

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 XXII - March 13th, 2008

Santa Fe, New Mexico

This matter came on for deliberations before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Thursday, March 13th, 2008, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
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## A P P E A R A N C E S

FOR THE COMMISSION:

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\* \* \*

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1           WHEREUPON, the following proceedings were had at  
2   2:58 p.m.:

3           CHAIRMAN FESMIRE: At this time let's go back on  
4   the record.

5           This is a continuation of deliberations in Case  
6   Number 14,015.

7           The record should reflect that the date is  
8   Thursday, March 13th, 2008. It's 3:00 p.m. All three  
9   Commissioners are present. Like I said, this is a  
10   continuation. It was announced at the end of yesterday's  
11   meeting.

12           And I believe we were in the deliberations  
13   working our way through -- Had we gotten through  
14   19.15.17.13.F, or is that where we start?

15           MS. BADA: That's where we stopped.

16           CHAIRMAN FESMIRE: That's where we stopped?

17           COMMISSIONER OLSON: I think we were in the  
18   middle of F. I think we had gotten through the general  
19   requirements under F.(1) --

20           CHAIRMAN FESMIRE: Right, and we're looking at  
21   F.(2) --

22           COMMISSIONER OLSON: -- but I'm trying to --  
23   trying to remember something, though, that I didn't have  
24   checked. It was an issue that came up on the -- I think,  
25   you know, the consensus of the Commission was, we weren't

1 going to have a surface owner's written consent, but did we  
2 discuss the deed notice? I'm kind of a little fuzzy on  
3 that.

4 COMMISSIONER BAILEY: No, we had eliminated that  
5 second sentence of F.(1).(b) to say that proof of notice to  
6 the surface owner was what was required, not consent.

7 COMMISSIONER OLSON: Right, and I'm thinking  
8 maybe it comes in more in F.(1).(h) where we talk about  
9 somehow marking the locations of these. That was a concern  
10 that I had, was that maybe there would be some kind of a  
11 deed notice filed with the county. I'm trying to remember  
12 here.

13 COMMISSIONER BAILEY: Okay, that's in F.(2).(b).

14 COMMISSIONER OLSON: That's in F.(2), okay. That  
15 takes care of that concern for me.

16 CHAIRMAN FESMIRE: So it looks like we're ready  
17 to start with F.(2), in-place burial. That must have been  
18 why we quit.

19 COMMISSIONER OLSON: Well, I think we talked  
20 about the in-place burial, because we had a lot of  
21 discussion about that, the in-place burial was the taco  
22 system where we'd used that tiered levels of closure. I  
23 think why we were -- because I thought we already covered  
24 in-place burial, but we were stuck on on-site trench  
25 burial, or the deep trench.

1 CHAIRMAN FESMIRE: Yes.

2 COMMISSIONER BAILEY: And Mark's concern was  
3 whether or not they would be forming hills there with  
4 excessive mixing.

5 COMMISSIONER OLSON: Right.

6 COMMISSIONER BAILEY: Can we eliminate that  
7 concern by including the wording, To recontour to  
8 approximate original contours, where we discuss re-  
9 vegetation and recontouring of the pit locations?

10 CHAIRMAN FESMIRE: Well, we decided to set the  
11 standard at the 250 leachate standard, right? --

12 COMMISSIONER OLSON: Uh-huh.

13 CHAIRMAN FESMIRE: -- and back that up through  
14 the calculation and allow that by exception only. And I  
15 don't think we defined how to get to that exception.

16 COMMISSIONER OLSON: And I think your concern  
17 was, are folks going to dilute -- if you've got, you know,  
18 100,000 TDS, you know --

19 CHAIRMAN FESMIRE: Yeah.

20 COMMISSIONER OLSON: -- waste, are you going to  
21 have a 20-fold dilution to get -- which creates a huge  
22 volume. Essentially if you're looking at -- I think the  
23 testimony was that there's -- you know, the average pit is  
24 like 1000 yards they have to deal with, or something like  
25 that, when they're closing this, is that now you've got

1 20,000 yards.

2           So the testimony, I think, that would seem pretty  
3 clear to me, which might be supported by the record, was  
4 that they look at a 2-to-1 to 3-to-1 dilution of adding  
5 material in to make it stable enough to close so that you  
6 can get equipment and go over the top of that. I was  
7 wondering if we could use that, because -- something that  
8 is supported by the recorded, that that's what is used, and  
9 that you say that, you know, the material will be -- you  
10 know, not be more than a -- maybe a 3-to-1 mixing of waste  
11 contents and clean soil. I think it's supported by the  
12 record, and I think it gives some kind of directions.

13           I was thinking about it last night, that -- on  
14 the idea that if you couldn't do it at a maximum of 3-to-1,  
15 that means you didn't dewater it enough in the first place,  
16 so -- which you should have been doing anyways.

17           CHAIRMAN FESMIRE: Okay. So if we were to do it  
18 that way, maybe in conjunction with the recontouring  
19 requirement that Jami is talking about --

20           COMMISSIONER OLSON: Uh-huh.

21           CHAIRMAN FESMIRE: -- that that would be  
22 sufficient to allay my fears that, you know, we'd just turn  
23 into massive amounts of waste, trying to dilute it down to  
24 the concentration that can be buried in a deep-trench  
25 burial.

1 COMMISSIONER BAILEY: The transcripts indicate  
2 3-to-1 is how we were led to --

3 COMMISSIONER OLSON: I think they said sometimes  
4 it's 2-to-1, they said usually a maximum of about 3-to-1,  
5 is what I seem to recall, and I remember seeing that; it  
6 was in the transcripts as well.

7 CHAIRMAN FESMIRE: To achieve technical  
8 stabilization, and that would be the -- the sampled  
9 material upon which the leachate standard would apply --

10 COMMISSIONER OLSON: -- would be based, right.

11 CHAIRMAN FESMIRE: -- after stabilization. And  
12 this is just by exemption -- I mean, by exception.

13 COMMISSIONER OLSON: Uh-huh.

14 CHAIRMAN FESMIRE: And I want to make sure -- How  
15 would we address that? Does anybody have an idea?

16 COMMISSIONER OLSON: Well, isn't the exception --  
17 This is the exception, isn't it? Isn't this portion of the  
18 rule -- it's an exception by rule, so it's not an  
19 individual case-by-case -- I mean, essentially you're  
20 setting out the certain criteria here in F, which is that  
21 these are on-site closure methods.

22 So technically -- the way I was envisioning this,  
23 that if you meet these criteria, this is a method -- it's  
24 only if it's over 100 feet to water, it's got to meet these  
25 waste criteria, it's got to meet the blending criteria, the

1 -- whatever, the recontouring criteria. And so therefore  
2 it is allowed by rule.

3 I don't know if you can say that -- an exception  
4 or not, though. Because nothing in here says you'll dig  
5 and haul everywhere, so -- which would give you something  
6 that would be an exception. Just -- it's an accepted  
7 disposal method if you meet these criteria, which is the  
8 way it's written now.

9 MS. BADA: Actually, the way you would -- well,  
10 no, because you have to go back -- I can't remember if it's  
11 section 8 or 9, and that's where you have to decide, are we  
12 going to do it by rule and allow it in the siting criteria,  
13 essentially, or do you want to have a hearing? And those  
14 are your two options. You can either allow it by rule as  
15 an exce- -- you know, I think it's section 8.

16 CHAIRMAN FESMIRE: Could we do it by --

17 MS. BADA: Section 10.

18 CHAIRMAN FESMIRE: Section 10?

19 MS. BADA: Section 10 is how we've done the  
20 other, landfarm, and it's basically in C, discusses, you  
21 know, that you can't use an on-site closure method except  
22 -- and that sets out the criteria.

23 COMMISSIONER OLSON: So you could put it in here  
24 to say --

25 MS. BADA: So that --

1 COMMISSIONER OLSON: -- an exception for on-site  
2 burial pursuant to F -- whatever it is, (2) or (3),  
3 whichever one it becomes.

4 MS. BADA: That is one way you can --

5 COMMISSIONER OLSON: It's all the same, I think,  
6 so.

7 MS. BADA: And that's essentially exception by  
8 rule. The other way to do it is exception by hearing.

9 CHAIRMAN FESMIRE: I would lean towards the  
10 exception by hearing. Is that going to be a --

11 COMMISSIONER BAILEY: I disagree, because your  
12 Examiners are already overloaded, and orders coming out  
13 from Examiner Hearings are already months in the making,  
14 and I think that that would be an unwarranted delay for a  
15 drilling --

16 CHAIRMAN FESMIRE: Commissioner Olson?

17 COMMISSIONER BAILEY: -- location.

18 COMMISSIONER OLSON: I was -- at least my first  
19 thought was that you'd do it by exception by rule, and if  
20 you want to do anything at other, higher -- which is  
21 actually what industry and actually even OCD had proposed,  
22 if you want to do it at higher levels than that, then it  
23 would be exception by hearing. So anything above those  
24 waste criteria of -- which would be a maximum of 5000 total  
25 chlorides in the waste, which is, I think, a reasonable way



1 to do it, so -- which I'm comfortable with, as long -- on  
2 the idea that since there isn't surface-owner approval  
3 that's going forward, you know, by consensus, I could at  
4 least be comfortable to say that we'd allow some level  
5 that's higher with the burrito system, but not real high --  
6 not as high as what was proposed, because I don't -- I have  
7 concerns over that.

8 CHAIRMAN FESMIRE: Okay.

9 MS. BADA: I do have to clarify, there is not  
10 another exception provision for on-site burial. That's  
11 specifically prohibited in section 15. So if that is  
12 something you would want, you would have to discuss that.  
13 It's not in there now.

14 CHAIRMAN FESMIRE: You'll have to clarify that  
15 for me.

16 MS. BADA: Bill was saying that there would be --  
17 that if you wanted higher waste -- on-site burial for  
18 higher waste, that you would have to go to hearing, but  
19 actually the exception section does not provide for that.  
20 It specifically prohibits it. So I just wanted to clarify  
21 that.

22 CHAIRMAN FESMIRE: Prohibits it.

23 MS. BADA: If you actually read the exceptions  
24 section.

25 COMMISSIONER OLSON: So you're saying it

1 prohibits other exceptions --

2 MS. BADA: Yes.

3 COMMISSIONER OLSON: -- by hearing?

4 MS. BADA: Yes. Or on-site burial.

5 CHAIRMAN FESMIRE: So if we do the exceptions by  
6 rule --

7 MS. BADA: That would be it, it would not be an  
8 exception by hearing.

9 CHAIRMAN FESMIRE: But this exception by rule is  
10 the same thing that the OCD proposed in the first place,  
11 isn't it?

12 MS. BADA: Yes --

13 COMMISSIONER OLSON: Uh-huh.

14 MS. BADA: -- with their 100-mile radius, yes,  
15 that was the same type of --

16 COMMISSIONER OLSON: But it's a lower waste --

17 MS. BADA: -- waste, yeah --

18 COMMISSIONER OLSON: -- management criteria, so  
19 it's essentially, you know, 1/20 of the waste acceptance  
20 criteria that they were going to allow, so -- I think it's  
21 fully supported by -- especially by, you know, Dr. Thomas.  
22 He stressed heavily that -- the protectiveness of looking  
23 at SPLP leachates, so I think -- and with the idea that  
24 everybody agrees that these things are going to breach at  
25 some point in the future, you're still having this

1 allowance to try to keep leachate from generating through  
2 that material, and not generate a problem, so --

3 CHAIRMAN FESMIRE: Okay.

4 COMMISSIONER OLSON: -- I kind of -- that's why I  
5 thought it being by rule, because it has some inherent  
6 safety built into it as well, with the capping of the  
7 material that's there.

8 CHAIRMAN FESMIRE: Okay.

9 MS. BADA: The other question I have that wasn't  
10 discussed, I'm assuming that the other, the benzene, BTEX,  
11 the TPH concentrations, remain the same as was proposed in  
12 the Division's --

13 COMMISSIONER OLSON: Right.

14 MS. BADA: -- draft. Okay.

15 CHAIRMAN FESMIRE: That was my --

16 COMMISSIONER OLSON: That was my --

17 CHAIRMAN FESMIRE: -- understanding.

18 COMMISSIONER OLSON: -- intent.

19 COMMISSIONER BAILEY: But they're the same as in  
20 the landfarm?

21 MS. BADA: -- involved in F.(1).(d)

22 COMMISSIONER BAILEY: Which is the landfarm --

23 MS. BADA: I don't --

24 COMMISSIONER BAILEY: -- standard?

25 MS. BADA: I'm assuming that's where they got

1     them, but I wouldn't swear --

2                 COMMISSIONER BAILEY:   Okay, because we've agreed  
3     that we would use the landfarm standards for application in  
4     this rule.

5                 MS. BADA:   I don't know if those are the same or  
6     not.

7                 COMMISSIONER OLSON:   Actually, they're not the  
8     same, because they use a -- allow a TPH concentration up to  
9     2500, which --

10                CHAIRMAN FESMIRE:   -- which is greater than the  
11     landfarm --

12                COMMISSIONER OLSON:   -- which is greater than the  
13     landfarm.   But I didn't really have a problem with that if  
14     it was going to be in the burrito system, because that at  
15     least is -- the petroleum is a biodegradable thing.   If it  
16     gets out, it will biodegrade anyway, as the hydrocarbons --  
17     in terms of a leachate.

18                The only thing it might be was the concern that  
19     Commissioner Bailey brought before:   Are you going to get  
20     -- or -- is that a high enough concentration to generate,  
21     you know, H<sub>2</sub>S or some other --

22                CHAIRMAN FESMIRE:   Well --

23                COMMISSIONER OLSON:   -- vapors, which I don't  
24     think it's that high to do that.

25                CHAIRMAN FESMIRE:   Well, I have a different

1 number here than we would in the -- We've been trying to  
2 standardize everything.

3 COMMISSIONER OLSON: I don't have a problem with  
4 that, I was just -- I was -- my first thought was, I didn't  
5 really -- I'd go with either one, I guess, doesn't --

6 CHAIRMAN FESMIRE: We've gone to a lot of effort  
7 here to standardize that --

8 COMMISSIONER OLSON: Uh-huh.

9 CHAIRMAN FESMIRE: -- you know, and I think we  
10 ought to go ahead and standardize this portion of it also.

11 MS. BADA: So you would use the landfarm  
12 standards when it's over 100 feet to groundwater?

13 CHAIRMAN FESMIRE: Right.

14 MS. BADA: Okay.

15 COMMISSIONER OLSON: And the only difference  
16 would be that you're allowing a higher chloride content, so  
17 you're allowing the higher salt content, which is being  
18 accounted for by the extra protections of the new liner,  
19 the cap, and -- Okay.

