

STATE OF NEW MEXICO  
ENERGY, MINERALS 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, SUMPS AND  
OTHER ALTERNATIVE METHODS RELATED TO THE FOREGOING  
MATTERS, STATEWIDE

CASE NOS.: 14784 AND 14785

Volume 26

February 15, 2013  
1:00 p.m.  
1220 South St. Francis Drive  
Porter Hall, Room 102  
Santa Fe, New Mexico

THE COMMISSION:

JAMI BAILEY, Chairperson

DR. ROBERT BALCH, Commissioner

GREG BLOOM, Commissioner

MARK SMITH, Esq.

FLORENE DAVIDSON, Commission Clerk

THERESA DURAN-SAENZ

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1                   CHAIRPERSON BAILEY: Good afternoon. It's  
2   1:00 in Porter Hall, in Santa Fe, New Mexico. This is a  
3   meeting of the Oil Conservation Commission.

4                   Commissioner Greg Bloom, representing the  
5   designee of the Commissioner of Public Lands, is present;  
6   Commissioner Dr. Robert Balch, who is the designee of the  
7   Secretary of Energy, Minerals and Natural Resources  
8   Department is present; and I'm Jami Bailey, Director of  
9   the Oil Conservation Division. So we have all three  
10  Commissioners, and it is a quorum.

11                  First on the agenda, we need to adopt the  
12  minutes of the previous meetings. We have minutes for  
13  January 9th through 11th, and January 17th through the  
14  18th.

15                  Commissioners, have you had a chance to review  
16  these minutes as they have been amended?

17                  COMMISSIONER BLOOM: I have.

18                  COMMISSIONER BALCH: I have.

19                  CHAIRPERSON BAILEY: Do I hear a motion to  
20  adopt both of these sets of minutes?

21                  COMMISSIONER BALCH: I will make the  
22  motion to adopt that.

23                  COMMISSIONER BLOOM: And I'll second.

24                  CHAIRPERSON BAILEY: All those in favor?

25                  Aye.

1 COMMISSIONER BLOOM: Aye.

2 COMMISSIONER BALCH: Aye.

3 CHAIRPERSON BAILEY: Then I will sign them  
4 on behalf of the Commission and give them to the  
5 Commission Clerk.

6 We are still deliberating consolidated Case  
7 Numbers 14784 and 14785, which are the applications of  
8 the New Mexico Oil and Gas Association and the  
9 Independent Petroleum Association of New Mexico for  
10 amendment of certain provisions of Title 19, Chapter 15,  
11 of the New Mexico Administrative Code concerning pits,  
12 closed-loop systems, below-grade tanks, sumps and other  
13 alternative methods related to the foregoing.

14 Commissioners, I believe when we last met, we  
15 had gone over our latest draft of the rule, and our  
16 homework assignment was to read over the draft and to see  
17 if we have reached the final to be working with.

18 I see, Commissioner Balch, you have some  
19 changes that you would like to suggest for this draft?

20 COMMISSIONER BALCH: Yes. And I apologize  
21 for that. I think really it's inconsequential changes.  
22 There's one grammatical correction and then one sentence  
23 that I think actually needs to be rewritten.

24 CHAIRPERSON BAILEY: Okay. Where are we,  
25 then?

1 COMMISSIONER BALCH: 19.15.17.13D(6), on  
2 page 13. "The concentration of all contaminants" --

3 COMMISSIONER BLOOM: I'm sorry.

4 COMMISSIONER BALCH: Six, in the middle of  
5 that second line where it says, "tank associated with a  
6 closed-loop system is less than or equal," I think that  
7 needs to be "are," instead.

8 CHAIRPERSON BAILEY: We are talking  
9 plural?

10 COMMISSIONER BALCH: I'm talking multiple  
11 contaminants. Right there, I think that needs to be  
12 "are."

13 CHAIRPERSON BAILEY: "Concentration is  
14 less than"?

15 COMMISSIONER BALCH: That's right. So  
16 you're talking about all the contaminants.

17 CHAIRPERSON BAILEY: So we'd have to make  
18 "concentration" plural in order to have a plural for --

19 COMMISSIONER BLOOM: "Concentration" is  
20 the subject, and everything else modifies it.

21 COMMISSIONER BALCH: Right. I think  
22 "concentration" needs to be plural, as well, so we're not  
23 talking about one.

24 CHAIRPERSON BAILEY: If we add the "S" to  
25 "concentration," to make it "concentrations of all

1 contaminants in the contents from a temporary pit or  
2 drying pad and tank associated with a closed-loop system  
3 are less," then we are grammatically correct for plural  
4 with subject and verb.

