

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL AND GAS
ASSOCIATION FOR AMENDMENT OF CERTAIN PROVISIONS OF
TITLE 19, CHAPTER 15 OF THE NEW MEXICO
ADMINISTRATIVE CODE CONCERNING PITS, CLOSED-LOOP
SYSTEMS, BELOW GRADE TANKS AND SUMPS AND OTHER
ALTERNATIVE METHODS RELATED TO THE FORE GOING
MATTERS, STATE-WIDE.

CASE NO. 14784 AND 14785

VOLUME 24

January 18, 2013
12:00 Noon
1220 South St. Francis Drive
Porter Hall, Room 102
Santa Fe, New Mexico

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GREG BLOOM, Commissioner

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1 (Note: In session at 12:00.)

2 CHAIRPERSON BAILEY: Today is Friday,
3 January the 18th in Porter Hall in Santa Fe, New
4 Mexico. This is the meeting of the Oil Conservation
5 Commission to continue deliberating in Consolidated
6 Cases 14784 and 14785. We had looked at a draft
7 overnight, and Commissioners, before we get into the
8 substantive deliberations of Tables 1 and 2 again, I
9 went through and found a few items that I think
10 should be corrected before we have a final copy.

11 Beginning with the definition for
12 multi-well fluid management pits on Page 2, the
13 phrase that we inserted yesterday I think modifies
14 the wrong word, so I would like to reorganize the
15 structure of the last sentence of that definition to
16 move the phrase "such as a pond, pit or other
17 impoundment" to be placed right after the word
18 "structure," so it would read "any containment
19 structure such as a pond, pit or other impoundment
20 that holds only freshwater that has not been treated
21 for oil field purposes is not a multi-well fluid
22 management pit."

23 DR. BALCH: That's fine.

24 COMMISSIONER BLOOM: I think that makes
25 sense.

1 DR. BALCH: While we are on this
2 paragraph, I wonder am I the only one making a note
3 for Theresa to go fix all the "on-sites" that aren't
4 hyphenated. Located on site or on-site. We have a
5 definition for on-site and this is a different
6 spelling.

7 CHAIRPERSON BAILEY: I would prefer it all
8 one word without the hyphen.

9 DR. BALCH: Doesn't matter but I think we
10 need to be consistent.

11 COMMISSIONER BLOOM: We can do a search
12 and replace for on-site and change it to on site.

13 DR. BALCH: We probably ought to change in
14 the definition as well.

15 CHAIRPERSON BAILEY: Do you want to do
16 that now Theresa? On break? Okay. That change in
17 the structure of the sentence in L, multi-well fluid
18 management pit, needs to be reflected in the same
19 sentence in the definition for temporary pit over on
20 Page 3. So it would read, "Any containment
21 structure such as pond, pit or other impoundment
22 that holds only freshwater."

23 COMMISSIONER BLOOM: Before we move on, I
24 had a question about part of multi-well fluid
25 management pit that Mr. Balch brought up. Given our

1 definition of on-site, would it still be allowable
2 for an operator to have a multi-well fluid
3 management pit that is on-site or off-site?

4 DR. BALCH: Well, multi-well fluid
5 management pits are a little different animal
6 because you are, by necessity, centralizing the
7 location.

8 COMMISSIONER BLOOM: Right. I wanted to
9 make sure we didn't define on-site.

10 DR. BALCH: By the definition we have
11 on-site or off-site.

12 CHAIRPERSON BAILEY: Of a well drilling
13 location. You have to have the continuing phrase.

14 DR. BALCH: Can we go back up to the
15 definition L?

16 COMMISSIONER BLOOM: Maybe we better use
17 on or off well drilling locations so we don't bring
18 in the definition of on-site? Or does that beg the
19 question, do we want a multi-well fluid management
20 pit to be able to serve wells which are outside the
21 boundaries of a single lease?

22 DR. BALCH: I think the goal would be to
23 have a multi-well fluid management pit be able to
24 support as many wells as it could for a single
25 operation. That operation may have a permit that

1 has multiple leases in it.

2 COMMISSIONER BLOOM: This would allow it
3 to serve a unit, for example.

4 DR. BALCH: There are practical
5 limitations how far you can pipe the water over the
6 surface. But this is a special case and that's why
7 it has its own definition.

8 CHAIRPERSON BAILEY: So with this
9 definition as it's written it means it's either
10 within the boundaries of the single lease or
11 off-site, meaning it doesn't qualify, and may be
12 outside that lease. So I think you bring up a good
13 point that we need to understand that.

14 DR. BALCH: Legally speaking, does that
15 cause conflict with the definition of on-site? Or
16 do you have the definition of being on a single
17 lease?

18 MR. SMITH: I don't see why.

19 DR. BALCH: Okay.

20 MR. SMITH: Can you explain to me why you
21 thought it might?

22 DR. BALCH: I don't know the effect of
23 having a definition for on-site and we don't have
24 one for off-site.

25 MR. SMITH: I think anything that is not

1 on-site would be off-site.

2 DR. BALCH: Makes sense logically but I
3 didn't know if it made sense legally.

4 CHAIRPERSON BAILEY: Are we okay with
5 that?

6 DR. BALCH: I think so.

7 COMMISSIONER BLOOM: I think so.

8 CHAIRPERSON BAILEY: Let's go to the
9 definition for sump. Means a subgrade, impermeable
10 vessel that is partially buried in the ground, not
11 into ground.

12 Scrolling down to Section 8, the second
13 sentence says, "Facilities permitted pursuant to the
14 Surface Waste Management Rule are exempt from this
15 rule." I realize that this rule deals with
16 below-grade tanks which may be present at a surface
17 waste management facility. If we are exempting
18 below-grade tanks from this rule when they appear at
19 surface waste management facilities, then the OCD
20 would have to go through the entire rule of 17 to
21 ensure that it still meets the integrity test,
22 reclamation test and all of that.

23 I would suggest that we delete that
24 sentence, because our current Rule 36 does reference
25 Rule 17 for those facilities that are covered under

1 17.

2 COMMISSIONER BLOOM: I agree. It could
3 also be read to say that a below-grade tank, if it
4 is permitted or if it's regulated by Rule 36, they
5 are exempt from Rule 17 and below-grade tanks
6 wouldn't apply.

7 CHAIRPERSON BAILEY: Would not apply.
8 Right. That's why I suggest that we delete that
9 sentence.

10 COMMISSIONER BLOOM: I agree with that.

11 CHAIRPERSON BAILEY: The idea follows
12 through in Section 9, Permit Application and
13 Registration. That first sentence says, "An
14 operator shall use the appropriate form C 144 to
15 apply to the Division to construct or use the pit
16 with the proposed alternative method or to register
17 a below-grade tank to which this particular rule
18 applies." I think we should delete to which rule
19 19.15.17 NMAC applies.

20 DR. BALCH: Because it applies to all of
21 them.

22 CHAIRPERSON BAILEY: Are we in favor of
23 that?

24 DR. BALCH: Yes.

25 COMMISSIONER BLOOM: Yes.

1 CHAIRPERSON BAILEY: Within that same
2 paragraph it says "for upstream facilities the
3 operator may submit form C 144." We have no
4 definition for what upstream facilities means.

