I don't know.  
19 CHAIRMAN FESMIRE: We need to be consistent.  
20 COMMISSIONER OLSON: But that's the language  
21 that's been used for --  
22 MS. BADA: Forever.  
23 COMMISSIONER OLSON: -- you know, 40-some years  
24 now.  
25 MS. BADA: Look at your rule real quick.

1           COMMISSIONER OLSON: Yeah, I agree, there needs  
2 to be allowance for exceptions and for those kind of  
3 circumstances.

4           MS. BADA: Yeah, and you talk about fresh --

5           CHAIRMAN FESMIRE: Okay. And such basics as no  
6 unlined pits.

7           COMMISSIONER OLSON: So you don't want to even  
8 look at the idea of burritos over --

9           CHAIRMAN FESMIRE: Oh, I'm sorry, I didn't mean  
10 to -- I didn't realize you were --

11           COMMISSIONER OLSON: We're finished what that  
12 part, yeah. That's what I was thinking originally, was  
13 using that concept of the leachability. You could say,  
14 Okay, well, you can make some allowance for if you're 5000  
15 chlorides or less, do a burrito, so there would be like a  
16 staggered-type approach.

17           But you're thinking more along the lines of  
18 saying if it's -- if you can leave it at surface, then --

19           COMMISSIONER BAILEY: -- taco is good enough.

20           COMMISSIONER OLSON: Right.

21           CHAIRMAN FESMIRE: If you can leave it.

22           COMMISSIONER OLSON: Right.

23           CHAIRMAN FESMIRE: I'm not sure you guys have  
24 convinced me that it should be left.

25           COMMISSIONER OLSON: Uh-huh. Oh, you mean if

1 it's -- you mean for the thousand and the five --

2 CHAIRMAN FESMIRE: No --

3 COMMISSIONER OLSON: Oh, for -- you're talking  
4 about the higher levels?

5 CHAIRMAN FESMIRE: Yeah.

6 COMMISSIONER BAILEY: Right.

7 CHAIRMAN FESMIRE: The 500 and 1000 I --

8 COMMISSIONER OLSON: Yeah.

9 CHAIRMAN FESMIRE: -- I agree with.

10 COMMISSIONER OLSON: Okay.

11 CHAIRMAN FESMIRE: It's the other stuff that  
12 we'll probably have to talk some more about. But again,  
13 we're looking at a very small percentage of --

14 COMMISSIONER OLSON: Right.

15 CHAIRMAN FESMIRE: -- of the well locations that  
16 we're talking about.

17 MS. BADA: I would just say, you know, think  
18 about it, and think about if you allowed it, which criteria  
19 would you want them to demonstrate? Because you would need  
20 criteria for an exception.

21 COMMISSIONER OLSON: Because then essentially  
22 you're just talking about leaving the taco systems, and  
23 that way they wouldn't even have to sample underneath the  
24 liners, would they?

25 CHAIRMAN FESMIRE: Oh, the idea being that -- you

1 know, if the material is, for lack of a better word, safe  
2 to leave, it doesn't matter whether the liner is there or  
3 not. Right? Once it's been stabilized and tested --

4 COMMISSIONER OLSON: Right.

5 CHAIRMAN FESMIRE: -- if it's safe to leave, you  
6 know, we're -- anything that needs a liner, we don't want  
7 left. You know, and the liner is there just to prevent,  
8 and before it's stabilized, to prevent the concentrations  
9 and the problems that we would have. That's my -- my way  
10 of thinking.

11 COMMISSIONER BAILEY: So we would have no deep-  
12 trench burials?

13 CHAIRMAN FESMIRE: That's what I'm thinking.

14 COMMISSIONER OLSON: Okay, I'll think about that.

15 COMMISSIONER BAILEY: Let's mull that one over.

16 COMMISSIONER OLSON: I want to think about that,  
17 because I was thinking along the lines of -- you know,  
18 because the Division was saying, Well, okay, the -- in  
19 their modeling -- that's the tricky part, because there is  
20 evidence that's in the record saying, well, you can do  
21 deep-trench burial in some circumstances. The key is, what  
22 levels do you use for, you know, allowing material to stay  
23 in place? I didn't like the levels that they were coming  
24 up with.

25 And actually once I get down to Dr. Stephens'

1 modeling, I get back to the same -- that's when I got to --  
2 that's why I was asking that -- questions of Dr. Thomas,  
3 because I got to this -- and Dr. Stephens, because all of a  
4 sudden I was starting to see that the numbers he's  
5 proposing as a leachability level of 250 is the same number  
6 that you come up with in Dr. Stephens' modeling if you use  
7 the effective 10-foot mixing zone. You get -- With his,  
8 you get 260, versus using 250 as the leachability level.

9           So that was kind of a strange coincidence that  
10 you're getting the same number coming out of his modeling  
11 as it comes -- now, I consider that pretty conservative --  
12 versus the leachate, you know?

13           So there would -- there'd be -- would be a case  
14 then, but it wouldn't allow for some burial, but it would  
15 be at a maximum of 5000 chlorides.

16           COMMISSIONER BAILEY: But all of that modeling  
17 was 50 feet to water.

18           COMMISSIONER OLSON: Right, but then Dr. Stephens  
19 said at the same time, the only difference it makes is if  
20 you increase the depth to groundwater, it's just increasing  
21 the time that it takes to get there, but it will still get  
22 there, is what he said.

23           COMMISSIONER BAILEY: And Hansen showed 1100  
24 years or 1500 years --

25           COMMISSIONER OLSON: Well, you're looking --

1    yeah, Dr. Neeper was talking about less years.  But I don't  
2    think that's -- you start -- all this competing modeling,  
3    it gets -- that's a tough thing to sort out.  And I've  
4    never been real confident of the VADSAT modeling because  
5    I've seen it used in some circumstances where they said  
6    there wasn't going to be a problem, and then they delineate  
7    the contamination of that groundwater contamination.

8                    So I'm not a real fan of modeling that hasn't  
9    been verified with the real-world data, you know? --

10                   COMMISSIONER BAILEY:  Yup.

11                   COMMISSIONER OLSON:  -- because it's just that,  
12    it's just being at that point, it's a theory and it's not  
13    always borne out by the facts.  And you have to calibrate  
14    the models with actual field data to show that it's  
15    actually working.

16                   You may come back at that point -- and Phelps  
17    Dodge has been going through this a lot with all the  
18    modeling that goes out there, and that's been a big point  
19    that goes on, they'll start trying to calibrate some of  
20    this stuff just in terms of the cover models that they're  
21    using for soil covers on the tailings, and they have to  
22    recalibrate those models, and they might throw a model out  
23    and start using a different model that might work better  
24    with the data.  And it's one of those things that the real  
25    data is much more convincing, you know, than a model.

1           COMMISSIONER BAILEY: So if we have groundwater  
2 at 300 feet, which is not unusual in the southeast --

3           COMMISSIONER OLSON: Uh-huh.

4           COMMISSIONER BAILEY: -- we have a 14,000-foot  
5 well, what are they going to do? Groundwater is deep,  
6 connate water is unusable. Let's call it -- what? 80,000?

7           COMMISSIONER OLSON: Uh-huh.

8           COMMISSIONER BAILEY: Why can't they just leave  
9 it in place?

10          COMMISSIONER OLSON: Uh-huh.

11          COMMISSIONER BAILEY: Not going to hurt anything.

12          COMMISSIONER OLSON: Well, it would be -- the  
13 difference would be leaving it in place versus the burrito.  
14 I still like the 5000. Give them a little bit of  
15 flexibility. Say, Okay, well, here's some higher levels  
16 that you'd be allowed. But then other than that -- for  
17 something like that would be an exception I would look at,  
18 you know? That they would have to then submit it for an  
19 actual demonstrated exception, versus exception by rule.

20          CHAIRMAN FESMIRE: This is something that we'll  
21 probably have to talk about some more, because I'm not  
22 comfortable with the concept yet --

23          COMMISSIONER OLSON: Okay.

24          CHAIRMAN FESMIRE: -- so it's probably one area  
25 that we'll have to look into, you know, in detail later. I

1 do think it represents a very small percentage of the --

2 COMMISSIONER OLSON: I agree, because I was  
3 thinking for southeastern New Mexico, the places -- over  
4 100 feet to groundwater down there, a lot of the Ogallala,  
5 except once you get up north of Tatum, is less than 100  
6 feet to groundwater. Or you get towards the edge of the  
7 Cap, then it's deeper up there, you know, it's more in the  
8 range of 150 feet or something. So there are scenarios  
9 where they would have a little bit more of an allowance for  
10 some higher levels.

11 I guess the concern would be if you start looking  
12 at somebody wanting to do a really large deep-trench  
13 burial, you have get all that waste down to 5000, and then  
14 it seems like you're defeating the purpose. Now you're  
15 making just a huge volume of waste over what you started  
16 from, you know. Really need to think about that some more.

17 CHAIRMAN FESMIRE: And review the transcript and  
18 the --

19 COMMISSIONER OLSON: Right.

20 CHAIRMAN FESMIRE: -- testimony on it. Okay.

21 But we are thinking along the lines that -- no  
22 unlined pits --

23 COMMISSIONER OLSON: Right, for production pits.  
24 Or just in general?

25 CHAIRMAN FESMIRE: In general --

1 COMMISSIONER OLSON: Right.

2 CHAIRMAN FESMIRE: -- what I as thinking.

3 COMMISSIONER OLSON: Right, I agree.

4 CHAIRMAN FESMIRE: You know, dig-and-haul, with  
5 procedures for exceptions in places where it doesn't make  
6 sense.

7 COMMISSIONER BAILEY: You're looking at it this  
8 side, I'm looking at it this side. You're seeing dig-and-  
9 haul as the primary with exceptions, and I'm seeing it as  
10 the exception is dig-and-haul. So it's just --

11 COMMISSIONER OLSON: Well, I think in the  
12 southeast, though, I would see like -- especially if you  
13 get less than 100 feet to groundwater, I think a lot of  
14 that is more dig-and-haul, you know?

15 COMMISSIONER BAILEY: Yeah. Well, I think we're  
16 all agreed because --

17 COMMISSIONER OLSON: Right, but there's other  
18 areas down there --

19 COMMISSIONER BAILEY: Yeah.

20 COMMISSIONER OLSON: -- I agree, that -- and how  
21 do you address that? I agree it's probably a smaller  
22 percentage of those areas than -- the areas that are less  
23 than 100 feet to groundwater are some pretty big areas down  
24 in the southeastern part of the state, you know? But  
25 there's others too that are not.