20 CHAIRMAN FESMIRE: Okay?

21 COMMISSIONER OLSON: I have no problem with that.

22 CHAIRMAN FESMIRE: Is that okay with you,  
23 Commissioner?

24 COMMISSIONER BAILEY: Yes.

25 CHAIRMAN FESMIRE: What's next? That was F --

1 COMMISSIONER OLSON: That's a major hurdle.

2 CHAIRMAN FESMIRE: -- F.(2). Is F.(2) complete?

3 COMMISSIONER OLSON: I didn't have anything else  
4 on F.(2) --

5 MS. BADA: Did you want deed --

6 COMMISSIONER OLSON: -- but I --

7 MS. BADA: Before we go on, did you want deed  
8 notices on that also, on the --

9 COMMISSIONER OLSON: Yes.

10 MS. BADA: Okay.

11 COMMISSIONER OLSON: I wasn't sure if it was  
12 covered in the --

13 MS. BADA: Right now it's in the in-place burial,  
14 so let's make it a general --

15 COMMISSIONER OLSON: It should be a general  
16 criteria.

17 CHAIRMAN FESMIRE: Okay, that's actually F.(2)  
18 and F.(3).

19 The next one I've got on the list is 13.G.

20 COMMISSIONER OLSON: I guess, did we have any  
21 other comments from industry or anyone else on F that we  
22 need to deal with?

23 CHAIRMAN FESMIRE: I think we've dealt with it --

24 COMMISSIONER OLSON: I think we may have --

25 CHAIRMAN FESMIRE: -- considered everything.

1 COMMISSIONER OLSON: -- dealt with them all.

2 CHAIRMAN FESMIRE: I thought I'd gone through and  
3 corrected everything after Florene gave me the first draft,  
4 but I've got -- I note here, industry committee, closure of  
5 any drying pad associated with -- can't read the last word,  
6 so I'd better check that.

7 COMMISSIONER BAILEY: With the closed-loop  
8 system?

9 CHAIRMAN FESMIRE: Is that what it said?

10 ...the APD associated with the -- drilling pit  
11 associated with -- any drilling pit associated with a  
12 closed-loop system or temporary pit associated with an APD.

13 I think that's -- that's already been covered in  
14 the deep-trench burial. We're not differentiating it  
15 anymore.

16 COMMISSIONER OLSON: I don't know if that's  
17 necessary -- I don't see that that's --

18 CHAIRMAN FESMIRE: Yeah.

19 COMMISSIONER OLSON: -- necessary. I think the  
20 other issue we dealt with to a large extent that they had  
21 was about testing soils beneath the temporary pit. I mean,  
22 for the taco system we were kind of agreeing we didn't need  
23 to do that, so -- but if you have the higher sites where  
24 you are having to remove that -- higher chloride level  
25 sites, then you would.

1           So I think that seems consistent with the, you  
2 know, adequate protections for the higher level waste and  
3 demonstrating that it couldn't pose a problem. So I think  
4 we've addressed it partially -- or mostly, should I say?

5           CHAIRMAN FESMIRE: Okay.

6           MS. BADA: Where are we at?

7           COMMISSIONER OLSON: I was just looking at the  
8 industry's comments that they wanted to remove the testing  
9 of soils beneath the temporary pits, so I think we've done  
10 it for most -- for a good number of those sites, then.

11          MS. BADA: Okay.

12          CHAIRMAN FESMIRE: Okay, I think we get to the  
13 Commissioner Bailey show next. This is 13.G, reclamation  
14 of pit locations and on-site burial locations and drying-  
15 pad locations.

16          COMMISSIONER BAILEY: Before we get there,  
17 though --

18          COMMISSIONER OLSON: Let's go through -- let's  
19 see --

20          COMMISSIONER BAILEY: -- subparagraph (i), just  
21 right up above there, has recontour -- it mentions  
22 recontouring.

23                Okay, we all agree that we'll have recontouring  
24 there, and then later in the next paragraph we can AOCs?

25          CHAIRMAN FESMIRE: Yes.



1 COMMISSIONER BAILEY: Okay, so let's go on to G.  
2 G.(1), the second sentence begins, The operator  
3 shall substantially restore the impacted surface area to  
4 the condition that existed prior to oil and gas operations  
5 by placement of soil covers provided in subsection (h),  
6 blah, blah, recontour the location associated areas to  
7 approximate original contours.

8 MS. BADA: Okay, so where we say to a contour  
9 that blends -- say to a contour that approximates the  
10 original --

11 COMMISSIONER BAILEY: -- original contours and  
12 blends with the surrounding topography.

13 CHAIRMAN FESMIRE: I've got no problem with that  
14 at all.

15 COMMISSIONER BAILEY: Okay.

16 COMMISSIONER OLSON: That sounds good.

17 CHAIRMAN FESMIRE: In G.(2), CRI and the Oil and  
18 Gas Accountability Projects requested that we delete that  
19 section. The industry committee wanted to delete the words  
20 "deep trench".

21 COMMISSIONER BAILEY: In G.(2), yes.

22 CHAIRMAN FESMIRE: Yes, ma'am.

23 COMMISSIONER OLSON: Didn't we change our  
24 convention to be just trench burial now?

25 COMMISSIONER BAILEY: To eliminate the words

1 "deep"?

2 COMMISSIONER BAILEY: Yeah, I thought we got rid  
3 of "deep".

4 CHAIRMAN FESMIRE: Yes, that was the convention  
5 we were using.

6 COMMISSIONER BAILEY: So also in H.(2), we remove  
7 the word "deep".

8 CHAIRMAN FESMIRE: G.(2). The operator may  
9 propose an alternative to the re-vegetation requirement if  
10 the operator demonstrates that the proposed alternative  
11 effectively prevents erosion, protects fresh --

12 COMMISSIONER BAILEY: Did I say -- ? H.(2).

13 CHAIRMAN FESMIRE: I was talking about G.(2).

14 COMMISSIONER BAILEY: Oh.

15 CHAIRMAN FESMIRE: I haven't -- but apparently --

16 COMMISSIONER OLSON: I guess the one thing that  
17 comes up in G.(2), it's talking about the soil cover  
18 designs only for the trench burial. We've added --

19 MS. BADA: Yeah, we need to talk about --

20 COMMISSIONER OLSON: -- now in place --

21 MS. BADA: -- on-site.

22 COMMISSIONER OLSON: -- so it would be both in  
23 place and --

24 MS. BADA: -- on-site.

25 COMMISSIONER OLSON: -- on-site trench burial.

1 MS. BADA: Basically we could just say, on-site  
2 or both things, either one --

3 COMMISSIONER OLSON: It would be both.

4 MS. BADA: -- burial in place.

5 COMMISSIONER OLSON: Right.

6 COMMISSIONER BAILEY: Industry has the suggestion  
7 to add the sentence, Re-seeding may be required if the  
8 cover is not successfully established within five years of  
9 completion of closure. I'm trying to find where that would  
10 fit into our new --

11 MS. BADA: In I.3, potentially.

12 COMMISSIONER OLSON: Where do you see that? I  
13 didn't see it on the industry committee's --

14 COMMISSIONER BAILEY: Industry committee's page  
15 23, under their paragraph H.1.

16 COMMISSIONER OLSON: Okay, I was just looking at  
17 their proposed language.

18 COMMISSIONER BAILEY: I.(2) says that re-  
19 vegetation has to be maintained through two successive  
20 growing seasons, and industry's suggestion is that re-  
21 seeding may need to be established within five years of  
22 closure.

23 MS. BADA: We could put that in I.3 if you want a  
24 time limit.

25 COMMISSIONER BAILEY: I don't see a

1 contradiction.

2 CHAIRMAN FESMIRE: You don't see a contradiction?

3 COMMISSIONER BAILEY: Do you?

4 MS. BADA: No. Essentially -- I mean, once you  
5 get it established you have the two years. So the question  
6 is, do you want to put a time limit on how long they have  
7 to get it established? I think they're suggesting five  
8 years. Right now we don't have a time limit. We just say  
9 they have to continue until it's successful.

10 COMMISSIONER OLSON: Right. I think that was  
11 probably coming about because Dr. Buchanan was testifying  
12 that -- I think in response to some of the questioning  
13 that, well, if you didn't have something in five years, I'd  
14 tell you to re-seed it, you know, because --

15 COMMISSIONER BAILEY: Uh-huh.

16 COMMISSIONER OLSON: -- you need to do something,  
17 so...

18 But I kind of agree that it seems like it's  
19 already covered in I.3, because you'll keep -- you need to  
20 do it until you get a -- required vegetative cover.

21 COMMISSIONER BAILEY: And there is the ability to  
22 ask for a delay because of drought conditions, so I don't  
23 think we need to have that recommendation inserted in here.

24 COMMISSIONER OLSON: I don't believe it's  
25 necessary.

1 CHAIRMAN FESMIRE: Okay, let's proceed.

2 CRI had some comments, but apparently we've  
3 addressed them, and that's the last comment I have on the  
4 list until 15. But we've got a K and we made a change  
5 according to the prior agreement.

6 MS. BADA: Before we go further, I think  
7 Commissioner Bailey had --

8 COMMISSIONER OLSON: Yeah.

9 MS. BADA: -- a question on the definitions of  
10 restoration and re-vegetation, in the first part of the  
11 rule.

12 CHAIRMAN FESMIRE: Oh, yes.

13 COMMISSIONER OLSON: Where are you at?

14 CHAIRMAN FESMIRE: Going back to the definitions.

15 MS. BADA: In section 7.

16 CHAIRMAN FESMIRE: We've got a definition for  
17 restore and re-vegetate. Did you want to address those?

18 COMMISSIONER BAILEY: I can't remember what my  
19 question was. Do you recall the --

20 MS. BADA: I think it was the re-vegetate one,  
21 because now we have the 70-percent standard --

22 COMMISSIONER BAILEY: Right.

23 MS. BADA: -- and the definition itself just says  
24 a quantity that controls erosion.

25 COMMISSIONER OLSON: All right. Well, I think

1 one of the things I remembered from looking back in the  
2 transcripts is, you questioned whether you wanted to use --  
3 Several times you were saying they should follow the BLM's  
4 gold book standard --

5 COMMISSIONER BAILEY: Yes.

6 COMMISSIONER OLSON: -- and I don't know if you  
7 wanted to -- if we're looking at other things that are  
8 consistent with other rules and regulations, it seems --  
9 for trying to keep other consistencies, it almost makes  
10 more sense to use something that they're already having to  
11 do, so they don't have to repeat it for us, by us coming in  
12 here and saying, well, that's slightly different than what  
13 we've got, you know?

14 MS. BADA: I think Commissioner Bailey discussed  
15 that she did look at the gold book.

16 COMMISSIONER OLSON: Right, but --

17 COMMISSIONER BAILEY: Exactly, and that's on the  
18 record --

19 MS. BADA: Yes.

20 COMMISSIONER BAILEY: -- that that is the  
21 reference --

22 MS. BADA: -- the language that's proposed.

23 COMMISSIONER OLSON: Is --

24 COMMISSIONER BAILEY: Yes.

25 COMMISSIONER OLSON: I wasn't sure just if you

1 wanted to reference the gold book.

2 MS. BADA: The problem is that it deals with the  
3 entire site --

4 COMMISSIONER OLSON: Okay.

5 MS. BADA: -- so it's a little difficult to do  
6 that.

7 COMMISSIONER OLSON: So these elements that are  
8 taken from --

9 MS. BADA: Yeah.

10 COMMISSIONER OLSON: -- the gold book -- Okay.

11 MS. BADA: My only concern is, I think the re-  
12 vegetation definition no longer works, or I don't know that  
13 we need it. I think you've set up a conflict if you leave  
14 it the way it is.

15 CHAIRMAN FESMIRE: If you leave it the way it is?

16 MS. BADA: Not in section 7, I do not think so.

17 COMMISSIONER BAILEY: Okay, then that means we  
18 need to fix it or remove it, right?

19 MS. BADA: Yes.

20 COMMISSIONER BAILEY: Then let's fix it to  
21 conform with the standard that we used in the landfarm --

22 MS. BADA: Right, and you do in the rule, and so  
23 you may not need a definition, since you now have it in the  
24 substantive provisions. It may be easier just to remove  
25 it.

1 COMMISSIONER BAILEY: May be easier, okay.

2 COMMISSIONER OLSON: Because the key in my part  
3 of this, making sure it's in the substance too, that if  
4 they're required to do something by BLM, I don't think we  
5 should get in between two agencies saying, Well, you  
6 know --

7 CHAIRMAN FESMIRE: Right.

8 COMMISSIONER OLSON: -- you required this, we  
9 require this, and then getting bounced back and forth. It  
10 should be something -- that's my concern, just that it's  
11 consistent. So whatever they submit for us or whatever  
12 they submit for BLM should be acceptable to us on re-  
13 vegetation.

14 COMMISSIONER BAILEY: And it should be the  
15 same --

16 COMMISSIONER OLSON: Yeah, it should be --

17 COMMISSIONER BAILEY: -- it should not be a lower  
18 standard.

19 COMMISSIONER OLSON: It should be the same,  
20 right. I agree.

21 COMMISSIONER BAILEY: That was the point that I  
22 was making --

23 COMMISSIONER OLSON: Right.

24 COMMISSIONER BAILEY: -- was that they're already  
25 doing it for BLM, so let's make that the standard for the



1 entire state.

2 COMMISSIONER OLSON: I agree.

3 MS. BADA: BLM has requirements for recontouring  
4 and for planting. I think the only difference is the --  
5 they don't have a specific standard on percentages of re-  
6 vegetation. So given that they don't, I think you've okay.

7 COMMISSIONER BAILEY: Okay.

8 COMMISSIONER OLSON: Well, I like these  
9 percentages, especially that it's consistent with our other  
10 rules --

11 COMMISSIONER BAILEY: Uh-huh.

12 COMMISSIONER OLSON: -- so...

13 MS. BADA: So did you want to take out that  
14 definition, G?

15 COMMISSIONER BAILEY: Sure.

16 MS. BADA: Okay.

17 COMMISSIONER OLSON: 7. Wow, I even had a big  
18 star by that and I forgot about it.

19 CHAIRMAN FESMIRE: And that way we were going to  
20 come back to it.

21 Okay, believe it or not, there was a whole  
22 section where we didn't get any negative comments, 17.14,  
23 Emergency actions.

24 Does anybody have anything they want to talk  
25 about now?

1           COMMISSIONER OLSON: Yes, I had a question, and I  
2 think I can correct something. When I came to the  
3 provisions of so-called emergency pits in -- I guess it's  
4 14.E, and I think what the intent was -- it's not defined  
5 anywhere. It would be nice just to maybe state out what  
6 we're asking in here.

7           The intent, as I understand it, is that you don't  
8 go and construct a pit in advance with the anticipation  
9 that you're going to have an emergency some -- a year down  
10 the road or something like that.