5 DR. BALCH: Is there a definition anywhere
6 in the Oil and Gas Act?

7 CHAIRPERSON BAILEY: Not that I'm familiar
8 with. We could begin that sentence deleting "for
9 upstream facilities" and capitalize it and say, "The
10 operator may submit Form C 144 separately or as an
11 attachment to an application for a well permit." Or
12 delete the word "upstream." To me that doesn't add
13 anything and creates confusion.

14 DR. BALCH: Right. Because it makes you
15 wonder if we could have something similar for
16 downstream.

17 CHAIRPERSON BAILEY: Right.

18 DR. BALCH: I would support the change to
19 remove "for upstream facilities." If there was a
20 definition, everything that we put into the
21 definition would be the things that are addressed by
22 this rule anyway.

23 CHAIRPERSON BAILEY: Right.

24 COMMISSIONER BLOOM: You almost have some
25 of that same language. If you look at the rest of

1 the sentence they're talking about, seems to be
2 similar to the preceding sentence.

3 CHAIRPERSON BAILEY: So that sentence you
4 are saying is not even necessary?

5 COMMISSIONER BLOOM: Might be correct if
6 we wanted to take Form C101 or C103 and move it up
7 behind "permit application" in the preceding
8 sentence. The sentence begins with "for upstream
9 facilities."

10 CHAIRPERSON BAILEY: It's saying when you
11 can submit C 144, and that's exactly what it says in
12 the sentence above, so we could just put --

13 DR. BALCH: You could almost delete the
14 entire sentence.

15 CHAIRPERSON BAILEY: The entire sentence
16 could be deleted.

17 COMMISSIONER BLOOM: That will work.

18 DR. BALCH: Do you anticipate when the OCD
19 does this they will have like a C 144 T for tank and
20 C 144 P for pits and M for multi-well?

21 CHAIRPERSON BAILEY: Yes.

22 DR. BALCH: Okay.

23 CHAIRPERSON BAILEY: We come across the
24 term on-site on Page 16, which is Section 12,
25 Operational Requirements, B3 where it says, "The

1 operator shall inspect a temporary pit containing
2 drilling fluids at least daily while the drilling or
3 workover rig is on site." Now, using the definition
4 that on-site includes the entire lease, we might
5 have an issue.

6 DR. BALCH: If we want to use a different
7 word or use the hyphen to differentiate it.

8 CHAIRPERSON BAILEY: I think probably
9 using a different term rather than on site in this
10 location.

11 DR. BALCH: You could say, "The operator
12 shall inspect the temporary pit containing drilling
13 fluids at least daily while the drilling or workover
14 rig is operating."

15 COMMISSIONER BLOOM: Present?

16 DR. BALCH: Present. You're not going to
17 idle very long because it costs you thousands of
18 dollars a day.

19 CHAIRPERSON BAILEY: Let's just say
20 operating, and that way there's no question for
21 delays or shutdowns.

22 On Page 20, which is section 13, closure
23 and site requirements, so that would be 13C8B, and
24 that paragraph discusses installation of the
25 geomembrane cover for closure and site reclamation.

1 The paragraph is specific to lined trench, but we
2 also agreed it should apply to temporary pits.

3 DR. BALCH: I think you could just say a
4 lined pit or temporary pit.

5 CHAIRPERSON BAILEY: In two locations
6 there within that paragraph. So it would say in the
7 lined trench or temporary pit.

8 MR. SMITH: When you are finished here
9 would you go back to the operating section?

10 CHAIRPERSON BAILEY: Sure.

11 DR. BALCH: Talking about the section we
12 just discussed?

13 MR. SMITH: Yes.

14 CHAIRPERSON BAILEY: Before we leave this
15 paragraph, would you scroll down to Paragraph C? I
16 think that references subsection G, not F.

17 MR. SMITH: Again, here is a
18 cross-reference that you will need to bracket and
19 bold-face, Theresa, and you will have to go through
20 and bracket and bold-face all cross-references so
21 they can be rechecked.

22 CHAIRPERSON BAILEY: You wanted to go to
23 the operating section?

24 MR. SMITH: If you wouldn't mind. You
25 also have -- go ahead.

1 CHAIRPERSON BAILEY: We were looking at
2 Paragraph B3.

3 DR. BALCH: We changed the word "on-site"
4 to "operating." I guess it should be red.

5 MR. SMITH: Yes, it should be. Now, this
6 displays my ignorance of the pit inspection. Well,
7 the whole project. This is not intended to require
8 the operator to inspect the pit while drilling is
9 actually taking place. I mean, while the drill is
10 actually running.

11 DR. BALCH: It says they do it every day
12 while the drill is running.

13 MR. SMITH: But it's while the drill is
14 running?

15 DR. BALCH: Every day and thereafter every
16 week.

17 MR. SMITH: That's fine. As long as you
18 want the drill running at the time. For instance,
19 let's say they drilled for some reason between 7:00
20 and 10:00 in the morning, then had to shut down for
21 some reason. Do you want them -- I mean, is it
22 necessary for them to inspect that pit between 7:00
23 and 10:00? Or if they inspected it at 1:00 would
24 that satisfy your requirement?

25 DR. BALCH: I think just once per day.

1 The intent is once per day while there's a rig there
2 and operations are underway. You would look at the
3 pit once a day.

4 MR. SMITH: This could be interpreted to
5 mean that they have to inspect -- nonsensically that
6 they have to inspect the pit between 9:00 and 10:00
7 on that one day.

8 DR. BALCH: Could we just say on location?

9 CHAIRPERSON BAILEY: Sure.

10 MR. SMITH: I think that's better.

11 CHAIRPERSON BAILEY: Then other areas I
12 found to talk about on Page 22. But we really
13 haven't gotten into the reclamation portions yet,
14 the discussion.

15 DR. BALCH: We discussed reclamation some
16 months ago.

17 CHAIRPERSON BAILEY: Yes, but if we look
18 on Page 22G1B, the paragraph begins, "The operator
19 may propose an alternative to the revegetation or
20 recontouring requirement." The revegetation is a
21 required component of the system that was described
22 by Mr. Mullins to protect the groundwater. The
23 system included revegetation, four feet of soil,
24 burial of the pit at some distance from groundwater.
25 If you lose any part of that system you have altered

1 the results.

2 I would suggest that we do not have an
3 alternative to revegetation if we have burial
4 on-site.

5 DR. BALCH: I think that the reason that B
6 exists here is because there was perhaps potential
7 that a permanent pad would be there for the
8 operation of a well or you may want to pave it over
9 for a basketball court, those kinds of things,
10 parking lot.

11 CHAIRPERSON BAILEY: Or a rancher who has
12 a major interest in the well doesn't want to have
13 the expense of revegetating. That situation arose
14 last year and they did not want to revegetate at
15 all. And as the surface owner, he wanted to allow
16 burial but not revegetation, which is an integral
17 part of this system that we are approving.

18 DR. BALCH: I guess I want to make sure
19 that you don't -- some better practice comes up than
20 what we have written into the reclamation standard
21 now, and if somebody wants to use it or even try it,
22 I think that would be something you would want to
23 encourage. Perhaps you could leave this paragraph
24 in and raise such an alternative to the level of an
25 exception.

