

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 XXI - March 12th, 2008

Santa Fe, New Mexico

This matter came on for deliberations before the Oil Conservation Commission, MARK E. FESMIRE, Chairman, on Wednesday, March 12th, 2008, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
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C U M U L A T I V E I N D E X

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* * *

A P P E A R A N C E S

FOR THE COMMISSION:

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* * *

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1 WHEREUPON, the following proceedings were had at
2 9:07 a.m.:

3 CHAIRMAN FESMIRE: Good morning and welcome to
4 the Wednesday, March 12th, 2008, meeting of -- the special
5 Commission meeting of the New Mexico Oil Conservation
6 Commission.

7 The record should reflect that the purpose of
8 this meeting is to continue the deliberations in Cause
9 Number 14,015, the Application of the New Mexico Oil
10 Conservation Division for repeal of existing Rule 50
11 concerning tanks and below grade -- pits and below grade
12 tanks and adoption of new rules governing pits, below grade
13 tanks, closed loop systems and other alternative methods of
14 the foregoing, and amending other rules to make conforming
15 changes.

16 Let the record reflect that Commissioners Bailey,
17 Olson and Fesmire are all present and that this is -- that
18 the sole purpose of this meeting is to address Case Number
19 14,015.

20 Before we start, I need to make sure that the
21 people present understand that this is a deliberative
22 meeting, that the record is closed, and that there will be
23 no input from any party other than the Commissioners and
24 their counsel.

25 And with respect to that, I think Counsel Bada

1 does have something to say about an occurrence here
2 recently.

3 MS. BADA: I do. Unfortunately, a letter was
4 sent to the Commission early this week, and it took
5 advantage of the Commission clerk's diligence in getting
6 things to the Commission, and it was a letter from NMOGA,
7 IPANM and the industry committee, which basically are doing
8 to the Commission. The record was closed at noon on
9 December 14th. Under Commission Rules, nothing else should
10 have been submitted to the Commission. And while I note
11 the parties' attorneys were not listed on the letter, I
12 certainly hope they were not involved.

13 So just let me remind everyone that once the
14 record is closed, nothing else can be submitted.

15 CHAIRMAN FESMIRE: I also need to put on the
16 record, while the letter was delivered to my office, when I
17 read the heading and realized what it was, I did not read
18 the letter. Being an attorney, I understood the need to
19 keep the record closed at that point and again did not read
20 the letter.

21 Commissioner Olson, do you have anything to say
22 about that?

23 COMMISSIONER OLSON: Oh, I hadn't read it. I was
24 at other hearings that day and came back for the phone
25 message from our counsel, so I stuck it through my Enron

1 document management device, so...

2 CHAIRMAN FESMIRE: Commissioner Bada [sic]?

3 MS. BADA: And just clarification, in case
4 somebody has read it, please ignore it. It cannot be used
5 in the deliberations or your decision.

6 CHAIRMAN FESMIRE: With that, I think it's time
7 to begin the deliberations.

8 I'm going to ask the Commissioners -- Counsel
9 Bada has gone through and attempted to include our points
10 of understanding in a redraft of the rule. Did everybody
11 get a chance to look at that?

12 COMMISSIONER BAILEY: Yes, and I think she did an
13 excellent job of capturing what our intent was, and I would
14 like to use that as the basis for our continued
15 deliberations, if that's okay with the other Commissioners.

16 CHAIRMAN FESMIRE: That was my intention too.

17 Commissioner Olson, do you have anything to say
18 about that?

19 COMMISSIONER OLSON: Yeah, I don't mind. I guess
20 I didn't -- I still had my stuff on the old version, so I
21 didn't kind of transfer some of that over, but I have no
22 problem with working through that.

23 COMMISSIONER BAILEY: Okay.

24 CHAIRMAN FESMIRE: Okay, I guess the way to do it
25 is to just start through.

1 Do you have a copy of counsel's --

2 COMMISSIONER OLSON: I don't have -- didn't bring
3 that with me, so --

4 CHAIRMAN FESMIRE: Ed, could you --

5 COMMISSIONER OLSON: I can just work through with
6 counsel.

7 CHAIRMAN FESMIRE: You've got -- Counsel is going
8 to --

9 COMMISSIONER OLSON: Uh-huh.

10 CHAIRMAN FESMIRE: Thank you.

11 The first change that she made was in the
12 definition section of 15.17.7: Significant watercourse
13 means a watercourse with a defined bed and bank, either
14 named to a USGS 7-point - -- either named on a USGS 7.5-
15 minute quadrangle map or first-order tributary of such
16 watercourse.

17 I think that pretty accurately captures the
18 change that we wanted to make to the definition of
19 watercourse.

20 Commissioner, is that acceptable to you?

21 COMMISSIONER BAILEY: Yes, it is.

22 CHAIRMAN FESMIRE: Okay.

23 COMMISSIONER OLSON: Yeah.

24 CHAIRMAN FESMIRE: Commissioner Olson?

25 COMMISSIONER OLSON: It's the same as what we've

1 had in our points of understanding on this.

2 CHAIRMAN FESMIRE: Okay. The next change is in
3 19.15.17.9.D.(2).

4 COMMISSIONER OLSON: I wonder if you wanted to go
5 -- just if there's any comment on the -- there was other
6 definitions as well that were proposed by the Division in
7 their Application for --

8 CHAIRMAN FESMIRE: Yeah --

9 COMMISSIONER OLSON: -- hearing. I don't know if
10 you want to go through all the definitions first or --

11 CHAIRMAN FESMIRE: Let's go through it in
12 order --

13 COMMISSIONER OLSON: Okay.

14 CHAIRMAN FESMIRE: -- and -- the definitions. So
15 if you've got anything between there and the next one that
16 we need to discuss, please bring it up.

17 COMMISSIONER OLSON: Well, I think they had a
18 number of changes. And the only one, I think, that was a
19 point of issue for the hearing was the below-grade tank
20 definition, and the industry committee as well is looking
21 at adding a definition for subgrade tanks as well.

22 I didn't have a problem with the definitions as
23 presented by the Division except for those -- there's
24 actually a number of them that are changed, but except for
25 that one issue of contention, I don't think there was any

1 testimony objecting to the others. I think that's pretty
2 straightforward and just accepting the Division proposals
3 there.

4 As far as the industry committee's definition of
5 subgrade tank and below-grade tank, maybe we want to wait
6 on that till we get to the section on below-grade tank,
7 because it's all -- it's all linked together.

8 CHAIRMAN FESMIRE: Okay --

9 COMMISSIONER OLSON: So I just wanted just to
10 point out, I guess, that there were a lot of other changes
11 that there were no objections to at the hearing.

12 CHAIRMAN FESMIRE: Yeah. No, that's -- that's my
13 intention, to work through it from front to back, and --

14 COMMISSIONER OLSON: Okay.

15 CHAIRMAN FESMIRE: -- anything that you want to
16 bring up after your deliberations that you need to change,
17 just feel free to bring it up, please.

18 COMMISSIONER OLSON: I think there was, though,
19 an industry proposal I saw in their December 13th final
20 recommendations that was kind of a clarification to the
21 definition of pit that I didn't have a problem with.

22 CHAIRMAN FESMIRE: And what was that?

23 COMMISSIONER OLSON: At the end of the definition
24 of pit -- that was P --

25 COMMISSIONER BAILEY: -- 3.

1 COMMISSIONER OLSON: -- P(3), I believe -- they
2 added some language that the definition of pit doesn't mean
3 facilities solely for the purpose of safety, and they
4 deleted the word and, and then have secondary containment
5 and storm water or run-on control. I think that was pretty
6 consistent with a lot of the discussions at the hearing,
7 and I believe OCD didn't have any objections to excluding,
8 you know, stormwater-type containments around tanks and so
9 forth.

10 So I think that's acceptable, to accept the
11 industry's addition to that definition.

12 CHAIRMAN FESMIRE: Commissioner Bailey, do you
13 have any problem with that change?

14 COMMISSIONER BAILEY: No, I fully support that.

15 CHAIRMAN FESMIRE: Okay. Commissioner Olson,
16 anything else?

17 COMMISSIONER OLSON: I don't know, I was just
18 going back to the definitions, then, of subgrade tank and
19 below-grade tank. I'd rather defer that till we get to the
20 below-grade tank section.

21 CHAIRMAN FESMIRE: Okay. So anything up to
22 19.15 - -- besides the subgrade tank issue, up to
23 19.15.17.10? Excuse me, 17.9.D.(2)?

24 COMMISSIONER BAILEY: That's the next one on my
25 list.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER OLSON: I think I actually had
3 something before that. Just give me a second. Yeah, it
4 looks like under 19.15.17.8.C --

5 CHAIRMAN FESMIRE: In registration of subgrade
6 tanks?

7 COMMISSIONER OLSON: Yeah, and it's actually -- I
8 believe it might be a new -- it's a change in there that
9 industry had proposed for the idea that you can submit a
10 single permit for -- or you can -- you just have the
11 ability to issue permits for all the pits and tanks on a
12 site under -- associated with a single APD. I think that's
13 consistent with what's been done in the past with OCD at
14 other sites and trying to, you know, streamline the
15 permitting process and allowing for essentially one
16 application for all your activities, versus submitting each
17 one individually.

18 So I didn't have a problem with that concept, and
19 I think that's the way it's been done in past pit rules
20 and --

21 CHAIRMAN FESMIRE: So under --

22 COMMISSIONER OLSON: -- I'd recommend that we
23 accept that.

24 CHAIRMAN FESMIRE: And that is -- Why don't you
25 give me that citation again?

1 COMMISSIONER OLSON: It looks like they're adding
2 right now under the --

3 CHAIRMAN FESMIRE: -- the industry proposal?

4 COMMISSIONER OLSON: Well, under the Division
5 proposal it doesn't exist, right, so there would be a new C
6 under 19.15.17.8, a new letter C that would read, a single
7 permit may be issued for all pits, below-grade tanks and
8 closed-loop systems or other Division-approved alternative
9 methods associated with a single PD.

10 CHAIRMAN FESMIRE: PD?

11 MS. BADA: APD.

12 COMMISSIONER OLSON: APD, excuse me.

13 CHAIRMAN FESMIRE: APD.

14 Commissioner Bailey?

15 COMMISSIONER BAILEY: I like it.

16 CHAIRMAN FESMIRE: I do too. Okay Commissioner
17 Olson, you're on a roll. Let's go. What's your next one?

18 COMMISSIONER OLSON: I think the next thing I see
19 is in B.(2).

20 CHAIRMAN FESMIRE: 9.B.(2)?

21 COMMISSIONER OLSON: Uh-huh.

22 CHAIRMAN FESMIRE: Temporary pits?

23 COMMISSIONER OLSON: Actually, I had one of my
24 own in 9.B, I guess, just the preface sentence to -- before
25 number (1).

1 CHAIRMAN FESMIRE: The permit application shall
2 include a detailed engineering design plan?

3 COMMISSIONER OLSON: Actually it comes down below
4 that, then, in that first sentence of (1). There seemed to
5 be a lot of confusion at the hearing about what an
6 engineering design plan is, and in some cases it's done by
7 a registered professional engineer, in some cases it's not.

8 So I think the key to what the Division was
9 looking at was that the items that are constructed are done
10 by a registered engineer, not -- because some of these
11 things, I questioned this as well, that -- you know,
12 hydrologic report, it doesn't make any sense that an
13 engineer is certifying a hydrologic -- the hydrology and
14 geology of a site when that's not within -- maybe within
15 his expertise.

16 So just for clarification, I would add a couple
17 words in that sentence so that -- under 19.15.17.9.B.(1) it
18 would read, a registered professional engineer shall
19 certify engineering construction and design specifications
20 for permanent pits. And I think that's the intention of
21 what the Division was looking at.

22 CHAIRMAN FESMIRE: So the hydrologic report to a
23 registered engineer who's qualified, or a hydrologist? Is
24 that what you're trying to accomplish?

25 COMMISSIONER OLSON: Well, I'm just trying to

1 accomplish that actually constructed -- engineered,
2 constructed facilities should be designed and constructed
3 pursuant to an engineering plan by a registered engineer.
4 Other things that are in here really don't have much to do
5 with engineering. Climatological factors, hydrology,
6 geology, monitoring inspection plans -- some of these
7 things are not necessarily engineering, in the practice of
8 engineering.