11          CHAIRMAN FESMIRE: Or during the drilling  
12 operations, is what the --

13          COMMISSIONER BAILEY: Well, 7.D has the  
14 definition for emergency pit.

15          MS. BADA: An actual emergency pit.

16          COMMISSIONER OLSON: No, but I remember when this  
17 came up, because it came up with a couple operators in the  
18 southeast where -- in the past, and I was one of the ones  
19 that had witnessed some of this. You went out to the site  
20 of a tank battery, and there was this -- a big old pit full  
21 of oil, and they told us, Well, that's an emergency pit,  
22 because that's supposed to catch -- when we have an  
23 overflow from the tanks.

24          And that's what -- I remember Roger Anderson had  
25 coined this phrase a long time ago to deal with those type

1 of sites which weren't for fluids generated in an  
2 emergency, it was just -- they were using it to catch  
3 things and calling them an emergency pit.

4 So I think maybe we could change that and just  
5 strike the phrase, so-called emergency pit, and replace it  
6 with, a pit to be used as a contingency measure in advance  
7 of an emergency event. And I think that -- at least I  
8 think it describes it if...

9 COMMISSIONER BAILEY: How does that differ from  
10 7.D?

11 MS. BADA: Because they actually construct the  
12 pit at the time of an emergency, they don't have it built  
13 and waiting.

14 COMMISSIONER OLSON: And this talks about a pit  
15 constructed in an emergency.

16 COMMISSIONER BAILEY: 7.D says, a precautionary  
17 matter. So we have to make things jive here.

18 CHAIRMAN FESMIRE: ...a pit constructed...

19 MS. BADA: Could we just say they can't construct  
20 a pit prior to the emergency actually occurring? Would  
21 that work?

22 COMMISSIONER OLSON: Yeah, I think the point is,  
23 is that if it's constructed prior to an emergency, it's a  
24 pit, it's not an emergency pit. It's a planned -- it has a  
25 planned use.

1           CHAIRMAN FESMIRE: How about, does not authorize  
2 construction of contingency pits? Construction or use of  
3 any such pit requires a permit --

4           COMMISSIONER OLSON: -- pursuant to the rule.  
5 That's --

6           CHAIRMAN FESMIRE: Yeah, but then we've got a  
7 definition of contingency pits. Do we need that?

8           COMMISSIONER OLSON: So where's that?

9           CHAIRMAN FESMIRE: That's the first sentence in  
10 E, does not authorize the construction or the use of -- Or  
11 do we need E at all? I mean -- we have a definition of --

12           COMMISSIONER OLSON: Well, I was -- originally,  
13 when we did Rule 50 --

14           CHAIRMAN FESMIRE: ...shall contain a spill in  
15 the event of a release, means a -- the pit that is  
16 constructed as a precautionary manner.

17           I think we need to change the definition of  
18 emergency pit. Go back to 17.7.D.

19           MS. BADA: Maybe that is what they're -- Maybe  
20 they did define it. Hang on.

21           COMMISSIONER OLSON: Because, see, you may have a  
22 contingency pit that's built specially for stormwater --

23           CHAIRMAN FESMIRE: But that requires a --

24           COMMISSIONER OLSON: Right --

25           MS. BADA: No --

1 COMMISSIONER OLSON: -- but --

2 MS. BADA: -- no, I think that is what they're  
3 using as the definition of an emergency pit.

4 CHAIRMAN FESMIRE: Where at?

5 MS. BADA: What they're referring to in E. I  
6 think they are defining what they mean by it, so it may  
7 just not -- may just strike the quotes and the "so-called".

8 COMMISSIONER OLSON: Because what I was looking  
9 at was what follows after that, and it talks about, unless  
10 the pit is described in a spill prevention, control and  
11 countermeasure plan, which people do construct pits as part  
12 of SPCC plans to -- contain any spill that they may have.

13 CHAIRMAN FESMIRE: But see, we -- in the  
14 definition we've got, Means a pit that is constructed as a  
15 precautionary matter to contain a spill.

16 How about, Means a pit that is constructed in the  
17 event of an emergency --

18 MS. BADA: No, I don't think that's what they  
19 meant that definition for. I think they meant it for what  
20 they're referring to in E. You notice, they never talk  
21 about an emergency pit in A, B, C or D.

22 CHAIRMAN FESMIRE: Well, what we're looking for  
23 here is a pit where they've got a problem out there,  
24 they've got state police on location, they need to dig a  
25 pit to contain --

1 MS. BADA: Yeah --

2 CHAIRMAN FESMIRE: -- a problem.

3 MS. BADA: -- and I don't think they actually  
4 define that as an emergency pit. I think they're really  
5 talking about E.

6 So I think maybe what you say is, 19.15.17.14  
7 NMAC does not authorize construction of an emergency pit  
8 unless the construction or use is pursuant to a permit.

9 CHAIRMAN FESMIRE: Okay, an emergency pit defined  
10 in --

11 MS. BADA: Yeah.

12 CHAIRMAN FESMIRE: -- 7.D.

13 MS. BADA: Yeah.

14 CHAIRMAN FESMIRE: Okay.

15 Commissioner Bailey, is that --

16 COMMISSIONER OLSON: Because it's not a problem  
17 to have those, it's just that they need to be permitted.

18 COMMISSIONER BAILEY: Do we want to add the word  
19 "accidental" in 7.D? In the event of an accidental  
20 release?

21 CHAIRMAN FESMIRE: Well, it still could -- you  
22 know, what we're trying to get around is any appearance  
23 that by calling it an emergency pit you get around the need  
24 for permitting a pit that, you know, is part of your  
25 planned events.

1 COMMISSIONER BAILEY: Uh-huh.

2 CHAIRMAN FESMIRE: What we're trying to provide  
3 here is, in emergency actions they can dig a pit without a  
4 -- without a permit --

5 COMMISSIONER OLSON: Like a blowout.

6 CHAIRMAN FESMIRE: Like a blowout.

7 COMMISSIONER OLSON: Uh-huh.

8 COMMISSIONER BAILEY: Uh-huh.

9 CHAIRMAN FESMIRE: So we've got this definition  
10 of emergency pit, and then back here --

11 COMMISSIONER OLSON: Well, maybe it's okay if you  
12 just take out -- the "so-called" was the one -- was the  
13 part of that that kind of --

14 MS. BADA: Yeah.

15 COMMISSIONER OLSON: -- bugged me, because like  
16 what's a so-called? It's either an emergency pit or it's  
17 not, you know?

18 CHAIRMAN FESMIRE: Emergency pit.

19 MS. BADA: Take out the quotes, okay.

20 CHAIRMAN FESMIRE: How about an emergency pit as  
21 defined in 7.D?

22 COMMISSIONER OLSON: Right.

23 MS. BADA: Okay, we can reference that.

24 COMMISSIONER OLSON: Right, that would probably  
25 take care of it.

1           CHAIRMAN FESMIRE: So in an emergency you can't  
2 drill an emergency -- dig an emergency pit, you can dig a  
3 pit without a permit.

4           MS. BADA: Yeah, it's a little odd, isn't it?

5           COMMISSIONER OLSON: Well, the only other thing  
6 is, you just go and you change the definition.

7           MS. BADA: Yes.

8           COMMISSIONER OLSON: Instead of an emergency pit,  
9 maybe you call it a contingency pit.

10          CHAIRMAN FESMIRE: Yeah, but this is a  
11 sectionwide definition. I don't know --

12          COMMISSIONER OLSON: Right.

13          CHAIRMAN FESMIRE: -- what we'd be changing if  
14 we --

15          COMMISSIONER OLSON: Right.

16          MS. BADA: It's a partwide definition.

17          CHAIRMAN FESMIRE: Partwide definition, yeah.

18          MS. BADA: Unless you use it somewhere else, it's  
19 not a problem.

20          CHAIRMAN FESMIRE: Well, what do you say we fix  
21 it in the definition if we don't use it somewhere else, and  
22 fix it this way if we do?

23          MS. BADA: Okay.

24          COMMISSIONER OLSON: Uh-huh.

25          CHAIRMAN FESMIRE: Okay. So much for the --



1 MS. BADA: If it's only in this part and it's not  
2 used somewhere else, what do you want to call it?

3 COMMISSIONER OLSON: Well, I don't have a -- I'd  
4 go with either one, because they seem like they accomplish  
5 the same thing, so --

6 CHAIRMAN FESMIRE: Yeah.

7 COMMISSIONER OLSON: Actually, it might be easier  
8 just to say for use of an emergency pit as defined here,  
9 because it -- that's the least change to other portions of  
10 the -- potentially other portions of the regulation that's  
11 proposed.

12 CHAIRMAN FESMIRE: So much for the easy section.

13 COMMISSIONER OLSON: That's all I had, so...

14 CHAIRMAN FESMIRE: 15 had about a page of  
15 remarks.

16 Starting with 15.A.(1), the Citizens and CRI,  
17 Scratch the closure requirement references, and the  
18 industry committee wanted to change, it provides equivalent  
19 or better protection.

20 COMMISSIONER BAILEY: I think we ought to keep it  
21 as is, because we've changed and set up our scheme for  
22 disposal.

23 CHAIRMAN FESMIRE: Okay, I'm okay with A.(1).

24 Commissioner?

25 COMMISSIONER OLSON: I think I -- as far as I can

1 tell, I was okay with A.(1) as well.

2 I just noticed -- I don't know if we discussed,  
3 though, back on the re-vegetation in G.(1) -- I don't know  
4 if we discussed -- the New Mexico Citizens for Clean Air  
5 and Water, they had a change. Did you want to specify that  
6 your two successive growing seasons to prove viability,  
7 there won't be artificial irrigation? I don't know if  
8 that's...

9 But on A.(1) I don't have a -- I thought it was  
10 fine.

11 CHAIRMAN FESMIRE: Do you want to go back to G,  
12 to 13.G, and discuss it?

13 COMMISSIONER OLSON: Yeah, they just have -- they  
14 have one sentence that would go on the --

15 MS. BADA: Re-veg.

16 COMMISSIONER OLSON: -- looks like the end of  
17 I.(2) on page 14.

18 CHAIRMAN FESMIRE: Well, do we want to discourage  
19 irrigation? Because it seems to me that's going to be the  
20 first place to use treated, produced water, and I think  
21 what the concern is, is that if you establish it with  
22 irrigation, then you take the irrigation off, then it won't  
23 maintain.

24 COMMISSIONER OLSON: I think that's what they're  
25 trying to say, that you're -- your two seasons for

1 viability don't have irrigation.

2 COMMISSIONER BAILEY: And it attracts every cow  
3 in the county.

4 CHAIRMAN FESMIRE: Okay, then I think maybe we  
5 ought to --

6 MS. BADA: -- add it?

7 COMMISSIONER OLSON: Yeah, I didn't have any  
8 problem with adding that in there. I think that's what  
9 everybody was talking about, so...

10 CHAIRMAN FESMIRE: We're not saying they can't  
11 establish it with irrigation --

12 COMMISSIONER OLSON: Right.

13 CHAIRMAN FESMIRE: -- what we're saying is, the  
14 two years towards completion won't count if they're  
15 irrigating it.

16 MS. BADA: The way it's written, you can't use  
17 it.

18 COMMISSIONER OLSON: Well, it says during the two  
19 growing seasons that prove viability.

20 CHAIRMAN FESMIRE: Right. So you can establish  
21 it with irrigation.

22 COMMISSIONER OLSON: Right.

23 CHAIRMAN FESMIRE: Remove the irrigation, you've  
24 got two years to establish viability.

25 COMMISSIONER OLSON: And during those two seasons

1 there shall be no artificial irrigation. I thought --  
2 that's just a clarification of what everybody is talking  
3 about in the testimony -- you know, that's, as far as I  
4 understand, everyone's intent in re-vegetation, so...

5 CHAIRMAN FESMIRE: Okay.

6 COMMISSIONER OLSON: Sorry, I just had noticed  
7 that.

8 CHAIRMAN FESMIRE: One step forward and two steps  
9 back.

10 Okay, we're in section 15. CRI.

11 ...closure requirements of subparagraph (c) of  
12 paragraph (1) of section F.

13 MS. BADA: What about the --

14 CHAIRMAN FESMIRE: They wanted to --

15 MS. BADA: -- Citizens' notice requirement?

16 CHAIRMAN FESMIRE: -- delete that part --

17 MS. BADA: Did you discuss Citizens' --

18 COMMISSIONER OLSON: -- that's what's --

19 MS. BADA: A.(2) of 15 --

20 COMMISSIONER OLSON: -- coming up right now --

21 MS. BADA: -- it's on the next page.

22 COMMISSIONER OLSON: -- we're just getting --  
23 we're just getting to A.(2) now.

24 Commissioner Bailey, do you see anything else in  
25 A.(2) we need to address?

1 COMMISSIONER BAILEY: In 15.A.(2), yes, we --

2 CHAIRMAN FESMIRE: I mean A.(1), I'm sorry --

3 COMMISSIONER BAILEY: Oh, no, A.(1) --

4 CHAIRMAN FESMIRE: We're about --

5 COMMISSIONER BAILEY: -- I'm fine.

6 CHAIRMAN FESMIRE: -- to go to A.(2).

7 Okay, A.(2). It was extremely well commented on.

8 I don't mean that in a complimentary way, there were just a  
9 lot of comments.

10 A.(2). The operator shall give written notice by  
11 certified mail, return receipt requested, to the surface  
12 owner of record where the pit, closed-loop system, below-  
13 grade system [sic] or other proposed alternative is, or  
14 will be, located, and to such other person as the  
15 Environmental Bureau may direct by certified mail... The  
16 operator shall issue public notice by publication one time  
17 in a newspaper...

18 And these are for the exceptions, right? Does  
19 this include the exceptions by rule?

20 MS. BADA: No, it does not.

21 COMMISSIONER BAILEY: How do we make that clear?

22 CHAIRMAN FESMIRE: Do we want to make that clear?

23 COMMISSIONER OLSON: I think that's in A.(1), I  
24 thought.

25 MS. BADA: It's in (1), so that's why it --

1           CHAIRMAN FESMIRE: Shouldn't we perhaps make this  
2 apply to the exceptions by rule?

3           COMMISSIONER BAILEY: No, because you're asking  
4 for approval by the land owner here.

5           MS. BADA: Yeah, this is an exception procedure.

6           CHAIRMAN FESMIRE: Well, we're going to be  
7 leaving contaminated materials in their land.

8           MS. BADA: Well, I mean they already have to be  
9 notified of that in F.

10          CHAIRMAN FESMIRE: Oh, this is the provision on  
11 permission, right?

12          MS. BADA: Yeah, this is an exception provision.  
13 This is the notice for hearing, exceptions for hearing.

14          COMMISSIONER OLSON: Now you see, that's, I  
15 guess, where maybe where you could explain that to me,  
16 because the way I read A.(1) -- or maybe I'm reading this  
17 wrong -- that you can get an exception to --

18          MS. BADA: No, because it doesn't allow except  
19 for F.

20          COMMISSIONER OLSON: Then I'm reading it wrong,  
21 that's why. Okay.

22          MS. BADA: Now, what (2) might ought to say is,  
23 the operator shall give notice of the request for  
24 exception. That might make it clear.