1 CHAIRPERSON BAILEY: I can agree with
2 that.

3 COMMISSIONER BLOOM: The language as it
4 stands right now, wouldn't that allow OCD to turn
5 around and say, "Non-revegetation is not an option
6 when there's been a trench burial because it doesn't
7 provide equal protection."

8 DR. BALCH: This is true also, because it
9 has to demonstrate -- wait a second. We have the
10 word "effectively prevents erosion." We don't have
11 the equivalence that we have in other places where
12 we discuss alternatives. Usually you have to have
13 equal or better, and this is just equivalent. I'm
14 sorry, just effectively.

15 CHAIRPERSON BAILEY: Not even equivalent.

16 DR. BALCH: Another way to approach it
17 might be to take the word "effectively" and change
18 it to equivalent or better.

19 CHAIRPERSON BAILEY: So we would leave in
20 "revegetation or if the operator demonstrates that
21 the proposed alternative provides equal or better
22 prevention of erosion, protection of freshwater,
23 public health and the environment."

24 DR. BALCH: I think you would say
25 "effectively prevents erosion, and protects

1 freshwater, public health and the environment. I
2 think it's fine the way it is, because freshwater,
3 public health and the environment is the goal of the
4 entire rule. Erosion is added.

5 CHAIRPERSON BAILEY: Right. Where did you
6 put in "provides equal or better"?

7 DR. BALCH: It should be right there where
8 the word "effectively" is highlighted. Take out the
9 "effectively prevents" and put in "provides equal or
10 better prevention of erosion, and protects
11 freshwater, public health and the environment."

12 MR. SMITH: Well, you want the equal or
13 better to modify the protection of freshwater,
14 public health and the environment as well, right?

15 CHAIRPERSON BAILEY: Yes.

16 DR. BALCH: Take out the "and" I guess
17 after erosion.

18 MR. SMITH: No, I don't think you need to
19 do that. You could do "protection of."

20 DR. BALCH: But you are not protecting
21 erosion, you are preventing erosion.

22 MR. SMITH: No, better, prevention of
23 erosion and protection of freshwater.

24 DR. BALCH: I think with that, that closes
25 the loophole of the surface owner not wanting to

1 revegetate.

2 COMMISSIONER BLOOM: Good point.

3 CHAIRPERSON BAILEY: Are we ready to talk
4 about Tables 1 and 2 or particularly Table 1?
5 Because I have some thoughts on that.

6 DR. BALCH: Go ahead.

7 COMMISSIONER BLOOM: I would love to hear
8 them.

9 CHAIRPERSON BAILEY: The way Table 1 is
10 presented, it combines the idea of temporary pits
11 that are short-term, that have a short-term life,
12 closed-loop systems that have a short-term life, and
13 multi-well fluid management pits, below-grade tanks
14 and permanent pits that have long lives. A leak
15 from a drying pad of a closed-loop system or a
16 temporary pit has less opportunity to impact
17 groundwater. We have never had a case of
18 contaminated groundwater from a temporary pit or
19 drying pad of a closed-loop system.

20 DR. BALCH: During the operation.

21 CHAIRPERSON BAILEY: During the
22 operational phase. We have had contamination from
23 below-grade tanks and potentially multi-well fluid
24 management pits and multi-well permanent pits. So
25 we really need to have different approaches in this.

1 I know you're smiling.

2 DR. BALCH: I proposed three tables
3 yesterday.

4 CHAIRPERSON BAILEY: No, but I'm still
5 with two tables, but pulling out temporary pits and
6 drying pads from closed-loop systems and just using
7 that 600 milligrams per kilogram criteria for soil
8 and biologic protection and putting it where you
9 said to put it, in the reclamation area.

10 DR. BALCH: In the reclamation standard?

11 CHAIRPERSON BAILEY: Yes. And that could
12 possibly go in on Page 22G2 that was designed as
13 soil cover designs for drying pads associated with
14 below-grade systems and temporary pits. Well, no,
15 we won't be able to do that. Below-grade tanks,
16 because below-grade tanks are not going to have the
17 four foot cover.

18 DR. BALCH: There's already a 600
19 milligrams per kilogram in there.

20 CHAIRPERSON BAILEY: Right. But if we add
21 below-grade tanks in this section that talks about
22 soil cover after recontouring and testing for
23 chloride concentrations, then we could just pull
24 below-grade tanks out of this Table 1 all together.
25 By adding below-grade tanks there, we are saying if

1 there was a leak then the chloride concentration is
2 going to be greater than 600 milligrams per liter.

3 DR. BALCH: If it is.

4 CHAIRPERSON BAILEY: Well, what are you
5 going to have in a below-grade tank? You are going
6 to have produced water where obviously a leak is
7 going to be greater than 600.

8 DR. BALCH: Generally brine.

9 CHAIRPERSON BAILEY: Yeah. Or you are
10 going to have hydrocarbons, which may or may not
11 have -- but if you have that threshold of 600
12 milligrams per kilogram, that would trigger further
13 delineation if there was a leak. I think we're
14 covered.

15 DR. BALCH: Then we can have Table 1 just
16 refer to the situation of --

17 CHAIRPERSON BAILEY: Of multi-well fluid
18 management pits, permanent pits.

19 DR. BALCH: And remove temporary pits.

20 CHAIRPERSON BAILEY: And temporary pits.
21 Because with the shallower ones, we are concerned
22 about the impact on biological components. With the
23 leaks that would occur from multi-well fluid
24 management pits or permanent pits or a temporary pit
25 we are concerned about threats to groundwater.

1 DR. BALCH: And by definition, any of
2 those pits will have sufficient depth once their
3 contents and liners are removed that you would have
4 at least four feet of cover if not ten or 12 or 20,
5 so I think the surface is protected. So we are
6 talking about the right subject in Table 1.

7 CHAIRPERSON BAILEY: We were trying to mix
8 too many things together and it wasn't working, and
9 I think that led to our circular round-about
10 discussions yesterday where we never really reached
11 a decision.

12 COMMISSIONER BLOOM: Do we have 2
13 correctly up there?

14 CHAIRPERSON BAILEY: Soil cover designs
15 for drying pads associated with below-grade tanks.
16 No, drying pads associated with closed-loop systems
17 and below-grade tanks.

18 DR. BALCH: Take "closed-loop systems" and
19 put it back after "associated with."

20 CHAIRPERSON BAILEY: If it's greater than
21 600 milligrams per kilogram they have to chase it
22 down with rules that are in place.

23 DR. BALCH: Yeah, and obviously with the
24 drying pad you're going to be able to do it with a
25 couple of shovels and some buckets.

1 COMMISSIONER BLOOM: Right. If we change
2 A to read "the soil cover for closures where the
3 operator has removed the drying pad contents and
4 liner," do we want to make that "drying pad contents
5 and below-grade tank"?

6 CHAIRPERSON BAILEY: Why not put "where
7 the operator has removed the below-grade tank and
8 drying pad and contents and liner"?

