

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

12

IN THE MATTER OF THE HEARING)
CALLED BY THE OIL CONSERVATION)
COMMISSION FOR THE PURPOSE OF)
CONSIDERING:)
HEARING CALLED BY THE NEW MEXICO)
OIL AND GAS ASSOCIATION AND)
CONTROLLED RECOVERY, INCORPORATED)
_____)

CASE NOS. 11,143
11,216
(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

September 28th, 1995

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission on Thursday, September 28th, 1995, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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I N D E X

September 28th, 1995
 Commission Hearing
 CASE NOS. 11,143 and 11,216

	PAGE
DIVISION WITNESSES:	
<u>ROGER C. ANDERSON</u>	
Direct Examination by Mr. Carroll	31
Examination by Mr. Kendrick	38
<u>FRANK T. CHAVEZ</u>	
Direct Examination by Mr. Carroll	39
REPORTER'S CERTIFICATE	55

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A P P E A R A N C E S

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(Continued...)

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

FOR NEW MEXICO OIL AND GAS ASSOCIATION
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By: EDMUND H. KENDRICK

* * *

1 WHEREUPON, the following proceedings were had at
2 11:05 a.m.:

3 CHAIRMAN LEMAY: We're reconvening now, and we'll
4 call Cases Number 11,143 and 11,216, which is the hearing
5 called by the New Mexico Oil and Gas Association,
6 continuation -- it's actually re-opened -- and Controlled
7 Recovery, Incorporated, to rehear Rule 711, basically.

8 And I'd like to call for appearances in Cases
9 11,143 and 11,216.

10 MR. KELLAHIN: Mr. Chairman, I'm Tom Kellahin of
11 the Santa Fe law firm of Kellahin and Kellahin, appearing
12 on behalf of the New Mexico Oil and Gas Association and
13 Controlled Recovery, Inc. We were the applicants for
14 rehearing, and we're present today, Mr. Chairman.

15 CHAIRMAN LEMAY: Thank you, Mr. Kellahin.
16 Additional appearances?

17 MR. CARROLL: Rand Carroll on behalf of the New
18 Mexico Oil Conservation Division. I'll have one or two
19 witnesses.

20 CHAIRMAN LEMAY: Okay. How many witnesses, Mr.
21 Kellahin?

22 MR. KELLAHIN: I have none, Mr. Chairman.

23 CHAIRMAN LEMAY: Okay. Will those witnesses that
24 will be testifying please stand and raise your right hand?

25 (Thereupon, the witnesses were sworn.)

1 CHAIRMAN LEMAY: Mr. Kellahin, you're a busy man
2 today, so we shall let you proceed.

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

4 Again, this is a rule-making item on the agenda.
5 It has some peculiarities of procedure which I'll address
6 to you, and then I want to describe for you the process by
7 which we have exercised the opportunity the Commission has
8 granted us when they issued the rehearing request.

9 You may remember that Rule 711 came to you on
10 August 10th. The Commission -- I've got my cases confused.

11 The Commission order in 711 was issued on July
12 10th.

13 On August 10th, you granted our application for
14 rehearing to visit, again, some of the items in Rule 711.
15 711 deals with the surface waste disposal facility rules.

16 And as a result of the granting of the rehearing
17 application, then, members of the Association, including
18 some members of your original Rule 711 committee, have
19 worked extensively to, one, discuss and resolve the issues
20 we raised in the application for rehearing, and to provide
21 for you what we consider to be a solution to those issues.

22 The process that we engaged in was involved, it
23 was carefully done and required a number of meetings and
24 efforts by members of the Division, Counsel for the
25 Commission and members of our industry.

1 In particular, note the following industry people
2 participated since the rehearing to draft what I'm about to
3 present to you:

4 Ruth Andrews of the Association.

5 Buddy Shaw of Amoco in Farmington. Mr. Shaw is
6 probably recognizable to you as an incredibly skilled and
7 highly informed operational manager up there. If there's a
8 field operation that you need to know about, Buddy is the
9 guy you ask. He unfortunately cannot be here today, but I
10 want you to know his absence is no indication of the fact
11 that -- He spent hours with us working on this problem.

12 Raye Miller of Marbob Energy in Artesia has also
13 participated with us in looking at the proposed rule
14 change.

15 We had assistance from Tom Lowry and Dick Pollard
16 with Marathon in Midland. They had knowledge and
17 experience about the underground injection control rules
18 and how to address some editing changes there.

19 Ned Kendrick was a member of the original 711
20 committee, and he has donated his time to help us with this
21 process, and he has been incredibly helpful in helping me
22 edit all the little glitches and niggles that you have when
23 you try to draft rules.

24 And then finally we have had support from the
25 industry in providing its comments. Mr. Fernando Blackgoat

1 of Exxon in Houston has been particularly helpful.

2 We have had two separate meetings among our
3 industry group and Division staff, including Roger
4 Anderson. Roger has been available on a moment's notice,
5 he has dropped everything he was doing to meet with us, and
6 we have spent hours with Roger talking about, one, the
7 concept, agreeing on the issue, and then drafting a
8 solution that everybody, one, understood and could come to
9 some consensus about.

10 In that process we had Frank Chavez and people
11 with his staff in Farmington meet with us on the last
12 meeting and talk about this issue as well.

13 Attorneys for the Division and the Commission
14 have helped us with editing the proposal I'm about to show
15 you and to hopefully complete the process.

16 To aid you in understanding what you would hear
17 this morning, we have circulated on Monday to the
18 Commission the proposed change in which I have given you a
19 summary of what I consider to be the principal features of
20 that change.

21 I'm here to represent to you that the industry
22 that participated in this process is satisfied with the
23 Commission's adoption of this proposed change. We believe
24 it resolves the issues of major concern that we had with
25 the current rule as adopted.

1 We would like to suggest that in order to make
2 sure there are no final glitches in this, that you take our
3 presentation, subject to whatever else might be presented,
4 and give us a comment period where we might reflect upon
5 additional information we may hear today or become aware of
6 later and that we commit to working with Mr. Anderson and
7 his people to respond to those comments so that when you
8 close the book on this rule, we will have given you our
9 best effort to get you a rule that accommodates everybody's
10 point of view.

11 In addressing the issues, let me summarize them
12 for you without reading the letter.

13 One of the principal concerns is the way the
14 order was constructed and adopted. It requires a level of
15 financial assurance. It's easier for me to describe that
16 as bonding, but it included more. You could post a bond or
17 get a letter of credit. That financial insurance, bonding,
18 was open-ended as to all facilities and was pegged only
19 upon the estimated costs of closure, to be conducted by a
20 third party.

21 The open-ended nature of that rule was
22 troublesome to many members of the industry, because they
23 like the assurance of at least a maximum.

24 You go out and insure your car, and it's tough to
25 get insurance on you for an unlimited amount, and the

1 insurer always wants a cap. Well, Buddy Shaw suggested in
2 one of the earlier meetings, can we make a lot of this go
3 away, can the anxiety be reduced if we just impose a cap?
4 Sounded terrific.

5 We pursued the idea, and we have come to a
6 consensus among the industry which we believe that Mr.
7 Anderson and the Bureau will support, for the concept of a
8 cap, and it works like this:

9 If you have a centralized facility, then your
10 limit of bonding is \$25,000, just like a plugging well
11 bond, and that's where it came from. The consistency of
12 using \$25,000 was convenient, and we used it.

