

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

IN THE MATTER OF THE HEARINGS CALLED BY )	
THE OIL CONSERVATION COMMISSION FOR THE )	
PURPOSE OF CONSIDERING: )	
HEARING CALLED BY THE OIL CONSERVATION )	CASE NOS. 11,352
DIVISION TO AMEND RULE 116 OF ITS )	
GENERAL RULES AND REGULATIONS PERTAINING )	
TO THE NOTIFICATION OF FIRES, BREAKS, )	
LEAKS, SPILLS AND BLOWOUTS )	
HEARING CALLED BY THE OIL CONSERVATION )	and
DIVISION TO ENACT A NEW RULE )	11,635
ESTABLISHING METHODS AND STANDARDS FOR )	
THE PREVENTION AND ABATEMENT OF WATER )	
POLLUTION ASSOCIATED WITH OPERATIONS IN )	
THE OIL AND GAS INDUSTRY )	
	(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
COMMISSION HEARING

ORIGINAL

BEFORE: WILLIAM J. LEMAY, CHAIRMAN  
WILLIAM WEISS, COMMISSIONER  
JAMI BAILEY, COMMISSIONER

October 29th, 1996  
Santa Fe, New Mexico

These matters came on for hearing before the Oil Conservation Commission, WILLIAM J. LEMAY, Chairman, on Tuesday, October 29th, 1996, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

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## I N D E X

October 29th, 1996  
 Commission Hearing  
 CASE NOS. 11,352 and 11,635 (Consolidated)

	PAGE
APPEARANCES	3
PRESENTATIONS BY THE RULE 116 COMMITTEE:	
By Mr. Kellahin Committee Chairman	7
By Mr. Robert Menzie (Marathon Oil Company) Advanced Environmental Representative Division of Environmental Geosciences American Association of Petroleum Geologists	40
By Mr. Roger Anderson Environmental Bureau Chief, NMOCD	44
DISCUSSION OF JURISDICTIONAL ISSUE	
By Mr. Carroll	71
REPORTER'S CERTIFICATE	81

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## E X H I B I T S

Committee	Identified	Admitted
Exhibit 1	8	-
Exhibit 6	28	-

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

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By: LOUIS W. ROSE

## ALSO PRESENT:

DONALD NEEPER, New Mexico Citizens for Clean Air and Water

\* \* \*

STEVEN T. BRENNER, CCR  
(505) 989-9317

1           WHEREUPON, the following proceedings were had at  
2   9:11 a.m.:

3           CHAIRMAN LEMAY: We shall now call Cases -- the  
4   first case, Number 11,352, which is the case called by the  
5   Oil Conservation Division to amend Rule 116 of its General  
6   Rules and Regulations, and Case Number 11,635, a companion  
7   case called by the Oil Conservation Division to enact a  
8   newly established and standards for prevention and  
9   abatement of water pollution.

10           Without objection, these two cases will be  
11   consolidated for testimony purposes.

12           And I shall now call for appearances in Case  
13   11,352 and 11,635.

14           MR. CARROLL: May it please the Commission, my  
15   name is Rand Carroll, appearing on behalf of the Oil  
16   Conservation Division. I have one witness.

17           CHAIRMAN LEMAY: Mr. Carroll.

18           MR. KELLAHIN: Mr. Chairman, I'm Tom Kellahin of  
19   Santa Fe, New Mexico. I'm appearing as the chairman of the  
20   Commission-designated Rule 116 Committee.

21           CHAIRMAN LEMAY: Thank you, Mr. Kellahin.

22           Any other appearances?

23           MR. ROSE: And Mr. Chairman, I'm Louis Rose with  
24   Montgomery and Andrews. I'm here on behalf of Marathon  
25   Oil.

1           CHAIRMAN LEMAY: Thank you. Do you have any  
2 witnesses, Mr. Rose?

3           MR. ROSE: Mr. Chairman, we do, but we would  
4 request that we be allowed to present our testimony at the  
5 continuance of this hearing next month so we'll have an  
6 opportunity to meet with the Division and try to work out  
7 some of our proposed language changes and come, hopefully,  
8 with consolidated separate requests.

9           CHAIRMAN LEMAY: Mr. Kellahin, do you have any  
10 witnesses to present testimony today?

11          MR. KELLAHIN: Mr. Chairman, it's my preference  
12 to make a presentation on behalf of the committee to the  
13 Commission.

14          And then I'm going to ask Mr. Bob Menzie -- Mr.  
15 Menzie was the Marathon member to the Rule 116 committee.  
16 I've asked him to present to the Commission an outline of  
17 what we've characterized to be Rule 19.

18          Then following that, I've asked Mr. Anderson of  
19 the Division to provide the Division comments on the  
20 committee-proposed draft rules that you're about to look  
21 at.

22          So we'll have three presenters.

23          CHAIRMAN LEMAY: Okay. Any other people that  
24 want to present?

25          This will be informal, generally, as for rule-

1 making purposes. We feel we can be more -- get to the  
2 heart of matters when we are more informal. But we do need  
3 to call for appearances.

4 those witnesses that will be giving testimony,  
5 would you kindly stand and raise your right hand?

6 (Thereupon, the witnesses were sworn.)

7 CHAIRMAN LEMAY: Thank you, you may be seated.

8 For those of you that weren't familiar with this  
9 case, we will be receiving more testimony, the record will  
10 be kept open until the November 14th hearing. So if you  
11 missed a chance today, certainly feel free, you can submit  
12 written comments and/or present testimony on November 14th.

13 And with that, I think we'll begin. I think --  
14 Do you want to start this, Mr. Kellahin?

15 MR. KELLAHIN: Yes, sir.

16 CHAIRMAN LEMAY: I'm sorry, yes, sir?

17 MR. NEEPER: Mr. Chairman, I'm Donald Neeper,  
18 representing New Mexico Citizens for Clean Air and Water.  
19 I did not understand you wanted all witnesses to rise and  
20 announce that they would testify.

21 CHAIRMAN LEMAY: Will you be giving testimony  
22 today?

23 MR. NEEPER: I prefer to give testimony on the  
24 14th, and I have filed a notice --

25 CHAIRMAN LEMAY: We've got your notice. You and

1 I think Chris Shuey also requested testimony given on the  
2 14th.

3 MR. NEEPER: I can't say, I don't --

4 CHAIRMAN LEMAY: No, I know, but those are the  
5 two we received.

6 MR. NEEPER: All right.

7 CHAIRMAN LEMAY: Your choice, whether you would  
8 like to give testimony today and/or the 14th.

9 MR. NEEPER: I would prefer the 14th --

10 CHAIRMAN LEMAY: Sure.

11 MR. NEEPER: -- but I didn't know if I had to  
12 affirm today.

13 CHAIRMAN LEMAY: Not today, we'll do the same  
14 thing on the 14th.

15 Mr. Kellahin?

16 MR. KELLAHIN: Thank you, Mr. Chairman.

17 CHAIRMAN LEMAY: Do you have some kind of an  
18 executive summary for this, Mr. Kellahin?

19 (Laughter)

20 MR. KELLAHIN: Mr. Chairman, you're looking at  
21 the summary.

22 CHAIRMAN LEMAY: Okay.

23 MR. KELLAHIN: Mr. Chairman, on behalf of the  
24 Rule 116 Committee, I'm pleased to present to you our work  
25 product that we have generated, that this Committee has

1 spent hundreds if not thousands of hours working on to  
2 provide you a starting point for addressing the  
3 environmental rules that the Commission has under its  
4 jurisdiction with regards to the oil and gas operations in  
5 the State of New Mexico.

6 Let me take a moment and show you how the  
7 information is organized, and then we'll go back through  
8 and talk about how the committee functioned, how we met,  
9 and how we decided to tackle the task.

10 In doing so, it's my hope that I can take you  
11 through the major parts of the committee report that was  
12 submitted to you last week so that you'll have a working  
13 understanding of the major topics, the issues and how the  
14 committee chose to address those issues.

15 First of all, I have before me -- It's not  
16 marked, but there is a three-ring, three-inch black binder  
17 of committee documents. This is not all of them. My  
18 binder is not big enough anymore for the Committee  
19 documents.

20 When you look at the spiral book, which I will  
21 mark as the Committee Exhibit 1 to the Commission, this is  
22 the major topics, then, that are taken from the big minute  
23 book of the committee.

24 Within the spiral notebook there is a summary  
25 that I have generated in an effort to identify for you the



1 major topics that you'll have to address in dealing with  
2 these issues.

3 Behind my report, the first thing that you're  
4 going to find in the next blue tab is the committee.  
5 Chairman LeMay organized the committee from volunteers back  
6 in September of 1995. With the exception of me as  
7 chairman, the rest of these committee members, by  
8 experience, by education or by a combination of both, can  
9 qualify before this Commission as experts in this area.

10 It has been a pleasure for me to work with such  
11 competent experts, and you will know when you turn to the  
12 next page and see the attendance list for committee  
13 involvement that there has been overwhelming support of not  
14 only the industry's committee members, but of the  
15 regulator's committee members.

16 And it's an interesting way the committee was  
17 organized. We have a number of oil-industry members, but  
18 they have been balanced by regulators. And one of the  
19 items on our agenda was to have the representative from the  
20 Commissioner of Public Lands and the representatives from  
21 the BLM. Mark Schmidt was the Land Office representative,  
22 and Don Ellsworth from the BLM in Farmington was the BLM  
23 representative. Roger Anderson was the OCD representative.  
24 But in addition to Mr. Anderson, we had substantial  
25 involvement and participation by Mr. Carroll, by Bill

1 Olson, we had Denny Foust and Frank Chavez from the Aztec  
2 office that were often at our meetings.

3 In addition, we relied upon the expertise of some  
4 of the industry's attorneys. We had the good fortune of  
5 having Ned Kendrick of the Montgomery law firm, along with  
6 Louis Rose, also of the Montgomery law firm, to aid us with  
7 some of the legal issues, and they were kind enough to help  
8 us frame and understand some of the complexities of the  
9 jurisdictional topics when we deal in this area.

10 In addition, we had Mr. Chris Shuey. Mr. Shuey  
11 is perhaps known to all of you. He's with the Southwest  
12 Research and Information Center. Mr. Shuey, I believe,  
13 attended all of our meetings and was active in helping us  
14 organize how we would go about doing our task.

15 If you'll turn behind the next blue tab, you'll  
16 see one of the starting places. This is the current and  
17 existing -- what we call the Rule 116. I've taken Rule 116  
18 and duplicated it for you. You'll find later on that  
19 you'll -- the form that is currently utilized by the  
20 Division is in this part of the book. In addition, I've  
21 given you a sample of how the form is filled out and some  
22 instructions. This is where we start. We had the existing  
23 rule.

24 In addition, behind the existing rule, in the  
25 next blue tab, we had as one of the committee documents the

1 IOGCC/EPA State Peer Review of the Oil Conservation  
2 Division, State of New Mexico. And so at such point as you  
3 care to look through that, it will give you that peer-  
4 review recommendations, findings and suggestions with  
5 regards to the topics that are before you today.

6 The recommendations of the IOGCC were that in  
7 terms of reporting -- spills, releases, discharges -- they  
8 recommended that the Division re-examine that topic.

9 In addition, there were recommendations with  
10 regards to formally adopting rules and regulations that  
11 went with what I would call cleanup. We have engaged in  
12 all those topics.

13 And so when you come back to the beginning of the  
14 report that I have prepared, we started with the  
15 jurisdictional issue you find on page 4 of my summary.

16 The committee in September, and again in  
17 November, and I believe again in January of this year, had  
18 lengthy discussions about all the jurisdictional items with  
19 regards to this topic. We examined the Water Quality Act,  
20 we examined the Oil and Gas Act. And if you care to go  
21 through all of the jurisdictional issues, we have the  
22 documents where you can go through that process.

