

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 II - October 14th, 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.

\* \* \*

STEVEN T. BRENNER, CCR  
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\* \* \*

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\* \* \*

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MARBOB ENERGY COMPANY; YATES PETROLEUM CORPORATION;  
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## ALSO PRESENT:

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DEBBIE BEAVER  
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## ALSO PRESENT (Continued):

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Attorney at Law

YOLANDA PEREZ  
ConocoPhillips

(Continued...)

## ALSO PRESENT (Continued):

CHARLIE T. PERRIN  
District Supervisor  
Aztec District Office (District 3)  
NMOCD

WAYNE PRICE  
Environmental Bureau, NMOCD

JOSÉ DANIEL SANCHEZ  
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DEBORAH D. SELIGMAN  
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DENNIS R. STENGER  
Deputy State Director, Minerals and Lands  
BLM

\* \* \*

1 WHEREUPON, the following proceedings were had at  
2 8:35 a.m.:  
3  
4  
5

6 CHAIRMAN FESMIRE: At this time the Commission  
7 will proceed to the continuation of Cause Number 13,564,  
8 the official title of which is the amended Application of  
9 the New Mexico Oil Conservation Division through the  
10 Enforcement and Compliance Manager for the adoption of new  
11 rules 19.15.1.37 NMAC; 19.15.1.38 NMAC; 19.15.3.100 NMAC;  
12 and 19.15.14.1227 NMAC; and the amendment of 19.15.1.7  
13 NMAC; 19.15.3.101 NMAC; 19.15.3.102 NMAC; 19.15.4.201 NMAC;  
14 19.15.4.203 NMAC; 19.15.4.1101 NMAC; 19.15.9.701 NMAC;  
15 19.15.13.1103 NMAC; 19.15.13.1104 NMAC; and 19.15.13.1115  
16 NMAC.

17 And I believe, Ms. MacQuesten, you were in the  
18 middle of direct examination of the witness; is that  
19 correct?

20 MS. MacQUESTEN: That's right.

21 CHAIRMAN FESMIRE: Would you like to begin again  
22 this morning with an interesting exhibit?

23 MS. MacQUESTEN: Actually, I want to go back to  
24 one of the old, boring exhibits.

25 CHAIRMAN FESMIRE: Okay.

1                    JANE E. PROUTY (Continued),  
2     the witness herein, having been previously duly sworn upon  
3     her oath, was examined and testified as follows:

4                    DIRECT EXAMINATION (Resumed)

5     BY MS. MacQUESTEN:

6            Q.     Ms. Prouty, when we left off yesterday, you were  
7     giving us a demonstration of the OCD's inactive well list,  
8     and that's Exhibit 26 in the exhibit book.

9                    Before we move on to the next exhibit I wanted to  
10    ask you, Exhibit 26, which is a paper copy of our website  
11    showing inactive wells -- is the -- does the inactive well  
12    list anywhere indicate by name -- does it ever label an  
13    operator or a well out of compliance? Does it ever use the  
14    words "out of compliance"?

15           A.     No.

16           Q.     Does it ever use the words "out of good  
17    standing"?

18           A.     No.

19           Q.     Does it ever use the words "bad actor"?

20           A.     No.

21           Q.     It is simply a list of inactive wells --

22           A.     Yes.

23           Q.     -- that can be searched by months, and if you  
24    know that a well should not be inactive for more than 15  
25    months, you will know that if it appears as inactive for

1 more than 15 months it's out of compliance with the rules?

2 A. Yes.

3 Q. But other than that, there is no indication of  
4 the well being out of compliance or operator being out of  
5 good standing?

6 A. No.

7 Q. Does the proposed rule require us to post a list  
8 of operators out of good standing?

9 A. No.

10 Q. Does it require us to label an actor -- an entity  
11 as a bad actor?

12 A. No.

13 Q. Are you aware of any plans to post such a list?

14 A. No.

15 Q. Now if you could turn to what's been marked as  
16 Exhibit 27, can you tell us what this is?

17 A. I pulled this, I believe, October 3rd, to  
18 summarize the current number of wells every operator had,  
19 the number of inactive wells at that time showing up on the  
20 list, the percentage, and then I indicated whether in the  
21 proposed rule they would be in good standing or not. It  
22 was meant to be a tool for all of us to take a look at --  
23 to assess the impact of the proposed rule and alternatives.

24 Q. Did you prepare this with an intent to post it on  
25 the Web?

1 A. No.

2 Q. This was to help us understand, for purposes of  
3 this hearing, how the proposed rule would affect an  
4 operator's good standing and how alternatives based on a  
5 percentage might affect an operator's good standing?

6 A. Right.

7 Q. I'd like to go through the columns so that I  
8 understand what appears on this list. Do all operators in  
9 New Mexico appear on this list?

10 A. All operators who currently show up on the well  
11 list.

12 Q. How do you appear on the well list?

13 A. You appear on the well list if you have a well  
14 that is not a canceled APD and not a plugged well. All  
15 other wells appear on the well list.

16 Q. The next column is number of wells. How did you  
17 determine the number of wells for each operator?

18 A. That matches the number of wells that appeared on  
19 the well list on October 3rd, I think, was the day I  
20 prepared this, the number of wells for each operator.

21 Q. And by "wells", does that mean -- if a well is  
22 properly plugged and abandoned, would it appear in that  
23 number?

24 A. No, and also I should not have used the phrase  
25 "number of wells", also. Even if it's just an APD approved

1 yesterday, it's on this list because it prints on the well  
2 list. So what -- we had just determined that the easiest  
3 way for everyone to identify what a well is, is to work  
4 from the definition of the well list so that everyone could  
5 go to the Web and say, Oh, I forgot to cancel that APD, or  
6 oh, this APD I have approved isn't on there yet, it should  
7 be. So we matched exactly the number that were appearing  
8 on the well list that day.

9 Q. And the number of wells an operator has is  
10 important if we choose to define good standing in terms of  
11 having over or under a certain number of wells or a  
12 percentage of wells, we need to know the total?

13 A. Yes.

14 Q. If we just picked a flat number, we wouldn't care  
15 how many wells an operator had?

16 A. Right.

17 Q. The next column shows inactive wells. Did you  
18 use the same criteria for inactive in this column as you  
19 did for the inactive well list?

20 A. Right, yes. It came directly from transferring  
21 that well list into Excel.

22 Q. The next column is percent. What does that show  
23 us?

24 A. All I did was divide the number of wells by -- I  
25 should say the reverse. I divided the inactive wells by

1 the number of wells and came out with a percent inactive.

2 Q. And that is for use in discussing proposals based  
3 on some percentage of wells that are inactive?

4 A. Yes.

5 Q. What is the final column, "not in good standing"?

6 A. That I calculated so that we would have an  
7 indication based on the proposed rule, if they had more --  
8 less than or more than 100 wells, and based on the number  
9 of inactive wells they had, whether they would be in good  
10 standing or not.

11 Q. How many operators would be out of good standing  
12 if we adopted the rule as proposed?

13 A. I had a total -- 158.

14 Q. What percentage of wells are currently out of  
15 compliance with the inactive well rule?

16 A. I have a note here, I believe I calculated five  
17 percent. The total number of wells is 56,998 on this  
18 report. The total number of inactive wells on this report  
19 is 2931. So if I calculated -- if my note is that  
20 calculation, then it was five percent.

21 Q. A proposal has been made that we define out of  
22 good standing as an operator who has more than five wells  
23 out of compliance or more than five percent of his wells  
24 out of compliance. How would that impact the current  
25 number of wells out of compliance?

1           A.    I'm afraid I couldn't quite understand the  
2   proposal, because I didn't know if -- I need to have the  
3   proposal reiterated, perhaps using these examples, because  
4   if you had an operator -- I think the way it was presented  
5   was, either five wells or five percent, whichever is  
6   greater. And if you were to take -- let me see, an  
7   operator who -- Here we go.

8                    If you took Amerada Hess, they have seven wells  
9   inactive, which represents the 1.31 percent. I wasn't sure  
10  if the proposal was if they met either criteria to count  
11  them as not in good standing or whether they met both  
12  criteria. So I just need to have that restated.

13                   So I do have a spreadsheet here that we could --  
14  if it is restated, we can do some calculations it if we  
15  need to, but I wasn't sure what we were being asked.

16           Q.    Okay. Let me try to rephrase it as I understand  
17  it, and Mr. Carr and other commentators may have a different  
18  understanding, but if the proposal is -- It might be easier  
19  to phrase it this way: If an operator has 100 wells or  
20  less, they can have five wells out of compliance. If they  
21  have more than 100 wells, they can have no more than five  
22  percent out of compliance.

23           A.    Okay.

24           Q.    If we adopted something like that, is that  
25  something you could program into the computer to figure out

1     which operators were in compliance or not?

2             A.     Yes.

3             Q.     Okay.  If we are currently at five percent out of  
4     compliance and we adopt a standard that allows five percent  
5     out of compliance, we don't get very far, do we?

6             A.     I think it would be worse than that.  I think it  
7     would grow, because allowing five percent for the larger  
8     operators, when many don't have five percent now, could  
9     allow it to grow.

10            Q.     So many operators are meeting a stricter standard  
11    now than a five-percent standard?

12            A.     Yes.

13            Q.     Let me ask you how the good-standing requirement  
14    would be applied in practice.  Let us say an operator has  
15    more than the number of wells permitted under the  
16    definition for good standing, whatever it is, so he is out  
17    of good standing.  You told me before, nothing appears on  
18    the website indicating the operator is out of good  
19    standing.

20                    Let's say that operator goes to our website to  
21    try to obtain an APD.  Could you walk me through what would  
22    happen to that operator?

23            A.     Yes.  I don't know if you're familiar with our  
24    electronic permitting application for APDs right now, but  
25    it gives what we call warnings.  If you try to -- if you

1 indicate the location of a well is in a spot that a well  
2 already exists in, you're allowed to enter that. And then  
3 when you look at the warnings page, it tells you there's  
4 another well in that location. Do you want to maybe  
5 readjust your own location or whatever?

6 Now in that case, having it in the exact same  
7 footages would be what we call a fatal error where they  
8 couldn't submit the permit.

9 Other errors such as, you know you've entered a  
10 casing string where the -- you're using production fluid  
11 or, you know, a drilling fluid that isn't allowed at the  
12 surface, those things are nonfatal errors. It lets the  
13 person submitting the form know -- It looks like  
14 something's wrong, but we'll let it go through and let the  
15 operator see it as a nonfatal error and let OCD see it as a  
16 nonfatal error, and both of them can make that decision and  
17 move forward, whether that impacts whether the permit is  
18 approved or some questions are asked.

19 That philosophy would probably be the same that  
20 we would use with an operator who is not in good standing.  
21 If they go to enter an APD, they would be allowed to enter  
22 it, and then from any point you can go to the warnings  
23 page. You don't have to enter the whole thing and look at  
24 warnings; you can look at warnings the minute you sign on.  
25 And they could -- we would propose that probably the

1 application would show them a nonfatal warning that says,  
2 it appears that you're not in good standing due to either  
3 inactive wells, a penalty, whichever item would make them  
4 out of good standing.

5 And then let them go ahead and fill out the  
6 permit, let them submit the permit. They probably would  
7 choose to put some comments in about, I plan to enter an  
8 ACO tomorrow, and that will put us in good standing, or  
9 whatever.

10 Then it would come to OCD after it was submitted.  
11 OCD would see the comments that the operator submitted,  
12 plus see the same nonfatal warning and make a decision  
13 whether to approve that APD or not, based on what they saw.

14 The APDs are approved in the district, and  
15 possibly they would discuss any potential denial related to  
16 not in good standing with the Compliance and Enforcement  
17 Officer in Santa Fe. They might check the data. If the  
18 comment said this is incorrect or whatever, they might  
19 check into whatever made it incorrect and fix that and then  
20 immediately see if it took off that warning.

21 Let's say if we said that there was a penalty due  
22 that hadn't been paid and we immediately processed that and  
23 got it straightened out, the warning would disappear. So  
24 then they would move forward.

25 So with all that information, the APD would

1 either be accepted or rejected, based on whatever  
2 information. And if we rejected it, we would put comments  
3 in about why we rejected it.

4 Q. And we saw yesterday as we went through the rules  
5 that denial of an APD based on lack of good standing is  
6 discretionary, not mandatory; that's right?

7 A. Right, that's why it would be a nonfatal error.

8 Q. So even if an operator was out of good standing,  
9 it would be possible for the OCD to decide to grant an APD,  
10 notwithstanding the fact that the operator is out of good  
11 standing?

12 A. Right.

13 Q. If the OCD denied the APD based on lack of good  
14 standing, what would happen then? Or indicated it was  
15 planning on doing it, I should say?

16 A. Yes. If they returned it -- an operator can  
17 resubmit anything that's been returned with more  
18 information or at a later time or whatever.

19 I should have said, another alternative is that  
20 OCD could accept the permit and put on it a condition of  
21 approval saying, before the C-104 is approved, this or that  
22 should take place. I should have mentioned that. But the  
23 electronic ones have standard conditions of approval plus  
24 *ad hoc* conditions of approval.

25 Q. And by the C-104, you mean the allowable?

1 A. Yes.

2 Q. And that's another stage at which good standing  
3 comes into play under the rule?

4 A. Yes.

5 Q. You mentioned that there could be other lists.  
6 We've only looked at the list of inactive wells that could  
7 affect good standing, but there are other issues that could  
8 affect good standing as well. Do we have such lists right  
9 now for penalties for not being in compliance with an order  
10 requiring corrective action, for not having the correct  
11 bonding in place? Do we have such lists now?

12 A. No.

13 Q. Is the OCD planning on creating such lists if  
14 this rule goes forward?

15 A. Yes.

16 Q. How would you propose -- I'm assuming that a list  
17 of penalties would be fairly straightforward because it's  
18 based on orders, and similarly an order finding an operator  
19 out of compliance with an order, again, is fairly  
20 straightforward.

21 But how do you plan to handle financial  
22 assurances and the bonding issues, particularly if the OCD  
23 adopts the bonding proposed rules requiring federal  
24 bonding, requiring bonding on inactive wells, et cetera?  
25 How do you keep track of that to help operators understand

1 whether they are in danger of losing good standing?

2 A. Okay, currently all -- Well, would you like me to  
3 address both before and after January, 2008, or start with  
4 currently?

5 Q. Either -- whatever you think would be  
6 appropriate.

7 A. Okay. Before January, 2008, it only affects  
8 wells drilled and wells acquired. So currently on the  
9 operator change application, if the specifications in the  
10 LeMay memo are met, such as more than 10 wells are  
11 transferring, automatically it goes in and calculates  
12 whether any additional bonding is due. And I would assume  
13 most people are familiar with that screen in the audience.  
14 I don't know, I could show you if you'd like.

15 Q. That's the current practice?

16 A. Yes, the current practice. So people are  
17 accustomed -- as they select wells for operator change,  
18 they're accustomed to seeing an additional bonding column  
19 appear on the far right side. And it appears on the  
20 printouts if they want to print this. Usually they want to  
21 look at the list and say, Well, maybe I don't want this  
22 well due to this, or maybe I do. And this is what the bond  
23 -- the amount needs to be, et cetera. So that is  
24 automatically generated.

25 And it would be very similar to that, that it

1 would automatically be generated for people doing an  
2 operator change. We would take out the coding we have now  
3 for the LeMay memo and replace it with the coding to meet  
4 the proposed rule.

5 So I think people would be quite familiar with  
6 that prospect. That captures the list of the wells that --  
7 Let's say the well last produced in 1986 or something,  
8 where we had already passed two years.

9 Then there's another family of wells that haven't  
10 passed the two years now. Maybe they last produced in July  
11 of 2004, and they're not due for additional bonding at this  
12 moment, but they will be due sooner than January, 2008.  
13 Those -- I was proposing a list, and I made -- I wonder  
14 what I called it. I made a spreadsheet -- To give an  
15 example that I don't think you'll be able to see too well,  
16 but let's see, maybe it -- oh, great, we don't want to --  
17 Here we go, okay.

18 I know you can barely read this, plus it  
19 truncates. This is just an example of what we might have.  
20 All I did was take a current well list off our website for  
21 Aspen Oil, and I made up some dates, so don't -- none of  
22 this actually applies to Aspen Oil. But the spreadsheet is  
23 the format we're familiar with as far as listing the well  
24 name, the location, the type of land, et cetera.

25 And over here on the right, what I did was, I

1 highlighted the wells that, let's say, a potential operator  
2 is interested in acquiring. So let's say Aspen Oil has all  
3 the wells you see on the screen, but the top yellow ones  
4 are ones that another operator is interested in acquiring.

5 The bottom wells show -- This column here called  
6 single-well bond required, everything is set to January,  
7 2008, until another operator comes along and decides to  
8 acquire them.

9 Then the next column that says bond required if  
10 there were to be an operator change, 12-2005, just making  
11 it up as if December, someone came along, the wells that  
12 have an asterisk would immediately show up in the operator  
13 change application as being wells needing additional  
14 bonding right away. Because the last production on those  
15 wells -- this one is January 2003, this one is April of  
16 1964, et cetera. So those have definitely passed the two  
17 years.

18 For the other wells, what I printed here and what  
19 we would print on the well list that the operator saw as  
20 they went to acquire the wells is when the bonding will be  
21 due if these wells are acquired right now.

22 So it wouldn't look like this, it would look  
23 better. But just to show you how people can plan on what  
24 obligations they might be inheriting, this would be a  
25 sample of how it would look.

1           Q.    If I were acquiring these wells, I'd know right  
2 away that some of them needed additional bonding right  
3 away. But would this help me understand what I might be  
4 facing in the next few months --

5           A.    Yes --

6           Q.    -- as wells fall out of com- --

7           A.    -- because for example, you notice originally  
8 every well was not due for a bond -- and I know you can't  
9 read this, at least I can't, up there. Every well -- if  
10 nothing happened, no well would be due for additional  
11 bonding until January, 2008. However, if the operator  
12 change happened, many of these wells would be due in July  
13 of 2007, some of the wells would be due -- here's one due  
14 in June 2006, September 2006, February 2006. So yes, it  
15 would tell them any wells based on last production.

16                Now, this -- All the ones that currently say  
17 July, 2007, really probably won't be due in July, 2007,  
18 because those are -- the operator has reported -- if you  
19 look at the last month of production/injection it is July  
20 of 2005. So this is a currently reported well. Next month  
21 most likely that will say August, 2005. So that will be a  
22 rolling thing. But as far as in a worst-case scenario, if  
23 all of the wells being acquired never produced again,  
24 that's when the bond would be due.

25                And then we're proposing publishing this next --

1 this additional bonding due date on the Web, maybe with the  
2 well list, maybe not, because the well list already is  
3 pretty cramped in size, but having every well available for  
4 every person, whether they entered into an operator-change  
5 transaction or not, always posting a full list of what --  
6 if no further production came in after today, what day  
7 would additional bonding be due?

8 Q. How do you deal with federal wells? If we change  
9 the rule to require bonding on federal wells, is there any  
10 way to alert operators?

11 A. Currently, as you can see from the lease type --  
12 whoops -- yeah, here we go -- some are state and some are  
13 federal. They're already -- they'd be subject to the  
14 calculation for the additional bonding. If that were  
15 changed, they'd be taken out of the calculation.

16 So I was proposing listing it for all wells, but  
17 it could be changed if necessary.

18 Q. Well, when you say subject to additional bonding,  
19 are you thinking of the single-well bonds?

20 A. That's -- I used the wrong word, yeah.

21 Q. Okay.

22 A. Thank you.

23 Q. Well, how do you deal with -- if we require bonds  
24 on federal wells that, say, an operator has a blanket bond  
25 that covers his state and fee lands, but he also has

1 federal wells, currently are not covered by that bond, how  
2 -- if we adopt a rule that says all wells need bonding, how  
3 can we alert operators to that?

4 A. We could very easily, programmatically, put a  
5 message on there, on the warnings area, whether they've  
6 satisfied that or not. Our bonding administrator is one of  
7 the approvers of operator changes. So on that activity,  
8 the bond -- a warning could exist, plus the bond  
9 administrator would validate that we've received the  
10 bonding.

11 On APDs, there already is a warning if the  
12 operator doesn't have either a single-well bond or a  
13 blanket bond, and the operator would see the warning. We  
14 also make that nonfatal, because it could have -- the bond  
15 could have come in but not been registered yet in our  
16 system.

17 As part of this rule, the bonding function will  
18 be tremendously enhanced anyway to track these -- the  
19 receipt of them.

20 Q. Okay. Now, you mentioned the magic date of  
21 January, 2008. That's when the full effect of the rule  
22 would come into play. What you've talked about right now  
23 is only how the rule would affect people up until that  
24 date. In other words, it only impacts people who are  
25 acquiring new wells or drilling new wells?

1           A.    Right.

2           Q.    Those new wells would come under the rule.  But  
3   January 1st, 2008, all wells would come under the rule.  
4   How -- At that time, how will operators know what their  
5   bonding requirements are?

6           A.    The same method.  If we would have a list of  
7   every well and when bonding by well for inactive wells  
8   would be due, then that would be automatically available on  
9   the web, just like the inactive well list.  And it may be  
10   feasible to combine them or not, combine it with a well  
11   list or not.  Whatever is most readable to people is how  
12   we'll implement it.  That will cover the single well bonds  
13   for inactive wells.

14                  For the other wells where -- for the few  
15   operators who only had federal wells and therefore did not  
16   currently have a blanket bond, that also could either be  
17   made available on a list, or we could notify those  
18   operators it wasn't that many and let them know whatever  
19   would work.

20                  And then it would all be folded in.  If a new  
21   operator came along and wanted a new APD and wasn't covered  
22   by a bond, all the same procedures we have in place today  
23   would be covered.  We would make sure that the text in the  
24   bond covered federal as well as single wells -- as well as  
25   state and fee wells.

1 Q. I'd like to turn to Rule 1115, the operator's  
2 monthly report. Is it possible to switch to the PowerPoint  
3 slides?

4 A. Sure, our -- Yeah. Possible to me...

5 CHAIRMAN FESMIRE: Did you need to reset the  
6 projector?

7 THE WITNESS: I didn't yesterday when I flipped  
8 over to mine. Maybe it's -- On mine it's FM F8, but I  
9 don't know -- It may be a different key on this one. Is Ed  
10 here today? Have you seen him? I don't -- on this PC I'm  
11 not sure if it's a different -- I also might -- Some PCs  
12 have different control things.

13 MS. PEREZ: Let's see if I can help. Sometimes  
14 they have a color-coded --

15 THE WITNESS: You're right, I was using FM F8.

16 MS. PEREZ: Did you do this one?

17 THE WITNESS: No, I didn't do 7. I don't know  
18 what this display thing is, I'm not sure what the symbols  
19 are. That's actually a good sign, if it blanks out,  
20 because they it may appear -- Now, do you recall what you  
21 had?

22 (Laughter)

23 MS. PEREZ: The function moon.

24 THE WITNESS: Function moon, okay.

25 MS. PEREZ: It looks like a half moon or whatever

1 to me.

2 THE WITNESS: Thank you, Yolanda.

3 Okay, so now we did manage to lock the PC, Gail,  
4 if you could sign on again. Great, now we want to move  
5 to -- Okay, there we go. Thank you, everyone.

6 CHAIRMAN FESMIRE: When Jane's nervous she talks  
7 continually.

8 (Laughter)

9 THE WITNESS: Well Jane must always be nervous  
10 then, right? Yeah, there we go.

11 Q. (By Ms. MacQuesten) Jane, when you were telling  
12 us yesterday your job duties, I believe you mentioned that  
13 your duties include working with the monthly reports?

14 A. Yes.

15 Q. Did you request the changes that we're proposing  
16 to this rule?

17 A. Yes, my team and I did, yes.

18 Q. All right. This slide, I attempted to summarize  
19 the significant changes that you were requesting. Let's go  
20 through those changes one by one.

21 In paragraph A of the rule -- let me make sure  
22 you have a copy of it --

23 A. I do, yes.

24 Q. -- you changed some of the language. Instead of  
25 saying that an operator should report on each producing

1 lease, it is now proposed to change to each nonplugged well  
2 completion. Why did you want that change?

3 A. Because it matches the C-115 form to make it more  
4 clear. It's always been reported this way, and all it does  
5 is change the rule to match what the form asks for. The  
6 disposition is reported at the -- at the -- let's see,  
7 producing lease level, but the production is reported at  
8 the completion level. So it was just to make it more  
9 clear.

10 Q. In paragraph B, that paragraph currently  
11 describes electronic filing requirements. You're proposing  
12 to eliminate a lot of the language in that rule and now  
13 require electronic filing. Why make that change?

14 A. We currently have about 600 operators reporting  
15 C-115s, and I didn't count, because we don't have a real  
16 easy way to, but I'm going -- my understanding is,  
17 approximately 200 of those are currently filing on paper,  
18 and the remainder are filing electronically.

19 Many of the ones who file electronically have one  
20 well, two wells, 10 wells, whatever, so it is a very  
21 popular way to file. If they file electronically, they  
22 immediately see anything wrong with the C-115 and they can  
23 fix it and submit it immediately, whereas if they file it  
24 on paper they have to mail it in to us, wait for us to key  
25 it, which is generally the same day that we receive it, but

1 there's the mailing time lag, and then we get the errors  
2 ourselves on the screen, and then we contact the operator.  
3 So anyone who is aware of the option of electronic filing  
4 has chosen to go to it.

5 Of the people who file on paper, about three-  
6 quarters of those people are using our C-115 spreadsheet.  
7 May I show it as an examp- -- Oh, well.

8 (Laughter)

9 CHAIRMAN FESMIRE: Wrong computer, right?

10 THE WITNESS: We're going back here -- Okay, well  
11 -- Gosh. We'll just remember the moon and -- See, he's  
12 going to miss the game in Artesia tonight because of me  
13 jacking around with the cord.

14 CHAIRMAN FESMIRE: I'll bet he don't.

15 (Laughter)

16 THE WITNESS: Okay, let me open up Excel and show  
17 you a C-115. Okay, this is a C-115 form. The highlighting  
18 was actually as it came to me, nothing I tried to  
19 highlight.

20 We provide the operators an Excel spreadsheet,  
21 and the people at PRRC also help us by distributing this.  
22 This written about ten years ago by my predecessor. We  
23 provide them an Excel spreadsheet, and anyone who asks us  
24 for this spreadsheet, we give it to them filled in because  
25 it's what we use to key the data ourselves.

1           If someone handwrites a C-115, we create one of  
2 these and use it every month and submit the C-115 using  
3 this, so we already have one generated, and anytime anyone  
4 asks us for one we give it to them.

5           Well, what we found was, from going through the  
6 C-115s that we receive on paper, three-quarters or more of  
7 these come to us on this spreadsheet that we distribute.  
8 That tells us that the people have a computer, and they are  
9 filling it out every month on that.

10          So if they would -- it would save the State a lot  
11 of time if we didn't have to key any of these, and since  
12 the operators already are doing it electronically and then  
13 printing it and mailing it and we're turning around and re-  
14 keying it, it won't be difficult for them to send it to us.

15          Their options are to -- if they have the  
16 Internet, to -- very -- What it does, you use this thing  
17 called tools and C-115 electronic report, and it  
18 automatically -- you just say okay; in this case I already  
19 had created a file -- and you're done. That has created  
20 the file that you would send to the OCD. So they get a  
21 package on how to do this.

22          Then they would sign on to the Web and attach  
23 this file and immediately see what errors they have. So a  
24 lot of them have the Internet and just aren't familiar with  
25 this option. Or, if they don't have the Internet, they can

1 take their file to -- the OCD has public terminals, all the  
2 libraries have public terminals, there are many companies  
3 -- I can think of about 20 -- that do C-115s for other  
4 operators who may have one or zero wells -- excuse me, one  
5 or 20 wells. Some people have higher services to do those.  
6 So there are a lot of options on doing the C-115  
7 electronically.

8 So we think a lot of people will want to do it,  
9 because the advantage is, they see any problem right away.  
10 It's been very popular with all the operators who do use  
11 it. So those -- I said about three-quarters come in our  
12 own spreadsheet, so we know they have computers.

13 The kind that don't are what we call the shaky-  
14 hand C-115s where someone has -- you know, every month they  
15 copy the C-115, and then they white out the prior month's  
16 entries and they enter the new ones. Those are just on  
17 paper. So we put in the provision that if it's an economic  
18 hardship for anyone to do the C-115 electronically, that we  
19 would be very happy to entertain an exception. And I don't  
20 know what the criteria would be for the exception because  
21 personally I don't know the cost of hiring another company,  
22 hiring you nephew or whatever, you know, to turn in the  
23 C-115 for you if you just have a couple of wells. The  
24 shaky-hand ones, they tend to only have 10 or fewer wells,  
25 and they may or may not be producing.

1           So we didn't feel -- It would save the State some  
2 time. We thought it would be popular with the people who  
3 didn't know about it already. It eliminates the need for  
4 us to say if you have this many wells, that many wells. It  
5 just gets us down to -- because we do have a lot of filers  
6 with just -- electronic filers with just one well. We  
7 didn't think it would be unpopular with the others.

8           It's just the -- the last rule was written, I  
9 think, in 1996, and in this decade the number of people  
10 having PCs has so changed, the number of people having  
11 relatives and family members who -- well, excuse me, that  
12 would be the same -- who can type into a PC for someone has  
13 dramatically increased. So we thought it might be  
14 feasible.

15           Q.    (By Ms. MacQuesten) You also made changes in  
16 Rule 1115 to the enforcement provisions in the rule?

17           A.    Yes.

18           Q.    Now --

19           A.    Do you have a slide in there?

20           Q.    I have a slide, but maybe we can get away with  
21 not using a slide.

22           A.    Okay.

23           Q.    If it's possible, could you tell me what the  
24 current provisions are for enforcement? And this is a  
25 test, and if you fail the test we have to use the slide.

1           A.    I would fail the test, but I have the rule right  
2 in front of me.

3           Q.    Okay.

4           A.    The current provision is that we notify the  
5 operator that their -- Again, this was written 10 years  
6 ago, and it's not the way the system works now. But what  
7 it was intended to do was isolate every single error or  
8 omission.

9                    So it says that we will notify the operator of  
10 every single error or omission. Now that's done  
11 electronically, so that we actually don't receive any  
12 errors or omissions. But this said that we would do that,  
13 and we did do that, we sent error notices either  
14 electronically via e-mail or on paper to those that  
15 couldn't receive e-mail.

16                   It said that this would be mailed within 30 days,  
17 and it was. If -- Long ago, the C-115s may not have been  
18 keyed within 30 days, so we may not have met that.

19                   Then the operator is supposed to respond and  
20 refile. In today's environment we take the C-115 as a  
21 whole. It's a monthly report with all the wells. The way  
22 this rule is written, it addresses individual wells. It's  
23 missing well number three this month, next month well  
24 number five has a problem, and we're still notifying and  
25 having them respond on well number three.

1           Today the way we handle it is, we ask the  
2 operator, if you have a problem with well number three  
3 please resubmit your whole C-115. Because it's electronic,  
4 they can do it with that same step. You just go into the  
5 C-115, change this number to 118, if that was your error.  
6 You go to tools, C-115 electronic report -- and I must have  
7 it up somewhere because -- hm. Oh, because -- yeah, excuse  
8 me. And then you say okay and overwrite your file, and  
9 you've just created your new file. So it's -- we ask them  
10 to resubmit the whole thing now, not well by one. So this  
11 one asked for everything to be handled well by well.

12           You can imagine that for an unending period of  
13 time, following up on that well number three that did get  
14 reported correctly, for every subsequent month becomes  
15 really difficult for the operator -- for us to notify --  
16 well, we're still continually missing this or this is off  
17 by this, when all the subsequent months have come in all  
18 right. But that's what this rule required. It required a  
19 lot of follow-up on OCD's part, a lot of tracking, and we  
20 didn't have any system to track that.

21           So every -- We were supposed to notify them  
22 within 30 days of every -- both the error plus a lack of  
23 response to the error. They were supposed to notify us  
24 within 30 days. And then at the end, if we didn't get that  
25 resolved, we were supposed to cancel authority to produce,

1 or to transport, I guess.

2 Q. What are you recommending that we use as an  
3 enforcement mechanism now, under the proposed rule?

4 A. Under the proposed rule we notify the operator --  
5 well, if there --

6 Q. Walk me through it. I file my report and I make  
7 an error. What happens to me?

8 A. You immediately see that error. Would you like  
9 to see how --

10 Q. Sure.

11 A. -- the operator sees it? All right, I go to the  
12 Web and I sign on to OCD -- oh, excuse me, I need to go to  
13 our development system, because I'm going to submit a  
14 C-115.

15 I'm going to sign in as myself, but I'm going to  
16 sign on for Tenison, which is the operator that I had that  
17 C-115 for. I go to other, and I find C-115. This is our  
18 electronic permitting system. And I say that I would like  
19 to create a new C-115.

20 I first need -- I'm in -- I default into the  
21 thing that says please attach the file that you created for  
22 your C-115. So I go to browse, I pick the file that I had  
23 saved. And I have one with errors in it, just to show you.  
24 And I'm going to attach this file. Oh, well, excuse me.  
25 Let me -- Okay, here's my one with errors. And I'm going

1 to attach it.

2 And then what I do is validate it, and it will  
3 tell me some errors exist. And in this case I have one  
4 out-of-balance condition. So I view that error and it will  
5 tell me where I'm off. And do you remember that I changed  
6 the 112 to a 118? That -- when I was showing you how easy  
7 it is to change a C-115. It created an out-of-balance  
8 condition. Everything else was perfect with the C-115,  
9 they reported all their wells, et cetera, so this is the  
10 only error that they have.

11 And if they had had more, then we would have seen  
12 them here. It would have shown, oh, you have a production  
13 error, you reported on a well that you don't operate.  
14 Let's say you had an omission, you didn't report three  
15 wells. So that's all captured immediately for the  
16 operator.

17 Then they go back to their C-115 and change the  
18 item here, the 112, and then they do the tools again. And  
19 as it happens, I have a corrected file already -- you can  
20 either just save it here or go back over to the application  
21 and attach a different file with no errors in it.

22 I don't know if that was very clear, but what --  
23 all they do is -- Now, some companies use this C-115 that  
24 we've provided, the Excel one that I was showing you.  
25 Other companies already have accounting software that

1 generates the C-115 file we use. So they would use their  
2 own processes to fix their errors in their own systems.  
3 They have choice, they don't have to use our C-115.

4 But however they do it, they would simply fix the  
5 error that OCD just told them about, and then attach the  
6 new file with no errors in it, and that would handle that.

7 So currently there is no such thing as receiving  
8 a C-115 with errors or receiving a C-115 with out-of-  
9 balance conditions or receiving a C-115 that is not  
10 complete. So there's no more notification required for  
11 those things.

12 The only thing receiving no C-115 at all. So  
13 what we put in this rule is, if -- for operators that  
14 haven't submitted a C-115 at all, please -- that we will  
15 notify them 60 days after it was due, and then they can  
16 take action during that following time.

17 Q. So if an operator submits a report with an error  
18 electronically, he will know immediately that there is an  
19 error, and the particular error that the computer found?

20 A. Yes.

21 Q. And if there's an error, the report simply won't  
22 be processed, it won't go through until the error is fixed?

23 A. Yes.

24 Q. And if the operator still doesn't correct the  
25 error, then we notify him and say, You have a certain

1 amount of time, and if you don't -- there's a sanction if  
2 he doesn't file the C-115 within a certain time period?

3 A. Right, they either can file or, if they don't we  
4 could enter into an ACO if -- Sometimes people are having  
5 problems because they're changing computer systems and they  
6 can't send a C-115. They may have done a massive operator  
7 change. It usually doesn't keep them -- they're so  
8 sophisticated and good, it has not yet kept anyone from  
9 meeting this time frame. But if it did, let's say they  
10 just had a severe problem, then we might enter an ACO for  
11 an extra month or two or whatever they demonstrated that  
12 they needed to get the C-115 in to us.

13 If they didn't choose that option, then we would  
14 take the action in the proposed rule.

15 Q. And that action would be what?

16 A. To -- Let me make sure I get it right. To cancel  
17 the operator's authority to transport or inject into all  
18 wells it operates.

19 Q. Now, that's a different sanction than the  
20 original rule, because the original rule talked about an  
21 allowable for a particular well, and this is authority to  
22 transport or inject into all wells of the operator. Why  
23 move to that severe a sanction?

24 A. Uh-huh. For a couple of reasons. As you see, we  
25 don't accept C-115s by well. It comes as a complete

1 package. So if we're not receiving one well, we're not  
2 receiving all wells.

3 I also did a study of all the operators that this  
4 would have affected, and the only operators that are in  
5 this type of situation are what we call orphan operators  
6 anyway. They're people that we -- like Saba, the people  
7 that we can't find a responsible party for anyway.

8 So the intention is to make sure that they cannot  
9 slack, that they do send it in. But whether they send --  
10 like if one well is off the list, usually that well is not  
11 producing, so shutting in that well -- this sanction has  
12 never been implemented at all.

13 Usually we don't have blatant offenders. We have  
14 two categories of offenders. There are blatant offenders.  
15 One is, for example, Ready Oil, which is the well that -- a  
16 federal -- they have federal wells, and the BLM is working  
17 with them very closely. So there are two categories.  
18 They're identified as orphan to us, or the BLM is already  
19 working with them in every way they can.

20 But when we contact any slacker we get that C-115  
21 in. They're -- Usually they're just afraid, and they work  
22 with us and send it in.

23 So we wanted to take action for all the wells so  
24 that they knew something would happen if they didn't -- you  
25 know, if they're scared -- sometimes they have family

1 financial issues and the just -- they're afraid of how to  
2 send it in. And once we talk to them, we get -- they do  
3 it.

4 Q. This reporting information, why is it so  
5 important? Who uses it?

6 A. Everyone in the room uses it. It's critical to  
7 have -- we publish all of our production to the world, it's  
8 available for pickup. We have C-115 reports right now -- I  
9 won't show you each one, but we have a summary balancing  
10 report that shows everything Marbob has submitted to us for  
11 four years, every sum of production, every sum of  
12 disposition. We have detailed reports that show every  
13 transporter that was used for every MCF of gas, every  
14 barrel of oil.

15 This information is -- since it's on the Web, I  
16 can't even say all of the users, but people -- it is  
17 critical. It's critical to the Energy Information  
18 Administration that does their projections based on this.  
19 The minute we get the data we post it so that our monthly  
20 reports -- every piece of data that comes in is available  
21 on the Web immediately. Most of it right now -- well, a  
22 lot of it right now is only available in summary fashion.  
23 GO-TECH I still send the data to just monthly. So on an  
24 individual well, it's generally just available monthly.

25 But when it's not on the Web I hear about it,

1 and --

2 Q. Is the information used by other State agencies?

3 A. Yes, it is. Taxation and Revenue uses it for  
4 taxes and the State Land Office uses it for royalties,  
5 so...

6 Q. Let's turn to proposed Rule 100, the operator  
7 registration, change of operator, change of name provision.

8 A. Would you like to display it?

9 Q. I don't think I have slides for this.

10 A. All right.

11 Q. So we're okay.

12 Let's deal with the different issues separately.

13 Let's talk first about operator registration. Is there  
14 anything in the current rules about operator registration?

15 A. I believe not.

16 Q. Paragraph A of the proposed rule sets out a  
17 procedure for registering. Is that the same procedure that  
18 operators would follow now?

19 A. Yes, but I don't believe the -- I don't know what  
20 mechanism is in place regarding affiliation with an  
21 operator that is, let's say, an orphan.

22 Q. Sure.

23 A. But the rest of it, yes.

24 Q. And that's in paragraph B, but paragraph A --

25 A. Oh, excuse me.

1 Q. -- sets out --

2 A. Yes.

3 Q. -- application procedure.

4 A. Yes.

5 Q. Walk me through it. I want to register as an  
6 operator. What do I do?

7 A. We would suggest having this as an electronic  
8 permitting application as well so that the operators could  
9 just sign on and do it and not have to call us or mail us  
10 anything. So the operator would select the option that  
11 they would like to register, they would fill in their name,  
12 their address. If the contact information is something  
13 that we want to put on there, that everyone feels is  
14 worthwhile, then they would fill that in. And the current  
15 address, and currently they provide us with phone number  
16 and fax number as well. So they would fill that in.

17 Then our bond administrator would verify, as she  
18 does now, that the company name is registered with the PRC  
19 or the Secretary of State's Office. And if we had the  
20 financial assurance, then she would approve it.

21 Now, this operator could or could not already  
22 have an OGRID code, which is simply a number to do business  
23 as an oil and gas -- It stands for oil and gas reporting  
24 ID. So sometimes State Land Office or Tax and Rev have  
25 already registered this operator. Maybe we've already

1 registered them, let's say, as a transport or something.  
2 They could have an OGRID or they could not.

3           What this process would do is, if the bond  
4 administrator, who often works with the attorney on any --  
5 any -- things that look like exceptions to the --  
6 registering just anything she notices that might be  
7 different -- at the end of her approval she checks a mark  
8 called an OGRID role code that says this is a well operator  
9 and this operator has a bond. Those would remain the same.

10           So when the bond administrator approved this  
11 operator registering, it would simply create a role code of  
12 operator, well operator, and a role code of -- containing a  
13 -- you know, having a bond. And that information would go  
14 to ONGARD as it does now.

15           Q.    Okay, so let me get this straight. You could  
16 obtain an OGRID number from OCD or from other agencies, and  
17 you would be registered as an entity. But to become  
18 registered as an operator, OCD is the only entity that  
19 assigns that role code?

20           A.    Yes.

21           Q.    Does anything in this proposed rule affect ONGARD  
22 and other agencies' use of it?

23           A.    No, the data would be the same. We work really  
24 closely, and it's even stated further down in the rule --  
25 oh, I think in the name-change area -- anything to do with

1 OGRIDs, we work really closely with Tax and Rev and the  
2 Land Office. We have some unspoken rules of convenience  
3 among us, we e-mail, we notify each other before we release  
4 the bond. Before we do a lot of things, we talk with the  
5 other agencies. And that would stay the same.

6 Q. In paragraph B we have a provision that's  
7 generated a lot of comment. The Division may deny  
8 registration in certain situations. Let me give you a  
9 scenario.

10 Let's say I was previously president of a company  
11 that operated wells in New Mexico, and that company is not  
12 in good standing. I come to the OCD and try to register a  
13 new company. What would happen?

14 A. As I understand, the operator would go through  
15 the same process that I described on registering. And as I  
16 said, the bond administrator discusses that with the  
17 attorney. If there were any red flag, perhaps the attorney  
18 would recommend requesting additional information as is  
19 indicated here.

20 I don't know if the application -- if it would be  
21 -- ever happen enough that the application would handle any  
22 kind of request. I don't think so, from what I'm  
23 understanding. So I believe it would be just like we might  
24 do today of calling and trying to verify something about  
25 this information.

1 Q. So it's possible it could just slip through, and  
2 I could be properly registered as an operator, but if  
3 someone had a question, they may request information from  
4 me --

5 A. Yes.

6 Q. -- about my connection to that other company that  
7 was out of good standing?

8 A. Yes.

9 Q. Is that denial -- If they found out that I was  
10 connected to a company that was out of good standing, would  
11 the OCD then automatically deny my registration? Is it  
12 permissive, or is it mandatory that they deny?

13 A. It says may deny.

14 Q. So I would have the opportunity to plead my case  
15 to become registered anyway.

16 In paragraph C, there's a new requirement that  
17 the operator keep the OCD informed of its current address  
18 for notice and in emergency contact name and phone number.  
19 What is the practice right now concerning contact  
20 information from operators?

21 A. When they sign up we do get an address from them  
22 and a phone number and a contact. That's it. It stays the  
23 same.

24 Q. Let's move to the change-of-operator provisions.  
25 Now, there are -- there is a rule that covers change of

1 operator right now?

2 A. Yes, there are two rules.

3 Q. Okay. Where are they? Do you recall?

4 A. Well, I'm not very good with the rules, but one  
5 is in Rule 1104, and one is -- currently we have it  
6 separated for existing wells versus drilling wells, and the  
7 majority of the rule relates to existing wells, and that's  
8 in Rule 1104. And the drilling wells are in the sundry  
9 rule.

10 Q. Okay. How does change of operator work right  
11 now? Let's say I want to acquire those wells from Aspen.  
12 How would I go about transferring the registered operator  
13 from Aspen to --

14 A. Okay, would you like me to demonstrate it, or --

15 Q. Sure.

16 A. Okay. That's also an OCD online application.  
17 That is also under other -- I'm still signed on as Tenison,  
18 and hopefully I'm still in the development system before I  
19 transfer all their wells.

20 We -- I selected change of operator. I'm going  
21 to do a new change of operator. And you fill in some basic  
22 information. The way it's set up, either the old operator  
23 or the new operator or an agent can enter information. So  
24 let's say I'm going to transfer the wells from Tenison to  
25 -- Let's do Burlington, if you don't mind, because I know I

1 have an ID for that, although I don't think I have to go  
2 that far to show it to you.

3 MR. GANTNER: Are they good wells?

4 (Laughter)

5 CHAIRMAN FESMIRE: A better question is, are they  
6 in compliance?

7 (Laughter)

8 THE WITNESS: Okay, I don't have to -- you would  
9 just go through and enter the contact person. Anything  
10 with an asterisk, is a required piece of information, but I  
11 won't enter it for this purpose.

12 Then you select the properties, and when you  
13 click on -- oh, brother. Well, we're not going to go  
14 further -- oh, there's not enough space on the disk. Okay,  
15 that's talking about on the server, so we're not going to  
16 be fixing that one real quickly.

17 Okay, let me go back to -- imagine with me. All  
18 my years as a professional demonstrator. But okay -- well,  
19 this -- okay, so that's development, but I -- I could still  
20 show you in production, just remind me not to transfer the  
21 wells.

22 Okay, so it appears it will be Burlington's wells  
23 I'm transferring and --

24 MR. MILLER: Give them to Marbob.

25 (Laughter)

1           THE WITNESS: We'll take those three. So I sign  
2 on for operator change, I'm going to do a new change of  
3 operator. It's going through now to see whether I have any  
4 existing ones to change. And without even filling in any  
5 of the other information, I can just go to select  
6 properties and it will create a list of all the properties  
7 that Burlington has. They have a lot, so you see just on  
8 this page the A's. If you wanted to go over to something  
9 starting with R, you know, you could pick any of these  
10 properties.

11           Then you go to the select wells, and within those  
12 properties it lists the wells. It shows the last  
13 production because -- for the purpose of calculating any  
14 possible additional bonding. If I wanted all the wells in  
15 those properties, I can just select those, and then I would  
16 check warnings normally and then just go over and submit  
17 the form.

18           You also would print out a copy -- the system --  
19 I won't show you every detail because again there's the  
20 game in Artesia. But if you wanted to look at the form and  
21 see it, look at a list of all the wells transferring, look  
22 at any additional bonding required, you could from the  
23 reports.

24           And then once you submitted a signed copy of the  
25 C-104-A, signed by both operators, then you certify that

1 these are the wells that you want to transfer, because we  
2 have had a little confusion in the past where people did an  
3 operator change, but they didn't realize 10 of those wells  
4 -- they maybe have transferred 100, they didn't realize 10  
5 of those were bad wells, so we do ask them to certify.

6 I have looked at this list of wells that are  
7 transferring, and this is exactly the list of wells that I  
8 want to transfer.

9 So you can view all wells affected by the change,  
10 and they certify that these are the wells. And actually,  
11 one of them does require additional bonding there, we  
12 managed to pick one of the few that hadn't produced.

13 So anyway, they submit that to OCD and then the  
14 OCD approves it, makes sure the bonding is received, the  
15 bonding administrator approves it and the district approves  
16 it.

17 Q. (By Ms. MacQuesten) So the current operator and  
18 the new operator have to agree on a list of wells to be  
19 transferred?

20 A. Yes, they both certify that this is the list of  
21 wells they're accepting.

22 Q. Once they do that, does the OCD look beyond that  
23 certification to say whether the new operator has any right  
24 to these wells or anything like that? We just accept their  
25 certification that this is what they want to do and it's

1     okay?

2           A.    We sometime stake this as an opportunity to have  
3     contact with the operator.  If -- To use again Ready Oil as  
4     an example, the last time they transferred wells we asked  
5     them to come current with their C-115s, and they did, and  
6     then we approved the operator change.

7           So if there's any outstanding activity, we do  
8     take this as an opportunity to look at any open actions and  
9     work with them if we can.

10          Q.    And under the proposed rule, that would be  
11     formalized, because we would be able to look at whether the  
12     new operator was in good standing or not?

13          A.    Yes.

14          Q.    And we'd also be able to look at whether the old  
15     operator had a compliance order requiring corrective  
16     action, we could talk to the new operator about the need to  
17     complete whatever corrective action is required?

18          A.    Yes.

19          Q.    Again, is it mandatory that the new operator  
20     assume a compliance order?  Is it mandatory that the new  
21     operator be in good standing?

22          A.    No.

23          Q.    But it would be an opportunity to discuss those  
24     things?

25          A.    Yes.

1           Q.    What happens if the old -- the original operator  
2 isn't available, and I want to acquire those wells. For  
3 some reason -- he's deceased, he's a defunct company -- how  
4 do you make the transfer then?

