1   PUBLIC HEARING

2   STATE OF NEW MEXICO

3   OIL CONSERVATION COMMISSION

4

5   Pecos Hall, 1st Floor, Wendell Chino Building

6   1220 S. Saint Francis Drive santa Fe, New Mexico

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9   TRANSCRIPT OF PROCEEDINGS

10   March 11, 2025

11   SPECIAL MEETING: DELIBERATIONS, PFAS RULEMAKING

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14 HEARD BEFORE:

15   HEARING OFFICER FELICIA ORTH

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17 COMMISSION MEMBERS:

18   GERASIMOS ROZATOS, Chair

19   GREG BLOOM, Member

20   DR. WILLIAM AMPOMAH, Member

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22 COUNSEL TO THE COMMISSION:

23   MR. ZACHARY SHANDLER, ESQ.

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1	TRANSCRIPT OF PROCEEDINGS
2	CHAIR ROZATOS: Good morning to everybody.
3	I'm Gerasimos Rozatos. I am the acting director for
4	the Oil Conservation Division, and I'm also the
5	acting Chair for the Oil Conservation Commission.
6	I'd like to bring into order our meeting
7	that we have scheduled for today. It is the
8	rulemaking that we have, so we'll start up our
9	meeting with a roll call.
10	As stated, I am Gerasimos Rozatos. I am
11	the acting director for the Oil Conservation Division
12	and acting Chair for the Oil Conservation Commission.
13	And I'll go to the commissioner right
14	next to me.
15	COMMISSIONER BLOOM: Good morning. I'm Greg
16	Bloom. I'm the designee of the commissioner of
17	Public Lands. Thank you.
18	COMMISSIONER AMPOMAH: Good morning. I'm
19	Dr. William Ampomah, designee of the Energy
20	secretary.
21	CHAIR ROZATOS: Excellent. Thank you all.
22	So we've got our roll call.
23	Next we need to do the approval of our
24	March 11th and 12th, 2025, agenda. If I could get a
25	motion for the approval of the agenda.

1   COMMISSIONER BLOOM: I so move.

2   COMMISSIONER AMPOMAH: I second.

3   CHAIR ROZATOS: Excellent so our agenda is

4   approved.

5   (Motion approved.)

6   CHAIR ROZATOS: As stated, this is our

7   pending case. It's Case Number 23580. It is

8   application of WildEarth Guardians to amend the

9   Commission's rules to address PFAS amendments to

10   19.15.2, 19.15.7, 19.15.14, 19.15.16 and 19.15.25 of

11   the New Mexico Administrative Code.

12   This is going to be the Commission's

13   deliberations, so I want to open it up and we can

14   start deliberating. Commissioners.

15   COMMISSIONER BLOOM: Mr. Chair, I don't know

16   if you have any ideas about how we work our way

17   through this. I think, however, one approach might

18   be to just start at the top and work our way through

19   it. I think we'd get pretty quickly into the mix on

20   some of the bigger issues.

21   Or we could just, you know, each spend a

22   few minutes talking about where we're at with the

23   case in general.

24   CHAIR ROZATOS: Thank you.

25   Commissioner Ampomah, did you have

1   anything?

2   COMMISSIONER AMPOMAH: Not really. You

3   know, I feel like if you look at NMOCD's summaries,

4   really reflects a lot, then compare the petition and

5   then also that of NMOGA's position. So I think that

6   will be very helpful. And also the one that counsel

7   also prepared for us. So either way is fine with me.

8   CHAIR ROZATOS: Excellent. I do have one

9   question for you, Commissioners. We could definitely

10 go one by one, as Commissioner Bloom stated. Is

11 there a preference on potentially taking a holistic

12 and just adopting one set of suggestions? For

13 instance, WildEarth Guardians NMOGA's or the OCD's.

14   COMMISSIONER AMPOMAH: I will say that it's

15 probably one after the other, because maybe we might

16 not all agree on adopting just one single suggestion.

17   CHAIR ROZATOS: Excellent.

18   Commissioner Bloom.

19   COMMISSIONER BLOOM: Mr. Chair, I think I

20 agree with Dr. Ampomah there. I don't think any one

21 set of proposals encompasses where I would land. And

22 I'm not sure that it would for the entire Commission

23 either. So I think working our way through from the

24 beginning might be fruitful.

25   And just something to put out there.

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 1   One thing I've done in the past, I think we did

 2   rulemaking on the pit rule back in 2012 or so, 2013,

 3   and we kind of, you know, found our way through,

 4   looked at some areas where we agreed and could set

 5   those aside, and then dealt with some of the trickier

 6   issues at the end.

 7            Although in this case, I think there's a

 8   few big issues out there that we just need to get

 9   into.

10            CHAIR ROZATOS:  Excellent.  Well, then,

11   let's start one by one.

12            COMMISSIONER BLOOM:  Dr. Ampomah, I think

13   you were saying that going through OCD exhibit was

14   helpful in terms of getting us side by side.

15            COMMISSIONER AMPOMAH:  I think so, and that

16   was really, really helpful.  But let's say if we even

17   start from the beginning, we can still cross-check

18   that with what OCD has in terms of the comparison of

19   all the proposals, and we can agree or, more or less,

20   discuss.

21            CHAIR ROZATOS:  Okay.  We can totally do

22   that.  I apologize, I just had failure of my

23   electronic device.  So it'll take me a second.  If

24   you all would want to start with the first one.

25            COMMISSIONER AMPOMAH:  You know, with the
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1 first one, so the petitioner is proposing a

2 definition for "chemical."

3 You know, I kind of side with OCD

4 because this is a common industry term, and if we

5 intend to define that with regard to this rulemaking,

6 probably there could be some limitations to the

7 scope. So I agree with OCD that that should be

8 scrapped.

9 COMMISSIONER BLOOM: I would coincide there,

10 as well.

11 CHAIR ROZATOS: I actually have to agree

12 with that also, so I think we would stick with what

13 the OCD stated for that one. Excellent.

14 And, again, I apologize. Can one of you

15 just say the actual rule number that we're looking

16 at? As I said, mine kind of collapsed.

17 COMMISSIONER BLOOM: Sure. That was Rule

18 19.15.2.C(4) and (5) NMAC. It's the definition of

19 "chemical," which we would remove from consideration.

20 It was proposed by the joint proponents.

21 CHAIR ROZATOS: Excellent. Thank you.

22 COMMISSIONER BLOOM: Then I believe the next

23 one right after that is Number (5), which is the

24 definition of "chemical disclosure list."

25 And that is a term I would want to

1 retain because it comes into play later on. We get

2 into questions about do we allow trade secrets or

3 proprietary information to be retained in FracFocus.

4 And I think it's time to let the sun shine in and

5 drop the trade secrets. I'm glad to elaborate more

6 on that if there's any discussion of it.

7   CHAIR ROZATOS: I actually would like to

8 hear some more on that, if at all possible from you,

9 Commissioner.

10   COMMISSIONER BLOOM: And, Mr. Chair, if you

11 want, we could take a few minutes here. You can pull

12 up your documents. I know it's distracting to try.

13   CHAIR ROZATOS: I apologize. Everything

14 just kind of went. If we could just take a minute,

15 if you could give me five minutes and we'll be right

16 back on record. Thank you.

17   (Pause in the proceedings.)

18   CHAIR ROZATOS: Apologies to everybody.

19 We're back on the record.

20   Commissioner Bloom, you were discussing

21 a specific rule. If you could just restate it for

22 the purposes and we just get back to it.

23   COMMISSIONER BLOOM: Yes. Let move up the

24 page here to find that again.

25   Okay. So before our pause there, we

1 were looking at proposed changes of rules to

2 19.15.2.C(5) and that is the addition of a definition

3 for the term "chemical disclosure list," which means

4 a list of all chemicals used in downhole operations

5 at a well site.

6   And let me just set the stage for this.

7 This comes into play a little bit later. If we look

8 at citing here OCD's exhibit binder that they use for

9 the hearing, and this is Page 32 of that 101-page

10 document, there is another definition for

11 "undisclosed chemicals" for 19.15.2.U, as in under,

12 (3). And that reads: Undisclosed chemicals means

13 either chemicals that are listed without a chemical

14 abstract service number in the FracFocus database

15 pursuant to 19.15.16.19.B NMAC, or if a safety data

16 sheet lists ingredients that comprise less than

17 100 percent of the whole chemical product, those

18 chemicals that make up any unlisted portion of a

19 chemical product in a safety data sheet.

20   I believe this becomes important with

21 Page 35 of the PDF. We see WEG's proposal, the joint

22 proposal, of 19.15.7.16.A NMAC, where it says that:

23 Within 45 days following the completion or

24 recompletion of a well, the operator shall file form

25 C-105 with the Division, accompanied by a summary of

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 1   special tests conducted on the well, including drill

 2   stem test.  And the addition is, "and the chemical

 3   disclosure list."  In addition, the operator should

 4   file a certification that no undisclosed chemicals or

 5   PFAS were used in the completion or recompletion of

 6   the well.

 7              So we see this term going through, so

 8   this would be a -- these would all be terms that we

 9   would want to keep if we are interested in bringing

10   sunlight to what's being put into the ground, what's

11   being released into the air and what's being spilled

12   on our ground.

13              If you'll permit me, Mr. Chair, my notes

14   here for this, but this section, I think NMOGA noted

15   in its opening that PTFE, a PFAS chemical, had been

16   used up until 2020.  FPEG was used up until 2015.

17   And the only reason we know about these chemicals is

18   because they were disclosed.  Had they been held as

19   trade secrets, we would not have known anything about

20   them.

21              There are a lot of PFAS chemicals,

22   potentially hundreds of thousands, that have not been

23   safety tested.  We heard that testimony during the

24   course of this hearing, that that could be used, you

25   know, currently in New Mexico if we don't implement
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1   this rule; if we don't implement it broadly, they
 2   could be hidden as trade secrets.
 3   There was some talk from NMOGA that we
 4   cannot ban trade secrets at the OCC. I don't believe
 5   we would be doing any such thing. It was the OCC
 6   which allowed the use of proprietary information when
 7   it set up its disclosure rules and linked our State
 8   to FracFocus.
 9   And what the joint proponents have
10   offered is language that says companies can keep
11   their chemical formulas secret, they just can't use
12   those chemicals in New Mexico. If you want to use it
13   here, you have to publicly release that chemical
14   information.
15   I think this is really important
16   because, as we heard from Ms. Troutman, with the
17   proponents, we've had massive numbers of spills over
18   the past, I think, 10-year period that she looked at.
19   One of the figures that stuck out to me was there are
20   almost 5 million barrels of spilled fluids and oil
21   and gas spills, totaling about 5 million barrels; 2
22   million barrels of which were never recovered.
23   And we don't know what -- we really
24   don't know what was not recovered. It could have
25   been other PFAS chemicals. They could be out there

1   in use today and we have no idea of it. These

        2   chemicals, we know, are incredibly toxic at a level

        3   of not parts per million or parts per billion, it's

        4   parts per trillion. And the vast, vast majority of

        5   them have not been safety tested.

        6   Parts per trillion, we're talking about

        7   a drop in 100 Olympic swimming pools. I think we

        8   heard another figure tossed out during the hearing

        9   was 1.5 ounces would contaminate 100,000 acre feet of

        10   water. An acre foot is enough water for two or three

        11   houses for a year; it's hundreds of thousands of

        12   gallons.

        13   So the toxicity of this is almost, I

        14   mean, to a level where it's unfathomable. And they

        15   haven't been safety tested. It's being spilled on

        16   the ground. We heard testimony that it can be

        17   evaporated into the air, we don't know what happens

        18   with that, had very little testing.

        19   So I believe if a company wants to bring

        20   chemicals into New Mexico, transport them,

        21   potentially spill them, may or may not report them,

        22   maybe not have them cleaned up, may kick dirt over

        23   them, as we see at the Land Office, in a way that's

        24   almost routine, frankly. We should know what

        25   chemicals are being used out there.

1   This is not in violation of the Trade

2 Secrets Act. OCC has done rulemaking in this area

3 previously, and I believe we should do it now.

4   CHAIR ROZATOS: Thank you, Commissioner

5 Bloom.

6   Commissioner Ampomah, Doctor.

7   COMMISSIONER AMPOMAH: Yes. So,

8 Commissioner Bloom, with regard to, let's say, the

9 chemical disclosure list, this is something that

10 companies have to disclose, more or less, like, let's

11 say, through FracFocus.

12   Now, with regard to the trade secrets, I

13 mean, if you say that -- if you define "chemical

14 disclosure list" means all -- means a list of all

15 chemicals used in downhole operations at a well site,

16 I mean, how are we -- well, like, let's say if you

17 have Company A, Company B, there are some kind of

18 trade secrets with regard to, let's say, a particular

19 composition. So are you saying that, let's say, if

20 we force companies to, more or less, disclose

21 entirely all the chemicals that they are going to use

22 in their downhole operations, are we not in violation

23 of the Trade Secret?

24   COMMISSIONER BLOOM: Mr. Chair, Commissioner

25 Ampomah, that's a good question. If we want to pull

1 up the Uniform Trade Secret Act in New Mexico, we can

2 certainly do that. But we would not be in violation

3 of that because we would be saying that companies

4 simply have to disclose the chemicals they're using

5 and they can't use anything that's not disclosed.

6   So, essentially, it's the end of trade

7 secrets in terms of what chemicals would be used in

8 oil and gas operations in our State.

9   COMMISSIONER AMPOMAH: And will not -- will

10 that not hurt innovation?

11   COMMISSIONER BLOOM: Dr. Ampomah, I don't

12 know how much -- how that would affect innovation.

13 You know, I've looked -- I was pulling up some of the

14 FracFocus disclosures randomly yesterday, just kind

15 of going around Eddie County, and a good number of

16 them had maybe six ingredients listed in their in

17 their frack fluid, and they were all made public.

18   I think some of the -- the secret might

19 be in the ways that they're mixed or put together.

20 You know, is there going to be a degree of hardship

21 for the land -- for the companies? You know, there

22 could be, but I believe that's outweighed by the

23 public's right to know. And I believe it's

24 outweighed by our duty to protect public health and

25 the environment. We can't protect ourselves from

1   chemicals that we don't know about.

2   This would create a much more open

3   system, one with greater availability of information

4   to first responders, people working on cleanups,

5   people going out to sites. It would simply be jump

6   on FracFocus, see what's on that, see what was being

7   used or transported to that job.

8   So I think, you know, our charge is to

9   protect public health and the environment. It's not

10   necessarily to ensure trade secret status for

11   chemicals which we now know are incredibly toxic.

12   We've only, you know, recently set EPA

13   limits on about six PFAS chemicals, and there is

14   testimony we heard suggesting there are tens of

15   thousands or hundreds of thousands such chemicals out

16   there. Chemicals routinely come into commerce in the

17   United States, and there's no substantial testing

18   regime for them. It's been an ongoing problem.

19   COMMISSIONER AMPOMAH: So, Commissioner

20   Bloom, I'm looking at one of the -- I'm looking at

21   one of the disclosures through FracFocus. So you're

22   saying that -- let's say they can list the

23   ingredient, but so here, the CAS number, they are

24   making it more, like, proprietary.

25   So are you saying that, let's say, as

1 long as they, more or less, disclose the ingredient

2 and not necessarily the CAS number, is that

3 acceptable?

4   COMMISSIONER BLOOM: Dr. Ampomah, I would be

5 anticipating that the ingredient, the CAS, C-A-S,

6 number and a percentage of the fluid would still be

7 disclosed as we would -- they would -- all those

8 numbers would be disclosed to have a full disclosure.

9   CHAIR ROZATOS: Did you have any other

10 concerns, Commissioner Ampomah?

11   COMMISSIONER AMPOMAH: I want to hear from

12 the counsel, if he can chime in on this one,

13 especially. Let's say, with regard to this

14 particular discussion, if we are not in violation of

15 the trade secret, if we are not, then I do not have a

16 lot of concern about this.

17   But I feel like the competitiveness of

18 companies can be, more or less, restricted here if we

19 are, more or less, allowing 100 percent disclosure,

20 especially if it is -- if it is marked as a trade

21 secret.

22   CHAIR ROZATOS: So before you answer,

23 Counsel, I would want to say that I kind of have the

24 same concerns that this may be overstepping our

25 ability and authority with the trade secret laws.

1 Though I share the concerns that Commissioner Bloom

2 has, and we are dealing with chemicals that

3 definitely have the potential of hazard and toxicity,

4 and it is one of this Commission's goals to protect

5 the public safety and to protect the environment, I

6 would never want to have this Commission overstep its

7 boundary into law that we have no jurisdiction over.

8   So I do share the same concern that

9 Commissioner Ampomah does.

10   MR. SHANDLER: This is Zach Shandler, from

11 the Department of Justice.

12   I think both sides have laid out their

13 legal arguments. I don't think there's a black and

14 white answer I can deliver to you today. I don't

15 know if the hearing officer wanted to summarize the

16 different legal -- you know, just a neutral

17 recitation of the legal arguments.

18   HEARING OFFICER ORTH: Yes, Mr. Shandler and

19 Commissioners. My name is Felicia Orth.

20   What the petitioner is doing here is

21 not engaging in the sort of debate that, for example,

22 NMOGA and even, I think, the Division was engaged in,

23 which is what happens when a company identifies a

24 trade secret and then OCD has to take custody of it

25 and protect it. And there's a fair amount of

1 administrative work around that. That's not where

2 they're engaging.

3 　　　　　　They're stepping around the question of

4 what happens when a company says, "Hey, that's a

5 trade secret," to say this is about disclosure. And

6 you might have a trade secret, right? You might have

7 proprietary substances, you just can't use them if

8 you're not willing to disclose them.

9 　　　　　　So, again, it goes back to disclosure.

10 It's of a piece with the disclosure mechanism. And

11 if they're not willing to disclose it, if they still

12 want to characterize this as a trade secret, they

13 just don't put it down the hole. So it's a stepping

14 around the question, really, of what is a trade

15 secret.

16 　　　　　　That's how I read the competing

17 arguments here.

18 　　　　COMMISSIONER AMPOMAH: But I remember that

19 in the discussion, NMOCD made it clear that if there

20 is a problem, then you have to disclose everything to

21 NMOCD, but they would have to, more or less, you

22 know, be careful with regard to how they disclose

23 that to the public.

24 　　　　　　So I don't think NMOCD was saying that

25 if you cannot disclose it, you don't use it. They

1 also give a path that if there is a problem, and,

2 let's say, assuming they have a cause of concern,

3 especially if they say your operation is going to

4 impact the ground source of drinking water, there you

5 have to disclose that to them without any

6 restrictions, but they will still protect that

7 information.

8   HEARING OFFICER ORTH: Right. You're right.

9 The Division was aligned with NMOGA on this,

10 effectively, not with the petitioners, who are saying

11 this is a piece with the disclosure requirement,

12 either you disclose it or you don't use it toward a

13 trade secret.

14   And so I guess, Mr. Shandler, the place

15 I think the Commission might benefit from a legal

16 opinion is, yes, certainly to the extent they are

17 allowed to say, "We want to use a trade secret, you

18 know, proprietary substance in our fracking," but

19 does the Trade Secret Act entitle them to use

20 something that's not a trade secret?

21   So yes, once it's a trade secret, right,

22 we know how to treat it. But are they entitled to

23 use a trade secret down a hole?

24   COMMISSIONER BLOOM: Ms. Orth and

25 Dr. Ampomah, when we look at the Trade Secret Act,

1   it's Uniform Trade Secrets. It's a very short act,

2   frankly, and it really works in the way, for example,

3   if a company says that it has a trade secret, its

4   employees would not be allowed to make those things

5   public, otherwise they could face action in court.

6   It does not give a company the right to

7   say, "I'm declaring a trade secret of this food

8   additive," and then put that food additive on the

9   shelves in New Mexico and not list the ingredients.

10   It doesn't work that way. It's really

11   about what happens once a company declares a trade

12   secret and how, when that trade secret is broken,

13   people can be sued in court. I'm just looking at

14   Google here.

15   CHAIR ROZATOS: Can I interrupt one second,

16   Commissioner Bloom?

17   COMMISSIONER BLOOM: Sure.

18   CHAIR ROZATOS: Again, I agree with what

19   you're saying, for the most part. Trade secret, same

20   law that you're looking at, New Mexico Statutes

21   Annotated, Chapter 57, under Trade Practices and

22   Regulations. So it's 57-3A-2, the definition is

23   under D: Trade secret means information including a

24   formula, pattern, compilation, program, device,

25   method, technique or process that derives independent

economic value, actual or potential, from not being

generally known to and being readily ascertainable by

proper means by other persons who can obtain economic

value from its disclosure.

So "formula" is part of that. That is

covered. The Division, as Commissioner Ampomah

brought out, stated that it would also cause a burden

on them because now they're having to maintain the

trade secrets that it would not, in its daily

activities, unless there was a spill that was

justified. And at that point, the rule of the spills

come in and they have to disclose.

So there is a little bit of a

distinction here of what is disclosed and what isn't

and how that affects legally and also how it affects

the Division.

COMMISSIONER BLOOM: Mr. Chair, I don't

believe there would be any burden placed on OCD

because they simply would not receive trade secrets.

Companies could not use anything that hadn't been

disclosed on FracFocus. So any knowledge would be

out there, would be public, and there's probably less

of a burden on OCD if we only allow the use of

disclosed chemicals.

And I agree that chemicals can receive

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 1   trade secret and formulas can have a trade secret

 2   designation.  But as we read the act, and you can go

 3   through it here, I mean, it's a few lines, there's

 4   nothing out there which says a company, a person can

 5   declare a trade secret and then have the right to use

 6   that.

