

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

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

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR REPEAL OF)
EXISTING RULE 50 CONCERNING PITS AND)
BELOW GRADE TANKS AND ADOPTION OF A)
NEW RULE GOVERNING PITS, BELOW GRADE)
TANKS, CLOSED LOOP SYSTEMS AND OTHER)
ALTERNATIVE METHODS TO THE FOREGOING,)
AND AMENDING OTHER RULES TO MAKE)
CONFORMING CHANGES; STATEWIDE)

CASE NO. 14,015

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

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

Volume II - November 5th, 2007

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Monday, November 5th, 2007, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

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

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C U M U L A T I V E I N D E X

Monday, October 22nd, 2007 (Volume I)
 Commission Hearing
 CASE NO. 14,015

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A P P E A R A N C E S

FOR THE COMMISSION:

CHERYL BADA
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE DIVISION:

DAVID K. BROOKS, JR.
Assistant General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR NEW MEXICO OIL AND GAS ASSOCIATION; CONOCOPHILLIPS COMPANY; DUGAN PRODUCTION CORPORATION; and ENERGEN RESOURCES CORPORATION; and an INDUSTRY COMMITTEE comprised of BP America Production Company, Inc.; Benson-Montin-Greer Drilling Corporation; Boling Enterprises, Ltd.; Burlington Resources Oil and Gas Company; Chesapeake Energy Corporation; Chevron USA, Inc.; ConocoPhillips Company; Devon Production Company; Dugan Production Corporation; Energen Resources Corporation; Marathon Oil Company; Marbob Energy Corporation; Merrion Oil & Gas Corporation; Occidental Permian, which includes OXY USA, Inc., and OXY USA WTP Limited Partnership; Samson Resources Company; J.D. Simmons, Inc.; Williams Production Company, LLC; XTO Energy, Inc.; and Yates Petroleum Corporation:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

(Continued...)

A P P E A R A N C E S (Continued)

FOR NEW MEXICO INDUSTRY COMMITTEE
and YATES PETROLEUM CORPORATION:

JORDEN, BISCHOFF & HISER, P.L.C.
7272 E. Indian School Rd., Suite 360
Scottsdale, AZ 85251
By: ERIC L. HISER

FOR CONTROLLED RECOVERY, INC.:

HUFFAKER & MOFFETT, L.L.C.
155 Grant
Santa Fe, New Mexico 87501
P.O. Box 1868
Santa Fe, New Mexico 87504-1868
By: GREGORY D. HUFFAKER, Jr.

FOR NEW MEXICO OIL AND GAS ACCOUNTABILITY PROJECT:

New Mexico Environmental Law Center
1405 Luisa Street, Suite 5
Santa Fe, New Mexico 87505
BY: ERIC D. JANTZ
and
BRUCE FREDERICK

FOR NEW MEXICO CITIZENS FOR CLEAN AIR AND WATER:

BELIN & SUGARMAN
618 Paseo de Peralta
Santa Fe, New Mexico 87501
By: ALLETTA BELIN

(Continued...)

A P P E A R A N C E S (Continued)

FOR INDEPENDENT PETROLEUM ASSOCIATION OF NEW MEXICO:

KARIN V. FOSTER
Independent Petroleum Association of New Mexico
Director of Governmental Affairs
17 Misty Mesa Ct.
Placitas, NM 87043

* * *

1 WHEREUPON, the following proceedings were had at
2 9:00 a.m.:

3 CHAIRMAN FESMIRE: At this time we're going to
4 call the special meeting of the New Mexico Oil Commission
5 to order. Let the record reflect that it is nine o'clock
6 on Monday, November 5th, 2007.

7 The only cause before the Commission is -- and
8 the reason for this special meeting -- is Case Number
9 14,015, the Application of the New Mexico Oil Conservation
10 Division for repeal of existing Rule 50 concerning pits and
11 below grade tanks and the adoption of a new rule governing
12 pits, below grade tanks, closed loop systems and other
13 alternative methods to the foregoing, and amending other
14 rules to make conforming changes; statewide.

15 Let the record that present are Commissioner
16 Bailey, Commissioner Olson and Commissioner Fesmire. We do
17 have a quorum present.

18 This hearing was originally convened on Monday,
19 October 22nd, at which time we heard opening statements
20 from the parties that did not wish to waive their -- to
21 reserve their opening statement until their case.

22 At this time we'll take the appearances of
23 attorneys present.

24 Mr. Brooks?

25 MR. BROOKS: Mr. Chairman, honorable

1 Commissioners, I'm David Brooks, of the Energy, Minerals
2 and Natural Resources Department of the State of New
3 Mexico, for the Oil Conservation Division.

4 CHAIRMAN FESMIRE: Mr. Carr?

5 MR. CARR: May it please the Commission, I'm
6 William F. Carr with the Santa Fe office of Holland and
7 Hart, L.L.P. We represent the New Mexico Oil and Gas
8 Association. Present with us today is Bob Gallagher, the
9 president of the association, and Stephanie Reed, Director
10 of Governmental Affairs.

11 We also represent a group called the industry
12 committee, and so everyone here knows who we are I'd like
13 to again provide the names of the companies, with your
14 permission:

15 BP America Production Company; Benson-Montin-
16 Greer Drilling Corporation; Boling Enterprises, Ltd.;
17 Burlington Resources Oil and Gas Company; Chesapeake Energy
18 Corporation; Chevron USA, Inc.; ConocoPhillips Company;
19 D.J. Simmons, Inc.; Devon Energy Production Company; Dugan
20 Production Corporation; Energen Resources Corporation;
21 Marathon Oil Company; Marbob Energy Corporation; Merrion
22 Oil & Gas Corporation; Occidental Permian, LTD, including
23 OXY USA, Inc., and OXY USA WTP Limited Partnership; Samson
24 Resources Company; Williams Production Company, LLC; XTO
25 Energy, Inc.; and Yates Petroleum Corporation.

1 We also independently entered appearances for
2 ConocoPhillips, Dugan Production Corporation and Energen
3 Resources Corporation. ConocoPhillips will present its own
4 testimony at the appropriate time during the course of the
5 hearing.

6 Thank you, Mr. Chairman.

7 CHAIRMAN FESMIRE: Thank you, Mr. Carr.

8 Mr. Hiser?

9 MR. HISER: Mr. Chairman, members of the
10 Commission, Eric L. Hiser, from Jorden, Bischoff and Hiser.
11 We are here to represent the New Mexico industry committee
12 in addition to Mr. Carr, and also separately represent
13 Yates Petroleum Corporation.

14 CHAIRMAN FESMIRE: Okay. Mr. Moffett? His
15 partner?

16 MR. HUFFAKER: Mr. Chairman, I'm Greg Huffaker
17 here instead of Mr. Moffett. I'm from the firm of Huffaker
18 and Moffett and I represent Controlled Recovery, Inc.

19 Good morning.

20 CHAIRMAN FESMIRE: Mr. Jantz?

21 MR. JANTZ: Good morning, Mr. Chairman, members
22 of the Commission. My name is Eric Jantz. I'm a staff
23 attorney with the New Mexico Environmental Law Center, here
24 on behalf of the Oil and Gas Accountability Project.

25 CHAIRMAN FESMIRE: Ms. Belin?

1 MS. BELIN: Lettie Belin of Belin and Sugarman,
2 here for New Mexico Citizens for Clean Air and Water.

3 CHAIRMAN FESMIRE: At our last meeting Karin
4 Foster also entered an appearance for the Independent
5 Petroleum of Association of New Mexico.

6 MR. MULLINS: Mr. Chairman, my name is Tom
7 Mullins, I'm the northwest New Mexico vice president of the
8 Independent Petroleum of Association of New Mexico.

9 Unfortunately, Ms. Foster is delayed
10 approximately an hour and a half from her attendance here
11 today at the meeting, but I would ask if you could defer
12 your legal arguments regarding her motions until her
13 arrival.

14 CHAIRMAN FESMIRE: Okay. Are there any other
15 attorneys present who wish to make an -- enter an
16 appearance?

17 Okay, as Mr. Mullins noted, there are two motions
18 filed by Ms. Foster that are pending. There's also a third
19 motion pending that involves Ms. Foster, so we'll defer
20 action on those motions until Ms. -- at some time when Ms.
21 Foster is present.

22 Mr. Brooks, are you ready to begin your case-in-
23 chief?

24 MR. BROOKS: Mr. Chairman, members of the
25 Commission, we would respectfully request, if it's not

1 objectionable to anyone, a little bit different type of
2 presentation order for our first two witnesses.

3 We would like to start off with a slide show
4 that's approximately eight minutes long, then follow that
5 with the testimony of Chief Price about his initial
6 presentation and overview, and then follow with the unlined
7 pit testimony from Mr. von Gonten, and then allow both Mr.
8 Price and Mr. von Gonten to be cross-examined since those
9 initial presentations will involve the same subject matter.
10 Of course, if that is not acceptable to other counsel and
11 the Commission, we will proceed with Mr. Price's testimony
12 first and submit him for cross-examination, followed by Mr.
13 von Gonten.

14 CHAIRMAN FESMIRE: Is there any objection?

15 MR. CARR: Mr. Chairman, I have no objection to
16 what Mr. Brooks is proposing. I would suggest that once
17 Ms. Foster gets here and we have all counsel present, that
18 at some time today it would be helpful to sort of take a
19 look at the case and see how many attorneys and how many
20 witnesses and estimate time.

21 From the industry committee's perspective we have
22 three experts who will be arriving today at noon, and not
23 that this breaks anyone's heart, I'm sure, but it costs
24 \$10,000 a day to just sit and listen, so -- in terms of
25 expert fees and all. And so if we could at some point

1 today work out a schedule, that would be -- but we
2 certainly do not object to Mr. Brooks presenting the case
3 as he desires.

4 CHAIRMAN FESMIRE: Okay. Mr. Carr, we'll do our
5 best because heaven knows, we want to make sure that the
6 industry saves money in the presentation.

7 (Laughter)

8 MR. CARR: And Mr. Chairman, I would hope the
9 Commission would be concerned about what the costs of this
10 proposal are.

11 CHAIRMAN FESMIRE: We always are, Mr. Carr.

12 Is there any objection from the Commission to
13 doing it that way?

14 Mr. Hiser?

15 MR. HISER: Mr. Chairman, one other thing that we
16 may want to address in order to spare numerous objections
17 throughout what is likely to be the presentation that Mr.
18 Price and Mr. von Gonten will do. That is an objection to
19 foundation and to whether the pits that we see, the
20 approximate time of the photos, whether they are production
21 pits or whether they are drilling or reserve pits, all that
22 needs to be specified, because there are different types of
23 pits.

24 And for the Commission -- or for the Division
25 to -- must see them all together, I think, is to do a

1 disservice to the Commission as to what is the
2 environmental impact of each of the different types of
3 pits.

4 So it seemed to me that perhaps the Commission
5 should direct the Division that they should distinguish as
6 to what type of pit and the dates of the photos and the
7 dates of the problems that they're going to speak about as
8 part of their presentation, to spare us having to object to
9 each one on the basis of foundation.

10 CHAIRMAN FESMIRE: In essence, Mr. Hiser, you're
11 instituting a running objection prior to the introduction
12 of the evidence?

13 (Laughter)

14 MR. HISER: That's correct. And that's just to
15 save us having to get up at every slide and do the same
16 thing.

17 CHAIRMAN FESMIRE: Okay, the record will reflect
18 Mr. Hiser's request.

19 Is there any other comments before we begin?

20 MR. HISER: I take it the record is also
21 reflecting the Chairman's denial of my request?

22 CHAIRMAN FESMIRE: It's hard to rule on an
23 objection before the evidence is presented.

24 MR. HISER: Fair enough, I will prepare to make
25 my objection when the first slide appears.

1 MR. BROOKS: Mr. Chairman, since the slides are
2 going to be rotated electronically and they're going to
3 each be only like -- what, a half a minute --

4 MR. VON GONTEN: Three to five seconds.

5 MR. PRICE: Three to five seconds.

6 MR. BROOKS: -- very short on the screen, we
7 certainly would prefer that the Chair make a ruling. These
8 are just a cross-section of pits, and Mr. Price will
9 identify generally what they are, but there is no
10 identification to each specific one.

11 We understand Mr. Hiser objects on that ground.
12 We would prefer that the Chair make a ruling and give Mr.
13 Hiser his running objection, if the Chair overrules it,
14 rather than having to stop the projector during the
15 presentation.

16 CHAIRMAN FESMIRE: Okay. Mr. Hiser, the Chair
17 notes your running objection, the Chair will overrule your
18 running objection at this point. If there are specific
19 objections to an individual slide, we'd be glad to
20 entertain it at that time.

21 Anything else before we begin?

22 Okay, we're going to change our procedure one
23 slight way. Because this is going to be a several-day
24 hearing, we're going to swear the witnesses in one at a
25 time to make sure that, you know, everybody gets sworn in

1 prior to their testimony.

2 So at this time, Mr. Brooks go ahead and begin
3 your presentation.

4 MR. BROOKS: Mr. Chairman, in the light of the
5 manner in which we're presenting it, we'll request that Mr.
6 Price and Mr. von Gonten both be sworn at this time.

7 CHAIRMAN FESMIRE: Okay, Mr. Price, Mr. von
8 Gonten, would you stand, please?

9 (Thereupon, Mr. Price and Mr. von Gonten were
10 sworn.)

11 MR. BROOKS: Call Wayne Price.

12 CHAIRMAN FESMIRE: Mr. Price?

13 WITNESS PRICE: Actually, Mr. von Gonten for the
14 slides.

15 MR. BROOKS: Oh, Mr. Price has reminded me that
16 Mr. von Gonten will provide the foundation for the slide
17 show, so we'll call Glenn von Gonten.

18 CHAIRMAN FESMIRE: Okay, Mr. von Gonten?

19 GLENN VON GONTEN,
20 the witness herein, after having been first duly sworn upon
21 his oath, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q. Mr. von Gonten, before you start the show, would
25 you state your name, please, for the record?

1 A. Glenn von Gonten.

2 Q. And where do you reside?

3 A. Santa Fe.

4 Q. In fact, you reside in de Vargas Heights, I
5 believe?

6 A. Yes, I do.

7 Q. Just a few blocks from me?

8 A. That's correct.

9 Q. Very honorable and prestigious place to reside?

10 A. Seems so to me.

11 Q. Mr. von Gonten, would you explain to us what
12 we're about to see?

13 A. Yes, this is a slide show of approximately 106
14 slides. These slides were photographs taken by OCD's
15 district inspectors.

16 These slides are, as far as we can tell, more
17 recent than January 1, 2006. The inspectors do not
18 generally take pictures of pretty pits, so what we are
19 focusing on here is problems that have been identified by
20 OCD staff.

21 And again, these are more recent, either by the
22 date stamp on the slide or on the file itself, the
23 electronic file, our understanding is that these things are
24 more recent than January 1, 2006.

25 Q. And Mr. von Gonten, are these any particular type

1 of pit, or are they an assortment of different types of
2 pits?

3 A. They are an assortment. I went through the
4 inspector's files that is on a server, and I identified
5 anything that looked like a pit.

6 We winnowed it down to pits that were more recent
7 by date, and we also winnowed the pits down so that there
8 wouldn't be duplicates.

9 Q. And do you have the locations of these pits?

10 A. No, I do not.

11 Q. Okay. You may proceed with your demonstration,
12 Mr. von Gonten.

13 A. This presentation is intended to be a slide show.
14 I don't plan on interrupting it to make comments.

15 (Thereupon, the slides were shown.)

16 THE WITNESS: And that concludes the slides.

17 MR. BROOKS: Thank you. Could we have the
18 lights, please?

19 At this time the Division will call Wayne Price.

20 CHAIRMAN FESMIRE: Mr. Price?

21 MR. HISER: Mr. Chairman, having now seen the
22 slides, and having seen that the Division is unable to meet
23 the foundational requirements of being unable to identify
24 where they are, and showing no relevance whatsoever,
25 because we don't know what types of pits they are, we don't

1 know any of that type of stuff, we would re-ask that -- the
2 motion that the entire slide presentation be stricken from
3 the record.

4 CHAIRMAN FESMIRE: Mr. von Gonten, were those
5 pictures taken in New Mexico?

6 THE WITNESS: Yes, sir.

7 CHAIRMAN FESMIRE: And are they of oil and gas
8 pits?

9 THE WITNESS: As far as I know, they were all
10 taken by OCD district inspectors while conducting official
11 inspections at oil and gas operation sites.

12 CHAIRMAN FESMIRE: As far as you know, do you
13 believe that they were taken by oil and gas inspectors in
14 New Mexico?

15 THE WITNESS: Yes.

16 CHAIRMAN FESMIRE: I'm going to overrule your
17 objection, Mr. Hiser.

18 MR. HISER: Not the custodian of the records, he
19 can't testify to that, respectfully, Mr. Chairman.

20 CHAIRMAN FESMIRE: Mr. Hiser, you understand that
21 we're not strictly bound by the rules of evidence here.

22 MR. HISER: I'm just trying to establish what
23 your evidentiary grounds are going to be. Thank you, Mr.
24 Chairman.

25 CHAIRMAN FESMIRE: Mr. Brooks?

1 MR. BROOKS: Call Wayne Price.

2 WAYNE PRICE,

3 the witness herein, after having been first duly sworn upon
4 his oath, was examined and testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BROOKS:

7 Q. Good morning, Mr. Price.

8 A. Good morning.

9 Q. Somebody raised a question about the adequacy of
10 the amount of water you brought with you. Do you feel
11 comfortable that you have plenty?

12 A. I do feel comfortable.

13 Q. Very good. Would you state your name, please,
14 for the record?

15 A. Wayne Price.

16 Q. And by whom are you employed, Mr. Price?

17 A. The New Mexico Oil Conservation Division.

18 Q. And what is your title?

19 A. I'm the Environmental Bureau Chief.

20 Q. And where do you reside, Mr. Price?

21 A. I live in Rio Rancho, New Mexico.

22 Q. And you work here in Santa Fe, correct?

23 A. I do.

24 Q. Mr. Price, would you briefly summarize your
25 education and experience as an environmental engineer?

1 A. I have a degree from New Mexico State University,
2 electrical engineering degree. As early as 1969 I was
3 working on environmental projects for the Goodyear Tire and
4 Rubber Company. Subsequently I worked for a large chemical
5 company as their environmental compliance manager. Also
6 I've had practical experience in the oilfield. I've
7 actually -- during my college summers I roughnecked during
8 those times.

9 Q. How long have you worked for the Oil Conservation
10 Division?

11 A. Thirteen years.

12 Q. And did you work in the Hobbs District at one
13 time?

14 A. I did, approximately five years.

15 Q. And what did you do there?

16 A. I was the environmental engineer.

17 Q. And did your experience there include conducting
18 the inspections?

19 A. Yes, it did.

20 Q. And how long have you been here in Santa Fe?

21 A. Approximately eight years.

22 Q. And how long have you been Bureau Chief?

23 A. Approximately two years, or a year and a half,
24 two years.

25 Q. Time gets by.

1 A. What?

2 Q. Time gets by.

3 A. It does.

4 MR. BROOKS: Mr. Chairman, I will tender Mr.
5 Wayne Price as an expert in environmental engineering and
6 oil and gas inspections.

7 CHAIRMAN FESMIRE: Any objection?

8 MR. CARR: No objection.

9 MR. HISER: No objection.

10 CHAIRMAN FESMIRE: Mr. Price's experience is so
11 admitted.

12 Q. (By Mr. Brooks) Okay, Mr. Price, you may begin
13 with your presentation, your overview of this Rule, and I
14 may -- I'm not going to proceed by strict question and
15 answer, if that's acceptable to counsel. I would expect
16 you to proceed through your presentation, and I will
17 interrupt you when I have questions that I want to ask --

18 A. Okay.

19 Q. -- if that's satisfactory with you?

20 A. Okay, thank you.

21 Good morning, Commissioners, my name is Wayne
22 Price, I'm the Environmental Bureau Chief of the OCD.

23 I'd like to take this opportunity to explain why
24 the Environmental Bureau is here before you today and
25 provide you a brief overview of what we're proposing.

1 In 2003, the OCD took the first step in this
2 process and formulated a pit rule. The emphasis at that
3 time was to collect a hodge-podge of orders, rules,
4 memorandums, guidelines and merge those into one
5 comprehensive rule. The primary reason for that, of
6 course, was to make the rule more user friendly and -- by
7 placing all the past regulations into one place.

8 The rulemaking back then followed the same
9 process that it has now, and we did have a task force.

10 Q. Okay. Now before you go on to your next slide,
11 this pit that's shown on your cover sheet, is this a pit in
12 New Mexico?

13 A. Yes, it is.

14 Q. And is this an oil and gas pit?

15 A. Yes, it is.

16 Q. And is this unlined?

17 A. That's an unlined pit.

18 Q. And tell me some of the things this picture shows
19 that you would take exception to.

20 A. Well, it's an unlined pit. However, I will have
21 to say that it's in the so-called exempt area.

22 Q. So it's legal under present rules?

23 A. That is correct.

24 Q. And it looks like the netting is kind of falling
25 apart there?

1 A. That's correct.

2 Q. And -- Okay, well then, let's move ahead to your
3 next presentation.

4 A. Okay. Well, it's been apparent to the OCD that
5 while this was a first good step, the existing pit rule, we
6 noted that it has deficiencies. These issues have been
7 pointed out by land owners to general public, OCD's own
8 personnel, and even the industry. And it's for that reason
9 we decided to -- some time ago, to go ahead and have a rule
10 rewrite, which was in order.

11 The following slides will provide a brief
12 overview of the process and the proposed Rule.

13 Of course, I think the most important question
14 that everyone should be asking, including ourselves, is
15 revamp the current pit rule, and why? And I have three
16 main reasons.

17 The Governor's Environmental Justice Mandate.
18 Under the mandate to the OCD, regulations shall be reviewed
19 on a routine basis to ensure protection of the public. We
20 feel that by rewriting this particular rule, that we're
21 following that mandate.

22 It also notes that the State's rules and
23 regulations should fall in line with the federal programs
24 where appropriate. One of the things we'll be talking
25 about is cumulative effect, and that's also mentioned in

1 the Governor's Environmental Justice Mandate.

2 That all voices be heard. Quality of life issues
3 is part of the Governor's mandate.

4 In a recent Rhino decision it was noted that the
5 public does not necessarily have to show permits would
6 violate specific technical requirement. In this particular
7 case, the public has expressed concern as to why the
8 citizens of New Mexico should be required to be the
9 beneficiary of a risk when there are other viable options
10 to handle and dispose of waste.

11 Partnership with the public. A more balanced
12 approach when developing natural resources, making sure the
13 public has a say in this process.

14 Now it does not mean -- does not necessarily
15 mean, not in my backyard. Now New Mexico depends heavily
16 on the oil and gas industry, and our overall quality of
17 life would suffer without it. I think we all recognize
18 that.

19 Next slide.

20 Performance based standards are not working. Let
21 me explain what a performance based standard is. If you
22 would go out to the interstate and you get on the
23 interstate and the speed limit sign would say, Drive at a
24 safe speed, see guidelines, or --

25 (Laughter)

1 A. -- or, Don't drink and drive, see guidelines,
2 that's a performance based standard.

3 Sadly, as you just saw, we have hundreds of
4 examples where performance based standards just aren't
5 working. And also sadly to say, not one time -- and I
6 repeat, not one time has industry come forth to the
7 Environmental Bureau and say, You know, this isn't working,
8 we need to change, we need to do something.

9 So therefore performance based standards have not
10 worked, and so therefore we feel that we have to go to a
11 prescriptive method.

12 Q. Now Mr. Price, I would like to ask you about a
13 couple of examples on this. First of all, the present pit
14 rule was adopted in -- was it 2003?

15 A. 2003 --

16 Q. Yeah --

17 A. -- that's correct.

18 Q. -- this is Rule 50 in our present rulebook?

19 A. Correct.

20 Q. And basically it consists of performance based
21 standards, correct?

22 A. It does.

23 Q. I want to read you some language from Rule 50 in
24 regards to closure. It says, Where pit contents will
25 likely migrate and cause ground water or surface water to

1 exceed Water Quality Control Commission Standards, the
2 pit's contents and the liner shall be removed and disposed
3 of in a manner approved by the Division.

4 Now is that an instance of one of these
5 performance based standards?

6 A. Yes.

7 Q. Is it also an instance of one that is not
8 working?

9 A. Correct.

10 Q. Do we know how to apply that? Do our inspectors
11 know how to apply that provision?

12 A. It's fairly ambiguous.

13 Q. Does industry know how to comply with it?

14 A. No.

15 Q. Okay, let me quote another one.

16 Rule 50.C.(2).(b), The liner shall be designed,
17 constructed and maintained so as to prevent the
18 contamination of fresh water, public health and the
19 environment.

20 Does that tell anybody what kind of liner they
21 need to use?

22 A. No, it doesn't.

23 Q. Does it tell our inspectors what kind of liner
24 that they should require people to use?

25 A. No.

1 Q. Okay. Rule 50.C.(2).(a) says, The Division may
2 require additional protective measures for pits located in
3 groundwater sensitive areas or wellhead protection areas.

4 Does that tell you what additional protective
5 measures the Division should require?

6 A. Not in my opinion, it does not.

7 Q. Does it tell you what groundwater sensitive areas
8 are?

9 A. No.

10 Q. Are these some of the defects with the present
11 Rule that will be cured or significantly addressed in the
12 proposal?

13 A. Yes.

14 Q. Okay, you may continue.

15 A. The other point I'd like to point out is the
16 documented vadose zone and groundwater contamination cases.
17 OCD will show that the current regulations are not working
18 and we continue to see contamination, both in the vadose
19 zone and groundwater.

20 You will hear industry claim we're not using
21 sound science and we do not have data. We stand ready
22 today to show you real data and the sound science.

23 We had a process that we invoked, and Mr. von
24 Gonten, I think, is going to -- in his testimony will go
25 into a little bit more detail on that. I will also.

1 The next slide.

2 This is one of the public outreach meetings that
3 we had, and this particular one, I believe, was in Santa
4 Fe. We had four meetings. We had one in Santa Fe, one in
5 Hobbs, one in Farmington, and of course Santa Fe -- and
6 Artesia.

7 Go back.

8 And I thought it would be very beneficial for the
9 audience and the Commission to see exactly what we did in
10 the public outreach meetings.

11 We're having a little bit of problem here, but
12 we'll get it up.

13 CHAIRMAN FESMIRE: At this time I'd ask that
14 everybody make sure that they've signed in, and if you want
15 to make a comment, check the comment box over on the far
16 right column.

17 THE WITNESS: Okay, we've seen that slide, so go
18 to the next slide.

19 The purpose of the meeting was to point out
20 possible deficiencies in OCD's current Pit Rule 50, was to
21 stimulate public input. We had an objective as define the
22 rulemaking process and receive public input, and we had a
23 place where you send written comments to. We defined what
24 the proposed rulemaking process was going to be.

25 Next slide.

1 Absolutely no pits -- or absolutely permits are
2 required.

3 Now we did have an objection from industry. This
4 slide was about five years old, and they had indicated that
5 they don't operate this way anymore.

6 Drilling and workover pits, we wanted to take a
7 look at those. Commercial pits, proper waste management,
8 proper operation and closure of pits, surface restoration
9 to prevent erosion and contamination from buried pits.

10 Go back.

11 This particular pit, as you can see, is out east
12 of Artesia. There was salt coming up, we also have erosion
13 going into a draw, which would eventually lead to the Pecos
14 River.

15 Next slide.

16 Oilfield service companies, we want to address
17 those.

18 Closed loop systems and sensitive groundwater
19 areas. We think when you're in an area like this that you
20 should be using a closed loop system.

21 Migratory bird protection, fencing requirements,
22 protection of the public with fencing and so forth, best
23 management practices.

24 Pit liners, types, thickness, seams, proper
25 insulation and compatibility. Pit liner integrity, torn

1 pit liners.

2 Financial assurance to prevent this type of
3 scenario. This particular slide has cost the people of New
4 Mexico approximately \$3 million as of to date, and we're
5 still not done.

6 Wildlife-sensitive areas, groundwater/surface
7 water protection areas, unlined pits.

8 We have to interface this rule with our other
9 rules, for example, the Otero Mesa rule.

10 And of course, Valle Vidal, as you know, there
11 has been a moratorium on drilling in the Valle Vidal.

12 Below-grade tanks.

13 And then guidelines versus the rule. Guidelines
14 are not enforceable, results in policy making that may
15 undermine due process. We had a matrix, a series of
16 things, that we went through to -- we basically pointed out
17 to the audience to try to get input, and we had issues that
18 we wanted to talk about.

19 Next slide.

20 And then same thing here.

21 Next slide.

22 And then of course we wanted their input, and we
23 had the written comments here too.

24 Go to permits now.

25 Permits --

1 Q. (By Mr. Brooks) Excuse me, Mr. Price, were you
2 going to talk about the other matters on your slide
3 entitled the process?

4 A. No, I was going to let Mr. von Gonten do that.

5 Q. Okay, very good. You may proceed.

6 A. Permits. In this particular Rule, we're --
7 proposed Rule, we're of course requiring -- proposing
8 required permits for the following categories:

9 Permanent pits, temporary pits, which we'll
10 classify as drilling workover pits, closed loop systems,
11 below grade tanks, closure plans, sumps and emergency pits
12 are exempt.

13 You see the asterisk up on the permanent pits.
14 We are proposing a statewide ban on unlined pits, no
15 exceptions, no size limit for permanent pits.

16 Q. Mr. Price, are we also proposing a statewide ban
17 on temporary pits, except on specific location, case-by-
18 case exception?

19 A. That is correct.

20 Q. Please continue.

21 A. Applications. We want to use the C-144 form
22 instead of what we're doing right now. A good example of
23 that, we have a 101, 103, 144s, and others are coming in,
24 even by letters. And so we're having a hard time tracking
25 all of these pits from a database standpoint. And so we

1 feel -- it's very important to track these, and so
2 therefore we think the C-144 process will work in this
3 manner.

4 Q. Have we encountered a lot of confusion with
5 people not knowing what to file?

6 A. I think that's probably a question for the
7 District Supervisors, but it's my understanding that that
8 is correct.

9 Q. Okay. I forgot to ask you a question back here
10 on permits, because there is one change -- all of these
11 things require permits now, with the exception of sumps,
12 which will not -- sumps and emergency pits will continue
13 not to require permits -- except closed loop systems.
14 Closed loop systems currently do not require permits. What
15 is the reason for adding that requirement to the Rule?

16 A. Well, as any system, closed loop systems generate
17 a waste, and so therefore I think it should be required to
18 be under the permit mechanism.

19 Q. Okay, closed loop systems usually either have
20 pits associated with them or they have drying pads; is that
21 not correct? Is that an accurate statement?

22 A. The closed loop systems that I have seen in New
23 Mexico generally have drying pads. They could have pits.

24 Q. And these have to be closed in a proper manner?

25 A. That's correct.

1 Q. Okay, continue.

2 A. Prescriptive requirements. We talked quite a bit
3 about that. We feel it's imperative now that we have to
4 have prescriptive requirements.

5 Closure plans filed up front, that's in the Rule.
6 Permanent pits filed at the Santa Fe office, and then other
7 categories filed at the District Office.

8 Statewide ban on unlined permanent pits, it
9 eliminates unlined permanent pits regardless of location,
10 size and -- or groundwater. In other words, we're going to
11 have a presentation just on unlined pits. So why?

12 RCRA classifies these as open dumps, it's not
13 sensible, proper waste management in today's time to have
14 unlined pits, and the liability is transferred to the
15 people of New Mexico.

16 Highlights of siting requirements. We have new
17 siting requirements. We're going to have additional
18 protection for municipal and domestic water wells.

19 Contrary to some of the articles you've been
20 reading in the newspapers, there have been a number of
21 groundwater contamination cases, particularly the Lovington
22 water well field has been contaminated. We just found out
23 yesterday that we have another well that's being
24 contaminated.

25 Prevent pits in proximity to public areas, for

1 protection of the public.

2 New setbacks required near watercourses and
3 wetlands.

4 Further details of the siting requirements.

5 No pits located if groundwater is less than 50
6 feet. And it's in red because that was a -- it was a
7 nonconsensus item, but I'm hoping that we can all agree
8 upon that. We will justify the 50 feet.

9 300 feet from a river or stream, 200 feet from a
10 watercourse or a playa lake. 300 or 1000 feet from a
11 residence or school; the 1000 feet would be a permanent
12 pit, the 300 feet would be a drilling pit. 500 feet from a
13 domestic well, 1000 feet from a public water supply.

14 Within a municipal boundary or wellfield.

15 Q. And that would be subject to the consent of the
16 municipality, correct?

17 A. That is correct.

18 Q. They could authorize it if they wanted to?

19 A. They could.

20 Q. Go ahead.

21 A. 500 feet from a wetland. And then overlying any
22 mine or unstable area, and then within a 100-year
23 floodplain.

24 We want to encourage and propose -- and require
25 using closed loop systems or any other method where the

1 siting requirements could not be met. And this particular
2 slide here is a closed loop system in which we gave a
3 company the environmental merit award back in 2003.

4 Q. Now Mr. Price, I know we have another witness,
5 Mr. Chavez, who's going to talk about closed loop systems
6 more, but are there closed loop systems actually being used
7 to drill wells in New Mexico?

