

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

MAY 1

IN THE MATTER OF THE HEARING )  
CALLED BY THE OIL CONSERVATION )  
COMMISSION FOR THE PURPOSE OF )  
CONSIDERING: )  
HEARINGS CALLED BY THE OIL )  
CONSERVATION DIVISION )

CASE NOS. 11,143  
and 11,216  
(Consolidated)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN  
WILLIAM WEISS, COMMISSIONER  
JAMI BAILEY, COMMISSIONER

May 11th, 1995

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission on Thursday, May 11th, 1995, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, before Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

\* \* \*

STEVEN T. BRENNER, CCR  
(505) 989-9317

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 Commission Hearing  
 CASE NOS. 11,143 and 11,216 (Consolidated)

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## A P P E A R A N C E S

## FOR THE COMMISSION:

CAROL LEACH  
General Counsel  
Energy, Minerals and Natural Resources Department  
2040 South Pacheco  
Santa Fe, New Mexico 87505

## FOR THE OIL CONSERVATION DIVISION:

RAND L. CARROLL  
Attorney at Law  
Legal Counsel to the Division  
2040 South Pacheco  
Santa Fe, New Mexico 87505

FOR THE NEW MEXICO OIL AND GAS ASSOCIATION  
and BENSON-MONTIN-GREER:

KELLAHIN & KELLAHIN  
117 N. Guadalupe  
P.O. Box 2265  
Santa Fe, New Mexico 87504-2265  
By: W. THOMAS KELLAHIN

## ALSO PRESENT:

ROGER C. ANDERSON, NMOCD  
Chairman, Rule 711 Change Committee

EDMUND H. KENDRICK, Montgomery & Andrews, P.A.  
Member, Rule 711 Change Committee

RICHARD BRAKEY, Parabo, Inc.  
Member, Rule 711 Change Committee.

KENNETH R. MARSH, Controlled Recovery, Incorporated  
Member, Rule 711 Change Committee

ALBERT R. GREER, Benson-Montin-Greer

RUTH ANDREWS, New Mexico Oil and Gas Association

DENNY FOUST, Environmental Compliance District 3, NMOCD

\* \* \*

STEVEN T. BRENNER, CCR  
(505) 989-9317

1 WHEREUPON, the following proceedings were had at  
2 9:08 a.m.:

3 CHAIRMAN LEMAY: We shall now call Cases Number  
4 11,143, which has been called by the Oil Conservation  
5 Division to Amend Rule 711 of its General Rules and  
6 Regulations, and Case 11,216, which has been an Application  
7 of the Oil Conservation Division to amend Rule 711 by  
8 incorporating the existing Rule 312, and these two cases  
9 will be consolidated for the purpose of testimony.

10 And at this point I'd like to call for  
11 appearances in Cases 11,143 and 11,216.

12 MR. CARROLL: Rand Carroll on behalf of the New  
13 Mexico Oil Conservation Division.

14 CHAIRMAN LEMAY: Thank you, Mr. Carroll.

15 MR. KELLAHIN: Mr. Chairman, members of the  
16 Commission, I'm Tom Kellahin of the Santa Fe law firm of  
17 Kellahin and Kellahin, appearing today on behalf of the New  
18 Mexico Oil and Gas Association and Benson, Montin and  
19 Greer.

20 CHAIRMAN LEMAY: Thank you, Mr. Kellahin.

21 MR. ANDERSON: Mr. Chairman, Roger Anderson. I'm  
22 a member of the Oil Conservation Division and Chairman of  
23 the Rule 711 Change Committee.

24 CHAIRMAN LEMAY: Thank you, Mr. Anderson.

25 Mr. Kendrick?

1 MR. KENDRICK: Ned Kendrick with the Montgomery  
2 and Andrews firm, as a member of the Rule 711 Change  
3 Committee.

4 CHAIRMAN LEMAY: Thank you, Mr. Kendrick.  
5 Additional appearances in the case?

6 MR. BRAKEY: Richard Brakey from Eunice, New  
7 Mexico, representing Parabo. I'm a member of the Rules  
8 Change Committee.

9 CHAIRMAN LEMAY: Thank you, Mr. Brakey.  
10 Additional appearances?

11 Okay. Mr. Anderson, are you representing the Oil  
12 Conservation Division or the Committee or both?

13 MR. ANDERSON: Mr. Chairman, I'm going to present  
14 the Committee's findings and be a witness for the Division.

15 CHAIRMAN LEMAY: Through Mr. Carroll, I take it?

16 MR. ANDERSON: Through Mr. Carroll.

17 CHAIRMAN LEMAY: All right, thank you.

18 Any additional appearances?

19 Will those witnesses who will be giving testimony  
20 please stand and raise your right hand?

21 (Thereupon, the witnesses were sworn.)

22 CHAIRMAN LEMAY: Mr. Carroll, you may begin.

23 MR. CARROLL: Mr. Chairman with your permission I  
24 will defer to Mr. Anderson who will present the Committee's  
25 findings, since he was Chairman of the Committee and I

1 don't represent the Committee, per se.

2 CHAIRMAN LEMAY: I see. Well, that would be  
3 fine.

4 Mr. Anderson, you may --

5 MR. ANDERSON: Here?

6 CHAIRMAN LEMAY: Depends if you're a lawyer or an  
7 expert witness, I guess. Either place, wherever you're  
8 most comfortable.

9 MR. ANDERSON: This way they'll be able to see --

10 ROGER C. ANDERSON

11 (Testifying as Chairman, Rule 711 Change Committee),  
12 the witness herein, after having been first duly sworn upon  
13 his oath, was examined and testified as follows:

14 EXAMINATION

15 BY CHAIRMAN LEMAY:

16 Q. Okay. Well, let me ask the initial questions if  
17 there's not a lawyer to give you the introduction.

18 I understand you are an engineer employed by the  
19 Oil Conservation Division and have been selected to be  
20 Chairman of the 711 Rules Committee.

21 A. Yes, sir.

22 Q. And what you're doing before us today is  
23 presenting the findings of the Committee?

24 A. That's correct, sir.

25 Q. And I think -- Are your qualifications a matter

1 of record?

2 A. Yes, sir, they are.

3 Q. Well, then, they're acceptable. You may begin.

4 A. Okay. As a background to the Committee  
5 formation, the Oil Conservation Commission hearing of  
6 11-17-94 required the Oil Conservation Division to create a  
7 Committee to investigate the rule changes that the Division  
8 had requested.

9 The Division named a Committee of ten people on  
10 December 2nd, 1994. That Committee was made up of:

11 Myself as Chairman.

12 There were three operators representing disposal  
13 facilities: Richard Brakey of Parabo, Phil Nobis of Tierra  
14 Environmental Corporation, and Ken Marsh of Controlled  
15 Recovery.

16 There were four industry representatives, what we  
17 termed industry representatives, was Raye Miller of Marbob  
18 Energy, Ned Kendrick representing, I believe, NMOGA for  
19 Montgomery and Andrews, Buddy Shaw from Amoco Production,  
20 and Frank Yates, Jr., from Yates Petroleum.

21 There was an environmental representative, Chris  
22 Shuey, from Southwest Research and Information Center.

23 And one member of the public that was added  
24 approximately a week after the initial Committee was  
25 formed, and that was Erlinda Miller from Blanco, New

1 Mexico. She is a resident that lives approximately half a  
2 mile away from one of our disposal facilities.

3 The Committee met four times to consider -- the  
4 first time was to consider the Oil Conservation Division's  
5 draft, and that was on January 20th, 1995. We met for  
6 approximately all day.

7 We met three times subsequent to that meeting,  
8 and each time there were new drafts that were discussed and  
9 new changes to -- made to those drafts. They met on  
10 February 3rd, 1995, in Artesia; February 17th, 1995, in  
11 Farmington; and March 3rd, 1995, in Santa Fe.

12 The conduct -- The procedures followed by the  
13 Committee is, we went over each item in the new proposed  
14 rule, in the draft proposed rule. Everybody at the table  
15 was -- presented their viewpoints of each item in the rule.  
16 And if there was some discrepancy between what was being  
17 proposed and what the members of the Committee wanted,  
18 there was a vote taken. Whatever the majority voted to  
19 have in the rule was put in the rule. Basically, it was a  
20 majority-rule Committee. And that is the final draft that  
21 has come out today, is what the majority wanted.

22 All members of the Committee were informed that  
23 it would be appreciated if they would come to the  
24 Commission, offer testimony on any minority positions that  
25 they had.

1           There was not a minority report written, because  
2 the differences of opinion on -- varied so much within the  
3 items that I don't think we could get a minority report on  
4 any specific item.

5           So we do have comments from the Committee members  
6 of what they disagree with in the draft order, in the draft  
7 rule, and we will be bringing those to the attention of the  
8 Commission at a later date.

9           Okay, that is the position of the Committee.

10          Now, before you I've passed out a packet of  
11 items, and in that packet you have there's a copy of old  
12 Rule 312 and old Rule 711.

13          You have also a new proposed rule, which is dated  
14 -- which is stamped "Draft" and dated March 9th, 1995.

15          And you have a package of comments with -- The  
16 cover of it is a memo from myself to the Committee, and  
17 then the Committee's comments after that.

18          The first item I'd like to go over is the old  
19 Rule 711. And this has been in existence since, I believe,  
20 1988.

21          There were some problems with this rule that went  
22 to the formation of the Committee. This rule started to be  
23 changed back approximately a year and a half ago, when we  
24 had the problems with a disposal facility up in the  
25 northwest, and they'd had hydrogen sulfide emissions from

1 the facility. There are residents within a half a mile of  
2 the facility.

3 In 1988 we had another facility that had hydrogen  
4 sulfide emissions.

5 So consequently, we realized that there needed to  
6 be more stringent controls on our commercial disposal  
7 facilities, where they were put and how they were  
8 operating.

9 And then last year we had a facility that went  
10 bankrupt, and at this time we started using the reclamation  
11 fund, the Oil Conservation Reclamation Fund, to close this  
12 facility. It had a \$25,000 bond on it. That \$25,000 was  
13 spent in approximately the first month.

14 We issued a contract to close this facility in  
15 August of last year. And through March 29th of this year,  
16 out of the reclamation fund we have spent \$129,774.28. We  
17 do not have the bills for April, and those should equal  
18 approximately \$28,000.

19 And it will continue to cost the reclamation fund  
20 to close this facility until it's completely closed in, we  
21 estimate, approximately September.

22 So we realized very quickly that the \$25,000 bond  
23 was not sufficient to protect the State's interest. That  
24 is tax money that the industry puts into the reclamation  
25 fund, and it is administered by the State. And that was



1 one of the reasons for going through and changing this rule  
2 as quickly as we did.

3 The other rules were public health and safety.  
4 The operation of the facilities -- These facilities are  
5 very large. Some of them hold up to 400,000 barrels of  
6 water at any one time, or can hold up to that. They have  
7 the potential for creating hazardous gases that could  
8 impact the public health, and we needed to have a mechanism  
9 for controlling the operation of these facilities.

10 We also realized that we needed a mechanism to  
11 control what these facilities accept and what they cannot  
12 accept. We are, by statute, only allowed to regulate the  
13 disposition of oilfield waste.

14 There are a number of different wastes that have  
15 been accepted in the past by our permitted facilities. One  
16 incident resulted in a hazardous-waste problem, and the  
17 Environment Department had to enter into the operation of  
18 one of our facilities, and we had hazardous waste removed  
19 from it.

20 So we wanted to control the acceptance by our  
21 permitted facilities of wastes that we can regulate.

22 That's a little history behind why we went into  
23 changing this.

24 Now, the second case on the Commission docket was  
25 the -- changing Rule -- amending Rule 711 to add 312

1 facilities. 312 facilities are defined as treating plants  
2 in the old rule, and you have a copy of the old rule.

3 These treating plants are also commercial  
4 facilities. They treat waste oil, they have some of the  
5 same problems that the commercial disposal and centralized  
6 disposal facilities have. They are large facilities that  
7 will take a large amount of money to close if the Division  
8 has to close them and reclaim the sites.

9 As an incident for that, we just inspected one  
10 last week that we believe is not in operation anymore. We  
11 do not have any operational paperwork from them for the  
12 past 18 months.

13 It has approximately ten bolted old oil tanks  
14 completely full of waste oil, approximately eight old  
15 redwood tanks. We've seen -- It also has an injection well  
16 on the site with the cellar filled with oil.

17 We believe that there's very little salvage value  
18 of this, and the \$25,000 bond we have on this facility will  
19 not be adequate to reclaim this site properly.

20 We just inspected it last week. We have not  
21 issued any letters to the operator or anything, but this is  
22 a potential.

23 We have a number of these sites around the state  
24 that could conceivably impact the state and the reclamation  
25 fund, if we had to use them.

1           So the -- That's the history for 312 and why we  
2 wanted to. It has the same impact. Treating plants have  
3 the same type of operation. They reclaim oil, but they  
4 also have wastes, and they're large facilities.

5           I'd like to go through, if there are no questions  
6 on the previous rules, and why we decided to go through  
7 this and create the Committee. I'd like to go through the  
8 draft, item by item, the new draft on what we have  
9 proposed. Okay?

10           CHAIRMAN LEMAY: I think it's -- Is it all right  
11 with you all if we just go on, or do you want some  
12 questions at this point?

13           COMMISSIONER WEISS: Yeah.

14           CHAIRMAN LEMAY: Okay, if you don't mind --

15           THE WITNESS: Mr. Commissioner, there's a lot of  
16 information, and I'd appreciate, you know --

17                           EXAMINATION

18           BY COMMISSIONER WEISS:

19           Q.    Just a couple, quickly.

20           A.    Sure.

21           Q.    What's the status of the state reclamation fund  
22 today?

23           A.    The amount that's in it?

24           Q.    Yeah.

25           A.    I don't know that, sir. I know what we -- what

1 the contracts have expended from the contracts that I have  
2 been administering. I don't know what other contracts have  
3 gone out.

4 Q. Yeah, I was interested in the difference, you  
5 know, whether it's about broke or not.

6 A. I don't believe so.

7 MR. CARROLL: To the best of my knowledge,  
8 there's probably right now about \$800,000 in the  
9 reclamation fund, with contracts going through for probably  
10 \$125,000, which brings it down to \$675,000 at this point.

11 CHAIRMAN LEMAY: Thank you, Mr. Carroll.

12 MR. CARROLL: So it's a long way from being  
13 broke.

14 CHAIRMAN LEMAY: Commissioner Weiss, the nature  
15 of the fund is such that it clicks off at a million  
16 dollars, the tax clicks off at a million dollars, and you  
17 have to work it down to below \$500,000 before the tax is  
18 reinstated on oil and gas production.

19 So right now the fund is not being rebuilt; it's  
20 being depleted by the amount of money that is expended for  
21 plugging wells and for restoring this site.

22 Q. (By Commissioner Weiss) Okay. And then the  
23 second site that you mentioned, the one you visited, where  
24 is that?

25 A. That's in the southeast. It's just west of

1 Hobbs.

2 COMMISSIONER WEISS: That was the only questions  
3 I had. Thanks.

4 THE WITNESS: Okay.

5 CHAIRMAN LEMAY: At this point do you have any,  
6 Commissioner Bailey?

7 COMMISSIONER BAILEY: No.

8 EXAMINATION (Resumed)

9 BY CHAIRMAN LEMAY:

10 Q. Okay. Well, I guess let's go through the  
11 document --

12 A. Okay.

13 Q. -- on the Rule 711 changes, I guess, is what you  
14 plan to do?

15 A. Okay, we had -- We intended to try and make this  
16 rule smaller, and I think it was only a page and a half or  
17 two pages to begin with, and it's now up to 18.

18 So we didn't accomplish making it smaller, but  
19 there were a lot of items that had to be put in here and  
20 were recommended by the Committee to be put in here.

21 The first part, the initial change, the major  
22 change, is what the rule regulates.

23 It used to be -- In the past it was commercial  
24 surface waste disposal facilities.

25 And we changed it to all surface waste management

1 facilities, to include the Rule 312 or the treating plants,  
2 because treating plants -- They have waste to dispose of at  
3 their facility, but they're also a reclamation. So they're  
4 basically a waste-management facility.

5 And this is in line with the Interstate Oil and  
6 Gas Compact Commission recommendations for waste-management  
7 programs.

8 This -- The first part of this rule, rule A. --  
9 or item A. -- is primarily definitions.

10 In the old rule it was just confined to  
11 commercial facilities. We have found that there are a  
12 number of centralized facilities that are as large as, if  
13 not larger, and could pose as much potential for damage to  
14 the environment or to public health as some of our  
15 commercial facilities do.

16 And there are definitions in here that set out  
17 what are commercial and what are not commercial facilities,  
18 and we've also added the definitions of different items  
19 that can be accepted at these facilities.

20 And the definition of a commercial surface waste  
21 manage- -- or a surface waste management facility is, any  
22 facility that receives for collection, disposal,  
23 evaporation, remediation, reclamation, treatment or storage  
24 any produced water, drilling fluids, drill cuttings,  
25 completion fluids, contaminated soils, BS&W, tank bottoms,

1 waste oil or, upon written approval by the Division, other  
2 oilfield waste.

3 I believe in that definition we -- for surface  
4 disposal -- or management facilities, we've covered just  
5 about everything that the oilfield creates. I don't know  
6 of any other waste that could be created in the oilfield  
7 that we haven't covered.

8 We tried to separate commercial from centralized  
9 by stating that a commercial facility receives  
10 compensation, they're in the business of making money by  
11 disposing of or treating oilfield waste.

12 A centralized facility is a facility that,  
13 although large, is the operation of one operator, taking  
14 his wastes only for disposal or reclamation, or, under a  
15 unit agreement, a joint operating agreement, wastes from  
16 wells that he operates or that he has interest in. They're  
17 not there primarily for making a profit off of waste  
18 disposal.

19 That's what we tried to define in the -- and  
20 differentiate between commercial and centralized.

21 And then we had a number of exemptions to the  
22 centralized forms, because there are a number of small  
23 facilities that have wastes that really don't need to be  
24 permitted. They're small, they're on lease sites, they can  
25 be permitted through the drilling process, they're approved

1 either through the district or through Santa Fe level as  
2 small facilities and have very little impact on the  
3 environment or public health.

4 And those facilities, basically are -- The  
5 single-well pits, small pits at single wells, those pits  
6 and the facilities that receive less than 16 barrels per  
7 day of exempt liquid waste -- and by "exempt" we mean those  
8 that are exempted under the Resource Conservation and  
9 Recovery Act as oil and gas exploration and production  
10 wastes -- those exempt wastes are -- we have a listing of  
11 those, they're numerous: produced water, drilling muds,  
12 drill cuttings and -- that's -- are included in those  
13 exempt wastes.

14 And that 16-barrel-per-day in this exemption was  
15 basically gleaned from the Commission Order R-3221  
16 amendment that allowed 16 barrels per day per pit in the  
17 southeast, and that's where that number came from.

18 Underground injection wells, they're under the  
19 Underground Injection Control Program.

20 Tank-only facilities that have no surface waste  
21 disposal, that have no pits associated, they're all tanks,  
22 they're all enclosed, and those are exempt.

23 Emergency pits are designed to be emptied in 24  
24 hours after use. They're basically not designed to hold  
25 fluids continuously, removing any hydrostatic head from the



1 fluids to eliminate the problem of contamination to  
2 groundwater.

3 And any facility that's subject to discharge-plan  
4 requirements under the Water Quality Control Commission,  
5 those are already covered in their discharge plans so they  
6 don't need additional requirements and permits.

7 And then we had an item that -- for existing  
8 facilities, that facilities in operation on the effective  
9 date of the rule are subject to the requirements in Section  
10 E. -- and we'll get to Section E. later -- prior to  
11 construction or major modification -- Section E. is  
12 basically just an exemption -- not an exemption but a  
13 timetable for them to comply with this rule -- and then  
14 prior to construction or major modification of any  
15 facility. So if a facility is in operation and they're  
16 going to have a major modification, they must comply with  
17 this rule at that time.

18 Then we go to B.1., are the technical -- are the  
19 paperwork requirements for application for a permit and  
20 also the -- some technical requirements and operational  
21 requirements.

22 This has not changed much from the original rule.  
23 There are some clarifications in here on forms, on  
24 punctuation, spelling, stuff like that, plus the addition  
25 of Division guidelines.

1           We added that the application shall comply with  
2 Division guidelines and shall include basically the  
3 following.

4           The following has not changed, other -- much,  
5 other than, we've asked for the names and addresses of the  
6 applicant and all principal officers.

7           We change the owners of -- Okay, we added surface  
8 owners of real property, to try and distinguish between  
9 mineral-rights owners, stuff like that.

10           This is where the attorneys helped us on some of  
11 these definitions of what we were asking for, because we  
12 really -- in the previous order we really didn't ask for  
13 what we really wanted. So we changed some of those to get  
14 into the realm of getting the information that we need  
15 about who owns the properties around this facility.

16           We added the hydrogen-sulfide-prevention  
17 contingency plan, which, as I stated before, is because of  
18 past experience with hydrogen sulfide releases.

19           Added a closure-cost estimate to the closure  
20 plan, and I'll explain that when we get to the bonding  
21 requirements.

22           And added depth to groundwater, and that's for  
23 public notices.

24           And that's really just some more -- just  
25 primarily explanation-type items in here, to explain

1 exactly why -- what was needed from the previous  
2 requirements.

3 B.2. -- 1., now -- Okay, item 2., yeah, B.2. was  
4 notice requirements, and there's a major change in the  
5 notice requirements because of past experience with other  
6 facilities and residences within a half a mile of those  
7 facilities that we've had some problems with. We changed  
8 the notice requirement from one-half mile from the  
9 boundaries of the facility to one mile of surface owners of  
10 the land, for notification procedures, and within city  
11 limits and things like that, we added a few things to allow  
12 for greater public notice, greater public input into the  
13 processing of these permits.

14 We also added an area -- an item in there for  
15 what could be termed sensitive areas or those areas that  
16 have a potential for adversely impacting public health,  
17 that -- the option of the Director to increase the notice  
18 requirements if deemed necessary.

19 Increase distances and increase methods of  
20 notice. And that would be up to the discretion of the  
21 Division Director, based upon input from the public and  
22 other groups.

23 We changed -- on b., we changed from the Division  
24 to the applicant issuing public notice. Basically a  
25 budgetary thing.

1           And then we kept the -- basically just changing  
2   in format the request for public hearings. They have to be  
3   in -- They now have to be in writing to the Director and  
4   why a public hearing will be held. And gave the option of  
5   holding a public hearing if there is significant public  
6   interest.

7           And then added an item that the Division will  
8   distribute notice of the filing for a new facility or major  
9   modification on all our hearing dockets. That's the notice  
10   of the hearing -- of the application, not a notice of a  
11   hearing. But every time we get a -- According to this,  
12   every time we get an application, we will issue notice that  
13   we got an application with the hearing, with the hearing  
14   dockets, both Examiner and Commissioner hearing dockets.

15           And item B.3. is the major portion of the change  
16   of this rule, and it is basically changing the financial  
17   assurance requirements from the present \$25,000 to an  
18   amount estimated to what it would cost to close that  
19   facility at the time that the bond is calculated.

20           As I said earlier, the Southwest Water Disposal  
21   pond up in Blanco that is -- that the Division is closing,  
22   has cost \$126,000 so far.

23           If we would have had -- We estimate that it's  
24   probably going to cost somewhere around between -- now,  
25   between \$200,000 and \$300,000 to close. We don't know what

1 the construction costs are going to be. If we would have  
2 had that estimated, that's -- at the time we permitted this  
3 facility and had a bond in the amount of the estimate of  
4 closure, we would have a \$300,000 bond on it, and we would  
5 not be using state funds to close this facility.

6 That estimate, it's a closure-cost estimate  
7 submitted by the operator and approved by the Division. If  
8 there is any discrepancy between what we think it will  
9 close and what they think it will close, we'll get together  
10 with them and we'll negotiate that and come up with a bond  
11 that we feel is adequate.

12 In the bonding also, there is a method for not  
13 having that bond all up front. There is a time limit for  
14 accumulating that bond. And basically for new facilities  
15 at this time it's one -- it's based on a year, and it's a  
16 time-and-volume method.

17 After one year, or when the facility has filled  
18 to 25 percent of capacity, they'll have 25 percent of the  
19 bond in place. After two years, or when the facility is  
20 filled to 50-percent capacity, they'll have 50 percent of  
21 the bond in place. And so on, up to four years and 100  
22 percent of the bond.

23 And that's whichever comes first. If a facility  
24 is full within a year, filled to 100-percent capacity of  
25 bond within one year, they'll have to have 100 percent of

1 the bond in place at that time.

2           There are also -- We just made some changes to  
3 the -- who the bond is payable and that kind of thing,  
4 because we ran into some problems with the way the other  
5 one was written, in being able to access a bond to close a  
6 facility, when a facility goes out of business. And those  
7 are just methods to access to the bond so that we can close  
8 the facility.

9           The next five or six pages go through types of  
10 financial assurances that are accepted, and I'll just  
11 basically go over them briefly.

12           I will freely admit some of them I don't  
13 understand, but I'm not a financial person; I'm -- So I'm  
14 sure there will be other people that can answer questions  
15 and testify as to what some of these mean.

16           The following bond -- We've increased this. It  
17 used to be that we allowed cash or surety bonds only, and  
18 in this proposed rule we propose to allow the acceptance of  
19 surety bonds, collateral bonds in various different forms,  
20 and there's a lot of information on this in here as to what  
21 is allowed. Self-bonding, and I think that takes up three  
22 pages.

23           And these bonds, these methods of bonding, were  
24 taken from the mining regulations that have just been  
25 passed, I believe, recently, within the last year. And

1 these are what is allowed for the mines, so we went ahead  
2 and put those in here.

3 It opens up -- Especially the self-bonding for  
4 large companies, it opens up the ability to have financial  
5 assurance on a facility without tying up cash flow and  
6 putting large amounts of money into a cash bond or into a  
7 surety bond and have to pay for that every month. It opens  
8 it up to a lot of different options.

9 Okay. Then item number 5. on page 12 -- and I  
10 believe it's still B.5. -- is the ability for the Director  
11 to deny a permit based on things other than items that he  
12 has put in his application, such as history of failure to  
13 comply with Division rules and orders, or state or federal  
14 environmental laws. And that's -- you know, that's an  
15 inability -- That's basically a bad-actor provision.

16 And then to cover site suitabilities, limitations  
17 and things like that, we added a section that the Director  
18 may, for protection of public health and the environment,  
19 impose additional requirements such as setbacks from  
20 existing occupied structures, and that would cover the  
21 site-suitability limitations.

22 The next item number, old 5., new 7., which is  
23 still under B., is -- In the past, all permits issued under  
24 Rule 711 and Rule 312 for disposal facilities and treating  
25 plants were for life-of-facility permits, they were

1 forever. There was no -- other than, you know, compliance,  
2 for compliance reasons, there was no way to review these  
3 permits and upgrade them based on changing technology,  
4 changing regulations, federal regulations, and things such  
5 as that.

6 So this section allows for the review -- not the  
7 renewal, but the review of permits every five years. And  
8 we think this is needed to allow the Division to look and  
9 see what's actually happening out at these facilities, how  
10 they're being operated.

11 It's not going to take away the ability to go out  
12 and inspect these on a periodic basis. But it will also  
13 allow the review of the conditions of the permit, to bring  
14 them more in date [sic] with federal and other state  
15 mandates.

16 Item number C., our operational requirements,  
17 there have been some -- a number of changes in these.

18 Number 1. did not change much, other than  
19 changing from disposal management.

20 Item C.2. is basically the only addition of  
21 anything from Rule 312 into this rule, specifically  
22 addressing treating plants. All treating plants are  
23 addressed generically through waste-management procedures.  
24 And this item just adds the paperwork that are specifically  
25 unique to the waste-oil treating plants.



1           Item 3. and 4. are the items that add what can be  
2           accepted and what cannot be accepted. Basically, it  
3           prohibits the introduction of non-oil-and-gas-industry-  
4           related wastes into any of our disposal facilities and  
5           requires the paperwork from the operator, the transporter  
6           and the disposal facility to assure that no non-oilfield  
7           wastes enter into the facility.

8           And there are three different types of wastes  
9           that we've identified for the different paperwork.

10           There's exempt oilfield wastes, which again I say  
11           is exempt from RCRA Subtitle C definition and tracking as  
12           hazardous waste, and non-exempt, non-hazardous oilfield  
13           waste, and then an emergency section.

14           And I said before, we don't want any non-oilfield  
15           wastes. However, there are certain instances, and we -- I  
16           will propose a change to this, this item C., a little bit  
17           later on before the Commission. It's not after -- We went  
18           through legal review. It's not quite exactly as it's  
19           needed to be. And I'll propose that under changes to what  
20           we propose to make to this rule.

21           The rest of the order, up until facility closes,  
22           hasn't changed that much, other than for clarification,  
23           until we get down to additional operating requirements of 9  
24           and 10, and that's fencing requirements and transferring of  
25           permits.

1           We believe that there needs to be a provision in  
2 here for the approval for transferring of permits, and that  
3 is stated in here, basically, to make sure we transfer the  
4 financial assurance.

5           And the other item was fences, and that's --  
6 later on, that will be up to -- that will be open to  
7 exemption given by the Director upon good cause, for  
8 existing facilities, not for new facilities. The fencing  
9 requirement was for basically protecting public health and  
10 wildlife.

11           Then we have the next item is Facility Closure,  
12 and this changed quite a bit from the original rule. It  
13 has methods in here to where -- what the Division will do  
14 if the Division is going to require a facility to close.

15           And basically, it's -- If the permittee refuses  
16 or is unable to conduct operations, there are a certain  
17 number of items that the Division has to go through to make  
18 sure that their rights are protected and the public is  
19 protected. And they have to send their notice requirements  
20 by the Division, hearing requirements by the Division, and  
21 things such as that.

22           And then it also includes the forfeiture of the  
23 financial assurance, the ability for us to collect those  
24 funds and use them to close the facility if necessary.

25           Then the next item was old 12., now new d., and

1 that's the emergency clause giving the Director the ability  
2 to order operations to cease if the facility -- if the  
3 cessation is required to protect public health or the  
4 environment.

5 Item e. is a brand-new one, and that's the  
6 ability -- that gives the Division the ability to enter a  
7 facility and do anything necessary to protect the public  
8 health and the environment in closure of that facility.

9 Item E. on page 17 is basically what we term a  
10 grandfather clause. It's for facilities in operation at  
11 the time, and it gives the facilities in operation at the  
12 time of the promulgation of the order one year to submit  
13 the information required in -- on the new application.

14 And most of that information is already on file.  
15 They would not have to submit any -- duplicate the  
16 information that's already on file, just -- and we would --  
17 we will write letters to them telling them what is not on  
18 file so that they don't have to go through all the  
19 gyrations of reproducing and coming up with everything that  
20 we already have. We don't want to do unnecessary  
21 paperwork.

22 Then they will also have on year. Any  
23 unpermitted facilities that are -- would now be permitted  
24 under this rule, would also have a year to become permitted  
25 under this rule.

1 Under item 3., all existing facilities would have  
2 one year to comply with the operating requirements, unless  
3 the Director grants an exception to that.

4 And then item 4. provides for the financial  
5 assurance for existing facilities to be increased -- to be  
6 implemented over an eight-year period, as opposed to a  
7 four-year period, and there are no volume requirements in  
8 that period of time.

9 So that's pretty -- a real rough overview of what  
10 we have proposed. It's a long document, a lot longer than  
11 what we had expected.

12 Are there any questions on that so far? It's --

13 Q. That's basically your presentation of the  
14 Committee's report?

15 A. Of the Committee's report, yes, sir.

16 CHAIRMAN LEMAY: Let's work with that first, and  
17 then anything else, maybe we can address later, Mr.  
18 Anderson.

19 Any questions of the witness, concerning his  
20 testimony so far, from the audience here? Any of you would  
21 like to cross-examine?

22 Fellow Commissioners? Commissioner Weiss?

23 FURTHER EXAMINATION

24 BY COMMISSIONER WEISS:

25 Q. Yeah, I agree with you, this is a daunting

1 document.

2 Do most of the operators of these facilities have  
3 lawyers on their staff?

4 A. I -- Most of the facilities are large, and I  
5 don't know. I really couldn't tell you if they have  
6 lawyers.

7 Q. Well, from my way of thinking -- this is, of  
8 course, the first time I've seen this -- this is very  
9 detailed.

10 And maybe the way to -- I'd hate to be the guy  
11 who had to fill out the forms for this. And maybe if you  
12 could come up with a checklist of what a person has to do,  
13 rather than try to figure out what all this is, in a form,  
14 where an individual might be able to go through it and find  
15 out whether he should just shut out his facility and go  
16 home or attempt to stay in business --

17 A. Yes, sir.

18 Q. This is too complex, I think.

19 A. I may be able to answer that and -- Pass this  
20 down here.

21 We have a proposed application for a waste-  
22 disposal facility, which is basically an easy checklist.  
23 And along with that go guidelines for filling this out.

24 These guidelines -- Now, you asked if there were  
25 attorneys -- if the disposal facilities have attorneys on

1 staff. I don't know that, but I know we have attorneys  
2 that were helping on the committee, draft this rule.

3 Now, we also have guidelines, and we have to  
4 revise these, and we will revise these if there's a new  
5 rule that's promulgated, based on the new rule.

6 Q. I think this is much more reasonable (Referring  
7 to Form C-137).

8 A. Yes. And we do have guidelines that say how to  
9 follow -- how to fill that form out. These guidelines were  
10 not by attorneys either; they were written by -- of course,  
11 they were written by technical people, so...

12 Q. Yeah, this is -- I think if this -- I mean --

13 A. Yes, sir. Yes, sir. Yes.

14 Q. I have one other comment.

15 A. Yes, sir.

16 Q. Is there a committee report as such?

17 A. No, sir.

18 Q. We have -- Just this?

19 A. Just -- It was decided not to have formal minutes  
20 taken of the meeting, because where we were going and the  
21 cost of the -- and budgetary constraints and the cost of  
22 formal minutes, so there is not a formal report.

23 We are encouraging minority testimony, minority-  
24 report testimony before the Commission on this -- on the  
25 proposed draft.

1 COMMISSIONER WEISS: Okay. Okay, that was the  
2 only question I had.

3 THE WITNESS: Yes, sir.

4 COMMISSIONER WEISS: Thank you.

5 THE WITNESS: Yes, sir.

6 CHAIRMAN LEMAY: Commissioner Bailey?

7 EXAMINATION

8 BY COMMISSIONER BAILEY:

9 Q. I did get a chance to review this before the  
10 hearing today, and as the Commissioner's representative to  
11 the Coal Surface Mining Commission, I may bring a different  
12 perspective to the bonding requirements that appear to be  
13 lifted word for word from the Coal Surface Mining  
14 Commission rules concerning bonding and financial  
15 assurance.

16 I have some concern that they were lifted word  
17 for word from rules that apply to another industry,  
18 particularly where some of these requirements, such as the  
19 ratios that are found in -- let's see, (c) under self-  
20 bonding, and then (c) again, and then number (3).

21 Those ratios came from the Dun and Bradstreet  
22 coal ratios for the industry 15 years ago. I'm concerned  
23 that they haven't been updated for the oil and gas  
24 industry.

25 There are other areas in through here that I feel

1 needed to be looked at, because the lessons that can be  
2 learned from a coal mine that went bankrupt, and some of  
3 the problems that were encountered in trying to sell off  
4 their property that had been used as collateral, I feel  
5 like this is an opportunity to change those bonding  
6 requirements and take the opportunity to learn the lessons  
7 from both the administration and the enforcement of these  
8 particular rules.