9 DR. BALCH: Would it make more sense to
10 have an A and a B? One for the closed-loop drying
11 pad and one for the tank? They are going to say
12 essentially the same thing but it makes it clear. I
13 don't know if it makes it awkward if you go in there
14 and put "or below-grade tank." Maybe it's fine.

15 CHAIRPERSON BAILEY: I would like to see
16 it so there's no confusion to say, "The soil cover
17 for closures after site contouring," because up
18 above we are talking about site contouring and with
19 removal of a below-grade tank there's probably going
20 to need some site contouring. So we could put --

21 DR. BALCH: That's why I think you might
22 want an A and a B. Because you are not going to
23 necessarily site-contour for a pad with a
24 closed-loop system.

25 CHAIRPERSON BAILEY: I think that should

1 apply consistently to everything. "The soil cover
2 for closures after site contouring, where the
3 operator has removed the below-grade tank or drying
4 pad contents and liner." You already have the words
5 there, Theresa. You can subtract them.

6 DR. BALCH: So this takes care of those
7 two items that caused confusion in Table 1.

8 COMMISSIONER BLOOM: It reads a little
9 rough.

10 CHAIRPERSON BAILEY: Drying pads are not
11 associated with below-grade tanks.

12 DR. BALCH: We have two categories. What
13 we are trying to do is identify things which would
14 have less than the reclamation standard that's
15 defined and the items that would fit into that
16 category would be below-grade tanks in your move,
17 which in theory haven't leaked anything, but if they
18 have you would only have to put a foot of cover over
19 it. And if you only put a foot of cover and you
20 have chlorides above 600 milligrams per kilogram you
21 would be affecting the environment, the plants that
22 would be seeded above that.

23 Similarly are drying pads with the
24 closed-loop system. Now, a closed-loop system is
25 just a drilling system and you have pads where you

1 capture your drill cuttings and things like that,
2 and those are sitting on a liner in a shallow
3 depression normally, but in theory that could leak.
4 If it did, it would not be that great of a leak, but
5 if we are really looking at the same case where if
6 that did leak and you had greater than 600
7 milligrams of chloride and you buried it with a foot
8 you would be risking the environment, the plants at
9 that one foot of depth.

10 All the pits, by contrast, are necessarily
11 deeper and are going to have that four foot of cover
12 and full contouring and revegetation standard. So
13 we are really separating out the two cases.

14 MR. SMITH: Would it help to put a
15 Romanette 1 before "drying pads associated" and a
16 Romanette 2 for below-grade tanks?

17 DR. BALCH: I think it might. That would
18 be in 2, Theresa. Associated with Romanette 1 --

19 MR. SMITH: No. If you don't have drying
20 pads associated with below-grade tanks you want to
21 put the Romanette before "drying."

22 DR. BALCH: Right. Okay. So Romanette it
23 1 there.

24 MR. SMITH: No, you don't have to split
25 them up. You can leave them in the same sentence.

1 COMMISSIONER BLOOM: With the little I?

2 MR. SMITH: Yeah, and you just want to use
3 the regular parenthetical, I think, Theresa, instead
4 of the fancy brackets, whatever they are called.

5 DR. BALCH: And 2, below-grade tanks.

6 MR. SMITH: You don't need to break them
7 up. You can leave it in the same sentence.

8 DR. BALCH: Lower case Is in 2. Now, with
9 that clearly defined in 2 can we truncate A a little
10 bit and maybe remove some of the confusion? Do we
11 need the part that says "the operator has removed"?
12 I think it's all right the way it is.

13 COMMISSIONER BLOOM: It reads, "The soil
14 cover for closures after site contouring where the
15 operator has removed the below-grade tank or the
16 drying pad contents and liner, and if necessary
17 remediated to chloride concentrations less than 600
18 milligrams per kilogram, shall consist of the
19 background thickness of topsoil or one foot of
20 suitable material, whichever is greater.

21 CHAIRPERSON BAILEY: Are we all okay with
22 that?

23 DR. BALCH: I believe that's the intent.

24 COMMISSIONER BLOOM: Sure.

25 CHAIRPERSON BAILEY: Which takes us down

1 to the following Paragraph 3 where we would
 2 delete "and below-grade tanks" in that first
 3 sentence because the soil cover designs would apply
 4 only for any kind of pit or on-site burial
 5 locations, which would include temporary pit or
 6 trench burial.

7 DR. BALCH: This would be soil cover
 8 designs for reclamation of pit locations and on site
 9 burial locations.

10 CHAIRPERSON BAILEY: Correct.

11 DR. BALCH: Remove the hyphen in on site.
 12 Instead of the comma, put an "and." Now this refers
 13 to Table 1.

14 CHAIRPERSON BAILEY: Table 1, and that
 15 soil cover still has chlorides less than 600 and
 16 then the soil cover to prevent ponding and erosion.
 17 I think we can go down to Table 1 now and discuss
 18 the title. So instead of saying "Closure criteria
 19 for soil beneath pits and below-grade tanks" it
 20 would say below pits --

21 DR. BALCH: Where contents are removed?

22 CHAIRPERSON BAILEY: Yes.

23 DR. BALCH: "Beneath pits where contents
 24 are removed."

25 CHAIRPERSON BAILEY: And delete

1 below-grade tanks.

2 DR. BALCH: "Contents" instead of
3 "content." What's the title for Table 2? I think
4 it's still all right. Yes.

5 CHAIRPERSON BAILEY: A lot of times in the
6 discussions it's okay, below 50 feet, between 50 and
7 100 feet, but what's never said and is just assumed
8 is that that depth is measured below the bottom of
9 the pit. I'm thinking it wouldn't hurt in that
10 first column to change that to reflect that it sets
11 the depth to groundwater below the bottom of the
12 pit. So it would read "depth below bottom of pit."
13 No, wrong place. "Depth below bottom of pit to
14 groundwater less than 10,000 milligrams per liter."

15 COMMISSIONER BLOOM: Clarification?

16 CHAIRPERSON BAILEY: Yes, just so that
17 never gets forgotten.

18 DR. BALCH: Probably in Table 2 we need
19 the same thing.

20 CHAIRPERSON BAILEY: Yes.

21 DR. BALCH: All right. So now in Table 1
22 we are talking about below pits that are going to
23 have substantial remediation to the standard defined
24 in the rule, and we are talking about situations
25 where there's probably been a limited release

1 because there's been regular monitoring of the pits
2 while they are operational. If you had a
3 significant leak, you would notice it.

4 CHAIRPERSON BAILEY: Not particularly.

5 DR. BALCH: I think in a temporary pit, if
6 you are looking at it every day during operations
7 and every week while it's sitting there, you would
8 notice the change in the level of fluids.

9 CHAIRPERSON BAILEY: For temporary pit,
10 yes, but for a permanent pit you are only looking at
11 it occasionally. You may not know whether that's
12 evaporation that's been taking place or leakage.

13 DR. BALCH: That begs the question do we
14 need to look at it differently for temporary pits
15 versus multi-well and permanent.