13 If you have multiple facilities, you can do as
14 you do now if you're an operator of multiple wells and you
15 can post a statewide bond. It's \$50,000. So on
16 centralized facility, either existing or new, the cap is
17 \$25,000 per facility, but a combination cannot exceed
18 \$50,000, and that's what we did.

19 The other thing we did was to address the
20 commercial facility. The commercial facility, we said
21 there is a difference between new facilities that are about
22 to be constructed, or existing facilities for which there
23 is a proposed major modification or a major expansion.
24 They're coming into the game with these rules and they
25 ought to know what they're getting into. And they ought to

1 be able to organize their financing and build their
2 facility under the original concept of posting a bond
3 equivalent to the appraised value of closure by a third
4 party. And so there's no cap proposed on new facilities.

5 To give existing facilities the opportunity to
6 plan and to achieve the ability to get the bond, we've
7 capped, or propose to cap, existing commercial facilities
8 at \$250,000 as the cap. And there's a sliding scale within
9 the cap. It is that you will bond up to the level of the
10 cost of closure or \$250,000, whichever is less. And then
11 there's an implementation period where during the course of
12 a three-year period you will annually escalate that in 25-
13 percent increments, and that's the way the rule is
14 constructed.

15 That has allowed us to agree to the deletion of
16 all that self-insurance stuff that we've fussed with at the
17 last hearing that nobody could understand and nobody
18 wanted. It's not in here anymore, and we're not suggesting
19 you put it in. It's gone.

20 The next thing we dealt with was the concept of
21 what you wanted to control within the scope of the rule.

22 The way Rule 711 exists now, there's some
23 glitches, unintended, but they are there.

24 One of them is, we have confused the rules for
25 how to process underground injection control. Subsurface

1 disposal is handled under 701. It's the UIC stuff. 711 is
2 the surface disposal. There's some creatures in between
3 that are subject to debate as to how they're governed under
4 the current rule.

5 The easiest example is, if you have a UIC well,
6 injection saltwater disposal well that's permitted under
7 701, what do you do with the surface facilities? We have
8 revised the rule to provide that if those additional
9 surface facilities are storing waste in above-grade tanks,
10 they're exempted from 711. No reason to do it anyway,
11 they're above-ground tanks, their integrity is managed
12 otherwise, and Mr. Anderson has agreed that they don't need
13 to be in this rule.

14 Without the change, you have the argument that a
15 UIC facility is not only permitted by 701 but is also a
16 commercial facility, because we put the UIC exemption in
17 the rule you have now as an exemption from centralized
18 facility, and so it's a drafting error.

19 And with Mr. Kendrick's assistance and the
20 fellows at Marathon, we have moved all those things,
21 rearranged them so you're exempting if you adopt this, from
22 711, the UIC wells that have above-ground tanks, the UIC
23 wells that are activities that are handled by the
24 Environmental Improvement Agency, those kinds of things,
25 which the technical people that understand that kind of

1 stuff say this is right.

2 What you have also done, though, is, if there is
3 a UIC facility that has surface waste disposal in a below-
4 ground tank, in a pond or a pit, they are subject to being
5 permitted under 711 as a centralized facility. They're
6 going to have two permits to get.

7 Under a centralized facility, they're going to
8 have to go get a permit and post the bond if they don't
9 fall under some exemptions. And we've cleaned up all the
10 exceptions; they're few, and they're easy to understand.
11 The exemptions are as to volume and capacity. And if you
12 exceed the 50 barrels a day and the 500-barrel capacity and
13 you can't show Roger that you're not harming the
14 environment, you're going to have to get a permit as a
15 centralized facility for that UIC facility.

16 And so that was the concept to take care of some
17 of those. When you see the rule rewritten, it was
18 originally written to take care of those glitches.
19 Paragraph A. All right.

20 The hard part was dealing with the definition.
21 That's the hardest thing I've done in months. And we've
22 had lots of people help us with how to define it. We
23 started off with commercial. We had a group of five
24 lawyers in the room, and nobody could figure it out. It
25 wasn't our fault, Roger couldn't figure it out either.

1 And so we decided to approach it from an
2 exclusion point of view. We dealt with what we knew we
3 could handle. We dealt with centralized facility. And
4 with Buddy Shaw and the rest of these fellows from the
5 field that knew what this stuff looked like when they saw
6 it, and with Roger Anderson's experience we've drafted
7 centralized facility to have some meaning.

8 And what you're capturing or targeting under 711
9 for centralized facility is those facilities that are
10 operated by a single generator. We've had some confusion
11 of identify of definition, so when you see "generator" we
12 have often substituted that for "operator". When we talk
13 about "operator" I'm not thinking about an oil and gas
14 operator, the guy that does the well; I'm not thinking
15 about a facility operator.

16 So we've been clear in defining a facility
17 operator. When you see "operator", it says "facility
18 operator". That's the waste guy.

19 When you say "generator", that's the guy that's
20 generating the stuff. And if it's from one well going into
21 his own facility as a generator, he's entitled to an
22 exemption. Small risk. Roger says it's no problem.
23 That's the way you have it now under 711.

24 We also dealt with the multiple-well issue, which
25 is the unit concept. You've got an operator in a unit,

1 waterflood or otherwise, and he gathers up this material
2 and he needs a way to dispose of it, and so he does it
3 under an operating agreement in some fashion. We didn't
4 tinker with that; it's in the current rule. We left it in
5 there; it made good sense.

6 And so by backing out these definitions of
7 "centralized", we have defined everything else as
8 "commercial". And I think we have appropriately targeted a
9 true commercial facility, which takes a profit, then, waste
10 from generators not related to that facility.

11 We've taken the definition of "commercial",
12 though, and put it down in "centralized". And when you
13 read the rule, I hope you'll agree with us that it has a
14 logic to it, it makes sense and there's a clarity of
15 purpose that is accomplished with the redraft.

16 And so that's what we have done with the
17 definitions, is trying to obtain the objective of truly
18 targeting a commercial facility, requiring them to have the
19 higher level of bonds, require them the more complicated
20 processing, approval and permitting that's required for
21 that kind of level of activity, and reducing and
22 eliminating from the process those small-volume facilities
23 that are not required to be covered under this regulation.

24 So that deals with the definition.

25 And then finally -- And there's some fine tuning

1 in here, and if you want to talk about them, we can address
2 them in response to your questions. There are a couple of
3 fine-tuning items.

4 There are some cookies for the industry. There
5 is a catch-all exemption, if you will, and the catch-all
6 exemption under "centralized" is to provide the flexibility
7 to the industry, to say, I can't fit these limited
8 exemptions, but I still think I have a facility that's not
9 going to impair public health, the environment or any of
10 those bad things, and I want to have a chance to let Roger
11 process that for me administratively.

12 And so you'll find in the rule that concept. And
13 it is not a blank check to Roger to set up criteria and all
14 kinds of stuff on how you process it. It's an opportunity
15 for flexibility for the industry to have a chance to go
16 ask. We can't think of many examples where that might
17 occur, but we were uncomfortable in not having a mechanism
18 where they could seek an exemption for a truly worthy
19 reason that is not outlined as enumerated exemption. So
20 you'll see that in there. That was our request and not
21 Roger's. We wanted that.

22 The other thing we have done is, we have
23 hopefully dispelled all the commotion about the form that's
24 filed and who approves it and why don't you do whatever you
25 do with that form? And the tail end of this, we're talking

1 about the Form C-136.