5 MR. SMITH: Will that take a global search  
6 for "concentration" to see if you need to make that  
7 change on all of them?

8 COMMISSIONER BALCH: I checked everywhere  
9 else where we talked about it. It's mostly in this  
10 section. We did haven't "is" anywhere except for here,  
11 but we might want to check on "concentration" versus  
12 "concentrations." I think everywhere else I looked was  
13 all right.

14 CHAIRPERSON BAILEY: That was the  
15 grammatical change. Now what is the sentence that you --

16 COMMISSIONER BALCH: Section 8, on the  
17 same page, it says, "Upon achieving all applicable waste  
18 stabilization and transfer of the wastes to the temporary  
19 pit or burial trench, the operator shall," this, I think,  
20 is a little unclear. Because if you are burying in place  
21 in a temporary pit, then you're not going to be  
22 transferring any wastes.

23 CHAIRPERSON BAILEY: But we're allowing  
24 multiple pits to contribute to that temporary pit,  
25 multiple drilling of wells. Maybe "transferred to a

1 single temporary pit for burying."

2 COMMISSIONER BALCH: Okay.

3 COMMISSIONER BLOOM: What if we put the  
4 word "any" in front of "transfer"?

5 COMMISSIONER BALCH: I think I have some  
6 suggested language that might repair it, I guess, a  
7 little bit better in my mind. "Upon achieving all  
8 applicable waste stabilization in the temporary pit, or  
9 transfer of stabilized wastes to the temporary pit or  
10 burial trench, the operator shall."

11 CHAIRPERSON BAILEY: Okay. Would you read  
12 that again for us?

13 COMMISSIONER BALCH: "Upon achieving all  
14 applicable waste stabilization in the temporary pit, or  
15 transfer of stabilized wastes," that still allows  
16 transfer of waste from more than one pit.

17 CHAIRPERSON BAILEY: Mr. Bloom, are you  
18 good with that?

19 COMMISSIONER BLOOM: That sounds right to  
20 me.

21 CHAIRPERSON BAILEY: That sounds okay with  
22 me, too.

23 COMMISSIONER BALCH: In the same section  
24 H(1)(b) -- this may not be an issue, necessarily. "The  
25 operator may propose an alternative to the re-vegetation

1 or recontouring requirement if the operator demonstrates  
2 that the proposed alternative provides equal or better  
3 prevention of erosion, and protection," to whom and how  
4 is this demonstrated?

5 CHAIRPERSON BAILEY: To the district  
6 offices who approve --

7 COMMISSIONER BALCH: So they need to  
8 demonstrate in paragraph (b) to the appropriate Division  
9 district office?

10 CHAIRPERSON BAILEY: Yes.

11 COMMISSIONER BLOOM: Do you want to add  
12 that?

13 CHAIRPERSON BAILEY: "May propose an  
14 alternative to"?

15 COMMISSIONER BALCH: I think that's fine.

16 CHAIRPERSON BAILEY: "Demonstrates to the  
17 appropriate district office."

18 COMMISSIONER BALCH: That was all I had.

19 CHAIRPERSON BAILEY: Commissioner Bloom,  
20 did you have any?

21 COMMISSIONER BLOOM: I don't have  
22 anything, no.

23 CHAIRPERSON BAILEY: Okay. Then that, I  
24 believe, was nonsubstantive enough that we don't have to  
25 look at it again overnight or defer this to another

1 meeting.

2 So at this point, we do need to talk about  
3 requirements that the Small Business -- let me get this  
4 exactly right. The Small Business Regulatory Relief Act  
5 requires us to consider the effects of the adoption of  
6 rules and rule changes on small businesses. And "small  
7 business" is defined under the act as, "a business that  
8 is independently owned and operated and employs 50 or  
9 fewer full-time employees."

10 So we need to have on the record a discussion  
11 of the impact that we believe this rule will have on the  
12 small businesses in compliance with this Relief Act.

13 I looked through the transcripts and saw many,  
14 many, many areas where IPANM discussed the impact of  
15 costs of the current rule to their small businesses that  
16 make up the majority of the IPANM organization.

17 I also saw where witnesses for NMOGA discussed  
18 the impact of the costs of the current rule and their  
19 amendments, which would give relief to some of the costs  
20 that they have incurred.

