

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

IN THE MATTER OF THE HEARING CALLED BY )  
 THE OIL CONSERVATION COMMISSION FOR THE )  
 PURPOSE OF CONSIDERING: ) CASE NO. 12,897  
 )  
 APPLICATION OF THE NEW MEXICO OIL )  
 CONSERVATION DIVISION, THROUGH THE )  
 ENVIRONMENTAL BUREAU CHIEF, FOR THE )  
 ADOPTION OF AMENDMENTS TO DIVISION )  
 RULE 118 (HYDROGEN SULFIDE GAS) )  
 \_\_\_\_\_ )

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
 JAMI BAILEY, COMMISSIONER  
 ROBERT LEE, COMMISSIONER

October 25th, 2002

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Friday, October 25th, 2002, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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## I N D E X

October 25th, 2002  
 Commission Hearing  
 CASE NO. 12,897

	PAGE
REPORTER'S CERTIFICATE	35

\* \* \*

Submission by Mr. Ross, not offered or admitted:

Identified

Packet with strikeout version of the Rule, modified pursuant to the consensus work group's draft	4
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## A P P E A R A N C E S

FOR THE COMMISSION:

STEPHEN C. ROSS  
 Assistant General Counsel  
 Energy, Minerals and Natural Resources Department  
 1220 South Saint Francis Drive  
 Santa Fe, New Mexico 87505

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 9:28 a.m.:

3           CHAIRMAN WROTENBERY: And then I believe we just  
4 have one other item we need to discuss today, although we  
5 won't plan to take action on it, and this is Case 12,897,  
6 the Application of the New Mexico Oil Conservation Division  
7 for the adoption of amendments to Division Rule 118  
8 concerning hydrogen sulfide gas.

9           Steve, you have some information for us, I  
10 believe?

11          MR. ROSS: Yes, madame Chairman.

12          The record's been closed in this case now twice,  
13 and it's been closed for a substantial time now. The last  
14 item that we received when the record was open was the  
15 consensus report of the work group, and I forwarded that to  
16 all of you.

17          When you compare the consensus draft against the  
18 Commission's draft, it's apparent that there are about six  
19 issues which I'll need some direction on before I can draft  
20 a final order and final Rule in this matter, and I'll just  
21 run down them.

22          What I have done -- What I've put together is a  
23 packet for each of you with a strikeout version of the  
24 Rule, modified pursuant to the consensus work group's  
25 draft. It's kind of a conceptual document to give you

1 something to look at, to react against. It's my work  
2 product, and it's not intended exactly to be your work  
3 product at this point, but it's a discussion draft.

4 And what I'd like to do is give one of these to  
5 each of you and ask as you look at it and think about it in  
6 the upcoming days or weeks before we actually meet to enact  
7 the Rule. What the little packet contains is a strikeout  
8 -- you know, our usual line-out, strikeout version. This  
9 is the latest one. And it also contains the draft order.

10 The draft order, of course, is a work in  
11 progress, because we don't -- without knowing exactly which  
12 direction we're going to go on these six issues, I had to  
13 guess. So this is offered for what it's worth.

14 Let me run down --

15 CHAIRMAN WROTENBERY: Let me just make one thing  
16 clear for the record. This is your work product, and it's  
17 not intended for public display?

18 MR. ROSS: Right, I'm not going to distribute  
19 this, it's just for your codification. It's just -- free  
20 to think about it in the next few days. It's not intended  
21 to be a final product or anything like that. So look at  
22 it, react to it.

23 Let me run down the six main issues, though, that  
24 we're confronted with. Unfortunately, the consensus draft  
25 and the previous draft left unresolved some issues which

1 you'll need to decide at some point, and they are as  
2 follows.

3           The first issue that's arisen between the older  
4 drafts and this latest draft is the timelines that are  
5 applicable to things like doing your testing, doing your  
6 determination of the radius of exposure and for developing  
7 a plan, a hydrogen sulfide contingency plan.

8           As you'll recall, the way the Rule works is, once  
9 the Rule becomes effective, the operator is required to  
10 test their wells or systems or plants, what have you, and  
11 determine what concentration of hydrogen sulfide exists in  
12 the gas that they're handling. And the issue is, how long  
13 should they be permitted after the Rule is enacted to  
14 conduct that test and then to determine the radius of  
15 exposure, if applicable?

16           The Rule as drafted now -- and I don't there's  
17 any -- there really hasn't been any dispute about this  
18 provision all along, is that once you make a determination  
19 that you have a potentially hazardous volume, that you  
20 subsequently have to write a contingency plan to provide  
21 for response actions and other activities in the event of a  
22 release.

23           So there's another issue there about how long  
24 should you have to prepare this plan, given the fact that  
25 there are no such plans required at this point, or -- I

1 gather there's some sort of a plan, but even the consensus  
2 draft provides quite a laundry list of things that have to  
3 be in the plans. I think it's safe to say nobody has a  
4 plan like that right now, or if they do they haven't been  
5 submitted to the Division.