8 A. Yes.

9 Q. It's not an unheard of thing?

10 A. No.

11 Q. Continue.

12 A. Additional construction design and operational
13 requirements.

14 Proper base for a liner insulation, minimum of
15 20-mil thickness liner and seaming requirements.

16 Q. Now that is an increase in the liner thickness
17 compared to our present guidelines, is it not?

18 A. That is correct.

19 Q. And what do our present guidelines call for?

20 A. 12 mil.

21 Q. Okay, and as we went into when I read the portion
22 of the Rule a little bit ago, the actual current Rule does
23 not specify, it just says adequate, correct?

24 A. That's correct.

25 Q. Continue.

1 A. And then of course we're going to have additional
2 construction design requirements for signs, fencing,
3 netting, water-loss detection, oil removal, retain
4 topsoils, routine inspection, berms, et cetera.

5 So this is a very prescriptive rule.

6 Q. I forgot to ask one follow-up question on that
7 liner thickness. Mr. Chavez will present testimony, will
8 he not, on that subject, the reasons for that liner
9 requirement --

10 A. Yes.

11 Q. -- the thickness requirement?

12 A. Yes, he will.

13 Q. Thank you.

14 A. As you know, we had a task force. And probably
15 one of the hot topics, or number one topics that I think we
16 all agreed upon was removing liquids in a timely fashion.
17 I think it's just common sense, if you get the liquids off,
18 it basically equates to no groundwater contamination. And
19 once again, if you -- I'll say it again. If you remove the
20 liquids, the probability of contaminating groundwater
21 diminishes drastically.

22 Q. Now Mr. Price, you said that was a consensus item
23 of the task force?

24 A. No. No, on the last day it was not, it became a
25 nonconsensus item.

1 Q. Okay, and that 30 days is subject to the -- The
2 District Office can extend that for up to three months?

3 A. That's correct.

4 Q. Continue.

5 A. New closure standards.

6 Dig and haul. Disposal method is preferred,
7 that's what we're proposing. On-site deep trench burial is
8 an option. Other methods allowed through exceptions.

9 Q. Okay, let me stop you here again. The dig and
10 haul method would be required in the absence of an
11 exception unless the facility -- unless the pit is located
12 a certain distance -- more than a certain distance from a
13 disposal facility; is that correct?

14 A. That is correct, and I have a slide for that.

15 Q. And what is that distance?

16 A. One hundred miles.

17 Q. Okay, well I'll wait till you get to the slide to
18 ask you further about that.

19 And the on-site deep trench -- outside that 100-
20 mile radius, then, the on-site deep trench burial is one of
21 the options that's permitted without the necessity to apply
22 for an exception, correct?

23 A. That is correct.

24 Q. But only outside the 100-mile radius?

25 A. That is correct.

1 Q. In the 100-mile radius you have to get a specific
2 exception to be allowed to do trench burial?

3 A. Correct.

4 Q. And if you want to allow another -- want to use
5 another method, other than dig and haul or deep trench
6 burial, that requires an exception?

7 A. That is correct.

8 Q. Proceed.

9 A. Once again, pits required to be closed in a
10 timely fashion. I would like to say on that particular
11 topic, that when we went to the field, when we talked to
12 industry reps, they all agreed that the faster you can get
13 these pits closed, the lower the probability of any sort of
14 contamination. Time is detrimental to pits.

15 Chemical testing required under all pits. If
16 you're going to have a pit, we want to know if it has
17 leaked.

18 Q. Now that is not required at the present, right,
19 chemical testing under the pits?

20 A. It is not required in the Rule, it's recommended
21 in the guidelines.

22 Q. Okay. So if it's not being done, would that mean
23 it would be hard to tell whether the pits that are --
24 whether the pits are actually causing contamination or not?

25 A. It would be virtually impossible to tell if

1 contamination is coming from a pit unless you test
2 underneath it.

3 Q. Okay, continue.

4 A. And then of course, prescriptive treatment
5 closure standards. We're going to have closure standards
6 that are very prescriptive.

7 And then on-site burial requires landowner
8 approval. In the task force we had land owners that were
9 being represented there. We had -- in the previous task
10 force we had landowners, and they had requested that -- and
11 they didn't make it into the previous rule. We feel that
12 landowners should have a say on -- if you're going to bury
13 something on their property, they should have a say.

14 Next slide.

15 Okay, dig and haul. What is the issue here? Of
16 course it's a highly contested topic about digging and
17 hauling in the public outreach and the public -- or the
18 task force meetings. It certainly was a nonconsensus item
19 for people to dig and haul.

20 The general public appeared to want the oil and
21 gas industry to dispose of their waste in the centralized
22 landfills, just like we have to. For example, if you build
23 a home, you have a dumpster out there. That dumpster --
24 all that waste has to go to the local landfill. All of the
25 industries has to take their waste to landfills.

1 And the environmental groups were totally against
2 burying any waste on site unless it was benign, and they
3 felt there were just too many ticking time bombs out there.

4 OCD heard issues from landowners about taking
5 their land without permission, and so they would like to
6 have the option to say, I don't want it on my property, dig
7 and haul it away.

8 And then the other thing is, OCD sampling program
9 definitely confirmed that there's toxic pollutants in these
10 pits. Now you're going to hear industry come and say that
11 they used what's called a TCLP test to sample their pits,
12 and we used a total analysis.

13 Now a TCLP is a toxicity characteristic leaching
14 procedure that's used -- that's recommended to classify
15 hazardous waste. It is not used to determine what is in
16 waste. And as a matter of fact, just to let you know, what
17 a TCLP actually does, you take a waste and you dilute it 20
18 times before you actually run the test. And so naturally
19 you're not going to see some of the constituents in there
20 if it's diluted.

21 And we're saying that if you want to know what's
22 in pits, run the total analysis. And so there will be a
23 lot of discussion about how the agency run their analyses
24 and how industry ran their analysis.

25 Industry has countered with, Show us the data, no

1 harm has occurred and sound science issues and risk
2 assessment. Those are things that we'll be talking about a
3 lot.

4 So what was the possible solution to this? The
5 first draft Rule had some economic criteria to try to
6 resolve this issue. Neither side liked that idea, nor did
7 the OCD attorneys. And the primary reason was -- is that
8 basically OCD would have had to look at the industry's
9 books. We didn't want to do that. Industry certainly
10 doesn't want us digging into their books and looking at
11 their books. So therefore, that particular idea fell
12 through.

13 The final draft issued what we thought was a
14 common-sense approach. We set a 100-mile radius, so
15 basically if you're in a 100-mile radius of an area that is
16 highly congested or inundated with oil and gas properties,
17 then we felt that you should dig and haul.

18 Mr. Carr, I'm going to shine this laser light, I
19 don't want to --

20 MR. CARR: You better not.

21 THE WITNESS: -- hit you. I know.

22 (Laughter)

23 THE WITNESS: Could you turn, look at the screen?

24 MR. CARR: I'll flash it back at you.

25 THE WITNESS: So as you can see, the 100-mile

1 radius pretty well takes care of the Permian Basin and
2 pretty well takes care of the San Juan Basin. And in our
3 research we found that it's not uncommon that municipal
4 landfills will set their business model up using the 100-
5 mile radius. Some do it less, some actually have a higher
6 mileage. But we felt that 100 miles was a common-sense
7 approach, so we picked the 100-mile radius.

8 The concept of this practice is generally
9 required for all other industries. Only the oil and gas
10 industry, that I can think of, are allowed to bury their
11 waste on site, where they're at. All other industries has
12 to carry their waste to a bona fide, certified permitted
13 landfill.

14 The New Mexico Environment Department requires
15 waste to be disposed of in the large permitted landfills.
16 Of course they have exceptions, and we are going too.

17 The New Mexico Environment Department and the
18 OCD will have an agreement -- or we do have an agreement,
19 and we have statutory language to allow this.

20 Q. (By Mr. Brooks) Let me interrupt you, ask
21 certain questions here that I think we need -- are
22 generally know, but we need to be sure they're in the
23 record here. On the slide that you have on the screen,
24 which is slide 14 of your presentation --

25 A. Yes.

1 Q. -- there are some red circles and some yellow
2 circles. The yellow circles are extremely hard to see.
3 Tell us first what the yellow circles are.

4 A. Well, basically the yellow circles that we have
5 on here is, in the southeast part of the state, and the red
6 circles is the number of landfills that can be used in the
7 northwest part of the state.

8 Q. Okay. Now these circles plot the 100-mile radius
9 around existing facilities that would qualify for disposal
10 of oil and gas waste?

11 A. Yes, they do.

12 Q. And there are no dedicated oil and gas waste
13 facilities in the northwest, correct?

14 A. There is no OCD-permitted facility, landfill
15 facilities. We do have OCD-permitted landfarms in the
16 northwest.

17 Q. Yeah, but there are no disposal -- permanent
18 disposal facilities, landfills?

19 A. No, that's incorrect. We have -- there are
20 landfills in the northwest that can accept oil and gas
21 industry waste, they just happen to be permitted by the New
22 Mexico Environment Department.

23 Q. These would be solid waste landfills that are
24 authorized to accept oil and gas waste with our approval?

25 A. That is correct.

1 Q. Okay. Now if for any reason any particular
2 facility were unable to take waste, then that facility --
3 the 100-mile radius would not count as to that facility,
4 correct?

5 A. That is correct.

6 Q. And if that was the only facility that was within
7 100 miles of a particular pit, then that pit could be
8 closed on site under our rules if it otherwise qualified?

9 A. Correct.

10 Q. Continue. Oh, I had a couple other questions,
11 sorry.

12 Was the principal objection -- during the task
13 force procedure, was the principal objection to digging and
14 hauling a matter of cost?

15 A. I would probably have to refer that question to
16 either Glenn von Gonten, Ed Hansen or Brad Jones.

17 Q. Okay. Well, I know Brad Jones is going to talk
18 extensively about the task force --

19 A. Right.

20 Q. -- proceedings. But assuming that one of the
21 objections, at least, is a matter of cost, is a major
22 portion of the cost of digging and hauling pit contents the
23 actual haulage?

24 A. It's the hauling.

25 Q. And does that make a big difference how far you

1 have to haul it?

2 A. That is correct.

3 Q. So that with the 100-mile radius -- the pits
4 outside the 100-mile radius, would that eliminate from the
5 dig-and-haul requirement those pits for which digging and
6 hauling would be most expensive?

7 A. I don't understand the question, repeat the
8 question.

9 Q. The fact that the Rule requires digging and
10 hauling within 100 miles, does that eliminate from the
11 requirement to dig and haul those instances in which it
12 could be most expensive because of the distance?

13 Perhaps you're not understanding --

14 A. I'm not understanding your question. Are you
15 saying --

16 Q. Would it be more expensive to dig and haul pits
17 more than 100 miles from a facility, versus those less than
18 100 miles?

19 A. Yes.

20 Q. And I realize there's no particular magic to a
21 given number, but why did you choose 100 miles?

22 A. Well, we got some very preliminary -- and I will
23 say preliminary numbers, but we did some of the disposal
24 companies, and we got a range from \$30,000 to \$80,000,
25 using a 90-mile radius.

1 Q. And give what we know about the economics of the
2 oil industry -- and like you say, we haven't seen their
3 books, but given what we know, we thought that was within
4 the range of a reasonable cost for waste management,
5 correct?

6 A. Yes, in today's term, particularly with the price
7 of oil and gas where it's at, we feel that this is a small
8 percentage.

9 Q. But if it got to be substantially more than that,
10 we thought, Well, maybe that might cause a hardship for
11 some operator?

12 A. That's correct.

13 Q. Okay, you may continue.

14 A. So why centralized facilities? Better QA/QC,
15 regulatory oversight for a single site than thousands of
16 sites, closure cost, post-closure monitoring, and bonds and
17 financial assurance.

18 For example, one site would possibly -- would be
19 much easier to regulate than thousands of sites. And also,
20 if there's centralized permitted facilities, then we have
21 financial assurance and bonds on these in which the company
22 has to put up. And so therefore, if there is a closure
23 issue, it goes to the companies that have put the waste in
24 there; it does not go to the people of New Mexico, and
25 we'll have financial assurances for post-monitoring and to

1 take care of that.

2 Next slide.

3 This is an example of the inundation of oil and
4 gas activity in a San Juan County unit. It's almost
5 impossible -- if I point up here, it's almost impossible to
6 not hit an oil and gas well.

7 And so why bury any more waste unless it's in an
8 area that can be controlled and monitored? OCD has a
9 limited staff. We have a total of eight environmental
10 people for the whole state. There is absolutely no way we
11 can get the thousands and thousands of sites.

12 If we have one or two sites, centralized disposal
13 facilities, those can be monitored much easier than
14 thousands of sites. It's better to have a few sacrificial
15 areas of limited size and location, rather than thousands
16 of many landfills.

17 Now when I say sacrificial, I'm not talking about
18 sacrificing the whole county of Lea County or the whole
19 county of San Juan County. In the last task force meeting,
20 the task force meeting for Rule 53, one of the things that
21 was very upsetting to me is that I remember one of the
22 Sierra Club members basically pointing out that Lea County
23 is a sacrificial area, and I take exception to that. I
24 think the people in Lea County deserve the same amount of
25 protection as they deserve in the Galisteo Basin or

1 anywhere else. So when I talk about sacrificial areas, I'm
2 talking about very small, dedicated areas such as a
3 municipal landfill.

4 When you have a town, you have a landfill,
5 generally. If you have an oilfield you should have a
6 landfill.

7 Now 20, 30 years ago, the southeastern part of
8 the state saw a need for oil and gas landfills. And during
9 that time there was a business model that companies
10 actually got into the business, and so the southeast part
11 of the state has four bona fide commercial landfills that
12 are in operation. And we feel that the northwest could do
13 the same, all we have to do is dangle the carrot out there
14 and make it worthwhile for a company to put it in.

15 Because our Rules and Regulations is really what
16 brought about the facilities in the southeast, is that we
17 had -- back in those days they were putting BS&W and
18 produced water basically on our roads and spread it all
19 over the place. We saw there's a need in the southeast
20 part of the state to stop that, and so therefore we
21 required that these type facilities or this type of waste
22 would go to treating plants, and those turned into
23 commercial landfills.

24 And so we think it's very beneficial what the
25 southeast has done, we just think it's time that the

1 northwest have a commercial landfill.

2 Now 100,000 wells, approximately, in the State of
3 New Mexico -- if we wait 10, 15, 20, 30 years to go back
4 and close these sites, we could be looking at a million
5 dollars a site if there's groundwater contamination. We
6 have one site that's -- we have two or three sites that
7 there's groundwater contamination in which it's cost \$10
8 million to remediate, and which a \$2500 liner would have
9 prevented that.

10 And so this type of closure could cost the
11 taxpayers \$100 billion, and so it's just time to stop this
12 madness. We just need to go ahead and take this waste and
13 put it in a centralized landfill where we can have control
14 of it.

15 Q. Okay, Mr. Price, we're going to go on to this
16 later and with some other witnesses, but I'm just going to
17 ask you a few overview questions here.

18 The time from the time that contamination escapes
19 from a pit until it reaches the groundwater, it could be
20 fairly lengthy, could it not?

21 A. Yes.

22 Q. Over a hundred years?

23 A. Possible.

24 Q. So would that suggest -- Well, how long has there
25 been oil and gas activity in New Mexico?

1 A. Since 1929, I believe.

2 Q. Probably a little bit before that, but that's
3 basically pretty accurate. You're talking about what, 80
4 years?

5 A. Eighty years.

6 Q. And so, given the time frames, the fact that we
7 -- if it be true, as some have suggested, that we haven't
8 identified a lot of instances of groundwater contamination
9 so far, does that indicate -- does that fact in itself mean
10 that we will not have a lot of such instances in the
11 future?

12 A. No, we're going to have.

13 Q. Given the time, is it not entirely possible that
14 it may just not have become apparent yet?

15 A. If you don't look, you're not going to find them.

16 MR. HISER: Mr. Chairman, I do hate to object,
17 but this is now wholly speculative on the part of the
18 expert. We haven't laid any type of thing about the types
19 of pits, where they are, how much there is going to be or
20 anything that, that would allow this type of speculation to
21 have any bearing on this proceeding.

22 CHAIRMAN FESMIRE: He's been qualified as an
23 environmental engineer. Isn't that within the purview of
24 his expertise?

25 MR. HISER: It may be that he is qualified as an

1 environmental engineer. The question, though, is whether
2 this is speculative as to whether this is going to happen
3 or not. And here we have general discussions about -- we
4 don't even know depths, we don't know it's designed and all
5 that, which makes it extremely hard for anybody to respond
6 to it. And so what's the probative value to you as the
7 Commission?

8 CHAIRMAN FESMIRE: Mr. Brooks?

9 MR. BROOKS: Mr. Chairman, honorable
10 Commissioners, we will put on technical testimony through
11 another witness about the time frames involved. The
12 purpose of this question is merely to establish that -- one
13 of the reasons why Mr. Price is making the recommendations
14 he's making.

15 CHAIRMAN FESMIRE: Okay, for those purposes I'll
16 go ahead and overrule the objection, but I'd ask you to
17 change the subject now. You've covered that.

18 Q. (By Mr. Brooks) Very good. Mr. Price, you may
19 continue with your presentation.

20 A. Okay, I want to talk about cumulative effects.
21 And this is one you need to bring up a little bit. But
22 basically, this is -- in your handouts, this is from the
23 executive office of the President of the United States, and
24 it talks about -- this is some guidelines for cumulative
25 effects. They are guidelines, and I have provided a -- my

1 next slide will provide a slide presentation of...

2 Okay, go to the next slide. Excuse me, we're
3 having some technical difficulties here. There, next
4 slide. That one.

5 Okay, cumulative effects guidance.

6 Now this is from, like I say, from the Council on
7 Environmental Quality. Agencies are required to analyze
8 the environmental effects of past actions when implementing
9 new regulations.

10 First -- next -- requires analysis, concise
11 description, identifiable present effects. Show me the
12 data. The industry is going to ask that, and it's a good
13 question.

14 May conduct an adequate cumulative effects
15 analysis by focusing on the current aggregate effects of
16 past action without delving into historical details of
17 individual past action. In other words, recent drilling
18 pit liner failures, we think we can certainly substantiate
19 that part of the guidelines.

20 Second, experience with and information about
21 past direct and indirect effects of individual past actions
22 may also be useful in illuminating or predicting the direct
23 and indirect effects of a proposed action. We have 400 to
24 500 groundwater contamination cases caused by pits.

25 And then agencies should clearly distinguish the

1 analysis of direct and indirect effects based on
2 information or past action. In other words, they've got to
3 be linked. I think we will show that these are linked.

4 Moving on into the Rule, we're going to require
5 re-vegetation in the Rule.

6 Exceptions: Allows promotion of new technology
7 and tiered approaches for wildcat explorations, approval
8 only by Santa Fe Environmental Bureau.

9 Not allowed for the following: Unlined permanent
10 pits, permits and modifications, exceptions and landowner
11 approval.

12 Now I want to talk about exceptions. You can't
13 get an exception to an exception. There was a loophole in
14 one of our recent cases in which a company tried that and
15 of course we've closed that loophole in this particular
16 Rule.

17 Public involvement and landowner approval --

18 Q. Excuse me a minute on the exceptions. I have a
19 couple of other questions --

20 A. Okay.

21 Q. -- here. There are no exceptions to the
22 permitting requirement? In other words, you can't come in
23 and say, I want an exception to allow me to have a pit
24 without a permit, correct?

25 A. Correct.

1 Q. Other than that, and the exceptions to the
2 exceptions, there's basically only two things that you
3 can't get -- substantive, there are two things you can't
4 get an exception to: You can't get an exception for an
5 unlined permanent pit, correct?

6 A. Correct.

7 Q. And you can't get an exception to the requirement
8 for landowner approval for on-site burial?

9 A. Correct.

10 Q. And anything else that's substantive, you can get
11 an exception to, correct?

12 A. That is correct.

13 Q. If you follow the exception procedure.

14 A. Right.

15 Q. And the exception procedure requires an
16 application, notice to the surface owner, and public
17 notice?

18 A. And public notice.

19 Q. So there's a procedure for involving the public
20 in that exception procedure?

21 A. Correct.

22 Q. Continue.

23 A. Public involvement and landowner approval, we do
24 have a slight mistake or misnomer on this, and Mr. Brooks
25 had pointed this out to me. Public involvement is part of

1 this Rule, and landowner approval is part of this rule.
2 Any on-site burial and major exceptions -- if it's an on-
3 site burial outside the 100-mile, it does not require
4 public notice. I just want to point that out.

5 Q. Does not require public notice, but it still
6 requires landowner approval?

7 A. It still requires landowner approval, that's
8 correct.

9 Q. Okay.

10 A. And of course, hearings may be required.

11 Next slide.

12 We have transition provisions in the Rule. We
13 have a provision that's allowing five years to close or
14 retrofit with secondary containment, below-grade tanks.
15 Unlined permanent pits, we have two years to close existing
16 permitted or registered pits. We have 60 days to close
17 existing pits not permitted or registered.

18 And then all below-grade tanks and pits must
19 eventually conform to permitting, siting, design,
20 operational and closure requirements.

21 And that's the end of this overview presentation.

22 Q. Okay. Now do you propose to refer to Mr. von
23 Gonten?

24 A. No, what I'd like to do is go into the next
25 presentation --

1 Q. The unlined pit presentation?

2 A. The unlined pit one, where Mr. von Gonten will
3 help me. And then after that, we would be open for cross.

4 Q. You may continue.

5 CHAIRMAN FESMIRE: Yeah, what he said.

6 THE WITNESS: Mr. Commissioner, did I take that
7 as, we should get your --

8 CHAIRMAN FESMIRE: Mr. Brooks said we could
9 continue, so --

10 (Laughter)

11 CHAIRMAN FESMIRE: -- I guess we won't take
12 another break --

13 THE WITNESS: I've got a feeling our attorney
14 should ask the Commission if we could --

15 MR. BROOKS: I was instructing the witness that
16 he may continue with his presentation. Certainly if the
17 Commission wishes to do something else --

18 CHAIRMAN FESMIRE: This is too early for a break,
19 go ahead and...

20 THE WITNESS: This is a final appeal to the OCC
21 for a statewide ban on unlined permanent pits. I would
22 like to take -- it's going to take a little bit of time to
23 go through this, but I think it's well worth it. It's the
24 evolution of New Mexico pit regulations.

25 This all started back in 1931 where the State

1 Engineer declares Lea County a water basin.

2 1953, the State Engineer declared all water less
3 than 10,000 milligrams per liter is protectible.

4 1956, the OCC through Order R-1224 -- State
5 Engineer requested from the OCC to enact rules governing
6 brine water disposal in parts of Lea County.

7 I went back and checked the old records. We had
8 some contamination from produced water pits back in the
9 '50s, up in the Tatum area, and of course the OCC ordered
10 operators to perform due diligence study to see if this was
11 actually happening.

12 1958, the OCC Order R-1224-A, once again the
13 State Engineer requested that portions of Lea County, New
14 Mexico, underground water basin be protected from oilfield
15 brine discharges into unlined data [sic].

16 I read the testimony and the records. Kind of
17 the same process that we're having here. You know, Show us
18 the data. OCC ordered such protection with small quantity
19 exemptions, allowed and rescinded protection studies for
20 other parts of Lea County, southern parts of Lea County.

21 1963, OCC Order R-2526, OCC show-cause hearing to
22 several operators who were discharging brine water in
23 unlined pits in Lea County underground water basin. OCC
24 orders operators to cease discharging in unlined pits.

25 1964, OCC R-2788, OCC heard a request from a Dr.

1 Sam Dunn to review a previous directive by the OCC on a
2 moratorium on discharging salt water into unlined pits near
3 the Pecos River. OCC ordered discharging within two miles
4 of the Pecos River was prohibited in those area, but
5 allowed limited quantities where operators were further
6 than two miles.

7 1966 --

8 Q. (By Mr. Brooks) Yeah, let me interrupt you here.
9 1965, which was in the middle of when all these things were
10 going on that you have testified about, did the Legislature
11 amend the Oil and Gas Act to expressly authorize the Oil
12 Conservation Commission to make rules concerning the
13 disposition of produced water?

14 A. Yes, they did.

15 Q. Okay, continue.

16 A. In 1966, OCC R-3164, OCC held a show-cause
17 hearing for operators that had been notified of discharging
18 produced water in the Vacuum field located west of Hobbs,
19 New Mexico, which was part of the declared water basin
20 designated for protection, State Engineer's Office. OCC
21 ordered all operators to cease by certain deadlines.

22 1967, OCC Order R-3221, commonly known as the
23 exempted order, OCC files motion to prohibit discharge of
24 produced waters in Lea, Eddy, Chaves, Roosevelt County.
25 The State Engineer had declared these areas to be

1 protected. Order noted issue of high chlorides.

2 OCC orders protection -- prohibition of use of
3 unlined pits in the four counties, with exceptions. These
4 exceptions were, 16 barrels a day were allowed, District
5 Supervisors could allow 30-day usage without liners, and of
6 course mud and drilling pits and burn pits were exempted.

7 1967, R-3221 files -- OCC files motion to start
8 the R-3221 prohibition at an earlier date for certain areas
9 in Lea County. OCC ordered such.

10 1968, OCC Order R-3221-B, -B-1 and -C,
11 application to amend the B to allow unlined pits in a large
12 area between Hobbs and Carlsbad known as Nash Draw and
13 Clayton Basin.

14 R-3221-C, application to require permits for
15 lined pits. Now you didn't have to have a permit for an
16 unlined pit, but you had to have a permit for a lined pit.

17 OCC amends R-3221 to allow unlined pits due to
18 sparse groundwater in close proximity to potash mining
19 areas and salt playa lakes. OCC requires permits for lined
20 pits.

21 Now in 1978 the EPA made a report on surface
22 impoundments and the effects on groundwater quality in the
23 US. This was a nationwide report. The report summary was
24 that New Mexico had 16,000 pits, the highest reported in
25 the United States. The majority, 98 percent, was from oil

1 and gas operations.

2 Now drilling and workover pits were not included
3 in this study, which would have added six to eighty-
4 thousand additional pits. This study confirmed that pits
5 present a high risk to groundwater.

6 Now I think it's ironic that New Mexico, of all
7 the states, including Texas, we have more pits, the highest
8 reported in the United States, than any state.

9 1985, OCC Order 7940. OCC files application to
10 determine a vulnerable area for McKinley, Rio Arriba, San
11 Juan and Sandoval Counties. OCC creates a vulnerable area
12 in the northwest San Juan Basin. It primarily protected
13 just the river valleys of San Juan, La Plata and the
14 Animas, 29 section in addition where groundwater was less
15 than 50 feet.

16 The OCC defined a vulnerable aquifer as less than
17 50 feet. I checked the record, there was -- This is based
18 primarily on organics, not on TDS or chloride
19 contamination. There was a 5-barrel-a-day exemption
20 allowed with conditions. It created a short-term and long-
21 term study group, required pit registration, approval for
22 commercial facilities.

23 In 1968 to '85 numerous applications are filed
24 for the R-3221 exception, which basically says you could
25 have unlined pits in those areas.

1 1986, the OCC Order 7940-A, requires permits for
2 commercial and centralized facilities, exempts facilities
3 with less than 16 barrels per day.

4 1988, OCC Order R-3221-D. OCC application set
5 guideline for the following exceptions. There were a
6 number of exempted pits issued without groundwater being
7 verified, and so therefore the agency saw a need that there
8 be some sort of guideline to protect groundwater in those
9 areas.

10 Go back.

11 OCC approved the guidelines for filing
12 exceptions.

13 Q. Now Mr. Price, in 1989 did the Legislature amend
14 the Oil and Gas Act again?

15 MS. FOSTER: I would object to Mr. Brooks'
16 testifying. If the witness doesn't know that the Oil and
17 Gas Act was changed during these time periods, Mr.
18 Brooks can't ask him a question --

19 CHAIRMAN FESMIRE: Ms. Foster, how do we know
20 till we get an answer?

21 MS. FOSTER: Well, Mr. Brooks is clearly
22 testifying now.

23 CHAIRMAN FESMIRE: You mean he's leading him?

24 MS. FOSTER: Well, yes.

25 CHAIRMAN FESMIRE: Overruled. Go ahead, answer

1 please.

2 THE WITNESS: Question please?

3 Q. (By Mr. Brooks) In 1989 did the Legislature
4 again amend the Oil and Gas Act?

5 A. Yes, they did.

6 Q. And in that amendment did they give the Oil
7 Conservation Division the power to make rules concerning
8 disposition of oil and gas waste?

9 A. Yes.

10 MS. FOSTER: Objection.

11 CHAIRMAN FESMIRE: Overruled.

12 Q. (By Mr. Brooks) Continue.

13 A. Okay, in -- of course in 1980, OCC Order
14 R-3221-D.

15 Next slide please.

16 1992, OCC Order 7940-B. There's a lot of
17 information here. Mr. von Gonten will go into the issue of
18 this particular order in a little bit more detail than I
19 am.

20 But bottom line here is that the order -- the
21 vulnerable area was expanded, but yet there were still
22 many, many areas that were outside of the vulnerable area
23 that has groundwater.

24 Next slide.

25 1992, OCC Order 7940-C, OCC proposed an amendment

1 to 7940 and rescinded the previous order. OCD orders the
2 following: Rescinded all small-quantity exemptions with
3 the vulnerable area.

4 There was a study done at that particular time
5 that proved that small quantity exemptions should have been
6 rescinded. There was unrefuted evidence to show that these
7 small-quantity pits were causing groundwater contamination.
8 That particular rule reduced the radius for domestic
9 wellhead protection areas, maintained the vulnerable area
10 expansion, vulnerable area lined pits and below-grade tanks
11 would require approval, and the nonvulnerable areas
12 registration of unlined pits greater than 5 barrels a day
13 -- now this is something that everyone should realize.
14 There are literally thousands of pits out there that did
15 not have to be registered if they put in less than five
16 barrels per day. And we will go into the number of pits,
17 and we may not know how many pits are actually out there.
18 And then pit closures were required if they met the
19 conditions above, and of course variances were allowed.

20 Evolution of the pits.

21 In 1997 OCD did a pit survey, and we reported on
22 our database that we have 11,614 pits were reported to us.
23 55 percent were unlined production pits, 90 percent were
24 not permitted, and 95 percent were located in San Juan and
25 Rio Arriba County.

1 Now I need to note that not all companies
2 responded to the pit survey.

3 Now in 2003, I discussed that previously, OCC
4 Order R-12,011-B, the current Pit Rule 50 as we know it.
5 It repealed several orders and rules to combine in one
6 comprehensive rule. It was so ordered with performance
7 based standards and guidelines. It more or less
8 grandfathered unlined pits, it had -- some siting
9 requirements were unlimited, it allowed new unlined pits in
10 areas of known protectible groundwater. It does not
11 require technical sound science or guidance for permitting
12 new unlined pits.

13 Q. Okay, now let me interrupt you and talk about
14 this grandfather thing. The unlined pits that were
15 grandfathered, was that pits that had an order that
16 authorized them, that -- where was an OCC order authorizing
17 those pits to be unlined?

18 A. Correct.

19 Q. So there were certain cases in which OCC had
20 issued the order saying you could have an unlined pit in
21 such and such a location?

22 A. That is correct.

23 Q. And those --

24 CHAIRMAN FESMIRE: Mr. Brooks, at least let's try
25 not to get too many leading questions in there, okay?

1 MR. BROOKS: Okay. Yes, sir.

2 Q. (By Mr. Brooks) Now I believe you've already
3 said that -- When you're talking about grandfathered
4 unlined pits, is that the category of pits you're talking
5 about?

6 A. Yes, I am.

7 Q. Okay. Separately and in addition to that, does
8 Rule 50 permit new unlined pits as well as existing ones in
9 certain areas?

10 A. Yes.

11 MS. FOSTER: Objection.

12 CHAIRMAN FESMIRE: Overruled. Go ahead.

13 Q. (By Mr. Brooks) And what are those areas?

14 A. Well, those areas could be in the exempted area
15 or in the nonvulnerable area.

16 Q. Now is the exempted area defined specifically by
17 township and range in the Rule?

18 A. Yes.

19 Q. And the nonvulnerable area, is that -- you told
20 us a minute ago what the vulnerable area was.

21 A. Yes, and Mr. von Gonten will describe it in
22 detail.

23 Q. And is the nonvulnerable area the area that is
24 not the vulnerable area?

25 A. That's correct.

1 (Laughter)

2 MR. BROOKS: Thank you.

3 CHAIRMAN FESMIRE: That didn't get an objection?

4 (Laughter)

5 THE WITNESS: And of course monitor wells or
6 testing is not required.

7 Closure standard does not include protection of
8 public health and the environment for unlined pits. Only
9 the current ruling protects for groundwater.

10 And then of course there's no bonding or
11 financial assurances required. Of course, we can't --
12 under single, individual pits like this, we don't have the
13 ability to bond them, so that's why this agency would like
14 to see a permitted landfill that we do have the ability to
15 provide financial assurances. If something goes wrong,
16 then we have money up front that we can close it properly
17 or have post-monitoring for a number of years.

18 Next one.

19 So, pit groundwater contamination cases.

20 2005, we had an estimate of 400 confirmed pit
21 groundwater contamination cases. We have unknown other pit
22 cases, and I do mean unknown.

