

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: )

IN THE MATTER OF THE PROPOSAL OF THE OIL ) CASE NO. 13,564  
CONSERVATION DIVISION ON ITS OWN MOTION )  
TO AMEND RULE 7 OF 19.15.1 NMAC; RULES )  
101 AND 102 OF 19.15.3 NMAC; RULES 201 )  
AND 203 OF 19.15.4 NMAC; RULE 701 OF )  
19.15.9 NMAC; RULES 1101, 1103, 1104 AND )  
1115 OF 19.15.13 NMAC; AND THE ADOPTION )  
OF RULES 37 AND 38 OF 19.15.1 NMAC; RULE )  
100 OF 19.15.3 NMAC; AND RULE 1227 OF )  
19.15.14 NMAC )

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: MARK E. FESMIRE, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
WILLIAM C. OLSON, COMMISSIONER

Volume III - October 17th, 2005

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on October 13th, 14th and 17th, 2005, 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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2005 OCT 31 PM 1:59

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YOLANDA PEREZ  
ConocoPhillips

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## ALSO PRESENT (Continued):

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District Supervisor  
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WAYNE PRICE  
Environmental Bureau, NMOCD

JOSÉ DANIEL SANCHEZ  
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DENNIS R. STENGER  
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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   8:35 a.m.:

3           CHAIRMAN FESMIRE: Go back on the record. This  
4   is a continuation of Cause Number 13,564, the amended  
5   Application of the New Mexico Oil Conservation Division  
6   through the Enforcement and Compliance Manager for the  
7   adoption of new rules 19.15.1.37 NMAC; 19.15.1.38 NMAC;  
8   19.15.3.100 NMAC; and 19.15.14.1227 NMAC; and the amendment  
9   of 19.15.1.7 NMAC; 19.15.3.101 NMAC; 19.15.3.102 NMAC;  
10   19.15.4.201 NMAC; 19.15.4.203 NMAC; 19.15.4.1101 NMAC;  
11   19.15.9.701 NMAC; 19.15.13.1103 NMAC; 19.15.13.1104 NMAC;  
12   and 19.15.13.1115 NMAC.

13           Let the record reflect that it's Monday morning,  
14   8:35, October 17th, and that all members of the Commission  
15   are present.

16           The Commission was considering the changes to  
17   Rule 201 that had been proposed by the Division, and that's  
18   where we cut off Friday evening. Was it 201 or --

19           COMMISSIONER OLSON: 203.

20           CHAIRMAN FESMIRE: 203, I'm sorry, 203 that were  
21   proposed to the Commission.

22           Over the weekend I had a chance to go over this,  
23   and I think there were a couple of things that I wanted to  
24   propose to the Commission.

25           But before I start, Commissioner Bailey, do you

1 have anything to say about this that you want to put on the  
2 record real quick?

3 COMMISSIONER BAILEY: No.

4 CHAIRMAN FESMIRE: No?

5 Commissioner?

6 COMMISSIONER OLSON: No.

7 CHAIRMAN FESMIRE: Okay. The things that -- the  
8 decisions that we had to make is -- I think we had worked  
9 down to 203.C.

10 We'd need a couple of changes in B, I think in  
11 B(1). Any operator seeking approval for approved temporary  
12 abandonment status. We considered adding the word  
13 "approved". And then after sundry notices on reports on  
14 wells, and a notice of intent. And then in the last line  
15 of B(1), before beginning work.

16 And we've gotten down to C, and I think --

17 COMMISSIONER OLSON: Where was that? Oh, okay.

18 CHAIRMAN FESMIRE: And I -- we had gotten down to  
19 C. And the first thing I think that we need to decide is,  
20 when an operator TA's a well do we want them to pull the  
21 packer or allow the to leave the packer and tubing in the  
22 hole and basically just test the annulus between the casing  
23 and the tubing?

24 COMMISSIONER BAILEY: Before we leave B, there  
25 were some words that we talked about the B(2).

1 COMMISSIONER OLSON: B(2) as well.

2 CHAIRMAN FESMIRE: Oh, I'm sorry. Would you go  
3 ahead and -- My notes aren't very good.

4 COMMISSIONER BAILEY: Okay, we had agreed that it  
5 would say, The Division shall not approve temporary  
6 abandonment until the operator furnishes evidence  
7 demonstrating that such well's casing and cementing are  
8 mechanically and physically sound.

9 CHAIRMAN FESMIRE: I think that's what we had  
10 determined.

11 COMMISSIONER OLSON: Mechanically and physically,  
12 right?

13 COMMISSIONER BAILEY: Uh-huh.

14 MS. BADA: Yeah.

15 COMMISSIONER OLSON: Okay. Did we add a new (3)  
16 in there as well, in B? One of my notes said number (3),  
17 but I don't have what it is.

18 CHAIRMAN FESMIRE: Counsel Bada, do your notes  
19 show --

20 MS. BADA: I think it has something to do with  
21 demonstrating internal and external mechanical integrity.

22 CHAIRMAN FESMIRE: Yes, the operator shall  
23 demonstrate both internal and external mechanical integrity  
24 pursuant to paragraphs (1) and (2) of Section C of 203  
25 NMAC.