1 COMMISSIONER BAILEY: Just so long as we see that  
2 there are --

3 COMMISSIONER OLSON: Right.

4 CHAIRMAN FESMIRE: -- possible exceptions. A way  
5 to do it if it's --

6 COMMISSIONER BAILEY: Yeah, we can either have  
7 dig-and-haul as primary with a lot of exceptions, or have  
8 all of our criteria, and dig-and-haul is the exception.

9 CHAIRMAN FESMIRE: I'm going to vote the former.

10 COMMISSIONER OLSON: See, I was kind of thinking  
11 along the lines of -- well, that's what I had first thought  
12 of it, was saying, Okay, there's kind of a prohibition on,  
13 you know, the burial with these exceptions. That's kind of  
14 the way I was still thinking of it the way he's thinking of  
15 it too. So that makes it --

16 COMMISSIONER BAILEY: It all --

17 COMMISSIONER OLSON: It all ends up --

18 COMMISSIONER BAILEY: -- winds down --

19 COMMISSIONER OLSON: -- being the same thing, I  
20 agree.

21 COMMISSIONER BAILEY: -- being the same thing,  
22 yes.

23 CHAIRMAN FESMIRE: And I see your argument up in  
24 the northwest. You know, there may be a significant number  
25 up there that would end up being exceptions.

1           COMMISSIONER BAILEY: So we have exceptions in  
2 the rule and we're all down --

3           COMMISSIONER OLSON: Right.

4           COMMISSIONER BAILEY: -- to the same outcome  
5 anyway.

6           COMMISSIONER OLSON: Because I agree, my bigger  
7 problem is the southeast, I've seen so many areas down  
8 there just trashed with the salts, you know. And more of  
9 that's -- because, you know -- it's so funny, when I was  
10 here and folks saying, Here, well, we're doing this -- you  
11 know, the burrito system now. And I was like, Well, that's  
12 really recent, that's only happened in the last couple  
13 years, because --

14          CHAIRMAN FESMIRE: Since I've been here.

15          COMMISSIONER OLSON: Yeah, because actually when  
16 I left I could only think of 81 or so that had been done  
17 that way when I left --

18          CHAIRMAN FESMIRE: Right.

19          COMMISSIONER OLSON: -- here in 2004, so --

20          CHAIRMAN FESMIRE: Yates was starting to do a lot  
21 of the, though.

22          COMMISSIONER OLSON: Right. And so that's a real  
23 new thing now, so it's -- But there are so many older sites  
24 out there, you just go out there on that pad -- and part of  
25 it, you know, is caliche too, but then between the caliche

1 and the salts, you know, nothing is growing on that pad  
2 ever. There's some of those that have been sitting there  
3 for 50 years and there's still nothing on the pad except  
4 for a couple tumbleweeds or something, that's about it, you  
5 know?

6 CHAIRMAN FESMIRE: What about re-vegetation?

7 COMMISSIONER OLSON: That's what I was just --  
8 leads right into --

9 (Laughter)

10 COMMISSIONER BAILEY: What a nice segue.

11 The cumulative effects that the public sees has  
12 nothing to do with depth to water and whether or not  
13 they're buried. What they see is --

14 CHAIRMAN FESMIRE: -- is a bare spot.

15 COMMISSIONER BAILEY: -- a bare spot --

16 COMMISSIONER OLSON: Uh-huh.

17 COMMISSIONER BAILEY: -- that has so many years  
18 of no vegetation, a road leading to it, and just absolutely  
19 destroyed range land or whatever. So if there's a concern  
20 about cumulative effects, in my mind it's got to be taken  
21 into soil cover and re-vegetation.

22 And since we already threshed out with all of the  
23 experts what re-vegetation should look like at landfarms,  
24 it seems to me we should use the same criteria that we used  
25 for landfarms.

1 COMMISSIONER OLSON: Uh-huh.

2 CHAIRMAN FESMIRE: I agree with you, Jami.

3 COMMISSIONER BAILEY: So Cheryl can put that  
4 together.

5 As far as soil cover, we need to be sure that  
6 there is sufficient soil cover that we can actually have  
7 growing plants with a rooting --

8 MS. BADA: Are you okay --

9 COMMISSIONER BAILEY: -- level.

10 MS. BADA: -- with the proposed four foot?

11 COMMISSIONER OLSON: Well, I think everybody was  
12 in agreement with the four foot --

13 COMMISSIONER BAILEY: Yeah.

14 COMMISSIONER OLSON: -- it was just a matter of  
15 what you do at the surface.

16 COMMISSIONER BAILEY: Right.

17 MS. BADA: The other issue was, how much time do  
18 you want to give them?

19 COMMISSIONER BAILEY: Well, we need a time limit  
20 on when they have to begin their re-vegetation, and we have  
21 to give a time limit on when they are free of obligation.

22 COMMISSIONER OLSON: I thought the one that made  
23 more sense was, the two successive growing seasons doesn't  
24 mean it's two years in a row, it means --

25 COMMISSIONER BAILEY: No.

1           COMMISSIONER OLSON:  -- once you get it  
2 established you have two consecutive --

3           COMMISSIONER BAILEY:  But they need to --

4           COMMISSIONER OLSON:  -- seasons.

5           COMMISSIONER BAILEY:  -- begin that --

6           COMMISSIONER OLSON:  Right.

7           COMMISSIONER BAILEY:  -- re-vegetation --

8           COMMISSIONER OLSON:  That's right.

9           COMMISSIONER BAILEY:  -- by the next growing  
10 season after closure --

11          COMMISSIONER OLSON:  Right.

12          COMMISSIONER BAILEY:  -- of the pit.

13          CHAIRMAN FESMIRE:  And they're not released until  
14 they've had two successive, successful growing seasons.

15          COMMISSIONER BAILEY:  Right, right, but --

16          COMMISSIONER OLSON:  If it took them two years --

17          COMMISSIONER BAILEY:  -- when they --

18          COMMISSIONER OLSON:  If it took them two years to  
19 get a successful thing done, and it might be four years  
20 until they're really out of it.

21          COMMISSIONER BAILEY:  But they have to begin  
22 it --

23          COMMISSIONER OLSON:  They have to begin it,  
24 right.

25          COMMISSIONER BAILEY:  -- by the next growing

1 season.

2 COMMISSIONER OLSON: Right.

3 MS. BADA: So you basically want four years to  
4 succeed --

5 CHAIRMAN FESMIRE: No.

6 COMMISSIONER OLSON: No.

7 MS. BADA: -- to --

8 COMMISSIONER OLSON: Just a time frame for when  
9 they start.

10 CHAIRMAN FESMIRE: Yeah, begin it the next  
11 growing season, and then released after two successive --

12 MS. BADA: Do you want to give them 10 years?  
13 That's what I'm saying, do you want to have --

14 CHAIRMAN FESMIRE: If they want to draw it out --  
15 You know, the alternative is, they're released when they  
16 have been successful for two growing seasons in a row.

17 COMMISSIONER BAILEY: There is that --

18 COMMISSIONER OLSON: Well -- Yeah.

19 COMMISSIONER BAILEY: -- provision that they  
20 don't have to re-seed that second year if it is in a  
21 drought condition.

22 COMMISSIONER OLSON: That could be one way to do  
23 it.

24 COMMISSIONER BAILEY: I liked that language,  
25 because it took into account the fact that there are going

1 to be some bad years that you're just not going to be able  
2 to do it, and you're throwing money away and throwing seed  
3 to the birds. So I liked that language that was in that  
4 draft that I proposed.

5 MS. BADA: I was just wondering, if you don't put  
6 a time limit they could take 15 years. Do you want it  
7 there for 15 years?

8 COMMISSIONER OLSON: No, but then you have  
9 something more along the lines of what Jami said. You may  
10 have to keep re-seeding them. So there is an incentive for  
11 them --

12 COMMISSIONER BAILEY: Uh-huh.

13 COMMISSIONER OLSON: -- to get out of there,  
14 because they're spending by having to re-seed each year --

15 COMMISSIONER BAILEY: Uh-huh.

16 COMMISSIONER OLSON: -- essentially.

17 CHAIRMAN FESMIRE: Or -- Well, again we get into  
18 the drought problem. I was going to say, they have to re-  
19 seed every year beginning the first growing season after  
20 closure, but then, you know --

21 COMMISSIONER BAILEY: But an exception for  
22 drought.

23 CHAIRMAN FESMIRE: Yeah.

24 COMMISSIONER BAILEY: Yeah, I like that language,  
25 yes. That works.

1 MS. BADA: Because didn't Dr. Buchanan say if  
2 they don't actually succeed within four or five years, they  
3 probably --

4 CHAIRMAN FESMIRE: They should start over.

5 COMMISSIONER OLSON: They should -- right.

6 COMMISSIONER BAILEY: Yeah, they need to re-rip  
7 it, because clearly they have not --

8 COMMISSIONER OLSON: Uh-huh.

9 COMMISSIONER BAILEY: -- provided a good growing  
10 medium.

11 COMMISSIONER OLSON: Which is entirely possible.

12 MS. BADA: Right.

13 COMMISSIONER BAILEY: And then the interim  
14 reclamation, instead of waiting until the final  
15 reclamation, I think that is also important for public  
16 perception of what's going on there. And all of those  
17 photographs that we saw from ConocoPhillips showed --

18 MS. BADA: -- they do interim on a pad, though,  
19 or --

20 CHAIRMAN FESMIRE: Yeah --

21 MS. BADA: -- a pit --

22 COMMISSIONER BAILEY: They reduce it down to --

23 COMMISSIONER OLSON: They actually rip it and do  
24 a --

25 COMMISSIONER BAILEY: -- what's necessary.

1 MS. BADA: We're not talking --

2 COMMISSIONER OLSON: -- and rip it.

3 MS. BADA: -- about the whole drilling pads in  
4 this rule, we're only talking about the pits and the drying  
5 pads.

6 COMMISSIONER BAILEY: No, we're not. We're also  
7 talking about the roads that are required, all of that  
8 extra --

9 MS. BADA: That wouldn't fall under this rule --

10 COMMISSIONER BAILEY: Yes, it would, because it's  
11 the closed loop system. When you require --

12 MS. BADA: You could --

13 COMMISSIONER BAILEY: -- the closed loop system,  
14 you --

15 MS. BADA: You could for closed loop --

16 COMMISSIONER BAILEY: -- also require --

17 MS. BADA: -- you could for closed loop. But the  
18 others, you're going to have a tough time, because the rule  
19 doesn't deal with it.