9           You have a disclaimer, you're not the bonding  
10 expert.

11           A.    Yeah.

12           Q.    I'll accept that.

13                But on the other hand, I'm looking for the proper  
14 person to go through these with. There are -- like areas  
15 in -- Let's just start at the beginning of the bonding  
16 part. How's that?

17                Number 4.b., Collateral Bonds. And then on over  
18 to number (3) (b), and it goes through i), ii) and iii).

19                Would it be fair, in your opinion, to require an  
20 environmental assessment of the property if there was not  
21 full knowledge concerning the past history of that property  
22 being used as collateral? It would seem unusual that the  
23 State would then have to accept, on a default, property  
24 where there were more environmental problems than what the  
25 cash collateral amount was.



1           It seems like that should be thought about as  
2 part of the rule.

3           A.   Commissioner Bailey, you know, I don't see that  
4 there would be any problem in that. That's a thing that is  
5 happening more and more often.

6           I don't know -- There's very little oil and gas  
7 property that changes hands, even leases that change hands,  
8 anymore, without some sort of an environmental assessment.

9           I think that's a very reasonable requirement to  
10 put on it.

11          Q.   At the discretion of the --

12          A.   Certainly. We are contacted constantly from oil  
13 companies that are considering purchasing or considering  
14 selling their leases to see -- and they're going through  
15 phase-one environmental assessment, and some of them are  
16 even going through phase-two environmental assessments.

17                Very little property changes hands anymore  
18 without an environmental assessment of that property.

19          Q.   Right, and since the State would be using this  
20 real property --

21          A.   Sure.

22          Q.   -- as a collateral bond --

23          A.   Sure.

24          Q.   -- it would only seem reasonable that we would  
25 have that assurance that we're not getting a pig in a poke.

1           It would seem reasonable also, if we were  
2     accepting property -- and this taken from experience of the  
3     bankrupt coal company -- that we should have a commitment  
4     for title insurance and that -- a commitment on a yearly  
5     basis that all property taxes are paid on that property  
6     while it's being used as collateral.

7           Going on down to Number (4) (b) where it states  
8     that interest paid on a cash account shall be retained in  
9     the account, I would think that that interest should be  
10    returned to the permittee unless the State increases the  
11    bond. In my opinion. This is something for discussion.

12          A.    Okay --

13          Q.    But it seems as though if the bond is set at a  
14    certain amount and that property is used -- or that cash  
15    account is used as that bond, that until that bond is  
16    officially increased through the two-year, four-year, 25-  
17    percent, whatever, that the State does not have claim to  
18    that interest.

19          A.    Commissioner Bailey, I think what we thought on  
20    this item -- and this may be one that was -- most of this,  
21    you're correct, was verbatim from the mining regs.

22                But because of the extended period of time that  
23    they were going to be increasing the bond, that the  
24    interest was going to stay in there as part of the increase  
25    in the bond until they got their full bond, and that's

1 where the Director can approve the payment of the interest  
2 from then on back to the permittee.

3 It may not have been stated that -- It may not be  
4 clear, it may need to be clarified.

5 Q. On over to the section on Self-bonding, c. (1)  
6 (c) (i), where it discusses the current rating by Moody's  
7 or Standard and Poor's for the company, my only caution is  
8 that there are two higher A ratings, AA and AAA, and that  
9 the bankrupt coal company that I am aware of was rated A  
10 until the day it went bankrupt.

11 And I would think that the financial statements  
12 for one year, referring to Section (d) under Self-bonding,  
13 where it requires only the most recently completed fiscal-  
14 year statement, it's a snapshot in time and they may have  
15 had a very good year or a very bad year beforehand; where  
16 if the requirement was for three previous financial  
17 statements, you see whether were going like this, or if  
18 they were holding steady.

19 And then just in clarification on the -- farther  
20 on under the Self-bonding area, all the way down to number  
21 B.7., just before "Operational requirements", I'm wondering  
22 if industry would feel more comfortable if there were some  
23 sort of clarification on the frequency of review, whether  
24 it was going to be based on the operator's history of  
25 compliance and the level of activities, that sort of thing,

1 so that there's a clarification that there's not an  
2 arbitrary period of review for these.

3 Where it says "Permits shall be reviewed a  
4 minimum of once every five years..."

5 A. Okay. Yeah, that -- Commissioner Bailey, that  
6 was intended to mean that we were going to review it every  
7 five years, but it didn't prevent annual or semi-annual or  
8 as-need-be compliance-type inspections.

9 And based on compliance inspections, you know,  
10 and operations noticed at the time of the compliance  
11 inspections, it would allow review of the permit at that  
12 time if necessary, if the Director deems necessary.

13 But initially we had renewed -- All permits will  
14 be renewed every five years, similar to the discharge plan  
15 requirements where all permits are reviewed every five  
16 years.

17 The comments came up with justification that a  
18 company, if they're going to have a permit to dispose of  
19 something only for five years and they have a -- you know,  
20 a reasonable chance of losing that permit, are never going  
21 to get financial backing. Banks are not going to look at a  
22 five-year permit.

23 And so if we issue the permits and just review  
24 them for terms and conditions every five years, you know,  
25 that would better aid them to get financing.

1           Q.    Was the concept of a bonding pool brought up in  
2 your discussions?

3           A.    It was, and nobody ever came up with a good  
4 bonding pool.

5                   It's the idea that -- It's my opinion that it's  
6 the feeling that, you know, good companies, reputable  
7 companies, responsible companies are going to pay into this  
8 pool, and they're probably never going to use it because  
9 the disreputable companies are the ones that go out of  
10 business, generally.

11                   Well, there are always exceptions to that. There  
12 are good, reputable companies that do have financial  
13 troubles because of downturns in business. There's no  
14 doubt about that.

15                   But I think the feeling was -- and this is not an  
16 official Committee comment, I know that, it's just outside  
17 comments, that, why pay for somebody else to go out of  
18 business?

19                   Now, you know, that may change. There are pools  
20 in other states, there are pools in other places. That may  
21 change. There may be a good reason for it.

22           Q.    And one last question. The verification of the  
23 bonding amounts, would that be performed by the Division,  
24 by an outside party, by --

25           A.    That -- Commissioner Bailey, that came up in

1 discussion in committee, at the Committee level, and, you  
2 know, if we disagree -- and at this time we disagree with  
3 the bonding of one of our facilities, what kind of  
4 arbitration is there?

5 You know, I believe we're probably about -- in  
6 one facility, about \$90,000 off right now. And that's --  
7 You know, we're twice as much as what the proposal is.

8 The arbitration, the final arbitration, has not  
9 been solved yet. We don't know.

10 I don't know how to -- You know, are we going to  
11 be arbitrary in that and say, well, we think it's going to  
12 cost this much?

13 I think that's left up to negotiation between the  
14 Division and the companies, and we've always had a  
15 tradition of negotiating things like that and coming up  
16 with good agreement.

17 COMMISSIONER BAILEY: That's all I have.

18 COMMISSIONER WEISS: I have another question.

19 CHAIRMAN LEMAY: Go ahead, Commissioner Weiss.

20 FURTHER EXAMINATION

21 BY COMMISSIONER WEISS:

22 Q. You know, I didn't quite understand this last  
23 point that Commissioner Bailey brought up, and that's on  
24 this permit business, the review --

25 A. Yes, sir.

1 Q. -- every five years?

2 A. Yes, sir.

3 Q. I don't understand what that's about. Why do  
4 that?

5 A. To -- The permit review, initially, as I said, it  
6 was for permit renewal, to renew permits every --

7 Q. That would make sense --

8 A. -- every five years.

9 Q. -- but you're not going to do that, right?

10 A. Well, we -- the term -- For some reason, the term  
11 "review" puts financial backers, banks and stuff like that,  
12 more at ease, as to saying, well, you know, we're not going  
13 to sink \$100,000 or \$200,000 or \$300,000 into a place  
14 that's just going to operate for five years, and we may end  
15 up with the liability of any waste that's left there if  
16 they lose their permit. And that's understandable.

17 So rather than renew, we're going to review the  
18 permit for conditions and -- for changing terms and  
19 conditions.

20 If the environment, the political environment,  
21 the environmental environment, regulations, requirements  
22 from other state agencies or the federal government require  
23 changing in conditions of permits, then we can do that at  
24 the review period.

25 COMMISSIONER WEISS: I think you have to include

1 something like that. This is just a review, so what?

2 THE WITNESS: Okay.

3 COMMISSIONER WEISS: Who cares? It's just a  
4 waste of time, a review, in my opinion, unless there's a  
5 reason for it.

6 That's the only comment I had.

7 CHAIRMAN LEMAY: Okay. Mr. Anderson, I guess I  
8 share Commissioner Bailey's and Commissioner Weiss's  
9 concerns over the length of the report, and this is the  
10 first time I've seen this report also.

11 I guess eight pages out of 17 are devoted to the  
12 bonding, financial --

13 THE WITNESS: Yes, sir.

14 CHAIRMAN LEMAY: -- assurance. So that truly is  
15 the big bureaucratic part of this as I view it. I mean,  
16 "bureaucratic" meaning...

17 We've never gotten into a lot of these  
18 determinations as to surety values, and I have some concern  
19 over whether we have the resources in the Division to  
20 evaluate real property or evaluate the net worth of a  
21 company, because that becomes fairly subjective in many  
22 areas, whether --

23 THE WITNESS: That's correct.

24 CHAIRMAN LEMAY: -- it's cost-effective to  
25 continue reviewing annual reports to see if the surety is



1 still in place, to get involved with unaudited financial  
2 statements if we have some concern about the audited  
3 financial statements.

4 It looks to me like the Committee, once they  
5 opened this box up -- Because we've always accepted cash  
6 bonds, we've accepted, of course, surety bonds, and we've  
7 considered letters of credit, which I think have some basis  
8 in the financial community.

9 If you have those assets and you certainly have a  
10 banker somewhere, and those assets are in a bank, can't  
11 that bank issue you a letter of credit that can be used as  
12 surety against property?

13 And then it takes us out of this business of  
14 trying to be an evaluator of assets, which -- My gosh, I  
15 don't think we have that kind of expertise. And the way  
16 this is written, it puts us in that position, to be an  
17 evaluator of assets, and a continuing evaluator.

18 I don't know how much discussion was given to  
19 that particular item. I assume quite a bit, when you ended  
20 up with seven pages -- eight pages out of 17 to cover every  
21 possible contingency of surety value or asset value.

22 But I guess I share my fellow Commissioners'  
23 concerns over just taking that -- And I'm sure it had a lot  
24 of history in the Mining Act; I'm not discounting what went  
25 on there. I have no idea of what went on there.

1 But as a very practical way of doing things, I  
2 have concern over that section.

3 Maybe we'll get some more testimony on that.

4 THE WITNESS: Mr. Chairman, I agree. I don't  
5 have that ability to evaluate a company's financial  
6 statement. I don't know if anybody in our Division does.  
7 I know nobody on my staff does. Does anybody in the  
8 department?

9 COMMISSIONER WEISS: I agree with Bill. Let a  
10 bank evaluate it.

11 THE WITNESS: Okay.

12 CHAIRMAN LEMAY: If someone's going to be in  
13 business, obviously they've got to provide some kind of  
14 surety somewhere.

15 I guess I get a little nervous seeing a lot of  
16 paper trails of -- even financial statements.

17 To be honest on the record, we used to pump those  
18 things up. I mean, I was in business 25 years. I know how  
19 that's done. We'd pump it up to the max to get the maximum  
20 amount of leverage with the bank to borrow money.

21 And to be put in a position of evaluating those  
22 things -- I mean, I know banks couldn't do it.

23 THE WITNESS: Right.

24 CHAIRMAN LEMAY: In many respects they don't know  
25 what an oil property's worth. How are they going to get in

1 the business of the Oil Conservation Division second-  
2 guessing the experts to really provide some value to an  
3 asset that may be very specialized in nature in terms of  
4 value, or may have a wide range of value depending upon  
5 whether you're going to take the black, the gray or the  
6 white appraisal?

7 I'm sorry, that's just a lot of concern that I  
8 have, expressed by the Commissioners.

9 And I appreciate you presenting the report as you  
10 have, because it was -- I assume you were giving the report  
11 that -- where there was unanimous agreement, or at least  
12 where there wasn't the controversy. We'll hear the  
13 controversy later.

14 THE WITNESS: Yes, sir. We -- This draft is what  
15 there was unanimous agreement on.

16 There are some items in this draft that there are  
17 a number of people that disagree with. There are some  
18 things that the Division disagrees with also, and I'll be  
19 testifying on that later.

20 CHAIRMAN LEMAY: So you have two hats on?

21 THE WITNESS: Yes, sir.

22 CHAIRMAN LEMAY: Okay. Ned?

23 MR. KENDRICK: Mr. Chairman, I have at least one  
24 comment on Mr. Anderson's presentation thus far.

25 CHAIRMAN LEMAY: Yes, please do. I mean, anyone

1 who has a comment that was a part of the Committee, that  
2 disagrees with what Mr. Anderson said, please state that  
3 now, if you would.

4 MR. KENDRICK: Well, though actually, this is  
5 more of a question or a clarification on one of the  
6 exemptions. This is changing the subject from the bonding.

7 I wanted to draw your attention to Section 3.b.

8 THE WITNESS: Okay.

9 MR. KENDRICK: That's the exemption for  
10 facilities that --

11 CHAIRMAN LEMAY: What page?

12 MR. KENDRICK: I'm sorry, it's on page 1. Page 1  
13 of the proposal, Section A.3., which covers exemptions for  
14 centralized facilities. And I'm looking at b. of that  
15 section.

16 And it states that facilities that receive --  
17 let's see -- okay, less than 16 barrels of exempt liquid --  
18 The part I'm interested in is facilities with a capacity to  
19 hold 1400 cubic yards of solids or less.

20 And I think we had this discussion in our  
21 Committee meeting, but I wanted to make sure we clarified  
22 how you calculate that capacity.

23 Could you -- And I could sort of refresh your  
24 memory, but --

25 THE WITNESS: If I remember right, it was the

1 average lease size --

2 MR. KENDRICK: Let me give you an example.

3 Did it say you have a bermed area --

4 THE WITNESS: Uh-huh.

5 MR. KENDRICK: -- of 200 -- Okay, we're talking  
6 about a land farm.

7 THE WITNESS: Correct.

8 MR. KENDRICK: Okay, and say -- and you have a  
9 bermed area of 200 by 200 feet, and maybe the berm is three  
10 feet high --

11 THE WITNESS: Correct.

12 MR. KENDRICK: -- around the area.

13 THE WITNESS: Correct.

14 MR. KENDRICK: And how would you calculate the  
15 capacity of that land farm for this exemption?

16 THE WITNESS: Okay, what we did for the exemption  
17 was calculate -- we didn't use the berm height or the berm  
18 size -- volume or any -- the berm volume, area.

19 It's the ability to disk a landfarm-type  
20 operation. And generally, unless you bring large equipment  
21 in for disking, a normal disk disks six inches of soil.

22 So we figured the average lease site where there  
23 would be a land farm six inches deep. So if you had a  
24 three-by-three bermed area, you would still have just six  
25 inches in there, because you can only disk six inches at a

1 time.

2 And there are always some exceptions to that, if  
3 you bring in some monstrous equipment that you can disk  
4 down or -- you know, 12 or 18 inches. There is equipment  
5 available, but it's not readily available because it's not  
6 common. And we used the six-inch-deep disking as a  
7 guideline.

8 MR. KENDRICK: Okay. So generally, unless  
9 there's that unusual circumstance of special equipment that  
10 can disk deeper than six inches, you would calculate the  
11 capacity of that land farm as 200 feet times 200 feet times  
12 one-half foot, six inches?

13 THE WITNESS: That's correct, yes.

14 MR. KENDRICK: And that's how you get the  
15 capacity.

16 And I believe --

17 THE WITNESS: It's 1400 cubic feet, a pretty  
18 good-sized area.

19 MR. KENDRICK: And I believe this operational  
20 parameter of spreading soil in six-inch lifts is contained  
21 in the guidelines for permit application, design and  
22 operation of centralized and commercial land farms.

23 THE WITNESS: There's another set of guidelines  
24 that I don't have in here, but it's guidelines for land  
25 farm application. And that will be combined with this,

1 based on what's passed on the rule.

2 We have a number of guidelines that we'll be  
3 combining together, to make things a lot easier.

4 MR. KENDRICK: Okay, that answers that question.

5 In terms of additional comments or additional  
6 exemptions that have been submitted to you, is now the  
7 proper time to ask you about that, or is it after the  
8 second half of your presentation?

9 THE WITNESS: I believe the procedure that we had  
10 thought we would do, with the Commission's approval, is  
11 that once I'm done presenting the Committee's view, then  
12 I'll switch hats for the Division and I will testify  
13 against what the Division has a problem with in the rule,  
14 and then also present what was sent to me over the last  
15 month or so as comments, and I will answer those comments  
16 without -- you know, basically of what was proposed in  
17 changes also, and I'll answer those comments.

18 I believe that's the way we -- Isn't it?

19 MR. CARROLL: Mr. Chairman?

20 CHAIRMAN LEMAY: Mr. Carroll?

21 MR. CARROLL: Mr. Chairman, before I present Mr.  
22 Roger Anderson as a witness for the OCD I'd like to have  
23 him continue testifying as Committee Chairman and present  
24 the minority positions that have been submitted to him as  
25 Chairman of the Committee.

1 And then at that time I would like to present him  
2 as a witness for the OCD to comment on the proposed changes  
3 to the proposed rule.

4 CHAIRMAN LEMAY: Does that help you?

5 COMMISSIONER WEISS: Oh, yeah, yeah, sure.

6 CHAIRMAN LEMAY: Yeah, I think it probably would  
7 be, so we can gather where the opposition is to the report.  
8 You've got a consensus document there, and now you're --  
9 now he's going to -- he can summarize the points that -- of  
10 disagreement, I guess, huh?

11 MR. CARROLL: Yeah. And I'd like to ask Mr.  
12 Anderson one question in his capacity as Committee Chairman  
13 right now.

14 EXAMINATION

15 BY MR. CARROLL:

16 Q. I think you misstated earlier that the proposed  
17 rule was the unanimous agreement of the Committee.

18 It was actually the majority --

19 A. I'm sorry --

20 Q. -- position of the Committee, was it not?

21 A. If I said "unanimous", I was mistaken. It's  
22 majority opinion.

23 Q. And there are a number of minority positions,  
24 including the OCD's?

25 A. That's correct.



1 COMMISSIONER WEISS: What was the vote?

2 THE WITNESS: If there were five people, five  
3 members, that wanted something in there, it went in there,  
4 because I didn't vote, which made nine people on the  
5 Committee.

6 So if it was five to four, it went in here.

7 There are some things that were nine to nothing  
8 that went in here.

9 CHAIRMAN LEMAY: Okay.

10 MR. KENDRICK: Mr. Anderson, my letter to you of  
11 May 2nd, concerning an additional exemption, I take it you  
12 will be responding to that and then asking questions about  
13 it later?

14 THE WITNESS: If it's in here, yes.

15 CHAIRMAN LEMAY: Well, I mean, since we have a  
16 lot of --

17 THE WITNESS: Yes, sir.

18 CHAIRMAN LEMAY: -- people here --

19 THE WITNESS: Yes, sir.

20 CHAIRMAN LEMAY: -- that are going to express a  
21 minority opinion, can I assume that he will just be listing  
22 the minority opinions --

23 THE WITNESS: Yes.

24 CHAIRMAN LEMAY: -- and not defending them, and  
25 then when -- I'm sure we'll hear from the minority opinions

1 out there if we've got Mr. Kellahin and you, Mr. Kendrick,  
2 and Mr. Brakey and Mr. Carroll all lined up to testify, or  
3 at least present witnesses.

4 MR. KENDRICK: Okay. That's all the questions I  
5 have this morning.

6 CHAIRMAN LEMAY: Well, is that a fair assumption,  
7 that Mr. Anderson is going to list them and not defend  
8 them?

9 THE WITNESS: The way I envision this is, I'm  
10 going to read what -- in the sections that people have  
11 minority opinions on, and I won't defend them or oppose  
12 them until I switch hats.

13 CHAIRMAN LEMAY: You're wearing a lot of hats  
14 today.

15 (Laughter)

16 CHAIRMAN LEMAY: Can you summarize it without  
17 reading them? I mean, I'm sure --

18 THE WITNESS: Oh, sure. Yes, sir.

19 CHAIRMAN LEMAY: Yeah, let's just summarize where  
20 the opposition is, so we as Commissioners get an idea --

21 THE WITNESS: Okay.

22 CHAIRMAN LEMAY: -- I think we have a pretty good  
23 idea where it was sticky, but if you want to summarize  
24 those --

25 THE WITNESS: I can, sure.

1 CHAIRMAN LEMAY: -- and then let the various  
2 witnesses defend their points of view.

3 THE WITNESS: Okay.

4 CHAIRMAN LEMAY: So we'll continue on, I think,  
5 as part of your -- as the Committee Chairman. Do you want  
6 to keep that hat on and --

7 THE WITNESS: Certainly.

8 CHAIRMAN LEMAY: -- keep going on where the  
9 minority positions are?

10 THE WITNESS: We can, unless -- if there was  
11 anybody else that had questions on what I've presented, if  
12 I may have presented something that was wrong.

13 CHAIRMAN LEMAY: Is there anyone out there that  
14 disagrees with what I guess Mr. Anderson has presented so  
15 far as a consensus, or at least a majority position?

16 Okay, I don't see any hands.

17 THE WITNESS: Okay.

18 CHAIRMAN LEMAY: You may continue.

19 THE WITNESS: Some of the minority -- and I --  
20 These are just items that I have -- that have been mailed  
21 to me to present to the Commission as minority opinions.  
22 There may be others that I don't know about as yet.

23 I'll start with the OCD's, and we have a minority  
24 position on the last section of the rule, and that's E.4.,  
25 which is the phase-in for existing facilities.

1 COMMISSIONER WEISS: What page is that?

2 THE WITNESS: Page 17. E.4., which is the two-,  
3 four-, six-, eight-year phase-in of bonding for the  
4 existing facilities, and the Division will present a  
5 minority view on that.

6 We will also -- And there have been a number of  
7 different people who have changes or minority views on  
8 A.1., of which we also have one, which is the definition of  
9 commercial facilities.

10 There is a minority position to add some  
11 exceptions to the centralized definition.

12 Okay, and this is just a rough overview. We're  
13 not getting into the specifics of what the minority  
14 position is; it's just basically on the section.

15 There's a position on the exemptions for  
16 compliance with operating requirements, additional  
17 exemptions, basically just the Director granting exemptions  
18 for that.

19 And I believe there -- and there's -- on page 13  
20 there will be a minority view and testimony on C.4.a., b.  
21 and c., basically C.4., on the paperwork required for  
22 acceptance of waste.

23 And the Division also has a minority viewpoint --  
24 or basically a change to request for a. -- or 4.c., based  
25 on legal advice from the legal staff.

1 CHAIRMAN LEMAY: Oh, C.4. again?

2 THE WITNESS: Yes, sir.

3 CHAIRMAN LEMAY: So there were two minority  
4 positions on C.4. but they were different, I take it?

5 THE WITNESS: That's correct. One will be  
6 opposing all of it, and ours will be changing some  
7 provisions based on legal advice.

8 And that is all that I have been notified of.

9 CHAIRMAN LEMAY: No minority opinions on all that  
10 bonding stuff?

11 THE WITNESS: Other than the possibility of a  
12 minority opinion on even requiring increased bonds, over  
13 the \$25,000, and I believe we'll have that, although I do  
14 not have any --

15 CHAIRMAN LEMAY: But there's going to be no  
16 testimony presented on the surety requirements of these  
17 facilities?

18 THE WITNESS: Not -- I haven't heard of it yet.

19 CHAIRMAN LEMAY: Okay.

20 MR. MARSH: Mr. Chairman, perhaps a  
21 clarification, but maybe no opposition.

22 CHAIRMAN LEMAY: I see. Well, we have  
23 Commissioners here that might have some issues with what  
24 I've heard.

25 THE WITNESS: I -- Personally, I could not offer

1 any testimony against it, because a lot of it I don't  
2 understand. So...

3 CHAIRMAN LEMAY: If the Committee Chairman  
4 doesn't understand it, we've got some problems.

5 THE WITNESS: Well, no, the bonding requirements  
6 are very complex and, you know, they -- I understand why  
7 they're there.

8 And I think this was the consensus opinion of the  
9 Committee, that there needs to be more forms of bonds  
10 because of the increased -- if there are going to be  
11 increased amounts of bonds, that there needs to be some  
12 different forms of bonds that are allowable to allow the  
13 companies to be competitive, to stay competitive.

14 CHAIRMAN LEMAY: Could that be a bigger issue on  
15 bonding in itself? We're talking about bonding of one --  
16 of waste management facilities here. We have bonding on  
17 wells, we have other forms of bonding.

18 THE WITNESS: That's correct.

19 CHAIRMAN LEMAY: Was there any committee  
20 discussion on whether that issue could be raised in a  
21 larger context? Because we really are departing from  
22 procedure here by accepting a lot of things we've never  
23 accepted in the past.

24 THE WITNESS: That's correct, Mr. Chairman, and  
25 there was mention made that maybe this could go to a

1 separate rule type, although that's adding more rules, of  
2 actually what is acceptable as a bond.

3 At this --

4 CHAIRMAN LEMAY: Well, I guess where I'm going  
5 is, was there any discussion of -- to put one paragraph in  
6 Rule 711 that said bonds -- surety acceptable as per  
7 Division rules, and then go on Division rules on what's  
8 acceptable -- I mean, from any -- I mean, if you want to --  
9 You're tackling a big issue here, is what I'm --

10 THE WITNESS: That's correct.

11 CHAIRMAN LEMAY: -- what I'm saying. And it kind  
12 of extends beyond what you were looking at if you're  
13 talking about what's acceptable surety for operations. You  
14 are in terms of waste-treating plants, but I mean this  
15 opens other issues that we've looked at in terms of wells.  
16 People have surety out there in terms of plugging bonds.

17 THE WITNESS: It's --

18 CHAIRMAN LEMAY: I just wondered if the Committee  
19 had any -- delved into that at all?

20 THE WITNESS: Just on the surface, Mr.  
21 Commissioner -- or Mr. Chairman -- because what we did was,  
22 rather than -- and in the past it had been a bond approved  
23 by the Division, but there seemed to have been a need to  
24 expand the types of bond because of the large amounts.

25 And the inability -- And I believe we had a

1 presentation in Artesia by a bonding expert of how hard it  
2 is to get bonds that are large, you know, \$100,000,  
3 \$200,000, \$300,000 bonds. And it's my opinion, you know,  
4 from what I've heard, just hearsay from industry, it's  
5 almost impossible to get an environmental bond in those  
6 amounts from a surety company.

7           So consequently, a company would have to put that  
8 either in cash -- well, in cash, because in the past the  
9 only bonds that the Division has accepted are cash or  
10 surety bonds. If you can't get a surety bond, you have to  
11 put up in cash, you have to put up \$200,000 or \$300,000 in  
12 cash. That's working capital. That's hard -- That is very  
13 hard to do.

14           So rather than put just a form approved by the  
15 Division, which were cash and surety bonds, the Committee  
16 saw the need to try and put additional areas of bonding  
17 that would be allowed, additional types of bonds that would  
18 be allowed.

19           Now, we also -- You know, open up another hearing  
20 for allowing different types of bonds with bonding experts  
21 testifying and all that kind of thing, would -- if -- would  
22 have to precede any rule-changing because of the amounts of  
23 bonds, in the interim, we'd be in limbo as to what bond  
24 would these facilities to have, until we change the rules  
25 on what we would allow for bonding.



1 I may not be explaining this right, but that was  
2 the thinking that went behind it, so that we could allow --  
3 so that there would be -- such as the self-bonding, allow  
4 the companies to comply with the bonding requirements,  
5 without reducing cash flow, and the ability to invest  
6 elsewhere in the state.

7 CHAIRMAN LEMAY: Well, I understand the reasons.  
8 I'm not sure -- That would be creating a lot of problems to  
9 address a problem, but -- Commissioner Weiss?

10 COMMISSIONER WEISS: Yeah, I think I would  
11 emphasize, I don't know anything about bonding issues, and  
12 I think banks are the place to --

13 THE WITNESS: Yes.

14 COMMISSIONER WEISS: -- They can assign risk,  
15 perhaps. I don't know if a bank letter of credit would  
16 work here, but -- Anything but what you have, because  
17 this --

18 THE WITNESS: It's complicated, there's no doubt,  
19 Mr. Commissioner.

20 CHAIRMAN LEMAY: Well, I guess I'm hoping some of  
21 the other people that present opinions will at least kind  
22 of address that for us.

23 As you've all seen, we've got -- three  
24 Commissioners have some concern over this, and it seems to  
25 me to be that the Committee heard lots of testimony on it.

1 But you must have agreed that these eight pages are what we  
2 need to do.

3 If that's the case, we have a problem as  
4 Commissioners. We'll have to bring it up with each of you  
5 that give some testimony, because you've heard us and our  
6 concerns here. We have concerns I guess you didn't, is  
7 what it amounts to.

8 Do you have anything, Commissioner, Bailey?

9 COMMISSIONER BAILEY: Well, I agree with the  
10 position there needs to be something concerning the bonding  
11 issue. Industry can't just shut down because they can't  
12 get bonds.

13 So I believe that we need to have some sort of  
14 resolution of the problem, how to have the industry able to  
15 take care of these problems but yet have the financial  
16 assurance to the State that any potential problems can be  
17 taken care of.

18 So to me, this is of primary importance, that  
19 both the regulators have the ability to review what's  
20 required of industry, and that industry has an opportunity  
21 to be able to work within the system.

22 CHAIRMAN LEMAY: Is there anything else on the  
23 presentation of Mr. Anderson as Committee Chairman, just  
24 outlining the minority positions and the presentation of  
25 the majority view?

1 MR. CARROLL: Yes, I guess I have some questions  
2 regarding clarification of the bonding discussions that  
3 happened during the Committee meetings and Mr. Anderson's  
4 position as Committee Chairman, and then I would like to go  
5 into presenting him as a witness for the OCD.

6 CHAIRMAN LEMAY: Well, we might take a break  
7 before he changes hats.

8 But in terms of clarification of Committee  
9 activity, please go ahead.

10 EXAMINATION (Resumed)

11 BY MR. CARROLL:

12 Q. Mr. Anderson, as Committee Chairman, do you  
13 recall some bonding experts from Houston traveling to the  
14 meeting in Artesia to present evidence?

15 A. Yes, I do.

16 Q. And what was their presentation? What was their  
17 conclusion as to the ability of industry to obtain bonds?

18 A. They discussed the cost of bonds, the type of  
19 bonds that they could get, the surety bonds, and basically  
20 what they went over was the actual cost based on the past  
21 history of the company, from what I recall.

22 If I recall right, they said, depending on the  
23 company, the past history of the company, large bonds would  
24 be very hard to get, although they could be underwritten  
25 for a large -- for a major cost to the company.

1 I don't remember the exact percentages that they  
2 said. I think for a major company with very good rating --  
3 very good history, paid something like three percent per  
4 month, if I'm not mistaken, of the actual value -- or three  
5 percent per year for the actual value of the bond.

6 And I believe they said it could go up to as much  
7 a seven percent for the cost of a surety bond.

8 They never said that they couldn't get them. No  
9 matter, you can always get a bond, basically what this  
10 guy -- And he was the underwriter, he was the one that  
11 evaluated the bonds for cost.

12 But they -- You know, depending on the company  
13 and the situation and the operation, it's the cost of that  
14 bond on an annual basis.

15 Q. Regarding minority positions on the bonding  
16 requirement, do you recall the OCD's original position  
17 regarding bonding, what was acceptable?

18 A. The OCD's original position was cash and surety  
19 bonds.

20 Q. And who was it that wanted self-bonding to be  
21 part of the rule?

22 A. Specifically on the Committee, I don't  
23 remember --

24 Q. But --

25 A. -- but there were other options that wanted --

1 Q. There were a number of Committee members --

2 A. Number of Committee members --

3 Q. -- that wanted self-bonding?

4 A. -- that wanted other options, and that was one of  
5 them. And we brought in the mining regulations, their  
6 bonding. And if I'm not mistaken, I think we took a couple  
7 of the items out of the mining regulations. I don't think  
8 we copied them verbatim; there were some things that were  
9 changed in the mining regs also.

10 But the types of bonds remain -- were the same  
11 things that were under the mining regs.

12 Q. Right, and I guess the Committee members that  
13 wanted some self- -- or wanted some sort of self-bonding  
14 didn't have a proposal themselves, so the OCD brought in  
15 the mining regs because they were recently adopted and  
16 thought readily transferable --

17 A. That's correct.

18 Q. -- to the OCD?

19 A. That's correct.

20 Q. Now, the other committee members have had these  
21 seven pages of the financial assurance requirements for  
22 their review for a number of months now; is that correct?

23 A. That's correct.

24 Q. And there's been no problem expressed in the  
25 minority positions presented to you as Committee Chairman

1 regarding those financial-assurance requirements?

2 A. That's correct.

3 MR. CARROLL: That's all I have of Mr. Anderson  
4 as Committee Chairman.

5 CHAIRMAN LEMAY: Commissioner Weiss?

6 COMMISSIONER WEISS: I have another question  
7 regarding the Committee.

8 Did the Committee look into bonding somehow or  
9 another with the state reclamation fund? Is there a way to  
10 use it?

11 THE WITNESS: That -- I don't -- We did not  
12 really look into that. We discussed the idea of using the  
13 state reclamation fund, and at that time there was a bill  
14 before the Legislature to specifically allow it on lease  
15 sites.

16 We -- The Division at that time took the position  
17 that we had the ability to use the state reclamation fund,  
18 in the event that public health could be jeopardized, and  
19 we have used it, and -- but no, there was -- There was a  
20 committee of NMOGA at the time, I believe it was, that was  
21 looking into the state reclamation fund.

22 COMMISSIONER WEISS: Could the state reclamation  
23 fund be the bonding agency, I guess, is my comment,  
24 question?

25 THE WITNESS: To be honest with you, Commissioner

1 Weiss, I don't know. I don't know how that would work,  
2 because that's -- I would assume that would have to be --  
3 that the Legislature would have to do that. I don't know  
4 how the procedure for doing that would be.

5 COMMISSIONER WEISS: Thank you, sir.

6 CHAIRMAN LEMAY: Any other questions of Mr.  
7 Anderson as Committee Chairman?

8 Let's take a 15-minute break. We'll return and  
9 come back with his other hat on as OCD witness.

10 (Thereupon, a recess was taken at 10:37 a.m.)

11 (The following proceedings had at 10:58 a.m.)

12 CHAIRMAN LEMAY: Okay, before we continue, a  
13 couple housekeeping items.

14 One, it was announced at the beginning of the  
15 hearing that we would continue Case 10,907 until the July  
16 6th hearing.

17 A correction on that. We're going to hear that  
18 August 3rd. So what -- we're going to be giving Dave  
19 Martin and the Socorro group three months.

20 The reason for that is, Gary Carlson, who sits in  
21 as Commissioner, will not be available on July 6th, and he  
22 does want to hear that particular case.

23 So that will be continued to August 3rd.

24 Also I think I mentioned early on that for the  
25 record and for those present here I'd give you the

1 Commission dates that we will be hearing cases throughout  
2 the rest of the year.

3 Of course today is May 11th.

4 The next Commission meeting will be on June 8th,  
5 July 6th, August 3rd, September 28th, October 12th,  
6 November 9th.