1 COMMISSIONER OLSON: So that's a new number (3).  
2 Okay.

3 CHAIRMAN FESMIRE: Okay. Going on to C, the big  
4 question here is whether -- to me, at least, is whether or  
5 not we want to make them pull the packer and run in with a  
6 cast iron or retrievable bridge plug, or allow them to TA  
7 it with a packer and tubing in the hole. Is there any  
8 comment on --

9 COMMISSIONER BAILEY: Well, in C(1)(a) it says  
10 the operator may set a cast iron bridge plug within 100  
11 feet. Has there been a problem?

12 CHAIRMAN FESMIRE: Not with cast iron bridge  
13 plugs. The packer question comes in on number two, the  
14 operator may run a retrievable bridge plug or packer. Do  
15 we want to allow that, I guess, is the question.

16 COMMISSIONER BAILEY: Has there been a problem  
17 with this before? Because has been language for a very  
18 long time, hasn't it?

19 CHAIRMAN FESMIRE: Uh-huh. The problem comes  
20 when you run in five years later and the tubing parts and  
21 you leave the packer in the hole. I don't think the  
22 wellbore is a very good place to store a string of tubing,  
23 I guess is what I'm saying.

24 MS. BADA: I guess my question would be that we  
25 don't have -- and my advice is that you don't have any

1 evidence on the record concerning whether that's good or  
2 bad, so what would you be basing your decision on if you  
3 chose to change it?

4 COMMISSIONER OLSON: I guess that would be my  
5 question too. I just want to make sure that we're not  
6 getting ourselves in some spot where we can be challenged  
7 on something just because of the fact that we didn't have  
8 something in the record for testimony about that issue. It  
9 wasn't proposed to be changed, I guess, at this point, so I  
10 think it might be difficult for us to do that, to take that  
11 action.

12 CHAIRMAN FESMIRE: Okay. Okay, I would also  
13 propose that both (a) and (b) under C, with a pressure drop  
14 of not more than 10 percent over a 30-minute period.

15 COMMISSIONER BAILEY: Yes.

16 COMMISSIONER OLSON: Right.

17 CHAIRMAN FESMIRE: And during -- One of the  
18 things that is not clear but I think we need to address, as  
19 the pressure changes that occur on the back side during the  
20 testing of the casing and whether or not there's a flow on  
21 the back side, I think that's a natural part of the casing  
22 integrity testing that we're mandating here, and I would  
23 propose in C(1)(c) that C(1)(c) read -- a new part --  
24 During the testing described in (a) and (b) above,  
25 operators shall open all casing valves during the internal



1 pressure tests and report any flow or pressure change  
2 occurring before, during or after the 30-minute pressure  
3 test.

4 Like I said, I think this is a natural outgrowth  
5 of the testing that we're going to be doing on the casing  
6 and would allow us to determine whether the cement on the  
7 outside of the well and the casing, other than the  
8 production casing string, have enough integrity to  
9 withstand a period of five years shut in.

10 COMMISSIONER BAILEY: I think that's a good idea.  
11 We've demonstrated that there was nothing in the rule that  
12 talked about channeling behind the pipe.

13 CHAIRMAN FESMIRE: Right.

14 COMMISSIONER OLSON: And when -- we did have a  
15 recommendation from Mr. Price that we should add integrity  
16 testing of all annulus, essentially.

17 CHAIRMAN FESMIRE: Okay. I would also recommend  
18 a fourth part to that, C(1)(b), operator shall top off the  
19 casing with inert fluid prior to leaving the location, in  
20 case they lose any fluid -- if we're allowing a 10-percent  
21 pressure fall-off during the testing, there's liable to be  
22 a small volume of inert fluid lost, and we don't want the  
23 upper part of the production casing subjected to the  
24 detrimental effects of high moisture content,  
25 uninhibited --

1 COMMISSIONER BAILEY: It makes sense to me.

2 CHAIRMAN FESMIRE: Okay. And then perhaps  
3 C(1)(e), any flow during the test above shall be reported  
4 to the Division district office prior to completion of TA  
5 operations, and the Division may require remediation of the  
6 flow prior to granting TA status on the well.

7 COMMISSIONER BAILEY: Okay.

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER OLSON: Then I guess, is this  
10 consistent with TA actions that are going on with the  
11 Division right now?

12 CHAIRMAN FESMIRE: In some districts, yes.

13 COMMISSIONER OLSON: Okay.

14 CHAIRMAN FESMIRE: But not in all districts,  
15 unfortunately. Okay, in -- so we're pretty much agreed to  
16 C, adding C(1)(c) and C(1)(d) and C(1)(e)?

17 MS. BADA: Can I get your notes when --

18 CHAIRMAN FESMIRE: Sure.

19 MS. BADA: -- before we leave?

20 CHAIRMAN FESMIRE: Sure.

21 COMMISSIONER BAILEY: Yes.

22 CHAIRMAN FESMIRE: Okay.

23 COMMISSIONER OLSON: Uh-huh, yes.

24 CHAIRMAN FESMIRE: The Division may approve the  
25 following methods, add an "s", of demonstrating -- so we

1 need to add a section (2), I think.

2 COMMISSIONER OLSON: Capital C(1) -- C(2)?

3 CHAIRMAN FESMIRE: Yes.

4 COMMISSIONER OLSON: Okay.

5 CHAIRMAN FESMIRE: The Division --

6 COMMISSIONER OLSON: Oh, there is a C(2) already,  
7 so I guess this is a new C(2)?

8 CHAIRMAN FESMIRE: What is the C(2) --

9 MS. BADA: It talks about not --

10 CHAIRMAN FESMIRE: The operator may -- Okay, this  
11 is just a little rewrite of that.

12 The Division may approve the following methods of  
13 demonstrating external casing and cement integrity for  
14 wells to be placed on approved temporary abandonment  
15 status.