20 COMMISSIONER BAILEY: But when you have that  
21 closed loop system, you have really destroyed a lot more of  
22 that location --

23 COMMISSIONER OLSON: Uh-huh.

24 COMMISSIONER BAILEY: -- than just the physical  
25 aspects of the pits. And so that whole location is going

1 to need to be reworked and interim reclaimed, down to what  
2 is needed for workover and operations.

3 COMMISSIONER OLSON: I would think you could do  
4 that, because you're talking about the activities that are  
5 going on --

6 MS. BADA: You could for the closed loop, but I  
7 think you're going to -- the problem with the others is,  
8 your rule is addressing pits, it's not addressing your  
9 drilling site. That is not the focus of that rule. So  
10 you're going beyond the scope of your rule if you're  
11 addressing the whole drilling site.

12 COMMISSIONER OLSON: Uh-huh.

13 COMMISSIONER BAILEY: But the testimony talked  
14 about drilling locations --

15 MS. BADA: I understand --

16 COMMISSIONER BAILEY: -- well sites.

17 MS. BADA: -- that the test- -- but your rule  
18 doesn't. So I don't think that's the place you would put  
19 it.

20 COMMISSIONER BAILEY: You have to.

21 MS. BADA: Your rule is dealing with the pit  
22 location, it's not the abandonment of the site and the --

23 COMMISSIONER OLSON: Well, I think we have to  
24 look at that, because I think that's the only place that  
25 reclamation and location appears in the regs, is in the --

1 MS. BADA: Well, when you abandon it talks about  
2 it. So I think you --

3 COMMISSIONER OLSON: Oh.

4 MS. BADA: -- can't. Yeah.

5 COMMISSIONER OLSON: But she's not talking about  
6 abandonment, not --

7 MS. BADA: No --

8 COMMISSIONER OLSON: -- the same --

9 MS. BADA: -- not for the interim, but --

10 COMMISSIONER BAILEY: No, for interim, that would  
11 be covering the pit areas, the road locations, the parking  
12 areas that were all part of the drilling operation.

13 COMMISSIONER OLSON: And this is related to the  
14 drilling operation. Well, it's -- No?

15 MS. BADA: Not really, it's dealing with your  
16 pits.

17 COMMISSIONER OLSON: Uh-huh.

18 MS. BADA: The problem is, you're beyond the  
19 scope of the rule. It's not a wellsite rule, it's a -- I  
20 think you can get there for your closed loop area, but I  
21 don't know that you'd get there on your pits.

22 COMMISSIONER BAILEY: But it's not just the area  
23 of the closed loop, it's all of the -- they talked about  
24 that for safety reasons they had to have a drying pad, they  
25 had to have the perimeter roads, they had to have all the

1 extra parking and maneuvering areas --

2 COMMISSIONER OLSON: I think she's saying you  
3 could probably do it for those --

4 MS. BADA: Yeah --

5 COMMISSIONER OLSON: -- she's just wondering  
6 about the -- if you used an actual pit versus a closed  
7 loop, that you could only really -- I think that's what I  
8 hear Cheryl saying, is that you could only really do it for  
9 the pit, because that's what the rule is envisioning.

10 But she's saying for the closed loop systems,  
11 because you are requiring a larger area as part of that --

12 COMMISSIONER BAILEY: All disturbed area --

13 COMMISSIONER OLSON: -- could do it --

14 CHAIRMAN FESMIRE: That's the way to put it,  
15 all --

16 COMMISSIONER BAILEY: -- all disturbed --

17 CHAIRMAN FESMIRE: -- all disturbed area during  
18 the drilling operations, or --

19 COMMISSIONER BAILEY: Yes.

20 CHAIRMAN FESMIRE: -- you know, something. Would  
21 that be outside the scope?

22 MS. BADA: You're not dealing with your drilling,  
23 you're dealing with your pits and your below grade tanks  
24 and your -- Yeah, the closed loop you probably can because  
25 it addresses them. But it doesn't really address your --

1 where your rig is at or your -- this rule doesn't.

2 That's why I think you probably need a rule that  
3 does that, I just don't think this is the mechanism to get  
4 there. I certainly think you need a rule that addresses  
5 your drilling site and your -- all the disturbed areas that  
6 ago with that, but I don't -- This isn't that rule.

7 CHAIRMAN FESMIRE: So pits and areas disturbed  
8 during drilling.

9 MS. BADA: Uh-huh --

10 CHAIRMAN FESMIRE: This is a reclamation --

11 MS. BADA: -- well, pits basically -- pits are  
12 things used for your closed loop system.

13 COMMISSIONER BAILEY: And tanks. I mean,  
14 wherever they have tanks we're going to have issues,  
15 wherever they have --

16 CHAIRMAN FESMIRE: Pits, tanks, closed loop  
17 systems, roads --

18 MS. BADA: That I don't think is the problem --

19 CHAIRMAN FESMIRE: -- used during the use of the  
20 closed --

21 MS. BADA: -- I think the problem --

22 CHAIRMAN FESMIRE: -- closed loop --

23 MS. BADA: -- is where your drilling rig was.

24 COMMISSIONER BAILEY: All disturbed areas, all  
25 areas necessarily disturbed --

1 MS. BADA: -- or pits, closed loop systems,  
2 tanks --

3 COMMISSIONER BAILEY: -- access --

4 MS. BADA: Well, access --

5 COMMISSIONER BAILEY: Access to the pits.

6 MS. BADA: Yeah, access to the pits, those  
7 things, I think --

8 COMMISSIONER OLSON: Uh-huh.

9 MS. BADA: -- you could get there. I -- You  
10 know, I wish I could tell you that you could do one that  
11 would deal with the wells --

12 COMMISSIONER OLSON: But if you actually deal  
13 with the areas that are disturbed as part of the disposal,  
14 the waste management and disposal issues, you're going to  
15 cover the bulk of it, I would think.

16 COMMISSIONER BAILEY: Maybe.

17 COMMISSIONER OLSON: Yeah. Well, there's --  
18 You're right.

19 MS. BADA: No, I absolutely agree you need a rule  
20 to do that, I just think a lot of it is beyond the scope of  
21 this rule.

22 COMMISSIONER BAILEY: So when you do a P-and-A  
23 rule, then yes, we'll do it again there.

24 MS. BADA: Yes, absolutely.

25 CHAIRMAN FESMIRE: -- do another rule.

1 COMMISSIONER BAILEY: Huh?

2 (Laughter)

3 COMMISSIONER BAILEY: I hear you all are working  
4 on several more.

5 CHAIRMAN FESMIRE: That's a scare.

6 MS. BADA: Yeah, I think that is probably the  
7 more appropriate place for the rest of this.

8 COMMISSIONER BAILEY: Why not make it as broad as  
9 you possibly can?

10 CHAIRMAN FESMIRE: -- and still stay within  
11 the --

12 COMMISSIONER OLSON: -- the framework of --

13 COMMISSIONER BAILEY: Yes.

14 COMMISSIONER OLSON: -- what was submitted.

15 COMMISSIONER BAILEY: Not strict construction,  
16 broad construction.

17 MS. BADA: Anything we can do to tie it to the  
18 pit and the closed loop.

19 COMMISSIONER BAILEY: Yes.

20 COMMISSIONER OLSON: Okay.

21 CHAIRMAN FESMIRE: Okay. Anything else we need  
22 to discuss?

23 COMMISSIONER OLSON: Well, we probably need to  
24 deal with -- what we got the legal briefs on was surface  
25 owner approval. That will be a big issue. We already took

1 care of the briefs on the commerce clause, because we  
2 hacked out the hundred-mile radius, so that's okay. We  
3 still have this issue of, do we have the support for  
4 surface owner approval, based upon the briefs that were  
5 given to us.

6 And I think we do. I read them all, you know. I  
7 don't see where landfilling on somebody's property is --

8 COMMISSIONER BAILEY: Yeah, but I don't think  
9 it's landfilling, and I think it goes beyond the scope of  
10 SOPA. I think it's giving you additional authorities to  
11 surface owners that are not part of SOPA.

12 COMMISSIONER OLSON: Well, you know, we do it  
13 through the landfarms already. The landfarms require them  
14 to provide proof of approval from the landowner to use the  
15 site.

16 CHAIRMAN FESMIRE: You have the small landfarms?

17 COMMISSIONER OLSON: The small landfarms require  
18 that already too. And I was looking at it, it's just  
19 consistent, too, with what we did there. I still think of  
20 it as kind of landfilling on somebody's property, but --  
21 even though I agree. You need to have the pit to be able  
22 to drill a well. But that part of it is necessary for  
23 production of the minerals, but then you don't necessarily  
24 have to bury it on site, you know, as -- to produce the  
25 minerals. That's the way I'm thinking of it.

1           COMMISSIONER BAILEY:  If we have to go that way,  
2 then we have to have an exception -- or an appeal, because  
3 I have seen and heard too many ranchers who extort money  
4 out of industry --

5           COMMISSIONER OLSON:  Uh-huh, I know some  
6 examples.

7           COMMISSIONER BAILEY:  -- and this would be a  
8 prime source of --

9           COMMISSIONER OLSON:  Uh-huh.

10          COMMISSIONER BAILEY:  -- extortion money --

11          COMMISSIONER OLSON:  Uh-huh.

12          COMMISSIONER BAILEY:  -- and I am saying that on  
13 the record.  So we have to have some sort of appeal or OCD  
14 to overrule it or something, so that we don't just shut it  
15 down because of the ag. people, especially when there's the  
16 question whether giving the surface owner those rights -- I  
17 cannot agree with.

18          COMMISSIONER OLSON:  Yeah, I'm not sure I agree,  
19 but --

20          MS. BADA:  I think what you need to focus on,  
21 surface owner approval and protect groundwater or the  
22 environment or public health.  That's what you need to  
23 focus on, whether that does that.

24          COMMISSIONER BAILEY:  Whether the what?

25          MS. BADA:  Whether having surface owner approval

1 somehow protects the environment, protects groundwater or  
2 protects public health. That's really your mission. So  
3 you need to figure out, does it do that? And if so, how?