16 CHAIRPERSON BAILEY: I would like to point
17 out something. The salt bulge, the chloride bulge
18 that Dr. Neeper talked about, that Dr. Buchanan
19 talked about, that Dr. Robinson talked about,
20 Dr. Neeper's Exhibit 5 Page 39 had the graphs of the
21 bulges comparing depth to moisture potential and
22 also depth to dry soil chloride.

23 The exhibit shows at Loco Hills Pit 321A
24 that at the depth of 20 feet the chloride
25 concentration was over 11,000 milligrams per

1 kilogram at 20 feet. By 30 feet the chloride
2 concentration is zero. Within ten feet that
3 concentration level went back to a normal background
4 level of chlorides.

5 DR. BALCH: You lost the drive mechanism.

6 CHAIRPERSON BAILEY: That's exactly right.
7 Because it is the transport that makes the
8 difference for diffusion of chloride into
9 groundwater. With the salt bulge, the chloride
10 bulge showing up even -- that the concentration is
11 not the important factor, as Dr. Neeper pointed out
12 and as I quoted in yesterday's transcripts. The
13 important factor is whether or not there is a
14 transport mechanism.

15 So on Table 1 for depths of 50 feet to 100
16 feet, the application was for chlorides at 10,000
17 milligrams per kilogram.

18 DR. BALCH: Right.

19 CHAIRPERSON BAILEY: That is a lower depth
20 than even the graph that Dr. Neeper showed in his
21 Loco Hills investigation that showed that by 30 feet
22 that 11,000 milligrams per kilogram concentration
23 went back to background.

24 DR. BALCH: You are saying when you have
25 at least one example -- and I think there are other

1 salt bulges that are even higher levels than 11,000.
2 The main thing -- the only thing you really have to
3 worry about is if you have enough drive to push the
4 salt bulge down while it's in operation and leaking.

5 CHAIRPERSON BAILEY: And if we had the
6 geomembrane cover over the pit, if we have the four
7 feet of cover and the vegetation that is such an
8 important part of that system, then I have no
9 trouble with the 10,000 milligrams per kilogram in
10 the application.

11 DR. BALCH: The surface is protected.

12 CHAIRPERSON BAILEY: The surface is
13 protected and the groundwater is protected.

14 DR. BALCH: I would make it an additional
15 argument for groundwater protection using the
16 following: With the temporary pit you have a
17 relatively low period of time in which fluids are in
18 the pit, a transient period of a few months. So you
19 have a pull on the amount of fluids that could
20 contribute to driving that salt bulge down.

21 In a permanent pit or a multi-well fluid
22 management pit you have a double liner on the bottom
23 with a leak detection system. You should notice if
24 you are leaking into that second liner. So I think
25 that I would have to agree with you that not only is

1 the surface vegetation and the environment
2 protected, but groundwater is also protected in the
3 case of those three types of pits.

4 CHAIRPERSON BAILEY: I will have to admit,
5 it took me a very long time to come around to this
6 way of thinking. Because 10,000 milligrams per
7 kilogram of chloride in soils where groundwater is
8 between 50 and 100 feet just on the surface of it
9 seems outrageous. But when you look at the impact
10 of the chloride bulge, that in every instance that
11 was given to us returns to normal at 35 feet. If we
12 maintain that 600 milligrams per kilogram as our
13 cutoff or as our threshold for further investigation
14 where groundwater is shallow --

15 DR. BALCH: And where the cover is thin?

16 CHAIRPERSON BAILEY: Where the cover is
17 thin, then I can accept 10,000 milligrams per
18 kilogram at this level and 20,000 milligrams per
19 kilogram where groundwater is 100 feet below the
20 bottom of the pit.

21 DR. BALCH: So the only case left is the
22 proponents asking for 5,000 milligrams per kilogram
23 when you have groundwater less than 50 feet.

24 CHAIRPERSON BAILEY: And 600 milligrams
25 per kilogram chlorides at less than 50 feet I think

1 is still a necessary part of the analysis to
2 indicate whether or not -- because with Table 1 we
3 don't know where the bottom of that leak has gone
4 to. We don't know how deep that leak has penetrated
5 towards groundwater.

6 DR. BALCH: With an abundance of caution
7 you are comfortable with the higher levels when
8 groundwater is significantly deeper, not as much
9 when it could be shallower?

10 CHAIRPERSON BAILEY: That is correct.

11 COMMISSIONER BLOOM: I see there's a
12 drop-off somewhere between 30 and 40 feet. The
13 chloride doesn't get much deeper.

14 DR. BALCH: And realistically data, while
15 useful at the location it's collected -- say you had
16 a well right next to it, a water well right next to
17 the lease and that was the basis for groundwater,
18 there could be a slope that would change a couple
19 feet or there could be seasonal drawdowns that could
20 change that by a few feet. So I think with the lack
21 of precision of the data, I think you do want to
22 provide more protection at shallower depths. What
23 was in the original is 500, right?

24 CHAIRPERSON BAILEY: Oh, the current rule?

25 DR. BALCH: Right.

1 CHAIRPERSON BAILEY: The current rule has
2 500 milligrams per kilogram for water between 50 and
3 100 feet and 1,000 milligrams per kilogram for water
4 below 100 feet.

5 DR. BALCH: And nothing for less than 50.

6 CHAIRPERSON BAILEY: No, there was no
7 burial.

8 DR. BALCH: So there's adequate testimony
9 to justify 600 milligrams per kilogram limit besides
10 the fact that it's already in the current rule and
11 the reclamation standard for drying pads, to which
12 we added below-grade tanks.

13 CHAIRPERSON BAILEY: Right. While we're
14 letting that settle, we can scroll on down and
15 delete the table that's also listed below Table 2,
16 which was replaced. That one. That's irrelevant.
17 It can be deleted. On Table 2 did we add that --
18 yes, we did. Yes, we did.

19 DR. BALCH: You should probably red-letter
20 "below the bottom of the pit" there in Table 1 and
21 Table 2.

22 CHAIRPERSON BAILEY: In Table 1 we still
23 have the combination TPH (GRO plus DRO).

24 DR. BALCH: We have to add the table
25 level.

1 CHAIRPERSON BAILEY: Add a line like we
2 did with Table 2 to separate out TPH and DRO plus
3 GRO. The TPH test was EPA SW-846.

4 DR. BALCH: You can copy that from Table 2
5 if you want.

6 CHAIRPERSON BAILEY: Method 418.1.

7 COMMISSIONER BLOOM: Method 418.1.

8 CHAIRPERSON BAILEY: For GRO plus DRO.
9 Wait a minute. I'm confusing it. GRO plus DRO is
10 SW-846 Method 8015M.

11 DR. BALCH: Take what you have and copy it
12 up to TPH and instead of 418 put 8015M for DRO plus
13 GRO. EPA SW-846 stays the same I think, right?

14 CHAIRPERSON BAILEY: Uh-huh.
15 Commissioners, those were all my notes for
16 discussion for today. If you all have other --

17 DR. BALCH: I think if we finished the
18 discussion of Table 1 we would be substantially
19 ready to --

20 COMMISSIONER BLOOM: What does GRO and DRO
21 go to there?

22 DR. BALCH: That's when we finish
23 discussing the tables and make it consistent with
24 Table 2, I think. TPH is total petroleum
25 hydrocarbons and DRO plus GRO is a component of the

1 number.