2 The 136 form is a generalized form that has been
3 adopted by the agency by practice, which is now formalized
4 by rule, if you adopt these rules, which addresses the
5 levels of waste materials but has an opportunity for being
6 misunderstood by the party processing the form. And I'll
7 give you a package here in a minute and you can see what
8 I'm looking at.

9 The form is arranged in such a way that it
10 appears that you have to obtain Division approval to handle
11 E-and-P-exempt waste. I don't think that was the intent,
12 but it's there. And Nedrick and -- Ken Nedrick -- Ned
13 Kendrick, my buddy here, and I have fielded phone calls
14 from people that don't understand what it says. And we
15 tell them what Roger says and they say, Well, it doesn't
16 read that.

17 And we tell Roger, Well, it doesn't read that.
18 And he says, Well, I don't know what it reads, but here's
19 what I wanted. What I wanted is not to process those for
20 approval by the agency. What we wanted is to leave it to
21 the operator, the generator and the facility operator, to
22 at least be required to have a form in writing that is
23 signed by the generator, that's accepted by the facility.

24 And that's the paper trail, and it sits there at
25 the facility where it can be looked at if Roger wants to go

1 look at it. But we don't have to go get it approved, we
2 don't have to submit it to anybody anywhere to get them to
3 stamp it. It's there. And the industry would like that.
4 We think it's appropriate, we think it's logical.

5 And so to remove any confusion, we have clarified
6 in the last portion of the rule, with Mr. Kendrick's
7 assistance and others, how to make sure everyone
8 understands what we've done with that form. And it's found
9 on page 10 under the operating rules, and it's outlined
10 there. And I've chosen the same style as before. If it's
11 highlighted, shaded, it's an addition. If it's lined
12 through, it's a deletion. And I took the 711 as you
13 adopted it, the changes that you see are reflective of the
14 order as adopted by the Commission, and that was the
15 format.

16 We have rearranged the rule. There's been some
17 reformatting where we talked about phasing in the levels of
18 financial responsibility. They have been moved from one
19 section to another. And I think you'll find, if you've
20 looked at the order, there is an easier reading format to
21 the way it's been arranged, and that was a drafting style
22 we came to some agreement about.

23 So don't be surprised when you see the rule
24 rearranged. We didn't take things out of substance unless
25 there was a consensus about doing it. If there's a

1 deletion, it's clearly reflected in the draft so you know
2 what you're seeing.

3 To aid you in the process, I have duplicated
4 again the summary letter I provided on Monday, again with
5 the rule change. There's an additional change on page 6
6 we'll talk about in a minute, brought to my attention.

7 Beyond that, there's a blue tab, and I've given
8 you a copy -- I misspoke, it's Division Form C-138 and
9 not -136. There's a sample of the form. You can see what
10 I'm talking about.

11 CHAIRMAN LEMAY: Have you got some of those
12 copies for us?

13 MR. KELLAHIN: Yeah. The package is organized
14 this way: The cover letter I prepared, the proposed rule
15 from our working group, followed then by a blue tab, and
16 behind that blue tab, then, is the Division form. We might
17 as well look at that now.

18 The confusion people are having in the field is
19 that on the Form C-138 under the first block it says "RCRA
20 Exempt", and then it says "Verbal Approval, Yes", and then
21 at the bottom of the sheet it says further approvals.
22 There are people that are confused, and Roger, I think, can
23 explain or articulate some of the concerns.

24 But what we have attempted to do is to clarify,
25 then, when you turn to the actual rule and turn to page --

1 I think it was 10 -- page 10 of the proposed draft, and at
2 the bottom of page 10 you can see our choice of style on a
3 couple of points.

4 First of all, we're deleting operator and shipper
5 and simply talking about a generator. The vocabulary of
6 this portion of the industry is accustomed to seeing the
7 word "generator", as opposed a shipper or an operator. His
8 authorized agent, a certificate's signed, it's got to be in
9 writing. He represents and warrants that the wastes are
10 exempt, the E and P wastes, and that he hasn't mixed them.

11 And then the last one is a clarifying provision
12 that we put in here saying, one, either the generator or
13 the permittee, meaning the party that has the facility
14 permit, is required to obtain approval. And that's the
15 construction Mr. Anderson says that he makes of the
16 existing rule, but which is unclear to us.

17 In addition, it provides for the permittee and
18 the generator to do it on a per-load basis, on a form they
19 want to use. You can do it annually, monthly. It provides
20 flexibility, and we think that puts that issue away.

21 To aid you, and perhaps to aid me, because I can
22 never remember them, we've attached at the tail end of the
23 attachment an identity or a list, first of all, of what the
24 EPA calls the non-exempt E and P wastes. I think it's
25 helpful to have the list there. If you want to talk about

1 it later this morning, it's there. And then the last page
2 is the list of exempt E and P waste. And so it's there for
3 your choice.

4 To give you a taste of what the industry uses,
5 behind the Division form is -- and I simply picked at
6 random -- a form I had for Mitchell Energy, one of the
7 Amoco forms. There's lots of them out there, but these are
8 the ones I could pick up last night when I was looking
9 through the file. I know Texaco's got one that's a good
10 form, Conoco uses a form that's a nice form. So there are
11 a lot of forms.

12 And we're just suggesting the industry ought to
13 be able to choose their form, the facility permittee can
14 pick a form. The rule says you've got to have a form, it's
15 got to be in writing, you've got to sign for it. We're
16 happy with that.

17 The notice of hearing said, if you didn't have
18 any new evidence, we heard you before, thank you very much,
19 you don't have to repeat yourself. We're not going to
20 repeat ourselves, members of the Commission. I have
21 brought Ruth Andrews with me today. We have widely
22 circulated this proposed change. We've killed a bunch of
23 trees moving this paper, and we've got comments back and
24 perhaps we'll get a few more.

25 But I hope, as widely distributed as this was, we

1 have got every meaningful item of importance before you in
2 some fashion. Mr. Kendrick is here to help me explain to
3 you, one, how we changed the draft, how we edited it, and
4 issues within his specialty if you have questions.

5 We find, Mr. Kendrick and I, as we look at the
6 draft, an error I made in finally compiling this. If
7 you'll turn with me to page 6 on financial assurance
8 requirements, you're going to see a couple of words that
9 are red-lined out. I did that last night because I
10 recognized it doesn't do what it should do.

11 Existing and new refers to commercial. You need
12 to delete "Existing" from "centralized", because new or
13 existing is to be a centralized facility that's got the
14 \$25,000 bond on it. And the way this is drafted, you have
15 excluded, then, new centralized facilities, but we haven't
16 dealt with them. So it's a drafting glitch. And if you'll
17 -- I have noted for you on your copies that change.

18 To the best of my effort, and with the help of
19 lots of people, I think we have got all the rest of the
20 drafting errors out of here, and we're ready to address the
21 concepts. And while I'm not an expert in this area, I can
22 at least tell you why we chose the procedure and why we
23 chose the drafting choices.

24 I'd like to suggest this procedure, that you
25 consider our change as a solution of the application for

1 rehearing and that there is a commitment of the Association
2 that this will satisfy our concerns.

3 In case that there is an operator or an
4 interested party out there that has another problem, we
5 have told them in this last notice that they needed to
6 bring their own lawyer, their own experts and their own
7 people today and testify. I'm not aware of any of them.
8 No one filed a prehearing statement, I don't know of any
9 other industry operator that wants to come and argue
10 something different than you see in our proposed draft.