5           A.    We've had a couple of instances of that, and we  
6 go to our attorney, and the operator explains that, either  
7 shows a court order or writes a letter or whatever to us,  
8 and if our attorney approves it -- I've set up a user ID  
9 for myself and signed on and done the other operator's side  
10 of the transaction.

11                   Sometimes the court order already obligates the  
12 new operator to do that transaction, so we would set up a  
13 user ID correctly for the new operator so they sign.

14                   I think I've only signed on once myself, and  
15 there have been a couple of other instances where we've  
16 created user IDs for both companies, for the same person,  
17 since the courts authorize that.

18           Q.    All right. Let's move to change of name. Do we  
19 have any current rules regarding change of name?

20           A.    Not to my knowledge.

21           Q.    Just to speed things along, the proposed rule --  
22 does the proposed rule reflect what we actually do now  
23 regarding change of name?

24           A.    Yes.

25                   MS. MacQUESTEN: I have no more questions for Ms.

1 Prouty at this time.

2 I would move for the admission of Exhibit 16 --  
3 that's the bar chart that Mr. Perrin testified to, that we  
4 delayed requesting admission of until Ms. Prouty could give  
5 further testimony on it -- and also Exhibits 20 through 27.

6 MR. CARR: No objection.

7 CHAIRMAN FESMIRE: Is there any other objection  
8 to the admission of those exhibits?

9 Exhibits Number 16 and 20 through 27 are  
10 admitted.

11 MS. MacQUESTEN: I would also, just to take care  
12 of some housekeeping, move for the admission of Exhibit 1,  
13 which is the packet of the proposed rules, and Exhibit 2,  
14 which is the affidavit of notice.

15 In addition to the affidavit of notice, we  
16 received the affidavit of publication from the newspaper on  
17 October 12th, and I can provide the Commission with that.

18 CHAIRMAN FESMIRE: Why don't we label that  
19 Exhibit 2A?

20 And your motion is to admit Exhibits 1, 2 and 2A?

21 MS. MacQUESTEN: Yes.

22 MR. CARR: No objection.

23 CHAIRMAN FESMIRE: Is there any objection?

24 Exhibits 1, 2 and 2A are admitted.

25 Ms. MacQuesten, is that the extent of your --

1 MS. MacQUESTEN: That concludes my direct of Ms.  
2 Prouty.

3 CHAIRMAN FESMIRE: Do you have another witness  
4 after Ms. Prouty?

5 MS. MacQUESTEN: No.

6 CHAIRMAN FESMIRE: Mr. Carr, why don't we take a  
7 10-minute --

8 MR. CARR: Yes, sir.

9 CHAIRMAN FESMIRE: -- recess before you start  
10 your cross --

11 MR. CARR: Thank you, sir.

12 CHAIRMAN FESMIRE: -- and we'll reconvene just  
13 after -- okay, make it 10:05.

14 (Thereupon, a recess was taken at 9:52 a.m.)

15 (The following proceedings had at 10:07 a.m.)

16 CHAIRMAN FESMIRE: Okay, let's go back on the  
17 record.

18 Mr. Carr, I believe you were going to cross-  
19 examine Ms. Prouty?

20 MR. CARR: Yes, sir, I am.

21 CHAIRMAN FESMIRE: Okay.

22 CROSS-EXAMINATION

23 BY MR. CARR:

24 Q. Ms. Prouty, at the outset I want to tell you that  
25 I'm not concerned with the effort you made to prepare the

1 list, I'm only concerned about the list and how it may be  
2 used an the impact of that list on the industry.

3 Would you agree with me that the Oil Conservation  
4 Division is going to expect operators to know and  
5 understand these new enforcement rules once they're  
6 adopted?

7 A. Yes.

8 Q. And part of that would mean that the Division is  
9 going to expect operators to know that if they have more  
10 than five wells listed on the inactive well list, that --  
11 if they operate over 100 wells and have more than five --  
12 that they are no longer considered in good standing? Isn't  
13 it fair that you would expect them to know that?

14 A. Yes.

15 Q. You testified that the Division was not going to  
16 post on its website a list of operators, branding them as  
17 bad actors or not in good standing. Was that your  
18 testimony?

19 A. Probably what I meant was, the rules do not  
20 require that, and I'm not aware of any request to do that.

21 Q. Although the rules don't require it, you could do  
22 it?

23 A. Right.

24 Q. And in fact, yesterday or sometime recently did  
25 prepare a list that did just that?

1 A. Right, the Excel spreadsheet.

2 Q. And you said you are aware of no request to do  
3 this?

4 A. Right.

5 Q. But if you --

6 A. Well, yeah, not -- The ones I'm aware of are the  
7 ones that are in the rules related -- the ones that are in  
8 the rules. As far as consolidation, no one has asked me to  
9 do that.

10 Q. But if someone asked you to, you could?

11 A. Yes.

12 Q. And if certain people asked you to, you would?

13 A. Yes.

14 Q. I mean, Mr. Fesmire, if he asked you, you would?  
15 If the Governor asked you to, you would; isn't that right?

16 A. Probably, yes, I'm -- I don't --

17 (Laughter)

18 THE WITNESS: -- Commissioner Fesmire --

19 Q. (By Mr. Carr) I'm not asking you --

20 A. No, he will swear that I don't necessarily do  
21 what I'm asked, but --

22 (Laughter)

23 MR. PERRIN: Well, we can't make him a witness.

24 (Laughter)

25 Q. (By Mr. Carr) But there's nothing in the current

1 plans to post this list; isn't that right?

2 A. Right.

3 Q. The testimony throughout this hearing has been  
4 that the Division needs additional enforcement tools to  
5 bring operators into compliance, to get wells into  
6 compliance. And when we look at the rules and your  
7 testimony, you've talked about some actions being mandatory  
8 and some being permissive. You may grant an APD, you may  
9 not.

10 Are there any standards in these rules that would  
11 tell an operator, if they're not in good standing, when you  
12 might or might not approve an APD?

13 A. Not to my knowledge. I think -- I don't know if  
14 it goes beyond your question. I think a lot of discussion  
15 -- a lot of effort would be put into trying to be  
16 consistent, and I believe that's how the Compliance and  
17 Enforcement Manager -- his role would be to make sure that  
18 we had an understanding of that.

19 Q. If I operate more than 100 wells, and if I have  
20 more than five wells on the inactive list the day after the  
21 new rules are adopted, if they're adopted as written, it's  
22 possible that my APD could be denied; isn't that right?

23 A. Yes, it's possible.

24 Q. And so when I evaluate these rules in the context  
25 of what they might mean to me as an operator, you

1 understand that we're looking at these in terms of how they  
2 can be enforced against us?

3 A. (Nods)

4 Q. Now, when I got the proposed rules I went to the  
5 Web page, which is a challenge for me, and I found your  
6 inactive well list. And I tried to read it, and there were  
7 a number of codes on that list, not just -- there were A,  
8 T, P, S various other things. And I could find no legend.  
9 Is there a legend available to explain the codes that are  
10 used on that inactive list?

11 A. No, there isn't. Now, you won't find an A  
12 anymore because that was misleading, so we blanked that  
13 out. And that was a suggestion we received from  
14 Chesapeake, and they were right, so we took that off  
15 because it was confusing.

16 Ms. Perez yesterday recommended that I spell out  
17 those codes, and I made a note to do that.

18 Q. Now, when I look at the list, at least the one I  
19 looked at when the rules were promulgated, it was called an  
20 inactive well list. Is that what is going to be the Rule  
21 201 noncompliant list as it's defined in the rule?

22 A. I believe so. I'm not too good on my numbers.  
23 There would be several noncompliance lists or -- and --

24 Q. If we go to Rule 37, the rule on good standing --

25 A. Yes.

1 Q. -- do you have that there?

2 A. Yes, I do.

3 Q. If we go down to E(1) --

4 A. Yes.

5 Q. -- it says the division shall post on its  
6 website, and update daily, a, quote, Rule 201 noncompliant  
7 list. Is that what we're talking about?

8 MS. MacQUESTEN: Objection. Mr. Carr is  
9 referring to the version of proposed Rule 37 that appeared  
10 in the original application. Since then we have filed an  
11 amended application that changes the language in that  
12 paragraph. We are no longer recommending the language that  
13 he's quoting.

14 MR. CARR: Now, this is one of the problems we  
15 have. I mean, trying to have notice and know what you're  
16 proposing and what you're not has become quite a challenge  
17 in the time frame that we're working in.

18 Are you going to post, though, a 201 noncompliant  
19 list, or do you have a new title for that?

20 MS. MacQUESTEN: We have the title that's on the  
21 list.

22 THE WITNESS: Yeah, the --

23 Q. (By Mr. Carr) What is the title that's on the  
24 list?

25 A. The inactive well list.

1 Q. Now, is that inactive well list going to identify  
2 each well by operator?

3 A. That is -- that meets the criteria that's listed  
4 on there, yes.

5 Q. So the inactive well list, whatever you're going  
6 to call it, or whatever we have now before us, is going to  
7 look kind of like what I saw in that you're going to have  
8 operator names and wells that are no longer -- that are on  
9 the inactive list; is that right?

10 A. Yes. Excuse me, you know, they may be in  
11 compliance if they selected less than 15 months. You  
12 know --

13 Q. From that list I will as an operator be able to  
14 look -- look at my name and see how many wells I have that  
15 you believe, based on your data, are inactive; is that  
16 right?

17 A. Yes.

18 Q. And if I took that list, if I am Burlington, I  
19 could pull it up and look at BP, and I could see operator,  
20 and if I can count to six I know that operator is not in  
21 good standing under your rules; isn't that right?

22 A. Yes.

23 Q. And anyone can do it.

24 A. (Nods)

25 Q. And if I went through that list I could look at

1 myself right here and now, and every operator on that list  
2 that has more than five wells, I know, from your list, is  
3 not in good standing, correct?

4 A. Yes.

5 Q. And so when you put together the list that is  
6 marked Exhibit 27, if I know the rules as an operator, even  
7 without the column that says "not in good standing", I can  
8 look at this and tell who is and who is not in good  
9 standing?

10 A. Yes.

11 Q. Do you keep a historical record of this kind of  
12 information? You're constantly changing it. Is there  
13 going to be a historical way to document where operators  
14 stood on this list at any particular time?

15 A. It can be done. I'm not aware of a need to do it  
16 right now.

17 Q. If I was going to enter a partnership with  
18 another company and I was concerned that they had officers  
19 or directors who had a five-percent control -- or would  
20 have -- in my operation, how would I find out if in  
21 September, 2002, for three days they had been not in good  
22 standing?

23 A. Right now you wouldn't find it out from the Web.  
24 You could call me. I do give out any information we have,  
25 if it's not on the Web, to anyone. My understanding was,

1. there's not a plan to do that, because the actions are to  
2. be taken based on the current day. So if they're in good  
3. standing today, that's how it works.

4. Q. But you see, you may deny my registration under  
5. the rule if an officer, director, partner in the applicant  
6. or a person with an interest in the applicant exceeding  
7. five percent is or was within the past five years an  
8. officer, director, partner, or a person with an interest  
9. exceeding five percent in another entity not in good  
10. standing.

11. I understand why you want that data, to deal with  
12. a Saba. But when the rule is there, I as an operator, as  
13. I'm going into a business relationship also need to know.  
14. And my question really is, I mean, is that something that  
15. we can get from the OCD?

16. A. If -- I'm switching glasses like crazy because I  
17. have to. But my understanding is, it's not asking about an  
18. operator who was in good standing five years ago. If that  
19. operator is in good standing today, this would not be  
20. required of you. If you were a partner of an operator  
21. several years ago that is in good standing today, you would  
22. respond that way to the OCD if you were asked.

23. Am I reading that --

24. Q. My concern was, as I read the rule, I'd have to  
25. know if someone was within the past five years an officer

1 or a director in a company that is not in good standing.

2 And do I have to know that they were not in good standing  
3 five years ago, or is it only today?

4 A. My understanding is that today is the issue.

5 Q. And am I misreading that? And so a company could  
6 have been in bad standing in the past, but we're only going  
7 to look at it on a point forward today?

8 A. Yes.

9 Q. You offered Exhibit 27 today.

10 A. Uh-huh.

11 Q. How long did it take you to create this document  
12 with your computer?

13 A. An hour...

14 Q. It's something that could be done?

15 A. Yes.

16 Q. And if I understood your testimony, you don't  
17 think that a five-percent figure is going to work very  
18 well; is that fair to say?

19 A. Well, I think it might grow the number of  
20 inactive wells.

21 Q. Do you think this system works very well?

22 A. The proposed rule?

23 Q. Yes.

24 A. Well, "well" wouldn't be for me to judge. Would  
25 it -- It helps identify what wells need to be worked on or

1 what wells we have bad information for.

2 Q. This is the kind of list that you would go to --  
3 this is the data that you would use, if I filed for an APD,  
4 to determine whether or not I had a warning pop up or was  
5 denied an APD; isn't that right?

6 A. Right, the computer would do a similar  
7 calculation.

8 Q. If we go over to page 6 of this, the company's  
9 name is Heartland? Heartland Energy Corp. Do you see  
10 that?

11 A. I could have numbered the pages. Yes.

12 Q. And they have total number of wells, 2, they have  
13 total inactive wells, 2. They're at 100 percent of their  
14 wells are on your inactive list, and yet they're shown as  
15 being in good standing. So with 100 percent inactive, 100  
16 percent out of compliance, they could get an APD, wouldn't  
17 they, under your system?

18 A. Yes, and it's -- yes, they could.

19 Q. Compare them, if you would, to Mewbourne on page  
20 9. Mewbourne operates 326 wells. They have six inactive  
21 wells. They're 1.84 percent out of compliance, and yet  
22 they're a bad actor; isn't that what this list tells me?

23 A. I would say they meet the proposed rules criteria  
24 for being --

25 Q. -- for being not in good standing?

1 A. Right.

2 Q. And so if I were Mewbourne with 1.84 percent of  
3 my properties out of line, my APD could be denied, another  
4 operator could say that I'm not in good standing and be  
5 reluctant to enter into an agreement with me. All the  
6 sanctions that are automatic in this rule could apply to  
7 me, correct? And none of those would apply to Heartland?

8 A. They actually would. Heartland is on our orphan  
9 list. The wells with such numbers are being addressed in  
10 other ways.

11 Q. Okay, and you have other tools to address  
12 noncompliant wells, other than just good standing; isn't  
13 that right?

14 A. Yes.

15 Q. I mean, the orphan well list, I mean, you can  
16 find -- you can do other things to bring someone in  
17 compliance. This would -- this good standing is a new  
18 tool, it's not the only tool?

19 A. You know, I'm so sorry, I don't work in the area  
20 of other kinds of --

21 Q. But you know the Heartland wells are on an orphan  
22 well list?

23 A. Well, they're not really orphan. I prepare a  
24 thing called potential orphan, people we haven't heard  
25 from, and other people validate whether they are.

1 Q. Do you know the purpose of that list?

2 A. Yes, to look at potential candidates for being  
3 plugged by the reclamation fund.

4 Q. And that would be another way to deal with these  
5 potential orphan wells?

6 A. Yes.

7 Q. When we look at this rule, we're talking about --  
8 and I'm talking about the good-standing rule -- we're  
9 talking about putting a label on an operator. That's what  
10 we're concerned about. You understand that. If we have  
11 too many wells, we are labeled.

12 Is it your concern that if this rule is adopted,  
13 Burlington, XTO, others, will abandon their management  
14 programs and say, Heck, I can now have hundreds of wells,  
15 let's forget this? I mean, are you really worried about  
16 that?

17 A. Excuse me, if we do it the current proposed way  
18 or --

19 Q. Yeah, if you -- No, if you went with a five-  
20 percent cutoff --

21 A. Oh, okay.

22 Q. -- do you think that these companies would just  
23 go ahead and run it right up to the limit and sit there in  
24 terms of noncompliant wells?

25 A. No.

1 Q. You're really looking at bad actors; isn't that  
2 right?

3 A. I think -- personally, looking for everyone to be  
4 informed and motivated to whittle down the list.

5 Q. Suppose Burlington said, to heck with it, we're  
6 going to have 326, or whatever it is, inactive wells.

7 A. Uh-huh.

8 Q. You could fine them, you could bring other  
9 actions against them; isn't that true?

10 A. I don't work in that area, but I -- so I'm sorry.

11 Q. But what we have here is, we're dealing with just  
12 a determination of whether or not they're in good standing,  
13 labeling that company?

14 A. Uh-huh. Well, I wasn't agreeing to that. It's  
15 an indicator. You know, I mean, it was -- I wasn't looking  
16 at labeling, I was looking at a programmatic way --

17 Q. All right --

18 A. -- of flagging a system to say, Oh, you don't  
19 have this in place.

20 Q. Do you think an operator should lose its standing  
21 because of an indicator?

22 A. I think the indicators already alert both the  
23 operator and us to problems out there. For example, when  
24 someone's about to acquire wells, they'll call me and say,  
25 Are there any remediation actions going on --

1 Q. Uh-huh.

2 A. -- are there -- you know, are the wells  
3 producing? So we're providing indicators based on data we  
4 have.

5 A. You have 158 operators on this list who are not  
6 in compliance, or have too many inactive wells. Can you  
7 handle 158 operators coming in to see you in the next two  
8 weeks? Are you staffed for that?

9 A. Again, that's not my area, but I think there has  
10 not been a rush of them so far, was what Mrs. MacQuesten  
11 was telling us.

12 Q. The question was, do you know if you could handle  
13 158 operators at one time? You don't know?

14 A. I don't know.

15 Q. If you are -- when we look at this list and I  
16 read the rule, the wells and the information on this list  
17 create a rebuttable presumption that -- you know, that  
18 these wells are inactive. And I just believe it was your  
19 testimony yesterday, you told us how we could correct that.  
20 We could call you, we could send in paper data, and that is  
21 how we rebut the presumption. There's nothing -- no  
22 procedural thing you're aware of beyond that, that we would  
23 do. It's a fluid system on our side of the street, as well  
24 as yours; is that fair to say? You'll take it off the list  
25 if we bring in data; isn't that right?

1 A. Right, and if we find -- yeah, information --

2 Q. Now, when I look at the list, the inactive well  
3 list, if I understand, if I read the rule correctly, this  
4 is a list that is based on the information that is in the  
5 possession of the OCD?

6 A. Yes.

7 Q. I mean, we talk about, you know, based on  
8 Division records.

9 A. Submitted by the operators.

10 Q. Right. If there is an error in that information,  
11 there's going to be an error on the list; isn't that right?

12 A. Yes, or an omission.

13 Q. And we know there are errors in the data right  
14 now, do we not? I mean, we're trying to take plugged and  
15 abandoned wells out.

16 A. I wouldn't actually call those errors. If you  
17 look in the imaging system, you'll see that we have no  
18 subsequent approved on those wells.

19 Q. Why are you taking them off the list now? I  
20 thought yesterday you said you --

21 A. Oh, the plugged not released is a new category,  
22 because as part of this project it wasn't a focus. It's a  
23 focus on other areas, but as far as us asking operators to  
24 do more, we're not. We're asking them to do more after a  
25 year. So --

1           Q.   Aren't you taking some wells off the list because  
2 of this new category and all that you're working with, or  
3 did I mis-hear you?

4           A.   Well, yes, they have been taken off the list  
5 since we created this two months ago and posted it. We --

6           Q.   Are they off now?

7           A.   We have not had the districts literally go in and  
8 have every well put into that category. Do you -- Am I  
9 clear there?

10          Q.   Well, that -- I understand what you're saying.  
11 Tell me if I'm wrong. I mean, you're working on that and  
12 you're taking some wells off, and that's something that  
13 you're doing to correct the list?

14          A.   Yes, if we've certified that it's been plugged  
15 but not released, we're recording that right now.

16          Q.   And Chesapeake contacted you about an A category,  
17 whatever that means --

18          A.   Yes.

19          Q.   -- and you took those off too, didn't you?

20          A.   No, we didn't take the wells off, we took off the  
21 letter A --

22          Q.   Okay.

23          A.   -- because what the issue is, we don't get a  
24 permit to make a well be in an active status or not, but we  
25 set a well up in active status when it's initiated. We

1 don't ever get a permit to say that this well stopped  
2 producing, so we don't record that.

3 So Chesapeake's concern was, they thought the  
4 well was active because of the A. And in truth, the last  
5 permit that we received caused the well to be active. So I  
6 left the wells in the active status, but I blanked it out  
7 on the list to not be confusing, and that's -- we've gotten  
8 a lot of good feedback like that.

9 Q. Occidental came in and talked about observation  
10 wells, and I think you said yesterday they come off the  
11 list as well?

12 A. Right.

13 Q. So the point is that the list is constantly  
14 changing, and it's changing not just because of errors in  
15 data, but because of the kind of information you're  
16 tracking to make it more reflective of real inactive wells;  
17 isn't that fair?

18 A. Right.

19 Q. Now, you started several years ago with 8000  
20 inactive wells. How many of those original 8000 wells are  
21 still in inactive status? Do you know?

22 A. No, I don't. I used to track that and I could  
23 track it, I have a file of those wells, but I have not had  
24 time to do that.

25 Q. And I thought you said that some of the wells

1 came off the list because of corrections in data that had  
2 been provided, as well as plugging and the other ways to  
3 get a well off the list.

4 A. Again, that word "corrections". If someone  
5 supplied us information that the BLM approved this TA but  
6 you never got a copy of it, and we look at the approved TA  
7 by the BLM, we record it and register it. So correction --  
8 you know --

9 Q. Did you --

10 A. -- supplying information, maybe.

11 Q. How many inactive wells do we have today?

12 A. Well on this list we had as of yesterday, we had  
13 2853.

14 Q. That's down from 8000?

15 A. Yes.

16 Q. And is that because those wells have been taken  
17 off the list by being plugged or put under some sort of an  
18 order, or is it because some of those are off because of  
19 the way you're now processing your data?

20 A. It's not the way we're processing the report. As  
21 I said yesterday, approximately 4000 wells within the valid  
22 TA period were taken off, because those were covered. So  
23 the list dropped down that much --

24 Q. By 4000 for that?

25 A. Right. Today we don't have that many wells in

1 the valid TA period, but at that time we did.

2 Q. Is it fair to say that the program has been  
3 fairly successful to date?

4 A. Just as a numbers person, it was most successful  
5 when the OCD had a program going. If you look at our list  
6 of the wells that have been plugged, that I post on the  
7 Web, we had -- starting in 1998 we had 577, 384, 652, 790.  
8 In the years -- you see a dramatic increase from 1999 where  
9 we only had 384 wells plugged, to the following three years  
10 where we reached a peak of 1000 wells plugged.

11 I believe due to the inactive program and the  
12 mailout that we did and the equivalent of agreed compliance  
13 orders that we entered into -- everyone worked really hard,  
14 OCD and the operators, and then that number had come down  
15 again. One, the price, you know, has changed that. But we  
16 were in the 700s the last couple of years.

17 So I think you can see from this list of wells  
18 plugged the attention that was given at that time to -- So  
19 I think the attention helped.

20 Q. And you say was given at that time. Is it not  
21 being given now?

22 A. As Charlie testified, I believe he kept up a real  
23 strong program, and the number in his district has remained  
24 constant. And I think the other districts didn't have the  
25 tools and didn't keep up the program, as -- We didn't have

1 a good Web-based way to let everyone know of their inactive  
2 wells.

3 Q. Are you aware that in some of your districts  
4 operators have reached agreements to plug wells, but they  
5 have not signed a formal order concerning those wells?

6 A. I'm not aware.

7 Q. You would agree with me that if you're going to  
8 -- if this list is going to be used to take away an  
9 operator's good standing to do business in the state, it's  
10 important to try and make the list accurate? You would  
11 agree with me on that, would you not?

12 A. Yes.

13 Q. And aren't you concerned that operators in your  
14 own -- with a five-well list, with a five-well cutoff, that  
15 there are operators out there who might fall into the bad-  
16 standing category simply because of a data error?

17 A. Obviously we're concerned if -- I don't -- being  
18 a data person, I guess I would not agree that anything  
19 we've discussed so far is a data error, more that OCD  
20 didn't receive a piece of paper or whatever, that's  
21 generally the case. But we certainly act really quickly to  
22 correct them when we get them, or...

23 But it's my understanding that, you know, to do  
24 business with the State, it's your obligation to be current  
25 on the rules. We've provided an easy way for everyone to

1 access the information, so I believe we've alerted people.

2 And then if there is an error, we can enter into  
3 an agreed compliance order to say, Oh, sorry, you don't  
4 know about this, or we didn't know, whatever -- You know,  
5 let's say you thought -- you've been paying someone to  
6 supply your C-115s for all these years, and they haven't  
7 been coming to you, and the address we had was wrong, so  
8 you don't know about this. To me, that's the time when we  
9 would enter into an agreed compliance order and give them  
10 whatever period of time to get it straightened out.

11 Q. You said it was important for an operator to be  
12 current with the rules, understand the rules get the things  
13 timely filed, the paper timely filed. Wouldn't you think  
14 it was also incumbent on the agency to process that paper  
15 in a timely fashion?

16 A. Yes.

17 Q. And if there's something that isn't being timely  
18 processed, an operator could be held hostage in that period  
19 of time, having done what they should do if the agency  
20 doesn't have a quick turn-around on handling paper?

21 A. In the instances we're talking about, it would  
22 have to be 15 months of not processing, so that would --

23 Q. That's correct.

24 A. -- that would be a pretty long time, yes.

25 Q. And that shouldn't happen?

1 A. Right.

2 Q. If this rule as written was adopted today, I  
3 guess you have 158 operators who are not in good standing  
4 because they have too many wells on this list.

5 If an operator like Burlington -- we're picking  
6 on Burlington -- on that one day happened to have six wells  
7 that were out of compliance, they bumped around three or  
8 four the last few weeks, then Burlington would be labeled  
9 as not in good standing; isn't that right?

10 A. They -- depending on the -- I don't -- depending  
11 on the activity that they tried to do, it would come up  
12 with an indicator of yes, we need -- this is an issue, we  
13 need to get it settled. I don't --

14 Q. If you were told to do it, you could make this  
15 list and being on this list a fatal error in your system so  
16 that an operator couldn't get an APD; isn't that right?

17 A. (Nods)

18 Q. And if that happened, there would be today 158  
19 operators in the State who couldn't get an APD approved.

20 A. If --

21 Q. Have you given any thought to the impact on New  
22 Mexico if you were told to do that by someone?

23 A. Well, since the rule says "may", I really -- I  
24 can't imagine using it as a "will".

25 Q. It says "may". But for us, without standards,

1 it's just that, and it's saying maybe. And you have not  
2 looked into that or thought about that?

3 A. Was that question --

4 Q. Have you --

5 A. Have I --

6 Q. -- thought about that?

7 A. My thoughts are just what I said, which is, I  
8 would not be asked to automatically program something that  
9 goes against the rule. I've never been asked that, and I  
10 don't believe I would.

11 Q. Goes against the rule. What rule? I thought  
12 this would be the rule that said we could be denied an APD?

13 A. Well, the rule says "may", and so I would be  
14 requested to set up a system that supports the rule. The  
15 system would say, Here's some information; you all decide  
16 how you're going to handle this information.

17 Q. But if someone said, we're not going to give APDs  
18 to operators with too many wells on the inactive list, then  
19 you could do that?

20 CHAIRMAN FESMIRE: Mr. Carr, I think that is what  
21 she's saying about a premise that's outside the rule.

22 MR. CARR: You mean -- is it -- Am I misreading  
23 the rule? When you say we may do it, it means you can't do  
24 it?

25 CHAIRMAN FESMIRE: No, sir. What I think she's

1 saying, if I understand it correctly, is that she has never  
2 been asked to program fatal errors in a "may" situation.

3 MR. CARR: And my question is, could she be asked  
4 to do it? And if so, could she do it?

5 CHAIRMAN FESMIRE: I think that's a question for  
6 the witness.

7 THE WITNESS: Sure.

8 Q. (By Mr. Carr) Did you say that 50 percent of the  
9 inactive wells were on federal lands?

10 A. I did. I said about. And as of yesterday, we  
11 had 1179 federal and 130 Indian and related. So that's not  
12 quite half.

13 Q. Are you aware that if we file -- "we" -- an  
14 operator; I'm not an operator -- if an operator files a  
15 notice of intent to plug a well on federal lands, it first  
16 goes to the BLM?

17 A. Yes.

18 Q. And it can be there for a month before it gets  
19 just mailed to the OCD?

20 A. (Nods)

21 Q. So there can be a month delay in just getting  
22 that paperwork processed, is the system that works for  
23 wells on federal land?

24 A. Yes.

25 Q. And during that period of time, even if you've

1 done what you're supposed to do, you still could be held  
2 hostage, that is, have that well included on an inactive  
3 well list, could you not?

4 A. It would. And I asked the District Supervisor  
5 yesterday -- if I may --

6 Q. Uh-huh.

7 A. -- because actually the question was related to a  
8 TA -- what the time lag was in that.

9 Q. Uh-huh.

10 A. And the answer I received was that whenever  
11 there's an individual circumstance such as this, some kind  
12 of time lag, if they would -- what they've done in the past  
13 and would want to continue doing is, if we could be made  
14 aware of that, in several situations we will either record  
15 a temporary ACO, or if it agrees -- if it is not the type  
16 of permit that is likely to be changed by the BLM and  
17 disapproved by the BLM, that we could go ahead and enter  
18 that status on a temporary basis.

19 Q. Even before the BLM processed --

20 A. Right, if it's -- We weren't talking APDs, we  
21 were talking TAs. But all I could say is, there's an  
22 interest in the operator letting us know of a pending  
23 circumstance, and either through the ACO process or just  
24 including it in our system, that would be how it could be  
25 handled.

1           Q.   Listening to the Division's presentation, it  
2   seemed to me that you've been writing a lot of letters to  
3   operators from the Environmental Bureau, notice of the  
4   violation, trying to encourage people to get into  
5   compliance.  You've also had a number of letters coming out  
6   of the District Office trying to bring operators into  
7   compliance.

8                   My question is, could your computer system  
9   generate a certified letter to an operator telling them  
10   that your data shows that they have too many wells on the  
11   inactive list?

12           A.   I'm glad you asked, because yes, it can.  But I  
13   haven't met the computer yet who can fill out the little  
14   green form, which takes an hour to fill out, if you've ever  
15   -- I'm sure you've done them.  Well, okay, maybe not.

16           Q.   I have --

17                   (Laughter)

18           MR. CARR:  -- and I challenge you on that.

19                   (Laughter)

20           THE WITNESS:  You know, I would like to write the  
21   software program and gain the revenue for filling -- and  
22   there must be one.  But the certified -- yes, you can write  
23   a certified letter on a program and have a letter  
24   generated, and we do do that.  Well, I don't -- I'm sorry,  
25   I don't know if we put "certified" on the letter.  But you

1 can generate letters from systems.

2 The "certified" is a manual, very, very  
3 cumbersome process to meet the Post Office's requirements.

4 Q. (By Mr. Carr) You'd have 158 letters on this  
5 list alone. I mean, you have 158 operators on this list,  
6 and if you had to get to notifying them by certified mail,  
7 this list alone would be the source of 158 letters; isn't  
8 that right?

9 A. I don't know of anything asking me to send a  
10 certified letter to those --

11 Q. But if you were asked to -- If the rule was  
12 amended and said before you will brand someone as not being  
13 in good standing you have to send them a certified letter  
14 and tell them, you'd have to write 158 certified letters,  
15 based on this one exhibit; isn't that right?

16 A. If the rule were changed that that's what I have  
17 to do, that's what we'd have to do.

18 Q. And I have a statutory unit hearing next week. I  
19 have to send 187 to notify people of that action. I mean,  
20 it's a burden, but it is a way to give notice; isn't that  
21 correct?

22 A. Actually no because again, using Ready Oil, they  
23 know and they don't pick those up. So you go to all the  
24 trouble to fill those out, and they don't pick up their  
25 certified letters from their post office boxes. So you've

1 gone to all of that work, but you still have not received  
2 any acknowledgement that you sent that.

3 Q. Well, you get it back, "not received"?

4 A. Right.

5 Q. And you can show you sent it to the correct  
6 address; isn't that correct?

7 A. Well, again we have that correct-address issue,  
8 but --

9 Q. Let me ask you about that. You know, you're  
10 going to be -- if you mailed notices to any operator here,  
11 Burlington again, they have offices in the San Juan Basin  
12 and in the Permian Basin. And if you mail a notice to  
13 Houston, you're really not giving them notice at all. I  
14 mean timewise, if you have to act in a short time frame?  
15 And I get criticized for this all the time on my notice  
16 affidavit.

17 But when you talk about, in the rules, wanting to  
18 have an address and a contact person so if there's an  
19 emergency Mr. Perrin knows who to call, don't you think it  
20 would be important that there be addresses on file, filed  
21 with you, so that if you're going to notify us of  
22 something, if we have a property in the San Juan Basin, you  
23 tell the people who are in charge of that and don't mail it  
24 to Houston, or you have an address for the people in  
25 Midland --

1 A. Yes --

2 Q. -- and you don't mail that one to Farmington?

3 A. -- and that was part of the request. Charlie had  
4 asked for one contact person per district. If that's the  
5 same person, that's fine. He was looking for a responsible  
6 person.

7 Regarding the address, we will accept addresses  
8 for anyplace you want to give us, and our systems have  
9 always allowed that. But we were asking for one address  
10 that the operator would verify, that would be checked, so  
11 that if we send a certified letter that address, it would  
12 be the operator's responsibility to receive that  
13 notification. Because we don't have that now.

14 So if -- It doesn't matter what address it is, if  
15 there would be one address given to us where we could be  
16 absolutely certain we could reach someone and they would  
17 commit to us, that's what we're looking for. So we'll take  
18 any number of addresses, we'll take any number of phone  
19 numbers, e-mail addresses, names, but we need -- That's for  
20 the contact information as far as emergencies.

21 As far as being able to mail a certified notice,  
22 we need one that works.

23 Q. This morning -- I may not have heard this right  
24 and I just wanted to ask you to restate, I think, the  
25 testimony. You were talking about what happens to an

1 operator if they acquire properties. What does that  
2 operator do to ensure that when he buys properties he's not  
3 also buying bad standing with the agency? And I just -- I  
4 didn't hear. I thought I heard you say that you were --  
5 you could enter a noncompliance -- and that you might have  
6 to get a one-well bond, and I just wanted to be sure I  
7 understood what you said. Is there a requirement that you  
8 bond at that time, or will a noncompliance order be  
9 sufficient? Do you know?

10 A. I'm not -- Excuse me, under the current system or  
11 the --

12 Q. Under the proposed system. I was writing and I  
13 heard something that I thought indicated you might require  
14 bonds if you buy wells that have been in inactive status  
15 over two years. Did you say that?

16 A. Oh, the way the financial assurance rule is  
17 written, it does not take effect until January, 2008,  
18 except in the case of wells newly requested to be drilled,  
19 plus any wells newly acquired. So yes, any newly acquired  
20 well that's gone through operator change would immediately  
21 be subject to the two-year rule.

22 So I showed that little example that the wells  
23 with the asterisk that were more than two years old,  
24 reporting right now, would immediately upon operator change  
25 -- part of the operator change would be us certifying, yes,

1 we have a financial assurance on those wells. The other  
2 wells would come up during -- before January, 2008.

3 Q. And so in that scenario if, again, Burlington  
4 acquired some wells and they have an active program to keep  
5 on top of the inactive wells, by acquiring them they would  
6 then have to get a bond, get them in line. And then the  
7 bond would be released, or would the bond be kept forever?

8 A. Or they might -- excuse me, I believe -- if I  
9 could address the released in a minute.

10 Q. Okay.

11 A. I believe -- It's our desire to have inactive  
12 wells taken over by responsible operators, so I know that  
13 if bonding were not the approach of -- I know we would want  
14 to work with the operator on the possibility of doing an  
15 ACO for these wells, because it's to the State's benefit to  
16 have a responsible operator take wells from an  
17 irresponsible operator. So I -- again, that would use the  
18 "may" approach.

19 As far as them being released automatically, I  
20 have to check my rules, I don't remember. I think they get  
21 released once the well comes into compliance.

22 That's in the financial assurance -- Excuse me.  
23 May I ask --

24 MS. MacQUESTEN: On the release?

25 THE WITNESS: Yes.

1 MS. MacQUESTEN: It's in -- Let's see.

2 THE WITNESS: Okay, I don't have a page number  
3 but it's in the financial assurance one, which is number  
4 101 --

5 MR. CARR: Uh-huh.

6 THE WITNESS: -- that used to be called plugging  
7 bond. Item G, release of financial assurance, the Division  
8 may release it --

9 MS. MacQUESTEN: Actually, Jane, if I could  
10 help --

11 THE WITNESS: Thank you.

12 MS. MacQUESTEN: Check in paragraph B, which is  
13 the paragraph that talks about the bonding being required  
14 for wells more than two years inactive, and it's a may  
15 release.

16 Q. (By Mr. Carr) A may release. So even if you had  
17 acquired a well, got the bond, brought it quickly into  
18 compliance, you still might have that bond -- that bond  
19 might have to stay in place? There's no automatic release  
20 in that situation; is that right?

21 A. Apparently so.

22 Q. Okay. Suppose there's a company who we won't  
23 name that happened to operate about 6000 wells in New  
24 Mexico. Suppose they had six wells out of compliance.  
25 They would have 1/10 of one percent of their wells out of

1 compliance.

2 A. Which is close to what they have out of  
3 compliance.

4 Q. But if they had six wells -- with 1/10 of one  
5 percent out of compliance, they would be labeled not in  
6 good standing, or they would not be in good standing based  
7 on the inactive well list; isn't that right?

8 A. Correct.

9 Q. Now, if a company operated a hundred wells and  
10 had five wells on the inactive list, they'd have five  
11 percent of their operations not in compliance. They'd be  
12 in good standing because they only have five wells, and yet  
13 they have 50 times more of their properties out of  
14 compliance.

15 My question is, isn't the Division with these  
16 rules applying a much higher standard to certain operators  
17 than to others?

18 A. Well, we're applying the same standards. It's  
19 the operator's choice how many wells they operate.  
20 Obviously the number of inactive wells allowed is  
21 different.

22 Q. And you don't think that listing someone as not  
23 being in good standing with 1/10 of one percent out of  
24 compliance, while you let another operator with five  
25 percent of its properties out of compliance -- you don't

1 think that's arbitrary or discriminatory against the party  
2 that only has 1/10 of one percent out of compliance?

3 A. I guess I wouldn't use those words. I think all  
4 of our motivation jointly is to get the number down, and  
5 whatever works would be very good.

6 MR. CARR: Thank you, Ms. Prouty.

7 THE WITNESS: Thank you.

8 CHAIRMAN FESMIRE: Is there any other cross-  
9 examination from the participants?

10 Commissioner Bailey?

11 COMMISSIONER BAILEY: I do have a few questions.

12 EXAMINATION

13 BY COMMISSIONER BAILEY:

14 Q. I'd like to start with the OGRID numbers. Which  
15 rule is that?

16 CHAIRMAN FESMIRE: Registration?

17 COMMISSIONER BAILEY: Yes.

18 MS. MacQUESTEN: Probably Rule 100.

19 COMMISSIONER BAILEY: Yes.

20 Q. (By Commissioner Bailey) You said that OCD has  
21 the ability to assign role codes, and that is a unique  
22 ability of OCD for a role code for a well operator. That  
23 ability is not shared by the other two agencies involved in  
24 assigning identification numbers.

25 Do you have an objection, because of the

1 confusion of the agencies that can assign OGRID numbers,  
2 and because this rule is not going to be binding on Tax and  
3 Rev or the Land Office, if in 19.15.3.100.B the title says,  
4 The Division may deny registration as a well operator if --  
5 and then those certain criteria?

6 As it reads now, it simply says the Division may  
7 deny registration if -- and lists the criteria. There's a  
8 problem there, because the Land Office and the Tax and Rev  
9 Department would still be able to assign OGRID numbers.

10 A. Right. The top -- that's implied in the top  
11 sentence, shall register with the Division as an operator.  
12 So registration in this whole area is meaning as a well  
13 operator. But no, I'd have no objection if it were  
14 restated.

15 Q. It could possibly clarify for everyone involved  
16 that this would deny registration as a well operator.

17 Okay, that's the easy part.

18 (Laughter)

19 Q. (By Commissioner Bailey) Within that same  
20 subsection B, you use the percentages of five percent for  
21 investigating whether officers, directors, et cetera, have  
22 an interest in companies. Where did you get that five-  
23 percent number?

24 A. I'm not aware.

25 Q. Is it just --

1           A.    I wasn't -- I wasn't -- the rule was this way  
2 when I saw it, so I'm not familiar.

3           COMMISSIONER BAILEY:   Okay.   Ms. MacQuesten, is  
4 there --

5           MS. MacQUESTEN:   Yes, it comes from Illinois's  
6 rules, and the exact rule is supported in the brief in  
7 support of the application.   The language in B(2) and B(3)  
8 comes from the Illinois rule.

9           COMMISSIONER BAILEY:   Do we know how that is  
10 working in Illinois?   Is there any report that indicates  
11 that five percent is reasonable, as opposed to 25 percent?

12          MS. MacQUESTEN:   No, I don't.   I tried to do a  
13 very quick search for case law, and I'm not sure that I was  
14 completely thorough, but in my limited search I couldn't  
15 find anything.

16          COMMISSIONER BAILEY:   Because we have had some  
17 comments that tracking down five percent of -- for names  
18 within the past five years is a rather difficult task for  
19 any company to do.   I was just wondering if an arbitrary 25  
20 percent made more sense.

21          MS. MacQUESTEN:   I think -- Do you want to want  
22 to address the rules now?   I'm just -- We're still in the  
23 middle of the cross-examination.   I'd be happy to talk  
24 about this.

25          COMMISSIONER BAILEY:   Let's put that off to that

1 point. I have other questions for Ms. Prouty.

2 Q. (By Commissioner Bailey) Proposed Rule 37 on  
3 good standing lists four criteria, and in -- a company must  
4 meet all four criteria to be considered in good standing.  
5 And compliance with the financial assurance requirements,  
6 the Division shall post on its website and update weekly a  
7 list of operators who are not in compliance with the  
8 financial assurance requirements. That's listed as  
9 paragraph B.

10 Does the Division currently post on its website  
11 anything connected with financial assurance requirements  
12 and lists of operators who do not meet them?

13 A. No, because to my understanding there aren't any  
14 who are not in compliance. We don't allow an operator  
15 change to go through unless the bonding has been satisfied  
16 or settled, and we don't add wells -- we don't -- we don't  
17 click currently the OGRID role code as an operator unless  
18 there is a blanket bond in place, unless there also -- or  
19 there is a single well bond in place, if they're choosing  
20 to go that route.

21 So in today's environment there is not such a  
22 thing as being out of compliance with the rules -- excuse  
23 me, with the financial assurance, except if a bond is  
24 canceled by a surety, at which point they turn into an  
25 orphan, and we wouldn't --

1 Q. But there's no published list for that?

2 A. No.

3 Q. In subsection C, compliance with orders requiring  
4 corrective action, the Division shall post on its website a  
5 list of operators who are not in compliance with a division  
6 or commission order. Is there such a list published on the  
7 website now?

8 A. Not to my knowledge, no.

9 Q. Compliance with penalty assessments. The  
10 Division shall post on its website a list of operators who  
11 have a penalty assessment unpaid, et cetera. Is there such  
12 a list posted now?

13 A. No, I don't believe right now we even -- we have  
14 databases that record these, yeah. If we did, they'd be  
15 public information.

16 Q. So the only one that is currently posted is the  
17 inactive well list?

18 A. Yes.

19 Q. At first reading, these new lists that would  
20 define bad actors seems to be vindictive. I'm sorry,  
21 that's the word I have to use. It appears to be vindictive  
22 to me that operators would then go on these new lists and  
23 could -- would be not even given notice that they were on  
24 those -- would be on those lists.

25 A. If I -- the way I envision them, not as the way

1 they were written, but as the person responsible -- as I  
2 read the rules, as the person responsible for supplying  
3 that information, we've talked for a long time about  
4 releasing RBDMS on line, which contains some of this  
5 information, all types of violations and listing  
6 everything, because everyone wants to know about it, good  
7 activities and bad activities.

8           So my vision of how these would be released is,  
9 listing all orders and then having a -- you know, an  
10 indicator, date compliance due, date compliance met, so  
11 there wouldn't -- I didn't envision a -- to meet this  
12 requirement, I had a vision of releasing all information  
13 about penalties, all information about orders, not  
14 necessarily -- from which you'd be able to determine who  
15 met them and who didn't. But that's what the public --  
16 that is public information, and that's what people want to  
17 know about.

18           Such as, if they're about to acquire wells,  
19 they're always asking me to manually go look, are any of  
20 these actions about to happen? I was just asked for  
21 ChevronTexaco to check that out.

22           So I saw it more as making all the information we  
23 have public than specifically creating a small list of  
24 those in violation. Do it the other way around, of a list  
25 of all activities from which you can discern who's in

1 violation and who isn't.

2 COMMISSIONER BAILEY: I think that's all I have  
3 right now.

4 CHAIRMAN FESMIRE: Given that conditional  
5 statement, Commissioner Olson, do you have any questions?

6 EXAMINATION

7 BY COMMISSIONER OLSON:

8 Q. I guess I had a question on something Mr. Carr  
9 brought up. He asked you a question about the good-  
10 standing requirement in Rule 100, and I think you had said  
11 that you looked at the -- for those parties and persons  
12 that would be exceeding five-percent interest owners, that  
13 it would be based upon the -- or denying the registration  
14 would be based upon those people being in good standing at  
15 the time of the application. That doesn't seem to be what  
16 the rule says. Could you clarify that for me?

17 A. Okay. If you were to come to us today with the  
18 Olson Company and you had financial assurance, we would  
19 have every reason to, you know, approve registration of you  
20 as an operator, unless some review of the records might  
21 have shown the William Olson Company to be currently out of  
22 compliance, and golly, your name was the same. And that  
23 might lead us to ask if you had anything, any relation,  
24 with the William Olson Company who was currently out of  
25 good standing. And if within the past five years you had

1 not had any relation with the William Olson Company, I  
2 believe your registration would be accepted.

3 So my understanding of this rule is, it's based  
4 on the William Olson Company's current standing. If they  
5 were in bad standing -- not in good standing yesterday, and  
6 you applied today and they were in good standing today, I  
7 don't believe the question would come up, the way I read  
8 this.

9 Do you see what I mean?

10 So the first decision point would be, is the  
11 company that you may have an affiliation with in good  
12 standing today? The second question would be, have you had  
13 a relationship with a company that is not in good standing  
14 in the past five years.

15 And I read it that way, but...

16 Q. Okay, so you're reading it that it is a current  
17 good standing, if they're actually in current good  
18 standing, right?

19 A. Yes.

20 Q. Okay, thank you.

21 And I guess maybe you've partially answered my  
22 next question, and it's also going to 19.15.3.100.B, when  
23 you're talking about this five-percent interest for persons  
24 with a five-percent interest in a particular company, I  
25 think you just said that the Division would contact them

1 and ask them about it. Is that the only mechanism that the  
2 Division has for determining whether someone has that type  
3 of an interest?

4 A. That was my understanding, yes. I don't know  
5 these things. It may be that from -- I don't know if  
6 parties are listed on the PRC website or anything like  
7 that.

8 COMMISSIONER OLSON: I think that's all the  
9 questions I have, Mr. Chairman.

10 EXAMINATION

11 BY CHAIRMAN FESMIRE:

12 Q. Ms. Prouty, if all 158 operators were to look on  
13 the website, pick up the phone and call you, and say all  
14 158 had a problem, how long would it take you to straighten  
15 those problems out?

16 A. Not very long. We've worked with very few  
17 operators so far. EOG came to visit -- was it EOG? -- yes,  
18 EOG came to visit and had a list of maybe 20 wells. The  
19 list they had printed that week already differed quite a  
20 bit from our list, because they had recently turned in  
21 sundries that had been processed in the normal course of  
22 time.

23 So we actually -- On their list of 20 wells there  
24 were no discrepancies, they left us with the task of, on  
25 two wells where they were just turning in to the BLM the

1 subsequent plugging notice, they asked me to keep an eye  
2 out, that they got recorded as plugged not released. And  
3 when I did check that a week later, they were plugged not  
4 released already. So each one doesn't take long.

5 We have a convention where I don't do the  
6 processing, the districts do, because they're the experts  
7 on what to accept. All I would -- So we had said the  
8 method of how to get these resolved generally started with  
9 the district, and then if Daniel or I could help we would  
10 be happy to, to follow up, let's say, for an operator who  
11 had many -- had wells in multiple districts or anything.

12 But it's -- to enter one piece of item such as a  
13 TA date, entering plugged not released, plugging a well  
14 where we have the proper paper, it takes a second.

15 Q. Okay. If you, your staff and the districts were  
16 to get these calls from the operators, do you think you  
17 could handle all of those calls within, say, a 60-day  
18 period?