16 Here the decision is under (a), if the tests,  
17 C(1) above, show no flow behind the casing -- I don't think  
18 there's a real strong argument to require any additional  
19 inquiry if they don't have a flow or -- behind the pipe.  
20 But if the -- shows no flow behind the casing, the operator  
21 may use the results of the temperature or noise log, or  
22 cementing records, verified by recent cement bond log,  
23 approved by the Division or other methods approved by APA  
24 specified at 40 CFR 146.8 -- I think that's a little  
25 awkward.

1           What I would say is, if the test in C(1) shows no  
2 flow behind the pipe, a cement bond log run during the life  
3 of the well, show an adequate bond to prevent flow behind  
4 the casing, can be accepted.

5           What that's -- What I'm trying to say there is  
6 that if there's no flow, they just show us a cement bond  
7 log that they've run in the past showing adequate bond to  
8 prevent flow and that they filed that log with the  
9 Division.

10           COMMISSIONER BAILEY: How much deterioration of  
11 the cement do you see through the salt section?

12           CHAIRMAN FESMIRE: That's a good question.

13           COMMISSIONER BAILEY: I think that it's been  
14 documented that channeling and deterioration of that cement  
15 does occur.

16           CHAIRMAN FESMIRE: Okay. So you don't think we  
17 should accept old cement bond logs?

18           COMMISSIONER BAILEY: No.

19           CHAIRMAN FESMIRE: Are we going to require a  
20 cement bond log every time they -- when they go to PA the  
21 well -- TA the well?

22           COMMISSIONER BAILEY: And then every five years  
23 after that. We don't have any testimony. We don't have  
24 any documentation on the deterioration of the cement, it's  
25 just common knowledge, isn't it?

1 CHAIRMAN FESMIRE: So is there a suggestion?

2 COMMISSIONER BAILEY: I'm thinking.

3 (Laughter)

4 COMMISSIONER BAILEY: I'm trying.

5 MS. BADA: Do the EPA regs require it, for  
6 mechanical integrity?

7 COMMISSIONER BAILEY: The top of the left  
8 column --

9 CHAIRMAN FESMIRE: On page 2?

10 COMMISSIONER BAILEY: On page 2, C(1), the  
11 results of the temperature and noise log.

12 CHAIRMAN FESMIRE: Yup.

13 MS. BADA: So do you want to take administrative  
14 notice of the EPA regulations?

15 CHAIRMAN FESMIRE: Yes, at this time we'll take  
16 administrative notice of CFR 146.P [sic]. Is that  
17 sufficient to describe it?

18 MS. BADA: It's 40 CFR 146.8.

19 CHAIRMAN FESMIRE: 40 CFR 146.8.

20 COMMISSIONER BAILEY: But for Class II they only  
21 require the cementing records.

22 CHAIRMAN FESMIRE: So I think -- the wells that  
23 we're -- most of the wells that we'll be dealing with here  
24 are going to be Class II wells, aren't they? Class II is  
25 oil and gas wells?

1 COMMISSIONER BAILEY: Yes.

2 CHAIRMAN FESMIRE: Cementing records  
3 demonstrating the presence of adequate cement to prevent  
4 such migration.

5 COMMISSIONER BAILEY: Why can't we just adopt  
6 this Section C that says one of the following methods must  
7 be used to determine --

8 CHAIRMAN FESMIRE: Okay, now, I think that's  
9 basically what the -- with perhaps too much verbiage, but a  
10 log approved -- a recent cement bond log. How about, the  
11 operator may use any of the methods approved by EPA  
12 specified in 40 CFR 146.8?

13 COMMISSIONER BAILEY: Okay.

14 COMMISSIONER OLSON: Uh-huh, I like that.

15 MS. BADA: Do you want to repeat that so I can  
16 get that down.

17 COMMISSIONER OLSON: So where does that go again?  
18 That's --

19 CHAIRMAN FESMIRE: It's under 2(A). 2 reads, The  
20 Division -- currently reads, The Division may approve the  
21 following methods of demonstrating external casing  
22 integrity --

23 MS. BADA: Okay, so that would be a new section  
24 2.

25 COMMISSIONER OLSON: That's a new 2, right?

1 CHAIRMAN FESMIRE: Well actually --

2 COMMISSIONER OLSON: Because that's --

3 CHAIRMAN FESMIRE: -- yes.

4 COMMISSIONER OLSON: -- to read, so that --

5 CHAIRMAN FESMIRE: Right. The operator may  
6 approve the results of a -- I'm sorry, let me start over.

7 2 shall read, The Division may approve the  
8 following methods of demonstrating external casing and  
9 cement integrity for wells to be placed on approved  
10 temporary abandonment status.

11 And (a), Any of the methods approved by the EPA  
12 in 40 CFR 146.8.

13 And that eliminates the need for (b) there also.

14 MS. BADA: Is there a certain section in that  
15 146.8?

16 COMMISSIONER OLSON: Chapter, you mean?

17 CHAIRMAN FESMIRE: 146.8 --

18 MS. BADA: Yeah.

19 CHAIRMAN FESMIRE: -- (c).

20 MS. BADA: And that's a small (c)?

21 CHAIRMAN FESMIRE: Small (c).

22 MS. BADA: Okay.

23 CHAIRMAN FESMIRE: And might add (d) also.

24 COMMISSIONER OLSON: What's that part of? It's  
25 part of 3.

1 MS. BADA: I think you already have that in that  
2 one section that you have on 4, allows you to approve other  
3 methods.