21 I believe, in my opinion, that this rule will  
22 protect fresh water, human health and the environment,  
23 but it will still lessen the impacts of costs for  
24 operators in New Mexico; that we meet our statutory duty  
25 to protect fresh water, human health and the environment,



1 but we do allow operators to use temporary pits for  
2 cavitation of coal bed methane wells in areas where  
3 groundwater is less than 50 feet below the pit. We would  
4 be allowing operators to bury waste on-site, when the  
5 location and waste meet the siting criteria and waste  
6 criteria standards of Tables I and II.

7 I believe that the portion that we discussed  
8 and will vote on to adopt for below-grade tanks, that  
9 will be a relief to operators in meeting the requirements  
10 as long as it takes to demonstrate integrity. We have,  
11 in many different ways, taken into account and lessened  
12 the cost, the financial burden, on small businesses. So  
13 I would like to have that in the record.

14 And if you both agree or if you have any  
15 comments on that, I would like to hear them, too.

16 COMMISSIONER BALCH: I think that, first  
17 of all, most of the production in New Mexico, oil and  
18 gas, about half gas and more than two-thirds of oil,  
19 comes from small producers, companies that fit that  
20 description of 50 persons or less.

21 But beyond that, if you simplify the  
22 regulatory process while maintaining protections, you're  
23 also going to, perhaps, stimulate a more allowable  
24 activity, and that affects numerous other small  
25 companies, including small service companies or anybody

1     that has work to do with operations or a support of  
2     operations of oil and gas deals, restaurants, everybody  
3     that's involved with -- people that are working in a  
4     community are going to benefit. I don't see a place  
5     where this would negatively impact any small business in  
6     New Mexico.

7                     MR. SMITH: Do you believe that the  
8     case -- that what you're looking at in terms of the  
9     amendments to be a simplification in the regulatory  
10    process?

11                    COMMISSIONER BALCH: I do believe that to  
12    be the case.

13                    COMMISSIONER BLOOM: I'll agree with much  
14    of that. I think we've been able to clarify some  
15    definitions, clarify some rules along the way, which  
16    should help small businesses in using these rules. I  
17    also agree that we probably will see less costs to the  
18    small business.

19                    We could see potentially a less-required use  
20    of closed-loop systems, more potential on-site burial.  
21    You should see savings resulting from a decreased cost to  
22    haul water through such things as the multi-well fluid  
23    management pits. I think those are some of the gains to  
24    small business here.

25                    A few of these things, of course, I differ

1 with you in not wanting them -- the changes made in the  
2 rule. I wasn't swayed by some of the discussions we had  
3 about economics and waste. But I think small business  
4 would be well served by these rules.

5 CHAIRPERSON BAILEY: Okay.

6 MR. SMITH: Would you all -- let me just  
7 ask you briefly to encapsulate this. Would you all say  
8 that at least part of the impetus for the amendments that  
9 you all have considered is to, while you are carrying out  
10 your statutory duties to amend the rule, so that it will  
11 be friendlier to smaller operators and small business  
12 people in New Mexico?

13 COMMISSIONER BALCH: That is true. At  
14 least from my point of view, that's true. But also, the  
15 impact on a regulatory site in making a rule more  
16 streamline and more easily implemented if you make that  
17 process more efficient, that's going to be a benefit, as  
18 well.

19 CHAIRPERSON BAILEY: I certainly agree  
20 with that. The current rule is so complicated that it's  
21 very difficult for operators to take advantage or to even  
22 understand portions of those requirements. And I believe  
23 that the rule that we are discussing here, the  
24 amendments, will be so much clearer that operators will  
25 be able to understand and to meet the requirements.

1 MR. SMITH: When you say, "operators,"  
2 you're including small operators?

3 CHAIRPERSON BAILEY: Definitely.

4 COMMISSIONER BALCH: As I mentioned, 70  
5 percent of our oil and 50 percent of our natural gas  
6 comes from small companies.

7 And as you mentioned, with the rule and its  
8 complexity, there's a backlog of tens of thousands of  
9 applications for permits for tanks, in particular, but  
10 other types of sites, as well, that have not been able to  
11 be resolved on either Division level or for the operators  
12 that are required to meet those requirements.

13 CHAIRPERSON BAILEY: I believe it's time  
14 for us to vote on adoption of the rule. Commissioner  
15 Balch, are there any portions of the rule that you cannot  
16 support?

17 COMMISSIONER BALCH: I am satisfied with  
18 the rule, as we've written it.

19 CHAIRPERSON BAILEY: I understand,  
20 Commissioner Bloom, that there are portions that you do  
21 not support. If you could tell us what those are, and we  
22 can go through those, and we would do individual votes  
23 for those. But a blanket vote for all the rest of the  
24 rule would probably be a very efficient way to be able to  
25 adopt this by the majority in some places and by the

1 whole Commission in other places.