19 A. Oh, yes.

20 Q. I need to address one of the things that  
21 Commissioner Bailey addressed, the phrase "vindictive",  
22 that some of the conditions in here seemed vindictive.  
23 Have you seen anything in your experience in working in  
24 these rules and preparing for this hearing that would  
25 indicate that -- that would make you use that word? Have

1 you seen anything like that?

2 A. No.

3 Q. Okay. Have you seen anything that would indicate  
4 that the decisions made here have been arbitrary or  
5 inconsistent?

6 A. No.

7 CHAIRMAN FESMIRE: Ms. MacQuesten, would you have  
8 any redirect?

9 MS. MacQUESTEN: Yes, please.

10 REDIRECT EXAMINATION

11 BY MS. MacQUESTEN:

12 Q. Ms. Prouty, at the beginning of Mr. Carr's cross-  
13 examination of you he expressed concern that if this rule  
14 were passed the OCD might publish a list of bad actors or  
15 operators out of good standing. And I believe you  
16 testified that you weren't aware of any requests to do  
17 that, and then he asked, well, what if the Governor  
18 requested or Mr. Fesmire requested, would it get posted?  
19 And what was your response?

20 A. To me, I serve the State, not the Governor or my  
21 Director, and I'm hired for my conscience. And I've never  
22 been asked -- as is everyone else -- I don't -- I've never  
23 been asked to do anything inappropriate, and probably  
24 wouldn't do it.

25 Q. Okay. It's possible, though, that if we were

1 told to publish a list we would publish a list?

2 A. It's possible.

3 Q. But it's possible now we could be asked to  
4 publish a list of all operators with more than 10 wells out  
5 of compliance with the rule, right?

6 A. Yes.

7 Q. Or the top-10 list of operators with the most  
8 wells out of compliance, or a list of every operator we are  
9 seeking a compliance case against. There's nothing special  
10 about this rule -- If we don't have this rule, it doesn't  
11 protect operators from the possibility of lists, correct?

12 A. Correct.

13 Q. The effect of lack of good standing. Lack of  
14 good standing only affects an operator if the operator is  
15 seeking certain things from the Division; is that right?

16 A. Yes.

17 Q. An APD, a transfer of wells, an allowable. If  
18 they're not seeking any of those things, whether they're in  
19 good standing or not doesn't affect --

20 A. Yes. They can't do those activities, yes.

21 Q. But if you have an operator who isn't active,  
22 whether he's in good standing or not doesn't really impact  
23 him; is that right?

24 A. They can continue operations.

25 Q. And if you have an operator who isn't operating

1 at all, this isn't going to be a very effective enforcement  
2 tool, is it?

3 A. No, it's not.

4 Q. This is designed to go -- to be used to encourage  
5 active operators to get into compliance and stay in  
6 compliance?

7 A. Yes.

8 Q. Mr. Carr used the example of Heartland, and you  
9 said that they were on the potential orphan list?

10 A. You know, I -- thank you for asking me that, and  
11 -- because I may be wrong. I think I was thinking of  
12 Harvest. There are three company names close, so I don't  
13 know the answer to that, I'm sorry.

14 Q. Okay. Well, maybe this would help. If we went  
15 to your inactive well list and looked up Heartland, it in  
16 fact does show two wells on that list, and it shows the  
17 last recorded reporting from that company for those two  
18 wells, they both show 6 of '96, so that's the last time  
19 we've heard from Heartland?

20 A. It would be the last time that they reported a  
21 volume. They may be sending C-115s in regularly but with  
22 zero volumes. So yeah, thank you for that opportunity, as  
23 -- Harvest, excuse me -- Harvest -- yeah, there are three  
24 that have H's there, and I'm not sure.

25 But yes, the last -- it's possible that we're not

1 getting C-115s, but what that tells us is that we're not  
2 getting C-115s with volumes.

3 Q. Okay. And this is a company that only has two  
4 wells, and these two wells haven't produced since sometime  
5 in 1997?

6 A. (Nods)

7 Q. For that sort of company, we have to use other  
8 methods; is that right?

9 A. Yes.

10 Q. And you're familiar with the orphan well program  
11 where we don't believe there's an operator out there who's  
12 going to respond to anything we do?

13 A. (Nods)

14 Q. And those orphan wells are generally taken to  
15 hearing, to get the authority to plug the well, and then we  
16 plug using the reclamation fund, and those are in fact the  
17 wells that Mr. Brooks -- many of the wells on Mr. Brooks'  
18 list are those sort of wells, right?

19 A. Yes, they are.

20 Q. Now, Mr. Carr also brought up the issue of  
21 notice, and the Rule 100 asks for an operator to provide a  
22 current address of record to be used for notice --

23 A. Yes.

24 Q. -- and to keep us updated on that address?

25 Now he said, What if you need different

1 addresses, more than one, for notice? But would it be  
2 possible for you to keep track of multiple addresses --  
3 multiple notice addresses for each district or whatever  
4 designation the operator asked for?

5 A. Yes, it's possible, it's just -- When the wells  
6 affect all districts, which address would we use, or would  
7 we use all of them or -- yes, of course it's possible --

8 Q. Right, we move back to the same question of which  
9 address do we use in order to reach this company?

10 A. Yes.

11 Q. Do you use the Midland address or the Houston  
12 address, et cetera?

13 A. (Nods)

14 Q. So what the current rule is asking for is, just  
15 give us one address, we'll send it there, you figure out  
16 what to do with it after that?

17 A. Yes. And as I said, we'll still continue to  
18 record multiple addresses for other purposes, but for this  
19 purpose we want one.

20 Q. We've had some different proposals of the number  
21 of wells that we would tolerate being out of compliance  
22 before an operator lost good standing. The goal as an  
23 operator should be in compliance on all wells; is that  
24 right?

25 A. Yes.

1 Q. Any number we pick -- We could say zero  
2 tolerance, no wells out of compliance. That would be one  
3 way to approach this, wouldn't it?

4 A. Yes.

5 Q. But instead we pick some way of allowing  
6 operators a little breathing space before we deal with good  
7 standing. Wouldn't any method we pick affect some  
8 operators more favorably than others?

9 A. It would be --

10 Q. Can you come up with anything we could do that  
11 would be a standard that would apply equally to large  
12 operators and small operators?

13 A. No, I can't, if you're also working with the goal  
14 of reducing the overall number.

15 MS. MacQUESTEN: Thank you, that's all I had.

16 CHAIRMAN FESMIRE: Mr. Carr, do you have anything  
17 else?

18 MR. CARR: Yeah.

19 RECROSS-EXAMINATION

20 BY MR. CARR:

21 Q. You responded to Ms. MacQuesten's question about,  
22 you know, what happens if you're on the bad actor list.  
23 You can't get a permit but you can continue to operate.  
24 Have you considered the indirect consequences on a company  
25 being labeled as not being in good standing in this state

1 when it comes to things like entering into contracts with  
2 third parties or borrowing money or anything else?

3 A. Personally, no.

4 Q. We talked about this Harvard or Haviland or  
5 some -- Heartland Oil Company, and no matter what it is,  
6 they still have 100 percent of their properties out of  
7 compliance; isn't that right?

8 A. Yes.

9 Q. And they still could get an APD. If they filed  
10 one, it wouldn't be kicked out of your system?

11 A. Depending on whether they were filing a C-115,  
12 I'm not sure they could produce anything.

13 Q. But I understand you could get an APD approved if  
14 you filed it and you're not in bad standing?

15 A. If it met all the other criteria.

16 Q. And concern about multiple addresses, we don't  
17 want to confuse you about them, but you would be able to  
18 tell if the well you're talking about is in the Permian  
19 Basin or the San Juan; your system could do that, couldn't  
20 it?

21 A. We wouldn't be talking about a well. We'd be  
22 talking about all of the wells that the operator operates.

23 Q. Could you then send it to both?

24 A. You could, and my experience is that one or the  
25 other will say they didn't get it, and they likely didn't

1 get it, because it possibly did change. So then -- But if  
2 you ask someone to keep one record current, the likelihood  
3 of someone being responsible for everything that comes to  
4 that address is great.

5 Q. Now, I believe you responded to a question from  
6 Ms. MacQuesten saying that you actually could go to a no-  
7 tolerance situation if you have inactive wells and it was  
8 on that list, you're not in good standing, and I believe  
9 you said you could. If you did that, then -- and strictly  
10 enforced the rules as drafted, you might just shut down the  
11 industry; isn't that right?

12 A. Again, as Mrs. MacQuesten pointed out, further  
13 activity, not -- the current operation would stay as it is,  
14 but the ability to go to new drilling when old drills  
15 haven't been taken care of would be reduced.

16 Q. And that would include most operators, wouldn't  
17 it?

18 A. Well, we have about 700, and --

19 Q. We could count this list if we wanted to, but I  
20 don't want to.

21 A. I think I did, and it was -- didn't I say a  
22 hundred -- no, no, no, I'm sorry.

23 Q. That was 158 with five wells. But if you went to  
24 no tolerance we'd jump that number way up, wouldn't we?

25 A. Yeah, we have 607 operators who've reported

1 C-115s this year with some production on it, so we're  
2 always in that 600-to-700 range.

3 Q. Ms. MacQuesten asked you if there was a system  
4 that would be fair to all operators, and you said you  
5 really didn't think you'd come up with one. Don't you  
6 think going to a percentage basis with a floor under it for  
7 the very small operator would be more fair than a system  
8 that will treat an operator as in bad standing when he is  
9 50 times more in compliance than one who is not branded as  
10 being in bad standing? The example we had with Burlington  
11 versus a small operator. Do you think that's fair?

12 A. I'm struck here with whether it's my place to  
13 determine this, so -- but I believe the intention was to  
14 make things clear for everyone. If they had an APD  
15 yesterday for 12 new wells and that increases their  
16 percentage, the intention, I think, was to make it very  
17 clear rather than people worrying about were they out of  
18 good standing yesterday because some APDs were at the BLM  
19 and that would have increased their percentage.

20 So if you take the full specter of "fair", I  
21 think there was -- I know there was an effort made to what  
22 is the clearest to everyone.

23 Q. Were you involved in the discussions trying to  
24 determine how to handle that internally in this agency?

25 A. How to determine the number or how to --

1 Q. How to handle this --

2 A. -- support it?

3 Q. -- five wells or ten wells, I mean, we've had  
4 both proposals. Were you involved in any of those  
5 discussions on how many wells you ought to use?

6 A. Some of the meetings I was. I don't believe I  
7 participated in that number.

8 Q. As the rule is drafted, if I have the right copy,  
9 you've got two distinctions, less than 100 and more than  
10 100. Was any consideration to having a more -- more  
11 categories, less than 200, or 200 or less, or more -- 500  
12 or more? I mean, in other words, having more categories to  
13 address the very large and the very small operator, instead  
14 of using just a -- one break point, 100 wells. Were there  
15 discussions along those lines?

16 A. I think -- I can recall attending meetings where  
17 the number of wells out of compliance was discussed but not  
18 the break points. There were a lot of -- I only went to  
19 one meeting --

20 Q. Okay.

21 A. -- that I -- I had a private meeting with Mrs.  
22 MacQuesten on the C-115 rule and how the system impacted  
23 the rules. But I only attended one meeting of the other,  
24 and that particular item was not discussed.

25 MR. CARR: Thank you.

1 CHAIRMAN FESMIRE: Are there any other questions  
2 of this witness?

3 Yolanda?

4 MS. PEREZ: May I ask --

5 CHAIRMAN FESMIRE: Why don't you identify  
6 yourself for the record, since this is for --

7 MS. PEREZ: Yolanda Perez with ConocoPhillips,  
8 and if I could ask questions or make suggestions, you know,  
9 I'm a -- well, you've heard before I'm a big advocate of  
10 the electronic system that the OCD has in place.

11 I see opportunity to clarify and work more with  
12 the inactive well list, to help the operators see if there  
13 is a problem -- Let's see if I can explain this correctly.  
14 Include more criteria on your initial page, like, you know,  
15 the suggestions of what P means, what T means. But also  
16 include criteria for wells that, like, are not included in  
17 the well count. Like a pressure-observation well is not  
18 included in the well count, miscellaneous well is not  
19 included in the well count.

20 So that if there is a well listed there with the  
21 wrong status -- not status, but the wrong type, an operator  
22 can see that they -- that we need to correct that type  
23 that's listed, because this well is now a pressure-  
24 observation well, but the OCD's records show it's an  
25 injection well or whatever the case may be.

1           We need a little bit more clarification on the  
2 query. Just yesterday as -- Ms. Prouty was querying a  
3 well, and she queried a well with a month. That wasn't a  
4 true indication of what an inactive meant at that point, or  
5 production. I think that we need to clarify that -- okay,  
6 if you query it for five months, it really means that you  
7 have -- equals three months of no production, type  
8 definition or clarification.

9           Because my concern is that -- and I think that it  
10 will help industry and it will help the OCD that at the  
11 time these rules go into effect -- because it seems like  
12 there is ongoing work with the system to clarify, to take  
13 wells off the list.

14           And at the point that these wells [sic] go into  
15 effect, we have to have a system that is as accurate as  
16 that can be so that we know and can use our resources to  
17 clarify, to make the changes, to correct anything that's  
18 out there.

19           So I feel that we need more clarification on the  
20 website to that effect, because that is going to be the  
21 tool that operators will use to proactively manage their  
22 standing. So I would like to see that type of information.  
23 I think that -- you know, by bringing it up at this point  
24 when we're -- because it -- you know, because of the  
25 inactive well and the good standing and all that, we really

1 need to have a system that works with the information that  
2 is needed to query -- I mean, we want to compare apples to  
3 apples.

4 We have -- as ConocoPhillips, have processes in  
5 place, and we're -- you know, we're having it in San Juan.  
6 Going to implement it in the southeast, that's a different  
7 discussion. But I have a process that I -- I have a query  
8 that was sent to me by our production accounting system to  
9 tell me, to give me wells that show zero production for  
10 three months. I want to be able to compare that to the  
11 same three-month production period in the OCD website, so  
12 we are comparing apples to apples. So I have that  
13 suggestion about clarifying, making sure we have the right  
14 information, the status, the type of wells, to help clean  
15 it up.

16 I think that, if I may, on the notice piece, you  
17 know, we talk about addresses, but we talk about having a  
18 lot of electronic-type of notification. One of the things  
19 the OCD also has is an operator/administrator for their OCD  
20 online applications, that maybe that would even be another  
21 way to notify operators not in good standing through the  
22 already-existing OCD online system. I mean, maybe as an  
23 option or just another way. Because you know, that is an  
24 electronic-type notification, versus mail also. I mean,  
25 certified mail would be the -- probably one of -- what we

1 would we prefer.

2 But you know, not to have -- it would be a lot  
3 better than snail mail, having some type of electronic  
4 notification, maybe through the operator/administrator,  
5 that is on file with the system.

6 And since the OCD is looking at even all  
7 operators reporting those C-115s electronically, and making  
8 that the rule and not the exception to the rule. But -- So  
9 you would have an operator/administrator for every company  
10 that's out there.

11 The other question I have is, we talked about the  
12 nonfatal warning for state-approved -- state APDs, because  
13 that's the only current way that we have of filing APDs, is  
14 -- for state or fee lands on the OCD electronic system.

15 But as has been noted and everybody is aware, we  
16 have a lot of federal lands, BLM APDs. And so what is  
17 going to be the system in place to notify on federal wells  
18 that you're not going to get an APD approved, because we  
19 won't get an electronic notification, you won't get a  
20 nonfatal warning until maybe -- but something to consider  
21 too, because I know that there are some things working with  
22 the OCD and BLM, whenever the BLM system ever gets back up,  
23 but you need to have a mechanism in place also for federal  
24 wells, because we do operate -- probably in the Basin 90  
25 percent are federal wells. And so we need to think about

1     how that notification is going to be made on those types of  
2     APDs.

3             CHAIRMAN FESMIRE:   Okay.

4             MS. PEREZ:   I think that's all I have of this --  
5     at this time.

6             CHAIRMAN FESMIRE:   Okay.   Any other questions of  
7     this witness?

8             THE WITNESS:   May I respond to the -- they  
9     weren't questions, but there were a couple of things that  
10    -- Is that all right?

11            CHAIRMAN FESMIRE:   Ms. MacQuesten, would you --

12            MS. MacQUESTEN:   I have no objection.

13            THE WITNESS:   Okay.   Just real quick, I think --  
14    Yolanda is a continual source of good suggestions, and  
15    those are good.   Thank you.

16            As far as the month, I worked really hard on the  
17    month.   The report clearly tells you -- like if you don't  
18    know what four months ago is, it prints four months ago so  
19    that you're not constantly saying, Do they mean four C-115  
20    months or four months from today?   So the report very  
21    clearly shows wells that have been inactive since -- and it  
22    translates the three months into July -- this is October,  
23    three months ago was July.

24            If an operator -- the reason that we didn't  
25    automatically that three months in is, operators can submit

1 a C-115, and do, for September. So they won't show up as  
2 wells not reported. So what I worked really hard to do was  
3 say, these are the wells we haven't received any reporting  
4 on since three months ago. It doesn't say they're in  
5 violation for that, but it clearly states what month we're  
6 talking about.

7 So I took a consistent role on that and I think I  
8 would vote for it to stay the same way, although I'm sure  
9 there's some text enhancement I can make.

10 But as far as it being accurate, it is accurate.  
11 If the operator submitted their September C-115, you won't  
12 see that list that you saw yesterday. Marbob hasn't  
13 submitted their August one, so that's why it was there.

14 The operator/administrator, when I send blanket  
15 e-mails I get a lot of those back that they're incorrect  
16 e-mail addresses, that people have changed systems and they  
17 don't notify us, even though they should. So if we use  
18 that method, which was certainly our intention, to find one  
19 responsible operator who blesses all other users, you know,  
20 we have to work on the language, but right now that would  
21 not be an effective way to get ahold of someone because  
22 they're not notifying us when wells go inactive.

23 And the last one, the federal APDs, what we would  
24 do to notify people is, today on the federal APDs we put in  
25 a condition of approval that the C-104 will not be approved

1 if there's anything related to our responsibility that  
2 isn't done. So that would be the vehicle to notify on any  
3 federal APD if we had any issue. And yes, we are working  
4 to get our data shared electronically, and that will solve  
5 the whole problem, but that's probably quite a bit of time  
6 off.

7 Thank you.

8 CHAIRMAN FESMIRE: Ms. MacQuesten, are you  
9 finished with this witness?

10 MS. MacQUESTEN: I am.

11 CHAIRMAN FESMIRE: Okay, do you have another  
12 witness?

13 MS. MacQUESTEN: No, I don't. This concludes the  
14 OCD's presentation.

15 CHAIRMAN FESMIRE: Okay. Mr. Carr, would you  
16 like to get started on your case before lunch?

17 MR. CARR: Whatever you -- the pleasure of the  
18 Commission.

19 CHAIRMAN FESMIRE: That would seem reasonable to  
20 me. Thank you.

21 MR. CARR: May it please the Commission, at this  
22 time on behalf of NMOGA and the Independent Petroleum  
23 Association, we call Bruce Gantner.

24 Mr. Gantner has one exhibit, definitions, and  
25 these definitions were included in our comments and

1 attached to the prehearing statement that we filed last  
2 week.

3 CHAIRMAN FESMIRE: Mr. Gantner, you've previously  
4 been sworn, have you not?

5 MR. GANTNER: Yes.

6 BRUCE A. GANTNER,  
7 the witness herein, after having been first duly sworn upon  
8 his oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CARR:

11 Q. Would you state your name for the record, please?

12 A. My name is Bruce Gantner.

13 Q. Mr. Gantner, where do you reside?

14 A. I reside in Farmington, New Mexico.

15 Q. By whom are you employed?

16 A. I'm employed by Burlington Resources.

17 Q. And what is your position with Burlington  
18 Resources?

19 A. I'm a manager of environmental health and safety.

20 Q. Your responsibilities include keeping your  
21 company in compliance with the rules of the OCD, do they  
22 not?

23 A. Yes, sir.

24 Q. And your work product has been the subject of  
25 some significant discussion during the course of this

1 hearing?

2 A. Yes, sir.

3 Q. Have you participated in the meetings of NMOGA  
4 and IPA New Mexico to review the rules, the proposed  
5 enforcement rules, that are the subject of today's hearing?

6 A. Yes, sir, I have.

7 Q. And are you prepared to share with the Oil  
8 Conservation Commission the industry comments that have  
9 come out of those meetings?

10 A. Yes, I am.

11 Q. By training, are you an engineer?

12 A. Yes, I am.

13 Q. You're not here today to provide technical  
14 engineering testimony, however?

15 A. That's correct.

16 Q. You're just going to be reviewing the concerns  
17 that are expressed by these industry groups?

18 A. Yes, that's correct.

19 Q. I'd like to direct your attention first to the  
20 good-standing provisions in the proposed enforcement rules,  
21 Rule 37. And if you would, could you summarize the  
22 industry concern with this provision in the rule?

23 A. Well, there's several concerns. First and  
24 foremost, we understand that there's some mayas and some  
25 shalls there, but potentially they impair the ability of

1 the operator to develop -- to fully develop its oil and gas  
2 property rights in the State.

3 Second, we feel, contrary to what we heard  
4 earlier, that it -- we feel it authorizes some arbitrary  
5 decisions with respect to when you would be in good  
6 standing and when you would not. We're concerned about who  
7 makes that determination and the information that's going  
8 to be used to make that information -- that determination.

9 And the sense, I think the general sense is, we  
10 feel it penalizes, you know, good operators, because we  
11 consider ourselves and others -- you know, we strive to  
12 comply with, you know, all the rules of the agency. And to  
13 all of a sudden have a label of not being in good standing  
14 is, frankly, not very appealing to us.

15 Q. Mr. Gantner, we've heard testimony about the  
16 consequences of being labeled a bad actor or not being in  
17 good standing, and I think at this point we can probably  
18 not readdress those.

19 A. Okay.

20 Q. And I'd like you to follow up on your statement  
21 that you're concerned about who is going to be making this  
22 determination. What's your concern there?

23 A. Well, it's certainly -- it's going to be made by  
24 the Oil Conservation Division. Sounds like some of it  
25 might be at the District Office, some may be in Santa Fe.

1 But the decision is going to be made, as well, based on  
2 records that they have, which I think we've heard from the  
3 discussions that you've heard from the OCD, that that data  
4 -- their own records may not be accurate, may not be up to  
5 date.

6 And from our experience personally, there's  
7 errors in those records. And it's not a fault, I think,  
8 of the system. I mean, I compliment Ms. Prouty on the  
9 system. It's pretty well done. But the fact is that there  
10 are inherent delays and pieces there, and to label that  
11 list as a noncompliance list is not appropriate.

12 Q. When you look at the rule and you see that if you  
13 are not in good standing the Division may do some things  
14 and it shall do others, can you find any standards in the  
15 rules that give you any guidance as to when or how the rule  
16 may be enforced against you as an operator?

17 A. No, that's what concerns us, is that it could  
18 be -- it's not very clear as to when it would and when it  
19 wouldn't, other than the things that are stated as shalls.  
20 Those are absolutes.

21 Q. Let's talk for a minute about the inactive well  
22 list. Can you summarize the concerns that industry has  
23 with this list and the way it's to be used?

24 A. I think inherent in it is, we understand that  
25 it's a pretty mechanical list. It's basically a computer-

1 generated list that reflects from the Division's records of  
2 whatever wells have not been producing for 12 months plus  
3 three months. And that concerns us because there's a lot  
4 of effort, I can tell you, at my company and others, that  
5 we're working with those wells constantly.

6 And so it's dynamic and changing, and so one day  
7 a company of my size, like you said, we could have three --  
8 when I came here to the hearing we had three on the list,  
9 two of which on the list did not reflect the current  
10 status, I mean the accurate status. And yet tomorrow that  
11 list could be five, and we could be out of good standing.

12 The arbitrary nature of the standard concerns us  
13 as well. I don't feel, you know, representing Burlington,  
14 that it's a fair standard to say that somebody could have  
15 two wells in there and they only operate two, and they're  
16 100 percent out of compliance. Yet we would have five  
17 wells out, which is less than a tenth of a percent of our  
18 operated wells, and to be labeled as not in good standing.

19 So this concerns us about the list and making  
20 sure it's accurate. And again, I commend the Division in  
21 their efforts and -- to keep that up. But we don't feel  
22 that on a day-to-day basis that that should be, you know, a  
23 reasonable decision as far as good standing or not.

24 Q. There seems to be in this hearing the -- we're  
25 treating this label "good standing" as if it is the only

1 remedy and that if we go to a percentage, you, Burlington,  
2 or another company is going to have, you know, all of a  
3 sudden a large number of wells that are not in compliance.  
4 Is industry's concern with -- is it that simple in focus,  
5 or is there concern about the label, and then aside from  
6 that label other compliance provisions that can be brought  
7 to bear?

8 A. Right. Well, in terms of our day-to-day  
9 business, we aren't going to -- you know, we're operating  
10 to be 100 percent in compliance every day. I mean, that's  
11 our objective. We'd like to keep every well producing. I  
12 mean, that would be objective. Goodness, the nation needs  
13 the energy, and so we'd certainly like to be -- to see that  
14 happen.

15 But I think the nature of producing in the oil  
16 and gas industry is that you are going to have wells that  
17 today it's producing, you could log off tomorrow, and  
18 granted, you're going to take -- within time you're going  
19 to get to that well and work on it. And granted, we strive  
20 to work on it sooner than 12 months, but -- and three  
21 months, but -- So from a numbers standpoint we object to  
22 that.

23 A percentage seems more fair to us. Again, NMOGA  
24 proposed five percent. For Burlington that would be 300-  
25 some wells. We're not going to operate in a way that's

1 going to allow 300 wells to go up there. It's not in our  
2 incentive to do that.

3 Q. If you had 300 wells out of compliance, I believe  
4 the testimony was that -- yesterday -- you could be subject  
5 to \$300,000 in fines?

6 A. Per day, right.

7 Q. There are other enforcement tools, if you decided  
8 to change your position and start accumulating a large list  
9 of inactive wells; isn't that true?

10 A. That's correct.

11 Q. And your concern is really with -- having only  
12 1/10 of one percent, being at risk of being labeled a bad  
13 actor.

14 A. Plus the consequences that can come from that,  
15 which means no future APDs, possibly having an injection  
16 well shut in because it's not being allowed to inject.  
17 Obviously, that's a very key thing in our Basin, that --  
18 the ability to inject water. If you don't inject water,  
19 you're going to be shutting in wells as well.

20 Q. What was NMOGA's recommendation on the number of  
21 inactive wells that an operator should be allowed to have  
22 without being in bad standing?

23 A. We recommended a two-tiered approach. For the  
24 smaller operator we recommend five -- no more than five  
25 wells. And for the balance, anyone that was not a small

1 one, would be a large one, would be five percent.

2 Q. And was a recommended amendment to the rule  
3 proposed by NMOGA?

4 A. Yes, it was.

5 Q. And that is set out on page 2 of our Exhibit 1?

6 A. Yes, sir, it is.

7 Q. What is industry's concern about the accuracy of  
8 the data that's being used to determine whether or not  
9 someone is in bad standing?

10 A. Well, it's -- the wells out there are dynamic,  
11 they're changing, you know, all the time. And so, just as  
12 a case in point, I mean, if you looked at a well that was  
13 on Burlington's list, it shows one well. I think when we  
14 had the public meeting back on September 21st, that same  
15 well is on there today. That well is producing today, but  
16 the records, I guess, just haven't caught up to the effect  
17 of where that's going to drop off the list.

18 And so it doesn't accurately reflect that that  
19 well is inactive. It isn't inactive, it's active. But  
20 their records obviously show it's that. So you could say  
21 that's an error, or just a matter of the time frame that it  
22 takes information to catch up.

23 But that's just one example. There are examples  
24 I think others have. I believe OXY will talk later about  
25 some wells that they have P-and-A'd that still show on that

1 list.

2 Q. Are you concerned that just problems with the  
3 system -- If you're only to have, in your size operation,  
4 five wells on that list at any one time, are you concerned  
5 that just these problems with the system, not failure to  
6 comply with the rules but system problems, could cause you  
7 to be labeled as not being in good standing to do business  
8 in this state?

9 A. Yes, sir, that does cause us concern.

10 Q. And what did NMOGA and IPA recommend as a way to  
11 deal with that situation?

12 A. Well, I believe that we felt, just because of the  
13 nature of the list -- and it is dynamic -- that before  
14 anybody would be placed, you know, on -- or even if there  
15 is no list of not good standing, but basically the inactive  
16 well list -- before they would be subject to a not-good-  
17 standing-type criteria, meaning denied permits, denied  
18 injection, that we would be given due notice by certified  
19 mail that you're about to be entered into this kind of  
20 status, and that just seems appropriate to us that we would  
21 have a chance to reconcile information.

22 If we need to come to a compliance order, that's  
23 fine. I would think we'd be working on that ahead. But  
24 before we be put into that status, that we would be given  
25 due notice.

1 Q. You know, the Division in the hearings in the  
2 last two days has expressed reservations about that. How  
3 would you respond to that?

4 A. I guess it confounds me. I mean, the list is  
5 published. I mean, if that list is available, it seems  
6 very -- easy enough, like I think Ms. Prouty said, that you  
7 could generate a letter -- maybe not the certified green  
8 piece, but the letter to say, Hey, you're entering into  
9 this status, and we want to give you that.

10 Now, I will say that as operators, we're keeping  
11 track of that information ourselves. So I have an idea  
12 pretty much on a day-to-day basis, as our folks do, of  
13 where our wells stand. But obviously because we have  
14 information that they may not have, they may not reconcile.

15 So we want to make sure that the two, you know,  
16 really correspond before they would place us into that  
17 status.

18 Q. Thirty days' notice would give you reasonable  
19 opportunity to come in and correct that data and deal with  
20 the situation, wouldn't it?

21 A. Yes, sir.

22 Q. Does this provide Burlington as a good operator a  
23 degree of protection that simply isn't there as the rule is  
24 now written?

25 A. Yes, sir, it would.

1           Q.    If you acquire wells from another operator, and  
2   some of those are qualified to be on the inactive list,  
3   would 30 days also give you an opportunity to enter an  
4   appropriate order or deal with that situation?

5           A.    Yes, sir, it should.

6           Q.    NMOGA and IPA also proposed an amendment that  
7   would provide a 30-day notice period.  Is that also  
8   included on page 2 of our Exhibit Number 1?

9           A.    Yes, it is.

10          Q.    What is your recommendation concerning the  
11   publication of lists of operators showing how many wells  
12   they have not in compliance?

13          A.    Well, I was pleased to hear Ms. Prouty say she  
14   hasn't been asked, and we would certainly endorse that no  
15   such list be published of companies who are not in good  
16   standing.

17          Q.    The new rules contain a definition of the term  
18   "approved temporary abandonment".  When we look at the  
19   rules that we're considering here in this hearing, we're  
20   really talking about three types of wells, temporarily  
21   abandoned, approved temporarily abandoned, and inactive  
22   wells.  Could you respond to the Division's proposal to now  
23   have a new term, "approved temporary abandonment"?

24          A.    Well, I certainly understand where this came  
25   about, because of the Statute and that.  It certainly in

1 our opinion adds confusion, and it results in the  
2 inconsistent use of terms throughout. And certainly in the  
3 industry, if you talk to petroleum engineers, they have an  
4 understanding of what temporarily abandoned is. And  
5 certainly we understand that all TA'd wells are approved.  
6 I mean, they aren't accepted as TA'd until they're  
7 approved. But we feel that the separation between these  
8 terms should be maintained.

9 Q. And so what is the recommendation of NMOGA and  
10 IPA New Mexico?

11 A. Well, we oppose the change to create the fix that  
12 they're trying to achieve. We feel that the real issue is  
13 inactive wells, and so that we feel that the current  
14 definition, in fact, that's currently in the rules should  
15 remain.

16 Q. We proposed a definition of "inactive well", "we"  
17 being NMOGA and IPA New Mexico, did we not?

18 A. Yes, we did.

19 Q. It was not well received by the Oil Conservation  
20 Division; is that true?

21 A. That's correct.

22 Q. Mr. Gantner, if we had had more time to work with  
23 the Division, do you believe there's a chance we might have  
24 come up with a definition for this term that is better than  
25 the existing definition?

1           A.    Yes, I believe we could.

2           Q.    And with the inactive well list being as much a  
3 part of these rule changes, don't you think a better  
4 definition is warranted?

5           A.    Yes, sir, I do.

6           Q.    We also have raised concerns about another  
7 definition, the definition of knowingly and willfully, and  
8 it -- What are industry's concerns about this definition?

9           A.    Certainly we understand that enforcement and  
10 compliance with the rules is important. What concerns us  
11 with the definition -- We understand where it came from,  
12 but it lacks some specificity that it could be overused.  
13 And so we feel that it needs to be more carefully crafted  
14 of when a violation of a rule, an existing rule or that,  
15 "knowing and willfully" should be used. That's our basic  
16 concern.

17          Q.    Objections have been raised by a number of  
18 operators to the last sentence in the proposed rule which  
19 says, conduct that is otherwise regarded as being knowing  
20 and willful is rendered neither accidental nor mitigated in  
21 character by the belief that the conduct is reasonable and  
22 legal.

23          A.    Right.

24          Q.    Do you share your --

25          A.    -- concern?

1 Q. Yes.

2 A. Yes. Yes, I do.

3 Q. Is it possible that you and Mr. Perrin might  
4 think that something is reasonable and legal and have Mr.  
5 Williams not think so in Hobbs?

6 A. That's quite possible.

7 Q. You have proposed a new definition for that term.  
8 What is the source of that definition?

9 A. That source -- we dug this from federal law --  
10 really comes from the Occupational Safety and Health  
11 Administration, that they use for -- which has a knowing  
12 and willful in their Occupational Safety and Health Act,  
13 but gave some further definition and clarification of when  
14 it should be used.

15 Q. Mr. Gantner, why do you think this is a better  
16 definition than what the OCD is proposing?

17 A. I believe, as we stated with the concerns, that  
18 it satisfies -- it gives more clarification and  
19 specification -- I was trying to say specificity, but that  
20 would really be hard, as I just showed -- but it would give  
21 more clarification of when it's appropriate to use that  
22 term, because we really feel it shouldn't be overused.  
23 Most -- the operators I -- certainly my company and the  
24 operators I deal with on the NMOGA Environmental Committee,  
25 they're trying to be compliant.

1           So it shouldn't be a term -- it shouldn't be an  
2     issue that's used quite often. It should be the  
3     circumstance where somebody just doesn't want to comply,  
4     and we heard examples earlier of maybe some companies that  
5     aren't doing that.

6           Q. Did you participate in the effort that resulted  
7     in the drafting of the proposed amendments that are  
8     contained in NMOGA and IPA New Mexico Exhibit Number 1?

9           A. Yes, sir, I did.

10          Q. If those changes are adopted, do you believe it  
11     would impair the ability of the Oil Conservation Division  
12     to effectively enforce the new rules that they're proposing  
13     here today?

14          A. No, I don't believe it would. In fact, I think  
15     it would enhance.

16          Q. Would it provide operators with a degree of  
17     protection against an arbitrary action, a protection that  
18     doesn't exist in the existing rule?

19          A. Yes, sir, I believe that's the case.

20          Q. Are the proposals set out in Exhibit Number 1  
21     accurate representations of the amendments that NMOGA and  
22     IPA are proposing to the Commission?

23          A. Yes, sir, they are.

24                 MR. CARR: May it please the Commission, at this  
25     time I'd move the admission into evidence of NMOGA and IPA

1 New Mexico Exhibit Number 1.

2 CHAIRMAN FESMIRE: Is there any objection?

3 MS. MacQUESTEN: No objection.

4 CHAIRMAN FESMIRE: Any objection from the  
5 Commission?

6 It will so --

7 COMMISSIONER OLSON: Mr. Gantner --

8 CHAIRMAN FESMIRE: Oh, I'm sorry.

9 COMMISSIONER OLSON: -- just one thing, I was  
10 noticing on -- I think Mr. Carr was referencing a page 2.  
11 Is that part at the top there where it has the requirement  
12 for good standing, is that citation correct? That should  
13 not be 19.15.1.37, not --

14 MR. CARR: I think you're right.

15 COMMISSIONER OLSON: -- 201.A?

16 MR. CARR: Yes. Yes, I think that's correct.

17 CHAIRMAN FESMIRE: Can we blame that on Ocean?

18 (Laughter)

19 MR. CARR: No, Ocean refuses to type.

20 That concludes my direct examination of Mr.  
21 Gantner.

22 CHAIRMAN FESMIRE: Ms. MacQuesten?

23 CROSS-EXAMINATION

24 BY MS. MacQUESTEN:

25 Q. Mr. Gantner, if you drove 45 miles an hour in a

1 school zone and the police pulled you over, would it be an  
2 excuse to say that you thought the limit was 45?

3 A. I'd say there would be no excuse.

4 Q. You're supposed to know that it's 25?

5 A. Yes, ma'am, that's correct.

6 Q. And if the officer let you off with a warning, it  
7 would be out of the goodness of his heart, and not because  
8 there's a legal defense that you don't know what the speed  
9 limit is in a school zone?

10 A. Probably so.

11 Q. You're presumed to be aware of the driving laws  
12 in order to be a licensed driver; isn't that right?

13 A. Uh-huh.

14 Q. Shouldn't it be the same with a regulated  
15 industry?

16 A. Ms. MacQuesten, I'd say that we're -- again,  
17 speaking for my company, and you can ask others -- we're  
18 committed to knowing the rules, complying with those rules,  
19 and that's just our nature. I mean, I deal with that every  
20 day.

21 However, we also need to understand that there's  
22 an interpretation of the rules. And so -- You drew the  
23 example of traffic. It's my understanding, your  
24 understanding, that that stop sign means that we stop.  
25 Well, what does "stop" mean? Does that mean that I let the

1 wheels slow down to where they're barely turning before I  
2 make the right turn, or is it that the wheels completely  
3 stop, or that I look both ways -- We can have a different  
4 interpretation sometimes of what rules -- and I deal a lot  
5 with Charlie there in the District, and generally we agree,  
6 but sometimes we have a different interpretation about what  
7 rules require.

8           So -- and that's, I think, just part of our  
9 nature, to work together and have a common understanding.

10           Q. Well, I'm a little concerned about that, because  
11 when I look at the definition you're proposing for knowing  
12 and willful -- I understand your concern about  
13 interpretation, but right now I'd like to stick to the idea  
14 of knowledge of what the rules require, because your  
15 definition talks about whether somebody was aware of an  
16 applicable law or not, and that appears in several parts of  
17 this.

18           Aren't they -- Shouldn't we expect, and isn't it  
19 reasonable to require industry to know what the rules are?

20           A. Absolutely, and OSHA's statute does the same.  
21 But this is the clarification. It comes right out of their  
22 guidance.

23           Q. Well, I'm questioning why we should apply that to  
24 our situation here. You want to make it a defense that I  
25 didn't know what the rule was.

1           A.   Well, if I understand, and -- I don't know, let's  
2 just take a rule that exists, and it says that you shall  
3 not waste, and so oil should not go into a pit. Right?  
4 That's a current rule that the agency has. Now -- So I  
5 understand that.

6           Now, to what extent are we talking about oil  
7 going over? If there is a 1/100 of a percent amount of oil  
8 in that pit -- because I -- believe me, you can show  
9 absolutely no oil in that pit, but you can go test that  
10 water and you will find parts per million of oil in that  
11 water.

12           Now, we have a common understanding -- and I  
13 think there is -- what, Charlie? Is it one percent or --  
14 that's allowed in the pit? I think there's an amount.

15           MR. PERRIN: There is an amount.

16           THE WITNESS: Right, but the rule says that there  
17 shall not be waste. So there obviously has to be a common  
18 understanding of what that means. It's not just a sheen,  
19 but it's got to be a measurable amount, something that we  
20 both could agree that a lease operator going out there  
21 should know better about when it's being wasted and when  
22 it's not.

23           Q.    (By Ms. MacQuesten) But I think we're talking  
24 about different things. You're talking about  
25 interpretation, and I'd like to, if I can, get back to

1 knowledge.

2 Under your proposed definition it would be a  
3 defense to say, I didn't know that there was a rule saying  
4 that I can't have oil on the surface of the pit.

5 A. Well, there's two parts of that, is that I know  
6 the rule, and then as well that I know that there's a  
7 condition out there that's violating the rule. And so I  
8 know that there's the rule that says that I shouldn't waste  
9 oil and have oil in that pit. And so as responsible  
10 operator, my obligation is to make sure my employees all  
11 understand that, and then -- communicated that, and then  
12 hopefully they live by that each day.

13 And so it's a combination of knowing the rules  
14 and making sure that we train our people to do the right  
15 job. But then as well, the conditions out there -- I can't  
16 know for sixty- -- I think it was 6000 wells they said  
17 earlier we had? I've got 6200 in my mind. I can't know on  
18 a day-to-day basis what those 6200 wells -- personally.  
19 But I know that I've done the education of the folks out  
20 there, and I know that I've trained those people, so I have  
21 a pretty high confidence that they understand what they  
22 need to do on a day-to-day basis.

23 Q. You said that you have concerns about what --  
24 about interpretation and that people may have different  
25 ideas about what is reasonable. Getting back to driving 45

1 miles an hour in a school zone, would it be a defense to  
2 argue that you felt under the circumstances that it was  
3 reasonable to go 45?

4 A. In the circumstances you've given where it's --  
5 it has an established limit, it's not reasonable to go  
6 above that limit --

7 Q. Right, because the Legislature has made the  
8 determination --

9 A. -- for safety of children.

10 Q. -- that the rule is going to be 25 miles an hour.

11 A. That's -- well, it's -- I think it's, according  
12 to the local zones I go through, it's about 15.

13 Q. Okay, okay. But somebody that has the  
14 responsibility for making that decision has made that  
15 decision?

16 A. That's correct.

17 Q. And it's not a defense to you to just argue that  
18 it's not reasonable?

19 A. In that circumstance, you're correct, there's not  
20 much argument.

21 Q. Well, if the Commission enacts a rule that says  
22 thou shalt do something, do you want to make it a defense  
23 to say, Well, I don't think it was reasonable in this case?

24 A. No, I think we -- Again, I'll go back to what I  
25 said in the beginning. We're committed to complying with

1 all the rules that the OCD has on our books. I strive with  
2 our folks to understand those and explain that to people  
3 every day.

4 But as -- in the true world, as you go driving  
5 down the highway, it says 70 miles an hour right out here,  
6 and you see people that go more than 70 and you see some  
7 that are staying below the limit. Somebody set that as a  
8 rule. And I won't ask you, you know, if you've ever sped  
9 above the limit, but I think I can say I have in my past.  
10 I didn't this morning when I drove here, though.

11 Q. I hope you don't think I'm picking on you, Mr.  
12 Gantner, because I have a great deal of respect for  
13 Burlington, and I -- I'm not worried about Burlington doing  
14 the best it possibly can to comply with our rules.

15 But I am worried about what will happen if we  
16 adopt the definition you're proposing when we're dealing  
17 with some operators who may not be as fastidious as  
18 Burlington.

19 A. Well, I would share with you -- and again, this  
20 came out of the OSHA statute, and I just brought it if you  
21 want to make this part of the record, or I could just read  
22 it. But OSHA has been enforcing this kind of definition  
23 for years. For fiscal year 2004, they brought 86,708  
24 violations of their statutes, their laws that you stated  
25 there. Of those, only 462 did they cite and get conviction

1 on willful -- knowing and willful violations.

2 And so I think it's just a means that -- it has  
3 stood, obviously, a test of time, and we're simply  
4 proposing this as a reasonable means of further defining  
5 what is knowing and willful and what is really more of the  
6 most typical situations, total violations of 86,708, with  
7 only about a half a percent of those being knowing and  
8 willful. Because I feel that companies like ourselves, you  
9 said, and others that are here -- we're striving to comply.  
10 So when we violate in general, I don't think it's knowing  
11 and willful.

12 Q. Is it your position that the penalty provision  
13 should be used only in extremely rare circumstances, then?

14 A. Well, I'm supporting this from a knowing and  
15 willful standpoint, that this is an appropriate  
16 classification and definition around what that is. As far  
17 as the penalties, I'm not really here to talk about that.

18 Q. Well, knowing and willful only has relevance to  
19 penalties.

20 A. In -- for OCD.

21 Q. Right.

22 Let's go through the definition itself.

23 A. Sure.

24 Q. In looking at paragraph 1)a., it's -- a violation  
25 is knowing and willful if an authorized representative of

1 the operator was aware of the law, rule, order, or permit  
2 condition and knew of a condition or practice in violation  
3 but did nothing about it.

4 A. Uh-huh.

5 Q. So he has to know the rule --

6 A. Uh-huh.

7 Q. -- and he has to know the factual circumstances.

8 A. Right.

9 Q. If he doesn't know the factual circumstances --

10 A. Right, in other words --

11 Q. -- it's not knowing and willful?

12 A. Right. In other words, the example I gave of the  
13 pit, you know, I know that that's a rule that I can't have  
14 oil in that. But I don't know for the 6200 wells out  
15 there, because I don't go out and visit those, that those  
16 are there. So you couldn't bring cause against me as part  
17 of Burlington that I knowingly and willfully violated that.

18 Q. I guess I'm concerned about the situation where  
19 you know that you're not supposed to have oil on the  
20 surface of the pit, but the field person at a particular  
21 pit knows that there's oil on the surface of the pit, but  
22 you don't know.

23 A. Right.

24 Q. And if you insulate yourself from that knowledge,  
25 then your company hasn't committed a knowing and willful

1 violation?

2 A. Well, again, you raise a hypothetical that he  
3 knows, and I guess you'd have some means of evidence that  
4 he did know.

5 Q. Well, let's say he --

6 A. Right.

7 Q. -- goes past the pit every day and he sees oil on  
8 the surface of the pit --

9 A. Right.

10 Q. -- but he doesn't tell his supervisor --

11 A. Right.

12 Q. -- and his supervisor knows that you're not  
13 supposed to have oil on the pit.

14 A. Right.

15 Q. Well, isn't this encouraging ignorance as a  
16 policy? I mean, you're better off not to know what's going  
17 on?

18 A. I don't think it encourages that. I think it's  
19 just trying to establish a difference between, as I  
20 characterized earlier from the OSHA side, that there are  
21 violations that person knew -- you know, didn't achieve  
22 what they were meant to, but they didn't really cross the  
23 threshold of being knowing and willful. There could have  
24 been ice out there, and so the compounding circumstances  
25 that they weren't really able to see, maybe they didn't

1 crawl out there. And I know getting out of their truck  
2 sometimes when it's two degrees zero, or above zero out  
3 there, they may not get out of their truck like you'd like  
4 them to, to go observe what that pit condition is.

5 So all we're dealing is -- We're not condoning  
6 the violation, we're just saying putting some structure  
7 around when it's knowing and willful and when it's not.

8 Q. But you understand the burden that it would  
9 impose on the OCD. In order to assess any penalties, we  
10 would have to get into your skull and prove that you knew  
11 what the rule was and that you knew what the conditions  
12 were. And if you said, I just didn't know what the  
13 conditions were, then we can't do anything about it?

14 A. Again, we aren't striving for not being  
15 compliant, and all we're characterizing --

16 Q. And I'm not worried about you, Mr. Gantner --

17 A. And I understand that.

18 Q. -- but, you know, I'm worried about how this  
19 applies across the board.

20 A. Correct, and -- as are we. And we just feel  
21 there should be a distinction between what is -- and I'm  
22 not saying any violation is acceptable, but there are  
23 gravities of violations. There's the things that are  
24 inadvertent oversight, somebody just didn't maybe pay  
25 attention, versus some -- where they frankly knew about it

1 and just frankly chose out of indifference to do nothing.  
2 There's a difference between those two, and that's what  
3 we're trying to characterize here.

4 Q. In paragraph 1)b., you talk about the plain  
5 indifference. It constitutes -- if I understand this  
6 correctly, it constitutes plain indifference if you know  
7 the applicable law but you don't communicate it to lower  
8 level employees?

9 A. Right, that would be the case for the pit, if I  
10 knew those pit rules but frankly I didn't train our people,  
11 I didn't have sessions with them to understand that. And  
12 so as a result, Charlie or his group went out to 50 of our  
13 wells that day, all 50 were -- had oil in the pits. Then  
14 I'd say there's probably grounds -- and he won't find that  
15 in ours, but I would say there would be grounds out of  
16 knowing and willful for plain indifference that frankly we  
17 knowingly and willfully didn't do things to make sure we  
18 comply.

19 Q. So to avoid coming under the knowing and willful  
20 standard by plain indifference, you should be informing  
21 your employees --

22 A. Absolutely.

23 Q. -- as to the rules?

24 A. Absolutely.

25 Q. But again, you could inform them as to the rule,

1     there should not be oil on the surface of the pit, but as  
2     long as you don't know there's oil on the surface of the  
3     pit, you personally as a higher-up, there's no knowing and  
4     willful violation?

5           A.     Well, I'm not going to characterize that there  
6     can't be, but the way I conduct our business, we should  
7     never have one of these. But I'm not going to pretend that  
8     at some point somebody doesn't take my message seriously  
9     and chose to just frankly -- and I would be confident that  
10    Charlie would bring the right course of action to see that  
11    we didn't do that again.