11 I would like to suggest that you take this under
12 advisement and give us a 30-day comment period. I think
13 I'm going to find the comment period particularly useful,
14 because I think Mr. Chavez has got some further suggested
15 changes for you, for which I've had no time to reflect, and
16 which I would like to take back to my membership and see if
17 there is a problem.

18 And with that explanation, members of the
19 Commission, we submit to you what we propose to be a
20 consensus document with the approval of the Environmental
21 Bureau that satisfies our concerns.

22 And thank you for the opportunity to let us
23 revisit the rule.

24 CHAIRMAN LEMAY: Okay, Commissioner Bailey, do
25 you have any questions of Tom or any of the other --

1 COMMISSIONER BAILEY: Just a little
2 clarification. Centralized facilities with a new, existing
3 or expanded, would fall under the cap of \$25,000 per
4 facility or \$50,000 blanket; is that correct?

5 MR. KELLAHIN: Centralized?

6 COMMISSIONER BAILEY: Centralized.

7 MR. KELLAHIN: Yes, ma'am.

8 COMMISSIONER BAILEY: New, existing or expanded?

9 MR. KELLAHIN: Yes, ma'am.

10 COMMISSIONER BAILEY: Okay. Only the commercial
11 facilities that are existing would retain the \$25,000? Is
12 that what you're saying --

13 MR. KELLAHIN: No, ma'am.

14 COMMISSIONER BAILEY: -- is the cap?

15 MR. KELLAHIN: No, ma'am. Commercial facilities
16 are handled differently.

17 COMMISSIONER BAILEY: Uh-huh.

18 MR. KELLAHIN: A commercial facility, if it's
19 existing and if they don't make a major modification or
20 expansion, are going to have financial assurance at cost of
21 closure, but not greater than \$250,000.

22 COMMISSIONER BAILEY: Okay. So existing, new and
23 expanded?

24 MR. KELLAHIN: No, ma'am. Let me do it.

25 COMMISSIONER BAILEY: Okay.

1 MR. KELLAHIN: Existing commercial, you don't
2 expand it, you don't modify it. You know, you can tinker
3 with it, but if it's a major you're going to go into a
4 different pocket.

5 If you're existing commercial, you're going to
6 bond on a phased-in bonding schedule where it's going to be
7 cost of closure or a \$250,000 cap, whichever is less.

8 If you are a new commercial or if you make
9 substantial changes to your existing commercial facility,
10 you lose the benefit of the cap, and the new facility is
11 going to have to bond at cost of closure by a third party
12 closing contract.

13 COMMISSIONER BAILEY: Thank you for that
14 clarification.

15 MR. KELLAHIN: Yes, ma'am.

16 COMMISSIONER BAILEY: That's all.

17 CHAIRMAN LEMAY: Commissioner Weiss?

18 COMMISSIONER WEISS: Yes, as I recall in the past
19 there was some -- Wasn't the state going to have to have to
20 get in the banking business or understand it or something?
21 Is that deleted?

22 MR. KELLAHIN: Your memory is clear, Commissioner
23 Weiss. We had proposed -- The 711 committee has been in
24 existence a long time. It was initiated back in, I think,
25 December of last year. But one of the themes they handled

1 is because cost of closure could be very high, they wanted
2 the flexibility of being self-insured.

3 And part of that process involved the agency and
4 the industry in a very complicated banking criteria that
5 quite frankly nobody, I don't think, understood. That's
6 all been taken out of here, thrown away and replaced with
7 this cap concept.

8 COMMISSIONER WEISS: That's the only question I
9 had. Thank you.

10 CHAIRMAN LEMAY: Okay, just a matter of
11 participation in the redraft. Ned, maybe you could answer
12 this better than Tom, but has the environmental community,
13 Chris Shuey or anyone, been involved in the redraft?

14 MR. KENDRICK: I have not spoken to him. The
15 only thing he's told me is that as long as this rule -- it
16 covers pits or below-grade facilities, that's the coverage
17 he wants. He doesn't believe this rule should address
18 above-ground tankage.

19 That's basically -- I think he's represented to
20 me that as long as we keep that approach, that he's
21 satisfied.

22 CHAIRMAN LEMAY: Okay.

23 MR. KELLAHIN: And this draft is consistent with
24 that objective.

25 CHAIRMAN LEMAY: Okay. Here's another thing that

1 probably wasn't explained, is, on page 2, Tom, where you're
2 -- I see you talk about a generator subject to New Mexico
3 Oil and Gas Conservation Tax Act. How is -- Do you want to
4 explain that to us, how that's a qualifying statement, or a
5 qualifying item for a centralized facility?

6 MR. KELLAHIN: Yes, sir. The concept was to have
7 the financial impact, as well as the benefit of
8 classification, plus the opportunity for an exemption to be
9 realized by a generator that was subject to being taxed
10 under the conservation tax scheme, which provided revenues
11 by which we have funds, then, for plugged and abandoned
12 wells, and the practice of having those funds available to
13 close waste facilities.

14 And we thought it was appropriate for the parties
15 being subject to the impact of a tax to have the benefit of
16 a potential exemption by the definition. Plus -- You see
17 what it does? If it classifies that generator who is not
18 subject to the tax, it kicks them over into being a
19 commercial facility, and you're right back where you want
20 to target the big commercial facility that's taking waste
21 from all over the place, and you're not tied back into the
22 operator who's paying the tax for disposal and putting it
23 into either his disposal well or into a centralized
24 facility he's operating in conjunction with a unit
25 operation. So that was the concept.

1 And the effort was then by exclusion, capturing
2 in commercial those that didn't pay the tax.

3 CHAIRMAN LEMAY: What you've done, then, at least
4 -- Let me ask you this from a legal response.

5 A centralized facility, then, if it was to be
6 closed, are you agreeing that it probably fits within the
7 law to close that facility if we had to, beyond the \$25,000
8 bond with the plugging fund?

9 MR. KELLAHIN: That is the concept. The practice
10 will be that we would like to make sure that that procedure
11 is flawless and will aid and ask through the association
12 and the involvement of the agency to have statutory
13 clarification which endorses that practice.

14 But that was the concept here. And we have no
15 disagreement with using those funds to plug a waste
16 facility. We think it may be important to clarify it with
17 legislation so that there is no potential glitch in that
18 procedure.

19 CHAIRMAN LEMAY: By inference, does that mean
20 that a commercial facility could not be closed with
21 plugging fund money?

22 MR. KELLAHIN: That is our intent, because they
23 are going to be bonded at a much higher level, based upon
24 actual cost of closure, and if they're an existing facility
25 they've got the \$250,000 cap.

1 CHAIRMAN LEMAY: And the way you handle the
2 definitions, you define "centralized" and you find the
3 exceptions to "centralized"?

4 MR. KELLAHIN: Yes.

5 CHAIRMAN LEMAY: And everything else is
6 commercial?

7 MR. KELLAHIN: That was the methodology.

8 CHAIRMAN LEMAY: There's nothing that doesn't
9 fall through the cracks with that methodology?

10 MR. KELLAHIN: I hope not. We have tried to
11 recognize that, and perhaps that question is best addressed
12 to Mr. Anderson, who is much more experienced in that than
13 I am. But among the industry we believe that we have got
14 everything covered by the definition in some --

15 CHAIRMAN LEMAY: It's an interesting way to go
16 about defining, is by -- everything else is --

17 MR. KELLAHIN: Look how hard it was to do.

18 CHAIRMAN LEMAY: Oh, I know.

19 MR. KELLAHIN: If you start with commercial, the
20 Commission chose to put unrelated in the definition. We
21 know what you intended, but I had dozens of phone calls
22 about whether that meant aunts and uncles or something
23 else. They couldn't deal with it.