7 We historically have not had a meeting in  
8 December, however we can schedule one if -- you know, if  
9 there's pressing need to have one.

10 But those will be the dates the Commission meets,  
11 and those are all Thursdays. They're alternate Thursdays  
12 to when the Examiner has hearings, and that was at the  
13 request, I think, of some of the lawyers who kind of needed  
14 to have some space in there to prepare for our hearings.

15 Okay, we'll continue. This time we're going to  
16 hear from Mr. Anderson -- I think you've -- You've been  
17 sworn in. And Mr. Carroll, he's basically your witness,  
18 the OCD witness, so if you'll proceed.

19 ROGER C. ANDERSON

20 (Testifying as NMOCD witness),  
21 the witness herein, after having been first duly sworn upon  
22 his oath, was examined and testified as follows:

23 EXAMINATION

24 BY MR. CARROLL:

25 Q. Thank you, Mr. Chairman.



1           Mr. Anderson, as the OCD representative on the  
2 Committee, did you get a chance to review the minority  
3 positions that were filed with the Committee Chairman?

4           A.    Yes, I have.

5           Q.    And can you briefly set forth, Committee member  
6 by Committee member, their objections or problems with the  
7 proposed rule?

8           I know you summarized them earlier, but it wasn't  
9 by each member and what their specific objections were.

10          And then I'd ask you to state whether the OCD  
11 agrees with that minority position or disagrees.

12          A.    Okay, I sure can.

13          The first one I received was from Ken Marsh of  
14 Controlled Recovery, as a committee member. And he has a  
15 position opposing the Section C. Operational Requirements,  
16 Number 4., which is on page 13.

17          It does not state in his letter as to what the  
18 specific objections are, but it pertains -- from what I  
19 understand, it pertains primarily with the 4.a. on page 13,  
20 C.4.a. on page 13, which requires a certification of waste  
21 status signed by the generator, certifying that the wastes  
22 are generated from oil and gas exploration and production  
23 operations, are exempt from RCRA, or from the Resource  
24 Conservation and Recovery Act, Subtitle C regulations, and  
25 are not mixed with non-exempt wastes.

1           That requirement -- The OCD opposes the changing  
2 of that requirement. That requirement is basically the  
3 exact same requirement that went out in a memorandum under  
4 the Director's signature to all commercial surface disposal  
5 facilities on April 2nd of 1993.

6           That -- The requirement for that paperwork was  
7 instituted based on an incident where one of our permitted  
8 disposal facilities had unknowingly -- the operator of the  
9 facility was unknowingly there, some other problems  
10 involved in it, but he accepted hazardous waste at the  
11 facility. Subsequently, we had to close the facility down,  
12 turn it over to the Environment Department to clean up the  
13 hazardous wastes.

14           And it was our opinion that we put a number of  
15 oil companies in jeopardy at that facility, because that  
16 waste could have been -- that hazardous waste could have  
17 been mixed with the waste that they had deposited at that  
18 facility also.

19           So we wanted to put in some controls over the  
20 non-oilfield wastes that are accepted at facilities and  
21 make sure that even any oilfield wastes that are accepted  
22 at our facilities are determined to be non-hazardous by  
23 RCRA standards.

24           Even if it is an oilfield waste and determined to  
25 be hazardous by characteristic, the Oil Conservation

1 Division has no jurisdiction over that waste, if it's  
2 hazardous. That's under the jurisdiction of the  
3 Environment Department through a primacy grant from the  
4 EPA.

5 The paperwork involved is basically a statement  
6 requiring a generator of a waste to say what that waste is,  
7 that it is produced water or it's contaminated soils.

8 Now, we did, in this same -- We could go up to  
9 the actual Number 4. It said "The permittee shall require  
10 the following documentation for accepting wastes, other  
11 than wastes returned from the wellbore in the normal course  
12 of well operation such as produced water and spent treating  
13 fluids..."

14 Those high-volume wastes that are transported to  
15 one of our disposal facilities, you know, many -- large  
16 volumes, many truckloads at a time, it's understandable  
17 that there's not going to be a company representative,  
18 necessarily, at all locations when produced water is being  
19 picked up by a water truck, and it's very difficult for the  
20 company representative to sign each load stating that this  
21 is produced water, it's exempt and all that.

22 So we have specifically exempted those from the  
23 individual paperwork, and that can be covered under a  
24 contract with the waste disposal with the trucking company  
25 saying, yeah, you can only pick up produced water, it is

1 exempt. So we have exempted those from the paperwork  
2 requirement.

3 But the smaller wastes, we don't feel it would be  
4 a hardship on the industry, when they have things such as  
5 contaminated soils that they're taking to a disposal  
6 facility, to say that they are contaminated soils and  
7 they're not mixed with a non-exempt waste. That's  
8 protection for them, it's protection for the disposal  
9 facility, and we oppose the changing of that one.

10 Q. So it's the OCD's position that the requirement,  
11 the documentation requirements of C.4. are needed and that  
12 C.4. merely incorporates existing OCD policy regarding  
13 documentation, based upon that 1993 memo?

14 A. That is correct. There is a -- I don't know if  
15 this is the right time to bring it up, but 4.c. --

16 Q. Yes, while we're on C.4.c., you have --

17 A. Yes.

18 Q. -- suggested changes to that?

19 A. Through advice from counsel, we are suggesting a  
20 change that -- It states right now, "Non-oilfield wastes  
21 may be accepted in an emergency if requested by another  
22 regulatory agency."

23 The advice that we obtained was that another  
24 regulatory agency -- We may not have jurisdiction over that  
25 waste if another agency just requests it.

1           So we propose the change to delete "requested by  
2 another regulatory agency" and add after "if ordered by the  
3 Department of Public Safety".

4           It's felt that the Department of Public Safety  
5 has authority to order us to take a waste in the event that  
6 the public health could be immediately impacted if it  
7 remained where it was.

8           Q.    If there was an actual emergency?

9           A.    If there was an actual emergency, that's correct.

10           Now, we also propose that -- and the fifth  
11 sentence, states, "OCD Form C-138 accompanied by the  
12 regulatory agency's request" -- change that, strike  
13 "regulatory agency's request" and add "the Department of  
14 Public Safety order".

15           And at the -- Strike the last sentence,  
16 "Acceptance will be on a case-by-case basis after approval  
17 from the Division's Santa Fe office", and add to the  
18 previous sentence, after "District office", "and the  
19 Division Santa Fe office."

20           In other words, the -- "accompanied by the  
21 Department of Public Safety order will be submitted to the  
22 appropriate district office and the Division Santa Fe  
23 office."

24           Q.    So as I understand this procedure, if somebody  
25 has non-oilfield wastes, they would go to the Department of

1 Public Safety, ask that an emergency exists and ask that  
2 the DPS issue an order to the OCD, ordering the OCD to  
3 allow the acceptance of this waste?

4 A. That's correct. Historically, if there is a --  
5 say, an accident of -- a JP-4 fuel truck overturns and it's  
6 in the middle of a town or something, the Department of  
7 Public Safety Hazardous Response Team, which is made up of  
8 the State Police also, responds to an accident such as  
9 that, and they make the determination that public health  
10 could be impacted immediately.

11 And we have had a number of these cases where  
12 they have requested that we take the soils so that they can  
13 get them out away from the public immediately, and we have  
14 accepted these.

15 And I think under -- for protection of public  
16 health, we should be able to continue to do this, if  
17 ordered so by the Department of Public Safety.

18 Q. So you're saying -- The OCD still doesn't have  
19 jurisdiction to allow the acceptance of this waste, but if  
20 a higher power, the Department of Public Safety, declares  
21 an emergency, the OCD can make a case why it shouldn't be  
22 permitted, but if they're ordered the OCD is ordered to  
23 allow it?

24 A. That's correct.

25 Q. I refer you to C.3. on page 13. This is just a

1 typo, but there's reference to "C.5.c. below" in that  
2 second line, and that should be "C.4.c"; is that correct?

3 A. That's correct.

4 Q. If you'll go to the -- Is that the only minority  
5 position expressed in the letter from CRI or --

6 A. Yes. Yes, sir, it is.

7 Q. Will you go to the next minority position that  
8 you have reviewed as the OCD representative?

9 A. Okay, the next one was on -- from Marbob Energy,  
10 Raye Miller of Marbob, and it was in April, and his request  
11 was on page 17, E.3., which states that basically waste  
12 management facilities in operation at this time, the rule  
13 becomes effective will or shall "comply with sections C and  
14 D unless the Director grants an exemption for C.9."

15 Q. What is C.9.?

16 A. C.9. is the operational requirements requiring  
17 fencing.

18 Q. And what's Mr. Raye Miller's suggested change?

19 A. Raye Miller's suggestion was, primarily because  
20 C.9. was used as an example, that the actual intent should  
21 have been "comply with Sections C and D", which are all the  
22 submittal requirements and the operational requirements,  
23 unless -- and they say "comply with Sections C and D unless  
24 the Director grants an exemption". C. are operational  
25 requirements, D. are closure requirements.

1 Q. And what's the OCD option that suggested change?

2 A. The change on that, it just is -- All it does is  
3 give the Director the discretion to waive some of the  
4 operational requirements or closure of the requirements at  
5 his discretion.

6 And the Division has no objection to that.

7 Q. While we're on Section E.3. on page 17, earlier,  
8 when you testified as Committee Chairman, you read "within  
9 one year" into that E.3. Is this a typo, or was it the  
10 Committee's intent that 3. also be within a one-year  
11 period?

12 A. Yes. Yes, I don't believe it was the Committee's  
13 intent to require them to comply with Sections C and D  
14 immediately. I think that would be an undue hardship to,  
15 immediately upon promulgation, to --

16 Q. So you're testifying that 3. should --

17 A. Should have --

18 Q. -- have to be within one year --

19 A. Should have one year, yes.

20 Q. -- to comply with Sections C and D?

21 Did Mr. Miller have any other minority positions?

22 A. Not on that letter.

23 On the next correspondence from him, on May 1st,  
24 he had a position -- and this was taken by a number of  
25 members from the Committee -- that the word in A.1. --



1 Q. First page?

2 A. The first page, page 1, A.1., that the definition  
3 of "commercial facility" take the word "compensation" -- He  
4 had some dispute on the word "compensation" in there, and  
5 there were others that --

6 Q. What other Committee members voiced --

7 A. Marbob --

8 Q. -- objection?

9 A. -- Raye Miller of Marbob. We didn't have another  
10 Committee member. I believe we had another company, an oil  
11 company, Benson-Montin-Green, that wrote a letter that  
12 looked at the draft and objected to the "compensation"  
13 being -- as a definition for a commercial facility.

14 Q. And what is the basis for that objection?

15 A. The basis for that objection was based on  
16 operating agreements that -- and -- As I understand it,  
17 there are some companies that operate a number of different  
18 wells, and -- for -- with different partnerships, under  
19 joint operating agreements.

20 And the water from those wells goes to a  
21 centralized facility, and there are back charges or charges  
22 from lease to lease for the use of a facility that's on  
23 another lease.

24 Those charges could be construed as compensation.  
25 It was not intended for those charges for use by an

1 operating agreement, by a joint operating agreement, to be  
2 considered compensation and put that facility under the  
3 "commercial" definition.

4 Q. Mr. Anderson, wouldn't 2.b., then, right after  
5 1., handle that situation? Or do you think exclusionary  
6 language in A.1. is needed?

7 A. 2.b. could -- puts that type of an operation  
8 under the centralized facility, but it does not exclude it  
9 from a commercial facility. So theoretically it could be  
10 considered both a commercial and a centralized.

11 So -- And, you know, we agree that maybe some  
12 exclusionary -- Rather than remove the "compensation", the  
13 word "compensation", from number 1., add "exclusionary"  
14 terminology in the number 1., basically at the end.

15 Say "A commercial facility is defined as any  
16 waste management facility that receives compensation for  
17 waste management other than under a joint operating  
18 agreement." And that should exclude it.

19 And then it's added under the centralized  
20 facilities under A.2.b.

21 Q. Okay. Did Mr. Raye Miller have another minority  
22 position regarding the proposed rule?

23 A. Okay, yes, there was a question that he raised as  
24 to whether the Director has any latitude to grant  
25 individual exemptions on a case-by-case basis where

1 basically the facility is very similar to those exempted in  
2 A.3.

3 But for some reason or other, the criteria does  
4 not meet the total requirement. And we believe that -- you  
5 know, we -- the Division agrees with Mr. Miller's comments  
6 that there may need to be some other exemptions, some other  
7 wording, to give the Director discretion to exempt a  
8 facility that does not fit the requirements of the  
9 exemption but is in an area where there is not threat to  
10 groundwater, surface water, public health and the  
11 environment.

12 Q. So you would put that condition on any  
13 discretionary Director exemption to --

14 A. Yes, I would.

15 Q. -- A.3.?

16 A. Yes, I would.

17 Q. Did Mr. Raye Miller have --

18 A. That's --

19 Q. -- any other minority positions?

20 A. He had the minority position of the compensation  
21 and -- No, that was all for Mr. Miller.

22 Q. Let's go on to the next --

23 A. The next one --

24 Q. -- Committee member.

25 A. -- was from Ned Kendrick of Montgomery and

1 Andrews, and his suggested language, addition to an  
2 exemption under A.3., would be to further add an exemption  
3 for "pits that are being remediated or closed pursuant to  
4 the Commission Order R-7940-C".

5 In part, the Division has no objection to that  
6 exemption. However, we feel that is already covered as not  
7 by default by not being in the definition under commercial  
8 or centralized facilities in the first place.

9 Those pits that are being remediated under R-7940  
10 closure are individual well-site pits, which would be  
11 covered under the exemption of the well-site pits.

12 And further, they are being closed and remediated  
13 -- This rule is intended for those facilities that are  
14 going to operate as a commercial or a centralized disposal  
15 facility. Pits that are being remediated and closed would  
16 not fit that definition in the first place.

17 Now, to put an exemption in there for R-7940-C-  
18 closure facilities would preclude us from permitting a  
19 large centralized remediation facility that is taking in  
20 contaminated soils from the closure of a number of pits,  
21 and we have a number of these.

22 And there is one incident right now where we are  
23 having citizens' complaints at a large facility that has  
24 some 60,000 cubic yards of stockpiled waste, contaminated  
25 soils and a number of thousands of yards of stockpiled

1 manure that's causing odors and causing citizens'  
2 complaints right near a residential area. That is a --  
3 what we would define as a centralized remediation facility,  
4 and would have to be permitted.

5 However, it is taking the wastes from a -- R-7940  
6 closures to one central site. And the way I see it, if  
7 this was -- this exemption was in there without a --  
8 something to not exempt centralized facilities, then we  
9 wouldn't be able to have any control over that large  
10 facility.

11 Q. Could NMOGA's concern be handled by an official  
12 OCD opinion or interpretation which would solve their  
13 concern as to whether these pits would be exempted, or the  
14 7940 closures?

15 A. Well, I think they could, because the 7940  
16 closure has their own -- We have rules for 7940 closure in  
17 R-7940.

18 Q. Because what you said, too, earlier was your  
19 interpretation of how to read this proposed Rule 711?

20 A. Yes, yes.

21 Q. If the OCD clarified it through an official  
22 letter --

23 A. Sure.

24 Q. -- or opinion, that should solve their concern?

25 A. Certainly. I would think so, yes.

1 Q. Did NMOGA have any other minority positions  
2 expressed in the letter sent to --

3 A. No.

4 Q. -- the Committee?

5 A. No, that was the only one in this one, in that.

6 And the only other letter we received was from --  
7 Well, we got a -- we had a fax from Tierra, Phil Nobis of  
8 Tierra. And he also agreed -- he had a -- And this was a  
9 comment that he agreed with from Ned Kendrick, not in  
10 writing, that on the last page, page 17, E.4., which is a  
11 time schedule for implementation of bonding for existing  
12 facilities, and his comment was, "I also agree with Ned  
13 Kendrick's comments regarding pit closure. Eight years  
14 seems too long to meet the financial requirement. Four is  
15 reasonable."

16 Q. While we're on E.4., what's the OCD position on  
17 the phase-in period?

18 A. Okay, the OCD's position on phase-in is that --

19 Q. And this is for grandfathered --

20 A. This is for grandfathered --

21 Q. -- facilities?

22 A. -- existing facilities that will be existing at  
23 the time of the promulgation of the rule, that eight years  
24 is also too long.

25 It puts them at a competition advantage -- One

1 reason, it puts them at a competition advantage for any new  
2 facilities that may come into -- may want to come into the  
3 state.

4 If a new facility has four years and by volume  
5 also, to get a bond up, there may be some competitive  
6 advantage given to an existing facility that's already  
7 there. That's economic reasons.

8 There's also a technical reason, that the pit --  
9 the facility we are closing was permitted for five years,  
10 and then we have to close it after five years. Obviously,  
11 we would not have had a bond if they would have had eight  
12 years. If this rule would have been promulgated three  
13 years ago with bonding requirements, they would have had a  
14 full bond in place in eight years. And they still went out  
15 of business three years later.

16 So I think reasonably and logically, with -- You  
17 know, there needs to be enough time to get a bond in place.  
18 But I believe that time needs to be reasonable for  
19 protection of the State and the State's resources.

20 And so we agree with -- and we took the position  
21 initially that, you know, the bond should be between, you  
22 know, 25 percent in one year, 50 percent in two, 75 percent  
23 in three, and 100 percent in four, but without the new  
24 facility volume requirements. Some of our facilities are  
25 already half full or three-quarters full.

1           So I think it would be undue hardship to come up  
2 with a bond based on volume requirements. But I don't  
3 believe that the four years is undue.

4           Q.    The current version of E.4. doesn't include any  
5 volume requirements, so we're just --

6           A.    That's correct.

7           Q.    The OCD position is, we're just changing it from  
8 eight years to four years?

9           A.    That's correct.

10          Q.    Are there any other minority positions you  
11 reviewed?

12          A.    There -- Not from the Committee.

13          Q.    Did Erlinda Miller send any letter?

14          A.    She sent a fax yesterday, based on some questions  
15 that Raye Miller sent out to all the Commission -- or to  
16 all the Committee, and --

17          Q.    Did that express any dissatisfaction with any  
18 parts of the proposed rule?

19          A.    It disagreed with his first question, which was  
20 changing -- which was removing the word "compensation" from  
21 the A.1., and that's the one she disagreed with.

22                And her comments were that this would take -- The  
23 facilities, such as we have up in the northwest right now,  
24 that receives wastes -- which is RMI, which is the RMI  
25 facility -- which receives wastes from only one operator,



1 but was permitted by a consulting firm as their facility,  
2 as a commercial facility.

3 If we take compensation out of it, they're still  
4 just receiving it from one operator. But they're operating  
5 a facility; they don't have any production, they don't have  
6 any, you know, ties. It's just basically -- They'd be just  
7 one facility, but they would not be under the commercial  
8 facility definition.

9 Q. So you agree with --

10 A. I agree with Erlinda Miller on that.

11 She agreed, like just about everybody did, that  
12 the Director -- you know, changing the exemptions in that  
13 -- her grandfather clause is from C.9., exemption -- the  
14 Director can grant an exemption per C.9., and change it to  
15 C. and D.

16 Q. All right, Mr. Anderson, will you turn to Section  
17 B.2.d?

18 A. B.2.d.?

19 Q. Yes, that's on page 4.

20 A. Okay.

21 Q. Now, I believe this provision was requested by  
22 industry just so they would be on notice of any  
23 applications for facilities that are filed with the OCD.

24 Does the OCD agree with that section B.2.d.?

25 A. I believe this was requested by not only some

1 members of industry but also by the environmental  
2 representative on the Committee to allow -- and basically  
3 that lets the industry also know what's going on, and some  
4 members of the public get ahold -- get copies of the docket  
5 also.

6 Q. So it is, in effect, additional public notice  
7 targeted to the industry?

8 A. That's correct, and we agree with it.

9 Q. If you would please turn to Section C.2., which  
10 is on page 13, now, as I understand your testimony earlier,  
11 this was the only paragraph added as a result of  
12 repealing -- the proposed repeal of Section -- or Rule 312?

13 A. That's correct, it's the only full paragraph  
14 added.

15 Q. What else was added?

16 A. In definitions, under A. on page 1, we added  
17 "Bottom Sediment and Water", "tank bottoms" and "waste oil"  
18 for the fluids that are -- the wastes that are acceptable  
19 at a waste-management facility.

20 Q. So although proposed Rule 711 was lengthened  
21 considerably, primarily due to the financial assurance --

22 A. That's correct.

23 Q. -- section, Rule 312 was -- did away in its  
24 entirely by just adding paragraph C.2. and then a couple of  
25 additional definitions in --

1           A.    That's correct.

2           Q.    -- A.?

3                    You heard Commissioner Weiss's question earlier,  
4   and it was directed at you, regarding section B.7.

5                    Does the OCD have a position regarding this  
6   renewal-versus-review process?

7                    That's on page 13.

8           A.    Initially, we had proposed to renew all permits.  
9   And that's a position that the Interstate Oil and Gas  
10   Compact Commission took in their findings of our review and  
11   also in their guidelines for waste-management programs,  
12   that permits should be renewed on a periodic basis.

13                   And the Water Quality Control Commission  
14   regulations that we enforce in the oilfield facilities  
15   require five-year renewal of all permits. And so we  
16   initially put in the first draft that all permits will be  
17   renewed every five years.

18                   We -- That caused some problems with some of the  
19   people -- with some people who have to get bonds and who  
20   have to get financing to construct their facilities.

21                   So the word "review" came up as a term that maybe  
22   some bankers or financial backers would accept. And to be  
23   honest, we didn't see a difference between "renewal" or  
24   "review".

25           Q.    I guess my question is, if it's needed, does

1 the -- The OCD has the authority to continually review or  
2 check for compliance of all these facilities right now,  
3 does it not?

4 A. That's correct.

5 Q. So it's placing an additional burden on the OCD  
6 to review these facilities, even though their ongoing  
7 monitoring of these facilities shows that there's no cause  
8 for a review?

9 A. Well, it -- a review, a periodic review --  
10 because of staffing levels, funding and all that, it's --  
11 sometimes we do not get to inspect facilities, you know, as  
12 we should, like once a year or once every six months or  
13 once very three years. And this is an operational problem,  
14 I understand that. But --

15 Q. I guess my question is, couldn't this be handled  
16 by internal OCD policy, or do you need something in the  
17 rule that tells you to review these every five years?

18 A. It could be handled by internal policy, yes, that  
19 we require our permits to be reviewed internally.

20 As I said before, we were putting "renewed" in  
21 there, primarily because of the guidelines from the  
22 Interstate Oil and Gas Compact Commission.

23 Q. Did the IOGCC recommend that the rules be amended  
24 to provide for five-year renewals, or reviews, or could  
25 that be handled --

1 A. Yes.

2 Q. -- by --

3 A. Yes, their recommendation was that the permits,  
4 other -- and discharge plans were already renewed every  
5 five years, that all other permits be renewed on a periodic  
6 basis. That was a specific recommendation of theirs.

7 Q. Okay, Mr. Anderson, let's go back to bonding.  
8 You stated earlier that it was the original OCD position  
9 that only cash and surety bonds be acceptable to the  
10 Division?

11 A. That's correct.

12 Q. And why is that?

13 A. Because those are the bonds -- those are the type  
14 bonds that have always been used, have been accepted by the  
15 OCD in the past.

16 The other -- Any other type of bonds were  
17 basically foreign to the OCD. We do not -- Right now, that  
18 I know of, we do not have the capability of evaluating  
19 other type of bonds, other than cash or surety bonds.

20 And that was the initial proposal. We -- There  
21 was an opinion that there should be other forms of bonds  
22 that were acceptable, and that may be, so -- and it was the  
23 majority view that other forms of bonds were acceptable.

24 Q. Now, the OCD didn't file or express a minority  
25 position up to now regarding the self-bonding, so

1     apparently the OCD went along with the self-bonding  
2     provisions that were incorporated in the proposed rule?

3             A.     That's correct.

4             Q.     And why is that?

5             A.     It's -- Self-bonding sounds, you know, although  
6     not being able -- I can't evaluate a self-bond, to me it  
7     sounds like, you know, it would be a reasonable method for  
8     protecting the State's resources.

9             Q.     How would the OCD evaluate this self-bonding?  
10     Would additional staffing be necessary, or who in the OCD  
11     would be evaluating --

12            A.     I don't know if there's any capability in the OCD  
13     at this time to evaluate a self-bond.

14                    Now, whether additional staffing would be needed  
15     or not, I don't -- I would imagine it would be, yeah.

16            Q.     Well, what would --

17            A.     There may be some -- There may be capacity in the  
18     Department to evaluate a self-bond, and that I don't know.

19            Q.     What would be done with the documentation filed  
20     with the OCD if there's nobody to evaluate the financial  
21     statements that are being --

22            A.     Well, if we -- if there were other forms of  
23     bonding allowed, we would get the capacity to evaluate it  
24     or find the -- find someone to evaluate it and have it  
25     evaluated.

1           We would be required to do that, if that was what  
2 was required. We wouldn't just get --

3           Q.    Does the OCD desire to do that?

4           A.    Huh? Well, I -- Personally, I don't.

5           Q.    How does OCD feel about letters of credit?

6           A.    Letters of credit are the evaluation by a third  
7 party, such as a bank, you know, and that's a method, a  
8 good method, for -- to evaluate the financial ability of a  
9 company, let a third party, an experienced third party that  
10 knows how to do it, do it.

11          Q.    So the OCD would fully support the addition to  
12 not only cash and surety bonds, but letters of credit  
13 because it wouldn't impose additional staffing or review  
14 requirements on the OCD?

15          A.    That's correct.

16          Q.    Although no official minority positions were  
17 filed with Committee Chairman, it was expressed in the  
18 Committee meetings that an exemption from the bonding  
19 requirements for centralized facilities be implemented, and  
20 that exemption was based on the assumption that these  
21 centralized facilities are connected to producing wells  
22 which are assets which could be sought to cover the cost of  
23 closing a pit, and that those wells connected to the  
24 centralized facility have always paid into the reclamation  
25 fund and therefore they're basically self-bonded.

1 Does the OCD have a position regarding any  
2 centralized-facilities exemption that might be proposed by  
3 later testimony here?

4 A. Yes. Number one, the first -- the initial  
5 position was that the centralized facilities are being  
6 contributed to by wells that are producing, and those are  
7 financially -- you know, they have financial backing if --  
8 However, it's the OCD's position that if -- the only time  
9 there would be a problem with a centralized facility is  
10 when the production is no longer economical, and  
11 consequently the wells would have to be plugged, so there's  
12 really no backing for the centralized facility right there  
13 anyway.

14 Granted, they are backed by operating wells, but  
15 it's when those wells are no longer operating that the pond  
16 would become a problem.

17 So we feel that they should need bonding for that  
18 reason.

19 Number two, yes, we are using the oil and gas  
20 reclamation fund to close a commercial facility. This has  
21 public-health implications, immediate -- it had immediate  
22 public-health implications.

23 It was determined that due to the depth of the  
24 pond, the size of the pond, the nature of the water within  
25 the pond, that if it was left unattended for a matter of



1 days -- it could be as little as two days -- that there  
2 could be dangerous concentrations of hydrogen sulfide gas  
3 emitted from that pond, and there were residents within a  
4 half a mile of that pond.

5 So it was basically an emergency action taken by  
6 the Director to keep -- to avoid a public-health emergency,  
7 to use the reclamation fund.

8 If in the normal course of events, you know,  
9 that's -- I'm not going to make a determination legally as  
10 to whether the reclamation fund or not can be used, but  
11 there is some -- there may be some doubt as to whether it  
12 can be used for a regular facility, since it's not on a  
13 lease site. It's on a lease site, but it's -- You know, it  
14 could be within a lease but not on a site, on a well site.

15 Q. So it's your testimony that the problem will only  
16 arise when the wells connected onto the centralized  
17 facility become economic [sic], they're shut down, and then  
18 the centralized facility will have to be cleaned up?

19 A. That's correct.

20 Q. And although there may be plugging bonds to cover  
21 the wells that need to be plugged, the reclamation fund may  
22 not only be needed to plug those wells but also to close  
23 the facility, if in fact an exemption was granted?

24 A. That's correct.

25 Q. And it's the OCD position that we're opposed to

1 granting such an exemption?

2 A. That's correct.

3 Q. Mr. Anderson, if you'll please turn to page 1,  
4 A.3.b., and I'll try to clarify again what Mr. Kendrick  
5 clarified, and this is probably for my own benefit, but the  
6 1400 cubic yards --

7 A. Okay.

8 Q. -- that was based upon the 200-by-200-by-six-inch  
9 site?

10 A. I don't remember exactly what the --

11 Q. Is that based on the size of a well pad?

12 A. It's based on the average -- One of the Committee  
13 members came up with an average well pad size, that --  
14 exclusive of the well head and tankage equipment and  
15 stuff -- that could be used to remediate a -- or create a  
16 land farm where the contaminated soils were six inches  
17 deep.

18 Q. Then I also notice in that A.3.b. exemption the  
19 word "exempt liquid waste". I guess everybody knows that's  
20 RCRA-exempt, and I know it's spelled out later in the  
21 proposed rule that "exempt" refers to RCRA. I don't know  
22 if it's needed at that point in the rule or not.

23 I think it's pretty much -- well known in the  
24 industry what "exempt" --

25 A. Exempt -- RCRA-exempt, oil-and-gas-exempt --

1    yeah, waste exempted from RCRA under the oil-and-gas  
2    exemption.

3            Q.    Okay, a couple other questions.

4            You referred to an operator, and I -- presumably  
5    this was Southwest Water Disposal that went bankrupt.

6            Did they in fact go bankrupt? Do you know they  
7    went bankrupt?

8            A.    No, we don't know they went bankrupt. They  
9    indicated by letter to us that they were unable to continue  
10   operation of their facility.

11           Q.    And due to the threat to the public health and  
12   safety, the OCD stepped in and --

13           A.    Yes, sir.

14           Q.    -- and used the reclamation fund?

15           A.    That's correct.

16           Q.    Is it the OCD intent to go after the operator,  
17   once this site is cleaned up --

18           A.    It's my understanding it's --

19           Q.    -- cleaned up, for moneys spent out of the  
20   reclamation fund?

21           A.    It's my understanding that it is the intent of  
22   the Division to do that.

23           Q.    Mr. Anderson, do you have anything else you'd  
24   like to add or tell the Commission at this point?

25           A.    I would like to further clarify the A.3.b.

1 exemption, because it is a volume -- it's different volumes  
2 of liquids and solids -- and explain where these volumes  
3 came from.

4 The 16 barrels of exempted liquid waste is a  
5 product of our 3221 exemption.

6 The no-pit -- basically, the no-pit order for the  
7 southeast -- it was, I believe, passed in 1967, which  
8 allowed one barrel per day per 40-acre lease, up to a  
9 maximum of 16 barrels into unlined pits in the southeast  
10 part, those areas that were not exempted.

11 And that's where that volume came from. It does  
12 have precedents in a previous order.

13 And like I said, the 14- -- the 500 barrels was  
14 basically a -- the 500-barrel storage capacity was a happy  
15 medium that was agreed upon by the Committee. There were a  
16 number of different recommendations, from 100 barrels up to  
17 1000 barrels, and 500 barrels seemed like a pretty good  
18 consensus.

19 And then the 1400 barrels we explained.

20 And I believe that's about it.

21 Q. I do have one more question. You testified  
22 earlier that it was between the OCD and the operator as to  
23 negotiate a closing cost estimate for facilities?

24 A. That's correct.

25 Q. Is it your opinion the OCD has the authority

1 after the initial bond is put in place to require an  
2 increase in the size of that bond? You mentioned a \$90,000  
3 shortfall, you estimated?

4 A. Okay, this -- And I'm glad you brought that point  
5 up, because this is another reason that was stated during  
6 the Committee meeting for the five-year review, is, it also  
7 allows a review of the bonding requirements and increases  
8 them based on inflation, if need be.

9 So basically the bond that we would agree with  
10 would be good for five years, until we reviewed it again at  
11 the five-year review.

12 Q. And then as additional information becomes known  
13 to the OCD and it becomes obvious that an increased bond is  
14 required, that they would impose an increased bond at that  
15 time?

16 A. At the review period, yeah, at the review time,  
17 that's correct.

18 MR. CARROLL: Mr. Chairman, that's all I have of  
19 this witness.

20 CHAIRMAN LEMAY: Thank you, Mr. Carroll.

21 Questions of the witness?

22 Mr. Kendrick?

23 MR. KENDRICK: I just want to go back to this  
24 pit-closure exemption to try to address your concern about  
25 centralized facilities that may be subject to Commission

1 Order Number 7940-C.

2 I'm wondering if we could just add a couple words  
3 to what I proposed, to solve your problem. Right now it  
4 reads "pits that are remediated or closed pursuant to  
5 Commission Order Number 7940-C". This is -- would be an  
6 additional exemption under A.3. on page 1 of the  
7 regulations, page 1 or 2.

8 If we inserted the words "on site" after the word  
9 "closed" so pits that are remediated are closed on site, as  
10 opposed to taking the waste off site to a central facility,  
11 would that make the exemption logical?

12 THE WITNESS: Well, if that also prohibited the  
13 introduction of wastes from another pit somewhere else to  
14 that same site, then that would take care of it.

15 Now, I guess if you said pits that were closed on  
16 site, under R-7940, that would prohibit -- that would  
17 prevent them from bringing soils from another pit.

18 MR. KENDRICK: I think so --

19 THE WITNESS: Yeah --

20 MR. KENDRICK: -- because other soils --

21 THE WITNESS: -- I believe it would, yeah.

22 MR. KENDRICK: -- would not be covered.

23 THE WITNESS: That's correct.

24 CHAIRMAN LEMAY: Clarification. What are you  
25 talking about? Are you talking about another item of

1 exemption under item 3.?

2 MR. KENDRICK: Yes, this is the exemption that  
3 Mr. Anderson discussed.

4 CHAIRMAN LEMAY: But not listed on our draft?

5 MR. KENDRICK: Correct, yeah. So when I say  
6 where it is on the draft, it's not there.

7 I propose it to be A.3.g., so it would be on the  
8 top of page 2, an additional exemption after f.

9 CHAIRMAN LEMAY: Okay, I thought that was it, but  
10 I -- clarification, we couldn't find it.

11 THE WITNESS: Mr. Chairman, it's a letter from --

12 CHAIRMAN LEMAY: Yeah.

13 THE WITNESS: -- Mr. Kendrick dated May 2nd, and  
14 it's --

15 CHAIRMAN LEMAY: I assume probably all of that  
16 will be admitted into the record, will it?

17 MR. KENDRICK: This might be a good opportunity  
18 just to --

19 CHAIRMAN LEMAY: Well, let's discuss that. I  
20 mean, that would be an opportunity of -- certainly for the  
21 introduction of letters, statements at the end, into the  
22 record so that you're talking about the language you'd like  
23 to have the Commission consider. The record will be open  
24 for that.

25 THE WITNESS: Yes.

1           CHAIRMAN LEMAY: I assume that whatever Committee  
2 deliberations were, that's your choice whether you want  
3 that admitted or not. I assume, Mr. Carroll, you'll give  
4 some instructions on that, after Mr. Anderson -- what's  
5 admitted and what's not.

6           MR. CARROLL: (Nods)

7           CHAIRMAN LEMAY: But we'll have plenty of chance  
8 for additional written comment for the Commission to  
9 consider after.