6 So those are basically the two areas where you as  
7 a body need to decide how much time you want to provide.

8 CHAIRMAN WROTENBERY: And what's in the various  
9 drafts?

10 MR. ROSS: In the earlier drafts you had 180  
11 days, half a year, six months, to do your initial  
12 determination and your initial testing. And then you had  
13 six months after that to prepare your contingency plan.  
14 The consensus work draft has extended that time period to  
15 one year.

16 CHAIRMAN WROTENBERY: For both?

17 MR. ROSS: It's not completely clear to me --  
18 Yeah, for both. It's not clear to me whether the draft  
19 provides for a one-year time period for testing and then a  
20 subsequent one-year period for developing your plan. I  
21 don't think it says that, but the earlier drafts provided  
22 that those things would happen in succession.

23 So that seems to be one of the main issues that  
24 you're going to have to look at, is how much time should we  
25 give? Should it be successive, should it be cumulative?

1           CHAIRMAN WROTENBERY: Let me just say, I don't  
2 know what the sense of the other Commissioners is, but I  
3 think the way it was laid out initially where they had six  
4 months to do the initial testing or determination -- it's  
5 not really right to say testing, because they can make a  
6 determination based on process knowledge as well, but in  
7 the earlier draft they had six months to do the  
8 determination and the calculation of the radius of exposure  
9 and then another six months to do a plan, if one was  
10 required, and I would think that would be adequate time.

11                   Do you have a sense?

12           COMMISSIONER LEE: No, it -- Can they speak out  
13 now?

14           MR. ROSS: The record is actually closed, unless  
15 you want to re-open the record, in which case we probably  
16 would have to publish that, take it up at a subsequent  
17 time.

18           CHAIRMAN WROTENBERY: Well, I guess I'd just say  
19 draft it with six months for the determination calculation  
20 and another six months for the plan, and then we can make a  
21 final decision on that we take final action.

22           MR. ROSS: Okay, the next item that seems to be  
23 an issue is -- revolves around the activation of the  
24 contingency plan and what should trigger the activation of  
25 the plan. The consensus work draft appears to require that

1 a plan be activated when there's a release that could  
2 produce a potentially hazardous volume.

3 COMMISSIONER LEE: I don't understand. Can you  
4 repeat that?

5 MR. ROSS: Okay. When you've gone through your  
6 determination and determined that you have a potentially  
7 hazardous volume present in your gas stream, which is -- by  
8 reference to the equations that we discussed with Mr.  
9 Price, then you're required to produce a contingency plan,  
10 which provides for certain actions in the event of a  
11 release.

12 The issue here is, when should you be required to  
13 put that plan into action? When should you call in the  
14 troops, when should you start making phone calls,  
15 evacuating, taking measures to control releases, calling  
16 the state police, doing all that kind of stuff? It's the  
17 threshold, and you pretty much have to set a threshold, a  
18 threshold level or time describing in some manner so that  
19 operators know when they have to make a call.

20 COMMISSIONER LEE: So if they have a rupture of  
21 the wellhead --

22 MR. ROSS: Right.

23 COMMISSIONER LEE: -- you want to know when they  
24 should call?

25 MR. ROSS: Right

1           COMMISSIONER LEE: I thought it was right away.

2           MR. ROSS: Well, it's not so much right away,  
3 it's what constitutes an event that would require them to  
4 make the call. Like, say, you knock a valve off on a small  
5 line and you have a small leak. Does that require you to  
6 make the calls, or does it have to be a catastrophic  
7 failure, a blowout, something like that?

8           And the way the consensus draft is drafted, which  
9 is different from earlier drafts, is that a release would  
10 only merit -- or you'd only require that a plan be  
11 activated in the event of a catastrophic failure, not some  
12 lesser failure.

13           CHAIRMAN WROTENBERY: Steve, would you check the  
14 work group draft? Because I think that issue was addressed  
15 in the work group draft in the section on the activation  
16 level. I think where there was still an issue was in the  
17 section on when a plan is required, and there is some  
18 language that says a plan should be required when there is  
19 a --

20           MR. ROSS: Well, I mean, it just -- It says under  
21 the Plan Activation, hydrogen sulfide plan shall address  
22 the activation level and events that would lead to that  
23 threshold. Minimum criteria for activations, minimum  
24 criteria --

25           CHAIRMAN WROTENBERY: It has minimum criteria.

1 MR. ROSS: -- shall include an event that could  
2 result in a -- they recite, 100 p.p.m. in a public area,  
3 500 p.p.m. at a public road, 100 p.p.m. 3000 feet from the  
4 site of the release, or 50 p.p.m. for ten minutes at the  
5 boundary of the facility.

6 Aside from the last factor, it's a --

7 COMMISSIONER LEE: Is the document you're based  
8 upon right now, it's a consensus of the producers and the -  
9 - Wayne and Roger's -- the final version?