2 So if you would begin and go through and let  
3 us know which portions you would not support.

4 COMMISSIONER BLOOM: Okay. So I think in  
5 Sections 1, 2, 3, 4, 5 and 6, we have agreement there.  
6 Section 7, Definitions, I believe the only definition I  
7 had issue with was the one for low Chloride fluids, which  
8 actually creates this category. So I disagree with the  
9 creation of the category and the levels set there.

10 But other than that, the other definitions and  
11 the changes we made to about 10 of them, I think we're  
12 all seeing eye to eye on.

13 CHAIRPERSON BAILEY: Okay. For 19.15.17.1  
14 through 7, with the exception of 19.15.17.7J, which has  
15 to do with low Chloride fluids, then we can have a vote  
16 for unanimous adoption of those portions. All those in  
17 favor?

18 Aye.

19 COMMISSIONER BALCH: Aye.

20 COMMISSIONER BLOOM: Aye.

21 CHAIRPERSON BAILEY: For the definition of  
22 low Chloride fluids, we can have a vote of for and  
23 against. For?

24 Aye.

25 COMMISSIONER BALCH: Aye.

1 CHAIRPERSON BAILEY: And against?

2 COMMISSIONER BLOOM: Aye.

3 CHAIRPERSON BAILEY: So we have the  
4 majority of the Commission for that definition.

5 Going on to the next sections, do you have  
6 other --

7 COMMISSIONER BLOOM: Looking at Section 8,  
8 Section 9, I believe we're all on agreement on those two  
9 sections. We could vote there. And then I think I have  
10 differences on some of the siting requirements.

11 CHAIRPERSON BAILEY: All those in favor of  
12 adopting 19.15.17.8 through 9, all those in favor?

13 Aye.

14 COMMISSIONER BALCH: Aye.

15 COMMISSIONER BLOOM: Aye.

16 CHAIRPERSON BAILEY: Now, within Section  
17 10, dealing with siting requirements?

18 COMMISSIONER BLOOM: That section, I would  
19 disagree with I believe it's subsection A, which is  
20 specifically dedicated to low Chloride fluids.

21 CHAIRPERSON BAILEY: The entire section A?

22 COMMISSIONER BLOOM: Yes, that's correct.

23 CHAIRPERSON BAILEY: We shall vote --

24 COMMISSIONER BLOOM: I'm sorry. That  
25 is -- let me think about that. I'm sorry. That's

1 Section A(1). By the time we get to A(2) and (3), that's  
2 a little different.

3 CHAIRPERSON BAILEY: So there will be a  
4 vote for 19.15.17.10A(1). All those in favor of adopting  
5 those subsections?

6 Aye.

7 COMMISSIONER BALCH: Aye.

8 CHAIRPERSON BAILEY: All those opposed?

9 COMMISSIONER BLOOM: Aye.

10 CHAIRPERSON BAILEY: So we have a majority  
11 of the Commission adopting that subsection.

12 Now on to Subsection (2) of A, where else do  
13 you not agree?

14 COMMISSIONER BLOOM: Let me read down,  
15 then. Excuse me. Let me check something on that.

16 CHAIRPERSON BAILEY: Before you mention  
17 anything, let's just have some clarification that it's a  
18 majority in support of 19.15.17.10A(1)(a) through (i),  
19 which would include the entire Subsection A(1) through  
20 (i).

21 COMMISSIONER BLOOM: So then now with  
22 respect to 19.15.17.10A(3), I believe we're all in  
23 agreement on (3)(a), (3)(b), (3)(c), (3)(d) and (3)(e).  
24 And I'll depart with you on (f), where we went from a  
25 500-foot setback to a 300-foot setback for wetlands.

1 CHAIRPERSON BAILEY: How about (g), (h)  
2 and (i)?

3 COMMISSIONER BLOOM: I'm fine with those.  
4 So I would only disagree with you on (f).

5 CHAIRPERSON BAILEY: So we can take a vote  
6 on 19.15.17.10A(2) through (3), with the exception of  
7 (3)(f). All those in favor?

8 Aye.

9 COMMISSIONER BLOOM: Aye.

10 COMMISSIONER BALCH: Aye.

11 CHAIRPERSON BAILEY: Now concerning  
12 (3)(f), all those in favor?

13 Aye.

14 COMMISSIONER BALCH: Aye.

15 CHAIRPERSON BAILEY: All those opposed?

16 COMMISSIONER BLOOM: Aye.

17 CHAIRPERSON BAILEY: So we have the  
18 majority of the Commission approving (3)(f).

19 COMMISSIONER BLOOM: Then on  
20 19.15.17.10A(4), we're in agreement. All of (5), (6),  
21 (7) and (8), I'm in agreement.