25          COMMISSIONER BAILEY: OCD already has notice

1 requirements.

2 CHAIRMAN FESMIRE: For the APD, I mean, for  
3 hearing.

4 COMMISSIONER BAILEY: Can we find some way to  
5 have consistency in notice requirements as well, so we  
6 don't have -- one rule has certain notice requirements,  
7 another rule has certain other ones, and another one has  
8 certain other ones? I mean, if we're trying to find some  
9 consistency so that everybody knows this is the way it is,  
10 can we adapt what's already on the record, or just refer to  
11 the notice requirements that are on -- have already been  
12 adopted?

13 CHAIRMAN FESMIRE: The problem is, we've got  
14 several different notice requirements already.

15 COMMISSIONER BAILEY: But we -- That's what I'm  
16 saying, you know, why make more?

17 CHAIRMAN FESMIRE: Yeah.

18 COMMISSIONER BAILEY: Why not choose one and have  
19 that as, by reference, the notice requirements in this  
20 situation also, rather than keep making up new ones as we  
21 go along?

22 COMMISSIONER OLSON: Well, I'd noticed that in  
23 CRI's proposal, that a number of the things that they're  
24 listing are consistent with other portions of our public  
25 notice. I thought it was out of -- might have been out

1 of --

2 MS. BADA: -- 36.

3 COMMISSIONER OLSON: -- 36, I think. You know,  
4 Rule -- or part 36.

5 So maybe -- I was going to suggest, maybe the  
6 counsel could just look at that for the consistency with  
7 the other rules and try to propose --

8 MS. BADA: The question would be, which one do  
9 you want to be consistent with?

10 COMMISSIONER OLSON: Right, but -- right, because  
11 some of those have distance requirements for notification  
12 of adjacent landowners.

13 MS. BADA: What I could do is check and see if  
14 there's a notice provision for exceptions in Rule 36, see  
15 if that one can be made --

16 CHAIRMAN FESMIRE: You know, that's a good idea,  
17 because I'm pretty sure there's going to be. It would be  
18 after that was published, wouldn't it?

19 So the scheme that we've got here has a certain  
20 number of exceptions by rule, and that this provision also  
21 gives us exceptions -- other exceptions --

22 MS. BADA: Yes.

23 CHAIRMAN FESMIRE: -- so -- Okay.

24 MS. BADA: This is to cover exceptions that  
25 aren't specifically --



1           COMMISSIONER OLSON: See, the exceptions in part  
2   36 refer back to providing of notice in accordance with  
3   36.9, which is probably the --

4           COMMISSIONER BAILEY: What part of 36?

5           MS. BADA: Section 9.

6           COMMISSIONER OLSON: Section 9 in 36, which is  
7   the notice requirements for a new facility. They have a  
8   half-mile radius.

9           So it looks like actually what CRI has proposed  
10   here comes largely out of part 36.9.

11          MS. BADA: And this one just -- instead of having  
12   distance requirements requires to the surface owner and  
13   then anybody that's on the mailing list.

14          COMMISSIONER OLSON: Because the one thing I  
15   didn't like, and what CRI proposed, there were certain  
16   portions when they clarified that you can submit requests  
17   for a hearing or -- there was a little bit more clarity in  
18   this, so if that comes out of here I think we should have  
19   that same -- same clarity.

20          MS. BADA: So did you want to make CRI's changes,  
21   suggested changes?

22          COMMISSIONER OLSON: Not all of them.

23          MS. BADA: Okay. Well, let's -- find my copy  
24   here.

25          CHAIRMAN FESMIRE: I think what we want to do, to

1 the extent possible, is conform to the --

2 COMMISSIONER OLSON: Uh-huh.

3 CHAIRMAN FESMIRE: -- part 19.15.36.9 notice  
4 requirements. It's not applicable.

5 MS. BADA: That's the problem.

6 COMMISSIONER OLSON: But I think that's a -- you  
7 know, we've been looking at trying to get more consistency,  
8 and that seems like the most appropriate thing that's  
9 consistent with a lot of this, because the biggest issues  
10 that are going to come up are similar disposal-type issues.

11 CHAIRMAN FESMIRE: Exactly.

12 COMMISSIONER OLSON: So why don't we just --

13 CHAIRMAN FESMIRE: I mean, this speaks to the,  
14 you know, preliminary tentative decision and all that, and  
15 we can't --

16 MS. BADA: Yeah, and we don't necessarily have  
17 all that.

18 CHAIRMAN FESMIRE: But there -- I mean, but the  
19 notice scheme and the time periods are generally like we  
20 would -- and being in 36, they've stood the scrutiny.

21 COMMISSIONER OLSON: Because I think that -- see,  
22 that was one area that CRI went above and beyond the part  
23 36, because they were looking at also notifying the lessees  
24 of record within a half mile, just versus, you know,  
25 surface owners. So they were trying to expand it even upon

1 what was in here, so...

2 I like the idea of just taking elements as they  
3 apply to exceptions -- or for hearing, to apply those  
4 towards exceptions in general.

5 COMMISSIONER BAILEY: So we don't just keep  
6 creating new --

7 COMMISSIONER OLSON: Right.

8 COMMISSIONER BAILEY: -- standards.

9 COMMISSIONER OLSON: Right.

10 CHAIRMAN FESMIRE: And when a person reads one,  
11 they can generally apply that to the --

12 COMMISSIONER BAILEY: Uh-huh.

13 CHAIRMAN FESMIRE: -- to the others.

14 When they talk about -- CRI's proposal talking  
15 about lessees, are they talking about mineral lessees or --

16 COMMISSIONER OLSON: That's what I --

17 CHAIRMAN FESMIRE: -- surface lessees?

18 COMMISSIONER OLSON: It could be both, the way  
19 it's written. I don't necessarily agree with that.

20 CHAIRMAN FESMIRE: And subsurface owners and  
21 lessees --

22 COMMISSIONER OLSON: To me, the key was -- to me,  
23 the key is surface owners, because I come back to the same  
24 issue again.

25 CHAIRMAN FESMIRE: This is a waste-disposal

1 issue.

2 COMMISSIONER OLSON: Right.

3 CHAIRMAN FESMIRE: And I'm not sure that we need  
4 to -- in fact, I don't think that we need to add mineral  
5 owners to the --

6 COMMISSIONER OLSON: No.

7 MS. BADA: Yeah, the problem with 36, that all  
8 those were tentative decisions.

9 CHAIRMAN FESMIRE: Right.

10 COMMISSIONER OLSON: I mean, overall, what I'm  
11 seeing here is, I don't have -- I guess in CRI's proposal I  
12 didn't have a big objection because I think it clarifies  
13 how the process works, except for this issue of like  
14 mineral lessees and subsurface owners and...

15 But I'm not sure how consistent that is with 36,  
16 because part 36 is a little different, because it's  
17 actually permitting a brand-new --

18 CHAIRMAN FESMIRE: And it's a two-step process.

19 COMMISSIONER OLSON: -- activity, and it's a  
20 process similar to the notice requirements that go for  
21 discharge permits under WQCC regulations.

22 CHAIRMAN FESMIRE: There is an awful lot to be  
23 said for complying as much as possible with 36.

24 COMMISSIONER OLSON: It's just the action ends up  
25 being a little bit different in how it works.

1           CHAIRMAN FESMIRE: And I'm not really interested  
2 in giving the mineral lessees information on --

3           COMMISSIONER OLSON: No.

4           CHAIRMAN FESMIRE: -- surface waste issues.

5           So why don't we ask counsel, using part 36 as a  
6 model, and --

7           MS. BADA: Looking at part 36, and I frankly  
8 wouldn't choose it as a model for this.

9           COMMISSIONER OLSON: Well, I'm thinking maybe you  
10 might look at -- maybe counsel could look at CRI's proposal  
11 and see how that works as being consistent. Overall, I  
12 think it's close.

13          CHAIRMAN FESMIRE: Except for the part about  
14 mineral lessees and --

15          COMMISSIONER OLSON: Right, except for the parts  
16 about --

17          CHAIRMAN FESMIRE: -- and subsurface --

18          COMMISSIONER OLSON: -- mineral lessees.

19          CHAIRMAN FESMIRE: I'm not -- like I said, I  
20 don't think that's a --

21          COMMISSIONER BAILEY: Or if there are other  
22 notice requirements in other rules, they may be able to be  
23 used as standards, rather than trying to adapt something  
24 that's obviously not going to work. 36 is not the only one  
25 that has notice requirements.

1 MS. BADA: Yeah, 14 does.

2 CHAIRMAN FESMIRE: Yeah, we've got a veritable  
3 buffet of notice requirements.

4 COMMISSIONER BAILEY: Uh-huh, proliferation.

5 MS. BADA: ...rulemaking, adjudicatory hearing...

6 COMMISSIONER OLSON: Because what I'm -- you  
7 know, some of the parts I like -- CRI has added clarity to  
8 the whole thing, which was especially the item number 3  
9 they were proposing here.

10 CHAIRMAN FESMIRE: Any person wishing to  
11 comment --

12 COMMISSIONER OLSON: Right, because it didn't  
13 really -- there wasn't anything in the rule as proposed to  
14 say what you do, what that person needs to do.

15 MS. BADA: There are lots of notice requirements  
16 in 14, but they're all pretty specific to their individual  
17 thing.

18 CHAIRMAN FESMIRE: Have you looked at the CRI  
19 proposal?

20 MS. BADA: This one?

21 CHAIRMAN FESMIRE: Yeah.

22 COMMISSIONER OLSON: Uh-huh.

23 MS. BADA: There's hearing notices, but they're  
24 more directed to the --

25 COMMISSIONER OLSON: Because, see, this -- the

1 whole intent of this was to be able to grant an exception  
2 administratively --

3 MS. BADA: Yeah.

4 COMMISSIONER OLSON: -- if they're not getting a  
5 request for a hearing.

6 MS. BADA: -- hearing.

7 COMMISSIONER OLSON: So it's not a requirement to  
8 have a hearing, and that's the key.

9 CHAIRMAN FESMIRE: Yeah, if there's no objection  
10 there's no need for a hearing, but we need to make sure  
11 that the proper people get notice and the opportunity to  
12 object.

13 COMMISSIONER BAILEY: But under paragraph (4) on  
14 page 15 it requires a waiver from all persons to whom  
15 notice is required.

16 COMMISSIONER OLSON: Paragraph (4) of the --

17 COMMISSIONER BAILEY: -- page 15 --

18 MS. BADA: Which --

19 COMMISSIONER OLSON: Yeah, that was actually in  
20 OCD's proposal.

21 COMMISSIONER BAILEY: That's -- yeah, but we've  
22 already agreed we don't have to do that.

23 COMMISSIONER OLSON: Uh-huh.

24 COMMISSIONER BAILEY: So that portion of CRI's  
25 proposal should be stricken.

1 MS. BADA: So which parts --

2 COMMISSIONER OLSON: Well, it's actually OCD's  
3 proposal, but --

4 COMMISSIONER BAILEY: Whosever it is --

5 COMMISSIONER OLSON: Right.

6 COMMISSIONER BAILEY: -- it has to be removed.

7 COMMISSIONER OLSON: I don't think it's necessary  
8 if all these people are notified, there's not -- I brought  
9 that up in the hearing, because they had -- at one point  
10 they said, Well, if you had gotten everybody to sign off on  
11 the waivers, but the other portions of the regulations are  
12 requiring that you give notice --

13 COMMISSIONER BAILEY: Yeah.

14 COMMISSIONER OLSON: -- so why are you giving  
15 notice if you have to get waivers? So I think we shouldn't  
16 strike the --

17 MS. BADA: Well, and OCD proposed that in their  
18 redline, to take that out, to take the written-waiver  
19 requirement out.

20 COMMISSIONER OLSON: Okay, yeah. So we can  
21 strike that.

22 COMMISSIONER BAILEY: So is this -- I just want  
23 to be clear in my mind. Is this requiring every on-site  
24 burial --

25 MS. BADA: No.



1 COMMISSIONER BAILEY: -- to be approved?

2 CHAIRMAN FESMIRE: Except those that are excepted  
3 by rule, that are --

4 MS. BADA: No, there is no exception for on-site  
5 burial in 15. If you read it, it says except for the  
6 following. One of them is subsection F. That's what I was  
7 pointing out earlier.

8 COMMISSIONER OLSON: Uh-huh.

9 CHAIRMAN FESMIRE: Okay, say that again?

10 MS. BADA: There is no exception available for  
11 on-site burial.

12 COMMISSIONER OLSON: Look in A.(1), third  
13 sentence.

14 CHAIRMAN FESMIRE: Okay.

15 COMMISSIONER OLSON: Or third line, excuse me.

16 CHAIRMAN FESMIRE: Okay, subsection F, okay.

17 COMMISSIONER BAILEY: So on-site burials can go  
18 through without public notice within a half-mile --

19 MS. BADA: -- exception, so the only on-site  
20 burial that would be allowed is whatever you've allowed in  
21 section 10.

22 COMMISSIONER OLSON: What she's saying, we've  
23 allowed an exception by rule. Those are the only ones that  
24 would be allowed, is what we're allowing -- the way this is  
25 written, we'd only be allowing exceptions by rule to those

1 in that -- those sections that we're adopting there,  
2 because it's specifically exempting them from an exception,  
3 the way it's written.

4 COMMISSIONER BAILEY: From my understanding --  
5 let's quit using the word exception --

6 COMMISSIONER OLSON: Uh-huh.

7 COMMISSIONER BAILEY: -- and just say, Can we  
8 have on-site burials without having public notice to  
9 everybody within a half mile?

10 MS. BADA: And have those that you are allowing  
11 in section 10.

12 CHAIRMAN FESMIRE: Which are -- ?

13 MS. BADA: Which are, they meet the landfarm  
14 standards or the one you've just discussed, if they meet  
15 the 250 --

16 COMMISSIONER BAILEY: Okay, and those will be  
17 allowed without --

18 MS. BADA: Those would be allowed.

19 COMMISSIONER OLSON: -- without a hearing.

20 COMMISSIONER BAILEY: Okay.

21 CHAIRMAN FESMIRE: We've hit a lull here.

22 MS. BADA: So what do you want me to do about  
23 notice?

24 CHAIRMAN FESMIRE: Well, I --

25 COMMISSIONER OLSON: Well, I think this -- maybe

1 if we -- it seems like the majority of CRI's proposal is  
2 consistent with some of our other rules, so why don't we  
3 try to use --

4 MS. BADA: Why don't we go through that --

5 COMMISSIONER OLSON: You have testimony on this,  
6 and this was presented as part of the hearing.

7 MS. BADA: Why don't we go through what they're  
8 presenting, and tell me what parts of it you want me to  
9 adopt and which parts you don't.