10 MR. ROSS: Right. Right. That's the exhibit  
11 that Mr. Brooks submitted to us a few weeks ago, which I  
12 e-mailed to you.

13 COMMISSIONER LEE: Uh-huh. But I thought they  
14 had another meeting to come out with this consensus, right?

15 MR. ROSS: That's what this is.

16 COMMISSIONER LEE: Is this -- Right? Is that  
17 right? Or -- You don't have to say it, okay?

18 CHAIRMAN WROTENBERY: That is right, and they  
19 submitted that to us. There are still some issues  
20 remaining --

21 COMMISSIONER LEE: All right.

22 CHAIRMAN WROTENBERY: -- in the --

23 COMMISSIONER LEE: All right.

24 CHAIRMAN WROTENBERY: -- consensus draft --

25 COMMISSIONER LEE: All right.

1           CHAIRMAN WROTENBERY:  -- and that's what Steve's  
2 trying to highlight for you.

3           COMMISSIONER LEE:  All right.

4           MR. ROSS:  I'm putting it in your lap, actually.

5           COMMISSIONER LEE:  Right.

6           COMMISSIONER BAILEY:  May I see the work group  
7 draft just briefly?

8           I think the issue that's still of concern is this  
9 language in E.1 where it says "A hydrogen sulfide  
10 contingency plan is a written document that provides a plan  
11 of action that will be used to alert and protect persons at  
12 risk in the release of hydrogen sulfide gas that could  
13 produce a PHV."  That's the language of the work group  
14 draft.

15           That particular provision is not adequate,  
16 because there can be releases at levels significantly less  
17 than a PHV that would still have a possible detrimental  
18 effect on people within the area of exposure.  And we  
19 talked about that during the last hearing, and the issue  
20 was addressed in the paragraph on the activation level, but  
21 I think it was probably an oversight.  This PHV language  
22 remains in this provision that describes the purpose of the  
23 plan.

24           And my recommendation to the Commission would be  
25 that we just leave it as it was.  It's a general statement

1 of the purpose of the plan, which is to protect persons at  
2 risk in the event of a potentially significant release of  
3 hydrogen sulfide gas. I think that's a pretty basic  
4 statement.

5 COMMISSIONER BAILEY: Uh-huh.

6 CHAIRMAN WROTENBERY: There are other provisions  
7 that actually say when a plan is required and refer to the  
8 existence of a potentially hazardous volume and all, but  
9 that reference to PHV in that particular context, I think,  
10 is not appropriate.

11 MR. ROSS: Shall I move on to the third issue?

12 CHAIRMAN WROTENBERY: Uh-huh.

13 MR. ROSS: The third issue pertains to signs, and  
14 the sign provision seemed to have provoked a lot of  
15 controversy over the course of the rulemaking. The present  
16 draft, the consensus work draft, condensed all the prior  
17 thoughts on the sign issue into some very simple regulatory  
18 language, which seems to be a big improvement.

19 However, in one area it differed from prior  
20 drafts, and that is that it essentially grandfathered  
21 existing signs that comply with other applicable  
22 regulations, and some examples that are given are the  
23 Department of Transportation and OSHA.

24 And so I guess the issue presented by this change  
25 is, should we grandfather sign provisions?

1           CHAIRMAN WROTENBERY:  And I'll share with the  
2           Commissioners my view on that particular point.

3           I think at this stage the work group has done a  
4           good job of simplifying the sign requirement and basically  
5           pulling out the essence of the provision and setting some  
6           basic requirements for signs without being too terribly  
7           prescriptive.  And I think the requirements that they have  
8           there should give the operators a lot of flexibility, and I  
9           would expect that a lot of the signs would meet the  
10          requirements of the revised draft -- the signs that the  
11          operators already have out there.

12          The requirements that are in the Rule now are  
13          pretty basic requirements, the essential elements necessary  
14          to advise the public of the hazard, and so I'm not inclined  
15          to go along with the grandfather provision.

16          I would -- I do recognize that it may take some  
17          time to verify that all signs are in compliance, and I  
18          would suggest, perhaps, that we include a provision in  
19          there that gives the operators some time to review their  
20          signage and bring their compliance up to standards.  But I  
21          do not concur with the grandfathering.

22          COMMISSIONER BAILEY:  How much time do you think  
23          would be reasonable?

24          CHAIRMAN WROTENBERY:  I don't know.  At least a  
25          year.  I would be willing to consider more time than that,

1 but --

2 COMMISSIONER BAILEY: It seems like we gave a  
3 year for the last time we dealt with signs, a couple of  
4 years ago.