9 So I just wanted to make clear, then, that that
10 is something distinctly different. The actual construction
11 and the specifications for construction and design of an
12 engineered structure versus some of these other issues,
13 which aren't necessarily engineering -- you know, closure
14 plan isn't necessarily an engineering activity. But some
15 of these things are, so that -- The key point is that
16 things that you construct should be done by a registered
17 engineer and certified by the -- because there seemed to be
18 some confusion amongst industry as to what was really being
19 required here.

20 CHAIRMAN FESMIRE: Okay, so a registered
21 professional engineer shall certify engineering,
22 construction and design plans --

23 COMMISSIONER OLSON: And design specifications,
24 and strike the word plans.

25 CHAIRMAN FESMIRE: The engineering --

1 COMMISSIONER OLSON: You still have an
2 engineering design plan, but certain portions of it have to
3 be certified -- the actual constructions and specifications
4 has to be done by a registered engineer.

5 CHAIRMAN FESMIRE: Is that not a little bit
6 confus- -- isn't that more confus- -- Well, one of the
7 benefits of having the whole thing signed off by an
8 engineer is that he would be able to -- you know, you'd
9 have a point of responsibility. But even a little bit
10 ambiguous is --

11 COMMISSIONER BAILEY: But I agree with Bill that
12 an engineer does not have the expertise to sign off on the
13 hydrologic reports --

14 COMMISSIONER OLSON: Right.

15 COMMISSIONER BAILEY: -- that only a hydrologist
16 or certified professional geologist, that type of technical
17 expert. I think he's making a good distinction that --
18 exactly what does the engineer sign off on, and also he's
19 making a distinction that the engineer signs off on the
20 constructed facility, not on the design strictly. And I
21 think that's very useful.

22 COMMISSIONER OLSON: I kind of bring this up
23 because at the Environment Department, especially the last
24 few years, we've had a lot of issues with the engineering
25 board in the state on design and construction of lagoons

1 and ponds, that that is the practice of engineering.

2 So we have had to look at now, ourselves, in our
3 discharge permits, of ensuring that all, you know, ponds,
4 lagoons, et cetera, are designed and certified by a
5 registered professional engineer, as well as the as-built
6 construction, usually afterwards, because those are usually
7 larger -- larger-type structures than we're going to have
8 here.

9 But it is a -- it's been a major point with the
10 engineering board the last few years about the designs of
11 pits and lagoons.

12 CHAIRMAN FESMIRE: Okay. Should we then try to
13 divide this into two lists, what has to be signed off by a
14 registered engineer and what has to be part of the design
15 plan?

16 COMMISSIONER OLSON: I think the design plan is
17 okay, because it is an overall -- and maybe it's just the
18 title, because it says engineering design plan. But the
19 key portions of it are that it would require certification,
20 or just the -- you know, the --

21 CHAIRMAN FESMIRE: Okay, so --

22 COMMISSIONER OLSON: -- the design, construction
23 specifications.

24 CHAIRMAN FESMIRE: Okay, a registered
25 professional engineer shall certify engineering and design

1 specifications for permanent pits --

2 COMMISSIONER OLSON: Right.

3 COMMISSIONER BAILEY: Now go with construction
4 also.

5 CHAIRMAN FESMIRE: -- construction design --

6 COMMISSIONER OLSON: Uh-huh.

7 CHAIRMAN FESMIRE: -- and specification --

8 COMMISSIONER BAILEY: Shall certify specification
9 -- design specification and construction.

10 COMMISSIONER OLSON: Uh-huh.

11 CHAIRMAN FESMIRE: Okay.

12 COMMISSIONER OLSON: Yeah.

13 CHAIRMAN FESMIRE: And the -- then do we need to
14 strike engineering? The design plan shall include --

15 COMMISSIONER OLSON: We could do that, it doesn't
16 -- that's fine with me.

17 CHAIRMAN FESMIRE: Commissioner Bailey?

18 COMMISSIONER BAILEY: Sure.

19 CHAIRMAN FESMIRE: Okay, let's do it that way.

20 In 19.15.17.9.B.(1) under permanent pits, a registered
21 engineer shall certify engineering, construction and design
22 specifica- -- engineering, comma, construction, comma, and
23 design specifications for permanent pits.

24 COMMISSIONER BAILEY: I would reverse that --

25 COMMISSIONER OLSON: Yeah, I'd reverse --

1 COMMISSIONER BAILEY: -- because design comes
2 before construction.

3 COMMISSIONER OLSON: Yeah.

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER OLSON: Specifications first, and
6 then construction.

7 CHAIRMAN FESMIRE: Okay. And then the design
8 plan, which is different, which includes elements that
9 don't have to be signed off by a registered engineer shall
10 include -- How's that?

11 MS. BADA: The only thing I would suggest on that
12 first sentence is, I would say engineering, construction --
13 engineering, design specifications and construction
14 contained in the plan.

15 CHAIRMAN FESMIRE: Okay. That would be okay for
16 me.

17 Commissioner Olson?

18 COMMISSIONER OLSON: Yeah, do you want to read
19 that again? Just --

20 MS. BADA: I would suggest, a registered
21 professional engineer shall certify engineering, design
22 specifications and construction for permanent pits, as
23 contained in the design plan.

24 CHAIRMAN FESMIRE: Could we call it a pit plan,
25 to be specific?

1 MS. BADA: Call it anything you want.

2 COMMISSIONER OLSON: You could just call it a
3 detailed plan, as far as I'm --

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER OLSON: -- concerned, take out
6 design. Because some of this is not necessarily design --

7 CHAIRMAN FESMIRE: Okay.

8 COMMISSIONER OLSON: -- criteria, just a detailed
9 plan.

10 CHAIRMAN FESMIRE: The detailed plan --

11 COMMISSIONER OLSON: And so it would be also in
12 the first sentence there, that preface that it will include
13 a detailed plan, period.

14 CHAIRMAN FESMIRE: Okay. Counsel, did you get
15 all that?

16 MS. BADA: Yes.

17 CHAIRMAN FESMIRE: Okay, the next issue.
18 Everybody's comfortable with the contents of the plan?

19 COMMISSIONER OLSON: Uh-huh.

20 COMMISSIONER BAILEY: Uh-huh, yes.

21 CHAIRMAN FESMIRE: No changes on temporary pits?

22 COMMISSIONER OLSON: Actually I think we need to
23 do the same thing, because it has engineering design plan
24 there, so you could just say the plan, a plan, under
25 temporary pits, in the first sentence --

1 CHAIRMAN FESMIRE: And the --

2 COMMISSIONER OLSON: -- and strike an engineering
3 design.

4 CHAIRMAN FESMIRE: And the purpose there is to
5 not require the registered engineer to sign off on each
6 plan; is that correct?

7 COMMISSIONER OLSON: I think here, I think the
8 intent was that they did not need a registered engineer for
9 this circumstance.

10 CHAIRMAN FESMIRE: Right. There's a second
11 paragraph -- there's a paragraph in the middle of that, the
12 third line from the bottom, where it says an engineering
13 design plan, so we need to take engineering and design out
14 of there too?

15 COMMISSIONER OLSON: Yes, every place it reads
16 engineering design plan, it should be replaced with just
17 plan.

18 CHAIRMAN FESMIRE: In B.(2), right?

19 COMMISSIONER OLSON: In B.(2), right.

20 COMMISSIONER BAILEY: And that's in the second
21 sentence also.

22 COMMISSIONER OLSON: Right.

23 And just for clarification as to what, I guess,
24 the intent of the Division was and some of the confusion in
25 industry over what was being asked for, I think where it

1 says on the third line, and a hydrologic report, I think
2 you just replace that with, and hydrologic data. Because I
3 think what the Division had testified to was that they're
4 not looking for a full-blow geology and hydrology of the
5 site, they're looking for specific hydrologic data that
6 they could use to evaluate the application.

7 CHAIRMAN FESMIRE: Okay. Is that acceptable,
8 Commissioner?

9 COMMISSIONER BAILEY: Yes.

10 CHAIRMAN FESMIRE: B.(3) --

11 COMMISSIONER OLSON: I still have one other --

12 CHAIRMAN FESMIRE: Whoops.

13 COMMISSIONER OLSON: -- issue there.

14 MS. BADA: Actually, industry had proposed
15 changes, some additional changes, to B.(2) which you
16 probably need to address.

17 COMMISSIONER OLSON: Yeah, and I actually had
18 agreed with a couple of issues that the industry brought
19 up. It seemed like it was just kind of tweaking of --
20 fine-tuning of the language.

21 Under the second sentence, they were placing the
22 word "recommendations", to follow applicable manufacturers'
23 recommendations with applicable manufacturers'
24 requirements.

25 CHAIRMAN FESMIRE: This is on B.(2)?

1 COMMISSIONER OLSON: This is on B.(2).

2 CHAIRMAN FESMIRE: I guess I don't see it.

3 Appropriate Division --

4 COMMISSIONER OLSON: It's in the second sentence.

5 CHAIRMAN FESMIRE: The plan shall include
6 operating and maintenance procedures, a closure plan and
7 hydrogeologic data that provides sufficient information --

8 COMMISSIONER BAILEY: First sentence, second
9 line --

10 COMMISSIONER OLSON: No, the first sentence of --
11 the second line of that paragraph where it just says,
12 follow applicable -- maybe I've got the -- yeah, right
13 here, follow applicable --

14 CHAIRMAN FESMIRE: Okay.

15 COMMISSIONER OLSON: -- applicable manufacturers'
16 requirements, instead of recommendations. And that's --
17 you know, I don't see a lot of difference. If they think
18 that clarifies it, that's fine with me.

19 CHAIRMAN FESMIRE: Okay.

20 COMMISSIONER OLSON: And then I had a question,
21 kind of, about their additional language down in B.(2)
22 about adding some language on compliance with the siting
23 standards, because I think that was the intent, as I
24 understood it from the Division's testimony, of what they
25 were looking for was, they need to have the data necessary

1 to determine what's going on and the potential impacts in
2 evaluating the application. But I would not strike the
3 language that industry actually struck, I'd just add that
4 as an additional -- some additional language.

5 CHAIRMAN FESMIRE: So it should read --

6 COMMISSIONER OLSON: I'm not sure, it was just
7 kind of a question I had with that. You know, that's -- it
8 seemed to me from the testimony that the major intent was,
9 you have to -- you're looking at the potential effects on
10 soils, surface water, groundwater, but you're also looking
11 at compliance with the siting criteria that are in
12 19.15.17.10.

13 So maybe if we just -- you know, it's a
14 suggestion, you might just add at the end of there, in
15 compliance with the siting criteria.

16 COMMISSIONER BAILEY: But I think it goes back to
17 the question of responsibility. Who's evaluating it? And
18 if the information is given in this list under B.

19 COMMISSIONER OLSON: Uh-huh.

20 COMMISSIONER BAILEY: It's not industry that's
21 going to be evaluating the potential effects of soil,
22 surface water and groundwater, it's the Division that will
23 be. So I can understand why that should be struck, that
24 language, because that's --

25 COMMISSIONER OLSON: Because it's got that right

1 in the preface to that, though. It's to enable the
2 appropriate Division district office to evaluate.

3 COMMISSIONER BAILEY: -- to evaluate.

4 COMMISSIONER OLSON: Right.

5 COMMISSIONER BAILEY: Right, but if -- that
6 language is not something that industry has to comply with,
7 it's something that the Division has to determine. And I
8 think it's clear whose responsibility it is.

9 MS. BADA: But it's -- but they're asking for the
10 information, and that --

11 COMMISSIONER BAILEY: Right.

12 MS. BADA: -- sentence is requiring -- it's the
13 information.

14 COMMISSIONER BAILEY: But they're given the
15 information up in the list of B.

16 MS. BADA: No, but B applies to permanent pits.
17 (1) applies to permanent pits, (2) is for temporary pits.
18 So that list wouldn't apply to temporary pits.