23 One of the things the Committee was educating  
24 itself about is whether or not the Oil Conservation  
25 Commission has jurisdiction for oil and gas industries with

1 regards to reporting, controlling and cleaning up  
2 contamination or potential risk to water pollution. We  
3 have ultimately concluded that you do, and we have relied  
4 upon the advice of some of the oil and gas industry  
5 attorneys to give us that opinion.

6 When we look at the historical background of the  
7 jurisdictional issues, it is interesting. In summary, we  
8 have found that when we look at the Water Quality Control  
9 Commission's actions and look at the statutes involved in  
10 each of these topics, we find that the Oil Conservation  
11 Commission has the authority, the discretion and the choice  
12 to develop rules and regulations for the reporting of  
13 releases, for the prevention of water pollution, and for  
14 the abatement or the cleaning up of those releases that  
15 pose risks to water.

16 The summary is my effort to help you walk your  
17 way through that process.

18 When you look at some of the items, you will find  
19 that the Legislature, back in 1989, subdivided some topics.  
20 They subdivided the regulatory jurisdictional environmental  
21 topic before this Commission into what we on the committee  
22 used as shorthand as the B.(21) and the B.(22) provisions.  
23 They're found on page 5.

24 The B.(21), for shorthand purposes, we  
25 characterized as upstream E-and-P activities. And when you

1 look at B.(21) it says, to regulate the disposition of non-  
2 domestic wastes resulting from the exploration,  
3 development, production or storage of crude oil or natural  
4 gas to protect public health and the environment. So when  
5 we talk in the committee before you of the upstream or the  
6 B.(21) activities, that's what we're talking about.

7 When we talk about the B.(22) activities, those  
8 are taken right out of the Act, and they are those  
9 activities which you have jurisdiction to regulate with the  
10 disposition of non-domestic wastes resulting from oilfield  
11 service industry, transportation of crude oil or natural  
12 gas, the treatment of natural gas, refinement of oil to  
13 protect public health and the environment, including the  
14 administration of the Water Quality Act. We've called  
15 those the B.(22) or the downstream E-and-P activities.

16 The Committee spent a lot of effort trying to  
17 decide if we should recommend to you a different way to  
18 handle the upstream versus the downstream activities.  
19 Ultimately, we decided to have the same system for both,  
20 same system of rules and notices and regulations, if you  
21 will.

22 So despite the fact the committee spent an awful  
23 lot of time working its way through this maze of  
24 jurisdictional and regulatory issues, we have ultimately  
25 come to the conclusion that in a comprehensive solution,

1 the best solution that we can think of for you is to treat  
2 those as one group. So as you talk among yourselves and  
3 with us about how this was done, the ultimate answer is, we  
4 put them together in one concept.

5 Having decided that was going to be our general  
6 plan, then we addressed the project in three parts.

7 First, in order to trigger regulation and  
8 cleanup, you had to have some notice. We had to have some  
9 rule that required the responsible person to make a report.  
10 And that's what we call 116, and we currently have a spill-  
11 and-release report.

12 The first thing that we did is, we tried to  
13 decide on definitions. So when we talk to you today and  
14 later about releases or unauthorized releases, we have  
15 recommended to you, when you read the proposed rule, is  
16 that spills, discharges, releases, fires, any way to put  
17 product or waste from our industry into the environment so  
18 that it's a risk to the environment or public health, we  
19 called a release.

20 Now there are some authorized releases, and there  
21 are some unauthorized releases. But when you see our  
22 terminology, when we say unauthorized release, we're  
23 talking about the spills, the discharges.

24 The definitions are helpful. I found it helpful  
25 this weekend, trying to figure out how I was going to

1 explain this to you, to go back and spend some time with  
2 the definitions. The committee spent a lot of time with  
3 the definitions.

4 And so you have before you today several pages of  
5 definitions. They are not in the rule book now. We have  
6 taken those definitions from various places, a number of  
7 them from the Water Quality Control Commission regulations.  
8 We have had the committee experts work on the language.  
9 There may still be some discussion on how to further define  
10 some of the definitions. But the definitions were very  
11 helpful to us, and we used them then in what we call the  
12 revised Rule 116 we're proposing to you, and we've also  
13 used them for Rule 19.

14 And so what are we talking about? Rule 116 is  
15 our committee recommendation to you with regards to the  
16 notice. The notice will deal with volumes, quantities and  
17 substances.

18 When you look on page 7, you'll find that the  
19 committee, as well as the IOGCC, found some weaknesses,  
20 some deficiencies in the current 116. I've listed six of  
21 them. There are perhaps many more. The committee is  
22 unanimous in recommending to you that Rule 116 needs to be  
23 revised. We debated it, we discussed it, and that is a  
24 unanimous recommendation.

25 After we dealt with 116, in that process we

1 ultimately decided that the Division needed a Rule 19, and  
2 that is simply a rule to deal with the prevention of water  
3 pollution. And if there is a potential risk of water  
4 pollution, then there is a rule that tells the reader what  
5 they have to do for cleanup. I as a layman in this area  
6 will call it cleanup. The experts, Mr. Menzie and Mr.  
7 Anderson, can detail to you more specifically how the  
8 definitions work. But abatement is one of their magic  
9 words. It has to do with cleanup. There's a remediation  
10 definition. It has to do with cleanup. So in a minute  
11 when we talk about 19, we're talking about the cleanup.

12           Back to 116 now, let's start at the beginning.  
13 We added some definitions in 7, which are repeated before  
14 you in the proposal, and they had to do with releases. We  
15 spent time, and that's the release definition. There may  
16 be some modification to it as you get to what is the final  
17 one, but we had a release definition. We wanted to know  
18 the watercourse definition. I think we took that out of  
19 the vulnerable-area rule from the San Juan Basin. We then  
20 dealt with the oilfield-waste definition, and then well  
21 blowout.

22           The other thing we found is, we found Rule 116  
23 was confusing, the existing rule. It was hard to work your  
24 way through. And so what we decided to do was to retitle  
25 it, reformat it and change the content.



1           If you'll turn with me to page 11, we will begin  
2 to look at Rule 116 and look how the committee categorized  
3 the type of releases that we are recommending to you be  
4 reportable events. We decided to focus on the fact that if  
5 you look at 116 now, there is some inconsistencies in  
6 volumes and substances, and you could have a risk to the  
7 environment or endangerment of public health that is not  
8 adequately addressed in the current rule.

9           And so what we did is broke this down by  
10 substance. And on page 12, then, we began to address  
11 natural gas releases. Quite frankly, we started there,  
12 because that was the easiest one for us to deal with at  
13 that time.

14           I have repeated for you on page 12, so you know,  
15 in the block, what existing notice requirements are for  
16 natural gas releases.

17           In the left block, you'll see the current OCD  
18 rule. Below 1000 MCF, there's no reporting. Over 1000  
19 MCF, written report in ten days.

20           You will find that when you get to our  
21 recommendation, all the written reporting is a 15-day  
22 period. We have standardized the 15-day period, and it was  
23 our effort to work out an arrangement with the BLM  
24 reporting, that currently uses 15-day written notice. And  
25 so we're trying to track for the BLM and the Land Office

1 and the OCD a similar system, and hopefully eventually with  
2 the same form -- and when we get there I'll show you the  
3 form -- so that all three regulators -- the industry in  
4 reporting to all three regulators are going to be  
5 comfortable because they continue to use the same type of  
6 form. So we thought that was helpful.

7 When we look at the difference between the BLM  
8 and the OCD, you'll find that the BLM has a lower threshold  
9 of initial reporting. They go down to 50 MCF. There's a  
10 difference here that you need to understand in what the  
11 committee then did.

12 The BLM has a lower threshold reporting, because  
13 the purpose of their reporting is not necessarily for  
14 prevention of risk to the environment or public health;  
15 it's because they as a royalty owner want to make sure that  
16 they are reported on a release so they can go out and claim  
17 royalty. The committee, by a majority, chose to ultimately  
18 give you a threshold for gas-release reporting that is  
19 independent of the issue of reporting to the Land Office or  
20 the BLM for volumes for royalty purposes.

21 A majority of the committee took the point that  
22 this Rule 116 was a safety issue and was not necessarily --  
23 or should not be used as a reporting or a tracking system  
24 for the other two agencies to generate royalty from.

25 That will be a topic for you to decide. The

1 committee is not unanimous. I'm sure you'll hear  
2 discussion now and later as to what the gas threshold  
3 reporting limit ought to be. We don't have a unanimous  
4 recommendation for you, so that's one of the items on your  
5 list.

6           What the committee did do, though, is, we decided  
7 that any volume of gas, however small, if that was going to  
8 result in a fire, may with reasonable probability endanger  
9 public health or result in substantial damage to the  
10 property or the environment, that ought to be reported, and  
11 because it's natural gas, it ought to be an immediate  
12 verbal reporting.

13           And so that's what we are suggesting when you see  
14 116, is that natural gas releases of any volume that are a  
15 substantial risk as I've described, if it's up in Denny  
16 Foust's area with Frank Chavez, it's an immediate phone  
17 call, and you've got to go take care of it.

18           We also decided that 116 was not particularly  
19 well written when it talked about volumes in relation to  
20 releases to a watercourse. When we're dealing with  
21 environmental issues of water pollution, the topic of  
22 concern to the committee experts is, where is this stuff  
23 being released to? Is it out in nowhere? Or is it in an  
24 area where it has reasonable probability that it will reach  
25 a watercourse? And so then we debated, what's a

1 watercourse? And you have a definition, what the committee  
2 decided a watercourse was.

3 If you'll look at the existing -- On page 13, it  
4 says here's the existing OCD requirements for releases  
5 which can release a watercourse. Now, it's not packaged  
6 this way in the current rule. We lifted it out to show you  
7 for convenience what the Division is now requiring the  
8 industry to do.

9 It says, less than a barrel, no reporting.  
10 Produced -- I'm sorry, oil less than a barrel, no  
11 reporting. A barrel or more, immediate verbal. If it's  
12 produced water, it's less than 25 barrels, no reporting.  
13 More -- 25 barrels or more, it's an immediate verbal.

14 We then decided that any volume that's released,  
15 that has reasonable probability of reaching a watercourse,  
16 needs to be reported. We have made this requirement more  
17 stringent, or proposed to for the industry, and we're  
18 saying any volume of oil, any volume of produced water,  
19 immediate verbal, and within 15 days a follow-up written  
20 report. We think those are appropriate. We're going to  
21 recommend those to you.

22 It may be a topic from others, when they come to  
23 testify before you as to those volumes. But it helped us  
24 in understanding the risk to the environment, to deal with  
25 these potential releases to a watercourse, and we have made

1     them more stringent.

2             The next topic is releases which will not reach a  
3     watercourse, page 14. The committee spent a lot of time  
4     worrying about this category. To help you understand what  
5     the committee did, on page 14 I have duplicated in the  
6     first block what the existing rule requires. The existing  
7     rule divides oil -- has the reporting requirements for oil,  
8     it has produced water under a different volume-release  
9     reporting schedule.

10            Oil to ground, less than five barrels, no  
11     reporting. Five to 25, written in ten days. More than 25,  
12     immediate verbal. Produced water, zero to 25, no  
13     reporting. 25 to 100, ten days written. Over 100,  
14     immediate verbal.

15            The committee was unanimous that produced water  
16     should be treated with the same reporting volume limits as  
17     oil. We did not want to try to draw a distinction between  
18     the two substances.