12           And again, we are not striving for a way out. We  
13    are just striving to distinguish between what is an  
14    oversight situation of just somebody just maybe not doing  
15    as good a job as they could have, versus somebody that  
16    frankly knew better and just chose not to comply. There  
17    is a distinction in our mind.

18           Q.     In your proposed definition of knowing and  
19    willful you use the phrase "authorized representative"?

20           A.     Right.

21           Q.     What does that mean?

22           A.     Our intention there is certainly authorized are  
23    people who are employees of our company, they're  
24    contractors, they're authorized, that do work.

25           And so if -- as an example, we understand that

1 we're not supposed to spill -- have spills out there. And  
2 so our employees shouldn't go and open up a valve of a tank  
3 and empty the tank contents out on the ground. That would  
4 be a violation.

5 But now, if somebody unauthorized -- say we have  
6 some kids out there playing, they're pranksters, and they  
7 get out there and open the valve, well, they aren't  
8 unauthorized: That's vandalism. So they aren't authorized  
9 to conduct business for us, so that couldn't be brought  
10 against us as knowing and willfully spilling material out  
11 on the ground.

12 Q. Well, do you think that the OCD's proposed  
13 definition would allow a finding of knowing and willful  
14 based on conduct by some unknown third party, a vandal?

15 A. No, but again we just felt that that  
16 clarification was appropriate for our protection.

17 Q. What does -- You said that Burlington does its  
18 best to be aware of the rules and you train your employees  
19 about the rules, did you not?

20 A. Yes, ma'am.

21 Q. Do you have a formal training program for that?

22 A. We have formal, and then obviously we need to --  
23 because we're hiring people all the time, so -- we're  
24 bringing people in. So we have an orientation when we  
25 bring new people in, but we try to do this in one setting

1 to where we get everybody in so they all hear the same  
2 message, and so -- and not only your rules but the BLM as  
3 well to make sure they do, yes.

4 Q. And although I've been raising the specter of you  
5 may not know what's going on out in the field, my guess is  
6 that Burlington does monitor activities in the field?

7 A. Yes, we do. I have people on my staff, plus  
8 occasionally we'll receive word from somebody that's a  
9 third party, Hey, we think this is happening out there.

10 Sometimes I'll even -- although I hate to get it,  
11 I get a call from Charlie, he says, I've got this  
12 complaint, I want you to go look at it. And we'll go look  
13 at it.

14 So yes, we have a fairly good feel.

15 Q. Do you have some sort of reporting program from  
16 field officers to tell you what's going on at the sites?

17 A. No. Again, I have a staff of folks, and so we  
18 audit periodically, so we go out and audit. But then,  
19 we're often out there, often enough, for other reasons,  
20 whether that be an inadvertent spill or -- we have other  
21 duties, noise, safety, that we're out. And so while we're  
22 out there we get a general idea, as well, of how things are  
23 going.

24 Q. Now, to have a training program such as you  
25 describe and an auditing program such as you describe, that

1 takes a certain amount of time and money --

2 A. Uh-huh.

3 Q. -- to run that sort of program?

4 A. Yes, it does.

5 Q. And Burlington is able to do that?

6 A. Well, we're able and we're committed to doing  
7 that.

8 Q. Don't you think your competitors ought to play by  
9 the same rules?

10 A. A lot of the ones that I deal with and that I see  
11 do. Again, I can't speak for everyone, but the ones I'm  
12 aware in this room that I see around do that.

13 Q. Well, wouldn't you be at a competitive  
14 disadvantage putting all that time and money into  
15 compliance if other competitors were able to say, I just  
16 didn't know what was going on?

17 A. We certainly encourage and want to see a level  
18 playing field with respect to compliance. We'd like to see  
19 everybody comply.

20 Q. And in fact, as we've heard, you've made heroic  
21 efforts to bring your inactive wells into compliance?

22 A. I don't know if I'd call it heroic. We've  
23 certainly made a big effort, and we have a process in place  
24 that again, I believe we will be able to maintain that list  
25 with the least possible.

1 Q. Well, you must be doing something right, because  
2 you would be under good standing under any of the  
3 designations.

4 A. As I checked before I came here on Monday, yes.  
5 But I don't know about today. I didn't -- today.

6 Q. Mr. Fesmire asked a question of Mr. Perrin, and I  
7 just wanted to double-check with you. He asked Mr. Perrin  
8 if Burlington actually increased its revenues when it  
9 evaluated its inactive wells and brought them into  
10 compliance?

11 A. I don't know about revenues, because they don't  
12 give me a tally on what their revenues are, although I see  
13 periodic reports. They're doing okay with present-day  
14 prices.

15 In terms of volume, some of the wells that we  
16 were able to take off the inactive list were put onto  
17 production. So again, you would presume that that  
18 generates additional volumes and revenues for the company.

19 Q. And you mentioned the good prices right now. Do  
20 you know what the going prices are?

21 A. In San Juan I think they're around seven dollars  
22 per thousand.

23 Q. How about for oil? That's not really  
24 Burlington's area, is it?

25 A. It's not, but it's something in the \$40 or \$50

1 range.

2 Q. Forty or fifty?

3 A. Right.

4 Q. Hm. Is that right?

5 CHAIRMAN FESMIRE: Yup.

6 MS. MacQUESTEN: Okay.

7 Q. (By Ms. MacQuesten) Those are good prices, I  
8 take it?

9 A. I don't see anybody's complaining about it --  
10 (Laughter)

11 THE WITNESS: -- other than the people -- all of  
12 us that fuel up and pay for fuel, certainly.

13 Q. (By Ms. MacQuesten) I mean, if it's possible to  
14 return a well to production, now is a pretty good time to  
15 do it?

16 A. Certainly. Well, anytime's good, but certainly  
17 now is a good time.

18 Q. You testified that you have a well right now that  
19 has started producing, but it's still appearing on the  
20 inactive list?

21 A. Yes, ma'am, I pulled the list before I came to  
22 the meeting on Monday. I assume it's still on the list.  
23 The Mangum 4 E, which has been producing since August of  
24 2005, August 9th. So I'm not sure when the system catches  
25 those volumes or not.

1 Q. Has a C-115 been filed?

2 A. I don't know. My folks said that it's been  
3 producing, so I assume -- they're generally pretty good  
4 about producing those C-115s, so I would assume that.

5 Q. Well, let's see, production is reported the 15th  
6 day of the month following --

7 CHAIRMAN FESMIRE: -- the end of the month.

8 Q. (By Ms. MacQuesten) -- the end of the month of  
9 production; is that --

10 A. That's my understanding, right. So that would  
11 have been reported in September, and it's still on the  
12 list, so I don't know --

13 CHAIRMAN FESMIRE: It would have been recorded  
14 this month, I believe, in October.

15 THE WITNESS: Next --

16 MS. PROUTY: Well, the deadline is next Monday.  
17 You could report it --

18 THE WITNESS: Okay, okay.

19 Q. (By Ms. MacQuesten) But if they were just  
20 following normal deadlines, it wouldn't be reported yet?

21 A. Okay, well then that's what I'm saying. It's on  
22 the list, it was on there September 21st, and yet it's been  
23 producing since August 9th.

24 Q. You understand there's a way, if you wish to file  
25 the C-115 --

1 A. I understand.

2 Q. -- ahead of time, it could have been done?

3 A. The accounting folks don't report to me, so...

4 Q. You testified that in your opinion -- you were  
5 concerned about arbitrary decisions made in applying the  
6 good-standing requirement, and you mentioned that there are  
7 a lot of mays --

8 A. Right.

9 Q. -- as opposed to shalls in the application. The  
10 Division may deny certain things.

11 You understand that in putting may in, we're  
12 allowing the Division to cut an operator some slack?

13 A. We support that. I don't have any problem with  
14 mays. But again, you're -- with the new rule you're  
15 establishing a system now that -- as written, with five  
16 wells, that Burlington could have 99.9 percent of our wells  
17 in compliance, could have six that are on the list, which  
18 again we need to reconcile the list, but you could deny us  
19 the ability to go drill a well, an APD, when 99 percent by  
20 -- again, how the rule is crafted.

21 And yet somebody else that has a hundred percent  
22 of their wells out, you could -- and you would grant the  
23 APD. I -- You know, we have a problem with that. And we  
24 feel a percentage is more appropriate. Not that we  
25 wouldn't allow ourselves to float up to that, because

1 that's still a compliance issue. That's not our character.

2 Q. And if we adopt your proposals of five wells --  
3 or five percent, that operator with the two wells and 100  
4 percent, what happens to them?

5 A. Well, they'd still have the same rights they do  
6 under as you proposed.

7 Q. It doesn't really solve that problem?

8 A. It does not, I understand.

9 But before, again, you would place a company as  
10 ourselves in not good standing, there'd have to be  
11 something more substantial than five wells, at least as  
12 we've proposed.

13 Q. Now, you said you understand that allowing --  
14 putting "may" in some of those provisions allows us to cut  
15 operators some slack. These are operators who are out of  
16 compliance, that's right?

17 A. Possibly. Again, if the reconciled list shows  
18 that they -- even after reconciliation, that they have more  
19 than five, yes.

20 Q. Well, and they could certainly ask us to check  
21 and --

22 A. Right.

23 Q. -- make corrections?

24 A. But you can see this well that we had here, the  
25 fact that that is on there, I'm not out of compliance with

1 that well; it's just inactive. So if I had five more wells  
2 like that, those wouldn't be out of compliance too,  
3 provided that I've filed my reports within the time --

4 Q. Well, if you filed your reports we wouldn't be  
5 talking about that well.

6 A. Well, we did, I assume, file. I don't know.

7 Q. But I mean --

8 A. It's on the list, just because the timing  
9 hasn't --

10 Q. Right, right --

11 MS. PROUTY: But you can file --

12 THE WITNESS: I understand, but -- I mean, they  
13 all have jobs too, and I don't know when their job is to  
14 file that report. I mean, they probably try to do it all  
15 at one time so that they do it -- They don't want to do  
16 that 6200 times for 6200 wells.

17 Q. (By Ms. MacQuesten) I understand your concern  
18 about possible arbitrariness in giving operators breaks.  
19 Do you have a suggestion for how we could limit that?

20 A. Well, again, if the definition of good standing  
21 allows more tolerance, I'm comfortable with that because we  
22 can surely live with it. Five is pretty tough to live  
23 with. I mean, we're going to conduct our business to be  
24 100 percent compliant. And 99.9 percent today -- it's  
25 99.95, I think.

1 But maybe from vacations or something, somebody  
2 lets something slip, and I might end up getting to maybe 10  
3 or 15 wells. I don't think that that should change an  
4 operator's status in good standing when they're making a --  
5 reasonable efforts to deal with these issues, like you  
6 said. I mean, our criteria and what we're suggesting is to  
7 not penalize good operators that are making good faith  
8 efforts, and we feel that as it's presently proposed does.

9 Q. You testified that you would want the Division to  
10 provide notice before an operator is relieved of his good  
11 standing. You understand that you could look at the  
12 inactive well list and track a well for a full 15 months  
13 before it --

14 A. Yes.

15 Q. -- is out of compliance and affects good  
16 standing?

17 A. That's right.

18 Q. If you require us to provide a formal notice, by  
19 means of a letter, say, before an operator can lose good  
20 standing, to me that implies that then -- when you lose  
21 good standing you do go on a list of, we have shown that  
22 they are out of compliance in this certain way and now we  
23 are removing their good standing, so now they are on the  
24 list of those without good standing.

25 A. Okay, but as well as if there errors of which a

1 decision is being based on, they could be corrected.

2 Q. I understand that, and that's a good function of  
3 the notice provision and so forth, but assuming that we  
4 give the notice and we aren't in error, then that person  
5 loses good standing.

6 If we have to go through that process before we  
7 can say that someone loses good standing, then those lists  
8 aren't going to tell you anything. It's only after we've  
9 gone through that process and made a declaration that this  
10 operator has lost good standing?

11 A. Right, but we feel that that's appropriate, given  
12 especially the potential for errors, that proper notice and  
13 the chance to reconcile issues --

14 Q. Okay.

15 A. That's not to delay things another 30 days, we  
16 just feel that if there's -- because -- I don't know how  
17 often our folks look at your list. They probably look at  
18 it periodically.

19 But we have internal systems. I think Yolanda  
20 spoke to theirs. So we have our own production accounting  
21 system that really keeps track of this. So we have our own  
22 that we monitor. And so they're watching that, you know,  
23 fairly frequently to keep track of these wells on our own.

24 But it's -- when you have two different lists  
25 it's a potential, always, for the two lists to not be the

1 same. So we complement you on the systems and we're  
2 certainly going to use them. But before you would invoke,  
3 you know, a potential good-standing status and the lack of  
4 it with the penalties that could come with it, we just feel  
5 -- appropriate notice.

6 Q. The way I read your proposed notice language, we  
7 would give the notice after we felt the operator had fallen  
8 out of good standing?

9 A. I think that's how we proposed. Now, I heard you  
10 earlier talking about something in advance and that, and I  
11 think -- you know, we're certainly willing to consider  
12 that. But in the absence of that dialogue, you know, this  
13 is what we proposed.

14 Q. I also have heard today a great deal of concern  
15 about the establishment of a list of people out of good  
16 standing --

17 A. Right.

18 Q. -- and the label of being out of good standing.  
19 And I'm trying to reconcile that with your request that we  
20 formally declare somebody out of good standing and put them  
21 on a list. I mean, we were trying to avoid that, but which  
22 would you prefer? I mean, do you -- is it --

23 A. I prefer not being on the list, and so we're  
24 going to strive to comply. And I believe we should, as I  
25 believe the other operators in this room. But if we ever

1 do get to that point to where we didn't meet what is  
2 specified in that, and after notice we still don't, then I  
3 would think that we would deserve to be categorized that.  
4 Then shame on us, we need to fix the issue.

5 Now, I don't see us getting -- we're not going to  
6 allow ourselves to be in that position. And you could  
7 understand, I think, that with just five wells, it would be  
8 pretty difficult for me on a day-to-day basis to do that.  
9 Even though I have processes and I think we're doing  
10 everything we can, I watch the list fluctuate, and maybe  
11 tomorrow it goes up to five, I don't know.

12 And our folks -- and I appreciate what was  
13 raised, that we shouldn't just be waiting till they get to  
14 15 months. We don't. I mean, I think we learned a lot  
15 from working with Charlie and them as we found our initial  
16 lists, that we weren't managing it, we were just waiting to  
17 hear from the agency when it became an issue. But now we  
18 have an upfront process that we manage this on a daily  
19 basis. So...

20 Q. So just so I understand, you feel that if we do  
21 go through a notice process similar to the one you proposed  
22 and it is determined that the operator is out of compliance  
23 and meets whatever standard is established for good  
24 standing -- for lack of good standing -- that we then could  
25 call that person out of good standing?

1           A.    Calling them -- Yes, I don't advocate having a  
2 list of folks. I just don't think that serves a purpose.

3           Q.    I mean, publishing such a list is a separate  
4 issue from --

5           A.    Right, right --

6           Q.    -- having --

7           A.    -- but if after all those courses of action and  
8 you're not getting that attention and they aren't managing  
9 their wells and they fall above the threshold that we -- at  
10 least what we proposed, but again the Commission has to  
11 decide what the right threshold is, and then even after 30  
12 days' notice they still don't either enter a compliance  
13 order or make the corrections necessary, then I think we're  
14 prepared to deal with that.

15           MS. MacQUESTEN: Thank you, I don't have any  
16 other questions.

17           CHAIRMAN FESMIRE: Mr. Carr, Ms. MacQuesten,  
18 before we throw this out to other folks and the Commission  
19 for questions, what do you say we take an hour break for  
20 lunch and return back here at 1:30, and we'll start with  
21 the remaining cross-examination of Mr. Gantner.

22           (Thereupon, noon recess was taken at 12:30 p.m.)

23           (The following proceedings had at 1:35 p.m.)

24           CHAIRMAN FESMIRE: Okay, we'll go back on the  
25 record. I believe Mr. Gantner was ready to stand for

1 cross-examination from anybody other than the Oil  
2 Conservation Division. Is there anybody of the  
3 participants who would like to ask questions of Mr.  
4 Gantner?

5 Okay, Commissioner Bailey, do you have any  
6 questions? You said you had one or two?

7 COMMISSIONER BAILEY: Yeah.

8 EXAMINATION

9 BY COMMISSIONER BAILEY:

10 Q. Mr. Gantner, in general would you say that  
11 industry does not object to the concept of getting bad  
12 actors out of the business in New Mexico, but does object  
13 to the way this proposed Rule 37 takes short-term, daily,  
14 fluctuating, possibly incorrect information and uses it to  
15 label a company with the epithet "bad actor" that can be of  
16 long-term impact on public perception and opinion and  
17 stockholders' investments?

18 A. As you stated, in general, yes, as you stated.  
19 We don't have a problem going -- as the examples were  
20 earlier yesterday, of companies that aren't living up to  
21 their responsibilities to plug wells, take care of wells,  
22 and act in a manner to protect public health and the  
23 environment.

24 But this particular rule, what it does with good  
25 standing, again, our comments stand and what we feel, that

1 if it is going to have a good standing, at least what --  
2 our recommendations are where we would take it.

3 Q. Would you be willing to work with the OCD to  
4 develop workable, fair plans with standards to accomplish  
5 the goal that they've set out and to provide OCD with  
6 effective tools for enforcement?

7 A. Yes, ma'am, we certainly would.

8 COMMISSIONER BAILEY: Thank you.

9 CHAIRMAN FESMIRE: Commissioner Olson?

10 COMMISSIONER OLSON: I just had a couple of  
11 questions.

12 EXAMINATION

13 BY COMMISSIONER OLSON:

14 Q. Mr. Gantner, you expressed some concern about the  
15 number of wells that would be used for the -- determining  
16 whether or not you're in good standing. And then I guess,  
17 as I understand it, you're proposing a level instead of  
18 five percent of an operator's wells. What is the basis for  
19 selecting five percent?

20 A. Well, I think as we sat down as a committee, we  
21 had all the ranges and just like what was picked from the  
22 OCD side, we picked a number.

23 Q. Okay.

24 A. So -- And as I stated earlier, as a company we're  
25 going to operate to be in 100-percent compliance. But with

1 respect to good standing we feel it should be some  
2 percentage. And so if five percent is too much, some  
3 reasonable percentage is a fair basis to apply to all  
4 companies, and maybe some allowance for the small ones.

5 Q. So it's a number that was selected by the  
6 committee?

7 A. Right, that's correct.

8 Q. Okay. And I guess there was a lot of discussion  
9 from Ms. MacQuesten on whether somebody's aware of the  
10 rules. In the definition that you have proposed there's a  
11 lot of -- the word "aware" occurs throughout this. And  
12 then I guess I'll use the same thing: Are you aware that  
13 there is a rule of -- in the Division rules, that requires  
14 an operator to be knowledgeable about the rules?

15 A. You know, I have to admit I'm not. But implicit  
16 to me in my career and that is, that's implicit with what a  
17 good environmental professional and that would do, is be  
18 aware of the rules, that they live in the state and they  
19 operate under.

20 Q. Well, let me just clarify it then. OCD Rule  
21 19.15.1.12 requires an operator to be knowledgeable about  
22 the rules, it's their responsibility to do that.

23 A. Okay, I'll take your point as that.

24 Q. And then I guess under your proposal for Section  
25 F under 19.15.1.37, the proposed rule, you're using the

1 language about revoking the standing of an operator. I  
2 don't -- maybe you can point out to me, I guess, where in  
3 the rule it is actually -- the Division actually revokes  
4 anything. I don't recall seeing that in the proposed rule.

5 A. Well, it was my understanding with respect to an  
6 existing injection permit -- let's see here -- may have a  
7 current permit to inject fluids revoked. So you could have  
8 your injection permit revoked.

9 Q. Right, that's revocation of a permit --

10 A. That's -- right.

11 Q. -- but it's not revocation out of your standing.

12 A. No.

13 Q. Because that was, I think, one problem I was  
14 seeing just in what you proposed. I didn't see anywhere in  
15 the proposed rule where it talks about revoking someone's  
16 standing, and then you're listing in your proposal that  
17 this is prior to revoking the standing. It seems to be a  
18 little inconsistent with what's proposed.

19 A. Okay.

20 COMMISSIONER OLSON: And that was the only thing  
21 I had.

22 CHAIRMAN FESMIRE: Okay.

23 EXAMINATION

24 BY CHAIRMAN FESMIRE:

25 Q. Bruce, does NMOGA support the general concept of

1 enforcement and compliance rules? I'm being a little more  
2 general than --

3 A. Right, absolutely.

4 Q. But you think we're moving too fast?

5 A. Well, again, we've been consistent, I think, in  
6 this regard, Commissioner, that -- Mr. Chairman, that when  
7 there's a need to change rules there's a reason for it, and  
8 I guess we've heard a lot -- I was at that workshop with  
9 Ms. MacQuesten. And so we understood that we weren't  
10 making enough progress on the inactive wells. And so where  
11 there's a need -- I guess in the past we've certainly sat  
12 down with the agency and worked through a number of rules,  
13 H<sub>2</sub>S rule, pit rule, vacuum rule. And I know some of those  
14 took time, but I don't think time is a bad thing --

15 Q. Okay --

16 A. -- in some regards.

17 Q. -- and one of your concerns is, the data may not  
18 be accurate; is that right?

19 A. Yes.

20 Q. Why wouldn't it be accurate?

21 A. Why wouldn't it be accurate? Well, I think part  
22 of it is, it says it's an active well. I just pointed out,  
23 there's a well of ours that's on there that isn't inactive;  
24 it is active. It's just shown on there because the natural  
25 time frame is -- it hasn't caught up. So that's

1 inaccurate. It's not an inactive well.

2 Q. Okay. But this is the same data that you pay  
3 taxes on, this is the same data that you pay royalty to the  
4 State on, it's the same data collection process and the  
5 same data, isn't it?

6 A. Sure, with different time frames, obviously, to  
7 it.

8 Q. Okay.

9 A. Obviously you pay royalties, and I'm not sure  
10 what frequency royalties are paid, but --

11 Q. Okay.

12 A. -- that's correct.

13 Q. Now, you said that the inaccuracies are not the  
14 fault of the system. Whose fault are they?

15 A. Well, I don't know that there's necessarily a  
16 fault to apply. It could be in an instance, if we haven't  
17 filed a report, that it maybe lies with us. It could be  
18 that -- the process or system itself, in creating a list  
19 and then saying that that's an absolute list of  
20 noncompliance. I mean, it's not. It's an inactive well  
21 list that has some inherent time delays and that, that  
22 doesn't necessarily reflect noncompliance.

23 So I don't know that there's fault. There could  
24 be, for a given time and that. We may be at fault for not  
25 getting information. It could be, although I think it's

1 pretty rare -- we always like to hear computer error. I  
2 think it's pretty rare that the computer is in error.

3 Q. Okay.

4 A. It's usually the people that put information into  
5 it.

6 Q. Why would Burlington have a well out of  
7 compliance? I'm asking you to switch hats here, from NMOGA  
8 to Burlington.

9 A. Okay, why would Burlington have a well out of  
10 compliance? It's not our intention to have any well out of  
11 compliance. It's quite possible -- and I mentioned this at  
12 the public hearing, that increasingly we see these wells  
13 that -- maybe they've gone into nonproduction as assets.  
14 Increasingly, we're being asked to twin locations, to use  
15 locations as well as wellbores for purposes to where we  
16 don't disturb more. So increasingly we're seeing these  
17 wellbores as assets, not a liability.

18 Q. Okay.

19 A. And so obviously it would be premature to go plug  
20 a well that you might want to re-enter and recomplete. But  
21 certainly we have the obligation that if we're going to do  
22 that, that we ought to bring it into a TA status.

23 Q. In fact, there's a procedure for doing that --

24 A. Yes, sir.

25 Q. -- both currently and in the proposed rules --

1 A. Yes, sir.

2 Q. -- is that correct?

3 A. That's correct.

4 Q. So again let's go back to the question. Why  
5 would a well be out of compliance for Burlington?

6 A. In managing 6000 wells it's possible that somehow  
7 one of these made it through and slipped through to where  
8 we didn't catch it and we didn't get a rig. It's possible  
9 that, like the weather delays we had, that we couldn't get  
10 a rig out there to go plug it. It's possible that we  
11 couldn't get a -- with the crews and equipment, to get out  
12 there and test it, set the bridge plug and pressure test  
13 it.

14 So those are all reasons that -- again, not --  
15 some maybe with just due to the nature of trying to get  
16 equipment and that out there.

17 Q. And how long would it take you to find that out,  
18 do you think?

19 A. Again, there's -- obviously there's somebody that  
20 probably knows it. That lease operator is out there. He  
21 probably knows his wells, he or she.

22 Q. Within the first two or three months?

23 A. They probably know it maybe on a weekly basis.

24 But -- where that transcends the people. It's -- not  
25 trying to make an excuse here, I think that managing 6200

1 wells out there and trying to drill 200 and some wells a  
2 year, that's a pretty mind-boggling task. I tip my hat to  
3 the folks that do it. But sometimes maybe one slips  
4 through.

5 Q. So, I notice that you said one, not a percentage.  
6 One slips through.

7 A. Well, again, the percentage we're asking for --  
8 I'm not going to say that if we got -- Let's just say you  
9 didn't agree to five percent, let's just say you'd agree to  
10 two percent. That's 120 wells. That's not the threshold  
11 we're going to work towards, we're going to work towards  
12 zero.

13 But when it comes to good standing, to where you  
14 would potentially deny permits, not give us the right to  
15 acquire or that, we feel it should be a more reasonable  
16 threshold.

17 Q. Bruce, I kind of see you in a pretty tough  
18 position here. Here you are, a representative of a company  
19 that's succeeded in doing this and succeeded very well, yet  
20 you're arguing that we not impose the very rules that you  
21 all have essentially complied with for the last four  
22 months; is that right?

23 A. I don't know that we've been below five for the  
24 past four months. I don't know that. I know at least as I  
25 checked before I came here, yeah, we are below the five.

1 And we're always going to strive to be there.

2 But I think -- I mean, the companies that are on  
3 this committee, that have worked through this -- to my  
4 knowledge, they're good people. The names I heard with  
5 problems aren't here at the table.

6 Q. Right.

7 A. They aren't the ones here, and so with those good  
8 efforts, why should we all of a sudden on one day be okay,  
9 but then tomorrow they're in not good standing just because  
10 maybe an oversight or something slipped? I don't think we  
11 should set that narrow a tolerance.

12 Q. And how long would it take you to correct that,  
13 if something slipped?

14 A. Depending on the awareness and that, it might  
15 take a week or so. I don't know for sure. I'd have to  
16 have more specifics. I know we've got a process now, Mr.  
17 Chairman, that I feel pretty comfortable no matter whether  
18 you set five or one percent or three percent, that we'd  
19 sure try to live within it.

20 But certainly you would have to admit, it would  
21 be a much tougher task to stay below five, even for a  
22 company of our size, to stay below that five, 365 days a  
23 year.

24 Q. Are you aware of some of the compliance histories  
25 of other companies in NMOGA?

1           A.    Just from some of our discussions in the  
2 committee, some of them.

3           Q.    Okay.  Let's talk about Marbob.  How many wells  
4 do you think they operate?

5           A.    I have no idea?

6           CHAIRMAN FESMIRE:  They operate 976 wells; isn't  
7 that right, Ray?

8           MR. MILLER:  No, actually the count includes  
9 wells that have been applied for drilling.

10          CHAIRMAN FESMIRE:  Right.

11          MR. MILLER:  I think our count is actually  
12 somewhere in the 800-something range --

13          CHAIRMAN FESMIRE:  Okay.

14          MR. MILLER:  -- because we have several federal  
15 permits that are approved but are undrilled.

16          Q.    (By Chairman Fesmire)  Here we have another -- a  
17 smaller operator, yet a good operator -- you can quote me  
18 on that -- a real good operator.  How many wells do they  
19 have out of compliance; do you remember?

20          A.    Without looking at the list I wouldn't be able to  
21 tell you.

22          Q.    Zero.

23          A.    That's great.

24          Q.    So it's not unusual --

25          A.    Does that include the wells that she just

1 transferred over to them from ours?

2 (Laughter)

3 MR. MILLER: I want the other 6000.

4 (Laughter)

5 CHAIRMAN FESMIRE: Well, we shouldn't have let  
6 that out of the bag, huh?

7 Q. (By Chairman Fesmire) But the point is, not only  
8 can Burlington do it, but smaller companies can do it. And  
9 yet all I hear from industry is, No, stop, wait, don't,  
10 slow down. Yet people are complying now, people who really  
11 want to are complying now, good companies.

12 A. Yes.

13 CHAIRMAN FESMIRE: There are other companies.  
14 ConocoPhillips in the northwest division, they're down to  
15 one. We're not going to talk about the Permian Basin,  
16 right?

17 MS. PEREZ: We'll talk later.

18 CHAIRMAN FESMIRE: Okay.

19 (Laughter)

20 Q. (By Chairman Fesmire) But it can be done --

21 A. Yes, sir.

22 Q. -- under the proposed rules?

23 A. Right.

24 Q. Now, permissive language such as "may" instead of  
25 "shall" within regulatory constructs are not always a bad

1 idea, are they?

2 A. No, and we applaud that and we welcome that,  
3 where there's some discretion.

4 Q. Like -- Let's just run through a hypothetical  
5 situation. How many wells does Burlington have out of  
6 compliance now? Did we decide?

7 A. Actually out of compliance? According to my  
8 records, none.

9 Q. None, okay. The list contains four?

10 A. The list, as I printed it out before I came to  
11 the meeting, was three.

12 Q. Three?

13 A. Right.

14 Q. And all of those were some other problem?

15 A. Right. I mentioned one was in production, one is  
16 in dewatering. So you know, my logical question comes, are  
17 we reporting the water on that one? I don't know.

18 And then the other is waiting on a rig to put a  
19 pump downhole to where we can return that well to  
20 production.

21 Q. Okay. So essentially nothing that you couldn't  
22 correct in a phone call, right?

23 A. Right, uh-huh.

24 Q. Okay. Now you said something during your  
25 testimony about a level playing field. Why couldn't all

1 operators be held to the same standard that Burlington has  
2 held for itself, has basically established for itself?

3 A. I'm not aware of how other companies are staffed  
4 and that. I mean, I think everybody's got the same  
5 objectives. But let's face it, we're in the state, we're  
6 the largest gas producer, and I guess that stands for a  
7 reason. We had a good leasehold position here, so we've  
8 staffed it appropriately for the number of wells that we  
9 manage.

10 I hesitate to think that a company that maybe  
11 only has five employees can achieve that same level. I  
12 don't know that. I mean, I think the goal ought to be the  
13 same. And for purposes of good standing, which I  
14 understood, you know, from the very start was to achieve a  
15 greater deal of reduction in these inactive wells.

16 And so I think within your existing rules you had  
17 means of doing that. This is certainly another proposal  
18 which, again, we aren't against the premise of good  
19 standing. But let's just make it reasonable on the  
20 threshold we set.

21 Our companies, and I think larger companies,  
22 we're affected by the status of what one state would say.  
23 We operate around the world. And all of a sudden, have to  
24 say -- they pick off the press or that, well, gee, we hear  
25 you're not in good standing in New Mexico, that would be a

1 problem to our company. You might not see me here if we  
2 came into that role and I wasn't in good standing. They  
3 might find somebody else who can do a better job than I  
4 can. So --

5 Q. But you've done a pretty fine job, haven't you?

6 A. Well, I'd say so far this year -- I'd say so far  
7 this year, we'll take that. But we work hard at it.

8 Q. Okay. And shouldn't your competition work hard  
9 at it too?

10 A. Absolutely.

11 Q. Okay. You know John Zent came to talk to me  
12 about -- during that weather problem --

13 A. Uh-huh.

14 Q. -- and in order to get into this situation, you  
15 all had entered into an agreed compliance order with us --

16 A. Yes, sir.

17 Q. -- and then you promised to bring -- I think it  
18 was 68 wells, into compliance --

19 A. As I recall.

20 Q. -- and you did, with a minor delay.

21 And in fact, when we found out that the weather  
22 was going to be a problem -- and I think there was a little  
23 bit of a problem getting equipment --

24 A. Uh-huh.

25 Q. -- what was the OCD's reaction?

1           A.    I believe your reaction was to work with us and  
2    give us additional time, and you understood.  So -- That  
3    was our understanding, and we appreciate that.

4           Q.    He brought an engineer with him, and we talked  
5    about the results of that program.  And if I remember  
6    correctly, one of the things that stood out to me was, they  
7    told me that if this whole project, including the plugging  
8    cost and the cost to put the wells back on production, if  
9    it had been an economic option at one time, it would have  
10   met your investment thresholds, and the company would have  
11   done it to make money; is that correct?

12          A.    As I recall.  I don't recall exactly what was  
13   presented.  In general, you know, with the current  
14   environment, it's pretty profitable if you can get  
15   production out of it.  But not all wells, unfortunately,  
16   can you get back to that.

17          Q.    Well, that's true.  But that included the cost to  
18   plug the wells that you had to plug --

19          A.    Sure.

20          Q.    -- return to production the wells that you  
21   returned to production?

22          A.    Right.

23          Q.    So I guess the point I'm trying to make -- and I  
24   hope it's obvious by now -- is that this was a profitable  
25   venture for Burlington, right?

1           A.    At this point in time, it certainly was.  
2 Different pricing environment, you'd have a different  
3 position. But certainly we understand that it's the right  
4 thing to do, and our intentions are to comply. And I would  
5 say from this point forward, given what we learned, I'd be  
6 surprised to see us go back into a mode to where we had 68  
7 wells on the list.

8           Q.    Let's talk about the wells that you put on  
9 production, that you brought back onto production on August  
10 9th --

11          A.    Uh-huh.

12          Q.    -- that still shows up on the list.

13          A.    Uh-huh.

14          Q.    You don't know that they filed a C-115 on that?

15          A.    I do not.

16          Q.    In fact, they could have filed the C-115 the last  
17 -- the day that the pumper reported the last production for  
18 the month of August, couldn't they?

19          A.    Yeah, I don't know. I asked for them to give me  
20 a status, and they gave me that and -- when it was returned  
21 to production. I didn't follow through with accounting to  
22 see when they filed the C-115.

23          Q.    Okay. Well, the point I'm trying to make is, if  
24 they had filed that C-115 on the last day of August, that  
25 would have been off the list by now, and that was the first

1 day that they would have been able to do that; is that not  
2 correct?

3 A. I believe that's correct.

4 Q. Okay. So if it's not off the list by now, that  
5 may be partially a structural delay and partially due to  
6 the fact that if your operators were more aware of the need  
7 to do that, they could have gotten it off the list  
8 immediately?

9 A. Well, from a -- you mentioned operator. As far  
10 as that lease operator is concerned, that's not his  
11 concern. His concern, obviously, is to keep his wells  
12 producing, his or hers, keep them compliant and -- daily  
13 basis, that's what they do.

14 Each one of our lease operators has about 90  
15 wells. And I think you and I would agree that if you had  
16 90 wells, just like you had maybe 90 fruit trees, and 80 of  
17 those were real good producers, and then you had one or two  
18 over here that wasn't, and they said maximize your  
19 production, where would you spend your time? They're going  
20 to spend more of their time on those ones that produce  
21 more.

22 Q. Absolutely. But if we make it important enough  
23 for them to report production on a well off of this list  
24 immediately --

25 A. Uh-huh.

1           Q.    -- such as I think these rules would do, don't  
2 you think that would happen?

3           A.    Not the lease operator. I think his -- his day-  
4 to-day is, you know, thinking about getting out there and  
5 getting his stuff done.

6                   Certainly as a company, you know, we're all  
7 striving to be compliant. From an accounting standpoint,  
8 yeah, they like to report in a timely fashion. But I don't  
9 know how often -- I mean, from their standpoint, yeah, they  
10 could have reported at the end of August, but I guess they  
11 could have also reported by the 15th of September. They've  
12 got 6200 wells to account for, and they may tell me and  
13 you, well, once is enough for them.

14          Q.    Well -- But with the emphasis that Burlington has  
15 put on complying with this stuff, it doesn't seem like much  
16 of a major change, now that they've made most of the  
17 changes to --

18          A.    We can certainly look at that.

19          Q.    Okay. Yo keep talking about a reasonable  
20 percentage. What kind of a proposal would you have for the  
21 Commission that -- What do you think would be reasonable?

22          A.    Again, we support what NMOGA has submitted.  
23 Burlington submitted separate comments, and I believe we  
24 gave you a range, and I think it was like two to five  
25 percent. So there's, you know, some range tolerance there

1     you can --

2           Q.     Okay. And if you weren't part of that decision  
3     you may not be able to answer this question, but what went  
4     into deciding two to five percent?

5           A.     From Burlington standpoint?

6           Q.     Yes.

7           A.     Well, we looked -- again -- Again, I'd just point  
8     out that that's not the compliance threshold that we're  
9     going to bring it up to. Our compliance threshold is 100  
10    percent.

11                   But with respect to good standing we believe that  
12    it would be something from Burlington that would say if we  
13    didn't do a manageable job -- which you said we're doing  
14    now, and I agree, we're managing it now. But if we let  
15    things slip -- Let's say people changed and the new guy,  
16    that wasn't his focus. Or I -- Let's say they moved me to  
17    Canada and somebody else came in there and they didn't have  
18    that. Let's say they let things slip a bit, but it is  
19    still reasonable. Let's say it only got to 30 well or  
20    maybe 40 wells, but they're still managing the process.  
21    That shouldn't upset our good standing.

22                   So we came up, and I think the lower -- the most  
23    extreme end that we felt was two percent, which for us  
24    would be 120-some wells.

25           Q.     And when you were giving me example of reasonable

1 you said 40 wells. That's about 1.5 percent of the wells  
2 that you all have.

3 A. Again, that's -- if you look at a process, you  
4 set ranges around it, and maybe that's in the middle of the  
5 range. But you want to set that upper end to where you can  
6 live with it in case something happens.

7 Q. Okay.

8 A. I might acquire -- tomorrow I might get some of  
9 those wells of Marbob's, you know, over there and -- of  
10 course you said zero for his --

11 Q. Right.

12 A. -- so that would be good. But I might buy  
13 somebody else that maybe has a hundred wells, and I really  
14 like to not be in noncompliance.

15 Q. And you understand that these rules and these  
16 procedures include the ability for an operator to come to  
17 us --

18 A. Yes, yes --

19 Q. -- before they take possession of those wells --

20 A. -- that's correct.

21 Q. Okay.

22 A. Which I'm sure we would.

23 Q. Okay. So again, I'm -- You know, I'm obviously  
24 listening to you on the number of wells. But again, the  
25 higher end of what you described as reasonable was 1.5

1 percent.

2 A. No, what Burlington proposed was two percent --  
3 excuse me, 2.5

4 Q. But when you gave me an example, you gave me 40  
5 wells out of 6000.

6 A. Well, I'm saying that that would be -- if we let  
7 things slip a little bit, but not to the threshold that we  
8 would think that we should lose good standing. What I'm  
9 talking about is a normal tolerance of things maybe getting  
10 a little bit out of where we'd like to see it, but yet not  
11 approaching a threshold that we would be held in not good  
12 standing.

13 Q. Okay, I've got to stand corrected. 40 out of  
14 6000 is more like two-thirds of a percent, isn't it?

15 COMMISSIONER OLSON: I was going to say something  
16 about that.

17 (Laughter)

18 CHAIRMAN FESMIRE: Mr. Carr, I'm --

19 MR. CARR: Math is obviously not your forté.

20 (Laughter)

21 CHAIRMAN FESMIRE: When I started this job it  
22 was.

23 (Laughter)

24 CHAIRMAN FESMIRE: Mr. Carr, do you have any  
25 redirect?

1 MR. CARR: We have no further examination of Mr.  
2 Gantner, and at this time we would call Elizabeth Bush.

3 CHAIRMAN FESMIRE: Okay, Ms. Bush, would you --  
4 You've been previously sworn, have you not?

5 MS. BUSH-IVIE: Yes.

6 ELIZABETH BUSH-IVIE,  
7 the witness herein, after having been first duly sworn upon  
8 her oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. CARR:

11 Q. Would you state your name for the record, please?

12 A. Elizabeth Bush-Ivie.

13 Q. Where do you reside?

14 A. Houston, Texas.

15 Q. By whom are you employed?

16 A. OXY Permian.

17 Q. And what is your position with OXY Permian?

18 A. I'm the regulatory team leader.

19 Q. You replaced Mr. Foppiano --

20 A. Yes.

21 Q. -- did you not?

22 In this role, what are your responsibilities?

23 A. They are to supervise the regulatory analysts who  
24 are responsible for filing operations-related permits.

25 This is not the accounting permits or the accounting

1 reports or the environmental permits; this is the APDs, the  
2 sundry notices, applications for permit to drill -- well, I  
3 said APDs -- TAs, follow-up, and also to try to ensure that  
4 the operations personnel are aware of the regulations and  
5 are in compliance with regulations.

6 Q. How long have you been with OXY?

7 A. Two months.

8 Q. And prior to that time, have you had other  
9 regulatory experience?

10 A. Yes, I have.

11 Q. And for whom have you worked?

12 A. I worked about 18 years for ARCO in the Permian  
13 Basin as a production and drilling engineer, and then in  
14 the regulatory and public affairs. I managed a well-  
15 plugging company in Texas for a couple of years, and then I  
16 was the compliance engineer at Houston Pipeline.

17 Q. Ms. Bush-Ivie, you attended the NMOGA and IPA  
18 joint meetings to review the proposed rules, did you not?

19 A. Yes, I did.

20 Q. And you were present today for Mr. Gantner's  
21 comments on good standing?

22 A. Yes.

23 Q. Do you concur in those statements?

24 A. Yes, I do.

25 Q. We -- Also you were here when Mr. Gantner

1 discussed the inactive well list?

2 A. Right.

3 Q. Would you explain what your understanding is of  
4 the concerns with this inactive well list?

5 A. My concern is, one, with the accuracy of the  
6 data. I've reviewed OXY's records, and on my initial  
7 review and talking with my analysts I believe that over 50  
8 percent of the wells on the list are -- should not be on  
9 the list. They've been PA'd several years ago. They're  
10 under current approved temporary abandonment procedures  
11 with removal deadline sometime in the future.

12 And I'm also concerned with the use of the data  
13 to take someone out of good standing.

14 Q. Do you concur that as written, this rule would  
15 discriminate against the larger operator?

16 A. I believe it would.

17 Q. OXY is going to have more than five wells on the  
18 noncompliant list, even after you sort out this data; isn't  
19 that right?

20 A. Yes.

21 Q. And you are implementing programs in your company  
22 to bring this company back into compliance?

23 A. Yes, I am.

24 Q. Is a five-well target a difficult target to  
25 assure you stay under?

1           A.    I think based on the nature of the operating unit  
2   that five wells could be difficult on any given day.  The  
3   target is to be in compliance; but as Mr. Gantner  
4   explained, there are other jobs that people have and  
5   priorities that are put in front of them, and it's possible  
6   that the shut-in well, the inactive well, gets pushed to  
7   the bottom of the pile.

8           Q.    In terms of a five-well limit, what percent of  
9   the OXY operations in New Mexico would that represent?

10          A.    That would represent .25 --

11          Q.    Of one percent?

12          A.    -- five wells.

13          Q.    .25 of one percent?

14          A.    Yes.

15          Q.    And so you could be 99.75 percent in compliance  
16   and still be in bad standing?

17          A.    Yes.

18          Q.    Mr. Gantner testified about the accuracy of the  
19   data that was, and is, used.

20          A.    Uh-huh.

21          Q.    And we're talking here in particular about the  
22   inactive well list.  Have you determined the accuracy of  
23   the data for the OXY wells?

24          A.    I'm currently working on that.

25          Q.    Now the list that you've looked at, does it

1 include plugged and abandoned wells?

2 A. Yes.

3 Q. And have some of these wells, all data been  
4 filed?

5 A. To the best of my knowledge. The analysts are  
6 pulling copies of the records for me to try to prepare to  
7 bring to the OCD.

8 Q. Are these just recent filings?

9 A. No, one of them dates back as far as 2002.

10 Q. Temporarily abandoned wells were also included?

11 A. Yes.

12 Q. Were injection wells also in the list?

13 A. Yes.

14 Q. And wells that have been returned to service?

15 A. That's correct.

16 Q. How old are some of those -- how long have some  
17 of those wells been back in service?

18 A. Several years.

19 Q. And you're bringing those to the OCD?

20 A. Yes, I will be when I get all the data together.

21 Q. Do you agree that a 30-day notice period is  
22 appropriate?

23 A. Yes, I do.

24 Q. And why is that?

25 A. Because I believe that the 30 days -- the loss of

1 good standing is a significant impact on an operator. It  
2 goes far beyond just the relationship with the OCD, and the  
3 30-day notice would provide the operator the opportunity to  
4 work with OCD to ensure that the data is correct, both on  
5 the OCD side as well as on OXY's side.

6 Q. Would a delay in the effective date of these  
7 rules be of assistance to operators in bringing wells into  
8 compliance?

9 A. I believe it would be.

10 Q. Would it provide an opportunity to avoid being  
11 branded as having lost good standing?

12 A. Yes.

13 Q. You were here for Ms. Prouty's presentation and  
14 how the data is going to be presented on the web page for  
15 each operator?

16 A. Yes.

17 Q. Is that a benefit to your in trying to manage  
18 your properties?

19 A. I think having the information there is a  
20 benefit, definitely having a legend to identify what the  
21 classifications are will be helpful.

22 Q. Does this, in your opinion -- would this relieve  
23 the Division of the duty to provide notice before they list  
24 someone as a -- losing good standing?

25 A. I don't believe so.

1 Q. Let's talk about financial assurances.

2 A. Okay.

3 Q. What is industry concern about the financial  
4 assurances in the rules as written?

5 A. One of the main concerns is having to provide a  
6 double bond on the federal wells.

7 And also we are concerned about the situation  
8 that the OCD, if they plug wells for -- on federal land,  
9 that they should have access to the federal bonds that are  
10 out there.

11 We did propose -- OXY did in their comments, that  
12 some type of an agreement be negotiated between BLM and OCD  
13 to try to ensure that those funds were there.

14 Q. And you'd support a single joint bond for the  
15 plugging of wells between the two agencies?

16 A. We would support that, yes.

17 Q. When a bond is obtained, do you have an opinion  
18 on how long that bond has to stay in place before it can be  
19 released?

20 A. Well, on the individual well bonds that they have  
21 for temporary abandonment, we believe that when you put the  
22 well back into service, that that individual well bond  
23 should be released and it should go back under the blanket  
24 bond.

25 Other bonds should be released when the well is

1 properly plugged and abandoned.

2 Q. In the NMOGA and IPA meetings there was  
3 discussion concerning uniformity of enforcement?

4 A. Yes.

5 Q. What was that issue?

6 A. That issue related to some -- the different OCD  
7 districts administering -- or their interpretation of the  
8 rules in their district and how they manage some of the  
9 programs. There's positives and negatives of that.

10 But there was concern that with too much leeway  
11 that there could be a situation where perhaps an operator  
12 had gotten crossways with someone at the OCD and that they  
13 could use the rules in a manner that might not be fair and  
14 equitable.

15 Q. There were also concerns expressed about operator  
16 registration?

17 A. Yes.

18 Q. What is the concern there?

19 A. The biggest concern was with the five-percent  
20 issue. When you have a major company, that's quite a task  
21 to do that; that's an SEC filing. We wonder how the  
22 Commission would actually keep up with that.

23 My thought was -- this is sort of off the well,  
24 but the New Mexico Teachers Retirement Fund could have a  
25 five-percent interest in a company that was not in good

1 compliance, and they -- five percent on another company  
2 that comes in, that -- you know, like I said, it was sort  
3 of off the wall, but it's one of those bad-actor triggers,  
4 so...

5 But trying to track it is going to be very  
6 difficult, I think, not only for the companies but for the  
7 OCD. And the operator is the person that is responsible  
8 for the compliance with the regulations, and that's  
9 designated by the leasehold and operator agreements.

10 Q. Do you believe that the appropriate place to look  
11 is the operator, and use existing authority to control that  
12 entity?

13 A. Yes, we do.

14 Q. If the rules are adopted with the amendments  
15 proposed by NMOGA and IPA New Mexico, do you believe this  
16 will impair the ability of the OCD to vigorously enforce  
17 its rules?

18 A. No, I don't.

19 Q. Do you believe with the amendments proposed by  
20 NMOGA and IPA New Mexico that there will be protections for  
21 operators that do not exist in the rules as drafted?

22 A. Yes.

23 MR. CARR: That concludes my examination of Ms.  
24 Bush.

25 CHAIRMAN FESMIRE: Ms. MacQuesten?

## CROSS-EXAMINATION

BY MS. MacQUESTEN:

Q. Ms. Bush, you're here on behalf of OXY Permian?

A. Yes.

Q. Is that Occidental Permian, Limited?

A. -- Limited, and it also represents OXY USA and  
OXY USA WTP, LTD.

Q. So all --

A. All three of those entities.

Q. -- all three of those are OXY entities?

A. They're operated under the name of OXY Permian.

Q. Okay. When you said that you thought that over  
50 percent of the wells on the list were there improperly,  
were you talking about the lists for those three companies,  
or the whole lists?

