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

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

APPLICATION OF DCP MIDSTREAM, LP, TO AMEND ORDER NO. R-12546, LEA COUNTY, NEW MEXICO

Case No. 13589

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: JAMI BAILEY, Chairman
DR. ROBERT BALCH, Commissioner
SCOTT DAWSON, Commissioner

July 14, 2011
Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Commission, JAMI BAILEY, Chairman, on Thursday, July 14, 2011, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
Paul Baca Professional Court Reporters
500 Fourth Street, N.W., Suite 105
Albuquerque, NM 87103 505-843-9241

A P P E A R A N C E S

FOR THE OIL CONSERVATION COMMISSION:

CHERYL BADA
Assistant General Counsel
1220 S. St. Francis Drive
Santa Fe, New Mexico 87504

FOR DCP MIDSTREAM, LP:

HOLLAND & HART, LLP
OCEAN MUNDS-DRY, ESQ.
P.O. Box 2208
Santa Fe, New Mexico 87504
(505)988-4421

FOR THE SMITHS:

MILLER STRATVERT, P.A.
THOMAS J. BUNTING, ESQ.
RICHARD ALVIDREZ, ESQ.
500 Marquette, N.W., Suite 1100
Albuquerque, New Mexico 87102
(505)842-1950

ALSO PRESENT:

Florene Davidson

WITNESSES: PAGE

CHAIRMAN BAILEY: Good morning. This is a special meeting of the Oil Conservation Commission on July 14th, 9:00, in the Wendell Chino Building.

To the my left is Dr. Robert Balch. To his left is Cheryl Bada. To my right is Scott Dawson, and to his right is Florene Davidson. I'm Jami Bailey, Chairman of the Commission. Welcome.

We have several things to take care of this morning before we really get down to business. First, we need to look at the minutes. Have the Commissioners had a chance to review the minutes of the previous meeting of June 28th?

COMMISSIONER BALCH: I have.

COMMISSIONER DAWSON: Yes.

CHAIRMAN BAILEY: Is there a motion to adopt these minutes?

COMMISSIONER BALCH: I so motion.

CHAIRMAN BAILEY: Second?

COMMISSIONER DAWSON: I second.

CHAIRMAN BAILEY: All those in favor, signify by saying aye. All those opposed? Then I will sign on behalf of the Commission and transmit them to the Commission secretary.

The next item of business is a series of motions that have been filed by both parties in Case

Number 13589, which is the application of DCP Midstream, LP, to amend Order Number R-12546, Lea County, New Mexico.

Applicant moves for an order amending Oil Conservation Commission Order Number R-12546 (D), to remove the daily injection rate in the Linam AGI Well Number 1 and/or amending the condition in Order R-12546 which requires an improved modification of a discharge permit. Said area is located approximately four and a half miles west of Hobbs, New Mexico.

I believe the Commission first needs to hear arguments on the motion to continue the hearing. Who's first up?

MR. BUNTING: Madam Chair, it's our motion. We'll start. Madam Chair, Commissioners, good morning.

CHAIRMAN BAILEY: Could we have appearances?

MR. BUNTING: Tom Bunting and Rick Alvidrez, from Miller Stratvert. We're here with our client, Mr. Randy Smith.

MS. MUNDS-DRY: Good morning, Madam Chair, Commissioners, Ms. Bada. My name is Ocean Munds-Dry. I'm with the law firm Holland & Hart, LLP, and I represent DCP Midstream, LP.

CHAIRMAN BAILEY: Mr. Bunting?

MR. BUNTING: Yes, Madam Chair. We filed our renewed motion to continue. It's pending before the Commission. The Commission has the discretion to continue these hearings at any time and the responsibility to make sure that all rulings are based on substantial evidence and that all parties have the due process required and the opportunity to be heard fully.

We filed our motion to amend -- I'm sorry, motion to continue on June 24th, and it was denied by an order of July 5th. And then we served discovery requests the same day, and they're due August 5th. We requested two months to conduct discovery on the results of step rate testing, some technical data that we feel we needed to prove whether or not DCP's motion will be safe and will protect the environment and human health.

We also requested operating data since commencing injection that shows the frequency of off-site conditions. We requested data on the remaining volume in this formation. We requested data about the results of mechanical integrity testing.

Mr. Smith is here today, and he'll testify that this AGI well has experienced many operational problems since it started injecting in 2009. And right now we're not sure if those are volume related or pressure related or what the problems operationally are. And until we and the Commission can get this evidence, we don't think that now is a proper time to hold this hearing.

The previous hearings on DCP's application, they didn't involve any of this operational data because it wasn't in operation yet. And now that we and the Commission have the benefit of this over a year of data, we think it is appropriate to allow at least a little bit more time to continue this hearing and conduct a little bit of limited discovery.

We're at a further disadvantage at this meeting because we didn't receive DCP's prehearing statement until around midday Tuesday. It was less than two days ago. So not only did we not get any discovery, any of the data that we sought initially, but the data that DCP is now presenting, we haven't had time to fully review or engage a consultant to look at any of it.

So they've identified three witnesses in these exhibits. And I believe we're entitled to more notice than this to prepare cross, go over testimony and possibly engage an expert to testify on Mr. Smith's behalf.

CHAIRMAN BAILEY: Do you have a response?

MS. MUNDS-DRY: I do, Madam Chair. Thank

you.

If I could, I'd reserve my comments on the discovery issue. As you know, we filed a motion for a protective order. And if I might, I might address those issues as to what may or may not be appropriate discovery when we have that discussion.

In terms of the motion to continue or the renewed motion to continue, the Smiths are arguing that it is appropriate, because we have some operational data, that we should have some discovery on that and that should be the subject of the hearing.

Certainly there will be some limited discussion of that today to confirm really that what the Commission decided in 2006, when it reviewed the designs of the well, when it reviewed in detail the formation to determine whether it was an appropriate formation to accept the acid gas, that all of that has gone as expected.

However, getting into the extent of all the safety issues that the Smiths wish to go down, they've already had that opportunity in 2006 to explore those issues. That was really the subject of their first motion, which, Madam Chair, you've already ruled on.

Really the point, I think, of their renewed motion is that they did not receive the pre-hearing statement until this week. We feel very badly about that. It was an unfortunate circumstance. We did, in fact, email it to them on Thursday. I confirmed it with my assistant to make sure. I don't know why they didn't receive it. We sent the hard copy, the notebook that you received, in the mail as a backup to make sure they received the notebook. I don't have an explanation as to why they didn't receive it, and we do feel badly about that.

However, the point is that prehearing statements are normally filed simultaneously. They did file theirs a day late, and we objected to that. We can't argue that we're not prepared to go forward today, but we wanted for the record at least to note that it was filed late. So we've both been a little disadvantaged by having a late pre-hearing statement.

There's nothing that we're presenting today that is a surprise. Our motion was very clear from the beginning that we're seeking to proceed under the original order, which did not have a volume limitation.

We've brought our DCP people in, Mr. Gutierrez, to discuss that request with you. And then we've also come prepared to talk today about some of the allegations that Mr. Smith has brought forward. We would not have been prepared to talk about that, other than we were aware that he had these concerns. So they were really issues that he's raised.

They chose not, in their original pre-hearing statement, to present any experts, but the testimony of Mr. Smith. So to argue that there's some prejudice or due process issue is I don't want to say disingenuous, but it shouldn't be a surprise. There's nothing here that we're presenting to you today that they should not have already been aware of.

Again, we do regret the unfortunate circumstance. But for some reason, our process systems didn't work out like we thought they would. But there's nothing that should be a prejudice or surprise to them in what we plan to present today.

CHAIRMAN BAILEY: Do the Commissioners have any questions of the parties before we go into executive session to discuss this renewed motion for continuance?

COMMISSIONER BALCH: I have no questions.

COMMISSIONER DAWSON: I have no questions.

CHAIRMAN BAILEY: Okay. Then we will go into executive session, pursuant to NMSA 1978 Section 10-15-1-H, to deliberate strictly and only on this renewed motion to continue the hearing.

If you could please clear the room, and we'll call you back as soon as we have a response.

Do I hear a motion to go into executive session?

COMMISSIONER BALCH: I make that motion.

COMMISSIONER DAWSON: I second.

CHAIRMAN BAILEY: All those in favor?

(Whereupon the Commission went into executive session.)

CHAIRMAN BAILEY: Do I hear a motion to go back into session?

COMMISSIONER BALCH: I'll motion to go back into session.

COMMISSIONER DAWSON: I second.

CHAIRMAN BAILEY: All those in favor? The Commission is back in session. We discussed strictly Case 13589.

The decision of the Commission is to deny the motion for continuance based on the fact that Smith had an opportunity during the original hearing and participated in that original hearing, and no new issues to suggest a change from that original petition are being brought up.

There were problems possibly on both side as far as communications before this hearing, so we will continue with this case.

The next question has to do with DCP's motion for a protective order. Do we hear an argument on that one?

MS. MUNDS-DRY: Yes, Madam Chair. Briefly, DCP filed a motion for protective order. The Smiths served some interrogatories and some requests for production on July 5th, which happened to be the same day that the Commission issued its order denying their first motion to continue.

The requests for discovery, first of all, were issued under the improper procedure. As you know, discovery is issued under a subpoena. There's a specific rule that is followed in order to request discovery, so that was not followed. They were sent as you would in a court proceeding, by serving it directly on the parties, rather than achieving a subpoena from the Division Director, as the Commission and Division rules require. So that's a problem.

Number two, the discovery requests go beyond the scope of DCP's motion. Our request is very simple, we think. And again, as we've noted previously, the Smiths are taking this beyond the scope of what we're really asking for and going into a number of operational issues and really checking to see if DCP is in compliance. This isn't a compliance proceeding, and we certainly would not like to get into issues beyond what

DCP's simple request is before the Commission today.

For those reasons, we've requested a protective order requesting that DCP not be required to respond to the Smiths discovery request.

CHAIRMAN BAILEY: Do you have a response?

MR. BUNTING: Yes, Madam Chair. DCP's motion brought up what I feel is three issues, two that Ms. Munds-Dry brought up and a third one.

The first, saying we didn't properly serve these requests, these were informal requests. We didn't try to serve them pursuant to the Rules of Civil Procedure or anything like that. It was an informal request for some information, and we requested that information.

We requested that it be provided to us in 30 days, but there is -- we were just asking for it. We didn't feel like in this setting, with another party, that we should bring the Commission's subpoena power to bear on a simple discovery request when we could just ask for it first. The request wasn't enforceable by the Commission. We can't get a motion to compel, but we were just asking.

We are aware of the rule that allows parties to request subpoenas for discovery. And if this were discovery from a nonparty, then certainly we would do that. But in this setting, we always think it's better to ask first. And I haven't seen any rule that says issuing subpoenas is the sole way that we can conduct discovery of these proceedings. I've never seen a rule that says interrogatories and requests for production are not allowed.

To the second point, discovery in this setting is supposed to be broad. The fact that the Rules of Civil Procedure and Evidence don't apply aren't meant to restrict the proceeding. They're meant to facilitate discovery.

DCP has brought up compliance. It's all throughout its amended order that DCP stated it's complied with its original permit conditions. And it bases its requests on the fact that partially it's complied with these permit conditions.

For example, it says DCP has met all conditions in the original order besides N and Q. It says that DCP will have to shut in producers, rather than exceed the 4 million cubic feet per day limit. This is a compliance issue.

For example, one of our interrogatories asked directly, "How have you complied with this limit? Are you in compliance with this limit?" So DCP put these areas at issue in its own motion. Therefore, we think it's a relevant area to explore in discovery.

And briefly, a third point: DCP seems to be arguing that the requests are invalid because they are -- we didn't ask for them before the date of this hearing. There are no rules -- we gave them 30 days. There's no rule that says we couldn't ask for it to be due yesterday, but we gave them 30 days because that's sort of the standard procedure under the civil procedure rules.

This case doesn't disappear after the hearing. The Commission still has jurisdiction for an indeterminate amount of time right now. But it will definitely retain jurisdiction of this case past August 5th, which is when these interrogatories and requests for prodution were requested to have been due. Basically we think the requests are well within the scope of what DCP has put into issue in its own motion.

CHAIRMAN BAILEY: Does the Commission have any questions concerning this motion for a protective order?

COMMISSIONER BALCH: Can I ask a question about the data you're requesting?

How much of that is beyond what is available already in the public record? Injection rates, for example, are available online.

MR. BUNTING: We requested some of that information, and some of it wasn't available to us online. And I can't -- I guess I don't have a list right now of what specifically we thought we could or couldn't get, but -- I'm sorry. I don't know if that answers your question.

MS. MUNDS-DRY: If I may respond, Commissioner? We believe most of it is publicly available. For that matter, if the Smiths were interested to know if we were in compliance or if we were in violation of any rule, most of those documents are also publicly available. The Division, as you probably know, has done a very good job of putting all of its records online. It's not like we're trying to keep a secret. Most of those documents are publicly available.

CHAIRMAN BAILEY: Okay. A decision on this motion is dependent on the Commission voting for the request for continuance because this motion becomes moot if the continuance is denied by the entire Commission. So do I hear a motion to deny the request for continuance?

COMMISSIONER BALCH: I'll make that motion.

COMMISSIONER DAWSON: I'll second it.

CHAIRMAN BAILEY: All those in favor? All those opposed? Nobody.

So the hearing will continue. The question concerning discovery becomes moot, and we will be able to swear in witnesses at this point.

MS. MUNDS-DRY: Can I ask a question, Madam Chair, so I understand? I guess what I'm understanding from counsel is that this is informal discovery. I guess what I was partly hoping was that the motion for protective order was confirmation that we weren't required to respond to it because it didn't follow the procedures of the Commission.

So even though it is due after this hearing, and I understand your point about it being moot, we want to make sure we're not violating any obligation to respond to discovery.

MS. BADA: You can ask for discussion.

MR. BUNTING: Madam Chair, we agree that this is informal discovery and there's no mechanism through which we can enforce it. If we wanted to start with subpoenas, something that was enforceable right away, we could have gotten subpoenas. So we agree that if DCP doesn't want to respond, we can't force it to.

CHAIRMAN BAILEY: Okay. Do we have any discussion among the Commission? Do I hear a motion to provide a protective order then?

COMMISSIONER BALCH: I'll make the motion to provide a protective order from that informal discovery request.

COMMISSIONER DAWSON: I'll second.

CHAIRMAN BAILEY: All those in favor? All those opposed? Okay.

Now we'll swear in witnesses. Do you have --

MS. MUNDS-DRY: I have three witnesses this morning.

CHAIRMAN BAILEY: Do you have witnesses?

MR. BUNTING: We have one witness.