23 2007 --

24 Q. (By Mr. Brooks) Excuse me, what do you mean by
25 unknown? Why are there unknown other pit cases?

1 A. Okay, if you will think about the 11,000 in the
2 previous slide, there were a number of those pits that were
3 closed prior to Rule 50, and they were not required to
4 submit a closure report. So we do not know how many other
5 pit cases are out there. If they're unlined, then they
6 obviously cause contamination in the vadose zone, they
7 obviously could cause contamination in the future for
8 groundwater.

9 Q. So these are cases that have not been reported to
10 you?

11 A. They have not been reported.

12 Q. And you don't know whether they're --

13 A. We do not --

14 Q. -- contamination or not?

15 A. We do not.

16 Q. But is it your professional opinion that there
17 could be contamination?

18 A. It's my professional opinion that there is
19 contamination. If they're unlined, then they've
20 contaminate the vadose zone.

21 Q. Continue.

22 A. 2007, we had 150 abatement cases that we
23 considered high priority but 154 pending cases, lower
24 priority. We have an estimated 200 pit cases that are
25 pending, and those 200 cases are literally setting on my

1 floor, Mr. von Gonten's floor and Mr. Hansen's floor.

2 Q. Now Mr. --

3 A. We just don't -- we haven't had time to get to
4 them.

5 Q. Mr. Price, how does the -- if my arithmetic is
6 correct, the 2007 number totals 504, correct?

7 MS. FOSTER: Objection.

8 Q. (By Mr. Brooks) What is the total of the 2007
9 numbers, Mr. Price?

10 A. Do you want me to add it up? Well, the actual
11 groundwater contamination cases that we have logged in, in
12 RBDMS, would be 304, and we have a 200 estimate more cases
13 that we haven't logged in.

14 Q. And what is the total of those two numbers?

15 A. That would be 504.

16 Q. Now how does that 504 number relate to the 400
17 number you've given for the year 2005?

18 A. Well, it's higher.

19 Q. Does it include those same 400 cases, or is it in
20 addition to those 400 cases?

21 A. No, it includes them.

22 Q. Okay, so the 400 cases, or the 400 cases for --
23 (Electrical power failure at 10:20 a.m.)

24 (The following proceedings had at 12:30 p.m., in
25 Governor O.A. Larrazolo Auditorium, Harold Runnels

1 Building, 1190 South St. Francis Drive, Santa Fe, New
2 Mexico.)

3 CHAIRMAN FESMIRE: Well, good afternoon. Welcome
4 back from lunch. We're going to go back on the record now.
5 For the record, this is a continuation of Cause Number
6 14,015. It's 12:30 p.m. We are no longer in Porter Hall
7 due to a power outage. We are in the Harold Runnels
8 Building, in the main auditorium.

9 As promised prior to lunch, we're going to in
10 just a minute give folks who signed up on the sign-in
11 sheets a chance to make comments on the record. Due to a
12 quirk in our Rules, you can do that one of two ways. You
13 can stand up and make an unsworn position statement, or you
14 can stand up, get sworn and give testimony. However you
15 want to do it is up to you. As long as people can hear
16 you, I don't care whether you do it from your seat, as long
17 as you're standing up, or come to the front. It's up to
18 you all. If you come to the front it might be easier for
19 the court reporter to hear you. The microphones we have in
20 front of us are not part a PA system, they're part of his
21 recording system. So if you really want to make sure that
22 he gets everything you say absolutely correct, I'd come
23 down front and use one of the microphones. But that's not
24 essential unless we just absolutely can't hear you.

25 The way we're going to do it today, for the rest

1 of the day, is to go ahead and take public comments, then
2 continue with the OCD's case. Then towards the end of the
3 afternoon we've got some motions that we have to address
4 and some scheduling matters that we have to address, so
5 that we can truly minimize the cost, especially to experts
6 and people who have to fly in, so we're going to have to
7 address that and try to do as much scheduling as we can and
8 get as close as we can.

9 The meeting tomorrow will not be in this room.
10 Don't know where it's going to be yet, but it won't be in
11 this room. The transformer at the -- at Porter Hall, or
12 actually the Wendell Chino Building, looks like it's going
13 to be out. They tell me they might get it tomorrow, but
14 I'm not betting on it.

15 So as of right now -- and we'll have an
16 announcement towards the end of the meeting -- we will
17 probably be meeting in the --

18 COMMISSIONER BAILEY: Morgan Hall.

19 CHAIRMAN FESMIRE: -- Morgan Hall in the State
20 Land Office. The big problem there is that there's no
21 parking. You're going to be asked to park in the PERA
22 Building and walk over, and that's the way I would
23 tentatively plan if you're going to attend the hearing
24 tomorrow.

25 Let the record reflect that Commissioner Bailey,

1 Commissioner Olson and Commissioner Fesmire are present.

2 We therefore have a quorum.

3 And we're going to open the floor for comments.
4 Those of you who signed in, I've been asked -- there are
5 several members of the Legislature who would like to speak,
6 and they apparently have another meeting this afternoon, so
7 with the permission of those signed in we're going to give
8 them the first chance. I hope that's okay with folks. But
9 they, like I said, have other things that they need to do
10 today, and they've been very patient, although all they got
11 out of it so far is apparently a long lunch.

12 So of the members of the Legislature, who would
13 like to go first? Mr. Bandy -- Representative Bandy? For
14 the record, would you state your name and the district that
15 you represent?

16 REPRESENTATIVE BANDY: My name is Paul Bandy, I'm
17 representing District 3 from Aztec and Bloomfield and
18 Blanco, New Mexico. I'm a cattle rancher, I ranch in the
19 San Juan Basin which has been described by Tony Hillerman
20 as the Persian Gulf of America. And it's my understanding,
21 after different figures, that we produce between 6 and 10
22 percent of the natural gas in the United States.

23 And can I be sworn in, please?

24 CHAIRMAN FESMIRE: Sure.

25 (Thereupon, Representative Bandy was sworn.)

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REPRESENTATIVE PAUL BANDY,

the witness herein, after having been first duly sworn upon his oath, was examined and testified as follows:

DIRECT TESTIMONY

BY REPRESENTATIVE BANDY:

REPRESENTATIVE BANDY: And everything I said prior was true also --

(Laughter)

REPRESENTATIVE BANDY: -- so...

I'm a cattle rancher, I ranch in the San Juan Basin. We have, oh, in excess of 300 wells on our ranch. We have the combination of BLM and State land leases and fee land.

And I'd like to tell you a little bit about the history of what's been happening with us lately in the San Juan Basin so you can kind of understand where I'm coming from. The pictures that you had this morning about pits that are problems, I've seen a lot of those pictures, I've taken some of them myself, and I know how that can be a problem. We've had cows poisoned by drinking from unfenced pits, and there have been a lot of problems prior to probably -- prior to about 2000.

And in 2000 we started meeting with the BLM as the lead agency, the State Land Office, the oil companies, the Forest Service and OCD representatives, to come up with

1 some kind of solution to the problems that we've been
2 having. And part of the problem was that no one knew what
3 the regulations were, which I believe was brought out to
4 some extent this morning.

5 The BLM, which manages most of that land, had
6 different regulations, depending on when that well was
7 completed and the APD, the application for petroleum
8 development, was issued. So to find out what the find out
9 what the regulations were about how that well was supposed
10 to be managed, it would take them at least a day of sifting
11 through old dusty boxes to find the original APD to find
12 that out, and that just wasn't working.

13 And so we had these meetings between the oil
14 companies and -- like I said, and all these different
15 agencies and the ranchers. And at first it was pretty
16 tense. There's a lot of hard feeling. But I really think
17 that the oil companies stepped up and changed the way --
18 and were committed to change the way that they operate in
19 the Basin.

20 And so over a period of maybe six or eight months
21 to a year, we developed a set of uniform guidelines.
22 They're voluntary and went into effect about how things
23 were supposed to be managed, how pits were supposed to be
24 fenced, how they're supposed to be lined, how the wells are
25 supposed to be developed and re-vegetated. And I think

1 they're working very well, and it's been a -- I think it's
2 been a success story, what we've been doing out there.

3 And so what I -- there's two things I would like
4 to comment upon.

5 One is the process and how I think that process
6 maybe has a better outcome than -- to raising the
7 Legislative whip -- I mean the regulative whip and saying,
8 you know, this is the way you have to do it.

9 And also I'd like to comment about how the actual
10 well is developed and re-vegetated, and so -- and the way
11 that we operate now -- and this is kind of standard
12 procedure throughout the Basin, and to my knowledge it's
13 the way things operate. It's not perfect. I mean, every
14 now and then somebody does something that's not in
15 compliance with these uniform guidelines, but my experience
16 is that it's really working and it's -- they're observed.

17 And so when they develop the well, the first
18 thing that they do is, they -- Well, the first thing that
19 they do is, they include the permittee in the on-site when
20 they go to decide where the well is going to be and how
21 it's going to be operated. So they get the input into
22 that, and sometimes we can tell them something like, well,
23 the water table is too high, or they can move the well up
24 the hill a little bit, and things like that, that can be of
25 benefit to protecting the land.

1 Secondly, they take the topsoil and they move it
2 all off the location, they move the topsoil off the --
3 eight, 10 inches or a foot, pile it all up. They don't
4 pile it behind where the flare pit is, where they burn the
5 gas off when the first complete the well, because that
6 would kill the life in the soil, so they pile it in a
7 separate place.

8 Then they develop -- after they drill the well,
9 they go in and re-conform -- well, first they let the
10 reserve pit -- okay, I should probably go to that.

11 The reserve pits are always lined with some kind
12 of rubberized liner, and then they -- after the well is
13 completed they let that evaporate. Then they cover that,
14 turn the liner in on itself, and then they go back and kind
15 of re-form most of the location, over half of it, to kind
16 of conform to the natural contours of the land. And then
17 they go take topsoil and put it back on, and then plant
18 grass seed and -- or brush seed, whatever is appropriate.

19 We've done research up there, the BLM has, and
20 the oil companies have financed the New Mexico State's
21 studies to see what kind of grass and what kind of brush
22 grows well in this situation, and so they use that to
23 determine what kind of grass seed to plant.

24 Generally, they -- almost always now, they mulch
25 it. In other words, they put a straw mulch on top of the

1 ground. And that, in our country, is really helpful to
2 establish the grass and vegetation after the well is --
3 after it's been re-vegetated.

4 They don't -- the standard procedure now is that
5 they don't -- they do the whole location, so that the only
6 part that hasn't been re-vegetated is the -- and it is the
7 part that they drive on, you know -- they call it the
8 teardrop; you drive in from one side then drive out the
9 other -- and the roads, of course.

10 The oil companies have a voluntary program where
11 for every acre of ground that they take out of production
12 they contribute \$1000 to the -- what they call the offsite
13 mitigation fund. This goes to the -- for the BLM land.
14 And this goes to the permittee to use for whatever kind of
15 range improvements that they think is best to create grass
16 and to improve the land on areas where they're not using
17 it. And to my knowledge, up to this time, they've spent
18 about \$800,000 that's been contributed to that fund.

19 And we've used it on our own ranch for putting up
20 fences, cross-fences to improve the rotation of the cows
21 and for putting in stock ponds so we can spread out the
22 cows and use more of the country more evenly.

23 And so the proposal that you have that would kind
24 of across-the-board require all the digging and hauling
25 away, the cuttings and the products of -- and the temporary

1 pits -- and I think it's important to distinguish between
2 the production fluid pits and the temporary drilling pits.

3 The production fluid pits now -- and this is kind
4 of the standard in our country, is to have them put in
5 tanks, you know. Generally they're under the ground and
6 they have access to them by pipe and they pump it out and
7 take it somewhere.

8 But the production pits that are a lot bigger and
9 a lot -- there's a lot more liquid involved, and they're --
10 the standard is to leave them in place. And you know, to
11 me it doesn't seem to be hurting what we're doing there,
12 because you can't really tell where the production -- where
13 those temporary pits have been, because the grass grows on
14 them just as well as they do on the rest of the locations.
15 So I don't think that -- it doesn't seem like there's a lot
16 that they're damaging to the country at all.

17 And if seems like if they have to take all that
18 -- dig it out and haul it away somewhere, or use the closed
19 loop system where they haul it all away, it's going to
20 increase our traffic, truck traffic, tremendously.
21 Probably double the truck traffic with water trucks, and
22 going to tear up the county roads and especially tear up
23 the back roads, the dirt back roads that we access on the
24 ranch. We get more cows run over, because there'll be more
25 traffic.

1 And it seems like, to me, that there needs to be
2 carefully considered about -- before that, that part of the
3 regulations are implemented, because it's -- I don't see
4 that the problems that we're going to have with traffic and
5 truck traffic is going to be offset by any improvement for
6 the environment there.

7 So I think that's my testimony.

8 CHAIRMAN FESMIRE: Mr. Brooks, do you have any
9 questions of this witness?

10 MR. BROOKS: No questions, your Honor.

11 CHAIRMAN FESMIRE: Mr. Carr?

12 MR. CARR: No questions.

13 CHAIRMAN FESMIRE: Mr. Hiser?

14 MR. HISER: No questions.

15 MS. FOSTER: No --

16 CHAIRMAN FESMIRE: Anybody else? We can go
17 through it individually or -- Lettie, do you have any
18 questions?

19 Yes, ma'am?

20 FROM THE FLOOR: I'd just request that -- Could
21 we be miked here, or is it hard to hear?

22 CHAIRMAN FESMIRE: We'll have to speak up. We
23 don't have a public address system. I apologize for that.
24 This was kind of a last-minute deal.

25 FROM THE FLOOR: I understand.

1 REPRESENTATIVE BANDY: I'm sorry, I should speak
2 up more. I thought that's what this was.

3 CHAIRMAN FESMIRE: Representative, thank you very
4 much for your time.

5 REPRESENTATIVE BANDY: Thank you very much for
6 your time.

7 CHAIRMAN FESMIRE: Mr. Strickler?

8 REPRESENTATIVE STRICKLER: I'd like to be sworn.

9 (Thereupon, Representative Strickler was sworn.)

10 REPRESENTATIVE JAMES STRICKLER,
11 the witness herein, after having been first duly sworn upon
12 his oath, was examined and testified as follows:

13 DIRECT TESTIMONY

14 BY REPRESENTATIVE STRICKLER:

15 REPRESENTATIVE STRICKLER: I'm going to read from
16 a text, if that's okay.

17 My name is James Strickler, I'm a State
18 Representative, District 2, Farmington and rural San Juan
19 County, and I'm here today to speak to you from the
20 perspective of someone who puts food on their family's
21 table by working in the oil and gas industry. I'm a 30-
22 year veteran of the industry and currently practice as an
23 independent petroleum landman.

24 As you know, the oil and gas industry is a boom-
25 or-bust industry. At least that's been my experience. As

1 Representative Bandy said, all interested parties in our
2 area, oil and gas, land owners, BLM, State Land Office and
3 others, have a positive working relationship in the San
4 Juan Basin. These people have a vested interest in
5 protecting the land around the state that provides good-
6 paying jobs with benefits and provides the vital tax and
7 royalty revenues for state government to operate.

8 The Bureau of Land Management is the largest land
9 owner in New Mexico, and it is my understanding that
10 they've had somewhat little input in these Rules. I hope
11 I'm wrong.

12 Incidentally, the oil and gas industry provides
13 well over \$2.8 billion to the State's treasury. That
14 amounts to 35 percent of the State's total budget.
15 Education is a benefactor of these funds, and education
16 allocates about 60 percent of the entire state budget.

17 So who will suffer if we have a downturn in the
18 industry? You know, I think the kids do.

19 We should conduct -- I believe we should conduct
20 an economic impact study of these proposed Rules before
21 putting them into effect.

22 The San Juan Basin is the largest producing
23 natural gas field in the United States. Our local oil and
24 gas industry safely produces vital, clean-burning natural
25 gas as the fuel of choice for America. The dedicated lease

1 operators go out every day to check the wells on their
2 weekly run. They usually number 50 to 75 wells. Their
3 goal is to be sure that the wells are flowing properly and
4 that high environmental standards are met. I don't know of
5 an industry out there that monitors their operations as
6 closely as the oil and gas industry.

7 Area producers already face drilling inflation,
8 and these are higher costs for material, labor and services
9 that have nearly doubled over the past years in the San
10 Juan Basin. I believe in the southeast part of the state,
11 with the deeper wells, some of those costs have tripled.
12 And that's just the natural course of business. As a
13 consequence, drilling permits are down by one-third in the
14 San Juan Basin. I believe this is part of the economics,
15 just the natural economics going on.

16 The added expense of meeting regulatory
17 requirements hurts our industry. Oil and gas companies
18 lose revenue, they will take their investments elsewhere,
19 moving to friendlier states or overseas. The lack of new
20 drilling will negatively impact our local economy. The
21 service companies will feel the impact first, but the
22 layoff of employees in all sectors is inevitable. Over-
23 regulation stifles business and economic development.

24 The proposed new pit rules, along with other
25 proposed rules, seriously damages the oil and gas business

1 in our state. These new rules, if adopted, will add
2 anywhere between \$150,000 to \$300,000, depending on the
3 depth of the well, in the areas drilled, northwest to the
4 southeast part of the state.

5 In addition to these new drilling costs, what
6 this will do with all the drilling inflation is that it
7 will render 25 to 50 percent of the inventories uneconomic,
8 so that means that fewer wells will be able to drill.

9 These excessive pit rules, if adopted, will
10 devastate our state's economy with little or no
11 environmental gain. San Juan County is a high desert
12 country where we see less than eight inches of annual rain
13 fall. Over 93 percent of the lands belong to the
14 government. That leaves only seven percent in private
15 hands.

16 Because we live in a desert -- I wish we had more
17 groundwater -- most of our drinking water comes from our
18 area rivers and reservoirs. The Governor has rightly
19 emphasized the need for economic development throughout New
20 Mexico. The Legislature has the privilege of reviewing
21 these many business enterprises, and we actively promote
22 their formation through easing taxes and providing loan
23 guarantees. These new rules are counterproductive to those
24 objectives and will damage the economic development of our
25 state. I don't believe the Governor wants to drive away

1 our core industries to competing states such as Texas and
2 Oklahoma. We don't want to kill the goose that laid the
3 golden egg for our state.

4 Small mom and pop companies, those are the folks
5 I'm really worried about. They will be the hardest hit.
6 Who are these mom and pop companies? They're the ones that
7 provide the surveyors, pipefitters, plumbers, electricians,
8 the drivers, the water haulers, the roustabout crews and
9 heavy equipment operators that serve the oil companies and
10 their subcontractors. These people are working hard every
11 day. And they don't have a voice with the regulators.
12 They rely on their managers and legislators to fight for
13 them in Santa Fe.

14 Many of us remember the industry layoffs of 1987,
15 1996 and 2000. The industry layoffs that I have mentioned
16 were caused because of poor economic conditions brought
17 about by depressed oil and gas prices.

18 If these rules are implemented as is, this will
19 be the first time in my career that a regulatory agency has
20 caused layoffs, rather than natural economic factors.

21 The entire fuss is over the disposal of drilling
22 fluids, and we want to make sure we have clean water, clean
23 drinking water, and our water tables protected. The main
24 ingredients of drilling fluids in our area are fresh water,
25 clay, ground up cedar bark and drill cuttings, sand and

1 shale which makes up drill cuttings, all of which are
2 natural or biodegradable. In fact, you could manufacture
3 bricks out of this stuff.

4 OCD has been given legislative authority to adopt
5 reasonable rules, not license to put a crucial industry out
6 of business. These proposed pit rules are tantamount to
7 requiring a builder to put four roofs on your house when
8 one is sufficient. A one-size-fits-all approach to
9 regulation rarely works, and I think we need some
10 exceptions.

11 Right now the State is facing a budget crunch
12 which will continue to grow in the future years, and it's
13 looking to fund well over a billion dollars in program
14 shortfalls. We're running short of funds for education,
15 highways, prisons and the proposed government-run
16 healthcare program.

17 There seems to be a disconnect between the OCD
18 rulemaking and the goals and objectives of the Governor and
19 the Legislature. This is not the time to place new
20 stifling regulations on the industry that provides such a
21 large portion of our state funds.

22 My good friends that work with me in the industry
23 simply do not understand why the regulatory authorities is
24 so hostile to our business that affects 22,000 workers
25 throughout the state. They're trying to put them out of

1 business instead of working with us to find solutions to
2 these problems.

3 As a freshman legislator and a veteran in the oil
4 and gas industry, I know such regulation would never
5 survive the legislative process. It is poorly thought out,
6 ineffective and a huge threat to our state economy. Should
7 the NMOCDC approve the new pit rules, legislators will be
8 pressed to raise income, property and gross receipts tax in
9 an effort to replace lost revenue. We don't want to do
10 that, and I hope you don't either.

11 Thank you.

12 CHAIRMAN FESMIRE: Any questions of this witness?

13 MR. BROOKS: No questions, your Honor.

14 MR. CARR: No questions.

15 CHAIRMAN FESMIRE: Ms. Foster?

16 MS. FOSTER: No questions.

17 COMMISSIONER BAILEY: I have a question.

18 EXAMINATION

19 BY COMMISSIONER BAILEY:

20 Q. The Legislature passed the Surface Owner
21 Protection Act this past session.

22 A. Yes, ma'am.

23 Q. The question of this proposed Rule, which would
24 give surface owners the authority to disallow burying of
25 the pit wastes on their property, does that go beyond the

1 legislative intent of that new law?

2 A. Commissioner Bailey, I believe that it does. I
3 believe that needs to be addressed by the Legislature. I
4 was surprised to see that. I did read over the Rule. It's
5 rather lengthy, and that was a surprise to me today. And I
6 think it would be contrary to the intent of the
7 Legislature, and I think we would have to address that.

8 MR. BROOKS: Mr. Chairman, I hesitate to object
9 to anything that an honorable member of the Legislature
10 says, but I believe I must preserve for the record that the
11 statements after enactment by one member of the Legislature
12 are not admissible for the purpose of showing the intent of
13 the statute.

14 CHAIRMAN FESMIRE: Mr. Brooks, your objection is
15 noted but overruled.

16 Representative, continue.

17 THE WITNESS: That's my honest opinion, but I
18 appreciate the counsel's comments. That was a little
19 broadening of the pit rules from my earlier reading, and I
20 think it'll have to be addressed.

21 COMMISSIONER BAILEY: Thank you for your comment,
22 for your personal opinion.

23 CHAIRMAN FESMIRE: Any other questions of this
24 witness?

25 Thank you, Representative.

1 Representative Ezzell, are you next?

2 REPRESENTATIVE EZZELL: Mr. Chairman, I'd like to
3 be sworn in, please.

4 (Thereupon, Representative Ezzell was sworn.)

5 REPRESENTATIVE CANDY SPENCE EZZELL,
6 the witness herein, after having been first duly sworn upon
7 her oath, was examined and testified as follows:

8 DIRECT TESTIMONY

9 BY REPRESENTATIVE EZZELL:

10 REPRESENTATIVE EZZELL: Mr. Chairman, members of
11 the Commission, thank you for allowing me this opportunity.
12 I do have a prepared statement.

13 I am Candy Spence Ezzell, I am a State
14 Representative, District 58, which takes in southern Chaves
15 County. I am a rancher and a farmer, I'm an independent
16 oil producer, and I'm a member of the legislature, and I
17 pay my share of taxes in the State of New Mexico.

18 You have heard previous testimony concerning
19 landowners and oil producers, and we are here asking that
20 certain rules and regulations be reconsidered and to
21 closely review the facts, what the long-term impacts will
22 be, and the precedent it sets both legally and in process.

23 Every one of the Legislature knows that our
24 recent budget surpluses have come to us courtesy of the oil
25 and gas industry, but it seems like only a few of us

1 appreciate this contribution to our state's welfare.

2 We strive to be a business-friendly state. We
3 aren't.

4 If you look at the reported rig counts, New
5 Mexico is decreasing while Texas and Colorado's rig counts
6 are increasing dramatically. On the Baker Hughes website,
7 New Mexico right now is down 23 rigs from December of '06.
8 For the entire United States they are up 56 compared to
9 November the 2nd, of 2006.

10 We are blessed with some of the largest oil and
11 gas reserves in the nation, but our producers are being
12 penalized for trying to make our country less dependent on
13 foreign energy sources.

14 We are here to discuss the proposed pit rule, but
15 that is only an example of our real problem. New Mexico is
16 trying to implement an agenda that seeks to create change
17 or generate revenue through regulation, not through
18 legislation.

19 Elected officials, not political appointees,
20 should direct our state's future. Even when regulation
21 should be imposed, there should be legislative oversight.

22 The unintended consequences of the pit rule will
23 result in marginal wells not being produced, reserves being
24 left in the ground, lost economics, more illegal dumping
25 and heightened risk of drivers on our roads. This is

1 another example of an unintended consequence, that by
2 making rules without using sound economic studies the
3 people of New Mexico will suffer, and therefore you are not
4 fully informed to make these decisions.

5 The people of our state should be entitled to
6 replace those who impose regulations that affect their
7 lives. Bureaucrats are not elected, so people cannot vote
8 them out of office. If the citizens of New Mexico are
9 allowed to have a voice, there must be legislative
10 oversight of agency regulations. Please give thoughtful
11 consideration to the input from the industry that was
12 excluded in the development of the mechanisms that affect
13 their very lives and those of the citizens of our state.

14 We are asking you to allow flexibility. The
15 magnitude of this rule makes it of the utmost importance to
16 carefully consider all impacts now and into the future. We
17 don't need to shoot the cash cow.

18 That's the end of my testimony, thank you.

19 CHAIRMAN FESMIRE: Mr. Brooks?

20 MR. BROOKS: No questions, your honor.

21 MR. HISER: No questions.

22 MR. CARR: No questions.

23 MS. FOSTER: No questions.

24 CHAIRMAN FESMIRE: Ms. Belin?

25 MS. BELIN: (Shakes head)

1 CHAIRMAN FESMIRE: Commissioner Bailey?

2 COMMISSIONER BAILEY: I won't ask the question
3 again.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 COMMISSIONER OLSON: No questions.

6 CHAIRMAN FESMIRE: I do have one question,
7 Representative.

8 EXAMINATION

9 BY CHAIRMAN FESMIRE:

10 Q. You said that this is setting bad precedent, both
11 legally and in process. What did you mean by that?

12 A. Mr. Chairman, what we are seeing here, we are
13 seeing not only this particular agency but other agencies
14 that are in our State's government that are coming up with
15 rules and regulations. And as the whole Commission knows,
16 that any time there's a new rule, regulation or law, it
17 will affect somebody's life, either on the good side or on
18 the bad side. That's just the way it is.

19 The precedent that we are seeing here, it gives
20 the Commission the authority to -- Let's run with this, and
21 we're going to make up the rules as we go along. So each
22 week, guys, we might need to be sitting down, taking a look
23 at the new rules that have been set forth by each agency,
24 if you want to call it that. And therefore, it gives -- it
25 does not allow the industry the flexibility to make any

1 long-term plans, in my opinion. And that's just my
2 opinion.

3 CHAIRMAN FESMIRE: Thank you, Representative.

4 Any other questions?

5 Thank you, ma'am.

6 REPRESENTATIVE EZZELL: Thank you.

7 CHAIRMAN FESMIRE: Representative Foley? I don't
8 have to worry about who's next now.

9 REPRESENTATIVE FOLEY: Could I be sworn in?

10 CHAIRMAN FESMIRE: You bet.

11 (Thereupon, Representative Foley was sworn.)

12 REPRESENTATIVE DAN FOLEY,

13 the witness herein, after having been first duly sworn upon
14 his oath, was examined and testified as follows:

15 DIRECT TESTIMONY

16 BY REPRESENTATIVE FOLEY:

17 REPRESENTATIVE FOLEY: Thank you, Mr. Chairman,
18 members of the Commission. I want to begin by thanking you
19 for allowing me and my colleagues to address the Commission
20 today, and I want to thank the people in the audience for
21 letting us get to the front of the line. So thank you.

22 I also want to let you know that as the
23 Republican Whip in the New Mexico House of Representatives
24 that today I'm representing myself and Representative Tom
25 Taylor, the Republican leader in the House.

1 I want to do something that I think has been
2 lacking lately from people in Santa Fe and state
3 government, and that is thank the thousands of New Mexico
4 citizens who get up every day and go to work in the oil and
5 gas industry and provide this Administration, this
6 Legislature and state government an enormous portion of the
7 nearly six billion dollars we've spent and will spend again
8 in this upcoming session.

9 The OCC is an appointed group that is charged
10 with implementing the policies of this Administration.
11 Make no mistake about it, you serve at the pleasure of the
12 Governor. And by accepting that role, you are directly
13 responsible for implementing this Administration's
14 policies. This role is serious. In carrying it out, as is
15 the case with all regulatory bureaucracies and agencies, it
16 is vital that regulators and employees leave aside any
17 allegiance to special interest groups, political activists
18 or idealogues. Those are not the people we serve. We
19 serve the people of New Mexico.

20 I know all New Mexicans want a clean and safe
21 state in which to live and raise their families. All New
22 Mexicans, including the ones in this room and working today
23 in the oil and gas fields.

24 This begs the question as to why am I here today.
25 The answer is simple.

1 I believe you have unfairly placed the very
2 industry that we depend on for the economic existence of
3 this state on a path to destruction. Quite a number of
4 observers -- a growing number, I might add -- believe the
5 very policies that you are trying to implement are based on
6 pandering to special interest groups.

7 Among the charges I have heard include, one,
8 setting up committees that are stacked to get a
9 predetermined decision before a single public comment is
10 made or, two, decisions that are not based on any real,
11 proven science.

12 It seems the OCD's very existence depends on the
13 oil and gas industry, is spending a majority of its time
14 and resources lately running the industry out of New
15 Mexico.

16 There was once a cooperative relationship between
17 the industry and OCD. By cooperative, we don't mean that
18 the industry ran the OCD, we mean that the industry had a
19 seat at the table with OCD. Today the industry is
20 perceived as a threat to the state rather than an asset.

21 There is a difference between regulating and
22 destroying. Today OCD is in a posture to destroy this
23 industry.

24 Now these criticisms that I am bringing to light
25 may be perceived as harsh, but certain facts indicate to me

1 that these independent assessments may be correct.

2 Why, for example, when the price of oil and gas
3 has been reaching record highs, is the rig count in New
4 Mexico down by eight last week?

5 Let me say this. If you end up setting up rules
6 that are not based on science but are derived from
7 political motivations to create impressions about New
8 Mexico and New Mexico's Environment and about this
9 Administrations, then those rules are achieved -- achieve
10 the notoriety which is their goal but cripple our economy,
11 you will have not lived up to your fiduciary
12 responsibility. If such rules end up advancing the
13 political agendas but add absolutely nothing to
14 environmental protection, are you really living up to the
15 oath of office? Are you serving the people of New Mexico,
16 or are you serving an ideology?

17 These are serious questions, open questions. I
18 pray the commentary -- the scientific commentary I've been
19 privy to is false, that you do not have such designs and
20 that you are going to be able to show everyone that
21 everything you do is based on hard science and not politics
22 or ideology.

23 Here's the reason. As Legislators, we are
24 charged with funding the ongoing programs and priorities of
25 the entire State of New Mexico. Where do you expect us as

1 Legislators to find the money to finance the important
2 projects throughout the state? Where do you expect us to
3 find the money to finance the education of our children,
4 the -- finance the colleges and universities? Where do you
5 recommend we find the money to provide health care to the
6 poorest children of our state? How about funding the
7 senior programs in each and every community that help feed,
8 through the Meals on Wheels programs, those very
9 individuals that cannot prepare the food they need for
10 their very existence.

11 Let's talk about programs that are near and dear
12 to the hearts of some of the special interest groups that
13 I've been reading about, that we believe are also pushing
14 us towards some nonscience-based decisions. If you end up
15 traveling down this path, who's going to fund the research
16 for finding alternative energy options for the State of New
17 Mexico? Who's going to fund the housing programs to help
18 those who cannot afford to pay rent or mortgages? And more
19 importantly, who's going to pay to make sure that our state
20 is safe in the future.

21 I'm troubled that during the very time this
22 Administration and this State have seen a surplus in money
23 because of our friends, neighbors and family members in the
24 oil and gas business, we've had no problem expanding the
25 role of government in several areas that are going to be

1 very, very costly in annual operating expenses for years to
2 come.

3 This of course includes, first of all, the 11-
4 percent increase in the State budget last year. But it
5 also includes such cash guzzlers as the Rail Runner, the
6 Spaceport and the desire of this Administration to add a
7 full-blown, comprehensive, universal pre-K program.

8 Add to this the current discussion about
9 expanding the rule of government-run healthcare programs or
10 the desire to continue the GRIP programs, while
11 simultaneously trying to find a way to pay for much-needed
12 maintenance and upkeep of our current roads and bridges.

13 At a time when major industries from Intel to
14 Eclipse are laying off hundreds if not thousands of New
15 Mexicans, as well as the current discussion revolving
16 around the expected shortfall in dollars for road projects,
17 which now we're hearing is going to lead to thousands of
18 unemployed construction workers around the State, the oil
19 and gas industry is looking to hire New Mexicans in high-
20 paying, long-term jobs with benefits. Why do we want that
21 to end?