 7             In fact, it was the OCC, wasn't it, that

 8   created the use of FracFocus for the State and

 9   allowed for information to be held as proprietary?

10   And this simply undoes that.

11             I mean, think about this.  We would have

12   no idea that PFAS were being used in New Mexico if it

13   hadn't been disclosed.  They could have declared

14   these things proprietary information and we would

15   never have known about them.

16             And the numbers are pretty substantial.

17   Let me find those.  One second here.  I think it

18   was -- I'll go back and find them later.  Just the

19   number of PTFE and FPEG that were used, the many,

20   many thousands of pounds of it is really substantial.

21   And this stuff is, you know, toxic at the level of,

22   you know, one drop in 100 swimming pools.

23             Here we go.  I was looking at the joint

24   proponents post-hearing closing brief for adoption,

25   Page 8.  It says Mr. Horowitz's research indicates
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1 that during the time period, 22 oil and gas companies

2 injected 227 wells with a total of 2,605 pounds of

3 PTFE. Additionally, EOG Resources injected 34 wells

4 with FPEG, with a total injected weight of 6,400

5 pounds.

6 Remember, this is a situation where one

7 ounce can make toxic for human consumption hundreds

8 of thousands of acre feet of water or millions of

9 gallons of water.

10 Between 2013 and 2022, oil and gas

11 companies injected 8,200 wells with at least one

12 trade secret chemical per well. Trade secret

13 chemicals used over this period totaled 243 million

14 pounds, almost a quarter billion pounds released into

15 the air, spilled onto the ground. We see them going

16 down washes, we see them -- you know, we heard the

17 stories of people pulling the plugs on water trucks

18 and produced water spilling out onto the road.

19 We don't know what's in these, hasn't

20 been released. You know, it's us. We're up here

21 protecting health, we're up here protecting the

22 environment. And right now, the industry can take

23 any chemical, call it a trade secret and we have no

24 idea it's in use. I mean, there could be an entire

25 new class of chemicals invented tomorrow that would

1   be put into use and we wouldn't know about it for

2   Lord knows how long until somebody decided to

3   voluntarily disclose it to us.

4   But right now, any of these chemicals, I

5   mean, even PTFE today could be in use in New Mexico

6   and just held up as proprietary, and there's no

7   protection. We need to put the cart before the horse

8   here. We're bringing chemicals into commerce, into

9   public use, into contact with the environment and

10 people before they've been safety tested. And later

11 on we find out, you know, how horrible they are.

12   And we heard, you know, ample testimony

13 from the joint proponents' witness that worked at 3M

14 and, you know, that debacle. And, you know, here we

15 are again, you know, trying to get the genie back in

16 the bottle. And it's disclosure that allows us to

17 know what's being used in New Mexico.

18   So I'll stop there.

19   COMMISSIONER AMPOMAH: Commissioner Bloom,

20 so I'm looking through OCD's closing argument, and in

21 there, on Page 4, Item 15 -- or, let's say, 16, it is

22 clear intent of the legislature that trade secret

23 protections are beneficial. The Commission does not

24 have the requisite authority to either compel

25 disclosure of protected information to the public or

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1   to ban use of such compound simply because it is

2   marked as trade secret.

3              So, you know, and also from, let's say,

4   someone from a research background, this is very

5   important, you know.  To me, I feel like if we go

6   beyond this, then it means we are, more or less,

7   restricting innovation.  So I will still stick to my

8   opinion that this should not -- I mean, I will side

9   with OCD on this one.

10             CHAIR ROZATOS:  So let's take it as a vote.

11  I'll just start just on the far right.

12             Commissioner Ampomah, how would you like

13  to go with this one?

14             COMMISSIONER AMPOMAH:  I'll side with OCD

15  and I scrap the chemical disclosure definition.

16             CHAIR ROZATOS:  Okay.  Commissioner Bloom.

17             COMMISSIONER BLOOM:  I would leave in the

18  new definition of chemical disclosure list so that we

19  can get towards full public disclosure of all

20  chemicals that are being used in the oil and gas

21  industry in New Mexico.

22             CHAIR ROZATOS:  Okay.  And my vote is

23  actually going to be I agree with Commissioner

24  Ampomah and with the OCD that this is -- it goes past

25  the purview of this Commission, and so we scratch the
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1   chemical disclosure list for this one.

2   So that is a 2 to 1 that we remove the

3   chemical disclosure rule on this. So 19.15.2.C(5)

4   will be struck under chemical disclosure.

5   Excellent.

6   Next one is the change of Rule

7   19.15.2.D(9), downhole operations. WildEarth

8   Guardians proposes the downhole operations means oil

9   and gas production operations that are conducted

10   underground. The OCD suggested that that be removed,

11   and I believe that's cited with New Mexico Oil and

12   Gas.

13   Yes, sir. Did I miss one?

14   MR. SHANDLER: Yes. They scrapped that.

15   CHAIR ROZATOS: Did they? I appreciate

16   that.

17   Madam Hearing Officer, did that one get

18   scratched?

19   HEARING OFFICER ORTH: I believe so.

20   CHAIR ROZATOS: Awesome. Thank you. I

21   appreciate that.

22   So which one is our next one? Okay. So

23   it's under P, PFAS. So we'll move on to 19.15.2.P,

24   as in Paul, Number (3), PFAS chemicals means a

25   fluoroalkyl or a polyfluoroalkyl substance, with at

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1   least one fully fluorinated carbon atom.
2               That was the proposal from WildEarth
3   Guardians.
4               The Oil Conservation Division wanted to
5   modify it to read that:  PFAS chemicals means any
6   chemical with at least a perfluorinated methyl group,
7   a CF3 or a perfluorinated methylene group, a CF2,
8   excluding those with a hydrogen, chlorine, bromine or
9   iodine atom attached to the subject carbon atom.  For
10  the purposes of compelling environmental
11  investigation, the specific PFAS chemicals that can
12  be included in the chemical analysis includes those
13  listed in the United States Environmental Protection
14  Agency, or USEPA, Standard Analytical Methods
15  documents, specifically Method 537.1, drinking water;
16  Method 533, drinking water; Method 8327, groundwater,
17  surface water and wastewater; Method 1633,
18  wastewater, surface water, groundwater, soil,
19  biosolids, sediment, landfill, leachate and fish
20  tissue; OTM 45, which is air, semi-volatile and
21  particulate-bound PFAS; and OTM 50, air volatile
22  PFAS, including updated versions for each standard
23  method.
24               Commissioners.
25               COMMISSIONER AMPOMAH:  So can the counsel
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1   comment on this one? Because this is the one that it

2   was brought to our attention that the legislators are

3   looking at this. So I don't know if there is any

4   guidance from the counsel on this one. Yeah, I just

5   need some guidance on this.

6   MR. SHANDLER: So, Mr. Chairman, you did

7   receive a letter from the proponents updating the

8   information about the legislative process for a

9   particular bill. I think at this time, there's no

10   certainty about what would happen. So the lay of the

11   law right now, of the land, is that bill is just out

12   there as a proposal.

13   If the legislature then does adopt it at

14   a subsequent date and it's signed, the Commission can

15   then evaluate the legal landscape at that time. But

16   the landscape at the time is -- at this moment is

17   it's just a proposal.

18   COMMISSIONER AMPOMAH: Okay. If that is the

19   case and also OCD scrapped the OTM 45, so they

20   removed that portion from their definition, and from

21   OCD's standpoint, their definition will help them to

22   be able to regulate. They believe that, let's say,

23   what the proponent is providing here can be probably

24   unenforceable.

25   So on this one, too, I will side with

1 OCD's modification to the definition of PFAS

2 chemicals.

3   CHAIR ROZATOS: Thank you, Commissioner

4 Ampomah.

5   Commissioner Bloom.

6   COMMISSIONER BLOOM: Thank you, Mr. Chair.

7   On this one, I mean, again, I think we

8 have a real opportunity here to do something to more

9 widely protect public health, which is something

10 we've been charged with, and to protect the

11 environment.

12   The NMOGA and the OCD definitions would

13 very much limit the definition of PFAS, which would

14 make a lot of chemicals eligible to be put into -- or

15 I guess to be continued to have use in not only the

16 oil and gas industry in our State when we know -- I

17 think what we heard was absolutely nothing about the

18 safety of those chemicals.

19   I don't know why we can't make some --

20 we can't prohibit something without it being

21 enforceable, Dr. Ampomah. You know, I was trying to

22 think of some analogies to this.

23   And, you know, there are certain crimes

24 that have very good clearance rates. For example, I

25 live in Albuquerque and we've got a bit of a -- some

1   crime going on down there. The clearance rate for

2   murder is really high. I think it's like 85 percent

3   or 90 percent; almost all those cases are solved.

4   But we don't see that private property is recovered

5   from home break-ins. We don't see that vehicles are

6   recovered when they're stolen. And yet those things

7   are still prohibited or they're still illegal.

8   We can make something -- we can prohibit

9   something. Even though there's not a test for it

10   today, there's still other ways to find out that a

11   chemical has been used when it shouldn't have been.

12   If we go with the proponents' definition of, you

13   know, at least one fully fluorinated carbon atom,

14   there could be other ways to find out that that

15   chemical was used.

16   For example, someone from a company

17   could step forward and say, you know, "We should not

18   have been using this chemical and it was used," sort

19   of a whistleblower-type situation.

20   We are also putting down a marker that

21   we're not going to allow untested chemicals to be

22   used in our State; again, where they're, you know,

23   spilled onto the ground to the tune of 2 million

24   barrels over a 10-year period; you know, 80 million

25   gallons of these fluids, which are -- potentially

1 some of them being very, very toxic.

2   I think casting a wider net here is

3 absolutely appropriate. And I would point out the

4 joint proponents mentioned that this very definition

5 of PFAS is used by 23 states and cited by the federal

6 government. So this is not some quickly, you know,

7 thought-up definition, but it's one that's in common

8 use in nearly a majority of the states. I'm sure

9 many states don't have them, so probably the states

10 that have them, this would probably be the most

11 common definition.

12   I think the last thing I would say is,

13 just because something can't be tested now, you don't

14 get an enforcement that way, the tests are growing,

15 future tests will be available, and we should use a

16 definition of PFAS, a wide definition of PFAS.

17   One last thing, and then I'll stop here,

18 Mr. Chair.

19   I think, Dr. Ampomah, during the

20 hearing, you asked Dr. Richardson if a ban would

21 impact NMOGA, and he said, "I don't think it would

22 have any impact at all, to be honest."

23   So, you know, why not have a wider ban?

24 If companies are supportive of this ban, you know,

25 let's go ahead and use it. Let's do something broad,

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 1   let's put health first and protect it.
 2            CHAIR ROZATOS:  Commissioner Ampomah, you
 3   look like you have a question.
 4            COMMISSIONER AMPOMAH:  Commissioner Bloom
 5   made an important point, that we have to put our foot
 6   on the ground in such a way that untested chemicals
 7   cannot be used in New Mexico.  You know, because I
 8   had a concern about when OCD say that currently not
 9   all PFAS compounds can be detected using standardized
10   methods.
11            So I'm kind of probably leaning towards
12   your argument that no untested chemical should be
13   used in New Mexico.  Probably yeah, you are pushing
14   me to your angle now.  Thank you.
15            CHAIR ROZATOS:  And, Commissioner Bloom, I'd
16   like to just ask, in your mind, how does what
17   WildEarth Guardians and what OCD proposals differ?
18   What's the big hang-up for you between the two?
19            COMMISSIONER BLOOM:  Mr. Chair, the
20   definition of PFAS as put forth by the joint
21   proponents would cover thousands and thousands of
22   chemicals.
23            And I believe the testimony we heard
24   from the OCD and NMOGA is that their definition would
25   cover on the order of, like, a hundred.
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1   So we're talking many -- what's the word

2   I'm looking for, -- sort of 10x type, you know,

3   increases in the amount of chemicals that would be

4   covered.

5   You know, I think there was some

6   important discussion from some of the proponents'

7   health experts on this, that you can't -- you really

8   can't regulate and protect from things if you don't

9   know they're out there, if they're not disclosed.

10   And if we don't have a wide definition of PFAS, we

11   don't even know, you know, what other chemicals might

12   be being used, might be out there and shielded

13   because of proprietary information or trade secrets.

14   CHAIR ROZATOS: So though I agree, again,

15   with you on the fact that the OCC is tasked to make

16   sure that we maintain and protect the environment and

17   public health, if you look at the OCD version, it

18   states that with at least a perfluorinated methyl

19   group, or a CF3, or a perfluorinated methylene group

20   without the hydrogen chlorine, bromine or iodine, and

21   then it says for the purposes of completing

22   environmental investigations, the specific PFAS

23   chemicals that can be included in the chemical

24   analysis include those listed in the EPA testing, and

25   then it says, including updated versions for each

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 1   standard method.

 2              So I don't see how it's limiting to go

 3   with the OCD version when we're saying it is

 4   something that if we can see it, let's definitely

 5   test for it and get it done.

 6              Again, not saying that we shouldn't -- I

 7   believe you opened up with your remarks to

 8   Commissioner Ampomah, Dr. Ampomah, that if we can't

 9   test it, we shouldn't have it.  I don't necessarily

10   agree with that statement either.

11              But it was also told to us, as a

12   Commission, that something as important as Paxlovid

13   is a one-carbon perfluorinated compound; an SSRI that

14   is commonly used is considered PFAS.

15              So I think a broad statement is a lot,

16   not that we're putting Paxlovid and SSRIs down a hole

17   for drilling, but I believe, though, on a chemical

18   substance, on a chemistry background, the Division's

19   definition definitely covers what this goal of this

20   Commission is, to protect public safety and the

21   environment.

22              COMMISSIONER AMPOMAH:  Commissioner, so if

23   you look at OCD's closing statement, on Page 3, it

24   says that all three proposed definitions of PFAS will

25   result in the prohibition of the use of more
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1 compounds that are known to cause toxicological harm

2 to humans. Now, OCD definition will prohibit about

3 40 to 70 compounds.

4   The key point I want to make here is

5 that on 8, it says OCD's proposed definition will

6 evolve and expand with the field of study,

7 prohibiting the use of any compounds identifiable

8 through the described sampling methods.

9   So, Commissioner Bloom, let me ask you,

10 if we cannot --

11   CHAIR ROZATOS: Can I interrupt you,

12 Commissioner?

13   COMMISSIONER AMPOMAH: Sure, sure.

14   CHAIR ROZATOS: Could you read 9 for us, as

15 well?

16   COMMISSIONER AMPOMAH: Okay. OCD's proposed

17 definition is inherently precautionary because it

18 will cover all PFAS compounds for which the

19 scientific community develops a standardized testing

20 method.

21   So it sounds like OCD is trying to

22 broaden their definition here, and it's going to

23 evolve. Do you see the proponent's definition more

24 or less evolving, or is this a one-time stop, where

25 even chemicals that we cannot even test for are more

1   or less automatically banned?

2   COMMISSIONER BLOOM: Take a step back and

3   remember that these chemicals are so dangerous, so

4   toxic that industry doesn't want to use them anymore.

5   They're worried about the liability. They're worried

6   that when they spill, it can get washed downstream.

7   I mean, these are chemicals that don't bind to much

8   of anything, so they shoot straight through the

9   ground, they go into groundwater. These are

10 incredibly toxic. Nobody wants to use this entire

11 class of chemicals.

12   We have the opportunity to ban their use

13 in oil and gas very widely to the tune of, you know,

14 thousands of chemicals. I mean, sure, Paxlovid is

15 ingested by people, you know, fighting off COVID.

16 But, you know, would we want to use those same

17 chemicals downhole? You know, I don't know. It

18 might not be safe. How do they react to pressure and

19 heat? You know, those tests haven't been done.

20   And so what we're looking at is one

21 definition which would ban thousands of chemicals

22 that NMOGA says nobody wants to use anymore, or the

23 OCD definition of 4070 compounds.

24   Yes, it'll grow because some of these

25 standard tests and methods will grow, but we don't

1   have to adopt a standard that only encompasses what's

2   enforceable. We can have a standard which

3   essentially says there are thousands of chemicals

4   that haven't been safety tested, and we leave those

5   out, and, you know, tests will evolve over time and,

6   of course, OCD will have more ability to enforce over

7   time as more tests become available.

8   But let's, you know, protect the broader

9   health. Let's keep a broad class of dangerous

10   chemicals, dangerous to the petroleum level, let's

11   keep those out of public commerce, you know, off our

12   lands, away from human interaction until we

13   understand, you know, that there's testing.

14   If these things are deemed, one, safe

15   and then, two, of interest to industry, they can

16   petition, come back and reconsider. But I don't

17   think covering, you know, a relative handful of the

18   thousands of chemicals is sufficient when our charge

19   is to protect human health and public health and the

20   environment.

21   COMMISSIONER AMPOMAH: Mr. Chair, I have a

22   question for you.

23   So on Number 10, on that same page, 3,

24   prohibiting the use of defined PFAS compounds from

25   the use as downhole additives will not negatively

1 affect the exploration, development or production of

2 oil and gas, because the industry has phased out the

3 use of PFAS. So my question to you is, does it

4 really matter?

5 You know, the definition that we use

6 because, you know, OCD is saying even companies are

7 moving away from the use of PFAS, so either

8 proponents' definition or OCD's definition or NMOGA's

9 definition, does it really have any impact?

10 CHAIR ROZATOS: Are you asking my opinion?

11 COMMISSIONER AMPOMAH: Yes, I'm asking your

12 opinion on that.

13 CHAIR ROZATOS: Okay. So the statement is

14 correct, they are being phased out. And I think

15 that's why the OCD is definitely, in its closing

16 arguments, saying -- as you mentioned, it started off

17 that the proposed definition either way prohibits

18 these compounds.

19 And I come more from a laboratory

20 background. My background is in sciences and

21 laboratories, and we like to see what we can see in

22 our testing, when you're a scientist from a

23 laboratory background.

24 So in my opinion, since you asked my

25 opinion, I would tend to go mostly with what the OCD

1 says because of the ability to be able to see the
2 compound analytically and in testing that the
3 mechanisms that are -- and in proper analytical
4 procedures, you'll have your quality assurance, your
5 quality control, and you'll be able to substantiate
6 what you found based off of your testing protocols if
7 it met the QA/QC information that you've put in place
8 and maybe even if you're buying something, a standard
9 that is commercially available, if, you know, your
10 testing procedure actually sees what the actual
11 chemical that you just injected into the instrument
12 is.

13   So I tend to find security in numbers
14 and on the analytical side. That's my opinion, so I
15 would go mostly with what the OCD say.

16   But as you mentioned, they are phased
17 out. So, I mean, I think that's where we probably
18 just need to put it on to a vote and see. And we
19 just go that route.

20   COMMISSIONER AMPOMAH: Yeah. I have another
21 question for Commissioner Bloom.

22   So based on how our Chair described it,
23 you know, from his expertise, too, you know, in terms
24 of chemical laboratory analysis point of view, you
25 know, how do you compare, let's say, the two

1   definitions in terms of causing confusion, you know,

2   to, let's say, even the general public, and also even

3   to the industry, as to which compound is even, you

4   know --

5   COMMISSIONER BLOOM: Yeah, sure. That's a

6   good question.

7   I think the industry would easily

8   understand either definition. You know, I think they

9   get it very clear, subsets of chemicals.

10   Listening to the Chair speak, you know,

11 again, I come back to I think we're here to widely

12 protect health, not only pass regulations that can be

13 enforced right now or for which there's a test. I

14 mean, we have the opportunity to say, "Hey, this

15 whole class of chemicals is off limits."

16   We've seen, you know, the devastating

17 contamination of national waters and people's health

18 and the presence of this in our blood. You know,

19 it's more affecting children and vulnerable

20 populations. It's a concentrated impact on areas of

21 oil and gas operations. And people should, you know,

22 feel safe that all these chemicals have been taken

23 offline for use in oil and gas, not just those which

24 are enforceable today.

25   And, again, just because there's not a

1   test for something doesn't mean that it also couldn't

2   be, you know, a violation or a violation that that's

3   dealt with in other ways or apprehended in other

4   ways.

5   CHAIR ROZATOS: I just want to make one

6   clarification. I, you know, as I stated, am

7   definitely more on the analytical aspect just because

8   I came from a laboratory standpoint.

9   I'm very concerned about the environment

10 and public health and safety. I think, as

11 Commissioner Bloom says, a lot of these compounds are

12 definitely toxic to the environment.

13   But I also want to urge and caution this

14 Commission, because we're saying all PFAS. As was

15 brought out, not all PFAS are deadly. Paxlovid is

16 something that we're taking and it has saved millions

17 of lives with COVID. There is an SSRI that helps

18 millions of people with their depression that are

19 categorized as PFAS.

20   So I think we just need to be careful

21 when we're saying all PFAS. Because the medical

22 community, the scientific community has found that

23 some of these PFAS compounds are actually beneficial.

24   So I am very distraught at the thought

25 that there are chemicals that are destroying our

1   environment, that are destroying our health and

2   safety that are categorized as PFAS. But I think we

3   need to be careful with the word "all," it's so

4   inclusive, when the scientific community and the

5   medical community has, indeed, found PFAS that, with

6   the definition of PFAS, are beneficial to us. So I

7   just would want to caution that with the Commission.

8   And with that, I guess I stifled

9   communication. So why don't we put it up for vote.

10   So for Rule 19.15.2.P, as in Paul,

11   Number (3), the definition for PFAS, Commissioner

12   Ampomah.

13   COMMISSIONER AMPOMAH: Can I abstain from

14   this one?

15   COMMISSIONER BLOOM: You can see what

16   happens.