10 CHAIRMAN FESMIRE: Okay.

11 COMMISSIONER BAILEY: And this would be used in  
12 those cases where --

13 MS. BADA: -- where they're requesting an  
14 exception to --

15 COMMISSIONER BAILEY: Don't -- Please don't use  
16 that word.

17 MS. BADA: What 15 is for is, if you go back and  
18 look at A.(1) it says when you can request an exception  
19 that isn't already provided for somewhere else in the rule.  
20 And that's when these notice requirements apply, when  
21 you're requesting something in A.(1).

22 COMMISSIONER BAILEY: Of -- ?

23 MS. BADA: 15, section --

24 COMMISSIONER BAILEY: Of 15.A.(1) --

25 MS. BADA: Yeah.

1 COMMISSIONER BAILEY: -- if you want something  
2 different than what we've already talked about --

3 MS. BADA: Right.

4 COMMISSIONER BAILEY: -- such as --

5 MS. BADA: -- somewhere else in the rules, right.  
6 So if you want to do -- so --

7 CHAIRMAN FESMIRE: If you can't meet the trench  
8 burial standards that we've talked about, the F.(1) --  
9 the --

10 MS. BADA: No, it would not be in F.(1), because  
11 F.(1) is not --

12 CHAIRMAN FESMIRE: I think we're saying the same  
13 thing, but --

14 MS. BADA: Yeah.

15 CHAIRMAN FESMIRE: -- that is what I would call  
16 exception --

17 MS. BADA: Say you wanted a -- let's see. Say  
18 you wanted an exception to the liner, just for an example.

19 COMMISSIONER BAILEY: Okay.

20 MS. BADA: You can request it here.

21 COMMISSIONER BAILEY: Okay.

22 MS. BADA: You want an exception to an anchor  
23 trench, those type of things. You'd request it here, and  
24 this is the type of notice you would have to give.

25 CHAIRMAN FESMIRE: Okay, what if I had a waste

1 that was 200 miles from a facility, that I wanted to bury  
2 on-site in a trench? I cannot get an exception to that.

3 COMMISSIONER OLSON: Well, I -- the way I -- what  
4 I'm seeing here is that you can. Now it's only referring  
5 to --

6 MS. BADA: -- (c) --

7 COMMISSIONER OLSON: -- (1).(c), which is that  
8 you've got to comply with the closure requirements and  
9 standards of 2.(F). If the method for --

10 MS. BADA: I don't know.

11 COMMISSIONER OLSON: Let me -- let me look at  
12 this a second. Because only -- it's only exempting  
13 (1).(c).

14 COMMISSIONER BAILEY: (1).(c) of what part?

15 COMMISSIONER OLSON: Of 13.F on page 12.

16 COMMISSIONER BAILEY: Okay.

17 MS. BADA: Oh, (1).(c) -- don't look at this one,  
18 go back and look at -- (1).(c) was the surface-owner  
19 approval.

20 COMMISSIONER OLSON: In the original?

21 MS. BADA: Yeah.

22 COMMISSIONER OLSON: So you can get -- it's  
23 allowing for --

24 MS. BADA: So you're going to have --

25 COMMISSIONER OLSON: -- an exception --

1 MS. BADA: -- to revise that. No, actually it  
2 wasn't, because if you couldn't get surface-owner approval  
3 before, you couldn't. So now you're going to have to  
4 decide whether you want to.

5 CHAIRMAN FESMIRE: Well, it's a moot point, isn't  
6 it? Because we're not requiring a surface owner who --

7 MS. BADA: No, but the way the -- the way 15 is  
8 drafted, you're going to decide whether you would want to  
9 allow that and, if so, when. Because before they weren't.  
10 You had to have surface-owner approval if you wanted to  
11 bury outside the 100-mile radius, and then there's no  
12 exception to that.

13 COMMISSIONER OLSON: Right.

14 MS. BADA: So the question now is, do you want to  
15 be able to have exceptions for other types of -- for on-  
16 site burial?

17 CHAIRMAN FESMIRE: And I think the answer is yes,  
18 isn't it?

19 COMMISSIONER BAILEY: We want to allow on-site  
20 burial, which means a whole lot of --

21 CHAIRMAN FESMIRE: Well --

22 COMMISSIONER BAILEY: -- 15.A.(2) needs to be  
23 revised.

24 CHAIRMAN FESMIRE: -- the only way we want to  
25 allow on-site burial is by exception, either the two

1 examples where they meet the closure standards, or by  
2 exception under this process --

3 COMMISSIONER OLSON: Or through --

4 CHAIRMAN FESMIRE: -- notice --

5 COMMISSIONER OLSON: -- hearing.

6 CHAIRMAN FESMIRE: -- or through hearing.

7 COMMISSIONER OLSON: So I think what -- Now it's  
8 coming back to me. The intent, I seem to recall, of what  
9 OCD was looking at here was that you can apply for an  
10 exception through hearing to anything in the rule except  
11 for the need for a permit and landowner approval.

12 CHAIRMAN FESMIRE: Right --

13 MS. BADA: Yes.

14 CHAIRMAN FESMIRE: -- and now the latter is --

15 MS. BADA: I'm there, so you have to --

16 CHAIRMAN FESMIRE: -- is moot.

17 MS. BADA: -- decide how you want to address it.

18 CHAIRMAN FESMIRE: Right.

19 COMMISSIONER OLSON: And the reason the permit  
20 requirement came up was because of the issues that came up  
21 with the appeal we had before on Otero Mesa, that they were  
22 trying to use Rule 50 to come back --

23 CHAIRMAN FESMIRE: -- to bootstrap into 21.

24 COMMISSIONER OLSON: -- to bootstrap into 21 and  
25 say, Hey, look, we can link to this and get an exception,

1 when 21 did not allow for pits, period, and they were  
2 trying to use the exception process of 50 to get a pit  
3 under Rule 21.

4 CHAIRMAN FESMIRE: Right.

5 COMMISSIONER OLSON: And that was the intent -- I  
6 think the majority of the intent of that language, that you  
7 can't get an exception for -- you need to have a permit,  
8 you've got to have a permit.

9 Now what's in your permit, you can get all kinds  
10 of different exceptions by hearing for. I'm okay with  
11 that, because I think that's -- you know, if somebody comes  
12 up with a better idea or --

13 MS. BADA: That doesn't necessarily require  
14 hearing.

15 COMMISSIONER OLSON: It can have a hearing if  
16 somebody --

17 MS. BADA: Right.

18 COMMISSIONER OLSON: -- requests for it.

19 MS. BADA: Yeah.

20 CHAIRMAN FESMIRE: Right, if you get an objection  
21 or a request for a hearing.

22 MS. BADA: Right.

23 COMMISSIONER OLSON: Right.

24 CHAIRMAN FESMIRE: Or the Director sets one.

25 MS. BADA: Right.



1 COMMISSIONER OLSON: Or -- right.

2 MS. BADA: So the question is, do you want to  
3 remove the reference to section F?

4 CHAIRMAN FESMIRE: I think so, because --

5 MS. BADA: Okay.

6 CHAIRMAN FESMIRE: -- we -- you know, no  
7 exception to the requirement to a permit, but the latter  
8 part is moot because we no longer require landowner  
9 approval. We notify them, but we don't need an exception  
10 to the notification.

11 MS. BADA: Right.

12 CHAIRMAN FESMIRE: And it's broad enough -- the  
13 exception provision is broad enough, for instance, if you  
14 can't find the landowner, then you could get an exception,  
15 and I think the exception provisions are necessary for the  
16 rule to function adequately.

17 COMMISSIONER OLSON: Uh-huh.

18 CHAIRMAN FESMIRE: Okay?

19 COMMISSIONER OLSON: Uh-huh.

20 CHAIRMAN FESMIRE: Where are we at?

21 COMMISSIONER OLSON: Well, we're ready to go  
22 through C --

23 MS. BADA: I think we're back to A.(2) now.

24 COMMISSIONER BAILEY: I thought we were just  
25 talking A.(2).

1 MS. BADA: No, we were back on A.(1).

2 (Laughter)

3 COMMISSIONER OLSON: Well, I can -- I mean, the  
4 first part of CRI's proposals is in A.(1), so that one,  
5 we've already dealt with that.

6 And if we come down to A.(2), I disagree with  
7 their change on the first and second lines of A.(2) that  
8 goes towards subsurface owners and lessees, so you can --  
9 don't worry about that one. I don't think that's  
10 appropriate.

11 CHAIRMAN FESMIRE: Yeah, I --

12 MS. BADA: So no to the --

13 COMMISSIONER OLSON: Right.

14 MS. BADA: -- first part of (2), the "and  
15 subsurface". Okay, and lessees.

16 CHAIRMAN FESMIRE: And they refer to it again in  
17 the second part.

18 COMMISSIONER OLSON: Yeah. I don't have a  
19 problem with the second, larger change, as long as you take  
20 out the subsurface owners and lessees. The half-mile  
21 requirement is the same as what's in part 36.

22 MS. BADA: Okay. Do you want just the surface  
23 owner where it would be buried -- Otherwise, you're  
24 expanding it potentially to adjacent surface owners. Do  
25 you want to do that?

1 COMMISSIONER OLSON: Well, this is expanding to  
2 one-half-of-a-mile radius.

3 CHAIRMAN FESMIRE: But we've decided we don't  
4 have to address the subsurface issue, because --

5 MS. BADA: No, that's subsurface, but surface  
6 owners.

7 CHAIRMAN FESMIRE: Yes, I --

8 COMMISSIONER OLSON: I --

9 CHAIRMAN FESMIRE: -- isn't that --

10 MS. BADA: Because that expands it beyond just  
11 the owner -- potentially beyond the owner of just the  
12 surface where the burial would take place.

13 CHAIRMAN FESMIRE: Yeah, this is notice --

14 MS. BADA: Okay.

15 CHAIRMAN FESMIRE: -- we're telling them we're  
16 going to bury it.

17 MS. BADA: Yeah. But what I'm asking is, you  
18 want it to have -- it could potentially include surface  
19 owners outside of the property, and I just want to make  
20 sure that's what your intent is.

21 CHAIRMAN FESMIRE: Yes.

22 MS. BADA: Okay.

23 CHAIRMAN FESMIRE: That's my intent.

24 Commissioner Bailey?

25 COMMISSIONER BAILEY: That is consistent with our

1 other notice requirements.

2 COMMISSIONER OLSON: Uh-huh.

3 MS. BADA: And so you want the county commission,  
4 city officials, all that to stay, right?

5 COMMISSIONER OLSON: Yeah, I think that's --

6 MS. BADA: Okay --

7 COMMISSIONER OLSON: -- with --

8 MS. BADA: -- all right.

9 COMMISSIONER OLSON: -- part 36 again.

10 And then I didn't have a problem with that, on  
11 page 15, the final language, the final sentence they added  
12 under (2) that says, The Division shall distribute notice  
13 of the application to persons who have requested  
14 notification and shall post notice of the application on  
15 the Environmental Bureau's web pages. That's -- that seems  
16 acceptable to me.

17 COMMISSIONER BAILEY: It's consistent.

18 COMMISSIONER OLSON: It's consistent.

19 And then looking at (3), again, I think I said  
20 before that (3) seems to clarify what that person needs to  
21 with notice, and you can file comments or request a hearing  
22 within 30 days. And the request for hearing must set forth  
23 the reasons why the hearing should be held, so that all  
24 seems to make -- be a logical --

25 COMMISSIONER BAILEY: Okay, but in (4) we delete

1 language, written waivers from all persons.

2 COMMISSIONER OLSON: Right.

3 CHAIRMAN FESMIRE: Right.

4 COMMISSIONER OLSON: And that's -- the OCD had  
5 proposed to do that.

6 Now the part I -- coming down onto the fourth  
7 line where CRI had some changes about objection and changed  
8 to comments or request for a hearing, I think if the Santa  
9 Fe office receives no requests for a hearing -- just  
10 because you get comments doesn't mean you should set it to  
11 hearing. If somebody wants a hearing, they should actually  
12 ask for it.

13 COMMISSIONER BAILEY: I'll agree with that.

14 CHAIRMAN FESMIRE: Yes.

15 COMMISSIONER OLSON: Yeah, so I think we accept  
16 their portion there, except the portion that says  
17 comments..

18 MS. BADA: Right here.

19 COMMISSIONER OLSON: Actually up here. Uh-huh.  
20 And then it was the same thing down on -- a  
21 couple lines down, they had comment again.

22 COMMISSIONER BAILEY: On paragraph (5).

23 COMMISSIONER OLSON: It's still on their (4).

24 COMMISSIONER BAILEY: Oh, I see it, okay.

25 COMMISSIONER OLSON: Where -- let's see here.

1 COMMISSIONER BAILEY: Well, it's also the first  
2 line of paragraph (5).

3 COMMISSIONER OLSON: And it's on the next -- it's  
4 on line 6 and line 7, the references that hearing is based  
5 on comments. Again, that should be stricken.

6 And on that line -- one, two, three, four, five,  
7 six -- seven, where they have comment or request, I think  
8 we just keep request, because they have the same thing  
9 about presenting issues, that if the Director determines  
10 that the request has technical merit or that there is  
11 significant public interest, then the Director may -- I  
12 don't think "shall" should be in there. And I think that's  
13 consistent with everything else, it's a discretionary  
14 action to set a hearing.

15 COMMISSIONER BAILEY: I agree.

16 COMMISSIONER OLSON: And then they had a change  
17 at the bottom, which was okay here. So that gets us --  
18 that's through (4). Is everybody okay with that?

19 COMMISSIONER BAILEY: Yes.

20 COMMISSIONER OLSON: Okay. Then if we go to  
21 CRI's number (5), I didn't like the comment that -- or the  
22 language they had proposed on the first line, and were just  
23 going to add -- or maybe it would read like this: If the  
24 Director does not determine that a hearing is necessary due  
25 to the lack of technical merit, and then the rest of it

1 reads the same, significant public interest or otherwise,  
2 then the Environmental Bureau of the Division's Santa Fe  
3 office may grant the exception without a hearing,  
4 notwithstanding the filing of a request for hearing, and  
5 not excepting the other portions they had on line three.

6 And then on the last line, I thought that that  
7 was acceptable.

8 MS. BADA: If the Director does not determine  
9 that a hearing is necessary -- because of? Or do you want  
10 to take out the "not"?

11 ...that a hearing is necessary due to --

12 CHAIRMAN FESMIRE: Do we want to --

13 COMMISSIONER OLSON: Oh, I see what you're  
14 saying, If the Director does not -- That sounds funny.

15 MS. BADA: Yeah.

16 COMMISSIONER BAILEY: So you were saying on the  
17 very last line of 5 to --

18 MS. BADA: What is it?

19 COMMISSIONER BAILEY: -- delete comment --

20 MS. BADA: Why don't we say if the Director  
21 determines that a hearing --

22 COMMISSIONER OLSON: No, because --

23 MS. BADA: -- was not necessary --

24 COMMISSIONER OLSON: -- the purpose of this is  
25 that there can be a mechanism for administrative approval.

1 MS. BADA: I think it's just the lack of --

2 COMMISSIONER OLSON: Uh-huh. Then that -- the  
3 bottom part of that, I think this part, the comment was  
4 okay because you're just giving notice now to people --

5 MS. BADA: Yeah, who want it.

6 COMMISSIONER OLSON: -- that had an interest in  
7 it.

8 CHAIRMAN FESMIRE: Right.

9 COMMISSIONER OLSON: They've filed comments. If  
10 you filed a comment, then he should at least be informed  
11 that there's a hearing on it and maybe you want to  
12 participate at that point.