CHAIRMAN BAILEY: Would all witnesses please stand to be sworn?

(Four witnesses were sworn.)

CHAIRMAN BAILEY: Would you call your first witness?

MS. MUNDS-DRY: May I give a brief opening statement?

CHAIRMAN BAILEY: Sure.

MS. MUNDS-DRY: Thank you. Again, thank you. Again, Commissioners, since I haven't been before you, I have been before Madam Chair, my name is Ocean Munds-Dry, and I represent DCP.

I'd like to introduce who I have behind me, three of the witnesses you'll hear from today, John Cook, who is the environmental manager for DCP; David Garrett, who is the Senior Vice President of the west business unit; and Alberto Gutierrez, who is on contract with DCP. He owns a company called Geolex.

I also have with me Paul Tourangeau, who is assistant general counsel. He's been in that position for all of about a week, so this is an introduction to the Commission for him.

I just want to briefly frame the issue for you. We hope, as you heard me repeat several times this morning, presented to you in our motion is a simple request. At the time that we filed the motion, we were seeking removal of the temporary limit that was imposed on us in Order 12546 D. That gave us a 4 million volume limit for injection at the time. It was meant to be a temporary order. It lasted a little longer than any of us anticipated due to circumstances out of our control.

We also requested in that motion, based on a policy statement that we had seen from the Division about a change in the way they were viewing discharge permits for an amendment, really a deletion of paragraph N, Condition N in the original Order R-12546, which required DCP to get a modification of its discharge plan for the Linam plant.

You will hear testimony today from our

witnesses that the AGI well is more than a mile away from the plant. But the way the Division Environmental Bureau viewed it, they considered it all sort of the same facility in terms of needing to modify the discharge permit to include the AGI well.

As I noted, in May the Division entered a policy statement that indicated their view of when discharge permits are required may be changing. So we, DCP, submitted a questionnaire to the Division for this discharge permit for the plant. And on June 22nd, the Environmental Bureau of -- the Division Director wrote back to DCP, indicating that the discharge permit was rescinded for that plant, and it would no longer be required.

Based on that new information, we believe our request is even more simple at this point. Now, had we not raised that motion with you, we would have simply come to the Division, as required by Condition Q, and told the Division, "We've complied with all the conditions in the order. Please issue a final administrative order that will allow us to inject into the well," except for the fact that we still have the condition in the original order by the Commission that requires us to get a modification of the discharge permit.

So we still believe we need to be in front of you requesting that amendment of that condition, based on the Division's letter to us indicating that we no longer need a discharge permit, to request that you, the Commission, delete that requirement that we basically no longer need to get a discharge permit.

So at this point, we think, and you'll hear our witnesses explain this to you, we believe all we're doing at this point is requesting an amendment or a deletion of paragraph N, so that we can be on our merry way and be under the original order injecting into the AGI well.

With that, Madam Chair and Commissioners, we can call our first witness.

CHAIRMAN BAILEY: Okay.

MS. MUNDS-DRY: We call John Cook, please.

JOHN COOK

Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MUNDS-DRY:

Q. Would you please state your full name for the record?

A. John Wendell Cook.

Q. And where do you reside?

A. Midland, Texas.

Q. By whom are you employed?
A. DCP Midstream, LP.
Q. What is your position with DCP?
A. I'm the environmental manager for the west region.
Q. What does that mean? If you could explain to the Commission, what are your duties as environmental manager?
A. I am responsible for environmental compliance for the west region, composed of Texas, Aztec and the Permian Basin and also the Southeast New Mexico assets for DCP.
Q. Have you previously testified before the Commission?
A. I have not.
Q. If you could briefly summarize your education and work experience for the Commission?
A. Sure. I am a chemical engineer from Texas A&M University. I graduated in 1994. I was hired by Dow Chemical. I have a varied background in engineering, different technologies within Dow Chemical. Probably half my career in Dow Chemical, 16 years, eight years as manufacturing, and then eight years was into environmental health and safety.
And then within the last year, I moved to the

Midland area to work for DCP Midstream as the environmental manager.

Q. And if I could focus your attention more specifically on what are your duties with respect to the Linam plant and really the AGI well?

A. My duties is I supervise a group of folks that is -- work in the facilities from environmental compliance for AGI and also the Linam facility. That's air compliance, water compliance and waste compliance. So any conditions that are placed upon these facilities, we ensure those compliance limits are met.

Q. And before we leave the topic of your experience, do you belong to any organizations as a chemical engineer?

A. I have historically. When I worked for Dow Chemical, I was an officer for the Vinyl Chloride Safety Association across North America.

Q. Are you familiar with the motion that DCP has filed here today?

A. Yes.

Q. And are you familiar with the history of the acid gas injection well that we are going to discuss?

A. Yes.

MS. MUNDS-DRY: Madam Chair, we tender Mr. Cook as an expert in chemical engineering.

CHAIRMAN BAILEY: Are there any objections?

MR. BUNTING: No objection.

CHAIRMAN BAILEY: His qualifications are accepted.

MS. MUNDS-DRY: Thank you, Madam Chair.

Q. (By Ms. Munds-Dry) Could you please briefly summarize what DCP is seeking today?

A. DCP's motion requests the removal of the temporary volume that was issued in Order D as a temporary limit. And what we're asking is that that condition N be amended or deleted from the order and we go back to the original order.

Since the motion has been filed, the OCD has communicated that DCP no longer needs a discharge permit. And this was as a result of the policy change that was made in 2010 issued by the OCD. Therefore, DCP requests authorization to proceed under the original Order N, which would be amended, or deletion of the ordering paragraph N.

MS. MUNDS-DRY: Mr. Cook, I'd like to turn to what's been marked as DCP Exhibit Number 1.

Do all the Commissioners and counsel have a copy of those exhibits? I want to make sure before we proceed. Chairwoman Bailey was here for that 2006 proceeding. But for the benefit of the other Commissioners, I'd like us to go through the history of the orders on this briefly.

Q. (By Ms. Munds-Dry) If you could, identify and review for us the first document tabbed here under Exhibit 1.

A. Okay. Exhibit 1 is a list of all the orders that DCP has been working with with the Commission. The original order was issued in 2006, authorizing DCP for an acid gas injection well for the Linam Gas Plant. Shortly thereafter, there was a minor amendment to the order. There was also a rehearing application denied with Order A.

Q. That's under Tab A in our notebook?

A. Yes, it is.

Q. What's Tab B?

A. Tab B was a request for an extension. We had one year to commence the AGI, and DCP needed more time to install surface facilities.

Q. So DCP requested an additional year extension, I believe?

A. That's correct.

Q. What is under Tab C?

A. Tab C was another extension for the commencement of the AGI operation that DCP requested.

Q. Okay. Let's turn to Tab D and, if we could, review the terms of this order, in particular since this is what precipitated our time here. What did Order D grant DCP?

A. DCP had requested a temporary approval of Order D to commence acid gas injection. This was primarily due because the control device for the Linam Gas Plant was having some significant operational issues, the Sulfur Recovery Unit. So DCP came forward to the Commission, asking to inject acid gas earlier than anticipated.

And as a result of this, there was a temporary limit that was listed here for a rate of 4 million. DCP anticipated that rate to be for about 90 days as a temporary limit, with an average pressure of around 1,800 psig.

Q. At that point, had DCP complied with all the conditions in the original order?

A. Yes.

Q. What was DCP waiting on then at that point? Why couldn't we proceed under the original order?

A. DCP was -- well, actually DCP was waiting on the Commission from a discharge plant -- waiting for OCD to issue us a discharge permit, and that would bring closure on the order.

Q. And how is the 4 million rate arrived at?
A. There was a temporary agreement that would allow us to safely shut down our Sulfur Recovery Unit and continue to process sour gas at our Linam facility to allow us to again bring the unit down, because there was some issues with catalytic support and some issues with our Sulfur Recovery Unit on a catalyst.
So it was a temporary limit that we felt like the conditions that were operated at the facility at that time we felt we could comply with on a temporary basis.
Q. So the volumes that DCP was receiving at the time, did DCP feel like that 4 million number was something they could live with?
A. Yes.
Q. And it also imposed a pressure -- average pressure?
A. That's correct, average pressure of 1,800 psig.
Q. And now let's turn to Tab E. What did this order grant us?
A. As we were waiting on the OCD to issue a discharge permit, we were running out of the 90-day timeframe with Order D, so we asked for another extension. So E was an extension of that order.
Q. That was a 60-day extension, I believe?

A. Right.

Q. Tab F, what is this order?

A. Tab F was another extension. Because the 60-day order, as we were waiting on the discharge permit from the OCD, we realized we were not going to meet that, so we asked for another extension.

Q. Then we get to the G order. If you could turn to the second page, how is this order different than the previous extension orders?

A. As DCP -- as F was going to expire, we requested another extension. And this stay was granted until a hearing before the OCC.

Q. And then the H order, that's more recently issued?

A. Correct.

Q. And what did the H order --

A. The H order denied continuance of a hearing.

Q. Okay. Let's turn then to what's been marked as DCP Exhibit Number 2. What is this document?

A. As I mentioned earlier, the OCD issued a requirement -- change in requirements on May 10th. And as a result of this, as far as pertaining to discharge permits and discharge plans, they were going through a policy change. As a result of this, they asked the facility to submit questionnaires.

We submitted a questionnaire around the Linam Ranch AGI facility. And on June 22nd we received a letter response to our questionnaire. In that letter, it states that a discharge permit is no longer needed for the AGI facility at Linam Ranch.

Q. Do you believe that DCP's motion, in your expert opinion, will prevent waste and protect human health and the environment?

A. I do. AGI, acid gas injections, are for the gas processing industry the best available control technology that's out there. And as we have more growth in the areas for acid gas or sour gas, the AGI again is the best operation for a control device. It allows the Linam facility to process that gas with minimal waste to the environment.

Q. And Exhibits 1 and 2 that you presented here today, are these records of the Commission or the Division?

A. Yes, they are.

MS. MUNDS-DRY: With that, Madam Chair, we move the admission of Exhibits 1 and 2 into evidence.

CHAIRMAN BAILEY: Any objection?

MR. BUNTING: No objection.

CHAIRMAN BAILEY: They're admitted then.

(Exhibits 1 and 2 were admitted.)

MS. MUNDS-DRY: Thank you. I have nothing further for Mr. Cook. I pass the witness.

MR. BUNTING: Good morning, Mr. Cook.

THE WITNESS: Good morning.

CROSS-EXAMINATION

BY MR. BUNTING:

Q. Isn't it true that DCP is always operating under this limitation?

A. They have been in compliance, yes.

Q. But that wasn't my question. From the date of commencement of injection, there's always been this 4 million volume limitation, hasn't there?

A. From Order D, yes.

Q. And so while in a sense you might be asked to go back to the status quo, in real terms you are asking for an increase in volume?

A. We're asking for the temporary limit that was imposed for the 90-day limit to be removed.

Q. Was that a yes?

A. That was to say that we complied with the temporary limit for 90 days. And we have been in compliance since because the limit is out there today.

Q. And you're asking for the limit to be removed?

A. We're asking to go back to the original order that was issued.

Q. Do you know what the deadly concentration of hydrogen sulfide gas is?
A. I would -- I mean I would defer that to our expert witness. He can go into more detail.
Q. As an environment manager, you're here asking the Commission to modify this permit. Isn't this some basic information that you might know?
A. It's in our H2S contingency plan. We have that as well.
Q. Would you be the person to ask questions about this contingency plan?
A. I can -- yes, I can answer questions about the contingency plan. But if you're going into detail with calculations and so forth, I defer that to our other witness.
Q. Okay. Then on the contingency plan, isn't the point of having one to alert the public to the dangers of gas, and if there were to be an unexpected release, as to the safety procedure that they should follow?
A. Yes.
Q. Who gets notice of that plan?
A. It's listed in our plan, Excel. The utility company has copies of the plan. The Smiths should have a copy of that plan. And --
Q. How is that determined?

A. How is that determined?

Q. Is it based on the radius of exposure who you notify of your contingency plan?

A. Yes.

Q. Okay. So everyone in the radius of exposure should be informed of the contingency plan; isn't that right?

A. Yes, they should be.

Q. Okay. So you said the Smiths are entitled to notice? They should have a copy?

A. Yes.

Q. Okay. The contingency plan, it always requires a flare; correct?

A. The contingency plan has certain reactions to -- if there's parts per million exposure out there, yes. So the flares are to mitigate safety of the situation.

Q. So flaring the facility is a requirement of the plan?

A. Yeah.

Q. Okay.

A. The flares also are there for maintenance and start-up and shut-down activities, as well.

Q. When should hydrogen gas be a flared? Is it something that happens as a matter of course, or only in an emergency?

A. As I stated, it could be for start-up, shut-down or maintenance activities. And it can also be for emergency situations.

Q. Okay. Is it DCP's practice to only flare during those situations that you just listed?

A. If there are upset conditions or, yes, if they are start-ups or shut-downs or malfunctions or maintenance.

Q. So upset conditions? I'm sorry.

A. I was going to say and the primary flaring should take place at the plant itself.

Q. Rather than the injection site?

A. Um-hum. But there's certain scenarios that drive those flaring situations.

Q. Like what?

A. Well, if you had to -- for example, we do preventive maintenance on our compressions. And since you're dealing with acid gas, you would take that -- shut that compressor down, isolate it. And then you would purge that acid gas to a flare, and it would be incinerated. It's just good engineering practices that we follow.

Q. Are you aware that DCP's contingency plan required it to install an audible alarm in my client's home?

A. Yes.

Q. And what's your understanding of why there isn't one in his home?

A. My understanding is that Mr. Smith would not allow us on his property to install one. As a result, we have installed four alert systems, one on the paved road going to the property. And it runs north and south. And then there's three that are on the west/east road going into the Smiths' property.

Q. When you say it's your understanding that Mr. Smith wouldn't let DCP on its property, how -- is that firsthand knowledge that you have?

A. I'm sorry?

Q. How do you have that knowledge?

A. Talking with folks who dealt with the situation historically.

Q. Was this an event that happened once, do you know? Or has DCP followed up with its contingency plan since?

A. I don't have that knowledge.

Q. Who would; do you know?

A. I do not know.

Q. Okay. Are there alarms at the well itself?

A. Yes.

Q. And are there alarms at the Excel plant?
A. Yes.
Q. And under what conditions do those alarms go off? Let's start with the alarms at the well.
A. I believe it's 10 parts per million.
Q. So you're saying it's safe to assume that any time an audible alarm is going off at the well, that's because there has been a detection of 10 parts per million or higher?
A. It varies. The alarm is if the monitoring device is triggered with greater than 10 parts per million, it does take emergency activation. There have been some times where there's redundancy of that system that there could be some malfunction with the instrumentation itself. But that's why there's redundancy.
Q. And these alarms, is there some means to measure the concentration in the air, or is it just an alarm goes off?
A. No. It's an analyzer of 10 parts per million.
Q. There's no way to quantify above that what a release --
A. I don't have that information.
Q. Okay. You don't know if there are sensors or anything that would give us more accurate information?