17   MR. SHANDLER: I think it's too early in the

18   day to talk about abstention. If you just want more

19   time and further discussion or to lay this one over,

20   I'll give you that, and return to the idea of

21   abstention later.

22   COMMISSIONER AMPOMAH: Yeah. You know, I

23   understand the point, you know, let's say, where

24   Commissioner Bloom is coming from, more or less

25   putting a broader blanket on protecting human health

1   of our precious people in the State of New Mexico.

2   Now, you know, the Chair explained from

3   actual, like, someone with expertise in this area.

4   You know, I'm not an analytical chemist, so that is

5   why I'm just on the fence here, you know.

6   But I really wanted the Chair to more or

7   less look at the proposed definition from the

8   proponent, and then the OCD, and then seeing that

9   neither of this -- let's say, all of this, you know,

10 all of this will ban PFAS utilization in oil and gas

11 operations in the State.

12   You know, I'll vote with Commissioner

13 Bloom on this one. Thank you.

14   CHAIR ROZATOS: So you vote for WildEarth

15 Guardians' definition?

16   COMMISSIONER AMPOMAH: Yes.

17   CHAIR ROZATOS: Okay. Commissioner Bloom.

18   COMMISSIONER BLOOM: Yes, I vote with the

19 proponents' proposal for PFAS chemicals.

20   CHAIR ROZATOS: Okay. Excellent.

21   I vote for the OCD's definition, so it

22 is a 2 to 1. We will be going with the definition

23 from WildEarth Guardians for PFAS chemicals for

24 19.15.2.P(3). Excellent. Thank you for that

25 conversation.

Our next one, just to make sure that I'm

on the right page here, is going to be the changes in

Rule 19.15.2.T, as in Tom, Number (7), trade secrets.

                    The WildEarth Guardians proposal is that

trade secrets means information including formula,

pattern, compilation, program, device, method,

technique or process that, 1, derives independent

economic value, actual or potential, from not being

generally known to and not being readily

ascertainable by proper means by other persons who

can obtain economic value from its disclosure or use,

and, 2, is the subject of efforts that are reasonable

under the circumstances to maintain its secrecy.

                    Am I reading the wrong one again?

          MR. SHANDLER: Just want to clarify with the

Hearing Officer. Maybe that's some of the old

language, and now there's new language?

          HEARING OFFICER ORTH: That's correct.

          CHAIR ROZATOS: I apologize.

          HEARING OFFICER ORTH: That's correct.

          CHAIR ROZATOS: I'm disconnected today. My

sincerest apologies.

          HEARING OFFICER ORTH: I'm sorry, Mr. Chair.

          CHAIR ROZATOS: No, no.

          HEARING OFFICER ORTH: The OCD is actually

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 1   aligned with the petitioners on this.

 2           CHAIR ROZATOS:  So we don't need to discuss

 3   this one?

 4           HEARING OFFICER ORTH:  Trade secret means

 5   any information meeting the definition of the Trade

 6   Secret Act, basically 57-2A-2D.

 7           CHAIR ROZATOS:  Excellent.  I need more

 8   coffee today.  My apologies for being disconnected.

 9               Okay.  So we don't need to discuss this

10   one because they're both on -- or do we?

11           COMMISSIONER AMPOMAH:  So are you saying --

12   so are we -- okay, okay.

13           CHAIR ROZATOS:  Since they're both on the

14   same page.

15           COMMISSIONER AMPOMAH:  Okay.  Yeah, thank

16   you.  Thank you.

17           MR. SHANDLER:  The third party, I think,

18   opposes it.

19           CHAIR ROZATOS:  Oh, I apologize.  Does NMOGA

20   oppose it?

21           COMMISSIONER AMPOMAH:  I think yeah, NMOGA

22   opposes that, but I will side with OCD on this one.

23           CHAIR ROZATOS:  Madam Hearing Officer, are

24   we correct?

25           HEARING OFFICER ORTH:  Yes.
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1   CHAIR ROZATOS: NMOGA opposes it. So on

2   Page 13 of NMOGA's proposed findings and conclusions,

3   their point at one point I see is trade secrets being

4   used in other OCC regulations without definition and

5   without a problem.

6   COMMISSIONER BLOOM: Mr. Chair -- I'm sorry,

7   I didn't mean to cut you off.

8   Let me take another swing at this. So,

9   you know, I don't know that we need the definition of

10 trade secrets in here if we're not going to require

11 companies to disclose everything that they're using.

12 And, again, I go back to some of the testimony we

13 heard from opponents about, you know, in Pennsylvania

14 they were looking for the health effects of fracking

15 oil and gas completions on the public. In

16 Pennsylvania. And they didn't know that PFAS was

17 even being used in the secret sauce. And because

18 they didn't know that, they weren't even looking in

19 people's bloodstreams.

20   And what you're doing here is you're

21 doubling down on that. You're saying the public

22 doesn't have the right to know what chemicals are

23 being used unless it's an emergency.

24   But routine use of chemicals, you know,

25 how it comes into, invades our water, gets in the air

1 because of spills, these, you know, 80 million

2 gallons that have not been recovered, you know, the

3 two-fifths of spilled fluids on the ground are not

4 recovered, this stuff's out there. I mean, this is

5 why we need to disclose these things.

6   COMMISSIONER AMPOMAH: Commissioner Bloom,

7 you know, so I don't think the Commission is saying

8 that the companies don't necessarily have to

9 disclose. I mean, if you look at FracFocus, they are

10 disclosing the ingredients. And I think we all agree

11 that they should disclose the ingredient.

12   But in terms of, let's say, having

13 someone to look at it more like the CAS number, then

14 they are saying it's proprietary, right?

15   So I don't think the Commission, we are

16 saying that we are giving companies the room to

17 utilize any compounds, you know, that can, more or

18 less, impact the health of our people. At least they

19 are disclosing the ingredients. And I feel, like,

20 from an innovation point of view, disclosing those --

21 I mean, that one definitely I'm not in favor of that.

22   So, Mr. Chair, I don't know what we do

23 with the Rule 19.15.2.7. I feel like we should still

24 keep, especially when OCD and then the proponents are

25 all in agreement on this one.

1   CHAIR ROZATOS: This one is kind of

2   interesting, I believe, because both WildEarth

3   Guardians and the OCD agreed that trade secrets

4   should follow what State Statute is, 57-2A-2D.

5   I understand that there are the concerns

6   that NMOGA has, but trade secrets in this instance is

7   something that is defined by State Statute.

8   So for me, that both the petitioner and

9   the Oil Conservation Division agree that trade secret

10   is what our law states, what our actual State Statute

11   is, I think doesn't harm the oil and gas industry in

12   any means.

13   So that's my opinion on this. Should be

14   just put it up for vote and see?

15   COMMISSIONER BLOOM: Mr. Chair, and I know

16   maybe Ms. Orth could elaborate on this a little bit,

17   but if we do a walk-through, I don't even believe we

18   need to have a definition of trade secret if we're

19   not changing anything about trade secrets, if we're

20   allowing trade secrets to be maintained. I mean, it

21   would just be the existing role.

22   CHAIR ROZATOS: Before you answer, Madam

23   Hearing Officer.

24   Are you suggesting that we just scratch

25   this one completely; is that what I'm understanding?

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 1          COMMISSIONER BLOOM:  I think that might be

 2   where we're landing.

 3          CHAIR ROZATOS:  Okay.

 4          HEARING OFFICER ORTH:  Yeah.  And

 5   Mr. Shandler may have his own answer on this.

 6   Typically, the lawyers looking at definitions and

 7   regulations believe it's unnecessary to repeat the

 8   statute, unless you're modifying it somehow.  But

 9   Mr. Shandler may have an answer here.

10          MR. SHANDLER:  Mr. Chair, that sounds like

11   sound advice.  I'm looking through to see if the term

12   is used in any other sections.  And I think

13   Commissioner Bloom's point is it's not used in any

14   other section so there's no need for it.  But I'll

15   double check that.

16          CHAIR ROZATOS:  So, Mr. Shandler, should we

17   wait until you do your decision, or should we put

18   this one up to vote?  What's your suggestion?

19          MR. SHANDLER:  Well, if someone has access

20   to the proposal, Attachment B, on their computer and

21   maybe just do a search or a controlled find, the

22   computer might be faster than the human.

23          CHAIR ROZATOS:  I'm having technical issues.

24   Does anybody have it up?  Give us a second and see if

25   Commissioner Bloom can do it.
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1   COMMISSIONER BLOOM: Yeah, no, it's not

2   reading it in the words.

3   COMMISSIONER AMPOMAH: So on Page 8 of

4   Attachment A, Number 1: The Division does not

5   require the reporting or disclosure of proprietary

6   trade secret or confidential business information.

7   So it is used only twice. The first one

8   is the definition, and then the second one is what I

9   just read.

10   CHAIR ROZATOS: So you mean under

11   19.15.16.19, log completion and workover reports, B,

12   hydraulic fracture disclosure, Number 1.

13   Is that what you're saying right there,

14   the Division does not require the reporting? So it

15   does show it.

16   MR. SHANDLER: So then I'd go back to the

17   Hearing Officer's statement that putting a rule in

18   there that says trade secret is the definition,

19   probably most lawyers would say that's redundant.

20   CHAIR ROZATOS: So strike it?

21   MR. SHANDLER: Mr. Chair, I think most

22   lawyers would say just there's no need for it, yes,

23   to strike it. But if you wanted to, if you felt like

24   it was important to put that marker in there, you

25   certainly have that opportunity.

1   CHAIR ROZATOS: Okay. So then if there's

2   redundancy and there's no need to have redundancy,

3   I'm going to move that this particular one,

4   19.15.2.T, as in Tom, (7), gets stricken.

5   Commissioner Ampomah.

6   COMMISSIONER AMPOMAH: Approved.

7   CHAIR ROZATOS: Commissioner Bloom.

8   COMMISSIONER BLOOM: I'll oppose on that,

9   because I think it might come back into play with

10   some other discussion about what's disclosed and

11   what's not.

12   CHAIR ROZATOS: Okay.

13   COMMISSIONER AMPOMAH: I thought it was your

14   motion.

15   COMMISSIONER BLOOM: I simply noted that it

16   might not be necessary if we're not going to require

17   disclosure of all chemicals.

18   CHAIR ROZATOS: Yeah, now I'm a little

19   confused, too, Commissioner Bloom. I must admit,

20   that was a curveball, because you started this

21   conversation.

22   COMMISSIONER BLOOM: I think I started by

23   saying if we don't want to talk about changing the

24   way chemicals are made public or concealed from the

25   public, that it doesn't really matter if we have that

1   definition in there.

2   And the next one we're going to come to

3   is one called "undisclosed chemicals," which also

4   would not serve a role if we don't want to be

5   transparent about what chemicals are being used and

6   transported and spilled all over our State.

7   CHAIR ROZATOS: Okay. So before we just

8   move on to the next one, I get it, you have your

9   stick on this.

10   But on this particular one, I think it's

11 redundant, as well. So if we're going to move on

12 this, it's a 2 to 1 that we strike this one due to

13 redundancy. And it is going based off of the State

14 Statute. And even petitioner agrees that the State

15 Statute is sufficient. So we just leave it at that.

16 Excellent.

17   Now I need to find my spot again. Next

18 up --

19   COMMISSIONER BLOOM: Undisclosed chemicals.

20   CHAIR ROZATOS: Undisclosed chemicals, there

21 it is. So this one is Rule 19.15.2.U(3), undisclosed

22 chemicals.

23   The definition that was submitted was

24 that undisclosed chemicals means either chemicals

25 that are listed without a chemical abstract service

1   number in the FracFocus database pursuant to

2   19.15.16.19.B NMAC, or if a safety data sheet lists

3   ingredients that comprise less than 100 percent of

4   the whole chemical product, those chemicals that make

5   up any unlisted portion of a chemical product on a

6   safety data sheet.

7   The OCD, I believe, is stating that we

8   strike this completely because it is related to trade

9   secrets.

10   Discussion.

11   COMMISSIONER AMPOMAH: Mr. Chair, so I still

12   stick to my previous vote on this one and I will go

13   with OCD.

14   CHAIR ROZATOS: Commissioner Bloom.

15   COMMISSIONER BLOOM: Yes. And, again, I

16   support the proponents' inclusion of definition of

17   undisclosed chemicals.

18   CHAIR ROZATOS: Okay. Thank you.

19   I think this one I, as well, would have

20   to go with the OCD on this one. And so I believe for

21   this particular rule -- I mean this, definition, it

22   is, again, 2 to 1 for the taking out undisclosed

23   chemicals.

24   And I believe that was it for that. The

25   time is about 10:20, did you want to take a break for

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 1   10 minutes and start back up at 10:30?  Okay.  Let's
 2   take a 10-minute break.  Thank you everyone.
 3                  (Recess held. )
 4          CHAIR ROZATOS:  Okay.  We're back on the
 5   record.  Our next rule to change is Rule
 6   19.15.7.16.A.
 7          HEARING OFFICER ORTH:  Mr. Chair.
 8          CHAIR ROZATOS:  Yes.
 9          HEARING OFFICER ORTH:  I don't remember that
10   the Commission has addressed the deletion of the
11   proposed definition for well site.
12          COMMISSIONER AMPOMAH:  I think we have.
13          HEARING OFFICER ORTH:  Oh, okay.  Good.
14          COMMISSIONER BLOOM:  Which word was that?
15          HEARING OFFICER ORTH:  Well site, the
16   definition.
17          CHAIR ROZATOS:  Yeah, that was dropped.
18   Thank you, Madam Hearing Officer.
19              Okay.  So we're back on 19.15.7.16, well
20   completion or recompletion report and log, the form
21   C-105.
22              Mr. Shandler, I think you were going to
23   kind of walk us through this one.
24          MR.  SHANDLER:  Thank you, Chair.  There's
25   different language provided by all three
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1   participating parties, and so I'm going to try to

2   systematically go through it to assist the

3   deliberations.

4   So starting with Paragraph A, which

5   starts "Within 45 days," it appears that all three

6   parties have agreement for those first couple lines

7   up to, including "drill stem test."

8   At that point, the proponents wanted to

9   add "and the chemical disclosure list."

10   Based on the earlier vote on rejecting

11   that definition, I guess it's my working presumption

12   that that phrasing will also not be adopted. So that

13   is the first sentence.

14   The second sentence, all three parties

15   start out the same, "In addition, the operator shall

16   file a," and everyone agrees to this phrasing, "a

17   certification that no," and then we have a differing

18   view.

19   The proponents want language saying,

20   "undisclosed chemicals or" before the phrase "PFAS."

21   COMMISSIONER BLOOM: I'll make this easy. I

22   would vote for the OCD language, if that's helpful.

23   Clearly, we've discarded undisclosed chemicals, so

24   this starts to look pretty close to the OCD language,

25   starts to look very close to the proponents'

1   language.

2   MR. SHANDLER: Okay. That sounds very

3   logical. The Oil and Gas Association, though, did

4   want to have some language after the "In addition the

5   operator shall file a certification," and this is the

6   new language they are proposing, "that no PFAS has

7   intentionally added to the hydraulic fracturing,

8   completion or recognition fluids used in the well."

9   That's on Page 16 of the their proposed findings.

10   So I hand it back to the Chair for

11   deliberations on the addition or non-inclusion of

12   that proposed phrase.

13   CHAIR ROZATOS: So the phrase was that no

14   PFAS was intentionally added to the hydraulic

15   fracturing completion or recompletion fluids used in

16   the well, correct? The word "intentional"?

17   MR. SHANDLER: Mr. Chair, that is one word,

18   but all that phrasing is different than the OCD

19   proposal, which just says added to the fluid used in

20   the completion or recompletion of the well.

21   CHAIR ROZATOS: Okay. Commissioners.

22   COMMISSIONER AMPOMAH: I will side with OCD

23   on this one. I believe -- you know, during the

24   hearing we discussed about the intentionality. But

25   the question is, you know, who justifies whether it

1   was used intentional or not.

2   So I will side with OCD's definition or,

3   let's say, OCD's statement right here, where it says

4   that: A certification that no PFAS chemicals were

5   added to the fluid used in the completion or

6   recompletion of the well.

7   Thereby rejecting NMOGA'S statement.

8   CHAIR ROZATOS: Okay. Thank you.

9   Commissioner Bloom.

10   COMMISSIONER BLOOM: Yeah, Mr. Chair, as I

11   just stated, I would be fine with OCD's alternative

12   language. I believe that's well articulated.

13   CHAIR ROZATOS: Thank you. I would have to

14   agree on the same reasons that the other two

15   Commissioners stated. So we will not add the part

16   that says that was "intentionally added," that

17   phraseology. We'll go with the OCD phraseology.

18   MR. SHANDLER: Mr. Chair, then moving to B.

19   B, all three parties agree on adding this phrase

20   about this applicable form, so there is uniformity,

21   from my review, on B, on B, adding that language.

22   CHAIR ROZATOS: Commissioners, any concerns

23   with that?

24   COMMISSIONER AMPOMAH: No concerns from me.

25   Sounds like they all agree to the same language, so I

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 1   will agree, too.

 2             CHAIR ROZATOS:  Okay.  Commissioner Bloom.

 3             COMMISSIONER BLOOM:  I'm sorry.  Are we

 4   talking about the language that's --

 5             CHAIR ROZATOS:  Subsection B.

 6             COMMISSIONER BLOOM:  Okay.  Mine kind of

 7   rolled over.  So the language that says "A copy of

 8   electrical and radioactivity logs," is that what

 9   we're looking at?

10             Next page, yeah.  I think we need to go

11   back up for a moment, because there's a little bit of

12   difference.  Or do we just adopt that, this other

13   language here, on A, where it says, "A copy of

14   electrical and radioactivity logs run on the well,"

15   with form C-105?

16             CHAIR ROZATOS:  I think it just kind of got

17   the whole -- and good point.  So on Part A, there was

18   still the part where it says, "chemical disclosure

19   list," but I think because chemical disclosure list

20   was taken out, that that would then go with what the

21   Oil Conservation Division stated.

22             Did NMOGA have any differences on --

23             COMMISSIONER BLOOM:  And let me just -- and,

24   Mr. Chair, if I could, I think we're missing a comma

25   in here.  This is where I'm going.  If we stick with
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1   the OCD language, it says, "If the Division does not

2   receive form C-105 with attached certification," it

3   says "certification logs and summaries." Is that

4   certification, comma, logs and summaries?

5   I think that's what we want, is comma

6   certification. It's not certification logs. It's

7   attached certification --

8   CHAIR ROZATOS: There is -- oh, so if you

9   look at the this copy here, and on -- so the comma is

10   there. I don't know if it made it onto that

11   particular page. But for WildEarth Guardians and for

12   the OCD, they do have the comma in there: Attach

13   certification, comma, logs and summaries.

14   They're just taking out the chemical

15   disclosure list for the OCD.

16   COMMISSIONER AMPOMAH: So, Chair, are you

17   saying "with attached certification logs," or is it

18   certification --

19   COMMISSIONER BLOOM: Comma, logs.

20   COMMISSIONER AMPOMAH: Yeah, it should be

21   certification, comma, logs.

22   CHAIR ROZATOS: You both are saying that

23   there needs to be a comma after "certification,"

24   correct.

25   COMMISSIONER AMPOMAH: Yes.

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 1          MR. SHANDLER:  All right.  So, Mr. Chair, if

 2    you're looking at the Division's Exhibit 1, also

 3    Exhibit 7, they do have a comma, and that is -- as I

 4    noted in my footnote, any typographical errors in my

 5    outline was unintentional, that the party submittal

 6    are the official record.

 7          COMMISSIONER AMPOMAH:  Okay.

 8          CHAIR ROZATOS:  So yeah, I think -- and what

 9    I'm looking at, I'm not looking at the pages that you

10    are.  I'm actually looking at what was submitted, and

11    they both have -- both versions, whether it's

12    WildEarth Guardians or OCD or NMOGA, all three

13    versions, there is a comma after "certification."  I

14    think it's just a typographical error on the form

15    that you're looking at.  So it should say:  If the

16    Division does not receive form C-105 with attached

17    certification, comma.

18          COMMISSIONER BLOOM:  Agreed.  Now I think we

19    might want to take a moment, make sure that we're

20    recording all this properly so we get a good final

21    draft, right?  Is there someone who's doing that for

22    us?  Are you doing that, Mr. Shandler?

23          MR. SHANDLER:  Mr. Chair, the hearing is

24    being recorded and will be transcribed afterwards.  I

25    am also taking notes.
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1   COMMISSIONER BLOOM: Okay. Because I think

2   in some ways, we're working off Attachment A.

3   Attachment A has language in it that we just voted

4   down, right? And so we might be having some issues

5   with version management. I just want to make sure

6   that we're making a good, clear record for ourselves

7   as we move along.

8   CHAIR ROZATOS: So Mr. Shandler is taking

9   notes. I am looking at him, as he mentioned. We

10   also are having it transcribed.

11   So I think, then, just to go with what

12   you're saying, Commissioner Bloom, if we continue in

13   Part A, where it starts, "If the Division does not

14   receive form C-105 with attached certification,"

15   comma, then it was added from WildEarth Guardians to

16   put "chemical disclosure list." But that was taken

17   out of the definition, so now that is taken out.

18   Then it will just read: Certification,

19   comma, logs and summaries within the specified 45-day

20   period. The Division shall withhold the allowable

21   authorizations for the well or suspend injection

22   authority, as appropriate, until the operator has

23   complied with 19.15.7.16 NMAC.