A. Those three lists.

Q. So you look for those --

A. Just the OXY-related lists.

Q. Okay. Well now, OXY USA, I looked -- I think it  
was yesterday -- and they have 506 wells?

A. I believe that's what you have on the list.

Q. And they had no wells out of compliance?

A. That's right. They had five on it earlier. They  
plugged those wells, and those wells have been accounted  
for.

1 Q. So --

2 A. Those are the Bravo Dome --

3 Q. Okay.

4 A. -- CO<sub>2</sub> wells.

5 Q. So they're in perfect compliance at this time?

6 A. At this time.

7 Q. And if we adopted the percentage -- and I did  
8 this ahead of time because I'm not going to do math here,  
9 so I hope I'm right. But if we took the percentage, it  
10 would be -- it could have 25 wells out of compliance?

11 A. Out of the -- what did you say they had, five  
12 hundred and some?

13 Q. 506.

14 A. Yeah, roughly.

15 Q. Okay. And OXY USA WTP Limited Partnership, I  
16 show 589 wells total.

17 A. Okay.

18 Q. And 19 out of compliance -- or on the list.

19 A. On the list.

20 Q. On the list, right. And before the hearing, a  
21 few days ago, we spoke on the phone, didn't we --

22 A. Right.

23 Q. -- about some of your concerns?

24 A. Well, we actually traded voice mails.

25 Q. We traded voice mails, which is -- to me that's

1 almost like talking on the phone.

2 But you raised some serious concerns. You had  
3 some wells that were active but not actively producing or  
4 injecting, they were observation wells.

5 A. Observation wells.

6 Q. And we went and checked and realized that we had  
7 a category of wells under M for miscellaneous that included  
8 wells like that, that were obviously of beneficial use --

9 A. Uh-huh.

10 Q. -- and that shouldn't be on this list. So those  
11 wells were removed if they had that designation of M?

12 A. Only one of the wells was removed. The other one  
13 doesn't have a designation on it, I don't think, at all.

14 Q. Okay. And when I returned the voice mail, I  
15 indicated that we removed the ones with that designation,  
16 but if you had others that you felt fit in that category  
17 but weren't showing up with that designation, that you  
18 should call us and we could deal with that.

19 A. And I plan to do that. I'm trying to get all my  
20 records together so that I do this at one time.

21 Q. And I believe Ms. Prouty testified that when we  
22 removed those M wells, we did so across the board, not just  
23 for OXY, but they -- they'll show up on the paper version  
24 of Exhibit 26 because that was done before we had our  
25 conversation, but if you go to the website now, those

1 wells --

2 A. Right.

3 Q. -- have dropped off. And in the course of that  
4 we also discovered some -- what we're calling water  
5 wells --

6 A. Uh-huh.

7 Q. -- designated with a W, and I believe one of OXY  
8 entities had some of those as well, right?

9 A. Not that I recall.

10 Q. But the W wells dropped off --

11 A. Right.

12 Q. -- the main list also?

13 I'm looking at an inactive well list printout  
14 from yesterday for OXY USA WTP Limited Partnership. Can  
15 you tell us today which wells you have concerns about on  
16 this list that you think shouldn't be there?

17 A. Not without my list, and I don't have it with me  
18 in the room. I do know that the -- OXY USA WTP is managed  
19 by a different group than the Occidental Permian, so I have  
20 to look at those lists separately. I do know that there's  
21 been a significant amount of turnover in that group, and so  
22 there are wells in noncompliance on that list, and we're  
23 going to be addressing that in a very timely manner.

24 Q. I also pulled the OXY Permian Limited list, and  
25 there I show 637 wells total --

1 A. Okay.

2 Q. -- and 23 out of compliance?

3 A. That's what you show. On that list, actually,  
4 when I break that out, there should -- are only three out  
5 of compliance at this time, according to my records.

6 Q. And what is the discrepancy? Why are we showing  
7 20 more than you are showing?

8 A. Well, I'm pulling the paperwork, but the majority  
9 of them have been plugged and abandoned, and we have the  
10 paperwork to follow up with. And there's -- I don't know,  
11 half a dozen or so that are approved temporary abandonment,  
12 but they're not shown in there as that.

13 Q. Approved temporary abandonment that still is in  
14 effect?

15 A. In effect. They have until somewhere -- Some of  
16 them are in 2006, they need to be retested, some as late as  
17 2008. We have one or two that have been converted to  
18 injection and are active injections, and a couple that have  
19 been returned to production. And according to my  
20 accounting people, they've been reported. Now, we're going  
21 to verify to see if there's some discrepancy, as well as  
22 have they reported it under the right zone or the right  
23 code, so that if it's an error on our part we can correct  
24 that as well.

25 Q. So you're saying that these were reports that

1 were filed, and it's OCD's fault that these wells are still  
2 appearing on the list?

3 A. Well, they've been filed, and we have the copies  
4 back that show that they were received. And so in some  
5 fashion the documentation hasn't been processed.

6 Q. I'm curious why this is happening on Occidental  
7 Permian, Limited, and yet apparently everything was  
8 processed exactly correctly for OXY USA, and I don't hear  
9 you saying the same things for OXY USA WTP Limited  
10 Partnership.

11 A. Well, part of it is, again, I know that the OXY  
12 USA WTP -- that there are some noncompliants on that, more  
13 than I would like to admit. And all I can say is, perhaps  
14 it has something to do with the processing in the District  
15 Office. I don't know, I've been out of the New Mexico  
16 regulatory arena for about eight years. As I mentioned,  
17 I've just been back in it two months, and I'm not quite up  
18 to speed on exactly how everything is processed in which  
19 office at this time.

20 Q. Looking again at the Occidental Permian Limited,  
21 the one that's giving us so much problem --

22 A. Okay.

23 Q. -- I'm looking at the last production date  
24 column, and there are some very, very old wells on this  
25 list. There's -- well, 1999, 1994, 1993, 1993, 1993, 1993,

1 1993, 1995, 1984, 1997, 1993, 1993, 1994, 1992. We've been  
2 showing these wells as inactive for a very long time. Was  
3 anything done to --

4 A. Well, as I --

5 Q. -- correct the --

6 A. -- indicated on that particular list, there are,  
7 I believe, three that would be determined to be out of  
8 compliance with the inactive well rule. The rest of them,  
9 I believe I will have documentation to show that they've  
10 been returned to production, injectors, plugged and  
11 abandoned or properly temporarily abandoned.

12 Q. Okay. When you have provided us information, for  
13 example, when you called us about the monitor wells or  
14 the --

15 A. Uh-huh.

16 Q. -- observation wells, was that handled in a  
17 timely manner?

18 A. Yes, I think I got a call back. I don't remember  
19 if it was the same day or the next day. And I actually had  
20 called to ask how you were handling them, because I wanted  
21 some clarification.

22 Q. What is OXY doing now to monitor inactive wells,  
23 to make sure they don't fall out of compliance by being  
24 inactive for 15 months or more?

25 A. Well, I'm setting up a process for my regulatory

1 analyst to go in and use the system as has been described,  
2 with a shorter time period than the 15 months, and to work  
3 with the operations personnel to make sure they're  
4 addressed in a timely manner.

5 Q. You didn't have such a program before?

6 A. I can't really speak to that. It's my  
7 understanding there was some type of a program in place,  
8 but I do not know what it was, and I haven't been able to  
9 get some answers on that.

10 Q. Do you feel if you set up a program that looks at  
11 inactive wells before they get to the 15-month period and  
12 give yourself enough lead time to deal with deciding what  
13 you want to do with the wells and taking care of them, do  
14 you think you can bring your companies into compliance with  
15 our inactive well rule?

16 A. I believe that we can. Again, though, when  
17 you're doing a reservoir analysis and you're working with  
18 wells of what you're going to do with them, it's not a one-  
19 or two-day process and review to see if it fits in with  
20 your waterflood or your CO<sub>2</sub> flood, and so you have to make  
21 some other decisions.

22 And so while the goal is to be in compliance and  
23 not have any out of compliance, there's always the  
24 possibility that you will have that window there where you  
25 do have some that fall into that arena, and hopefully they

1 will be addressed quickly. We hope they don't get there,  
2 but...

3 Q. But you mentioned that you had set up program so  
4 that you looked at them sometime before the 15-month  
5 period?

6 A. Right.

7 Q. And do you think you can set a time that will  
8 give you whatever time you need, and it's within your  
9 control to set that time?

10 A. Well, I can set the time, but I don't do the  
11 review, and I don't specify the priority to the operations  
12 and the engineering staff. So part of it is an education  
13 of them, of what they need to know and to do, and to get  
14 their attention on it. There has been a management change  
15 in that group, and I think there's the education there that  
16 will have to...

17 Q. Is that what you meant when you said that  
18 sometimes inactive wells get pushed to the bottom of the  
19 pile?

20 A. Well, when you have an aggressive drilling  
21 program and you're acquiring properties, that may be  
22 considered a lower priority at that time. And when you've  
23 got a rig scheduled and rigs are in tight demand, you can't  
24 let a rig go and not be able to get it on location. So  
25 that will have a higher priority than addressing a well

1 that is shut in.

2 Q. Do you think if the OCD adopted rules so that  
3 there were some consequences that took effect if a well was  
4 out of compliance with the inactive well rule, that that  
5 would cause your company to put more of a priority on the  
6 inactive well program?

7 A. I think that the consequences are already there,  
8 in place.

9 Q. Have we taken any enforcement action on OXY on  
10 inactive wells?

11 A. Not to my knowledge.

12 Q. And yet there are 23 out of compliance on OXY  
13 Permian and 19 on OXY USA, as far as we're concerned, and  
14 we're --

15 A. Right.

16 Q. -- looking at the records, we see those numbers.  
17 Has there ever been a case against OXY for plugging of  
18 inactive wells?

19 A. I can't answer that, I don't know. I haven't  
20 been there long enough, I don't know the history.

21 Q. If we find after you do your review and we get  
22 together and clean up these lists as best we can -- if we  
23 find that there some wells that are truly out of  
24 compliance, would you be willing to enter into an agreed  
25 compliance order to take them off this list?

1           A.    I believe we would consider that.

2           Q.    And you understand that if they were under an  
3           agreed compliance order, they wouldn't affect your good  
4           standing?

5           A.    Right. One of the things we've become concerned  
6           with is some of the language in the agreed compliance order  
7           right now.

8           Q.    What are you concerned about?

9           A.    Well, basically admitting knowing and willful,  
10          and there's some other language in there. I'm not an  
11          attorney, but I can just say that there are some concerns  
12          with the language in there. So we would have to look at  
13          it, of course, and I think that they would be. But I can't  
14          speak for saying absolutely that we would do that. So I'd  
15          just have to say we'd have to work with our legal counsel  
16          and go forward.

17          Q.    Well, I'm trying to remember the language in the  
18          agreed compliance where we were -- we use now, and we don't  
19          seek penalties for past transgressions, so we would not be  
20          having to have the operator acknowledge a knowing and  
21          willful violation of the past. But we do include penalties  
22          if the operator doesn't comply with the negotiated  
23          schedule.

24          A.    Right.

25          Q.    And in order to impose penalties, the violation

1 has to be knowing and willful?

2 A. If you're -- Yes, in that case that would be  
3 knowing and willful.

4 Q. So I guess my concern is, you would not be  
5 willing to sign an agreed compliance order that involved  
6 penalties at all, because you would not feel that you could  
7 agree that any -- not following the schedule would be  
8 knowing and willful?

9 A. No, it's my understanding that the issue with the  
10 knowing and willful is admitting that the wells were not in  
11 compliance knowingly and willfully, not so much that if you  
12 had an agreed compliance order and you didn't comply with  
13 it, that that would be knowing and willful. I think it  
14 goes back to some of the other language.

15 Q. Okay. Again, I'm just going from my memory here.  
16 If we have such language about the past, I think we can  
17 accommodate you on that.

18 A. Probably.

19 Q. I'm concerned if the language is to support the  
20 imposition of penalties, we may have a problem.

21 A. You mean if you didn't comply with the order?

22 Q. Right, if you're saying you can't sign an order  
23 that imposes penalties, if you fail to comply with the  
24 rules --

25 A. No, I'm not saying that.

1 Q. Okay, okay. Would you agree with me that an  
2 operator who has wells out of compliance and refuses to  
3 agree to enter into an agreed compliance order would be an  
4 operator we shouldn't consider in good standing?

5 A. I think it would depend on what you're discussing  
6 with that particular operator, and the circumstances. I  
7 don't think I can really say straight across.

8 Q. Okay. You understand that while a well is on the  
9 list, if it is in fact out of compliance, that it could be  
10 subject to other enforcement mechanisms?

11 A. That's correct.

12 Q. And that includes a potential \$1000 a day for --

13 A. Yes.

14 Q. -- each well?

15 Let's give you the benefit of the doubt. You  
16 said you think 50 percent of the wells on this list  
17 shouldn't be there. So let's eliminate 50 percent and say  
18 that 11 wells are out of compliance. That would  
19 theoretically be \$11,000 a day penalty?

20 A. Right.

21 Q. Would you prefer that we use that enforcement  
22 mechanism against OXY instead of good standing, where we  
23 contact you when you request some benefit and invite you to  
24 sign an agreed compliance order to come into compliance,  
25 with no penalties for past misconduct?

1           A.    Well, I think OXY would enter into an agreed  
2 compliance order versus a penalty. But again, the language  
3 is an issue that would have to be negotiated with the legal  
4 counsel. I can't say that -- what they would do --

5           Q.    Sure.

6           A.    -- as far as the language goes.

7           Q.    Sure.

8           A.    I think the agreed compliance order would be  
9 considered, but I'm not the one that will make that  
10 decision.

11          Q.    But if this rule doesn't go through and we don't  
12 have good standing as an enforcement tool, we go back to  
13 our traditional methods, and I only have a few methods  
14 available to me. One is to seek an order requiring you to  
15 plug all of the -- at least the wells that are out of  
16 compliance. Theoretically, I think I could ask you to plug  
17 productive wells too, but let's say I just asked you to  
18 plug the wells that are out of compliance, and if you  
19 don't, we would plug them. You wouldn't have a choice to  
20 say, Wait a minute, I think that well could be productive,  
21 I'd like to have some more time to work on it. We could  
22 say, Sorry, we have an order to plug this and we're going  
23 to plug it.

24          A.    You could do that.

25          Q.    And we could pursue penalties, \$11,000 a day?

1           A.    True.  I don't envision OXY continuing to carry  
2   those 11 wells in noncompliance.  It's being brought to the  
3   management's attention, and something is going to be done  
4   with them.

5                    OXY's position is similar to Burlington's.  Their  
6   position is, at a corporate level, to operate in  
7   compliance, and you just have to get to that point down in  
8   the ranks.

9           Q.    I'm just trying to understand industry's position  
10   of why they feel that this particular enforcement tool that  
11   we're proposing is so offensive, compared to the other  
12   options that we have.

13          A.    I think the issue is the good standing and then  
14   being labeled a bad actor -- whether you want to call it  
15   the bad actor or not; it's been used enough in the  
16   discussions that -- and that the loss of good standing  
17   based on the inactive well list and not making an effort to  
18   come into -- or if you were making an effort to come into  
19   compliance, is that it goes so far beyond just your dealing  
20   with getting an APD.  I mean, that's part of the issue, but  
21   it goes into your ability to work deals with other  
22   companies, you know, and things like that.

23                    So once you get labeled -- once you get labeled  
24   as not in good standing, it's not something that just goes  
25   in and out at the OCD.  The perception out in the public

1 has a tendency to stick with that, whether you are a bad  
2 actor or you're not a bad actor, and I think that's really  
3 our concern.

4 Q. I understand that. And bear with me, because I'm  
5 trying to get to something here. The way the rule is  
6 currently proposed, though, there is no bad actor list,  
7 there's nothing anywhere that says somebody's out of good  
8 standing, and the only time it affects you is when you  
9 apply for some privilege and the OCD says, We have a  
10 problem here, you have X number of wells on the inactive  
11 list, you have an unpaid penalty, or whatever the basis is  
12 for lack of good standing; how do you want to handle this  
13 before we deal with giving you this privilege? There isn't  
14 a label attached to anyone.

15 But what I'm also hearing at the same time is  
16 industry saying, let's set up a system where you give us a  
17 label, where you give us notice and we create a list of you  
18 are not in good standing.

19 Now, I could see this rule going either way, and  
20 I could live with it either way. But I'm trying to  
21 understand which is industry's concern. Do you want us to  
22 say, Yes, you are out of good standing and you are now on  
23 this list? Or do you want the less formal method that we  
24 have now, which doesn't give you a label and you deal with  
25 it on a case-by-case basis?

1 I mean again, I can go either way, so I'm not  
2 trying to -- I'm just trying to understand where industry  
3 is most concerned?

4 A. Well, I think that the perception from your  
5 perception and the industry's perception is that using the  
6 inactive well list and the other list that the rules say  
7 you'll post these lists is, in fact, listing as not in good  
8 standing, versus just, as you said, publishing the list  
9 that these aren't in good standing.

10 So I think there's a perception there from where  
11 we're looking at it.

12 Q. Would you prefer that we not have these lists  
13 posted? Is that what is offensive? We could simply say,  
14 give notice to an individual company: Company X, you have  
15 an outstanding penalty. Be aware that the next time you  
16 apply for these particular benefits, you may not get them.

17 A. I think that's what we would prefer as an  
18 industry.

19 Q. Okay. For the inactive well list, though, is it  
20 useful to have that on the Web?

21 A. Well, it actually is useful for us to try to --  
22 to help monitor it.

23 Q. One concern was raised that perhaps it would  
24 better if the list -- well, there was a concern that you  
25 can look at your wells, but you can also look at everybody

1 else's wells.

2 A. That's true.

3 Q. Now, should we do a list so that you can't see  
4 anybody's wells except your own?

5 A. Well, I can't really answer that. When I go in  
6 and look at it, I'm looking just at OXY's list.

7 If I'm looking to acquire a company, I may go in  
8 and look because that could be part of my due diligence.

9 Q. Sure, so it may be helpful in that situation at  
10 least.

11 A. But I can't speak for the rest of the NMOGA and  
12 IPANM.

13 MS. MacQUESTEN: Okay, thank you. No more  
14 questions.

15 CHAIRMAN FESMIRE: Is there any other cross-  
16 examination of this witness from the participants?

17 Commissioner Bailey?

18 EXAMINATION

19 BY COMMISSIONER BAILEY:

20 Q. Do you think that there might be a better  
21 strategy than what's presented in Rule 37 that would  
22 accomplish the goals of the OCD for their enforcement?

23 A. Refresh my mind. Rule 37 is the --

24 Q. Is the --

25 CHAIRMAN FESMIRE: Good standing.

1 THE WITNESS: The good standing?

2 Q. (By Commissioner Bailey) Yes. Somewhere in  
3 between these two extremes of only having the \$1000 per day  
4 and the good standing, do you think there might be a better  
5 strategy somewhere in between?

6 A. I think it's worth discussing.

7 Q. That a work group consisting of interested  
8 parties, industry, OCD, might be able to come up with all  
9 those fine lines, with a strategy that would accomplish the  
10 goals?

11 A. I believe that's very possible.

12 Q. Is OXY a publicly traded company?

13 A. Yes.

14 Q. Would labels like "bad actor" and "not in good  
15 standing" be damaging to the stockholders, even if those  
16 labels are very short-term?

17 A. Potentially they could be.

18 Q. And based on suspect data?

19 A. Yes.

20 Q. Do you also believe that the fluctuating short-  
21 term daily changes that are -- form the basis for bad actor  
22 would have long-term impacts, potentially?

23 A. I think potentially they could, because you could  
24 be floating in and out of that list all the time.

25 Q. Right. And you would be willing to work with OCD

1 and work with the stakeholders?

2 A. Yes.

3 COMMISSIONER BAILEY: Thank you.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 EXAMINATION

6 BY COMMISSIONER OLSON:

7 Q. I guess just as a follow-up to that, can you  
8 point out to me where in the proposed rules you're actually  
9 called a bad actor?

10 A. Well, in the rules when we go back, it's not --  
11 you're not called a bad actor. It has been used in various  
12 communications and open dialogue, and the lack of good  
13 standing -- not in good standing is an implication that  
14 you're a bad actor.

15 Q. I have one other question. Do you have any  
16 operations in Illinois?

17 A. No.

18 Q. No?

19 A. Well, let me qualify that. Not to my knowledge,  
20 at least oil and gas operations.

21 Q. But you --

22 A. Occidental could have some chemical operations,  
23 but I do not know for a fact.

24 Q. But OXY is active on a national basis?

25 A. Yes.

1           Q.    Have you ever heard of any problems with the  
2 requirement -- five-percent interest requirement in the  
3 Illinois rules?

4           A.    I haven't, no.

5           Q.    And I guess -- This list would be out and  
6 available on the inactive well list. Wouldn't this  
7 proposed rule give you an incentive to make sure that those  
8 lists stay -- are listed correctly, the data listed on  
9 there is listed correctly?

10          A.    Yes, and that is the intent, now that I'm aware  
11 of what the situation is and that the list is out there.  
12 As I mentioned briefly, I've just been in this position two  
13 months, and the intent is to manage that and make sure that  
14 it's correct.

15          Q.    Well, wouldn't it also give companies an  
16 incentive not to have wells on the list?

17          A.    Well, from the 15-month aspect, yes, it is an  
18 incentive. You're always going to have some wells that are  
19 shut in or inactive. So when we think of the inactive well  
20 list and we're talking about it in this context, it's the  
21 15 months that it's gone beyond.

22                So yes, there is an incentive not to keep them on  
23 the list.

24                COMMISSIONER OLSON: That's all the questions I  
25 had.

## EXAMINATION

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BY CHAIRMAN FESMIRE:

Q. Ms. Bush-Ivie, OXY has been very interested in NMOGA since at least 2000, haven't they? Very active in NMOGA?

A. Yes.

Q. Okay. And to say that they're an active player in New Mexico is a pretty accurate statement, wouldn't you think?

A. Yes.

Q. And they've got one entity with about 500 wells that has one well on the list, correct?

A. Well, we have one entity that has none on the list now, as of today.

Q. Okay, no wells on the list?

A. Yes.

Q. And you've got one entity with 23 wells on the list?

A. Yes.

Q. All of a sudden, the entity that wasn't in compliance got interested in this list, in bringing their wells into compliance, right?

A. Actually, they were always in compliance.

Q. The one with 23?

A. Oh, no, I was -- the Bravo Dome has been in

1 compliance. The one with the 23?

2 Q. The one with the 23. And I get them mixed up, so  
3 I'm just going to call them the one with the 23 and the one  
4 with zero, okay?

5 A. Okay.

6 Q. But they had 23 wells on that list, and they've  
7 been there for a significant amount of time, correct?

8 A. Yes.

9 Q. So all of a sudden they are interested in  
10 bringing those wells into compliance; is that true?

11 A. I think that they're interested because it's been  
12 brought to their attention.

13 Q. It's been brought to their attention. What got  
14 their attention?

15 A. Well, the discussion on these rules, in part, I  
16 believe, did that.

17 Q. And since -- We've been working on this project  
18 since 2000 --

19 A. Right.

20 Q. -- but we just now got their attention, and the  
21 reason that we just now got their attention is, we have the  
22 ability to affect their good standing; is that correct?

23 A. No, they got -- OXY -- It's my understanding that  
24 in 2000 OXY worked very closely with the OCD to address the  
25 inactive wells. The wells that are currently on the list,

1 I can't say that those were the same wells or if they're  
2 different wells that were on the list in 2000. I don't  
3 have that information.

4 Q. And granted, you're saying a significant  
5 percentage of them are -- may be mistakes --

6 A. Yes.

7 Q. -- but you're looking into it?

8 A. Yes.

9 Q. But they have been on there -- many of them have  
10 been on there for a long time now. There may be -- Some of  
11 them may be the ones that are mistakes, some of them may be  
12 new.

13 But if I remember Ms. MacQuesten right, there are  
14 wells on there from 1992, 1994, 1995, 1997?

15 A. Well, I don't know as they were on the list then,  
16 but what's being reported, I think, is the last day they  
17 produced. But some of those wells are also injection  
18 wells, so that is an accurate statement --

19 Q. Okay.

20 A. -- that that is the last time they produced --

21 Q. The last time they reported?

22 A. Right, production, reported production.

23 Q. Well, no, no, these lists --

24 A. No, this is --

25 Q. -- also include injection wells.

1           A.    But it's -- that date on there, it's -- my  
2 understanding is, that's the date they last reported  
3 production.

4           Q.    I think Ms. Prouty's testimony was, that was the  
5 last date they reported. Is that -- But we'll take it --

6           A.    Okay.

7           Q.    -- either way, either way. There are a lot of  
8 wells on there for a medium-size company, right? Or for a  
9 medium-size New Mexico company?

10          A.    There's quite a few wells on there.

11          Q.    And the point I'm trying to make is that we just  
12 now got their attention.

13                Now, you say back in 2000 they may have worked on  
14 it. But sometime between 2000 and now somebody quit paying  
15 attention to it.

16          A.    It appears that may be the case.

17          Q.    Okay. So now we come in with these new proposed  
18 rules, and that gets folks moving, right?

19          A.    That is partly due to it, yes.

20          Q.    To accomplish an objective that we've been really  
21 trying to do for several years?

22          A.    Okay.

23          Q.    Okay. So don't you think that our rules -- we've  
24 gotten as far as we could go with our rules, and we need to  
25 do something different?

1 A. Not necessarily.

2 Q. Just the threat of doing something different got  
3 OXY moving, didn't it?

4 A. I don't know as it was the threat of doing  
5 something. I think that in the course of reviewing the  
6 operations and the inactive wells, that would have been  
7 brought to --

8 Q. Okay, so --

9 A. -- their attention, so --

10 Q. -- so we're talking about the difference between  
11 inadvertent neglect and conscious neglect?

12 A. I'm talking about not -- well, not necessarily.  
13 I think it's --

14 Q. The fact is --

15 A. -- I think it's --

16 Q. -- that these proposed rules have gotten OXY  
17 moving, right? For whatever reason?

18 A. Well, yes.

19 Q. So haven't they accomplished some of their  
20 objective already?

21 A. Yes, but I think a letter would have accomplished  
22 the same thing, a 30-day-notice letter.

23 CHAIRMAN FESMIRE: Okay. I have no further  
24 questions, Mr. Carr.

25 MR. CARR: And I have no further questions.

1 Don't want to disappoint you, but I have no further  
2 questions.

3 (Laughter)

4 CHAIRMAN FESMIRE: Thank you, Ms. Bush-Ivie.

5 At this time there are several other parties that  
6 indicated that -- Oh, Mr. Carr, do you essentially rest?

7 MR. CARR: I essentially rest.

8 (Laughter)

9 CHAIRMAN FESMIRE: At this time there are several  
10 other parties who indicated that they might want to make a  
11 statement. Mr. Bruce, did you have anything to say on  
12 behalf of Devon?

13 MR. BRUCE: Yes, Mr. Chairman. I have some  
14 additional copies of the letter I'm submitting to you, Mr.  
15 Chairman, up here for other people. I'm submitting a  
16 letter on behalf of Devon Energy Corporation and its  
17 affiliates.

18 Devon is a very active producer and operator of  
19 exploratory and development wells in the State of New  
20 Mexico. I don't have an exact number, but they have  
21 hundreds and hundreds of wells in this state.

22 Devon has reviewed the proposed enforcement rules  
23 which are the subject of the case, and Devon fully supports  
24 the expressed intention of the Commission to ensure  
25 industry compliance with Division Rules and Regulations.

1     However, Devon shares many of the concerns expressed by  
2     other operators in this state through NMOGA.

3             One of Devon's major concerns is what it  
4     conceives as the lack of due process afforded to an  
5     operator who could lose his good-standing status solely by  
6     the number of inactive wells it operates, as itemized on a  
7     list of inactive wells appearing on the Division's website.  
8     Since loss of good-standing status can have repercussions  
9     to an operator under the proposed rules, we believe that an  
10    operator has a minimal right to due process by being  
11    notified at least 30 days in advance of losing its good-  
12    standing status.

13            Also related to the issue of good standing, Devon  
14    believes that the proposed rules regarding the number of  
15    inactive wells appearing on the Division's list which  
16    triggers the loss of good standing is unreasonable,  
17    particularly as applied to the larger operators in this  
18    state. We believe a reasonable approach would be to limit  
19    the number of inactive wells to an operator, to a  
20    reasonable percentage of total wells operated in this  
21    state.

22            From a procedural standpoint, Devon is also  
23    concerned with the abbreviated notice and comment period  
24    associated with this case and recommends a return to a  
25    collaborative, joint work-group process used by the

1 Division in the past. Devon has participated in and fully  
2 supports the written comments and testimony of the New  
3 Mexico Oil and Gas Association in this case in appreciates  
4 the opportunity to make this statement, and I would ask  
5 that this letter be made a part of this statement, Mr.  
6 Chairman -- of the case.

7 CHAIRMAN FESMIRE: Any objection?

8 Ms. MacQuesten?

9 MS. MacQUESTEN: No objection.

10 CHAIRMAN FESMIRE: Mr. Carr?

11 MR. CARR: No objection.

12 DR. NEEPER: Mr. Chairman, is this being accepted  
13 as an exhibit?

14 CHAIRMAN FESMIRE: No, it's being accepted as a  
15 comment to the case -- unless there's an objection.

16 Ms. Bush-Ivie, did you have anything to say?

17 MS. BUSH-IVIE: Nothing additional, thank you.

18 CHAIRMAN FESMIRE: Dr. Neeper?

19 COMMISSIONER OLSON: Could I maybe ask Mr.

20 Bruce --

21 CHAIRMAN FESMIRE: Sure.

22 COMMISSIONER OLSON: -- a question.

23 CHAIRMAN FESMIRE: Sure. Hang on, Doctor,  
24 there's a question from the Commission for Mr. Bruce.

25 COMMISSIONER OLSON: Mr. Bruce, you're expressing

1 a concern over the due-process rights. If the Division  
2 does not approve a permit, isn't there a due process for  
3 the approval -- for not approving that permit?

4 MR. BRUCE: Well, Mr. Commissioner, my problem  
5 with it is that what the Division puts in its computer,  
6 which has never had -- which Devon has not had a chance to  
7 review, is presumed conclusively correct, and it has not  
8 had a chance to provide an input with respect to a well  
9 that may be an injection well or whatever, which it  
10 believes it has filed and which the Division -- and it  
11 might be a mistake put in by the Division -- is viewed as  
12 an out-of-compliance wellbore. And it might be in  
13 compliance, but Devon has had absolutely no input with  
14 respect to that wellbore.

15 And if it is given a chance to look at that and  
16 within 30 days respond, it might be out of compliance, but  
17 on the other hand, if somebody with the Division -- and  
18 I've been working over here for 25 years and I know the  
19 good faith of the people in the Division, but mistakes are  
20 made. And that could severely affect future operations for  
21 Devon, because it has had no input with respect to a  
22 particular wellbore which is put on the bad-faith list.

23 COMMISSIONER OLSON: Well, I guess -- can't Devon  
24 be reviewing the list as something pops up and then bring  
25 it to the attention of the Division that this is something

1 that's in error, and not wait until you go past five wells,  
2 but as soon as one pops up on the list, you -- gets your  
3 attention and you say, This shouldn't be on there?

4 MR. BRUCE: And -- But if it's a mistake, why  
5 should it be Devon's obligation to correct the Division's  
6 mistake?

7 COMMISSIONER OLSON: I just seem to recall from  
8 the testimony we've had, a lot of mistakes appear to be  
9 coming from industry, in either not providing the  
10 information or -- I mean, I'm sure it happens on both  
11 sides, but --

12 MR. BRUCE: Well, and I guess my point,  
13 Commissioner, is, a 30-day notice and opportunity-to-cure  
14 period seems pretty minimal with respect to something like  
15 this, which may affect -- Devon drills dozens and dozens of  
16 wells, and there are other operators in this state --  
17 Burlington and BP have drilled hundreds of wells in the  
18 state every year, and one little mistake might cause a  
19 rainfall effect which will severely affect the number of  
20 wells that they get permitted to drill in the state over a  
21 period of several months, when one little notice might have  
22 cured the whole deal.

23 COMMISSIONER OLSON: Thank you.

24 CHAIRMAN FESMIRE: Mr. Bruce, that brings up a  
25 question on my part, then. Is there a due-process

1 requirement or some sort of protectible interest in a  
2 regulator's listing of noncompliant parties?

3 MR. BRUCE: I don't know if it's -- My view of it  
4 is this, Mr. Chairman, which is, Devon and the other  
5 operators own oil and gas leases, which are real property  
6 rights, and they have the right to develop those leases.  
7 And one little mistake might severely interfere with their  
8 right, especially if they have an expiring lease, state,  
9 federal or fee.

10 CHAIRMAN FESMIRE: And I could see where that  
11 might trigger a -- some sort of due-process requirement in  
12 a permit to drill that has been denied. But in the list  
13 itself, in simply maintaining a list of noncompliant  
14 operators, is that a --

15 MR. BRUCE: Well, maybe not the list itself, but  
16 it certainly has an effect on their real property rights.  
17 If, for instance, there's a well on there that triggers  
18 this bad-actor status, and all of a sudden they can't get  
19 an APD approved to commence a well within the terms of  
20 whether it's an expiring oil and gas lease or an expiring  
21 farmout or an expiring term assignment.

22 CHAIRMAN FESMIRE: And then there are provisions  
23 for notice and due process in that step, but the prior step  
24 -- this is something we may have to, you know, talk about  
25 later, but --

1 MR. BRUCE: Sure.

2 CHAIRMAN FESMIRE: -- I guess I'm missing the  
3 link that gets you to...

4 MR. BRUCE: Maybe not in the list itself, but it  
5 certainly has effects on the real property rights of these  
6 operators within the state.

7 CHAIRMAN FESMIRE: Okay. Dr. Neeper?

8 DR. NEEPER: Would it be acceptable to have a 10-  
9 minute break?

10 CHAIRMAN FESMIRE: Before Commissioner Bailey  
11 hits me, I think that's probably a good idea.

12 (Laughter)

13 COMMISSIONER BAILEY: I'll just ask you  
14 questions.

15 (Laughter)

16 (Thereupon, a recess was taken at 2:56 p.m.)

17 (The following proceedings had at 3:07 p.m.)

18 CHAIRMAN FESMIRE: Okay, let's go back on the  
19 record.

20 Dr. Neeper, I believe you were going to make a  
21 statement?

22 DR. NEEPER: Yes, Mr. Chairman.

23 I missed out on the group swearing yesterday  
24 morning, so I should be sworn.

25 (Thereupon, the witness was sworn.)

1                   DONALD A. NEEPER,  
2   the witness herein, after having been first duly sworn upon  
3   his oath, testified as follows:

4                   DIRECT TESTIMONY

5   BY DR. NEEPER:

6                   My name is Donald Neeper, I live in Los Alamos,  
7   New Mexico. I will be testifying as a designated  
8   spokesperson for the New Mexico Citizens for Clean Air and  
9   Water. I am appearing *pro se*, and therefore I will qualify  
10  myself if that is acceptable to the Commission.

11                  CHAIRMAN FESMIRE: It's acceptable.

12                  THE WITNESS: Although I will not be addressing  
13  things of engineering concern today, I will mention that I  
14  do have a PhD in thermal physics, I have 30 years of  
15  experience in thermal engineering. Since an official  
16  retirement, I've been continuing my research on subsurface  
17  transport of volatile hydrocarbons, and that's what would  
18  occupy my time if I weren't being torn away by things such  
19  as this.

20                  I have experience -- regulatory experience as an  
21  operational and unit project leader under RCRA with the  
22  RCRA facility investigation of closed and operating  
23  landfills.

24                  I have approximately 30 years' experience in on-  
25  again, off-again environmental advocacy. My interest in

1 oil and gas matters began with the adoption of Rule 116  
2 some number of years ago.

3 I had prepared testimony. I would rather use  
4 some crib notes I have made as this hearing has progressed  
5 to deal with issues where I think there may be things  
6 missing, the things we haven't discussed. At the risk of  
7 that, I'll be a little less disorganized, but I save the  
8 Commission some time.

9 I will bring up some things that will be much  
10 like rebuttal. You can take them as direct testimony, but  
11 in doing this I think it's much more efficient than my  
12 examining or cross-examining a witness and trying to bring  
13 out a point by questioning the witness if I can simply  
14 state it in direct testimony, and you can deal with the  
15 information as you wish, or I can be examined -- cross-  
16 examined, on that information.

17 I want to deal with a few topics that came up in  
18 direct testimony.

19 One was Mr. Gantner's proposed definition of  
20 knowing and willful, which would require that a person  
21 subject to a violation and a penalty both know the rule and  
22 be aware of the situation. I tried to picture myself in  
23 that circumstance, perhaps, as an operator, and I felt I  
24 would be, with that definition, quite well defended if I  
25 simply professed and maintained ignorance of the rule --

1 and there are many rules -- and if I never went out to  
2 visit my wells so that I could stay pretty much ignorant of  
3 the situation. Therefore, I would not favor that  
4 definition.

5 I would question Mr. Gantner's suggested  
6 definition of inactive well that included the situation of  
7 an approved injection well, or not producing because of  
8 delays in obtaining surface access to the well, or as a  
9 dewatering coal gas well. It's not that I object to these  
10 as concepts or that I think an operator ought to be  
11 penalized if he can't get surface access to his well. It's  
12 simply that if, by definition, any approved injection well  
13 is automatically not inactive, every injection well can  
14 eventually become an orphan well, because it can never make  
15 its way to your list. That's at least the way I see this.

16 There have been comments concerned with the speed  
17 of rulemaking, particularly as addressed to this rule, and  
18 suggestions that we should all use the stakeholder and  
19 discussion process, for example, as was used in the pit  
20 rule.

21 Our organization is almost always willing to  
22 discuss things. In fact, we operate much more in the  
23 discussion arena than in the regulatory arena.

24 The problem with the development through a  
25 participatory group -- the problem with a -- shall I say

1 undirected and unscheduled development of rulemaking, is,  
2 as we have heard -- it takes -- it can take a long time.  
3 If, as with the pit rule it takes two years, what you do is  
4 wear out anybody who isn't paid to be there. And as people  
5 raise the issue of fairness I will say that's unfair.

6 I would suggest instead, if you really wanted a  
7 different process and you had time for it, you could  
8 propose a rule. I find it very acceptable to have OCD  
9 propose a rule. Thereafter have a stakeholders' meeting,  
10 let all stakeholders comment. You could then again propose  
11 a rule. That's the only thing we'd be missing here, would  
12 be a second stage of proposal which would be subject to  
13 comment before we went to hearing. It would give one more  
14 iteration. We would support that kind of process.

15 Normally in the past, we would have supported the  
16 stakeholder long-term process, but I've been through a  
17 couple of those and I've been worn out by those.

18 There's the question of may versus shall. We  
19 think there has to be some discretion in the rules, and we  
20 prefer the may in giving OCD some regulatory authority,  
21 although I think very often the citizens out there who do  
22 not deal with regulatory matters don't understand that.  
23 When they get a traffic ticket, they think there is no  
24 choice. Either they appear before the judge and establish  
25 their innocence or they pay the ticket. They don't

1 understand why each and every violation here doesn't get a  
2 \$1000 fine. They think that really happens, and it  
3 doesn't, because that's not the way we work.

4 And so trying to tighten things up  
5 administratively -- because that doesn't really happen, and  
6 it really would wreak havoc, probably, with the industry if  
7 for every little infraction you could establish a fine;  
8 that's not what we're trying to do -- I think it's suitable  
9 to have some flexibility in the rule and to have  
10 administrative techniques that you can use without having  
11 to go after a \$1000 fine for every day that somebody  
12 neglects his well. There ought to be a different way to  
13 handle it.

14 There is much concern with this thing called the  
15 list. In one sense I see that as public information that  
16 is being made public. You're giving the public access to  
17 this information. Why would I bring that up, or what is my  
18 experience and expertise that qualifies me to say that?

19 I served for -- I served on the review panel when  
20 New Mexico was reviewed by STRONGER. STRONGER is a non-  
21 profit corporation funded by the EPA and by the American  
22 Petroleum Institute to review the adequacy of the  
23 environmental regulations of the various producing states.  
24 After I had served on that committee that reviewed New  
25 Mexico, I was subsequently appointed to the board of

1 directors, and I served on the national board of directors  
2 for three years. That gives me some experience with  
3 hearing about public participation and very much concerns  
4 about things that we heard here today. These concerns are  
5 not unique to New Mexico.

6 One of the things that STRONGER urged here and  
7 increasingly urged as it reviewed other states was to use  
8 the Web to get more information actually available. Often  
9 they were thinking of that to producers, but I was thinking  
10 of it in relation to the public and public participants.

11 I think OCD has done a very commendable job of  
12 that. Where you are now, compared to where you were four  
13 or five years ago, is a tremendous difference in terms of  
14 public access, and I see it increasing, and I think that's  
15 all to the good.

16 Now, we don't want to use those kinds of things  
17 to put a brand on a particular member of industry, and I  
18 heard a lot of words today about branding. Sometimes the  
19 way we view things depends on how somebody arranges the  
20 words by which we see them. Now "weapons of mass  
21 destruction" comes to mind. Nobody has said that any  
22 industry here is a bad actor, but that term has been used  
23 as though it's going to be a smoking brand on the side of  
24 each operator out there.

25 I can see that perhaps the literal words "good

1 standing" could be prejudicial. I understand the  
2 sensitivity of an industry to its appearance, because once  
3 I sought to get a particular operator to comply with what I  
4 thought was better cleanup, and that operator finally  
5 agreed to move and do the better cleanup, rather than to  
6 have me call for a hearing on it, because I thought I was  
7 technically right. He didn't disagree that I was right,  
8 but the main thing was, he didn't to be branded as having  
9 even to go to a hearing on cleanup, he'd rather do the  
10 cleanup. So we agreed, and that was that. That made the  
11 job easy for OCD because both of us came in and said we  
12 both want the same thing.

13 So bad actor is a label. We don't seek to put a  
14 label on anybody. I can see using different words for the  
15 same concept if it helps. We use the word often  
16 "administratively complete" in terms of applications. If  
17 there is a word like being administratively complete with  
18 OCD, we would have no objection to that.

19 So it would appear, at least to stockholders,  
20 that maybe an entity has an administrative discussion going  
21 on with OCD, but the word "administrative" doesn't  
22 necessarily carry either good or bad tied to it.

23 I didn't -- I may have missed it, but I didn't  
24 hear any testimony that really established that an operator  
25 could not easily correct an inactive well status within the

1 15 months allowed. That is, as far as I can tell, this  
2 isn't a status that happens overnight. One might get to  
3 being out of compliance with what is now called the good  
4 standing rule overnight, but one doesn't get there  
5 overnight. Nonetheless, if there were administratively a  
6 way to do it without being terribly burdensome, we would  
7 have no objection to the 30-day notice.

8           It's that I see, the way it stands, whether you  
9 are over or under the threshold of standing at the present,  
10 can fluctuate. And you can't afford to be sending out a  
11 notice every time there's a fluctuation. Within the period  
12 of this day and a half I have not been able to think up  
13 some other way to handle that, but I want to establish we  
14 certainly wouldn't object to the idea of somebody being  
15 told you -- your being told that you're pushing a  
16 threshold. One should know it from looking at the website,  
17 but if there's a way to tell a person without having to  
18 issue a notice every time it fluctuates, we have no  
19 objection.

20           I want to discuss this question, the validity of  
21 the good-standing concept, and I'll call it a concept  
22 because I don't care for it as a label. It is being  
23 applied, or it's been proposed to be applied, as I  
24 understand it now, because the Division really does not  
25 have the power, often, to assess penalties. You have to go

1 through a court procedure if it's a significant penalty or  
2 if you're really going to collect. And you need some  
3 administrative techniques short of a big court action.  
4 This is what I hear, and I understand that.

5 Similar situations occur in other states. Some  
6 of the comments prior to this hearing, the written  
7 comments, suggested that the procedures in Texas are  
8 better. But one of the things we heard during the Texas  
9 review was that the authorities don't pursue anything, they  
10 don't even look at it at less than the \$50,000 level,  
11 because it costs them that much to seek the penalty itself.

12 So I think we have a similar situation here,  
13 maybe at a smaller threshold, but this kind of limitation  
14 occurs other places. And therefore I think the idea of the  
15 standing concept is a worthwhile concept, and it's  
16 worthwhile to have it in a rule.

17 People feel that's a heavy hammer here to be  
18 used. I'll point out that the hammer in Indiana is a lot  
19 heavier. They similarly have a good-standing rule, but if  
20 you lose good standing there, don't come back in your  
21 lifetime, you may never drill again, you may never transfer  
22 another well into your ownership again, period. So here  
23 you can go into and out of good standing, but in Indiana  
24 once you lose it, it's gone.

25 They claimed that was their biggest enforcement

1 tool, and I can believe it. They didn't feel they had very  
2 many problems, but when I look back at that review I think  
3 they have one-third as many wells as this state, and they  
4 have eight inspectors compared to your nine. So their  
5 workload is somewhat different. Still, they felt they  
6 needed that particular rule as their major enforcement  
7 tool, and they seem to like it.

8           Since I testify as an environmental spokesman, I  
9 think it's appropriate to ask the question, would the  
10 proposed rule increase environmental protection?  
11 Particularly these -- what's been discussed has been  
12 focused on inactive wells.

13           There are basically three reasons for paying  
14 attention to inactive wells, as I understand it. One is  
15 correlative rights, secondly is reservoir protection, and  
16 the third one is protection of the environment,  
17 particularly including fresh water. So it is very relevant  
18 whether or not the rule would do any good.

19           I see as some evidence that the rule is doing  
20 good, the dialogue taking place here today of -- although  
21 it may not really belong in a rulemaking, it's whether or  
22 not my wells are out of compliance. That's the kind of  
23 dialogue that needs to take place, and there's got to be a  
24 stimulus to make that happen. Mr. Fesmire just started it  
25 with some questions of the previous witness, Isn't this

1 what's happening? Aren't we now getting some action due to  
2 proposing the rule?

3 I therefore see that the rule has a great  
4 potential for environmental protection, particularly as it  
5 comes to inactive wells. Four or five years ago when  
6 STRONGER reviewed this state, we didn't even know within  
7 the state how many orphan wells we had. We were just then  
8 beginning to -- OCD was just beginning to send out the  
9 letters.

10 I would point out that every orphan well is a  
11 failure of enforcement, it stems from the inability to do  
12 enforcement, because it's not supposed to be there, and  
13 somehow, at whatever time, the State was unable to enforce  
14 somebody else to plug and properly abandon that well. And  
15 so we have lots of examples out there of failure of  
16 enforcement.

17 The citizens are sensitive to that, because they  
18 think enforcement is like a traffic ticket. You get a  
19 ticket, you pay the fine, you whatever the policeman says.  
20 I recognize it isn't that simple, but we would like to make  
21 it as simple and as direct and as strong as we can. Not  
22 punitive, but just strong.

23 So we come to the question, then, of under what  
24 circumstances should and operator lose good standing or  
25 whatever you call this concept? Or under what

1 circumstances should the operator run into the situation  
2 where he or she cannot get another permit to drill until  
3 the situation is corrected?

4 We have heard a lot of arguments dealing with  
5 fairness, that the way it's established at two wells for a  
6 small operator, five wells for a big operator, is not fair.

7 Here's why I think there's a hole. I want to  
8 suggest that we are misdirecting the argument. This is not  
9 about fairness, this is about risk.

10 Every inactive well, if it's neglected, is a  
11 risk, either to the reservoir, to somebody's rights, or to  
12 the environment. And what we are trying to do with this  
13 rule, I suggest, is to minimize those risks.

14 Therefore, this analogy of traffic violations  
15 comes up, because there we are trying to minimize the risk  
16 to other people on the road. And I submit, I don't think I  
17 should be allowed to have twice as many tickets before my  
18 license is lifted because I drive twice as far as somebody  
19 else. But that's what I hear argued here today.

20 I can't tell you exactly where to set that limit,  
21 but I think it should be at some number of wells. I cannot  
22 see any reason why, because somebody is large, they should  
23 be allowed to supply more risk to the public and to fellow  
24 operators and to the reservoir than anybody else. A  
25 certain well is a risk, and that's that. You shouldn't

1 have any of them out there, and I think our major  
2 industries have agreed to that; they prefer not to have any  
3 risks out there.

4 Sometimes, they say, something slips through.  
5 Okay, there should be a limit to the amount -- to the  
6 number of things that can slip through.

7 I happen to think, as the discussion progressed  
8 with the previous witness, that there were apparently two  
9 divisions of OXY that were very much in compliance and one  
10 that apparently, or arguably, was not in compliance with  
11 the rule as proposed.