A. Again, I don't have that information.
Q. Okay. And what's DCP's practice of responding when an alarm goes off, an alarm at the well specifically? I'm sorry.
A. DCP has conducted a process hazard analysis. And as a result of that, there's many things that would signify what shuts down actions. Off of memory, I don't have those. I have a couple that I'm familiar with. But for me to sit back and recite what those all are, I could not do that at this time.
Q. I take your answer to mean that at least in some situations, DCP would shut down the plant, shut down the injection?
A. Based on the scenarios and the significance of the event, yes.
Q. And what did you say that was again, process hazard analysis?
A. PHAs.
Q. How many times have you been to the facility?
A. I've been to the AGI twice, to the well site.
Q. Twice while it's been in operation or twice?
A. Um-hum.
Q. Is that part of your job as the manager overseeing compliance?
A. I consider it part of my job to be at -- to

view the facility, get out and meet and talk with folks.

Q. Isn't it true that this well is in existence as part of a settlement agreement with the NMED regarding air quality permit violations?

A. Yes. That's what I stated earlier with the acid sulfur recovery unit.

Q. Having been to this well and seen the area around it, would you want to live on the border of this well?

MS. MUNDS-DRY: Objection. I don't think that's a fair question to ask the witness. That's a very argumentative question.

CHAIRMAN BAILEY: Sustained.

MR. BUNTING: I think it's fair, and I don't think it's far outside the scope.

CHAIRMAN BAILEY: It's asking for personal opinion at this point.

MR. BUNTING: Withdrawn.

Those are all the questions I have.

MS. MUNDS-DRY: I think I have one redirect, which I can wait until after the Commission has had a chance to ask questions.

CHAIRMAN BAILEY: Yes. Do you have any questions, Commissioner Dawson?

COMMISSIONER DAWSON: None at this time.

EXAMINATION

BY COMMISSIONER BALCH:

Q. On your safety and contingency plan, is that a formal process? Is there state oversight on that?

A. Yes. We have submitted that contingency plan to the state.

Q. Who approves or disapproves it?

A. I don't remember the name of who approved it.

Q. I mean the department. Is that the OCD?

A. Yeah. I was trying to think of the rule, but yeah.

Q. Are you familiar with potential injectivity of the well? What do you expect you could theoretically inject into it safely?

A. I would defer that to our expert geologist on that.

Q. Do you expect that -- how much would you like to inject? Is that a better question?

A. We'd like to go back to the original order where we would not have a limitation.

Q. Right. But how much do you anticipate that you would need to inject at that facility?

A. That's going to be more for our commercial folks to answer that question.

COMMISSIONER BALCH: That's all the

questions I have.

EXAMINATION

BY CHAIRMAN BAILEY:

Q. Order Number R-12546-D, in the findings, Number 8, on page 2, it says, "DCP requests it be allowed to inject acid gas at a maximum injection rate of 4.0 million cubic feet per day and an average wellhead pressure of no more than 1,800 psig."

The original order allows a higher pressure. I'm trying to find it now.

COMMISSIONER DAWSON: 2,644.

Q. Are you requesting to change the injection pressure as well, or to remain the pressure that was given in Order Number D?

A. What we would like to do is go to the original order of conditions.

Q. So you want a removal of the volume limitation and pressure increase from D back to the original pressure that was authorized at that time?

A. If we could go with the original order, that would be great.

Q. Is there someone who will be testifying today as to the well mechanics?

A. Yes.

Q. To go back to the original order, which is what you're requesting, it talks about several operational requirements. Are you requesting changes to those, or only to the pressure and volume limitation?

A. Just to the discharge plan requirement and also going back to the original no volume limitation, original pressure, the original order.

Q. Is there someone to talk about operational areas, such as the results of the step rate tests?

A. Yes, we have someone. Yes.

CHAIRMAN BAILEY: Then I have no other questions for you.

Is there redirect confined to the areas of the questions? I'm not a lawyer.

MS. MUNDS-DRY: The Commissioners asked all of my redirect, so I have nothing further for Mr. Cook.

MR. BUNTING: Just one question, sir.

RECROSS EXAMINATION

BY MR. BUNTING:

Q. DCP's motion doesn't ask for removal of the pressure limitation. Is that something that should be -- is that something that should be inferred from the request to increase volume?

A. Well, DCP is asking to go back to the original order. Specifically, the 90-day volume limitation has been a challenge for us. We have more testimony for that.

Q. I may be mistaken, but I don't -- if I were to tell you that that's not what the motion asks for, is that something you think is -- you know, that would go hand in hand with a request for increase in volume? I guess that's what I'm asking.

A. I would say to your technical questions from volumes to pressures, I defer that question to our expert.

MR. BUNTING: Thank you. That's all I have.

CHAIRMAN BAILEY: The witness may be excused.

MS. MUNDS-DRY: We'd next like to call Mr. Garrett.

DAVID GARRETT

Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MUNDS-DRY:

Q. Good morning.

A. Food morning.

Q. Please state your full name for the record.

A. David Frank Garrett.

Q. Mr. Garrett, where do you reside?

A. Crosby, Texas.
Q. And by whom are you employed?
A. DCP Midstream.
Q. What is your position with DCP?
A. I'm senior vice president of the western business unit.
Q. And what does that mean? What are your responsibilities?
A. I'm over the commercial activities and the earning and profitability of the western business unit within DCP.
Q. And do part of your responsibilities include the Linam plant and the AGI well?
A. Yes.
Q. Have you previously testified before the Commission?
A. No, I have not.
Q. Could you briefly review your education and work experience for the Commission?
A. Sure. I have a bachelor's degree in Business Administrative, Accounting and Finance from Lawrence Technological University. I have a Master's degree in Business Administration from the University of St. Thomas.
I've been in the natural gas business since

1981, and the gathering and processing business specifically since 1990. I bought gas. I was in contract administration for many years and have been in the gathering and processing side now for 21 years. And I've worked for DCP going on 21 years now and previous entities that DCP has merged into.

Q. Mr. Garrett, are you familiar with the motion that DCP has filed here today?

A. Yes, I am.

Q. And if you could spend a little more time so that we can understand what your responsibilities are in terms of the AGI well, what are your responsibilities in terms of the operation of the AGI well?

A. In terms of the operations, it's the commercial side. We buy the gas and direct it to the plant or process it. And we deliver the gas for producers at the tailgate, basically the contracting of gas and processing and managing the profitability.

MS. MUNDS-DRY: Thank you.

Madam Chair, we tender Mr. Garrett as an expert in the commerciality of AGI wells.

CHAIRMAN BAILEY: Any objection?

MR. BUNTING: No objection.

CHAIRMAN BAILEY: Your qualifications are acceptable.

Before we begin your testimony, why don't we take a 10-minute break?

(A recess was taken.)

CHAIRMAN BAILEY: Back on the record.

MS. MUNDS-DRY: Thank you, Madam Chair.

Q. (By Ms. Munds-Dry) Mr. Garrett, why does DCP need the Commission to take action on its motion?

A. We need action on the motion because of the development of Avalon Shale gas. We have gas shut in with producers. And I'm sure there's oil shut in also, since it's an oil play in Southern Lea and Eddy Counties.

Q. You're explaining the Avalon Shale?

A. Avalon Shale, it's a formation. It's a name. Really, our expert would probably know better in terms of the geology, but I believe it's called the Bone Springs also.

Q. Has that been a new play? What has led to you having to shut in gas?

A. The Avalon Shale development began about a year and a half, maybe a year and three quarters ago. It is a newer play. It is a shale, and it's fracked as such, as the shale plays are. It has a very high or can have a very high concentration, comparable to other wells, of CO2, very low H2S. In fact, in many cases, there's no H2S present.

Q. When did the volume limitation imposed by Order D become an issue for DCP?

A. Late April, early May, because of the increasing volumes of this Avalon Shale gas. In some of the wells, it can be as much as 4 to 16 percent CO_2. So it's quite a change from the standard almost zero to 2 or 3 percent. And with the developing and bringing on more gas down in Southern Lea and Eddy Counties, we started to see that we were reaching our limit.

Q. When you say you had to shut in gas, what does that mean?

A. We have several producers that we have refused to take their higher CO_2 gas at this point because we would be exceeding the limit. About 25 million cubic feet a day was flowing and is not flowing today. I'm sure there's oil associated with that.

We also have two places where there are about 8 to 10 million cubic feet a day of new supplies that we have connected or are in the process of connecting to the system. But we've indicated to these producers until we get relief here, we cannot begin to flow and process their gas.

Q. So is that what leads the producers to have to shut in their wells?

A. I believe -- I really don't know what they can do. I mean they can flare, I guess, maybe, or they will shut in the wells, is my guess.

Q. You're explaining to the Commissioners that it's really an increase in higher carbon dioxide volumes?

A. Correct.

Q. What have you seen in terms of the hydrogen sulfide content or the H2S?

A. Nil. Really very little to none in these new Avalon Shale wells to date.

Q. If you could explain to the Commission how the acid gas injection well has operated since it began taking acid gas?

A. The facilities were ready to go in November 2009. The first injections were around the middle of December 2009. The SRU, which we came forward on to move quickly, was in need of repair. We shut that down about a week or two after the acid gas injection well came on. We wanted to run it parallel, just to make sure all systems were good with the acid gas injection well. And then we went to full stream into the well in the later part of December 2009.

Q. Has the AGI well performed as expected?

A. Yes, operationally from pressures and injection, normal rates.

Q. And has DCP, to the best of your knowledge, complied with the rules and orders of the Division?

A. Yes.

Q. Why is this motion important to DCP?

A. It's important to us so that we can service our customers to produce -- allow them to produce more gas so that it can be processed, and also oil for the public good.

Q. Mr. Garrett, will approval of DCP's motion be in the best interest of conservation, the prevention of waste and the protection of public health and the environment?

A. Yes, it will.

Q. Why is that?

A. It will be in the benefit because rather than producers having to -- if they have the option to flare, they won't be flaring. They'll get the value for the gas, and the environment will be better off for it. Also, the CO_2 will be sequestered back to the earth.

MS. MUNDS-DRY: I have nothing further for Mr. Garrett. I pass the witness.

MR. BUNTING: Good morning.

THE WITNESS: Good morning.

CROSS-EXAMINATION

BY MR. BUNTING:

Q. So I understood you to say that to your knowledge, DCP hasn't exceeded the temporary volume limitation?

A. That's correct.

Q. And I have a couple questions about your affidavit. Do you have a copy of that?

THE WITNESS: Is it here, Ocean?

MS. MUNDS-DRY: No. The witness does haven't a copy of it.

MR. BUNTING: It's marked as our Exhibit D.

Can I approach the witness?

CHAIRMAN BAILEY: Yes, you may.

MR. BUNTING: It's marked as our Exhibit D. Here we go.

Q. (By Mr. Bunting) So this is your testimony?

A. Yes.

Q. This is the sworn affidavit that was filed along with DCP's motion?

A. Yes.

Q. I wanted to clear something up. There seems to be a typo. I just wanted to make sure. In Paragraph 5 you stated, "DCP has no pressure concerns with higher volumes and will remain within the 1,800 psig wellhead pressure"?

A. That's correct.

Q. Above that, in paragraph 2, you characterize that as an average pressure of no more than 1,800 psig?
A. That's correct.
Q. And is it your understanding that this is the requirements for the average pressure or a maximum pressure of 1,800 psi?
A. Average.
Q. Okay. I'll tell you that the order requires a maximum pressure of 1,800. And I would ask you, based on that, how your -- how this statement of Paragraph 5 -- how your assumptions that the pressure limitation won't be exceeded and will still hold true. It seems there will be a large difference between --
A. That's why we've made the request to go back to the original order, which had a higher level.
Q. I'm sorry?
A. Would you repeat the question?
Q. So I guess I'm just asking how this -- if you can tell us that your statement that there are no pressure concerns with higher volumes, was that based on some calculation that you did that assumed an average pressure, instead of a maximum pressure?
A. It's based on a calculation. I did not do the calculation, but we had experts that did it.
Q. Okay. So you're also stating that DCP's

motion intends to remove the pressure limitation as well as the volume limitation?

A. We were requesting to go back to the original order, which had a higher maximum pressure.

Q. As far as you know and understand these calculations, everything in here is still good, whether we're talking about a maximum or a daily -- I guess a daily volume of 1,800?

A. When it comes to -- just to clarify, when it comes to the calculations, I would defer that to our expert witness.

Q. Okay. You said you do stand by your assertion that the AGI wells have performed as expected?

A. Yes, I do.

Q. So both operationally and in your area of expertise, which would be on the commercial side?

A. Yes.

Q. Would you know how many -- first of all, how would DCP define an upset condition as it relates to the AGI well?

A. I'm not the one who developed the contingency plans and all that, so I defer that to our other -- whatever that definition is and how it came to be defined.

Q. I understand that you might not understand exactly how it's defined. Do you know specifically or approximately how many times this well has been upset?

A. No, I do not. I don't recollect any, quite honestly. But that's -- I'm not -- I don't work at the plant site. But I've not heard of any.

Q. Can I ask how many permanent employees there are at the plant site?

A. I'd be guessing, quite honestly. In terms of permanent, there's quite a few. There's also field employees in the area that go to the facilities.

Q. How many times have you been there?

A. I've been to the Linam Ranch plant probably 10 to 12 times.

MR. BUNTING: Those are all my questions for you. Thanks.

CHAIRMAN BAILEY: Commissioner Dawson?

EXAMINATION

BY COMMISSIONER DAWSON:

Q. So DCP is requesting the injection pressure to be -- it was originally at 1,800 pounds per square inch. So you're requesting it to be greater than 1,800, up to 2,600?

A. That was in the original order, is my understanding.

Q. 2,644, that won't be the max? It may be greater than that?

A. Well, I defer to our witness on that. But we would comply within the original order, yes.

COMMISSIONER DAWSON: That's all.

CHAIRMAN BAILEY: Commissioner Balch?

COMMISSIONER BALCH: I don't have any questions at this time.

CHAIRMAN BAILEY: I do.

EXAMINATION

BY CHAIRMAN BAILEY:

Q. You mentioned the prevalence of carbon dioxide as the injection component?

A. Yes.

Q. What else is being injected beside H2S and CO2?

A. I don't have all the details. I've not seen a rundown analysis of what all is being injected. I'd defer that to our expert witness.