24 And so we were frustrated by the same problem you
25 addressed, and we went around the other way.

1 CHAIRMAN LEMAY: I don't have any other
2 questions.

3 Any questions? I guess you're a witness here,
4 Mr. Kellahin.

5 MR. KELLAHIN: No, sir.

6 CHAIRMAN LEMAY: What we're doing is being
7 informal.

8 MR. KELLAHIN: I'm an attorney representing these
9 clients, Mr. Chairman, and I would suggest to you that
10 perhaps we could hear from Mr. Anderson so that we have the
11 Division's perspective on what I hope we have accomplished.

12 CHAIRMAN LEMAY: What I'd like to do is, for
13 clarification, if anyone had a question of you, though,
14 that you could respond to that question from the audience.
15 That was all.

16 MR. KELLAHIN: I'll do my best to do so.

17 CHAIRMAN LEMAY: Okay. Is there anyone else who
18 has -- or anyone who has a question of Tom with what he's
19 presented here?

20 Well, thank you very much. I appreciate your
21 presentation, Mr. Kellahin.

22 Rand Carroll, do you want to put on your witness?

23 MR. CARROLL: Call Roger Anderson to the stand.

24 Mr. Chairman, maybe I can touch on an issue
25 before Mr. Anderson is asked any questions, and that is

1 regarding the first issue we're going to bring to your
2 attention, which you've already touched on, and that is the
3 definition of centralized facility, found on page 1.

4 And Tom and Ruth and Ned can correct me if I make
5 a misstatement here, but the \$25,000 cap that is
6 recommended for centralized facilities is based on the
7 premise that the centralized facilities have paid into the
8 reclamation fund, through the tax.

9 The glitch we have spotted since is that, as it
10 reads it says, used exclusively by one generator subject to
11 the Oil and Gas Conservation Tax Act. Well, I think
12 immediately you can see a situation where somebody has 200
13 wells in Colorado, no production in New Mexico, they
14 acquire an interest in a well down in Lea County and they
15 become then subject to the tax -- conservation tax. So
16 they would fall within centralized facility, and the
17 premise that the \$25,000 cap is based upon New Mexico
18 production flowing into this facility is out the window.

19 One of the recommendations we have discussed is
20 that this definition, then, have a further condition that
21 the generator accept only waste generated from production
22 subject to the tax act. Now, that means a generator with
23 200 wells in New Mexico, with one well in Colorado, would
24 then be thrown out, but we then discuss the fact, well,
25 with that one well he can haul it somewhere else. That

1 might be one way to take care of this glitch.

2 But as currently written, I think it is subject
3 to possible abuse by out of state generators of waste. And
4 that's the first issue we're going to bring to you.

5 I don't know if there should be a threshold -- 90
6 percent -- I don't know how you come up with a percentage
7 figure and how you verify what percent of the production is
8 from New Mexico oil and gas and what is from outside the
9 state. Here, it can be any, not matter how minor, or you
10 can say, it must be all. I don't know if it should be all
11 or nothing or somewhere in between.

12 That is the first issue we're going to bring to
13 your attention.

14 ROGER C. ANDERSON,

15 the witness herein, after having been first duly sworn upon
16 his oath, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CARROLL:

19 Q. Mr. Anderson, are you the Bureau Chief for the
20 New Mexico Oil Conservation Division Environmental Bureau?

21 A. Yes.

22 Q. And you were involved in all the committee
23 meetings and discussions, plus the group that met after the
24 order was issued --

25 A. Yes.

1 Q. -- to come up with this draft that has been
2 submitted to the Commission --

3 A. That's correct.

4 Q. -- of amendments to the order that's currently
5 existing?

6 A. Yes.

7 Q. Is what I just spelled out for the Commission
8 your impression of what happened at the committee meetings
9 regarding the purpose of the \$25,000 cap for the
10 centralized facilities?

11 A. That's the way I understood it, yes.

12 Q. And you understand this glitch that we have
13 discovered after this draft was prepared?

14 A. Yes.

15 Q. And in fact, it was you that came up with a
16 possible amendment that only waste generated from
17 production subject to the conservation tax would be added
18 to this?

19 A. No, that was -- That came from a district, that
20 came from Frank.

21 Q. And do you agree with that?

22 A. Yes.

23 Q. Do you think it's a hardship on the industry to
24 have any waste generated from out of state be hauled to
25 another facility?

1 A. Well, it's my opinion the way it's drafted, in
2 the draft the Commission has, is one end of the spectrum.
3 The other, the additional language that was proposed by the
4 district, is the other end.

5 There should be something in between that, you
6 know, if somebody has a thousand wells down in Lea County
7 and has a centralized pit that we've permitted and they
8 have one well over in Texas that they want to bring --
9 that's right next to -- just across the line, and if it's
10 economical and convenient, you know, I don't see any
11 problem with that coming into New Mexico. You know, we
12 don't want to stop waste from coming into New Mexico.

13 I think there's got to be some kind of percentage
14 or some way to say what portion is backed by New Mexico
15 production so that the reclamation fund can close that pit
16 if need be.

17 Q. Is that easily verifiable or incapable of audit?

18 A. Well, I think with, you know, the paperwork
19 that's required even of commercial -- of a centralized
20 facility to keep track of their produced water, what goes
21 where, and the C- -- I believe it's no longer the C-120,
22 it's the C-115 for disposal reports. I think it can be
23 verified. Easily, maybe not. I don't know.

24 I don't know what percentage, whether it be 90,
25 95 percent of the water is generated in New Mexico. I

1 don't know what percentage that would be, what would be
2 appropriate.

3 Q. Mr. Anderson, do you have any other comments
4 regarding Mr. Kellahin's presentation to the Commission
5 here?

6 A. Mr. Kellahin mentioned that I was going to
7 clarify some things during his presentation, but -- and I
8 didn't write them down, so I'm going to have to ask what
9 those things that he wanted me to clarify were.

10 MR. KELLAHIN: I'm not sure I can specifically
11 enumerate them, but --

12 THE WITNESS: You don't remember them either.

13 MR. KELLAHIN: -- the questions are -- The
14 obvious question is, the draft as presented, do you have a
15 concurrence or position with regards to the final draft as
16 presented?

17 THE WITNESS: Myself and the Bureau concurs with
18 what was created in the draft, with the exception of that,
19 and we concurred with it when it was drafted and then found
20 that glitch on the tax act thing.

21 I don't believe there's anything else that I
22 disagree with that's in the --

23 Q. (By Mr. Carroll) The Division does have a
24 recommendation that would further aid industry, that Mr.
25 Chavez is going to testify; is that correct? Regarding the

1 documentation?

2 A. That's correct.

3 Q. The blanket documentation required?

4 A. That's correct.

5 I do have one question -- one problem, and I --
6 Because Mr. Kellahin just gave this -- the red-line portion
7 of it on page 6, that he mentioned to the Commission, and
8 we really didn't have that much time to look at it to see
9 what it does. But it in essence takes facilities that are
10 already existing away because they don't have to file an
11 application, and -- or a permit, an application for a
12 permit.