22 Now based on what I've read and heard discussed,
23 I would agree 100 percent if the policies we are discussing
24 were based on proven, sound science, and not talking points
25 from special interest groups that have no allegiance or

1 loyalty to the future of the State. I'm very concerned
2 that these same groups who appear to be the authors of much
3 of what we're talking about today in New Mexico spend their
4 time criss-crossing the United States, taking credit for
5 implementing anti-oil and gas policies that increase our
6 dependency on foreign oil, which I must add seems contrary
7 to the very goal that these groups advocate.

8 As reported in *The Hobbs News-Sun* on Saturday,
9 November 3rd, Mr. Fesmire -- Mr. Chairman, yourself -- made
10 reference to the pit rule changes relating to groundwater
11 contamination because of leaking pipes. This has nothing
12 to do with the new pit rules. The current climate with OCD
13 and the industry seems to be one of guilty until proven
14 guilty. Fining these industry people thousands of dollars
15 a day with no due process is not an American principle.

16 Another question that was brought to mind was the
17 100-mile rule. What science is this rule based on? How
18 can you sit there today and tell us that this is going to
19 contaminate groundwater if it's within 100 miles of a
20 storage facility, so it has to be moved, but if it's within
21 102 miles of a storage facility we can bury it on site,
22 because it's not going to contaminate that groundwater?
23 That's another example, I believe, of how some of these
24 rules are arbitrary and capricious.

25 I am concerned about all of these things. As

1 those of you who know me, I'm not one for pointing out
2 problems and just walking away. I like to provide
3 solutions as well.

4 The solution I have is simple. Let's stop
5 creating an environment of fear and business instability
6 that only encourages these New Mexicans to move their
7 businesses and, more importantly, their investment dollars
8 to other states and leaves the State wondering why is our
9 rig count down when Texas and everybody around us is up?

10 Let's reach out to the very industry we go to
11 every year and depend on for funding everything from
12 education to healthcare and work with them and not against
13 them. I know from visiting with these very individuals
14 that if -- and I place the emphasis on "if", Mr. Chairman
15 -- if you find a so-called bad actor, get them. Current
16 rules and laws allow you to do that. No one is more
17 supportive of finding, punishing and getting rid of bad
18 actors than the oil and gas community in New Mexico. They
19 universally, to a man and to a woman I've spoken with, want
20 the bad companies, the bad players, eliminated. They give
21 an entire industry a black eye.

22 But with lawful, conscientious companies and
23 businessmen and women, we have to make sure we don't use
24 fear and intimidation tactics to implement policies that
25 are, one, not based on science, two, have no beneficial

1 environmental impact on New Mexico at all, three, do not
2 protect our citizens and families of our land in any way
3 and, four, are detrimental to the financial future of our
4 state.

5 We must constantly remind ourselves that if there
6 is a problem that needs to be fixed, that it must be done.
7 However, when something that has nothing to do with the new
8 proposed pit rule, such as leaky pipes, makes its way into
9 the discussion, we wonder why.

10 When it comes to making and implementing rules,
11 we should gather New Mexicans to help the process. The pit
12 rule task force, by some accounts, Mr. Chairman, includes
13 people who live outside of New Mexico. Why are people who
14 live outside of this state making rules for industry inside
15 this state that represents our lifeblood? Shouldn't New
16 Mexicans have the voice on the rulemaking committee and not
17 outsiders?

18 I want to close, Mr. Chairman, by reminding you
19 that there is a Legislative branch in state government, and
20 you should respect the checks and balances we have in
21 place. I would encourage you to work with the Legislature
22 if you want to change statutes.

23 We should not try to implement changes of laws
24 via regulations. This is undemocratic and antithetical to
25 the American system. I can assure you, there is bipartisan

1 support, Mr. Chairman, for reigning in the out of control
2 regulatory environment that we are creating. This is not
3 the first time, but may be the last.

4 We are currently drafting bipartisan legislation
5 that will require real economic impact studies, and if the
6 study proves to affect a percentage of prior-year revenue
7 it will require approval of the Legislature before rules
8 like that may be adopted.

9 I'm here to work with you in making New Mexico a
10 safer, better place, but you have to stop holding this
11 industry hostage and stop making New Mexico an anti-
12 business state by creating this cloud of anxiety.

13 Let's show good faith and respect for science by
14 bringing artificial pit rules to a close now and letting
15 New Mexicans know you're going to move forward with
16 decisions based only on sound, proven science.

17 Mr. Chairman, thank you for allowing me and my
18 colleagues to be here today.

19 And again, thank you to the very people who get
20 up every day and take the risk of investing in New Mexico
21 and providing the thousands of jobs we need, we want, and
22 we will all take credit for.

23 I also want to thank the thousands of
24 individuals, Mr. Chairman, who get up every day and work in
25 the fields and offices. I want them to know there are

1 those of us in elective office that know the contribution
2 they make every day to the state, and I want them to know
3 we're -- continue to work with you to make sure they can
4 get up tomorrow and have the very job they had today.

5 With that, Mr. Chairman, I'll stand for any
6 questions.

7 CHAIRMAN FESMIRE: Thank you.

8 Mr. Brooks?

9 MR. BROOKS: No questions, Mr. Chairman.

10 MR. CARR: Mr. Chairman, no questions.

11 MR. HISER: No questions.

12 CHAIRMAN FESMIRE: I guess we don't need to go
13 through this every time, do we?

14 Does anybody have any questions?

15 Yes ma'am?

16 MS. BARNARD: How many oil and gas well owners in
17 the entire state are actually New Mexico citizens?

18 REPRESENTATIVE FOLEY: Mr. Chairman, do you want
19 me to address you and them, or just turn to them? How do
20 you want me to do it?

21 CHAIRMAN FESMIRE: That's traditional, Mr.
22 Representative.

23 REPRESENTATIVE FOLEY: Okay. Mr. Chairman,
24 normally it depends on your definition of oil and gas well
25 owners. If you're talking about drilling companies or

1 you're talking about the land that's owned that they're
2 drilling on --

3 MS. BARNARD: Drilling companies, people who
4 directly get their income from the well.

5 REPRESENTATIVE FOLEY: The people who directly
6 get their income from the well, Mr. Chairman, I would tell
7 you, are almost all New Mexicans because they live here,
8 they own those rights to the land, they own those lease
9 rights. Some of the actual drilling companies may not be
10 from New Mexico, but I will tell you that overwhelmingly
11 the production that I'm finding in New Mexico, especially
12 now, Mr. Chairman, is very local companies. The bigger
13 companies have left our state over the last few years.

14 MS. BARNARD: And can I just ask one more?

15 CHAIRMAN FESMIRE: Surely.

16 MS. BARNARD: So who gets most of this money? Is
17 it New Mexicans themselves, or is it out-of-towners?

18 MS. FOSTER: Mr. Chairman, if I could ask this
19 woman to identify herself, please, before she asks the
20 question, just so we know where the question is coming
21 from, for the record?

22 CHAIRMAN FESMIRE: Ma'am, do you mind doing that?
23 I'm not going to make you --

24 MS. BARNARD: Not all, no. My name is Leslie
25 Barnard and I'm a Santa Fe resident.

1 MS. FOSTER: Thank you.

2 CHAIRMAN FESMIRE: Representative, did you
3 understand the question?

4 REPRESENTATIVE FOLEY: I think so. Could she
5 repeat it again, Mr. Chairman? I'm sorry.

6 MS. BARNARD: I'm just wondering -- I guess what
7 I'm getting at is where does most of this money go? Where
8 is most of the money -- from the oil that is drilled here,
9 where does most of that money go? Does anybody know?

10 REPRESENTATIVE FOLEY: Mr. Chairman, I would
11 be --

12 MS. BARNARD: Does it stay in-state?

13 REPRESENTATIVE FOLEY: -- glad to -- I would be
14 glad to answer to the best of my knowledge.

15 There is a long list of people involved, whether
16 it's the landman that's doing the research, whether it's
17 the State that's getting the royalties from the lease,
18 whether it's the electrician, whether it's the guy that's
19 out there laying the pipe, to the person checking it, to
20 the roustabouts, to the people that are working on -- When
21 you start counting in the taxes that are paid, the
22 severance taxes that are paid, the lease royalties to the
23 State that are paid, I would tell you that -- I'm willing
24 to bet that -- I would venture to say that a large majority
25 of the money directly benefits either the citizens of the

1 State of New Mexico or citizens who own companies, own the
2 rights, own the land or are working on those rigs directly,
3 Mr. Chairman.

4 MS. BARNARD: You bet, but you don't really know?

5 REPRESENTATIVE FOLEY: Mr. Chairman, I'm under
6 oath. I mean, I don't want to say 74 percent and get told
7 it's 72 percent. But I bet you it's -- I would be willing
8 to say that I'd bet it's over 60 percent on every dollar
9 that is being -- is staying here in New Mexico, Mr.
10 Chairman.

11 I'll also add, if you use -- which is commonly
12 used in the Legislature, the factor where they take the
13 dollar that stays in New Mexico and times it times five, I
14 would tell you that it's a huge amount of revenue that is
15 staying and impacting the State of New Mexico.

16 MS. BARNARD: Thank you.

17 CHAIRMAN FESMIRE: Any other questions?

18 Thank you, Representative.

19 REPRESENTATIVE FOLEY: Mr. Chairman, thank you
20 for your time.

21 CHAIRMAN FESMIRE: Is there anybody else from
22 your group that would like to speak?

23 REPRESENTATIVE FOLEY: No, Mr. Chairman. Thank
24 you.

25 CHAIRMAN FESMIRE: Thank you.

1 I'd like to continue now, at least for a while,
2 on other folks who would like to make comments, who --
3 you're going to be offered the opportunity to make comments
4 twice a day at -- before we break for noon and before we
5 break for the end of the work.

6 We would ask that you not be repetitive in your
7 comments. If you make comments today and don't have a
8 different comment to make tomorrow, we would ask that you
9 honor that non-repetition.

10 But is there anybody else who would like to make
11 a comment today or who has a schedule conflict that might
12 prevent them from making a comment in the future?

13 Yes, sir?

14 MR. MCGARRH: Is this a position where I can go
15 up and --

16 CHAIRMAN FESMIRE: Surely.

17 MR. MCGARRH: -- say what I have in mind? I'm
18 just a citizen?

19 CHAIRMAN FESMIRE: You bet. You also have the
20 option of making an unsworn position statement or being
21 sworn in and asked questions.

22 MR. MCGARRH: I don't necessarily think I need to
23 be sworn in unless somebody's going to ask me a question
24 that -- if I need --

25 CHAIRMAN FESMIRE: It's entirely up to you, sir.

1 MR. MCGARRH: Okay, I don't believe I need to be
2 sworn in. And I'm not a good public speaker, so if I turn
3 bright red don't panic. I will breathe eventually.

4 (Laughter)

5 MR. MCGARRH: I wasn't asked to be here by
6 anybody in particular, by an oil company or by an
7 environmentally concerned group. I came down here on my
8 own. I'm from Farmington. I made my speech as I was
9 going.

10 CHAIRMAN FESMIRE: Hang on just a second.

11 MR. BROOKS: Mr. Chairman, could you ask the
12 gentleman to state his name for the record, please?

13 CHAIRMAN FESMIRE: Sure.

14 MR. MCGARRH: My name is Dana McGarrh. I'm from
15 Farmington, New Mexico, and I'm a small business owner that
16 has been in business in Farmington for 25 years. I'm one
17 of these mom and pop companies.

18 And I -- This is my speech, okay? I wrote it as
19 I was listening. But thank you, Mr. Chairman, for letting
20 me speak.

21 As I said, I'm one of these small business owners
22 from Farmington, wasn't asked to be here. I came to voice
23 what my company and hundreds of small and medium-size
24 companies across the state that know anything about this
25 are all thinking and would like to say, which is jobs.

1 Now I understand that you need to be
2 environmentally concerned. And like I said, in 25 years of
3 doing this, in about the last seven or eight I have seen a
4 gigantic push. As a service company I work for small oil
5 companies as well as big, and we're all pushed every day to
6 be good neighbors, be environmentally friendly. You almost
7 cannot compete in this industry as an independent without a
8 fulltime EH&S guy working for you. I have one on my staff.

9 But these rule changes, the way they're being
10 proposed -- I said that I'm here concerned about jobs. Not
11 only mine, but the 18 people that work for me, most of
12 which have families. The rule changes, the way that these
13 are being proposed today, from what I know of them, is
14 going to cost an awful lot of them.

15 In these discussions you've got the OCD and the
16 environmentally friendly people on one side, you've got the
17 oil companies, large and small, on the other. I want you
18 guys to know that in the middle there are hundreds across
19 the state of medium to small business that are stuck right
20 in the middle of this that, you know, don't have a say or
21 don't know how to get it across. I would not have known
22 that I would have had this opportunity had I not been here.

23 I've pulled my customers in around Farmington,
24 large and small -- and small I'm saying range from 10 wells
25 or so a year, to large companies that drill over 400, or

1 plan to drill over 400 in '08.

2 If these cuts go into effect, the way they're
3 stated today, I've been told that as little as 25 percent
4 of these wells will not be drilled, and as much as 100
5 percent of what a particular company had planned will not
6 be drilled, which is none.

7 All these cuts will have a trickle down on the
8 employees, the taxpayers, the working man, not only of San
9 Juan County, Rio Arriba County, but other parts of the
10 state. I don't even know about Hobbs and what goes on down
11 there.

12 But like I said before, I've seen some positive
13 changes in the last five to seven years. And just about
14 everyone has, you know, an EH&S guy. And I heard the first
15 gentleman that spoke mentioned that since 2000 they've been
16 talking with land owners and ranchers and stuff. That
17 coincides with what I just said, that about the last five
18 to seven years I've seen these oil companies push to be,
19 you know, better users of state land and the resources that
20 we have.

21 It seems to me that these changes, the way
22 they're proposed today, are awful drastic. It seems like
23 to me that there could be, you know, a little more time and
24 effort put into this to find out how big of an impact these
25 companies are actually having on the environment and what

1 impact that's having on the citizens of the state.

2 A lot of these wells that are being drilled in
3 and around Farmington are uneconomical. And when I say
4 uneconomical, if you add another \$100,000 to \$150,000 per
5 well they just won't drill them.

6 I've heard some talk, read some things on the
7 Internet that says, well, these people that aren't working
8 on the rigs, they can go work hauling these cuttings off,
9 it'll create jobs. That won't happen. They're just not
10 going to drill the wells. There'll be no trucking,
11 there'll be no roughnecking going on. These wells are
12 marginal at best, as it is.

13 I'm going to wrap up here pretty quick. You
14 know, like I said, I'm one of these mom and pop companies,
15 and I do believe -- when I heard another gentleman say that
16 he believes there should be an environmental impact study,
17 I do too.

18 I think that everybody in the state, including
19 the workers, should know why these cuts are being made.
20 This was contaminated, this water was contaminated and your
21 children could be drinking it 10 or 20 years from now.
22 This is why you lost your job, not a poli- -- It just seems
23 like to me, not being involved in politics, not being an
24 oil company owner, it just seems to me this is awfully
25 political. I haven't, as just a citizen, been -- nobody's

1 convinced me that there is actually really anything that
2 bad that has been done.

3 I saw the pictures of the pits, and I've also
4 worked in Farmington for 25 years, and I don't -- I go out
5 to the field on a regular basis and do not see that, that
6 often, if often at all. You know, those are probably the
7 worst case things that could have been presented.

8 But in any case, last thing I want to say is that
9 in 1986, I saw a downturn in the oilfield that cost
10 probably 80 percent of the jobs in Farmington. That
11 particular downturn in the oilfield drove my father to
12 bankruptcy. He went bankrupt. He had a lot of debt on a
13 lot of equipment, and none of it was being used, and he
14 went bankrupt.

15 In talking to the customers that I work for, and
16 the estimates that I'm getting of the wells that won't be
17 drilled in and around San Juan County, I could see this
18 having the potential to be the worst thing that's happened
19 in that part of the state since 1986.

20 Now I have 18 people working for me, as I said
21 before. I know that if these are implemented by the
22 beginning of 2008, I personally -- my one little company
23 will probably be down to nine before the end of January, if
24 this all happens as fast as the OCD is wanting it to.

25 Now I think a happy medium can be reached between

1 the State, what you guys do and what these oil companies
2 do, to where everyone can be happy and not so many jobs
3 have been lost.

4 And with that, that's all I have to say.

5 CHAIRMAN FESMIRE: Thank you, sir.

6 MR. MCGARRH: You're quite welcome.

7 CHAIRMAN FESMIRE: Is there anybody else that
8 would like to make a comment at this time? Sir?

9 And as Mr. Brooks reminded me, would you please
10 start with your name?

11 (Thereupon, Mr. Eisenfield was sworn.)

12 MIKE EISENFIELD,

13 the witness herein, after having been first duly sworn upon
14 his oath, was examined and testified as follows:

15 DIRECT TESTIMONY

16 BY MR. EISENFIELD:

17 MR. EISENFIELD: Chairman, Commissioners, my name
18 is Mike Eisenfield. I too live in Farmington, New Mexico.
19 Thank you for the opportunity to make a statement on the
20 pit rule proposed to repeal Rule 50.

21 I represent the San Juan Citizens Alliance, an
22 organization with over 200 members in New Mexico, dedicated
23 to improving environmental, economic and social conditions
24 in northwest New Mexico.

25 San Juan Citizen members are increasingly

1 concerned about the legacy of pit waste amidst the immense
2 rate of new natural gas drilling in the San Juan Basin.
3 There are extensive cumulative impacts in the San Juan
4 Basin from tens of thousands of existing and proposed
5 wells, pipelines, compressors and roads. Contamination to
6 New Mexico's water, soil, wildlife and residence as a
7 result of natural gas pit waste is unacceptable.

8 We thank the New Mexico Oil Conservation Division
9 for taking action now to prevent further contamination from
10 pits, as documented in almost 400 incidents of groundwater
11 contamination in New Mexico in 2005 from pits.

12 We believe that New Mexico Oil Conservation
13 Division should prioritize closure requirements, implement
14 enforcement actions for contamination from pits. Testing
15 of each pit would resolve disputes concerning where
16 contamination is occurring and to what extent.

17 We agree that we need to make our decisions based
18 on science. Thus we are asking for clear accounting,
19 systematic approach of pit testing on every well, closure
20 of pits and the elimination of on-site disposal of wastes
21 at every well.

22 Environmental regulations require enforceable
23 actions for pits rather than continual reliance on
24 voluntary compliance with guidelines. The cost of doing it
25 right should be incurred by all of us concerned with a

1 clean environment and avoidance of toxic legacies.

2 We also acknowledge the boom or bust. Thus it is
3 even more important that environmental regulations are in
4 place to avoid contamination, legacy cost issues to
5 taxpayers to clean up contamination.

6 We export billions of dollars from natural gas
7 from the San Juan Basin and deserve protection of our
8 natural systems, which in itself creates long-term economic
9 opportunities throughout northwest New Mexico.

10 Thank you.

11 CHAIRMAN FESMIRE: Thank you, Mr. Eisenfield.

12 Mr. Brooks, do you have any questions of this
13 witness?

14 MR. BROOKS: No questions, Mr. Chairman.

15 CHAIRMAN FESMIRE: Mr. Carr?

16 MR. CARR: No questions.

17 CHAIRMAN FESMIRE: Are there any questions?

18 MS. FOSTER: Yes, I have a few questions for this
19 gentleman.

20 CROSS-EXAMINATION

21 BY MS. FOSTER:

22 Q. Mr. Eisenfield, are you familiar with the
23 conservation tax in the State of New Mexico?

24 A. To some extent.

25 Q. And who puts the money into the conservation

1 fund? Where does the money come from for the conservation
2 fund?

3 A. I believe that it comes from the revenue
4 generated by oil and gas.

5 Q. And within the conservation fund is there a
6 reclamation fund?

7 A. I believe there is.

8 Q. Yes.

9 A. Maybe you can tell me how much it is per year?

10 Q. Well, I will tell you how much it is. Are you
11 aware that the OCD asked for an increase in the reclamation
12 fund cap last year to the Legislature?

13 A. Yes.

14 Q. All right, and do you know how much that is?

15 A. I'm asking you that.

16 MS. FOSTER: I would ask the witness to answer my
17 questions.

18 CHAIRMAN FESMIRE: Mr. Eisenfield, if you know
19 the answer --

20 THE WITNESS: I don't know the answer. Thank
21 you.

22 Q. (By Ms. Foster) Thank you. Okay, the
23 reclamation fund has \$2.5 million in it now. Okay?

24 And do you know why the reclamation fund was
25 created?

1 A. I'm sure it was to reclaim natural gas sites that
2 haven't been revegetated, restored or reclaimed in --
3 throughout the state.

4 MR. BROOKS: Mr. Chairman, I think counsel
5 misspoke, and I'm sure it was not intentional. The
6 reclamation fund cap is \$2.5 million. It's not the amount
7 currently in the fund, but I --

8 Q. (By Ms. Foster) Yes, I'm sorry, I misspoke. The
9 reclamation fund cap is \$2.5 million, meaning that the
10 money that comes in from the oil and gas industry can sit
11 in the reclamation fund and accumulate up to \$2.5 million?
12 Are you aware of that?

13 A. Yes, I'm aware that it can accumulate to \$2.5
14 million.

15 Q. And are you aware that it is the OCD, when they
16 do reclamation fund -- reclamation sites, that the money
17 comes out of that fund that comes directly from oil and
18 gas?

19 A. Yes.

20 Q. So that money does not come from the taxpayers,
21 does it?

22 A. Evidently -- evidently there's a \$2.5-million
23 fund that's used for reclamation.

24 Q. So your statement earlier that the taxpaying
25 public is paying for reclamation of locations is not

1 accurate, is it?

2 A. I believe it is accurate.

3 Q. Okay, tell me why you think it's accurate, then.

4 A. Because there's --

5 MR. FREDERICK: Excuse me, I'm Bruce Frederick of
6 the Oil and Gas Accountability Act [sic]. These questions
7 are way beyond the scope of --

8 MR. MULLINS: He has no standing. He cannot just
9 interrupt like that because he's one of these attorneys out
10 here --

11 MR. FREDERICK: Sorry, I just --

12 CHAIRMAN FESMIRE: He has --

13 MR. MULLINS: Be quiet --

14 CHAIRMAN FESMIRE: -- he has --

15 MR. MULLINS: Be quiet --

16 CHAIRMAN FESMIRE: Mr. Mullins --

17 MR. MULLINS: -- take your turn.

18 CHAIRMAN FESMIRE: Mr. Mullins, he has entered
19 his appearance.

20 Mr. Frederick, you can continue if you would,
21 please.

22 MR. FREDERICK: Thank you, Mr. Chairman.

23 I just want to object that this is beyond the
24 scope of his testimony, and it seems to be becoming
25 argumentative.

1 CHAIRMAN FESMIRE: Ms. Foster, I do have a
2 tendency to want to agree with him. Why don't you go ahead
3 and finish up this line of questioning as quickly as
4 possible, okay?

5 MS. FOSTER: Okay.

6 Q. (By Ms. Foster) You state that your decision --
7 that the decisions of the OCD need to be made on science.
8 You made that statement, correct?

9 A. Yes.

10 Q. Okay. And your basis of science is that there
11 needs to be more testing of locations to protect the people
12 of San Juan County, correct?

13 A. I believe that testing would then allow a
14 determination as to where contamination is occurring, if it
15 is occurring, and how to resolve that contamination.

16 Q. Okay, and what's your definition of
17 contamination?

18 A. There are numerous chemicals that have been found
19 at natural gas sites.

20 Q. What chemicals?

21 A. Hydrocarbons, other sorts of chemicals. I'm
22 not --

23 Q. Is a hydro- --

24 A. -- a scientist, so --

25 Q. Is hydrocarbon a chemical on the periodic table?

1 A. I'm not going to answer that.

2 Q. Well, you know, then I would question the basis
3 of your statement.

4 CHAIRMAN FESMIRE: Okay, Ms. Foster, finish up
5 here, all right?

6 MS. FOSTER: Thank you, I have no further
7 questions, since the witness is leaving.

8 CHAIRMAN FESMIRE: Mr. Eisenfield, there are --
9 let's stand for any other questions.

10 Are there any other questions of this witness?

11 Thank you, Mr. Eisenfield.

12 MR. EISENFIELD: Thank you.

13 CHAIRMAN FESMIRE: Yes, ma'am?

14 MS. ARCHULETA: I would like to testify.

15 CHAIRMAN FESMIRE: Come on up. Do you want to be
16 sworn and subject to cross-examination?

17 MS. ARCHULETA: No thank you!

18 (Laughter)

19 MS. ARCHULETA: Thank you very, very much, but...

20 CHAIRMAN FESMIRE: State your name for the
21 record, please.

22 MS. ARCHULETA: Yes, my name is Deena Archuleta,
23 and I am with the Wilderness Society. I am a native New
24 Mexican, I'm also raising my children here in New Mexico,
25 and I want to thank you for having these hearings, first

1 and foremost, and I respect the job you do. It's a very
2 difficult job, and I thank you for your time and serving
3 this community.

4 It's important for all of us to protect our land,
5 our water and our wildlife. Banning unlined pits is a very
6 important step in this direction.

7 To be truly protective, the pit rule needs some
8 additional provisions. Our main concern is that there
9 should be no contamination of water, soil or air from the
10 pits. The best way to achieve this is to keep toxic
11 liquids that can harm our water, soil and air safely away
12 from them.

13 With pits there is always the risk of leaks, so
14 we need to be very careful about where we permit them to be
15 used and how dangerous materials in them are managed.

16 No on-site burial of toxic wastes. Where pits
17 are used, companies should not be permitted to bury the
18 waste on site. Toxic wastes from the pits should be hauled
19 away and disposed of in approved facilities, which we know
20 have a much more stringent regime of what -- where they can
21 be hauled away to and the approved facilities.

22 The information that we've heard today highlights
23 -- that we heard earlier today, highlights the risks from
24 oil and gas to water and other resources. In addition to
25 supporting the need for stronger pit rules, the data

1 compiled and publicized by the OCD on the incredible amount
2 of groundwater contamination from oil and gas operations
3 shows the real risk to our water and certainly calls into
4 question whether oil and gas development can be conducted
5 without risk to our water supply.

6 This supports the argument for protecting such
7 areas as Otero Mesa from drilling, by providing hard
8 evidence that gas and oil development can harm our
9 groundwater. Some places are just too vulnerable to use
10 pits. The hundreds of cases of contamination from pits
11 cataloged by the OCD also show that places with vulnerable
12 water supplies, such as the salt basin under Otero Mesa are
13 not safe places for use of pits. The OCD should identify
14 other areas, as they have in Otero Mesa, where the presence
15 of water sources required use -- should use the closed loop
16 system.

17 OCD should provide fines and enforcement.
18 Through the proposed rule it is important -- it is an
19 important tool for protection of our land, our water and
20 our wildlife. It is imperative that the OCD guarantee that
21 any new rules passed are enforced on the ground. Maybe
22 this is where our legislature can come in handy and make
23 sure that we have enough funding to provide folks on the
24 ground.

25 We would like a clear statement on how the OCD

1 intends to enforce the rules, such as through fines and
2 shutting down the operations of pollutants -- or polluters,
3 excuse me, and commitment of staff to monitoring the
4 industry and holding it to new standards. Pits must not
5 only be lined but must also be bound to protect people and
6 animals. Pits should be constructed to protect our
7 environment and also additional fencing and netting
8 requirements to protect our wildlife and stock animals and
9 our people of New Mexico.

10 Thank you.

11 CHAIRMAN FESMIRE: Thank you, Ms. Archuleta.

12 Is there anybody else that would like to make a
13 statement? In the back there?

14 FROM THE FLOOR: No questions?

15 CHAIRMAN FESMIRE: Not when she just makes an
16 unsworn statement of position.

17 MR. MICOU: Commissioners, my name is Johnny
18 Micou.

19 CHAIRMAN FESMIRE: Would you like to be sworn, or
20 would you --

21 MR. MICOU: No, I'd like not to be sworn in.

22 (Laughter)

23 CHAIRMAN FESMIRE: Okay.

24 MR. MICOU: I'm a resident of Santa Fe, and I'm
25 with Drilling Santa Fe.

1 I do not have prepared comments. I just wanted
2 to come forward and, as I've watched this proceeding today,
3 to note that oil and gas activity has not come into Santa
4 Fe County yet. People are alarmed in Santa Fe County about
5 this prospect.

6 But watching these hearings, and watching the
7 animosity from the oil and gas industry to these proposed
8 rules is troublesome. It's going to be hard for citizens
9 of Santa Fe County to be welcoming the oil and gas industry
10 into the county with this sort of activity, or this
11 attitude, and I just thought I'd mention that.

12 And I'm concerned on the hundred mile radius, is
13 that since we're in central -- Santa Fe County is in the
14 central part of New Mexico, whether we would actually be
15 covered. And I'd just like to make that either a comment
16 or a question.

17 CHAIRMAN FESMIRE: Mr. Micou, I'm not able to
18 answer that right now.

19 MR. MICOU: Okay.

20 CHAIRMAN FESMIRE: You might contact Mr. --

21 MR. MICOU: All right --

22 CHAIRMAN FESMIRE: -- Price --

23 MR. MICOU: -- thank you.

24 CHAIRMAN FESMIRE: -- to get an answer to that.

25 MR. MICOU: I appreciate it, thank you.

1 CHAIRMAN FESMIRE: Thank you, Mr. Micou.

2 Oscar?

3 MR. SIMPSON: I'll just make my statement from
4 here, since I'm not going to be under sworn testimony.

5 Anyhow, I'm Oscar Simpson, native New Mexican,
6 sportsman, conservationist. I speak for the New Mexico
7 Wildlife Federation, who has 6000 supporters and members.
8 I also represent the National Wildlife Federation, which is
9 the largest conservation organization in the United States,
10 but also they have an additional 6000 members in New
11 Mexico.

12 We highly recommend and highly support the Oil
13 Conservation Division's efforts to bring forth the real
14 facts and science about contamination related to pits and
15 unlined pits, and we fully support your endeavors to make
16 sure that we protect our water resources which are our
17 number-one -- I think it's more valuable than oil and gas.
18 Without water you have nothing.

19 You look at the historical practices and efforts,
20 which I have looked at for over 30 years as a former
21 regulator and a state regulator protecting our public water
22 systems, we need to take immediate action, we need to make
23 sure that our water is protected, our air and also wildlife
24 resources. And I commend you.

25 We will provide technical testimony and/or

1 statements later on, but we commend your efforts, and we
2 really appreciate getting this information out on the
3 website and showing the public the facts and information
4 about what's going on in New Mexico, especially related to
5 our water resources.

6 Thank you.

7 CHAIRMAN FESMIRE: Rachel, did you have a
8 comment?

9 MS. JANKOWITZ: Yeah, I just wanted to
10 reiterate --

11 CHAIRMAN FESMIRE: Start with your name.

12 MS. JANKOWITZ: -- earlier that the people at the
13 front of the room remember to speak up.

14 CHAIRMAN FESMIRE: Okay. Is there anybody else
15 who would like to make a comment at this time?

16 Okay. Mr. Brooks, are you prepared to continue
17 where we left off during the power failure?

18 MR. BROOKS: Yes, Mr. Chairman. I would like to
19 address one housekeeping matter first, if I may.

20 CHAIRMAN FESMIRE: You may, sir.

21 MR. BROOKS: The reason for addressing this now
22 being that we have a witness who was instructed to be at
23 the hearing who is not present here but could be brought
24 here if necessary.

25 I would like to tender into evidence Exhibits

1 Numbers 1 and 2, which are copies of the notices that were
2 prepared and published in the *New Mexico Register* and in
3 the *Albuquerque Journal* and also that were sent to various
4 persons by e-mail.

5 If there is no objection to those notices being
6 admitted for whatever they state, I think that it would be
7 unnecessary for us to call a witness. If there's going to
8 be a foundational objection, we have a designated witness
9 we can call.

10 CHAIRMAN FESMIRE: Okay.

11 MR. CARR: We have no objection.

12 CHAIRMAN FESMIRE: No objection? Mr. Hiser?

13 MR. HISER: Even though it's a foundation issue
14 and I'm tempted, I won't, if it's all right.

15 CHAIRMAN FESMIRE: It looks like we're going to
16 talk about foundation a lot.

17 (Laughter)

18 CHAIRMAN FESMIRE: Ms. Foster?

19 MS. FOSTER: No objection at this time.

20 CHAIRMAN FESMIRE: Let's see, Ms. Belin?

21 MS. BELIN: No objection.

22 CHAIRMAN FESMIRE: Mr. Jantz?

23 MR. JANTZ: No objection.

24 CHAIRMAN FESMIRE: Okay. There being no
25 objection, we will go ahead and admit OCD Exhibits 1 and 2.

1 MR. BROOKS: Okay, with the Commission's
2 indulgence we will call Mr. Price back to the stand.

3 CHAIRMAN FESMIRE: Mr. Price, remembering that
4 you've been previously sworn; is that correct?

5 WITNESS PRICE: Yes, your Honor. I just wonder
6 if I could be de-sworn now --

7 (Laughter)

8 WITNESS PRICE: But yes.

9 CHAIRMAN FESMIRE: Mr. Brooks, which tab are we
10 on? I closed my book.

11 MR. BROOKS: I think we were talking about the
12 400 and 500 pits.

13 CHAIRMAN FESMIRE: Right, and that was in Tab --

14 MR. BROOKS: It may take me a minute to find
15 that. Yes, I believe it is in Tab 6, and I think it is
16 probably slide number 15.