22 CHAIRPERSON BAILEY: Okay. Shall we take  
23 a vote on 19.15.17.10A(4) through (8)? All those in  
24 favor?

25 Aye.



1 COMMISSIONER BALCH: Aye.

2 COMMISSIONER BLOOM: Aye.

3 And then I would agree with 19.15.17.10B. We  
4 could take a vote there. And then I think we might have  
5 some differences of opinion on C.

6 CHAIRPERSON BAILEY: All those in favor of  
7 19.15.17.10B, signify by aye.

8 Aye.

9 COMMISSIONER BALCH: Aye.

10 COMMISISONER BLOOM: Aye.

11 CHAIRPERSON BAILEY: That's unanimous  
12 then.

13 COMMISSIONER BLOOM: And then on  
14 19.15.17.10C(1), I don't think we're going to agree  
15 there. C(2), we won't agree there. C(4), C(6) -- this  
16 is on-site closure methods.

17 CHAIRPERSON BAILEY: I have 19.15.17.10C  
18 titled "Closure for burial trenches and in place," and it  
19 goes (a) through (i).

20 COMMISSIONER BALCH: You may be referring  
21 to closure rather than siting requirements.

22 COMMISSIONER BLOOM: Hold on. Let me look  
23 at the most recent draft so I can translate this. So on  
24 C, "Closure for burial trenches and in place," so we're  
25 talking 19.15.17.10C --

1 COMMISSIONER BALCH: I know where the  
2 difficulty came in. We added a two, and then all of (a)  
3 through (i) used to be numbers in the version you were  
4 looking at over the weekend.

5 COMMISSIONER BLOOM: That's right. So  
6 we'll disagree on (a), (b), (d) and (f). It's A, as in  
7 apple; B, as in boy; D, as in David; and F, as in Frank.

8 CHAIRPERSON BAILEY: So we can have a  
9 vote. All those in favor of  
10 19.15.17.10C(1) (c) (e) (g) (h) (i), signify by aye.

11 Aye.

12 COMMISSIONER BALCH: Aye.

13 COMMISSIONER BLOOM: Aye.

14 CHAIRPERSON BAILEY: All those in favor of  
15 19.15.17.10C(a) (b) (d) and (f), signify by aye.

16 Aye.

17 COMMISSIONER BALCH: Aye.

18 CHAIRPERSON BAILEY: All those opposed?

19 COMMISSIONER BLOOM: Naye or aye.

20 CHAIRPERSON BAILEY: So it's the majority  
21 of the Commission.

22 And then we have Subsection (2), where we have  
23 variances?

24 COMMISSIONER BLOOM: We have agreement.

25 CHAIRPERSON BAILEY: Do we have agreement

1 on -- let's vote for 19.15.17.10C(2). All those in  
2 favor?

3 Aye.

4 COMMISSIONER BALCH: Aye.

5 COMMISSIONER BLOOM: Aye.

6 CHAIRPERSON BAILEY: That's unanimous  
7 then.

8 And we move to "Design and Construction  
9 Specifications," which are 19.15.17.11.

10 COMMISSIONER BLOOM: Madam Chair, I  
11 approve of all the changes made in Section 11.

12 CHAIRPERSON BAILEY: Then shall we take a  
13 vote for 19.15.17.11? All those in favor of the language  
14 as drafted, signify by aye.

15 Aye.

16 COMMISSIONER BALCH: Aye.

17 COMMISSIONER BLOOM: Aye.

18 CHAIRPERSON BAILEY: Then it's unanimous  
19 for Subsection 11.

20 Let's look at 19.15.17.12, "Operational  
21 Requirements."

22 COMMISSIONER BLOOM: I think we're all in  
23 agreement there.

24 CHAIRPERSON BAILEY: Then let's vote on  
25 adoption of 19.15.17.12. All in favor of the language as

1 drafted, signify by aye.

2 Aye.

3 COMMISSIONER BALCH: Aye.

4 COMMISSIONER BLOOM: Aye.

5 CHAIRPERSON BAILEY: That is unanimous.

6 Let's look at 19.15.17.13, "Closure and Site  
7 Reclamation Requirements."

8 COMMISSIONER BLOOM: 13A, B -- Madam  
9 Chair, I think on Section 13, we're in agreement on  
10 Subsections A, B, C, D, E, F, and I think we'll get into  
11 a little bit of difference on Subsection G. So we can  
12 vote on A through F.