4 COMMISSIONER OLSON: Because see, we're already  
5 requiring that for small landfarms.

6 COMMISSIONER BAILEY: But that's separate from  
7 what she's saying.

8 COMMISSIONER OLSON: Uh-huh. But then if you  
9 take that -- if it has to be directly for those criteria --

10 MS. BADA: Because if you're looking at  
11 whether --

12 COMMISSIONER OLSON: -- then what we adopted  
13 there was not correct.

14 MS. BADA: Because --

15 COMMISSIONER BAILEY: They just need to challenge  
16 it.

17 COMMISSIONER OLSON: Uh-huh.

18 MS. BADA: But there you really are using the  
19 surface. You are, a small landfarm.

20 COMMISSIONER BAILEY: You know, the last time --

21 MS. BADA: I mean, there's the question --

22 COMMISSIONER BAILEY: -- I checked, about a month  
23 ago, not one small landfarm had been registered. None. So  
24 that's not being used by anybody.

25 MS. BADA: I think you have a much different

1 argument with appropriating somebody's surface. I think  
2 that's really difficult, to show how that's reasonable use  
3 of the surface, to access minerals if you're landfarming.  
4 I think that's tough.

5 COMMISSIONER BAILEY: Uh-huh.

6 MS. BADA: Burials are much --

7 COMMISSIONER BAILEY: If there's effective use --

8 MS. BADA: -- much more up in the air --

9 COMMISSIONER BAILEY: -- of the surface --

10 MS. BADA: -- much more in the air, you know, and  
11 I don't think that's your role as the Commission, to  
12 determine whether it's reasonable use or not reasonable  
13 use. What you need to be focusing on is --

14 CHAIRMAN FESMIRE: So I think counsel has given  
15 us the recommendation that perhaps, in your opinion, our  
16 interpretation is too broad, and that it -- Is what you're  
17 saying that our interpretation is too broad, and it would  
18 be outside of our authority to prevent waste, protect  
19 correlative rights and protect human health and the  
20 environment?

21 MS. BADA: I'm not saying that it is. I'm saying  
22 that if you go that way, you need to determine how it  
23 accomplishes that.

24 COMMISSIONER OLSON: Well, I was thinking of it  
25 more along the lines of what was in Mr. Brooks' legal

1 brief, that you still have to show that you have the legal  
2 right to conduct the activity that you want to do. Because  
3 that's not necessary for development of the minerals,  
4 you've got to have -- show that you have the legal right to  
5 do it. And he was using other actions that we've done like  
6 with TMBR/Sharp and Chaparral.

7 MS. BADA: It's something you might consider.

8 COMMISSIONER OLSON: And the landfarming, I was  
9 thinking, falls in the same thing, that you -- all that was  
10 having to show that you had a legal right to do the  
11 activity that you're even asked of the Division for.

12 So if you didn't have a legal right to enter and  
13 do that, then why would we be even approving it? I mean,  
14 that's --

15 COMMISSIONER BAILEY: But OCD does not want to  
16 get involved in title disputes.

17 COMMISSIONER OLSON: Uh-huh. That's why I  
18 wouldn't want to see exceptions -- you know, if there's a  
19 problem coming to us, but I would just think, hey, you've  
20 got to get the landowner approval.

21 But I agree, there's certain folks -- I know  
22 certain people that would gladly say, Okay, yeah, if you  
23 pay me fifty-grand I'll let you do it, you know? So --

24 COMMISSIONER BAILEY: Yeah, there's no limit --

25 COMMISSIONER OLSON: Uh-huh.

1 COMMISSIONER BAILEY: -- on the --

2 COMMISSIONER OLSON: Right.

3 COMMISSIONER BAILEY: -- rate that they would  
4 charge.

5 COMMISSIONER OLSON: Uh-huh.

6 COMMISSIONER BAILEY: But SOPA does have certain  
7 criteria that say the landowner has certain rights, then if  
8 there's no meeting of the minds, the company can still go  
9 in there and --

10 COMMISSIONER OLSON: Uh-huh.

11 COMMISSIONER BAILEY: -- take care of business  
12 because of the bond. There's no such provision in the way  
13 this is drafted up.

14 COMMISSIONER OLSON: I'm just not sure I agree  
15 that -- actually that they can come in and go do -- and  
16 drill the well, I'm just not sure I agree with the land --  
17 I still consider it like a landfilling on the property when  
18 you're burying something on somebody else's property, so --  
19 but that's necessary for the production of the minerals.

20 I mean, it's -- may be necessary to have the pit,  
21 to come in, access it, drill it, do all that. That's where  
22 I'm kind of having the disconnect that actual burial on  
23 somebody else's property is actually necessary, especially  
24 where most of it's going to occur -- is going to be in the  
25 southeast where we have the real problems, you know?

1           COMMISSIONER BAILEY: Which is where the  
2 extortion happens too.

3           COMMISSIONER OLSON: Which is where that happens.

4           CHAIRMAN FESMIRE: I'll bet you could give us a  
5 couple of names, couldn't you?

6           (Laughter)

7           COMMISSIONER OLSON: I can give you a couple too.

8           That one might take some more discussion, because  
9 that's kind of -- I'll admit -- I know Cheryl says that,  
10 but I still kind of -- you know, on that argument that if  
11 you don't have a legal right to do it, how can you --

12           MS. BADA: That's one thing to look at, but I  
13 think that has to be where we're coming from --

14           COMMISSIONER OLSON: And I was looking at it that  
15 that's consistent with the other --

16           MS. BADA: And I also think it's --

17           COMMISSIONER OLSON: -- with the interactions  
18 that --

19           MS. BADA: -- I also think you need to look at  
20 how it ties in with what you need to protect.

21           COMMISSIONER OLSON: Right.

22           COMMISSIONER BAILEY: With our legislative duty.

23           COMMISSIONER OLSON: Uh-huh.

24           MS. BADA: Now whether -- you know, if that is  
25 what you need to know, if they have a legal right to do it,

1 that may be something to consider, but --

2 CHAIRMAN FESMIRE: That would be a question we'd  
3 need to ask, you know, get them to represent to us that  
4 they have a legal right to do it, because --

5 COMMISSIONER OLSON: Because don't they have it  
6 signed in the APD now, right? That they have a legal right  
7 to drill at that --

8 CHAIRMAN FESMIRE: Yeah.

9 COMMISSIONER OLSON: -- location. Then they'd  
10 have to -- So I was thinking along the same lines of all  
11 those things, is why I was -- where I was coming back to  
12 that. But I wasn't thinking of it for -- as -- it's not  
13 necessarily a -- Landowner approval, that doesn't mean that  
14 it's protecting groundwater or public health or --

15 COMMISSIONER BAILEY: But if SOPA didn't go so  
16 far --

17 COMMISSIONER OLSON: Uh-huh.

18 COMMISSIONER BAILEY: -- as to allow the surface  
19 owner to absolutely veto, then we would be overstepping.

20 COMMISSIONER OLSON: But see, I don't see it as a  
21 veto, because that --

22 MS. BADA: I think the problem is, you do not  
23 have any definitive case saying whether burial on site is  
24 reasonable access to the surface. You just don't. And as  
25 long as that's not out there, you're -- it's an open

1 question.

2 COMMISSIONER BAILEY: Uh-huh.

3 COMMISSIONER OLSON: As long as what they have --  
4 and that's the case, that's -- it's dig-and-haul, doesn't  
5 mean you can't drill it, just you've got to -- in that  
6 circumstance, you've got to dig-and-haul it, you know?

7 MS. BADA: I mean, there are opinions on both  
8 sides of it, that's reasonable access.

9 COMMISSIONER OLSON: Uh-huh.

10 MS. BADA: We don't have a decision out.

11 COMMISSIONER BAILEY: And until the Legislature  
12 or the courts give some guidance on that --

13 COMMISSIONER OLSON: Uh-huh.

14 COMMISSIONER BAILEY: -- I don't see us as being  
15 the test case.

16 MS. BADA: As you might be, if you include it.

17 COMMISSIONER OLSON: Because the other aspect  
18 that that was coming down, this is coming more to the  
19 burrito system, because you're leaving high-level wastes  
20 behind.

21 What I was looking at, you know, if something is  
22 buried on the site, then there should be some kind of a  
23 deed notice to it, so how does somebody know in the future  
24 not to go dig it up? Now I don't know if that's  
25 necessarily as important if you're only leaving levels that

1 aren't really causing a problem, that can be left on the  
2 surface. Then the only thing you've really got is the  
3 plastic, you're not leaving out -- it's not -- not like  
4 you're going to go through and dig up, you know, 80,000  
5 chlorides and end up spreading it all around and causing a  
6 problem.

7           Because I was looking at that when they were  
8 talking about the burrito, is just to -- thinking, you  
9 know, you'd need to somehow notice that. That's what --  
10 part of the problem is where they came up with the Shell-  
11 Westgate, here it was you had something that was buried in  
12 the '50s that nobody had any idea was even there, just  
13 covered up.

14           COMMISSIONER BAILEY: Wasn't there a P-and-A  
15 marker --

16           COMMISSIONER OLSON: No, there --

17           COMMISSIONER BAILEY: -- or a well marker? No  
18 well marker there?

19           COMMISSIONER OLSON: No, there was just an old  
20 pit that was there. It wasn't a drilling pit, this was  
21 actually an old production pit.

22           COMMISSIONER BAILEY: So there was a well  
23 somewhere in the vicinity.

24           COMMISSIONER OLSON: Yeah, the well is about --  
25 It's still an active well. It's over -- it was probably

1 150 feet away, something like that.

2 COMMISSIONER BAILEY: Okay, and there was a  
3 marker on the well?

4 CHAIRMAN FESMIRE: No, it was an active --

5 COMMISSIONER OLSON: It's an active well --

6 COMMISSIONER BAILEY: It's an active well --

7 COMMISSIONER OLSON: -- you know.

8 COMMISSIONER BAILEY: -- okay. So what I was  
9 going to throw out was, on the C-102, why not require  
10 locations of the pits as part of the APD approval of the  
11 C-101 and -102? And that way, there is a permanent record,  
12 and anybody who sees either a well or a dryhole marker, a  
13 plug marker, could always go to the OCD to find where the  
14 pits are.

15 COMMISSIONER OLSON: Well, I don't have a problem  
16 with that, but I don't think they're going to go to OCD if  
17 they're drilling like a -- you know, the property  
18 transaction, somebody buys the property, they don't  
19 necessarily go to OCD to look if there's -- see if there's  
20 something there, you know?