17 And I have concluded my questioning of Mr. Price
18 about how many pits there are reported on slide 15, so...

19 WAYNE PRICE,
20 the witness herein, having been previously duly sworn upon
21 his oath, was examined and testified as follows:

22 DIRECT EXAMINATION (Resumed)

23 BY MR. BROOKS:

24 WITNESS PRICE: Okay, next slide.

25 This is a slide that was put together by one of

1 my staff engineers. It -- Over on the left-hand side here,
2 this is the price per barrel of oil. On the bottom is the
3 years. And this curve here is the number of pits that were
4 in New Mexico. And we only have three oints that we've
5 actually plotted.

6 But my point here is to show, back in -- I read
7 some of the testimony -- back in the early '70 and the '50s
8 and the '60s in which the price of oil was extremely low,
9 and there were a number of -- obviously, of unlined pits
10 that companies were using, and they made some very valid
11 points back then, is that the price of oil did not -- would
12 not support putting infrastructure in such as pipelines, et
13 cetera, et cetera.

14 And so I think it's kind of interesting to note,
15 as the price of oil has gone up, and then we meet a
16 deflection point right here and a deflection point right
17 here as the price has gone up. And this only goes to \$60 a
18 barrel. Of course, I guess we know it's now up around in
19 the \$90's, and I'm not staying that it would stay there by
20 any means.

21 I'm just trying to point out that as the price of
22 oil goes up, it makes having no -- or basically having
23 unlined pits -- they basically can afford not to have these
24 unlined pits. Now I'm talking about unlined pits here.

25 And so I think it's just a good graphical

1 representation that as the price goes up -- of course we
2 know the cost of business goes up too, but you can see from
3 here that the number of pits are coming down. And I think
4 the industry is making a good effort in that area.

5 But along these lines, around '75 and then the
6 '80s and the of course the '90s and the recent pit rule,
7 which is about right in here, those were also added effects
8 to having pits to be reduced.

9 And so that's all this slide shows. To me it's
10 just a good correlation: The more money we can get off the
11 oil and gas revenues, then we can afford some of the more
12 environmental protections that we have.

13 Next slide.

14 MR. HISER: Mr. Chairman, before Mr. Price goes
15 on, I was just wondering if you could have him clarify
16 whether this was total pits or unlined pits. You said both
17 during the course of your presentation.

18 WITNESS PRICE: This is unlined pits.

19 MR. HISER: Okay, so it's just the number of
20 unlined pits.

21 WITNESS PRICE: This is unlined pits.

22 MR. HISER: Thank you.

23 WITNESS PRICE: Right.

24 Next slide?

25 This was just the gas price versus pits, almost

1 the same thing.

2 Next slide.

3 Okay, modeling of small unlined pits. We've done
4 some modeling for small unlined pits. We selected the San
5 Juan Basin area. We used 5000 milligrams per liter of
6 chloride as a tracer. We used small quantity discharges,
7 less than a barrel a day.

8 We used typical input parameters. Mr. Ed Hansen
9 will talk about those input parameters in more detail.
10 However, in your packet there are modeling input parameters
11 and output sheets.

12 We varied the distance from the pits and we
13 varied the pit sizes. We selected a distance to
14 groundwater set at 50 feet, and then we looked at
15 cumulative effects.

16 Next slide.

17 Q. (By Mr. Brooks) Now Mr. Price, what were you
18 trying to achieve? What question were you trying to answer
19 with this modeling?

20 A. Okay, what we're trying to show here in the
21 modeling is that unlined pits, even though you put very,
22 very small quantities in, it can travel to a distance of 50
23 feet and contaminate groundwater.

24 Remember, earlier in my slide presentation I had
25 talked about the nonvulnerable area, a sensitive area that

1 was defined where groundwater was deeper than 50 feet. And
2 so what I'm trying to point out is that unlined pits, even
3 with very, very small quantities, will indeed contaminate
4 groundwater, and that's my point here.

5 Q. Now were you trying to determine how long it
6 would take for the pit contents to migrate so as to
7 contaminate groundwater? Was that the purpose of --

8 A. That wasn't my number one objective, but that's
9 -- I guess that's the result of -- the modeling will show
10 that.

11 Q. Okay. Now the models that you used, are these
12 modeling procedures that are standard in the environmental
13 engineering business?

14 A. Yes, they are.

15 Q. And have these models that you have used, have
16 they been peer-reviewed?

17 A. Yes, by EPA.

18 Q. Okay, you may continue.

19 A. Next slide.

20 Here's just an example of a pit with putting one
21 barrel per day in. 5000 milligrams per liter, that's a
22 pretty low concentration of salts. 50 feet to groundwater.

23 And you know, it's no surprise here. It shows
24 that the larger pit is going to contaminate more than the
25 smaller pit, and the time frame is fairly quickly.

1 Next slide.

2 Q. Now here you're talking about unlined pits?

3 A. These are all unlined pits.

4 Next slide. Next slide.

5 Okay, here I provided modeling of -- and we did
6 cumulative effects, meaning two pits adjacent to each
7 other. Of course, as you'll see here, the 30-by-30 pit
8 contaminated more, and...

9 Now the dotted line is the cumulative, more than
10 one pit, actually two pits. The solid line is one pit.

11 And I think what's really important to show here
12 is, look at the time frame here. Of course, this is no
13 surprise. The more waste you put into a stream, the more
14 waste you put into water, groundwater, then the quicker
15 you're going to exceed the standard.

16 And this line along the bottom here is the
17 groundwater standard minus 50 parts per million, which is
18 the typical background of most of the aquifers in New
19 Mexico, freshwater aquifers.

20 Q. Now --

21 A. And so my point here is that the cumulative
22 impact is a lot quicker. It looks like around 15 years or
23 so.

24 Q. Now as you're modeling, you assumed that the two
25 pits were adjacent to one another --

1 A. That's correct --

2 Q. -- you said?

3 A. -- they are.

4 Q. Now if the pits were some short distance apart,
5 like -- say they were 10 feet apart. Would there still be
6 cumulative effects?

7 A. There would still be cumulative effects?

8 Q. But it would be less than if they were adjacent?

9 A. They would be.

10 Q. But you didn't model that --

11 A. We did not model --

12 Q. -- scenario quantitatively?

13 A. We would have liked to model 50,000 pits, but we
14 didn't have the time to do that. Nor the manpower.

15 Q. Based on this concept of cumulative effects, I
16 know you can't say anything quantitatively because you
17 didn't do the modeling, but qualitatively would you say
18 that a large number -- the larger the number of pits --

19 MS. FOSTER: Objection.

20 Q. (By Mr. Brooks) -- in a small area --

21 CHAIRMAN FESMIRE: Hang on, there's an objection.
22 I don't know what it is yet.

23 MS. FOSTER: Well, it would seem that the
24 attorney is leading the witness again.

25 CHAIRMAN FESMIRE: Ms. Fos- --

1 MS. FOSTER: I would just ask that a question be
2 asked, as opposed to a statement.

3 MR. BROOKS: I would like to rephrase the
4 question, Mr. Chairman.

5 CHAIRMAN FESMIRE: Okay, we'll sustain the
6 objection. You'll rephrase the question, Mr. Brooks.

7 Q. (By Mr. Brooks) If you had -- Can you make a
8 statement as to whether or not a significant number of pits
9 in a small area would result in a higher probability of --
10 unlined pits, we're talking about -- would result in a
11 higher probability of contamination than just one pit in a
12 given area, whatever the area might be?

13 MS. FOSTER: Objection.

14 CHAIRMAN FESMIRE: Want to try again, Mr. Brooks?

15 (Laughter)

16 MR. BROOKS: Okay.

17 CHAIRMAN FESMIRE: I think you can make it real
18 simple. He probably knows what you're asking now.

19 MR. BROOKS: Okay.

20 (Laughter)

21 Q. (By Mr. Brooks) Is there a correspondence
22 between the number of pits in the vicinity of a particular
23 groundwater source and the amount of contamination that
24 will reach that groundwater source from those pits?

25 A. Yes.

1 Q. Thank you.

2 A. Next slide.

3 Here we modeled where the receptor, like a well,
4 would be 200 feet away from the particular well. Of course
5 you see the time frame is a lot longer now. It's around 50
6 years. But it still -- as you can see by these curves,
7 it's still contamination to groundwater.

8 Now you've got to understnad that this is a very,
9 very small quantity, one barrel per day with 80 percent
10 evaporation of that. And so these are very, very small
11 quantities going into unlined pits and traveling a distance
12 of 50 feet and contaminating the groundwater.

13 Next slide.

14 Modeling conclusions. Three major points here.

15 Very small quantities may cause groundwater
16 contamination over time.

17 50-foot separation does not protect groundwater
18 when a continual source is available. I think that's
19 really important right there, that we all understand. If
20 you cut the source off, you probably won't have
21 contamination. But if you continue to have a source of
22 water and an unlined pit, the probability is extremely high
23 you will have contamination.

24 And then of course cumulative effects compound
25 the problem.

1 Next slide.

2 Q. Now with regard to that water source, is it true
3 -- or, if I can state this in a nonleading manner to the
4 satisfaction of counsel, does contamination move to
5 groundwater faster if the pit is full of water?

6 MS. FOSTER: Objection.

7 CHAIRMAN FESMIRE: Overruled.

8 WITNESS PRICE: Yes.

9 Q. (By Mr. Brooks) And is that what you're
10 referring to when you say, When a source is available?

11 A. Yes.

12 Q. Thank you.

13 A. Next slide.

14 So how many unlined pits are remaining? Our best
15 estimate is 2000. That's unlined pits. Long-term impact
16 is unknown at this time.

17 Here is an example -- You've seen this slide
18 before, this is an unlined pit in the area between Hobbs
19 and Carlsbad. It's in the exempted, and --

20 Next slide.

21 -- we're standing at a ranch house, and this red
22 circle shows where this pit is located. It's about 150
23 yards across there.

24 Next slide.

25 Here's one of the three or four houses that is at

1 this ranch house. They do have fresh water in this area,
2 and they're in close proximity to this unlined pit.

3 Q. Now Mr. Price, as a matter of foundation, slides
4 25, 26 and 27, were those pictures taken by you or by a
5 member of your staff in your presence?

6 A. Go back to them. 25?

7 Q. 25 is the pit, 26 is the view --

8 A. These slides were taken by myself.

9 Q. And were you present on that occasion?

10 A. Yes.

11 Q. And is slide 26 a view from --

12 A. -- the ranch house.

13 Q. -- the house that is depicted in slide number 27?

14 A. Yes.

15 Q. Now is there a water well, an active water well,
16 located at that ranch house?

17 A. Yes.

18 Q. Thank you.

19 A. Next slide. Go to -- Keep going.

20 Okay, now we're going to have some groundwater
21 evidence presented by Mr. von Gonten, our senior
22 hydrologist.

23 And Ed Hansen, do you want to -- would you like
24 to drive for Glenn? Let Glenn come over here. I guess we
25 need another chair.

1 MR. BROOKS: Okay, pursuant to the manner of
2 presentation that I announced to the Commission at the
3 beginning of our presentation this morning, I will now call
4 Mr. von Gonten for the purpose of making his presentation
5 that is relevant to the matters that Mr. Price has
6 testified to, after which both witnesses will be submitted
7 for cross-examination.

8 CHAIRMAN FESMIRE: Mr. von Gonten, you understand
9 that you've been previously sworn, have you not?

10 WITNESS VON GONTEN: Yes, sir.

11 CHAIRMAN FESMIRE: Continue.

12 GLENN VON GONTEN,
13 the witness herein, having been previously duly sworn upon
14 his oath, was examined and testified as follows:

15 DIRECT EXAMINATION (Resumed)

16 BY MR. BROOKS:

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

19 A. Glenn von Gonten.

20 Q. And by whom are you employed?

21 A. The Oil Conservation Division.

22 Q. And what is your title?

23 A. Senior Hydrologist.

24 Q. Are you a geologist, Mr. von Gonten?

25 A. Yes, I have a bachelor's and a master's degree in

1 geology.

2 Q. Would you give a brief résumé of your work
3 experience?

4 A. Yes, sir. I started work with the Oil
5 Conservation Division about the last day or so of January,
6 2005, so I've been with the OCD in the Environmental Bureau
7 over two and a half years now.

8 Prior to that, from November, '99, to January,
9 2005, I was a -- employed with the Environmental Bureau
10 [sic]. I was a supervisor and dealt primarily with
11 Department of Defense hazardous waste sites, hazardous
12 waste regulated sites.

13 Prior to that, from '93 to when I joined the
14 Environment Department in '99, I was working at a similar
15 job with the Department of Environmental Quality for the
16 Commonwealth of Virginia, in Richmond, Virginia. I dealt
17 mostly with RCRA corrective action and permitting issues
18 with a broader spectrum of industries, industries including
19 manufacturing as well as the Department of Defense.

20 Prior to that, in 1977 through the next 14 years,
21 I worked in the oil and gas industry, a variety of
22 positions.

23 CHAIRMAN FESMIRE: Mr. von Gonten, would you
24 speak up, please?

25 WITNESS VON GONTEN: Yes, sir. From 1977 I

1 started work with a company called Exploration Logging. I
2 took a break to get my master's degree, and I went to work
3 for Conoco, and then I went to work for ARCO.

4 Q. (By Mr. Brooks) Mr. von Gonten, would you
5 summarize your experience in groundwater hydrology?

6 A. Well, I've been working mostly with groundwater
7 contamination for the past 14 years, as I mentioned, with
8 the Department of Environmental Quality in Virginia, the
9 Hazardous Waste Bureau in the Environment Department, and
10 here with the Oil Conservation Division. I have
11 postgraduate training in hydrogeology from the University
12 of Houston and Oklahoma State University.

13 MR. BROOKS: Mr. Chairman, we tender Mr. von
14 Gonten as an expert witness in geology and hydrology.

15 CHAIRMAN FESMIRE: Are there any objections?

16 MR. CARR: No objection.

17 MR. HISER: No objection.

18 CHAIRMAN FESMIRE: Let the record reflect no
19 objection. Mr. von Gonten will be so admitted.

20 FROM THE FLOOR: Could the witness speak a little
21 louder, please?

22 WITNESS VON GONTEN: I'll try.

23 CHAIRMAN FESMIRE: Okay.

24 Q. (By Mr. Brooks) Mr. von Gonten, I believe you're
25 going to be making your presentation, which has been

1 identified as OCD Exhibit 12?

2 A. Yes, sir.

3 Q. And we will proceed in the same way. I will not
4 interrupt you unless I have questions.

5 A. I will be talking first about the hydrogeology of
6 the San Juan Basin and focusing on the so-called vulnerable
7 areas and the nonvulnerable areas.

8 Next slide.

9 The San Juan Basin, of course, is located in the
10 northwest part of New Mexico and includes -- major part of
11 it is in San Juan County and Rio Arriba County. And the
12 State Engineer declared the San Juan Basin an underground
13 water basin.

14 Next slide, please.

15 Q. Now Mr. von Gonten, one question on that last
16 slide. Is this a depiction of the declared groundwater
17 basins in New Mexico that have been declared by the State
18 Engineer?

19 A. Yes, this published by the State Engineer's
20 Office. All of the basins have been declared in the State
21 of New Mexico.

22 Q. It looks like there's a declared basin
23 everywhere; is that correct?

24 A. That's correct.

25 CHAIRMAN FESMIRE: Mr. von Gonten, could you

1 speak up a little more?

2 WITNESS VON GONTEN: I'll try.

3 Q. (By Mr. Brooks) Continue.

4 A. Next slide, please.

5 This is a geologic map of the San Juan Basin.
6 I'll be talking here -- focusing on the tertiary aquifers.
7 The light brown -- I'm sorry, this is not working right.
8 Okay, the light brown formation is the San Jose formation,
9 which overlies the Nacimiento and Animas formations, shown
10 in darker brown. These are two uppermost tertiary
11 aquifers. I'll be using them to illustrate my points.

12 However, I should point out that there are older
13 Cretaceous and Jurassic aquifers in the San Juan Basin.
14 They're depicted in various colors of green to the west and
15 to the southwest.

16 Next slide, please.

17 My primary reference is this publication, USGS
18 1990, which is the hydrologic atlas entitled the
19 *Hydrogeology of the San José, Nacimiento and Animas*
20 *Formations in the San Juan Structural Basin, New Mexico,*
21 *Colorado, Arizona and Utah.*

22 As I mentioned, there were a number of --

23 Next slide, please.

24 As I mentioned, there were a number of other,
25 older aquifers, which are used as water supplies in the San

1 Juan Basin. They include the Ojo Alamo sandstone, the
2 Kirtland shale, the Fruitland formation, the Pictured Cliff
3 sandstone, the Cliff House sandstone, the Point Lookout
4 sandstone, the Gallup sandstone, the Dakota sandstone, the
5 Morrison formation, and the Entrada sandstones. These are
6 Jurassic and Cretaceous age. They are older than the
7 Tertiary aquifers that I'll be referring to next.

8 Q. Okay --

9 A. Next slide, please.

10 Q. -- Mr. von Gonten, the absence -- does the
11 absence of the San José, Nacimiento and Animas formations
12 in some portions of the Basin mean that there's not any
13 fresh groundwater in those areas?

14 A. No, it means that the fresh water is in the older
15 Cretaceous- and Jurassic-formation aquifers.

16 Q. Continue.

17 A. This slide depicts the uppermost San José
18 formation in pink, the underlying Nacimiento formation in
19 blue, and the Animas formation in purple. I would point
20 out that only a small fraction of the Animas formation
21 actually outcrops in northern New Mexico. It occurs
22 primarily in southern Colorado.

23 This figure also depicts the location at that
24 time of oil and gas wells and water wells.

25 Next slide, please.

1 This is a picture of the same formation, however
2 this well focuses on the water wells and springs, showing
3 the general distribution of water wells known to the USGS
4 at the time of the publication.

5 Next slide, please.

6 There are two major databases which detail the
7 locations and designated uses of water wells permitted by
8 the Office of State Engineer. They are from the USGS and
9 from the Office of the State Engineer.

10 These databases are available from the New Mexico
11 Resource Geographic Information System, and this is a GIS
12 clearing house of data for New Mexico.

13 Next slide.

14 Q. Is that what RGIS stands for?

15 A. Yes, sir.

16 Q. I think everyone -- I'm assuming everyone
17 probably knows what OSE and USGS stand for, so I won't ask
18 you that. Go ahead.

19 CHAIRMAN FESMIRE: Well, for the record let's go
20 ahead and put it on.

21 WITNESS VON GONTEN: Okay the USGS is the United
22 States Geological Survey, and the Office of State Engineer
23 is OSE.

24 Next slide, please.

25 These two figures side by side show the coverage

1 of each database, from the OSE on the left to the USGS on
2 the right. As with all databases, they are a work in
3 progress, and they do not exactly have the same coverage.

4 I would point out that in the left-hand figure
5 part of the San Juan County is showing a sparse
6 distribution of water wells, whereas there's a much greater
7 distribution depicted on the USGS database.

8 Also in Roosevelt County, to the north of Lea,
9 there's shown to be a gap or a lack of water wells, whereas
10 the other database shows a very high concentration.

11 The point here is that this is the best available
12 data. I combined these two databases for the next few
13 exhibits.

14 Next slide, please.

15 This map was generated using RGIS Explorer and
16 the data derived from both the US and Office of State
17 Engineer's database, and it depicts the locations of water
18 wells in the San Juan Basin. The water wells are more
19 visible, the closer that you zoom in.

20 I should point out that I also restricted the
21 extent of the database that I was using a subset of, so
22 that I would be able to work with the software faster.

23 Next slide, please.

24 Q. (By Mr. Brooks) I'm sorry, Mr. von Gonten, what
25 are you trying to show with slide number 10?

1 A. These are the locations of water wells as
2 documented in the two databases that I referred to.

3 Q. Does this show anything about the location of
4 these wells with reference to the topography?

5 A. It does. This is not a topographic map, it's a
6 shaded-relief base map. You can see the major drainages in
7 the north. This is the La Plata, the Animas and the San
8 Juan Rivers, and then you can see the other drainages which
9 feed into that drainage system.

10 Q. Now given the way the vulnerable area is defined,
11 does this show water wells that are not located in the --
12 or that are located outside the vulnerable area?

13 A. I will get to that in a moment --

14 Q. Okay.

15 A. -- but yes, there are water wells depicted on
16 this map that are located in the vulnerable area, and there
17 are water wells that are located in the so-called
18 nonvulnerable area.

19 Q. Okay, go ahead.

20 A. Next slide, please.

21 Because of the way that the vulnerable area is
22 defined in Rule 50, it's very difficult to get an exact
23 number from querying the two databases on how many water
24 wells are located in the nonvulnerable area or the
25 vulnerable area. The point is that water wells occur in

1 both the vulnerable area and nonvulnerable areas. And the
2 Office of the State Engineer was not involved in the
3 designation of the nonvulnerable area where pits are
4 permitted by Rule 50.

5 Q. Okay, Mr. von Gonten, your slide says, An unknown
6 but significant number of water wells are listed in the OSE
7 iWATERS database in the vulnerable area. Would it also be
8 fair to say that an unknown but significant number of water
9 wells are located outside the vulnerable area?

10 A. Yes, that would be fair to say, that they are
11 located in the so-called nonvulnerable area.

12 Q. Continue.

13 A. The vulnerable area is defined in subparagraph
14 (g), paragraph (2) of subsection C of 19.15.2.50 NMAC.

15 Next slide, please.

16 And that Rule 50 states that, Unlined pits shall
17 be allowed in the following areas, provided that the
18 operator has submitted and the Division has approved an
19 application for a permit as provided in Section 50 of
20 19.15.2 NMAC, and provided that the pit site is not located
21 in fresh water-bearing alluvium or in a wellhead protection
22 area.

23 Then the regulation goes on to actually define
24 what we refer to as the exempted area. But I'm focusing
25 now on the nonvulnerable area, so for completeness it --

1 Next slide.

2 -- continues, ending with the area that's being
3 defined, that -- This citation starts -- or ends the last
4 section here with the exempted area, which is Township 23
5 South, Range 30 East, NMPM, Sections 1 through 19. And the
6 next section has to do with the nonvulnerable, and it
7 states --

8 Q. Now Mr. von Gonten, what part of the state is the
9 exempted area located --

10 A. That's located in Eddy and Lea Counties.

11 Q. That's in southeast New Mexico?

12 A. It is located in the southeast.

13 Q. And in what part of the state is the vulnerable
14 area located?

15 A. The vulnerable area is primarily in San Juan and
16 Rio Arriba Counties.

17 Q. And is the nonvulnerable area -- how is that --
18 Well, you have the portion of the rule stated here?

19 A. That's the intent of this slide.

20 Q. Okay, go ahead and describe it.

21 A. So the nonvulnerable area is that area within San
22 Juan, Rio Arriba, Sandoval and McKinley counties that is
23 outside the valleys of the San Juan, Animas, Rio Grande and
24 La Plata Rivers, which are bounded by the topographic lines
25 on either side of the rivers that are 100 vertical feet

1 above the river channels, measured perpendicular to the
2 river channels, and is outside those areas that lie within
3 50 vertical feet, measured perpendicularly to the drainage
4 channel of all perennial and ephemeral creeks, canyons,
5 washes, arroyos and draws, and is --

6 Next slide.

7 -- outside the areas between the above-named
8 rivers and the Highland Park Ditch, Hillside Thomas Ditch,
9 Cunningham Ditch, Farmers Ditch, Halford Independent Ditch,
10 Citizens Ditch or Hammond Ditch, provided that no
11 protectable ground water is present or if present, will not
12 be adversely affected; or any area where the discharge into
13 the pit meets the New Mexico Water Quality Control
14 Commission ground water standards.

15 Q. Now the vulnerable area, then, is entirely in San
16 Juan, Rio Arriba -- the nonvulnerable, I'm sorry, is
17 entirely in San Juan, Rio Arriba, Sandoval and McKinley
18 Counties?

19 A. Yes. Actually, we're -- technically, I think,
20 Rule 50 talks about unlined pits. We refer to -- by
21 earlier rulemaking or earlier orders, to the nonvulnerable
22 area and the exempted area, but the actual language is as
23 shown here. That is what is meant by the nonvulnerable
24 area.

25 Q. Now it lists all these river valleys --

1 MS. FOSTER: Mr. Chairman, I believe that they
2 stated it, but I think I missed it, the specific section in
3 Rule 50 that this quote actually comes from. Could I just
4 have that?

5 WITNESS VON GONTEN: Yes, it's on page 12 --

6 MR. BROOKS: -- subparagraph (g) of paragraph (2)
7 of subsection C of 19.15.2.50 NMAC.

8 MS. FOSTER: Thank you.

9 Q. (By Mr. Brooks) Well, are these the upland areas
10 of the San Juan Basin?

11 A. In general, they are the areas that are out of
12 the river drainages.

13 Q. And this is the nonvulnerable area?

14 A. Those would be the nonvulnerable areas. The
15 vulnerable areas would be below that area, which is either
16 50 or 100 feet above the river channel.

17 Q. Continue.

18 A. Next slide. 15, please.

19 OCD drafted approximately 165 pits [sic] that
20 depict the vulnerable area.

21 CHAIRMAN FESMIRE: Pits or maps?

22 WITNESS VON GONTEN: Maps, 165 maps that depict
23 the vulnerable area and also the nonvulnerable areas.
24 These maps are on file in the Santa Fe office and are
25 available to industry for review. No member of industry

1 has requested to review these maps for the past two years
2 that I'm aware of.

3 How does the industry know which areas are
4 vulnerable as defined? And I think my point here is, as
5 defined is not as easily as the definition for the exempted
6 area, which is defined by township, section and range.
7 Actually, industry doesn't. They'll have to determine for
8 themselves, looking at topographic maps, whether a proposed
9 wellsite location is in a vulnerable area or a
10 nonvulnerable area.

11 Next slide, please.

12 This figure, which you have seen before, shows
13 the area that I'll be discussing, that I am discussing, the
14 vulnerable areas/nonvulnerable area. It's a very busy map.
15 Of course, there's a lot of primarily gas wells. This is
16 the -- I believe, the La Plata, the Animas, the San Juan
17 River, plus the drainages that feed into the San Juan River
18 system.

19 This map depicts the oil and gas wells, primarily
20 gas wells, located in the northwest. OCD Rules specify in
21 general approximately 160-acre spacing, but because there
22 can be several pools collocated -- that is, that have
23 stacked pay -- there can be more than four wells per square
24 mile.

25 It is possible or even likely that each producing

1 well that you see on this map is associated with more than
2 pit during its producing lifetime, one original drilling or
3 reserve pit, one production pit, and maybe several workover
4 pits.

5 OCD does not know how many pits are buried in the
6 northwest.

7 Next slide, please.

8 This table is based on information from the State
9 Engineer's Office. There's several things I want to point
10 out, is that, again, because this is the State Engineer's
11 Office which did not have complete coverage of the water
12 wells in the western part of San Juan County, presumably
13 because that's the Navajo nation and they don't share that
14 information with the State Engineer, but they do share it
15 to a greater degree with the USGS, you see that San Juan
16 County has less than 1900 wells.

17 The two numbers here are showing that -- the
18 first number is the number of wells reported in the
19 database that are located with a depth to water of 60 feet
20 or less. I think this is under-representation in San Juan
21 County, but I think the percentages are probably about the
22 same.

23 Approximately 90 percent of the wells in San Juan
24 County are located at a depth to water of 60 feet or less.
25 This is important because, assuming that you have perhaps a

1 10-foot-deep pit and you have a 50-foot separation, you can
2 see that the requirement in the proposed pit rule would say
3 that approximately 90 percent of the time you would be
4 unable to advance a well there using a lined pit, you would
5 have to go closed loop.

6 The percentages in Rio Arriba are 81 percent.

7 And in the southeast -- this is a little bit out
8 of order -- it's roughly 69 percent in Eddy County, and in
9 Lea County, which has the Ogallala aquifer, it is a much
10 higher percentage of 87.3 percent.

11 For reference, I also queried the database for
12 information that would be relevant in representing the
13 activity that's currently going on in the northeast in
14 Colfax County. Smaller number of wells. The percentage is
15 64.7 percent.

16 This documents that most water wells in the area
17 that we're concerned with are fairly shallow.

18 At this point, Mr. Brooks, I would like to hand
19 out the replacement pages for the Commission.

20 MR. BROOKS: Mr. Chairman, honorable
21 Commissioners, because the black-and-white copies of some
22 of these slides are essentially illegible, Mr. von Gonten
23 has prepared copies in color of certain of these pictorial
24 slides. We would like to offer them for the Commissioners
25 to substitute, if they wish to do so.

1 CHAIRMAN FESMIRE: Okay. Mr. Carr, do you have
2 any objection?

3 MR. CARR: No, I do not.

4 CHAIRMAN FESMIRE: Mr. Hiser, Ms. Foster?

5 MR. HISER: (Shakes head)

6 MS. FOSTER: (Shakes head)

7 CHAIRMAN FESMIRE: Anybody have an -- any of the
8 attorneys have an objection?

9 MS. BELIN: (Shakes head)

10 MR. BROOKS: You'll need one for the Commission
11 counsel also.

12 WITNESS VON GONTEN: We won't have enough to
13 provide --

14 MR. BROOKS: Okay, I guess -- Yeah, okay.
15 You may continue.

16 CHAIRMAN FESMIRE: Continue, please, sir.

17 WITNESS VON GONTEN: Next slide, please.

18 This is a figure that depicts the location of
19 selected water wells in the San Juan Basin. To enable the
20 software to work faster, I restricted the larger database
21 by latitude and longitude.

22 The Office of the State Engineer's database has
23 more than 148,000 water wells, and the USGS has more than
24 31,000 water wells. The blue dots are water wells --
25 actually, both the blue, the red and that one single green

1 dot are water wells that were captured by the combination
2 of the two databases. The larger red dots are water wells
3 that are located in the nonvulnerable area.

4 I zoomed into an area for querying the database,
5 to an area bounded by US 550 on the west and south, US 64
6 on the north, and State Highway 537 on the east, just for
7 reference. I made no attempt to determine -- the thousands
8 of water wells there, what percentage of them are in the
9 nonvulnerable area. But I will use this information to
10 illustrate the point.

11 Next slide, please.

12 There are water wells located in the
13 nonvulnerable areas. When you zoom in closer, the
14 topography layer of this mapping program becomes active,
15 and you can begin to see the river and drainage valleys
16 more clearly, which must be considered when determining
17 whether any particular drilling site is located in a
18 nonvulnerable area or a vulnerable area, and therefore
19 whether industry would be eligible to use an unlined pit
20 using the current pit rule 50.

21 In fact, to flag the red wells, I zoom in to the
22 maximum extent, and the GIS elevation layer can be queried
23 at that point to determine the elevation at the location of
24 the water well. The topography is clear enough to
25 determine whether the water well is located more than 100

1 feet vertically above the bottom of the stream channel.

2 Next slide.

3 The vulnerable area was defined partly based on
4 the presence of alluvium in major rivers and drainages.
5 The vulnerable area alluvial aquifers are indeed very
6 sensitive areas, without a doubt.

7 Next slide.

8 However, protectible groundwater occurs in both
9 alluvial and bedrock aquifers. Protectible groundwater
10 occurs in both the vulnerable areas and the so-called
11 nonvulnerable areas.

12 There is no hydrogeologic justification for the
13 assumption that groundwater will not or has not been
14 impacted from releases from unlined pits in the
15 nonvulnerable areas.

16 Next slide.

17 I'll be moving on to a discussion of the
18 hydrogeology of the exempted area of southeast New Mexico.

19 Next slide.

20 COMMISSIONER BAILEY: Wait a minute, wait a
21 minute. What's the green dot?

22 WITNESS VON GONTEN: Yes, of course. That was a
23 mistake on my part.

24 (Laughter)

25 Ed, can you back up several slides? Yes, the one

1 green dot there, I was going to do something with that and
2 ran out of time so I didn't. It should just be a red dot.

3 Okay, move forward to slide 23, please.

4 The area that we're going to be talking about
5 with the exempted area is located on the boundary between
6 the Capitan and -- the Carlsbad and Capitan Reef.

7 Q. (By Mr. Brooks) Now is this another copy of the
8 State Engineer's map that you --

9 A. Yes, this is the State Engineer map depicting the
10 location of the declared basins, and also depicting that
11 there are no undeclared basins left in New Mexico.

12 Q. And what basins is the exempted area located in?

13 A. That is located in the Carlsbad and Capitan
14 Basins.

15 Next slide, please.

16 This is a geology map of the exempted area. And
17 because of the regulations which I've cited earlier, define
18 the exempted area by using township, section and range, it
19 is relatively easy to pick the extent of the exempted
20 areas. And that's shown here in the red outlines.

21 I should also point out -- and I'll be referring
22 to it -- is, this is the boundary, the black line, darker
23 black line, is the boundary between Eddy County on the west
24 and Lea County on the right. For reference, there's the
25 City of Carlsbad and the Hobbs highway.