24   Are you good with that version?

25   COMMISSIONER BLOOM: Yes.

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 1          CHAIR ROZATOS:  Okay.  Commissioner Ampomah.
 2          COMMISSIONER AMPOMAH:  Yes.
 3          CHAIR ROZATOS:  Okay.  Now let's move to B
 4   for this section, Subsection B.
 5               Just to remind us again, Mr. Shandler,
 6   if you could just repeat.
 7          MR. SHANDLER:  Sure.  So the existing
 8   language reads in B:  In the case of a dry hole,
 9   complete record of the well on form C-105 -- then I'm
10   going to pause, all three parties have consensus on
11   the following addition:  Comma, or if applicable form
12   C-103, comma, and then the rest of the existing
13   language.  So in B, all three parties have consensus
14   on adding the new phrase.
15          CHAIR ROZATOS:  So, Commissioners, are you
16   good with that?
17               Commissioner Ampomah.
18          COMMISSIONER AMPOMAH:  Yes, I am.
19          CHAIR ROZATOS:  Commissioner Bloom.
20          COMMISSIONER BLOOM:  Yes.
21          CHAIR ROZATOS:  I am, as well.  So that will
22   be adopted.
23          MR. SHANDLER:  Mr. Chair, C, I'll do the
24   easy part first.  The existing language reads:  The
25   Division shall not keep form C-105.
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1   And all three parties agree on this

2   additional language: Comma, or if applicable form

3   C-103, comma.

4   And then the remaining language for that

5   sentence. So the first sentence, all three parties

6   agree with adding a particular phrase.

7   CHAIR ROZATOS: Okay. Commissioners, are

8   you in agreement with this?

9   COMMISSIONER BLOOM: I'm good with that, the

10   addition of, "or if applicable form C-103," yes.

11   CHAIR ROZATOS: Okay. Commissioner Ampomah.

12   COMMISSIONER AMPOMAH: I concur with that.

13   CHAIR ROZATOS: As do I. So that will go as

14   agreed upon by all three.

15   MR. SHANDLER: Later in that Subparagraph C,

16   there's the dispute about the use of the words

17   "shall" and "may." I will read the existing language

18   into the record. It's the last sentence of C.

19   This is the existing language: Upon

20   such request, the Division shall keep these data

21   confidential for 90 days from the date of the well's

22   completion, provided, however, that the report logs

23   and other attached data...

24   From there, the parties have a dispute

25   whether it should be "shall" or "may." According to

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 1   my research, and maybe the Hearing Officer or the

 2   other Commissioners can help me with this, I believe

 3   the proponents and the Oil and Gas Association both

 4   have "shall," where the Division has "may."

 5           COMMISSIONER BLOOM:  Yes.

 6           COMMISSIONER AMPOMAH:  I will certainly

 7   defer this one to you to decide on that, because it's

 8   English.

 9           CHAIR ROZATOS:  Because it's English.

10              Madam Hearing Officer, did Oil and Gas

11   also have "shall"?

12           HEARING OFFICER ORTH:  That's correct.

13           CHAIR ROZATOS:  And the OCD put in "may."

14           HEARING OFFICER ORTH:  That's correct.

15           MR. SHANDLER:  Or retains "may" is I think

16   more appropriately the case.

17           HEARING OFFICER ORTH:  Yes, retains "may."

18           CHAIR ROZATOS:  Okay.  So retains "may."

19   And Oil and Gas and WildEarth Guardians said "shall"?

20           HEARING OFFICER ORTH:  That's correct.

21           CHAIR ROZATOS:  Okay.  So I'm not a lawyer,

22   so, Madam Hearing Officer and Mr. Shandler, my

23   understanding is "may" gives us options, "shall" is

24   concrete, it's pretty much a demand, it will happen

25   this way.  Do I have that understanding?
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1   HEARING OFFICER ORTH: Correct.

2   MR. SHANDLER: Correct.

3   CHAIR ROZATOS: Okay. So, Commissioners,

4   based on that, since "may" gives the option, allows

5   choice, and "shall" makes it mandatory, how do you

6   go?

7   COMMISSIONER BLOOM: I think I need to

8   understand better what's happening here so we can

9   talk this through.

10   The Division shall not keep the form

11 C-105 or C-103 confidential unless the well owners

12 request it in writing. Upon that request, the

13 Division shall keep these data confidential for 90

14 days from the well's completion, provided, however,

15 that reports, logs and other attached data may or

16 shall, when pertinent, be introduced in a public

17 hearing before Division examiners, regardless of

18 their request.

19   So after 90 days, is everything public?

20   CHAIR ROZATOS: Madam Hearing Officer, do

21 you have an answer to that one?

22   HEARING OFFICER ORTH: Well, so my

23 understanding would be that it would be public after

24 that. My concern here with "shall" is that it could

25 be read to require a hearing, even when one wouldn't

1 be otherwise required; whereas, "may" is permissive.

2 If there's a hearing, it may be introduced. But

3 "shall" was confusing to me there.

4   CHAIR ROZATOS: I must admit, I find it

5 interesting that Oil and Gas also wanted "shall" in

6 this. I'm not going to lie, I could see where

7 WildEarth Guardians would want "shall" there. I

8 don't remember the testimony on this one.

9   HEARING OFFICER ORTH: So let me just offer

10 then as to NMOGA's justification that they reproduced

11 in their final proposal document they attached, was

12 NMOGA reports requiring operators to certify that no

13 intentionally added PFAS were used. And as outlined

14 in the prehearing testimony of Drs. Anderson and

15 Richardson, the target is a prohibition on the use of

16 PFAS containing fluids, and they wanted to properly

17 capture the focus of the rulemaking.

18   I don't see a specific justification of

19 the change from "may" to "shall."

20   CHAIR ROZATOS: Madam Hearing Officer, I

21 apologize. As you were talking, I was trying to keep

22 in mind your concern that you had with the word

23 "shall." Can you repeat it, please?

24   HEARING OFFICER ORTH: Just that I think the

25 sentence is ambiguous on the question of then whether

1   a hearing would be required, as opposed to allowing a

2   party, giving a party permission to introduce this

3   information in a hearing. That's one thing.

4   But I was just concerned that maybe the

5   word "shall" would require a hearing that might not

6   otherwise be required.

7   COMMISSIONER BLOOM: Yeah, Madam Hearing

8   Examiner, I take that to -- yeah, I don't take it to

9   mean that the hearing is required but rather that the

10   data shall be disclosed if a hearing were to happen.

11   Right?

12   HEARING OFFICER ORTH: Right. And I guess I

13   felt like "may" was sufficient there. That's all.

14   CHAIR ROZATOS: I have to agree. I find it

15   perplexing that both -- that Oil and Gas would want

16   "shall" as well. I actually have to agree, me

17   personally, with the Division that "may" is actually

18   more appropriate in this instance. So my vote is to

19   go towards "may."

20   I'll give you a minute more to ponder

21   this, and then I'll ask for your opinions, as well.

22   COMMISSIONER AMPOMAH: You know, I'll go

23   with "may" as well.

24   COMMISSIONER BLOOM: I'm still trying to

25   figure out what this does or what it would change.

1   So Part D, says there's an addition

2   there which says: If there is a change in the

3   information provided under this part, the operator

4   must submit the change within 30 days.

5   And then it goes on to say -- there's a

6   change, new language from the joint proponent saying

7   that the Division shall retain each form C-105 and

8   C-103 indefinitely.

9   CHAIR ROZATOS: Well, what you're thinking,

10   Commissioner Bloom.

11   Madam Hearing Officer, if we look at

12   that sentence one more time, it says: Upon such

13   requests, the Division shall keep these data

14   confidential for 90 days from the date of the well's

15   completion, provided, however, that the report logs

16   and other attached data -- and then we have the

17   differentiation of "shall" or "may" -- when

18   pertinent.

19   If it's a "shall," how does the phrase

20   "when pertinent" play, I guess? Because if it's a

21   "shall," then "when pertinent" is null. If it's a

22   "may," then "when pertinent" is something that would

23   play a part. Do I understand that correctly?

24   HEARING OFFICER ORTH: That would be, I

25   think, a reasonable reading of that sentence.

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 1              CHAIR ROZATOS:  So then if this Commission

 2   were to adopt "shall," then we would probably want to

 3   take out the phrase "when pertinent."

 4              HEARING OFFICER ORTH:  Right.  And yet no

 5   party is suggesting that you remove "when pertinent."

 6              CHAIR ROZATOS:  I know.  That's what's

 7   perplexing.

 8              MR. SHANDLER:  Mr. Chair, your point is if

 9   it's a "shall, when pertinent," it really comes back

10   to almost a "may," doesn't it?

11              CHAIR ROZATOS:  Exactly.  Okay.  So

12   Mr. Shandler handed me -- this is Attachment B from

13   WildEarth Guardians, and they stated on Number 47, on

14   Page 17, that to change from "may" to "shall" in

15   19.15.7.16.C recognizes that the chemical data

16   completed by this part will not be subject to a trade

17   secret claim because all chemical disclosures will be

18   made voluntarily.

19              And as I stated, I understand why

20   WildEarth Guardians would want "shall."  I don't

21   understand why New Mexico Oil and Gas wanted "shall."

22              I still stand on the way the phrasing is

23   set, since no one questioned "when pertinent," that

24   automatically makes it a "may," because it's based

25   off of "when pertinent."
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 1              COMMISSIONER BLOOM:  I think maybe where the
 2   proponents wanted to go was to delete "may" and "when
 3   pertinent," to get at --
 4              CHAIR ROZATOS:  We can't make that
 5   assumption on the "when pertinent."
 6              COMMISSIONER BLOOM:  Right.
 7              CHAIR ROZATOS:  I mean, we can make our
 8   decision on when pertinent, but I don't think we can
 9   make any assumption on what either side was thinking
10   of in leaving "when pertinent."
11              COMMISSIONER BLOOM:  Well, I'll vote for
12   "shall" because I did want to see more disclosure.
13              CHAIR ROZATOS:  Okay.
14              COMMISSIONER BLOOM:  And I'm in the
15   minority, so there we go.
16              CHAIR ROZATOS:  Okay.  So you're going for
17   "shall."  I'm going for "may."
18                  And, Commissioner Ampomah, are you for
19   "may" or for "shall"?
20              COMMISSIONER AMPOMAH:  For "may."
21              CHAIR ROZATOS:  Okay.  So 2 to 1 for "may"
22   on that one.
23              MR. SHANDLER:  Mr. Chair, the next two are D
24   and E.  D is new language that all three parties
25   agree upon.
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1   CHAIR ROZATOS: Okay. So I'm just going to

2   read it just to make sure that we just have it on the

3   record. D states, if there is a change in the

4   information provided under this part, the operator

5   must submit the change to the Division within 30 days

6   after the date the operator knew of the change.

7   All three parties did agree on this

8   phraseology.

9   Commissioner Ampomah, do you agree?

10   COMMISSIONER AMPOMAH: Yes, I do agree.

11   CHAIR ROZATOS: Okay. Commissioner Bloom?

12   COMMISSIONER BLOOM: Yes, I agree.

13   CHAIR ROZATOS: Excellent. So we all agree

14   with that change for D.

15   HEARING OFFICER ORTH: Mr. Shandler, may I

16   ask a clarification? Did you cover the 60 versus 90

17   days? It looks like NMOGA wanted 60, but yeah,

18   that's what's in their final proposal.

19   So I'm looking at the final proposal

20   from OCD. They say to keep 90. And I'm looking at

21   the final proposal from the petitioner that keeps it

22   90. But then NMOGA's has 60.

23   Okay. So there's a difference, then,

24   between their final attachment and their final

25   statement of reasons. Okay. I'll withdraw the

1 question.

2   CHAIR ROZATOS: Okay. So we'll just go off

3 of what Mr. Shandler has, which is the -- what was it

4 for NMOGA, the final, what was it called? The

5 proposed finding of facts and conclusions of law.

6 Okay.

7   So everybody agreed on the 90, correct,

8 Mr. Shandler?

9   MR. SHANDLER: If the reliance is based on

10 the NMOGA's proposed findings of fact and conclusions

11 of law, filed February 19th, yes.

12   CHAIR ROZATOS: Okay. Well, let's just --

13 let's solidify it and we'll go that way.

14   Commissioner Ampomah, for 19.15.7.16.C,

15 there is the dates for 90. Do you agree with 90

16 days?

17   COMMISSIONER AMPOMAH: Yes, I do.

18   CHAIR ROZATOS: Okay. Commissioner Bloom?

19   COMMISSIONER BLOOM: I agree, yes.

20   CHAIR ROZATOS: Okay. As do I. So we'll

21 make it official, 90 days. Excellent.

22   We just did D, as in dog. Now we're on

23 E, as in Edward.

24   MR. SHANDLER: Mr. Chair, only the

25 proponents have language for E. It reads, the

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 1   proposed language:  The Division shall retain each

 2   form C-105 and form C-103 indefinitely.

 3            CHAIR ROZATOS:  Okay.  I think the OCD's

 4   reasoning was to strike it because the OCD follows

 5   State's records retention rules, and my understanding

 6   is NMOGA went with the OCD on this one.  Correct?

 7            Okay.  Commissioners.

 8            COMMISSIONER BLOOM:  I would follow OCD's

 9   change there, proposal there.  I know that there are

10   State retention rules.

11            CHAIR ROZATOS:  Okay.  Commissioner Ampomah.

12            COMMISSIONER AMPOMAH:  I agree with that, as

13   well.

14            CHAIR ROZATOS:  Okay.  I, too, agree with

15   that.  So we're going to go with the OCD and follow

16   State records.

17            The next rule is changes to

18   19.15.14.9.C.  Mr. Shandler, I'll just let you direct

19   us on this one, as well.

20            MR. SHANDLER:  Mr. Chair, I direct the

21   Commission's attention to C, where there is some

22   consensus among the three parties and some

23   disagreement.

24            C would be new language proposed, as

25   follows:  An applicant for a permit to drill, deepen
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 1   or plug back shall certify that they will not -- I

 2   pause because I believe all three parties agree with

 3   that phrasing.  At that point, all three parties have

 4   different language.

 5               The proponents want -- just give me a

 6   second.

 7               CHAIR ROZATOS:  I think the first part is

 8   that the proponents want "any undisclosed chemicals."

 9               COMMISSIONER BLOOM:  Mr. Chair, if it's

10   helpful, I would be comfortable with the OCD

11   modification there, given that --

12               CHAIR ROZATOS:  Well, let's break it up.  I

13   mean, I think, Mr. Shandler -- thank you.  I

14   appreciate for expediency.

15               COMMISSIONER BLOOM:  I want to move, yeah.

16               CHAIR ROZATOS:  But I do want to just

17   document what exactly.  So the proponents want

18   "undisclosed chemicals."  That was taken out of our

19   definition, so I think by default that takes it out

20   of this sentence, as well.

21               Am I correct, Mr. Shandler?

22               MR. SHANDLER:  I'm tracking with you, yes,

23   Mr. Chair.

24               CHAIR ROZATOS:  So then our next part is

25   before "or PFAS," so the proponents added
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 1   "undisclosed chemicals," which is taken out, and then

 2   says, "or PFAS."

 3               The OCD says, "may not introduce any

 4   additives that contain PFAS."

 5               And what did Oil and Gas write for that

 6   one?

 7         MR. SHANDLER:  Mr. Chair, they will not

 8   introduce any additives that is -- strike that.

 9               They will not intentionally introduce

10   any PFAS containing hydraulic fracturing fluids in

11   hydraulic fracturing operations of the well.

12         CHAIR ROZATOS:  Okay.  So the petitioner put

13   in:  PFAS in downhole operations of the well.

14               The OCD put in:  Additives that contain

15   PFAS chemicals in the completion or recompletion of

16   the well.

17               And New Mexico Oil and Gas put in the

18   intentional -- they will not in this -- oh, they

19   mislabeled it -- that they:  Will not intentionally

20   introduce any PFAS containing hydraulic fracturing

21   fluids in hydraulic fracturing operations of the

22   well.

23               So those are the differences.  Again,

24   for expediency, I think, Commissioner Bloom, you said

25   let's just go with the Oil Conservation Commission
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1   Division's changes, correct?

 2   COMMISSIONER BLOOM: Yeah. I mean, I'll

 3   walk that back, I mean --

 4   CHAIR ROZATOS: Okay.

 5   COMMISSIONER BLOOM: -- I do support the

 6   proponents' position here to -- obviously to disallow

 7   or un-allow undisclosed chemicals. But, you know,

 8   we've taken our vote on that and that's gone, so then

 9   at that point, I think the OCD modification makes

10   sense.

11   CHAIR ROZATOS: Okay. Commissioner Ampomah.

12   COMMISSIONER AMPOMAH: Yeah, I agree with

13   OCD's revision there.

14   Now, I do have a quick question. So in

15   the bill that we received some notes on, you know, in

16   there, too, intentionality is a big part of it. So,

17   I mean, assuming this passes and then we've taken out

18   all the intentionality throughout our entire

19   deliberations here, Counsel, how does that impact,

20   let's say, what we've done?

21   MR. SHANDLER: Mr. Chair, are you asking the

22   question about intentionality, the impact of that

23   verb? Or was it a more holistic question.

24   COMMISSIONER AMPOMAH: Yeah, so reading

25   through the bill that we were briefed on prior to,

1 let's say, the deliberations, I'm asking, you know,

2 intentionality is throughout the entire bill.

3   MR. SHANDLER: Right.

4   COMMISSIONER AMPOMAH: So here, assuming,

5 let's say, we strike out "intentionally introduce any

6 PFAS," so let's see how does that -- like, if this

7 bill passes, how does that change, let's say, if we

8 are to go with the OCD's revision?

9   MR. SHANDLER: Mr. Chair, if the bill in

10 front of the legislature passes and is signed into

11 law, then it's possible that some party may need to

12 bring a new petition, even the government, to examine

13 the ramifications of adding that legal term of art,

14 "intentional."

15   But my advice from earlier this morning

16 is that until that happens, that the lay of the law

17 right now is -- the lay of the land is that that has

18 not passed. And that's actually not even from the

19 proponents' proposal. That's from the Oil and Gas

20 Association proposal.

21   So I guess short answer is it may have

22 to be reviewed if that law has that type of language.

23   COMMISSIONER AMPOMAH: Okay. I will agree

24 and vote to go with OCD's revision.

25   CHAIR ROZATOS: Okay. Excellent. I think I

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 1   will go with -- I also agree with the OCD, as well.
 2   So all three with OCD's proposal.
 3                   Our next section is 19.15.14.10,
 4   approval or denial of a permit to drill, deepen or
 5   plug back, Section A.
 6                   Mr. Shandler, I'll turn it over back to
 7   you.
 8           MR. SHANDLER:  So, Mr. Chair, I'll try to
 9   break this into two different parts here.  In the
10   first sentence, we're looking at 10, correct?
11           CHAIR ROZATOS:  Correct.
12           MR. SHANDLER:  The director or the
13   director's designee may deny a permit to drill,
14   deepen or plug back if the applicant is not in
15   compliance with.
16                   I've just read the existing language.
17   OCD has, on its own, proposed inserting an additional
18   rule citation in, which reads, "19.15.14.9 NMAC and,"
19   and then they continue with the sentence.
20                   So the first step is to decide whether
21   the Commission agrees with OCD and add in this second
22   citation.
23           CHAIR ROZATOS:  19.15.14.9, that's what we
24   just talked about, correct?  Yes.  19.15.14.9, so
25   that's the one that we just talked about.
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1   MR. SHANDLER: So what this is saying is

          2   that if an applicant for permit to drill, deepen or

          3   plug back not put any PFAS downhole, I think you're

          4   having to certify that.

          5   CHAIR ROZATOS: I think they're saying --

          6   okay. So if we look at 19.15.14.9, it's

          7   applications. So I think what the OCD is trying to

          8   say is that if it's not in compliance with any part

          9   of this Part 9, 19.15.14.9, or if it's not in

         10   compliance with Subsection A of 19.15.5.9, not "or,"

         11   "and." Sorry. So it needs to be in compliance for

         12   both sections for this to continue, is what the OCD

         13   is saying.

         14   Madam Hearing Officer, is that how you

         15   understand it, as well?

         16   HEARING OFFICER ORTH: Based on the failure

         17   to do a certification, that's what you're saying?

         18   CHAIR ROZATOS: I'm saying my understanding

         19   is that the OCD here is saying that the director or

         20   the director's designee may deny a permit to drill,

         21   deepen or plug back if the applicant is not in

         22   compliance with both of these groups, 19.15.14.9, and

         23   Subsection A of 19.15.5.9. Am I understanding that

         24   correctly?

         25   HEARING OFFICER ORTH: Yes.

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 1              CHAIR ROZATOS:  Okay.

 2              HEARING OFFICER ORTH:  So the extra

 3    language, as I read it, addresses something other

 4    than a permit to drill, deepen or plug back, which is

 5    to authorize the transport of non-domestic waste,

 6    including produced water.  This is from the

 7    Guardians, the petitioner.

 8              MR. SHANDLER:  So I think what we're trying

 9    to do here is deny a permit to an applicant that does

10    not provide certification that no PFAS were used,

11    right?  And if you look at NMOGA's hearing, I think

12    it's the first of the documents they submitted,

13    Part 1, they get at this.  There seems to be some

14    unanimous concurrence that we want to deny permits to

15    people that haven't certified they haven't used PFAS.

16              HEARING OFFICER ORTH:  On Page 810 of

17    NMOGA's attachment, what they say is that they've

18    stricken the other language because this rulemaking

19    has nothing to do with the transport of produced

20    water, or non-domestic waste has not been properly

21    noticed to consider such issues.