13 So that -- I think where it says a comment or  
14 requested a hearing is okay right there. It fits within  
15 the same intent. The key is that just because you submit a  
16 comment doesn't mean you get a hearing. You actually have  
17 to physically, in writing, request a hearing, right?  
18 That's the way we worked through all the other --  
19 everything else we have in our rules.

20 And then I think that --

21 MS. BADA: Those you wouldn't, because that would  
22 eliminate --

23 COMMISSIONER OLSON: Right. I think you don't  
24 accept those -- the other changes that CRI had in B, and I  
25 think that kind of clarifies it.



1           And maybe when counsel takes this, she can just  
2       check with Rule 36 to make sure we're being consistent to  
3       the extent that it can be, because it's a little different  
4       use.

5           CHAIRMAN FESMIRE: Are we -- Commissioner Bailey,  
6       are those changes acceptable to you?

7           COMMISSIONER BAILEY: Yes, they are.

8           CHAIRMAN FESMIRE: They're acceptable to me.  
9       Let's move on to --

10          COMMISSIONER OLSON: Just checking to see if  
11       anybody had anything else in the --

12          CHAIRMAN FESMIRE: The industry committee had  
13       several changes, but I don't think they're relevant. As  
14       you were. They wanted to strike A.(2) and (3).

15          COMMISSIONER OLSON: They just -- they didn't  
16       want to have the public notice and comment. I disagree  
17       with that.

18          CHAIRMAN FESMIRE: Okay, are we ready to move on  
19       to B?

20          COMMISSIONER OLSON: I think so.

21          CHAIRMAN FESMIRE: Okay, there were several,  
22       again, comments on B.

23          MS. BADA: What about statewide that CCAW wanted?

24          CHAIRMAN FESMIRE: They came from CRI, the  
25       industry committee and the Citizens for Clean Air and

1 Water.

2 COMMISSIONER OLSON: Actually, counsel just found  
3 one other item that somebody else had brought up.

4 MS. BADA: Citizens for Clean Air and Water had  
5 wanted the notice in the paper to be statewide, instead of  
6 in the county.

7 COMMISSIONER BAILEY: I don't agree with that.

8 CHAIRMAN FESMIRE: I don't think I do either.  
9 Commissioner Olson, do you have a feeling on that one way  
10 or the other?

11 COMMISSIONER OLSON: I mean, I don't have a  
12 problem with it being in the local area, because if I  
13 recall, the notice also goes to -- I mean, it goes to so  
14 many people.

15 CHAIRMAN FESMIRE: Yeah.

16 COMMISSIONER OLSON: And it also goes to other  
17 persons that may be directed, so...

18 COMMISSIONER BAILEY: And it's posted on the  
19 website.

20 COMMISSIONER OLSON: Uh-huh.

21 COMMISSIONER BAILEY: It's unnecessary.

22 COMMISSIONER OLSON: I think that's adequate.

23 CHAIRMAN FESMIRE: People who are interested in  
24 other parts of the state are going on and monitoring the  
25 website and --

1 COMMISSIONER BAILEY: Uh-huh.

2 COMMISSIONER OLSON: And I would think they could  
3 request of the Division, just similar to like the WQCC  
4 mailing list, that if some of these come up they wanted to  
5 be noticed of them. I think the Division would do that,  
6 wouldn't they?

7 MS. BADA: I think it already --

8 CHAIRMAN FESMIRE: Yeah.

9 MS. BADA: -- says that, right.

10 CHAIRMAN FESMIRE: Counsel, did you have  
11 something else?

12 MS. BADA: I think that was it, I was just...

13 CHAIRMAN FESMIRE: Okay, B, alternative closure  
14 methods.

15 CRI wanted to strike references to  
16 19.15.17.13.B.(2) and D.(2).

17 The industry committee wanted to change the  
18 quote, "provides equivalent or better protection" in B.(1).  
19 B and B.(1) -- closure methods specified in paragraphs (1)  
20 and (2) of sections B of 17.13.

21 COMMISSIONER BAILEY: I don't think we need to  
22 include industry committee's changes, because we rejected  
23 those same changes earlier on --

24 CHAIRMAN FESMIRE: Right.

25 COMMISSIONER BAILEY: -- and I think counsel will

1 need to re-work all the references anyway.

2 COMMISSIONER OLSON: Just in case she had nothing  
3 to do for the next month or two.

4 Okay.

5 COMMISSIONER OLSON: So we have no changes to  
6 B --

7 CHAIRMAN FESMIRE: B.(1) or (2) appear to be  
8 operational the way they are.

9 ...liquids in a manner that...

10 COMMISSIONER OLSON: I mean, I don't have any  
11 problem with the industry's proposal for B.(1). That's  
12 what it's all about. It's --

13 CHAIRMAN FESMIRE: Yeah.

14 COMMISSIONER OLSON: -- if it's protective of  
15 freshwater, public health and the environment, that pretty  
16 much comes from the statute, so...

17 CHAIRMAN FESMIRE: And we do want to incentivize  
18 innovation and --

19 COMMISSIONER OLSON: Right.

20 CHAIRMAN FESMIRE: -- things that are of  
21 equivalent protection.

22 What about B.(2)? Again, the industry committee  
23 had some approvals -- had some --

24 COMMISSIONER OLSON: Where did you get that?

25 CHAIRMAN FESMIRE: -- a comment --

1 COMMISSIONER OLSON: This is okay.

2 Are we on B.(2)?

3 CHAIRMAN FESMIRE: B.(2). They wanted to --  
4 their change, to me, doesn't add or -- doesn't really  
5 change anything. They want to change it from -- to, "or  
6 reuse the liquids in an approved manner", instead of that  
7 the Environmental Bureau in the Division's Santa Fe office  
8 approves.

9 COMMISSIONER BAILEY: Nicer language.

10 CHAIRMAN FESMIRE: Well, I --

11 COMMISSIONER OLSON: In an OCD-approved manner,  
12 maybe. Just -- when you say approved --

13 MS. BADA: Doesn't say --

14 COMMISSIONER OLSON: -- who has approved it?

15 MS. BADA: -- who's doing it.

16 CHAIRMAN FESMIRE: Yeah. No, I think -- I think  
17 we want those coming to the Santa Fe office. I don't think  
18 we want the option in the field on those, because this --  
19 Like I said, we're looking at innovative procedures here,  
20 and I don't think we'd have the expertise in the field to  
21 -- perhaps we wouldn't have the expertise in the field to  
22 evaluate that, so I'd kind of like to leave that the way it  
23 is.

24 COMMISSIONER OLSON: Right, and this is for  
25 alternative closure methods as well --

1 CHAIRMAN FESMIRE: Right.

2 COMMISSIONER OLSON: -- which I think we had  
3 agreed before would be done in the Santa Fe office.

4 The only part they did have I thought that was  
5 okay, was, they did want to strike the word "all". I think  
6 we had done that. It's "all liquids" versus just "shall  
7 remove liquids" --

8 CHAIRMAN FESMIRE: Yes.

9 COMMISSIONER OLSON: -- because we did accept  
10 that earlier in another portion of the regs.

11 MS. BADA: Well, we did for tanks. Does this  
12 apply specifically for tanks?

13 CHAIRMAN FESMIRE: Okay --

14 COMMISSIONER OLSON: Right.

15 CHAIRMAN FESMIRE: On B.(3), is there any  
16 objection to going to B.(3)?

17 The Citizens had a small change, I think, and I  
18 think it has to do with just the ordering of two words, but  
19 I want to check and make sure.

20 COMMISSIONER BAILEY: The first line, there's the  
21 extra "of" before "satisfaction".

22 CHAIRMAN FESMIRE: They want to strike -- No, I  
23 was wrong, they want to strike the phrase, "treatment using  
24 best demonstrated available technology", so that it would  
25 be "waste minimization; reclamation; reuse; cycling [sic]

1 or reduction in available contaminant concentration".

2 I don't think I'm predisposed to do that, because  
3 I think again we're trying to incentivize some sort of  
4 alternatives or incentive, innovation, and I don't think  
5 that's --

6 COMMISSIONER BAILEY: I agree with you.

7 COMMISSIONER OLSON: I agree.

8 CHAIRMAN FESMIRE: I think that's too  
9 restrictive.

10 And I did not get any comments on B.(4). Does  
11 anybody have any comments on B.(4)?

12 COMMISSIONER OLSON: I don't.

13 CHAIRMAN FESMIRE: Okay, going to 16. Guys,  
14 we're on the home stretch.

15 16.A, the industry committee suggested that we  
16 provide deadlines for the OCD in 16.A.

17 ...may approve, deny or approve an application  
18 with conditions. If the Division denies an application...

19 MS. BADA: Do you want to have to hear everything  
20 they haven't approved within 60 days?

21 CHAIRMAN FESMIRE: Is that the recommendation?

22 MS. BADA: Yes.

23 CHAIRMAN FESMIRE: I have a very selfish reason  
24 for not wanting to provide a benefit to flooding the  
25 Environment Bureau. But at the same time I see their point

1 about, you know, needing a -- But you know what, given our  
2 budget situation I don't think that we can -- we could put  
3 those kind of constraints on the OCD, so I'm going to pass  
4 on that one, I think.

5 Counsel -- I mean, Commissioner?

6 COMMISSIONER BAILEY: Is it possible to put any  
7 kind of timing on there so that industry is assured that  
8 their application doesn't wind up on the floor for two  
9 years like Wayne was talking about?

10 MS. BADA: Well, what you're assuming is their  
11 application is complete. And right now you have no  
12 determine of whether it's administratively complete.

13 COMMISSIONER BAILEY: So after their language of  
14 within 60 days of receipt of a complete application, so  
15 that you don't get just these minimal applications sent in  
16 to set the time.

17 COMMISSIONER OLSON: But then you pretty much  
18 have to review it within 60 days to see if it's complete.

19 MS. BADA: And you're going to have to say what's  
20 -- what is administratively complete.

21 COMMISSIONER OLSON: Uh-huh.

22 CHAIRMAN FESMIRE: We've set up the process  
23 somewhere, we have for something, and I can't remember  
24 what.

25 MS. BADA: You do in your surface waste rule.



1 CHAIRMAN FESMIRE: Right.

2 MS. BADA: I don't know that you do in this rule.

3 COMMISSIONER OLSON: I know this has been part of  
4 an issue that's been going on for quite some time at the  
5 Legislature with fixed times for permit issuance, and it's  
6 come up a number of times where they've been trying to set  
7 fixed limits down on our WQCC permits, which we have  
8 objected to, because we're usually trying to work through a  
9 problem with the Applicant, and we don't normally deny  
10 Applications, and -- extremely rare circumstance has a  
11 permit even ever been denied by -- a WQCC permit, under the  
12 regulations.

13 And so our goal is always to sit here and try to  
14 work out and get something that's approvable and not deny  
15 applications. Because if we had a time limit, I know with  
16 us it had to come through, and we had no time to get to it,  
17 and they're not giving us information to say, well, sorry,  
18 it's denied, and submit it again some other time. And I  
19 don't think that's a good mechanism for anybody to get  
20 into.

21 Because essentially that's what happened here,  
22 what happened here. If it came in and the Division doesn't  
23 like it, the applicant isn't addressing their concerns,  
24 then they deny it, and that doesn't -- I don't think that's  
25 to their benefit to get something in there that's

1 protective and have it done right, so...

2 COMMISSIONER BAILEY: But the other flip side is,  
3 if you can determine that it's a complete application --

4 COMMISSIONER OLSON: Right.

5 COMMISSIONER BAILEY: -- and it gets denied in 60  
6 days, well then they have the opportunity to reset the  
7 clock by reworking their application --

8 COMMISSIONER OLSON: Uh-huh.

9 COMMISSIONER BAILEY: -- and then sending in a  
10 complete application. And then the clock starts again --

11 COMMISSIONER OLSON: Uh-huh.

12 COMMISSIONER BAILEY: -- which I think would  
13 probably be better customer service than letting it sit on  
14 the floor for an undetermined amount of time.

15 COMMISSIONER OLSON: I agree. In some ways you  
16 do want to be responsive as being the, you know, public  
17 servants and acting in a timely manner, but it's got to be  
18 done in a way that's realistic.

19 Also though, I think, given budget constraints  
20 and if you're not -- if you're given a task to do and  
21 you're not given adequate budget to do it, it's kind of  
22 hard to expect the agency to beat time frames --

23 COMMISSIONER BAILEY: But if you --

24 COMMISSIONER OLSON: -- as well.

25 COMMISSIONER BAILEY: -- deny the application,

1 then that's off of your desk, that's gone --

2 COMMISSIONER OLSON: Uh-huh.

3 COMMISSIONER BAILEY: -- and the responsibility  
4 goes back to the operator to do it right again.

5 COMMISSIONER OLSON: Uh-huh.

6 CHAIRMAN FESMIRE: Yeah but, you know, there's an  
7 incentive there to be hypercritical instead of, like Bill  
8 said, working things out, you know, just looking for an  
9 excuse to deny it, and I've had a recent bout of this.

10 So I do see the point, but I don't know how to  
11 accomplish what industry is trying to accomplish without  
12 putting the OCD in a bind that is -- like I said, having  
13 seen the vagaries of some of the funding decisions that  
14 could put us in a real bind or put us in a position where  
15 we just have to disapprove what would otherwise be minor  
16 problems in an application, and return them to get them off  
17 their desk.

18 So I -- I would leave it the way it is --

19 COMMISSIONER OLSON: Because to me --

20 CHAIRMAN FESMIRE: -- but I do see the point.

21 COMMISSIONER OLSON: -- it almost seems like this  
22 is coming to an overall issue in general, for issuance of  
23 anything that comes through the agency. It seems like if  
24 you were going to do that, it probably should be looked,  
25 maybe, at -- on an overall basis towards what's going on

1 for all permitting actions, versus just one -- one type of  
2 permit.

3 I mean, even -- I think like APDs are things that  
4 industry definitely wants, you know, a quick turnaround.  
5 If you don't -- I'm sure if you don't have it coming fairly  
6 quickly you're getting calls, so...

7 CHAIRMAN FESMIRE: I mean, I do see the point,  
8 but I -- there's a counterpoint to it that's equally  
9 compelling to me.