Q. Have you injected in a business way fluids other than H2S and CO2? Do you have contracts for remedial water from cleanup operations or any other activities other than just gas producers?

A. No. It's just gas production.

Q. Okay. You mentioned the predominance of CO2. Do you have a percentage of injection for CO2, compared to H2S?

A. I'd defer to our expert. It has increased. To get to the specifics, it has increased from what it was when the original temporary permit was put into place mainly due to the new gas production.

Q. For clarification, are you requesting removal of the temporary injection order?

A. The restrictions.

Q. The restrictions of the temporary injection order, which was labeled D?

A. Yes.

CHAIRMAN BAILEY: Those are all the questions I have. Any redirect?

MS. MUNDS-DRY: I have no further questions.

MR. BUNTING: I have two questions.

RECROSS EXAMINATION

BY MR. BUNTING:

Q. You mentioned the producers having the alternative to flare the gas, rather than it being shut in?

A. They may. I'm familiar with Texas and somewhat with New Mexico. I know in Texas they have a right for a period of time to flare, and I don't know whether they have or not. I know that shales, if they get shut in, are very sensitive to damaging the wells.

Q. Okay.

A. At least I've been told by my customers that.

Q. Are you aware of any other alternatives besides what we've talked about?

A. Alternatives?

Q. Any alternatives besides sending the gas to Linam or flaring?

A. The way things are, they would have to, my guess is, file to put in an aiming unit to remove at the site. And that would require a lengthy process, to get a permit on that.

Q. Sure. But to your knowledge, are there any options to use acid gas injection to produce in the shale, for instance, or anything like that?

A. Not to my knowledge. I mean the shale gas is nonmerchantable with the CO2 in it.

MR. BUNTING: Okay. Thank you.

CHAIRMAN BAILEY: Nothing more?

MS. MUNDS-DRY: Nothing more.

CHAIRMAN BAILEY: You may be excused.

MS. MUNDS-DRY: May we proceed to our next witness?

CHAIRMAN BAILEY: Yes, please do.

MS. MUNDS-DRY: We call Mr. Gutierrez.

ALBERTO GUTIERREZ

Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. MUNDS-DRY:

Q. Would you please state your full name for the record?

A. Alberto Alejandro Gutierrez.

Q. Where do you reside, Mr. Gutierrez?

A. I live in Albuquerque.

Q. By whom are you employed?

A. Geolex, Inc.

Q. What is your position with Geolex?

A. I'm a geologist, and I'm the president of the company.

Q. What does Geolex do?

A. Well, we do a variety of geological and engineering services. But in the area of acid gas injection, we do feasibility studies, investigations and design and permit and oversee the drilling and testing and operation of AGI wells.

Q. How many AGI wells have you permitted in the State of New Mexico or assisted with permitting?

A. I think, at last count, the number is about eight.

Q. What is your relationship with DCP?

A. I've been a consultant for DCP on this AGI project since its initiation back in 2005.

Q. Have you previously testified before the Commission?

A. I have.

Q. Were your credentials accepted and made a matter of record at that time?

A. Yes.

Q. In fact, did you testify in the original 2006 hearing on this application?

A. Yes, I did.

Q. Are you familiar with the motion that's been filed by DCP in this case?

A. Yes, I am.

Q. Are you familiar with the history and the volume issues related to our motion on the AGI well?

A. I am.

MS. MUNDS-DRY: Madam Chair, we tender Mr. Gutierrez as an expert in petroleum geology and AGI design and operation.

CHAIRMAN BAILEY: Any objections?

MR. BUNTING: No objection.

CHAIRMAN BAILEY: So accepted.

MS. MUNDS-DRY: Thank you.

Q. (By Ms. Munds-Dry) You mentioned you provided

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expert testimony to the Commission in the original hearing regarding DCP's application. What role did you play in that application process?

A. We did the -- Geolex and I personally worked on and did the feasibility investigation that located the desired location for the well and identified the characteristics of the reservoir of the well.

We did the stratigraphic and seismic analyses to determine the limits and the character of the reservoir, and we prepared the C-108 application on behalf of DCP for this well.

And I testified here at the Commission in the hearing that was held to evaluate that C-108 application. And subsequently, I was the supervising geologist on the drilling and the completion and testing of the well.

Q. Specifically in the application and hearing process, did you do the studies to determine the injection and volume rates for the well and for the formation?

A. Yes.

Q. In the original order of the Commission, R-12546, what was the maximum allowable operating pressure and injection rate granted to DCP in the AGI well?

A. The MAOP was 2,644 at a specific gravity of

.8. Now, I think it's really important that that is taken into account. Because with respect to acid gas, the formulas, which are the formulas that OCD uses to calculate what would be an acceptable maximum allowable injection pressure, are a function not only of the depth of the injection zone, but they are also a function of the specific gravity of the fluid that is being injected.

And because acid gas has a density that is lower than water, typically you have to have a higher injection pressure, surface injection pressure, for a fluid that would be the same equivalent injection pressure with a denser fluid.

So it isn't a fixed number. It is a number that is dependent on the specific gravity of the fluid. And in the original order, it calls for an MAOP of 2,644, and that was calculated on the basis of a specific gravity of TAG of .8.

Q. And Mr. Gutierrez, is that reflected in the PowerPoint? We have a hard copy here. Once we get past the cover page, your first slide, does that show the calculation that was used in that original order?

A. Yes. This shows the formula approved by the OCD. And this is a very conservative formula that is designed to assure that there is no -- that at these pressures that are calculated with this formula, that there will not be any fracturing of the injection zone or the caprock at that depth.

But this is the formula that was used in the original application to calculate that MAOP. And in the original application, it was anticipated, based on the presumed mix of CO2 and H2S, that the TAG would have an approximate average specific gravity of .8.

So this is how that calculation was done, and that is why that number was set as the MAOP for the original order. And the original order has no injection rate limitation whatsoever. It's just as long as the injection rate takes place under the MAOP, it was permitted under the original order.

Q. And there's a couple -- if we turn one more slide, you've got the "Revision of Order." Mr. Garrett testified to that.

If you go to your third slide, you've got some temperature numbers that I was hoping you could communicate to the Commission. Are you on that slide?

A. Yes. As I mentioned, the actual volume and the conditions of the TAG are very dependent on both the composition of the TAG and the temperature of the TAG.

And so what this slide just shows, it's just taking the historical data that is available that indicates what the average temperatures and pressures have been since the well has been operating in terms of injection temperature and pressure.

You can see that the injection temperature is really varied between about 80-some degrees and about 108 or 109 degree, and it's got a median temperature of about 104 and an average of about 95. And the median and the average injection pressures are the same. It's been about 1,150 psi since the well has been operating.

Q. There's been some questions this morning about the hydrogen sulfide contingency plan, or H2S contingency plan. Are you familiar with that document?

A. I am.

Q. Are you familiar with the injected gas stream assumptions which determine the radius of exposure associated with the approved plan?

A. Yes.

Q. Before we turn there, if we could turn to what's been marked as DCP's Exhibit Number 4.

A. Yes.

Q. The first couple of documents, if you could identify and review for the Commission?

A. These are some documents, calculations and data that I used in my analysis of the injection history of this well.

The first page just shows a detailed

day-by-day injection rate and a -- for the -- not really actually injection rate. This is actually the throughput for the plant for the period of June 2011.

The second page is a summary of injection pressures from the beginning of injections at the well in December 2009 through May 2011. And these data were taken directly from the C-115 reports, which are on the OCD website online, which are reported by DCP every month.

The next page is a calculation of the average and median injection temperatures for the well for the last year of operation. So roughly, it gives you the temperatures -- the average temperatures for each of those months and then how we calculated the median and average temperatures for that annual time period.

The last -- the next page on that exhibit is a recent analysis of the inlet concentrations of gas to the plant from their field gas. And so this shows that right now, the plant is receiving inlet gas that is running about .573 MOL percent hydrogen sulfide, and about two and a half -- a little over two and a half percent carbon dioxide.

And that is a real fundamental reason why the current limitation on TAG volume makes it impossible for the plant to take all of the gas. And it's simply because there's so much carbon dioxide coming into the plant that the resulting TAG volume is increased significantly because of that CO2. CO2 is the largest component of that TAG stream, always was intended to be, but it's even become a larger component of that TAG stream as the well has operated.

Q. On that note, I believe we'll get back to the rest of the documents in Exhibit 4. If we could turn to what's been marked as DCP Exhibit 3?

A. Yes. I have it.

Q. Would you identify and review what you've put together here for the Commission?

A. These are just excerpts from the H2S contingency plan that are relevant to the issues that were raised or brought up earlier.

And what this shows, this is like -- it's just a copy of the cover page, the table of contents and then three appendices that are in the H2S contingency plan that is approved by OCD and that the current facility is operating under.

What it shows, basically, if I can turn your attention to Appendix B, it is the radius of exposure calculations that are a part of the H2S contingency plan, which would indicate what the radius of exposure at both 100 and 500 parts per million of H2S would be in the event of a catastrophic release at the plant site.

Q. So this is worst-case scenario?

A. Absolutely. In fact, it can't even occur, because the plant is a throughput process. And these worst-case scenarios assume a release instantaneously of the entire throughput. So that's just not possible, but it is the way they're done.

Q. Could you give us some of the assumptions that are put into the radius of exposure calculation?

A. There really are only two assumptions that are meaningful. One is, what is the volume of inlet gas that comes into the plant? And that volume, for the purposes of this calculation, the maximum volume is 225 million cubic feet per day.

And the next assumption or number that is important is what is the concentration of H2S in that inlet stream? And that is .57 MOL percent, and that is what this is based on.

Now, this Appendix B has radii of exposure calculated both for the plant site itself, as is required by the H2S contingency plan, and then also separately for the pipeline and the well site.

And if you'll note, the ROE is slightly different at the plant site than it is at the well, and there's really a very simple reason for that. It's a rounding error. Because in effect, when you look at the calculation that is done for the plant site itself, it is done on the basis of the inlet concentration and the maximum anticipated throughput for the plant.

But when you do it for the well site itself, you're now looking at using the discharge from the plant to the well site, so the value of TAG and the concentrations of H2S and CO2 in that TAG. And there literally is just a very small rounding issue. And so you end up getting a 500 ppm radius at the plant of 4,057 feet, and at the well of 4,073 feet. And at 100 ppm, it's 8,877 feet at the plant, 8,914 at the well.

But really, in reality, those numbers are the same because there is no -- that's within the level of accuracy that you do that calculation.

Q. So let me ask you some questions that relate to this motion. After you reviewed the H2S contingency plan and specifically the radius of exposure, if DCP were granted the ability to proceed under its original order, hence the removal of the 4 million limit, would the radius of exposure calculated in the H2S contingency plan change?

A. No, absolutely not.

Q. Why is that?

A. The only -- if you'll note, the volume of TAG that is going to the well is increasing simply because we're putting more CO_2 in the well than was originally anticipated.

If I could refer back to Exhibit 4. The last page that we looked at in that exhibit, that is the inlet gas analysis from the plant. And you can see that the MOL percent of hydrogen sulfide, .573, is essentially -- .57 was the number that was used to calculate the ROE in the plan. So really -- and in fact, many times the inlet concentration to the plant is less than .57.

But in general, as long as the inlet concentration of H_2S doesn't change, it doesn't matter how much TAG goes into the well, because all that -- it's a conservation of matter issue. All we do is we take the hydrogen sulfide that comes into the plant, we take it out of the gas, we put it into the TAG and then put it into the well.

Similarly, we take the inlet concentration of CO_2 that comes into the plant, we take it out of the gas ande we put it into the well.

What happened is that originally when this calculation was done, it was based on a volume of 4.6 million cubic feet a day of TAG. The inlet concentrations of CO_2 coming into the plant were about one and a half percent. Right now the inlet concentration of CO2 to the plant is running about two and a half percent, and that makes a 3 million cubic foot a day difference in the volume of TAG.

Q. While we're on Exhibit 4, I'd like to return, if I could, Mr. Gutierrez, to the fifth page under Exhibit 4.

A. Yes.

Q. What does this show us?

A. That page is a table that I constructed. It basically summarizes a comparison of the assumptions that were in the original H2S contingency plan and the current conditions or assumptions, if you will, of a worst case based on the current inlet gas concentration.

Q. I believe you have a better blown-up version of this exhibit document in the PowerPoint that may not strain all of our eyes so much.

A. Maybe. It looks like it's about the 10th slide. But it's the same chart, really.

Q. Yeah.

A. Basically, the chart shows, as I just mentioned earlier, and I'll mention in advance, obviously it's an Excel chart. And it rounded the .57 in the concentration to .6.

But basically the calculation is shown that ends up at the original assumptions, which would have been a concentration of .57 in the inlet gas of H2S and a concentration of CO2 of one and a half percent MOL percent. You wind up with a TAG volume of about 4.6 million cubic feet a day. And of that, 1.3 million cubic feet is H2S. The other 3.3 million cubic feet is CO2.

That ends up with the two ROEs that we just discussed at the plant and at the wellhead of approximately 8,900 at 100 ppm, and about 4,050 feet or 4,070 feet at the 500 ppm ROE.

The real difference -- the only thing that is different is that we're putting more CO2 into the stream. So the ROE for the H2S contingency plan is not affected at all. But what is affected is the amount of area or volume that is affected in the injection zone itself, in the Bone Springs, the lower Bone Springs.

There you can see that under the original assumptions, after 30 years, we would affect about 286 acres if we had been putting in the maximum of 4.6 million a day of TAG. Under the current conditions, we would be putting in closer to 7 million a day of TAG, and that would affect about 445 acres over the 30-year time frame. And that's what this chart shows.

Q. What does the next chart show us?

A. The next chart shows what are the compositions and the specific gravity and, basically, the conditions of injection at the well under the original presumed conditions when the C-108 was developed.

You can see that at these concentrations -- actually, when the original one was developed, we estimated a specific gravity of the TAG of .8, and that was actually based on an even lower concentration of CO2. But in reality, the specific gravity of the TAG at the current -- at the hundred-degree temperatures would be about .71.

But nonetheless, what it shows is that you're essentially -- with this concentration and this volume, that you would be affecting an area that would have a radius of approximately .38 miles in the injection zone after 30 years. And in fact, if you correct the MAOP for the specific gravity of the TAG, you would actually come up with an MAOP of 2,982 versus 2,644. But that really, the MAOP is not a significant issue once you get above 26 or 2,700, because the well history that we have indicates that the volumes will be able to be put away under that original pressure that is in the order.