22                   And so the focus for them should be on a

23    permit to drill, deepen or plug back.  And attempting

24    to redefine or equate produced water with or to

25    non-domestic waste, in their mind, is legally not
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 1   consistent with the law and the procedure.

 2            MR. SHANDLER:  So, Mr. Chair, I didn't lay

 3   this out as well as I could.  What I was trying to

 4   focus on was the first part, and then we'll get to

 5   what the Hearing Officer is --

 6            CHAIR ROZATOS:  Yeah, I'm still on the first

 7   part.

 8            MR. SHANDLER:  I think what you've said is,

 9   the first part, by adding the additional citation, is

10   that the Division is saying, "We now have additional

11   grounds to deny a permit."  And that is, if you don't

12   do this new certification document in the application

13   process.

14            CHAIR ROZATOS:  Yes.  So my understanding --

15   because we're still just on the addition of

16   19.15.14.9, that OCD put in.

17            HEARING OFFICER ORTH:  I'm sorry for jumping

18   on there.

19            CHAIR ROZATOS:  No, that's okay.

20            So 19.15.14.9 talks about -- I

21   apologize, I'm jumping between here -- talks about

22   applications, what is part of the application.  And

23   so we've added in the PFAS -- we agreed to the OCD's

24   interpretation of C for 19.15.14.9.

25            So then the OCD is saying,
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 1   traditionally, it had just Subsection A of 19.15.5.9,
 2   and if you go to 19.15.5.9, that is compliance, so
 3   it's under enforcement and compliance.  Subsection A
 4   states:  An operator is in compliance with
 5   Subsection A of 19.15.5.9 NMAC if the operator -- and
 6   then it has (1), (2), (3), (4), and the Number (4)
 7   has four sub-points, as well, which talks about the
 8   financial responsibility, any orders that may be
 9   against the individual, how many wells can be active
10   or inactive, et cetera.
11              So in this instance, for 19.15.14.10,
12   the OCD wants to make it a little more stringent by
13   adding in 19.15.14.9.  So you have to comply with
14   19.15.14.9 and Subsection A of 19.15.5.9 to be able
15   to proceed with an approval or denial or permit to
16   drill, deepen or plug back.
17              And I said that all in one breath.  Are
18   you all in agreement with that?
19         COMMISSIONER AMPOMAH:  Yes, I am.
20         CHAIR ROZATOS:  Commissioner Bloom.  It's
21   adding both -- just as a reminder, it's adding both
22   Subsection -- both rules --
23         COMMISSIONER BLOOM:  Yeah, I'm trying to see
24   what would drop out if we don't go with the --
25         CHAIR ROZATOS:  It's making it even more
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1 stringent than what WildEarth Guardians --

2   COMMISSIONER BLOOM: Yeah, I think I'm fine

3 with the OCD modification.

4   CHAIR ROZATOS: Okay. So for that one, I

5 agree, as well. We will keep in 19.15.14.9.

6   Now we go to the second part.

7   MR. SHANDLER: Mr. Chair, after the second

8 citation, and by that, I mean Subsection A of

9 19.15.5.9 NMAC, the proponent, and only the

10 proponent, has an additional four lines of text that

11 the Hearing Officer was alluding to. That proposed

12 language is: And shall deny a permit to drill,

13 deepen or plug back any permit authorizing the

14 transport of non-domestic waste, including produced

15 water, if the applicant does not provide the

16 certification required by Subsection C of 19.15.14.9,

17 or provides a false certification period.

18   Their rationale, "their" being the

19 proponents, on their proposed statements of reasons,

20 52, Number 52 says: The amendment requires OCD to

21 deny permits to any operator that will ensure that

22 operators who do not comply with the new PFAS and

23 undisclosed chemicals ban. This will help ensure

24 compliance with the new regulatory requirements.

25   CHAIR ROZATOS: Okay. So discussion.

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 1              COMMISSIONER AMPOMAH:  You know, I will

 2   agree with both NMOGA and OCD to strike that

 3   provision, because in there, it talks about produced

 4   water and then also non-domestic waste, transport of

 5   non-domestic waste, which we did not really hear much

 6   about during the hearing.

 7              And also, I do believe that this

 8   particular instance we're talking about drill permit,

 9   drilling permit, or, let's say, deepen or plug back

10   on the well.

11              So, to me, including produced water and

12   then non-domestic waste, more or less, make it more

13   complex.  So I will go with NMOGA and OCD to strike

14   that.

15              CHAIR ROZATOS:  Thank you.

16              Commissioner Bloom.

17              COMMISSIONER BLOOM:  I think I jumped ahead.

18   Are we on --

19              CHAIR ROZATOS:  So we are looking at

20   19.15.14.10.A, the second part.  So on your screen,

21   it would be this part in red.  For WildEarth

22   Guardians, this part in blue, that was struck out by

23   the New Mexico OCD.  And the New Mexico Oil and Gas

24   Association agrees with the OCD.

25              I am I right on that, the New Mexico Oil
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1   and Gas Association agrees with the OCD on that

2   second part?

3   MR. SHANDLER: Correct.

4   CHAIR ROZATOS: Okay.

5   COMMISSIONER BLOOM: For the same reasons as

6   the previous section, I would agree with the OCD

7   modification.

8   CHAIR ROZATOS: Okay. So I also agree with

9   the OCD on this one, but here's why I agree with the

10 OCD. I think the information there about the

11 domestic waste -- the transport of the domestic

12 waste, including produced water if the applicant does

13 not provide the certification required by

14 Subsection C of 19.15.14.9, with the OCD putting in

15 that 19.15.14.9, all of it, is dependent on this

16 denial or approval to drill, deepen or plug, is now

17 dependent on 19.15.14.9, then it automatically covers

18 it. So for whatever concerns there are with

19 anything, then it's still dependent on 19.15.14.9.

20   So I just think that it's a little

21 redundant, so I agree with the OCD, as well. So I

22 think all three agree to this change.

23   Our next one is the proposed amendments

24 to 19.15.16. I believe we start with 19.15.16.17.A,

25 Mr. Shandler.

1   MR. SHANDLER: Mr. Chair, I believe two

2   parties have differing language and some overlapping

3   language. The third party, the New Mexico Oil and

4   Gas Association, in their proposed findings of fact,

5   I could not find them a citation to alternative

6   language.

7   I did find Finding 113 saying the OCC

8   should adopt the NMOCD's proposed amendments to

9   19.15.16.7, provided that further amendments are made

10 to 19.15.16.17 NMAC to more accurately track

11 Mr. Powell's November 14, 2024, hearing testimony and

12 the written justifications that the OCD provided in

13 Exhibits 4-00442, 4-0049.

14   I'll pause for a second. I did not -- I

15 defer to the Hearing Officer to help explain what

16 Mr. Powell's testimony on November 14th might have

17 been. And then I will resume with the comparing and

18 contrast of the language.

19   CHAIR ROZATOS: Well, while you're looking

20 that up, Madam Hearing Officer, Mr. Shandler, on that

21 113, they're proposing to go with NMOCD for all of

22 19.15.16.17, or just this Part A?

23   MR. SHANDLER: Mr. Chair, the document I'm

24 looking at, New Mexico Oil and Gas Association's

25 proposed findings of fact and conclusions of law,

1 starting at Number 113, I could not find anywhere

2 where they provided --

3   CHAIR ROZATOS: So they're not

4 differentiating between A, A(1), A(2), A(3), A(4)?

5 They're just saying all the changes in 19.15.16.17?

6   MR. SHANDLER: Correct.

7   CHAIR ROZATOS: Okay.

8   HEARING OFFICER ORTH: So Mr. Powell said

9 that as to the changes in 19.15.16.17 refer to slides

10 22 through 27. I know Commissioner Ampomah was

11 looking at the slides.

12   They want to seek and codify OCD's

13 authority and process of groundwater or surface

14 waters threatened by downhole activities. The

15 proposed subparts of the rule provide a pathway for

16 OCD to conduct an appropriate investigation to

17 determine if there are impacts to water.

18   OCD believes the changes to this rule

19 should establish a process for the detection of

20 potential impacts, but not for their remediation.

21 The remediation will be regulated by existing OCD

22 rules regarding water impact, such as 19.15.29 and

23 19.15.30 NMAC.

24   The critical provision in OCD's proposed

25 version aims to ensure proper identification of

1 chemicals for which OCD may require testing and

2 remediation under existing rules.

3   CHAIR ROZATOS: Okay. I think we should

4 just go with that this is a blanket statement from

5 New Mexico Oil and Gas Association that they'll go

6 with what the New Mexico OCD states as their rules,

7 and then we can just go between the petitioner and

8 the OCD.

9   Does that sound appropriate to you,

10 Mr. Shandler?

11   MR. SHANDLER: Mr. Chair, if there's

12 anything from Mr. Powell's testimony that people

13 remember and feel of such weight, then maybe they can

14 wordsmith. But otherwise, I'm happy to proceed with

15 the language comparison between the two alternative

16 proposals.

17   CHAIR ROZATOS: Okay. Let's proceed, and

18 then if we have questions, we can go. Okay.

19   MR. SHANDLER: Mr. Chair, I will start with

20 A. The existing language starts out "If." Both the

21 proponent and OCD want to add the verb "completing."

22 The existing language then continues to read,

23 "shooting, fracturing or treating a well."

24   Both parties then want to add the

25 language, "has the potential to negatively impact."

1   The existing language then continues,

2 "the producing formation injection interval," then

3 both parties agree to add the phrase, "communicates

4 with other strata."

5   The existing language continues, "casing

6 or casing seat or may create underground waste or

7 contaminate fresh water, the operator shall, within

8 five working days, notify."

9   So I'm going to pause there. So both

10 parties are in agreement up to that point here.

11   Then the existing language says, "five

12 working days, notify in writing the Division."

13   The Division wants it to read "five

14 working days" -- or maybe "notify the Division in

15 writing" -- let me try this again.

16   I'm pausing because one "Division" is

17 deleted and one, I think, is replaced. So the

18 proposal says "notify the Division in writing," then

19 strike "the Division." That's what OCD wants.

20   CHAIR ROZATOS: I think it's congruity in

21 sentence structure. Because if you read, it says

22 WildEarth Guardians says "notify in writing the

23 Division," and I think it should mean "notify the

24 Division in writing."

25   MR. SHANDLER: Okay.

1   CHAIR ROZATOS: I think that's what the

2   correction is. And ironically, counsel from

3   WildEarth Guardians is nodding yes. No, not

4   WildEarth Guardians, but he said yes.

5   MR. SHANDLER: I think for our purposes, we

6   don't pay attention to whether they're nodding or

7   not.

8   CHAIR ROZATOS: I agree.

9   MR. SHANDLER: I think that the room

10   understands what the language proposal is, and I have

11   not explained it well for the record.

12   But the two proposals as presented in

13   the record provide the information better than

14   I've said it out loud.

15   Moving beyond that, then there is some

16   dispute about the last couple words where the

17   Division wants to add the phrase "loss of containment

18   of any."

19   COMMISSIONER BLOOM: Mr. Chair, I think we

20   see a lot of similarities there between the WildEarth

21   Guardians proposal and the OCD modification. The OCD

22   modification provides a little bit more nuance. I'd

23   be fine with either, but would support the OCD

24   modification.

25   COMMISSIONER AMPOMAH: So I do support all

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 1   OCD's modification, as well.

 2            CHAIR ROZATOS:  Yes, I think in this

 3   instance I agree with the OCD, as well.  I think the

 4   one part was just the grammatical situation where

 5   "the Division" and "the Division," and then they've

 6   added the "loss of containment or any damage."  I

 7   think that that works for us, as well.  So all three

 8   of us agree with the OCD's version of this particular

 9   one.  We'll document that.

10            MR. SHANDLER:  Mr. Chair, according to my

11   notes, A(1), both sides have identical new proposed

12   language.

13            CHAIR ROZATOS:  Okay.  And I think they

14   agree on this.  So for A(1), it just states:

15   Diligence shall include, but is not limited to,

16   varying casing integrity and isolation of strata.

17   This can include pressure testing in accordance with

18   19.15.25 NMAC.  Performing casing integrity logs,

19   cement bond logs and any other means determined

20   necessary by the operator or required by the

21   Division.

22                As was mentioned, all three sides agree.

23                Commissioner Ampomah.

24            COMMISSIONER AMPOMAH:  I agree to that, too.

25            CHAIR ROZATOS:  Okay.  Commissioner Bloom.
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1   COMMISSIONER BLOOM: I'm fine with that, as

2   well.

3   CHAIR ROZATOS: Excellent.

4   The next one is A(2).

5   MR. DAVIS: Madam Hearing Officer.

6   HEARING OFFICER ORTH: Sir.

7   MR. DAVIS: May I raise a point of order?

8   HEARING OFFICER ORTH: Okay.

9   MR. DAVIS: I believe in this next provision

10   that the Commission will discuss, there's an issue

11   that's related to a prior provision that has already

12   been discussed. And the issue is whether the

13   certifications will include all downhole operations

14   or just completions and recompletions.

15   And I don't believe that the Commission

16   discussed that issue, and so I just wanted to raise

17   that, that that is coming up now. But it is actually

18   related to a prior provision 19.15.14.9.C, and that

19   was a matter of significant discussion during the

20   hearing. I just wanted to raise that. Thank you.

21   HEARING OFFICER ORTH: Thank you.

22   CHAIR ROZATOS: Madam Hearing Officer.

23   HEARING OFFICER ORTH: Sir.

24   CHAIR ROZATOS: I'm a little perplexed with

25   what was just stated. And, again, it may be that I

1 don't have enough coffee in me, but I don't

 2 understand.

 3   HEARING OFFICER ORTH: He's noting that the

 4 issue of completions and recompletions was an issue

 5 of significant discussion during the hearing and it

 6 was a heads-up that it was related to another

 7 provision that was earlier discussed, unless I got

 8 that incorrect.

 9   CHAIR ROZATOS: I'm not understanding the

10 heads-up. Thank you, but, I mean, I don't -- I'm

11 missing something somewhere.

12   HEARING OFFICER ORTH: I'm sorry.

13   Mr. Davis.

14   MR. SHANDLER: Sorry. Actually, we can't go

15 down this road --

16   CHAIR ROZATOS: Right.

17   MR. SHANDLER: -- in a rulemaking. So if

18 you're gracious enough to allow him to make a

19 statement, if no one understands what it is, we can't

20 go down this rabbit hole. We're just going to

21 proceed.

22   CHAIR ROZATOS: Yeah, even better. Thank

23 you.

24   Okay. So let's just go with what we've

25 got in front of us, 19.15.16.17.A(1), the proposal

1   was that: Diligence shall include, but is not

2   limited to, varying casing integrity and isolation of

3   strata. This can include pressure testing in

4   accordance with 19.15.25 NMAC, performing casing

5   integrity logs, cement logs and any other means

6   determined necessary by the operator or required by

7   the Division.

8   I'm sorry. That was (1). We're on (2).

9   We did (1). My apologies.

10   If damage from the shooting, fracturing

11 or treating of a well has the potential to impact

12 surface or groundwater, the operator shall test for

13 all chemicals disclosed in previous downhole

14 operations and will use a third-party accredited

15 laboratory to conduct any -- is it inappropriate

16 testing? I don't think they mean inappropriate --

17 any appropriate testing necessary to verify any

18 potential impact. The testing shall include all

19 chemicals used in the well and may also include, but

20 is not limited to, PFAS chemicals listed in 20.6.2

21 NMAC, and chemicals listed in 19.15.29.11.A(5)(e)

22 NMAC. This may require more robust sampling than

23 what is proposed by the operator, if deemed

24 necessary, due to the nature of the potential

25 chemicals.

1   Of course the OCD has differing opinion

2   in this. So the OCD and WildEarth Guardians agree to

3   the first part: If damage from the shooting,

4   fracturing or treating of a well has the potential to

5   impact surface or groundwater.

6   COMMISSIONER BLOOM: Mr. Chair, I think a

7   lot of the additions in blue here are necessary only

8   because we have allowed the continuation of trade

9   secrets.

10   MR. SHANDLER: Correct, yeah.

11   CHAIR ROZATOS: So I was just going to go

12   there. I promise I won't take too long. I will

13   quickly differentiate.

14   So they agree on that first part up to

15   groundwater, comma. Then we have the change here

16   that the OCD put in: Then the operator will disclose

17   to the Division all additives used in the applicable

18   fluid stream, including trade secret additives as

19   necessary to identify all potential contaminants. If

20   trade secret chemical information is received by the

21   Division, the Division will hold the information

22   confidential as required by 1978 NMAC 14-21-1, based

23   on the chemicals identified by the operator and the

24   Division. The operator will test for all identified

25   potential harmful chemicals and will use the third

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 1  party.
 2              And they took out some of the other
 3  parts, such as "shall include all chemicals used in
 4  the well," and "can elect to request."
 5              Discussion.
 6              COMMISSIONER AMPOMAH:  Mr. Chair, so I think
 7  this one we've discussed that previously.  And I do
 8  like this provision a lot, because here we are giving
 9  NMOCD the authority to request for any undisclosed
10  chemicals, including trade secrets, especially if
11  there is any problem.
12              So that also means that we are not
13  necessarily saying that, let's say, all trade secrets
14  should never be disclosed.  You know, here, OCD will
15  have the authority to request for any undisclosed
16  chemicals which, more or less, probably might have
17  been marked as trade secret.
18              So I do support the revisions that OCD
19  is proposing on this.
20              CHAIR ROZATOS:  Okay.  Commissioner Bloom.
21              COMMISSIONER BLOOM:  Well, I'm back in a fix
22  again because, given that we have continued to allow
23  trade secrets, the OCD modifications would make
24  sense.  Although, I don't approve of that continuance
25  of the trade secrets.  So I guess I would vote
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1 against this. But given where we have gone, this

2 certainly makes sense.

3   I see that another not insignificant

4 change is that the testing won't be of all chemicals

5 used in the well but rather chemicals of concern.

6 And I think that makes sense. So seems to be well

7 put together, given where we're at currently in our

8 discussions.

9   CHAIR ROZATOS: Okay. Thank you.

10   I will agree with the OCD on this one,

11 as well.

12   Our next one is 19.15.16.17.A(3). The

13 proposal from WildEarth Guardians is: If it is

14 deemed there is an impact to surface groundwater, the

15 operator shall report the impact as a major release

16 in accordance with 19.15.29 NMAC and respond

17 accordingly.

18   The OCD does not have any modifications

19 to this. They agree.

20   Commissioner Ampomah.

21   COMMISSIONER AMPOMAH: I also agree to that,

22 as well.

23   CHAIR ROZATOS: Okay. Commissioner Bloom.

24   COMMISSIONER BLOOM: I agree.

25   CHAIR ROZATOS: And I agree, as well.

1   Excellent.

2   The next change is 19.15.16.17.A(4), If

3   testing reveals the presence of PFAS or undisclosed

4   chemicals, the Division may take enforcement action

5   pursuant to 19.15.5 NMAC.

6   Did I read that one right? I'm reading

7   off of Attachment A notes. I'm not reading the

8   counsel's notes. I'm reading Attachment A. I read

9   it straight off of Attachment -- Madam Hearing

10   Officer.

11   HEARING OFFICER ORTH: Right, I'm looking at

12   Attachment A, as well, which was filed the same day

13   as their closing brief, February 19th.

14   CHAIR ROZATOS: So this is correct. Okay.

15   So the statement from WildEarth Guardians under

16   Attachment A for 19.15.16.17.A(4), if testing reveals

17   the presence of PFAS or undisclosed chemicals, the

18   Division may take enforcement action pursuant to

19   19.15.5.

20   Am I missing something?

21   COMMISSIONER BLOOM: I feel like we're

22   missing something here, too. Let's take a second.

23   HEARING OFFICER ORTH: But then we have

24   NMOGA and OCD both striking what must have been

25   earlier language: If testing reveals the presence of

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 1   PFAS or undisclosed chemicals the Division may revoke

 2   authorization to operate upon consideration of

 3   whether the current operator or previous well owner's

 4   operations contributed to the presence of PFAS or

 5   undisclosed chemicals.

 6            COMMISSIONER BLOOM:  Mr. Chair, I think it

 7   looks like the --

 8            CHAIR ROZATOS:  There's version differences

 9   in this one.

10            COMMISSIONER BLOOM:  And you're looking at?

11            CHAIR ROZATOS:  I'm looking at Attachment A.

12            COMMISSIONER BLOOM:  Yeah, which I think

13   works from the OCD standpoint, because it gets rid of

14   withdrawing "operator authorization," which the OCD

15   doesn't have.  It just says you can take enforcement

16   action.

17            CHAIR ROZATOS:  Madam Hearing Officer, in

18   instances like this, because this is a massive

19   incongruity -- because if we look at what the Oil

20   Conservation Division has struck out, it doesn't read

21   what was submitted in Attachment A.

22            HEARING OFFICER ORTH:  Right.  So the

23   attachments to the post-hearing briefs were allowed

24   to differ from original proposals so long as what

25   they propose as kind of their best and final offer is
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1    based on evidence in the record.  I suspect

2    Mr. Shandler would support that statement.

3              CHAIR ROZATOS:  So is this Commission to

4    proceed on the assumption that the Oil Conservation

5    Division disagrees with the statement since it

6    differs?

7              HEARING OFFICER ORTH:  So NMOGA and OCD both

8    believed that what must have been in the original

9    proposal from Guardians needed to be struck, which is

10   if testing reveals the presence of PFAS, they can

11   revoke operating authorization.

12               So Guardian's final proposal does not

13   include the notion of revoking operating

14   authorization.  It simply says the Division may take

15   enforcement action pursuant to 19.15.5.