5 CHAIRMAN WROTENBERY: Okay.

6 COMMISSIONER BAILEY: I think that that did work  
7 out --

8 CHAIRMAN WROTENBERY: Uh-huh.

9 COMMISSIONER BAILEY: -- whatever that time  
10 period was.

11 CHAIRMAN WROTENBERY: Okay.

12 MR. ROSS: Want me to dash some language  
13 permitting that?

14 CHAIRMAN WROTENBERY: That instead of a  
15 grandfather clause gives a compliance period.

16 MR. ROSS: Another issue which has actually been  
17 prevalent throughout this rulemaking has been an issue of  
18 other plans. The BLM's Onshore Order requires contingency  
19 plans that are similar but not identical with the plan  
20 that's apparently provided for -- I guess they could be  
21 identical, but they don't necessarily have to be identical,  
22 with the plan that's proposed in the consensus work draft  
23 -- and the issue as to what extent that we should recognize  
24 those plans and obviate operators from coming up with a new  
25 plan on the same well, for example, or having to duplicate

1 or triplicate, even, this work.

2           The previous Division drafts -- and I haven't  
3 researched this thoroughly, but this issue has changed in  
4 the various drafts slightly from time to time -- I think  
5 the previous drafts permitted submission of a plan that's  
6 required for some other regulatory program, either in  
7 support of an exemption or just as -- for the Division to  
8 review and determine whether it meets the requirements of  
9 this Rule.

10           This draft changes that a bit, and I'll just read  
11 you what it says. They've added a paragraph called  
12 Multiple Jurisdiction and it says, "Where an existing  
13 operation or facility is subject to multiple  
14 jurisdictions...and is in compliance with the respective  
15 hydrogen sulfide rules of that jurisdiction, it shall be  
16 presumed that the operation or facility is also in  
17 compliance with this rule."

18           So as you can see, this takes that concept we've  
19 been struggling with and broadens it to the requirements of  
20 the entire Rule, not just the requirement to submit a plan.  
21 It's a bit of a significant departure from earlier drafts,  
22 and I wanted to bring that to your attention to try and get  
23 some guidance on how to handle that one.

24           I mean, the obvious problem is that the  
25 regulations of other jurisdictions -- Texas, the BLM, what

1 have you, OSHA -- are not going to be identical with  
2 whatever version you decide to adopt of this Rule. There  
3 are going to be differing standards. If you agree to this  
4 language, you would essentially agree to waive the  
5 provisions of your Rule in the event another jurisdiction,  
6 say the BLM, has a less restrictive rule on a given point.

7 COMMISSIONER BAILEY: I haven't studied the BLM  
8 rule. I have no idea how...

9 CHAIRMAN WROTENBERY: I haven't either, in  
10 detail. I don't know how the two size up, and I don't  
11 think we have any real evidence in the record that  
12 addresses that point specifically. I'm not even sure we  
13 have a --

14 MR. ROSS: Onshore Order 6 --

15 CHAIRMAN WROTENBERY: Do we have a copy of  
16 Onshore Order 6 in the record?

17 MR. ROSS: I have one in my office --

18 CHAIRMAN WROTENBERY: But not in the record?

19 MR. ROSS: -- and I have, you know, the Texas  
20 rule.

21 CHAIRMAN WROTENBERY: Yeah. My general view on  
22 these questions of multiple jurisdiction is that the agency  
23 should work together to try to eliminate conflict and  
24 avoid, as much as possible, duplication of effort. I am  
25 not generally a proponent of deferring to another agency's

1 regulations.

2           It has -- For one thing, the language that's in  
3 the work group draft is confusing to me. It establishes  
4 some kind of presumption that if they're in compliance with  
5 the BLM order, for instance, that they're in compliance  
6 with this Rule.

7           I'm not sure what that means in practice. I  
8 don't know if that's intended to say that if the Division  
9 wants to enforce a provision of this Rule it first has to  
10 call the operator in and establish through a hearing  
11 process that the BLM rule was not as stringent as the state  
12 rule or what. I just don't understand the purpose of that  
13 presumption language and how the agency is supposed to  
14 defeat the presumption.

15           I also have had unsatisfactory experience with  
16 some other places where we've deferred to other federal  
17 requirements that are less stringent than the state  
18 requirements, as in the bonding area.

19           COMMISSIONER BAILEY: Uh-huh.

20           CHAIRMAN WROTENBERY: There have been times when  
21 we've plugged orphan wells on federal lands, and the cost  
22 to the state ended up being greater because the federal  
23 bond requirement was less than the state bond requirement.

24           So I do feel strongly that we need to make sure  
25 that -- even on federal lands, that the operations are

1 meeting the requirements of this particular Rule. For one  
2 thing, the people that we're trying to protect are the  
3 public of the State of New Mexico that are probably in most  
4 cases not residents of federal lands.