19            We also wanted to avoid what apparently is some  
20     confusion in the field when someone, a responsible party,  
21     whether he's the guy driving the truck or whoever else is  
22     out there on a facility -- and you'll see we define  
23     facility to be much different than you might think of it; a  
24     truck could be a facility. The person responsible for  
25     reporting could be the guy that ordered the truck moved.

1 But let's say he's moving produced water and oil.

2 If he spills 24 barrels of produced water and  
3 four barrels of oil under the current rule, he has no  
4 reporting if it doesn't reach a watercourse. To make that  
5 obviously easier and, we think, more appropriate, we've  
6 changed it -- put them together. And the committee went  
7 through a rather lively discussion on what the volume were  
8 going to be. And you'll see, and I have reproduced some of  
9 them for you, because the committee was split on the  
10 reporting volumes.

11 But you'll ultimately find out, Mr. Anderson gave  
12 us a proposal on 15, and by a vote of five to one -- I  
13 think Mr. Shaw of Amoco voted against it -- it shows the  
14 summary here. What we're recommending to you -- It's not a  
15 unanimous recommendation, and you may have discussion and  
16 decide this ultimately, what to do. But a substantial  
17 majority of the committee proposed this Proposal 3, which  
18 is, now -- This is releases to the ground that aren't going  
19 to reach the watercourse. Less than five barrels, no  
20 reporting. Five to 25, a written report in 15 days. More  
21 than 25, immediate verbal and 15 days' written notice.

22 The discussion was comprehensive, but to  
23 summarize it, we ultimately decided that it was more  
24 important to have an effective and efficient reporting  
25 system for those larger volumes, more than 25 barrels, in a

1 way that was going to get a good response so that we could  
2 go and identify the potential risk, and if it was necessary  
3 to work out some cleanup schedule that you go attend to it.

4 And so there was a burden-to-the-industry  
5 argument with regards to reporting less than five. And in  
6 fact, there may be discussion about having it higher. Mr.  
7 Shaw up in Farmington said five out there in nowhere was  
8 not a risk to the environment or to water. And so he was  
9 arguing for a higher number. The point is, this is the way  
10 we've framed it for you. You ultimately need to decide  
11 what those reporting thresholds are.

12 When you look at how the rule is finally  
13 constructed for you, I have blocked it out in the bottom of  
14 Page 15, so it gives you a quick way to take all these  
15 categories and figure out what we're saying.

16 Category I -- To repeat, Category I, excluding  
17 natural gas, are those releases that pose the greatest  
18 potential risk, they're going to result in a fire, they're  
19 going to reach a watercourse, with reasonable probability  
20 they endanger public health or result in substantial damage  
21 to property or the environment. Those things have to be  
22 reported immediately as to any volumes. More restrictive  
23 than we have now, more requirements for the industry.

24 Category II, then, are the releases of any  
25 volumes of natural gas which result in fire, reasonable

1 probability of endangerment of public health or result in  
2 substantial damage to property or the environment.

3 And then III is the releases of volumes,  
4 excluding natural gas. Greater than five barrels but not  
5 more than 25 requires a written report. And then greater  
6 than 25 requires the written report in 15 days.

7 That's where we were on the notice.

8 We spent the better part of two committee  
9 meetings with what we call Rule 116 D. And when you look  
10 at 116 D, we called it the trigger. 116 D discussion is  
11 found beginning on page 9.

12 What we were concerned about is the fact that the  
13 current rule has very ambiguous language about cleanup.  
14 Rule D went through, I don't know, ten different drafts.  
15 We struggled with D a lot. What we were looking for is to  
16 make it very clear that someone reading the OCD rulebook  
17 and reads the notice release reporting requirements, they  
18 can within the context of that rule recognize that in  
19 addition to the responsibility to report, they've got a  
20 responsibility for corrective action.

21 Now, this doesn't tell them what they have to do,  
22 but it tells them they've got to do something. And so  
23 we're trying to bridge the notice rule, 116, to the cleanup  
24 rule, Rule 19. And this is where the industry will find  
25 it. They'll find it in corrective action, D.



1           And we're looking back at the responsible party.  
2       That party that's responsible for taking corrective action  
3       to clean up the release that poses a risk to the pollution  
4       of groundwater or surface water is going to have to take  
5       abatement action or remediation according to a set of  
6       procedures. And ultimately we went through this whole  
7       process.

8           And you'll find on 11, then, in the middle of  
9       page 11, what we finally agreed upon was the proper way to  
10      word the bridge so corrective action then triggers them to  
11      go somewhere else. And where do they go? They're going to  
12      go to Rule 19.

13           Let me give you a general overview of Rule 19.  
14      At this point we completed what I called phase one of the  
15      committee task, and that was the notice issue, and that's  
16      packaged in phase one.

17           Phase two, then, was the committee's activity in  
18      February, March and in September of this year. The  
19      committee spent three full days of committee meetings on  
20      19, plus all of the in-between time with various committee  
21      members working on drafts and passing them back and forth.  
22      So task two was Rule 19.

23           Task three, the committee has not yet -- or we're  
24      just barely beginning to think about it. Task three was to  
25      examine and make recommendations with regards to the OCD

1 guidelines. The Environmental Bureau has got guidelines  
2 for handling what happens after you get through Rule 19.  
3 There's a whole set of things to worry about, and we have  
4 not yet got there. Phase two, then, is the Rule 19.

5 What we wrestled with is what I started with.  
6 How do we fit the puzzle together when we talk about the  
7 Water Quality Control regs? And how do we recommend to you  
8 as the Commission to exercise your jurisdiction to deal  
9 with cleanup?

10 One of the things we thought about doing was to  
11 have a very short rule, and simply by reference incorporate  
12 the Water Quality Control regs. You know, it's the blue  
13 book. Everybody's seen one of these, and it goes on -- I  
14 don't know how many pages in here. There's -- It's pushing  
15 100.

16 And so one thing, we say, Well, let's make it  
17 easy on us, we'll just incorporate it by reference and  
18 we'll go home. And the more we thought about it, the more  
19 we recognized that the industry, even experts that deal  
20 with it, have a lot of trouble moving out of the OCD rule  
21 book and dealing with the Water Quality Control book. They  
22 use a way to identify their system in terms of the  
23 mechanics of how they are regulated and how they handle it.  
24 It's a little foreign to people like me that work over  
25 here.

1           And so what we ultimately decided to do -- and it  
2 was unanimous -- is that we would take the Water Quality  
3 Control reg when it dealt with cleanup, and we would select  
4 those portions that we could -- we thought appropriate,  
5 pull them out of that book, and put them into 19. So that  
6 was the methodology.

7           We first had Mr. Bill Olson of the Division  
8 tackle that task, and he gave us our first working draft,  
9 where he just physically took it out of the water quality  
10 and gave us a draft. You'll see that discussion, and I  
11 have given it to you so that you can see how carefully the  
12 committee has worked. So when you get past the last blue  
13 tab in the committee report, all the rest of these things,  
14 draft eight through -- I think it's 10 or 11 -- 11 -- these  
15 are the committee's working drafts as we dealt with the  
16 challenge of pulling the water quality regs over into the  
17 OCD rule book. And if you care enough to do it, it's  
18 documented here, and it can show you where we have  
19 problems, where we had discussions and what we did.

20           So that will give you a footprint of how we got  
21 to here.

22           One of the things that we did -- And any of the  
23 drafts that are before you are the current rule as proposed  
24 in the docket sheet, you know, you can flip to any of  
25 those, and if you'll start with 19 of the draft, it's also

1 contained in the spiral. The spiral book does have the  
2 committee's proposed Rule 19. It is Exhibit 6 in the  
3 material I've handed out to you.

4 All right, let's talk about the first part, the  
5 purpose.

6 The purpose is consistent with what our  
7 contributing attorneys have led us to conclude is the  
8 jurisdiction of the Oil Conservation Commission in terms of  
9 the oil and gas industry with regards to these topics. And  
10 it talks about the abatement of pollution of subsurface  
11 water, the abatement of surface water. And we have been  
12 careful in the definition section so that you can go back  
13 and you can look at the definitions.

14 We took care to talk about what we meant when we  
15 defined groundwater, so that the industry can read in the  
16 definitions -- All these definitions would go in front, in  
17 the general OCD rule book, so anybody looking for  
18 definitions can read down and finally realize for the first  
19 time in our book what groundwater is, how to define it.  
20 You can read down and find out what subsurface water is,  
21 the vados zone, talk about water, water contaminant,  
22 watercourse. And so a lot of care was taken in defining  
23 the terms so that people are using the same definitions.

24 The general mechanics of how this is done is  
25 consistent with what the Water Quality Control Commission

1 did in the WQCC regs.

2           The next thing is the standard. This committee  
3 is unanimous that the standards that you apply for  
4 prevention of water pollution and for the cleanup of water  
5 pollution are standards that are uniform in the State of  
6 New Mexico. It would be particularly odd, I think, if the  
7 oil and gas industry had a different of water-quality  
8 standards.

9           When I talk about water quality standards, I as a  
10 layman have been told I'm talking about three things, and I  
11 have given you two of the three parts in one of the  
12 handouts. It's the handout that starts with this  
13 definition of toxic pollutant. This came out of the WQCC  
14 regs. So my members on the committee, when they tell me  
15 I'm talking about water quality standards, they're talking  
16 about toxic pollutants. So that's one of the things we're  
17 talking about when we want to look at the standards.

18           In addition, there are some numerical standards  
19 for groundwater. Those are the numerical ones that we talk  
20 about. These also are adopted by the Water Quality Control  
21 Commission. And so these are the numbers for these  
22 substances that are established by that commission, and  
23 which we are proposing be adopted by this Commission as one  
24 of our water quality standards for this industry as to some  
25 point in time.

1           The Water Quality Control Commission, I think,  
2 changes these, or at least has hearings to discuss changes,  
3 and what the committee has proposed is that the standards  
4 in this industry are fixed as to a certain point in time.  
5 If they're later modified, then we come back before this  
6 Commission and a hearing would be presented to decide  
7 whether you want to adopt those changes in the standards  
8 made by the Water Quality Control Commission. And so that  
9 was the method.

10           In addition, there are water quality standards  
11 for interstate and intrastate streams in New Mexico. I  
12 don't have those right before me, but they're available, I  
13 think, in the building.

14           So these three things make the water quality  
15 standards. We didn't fool with them, we just adopted them  
16 for you, or at least suggest that you do.

17           The next part of how this is organized is to take  
18 from the Water Quality Control regs some concepts.

19           The first concept is that after you have reported  
20 it, then you need to work out a plan if required to clean  
21 it up. And Mr. Anderson can describe for you the methods  
22 much better than I, but the general concept is that you  
23 could file a stage-one abatement plan, which is nothing  
24 more than a determination being made that water pollution  
25 is going to occur or has occurred because of the release,

1 and you've got to clean it up so that your water pollution,  
2 which is in excess of the standards, is cleaned up to those  
3 standards. And you do it generally under Water Quality  
4 Control regs in two stages.

5           Stage one is, how big is the problem? It's an  
6 investigation-site kind of thing. So when you look at  
7 stage one in here, you're looking at the initial reporting  
8 that we've outlined here that is consistent with the Water  
9 Quality Control regs, that the responsible party files his  
10 stage-one abatement plan. Investigated the site, here's  
11 what it looks like, here's how big a mess it is.

12           Either concurrently with that or subsequent to  
13 it, you would file a stage-two abatement plan, which is  
14 nothing more than, Here's how I'm going to clean it up. In  
15 that process, you could, this rule allows, as does the  
16 Water Quality Control rules, allow you to make an argument  
17 that cleaning this up to the current water quality  
18 standards is technically infeasible. And so we have  
19 proposed to adopt for this industry and this Commission a  
20 similar technical infeasibility provision, as you find in  
21 the Water Quality Control regs, for other industries.