21 I was thinking along the lines of -- and I'll  
22 admit, I was thinking of this for the cases we were talking  
23 about from both the industry committee and OCD of leaving  
24 something in place that's like 70,000 to 100,000 chlorides.  
25 In that kind of case, the whole point to having the burrito

1 there is, you don't want to disturb it in the future.

2 COMMISSIONER BAILEY: Uh-huh.

3 COMMISSIONER OLSON: But there's less of a  
4 concern with, you know, tacos that meet the --

5 CHAIRMAN FESMIRE: -- requirement --

6 COMMISSIONER OLSON: -- the surface requirements.  
7 If it can be left on the surface, obviously that -- it's  
8 not really posing a threat at that point. You may still  
9 have some incidental metals and other things, but the  
10 volume of that is a lot less, so...

11 CHAIRMAN FESMIRE: Cheryl, would we have the same  
12 kind of problem if we required notice, rather than consent?

13 MS. BADA: Actually, I don't think so. The only  
14 question you might have is how long the county clerk will  
15 actually keep the deed --

16 COMMISSIONER BAILEY: No, you all are talking two  
17 different things. He's gone back to SOPA approval.

18 COMMISSIONER OLSON: Well, he was speaking of it  
19 in terms of the protection of fresh waters, public health  
20 and the environment. I think you do have -- I think  
21 there's a good rationale for it there, just because you  
22 could say, Hey, look, we're trying to -- I need to protect  
23 public health from direct access to the materials, you  
24 know. So you don't want people not knowing that they're  
25 digging these things up --

1 CHAIRMAN FESMIRE: Exactly.

2 COMMISSIONER OLSON: -- you know? So I think  
3 there's more justification in that -- for that.

4 MS. BADA: I think the deed notice -- you know,  
5 how effective it actually is in reality and --

6 COMMISSIONER OLSON: Right.

7 MS. BADA: -- how the county clerks would  
8 implement it and -- Yeah, I think as far as --

9 COMMISSIONER OLSON: And whether --

10 MS. BADA: -- it's easily justi- --

11 COMMISSIONER OLSON: Whether a title company will  
12 really pick that up is --

13 MS. BADA: Yeah.

14 COMMISSIONER OLSON: -- might be another story,  
15 but at least you've tried to make an attempt to alert  
16 future landowners to the things actually there, so...

17 And that could be a way around doing surface  
18 owner approval too, potentially, and say -- because there  
19 is a justification for the noticing of it.

20 COMMISSIONER BAILEY: So if they can prove that  
21 they have provided notice to the surface owner that they're  
22 going to --

23 COMMISSIONER OLSON: No, this would be actually  
24 putting some type of a -- something --

25 MS. BADA: Filing a notice.

1 COMMISSIONER OLSON: Filing a notice with the --  
2 MS. BADA: -- county --  
3 COMMISSIONER OLSON: -- county --  
4 MS. BADA: -- clerk --  
5 COMMISSIONER OLSON: -- that this --  
6 MS. BADA: -- that certain property, there's --  
7 COMMISSIONER BAILEY: So the location of the pit?  
8 COMMISSIONER OLSON: Uh-huh.  
9 COMMISSIONER BAILEY: Okay.  
10 COMMISSIONER OLSON: So it should show up if  
11 there's a title -- you know, a title search on the  
12 property. It should show up as attached to that property.  
13 COMMISSIONER BAILEY: Okay.  
14 MS. BADA: That, I don't think, presents any  
15 problem. You know, the practicalities of it may.  
16 COMMISSIONER OLSON: Yeah.  
17 MS. BADA: We may learn as we go.  
18 COMMISSIONER OLSON: Right.  
19 CHAIRMAN FESMIRE: Well, I understand Jami's  
20 argument, I understand the arguments in the briefs. And I  
21 understand what you're saying, that that may be outside  
22 what we're capable of doing.  
23 So I would say that -- you know, that there's  
24 evidence in the record to support a notification  
25 requirement, but not a -- and Bill, I --

1           COMMISSIONER OLSON: We may disagree, but  
2 that's --

3           CHAIRMAN FESMIRE: Well, I see your point.  
4 Believe me, I see your point. But I think it's --

5           COMMISSIONER OLSON: Because I just kind of stick  
6 to the side of the -- of what was brought up, that you  
7 still need to show that you've got a legal right to do what  
8 you're doing.

9           CHAIRMAN FESMIRE: And we do have that  
10 requirement.

11          COMMISSIONER OLSON: Uh-huh.

12          CHAIRMAN FESMIRE: The break there is whether  
13 that legal right to drill a well includes the legal right  
14 to leave the --

15          COMMISSIONER OLSON: Right.

16          CHAIRMAN FESMIRE: -- material on site.

17          COMMISSIONER OLSON: Which hasn't really been  
18 decided in any conclusive way.

19          CHAIRMAN FESMIRE: And my reasoning is that what  
20 you're talking about may be important, if they have that  
21 right, it may be a tort --

22          COMMISSIONER OLSON: Uh-huh.

23          CHAIRMAN FESMIRE: -- but that may be, in some  
24 circumstances, outside of our realm of responsibility.

25          COMMISSIONER OLSON: Well, if you filed a deed

1 notice on my probably, you'd probably have a tort.

2 (Laughter)

3 MS. BADA: If you bury it in place on my property  
4 you'd probably have a lawsuit --

5 (Laughter)

6 MS. BADA: -- but that's a whole 'nother story.

7 COMMISSIONER BAILEY: But that does bring up,  
8 should the C-102s indicate where the pits are going to be?

9 MS. BADA: I think that is --

10 COMMISSIONER OLSON: I think it should, you know,  
11 uh-huh. There should be final records filed with the  
12 Division of the -- because actually, by the time you've  
13 done the final closure, you -- that's what should really be  
14 definitive of where it was located, you know. Because  
15 things might change --

16 COMMISSIONER BAILEY: Okay, so that would be with  
17 the C-105, along with --

18 COMMISSIONER OLSON: Right.

19 COMMISSIONER BAILEY: -- completion record --

20 COMMISSIONER OLSON: Right.

21 COMMISSIONER BAILEY: -- have a plat indicating  
22 where the pits --

23 COMMISSIONER OLSON: Right.

24 COMMISSIONER BAILEY: -- are located in  
25 relationship to the wellbore.

1 COMMISSIONER OLSON: As part of the closure,  
2 uh-huh.

3 MS. BADA: C-105 is the closure, and then C-102  
4 is the APD?

5 CHAIRMAN FESMIRE: The proposed pit -- yeah,  
6 proposed drilling --

7 MS. BADA: Well -- Yeah.

8 COMMISSIONER OLSON: You have a proposal and a  
9 final, it might change, but --

10 MS. BADA: Yeah, okay.

11 CHAIRMAN FESMIRE: Okay, we can leave it like  
12 that. Okay?

13 Any other issues that we might be able to bring  
14 up?

15 MS. BADA: What else? Below grade tanks --

16 COMMISSIONER OLSON: Oh, did we talk about the --  
17 yeah, the soil criteria for the -- if you're doing the dig-  
18 and-haul, you've got to take samples from below the -- soil  
19 samples from below the pit --

20 MS. BADA: Yeah, so what criteria would you --

21 COMMISSIONER OLSON: -- one of your criteria for  
22 the triggers, and I think we talked about, again, the  
23 landfarm criteria as the triggers.

24 CHAIRMAN FESMIRE: Is that going to be  
25 sufficient, and then dig-and-haul?

1           COMMISSIONER OLSON: I think it is, because it  
2 would be -- you're back to the same thing again, you'd be  
3 able to leave it on the site. Maybe not for -- you still  
4 need the TPH levels and the BTEX levels. In terms of  
5 chloride, I think you could just use the 500 and the 1000  
6 as a trigger level, and if it's above that, obviously you  
7 had some kind of a release that was a little bit more  
8 significant, and then you need to delineate what the extent  
9 of the contamination is. But it's still not necessarily  
10 going to be the cleanup level, it just means you had  
11 something to look at, to see if it's going to --

12           COMMISSIONER BAILEY: Or background.

13           COMMISSIONER OLSON: Yeah, or -- Yeah, you're not  
14 going to really see that in terms of chloride, but TPH, you  
15 will see natural background in the TPH, which could be up  
16 around 50 sometimes.

17           MS. BADA: So did you want to do the TPH, or what  
18 was the industry's, the DRO and the GRO?

19           CHAIRMAN FESMIRE: Well, I think the TPH -- you  
20 know, to my way of thinking the TPH is a better indicator.  
21 The DRO/GRO dichotomy I understand, but I think that what  
22 we're looking for in the TPH is a better way of handling  
23 it. I mean -- but I'll defer to Bill on that.

24           COMMISSIONER OLSON: Well actually, no, I would  
25 agree because what you can do is use it as a measure of

1 gross contamination. And all you're trying to do from  
2 there is say something happened, and we need to look at it  
3 more.

4 And then when you come back to it, it's the same  
5 thing when you do any risk assessment, then you go and  
6 define what you've got. It might be a couple borings or  
7 maybe even be a backhoe. And if you don't have anything  
8 very extensive, then you could come back and say, Well, we  
9 also did a GRO/DRO, and the extent of the contamination  
10 only went 10 feet, so therefore we propose to leave it in  
11 place. And that would be approved, especially if you're  
12 100 feet to water or something like that.

13 But it's not a cleanup level, that's the  
14 distinction that's always confused on those trigger levels,  
15 is that -- one, it's just that something's happened, we  
16 need to just make sure that it wasn't a problem. And it  
17 doesn't mean it can't be left in place, though,  
18 necessarily. It may or may not be able to be left in  
19 place.

20 COMMISSIONER BAILEY: Then that needs to be  
21 clarified --

22 COMMISSIONER OLSON: Right.

23 COMMISSIONER BAILEY: -- because a lot of people  
24 fall into that.

25 COMMISSIONER OLSON: Right, and that's a real

1 common misperception with industry all the time, that the  
2 delineation level is not necessarily cleanup level. It's  
3 just that you need to delineate it and see what kind of --  
4 extent of a problem you had.