19 COMMISSIONER BAILEY: Okay.

20 CHAIRMAN FESMIRE: Is that --

21 COMMISSIONER OLSON: I think I see --

22 COMMISSIONER BAILEY: But it still -- it seems
23 like it's trying to shift the responsibility, and I think
24 we need to make it very clear that it's --

25 CHAIRMAN FESMIRE: The operator's --

1 COMMISSIONER BAILEY: -- the Division that makes
2 the evaluation. And so by eliminating those -- that
3 language right there, at industry's suggestion, we keep the
4 line between responsibilities clear.

5 COMMISSIONER OLSON: I guess I understand what
6 you're saying. How would you think of changing it?

7 COMMISSIONER BAILEY: Going ahead and deleting
8 that language that says the actual and potential effects on
9 soils, surface water and groundwater, and keeping
10 compliance with the siting standards of 19.15.17.10.

11 COMMISSIONER OLSON: That seems to me to -- it
12 might be confusing it even more, because it seems like then
13 the only criteria that you're looking at for approval is
14 compliance of the siting criteria and not -- and taking
15 away any discretion for potential effects on soils, surface
16 water and groundwater.

17 COMMISSIONER BAILEY: No, the Division always has
18 the responsibility.

19 MS. BADA: But not if you don't say they do.

20 COMMISSIONER OLSON: Right.

21 MS. BADA: And what it is, is notifying them.
22 This is the type of information we're going to need,
23 because this is the determination we have to make.

24 COMMISSIONER BAILEY: Okay.

25 CHAIRMAN FESMIRE: So the consensus is, if

1 Commissioner Bailey agrees, that we do add the compliance
2 with siting standards as recommended by the industry
3 committee, but we do not strike the actual and potential
4 effects of soil, surface water and groundwater?

5 COMMISSIONER BAILEY: Okay.

6 CHAIRMAN FESMIRE: Is that --

7 COMMISSIONER OLSON: Uh-huh.

8 CHAIRMAN FESMIRE: -- what you intended to do?

9 Okay. In B.(3), after looking at the record and
10 the recommendations of the parties, does anybody have a
11 change that they want to incorporate there?

12 COMMISSIONER OLSON: Well, I see the same one we
13 had, just from B.(2) above --

14 CHAIRMAN FESMIRE: The engineering design plan?

15 COMMISSIONER OLSON: No -- yeah, it's the
16 engineering design plan. Again, it should be the plan.
17 But then again, where it has applicable manufacturers'
18 recommendations -- the industry had suggested applicable
19 manufacturers' recommendations, and -- to be consistent
20 with what we just changed above.

21 CHAIRMAN FESMIRE: To requirements?

22 COMMISSIONER OLSON: Recommendations should be
23 changed to requirements.

24 CHAIRMAN FESMIRE: Okay, and then we've got the
25 engineering design plan again in the second sentence, the

1 plan?

2 COMMISSIONER OLSON: Uh-huh.

3 CHAIRMAN FESMIRE: And the plan -- Because again,
4 we're not requiring a -- because there's, you know, really
5 minimum construction and design required, we're not
6 requiring a professional engineer like we are requiring in
7 a permanent pit, right?

8 COMMISSIONER OLSON: Right.

9 CHAIRMAN FESMIRE: Okay. Is that satisfactory,
10 Commissioner?

11 COMMISSIONER BAILEY: Yes.

12 CHAIRMAN FESMIRE: B.(4), the industry committee
13 and the independents had some recommendations on siting
14 standards, below-grade tanks. Ah, here's the one we
15 probably need to talk about.

16 An engineering design plan for a below-grade tank
17 shall use appropriate engineering principles...

18 COMMISSIONER OLSON: In the first sentence, I
19 think it would just be consistent if we just say a plan.

20 CHAIRMAN FESMIRE: Are we not requiring some
21 engineering on the below-grade tanks?

22 COMMISSIONER OLSON: I don't believe that that
23 was the testimony of the Division. They only place that
24 they looked at, that I recall, requiring a registered
25 professional engineer, was design of a permanent --

1 CHAIRMAN FESMIRE: That was Mr. Jones --

2 COMMISSIONER OLSON: -- of a permanent pit.

3 CHAIRMAN FESMIRE: -- or Mr. von Gonten?

4 COMMISSIONER OLSON: I mean, they have it in the
5 first sentence where it says they'll use appropriate
6 engineering principles and practices, so -- but I don't
7 recall that -- the Division requesting that that be done by
8 registered -- or certified by a registered professional
9 engineer, unless -- unless I slept through that part --

10 (Laughter)

11 COMMISSIONER OLSON: -- because I don't remember
12 seeing it in the transcripts either.

13 COMMISSIONER BAILEY: Because farther in that
14 paragraph it does talk about hydrology also and geology.

15 COMMISSIONER OLSON: Uh-huh, right. I think we
16 need to have some of those same changes we had in the --

17 COMMISSIONER BAILEY: Uh-huh.

18 COMMISSIONER OLSON: -- in the prior bullets, in
19 (1), (2) and (3), to be consistent language.

20 CHAIRMAN FESMIRE: Okay, so the change you're
21 proposing --

22 COMMISSIONER OLSON: I guess the change I'd be
23 looking at would be that it's consistent with the previous
24 items we just changed, so it would be replacing the
25 engineering design plan with just a plan, where it appears

1 within B.(4), and then also on the second sentence, about
2 midway through, replacing the hydrologic report with
3 hydrologic data, and at the end of that sentence, after the
4 actual and potential effects on soils, surface water and
5 groundwater, adding and compliance with the siting criteria
6 of 19.15.17.10 NMAC, which again was the industry's
7 clarification of the intent.

8 CHAIRMAN FESMIRE: Okay. Commissioner Bailey,
9 are you okay with that?

10 COMMISSIONER BAILEY: I'm in agreement, yes.

11 CHAIRMAN FESMIRE: Okay. Okay, the next one we
12 have is 19.15.17.C.(1) through (4). The CRI, Oil and Gas
13 Accountability Project, Citizens for Clean Air and Water
14 and the industry committee all had comments on that one.
15 After reviewing the comments, does anybody see anything
16 that we need to change from the proposal?

17 COMMISSIONER OLSON: The only thing I saw was
18 under C.(4). I think the industry comment was that that's
19 redundant, because the application already requires a
20 closure plan, so why do you need to repeat it again in item
21 (4)? So they suggested deleting C.(4), and I didn't have a
22 problem with that. I didn't see -- it looks to me to be
23 redundant to the plan that's required, which requires a --

24 CHAIRMAN FESMIRE: -- a closure --

25 COMMISSIONER OLSON: -- a closure plan already.

1 So it's already there and required as part of the
2 application. I didn't understand why it needed to be
3 repeated here.

4 COMMISSIONER BAILEY: I agree.

5 CHAIRMAN FESMIRE: Okay.

6 COMMISSIONER OLSON: It's already part of the
7 application required above.

8 CHAIRMAN FESMIRE: Okay. The industry committee
9 proposed a --

10 MS. BADA: But this isn't --

11 CHAIRMAN FESMIRE: Pardon?

12 MS. BADA: I think what may not be clear, though,
13 and probably a better way to say it, is that a closure plan
14 is required. I don't think it's ever expressly stated.

15 CHAIRMAN FESMIRE: Shall we refer back to part B?

16 COMMISSIONER OLSON: I was looking at part B
17 where it just says, you know, the plan shall include --

18 MS. BADA: The permanent -- For permanent pits it
19 does. Okay, no --

20 COMMISSIONER OLSON: No, it's actually in all of
21 them, the closure plan is in --

22 MS. BADA: Yes, I don't think that --

23 COMMISSIONER OLSON: -- in all those --

24 MS. BADA: -- is necessary.

25 COMMISSIONER OLSON: -- items, so --

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER OLSON: -- it seemed redundant.

3 CHAIRMAN FESMIRE: The industry committee
4 proposed a new section on subgrade tanks to be labeled E.
5 Is this where we want to address the subgrade tank issue,
6 or start addressing it?

7 COMMISSIONER OLSON: I don't know if you want to.
8 I mean, I -- if it comes down to the overall discussion of
9 below-grade tanks, maybe we ought to just wait. I kind of
10 flagged that. It was in a couple places, those things that
11 we need to come back to.

12 CHAIRMAN FESMIRE: Subgrade tanks.

13 COMMISSIONER OLSON: It's part of just the
14 general issues of how we're going to deal with below-grade
15 tanks, subgrade tanks, whatever you want to call them.

16 CHAIRMAN FESMIRE: Okay, 17.10.A.(1).(a). The
17 industry committee had a definition of watercourse,
18 distance from watercourse; and CRI commented on the change
19 in depth criteria. I think that that has been addressed --
20 at least my interpretation that it's been addressed by the
21 changes that we agreed to in the points of agreement, and
22 counsel has inserted it with a blank.

23 MS. BADA: I have, because you discussed what you
24 wanted to -- No, that isn't the one, that's the one dealing
25 with the cavitation.

1 CHAIRMAN FESMIRE: Right. An operator shall not
2 locate a temporary pit or below-grade tank where
3 groundwater is less than 50 foot below the bottom of the
4 temporary pit or below-grade tank, and the additional
5 proposal was, unless the operator is drilling or working
6 over a coalbed methane well, and the Division finds that
7 the operator's proposed operation will protect groundwater
8 during the temporary pit's use and will remove any liquids
9 within the temporary pit within -- blank -- after the
10 operator completes cavitation.

11 MS. BADA: Yes, I need to know how soon you want
12 it removed.

13 And the other thing that needs to be clarified
14 is, is it just district office approval for that, or how do
15 you want to handle the approval in the review?

16 CHAIRMAN FESMIRE: This is part of the exception.

17 MS. BADA: Yeah.

18 CHAIRMAN FESMIRE: I mean, it is -- it is by
19 exception only here.

20 COMMISSIONER BAILEY: But the Aztec district
21 folks are so very familiar with their locations, with their
22 processes, maybe more so than the Santa Fe group, who will
23 be overwhelmed with other tasks to do. I'm willing to let
24 the Aztec district folks make that determination.

25 COMMISSIONER OLSON: Makes sense to me.

1 CHAIRMAN FESMIRE: Well, there's a requirement
2 here that there's a proposed affirmative finding that the
3 operation will protect groundwater. Do we want to put that
4 burden on the district office?

5 COMMISSIONER BAILEY: I think they are the
6 appropriate people to put it on, because they are there,
7 they are able to inspect it at that time.

8 COMMISSIONER OLSON: Uh-huh, right. I think it
9 is -- you know, it is specifically, then, allowed by the
10 district, as long as they believe that it's not going to
11 cause an effect on groundwater. And they know those
12 locations, I agree, better than probably the Santa Fe folks
13 do, because they're out there all the time.

14 COMMISSIONER BAILEY: And they can be there that
15 day --

16 COMMISSIONER OLSON: Right.

17 COMMISSIONER BAILEY: -- rather than --

18 COMMISSIONER OLSON: Uh-huh.

19 CHAIRMAN FESMIRE: But we have no content
20 requirement in here?

21 MS. BADA: No, that was something that you may
22 want to expand upon. You might want to look at (b) where
23 it -- approve an alternative distance based on the
24 operator's demonstration. So you may want similar
25 language.

1 COMMISSIONER OLSON: I mean, one way you may
2 amend it coming back to, I think, was what Commissioner
3 Bailey mentioned earlier, is making sure the proof is on
4 the operator, and you might say that where -- where it says
5 after and there, striking that part about the Division
6 finds and just saying that the -- and the operator
7 demonstrates --

8 MS. BADA: -- to --

9 COMMISSIONER OLSON: -- to the satisfaction of
10 the, you know, appropriate district office that the
11 proposed operation will protect groundwater.

12 But you're right, it doesn't specify the types of
13 information that they're going to provide.

14 Doesn't the types of information really come into
15 B.(2) where it's temporary pits? They have to provide this
16 information as part of their application. You know, the
17 hydrologic data, the closure plan, operating,
18 maintenance --

19 COMMISSIONER BAILEY: -- liner specs.

20 COMMISSIONER OLSON: -- liner specs and all that
21 other kind of stuff, so isn't it already required, I guess,
22 under 19.15.17.9.B.(2)?