10 Good enough?

11 COMMISSIONER BAILEY: I'm outvoted, that's fine.

12 COMMISSIONER OLSON: Yeah, leaving it as is.

13 CHAIRMAN FESMIRE: Okay, that was 16.A.

14 The next comment I've got is 16.E. Has anybody  
15 got anything before that?

16 COMMISSIONER OLSON: That's the next one I see.

17 CHAIRMAN FESMIRE: Both the Citizens and -- for  
18 clarification on the record, because I'm too lazy to say  
19 New Mexico Citizens for Clean Air and Water, I've been  
20 abbreviating it Citizens, I do not mean to disparage  
21 anybody's citizenship or lack thereof.

22 Citizens have a comment. They should -- they  
23 propose to add the sentence, any modification that is  
24 equivalent to an exception of any paragraph of 19.15.17  
25 NMAC shall be subject to the notice and approval procedures

1 required for an exception.

2 CRI has a similar but not exactly the same  
3 proposal to put in the same place: The provisions of  
4 subsection A of 19.15.17.15 NMAC shall apply to  
5 applications for modifications of a permit that proposed an  
6 exception to a requirement or provision of 19.15.17.

7 So what are we saying here?

8 ...15.17 -- 17 is the transitional provisions we  
9 haven't gotten to yet.

10 MS. BADA: No, this is the entire part.

11 COMMISSIONER OLSON: This is the entire part.

12 CHAIRMAN FESMIRE: Oh, the entire part, you're  
13 right.

14 COMMISSIONER OLSON: I think what they're  
15 concerned about is that if somebody comes back later,  
16 submits a modification that's actually more like an  
17 exception and can get it approved as a modification when  
18 they couldn't have got it approved as an exception, you  
19 know, or they bypass the notice provisions and everything  
20 else that goes along with it.

21 I think what they're trying to say here is just  
22 that if you come back and modify, if it's equal to -- it's  
23 like an exception, then it still needs to go through the  
24 notice and approval procedures.

25 I didn't have a problem with it, myself. It was

1 just trying to clarify what the intent of the rule was.

2 COMMISSIONER BAILEY: Because if it applies to  
3 those conditions that would require notice --

4 COMMISSIONER OLSON: Uh-huh.

5 COMMISSIONER BAILEY: -- then let's not let them  
6 short-circuit it.

7 COMMISSIONER OLSON: Right.

8 CHAIRMAN FESMIRE: To me, the Citizens' provision  
9 seems a little clearer. Does that --

10 COMMISSIONER OLSON: I liked, actually, the  
11 Citizens' provision better myself, which reads that any  
12 modification that is equivalent to an exception of any  
13 paragraph of 19.15.17 NMAC shall be subject to notice and  
14 approval procedures required for an exception. It seemed a  
15 little clearer than the language that was provided by CRI.

16 COMMISSIONER BAILEY: Okay.

17 COMMISSIONER OLSON: Is that okay?

18 CHAIRMAN FESMIRE: It's okay with me.

19 COMMISSIONER BAILEY: Okay.

20 COMMISSIONER OLSON: Are you okay with that?

21 MS. BADA: (Nods)

22 CHAIRMAN FESMIRE: Okay, everybody seems happy  
23 with F, transfer of a permit.

24 We did get a comment on G from the industry  
25 committee concerning e-mail or equivalent communications.

1 MS. BADA: Written is written.

2 CHAIRMAN FESMIRE: Pardon?

3 MS. BADA: I said, written is written.

4 COMMISSIONER OLSON: Isn't e-mail written?

5 MS. BADA: Yes, it is.

6 COMMISSIONER BAILEY: But I just read recently  
7 some national question whether or not e-mails were  
8 considered on the same level as other written materials.  
9 That was within the state, wasn't it? That was in the news  
10 lately, so I think their clarification may be all necessary  
11 because of that question that's been in the news lately.

12 CHAIRMAN FESMIRE: What they're wanting is a  
13 little earlier -- I think the e-mail would provide a little  
14 earlier notification to the applicant of approval, but --

15 COMMISSIONER OLSON: But it's not requiring. It  
16 says you'll do it by written statement, e-mail or --  
17 whether --

18 MS. BADA: Why don't we just say that -- if  
19 that's what they're worried about, why don't we say written  
20 statements include e-mail?

21 CHAIRMAN FESMIRE: Well, let me see what they say  
22 in the writeup. I --

23 COMMISSIONER OLSON: According to their writeup,  
24 they want to just provide formal authorization for the use  
25 of these alternatives. It's fine with me.

1 COMMISSIONER BAILEY: To go ahead and include  
2 e-mail or equivalent?

3 COMMISSIONER OLSON: Uh-huh.

4 MS. BADA: But we have other places saying  
5 written statement in other rules, and I don't want to make  
6 people think that because we're saying -- adding as an  
7 addition, that that doesn't include e-mail.

8 I'd be more comfortable saying that a written  
9 statement includes e-mail.

10 COMMISSIONER OLSON: I mean, right now at the  
11 Environment Department for our discharge permitting, we  
12 accept e-mail. It's like written statements, so I don't  
13 know that it's -- you print it off and you -- it goes in  
14 the file, you know? So...

15 COMMISSIONER OLSON: But --

16 MS. BADA: -- be comfortable adding, you know,  
17 here that a written statement includes e-mail.

18 CHAIRMAN FESMIRE: Yeah.

19 COMMISSIONER OLSON: Uh-huh.

20 COMMISSIONER BAILEY: Okay.

21 CHAIRMAN FESMIRE: Let's do it that way --

22 COMMISSIONER BAILEY: So long as it's --

23 COMMISSIONER OLSON: -- that's fine.

24 COMMISSIONER BAILEY: -- clarified here that it  
25 is.



1 CHAIRMAN FESMIRE: Okay. Boy, I feel like we're  
2 coasting now. And we are to 17, are we not?

3 COMMISSIONER BAILEY: Yes. Well, industry has  
4 suggested a new section of 16, H --

5 CHAIRMAN FESMIRE: Oh, yeah.

6 COMMISSIONER OLSON: Uh-huh.

7 COMMISSIONER BAILEY: -- so that hearings are  
8 conducted according to part 14.

9 CHAIRMAN FESMIRE: And what's the reason for  
10 that?

11 MS. BADA: Looks like they want to be sure that  
12 it really does. I mean, that's what we would use, but...

13 CHAIRMAN FESMIRE: They just want to clarify that  
14 it's not a rulemaking hearing, huh?

15 COMMISSIONER OLSON: That doesn't include notice  
16 provisions, does it?

17 MS. BADA: Just whether you feel it's necessary  
18 or not. Doesn't hurt anything.

19 CHAIRMAN FESMIRE: Doesn't change anything  
20 either.

21 COMMISSIONER BAILEY: If it clarifies it in their  
22 mind, okay?

23 CHAIRMAN FESMIRE: It's okay with me.

24 COMMISSIONER BAILEY: Sure.

25 CHAIRMAN FESMIRE: If you're more comfortable

1 with it?

2 MS. BADA: Doesn't matter.

3 CHAIRMAN FESMIRE: You might check and make sure  
4 that that is the adjudicatory hearings provisions.

5 MS. BADA: I'm pretty sure it is.

6 COMMISSIONER OLSON: Initiating -- 1206 is  
7 initiating --

8 CHAIRMAN FESMIRE: Commissioner Olson did, so...

9 COMMISSIONER OLSON: Yeah.

10 CHAIRMAN FESMIRE: Okay. Transitional  
11 provisions.

12 The industry committee had several changes in A.

13 A, they wanted to change it to "applications  
14 for" instead of "unlined temporary pits are prohibited" --  
15 This proposal recommended modification prohibits  
16 applications for unlined temporary pits after the rule's  
17 effective dates. Unlined temporary pits are phased out in  
18 accordance with proposed 17.15.17.13. This avoids a  
19 conflict between the provisions and the need for approved  
20 closure plans.

21 Is that correct?

22 There were -- you know, I think they've got a  
23 point --

24 COMMISSIONER OLSON: I think they do.

25 CHAIRMAN FESMIRE: -- because we are going to

1 prohibit unlined pits for two years.

2 COMMISSIONER OLSON: This is only for temporary  
3 pits.

4 CHAIRMAN FESMIRE: Yeah. After -- So I think we  
5 need the word "application -- "

6 COMMISSIONER OLSON: If you come down to A.(3),  
7 13.A.(3), an existing unlined temporary pit shall be closed  
8 within three months after the effective date. So I think  
9 they're right.

10 CHAIRMAN FESMIRE: Yeah. So as of the effective  
11 date applications...

12 COMMISSIONER OLSON: Uh-huh.

13 CHAIRMAN FESMIRE: In B, the industry committee  
14 wanted to change 30 to 90.

15 The operator of an existing operation that is  
16 required to close pursuant to paragraphs (1), (2), (3) or  
17 (4) of subsection A of 13 -- What is A of 13?

18 COMMISSIONER OLSON: That's those same time  
19 requirements.

20 MS. BADA: These are the ones we discussed  
21 yesterday --

22 COMMISSIONER OLSON: Uh-huh.

23 CHAIRMAN FESMIRE: Uh-huh.

24 MS. BADA: -- on the unlined permanent pits. So  
25 I think that's already -- we already addressed it.

1 CHAIRMAN FESMIRE: Okay. So do we need to strike  
2 B?

3 MS. BADA: No.

4 CHAIRMAN FESMIRE: Okay, just make it conform to  
5 what we --

6 MS. BADA: Yeah, just whether -- whether you want  
7 to change the 30 to 90.

8 CHAIRMAN FESMIRE: Okay.

9 In C -- I don't want to change it from 30 to 90.  
10 Commissioner Bailey, do you have a --

11 COMMISSIONER BAILEY: No, I think we agreed on 30  
12 yesterday.

13 COMMISSIONER OLSON: I thought we did.

14 CHAIRMAN FESMIRE: On C, the industry committee  
15 wants to allow 180 days for modifications and 18 months to  
16 comply.

17 The OCD recommends within two years -- Did we  
18 change this yesterday also?

19 MS. BADA: No.

20 CHAIRMAN FESMIRE: I think we've already added  
21 this. What they're trying to do is establish a -- to meet  
22 the standard.

23 COMMISSIONER OLSON: They seem to be kind of re-  
24 ordering it --

25 MS. BADA: Yeah.

1 COMMISSIONER OLSON: -- somewhat by taking it off  
2 the bottom and putting it up front.

3 MS. BADA: Yeah, and then they put in a time.

4 COMMISSIONER OLSON: And then they put in some  
5 time frames as well, which is probably not a bad idea, to  
6 have a time frame for that instead of just being open-  
7 ended.

8 MS. BADA: It already does. Somehow they're  
9 confining them. Let's see what they say here --

10 CHAIRMAN FESMIRE: Okay, if we should include a  
11 time limit, are the 180 days and 18 months -- do we want to  
12 include --

13 MS. BADA: Yeah, what they're wanting to do is  
14 the same discussion we had yesterday.

15 CHAIRMAN FESMIRE: Right.

16 MS. BADA: Instead of saying within two years you  
17 have to have done it, they want to make it 18 months  
18 from --

19 CHAIRMAN FESMIRE: -- the day --

20 MS. BADA: -- when they've received the permit.

21 CHAIRMAN FESMIRE: And we've already made this  
22 decision --

23 MS. BADA: No --

24 CHAIRMAN FESMIRE: -- don't we just need to --

25 MS. BADA: -- we didn't, I don't think. We

1 didn't discuss lined permanent pits, we talked about  
2 unlined -- the lined ones that already exist.

3 And I don't disagree that there should be a time  
4 limit for submitting your permit request, it's just a  
5 matter of whether you want the time for doing it to run  
6 from the permit's issuance.

7 CHAIRMAN FESMIRE: I swear we've already --

8 MS. BADA: Well, you talked about a similar thing  
9 yesterday in regard to --

10 COMMISSIONER OLSON: Uh-huh.

11 MS. BADA: -- unlined pits, but you haven't  
12 discussed it with regard to lined pits. That's --

13 CHAIRMAN FESMIRE: And --

14 MS. BADA: It's essentially the same request.

15 CHAIRMAN FESMIRE: Can we get this to conform  
16 with what we decided yesterday?

17 MS. BADA: No, because this is in a matter of  
18 discharge into --

19 CHAIRMAN FESMIRE: Yes, this is closure. Okay,  
20 it's coming --

21 COMMISSIONER OLSON: It's something that was  
22 allowed, specifically allowed, permitted or registered.

23 CHAIRMAN FESMIRE: Right.

24 COMMISSIONER BAILEY: For 13.A didn't we say that  
25 they had to submit the closure plan within six months,

1     cease discharges within two years and closure within three?

2     I have those notes --

3             MS. BADA:   Yeah, we did for unlined --

4             COMMISSIONER BAILEY:  -- in the margins here.

5             MS. BADA:  -- yeah.

6             CHAIRMAN FESMIRE:  For unlined, permitted and  
7     registered --

8             MS. BADA:  This is going to --

9             CHAIRMAN FESMIRE:  -- permit or registered.

10            MS. BADA:  -- construction requirements.

11            COMMISSIONER OLSON:  And this is for lined pits  
12     too --

13            MS. BADA:  Yeah.

14            COMMISSIONER OLSON:  -- in other words, this  
15     isn't unlined.  So if they were permitted, registered,  
16     lined pits, is it really -- Actually, I don't know if I've  
17     really got a problem with their proposal, because they're  
18     lined -- already lined units anyway, and --

19            COMMISSIONER BAILEY:  And they're already  
20     permitted, OCD has already --

21            COMMISSIONER OLSON:  Right.

22            COMMISSIONER BAILEY:  -- reviewed them.

23            COMMISSIONER OLSON:  Right.

24            CHAIRMAN FESMIRE:  Okay, I could accept that too.

25            COMMISSIONER BAILEY:  So incorporate it --

1 MS. BADA: If they have to go back and modify  
2 construction -- that's essentially what the --

3 COMMISSIONER OLSON: Well, they need to request a  
4 modification.

5 MS. BADA: No, but it really does -- require them  
6 to go back and comply with construction requirements, when  
7 you look at the original proposal.

8 COMMISSIONER BAILEY: But it's after -- 18 months  
9 after OCD approval of the modification to their already-  
10 approved facility.

11 CHAIRMAN FESMIRE: See, I don't see the urgency  
12 we had yesterday, because these are --

13 COMMISSIONER BAILEY: Yeah.

14 CHAIRMAN FESMIRE: -- these are --

15 COMMISSIONER OLSON: Uh-huh --

16 CHAIRMAN FESMIRE: -- these lined, permitted --

17 COMMISSIONER OLSON: -- right.

18 MS. BADA: So you're okay with the language then?

19 COMMISSIONER BAILEY: Just go ahead and  
20 incorporate the whole thing?

21 CHAIRMAN FESMIRE: Yeah -- well, I don't have a  
22 problem with the industry proposal.

23 COMMISSIONER BAILEY: Right.

24 COMMISSIONER OLSON: Yeah, I don't either.

25 CHAIRMAN FESMIRE: Yeah.



1 In D --

2 MS. BADA: It's the same kind of thing, right?

3 CHAIRMAN FESMIRE: -- one year for operators of  
4 below-grade tanks to comply.

5 COMMISSIONER OLSON: It's a -- it is a tank, so  
6 -- I mean, it -- my big concern is on the thing that's  
7 unlined that's out there.