13 So it basically says now, upon determination by
14 the Director that a permit can be approved, the Applicant
15 of the centralized facility shall have the -- so forth and
16 so on, the bonding.

17 So if they don't have to -- If an existing
18 facility does not have to apply for a permit, then they
19 won't have to have the bond.

20 So taking the actual, existing centralized out of
21 there, takes the existing facilities away from having to
22 have a bond. That's the way I read it. And that -- It's
23 probably just a wordsmithing problem that we have to look
24 at.

25 Q. Do you have anything else, Mr. Anderson?

1 A. No, that's it.

2 MR. CARROLL: That's all I have of this witness.

3 CHAIRMAN LEMAY: Questions? Commissioner Bailey?
4 Commissioner Weiss?

5 COMMISSIONER WEISS: I have no questions.

6 CHAIRMAN LEMAY: I don't have a question. Maybe
7 a suggestion.

8 On page 1, item 2, where you're dealing with that
9 2 b, surface -- "A centralized facility is defined as a
10 surface waste management facility that is used exclusively
11 by one generator subject to New Mexico's 'Oil and Gas
12 Conservation Tax Act', Section 7-30-1 NMSA-1978 as
13 amended."

14 Could you add a "for oil and gas wells generating
15 waste to be disposed of in that facility" or something of
16 that nature so you're defining -- you're tying together the
17 severance tax paid by certain wells with the facility that
18 carries a centralized designation?

19 MR. KELLAHIN: The legal issue is, you may have
20 unduly interfered with interstate commerce.

21 The practical problem is, you're impacting
22 Meridian and I think Amoco and other operators that do have
23 these kinds of facilities across the Colorado boundary, and
24 they have wells in New Mexico that generate that waste that
25 are tied into the same waste system as wells in Colorado,

1 and if we change it as you have proposed, then Meridian now
2 has a commercial facility. And that's not what was
3 intended.

4 So I recognize your issue, and I think I need to
5 have that as one of the items we address during the comment
6 period, because we're in an area of the law that I don't
7 practice. But by -- It's obvious that it's an interstate
8 commerce problem, and you may be drafting yourself into a
9 major mistake.

10 CHAIRMAN LEMAY: Well, I assume if I can leave
11 that with you all in a legal sense, you can address the
12 problem that was raised, being tying the waste generated to
13 the disposal of that waste in the same facility.

14 MR. KELLAHIN: We'd like to have that as an issue
15 to work on.

16 In addition, Roger has commented on my editing
17 change for existing centralized.

18 CHAIRMAN LEMAY: Okay.

19 MR. KELLAHIN: I told you our objective. Ned and
20 Roger and I can work on that after the hearing, if you'll
21 give us some guidance, but I think that's just a drafting
22 issue.

23 CHAIRMAN LEMAY: That's all. I just -- Thank
24 you, Mr. Anderson, appreciate it.

25 MR. KENDRICK: I have a question for Mr.

1 Anderson.

2 CHAIRMAN LEMAY: Oh, I'm sorry, Ned, go ahead.

3 EXAMINATION

4 BY MR. KENDRICK:

5 Q. Yes, I just -- Perhaps this takes care of your
6 drafting issue.

7 Page 13, E section that deals with existing
8 facilities. E 2, it says, "within one year after the
9 effective date unpermitted facilities" have to submit a
10 bunch of information to get a permit, essentially.

11 So it's -- I think an existing centralized
12 facility still has to get a permit, and then it still has
13 to get a bond, because by taking out the word "existing" on
14 page 6, just refers to all centralized facilities.

15 So I think there's a way -- I mean, I think the
16 regulation addressed is your concern as written.

17 A. Okay.

18 MR. CARROLL: Mr. Chairman, I think we can
19 address this in a later --

20 CHAIRMAN LEMAY: Can you all get together and
21 kind of work that one out?

22 MR. KENDRICK: Sure.

23 CHAIRMAN LEMAY: Okay. Any other questions for
24 Mr. Anderson?

25 If not, he may be excused. Thank you.

1 You can call your --

2 MR. CARROLL: Mr. Chairman, I call Mr. Frank
3 Chavez to the stand.

4 FRANK T. CHAVEZ,

5 the witness herein, after having been first duly sworn upon
6 his oath, was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CARROLL:

9 Q. Mr. Chavez, you're the District Supervisor for
10 the Oil Conservation Division --

11 A. Yes, I am.

12 Q. -- in Aztec, New Mexico; is that correct?

13 A. Yes, sir.

14 Q. And have you been involved in the discussions
15 surrounding the development of Rule 711?

16 A. Yes, I have.

17 Q. And the proposed amendments to Rule 711?

18 A. Yes.

19 Q. And are you prepared today to make one addition
20 to the draft that has been submitted and then make one
21 personal opinion as an oil and gas regulatory enforcement
22 officer to the Commission?

23 A. Yes, I'd want to testify on the basis of
24 enforcement and practicality of the way the rule is
25 written.

1 Q. Mr. Chavez, first of all, with your suggested
2 addition to the language in the proposed amendments to Rule
3 711, if you'll please turn to page 10 of the draft and go
4 down to Section C 4 a, the first sentence of that block on
5 the bottom that's shaded, starting with "The permittee
6 shall..."

7 A. Yes, sir.

8 Q. -- and what addition do you have to that sentence
9 that you believe would help industry and the Division out
10 in processing the documentation for waste?

11 A. I don't have exact wording, but I would propose
12 an addition that would require that the waste that is
13 brought to a commercial facility be documented as to -- and
14 I'm going to use this word, it may not be the easiest word,
15 but incident or case. And the reason we chose that is
16 because single-pit cleanup or spill cleanup may generate
17 several truckloads of contaminated soil for remediation.
18 We wouldn't at all want each load to -- or think that it's
19 necessary to document each load.

20 But on our review of facility documents when we
21 do our auditing or our office goes to these facilities to
22 check the documentation, without having that documentation
23 specifically by incident it's very difficult to understand
24 and to enforce the regulations as to what's going on at the
25 facility.

1 So this is the language that's used in b and c.
2 It's on a case-by-case basis. That may be more
3 appropriate, to continue the parallel structure in that
4 language. So I would recommend that this require that type
5 of documentation.

6 Also, if I might add, under C, Rule Number 1,
7 under Operational Requirements, it says the permittee shall
8 file certain forms.

9 As it stands right now, the Form C-120-A is no
10 longer required for produced water; the produced water is
11 handled under Form C-115. This particular portion of the
12 rule may not be necessary, otherwise you could basically
13 say all surface-waste-management facility permittees shall
14 file required forms. But that's -- It's one of those
15 things that goes without saying. And under enforcement, we
16 either need to be specific or perhaps to just leave that
17 one portion out, because the permits themselves will
18 generally say what forms are required, once a permit is
19 issued.

20 Q. So Mr. Chavez, to clarify your suggested addition
21 to C 4 a, that sentence would read, The permittee shall
22 have the option to accept either an annual, a monthly or a
23 per-load or a per-case or incident, whatever
24 language is agreed upon?

25 A. I would recommend that all the certifications be

1 done on a case-by-case basis, or incident basis. Like I
2 say, this makes our enforcement much easier when we are
3 reviewing the documents submitted to the facility and the
4 documents that they have.

5 An annual certificate -- I haven't seen myself
6 what an annual certificate would be to know whether or not
7 that's useful for us when we inspect a facility or are
8 keeping tabs on the activities of the facility, to
9 understand exactly what is going on. So I'd recommend that
10 the -- all the documentation be done on a case-by-case
11 basis.