23 CHAIRMAN FESMIRE: Right, but wasn't the purpose
24 to provide an exception for cavitation work?

25 MS. BADA: Yes, but there are also exceptions

1 under (b) and (g) of that same sub- -- of that same
2 paragraph, so it depends on how you want them to obtain
3 that approval. It's not a question of whether it's an
4 exception, it's how it's approved.

5 COMMISSIONER OLSON: I think the language that
6 counsel gave us here is giving the exception itself, so --
7 and then I like that language about making -- you know, the
8 demonstration requirement is -- the burden is upon the
9 applicant to demonstrate that it's not going to pose a
10 problem.

11 CHAIRMAN FESMIRE: Okay. So unless the operator
12 is drilling or working over a coalbed methane well that
13 requires cavitation -- Should we include that, or are we
14 intending to make this a broader exemption -- exception?

15 MS. BADA: No, it was for cav- --

16 COMMISSIONER OLSON: It was for cavitation, is
17 what I understood.

18 CHAIRMAN FESMIRE: Okay. So unless the operator
19 is drilling or working over a coalbed methane well
20 requiring cavitation, or requiring -- you know, this is
21 always their option, unless --

22 COMMISSIONER BAILEY: Utilizing --

23 COMMISSIONER OLSON: Uh-huh.

24 CHAIRMAN FESMIRE: Utilizing the cavitation
25 method of stimulation --

1 MS. BADA: What was that last part of that?

2 CHAIRMAN FESMIRE: -- cavitation method of
3 stimulation, and the Division finds that the operator's
4 proposed operation -- is there a better way to -- will
5 protect --

6 MS. BADA: Why don't we say, the Division finds
7 based on the operator's demonstration?

8 CHAIRMAN FESMIRE: -- finds based on the
9 operator's demonstration...

10 MS. BADA: I should say -- that's the other
11 thing, the Division or the district office.

12 CHAIRMAN FESMIRE: I think we've decided that it
13 ought to be up to the district office, didn't we?

14 MS. BADA: Okay.

15 CHAIRMAN FESMIRE: Upon an affirmative showing by
16 the operator that it will not.

17 COMMISSIONER OLSON: Uh-huh. And then what kind
18 of time frame do you want for removal of liquids?

19 CHAIRMAN FESMIRE: There should be minimal liquid
20 -- Well, I don't know, that's not true.

21 COMMISSIONER BAILEY: Workover pits have to be
22 cleared out within two weeks; isn't that right?

23 COMMISSIONER OLSON: But here they're in pretty
24 shallow groundwater areas, so --

25 COMMISSIONER BAILEY: Uh-huh.

1 COMMISSIONER OLSON: -- I'd want something
2 shorter than that. They should be just -- they should be
3 pretty much trying to keep fluids out of it, throughout its
4 use because it's so shallow to groundwater. And they
5 obviously might have a difficult time doing that as they're
6 actually doing the cavitation, that when they stop they
7 should maybe get them out right away, just do the shallow
8 depth to groundwater.

9 COMMISSIONER BAILEY: So shall we say 24 --

10 COMMISSIONER OLSON: Twenty-four --

11 COMMISSIONER BAILEY: -- or 48 hours or something
12 like that?

13 COMMISSIONER OLSON: Right.

14 CHAIRMAN FESMIRE: The record is replete with
15 evidence that the probability of groundwater effect depends
16 on the length of time that the head is present and, you
17 know, the amount of head and stuff.

18 So there's a relatively -- this is an operation
19 that requires an awful lot of planning, so --

20 COMMISSIONER OLSON: I mean, I don't see why they
21 can't do it within 24 hours. You finish the -- by the time
22 you complete the cavitation, you've just got to truck out
23 there and suck out anything you've got in there, so -- or
24 fluids.

25 And I think the testimony from the -- also from

1 the hearing, because I had asked about this a number times,
2 is that these are going to be a lesser number of sites
3 where it's less than 50 feet to water, either in along the
4 river valley, in a lot of that area and -- which is
5 essentially the former vulnerable areas that existed up
6 there, which is a small portion of the San Juan Basin that
7 occurs up there. So most of the operations, the bulk of
8 all the wells up there, I think the testimony was, is that
9 they're outside those former vulnerable areas, and that's
10 where you'd be potentially having 50 feet to groundwater or
11 less, so -- so it's affecting a smaller subset that
12 shouldn't be a big burden to get it out quickly.

13 CHAIRMAN FESMIRE: Is there any testimony in the
14 record indicating how long it would take an operator to get
15 into the site? Is there any reason why we can't
16 essentially make it immediate or, you know, what is the
17 oilfield equivalent of immediate? 24 to 48 hours? Is
18 there any testimony in the record that would keep us from
19 doing that?

20 COMMISSIONER BAILEY: I don't think there's
21 anything that talks about the reasonableness of the time.

22 COMMISSIONER OLSON: I mean, there was testimony
23 about drilling pits, that if they're letting these dry
24 out -- this is for the longer time frames where we're
25 looking at 30 days or something like that, but during the

1 winter they may have difficulty getting into a location for
2 a longer period of time, and we'll see that later on. I
3 think industry had asked for 45 days instead of 30 days,
4 because they might have trouble accessing that.

5 But I would think if they're doing the
6 cavitation, they're there, so --

7 CHAIRMAN FESMIRE: That's a good point.

8 COMMISSIONER OLSON: -- they should be able to
9 get a truck in when they're doing the cavitation.

10 CHAIRMAN FESMIRE: So I think the reasoning is,
11 it should be relatively immediately, and I think in
12 oilfield terms that would be 48 hours.

13 But we also need -- then we need to put in some
14 sort of exception if, you know, there is some testimony
15 that, you know, weather shuts them down. And while they
16 may have been able to get in to do the cavitation, they may
17 not be able to get out or get in to recover the fluids.

18 So my thinking would be, within 48 hours after
19 the cavitation operation is completed, unless they have for
20 due cause shown the district office that it is not feasible
21 for them to get in and remove those fluids during that
22 period of time.

23 Is that -- Is that acceptable, Commissioner?

24 COMMISSIONER BAILEY: Yes, it is. And I'm also
25 thinking about all the mud problems, that they could only

1 get in during the early morning hours when it's frozen over
2 right now.

3 CHAIRMAN FESMIRE: Right.

4 COMMISSIONER OLSON: Right.

5 CHAIRMAN FESMIRE: And, you know, if they can
6 show the district office that that is a problem, the
7 district office will be able to evaluate --

8 COMMISSIONER BAILEY: Right.

9 CHAIRMAN FESMIRE: -- the conditions and extend
10 that for a longer period of time.

11 COMMISSIONER OLSON: But it still should get out
12 as soon as they can access it, because at that point...

13 CHAIRMAN FESMIRE: Okay, that was 10.A.(1).(a).
14 Anything else we need to cover with that?

15 And 10.A.(1).(b), the Independent Association
16 asked that the 200 be reduced to 10 feet.

17 COMMISSIONER OLSON: I think we already addressed
18 that in our points of understanding from our initial
19 discussions, that we were going to go with the setback
20 distances that were proposed by the Division.

21 CHAIRMAN FESMIRE: Right. And CRI had a comment
22 on there, and like I said, I think that was already taken
23 into account when we evaluated the changes in the points of
24 understanding.

25 The next one I've got is A.(1).(g), and this is a

1 -- (g), and this was a comment by CRI. It says where
2 approval occurs.

3 COMMISSIONER OLSON: Where is that? I didn't see
4 that in their final December 13th proposal.

5 MS. BADA: CRI's was, that should be Division,
6 Santa Fe approval, rather than district approval.

7 COMMISSIONER OLSON: Right. I think they did
8 that throughout the document --

9 CHAIRMAN FESMIRE: Right.

10 COMMISSIONER OLSON: -- that anything that was
11 different should be done by the Environmental Bureau versus
12 the district office.

13 CHAIRMAN FESMIRE: Okay, is there -- does the
14 Commission see -- I think we're okay with that. Let me --
15 I think we've made the decision on that one.

16 COMMISSIONER BAILEY: Leaving it up to the
17 district --

18 CHAIRMAN FESMIRE: Right.

19 COMMISSIONER OLSON: Uh-huh.

20 CHAIRMAN FESMIRE: Okay. And (h), the --
21 basically the same. Any -- any reason not to continue from
22 that one, A.(1).(h)?

23 COMMISSIONER BAILEY: No, I think the district
24 knows the unstable areas better.

25 CHAIRMAN FESMIRE: Okay, 17.10.A.(2).(a), CRI,

1 the depth-to-groundwater provision, where groundwater is
2 less than 50 foot. I think we've -- in our points of
3 understanding we've already agreed that that is the
4 direction we want to go; is that correct?

5 COMMISSIONER BAILEY: Yes.

6 COMMISSIONER OLSON: Yes, what I understood.

7 CHAIRMAN FESMIRE: As presented.

8 COMMISSIONER OLSON: And I think that came
9 through not just CRI, I think there was other folks like
10 the OGAP that thought there shouldn't -- well, they thought
11 there shouldn't be anything below 100 feet, if I recall --

12 CHAIRMAN FESMIRE: Right.

13 COMMISSIONER OLSON: -- I think.

14 CHAIRMAN FESMIRE: Okay.

15 COMMISSIONER OLSON: But I think what we had
16 talked about before was that we would look at the 50 --
17 using it as 50 foot instead of 100 feet.

18 CHAIRMAN FESMIRE: Okay, and A.(3).(a), the same
19 kind of arguments, both for and again', lessening it and
20 extending it. But I think the evidence is sufficient to
21 support the way it was proposed.

22 COMMISSIONER OLSON: I'll put out something too,
23 and -- Actually it comes in a couple places, I guess I
24 missed that. In A.(1).(c) and in A.(2).(c), where it talks
25 about the setbacks to schools, hospitals, residences,

1 institutions, because I mentioned the issue of what if
2 somebody'd got a business there as well, and they -- I
3 think the testimony I heard at the hearing, when I asked
4 about that several times, it was like, Well, that wasn't
5 really included here, you could -- you know? That there
6 would be no setback from somebody's restaurant or some
7 other business.

8 I don't know, I -- it just kind of makes sense to
9 have some kind of a setback from some kind of an operation
10 like that. So I don't know if you'd want to include that
11 here.

12 COMMISSIONER BAILEY: Business is such a broad
13 term, though.

14 COMMISSIONER OLSON: I know.

15 COMMISSIONER BAILEY: I mean --

16 CHAIRMAN FESMIRE: A horse stable --

17 COMMISSIONER BAILEY: -- trying to --

18 COMMISSIONER OLSON: I know.

19 COMMISSIONER BAILEY: Yeah.

20 COMMISSIONER OLSON: Uh-huh.

21 COMMISSIONER BAILEY: I don't think we had enough
22 testimony on how to distinguish between businesses.

23 COMMISSIONER OLSON: Uh-huh.

24 COMMISSIONER BAILEY: I mean, a restaurant is one
25 thing --

1 COMMISSIONER OLSON: Right.

2 COMMISSIONER BAILEY: -- a stable is another
3 thing.

4 COMMISSIONER OLSON: Right, or an agricultural
5 field could be considered a business --

6 COMMISSIONER BAILEY: Yeah.

7 COMMISSIONER OLSON: -- as well.

8 COMMISSIONER BAILEY: So --

9 COMMISSIONER OLSON: Okay.

10 COMMISSIONER BAILEY: -- I don't think we can do
11 that.

12 But on (2).(b) and (3).(a), do we want to put in
13 significant watercourse, within 300 feet of a continuously
14 flowing significant watercourse?

15 MS. BADA: I think the proposal was that --

16 COMMISSIONER OLSON: Uh-huh.

17 MS. BADA: -- that they wanted to use significant
18 for any other. I think that was industry's suggestion. I
19 think you guys made that determination at your December
20 14th deliberations.

21 COMMISSIONER BAILEY: Okay.

22 COMMISSIONER OLSON: Yeah, I think there was
23 agreement that the continuously flowing was one issue, and
24 then what do we do with all these other --

25 COMMISSIONER BAILEY: Get the arroyos and the

1 gullies.

2 COMMISSIONER OLSON: -- arroyos and other types
3 of drainages?

4 COMMISSIONER BAILEY: Uh-huh.

5 CHAIRMAN FESMIRE: Okay. The -- Is there any
6 question with any of the provisions or any of the
7 provisions that we've discussed up to this point? Anything
8 that we need to go back and address? Anything that we
9 skipped that you want to talk about?