22           So we've not distorted the system; we've simply  
23 taken it from their rule book, put it in your rule book, in  
24 a way, using vocabulary that our industry will understand.  
25 We thought it was very, very important that the individuals

1 in our industry be able to look to the OCD rule book, that  
2 they should not have to go through all these rule books for  
3 other commissions and other agencies to figure out how to  
4 do this. And so that's what the committee spent a lot of  
5 time working on, is, How am I going to take this stuff and  
6 put it over here in a fashion that we can understand?

7 COMMISSIONER WEISS: Where is that?

8 MR. KELLAHIN: Say again?

9 COMMISSIONER WEISS: Where are -- Where is the  
10 summary of these numerical standards?

11 MR. KELLAHIN: It was separate from that. It's  
12 the handout.

13 COMMISSIONER WEISS: It's not in this?

14 MR. KELLAHIN: No, sir.

15 COMMISSIONER WEISS: I have the handout.

16 MR. KELLAHIN: Yes, sir. I failed to include it  
17 in the -- but it's separate from the handout. And Mr.  
18 Menzie and Mr. Anderson are very well equipped to go  
19 through any of the technical stuff for you.

20 All right. So the technical infeasibility is  
21 brought over here.

22 There's also a provision that has alternate  
23 abatement standards, and Mr. Menzie and Mr. Anderson can  
24 explain that for you. But in summary, within a certain  
25 threshold -- and I believe it's 200 percent -- if there is



1 a certain standard that you contend that you need some  
2 flexibility on, there is a method here outlined for making  
3 a decision on an alternative standard for that particular  
4 site or that particular release, and there is a procedure  
5 established where you go through a process to see if you  
6 can convince the Environmental Bureau Chief, ultimately the  
7 Director. And any of that can trigger a hearing process,  
8 and ultimately it could come to the Commission on a *de novo*  
9 hearing.

10 One of the challenges we had is, the hearing  
11 procedure under Water Quality Control regs is not as  
12 efficient as the industry sees before this Division. And  
13 so what we try to do when you look at those portions of 19  
14 that deal with public notice and hearing -- they're found  
15 over on page 10 under 19.G. -- was to begin to create a  
16 system by which the various parties involved in this issue  
17 get to participate.

18 Again, it was taken from the Water Quality  
19 Control regs, but we attempted to fit it into our hearing  
20 procedures and into the practices and methods used at the  
21 Division.

22 The first thing was the public notice. Who do  
23 you send notice to? We have detailed in 19.G. an area for  
24 notification and parties to be notified. This is more  
25 comprehensive than we see generally in Division hearings,

1 but then the issue of public health and the environment are  
2 more involved in this rule, and so it requires, if you  
3 decide to adopt it, notifications as categorized in there.  
4 And they're subdivided by particular type, notifying other  
5 governmental agencies, parties that may be impacted by the  
6 pollution which involve parties within a mile. And so that  
7 portion of the rule, there may be discussions about.

8           What we also did was attempt to adopt a process  
9 where if, after notice there's an adversely affected party  
10 that wants to participate in how the cleanup issues are  
11 resolved or whether there's an alternate abatement standard  
12 adopted, that those parties, whether it's the rancher  
13 within the mile or someone else that's immediately impacted  
14 by this release, has been provided notice and can come.  
15 There's a response period in which they file a notice that  
16 they want to be a participant. That process can trigger a  
17 hearing before an examiner, or it might be reserved.

18           If after -- before or after a Division Examiner  
19 hearing -- Sometimes they're not handled that way. There  
20 could be an administrative processing of these things, you  
21 understand. There may be no objection, and it's simply the  
22 responsible the party talking to the agency. And if Mr.  
23 Anderson as bureau chief approves the stage-two abatement  
24 plan as to cleaning it up, he will make recommendations to  
25 the Director of the Division, which the Division then can

1 decide to accept, change or otherwise resolve.

2           Once the Director makes the decision, then that  
3 decision becomes final, unless an adverse party appeals it  
4 to an Examiner hearing, which is the same system we have  
5 now.

6           The system is very similar, except that the  
7 administrative process that Mr. Catanach and Mr. Stogner do  
8 for the typical exploration/development topics would be  
9 handled by Mr. Anderson in an environmental way.

10           And if in that administrative processing there's  
11 an objection or he decides that this is a big enough issue,  
12 we better have a hearing on it, then they can trigger a  
13 hearing, just like Mr. Catanach and Mr. Stogner do in  
14 processing their kinds of things. They can trigger a  
15 hearing on their own initiative. Or they can go to the  
16 Director and say, This is a big deal and we need to have a  
17 hearing, and you have a hearing. It also can go through an  
18 administrative process that doesn't require the hearing.

19           But if there's an adversely affected party to  
20 satisfy due process, we can get them into our hearing  
21 track. After that hearing, an Examiner order is issued,  
22 and then we go through the routine that's very familiar to  
23 all of you. If there's no appeal from the Examiner order,  
24 it can go to the Commission, it's final. If there's an  
25 appeal from the Examiner order it comes to the Commission

1    *de novo*, and then they go to district court if they're not  
2    happy here. That is the general plan.

3               Mr. Menzie, I've asked him to go through the  
4    steps and to answer technical questions if you have them.

5               And then finally I've asked Mr. Anderson to give  
6    us the Environmental Bureau's point of view on the rules  
7    that we're proposing.

8               One of the handouts I gave you this morning was  
9    so that you had it -- It's the Water Quality Control  
10   Commission delegation of responsibilities. You remember  
11   there's what I would call this letter agreement from July  
12   of 1989 where they attempted to parcel out, if you will, a  
13   delegation of responsibilities between the EID and the OCD.  
14   This is kind of convenient. It's before you, in case you  
15   need it, as a cribsheet of how those delegations were  
16   sorted out.

17              In summary, we are recommending to you  
18   unanimously that Rule 116 needs to be changed. We think  
19   it's deficient. We believe we have a comprehensive plan  
20   that will help the industry more quickly and more timely  
21   report volume releases that are risks to the environment  
22   and public health.

23              The topics for you to resolve are the volumes of  
24   those releases and whether or not the release of natural  
25   gas is to be reported as to volumes, if there's a change in

1 the thresholds.

2 We have constructed for you what we think is an  
3 appropriate corrective action notice in 116 to tell people,  
4 we've got to do something. You don't have that now in your  
5 rule book, and it's easy if you're not familiar -- And in  
6 fact even if you are a reasonably knowledgeable expert in  
7 this area, the current rule is confusing and ambiguous.

8 Rule 116, as crafted, avoids having the Division  
9 staff do homework for the industry. It's easy to read and  
10 to figure out.

11 And in connection, then, with that notice, we  
12 have a proposed draft rule, and I think it says "draft" on  
13 it. It's draft at this point because while it's been  
14 examined by all members of the Committee, including the BLM  
15 and the Land Office, we very much want, and do not yet  
16 have, the concurrence of the Land Office and the BLM as to  
17 this form. But we've worked on this form considerably, and  
18 it's beginning to look what I hope is pretty close to a  
19 final form, but we don't have the final tally on what the  
20 other regulators see in the form.

21 Once we move beyond the corrective action, we  
22 have recommended to you that while you have the authority  
23 and you are free to consider any rules and regulations as  
24 to how you're going to require cleanup, you can tell us to  
25 go back and start over, you could have us go back and do

1 something else after the November hearing. Once you hear  
2 the comment from all these people, you may decide that  
3 there's something else we need to do.

4 But at this point, we find no useful purpose  
5 served by trying to create any kind of differences between  
6 B.(21) and B.(22) regulations, if you will, insofar as it  
7 deals with water pollution. We have not yet examined the  
8 OCD Division guidelines that they're using, have been  
9 commonly used for some time. That still remains a topic of  
10 the committee's action.

11 So at this point, that is as best I can summarize  
12 for you what the Committee has taken a year to accomplish  
13 and what we have spent thousands of hours considering. And  
14 I will do my best to answer your questions. If I cannot  
15 answer them, I will find someone that can.

16 I have with me today a number of members of the  
17 committee. Mr. Menzie is particularly adept at this topic.  
18 We have Mr. Anderson, and there are others here.

19 So with your indulgence, we'll do our best to  
20 answer any questions you have.

21 Thank you, Mr. Chairman.

22 CHAIRMAN LEMAY: Thank you, Mr. Kellahin. Do you  
23 want to take some questions now, or do you want to just put  
24 on other testimony?

25 MR. KELLAHIN: Perhaps -- Let me finish with the

1 other two presenters, and then we'll see where we are if  
2 you'd like that.

3 CHAIRMAN LEMAY: Anything right now that is  
4 confusing with Tom's testimony that you want to --

5 COMMISSIONER WEISS: No, I think it would be  
6 better to --

7 CHAIRMAN LEMAY: Yeah, to have it all. Okay.

8 MR. KELLAHIN: Thank you, Mr. Chairman.

9 CHAIRMAN LEMAY: Fine. Thank you, Mr. Kellahin.  
10 Let's take a ten-minute break, and then we'll get  
11 to the others.

12 (Thereupon, a recess was taken at 10:13 a.m.)

13 (The following proceedings had at 10:26 a.m.)

14 CHAIRMAN LEMAY: Okay, let's continue.

15 Let's see, Mr. Kellahin, you're kind of sitting  
16 there. Do you want to orchestrate this? I just thought  
17 maybe, Mr. Carroll, as long as you have the people on your  
18 committee that will be presenting what you want to present,  
19 do you want to just introduce them?

20 MR. KELLAHIN: Yes, Mr. Chairman. Bob Menzie is  
21 right here. He's our next presenter. He's with Marathon  
22 Oil Company.

23 CHAIRMAN LEMAY: Great.

24 MR. KELLAHIN: And we'd like to have him be the  
25 next presenter.

1           CHAIRMAN LEMAY: Fine, we'd like to have him too.  
2 Thank you.

3           MR. MENZIE: Good morning.

4           CHAIRMAN LEMAY: Good morning.

5           MR. MENZIE: My name is Bob Menzie. I'm a  
6 hydrogeologist for Marathon Oil Company.

7           CHAIRMAN LEMAY: Do you want to spell your name  
8 for the court reporter?

9           MR. MENZIE: M-e-n-z-i-e.

10          CHAIRMAN LEMAY: Thank you.

11          MR. MENZIE: Tom has asked me to address you  
12 today as a committee member to try to help explain the Rule  
13 19 process. And he's already done that, but I think it  
14 would serve the Commission well to briefly go over it  
15 again, and when I mean briefly, that's what I mean.

16                As Mr. Kellahin already stated, Rule 19 is an  
17 adaptation of the WQCC abatement regulations that were  
18 promulgated last December, with some minor changes. And  
19 the purpose was to better fit the oil and gas industry. I  
20 want to stress that the intent was not to change the  
21 process or the substance of the process, since the cleanup  
22 standards are basically the same, but to change the agency  
23 responsible for administering the regulation.

24                I would also like to tell you, in case there is a  
25 misunderstanding, that the oil and gas industry was very



1 involved with the development of the abatement regulations,  
2 the Water Quality Control Commission abatement regulations,  
3 in the years prior to 1995.

4 The rule will essentially allow the Oil  
5 Conservation Commission to make the final determination on  
6 the acceptability of cleanup for all oil and gas sites,  
7 rather than one -- you as a Commission for the so-called  
8 upstream facilities, and the Water Quality Control  
9 Commission for the so-called downstream facilities.

10 So the purpose of Rule 19 is really twofold:

11 To establish a formal process to assess and clean  
12 up larger releases or more complex sites. The committee  
13 considered these sites would require more than one year to  
14 clean up.