5 So you might just need to clarify that, that it's  
6 a trigger for -- maybe just say it's a trigger for  
7 delineation purposes, but it's not necessarily cleanup  
8 level. Because that's the confusion --

9 COMMISSIONER BAILEY: Right.

10 COMMISSIONER OLSON: -- that comes up all the  
11 time.

12 MS. BADA: And where is your cleanup level  
13 determined? Which rules?

14 COMMISSIONER OLSON: It's in -- I think it's in  
15 for closure. We'll have to look at that, because I --  
16 there's two different places that it appears. One is for  
17 closure, and another one is for looking underneath the  
18 liner, and I think it's -- maybe it's also in the closure  
19 too.

20 COMMISSIONER BAILEY: I think that's in closure  
21 too.

22 COMMISSIONER OLSON: Yeah.

23 COMMISSIONER BAILEY: Is there any difference in  
24 reliability of field tests for TPH, as opposed to DRO/GRO?

25 COMMISSIONER OLSON: Well, actually, see, there's

1 a lot more methods for -- there's some ways you can go out  
2 and do field TPHs. I've seen a lot of folks do them. They  
3 take, you know, the equipment out there, and they've got  
4 some little calibration kits, they're actually running the  
5 stuff in the field. You can't do GRO/DRO in the field  
6 unless you've got a pretty sophisticated --

7 CHAIRMAN FESMIRE: You've got --

8 COMMISSIONER BAILEY: Then doesn't TPH --

9 CHAIRMAN FESMIRE: -- to have a lab.

10 COMMISSIONER BAILEY: -- make more sense?

11 COMMISSIONER OLSON: You've got to have a lab.

12 Really, that's why I thought TPH makes more sense as just a  
13 measure of gross contamination.

14 But again, we just might need to make clear, this  
15 is for a trigger for a release --

16 CHAIRMAN FESMIRE: Further investigation.

17 COMMISSIONER OLSON: -- further investigation,  
18 delineation, as part of a release, then, and it's not  
19 necessarily the cleanup level. It could be, but -- If it's  
20 below that, it is the cleanup level, you know?  
21 Essentially. If it's above that, then you need to do some  
22 investigation.

23 And that way we've given them some allowance for  
24 the chlorides, to get -- you know, it's not 250, okay,  
25 well, we can go with the same criteria. If you're in that

1 50- to 100-foot depth to groundwater, you can use -- you  
2 know, 500 would be the trigger level. If you're above 100,  
3 you can use 1000 as the trigger level. It gives them a  
4 little bit of -- industry a little bit more wiggle room  
5 than for -- and it's what we'd allow anyways, on the  
6 surface. So if we allowed it there and we're allowed to  
7 bury it, why wouldn't it also be the delineation -- the  
8 trigger level for investigation, makes sense.

9 CHAIRMAN FESMIRE: Any other subjects?

10 COMMISSIONER OLSON: I'm sure there are.

11 (Laughter)

12 COMMISSIONER OLSON: There's starting to be less  
13 of them, though.

14 How about in your notes, do you have anything  
15 that's --

16 MS. BADA: Siting requirements.

17 COMMISSIONER OLSON: Yeah, we had the --

18 COMMISSIONER BAILEY: Or the distance to  
19 watercourses --

20 COMMISSIONER OLSON: -- the distances --

21 COMMISSIONER BAILEY: -- and all that.

22 MS. BADA: Yeah.

23 COMMISSIONER OLSON: Yeah.

24 CHAIRMAN FESMIRE: The concern there, at least  
25 from what I understood from the testimony, is that, you

1 know, the little rivulets that they've got in the northwest  
2 -- and we recognize that that's a problem. I think we've  
3 gotten around it by practice up there, but I think the  
4 concern is that by putting it in this rule, that we're  
5 going to somehow change the practice.

6 COMMISSIONER OLSON: Well, it's open to an  
7 interpretation. I think that's what industry is more  
8 worried about.

9 MS. BADA: Which watercourses are you really  
10 looking at? Are you looking at the perennials, the  
11 intermittents, the --

12 COMMISSIONER OLSON: Well, you are looking at  
13 intermittents because there's, you know, large-scale  
14 intermittents.

15 Now when we did the vulnerable area mapping, that  
16 was not mapping every rivulet, that mapped systems that had  
17 names. So that's -- And that's what I think industry has  
18 proposed here, is that it's, you know, something with a  
19 defined bed and bank. They took off on that idea, the way  
20 we mapped it for vulnerable areas in the latest --

21 COMMISSIONER BAILEY: Uh-huh.

22 COMMISSIONER OLSON: -- submittal they gave us,  
23 and they said they were going to make that change.

24 And so they're saying now it's a defined bed and  
25 bank that's named on a USGS Quad like, you know, Largo

1 Wash, everything that's got a name.

2 MS. BADA: Are they all named?

3 COMMISSIONER OLSON: You'll have -- there's still  
4 some pretty good size -- I won't say pretty good size, I  
5 would say there's some that are going to be a little bit  
6 larger that don't have a name, you know?

7 COMMISSIONER BAILEY: The ones out in Eldorado  
8 even have names --

9 COMMISSIONER OLSON: Right, most --

10 COMMISSIONER BAILEY: -- and Galisteo has names.

11 COMMISSIONER OLSON: -- of those do, uh-huh.

12 COMMISSIONER BAILEY: I mean, so those are pretty  
13 well defined as --

14 COMMISSIONER OLSON: Right.

15 COMMISSIONER BAILEY: -- the intent, with the  
16 names.

17 COMMISSIONER OLSON: Because then you can expand  
18 it from there. They say it's either named on a 7-minute  
19 quad or a first- --

20 COMMISSIONER BAILEY: -- first-order

21 COMMISSIONER OLSON: -- -order tributary --

22 COMMISSIONER BAILEY: -- to such a watercourse,  
23 which --

24 COMMISSIONER OLSON: -- to such a watercourse --

25 COMMISSIONER BAILEY: -- really expands the --

1 COMMISSIONER OLSON: -- which is actually a  
2 little larger than I was thinking.

3 COMMISSIONER BAILEY: Yeah.

4 COMMISSIONER OLSON: Yeah. So I think -- I don't  
5 know, I don't really have a problem with what industry  
6 is --

7 MS. BADA: My only suggestion is that we would  
8 define significant watercourse in the definitions, in  
9 section 7.

10 COMMISSIONER BAILEY: Instead of just having  
11 it --

12 MS. BADA: Yes.

13 COMMISSIONER BAILEY: -- incorporated in section  
14 10 --

15 COMMISSIONER OLSON: Right --

16 COMMISSIONER BAILEY: -- part 10?

17 COMMISSIONER OLSON: -- so you take this out and  
18 make it a definition.

19 MS. BADA: Yeah.

20 COMMISSIONER BAILEY: Bill, what do you think  
21 about the portion that says if that watercourse drains an  
22 area of at least five square miles?

23 COMMISSIONER OLSON: That's hard to measure.

24 CHAIRMAN FESMIRE: Yeah.

25 COMMISSIONER BAILEY: That does remove the very

1 small ones, but there's so much judgment involved in that.

2 COMMISSIONER OLSON: Uh-huh.

3 CHAIRMAN FESMIRE: Right. I think it's  
4 definitive enough without that --

5 COMMISSIONER OLSON: Yeah --

6 CHAIRMAN FESMIRE: -- last phrase.

7 COMMISSIONER OLSON: -- that's what I was  
8 thinking.

9 MS. BADA: Still a first-order tributary?

10 COMMISSIONER OLSON: Right.

11 CHAIRMAN FESMIRE: Of -- well, let's see.

12 COMMISSIONER OLSON: Because you get some -- like  
13 for Largo Wash, you get some pretty significant first-order  
14 tributaries that feed that, that have clear beds and banks.  
15 And like it says here, it's got to have -- it still has to  
16 have a defined bed and bank to be -- even in the first-  
17 order tributary. Because you're going to get up to some  
18 upper part of it where you get in that upper part of that  
19 watershed with that -- and that bed and bank is going to  
20 start disappearing.

21 And admittedly, that's getting a little  
22 questionable where you're stopping. But I kind of like  
23 that they're giving a little more clarity to that, and it  
24 helps, you know, industry.

25 I just -- I have a hard time with the five square

1 miles like you, Mark, just because that's -- now you have  
2 to start mapping all those things out.

3 CHAIRMAN FESMIRE: And measuring and  
4 planimetering --

5 COMMISSIONER OLSON: Measuring them, yeah.

6 COMMISSIONER BAILEY: Yeah, if we just delete  
7 that it's okay with me.

8 COMMISSIONER OLSON: Right, and then make it a  
9 definition, uh-huh.

10 CHAIRMAN FESMIRE: I think that we're getting a  
11 little specific than I wanted to get into today, but --

12 COMMISSIONER OLSON: Okay.

13 CHAIRMAN FESMIRE: -- that's one less we have to  
14 handle later.

15 COMMISSIONER OLSON: I was going to see if  
16 there's anything that's still kind of general.

17 Well, so that was --

18 COMMISSIONER BAILEY: Size of the liner.

19 COMMISSIONER OLSON: What's that?

20 COMMISSIONER BAILEY: 12-mil --

21 COMMISSIONER OLSON: Yeah --

22 COMMISSIONER BAILEY: -- or 20-mil?

23 COMMISSIONER OLSON: -- I was just going to  
24 say --

25 CHAIRMAN FESMIRE: I think the evidence was

1 definitive that 12-mil liners are simply not doing the job.

2 COMMISSIONER BAILEY: Especially when they're not  
3 string reinforced, but --

4 COMMISSIONER OLSON: Uh-huh.

5 CHAIRMAN FESMIRE: Well, even the -- I think  
6 there's evidence that even the string-reinforced 12-mil  
7 liners aren't holding. I'm --

8 COMMISSIONER OLSON: I like the 10, especially  
9 when he showed the little rip tests, you know, that liner  
10 guy, that was -- At least the 20 had a little better  
11 resistance.

12 COMMISSIONER BAILEY: I'm not invested in either  
13 one, so --

14 COMMISSIONER OLSON: Okay.

15 CHAIRMAN FESMIRE: I kind of am, I'm thinking  
16 there's a need for the 20-mil liners. I think the  
17 evolution has been such that it's time to go to the 20-mil  
18 liner.

19 COMMISSIONER OLSON: I was thinking 30 with  
20 burritos --

21 (Laughter)

22 COMMISSIONER OLSON: -- to be consistent with --

23 CHAIRMAN FESMIRE: These short lunches.

24 (Laughter)

25 COMMISSIONER OLSON: But since we're not talking

1 about burritos at the moment I'm okay with 20.