10 Okay --

11 COMMISSIONER OLSON: I don't think so.

12 CHAIRMAN FESMIRE: -- the next one I have is
13 A.(3).(a), 10.A.(3).(a). We talked a little bit about
14 that, the 300 feet, and I think that decision has been
15 made.

16 A.(3).(b), and there's been some comment on the
17 distance, and I think the evidence in the record supports
18 the decision that the Commission has made on that.

19 The next one that is on the list is 10.C, and
20 that drew an awful lot of comment, and we have made some
21 changes that I think address some of those comments.

22 The Citizens, OGAP and CRI want to strike the
23 section. The industry committee and the independents have
24 some comments on distance and definition.

25 We've made these revisions to be -- that I think

1 conform basically to some of the similar provisions in part
2 36. Is my understanding the understanding of the
3 Commissioners?

4 COMMISSIONER BAILEY: Yes, that we would have
5 some consistency of thought between the different rules.

6 COMMISSIONER OLSON: Well, I think also that the
7 -- CRI and OGAP were kind of trying to -- especially OGAP
8 was looking at there should be no, you know, on-site
9 closures. That's what the -- that's one of their major
10 points, that they -- I mean, every place throughout the
11 document they were striking on-site closure methods. They
12 didn't think it's appropriate.

13 I think we've kind of dealt with that already in
14 trying to craft ranges of types of closures, whether it's
15 the -- later, with the taco system versus the burritos
16 and --

17 CHAIRMAN FESMIRE: Right.

18 MS. BADA: The only clarification I needed is
19 that we had -- at your last -- the December 14th
20 deliberations, you'd wanted to use the surface waste
21 requirements for landfarms and small landfarms, and I just
22 had a question. Was it only for -- was it for all the
23 constituents listed in --

24 CHAIRMAN FESMIRE: I think the discussion talked
25 about chlorides, didn't it?

1 MS. BADA: It did. So I just had a question
2 about benzene and TPH and BTEX and whether -- that the
3 intent was also to include those or not?

4 CHAIRMAN FESMIRE: That wasn't my intent. I
5 don't know about the other Commissioners?

6 COMMISSIONER BAILEY: It was not your intent?

7 CHAIRMAN FESMIRE: No, ma'am.

8 COMMISSIONER BAILEY: What was your intent? Just
9 to --

10 CHAIRMAN FESMIRE: The discussion then was just
11 to provide some relief in the chlorides for -- you know, to
12 comply with -- to conform to the Rule 36 -- the part 36
13 decisions that we made on chlorides.

14 COMMISSIONER OLSON: I was thinking of that a
15 little differently. I was thinking we'd apply -- to be
16 consistent, apply the criteria of -- that was in Rule 36.
17 But I was looking at BTEX -- I was thinking of it in terms
18 of BTEX, TPH, chloride, those major indicators of a
19 problem, you know, so -- of something that should be a
20 problem.

21 COMMISSIONER BAILEY: That was my intent, was to
22 use the same as we had agreed upon for the landfarms.

23 COMMISSIONER OLSON: Uh-huh.

24 CHAIRMAN FESMIRE: Was that your -- ?

25 COMMISSIONER OLSON: That was my intent, was the

1 major -- the major criteria, which was used at -- a lot of
2 stuff the Division has done in the past, which is the, you
3 know, chloride, BTEX and TPH.

4 CHAIRMAN FESMIRE: And is that what has been
5 incorporated in the changes, counsel?

6 MS. BADA: Benzene, total BTEX, TPH and
7 chlorides.

8 COMMISSIONER OLSON: Right.

9 CHAIRMAN FESMIRE: They're all the same as the --

10 MS. BADA: Yes.

11 CHAIRMAN FESMIRE: -- part 36?

12 MS. BADA: Yes.

13 CHAIRMAN FESMIRE: Well, that's -- I guess I'm
14 overruled on that one. I do see a significant value in the
15 consistency.

16 COMMISSIONER OLSON: Well, what I was looking at
17 is, those are the indicators of essentially gross
18 contamination. So if we allow those to stay on the
19 surface, why wouldn't we then allow the same things -- I
20 think that was what I was looking at, why wouldn't we allow
21 those to be on the --

22 CHAIRMAN FESMIRE: TPH and some of the
23 hydrocarbon systems, if they stay on the surface there's
24 still going to be some more remediation occurring, whereas
25 if they're included in a closure, you know, there would be

1 no future remediation, no change in the concentration. Am
2 I wrong in --

3 COMMISSIONER OLSON: I'm not sure I understand
4 that.

5 COMMISSIONER BAILEY: There's soil incorporated
6 in the material which would include the bacteria necessary
7 for degradation.

8 CHAIRMAN FESMIRE: What about the oxygen and
9 water necessary? Do you think the testimony supports the
10 idea that that would be available, or is that something we
11 need to consider?

12 COMMISSIONER BAILEY: Well, I kept asking about
13 the potential for H₂S generation --

14 COMMISSIONER OLSON: Uh-huh.

15 COMMISSIONER BAILEY: -- and I think the
16 testimony was that there would not be any H₂S because of
17 the action of the oxygen and --

18 CHAIRMAN FESMIRE: Okay.

19 COMMISSIONER OLSON: Well, I think the idea that
20 -- what I heard from industry is, they -- especially in the
21 San Juan Basin, they said, well, they're coming in and
22 they're, you know, blending it, you know, 3-to-1, something
23 like that, to be able to -- just to make it --

24 CHAIRMAN FESMIRE: To stabilize --

25 COMMISSIONER OLSON: -- to stabilize it enough

1 anyways. So essentially you've got this contaminated soil
2 mix, if you want to think of it that way.

3 And the way I was thinking of it was, as part of
4 our discussions, was that, well, if we can leave that
5 material at a landfarm at those same concentrations, why
6 couldn't we just leave that in a -- buried in the ground as
7 well under the -- you know, the taco system or the in-place
8 burial that industry was proposing. Because that's
9 consistent with whatever could be left on the surface. You
10 have the same setback requirements on -- or same depth-to-
11 groundwater criteria that apply for the landfarms. All of
12 it's essentially the same.

13 CHAIRMAN FESMIRE: Okay, I'm going to defer to
14 your expertise on that, and think that there's an awful lot
15 of value in consistency, so...

16 COMMISSIONER OLSON: I don't think it's very
17 expensive when you're just looking at BTEX, TPH and
18 chloride. That's not a real expensive analysis either.

19 CHAIRMAN FESMIRE: Okay.

20 COMMISSIONER BAILEY: Okay.

21 CHAIRMAN FESMIRE: And you're okay with that?

22 COMMISSIONER BAILEY: Yes.

23 CHAIRMAN FESMIRE: So we're down to 17.11, are we
24 not, design and construction specifications?

25 The first one that comes up is, the industry

1 committee recommends that we add subgrade tanks here.
2 Operator shall design and construct a pit, closed-loop
3 system, below-grade tank or sump -- Oh, this is part of
4 their changing the -- including the definition of a
5 subgrade tank.

6 Commissioner Olson, I know you wanted to defer
7 this. Is this something we should defer to that section
8 itself?

9 COMMISSIONER OLSON: Yeah, we're getting close,
10 it's only two pages away, below-grade tanks.

11 CHAIRMAN FESMIRE: And we're only what? Five
12 pages into it. Boy, we're zipping right along.

13 Why don't we talk about this when we get to the
14 subgrade tank issue?

15 The same issue arose in D.(1) where the industry
16 committee recommended we add subgrade tanks; and in D.(2),
17 add subgrade tanks; D.(3), add subgrade tanks. And it says
18 -- and the Commission had a recommendation here.

19 COMMISSIONER OLSON: I'm sorry, where are we at
20 again?

21 CHAIRMAN FESMIRE: We're at 11.D.(3).

22 COMMISSIONER OLSON: Okay.

23 CHAIRMAN FESMIRE: And all of those -- Like I
24 said, I'm going to highlight those and defer those to a
25 general discussion on subgrade tanks.

1 COMMISSIONER BAILEY: But in D.(3) --

2 CHAIRMAN FESMIRE: D.(3)?

3 COMMISSIONER BAILEY: -- there was the change
4 from five feet to four feet for the top of the fence.

5 COMMISSIONER OLSON: Yeah, I had asked quite a
6 bit about -- you know, there was -- in my cross-
7 examination, that you don't see --

8 CHAIRMAN FESMIRE: -- many five-foot --

9 COMMISSIONER OLSON: -- you don't see five-foot
10 fences out in the -- in any of the ranching areas out
11 there, so...

12 And the idea was, too, that you really --
13 excluding -- I think they've got your wildlife and
14 livestock, and I guess maybe just for discussion, how far
15 do you see as that going when you come to the term
16 wildlife? Because if you have a four-strand barbed-wire
17 fence, well, you know, rabbits are wildlife, they're --
18 there's a lot of other things that are wildlife that go
19 right through a four-strand barbed-wire fence.

20 So when I saw four-strand barbed-wire fence, I
21 didn't really see that that's excluding wildlife, you know?
22 Elk will go over a four-foot fence, they'll go over a five-
23 foot fence, you know? So --

24 COMMISSIONER BAILEY: And lizards will go right
25 through anything.

1 COMMISSIONER OLSON: And other things will go
2 right through them, right.

3 CHAIRMAN FESMIRE: So where are we going with
4 this? I guess I don't --

5 COMMISSIONER OLSON: Well, I don't know, I just
6 had a big question mark there because I wasn't real
7 comfortable with the proposal, because it seems to me that
8 the proposal is not excluding wildlife, it's really only
9 excluding livestock, so...

10 COMMISSIONER BAILEY: And there was no testimony,
11 because I remember very clearly asking, What are you
12 talking about here? Remember, I asked about skinks.

13 COMMISSIONER OLSON: Uh-huh.

14 COMMISSIONER BAILEY: So it's a matter of, how
15 can we be specific in this rule, which is one of the goals
16 of the Division, was to -- for specificity rather than
17 being so general of what the current Rule 50 is?

18 MS. BADA: Didn't --

19 COMMISSIONER BAILEY: What?

20 MS. BADA: Didn't Game and Fish provide specific
21 comments on --

22 COMMISSIONER BAILEY: But they gave no specifics
23 for fencing, they just said wildlife.

24 MS. BADA: No, I mean Game and Fish. Didn't Game
25 and Fish provide written comments prior to the hearing?

1 CHAIRMAN FESMIRE: They testified at the
2 hearing --

3 MS. BADA: No, but I --

4 CHAIRMAN FESMIRE: -- and they gave comments,
5 yes.

6 MS. BADA: -- written comments.

7 COMMISSIONER BAILEY: But they weren't
8 specific --

9 COMMISSIONER OLSON: I don't think they were
10 specific --

11 COMMISSIONER BAILEY: -- as to the kinds of
12 fencing --

13 COMMISSIONER OLSON: Uh-huh.

14 COMMISSIONER BAILEY: -- they recommended, even.

15 COMMISSIONER OLSON: Because the only way you're
16 truly -- if you're going to take a broad term of wildlife,
17 the only way you're truly going to exclude them is to have
18 an enclosed tank. There is no way to -- or have a really
19 fine fence.

20 COMMISSIONER BAILEY: But there -- we are having
21 netting to exclude the birds.

22 COMMISSIONER OLSON: Right, which considering, if
23 you look at a lot of netting and such that's gone over,
24 especially tanks that I've seen, it would exclude most
25 wildlife as well --

1 COMMISSIONER BAILEY: Yes, it would.

2 COMMISSIONER OLSON: -- so -- because it's a very
3 fine mesh, most of that netting.

4 COMMISSIONER BAILEY: But to have it in D.(3)
5 gives no guidance to Division personnel --

6 COMMISSIONER OLSON: Uh-huh.

7 CHAIRMAN FESMIRE: Rachel Jankowitz testified on
8 behalf of the Game and Fish Department, and in her
9 testimony she spoke mostly about reclamation. And her
10 comment about fencing was, Fencing as described in
11 19.15.17.11.D will do nothing to protect wildlife and may
12 in fact present an additional injury hazard to animals
13 attempting to cross the fence. The netting requirements
14 are better, but we don't believe that they are adequate to
15 protect birds and migratory birds.