5 So the federal-state distinction doesn't take me  
6 far enough, really.

7 COMMISSIONER BAILEY: And doesn't it go to the  
8 traditional question of who has authority in New Mexico?

9 CHAIRMAN WROTENBERY: Uh-huh.

10 COMMISSIONER BAILEY: I think you need to --

11 CHAIRMAN WROTENBERY: It raises that question.

12 COMMISSIONER BAILEY: -- raise that question and  
13 ask if this doesn't create more of a problem, a sort of  
14 precedence, that the state agency defers to the federal  
15 government. And I think that there are so many examples of  
16 where that creates a problem, such as in the mining area.

17 CHAIRMAN WROTENBERY: Uh-huh.

18 COMMISSIONER BAILEY: There are always questions  
19 in the Mining and Minerals Division, who has authority.  
20 And I would prefer to see the OCD continue its historical  
21 assertion that it has jurisdiction over all lands in New  
22 Mexico, and not abdicate any authority over federal lands.

23 CHAIRMAN WROTENBERY: Now, that being said, what  
24 I would suggest is that we very clearly include a statement  
25 in the -- at least the contingency-planning portion of the

1 Rule and maybe some other portions as well, that if an  
2 operator submits a plan that has been prepared for BLM or  
3 for some other jurisdiction that meets the requirements of  
4 this Rule, then OCD will accept that plan in satisfaction  
5 of these requirements.

6 COMMISSIONER BAILEY: It's the OCD's role to make  
7 that determination.

8 CHAIRMAN WROTENBERY: Uh-huh.

9 COMMISSIONER BAILEY: I can buy off on that.

10 MR. ROSS: And then don't forget that if --  
11 There's still a broad exemption paragraph in all the drafts  
12 that have been running around. And if an operator believes  
13 that their compliance with another rule means that they  
14 don't need to comply with this particular Rule and they  
15 have good reasons for that, they can always apply to the  
16 Director for an exemption from any part of the Rule. It's  
17 very broadly stated in that paragraph.

18 Of course there has been, and I think there still  
19 is in all these drafts, language under the contingency-plan  
20 portion that you're welcome to submit a plan that you've  
21 prepared for another jurisdiction, and as long as it meets  
22 the requirements of this Rule, which -- in the consensus  
23 draft they've backed off from earlier drafts where there  
24 was a lot of detail provided in the contingency-plan  
25 portion of the Rule, you have to do this, you have to do

1 this, you have to submit this. They've backed off now and  
2 require you to address subjects, you know, subject matters  
3 in the Rule, rather than specific points, you know, have  
4 this, provide this.

5 So there's a little bit more flexibility there to  
6 prepare a plan for BLM that addresses all the same subjects  
7 and then suddenly just change the header, or not even  
8 change the header. The Environmental Bureau has the plan  
9 that satisfies this Rule. So...

10 CHAIRMAN WROTENBERY: Okay, I think draft it up  
11 without the multi-agency jurisdiction provision -- I'm not  
12 sure how that was captioned, but -- and then include some  
13 specific language indicating that a plan that has been  
14 submitted to another agency or prepared for another agency  
15 may be submitted to the OCD in satisfaction of this Rule,  
16 if it meets the requirements of this one.

17 COMMISSIONER LEE: So they can apply to BLM and  
18 they don't have to fill out your form, they can directly  
19 get those forms to me?

20 MR. ROSS: The latest draft doesn't require the  
21 specific form, it just requires --

22 COMMISSIONER LEE: And how you want to specify  
23 it, they have to fill it out again?

24 MR. ROSS: No.

25 COMMISSIONER LEE: No.

1 MR. ROSS: No, we don't. We don't want to create  
2 busy work, I wouldn't think.

3 CHAIRMAN WROTENBERY: Dr. Lee, I know some of the  
4 smaller companies have expressed concern about the burden  
5 of putting together this plan. Is this something PRRC  
6 could help with --

7 COMMISSIONER LEE: Yes, yes.

8 CHAIRMAN WROTENBERY: -- setting up some kind of  
9 a --

10 COMMISSIONER LEE: Yes, we will work with you --  
11 not we, they -- they will work with you and the industry to  
12 come up with something.

13 CHAIRMAN WROTENBERY: Okay.

14 COMMISSIONER LEE: On line or --

15 CHAIRMAN WROTENBERY: It would probably be  
16 helpful to have it in several different formats.

17 COMMISSIONER LEE: Okay. Then Martha will thank  
18 you for giving her more jobs.

19 CHAIRMAN WROTENBERY: Okay. Next?

20 MR. ROSS: All right, number five, the issue of  
21 electronic submission has been an issue through the whole  
22 process, and it's an issue I guess you're ultimately going  
23 to have to decide. I know the Division is working towards  
24 a lot of paperless --

25 COMMISSIONER LEE: We can do that.

1 MR. ROSS: -- processes, and then --

2 CHAIRMAN WROTENBERY: Huh?

3 COMMISSIONER LEE: We can do that.

4 CHAIRMAN WROTENBERY: Okay.

5 MR. ROSS: -- some of the earlier drafts that  
6 require plans and other items in the Rule be submitted  
7 electronically to the Division, those provisions have been  
8 loosened over time, I know, but they're still in there, and  
9 they're -- the consensus draft proposes to do away with  
10 them in large part.