4 CHAIRMAN FESMIRE: Yes.

5 MS. BADA: Will that cover it?

6 CHAIRMAN FESMIRE: Yes.

7 MS. BADA: Okay.

8 COMMISSIONER OLSON: So you really don't need an  
9 A there, do you? It could just be all one --

10 MS. BADA: Yeah --

11 COMMISSIONER OLSON: -- one requirement, not have  
12 a subsection?

13 MS. BADA: What? I'm lost.

14 CHAIRMAN FESMIRE: He doesn't think that we need  
15 an A, we just go from here and --

16 COMMISSIONER OLSON: Make it all one.

17 COMMISSIONER BAILEY: Oh, okay.

18 MS. BADA: Could we just say the operator may use  
19 any methods approved by EPA in 40 CFR 146.8? And would  
20 this be just an external casing, or would this be internal  
21 as well?

22 COMMISSIONER BAILEY: 146.8 describes both  
23 internal and external.

24 MS. BADA: Okay. So how about if we word it, an  
25 operator may demonstrate or may use any method approved by



1 EPA in 40 CFR 146.8(c) to demonstrate external and internal  
2 casing integrity for wells to be placed on approved  
3 temporary abandonment --

4 CHAIRMAN FESMIRE: -- status.

5 MS. BADA: Okay, well, I don't think we want to  
6 use "status" because that's in the definition.

7 CHAIRMAN FESMIRE: Okay.

8 MS. BADA: And it says a -- that that's what that  
9 means, status, so, I think they're probably redundant.

10 COMMISSIONER OLSON: I had just one question. Is  
11 that conflicting, then, with C(1), which is giving you your  
12 internal casing integrity?

13 MS. BADA: That's just internal, right, up there?

14 CHAIRMAN FESMIRE: Well, we're using the pressure  
15 testing to determine internal casing.

16 COMMISSIONER OLSON: Right.

17 MS. BADA: So this would just be external?

18 COMMISSIONER OLSON: Is that just external then?

19 CHAIRMAN FESMIRE: External casing and cementing.

20 MS. BADA: Okay, external casing --

21 CHAIRMAN FESMIRE: -- and cement integrity.

22 MS. BADA: -- and cement integrity, okay, and  
23 cement integrity.

24 COMMISSIONER OLSON: So we'd have a separate  
25 section for internal and a separate section for external?

1 CHAIRMAN FESMIRE: Right.

2 COMMISSIONER OLSON: Okay.

3 MS. BADA: Okay, so instead of saying -- Okay, so  
4 demonstrate external and cement -- external casing and  
5 cement integrity for wells to be placed on temporary  
6 abandonment, or in temporary abandonment? That's probably  
7 more accurate. Okay.

8 CHAIRMAN FESMIRE: You're the grammar -- you the  
9 grammar person.

10 MS. BADA: Okay.

11 CHAIRMAN FESMIRE: And the last change I had, the  
12 Division -- C(5), the Division may approve other methods --

13 MS. BADA: Okay.

14 CHAIRMAN FESMIRE: -- the operator proposes if  
15 the operator demonstrates that the test method will satisfy  
16 the requirements of paragraph (2), subsection B, 203 NMAC.

17 MS. BADA: Okay, so the Division may approve  
18 other methods to demonstrate that the well's casing is  
19 mechanically and physically sound --

20 CHAIRMAN FESMIRE: Right.

21 MS. BADA: Is that what you were trying to say?

22 CHAIRMAN FESMIRE: Yeah.

23 MS. BADA: Okay.

24 COMMISSIONER OLSON: And that's to replace, then,  
25 the existing (4)?

1 CHAIRMAN FESMIRE: No, I thought --

2 COMMISSIONER OLSON: That has other casing test  
3 methods in it, yeah.

4 CHAIRMAN FESMIRE: I think we're talking about  
5 external integrity in (4), and what we're talking about in  
6 (5) is --

7 COMMISSIONER BAILEY: That's different from what  
8 was in our notebook.

9 MS. BADA: Yeah, because --

10 COMMISSIONER OLSON: Yeah.

11 MS. BADA: -- what it says is, the Division --  
12 the proposed (4) says, the Division may approve other  
13 casing tests the operator proposes if the operator  
14 demonstrates the test will satisfy the requirements of  
15 paragraph 2 of Subsection B of 19.15.4 --