16 But there's nothing specific about what design
17 she would --

18 MS. BADA: I think she referred in her written
19 comments, but I can't find them.

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER BAILEY: Yeah, there were no
22 recommendations made by her.

23 CHAIRMAN FESMIRE: That's on page 1874 in the
24 record.

25 COMMISSIONER OLSON: Because they did submit

1 written comments on October 15th.

2 CHAIRMAN FESMIRE: Does it say anything about
3 fencing design?

4 COMMISSIONER OLSON: Well, they made some
5 comments that the barbed wire fence described will not
6 exclude any form of wildlife and that a fence intended to
7 exclude large wildlife must be constructed of wire mesh or
8 chain link at least eight feet high, and then to exclude
9 small wildlife a fence must be wrapped in a small mesh
10 material around the bottom, and then that fences don't
11 exclude flying wildlife.

12 And their issue seemed to be only with permanent
13 installations, not with temporary pits. They say, if you
14 have any pit fencing that will not be constructed as they
15 describe above, the words "wild life" should be removed
16 from the first sentence.

17 But they did give an illustration of a particular
18 type of fencing, but they don't specifically recommend it
19 either. So that's kind of a difficult thing to address
20 their concerns, since they don't actually have a specific
21 recommendation.

22 If you come to their -- the back of their written
23 comments, they do have a little document titled
24 Recommendations for Constructing Wire Fences for Livestock
25 and Big Game Habitats.

1 Although they even comment in their own document
2 that, you know, some areas should be free of fencing to
3 allow free movement of the game. So I don't think there's
4 any real clear direction from them on this.

5 MS. BADA: I think what -- as clarified, though,
6 is, if you want to use a four-foot barbed-wire fence, you
7 probably shouldn't say wildlife.

8 COMMISSIONER BAILEY: And leave the last
9 sentence. It leaves it open for a district --

10 COMMISSIONER OLSON: Uh-huh.

11 COMMISSIONER BAILEY: -- office to pose
12 additional requirements according to the specific
13 locations.

14 CHAIRMAN FESMIRE: Yes. So areas like the sand-
15 dune lizard area, would the --

16 COMMISSIONER BAILEY: Yeah.

17 CHAIRMAN FESMIRE: -- need to keep out lizards be
18 addressed?

19 COMMISSIONER BAILEY: So we could delete the word
20 wildlife --

21 COMMISSIONER OLSON: Uh-huh.

22 COMMISSIONER BAILEY: -- on the first sentence,
23 but keep that last sentence?

24 MS. BADA: What about the five-foot?

25 COMMISSIONER BAILEY: Change it to four.

1 COMMISSIONER OLSON: Yeah.

2 CHAIRMAN FESMIRE: You change that to four. I
3 think the testimony supports that that should be four foot.
4 Should we leave that up to the operator? Because that's a
5 four-strand fence.

6 MS. BADA: Why don't we say at least, at a
7 minimum?

8 COMMISSIONER OLSON: Well, if you have four
9 strands between one and four foot, that's one every four
10 foot, really, so...

11 MS. BADA: One foot.

12 COMMISSIONER OLSON: Or one foot -- every one
13 foot you've got a strand. I guess you could put four
14 strands at the top.

15 (Laughter)

16 MS. BADA: Why don't we say --

17 COMMISSIONER OLSON: I think it's fine, just say
18 between one and four foot. I don't --

19 MS. BADA: We could say evenly spaced.

20 COMMISSIONER OLSON: Uh-huh, yeah.

21 CHAIRMAN FESMIRE: Evenly spaced between one and
22 four foot? That's going to put you -- Well, let's see.

23 COMMISSIONER OLSON: At one foot, two foot, three
24 foot and four foot.

25 CHAIRMAN FESMIRE: Yup. The engineer had to draw

1 that out.

2 (Laughter)

3 CHAIRMAN FESMIRE: Okay. So the only change
4 we're going to make to that is to change the five foot to
5 four foot down there, under the testimony on that issue,
6 right?

7 COMMISSIONER BAILEY: And the first line,
8 delete --

9 COMMISSIONER OLSON: Right.

10 COMMISSIONER BAILEY: -- wildlife and.

11 COMMISSIONER OLSON: Uh-huh. And that way the
12 wildlife issues are covered if you have a particular
13 problem in an area --

14 COMMISSIONER BAILEY: In that last line, yeah.

15 COMMISSIONER OLSON: Right.

16 CHAIRMAN FESMIRE: Okay.

17 COMMISSIONER OLSON: It could be a lot of
18 different things. You end up keep having rabbits in
19 something, and probably you need to do something about
20 rabbits versus skinks versus...

21 CHAIRMAN FESMIRE: Okay.

22 COMMISSIONER OLSON: But it's where the problems
23 occur, I think.

24 CHAIRMAN FESMIRE: Okay. E, the Commission had
25 some comments on netting. I believe they were your

1 comments, Commissioner Bailey.

2 COMMISSIONER BAILEY: I was okay with what's
3 here.

4 CHAIRMAN FESMIRE: Commissioner Olson?

5 COMMISSIONER OLSON: I just kind of had one
6 question that was in there when it said, When netting is
7 not feasible the operator shall routinely inspect. And
8 it's like, what's routinely? But I don't have a good
9 suggestion as to what that is. I just don't think it's --
10 it seems kind of difficult to enforce if you don't know
11 what routine is, right? It's just a comment.

12 MS. BADA: Also, when do they have to report?

13 COMMISSIONER OLSON: Right, and when do they have
14 to report it as well? It just says that -- and report it.
15 Well, is it reported with -- you know, a month later? Is
16 it reported --

17 CHAIRMAN FESMIRE: Well, if they discovered it on
18 Friday, I think the maximum time period would be the first
19 thing Monday morning, so --

20 COMMISSIONER BAILEY: Unless there's a holiday.

21 CHAIRMAN FESMIRE: Unless there's a holiday. But
22 they're going to have pumpers on location on most holidays.

23 No matter what we put in there, we're always
24 going to have the argument, No, it wasn't there yesterday,
25 and --

1 COMMISSIONER OLSON: Uh-huh.

2 CHAIRMAN FESMIRE: -- and there's no way to
3 enforce it if you leave routinely and no time period on the
4 report.

5 COMMISSIONER OLSON: Uh-huh.

6 CHAIRMAN FESMIRE: So in order to enforce
7 something like this, we'd have to say -- Well, what would
8 we have to say?

9 MS. BADA: How often do you want them to inspect?

10 CHAIRMAN FESMIRE: They ought to have a pumper at
11 a permanent pit at least weekly, even with the SCADA
12 systems.

13 COMMISSIONER OLSON: But then in bad weather they
14 might not be out there for several weeks or -- depending on
15 if you can get to the site.

16 COMMISSIONER BAILEY: We could make it monthly,
17 report on a monthly basis, because the whole point of the
18 reporting is to figure out a scheme for keeping it from
19 happening again.

20 CHAIRMAN FESMIRE: Yeah, and I don't -- you know,
21 it's a real rare exception where they're not able to get to
22 the location at least monthly. Maybe sometimes up in
23 Farmington, but...

24 So I think monthly and then 30 days to report to
25 the district office. That way if the inspector finds a

1 bird, he waits for the first reporting period and then has
2 to do something to enforce it. How's that?

3 MS. BADA: So shall inspect on a monthly basis
4 and report within 30 days of discovery?

5 CHAIRMAN FESMIRE: Yes.

6 And that leads us to F.(1).

7 Commissioner Bailey, would you be interested in
8 taking a 10-minute break --

9 COMMISSIONER BAILEY: Sure.

10 CHAIRMAN FESMIRE: -- before we start with the
11 next page?

12 COMMISSIONER BAILEY: Sure.

13 CHAIRMAN FESMIRE: Why don't we reconvene at 20
14 till?

15 (Thereupon, a recess was taken at 10:29 a.m.)

16 (The following proceedings had at 10:42 a.m.)

17 CHAIRMAN FESMIRE: Let's go back on the record.

18 Let the record that this is a continuation of
19 Case Number 14,015, that all Commissioners are present, we
20 therefore have a quorum.

21 I believe -- Well, I know for sure that we were
22 about to start on 19.15.17.11.F and the comments that were
23 made on that.

24 In F.(1), the first comment was from the industry
25 committee concerning liquids: Oil, gas or water to prevent

1 uncontrolled releases.

2 Do we need to include a more generic liquids in
3 there?

4 COMMISSIONER BAILEY: Gas, comma, liquids or
5 water?

6 CHAIRMAN FESMIRE: Or water or other liquids --

7 COMMISSIONER BAILEY: Okay.

8 CHAIRMAN FESMIRE: -- or other liquids to prevent
9 uncontrolled releases.

10 COMMISSIONER OLSON: Yeah, I think the concern
11 is, you're not going to contain gas in the pit, so...

12 CHAIRMAN FESMIRE: Oh, yes, good point.

13 COMMISSIONER OLSON: Maybe if you just said to
14 ensure the confinement of oil or gas liquids or water.

15 CHAIRMAN FESMIRE: Of oil?

16 COMMISSIONER OLSON: Or oil and gas liquids --

17 CHAIRMAN FESMIRE: The operator --

18 COMMISSIONER OLSON: -- or water.

19 CHAIRMAN FESMIRE: -- shall construct a temporary
20 pit to ensure the confinement of liquids to prevent
21 uncontrolled releases. How about just --

22 COMMISSIONER BAILEY: Call it liquids.

23 CHAIRMAN FESMIRE: Just call everything liquids.

24 COMMISSIONER OLSON: Okay.

25 CHAIRMAN FESMIRE: The next is F.(2). There were

1 two comments, CRI and the independents.

2 CRI discussed the -- whether or not the authority
3 should be in the district or Santa Fe office, and the
4 independents were concerned with the sloping and berming.

5 Properly constructed foundation and interior
6 slope consisting of a firm, unyielding base...

7 I -- from the evidence presented, I didn't see
8 any reason to make the sloping or berming change.

9 Commissioner Bailey, did you get a different
10 interpretation?

11 COMMISSIONER BAILEY: I don't see that we need to
12 add that here.

13 CHAIRMAN FESMIRE: Okay.

14 COMMISSIONER OLSON: Yeah, I didn't have any
15 problem with the language that was proposed by the
16 Division. It seemed to make sense to me.

17 CHAIRMAN FESMIRE: Okay, so the next issue is,
18 the appropriate Division district office may approve an
19 alternative to the slope requirement if contamination -- if
20 the operator demonstrates that it can construct and operate
21 the temporary pit in a safe manner to prevent contamination
22 of fresh water and protect public health and the
23 environment.

24 The argument here was that, you know, again,
25 should this determination be made in the field or in the

1 Santa Fe office?

2 My inclination is that the field, where the
3 inspector can actually go out and see the conditions in the
4 field, as opposed to having to come down from the Santa Fe
5 office, but I do see the advantage to making all those
6 decisions in the Environment Bureau in the Santa Fe office.

7 Does either of the Commissioners --

8 COMMISSIONER BAILEY: I think the district office
9 is the appropriate place, because the topography is going
10 to play a role in this. And I think the district office is
11 more aware of what the topography is at a specific
12 location.

13 CHAIRMAN FESMIRE: Commissioner Olson, would you
14 have any problem with leaving it in the district office?

15 COMMISSIONER OLSON: No, I agree, I think I
16 agreed with the concepts that were presented by the
17 Division, that all the temporary pit issues were dealt with
18 at the district office level, so...

19 CHAIRMAN FESMIRE: Okay. The next issue is
20 F.(3). The independents and the industry committee both
21 were concerned with the thickness requirement.

22 The Division has specifically proposed a 20-mil
23 string-reinforced LDPE. I think the testimony presented to
24 us, for instance, the testimony from Mr. Bratcher with the
25 OCD Artesia office concerning the number of failures that

1 he had witnessed in pits that had been -- where the liner
2 had been pulled up, I believe the testimony was, he
3 conservatively estimated at least 80 percent, and I think
4 there's other testimony before us that it's -- that the 12-
5 mil liners that are being used simply aren't sufficient and
6 that the 20-mil ought to be the standard that we adopt.