16             CHAIR ROZATOS:  Commissioner Ampomah.

17             COMMISSIONER AMPOMAH:  Yeah, I think either

18   way OCD's response to that still applies.

19             CHAIR ROZATOS:  Well, this is a substantial

20   difference, though, Commissioner.  I mean, if you

21   read what they wrote in an Attachment A, it states:

22   If the testing reveals the presence of PFAS or

23   undisclosed chemicals -- well, we struck out the

24   words "undisclosed chemicals" -- the Division may

25   take enforcement action pursuant to 19.15.5.
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 1              COMMISSIONER AMPOMAH:  Not a different one?

 2              COMMISSIONER BLOOM:  I see where in OCD's

 3   original hearing comments, it says:  The OCD does

 4   already have other enforcement regulations codified

 5   under 19.15.5, which can include a number of

 6   sanctions.

 7              OCD did not seem to need to restate

 8   that.

 9              CHAIR ROZATOS:  Agreed.  But here --

10              COMMISSIONER BLOOM:  And I guess my concern

11   here is this new language is a very late addition

12   that other parties haven't had a chance to respond

13   to.  And even previously, NMOGA was -- or, I'm sorry,

14   OCD was going to strike the suggested language but it

15   believes that it already has the enforcement

16   capabilities.  It, yeah, might be fine without

17   Number (4) here.

18              CHAIR ROZATOS:  Yeah, that's where I was

19   going.  I was going to offer the two options.  We

20   either sit and we dissect this one, or we strike it,

21   we go under the assumption that the OCD says:  We

22   already have authority under 19.15.5.  This is

23   redundant.

24              COMMISSIONER AMPOMAH:  Yeah, that was my

25   thought, too.
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 1              CHAIR ROZATOS:  Okay.

 2              COMMISSIONER AMPOMAH:  Even reading both, it

 3   still feels like OCD believes that they do have the

 4   enforcement authority.  So probably not needed.

 5              CHAIR ROZATOS:  So you agree?  Your vote is

 6   to strike Number (4)?

 7              COMMISSIONER AMPOMAH:  Yes.

 8              CHAIR ROZATOS:  Completely?

 9              COMMISSIONER AMPOMAH:  Yes.

10              CHAIR ROZATOS:  Commissioner Bloom.  I was

11   pulling up 19.15.5 to look myself.  I have it up.

12              COMMISSIONER BLOOM:  Yeah.  So the main

13   aspects of 19.15.5 are compliance, enforcement,

14   enforcement of statute and rules, civil penalties,

15   hearing procedures.

16              I think given what we're seeing here,

17   given the prior comments from OCD, I think I would be

18   good moving ahead without Number (4) and not risking

19   having something in there that was not open to the

20   other parties to discuss.

21              CHAIR ROZATOS:  Yeah.  I have concerns with

22   a late-stage change like that, that the other parties

23   didn't get to discuss.  So I think we all agree

24   strike Number (4).

25              Now on Attachment A, there's -- did we
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1   have anything on 19.15.16.17.B?

2   HEARING OFFICER ORTH: Mr. Chair, it appears

3   that the OCD matches or -- I believe matches the

4   Guardians. So: If completing, shooting, fracturing,

5   or chemical treating results in the well's

6   irreparable injury, the Division may require the

7   operator to properly plug and abandon the well and

8   take any necessary actions to mitigate any resulting

9   impacts.

10   That appears to be an exact match there.

11   And NMOGA is not too far from that,

12 although it is different: If the well integrity

13 event from completing, shooting, fracturing or

14 treating a well results in the well's irreparable

15 injury, the Division may require the operator to

16 properly plug and abandon the well and take any

17 necessary actions to mitigate harm to human health,

18 animal, plant life or property.

19   CHAIR ROZATOS: Okay. I just want to double

20 check something. I've pulled up 19.15.16.17. I just

21 want to make sure that I've pulled up the right --

22 it's 19.15.17 -- 19.15.16.17.

23   Yeah, so 19.15.16.17 is just one

24 paragraph, and we were adding all of this stuff. So

25 is Subsection B now also introduced; is that what I'm

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 1   seeing?

 2             HEARING OFFICER ORTH:  No, Mr. Chair.  I

 3   believe there is an existing B.  There might be some

 4   confusion because OCD marks that as D, as in dog, but

 5   it's just clearly a typo; should be B, as in boy.

 6             CHAIR ROZATOS:  Madam Hearing Officer, we've

 7   pulled up the actual NMAC and there is no B.

 8             COMMISSIONER BLOOM:  Or A, for that matter.

 9             CHAIR ROZATOS:  These were being created.

10             HEARING OFFICER ORTH:  Ah, okay.

11             CHAIR ROZATOS:  Okay.  So I've asked

12   Commissioner Bloom to pull it up, and we both have

13   the same page of 19.15.16.17.  I'm trying to --

14             HEARING OFFICER ORTH:  Does not exist at

15   all?

16             CHAIR ROZATOS:  Can we turn off our mic?  If

17   we're not using the mic, let's turn it off, because

18   of the background.

19             19.15.16.17 currently in the NMAC

20   states, "Shooting and chemical treatment of wells,"

21   and it is literally three lines.

22             And so we have increased it with Part A,

23   and then adding the subsections under A.  And then

24   under WildEarth Guardians Attachment A, they added a

25   Paragraph B.  There's a lot of A's and B's in that
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 1   sentence.

 2              Am I reading this correctly,

 3   Commissioners?

 4              COMMISSIONER BLOOM:  Mr. Chair, if we go to

 5   the PDF 45 of OCD's exhibit, there is substantial

 6   information related to this.

 7              CHAIR ROZATOS:  Yeah.  So we expounded the

 8   paragraph from just three lines for 19.15.16.17, from

 9   three lines to a Paragraph Subsection A.  And then A,

10   we added subsections to that, (1) and (2) and (3).

11              And then, according to Attachment B of

12   WildEarth Guardians -- I'm sorry, Attachment A from

13   WildEarth Guardians, there's also a Paragraph B now.

14              COMMISSIONER BLOOM:  I think we jumped ahead

15   somewhere here.

16              CHAIR ROZATOS:  Yeah, but I'm going off of

17   the electronic version of Attachment A.

18              COMMISSIONER BLOOM:  Did we deal with 14.10?

19              CHAIR ROZATOS:  Yes.

20              COMMISSIONER AMPOMAH:  Yeah, we dealt with

21   that.

22              COMMISSIONER BLOOM:  That's right, yeah, we

23   did that.

24              CHAIR ROZATOS:  Right.  So then if you look,

25   so your printed copy is the same as my electronic
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 1   copy, Commissioner, so we're here.  There's this

 2   Part B.

 3             COMMISSIONER BLOOM:  Did we discuss this?

 4             CHAIR ROZATOS:  We did.  We just did all

 5   that.

 6             COMMISSIONER BLOOM:  Okay.

 7             CHAIR ROZATOS:  So for Number (1), so A(1),

 8   there was no changes, we agreed.  Both parties agree.

 9             COMMISSIONER BLOOM:  That's right, yeah.

10             CHAIR ROZATOS:  A(2), we went with the OCD

11   changes.  A(3), everybody agreed, so we went with

12   that.  A(4), we just struck it.

13             COMMISSIONER BLOOM:  Yeah.

14             CHAIR ROZATOS:  Then there is this

15   Paragraph B, as in boy.  The original NMAC does not

16   have a Paragraph B.  So WildEarth Guardians is

17   submitting changes?

18             MR. DAVIS:  Madam Hearing Officer, I think I

19   can clear this up very quickly, just to say that that

20   new Paragraph B, the paragraph, itself, the B, the

21   letter B is new.  The language that's not underlined

22   is existing language in the NMAC which has been

23   separated into a new paragraph.

24             So the "If shooting, fracturing or

25   chemical treating results" exists in the NMAC
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 1  currently, and that's why it's not underlined.
 2            HEARING OFFICER ORTH:  Right.  And it's in
 3  black ink rather than red.
 4            CHAIR ROZATOS:  So if you can just let me --
 5  if you just indulge me just one second.
 6                 Mr. Davis, you said that you basically
 7  have taken the existing paragraph in 19.15.16.17 and
 8  made it now Part B with modifications.
 9                 Is that how I understand it?
10            MR. DAVIS:  Mr. Chair, that's correct.  I
11  believe that OCD's proposed red-line also did the
12  same thing.  So the last sentence of the current NMAC
13  provision, 19.15.16.17, that last sentence is now
14  broken into a new Paragraph B.  And that's, I
15  believe, what's causing the confusion.
16            CHAIR ROZATOS:  Thank you for the
17  clarification.
18            COMMISSIONER BLOOM:  I see.  So they
19  split --
20            CHAIR ROZATOS:  They split --
21            COMMISSIONER BLOOM:  -- the two sentences
22  into A and B.
23            CHAIR ROZATOS:  A and B.  Okay.  So --
24            COMMISSIONER BLOOM:  So the A should have
25  been in red as well, yeah.
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 1           CHAIR ROZATOS:  Yes.  Okay.  So now let's

 2   just look at what was -- they took that second

 3   sentence and made it its own paragraph and stated:

 4   If completing, shooting, fracturing or chemical

 5   treating results in the well's irreparable injury,

 6   the Division may require the operator to properly

 7   plug and abandon the well and may take necessary

 8   actions to mitigate any resulting impacts.

 9               Though it's not a slide from the OCD,

10   and it's not a slide that anybody has commented on,

11   Commissioners, your thoughts.

12           COMMISSIONER AMPOMAH:  I do not have any

13   objection to the B.

14           CHAIR ROZATOS:  Okay.  Commissioner Bloom.

15           COMMISSIONER BLOOM:  This seems, on its

16   face, that -- I'm wondering if completing is -- it's

17   not entirely redundant with fracturing.  A lot of

18   times, the hydraulic fracturing job is completion,

19   but not necessarily.  So I guess we can add

20   "completing."

21               And then the rest of it seems common

22   sense that if the well's -- "if there's irreparable

23   injury, the Division may require the operator to plug

24   and abandon the well"; additionally, "take any

25   necessary actions to mitigate any resulting impacts."
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1   I mean, I think that's generally

2   understood to be part of abandonment and that that's

3   reclamation. And all the rest of it, although that

4   has a certain surface implication, I don't think I

5   would disagree with any of this language and move to

6   adopt it.

7   CHAIR ROZATOS: Okay. Just to address what

8   you stated about "completing," we did accept the

9   "completing" in the first part, in Part A. And the

10 OCD agreed to "completing" as the word change there.

11   HEARING OFFICER ORTH: And, Mr. Chair, I

12 read it earlier. Even NMOGA, in its final proposal,

13 uses the word "completing."

14   CHAIR ROZATOS: Okay. I am actually good

15 with this. I do want to just reserve that this

16 wasn't necessarily talked upon as a breakout, as

17 another paragraph. So we can break it and make it

18 into another paragraph. I agree with the other two

19 Commissioners, I think we proceed. But I do have

20 that just one concern as a side note. So I think we

21 go with that B as well.

22   So, Mr. Shandler, if you could just

23 indicate that on WildEarth Guardians Attachment A for

24 this section, 19.15.16.17.B, as in boy, all three

25 Commissioners agree with the verbiage.

1   Okay. Our next section is -- it is

2   lunch, yeah. It is noon.

3   COMMISSIONER BLOOM: I'd be fine powering

4   through if I can have a five-minute bathroom break.

5   CHAIR ROZATOS: Let's take a 15-minute

6   break, then we'll be back at 12:15.

7   (Recess held.)

8   CHAIR ROZATOS: Thank you, everybody, for

9   holding. There was a question that came up, so we

10   need about ten more minutes, so we'll be back on at

11   around 12:25. Ten more minutes. Thank you.

12   (Recess held.)

13   CHAIR ROZATOS: We're back on record. We

14   were going to continue with our next section, which

15   was 19.15.16.19, log completion and workover reports.

16   The first change comes up in Subsection B, under

17   hydraulic fracture disclosure.

18   The difference is, WildEarth Guardians

19   removed what was Subsection (1) and then made

20   Numbers (2) and (3), renumbered those.

21   The Oil Conservation Division made

22   changes to Subsection (1) -- I'm sorry, Oil

23   Conservation Division added Subsection (1).

24   Well, let me actually pull it up. Best

25   to see what it actually is. Okay. Got it.

1   The original statement under

2   19.15.16.19, log completion and workover reports,

3   Part B, hydraulic fracture disclosure, Number (1)

4   states: The Division does not require the reporting

5   of information beyond the material safety data sheet

6   data as described in the 29 CFR 1910.1200.

7   WildEarth Guardians wanted to remove

8   that particular statement from the current NMAC.

9   The Oil Conservation Division believes

10   that it should be there.

11   Did NMOGA have any changes to that one?

12   HEARING OFFICER ORTH: Do you want me to

13   read it?

14   CHAIR ROZATOS: Would you mind?

15   HEARING OFFICER ORTH: Absolutely.

16   CHAIR ROZATOS: Thank you.

17   HEARING OFFICER ORTH: So the petitioners

18   propose to strike that.

19   The Division proposes this language:

20   The Division does not require the reporting of

21   information beyond the material safety data sheet

22   data described in 29 CFR 1910.1200.

23   NMOGA goes a little further than that.

24   The same first part of the sentence about not

25   requiring the reporting of information beyond the

1 MSDS, and then there's a comma: With the exception

2 of Section 19.15.16.17.B(2) for events requiring the

3 confidential disclosure to the Division of otherwise

4 proprietary, trade secret or confidential business

5 information.

6   COMMISSIONER BLOOM: So, actually, OCD is

7 not adding language but rather retaining and

8 rejecting the deletion, right?

9   CHAIR ROZATOS: Correct, yeah. And then

10 NMOGA is adding after the MSDS 29 CFR 1910.1200,

11 they're putting a comma, correct, Madam Hearing

12 Officer?

13   HEARING OFFICER ORTH: Correct. And adding

14 a reference to 19.15.16.17.B(2) regarding proprietary

15 information.

16   CHAIR ROZATOS: 19.15.16.17.B, as in boy,

17 (2)?

18   COMMISSIONER BLOOM: I've got to take a look

19 at NMOGA's comments and see why they wanted that

20 addition.

21   CHAIR ROZATOS: There's no such section as

22 19.15.16.17.B(2).

23   COMMISSIONER BLOOM: Or did we just create

24 it?

25   CHAIR ROZATOS: We just created B. We

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 1    didn't create B(2).

 2            HEARING OFFICER ORTH:  So NMOGA's

 3    justification for their proposal, NMOGA supports the

 4    continued disclosure of hydraulic fracturing fluids

 5    with limited exceptions, discussed above in

 6    19.15.16.19.B(1) through (3) to the FracFocus

 7    chemical registry, which is available to the public

 8    free of cost for anyone interested in such

 9    information.

10            Continuing to require disclosures be

11    made in FracFocus provides a transparent process,

12    also does not unnecessarily burden communities with

13    information for which they have no context.  At the

14    same time, it's readily available and free of cost.

15            CHAIR ROZATOS:  Madam Hearing Officer, may I

16    see what you're reading?

17            HEARING OFFICER ORTH:  Yes, of course.  It's

18    Attachment A, Pages 14 and 15.  This was attached to

19    their post-hearing brief.

20            CHAIR ROZATOS:  Yeah.  It's just that

21    doesn't exist.

22            HEARING OFFICER ORTH:  Right.  I think

23    they're referring to something that they proposed

24    that perhaps the Commission didn't adopt.

25            CHAIR ROZATOS:  Okay.  What they're adding
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1   is 19.15.16.17.B, as in boy, (2). This is

2   19.15.16.19. They're saying 19.15.16.17. There's no

3   such number.

4   Go ahead.

5   COMMISSIONER BLOOM: So NMOGA's proposed

6   findings of fact and conclusions of law, Page 24, at

7   the top -- Page 25, at the top, Paragraph 121 -- or

8   Section 121, NMOCD and NMOGA both proposed leaving

9   19.15.16.17.B(1) as it currently appears in the rule.

10   CHAIR ROZATOS: Commissioner Bloom, I

11   appreciate what you're reading, but if you go a

12   little further back to Page 22, Number 113, this

13   Commission just decided that we were going to go off

14   of that NMOGA represented that they would do what the

15   OCD suggested.

16   The OCD did not suggest various parts of

17   Part B. There was no -- we don't have any

18   information from the OCD regarding Part B. So then

19   when we go to the WildEarth Guardians attachment for

20   Part B for 19.15.16.17, which was this part right

21   here, which they just differentiated to us, that they

22   took the two sentences in the original 19.15.16.17

23   and made it into two paragraphs, we just made our

24   decision off of Number 113 of the NMOGA statement

25   that they were going to go with what the NMOCD stated

1   for this section.

 2   We created a Part B, we just agreed to

 3   creating a Part B, and the Part B that we created was

 4   this one that the WildEarth Guardians suggested in

 5   their Attachment A, which reads: If completing,

 6   shooting, fracturing or chemical treating results in

 7   the well's -- in irreparable injury, the Division may

 8   require the operator to properly plug and abandon the

 9   well and take any necessary actions to mitigate any

10   resulting impacts.

11   So we created that paragraph. But now

12   there is a call-out that this paragraph has

13   subsections to it, a (1) and obviously a (2).

14   Because for 19.15.16.19.B(1), they call out, NMOGA

15   calls out 19.15.16.17.B(2), and we don't have a B(2).

16   Go ahead, Madam Hearing Officer.

17   HEARING OFFICER ORTH: I was just going to

18   say but NMOGA's proposed B(2) included references to

19   confidential proprietary and trade secret

20   information. So I think they're referring to their

21   own proposal, which this Commission did not adopt.

22   CHAIR ROZATOS: Correct. Because we said

23   trade secrets, heard trade secrets.

24   HEARING OFFICER ORTH: But I'm talking about

25   the very last section that you all walked through,

1 19.15.16.17.

2   So on Page A-12, NMOGA's red-line, they

3 had a B(2) in that section and it referred to trade

4 secrets, but you all didn't go with NMOGA's complete

5 rewrite of Section 17. They had completely rewritten

6 that and you didn't do that. You went with the

7 petitioner's and OCD, who were agreed on something

8 much less elaborate.

9   MR. SHANDLER: Madam Hearing Officer, let me

10 try to just clarify the record.

11   So we're talking specifically about the

12 rule titled, "Completion Operations, Shooting and

13 Chemical Treatment of Wells," okay, that was just

14 previously discussed in last half hour.

15   In the New Mexico Oil and Gas

16 Association's proposed findings of fact and

17 conclusions of law, Number 113, they said the OCC

18 should adopt the OCD's proposed amendments, provided

19 further amendments are made to more accurately track

20 with Mr. Powell's testimony.

21   The Commission had a discussion about

22 what his testimony was, and that was put on the

23 record and you weighed that evidence.

24   The New Mexico Oil and Gas Association

25 did not have within this document a cut-and-paste of

1   what their red-line would be. But later on, in a

         2   different document, titled "Attachment A," in A-11

         3   through A-12, they did have a red-line, which was two

         4   pages long, single spaced. And in that one is where

         5   they create all these new subsections, including this

         6   new B(2).

         7   So thanks to your observation, we were

         8   able to find everything that they've now presented.

         9   Okay? And so --

        10   CHAIR ROZATOS: So do we need to go back?

        11   MR. SHANDLER: I think maybe for the

        12   completion of the record, if you wanted to look at

        13   A-11 and A-12 and figure out is this proposal

        14   consistent with what's been proposed throughout the

        15   process. Or do you feel like this is a last-minute,

        16   lengthy addition to something?

        17   And so you could either say, "Well,

        18   we'll go back and adopt some of this language," or,

        19   "This language is inconsistent with the

        20   representations in their other document or beyond the

        21   scope of this particular hearing." That would

        22   probably satisfy them that they felt like all their

        23   material in two different places has at least been

        24   listened to.

        25   CHAIR ROZATOS: Okay. Commissioners.

                                                       Page 116

1   COMMISSIONER BLOOM: Sounds prudent.

2   CHAIR ROZATOS: To review, to go back to

3   19.15.16.17? Can I get you to verbally say yes to

4   that. You're nodding yes.

5   COMMISSIONER BLOOM: Yes, go back and review

6   that, since we've discovered that.

7   CHAIR ROZATOS: Okay. Commissioner Ampomah.

8   COMMISSIONER AMPOMAH: Yes, let's go back

9   and review that.

10   CHAIR ROZATOS: Okay. Then let's go back.

11   We'll go back to 19.15.16.17.B. WildEarth Guardians

12   proposed the one paragraph which stated: If

13   completing, shooting, fracturing or chemical treating

14   results in the well's irreparable injury, the

15   Division may require the operator to properly plug

16   and abandon the well and take necessary actions to

17   mitigate any resulting impacts.

18   The New Mexico Oil and Gas Association,

19   on two different documents has two different things,

20   one stated: We'll go with what the OCD says.

21   The second one actually has red-lines,

22   so let's discuss the red-lines, since the Commission

23   would like to see the red-lines. I need to pull it

24   up because I wasn't prepared for that one. Was that

25   in the case --

COMMISSIONER BLOOM: This is from the

1

hearing, yeah. I'll show you which one it is. It's

2

3   Part 1 of the five parts we were sent.

4   CHAIR ROZATOS: For the sake of time, let's

5   just go off of the printed copies. It's coming to

6   me. Mr. Shandler, if you'll just start us with the

7   conversation, please.

8   MR. SHANDLER: Yes, Mr. Chair. To

9   re-review, the Commission is now looking at a

10   document titled, "Attachment A," looking at A-11 and

11   A-12, which are a document, according to the

12   red-lines, from the New Mexico Oil and Gas

13   Association regarding the completion, operation,

14   shooting and chemical treatment of wells.