10           So if you have language or -- During your  
11 testimony you can certainly bring that up.

12           MR. KENDRICK: Okay, I'll introduce this as an  
13 exhibit during my testimony.

14           CHAIRMAN LEMAY: This has been somewhat reversed.  
15 I know it's why it's been that way.

16           Had you all been able to present your opinions  
17 and OCD comment on them, it might have been more logical  
18 for us.

19           However, understand, where the OCD is the  
20 Applicant in the case, therefore they present their case,  
21 and you all have the last word.

22           So I think that's probably the reason why we're  
23 taking this a little bit backwards today.

24           MR. KENDRICK: Okay. So Mr. Anderson, you said  
25 that you agreed with the insertion of the words "on site"



1 after the word "closed" in my proposed language for A.3.g.  
2 You would not object to the addition of that exemption?

3 THE WITNESS: No, I would not object.

4 MR. KENDRICK: Thank you.

5 CHAIRMAN LEMAY: Thank you, Mr. Kendrick.

6 MR. KENDRICK: Thank you.

7 CHAIRMAN LEMAY: Yes, sir?

8 MR. MARSH: Roger, I'd like to talk just a minute  
9 about the memorandum that was issued --

10 CHAIRMAN LEMAY: For the record, do you want to  
11 just identify yourself?

12 MR. MARSH: Oh, excuse me. I'm Ken Marsh,  
13 Controlled Recovery, Hobbs, New Mexico.

14 The memorandum that was issued on April 2nd,  
15 1993, that you referred to earlier concerning the language  
16 about certification of waste status and those kinds of  
17 things --

18 THE WITNESS: Uh-huh.

19 MR. MARSH: -- this document was circulated  
20 through the industry, and there was some opposition from  
21 the industry and the New Mexico Oil and Gas Association; is  
22 that correct?

23 COMMISSIONER WEISS: Excuse me, what document are  
24 you talking about?

25 MR. MARSH: A memorandum issued April 2, 1993.

1           CHAIRMAN LEMAY: The other Commissioners don't  
2 have a copy of that, so if you have --

3           COMMISSIONER WEISS: I don't know what you're  
4 talking about.

5           CHAIRMAN LEMAY: -- it's very difficult for them  
6 to...

7           MR. MARSH: Roger mentioned this from a  
8 memorandum --

9           CHAIRMAN LEMAY: Yeah, there should be a copy of  
10 it in the record somewhere, if it's referred to.

11          MR. MARSH: Was this memorandum ever enforced in  
12 southeastern New Mexico?

13          THE WITNESS: The -- Yes. Yes, it was. As a  
14 matter of fact, CRI is now -- is sending in for any non-  
15 hazardous waste -- or for non-exempt waste, it's been  
16 enforced. It's been enforced up in the northwest.

17          MR. MARSH: Item 1 says a certification of waste  
18 status signed by a corporate official of the waste  
19 generator certifying that the wastes are generated from  
20 oil-and-gas exploration and production, operations are  
21 exempt from Resource Conservation and Recovery Act,  
22 Subtitle C regulations.

23          THE WITNESS: Uh-huh.

24          MR. MARSH: My memory, Roger, is that NMOGA and  
25 other members of the industry wrote some letters and had

1 some conversation with you, and this was never enforced,  
2 and I think it was by agreement, because the waste-tracking  
3 committee was formed, and this was put off until the waste-  
4 tracking committee finished its recommendations.

5 So my memory serves me that this was never  
6 enforced, and it certainly hasn't been by our company.

7 THE WITNESS: Well, that first section may not  
8 have been enforced by individual districts of the Division.  
9 That's not -- That's not to say that it should not have  
10 been enforced.

11 As far as enforcing a memorandum from the  
12 Division, you know, I'm not going to say whether it's  
13 enforceable or not.

14 I know the other parts of it -- and there are  
15 parts of that memorandum that have been since eliminated,  
16 such as non-oilfield wastes.

17 I know CRI and all the facilities for non-  
18 exempt -- non-exempt waste -- that has been enforced.

19 As far as the exempted wastes, whether the  
20 individual districts have enforced that or not, I don't  
21 know. I know in District 4 -- or District 3 -- I believe  
22 it's been enforced in District 3. I don't know about  
23 District 1.

24 MR. MARSH: Would you agree that there are large  
25 differences in the oil and gas operations in the northeast

1 and the -- I mean, excuse me, the northwest and the  
2 southeast parts of the state, as far as waste practices are  
3 concerned, waste streams generated?

4 THE WITNESS: As far as waste streams generated,  
5 no, I don't -- I wouldn't necessarily agree with that.

6 As far as waste practices, yes, I would agree  
7 with that.

8 MR. MARSH: Okay.

9 THE WITNESS: But that doesn't mean -- You know,  
10 just because they're different, I'm not going to agree that  
11 they're necessarily right.

12 MR. MARSH: All right. What would the -- You  
13 mentioned a while ago the reason behind this memorandum.  
14 Would you refresh my memory what was the reason behind it?

15 THE WITNESS: Oh, the reason --

16 MR. MARSH: There was a problem with a waste  
17 facility, you said, that accepted some hazardous waste.  
18 Would you walk me through that, what happened?

19 THE WITNESS: I didn't get one back.

20 MR. MARSH: You mentioned earlier --

21 THE WITNESS: Yes.

22 MR. MARSH: -- that there was a problem with a --

23 THE WITNESS: Okay.

24 MR. MARSH: -- facility in the northwest that had  
25 accepted some hazardous waste. Would you kind of walk

1 us --

2 THE WITNESS: That's correct.

3 MR. MARSH: -- through that?

4 THE WITNESS: There was a facility up in the  
5 northwest part of the state, Envirotech, Incorporated, who  
6 accepted a waste -- a -- basically, it was a paint waste  
7 from a paint shop, who also did painting for the oil and  
8 gas industry. However, it was not the majority of their  
9 business, so they were not an oilfield concern.

10 Paint waste in itself is a listed hazardous  
11 waste. They did not know this. The company knew that, the  
12 generating knew it was.

13 And so consequently, we -- the memo went out so  
14 that -- to ensure that our disposal facilities that we  
15 permitted did not accept a waste that could be determined  
16 to be hazardous.

17 If a waste at one of our companies -- Say if your  
18 company accidentally put a waste that would later be  
19 determined by the Environmental Protection Agency or the  
20 Hazardous Waste Bureau of the Environment Department as a  
21 hazardous waste in your pit, that makes that whole pit  
22 hazardous waste.

23 MR. MARSH: I understand those implications of  
24 what the mixing does, Roger.

25 What I'm asking you, I guess, is, you say that

1 the generator knew that this was a paint waste and that it  
2 was a hazardous waste?

3 THE WITNESS: That's correct.

4 MR. MARSH: So I guess, then, if the generator  
5 knew that this was a hazardous waste and wasn't supposed to  
6 go to the facility, if his --

7 THE WITNESS: Well, I didn't say that.

8 MR. MARSH: -- if his signature was on the  
9 certification of waste status, would that have made any  
10 difference?

11 THE WITNESS: I didn't -- It probably would have,  
12 because I didn't say that he knew it couldn't go to our  
13 facility. I never said that.

14 He knows what his wastes are. He was  
15 subsequently fined by the Environment Department. And from  
16 -- I assume -- I'm assuming this, that there were no --  
17 there was no intent on his part, because they only brought  
18 fines, not criminal charges against him.

19 So if he would have signed it, would it have made  
20 any difference? You know, I can't say for sure whether it  
21 would have made any difference. But I feel it would have.  
22 If he signed saying exactly what a waste is, you know,  
23 that's intent. He's intentionally misrepresenting, okay,  
24 if he signs a false statement.

25 MR. MARSH: Okay. Since April 2, 1993, when this

1 item 1 has not been enforced in southeast New Mexico, to  
2 your knowledge, have there been any problems that have  
3 arisen by this not being enforced?

4 THE WITNESS: To my knowledge?

5 MR. MARSH: Yes.

6 THE WITNESS: No, I have -- None have been  
7 brought to my attention yet.

8 MR. MARSH: Okay.

9 THE WITNESS: Yet.

10 MR. MARSH: I think that's all the questions I  
11 have. Thank you.

12 CHAIRMAN LEMAY: Thank you.

13 Additional questions of the witness?

14 Yes, sir? Mr. Brakey?

15 MR. BRAKEY: Mr. Chairman, members of the  
16 Commission.

17 Roger, you referenced the review period on the  
18 five-year review.

19 Speaking as an operator of a facility, to obtain  
20 financing to expand large facilities with a renewal of a  
21 permit limited to five years would be very difficult with  
22 any of the financial institutions that I work with.

23 Our facilities currently are inspected monthly by  
24 the local OCD districts. Our monitor wells are witnessed,  
25 the actual monitoring of the wells, the testing of the

1 wells, on a quarterly basis, and those reports are  
2 submitted to the district office.

3 We currently have no less than six company audits  
4 -- and when I say "company audits", I'm talking about  
5 shipper audits -- a year, as to the disposition of their  
6 waste and the compliance of our -- with the record keeping,  
7 and as far as our permits and our amendments.

8 I have a little bit of problem, if companies know  
9 that your facility is only permitted for five years and  
10 they have a cradle-to-grave-type situation on their wastes  
11 in a lot of instances, you're most likely not going to get  
12 some of their business because they're going to be  
13 concerned that their waste at five years is going to be up  
14 for renewal, whether it can be left in place or whether  
15 it's going to have to be remediated and removed.

16 I, as a Committee member, understood that the  
17 intent of the review, the five-year review, was more or  
18 less a time when Santa Fe pulled an operator's file and  
19 went through all of the amendments and the modifications  
20 and all of the things, the bonding, that had taken place  
21 over the preceding five years, so that that file could be  
22 renewed -- or reviewed.

23 And if there was any need for additional bonding  
24 or maybe some additional permit modification to accept  
25 other types of waste, then that was reviewed at that time.



1           And stay away from the renewal, because it's  
2 going to be very difficult as an operator to go through  
3 these company audits and tell them that you only have a  
4 five-year permit, and whereas if you can tell them you have  
5 a five-year renewal for all your compliance issues, all  
6 your regulatory issues, all your bonding issues, everything  
7 that comes up...

8           You know, I mean even when we do small  
9 modifications or amend our permits, all of that paperwork  
10 is submitted through the district office, and most times  
11 it's sent straight to Santa Fe and copied to the district  
12 office. And we're up here personally for an amendment  
13 review before somebody, anyway, with the Commission.

14           So just a little -- as a -- from an operator's  
15 standpoint of a very large commercial facility, as an  
16 ongoing operation, it would be very difficult if I had a  
17 five-year renewal.

18           Now, take a person that's wanting to get into the  
19 business. They're going to build a \$500,000 facility on a  
20 five-year note with the bank, that that may be cancelable,  
21 that that permit's gone in five years. It won't happen,  
22 will not happen.

23           CHAIRMAN LEMAY: Can we assume this is your  
24 testimony, or is this a question? Can I scratch you off  
25 the list here?

1 MR. BRAKEY: No, I've got some more. I've got  
2 some more, Mr. Chairman.

3 CHAIRMAN LEMAY: Okay.

4 MR. BRAKEY: We weren't -- I mean, all of the  
5 comments that we had were sent up, but I haven't -- This is  
6 the first I'm hearing of the Commission's comments on some  
7 of the minority comments that they've had.

8 So I'm kind of a little surprised on some of  
9 this, so -- especially on this renewal. I thought we had  
10 the renewal issue pretty well hammered out. And even  
11 though IOGCC may require renewal or recommend renewal,  
12 "review", I think, came out as a better word.

13 THE WITNESS: I don't think the Division -- If I  
14 did, I'm sorry. I didn't intend to. I'm not opposing the  
15 review provisions in there.

16 To be perfectly honest with you, it's a  
17 terminology, and I see no difference between the review and  
18 renewal. We're going to do the exact same thing, whether  
19 it's renewed or reviewed. It's a word difference, and it's  
20 going to be exactly the same thing.

21 I don't -- We are not opposing the word "review".  
22 If I left that impression, I apologize.

23 MR. BRAKEY: Okay, I may have misunderstood that.

24 THE WITNESS: You know, we started off with  
25 "renewal", and we went to "review" because of the

1 industry's comments. Environmental groups on there agreed  
2 with it also.

3 Actually, I believe that was unanimous. You  
4 know, I can actually use the word "unanimous" now. That  
5 was unanimous that everybody agreed on it.

6 So no, we are not opposing the term "review".

7 MR. BRAKEY: Is it also appropriate at this time  
8 to make some comments on page 13, C.4.a.?

9 CHAIRMAN LEMAY: Well, the way you've organized  
10 it, I'm not sure whether you could make your case stronger  
11 in a presentation or -- This is supposed to be, as I  
12 understand it, questioning Mr. Anderson.

13 THE WITNESS: Uh-huh.

14 CHAIRMAN LEMAY: Everyone will have an  
15 opportunity to present their positions on the minority --

16 MR. BRAKEY: I'd rather wait till then.

17 CHAIRMAN LEMAY: -- and I think that may be a  
18 more appropriate --

19 MR. BRAKEY: Yeah.

20 CHAIRMAN LEMAY: -- time for it.

21 MR. BRAKEY: Thank you, Mr. Chairman.

22 CHAIRMAN LEMAY: Okay, thank you.

23 MR. MARSH: It was my understanding that we were  
24 questioning Mr. Anderson on the minority opinion; am I  
25 correct?

1           CHAIRMAN LEMAY: Well, there may be some  
2 confusion on this. I thought Mr. Anderson first presented  
3 a list of minority opinions. Now, he is presenting the OCD  
4 position on those opinions.

5           You can question him, but I thought you all were  
6 going to make your own presentations as to why you want  
7 your opinions in there.

8           Now, sometimes -- I mentioned, this is kind of  
9 doing it backwards in the sense that Roger here is  
10 commenting on something we really haven't heard yet.

11           And because that's confusing -- And I know why  
12 it's confusing. The organization was such, the Applicant  
13 puts on their case first. And by going according to the  
14 procedure, we are making it a little bit more complicated.

15           But you all organized it, and that's the way you  
16 brought it to us, and that's my understanding of -- is that  
17 correct?

18           THE WITNESS: Yes, that's the way I understood  
19 it.

20           MR. MARSH: My only point of clarification is  
21 that the questions I was asking Roger were for his minority  
22 viewpoint. So I guess that at some point we'll be able to  
23 address those, after I put my presentation on, because  
24 certainly he'll probably have some to ask me.

25           CHAIRMAN LEMAY: Well, we can go back and forth.

1 I think for clarification he'll have questions of you, just  
2 like you probably have some questions of him now.

3 But he's coming on first, and maybe that's  
4 confusing to you. If he was on last, you all could make  
5 your presentations.

6 I'm sure you have objections to other minority  
7 opinions too, so recognize that his position here is just  
8 like yours. It's a minority presentation of minority  
9 points.

10 We have the document here that you gave us.

11 MR. MARSH: Right.

12 CHAIRMAN LEMAY: Now, we're covering each  
13 individual's objection to the document.

14 THE WITNESS: Mr. Chairman, if I might, I think  
15 the object was to let the people -- the industry -- know  
16 what the Division's stance was up front so that they can  
17 refute what we say if they want to, or offer testimony  
18 against it, you know. But we wanted to let everybody know  
19 up front what we thought.

20 CHAIRMAN LEMAY: In a sense, Ken, you've got the  
21 last word --

22 THE WITNESS: Yeah.

23 CHAIRMAN LEMAY: -- and that may be more valuable  
24 than having the confusion of this presentation kind of  
25 backwards in a sense.

1 Any other questions of Mr. Anderson as a  
2 spokesman for the OCD position?

3 Commissioner Weiss?

4 COMMISSIONER WEISS: I don't have any questions.

5 CHAIRMAN LEMAY: Ms. Leach?

6 EXAMINATION

7 BY MS. LEACH:

8 Q. Mr. Anderson, I have a question. I have to go  
9 back to this review/renewal one more time.

10 If you review a permit, do you have the authority  
11 at any time to require the operator to amend the permit?

12 A. It was explained to me that elsewhere in our  
13 rules or in the statutes, that the Division has the  
14 authority to change conditions of a permit for the  
15 protection of surface water, groundwater, public health and  
16 the environment.

17 And that is stated in here, that the Director has  
18 the discretion to add additional requirements or change  
19 requirements for those protections.

20 Q. So in effect you can re-open the permit at any  
21 time after an inspection, after a review, and that would be  
22 almost like a renewal situation that the IOGCC was  
23 recommending?

24 A. That's correct.

25 But traditionally, when we go for a compliance

1 inspection, if there's something wrong we don't open --  
2 this is historical -- we will not open the whole permit to  
3 review, just correct those deficiencies that we noted.

4 This gives the option of going ahead and  
5 reviewing everything that the permit -- that is contained  
6 in the permit to see if it's adequate.

7 And there are a lot -- Believe it or not, there  
8 could be times that we would eliminate requirements because  
9 they are no longer needed.

10 Q. So --

11 A. I know that's hard to believe, but government  
12 sometimes does that.

13 Q. Is the intent of the language, then, to allow ---  
14 or to make sure that the Division at least once every five  
15 years looks at every aspect of the permit and makes  
16 recommendations for corrections that need to be made?

17 A. Yes, ma'am.

18 Q. Then back to the famous C.4.c. exemption.

19 That talks about emergency taking things that  
20 other -- which your proposed change and the Department of  
21 Public Safety in effect orders.

22 Would that include hazardous waste? Or perhaps  
23 would the Division want it to include hazardous waste?

24 A. Well --

25 Q. Would you want to be able to prohibit that?

1           A.    It could be, because at the time we would not  
2 know if it was hazardous waste.

3                   We would object to an order by the Department of  
4 Public Safety to take something we know is listed as a  
5 hazardous waste.

6                   Now, there are -- could be times when we would,  
7 you know, for public safety, accept something that we don't  
8 know whether it's hazardous waste or not until it's tested.  
9 And there are procedures on the permit for accepting those  
10 things and in this -- the requirements for acceptance of  
11 this.

12                   And this has been done a number of times by  
13 Tierra. And what they do is, they remove it, it's isolated  
14 on their facility, on plastic, and protected so that it  
15 can't migrate, it can't go anywhere. And it's stored that  
16 way, pending testing.

17                   If it does test out to be hazardous, then it  
18 would be moved under the hazardous-waste laws from that  
19 site to a hazardous-waste disposal facility.

20                   We have not had one that tested hazardous yet, so  
21 we haven't had to deal with that.

22                   But we do take precautions at the receiving  
23 facility to isolate it and make sure it doesn't contaminate  
24 anything else.

25           Q.    Are you always going to be talking about, in



1 effect, solids, as opposed to liquids?

2 A. Yes -- well -- yes, we would not -- Any liquids  
3 that are spilled would be removed and taken back to the  
4 company that they came from. We would not accept like  
5 diesel fuel or something like that. They'd just bring  
6 another pump truck out and take it back to the refinery.

7 JP-4 is the fluids that we've had three times, I  
8 think, we've accepted it. They've removed the fluids, and  
9 then it's the soils that they want to remove immediately,  
10 and it's the soils that we take.

11 Q. I guess my concern is that if we're not clear  
12 that we're just limiting this to soils that can be  
13 segregated, it's running a risk to the operator to  
14 unknowingly take hazardous waste to a pond.

15 A. That's a potential, and --

16 Q. Would it be helpful from the Division's point of  
17 view to be able to change the language to make sure that  
18 it's just talking about solids?

19 A. It could be either just talking about solids, or  
20 if there was a case where DPS said there's a public-health  
21 emergency in liquids, we might want to put some wording in  
22 there stating that it must be isolated prior to testing,  
23 because it is non-oilfield waste.

24 Q. Okay.

25 A. Yeah, that's a good concern. We hadn't -- The

1 Committee hadn't thought of that yet.

2 MS. LEACH: that's all, Mr. Chairman. Thank you.

3 CHAIRMAN LEMAY: Commissioner Bailey?

4 COMMISSIONER BAILEY: No, I'm done.

5 CHAIRMAN LEMAY: Fine, you may be excused. Thank  
6 you, Mr. Anderson.

7 Let's take a break for lunch, come back at 1:15,  
8 and we'll have the presentations by the other minority  
9 positions, I guess.

10 In fact, everyone has a minority position, I  
11 assume, in this. You only got together to give us a  
12 document. You all want fair play.

13 (Thereupon, a recess was taken at 12:10 p.m.)

14 (The following proceedings had at 1:20 p.m.)

15 CHAIRMAN LEMAY: We shall resume.

16 I have on my list here Mr. Kellahin.

17 MR. KELLAHIN: Thank you, Mr. Chairman.

18 Appreciate the opportunity to appear before you  
19 this afternoon on behalf of the New Mexico Oil and Gas  
20 Association.

21 Let me outline briefly what we're proposing to  
22 do, and then you can decide what order you would like to  
23 hear our technical people.

24 The Association and the industry never likes  
25 additional regulation, but we sympathize with the

1 Division's challenge in considering rules and regulations  
2 that deal with the topic of the surface waste disposal.

3 Let me hand out to you some information, and then  
4 let me suggest to you how we propose to go about presenting  
5 it to you.

6 In order to present to you the industry's  
7 perspective about the rule, we thought it would be helpful  
8 to have a knowledgeable operator, for which the Division  
9 had confidence, to come and discuss his operations. And  
10 we've asked Mr. Al Greer to come this afternoon to  
11 illustrate for you his particular project.

12 Al has prepared a set of exhibits that I'd like  
13 to utilize this afternoon, and with your permission I'd  
14 like to call first Mr. Al Greer.

15 Where did he go? Al? Al's left me.

16 Would you come on up, Al? Why don't you have a  
17 seat over here?

18 One of the challenges the affected operators have  
19 is to look at this order and decide to what extent they're  
20 impacted. And we have divided this into portions, and  
21 we're going to make some recommendations to you.

22 While we're opposed to having additional rules,  
23 if it's your decision to rewrite Rule 711 to deal with the  
24 concept of managing the waste facilities, then we have  
25 brought to you some experts to help you fine-tune that

1 process.

2           There is a definitional challenge with regards to  
3 how you describe a facility as either commercial or  
4 centralized, and within the context of Mr. Greer's  
5 operation up in the San Juan Basin, with his Canada Ojito  
6 unit, he has what would be characterized, in our opinion,  
7 as a centralized facility, and I'm going to have him in a  
8 moment describe for you how he set that up so that you can  
9 see how this rule and the definitions might function.

10           We are tinkering with the first portion of the  
11 rule in the first few pages. That fact that we're willing  
12 to help edit and refine and make this procedure better is  
13 no concession that we think the rule is necessary.

14           There are some parts of this rule, perhaps ten  
15 pages of it, that we have serious problems with. We will  
16 suggest to you that the bonding requirements set forth in  
17 this rule be referred back to another committee. The  
18 Commission has already expressed its concern about the  
19 bonding complexities. It is incredibly difficult.

20           One of the issues we see here is the fact that  
21 currently there is a liability limit of \$25,000. To take  
22 that ceiling off, the industry would like to have multiple  
23 options in satisfying the bonding requirements.

24           We've learned historically to live with cash  
25 bonds and surety bonds within the \$25,000 limit. But if

1 you're going to take that ceiling off, we want a thorough  
2 examination and some meaningful rules to help us bond to  
3 additional capacity.

4 It's a topic that we think the Committee  
5 struggled with and didn't resolve, ultimately, very well.  
6 So we're going to suggest that you take ten pages out of  
7 this rule and send it back to the Committee.

8 One of the Committee members, and I think perhaps  
9 shared with others, Mr. Marsh's concerns about the  
10 certification process. It's a whole different topic about  
11 how you go through the technical process of certifying the  
12 waste material.

13 We're going to call Ken Marsh in a moment and  
14 have him describe to you the struggle the work Committee  
15 had with the certification issues.

16 We're going to suggest to you that you take 4.a.,  
17 I believe it is -- I'm sorry, it's on page 13, it's under  
18 subsection C. It says "Operational requirements". We're  
19 going to suggest that you take 4.a. and refer that back to  
20 the Committee.

21 I'll call Mr. Marsh in a moment to talk about  
22 those kind of operational issues. We will also talk about  
23 the procedure with regards to the bonding.

24 At this point, though, I would like to go ahead  
25 with some background information from Mr. Greer, so that it

1 will give you a sense and a flavor of how he as an operator  
2 has to deal with the rule as proposed. And with your  
3 permission, then, we're going to talk about some of those  
4 fine-tunings of the first few pages of the rule.

5 Our ultimate recommendation is that part of this  
6 would go back to Committee and would do some more work  
7 before we engaged you in the decision-making process.

8 The last thing I want to offer to you is a  
9 possible solution to avoid giving Mr. Anderson and his  
10 attorney the impossible task of dealing with the Committee  
11 process, as well as wearing his hat as an OCD regulator.

12 I think one of the problems that this Committee  
13 had that was frustrating him was the lack of clerical  
14 resources to generate a meaningful report that was  
15 understandable for your analysis.

16 And on behalf of the Association, we will provide  
17 and pay for that clerical management assistance to this  
18 Committee, should you decide to use this group or another  
19 group in order to have a Committee function.

20 I think I perceive from Mr. Anderson's  
21 presentation that there was a frustration on his part for  
22 having to have his own point of view as a regulator, and  
23 then to understand and manage all these minority positions.  
24 And perhaps with the aid of some clerical assistance to  
25 manage that process, you may have a completed report, then,

1 upon which to make decisions. So we suggest that to you as  
2 an option.

3 With that introduction, I'd like to call Mr. Al  
4 Greer.

5 ALBERT R. GREER,  
6 the witness herein, after having been first duly sworn upon  
7 his oath, was examined and testified as follows:

8 EXAMINATION

9 BY MR. KELLAHIN:

10 Q. Mr. Greer, for the record, would you please state  
11 your name and occupation, sir?

12 A. Albert R. Greer, petroleum engineer with Benson-  
13 Montin-Greer Drilling Corp.

14 Q. And where do you reside, sir?

15 A. Farmington.

16 Q. Are you the principal, when we talk about the  
17 Benson-Montin-Greer operations, in what this Division knows  
18 and the Commission recognizes, as the Canada Ojito unit?

19 A. Yes, sir.

20 Q. Do you also have what would be characterized as a  
21 surface waste disposal management facility?

22 A. Yes, sir.

23 Q. You have an evaporation pond of some kind?

24 A. Yes, sir.

25 Q. Without characterizing whether it's commercial or

1 centralized, give us a basic understanding of why you built  
2 the pond and what is it supposed to do?

3 A. All right, the -- We operate the Canada Ojitos  
4 unit, and we operate a number of wells nearby.

5 We had approximately 15 barrels a day of produced  
6 water from the unit and about 15 barrels a day that produce  
7 water from the outside wells.

8 We pay about a dollar a barrel disposal fee, to  
9 dispose of the water. But sometimes, particularly in the  
10 wintertime, or even this time of year -- Three days ago we  
11 had several inches of rain and snow in the area, the roads  
12 were bad, and it's cost us as much as four or five dollars  
13 a barrel to truck the water to the disposal facility.

14 So we elected to build our own evaporation pond  
15 to avoid all the trucking cost, and we made -- started  
16 making our application about a year and a half ago. And in  
17 discussing it with the OCD people, we understood that our  
18 facility would be a centralized facility, not a commercial  
19 facility, that the only water brought to the pond would be  
20 from wells we operated, either in the unit or outside the  
21 unit.

22 We received our permit about -- a little over a  
23 year ago, and started constructing the pond, I think,  
24 August, September of 1994, completed it and put it in  
25 operation in January and have been operating since that



1 time.

2 Q. Has this facility been approved and operated  
3 pursuant to the existing Rule 711 in the OCD guidelines for  
4 that rule?

5 A. As best I understand.

6 Q. Is the actual facility, the waste-disposal  
7 facility, located within the boundaries of the Canada Ojito  
8 unit?

9 A. No, sir, it's located on fee land that we own  
10 right adjoining the unit.

11 Q. Give us an estimate of the kinds of materials,  
12 matter or liquids, that are ultimately displaced or put  
13 into the evaporation pond.

14 A. So far we've brought only produced water from  
15 oil-storage tanks within the unit and from some dehydrator  
16 pits.

17 Q. When you looked at the proposed rules, which is  
18 the form that was issued under a draft of March 9th, 1995,  
19 after examining that were you able to ascertain in your own  
20 opinion whether your operation would be a commercial  
21 facility or a centralized facility?

22 A. Well, it was first brought to our attention by  
23 some of our working interest owners in the unit -- Now, we  
24 built the pond as a unit facility, operated by the unit  
25 operator, but with the understanding in our AFE that we

1 sent out to the participants, it intended that we would  
2 bring not only water from unit wells to the pond but other  
3 wells that we operated, to help defray the cost.

4 We couldn't justify the cost of the pond with  
5 just the 15 barrels a day from the unit. But with all of  
6 the wells that we operate in the area, we felt we could  
7 justify the cost.

8 So we built the pond, then, as a unit facility,  
9 with the understanding that we would charge probably a  
10 dollar a barrel to outside wells; under the joint operating  
11 agreement we would allocate those costs to the wells,  
12 depending upon how much water each one of the wells  
13 produced.

14 One of the working interest owners who's familiar  
15 with the work of this Committee called to our attention the  
16 fact that the way the language -- the strict interpretation  
17 of the language of this proposed change in the rules, would  
18 make us a commercial facility, because there would be --  
19 could be considered compensation where we allocate charges  
20 to the individual wells.

21 And so we recommended that in defining a  
22 commercial facility, that they eliminate the word  
23 "compensation", and there have been quite a bit of back and  
24 forth on that.

25 The end result is that we were still working on

1 it yesterday afternoon, and again this morning, and we  
2 still don't have a good answer for how to handle the  
3 distinction between a commercial facility and a centralized  
4 facility.

5 Q. Let me direct your attention, Mr. Greer, to what  
6 we've marked as Exhibit Number 1, which is before the  
7 Commission, and ask you to read to the Commission what we  
8 have determined to be our latest effort at defining  
9 commercial facilities so that your operations would not be  
10 classified as such.

11 A. Well, what we're showing here -- and I'm not sure  
12 this is what it really needs to be, but we say here, "A  
13 commercial facility is defined as any waste management  
14 facility that receives compensation for waste management  
15 **unless that facility is operated under the terms of an**  
16 **operating agreement approved by the Director.**"

17 And the reason why we came to that language, when  
18 we were working on it earlier, a couple of weeks ago, Raye  
19 Miller, one of the members of the Committee, suggested that  
20 we eliminate "compensation" -- when we brought our problem  
21 to him -- that we eliminate the word "compensation" and put  
22 in there "receives waste from more than one operator". And  
23 we thought that that would satisfy all the conditions.

24 And yet we find yesterday, then, that Roger  
25 Anderson is concerned about a particular pit that's

1     apparently operated by one entity, takes waste from another  
2     single entity, and that that particular one -- and I think  
3     he explained that in his testimony this morning -- would  
4     then result in that facility not being defined as a  
5     commercial facility, and he's concerned about that.

6             But my understanding is that Roger and the others  
7     are satisfied that our facility is a centralized facility.  
8     We just have the problem of how do you define it so that it  
9     can be understood strictly from the words in the  
10    regulation, not by just the fact that he recognizes that  
11    it's a centralized facility.

12            Q.    All right, let's turn to Exhibit Number 2, Mr.  
13    Greer, and without reading the details of what you've  
14    displayed here, describe what the Commission would  
15    understand if they went through the example here you've  
16    shown on Exhibit 2.

17            A.    All right. Here we show an example. It's not  
18    quite like ours, but would be -- somewhat similar to it --  
19    would be three companies go together and elect to construct  
20    and pay for a pond. And they're each going to pay a third  
21    of the cost, but they don't know how much water is going to  
22    come from the different wells, and they don't know how much  
23    really, in a way, to determine each party's just and  
24    equitable share of the cost of building the pond.

25                So they decide that they'll just make a charge of

1 a dollar a barrel and let the chips fall where they may.  
2 Each month, each well will be charged with whatever its  
3 share is, and then the owners would be credited with the  
4 income.

5 So we see in the first row of figures a different  
6 ownership in the wells, companies A, B and C.

7 Then the next set of figures we show the activity  
8 that takes place. One well disposes of 1000 barrels,  
9 another 2000, another 3000.

10 And then the charges then result in the next set  
11 of figures. Company A gets charged \$2000, company B \$1750,  
12 company C \$2250. Total charge is \$6000.

13 And then they each get credited with their share  
14 of the income, which is -- leaves company A with a net  
15 balance of zero, but company B and company C are not in  
16 balance. One of them, in a sense, pays some money, and the  
17 other receives it.

18 We're concerned that this is a typical way in  
19 which costs are allocated to wells under the joint  
20 operating agreements typical in the industry, and yet under  
21 this rule as now proposed, it could be charged that  
22 compensation has taken place, and therefore it's a  
23 commercial pond.

24 Q. Does this example also illustrate one of the  
25 drafting problems when we look at how "centralized

1 facility" is defined?

2 If you'll see on the first page of the proposed  
3 rule, under A.2. and then sub small b., it says "used by  
4 more than one operator under an operating agreement and  
5 which receives wastes that are generated from two or more  
6 production units or areas or from a set of commonly..." and  
7 "commonly" is the word in question, is it not? "...owned or  
8 operated leases"?

9 Under your example, your leases are not commonly  
10 owned, are they?

11 A. No, sir, they're not commonly owned, they're  
12 jointly owned.

13 Q. You would recommend to strike the word "commonly"  
14 and insert the word "jointly" at this point?

15 A. Yes, sir, I think that would be more in line with  
16 the industry understanding of the words "commonly" and  
17 "jointly".

18 Q. When we turn to Exhibit 3, then, it is nothing  
19 more than documentation of your request that "commonly" be  
20 changed to "jointly"?

21 A. Okay.

22 Q. All right, sir. Let's turn to a different topic.

23 If the rule is implemented so that your facility  
24 is classified as a centralized facility, there are a number  
25 of options in here for exempting that facility from some of

1 the requirements of the rule; is that not true?

2 A. Yes, sir.

3 Q. Do you have a recommendation to the Commission  
4 for an additional exemption to be added to the list for the  
5 centralized facility?

6 A. Yes, sir, we do.

7 Q. And is that shown on Exhibit Number 4 in terms of  
8 what you're proposing to add?

9 A. Yes, sir.

10 Q. Describe for us the basis of why you're proposing  
11 an additional exemption.

12 A. Yes, sir. We would come under the bonding  
13 requirements, these new bonding requirements, and we just  
14 don't know what they'll be.

15 We've understood that the State was faced with  
16 over \$100,000 in cleaning up one pond and may even exceed  
17 \$200,000, and the figures for \$300,000 and \$400,000 for  
18 bonds have been talked about in the Committee.

19 And the way the rule is written, we don't know  
20 what our bonding requirements would be, and we feel that  
21 we're at risk, that we may have to put up a large bond.

22 Bonds in the last few years have begun to be more  
23 and more expensive, and in our instance we have found it  
24 more practical to put up a CD than to pay the cost of a  
25 bond.

1           In this particular instance, however, this is a  
2       small bond, our cost, I think, is like, \$40,000. We would  
3       certainly not want to put up a \$400,000 bond to cover the  
4       State's exposure on this facility, which we think there is  
5       very little exposure.

6           Q.    You're putting how many barrels of produced water  
7       into the pond?

8           A.    About 15 barrels a day, and we would like to put  
9       another 15 barrels that we based our AFE on.

10          Q.    If you put in more than 16 barrels a day, then,  
11       you couldn't qualify for the proposed exemption that's  
12       listed as the b. exemption under the rule?