8 CHAIRMAN FESMIRE: Yeah. I've got no problem  
9 with that too, I just think it might buy us some friends.

10 COMMISSIONER BAILEY: So adopt industry  
11 proposal --

12 CHAIRMAN FESMIRE: Yes.

13 COMMISSIONER BAILEY: -- for D?

14 CHAIRMAN FESMIRE: That's okay with me. What  
15 about you, Bill?

16 COMMISSIONER OLSON: That's fine with me.

17 CHAIRMAN FESMIRE: Okay. E.(1), (2) and (3).  
18 They wanted to be specific about the references in NMAC.

19 MS. BADA: Brad talked about this, and he had  
20 some concern. I can't remember what it was.

21 CHAIRMAN FESMIRE: Do you remember when -- where  
22 he talked about it?

23 MS. BADA: I just know it was an issue.

24 CHAIRMAN FESMIRE: I think he agreed with it,  
25 because they say he did.

1 CHAIRMAN FESMIRE: Did he talk -- in his rebuttal  
2 testimony?

3 MS. BADA: That's -- no, in his cross-exam. They  
4 said, Mr. Jones in his cross-examination agreed that these  
5 were the relevant operational and closure provisions.

6 CHAIRMAN FESMIRE: Okay, his cross-examination  
7 starts on page 2206, Volume IX.

8 COMMISSIONER OLSON: He had a lot of cross-  
9 examination.

10 CHAIRMAN FESMIRE: Yeah, I know. I think --

11 MS. BADA: That's the problem.

12 COMMISSIONER OLSON: Because 12 is operational  
13 requirements and 13 is closure requirements.

14 MS. BADA: It was Eric's cross.

15 CHAIRMAN FESMIRE: That's where I'm at. It looks  
16 like what you're remembering may start on page 2212.

17 MS. BADA: Okay.

18 CHAIRMAN FESMIRE: ...emergency pits, stormwater  
19 pits...

20 MS. BADA: Did the cross go in order of the  
21 sections?

22 CHAIRMAN FESMIRE: No, not exactly, but -- at  
23 least if it did, it didn't jump out at me.

24 COMMISSIONER BAILEY: Can't we just go ahead and  
25 specify, without finding the exact testimony, to just say

1 that they will comply with the operational and closure  
2 requirements, parts 12 and 13?

3 COMMISSIONER OLSON: That's -- I think that was  
4 actually the intent, because if you look at -- if you go to  
5 look at the rule, and if you actually look at the other  
6 parts of 17, like up above in D, you know, D is requiring a  
7 permit, and this is just saying that if you're -- you can  
8 continue to operate as long as you follow the -- if you  
9 close it, you follow the closure requirements, if you  
10 operate it, you follow the operational --

11 COMMISSIONER BAILEY: Uh-huh.

12 CHAIRMAN FESMIRE: Yeah.

13 COMMISSIONER OLSON: -- requirements. It seems  
14 pretty straightforward to me, but...

15 CHAIRMAN FESMIRE: But why would industry be --  
16 the industry committee be -- want to be that specific? Why  
17 would we have to be more specific than we have been here?

18 MS. BADA: -- specificity so they know which  
19 sections to --

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER OLSON: That's what I would guess.

22 CHAIRMAN FESMIRE: Okay. Well, if that's -- I've  
23 got no problem if that's the intent. I just want to make  
24 sure that we're not excluding something that we had  
25 intended to include.

1 MS. BADA: I think that was probably why they  
2 were general --

3 CHAIRMAN FESMIRE: Yeah.

4 MS. BADA: -- just in case.

5 CHAIRMAN FESMIRE: Tell you what, why don't we go  
6 ahead and accept those changes in 17.E and ask counsel when  
7 she makes those changes -- that may be something that we  
8 may need to discuss, the day we meet to accept it. But I  
9 don't -- I don't think it's a problem, and I'll try to find  
10 the testimony on it.

11 COMMISSIONER OLSON: Yeah, I'll look too and see  
12 if I can find it in the transcript.

13 That's a tentative yes?

14 CHAIRMAN FESMIRE: That's a tentative yes from  
15 me.

16 What about you, Commissioner?

17 COMMISSIONER BAILEY: It's a full yes for me.

18 CHAIRMAN FESMIRE: Okay. Ladies and gentlemen,  
19 last but not least, they want to make the same kind of  
20 change in 17.17.G, and I think that's probably appropriate,  
21 but again, barring the change.

22 Does anybody have anything else?

23 COMMISSIONER OLSON: Actually, I think there is  
24 something else.

25 MS. BADA: Actually, there are other --

1 COMMISSIONER OLSON: Yeah --

2 MS. BADA: -- parts that need to be addressed.

3 COMMISSIONER OLSON: -- because IPANM in their  
4 December 14th proposal had a change to the 19.15.1.21.

5 CHAIRMAN FESMIRE: 19.15.1.21? That was the --  
6 19.15.1 --

7 COMMISSIONER OLSON: I've probably got that here.

8 COMMISSIONER BAILEY: 19.15- what?

9 CHAIRMAN FESMIRE: -1.21.

10 MS. BADA: It starts, Special provisions for  
11 Otero -- Sierra and Otero Counties.

12 COMMISSIONER OLSON: Let's see, I remember  
13 there's also changes to 15 -- other portions too that  
14 were -- that they had proposed.

15 MS. BADA: They were proposed to ensure  
16 consistency with the changes to this --

17 COMMISSIONER OLSON: Right, but they were issues  
18 that nobody had --

19 MS. BADA: Yeah --

20 COMMISSIONER OLSON: -- a problem with --

21 MS. BADA: -- right.

22 COMMISSIONER OLSON: -- or raised at the hearing,  
23 other than OCD had proposed them.

24 MS. BADA: Right. I think that the concern on 21  
25 was that it struck the cross-references.

1 COMMISSIONER OLSON: Make sure I can find it.

2 MS. BADA: It struck the cross-reference to Rule  
3 50.

4 CHAIRMAN FESMIRE: We're out of my -- that's --  
5 yeah, that's in- --

6 COMMISSIONER OLSON: Here it is.

7 CHAIRMAN FESMIRE: -- that's intended to address  
8 current litigation, and I don't this is an appropriate --

9 MS. BADA: No, what it is, it struck the cross-  
10 reference to 19.15.2.50 and 711, because you no longer have  
11 those rules.

12 The only question is, do you want to put in --  
13 the reference to part 36 in, part -- this new part 17?

14 CHAIRMAN FESMIRE: Yeah, but that would be part  
15 of the conforming changes after the rule has been adopted,  
16 wouldn't it?

17 MS. BADA: No, you have to do them now, you have  
18 to tell me whether you want these.

19 COMMISSIONER OLSON: Yeah, IPANM is saying that  
20 we shouldn't be discussing this because of the lack of  
21 testimony or discussion on this issue.

22 CHAIRMAN FESMIRE: On conforming changes?

23 MS. BADA: I think they're concerned by striking  
24 the cross-references, that somehow change the meaning of  
25 pit, because I think the concern they had about the use of

1 steel tanks...

2 I mean, what we could do is just put in the  
3 substitute references for the new parts.

4 CHAIRMAN FESMIRE: I think that's the way we  
5 ought to address it, don't you all?

6 MS. BADA: 19.15.17 --

7 COMMISSIONER OLSON: Because they say, as written  
8 the proposed change implies that the Division will not  
9 allow any type of pit in either Sierra or Otero Counties,  
10 which is substantive rather than a conforming change.

11 MS. BADA: I don't know that Rule 711 would --  
12 Does 36 have anything about pits anymore?

13 CHAIRMAN FESMIRE: No.

14 MS. BADA: Okay, so it would just be the  
15 reference to part 17.

16 CHAIRMAN FESMIRE: Well --

17 COMMISSIONER OLSON: Well, Rule 50 is --

18 MS. BADA: Rule 50 would now be 17.

19 COMMISSIONER OLSON: -- would now be -- so it  
20 wouldn't even exist.

21 CHAIRMAN FESMIRE: But the Division shall not  
22 issue permits for pits located in the selected areas.

23 Do you guys want to come back tomorrow morning?

24 COMMISSIONER OLSON: No.

25 CHAIRMAN FESMIRE: Boy, are you going to upset my

1 carpool. The good thing is, they won't leave me; I drove.

2 MS. BADA: It's really a matter whether you think  
3 cross-reference has any substantive import.

4 CHAIRMAN FESMIRE: Well, I think it's a  
5 conforming change to -- but the -- but the new rule does  
6 include closed-loop systems. The old rule doesn't. So  
7 this would be --

8 COMMISSIONER OLSON: Uh-huh.

9 MS. BADA: I'm not sure you want to reference 17.

10 CHAIRMAN FESMIRE: Yeah.

11 MS. BADA: Or you could, I mean --

12 CHAIRMAN FESMIRE: Well, what we need to do is,  
13 shall not issue permits for pit, which closed-loop systems  
14 are not under 19.15.2.50, 19.15.9.711, or 19.15.17.

15 MS. BADA: But you could just say the Division  
16 shall not issue permits under 19.15.17, because that --

17 CHAIRMAN FESMIRE: Well, I think we --

18 MS. BADA: -- that's a new reference.

19 CHAIRMAN FESMIRE: Yeah, but we have to be  
20 specific here, because the --

21 MS. BADA: But we weren't striking for pits --

22 CHAIRMAN FESMIRE: Right, no, we --

23 MS. BADA: -- that language has not changed.

24 The only thing that was struck was the reference  
25 to Rule 50 and Rule 711.



1 COMMISSIONER OLSON: I mean, I kind of understand  
2 their point, because, you know, technically if you're doing  
3 a conforming change, you just change the number.

4 MS. BADA: So we could just --

5 COMMISSIONER OLSON: So they may be -- right.

6 MS. BADA: So we could just say the Division  
7 shall not issue permits under 19.15.17 --

8 COMMISSIONER OLSON: Uh-huh.

9 MS. BADA: -- strike the reference to 50 and  
10 711 --

11 CHAIRMAN FESMIRE: For pits --

12 MS. BADA: Yeah.

13 CHAIRMAN FESMIRE: -- but does that leave us the  
14 authority to issue a permit for a closed-loop system under  
15 the rule?

16 MS. BADA: Yeah, because there's a --

17 COMMISSIONER OLSON: Uh-huh.

18 MS. BADA: I mean, as long as your definition of  
19 pit doesn't include closed-loop system, you should be fine.

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER OLSON: I think that it is -- you're  
22 just changing a number, that is conforming. But if -- I  
23 think they may be correct that --

24 CHAIRMAN FESMIRE: Well --

25 COMMISSIONER OLSON: -- that there's a little bit

1 more -- maybe a little bit more to it than just if you're  
2 striking it out entirely. It wasn't discussed at -- and it  
3 wasn't discussed in the hearing.

4 CHAIRMAN FESMIRE: We've just got to take and put  
5 in the new --

6 COMMISSIONER OLSON: Right.

7 CHAIRMAN FESMIRE: -- new reference. Okay.

8 COMMISSIONER OLSON: Does that sound right, Jami?

9 COMMISSIONER BAILEY: That we strike --

10 MS. BADA: -- the reference to 711 --

11 COMMISSIONER BAILEY: -- the 50 and 711 and  
12 insert 17?

13 MS. BADA: Yeah.

14 COMMISSIONER OLSON: So we keep the numbers in  
15 there, we just don't strike them entirely, we just change  
16 the numbers consistent with the new rule.

17 COMMISSIONER BAILEY: Uh-huh.

18 COMMISSIONER OLSON: And that part is conforming,  
19 that's a conforming change.

20 CHAIRMAN FESMIRE: Right.

21 What else do we have?

22 MS. BADA: I'm assuming, even though there were  
23 not objections, the other changes, the conforming changes,  
24 were -- are okay.

25 CHAIRMAN FESMIRE: They're okay with me.

1 COMMISSIONER OLSON: They're okay with me.

2 COMMISSIONER BAILEY: As long as they conform to  
3 what we've all agreed to is -- they'll all need to be  
4 reviewed in light of what our --

5 MS. BADA: Yeah.

6 COMMISSIONER BAILEY: -- agreements are.

7 COMMISSIONER OLSON: Yeah.

8 COMMISSIONER BAILEY: Yeah.

9 CHAIRMAN FESMIRE: Yeah. No, we --

10 MS. BADA: I think they're mainly just cross-  
11 reference changes, so -- to the parts.

12 COMMISSIONER OLSON: I think the key is, nobody  
13 had any objections to any of those provisions, so...

14 CHAIRMAN FESMIRE: The -- Counsel will attempt  
15 to --

16 MS. BADA: -- memorialize all this --

17 CHAIRMAN FESMIRE: -- memorialize the agreements  
18 and draft the changes. She understands she's to make no  
19 substantive change, and no substantive change is to be made  
20 except by deliberation.

21 She will, however, I'm sure, assume -- require  
22 some -- well --

23 MS. BADA: What I will do is, I will attempt to  
24 draft it and distribute it for review, and if anybody has  
25 changes, you can let me know.

1 CHAIRMAN FESMIRE: Right.

2 We will --

3 COMMISSIONER OLSON: When will that --

4 MS. BADA: I don't know.

5 COMMISSIONER OLSON: -- or do you -- don't -- not  
6 want to say?

7 MS. BADA: I don't know.

8 CHAIRMAN FESMIRE: She will do it as quickly as  
9 possible.

10 This hearing will reconvene at the next regularly  
11 scheduled meeting of the New Mexico Oil Conservation  
12 Commission, which is April 16th at nine o'clock in this  
13 room. It will be on the docket with other cases, but the  
14 meeting will be nine o'clock April 16th in Porter Hall.

15 COMMISSIONER BAILEY: For deliberation and  
16 possible signature of an order.

17 CHAIRMAN FESMIRE: For deliberation and possible  
18 signature of an order, depending on whether or not --

19 MS. BADA: For possible deliberation and  
20 signature of an order --

21 (Laughter)

22 MS. BADA: -- assuming counsel has been able to  
23 get the order drafted by then.

24 CHAIRMAN FESMIRE: Counsel is making no  
25 guarantee.

1 CHAIRMAN FESMIRE: And thank you all. I guess we  
2 need a motion to adjourn.

3 COMMISSIONER BAILEY: I so move.

4 COMMISSIONER OLSON: Second.

5 CHAIRMAN FESMIRE: All those in favor, signify by  
6 saying aye and then passing out.

7 (Laughter)

8 COMMISSIONER OLSON: Aye.

9 COMMISSIONER BAILEY: Aye.

10 CHAIRMAN FESMIRE: Let the record reflect that  
11 the motion carried unanimously, although somewhat weakly --  
12 with an "a".

13 (Thereupon, these proceedings were continued at  
14 5:12 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 March 22nd, 2008.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2010