The next page is the same software analysis, same analysis of the current conditions that we are seeing at the plant in terms of CO2 concentrations. You can see that what has happened, in effect, is that instead of the injection stream being as in the previous chart, 72 percent CO2, 28 percent H2S, what we're currently seeing is more like 82 percent CO2 and 18 percent H2S.

And as a result of that, we have a significant increase in the volume of the TAG. And also, we have a significant decrease in the specific gravity of the TAG, which would, in turn, as I mentioned, result in an even higher MAOP, using the Division's own calculations.

But the area that is affected is greater. Instead of being .38 miles, it's more like .47 miles or 445 acres, versus the 286 acres or so that would have been affected under the original condition.

The last slide in that exhibit is a map which shows the effect on the injected formation of what these two different volumes of TAG would be. The existing Linam AGI is located right there in the middle of the circles that you see. The blue circle is a one-mile circle around the well.

And you can see in purple there is one well, and that is a plugged well. That is the only well within that entire one-mile circle that penetrates this injection zone. You can see that even after 30 years at the higher TAG rate of injection, the area influenced is significantly removed from that one well.

So this just gives you a picture of what we anticipate would be the effects on the injection zone after 30 years of injecting at those two rates.

Q. Chair Bailey asked about whether there was a step rate test performed, and you have a slide in that regard. It should be your next slide.

A. Yes. When we completed the well in January -- December of 2007 and January 2008, we performed a step rate test. This was not for the purpose of trying to get an increase in the MAOP or anything. It was merely a normal test procedure that we use when we complete a well so that we can predict what its injection performance is going to be over its lifetime.

So what we found -- that step rate test started at two barrels a minute of injection and went up in one-barrel-a-minute increments all the way up to nine barrels a minute of injection. And as can you see from the data from that test, which is plotted on both of those graphs, one is the actual steps and the bottomhole pressure, the next is the plotting out of those data. And can you see clearly that even up to nine barrels a minute, that injection zone showed no break whatsoever. So in fact, it just reveals how conservative that MAOP calculation is.

You can see that the estimated range of injection pressures, based on the history that we're seeing, is somewhere in that pink range. But you can see the MAOP does give some flexibility there, even at the higher TAG density, between roughly 2,000 and 2,600 psi.

So basically the results of the step test are confirming what we anticipated when we drilled the well. And that is that the lower Bone Springs there can take everything and the kitchen sink.

Q. Based on the data that you reviewed for the Commission today, would you please summarize your conclusions?

A. Yes. Basically, my conclusions are that the original order and the hearing that was held in front of the Commission really evaluated in detail the data that were available to determine whether or not the lower Bone Springs would be an adequate injection reservoir. And that, in fact, the drilling and testing and operation of that well bears out our original analyses and expectations.

So the original order was based on a detailed analysis which we performed and presented to the Commission and to the Division in a public hearing. The Commission, as a result of that public hearing, arrived at an order that included an MAOP of 2,644 at a specific gravity of .8, and an unlimited injection rate.

The step rate test plus the operation of the well indicates that at this injection pressure and that essentially at the maximum injection rates that you could put down that well, it would still not have any negative effects on the injection formation or the caprock.

Furthermore, I concluded that there's no revision necessary to the H2S contingency plan because of the TAG volume increase simply because the concentration of H2S has not changed from the original assumptions. That's the only thing that gets calculated into that ROE. And in fact, all we've done is put more CO2 into the well.

And the injection history demonstrates that the reservoir is an excellent reservoir and has ample capacity to safely contain this H2S and CO2.

Q. Let me ask you, if it was determined, based on some later information about the volumes of H2S increasing beyond what was anticipated in the contingency plan, how is that handled? How is an H2S contingency plan amended and processed in the Division?

A. If DCP should note that the inlet concentration -- average inlet concentration of .57 MOL percent of H2S was to change dramatically, increase dramatically, then -- or increase on an average basis, then they would have to approach the Division and say, you know, "I think it's appropriate to amend this H2S contingency plan and re-calculate the ROE and make sure that if the ROE increases because of increased concentration of H2S, that appropriate procedures are included in that H2S contingency plan to notify people that could be affected."

And that's an administrative procedure that is handled directly between the company and the Environmental Bureau of the Division.

Q. That's not a matter that needs to go before the Commission?

A. That's correct.

Q. Will approval of DCP's motion be in the best interest of conservation, the prevention of waste and the protection of public health and the environment?

A. Yes, it will.

Q. Were Exhibits 3 and 4 either prepared by you or compiled under your direct supervision?

A. They were prepared by me.

MS. MUNDS-DRY: Madam Chair, we'd move the admission of Exhibits 3 and 4 into evidence.

CHAIRMAN BAILEY: Any objection?

MR. BUNTING: No

CHAIRMAN BAILEY: Then they are so admitted.

(Exhibits 3 and 4 were admitted.)

MS. MUNDS-DRY: That concludes my direct examination of Mr. Gutierrez. I pass the witness.

CHAIRMAN BAILEY: Any cross?

MR. BUNTING: Yes, Madam Chair.

CROSS-EXAMINATION

BY MR. BUNTING:

Q. Mr. Gutierrez, thanks for explaining some of these numbers. Can I ask you to explain a few more?

A. Absolutely.

Q. This is referring to Exhibit 4, the first page. So I guess we'll start right at the bottom row here. Is this what it looks like, based on the MOL percentages of this sample that DCP has taken and based on the Linam Ranch throughput for the last month, that the average throughput of acid gas -- this would be gas coming out of Linam Ranch -- is 4.85 million?

A. Under the current -- this is taking into account the month of June. And based on the inlet concentrations of CO2 and based on the inlet concentrations of H2S, it would have generated approximately 4.8 million cubic feet of TAG combined.

As you can see, however, the .89 million cubic feet of H2S is significantly lower than the number that was calculated in the original H2S contingency plan because again, this is just a reflection. It reflects what is happening in terms of added CO2 volume to the plant.

Q. I understand. When we talk about acid gas, we're talking about both CO2 and H2S?

A. That's correct. Acid gas is a term that includes the entire -- what I call TAG. That means treated acid gas. It includes CO2 primarily, H2S; and then it may have a trace amount, probably less than 1 percent, of C1 through C6 hydrocarbons mixed in the stream.

Q. So a negligible amount of other things?

A. That's correct.

Q. And so with this -- feel free to check my math. My calculations could be wrong. But it looks like, based on this data for the month of June, that the throughput from Linam Ranch exceeded 4 million on all but three days.

I know you can't do the calculations now. But given --

A. No, no. You can't really make that conclusion from these numbers. Let me explain why. Because the actual amount of TAG -- first of all, there's a difference between throughput for Linam Ranch, which is what you're looking at here, and TAG.

This throughput is the total gas passing through the plant. So what it shows is that if the concentrations of H_2S and CO_2 were as shown in that analysis of June 16th for every one of these days, then you would be correct.

But the fact is that the CO_2 concentration and, for that matter, the H_2S concentration in the inlet gas varies on a day-to-day basis because the plant is just at the receiving end of the gathering system. They take what they get.

And they do analyze it on a daily basis or -- I'm not certain that their inlet gas is analyzed each and every day, but I think it is analyzed every several days or whatever.

And depending on the amount of CO_2 primarily is the biggest determinate of what the end TAG volume was. But if you assumed that the numbers from June 16th applied to every one of the days of this month, you would be correct.

Q. Just for the purposes of this exhibit, that's what you assumed?

A. I'm sorry?

Q. It looks like that's what you assumed to make these calculations?

A. That's right. Really, the purpose of this exhibit was to show under the current situation what would be the amount of TAG. And just to demonstrate that in effect, under the maximum considerations of the plant, you'd be looking at a little bit more, actually, than 7 million. I think it was 7.02, but it's 7 million, roughly.

Q. And from your experience, would these concentrations vary wildly from day to day?

A. They could. I wouldn't say, "vary widely." But they could vary from, let's say, 2.5 percent CO2 to 2.4 percent CO2 or 2.3 percent or 2.6 percent. And that has a significant amount -- when you take that and multiply it by 156 million, then it does make a significant difference in the volume of TAG.

Q. And you said this 2.5 MOL percent is unusually high for CO2?

A. No, I didn't say it was unusually high. I said it was significantly higher than what was originally assumed to be in the inlet stream when the well was planned six years ago.

Q. Are you assuming -- I take it you're assuming that there would now be -- the gas that the Linam Ranch plant is receiving will be more along the lines of 2.5 MOL percent?

A. Or greater.

Q. Then what about .57 percent H2S? Is that --

do you anticipate that changing?

A. The .57 hasn't really changed. That was the original assumption in the H2S contingency plan. And basically, as Mr. Garrett pointed out, the new gas that's come online is primarily sour gas because of its CO2 content. It has a negligible H2S content.

So while that H2S content may vary as well, and when you look at the plant, depending on which portions of the gathering system are feeding the plant at different times, that concentration does change. But the mix overall inlet concentration hasn't varied much with respect to H2S.

Q. Thanks. So I'm going to move on. I have one more question about this, down at the bottom row. So you agree it's clear, at least on some of these days in June, that the throughput from Linam Ranch gas was more than 4 million barrels of TAG?

A. No, you can't conclude that. Because the only one you could say anything specifically about would be day that we actually had an inlet concentration.

If you look at that day, June 16th, if you look earlier in this exhibit at the page that has the component analysis, that was done on June 16th. And when you look at the flow rate for June 16th, that flow rate was only 128 million. So if you multiply the concentrations times that throughput, you would not be over 4 million in TAG for that day.

Q. Just under 4 million?

A. That's right.

Q. Assuming that on a given day there were more than 4 million barrels, that's all going to the injection plant; right?

A. That's correct.

Q. Okay. There would be no reason that any of that would be taken out before it's injected?

A. That's correct.

Q. Okay. Moving on to page 5 of the exhibit, I had a question about your term on this bottom row. You mentioned expansion project. What is that?

A. Well, the plant is producing at roughly 160, 100 and -- you know, somewhere between 125, 150, 160 a day throughput now. And as mentioned by Mr. Garrett, when this additional gas is taken in, the plant is intending to accept that gas, and they are making some modifications to expand the plant in order to be able to take that gas.

And that is, in fact, why the calculations are done. And the calculations were originally were done on the basis of 225 million a day throughput. Because after all those modifications are done at the plant, they

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should be able to take 225 million a day.

Q. So you are making modifications to the physical plant and, hopefully, for a maximum of 225 million?

A. There are no modifications being made to the AGI facility because it's capable of taking the TAG anyway.

Q. It's at the Linam Ranch --

A. It's at the Linam Ranch Gas Plant that those modifications are being made.

Q. What modifications?

A. I don't know the specific modifications. I think it's upgrades of the aiming/treating systems, et cetera.

Q. Then you mentioned the H2S contingency plan and what would have to be a -- what would qualify as a material change. And you said a significant increase in H2S and what would be a material change. How much of increase?

A. I think one that would essentially get you out of the kind of range of uncertainty that exists in the calculation. So I'd say if you started seeing an average in excess of .6 or .62 MOL percent, you know, then that would require some modification of the H2S.

Q. How much of a pressure change -- how much of a change in the injection pressure would necessitate going over the plan again?

A. None. The pressure is absolutely irrelevant.

Q. Okay. And you're -- so you talked about the subsurface movement of this gas after you inject it. I'm assuming it radiates pretty evenly from injection?

A. Not exactly. The gas is injected in a supercritical state. It's essentially a liquid when it enters the formation. However, it has a lower specific gravity than water, and there is water in that formation currently. There is -- it is saturated with saline water.

That gas displaces some of that water. It also goes into solution into that water, but it does displace the water. But to a certain extent, it over time rises to the top of that injection zone and tends to migrate updip, as it's called. So those rocks are not flat. They dip down to the north. So it tends to migrate more in an updip direction towards the south.

That's why when you see my diagram there, I've got a kind of skewed plume that looks more triangular than circular in shape. That's because the dip direction is to the north. And therefore, over time, that would migrate more to the south.

Q. It sounds like it's fairly unpredictable.

A. Well, I wouldn't say it's fairly unpredictable. I would just say that you have to do a detailed reservoir model to be able to calculate what that exact plume would be. But you know, I think a radial assumption is a pretty good one.

I want to emphasize one thing about this. This is also a conservative assumption in terms of the area that would be affected, because we did not do a simple model to just displace the water. This takes into account irreducible water saturation of 45 percent in that lower Bone Springs formation. So it's saying we're not being able to displace all of the water. We can only displace about 55 percent. Therefore, the area that is affected is greater than if you did a simple plug model.

Q. How would I be wrong in assuming that this -- based on your 30-year assumption, that this injection would stay, would not migrate underneath the land of other property owners?

A. Well, the injection calculations and the understanding that we have of the reservoir is pretty good in this area. We've had seismic data that we've looked at where we identified there are structural features, and we understand what the dip of the formation is. So I believe that my model is a good approximation of what that plume is going to look like after 30 years.

MR. BUNTING: Those are all my questions. Thank you.

CHAIRMAN BAILEY: Commissioner Dawson?

EXAMINATION

BY COMMISSIONER DAWSON:

Q. When I look at your throughput for the Linam Ranch for June, where you have the daily throughput east and west inlets and combined, the standard cubic feet per day at the -- like the first part of the month, it looked like the combined throughput was roughly 170 to 180 from roughly June 7th through the 12th, and then it decreased.

Is that decrease due to the amount of -- I mean the wells being depleted, maybe? What's that decrease?

A. No. There is some variation normally anyway. But the consistent decrease there is the attempt of DCP to stay within the limits of the TAG by asking producers to shut their wells in or by shutting wells in.

Q. So you expect that would be going back up to roughly 170 to 180 million cubic feet per day if those wells are brought back on line?

A. As Mr. Garrett testified, I think he said they've got about 25 million a day shut in right now plus another eight million coming on. So that right there is 33 million, and that Avalon play is coming on pretty heavy. So I would anticipate that, you know, ultimately the plant will reach a throughput that would be in excess of 200 million a day.

COMMISSIONER DAWSON: Thank you.

CHAIRMAN BAILEY: Commissioner Balch?

COMMISSIONER BALCH: I have a couple of questions.

EXAMINATION

BY COMMISSIONER BALCH:

Q. What is the chemistry of the reservoir? Is there any oil saturation?

A. There's no oil saturation, and it's not a sand. It's a carbonate. It's a detrital carbonate.

Q. What is the formation directly above that? You called it the lower Bone Springs?

A. Yeah, I call it the lower Bone Springs.

Q. Is that the second or third carbonate?

A. Correlating those over that area is a little difficult. But I think it would be -- let me refer -- I've got a log here. Yeah, it looks to me like it is the third carbonate in that -- either the basal portion of the second carbonate or the third.