16 CHAIRMAN FESMIRE: Can we add (3) to this (4) --

17 COMMISSIONER OLSON: Yeah, I'm wondering if there  
18 should be additional paragraphs.

19 CHAIRMAN FESMIRE: -- and avoid what I was  
20 talking about, about (5)?

21 COMMISSIONER OLSON: Uh-huh.

22 MS. BADA: And is it only casing tests that we  
23 want, or is there something more broader that we want to  
24 say?

25 CHAIRMAN FESMIRE: Approve other testing methods.

1 MS. BADA: Okay.

2 COMMISSIONER OLSON: And then is it just the  
3 requirements of paragraph (2) --

4 CHAIRMAN FESMIRE: Well --

5 MS. BADA: -- (2), or do we add (c) in there as  
6 well?

7 CHAIRMAN FESMIRE: -- I think we'd need to add --  
8 (2) --

9 COMMISSIONER OLSON: Because (2) is a broad --  
10 very broad requirement.

11 CHAIRMAN FESMIRE: What about sections (b) and  
12 (c)?

13 MS. BADA: Yeah, because (2) is in (b).

14 CHAIRMAN FESMIRE: Right.

15 COMMISSIONER OLSON: Well, I don't know if you'd  
16 want (c), because --

17 MS. BADA: Oh, I know why we're referring to  
18 B(2), because B(2) tells you what they have to show.

19 COMMISSIONER OLSON: Yeah.

20 MS. BADA: So that's why it only --

21 COMMISSIONER OLSON: Just so that there wouldn't  
22 be damage to the --

23 MS. BADA: Right.

24 COMMISSIONER OLSON: -- zone, migration of  
25 hydrocarbons --

1 CHAIRMAN FESMIRE: Oh, okay.

2 COMMISSIONER OLSON: -- in the water. I think  
3 B(2) is correct.

4 MS. BADA: Okay. So it would now read, the  
5 Division may approve other testing methods the operator  
6 proposes if the operator demonstrates that the test will  
7 satisfy the requirements of paragraph (2) of subsection B?

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER OLSON: That's just the perform- --  
10 under performance, of what they need to demonstrate.

11 CHAIRMAN FESMIRE: Right. Okay, are there any  
12 other rules that --

13 MS. BADA: Well, we need --

14 CHAIRMAN FESMIRE: -- anybody after the  
15 weekend --

16 MS. BADA: We need to deal with that reference to  
17 C-108, which is a bad idea to have in a rule.

18 CHAIRMAN FESMIRE: Which one is that?

19 COMMISSIONER OLSON: Where is that?

20 MS. BADA: That was at, oh -- Let me go back and  
21 find it now. It has to do with notice requirements  
22 complying with C-108. I should have written down which one  
23 it was. It's on Rule 701, in paragraph C(1).

24 CHAIRMAN FESMIRE: Okay.

25 MS. BADA: And we should actually list what

1 requirements you want, instead of referring to a form.

2 CHAIRMAN FESMIRE: Looks like we're under Section  
3 14, proof of notice, on the form.

4 MS. BADA: And if you want, I can just add a  
5 paragraph there that says the notice shall include the  
6 following, and just list those requirements.

7 CHAIRMAN FESMIRE: Copy of the application has  
8 been furnished by certified or registered mail to the owner  
9 of the surface of the land on which well is to be located,  
10 and each leasehold operator with one and a half mile of the  
11 location.

12 Well, isn't that the requirements in B(2)?

13 COMMISSIONER OLSON: Just that one sentence,  
14 right?

15 MS. BADA: Well, no, because it says --

16 COMMISSIONER OLSON: Well, it has the contents --

17 MS. BADA: -- what has to be in there --

18 COMMISSIONER OLSON: -- right.

19 MS. BADA: -- is a name, address, phone number  
20 and contact party --

21 COMMISSIONER OLSON: Right.

22 MS. BADA: -- purpose. So it would need  
23 everything -- it would need the requirements in (2), (3)  
24 and (4).

25 CHAIRMAN FESMIRE: Yes, I think we need to do

1 that where it refers to C-108.

2 MS. BADA: Yeah.

3 COMMISSIONER OLSON: So if we just direct our  
4 Commission counsel to take the requirements from C-108 and  
5 replace those direct requirements into the rule, instead of  
6 the reference to C-108?

7 CHAIRMAN FESMIRE: Yeah, I think that would be a  
8 good idea.

9 MS. BADA: Okay.

10 CHAIRMAN FESMIRE: Do we need to -- Okay,  
11 anything else that we need to do that anybody can think of?

12 MS. BADA: That's all I had on my list.

13 CHAIRMAN FESMIRE: Commissioner Bailey?

14 COMMISSIONER BAILEY: I had nothing more.

15 COMMISSIONER OLSON: I just --

16 CHAIRMAN FESMIRE: Mr. Olson?

17 COMMISSIONER OLSON: I just was going to say,  
18 just following up on C-108, it looks like it also appeared  
19 up on B -- (1) -- that's by submittal of the C-108.

20 MS. BADA: Yeah.

21 CHAIRMAN FESMIRE: Right, that's just instructing  
22 that --

23 COMMISSIONER OLSON: Okay, got you.

24 CHAIRMAN FESMIRE: -- it doesn't -- The problem  
25 we've got is in C.(1) --

1 COMMISSIONER OLSON: It's information.

2 CHAIRMAN FESMIRE: It's information --

3 COMMISSIONER OLSON: Right.

4 CHAIRMAN FESMIRE: -- and you'd have to refer to  
5 the C-108 form, and I don't think we can -- Okay.

6 Commissioner Bada -- "Commissioner". Counsel  
7 Bada, do you think that you could make the changes that  
8 we've requested by the next commission meeting?

9 MS. BADA: I believe so, and then I will  
10 circulate them to you before that so that you'll have an  
11 opportunity to review them and let me know if I've missed  
12 anything or misunderstood you.

13 CHAIRMAN FESMIRE: Okay.

14 At this time the Chair would entertain a motion  
15 to adopt the rules as amended during the three-day meeting  
16 that we've had on these rules, and to direct counsel to  
17 draft an order adopting the rules and make the amendments  
18 to the attachment copy of the rules and present it for  
19 signature at the next meeting.