15   It's too lengthy for me to verbally read

16   into the record, but I imagine it's entered into the

17   record already.

18   COMMISSIONER BLOOM: So this is really quite

19   different from WEG NEE proposal.

20   COMMISSIONER AMPOMAH: Yeah. The way I read

21   through that, it sounds like they are, more or less,

22   being more extensive with regard to what needs to be

23   disclosed, especially the CAS number. And even

24   pushing the companies to show why -- or, let's say,

25   to prove as to whether this is a trade secret or not?

1   But really, I feel like what we've

2   already adopted, more or less, covers what they are

3   trying to say here. Because we've already given the

4   Division the power to be able to receive trade secret

5   materials when there is a problem.

6   But it sounds like NMOGA is going

7   really, really deeper, you know. So I'm not sure.

8   If we adopt either of them, it's still serving the

9   same purposes, but this one is really quite

10 extensive, as proposed by NMOGA.

11   COMMISSIONER BLOOM: Dr. Ampomah, I concur.

12 Looks like NMOGA is laying out a much more extensive

13 program for looking at those issues.

14   COMMISSIONER AMPOMAH: And I want to ask,

15 did all the other parties have the opportunity to

16 review NMOGA's extensive write-up?

17   HEARING OFFICER ORTH: So this document,

18 their closing brief and their proposed findings and

19 conclusions, were all filed on the same day as part

20 of one packet. That was February 19th.

21   We can go back to whatever their

22 original Attachment A was to look to see if this is

23 different. It would take me a moment.

24   COMMISSIONER BLOOM: Madam Hearing Officer,

25 I'm looking at NMOGA's closing statement, top of

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1  Page 8, where it says:  Further modifications to

2  NMOCD's proposed amendments to 19.15.16.17 are

3  needed, but with the enumerated additional

4  modifications, NMOGA could support the NMOCD's

5  proposed changes to 19.15.16.17.

6           HEARING OFFICER ORTH:  Thank you.

7           COMMISSIONER AMPOMAH:  You know, reading

8  through it, I believe we should still stick with what

9  we've already done, because it's, more or less,

10  saying the same thing, but just that it's quite

11  extensive with regard to what NMOGA is proposing.

12              I will certainly be curious to see what,

13  let's say, the proponent and NMOCD have to say about

14  this one.

15           COMMISSIONER BLOOM:  Dr. Ampomah, I concur

16  with you after reviewing the various materials that

17  the vote we've taken in support of the language in

18  Part B already would cover this.

19           COMMISSIONER AMPOMAH:  Yes, that is correct.

20           CHAIR ROZATOS:  In looking at all this, I

21  actually must concur.  And in two different documents

22  that they submitted post-hearing, the NMOGA stated

23  that they would be good to go with the NMOCD's

24  decisions based off of Mr. Powell's November 14th,

25  2024, hearing testimony and written justification
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 1   that they provided in their exhibits.
 2            So when we first started this, we said
 3   that this was in the document final NMOGA FOF and COL
 4   PDF on Number 113.  They stated that.
 5            And then in their closing statements, as
 6   Commissioner Bloom brought out, on Page 8, at the
 7   very top -- I believe it was Page 8, correct,
 8   Commissioner.
 9            COMMISSIONER BLOOM:  That's correct.
10            CHAIR ROZATOS:  Yes.  C on Page 8, at the
11   very top:  Further modifications in NMOCD's proposed
12   amendments to 19.15.16.17 are needed.  But with
13   enumerated additional modifications, the NMOGA could
14   support NMOCD'S proposed changes.
15            So we've accepted the NMOCD's proposed
16   changes, and then we did create a Part B that
17   sufficed.  So I would say, in reviewing all of this,
18   Mr. Shandler, the Commission agrees that we have
19   reviewed it and we are good with what the NMOCD has
20   stated and what we've done thus far and that we could
21   proceed.
22            Are there any concerns from you, as our
23   counsel?
24            MR. SHANDLER:  No concerns.  Thank you for
25   building the record.
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1   CHAIR ROZATOS: Okay. Excellent.

          2   So then, going back to what we

          3   originally started with, 19.15.16.19.B, as in boy,

          4   under hydraulic fracture disclosure, I just want to

          5   pull up the appropriate attachments so we're all on

          6   the same page, the concern was WildEarth Guardians,

          7   under B, as in boy, hydraulic fracture disclosure,

          8   wanted to remove Subsection 1.

          9   The New Mexico Oil Conservation Division

         10   wanted to leave it as it is.

         11   The New Mexico Oil and Gas Association

         12   wanted to leave it as it is, with a comma after the

         13   29 CFR 1910.1200, and add their additional language

         14   for the subsection that does not exist.

         15   So since that subsection does not exist,

         16   we will not take that into account.

         17   Commissioners, for 19.15.16.19.B, as in

         18   boy, hydraulic fracture disclosure, Number (1), do

         19   you agree with the petitioner to remove Number (1),

         20   or with the New Mexico Oil Conservation Division to

         21   leave Number (1) the way it is?

         22   COMMISSIONER AMPOMAH: I will say that I

         23   will leave it as it is, as proposed by NMOCD.

         24   CHAIR ROZATOS: Okay. Commissioner Bloom.

         25   COMMISSIONER BLOOM: I'm fine with the OCD

1 proposal, as well, to leave the language unchanged.

2   CHAIR ROZATOS: As do I. So all three of us

3 will leave the language unchanged for that one.

4   Our next section is 19.15.16.19.B, as in

5 boy. It's the creation of a new Section D, as in

6 dog.

7   The petitioner wants to add the

8 following for D: On or before a specific date an

9 operator shall provide the chemical disclosure list

10 to the following persons and entities unless the

11 person or entity opts out of the notification.

12   Then they have subsections, Number (1)

13 all owners of a private water well that are within

14 5,280 feet of a well site;

15   The State Land Office, if the State owns

16 minerals that are being developed at the well site;

17   (3) the Federal Bureau of Land

18 Management if the United States owns the minerals

19 that are being developed at the well site;

20   (4) to any tribe if the minerals are

21 being developed at the well site are within the

22 exterior boundary of that tribe's reservation and are

23 subject to the jurisdiction of the Division;

24   (5) police departments, fire

25 departments, emergency service agencies and first

1   responder agencies that have a jurisdiction that

2   includes the well site;

3   (6) local governments that have a

4   jurisdiction within 5,280 feet of a well site;

5   (7) the administrator of any public

6   water system that operates, (a), a surface water

7   public water system intake that is located 15 stream

8   miles or less downstream from a well site, (b), a

9   groundwater source under the direct influence of a

10   surface water public water system supply well within

11   5,280 feet of a well site; and a public water system

12   supply well completed within 5,280 feet of a well

13   site. That's B.

14   New Mexico OCD wants to strike -- out of

15   all of that, they want to strike out Number (1),

16   Number (2), Number (5), Number (6), Number (7),

17   Number (8), and Number (9) and just leave Numbers (3)

18   and (4).

19   And then, actually, to the paragraph,

20   they want to add, after list (2), they want to add

21   the following regulatory agencies unless the agency

22   opts out of the notification.

23   Commissioners.

24   COMMISSIONER BLOOM: Mr. Chair, I think what

25   the proponents were putting forth here was to create

1   the opportunity for the first time to have robust

2   baseline testing of water in New Mexico. This would

3   mean that landowners, people with domestic water

4   wells, where they get their drinking water for their

5   homes, tribes, water utilities could go out and test

6   their water for the chemicals that will soon be

7   brought out, you know, onto the surface of the land,

8   potentially spilled and then injected.

9   If, you know, today my well sample shows

10   no PFAS, but six months later, after this well has

11   been drilled and completed, PFAS shows up, we would

12   know where that comes from. So I think that's where

13   this was going.

14   CHAIR ROZATOS: Commissioner, I believe you

15   are correct. The OCD did state that they feel that

16   the inclusion of most of the entities is unwarranted.

17   If there is any impacted party due to water

18   contamination, that falls under 19.15.30 of the NMAC.

19   And so they feel that 19.15.30 provides, as it says,

20   the appropriate notice for these individuals.

21   It did allow the provisions to notice

22   the other regulatory agencies but provided the

23   agencies the option to opt out, as the OCD's unsure

24   if those agencies have interest for that information,

25   as it's already in FracFocus.

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1   COMMISSIONER AMPOMAH: So there was a lot of

2   discussion on this subject during the hearing. And I

3   think, you know, based on what we had, you know, OCD

4   made it clear that, you know, there are some of these

5   entities that really do not have the expertise to be

6   able to, more or less, understand the information

7   that is probably, more or less, provided to them.

8   And as Commissioner Bloom was saying,

9   let's say all this information is all on FracFocus.

10   So assuming someone tests their water and they find

11   something new, they can, more or less -- and they

12   know that there's some sort of oil and gas operations

13   close by, they can just go to FracFocus and then

14   compare that to their water analysis.

15   I believe that leaving the room to, more

16   or less, provide the information to all these other

17   entities that are not really, you know, able to

18   discern the information with regard to how oil and

19   gas operations, you know, are more or less

20   spearheaded in the area, I feel like it's going to be

21   a lot burdensome on these entities. And that was,

22   more or less, articulated during the hearing. So I

23   will agree with OCD. But I do have a question

24   though. So OCD is striking: to any tribe if the

25   minerals being developed at the well site are within

1   the exterior boundary of that tribe's reservation and

2   are subject to the jurisdiction of the Division.

3   Why would OCD want to strike that when

4   they're saying that the State Land Office can have

5   it, the Federal Bureau of Land Management, BLM, can

6   also have it? Why not the tribes?

7   So I would not agree to striking

8   Number 5, but I would agree to striking all the other

9   ones.

10   CHAIR ROZATOS: Okay. Commissioner Bloom.

11   COMMISSIONER BLOOM: Yes. Good question,

12   Dr. Ampomah. I think that's right, that if there's

13   notification to the Federal government the State

14   government, that we should also notify the tribal

15   governments; particularly when tribes are often

16   mineral owners, as well.

17   I'm not sure that 19.15.30 covers the

18   situation in the same way that the proponents have

19   proposed. 19.15.30 is about remediation, so that's

20   cleanup. By notifying people that wells are going to

21   be drilled and telling them what chemicals are going

22   to be used, it lets them know beforehand, gives an

23   opportunity to go out. Otherwise, there's no

24   notification that these wells are being drilled.

25   It could be, you know, a half mile away,

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 1   somebody wouldn't see it.  Most of the areas of

 2   development, you know, have a lot of activity, so one

 3   wouldn't necessarily know the activities occurring

 4   near their land.  There's no opportunity to go out

 5   and do baseline water testing.  And that's important

 6   to, you know, people that have domestic water wells.

 7   I mean, this is their drinking water, and if it gets

 8   contaminated with a spilled chemical, you can see

 9   migration to the water well.

10             And I think the other people who would

11   want to be aware of this would be the public water

12   systems that are mentioned here, giving them the

13   opportunity to do background testing, see if there's

14   been any contamination, and then test again after the

15   wells have been completed and see if there's been any

16   migration from either spills or the drilling or

17   completion program.

18             COMMISSIONER AMPOMAH:  Commissioner Bloom,

19   do you -- I'm asking the commissioners, do we

20   remember any testimony as to how the proponents came

21   up with the 5,280 feet of the well site?

22             COMMISSIONER BLOOM:  I mean, that's a mile.

23             COMMISSIONER AMPOMAH:  Oh, yeah.

24             COMMISSIONER BLOOM:  Some of us are from

25   parts of the world where we use kilometers and meters
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1 and things that round off to zero.

2   COMMISSIONER AMPOMAH: You got me right

3 there. Okay.

4   CHAIR ROZATOS: We're still on the empirical

5 here.

6   COMMISSIONER BLOOM: Now, why we don't say

7 "a mile," I'm not sure.

8   COMMISSIONER AMPOMAH: Right.

9   Mr. Chair, so then if we take, let's

10 say, one after the other, let's say all owners of

11 minerals that are being developed at the well site.

12 I'm not sure why the, let's say -- I'm not sure why

13 OCD will say that they do not, like -- let's say,

14 they shouldn't receive this information.

15   You know, so that one is a little bit

16 concerning. And then two, all surface owners,

17 building unit owners and residents within, let's say,

18 the one mile, I'm not sure -- I don't know the

19 justification, though. Because definitely, all

20 owners, surface owners, whenever you're going to

21 drill a well, you would have to provide them with

22 your well application within that vicinity. They get

23 access to your application, you tell them the

24 activities that you are going to do there.

25   So if we pass this and go with the OCD,

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 1   does that mean that they will withhold the chemical

 2   disclosure from that list?

 3              CHAIR ROZATOS:  Okay.  So correct me if I'm

 4   wrong, Commissioners and Counsel, when we started

 5   this under definition, we killed the chemical

 6   disclosure list, did we not?

 7              MR. SHANDLER:  It was not adopted.

 8              CHAIR ROZATOS:  It was not adopted.

 9              COMMISSIONER AMPOMAH:  Yes.

10              CHAIR ROZATOS:  So this is based on a

11   chemical disclosure list that no longer exists under

12   our definitions, except for what's provided in

13   FracFocus.  But we didn't create a chemical

14   disclosure list.

15              So if you look at D, it starts that:

16   The operator shall provide the chemical disclosure

17   list to the following persons.

18              COMMISSIONER AMPOMAH:  So if you are saying

19   we did not adopt the chemical disclosure list, then

20   what would be the relevance of D?

21              CHAIR ROZATOS:  What would be provided?

22   That's my question.  What would be provided?

23              COMMISSIONER AMPOMAH:  Yeah, what would be

24   provided?

25              COMMISSIONER BLOOM:  This is an excellent
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1   opportunity to bring back the chemical disclosure

2   list, to let people have access to baseline water

3   testing. Because there will be no secret ingredients

4   that they can't test for.

5   CHAIR ROZATOS: What did you call it

6   earlier, secret sauce?

7   COMMISSIONER BLOOM: Secret sauce.

8   COMMISSIONER AMPOMAH: But on that one, too,

9   they will still withhold the trade secret components.

10   COMMISSIONER BLOOM: I'm sorry, say that

11   again.

12   COMMISSIONER AMPOMAH: I'm saying that even

13   in there, it will probably be similar to what is

14   provided in the FracFocus, where they don't provide

15   the CAS numbers but they just provide the

16   ingredients.

17   I think if we all agree to that, then,

18   yeah, we can --

19   COMMISSIONER BLOOM: Yeah, I think we're in

20   a situation where the mineral owners, or people who

21   don't even own the minerals, and are out on the land,

22   or have a well, say, on a lease with the BLM or the

23   Land Office, or whomever, what we could do instead is

24   change chemical disclosure list to the FracFocus

25   filing would be sent directly to these people,

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 1   parties.
 2           CHAIR ROZATOS:  Okay.  Commissioner Ampomah.
 3           COMMISSIONER AMPOMAH:  Yeah, Mr. Chair, I
 4   think that will also help with the transparency.  You
 5   know, so assuming it's not everybody that do know
 6   about the FracFocus, right?  So if we are able to,
 7   more or less, adopt that, then it means that the
 8   public will have the opportunity to at least -- even
 9   if they do not know FracFocus, they will still know
10   the information that is provided to FracFocus.
11               But I'm not sure if all these entities,
12   you know, should receive this information.
13           COMMISSIONER BLOOM:  Remember, Dr. Ampomah,
14   that people can opt out as well, the parties can opt
15   out.  So if a water utility felt that they were
16   getting bombarded with FracFocus chemical
17   disclosures, they could ask to be left off that list.
18           COMMISSIONER AMPOMAH:  So who makes the
19   decision in terms of contacting these entities to
20   either opt in or opt out?
21           COMMISSIONER BLOOM:  So it's the operator
22   that provides the disclosure.  It says D:  On or
23   before the date, an operator shall provide a chemical
24   disclosure --  or in this case, maybe a FracFocus
25   disclosure -- to the following persons, entities,
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1   unless the person or entity opts out of the

2   notification.

3   So it would go to those groups from the

4   operator, taking the burden off of the OCD.

5   CHAIR ROZATOS: Can you repeat that, please?

6   COMMISSIONER BLOOM: Yeah. So right now,

7   the language says: On or before the date, an

8   operator shall provide the chemical disclosure list

9   to the following persons and entities unless the

10   person or entity opts out of the notification.

11   And so I was saying that there's no new

12   impact on the OCD if it's the operator that provides

13   the notice to any of the parties that we would add to

14   this list.

15   CHAIR ROZATOS: Commissioner Bloom, just so

16   I get it correctly, the verbiage that you stated, can

17   you repeat that for me, please?

18   COMMISSIONER BLOOM: Yeah. And I'm looking

19   at Attachment B. And yeah, do you want my new

20   proposed language?

21   CHAIR ROZATOS: Your new proposed language,

22   please.

23   COMMISSIONER BLOOM: On or before date, an

24   operator shall provide the FracFocus disclosure to

25   the following persons and entities, unless the person

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 1    or entity opts out of the notification.

 2              CHAIR ROZATOS:  Opts out.  Okay.

 3              COMMISSIONER BLOOM:  Opts out.

 4              CHAIR ROZATOS:  Commissioner Ampomah.

 5              COMMISSIONER AMPOMAH:  You know, I do

 6    support -- like, we listened to all the public

 7    comments, and one of the concerns was that we don't

 8    know what is going on, what is going into, let's say,

 9    the well, within or, let's say, on our backyard.

10              So I tend to agree that at least to

11    foster transparency, I'm glad that Commissioner Bloom

12    agrees to change the language of the disclosure, the

13    chemical disclosure to the FracFocus information, you

14    know, I'm also in favor of disclosure.

15              But the question still remains, which of

16    these entities should the information be provided to?

17              CHAIR ROZATOS:  Okay.  So the list will

18    dictate whether we say "persons" or "entities,"

19    because some of these are entities, some of these are

20    persons.

21              So I guess we then have to decide what

22    we want on the list so that then we can fine-tune the

23    phrase correctly.

24              COMMISSIONER AMPOMAH:  Okay.

25              CHAIR ROZATOS:  So let's discuss this list.
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1   The WildEarth Guardians propose nine different

2   persons or entities on the list. Oil Conservation

3   Division suggests two of that list.

4   And did NMOGA have any statements on

5   this, Madam Hearing Officer?

6   COMMISSIONER AMPOMAH: Strike it all.

7   HEARING OFFICER ORTH: Yes, just strike it

8   all. Because although they support the continued

9   disclosure of hydraulic fracturing fluids, with

10 limited exceptions, to the FracFocus chemical

11 registry, which is available to the public free of

12 cost and to anyone else interested in the

13 information, it doesn't unnecessarily burden

14 communities with information for which they have no

15 context.

16   CHAIR ROZATOS: Thank you, Madam Hearing

17 Officer.

18   So we basically go between the two lists

19 here, or we strike it all. I mean, we can. That's

20 an option. But from hearing the two of you, strike

21 it all is not necessarily an option. And I agree,

22 strike it all isn't necessarily an option here

23 either.

24   So, Commissioner Ampomah, I apologize.

25 I didn't mean to stifle your statements or question.

1   COMMISSIONER AMPOMAH: I think we can go

2   through these lists and probably vote on them.

3   CHAIR ROZATOS: Okay.

4   COMMISSIONER AMPOMAH: Or at least discuss

5   and vote on them.

6   CHAIR ROZATOS: Let's take the first two.

7   The first two are D, as in dog, (1) the proposed is:

8   All owners of minerals that are being developed at

9   the well site. And (2) is all surface owners,

10   building unit owners and residents, including tenants

11   of both residential and commercial properties, that

12   are within 5,280 feet of a well site.

13   COMMISSIONER BLOOM: Mr. Chair, I believe

14   that's been changed since.

15   CHAIR ROZATOS: I apologize. I was reading

16   the wrong one again.

17   COMMISSIONER BLOOM: Yeah.

18   CHAIR ROZATOS: I apologize.

19   COMMISSIONER BLOOM: I'm looking at the

20   proponent Attachment B, yeah.

21   CHAIR ROZATOS: So all owners of a private

22   well that are within 5,280 feet of a well site, or

23   the State Land Office if it owns mineral rights.

24   Correct?

25   COMMISSIONER BLOOM: Correct. And I think

1   this, we might -- well, yeah.

2   CHAIR ROZATOS: I'm sorry, it's not

3   Number (1) and (2). It's just Number (1) for right

4   now. Because the OCD states hold on to State Land

5   Office and Federal Bureau of Land Management.

6   So Number (1), all owners of a private

7   water well that are within 5,280 feet of the well

8   site.

9   COMMISSIONER BLOOM: I mean, as someone that

10 lives and gets his water supply and that of my family

11 from a domestic water well, I would love to know what

12 activities are happening around me that can impact

13 water so I can be on guard for surface spills, runoff

14 from well pads. I might want to get my water tested,

15 all those sorts of things. Yeah, I think we have

16 all -- we have all read the stories about the

17 Ogallala Aquifer and the depletion that's occurring

18 there. And water is an important resource.

19   I think giving people the opportunity to

20 receive this information from an operator would be

21 fine and prudent. And if they want to opt out later,

22 they can opt out.