7 Is there any problem -- any discussion from the
8 Commissioners?

9 COMMISSIONER BAILEY: 20, I think, had the case
10 made for it.

11 CHAIRMAN FESMIRE: Okay. Commissioner Olson, is
12 that okay with you?

13 COMMISSIONER OLSON: Yeah, I think that was
14 supported by the testimony from the hearing, especially our
15 little demonstrations that were done for us on the ripping
16 abilities of different liners and...

17 CHAIRMAN FESMIRE: Okay. CRI also raised the
18 issue in this one about the Santa Fe office and the
19 district office.

20 While I do think that the -- I'm going to have to
21 check the -- Again, CRI is making the argument that the
22 draft is inconsistent with other OCC rules, specifically
23 the part 36 -- it says Rule 36, but I assume they meant
24 part 36 rules. And I see the point, but I think it's --
25 with this respect, the proximity to the field and the

1 ability to make a physical inspection is probably more
2 important than the consistency it would receive by bringing
3 those decisions to Santa Fe.

4 COMMISSIONER BAILEY: I agree.

5 CHAIRMAN FESMIRE: F.(4) --

6 COMMISSIONER BAILEY: Okay.

7 CHAIRMAN FESMIRE: I'm sorry -- ?

8 COMMISSIONER BAILEY: Do we want to keep the --

9 CHAIRMAN FESMIRE: Do you have something else
10 that --

11 COMMISSIONER BAILEY: On F.(4), it says factory
12 seams. Do we want to change that to welded seams?

13 CHAIRMAN FESMIRE: Yes, ma'am. I do.
14 Commissioner?

15 COMMISSIONER OLSON: I think the Division had
16 proposed that the -- the last sentence to be added to (4),
17 which -- the seams shall be welded, kind of covered it.

18 CHAIRMAN FESMIRE: I think what they're saying
19 here is that the factory seams where possible --

20 COMMISSIONER OLSON: Uh-huh.

21 CHAIRMAN FESMIRE: -- and where factory seams
22 aren't possible, liner seams will be welded. The intention
23 here is to get away from the stitched --

24 COMMISSIONER BAILEY: Are factory seams stitched,
25 though?

1 CHAIRMAN FESMIRE: Good point. Do we need to add
2 factory-welded seams?

3 COMMISSIONER OLSON: Uh-huh.

4 CHAIRMAN FESMIRE: Okay.

5 The next provision is 19.15.17.11.F.(7). Both
6 the industry committee and the independents had a comment
7 about the use of anchor trenches being, I think
8 specifically, 18 inches deep.

9 I think the testimony of the Division has been
10 sufficient to show that those are a necessary part of the
11 design and that they're useful, and I think -- I think they
12 ought to be adopted as proposed with the 18-inch
13 requirement.

14 COMMISSIONER OLSON: I agree.

15 COMMISSIONER BAILEY: I won't object.

16 CHAIRMAN FESMIRE: Okay. The next one is F.(9).
17 The industry committee had some comments on proper sloping.

18 ...construct a temporary pit to prevent run-on of
19 surface water. A berm, ditch or other diversion shall
20 surround a temporary pit to prevent run-on of surface
21 water. During drilling operations, the edge of the
22 temporary pit adjacent to the drilling rig is not required
23 to have run-on protection if the operator is using a
24 temporary pit to collect liquids escaping from the rig.

25 Proper sloping. The industry committee --

1 COMMISSIONER BAILEY: Which allows topography to
2 be used as part of the protection. And I think that's
3 reasonable.

4 COMMISSIONER OLSON: I don't have a problem with
5 that, adding that.

6 CHAIRMAN FESMIRE: I don't either. I think the
7 phrase "proper sloping" should probably be added after a
8 comma between the words "ditch" and the words "or", used in
9 the phrase "or other diversion shall".

10 The next thing is OCD's comment on F.(11)
11 concerning freestanding liquids.

12 Commissioner Olson, do you see what they wanted
13 to change on F.(11)?

14 COMMISSIONER OLSON: Well, they added -- the
15 Division added a sentence that stated that the operator
16 shall not allow freestanding liquids to remain on the
17 unlined part of a temporary pit used to vent or flare gas,
18 and I think that was consistent with their testimony that
19 we are allowing them to temporarily use some kind of an
20 unlined portion for the purposes of venting and flaring.
21 So the key is, you won't have freestanding fluids, and they
22 should be designed so that they're actually draining the
23 fluids out and not keeping them there on an unlined portion
24 of a --

25 CHAIRMAN FESMIRE: Right, and it is a violation

1 to have freestanding fluids in the unlined portion of the
2 pit, so I think that's a --

3 COMMISSIONER OLSON: Uh-huh.

4 CHAIRMAN FESMIRE: -- that's a pretty important
5 addition.

6 COMMISSIONER OLSON: Uh-huh, I agree.

7 CHAIRMAN FESMIRE: So Commissioner Bailey, are
8 you okay with that one?

9 COMMISSIONER BAILEY: Yes, I am.

10 CHAIRMAN FESMIRE: Okay. The next one, we jump
11 all the way down to 11.G.(5), and the Citizens for Clean
12 Air and Water were requesting some sort of -- or commenting
13 that there should be some testing of the seams.

14 They are proposing that the phrase, A stabilized
15 air pressure of 35 p.s.i., plus or minus one percent, shall
16 be maintained for at least five minutes, and adding the
17 phrase, The operator shall test the seam by establishing an
18 air pressure between 33 and 37 p.s.i. in the pocket,
19 monitoring that the pressure pocket does not change by more
20 than one percent during the five minutes after the pressure
21 source is shut off from the pocket.

22 Does anybody see a significant difference between
23 what the OCD has proposed and what the Citizens for Clean
24 Air and Water are proposing?

25 COMMISSIONER BAILEY: No.

1 COMMISSIONER OLSON: Well, maybe just as a
2 clarification, the Division's proposed language doesn't say
3 it's really a test. That's kind of what it is, you're
4 testing the seams.

5 I don't have a problem with the language proposed
6 by the New Mexico Citizens for Clean Air and Water. I
7 think it's essentially the same, maybe says it a little
8 better.

9 CHAIRMAN FESMIRE: Commissioner Bailey, would --

10 COMMISSIONER BAILEY: I'm neutral.

11 CHAIRMAN FESMIRE: I think I agree with
12 Commissioner Olson, it's just a little better way of saying
13 the same thing.

14 COMMISSIONER OLSON: Uh-huh.

15 CHAIRMAN FESMIRE: On 11.I --

16 COMMISSIONER OLSON: Ah, here we are, below-grade
17 tanks.

18 CHAIRMAN FESMIRE: Yes. It's my opinion that the
19 objective of the Commission -- of the Division in proposing
20 their changes is to make sure that any tank that is in the
21 ground needs to be either double-walled or inspectable from
22 the ground surface, and I think the problem here has arisen
23 because there's a technicality.

24 Some of the pits, because they're needed to
25 gravity flow, have actually been set -- I mean, some of the

1 tanks have actually been set in old pits -- at least this
2 my understanding -- and that they need to be down below
3 that grade but that they're still designed in such a way as
4 that they are inspectable and they are monitorable.

5 The thing that we -- some of the testimony from
6 ConocoPhillips has been that they've spent \$125 million to
7 retrofit their tanks to meet that objective and a design
8 that I think does meet the -- the evidence shows, does meet
9 the objective but that would technically fall outside of
10 the new proposed definition.

11 So what we need to do is honor that design, as
12 long as it meets the objective, and I think the problem has
13 been that anything below grade is taken to mean below
14 ground, is taken to mean buried or partially buried, and
15 that's what we're trying to avoid. And I'm looking for
16 somebody to come up with the best way they think they have
17 of avoiding the problem and still honoring the work that --
18 the design that ConocoPhillips has, which I think from the
19 evidence has proven to be pretty successful and to achieve
20 the objective that we're looking at.

21 COMMISSIONER OLSON: I'd like to add just to what
22 you're saying, it wasn't just the ConocoPhillips design. I
23 think Dugan -- and maybe Merrion, I'm not sure -- had also
24 brought up issues for things that the Division has approved
25 under the prior rule where it was actually -- the Division

1 was encouraging the installation of tanks where you can see
2 the sides in a pit, and actually allowed for some designs
3 where they had come in and put a membrane liner down and
4 the gravel pad on it, and the tank on that. So essentially
5 the tank is analogous to an above-ground storage tank, in a
6 way.

7 And I think that was one of the issues that we
8 talked about in our points of agreement, that we should
9 allow those systems that were there before, and not have --
10 they shouldn't have to replace or retrofit those under the
11 rule, because the Division specifically encouraged them to
12 do that and approved them as well, you know?

13 So it seemed a good idea to, I guess, for lack of
14 a better word, grandfather those in and not require that
15 they be retrofitted. And I think that seems appropriate,
16 considering the actions the Division took in the past for
17 encouraging those activities.

18 In any circumstance, even when they remove them
19 they're still going to have to test under them, so we'll
20 see if there was a problem with them at that time. But
21 there wasn't any real testimony that there's extensive
22 groundwater problems from below-grade tanks, so I think we
23 could allow some latitude there.

24 COMMISSIONER BAILEY: I fully agree.

25 CHAIRMAN FESMIRE: How do we do it?

1 COMMISSIONER BAILEY: Not change the definition.

2 COMMISSIONER OLSON: Well -- yeah, there was --
3 the one problem I had was with industry's proposal to
4 create this new category of subgrade tanks. I think that
5 just confuses the issue even more, because what they're
6 looking at is having this essentially subgrade tank that
7 doesn't really have a permitting system, and I think I
8 disagree with that. I think they should all be below-grade
9 tanks and then having allowances for some different designs
10 that are out there.

11 The difficult thing was just, there's -- we have
12 really two different proposals, I think. It really just
13 comes in with the industry committee and the December 14th,
14 2007, proposal of the Division.

15 I think also we'd agreed back in December that we
16 would also get rid of the idea of this kind of secondary
17 containment where it's like a -- with a leak-detection
18 system of banding liners up to tanks, because they just
19 don't work. And there was testimony about that from
20 industry representatives that that is a problem and they've
21 always had difficulty keeping fluids out of those.

22 So I think as to one issue that was in here just,
23 you know, deleting that portion. I guess when I came
24 through and looking at the industry's -- the way they
25 started out with proposed language for I, theirs seemed to

1 flow a little bit better than the way OCD had started out
2 in their proposal.

3 I think they gave -- I'm looking at attachment A
4 of their December 13th, 2007, proposal. On page 5 they had
5 items 1 through 4, which were kind of basic items. Item 1
6 was that the below-grade tanks shall be constructed of
7 materials resistant to the tank's particular contents and
8 resistant to damage from the sunlight.

9 And then they moved down into more specifics
10 about tanks after that. I think -- I didn't really have a
11 problem with the ones that they proposed. They seemed to
12 be -- when I was looking through this, seemed to be some of
13 the same ones that OCD had listed. They just re-ordered it
14 to make it flow a little bit better.

15 I think you come down to -- where you have to
16 start looking at it is in industry's proposed (4), item
17 I.(4), and I think we may need to expand upon that from
18 there, either with additional items -- I think it covers
19 the basics that a below-grade tank system shall be either a
20 double-walled tank or a single-walled tank placed within a
21 geomembrane-lined collection system.

22 CHAIRMAN FESMIRE: Okay.

23 COMMISSIONER OLSON: But I guess we need to
24 expand upon that to cover these other types of systems that
25 have been installed in the past. And this doesn't

1 specifically get to some of the details. I think OCD went
2 into more detail about the Conoco proposal. And I don't
3 know if we necessarily need to go to that -- fully that
4 level of detail, but -- covering the general concepts of
5 it, but it's either in a system like Conoco had, where you
6 can visually inspect the bottom or the prior installed
7 systems that we just talked about a minute ago.

8 CHAIRMAN FESMIRE: Well, do we want to
9 grandfather in anything that's not inspectable or double-
10 walled? Is there -- There was some testimony, mostly from
11 Dugan, that they have facilities out there that are not
12 double-walled and don't appear to be -- at least my
13 interpretation of the testimony was that they were not
14 inspectable in the way that we're trying to do.