12 And I wondered, if we set a limit at something  
13 like five percent, how many bifurcations some operator  
14 could make into different organizations, each of which  
15 could have one-twentieth -- one well out of twenty out of  
16 compliance, and you could never act on those wells. What  
17 we need is action on the wells, action on the risks.

18 And so I think a numerical standard is the thing  
19 to have. I don't particularly care whether it's two or  
20 six, but I don't think a very small operator who has 10  
21 wells should be allowed to have all 10 out of compliance.  
22 I think it's fair to set some size. But I don't think  
23 setting it as a percent is the reasonable thing to do.

24 Finally, we come down to something I did not hear  
25 addressed much, and that is the question of fractional

1 ownership. How much do you own -- how much of a  
2 noncompliant operator might you have owned in order to put  
3 yourself in a position where you might be denied a drilling  
4 permit.

5 The present suggested rule says five percent. I  
6 would feel very uncomfortable with any limit as large as 30  
7 percent, because that would invite abuse, that would invite  
8 manipulation and people forming different companies and  
9 bifurcating and whatnot, simply to avoid compliance.  
10 Because it's always cheaper to put your wastes onto the  
11 environment and let it be a social cost than it is to  
12 absorb those costs, as we hear Burlington does, and I guess  
13 OXY does and Marbob does, and then compete in the  
14 marketplace after you've absorbed those costs.

15 So I would suggest that the ownership rule be set  
16 at something like 10 percent instead of five percent. I  
17 think five percent is too small. It's almost a harassment  
18 level to operators, and it's almost a harassment level to  
19 OCD to have to chase down ownership at that level. Ten  
20 percent you might be able to find, and it certainly could  
21 be almost significant in terms of directing or influencing  
22 the behavior of a company.

23 Well, I will conclude that allowing noncompliant  
24 wells does enter fairness in a certain area; it provides an  
25 unfair economic advantage to those who are careless or who

1 are deliberate in leaving their wells noncompliant. And  
2 therefore I am pleased that this question is being  
3 considered and that better enforcement is being considered.

4 With that, Mr. Chairman, I conclude my testimony  
5 and I am subject to cross-examination.

6 CHAIRMAN FESMIRE: Is there any questions of this  
7 witness?

8 Commissioner?

9 EXAMINATION

10 BY COMMISSIONER BAILEY:

11 Q. You've listened for two days. Given the  
12 demonstrated lack of data validity, for whatever reason,  
13 the fluctuations that occur on a daily basis, do you think  
14 there's a middle road between what's presented as Rule 37,  
15 the good-standing rule, and the \$1000 fine per day? Would  
16 you like to work on a middle ground?

17 A. I thought about that because you asked the  
18 question.

19 Q. Yes.

20 A. I didn't know it would be asked of me, but you  
21 forced me to think about it. I couldn't come up with a  
22 middle ground. I could come up with a 30-day notice. I  
23 could sit there and think about it and say, it has taken 15  
24 months for a well to reach the trigger point that triggers  
25 this thing, and if it's there temporarily it probably

1 hasn't interfered with obtaining a drilling permit, it's on  
2 for a month and it's off for a month.

3 There is an option for the operator to apply for  
4 a compliance order if the operator feels that well is going  
5 to be of beneficial use sometime, they want to put it in  
6 the bank, they just can't get equipment to it, all their  
7 equipment is tied up -- Whatever may be their reason,  
8 there's a pretty clear route where they can not fall out of  
9 what is now called good standing and I would call  
10 administrative compliance or some such term.

11 So I couldn't see a middle ground, and I'm sorry  
12 to disappoint you in that because we like to discuss things  
13 and work with operators.

14 Q. I expect honest answers from you, not what I want  
15 to hear.

16 (Laughter)

17 THE WITNESS: Well, that's what you've got. I  
18 think the 30 days is about as much as we could see to give  
19 on that.

20 Q. (By Commissioner Bailey) But I think you hit the  
21 nail on the head. We have identified the term as being  
22 prejudicial and suggested that maybe a different term could  
23 be found that would not be as prejudicial.

24 A. I don't care what you call it. I think the  
25 concept is valid. If you take the words "good" and "bad"

1 out of there, then maybe we aren't prejudicial. The  
2 objective is not to interfere with Marbob's ability to  
3 borrow money --

4 Q. Uh-huh.

5 A. -- the objective is to get wells cleaned up.

6 COMMISSIONER BAILEY: Thank you.

7 CHAIRMAN FESMIRE: Commissioner Olson?

8 COMMISSIONER OLSON: I have no questions.

9 CHAIRMAN FESMIRE: Nor I, Doctor, thank you very  
10 much.

11 Is there anyone -- Yolanda, you're listed on the  
12 list. You spoke yesterday, do you want to say anything  
13 else today?

14 MS. PEREZ: Yes, sir, I spoke this morning.

15 CHAIRMAN FESMIRE: Oh, I'm sorry. It's been one  
16 big day, I apologize.

17 MS. PEREZ: Do I need to go up there, or am I  
18 okay here?

19 CHAIRMAN FESMIRE: Would you be more comfortable  
20 there?

21 MS. PEREZ: Yes, sir.

22 CHAIRMAN FESMIRE: Okay.

23 MS. PEREZ: That's a hot seat over there.

24 (Laughter)

25 MS. PEREZ: This one might turn into one too, I

1 don't know.

2 Yolanda Perez with ConocoPhillips Company. I  
3 want to start by mentioning that ConocoPhillips is also  
4 committed -- the goal always has been zero incidents of  
5 noncompliance, whether it's health, safety, environmental  
6 or regulatory regulations.

7 One of the things that -- or -- I don't know how  
8 many operators you have in New Mexico that operate in both  
9 parts of the State of New Mexico. ConocoPhillips operates  
10 in the northwestern part of the state and the southeastern  
11 part of the state.

12 We have experienced some inconsistencies on how  
13 -- just this -- you know, the inactive rule, even from the  
14 year 2002, where we are today, on how those have been  
15 enforced, you know, because as mentioned before, we have  
16 the one well in the northwest. Because, you know, we were  
17 working with Charlie on agreed compliance orders, we knew  
18 that, you know, this was -- I had communicated that because  
19 -- I guess that started maybe about a year and a half ago  
20 or so, I started communicating and working with our  
21 southeast New Mexico group saying, you know, we need to  
22 work this also. And so we started working those.

23 Charlie in the Aztec District Office was  
24 providing, you know, a list of what they showed of wells  
25 being out of compliance, before we got the agreed

1 compliance order, so we were kind of -- been working and,  
2 you know, kind of had a heads-up on this is what's coming  
3 out. We did not have that in southeast New Mexico. So we  
4 started a list.

5 But I will tell you that in conjunction with the  
6 OCD to get into compliance, there was also another agency,  
7 the Bureau of Land Management, that approached  
8 ConocoPhillips about reducing the number of TA'd wells in  
9 the southeastern part of the state.

10 What we did at that time, we just took both of  
11 them and started working a plan and presented a three-year  
12 plan to the BLM and OCD, and have agreement on that plan to  
13 bring -- I'm sorry, I can't quote you a number, like a  
14 hundred-and-something wells into -- not that a TA'd was not  
15 in compliance, but at the time that they reached the five-  
16 year MIT, that we'd do something with the well, bring it  
17 back onto production and plug it. And you've had time to  
18 evaluate it because they've been TA'd for 15 years.

19 So we have, you know, working BLM wells and  
20 inactive wells that we did at that time, a year and a  
21 half -- well, I say a year and a half ago, maybe a year and  
22 three-quarters ago.

23 We -- Because we have that agreement, but nothing  
24 in writing, that we find ourselves with 48 wells on the  
25 noncompliant well list, I feel that it'll probably be in

1 ConocoPhillips' best interest, you know, with legal  
2 support, that we enter into an agreed compliance order with  
3 that existing plan that we already have in place. But --  
4 and we'll work on that.

5 But one of the things that I've heard is the  
6 short time frame. I mean, there might be a grace period  
7 that is going to be put in place, but it's going to be a  
8 short grace period. I think that the concern with that is  
9 -- and as people have mentioned here today, there's 158  
10 current operators on the noncompliant list that are going  
11 to all want to be competing for the same equipment to work  
12 on these wells, even the -- you know, regardless of these  
13 -- we've been working it since 2000, we are where we are  
14 today. So you know, that's just the nature of it now. So  
15 we -- so of course everybody's going to be working that to  
16 be in good standing and not jeopardize our good standing.

17 So when we start talking about short time frame,  
18 we really need to take that into consideration. At the  
19 point that these rules go into effect, it's going to be the  
20 winter months and all of this, so we need to be real  
21 careful about that.

22 One of the things that I've heard is that these  
23 rules would -- are going to help even with the OCD getting  
24 consistency on how the districts will enforce the rules.  
25 What I haven't heard is, how is that going -- what are the

1 plans to formulate consistency in the districts from these  
2 rules? What is the OCD's plan to address that? Do we  
3 know?

4 (Laughter)

5 CHAIRMAN FESMIRE: Turnabout is fair play. I'm  
6 going to -- Raye is sitting here pointing at Daniel, and in  
7 fact that is true. Why don't you and -- before you leave  
8 this trip, sit down with Daniel, and he can line you out on  
9 exactly where we're going or what we're doing with it.

10 MS. PEREZ: Okay. So that's not something that  
11 can be brought up for others to hear on? Well, I think in  
12 -- because, well, you know, wanting to know what the plan  
13 is, I want to not only know how that's going to be  
14 communicated within your districts and how that's going to  
15 be formalized, but how is that also at that point going to  
16 be communicated to industry on the direction the districts  
17 were given, so that we know how to understand how the  
18 enforcement is going to be imposed or --

19 CHAIRMAN FESMIRE: Okay.

20 MS. PEREZ: -- you know, how you're going to deal  
21 with that.

22 CHAIRMAN FESMIRE: Well, without stepping on  
23 Daniel's toes, I can tell you that we're going to model it  
24 off of what -- Obviously, Aztec has been our most  
25 successful office, so we're going to try to model the

1 programs in the other districts off of what has worked in  
2 Aztec. If -- Any more specific than that and I'll have to  
3 punt to Daniel. Okay?

4 MS. PEREZ: Okay. And I think that if there is  
5 going to be some type of written policy that the agency --  
6 that the OCD may, you know, provide to the districts to  
7 help them be consistent on the enforcement of the rules,  
8 that maybe that would be also something that can be --

9 CHAIRMAN FESMIRE: Okay --

10 MS. PEREZ: -- provided to industry or --

11 CHAIRMAN FESMIRE: -- one of the things we're  
12 trying to get away from is our reliance on the guidelines  
13 that haven't been through the rulemaking process. The  
14 rules are going to be the basis for most of what we do, and  
15 that's the way we're trying to structure. You'll see that  
16 a little more in the rulemakings that are coming down the  
17 line. But the idea is to make the rules specific enough  
18 that they induce standardization between the offices.

19 So in terms of a written procedure, as far as  
20 what we have, look to the rules --

21 MS. PEREZ: -- for that procedure.

22 CHAIRMAN FESMIRE: -- significantly. Right.

23 MS. PEREZ: And I -- one of the suggestions that  
24 -- if I may, is that at the time that it gets to that point  
25 where you're formalizing your consistency of enforcement

1 for your district offices, that somehow that -- you have  
2 workshops with industry to -- so that we're all on the same  
3 page, so that we know if we are being -- if it's -- we're  
4 getting different interpretations from the districts on how  
5 they were -- it was being communicated to them that this is  
6 how it's going to be done.

7 CHAIRMAN FESMIRE: Well, this is -- like I said,  
8 the rules -- and this is a significant part of Daniel's  
9 job, is making sure that consistency exists. And we think  
10 we're making progress, some people may not. But we are  
11 working on it.

12 MS. PEREZ: Okay. Another suggestion that I have  
13 with the -- where there has been some communication or some  
14 questions Ms. MacQuesten asked of Ms. Ivie-Bush -- Bush-  
15 Ivie --

16 (Laughter)

17 CHAIRMAN FESMIRE: It's counter-intuitive. One  
18 would think of an ivy bush, so it's Bush-Ivie.

19 MS. PEREZ: Okay. -- that I kind of found  
20 interesting is that because of the label issue of that, you  
21 know, there is a way -- I mean, we can move the inactive  
22 well list to be only as you sign on as an operator to view,  
23 that then that will be your own. Because you always have  
24 -- I mean, the well list has been out there for the public  
25 all the time.

1           CHAIRMAN FESMIRE: Okay, do you mean restrict it  
2 to just the operator, rather than public --

3           MS. PEREZ: That's what I'm getting at. Okay, if  
4 you could place the inactive well list as an operator to  
5 view when they sign on, just for their information, then  
6 they're not going to see the others. If they wanted to see  
7 others, you also have the capability to do that under the  
8 well-list option that's public.

9           And then by querying that well-list option,  
10 downloading it, you can go in there and see which well --  
11 what type -- which well last produced and when, without  
12 having it listed as a noncompliant list or an inactive well  
13 list. So you can make your own determinations for that.

14           CHAIRMAN FESMIRE: Well, just about everything we  
15 do is public information, and so I'm not sure that we could  
16 do what you're asking for without violating some of that.  
17 Probably not as part of this procedure, but we will look  
18 into it.

19           But like I said, I don't think that we could in  
20 essence just make your list available to you or people  
21 under -- you're operating under, without violating some  
22 things that I'll have to talk to the lawyers about, the  
23 other lawyers about.

24           MS. PEREZ: Okay. I think that we are -- Oh, you  
25 know, I can tell you that we have recurring compliance

1 meetings internal to ConocoPhillips every two weeks to make  
2 sure, because we are -- you know, as I mentioned before  
3 that we had the three-month zero query, we would make sure  
4 that we stay on track to make sure that these wells do not  
5 reach a 12-month status.

6 But I just wanted to -- as we speak about  
7 administrative burden not only to you as an agency but to  
8 agency, but to be proactive, and that's what we -- those  
9 are the things that we commit to do, to stay proactive. We  
10 -- I am working with our southeast New Mexico team to adopt  
11 the processes we have in place in San Juan, and so we are  
12 going to work very diligently on this. Not that we  
13 shouldn't have already, it's just that it was a different  
14 interpretation of the urgency of this between districts,  
15 and that's --

16 CHAIRMAN FESMIRE: Inconsistency among districts?  
17 Shame on you.

18 MS. PEREZ: (Laughs) But I want you to know  
19 that, you know, as a company there's, as you can see,  
20 inconsistencies as well, because you have different  
21 managers, you don't have the same manager that's operating  
22 in San Juan operate in southeast New Mexico. So as you  
23 have different managers in your districts, we have  
24 different managers in ours, and with different managerial  
25 style. And so we deal with that on a daily basis.

1 CHAIRMAN FESMIRE: Okay.

2 MS. PEREZ: And I think that's -- that's about  
3 all I have.

4 CHAIRMAN FESMIRE: Okay. Gwen Lachelt spoke  
5 yesterday, and the last person on the list is Mr. Owens  
6 with Chevron.

7 MR. OWENS: No, thank you.

8 CHAIRMAN FESMIRE: No, thank you, okay.

9 Mr. Miller?

10 MR. MILLER: May I speak?

11 CHAIRMAN FESMIRE: Sure.

12 MR. MILLER: Am I last?

13 CHAIRMAN FESMIRE: Well, unless somebody raises  
14 there hand when you sit down.

15 MR. MILLER: I actually like to sit at the hot  
16 chair.

17 (Laughter)

18 MR. MILLER: I never bothered -- had the heat  
19 bother me.

20 My name is Raye Miller, I'm with Marbob Energy  
21 Corporation.

22 I actually have pared my comments quite a bit,  
23 but since I ramble and we don't want to be here till seven  
24 o'clock tonight, I'll actually read what I wrote so that  
25 maybe it will brief what I have up.

1 CHAIRMAN FESMIRE: Okay.

2 MR. MILLER: The suggestion that OCD notice by  
3 regular mail and not certified mail should not be adopted.  
4 If -- and I have a strong "if" here -- if you adopt these  
5 rules, you should notify the operator by certified mail on  
6 all instances.

7 If you adopt some prior notice, if there is some  
8 good-standing provision, it should come 90 days before, not  
9 30 days. And the rationale is that if you actually have a  
10 small operator who has several wells that are actually  
11 noncompliant, his ability to actually get those wells  
12 compliant may not be able to be done in today's environment  
13 within 30 days, just equipment and all those problems.

14 You require us to notify others, such as in our  
15 injection-well applications, by certified mail to know with  
16 certainty that the other parties received it. Why  
17 shouldn't you be held to the same standard?

18 We receive a pile of mail each day, this high,  
19 our company. The certifieds are placed on top with the  
20 envelopes attached so that they are closely reviewed and  
21 handled. That makes sure that when the BLM, the OCD or  
22 other operators notice us, that we're aware of what types  
23 of issues we have in front of us. Please continue to  
24 certify/receipt-return all notices.

25 Now let's focus on the proposed rules and the

1 presentation so far before the Commission. What have we  
2 learned, and what would these proposed rules do to solve  
3 the problems or issues faced by OCD?

4 I guess the first thing that I learned is, never  
5 submit your comments before the day of the hearing, because  
6 the OCD lawyer will build a case against your comments to  
7 present to the Commission. Her case is then presented, and  
8 you must attempt to respond on the fly without preparation.

9 Secondly, the overreaching question that should  
10 have been asked to each OCD witness is, will the proposed  
11 changes to the rules solve the problems you have just  
12 described? In other words, had these rules been in place,  
13 would the same problem not have existed? Since we don't  
14 have time to call each witness back here, I'll answer for  
15 them.

16 In all but one instance the answer would have  
17 been no, these rules would not have changed the outcome or  
18 problem.

19 Let's look first at the brine-well problem  
20 described by Mr. Price.

21 Who approved the brine well 600 feet away from  
22 the 1939 producing well? Was it OCD? Would these rules  
23 have changed that approval? No.

24 Would these rules have caused Chevron to plug  
25 that well before the event? No.

1           The problem in Cedar Lake with the TA well  
2 waterflow, would these rules have changed the status of  
3 that well at the time? No.

4           Would OCD have taken a different action if these  
5 rules had been in place? No.

6           So what did these presentations do for us? The  
7 Commission and industry both know the role of OCD as a  
8 regulator and watchdog. Were those presentations made for  
9 the record and the public attending to hype that OCD is  
10 really doing something? It would appear so.

11           Let's focus even deeper into what we did learn  
12 yesterday. Our predecessors set up a tax on industry to  
13 fund the plugging and cleanup of orphan wells. We should  
14 grateful for their foresight in this, because it truly does  
15 work. Every federal, state and private well pays into the  
16 fund to take care of the legacy problems the ageing  
17 industry faces. The taxpayers of New Mexico are not  
18 footing the bill.

19           I'll digress for just a minute. Several times  
20 yesterday in some of the testimony it appeared that us and  
21 we were paying for this. Well, yes, OCD is writing the  
22 check, but the reclamation fund is actually paid for by  
23 production taxes on industry, not out of the OCD budget,  
24 not from an appropriation from the Legislature.

25           And while these rules do nothing to help that

1 fund become larger, we should be working on an effort by  
2 industry and OCD to work with the legislators on the size  
3 and triggers of that fund, which might be far more  
4 important than the rules being considered today.

5 What else did we learn about yesterday? OCD  
6 Exhibit 24, quote, the famous LeMay memo of 1996. That  
7 memo is the basis for additional bonding which OCD has  
8 required in certain instances since 1996. If you review  
9 OCD Exhibit 22, you would see a series of wells operated by  
10 Playa that have some very interesting bond requirements.  
11 If it hadn't been so late last night or this morning when I  
12 was preparing these comments, I would have calculated the  
13 additional cost to the reclamation fund had your proposed  
14 rules been in effect instead of the LeMay memo.

15 If I was OGAP -- and she's not here; it's a good  
16 thing -- and you adopted these rules, I'd take you to court  
17 for the changes which put the State in a worse bonding  
18 situation than what you are presently doing.

19 Then we heard about the Wrotenbery effort to  
20 conquer the TA/idle-well issue. There was a significant  
21 effort behind bringing industry to task to get their wells  
22 into compliance. I applaud those efforts.

23 Now, if our new rules had been in place, would we  
24 have had better success? No.

25 By allowing an amount of wells to be noncompliant

1 -- and that's, quote, okay -- you have failed in your job.  
2 The goal should be to have all wells in compliance, as your  
3 rules in place now call for. Maybe if we spent the  
4 thousands of man-hours the OCD has spent on these rules, in  
5 bringing operators' focus to the idle-well issue, we would  
6 have even less idle wells today than we presently have.

7 To permit an amount of noncompliance as okay  
8 would have Peter Porter turn over in his grave.

9 The one issue that did surface in these rules was  
10 a notice issue for injection wells. There appears to be an  
11 issue, and while the proposed rules make a stab at fixing  
12 that problem, it appears we are trying to draft the  
13 solution with the OCD testimony. Certainly a small working  
14 group with OCD could propose a rule change that would  
15 address the issue and make a workable resolution be found.

16 Lastly, I was a little taken back by the OCD  
17 response to the question whether some of the rulemaking was  
18 simply a circumvention of the lack of the Legislature to  
19 legislate OCD's request. The response by OCD was, I don't  
20 think so, or, I don't know. I assume that answer, since  
21 given under oath, means that the person either didn't know  
22 what OCD asked the Legislature earlier this year, or they  
23 didn't know what was contained in this rulemaking. In  
24 either case, that is a poor answer as I think they could  
25 have made.

1           Given these issues, what do I believe the  
2 Commission should do?

3           The first thing is, I believe you should set  
4 aside these proposed changes and ask OCD to go back and  
5 decide if these rules fix anything and, if the don't, focus  
6 on getting their job done with the limited man-hours that  
7 they have.

8           Two, I would ask OCD to work with other agencies  
9 to enhance regulatory efforts. Plugging federal wells and  
10 not being able to recoup the cost by federal bonds is  
11 unacceptable. Find ways to make the resources which are  
12 available go further.

13           Three, in future hearings, request that the OCD  
14 attorney prepare a short and concise case identifying the  
15 specific issue or problem and how the proposed rule change  
16 would truly make an improvement.

17           I'm sorry to be so harsh, but I am appalled at  
18 where my tax dollars are being spent by OCD in this effort.

19           Conversely, I was pleased to hear some of the  
20 comments made by the BLM about the review and alignment  
21 they are trying to do in their inspections. Our company,  
22 because of the value of federal royalty generated by wells  
23 we produce, receives a lot of inspections and audits. And  
24 while I don't object to being watched, I believe our  
25 company is an industry leader at trying to do things right.

1 BLM wants to spread their focus and also review  
2 many of the smaller operations to make sure that they are  
3 in compliance. They want to avoid orphan wells, legacy  
4 issues, surface and downhole problems, before they become  
5 larger issues. This is an excellent direction by that  
6 agency.

7 OCD has many excellent people working for it, but  
8 you need to focus the team in a way that will result in  
9 balanced enforcement and greater overall compliance. This  
10 Division is not yet building the groundwork for healthy and  
11 compliant industry with a good working relationship.

12 You have rules and penalties in the existing  
13 rules that would bring compliance. A \$1000-a-day penalty  
14 per well that is noncompliant will get folks moving more  
15 than the rules you are proposing.

16 I love the fact -- Well, and the rest of it says  
17 thank you for your time, but I'm going to make a couple  
18 more little comments on the record.

19 I love the fact that we have begun to generate  
20 some data and technology that provides us with some easy  
21 tools to identify some very significant issues. I also  
22 recognize the fact that there is a lot of time involved  
23 when you prepare certified letters to operators. But I  
24 assure you that when the Wrotenbery move in the year 2000  
25 came up, that was the first time we started focusing on

1 what our problems were when the list appeared. When the  
2 list appeared the other day, we also focused on it.

3 Had you sent us a letter and kindly -- certified  
4 receipt return -- told us that we had two wells, which was  
5 what the case was originally, that were over 12 months with  
6 no reporting, out of compliance, and that if we didn't  
7 resolve these issues and, you know, made some statement  
8 that, you know, there could be an inaccuracy of the records  
9 or, you know, something may not be posted -- but you know,  
10 that if these are not resolved within some time frame, 90  
11 days, that you would be seeking hearing and the institution  
12 of fines of \$1000 a day, I believe you would get the  
13 attention of industry.

14 I believe every operator here who may have an  
15 out-of-compliant well will be as well or more attuned to  
16 the fact -- if OXY or whoever it was has 13 wells out -- or  
17 23 wells out of compliance, a \$23,000-a-day fine potential,  
18 I don't want to be the manager at OXY's Permian division  
19 for southeast New Mexico that has to explain why I just got  
20 tagged with, you know, a \$23,000-a-day fine.

21 I think you have rules. I think you have the  
22 ability, and some of your offices have been working on it,  
23 and if you even strengthen the push, that you could have  
24 used the time that you all worked on this -- maybe the OCD  
25 lawyers could have done all those certified receipt return

1 cards and gotten better compliance.

2 Thank you for your time.

3 CHAIRMAN FESMIRE: Are there any other comments?

4 MR. CARR: Mr. Chairman, I had a closing  
5 statement, and I don't know -- If I keep it brief, can I  
6 give it?

7 CHAIRMAN FESMIRE: Sure.

8 MR. CARR: Gail -- I mean, do you have a closing?  
9 Were you planning on one? I mean, I'll go whenever you  
10 want me to.

11 MS. MacQUESTEN: It doesn't matter, it's fine if  
12 you'd like to go first.

13 MR. CARR: Okay. I debated, frankly, whether I  
14 was going to give this or not. But it seemed to me there  
15 were a couple things Dr. Neeper said and some things had  
16 been said, maybe it would be important to respond and at  
17 this point at least kind of retrack where NMOGA is and what  
18 their thinking is.

19 I think it's important, and I want you to  
20 understand, that no one in our -- the group that has been  
21 working on our comments at any time suggested that you  
22 shouldn't have authority to bring people into compliance  
23 with your rules. And the people who showed up at our  
24 meeting -- and we had 15 or 20 -- I had been looking at the  
25 list we got today, and I had the good players in my office

1 working on comments to these rules.

2 And when we were trying to find some people who  
3 could come testify, we had a -- you know, you have an  
4 interesting question. I mean, we knew that if Burlington  
5 stepped forward, Burlington had been doing a very good job.  
6 But they have been doing a very good and we thought we  
7 ought to bring someone from Burlington.

8 We knew that OXY had wells on the list and that  
9 they were engaging the issue and were going to bring things  
10 into compliance, and we thought it was important to bring  
11 them in. And they agreed to do it, and somewhat got beaten  
12 up, I think, or singled-out in the process. But it wasn't  
13 by accident. These weren't the two people who drew the  
14 short straws.

15 And we looked at the rules you are proposing not  
16 trying to tell you not to do things you need to do, but we  
17 looked at the rules from maybe a very different  
18 perspective. There was genuine concern about the list.

19 Now, good standing is a label that I'm convinced  
20 companies are truly concerned about, that to find  
21 themselves on a list -- I don't care if you're explaining  
22 to your manager a \$23,000 fine or how it is that your  
23 company is not in good standing in New Mexico, that's a  
24 serious sanction. And all we were trying to do was address  
25 that concept in a way that the day after the rule was in

1 effect we wouldn't have some good players hanging out.

2 And it seemed to us that there were three things  
3 -- I mean, you know, we could sit here and object to almost  
4 every line; somebody had some problem with every single  
5 word you wrote, practically. But we tried to cull this out  
6 and come in with something that, one, wouldn't impair your  
7 ability to achieve your objective, and at the same time  
8 would take the concern off of some of the people in this  
9 room.

10 And you know, the first thing we went to was the  
11 percentage. And I don't know if a percentage is right.  
12 But we came over and talked with you about it. And  
13 actually, when we arrived yesterday, we thought a  
14 percentage was probably going to be recommended. And we  
15 didn't know what, we had people wanted to go 10, 15  
16 percent. You know, five was a compromise number.

17 And it wasn't keyed to letting an operator have a  
18 lot of wells; it was trying to actually address what  
19 appears in these rules, and it is a cutoff that whether  
20 it's a percentage or set number can become a major problem  
21 for a company. And five is a very small number for a  
22 company managing over 6000 wells. And perhaps our best  
23 player bobs up and down below it, but they may go over it,  
24 and then boom, they are no longer in good standing. And  
25 that is a real concern.

1           So whether it's -- You know, if it's five, of  
2   course we try and live with it. If it's graduated by the  
3   number of wells we operate so that you -- there is some  
4   flex in it, it isn't that we're trying to avoid the  
5   problem. We agree with Dr. Neeper, any one of these wells  
6   is a risk. But it is a practical concern on how we manage  
7   our business and stay in good standing with you and get on  
8   top of this problem and address it.

9           And so that -- the first thing is the number,  
10   that was our concern.

11           The second thing was, we're all talking about  
12   inactive wells. I mean, there are a lot of other pieces in  
13   this puzzle, but inactive wells is the issue that really  
14   grabbed our attention.

15           And you know, I found out today I had the wrong  
16   set of rules I'd been working from, maybe raises a notice  
17   issue, I won't raise. But the definition I could find for  
18   an inactive well says an inactive well shall be a well  
19   which is not being utilized for a beneficial purpose.

20           And if we had to come in here and start going  
21   through a list, trying to cull this thing down or sort it  
22   out with you, we thought a good tool would be a better  
23   definition. We proposed one. If we'd had more dialogue, I  
24   absolutely am convinced we could have worked one out, but  
25   we didn't. And so that was the second part.

1           And the third part goes to 30 days' notice. And  
2 I recognize the physical problems and all the issues with  
3 that.

4           You know, it seems to me that we don't quarrel  
5 with the notion that what we do -- there's public  
6 information here, and it should be public. But we also  
7 think it should be right, because there are real  
8 consequences that come of that, hit us.

9           And I -- Jane Prouty does a fabulous job  
10 marshaling -- it's like, I'm sure, organizing an anthill.  
11 There is so much stuff coming in and out all the time. And  
12 it would be wonderful if we really thought we could get to  
13 a perfect list, but you know and I know, that's not going  
14 to happen. And with a real-world threshold, someday  
15 somebody is going to get popped because there is a delay in  
16 processing, a delay in filing, an honest mistake, and the  
17 consequences, we believe, are severe. And so we propose 30  
18 days' notice.

19           Thirty days is not a long period of time. It  
20 isn't a time designed to let you run out and plug wells or  
21 sell wells or do anything else, it's to look at that list  
22 and see if it's right or wrong, and then it is to get in  
23 here and get yourself either under an order or in a posture  
24 to avoid being singled out.

25           And you can play games, and I play games with,

1 you know, terms and all this stuff all the time. But  
2 nobody came in here and said give us a list. We really  
3 believe you have a list. I mean, if you all are required  
4 by rule to know and understand the rules, and we can all go  
5 look and see how many people have more than five wells on  
6 your list, we know who's not in good standing. And all  
7 we're asking is, we'd like to have notice so that we don't  
8 get put on that list in error.

9 And that's what we were asking. That's what  
10 NMOGA and IPA were trying to do: not get in your way but  
11 look out for our members so that some bad -- what we  
12 consider a bad consequence didn't fall out of this at the  
13 end.

14 Now, Dr. Neeper discussed the process. And he  
15 said that he had been -- had some bad experience with a  
16 stakeholder process. Well, I can assure you I have had  
17 some terrible experiences with the stakeholder process.

18 (Laughter)

19 MR. CARR: I have had the pleasure of serving on  
20 the compulsory pooling rule committee. We commenced in  
21 1995, and we still don't have a final rule. And it is just  
22 like living through a water torture, I mean unbelievable.

23 But I will also tell you that the process we've  
24 used here, it's a hell of a way to run a railroad. It's  
25 bad on your side, it's real bad on our side, because it is

1 being pushed too fast. It's got to be a poor example of  
2 how to draft and adopt rules.

3 And I'm saying this, and had debated it, because  
4 I know how happy you are I'm doing this -- but we have  
5 these rule hearings just coming like planes. I mean one  
6 after another, we're going into this process. They're  
7 shingled one right over the other, and here we go.

8 And if you try and look at what we've been trying  
9 to do here and then measure that by just what happened -- I  
10 mean, measure this process by what happened here. It's not  
11 a real good picture. I think it shows that there wasn't  
12 the kind of dialogue that there needed to be between you,  
13 between us, between other affected groups.

14 We had one stakeholder meeting, and we had a  
15 hurricane going and everybody trying to get back to  
16 Houston. And Dr. Neeper wasn't there. And comments from  
17 Dr. Neeper are consistently valuable and useful, but the  
18 first time we were in the same room discussing the same  
19 copy was here before you.

20 On the stand you're correcting errors in the  
21 rules. I mean, that's just because you're just being drive  
22 too fast to draft these things. Witnesses are correcting  
23 the text. I think it pushes us towards unnecessary rules  
24 and towards rules that may not be as well thought out as  
25 they should be.

1 I think the process leads to what I would  
2 characterize as sort of a sandbagging letter from the BLM.  
3 I mean, if you had real time and an opportunity to do this  
4 right, the issues that are raised in that letter are  
5 matters that you would have addressed through consultation  
6 with them. But you're being driven to judgment really too  
7 fast, and I think that the process is making it very, very  
8 difficult to get a good product out the other end.

9 So that's my speech on the process. There may be  
10 no good way, but if this is the alternative to the  
11 stakeholders' meeting, I don't know which I prefer.  
12 Anyway, those are our comments.

13 We really do believe that if you adopt the rules,  
14 that we've got to have notice before an action is taken  
15 that could be based on erroneous data, that could impair  
16 our right to develop our property interest in the state.  
17 We do think there are due-process overtones in that that we  
18 can talk about.

19 We do think that as you go through this process,  
20 you have to be very, very careful that in drafting rules  
21 you don't go beyond the powers and authorities that are  
22 delegated to you and get carried away with a general grant  
23 of authority and get into an area which really goes beyond  
24 what has been expressly stated in Statute and, ergo, fall  
25 into the area of legislation.

1           This is not a simple process that we're in.  
2       There are things that have to be weighed on all sides, and  
3       the process is just too fast to do it right.

4           That's my speech.

5           CHAIRMAN FESMIRE:   Okay.   Ms. MacQuesten, do you  
6       have a closing argument?

7           MS. MacQUESTEN:   Yes, thank you.

8           Yesterday the OCD presented testimony on the  
9       importance of dealing with inactive wells, and either  
10      plugging them or putting them on temporary abandonment  
11      status.   We showed that that was part of our original duty  
12      from 1935.   We showed the problems that can result from  
13      casing failures, from difficulties with wells that aren't  
14      properly TA'd or plugged.

15           We reviewed the TA rule, 203.   The Commission did  
16      a wonderful job of finding other areas to bolster that  
17      rule.   It was a good rule to begin with.   We proposed some  
18      changes that I think will make it a better, and the  
19      Commission proposed some additional changes that will make  
20      it even better than that.

21           It's a good rule.   It's a helpful rule.   It's a  
22      pretty rule.

23           But if we don't have enforcement rules and tools  
24      to allow us to require wells to be TA'd or plugged, that's  
25      all it will be: a pretty rule.   It will look like we're

1 doing something.

2 But right now, we have 2853 wells that are in  
3 violation of this rule. That's your Exhibit 26.

4 Dr. Neeper said that every orphan well is a  
5 failure of enforcement. And I would go further and say  
6 that every well on the inactive well list is a failure of  
7 enforcement.

8 We presented testimony yesterday designed to  
9 educate the Commission about the enforcement tools that we  
10 have and the resources that we have. And it's important  
11 when you look at what enforcement tools are available, you  
12 also look at the resources available to the agency to use  
13 those tools.

14 We tried to present evidence of some of our  
15 attempts to enforce this rule, from requesting voluntary  
16 compliance through Lori Wrotenbery's letter-writing  
17 campaign to going through our traditional enforcement tools  
18 of taking operators to hearing.

19 We gave a couple of specific examples that KC  
20 Resources -- that involved three wells. I can't tell you  
21 the number of hours it took to get a compliance order on  
22 those three wells.

23 Saba with six wells, as you know, took a Division  
24 Hearing and a Commission Hearing. The Commission Hearing  
25 alone took most of an afternoon -- and that was an

1 unopposed hearing -- only to get an order so that we could  
2 plug the wells.

3 Every operator on the inactive well list  
4 represents a case I should be bringing to obtain  
5 compliance. And I can tell you right now that with two  
6 attorneys -- and we can't devote a hundred percent of our  
7 time to this issue, there are plenty of other issues that  
8 we have to deal with in the OCD -- we can't keep up. We  
9 can't do it.

10 Right now, the structure of enforcement is that  
11 industry knows they don't have to do anything until we tell  
12 them there's a problem. They don't even look at it. We  
13 have some exceptional operators who do recognize it's their  
14 responsibility, but we're chasing down the rest of them.

15 What we're trying to do with this rule is put the  
16 burden more on industry. We will be your bookkeeper, we  
17 will create the list, we will put it on the Web, we will  
18 create it so that you can look and see for 15 months that  
19 information creeping towards a noncompliance status.

20 But then, if you come to us and ask us for an  
21 APD, we will have the right, as any administrative agency  
22 does, to deny a permit based on violations. It is  
23 irresponsible of an administrative agency to be granting  
24 new wells to operators who have wells out of compliance.  
25 And yet right now, compliance is not even an issue when an

1 APD is requested, it's not an issue when wells are  
2 transferred, it's not an issue on allowables. And it  
3 should be.

4 Commissioner Bailey suggested that we were doing  
5 an end run against the Legislature, and I didn't follow up  
6 with Mr. Sanchez, because he wasn't involved in that effort  
7 and I didn't want to put him on the spot and try to drag  
8 out of him what we actually did with the Legislative  
9 session.

10 But I'd ask you to take administrative notice of  
11 Senate Bill 777 from the last Legislative session and House  
12 Bill 871. You can see what we asked for.

13 We asked for a number of things, but on the  
14 enforcement issues we asked to increase penalty amounts.  
15 Are we trying to do that with this rule? No.

16 We asked to do away with knowing and willful, go  
17 to the same sort of strict liability that other agencies  
18 have. Are we making an end run around that? No. We're  
19 accepting that knowing and willful is part of our statute  
20 on penalties, but we're asking for a definition, we're  
21 asking for a definition that a sister agency applies in  
22 similar situations. That is not making an end run against  
23 the Legislature, that is dealing with what we have.

24 The other thing we asked for was clarification of  
25 our penalty powers. We still need clarification of our

1 penalty powers. The fact that the Legislature chose not to  
2 clarify it at the last session doesn't indicate that they  
3 feel we don't have administrative power to do this. It  
4 doesn't indicate that they do either. I'm not sure what it  
5 indicates. It leaves it up in the air. We have to either  
6 go back to the Legislature or resolve this through the  
7 courts.

8 Are we doing an end run by proposing these rules?  
9 Frankly, I would propose these rules even if the  
10 Legislature clarified that we had the power to assess  
11 penalties administratively, because penalties are not an  
12 adequate enforcement tool for us. Not with the requirement  
13 of knowing and willful. Not when we are an agency, as we  
14 are, without the authority to collect penalties ourselves.  
15 Even if we have the power to assess it administratively, it  
16 would still require a district court suit for collection.

17 It's easy to say, Use your existing powers, go  
18 after these companies with your existing powers, you don't  
19 need anything else. Frankly, I'm not quite sure how to go  
20 about that.

21 If we don't have this rule passed -- and this  
22 rule supplements our existing powers, and I wouldn't intend  
23 it to be the only thing we would use. We would still be  
24 doing compliance cases, we would still have to go after  
25 orphan wells, we would still have to look at wells where

1 they're small numbers that fall under the -- whatever limit  
2 is set.

3 Unless we have a zero-tolerance program, there  
4 will be some folks who are not covered by the proposed  
5 rule, and those folks will have to come under our  
6 traditional enforcement. We are not saying that it is  
7 acceptable to have wells that are out of compliance, it's  
8 just that we need a tool to get to the bulk of them and  
9 have industry do some of the work to come into compliance  
10 without us having to chase after them all the time.

11 But if my only tool is to take each operator on  
12 the inactive well list to hearing, I'm really not quite  
13 sure how to go about that.

14 We've heard a lot about this proposed rule giving  
15 us too much discretion, and how are we going to exercise  
16 it, and how are we going to decide whether to give an  
17 agreed compliance order or whether to deny an APD or so  
18 forth. Well, these are things that we're doing to people  
19 who are out of compliance. We're asking for discretion to  
20 be able to help them come into compliance.

21 How about the discretion that I have to exercise  
22 in determining which of these cases to bring to hearing?  
23 Right now the chance of getting a compliance action on an  
24 inactive well is roughly equivalent to being struck by  
25 lightning. And it's just about as arbitrary. If the

1 district asks me to do something, I'll take a look at it  
2 and put it on the list to do it.

3 There's one exception that puts people at the top  
4 of the list and that is if we have a concern about the  
5 environment. But other than that, how do I exercise my  
6 discretion? Because I can't do them all. How am I going  
7 to do that?

8 I have a great deal of concern with Commissioner  
9 Bailey suggesting that our proposed rule indicates that we  
10 are being vindictive. What we are trying to do is have a  
11 rule that we can apply to everyone, that will affect  
12 everyone, that will encourage everyone to come into  
13 compliance.

14 What I have now is the opportunity to exercise my  
15 discretion to go after the few operators I'll have the time  
16 to handle.

17 And I've given a lot of how to do that if we  
18 don't get this rule in place. And my current thought is,  
19 because of the concern of vindictiveness, because of the  
20 concern of exercise of discretion and so forth, I think we  
21 ought to have a lottery. And every time we have a chance,  
22 the opportunity to bring a case, we'll come up with an  
23 objective test, a roll of the dice, what page of the well  
24 list? We're going to do someone on page 47. We're going  
25 to roll the dice again. It'll be the third name from the

1 top. One, two, three. Oh, unlucky Kelton Operating  
2 Corporation. They're the ones we're going to do a case  
3 against now.

4 So I'm very concerned that anything I do --  
5 because I can't do it all, we can't have equal enforcement.  
6 All I have are very heavy hammers, and I can only do it  
7 against a few people.

8 The alternative we're proposing is this good-  
9 standing rule.

10 I agree with Dr. Neeper that perhaps some of the  
11 concern that we've heard today could be avoided by using  
12 different language. And in fact, when we discussed this at  
13 the stakeholders' meeting and we heard a lot of concerns  
14 about labels, about being a bad actor, being -- losing good  
15 standing -- it was just an offensive term.

16 And I said, you know, I'm sorry I used that term.  
17 I didn't know how to describe this scenario. I said and --  
18 with some seriousness, I wish I had said, If you meet these  
19 qualifications you are in Group B. And all operators in  
20 Group B, when they apply for APDs, the OCD will have -- may  
21 deny APDs. Maybe that would take some of the sting out of  
22 it, I'm not sure.

23 Other than that, we tried to design a system so  
24 there was no list out there, there were only tools that  
25 operators could use for their own management in bringing

1 themselves into compliance.

2           Industry has asked for notice. Again, I thought  
3 we were doing more than -- more than they've asked for.  
4 They want 30-day notice. They actually have 15 if they go  
5 to the website. If they want notice, again, I would  
6 suggest 90 days before the 15 months, so that operators  
7 would have a sufficient time to do what they need to do, to  
8 either clean up the list if they think it's a problem,  
9 bring the well into compliance, enter into an ACO if that's  
10 necessary.

11           I say that knowing that Ms. Prouty is probably  
12 glaring at me, because she understands the administrative  
13 difficulties of issuing notice.

14           If we don't come up with some method to encourage  
15 operators to come into compliance without the OCD having to  
16 take all of the active role in bringing them into  
17 compliance, rules like the temporary abandonment rule,  
18 rules like the pit rule you'll be considering, other rules  
19 that are coming up before the Commission, may be very nice  
20 rules, they may be very clear, they may be very helpful.  
21 They'll be very pretty. But I won't be able to enforce  
22 them.

23           Thank you.

24           CHAIRMAN FESMIRE: Thank you, Ms. MacQuesten.

25           Any other comments?

1 Dr. Neeper?

2 DR. NEEPER: I'll make a closing statement.

3 A long-term complaint of citizens has been --  
4 whether it's correct or not, but a long-term complaint has  
5 been insufficient enforcement. And this is a concern of  
6 this hearing, is enforcement. I have even heard industry  
7 lawyers argue, the problem isn't the rules, the problem is  
8 lack of enforcement, when they were arguing for some other  
9 rules.

10 And so I see that what is being worked on here is  
11 an attempt at enforcement, and I therefore am very much in  
12 favor of it.

13 Because the topic of stakeholder development of  
14 rules came up I'd like to clarify, if I can, my discussion  
15 on that.

16 Obviously we're not opposed to stakeholder  
17 proceedings. Sometimes we can be there and sometimes we  
18 can't. The thing that is very hard on us is if the OCD  
19 says, you stakeholders out there develop a rule and when  
20 you get something come back. And something comes back, and  
21 then it goes back out and it comes back. And I see that as  
22 almost an abdication of responsibility.

23 It's much better -- the thing I was trying to  
24 express in my direct testimony is, it's much better if the  
25 OCD proposes a rule and you have something direct to

1 discuss and then meet in a room, and you can hammer out  
2 agreements and disagreements and hand that back to the OCD,  
3 who can process it, you come back and maybe you go through  
4 one more hammer-out process. You know you can probably  
5 afford to do that when you can't afford to start at the  
6 beginning with a blank page and argue; it becomes a  
7 political process almost.

8 And so we encourage that kind of stakeholder  
9 process. We think you're very close to it now, and we hope  
10 we can go ahead with stakeholder meetings.

11 I'm trying to say do not be discouraged, be  
12 encouraged and consider including one more step in the  
13 process. But I appreciate your trying to develop a rule  
14 without giving us all a blank page to start with.

15 CHAIRMAN FESMIRE: Thank you, Doctor.

16 Anyone else?

17 With that, I would hope at least for part of the  
18 evening we would take this under advisement and begin our  
19 deliberations.

20 The deliberations on rulemaking are public  
21 deliberations.

22 I propose to cover six general areas and then go  
23 through the specifics of the rules.

24 Madam Commissioner, would you have any deviance  
25 from that?

1 COMMISSIONER BAILEY: That we eat when it's  
2 dinnertime, that's all I care about.

3 (Laughter)

4 CHAIRMAN FESMIRE: Commissioner, would you -- Is  
5 that a proper way to proceed, do you think?

6 COMMISSIONER OLSON: Sounds fine to me.

7 CHAIRMAN FESMIRE: Why don't we take a five-  
8 minute break, and we'll begin our deliberations at 4:35-  
9 plus?

10 (Thereupon, a recess was taken at 4:31 p.m.)

11 (The following proceedings had at 4:40 p.m.)

12 CHAIRMAN FESMIRE: Okay, we're going back on the  
13 record. Let the record reflect that it's 4:40. We're in  
14 deliberations, this is in public session.

15 The six things that I wanted to propose before we  
16 started through the individual rules is, one thing that  
17 counsel Bada brought up. The word that -- the thing that  
18 seems to be the worst for them is the wording of "good  
19 standing" If we were to just adopt "noncompliance with  
20 Rule 37" instead of "good standing" as the status of the --  
21 or perhaps compliance with -- "in compliance with Rule 37"  
22 instead of the phrase "good standing" --

23 COMMISSIONER OLSON: Or could you just use  
24 Neeper's suggestion, maybe, just "administrative standing"?  
25 And then all you have to do is change a word, just kind of

1 drop the word "good" out of it, if you have "administrative  
2 standing". I don't know --

3 MS. BADA: But then you would have to define it.  
4 I think it's easier just to reference your rule, if you  
5 just say a thing -- meet the requirement, you know, if they  
6 don't meet the requirements of 37 --

7 CHAIRMAN FESMIRE: Commissioner Bailey, would  
8 you --

9 COMMISSIONER BAILEY: I think that would go a  
10 long way towards some of the issues. That's not the only  
11 issue with this rule, but I think that right off the bat  
12 eases that adversarial feeling that comes through in this  
13 rule.

14 CHAIRMAN FESMIRE: Okay. So instead of a concept  
15 of good standing, we would have the idea that in compliance  
16 with Rule 37 and out of compliance with Rule 37.

17 MS. BADA: And instead of labeling it good  
18 standing, I think you can just label it compliance.

19 CHAIRMAN FESMIRE: Okay.

20 The second sort of global issue that I'd like to  
21 discuss is the number of wells to be in compliance with  
22 Rule 37, and I've got a proposal.

23 It seems ridiculous to me for us to have  
24 operators with 100 percent of their wells out of compliance  
25 and still be in good standing. So the first thing I'd like

1 to propose is anything greater -- 50 percent or greater of  
2 an operator's wells out of compliance, they are not in good  
3 -- they are not in compliance with Rule 37; less than a  
4 hundred wells, two wells; 100 to 500, four wells; 500 to  
5 1000, six wells; and greater than 1000, ten wells. I think  
6 that would basically keep the larger operators on parity  
7 with the smaller operators.

8 The idea of these noncompliant wells is ones  
9 that, as Mr. Gantner said, just fall through the cracks.  
10 And a small operator ought to have good enough control of  
11 his wells that less than a hundred wells he ought to be  
12 able to recognize two that are out of compliance; the  
13 smaller to medium-size operators, you know, 100 to 500  
14 well, four out of compliance; and 500 to 1000, six; and a  
15 thousand -- I mean, greater than 1000 wells, 10.