15 And, two, to establish procedures to allow for  
16 public input throughout the assessment and cleanup process.

17 And then before I go on to explain specifically  
18 how Rule 19 works, I think it's important to tell you that  
19 although environmental assessment and cleanup are very  
20 complex regulatory processes in most states and with the  
21 federal government, this rule is a synthesis, simplifying  
22 that process. And I believe that Rule 19 streamlines  
23 cleanups, compared to federal programs such as CERCLA and  
24 other state programs.

25 So how does Rule 19 work? For those facilities

1 that are required to clean up, there's generally six steps.  
2 All steps must be approved by the OCD.

3 First, the responsible party would submit a  
4 stage-one abatement plan. What -- A stage-one abatement  
5 plan is really an assessment work plan. It also includes a  
6 monitoring program, a sampling and analysis program, a  
7 quality-assurance program for that sampling and analysis  
8 program, a schedule of when quarterly monitoring reports  
9 would be submitted, and also a proposed date for the  
10 submission of the final investigation report. And that  
11 final investigation report would summarize all of the  
12 activities that occurred that were proposed in the stage-  
13 one plan. The OCD must approve that work plan.

14 Second step would be the conducting or the  
15 following -- or following the stage-one plan that had been  
16 approved, so conducting the assessment.

17 The third step would be, after completing the  
18 assessment activities, submitting the final site-  
19 investigation report.

20 The first three steps are consistent with what is  
21 commonly known across the country and in other states,  
22 depending on the regulation, as the remedial investigation  
23 stage. After submittal of the final site-investigation  
24 report, the OCD must approve that report.

25 Then the responsible party, step four, submits a

1 stage-two abatement plan. The stage-two abatement plan  
2 evaluates abatement options or cleanup options, selects an  
3 abatement option or a cleanup option, and then designs a  
4 plan or a system to achieve abatement standards. The plan  
5 is really a proposal to the OCD.

6 The evaluation and selection of abatement  
7 alternatives are known as the feasibility study across the  
8 country, that portion of it, and the proposing of the  
9 design of an abatement system is called the corrective  
10 action plan or the remedial action plan across the country.  
11 So we really have the same process simplified into a stage-  
12 one plan and a stage-two plan in our proposed Rule 19.  
13 Again, the OCD must approve that stage-two plan.

14 Step five would be implementation of the plan  
15 after receiving OCD approval.

16 And finally, stage -- or step six, excuse me,  
17 would be closure of the abatement plan or completion of the  
18 remediation, and that is established when eight or lesser  
19 quarters of monitoring data show that the standards have  
20 been met. And then a report is submitted, called an  
21 abatement completion report.

22 So that basically describes how Rule 19 will  
23 work.

24 Regarding public notice, public notice is  
25 required at two points: prior to the approval of the stage-

1 one plan, and prior to the approval of the stage-two plan.  
2 So the public is involved with both approval of the  
3 assessment phase and also the remediation phase.

4 I want to stress that the committee felt that the  
5 public-notice provisions were not burdensome, and we feel  
6 that this is an important part of the process of cleanup in  
7 the state.

8 In addition, the Rule 19 contains a notification  
9 requirement for releases that -- in such quantity as may  
10 with reasonable probability be detrimental to water or  
11 cause an exceedence of three standards: the vados-zone  
12 standard, the groundwater standard and surface-water-  
13 quality standard.

14 And with that, that's a brief overview of the  
15 general way that most cleanups will work under Rule 19.

16 I'd be happy to answer any questions, but maybe  
17 Roger Anderson would like to present his testimony at this  
18 time.

19 CHAIRMAN LEMAY: Yeah, thank you, Bob, we'll get  
20 Roger and then we'll put it up for general questioning.

21 MR. ANDERSON: Chairman LeMay, Commissioner  
22 Bailey, Commissioner Weiss, my name is Roger Anderson. I'm  
23 the Environmental Bureau Chief for the Oil Conservation  
24 Division.

25 My -- Like Bob Menzie, my presentation will be

1 rather brief. Tom and Bob have already gone over most of  
2 the detail of the rules. I have some corrections that may  
3 help the Commission.

4 Initially, I'd like to say the Division supports  
5 this rule as it is written, with one exception, and I'll go  
6 over that shortly. It took a lot of time. There was a lot  
7 of effort put into it by industry, by the other part of the  
8 regulatory community and by the environmental community.

9 Rule 116 itself, I'll start with that one. It  
10 needed to be changed. The committee determined that it  
11 needed to be changed, and they are recommending a change.  
12 There's one portion in Rule 116 that the Division did not  
13 support, and in Mr. Kellahin's summary you will see that it  
14 was by a vote of three to two, which the regulatory  
15 community opposed it, the industry wanted it, and the  
16 environmental groups abstained, and that is the reporting  
17 of natural gas releases.

18 The current Rule 116 has natural-gas-release  
19 reporting in it. The Division feels that because of the  
20 waste-of-resource issue and the public-safety issue, that  
21 reporting of natural gas releases should remain in the Rule  
22 116. And we propose to put that back in there and make the  
23 volumes and the reporting requirements equivalent to the  
24 Bureau of Land Management's requirements, which in essence  
25 are, anything over 500 MCF of any natural gases that are

1 released are reported immediately, anything between 50 and  
2 500 MCF of natural gas release is reported as a subsequent  
3 written report. And this will allow the Division to track  
4 the losses of natural gas and abide by its waste-of-  
5 resource jurisdiction.

6 That is the only thing that the Division proposes  
7 to change in the submittal of the Rule 116.

8 Yes, sir? Are you going to -- Commissioner  
9 Weiss?

10 Rule 19, we do not propose any changes to that.  
11 We agreed in consensus with everything -- I believe just  
12 about everything on there was almost unanimous.

13 I would like to make a few clarifications that  
14 Mr. Kellahin stated and I did not get to -- and I  
15 apologize, Tom -- I did not get to talk to him from the  
16 time he made his presentation until the time that I'm  
17 making mine, that the -- in this rule we are proposing that  
18 the Commission adopt the Water Quality Control standards as  
19 they are written in the Water Quality Control Commission  
20 regulations, and that they would remain what the Water  
21 Quality Control Commission adopts, that the way it is  
22 written, and the way I read it in here, is that we are  
23 adopting them by section of the Water Quality Control  
24 Commission.

25 So as the WQCC changes standards, ours would

1 automatically change also. So the Commission does not have  
2 to meet again and change the standards. We felt that this  
3 was important when we put this in there, in that we did not  
4 want to treat the oil and gas industry any better or any  
5 worse than any other industry in the state, that all  
6 industries should be held to the same standards as far as  
7 water quality goes. That way, when the Commission -- when  
8 the WQCC changes them, ours automatically change.

9 Another confusing portion in the abatement  
10 regulations is the public-hearing process. We believe that  
11 when we brought the abatement regulations over from WQCC,  
12 we streamlined them. I grant you, they are only -- I  
13 believe only two pages shorter than what the WQCC abatement  
14 regs are, and there are 15 pages here as is, and that's a  
15 pretty long regulation. But the hearing procedures that we  
16 go through add an extra step of the Examiner hearing. It  
17 gives both industry, public, residents, whoever, an extra  
18 chance to get their position before an Examiner or before  
19 the Commission.

20 WQCC does not have the two-hearing process where  
21 they go to an examiner and then can bring the case *de novo*  
22 to their commission. Their commission hears it or their  
23 commission appoints an examiner and then takes the examiner  
24 report and rules on it.

25 In addition, one correction is -- An abatement

1 plan, as Tom said, can -- it can either be administratively  
2 approved, or it can go to a hearing if there's sufficient  
3 public interest.

4 If an abatement plan proposes alternate abatement  
5 standards that are in excess of 200 percent, and for  
6 reasons other than technical infeasibility, then those  
7 cases must go to hearing. They cannot be determined  
8 administratively. That allows the public to have a forum  
9 to voice their opinions.

10 And I believe that's about all that I have to say  
11 on the abatement regs.

12 Again, I will say that the Division supports  
13 these regulations, it supports the industry and the method  
14 that we came up with these regulations. I think they're  
15 good ones. They're long, they're complex, but I think  
16 they're workable.

17 COMMISSIONER WEISS: Would you repeat your  
18 comments there on the 200 percent?

19 MR. ANDERSON: Oh --

20 COMMISSIONER WEISS: That didn't sink in.

21 MR. ANDERSON: -- okay. There are two different  
22 methods to obtain different -- alter the abatement  
23 standards, abatement standards that are different than the  
24 standards set in the WQCC standards, the groundwater  
25 quality standards.



1           One is through technical infeasibility. If a  
2 responsible party can demonstrate that it is technically  
3 infeasible to reach those standards that are published in  
4 the regulations, a technical-infeasibility alternate  
5 abatement standard can be approved. That standard can only  
6 be 200 percent of the original standard, double what the  
7 standard is set. That can be done administratively.

8           All other methods of -- All other alternate  
9 abatement standards must go to hearing and a demonstration  
10 must be made that it is either economically infeasible,  
11 technically infeasible over 200 percent, or that they have  
12 a -- they can -- may be allowed to run a risk analysis, if  
13 public health will not be impacted with the alternate  
14 abatement standards, and that must go to hearing.

15           COMMISSIONER WEISS: Does that mean that these  
16 lists of salts that are in this, that have a numerical  
17 standard on them --

18           MR. ANDERSON: Yes, sir.

19           COMMISSIONER WEISS: -- if barium is two parts  
20 per million, two milligrams per liter, there's going to be  
21 a hearing, rather than one?

22           MR. ANDERSON: If there is a -- and right off the  
23 top of my -- I've got one here, thank you.

24           Okay, if it is technically infeasible to  
25 remediate the barium in the groundwater to one and they can

1 remediate it to two, that's a technical -- and they can  
2 demonstrate technical infeasibility, but that they can get  
3 to two, then that can be administratively approved.

4 If it's over two, that's correct. If they can't  
5 get it down to, say, anything below five, then that would  
6 have to go to hearing, yes, sir.

7 COMMISSIONER WEISS: I just wanted to be clear  
8 on --

9 MR. ANDERSON: Yes, sir.

10 COMMISSIONER WEISS: -- what all of that meant.  
11 Thank you.

12 CHAIRMAN LEMAY: That's it, Roger?

13 MR. ANDERSON: Yes, sir.

14 CHAIRMAN LEMAY: Okay, how about some questions  
15 out there? Any questions of any of the three presenters  
16 here? I'm including Tom in that.

17 Yeah, Bob, why don't you come up here?

18 How about the Commissioners, my fellow  
19 Commissioners? Bill, do you have any questions for --

20 COMMISSIONER WEISS: Yeah, I have just a -- So I  
21 get it clear, how do you measure release volumes, gas or  
22 water?

23 MR. ANDERSON: From -- I'm sure you'll get  
24 different answers, Commissioner Weiss, from different  
25 people in the industry, different regulatory personnel.

1           But it is my opinion that the vast majority of  
2       them are estimated by sight. I don't believe that if you  
3       have a pipeline break and you see a 30-by-30 area covered  
4       by oil, that you're going to do anything but estimate  
5       approximately how much released from that pipeline.

6           COMMISSIONER WEISS: Is that --

7           MR. MENZIE: Just to add to that, pipelines are  
8       probably easier than some, because you generally know what  
9       your flow rate is, and when you know the length of release  
10      you can calculate approximately your volume loss from your  
11      pipe. Also, if you have as a second check, meters on both  
12      ends of that pipeline, totalizing meters, you can basically  
13      account for the loss from the meter differential.