11 CHAIRMAN WROTENBERY: Entirely, I think.

12 MR. ROSS: Yeah. I think that some of the  
13 smaller operators aren't able to e-mail. Perhaps they  
14 don't have an e-mail service, or they in some cases may not  
15 even have computers. So this -- it would be an issue for  
16 some of them to submit electronically.

17 CHAIRMAN WROTENBERY: Are they able to mail in a  
18 disk?

19 MR. ROSS: The way the thing has always read,  
20 it's submitted electronically. And you could interpret  
21 that as permitting mailing in a disk or something like  
22 that. I think people are interpreting that as --

23 CHAIRMAN WROTENBERY: -- over the Internet.

24 MR. ROSS: -- over the Internet or through  
25 e-mail.

1           COMMISSIONER LEE: We can encourage them, but we  
2 cannot force it.

3           CHAIRMAN WROTENBERY: Well, we do -- You know,  
4 for production reports, for instance, for operators with  
5 over 100 wells, we require them to submit electronically.  
6 And we don't interpret that as over the Internet. It means  
7 -- a lot of them send in a disk with a spreadsheet on it.

8           COMMISSIONER LEE: I mean if somebody has only  
9 two or three wells --

10          CHAIRMAN WROTENBERY: Uh-huh.

11          COMMISSIONER LEE: -- they don't want to --

12          CHAIRMAN WROTENBERY: Well, let me ask you this.  
13 Are operators really going to be typing contingency plans?

14          MR. ROSS: You mean on a typewriter?

15          CHAIRMAN WROTENBERY: Uh-huh. I don't know.

16          MR. ROSS: Well, the Division owns one  
17 typewriter.

18                 (Laughter)

19          MR. ANDERSON: A type- what?

20                 (Laughter)

21          CHAIRMAN WROTENBERY: It really seems to me that  
22 most of them will be doing this, or their contractors will  
23 be doing this, on some type of computer, so that they could  
24 send in a disk. There may be a few that fill in the blanks  
25 on a form in handwritten --

1 COMMISSIONER LEE: That's a different --

2 CHAIRMAN WROTENBERY: -- by hand or on a  
3 typewriter, I don't know, but --

4 COMMISSIONER LEE: I think the production data,  
5 the same thing. We write a manual --

6 CHAIRMAN WROTENBERY: Uh-huh.

7 COMMISSIONER LEE: -- with your signature on  
8 it --

9 CHAIRMAN WROTENBERY: Uh-huh.

10 COMMISSIONER LEE: -- and we go out to visit  
11 people and we --

12 CHAIRMAN WROTENBERY: Uh-huh.

13 COMMISSIONER LEE: -- make sure they get some,  
14 you know --

15 CHAIRMAN WROTENBERY: Uh-huh.

16 COMMISSIONER LEE: When do you need this? Four  
17 months? Two months?

18 CHAIRMAN WROTENBERY: Probably in a few months.

19 COMMISSIONER LEE: Can we charge Burlington?

20 CHAIRMAN WROTENBERY: With what?

21 (Laughter)

22 MR. FOPPIANO: They're not allowed to talk.

23 CHAIRMAN WROTENBERY: Now you're using it as a  
24 shield.

25 COMMISSIONER LEE: Okay, we'll talk about

1 details, but we will -- you know, we --

2 CHAIRMAN WROTENBERY: Okay. So what's the -- I  
3 will say, the Division does not want paper. However we get  
4 there, let's get there. And I think it's only fair that  
5 we're working very hard to scan all of our hard copy  
6 documents right now and make that information available.  
7 We've set systems up so we can take production reports  
8 electronically and APDs electronically. The future is  
9 going to be in the area of electronic communication. We're  
10 getting rid of our file cabinets, we're not going to have a  
11 place to put all of this paper. And so we need the  
12 information in some sort of electronic form. Anything that  
13 we get in paper we will be having to scan, and we'd like to  
14 minimize that work, so --

15 COMMISSIONER LEE: Can you tell Jan about it?  
16 Jan is in charge of this? Or Ben?

17 CHAIRMAN WROTENBERY: Ben, probably.

18 COMMISSIONER LEE: Ben and Michael Stogner.

19 CHAIRMAN WROTENBERY: But you better not have a  
20 requirement for electronic filing on it, or --

21 COMMISSIONER LEE: I think for the people with  
22 two or three -- the production, you didn't require them to  
23 file electronically.