Q. What's the formation directly above that?

A. Let me refer back to the original hearing C-108. I believe it's the Abo there. Let me just make sure.

It's essentially the lower portion of the Yeso and Abo below the Drinkard. We're in essentially the second Bone Spring carbonate and the third Bone Spring carbonate and a little bit of the second Bone Spring sand. But that is deeper into the basin off of the shelf.

In this area, we've basically got the Yeso/Clearfork immediately above it. And if you wanted to look at it in more detail, this is available in the original C-108 application. There's a cross-section that shows the stratigraphy.

Q. You have a 72 percent CO2 mix. What are the overall impacts on objectivity going to be as you increase your CO2 mix?

A. Two things. You're going to wind up with a lower density TAG. So you're going to wind up with a situation where, you know, your injection pressure at the surface is going to go up a little bit because of the lower density of TAG.

But in terms of the injection effects on the reservoir itself, what we would anticipate over the time period of this injection is that you're going to actually open up some more secondary porosity as a result of essentially an ongoing acid job into the carbonate portions of these detrital carbonates.

Q. The Avalon Shale, as you noted, is a developing play?

A. Yes.

Q. And actually probably getting quite a bit bigger? Over a number of years, this could impact the ratio of H_2S to CO_2? That's why I'm asking the question about the CO_2 ratio.

What is the parting pressure of the Bone Spring? Do you have an estimate on that, or has anybody done any mechanical studies?

A. Based on the step rate test, we haven't gotten anywhere near the parting pressure of the formation. But we anticipate that the parting pressure is going to be in excess -- basically, from our step rate test, we took the rate all the way up to nine barrels a minute, with a bottomhole pressure of about 6,500 psi. And the initial reservoir pressure was 3,262, and we hadn't reached the parting pressure yet. So I'd say it's going to be in excess of the surface pressure of 31, 3,200 at least.

COMMISSIONER BALCH: No further questions. Thank you.

CHAIRMAN BAILEY: I have several.

EXAMINATION

BY CHAIRMAN BAILEY:

Q. If we go back to the original order, let's go one by one through the requirements to ensure that all the other requirements have been met for the original order. Let's start on page 5. Yes, you are authorized to drill, which you did do.

All steps were taken to ensure that only the injection interval was impacted; is that correct?

A. Yes.

Q. Was the well substantially constructed in accordance with the description for the inspection well data sheet?

A. Yes.

Q. During the drilling operations, did the operator monitor the well for hydrocarbon shows?

A. Yes.

Q. Were copies of the log of the complete well and other items in the letter delivered to the Division's Hobbs District Office?

A. Yes. All that information was delivered as part of the C-105.

Q. Was a pressure test conducted from the surface to the packer-setting depth?

A. Yes.

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Q. That order, Paragraph Number F, also references to at least once every five years. But since you have been very involved with the Division and in its current requirements for AGI wells, they have changed that requirement to every two years?

A. That's correct.

Q. Is there an objection from you or the company to change ordering Paragraph F to reflect the current requirements of two years?

A. I can't speak for DCP. I think it's a reasonable requirement.

MS. MUNDS-DRY: I can get confirmation from my clients here on the lunch break or whenever we take a break, if that helps.

CHAIRMAN BAILEY: Please. Thank you.

Q. (By Chairman Bailey) The casing-tubing annulus was loaded with an inert fluid?

A. Yes, ma'am.

Q. Is the gas properly dehydrated?

A. Yes. That goes to one of the questions that you raised earlier. There's nothing else that's been put into -- this is a dry gas injection well, so there is no wastewater or anything else. This is strictly dry gas injection.

Q. Thank you for that clarification. And are injection rates and pressures recorded on a continuous basis?

A. They are.

Q. Was the system equipped with a pressure limiting device?

A. Yes.

Q. Paragraph M concerning the discharge permit is no longer an issue, since the Division has released you from that requirement; is that correct?

A. That's my understanding.

Q. An H2S contingency plan has been approved by the Division?

A. That is correct. And as a matter of fact, I believe that it has been modified several times simply because the Division has gone from their old Rule 118, which was what was in place here, to Rule 11. And the most recent plan is dated November 2009, and complies with Rule 11 requirements.

Q. And the other requirements concerning alarms have either been accomplished or an attempt has been made to accomplish?

A. Yes. The issue of the alarm was discussed earlier. And DCP does have systems in place and alarms and signs with flashing alarms on the paved road, as well as on the dirt road north of the site.

Q. The gas pipeline was buried at least three feet below the surface; is that correct?
A. That is my understanding.
Q. You have submitted to the Division written evidence of satisfaction of the conditions precedent to injection?
A. Yes.
Q. Monthly reports are being sent to the Division?
A. Yes. In fact, that's where the pressure and volume data that I used in my analysis came from, the OCD online C-115 reports.
Q. For the non-technical people, is there any possible method where the carbon dioxide can be changed into carbon monoxide?
A. No.
Q. Just to relieve that anxiety that some people may have, was the subsurface equipped with an auto safety valve?
A. Yes. It's set in the tubing.
Q. And is that tubing liner fiberglass?
A. Yes, even though that was frankly overkill, because it is a dry injection well. But we did line it with fiberglass.
Q. So the final question is, there's some

confusion over exactly what DCP is requesting. Is it an extension of authority to temporarily inject acid gas, or is it only asking that paragraph N in the original order be removed so that DCP may request an administrative order authorizing DCP to commence permanent injection of acid gas pursuant to the original order?

A. I don't know the legal implications, but I'll answer it as best I know. I think what DCP is requesting is the removal -- the acknowledgement in the original order of the removal of the discharge plan requirement, and then the vacating of the temporary order that restricts the injection rate to 4 million a day and the pressure to 1,800, and to return to the appropriate numbers that were included in the original order regarding injection -- maximum allowable injection pressure and rate.

CHAIRMAN BAILEY: Counsel, does that --

MS. BADA: I guess my question is -- I'll say it this way. The temporary order is in effect until we have a hearing before the Commission. Is DCP asking for another extension, or are they merely asking for N to be removed?

MS. MUNDS-DRY: We're merely asking for paragraph N to be removed so that we may proceed to get our administrative order as it contemplates in that paragraph Q under the original order.

We've always understood that temporary order to be just that, temporary. So once we can submit written evidence of satisfaction, meeting all the conditions to the Division, we can obtain our administrative order allowing us to inject per the terms of the original order.

So I don't know, Counsel, how you view this, but I don't see the need to vacate that temporarily, necessarily. We are just merely requesting that paragraph N be removed by the Commission so that we may proceed to get our administrative order from the Division.

CHAIRMAN BAILEY: Thank you. I have no further questions.

Any redirect? Or shall we hold that until after lunch?

MS. MUNDS-DRY: I don't have any, if that helps.

MR. BUNTING: I have one follow-up.

CHAIRMAN BAILEY: Okay.

RECROSS EXAMINATION

BY MR. BUNTING:

Q. Based on your experience with calculating this dispersion in the hydrogen sulfide contingency plans, do you think in the future there should be a larger buffer zone around these types of wells?

MS. MUNDS-DRY: Objection, calls for a legal conclusion.

Q. I'm not asking for a legal conclusion. I'm just asking in your experience with the hydrogen gas.

A. Absolutely not. In fact, I think that the calculation, the way it's done, is patently -- my own perception is that it's patently ridiculous because it can't occur. You cannot have an instantaneous release of the entire throughput of the plant. I think that is so grossly conservative now as to not be realistic.

Q. But maybe not going so much on the calculation, but just based on the safety issues that are involved in these types of plants?

A. No. Because I think that there are significant safety procedures that are built into the operation of these facilities that are sufficient to protect the public and are designed to provide notice and protect the public in an ROE that is much larger than what actually could occur.

Q. Do you agree that all those safeguards should be in place and should be monitored and maintained so that they will be effective in the event of a release or some event?

A. I believe that the safety features of the H2S contingency plan and the safety operations should be conducted as approved, yes.

MR. BUNTING: Okay. Thank you.

CHAIRMAN BAILEY: You may be excused. Let's break for lunch and return at 1:15.

(A lunch recess was taken.)

CHAIRMAN BAILEY: We're back on the record. All three Commissioners have returned, so we still do have a quorum for the Commission.

We had just concluded the testimony of Alberto Gutierrez. Do you have any other witnesses?

MS. MUNDS-DRY: No. That concludes our direct case.

MR. BUNTING: Madam Chair, we have a witness, Randy Smith.

RANDY SMITH

Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BUNTING:

Q. Could you please state your full name?

A. Randy Smith.

Q. And where do you live, Mr. Smith?

A. I live in Hobbs, New Mexico.

Q. What do you do for a living?

A. I work for a gas company. I've worked there for -- I'm starting my 31st year. I pump natural gas. That's what I've done for 30 years.
Q. And what is your job title?
A. They call me a mechanic. They -- but I actually operate the compressor station. I do some environmental work for my company. I work on compressors, overhaul them, whatever, a general maintenance person.
Q. In the course of your work, have you had any experience with H2S gas?
A. Yes. We -- my company is the one that takes the gas from like Linam, and then we transport it to California, to Texas, wherever they need it.
Q. So do you have -- through your work, do you have training that involves --
A. Yes. Once a year we go over, you know, the 10 parts per million. We have Delmar instruments that actually monitor the gas and make sure that these plants do not exceed a certain limit of H2S.
Q. You said 10 parts per million. Is that a safety standard?
A. Yeah. I heard them talk about the 10 parts per million. We do not allow four parts per million to come into our pipeline.

CHAIRMAN BAILEY: Can I ask a question first? What company do you work for, and are you here representing your company?

THE WITNESS: No, no. I did not want to mention my company's name because I -- the only reason I'm telling you this is so that you know I do have some experience. I'm not just up here -- my case -- go ahead, Tom.

MR. BUNTING: Mr. Smith is not here representing his company. He's just here in his individual capacity. And we try to keep the name of his employer out of this because he's not speaking for them as a representative, if it pleases the Commissioner.

CHAIRMAN BAILEY: All right. Thank you.

THE WITNESS: I don't mind, you know. I just thought it was not relevant.

CHAIRMAN BAILEY: Okay.

Q. (By Mr. Bunting) So you were talking about safety training. Do you have H2S training at all?

A. Yes. Once a year we go through the H2S -- I know the dangers of it. And like I said, we have little instruments that -- when we are dealing with these plants, like Linam or Frontier or any of these plants, that this instrument will go off if the H2S gets where it's too high for safe working, and we can clear out of there.

Q. So you've had safety training. What about H2S as a waste or corrosion to the pipelines?

A. Like I said, we do not let four parts per million into our pipeline. We close it off, because it's very corrosive. And even the CO2 mixed with water, it becomes very corrosive, too. We watch all these limits. We have gas quality instruments that are constantly monitoring what's going on with all these plants.

MR. BUNTING: Okay. Thank you, sir.

May I approach?

CHAIRMAN BAILEY: Yes.

Q. (By Mr. Bunting) Let me hand you two exhibits. One is part of DCP Exhibit 4, and the second is marked as Smith Exhibit A.

Can you please put a big X right where your house is in relation to this?

A. (Witness complies.)

Q. And you can just hold up it so everyone can see.

A. (Witness complies.)

Q. So how far away is your land from AGI's --

A. My land or my house?

Q. How far is your land?

A. My land is 600 feet.

Q. How far away is your house?
A. It's a mile and a quarter.
Q. In what direction?
CHAIRMAN BAILEY: Can you tell us what exhibit you're referring to?
MR. BUNTING: I'm sorry. Yes. It's page 5, I believe, of DCP's Exhibit 4.
MS. MUNDS-DRY: I think it's in Exhibit 3.
MR. BUNTING: Okay.
CHAIRMAN BAILEY: Thank you.
Q. (By Mr. Bunting) Would you show that again now? Just because everyone has it from front of them.
A. It's just straight north of the H2S -- I think it's marked in the little blue -- it was on this one. But do you see the X? Can you see the X where I've got it?
CHAIRMAN BAILEY: Can you give us some kind of verbal description, so the reporter could --
Q. (By Mr. Bunting) Can you describe where you drew that X in relation to where DCP's --
A. Yeah. It's in Section 18, and it's in the southeast quarter of Section 18.
Q. Thank you, sir. Which way does the prevailing wind blow?
A. Constantly south. It comes from the south and

blows right towards my house.

Q. So the injection well being to the north?

A. It is straight south of my house.

Q. And so I'm going to ask you some of your impressions based on your personal observations of the operations of DCP's plant. First of all, is there a flare at the AGI well?

A. Yes.

Q. Have you observed it flaring?

A. Constantly.

Q. How often is constantly?

A. Well, I hoped that we could get some of the operating records. But I'm seeing this four, five times a week, at least.

Q. Does there seem to be a pattern to the flaring?

A. It seems to go down when it's very cold, when it's very hot, when it's rainy. No. It's just all the time. They're having trouble.

Q. But it happens frequently?

A. It does.

Q. What about alarms? For what reason would alarms go off?

A. The alarms would be H2S release.

Q. Do you ever hear those?

A. Yes. Twice.

Q. You remember two times? Can you explain that to us? When was the first time?

A. The first time was the first winter after they went into operation. They must have froze completely off, because the whole plant was alarming and sirens going off. It was the whole plant, the H2S plant.

Q. How long did that last?

A. Several hours.

Q. What response did you see?

A. I never heard a word from them. As a matter of fact, I've never been contacted by DCP on any alarms.

Q. Okay. You say there was a second alarm. Do you remember that?

A. Yes. We were over, me and my wife and my son and my granddaughter, right out in the middle of the farm field.

Q. On your land?

A. Yes, on my land. And I noticed there's a siren going off over there. And there's no pickups. There's nobody working on it.

Q. You're talking about at the well?

A. At the H2S injection well site. There was nobody working on it. And I deal with Excel Energy, and so I called one of the guys I know over there, and said, "Have you heard anything? I'm right out in the middle of this field." And I would say where I was was maybe an eighth of a mile from that plant.

And he called, and called me back and said, "They say they have a problem, and they think it is an instrument failure." That was all I got.

Q. So you're talking about a -- this is a message that was related to you from?

A. That came from Linam's control room.

Q. Okay.

A. And the alarm went on the whole night, until the next day. And they finally -- maybe they got the part to fix that. I don't know what happened. They finally fixed it the next day.