14           Tank-battery spills can be -- you can look at  
15      what was contained within the dike. Most of the time we  
16      get to those fairly quickly, so it's a simple volume  
17      calculation, plus whatever you think was lost into the  
18      soils. That pretty much -- pretty much covers it.

19           Where you have a known volume in a tank or a drum  
20      or something like that, and you knew the drum was filled  
21      before and you lose it, then you can make an estimate based  
22      on what you knew was there before. Basically they are  
23      estimates, though.

24           COMMISSIONER WEISS: You know, if you have a  
25      known volume and you lose some, that's a good number, I

1     should think.

2                   And then I see our salts here are listed down to  
3     parts per billion, it looks like, and how -- Here we  
4     measure things in parts per billion and over here we  
5     measure in maybe barrels. I don't see how that comes  
6     together.

7                   MR. ANDERSON: Commissioner Weiss, are you  
8     talking about the standards that are --

9                   COMMISSIONER WEISS: Yes.

10                  MR. ANDERSON: Okay. The standards are measured  
11     in groundwater, the concentration of that constituent that  
12     is in the groundwater, and we do that by analysis.

13                  COMMISSIONER WEISS: Yeah, granted. But here's  
14     something we have so precise it's down to parts per  
15     billion, and over here we have something that's half a  
16     truckload.

17                  MR. ANDERSON: Uh-huh.

18                  COMMISSIONER WEISS: I think this is overkill,  
19     frankly.

20                  MR. ANDERSON: The -- Commissioner Weiss, I'm  
21     sorry?

22                  COMMISSIONER WEISS: The standards here.

23                  MR. ANDERSON: Oh, the standards are set through  
24     public-health -- through hearing of the Water Quality  
25     Control Commission and the use of public-health experts,

1 doctors and things like that. Personally, I've never been  
2 to one of the standards hearings over there.

3 COMMISSIONER WEISS: Well, this question of  
4 volume and the salt measurement, that just -- You're  
5 comparing apples to oranges, it appears to me.

6 MR. ANDERSON: That's correct, sir. There is not  
7 that much relationship between what's spilled and what is  
8 in the groundwater. That's why we broke these out into two  
9 different rules. One is a spill-notification rule where a  
10 spill could have an impact or could potentially impact,  
11 with reasonable probability could impact groundwater or  
12 public health. Rule 19 is the abatement of water pollution  
13 once it occurs.

14 COMMISSIONER WEISS: Okay, so first off, it's the  
15 volume of the spill, then you worry about the salts?

16 MR. MENZIE: Correct.

17 MR. ANDERSON: If it impacts groundwater, that's  
18 correct.

19 COMMISSIONER WEISS: Okay, that's reasonable.

20 CHAIRMAN LEMAY: Talking about groundwater, not  
21 protectible water?

22 MR. ANDERSON: Protect- --

23 CHAIRMAN LEMAY: 8000 parts per million would be  
24 protectible, according to State Engineer's standards.  
25 Would these standards click in there, or only if it's used

1 for domestic purposes, just drinking water?

2 MR. ANDERSON: No, sir, Commissioner LeMay, the  
3 ground -- The abatement regs would be enforced for  
4 protectible groundwater as designated by the State  
5 Engineer.

6 CHAIRMAN LEMAY: See, you have something out  
7 there at 9000 parts per million that we don't have a  
8 current use for today, and we'd have to apply these  
9 standards to that deposit of water?

10 MR. ANDERSON: Not necessarily, sir. We only --  
11 Now, these standards are standards if the ground -- the  
12 background groundwater is better than this. In other  
13 words, if you have 9000 TDS water we do not have to clean  
14 it up to the water-quality standards; you clean it up to  
15 9000 TDS, and that's all.

16 CHAIRMAN LEMAY: Okay. And my understanding is,  
17 you basically brought over the hearing-notification  
18 requirements as well as the standards from WQCC, because  
19 those are basically the standards that the State has  
20 designated as state standards?

21 MR. ANDERSON: Yes, sir. Now, the hearing  
22 requirements for -- We brought the hearing requirements  
23 over for the alternate abatement standards. All the rest  
24 of the hearing requirements are -- And we adapted them to  
25 the OCD/OCC hearing procedures.

1           The notifications were brought over because of  
2     the impact to the public, groundwater contamination.  
3     There's a little bit more notification through -- when  
4     groundwater is impacted than there is, say, for a  
5     nonstandard location or something like that, because of the  
6     impact to the public.

7           And the standards -- We brought those over  
8     because they're -- we believe that they should be  
9     statewide, one statewide groundwater standard, regardless  
10    of industry. And those are based on public-health -- for  
11    public-health reasons.

12           CHAIRMAN LEMAY: Commissioner Bailey?

13           COMMISSIONER BAILEY: Will the WQCC rules have to  
14    be changed? Is this a ripple effect if the Commission  
15    adopts Rule 19?

16           MR. MENZIE: I don't think so.

17           MR. ANDERSON: I would like to defer --  
18    Commissioner Bailey, I'd like to defer that question to the  
19    attorneys, because that's a jurisdictional issue as to  
20    whether we -- We have jurisdiction over the -- what are  
21    called the B.(21) and B.(22) facilities, and the WQCC has  
22    delegated us jurisdiction over this.

23           I'd appreciate if you step in if I'm getting this  
24    wrong, Rand, but --

25           MR. KELLAHIN: Commissioner Bailey, Mr. Rose and

1 I are in concurrence that there is no ripple effect. If  
2 the Commission takes action on this, we don't have -- or no  
3 one has to go back to the WQCC and change anything; it  
4 stops right there.

5 CHAIRMAN LEMAY: If we were to adopt different  
6 standards, it would be a problem, wouldn't it, Tom?

7 MR. KELLAHIN: Well, yeah, if you're going to do  
8 different water-quality standards, then we have a different  
9 problem.

10 CHAIRMAN LEMAY: So I mean -- I guess what I'm  
11 saying is, for our consideration to be legally correct we'd  
12 better not fuss with the standards. Those that we bring  
13 over need to be kept intact, or we've got a problem with  
14 the Water Quality Control Commission.

15 MR. KELLAHIN: That was what the committee  
16 ultimately concluded, is that we ought not to tinker with  
17 the standards.

18 CHAIRMAN LEMAY: Okay.

19 MR. KELLAHIN: And then we ultimately decided to  
20 simply bring over the abatement procedures, substantially  
21 like you have them at the Water Quality Control Commission.

22 CHAIRMAN LEMAY: Yeah, it's important for us to  
23 know what's off limits and what's not, so...

24 MR. KELLAHIN: I would think you would not want  
25 to fuss with the standards.



1           COMMISSIONER BAILEY: With the OCD taking over  
2 the administrative work, will that increase the workload to  
3 the point where there would be extreme delays for any of  
4 these locations that need to be cleaned up?

5           MR. ANDERSON: Commissioner Bailey, no, right now  
6 we are already doing this, but we are doing it under Water  
7 Quality Control Commission regulations. This way we would  
8 just be doing them under OCD regulations; it wouldn't  
9 change the workload at all.

10           COMMISSIONER BAILEY: And the last question:  
11 Could you furnish a minority opinion on that controversial  
12 paragraph D of the Rule 116?

13           MR. ANDERSON: I -- It's my understanding that  
14 that was unanimous.

15           CHAIRMAN LEMAY: The gas, or the --

16           COMMISSIONER BAILEY: The gas reporting?

17           MR. ANDERSON: Oh, I'm sorry, Commissioner  
18 Bailey, you're in something different.

19           MR. MENZIE: It's going to be B, and he's got it  
20 on 11. A minority --

21           MR. ANDERSON: Oh, okay.

22           MR. MENZIE: That's right.

23           MR. ANDERSON: I was going to --

24           MR. MENZIE: That would be here for --

25           MR. ANDERSON: Okay, all right. Yes, I will

1 submit what the proposal is. I want to present it now, and  
2 then submit it in writing shortly after the hearing, since  
3 we have another hearing date set for this, what our  
4 proposal are changing into.

5 COMMISSIONER BAILEY: That's all I have for you.

6 CHAIRMAN LEMAY: Bill?

7 COMMISSIONER WEISS: Yeah, one more. On the  
8 issue of the salts again, who measures those, and -- It  
9 seems to me like a standard produced-water analysis that  
10 might be -- somebody might know something -- than a  
11 truckload of water spills or something, does not include  
12 all these salts. Can you talk a little bit about that  
13 problem, or is that a problem?

14 MR. ANDERSON: Commissioner Weiss, you're correct  
15 that a produced water may or may not include the  
16 constituents that are of concern in -- that have standards.  
17 It will have sodiums, predominantly chlorides or sulfates,  
18 depending on where you are in the state. But it won't have  
19 all of them that are listed. It won't have all the  
20 constituents that are listed here.

21 COMMISSIONER WEISS: How do you know that?

22 MR. ANDERSON: We have tested produced water. We  
23 would test -- We could test the soils. But it's -- I don't  
24 think it would be a problem, because this is what's in the  
25 ground -- These standards are for the groundwater, not for

1 the soils.

2 There may be tremendously higher concentrations  
3 of some of the salts in the soils that will not migrate to  
4 the groundwater. It's what gets to the groundwater that  
5 counts, and how the groundwater is impacted.

6 COMMISSIONER WEISS: What, for -- My hypothetical  
7 example, a truckload of produced water turns over and runs  
8 down the ditch, and the groundwater is only 15 feet away  
9 there. So I guess you have to get a sample of the  
10 groundwater?

11 MR. ANDERSON: To determine if it's been  
12 impacted, yes, sir.

13 COMMISSIONER WEISS: Yeah, and then run all these  
14 tests, right? Every one of them that's on this list here?

15 MR. ANDERSON: Oh, I see what you -- Maybe I see  
16 what you're saying.

17 No, this is not just -- Each one is not an  
18 individual test. They're lumped into different groupings  
19 for testing, such as the metals that are in here can be  
20 done with -- all metals with one test, which is called an  
21 ICAP scan, inductively coupled argon plasma, then there are  
22 certain EPA-required or -approved methods for testing for  
23 the hydrocarbons, and those are done in two different  
24 tests, and then the salts are done basically in a major  
25 cation/anion scan.

1           So for -- If there are hydrocarbons that just  
2       produce water and you're not worried about the  
3       hydrocarbons, you'd run maybe two different tests and you'd  
4       get everything.

5           COMMISSIONER WEISS: Okay. And that sample, how  
6       is it obtained, that you're going to test?

7           MR. ANDERSON: From the groundwater?

8           COMMISSIONER WEISS: Yeah.

9           MR. ANDERSON: Auger -- If it's 10, 15 feet, you  
10      could auger a hole in there and collect it through a  
11      bailer.

12          COMMISSIONER WEISS: Is that done every time a  
13      truck turns over?

14          MR. ANDERSON: No, sir. No, sir. No, sir, if  
15      there are --

16          MR. MENZIE: Do you want me to --

17          MR. ANDERSON: -- good remedial actions -- yeah,  
18      yeah -- good remedial actions taken at the spill, then the  
19      potential for impacting the groundwater is almost nil  
20      unless it goes directly into the groundwater or there's  
21      somebody that's already got a hole to the groundwater.

22           But yeah, if it's cleaned up and sucked up,  
23      chances of it reaching groundwater are not very great.

24          CHAIRMAN LEMAY: Okay. You had something?

25          MR. MENZIE: I was just going to say that to help

1 you with specifically what we're talking about, once the  
2 spill came out of the truck you would have -- the operator  
3 would have to determine the volume. Under Rule 116 there  
4 would be a certain reporting requirement, either verbal  
5 and/or written. The OCD would have the opportunity to  
6 determine whether corrective action will be required under  
7 116 D, which is the corrective-action part of the spill  
8 rule.