2 COMMISSIONER BLOOM: What should the
3 levels be there, though?

4 DR. BALCH: I think they should be
5 consistent with the levels of Table 2. They may
6 already be. I would say they would have to be
7 consistent with Table 2. I think we had adequate
8 discussion yesterday about the limits for TPH and
9 GRO plus DRO. It would be hard to make the limits
10 different for Table 1.

11 MR. SMITH: With all of the changes that
12 have been made here, once Theresa is finished, do
13 you want her to print these two tables out and give
14 each of you those so you can side by side them and
15 look at them?

16 CHAIRPERSON BAILEY: I think that would be
17 helpful.

18 DR. BALCH: That would be great.

19 MR. SMITH: Can you do that, Theresa?

20 CHAIRPERSON BAILEY: Before you leave
21 today, one minor thing that needs to be taken care
22 of. Are you ready? Scroll on down. Where it says
23 "greater than 50 feet-100 feet," take away the
24 "greater than" because otherwise it's confusing.

25 DR. BALCH: Make it 51 to 100 feet.

1 Greater than 100 feet is fine.

2 CHAIRPERSON BAILEY: It was just that sign
3 that created an issue.

4 DR. BALCH: Also in Method off Table 1 put
5 an asterisk and descriptor and move the asterisk
6 from the rest of the values in that column. We have
7 an inconsistency between TPH and GRO plus GRO at
8 less than 50 feet because you have more GRO plus DRO
9 than you have TPH.

10 CHAIRPERSON BAILEY: That would be a
11 little difficult, wouldn't it?

12 DR. BALCH: For Table 2 what we did for
13 less than 25 feet -- I'm sorry, 25 to 50 feet
14 because we didn't have GRO plus DRO, we just said
15 TPH at 100, so you probably want to do the same
16 thing for less than 50 up in Table 1. Just remove
17 the GRO plus DRO. That would be consistent with
18 what we did in Table 2. You have a low value of 100
19 milligrams per kilogram. Are we ready to take a
20 short break and look at the side by side tables?

21 CHAIRPERSON BAILEY: Yes.. Let's come back
22 at 20 after.

23 (Note: The hearing stood in recess at
24 1:05 to 1:20.)

25 CHAIRPERSON BAILEY: Commissioners, we now

1 have copies side by side of Tables 1 and 2.

2 Commissioner Balch, I think you discovered some
3 corrections that needed to be made to Table 1?

4 DR. BALCH: It's just moving definitions
5 from Table 2 to Table 1 for the methods for BTEX and
6 Benzene. If you go to Table 2, copy both BTEX and
7 Benzene, the two descriptions all the way down, copy
8 it into the BTEX and Benzene descriptions in Table 1
9 and that will be consistent with our discussion of
10 the tables from yesterday.

11 CHAIRPERSON BAILEY: There's a problem
12 with the method for BTEX for Table 2 for the
13 category between 25 to 50 feet below trench pit.
14 Method designation is different than what was
15 proposed for BTEX and also different for BTEX in the
16 lower categories.

17 DR. BALCH: We changed those yesterday
18 because we discovered there wasn't adequate
19 discussion of changing methods so we reverted to the
20 original methods that were already in the rule. So
21 I think the BTEX from greater than 100 or 51 to 100
22 feet has been corrected. No, sorry, for greater
23 than 100 feet has been corrected in Table 2 and we
24 can copy that through.

25 CHAIRPERSON BAILEY: Which would change

1 the method that's on Table 2 for 51 to 100 feet for
2 BTEX right now. That would be taking it back to the
3 current.

4 DR. BALCH: Right.

5 CHAIRPERSON BAILEY: So that should be EPA
6 SW-846 Method 8021B or 8260B.

7 DR. BALCH: Theresa, grab the BTEX there,
8 the BTEX definition. Everywhere where there's BTEX
9 in Table 1 or 2, that same definition should apply.
10 For Benzene I think greater than 100 has been
11 corrected to the existing rule as well, right?

12 CHAIRPERSON BAILEY: Except for in Table 2
13 it needs to have a return carriage to also allow for
14 8015.

15 DR. BALCH: Or 8015M. Now you can copy
16 that definition for Benzene all the up through both
17 tables. Let's see. Chloride in the less than 50
18 foot case at the bottom actually belongs at the
19 bottom and 51 to 100, that should be moved down to
20 the next block.

21 MS. DURAN-SAENZ: I will have to
22 manipulate the table.

23 DR. BALCH: Just so you're aware of it.
24 Other than that, the numbers are now consistent
25 between the two tables as far as the limits except

1 for chlorides at less than 50 feet which we already
2 discussed today. The limits, the chloride
3 measurement in the part you highlighted, the bottom
4 of the 50 foot column, that should be 300.0.

5 COMMISSIONER BLOOM: Make that 300.0.

6 DR. BALCH: Apparently you make a lot of
7 tables, Mr. Bloom. That's everything I noticed. In
8 Table 2 in the first column, you can probably
9 remove "below trench/pit." Since you now have that
10 in the descriptor of the column, and the same for 51
11 to 100 feet.

12 COMMISSIONER BLOOM: If you scroll down a
13 little bit you can take the parentheses off of the
14 GRO and DRO.

15 DR. BALCH: Maybe we're at the point where
16 we need to look at the new rule versus the
17 black-line rule.

18 CHAIRPERSON BAILEY: I think we are to
19 that point, and then to then vote on acceptance of
20 the different provisions and the different sections
21 so we can have that final. But looking at the
22 comparison with the black-lined and the new rule, we
23 may find other things to deliberate. Because I find
24 something new every single time. So when are we
25 able to meet again?

1 COMMISSIONER BLOOM: One more question.

2 We did finish everything related to --

3 DR. BALCH: There were a couple yellow
4 highlighted areas we left until we were done with
5 Table 1.

6 CHAIRPERSON BAILEY: That's right.

7 Definition of low chloride fluids was one.

8 DR. BALCH: I don't think there was any
9 question about the definition. We wanted to leave
10 it there until we talked about Table 1.

11 COMMISSIONER BLOOM: Hyphenate
12 water-based.

13 DR. BALCH: Actually I'm not sure why it's
14 highlighted.

15 CHAIRPERSON BAILEY: We didn't have
16 unanimous acceptance for low chloride fluids as a
17 second category.

18 DR. BALCH: I think we still might be at
19 that point though but we have other things that are
20 not yellow highlighted that we didn't have unanimous
21 agreement, but perhaps we can do an -- I think we
22 did an up or down vote on this yesterday.

23 CHAIRPERSON BAILEY: We will do an up or
24 down vote when we have the final.

25 DR. BALCH: I don't know if it needs to

1 remain highlighted.

2 CHAIRPERSON BAILEY: I don't think it
3 does.

4 COMMISSIONER BLOOM: I agree.

5 CHAIRPERSON BAILEY: Then there was also
6 on Page 17 having to do with below-grade tanks and
7 what requirements we have for operational
8 requirements.