1 In the northeast part of this map, the orange
2 color is actually the Ogallala aquifer, the outlier to the
3 Ogallala aquifer to the south.

4 The yellow, various colors of yellow, are
5 Quaternary-age alluvium that have generally been reworked
6 out of the Pecos River Valley or off the Ogallala caprock.

7 The blue coloring depicts older Permian-age
8 formations which have been, in part, covered up by the
9 reworked Quaternary alluvium.

10 The exempted area is as much as 30 miles north to
11 south. It runs these five townships north and south, and
12 it's three townships east and west, 18 miles across.

13 And I should point out for reference, although I
14 did not include it on this figure, that this roughly
15 overlies the potash area, which is larger, but there's more
16 potash area as defined in Lea County. You can see that the
17 exempted area only includes a small section of one
18 township, the west half of one section of -- in Lea County.
19 And as I'm pointing out -- and I'll be referring to it on
20 other maps -- this jog in the offset of the county lines
21 will be an important reference point for future maps.

22 Next slide, please.

23 This is a topographic base map of the exempted
24 area, again approximately the same scale, and you'll see
25 this offset in the county line for reference. And what

1 we're talking about is, the exempted area is running here,
2 and it's 30 miles this way and 18 miles east to west.

3 Again, you can see perhaps better here the City
4 of Carlsbad and the highway going to Hobbs, and you can
5 also see these drainages here lined with salt lakes and
6 playas.

7 And by the way, this map was generated using
8 OCD's RBDMS database.

9 Next slide, please. This is the same map with
10 the oil and gas wells plotted on it. Note that the various
11 drainages again, running from that offset from the county
12 line. And you can also note that the potash area and the
13 exempt area have relatively few oil and gas wells because
14 of restricted drilling in that area.

15 Next slide.

16 Earlier when talking about the nonvulnerable area
17 and the vulnerable area, I was able to point out that there
18 was a significant number, but one number I was unable to
19 actually determine with accuracy, of water wells reported
20 by the State Engineer's Office database. However, because
21 in the southeast the exempted area is defined by township,
22 section and range, it was relatively easy to query the
23 database and determine that there was a total of 64 water
24 wells are listed in the Office of State Engineers waters
25 database in the exempted area as defined in subparagraph

1 (g), paragraph (2), subsection C, 19.15.2.50 NMAC.

2 There were a total of three domestic water wells,
3 five exploration, five industrial, two mining, 22 monitor
4 wells, 15 prospecting or development of natural resource
5 wells, 11 stock wells and one well whose use was not
6 specified.

7 I don't know, because the potash area is a more
8 complicated definition, how many water wells are located in
9 the potash area. I did not determine that.

10 Next slide, please.

11 This is a depiction, again combining both
12 databases, showing the location of those 64 water wells in
13 the exempted area. Again, here's the county line jog to
14 orient you.

15 Next I'd like to talk about the water quality of
16 the exempted area.

17 The next slide, please.

18 The data that I'll be presenting was obtained
19 from the New Mexico Water and Infrastructure Data System,
20 WAIDS.

21 The perception of many people is that the water
22 quality in the San Juan Basin is excellent, and the water
23 quality in the southeast is excellent in the Ogallala,
24 Artesia and Pecos River alluvial aquifers. However, there
25 seems to be a mistaken impression that the water quality

1 off of the Ogallala caprock and in the Pecos River is not
2 of protectible quality. That is incorrect, as the next few
3 slides will show.

4 Next slide, please.

5 This is just showing the database where I went to
6 this, and it shows that they generated, oh, perhaps 10 or
7 12 maps that are going to show the general water quality.
8 These chlorides depict this.

9 The numbers that you'll see on the next few
10 maps -- you'll see dots that are color-coded to relate to a
11 specific water quality. This is a little bit confusing
12 slide, and you should not consider that these things really
13 have anything -- these intervals that they mapped have
14 anything to do, necessarily, with these numbers over to the
15 right. They should just be considered two separate
16 columns. This does not correspond to the column on the
17 right.

18 Next slide, please.

19 This is the shallowmost -- this is going to go
20 from the most recent aquifer to older aquifers, and we'll
21 start off with the Quaternary alluvium aquifers. They're
22 depicted as being all over Eddy and Lea County, and Chaves
23 County as well. This base map, I'll spend a moment
24 explaining it to you.

25 You of course see that this is Eddy County on the

1 west and Lea County on the east, Texas down to the south
2 and east. You can see the location of the Capitan Reef
3 shown in this yellow-shaded pattern. You don't really see
4 with this one too many urban areas. Carlsbad is kind of
5 buried by the dots, the information, but you can see Hobbs
6 to the east. You can also see what they refer to as the
7 Central Basin Platform on the east bordering Texas.

8 So what we're looking at here is, this is the
9 Permian Basin, this is the Capitan Reef, and this is an
10 older -- what's referred to as the Abo shelf edge, and then
11 this is referred to as the northwest shelf.

12 Q. And it looks like maybe that jog in the county
13 line is hidden by the Capitan Reef --

14 A. It is --

15 Q. -- is that correct?

16 A. -- it is. For most of these slides you can see
17 the offset in the county boundaries, but that actual east-
18 west-running portion is buried underneath the symbol for
19 the Capitan Reef.

20 This shows -- now they're lumping together the
21 Ogallala -- or excuse me, the Quaternary alluvium found
22 along the drainage of the Pecos River, but there's also a
23 Quaternary alluvium which has worked off of the Ogallala.

24 You can see with the purple coloration here that
25 this is zero to 300 parts per million chlorides. This

1 means that in general that would be drinking water quality.
2 The water quality standard for drinking water for chlorides
3 is 250, and of course the standard for protection of
4 groundwater is 10,000 parts per million TDS, so you cannot
5 use these maps to determine right off whether the area
6 contains protectible groundwater or not as defined by the
7 State Engineer.

8 Next slide, please.

9 This is the Ogallala aquifer. Of course, it's
10 very high-quality water. It's located mostly in northern
11 Lea County, there's an outlier in southern Lea County, and
12 the data here is generally very -- the data -- the water
13 quality here is generally very, very good. And the next
14 blue color shows that the water quality may be still
15 protectible, probably still is protectible, but is not as
16 high quality as the purple.

17 Next slide, please.

18 This is a map of the Triassic aquifers from
19 Chaves County in the north to Eddy County in the south, and
20 Lea County in the east. Again, here's the location of the
21 exempted area, in this area where the county lines jog and
22 offset by one township. You can see a lot of purple here,
23 which means this is, generally speaking, pretty good water.
24 There is variable water quality as shown by some of the
25 other colored dots.

1 One more slide, please?

2 The late Permian or Ochoan interval includes the
3 Rustler and Salado formations. Again, in the area we're
4 looking for is now moving a little bit off to the west, but
5 you can see that there's some water quality here that looks
6 like it's protectible water quality. And again in this
7 interval, you have generally speaking some overall very
8 good water quality.

9 Next slide, please.

10 This slide of the Artesia group is included just
11 for completeness. This shows the underling Artesia group.
12 And according to the database there's only one well that's
13 particularly near the exempted area that produces from this
14 interval, shown by this one outstanding dot here.

15 Next slide.

16 Okay, to summarize, then, the exempted area
17 contains 64 permitted water wells, wells that were
18 permitted by the Office of the State Engineer, that are
19 being used for beneficial use and that may be impacted by
20 the release of oilfield waste from unlined pits. There is
21 no hydrogeologic justification for the assumption that
22 groundwater will not or has not been impacted from releases
23 from unlined pits in the exempted areas.

24 Next slide, please.

25 Finally, this is a list of pending and active

1 groundwater contamination cases where the operator has
2 submitted to the OCD verbal and written notification via
3 phone call and Form C-141 that it has impacted groundwater
4 from a release from a drilling pit. The more drilling pit
5 closures that OCD inspects, the more drilling pit cases --
6 contamination cases we are finding.

7 OCD district inspectors Mike Bratcher and Brandon
8 Powell will be offering testimony on their experiences with
9 drilling pits.

10 That concludes Exhibit 12.

11 MR. BROOKS: Okay, Mr. Chairman, Mr. Price wants
12 to offer one further slide here, and then we will pass
13 these witnesses.

14 CHAIRMAN FESMIRE: Okay.

15 WITNESS PRICE: Your Honor, may I approach the
16 video machine?

17 CHAIRMAN FESMIRE: Why don't we go ahead and take
18 a 10-minute break while Mr. Price finds that last slide he
19 wants to use and come back at 20 till 3:00 by that clock?

20 (Thereupon, a recess was taken at 2:30 p.m.)

21 (The following proceedings had at 2:45 p.m.)

22 CHAIRMAN FESMIRE: Okay, let's go back on the
23 record. Let the record reflect that it is November 5th at
24 2:45 p.m. We're reconvening Case Number 14,105, before the
25 New Mexico Oil Conservation Commission. Again, let the

1 record reflect that all three Commissioners are still
2 present, there is a quorum.

3 And we will proceed now with the testimony of Mr.
4 Wayne Price. You had one more exhibit, I believe you said?

5 WAYNE PRICE,
6 the witness herein, having been previously duly sworn upon
7 his oath, was examined and testified as follows:

8 DIRECT EXAMINATION (Resumed)

9 BY MR. BROOKS:

10 Q. Proceed.

11 A. Okay, this is the last slide in the evolution of
12 unlined pits, and you've seen all of our slides, you've
13 seen the evidence that there is groundwater in both the
14 exempted area and the nonvulnerable area, and we think it's
15 time that we finally closed the book on unlined pits in New
16 Mexico, with over 50 years of documented vadose zone and
17 groundwater contamination cases.

18 There's concerns from environmental and wildlife
19 groups, general public and landowners.

20 And it was a task force consensus item, and so --
21 during the task force I think it was 100-percent unanimous
22 and was a task force consensus item in which we should not
23 have unlined pits in New Mexico, permanent pits.

24 And that's all that we have for that particular
25 slide.

1 Q. Mr. Price, were OCD Exhibits 4, 5 and 6 prepared
2 by you or assembled by you from published sources?

3 A. Yes.

4 Q. Mr. von Gonten, were Exhibits 11 and 12 prepared
5 by you or assembled by you from published sources?

6 A. (By Mr. von Gonten) Yes, they were.

7 MR. BROOKS: Mr. Chairman, honorable
8 Commissioners, we will tender in evidence Exhibits 4, 5, 6,
9 11 and 12.

10 CHAIRMAN FESMIRE: What about 3?

11 MR. BROOKS: Exhibit 3 is merely a copy of the
12 Rule, and it is before the Commission by virtue of being
13 attached to the Application, so we included it in the
14 binder for illustrative purposes rather than as an
15 evidentiary --

16 WITNESS PRICE: 13A.

17 MR. BROOKS: I'm sorry?

18 WITNESS VON GONTEN: The slide show was 13A.

19 MR. BROOKS: Well, I will defer putting that into
20 evidence until we do the other slide shows. So at this
21 time I'll offer Exhibits, 4, 5, 6, 11 and 12.

22 CHAIRMAN FESMIRE: Is there any objection from
23 any of the parties?

24 MR. HISER: We have no objection if we can have a
25 copy of Exhibit 12, which we don't have.

1 CHAIRMAN FESMIRE: Mr. Brooks, you'll provide
2 counsel with a copy of Exhibit 12?

3 MR. BROOKS: Was it not included in the --

4 MR. HISER: At least neither Mr. Carr nor I have
5 it, so...

6 MR. BROOKS: And that was your presentation?
7 We'll be happy -- We have extra copies here of the exhibits
8 pursuant to the rule that says we must have five extra
9 copies in the room, so I believe --

10 WITNESS VON GONTEN: How many copies do you need?
11 Here's one.

12 MR. BROOKS: Okay, that's Exhibit 12 only?

13 MR. HISER: Yes.

14 MR. BROOKS: Okay. We apologize for that. I
15 thought all the exhibits were on the disc that we sent to
16 Mr. Carr.

17 MR. HISER: Thanks.

18 CHAIRMAN FESMIRE: Okay, seeing that there is no
19 objection, OCD Exhibits 4, 5 and 6, 11 and 12 will be
20 admitted into evidence.

21 Mr. Brooks, do you have anything further with
22 these witnesses?

23 MR. BROOKS: We'll pass these witnesses for this
24 purpose. We'll be recalling Mr. -- well, we'll be
25 recalling both of them for additional testimony, but we'll

1 pass them for this purpose.

2 CHAIRMAN FESMIRE: Mr. Carr?

3 MR. CARR: May it please the Commission.

4 CROSS-EXAMINATION (of witnesses Price and von Gonten)

5 BY MR. CARR:

6 Q. Mr. Price, are you the person who is responsible
7 for the drafting of the proposed rule that we're
8 considering here today?

9 A. (By witness Price) I'm sorry, Mr. Carr, repeat
10 the question.

11 Q. Are you the person who was responsible for the
12 drafting of the proposed rule that we're considering here
13 today?

14 A. (By witness Price) Well, I was very instrumental
15 in being part of a team member that did it.

16 Q. And who was on that team?

17 A. (By witness Price) It was myself, Brad Jones on
18 my staff, Glenn von Gonten, Carl Chavez, Ed Hansen, and
19 Leonard Lowe.

20 Q. Is that all of your staff?

21 A. (By witness Price) Yes.

22 Q. Did you also use field representatives or people
23 from the District offices to do this?

24 A. (By witness Price) Yes.

25 Q. How long have you actually been working on this

1 draft?

2 A. (By witness Price) Approximately two months.

3 Q. And how much of your time has that entailed?

4 Most of the last two months?

5 A. (By witness Price) A hundred percent.

6 Q. Have you reviewed the exhibits and the summaries
7 provided on behalf of the industry committee?

8 A. (By witness Price) Yes.

9 Q. You understand that the industry committee does
10 not have concern with the rules you're proposing for
11 permanent pits?

12 A. (By witness Price) I was hoping you'd say that.
13 (Laughter)

14 Q. Our concerns -- our concerns are focused on the
15 provisions as they relate to temporary drilling pits; do
16 you understand that?

17 A. (By witness Price) I do understand that.

18 Q. At the beginning of today's hearing you showed
19 over a hundred photographs of pits in New Mexico.

20 A. (By witness Price) Yes.

21 Q. Do which of those are permanent pits and which
22 are temporary pits?

23 A. (By witness Price) Do I know where -- if we went
24 through each individual one and if you were to be asking
25 me, Is that a permanent pit or is that a temporary pit? I

1 could make a good, educated guess.

2 Q. Could you make just a guess, and only that? Were
3 most of those permanent pits?

4 A. (By witness Price) No.

5 Q. Those were temporary pits?

6 A. (By witness Price) That's my opinion. And you
7 know, we're not talking -- I don't know what percentage
8 you're looking for. I really don't know what percentage.
9 But I would say that a lot of those were temporary --

10 Q. Temporary drilling pits?

11 A. (By witness Price) Yes.

12 Q. And when we look at those temporary drilling
13 pits, I think you testified these were recent photographs,
14 in the last couple of years?

15 A. (By witness Price) I'll refer to Mr. von Gonten
16 on that one.

17 Q. Is that right, Glenn?

18 A. (By witness von Gonten) Yes, sir, they were
19 dated -- They were part of the administrative record of
20 OCD. They were either date-stamped on the slide itself as
21 being more recent than January 1, 2006, or was -- the file
22 header gave that date.

23 I should point out that those slides were
24 compiled between -- Well, I actually did the exercise in
25 February and March of this year, so at that time they

1 represented 13 or 14 months' worth of photos from the OCD
2 inspectors.

3 Q. Do any of those photographs show situations that
4 would be authorized or permitted by current OCD rule?

5 A. (By witness von Gonten) I think that the answer
6 is yes.

7 A. (By witness Price) Yes.

8 A. (By witness von Gonten) Not all of those
9 photographs show a core problem that would be prohibited
10 and not meet the general performance standards.

11 Q. Did most of those show situations that violated
12 current rule?

13 A. (By witness von Gonten) Yes.

14 Q. If you were enforcing those rules, and if they
15 were followed, most of those situations would not occur;
16 isn't that fair to say?

17 A. (By witness von Gonten) I'm not sure that I
18 agree with that. I think that the language in Rule 50 is
19 ambiguous enough, especially where the area -- Well, that's
20 not true.

21 I think that the language here with the general
22 performance standards allows it always to be argumentative
23 whether that was allowed or not allowed.

24 Q. You told us, I believe, that you had 200 of them
25 sitting on your floor at this time; was that --

1 A. (By witness Price) That was an estimate. Could
2 be more.

3 Q. Could be more, could be less.

4 A. (By witness von Gonten) You're talking about
5 contamination cases?

6 Q. Yes.

7 A. (By witness von Gonten) I don't know how many
8 there are, but there's a sizeable number.

9 Q. And those are situations that are --
10 contamination situations under current rule that you're not
11 able to get to now and enforce your current rules?

12 A. (By witness Price) That is correct.

13 Q. Isn't it fair to say that in addition to
14 proposing a new rule change, that what you need to do is be
15 able to enforce the rules you've got?

16 A. (By witness Price) Are you -- Are you offering
17 more help?

18 (Laughter)

19 Q. I'm asking you -- Well, we'll talk about that in
20 a minute, but --

21 A. (By witness Price) I'm sure we will.

22 Q. -- but isn't it true that part of the problem is
23 enforcement?

24 A. (By witness Price) Yes, sir, it is.

25 Q. Now you showed a very bad picture of a -- I think

1 you called it a 2005 slide. It was separate from the slide
2 show at the beginning, and Mr. Price, you said this is an
3 example of a pit that had cost the State of New Mexico a
4 huge amount of money to clean up. Do you recall that?

5 A. (By witness Price) I do.

6 Q. That's clearly -- that pit was clearly in
7 violation of existing rules, was it not?

8 A. (By witness Price) Yes.

9 Q. To clean that up, were you able to get the
10 operator to pay for it?

11 A. (By witness Price) No.

12 Q. Why not?

13 A. (By witness Price) We didn't have records to
14 identify which operator had put the waste in there.

15 Q. And if you'd had the new rules in place, you
16 still -- it wouldn't have changed, that you'd still have a
17 pit, that is an old pit that falls to the state to clean
18 up?

19 A. (By witness Price) Mr. Carr, if you're saying
20 that under -- if we had a new rule, from the day the new
21 rule is -- whatever, forward, yes, we would know. But for
22 past activities, you're correct.

23 Q. If we look at the list of, say, 10 operators or
24 whatever one of the later exhibits was that listed current
25 pending problems with drilling pits --

1 A. (By witness Price) Yes.

2 Q. -- it listed, it looked to me like a number of
3 members of the industry committee who had reported those
4 pits to you on C-141s.

5 A. (By witness Price) That was -- are you talking
6 about the 1997 pit --

7 Q. There was an exhibit at the end that listed a
8 number of problems now that you said were related to
9 temporary drilling pits, and it was one of the later
10 exhibits.

11 A. (By witness Price) Oh, the drilling pit
12 groundwater contamination cases?

13 Q. Yes.

14 A. (By witness Price) That's what Mr. von Gonten
15 had shown, that was his slide. But I'll try to -- be more
16 than happy to answer questions, or he can.

17 Q. Well, the only question is, those were reported
18 to you on the C-141?

19 A. (By witness von Gonten) They were referred to --
20 they were either reported verbally to either Mr. Price or
21 to myself, and then we -- at that time we always remind
22 them of their obligation to submit a written C-141 in a
23 timely fashion.

24 MR. BROOKS: For the record here, are we talking
25 about page 37 of Exhibit 12?

1 WITNESS PRICE: Yes.

2 WITNESS VON GONTEN: Yes.

3 MR. CARR: Yes, we are.

4 MR. BROOKS: Thank you.

5 Q. (By Mr. Carr) My question is that your system
6 works when operators report these problems with drilling
7 pits; isn't that correct?

8 A. (By witness Price) I'm sorry, say that again?

9 Q. Your system works when an operator will report
10 these problems to you on the C-144 or verbally follow with
11 a C-14- --

12 A. (By witness Price) When you say the system
13 works, I don't understand what you mean.

14 Q. You know that these are pits that you need to
15 address?

16 A. (By witness Price) Yes.

17 Q. Because they've been reported to you?

18 A. (By witness Price) Yes.

19 Q. And when we look at your Exhibit Number 5 and see
20 that pit, that's not reported to you at all, is it? You
21 just find those?

22 A. (By witness Price) That's correct.

23 Q. And no matter what you do to the rule, the good
24 operators are going to continue to report and the bad
25 operators are going to be nonlocatable; isn't that,

1 generally speaking, true?

2 A. (By witness Price) In today's time with all the
3 eyes and ears and the landowners and their awareness, most
4 cases are -- generally come to our attention.

5 Q. Now another thing that we as the industry
6 committee are not advocating, and I hope you understand, is
7 that we are not advocating unlined pits. You knew that,
8 did you not?

9 A. (By witness Price) Once again, I'm really glad
10 to hear you say that.

11 Q. But there's nothing in the material file that
12 would suggest we were advocating unlined pits in New
13 Mexico?

14 A. (By witness Price) I would have to -- the
15 information that I read, that you sent in, you represent
16 NMOGA and Mr. Hiser and Mrs. Foster, I believe that is
17 correct. I think, though, there might have been a couple
18 letters that came in. I don't know if --

19 Q. Right.

20 A. (By witness Price) -- if you were representing
21 them or not, that may not agree with what you're asking.

22 Q. I filed, with Mr. Hiser, statements for the
23 industry committee. And to be sure there's no
24 misunderstanding, we are not advocating an unlined pit
25 anywhere in New Mexico.

1 A. (By witness Price) Thank you.

2 Q. Now under the system that you're proposing, as I
3 listen to what you were describing, basically you're
4 expecting operators to use a closed-loop system and dig and
5 haul if they're within 100 miles of an OCD-approved
6 disposal facility; is that fair?

7 A. (By witness Price) I think it's fair on the 100
8 miles for the dig-and-haul. And the closed loop system
9 would be a matter of the depth to groundwater. So there's
10 two different issues there.

11 Q. When we -- If we are under this system, there are
12 provisions for operators to get exceptions, are there not,
13 to these requirements, if they're outside the hundred miles
14 on the dig-and-haul?

15 A. (By witness Price) If they're --

16 Q. My question --

17 A. (By witness Price) -- outside the 100-mile --

18 Q. There are provisions -- I'm sorry, there are
19 provisions in the rule to give exceptions to the general
20 rule; isn't that fair?

21 A. (By witness Price) Yes, that's correct.

22 Q. And isn't the standard with these exceptions that
23 you have to show to you that -- the Division, that you will
24 have -- I believe the term is -- it's not comparable, but
25 it's better or equivalent protection to the dig-and-haul?

1 A. (By witness Price) Correct.

2 Q. In your opinion, is there really anything that
3 would be the equivalent or better than digging and hauling?

4 A. (By witness Price) I would have to answer yes.

5 Q. What would that be?

6 A. (By witness Price) Well, that would be a
7 situation where groundwater would be maybe nonexistent or
8 very deep, it could be a new type of stabilization program,
9 it could be a verification [sic], it could be some sort of
10 new treatment program. So I didn't want to shut the door
11 on any sort of new, viable alternative that may come up in
12 the future that we don't know about.

13 Q. When you say equivalent protection in the rule,
14 do you mean something more than a showing that it is
15 protective of groundwater, human health and the
16 environment?

17 A. (By witness Price) If it's equivalent to that,
18 we would accept it. If it's better, we certainly would
19 accept it.

20 Q. But is there something less than dig-and-haul
21 that could be protective of groundwater, human health and
22 the environment?

23 A. (By witness Price) Yes.

24 Q. Now Mr. Price, if we're digging and hauling,
25 we're taking it to an approved landfill; isn't that right?

1 A. (By witness Price) Yes.

2 Q. And there was an exhibit that was presented, and
3 I think it was Tab 6, but it's page 19, it showed two
4 curves. And if I understood the testimony, this was used
5 to show that a larger pit would, in fact, contaminate more
6 than a smaller pit.

7 A. (By witness Price) That's the way the model
8 results came out, that's correct.

9 Q. Now my question is -- And then you followed this
10 with some exhibits on cumulative effect. In other words,
11 if you have a number of small pits close together you would
12 have a greater effect than if they're farther apart; is
13 that what you're trying to show?

14 A. (By witness Price) What I'm trying to show
15 there, if -- What I was trying to show, Mr. Carr, is that
16 more than one pit represents a cumulative impact. If you
17 have thousands of pits, then of course you would have more
18 contamination.

19 Q. And if you have larger pits, if I look at this
20 exhibit, you'd have more contamination?

21 A. (By witness Price) That is correct.

22 Q. Now when we take our wastes and take them to a
23 landfill, aren't we just moving them to what is, in fact, a
24 larger pit?

25 A. (By witness Price) You are taking them to a

1 larger pit.

2 Q. And are the landfills lined in New Mexico?

3 A. (By witness Price) I'm sorry?

4 Q. Are landfills that approved by the Division lined
5 in New Mexico?

6 A. (By witness Price) We have two that are lined
7 and two unlined.

8 Q. And even if they're lined, those liners sometime
9 will fail; isn't that right?

10 A. (By witness Price) That's correct.

11 Q. And so aren't we really -- in your opinion, would
12 those landfills be contaminating the vadose zone as huge,
13 unlined pits?

14 A. (By witness Price) No.

15 Q. And they're not?

16 A. (By witness Price) No, no, I said -- I said they
17 won't.

18 Q. Why not?

19 A. (By witness Price) Because the new unlined --
20 I'm sorry, the new lined pits under part 36 has double wall
21 -- or double lining with leak detection and leachate
22 recovery.

23 Q. But when we're looking at an unlined landfill,
24 are they not potentially contaminating the vadose zone?

25 A. (By witness Price) That's correct.

1 Q. That's correct, what? They are, or they are not?

2 A. (By witness Price) They are.

3 Q. Okay. And so aren't what you're really doing by
4 making everyone dig and haul is getting rid of a number of
5 smaller pits and just transferring the risk to a large
6 landfill?

7 A. (By witness Price) May I answer more than a yes?

8 Q. You may answer any way you want, because if I
9 object the Chairman will tell you you can answer.

10 (Laughter)

11 A. (By witness Price) The answer to your question
12 is yes, but as with all centralized landfills -- and I had
13 pointed this out earlier -- we know where the waste is at.
14 Generally these landfills are situated in a geographic
15 location where there's very little if any groundwater, and
16 they're usually remote. And so I think it's a net plus for
17 the environment, rather than having 100,000, rather than
18 one.

19 Q. Are those -- You just gave some general
20 conditions that, as I understood, apply to these landfills
21 that were remote, not close to groundwater. Are those
22 standards that the Division applies in approving new
23 applications for landfills?

24 A. (By witness Price) Yes.

25 Q. They have to be remote, they have to be far from

1 groundwater?

2 A. (By witness Price) Yes.

3 Q. And those are then sort of -- because of that,
4 they don't represent the potential to contaminate that --
5 is that your testimony? -- that number of smaller pits
6 might represent?

7 A. (By witness Price) Yes.

8 Q. If I understand your proposal, you are adverse to
9 unlined pits now, anywhere in New Mexico. Isn't that what
10 this proposed rule would do?

11 A. (By witness Price) Yes, for unlined pits.

12 Q. And we're not going to have any areas that are
13 exceptions?

14 A. (By witness Price) For permanent unlined pits,
15 that's correct.

16 Q. Not in the potash area, not anywhere?

17 A. (By witness Price) That's correct.

18 Q. And so the unlined pits for which there are
19 exceptions in the state are the landfills?

20 A. (By witness Price) Two of them that were --

21 Q. Okay.

22 A. (By witness Price) -- permitted pursuant -- a
23 number of years ago by order.

24 Q. And those would be the only two facilities or
25 places that we can dispose that are unlined.

1 A. (By witness Price) That are unlined?

2 Q. Yes.

3 A. (By witness Price) Yes.

4 Q. When you look at this new rule, if it is adopted,
5 do you anticipate that the rule would increase the workload
6 in the Santa Fe office?

7 A. (By witness Price) Yes.

8 Q. And if you're 200, perhaps more, behind now, do
9 you have the ability to handle these applications?

10 A. (By witness Price) The applications for --

11 Q. -- for whatever the -- I mean, the workload that
12 you see coming in, applications for exceptions,
13 notification of problems. Do you have the work force to
14 handle this?

15 A. (By witness Price) Well, if we quit making
16 rules, I will.

17 (Laughter)

18 A. (By witness Price) I'm not being facetious
19 there, I --

20 Q. But you do have -- you currently do have staff to
21 administer it?

22 A. (By witness Price) Yes.

23 Q. You wouldn't need to add additional people?

24 A. (By witness Price) We would have to add
25 additional people.

1 Q. And how would you do that?

2 A. (By witness Price) Well, currently I think our
3 budget is going to allow us to have two additional people.

4 Q. And that's a budget function?

5 A. (By witness Price) Yes.

6 Q. Will two additional people be enough to handle
7 it?

8 A. (By witness Price) Yes.

9 Q. The proposed rule provides that -- and correct me
10 if I'm wrong -- that if an operator has complied with all
11 the OCD rules and regulations, and if you are doing
12 something that is a reasonable oil and gas related
13 activity, that before we could dispose on site, we'd still
14 have to have the approval of the landowner; is that
15 correct?

16 A. (By witness Price) If you dispose --

17 Q. -- on site.

18 A. (By witness Price) -- any waste on site, you
19 would have to have the approval of the landowner, that is
20 correct.

21 Q. So the landowner now has a veto over whether or
22 not an operator can dispose on his property, if this rule
23 is adopted?

24 A. (By witness Price) Yes.

25 Q. Are you assuming that the landowner would say no

1 because of an environmental reason?

2 A. (By witness Price) We don't know what percentage
3 of the landowners will accept waste to be put on their
4 property.

5 Q. And would this apply --

6 A. (By witness Price) We anticipate, though, that
7 some will.

8 Q. Will permit it?

9 A. (By witness Price) Yes.

10 Q. Will -- and you wouldn't -- and it's not your
11 concern what conditions they impose or what they ask for in
12 return for that authority?

13 A. (By witness Price) That would be between the
14 landowner and the company, if you're talking about some
15 sort of monetary contract between them.

16 However, I do want to point out that if any waste
17 is buried -- if any waste is buried, then we're going to
18 make sure that that buried waste is going to meet all the
19 closure standards to protect groundwater, public health and
20 the environment.

21 Q. And even if you're satisfied it does all of that,
22 the landowner can say no?

23 A. (By witness Price) Yes.

24 Q. And does this include a landowner, do you know,
25 who doesn't even own the mineral rights?

1 A. (By witness Price) Yes.

2 Q. Would this include a landowner who had leased the
3 mineral rights to someone under a lease that gave them a
4 right to make reasonable use of the surface?

5 A. (By witness Price) Is he the landowner?

6 Q. Uh-huh.

7 A. (By witness Price) Yes.

8 Q. When you do this, did you discuss, you know, what
9 authority the OCD has to pass this function to the
10 landowner?

11 A. (By witness Price) We did discuss that in-house
12 with our attorneys.

13 Q. And you're satisfied that that's within the
14 purview --

15 A. (By witness Price) Yes.

16 Q. -- Mr. Brooks?

17 MR. BROOKS: I'll object that he's -- this is
18 attorney-client privilege as to anything he understands
19 based on the advice of counsel.

20 CHAIRMAN FESMIRE: Mr. Carr, I'll sustain that
21 one.

22 Q. (By Mr. Carr) You did discuss that? You said
23 that?

24 A. (By witness Price) Yes.

25 Q. If we no longer have any exempted areas, Mr. von

1 Gonten, this would mean under the rule, if adopted, that
2 these rules governing pits would apply if we were drilling
3 a well on the bank of a potash tailing pond; isn't that
4 right?

5 A. (By witness von Gonten) Yes.

6 Q. Does the Oil Conservation Division have
7 environmental regulatory authority over potash companies?

8 A. (By witness von Gonten) I'm not sure about the
9 regulatory authority over potash. I do know that it is
10 part of the Oil and Gas Act, but it's not something I am
11 personally familiar with.

12 Q. In your experience with the agency, have you ever
13 looked into what's happening in the potash tailing pond?

14 A. (By witness von Gonten) No, sir, I have not.

15 Q. I think you testified that companies hadn't asked
16 you about where the vulnerable areas were?

17 A. (By witness von Gonten) That's correct.

18 Q. And you assumed that because of that, that we
19 didn't know where they were?

20 A. (By witness von Gonten) I think I made the
21 observation that they would have to make that determination
22 by looking at their own topographic maps, rather --

23 Q. Are you aware that certain --

24 A. (By witness von Gonten) -- than the ones the OCD
25 had prepared.

1 Q. Are you aware that certain oil and gas companies
2 worked with the Aztec office of the OCD in mapping these
3 vulnerable areas?

4 A. (By witness von Gonten) I was under the
5 impression that the 165 maps were constructed by OCD's
6 Santa Fe office, not the Aztec office.

7 Q. Do you understand that certain companies have
8 these in their computer systems and constantly monitor
9 them?

10 A. (By witness von Gonten) It would be new to me.

11 MR. CARR: That's all I have. Thank you, Mr.
12 Chairman.

13 CHAIRMAN FESMIRE: Mr. Hiser?

14 MR. HISER: Thank you, Mr. Chairman. I will
15 endeavor not to cross too much ground that Mr. Carr has
16 already covered.