Q. It eventually stopped?

A. (Witness nods head.)

Q. How long was that?

A. That would be almost 24 hours.

Q. What about odors? Can you smell anything coming from the plant?

A. Yes. I do smell SO2 a lot with those winds, the way they -- especially at night. Things get calmer. The winds get calmer. And it just carries that SO2. And my house is a mile and a quarter. It's just like these fires in the forest. That smoke is going to come down somewhere, and it comes right down on my property, on my house.

Q. Mr. Smith, you said you smelled SO2. How do you know that's what it was?

A. At one time, Linam -- which they are three miles away from me -- was flaring. And it made me sick at my stomach. The smell was so thick. It must have just come right down on my -- I also have a set of cattle pens there. And it's SO2. Now, if it had been H2S, I'd be dead.

Q. So from your experience earlier with SO2, you believe this is what it was?

A. Yes.

Q. Anything else? Have there been any effects on your water supply?

A. Yeah. About two months ago or maybe three months ago, we put in a trailer house west of the injection well site.

Q. Maybe since you have the map, you could show everyone.

A. Yeah. It's what I call my barn area. Let me see if I can find it. I think it's right -- no. It's hard to tell on this map.

Q. Maybe you could put a B next to that and describe where it is in relation to the well.

A. It is in Section 25, and it is in the -- it would be the east side of the north part of Section -- the north quarter, I'm pretty sure. I can't really tell where this section -- but it is in 25. It's kind of -- yeah, that's where it's at in the quarter.

Q. We'll move this into evidence later. So if you'd label it, that's fine.

I interrupted you. You were talking about a well.

A. Yeah. We put this trailer house in there, and we are getting a sulfur smell out of this well. So we thought maybe it's bacteria. So we even called Lea Water, and we talked to them about it. And they said. "Pour some bleach down in there, and that will -- if it's bacteria, that will kill it."

Well, it got better. But now it's come back again. And I smell it in the kitchen of the trailer house. When I turn the faucet on, there it is. And it is sulfur. I got some on my hands. And I went back home, and it was like it was on my skin. I could still smell it, even with the -- no water on my hands.

Q. Was this pretty recently?

A. Yes, yes.

Q. Can you give us dates? When did you first notice the smell?

A. About a month ago.

Q. You say you had it tested. When was that?

A. That's been last week. She -- there's no bacteria there in that well. So now we need to investigate this further and see what's going on.

Q. This is a water well? How deep is it?

A. It's about 220 feet. Most of those wells, you hit water around 60 feet over there, and then they'll go on down to 200 feet.

Q. Based on your experience, is this what you'd expect in terms of operational reliability for a plant like this?

A. I didn't think they'd be down as much as they are. You know, I hardly ever see anybody over there, except when they're down. And so I didn't think that -- I run electric equipment in my job, and we can go two or three months without losing a unit. And then I'm seeing this thing -- every three or four days, they're having, you know, trouble --

Q. When you say, "down" --

A. -- every time I turn around.

Q. -- what exactly do you mean?

A. They're flaring over there. And then in about an hour or so, here come some pickups and they'll start working on it. And sometimes in an hour or so, they will have it back up and going.

Q. Do you think these problems are -- do you think these conditions are going to get any better or worse or the same if the volume being injected increases?

A. Just from my experience running compression equipment, the harder you work it, the more problems you're going to have.

And I've seen when the temperature down there was over 100 degrees every day it was down. Every day that the temperature was over 100 degrees, that plant was down and it was flaring, and it would take them two, three hours. And it seemed like it was very temperature -- it had something to do with the temperature.

So I'm thinking -- I don't know, just from my experience, that maybe their compressor is getting hot and shutting down. If you put more through it, it's just going to increase that.

Q. I'm going to refer you back to DCP's Exhibit 3. I won't hand it to you, but I'll just show it to you. This is the H2S contingency plan. You heard people talking about this today?

A. (Witness nods head.)

Q. Have you seen this before?

A. I seen it yesterday in your office.

Q. Before that, have you seen it?
A. No, never seen it.
Q. Has anyone from DCP contacted you and mentioned a contingency plan?
A. No.
Q. Has anyone --
A. They know I'm there. They seen me over there working on the farm and stuff. No, they haven't never contacted me.
Q. So you're completely sure you've never received a copy of this?
A. Yes.
Q. Based on your understanding of what you've heard today, what does this represent right here?
A. That would be like an emergency plan of what would be done if -- you know, how they would evacuate people, just a type of emergency response.
Q. Did you hear the witness earlier today stating that you're entitled to receive this plan and that he thought DCP had provided you with it?
A. Yes, yes.
Q. Do you agree with that?
A. Repeat that.
Q. Do you agree that you're entitled to notice under this plan? Is this something you would have liked

to have seen?

A. Yes. I would have liked more communication between me and DCP from the very beginning, back in 2006. They wouldn't even acknowledge I was even there. They --

I remember reading in one report it talked about irrigation wells, and I have four of them within a half mile of this plant. And in that report it says there's none within a mile. Yeah. And I was right there.

The only way I found out about this H2S well was one of their employees told me, "We're getting ready to get rid of this sulfur plant and we're going to put an injection well a mile and a half away." Then I started, "Wait a minute. That's right on me." That's how I found out about it.

Q. You mentioned communication with DCP. Did you hear earlier in the day one of the witnesses said that you did not allow DCP officials on your land to install the alarm?

A. They never asked.

Q. Do you have any idea what that's referring to?

A. It may be that my original lawyer said that we did not want an alarm at my house. But they never did come back to me and, "Let's work this out or let's see what we can" -- no, they never did. And I never heard from them.

Q. What was the -- why didn't you want an alarm?

A. From what I see now, I would never get any sleep. This plant is going off all the time. And I bet -- of course I don't have the operation records in front of me -- it's close to 1,000 times since they started this in 2009. These alarms would be going off constantly.

And I have my grandchildren out there at times. And can you imagine getting a grandchild up in the middle of the night and saying, "We've got to go. We've got to go. There might be some H2S."

Q. Well, I should clear something up. Earlier I asked you about alarms, and you said you heard two audible alarms. Are we talking about different things?

A. The one I think was some kind of freezeup, because the whole plant was going off. I mean -- or maybe a malfunction with the computer system, because every alarm -- it was a real cold day. Every alarm in that was blinking and going off.

The other time, it was just one. And it was just on the -- it would be the north side of the compressor. It was just setting there, blinking and going off. I would have thought that would have shut that plant down. If that's an H2S leak detector, it should have shut that plant down.

But they were still running, and it was just setting there, blinking and sounding -- that's how -- the audible is how I knew something was going on. I might not have noticed just the blinking light.

Q. Mr. Smith, what's your understanding about subsurface movement of this gas that's being injected?

A. What is what, now?

Q. What do you -- what's your understanding about what's happening to this gas after it goes into the ground?

MS. MUNDS-DRY: Objection. I don't think Mr. Smith has shown he's qualified to testify about any of the issues about subsurface. I don't think he's a geologist or an engineer.

MR. BUNTING: We're just asking for his knowledge, if he has any firsthand.

MS. MUNDS-DRY: Based on what experience?

CHAIRMAN BAILEY: He hasn't qualified --

MR. BUNTING: We haven't tendered him as an expert.

CHAIRMAN BAILEY: You tendered him as a resident of the area. I sustain that objection.

Q. (By Mr. Bunting) What's -- so how do you enter your property, Mr. Smith?

A. I come down Maddox Road. It's straight north.
Q. Can you find Maddox Road on what you have in front of you?
A. Yes. It comes off of Highway 62 180, and it goes in on section -- the line between Sections 25 and 30.
Q. If these roads aren't labeled, could you please label them?
A. I think it does have Maddox.
Q. So I asked you, how do you enter your property?
A. I have a cattle guard. You know, I just -- I unlock it and go in right there. It's kind of hard -- it's right at the end of Maddox Road, before it turns back to the west. That's the entrance of my property.
Q. Is there any other way in or out?
A. No, no.
Q. So where is this entrance in relation to the AGI well?
A. It is about -- this shows maybe a half mile from the entrance. Where I go in is a half mile from the injection well.
Q. And so let's say -- I'll give you a hypothetical. Let's say something were to invoke this contingency plan, some unflared release of H2S, and the

wind were blowing it towards your property. How would you -- would you have to get through this gate to leave?

A. I could go across pasture land and maybe find a gate out of there. And then if it wasn't locked, maybe go to another -- this is my way in and out of there.

Q. This is your main way in and out? Would you --

A. I would have to see which way the wind is blowing, first thing. I sure wouldn't want to go toward it. I have become very aware of which way the wind is blowing every day that I'm out there.

Q. Are there any other developed roads on your property?

A. Yeah. There's some two-track -- you know, I call them ranch roads or -- and then -- but they run into peoples' private property, and I might not be able to get out that way. They might have it locked or -- this is my main way in and out.

Q. So you have one main entrance that you know you can get in and out of?

A. Yes.

Q. What happens if H2S is released and it's blowing towards your house and you have to leave?

A. I'm going to get down the opposite direction, however I can -- just as far away from it as I can.

Q. Assuming you can get over that farmland and maybe find a gate?

A. Um-hum. Yes.

Q. Is the only way you're guaranteed to be able to leave your property by going in through that one entrance?

A. At night, this -- I need to be able to get out this way. But in the daytime, I could find my way out of there going through other peoples' property.

Q. Why do you say it's different at night?

A. Well, at night I can't find these roads. If you've ever been out in a pasture, it's hard to find these two-track roads and head -- you know, my main -- I would just go the opposite direction the wind is blowing and just get as far away from it as I could.

Q. Is it safe for you and your family to live so close to the plant and have one way in and one way out?

A. No, I don't think it is.

MR. BUNTING: Those are all the questions I have for you, Mr. Smith.

MS. MUNDS-DRY: I have a few questions for Mr. Smith.

Good afternoon, Mr. Smith.

THE WITNESS: Hi.

CROSS-EXAMINATION

BY MS. MUNDS-DRY:

Q. You mentioned earlier in your testimony that you believe you saw a flare four to five times a week. Was that your testimony?

A. Yes.

Q. Was that at the plant or at the well site?

A. At the well site.

Q. So from your house can you see the flare stack of the well site?

A. Yeah, anywhere on my property.

Q. And you indicated that four to five times a week you saw the flare. Give us some time parameters. When did you first start noticing the flare?

A. In 2009, as soon as they started trying to put it on line. You know, they had heck getting it ever to go. They finally got it going. And there for a while, it seemed like they were working out a lot of bugs. And once they got that, it kind of calmed down a little bit.

But now I see it increasing, just more flares. And it's been awful hot down there.

Q. And your testimony -- I believe you said you believe that the flare goes up when the well is down? Is that the word you used, when it's down?

A. No. When the compressor is down.

Q. Okay. Are you aware of whether that's the only reason the flare might be on?

A. If they get a leak, that flare will be on, if they leak H2S. If they have some kind of technical -- you know, a compressor overheating or any kind of alarm on that compressor, low oil, that flare is going to go off.

Q. Were you present for Mr. Cook's testimony this morning?

A. Yes.

Q. And do you recall his testimony that the flare will come on if they are purging their equipment, for example?

A. Right. I understand there is what they call sweet gas.

Q. I'd like to ask you sort of the same set of questions on the alarm. You said you heard an audible alarm two times. Do I understand that correctly?

A. Yes. We do not get that alarm every time.

Q. Is that alarm from the plant or from the well site?

A. That's from the well.

Q. How do you know it's from the well site?

A. Because it flares. It starts flaring. And then here will come a bunch of DCP trucks, and they'll start working on it.

Q. You mean you see the flare and then you hear the alarm?

A. No. I do not -- it does not alarm. You know, I'm not totally familiar with their -- they've never invited me over even to look at it. But the audible I think is just when it's an H2S leak.

Q. How do you know that?

A. Well, because they go down a lot, and there's no audible alarm. You'll just see the flare take off. You won't never hear any kind of audible alarm.

Q. Are you aware if there are other reasons why the alarm may sound?

A. No.

Q. Have you ever asked to visit the well site?

A. I have not, no.

Q. Are you aware of whether -- you indicated that DCP had never contacted you when you heard the audible alarm. Are you aware of whether DCP is required to contact you when there's an audible alarm?

A. You'd think if somebody's life might be in danger, they might call you. I don't know.

Q. Are you suggesting that because there's an audible alarm, there's a threat to human health?

A. Yeah. There could actually be H2S.

Q. But you're not aware of other reasons why this alarm may sound, other than for protection of human health?

A. Right.

Q. You also indicated that you sometimes get -- SO2, is that sulfur dioxide? Is that what that is?

A. Yes.

Q. It's not H2S? I think you verified that.

A. No, no. I have smelled some strange odors and, you know, I don't know what they were. They weren't SO2. It was just a very odd odor. I didn't know what it was.

Q. But you were saying in this instance, I think your testimony was, you were familiar with the smell of SO2, so you knew that's what was in the air?

A. Yeah. When they're flaring, they're making SO2.

Q. Is it also your testimony that that comes from the well site and not from the plant?

A. Actually, both. I get both.

Q. You get both? You indicated you've seen some sulfur in a water supply well. Mr. Smith, what evidence are you offering today that that comes from the AGI well?

A. I am not. I am just telling you I have a sulfur smell in my well.

Q. Okay.

A. It will take more -- I will need to pull samples and take them to a local lab. It did not have any bacteria. I thought maybe that's what it was, that the well had some bacteria. It did not have it.

So now I've got to go to a reputable lab and have this water analyzed and see if they can come up with what I am smelling.

Q. You testified, I believe, Mr. Smith, that your water well was at a depth of 225 feet?

A. Right.

Q. Are you aware that the injection interval for AGI well is between 8,700 and 9,000 feet?

A. Right.

Q. You testified that you have never seen the H2S contingency plan; is that correct?

A. I seen it yesterday. He put it -- he showed me what you had seen.

Q. Were you aware that DCP had to have such an emergency plan?

A. I kept seeing it in the orders, you know. And I thought, well, they'll contact me and tell me what I need to do. And I never got contacted.

Q. Did you ever call DCP for such a plan?

A. No.

Q. You mentioned you thought that it wasn't you that maybe didn't allow the hard-wired alarm, but that maybe your original lawyer said no?

A. I told him I didn't want an alarm in my house, so that's where we left it. And he wrote a letter to the OCD that I didn't want an alarm in my house. And I told you why. It would just be going off all the time.

Q. Sure. But he -- I just want to make sure I understood that that was something that was from your direction?

A. Yes. I said, "I do not want an alarm in my house. I don't want to live that way."

Q. Is that still your position today, that you don't --

A. Yes.

MS. MUNDS-DRY: Thank you, Mr. Smith. That's all the questions I have.

CHAIRMAN BAILEY: Commissioner Dawson?