24 CHAIRMAN WROTENBERY: Not the smaller ones.

25 COMMISSIONER LEE: Right, so --

1 CHAIRMAN WROTENBERY: Uh-huh.

2 COMMISSIONER LEE: -- I think the same thing can  
3 be --

4 CHAIRMAN WROTENBERY: Okay.

5 MR. ROSS: Some sort of a threshold --

6 CHAIRMAN WROTENBERY: If we get a flood of  
7 contingency plans a year from now, can we send them to PRRC  
8 for --

9 COMMISSIONER LEE: Sure, sure, we --

10 CHAIRMAN WROTENBERY: Okay.

11 COMMISSIONER LEE: -- have offices at NMOGA, we  
12 can put it there.

13 CHAIRMAN WROTENBERY: Oh, NMOGA, okay. Okay.

14 COMMISSIONER LEE: But that's your decision,  
15 that's not our decision.

16 CHAIRMAN WROTENBERY: What's -- what's --

17 COMMISSIONER LEE: Whether you require people to  
18 send it electronically.

19 CHAIRMAN WROTENBERY: That's the Commission's  
20 decision, so you're here with us. Okay.

21 Any suggestions?

22 COMMISSIONER BAILEY: I'd like to see  
23 consistency. Companies with more than a hundred wells have  
24 to file electronically, it seems to me those are the same  
25 operators who should be required to file electronically

1 here. For those companies that have one or two and are not  
2 computer literate, I can see where it would create problems  
3 and I think if we set that threshold that if there are more  
4 than 25, more than 50 contingency plans that are to be  
5 filed, they have to be electronic. But some sort of  
6 threshold like that.

7 COMMISSIONER BAILEY: Okay. Do you want to mull  
8 that one over, Steve, and --

9 MR. ROSS: I think one could draft language that  
10 set a threshold.

11 CHAIRMAN WROTENBERY: Okay.

12 MR. ROSS: I'd have to think about how to do it  
13 because obviously the Rule doesn't just apply to wells, but  
14 I think it could be done.

15 CHAIRMAN WROTENBERY: Okay. Why don't we look at  
16 something like that?

17 MR. ROSS: Okay, the last issue is the -- there's  
18 been a paragraph in the draft for some time -- it was M in  
19 earlier drafts -- that the consensus draft proposes to  
20 eliminate, and it pertains to corrective actions. The  
21 paragraph -- It's really only one sentence. It says the  
22 Division may require corrective actions if necessary to  
23 maintain control of a well or any other facility or to  
24 safeguard public safety.

25 It really just states the obvious. The Oil and

1 Gas Act permits us to require corrective actions to  
2 maintain control of a well without stating it here, but I  
3 know that at some point during this process -- I think it  
4 came through one of the Bureau's witnesses -- they felt it  
5 is important to restate this so as to avoid any confusion  
6 about their authority when they order somebody to fix  
7 something, something along those lines.

8 That's -- whether that should -- Even if the  
9 paragraph is deleted, we probably maintain that authority  
10 anyway, under the Oil and Gas Act. So the decision is  
11 whether to leave it in as a reminder of that authority or  
12 whether to take it out.

13 CHAIRMAN WROTENBERY: And I'll say, the work  
14 group language is lengthy and is missing a conjunction  
15 somewhere that I think affects the meaning, and I think it  
16 raises more questions than it answers.

17 MR. ANDERSON: It has a verb.

18 CHAIRMAN WROTENBERY: I know, it has several  
19 verbs.

20 (Laughter)

21 COMMISSIONER LEE: But I will say, the shorter  
22 version that was, I think, previously agreed to by the work  
23 group, by the initial work group -- I don't know if that's  
24 true or not, actually, because we've had so many different  
25 drafts.

1           The shorter version, like Steve says, is just a  
2 statement of our statutory authority. So on the one hand  
3 I'd feel comfortable just striking the provision entirely,  
4 because we've got that authority.

5           I will say, our District Offices have requested a  
6 statement in the Rule of this authority, because they run  
7 into situations where they're asking an operator or an  
8 operator's representatives to address an issue, and the  
9 response is, well, where does it say this in the Rules?  
10 And so the District Offices have asked that there be some  
11 statement of the Division's authority in this area, within  
12 the Rule itself.

13           And I -- I can go either way. It's very clearly  
14 within the Division's authority.

15           COMMISSIONER BAILEY: My feeling is, if it  
16 duplicates language of the Oil and Gas Act --

17           CHAIRMAN WROTENBERY: Uh-huh.

18           COMMISSIONER BAILEY: -- if it could create  
19 confusion over interpretation of any action the Division  
20 would take --

21           CHAIRMAN WROTENBERY: Uh-huh.

22           COMMISSIONER BAILEY: -- that it should not be  
23 there.

24           CHAIRMAN WROTENBERY: Uh-huh. Well, that's  
25 definitely true of the work group language, that it could

1 create confusion.

2 COMMISSIONER BAILEY: It seems to me the  
3 Division's concerns could be addressed in another vein by a  
4 policy statement or a --

5 CHAIRMAN WROTENBERY: We have a --

6 COMMISSIONER BAILEY: -- new policy.

7 (Laughter)

8 CHAIRMAN WROTENBERY: Yes, because of all of the  
9 policy statements that get issued, we said that our  
10 policies will be written in our Rules.