9 For those small spills, as I testified before,  
10 probably they would not -- the OCD would not trigger Rule  
11 19 for a spill of that magnitude.

12 COMMISSIONER WEISS: A hundred barrels?

13 MR. MENZIE: Yeah, probably not. And they would  
14 have the option to do that if the cleanup was going to be  
15 longer or was going to require a more formal process.

16 What that spill would typically require is a  
17 remediation plan, which is defined in the definitions, and  
18 the remediation plan is generally how the OCD has been  
19 conducting all of their remediations today, and that is a  
20 case-by-case, site-by-site-specific plan for that  
21 individual spill.

22 And what would need to happen is, the company  
23 would have to determine, even if there was high enough  
24 concentrations in the soil that the water was spilled into,  
25 to warrant looking at the groundwater, whether the

1 groundwater is impacted. Fifteen feet may or may not -- at  
2 100 barrels, probably would impact groundwater if there was  
3 a high-permeability soil. But if the soil would not take  
4 the water very well and it ran off and soaked into the top  
5 few feet, then there may not be any justification for  
6 looking at groundwater.

7 That particular process is still within the gray  
8 area that is really not addressed by these regulations, and  
9 those particular spills will be addressed basically on a  
10 case-by-case basis, as they have before, with the  
11 responsible party coming in and proposing what they want to  
12 do and the OCD reviewing that and making sure it's adequate  
13 and approving those plans.

14 COMMISSIONER WEISS: Okay. Now, one step further  
15 in this hypothetical example here.

16 This 100 barrels is spilled and soaks in somehow,  
17 you know, areally it dissipates. On the notification, do  
18 you notify everybody within a one-mile radius of that?

19 MR. MENZIE: Under Rule 116, the district office,  
20 the local OCD district office, would be notified  
21 immediately.

22 MR. ANDERSON: They are the only ones.

23 COMMISSIONER WEISS: Okay.

24 MR. ANDERSON: Still --

25 COMMISSIONER WEISS: This one-mile notification

1 is only to notify the --

2 MR. ANDERSON: If --

3 COMMISSIONER WEISS: That was not clear to me.

4 MR. ANDERSON: Okay, Commissioner Weiss, the one-  
5 mile notification is in the abatement regs, and that's for  
6 the submittal of an abatement plan to abate water  
7 pollution.

8 COMMISSIONER WEISS: Okay. Well, let's just say  
9 if this spill required an abatement plan --

10 MR. ANDERSON: Okay, if they had to submit a  
11 part-one and part-two, whether it's separately or together,  
12 abatement plan, then the notification requirements would be  
13 in effect. But just a spill, there's no -- The only  
14 notifications that we require of a spill itself, until we  
15 get into the abatement plan, is to the district office.

16 Of course, there are other local laws to  
17 emergency-response personnel and stuff like that, but we  
18 only require it to the district office.

19 COMMISSIONER WEISS: Okay. What kind of an  
20 accident would require an abatement plan? Can you give me  
21 an example? Is it a pipeline break, produced water in a  
22 waterflood or something, or --

23 MR. ANDERSON: The type of accident, there's no  
24 type specifically that would trigger an abatement plan.  
25 It's the -- if groundwater is determined to be impacted --

1 In other words, say, Jane Doe or John Doe went out and  
2 drilled a water well and found the groundwater polluted  
3 from oilfield constituents. Then we can pretty well rule  
4 out some of the contamination from septic tanks and stuff,  
5 and we only deal with the oilfield.

6 And there's been a major spill over here in this  
7 one place, that could very well trigger an abatement plan,  
8 because if we could determine that it came from this one  
9 spill, the groundwater pollution.

10 Or if there is a major enough spill that it has a  
11 reasonable probability -- and that's kind of a -- that's a  
12 determination, that's a very subjective determination -- a  
13 reasonable probability of impacting groundwater, you know,  
14 not just maybe one-in-a-hundred chance, but a reasonable  
15 probability, then that could trigger an abatement plan  
16 also, if it could not be remediated within one year.

17 COMMISSIONER WEISS: Is this retroactive back to  
18 1930?

19 MR ANDERSON: Abatement plans can also be used  
20 for contamination that is found that has occurred 50 years  
21 ago, that's correct.

22 If -- But it's not for a spill that happened 50  
23 years ago. It's only when groundwater contamination is  
24 discovered.

25 COMMISSIONER WEISS: Even though it happened 50



1 years ago?

2 MR. ANDERSON: Yeah, because something that  
3 happened 50 years ago, you know, the abatement-plan system  
4 would be used -- could be used. But determining a  
5 responsible party might be the hardest part of triggering  
6 an abatement plan.

7 COMMISSIONER WEISS: Well, this example I just  
8 ran through was all considered through the committee  
9 hearing process?

10 MR. ANDERSON: There were --

11 COMMISSIONER WEISS: Is it that type of thing?

12 MR. ANDERSON: Yes, sir, Commissioner Weiss,  
13 there were a whole lot of different scenarios that were  
14 considered.

15 Now, I would like to point out that some of the  
16 smaller spills, as the -- D says here, subsection D in 116  
17 says that if they can be taken care of by a remediation  
18 plan or an abatement plan, and we'd like to think and get a  
19 system together where a remediation plan can be an  
20 emergency-response plan of a company for overall spills, so  
21 that each spill does not have to have a remediation plan.

22 Small spills can be -- You know, if -- All  
23 companies have emergency response. When they spill  
24 something, this is what they do, who they call and what  
25 they do. And that can act as their remediation plan for

1 the small ones that don't impact groundwater.

2 COMMISSIONER WEISS: Well, thank you. I just  
3 looked through this. I didn't hear -- I didn't read that  
4 in here somehow.

5 MR. ANDERSON: No.

6 CHAIRMAN LEMAY: Do you want to address some of  
7 the juris- -- Yes? Yes, sir? Doctor?

8 MR. NEEPER: Are you open for --

9 CHAIRMAN LEMAY: Yeah, this is --

10 MR. CARROLL: I have a couple of questions,  
11 though.

12 CHAIRMAN LEMAY: Yeah, okay. This is a very  
13 informal process, so please just stand and identify  
14 yourself, and --

15 MR. NEEPER: I'm Don Neeper --

16 CHAIRMAN LEMAY: -- and ask any of the questions  
17 you --

18 MR. NEEPER: -- representing New Mexico Citizens  
19 for Clean Air and Water, and I think I can relieve some of  
20 the concern that Mr. Weiss has by presenting a few  
21 questions to the witness.

22 Let us consider a hypothetical case, that there  
23 was, not necessarily a small spill, a large spill that  
24 occurred a number of years in the past. It is now  
25 discovered. The responsible party can clean it up in a

1 year. Would an abatement plan be triggered, and would any  
2 of this notification be required?

3 MR. ANDERSON: No, sir, it would not --

4 MR. NEEPER: Thank you.

5 MR. ANDERSON: -- be triggered.

6 MR. MENZIE: If it was a small spill --

7 MR. NEEPER: It has nothing to do with --

8 MR. MENZIE: Under N, it would be reported under  
9 19 N.

10 MR. ANDERSON: Yes, but it -- an abatement plan  
11 in its- -- If it could be cleaned up within one year and  
12 the contamination remediated, then there would not be a  
13 formal abatement plan; it would be a remediation plan  
14 that's totally administrative.

15 MR. MENZIE: I'd like to clarify his question by  
16 asking if this particular small discovery of groundwater  
17 contamination was caused by a spill or was unknown prior to  
18 that time.

19 MR. NEEPER: I'm simply considering that a  
20 release is discovered It may have happened years ago; it  
21 is now discovered.

22 MR. MENZIE: Okay, there's a distinction --

23 MR. NEEPER: And the responsible party is  
24 understood.

25 MR. MENZIE: In my opinion, there's a distinction

1 between whether or not it's discovered as a result of a  
2 release under Rule 116 or whether or not it was a historic  
3 release and discovered later. It doesn't matter if it's  
4 two days later or not. If it was not associated with a  
5 spill, then it would be reported under 19 N, which is the  
6 notification requirement within Rule 19 and would trigger  
7 automatically an abatement plan.

8 MR. ANDERSON: No, it would not. There are  
9 certain -- And that's one thing that nobody went over.  
10 There are exemptions in 19, and there are certain things  
11 that would not be triggered for an abatement plan, with an  
12 abatement plan, and this is one thing we're going to  
13 discuss.

14 MR. MENZIE: Okay.

15 MR. ANDERSON: What page is it?

16 MR. MENZIE: It's -- Page 6 is 19 D, Exemptions  
17 from Abatement Plan Requirement.

18 MR. ANDERSON: There are exemptions from  
19 abatement plan, and basically it's anything that's under  
20 another agency's remediation clean, such as a UST cleanup,  
21 a CERCLA cleanup, a hazardous-waste cleanup that another  
22 agency is already working on.

23 But under (f) there's also -- no, I take --  
24 Excuse me, under (g) it is, "on an emergency basis, or  
25 while an abatement plan approval is pending", either one --

1 and this one we would consider the emergency basis -- it  
2 would result "in compliance with the standards...within one  
3 year after notice is required to be given..."

4 That would be -- That one year would exempt it  
5 from the abatement plan, even though it is part of the  
6 notice requirements of 19 N. That's why we don't want to  
7 move it from there.

8 MR. MENZIE: We need to talk about that.

9 CHAIRMAN LEMAY: Get your act together,  
10 gentlemen.

11 (Laughter)

12 CHAIRMAN LEMAY: Yeah, Rand?

13 MR. CARROLL: I have a couple questions of Roger.

14 Roger, how much, if any, will the Division's  
15 regulation of downstream waste be affected if reviewed at  
16 the environmental bureau level, if review is done through  
17 the OCD and OCC rather than the WQCC?

18 MR. ANDERSON: I'm sorry, Rand, could you do that  
19 -- how much of what --

20 MR. CARROLL: How much, if any, will the  
21 regulation of B.(22) wastes be affected if review is  
22 through the OCD process, rather than the WQCC?

23 MR. ANDERSON: It won't be affected at all. We  
24 are proposing the same process for OCD that we used under  
25 WQCC; it's the same process.

1 MR. CARROLL: Okay, another question regarding  
2 B.(22) activities.

3 If the OCD adopts Rule 19, which deals with  
4 abatement, are there other items regulated by the WQCC --  
5 for example, discharge plans -- that the OCD will continue  
6 to enforce under the WQCC?

7 MR. ANDERSON: The OCD will continue to use the  
8 Water Quality Control Commission regulations for permitting  
9 of the B.(22) facilities. The only thing that would be  
10 affected would be the -- any groundwater remediation at  
11 those facilities, and that would still be the choice of the  
12 operator as to whether they wanted -- Because they are a  
13 B.22 facility, they could still choose at their option to  
14 go under WQCC, or under a discharge plan for remediation.

15 MR. CARROLL: Is it the operator's discretion --

16 MR. ANDERSON: It's the operator's discretion to  
17 request -- That's correct, it's the operator's discretion  
18 to request that, and with our concurrence.

19 For example, if there is groundwater  
20 contamination at a refinery and they have a discharge plan,  
21 they can choose, and with our approval, to remediate that  
22 under the discharge-plan requirements, as opposed to going  
23 through the abatement plan.

24 MR. CARROLL: Okay. So if the OCD doesn't have  
25 its own rule regulating the release, and the WQCC does at a

1 downstream facility, we will regulate under the WQCC?

2 MR. ANDERSON: That's correct. That's correct.

3 MR. CARROLL: Mr. Chairman, with the Commission's  
4 permission, I'd like to elaborate a little bit on the  
5 jurisdictional issue.