EXAMINATION

BY COMMISSIONER DAWSON:

Q. You said you had some other wells in the area, water wells?

A. Yes.

Q. Where are they located?

A. I've got one that's even closer to the well.

As you turn in and head from my house on Section 30, it is -- it will be right on the road, and it's in the northwest quarter of Section 30.

And then I have another one that is in Section 25, and it is -- it's going to be the same as that area. It will be to the south -- if I'm looking at these section lines right, I think it's in the north quarter of -- the northeast quarter of Section 25.

I can get you the exact -- and then I have another one that is in Section 25. And it is -- it's going to be -- it's on the west side. It would be -- I think it's going to be in the south quarter of Section 25 on the east side.

Q. Southeast?

A. Yeah.

Q. Are those wells completed, do you think, in the same water aquifer?

A. Yes.

Q. Do they have any SO2 smells in them?

A. I just use them for irrigation. I haven't really -- until I hooked this one up to this trailer house, I had just been watering cattle with it. Once I hooked it up to the house, then I had this odor.

Now, these irrigation -- we're pumping into a closed system. I haven't had those tested. But I probably do need to test that one that is closest to the well.

COMMISSIONER DAWSON: I have no further questions.

EXAMINATION

BY COMMISSIONER BALCH:

Q. I have a question about the water wells. From your description, it sounds like your well at your trailer is also in the northeast quarter of Section 25. How far away is that from that irrigation well?

A. It looks like on this map here, about from -- my other irrigation well?

Q. The closest irrigation well to your new water well.

A. It's almost a mile.

COMMISSIONER BALCH: Are we going to be able to look at that map?

CHAIRMAN BAILEY: He needs to be able to describe it so that the transcript can reflect those areas on the map that we're talking about.

MR. BUNTING: We'll make this part of the record, this exhibit.

CHAIRMAN BAILEY: You will?

MR. BUNTING: Yes.

CHAIRMAN BAILEY: You'll provide copies

for everyone?

MR. BUNTING: Yes.

COMMISSIONER BALCH: I have no further questions then.

COMMISSIONER DAWSON: Can you also provide the sampling results from the well near the trailer?

MR. BUNTING: We'd be happy to.

EXAMINATION

BY CHAIRMAN BAILEY:

Q. I was a little confused. You talked about your company that you worked for, and then the number of times that you've seen flares. Do you work from home?

A. I work for Transwestern Pipeline Company, and I live in a company house. And when I -- on the weekends, we stay at this farm. And on my vacation days, holidays, we are at the farm. What part of that didn't -- no, I don't see the flare from Transwestern. I see the flare when I'm at the farm.

Q. On weekends and holidays?

A. Yes, and vacations. I'm over there almost every day at the farm. I have cattle, and then we're irrigating. So I'm there every day after work.

Q. You talked about your company only allows a maximum of four parts per million of H2S?

A. Yes.

Q. Do you know if that's dry gas concentration or wet gas?

A. That is dry. We don't want any wet.

CHAIRMAN BAILEY: Those are all the questions I have.

MR. BUNTING: I have one more.

REDIRECT EXAMINATION

BY MR. BUNTING:

Q. Mr. Smith, whose responsibility is it -- is it your responsibility to call DCP and find out if they have any warnings to relate to you?

A. I would think it would be their responsibility to call me. They know what's going on over there. I do not.

Q. Do you know if they have a responsibility under the law to do that?

A. I would think they would. I don't know.

MR. BUNTING: Okay. That's all. Thank you.

We'd like to move into evidence the -- what was demonstrative and what was DCP's Exhibit. And we'll make copies for the Commission.

CHAIRMAN BAILEY: The photographs, are they part of your --

MR. BUNTING: We haven't used them. But

yes, we'd like to move them all into evidence, if possible.

MS. MUNDS-DRY: I'd like some sort of evidentiary foundation of what those pictures are supposed to be, if they're going to move them.

MR. BUNTING: Sure. May we approach?

CHAIRMAN BAILEY: Yes.

Q. (By Mr. Bunting) Mr. Smith, I already gave you what we've marked as Exhibit A, and here is Exhibit B and here is Exhibit 3. I just handed you -- I'm sorry, Exhibit C. I've handed you three photographs now.

A. These three?

Q. Yes, sir.

A. Yeah. This is the H2S facility.

Q. Which one are you describing?

A. The H2S facility.

MS. MUNDS-DRY: Which exhibit is that, sir?

THE WITNESS: Is that A?

MR. BUNTING: There's a sticker at the bottom.

THE WITNESS: That is B.

Q. (By Mr. Bunting) What did you say that was?

A. The H2S facility. And I am on -- where I took this picture, I am close to the middle of my farm.

Q. This is a photograph you took?
A. Yes.
Q. Is it a truthful and accurate depiction of what you saw on that day?
A. I see this all the time.
Q. What about the next one? What exhibit is that?
A. Exhibit A. That shows -- my entrance is right in this bottom corner. Then I go straight down that road that you see and go past the plant to go to my house.
Q. Is that a photograph you took?
A. (Witness nods head.)
Q. Is it an accurate depiction of the way you saw things that day?
A. Yes, yes.

COMMISSIONER DAWSON: That road is oriented -- you're traveling from south, heading north on that road?

THE WITNESS: No. I'm heading straight east. I'm heading towards the east. Then I go up and turn north to go to my house. I go past the plant, and then I turn north to go to my house.

COMMISSIONER DAWSON: You're going through Section 19?

THE WITNESS: Going through 19, yes.

CHAIRMAN BAILEY: When were these photographs taken? Are they all on the same day?

THE WITNESS: I don't remember the exact date. This was after a rainstorm, and we hadn't had any rain in six months.

But I did -- I took this just to -- and I think I took this one the same day. These were both the same day. But I have -- these are the only two pictures that I emailed. I have several on different days that I -- I just picked these two because you could see it so plain. We had the black clouds behind.

Q. (By Mr. Bunting) What about the third one, Mr. Smith?

A. This is Linam, and that's that smoke I'm telling you about. When they do that, and if the wind is just right, it travels to my ranch. It's just like these forest fires that you guys have had that you get that smoke off those forest fires. And it's the same thing. It travels out there and then comes right back down.

That day that I told you where I got sick to my stomach, they were doing this right here. And I think it come in on me.

Q. Did you take that photograph, sir?

A. No. I did not, no.

Q. Where did you get it?

A. Oh, this one? Yes, yes. I thought you meant did I take a photograph when that come down in on me.

Q. You took that?

A. Yeah, I took this.

Q. That's a photograph of the Linam Ranch facility?

A. Yes. And my wife has taken several pictures. We've got a whole lot of pictures of both facilities.

MR. BUNTING: Thank you, sir.

I believe we've already moved the map into evidence?

CHAIRMAN BAILEY: Yes.

MR. BUNTING: We please move Exhibits A, B and C and the map as Exhibit D into evidence.

CHAIRMAN BAILEY: Are there objections?

MS. MUNDS-DRY: I don't have any objections.

I would like to ask some additional questions of Mr. Smith, now that we're talking about these pictures, if I could.

CHAIRMAN BAILEY: I think that would be appropriate.

MS. MUNDS-DRY: But I don't have any objection to the pictures. He doesn't remember when he took them, but I don't remember what I had for breakfast yesterday, so I'm not going to hold that against them.

CHAIRMAN BAILEY: Exhibits A, B, C and the map that is part of the DCP exhibit are all admitted into evidence.

(Exhibits A, B, C and D were admitted.)

MS. MUNDS-DRY: That will be Exhibit D?

MR. BUNTING: Yes, D.

MS. MUNDS-DRY: And we'll get copies of that?

MR. BUNTING: Yes.

MS. MUNDS-DRY: May I ask a few questions about these pictures?

CHAIRMAN BAILEY: Yes.

MS. MUNDS-DRY: We were so close to being done.

THE WITNESS: I'm okay. I traveled a long way. I don't mind.

RECROSS-EXAMINATION

BY MS. MUNDS-DRY:

Q. These are the two pictures, Exhibit A and B, that you represented were part of the well site?

A. Yes.

Q. Are you aware that the pilot on that flare is lit all the time?

A. Yes.

Q. And I guess I have a more basic question.
You're aware that the flare is part of the safety system that's a part of the well?

A. Yes.

Q. And so you're not suggesting that just because there's a flare, that there is some danger to you, are you?

A. No.

Q. This Exhibit C, Mr. Smith, you indicated this was from the plant, not the well site?

A. That's Linam.

Q. And the plant is not a subject of today's hearing; correct?

A. Right, right.

MS. MUNDS-DRY: That's all the questions I have. Thank you.

THE WITNESS: I have seen the pilot out on this facility.

MS. MUNDS-DRY: Have you provided us any evidence of that today?

THE WITNESS: None, other than just my wife was with me.

MS. MUNDS-DRY: Thank you.

CHAIRMAN BAILEY: Do you have anything more?

MR. BUNTING: No.
CHAIRMAN BAILEY: Then you may be excused.
THE WITNESS: Thank you. Can I say thank you for letting me testify? And I feel better about this than the first time I come up here. We did the same thing. I testified after lunch, and the Chairman fell asleep. So this went a lot better.
CHAIRMAN BAILEY: We have a new Chairman in place.
Do you have any other witnesses?
MR. BUNTING: No.
CHAIRMAN BAILEY: That concludes your case?
MR. BUNTING: Yes, ma'am.
CHAIRMAN BAILEY: Are there any closing statements?
MS. MUNDS-DRY: I do, only because of maybe some confusion about what DCP is in front of you asking here today.
First, also, Madam Chair, I wanted to clarify -- as I said I would, I checked with DCP. And should the requirement that they need to get the pressure tested every two years, as has been the new condition on newer AGI wells, should the Commission wish to place that condition on them as well, instead of the five years,

that's acceptable. I just wanted to follow up on that.

Thank you for your time today and for setting this special hearing docket. We know it was off of your regular docket, and we appreciate that. And we appreciate you recognizing that we are in a bit of a critical situation, in that we have shut in gas producers in an attempt to comply with what we view as a temporary order, the D order that imposed the temporary volume limit.

We asked in our motion to remove the paragraph N, which requires a discharge permit. I don't think there's been any evidence or opinion to the contrary that a discharge permit is required. It appears clear from the Division that a discharge permit is no longer required, so we do continue to ask you for that.

In terms of the procedural steps forward, I leave that to your -- I'll suck up a little bit. You're a very smart Commission as to the best procedural method. That Q condition does require DCP, at the end of the day, once it's met all the conditions, to come to the Engineering Bureau and provide evidence that we have complied with all the conditions, and issue that administrative order.

We would suggest to you that if you are considering amending that original order, that you consider giving the authorization and essentially us skipping that Q step. We'll certainly do that, if that's how the Commission sees it. We're trying to figure out the most efficient and economic way, and we still are under that temporary order until you issue your decision.

But at this point, we would like to be clear that what we are mostly seeking is to remove that N condition, which will allow us to proceed to get our -- whatever final order that is, however you view that, to proceed under the original order conditions.

Thank you very much.

MR. BUNTING: Madam Chair, Commissioners, thank you for hearing us out today. Mr. Smith sees this as a question of whether or not it's safe to inject more gas right next to his house.

He's a member of the industry. He doesn't want to see gas producers shut out unnecessarily, but this was a question of safety for him and his family and the environment. And DCP was not responsive to many requests for information that would have allayed some of these fears, so that's what we are looking for today. That's what we came here for today. Thank you.

CHAIRMAN BAILEY: Then the Commission can go into executive session to debate this hearing. We will announce, if we reach a consensus, our decision and direct our Counsel to prepare an order, which will be signed at our next regularly scheduled meeting on the 28th.

So do I hear a motion for the Commission to go into executive session pursuant to NMSA 1978 Section 10-15-1-H to deliberate only on this case?

COMMISSIONER BALCH: I make that motion.

COMMISSIONER DAWSON: Second.

CHAIRMAN BAILEY: All those in favor? We will now go into session. If you'd like to stay around to hear the --

MS. MUNDS-DRY: I had a clarifying question. I'm sorry. If you determine that you will need further deliberations, which is understandable, would there be an opportunity for DCP to ask for some sort of interim or temporary relief while you're determining -- we are still under that 4 million order. We are shutting in producers.

We're just wondering, if you determine that it will be some time before you reach a determination, whether we will have an opportunity to seek some sort of interim relief for some additional volume increase so we don't have to shut in producers.

CHAIRMAN BAILEY: Let us go into session and debate the question. And then when we come back out, we'll be able to respond to that question.

MS. MUNDS-DRY: Thank you, Madam Chair.

(Whereupon the Commission went into executive session.)

CHAIRMAN BAILEY: We're back on the record.

The Commission has determined that DCP has met the requirements of R-12546; that paragraph N is no longer applicable; that paragraph Q, which requires the operator to go back to the Engineering Bureau, is not applicable. With the Commission order, they will have authority to be injecting under the authority of R-12546.

However, Paragraph F will be modified to reflect the two-year requirement for pressure testing, which is the current Division requirement for acid gas injection wells.

And paragraph O will be modified to no longer require an alarm at Mr. Smith's location, but to make a requirement that DCP shall make available to landowners within the ROE that is reflected in DCP's map in the contingency plan, which is Exhibit 3, so that the alarm system will be made available, but it is not a requirement for DCP to install it. Counsel?

MS. BADA: We need a motion.

CHAIRMAN BAILEY: Do you have a motion to have the Commission Counsel draft an order reflecting the statements I've just made?

COMMISSIONER DAWSON: I'll second the motion.

COMMISSIONER BALCH: I'll first the motion.

CHAIRMAN BAILEY: All those in favor signify by saying aye. All those opposed?

Okay. The order should be drafted to be signed at our next Commission hearing on July 28th. Thank you very much.

MS. MUNDS-DRY: Thank you very much.

CHAIRMAN BAILEY: Do I have a motion to adjourn?

COMMISSIONER BALCH: I so move.

CHAIRMAN BAILEY: Second?

COMMISSIONER DAWSON: Second.

CHAIRMAN BAILEY: All those in favor signify by saying aye.

Okay. We will adjourn the hearing.

(The hearing was adjourned at 2:30 p.m.)

REPORTER'S CERTIFICATE

I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO HEREBY CERTIFY that on July 14, 2011, proceedings in the above captioned case were taken before me and that I did report in stenographic shorthand the proceedings set forth herein, and the foregoing pages are a true and correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with any of the parties or attorneys in this case and that I have no interest whatsoever in the final disposition of this case in any court.

WITNESS MY HAND this 27th day of July, 2011.

Jacqueline R. Lujan

Jacqueline R. Lujan, CCR #91
Expires: 12/31/2011