17 CROSS-EXAMINATION (of witnesses Price and von Gonten)

18 BY MR. HISER:

19 Q. Mr. Price, you gave a simple model where you
20 presented two pits, one 10 by 10 and the one 30 by 30.
21 What model did you actually use to do that? You said that
22 it was an EPA model, but you didn't specify which one?

23 A. (By witness Price) Well, actually the modeling
24 was -- the modeling was done by Ed Hansen of my staff, and
25 he would probably be more in line to answer that question

1 than I would be. He is coming up in front of you. I don't
2 know if we'll make it today or not, but...

3 Q. Okay, so that's a question that Ed would be able
4 to answer?

5 A. (By witness Price) Yes.

6 Q. And the models that you presented assumed in all
7 cases an unlined pit, correct, with no liner?

8 A. (By witness Price) Yes, of the ones that I
9 presented.

10 Q. The ones that you did?

11 A. (By witness Price) Yes.

12 Q. Going now to your presentation 5, which was the
13 overview of the proposed pit rule, just so you know -- this
14 one --

15 A. (By witness Price) Okay.

16 Q. -- where we're going to start, I have just a
17 couple of minor questions for you on this, mostly in the
18 nature of clarification.

19 One of those is a discussion which I'm sure is
20 near and dear to your heart, and that's on page 9 of your
21 slide, which is the siting requirements details --

22 A. (By witness Price) Okay.

23 Q. -- and on here you have a 300 feet from a river
24 or stream, but only 200 feet from a watercourse, playa
25 lake, et cetera. What's the rationale for using a smaller

1 distance to a dry streambed than you are using for one
2 that's a perennial streambed?

3 A. (By witness Price) This was a topic -- are you
4 talking about the 300 feet from a river or stream?

5 Q. I'm talking about why the distinction between the
6 dry watercourses that are 200 foot, and then 300 foot.

7 MR. BROOKS: Mr. Chairman, let the record reflect
8 that the reference is to slide 9 of OCD Exhibit Number 5.

9 MR. HISER: I'm sorry, is it 5? You're correct,
10 it is 5.

11 Q. (By Mr. Hiser) So you chose a smaller distance
12 because those are dry watercourses; is that the basic idea?

13 A. (By witness Price) The 300 feet was a task force
14 consensus number --

15 Q. Okay.

16 A. (By witness Price) -- that industry, landowners,
17 OCD, all the parties of the task force agreed about.

18 The 200 feet was a nonconsensus item. It ranged
19 from 30 feet -- I'm thinking something more than 200. And
20 OCD had to -- as we've pointed out in the task force, if
21 the task force couldn't come up with the number, then the
22 burden was on the agency. It seems like there was more of
23 a consensus for 200 feet than there was for the 30 feet,
24 and so we selected the 200 feet. And the reason --

25 Q. And --

1 A. (By witness Price) Can I go ahead and explain
2 the reason for that?

3 Q. Yes.

4 A. (By witness Price) -- is, the 30 feet, most of
5 the industry committee members wanted 30 feet. But several
6 of the landowners, the other people, indicated -- and even
7 the OCD felt that you couldn't get a D9 Cat and a backhoe
8 and everything within 30 feet, and so we felt 200 feet is
9 just a more appropriate distance, because you can actually
10 work in that area.

11 Q. So there was a practicality concern --

12 A. (By witness Price) There's a practicality to it,
13 right.

14 Q. -- that you were concerned about?

15 Now -- and you know this question is coming,
16 because you've heard it in all the previous proceedings.
17 In your mind, what constitutes a watercourse, and at what
18 point does a rivulet or an erosion feature become a
19 watercourse that triggers this prohibition?

20 A. (By witness Price) Excellent question. And as
21 you know, that's probably been one of the most highly
22 discussed topics in the task force and all the companies
23 and we've all talked about.

24 And I can just tell you, we're trying to be
25 consistent with using the definition of watercourse with

1 the Environment Department. And so what we tried to do is,
2 we tried to put some common sense into this and put this
3 decision back out to the district offices where they have
4 field people, they can go out there and you can show them
5 so -- you know, like you take your hand and draw a line in
6 the sand, I guess you could consider that to be a
7 watercourse if it rains and a little bit of water runs down
8 it.

9 So we were trying, and we kicked it around over
10 and over and over in the task force, and no one could
11 really come up with a definitive definition to cover all
12 the aspects of this. And so we decided to stick with our
13 original definition of watercourse and try to help our
14 district offices help make this decision, a common sense
15 approach.

16 Q. And --

17 A. (By witness Price) We don't anticipate going out
18 there and saying, There's this wide of a channel or this
19 wide of a channel, water is -- therefore that you can't
20 drill. That wasn't our intent at all.

21 Q. And so your intent is, given that the rule right
22 now provides little guidance?

23 A. (By witness Price) Right, our intent is -- is
24 that you don't -- the siting requirement shall be from what
25 I would call a major watercourse or a playa lake. Major

1 watercourses, I think, could be well defined by looking at
2 a USGS map. They have all the well defined watercourses on
3 there.

4 Q. Okay, so looking at a USGS and seeing whether it
5 appears?

6 A. (By witness Price) Exactly.

7 Q. Okay, thank you.

8 And the next slide, two slides back on slide 11,
9 you talked about additional construction design and
10 operational requirements, and many of these, I believe,
11 came out of the task force recommendations; is that
12 correct?

13 A. (By witness Price) That's correct.

14 Q. In one of these you talk about water loss
15 detection. Is that out of the task force --

16 A. (By witness Price) It was out of the task force.

17 Q. As a practical matter, how do you anticipate
18 that's going to work?

19 A. (By witness Price) I only served on the task
20 force about two times, and that had already been
21 determined, that they thought they could -- that there
22 could be some sort of float or level device that could be
23 put in there and that they could monitor the levels with
24 that particular device.

25 And so I wasn't actually part of that agreement

1 at the task force, but I certainly accept it because it was
2 a consensus item.

3 Q. Right. Do you agree that that to some extent may
4 be driven in part by the formations through which the
5 drilling is being done and how much water or liquids,
6 drilling fluids, are accepted by the formation as that goes
7 through, and that that may make that a somewhat difficult
8 measure?

9 A. (By witness Price) I agree.

10 Q. Moving on to slide number 13, this is the new
11 closure standards. And the very last one -- Mr. Carr
12 briefly touched upon it -- is, the on-site burial requires
13 landowner approval. And I just wanted to clarify for
14 myself that at this point you don't have an environmental
15 rationale for that; this is a policy choice that the
16 Division is recommending to the Commission?

17 A. (By witness Price) Yes.

18 Q. In the next slide, on slide 14, you present your
19 map that is showing the areas around a number of landfills
20 that are located both in the southeast and the northwest
21 areas of the state. Now are all these landfills presently
22 permitted by the OCD to accept oilfield waste?

23 A. (By witness Price) No.

24 Q. Some of them are approvable but not presently
25 approved; is that correct?

1 A. (By witness Price) That's correct.

2 Q. And do any of those landfills have the option of
3 declining to accept oilfield waste? The ones that are
4 approvable, but not yet approved?

5 A. (By witness Price) That's a question that I may
6 not be able to answer. However, I think one of my staff
7 members could, Ed Hansen or Brad Jones, because --

8 Q. That would be an Ed Hansen question?

9 A. (By witness Price) Yeah, or -- probably an Ed
10 Hansen question.

11 Q. And --

12 A. (By witness Price) And the reason I say that, he
13 used to be a program manager that authorized such wastes to
14 go into those type of facilities at the Environment
15 Department.

16 Q. Okay, thank you. Continuing on with that, did
17 you evaluate as part of your thinking of using the
18 approvable, which would be those landfills that are
19 approved by ED, for example, but not yet by OCD, as to what
20 the impact of collocation of oilfield waste and municipal
21 waste would be on the waste contents?

22 A. (By witness Price) Mr. Hiser, repeat the
23 question. I didn't understand that.

24 Q. Did you evaluate the environmental impact of
25 collocating oilfield waste with municipal solid waste in a

1 municipal landfill that might be permitted by ED, rather
2 than an industrial monofill as is permitted by OCD?

3 A. (By witness Price) No.

4 Q. Do you agree that the constituent mixture in a
5 municipal landfill might be different from those found in
6 an OCD industrial landfill?

7 A. (By witness Price) Yes.

8 Q. In the rationale that you advanced for the 100-
9 mile distance you said basically that it seemed that the
10 cost of \$30,000 to \$90,000 seemed appropriate in light of
11 today's oil prices; is that correct?

12 A. (By witness Price) \$30,000 to \$80,000.

13 Q. I'm sorry, \$30,000 to \$80,000?

14 A. (By witness Price) Yes.

15 Q. And what would be the impact if the oil prices
16 were to substantially decline?

17 A. (By witness Price) Obviously it would impact it.

18 Q. Now you also said as part of your rationale for
19 why the 100-mile rule was reasonable was that it would
20 diminish some of the transport costs from facilities that
21 might be located greater than 100 miles from a landfill.
22 You said we're going to -- because we know that transit is
23 more expensive the further you go, beyond 100 miles we're
24 going to say that that may be a cost more than we want to
25 do, so we're going to draw a 100-mile line?

1 A. (By witness Price) It could even be an
2 exponential curve.

3 Q. Okay.

4 A. (By witness Price) Yes.

5 Q. And doesn't the relief, if any, that the 100-mile
6 rule gives depend upon whether the landfill -- or the pit,
7 would otherwise meet your closure standards to be closed in
8 place with deep trench burial?

9 A. (By witness Price) I'm going to not answer your
10 question the way you're wanting me, and then I'll try to
11 answer it.

12 Q. Okay.

13 A. (By witness Price) I think what I was trying to
14 point out is the cumulative effect of all of the waste
15 that's in the present San Juan Basin and the Permian Basin.
16 And we felt that by transferring this waste to a central
17 location it would certainly reduce the probability of the
18 cumulative effect adding up.

19 Now -- Now to answer your other question, I think
20 it's yes.

21 Q. Okay, and the answer -- I'm going to restate my
22 question and make sure that it's clear for the Commission
23 and everyone else --

24 A. (By witness Price) Okay.

25 Q. -- what it is we're talking about.

1 My question is that you said if you're located
2 over 100 miles from a landfill, you have the option in some
3 cases to do deep trench disposal or an on-site disposal,
4 under your proposed rule, correct?

5 A. (By witness Price) If you meet the siting
6 requirements, that's correct.

7 Q. If you meet the siting requirements. And aren't
8 there additional requirements in terms of the quality of
9 the material to be disposed?

10 A. (By witness Price) There's closure requirements,
11 prescriptive closure requirements.

12 Q. And so if in fact the material doesn't meet those
13 closure requirements, then it would still have to be hauled
14 to a landfill, regardless of its distance from that
15 landfill?

16 A. (By witness Price) No, that's not correct.

17 Q. That's not correct?

18 A. (By witness Price) That's not correct.

19 Q. What would one do in that case?

20 A. (By witness Price) Well, then you could -- an
21 operator could come back, propose another treatment method,
22 propose some other method for closure.

23 Q. But that's discretionary with the Department and
24 not of right, correct?

25 A. (By witness Price) No, that's discretionary upon

1 the operator. The operator could come back and modify its
2 permit and say, you know, we're 10 parts per million off,
3 and a little bit more treatment and we feel we can get it
4 down, and we certainly would allow them to do that.

5 Q. But it is -- but if that's not achievable, either
6 by your granting an amendment to the permit or us being
7 able to achieve those closure standards, the only remedy or
8 the only option right now for an operator is to dig that
9 material out and haul it to a landfill?

10 A. (By witness Price) If you cannot achieve the
11 closure standards in any form or fashion, then the answer
12 to your question is yes.

13 Q. Okay. In your presentation you put up a
14 communication from the Office of the President of the
15 United States, from the Council of Environmental Quality,
16 on cumulative impact analysis under this EQ regulation; is
17 that correct?

18 A. (By witness Price) Correct.

19 Q. Does that apply to you?

20 A. (By witness Price) It's guidelines for federal
21 agencies.

22 Q. Are you a federal agency or --

23 A. (By witness Price) No.

24 Q. -- are you a state agency?

25 A. (By witness Price) State agency. However, we do

1 get federal funds. So therefore, we do have to abide by
2 some federal guidelines.

3 Q. If it's a major federal action?

4 A. (By witness Price) That's correct.

5 Q. Mr. Carr has covered the Environmental Bureau.

6 Okay, I want to switch, then, to your Exhibit
7 Number 6. Give me just a second.

8 A. (By witness Price) Mr. Carr has already said
9 he's agreed to all this.

10 MR. CARR: And he hit me when I did.

11 (Laughter)

12 Q. (By Mr. Hiser) I want to go back to your slide
13 on this exhibit, on page 15 which is the number of
14 groundwater cases. And here you list 2005 and 2007 with an
15 approximate total of 504 cases; is that correct?

16 A. (By witness Price) These are pit groundwater
17 contamination cases, that's correct.

18 Q. And is it your agreement that the ones that you
19 know of that might be related to drilling pits are
20 comprised on page 37 of this exhibit?

21 A. (By witness Price) Yes.

22 Q. And how many drilling pits is it, I believe you
23 testified to, that there have been in the State of New
24 Mexico?

25 A. (By witness von Gonten) I believe that I --

1 Q. Maybe it was Mr. von Gonten.

2 A. (By witness Price) Yeah.

3 A. (By witness von Gonten) One of my slides was --
4 I was referring to the San Juan Basin, that there was
5 probably a pit, a drilling and reserve pit for each well.
6 Could have been a production pit that might have serviced
7 several wells. And there might have been one or more
8 workover pits; these are very long-lived wells.

9 Right now our database reports 99,000-plus wells
10 -- I think Wayne referred to 100,000 -- that are in our
11 database, that is, where we have an API number or have
12 assigned an API number retroactively and have a location
13 for it.

14 Q. So Mr. Price, in light of Mr. von Gonten's
15 statement, would you agree that there are somewhere in the
16 arena of probably about 100,000 drilling pits have been --
17 or maybe 80,000, somewhere in the 80,000 to 100,000
18 range --

19 A. (By witness Price) Yes.

20 Q. -- all that?

21 And what percentage of those pits right now have
22 presented a problem?

23 A. (By witness Price) We don't know.

24 Q. But of the ones that you know, which are these 10
25 which are right here --

1 A. (By witness Price) Yes.

2 Q. -- over 80,000 or 100,000, what percentage would
3 that be?

4 A. (By witness Price) Low, very low.

5 Q. Would you agree with me it's about .001 or one-
6 thousandth of a percent?

7 A. (By witness Price) We can do the math.

8 Q. Okay. Now on the 10 cases that you've presented
9 here, is it your professional opinion that all these are
10 documented cases, or are some of these still in the initial
11 investigatory phase?

12 A. (By witness Price) Oh, they're still in initial
13 investigatory stage.

14 Q. And how many of the 10 that you've presented are
15 still in that initial investigatory phase?

16 A. (By witness Price) Have to ask Glenn.

17 Q. Mr. von Gonten?

18 A. (By witness von Gonten) I would say all of them.

19 Q. Okay. So it may be less than 10 here, you just
20 don't know yet, but it may be certainly --

21 A. (By witness von Gonten) What we have right now
22 is, we have an indication from the operator that when they
23 were closing their pit, that the soil contamination reached
24 down to the top of groundwater and that they had sampled
25 the groundwater and were making a presumptive report,

1 pending the results from the lab.

2 Q. And when you used the term "contamination", am I
3 to assume that that in most cases means some sort of
4 chloride levels --

5 A. (By witness von Gonten) I think most of these
6 are from the southeast, and it would be chloride
7 contamination as opposed to hydrocarbon contamination.

8 A. (By witness Price) I would like to -- Can I add
9 to that, Mr. Hiser? Those are groundwater contamination
10 cases. There are many more vadose zone contamination cases
11 out there that we don't have the numbers for.

12 Q. And Mr. Price, if we're talking about a vadose
13 zone contamination, what is the receptor of concern in the
14 vadose zone?

15 A. (By witness Price) Well, it could be
16 groundwater, it could be the surface.

17 Q. So you would be looking at things either
18 migrating downward or migrating upwards?

19 A. (By witness Price) Yes.

20 Q. But you don't have an idea of the number of those
21 things --

22 A. (By witness Price) Well, another receptor could
23 be if somebody builds a house or something in a pit, which
24 we've had happen before.

25 Q. Okay. Let me flip the page here.

1 Mr. Price, in your modeling conclusions on the
2 unlined pits, which is on pages 23 and 24 of your exhibit,
3 those presumed a continual source; is that correct --

4 A. (By witness Price) Yes.

5 Q. -- of contamination?

6 A. (By witness Price) Yes, of less than a barrel
7 per day.

8 Q. And what would happen to those plumes that you
9 showed us if that source were to be removed?

10 A. (By witness Price) I'm sorry?

11 Q. If the source of the contamination, the one
12 barrel a day, were to be removed after, say, six months to
13 two years?

14 A. (By witness Price) The contamination would
15 eventually migrate to groundwater, but the shift of the
16 curves would be way far to the right.

17 Q. Okay. And do you have a sense of the number of
18 years that we're looking at --

19 A. (By witness Price) No.

20 Q. -- for that type of shift?

21 A. (By witness Price) No.

22 Q. Now on your own graphs, though, just looking at
23 that continual impact, you show that the main impact
24 occurred somewhere between 40 and 60 years, or 50 to 100
25 years; is that correct?

1 A. (By witness Price) On page 22?

2 Q. On page 21 and 22?

3 A. (By witness Price) Correct.

4 Q. And -- Now as part of the rationale for the rule
5 and the idea that we want to haul material to the landfills
6 is your belief that this is a more protective solution. We
7 have a couple of known places where the material goes and
8 we put them there, and some of them have liners, some of
9 them do not. Correct?

10 A. (By witness Price) We're following the national
11 trend in the United States. All industries except the oil
12 and gas industries take their waste, that I know, to some
13 sort of centralized landfill.

14 Q. That's an interesting statement, Mr. Price. So
15 it's your testimony then to the Commission that, for
16 example, the mining industry takes its tailings and waste
17 rock to a centralized landfill?

18 A. (By witness Price) Well, the mining industry is
19 the oil and gas industry, that's --

20 Q. Mining is oil and gas?

21 A. (By witness Price) Well, it's energy, minerals,
22 mining, oil and gas. It's a mining -- I mean, you're
23 mining -- it's been interpreted as a mining --

24 Q. So you're saying mining --

25 A. (By witness Price) -- with the exception --

1 Q. -- and oil and gas --

2 A. (By witness Price) -- yes, mining.

3 Q. What about the silvicultural industry? Do they
4 take all of the slash from their operations and take that
5 to a centralized landfill?

6 A. (By witness Price) If it meets a certain amount
7 of hazardous wastes, they certainly do. If it's hazardous
8 waste, they would.

9 Q. Well, are we talking about hazardous waste in the
10 oil and gas context, within the regulatory --

11 A. (By witness Price) We're talking about hazardous
12 materials, that the only reason it's not hazardous waste
13 is, they have received an exemption from the federal
14 government.

15 Q. But one could equally well say that the reason
16 that silvicultural waste is not hazardous waste is because
17 it has not been regulated by the federal government?

18 A. (By witness Price) Same scenario.

19 Q. And what about agriculture?

20 A. (By witness Price) It's my understanding, for
21 example, dairy waste, that has to be disposed of in a
22 landfill.

23 Q. But that's true only for certain concentrating
24 animal-feeding operations and not for typical ranching or
25 farming operations; is that not true?

1 A. (By witness Price) If you're talking about if
2 someone raises tomatoes and he plows the tomato plants
3 under the old plants, then for bio- -- for some sort of
4 bioremediation of the plants, you might want to say, to
5 help the nitrogen levels in the -- I wouldn't consider that
6 to be a waste.

7 Q. I guess I'll get off this digression and come
8 back to my main point. But anyway, your belief is that
9 putting these things in the landfill is going to be more
10 protective --

11 A. (By witness Price) That is --

12 Q. -- than having a number of small pits --

13 A. (By witness Price) -- yes, that is the --

14 Q. -- located around --

15 A. (By witness Price) Yes, that's the national
16 trend.

17 Q. Okay. Under the Department's just-approved
18 surface waste rules, what is the post-closure care period
19 that you're proposing to regulate the landfills for?

20 A. (By witness Price) Thirty years.

21 Q. And so is it not true, Mr. Price, that the post-
22 closure care that you relied upon is less than the period
23 that your uncontained continual source would show to reach
24 the groundwater, and so in fact the protections that you're
25 relying upon will not be present at the time that the

1 landfill would putatively leak and cause contamination --

2 A. (By witness Price) The answer to your question
3 is yes.

4 Q. Thank you. No further questions for you, Mr.
5 Price.

6 I have one question for Mr. von Gonten. Now you
7 gave a -- testimony about pits that were located in the so-
8 called exempt area in the southeast, correct?

9 A. (By witness von Gonten) Yes, I did.

10 Q. And you made a presentation about the fact that
11 there's, in fact, in your opinion, protectible groundwater
12 within the exempt area; is that correct?

13 A. (By witness von Gonten) That's correct.

14 Q. Is it not true that each one of the pits that
15 would have been located in that without liners would have
16 been done under an approval from the Commission?

17 A. (By witness von Gonten) Those -- yes, any pits
18 in the exempted area of the southeast would have been
19 approved by Rule 50, or there were probably approvals under
20 Order R-3221, I believe, and --

21 Q. And didn't that generally require a showing of no
22 groundwater?

23 A. (By witness von Gonten) I'm not sure about the
24 requirements of that order.

25 A. (By witness Price) I would like to answer that.

1 Q. Mr. Price?

2 A. (By witness Price) Yes, but if you go look at
3 the old orders, not one -- not one monitor well was ever
4 put in to prove that.

5 Q. So it's the Bureau's position now that the
6 Commission has entered those orders in error?

7 A. (By witness Price) It's an evolution of pit
8 rules, evolution of sound science. We all learn.

9 Q. So at this point, then, the Bureau is prepared to
10 challenge the findings that the Commission entered in each
11 of those orders?

12 A. (By witness Price) No, sir.

13 Q. Okay.

14 A. (By witness Price) We're willing to ask the
15 Commission to upgrade the technology to a point where we
16 can determine if the groundwater is going to be
17 contaminated.

18 MR. HISER: No further questions. Thank you, Mr.
19 Chairman.

20 CHAIRMAN FESMIRE: Thank you, Mr. Hiser.

21 Ms. Foster?

22 MS. FOSTER: Thank you.

23 CROSS-EXAMINATION (of witnesses Price and von Gonten)

24 BY MS. FOSTER:

25 Q. Mr. Price, I'm sorry I missed the beginning of

1 your testimony this morning, but I just wanted to ask you a
2 couple of questions.

3 First, what is your title over at the OCD?

4 A. (By witness Price) Environmental Bureau Chief.

5 Q. And as a bureau chief, you are in control of the
6 Environment Bureau of which Mr. von Gonten, Mr. Chavez, Mr.
7 Hansen and Mr. Brad Jones are your -- under you?

8 A. (By witness Price) Did you say control?

9 (Laughter)

10 Q. In the organizational structure?

11 A. (By witness Price) Well, I'm the boss.

12 Q. Okay, you're the boss. And who is your boss?

13 A. (By witness Price) My boss is Mr. Sanchez.

14 Q. All right, and does Mr. Sanchez have a boss
15 within the OCD?

16 A. (By witness Price) Yes.

17 Q. And who is that?

18 A. (By witness Price) Mr. Fesmire.

19 Q. Okay, and is that the same Mr. Fesmire who's the
20 Chairman of the OCC?

21 A. (By witness Price) Yes, it is.

22 Q. And does Mr. Fesmire have a boss?

23 A. (By witness Price) Yes.

24 Q. And who's that?

25 A. (By witness Price) Well, it's either Reese

1 Fullerton or Joanna Prukop.

2 Q. All right, and Joanna Prukop is the Secretary of
3 Energy and Minerals in the State of New Mexico --

4 A. (By witness Price) Yes.

5 Q. -- correct?

6 A. (By witness Price) Yes.

7 Q. All right, so she is a Cabinet Secretary, that's
8 correct?

9 A. (By witness Price) Yes.

10 Q. Now in terms of deciding to revamp some rules,
11 the pit rule, where does that decision come from? Who
12 makes that decision?

13 A. (By witness Price) That decision was made by the
14 Environmental Bureau some time ago, and I think I testified
15 to that, that right after Rule 50 was put in place the
16 previous bureau chief had indicated to me that we need to
17 recommend to the new Director that had come in that we
18 probably need to have a rule rewrite.

19 Q. All right. And did you hear Mr. Brooks' opening
20 statement?

21 A. (By witness Price) The other day?

22 Q. The other day, yes.

23 A. (By witness Price) Yes.

24 Q. And I believe at that time he stated that one of
25 the reasons that your division was redoing this rule was

1 pursuant to RCRA; is that correct?

2 A. (By witness Price) Reference to RCRA, yes.

3 Q. Yes, and what is RCRA?

4 A. (By witness Price) It's the Resource
5 Conservation and Recovery Act, and it's a federal program
6 that covers solid waste.

7 Q. And it covers solid waste disposal and
8 management, correct?

9 A. (By witness Price) Yes.

10 Q. All right. And are you now saying that oilfield
11 wastes is a solid waste under RCRA?

12 A. (By witness Price) Yes.

13 Q. All right, is there not an exemption under RCRA?

14 A. (By witness Price) For hazardous waste only.

15 Q. For oilfield waste under Section C, I believe it
16 is?

17 A. (By witness Price) No, you're incorrect.

18 Q. Okay.

19 A. (By witness Price) It is -- There's an exemption
20 for hazardous waste under RCRA for oilfield waste. Waste
21 that is normally hazardous is not hazardous under RCRA for
22 the oilfield.

23 But there's still Subtitle D regulation, which
24 basically regulates nonhazardous waste, and those
25 regulations -- it's the driving mechanism for landfarms and

1 landfills in the State of New Mexico.

2 Q. And one of the parties in this case is the Oil
3 and Gas Accountability Project; is that correct?

4 A. (By witness Price) One of the parties?

5 Q. The parties in this case, represented by an
6 attorney, is the Oil and Gas Accountability Project,
7 correct?

8 A. (By witness Price) OGAP.

9 Q. Yes.

10 A. (By witness Price) Yes.

11 Q. Yes, I'm sorry.

12 A. (By witness Price) Yes, right.

13 Q. You know them as OGAP and I --

14 A. (By witness Price) Yeah, right.

15 Q. -- know them as Oil and Gas Accountability --

16 A. (By witness Price) Yeah, yeah.

17 Q. Okay. And OGAP is based in Durango, Colorado,
18 correct?

19 A. (By witness Price) You know, I don't know that.
20 I really don't know the answer to that. I don't know where
21 they're based.

22 Q. All right. And -- Well, you worked with Bruce
23 Baizel, who is the OGAP attorney on the task force, did you
24 not?

25 A. (By witness Price) Yes, I did.

1 Q. All right. And are you aware that OGAP -- you
2 know, the Oil and Gas Accountability Project -- they put
3 documents out on the Web concerning oil and gas production?

4 A. (By witness Price) Yes, I do.

5 Q. And are you aware that in October, 2007, they
6 actually issued a document concerning RCRA and closure of
7 oilfield facilities pursuant to RCRA?

8 A. (By witness Price) I'm not aware of that.

9 Q. So you didn't read that document from OGAP
10 pursuant to this hearing?

11 A. (By witness Price) I don't think I did, I'm
12 sorry.

13 Q. Under the Oil and Gas Act, one of the mandates
14 for the OCD is to be protective of groundwater, health and
15 the environment, correct?

16 A. (By witness Price) Yes.

17 Q. And in order to be protective of groundwater,
18 health and the environment, when you go over a rule what do
19 you consider?

20 A. (By witness Price) Gosh, that's such a broad
21 question, Karin -- or Mrs. Foster.

22 Q. Well, let me rephrase that then.

23 When you are in the process of creating a new
24 rule --

25 A. (By witness Price) Right.

1 Q. -- do you review each provision of the rule to
2 ensure that it will be protective of groundwater?

3 A. (By witness Price) Yes.

4 Q. And do you review each provision of the rule to
5 ensure that it will be protective of the health of the
6 citizens of New Mexico?

7 A. (By witness Price) Yes.

8 Q. And do you review each provision of the rule to
9 ensure that it will be protective of the environment?

10 A. (By witness Price) I hope we did.

11 Q. Now do you review the rule to consider whether
12 there's any economic impact on small businesses?

13 A. (By witness Price) I did not.

14 Q. Are you familiar with the Small Business
15 Regulatory Relief Act?

16 A. (By witness Price) Yes, I am.

17 Q. And that was passed by the Legislature in 2005,
18 correct?

19 A. (By witness Price) I don't know.

20 Q. And -- Did you say you're familiar with that act?

21 A. (By witness Price) I know of it.

22 Q. And does that act talk about -- or mandate that
23 agencies have to review their rules for impact on small
24 businesses?

25 A. (By witness Price) It's my understanding.

1 Q. And pursuant to this rule, did you or anyone in
2 your division determine or have any discussion as to impact
3 on small businesses?

4 MR. BROOKS: Mr. Chairman, I have no objection to
5 the witness answering the question, except that the
6 predicate of the question seems to suggest that it was the
7 responsibility of the Environment Bureau to that effect,
8 and we disagree with that -- to perform such a review, and
9 we disagree with that interpretation of the act. As to
10 whether they did do such a review or not, I have no
11 objection to the witness answering.

12 CHAIRMAN FESMIRE: Okay, with that notation, go
13 ahead and answer the question.

14 WITNESS PRICE: I did not do a --

15 Q. (By Ms. Foster) Okay, so your bureau did not do
16 a review?

17 A. (By witness Price) No, we did not.

18 Q. Okay, but Mr. Brooks just reminded me that there
19 might be another division within the Oil Conservation
20 Division who might have followed the mandates of the Small
21 Business Regulatory Relief Act and done an economic review,
22 correct?

23 MR. BROOKS: Objection, misstated my observation.

24 CHAIRMAN FESMIRE: I'll sustain that objection.

25 Ms. Foster, are you familiar with the law you're

1 quoting?

2 MS. FOSTER: Yes, I am.

3 CHAIRMAN FESMIRE: Okay, you understand that it
4 is not the responsibility to make those determinations or
5 those notices, correct?

6 MS. FOSTER: Pursuant to the act -- If you'd like
7 to have a legal argument, I'd be more than happy to stand
8 in front of you and make a legal argument.

9 CHAIRMAN FESMIRE: Well, you have briefed that in
10 your motion, have you not?

11 MS. FOSTER: Yes, I have.

12 CHAIRMAN FESMIRE: Okay, and we had to postpone a
13 decision on your motion because you weren't here this
14 morning when we started. We'll cover that later, but I
15 don't believe after reviewing the motions and the responses
16 to the motion that we're going to sustain that motion. So
17 I have no problem with the witness answering the question,
18 but I need you to understand that we don't believe that the
19 predicate that you're basing those questions on is correct.

20 MS. FOSTER: Okay. And Mr. Chairman, would I ask
21 -- could I ask you if you're giving me that ruling as the
22 Chairman of the OCC or as Mr. Wayne Price's and Mr.
23 Brooks's boss?

24 CHAIRMAN FESMIRE: I don't believe that --

25 MS. FOSTER: Are you --

1 CHAIRMAN FESMIRE: I will go ahead and answer
2 that question, but it's the last one I'll answer from you
3 on that subject. It is not -- This is my position as
4 Chairman of the Commission. I am making that ruling as
5 Chairman of the Commission.

6 MS. FOSTER: Okay, thank you.

7 CHAIRMAN FESMIRE: I don't think it's proper for
8 you to raise that.

9 Mr. Price, you can answer the question if you
10 want.

11 MS. FOSTER: I'll withdraw the question.

12 MR. BROOKS: Let the record reflect also that my
13 boss is Ms. Carol Leach, the general counsel of the Energy,
14 Minerals and Natural Resources Department.

15 CHAIRMAN FESMIRE: Okay.

16 MS. FOSTER: Thank you, Mr. Brooks, for that
17 clarification.

18 Q. (By Ms. Foster) Mr. Price, there was some
19 discussion previously concerning the dig-and-haul
20 provisions of the proposed rule, correct?

21 A. (By witness Price) Yes.

22 Q. All right. And the concern of the Independent
23 Petroleum Association proposed with the dig-and-haul was
24 that this would put additional trucks on the road in New
25 Mexico; is that correct?

1 A. (By witness Price) I understand that, yes.

2 Q. Okay. And obviously there are many different
3 factors when drilling a well, and those different factors
4 will feed into the amount of waste that needs to be hauled
5 from a location, right?

6 A. (By witness Price) Correct.

7 Q. And the amount of waste that will need to be
8 hauled from a location will obviously go on the roads of
9 New Mexico, correct? To be hauled off?

10 A. (By witness Price) Oh, to -- not put on the
11 roads?

12 (Laughter)

13 Q. Yeah, I'm sorry, I misspoke. To be put on trucks
14 to go on the roads.

15 A. (By witness Price) Some part of the rule that I
16 didn't understand.

17 (Laughter)

18 A. (By witness Price) To be hauled off.

19 Q. Yes.

20 A. (By witness Price) Yes.

21 Q. And did you consider as part of the protection of
22 the people of the State of New Mexico and also protection
23 of the environment, the impact of putting additional trucks
24 on the roads?