12 Q. Okay. Well, now, I guess we're getting into your
13 personal opinion as a --

14 A. Yes, that's correct.

15 Q. -- regulatory enforcement officer?

16 A. Yes, sir.

17 Q. The Division has concurred with this draft, with
18 the exception of the definition of centralized facility,
19 and we have suggested the addition for an incident or a
20 case basis, which may involve several truckloads.

21 A. That's correct.

22 Q. And then your personal opinion is that it should
23 be -- the whole thing should just be case by case?

24 A. Yes, sir.

25 Q. Mr. Chavez, we'll get to your other personal

1 opinion as a regulatory enforcement officer, as to the
2 second language in that shaded area, then, which is,
3 "Neither the generator nor the permittee is required to
4 obtain Division approval of this certificate."

5 A. That's right.

6 Q. And what are your comments on that as your
7 personal opinion and as a regulatory enforcement officer?

8 A. I won't go through the testimony except to recall
9 to the Commission's mind that there was testimony at the
10 last hearing that this is required in the northwest. And
11 we have had excellent cooperation with the facility
12 operators and with the generators over approval of exempt
13 -- on a case-by-case basis of the waste going to commercial
14 facilities.

15 There hasn't been any opposition from the central
16 facility operators. It makes it very easy for us to
17 monitor what's going into the facilities, and has prevented
18 misclassification of waste on several occasions when we
19 were presented with the documentation which resulted to be
20 our new C-138, and by going through that discovered that
21 there was an erroneous classification of what the waste
22 was.

23 We feel that it does give the OCD protection to
24 our process and also perhaps from some liability, should
25 there be EPA inspections or should other types of

1 inspections occur at these facilities where we have
2 permitted the waste to go into them. We feel that it gives
3 us substantial protection, should the EPA want to inspect a
4 facility and find, perhaps, a portion of the facility may
5 not meet certain standards for different kinds of wastes,
6 yet our certificate shows where that came from and we
7 approved that.

8 So I would highly recommend that for enforcement
9 purposes, ease of enforcement purposes, we require that on
10 a case-by-case basis, that waste going into a commercial
11 facility be approved at the district level.

12 Q. And Mr. Chavez, the requirement in the northwest
13 was based upon your interpretation as Aztec District
14 Supervisor of an April, 1993, memo sent out from the Santa
15 Fe Division Director regarding the documentation required
16 in order for permitted facilities to accept waste; is that
17 correct?

18 A. That's correct, it was the enforcement of the
19 requirements issued at that time.

20 Q. And it was your personal interpretation as
21 District Supervisor?

22 A. No, it was after discussion with the rest of
23 the -- more OCD staff. And it went through further
24 discussion several times, once later at the June, 1993, OCD
25 environmental meeting in the northwest, and then again in

1 1994, in May, when we had an inspection staff meeting to
2 discuss environmental issues, we went through this process
3 again, to describe how well it was going and what the
4 results were.

5 And we found that it was giving us substantial
6 protection as an agency and, as a sideline, also gave our
7 facility operators and generators some protection.

8 MR. CARROLL: That's all I have of this witness.

9 CHAIRMAN LEMAY: Thank you. Questions of Mr.
10 Chavez? Ken?

11 MR. KEN MARSH: Mr. Chavez, this 1993 memo that
12 you talk about, how was that formulated?

13 THE WITNESS: The 1993 memo was formulated -- I'm
14 trying to -- It's been a while. I'm trying to get my
15 recollection as best as I can here.

16 For some time, we'd been looking at the processes
17 of approving and monitoring our 711 facilities. We had
18 some issues arise, and one which we thought might give
19 substantial liability to the State of New Mexico, at a
20 facility in the northwest, and this memorandum came out of
21 discussions that we had internally in OCD.

22 And after discussion with some operators of what
23 could we do in order to give ourselves and operators some
24 protection, should there be problems arise in the future,
25 and the memorandum was an outgrowth of that.

1 MR. MARSH: Was there any notice given or a
2 public hearing held on that?

3 THE WITNESS: I don't recall any.

4 MR. MARSH: Was there any industry involvement,
5 other than in the northwest?

6 THE WITNESS: I don't know.

7 MR. MARSH: Thank you.

8 CHAIRMAN LEMAY: Any other questions of Mr.
9 Chavez? Commissioner Bailey? Commissioner Weiss?

10 COMMISSIONER WEISS: I have no questions.

11 CHAIRMAN LEMAY: I have no questions. Thank you.
12 Thank you, Frank.

13 Do you have a question, Mr. Kellahin?

14 MR. KELLAHIN: No, sir. But as a result of what
15 Mr. Chavez has brought this morning, it represents a
16 dramatic departure of what we have been discussing for
17 weeks. And if we are going to talk about changes to this
18 particular proposed portion of the rule, then I need to
19 call Mr. Marsh as a witness and I need to revisit with Mr.
20 Anderson the position the Bureau has taken on this
21 paragraph. And that's where we are.

22 CHAIRMAN LEMAY: Yeah, since this is rule-making,
23 I think we can crystallize -- We're talking about generator
24 certification versus OCD approval, right? Isn't that the
25 issue as it stands out there?

1 COMMISSIONER WEISS: I've got a real question
2 here. What's a certificate? Is that what this is here,
3 number -- Form C-138? Is that a certificate?

4 MR. KELLAHIN: Yes, sir, that would be a sample.
5 And the ones we gave you from Amoco and Mitchell and --

6 COMMISSIONER WEISS: That's what I thought.

7 MR. KELLAHIN: Those are samples.

8 COMMISSIONER WEISS: Okay.

9 MR. CARROLL: Mr. Chairman, may I -- Maybe I can
10 clarify this a little.

11 CHAIRMAN LEMAY: Okay.

12 MR. CARROLL: The Bureau and Division concur with
13 the draft here. Mr. Chavez requested that he testify as a
14 regular enforcement officer in his own personal opinion.
15 The Division position is that this draft, with the possible
16 addition of the per-case or per-incident basis, be the rule
17 adopted by the Commission.

18 MR. KELLAHIN: Mr. Chairman, that is a
19 substantial change in position, and it's not how it was
20 represented to us when we walked in here this morning.

21 CHAIRMAN LEMAY: Well, I think what Rand is
22 saying is, the Division position is the position that
23 you've outlined in here, that Frank is testifying his own
24 personal viewpoint on; isn't that what you're saying?

25 MR. CARROLL: That's correct.

1 MR. KELLAHIN: Well, and I want to tell you that
2 if we go to a case-by-case reporting it substantially guts
3 one of the major things we hope to achieve with this rule
4 change, because we don't want to be in a position to go to
5 the Division and have all these exempt E-and-P materials
6 approved by Mr. Chavez or anyone else.

7 MR. CARROLL: Mr. Chairman, I believe Mr.
8 Kellahin misunderstood the testimony earlier.

9 Mr. Chavez -- The Division position is that it
10 will be on an annual monthly per load, and with the
11 addition of per-incident basis, and Mr. Chavez's personal
12 opinion was that that should all be scrapped for a case-by-
13 case basis, determination.

14 MR. KELLAHIN: If the Commission would like us to
15 aid in the drafting of a language change that deals with a
16 spill incident disposal, we are more than happy to work on
17 that.

18 But what -- my understanding, and I could be
19 wrong -- What I'm hearing discussing gives me major concern
20 because it undoes what we were trying to accomplish.