13          A.    That's correct.

14          Q.    Do you have some technical information for the  
15       Commission so that they'll know the potential risk to the  
16       environment and to health issues with regards to the  
17       quality of produced water that's being put into your pit?

18          A.    Yes, sir.

19          Q.    Let's turn to Exhibit 5 and have you describe  
20       that information.

21          A.    We show in Exhibit 5 three columns.

22                The left-hand column is the BTEX standards for  
23       groundwater for New Mexico, under the New Mexico Water  
24       Quality Control Commission.

25                The second is the BTEX standards of New Mexico



1 drinking water, under the drinking water regulations  
2 currently in existence.

3 And then we show in the third column the BTEX  
4 concentrations in our evaporation pond as they were  
5 measured on May 1st. And I need to explain that it had  
6 been several days since we brought water to the pond,  
7 produced water, and I think several weeks since we had  
8 brought water from a dehydration pit.

9 But it's very clear that, at least on May 1, the  
10 pond contained drinking water. It certainly was no threat  
11 to the health, safety of New Mexico.

12 Benzene, for instance, was only a tenth of what's  
13 permitted. And the other volatile hydrocarbons are far  
14 below the drinking-water standards.

15 Q. If the Commission were to adopt an additional  
16 exemption for small-volume produced-water discharges into  
17 this type of facility, do you have an example of the kinds  
18 of information that could be presented so that the  
19 Director, for good cause, could grant an exception under  
20 this procedure?

21 A. Yes, sir, we're not at this time asking for an  
22 exemption for this pond. All we're asking for is that the  
23 rules provide that the Director on good cause shown could  
24 grant an exemption.

25 We really don't know and understand as much as we

1 want to about the pond. We've developed some more  
2 information on it, and we would hope to have considerably  
3 more information if and when we would come to the  
4 Commission and ask for an exemption.

5 Q. Without going through the specific details of the  
6 rest of the information, let's summarize each of those  
7 displays.

8 If you'll turn to Exhibit 6, describe for the  
9 Commission how you have set up your facility and how these  
10 different parts are supposed to function when it's in  
11 operation.

12 A. We show here on the left-hand top, BTEX  
13 concentration in the water in an oil-storage tank that's at  
14 ambient temperature.

15 On the upper right hand we show the concentration  
16 in a heated tank.

17 And then in the center is the concentration in a  
18 dehydrator pit.

19 And the water is transported to the skimmer tank  
20 at the evaporation pond by truck, and from the skimmer tank  
21 it goes into the evaporation pond.

22 We designed our skimmer tank to be heated for  
23 three reasons. We felt like the heat would tend to drive  
24 off the volatile hydrocarbons, that it would also knock out  
25 the traces of oil that might be brought to the tank, and it

1 would prevent that from getting on the pond and forming a  
2 skim that would reduce the evaporation.

3 The third thing the heated water would do is, as  
4 it comes out of the skimmer tank to the pond, it would tend  
5 to float over the top of the water already there and have  
6 first exposure to the wind and wave action, and that also  
7 would tend to dissipate the volatile hydrocarbons.

8 So as near as we can tell, the system has worked  
9 even better than I had anticipated. I didn't anticipate to  
10 have drinking water in it.

11 Attached to the cover sheet are some of the  
12 analyses that go with it.

13 Q. All right, sir. Let's go now to Exhibit 7.  
14 Would you identify and describe that display?

15 A. Okay, Exhibit 7 shows BTEX concentration.

16 The day following, we had brought water from a  
17 dehydrator pit to the pond, and I had the -- our people  
18 that brought the water to the pond, I had them catch  
19 samples in the discharge from the skimmer tank that was  
20 going to the pond to see if there was any significant  
21 difference in concentrations as a result of bringing water  
22 from the dehydrator pit.

23 And they found a concentration about 16,000 parts  
24 per million -- per billion -- which is about three times as  
25 much as we showed in any of the water that we had brought

1 -- had sampled.

2 And so my tentative conclusion on that is that  
3 our dehydrators from time to time probably have some  
4 carryover of glycol. And, you know, the way that the  
5 dehydrator operates, as the gas passes through glycol it  
6 picks -- the glycol picks the water up out of the gas, and  
7 then the glycol goes to a regenerator where it's heated up  
8 to about 350 degrees. That knocks the water out, and it  
9 condenses and comes back down into the dehydrator pit.

10 It's possible for foaming or something to take  
11 place and some glycol carryover into the pit, and I think  
12 that's what happened, in that the BTEX gases tend to have a  
13 strong affinity for the glycol, and glycol is heavier than  
14 water and probably settled to the bottom of the pit.

15 So when they took a sample of the dehydrator-pit  
16 water, they just took it off the top. And I'm convinced  
17 now that beneath that they must have had glycol with very  
18 high concentrations of BTEX.

19 So I was also concerned that perhaps there was a  
20 difference in the samples they got on the surface of the  
21 pond, and perhaps lower. There's only about two feet of  
22 water in the pond now, so halfway down would be about 12  
23 inches.

24 I had them catch a sample at the surface and  
25 catch a sample 12 inches below the surface, and those

1 checked out to be about the same. So it looks like there's  
2 a fairly good dissemination of the volatile hydrocarbons  
3 throughout the pond, whenever we bring excessive amounts to  
4 it.

5 Attached to the cover sheet are some of the  
6 analyses that were run.

7 Q. Describe for us the last set of analyses that's  
8 marked as Exhibit Number 8.

9 A. The first line shows the concentrations which we  
10 showed on our first example, on the plat, it showed the  
11 pits and the tanks.

12 The second line, the 16,600 parts per billion, is  
13 where the truck has unloaded the water from a dehydrator  
14 pit.

15 Then on May 4th, those two figures, the ones we  
16 just looked at, these are the sums of the BTEX  
17 concentrations on the surface and 12 inches deep.

18 Then on the fifth, I began to wonder if the  
19 glycol would tend to settle out in the skimmer tank, and so  
20 I had them measure -- take four samples as they were  
21 unloading one truck of water.

22 And the way our skimmer tank is designed is, when  
23 one load of water is put into the skimmer tank, an equal  
24 volume comes out of the tank.

25 The volume that comes out is separated by a

1   baffle plate in the tank, such that I think there's very  
2   little cross-communication or conventional rollover, when  
3   they unload a truck.

4           And since we have the heater in the tank there's  
5   a possibility that that thermal convection would tend to  
6   equalize the concentrations in the tank, and that's what we  
7   found when they unloaded that load on the 5th of May.

8           So although I don't know, I have a very strong  
9   suspicion that most of the BTEX concentration we get in the  
10   pit is from the dehydrator pits. And as a consequence,  
11   until I find something different, we will not bring anymore  
12   water from the dehydrator pits to our pond.

13           And that's why we have set out in our  
14   recommendation here for the exemption that it be limited  
15   only to produced water and at not more than 50 barrels a  
16   day.

17           Q.   When you look at that possible exemption being  
18   added to the list of those exemptions that are already  
19   proposed, how would you characterize it in terms of risk?

20           A.   Well, I think there's very little risk if the  
21   pond continues to behave as it appears that it has so far.

22           Q.   Would that type operation be less risky to the  
23   environment and health resources than, say, 3.b., which has  
24   a facility that can have an exemption if it has less than  
25   16 barrels of exempt liquid waste per day?

1           A.    Yes, sir, I would argue that our pond with 50  
2   barrels per day would be far more benign than, say, a  
3   facility that has 16 barrels a day of waste that could  
4   include dehydrator liquids that could have H<sub>2</sub>S in them,  
5   could have drilling mud with chemicals in it.

6           So if we compare the exemption that the Committee  
7   has already recognized as having no threat to the health  
8   and safety, I say our pond is more benign than what they're  
9   recommending.

10           MR. KELLAHIN:  Thank you, Mr. Chairman.  That  
11   concludes my examination of Mr. Greer.

12           CHAIRMAN LEMAY:  Thank you.

13           Questions of Mr. Greer?

14           COMMISSIONER WEISS:  Yes.

15           CHAIRMAN LEMAY:  Commissioner Weiss?

16                           EXAMINATION

17   BY COMMISSIONER WEISS:

18           Q.    Yeah, Mr. Greer, in your opinion what's a  
19   reasonable bond for a \$40,000 facility?

20           A.    Well, under our situation, which there appears to  
21   be very little threat to the environment, I see nothing  
22   wrong with the existing \$25,000 bond.

23           Q.    And then one other question.  Can the BTEX volume  
24   per day in a pond be reasonably estimated?

25                   In other words, rather than this list of exempt

1 facilities, could that be narrowed down to just so many  
2 BTEX, whatever they come in, grams per day or something,  
3 volume or -- ?

4 A. I really haven't given any thought to that  
5 particular idea, but it would be something -- seem to me  
6 like that if the Committee is reactivated they might want  
7 to think about something like that.

8 Q. Well, is that a practical thing from the  
9 analytical requirements and costs involved, or is that  
10 just --

11 A. Well, as indicated a while ago, I'm not certain  
12 as to what really brings the concentration of the BTEX to  
13 the ponds. My strong feeling is that it's primarily these  
14 dehydrator pits.

15 And so any pond that would take only produced  
16 water and not water from dehydrator pits could be in a  
17 separate classification, it would seem to me.

18 Q. That was what it sounded like.

19 A. At least -- Appears to me it's at least something  
20 to consider. And the fact that I don't really know -- I'm  
21 just assuming, you know, just an educated guess about the  
22 thing. That's the reason that we did not ask for an  
23 exemption now for our pond, just that there be the ability  
24 or the rule set up so that there could be an exemption  
25 granted.



1 But I think what you're touching on would be  
2 something that the Committee, if it's reconstituted, would  
3 want to look into.

4 COMMISSIONER WEISS: Okay, those are the only two  
5 questions I had. Thank you.

6 CHAIRMAN LEMAY: Commissioner Bailey?

7 EXAMINATION

8 BY COMMISSIONER BAILEY:

9 Q. Commissioner Weiss was pulling on my idea. Are  
10 you recommending that some sort of standard be set below  
11 which BTEX and TDS or any other constituent --

12 A. To answer that question, I need to explain, you  
13 know, I'm an engineer; basically I'm skeptical about  
14 anything until I really, you know, see the proof. I would  
15 hesitate to make a recommendation now, not knowing any more  
16 than I do about it.

17 But I can see from what little bit we've done  
18 that there's room for things like that to be considered.

19 Q. And so as a catch-all, you just recommend for  
20 good cause shown?

21 A. Yes, ma'am. Certainly if you've got a pond out  
22 there with drinking water in it, it sure is no threat to  
23 anybody.

24 How many of them would be that way, I don't know.  
25 I don't know how much is the consequence of our heated

1 skimmer tank and the way I've designed it.

2 I thought that I had a good engineering design.  
3 After reading these numbers, I'm thinking I might ought to  
4 patent it.

5 We have some ranchers in the area that I think  
6 would sure like to have that water for their cattle.

7 COMMISSIONER BAILEY: I didn't have any  
8 questions.

9 EXAMINATION

10 BY CHAIRMAN LEMAY:

11 Q. Mr. Greer, I've got one I'd like to pursue a  
12 little bit in this area.

13 You talked about BTEX. How about chlorides and  
14 bicarbonates? Wouldn't they influence the --

15 A. I assume that that's something that might be  
16 looked into. I don't really know anything about them.

17 Q. And also, if you're talking about, as a practical  
18 matter, the cost to close a facility -- which really, I  
19 think, is what we're kind of getting around to because we  
20 want enough surety there that the State's not stuck with  
21 the bill -- wouldn't a facility like this that has  
22 basically fresh water be very easy to close because you  
23 wouldn't have to haul the water off?

24 A. Sure, it would be very little. In fact --

25 Q. So if the bond was based on the cost of closure,

1 would there be a problem there?

2 A. A problem to who?

3 Q. Oh, for the operator. I'm looking at --

4 A. Oh, no.

5 Q. -- this from an operator's point of view. We're  
6 saying -- We're listing all these exemptions for  
7 centralized.

8 A. Right.

9 Q. What we're really trying to get at is, there's  
10 enough money there to be able to close a facility, at least  
11 on the bonding side.

12 Now, when you get into the regulation side, there  
13 may be some other factors there that operators are  
14 objecting to.

15 A. Yeah, no, the cost --

16 Q. As far as bonding goes, that ought to be a pretty  
17 cheap facility to close.

18 A. Yeah, the cost to the operator to close that  
19 would just be a few hours of bulldozer time and haul the  
20 liners off, and that would be it.

21 Q. So there wouldn't be any objection you would have  
22 to a policy of -- or a rule that said the bond would be the  
23 amount it would cost to close the facility, maximum amount?  
24 You were talking about your liability; that's why I'm  
25 getting back to that question.

1           A.    Yeah, I have no problem with that, as long as you  
2   have some reasonable maximum, you know, like the \$25,000.

3                    The person that's going to have the final  
4   decision on what is the estimated cost is probably going to  
5   be somebody in the OCD. We would hope they would be  
6   reasonable, but they may have a different view of it than I  
7   do, so...

8           Q.    If it was left always to be able to take that to  
9   hearing and so forth, would that be -- I mean, I realize  
10   you'd like a lid on that, but I'm trying to visualize --  
11   What we're trying to do is prevent the \$300,000 bill to the  
12   State.

13          A.    Right.

14          Q.    A \$20,000 or \$25,000 closure plan really isn't  
15   what we're trying to address with this.

16          A.    Right, I understand that, and I haven't given  
17   much thought to that part of it. But again, it would seem  
18   to me that if you reconstitute the Committee, that's  
19   something that they might want to take into account.

20          Q.    Why would you want to reconstitute a Committee  
21   that -- we've had some meetings and --

22          A.    Oh, that we've had so many meetings on? Well,  
23   that's one of our recommendations, I think, that the Oil  
24   and Gas Association is recommending. They've got problems  
25   with bonding, as you discussed this morning. And the other

1 certification, there's some concerns about that, which it's  
2 my understanding that the members would like for those  
3 things to be re-addressed, revisited.

4 Q. The bonding I could see. The certification, I'm  
5 not sure I understand that concern.

6 A. Well, I'm not sure I do either. We're not  
7 involved in that. But there appears to be quite a bit of  
8 concern about it.

9 And I think there could be -- Don't we have  
10 somebody else who's going to address that?

11 MR. KELLAHIN: Yes, sir.

12 CHAIRMAN LEMAY: Okay. Well, that's all I have,  
13 Mr. Greer. Thank you very much. You may be excused.

14 Oh, I'm sorry, Mr. Carroll?

15 MR. CARROLL: Yeah, Mr. Chairman, I have a few  
16 questions. I was talking to a member of my staff here.

17 EXAMINATION

18 BY MR. CARROLL:

19 Q. Hello, Mr. Greer.

20 Is your facility permitted by the OCD?

21 A. Say again?

22 Q. Was your facility permitted by the OCD?

23 A. Yes, sir.

24 Q. Why was it permitted if it's a centralized  
25 facility and exempt from -- if it's not a commercial

1 facility?

2 A. They were very clear in -- when we discussed it  
3 and in making the Application and filings, the filing I  
4 started to make, one of the representatives -- I forget  
5 which one -- of the OCD said that you don't need that,  
6 that's for a commercial facility, your facility is a  
7 centralized facility.

8 And I discussed with one of the other members how  
9 we would be allocating making charges and credits on our  
10 joint billing. And his response was that that's your  
11 internal accounting, it's no business of the OCD how you  
12 handle your internal accounting, that's not a commercial  
13 facility.

14 Q. So I still don't understand why you got a permit  
15 from the OCD if you aren't a commercial facility.

16 A. Well, we got a permit because we're a centralized  
17 facility.

18 Q. And would you have -- Did the OCD impose  
19 conditions upon the construction of this facility?

20 A. Oh, yeah, they had their conditions which they  
21 sent to us, and we met them.

22 Q. Why were those conditions imposed? Were you --

23 A. Why were they imposed?

24 Q. Yes.

25 A. Well, they have conditions for a centralized

1 facility, just as well as they have for commercial  
2 facilities.

3 Q. Weren't conditions imposed because of the level  
4 of contaminants in this -- in your pond?

5 A. I don't see how they could have been. They  
6 didn't know what the level of contaminants would be, and I  
7 didn't either.

8 Q. Would you have built the facility the way you did  
9 without the OCD imposing additional conditions on the  
10 construction of your pit?

11 A. Yes, uh-huh.

12 Q. Where did you get the 50-barrel figure from? I  
13 mean, you testified that your facilities are currently  
14 processing 15 barrels a day. That would fit within the  
15 exemption in the proposed rule, but you propose upping that  
16 limit to 50 barrels a day. I'd like to know where you get  
17 the 50 barrels a day from.

18 A. It's just arbitrary multiplication of three times  
19 what's approved for pits that could have, as I indicated  
20 before, dehydrator fluids, hydrogen sulfide, drilling mud  
21 with chemicals in it.

22 By comparison, our 50 barrels a day, I think, is  
23 far more benign than that kind of a 16 barrels a day.

24 Q. So are you proposing to increase the scope of  
25 your operation above the 15 barrels a day?

1           A.    I thought I indicated earlier that we built the  
2 facility by the unit, by the Canada Ojitos unit, with the  
3 understanding, and when I sent out the AFE to the  
4 participants, it included that part of the cost of the pond  
5 would be defrayed by allocating cost to other wells which  
6 we operated in the area.

7                       So we built the pond by the Canada Ojitos unit.  
8 We've so far brought only water from the Canada Ojitos unit  
9 to the pond.

10                   We have some working interest owners who are  
11 concerned about this language that would appear to classify  
12 us as a commercial facility if we bring water from the  
13 outside wells. And so we have not brought any water yet  
14 from the outside wells, although we built it with the  
15 intention of doing that, with the understanding and  
16 discussions with the OCD people.

17                   But nevertheless, the way these rules are  
18 written, if you read them strictly word for word, we could  
19 be classified as a commercial facility.

20           Q.    Do you have any recommendation as to a total  
21 capacity limit of a pond? I mean, 50 barrels a day times  
22 365 is -- What? A little over 18,000 barrels a year, and  
23 if none evaporated over ten years it would be 180,000  
24 barrels. Is there any upper limit you propose?

25           A.    I don't know what you mean, "upper limit". the



1 pond is only so big, it will only hold so much water. We  
2 can't have a practical limit --

3 Q. I'm not talking about your pond, I'm talking  
4 about the exemption. At 50 barrels a day, is there a total  
5 limit on the size of the pond proposed?

6 A. I'm suggesting that 50 barrels a day be on an  
7 annual basis.

8 Q. And I'm asking you if you have a recommendation  
9 as to the total size of the pond for this exemption.

10 A. No, I have no recommendation.

11 Q. You testified that due to the make-up of the  
12 water in your pit, that all it would take is some bulldozer  
13 time to clean up the facility?

14 A. Right.

15 Q. Do you have an estimate of the cost of that?

16 A. Oh, I would say it would be -- Well, in our  
17 instance bulldozers are close by and it wouldn't take much  
18 to truck it there. I would think probably less than \$1000,  
19 perhaps a little bit more. We'd probably want to reseed  
20 the area.

21 Q. So according to the proposed rule brought forth  
22 by the Committee, your bond would be in the amount of about  
23 \$1000; is that right?

24 A. We haven't complained about the \$25,000 but a  
25 practical limit would be much less than \$25,000 for our

1 pond, I think.

2 Q. Yeah, and that is the proposal, the actual  
3 closure cost, even if it's less than \$25,000?

4 A. Yeah, let's see. If we have an exemption, I  
5 guess we -- I wasn't thinking about an exemption entirely.  
6 We want to be exempt by, I guess, anything over the  
7 \$25,000.

8 Q. So if another operator operated a facility and  
9 the closure costs were \$500,000, it's your recommendation  
10 that the bond should still be limited to \$25,000?

11 A. Well, you're getting into something now that I  
12 haven't worked and I think ought to be again the subject of  
13 the Committee to look into that.

14 And it would seem to me that the Committee has  
15 not looked into the real hazard of the ponds or the  
16 different kinds of ponds that you might have.

17 Q. Well, I'm just asking you for your personal  
18 opinion regarding whether a \$25,000 bond, in your opinion,  
19 is adequate to close the facility.

20 A. Well, I'd have to be satisfied that \$500,000 is a  
21 reasonable figure to close the pond. It would seem to me  
22 that would have to be a pond that's -- really does pose a  
23 threat.

24 Q. So if in your opinion the reasonable cost of  
25 closing a pond is \$500,000, you'd be in favor of a bond in

1 the amount of \$500,000?

2 A. Well, I don't know what would be the practical  
3 thing to do. The State gets a lot of benefit from the fact  
4 that that pond is operated, gets royalties, taxes and all  
5 of that. I don't know but what the State might should bear  
6 part of the cost.

7 I think you're getting into something that you  
8 really need to study more than has been studied.

9 Q. If there wasn't an exemption as you proposed for  
10 the 50 barrels a day, there really is no practical  
11 difference between being classified as a centralized  
12 facility or a commercial facility, is there?

13 A. Right, the only difference is that if we are a  
14 centralized facility, we do have the -- hopefully, the  
15 option of having an exemption.

16 Q. Right, but the only difference is that commercial  
17 facilities under C.4., which is in issue, would have to  
18 obtain documentation?

19 A. Right.

20 Q. Whereas a centralized facility wouldn't?

21 A. Yeah, we might get out of a little bit of  
22 paperwork, and certainly I'd like to do that.

23 Q. So other than -- To restate it, other than  
24 exemptions to centralized facilities, the only difference  
25 is the documentation requirement?

1 A. Essentially.

2 Q. And the exemption would be -- And the primary  
3 purpose for obtaining an exemption would be to avoid the  
4 bonding requirement?

5 A. Correct.

6 Q. Mr. Greer, do you know whether NMOGA was  
7 represented on the 711 Committee that was set up?

8 A. It's my understanding they were. I'm sure Raye  
9 Miller was one, and I don't know -- Buddy Shaw -- I've  
10 discussed it with both of them. I haven't discussed it  
11 with any of the others.

12 Q. I heard you testify that it was your  
13 recommendation that the Committee be reconstituted or, it's  
14 NMOGA's position?

15 A. That's my understanding, yes.

16 Q. But NMOGA already had a representative on the  
17 Committee that was already set up and held meetings?

18 A. Oh, yeah.

19 Q. Were you contacted regarding your opinion  
20 regarding the proposed rule prior to preparation for this  
21 hearing?

22 A. I didn't understand.

23 Q. All along -- When the Rule 711 Committee was set  
24 up, were you contacted regarding your opinion as to what  
25 should be done?

1           A.    Yes, sir, I expressed my concern to Roger  
2   Anderson, I wrote him a letter in January.  And he advised  
3   that they planned to have a meeting in February, one of  
4   them, in Farmington.  I planned to attend, and I wrote and  
5   told him I would try to attend.  But it turned out that I  
6   couldn't make it that day, and so I did not get to make  
7   that meeting.  But I had hopes that the Committee would  
8   consider my concerns.

9           Q.    So you submitted your proposed exemption to --

10          A.    Oh, we just talked about that.  I discussed that,  
11   I think, with Raye and with Buddy.

12          Q.    Well, when did you come up with your proposed  
13   exemption of 50 barrels a day?

14          A.    Oh, I don't know when it was.  It was a couple of  
15   weeks ago that -- maybe ten days ago that we got the final  
16   draft -- Mr. Kellahin got it from Roger Anderson and mailed  
17   it to me.

18                And in reviewing it, I believe that was the time  
19   that we decided that that would be a reasonable number.

20          Q.    So that number was never submitted to the  
21   Committee?

22          A.    No, and I --

23          Q.    It was just presented here?

24          A.    And I apologize to the Committee and this  
25   Commission for the fact that I was remiss in not following

1 the Committee's action more closely than I did.

2 Q. And the purpose of all your analyses, the  
3 chemical analyses, was as an example of showing good cause  
4 why the Director should exempt a facility such as yours  
5 that is under 50 barrels a day?

6 A. I was searching for some of the facts as to what  
7 would be some of the things for the Director to consider,  
8 and frankly I was surprised when I found the strong effect  
9 of the dehydrator pit.

10 And of course that information came to me just  
11 last -- within the last week.

12 Q. Does your facility have any potential for sulfur  
13 dioxide generation?

14 A. What do you mean by "outside generation"?

15 Q. H<sub>2</sub>S generation.

16 A. Say again?

17 Q. Do your -- The facilities you operate, is there  
18 any possibility of H<sub>2</sub>S generation?

19 A. My understanding is not, in discussing it with  
20 the best people I knew, on design and construction of the  
21 evaporation ponds, was that if you keep the depth of the  
22 water less than five feet, that there's little chance of  
23 H<sub>2</sub>S generation.

24 If there is, then, of course, we need a spray  
25 system.

1 But our pond is designed for a maximum of four  
2 feet, and we have made provision -- laid the electrical  
3 lines and such, in case we need to go to evaporation by  
4 helping it with a spray system, which would at the same  
5 time prevent the pond from generating H<sub>2</sub>S.

6 Q. Are you familiar with what happened to Southwest  
7 Water Disposal up near Blanco?

8 A. Oh, I just heard a little bit about it. I don't  
9 really have the facts.

10 Q. So if they took in less than 50 barrels a day,  
11 they -- based upon your limited knowledge, they probably  
12 couldn't have qualified for an exemption on good cause  
13 shown, because their pit was more than five feet deep?

14 A. So they ran the risk of H<sub>2</sub>S.

15 Q. And your proposal on 50 barrels a day, is that on  
16 an average basis, or is that a strict limit every day on  
17 the amount of water that can be taken into the pond?

18 A. I think the way we wrote our recommendation, that  
19 it's 50 barrels a day on an annual basis.

20 MR. CARROLL: Yeah, that's correct.

21 That's all I have, Mr. Examiner.

22 CHAIRMAN LEMAY: Additional questions of the  
23 witness?

24 Commissioner Weiss?

25 COMMISSIONER WEISS: Yes.

## 1 FURTHER EXAMINATION

2 BY COMMISSIONER WEISS:

3 Q. Mr. Greer, where is your pond located?

4 A. It's about the central location, north-south,  
5 adjoining our Canada Ojitos unit on the east.6 Q. Is there anything out there but scrub brush?  
7 Maybe your --8 A. Not right close by. I've got an airstrip about a  
9 thousand feet from it.

10 Q. No towns or anything?

11 A. No, not on it?

12 Q. That's my only question. I was just curious --

13 A. No. We own, I think, a section or half section  
14 of land in fee there, and we don't farm it.

15 COMMISSIONER WEISS: Thank you.

16 CHAIRMAN LEMAY: Additional questions?

17 If not, the witness may be excused. Thank you,  
18 Mr. Greer.

19 MR. KELLAHIN: I'd like to call Ken Marsh.

20 KENNETH R. MARSH,  
21 the witness herein, after having been first duly sworn upon  
22 his oath, was examined and testified as follows:

## 23 EXAMINATION

24 BY MR. KELLAHIN:

25 Q. Mr. Marsh, for the record, sir, would you please



1 state your name and occupation?

2 A. Kenneth Ray Marsh. I'm a consultant for  
3 Controlled Recovery, Incorporated.

4 Q. Controlled Recovery, Incorporated?

5 A. That's correct.

6 Q. What is the business of that company?

7 A. They're an oilfield-waste-disposal company.

8 Q. And have you been in that business in the State  
9 of New Mexico?

10 A. Yes.

11 Q. And where do you reside, sir?

12 A. In Hobbs, New Mexico.

13 Q. Give us a summary of your background in the  
14 management of a waste facility in the State of New Mexico.

15 A. I designed and constructed -- Well, first, I  
16 permitted -- went through the permitting process, designed  
17 and constructed the facility and operated it until 1993.

18 Q. And where was this facility located?

19 A. Between Hobbs and Carlsbad in Lea County.

20 Q. And what kind of material did you take into your  
21 facility?

22 A. We take all forms of oilfield waste.

23 Q. Have you become knowledgeable on the rules and  
24 regulations for the management of what is known as E-and-P  
25 waste material?

1 A. I believe so.

2 Q. Did you participate on the Commission Rule  
3 Committee that developed the rule proposal which is under  
4 discussion by the Commission today?

5 A. Yes, I did.

6 Q. Did you attend all those meetings and participate  
7 in all those discussions?

8 A. Yes.

9 Q. Describe for us, Mr. Marsh, the initial  
10 understanding you had about the reason the Committee was  
11 called, and for what purpose.

12 A. My understanding was that the Committee was  
13 formed to address the bonding requirements for oilfield  
14 surface-waste-disposal facilities, because of the failure,  
15 financial failure, of a facility in the northwest, that the  
16 State did not have -- or the OCD did not have the latitude  
17 to use funds to close that facility, and it was an  
18 emergency-type situation because it evidently proposed a  
19 threat to public health.

20 Q. Were you aware of any other reason that was used  
21 or represented to you as the basis for undertaking a study  
22 of Rule 711?

23 A. No, I believe that was the focus of why we were  
24 gathered. Perhaps -- Perhaps there was discussion about  
25 being in line with IOGCC, some of the IOGCC guidelines, as

1 well as that.

2 Q. All right. At the initial meeting of the  
3 Committee, how did you go about deciding how to manage the  
4 task -- or first, determine what the task was?

5 A. I don't think we ever did.

6 Q. How was the Committee initially engaged in its  
7 work effort, then?

8 A. We gathered around these tables that you see here  
9 and started having discussions.

10 Q. What was the topic of discussion?

11 A. The topic of discussion -- We were furnished with  
12 a draft proposal of the rule. We didn't start from  
13 scratch; we were furnished by a draft that was furnished to  
14 us by the OCD and said, these are the guidelines we're  
15 going to work from.

16 Q. Were you given any kind of instructions from the  
17 Division with regards to which, if any, of these topics  
18 were nonnegotiable?

19 A. There was no formal or written notice about it,  
20 but in our discussions we found that some things were -- at  
21 the discretion of our Chairman were not open to discussion  
22 or not open to any major changes, that those were in fact  
23 going to be included in some way.

24 In other words, there was a discussion about  
25 modifications, and some of those were modified; it wasn't

1 cast-in-stone-type thing, but it was -- We understood that  
2 these things will be included in the rule.

3 Q. Give us a general summary, then, of where you  
4 started with the initial Division-proposed working copy of  
5 the rule change and how it evolved.

6 A. I'm not sure I understand your question.

7 Q. All right, sir. When you had the initial draft  
8 from the Division, did it include a proposal on how to  
9 handle bonding?

10 A. No, it had some limited language in there, but  
11 the way we got to the bonding issue is, I arranged for a  
12 member of the insurance community that writes a lot of  
13 bonds in the State of New Mexico to address the Committee  
14 in the Artesia meeting.

15 Q. Why did you do that, Mr. Marsh?

16 A. Because I felt like we needed some knowledge  
17 about how difficult it was to obtain bonds, what the  
18 procedure was, what the costs were to the participants in  
19 these programs.

20 Q. Why didn't any of that matter?

21 A. Because we were -- one of the tasks was to change  
22 the closure cost of these facilities.

23 Q. What was the closure cost you started with  
24 initially, under the existing rule?

25 A. \$25,000.

1 Q. And how was that handled by your company and  
2 others?

3 A. Our company, in 1990, when we formed the company,  
4 we applied to the bonding company for a \$25,000 bond.

5 The bonding company wrote us a \$25,000 bond and  
6 charged us about 12 percent per year, plus they required a  
7 \$12,500 CD before they would write the bond.

8 Q. What was proposed to be done with the bonding  
9 financial responsibility aspects of the rule, then?

10 Were they to remain at \$25,000, or was something  
11 else to happen?

12 A. No, the original proposal in the guidelines  
13 handed us said that you would engage a third party,  
14 certified engineering firm, to do an audit on your facility  
15 and do an estimate of closure costs, and those closure  
16 costs would be your bond.

17 Q. And how does that fit into the existing rule of  
18 the \$25,000 bond?

19 A. Well, it depends on what your facility is and  
20 what the engineering firm would be.

21 In some instances -- The original proposal said  
22 that you would have to include in these costs the -- in  
23 this analysis, the cost to clean up the facility, to remove  
24 all the waste streams from the facility, to bring it back  
25 to its natural state and to revegetate it.

1 Q. The concept, then, was to substitute a different  
2 financial responsibility criteria, other than the blanket  
3 \$25,000 bond?

4 A. That's right. In the case of our facility, we  
5 did some rough numbers, not with an engineering firm but  
6 with our own staff. And based on the original proposal,  
7 our facility would have cost about \$11 million to get back  
8 like we started.

9 Q. Under those type of closure costs, what options  
10 were discussed by the Committee in order to post those  
11 types of bonds?

12 A. There weren't any. There were -- I furnished the  
13 -- some of the language early on that was used by the EPA  
14 in some closure cost, that they use in hazardous waste  
15 sites, to the Committee. These were discarded in favor of  
16 what you see in there now, that were copied from the coal-  
17 mining industry.

18 Q. What was that done, Mr. Marsh?

19 A. That was done to meet the request of Buddy Shaw  
20 with Amoco. His position was that Amoco is a large,  
21 responsible producer, they have worldwide operations, and  
22 they're financially responsible to take care of any closure  
23 problems that they might have and that their money would be  
24 well -- would be better suited to engage in their  
25 operations to do something that would make a profit instead

1 of being tied up in a large bond.

2 I was not in opposition to that, because I  
3 believe that the major oil companies have brought a lot to  
4 our state, and I believe that they're responsible  
5 operators. I believe that nearly everybody in our industry  
6 are responsible operators.

7 Amoco can pass these financial requirements that  
8 were in there, and quite frankly, I did not analyze in  
9 depth all those self-bonding requirements and these kinds  
10 of things, and the ratios of -- the financial ratios that  
11 are required in these things.

12 My feeling was, and still is, that Amoco, Exxon,  
13 Conoco, the companies that can indeed meet these  
14 requirements, are probably good actors, and there probably  
15 is very little liability to the State to have to take in  
16 and bail out one of their operations because of a closure  
17 cost or because of some threat to public health.

18 Our company is a publicly traded company with a  
19 considerable amount of assets, and we can't pass those  
20 tests that are included in these regulations now. So it's  
21 only going to be your -- the big sisters of the industry  
22 that can meet these requirements.

23 So I quite frankly have no problem with those  
24 being in there, because I do believe that if Exxon or  
25 Conoco or someone has even a million dollars worth of

1 liability in there, that they ought to take that million  
2 bucks and be able to use it in some other fashion, because  
3 they ultimately will be responsible.

4 Q. Under this proposed rule, as we see it this  
5 afternoon, how would you handle it for the facility that  
6 you are involved in?

7 A. Well, frankly, I'm not -- I never have been in  
8 favor of changing bonding requirements. I'm afraid that by  
9 changing the bonding requirements for our commercial  
10 surface waste disposal facilities because of one incident  
11 -- to my knowledge, there's only been one incident that  
12 caused this problem that has to be dealt with. I don't  
13 believe that you can build the rules to cover a hundred  
14 percent of all possibilities in the future.

15 So I think that with one failure, I think, could  
16 be addressed in some other way. I think the \$25,000 bond  
17 is sufficient.

18 I'm afraid that if we change these bonding limits  
19 now for commercial surface waste disposal facilities, then  
20 the next thing we do, we set a precedent for the rest of  
21 the industry to start changing bonding requirements for  
22 other things, such as plugging wells.

23 Q. Have you formed a personal opinion on the  
24 necessity of changing Rule 711?

25 A. Yes, I have.



1 Q. And what is that opinion?

2 A. I don't believe that it needs tinkering with.

3 Q. And why, sir, do you say that?

4 A. Well, it seems to have served us very well in the  
5 past. We have had very little problems with the facilities  
6 that are regulated under 711. One that I know of.