16 Is that -- That basically doubles what they've  
17 got under the current rule.

18 COMMISSIONER BAILEY: What was the figure for  
19 between 100 and 500?

20 CHAIRMAN FESMIRE: Six.

21 COMMISSIONER BAILEY: No, four --

22 CHAIRMAN FESMIRE: Oh, four --

23 COMMISSIONER BAILEY: -- four.

24 CHAIRMAN FESMIRE: -- I'm sorry, between 100 and  
25 500.

1 COMMISSIONER BAILEY: I can support that.

2 CHAIRMAN FESMIRE: We're talking about -- for the  
3 benefit of the attorneys who just came in, we're talking  
4 about some of the changes. One of the things that we have  
5 decided, at least as a concept, is that -- to drop the  
6 phrase "good standing" and simply refer to it as compliant  
7 or noncompliant with Rule 37. I think that will avoid a  
8 lot of the problems some of industry has had.

9 And we're talking right now about the number of  
10 wells, and I have proposed -- and we are simply at the  
11 position of proposing -- if an operator has 50 percent or  
12 more of its wells out of compliance, that it not be in good  
13 standing; if they operate less than a hundred wells, two  
14 wells out of compliance -- anything greater than two wells  
15 out of compliance will -- and I've got to get over using  
16 the word "good standing" -- would not be compliant with  
17 Rule 37; 100 to 500 wells, more than four wells out of  
18 compliance would not be compliant with Rule 37; 500 to 1000  
19 wells, more than six wells would not be compliant with rule  
20 37; and if they've got more than 1000 wells, they would be  
21 able to have 10 wells out of compliance before they were  
22 not in compliance with Rule 37.

23 That's a proposal. Commissioner Bailey says that  
24 she can live with that.

25 COMMISSIONER BAILEY: Yes, I can support that.

1           CHAIRMAN FESMIRE: Commissioner Olson?

2           COMMISSIONER OLSON: Well, I was already thinking  
3 myself of the over 1000, 10, so I can agree with that, and  
4 less than a hundred.

5           I wonder about the four and the six, though, if  
6 you might just say between 100 and 1000 you have five wells  
7 and you just have -- that way you'll end up with three  
8 categories? Because I think there was already some  
9 discussion about five wells as a criteria. Make it a  
10 little simpler just to be two, five and 10. Between 100  
11 and 1000 you'd have five, and --

12          CHAIRMAN FESMIRE: Commissioner Bailey?

13          COMMISSIONER BAILEY: Is that too big a gap  
14 between 100 and 1000? I mean, that seems to be an awfully  
15 large array.

16          COMMISSIONER OLSON: Well, I was kind of thinking  
17 of right now, the way the Division had proposed it, they  
18 were already looking at anything over 100 would be five.  
19 So that's even being a little more stringent than what the  
20 Division had proposed, between -- if you're in that  
21 category, between 100 and 500.

22          MS. BADA: Could you do five and seven?

23          COMMISSIONER OLSON: Like between 100 and 500, it  
24 seems to me that I think five would be a -- In other words,  
25 that's what the Division was already proposing, was things

1 that were over 100 being five.

2 COMMISSIONER BAILEY: And then 500 to 1000 --

3 COMMISSIONER OLSON: -- could be seven --

4 COMMISSIONER BAILEY: -- seven?

5 COMMISSIONER OLSON: -- you know?

6 CHAIRMAN FESMIRE: Five hundred to 1000 would be  
7 seven, and --

8 COMMISSIONER OLSON: -- 100 to 500 would be five.

9 CHAIRMAN FESMIRE: -- 100 to 500 would be five;  
10 500 to 700 --

11 COMMISSIONER OLSON: Or seven or eight, I don't  
12 know if it makes much difference.

13 CHAIRMAN FESMIRE: Seven. And 700 to --

14 COMMISSIONER BAILEY: -- over a thousand --

15 COMMISSIONER OLSON: -- over a thousand --

16 COMMISSIONER BAILEY: -- 500 to a thousand --

17 COMMISSIONER OLSON: -- 500 to a thousand --

18 COMMISSIONER BAILEY: -- would be seven wells.

19 COMMISSIONER OLSON: -- would be seven.

20 MS. BADA: Yeah --

21 COMMISSIONER OLSON: One apiece there.

22 MS. BADA: -- if it helps, I added up how many  
23 operators have wells in those categories. There's 15 in  
24 the 500-to-1000 wells, 10 with over 1000, and 59 in the  
25 100-to-500 category.

1           CHAIRMAN FESMIRE: Okay, is that, at least in  
2 principle -- We'll discuss it when we get to Rule 37, but  
3 at least in principle, we've got less than a hundred --  
4 we've got a hundred wells or less -- or less than a hundred  
5 wells, two; 100 to 500, five; 500 to 1000, seven; and  
6 greater than 1000, 10 wells. And anytime they've got more  
7 than fifty -- fifty percent or more of the wells they  
8 operate out of compliance, they will be noncompliant with  
9 Rule 37?

10           COMMISSIONER BAILEY: Yes.

11           COMMISSIONER OLSON: So that will be like an  
12 additional thing at the end, it would say, in any event no  
13 operator may have over 50 percent of their wells.

14           CHAIRMAN FESMIRE: I'm thinking of the operator  
15 that has two wells, a hundred percent noncompliant --

16           COMMISSIONER OLSON: Right.

17           CHAIRMAN FESMIRE: -- and he is still in good  
18 standing.

19           COMMISSIONER OLSON: Right.

20           CHAIRMAN FESMIRE: That just didn't -- wasn't  
21 kosher to me.

22           The other thing I'm thinking about in a general  
23 issue is that actually according to the wording of the  
24 rules, they fall out of compliance after 12 months, and the  
25 90 days is basically a grace period. If we were -- and

1 this is where we may have to ask Ms. Prouty.

2 If we were to issue a letter after 12 months, a  
3 notice letter, and I'm not thinking certified yet --

4 COMMISSIONER OLSON: You could e-mail.

5 CHAIRMAN FESMIRE: -- a letter or an e-mail --

6 COMMISSIONER OLSON: Uh-huh.

7 CHAIRMAN FESMIRE: -- could we do that, issue an  
8 e-mail for anybody who's --

9 MS. BADA: You can't ask for questions.

10 CHAIRMAN FESMIRE: Oh, I'm sorry.

11 COMMISSIONER BAILEY: But in -- the idea has been  
12 brought up, e-mail.

13 MS. BADA: If you required a current e-mail  
14 address, you could certainly do it.

15 COMMISSIONER BAILEY: But with the change of  
16 personnel that goes on on a continual basis in the  
17 industry, an e-mail address to an employee of the company  
18 may be defunct --

19 COMMISSIONER OLSON: Uh-huh.

20 COMMISSIONER BAILEY: -- the next time you try to  
21 send the notice, and there's no requirement?

22 MS. BADA: The only way you could do that is if  
23 you require in your registration section that they keep it  
24 up to date. That would be the only way it would work.

25 COMMISSIONER BAILEY: And if they are merged or

1 fired or whatever, laid off, whatever, it would just --  
2 die. So really, a certified mail to the company after 12  
3 months.

4 CHAIRMAN FESMIRE: After 12 months, telling them  
5 that they're -- you know, that they have X wells  
6 noncompliant --

7 COMMISSIONER OLSON: Noncompliant.

8 CHAIRMAN FESMIRE: -- and that they're in danger  
9 of losing their good standing. That gives them 90 days,  
10 the same 90 days that's in the current rule, to bring their  
11 well into compliance before they go out of --

12 COMMISSIONER OLSON: -- they go on the list.

13 CHAIRMAN FESMIRE: -- on the list.

14 COMMISSIONER BAILEY: Works for me.

15 CHAIRMAN FESMIRE: Okay. Now the big one. Well,  
16 not the big one. The five-percent ownership, in the  
17 partnership stuff, in the -- noncompliant with Rule 37  
18 ownership.

19 There was some testimony that that might be  
20 unusually restrictive and -- Does anybody remember which  
21 rule that was?

22 COMMISSIONER OLSON: The percentage is in -- I  
23 believe that's in Rule 100.

24 CHAIRMAN FESMIRE: Yes, that's one place it is.  
25 It actually shows up not only later in that rule but in

1 another rule too. An officer, director or partner in the  
2 applicant or a person with an interest in the applicant  
3 exceeding five percent is or was within the past five years  
4 an officer, director, partner or person with an interest  
5 exceeding five percent, and another entity that is not in  
6 good standing.

7 I think we cleared up that. You know, this is  
8 the present tense. If they have been an officer with the  
9 last five years of an entity that is not in good standing  
10 -- Is that your interpretation, Commissioner?

11 COMMISSIONER BAILEY: Are we going back to this  
12 good-standing --

13 COMMISSIONER OLSON: Not in compliance.

14 CHAIRMAN FESMIRE: Not in compliance, I'm sorry.

15 COMMISSIONER OLSON: Or compliant, I don't know  
16 what you're --

17 CHAIRMAN FESMIRE: Let the record reflect that  
18 from this point forward I do not mean the phrase "good  
19 standing", I mean not in compliance with Rule 37.

20 COMMISSIONER BAILEY: Global replacement.

21 MS. BADA: We will do that. I would suggest,  
22 though, that it would not hurt to where it says -- you  
23 could add the word "currently" not in compliance with Rule  
24 37. It certainly does not hurt for clarity.

25 CHAIRMAN FESMIRE: Currently, yes.

1 COMMISSIONER BAILEY: It would be the last line  
2 of 2, E(2)?

3 CHAIRMAN FESMIRE: Yes, and it also occurs  
4 someplace else in the rules. Do you remember where it is,  
5 counsel Bada?

6 MS. BADA: Look through here, I can't keep track  
7 of it all. May not be numerical. I'm continually lost,  
8 but --

9 CHAIRMAN FESMIRE: Yeah.

10 MS. BADA: Okay, it's in 100, definitely.

11 CHAIRMAN FESMIRE: Why don't we cover it when we  
12 go through the individual rules?

13 MS. BADA: Okay.

14 CHAIRMAN FESMIRE: Right now, let's talk about  
15 the five percent, whether that's a threshold we want to  
16 maintain or not.

17 COMMISSIONER BAILEY: Five percent, I think,  
18 truly is too low a number. I would think 25 percent would  
19 be a much more reasonable figure for both companies and for  
20 OCD to try to track down.

21 CHAIRMAN FESMIRE: 25 percent seems a little low.  
22 What do you think? To me. I mean, I was thinking 10  
23 percent. What's the reasoning for 25 percent, do you  
24 think?

25 COMMISSIONER BAILEY: That it would be easier to

1 find principals that own 25 percent or more.

2 CHAIRMAN FESMIRE: Commissioner, do you have any  
3 thoughts?

4 COMMISSIONER OLSON: My thought is -- my biggest  
5 problem was, is how -- and I think I asked this, you know,  
6 some of the questioning, is how you even do this as the  
7 Division. It's kind of a -- it is a difficult thing to do.  
8 And I think that Ms. Prouty had said that pretty much you  
9 ask them, and there's not a really good mechanism for  
10 determining who has that interest that was -- I'm a little  
11 concerned about that.

12 But I'd agree, the five percent does seem low in  
13 terms of identification purposes with the number of  
14 principals you're going to have to try to identify.

15 CHAIRMAN FESMIRE: Okay, so --

16 COMMISSIONER OLSON: I don't know that I've got a  
17 good number.

18 COMMISSIONER BAILEY: But then you can always  
19 bring up the question, if it's difficult to enforce, OCD  
20 doesn't have the resources. Do we need it?

21 CHAIRMAN FESMIRE: I think yes.

22 COMMISSIONER OLSON: I kind of think you need it,  
23 I just --

24 COMMISSIONER BAILEY: At what --

25 COMMISSIONER OLSON: Yeah, I think from -- my

1 idea is just what the number would be to simplify that a  
2 little bit.

3 CHAIRMAN FESMIRE: I could live with the 25  
4 percent. If it becomes a problem, and we have specific  
5 examples of problems, we can always come back and make the  
6 change.

7 COMMISSIONER BAILEY: Yeah, and then we would  
8 have some sort of experience and background on which to  
9 base it, rather than --

10 CHAIRMAN FESMIRE: Right.

11 COMMISSIONER BAILEY: -- because we didn't get  
12 any testimony whether or not it was actually working in  
13 Illinois.

14 CHAIRMAN FESMIRE: Yeah. Okay, and the last  
15 issue --

16 COMMISSIONER OLSON: I guess the key is going to  
17 be, for what kind of percentage interest are you really  
18 going to be controlling the operations?

19 CHAIRMAN FESMIRE: Or have a significant  
20 influence?

21 COMMISSIONER OLSON: -- significant influence on  
22 them, right.

23 CHAIRMAN FESMIRE: I don't think we need to have  
24 controlling --

25 COMMISSIONER OLSON: Right.

1           CHAIRMAN FESMIRE:  -- as a criteria.

2           Federal bonding.  Because I'm such a pacifist and  
3   want to maintain good relations with the BLM, I would be  
4   inclined to take out the requirement of federal bonding.  
5   But what does that do to the rest of the structure of this?

6           MS. BADA:  I think what you need to remember is,  
7   even if you require the bond, unless they invite you on,  
8   how do you use it?

9           CHAIRMAN FESMIRE:  Right.

10          MS. BADA:  You can't just go on a tribal land  
11   unless they want you there, and pretty much that's going to  
12   be the same with the BLM.  So while you may require it -- I  
13   don't think there would be anything to keep you from  
14   requiring it -- how do you use it, even if you --

15          COMMISSIONER BAILEY:  Are you open at all to  
16   withdrawing this one from decision right now, working with  
17   BLM?  Because everything is still -- it is sorted out with  
18   BLM, and bringing this back after consultation and working  
19   with BLM?

20          CHAIRMAN FESMIRE:  I think we could do that  
21   simply by withdrawing the phraseology, you know, a bond  
22   running to the state on all land.  And we can discuss that,  
23   I just wanted to get some sort of agreement on, you know,  
24   whether or not you all would be amenable to not putting  
25   that in, whether or not it would be workable within the

1 concept -- within the framework that we've established  
2 here.

3 COMMISSIONER BAILEY: I just don't want something  
4 cobbled together, quickly made decision on -- that has  
5 unintended consequences.

6 CHAIRMAN FESMIRE: Right, and that's -- that's  
7 the thing that I would, you know, be asking. But I don't  
8 want to take it out of the -- is that the -- Do you  
9 remember where the bonding requirement is?

10 MS. BADA: It's 101.

11 CHAIRMAN FESMIRE: 101.

12 MS. BADA: And frankly I have to admit, when I  
13 read this, because I was unaware how your bonding works, it  
14 never raised any flags to me that all included tribal land.  
15 So I think you could probably just put a phrase in there  
16 that says except for. Or you could say state and private.

17 COMMISSIONER OLSON: Well, that's what was  
18 previously in here --

19 MS. BADA: Right.

20 COMMISSIONER OLSON: -- was on -- what was  
21 stricken was privately owned --

22 MS. BADA: -- or state owned, and I think --

23 COMMISSIONER OLSON: -- or state owned.

24 MS. BADA: -- you could just leave that.

25 CHAIRMAN FESMIRE: Yeah.

1           COMMISSIONER OLSON: But that was just a comment  
2 for the whole thing, because we do -- the Environment  
3 Department does bonding of mine sites, and we're doing this  
4 in conjunction with the Mining and Minerals Division.  
5 There's been a lot of -- I don't say a lot, but there's  
6 been a little bit of concern with a couple of companies  
7 lately that if BLM has a bond, then we should have some  
8 type of a joint bonding between the State and the BLM.

9           However, BLM has been reluctant to say that the  
10 State -- to really have the State have its say, and  
11 especially for the water quality issues that are going on.  
12 So there's been a little -- I won't say it's a dispute at  
13 the moment. Right now it's just kind of an unresolved  
14 issue between the BLM and the State as to whether or not  
15 the State would accept a joint bond, depending on how the  
16 bond is released, and back to the State for the activities  
17 that need to occur.

18          CHAIRMAN FESMIRE: Yeah.

19          COMMISSIONER OLSON: So I'm just -- kind of  
20 express some concern on that. At this point in time, I  
21 know the Environment Department has said that, Well, just  
22 because of that issue we have to require our own separate  
23 bond at that point, until -- and the problem seems to be  
24 more with the BLM than with the state at that point, so...

25          But at this point we're requiring separate bonds

1 for those things. They're pretty substantial bonds, you're  
2 looking at multi-million dollar bonds on those --

3 CHAIRMAN FESMIRE: Yeah. I think there's too  
4 much in here that we need to keep, but we can discuss that.  
5 But I think the concept is that we don't want to include  
6 federal lands in the -- is that -- you're in agreement?

7 COMMISSIONER OLSON: Well, I think -- It sounds  
8 like something needs to be worked out. If they have the  
9 bond and they've had a mechanism in the past to release  
10 them to the State, then it sounds like that's something  
11 that just needs to be worked out.

12 CHAIRMAN FESMIRE: Okay, so you want to start  
13 working -- Do you all have some other global issues or  
14 things that we'd need to talk about before we start through  
15 the individuals?

16 COMMISSIONER BAILEY: I don't think so, because  
17 those were the two rules that I had the most --

18 CHAIRMAN FESMIRE: Okay. Commissioner Olson, do  
19 you have anything else?

20 COMMISSIONER OLSON: I don't think anything, We  
21 can probably just pick up as we go through them.

22 CHAIRMAN FESMIRE: Okay. Starting with Rule  
23 1227, I had no -- nothing in there that I thought we needed  
24 to address.

25 MS. BADA: Where are we?

1 COMMISSIONER OLSON: Start from the beginning?

2 CHAIRMAN FESMIRE: Yeah, it is at least organized  
3 that way.

4 COMMISSIONER BAILEY: Okay, in here my notes say,  
5 needs certified mail, the Post Office is not reliable.

6 CHAIRMAN FESMIRE: I thought about that. I --  
7 You know, part of this structure is that they maintain  
8 viable addresses with us. I would be opposed to that  
9 simply because of the cost, and I don't agree with the --  
10 generally don't agree with the idea that the Post Office is  
11 unreliable.

12 COMMISSIONER BAILEY: Example: I get community  
13 association fees that I have to pay every year. The bill  
14 was mailed to me postmarked March -- I mean, December 26th  
15 last year. I didn't get it in my mailbox until two days  
16 before it was due, March 1st. Where was it for three  
17 months? There was never any good answer to that. I mean,  
18 the Post Office does lose things. The mail carriers, I  
19 think, just kind of put things to the side, possibly. But  
20 I think we all have experiences where it's taken an  
21 unreasonable length of time, if something was delivered at  
22 all.

23 So for something this important, that has such an  
24 impact, I think we should be very sure that it is received.

25 CHAIRMAN FESMIRE: And where would you want to

1 include that?

2 COMMISSIONER BAILEY: Probably --

3 CHAIRMAN FESMIRE: Well see, then we'd have to  
4 modify Rule 1207, which is not in this package.

5 COMMISSIONER OLSON: You'd have to modify what?

6 CHAIRMAN FESMIRE: 1207.

7 COMMISSIONER OLSON: 1207?

8 CHAIRMAN FESMIRE: The Division shall provide  
9 notice of compliance proceedings as follows: The Division  
10 shall publish notice in accordance with 1207.

11 COMMISSIONER BAILEY: I think it's in (2) --

12 MS. BADA: Yeah, I think -- Yeah, it's in D(2).

13 COMMISSIONER OLSON: Yeah, I think it's only in  
14 (2), that's what I thought --

15 COMMISSIONER BAILEY: Yeah, D(2).

16 COMMISSIONER OLSON: -- where you provide notice  
17 to the operator.

18 COMMISSIONER BAILEY: -- to the operator and any  
19 other responsible parties. That's where it needs to be  
20 certified.

21 CHAIRMAN FESMIRE: By certified mail?

22 MS. BADA: Is there anything between certified  
23 mail and first class? Is there a way to --

24 CHAIRMAN FESMIRE: There's registered.

25 COMMISSIONER BAILEY: That's even more hassle,

1     though, isn't it?

2             CHAIRMAN FESMIRE: Well, certified mail is  
3     registered return receipt --

4             MS. BADA: The problem, I think, that they're  
5     concerned about, at least from what I heard, is, people  
6     won't sign for it. What you really want to make sure is,  
7     it got there.

8             COMMISSIONER BAILEY: Well you have the receipt  
9     that it was delivered to their post office. If they choose  
10    not to take it out of their mailbox, that's their problem,  
11    but you have a receipt that it got to their post office.

12            COMMISSIONER OLSON: Or you have a receipt that  
13    you mailed it, essentially. Because you may not get back  
14    the -- the card may not come back to you. I've had that  
15    happen before.

16            CHAIRMAN FESMIRE: Okay, but what was 1210 say?  
17    Except that when notifying an operator --

18            COMMISSIONER OLSON: 1210 is the notice  
19    requirements.

20            COMMISSIONER BAILEY: I guess it would go on the  
21    last line in D(2) where it says "by first class mail",  
22    substitute there --

23            MS. BADA: I think that's --

24            COMMISSIONER BAILEY: -- "certified mail".

25            CHAIRMAN FESMIRE: Yeah, because 1210 sets out --

1 Okay, so it would be --

2 MS. BADA: Does 1210 required certified mail --

3 COMMISSIONER OLSON: Well, I'm just --

4 MS. BADA: -- that you may --

5 COMMISSIONER OLSON: -- looking. It has notice  
6 requirements, but then it's for --

7 CHAIRMAN FESMIRE: -- adjudicatory or --

8 COMMISSIONER OLSON: -- set types of  
9 adjudications, and I was trying to figure out where it  
10 falls. There's compulsory pooling and statutory  
11 unitization --

12 CHAIRMAN FESMIRE: There's 3, there's 2 --

13 COMMISSIONER OLSON: -- unorthodox well  
14 locations, nonstandard proration, special pool orders and  
15 special orders for potash areas and downhole commingling,  
16 and I didn't see --

17 CHAIRMAN FESMIRE: Surface, surface commingling.  
18 Adjudication is not listed above.

19 COMMISSIONER OLSON: Okay.

20 CHAIRMAN FESMIRE: The applicant shall give  
21 notice as the Division requires -- as the Division  
22 requires. So basically it's up to us here.

23 So if you all really want -- and I don't mean to  
24 prejudice you by --

25 MS. BADA: Exception to an exception.

1           COMMISSIONER OLSON: Uh-huh. So I guess in terms  
2 of cost, how many do you expect that you would have within  
3 a year? I don't -- I mean, because your certified mailings  
4 cost you what, about three dollars apiece or something like  
5 that?

6           CHAIRMAN FESMIRE: And any other responsible  
7 parties against whom the compliance order is sought by  
8 following the provisions except that when notifying an  
9 operator required to provide the Division with a current  
10 address pursuant to -- it shall be sufficient for the  
11 Division to send notice by first class mail to the most --  
12 it shall be sufficient for the Division to send notice by  
13 first class mail -- that's in --

14           COMMISSIONER OLSON: Yeah, I guess, from what I'm  
15 seeing -- counsel is pointing out that the rule already  
16 requires certified mail.

17           CHAIRMAN FESMIRE: Under 1210?

18           COMMISSIONER OLSON: Under 1210. This is for  
19 this special exception.

20           CHAIRMAN FESMIRE: Right, this --

21           COMMISSIONER BAILEY: Oh, okay.

22           COMMISSIONER OLSON: This is only for a special  
23 exception.

24           COMMISSIONER BAILEY: Never mind.

25           CHAIRMAN FESMIRE: Okay.

1 MS. BADA: So if you chose -- if you want  
2 certified mail to the operator, what you would do, you  
3 would just end it right after 19.15.14.1210 NMAC, period.

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER OLSON: But this has a special  
6 purpose. I guess I'm trying to understand it.

7 MS. BADA: Yeah, what it was was to take away the  
8 certified mail requirement for operators. Everybody else  
9 would -- that has to be notified in 1210 would still have  
10 certified mail, so that's why it says except that.  
11 Basically it's excepting owners from the certified mail --  
12 you know, the operators from the certified mail  
13 requirement.

14 COMMISSIONER BAILEY: That's good enough with me.

15 CHAIRMAN FESMIRE: Okay.

16 COMMISSIONER BAILEY: Then I don't have any issue  
17 with this as long as --

18 COMMISSIONER OLSON: Uh-huh.

19 COMMISSIONER BAILEY: -- 1210 does require  
20 certification.

21 CHAIRMAN FESMIRE: Do you have any other issues  
22 with 1227?

23 COMMISSIONER OLSON: No, I don't.

24 CHAIRMAN FESMIRE: Okay, knowing and willful.  
25 Guys, I have very little sympathy for them --

1 MS. BADA: We want to make sure you're clear on  
2 that. What it does is that in compliance proceedings, all  
3 they're going to do when they notify the operator is send  
4 it by first class mail, because it's an exception to 1210.  
5 Are you okay with that? I didn't -- That's what I want to  
6 make sure of.

7 COMMISSIONER BAILEY: Compliance needs to be  
8 certified. Notification of the address changes --

9 MS. BADA: Well, this is a compliance hearing,  
10 that's -- would be making an exception to certified. So if  
11 you're not comfortable with that and you want it to be  
12 certified, what you really should do is, on D(2), in the  
13 sentence after the site --

14 CHAIRMAN FESMIRE: NMAC.

15 MS. BADA: -- the NMAC site --

16 CHAIRMAN FESMIRE: The first NMAC site.

17 MS. BADA: Yeah.

18 CHAIRMAN FESMIRE: Is that what you want to do?

19 COMMISSIONER BAILEY: I want compliance order to  
20 be certified. Address changes, I don't care.

21 CHAIRMAN FESMIRE: Following the Division's --  
22 Okay, so then we need to strike the sentence, the sentence  
23 fragment from "except that when notifying" all the way all  
24 the way through the end of that paragraph.

25 COMMISSIONER BAILEY: Okay.

1 COMMISSIONER OLSON: And the reference it's going  
2 to there in 100 is to the new provision for operator  
3 registration.

4 MS. BADA: Right.

5 COMMISSIONER OLSON: So there's a notification  
6 provision?

7 MS. BADA: There's a registration provision.

8 CHAIRMAN FESMIRE: We're not going to change  
9 that, the requirement, what we're going to -- that  
10 requirement requires them to bring a -- to provide a  
11 current address --

12 COMMISSIONER OLSON: Uh-huh.

13 CHAIRMAN FESMIRE: -- or simply saying that that  
14 doesn't matter, we're going to send it certified anyhow.

15 COMMISSIONER OLSON: I believe it should be  
16 certified too.

17 CHAIRMAN FESMIRE: Okay. Okay, and I like our  
18 definition.

19 COMMISSIONER BAILEY: I do too.

20 COMMISSIONER OLSON: I do too, I don't have a  
21 problem.

22 CHAIRMAN FESMIRE: There was one suggestion that  
23 we add the phrase "for the purposes of assessing civil  
24 penalties". And knowing and means the voluntary --  
25 knowing and willful, comma, for the purposes of assessing

1 civil penalties, so that we don't interfere with the --

2 MS. BADA: Right.

3 CHAIRMAN FESMIRE: -- established court-tested  
4 criminal --

5 MS. BADA: Right.

6 CHAIRMAN FESMIRE: -- definitions of knowing and  
7 willful.

8 COMMISSIONER OLSON: So it goes right after  
9 willfully?

10 CHAIRMAN FESMIRE: Right, knowing and willfully,  
11 comma, for the purpose of assessing penalties, comma, means  
12 the voluntary or conscious performance of an act that is  
13 prohibited by, et cetera.

14 COMMISSIONER OLSON: Purposes of assessing civil  
15 penalties, okay.

16 CHAIRMAN FESMIRE: Is that okay?

17 COMMISSIONER BAILEY: Good.

18 CHAIRMAN FESMIRE: Rule 38. Didn't we have a  
19 second definition?

20 COMMISSIONER OLSON: So that's the only place  
21 that knowing and willfully --

22 MS. BADA: -- further along.

23 COMMISSIONER OLSON: -- is for the assessment of  
24 penalties?

25 CHAIRMAN FESMIRE: Yes.

1 COMMISSIONER OLSON: Is that the only place it  
2 really counts, is in compliance?

3 CHAIRMAN FESMIRE: No, what we're trying to do,  
4 there is a knowing and willful culpability in criminal  
5 statutes --

6 COMMISSIONER OLSON: Right.

7 CHAIRMAN FESMIRE: -- and what we're -- you know,  
8 that has been court-tested and -- you know, what we're  
9 trying to say is, for the purposes of civil sanctions under  
10 this law, this is the definition of knowing and willful.  
11 We're not going to get in conflict --

12 COMMISSIONER OLSON: Oh yeah, I wasn't worried  
13 about that --

14 CHAIRMAN FESMIRE: -- with the criminal  
15 definitions.

16 COMMISSIONER OLSON: -- I was thinking, is that  
17 the only place it's really used, is with --

18 MS. BADA: -- penalties.

19 COMMISSIONER OLSON: -- with penalties?

20 CHAIRMAN FESMIRE: Yes.

21 COMMISSIONER OLSON: Okay.

22 MS. BADA: Okay, I have one thing to bring up  
23 before we get to the next two rules. David has asked that  
24 we bump those numbers out, because he's working on more  
25 compulsory pooling rules, and he'd like a couple sections

1 reserved, parts reserved, so that he'll have room to keep  
2 them all together.

3 CHAIRMAN FESMIRE: Any problem with notice?

4 MS. BADA: I have no problem with that as long as  
5 you are comfortable with that. But I think it makes more  
6 sense to have all your compulsory pooling orders together,  
7 so...

8 CHAIRMAN FESMIRE: Yes, so this --

9 MS. BADA: So if you don't mind re-numbering them  
10 39 or 40 and --

11 CHAIRMAN FESMIRE: Except we're going to --  
12 they're going to accuse us of sneaking one in. Compliance  
13 with Rule 40?

14 Okay, so old Rule 38 will be --

15 COMMISSIONER OLSON: Can't we just leave that to  
16 our Commission counsel to figure out what the appropriate  
17 numbering would be?

18 CHAIRMAN FESMIRE: Yeah.

19 MS. BADA: If you'll do that, I'll --

20 CHAIRMAN FESMIRE: But from here on out we're  
21 going to have to call it compliant with Rule X.

22 Which brings us to Rule X. We're not going to  
23 call it good standing. We're going to call it compliance,  
24 as the title --

25 COMMISSIONER BAILEY: With OCD Rules?

1 COMMISSIONER OLSON: Compliant? Because if you  
2 start reading this, it talks about an operator is in good  
3 standing --

4 MS. BADA: Yes, we'll have to re-do that  
5 sentence. I was looking at that, and I was basically --

6 COMMISSIONER OLSON: Could be a --

7 MS. BADA: -- I would suggest you just say a well  
8 operator is considered to be in compliance with this --

9 CHAIRMAN FESMIRE: Except --

10 MS. BADA: -- subsection, or this section.

11 CHAIRMAN FESMIRE: Except that they won't let us  
12 do that at the State Archives. We're going to have to say,  
13 is -- an operator is compliant --

14 MS. BADA: Yeah, and I can put the numbers in --

15 CHAIRMAN FESMIRE: -- with Rule X --

16 MS. BADA: Yeah. Basically I think it would be  
17 with subsection A of 19.15.1. -- whatever ends up being --  
18 NMAC, because the others talk about posting. So the only  
19 one that you're really looking at is A.

20 CHAIRMAN FESMIRE: Okay. And here's where we  
21 want to add our matrix greater than or equal to 50 percent  
22 of operated wells --

23 MS. BADA: Right, so I'll put the new matrix in  
24 there.

25 CHAIRMAN FESMIRE: Okay, and you've got a copy of

1 it?

2 MS. BADA: I've written it down.

3 CHAIRMAN FESMIRE: Okay. For the record, it's --

4 MS. BADA: Let me make sure I have it right, it's  
5 -- that more than 2000, it's 10.

6 CHAIRMAN FESMIRE: 2000?

7 COMMISSIONER OLSON: 1000.

8 MS. BADA: 1000.

9 CHAIRMAN FESMIRE: 1000.

10 MS. BADA: Yeah, I have it. And I don't have it  
11 in the right place. Where did my notes go? Okay, here's  
12 the right one. Over 1000, ten; 501 to 1000, seven; 101 to  
13 500 is five; and 100 or less is two. And then the  
14 qualifier is, they can't have more than 50 percent of their  
15 wells in any case.

16 CHAIRMAN FESMIRE: Okay. Any other changes in  
17 Rule X?

18 COMMISSIONER BAILEY: The notice --

19 COMMISSIONER OLSON: Does it --

20 COMMISSIONER BAILEY: The notice --

21 COMMISSIONER OLSON: So --

22 CHAIRMAN FESMIRE: Does it -- Oh, yes, yes,  
23 the --

24 MS. BADA: We should probably do that right in A,  
25 talk about a notice provision.

1           CHAIRMAN FESMIRE: And we have decided that when  
2 a well has been inactive for 12 months --

3           MS. BADA: Right.

4           CHAIRMAN FESMIRE: -- the Division will -- Do we  
5 have to send a certified letter here?

6           COMMISSIONER BAILEY: Yeah.

7           CHAIRMAN FESMIRE: Okay.

8           COMMISSIONER OLSON: Does that need to be a  
9 separate letter then, just --

10          MS. BADA: It could be -- it might be a B, we can  
11 make a new B --

12          COMMISSIONER OLSON: Like make a new B and --

13          CHAIRMAN FESMIRE: Okay.

14          COMMISSIONER OLSON: -- shift everything. Might  
15 be -- make more sense.

16          MS. BADA: Make it a notice of --

17          COMMISSIONER OLSON: Uh-huh, so it will be a  
18 specific notice provision.

19          MS. BADA: Yeah.

20          CHAIRMAN FESMIRE: Okay. And a certified letter  
21 after 12 months of noncompliance, and the contents of that  
22 letter shall be simply notice that they have had a well out  
23 of compliance for 12 months and that they have three months  
24 to bring that well back in compliance.

25                 Is that sufficient?

1 COMMISSIONER BAILEY: I like it.

2 CHAIRMAN FESMIRE: Or they have 90 days to bring  
3 that well back into compliance, pursuant to -- and then  
4 cite the 90-day statute.

5 COMMISSIONER OLSON: So that is then consistent  
6 with the rules for coming in -- say you've got a 12-month -  
7 - what, 12-month and then a 90-day grace period; is that --

8 CHAIRMAN FESMIRE: That's what the rule says.

9 COMMISSIONER OLSON: Okay.

10 CHAIRMAN FESMIRE: Twelve months, and then 90  
11 days to bring it into compliance.

12 COMMISSIONER OLSON: Okay.

13 COMMISSIONER BAILEY: I had totally misunderstood  
14 what was going to be on these lists until Jane explained  
15 what was going to be on the lists. Should we try to work  
16 with her testimony and make that --

17 MS. BADA: I was wondering if there was a  
18 different way to word it --

19 COMMISSIONER BAILEY: Yeah.

20 MS. BADA: -- and this is what I would suggest,  
21 and tell me if you -- What I would suggest, where it talks  
22 about financial assurance is, the Division shall make  
23 available on its website and update weekly a list of the  
24 status of operator's financial assurance --

25 COMMISSIONER BAILEY: Yeah.

1 MS. BADA: -- and that way they either are or  
2 they aren't, but it's not --

3 COMMISSIONER BAILEY: It's not adversarial that  
4 way.

5 MS. BADA: -- not the ones -- It's not just the  
6 negative.

7 CHAIRMAN FESMIRE: Well, but then we have to list  
8 everybody.

9 COMMISSIONER OLSON: Then you have to list  
10 everybody, yeah, that's what --

11 MS. BADA: But you get that anyway. I mean, if  
12 you have a database that should not be a problem. You  
13 already know whether they do or not. So it's just one more  
14 database they can search.

15 COMMISSIONER BAILEY: And some of them are  
16 constantly changing bond companies or riders, we need  
17 changes. I mean, this would help them --

18 MS. BADA: They'll know if they have the right  
19 bond company, even.

20 COMMISSIONER BAILEY: Yeah.

21 MS. BADA: Well look at Jane's face. Can we do  
22 that?

23 (Laughter)

24 MS. BADA: I'll ask her.

25 MS. PROUTY: You can't. Oh, I can talk to you?

1 MS. BADA: You can talk to me.

2 (Laughter)

3 (Ms. Bada and Ms. Prouty left the room.)

4 CHAIRMAN FESMIRE: Okay, you want to -- while  
5 we're waiting for that -- No, I think we'd better wait for  
6 Cheryl, don't you?

7 COMMISSIONER BAILEY: At least think about, are  
8 we going to -- F and G?

9 CHAIRMAN FESMIRE: You know, that's the first --  
10 the only part --

11 COMMISSIONER BAILEY: Okay. Well actually, we  
12 have taken care of that.

13 CHAIRMAN FESMIRE: Yup.

14 COMMISSIONER OLSON: Uh-huh.

15 COMMISSIONER BAILEY: Yeah.

16 COMMISSIONER OLSON: We already took care of  
17 that.

18 COMMISSIONER BAILEY: So we did.

19 CHAIRMAN FESMIRE: And G is -- G is just what  
20 they wanted in the letter, and we've already --

21 COMMISSIONER BAILEY: That's right.

22 COMMISSIONER OLSON: I guess nobody wanted to  
23 stay around to listen to us.

24 CHAIRMAN FESMIRE: No, we'd be up here rambling  
25 like we did last time. Except for Charlie, Mr. Perrin

1 stayed.

2 (Ms. Bada and Ms. Prouty re-entered the room.)

3 CHAIRMAN FESMIRE: And the only reason that  
4 Wayne's here is, he's my ride.

5 MS. BADA: It's not a problem to do all the  
6 financial assurance or the orders, but what you want to do  
7 on the noncompliance -- because certified mail basically --  
8 essentially means -- Right now you have 2800 wells. If you  
9 notify by well it's do-able but extremely burdensome. If  
10 you try to do it when they hit that certain number, it's  
11 almost impossible.

12 CHAIRMAN FESMIRE: Well, I think initially we can  
13 send it out by operator --

14 COMMISSIONER BAILEY: Yeah.

15 CHAIRMAN FESMIRE: -- but from that point forward  
16 we're assuming that not many more than one well at a time  
17 will come out of --

18 COMMISSIONER OLSON: Uh-huh.

19 CHAIRMAN FESMIRE: -- compliance.

20 MS. BADA: Okay, I think you should do it by  
21 well. From what I've heard, that's still a lot of work to  
22 do that certified, but --

23 CHAIRMAN FESMIRE: 2800 letters by well?

24 MS. BADA: Yeah, by --

25 COMMISSIONER OLSON: Three dollars apiece?

1 COMMISSIONER BAILEY: Yeah, why can't we do it by  
2 operator, just listing the wells?

3 MS. BADA: Because they're constantly coming in  
4 and out if you do it by operator.

5 CHAIRMAN FESMIRE: She's right.

6 MS. BADA: Now, if there was a way to have a  
7 private section where you could put the notice on the Web  
8 and they go to it, that would be easier. I don't know if  
9 that will solve your notice concerns, but it --

10 CHAIRMAN FESMIRE: Can we send them a certified  
11 letter that says, You have one or more wells out of  
12 compliance, go to this site on the Web?

13 COMMISSIONER BAILEY: Or contact --

14 MS. BADA: You're still sending the letter,  
15 you're still certifying it. That's the burden. You know,  
16 and that's your choice as the Commission, but I just want  
17 you to --

18 CHAIRMAN FESMIRE: At three dollars a pop. I  
19 don't have --

20 COMMISSIONER BAILEY: No, I know you don't.

21 MS. BADA: It really is unfortunate that we have  
22 such a hard time keeping e-mail addresses, because boy,  
23 that's the quickest --

24 COMMISSIONER OLSON: Uh-huh.

25 MS. BADA: -- but it's hard to keep them updated.

1 COMMISSIONER BAILEY: We can't have one to each  
2 operator --

3 MS. BADA: Well, the problem is --

4 COMMISSIONER BAILEY: -- that says, You have --

5 MS. BADA: -- not --

6 COMMISSIONER BAILEY: -- potential issues?

7 MS. BADA: -- not all your wells are going to hit  
8 at the same time --

9 COMMISSIONER BAILEY: Right.

10 MS. BADA: -- you know, because they're all on  
11 different schedules.

12 COMMISSIONER BAILEY: But maybe once a month send  
13 them a letter saying you have issues.

14 MS. BADA: Well, some operators, though, you may  
15 be doing -- I suppose if you did it every -- I don't know,  
16 what would that do if you send a letter every month,  
17 depending on how many wells you have? Because sometimes it  
18 may not be every month, it may be -- of course, I imagine  
19 if they're on there for -- Not every well is going to be  
20 hit at the same time. They're just not. Because if  
21 they're on there for 12 months, you don't do anything until  
22 they hit the 12 months. We don't know as how many each  
23 month are basically going to be in that -- hit that 12-  
24 month status.

25 COMMISSIONER BAILEY: Would there just be a large

1 group at the beginning of this rule --

2 CHAIRMAN FESMIRE: Yeah, 2800 --

3 COMMISSIONER OLSON: 2800 --

4 COMMISSIONER BAILEY: -- effectively --

5 COMMISSIONER OLSON: Uh-huh.

6 CHAIRMAN FESMIRE: -- and then after that you

7 shouldn't --

8 COMMISSIONER BAILEY: -- just trickle.

9 CHAIRMAN FESMIRE: Yeah.

10 COMMISSIONER BAILEY: Yeah.

11 CHAIRMAN FESMIRE: But that 2800 at three bucks a

12 pop is --

13 COMMISSIONER BAILEY: -- is unreasonable.

14 CHAIRMAN FESMIRE: -- \$8000.

15 COMMISSIONER BAILEY: Yeah.

16 MS. BADA: Now, if you sent it by regular mail  
17 you could do it, and if they're required to register -- So  
18 I suppose what you could do is do a delay, and when this  
19 rule kicks in -- until you get your registrations in place.

20 CHAIRMAN FESMIRE: That's one of the things that  
21 I think we had talked about, you know, putting the 60-day  
22 delay, during which time they have to comply with the  
23 registration rule.

24 MS. BADA: That would be one way of ensuring you  
25 at least had a decent address. It won't solve problems

1 with any glitches in the US mail.

2 COMMISSIONER BAILEY: So you want to just do it  
3 plain regular mail?

4 COMMISSIONER OLSON: Well, why couldn't you?  
5 Because the idea is, they're going to be on the list, they  
6 should be looking at the lists anyways, to see where they  
7 stand on a regular -- if they're --

8 MS. BADA: You could certainly write the rule to  
9 require them to.

10 COMMISSIONER OLSON: Well, I think that's the way  
11 it's set now, is that they would --

12 CHAIRMAN FESMIRE: Right.

13 COMMISSIONER OLSON: -- have to -- the  
14 responsibility is theirs to keep an eye on the list and  
15 figure out where they're at, you know?

16 MS. BADA: But you could expressly state that  
17 also, you could put the burden on them to go check their  
18 list.

19 COMMISSIONER OLSON: Well, I think if you did it  
20 by regular mail -- and they've also got a backup, because  
21 they can look at the list anytime they want on the Web, and  
22 then they're getting it by regular mail. They've got 90  
23 days.

24 CHAIRMAN FESMIRE: Who was that? Was that  
25 Sandra?

1 COMMISSIONER OLSON: I would think just because  
2 there's other mechanisms for -- to do it by, there's  
3 regular mail, and -- this -- you'd probably be okay.

4 CHAIRMAN FESMIRE: Okay. But that contradicts --

5 COMMISSIONER BAILEY: -- what we just did for 37.

6 CHAIRMAN FESMIRE: Yeah.

7 COMMISSIONER OLSON: But that's a compliance  
8 proceeding, right? That's for compliance orders?

9 MS. BADA: Yeah, that's if your actually bringing  
10 in an action against --

11 COMMISSIONER OLSON: That's different. This is  
12 more of a notification than a --

13 CHAIRMAN FESMIRE: We're on old Rule 37.

14 COMMISSIONER OLSON: Right.

15 CHAIRMAN FESMIRE: Okay? And we had decided that  
16 that required --

17 MS. BADA: We're going to do 90 days notice.

18 CHAIRMAN FESMIRE: Ninety days notice, and we  
19 decided --

20 COMMISSIONER OLSON: After 12 months.

21 MS. BADA: After 12 months.

22 CHAIRMAN FESMIRE: Okay.

23 MS. BADA: What you've got to decide is how you  
24 want to do the mailing --

25 CHAIRMAN FESMIRE: Well, I think we just --

1 MS. BADA: -- or the notice.

2 CHAIRMAN FESMIRE: I think we decided that --  
3 first class mail.

4 COMMISSIONER BAILEY: Yeah, because it's  
5 unreasonable to do it certified at three bucks a pop for  
6 2800.

7 COMMISSIONER OLSON: Uh-huh.

8 CHAIRMAN FESMIRE: Okay.

9 COMMISSIONER BAILEY: Let's be realistic here.

10 CHAIRMAN FESMIRE: Thank you.

11 COMMISSIONER OLSON: And it's not like you're  
12 telling them they're -- got a compliance order against  
13 them --

14 COMMISSIONER BAILEY: That's right.

15 COMMISSIONER OLSON: -- you're just notifying  
16 them that they've got a problem and that they need to  
17 correct.

18 COMMISSIONER BAILEY: It's a status report, is  
19 what it is.

20 COMMISSIONER OLSON: -- essentially is what it  
21 is, yeah.

22 CHAIRMAN FESMIRE: So we will send out 2800  
23 notices for people who are on the noncompliant list, and  
24 then every list -- Well, it's going to be more than 2800  
25 because we're going to have the ones in the 12-to-15-month

1 set. And we send those by regular mail, and the rule will  
2 reflect that, right? You'll modify?

3 MS. BADA: I think you want to do it by well.

4 CHAIRMAN FESMIRE: Yes --

5 MS. BADA: By well --

6 CHAIRMAN FESMIRE: -- if we're doing it on first  
7 class mail, we can do it by well.

8 MS. BADA: Uh-huh.

9 CHAIRMAN FESMIRE: But see, what I'm saying is,  
10 we've got 2800 out of --

11 MS. BADA: Right.

12 CHAIRMAN FESMIRE: -- compliance with the 15-  
13 month rule now. We've got another X amount that are  
14 between 12 and 15 months.

15 MS. BADA: Right.

16 CHAIRMAN FESMIRE: We're going to have to send  
17 letters to them.

18 MS. BADA: Right.

19 CHAIRMAN FESMIRE: Then from that point  
20 forward --

21 MS. BADA: -- it should be by well, it should  
22 drop dramatically.

23 CHAIRMAN FESMIRE: It should drop dramatically,  
24 but we have to send one letter out every -- for every well  
25 that hits the 12-month mark.

1 MS. BADA: Right. So basically what it is, the  
2 letter will automatically be sent at 12 months, when the  
3 well's been inactive for 12 months --

4 CHAIRMAN FESMIRE: Okay, and you will --

5 MS. BADA: -- regular mail.

6 CHAIRMAN FESMIRE: -- and you will modify this  
7 order to reflect that, that we're sending out all that are  
8 out of compliance now, all that are in the three-month  
9 warning track. And then from that point forward, every  
10 well that is noncompliant for 12 months will be mailed by  
11 regular mail, right? Okay.

12 MS. BADA: So essentially -- I mean, you don't  
13 have to say that because what will happen is, when this  
14 rule goes into effect, anything's that at 12 months gone  
15 out then.

16 COMMISSIONER OLSON: Uh-huh.

17 CHAIRMAN FESMIRE: Right.

18 COMMISSIONER OLSON: Uh-huh.

19 CHAIRMAN FESMIRE: Okay.

20 COMMISSIONER OLSON: Which is everything on the  
21 list.

22 CHAIRMAN FESMIRE: Which is everything in that --

23 MS. BADA: Yeah.

24 COMMISSIONER OLSON: Uh-huh.

25 CHAIRMAN FESMIRE: Okay. Anything after 12

1 months, and include the 2800 plus however many are in the  
2 three-month window.

3 MS. BADA: Now, did you want -- When do you want  
4 this to become effective?

5 CHAIRMAN FESMIRE: That was the other thing that  
6 we talked about. Sixty days after publication.

7 MS. BADA: Okay, what we can do is, we can post-  
8 date the effective date on this particular rule if you  
9 want --

10 CHAIRMAN FESMIRE: Okay.

11 MS. BADA: -- instead of having it effective  
12 publication, we'll just have it effective at --

13 COMMISSIONER OLSON: Put an actual effective  
14 date.

15 CHAIRMAN FESMIRE: Okay. We were figuring  
16 publication on --

17 MS. BADA: And I'll talk to Sally and figure out  
18 the best way to do that, whether we should put something in  
19 here that says it becomes effective, or whether we can just  
20 put at the -- it in the rule.