21 This is an incredible puzzle, and my problem is,
22 I have simply taken what I thought was the Division's
23 position of not requiring us to have this C-138 approved.

24 CHAIRMAN LEMAY: I think --

25 MR. KELLAHIN: I know what Frank does, and I

1 disagree with him. I think it's absolutely wrong, and I
2 want the opportunity for my clients to have the form and
3 the material record there for his inspection. And I don't
4 want to have him to approve it, I don't want to have to use
5 his form, and if he wants to come look at it he can see
6 ours.

7 CHAIRMAN LEMAY: I understand that.

8 MR. KELLAHIN: All right.

9 CHAIRMAN LEMAY: Ken?

10 MR. MARSH: May I just make a comment that might
11 help Frank's concerns as well as everybody else's?

12 Any commercial facility will have an invoice for
13 each incident or each lease or each load, because you have
14 to bill the oil company for where it came from, because of
15 partnerships and royalty agreements and so forth.

16 So that is already done on a commercial facility.
17 You're going to have to invoice for each piece -- each
18 activity that happened at that facility. So there's no use
19 in us duplicating that in some other form.

20 CHAIRMAN LEMAY: Okay, do you want to respond to
21 that, Frank?

22 MR. CHAVEZ; Yes, there is one time that's
23 difficult to handle, and that is when out-of-state waste --
24 exempt out-of-state waste is coming into a commercial
25 facility.

1 When exempt waste is coming into -- from out of
2 state, there's a very difficult issue of us inspecting the
3 generation of that waste, where it came from.

4 I wholly agree with the -- and like I say, it
5 came from -- Roger said it came from our office, the
6 recommendation on the classification of what is a
7 centralized facility, handling only waste generated by
8 production from which New Mexico taxes are generated.

9 Given that, that creates a commercial facility,
10 basically anything that handles out-of-state waste. By
11 requiring District approval, that gives us an opportunity
12 to more easily regulate what's come in from out of state.

13 We're all concerned about, we don't want New
14 Mexico to be a dumping-ground thing, but yet we do want our
15 operators to have an ability in New Mexico to handle their
16 wastes in a practical, inexpensive manner. But out-of-
17 state wastes can become an issue unless we address it, and
18 by requiring approval for exempt waste, all of it, we don't
19 discriminate between in-state and out-of-state waste going
20 to commercial facilities. And this discrimination, as you
21 heard earlier, can be a real problem, and that would solve
22 that problem.

23 CHAIRMAN LEMAY: Well, let me ask, this same
24 issue, Roger, a question. In talking specifically about a
25 problem in Colorado, did you say that you were asking a

1 Colorado agency to give you -- not authorization but just
2 somehow certify that a load has moved?

3 MR. ANDERSON: What we were asking the Colorado
4 Oil and Gas Commission -- or the operator to obtain from
5 them, was authorization to move that waste out of state,
6 because they're the ones that have the ability to inspect
7 that waste, and we do not -- or to determine whether it is
8 appropriate to be moved. And it's basically because of the
9 hazardous-waste laws.

10 Now, they do have the ability to determine
11 movement of hazardous waste. From what I understand, they
12 do not have a system in place for authorizing movement of
13 nonhazardous waste, and that's basically what -- the reason
14 we asked for.

15 We have that, we get that authorization from the
16 Texas Railroad Commission or the Texas Natural -- the train
17 wreck; I can't think of what they're actually called. And
18 we also have that from BLM, from the Navajos, from the
19 Jicarillas. They all give that authorization and basically
20 verify what the waste is for us.

21 CHAIRMAN LEMAY: Tom, how does that play out in
22 your draft? Is that still a requirement that we could do
23 under this draft, or is that out the window?

24 MR. KELLAHIN: Well, it introduces a topic for
25 another committee discussion and a further processing of

1 the issues.

2 I would suggest that you act on this draft and
3 take this interstate transportation of waste materials and
4 give us as a new item on the agenda to address it when we
5 can talk about that subject.

6 But I think you're opening us up to an incredible
7 amount of work for which we don't have the answers this
8 morning, and I don't want to hold up this draft for that
9 issue.

10 CHAIRMAN LEMAY: Well, I appreciate that. What
11 we're trying to do is look at the way it's being done now
12 and how your draft affects that as --

13 MR. KELLAHIN: We don't --

14 CHAIRMAN LEMAY: -- you're saying you don't
15 address it, therefore we couldn't require it.

16 MR. KELLAHIN: That's right. And if you want to
17 require it for interstate commerce, we've got to get some
18 Constitutional lawyers involved and we've got figure out
19 how to do this, because I don't think the State of New
20 Mexico requires the out-of-state permit even on hazardous
21 materials at this point.

22 We're dealing with a topic that is very
23 complicated, and I would suggest that you act on this topic
24 now, move this to a different item.

25 CHAIRMAN LEMAY: But you understand the issue --

1 It works in Texas, I understand. The way we do it, they
2 ask us if this -- if we gave them permission to use this
3 waste; we say yes over a phone call.

4 And the reverse is true, such that when that
5 truck comes over, we know that some regulatory agency in
6 the other state gave permission to move that. I mean,
7 we're not certifying anything, but it has some official
8 movement connected with the other state. I mean, that's
9 the way we handle it in Texas.

10 We've had a problem with that in Colorado. And
11 it probably is, like you say, an open-ended issue that
12 maybe shouldn't hold up this draft. But I want to bring it
13 up to get your comments on it.

14 MR. KELLAHIN: I'm not sure what you're doing
15 with Texas is appropriate. I'm not sure there's a loosey-
16 goosey handshake where you guys can talk and move this
17 stuff. I don't know, we have to get it permitted in Texas
18 in order to move it to New Mexico.

19 You're asking questions that will take some
20 effort to decide, and I implore you to act on this. We've
21 spent hundreds of hours getting to this point. This is a
22 new topic for a different date.

23 CHAIRMAN LEMAY: I appreciate that, thank you.

24 Any other questions of Mr. Chavez? He may be
25 excused. Thank you.

1 Mr. Carroll?

2 MR. CARROLL: That's all I have, Mr. Chairman.

3 CHAIRMAN LEMAY: Is there anything else in
4 consideration, now, of Rule 711?

5 I think we'll take the recommended procedure,
6 leaving the record open for 30 days for comment and then
7 taking this case under advisement.

8 Any statements, additional comments?
9 Commissioners?

10 Okay. If not, we shall take the case under
11 advisement after a 30-day comment period.

12 Thank you very much. And again, my -- Thank you
13 to all of you for the extra effort you've put into this.
14 It's been a struggle, and I know -- It's not like we can
15 plug all of the holes with one rule. I think some of this
16 is a learning experience for all of us, and I appreciate
17 your kind of staying with it and really working -- Each
18 draft becomes better. And this one, I think, is the best
19 so far, and I thank you for the effort you've put into it.

20 MS. ANDREWS: We thank you for the hearing.

21 (Thereupon, these proceedings were concluded at
22 12:17 p.m.)

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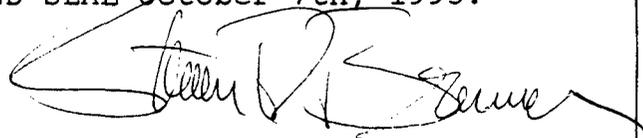
CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL October 7th, 1995.



STEVEN T. BRENNER
 CCR No. 7

My commission expires: October 14, 1998