25 A. (By witness Price) No, I did not.

1 Q. And did you consider -- so basically, just so I'm
2 clear, your focus on protection of the groundwater, health
3 and environment is of the location, the drilling location?
4 That is your only concern, correct? Would that be a fair
5 statement?

6 A. (By witness Price) Well, I'm always concerned
7 about public health and the environment, you know, if it
8 has to do anything with oil and gas activity. But I think
9 -- I think what you're saying is probably correct, yes.

10 Q. All right. Now you stated earlier that the
11 general public wants -- wants centralized landfills. And
12 in fact, you -- I think you stated that this was following
13 a national trend, to put wastes in landfills?

14 A. (By witness Price) Yes.

15 Q. And I believe you stated earlier that there was
16 two lined and two unlined landfills in southeast New
17 Mexico, correct?

18 A. (By witness Price) Permitted by OCD.

19 Q. Permitted by OCD. What are the names of the two
20 unlined landfills?

21 A. (By witness Price) The two unlined -- One of
22 them is Sundance Parabo, located east of Eunice, New
23 Mexico. The other is CRI, Controlled Recovery, located
24 halfway between Hobbs and Carlsbad.

25 Q. Okay. And if those two are unlined, would it be

1 correct to assume that it's because those are older
2 landfills?

3 A. (By witness Price) Yes.

4 Q. And therefore under the new surface waste
5 management rule that you passed, were they grandfathered
6 in?

7 Q. Okay.

8 A. (By witness Price) They still have to meet
9 certain requirements of part 36 for closure and so forth.

10 Q. For closure, But as long as they're still open,
11 they don't have to meet the -- I think you said before,
12 double-lining and leachate-testing, et cetera, requirements
13 of the new surface waste management rule?

14 A. (By witness Price) As long as they don't make a
15 major modification in building a new cell and so forth,
16 that's correct.

17 Q. And how large is the Sundance facility?

18 A. (By witness Price) I'm thinking a half a
19 section.

20 Q. A half a section?

21 A. (By witness Price) -- section, I'm thinking --

22 Q. Okay.

23 A. (By witness Price) -- for their total amount of
24 property. But I could -- I could be missing that.

25 Q. Okay, I -- it's just --

1 A. (By witness Price) -- it's rather large.

2 Q. All right. And how large is the CRI location?

3 A. (By witness Price) I would have to guess, same
4 thing. We can get those numbers, exact numbers, for you,
5 though, if you -- we can look those up and find out.

6 Q. Okay. Well, if I understand your testimony
7 earlier, you were saying that the landfill areas, you were
8 willing to have them be -- and I think you used the word
9 "sacrificial areas". You used that word earlier; is that
10 correct?

11 A. (By witness Price) I did.

12 Q. And what did you mean by that?

13 A. (By witness Price) Well, I thought I explained
14 that. What I meant by that was, these were local landfill
15 permitted areas, that that waste would be there forever.
16 There's no question about it. But they're very -- They're
17 small in comparison to thousands of mini-pits all over the
18 countryside.

19 And when I meant "sacrificial", I certainly
20 didn't mean to imply that we're willing to sacrifice a
21 whole county, like the Sierra Club guy had pointed out to
22 me that Lea County is sacrificial as far as they're
23 concerned. I totally disagree with that. I'm from Lea
24 County, and I think it's worth protecting.

25 Q. All right. Now, but these areas, these two

1 landfills which put together amount to one whole section,
2 okay? These were close to a half, okay?

3 A. (By witness Price) Yeah, once again, I would
4 have to really look it up and see what the acres --

5 Q. All right, but they're large --

6 A. (By witness Price) -- they're a number of
7 acres --

8 Q. -- they're large landfills?

9 A. (By witness Price) They are large.

10 Q. Okay. And they're accepting oilfield waste which
11 you maintain has high levels of chlorides, right?

12 A. (By witness Price) Yes.

13 Q. And I believe, if I correctly understand your
14 testimony, that your concern is the migration of chlorides
15 through the vadose zone into the groundwater, correct?

16 A. (By witness Price) Yes.

17 Q. And so -- I don't want to put words in your mouth
18 here, but its okay for you in the sacrificial area to put
19 oilfield waste and have it migrate to groundwater in that
20 one-section area of New Mexico? Is that okay?

21 A. (By witness Price) Is that a leading question?

22 (Laughter)

23 Q. This is cross, leading is allowed.

24 CHAIRMAN FESMIRE: You can ask leading questions.

25 MR. BROOKS: Cross-examination, leading questions

1 are okay, but --

2 (Laughter)

3 Q. (By Ms. Foster) Well, Mr. Price, if you don't
4 want to answer --

5 CHAIRMAN FESMIRE: Mr. Price, I will overrule
6 your objection.

7 (Laughter)

8 WITNESS PRICE: Question again, please. I'm
9 sorry.

10 Q. (By Ms. Foster) All right, in this large area,
11 the CRI which is a one-half section and the Sundance which
12 is one-half section, that accepts oilfield waste with
13 chlorides --

14 A. (By witness Price) Yes.

15 Q. -- is it okay in those areas to have those
16 chlorides migrate to the vadose zone and the groundwater?

17 A. (By witness Price) No.

18 Q. All right. Well, how is it that you will prevent
19 the migration of chlorides in those areas if they're not
20 lined?

21 A. (By witness Price) In those two particular
22 locations, geographically there is -- and particularly for
23 Sundance, there's several hundred feet of redbed underneath
24 Sundance. And there's also monitor wells that ring the
25 whole facility to make sure that it's not leaving the

1 facility.

2 CRI is built on similar lithology.

3 Q. All right. Now CRI is located near what town?

4 A. (By witness Price) It's Halfway, New Mexico,
5 which there's not a town there.

6 Q. Okay, is there any oil and gas production near
7 CRI?

8 A. (By witness Price) Yes.

9 Q. All right. And I believe you stated earlier that
10 when the OCD -- or when your department permitted the
11 surface waste management facilities, that you preferred
12 them to be remote and far from groundwater, correct?

13 A. (By witness Price) Yes, that's preferable.

14 Q. So are you saying that any oil and gas locations
15 that are close to or adjacent to CRI or Sundance should not
16 be allowed to have any on-site burial at all, even though
17 right next door you have Sundance and CRI that does?

18 A. (By witness Price) That's what we're proposing.

19 Q. And is there science to support that?

20 A. (By witness Price) Once again, it's the
21 cumulative effect -- Mr. von Gonten pointed out that in
22 some of those areas that you're talking about, there is
23 groundwater there. And so it's our position that we think
24 the national trend is to haul all waste to a centralized
25 facility, and that's what we're proposing here

1 Q. So if there's a well located, let's say, half a
2 mile from the CRI facility, for example, and it's in the
3 same topography as CRI which you stated, I believe, was in
4 redbed, that you would still require as the environmental
5 department in this rule -- you would still feel more
6 comfortable forcing them to haul all those wastes to CRI?

7 A. (By witness Price) We didn't differentiate in
8 that particular instance. We did mention one time about
9 the salt playa issues in which the same scenario could
10 occur. There's just really no way that we could write the
11 rule to make it perfect and make it not include those
12 areas. I mean, it -- we just didn't know how to do that.

13 Q. Okay. So what you're saying, then, is that wells
14 that are close to these landfills that have the same
15 general geography -- I'm sorry, topography -- as these
16 landfills, they still have to have the \$30,000 to \$80,000
17 expense to haul because you just didn't know how to write
18 the rule that way?

19 A. (By witness Price) No.

20 MR. BROOKS: Objection, argumentative.

21 CHAIRMAN FESMIRE: Overruled. Go ahead and
22 answer, Mr. Price.

23 WITNESS PRICE: Okay. Mrs. Foster, that's not
24 what I'm really saying. What I'm really saying is that,
25 yes, there is oil and gas activity around these facilities,

1 there's no question about it.

2 But these facilities are very unique, very
3 unique. These companies -- I've gone back and looked at
4 the records, and they spent a tremendous amount of time
5 trying to find these locations. And they're hard to find,
6 there's no question about it.

7 And so I'm not saying that just because there's a
8 well a mile or two or ten miles away that it's the same
9 geology. I'm not saying that at all.

10 As a matter of fact, there's -- as Mr. von Gonten
11 pointed out, there's groundwater in some of those areas.

12 Q. (By Ms. Foster) Groundwater next to CRI?

13 A. (By witness Price) I didn't say that.

14 Q. Okay, well then clarify your answer.

15 A. (By witness Price) Okay, what I'm saying is in
16 the vicinity, in the exempted area, because CRI is located
17 close to the exempted area.

18 Q. Okay. Now let's talk about this exempted area,
19 Mr. Price. It's my understanding that in the northwest
20 there is no current OCD-permitted landfill; is that
21 correct?

22 A. (By witness Price) There is no OCD-permitted
23 landfill, that is correct.

24 Q. In the northwest?

25 A. (By witness Price) Yes. There is landfarms but

1 not landfills.

2 Q. Right. But the requirements of this rule will be
3 that we bring our waste to a landfill, correct?

4 A. (By witness Price) Correct.

5 Q. And I believe that on the map you showed there
6 was the San Juan regional landfill, the northern New Mexico
7 landfill and the regional -- and the Rio Rancho landfill
8 that was 100 miles from the San Juan Basin, correct?

9 A. (By witness Price) Correct.

10 Q. Now do you have an agreement with each one of
11 these landfills to dispose oilfield waste?

12 A. (By witness Price) We have the statutory
13 language, and we also have Rule 712 that allows this.

14 Q. All right. Concerning the San Juan landfill, is
15 it large enough to accept all the oilfield waste that will
16 come off if this rule passes --

17 A. (By witness Price) We --

18 Q. -- from the San Juan Basin?

19 A. (By witness Price) The only way I can really
20 answer that is, we have never had the San Juan landfill
21 turn any oilfield waste down pursuant to 712 because of
22 capacity.

23 Q. Okay. Is it not true that you had -- this past
24 year, after the surface waste management rule passed, you
25 had to have an agreement, a one-year agreement, with that

1 landfill for disposal of oilfield waste?

2 A. (By witness Price) We didn't have to have
3 that agreement, but what we did, that was an agreement
4 primarily to notify all the parties. There was a lot of
5 fear and outrage out there because of the 1000 parts per
6 million chloride, and we wanted to make sure that they had
7 a place to take this, and it was the way that we did that,
8 and so...

9 The environment requirement also, we had an MOU
10 that we had with them, and two of our -- two of the people
11 that work for me had worked over in that section and knew
12 the language of -- the statutory language, knew the rules
13 very well, and so we thought it was beneficial to have an
14 MOU out there so all the parties could understand that they
15 could take their wastes there.

16 Q. And that MOU was really only for the period of
17 one year; is that not the case?

18 A. (By witness Price) That's correct.

19 Q. All right, and what happens after one year? Can
20 there no longer be disposal at the San Juan location?

21 A. (By witness Price) Because of what they dispose,
22 but there can be disposal there.

23 Q. Okay, it depends on what they dispose. I'm
24 talking -- I'm concerned about where operators are going to
25 dispose of the waste if this rule passes.

1 A. (By witness Price) What waste?

2 Q. The waste from these locations?

3 A. (By witness Price) You've got to be more
4 specific on what waste.

5 Q. Okay, then --

6 A. (By witness Price) I mean, I can't answer the
7 question unless you do.

8 Q. -- correct me if I'm wrong, then. It's my
9 understanding, then, that all waste that comes out of these
10 oil and gas locations can be disposed of at a permitted
11 landfill, for example the CRI or Sundance facilities?

12 A. (By witness Price) Mrs. Foster, when you say all
13 wastes, there are some wastes that are out on site that are
14 hazardous wastes that are generated, that do not fall
15 underneath the exemption. And so the answer to that
16 question is no if it's hazardous, not always.

17 If you're talking about specific waste such as
18 drilling waste that's in a drilling pit, then it can go to
19 the San Juan County landfill.

20 Q. Okay, let's talk about drilling wastes, then.

21 A. (By witness Price) Okay.

22 Q. It can go to the San Juan County landfill for the
23 next year; is that correct?

24 A. (By witness Price) It's our -- with our
25 understanding -- we've had several conversations and

1 meetings with the Environment Department's understanding
2 that we can continue to use Rule 712 and they don't have a
3 problem with it.

4 And actually, Ed Hansen and Brad Jones both
5 worked on that, and so we'd like to refer -- defer that
6 question to them. But I mean, I know the situation is that
7 we certainly are allowed to use that particular landfill
8 you're talking about.

9 Q. And do you have an MOU with the northern New
10 Mexico regional landfill?

11 A. (By witness Price) Where is that one located at?

12 Q. Well, that was going to be my next question.

13 (Laughter)

14 WITNESS PRICE: Northern New Mexico. I'd have to
15 refer to one of my staff members. They would know where
16 that's at.

17 Q. (By Ms. Foster) Okay, I believe that was on your
18 map. Unfortunately I didn't have the exhibit number. I
19 will review that and ask that again.

20 But how about the Rio Rancho landfill?

21 A. (By witness Price) Yes.

22 Q. Do you have an MOU with them for disposal of the
23 waste?

24 A. (By witness Price) No, we don't have an MOU.
25 What we have is, we have the ability under Rule 712 to

1 dispose of waste there.

2 Q. And those facilities are under NMED jurisdiction
3 or --

4 A. (By witness Price) Yes.

5 Q. -- OCD jurisdiction?

6 A. (By witness Price) No, NMED.

7 Q. All right. So then an operator would be
8 disposing at those facilities, and the waste would then be
9 managed, or that facility would then be managed by the
10 Environment Department, not the Oil Conservation Division
11 any longer?

12 A. (By witness Price) Well, it would actually be
13 managed by the company who owns the facility, but the
14 Environment Department would have oversight because they
15 have the permits on that.

16 Q. All right. So then you would have no more
17 oversight over that waste, once it goes into the NMED
18 landfill?

19 A. (By witness Price) That's correct.

20 Q. And I believe on the same map you mentioned that
21 there was a couple of facilities on Colorado; is that
22 correct --

23 A. (By witness Price) Correct.

24 Q. -- for the northwest?

25 A. (By witness Price) Correct.

1 Q. And do you have user agreements with those
2 landfills to dispose there?

3 A. (By witness Price) No.

4 Q. So could I ask you the basis for putting those
5 landfills on the map as potential disposal locations --

6 A. (By witness Price) Yes.

7 Q. -- for oilfield waste?

8 A. (By witness Price) Yes. We had -- One of my
9 staff members had called those particular landfills, and
10 they are currently taking waste from -- oilfield waste like
11 you're talking about, from New Mexico into those landfills.

12 Q. Okay. So based on what they're currently doing,
13 you --

14 A. (By witness Price) Now.

15 Q. -- they will --

16 A. (By witness Price) Yes.

17 Q. Did you have any sort of a conversation or
18 indication at all that they will continue to accept
19 oilfield waste?

20 A. (By witness Price) My staff -- Carl Chavez is
21 the member of my staff that checked that out. Probably we
22 need to ask him that question.

23 Q. Okay, I will make a notation to ask him.

24 Now I believe it was Exhibit [sic] 19 where you
25 did your modeling for your small unlined pits.

1 WITNESS VON GONTEN: 19, no.

2 WITNESS PRICE: Exhibit --

3 Q. (By Ms. Foster) I'm sorry, page 19 --

4 A. (By witness Price) Page 19.

5 Q. -- yeah.

6 A. (By witness Price) Okay.

7 Q. I want to make sure that I understand that model.

8 That is for the disposal of one barrel of contaminant; is
9 that correct?

10 A. (By witness Price) Per day.

11 Q. Per day.

12 A. (By witness Price) Per day.

13 Q. Okay.

14 A. (By witness Price) Every day.

15 Q. So it's one barrel of pure chloride that you're
16 putting into a pit?

17 A. (By witness Price) It's one barrel of water that
18 has a concentration of 5000 milligrams per liter of
19 chloride.

20 Q. And I believe you stated earlier that it's a
21 continual disposal of the one barrel per day over a long
22 period of time?

23 A. (By witness Price) Over 50 years.

24 Q. Over 50 years?

25 A. (By witness Price) Yes.

1 Q. Now reserve and drilling pits, how long are those
2 pits open?

3 A. (By witness Price) Well, under the current rule
4 -- this is probably a better question for our district
5 supervisors, but it's my understanding that those have been
6 -- we have some open as long as three, four, five years.

7 Q. Okay, but that would be the exception as opposed
8 to the norm, correct?

9 A. (By witness Price) It would be the -- Yes, it
10 would be the exception.

11 Q. All right. Wouldn't it be fair to say that most
12 drilling pits are open a matter of days, at most months,
13 depending on the project that they're actually drilling?

14 A. (By witness Price) Months.

15 Q. All right. In other words, there is a
16 distinction in your rule between permanent pits and
17 temporary pits?

18 A. (By witness Price) Yes.

19 Q. All right. And I guess what I'm getting at is,
20 temporary pits and the migration of chlorides from those
21 temporary pits, all right?

22 A. (By witness Price) Yes.

23 Q. This model does not cover that discussion,
24 correct?

25 A. (By witness Price) It does not.

1 Q. All right. This model really talks about
2 permanent pits that are open for years and years?

3 A. (By witness Price) Yes.

4 Q. All right, with a continual disposal of the
5 chlorides in that level?

6 A. (By witness Price) That is correct.

7 Q. All right. Could you please describe a reserve
8 pit?

9 A. (By witness Price) I've got a picture of one, if
10 you'd like to see one.

11 Q. Well, just conceptually, if you could just
12 describe, you know, how deep it is, how big it is.

13 A. (By witness Price) May I tell Ed to put it up on
14 there? Ed, would you go to --

15 MR. YAHNEY: You haven't put any other ones up.
16 Why put this one up?

17 CHAIRMAN FESMIRE: You know, there's a place for
18 public comment in this procedure and this isn't it, okay?
19 Thanks.

20 MS. FOSTER: Well, if it'll take him too long to
21 look for it --

22 WITNESS PRICE: It won't, it won't take just --
23 it won't take just a minute.

24 MS. FOSTER: Okay, that's fine.

25 Q. (By Ms. Foster) All right, so this is a working

1 reserve pit, correct?

2 A. (By witness Price) Yes.

3 Q. All right. And under the current Rule 50, when
4 that is closed what's the process for closing that pit?

5 A. (By witness Price) The process is that they let
6 the water evaporate, and then once it's evaporated then
7 they -- depending upon which company it is, depending upon
8 where it's located, but generally it's -- Let's talk about
9 the southeast. A lot of times they'll take that pit
10 contents and put it in a deep-trench burial and cover it
11 up.

12 Q. And when you say cover it up, how much -- Do they
13 put topsoil on it? What do they cover it up with?

14 A. (By witness Price) Generally the soil that they
15 have on location, that they use to help dig these pits.
16 They dig the deep trench, they have soil, they put
17 something in it, you're always going to have some soil left
18 over, and they'll push that on top.

19 Q. Okay. And is there a requirement under the
20 current Rule 50 on how much cover has to be on there?

21 A. (By witness Price) I would have to look --

22 Q. Okay.

23 A. (By witness Price) -- but I believe it's in the
24 guidelines.

25 Q. Okay. Well, would it surprise you that it's four

1 feet? Does that number sound familiar at all?

2 A. (By witness Price) If you say it is, it is. I'm
3 drawing a blank on that.

4 Q. Okay, maybe I'll just defer this line of
5 questioning to an operations person then.

6 All right, moving on then.

7 I believe that you stated that oil and gas
8 companies can afford to have a \$30,000 to \$80,000 hauling
9 cost, and that was your justification for the 100-mile
10 rule?

11 A. (By witness Price) It's the only economics that
12 we're able to get. We had called some disposal companies,
13 and that was a range that we got --

14 Q. All right --

15 A. (By witness Price) -- \$30,000 to \$80,000.

16 Q. -- but it's a hundred miles, basically, based on
17 -- I don't know what you want to call it, but --

18 A. (By witness Price) Radius.

19 Q. Well, yeah, as the crow flies --

20 A. (By witness Price) Yes.

21 Q. -- as opposed to driving miles?

22 A. (By witness Price) Yes.

23 Q. All right. So in places in southern -- in
24 northern New Mexico in particular, there might not be
25 direct routes to get to some of these locations, correct?

1 A. (By witness Price) You're correct.

2 Q. All right. And I believe you also stated on
3 cross-examination that you understand that the oil and gas
4 industry is a cyclical industry?

5 A. (By witness Price) Yes.

6 Q. And do you know how many small producers there
7 are in the state?

8 A. (By witness Price) I can't tell you the number.

9 Q. Could you venture a guess at how many producers
10 there are in the state?

11 A. (By witness Price) Small producers?

12 Q. Producers.

13 A. (By witness Price) It would be a guess.

14 Q. All right.

15 A. (By witness Price) Do you want a guess?

16 Q. Well, based on the OCD numbers I believe it was
17 711? Does that sound about right? Different companies?

18 CHAIRMAN FESMIRE: Don't look at me.

19 (Laughter)

20 WITNESS PRICE: No, I'm not looking, I'm just
21 trying to think. I don't know the answer to that question.

22 Q. (By Ms. Foster) All right. In terms of the
23 regulatory costs or shifting to do regulations, would you
24 agree that it's more difficult for smaller producers to
25 shift when there's a change in regulations, or adjust to

1 those regulations?

2 A. (By witness Price) Not necessarily.

3 Q. All right, why is that?

4 A. (By witness Price) They're lean and mean, and
5 they do things a lot cheaper than some of the bigger
6 companies do it.

7 Q. All right, but small companies generally don't
8 have -- I believe there was a gentleman who testified
9 earlier today that they finally have had to hire E&S safety
10 personnel --

11 A. (By witness Price) Environmental --

12 Q. -- in order to follow --

13 A. (By witness Price) Environmental health and
14 safety.

15 Q. -- the regulations.

16 A. (By witness Price) Uh-huh.

17 Q. Correct?

18 A. (By witness Price) Right.

19 Q. And generally the smaller companies don't have
20 the excess personnel, for example, regulatory affairs folks
21 or lawyers, even, on staff, correct?

22 A. (By witness Price) Oh, that's true.

23 Q. All right. And are you aware that oil and gas in
24 particular is what would be considered a commodity on the
25 markets?

1 A. (By witness Price) Yes.

2 Q. All right. And based on your work -- You worked
3 in oil and gas for a while, correct?

4 A. (By witness Price) I have.

5 Q. And you understand that oil and gas companies
6 generally don't set the price of a barrel for oil, correct?

7 A. (By witness Price) Well, they're not supposed
8 to.

9 (Laughter)

10 Q. Unless you're in Saudi Arabia?

11 A. (By witness Price) Yes, they --

12 Q. Generally --

13 A. (By witness Price) -- don't set the price --

14 Q. Yes.

15 A. (By witness Price) -- it's done --

16 Q. New Mexico --

17 A. (By witness Price) -- by the market.

18 Q. -- producers generally don't?

19 A. (By witness Price) Yes, it's market-driven.

20 Q. It is market-driven --

21 A. (By witness Price) Yes.

22 Q. And therefore for selling a commodity that is
23 market-driven companies generally have to absorb regulatory
24 costs?

25 A. (By witness Price) Yes.

1 Q. All right.

2 CHAIRMAN FESMIRE: Ms. Foster, how much longer do
3 you think you're going to be?

4 MS. FOSTER: About five minutes.

5 CHAIRMAN FESMIRE: Okay.

6 MS. FOSTER: All right?

7 Q. (By Ms. Foster) Okay, thank you, Mr. Price.

8 Mr. van [sic] Gonten, I had a couple questions
9 for you concerning your mapping of the San Juan. I believe
10 one of those -- the maps discussed the outcrops of San
11 Juan; is that correct?

12 A. (By witness von Gonten) Are you referring to
13 page 3 of my Exhibit 12?

14 Q. I believe so. Yes.

15 The mapping that you demonstrated has topography
16 on that map, correct?

17 A. (By witness von Gonten) Well, that would be a
18 different exhibit. This is a geologic base map on page 3.
19 Just to make sure we're on the same page, the maps that I
20 generated using the RGIS Explorer do have -- depending on
21 what scale, how close in you're zooming in, they will
22 either just -- they can be manipulated to display a shaded
23 relief or a topographic map, yes.

24 Q. Okay. I believe I was looking at, let's see,
25 page 6 of your Exhibit 12 --

1 A. (By witness von Gonten) Okay --

2 Q. -- page 6 and 7 --

3 A. (By witness von Gonten) Okay, now those are
4 geologic maps focusing on just the upper three tertiary
5 formation aquifers.

6 Q. Okay. And I believe that the heading on this map
7 discusses outcrop of San Juan formation, outcrop of the --
8 I'm sorry, I can't read this, it starts with an N --

9 A. (By witness von Gonten) Nacimiento.

10 Q. -- formation and the Animas formation.

11 A. (By witness von Gonten) Yes, ma'am.

12 Q. Okay. And what is the definition of an outcrop?

13 A. (By witness von Gonten) It's a geologic
14 formation that actually -- we have circular logic, but it
15 crops out.

16 Q. Okay, crops out of what?

17 A. (By witness von Gonten) It's a term. It means
18 that it is exposed at the surface, as opposed entirely
19 buried and not visible, it's only known from the
20 subsurface. Surface geology versus subsurface geology.

21 Q. Thank you. And the geology also -- that same
22 geology also goes under -- the subsurface geology is
23 intersected when a company drills for oil and gas --

24 A. (By witness von Gonten) Yes.

25 Q. -- correct?

1 And when a company intersects the geology, do --
2 is that commonly what's known as drill cuttings that comes
3 up to the surface when they cut through the rock?

4 A. (By witness von Gonten) Yes.

5 Q. And that geology is composed of different
6 minerals; is that correct?

7 A. (By witness von Gonten) That's right.

8 Q. And -- I'm not the geologist, so I'm asking you
9 this question for real because I don't know the answer.
10 The geology that you have and the names of the different
11 formations, is that related to the mineral contents that
12 are in the different formations, or is that the year -- the
13 time period in which they were formed?

14 A. (By witness von Gonten) That's a bit
15 complicated. If I can take just a moment, there's at least
16 two ways of looking at that.

17 There's time-stratigraphic equivalents, and that
18 has to do with things all being deposited at the same time.
19 For example, if you look at what's currently happening
20 today, the Rio Grande is flowing down through the Rio
21 Grande valley, it's depositing bed load alluvium, and that
22 goes all the way down through Texas, and at the other end
23 there's a Rio Grande delta and it goes offshore. If you
24 were to map all that, you would see a change from very
25 coarse alluvium in New Mexico through sands in Texas, to

1 finer sands in the delta offshore, to muds and into the
2 deep water. All that would be dated November 5th, 2007.

3 That's not very practical if you're trying to
4 find oil and gas, so you look for things that are of the
5 same lithology. So a lot of those aquifers that are
6 referred to are referred to as sandstone units, and those
7 would be fine-grain -- generally fine to coarse-grain
8 quartzose sandstones.

9 Q. Okay, and the fine-grain quartzose sandstone is
10 what basically would come up in drill cuttings?

11 A. (By witness von Gonten) Well, when you encounter
12 it, yes. But you could also go through -- at least in the
13 Cretaceous, there's a lot of shaly section in there, and so
14 you would be seeing mudstones that were ground up and
15 they're coming to the surface as these same cuttings, but a
16 different lithology.

17 Q. So the rock -- just so I understand this
18 correctly, the rock subsurface is the same rock that --
19 what you could possibly have in the outcrops?

20 A. (By witness von Gonten) It could.

21 Q. And do the minerals wash off or anything when you
22 have rainstorms on outcrops?

23 A. (By witness von Gonten) Yes.

24 Q. And the minerals that are in the outcrops, would
25 those end up, for example, in rivers?

1 A. (By witness von Gonten) Yes.

2 Q. And then is it possible, then, to have rivers in
3 the State of New Mexico that might have higher mineral
4 content than in other parts of the country?

5 A. (By witness von Gonten) Yes.

6 Q. All right. Would it surprise you to know that in
7 the San Juan River the arsenic content is 70 parts per
8 billion?

9 A. (By witness von Gonten) I wasn't aware of that.

10 Q. All right. And the San Juan River basically runs
11 by the San Juan outcrops?

12 A. (By witness von Gonten) Well, the San Juan River
13 drains the San Juan Basin, yes.

14 Q. Right, okay.

15 Just a question concerning the slides, I believe,
16 that you gave us that were in color. Let's see, slide --
17 same exhibit -- Here we go. I believe it's slide 31.

18 A. (By witness von Gonten) Yes, I'm with you.

19 Q. Determining -- just looking at your key for the
20 Ogallala, the Triassic and the Ochoan and the Artesian
21 group, the quantification that you had here, zero to 300,
22 300 to 3000, is that set by USGS or was that a number that
23 you picked?

24 A. (By witness von Gonten) I did not generate this
25 map. This map was published by the water and

1 infrastructure data system on the Web.

2 Q. All right. So -- But I believe that you stated
3 on direct examination that 250 -- was it parts per million?
4 -- is considered drinkable water standards?

5 A. (By witness von Gonten) That is the Water
6 Quality Control Commission standard for fluorides, yes, 250
7 milligrams per kilogram --

8 Q. Okay, so --

9 A. (By witness von Gonten) -- milligrams per liter.

10 Q. -- so these pictures that you showed us here,
11 every purple dot is for a well that is effectively close to
12 drinking water standards?

13 A. (By witness von Gonten) Yes, it would be --
14 well, yes, that's correct. Some of them are going to
15 exceed, it's zero to 300 rather than zero to 250.

16 Q. Okay, but this is for water and not for dirt in
17 reserve pits?

18 A. (By witness von Gonten) That's right.

19 Q. All right, this is depiction of water wells?

20 A. (By witness von Gonten) That's right.

21 MS. FOSTER: Okay. All right, I have no further
22 questions, thank you.

23 CHAIRMAN FESMIRE: Okay. The other attorneys,
24 are you all going to have questions for these witnesses?

25 Mr. Huffaker?

1 MR. HUFFAKER: No, at this time.

2 CHAIRMAN FESMIRE: Okay. Mr. Jantz, or Bruce?

3 MR. FREDERICK: Yeah, I think we're just going to
4 have a couple.

5 CHAIRMAN FESMIRE: Okay, but you are going to
6 have some?

7 MR. FREDERICK: Yes. I'll take less than five
8 minutes.

9 CHAIRMAN FESMIRE: Okay. We're going to have to
10 do something different. The power outage that caused our
11 problem in the other building also knocked out the security
12 system and the locks, so they're going to chain-lock the
13 building closed at 5:15, which means unless you all want to
14 adopt an OCD staffer for the night, they're going to have
15 to go back home and get their car keys and everything.

16 So I did promise folks that we'd have another
17 chance to make public statements this evening. Sir, if you
18 have a statement that you'd like to make we can do it at
19 this time.

20 And then we'll have to take up the housekeeping
21 matters at nine o'clock in the morning at the -- Morgan
22 Hall in the State Land Office. Again, I've been asked
23 repeatedly to point out that there is no parking there.
24 Don't try to park in the parking lot, they won't let you
25 in. You press the button there, you'll get the nicest lady

1 in the world but she won't let you in. So you're going to
2 have to park in the PERA building.

3 So before we adjourn, we will now accept -- is
4 there anyone else who wants to make a public statement this
5 evening?

6 Yes, sir?

7 MR. HAWKINS: Bill Hawkins with BP.

8 CHAIRMAN FESMIRE: Come on down, Mr. Hawkins.
9 Mr. Hawkins, I think you were here when we went through the
10 ritual before. You can either make an unsworn statement of
11 position, or you can be sworn and present testimony.

12 MR. HAWKINS: I'm going to make an unsworn
13 statement.

14 BP has submitted some written comments, and so I
15 don't want to make this a long statement but I did want to
16 make a statement for BP.

17 We're a participant in the New Mexico industry
18 committee, and we support the general comments and their
19 recommendations to the Commission.

20 But in addition to that, we also believe that the
21 current pit rule, if it's properly implemented, would be
22 adequate to protect public health and safety and the
23 environment. We think if the proposed rule is adopted as
24 it's currently written that there will be a number of
25 adverse -- broader adverse impacts on public safety with

1 additional trucks on the road and potential impacts to the
2 environment.

3 So we are concerned that making a change that may
4 not be needed to protect the environment could actually
5 make things worse.

6 Finally, we would note that the rule as it's
7 drafted is going to have a significant adverse financial
8 impact on not only industry but on the State of New Mexico.
9 And so we think that the potential financial impact should
10 also be considered before a new rule is adopted.

11 And that's all I have.

12 CHAIRMAN FESMIRE: Okay, thank you, Mr. Hawkins.

13 Is there anyone else who would like to make an
14 unsworn -- make a public comment? Doesn't have to be
15 sworn, doesn't have to be unsworn.

16 Okay. With that, we are going to reluctantly
17 adjourn, to reconvene tomorrow morning in Morgan Hall in
18 the State Land Office at nine o'clock in the morning.

19 (Thereupon, evening recess was taken at 4:21
20 p.m.)

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CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Commission was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL November 19th, 2007.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010