20 COMMISSIONER BAILEY: I so move.

21 COMMISSIONER OLSON: So moved -- yeah, second.

22 CHAIRMAN FESMIRE: All those in favor signify by  
23 saying aye.

24 COMMISSIONER BAILEY: Aye.

25 CHAIRMAN FESMIRE: Aye.



1 COMMISSIONER OLSON: Aye.

2 CHAIRMAN FESMIRE: All those --

3 MS. BADA: Okay, before you leave -- I'll let you  
4 finish, but -- Go ahead and ask for nays.

5 CHAIRMAN FESMIRE: All those opposed signify by  
6 saying nay.

7 The motion carries that the rules in Case Number  
8 13,564 be adopted as amended and that the counsel draft an  
9 order and make the amendments to that effect for  
10 presentation for signature at the next regularly scheduled  
11 OCD meeting, which is November 10th --

12 COMMISSIONER BAILEY: Yes.

13 CHAIRMAN FESMIRE: -- in this room.

14 Counsel, Bada, you had something to say.

15 MS. BADA: I would like to go through these  
16 rules, and any major changes, I'd like to have your reasons  
17 for making them on the record, or why you adopted the rule  
18 as it was written, because if you get challenged you'll  
19 need to have a basis for why you did what you did.

20 CHAIRMAN FESMIRE: Okay.

21 MS. BADA: I want to make sure we have enough on  
22 the record that I can support you.

23 CHAIRMAN FESMIRE: Okay. I guess we can go  
24 through --

25 MS. BADA: Let's start with 1227, and some of

1     them will be very short, and others will be longer.

2             CHAIRMAN FESMIRE: I think the rule as adopted --  
3     the rule as amended was adopted, at least on my part,  
4     because there's a need to formalize some of the compliance  
5     and enforcement regulations that the OCD has to allow the  
6     OCD and the OCC to effectively protect the correlative  
7     rights, protect -- prevent waste, protect correlative  
8     rights and protect human health and the environment, the  
9     reason being that the OCD has reached a plateau in its  
10    enforcement efforts, and given the resources we have and  
11    the rules that we're using, we need to be able to basically  
12    bring to bear some more stringent regulation and  
13    enforcement actions, and that the Rule 1227 outlines and  
14    gives us the necessary means to bring those compliance  
15    proceedings.

16            Commissioner?

17            COMMISSIONER BAILEY: I think 1227 simply  
18    clarifies to an operator exactly what can happen if they  
19    ignore OCD and the rules.

20            COMMISSIONER OLSON: Yeah, I'd probably add to  
21    that clarification, it clarifies the procedural mechanisms  
22    that the Division will use to seek compliance. I think  
23    that the -- I would say for all these rules, I think that  
24    we've got here, I think that the Division in their  
25    testimony provided adequate justification for -- and

1 testimony in support of the need for these rules.

2 CHAIRMAN FESMIRE: And I'd like to add that the  
3 -- one of the more important stipulation -- one of the more  
4 important sections of 1227 is the ability to bring an  
5 agreed compliance order and to have that agreed compliance  
6 order have the effect that it needs to have to make it  
7 enforceable under current rules.

8 MS. BADA: Okay, on Rule 7(K), could you just  
9 briefly explain why you chose to adopt the Division's  
10 proposed definition with one minor amendment, rather than  
11 NMOGA and IPANM's proposed definition for knowing and  
12 willful?

13 CHAIRMAN FESMIRE: I think for the purposes of  
14 assessing civil penalties, the knowing and willful  
15 definition presented by the Division is much more concise,  
16 much clearer, and lets the operators and the people who are  
17 regulated by these rules understand exactly what's expected  
18 of them and understand exactly what the definition of  
19 knowing and willful that they will be subject to is.

20 Some of the other definitions that were proposed  
21 to the Commission, I think were more nebulous and, for lack  
22 of a more legal term, wishy-washy. And this is definitive,  
23 this is accurate, and I think it accurately represents the  
24 Legislative intent to provide operators the ability to know  
25 exactly what knowing and willful are in conjunction with

1 the enforcement statutes and rules.

2 MS. BADA: Do either of you or -- Do you have  
3 anything to add?

4 COMMISSIONER BAILEY: I simply think the OCD made  
5 a better case than the other parties.

6 MS. BADA: Why don't we go to what was proposed  
7 Rule 37, and you can -- since that's one of the more  
8 controversial ones.

9 CHAIRMAN FESMIRE: Counsel Bada, have you  
10 determined what that rule number will be?

11 MS. BADA: I believe it will be either Rule 39 or  
12 Rule 40.

13 COMMISSIONER OLSON: 40 sounds good.

14 MS. BADA: Okay. We'll leave three for David for  
15 his --

16 CHAIRMAN FESMIRE: Okay.

17 MS. BADA: -- compulsory pooling, we'll propose  
18 it to be 40.

19 CHAIRMAN FESMIRE: Okay. My reason for voting  
20 for this rule as amended is that I think the ability of the  
21 OCD to enforce its rules and regulations without such a  
22 rule were pretty much compromised in that while operators  
23 could be caught in violations and punished to a certain  
24 extent, there was nothing in there that kept them from  
25 coming back and committing the same violations or new

1 violations while essentially thumbing their nose at OCD  
2 Rules and Regulations.