7 It appears to me that the OCD -- that the rule  
8 covers the basics and that the OCD has done a good job in  
9 permitting and regulating these facilities under the rules  
10 that they have. Consequently, I don't see any reason that  
11 it ought to be changed.

12 Q. Describe for us the evolution, then, from this  
13 first draft to what we see now in terms of the operational  
14 requirements that are contained within this proposal.

15 You expressed earlier in your questions of Mr.  
16 Anderson some concerns about the paperwork and the  
17 permitting of the operational requirements. As to that  
18 aspect -- and I think we're looking on page 13 of the draft  
19 -- it is topics under subparagraph C. It says "Operational  
20 requirements".

21 A. Well, 4.a., the "'Certification of Waste Status'  
22 signed by the generator..." We first saw this language in  
23 1993, I believe, in a memorandum from Mr. LeMay, and it had  
24 some more information in it, and in this memorandum it --  
25 then it said, signed by a corporate official.

1 I have a problem with this for several reasons.  
2 One is that it puts the burden --

3 COMMISSIONER WEISS: Where are you at?

4 Q. (By Mr. Kellahin) You're looking at the bottom  
5 of page 13?

6 A. Page 13.

7 Q. And it's the last entry, it's the subparagraph  
8 that's numbered 4., and then it has a subsection.

9 COMMISSIONER WEISS: I see.

10 Q. (By Mr. Kellahin) All right, sir. Please  
11 continue.

12 A. The requirement for the signature of a generator  
13 is an unnecessary burden on the industry, and particularly  
14 on the disposal operator. It makes the disposal operator  
15 the policeman, so to speak.

16 Section 5. requires for the maintenance of the  
17 records, and that puts the maintenance of the records on  
18 the disposal facilities, their responsibility.

19 The OCD has said that they don't want it  
20 submitted to them; they just want us to -- they want the  
21 disposal facilities to keep them.

22 So let's -- For a scenario, let's say that in  
23 four years Exxon sends their audit team in to audit me to  
24 see if I'm handling my waste practices correctly and they  
25 want to keep sending their waste to us.

1           As a matter of professional ethics and duties,  
2     their audit team would be forced to examine, at least spot-  
3     check, some of these records that I'm keeping. In case  
4     that there was an illegible signature, a signature that I  
5     couldn't identify, a forgery or even a blank on some of  
6     these things, they would be forced to note that in their  
7     report. Consequently, Exxon might say, You're not doing  
8     your job right, we're not going to use you anymore.

9           Or, in the other instance, the OCD could do the  
10    same thing for us, not having these signatures. In case  
11    that a trucking company and the oil company got in a  
12    conflict, they could subpoena my records, because I would  
13    be the only one that would have them. So I'd be wound up  
14    in the middle of a lawsuit, not of my volition or my  
15    causing.

16           This is -- You remember that bonding is one of  
17    the main reasons we're here. If I had some kind of  
18    violation like that on my record, then the bonding company  
19    would probably not issue me a bond at all.

20           So if these records are indeed necessary, and  
21    this signature is necessary, then it should be the OCD's  
22    job to pass that verification on. It should come to the  
23    OCD for their verification and then be signed off by them  
24    and sent to me, on every piece of -- on every waste stream  
25    that comes.

1           Now, we have some exemption in here, in this  
2 proposed rule, for some of the waste streams not to require  
3 that, because they're part of the exempt waste streams.d

4           My contention is, why do we need part of them to  
5 be certified and part of them not? We, the industry, the  
6 disposal operators, the generators of the waste, are all  
7 well versed in the rules. All the oil companies now have  
8 environmental departments, compliance officers and these  
9 kinds of things. Most have their own waste-handling  
10 manifest in place. Our disposal companies require more  
11 information now on our tickets and our documentation than  
12 the OCD and the IOGCC recommendations call for, with the  
13 exception of the signature of the generator.

14           In light of the past court decisions and criminal  
15 statutes involving waste streams where we now have personal  
16 criminal liability involved, instead of corporate liability  
17 as it used to be, many companies and many of their  
18 representatives will not sign anything. They just as a  
19 matter of course will not do that because of the liability  
20 involved and their fear of getting embroiled in a legal  
21 controversy or maybe having to defend themselves in court.

22           So this is not a workable situation. It's -- The  
23 industry doesn't want it. We don't need it as disposal  
24 operators because we know our waste stream, we're  
25 responsible. We know our liabilities, the oil companies

1 know their liabilities in these instances. We don't need  
2 additional paperwork.

3 We're already -- The industry is very responsive.  
4 We started these things, these requirements of these  
5 documentations, long before the OCD started thinking about  
6 it, and long before the IOGCC recommended them. So we are  
7 responsible and act in a responsible way and can manage our  
8 waste streams responsibly without these additional  
9 requirements.

10 Q. When you look at the March 9th, 1995, draft  
11 that's been circulated to the Commission, did you have an  
12 opportunity to review and provide Committee input to this,  
13 what I will characterize the final draft?

14 A. Yes.

15 Q. And how did you go about that process?

16 A. We had discussion groups, and at the very end, we  
17 took votes on positions, as we had evolved this thing down  
18 and change of language. Each meeting we would have  
19 discussion groups, and we would come back with revised  
20 language.

21 Now, I might add that we did not have a -- any  
22 clerical help involved in this thing, so we don't have a  
23 good paper trail or a good recollection. We had no minutes  
24 or those kinds of things about how we evolved along those  
25 things.

1 Q. What was to happen after the March 9th, 1995,  
2 draft was circulated to the Committee? Was there anything  
3 else supposed to happen?

4 A. We were supposed to -- We were asked to submit  
5 comments about minority positions, and what we would -- and  
6 where we would go from there.

7 Q. How was that to be done?

8 A. They were to be mailed to Roger Anderson, and  
9 Roger was to put them all in one package to send them to  
10 the members of the Committee.

11 Q. All right. Did you ever receive a package of the  
12 minority comments?

13 A. I received some by fax, but I didn't receive all  
14 of them, and I didn't receive any of the OCD's minority  
15 opinions.

16 Q. Okay. Did the Committee come together after the  
17 March 9th draft to discuss any of the minority issues in an  
18 effort to resolve within the committee process itself these  
19 issues?

20 A. No.

21 Q. Was there a final vote taken by the Committee as  
22 to what draft would ultimately be submitted to the  
23 Commission for consideration as a rule?

24 A. Yes.

25 Q. And what draft was that?

1           A.    That's the draft that you see. It was not  
2 unanimous; there were dissenting opinions on several  
3 different items.

4                   Some of the items were, in fact, unanimously  
5 agreed on by the Committee, one being the self-bonding  
6 requirements.

7           Q.    You participated on the committee process, Mr.  
8 Marsh, and you have particular knowledge and experience  
9 with regards to managing surface waste disposal facilities.

10                   What is your recommendation to the Commission  
11 with how to handle this proposed rule change in today's  
12 hearing?

13           A.    I'm not sure I understood that.

14           Q.    Yes, sir. Do you have a recommendation to the  
15 Commission as to what they should do about this draft rule  
16 change?

17           A.    My recommendation, as I stated a while ago, is  
18 that we should leave the existing Rule 711 as it is.

19           Q.    If the Commission should disagree with you on  
20 that basis, do you have any other modified recommendations  
21 or suggestions to the Commission?

22           A.    Yes, I have several suggestions about this rule.

23           Q.    All right, sir, let's hear them.

24           Q.    Well, obviously we've been through the signature  
25 requirement on the certification of waste and my reasons

1 for that.

2           There maybe is another reason or two that -- Most  
3 of these oil companies now, as you well know, are  
4 downsizing their operations. They're depending on  
5 contractors, they handle a lot of their business by  
6 telephone. And a lot of those guys won't even -- a lot of  
7 the companies wouldn't even have a representative in state,  
8 much less on the location, at the time this waste needs to  
9 be moved.

10           And it's a routine operation and everybody  
11 involved in that routine is familiar with it. It's not  
12 like it's something that we invented each morning. It's  
13 something that we do every day, and we've done it for years  
14 in the past, so we're familiar with that.

15           As I said a while ago, we keep -- Our disposal  
16 companies now, and the oil companies, most of them have  
17 their own waste-tracking requirements, and there are  
18 programs in place. So a lot of these things are not  
19 necessary.

20           I think that industry has responded very well to  
21 the needs of the public and to the needs of the industry  
22 and to the needs of the regulator in furnishing  
23 information, being responsible operators, and getting where  
24 we need to be.

25           None of us in the industry want any problems with



1 the environmentalists. We don't want any problems with  
2 your regulatory agencies. We want to get along and do our  
3 job with the least amount of paperwork that we can  
4 generate.

5 As I said before, in case that the Commission  
6 should require us to do these -- for the disposal company  
7 to be the regulator in this instance, then I think that the  
8 OCD is going to have to be involved and keep those records  
9 themselves and sign off on them.

10 I don't think it's fair to the disposal company  
11 to have to tell a transporter that, hey, you can't unload  
12 this load of whatever it is here because your paperwork  
13 isn't in order. That's not my position as a disposal  
14 company. That's a regulatory determination, and it  
15 shouldn't be put on us.

16 The -- One other thing in this section.  
17 Environmental positions have been funded for all the  
18 district offices. In case that we have requests for non-  
19 exempt oilfield wastes, which we already are doing -- We  
20 are complying with this rule now, as it is written, even  
21 though we weren't required to previously, because it wasn't  
22 in the rule. But we're doing this, we're submitting our  
23 request to the OCD.

24 We would like to see them sent to the district  
25 office, because environmental positions have been funded

1 for the district office. That way, that gives us a quicker  
2 turnaround for something that's routine.

3 If it's not routine, then the district can in  
4 turn ship it to Santa Fe. Consequently, that covers all  
5 the bases, but it gives us a faster turn-around if the  
6 district has the ability to do that. So I would ask that  
7 that be changed.

8 I personally don't like any of the a. or b.  
9 section, but we can live with it as an industry. I believe  
10 that we are -- I believe that we are self-sufficient enough  
11 in the industry and the disposal business to be able to  
12 police ourselves without putting all these burdens on us.

13 Each one of these things that we have to do  
14 requires time, effort, bookkeeping, telephone calls, faxes,  
15 et cetera, et cetera.

16 There is no reason to believe that the -- There's  
17 no history to believe that the disposal companies or the  
18 operators are in fact causing problems, because none of  
19 them have arisen. We have never had a violation. I don't  
20 think that Parabo has. And our company and Parabo probably  
21 account for 75 percent of the waste, other than the  
22 produced water, that's disposed of in this state. So we've  
23 got a good track record.

24 I have some petitions that I sent out to some of  
25 our customers that I'd like to submit as evidence, asking

1 from the people that deal with these issues every day, the  
2 guys that own the trucking companies, that drive the  
3 trucks, the oil producers, these folks, and their feelings.  
4 And they're the guys that deal with this issue every day,  
5 and they know their liabilities and responsibilities. And  
6 this is only a partial -- we sent out a partial customer  
7 list of ours, and this is the response we got in about ten  
8 days, and I would like to submit these as evidence to the  
9 Commission.

10 MR. KELLAHIN: With your permission, Mr.  
11 Chairman, we'll have that marked and introduced as NMOGA  
12 Exhibit Number 9, so that the record will be straight on  
13 what he has submitted for your consideration.

14 THE WITNESS: Let me stress to you that the  
15 IOGCC, in their recommendations, do not require and do not  
16 ask for a certification of waste status signed by the  
17 generators.

18 So we're going -- these rules and regulations are  
19 going beyond what IOGCC is asking for or has recommended.

20 On the bonding issue, there was some discussion  
21 of a bonding pool or a program in these discussions that  
22 would require the disposal companies or generators or  
23 someone to put so much per yard or so much per barrel into  
24 a fund until it reached X number of dollars that would be  
25 used for handling a potential problem of the nature that

1 happened in Southwest Water Disposal.

2 This got shot down for I don't know what reason.  
3 I think one was that you couldn't -- that you had to figure  
4 out who you were going to require to do it, and that  
5 centralized and commercialized facilities came into play.  
6 Consequently, a commercial facility, if they were the only  
7 ones that were forced to do it, would be paying the cost  
8 for the centralized facilities. There was -- That  
9 discussion never got to where we needed to go with it, or  
10 it was never fully developed.

11 Legislative action was not a consideration and  
12 wouldn't -- was not considered in this rule-making. And  
13 what I'm referring to there is that if there were a way to  
14 access some fund by legislative authority, it would give  
15 the OCC, the Commission, the authority to utilize funds to  
16 handle these problems -- and I again stress to you that  
17 there's only been one to my knowledge -- that if you could  
18 handle those problems like that, then it wouldn't be  
19 necessary to change any of this policy. We wouldn't need  
20 to change anything in the rule to get where that the OCD  
21 wants to be, and that's to be able to address problems of  
22 human health.

23 We had discussions, as I said, about the bonding  
24 issue, and writing the closure costs. Some of those  
25 discussions -- As I said at first, it was going to require

1 a third party, independent engineering survey, and it calls  
2 for removing the equipment, putting the property back to  
3 its original state.

4 Well, that was not an acceptable idea to me, and  
5 maybe some other members of the Committee, because in our  
6 instance we own the property. We shouldn't have to remove  
7 anything or do anything to that property, other than to do  
8 something that will keep it from being a problem to the  
9 public health or to the environment.

10 So when you put all those things in, maybe this  
11 closure cost is not a terrible thing, a way to assume this.  
12 But the problem that you get to is that right now the  
13 personnel in the OCD, I feel comfortable with and have no  
14 problem dealing with, and I believe that we can -- if we  
15 have to write a closure-cost estimate, that we can get one  
16 that we can agree on and the OCD can agree on with us.

17 However, I don't know what happens in ten years  
18 when somebody else is running this company and other people  
19 are sitting here.

20 So maybe this \$25,000 cap is not such a bad idea,  
21 to leave it where it is, and to address these things in  
22 some other method.

23 This problem, I don't believe, is as potentially  
24 great as to incur these additional costs on the whole  
25 industry. And if you increase our cost to disposal

1 companies, then you're going to increase the cost to the  
2 generators, to the oil companies, because as our costs go  
3 up we're going to have to charge more. That's basic.

4 The five-year renewal or review program has  
5 already been discussed a little bit by Mr. Brakey. But for  
6 instance, in our bookkeeping system for our company, we  
7 give our facility a 50-year life. So -- And that's what we  
8 sell it to our stockholders, based on that kind of thing.  
9 It's in our prospectuses.

10 So if we would put a five-year -- If there's a  
11 possibility for a five-year cancellation of that thing it  
12 makes us have to go back to the stockholders, it makes us  
13 have to give new disclosures and all these kinds of things.

14 So that thing is a little touchy about that  
15 issue, because when that permit was issued to us, I  
16 believed it was a lifelong permit, and I still do.

17 There was one other discussion that was not  
18 brought out in this self-bonding issue thing, and that  
19 was -- There was some discussion about how to determine if  
20 these ratios and these kinds of things were in fact valid.  
21 As you said, you don't have anybody on your staff and these  
22 kinds of things.

23 It was brought up in the Committee meeting that  
24 perhaps another State agency could be utilized for that  
25 determination, such as the Treasurer's Office, if indeed

1 the bonding requirements should stay as they are in this  
2 proposed rule. That might give a little latitude to these  
3 major oil companies that want to utilize this thing.

4 I don't believe that -- From the face of it, I  
5 don't believe that many companies would even ask for -- to  
6 be considered under these things. So the few that would,  
7 it probably would not be an onerous burden on somebody with  
8 the ability to make those decisions.

9 So you might utilize somebody else in state  
10 government that has that ability to make those, to make it  
11 easier on these oil companies, if indeed that you stay with  
12 these self-bonding requirements. So that's a consideration  
13 that might be undertaken.

14 There was mention of asking for other methods of  
15 satisfying the bonding requirements to be -- other methods  
16 that would be approved by the Director. But your staff  
17 came to your rescue, Bill, and they said, No, we don't want  
18 that because he'll be inundated with them and have to look  
19 at three million of them. So we all agreed that that  
20 probably was not a good solution.

21 I believe that that's all the comments that I  
22 have.

23 I would like to leave with the Commission and for  
24 the evidence -- I have a copy for each -- of the highlights  
25 of my comments, as well as a list of the people -- not the

1 petitions, but a list of the people that signed the  
2 petitions and their companies, as well as a newspaper  
3 clipping that was in the *Hobbs News Sun* on February 1,  
4 1995, from Secretary Salisbury outlining some of her  
5 positions about things for the industry that I would like  
6 to have you take under consideration too.

7 Thank you for your time.

8 CHAIRMAN LEMAY: Thank you.

9 Questions of Mr. Marsh?

10 MR. CARROLL: Yes, Mr. Chairman, I have some  
11 questions.

12 EXAMINATION

13 BY MR. CARROLL:

14 Q. Mr. Marsh, you're appearing here today as a NMOGA  
15 witness. Is it your personal opinion or the NMOGA position  
16 that Rule 711 need not be changed at this point?

17 A. I'm here appearing as a representative of  
18 Controlled Recovery and as a representative of the oil and  
19 gas industry.

20 Q. So which is it, your opinion or the oil and gas  
21 industry, that 711 need not be changed at this point?

22 A. That's my opinion. I've not been in a forum that  
23 cast any votes on that.

24 Q. You referred to the original proposal by the OCD,  
25 that was contained in the original draft given to the



1 committee, that a third party, an independent engineer,  
2 present some closure cost to the OCD; is that correct?

3 A. That's correct.

4 Q. Was the OCD position non-negotiable as to whether  
5 a third-party engineer need be obtained?

6 A. No, it obviously wasn't because it's in our draft  
7 rule that -- It's different than what it was originally.

8 Q. And the OCD original position was that it only  
9 wanted cash or surety bonds. Was that position non-  
10 negotiable?

11 A. No, that was in the old rule.

12 Q. What positions of the OCD were non-negotiable?

13 A. The certification of waste status was one,  
14 changing the bonding requirements was one.

15 Q. Were votes taken on those issues?

16 A. Yes.

17 Q. And how did the votes come out?

18 A. As you see the draft proposal.

19 Q. And if the votes were against the OCD position,  
20 would the draft be different here presented to the  
21 Committee -- or the Commission?

22 A. Well, let me say this to you, that there was  
23 never any real meaning given to changing certification of  
24 waste status.

25 Q. And did you bring it up and bring it to a vote?

1           A.    I brought it up, and brought it up, and bought it  
2 up.

3                   The reason --

4           Q.    And was your proposal defeated, then, by the  
5 Committee?

6           A.    Yes, it was.

7           Q.    And if your proposal had carried, that would have  
8 appeared in this draft rule, and the OCD position would  
9 have been negotiable, and it always was negotiable; isn't  
10 that true?

11          A.    I guess that's a matter of semantics, but that  
12 was not my feeling. You would have to ask some more --  
13 other members of the Committee.

14                   I might add that I think we would have had more  
15 members of the Committee here today, had we seen all  
16 these -- had we seen the OCD's minority positions outlined  
17 before the hearing. I don't know that, but I suspicion  
18 that would be true.

19          Q.    Mr. Marsh, we received a letter from you dated  
20 March 21st, and you set forth one minority position.  
21 You've just detailed a number of other minority positions.  
22 How come you didn't send those to the OCD?

23          A.    I don't have any answer to that.

24          Q.    You mentioned -- You pulled an \$11-million figure  
25 out. I didn't catch what that pertained to.

1           A.    That was the closure cost of the original  
2 proposal that was submitted for the engineering studies in  
3 closure costs.

4                   That's what I estimated it would cost to put our  
5 facility back to original site.

6           Q.    What do you mean by "original site"?

7           A.    Well, if you'll read the original draft it says,  
8 to remove all equipment, to remove all the waste,  
9 decontaminate and put it back to its original state.

10          Q.    You mean natural state, the way it was before you  
11 opened the facility?

12          A.    That's what the original draft reg said.

13          Q.    The original draft proposal said that?

14          A.    Yes.

15          Q.    So you estimated \$11-million closure cost for  
16 your facility, but don't recommend increasing the amount of  
17 a bond above \$25,000?

18          A.    That's correct.

19          Q.    And if your company was financially unable to  
20 close that facility, who was supposed to pay the  
21 \$10,975,000 excess?

22          A.    Well, number one, that proposal was unrealistic.

23          Q.    Who came up with the proposal?

24          A.    I guess the OCD did. It was in their guidelines  
25 and submitted to us at the first meeting we had.

1 Q. You mean the proposal was unrealistic, or your  
2 estimate was unrealistic?

3 A. The proposal was unrealistic. For instance, it  
4 required removal of all waste from our site. Well, our  
5 site is, in fact, permitted as a final resting place.  
6 That's the way it was permitted, that was the intent that  
7 it was permitted under.

8 But that wasn't what this initial regulation  
9 said, and it has changed. And now it's realistic.

10 Q. Okay, what's your realistic estimate of the cost  
11 under the proposed rule presented to the Commission today?

12 A. I have not written the closure plan.

13 Q. You have no ballpark figure as to what it would  
14 cost to close your facility to comply with the new Rule  
15 711?

16 A. No.

17 Q. And if that amount was above \$25,000 and your  
18 company's financially unable to complete closure, who would  
19 you recommend would close the facility?

20 A. I guess first you'd have to make a determination  
21 that it would have to be closed. Who would make that  
22 determination that it would have to be closed -- Why do you  
23 assume that that facility has to be closed?

24 Q. Because it would be a threat to the environment.

25 A. Well, I don't perceive it that way.

1 Q. Well, Mr. Marsh, you referred to a -- that Rule  
2 711 shouldn't be amended or changed based on one instance.  
3 Are you talking about one instance that will never happen  
4 again, or do you actually mean based upon the first  
5 instance, implying that there will be other required  
6 closures down the road?

7 A. Well, I guess that's a word of semantics. Let's  
8 say based on the only one that I'm aware of that's required  
9 this action, which was the Southwest Water Disposal.

10 Q. And you don't think it will ever happen again?

11 A. I did not say that. I'm saying let's look at  
12 historical -- I'm not looking into the future.

13 Q. Is there a possibility it will happen again?

14 A. Well, absolutely, every possibility is there.

15 Q. Do you know what financial assurance your company  
16 will use if the proposed Rule 711 is adopted by this  
17 Commission?

18 A. No.

19 Q. What is your facility permitted to accept as  
20 waste?

21 A. Exempt and non-exempt oilfield waste.

22 Q. How can you prove that? I mean, how can you  
23 prove that you're only accepting non-exempt and exempt  
24 oilfield waste?

25 A. I don't guess I understand where you're going

1 with that question or exactly what the question says.

2 Q. I mean, you state to me that your facility only  
3 accepts non-exempt and exempt oilfield waste. How can you  
4 prove that to me?

5 A. You can come look at our records, you can come  
6 test it, you can go to the sites that it comes from, you  
7 can question the people that bring it to us, you can  
8 question the generators, you can question my employees, you  
9 can question me.

10 Q. So your records show that it's all oilfield  
11 waste?

12 A. Yes. In my documentation here that I've  
13 submitted, there's a copy of our acceptance form on here.

14 Q. Who's that signed by?

15 A. It's signed by whoever brings it in.

16 Q. Isn't that what the proposed rule is going to  
17 require?

18 A. No.

19 Q. What does the proposed rule require, in your  
20 opinion?

21 A. The proposed rule requires the signature of the  
22 generator.

23 Q. But you only obtain a signature from the  
24 transporter?

25 A. That's correct.

1 Q. Does the transporter obtain a signature from the  
2 generator?

3 A. I don't know. That's not my bailiwick.

4 Q. So you don't know how the transporter can verify  
5 that these wastes are only oilfield wastes?

6 A. Well, realistically, as you know, the trucking  
7 companies are responsible operators.

8 The oil companies are very responsible operators,  
9 and they understand their liabilities. Consequently,  
10 they're going to use a hauler that knows how to handle the  
11 waste and knows what they're hauling and why they're  
12 hauling it and where they're hauling it to, how to haul it.  
13 They know the DOT rules, the OSHA rules, the H<sub>2</sub>S  
14 certification, they've been drug-tested, all on and on and  
15 on.

16 So we're not talking about somebody that's a thug  
17 that you're going to find on Fourth Street at midnight;  
18 we're talking about responsible people.

19 Q. Well, it seems to me that responsible people like  
20 that could easily sign a paper as generator that that waste  
21 is oilfield waste, give it to the transporter, and the  
22 transporter can give you two documents --

23 A. Well --

24 Q. -- its own document and the generator's document.

25 A. Okay, let's assume that you're a company

1 representative for Exxon and you're in Denver. And you  
2 call a private well service who does everything for you,  
3 they're your single-source contractor.

4 You say, Go out here and rig up a well and do X  
5 for me, and when you get through, rig it down, send  
6 everything to the yard, what waste you have send it to  
7 Controlled Recovery.

8 That guy's in Denver, he's got 15 operations like  
9 that going on in seven states. Now, he's the generator.  
10 He's not going to come to that field and sign that.

11 Q. Do you have a fax?

12 A. Sure, I have a fax.

13 Q. Do you think these big companies have fax  
14 machines?

15 A. Do you think they're going to fax me that?

16 Q. Yeah.

17 A. Well, I don't.

18 Q. Why not?

19 A. It's an unworkable, tenuous situation.

20 Q. Could Pride sign as a representative of the  
21 generator if the generator gave it authority, written  
22 authority?

23 A. You'll have to talk to Pride and the generator  
24 about that.

25 That's not my determination, is where I'm coming



1 from, and it's not my position to be put -- to be forced in  
2 a position to make that determination, because I'm  
3 satisfied with it.

4 Obviously Exxon and Conoco, et cetera, et cetera,  
5 et cetera, are satisfied with it, because that's the way  
6 we're operating now.

7 Q. Does Exxon periodically audit your records? You  
8 gave an example of Exxon coming in and auditing your  
9 records.

10 A. As a matter of fact, they have audited us three  
11 times, and they plan to be back next week.

12 Q. But you complained about records being illegible  
13 and them having to double-check that?

14 A. No, what I said was, if you require me to have a  
15 signature of the generator, how do I determine that it is  
16 in fact -- am I responsible for a signature that's false or  
17 for one that's illegible, or is it my responsibility to say  
18 that John C. Smith is indeed an employee of Exxon or Mallon  
19 or somebody?

20 I mean, I know the location -- I know the  
21 location that it came from, I know what it is, I know when  
22 it was picked up, I know the driver's name, I know the time  
23 it got there. My employee -- One of my employees will be  
24 present when any waste stream is unloaded, except produced  
25 water. Anything that's unloaded, my people are there to

1 inspect it when it's unloaded, and they sign off on it.

2 Q. But you don't know any of that. You get all that  
3 information from the transporter's document that he signs  
4 when he brings it into your facility; isn't that correct?

5 A. That's correct.

6 Q. And you would have additional assurance if you  
7 also had a document from the generator?

8 A. Well, I suppose that if you had a genuine  
9 document from the generator, that would be some assurance.  
10 I don't see what it would change.

11 Q. So you thought Exxon would prefer no  
12 documentation rather than illegible documentation?

13 A. I didn't say that.

14 Q. What did you say?

15 A. I said that if I have something that presents a  
16 problem that is not in direct compliance with all the rules  
17 that the OCD writes, as well as other folks, then it sets  
18 my company in a position to have a violation against them.

19 And that violation causes us long-term problems.  
20 We strive not to have any violations.

21 Q. How many other committee members had problems  
22 with these documentation requirements?

23 A. I don't know what the vote was. We didn't record  
24 any votes.

25 Q. To the best of your recollection, who else voted

1 with you?

2 A. Mr. Brakey voted with me. I believe there were  
3 two other members that voted with me on this situation.

4 I might add too that, as I said a while ago, that  
5 Mr. Brakey -- his company and my company probably account  
6 for 75 percent of the waste, other than produced water, in  
7 the State of New Mexico.

8 Q. Produced water is exempt from documentation  
9 requirements, is it not?

10 A. That's what I said.

11 Q. Any producers vote with you? They would be the  
12 ones signing these generator documents.

13 A. Yeah, right here. There's a copy of the  
14 petitions. There's some of the generators and producers.

15 Q. Was that petition sent out with a cover letter?

16 A. Yes.

17 Q. Is that part of the exhibit?

18 A. I don't know if it is or not, but if it's not  
19 I'll certainly furnish it.

20 Q. Yeah, I'd appreciate that.

21 Do you know how long 711 has been in existence?

22 A. No.

23 Q. Well, I'll tell you, it's eight years. But in  
24 the eight years it's been in operation, you consider that a  
25 long enough time that it doesn't need to be changed at this

1 point, that the track record established is sufficient just  
2 to keep it the way it is?

3 A. In my opinion, yes.

4 Q. Is CRI satisfied with the financial assurance  
5 requirements that's contained in the proposed rule?

6 A. No.

7 Q. What specifically, besides increasing the amount  
8 of bond?

9 A. That's specifically it. It's economically  
10 driven.

11 Q. You testified CRI probably can't qualify for  
12 self-bond?

13 A. That's right.

14 Q. So you testified most industry participants have  
15 their own environment departments and have their own  
16 disposal waste-tracking systems?

17 A. A lot of the companies have their waste-tracking  
18 systems. Most of them -- Nearly all companies now have  
19 compliance and regulatory people, as well as most of them  
20 have an environmental department.

21 Q. Does CRI have such a department and tracking  
22 system?

23 A. Yeah, I just showed you what we have here.

24 Q. How many people are employed in your  
25 environmental bureau or department?

1 A. I guess everyone in our company is.

2 Q. How many are in your company?

3 A. We're all responsible -- We all have different  
4 responsibilities, and we're all responsible for this  
5 documentation.

6 When I said that people have their environmental  
7 compliance folks and these kinds of things, I'm talking  
8 about the producers of this waste.

9 Q. But the disposers of the waste don't; is that  
10 what the implication is there?

11 A. No, that's not the implication.

12 Q. How many people are employed by CRI?

13 A. We probably have 14 or 15 on the payroll.

14 Q. Who's in charge of the environmental compliance?

15 A. I am.

16 Q. And who do you have assisting you in that duty?

17 A. I have -- locally I have Mike Patterson, David  
18 Parsons, Amy Summerall, and Gail Power.

19 Q. And did I hear correctly that you recommend that  
20 the OCD might obtain the services of another state agency  
21 to help review the self-bonding documentation?

22 A. I said that in case that that was a solution that  
23 they want to pursue, because it was raised earlier that  
24 there was not qualified people on the OCD staff to do that,  
25 that the State Treasurer probably has someone that is

1 capable of making these kind of determinations to in fact  
2 determine if some kind of company meets these requirements.  
3 That wasn't a recommendation; that was a possibility, I  
4 suppose.

5 Q. And I'm going to ask for your personal opinion  
6 here as to if there are future instances like the Southwest  
7 Water Disposal operation and a \$25,000 bond is woefully  
8 inadequate to close that facility, is your recommendation  
9 that the reclamation fund continue to be used to close  
10 those facilities?

11 A. Well, I don't have a recommendation as to what  
12 method -- as to what method is used, but there should be  
13 some -- there should be some alternative method, other than  
14 raising the bonding requirements.

15 Q. And what alternative do you propose?

16 A. Well, you can use the one you mentioned. You can  
17 use a pool. You can maybe get the Legislature to budget  
18 the some dollars to the OCD for those purposes. I don't  
19 know, there's probably some --

20 Q. Which alternative did I just mention?

21 A. The reclamation fund.

22 MR. CARROLL: That's all I have of this witness.

23 CHAIRMAN LEMAY: Additional questions of the  
24 witness?

25 Commissioner Weiss?

## EXAMINATION

BY COMMISSIONER WEISS:

Q. Yeah, I've heard, Mr. Marsh, three estimates of what it costs to close a pit. I heard \$1000 from Mr. Greer, I heard \$300,000 from Roger Anderson, and I heard \$11 million from you. Now, that's a considerable spread.

A. Yes, sir.

Q. Would it be possible to have a peer review of these costs? Would that be acceptable? Your company look at somebody else's, and in turn they would look at your estimates? And is there a way to reach a common ground from a number of experts, people who really know what they're doing?

A. I think there probably is. And as I said, I think that right now there's not a problem, because I think all the people we deal with here now are reasonable, and I've dealt with them so I have a confidence level. So I don't have any problems with that now.

Q. You just want it written down.

A. Huh?

Q. You just want it written down --

A. It's down --

Q. -- this Committee or --

A. It's down the line.

Q. Okay. And then would this tracking system that

1 most of the companies have, the generators, could that  
2 serve to meet the signature requirements somehow or  
3 another? Could that be used?

4 A. Well, most companies that have that in place have  
5 their internal guidelines, and they -- and it may not have  
6 their -- somebody's exact signature on it, but they have  
7 all the documentation in place, and it's usually done  
8 before that load leaves the location. So they're very  
9 conscious of how it's tracked.

10 And I'm not familiar with all the different  
11 methods that they use, but they're very precise in  
12 identifying what their waste is and how it's being treated  
13 and where it's going, because they realize the long-term  
14 liabilities.

15 Q. Yeah, so that's all available, it's just a matter  
16 of getting it, it sounds to me --

17 A. That's right.

18 Q. -- access to it?

19 A. That's correct.

20 COMMISSIONER WEISS: Those are the only two  
21 comments, I think.

22 CHAIRMAN LEMAY: Commissioner Bailey?

23 EXAMINATION

24 BY COMMISSIONER BAILEY:

25 Q. 711 was originally promulgated in 1987, 1988.



1 It's been in existence for eight years.

2 At that time, \$25,000 was agreed upon as a  
3 reasonable figure. Obviously, it passed.

4 Do you think that within the past eight years,  
5 that reclamation costs have increased as much as inflation  
6 has increased? Or more?

7 A. Oh, sure -- I'm sure that they have.

8 Q. So is the \$25,000 from eight years ago, in your  
9 opinion, still valid eight years later?

10 A. Well, the \$25,000 fee is -- It's probably not an  
11 acceptable amount, or probably not a sufficient amount, to  
12 close most facilities, if that's what you're asking me.

13 On the other hand -- On the other hand, \$25,000  
14 bond, plugging bond, is probably not enough dollars to plug  
15 an oil well, and a \$50,000 blanket bond certainly is not  
16 enough to plug a hundred wells.

17 So it's not exactly a question of these costs;  
18 it's kind of related to the whole industry and to a  
19 fairness standard, if you will.

20 Q. And if we go with a fairness standard, is it fair  
21 for a company to walk away from a \$300,000 liability, and  
22 that the State should be required to pick up the excess  
23 over the \$25,000?

24 A. Absolutely not.

25 Q. So if it's not fair, then should that company be

1 responsible through some form of bonding to the limit of  
2 what it would cost the State to close it?

3 A. Well, I suppose -- I -- The theoretical answer to  
4 that, I suppose, is yes. That's not exactly my opinion in  
5 this matter, as you've heard.

6 This is a -- This action that happened up there  
7 was very unfortunate, and it was one of a kind so far. So  
8 it was very unfortunate, as I said, and -- but the OCD  
9 practices have been such that this has been very seldom.  
10 It's only one time it's happened, that I'm aware of.

11 So your agency has been very good in the  
12 permitting process and keeping these things from happening.

13 Now, if you raise our bond to X number of  
14 dollars, whatever it is, somewhere down the line you're  
15 going to have another problem with some facility that's not  
16 going to be covered. I mean, I don't know what it's going  
17 to be, but there's some possibility down there that you  
18 don't see, and I can't see that's going to rise up again.