2 COMMISSIONER BAILEY: Are we really okay with  
3 burritos not developing H<sub>2</sub>S or methane?

4 COMMISSIONER OLSON: That's -- there is -- you  
5 know, there's potential. I don't know if it's that big,  
6 myself, but I mean, you have something that is covered,  
7 it's fully wrapped up, I mean, it's going to sit there  
8 and --

9 COMMISSIONER BAILEY: -- and --

10 COMMISSIONER OLSON: -- and --

11 COMMISSIONER BAILEY: -- churn away --

12 COMMISSIONER OLSON: -- churn away and try to  
13 bubble up or do things, you know, so --

14 COMMISSIONER BAILEY: Anaerobic bacteria just  
15 have a good time.

16 COMMISSIONER OLSON: Uh-huh. So I guess that's  
17 the other question, because that's one of the things that  
18 industry brought up, was about the sampling underneath the  
19 liner from the temporary pits. Because under that system  
20 you're actually going to dig it up and physically put it in  
21 a burrito. So then you could sample under it.

22 So for what we're talking about now is allowing  
23 more of what industry was asking for, was the burial in  
24 place, but with the lower contaminant level, so therefore  
25 you don't need to sample underneath it.

1 CHAIRMAN FESMIRE: Right.

2 COMMISSIONER OLSON: Make sure I understand that  
3 correctly.

4 CHAIRMAN FESMIRE: The material that they're  
5 leaving in place is the same material that we would allow  
6 on a landfarm.

7 COMMISSIONER OLSON: Right.

8 CHAIRMAN FESMIRE: If it's worse than that, we  
9 don't need to put in a plastic, wrap it up --

10 COMMISSIONER OLSON: Right.

11 CHAIRMAN FESMIRE: -- down below, we haul it off  
12 and --

13 COMMISSIONER OLSON: They don't have to actually  
14 pull anything up and take samples underneath it then too.

15 CHAIRMAN FESMIRE: Right, because we've already  
16 determined that the contaminant levels that we're going to  
17 allow are not something that we would be -- concerned is  
18 the wrong word --

19 COMMISSIONER OLSON: Right.

20 COMMISSIONER BAILEY: Unless groundwater is  
21 greater than 100 feet.

22 CHAIRMAN FESMIRE: Right.

23 COMMISSIONER BAILEY: Okay.

24 COMMISSIONER OLSON: So we're talking about tacos  
25 without any sampling underneath, okay.

1 COMMISSIONER BAILEY: At 100 feet --

2 COMMISSIONER OLSON: Right.

3 COMMISSIONER BAILEY: -- you can have tacos or  
4 burritos.

5 COMMISSIONER OLSON: Well, that's one we're  
6 still --

7 CHAIRMAN FESMIRE: Yeah, we're going to have  
8 to --

9 COMMISSIONER OLSON: -- going to have to talk  
10 about, so...

11 COMMISSIONER BAILEY: Okay.

12 MS. BADA: How about anchor trenches?

13 COMMISSIONER OLSON: Because that was more okay  
14 with the burritos with landowner approval.

15 CHAIRMAN FESMIRE: The anchor trenches, I think  
16 the evidence is there that they're necessary, that it's a  
17 proper design, and it -- like I said, it's an important  
18 part of the overall system. I think it needs to be there,  
19 and I think the evidence is sufficient to support that.

20 COMMISSIONER OLSON: Yeah, I didn't have a  
21 problem with that.

22 Oh, on some of the other sampling stuff too, we  
23 looked at -- under the dig-and-haul we had the BTEX, you  
24 know, there was BTEX concentrations as well as the TPH, and  
25 industry proposed different levels than the Division did,

1 if I recall.

2 I think it's in the closure section, 13.

3 COMMISSIONER BAILEY: 13.F?

4 COMMISSIONER OLSON: No, I guess not. Looks like  
5 it's the same levels for BTEX and TPH -- I mean, for BTEX  
6 and benzene, excuse me. The difference was the TPH levels  
7 versus the GRO/DRO.

8 And they also had a different level. They wanted  
9 to be allowed to have 2500 of GRO/DRO, versus 100 of TPH.  
10 I myself, like the 100 TPH. We've used that for years, and  
11 it's been a very effective indicator for delineation  
12 purposes, not only -- not for cleanup, but for delineating  
13 whether a site caused an impact on groundwater. The 100  
14 has been extremely useful on a TPH basis.

15 So I think maybe we just need to clarify the same  
16 thing, that it's for delineation purposes, not necessarily  
17 the final cleanup level. Because I think in here it's  
18 both.

19 COMMISSIONER BAILEY: Where are you? 13.F?

20 COMMISSIONER OLSON: I was looking in 13 -- I see  
21 it first appears in B.

22 CHAIRMAN FESMIRE: Of which one?

23 COMMISSIONER OLSON: 17.13.B, where it talks  
24 about closure methods for temporary pits.

25 MS. BADA: B.(1), actually it's just delineation,

1 because then it refers them to Rule 116 or 19, if it  
2 exceeds those. It's also a closure standard --

3 COMMISSIONER OLSON: Right, so this is going to  
4 have to be finessed a little bit, because --

5 MS. BADA: Yeah.

6 COMMISSIONER OLSON: -- now we're talking about  
7 the -- we're going to still have some of these -- the taco  
8 systems where you're not going to have to do this. But it  
9 would be used for a temporary pit where you had to do a dig  
10 and haul. You'd need to still delineate underneath it at  
11 some level, I think the same levels we talked about for the  
12 tacos.

13 Maybe just needs to be clear that that is  
14 delineation too.

15 And then --

16 MS. BADA: How about closure for a taco? What  
17 would you use? TPH?

18 COMMISSIONER OLSON: Well, I guess you're coming  
19 down to -- because -- the difference now between the in-  
20 place closure and the burrito, because in the burrito you  
21 had to have -- at least under the OCD's proposal you had to  
22 have the 3103 constituents from the WQCC standards analyzed  
23 for, and then not be below, you had to be below those  
24 levels for deep-trench burial.

25 I mean, I don't know, I'll have to go back and

1 look at those --

2 MS. BADA: Okay.

3 COMMISSIONER OLSON: -- analyses again, because  
4 if you're doing the mixing at 3-to-1 you should be below  
5 all those levels anyways.

6 CHAIRMAN FESMIRE: Right.

7 COMMISSIONER OLSON: I guess the concern as  
8 whether you had other things like metals, and that was, you  
9 know, brought up by other people as well as the Division,  
10 you know. But a 3-to-1 dilution, 2-to-1, 3-to-1, it  
11 shouldn't be a problem, but should you be analyzing for it  
12 then? I don't know that I've got the best answer off the  
13 top of my head at the moment.

14 COMMISSIONER BAILEY: Want to come back to that?

15 COMMISSIONER OLSON: Yeah, that would be one to  
16 come back to, I think, when we come back and look at this  
17 as to what would be the -- maybe better level set for  
18 chloride, but do we need to look at some of these other  
19 constituents as part of the burial? Then have some kind of  
20 demonstration, whether it's maybe just -- maybe it's a  
21 cruder version for TPH and metals or something, I don't  
22 know.

23 Because the 3103 constituents is -- you'd have to  
24 run a metals analysis, and then you're going to have to run  
25 the volatiles, the aromatic and halogenated. That, you

1 know, runs around -- I don't know what it is these days,  
2 it's \$300. And then a couple hundred dollars for metals,  
3 and you've got to also run for the semi-volatiles, which is  
4 a couple hundred dollars. If you start looking at having  
5 to analyze for those, you're probably looking at at least  
6 \$700, \$800 or something like that --

7 COMMISSIONER BAILEY: And the length of time --

8 COMMISSIONER OLSON: -- for example.

9 COMMISSIONER BAILEY: -- it takes to get back  
10 some of those analyses.

11 COMMISSIONER OLSON: And you have -- That's  
12 right.

13 COMMISSIONER BAILEY: While it's being  
14 analyzed --

15 COMMISSIONER OLSON: Right --

16 COMMISSIONER BAILEY: -- you're not closing it.

17 COMMISSIONER OLSON: -- right, right.

18 CHAIRMAN FESMIRE: Okay, are there any other big  
19 issues that we need to -- or directional issues, I guess,  
20 would be a better way to put it?

21 MS. BADA: You probably just need to think about  
22 the alternate distances that were requested for --

23 CHAIRMAN FESMIRE: Four ground- -- for water --

24 MS. BADA: -- watercourses, 30 instead of the --

25 COMMISSIONER OLSON: Well, if we use the

1 industry's proposal for the named systems --

2 CHAIRMAN FESMIRE: -- for the definition, yeah.

3 COMMISSIONER OLSON: Yeah, I'm comfortable with  
4 OCD's distances then, you know? Because I don't think -- I  
5 think on one of them -- I think it was IPANM's, I don't  
6 believe 10 feet is --

7 MS. BADA: Or 30 feet.

8 COMMISSIONER OLSON: -- or 30 feet is appropriate  
9 for those --

10 MS. BADA: So you're comfortable --

11 COMMISSIONER OLSON: Yeah --

12 MS. BADA: -- with the 200?

13 COMMISSIONER OLSON: -- right.

14 CHAIRMAN FESMIRE: Okay, I think we've addressed  
15 the important issue there by making it relatively major  
16 stream -- or -- stream systems, that's not -- watercourses.

17 COMMISSIONER OLSON: Yeah, I think their concern  
18 was, too, that it was going to be smaller systems, so they  
19 wanted something smaller.

20 MS. BADA: What about the proposed change to the  
21 pit to include stormwater or run-on?

22 CHAIRMAN FESMIRE: Where is that?

23 MS. BADA: That's in part --

24 COMMISSIONER OLSON: It's in the definition of  
25 the pit for industry.

1           See, I don't ever like -- I mean, we have a lot  
2 of stormwater pits, I know, non-oilfield stuff that has  
3 some -- that can collect a lot of contaminants. I'm not  
4 sure --

5           CHAIRMAN FESMIRE: Well --

6           COMMISSIONER OLSON: -- the extent you're going  
7 to have it, at some of these -- especially in the San Juan  
8 Basin, some of these sites.

9           CHAIRMAN FESMIRE: Yeah, but this is  
10 exclusionary. What they're --

11          COMMISSIONER OLSON: Right.

12          CHAIRMAN FESMIRE: What they're trying to do is  
13 make sure that a stormwater impound- -- or a stormwater  
14 exclusion impoundment -- exclusion berm, doesn't come under  
15 the definition of a pit. I'm not sure but what I don't  
16 agree with them on that. Let's look at it.