3 If our rules and regulations are going to be  
4 enforceable, this concept as embodied in Rule 40 -- the new  
5 proposed Rule 40, the old proposed Rule 37 -- is necessary  
6 to allow us to enforce the rules and regulations and,  
7 again, to protect correlative rights, prevent waste and  
8 protect human health and the environment, especially  
9 protect human health and the environment.

10 COMMISSIONER BAILEY: I think this rule as  
11 amended is now fair and reasonable and can be consistently  
12 applied.

13 COMMISSIONER OLSON: And I'd like to add that I  
14 think the Division put forward a good case that they need  
15 additional mechanisms to achieve compliance with Division  
16 rules, besides just issuing a financial penalty.

17 MS. BADA: Okay.

18 CHAIRMAN FESMIRE: 102?

19 MS. BADA: And with regard to 102, I think the  
20 only change we made there was the -- you know, to change it  
21 from good standing to compliance. But if you just -- one  
22 of you could speak briefly about adding standards for  
23 reviewing permissive actions, it would be helpful.

24 CHAIRMAN FESMIRE: Well, one of the complaints  
25 that the regulated community has against the OCC and the

1     OCD is that sometimes we have difficulty being consistent  
2     in our enforcement.

3             I think one of the major changes -- the major  
4     change brought about by this rule will help provide the  
5     standards that we need to be consistent and to provide a  
6     benchmark from district to district and over the entire  
7     state for compliance actions and the penalties that will be  
8     meted out under those compliance actions.

9             MS. BADA: Okay, does anyone --

10            COMMISSIONER BAILEY: Operators need to have the  
11     same standards applied, no matter where they locate their  
12     wells in New Mexico.

13            MS. BADA: Do you have anything, Bill?

14            COMMISSIONER OLSON: I don't have anything to add  
15     to that.

16            MS. BADA: Okay, does anybody have any thoughts  
17     on 701 and your changes there to B(2) and C(1)?

18            COMMISSIONER OLSON: You skipped 1101 or --

19            CHAIRMAN FESMIRE: Did you mean to skip 1101,  
20     counsel?

21            MS. BADA: I don't know that we made any changes  
22     to 1101, so I'm assuming you're fairly comfortable with  
23     those.

24            CHAIRMAN FESMIRE: Again, the injection of fluid  
25     either as a pressure maintenance operation or in a disposal

1 operation is an integral part of producing oil and gas in  
2 New Mexico.

3 The ability to effectively regulate that  
4 injection is an imperative that the Oil Conservation  
5 Division and Oil Conservation Commission has to address.  
6 This Rule 701 allows us to basically regulate that in  
7 conjunction with the federal regulations and in compliance  
8 with the federal regulations, and I believe that this is a  
9 required change for the OCD to make at this time.

10 COMMISSIONER OLSON: I might add that the changes  
11 that we placed in this section were supported by the  
12 testimony provided by the Division, were not opposed.

13 COMMISSIONER BAILEY: And I think the geology and  
14 harsh conditions in many well sites requires this type of  
15 testing, particularly on older wellbores.

16 MS. BADA: Did anyone want to comment on 101.A  
17 and the decision to leave in the reference to privately  
18 owned or state owned lands?

19 CHAIRMAN FESMIRE: On 101?

20 MS. BADA: Yeah, that's the bonds.

21 CHAIRMAN FESMIRE: Yes. Since this rule was  
22 drafted, there have been some changes in the federal  
23 legislative scheme that it appears, and the testimony seems  
24 to support, that the federal government will be able to  
25 collect and adequately plug the wells on federal lands.

1           And at this time, at least for the time being,  
2   until we see how that program comes out, the need that this  
3   rule was written to address is at least held in abeyance  
4   for the time because, again, the federal government has  
5   proposed -- or has essentially mandated under the new  
6   Energy Act that they begin plugging their own wells on  
7   federal lands, and they will be doing that in addition to  
8   the plugging going on by the State of New Mexico and the  
9   use of the oil and gas reclamation fund on federal lands.

10           Therefore at this time it does not appear that  
11   some of the changes that we had originally intended to make  
12   in this rule are necessary. Others still are, but the  
13   bonding on federal land appears to be a problem that the  
14   federal government has addressed.

15           COMMISSIONER BAILEY: Nothing to add.

16           MS. BADA: Okay.

17           COMMISSIONER OLSON: I'd like to add too, just --  
18   I'd added in a number of places some additional language  
19   for -- just clarifying that the site is restored and  
20   remediated and -- that the well site itself is restored and  
21   remediated. I'd just like to clarify this because I  
22   believe that's an integral part of the plugging and  
23   abandonment of the site.

24           MS. BADA: Anybody have any comments on 203? And  
25   I'll let you go. And that's the integrity testing.



1           CHAIRMAN FESMIRE: Yes, the -- one of the most  
2 important parts of protecting New Mexico's water resources  
3 is to make sure there is no flow between different geologic  
4 strata. The proper temporary abandonment of wells,  
5 especially wells that have had a relatively long life, is  
6 perhaps the most important part of preventing that flow.

7           The changes that we've made in Rule 203, I  
8 believe, will very adequately prevent that sort of wellbore  
9 deterioration and failure that will result in future  
10 contamination.

11           The wellbores that are in essence turned off in  
12 this state are temporarily abandoned, and the operator --  
13 especially in this time when it's very difficult to get  
14 ahold of rigs, as some of the testimony provided, and it's  
15 difficult for the operator to pay attention to these wells,  
16 it's time for the State to, in essence, make sure that that  
17 is one of the operator's priorities, and this rule will do  
18 that, I believe.