9 DR. BALCH: We were holding off on this
10 until we resolved the surface versus groundwater
11 protection. I think we have done that. So
12 actually, below-grade tanks no longer point at Table
13 1. We would have to have a pointer to the
14 appropriate section of the reclamation standard
15 instead.

16 CHAIRPERSON BAILEY: Uh-huh.

17 COMMISSIONER BLOOM: We can probably
18 delete everything from the operator -- I believe the
19 second sentence.

20 CHAIRPERSON BAILEY: Well, we still need
21 to say that they have to demonstrate if it exceeds
22 those standards.

23 DR. BALCH: What paragraph in the
24 reclamation standards?

25 CHAIRPERSON BAILEY: That would be in 13G.

1 DR. BALCH: So you can take off in -- it
2 will be "set forth in" and remove Table 1 of.
3 Delete that. And then 19.15.17.13G2, right?

4 CHAIRPERSON BAILEY: Yes.

5 DR. BALCH: That points to the closure
6 requirement.

7 CHAIRPERSON BAILEY: That's the one we
8 highlight for checking cross-references.

9 COMMISSIONER BLOOM: We don't need the
10 language about --

11 CHAIRPERSON BAILEY: If it exceeds the
12 standards, the operator shall proceed with
13 investigation and delineation.

14 DR. BALCH: If the wet or discolored soil
15 exceeds. There's really only one standard, right?

16 CHAIRPERSON BAILEY: Yes. Exceeds the
17 standard. Subtract "any of."

18 DR. BALCH: "Exceeds the standard set
19 forth in" and remove "Table 1 of" and you have
20 19.15.19.13G2 and bracket that.

21 COMMISSIONER BLOOM: Back in G2, do we
22 want to specify the test that's used to produce that
23 600 milligrams per kilogram result?

24 DR. BALCH: Should be the same paint
25 filter test that we have.

1 CHAIRPERSON BAILEY: Why don't we go ahead
2 and put it in so we know it's a laboratory analysis
3 and not a field analysis.

4 COMMISSIONER BLOOM: EPA 300.0? EPA
5 method.

6 DR. BALCH: So the paint filter test is
7 the field test, right?

8 CHAIRPERSON BAILEY: Yes.

9 DR. BALCH: So after you are done here,
10 Theresa, we go back to 17.13G2.

11 COMMISSIONER BLOOM: Page 22. Right
12 there.

13 DR. BALCH: Concentrations less than 600
14 milligrams per kilogram using EPA Method 300.0?

15 CHAIRPERSON BAILEY: Yes.

16 DR. BALCH: So in A at the end of less
17 than 600 milligrams per kilogram --

18 CHAIRPERSON BAILEY: As analyzed by EPA
19 method --

20 DR. BALCH: 300.0. Now the same thing
21 with 2A, right?

22 CHAIRPERSON BAILEY: Yes.

23 COMMISSIONER BLOOM: Do you want analyze?

24 DR. BALCH: That's fine. Same thing in
25 2A.

1 COMMISSIONER BLOOM: That should be a
2 period. I'm sorry, hold on.

3 DR. BALCH: That's a different animal so I
4 think it's okay where it is. I think it might be
5 more efficient for us to compare the two versions at
6 this point rather than sitting here for hours.

7 CHAIRPERSON BAILEY: Soil cover
8 remediated. It's not the soil cover that needs
9 remediation, it's the soil below the tank that needs
10 remediation. If you delete the unnecessary stuff or
11 the modifiers, the soil cover remediated to chloride
12 concentrations. That's not what we want. "Where
13 the operator has removed the below-grade tank or
14 drying pad contents and if necessary remediated" --
15 the ground, or remediated the soil below the tank or
16 drying pad -- below the below-grade tank or drying
17 pad liner.

18 DR. BALCH: I would say the soil beneath
19 instead of the soil below so we don't have two
20 belows right next to each other.

21 COMMISSIONER BLOOM: Do we need to add
22 that below?

23 DR. BALCH: No, that's for the
24 constituents of the soil contents that you put on
25 top of the liner.

1 COMMISSIONER BLOOM: Looking at the tables
2 we just revised, I'm concerned that when depth to
3 groundwater is 51 feet, if there was a situation and
4 there would have been a leak in a pit and the soil
5 underneath the pit was at 9,000 milligrams per
6 kilogram, that doesn't concern you?

7 CHAIRPERSON BAILEY: Run that by me again.
8 Table 2?

9 COMMISSIONER BLOOM: Table 1.

10 CHAIRPERSON BAILEY: Which is where the
11 soils have been removed, the contents of the waste
12 has been removed. We are only looking at where a
13 potential leak has created discoloration. If
14 groundwater is 51 feet, you said?

15 COMMISSIONER BLOOM: And there's a
16 situation where there's been a leak and the soil is
17 at 9,000 milligrams per kilogram. We are not
18 concerned that -- we don't want to explore that?
19 Just leave it?

20 DR. BALCH: Well, the example that
21 Commissioner Bailey gave was one of the salt bulges
22 had a maximum concentration of 1,000 and all of the
23 salt bulges were well above 51 feet, and that's how
24 I think she and I agree that it would be protected.

25 CHAIRPERSON BAILEY: It was in ten feet it

1 went from 11,000 feet to zero.

2 DR. BALCH: Keep in mind also that Table 1
3 now applies to closure of pits where you remove
4 everything, so you are necessarily going to be
5 already pretty deep. You are going to have a lot of
6 soil cover, so you are definitely protective of the
7 environment up above the plants and now we are just
8 applying a similar yet a little more stringent
9 standard than we are for on-site trench burial.

10 CHAIRPERSON BAILEY: There's no further
11 source of material. The transport of chlorides that
12 may be in that soil at 51 feet has been essentially
13 eliminated.

14 DR. BALCH: There's no more drive
15 mechanism and there should have been either limited
16 release because it was a temporary pit that wasn't
17 there very long, which would control the amount of
18 head or volume that you would be able to apply to
19 the location, or it's a permanent or multi-well pit
20 where you have a double liner with a leak detection
21 system and you should have noticed a significant
22 leak.

23 CHAIRPERSON BAILEY: Because we require
24 the monitoring and the periodic inspections.

25 DR. BALCH: So really we are just worried

1 about groundwater. The releases should have been
2 and most likely were very limited and those levels
3 are even more stringent than those we have in Table
4 2 for buried waste.

5 COMMISSIONER BLOOM: I have seen a limited
6 number of cases -- Dr. Neeper showed if he didn't
7 have time and resources to go deeper and so he would
8 stop his --

9 DR. BALCH: I think he hit a rock in one
10 case.

11 COMMISSIONER BLOOM: Research. Yeah.
12 Perhaps making a rule based on a limited number of
13 samples.

14 DR. BALCH: Well, there's a couple ways to
15 look at data like that. I mean, obviously, there's
16 100,000 piles of these buried waste around the state
17 and we have a relatively small sample. I think it
18 was six cases from Dr. Neeper's study. I think it
19 was six. Then you had a couple cases presented by
20 Dr. Buchanan. Then you had Dr. Buchanan testify as
21 to his own experience with many more pits about the
22 existence of the salt bulge and it being consistent
23 with the way salts migrate in soils in New Mexico in
24 particular.