17          COMMISSIONER OLSON: Oh, I see the way you're  
18 reading it.

19          CHAIRMAN FESMIRE: Secondary containment and  
20 stormwater or run-on control.

21          COMMISSIONER OLSON: But not a stormwater pit.

22          CHAIRMAN FESMIRE: Right.

23          COMMISSIONER BAILEY: It's a berm.

24          CHAIRMAN FESMIRE: Yeah --

25          COMMISSIONER OLSON: Right.

1           CHAIRMAN FESMIRE:  -- it's -- exactly, a berm  
2 made to exclude run-on, and they don't want that included  
3 in the definition of a pit.

4           COMMISSIONER OLSON:  Well, maybe if it said and  
5 berms for stormwater and run-on control, I'd be --

6           CHAIRMAN FESMIRE:  Yeah.

7           COMMISSIONER OLSON:  -- a little more  
8 comfortable, because that almost makes it sound like -- you  
9 know, there's a lot of use of stormwater pits.  I just want  
10 to make sure that it's not an actual --

11          CHAIRMAN FESMIRE:  Well, berm -- I think berms --  
12 excluded from this definition are berms constructed around  
13 tanks or other facilities solely for the purpose of  
14 safety --

15          MS. BADA:  Yeah, it's --

16          COMMISSIONER OLSON:  Okay.

17          CHAIRMAN FESMIRE:  -- secondary containment and  
18 stormwater --

19          COMMISSIONER OLSON:  Okay.

20          CHAIRMAN FESMIRE:  -- or run-on control.

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

23          MS. BADA:  What about their suggestion about  
24 adding C in section 8 so that they could get one permit  
25 instead of -- so it's clear that they can get one permit?

1 CHAIRMAN FESMIRE: That was the intent.

2 MS. BADA: So are you okay with that one?

3 CHAIRMAN FESMIRE: Yes.

4 COMMISSIONER OLSON: Yeah, I don't have any  
5 problem with that.

6 MS. BADA: Okay.

7 COMMISSIONER OLSON: And I think the Division had  
8 some other stuff too, like welding and seams. I thought  
9 that was --

10 COMMISSIONER BAILEY: Yes.

11 COMMISSIONER OLSON: -- acceptable too.

12 COMMISSIONER BAILEY: And changing the hot spot  
13 for --

14 COMMISSIONER OLSON: Right.

15 COMMISSIONER BAILEY: -- actual words.

16 CHAIRMAN FESMIRE: Yes.

17 COMMISSIONER OLSON: And Dr. Neeper's issue too,  
18 I think, on clarifying like if we look at wet areas and  
19 things like that, I thought that was a good suggestion too.  
20 You're looking at leaks in the liner system. Because I  
21 think it was -- in the OCD's version it was this broader  
22 description, and his gave a little bit more clarity, I  
23 thought, to it.

24 CHAIRMAN FESMIRE: My plan was, you know, to --  
25 again, when we get the transcript, go through this --

1 COMMISSIONER OLSON: Right.

2 CHAIRMAN FESMIRE: -- piece by piece --

3 COMMISSIONER BAILEY: Uh-huh.

4 CHAIRMAN FESMIRE: -- to address those issues.

5 COMMISSIONER BAILEY: Uh-huh.

6 CHAIRMAN FESMIRE: What I was trying to get  
7 accomplished today was, I think, what we have accomplished,  
8 and that is just get a real good idea of the direction  
9 we're going, where we've got agreement and where we've got  
10 disagreement, and --

11 COMMISSIONER BAILEY: And I think we made  
12 marvelous progress.

13 COMMISSIONER OLSON: Pretty remarkable, I think.

14 CHAIRMAN FESMIRE: So is there anything else in  
15 that line that we need to address today?

16 COMMISSIONER BAILEY: I think we did a great job.

17 COMMISSIONER OLSON: I think that's -- I think  
18 that's the major areas that we need to cover, to tell you  
19 the truth.

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER OLSON: Like I said, we'll have to  
22 fine-tune it when we get the --

23 CHAIRMAN FESMIRE: Oh, yeah --

24 COMMISSIONER OLSON: -- for the final draft.

25 CHAIRMAN FESMIRE: -- I intend when we get the

1 transcript and get a chance to review the transcript --

2 COMMISSIONER OLSON: Right.

3 CHAIRMAN FESMIRE: -- to sit down and go through  
4 it according to the list that we've made and check out each  
5 one of these changes, check out the justifications that  
6 have been filed for each one of these changes, and make a  
7 decision on that.

8 But I think we've decided which direction we're  
9 going --

10 COMMISSIONER OLSON: Uh-huh.

11 CHAIRMAN FESMIRE: -- how we're going to get  
12 there, and how long it might take.

13 Is there anything else that you guys want to  
14 discuss?

15 MS. BADA: Is there anything you want me to work  
16 on in the meantime?

17 CHAIRMAN FESMIRE: Would it be proper to draft  
18 sort of a memo between us that outlines what we've talked  
19 about and make sure we've --

20 COMMISSIONER BAILEY: I can agree to that.

21 CHAIRMAN FESMIRE: Okay.

22 COMMISSIONER OLSON: Uh-huh.

23 CHAIRMAN FESMIRE: And we'll do that, if you  
24 would -- you've kept the notes and --

25 MS. BADA: I think so.

1 (Laughter)

2 COMMISSIONER OLSON: Maybe just --

3 MS. BADA: I think you'll find out where it's --

4 COMMISSIONER OLSON: -- do that -- shall we just  
5 maybe do it as a motion to have our counsel draft a rule  
6 based upon the general concepts that we've presented here  
7 today and then --

8 CHAIRMAN FESMIRE: I'm not sure she's got enough  
9 to draft a rule, because like I said, we've got 10 pages of  
10 things that we've got to go through. But if she could --  
11 if she could give us a memo, sort of a guidance document,  
12 you know, here are the macro decisions that we've made, we  
13 will use those as a guideline when we go through  
14 individually on each one of these areas where there were  
15 comments --

16 COMMISSIONER OLSON: Well, I was wondering if we  
17 could -- because some of this stuff is going to be changed  
18 language. I think it would be good if we could --

19 CHAIRMAN FESMIRE: Well --

20 COMMISSIONER OLSON: -- if Cheryl could maybe  
21 take just the major concepts we've talked about so far, and  
22 after the transcript comes out try to put together a  
23 discussion -- draft discussion document that's got the new  
24 concepts in it.

25 MS. BADA: Some of them I can. The one I

1 probably can't without some assistance is the below grade  
2 tank issue.

3 CHAIRMAN FESMIRE: Yeah --

4 COMMISSIONER OLSON: Oh, right --

5 CHAIRMAN FESMIRE: -- we'll need to address  
6 that --

7 COMMISSIONER OLSON: -- right.

8 CHAIRMAN FESMIRE: -- later. But I think we've  
9 established the direction we want to go with that, the  
10 specific wording, what you might do is make an attempt at  
11 it, and we can use that as a discussion document the next  
12 time we meet.

13 My intention now is, since we don't know exactly  
14 when we're going to get the transcript, to not set a next  
15 meeting at the present time, which means that we will have  
16 to re-notice it. And as soon as the reporter gets a date  
17 -- I'll bet he can give us 20 days' notice for when he  
18 thinks he'll be done, and we'll go ahead and re-notice it  
19 and continue the hearing until that point.

20 In the meantime, as the court reporter finishes  
21 each volume, he'll send us an electronic copy. And if you  
22 want a hard copy, we can print it out for you on our  
23 budget.

24 COMMISSIONER BAILEY: I read hard copy.

25 CHAIRMAN FESMIRE: Okay.

1           COMMISSIONER OLSON: Uh-huh, I'm the same way.  
2    You know --

3           CHAIRMAN FESMIRE: As he --

4           COMMISSIONER OLSON: -- I don't mind having  
5    electronic, but I like the hard copy for reading.

6           CHAIRMAN FESMIRE: As the court reporter gets a  
7    volume done, he can send it to us and we'll print it make  
8    sure that you all get a -- each get a hard copy and the  
9    electronic version.

10           Is there anything else we need to address today?

11           COMMISSIONER BAILEY: When will Cheryl be able to  
12    give us this kind of general agreement, directional --

13           MS. BADA: I'll start working on it next week. I  
14    can't promise it will be finished, so...

15           CHAIRMAN FESMIRE: I'll bet it will be sometime  
16    after Christmas.

17           COMMISSIONER BAILEY: By the next regularly  
18    scheduled hearing on the 22nd?

19           MS. BADA: Yes, it should be -- yeah, that should  
20    be fine.

21           COMMISSIONER BAILEY: Okay.

22           CHAIRMAN FESMIRE: Is there anything from the  
23    rather sparse audience that we should take up?

24           Mr. Carr, do you have anything?

25           MR. CARR: I'd like to wish you a merry

1 Christmas.

2 (Laughter)

3 COMMISSIONER OLSON: And you don't want to see us  
4 for a while?

5 CHAIRMAN FESMIRE: Mr. Brooks?

6 MR. BROOKS: Mr. Chairman, at an earlier stage I  
7 promised the Commission counsel that I would furnish some  
8 requested findings and conclusions, because I thought that  
9 might be helpful to the Commission counsel in formulating  
10 the final conclusions. And of course since I'm acting as  
11 Division counsel and not as Commission counsel, I would --  
12 it would be something I would obviously furnish to other  
13 counsel to permit them to examine.

14 CHAIRMAN FESMIRE: Okay. Mr. Carr, do you have  
15 any problem with that?

16 MR. CARR: No, sir.

17 MS. BADA: I would be most grateful.

18 CHAIRMAN FESMIRE: Mr. Huffaker, do you have any  
19 problem?

20 MR. HUFFAKER: No, Mr. Chairman.

21 CHAIRMAN FESMIRE: Anything else -- anything else  
22 you'd like to add?

23 MR. HUFFAKER: No. Happy holidays.

24 (Laughter)

25 CHAIRMAN FESMIRE: Okay. With that, we will go

1 ahead and adjourn, to reconvene at some point to be noticed  
2 out later.

3 Thank you all very much for your patience.

4 (Thereupon, these proceedings were continued at  
5 2:52 p.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 February 19th, 2008.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2010