11 COMMISSIONER BAILEY: I like that, I like that.  
12 I'll just give them a copy of the statute.

13 CHAIRMAN WROTENBERY: Yes, a copy of the statute.

14 COMMISSIONER BAILEY: Give them that, we can hand  
15 that out.

16 COMMISSIONER LEE: So we're taking out --

17 CHAIRMAN WROTENBERY: I think that -- I would  
18 strongly advise against using the work group language. We  
19 could use the language that was in the last Commission  
20 draft --

21 COMMISSIONER LEE: I think we --

22 CHAIRMAN WROTENBERY: -- but given the  
23 controversy on the point, I'd be comfortable leaving it  
24 out. What's there is just a statement of the Commission's  
25 and the Division's statutory authority --

1 COMMISSIONER LEE: So just take --

2 CHAIRMAN WROTENBERY: -- so --

3 COMMISSIONER LEE: -- this all out?

4 CHAIRMAN WROTENBERY: I think we could --

5 COMMISSIONER LEE: Okay.

6 CHAIRMAN WROTENBERY: -- just leave it out and  
7 maybe provide some guidance to the District Offices that  
8 includes both the provisions of the Rule and the provisions  
9 of the statute that would apply to help them in their  
10 inspection and enforcement efforts.

11 COMMISSIONER BAILEY: Let's not confuse --

12 CHAIRMAN WROTENBERY: Okay, so we'll strike that  
13 provision.

14 COMMISSIONER LEE: You're going to hurt Bruce's  
15 feelings. He wrote this.

16 CHAIRMAN WROTENBERY: I hope he didn't write  
17 that.

18 (Laughter)

19 COMMISSIONER LEE: This is engineering writing.

20 CHAIRMAN WROTENBERY: I think, to me, that has  
21 all the hallmarks of a committee effort.

22 (Laughter)

23 CHAIRMAN WROTENBERY: I wouldn't blame any one  
24 person for that language.

25 MR. ROSS: You may get input whether you like it

1 or not.

2 CHAIRMAN WROTENBERY: Yes. Okay.

3 MR. ROSS: Okay, so those are the six key big  
4 issues that I identified with this latest draft. The  
5 question is where to go from here, and that's why I whipped  
6 up this version for you to think about, which I'll give you  
7 after the meeting, and the order. But I'll be able to  
8 define those documents a lot more, given your input today,  
9 and maybe I should do that and then e-mail you amended  
10 documents.

11 CHAIRMAN WROTENBERY: And what we're thinking is,  
12 we may be able to take final action on this Tuesday at the  
13 beginning of the meeting. We do have it on the agenda.  
14 And so, Steve, do you think by the end of the day you could  
15 get a --

16 MR. ROSS: Uh-huh.

17 CHAIRMAN WROTENBERY: -- revised version of the  
18 draft order out, and that will give us some time to look at  
19 it before Tuesday morning.

20 MR. ROSS: Uh-huh.

21 CHAIRMAN WROTENBERY: Any other questions, or any  
22 issues that the Commissioners might have wanted to raise,  
23 based on the work group draft?

24 COMMISSIONER BAILEY: Was there a question on the  
25 use of the word "reasonable"?

1 MR. ROSS: Well, that word appears in the two  
2 paragraphs that --

3 CHAIRMAN WROTENBERY: We've deleted --

4 MR. ROSS: -- I understand you want me to delete.

5 CHAIRMAN WROTENBERY: So I think we took care of  
6 that issue.

7 (Laughter)

8 COMMISSIONER BAILEY: That's all I have.

9 CHAIRMAN WROTENBERY: Okay. Anything else, then,  
10 for today?

11 I'll entertain a motion to adjourn.

12 MR. ROSS: You might want to make it --

13 CHAIRMAN WROTENBERY: Oh, I'm sorry.

14 MR. ROSS: -- clear that we're continuing this  
15 case until Tuesday.

16 CHAIRMAN WROTENBERY: Okay, yes, we are  
17 continuing this case until Tuesday. It is on the --

18 MR. ROSS: It is on the agenda.

19 CHAIRMAN WROTENBERY: -- agenda for Tuesday and  
20 -- so just for the record we'll make that clear, that we  
21 will be taking this up Tuesday.

22 I'll entertain a motion to adjourn.

23 COMMISSIONER BAILEY: I so move.

24 COMMISSIONER LEE: Second.

25 CHAIRMAN WROTENBERY: All in favor say "aye".

1 COMMISSIONER BAILEY: Aye.

2 COMMISSIONER LEE: Aye.

3 CHAIRMAN WROTENBERY: Aye. Thank you.

4 (Thereupon, these proceedings were concluded at

5 10:15 a.m.)

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## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL November 8th, 2002.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006