25 So I think if you saw an example that

1 showed no salt bulge then you would wonder if it
2 always existed. Even though we have a relatively
3 small sampling of data, eight or ten. There's an
4 OCD study also from the previous hearing that was
5 mentioned where they looked at a number more. Of
6 course, we don't know if there was a salt bulge
7 there. All we know is what the concentrations were.

8 COMMISSIONER BLOOM: Talking about the
9 cases Ms. Martin cited?

10 DR. BALCH: Yes. I think those really
11 referred to things that would be controlled by the
12 Spill Rule, surface releases. Operational only.
13 Where I think in this rule we have come up with
14 better protection for surface releases also. The
15 risk is in a small window as described by
16 Dr. Thomas.

17 So I'm comfortable going with the
18 experience of Dr. Buchanan on that issue,
19 particularly when the data that we do have all backs
20 that up.

21 COMMISSIONER BLOOM: Okay. That's all I
22 have.

23 CHAIRPERSON BAILEY: Shall we pull out our
24 calendars and see the next time we can get together,
25 giving enough time to Theresa and Mr. Smith to pull

1 together the black-lined and the red-lined and the
2 clean copy and everything else? Given the fact that
3 they both have additional responsibilities,
4 particularly now that the legislature is in session.

5 DR. BALCH: Do you have a timeline for
6 that?

7 MR. SMITH: Well, how long do you think
8 that would take, Theresa? What we would need to do,
9 as I understand it, is save this so nothing is lost
10 here and save it into another document, Save As, and
11 then take that document and accept all changes so
12 you have a clean copy and then take that and Compare
13 Write it to the current rule. So when we come in
14 the Commission will have one clean copy and one
15 Compare Write copy. How long do you think it will
16 take you to do that? Do we have a Word version of
17 the current rule?

18 MS. DURAN-SAENZ: I can obtain one from
19 records. That would be the cleanest way is to get
20 one from the file.

21 MR. SMITH: Taking that into account, how
22 long do you think it would take to produce those two
23 documents?

24 MS. DURAN-SAENZ: With the legislative
25 session in process, maybe a week.

1 MR. SMITH: I would like to have, after
2 that comes back, I would like to eyeball it and make
3 sure we don't have anything I can't sort of
4 administratively deal with.

5 CHAIRPERSON BAILEY: Shall we look at two
6 weeks out then? That would give some flex time to
7 both of you.

8 MR. SMITH: Sure.

9 CHAIRPERSON BAILEY: So either the last of
10 January or the beginning of February?

11 DR. BALCH: The beginning of February I
12 know I probably won't be available. I know it might
13 be a little further out than you want, but in
14 February we have a hearing on the 14th and we could
15 meet a day earlier or we can incorporate it into
16 that meeting.

17 CHAIRPERSON BAILEY: We won't know what
18 the docket will look like for February 14th for a
19 couple weeks.

20 (Note: A discussion was held off the
21 record).

22 DR. BALCH: We could meet the Wednesday
23 before.

24 CHAIRPERSON BAILEY: Or the Friday after.

25 COMMISSIONER BLOOM: The Friday after is

1 oil and gas day.

2 DR. BALCH: I think I could come up -- I
3 don't think this would take very long. Maybe half a
4 day or a day at the most.

5 CHAIRPERSON BAILEY: So the 13th? Would
6 that work for both of you?

7 COMMISSIONER BLOOM: Just to review or are
8 we going to go through and vote as well?

9 CHAIRPERSON BAILEY: We may be ready to
10 vote.

11 DR. BALCH: There will be reviews and
12 deliberation and if we get through that I guess we
13 would be voting.

14 CHAIRPERSON BAILEY: Because you will
15 E-mail to us the documents beforehand that we can
16 prepare and be ready for discussion and vote on the
17 13th.

18 DR. BALCH: I think that would give more
19 time for Theresa to prepare it and a little more
20 time for Mr. Smith to review it and I wouldn't mind
21 having a week to look at it myself.

22 CHAIRPERSON BAILEY: So why don't we
23 continue this meeting until February the 13th at
24 9:00 o'clock here in Porter Hall.

25 MR. SMITH: Before you adjourn for the

1 day, Theresa tells me that there remains in your
2 current version language that is both red and
3 underlined, and I think that you need to go back and
4 look at that.

5 CHAIRPERSON BAILEY: Yes. Let's do that.
6 Did you change the footnote?

7 MS. DURAN-SAENZ: Yes, ma'am.

8 DR. BALCH: That was waiting for the
9 discussion of Table 1, I believe.

10 CHAIRPERSON BAILEY: So we have the siting
11 restriction that a temporary pit containing low
12 chloride fluids is not located less than 25 feet
13 below the bottom -- I think we had an up and down
14 vote on this?

15 DR. BALCH: I think so.

16 COMMISSIONER BLOOM: I believe so.

17 CHAIRPERSON BAILEY: I think almost all of
18 these siting restrictions were up and down votes,
19 because I know we went through all of these to talk
20 about them.

21 DR. BALCH: I think we all agreed on that.

22 CHAIRPERSON BAILEY: The rest of these
23 were up and down votes.

24 MR. SMITH: Do you want to in some way or
25 another mark your up and down votes to make it

1 easier for you when you vote in the final version?

2 DR. BALCH: I think it's easier if we mark
3 it at that time.

4 CHAIRPERSON BAILEY: Who knows? We may
5 have a change of heart even between now and then.

6 DR. BALCH: I think it will be more clear
7 on the record if we do it all at once.

8 MR. SMITH: I absolutely agree with that.

9 DR. BALCH: I think we up and down voted
10 on that.

11 CHAIRPERSON BAILEY: We agreed on that.

12 MR. SMITH: If I could ask you all now,
13 I'm virtually certain that once Theresa accepts all
14 of these changes there will be formatting issues.
15 If it's okay with you we can ask Theresa to take
16 care of the formatting issues in the version that
17 she's going to present to you next month.

18 CHAIRPERSON BAILEY: Please do.

19 DR. BALCH: As close to a final version as
20 possible.

21 CHAIRPERSON BAILEY: That's it. So we are
22 ready to have a printout of this copy and look for
23 another E-mail of the strikeout comparisons. Can
24 you get us a copy of this this afternoon?

25 MS. DURAN-SAENZ: I sure can.

1 CHAIRPERSON BAILEY: Thank you. And then
2 we will look forward to the other E-mail and meet
3 again on February 13th. Do I hear a motion to
4 adjourn this meeting but to continue our discussions
5 on February the 13th?

6 DR. BALCH: I will make that motion.

7 COMMISSIONER BLOOM: I second.

8 CHAIRPERSON BAILEY: All in favor.

9 DR. BALCH: Aye.

10 COMMISSIONER BLOOM: Aye.

11 MR. SMITH: You are not adjourning the
12 meeting, you are continuing.

13 CHAIRPERSON BAILEY: Yes. We are done for
14 the day.

15 (Note: The hearing stood in recess for
16 the day at 2:00).

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REPORTER'S CERTIFICATE

I, JAN GIBSON, Certified Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

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


JAN GIBSON, CCR-RPR-CRR
New Mexico CCR No. 194
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