19 But because one arose, we don't need to penalize  
20 everybody else that's good actors in this industry. We  
21 don't need to increase our costs.

22 Q. You stated that it was unanimous agreement on the  
23 self-bonding proposals in the draft, but yet from what I'm  
24 understanding, only one company could actually utilize  
25 those benefits of self-bonding. The other companies were

1 not really aware of what the requirements were, or where  
2 they come from, or what benefits or disadvantages there  
3 would be to either them or the one company that could  
4 benefit, or what impacts it would have on the State; isn't  
5 that understanding a fair summation --

6 A. I don't understand the part you said about the  
7 impact to the State.

8 But it was my understanding, and I think most of  
9 the other members of the Committee, that while this self-  
10 bonding thing was very complex, that it required such vast  
11 amounts of capital that only a handful of the major oil  
12 companies would be able to comply with these self-bonding  
13 requirements.

14 And if that be the case -- No matter which way  
15 these bonding things go, if that be the case and that  
16 vehicle is available to that oil company and it satisfies  
17 the liability of the State, then I don't see anything wrong  
18 with it.

19 Q. It just seemed to me that there were problems  
20 within those proposed regs that were not fully covered --

21 A. That very well could be, and --

22 Q. -- and should be --

23 A. -- I certainly don't hold myself out as an expert  
24 on those. I'm going by what little I was told by other  
25 folks, and I ran it by our accountant briefly.

1 COMMISSIONER BAILEY: I think that's all I have.

2 CHAIRMAN LEMAY: Any more questions?

3 If not, you may be excused. Thank you.

4 Let's take a break, about ten minutes.

5 (Thereupon, a recess was taken at 3:15 p.m.)

6 (The following proceedings had at 3:25.m.)

7 CHAIRMAN LEMAY: We shall continue with Mr.

8 Kendrick.

9 NED KENDRICK,

10 the witness herein, after having been first duly sworn upon  
11 his oath, testified as follows:

12 DIRECT TESTIMONY

13 BY MR. KENDRICK: Okay, I'm Ned Kendrick with the  
14 Montgomery and Andrews law firm.

15 I was a member of the 711 Rule Committee, and I  
16 have three very narrow drafting suggestions here.

17 One is -- The first I discussed earlier, and  
18 that's the exemption for pits being remediated under  
19 Commission Order 7940-C. And I'm just formally introducing  
20 my letter of May 2nd, 1995, as Exhibit 1.

21 And this is the proposed language that I believe  
22 Roger Anderson agreed with, although we decided that if we  
23 put in the words "on site" after the word "closed", that  
24 satisfied Mr. Anderson, because I think his concern was  
25 that Order Number 7940-C could cover centralized facilities

1 and on that basis should not be exempted.

2 So we put in the word "on site" after "closed",  
3 so pits that are being remediated or closed on site  
4 pursuant to Commission Order Number 7949-C, that I  
5 understand is an acceptable exemption to Mr. Anderson.

6 And I think even though this exemption may --  
7 this will be an additional exemption at the end of A.3. --  
8 even though there may be some overlap with some other  
9 exemptions, such as 3.a., which is facilities that receive  
10 wastes from a single well, I think there's a feeling in the  
11 oil and gas community that this would clarify, this would  
12 be a nice clarification, that if they're going ahead with a  
13 pit remediation under that vulnerable-area order, they  
14 should not have to deal with Rule 711, and this would just  
15 make it crystal clear.

16 Then moving to my Exhibit 2, this is a letter  
17 that I just prepared today. It has not been distributed,  
18 and I guess ideally I would have distributed this earlier  
19 and let people review it. But this is partially in  
20 response to a letter that Raye Miller drafted, which I  
21 think Mr. Anderson discussed earlier.

22 The first proposed language edition is one I've  
23 already spoken about. That's the A.3.g. edition, dealing  
24 with pits being remediated or closed pursuant to Commission  
25 Order Number 7940-C.

1           The other, the next one, which would be an  
2 additional exemption, which would go on the top of page 2  
3 of the proposed regulation, at the very end of the  
4 exemption list, is kind of a catch-all exemption.

5           And I believe Mr. Miller in his letter, which may  
6 or may not be in evidence right now, suggested -- it had  
7 some language to the effect that the Director be able to  
8 provide such other exemptions as he sees fit in his  
9 discretion.

10           And I'm thinking -- Without contradicting Mr.  
11 Miller, I'm suggesting that maybe it would be useful to  
12 have a standard -- to have a catch-all exemption with a  
13 statutorily based standard, because I think that the  
14 concern here is that there may be some facilities that do  
15 not fit the other six or seven exemptions, but yet are  
16 really not of a size or have serious contamination that  
17 warrants being subject to Rule 711 in the bonding  
18 requirements.

19           So if an operator were able to demonstrate that  
20 the facility does not present a risk to public health and  
21 the environment, this puts a burden on the operator to make  
22 a showing that then his facility should be exempt from the  
23 definition of "centralized facility".

24           So I think this is a little bit like Mr. Greer's  
25 proposed exemption, but it's a broader kind of catch-all

1 exemption.

2           It's not dealing with a particular number of  
3 barrels per day or a particular water quality; it's just --  
4 it would be the basis for an operator just to make a  
5 showing that his particular facility does not pose a threat  
6 to public health and the environment, and therefore should  
7 not be included under Rule 711.

8           And my final -- My third suggestion, I think,  
9 also keys off a suggestion that Raye Miller made in his  
10 letter of May 8th, and that's Section E.3., which currently  
11 reads, waste management facilities currently in operation  
12 must "comply with sections C and D unless the Director  
13 grants an exemption for C.9..."

14           And I think Mr. Anderson has recognized that it  
15 wasn't the intent of the Committee that there only be a  
16 possible exemption for C.9., which is the fencing  
17 requirement for a facility.

18           I think the intent of the Committee was that  
19 for -- basically for good cause shown, the Director could  
20 give an exemption for any of the requirements in section C  
21 or D. And I'm thinking rather than have a -- sort of a  
22 general statement that it's possible to give an exemption,  
23 I thought I'd like to suggest tying it to the Oil and Gas  
24 Act standard of protecting public health and the  
25 environment.

1           So my goal here is just to add a standard, and  
2   that standard is, as indicated in the letter, comply with  
3   sections C and D, unless the Director grants an exemption  
4   for a requirement in these sections, and the new language  
5   would be "based on a demonstration by the operator that  
6   such a requirement is not necessary to protect public  
7   health and the environment".

8           So that's just a drafting suggestion that -- a  
9   little different from Raye Miller's suggestion, so -- and  
10   it's just my personal suggestion, it's not NMOGA's or the  
11   Committee's, it's just my suggestion.

12           And I'll see -- Now, I'll distribute it to the  
13   rest of the Committee and see how they feel about it. And  
14   if you allow post-hearing comments, maybe people will come  
15   back with something completely different.

16           But for today, this is my drafting suggestion.

17           So I have no further comments.

18           CHAIRMAN LEMAY: Questions of the witness?

19           Commissioner Weiss?

20           COMMISSIONER WEISS: I have none.

21           CHAIRMAN LEMAY: Commissioner Bailey?

22           COMMISSIONER BAILEY: No.

23           CHAIRMAN LEMAY: Thank you, Mr. Kendrick.  
24   Appreciate your comments.

25           MR. KENDRICK: Okay, thank you.



1 CHAIRMAN LEMAY: Mr. Brakey?

2 Either place. If you're your own witness, you  
3 can sit anywhere you want.

4 RICHARD BRAKEY,  
5 the witness herein, after having been first duly sworn upon  
6 his oath, testified as follows:

7 DIRECT TESTIMONY

8 BY MR. BRAKEY: Mr. Chairman and members of the  
9 Commission, I would like to -- My name, first, is Richard  
10 Brakey.

11 I'm the manager of Parabo, Incorporated, a  
12 large -- and when I say a large surface disposal facility  
13 in southeast New Mexico, we've got over 40 acres of  
14 permitted pit area for evaporation, as well as containment  
15 of oilfield exempt and non-exempt material.

16 We also operate a -- about an 11,000-barrel-  
17 capacity treater plant facility in the oil-reclamation  
18 site. We're not into that business real strong right now,  
19 but we have the capacity of doing that.

20 We've operated Parabo since 1983, in conjunction  
21 with the Roland Trucking Company operation that we owned,  
22 which was the largest trucking company in southeast New  
23 Mexico for hauling oilfield liquids. And we were permitted  
24 in the three counties in southeast New Mexico for all of  
25 those liquids.

1           So we -- And we also operated six downhole  
2 disposal wells, injection wells for disposal of produced  
3 water, as well as one of the surface disposal facilities in  
4 Eddy County that was a temporary facility that we closed  
5 and cleaned up and -- at our own choosing, when the playa  
6 lake issue came up, and we closed that facility down.

7           So as far as my background, I've been in the  
8 oilfield business, disposal and trucking, since 1980, and  
9 heavily into Parabo since 1983. So...

10           The concerns I've got as an operator, on page 13,  
11 on C.4.a., Mr. Marsh -- and I don't want to hammer a lot of  
12 issues that he's already brought before the Commission, but  
13 some of the problems that I can see as far as an operator  
14 with that issue is, all of the other sections of Number 4  
15 -- and there's just -- What? b. and c. But they reference  
16 a State C-138 form for acceptance of solid wastes. And we  
17 have no problem with that whatsoever. It works real good.

18           Part of the problems I see with a. is, who  
19 generates the language in that certification statement?  
20 What needs to be included in that certification statement?  
21 Where is that document retained? Is it an ongoing per-load  
22 certification statement? Is it a one-time, generic, "I,  
23 Exxon, certify that all the wastes that I produce or ship  
24 to Parabo will be exempt oilfield waste"? You know?

25           So more of my stuff is strictly from an

1 operational standpoint. How do I comply with a., with no  
2 more wording in there than what's in there currently?

3 I have to agree with Mr. Marsh on the audit  
4 situation. We are constantly audited by the generators and  
5 shippers of this waste, and they are pretty meticulous in  
6 their going through records and compliance with issues in  
7 rule 711.

8 And I would -- It would be difficult to, I think,  
9 in audit procedure right now, to, with no more  
10 clarification than there is in this, as to, if somebody  
11 asked me for a certificate from the generator, who's  
12 authorized by the generator to sign the statement -- I  
13 really think a uniform waste-tracking form -- Several  
14 companies use this form. It's normally signed by a company  
15 representative, identifying the waste.

16 This waste follows -- or this form follows the  
17 waste to the facility with the trucking company. It may be  
18 a solution to part of this, is to have the State just set  
19 out some guidelines that they want to see in the waste-  
20 tracking form.

21 And if your company wants to generate its own  
22 internal form and it complies with these guidelines, then  
23 use your own generated form. If not, then there should be  
24 a generic form that comes with this.

25 But right now, the burden of all of this

1 certification is on the operators as a disposal facility.  
2 We've got a big job to determine where the waste is coming  
3 from, how's it generated, how it was transported.

4 We spend a tremendous amount of time contacting  
5 the district offices, getting permission to accept this  
6 waste, verifying that it is exempt oilfield waste.

7 And I think it can be done a little bit easier  
8 and a little bit less cumbersome, not only on our part, but  
9 also you have to realize a lot of these operators, just  
10 like Mr. Marsh said, are not living in New Mexico, they're  
11 not in Hobbs or they're not in Jal. They're in Midland or  
12 they're in between, in their pickup with a cell phone, and  
13 they're calling the trucking company to come out and haul  
14 this waste off, and they know what the waste is. I find  
15 out what the waste is when it comes in.

16 But for me to have a signed document that's  
17 sitting at my office when that load comes in, in a lot of  
18 cases, is going to be very, very difficult, very difficult  
19 for us from an operational standpoint. I'm not going to  
20 say it can't be done, but it's going to be difficult.

21 The oilfield does not work eight to five; it  
22 still works 24 hours, seven days a week. So getting these  
23 signatures -- And what's the use of -- if it's an after-  
24 the-fact issue?

25 I mean, if it's just a generic deal, they say,

1 well, go ahead and take the waste, we'll get the approval  
2 two days from now -- I mean, why even worry about it? I  
3 mean, that -- To me, that's a waste because it's already  
4 been done.

5 So that's about all I've got on 4.a.

6 I'd like -- A couple issues on the bonding issue.  
7 I guess the biggest thing that we've got against us is that  
8 all the waste that we've got is laying above ground. It's  
9 there for everybody to come and see.

10 It's not pretty by any means. For those of you  
11 who have never seen an oilfield waste disposal facility,  
12 tank-bottom material, drilling sludges, reverse pit  
13 cleanout material -- pretty nasty, black, filthy. The  
14 staining is pretty intense in the pit area.

15 When this rule first came out -- and it's changed  
16 drastically since it first came out, the draft issue. You  
17 know, our facility is a landfill facility, we're there to  
18 -- this is the final resting place for the majority of this  
19 material. So we were really shocked when this thing first  
20 came out, as far as the remediation issues and returning it  
21 back to like it was before the facility was even  
22 constructed.

23 That's changed drastically. That's no longer in  
24 here. \$25,000 bond today will not cover the plugging or  
25 the closure of Parabo, I can tell you that right now.

1           It also has a lot to do with the time frame that  
2           you're required to close a facility.

3           Like I say, we've got 40 acres of evaporation  
4           pond area. Today we take in an average of 40,000 barrels  
5           of various oilfield wastes per month. It may take -- if I  
6           had to shut the facility down, it may take me two, two and  
7           a half months to evaporate all the free-standing liquids,  
8           depending on Mother Nature and what time of the year it is.  
9           If it's in the summertime, it won't take very long. If  
10          it's in the winter, it's going to take a little longer.

11          The pits that are permitted for BS&W and liquids  
12          solids -- and you've got to realize, a lot -- Most of these  
13          solids that come into our facility come in on vacuum trucks  
14          as -- in liquid form. There are drill cuttings and cements  
15          and muds.

16          And vacuum trucks go out to a large spill area  
17          where they've had hydrocarbon on the ground, tank batteries  
18          run over and things like that -- Well, they suck this  
19          material up. They try to get as much of the oil that they  
20          can and put back into the battery.

21          But a lot of this, once you get down to the  
22          sludge material, that's still picked up with a vacuum truck  
23          but the oil companies do not want it back in their tank  
24          battery. So they bring it to a disposal facility. So you  
25          end up with some real heavy sludges.

1           Through settling time in the ponds, the liquids  
2   tend to separate, and you can pull some free-standing  
3   liquids off of them. But then you're going to end up with  
4   some ponds that have some very black -- in some cases, some  
5   very oily material that may take quite a period to dry out  
6   or to remediate to a state that you can compact it so that  
7   you can go ahead and close the pits.

8           And Parabo does have a closure plan in place.  
9   That was one of the requirements of our 711, was an in-  
10   place, approved OCD closure plan. And most of that is,  
11   remove the liquids, decant the waters, dry everything out,  
12   cover the pits up, put clay liners back on top.

13           So \$25,000 is not going to cover closing Parabo.  
14   \$100,000, if I've got a year or so, probably would, because  
15   we have equipment now in place on site to do our own  
16   closure.

17           If a midnight trucker came in and cut the locks  
18   on my facility and filled it up with PCVs today -- Who  
19   knows? \$20 million, \$30 million?

20           I don't think you can ever fix a value and say  
21   your bond or your closure today is \$100,000, and tomorrow  
22   it could be \$20 million.

23           I don't think you can also get to the point to  
24   where you -- Like Mr. Marsh commented, we probably take in  
25   75 percent of the heavy materials that the oilfield cannot

1 pump downhole, cannot remediate on site, however they want  
2 to do it. They've got to take it somewhere.

3 And if you get the closure requirements or the  
4 operational requirements for facilities to where the pass-  
5 through costs back to the major oil companies is so  
6 exorbitant, then for one thing, I think you're going to see  
7 a lot of material going out of state. It already does, it  
8 goes across the state line.

9 And I'm not testifying to be an expert on the  
10 State of Texas. I do know they have either no bonding  
11 requirements or very, very low bonding requirements. So  
12 consequently, the cost of disposal across the state line is  
13 usually less than what it is in the State of New Mexico.  
14 So some companies will, yes, just take it across the state  
15 line.

16 I think our business is very necessary to the  
17 industry. I really don't know where this material would go  
18 to if we were closed down tomorrow, and I know a lot of  
19 operators or generators of this waste that have that same  
20 concern.

21 A lot of this business that comes -- I mean, this  
22 is New Mexico revenue-generating business, and we generate  
23 a lot of revenue for the State of New Mexico in southeast  
24 New Mexico.

25 And our disposal facility hires four people full-



1 time, we have an annual sales -- oh, half a million, in  
2 that range, pay taxes to the State of New Mexico.

3 I'd hate to see the bonding get so prohibitive  
4 that it would put us out of business. I know where the  
5 State is coming from on their liability concerns, but I...

6 There's got to be some other solution than just  
7 saying if it takes \$50,000 or \$500,000 to close your  
8 facility -- That's a snapshot of that time, for that  
9 specific closure, and two days from now that could be  
10 doubled, you know, just depending on what you take in.

11 And that's -- Oh, I would like to -- We also at  
12 Parabo have our own waste form that when a load of material  
13 comes in -- We started this back in 1989, maybe 1990. And  
14 it's got some statements on there that deal with mixture,  
15 as far as the transportation company bringing it to your  
16 facility, that they're not going to stop anywhere and mix  
17 this with any other material. It identifies the material  
18 as to where it came from, the lease, the operator, the time  
19 it was picked up, the nature of the material, to the best  
20 of their ability.

21 And we're talking about everyday stuff. This is  
22 not -- Nine times out of ten, this isn't rocket science,  
23 this is just everyday oilfield stuff. And, you know, it's  
24 tank bottoms or it's contaminated soil or it's mud or  
25 cements.

1           And that load comes to our facility, and we  
2           question the driver as to where the material is coming  
3           from, and then they sign off on it.

4           Because -- Right now that's about the only  
5           signature we can get, because -- I think probably if I had  
6           to use an average, eight times out of ten the driver and  
7           possibly the unit operator, the pull-unit operator, may be  
8           the only person on location.

9           And the pull-unit operators are even getting more  
10          and more to where they supervise the entire job on that  
11          location. Because of all the cell phones and everything  
12          else, these people can run multiple jobs and let that unit  
13          operator run that job site.

14          So he actually calls the truck -- It may be Pride  
15          Well Service or Pool or Lucky or somebody like that. He'll  
16          actually call the truck on his telephone and come out and  
17          empty a reverse pit or a cellar or something like that, and  
18          you don't ever see the company man, never.

19          So just from an operational standpoint, I think  
20          it's going to be very difficult. But it's something that  
21          cannot be -- It's something that can be done. It -- I  
22          think it needs to be more directed through the State of New  
23          Mexico district offices, and possibly those district  
24          offices can direct the generators of the waste in helping  
25          them understand what guidelines are being put on the

1 disposal facility so that we're not taking all the heat all  
2 the time.

3 Because I sure hate to turn these -- And it's not  
4 because of our revenue situation, but at eight o'clock at  
5 night you've got a truck that's got liquid cement on it and  
6 it's fixing to set up in its trailer. And believe me,  
7 after 15 years in the trucking business, I know what that  
8 is. And you don't have one of those pieces of paper  
9 signed. And you need to unload that material, and the man  
10 that's responsible for signing that load off is in Houston.  
11 So you've got a problem.

12 That's all I've got. I would like to give you  
13 the copies of these, of our manifests, so that you can look  
14 at them.

15 And I'm through.

16 CHAIRMAN LEMAY: Questions of the witness?

17 MR. CARROLL: Yeah, I have just a few.

18 CHAIRMAN LEMAY: Yes, sir, Mr. Carroll?

19 EXAMINATION

20 BY MR. CARROLL:

21 Q. Mr. Brakey, do you agree with Mr. Marsh's  
22 testimony that this rule change is unnecessary?

23 A. That the rule change is unnecessary? This is  
24 strictly my personal opinion, you know.

25 It seemed like 711 was fine until all of a sudden

1 we had a problem, and there was maybe some gray areas or  
2 some loopholes or some loose ends in there that allowed  
3 some situations to happen that maybe the new document is  
4 supposed to tighten up.

5 Again, I just have to go back to the fact that we  
6 haven't really had any problem in the industry that I know  
7 of in the past down in southeast New Mexico. I'm not  
8 familiar with northwest at all.

9 I think there's some good things in the new  
10 proposal. I think it tightens up some things that make it  
11 easier for me as an operator to convince a shipper of some  
12 waste that they need to do a little bit better job of  
13 identifying or representing their wastes or coming up with  
14 some sort of waste tracking that will help me do my job  
15 better so that I understand what their waste is, and --  
16 Because right now we're doing a lot of the determination  
17 for the company, and that's an awesome burden on the  
18 disposal facility.

19 Q. And did I hear you testify that you estimated it  
20 would cost Parabo around \$100,000 over one year to close it  
21 in compliance with this rule?

22 A. Our closure requires that, like I say, we remove  
23 the free-standing liquids. Well, Mother Nature is going to  
24 do that for me anyway; that's how our facility operates.  
25 We're going to evaporate all the materials that I can get

1    evaporated. The sludges and stuff like that are going to  
2    have to be dried over a period of time.

3                Now, that can be done in several ways. We have  
4    the acreage to spread that material and allow it to dry to  
5    a state where you can compact it.

6                What I'm saying is, if you have one big pit of  
7    tank-bottom or drilling muds and you decant the water off  
8    of that pit today, you'd better not try to drive a  
9    bulldozer on it tomorrow, because you're going to lose  
10   you're bulldozer. I've done that. So you're going to have  
11   to wait a period of time for that material to dry out.

12               Now, that material is permitted to rest there.  
13   I'm permitted in my closure plan today to cover that  
14   material up. I put a red-bed clay cap on it, and I put the  
15   overburden back on it and it's there.

16               Now, I've got over 100 monitor wells surrounding  
17   my facility, and part of my requirement is that after the  
18   final closure, I'm to continue to monitor those wells for  
19   an additional six months to make sure that we don't have  
20   any problems with any of the pits, with rainwater.

21               But yes, I think I could close it -- you know,  
22   \$100,000, it's -- We have the equipment in place to close  
23   our own facility, as far as the physical tractors and pumps  
24   and stuff like that. I have the people there in place that  
25   operate the facility, that operate this machinery. So

1 we're talking about operating costs of the machinery as  
2 well as labor costs.

3 As far as removal of the surface equipment, the  
4 tankage and the pipelines and stuff like that, I'll have to  
5 go back a lot -- to the landowner, because our facility is  
6 leased from a landowner as far as the surface. He may want  
7 those tanks, you know. I don't know today that he wants  
8 everything removed.

9 Now, my permit says I will remove them, or to the  
10 discretion of the Commission -- or at the discretion of the  
11 Commission, as to my closure. So that's a hard figure to  
12 come up with, it really is.

13 Now, if you have to dig all that up and you've  
14 got to treat everything back, then I wouldn't even try to  
15 estimate a cost of doing that, because we've been in  
16 operation for 12 years, as far as the disposal facility,  
17 and we're not talking small amounts. We're talking  
18 hundreds of thousands of barrels of material.

19 Q. And I take it Parabo has the \$25,000 bond with  
20 the OCD?

21 A. Yes, yes.

22 Q. And the difference, the \$75,000, I guess you're  
23 operating under the assumption that Parabo will be in  
24 operation and close it itself, with internally generated  
25 funds at the point that closure is needed?

1           A.    Well, now, run that by me again.  Now, what are  
2 you talking -- ?

3           Q.    You're operating under the assumption that Parabo  
4 will close it itself, with its own money, the \$100,000?

5           A.    Yes.

6           Q.    Does Parabo kind of self-bond or set up a sinking  
7 fund internally to set aside this \$100,000 for that  
8 contingency?

9           A.    We're owned by a large corporation out of  
10 England.  I haven't seen their financial statement this  
11 year, but I'm sure it's pretty large.

12                   I don't think they would have a problem with --  
13 you know, if it came -- push came to shove, self-bonding, I  
14 don't think we would have a problem with that if it was a  
15 CD or...

16                   We don't want to do it; we're like the oil  
17 companies.  I'd rather use that money for improving the  
18 facility, expanding the facility and doing other things  
19 with the money, than putting it into a fund that's going to  
20 draw interest and only pay interest.

21                   But, you know, we're willing to work with the  
22 State.  You know, we want to do whatever is right.

23                   But, you know, you can't have -- every facility  
24 that's on State land, if you try to figure out what they're  
25 -- what the environmental impact -- not -- I mean, just

1 counting the oilfield out of it, what it would cost the  
2 State to go in and clean up everybody's potential  
3 liabilities? I don't think you can put a figure on that.

4 Q. Now, you testified that a lot of our waste is  
5 going to Texas because they have no or little bonding?

6 A. Yeah, and I don't want to be an expert on that  
7 because all I've talked with is -- I've visited with one of  
8 the operators at West Tex Systems, which is down around  
9 Notrees.

10 And at that time -- now, this was over a year ago  
11 -- Texas did not have a bonding requirement for a surface  
12 disposal facility. And I know for a fact that a lot of the  
13 material generated in southeast New Mexico goes to that  
14 facility.

15 Q. Do you receive any waste from Texas?

16 A. Very little, very little. But that's not --  
17 because we don't go after it. That is not one of my target  
18 markets.

19 In the past, when we operated the trucking  
20 company, we had just more than enough business in southeast  
21 New Mexico to take care of it. But I do get some waste  
22 from Texas occasionally, and it's just because the waste is  
23 being generated is right across the state line.

24 Parabo sits right on the state line in the  
25 southeast corner. I can -- If the wind is blowing from the



1 west, I can chunk a rock and hit Texas to the east. So  
2 it's -- If there's wells in the surrounding water, a lot of  
3 them will come to me.

4 Q. Do you recall somebody at the meeting the  
5 Committee had in Artesia mentioned the fact that some  
6 agency in Texas -- Was it the T&RCC or -- had imposed  
7 additional bonding requirements, and a number of operators  
8 of those bonded facilities --

9 A. That's water -- that's -- I think that's on water  
10 quality, though. That's not the -- That's not the Railroad  
11 Commission.

12 Q. Right, but that was --

13 A. And I don't want to hold my hand up to any of  
14 that because I don't -- I can't remember. But I do  
15 remember a recollection that somebody talked about there  
16 were some bonding requirements being put in place. But if  
17 I remember right, at that time it may have been either a  
18 \$10,000 or a \$15,000 bond, was all it was.

19 Q. So it's your recommendation that the OCD stay at  
20 a bonding of \$25,000 per facility?

21 A. Well, I think that's negotiable between the  
22 facility and the OCD.

23 Q. So you would recommend that closure cost be the  
24 rough figure --

25 A. Well --

1 Q. -- once it's agreed upon?

2 A. -- again it depends on how you close it. You  
3 know, if I throw my hands up and walk away from it, the  
4 State of New Mexico has to hire a contractor and consulting  
5 firm to come and close my facility. The closure costs are  
6 going to be quite a bit different than the way I propose to  
7 close it.

8 Q. Well, it sounds like the way you propose to close  
9 your facility would meet with the OCD approval?

10 A. Well, we've already got one closure plan in place  
11 under current 711. It's already been approved.

12 Q. So would you object to raising your bond from  
13 \$25,000 to \$100,000, and that's your reasonable estimate of  
14 your closure cost over one year?

15 A. If it was spread out over a period of time, I  
16 could probably come by, you know, with a -- probably self-  
17 bond for the rest of it because it is -- I don't know if I  
18 could get the additional \$75,000 surety.

19 Q. If we gave you four years to do it, could you do  
20 it?

21 A. Probably, probably. You know, I think it's a do-  
22 able deal.

23 MR. CARROLL: That's all I have of this witness.

24 CHAIRMAN LEMAY: Additional questions?

25 Commissioner Weiss?

1 COMMISSIONER WEISS: Yeah, a couple.

2 EXAMINATION

3 BY COMMISSIONER WEISS:

4 Q. When I listen to you and I hear the comments  
5 today, I guess when we're talking about a facility being  
6 closed that means that the oilfield's done, we're sometime  
7 way down the future. Is that what that means, when you  
8 talk about closing your facility?

9 A. Well, I'm kind of like you. I really don't now  
10 what -- I guess at some point, if we decided it was  
11 uneconomic to operate the facility, then we would need to  
12 close the facility then. Now, that would either be due to  
13 the fact that we had to raise our disposal prices so high  
14 to cover the closure cost that it put us out of business,  
15 or our company became insolvent to the point where we could  
16 not close the facility.

17 Now, the way these pits are designed, you know,  
18 this -- as a pit matures or as you fill the pit up and its  
19 lifespan decreases, at some point you're going to close  
20 these pits on an individual basis.

21 And at the same time, we're re-opening new pits  
22 on an ongoing basis to keep our facility open.

23 We do not have -- Parabo does not have a plan, a  
24 strategic plan or anything else in place that says in 1998  
25 or the year 2050 we're going to close the facility. We're

1 going to keep it open as long as we can. As long as  
2 there's waste being generated in southeast New Mexico, and  
3 as long as it's a viable operation, we're going to keep the  
4 facility open.

5 Q. So -- Yeah, as long as there's business, you're  
6 there?

7 A. As long as there's business.

8 Q. One other question. What did it cost you to  
9 close the Eddy County facility, as a function of the  
10 facility capital cost?

11 A. That was a small facility. It was strictly a  
12 produced-water facility. And the way I understand it, it's  
13 probably very similar to the facility in the northwest part  
14 of the state, in New Mexico.

15 It was not permitted for tank-bottom materials,  
16 solids, muds and the oilfield solids. It was strictly  
17 produced water.

18 We had a series of tank batteries, a gunbarrel  
19 system, went through two sludge -- what we call sludge  
20 skimmer ponds, before the water went into a playa lake.

21 The -- All of the above-ground surface equipment  
22 was removed and used in our ongoing disposal operations at  
23 other sites, and the cost was relatively small to move that  
24 equipment, because most of it was in Eddy County anyway,  
25 and we're talking about a 1000- -- 500-barrel, 1000-, 1500-

1 barrel gunbarrel tanks.

2 So the sludge pits were dried up, and then that  
3 material was hauled from Eddy County to Parabo and disposed  
4 of, and I think the total on that was around \$27,000 to  
5 haul that dry, cakey material out.

6 But now, that facility was permitted in a  
7 temporary sense, as far as those sludge pits. That wasn't  
8 the final resting place for that material. We knew from  
9 day one when we built that facility that those sludge pits  
10 would eventually have to be cleaned up, so that was our  
11 only -- you know.

12 And the closure for that facility was totally  
13 different than the closure for Parabo because Parabo is a  
14 final resting place.

15 So we knew going in, on the onset, that we were  
16 going to have to clean this material up and haul it off and  
17 then test the bottom of the pits and then backfill, and  
18 that's what we did.

19 Q. And that -- Moving the equipment off and  
20 everything was \$27,000?

21 A. \$27,000 to \$30,000, probably.

22 Q. Okay. And then what kind of -- If I may, if you  
23 can tell me what it cost to set that up, put that facility  
24 together to start business there?

25 A. Oh, probably \$150,000 initially. And we operated

1 that facility from 1982, I believe, or 1981, until about  
2 1988, I believe, or 1987, when the playa-lake issue came up  
3 on the --

4 Q. Did I hear you imply, subtly, that it cost ten  
5 times more for the State to close up one of these things  
6 than for --

7 A. Well, I don't know -- I don't say ten times,  
8 but --

9 Q. Well, \$300,000 was --

10 A. Well.

11 Q. -- real quick, I figured that.

12 A. Well, you know, it's cheaper for me to do it  
13 internally, because I'm there every day and I know what it  
14 takes to do this.

15 But to hire a consultant firm to come in, first  
16 they've got to make the assessment of what's there, and I  
17 already know what's there. And then they've got to get all  
18 the other people, all the testing done and -- That's there.

19 So yeah, it's going to cost quite a bit more for  
20 a consulting firm to come in and close the facility up than  
21 for an in-house -- for people to do it internally.

22 Just like Mr. Marsh's facility. You know, if he  
23 was to close his own, he's got the equipment on site, his  
24 closure costs are going to be quite a bit less than mine,  
25 even, just due to the fact that he hasn't got the number of

1 years and the volumes involved that I do, or the size.

2 Q. Might not cost him 11 million bucks?

3 A. May not.

4 COMMISSIONER WEISS: Thank you.

5 THE WITNESS: But I'm not an expert on Mr.  
6 Marsh's closure.

7 COMMISSIONER WEISS: Sure, I understand. Yeah.  
8 Those are the only questions. Thank you.

9 CHAIRMAN LEMAY: Commissioner Bailey?

10 COMMISSIONER BAILEY: I really don't have any.

11 THE WITNESS: Okay.

12 COMMISSIONER BAILEY: You've covered it pretty  
13 well.

14 THE WITNESS: Okay.

15 CHAIRMAN LEMAY: I do have a couple.

16 THE WITNESS: Okay.

17 EXAMINATION

18 BY CHAIRMAN LEMAY:

19 Q. I'm just trying to focus on this C.4.a. issue,  
20 which seems to be a contentious issue here.

21 This form you gave here, I notice it's -- That's  
22 something you require today?

23 A. Yes, sir. But it's signed by the transporter.

24 Q. The transporter. And I guess the critical  
25 element, narrowing it down, is --

1 A. Generator.

2 Q. -- is the generator.

3 But I also see as a condition of Parabo's  
4 acceptance of this material, operator/shipper. So the  
5 operator could be the generator, and in fact usually is,  
6 isn't he?

7 A. Yes, yes. And what we do with this, Mr.  
8 Chairman, is, we sign this load in, this driver signs for  
9 this load. It's a four-part form, and we give one back to  
10 the driver, of course, he takes back to his operation.

11 And then when we -- normally, most disposal  
12 facilities bill or invoice the trucking company for the  
13 waste hauled. They in turn bill the generator.

14 So I'll bill Roland Trucking for all of their  
15 disposal, and there may be Texaco, Exxon, Chevron and  
16 everybody else on these tickets. I attach a copy of all of  
17 the waste manifests that came into my facility.

18 When they internally rebill Exxon for their  
19 portion, I assume they are attaching -- because usually  
20 they want to see a copy to verify if that load did leave  
21 their lease and come to Parabo. So eventually this goes  
22 back, probably, to the generator.

23 But as far as the generator actually signing it  
24 -- or it may not get back to -- it may get back to the  
25 accounting office of the generator, not necessarily the



1 field foreman that authorized the pickup of that material.

2 So this was a self-form that CRI and Parabo -- we  
3 put this in place ourselves, to try to do the best job we  
4 could with the memorandum that came out back in 1987,  
5 because...

6 The problem we ran into, to be real honest, on  
7 that memorandum it said a corporate officer of a generator.  
8 We couldn't find any of the corporate officers that would  
9 sign off on the waste. You know, they're all in Houston,  
10 and they're not going to sign off on a load of waste out in  
11 Lea County.

12 Q. Well, I don't think we're that far away from what  
13 you're doing now --

14 A. Yeah. Well, I think so.

15 Q. -- and what we're talking about here as far as  
16 waste-tracking. If we were to work on -- And I don't see  
17 anything in 4.a. that would prevent you from taking the  
18 load and getting the paperwork after you took the load.

19 I didn't -- I mean, my interpretation of that  
20 doesn't say you've got to have that signed paper before  
21 we'll take it.