6 CHAIRMAN LEMAY: Yeah, please do.

7 MR. CARROLL: And the attorneys in the audience  
8 can help me out if I misstate something. I hope to shed  
9 some light, or probably add to the confusion here.

10 As the Commission probably knows, in 1989 the  
11 Legislature amended Section 70-2-12 of the Oil and Gas Act  
12 to add the last two subsections regulating the disposition  
13 of waste from -- 21 deals with upstream activities,  
14 exploration, development and production or storage, and 22  
15 regulates the downstream activities.

16 The preliminary language of this section -- it's  
17 titled enumeration of powers of the OCD -- is that the OCD  
18 is authorized to make rules, regulations and orders for the  
19 purposes of regulating under 21 the upstream wastes and,  
20 22, regulating the downstream wastes, including  
21 administering the Water Quality Act.

22 For some reason, the Legislature divided the two  
23 between B.(21) and B.(22).

24 It's ambiguous, due to the language used in  
25 B.(22), whether the OCD has the option of adopting its own

1 rules rather than just enforcing the Water Quality Control  
2 Act.

3 Under B.(22) it says, regulate the disposition of  
4 wastes from downstream activities, including administering  
5 the Water Quality Act.

6 It would have been clearer if the Legislature had  
7 stated, including at its option administering the Water  
8 Quality Act, or including, if it so chooses, administering  
9 the Water Quality Act. But it so didn't.

10 You can imply, I guess, from reading the  
11 preliminary language that the OCD is authorized to make  
12 rules, regulations and orders to regulate this, that the  
13 OCD is not required to regulate it, but it can if it so  
14 chooses.

15 But then you hit the language, including  
16 administering the Water Quality Act. So the option -- Does  
17 it apply to the whole paragraph or to the option of  
18 regulating the waste and then the option of administering  
19 the Water Quality Act? There's been some confusion.

20 Those two subsections were enacted in 1989 and  
21 became effective in June of 1989.

22 In July of 1989, the WCC [sic] issued its  
23 delegation of authority, and it hoped to remove the --  
24 well, it shed some light on how to read the sections, and  
25 it referred to a section in the Water Quality Act which



1 prohibits the Water Quality Control Commission from taking  
2 any action which would interfere with the exclusive  
3 authority of the OCD over all persons and things necessary  
4 to prevent water pollution as a result of oil or gas  
5 operations.

6 And the WQCC also recognized that the OCD also  
7 administers regulations under the Oil and Gas Act and that  
8 the OCD has discretion as to which regulations to enforce  
9 in any given situation.

10 Those two references are found on the first two  
11 pages of the delegation of authority.

12 And in 1993, the Legislature revisited the Water  
13 Quality Act and changed that section I just read, which was  
14 74-6-12 G, which prohibits it from interfering with the  
15 exclusive authority of the OCD by stating that the Water  
16 Quality Act does not apply to any activity or conditions,  
17 subject to the authority of the OCC under the Oil and Gas  
18 Act, conferring power on the Oil Conservation Commission to  
19 prevent or abate water pollution.

20 Even though the Legislature attempted to remove  
21 the ambiguity, it still can be read either way, that we  
22 don't have the option and we do have the option.

23 One attorney that was present during the  
24 legislative process in 1989 says his recollection is that  
25 the distinction really doesn't mean anything and that

1 B.(21) removed from the Water Quality Act the upstream  
2 activities but left the option of either the OCD or the  
3 Water Quality Act in the B.(22) activities.

4 I also had another attorney visit me last fall  
5 who said it's unambiguous, it says including administering  
6 the Water Quality Act, and that if you regulate the waste  
7 for downstream activities, we also have to enforce the  
8 Water Quality Act.

9 Now, for consensus purposes, the Committee  
10 adopted the interpretation that we have the option under  
11 B.(22) of bringing everything over to the OCD and have the  
12 review process go up through the OCD and the OCC, rather  
13 than under the Water Quality Act.

14 I'm just alerting you to the questions that arise  
15 in that -- You know, with the language there, you can read  
16 it either way, and I guess only a court can really decide  
17 what was the intent and what it all means. Recollections  
18 of unrecorded intent aren't very persuasive, so I -- you  
19 know.

20 And the amendment made to the Water Quality Act  
21 in 1993 doesn't really remove the ambiguity either. Like I  
22 said at the beginning, if B.(22) had included the language  
23 "at its option" or "if it so chooses", it would have made  
24 it perfectly clear that we had the option. Without that  
25 specific language, I think it can be read either way, and

1 the committee has adopted the interpretation that we do  
2 have the option.

3 CHAIRMAN LEMAY: I don't know whether to thank  
4 you or not, Counsel.

5 (Laughter)

6 CHAIRMAN LEMAY: Are there some legal comments to  
7 Rand's presentation? Agree, disagree?

8 MR. KELLAHIN: Mr. Chairman --

9 CHAIRMAN LEMAY: In a simplified version?

10 MR. KELLAHIN: -- I'll let Mr. Rose stand for  
11 himself. It's my recollection that the Committee decided  
12 to avoid all that jurisdictional quagmire by simply  
13 adopting -- suggesting you adopt the same procedures and  
14 standards for the B.(21) as we're doing for B.(22). So  
15 because we're not drawing a difference, there is no  
16 difference.

17 CHAIRMAN LEMAY: So would you take the position,  
18 then, because we are bringing basically the Water Quality  
19 Control Commission standards and procedures over here which  
20 stem from the Water Quality Act, that we are covered in  
21 both areas, we are really administering the Water Quality  
22 Act and we've chosen as an option to do so?

23 MR. KELLAHIN: I think that's a fair way to  
24 characterize it.

25 CHAIRMAN LEMAY: Before I let you go, Tom, am I

1 understanding that you had phase one, which is the notice,  
2 116, the notice issue, you've come to us with a suggested  
3 rule change on it?

4           You've also introduced Rule 19. I'm trying to do  
5 this for the benefit of my fellow Commissioners. Rule 19  
6 is new, but in essence it does bring the Water Quality  
7 Control Commission rules and regs over here, the standards,  
8 and puts those on the plate of the OCC.

9           But what you did not do is enter this area, phase  
10 three, cleanup, cleanup standards, cleanup guidelines.  
11 That still is -- If it's an unresolved issue, at least  
12 we're going back to the guidelines that we've had before.  
13 And are you saying you're going to look at that or you're  
14 not or --

15           MR. KELLAHIN: We need direction from the  
16 Commission, Mr. Chairman. The committee is at that point  
17 in the process where we are prepared, if you desire us to  
18 do so, to give our comments on what the Division has been  
19 using for some time now as the OCD guidelines. You know,  
20 Roger deals with this every day. He can describe for you  
21 what he does with the guidelines.

22           The task of the Committee would be to go through  
23 each of the guidelines, look at them, decide if there's  
24 comments, changes or suggestions, and then part of that  
25 process would be whether or not it's useful to more

1 formally adopt the guidelines as regulations and get into  
2 that discussion or whether you want us not to do anything  
3 at all.

4 CHAIRMAN LEMAY: I guess for purposes of  
5 simplicity, you've got this thing wrapped up kind of neat  
6 by not getting into this issue.

7 Your suggestion is for us to handle -- handle  
8 this, what you've brought to us now, and either postpone  
9 that, a separate OCC rule -- or a separate project almost?

10 MR. KELLAHIN: Yes, Mr. Chairman, this thing  
11 packages very well --

12 CHAIRMAN LEMAY: That's -- I guess that's --

13 MR. KELLAHIN: -- where we are at a convenient  
14 place to let you start deciding what we've presented today,  
15 and we can either proceed with the guideline study or not.

16 CHAIRMAN LEMAY: Okay.

17 MR. KELLAHIN: And your action can take place  
18 independent of that.

19 The interesting part about this group is that  
20 we've captured them for some time, but they're very good at  
21 this. And so the dilemma is, if you form another  
22 committee, whom will you choose? This one's getting a  
23 little tired, but we're at the point where we can do some  
24 more for you if you like us to.

25 CHAIRMAN LEMAY: Yeah, I appreciate that.

1 Anything else?

2 Yes, Roger?

3 MR. ANDERSON: Mr. Chairman, in -- I'm concerned  
4 about the guidelines.

5 The Division's proposal is that we take the Rule  
6 116 and the Rule 19 as they are and postpone any action  
7 on -- the guidelines are nothing but remediation -- soil-  
8 remediation standards and procedures -- and we delay --  
9 that the Commission delay action on that until a future  
10 date and set up a different organization to address those  
11 guidelines, whether they be as rules or guidelines, and do  
12 that at a later date.

13 CHAIRMAN LEMAY: Okay, I thought that was where  
14 you were. I --

15 MR. ANDERSON: Yes, sir.

16 CHAIRMAN LEMAY: The logical link, that bridge  
17 you use to get from 116 to 19 -- There's another bridge  
18 that you go from leaks and spills on remediation into pit-  
19 closure contamination, and once you make that bridge I  
20 think we're opening a lot of doors in there that maybe  
21 aren't packaged as neatly as you've brought this before us.

22 MR. ANDERSON: That's correct, sir.

23 CHAIRMAN LEMAY: Bill?

24 COMMISSIONER WEISS: I took your answer to my  
25 question, who measures the salts in the water to see if the

1 standards are met, as that OCD measures them?

2 MR. ANDERSON: Commissioner Weiss, no. No, sir,  
3 once water is contaminated, then the responsible party is  
4 responsible for also monitoring and doing the analysis.

5 The OCD splits samples with them occasionally and  
6 checks on their analysis, to determine whether groundwater  
7 is initially contaminated from an unknown source. That  
8 would be the OCD that does that.

9 If it's a known source, then the responsible  
10 party --

11 COMMISSIONER WEISS: Well, who finds out that the  
12 groundwater is contaminated in the first place?

13 MR. ANDERSON: Well, it's a procedure that we go  
14 through in the investigation of a spill, as to how -- the  
15 extent of the contamination. And it would be the  
16 responsible party for the spill that determines the extent  
17 of the contamination. And if it did reach groundwater,  
18 then he would have to determine what the extent of  
19 contamination in the groundwater is also.

20 COMMISSIONER WEISS: Thank you.

21 MR. ANDERSON: Yes, sir.

22 CHAIRMAN LEMAY: Commissioner Bailey?

23 COMMISSIONER BAILEY: I pass.

24 CHAIRMAN LEMAY: Any other questions,  
25 clarification?

1 I want to thank the committee very much. And  
2 stay with us just for a couple more weeks. We're back on  
3 the 14th. We'll have additional testimony then. The  
4 record will remain open for any additional comments.

5 Do you have something, Chris? No, I'm sorry, I  
6 thought you were raising your hand.

7 MR. SHUEY: No.

8 CHAIRMAN LEMAY: I've got you on the 14th on  
9 testimony, I understand, and there will be additional  
10 testimony then.

11 So we'll leave this case open for the 14th, the  
12 record will remain open. And we appreciate the  
13 clarification and the presentation, the packaging, as  
14 you've done it for the Commission.

15 Thank you. We'll take the case -- We'll leave it  
16 open for two weeks.

17 (Thereupon, these proceedings were concluded at  
18 11:27 a.m.)

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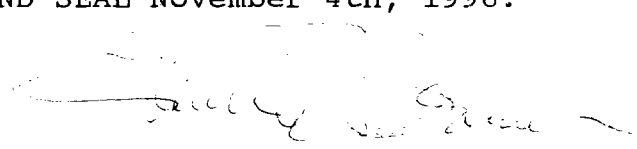
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL November 4th, 1996.

  
\_\_\_\_\_  
STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 1998