13 CHAIRPERSON BAILEY: All those in favor of  
14 the language as drafted for 19.15.17.13A through F,  
15 signify by aye.

16 Aye.

17 COMMISSIONER BALCH: Aye.

18 COMMISSIONER BLOOM: Aye.

19 CHAIRPERSON BAILEY: That is unanimous,  
20 then. And Subsection G, there are some issues?

21 COMMISSIONER BLOOM: Yes. That would be  
22 G(3) (a) .

23 COMMISSIONER BALCH: Are you perhaps  
24 talking about Section H?

25 COMMISSIONER BLOOM: Madam Chair, I

1 believe we can go through and do the tables separately?

2 CHAIRPERSON BAILEY: Yes.

3 COMMISSIONER BLOOM: I think some of that  
4 was brought up earlier here. Perhaps we have an  
5 agreement on G, as well. Yes. I'm fine with Subsection  
6 G, as well.

7 CHAIRPERSON BAILEY: Let's have a vote for  
8 19.15.17.13G. All those in favor of adopting the  
9 language as drafted?

10 Aye.

11 COMMISSIONER BALCH: Aye.

12 COMMISSIONER BLOOM: Aye.

13 CHAIRPERSON BAILEY: That is unanimous,  
14 then. Then on H?

15 COMMISSIONER BLOOM: Then on H(2), I have  
16 a disagreement there on going to 600 milligrams per  
17 kilogram from 500 milligrams per kilogram, and also,  
18 dropping some of the previous elements from testing. So  
19 I think I would break with you on (2) and (3) there. Let  
20 me just keep looking down on (4) and (5).

21 So Subsection H, I think we have agreement on  
22 (1), (4) and (5).

23 CHAIRPERSON BAILEY: Excluding the tables?

24 COMMISSIONER BLOOM: Correct. And a  
25 disagreement on (2) and (3).

1 CHAIRPERSON BAILEY: All those in favor of  
2 adopting the language as drafted for 19.15.17.13H(1), (4)  
3 and (5), excluding the tables, signify by aye.

4 Aye.

5 COMMISSIONER BALCH: Aye.

6 COMMISSIONER BLOOM: Aye.

7 CHAIRPERSON BAILEY: All those in favor of  
8 adopting 19.15.17.13H(2) and (3), signify by aye.

9 Aye.

10 COMMISSIONER BALCH: Aye.

11 CHAIRPERSON BAILEY: All those against?

12 COMMISSIONER BLOOM: Aye.

13 CHAIRPERSON BAILEY: So it is the majority  
14 of the Commission for H(2) and (3).

15 And that brings us to the tables.

16 Commissioner Bloom, you were indicating that you did not  
17 agree with the tables?

18 COMMISSIONER BLOOM: Yes, Madam Chair. On  
19 Table I, changing Chlorides from 500 to 600, I would  
20 disagree there, also, the increases for Benzene, and  
21 generally, I guess, I can say that at all depths, the  
22 changes to Chlorides and the changes to Benzenes. I do  
23 not see any differences with respect to TPH, BTEX -- hold  
24 on a second.

25 I think the best way to work through this or

1 to vote through it -- do you want to go through it line  
2 by line?

3 CHAIRPERSON BAILEY: Or the entire table.  
4 Would you prefer going line by line?

5 COMMISSIONER BALCH: Is it just the  
6 Chloride and Benzene levels in Table I?

7 COMMISSIONER BLOOM: Actually, Table I,  
8 and then also some changes, I think, to TPH at one level  
9 in there.

10 MR. SMITH: May I ask this for clarity on  
11 taking notes? Maybe if Commissioner Bloom could go  
12 through Table I, under 50 feet, objects to, for instance,  
13 Chloride, Benzene, and then the next section of the  
14 table, objects to, and then over 100 feet, objects to.  
15 That might be easier for the record, and it would be  
16 easier for me, too, since I have to write this order.

17 COMMISSIONER BLOOM: Table I of  
18 19.15.17.13, under "50 feet or less," I disagree with  
19 changes to Chlorides and Benzene. From 51 feet to 100  
20 feet, I disagree with the changes made to the levels set  
21 for Chlorides.

22 MR. SMITH: I'm sorry.

23 COMMISSIONER BLOOM: We're in no hurry at  
24 this point.

25 MR. SMITH: Okay. 50 to 100?

1 COMMISSIONER BLOOM: 50 to 100 feet, no on  
2 Chlorides, no on the change to TPH, no on the GRO and DRO  
3 levels there, no on the change to Benzene. And then when  
4 we get to greater than 100 feet, no on the change to  
5 Chlorides, no on the change to Benzene.