22 A. Well, that was my point in an audit, I mean,  
23 there's not enough guidelines in there for a --

24 Q. In here?

25 A. Yes. I mean --

1 Q. Yeah --

2 A. -- somebody may say --

3 Q. -- or we could have too much guidelines by  
4 someone else's standard, that we're creating too much  
5 bureaucracy --

6 A. Well, you know --

7 Q. -- but what I'm trying to get at is --

8 A. -- again -- We do it on a per-load basis, though.

9 Q. Okay. If you do it on a per-load basis, if we  
10 change this -- I'm just playing around with words. Instead  
11 of signed by a generator certifying, say identified by a  
12 generator, stating that -- In other words, the facts,  
13 just --

14 A. Right.

15 Q. -- some way that you wouldn't have to get a  
16 corporate officer --

17 A. Right.

18 Q. -- but there will be some acknowledgement where  
19 this came from, besides the trucking company, or hold the  
20 trucking company responsible for --

21 A. Right now, we do.

22 Q. -- somehow -- And you do?

23 A. Right now, we do.

24 Q. Yeah, and I think you would. I mean, you've got  
25 a valuable facility. Taking --

1 A. I'm not --

2 Q. -- exempt waste -- you talk about the PCBs --

3 A. Oh, yeah.

4 Q. -- they'll close you down tomorrow --

5 A. Oh, yeah.

6 Q. -- they can't take that risk, I wouldn't think.

7 A. Yeah, yeah. And that's why I say, we question  
8 the drivers pretty extensively --

9 Q. Yeah.

10 A. -- when they come in. And I have turned down  
11 material.

12 Q. Uh-huh.

13 A. If it's come in and if it doesn't look right,  
14 smell right and it's not right, it doesn't get in the  
15 facility. I've turned trucks around.

16 And I've had shippers call me and want to know  
17 why. And I said your paperwork wasn't right coming from  
18 certain facilities, because it's not a downhole well, it's  
19 not a production site, it's not a drilling site, and it  
20 came from a field site that was in question. And we have  
21 turned material down.

22 So we normally know on a 99-percent basis -- They  
23 call us and say, we've got some material coming in to you,  
24 XYZ Trucking Company is going to bring it to you, and  
25 there's so many yards or so many barrels, and it's -- Like

1 I say, it's been done for so many years, it's just going on  
2 and on.

3 Q. Right, it doesn't seem like there was that --

4 A. What worries me, and I think worries Mr. Marsh --

5 Q. Yeah.

6 A. -- is that, if that's in there and Exxon -- and I  
7 think he used Exxon, or whoever comes in, Garrity Miller,  
8 and they go by the book and say, You don't have all these  
9 certifications today, we've got to violate you, and the  
10 bonding company may question that violation, and Exxon may  
11 question that violation, and it's really not -- I don't  
12 think it's fair to the operators. I think it's something  
13 that we should --

14 Q. Well, the implication is that by this paragraph  
15 here we're holding you responsible --

16 A. Yes.

17 Q. -- for where that waste comes from --

18 A. Right.

19 Q. -- rather than just an acceptance of something,  
20 not --

21 A. Right.

22 Q. -- You're not certifying where it came from.

23 A. Exactly, exactly.

24 Q. The owner of the facility that shipped it is  
25 certifying where it came from --

1 A. Yes.

2 Q. -- in some form or fashion?

3 A. Right.

4 Q. And then the other problem, as I'm trying to come  
5 to grips, is an operational problem. One is accepting this  
6 -- According to Mr. Marsh's testimony, I think, it was  
7 understood that -- you know, that you'd have to have a  
8 signed document there, and the guy may be in Houston or  
9 Denver. A fax wouldn't work or a telephone call wouldn't  
10 work.

11 But if it was after the fact, it wouldn't prevent  
12 you from accepting the waste, but at some point in time you  
13 have to document the waste --

14 A. You have to document --

15 Q. -- then it wouldn't be an operational problem,  
16 would it?

17 A. No. And we documented on this right now.

18 Q. Yeah, right, that --

19 A. I mean, we feel pretty comfortable with this.

20 Q. Yeah, okay.

21 A. We really do.

22 Q. This looks like a document that says  
23 operator/shipper.

24 A. Right.

25 CHAIRMAN LEMAY: Commissioner Weiss?

## FURTHER EXAMINATION

BY COMMISSIONER WEISS:

Q. One more comment concerning documenting that stuff.

These audits that you go through, now, if Exxon comes in and audits your records, do they look at -- I take it -- They look at where everything that's in your pits came from; is that correct? Not just theirs, everybody's?

A. That's right. We keep on-site the pink copy of this form, and we keep it for a year on-site, and then I take it back because I have a five-year rule to keep it in my office somewhere.

But I normally keep these pink copies because we refer back to these quite a bit. Somebody will have a question about something, number of barrels or something like that. So I keep a monthly running log of all of these.

And when I'm audited by whoever -- and sometimes it's an outside consulting firm working on Exxon's behalf or something like that -- they'll come in and they'll pull these just at random, and not necessarily Exxon's, and they'll pull anything else that I have that I'm required to have on location and look at, and --

Q. Well, how do you know what the result of their audit is?

1           A.    They normally tell you.

2           Q.    Verbally, or do they give you --

3           A.    Verbally.  You can request a written, if there's  
4   a -- If they find something that they're not comfortable  
5   with, it will probably be in writing.

6                    But usually it's an exit briefing or a  
7   debriefing.  They usually -- When they come in, they'll  
8   give you an entry briefing as to what they're looking for,  
9   what they'd like to see.  Can they take pictures or can  
10   they not take pictures?  And can -- If there's sampling  
11   required, do you want to take two samples?  You know,  
12   things like that.

13                   So all the groundwork is put out beforehand.  The  
14   audit is performed, and then normally there's an exit  
15   debriefing and they'll tell you their concerns.

16           Q.    Well, if that's -- I don't know if this can be  
17   done, but if that could be made available to whoever it is  
18   that wants this signature -- us, I guess -- it seems to me  
19   that would solve the signature problem.

20           A.    I don't know whether those people would sign off  
21   on that, is what I'm saying, as to what their wastes are.

22           Q.    But if they audited it and said you pass, it  
23   seems to me that that's a much better documentation that  
24   you're operating in a compliant manner --

25           A.    I think a lot of your --

1 Q. -- than somebody's signature.

2 A. I think a lot of your indication whether you  
3 passed or not is whether you stay on the approved disposal  
4 list for that facility, because they all have lists of  
5 approved disposal sites that their company can use, and  
6 they're all reducing these because of the cost that is  
7 incurred in auditing these facilities. So instead of  
8 having ten sites, they would much rather have two sites  
9 that would have to audit every year or two. So they reduce  
10 the number of disposal sites.

11 COMMISSIONER WEISS: It looks like we could go to  
12 school on that.

13 THE WITNESS: Uh-huh, uh-huh.

14 COMMISSIONER WEISS: Those are my comments.

15 CHAIRMAN LEMAY: Any other questions of the  
16 witness?

17 If not, you may be excused. Thank you very much.  
18 Any other testimony?

19 MR. KELLAHIN: Ruth Andrews has a statement.

20 CHAIRMAN LEMAY: Fine. Are you making a  
21 statement, or are you going to give a little testimony so  
22 we can ask you some questions?

23 MS. ANDREWS: Whatever you want to call this.

24 I'm Ruth Andrews with New Mexico Oil and Gas  
25 Association.



1 First of all, I would like to compliment Roger  
2 and the Committee for undertaking this difficult task. I  
3 think it's been a much bigger project than any of us  
4 anticipated.

5 NMOGA supports this draft with the proposed  
6 amendments that Roger outlined as consensus amendments and  
7 which were presented by industry here today.

8 We take exception to the requirements for  
9 certification, bonding and financial assurance. We would  
10 like these issues to go to a continuing work group, to  
11 identify alternatives with possible legislative action.

12 For the certification issues, Texaco has provided  
13 us with a very good waste-tracking program to make  
14 available to our companies who do not have one, and I will  
15 be happy to provide that to you. It has appropriate forms  
16 similar to what you're seeing from Parabo and would answer  
17 a lot of the questions you've been asking here today.

18 We would ask that you consider the economic as  
19 well as environmental impacts of any regulation you  
20 promulgate. I think it would be helpful to you if NMOGA  
21 submits a red-lined version of this draft showing the  
22 consensus amendments, as well as our requested deletions.

23 We would also like to help facilitate any ongoing  
24 process on the issues.

25 CHAIRMAN LEMAY: Thank you.

1 Do you want to take any questions?

2 MS. ANDREWS: Sure.

3 CHAIRMAN LEMAY: Are there some -- Go ahead.

4 COMMISSIONER WEISS: What was your comment  
5 concerning bonding again? I missed that. What was your  
6 statement on bonding?

7 MS. ANDREWS: We would like that to go to a work  
8 group for further consideration and possible legislative  
9 action.

10 COMMISSIONER WEISS: Okay, thank you.

11 CHAIRMAN LEMAY: Any other questions?

12 Commissioner Bailey?

13 COMMISSIONER BAILEY: Would you recommend that  
14 the work group be the same group that worked on the rule to  
15 begin with?

16 MS. ANDREWS: I couldn't make a recommendation on  
17 that. I think that the OCC would have to determine that.  
18 I couldn't answer that.

19 COMMISSIONER BAILEY: Okay. On behalf of the  
20 Commission, I appreciate the offer of clerical help  
21 whenever there is need for and facilitation of the  
22 meetings. We appreciate the offer.

23 MS. ANDREWS: Thank you.

24 CHAIRMAN LEMAY: You broke it down into three  
25 areas, bonding, financial assurance and certification. It

1 looks like bonding and financial assurance are really kind  
2 of in the same boat, aren't they? You're talking about --

3 MS. ANDREWS: Yes, but they are separated in the  
4 document --

5 CHAIRMAN LEMAY: Yeah.

6 MS. ANDREWS: -- so...

7 CHAIRMAN LEMAY: Boy, that's a big one, Ruth. I  
8 mean, just everyone is struggling with that in so many  
9 areas.

10 I guess to outline it here would have -- I mean,  
11 I think in the future -- Your comments are well taken. I'm  
12 not sure that -- It was such a hot potato here, it looked  
13 like the Committee ducked it by bringing in the mining  
14 deal. I mean, it is difficult, as you can appreciate.  
15 Maybe your suggestion in the long term -- And not only  
16 this, I'm thinking wells and everything else.

17 MS. ANDREWS: Exactly, and I've been concerned,  
18 there seems to be a perception here that the bonds will be  
19 used in all cases. That's not happening, and nobody seems  
20 to be bringing that forward. So I would like that to be  
21 kept in mind.

22 CHAIRMAN LEMAY: Yeah. Well, I appreciate your  
23 testimony, and I've got a few concluding remarks that will  
24 encompass what you've said.

25 MS. ANDREWS: Okay.

1 CHAIRMAN LEMAY: Anything else? Yes, go ahead.

2 MR. CARROLL: Yeah, unfortunately I have a couple  
3 of rebuttal witnesses, and they should be real quick.

4 CHAIRMAN LEMAY: Well, now, I'm not sure that we  
5 call them rebuttal witnesses, because we're not rebutting.  
6 All's we're doing is putting them on, because there isn't  
7 any --

8 MR. CARROLL: Okay, I'll --

9 CHAIRMAN LEMAY: I mean, what we have is --

10 MR. CARROLL: -- call Roger Anderson to the stand  
11 then.

12 CHAIRMAN LEMAY: Okay.

13 ROGER ANDERSON (Recalled),  
14 the witness herein, having been previously duly sworn upon  
15 his oath, was examined and testified as follows:

16 EXAMINATION

17 BY MR. CARROLL:

18 Q. Mr. Anderson, you heard testimony earlier that --  
19 you know, why is the OCD doing this, because this is just a  
20 one-shot deal with Southwest Water Disposal?

21 Are there, in fact, other facilities that need to  
22 be closed and the only reason that Southwest Water was  
23 closed at this point is because there was a threat to --  
24 immediate threat to the health and environment?

25 A. Yes, that's correct. We know now, right now,

1 of -- I believe it's three treating plants that are in the  
2 southeast, that are not an immediate threat to public  
3 health and the environment, that will need to be closed in  
4 the near future.

5           They are -- Two of them are abandoned facilities  
6 with no bonds on them at this time. They were abandoned  
7 some time ago. At that time there were \$10,000 bond on  
8 them. Now, it doesn't cover every situation, and I realize  
9 this. One of them, the bonding company went out of  
10 business, so the bond was lost on it. The other one, I  
11 don't even know when it went out of business. I don't know  
12 when it was permitted.

13           There's --

14           Q. Are there any 711 facilities in the area?

15           A. There's one pit that would be a 711 facility, if  
16 permitted today, that will need to be closed.

17           Q. And will the cost -- Is that covered by a bond?

18           A. No, it is not.

19           Q. And do you have --

20           A. The cost --

21           Q. -- any ballpark figure --

22           A. The cost --

23           Q. -- as to the closing cost?

24           A. The cost, I'd say, for two of the treating plants  
25 will exceed \$25,000 probably, and I really don't have an

1 estimate of the cost of them because we really don't -- we  
2 haven't gotten in to see exactly what's going to happen --  
3 what's going to need to be done.

4 The third one probably may be \$10,000 to close.  
5 We've been slowly closing that one, using the Highway  
6 Department to take some of the tank bottoms for road  
7 construction.

8 The pit, I really don't know. I couldn't guess  
9 on that one.

10 Q. That -- You wouldn't know whether it's about  
11 \$25,000 or --

12 A. No, I wouldn't even -- It's in an unpopulated  
13 area, so we've got a lot of time with it.

14 Q. Do you have any other concluding remarks?

15 A. For one of Ruth's comments -- and I agree with  
16 her a hundred percent -- I have not seen Texaco's waste-  
17 tracking system.

18 As far as the certification goes, if a waste-  
19 tracking system was in place, that would take the place of  
20 this certification.

21 However, if a waste-tracking system was in place,  
22 it would have to be required of all waste that's being  
23 shipped in order to solve the problems that we see as going  
24 to be coming forward on waste-tracking.

25 Yes, you know, just like Parabo's paperwork is

1 good, that serves a purpose. But everybody doesn't do  
2 that. There's going to be the loophole where unless it's  
3 required, it's still not going to be done by some people,  
4 you know.

5 But yeah, we definitely support a waste-tracking  
6 system. And that's something down the road, though, and  
7 that would take the -- That would solve the problem of the  
8 paperwork.

9 Q. Is that all you have?

10 A. I believe so, yeah.

11 MR. CARROLL: That's all I have of this witness.

12 CHAIRMAN LEMAY: Questions of Roger?

13 COMMISSIONER WEISS: Yes.

14 CHAIRMAN LEMAY: Go ahead, Commissioner Weiss?

15 EXAMINATION

16 BY COMMISSIONER WEISS:

17 Q. Are all waste facilities audited at one time or  
18 another, by -- such as we heard, such as these larger ones?

19 A. No, they are not. The only waste facilities that  
20 are audited are -- The only companies that audit waste  
21 facilities are those companies that use that waste  
22 facility.

23 I believe you said Exxon audits you?

24 MR. BRAKEY: Just about everybody that -- that --  
25 large corporation audits us --

1 THE WITNESS: That uses you?

2 MR. BRAKEY: That uses us, yes.

3 THE WITNESS: That's correct. Now --

4 MR. BRAKEY: And they also audit the downhole  
5 surface facilities in the area that they operate. I mean,  
6 they just don't --

7 THE WITNESS: Sure.

8 MR. BRAKEY: -- the surface disposal facilities.

9 THE WITNESS: Sure, I --

10 MR. BRAKEY: They'll send a team up, and they may  
11 get ten disposals in southeast New Mexico.

12 THE WITNESS: Right, but they won't -- They won't  
13 bother with ones that are not on their approved list to  
14 use.

15 MR. BRAKEY: That's right, that's right.

16 THE WITNESS: Like Exxon will not go up and audit  
17 Basin Disposal up in the northwest.

18 Q. (By Commissioner Weiss) Does anybody audit Basin  
19 Disposal?

20 A. We do.

21 Q. And that's it?

22 A. That's right. As far as I know, it is. I -- We  
23 do not get the audits from the major oil companies.

24 Q. Is there a way to use their time and money that  
25 they put into these audits so that we don't have to



1 duplicate it?

2 A. Well, I'm not sure that we could -- You know,  
3 that would be a question we'd have to ask our legal staff,  
4 as to whether we can use their audits as state regulatory  
5 audits. I don't know the answer to that question, you  
6 know, whether we could -- if we can delegate the regulatory  
7 responsibility to a corporation or not, I don't know.

8 MR. KENDRICK: Are you through?

9 COMMISSIONER WEISS: Yes, thank you very much.

10 MR. KENDRICK: Question for --

11 CHAIRMAN LEMAY: Yeah, go ahead.

12 EXAMINATION

13 BY MR. KENDRICK:

14 Q. Isn't it true these audits are strictly a matter  
15 of private business relationships, that they aren't at all  
16 government mandated?

17 A. That's correct, yes.

18 Q. So there's no access to that information by  
19 anybody other than the parties to the audit?

20 A. That's correct. We have no method to require an  
21 audit like that to be submitted to us. We don't even know  
22 when they take place.

23 MR. KENDRICK: Thank you.

24 CHAIRMAN LEMAY: Anything else?

25 If not, you may be excused. Thank you, Mr.

1 Anderson.

2 THE WITNESS: Thank you.

3 MR. CARROLL: Mr. Chairman, the OCD does have  
4 some experience with certification, similar or exactly as  
5 what would be required by C.4.a., and I'd like to have  
6 Denny Foust sworn in and he can testify as to the  
7 experience of the Aztec district with this type of  
8 certification and the problems, if any, that occur in  
9 obtaining that certification.

10 CHAIRMAN LEMAY: Okay. You weren't here to be  
11 sworn in, were you, Mr. Foust, before?

12 MR. FOUST: I didn't stand, but --

13 CHAIRMAN LEMAY: Do you want to stand and raise  
14 your right hand?

15 DENNY FOUST,  
16 the witness herein, after having been first duly sworn upon  
17 his oath, was examined and testified as follows:

18 EXAMINATION

19 BY MR. CARROLL:

20 Q. Mr. Foust, would you please state your name and  
21 your employer for the record?

22 A. My name is Denny Foust, that's F-o-u-s-t. I am  
23 the environmental compliance person for the District 3.  
24 I'm a geologist, an employee of the Oil Conservation  
25 Division.

1 Q. Mr. Foust, have you had an opportunity to testify  
2 before the Commission before?

3 A. Not before the Commission, but before the  
4 Division.

5 Q. For the Commission, can you just briefly state  
6 your educational and work background?

7 A. I have a bachelor's and master's in geology,  
8 geochemistry. I have about 15 years' professional  
9 experience, plus five years with the Oil Conservation  
10 Division.

11 MR. CARROLL: Mr. Chairman, are the witness's  
12 qualifications acceptable?

13 CHAIRMAN LEMAY: His qualifications are  
14 acceptable.

15 Q. (By Mr. Carroll) Mr. Faust, have you had an  
16 opportunity up in the Aztec district to -- and I'll refer  
17 you to what has been marked as OCD Exhibit Number 7, and  
18 that's in the pack. I've marked all these exhibits for  
19 prior documentation.

20 Has the OCD up in Aztec been using what has been  
21 marked OCD Exhibit Number 7, which is titled Request for  
22 Approval to Accept Solid Waste?

23 A. Yes, we use this form for all of our commercial  
24 waste disposal facilities -- that's solid waste -- in  
25 conjunction with a certification of waste from the

1 operator.

2 Q. To your knowledge, has there been any problems in  
3 operators of disposal facilities obtaining this type form  
4 from the generator of the waste?

5 A. Well, the form shown in Exhibit 7 is filled out  
6 by the disposal facility, and they attach a certification  
7 of waste from the operator which -- I don't have an example  
8 here, but it's a certification of waste, either exempt or  
9 non-exempt oilfield waste, and then it gives the location  
10 or facility that it was generated at, maybe a one-sentence  
11 description, and then we have the other information that's  
12 shown here on this form, then, is submitted.

13 Usually non-exempt [*sic*] wastes are verbally  
14 approved. I get a call on the phone, and moving these  
15 wastes to the facilities are approved verbally, and the  
16 paperwork comes in later.

17 Non-exempt wastes are not moved until this form  
18 is filed in the office and it's approved in the district  
19 and also approved in Santa Fe.

20 CHAIRMAN LEMAY: I think you said "non-exempt"  
21 both times, didn't you?

22 Do you mean exempt waste is approved by  
23 telephone?

24 THE WITNESS: Yes, that's what I meant. If I  
25 said non-exempt, please excuse me.

1           CHAIRMAN LEMAY: Okay. Exempt waste is approved  
2 by telephone, non-exempt --

3           THE WITNESS: Yes.

4           CHAIRMAN LEMAY: -- with the form.

5           Q. (By Mr. Carroll) Mr. Foust, as I understood you,  
6 there's a certificate attached to this, signed by the  
7 generator of the waste?

8           A. Yes, that's correct.

9           Q. Is there a transporter certificate required also,  
10 that's attached?

11          A. There is not a requirement for a transporter  
12 certificate. We haven't utilized that in our district, but  
13 oftentimes it is attached.

14          Q. Have operators of facilities up in the northwest  
15 expressed any dissatisfaction or hardship in obtaining the  
16 attached certificate to this form?

17          A. The disposal facility operators seem to be  
18 utilizing this form, and it helps them keep track of  
19 information.

20                 We do once a year get together and compare data  
21 to see that everybody has the same paperwork. They keep an  
22 audit file that just shows the material transported and its  
23 classification, and this is done on an annual or a  
24 quarterly basis. By that, they file these consecutively on  
25 a quarterly or an annual basis, however their volumes. And

1 we actually have the audit once a year. And they are  
2 audited by people who use -- or operators who use their  
3 facilities also.

4 El Paso is one of the big auditors. Mr. Bays  
5 just left but --

6 Q. And are you aware that Roger Anderson basically  
7 used the form used by you up in the northwest to prepare  
8 his C-138?

9 A. Yes, sir.

10 MR. CARROLL: And I've marked that as OCD Exhibit  
11 Number 8. And that's all I have of this witness.

12 Mr. Chairman, I've marked the documents submitted  
13 earlier by Mr. Anderson as Committee Chairman as OCD  
14 exhibits for purposes of just getting it into the record.

15 Ad I've marked Exhibit Number 1 as the original  
16 Rule 711; Exhibit Number 2 as the original Rule 312;  
17 Exhibit Number 3 as the March 9th draft, which is the  
18 proposed rule submitted by the Committee; the minority  
19 position submitted by the members of the Committee as  
20 Exhibit 4; the April 2nd, 1993, OCD memo to industry is  
21 Exhibit Number 5; the OCD form C-137, Application for Waste  
22 Management Facilities, Exhibit Number 6; the form testified  
23 to by Mr. Foust used in the northwest is OCD Exhibit Number  
24 7; and Mr. -- and the proposed OCD form C-138 is Exhibit  
25 Number 8.

1 And at this time I would move these exhibits into  
2 the record.

3 CHAIRMAN LEMAY: Any objection?

4 If not, Exhibits 1 through 8 will be admitted  
5 into the record.

6 MR. CARROLL: And that's all I have, Mr.  
7 Chairman.

8 CHAIRMAN LEMAY: Okay. Mr. Kellahin?

9 MR. KELLAHIN: Question, Mr. Chairman.

10 EXAMINATION

11 BY MR. KELLAHIN:

12 Q. Mr. Foust, I'm looking at Exhibit 7.

13 A. Yes, sir.

14 Q. I don't see a Division form number on this  
15 exhibit, Mr. Foust. Is there a form number that goes with  
16 this?

17 A. No, this isn't an official form at this time.

18 Q. Is there an instruction sheet that goes with  
19 this, for filling this form out?

20 A. No.

21 Q. Who generated the form?

22 A. We generated it in our office in Aztec.

23 Q. And when was this implemented?

24 A. It was implemented after we had some difficulties  
25 at Envirotech.

1 Q. Was this made a subject of a Director memorandum  
2 for the issuance of this form? Did Mr. LeMay issue a  
3 memorandum that required this form to be issued?

4 A. Not to my knowledge.

5 Q. Was this ever the subject of a regulatory hearing  
6 before the Division?

7 A. No, sir.

8 Q. Was it issued pursuant to any guidelines  
9 developed by the Santa Fe office of the Environmental  
10 Bureau of the agency?

11 A. It was developed in conjunction with the  
12 Environmental Bureau, yes.

13 Q. Is there any compliance requirements if a party  
14 chooses not to fill out this form?

15 A. In our district, we don't allow the material to  
16 be moved to a facility if you don't fill out the form.

17 Q. If an operator chooses to move solid waste, he  
18 can't do it unless he submits one of these forms?

19 A. To a commercial facility.

20 Q. There's nothing in the existing Rule 711 that  
21 provides for this form, though, is there?

22 A. Not to my knowledge.

23 MR. KELLAHIN: Okay, thank you, Mr. Chairman.

24 CHAIRMAN LEMAY: Mr. Kellahin.

25 Additional questions of the witness?



1 Yes, sir, Mr. Marsh?

2 MR. MARSH: Mr. Foust, I see in the top left-hand  
3 corner of this it says, verbal approval received.

4 THE WITNESS: Uh-huh.

5 MR. MARSH: Who is the verbal approval from?

6 THE WITNESS: It's from myself, or other  
7 designated parties in our office in my absence.

8 MR. MARSH: Does -- Do you require somebody's  
9 name on here, or just a check?

10 THE WITNESS: Yeah, they initial it that --  
11 whoever approved it.

12 MR. MARSH: So if it was you, they'd write your  
13 name in up here --

14 THE WITNESS: Uh-huh.

15 MR. MARSH: -- and say yes and write your name  
16 in?

17 The bottom down here, on the very bottom, it says  
18 "approved by". Is that -- except for state use. Is that  
19 for you or your office, you sign off on that?

20 THE WITNESS: Yes, uh-huh.

21 MR. MARSH: So if I have some waste that I want  
22 to move, I come to you and bring a certificate of waste  
23 status, and then I get this form from you?

24 THE WITNESS: No, you've --

25 MR. MARSH: I've already got it?

1 THE WITNESS: You've got it.

2 MR. MARSH: All right, I've got.

3 THE WITNESS: You should fill it out.

4 MR. MARSH: But I've got to get your signature to  
5 it before I can move the waste?

6 THE WITNESS: On non-exempt waste, yes.

7 MR. MARSH: What about exempt waste?

8 THE WITNESS: You could go ahead and accept it  
9 and submit it.

10 MR. MARSH: No, I'm not -- Not me as a disposal  
11 facility. Me as a producer?

12 THE WITNESS: No. The person that prepares this  
13 document is the operator of the --

14 MR. MARSH: -- this lease?

15 THE WITNESS: -- disposal facility.

16 MR. MARSH: Oh, they are?

17 THE WITNESS: Not the lease operator.

18 MR. MARSH: I have no more questions.

19 CHAIRMAN LEMAY: Thank you.

20 Additional questions?

21 MR. CARROLL: I have one follow-up question.

22 CHAIRMAN LEMAY: Okay.

23 FURTHER EXAMINATION

24 BY MR. CARROLL:

25 Q. Mr. Foust, in fact, this form was generated after

1 the April 2nd, 1993, memo from Director LeMay; is that  
2 correct? And a result of that memo?

3 A. Yes, but I don't recall all the details of that  
4 memo without reviewing it.

5 MR. CARROLL: That's all I have, Mr. Chairman.

6 MR. MARSH: I have one.

7 CHAIRMAN LEMAY: Yes, sir, Mr. Marsh.

8 MR. MARSH: Mr. Foust, how many disposal  
9 facilities do you have in the Farmington area in your  
10 district?

11 THE WITNESS: There are three facilities that are  
12 using this type of documentation.

13 MR. MARSH: What waste streams do they receive?

14 THE WITNESS: All solid wastes that are developed  
15 in the oilfield.

16 MR. MARSH: Do they take drilling fluids and  
17 drill cuttings and amine filters and all these kinds of  
18 things?

19 THE WITNESS: They don't take amine filters, but  
20 they do take some drill cuttings.

21 MR. MARSH: Where do they put these liquid  
22 cuttings?

23 THE WITNESS: They have a stabilization procedure  
24 to make them solids before they're spread on the land  
25 farms.

1 MR. MARSH: Okay, what about tank bottoms?

2 THE WITNESS: We do not process tank bottoms.

3 MR. MARSH: How many different waste streams do  
4 you have, as compared -- is there any difference in -- I  
5 guess what I'm getting at, is there any difference in the  
6 oilfield waste operations in your part of the State and  
7 ours? Because I've been up there and looked at yours, but  
8 I'm really not that familiar --

9 THE WITNESS: As far as the solid wastes, really  
10 the only difference would be the volume of tank bottoms  
11 which you generate in the southeast New Mexico area.

12 MR. MARSH: How many different operators would  
13 you estimate that you have in your part of the country up  
14 there?

15 THE WITNESS: I would say about a hundred.

16 MR. MARSH: Okay, how many majors do you have?  
17 When I say "majors", I mean how many do you have that have,  
18 say, over a thousand wells?

19 THE WITNESS: I think six.

20 MR. MARSH: So six of these entities would  
21 probably account for 70 percent or more of the waste --

22 THE WITNESS: I think that's a fair statement,  
23 yes.

24 MR. MARSH: -- of the waste involved?

25 So you've really got six major corporations or

1 six large corporations that you're dealing with primarily?

2 THE WITNESS: Yes, especially if you include  
3 Meridian as a major, and I think that's --

4 MR. MARSH: Right.

5 THE WITNESS: -- fair in --

6 MR. MARSH: Sure.

7 THE WITNESS: -- New Mexico.

8 MR. MARSH: Yeah. Okay, that's all I have.

9 Thanks.

10 CHAIRMAN LEMAY: Additional questions of the  
11 witness?

12 If not, he may be excused.

13 COMMISSIONER WEISS: Yeah, I have.

14 CHAIRMAN LEMAY: Oh, I'm sorry. Go ahead.

15 EXAMINATION

16 BY COMMISSIONER WEISS:

17 Q. I didn't understand that conversation there.  
18 Could you explain it to me?

19 How come you don't have questions when the guy on  
20 a cellular phone -- I guess that's what you two were  
21 talking about -- and he does get this form signed? I don't  
22 know -- What happened?

23 You know, he can't get this form signed because  
24 the guy's in Denver. You're able to get the form signed.  
25 How come?

1 A. I guess because we demand that it be signed.

2 Q. Is the guy in Denver -- Does he sign it?

3 A. No, these people are in Farmington, or they may  
4 be in Durango.

5 We get some out-of-state waste too that has to be  
6 signed for, but --

7 Q. But there's always a company man available?

8 A. Yes.

9 COMMISSIONER WEISS: Maybe that's the difference.  
10 Thank you.

11 CHAIRMAN LEMAY: Commissioner Bailey?

12 COMMISSIONER BAILEY: I had a question.

13 EXAMINATION

14 BY COMMISSIONER BAILEY:

15 Q. Are the other OCD districts aware of your  
16 requirements up in the northwest to have this form filled  
17 out?

18 A. Yes.

19 Q. Is there a reason why one district is requiring  
20 procedures different from the other two producing  
21 districts?

22 A. Because it's not part of a rule or a directive.

23 Q. Okay. My concern is that there are different  
24 criteria for operators, depending on the State location.

25 Was there much objection from the facility

1 operators in the northwest?

2 A. There hasn't been any objection from the facility  
3 operators. I think that one of them was on the Committee,  
4 Mr. Nobis, and expressed support for certification.

5 And I think it has turned out to be a handy tool  
6 for handling some operators that want to send them some  
7 materials that they don't necessarily want to accept. They  
8 don't have to take the entire responsibility themselves.

9 COMMISSIONER BAILEY: Okay, that's all I had.

10 CHAIRMAN LEMAY: Additional questions?

11 If not, he may be excused. Thank you, Mr. Foust.

12 Any other comments, statements?

13 Okay. What we're going to do is take it under  
14 advisement for -- leave the record open for two weeks.

15 I like the idea that Bruce said -- I mean, mark  
16 it up red like we had last time if you have some  
17 suggestions. But especially for adding to the record, I  
18 would appreciate Texaco's form, if you could ask them.

19 It seems like the C.4.a. item is one of the  
20 disputed items, so those of you that have additional  
21 language you'd like to see in C.4.a., after thinking about  
22 it, thinking about the testimony, we as Commissioners would  
23 appreciate that language for consideration.

24 I think in principle I've not seen a whole lot of  
25 problem. I just think that it will help us if we can maybe

1 look at some language from an operational point of view  
2 that might satisfy you and still fulfill what we're trying  
3 to do, or at least what the Committee thought they tried to  
4 do. So that would be helpful.

5 And I think the Commission can handle -- I'm not  
6 saying we can handle it. I think we'll come to grips with  
7 the bonding/financial-assurance aspect for this particular  
8 rewrite.

9 That's not to say that in the future, if we put a  
10 bonding/financial-assurance committee together, that they  
11 might not look at the total problem of bonding and  
12 financial assurance and in that way -- Rules can be changed  
13 in that area very easily.

14 I just hate to hold up rewrite of this rule based  
15 upon what turns out to be, I think, a major problem within  
16 the industry.

17 What I've seen -- I don't know if you've looked  
18 at what the BLM and the feds are looking at in terms of  
19 their performance review, the increase in bonding that  
20 they're requiring. I imagine there will be a committee  
21 established within NMOGA to look at that. So we just may  
22 put a lot of things on that plate.

23 But there's a reluctance -- I mean, I have a  
24 reluctance to hold up issuing an order based on any  
25 conclusion that could be reached by that committee. Not to



1 say that these orders could not be revised and changed at  
2 any time where there is a consensus out there for financial  
3 assurance.

4 So is there anything else that you would like to  
5 state prior to winding up?

6 Ruth?

7 MS. ANDREWS: I think that our request was not  
8 that this rule be held up but that the bonding provisions,  
9 the changes to the bonding provisions, be removed and  
10 considered on its own, so that this rule is not held up.

11 CHAIRMAN LEMAY: Okay.

12 MS. ANDREWS: That's what we will request.

13 CHAIRMAN LEMAY: Okay, fine. We'll take that one  
14 under advisement.

15 I mean, as I heard the bonding requirements, they  
16 were twofold. One had to do with raising the bond; the  
17 other part of that had to do with what kind of financial  
18 assurance would be accepted for any level of bond, or any  
19 level of surety. The -- And I think they are two separate  
20 issues.

21 So we'll take that request, certainly, under  
22 advisement, as well as any other comments we receive in the  
23 next two weeks.

24 Yes, Frank? Frank Chavez, Aztec District  
25 Supervisor.

1 MR. CHAVEZ: Yeah, Mr. Commissioner, in the make-  
2 up of the committee, there weren't any district people who  
3 were actually official members of the Committee, but there  
4 are always district people as observers if the actions are  
5 going on, and we're grateful that the Committee allowed us  
6 to participate as much as we did, even though we weren't  
7 Committee members.

8 I think there may be some comments from the  
9 operational issues that you discussed that we may want to  
10 submit from the districts that -- also, if that is okay.

11 CHAIRMAN LEMAY: We certainly encourage comments  
12 from the District Supervisors, as well as anyone else that  
13 didn't happen to be on the Committee that would like to  
14 submit comments.

15 We appreciate your comments, yes, or your  
16 submittals.

17 Is there anything else?

18 Well, thank you all very much. We appreciate  
19 your contribution.

20 We'll take this case under advisement.

21 (Thereupon, these proceedings were concluded at  
22 4:45 p.m.)

23 \* \* \*

## 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 May 21st, 1995.



STEVEN T. BRENNER  
CCR No. 7

My commission expires: October 14, 1998