19           COMMISSIONER BAILEY: I think the consistency  
20 shown between the EPA regulations and State regulations is  
21 a very important aspect of this rule.

22           Could I make one more comment on Rule 701?

23           Although we have amended this rule, I bring up  
24 the fact that I would like to see this rule brought for  
25 amendment again at some point in the near future to address

1 the injection of drilling wastes into salt caverns as an  
2 issue connected with this rule.

3 MS. BADA: Okay, and I have one more question,  
4 because I'm not sure that we adequately explained it.

5 COMMISSIONER OLSON: I might add to the rationale  
6 for Rule 203 that these requirements are necessary to  
7 protect fresh waters in New Mexico.

8 MS. BADA: Okay, and the last thing I want to ask  
9 you is, in the rule -- what will now be Rule 40, your  
10 thought -- why you chose to increase the number of wells  
11 for some categories, for operators that have a larger  
12 number of wells, and chose not to do a percentage. So if  
13 you could just explain that.

14 CHAIRMAN FESMIRE: I think the operators made an  
15 adequate showing that perhaps the threshold we set was a  
16 little low for the larger operators. But I think it has  
17 been adequately demonstrated by two of the -- if not the  
18 biggest, the most important operators in New Mexico,  
19 specifically Burlington and Marbob, that the thresholds  
20 that we were seeking were fully achievable and that they  
21 were not an onerous burden on industry, and that when a  
22 company engaged in the good practices that we're  
23 essentially mandating with these rules, that they actually  
24 made money at it.

25 Again, I think that they showed that the

1 thresholds that we were initially proposing were perhaps a  
2 little low. They did not make a case to show that a  
3 percentage of the wells was a better option. I think they  
4 did show that a good operator can maintain compliance, and  
5 that's what this is, is simply compliance.

6 Any hurdle or threshold in the number of wells  
7 that we're -- enact here, is in essence more of a cushion  
8 on the rules of compliance, and I think the numbers that we  
9 proposed in there and the step structure that we proposed  
10 were fully adequate to address the concerns that the  
11 operators raised.

12 MS. BADA: What concern would you have about  
13 using a percentage rather than an actual number?

14 CHAIRMAN FESMIRE: As Mr. Gantner, the witness  
15 for NMOGA/Burlington, testified, when he started talking  
16 about talking about what would be, in his idea, a  
17 reasonable number, he mentioned 30 to 40 out of 6000. That  
18 is certainly a very small percentage when you talk about  
19 Burlington's total number of wells.

20 And he also testified that they have zero wells  
21 out of compliance now. That is a very good record.  
22 Occasionally something's going to fall through the cracks.  
23 But certainly the number that falls through the cracks is  
24 not going to be a representative percentage of the total  
25 numbers of the wells.

1           The number that the Oil and Gas Association  
2 proposed, five percent, in the case of Burlington, would be  
3 300 -- 300-plus wells. They have demonstrated that they  
4 can keep that down to essentially zero and that they can  
5 maintain that rate over a significant period of time, that  
6 they can maintain that target over a significant period of  
7 time.

8           It shows that the numbers that we have applied  
9 are fully reasonable, it shows that the number of wells out  
10 of compliance is not going to be a function of the number  
11 of wells you have in the field, it's going to be a function  
12 of how much attention and resources you pay to staying in  
13 compliance, and the idea behind these rules is to achieve  
14 compliance.

15           MS. BADA: Would you have any concerns, even if  
16 you used a fraction of a percent in trying to calculate  
17 that number and -- field offices and knowing --

18           CHAIRMAN FESMIRE: Yes.

19           MS. BADA: -- exactly the number of wells that --

20           CHAIRMAN FESMIRE: I think the testimony showed  
21 that we would get into, you know, the definition of total  
22 wells, how many total wells are available for the  
23 calculation.

24           While we -- there may be a slight argument now  
25 with the step structure we have, I don't think it will be

1 hard to maintain, because the only time that you're going  
2 to have an argument is when the operators are on the cusp  
3 of the step, and that is a significantly smaller burden on  
4 both the operators and the OCD than having to argue about  
5 the accuracy of the number and applying a percentage to it.

6 MS. BADA: Do you have anything, Jami?

7 COMMISSIONER BAILEY: Nothing to add.

8 MS. BADA: Okay, Bill?

9 COMMISSIONER OLSON: I have nothing to add to  
10 that.

11 MS. BADA: Okay, I have no more questions to prod  
12 you with.

13 CHAIRMAN FESMIRE: Counsel will prepare proposed  
14 rules and the proposed amendment and circulate it to the  
15 Commissioners prior -- hopefully significantly prior to the  
16 next meeting --

17 COMMISSIONER OLSON: Please.

18 CHAIRMAN FESMIRE: -- at which time we will --

19 MS. BADA: I will attempt to do this quickly so  
20 that I don't forget what you've done.

21 CHAIRMAN FESMIRE: Is there any other business  
22 before the Commission today?

23 COMMISSIONER BAILEY: No, and I move we adjourn.

24 CHAIRMAN FESMIRE: All those in favor?

25 COMMISSIONER BAILEY: Aye.

1 COMMISSIONER OLSON: Aye.

2 CHAIRMAN FESMIRE: The motion carries. The  
3 Commission is adjourned at 9:25 Monday, October 17th.

4 (Thereupon, these proceedings were concluded at  
5 9:25 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 October 27th, 2005.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006