6 CHAIRPERSON BAILEY: We can do a vote then  
7 on Table I, which is part of 19.15.17.13, all those in  
8 favor of Table I, less than 50 feet, TPH level and BTEX  
9 level, all those in favor, say aye.

10 Aye.

11 COMMISSIONER BALCH: Aye.

12 COMMISSIONER BLOOM: Aye.

13 CHAIRPERSON BAILEY: For Chloride and  
14 Benzene at less than 50 feet in Table I, all those in  
15 favor?

16 Aye.

17 COMMISSIONER BALCH: Aye.

18 CHAIRPERSON BAILEY: All those opposed?

19 COMMISSIONER BLOOM: Aye.

20 CHAIRPERSON BAILEY: For 51 to 100 feet,  
21 all those in favor of BTEX, signify by aye.

22 Aye.

23 COMMISSIONER BALCH: Aye.

24 COMMISSIONER BLOOM: Aye.

25 CHAIRPERSON BAILEY: All those in favor of



1 the levels drafted here for Chloride, TPH, GRO plus DRO  
2 and Benzene, signify by aye.

3 Aye.

4 COMMISSIONER BALCH: Aye.

5 CHAIRPERSON BAILEY: And opposed?

6 COMMISSIONER BLOOM: Aye.

7 CHAIRPERSON BAILEY: At greater than 100  
8 feet, all those in favor of the levels for TPH, GRO plus  
9 DRO and BTEX, signify by aye.

10 Aye.

11 COMMISSIONER BALCH: Aye.

12 COMMISSIONER BLOOM: Aye.

13 CHAIRPERSON BAILEY: All those in favor of  
14 the levels for Chloride and Benzene, signify by aye.

15 Aye.

16 COMMISSIONER BALCH: Aye.

17 CHAIRPERSON BAILEY: Those opposed?

18 COMMISSIONER BLOOM: Aye.

19 CHAIRPERSON BAILEY: Now to Table II.

20 COMMISSIONER BLOOM: Looking at Table II  
21 of 19.15.17.13, depths from 25 to 50 feet, I would  
22 disagree with the changes to Chlorides and Benzene. And  
23 51 to 100 feet, I disagree with the changes to Chlorides,  
24 GRO plus DRO and Benzene. Depths greater than 100 feet,  
25 I disagree with the changes to Chlorides and Benzene.

1 CHAIRPERSON BAILEY: Okay. For Table II  
2 of 19.15.17.13, all those in favor of the depths 25 to 50  
3 feet, the limits set for TPH and BTEX, all those in  
4 favor, say aye.

5 Aye.

6 COMMISSIONER BALCH: Aye.

7 COMMISSIONER BLOOM: Aye.

8 CHAIRPERSON BAILEY: All those in favor of  
9 the standards set for Chlorides and Benzenes, signify by  
10 aye.

11 Aye.

12 COMMISSIONER BALCH: Aye.

13 CHAIRPERSON BAILEY: And opposed?

14 COMMISSIONER BLOOM: Aye.

15 CHAIRPERSON BAILEY: At depths 51 to 100  
16 feet, all those in favor of the limits for TPH and BTEX,  
17 signify by aye.

18 Aye.

19 COMMISSIONER BALCH: Aye.

20 COMMISSIONER BLOOM: Aye.

21 CHAIRPERSON BAILEY: All those in favor of  
22 the limits for Chloride, GRO plus DRO and Benzene,  
23 signify by aye.

24 Aye.

25 COMMISSIONER BALCH: Aye.

1 CHAIRPERSON BAILEY: And opposed?

2 COMMISSIONER BLOOM: Aye.

3 CHAIRPERSON BAILEY: At greater than 100  
4 feet, all those in favor of the limits set for TPH, GRO  
5 plus DRO and BTEX, signify by aye.

6 Aye.

7 COMMISSIONER BALCH: Aye.

8 COMMISSIONER BLOOM: Aye.

9 CHAIRPERSON BAILEY: And for the limits  
10 set for Chloride and Benzene, all those in favor, say  
11 aye.

12 Aye.

13 COMMISSIONER BALCH: Aye.

14 CHAIRPERSON BAILEY: And those opposed?

15 COMMISSIONER BLOOM: Aye.

16 CHAIRPERSON BAILEY: Do you believe that  
17 your record is clear on that, Counsel?

18 MR. SMITH: I think so. It might not  
19 hurt, when you all have finished, to just take a break  
20 for five minutes and let me double check with  
21 Commissioner Bloom. Or if you want, we can do it on the  
22 record. Whatever you want to do.