23   CHAIR ROZATOS: Thank you, Commissioner

24 Bloom.

25   Commissioner Ampomah.

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 1              COMMISSIONER AMPOMAH:  How is the -- for the
 2   operators to be able to identify, let's say, all
 3   private water well owners, is it well-documented
 4   information?
 5              CHAIR ROZATOS:  Off the top of my head, I'm
 6   not sure.
 7              COMMISSIONER BLOOM:  Dr. Ampomah, my
 8   understanding is, to get a water well, you make an
 9   application to the Office of the State Engineer.  We
10   had to do that when we drilled a well at our house.
11   And so you go to the OSE website and see the wells
12   that are there.
13              COMMISSIONER AMPOMAH:  Okay.  Yeah, so if it
14   is well documented, then I do not have any objection
15   to that.
16              CHAIR ROZATOS:  Okay.  I think I agree, as
17   well.  So we'll leave Number (1) the way it is.
18                   Numbers (2) and (3), the OCD agreed to
19   leave those the way they are, and the State Land
20   Office and the Federal Bureau of Land Management.
21                   Then we go to Number (4), to any tribe
22   if the minerals being developed at the well site are
23   within the exterior boundary of the tribe's
24   reservation and are subject to the jurisdiction of
25   the Division.
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1   Now, this is exterior boundaries.

 2   Exterior, outside.

 3   COMMISSIONER AMPOMAH: So was there a

 4   discussion on this during the hearing, I mean, to

 5   define the exterior boundary?

 6   COMMISSIONER BLOOM: I read this to say that

 7   any tribe, if the minerals are being developed, are

 8   within the tribe's reservation boundary, you're

 9   within the exterior boundary.

10   So here you have -- I mean, I think the

11   word "exterior" is kind of duplicative. I think we

12   could just say "boundary," right, that are within the

13   boundary of the tribe's reservation? You only have

14   an exterior boundary.

15   CHAIR ROZATOS: That are subject to the

16   jurisdiction of the Division.

17   COMMISSIONER AMPOMAH: Is there any example

18   to that?

19   CHAIR ROZATOS: Madam Hearing Officer, was

20   there anything stated on this?

21   HEARING OFFICER ORTH: By the proponent,

22   just that the chemical disclosures are provided in

23   order for disclosure, necessary to eliminate gaps in

24   disclosures.

25   So I don't see that they specifically

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 1   address the jurisdiction of the Division within the

 2   reservation.  Was that your specific question?

 3             CHAIR ROZATOS:  Yes, ma'am.

 4             HEARING OFFICER ORTH:  Okay.  Hold on.

 5             I mean, their focus, obviously, was

 6   providing greater transparency for everything

 7   happening at well sites.  Many pages of their closing

 8   argument and proposed findings and conclusions,

 9   several of their witnesses supported the notion of

10   transparency, including Dr. Brown.  Lack of

11   information about what's happening there can impede

12   public health work, for example.

13             I don't remember anything specific to

14   the reservation.  It wasn't said basically about

15   disclosure to other entities in the public.  Equity

16   through transparency.

17             CHAIR ROZATOS:  Okay.  Thank you, Madam

18   Hearing Officer.

19             I think, for the sake of time, I mean,

20   we could definitely sit here and kind of go through

21   every single one.  Maybe it would be best if we

22   just -- do we want to go with what the OCD says, or

23   do we want to go with the proposal from WildEarth

24   Guardians?

25             Because if we go with the proposal of
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 1   just WildEarth Guardians, then we can just adopt

 2   exactly what they say here so we don't have to

 3   nitpick words and all that.

 4                 Or we go with the proposal of the

 5   New Mexico OCD for who gets this notification.  I

 6   believe we like the way that Commissioner Bloom

 7   stated the opening sentence and the phraseology that

 8   was used.  But now do we want to accept this whole

 9   list on its face value, or do we want to remove like

10   the OCD suggested and just keep two?

11         COMMISSIONER BLOOM:  I'd be supportive of

12   what has been proposed here and that anybody can opt

13   out if they don't want to receive it.

14         CHAIR ROZATOS:  Okay.  Commissioner Ampomah.

15         COMMISSIONER AMPOMAH:  Well, you know, let's

16   say -- I'm just looking at the Number 4, for

17   instance.  It sounds like -- it's a little bit vague

18   and ambiguous and even will cause a lot of confusion

19   with regard to how do you define the boundary.

20         CHAIR ROZATOS:  I think the phrase is just

21   odd with that one.  I think, for all intents and

22   purposes, if it's within the tribe or the nation, I

23   agree with Commissioner Bloom, the exterior boundary

24   is kind of a weird statement.  Is it in the boundary

25   of the tribe or the nation?
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 1                    And I think we can take the word

 2    "exterior" out if it bothers us --

 3             COMMISSIONER BLOOM:  I would agree.

 4             CHAIR ROZATOS:  -- and we accept it that

 5    way.  It is a weird sentence.

 6             COMMISSIONER AMPOMAH:  Okay.

 7             CHAIR ROZATOS:  It is a weird sentence.

 8             COMMISSIONER AMPOMAH:  Yeah, so if we can

 9    make some adjustments to that, then I do not have any

10    problem with the other ones.

11             CHAIR ROZATOS:  Commissioner Bloom, I think

12    I know your answer.

13             COMMISSIONER BLOOM:  No, I'm fine with that.

14    I was just already looking down the page, the

15    proposed E, which would need some work.

16             CHAIR ROZATOS:  We'll get there.

17                    Okay.  So for D, I agree as well.  We

18    will accept the changes to read:  On or before the

19    date, an operator shall provide the FracFocus

20    disclosure to the following persons or entities,

21    unless the person or entity opts out of the

22    notification.

23                    Did I get that right, Commissioner

24    Bloom?

25             COMMISSIONER BLOOM:  Correct.
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1   CHAIR ROZATOS: Okay. And then we will keep

          2   (1), (2), (3), (4), (5), (6) and (7) as proposed by

          3   WildEarth Guardians, with the correction to

          4   Number (4) to take out the word "exterior" boundary,

          5   just to put boundary. Take out "exterior."

          6   Okay. Next one, Subsection E, there was

          7   the addition of: The chemical disclosure list must

          8   be disclosed to the above parties within 30 days

          9   after the operator's chemical disclosure to the

         10   Division.

         11   COMMISSIONER BLOOM: So on that, we no

         12   longer have a chemical disclosure. We would replace

         13   "chemical" with "FracFocus." I don't think we need

         14   the word "list." We could say the: FracFocus

         15   disclosure must be disclosed to the above parties

         16   within 30 days.

         17   And then after "the operator's" --

         18   CHAIR ROZATOS: "disclosure to the" --

         19   COMMISSIONER BLOOM: -- "disclosure to

         20   FracFocus"?

         21   CHAIR ROZATOS: That's a lot of "FracFocus"

         22   in one sentence.

         23   COMMISSIONER BLOOM: And a lot of

         24   "disclosure."

         25   CHAIR ROZATOS: Yeah. The FracFocus must be

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 1   disclosed to the above parties within 30 days.
 2             COMMISSIONER BLOOM:  Within 30 days of?
 3             COMMISSIONER AMPOMAH:  Yeah, disclosure to
 4   the Division.
 5             COMMISSIONER BLOOM:  Does it come to the
 6   Division, the FracFocus disclosure?
 7             COMMISSIONER AMPOMAH:  Yeah.
 8             CHAIR ROZATOS:  Yeah.
 9             COMMISSIONER BLOOM:  Or is it -- so when an
10   operator is doing its FracFocus disclosure, no, it
11   does not send it to the Division.  The Division
12   downloads them quarterly, right?
13             COMMISSIONER AMPOMAH:  Yeah.
14             COMMISSIONER BLOOM:  So I think the
15   FracFocus disclosure must be disclosed to the above
16   parties at the time it's filed with FracFocus?
17             COMMISSIONER AMPOMAH:  Or at least within 30
18   days?
19             COMMISSIONER BLOOM:  Within 30 days of being
20   filed with FracFocus?
21             CHAIR ROZATOS:  Okay.  I'm having some
22   issues here.  Let's read B one more time.
23                  Hydraulic fracture disclosure.  We're
24   just going to go back to B.  For a hydraulically
25   fractured well, the operator shall also complete and
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 1   file with the FracFocus chemical disclosure registry
 2   a completed hydraulic fracturing disclosure within 45
 3   days after completion, recompletion or other
 4   hydraulic fracturing treatment of the well.  The
 5   hydraulic fracturing disclosure shall be completed on
 6   a then current edition of the hydraulic fluid product
 7   component information form published by FracFocus and
 8   shall include complete and correct responses,
 9   disclosing all information filed by the FracFocus
10   form, provided that -- and then we have the three
11   things that we have.
12               And you're right, the Division will
13   download the FracFocus submissions on a quarterly
14   basis.
15               Then C states:  If the FracFocus
16   chemical disclosure registry is temporarily
17   inoperable, the operator of the well on which
18   hydraulic fracturing treatment or treatments were
19   performed shall file the information required by the
20   then most recent FracFocus form with the Division
21   along with the well completion report, or C-105, or
22   sundry notice, C-103 reporting, the hydraulic
23   fracture treatment, and file the information on the
24   FracFocus internet website when the website is again
25   operable.  If the FracFocus chemical disclosure
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1   registry is discontinued or becomes permanently

2   inoperable, the operator shall continue filing the

3   information with the Division until otherwise

4   provided by rule or ordered.

5   I'm going to go back to this D. This D

6   was based off of the chemical disclosure list, which

7   we killed. FracFocus is already in operation with B

8   and C. And D and E and F are based on these chemical

9   disclosure lists that do not exist.

10   So my motion is to go back to D and kill

11 it. It's based on a list that does not exist.

12 Strike it.

13   COMMISSIONER BLOOM: So you would get rid of

14 all public notification?

15   CHAIR ROZATOS: But what are we notifying?

16 B and C are already saying that this is in FracFocus,

17 and if FracFocus is not available, they are to report

18 all of this on the C-105 and the C-103. So what's

19 being reported?

20   COMMISSIONER BLOOM: So currently, owners --

21   CHAIR ROZATOS: (Inaudible).

22   COMMISSIONER BLOOM: -- owners -- well, we

23 changed D to say that the FracFocus disclosure would

24 be sent to these parties because they don't know that

25 a well is being drilled in their backyard. So all

1 owners of private water wells within a mile would

2 have no idea that anything was ever filed with

3 FracFocus. So this alerts these parties to that.

4   COMMISSIONER AMPOMAH: Commissioners, I do

5 believe that, like, based on the testimonies that we

6 listened to throughout the whole week at that time,

7 the FracFocus was mostly to help with public

8 disclosure. And at that time, it was known to us

9 that it's probably free.

10   But, Chair, let me ask you, why do you

11 believe NMOCD did not strike that?

12   CHAIR ROZATOS: Forgive me. I honestly am

13 not sure why they did not strike it completely.

14   COMMISSIONER AMPOMAH: Yeah.

15   CHAIR ROZATOS: But the statements were --

16 this whole section was created off of a chemical

17 disclosure list that we, as a Commission, struck.

18   COMMISSIONER BLOOM: I would say just

19 because we don't want to let people know what

20 chemicals are being used in their backyard doesn't

21 mean that we can't notify them with the data that is

22 available.

23   CHAIR ROZATOS: And that's fine. We could

24 rewrite it and state that they could provide to the

25 public this information. I mean, nowhere is there

1 anything that says that the public cannot get access

2 to it. If you see a well that's being drilled and

3 you have a question, "What's going on down there?" --

4 no, please, go ahead.

5   COMMISSIONER BLOOM: Currently, there's no

6 statute or rule in existence in New Mexico that even

7 alerts the State Land Office that a well is being

8 drilled. So we're 300, 400 miles away from where the

9 drilling is taking place and we would have no idea

10 that that well is going in or what's being used. And

11 not that we can't get at that other ways, but what

12 about the people with the domestic wells?

13   I mean, we heard pretty strongly during

14 public testimony, and Dr. Ampomah's point, that

15 people do want greater transparency. And even though

16 we're not going to release the CAS number of every

17 frack component, this does go, you know, a bit

18 further, a longer way towards giving people some

19 transparency.

20   COMMISSIONER AMPOMAH: Mr. Chair, you know,

21 it's going to be hard for us to strike that, you

22 know, especially when NMOCD did not strike the whole

23 thing. During the hearing, I think NMOCD's point was

24 solely more like the people receiving the

25 information, would they really understand the

1   information, will it cause some confusion, right?
2   And if you look at the updated list, I
3   feel like, let's say, like Commissioner Bloom was
4   saying, a public water utility system needs to know
5   what is going on, you know, within, let's say, a
6   mile. So, I mean, I don't think we need to strike
7   it.
8   CHAIR ROZATOS: What are we providing?
9   We're just going to tell him go to FracFocus and look
10   up the well?
11   COMMISSIONER AMPOMAH: Well, so, you know,
12   even I've thought about that. Like, what about,
13   let's say, writing a letter to all these entities or
14   individuals letting them know that, let's say, the
15   information or, let's say: The materials that we are
16   using in our operations is more and less, uploaded to
17   the FracFocus.
18   At least there has to be some kind of
19   notice. It's not everybody. Let's say, from all the
20   public comments, it's not everybody that is aware of
21   FracFocus. I mean, it was clear, you know, not
22   everybody. So I believe it is our job to make it
23   easier for the public to have access to the
24   information.
25   CHAIR ROZATOS: And I agree. The only thing

1 I'm going off of is that this is the chemical

2 disclosure list, this what it was written off of. So

3 D, E and F are off of these chemical disclosure

4 lists.

5   So I like that we changed it to the

6 FracFocus, I like that we made the information

7 available to the public. I think the public does

8 need it and transparency does need to be put out

9 there. And we can keep D the way we wrote it. E and

10 F are also based off of chemical disclosure lists.

11 So we'll just change everything to FracFocus.

12   COMMISSIONER BLOOM: Yeah.

13   COMMISSIONER AMPOMAH: Yeah, and even I have

14 a problem with F.

15   CHAIR ROZATOS: You do or do not?

16   COMMISSIONER AMPOMAH: I do have a problem

17 with F. I mean, is it NMOCD's responsibility to,

18 let's say, upload this to their website, aside being

19 on FracFocus?

20   CHAIR ROZATOS: Well, that's the point,

21 because it's based off of a chemical disclosure.

22   COMMISSIONER AMPOMAH: I mean, that, to me,

23 just mailing it to the people should be okay. But to

24 have NMOCD upload this to their website, more like

25 building a database, which is almost the same as

1 FracFocus, I think it's redundant. So I would

2 definitely not vote for F. I would strike it down.

3 　　　　　COMMISSIONER BLOOM: Let me propose this

4 language for E, that read: The FracFocus disclosure

5 must be disclosed to the above parties via certified

6 mail within 30 days of being filed with FracFocus.

7 　　　　　And we disregard F because the State

8 already has all this information at FracFocus.

9 　　　　　COMMISSIONER AMPOMAH: I agree.

10 　　　　　CHAIR ROZATOS: That's more palatable for

11 me, as well. Can you repeat what you said, for the

12 record?

13 　　　　　COMMISSIONER BLOOM: Yes. I would move to

14 strike F, and then change E to read: The FracFocus

15 disclosure must be disclosed to the above parties via

16 certified mail within 30 days of being filed with

17 FracFocus.

18 　　　　　CHAIR ROZATOS: Okay.

19 　　　　　COMMISSIONER BLOOM: We have one more line.

20 　　　　　CHAIR ROZATOS: We do. Our next proposed

21 amendment is to 19.15.25.14, demonstrating mechanical

22 integrity. It's under Part A.

23 　　　　　The proposal from WildEarth Guardians

24 is: An operator may use the following methods of

25 demonstrating internal casing integrity, for casing

1   investigations, casing repair and wells to be placed

2   in an approved temporary abandonment.

3   The NMOCD, I believe, agreed with this

4   one.

5   Did NMOGA agree with this one?

6   HEARING OFFICER ORTH: No, Mr. Chair. NMOGA

7   proposed to delete the words "for casing

8   investigations" on the grounds that casing

9   investigations is not defined or used elsewhere in

10   the rule and so it wouldn't be known what casing

11   investigations are or how it might differ from a

12   casing integrity test.

13   CHAIR ROZATOS: Thank you, Madam Hearing

14   Officer.

15   Commissioners.

16   COMMISSIONER AMPOMAH: I tend to agree with

17   NMOGA on this one. Because when you say "casing

18   integrity," and then you also say "casing

19   investigations," I mean, that's a little bit -- it

20   might cause a little bit of confusion.

21   COMMISSIONER BLOOM: Madam Hearing Officer,

22   what was the Oil and Gas Association's

23   recommendation? To delete the words "for casing

24   investigations"?

25   HEARING OFFICER ORTH: Correct. And I would

1 say that where a word is not defined, you would use

2 the ordinary English definition. Is "casing

3 investigations" confusing as a word?

4   COMMISSIONER AMPOMAH: You know, when you

5 say "casing investigation," I feel like it is -- it

6 is something that you are proposing for the industry.

7 And I'm not sure if there is a standard, you know,

8 when you talk of casing investigation. It might

9 cause some confusion, especially if you've not

10 defined it.

11   COMMISSIONER BLOOM: Dr. Ampomah, I think I

12 agree. This section is entitled, "Demonstrating

13 mechanical integrity," and it says: An operator may

14 use the following methods of demonstrating internal

15 casing integrity.

16   We could just say: For casing repairs

17 and walls to be placed in approved temporary status.

18   I think that's tantamount to an

19 investigation, and then it kind of runs through

20 everything else. I'm not sure that "casing

21 investigations" would typically mean anything

22 particular to the OCD when they're talking about

23 looking at mechanical integrity in general. I mean,

24 that's a big part of what the OCD does, is mechanical

25 integrity reviews and everything else.

1   So I could live without the words

2 "casing investigations." I think that's what we

3 would strike, just those two words, "casing

4 investigations."

5   CHAIR ROZATOS: I kind of tend to agree.

6   Madam Hearing Officer, did the OCD state

7 anything on that?

8   HEARING OFFICER ORTH: They agreed with the

9 petitioner's proposal. But I didn't see a

10 justification.

11   CHAIR ROZATOS: Okay. Thank you.

12   COMMISSIONER BLOOM: I mean, that's what --

13 you know, MITs are used for investigations and

14 repairs and making sure that wells are worthy. We

15 look at them at the Land Office to ensure that our

16 saltwater disposal wells are functional; when they're

17 not, we cancel the easement. That's kind of how that

18 investigation works. You know, if you have

19 mechanical integrity, you know, it's done.

20   CHAIR ROZATOS: I agree that the phrasing is

21 a little redundant, I think in this instance. So I

22 think for this particular rule, we'll take out "for

23 casing investigations." So it'll read: An operator

24 may use the following methods of demonstrating

25 internal casing integrity, comma, casing repairs and

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 1   wells to be placed in approved temporary abandonment.

 2              Since we all three agree on that one.

 3         COMMISSIONER BLOOM:  Yes.

 4         CHAIR ROZATOS:  Okay.  Wow.  Mr. Shandler.

 5         MR. SHANDLER:  So you have to memorialize it

 6   with a final motion and vote.  The motion can either

 7   go through all the things, or you can say, "I make a

 8   motion that we approve the items that we itemized

 9   today, which will be memorialized in a written

10   order."

11         CHAIR ROZATOS:  Okay.  I make a --

12         COMMISSIONER BLOOM:  Oh, I'm sorry.

13         CHAIR ROZATOS:  You have a question?

14         COMMISSIONER BLOOM:  Yeah, one question.

15              And then, Mr. Shandler, we will get a

16   finalized paper draft -- not a paper draft.  We'll

17   get a finalized draft to review, and then we come

18   back and have an opportunity to discuss that and can

19   make any last changes, should we see necessary edits

20   and errors, anything like that; is that right?

21         MR. SHANDLER:  Correct.

22         HEARING OFFICER ORTH:  Also, you should have

23   an opportunity to discuss the statement of reasons

24   that would support this, right?

25         COMMISSIONER BLOOM:  That's correct.
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1   And it's you, Mr. Shandler, that puts

 2 together the statement of reasons for this as we go

 3 forward.

 4   MR. SHANDLER: Yes.

 5   CHAIR ROZATOS: Okay. So we'll make the

 6 motion here. But just to understand, we'll make the

 7 motion, then we'll get everything written, submitted

 8 to the Commission again to make sure that it is

 9 exactly what we agreed.

10   Do we reconvene? We come back together

11 again? I apologize.

12   MR. SHANDLER: Sure. Mr. Chairman, at a

13 future meeting, it'll be an action item, approval of

14 the final order, statement of reasons. And at that

15 point, you'll, once again, have deliberations, edits,

16 corrections and then a vote on the approval of that

17 final order.

18   CHAIR ROZATOS: But we don't have to do a

19 special meeting for this? It could be as an agenda

20 item on one of the future meetings?

21   MR. SHANDLER: Correct.

22   CHAIR ROZATOS: Okay. So there's a motion

23 to -- I want to do the cover one, the all-inclusive

24 one that you stated. So how do I word that?

25   MR. SHANDLER: Mr. Chair, you're looking for

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 1   a motion for the adoption of the proposed rules as

 2   itemized in the Commission's deliberations today that

 3   will be memorialized in a written order.

 4              CHAIR ROZATOS:  Okay.  And I have someone

 5   to --

 6              COMMISSIONER AMPOMAH:  I move a motion.

 7              CHAIR ROZATOS:  Okay.

 8              COMMISSIONER BLOOM:  I second.

 9              CHAIR ROZATOS:  Okay.  So we've got the

10   motion approved for that.

11                   (Motion approved.)

12              CHAIR ROZATOS:  Now we're done.  Okay,

13   great.  So this adjourns this special meeting for

14   this particular case.

15                   Thank you, everybody, for your attention

16   on the platform and here in person and wish you all a

17   good afternoon.  Thank you.

18                   (Proceedings adjourned.)

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 1   RE:   MARCH 11, 2023, OCC RULEMAKING HEARING

 2

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