21 CHAIRMAN FESMIRE: Okay. But we want to give  
22 them 60 days to bring everything into compliance.

23 MS. BADA: Okay. Because if we can just put a --  
24 postdate it effective at the end of the section, that's the  
25 easiest. Then you don't have a provision in here that, you

1 know, three months from now means nothing. You just have  
2 an effective date at the end of your rule, but...

3 CHAIRMAN FESMIRE: Okay, Rule 102 --

4 COMMISSIONER OLSON: Do we have to have a place  
5 "good standing" appears? I guess in the text, is -- just  
6 in the beginning?

7 MS. BADA: There are several places, and I'll do  
8 a word search through all of the rules.

9 COMMISSIONER OLSON: Okay.

10 MS. BADA: And then once we get it drafted I'll  
11 send it out so you can all -- can look at it.

12 CHAIRMAN FESMIRE: Very thoroughly. Okay, I  
13 don't have any notes on 102. Does anybody else?

14 COMMISSIONER BAILEY: There were the questions on  
15 standards for denial. I don't think you can put standards  
16 in this kind of a rule.

17 CHAIRMAN FESMIRE: Not for what the comments  
18 were. Did you --

19 MS. BADA: Where are we at?

20 COMMISSIONER OLSON: Where are you at?

21 COMMISSIONER BAILEY: Paragraph C and D for Rule  
22 102, there were questions on what were the standards for  
23 denial.

24 MS. BADA: You can put things in that you would  
25 consider. And things you could consider is how many wells

1 they're over, how long they've been out of compliance, you  
2 know, whether they have any outs- -- you know, orders they  
3 aren't complying with.

4 COMMISSIONER OLSON: Isn't that what 37 does?

5 MS. BADA: It does, but it doesn't say how long.

6 CHAIRMAN FESMIRE: And remember, 37 --

7 MS. BADA: You know, if they only have two wells  
8 over, that may not mean anything. If they have 50, you may  
9 care more.

10 CHAIRMAN FESMIRE: Right.

11 MS. BADA: And that at least gives you some basis  
12 for what to consider.

13 CHAIRMAN FESMIRE: The Division may not approve a  
14 -- may not -- That sounds almost mandatory in the negative.

15 MS. BADA: Yeah

16 CHAIRMAN FESMIRE: The Division may approve a  
17 permit to drill, deepen or plug back. Why do we need "not"  
18 in there.

19 COMMISSIONER OLSON: You might say "may deny" --

20 MS. BADA: Yeah, "may deny" --

21 COMMISSIONER OLSON: -- instead of --

22 MS. BADA: -- the permit, that's really what you  
23 -- it's not in compliance with.

24 CHAIRMAN FESMIRE: A permit to drill, deepen or  
25 plug back if the Applicant is not in good standing pursuant

1 to --

2 COMMISSIONER OLSON: Is not compliant.

3 (Laughter)

4 CHAIRMAN FESMIRE: That was a global change.

5 MS. BADA: Uh-huh. And then you could just put  
6 briefly, in deciding whether to deny or approve a permit,  
7 that, you know, it was not compliant with that rule.  
8 Several factors they can consider. That's really what  
9 they're looking --

10 CHAIRMAN FESMIRE: Factors considered may  
11 include, but shall not be limited to, the number of wells  
12 out of compliance -- or the number of wells that are not  
13 compliant with Rule 37, the length of time those rules have  
14 been out, operators' efforts to bring their wells into  
15 compliance --

16 MS. BADA: Uh-huh.

17 CHAIRMAN FESMIRE: -- and I think that's enough  
18 for the time being.

19 MS. BADA: But then that gives them something to  
20 say, Okay, there's some guidance out there to look at when  
21 you're making that decision, and that's really what they're  
22 really saying that's lacking.

23 CHAIRMAN FESMIRE: So we're okay with 102 with  
24 those changes.

25 COMMISSIONER OLSON: Let me see what those were

1 again, because -- Well, I was not sure why you needed to  
2 put the number of wells and stuff, it's already --

3 CHAIRMAN FESMIRE: This is just --

4 MS. BADA: It's just factors to consider, okay,  
5 because this is permissive.

6 COMMISSIONER OLSON: Right.

7 MS. BADA: So if you're going to choose to deny  
8 it, what are you going to look at when you make that  
9 decision?

10 So that two wells over 50, they've been out of  
11 compliance for a month, you know, a month over the 15, or  
12 they've been out of compliance for five years past the 15  
13 months, you know, or what are they -- are they actually  
14 trying to do something about it, or you just haven't heard  
15 from them? Those are the type of things you can look at  
16 when you're making this permissive decision, because it's  
17 not a shall.

18 If it was a shall deny, you wouldn't have any --  
19 but people won't like not having some basis for what you're  
20 going to consider in making that permissive decision.

21 COMMISSIONER BAILEY: I think the assurance that  
22 it's not going to be just be capricious --

23 MS. BADA: Yeah.

24 COMMISSIONER BAILEY: -- according to who's  
25 looking in it that day.

1 MS. BADA: Yeah, one day there -- you know,  
2 somebody has five wells above the limit and you say no, and  
3 somebody has 200 and you say yes. Well, how do you --

4 COMMISSIONER OLSON: See, I was looking at it  
5 like if you're over, it didn't -- wouldn't really matter,  
6 because that's the way it was written before, if you're  
7 over, you're over, and then they may deny it, you know.

8 But that's -- You're right, it doesn't say that  
9 they have to either.

10 MS. BADA: You know, the only way it would be is  
11 if it said shall, and there's just no leeway, you just do  
12 it.

13 COMMISSIONER OLSON: Right.

14 MS. BADA: But if you're going to make it may,  
15 you really ought to give --

16 COMMISSIONER OLSON: -- some guidance.

17 MS. BADA: Yeah. And if you want, the other  
18 thing to do is, you can say who can make this decision.

19 COMMISSIONER OLSON: I think -- would that be the  
20 Director or --

21 MS. BADA: Yeah, you could make it the -- or you  
22 could make it the compliance officer, or you can leave it  
23 to all your district supervisors. But if you're worried  
24 about them applying it differently, you can make it one  
25 person.

1 CHAIRMAN FESMIRE: Why don't we make it this  
2 decision shall be made by the Division Enforcement and  
3 Compliance Manager or the Director --

4 MS. BADA: Okay.

5 CHAIRMAN FESMIRE: -- or their designees.

6 COMMISSIONER OLSON: Well, you said the Director,  
7 because you could designate that to somebody.

8 CHAIRMAN FESMIRE: The Director or his designee  
9 then.

10 MS. BADA: Okay.

11 CHAIRMAN FESMIRE: Does that provide them any --

12 MS. BADA: We can do that.

13 CHAIRMAN FESMIRE: Okay. 1101, I don't have any  
14 notes on it either.

15 COMMISSIONER BAILEY: My only notes were, again,  
16 standards denying APD.

17 MS. BADA: We could do the same thing that we did  
18 in the previous rule.

19 CHAIRMAN FESMIRE: Since the C-101 is  
20 referenced --

21 COMMISSIONER OLSON: Yeah, I don't know if you  
22 need it in here, I don't see where it's -- denials.

23 COMMISSIONER BAILEY: Yeah.

24 COMMISSIONER OLSON: It's as if they deny it --

25 COMMISSIONER BAILEY: It's taken care of there.

1 COMMISSIONER OLSON: It just says what you'll do.

2 CHAIRMAN FESMIRE: Okay, 701. I do have -- Do we  
3 need a definition of tract in 701 or somewhere?

4 MS. BADA: That was the one that you were talking  
5 about -- Let's see, is that the one?

6 COMMISSIONER OLSON: Will Jones talked about a  
7 change in --

8 MS. BADA: Yeah.

9 CHAIRMAN FESMIRE: Yeah.

10 COMMISSIONER OLSON: -- B(2).

11 CHAIRMAN FESMIRE: And I think I've got that.

12 MS. BADA: And I -- if you will provide that --  
13 well, if you guys are all in agreement with what he  
14 suggested and will provide it to me --

15 CHAIRMAN FESMIRE: Didn't -- Isn't that part of  
16 what was --

17 MS. BADA: Did Gail give this to you? This was  
18 the stuff you had requested from Wayne.

19 CHAIRMAN FESMIRE: Yeah, those --

20 MS. BADA: He wasn't sure if she had provided it.

21 CHAIRMAN FESMIRE: This is -- when we get to

22 203 --

23 MS. BADA: That's the mechanical integrity.

24 CHAIRMAN FESMIRE: Right. But Will had provided  
25 some -- was going to provide some wording substantially to

1 say in B(2) --

2 MS. BADA: Right --

3 CHAIRMAN FESMIRE: -- the third line --

4 MS. BADA: -- what he was going to say, to each  
5 leasehold operator or other affected person, period, and  
6 then define affected person in this rule so that you don't  
7 have --

8 CHAIRMAN FESMIRE: Right, and Will was going to  
9 provide that language.

10 MS. BADA: I don't know that he --

11 COMMISSIONER OLSON: I don't know that did.

12 MS. BADA: I think he thought he had, because  
13 they were sitting there talking about it. Anyway, get that  
14 written down.

15 CHAIRMAN FESMIRE: Okay.

16 COMMISSIONER OLSON: Well, I just had here, he  
17 had just -- the part he added after affected person, I  
18 don't if that's where it finally ended up.

19 MS. BADA: Right.

20 COMMISSIONER OLSON: He said after person it said  
21 in any tract wholly --

22 MS. BADA: -- wholly --

23 COMMISSIONER OLSON: -- or partially --

24 MS. BADA: -- or partially contained --

25 COMMISSIONER OLSON: -- contained --

1 MS. BADA: -- right.

2 CHAIRMAN FESMIRE: -- within one half mile.

3 COMMISSIONER OLSON: -- within one half mile --

4 MS. BADA: Yeah.

5 COMMISSIONER OLSON: -- of the well, right --

6 MS. BADA: Okay.

7 COMMISSIONER OLSON: -- as defined in

8 subparagraph A.

9 COMMISSIONER BAILEY: No, because the -- that  
10 reference was bad, because that reference talked about --

11 CHAIRMAN FESMIRE: Right.

12 COMMISSIONER BAILEY: -- adjoining spacing  
13 units --

14 COMMISSIONER OLSON: I know.

15 COMMISSIONER BAILEY: -- that was the --

16 MS. BADA: Let me try wholly or --

17 CHAIRMAN FESMIRE: That's what he was going to  
18 try to -- to change.

19 MS. BADA: I think we can probably do that.

20 CHAIRMAN FESMIRE: Okay.

21 MS. BADA: Wholly or partially --

22 COMMISSIONER BAILEY: I had some comments --

23 COMMISSIONER OLSON: And then this right here --

24 COMMISSIONER BAILEY: -- that they could never  
25 come out on the record --

1 COMMISSIONER OLSON: -- within half a mile, comes  
2 up after that.

3 COMMISSIONER BAILEY: -- like this --

4 MS. BADA: Yeah.

5 COMMISSIONER BAILEY: -- rule appears to allow --

6 MS. BADA: One half mile of --

7 COMMISSIONER BAILEY: -- disposal of drilling  
8 wastes into salt caverns without --

9 COMMISSIONER OLSON: -- of the well --

10 MS. BADA: Okay.

11 COMMISSIONER BAILEY: -- hearing --

12 MS. BADA: And then he was going to say -- then  
13 we were going to define affected person right after that.

14 COMMISSIONER BAILEY: -- and I wanted to somehow  
15 make sure that that couldn't happen, because under C(1), if  
16 the application is for administrative approval rather than  
17 for a hearing, details required in Form C-108, and I could  
18 never find Form C-108 to see if that would negate this kind  
19 of an application.

20 MS. BADA: Well, I think the problem is, your  
21 forms are not adopted by rule, so you should really put  
22 what you want in the rule --

23 COMMISSIONER BAILEY: Uh-huh.

24 MS. BADA: -- and say it shall be included in the  
25 form. You should not refer to something that's not a rule.

1           COMMISSIONER BAILEY: I agree with you. But I'm  
2 really concerned about the provisions for drilling disposal  
3 wastes in salt caverns, because that was a big issue  
4 several years back.

5           CHAIRMAN FESMIRE: Well, I don't think it -- it  
6 may, but I don't think it would because of a -- I mean,  
7 because of a difference that we're making here. It may be  
8 something we need to address here while we've got this --

9           (Ms. Bada left the room.)

10          COMMISSIONER BAILEY: Yeah, because it says or  
11 any other medium into any reservoir --

12          CHAIRMAN FESMIRE: Uh-huh.

13          COMMISSIONER BAILEY: -- which opens the door for  
14 that kind of disposal.

15          CHAIRMAN FESMIRE: Air, water any other medium  
16 into any reservoir. See, that's the old part of the Rule.

17          COMMISSIONER OLSON: Would you say that again,  
18 Jami, what you're seeing is the problem in there? I'm not  
19 sure I'm following --

20          COMMISSIONER BAILEY: That this rule appears to  
21 allow the disposal of drilling wastes into salt caverns --

22          COMMISSIONER OLSON: Uh-huh.

23          COMMISSIONER BAILEY: -- by administrative  
24 approval --

25          COMMISSIONER OLSON: Uh-huh.

1 COMMISSIONER BAILEY: -- rather than being  
2 required to go to hearing.

3 COMMISSIONER OLSON: I see.

4 CHAIRMAN FESMIRE: We've got to be careful with  
5 this one, because this could affect our UIC program.

6 COMMISSIONER BAILEY: Uh-huh.

7 COMMISSIONER OLSON: Uh-huh.

8 CHAIRMAN FESMIRE: Okay, the injection of gas,  
9 liquefied petroleum gas -- a permit for the injection of  
10 gas -- permit for injection required, the injection of gas,  
11 liquefied petroleum gas, air, water or any other medium  
12 into any reservoir for the purpose of maintaining reservoir  
13 pressure or for the purpose of secondary or other enhanced  
14 recovery or for the storage or the injection into the  
15 formation for the purpose of water disposal shall be  
16 permitted only by order of the Division after notice and  
17 hearing unless otherwise provided herein.

18 COMMISSIONER OLSON: So it doesn't seem like  
19 waste would fall into one of those categories, as --

20 COMMISSIONER BAILEY: No, it's water, could be  
21 water.

22 COMMISSIONER OLSON: Yeah, but it --

23 COMMISSIONER BAILEY: It's going to be fluid  
24 enough to go into --

25 COMMISSIONER OLSON: Right, but then it's -- it's

1 for the -- it's a certain purpose --

2 COMMISSIONER BAILEY: Uh-huh.

3 COMMISSIONER OLSON: -- isn't it? Well, but  
4 it's, Or for the purpose --

5 COMMISSIONER BAILEY: Yeah.

6 COMMISSIONER OLSON: Yeah, I got you. Okay.

7 CHAIRMAN FESMIRE: Florene, do we have this room  
8 Monday, or is there --

9 MS. DAVIDSON: I don't know, I can go upstairs  
10 and check.

11 CHAIRMAN FESMIRE: Okay. I guess you can't check  
12 my calendar either, can you?

13 MS. DAVIDSON: Yeah, I can check it. I can't do  
14 anything to it, but I can check it.

15 CHAIRMAN FESMIRE: Yeah, see if I've got --

16 (Ms. Bada re-entered the room.)

17 CHAIRMAN FESMIRE: -- for Monday.

18 MS. DAVIDSON: Okay.

19 CHAIRMAN FESMIRE: Cheryl, do you see the  
20 problem?

21 (Ms. Davidson left the room.)

22 MS. BADA: No, but I'm not technical enough to  
23 know, so explain it to me.

24 COMMISSIONER BAILEY: Several years ago, there  
25 was a big push by a Texas company wanting to inject

1 drilling wastes into salt caverns.

2 MS. BADA: Okay.

3 COMMISSIONER BAILEY: There is no prohibition of  
4 administrative approval of that kind of an application.

5 MS. BADA: What I would suggest, since we haven't  
6 proposed that, is that the Division do a rule specifically,  
7 just one line, to actually do that, if that's a concern.  
8 But there's no testimony on the --

9 COMMISSIONER OLSON: There's no testimony, no.

10 MS. BADA: -- and it wasn't noticed --

11 CHAIRMAN FESMIRE: Wasn't noticed.

12 COMMISSIONER OLSON: Uh-huh.

13 MS. BADA: -- so I think it would be a good idea,  
14 do a rule to do that.

15 CHAIRMAN FESMIRE: Okay, at some point in the  
16 future. Okay. Does that satisfy --

17 COMMISSIONER BAILEY: As long as it's taken care  
18 of in the future.

19 MS. BADA: And it shouldn't take much. I mean,  
20 it's a one-line prohibition, so...

21 CHAIRMAN FESMIRE: So are there any other  
22 comments on that rather extensive Rule 701?

23 We're going to go ahead and address Will's  
24 concerns with the addition of the phrase, in any tract  
25 wholly or partially contained within one half mile for a --

1 COMMISSIONER BAILEY: Oh, okay, there was no  
2 testimony on Section H, it's just language change?

3 MS. BADA: Yeah, there's nothing substantive  
4 that's changed in that. It's just all formatting. I'll  
5 make myself a note here on the rule to prohibit injection  
6 of...

7 CHAIRMAN FESMIRE: Okay --

8 COMMISSIONER OLSON: Administrative objection.

9 CHAIRMAN FESMIRE: -- what about Rule 1104?

10 MS. BADA: -- administrative.

11 COMMISSIONER OLSON: -- or approval of injection.

12 COMMISSIONER BAILEY: I have no notes.

13 CHAIRMAN FESMIRE: I have no notes on 1104  
14 either.

15 Bill?

16 MS. BADA: Let me look at that.

17 COMMISSIONER OLSON: 1104, no.

18 CHAIRMAN FESMIRE: Okay, so we'll go to 1115. I  
19 have, Jami has question.

20 COMMISSIONER BAILEY: Not --

21 CHAIRMAN FESMIRE: Oh, I'm sorry, not 1115, 100.

22 COMMISSIONER BAILEY: Okay, there was going to be  
23 language inserted for A(3) -- no, A -- B, B(1), the  
24 applicant is not currently in good standing --

25 CHAIRMAN FESMIRE: Currently compliant with --

1 COMMISSIONER BAILEY: Yeah.

2 CHAIRMAN FESMIRE: -- Rule X?

3 COMMISSIONER BAILEY: Yeah.

4 MS. BADA: Did we do 1104 already?

5 CHAIRMAN FESMIRE: Yeah.

6 MS. BADA: Okay.

7 COMMISSIONER BAILEY: And its title would be, the  
8 Division may deny registration if -- as a well operator.

9 COMMISSIONER OLSON: -- as a well operator,  
10 yes --

11 COMMISSIONER BAILEY: Yes, okay.

12 COMMISSIONER OLSON: -- that was a --

13 COMMISSIONER BAILEY: -- a rule -- yeah.

14 MS. BADA: Okay, and then you wanted to do the 25  
15 percent?

16 CHAIRMAN FESMIRE: Yes.

17 MS. BADA: Okay.

18 CHAIRMAN FESMIRE: That's the other place that I  
19 was looking for.

20 COMMISSIONER OLSON: Is that -- and it would read  
21 that if -- number 1 would be, the applicant is not  
22 compliant with --

23 MS. BADA: Yeah.

24 COMMISSIONER OLSON: -- rule whatever, 37 or  
25 whatever it is.

1           CHAIRMAN FESMIRE: Do you all -- This five  
2 percent is going to come up in the solid -- in the solid  
3 waste management rules too. We're going to -- it's in  
4 there currently at five percent, a similar provision. So  
5 remember when that comes to us in that airplane analogy  
6 that Bill was using.

7           COMMISSIONER BAILEY: Yeah, it hasn't been --

8           MS. BADA: Mark, is there a way for someone to  
9 check with PRC and Secretary of State, are they actually on  
10 record, or is it just an SEC filing for your offset  
11 ownership interest.

12          CHAIRMAN FESMIRE: No.

13          MS. BADA: It would be really nice to know what  
14 we could actually access.

15          CHAIRMAN FESMIRE: Partners have to register at  
16 the Secretary of State, and the PRC has the record on  
17 corporations. Or maybe vice-versa, I forget which is  
18 which. But it is public information available if it's  
19 public corporation.

20          MS. BADA: Okay.

21          COMMISSIONER OLSON: But not interest owners.

22          CHAIRMAN FESMIRE: I guess they don't -- well --

23          MS. BADA: -- I was going to check --

24          CHAIRMAN FESMIRE: -- that don't look good.

25          (Ms. Davidson re-entered the room.)

1 MS. BADA: -- for that rule.

2 MS. DAVIDSON: Porter Hall is available, and your  
3 calendar is free.

4 CHAIRMAN FESMIRE: All right, if we need it.

5 Okay, so you were saying -- ? I'm sorry.

6 MS. BADA: I said just when you do that rule you  
7 might direct whoever's drafting the rule to go check that  
8 out before it gets filed.

9 CHAIRMAN FESMIRE: Okay.

10 COMMISSIONER OLSON: Well, the other thing with  
11 the other rule is, there might be a reason why that rule  
12 needs more scrutiny than others in terms of the interest  
13 owners' --

14 CHAIRMAN FESMIRE: Yeah.

15 COMMISSIONER OLSON: -- it's a potential to --

16 CHAIRMAN FESMIRE: Okay, Rule 1115, finally.

17 MS. BADA: Let me circle that.

18 COMMISSIONER OLSON: Oh, I think I had a typo  
19 here on 100, on the -- it looks like under F(2).

20 MS. BADA: Okay, all right.

21 COMMISSIONER OLSON: I think it should be an  
22 operator shall apply, instead of an operator applies. It's  
23 consistent with all the other language that was in here.

24 MS. BADA: Okay. Shall apply.

25 CHAIRMAN FESMIRE: Okay, now 1115?

1 MS. BADA: Yeah, okay.

2 CHAIRMAN FESMIRE: Okay, I don't have any notes.  
3 Do you have anything?

4 COMMISSIONER BAILEY: No, just something of  
5 interest.

6 CHAIRMAN FESMIRE: Okay, so Rule 101. I have,  
7 Bill 01, question mark, and automatic lease on B. Does  
8 anybody know what I was trying to say?

9 COMMISSIONER BAILEY: Well, we've figured out the  
10 automatic list by saying that all financial assurances go  
11 on the website.

12 CHAIRMAN FESMIRE: Okay.

13 COMMISSIONER BAILEY: And then we do not delete  
14 language privately owned or state owned --

15 CHAIRMAN FESMIRE: Right.

16 COMMISSIONER BAILEY: -- up at the top.

17 CHAIRMAN FESMIRE: This -- okay, okay.

18 COMMISSIONER OLSON: Uh-huh.

19 CHAIRMAN FESMIRE: Okay, this is where we're  
20 going back to the exclusion of federal bonding. I mean  
21 bonding on -- renting to the state on federal lands.

22 Anything else on that page?

23 COMMISSIONER OLSON: Yes, looking at just in that  
24 first paragraph of A, I noticed this in a series of other  
25 spots too, farther back, but it talks about -- because I

1 think the intent of what the Division was talking about was  
2 also the site remediation, and I guess at the end of that  
3 paragraph A where it talks about conditioned that the well  
4 be plugged and abandoned and the site restored or  
5 remediated, that language is used in some other spots, but  
6 it doesn't appear at all places; sometimes it just says  
7 plugged and abandoned.

8 CHAIRMAN FESMIRE: And the site restored or  
9 remediated.

10 MS. BADA: Which word do you want to use,  
11 restored or remediated?

12 COMMISSIONER OLSON: They use both, because they  
13 said here restoring and remediating the well site. That's  
14 what it -- it was --

15 MS. BADA: Do you want to use both?

16 COMMISSIONER OLSON: I'd just use both, I guess,  
17 because that -- to be consistent with what the Division had  
18 already approved.

19 MS. BADA: Do you want me to do a word search  
20 through the rules and --

21 COMMISSIONER OLSON: I can -- yeah, you can -- I  
22 can point out a couple spots I show --

23 MS. BADA: Okay.

24 COMMISSIONER OLSON: -- I found them. The other  
25 ones I found were on the on the next page on G --

1 MS. BADA: Okay.

2 COMMISSIONER OLSON: -- and G(1) --

3 MS. BADA: Okay.

4 COMMISSIONER OLSON: -- in the third line, after  
5 abandoned.

6 MS. BADA: Okay.

7 COMMISSIONER OLSON: Oh no, other G.

8 MS. BADA: Oh, through G.

9 COMMISSIONER OLSON: Through G, uh-huh, right  
10 there after abandoned.

11 MS. BADA: Okay.

12 COMMISSIONER BAILEY: And while you're there on  
13 that G, that may --

14 MS. BADA: Are you going to --

15 COMMISSIONER BAILEY: -- get changed to shall.

16 COMMISSIONER OLSON: Should be a shall too.

17 MS. BADA: Okay.

18 COMMISSIONER OLSON: I think that was OCD  
19 testimony.

20 CHAIRMAN FESMIRE: Yeah, and F has the -- F(1)  
21 has the same -- new F(1) has the same problem. The  
22 Division may accept irrevocable letters -- it shall -- it  
23 says. Maybe the Division shall...

24 MS. BADA: Uh --

25 CHAIRMAN FESMIRE: Okay.

1 COMMISSIONER OLSON: Wouldn't that be a may?

2 CHAIRMAN FESMIRE: Yeah.

3 MS. BADA: That's a -- probably a may, because  
4 you may not like the --

5 COMMISSIONER OLSON: You may not like what  
6 they --

7 CHAIRMAN FESMIRE: Okay, it looks like I caught  
8 the wrong thing on the testimony.

9 Okay, anything else?

10 COMMISSIONER OLSON: Yeah, then again there's a  
11 couple more of those on -- in -- is that H(1)?

12 MS. BADA: Yeah, it should be plugged and  
13 abandoned and the site --

14 COMMISSIONER OLSON: Yeah, and eight -- there's a  
15 whole series of them in there.

16 MS. BADA: Okay, I'll --

17 COMMISSIONER OLSON: There's like one, two,  
18 three, four -- I see like four of them, it looks like.

19 MS. BADA: Okay, all right.

20 COMMISSIONER OLSON: And -- maybe five, it looks  
21 like, five of them I see.

22 MS. BADA: Okay, I'll circle that.

23 COMMISSIONER OLSON: I saw one --

24 MS. BADA: Plugging.

25 COMMISSIONER OLSON: -- right there --

1 MS. BADA: Do we want to say plugging and --

2 COMMISSIONER OLSON: -- there's another one  
3 there.

4 MS. BADA: -- abandon, or do we just want to say  
5 plugged?

6 COMMISSIONER OLSON: They use plug and abandon in  
7 that --

8 MS. BADA: Yeah, so -- Okay.

9 COMMISSIONER OLSON: There's one up here too,  
10 right there --

11 MS. BADA: Okay, all right.

12 COMMISSIONER OLSON: -- after abandoned.

13 MS. BADA: Okay. There's several, we'll make  
14 sure we use --

15 COMMISSIONER OLSON: Yeah, there's --

16 MS. BADA: -- the same word throughout.

17 COMMISSIONER OLSON: -- about five of them in  
18 through there.

19 MS. BADA: Okay.

20 COMMISSIONER OLSON: Sometime it was restore, I  
21 think other ones it was --

22 MS. BADA: -- plugged and abandoned --

23 COMMISSIONER OLSON: -- restored, it was in past  
24 tense.

25 MS. BADA: Okay --

1 COMMISSIONER OLSON: Sometimes it's --

2 MS. BADA: -- I will check.

3 COMMISSIONER OLSON: All right.

4 MS. BADA: Okay.

5 COMMISSIONER OLSON: That was all I had.

6 CHAIRMAN FESMIRE: Okay. Rule 7(T), as in tango.

7 I was -- I think Gail's wording on the -- and reasoning  
8 behind the differentiating between temporary abandonment  
9 and approved temporary abandonment status was pretty valid  
10 to me. I realize that industry did not like it.

11 MS. BADA: But the statute is what the statute  
12 is.

13 CHAIRMAN FESMIRE: Yeah.

14 MS. BADA: Uh-huh.

15 CHAIRMAN FESMIRE: So I don't see any problem  
16 with 7(T) -- 7(T)(2). And 7(A) is, you know, the other  
17 half of that problem.

18 COMMISSIONER OLSON: Uh-huh.

19 CHAIRMAN FESMIRE: Which brings us to Rule 203,  
20 which is the one that we have the problem with the --

21 COMMISSIONER BAILEY: -- external MITs.

22 CHAIRMAN FESMIRE: Yeah mechanical integrity  
23 tests.

24 COMMISSIONER OLSON: Right, with all annuluses --  
25 with annuluses, not just the --

1 CHAIRMAN FESMIRE: Right.

2 COMMISSIONER OLSON: -- internal.

3 CHAIRMAN FESMIRE: And I think we've got some  
4 proposed language in there.

5 COMMISSIONER OLSON: Was that admitted as  
6 evidence, then, or what?

7 CHAIRMAN FESMIRE: No, but we can --

8 COMMISSIONER OLSON: Okay.

9 CHAIRMAN FESMIRE: -- we can examine -- I mean,  
10 there was evidence that they would present...

11 Okay, starting with B(2), the Division shall not  
12 approve temporary abandonment until the operator furnishes  
13 evidence demonstrating that such well's casing and  
14 cementing programs are mechanically sound and in such  
15 condition as to prevent (a), (b), (c) and (d).

16 And the change appears to have been casing and  
17 cementing programs, casing and cementing programs, are  
18 mechanically sound and in such condition as to prevent...

19 So here's -- here is where we start talking about  
20 the cement bond logs, the casing and cementing programs are  
21 mechanically sound in such condition as to prevent -- and  
22 the same (a), (b), (c) and (d). So that part is the  
23 addition of the cementing program --

24 MS. BADA: Okay, can I stop you and ask you why  
25 you feel you can consider that. Given it's a change that

1 wasn't noticed in the requirement -- you know, the basic  
2 rules, it has to be a logical outgrowth of what was  
3 proposed, so I need to have you explain why you believe  
4 that to be the case.

5 CHAIRMAN FESMIRE: The inspection of the casing  
6 and the integrity of the seal against external migration of  
7 fluids is a logical outgrowth of the requirement that the  
8 casing be sound and have -- and the casing system have  
9 enough integrity to prevent the migration of fluids between  
10 formations.

11 It is -- I mean, it is a natural part of the same  
12 system. When we're talking about the casing and cementing  
13 program, they're always spoken of together, because they're  
14 always a similar -- I mean, they are always a system  
15 designed to prevent the migration of fluids between  
16 formations.

17 COMMISSIONER BAILEY: And I think the testimony  
18 from both Wayne and Jack showed their concerns, and my  
19 direct questions of what can we do, what do we have for  
20 that external soundness of -- and prevention of channels?

21 COMMISSIONER OLSON: And not just the casing?

22 COMMISSIONER BAILEY: Right.

23 COMMISSIONER OLSON: Uh-huh.

24 MS. BADA: Okay. All right, I'll let you go on.

25 CHAIRMAN FESMIRE: Okay.

1 COMMISSIONER BAILEY: That's why I gave Wayne  
2 such a hard time --

3 (Laughter)

4 COMMISSIONER BAILEY: -- right on the record.

5 CHAIRMAN FESMIRE: Okay, the next one is (3), the  
6 addition of (3) right under (d). The operator shall  
7 demonstrate both internal and external mechanical integrity  
8 pursuant to Paragraphs (1) and (2), of Subsection C of  
9 19.15.4.203 NMAC. 19.15.4.203 NMAC, subsection (c),  
10 methods of demonstrating mechanical integrity.

11 COMMISSIONER BAILEY: Okay.

12 CHAIRMAN FESMIRE: And for the same reasons as  
13 noted above, again, the casing and cementing program are  
14 part of a system designed to prevent the flow of fluids  
15 between strata and formations.

16 And C, demonstrating internal casing program  
17 integrity. Do we need "program" there? Demonstrating  
18 internal casing integrity.

19 COMMISSIONER OLSON: I don't think so.

20 CHAIRMAN FESMIRE: And then again, that was part  
21 of the original -- well, when they say casing integrity,  
22 we're simply differentiating between internal and external,  
23 which is all part of the phrase casing integrity, which  
24 was --

25 COMMISSIONER BAILEY: Uh-huh.

1 CHAIRMAN FESMIRE: -- what was noticed.

2 And then number (2), the Division may approve the  
3 following method of demonstrating external casing program  
4 integrity for wells to be placed on approved temporary  
5 abandonment status. The author -- The operator may use the  
6 results of the temperature or noise log or cement records  
7 verified by recent cement bond logs approved by the  
8 Division or other methods approved by EPA specified at 40  
9 CFR 146.8 for determination of conduits of fluid movement  
10 out of the injection zone.

11 (b), The operator may use other methods approved  
12 by the EPA as specified in 40 CFR 146.8 for determination  
13 of conduits of fluid movement out of the injection zone.

14 COMMISSIONER BAILEY: Question. When we look at  
15 that, aren't cement bond logs temperature based?

16 CHAIRMAN FESMIRE: Not all of them, no. A cement  
17 bond log is a sonic log -- well, the acoustic logs --

18 COMMISSIONER BAILEY: Yeah.

19 CHAIRMAN FESMIRE: -- and they ring the casing to  
20 see if it rings --

21 COMMISSIONER BAILEY: Okay.

22 CHAIRMAN FESMIRE: -- whereas if it's got a  
23 cement sheath it won't ring as freely --

24 COMMISSIONER BAILEY: Yeah.

25 CHAIRMAN FESMIRE: -- whereas if the cement is

1 not properly bonded, it rings.

2 COMMISSIONER BAILEY: Okay, the one I was  
3 familiar with was temperature-related.

4 CHAIRMAN FESMIRE: Yeah, but those are -- those  
5 cement logs are used when you first --

6 COMMISSIONER BAILEY: Uh-huh --

7 CHAIRMAN FESMIRE: -- set the casing --

8 COMMISSIONER BAILEY: -- which means that --

9 CHAIRMAN FESMIRE: -- and --

10 COMMISSIONER BAILEY: -- this was inappropriate  
11 for --

12 CHAIRMAN FESMIRE: Yeah.

13 COMMISSIONER BAILEY: -- something -- five years.

14 CHAIRMAN FESMIRE: The operator may use -- log or  
15 -- bond log approved by the Division -- (b). 2(a). First  
16 of all will be following methods demonstrating -- the  
17 operator may use other methods -- Okay, it's just giving  
18 you an alternative. If they've changed to 40 CFR you can  
19 have the alternative.

20 And finally under (5), C(5), the Division may  
21 approve or require other methods in order to demonstrate  
22 that the method will satisfy the requirements of Paragraph  
23 (2), Subsection B.

24 The Division may approve or require other --

25 COMMISSIONER BAILEY: -- tests --

1           CHAIRMAN FESMIRE:  -- tests and methods, in order  
2     to demonstrate that the test -- that the method will  
3     satisfy the requirements of Paragraph (2), Subsection B.  
4     Paragraph (2), Subsection B.

5           MS. BADA:  Let me look at and see if --

6           COMMISSIONER OLSON:  That's about as --

7           CHAIRMAN FESMIRE:  That doesn't address the  
8     question we had about the multiple annulus either.

9           COMMISSIONER OLSON:  Uh-huh.  I think that was  
10    Wayne's recommendation, that we have integrity testing of  
11    all annuluses.

12          CHAIRMAN FESMIRE:  Yes.

13          MS. BADA:  Because what we're trying to say here  
14    in (5) is that you can approve other methods if they can  
15    demonstrate that it will satisfy the requirements of --

16          COMMISSIONER OLSON:  Uh-huh.

17          MS. BADA:  -- paragraph (2).  Is that what we're  
18    intending?  Okay.  Why don't we say the Division may  
19    approve other methods --

20          COMMISSIONER OLSON:  -- that satisfy --

21          MS. BADA:  -- proposed by the operator --  
22    proposes --

23          CHAIRMAN FESMIRE:  Sonic log was what I was  
24    trying to --

25          MS. BADA:  -- if the operator --

1 CHAIRMAN FESMIRE: -- just some tools to --

2 COMMISSIONER BAILEY: Okay --

3 MS. BADA: -- demonstrates --

4 COMMISSIONER BAILEY: -- used out in the field  
5 was the --

6 MS. BADA: -- that the method will satisfy the  
7 requirements of -- is that -- That works.

8 COMMISSIONER BAILEY: But it also --

9 CHAIRMAN FESMIRE: Yeah, if they were pumping  
10 into -- yeah.

11 COMMISSIONER OLSON: I just want to see this,  
12 because I was having -- hard following that before. Let's  
13 see. Internal and external -- internal is here, external  
14 is here. Okay.

15 CHAIRMAN FESMIRE: But it doesn't say anything  
16 about the annulus.

17 COMMISSIONER OLSON: It doesn't say anything  
18 about other -- annulus itself.

19 CHAIRMAN FESMIRE: C(1), (2) --

20 MS. BADA: How would you test those?

21 CHAIRMAN FESMIRE: C(1) and C(2). C(1) --

22 COMMISSIONER OLSON: Well, that would be an  
23 internal casing integrity, right?

24 CHAIRMAN FESMIRE: Shall not approve -- Okay,  
25 approve temporary abandonment. Approve temporary

1 abandonment status. The Division may place any well in  
2 approved temporary abandonment status for a period of up to  
3 five years. Prior to the expiration of any approved  
4 temporary abandonment -- status, the operator shall return  
5 the well to beneficial use under a plan the Division  
6 approves, permanently plug and abandon said well or apply  
7 for a new approval to temporary -- temporarily abandon the  
8 well, okay.

9 Requests for approval and permit. Any operator  
10 seeking approval for temporary abandonment shall submit a  
11 Form C-103, sundry notices or reports on wells, a notice of  
12 intent to --

13 COMMISSIONER OLSON: -- seek.

14 CHAIRMAN FESMIRE: -- seek approved temporary  
15 abandonment status for the well describing the proposed  
16 temporary abandonment procedure to be used, okay, for the  
17 well. A notice -- and a notice -- Jesus. And a notice of  
18 intent to seek approved temporary abandonment status for  
19 the well describing the proposed temporary abandonment  
20 procedure to be used.

21 The operator shall not commence any work until  
22 approved by the Division. Until what is approved by the  
23 Division? Until --

24 COMMISSIONER OLSON: -- a proposed procedure --

25 CHAIRMAN FESMIRE: Seek. Any operator seeking

1 approval for temporary abandonment -- Is that temporary  
2 abandonment status?

3 COMMISSIONER OLSON: I don't think so.

4 CHAIRMAN FESMIRE: An operator seeking approval  
5 for --

6 MS. BADA: Let's look at --

7 CHAIRMAN FESMIRE: -- temporary abandonment --

8 MS. BADA: -- the definition. Hang on. No,  
9 because temporary abandonment shall be the status of a well  
10 that is inactive. So no, you wouldn't want to repeat that.

11 CHAIRMAN FESMIRE: Okay.

12 MS. BADA: You just want to say temporary  
13 abandonment.

14 CHAIRMAN FESMIRE: But do we need to say approved  
15 temporary abandonment?

16 MS. BADA: Yeah.

17 CHAIRMAN FESMIRE: -- temporary abandonment,  
18 shall submit on Form C-103, sundry notices and reports --  
19 shall submit --

20 MS. BADA: -- a notice of intent --

21 CHAIRMAN FESMIRE: -- shall submit --

22 COMMISSIONER OLSON: There's a comma there.

23 MS. BADA: Yeah, because sundry -- There's a  
24 comma right after 103, and then right after sundry notices  
25 and reports on wells, comma, a notice of intent.

1           CHAIRMAN FESMIRE: A notice of intent to  
2 temporarily -- to seek approved temporary abandonment  
3 status for the well described -- for the well, describing  
4 the proposed temporary abandonment procedure to be used.

5           MS. BADA: Actually probably don't want status,  
6 because temporary abandonment is defined to include -- to  
7 be a status.

8           COMMISSIONER OLSON: Uh-huh.

9           CHAIRMAN FESMIRE: Okay.

10          COMMISSIONER OLSON: So strike status there.

11          CHAIRMAN FESMIRE: Okay. Shall give 24 hours'  
12 notice to the appropriate district office of the Division  
13 before work actually begins. How about before beginning  
14 work?

15          MS. BADA: Okay.

16          CHAIRMAN FESMIRE: Okay. The Division shall not  
17 approve temporary abandonment status until the operator  
18 furnishes evidence demonstrating that such well's casing  
19 and cementing programs are mechanically sound and in such  
20 condition as to prevent -- casing and cementing programs --

21                 What would you put instead of cementing programs?  
22 Casing and cement? Shall demonstrate both internal and  
23 external --

24          MS. BADA: Could you say casing and cementing are  
25 mechanically sound?

1 COMMISSIONER OLSON: Yeah, that's what I'm -- so  
2 it would be, furnishes evidence demonstrating that the  
3 well's casing and cement is mechanically sound.

4 CHAIRMAN FESMIRE: -- and cement --

5 MS. BADA: -- mechanically sound, okay.

6 CHAIRMAN FESMIRE: -- and cement are mechanically  
7 sound.

8 COMMISSIONER OLSON: Does that sound right?

9 CHAIRMAN FESMIRE: Yeah.

10 COMMISSIONER BAILEY: Is cement mechanically  
11 sound --

12 CHAIRMAN FESMIRE: Yeah, well --

13 COMMISSIONER BAILEY: -- or physically sound?

14 COMMISSIONER OLSON: Mechanically and physically  
15 sound?

16 MS. BADA: Yeah.

17 CHAIRMAN FESMIRE: Okay.

18 MS. BADA: Yeah.

19 CHAIRMAN FESMIRE: Okay, the operator shall  
20 demonstrate both internal and external mechanical  
21 integrity, pursuant to paragraphs (1) and (2) --

22 MS. BADA: Where are we at now?

23 CHAIRMAN FESMIRE: Okay. Okay, okay, now it's  
24 beginning to make sense. We're in (3) in the --

25 COMMISSIONER OLSON: Uh-huh.

1 MS. BADA: Okay.

2 CHAIRMAN FESMIRE: -- the new provision.

3 MS. BADA: All right.

4 COMMISSIONER OLSON: New (3).

5 CHAIRMAN FESMIRE: Okay, the operator shall  
6 demonstrate internal and external mechanical integrity,  
7 pursuant to paragraphs (2) and (3). Okay.

8 The operator shall submit a --

9 COMMISSIONER OLSON: Do you want to just say of  
10 all strings?

11 CHAIRMAN FESMIRE: Yeah -- the Division may  
12 approve the following -- internal casing, mechanical  
13 integrity, wells to be placed -- the operator may set a  
14 cast-iron bridge plug within 100 feet of the -- fluid --  
15 surface pressure, with pressure drop of not more than 10  
16 percent -- over 30 minutes, instead of four -- and a  
17 retrievable bridge plug or packer to within 100 feet of the  
18 uppermost perforation or production casing shoe, test the  
19 well to 500 pounds per square inch, with a pressure drop of  
20 not greater than -- over 30 minutes again.

21 The Division may approve the following -- Okay.

22 COMMISSIONER OLSON: This doesn't address the --  
23 I don't know how you do that. Doesn't address the other  
24 annuluses.

25 CHAIRMAN FESMIRE: Uh-huh.

1 COMMISSIONER BAILEY: Isn't there standard  
2 language that the examiners use for injection approvals at  
3 a hearing? I mean, it seems to me that there are very  
4 standard paragraphs that they use for filling the annulus  
5 with inert fluid and pressure testing, blah, blah, blah.  
6 Can't that standard language be inserted, and we can direct  
7 the attorney to research that and --

8 CHAIRMAN FESMIRE: Right.

9 COMMISSIONER BAILEY: -- put it in for us?

10 CHAIRMAN FESMIRE: Well, what we want to do is to  
11 test all surface-accessible annuluses -- annuli?

12 COMMISSIONER BAILEY: Yeah.

13 MS. BADA: If you want to just meet Monday  
14 morning, and you'll know what you want to say by then.

15 CHAIRMAN FESMIRE: Do you want to come back for a  
16 short period of time Monday?

17 COMMISSIONER OLSON: I wouldn't -- I don't know  
18 what the standard language is, myself, so...

19 CHAIRMAN FESMIRE: We'll pull it --

20 COMMISSIONER BAILEY: Yeah.

21 CHAIRMAN FESMIRE: -- we'll make sure.

22 There are a few more -- Florene, is there  
23 anything else that we have to --

24 MS. DAVIDSON: There's two *de novo* cases that  
25 need to be continued.

1           CHAIRMAN FESMIRE: Okay, why don't we just  
2 continue the whole hearing until Monday, and we'll do  
3 that --

4           COMMISSIONER OLSON: Sure, uh-huh. We're almost  
5 done.

6           CHAIRMAN FESMIRE: Well, this -- we need to get  
7 this right.

8           COMMISSIONER BAILEY: We need to research that  
9 one.

10          COMMISSIONER OLSON: Okay.

11          CHAIRMAN FESMIRE: Yeah. So what do you say --  
12 What do you say. We're going to --

13          COMMISSIONER OLSON: Can we finish the remaining  
14 two and just leave that piece?

15          MS. BADA: There's nothing --

16          COMMISSIONER OLSON: I don't think we have  
17 anything --

18          MS. BADA: I'm looking to see if you have  
19 anything at 201 or 1103.

20          CHAIRMAN FESMIRE: So 203 [sic] is the --

21          COMMISSIONER OLSON: 201 first. I don't have  
22 anything on 201.

23          CHAIRMAN FESMIRE: I didn't have anything on 201  
24 either.

25          COMMISSIONER BAILEY: I don't either.

1 CHAIRMAN FESMIRE: And 1103, the same story.

2 COMMISSIONER BAILEY: Same story.

3 COMMISSIONER OLSON: I had one thing where -- the  
4 same thing again about --

5 MS. BADA: -- plugged and abandoned?

6 COMMISSIONER OLSON: Yeah, about after the -- no,  
7 but it's here after the -- in --

8 MS. BADA: Oh, I see.

9 COMMISSIONER OLSON: -- (2), A(2), it talks about  
10 the number of sacks of cement and depths of plugs --

11 MS. BADA: Okay, and you want --

12 COMMISSIONER OLSON: -- and the other thing would  
13 be restoration or remediation of the well site should be  
14 included as part of the report.

15 MS. BADA: Okay, right.

16 COMMISSIONER OLSON: Right, restoration and  
17 remediation of the --

18 MS. BADA: Okay, I have one question I need to --  
19 before we leave. We have a question about the reference to  
20 the form. Did we resolve that?

21 COMMISSIONER BAILEY: Is that the C-108?

22 MS. BADA: Yeah.

23 COMMISSIONER BAILEY: Yeah. The more I think  
24 about that, the more -- You can't have -- as Cheryl said,  
25 you can't have a rule depending on what the form says. The

1 form has to be dependent on the rule.

2 CHAIRMAN FESMIRE: Right.

3 COMMISSIONER BAILEY: I agree with that.

4 COMMISSIONER OLSON: Is that in -- Let's see.

5 MS. BADA: I can't remember which rule that was.

6 COMMISSIONER OLSON: It should be in 701, isn't  
7 it? For injection?

8 COMMISSIONER BAILEY: Yup, paragraph C.

9 MS. BADA: Why don't we get a copy of Form C-108  
10 and bring it for Monday, and then we can actually list what  
11 you want in the rule?

12 CHAIRMAN FESMIRE: Okay. So, madame Counsel --

13 MS. BADA: We need a copy of Form C-108, and then  
14 you wanted the requirements for --

15 CHAIRMAN FESMIRE: -- testing of external  
16 annuluses on injection wells.

17 MS. BADA: Okay. Is there a place it's already  
18 listed, like EPA rules or --

19 COMMISSIONER OLSON: It would be in a --

20 CHAIRMAN FESMIRE: It would be in the UIC rules.

21 MS. BADA: Okay.

22 CHAIRMAN FESMIRE: We'll check those. Okay.

23 MS. BADA: So those two things we --

24 CHAIRMAN FESMIRE: At this time we're going to  
25 adjourn for the evening and continue this case until Monday

1 morning at -- 8:30?

2 COMMISSIONER BAILEY: As early as you want. I  
3 get there at 7:00.

4 CHAIRMAN FESMIRE: What time do you start?

5 COMMISSIONER OLSON: Any time, I'm here. I'm  
6 here at about that time --

7 MS. BADA: Why don't we say --

8 COMMISSIONER OLSON: -- all week long.

9 MS. BADA: -- 8:30? That will give us time to --

10 CHAIRMAN FESMIRE: Right. We're going to  
11 continue Cause Number 13,564 until 8:30 Monday morning.  
12 Monday is the -- would you believe, I can't read -- the  
13 17th of October.

14 (Off the record at 6:17 p.m.)

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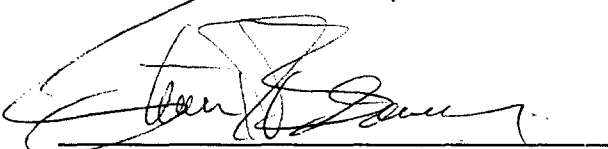
## CERTIFICATE OF REPORTER

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

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

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

WITNESS MY HAND AND SEAL October 27th, 2005.

  
STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 16th, 2006