23 CHAIRPERSON BAILEY: We can double check  
24 these figures in a few minutes.

25 So let's look at Sections 19.15.17.14, dealing

1 with emergency actions.

2 COMMISSIONER BLOOM: We are all in  
3 agreement.

4 CHAIRPERSON BAILEY: So all those in favor  
5 of the language as drafted for 19.15.17.14, signify by  
6 aye.

7 Aye.

8 COMMISSIONER BALCH: Aye.

9 COMMISSIONER BLOOM: Aye.

10 CHAIRPERSON BAILEY: So that is unanimous.  
11 We'll go to 19.15.17.15, "Exceptions and  
12 Variances." Are we in agreement for that section?

13 COMMISSIONER BLOOM: We are, indeed.

14 CHAIRPERSON BAILEY: All those in favor of  
15 the language as drafted for 19.15.17.15, "Exceptions and  
16 Variances," signify by aye.

17 Aye.

18 COMMISSIONER BALCH: Aye.

19 COMMISSIONER BLOOM: Aye.

20 CHAIRPERSON BAILEY: Then that is  
21 unanimous.

22 We'll go to 19.15.17.16, "Permit Approvals.  
23 Conditions, Denials, Revocations, Suspensions,  
24 Modifications or Transfers." Are we in agreement for the  
25 language as drafted for that section?

1 COMMISSIONER BLOOM: Yes, we are.

2 CHAIRPERSON BAILEY: All those in favor  
3 for accepting this language as drafted, signify by aye.

4 Aye.

5 COMMISSIONER BALCH: Aye.

6 COMMISSIONER BLOOM: Aye.

7 CHAIRPERSON BAILEY: Commissioners, we  
8 have gone through the draft. We are still in the  
9 deliberations phase until an order is drafted by our  
10 attorney and signed by us. And then the rule becomes  
11 effective when it is published in the Register.

12 I congratulate all of us and all the witnesses  
13 on all sides for the record that has been put forth in  
14 this application for amendment of a very important rule  
15 for the OCD to enforce.

16 So Counsel, do you have any comments on when  
17 we could expect to look at an order? Two months?

18 MR. SMITH: Sure. And I would hope less.  
19 Did you say two months?

20 CHAIRPERSON BAILEY: I'm giving you a lot  
21 of leeway there.

22 MR. SMITH: I know that's what you think.

23 Yes, you can have it in two months. And  
24 hopefully, a lot less. I would hope six weeks.

25 COMMISSIONER BALCH: April 16th, we have a

1 regularly-scheduled meeting.

2 CHAIRPERSON BAILEY: We would love to see  
3 this April 16th for our regularly-scheduled meeting.

4 MR. SMITH: I will give it to you by then.

5 CHAIRPERSON BAILEY: Thank you very much.

6 We are concluded with this session. Do we  
7 have anything else before the Commission today?

8 COMMISSIONER BLOOM: Would you like to  
9 take a five-minute break for Mr. Smith to review  
10 anything?

11 MR. SMITH: Is that okay?

12 CHAIRPERSON BAILEY: Sure. Let's take  
13 five.

14 (A recess was taken.)

15 CHAIRPERSON BAILEY: Okay. Let's go back  
16 on the record. We have no other business before us  
17 today. Do I hear a motion to adjourn for the day?

18 COMMISSIONER BLOOM: I so move.

19 COMMISSIONER BALCH: I will second.

20 CHAIRPERSON BAILEY: All those in favor?

21 Aye.

22 COMMISSIONER BALCH: Aye.

23 COMMISSIONER BLOOM: Aye.

24 CHAIRPERSON BAILEY: Thank you very much.

25

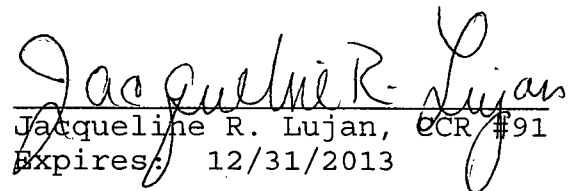
## REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO  
HEREBY CERTIFY that on February 15, 2013, proceedings in  
the above captioned case were taken before me and that I  
did report in stenographic shorthand the proceedings set  
forth herein, and the foregoing pages are a true and  
correct transcription to the best of my ability.

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

WITNESS MY HAND this 25th day of February,  
2013.

  
Jacqueline R. Lujan, CCR #91  
Expires: 12/31/2013