15 COMMISSIONER BAILEY: I think we can't lose sight
16 of what the purpose is.

17 COMMISSIONER OLSON: Right.

18 COMMISSIONER BAILEY: And if we keep that purpose
19 in mind, then I think we can go with what industry has,
20 with a few modifications to ensure that the purpose that
21 the purpose that the OCD -- the goal is going to be
22 reached.

23 CHAIRMAN FESMIRE: Okay. So basically I.(1)
24 through (5) -- or (1) through (4) outlines the way we want
25 to go.

1 It doesn't address the grandfathering issue that
2 we were talking about, so how do we address that? And what
3 direction do we want to go with that, I guess, is the first
4 question we ought to answer?

5 COMMISSIONER OLSON: Well, I guess OCD did try to
6 address that in their proposals, because they have some
7 issues that come towards things that are constructed prior
8 to the effective date. I don't think they specifically
9 addressed, though, this issue of, you know, the systems
10 that were done with, you know, the liner underneath and
11 then set on a little -- on a pad or whatever, having some
12 type of mechanism underneath to detect leaks, even though
13 it's not technically a double- -- fully double-lined
14 system, you know?

15 CHAIRMAN FESMIRE: Uh-huh.

16 COMMISSIONER OLSON: But I think it's close
17 enough in meeting that, and it's been approved before, so I
18 think we should have that allowance for that. So it might
19 just be a way to put in language that, you know, the
20 operator of a below-grade tank constructed, you know, prior
21 to the effective date, and then we'll have to figure out
22 the exact language. I didn't write something out, I just
23 have some questions on it.

24 CHAIRMAN FESMIRE: Let's figure it out.

25 I think it's okay to -- and I think it's

1 supported by -- Well, I think it's okay, and is probably
2 supported by the evidence, to start with the industry's I,
3 as in the original proposal, and go through the first four
4 that they inserted, the first four subparagraphs that they
5 inserted: the description of a below-grade tank's
6 resistance to the particular contents, constructed to
7 prevent overflow and collection of surface-water run-on, a
8 below-grade tank system shall have a properly constructed
9 foundation consisting of a level base free of debris, sharp
10 edges or irregularities to prevent punctures or cracks to
11 the liner or tank bottom, and a below-grade tank system
12 shall consist of either a double-walled tank with the
13 capability to detect leaks or a single-walled tank placed
14 within a geomembrane-lined collection system, or an
15 alternative system that the appropriate Division district
16 office approves based upon the operator's demonstration
17 that an alternative provides equivalent or better
18 protection.

19 To me that's an acceptable first part of it.

20 COMMISSIONER BAILEY: Yes.

21 COMMISSIONER OLSON: I agree.

22 CHAIRMAN FESMIRE: I don't -- I think the prelude
23 to (5) is acceptable. They've changed a cite here in
24 paragraph (5) to paragraph (3), which I think is correct.
25 The installed geomembrane liner shall extend above the

1 existing grade. The liner shall consist of 20-mil LDPE
2 liner or an equivalent.

3 I think the evidence has shown that the OCD's
4 proposal is probably necessary, that the 20-mil LLDPE would
5 probably not be acceptable for this sort of heavier use, so
6 that part I don't think that I would accept. But the rest
7 of part I.(5) there, I think, would be acceptable.

8 Then we have to start --

9 COMMISSIONER OLSON: Well, I just thought of a
10 problem, though, because this is coming back to this
11 banding system again, because that's what is in (5).(e) --

12 MS. BADA: Uh-huh.

13 COMMISSIONER OLSON: -- is that -- and that's
14 just not -- the system just doesn't work. You know? I
15 mean, it's been -- it was originally put out by the
16 Division back in the 19- -- somewhere around '85 or '86 as
17 an alternative method, and then when those things had been
18 installed I had actually inspected a lot of those in the
19 past when I had worked for OCD, and almost all of them,
20 they usually had fluid in there, because --

21 CHAIRMAN FESMIRE: Condensation.

22 COMMISSIONER OLSON: -- it wrinkles up around
23 where they band it to the tank, rains, and it just gets in
24 there, and it's just defeating the whole purpose. You
25 never know what's in there, unless you actually go and

1 sample it, what actually the fluid is. And it just seems -
2 - it's just kind of a failed system.

3 I think Mr. Wurtz in his testimony -- I think he
4 was one that addressed some of that as well, that said that
5 they, yes, they've had problems with that and those systems
6 haven't worked in the past.

7 CHAIRMAN FESMIRE: So Commissioners, think that
8 we should -- that banding should not be a feasible way of
9 accomplishing the effect of the double wall, then?

10 COMMISSIONER BAILEY: Right, I saw the problems
11 too.

12 CHAIRMAN FESMIRE: Okay.

13 COMMISSIONER OLSON: Yeah, and I think we said
14 that in our points of understanding as well, we just
15 wouldn't --

16 COMMISSIONER BAILEY: Uh-huh.

17 COMMISSIONER OLSON: -- accept that.

18 CHAIRMAN FESMIRE: You're right.

19 So then the only other thing -- then basically we
20 would have to strike all of (5), right?

21 COMMISSIONER OLSON: Right.

22 CHAIRMAN FESMIRE: The next thing we have to
23 address is the grandfathering issue. How would we do that?

24 COMMISSIONER OLSON: Well, I think there's two
25 parts of that. The Division had proposed language for

1 grandfathering where if you didn't meet the requirements
2 that were in this rule, you needed to either bring it into
3 compliance with it or close it within five years.

4 So there was some allowance that was given in the
5 -- that the Division was giving, and some allowance of time
6 frames as well, to kind of phase in the economics of sites
7 that didn't meet some of those requirements. I think
8 that's okay, but you'd still have to add into this
9 provisions for tanks of the ConocoPhillips design or these
10 other liner designs that were constructed in the past.

11 CHAIRMAN FESMIRE: Well, I think that brings us
12 back to the definition of below-grade tank:

13 ...where a portion of the tank's sidewall is
14 below the surrounding ground surface's elevation of the
15 ground surface and not visible.

16 Can this whole problem be avoided by just saying
17 something to the effect that -- below the immediate ground
18 level, or -- I understand the need to have these tanks
19 gravity-flowed. What we're trying to avoid is any portion
20 of the tank being buried and allow these other designs as
21 long as they're inspectable, as long as they're not in
22 contact.

23 COMMISSIONER BAILEY: As long as the sidewalls
24 are visible.

25 CHAIRMAN FESMIRE: Right.

1 COMMISSIONER OLSON: Right.

2 CHAIRMAN FESMIRE: How do we go about saying
3 that? And can we solve it in this definition alone?

4 COMMISSIONER OLSON: I don't think you deal with
5 it in the definition. I think the definition is just
6 trying to tell you this is a below-grade tank. The only
7 point that came up was industry's concern that, well, if
8 you've got an above-ground storage tank, that maybe it's
9 set a little bit lower, how do you measure the ground
10 surface elevation? Does that now by definition become a
11 below-grade tank? That was their concern in the
12 definition.

13 CHAIRMAN FESMIRE: Yeah, the problem is, we're
14 talking about either the general grade of the area or the
15 immediate grade in the depression where a lot of these
16 tanks have been set, where most of these tanks have been
17 set --

18 COMMISSIONER OLSON: Uh-huh.

19 CHAIRMAN FESMIRE: -- to get the gravity flow,
20 the benefits of gravity flow.

21 COMMISSIONER BAILEY: But the determining factor
22 is whether or not you can see the sidewalls.

23 CHAIRMAN FESMIRE: Right, so can't we just
24 address that in the definition? I think from the
25 testimony, the industry folks are concerned that in

1 attempting to -- you know, the definition of grade. Is it
2 the general grade around there or, like I said, the
3 immediate grade? Can't we address it with a change to the
4 definition?

5 MS. BADA: Couldn't you just add the "and not
6 visible" back in?

7 COMMISSIONER OLSON: The problem that comes in
8 with that then, and why that was in there before --

9 CHAIRMAN FESMIRE: Uh-huh.

10 COMMISSIONER OLSON: -- was, because if it was
11 visible, then even if it's a below-grade tank it's not
12 considered a below-grade tank and therefore doesn't need to
13 be permitted.

14 And that's a hole in the regs right now, that
15 there isn't a permitting of those tanks, because the sides
16 are visible. They're not considered a below-grade tank,
17 and they're not required to be permanent. And it was an
18 incentive that was built in there, admittedly, to try to
19 get folks to put in tanks. But I think part of what we had
20 in our points of understanding is, we agreed those things
21 need to be permitted --

22 CHAIRMAN FESMIRE: Right.

23 COMMISSIONER OLSON: -- but how do we deal with
24 the visible aspect? I agree, there needs to be some kind
25 of a distinction for, you know, having visible walls. It's

1 kind of a simple -- very simple leak detection. You see if
2 something is leaking.

3 MS. BADA: I think you put it in your design
4 standards.

5 COMMISSIONER OLSON: That's more of what I was
6 thinking, is what counsel is saying, that you just put it
7 in your design and construction criteria, that they still
8 -- even though it's a tank in a pit or a vault with the
9 sides exposed it still needs to be permitted but it just --
10 it may not need to meet certain requirements --

11 CHAIRMAN FESMIRE: So can we not --

12 COMMISSIONER OLSON: -- on design and
13 construction.

14 CHAIRMAN FESMIRE: -- change the definition of
15 subgrade tank to, you know, with any portion buried so that
16 it's not -- so that the sidewalls are not visible, and
17 then --

18 MS. BADA: No, because then you exempt it out.

19 COMMISSIONER OLSON: Then you would exempt them
20 out.

21 CHAIRMAN FESMIRE: But also, isn't it time that
22 we -- maybe we need to register those -- require
23 registration for all subgrade tanks.

24 MS. BADA: Well then, that would be the approach,
25 to have a subgrade -- to differentiate between below-grade

1 tanks and subgrade tanks.

2 COMMISSIONER BAILEY: Which is where industry's
3 definitions come in. They have the subgrade tanks, where
4 the bottom must also be visible for inspection, and with
5 the below-grade tanks the sides are not visible.

6 So there is usefulness in having the two
7 definitions, one for below-grade tanks and one for subgrade
8 tanks. Below-grade tanks, the walls are not visible.
9 Subgrade tanks, such as those in the old pits, the sides
10 are visible. So it might be useful to look again at their
11 definitions and see if they're taking care of the problem
12 that you're talking about now.

13 COMMISSIONER OLSON: I just didn't like creating
14 another definition. We already have this distinction
15 between below-grade tanks and sumps, and then creating
16 another type of tank, to me, just seemed problematic. I
17 mean, they should all be permitted except for the sumps,
18 which is the -- smaller little things.

19 CHAIRMAN FESMIRE: Which is what the rule -- I
20 don't know that anybody proposed a change in that, did
21 they? I don't remember.

22 COMMISSIONER OLSON: Well, I think --

23 MS. BADA: I think they proposed a registration.

24 COMMISSIONER OLSON: I think they proposed a
25 registration for them and not a permitting for subgrade

1 tanks, was what the industry proposal was looking at.
2 That's the way I remember it. And it seems to me they
3 should just all be permitted, just part of the activities
4 that comes in with the APD and just all done up front.

5 But you know, I do agree, yeah, there's a
6 definite distinction, if the sides are visible and, you
7 know, these things have been approved before and they've
8 got the membrane liner or whatever underneath them and you
9 can see the sides, I don't have a problem with those.

10 COMMISSIONER BAILEY: And they're subgrade.

11 COMMISSIONER OLSON: Right. I think why don't
12 you just maybe handle it as a grandfathering under the
13 design and construction, versus create a whole new class of
14 tanks that are out there.

15 MS. BADA: But I think -- do you want to allow
16 those in the future? If you do, then I think what you do
17 is say, where the sides are visible this is what you mean,
18 if they aren't --

19 COMMISSIONER OLSON: Right.

20 MS. BADA: -- this is what you --

21 COMMISSIONER BAILEY: Uh-huh. So it could be --
22 I mean, you could even come into (4) here where you say a
23 below-grade tank system shall consist of, and then you
24 could break that into an (a), (b) and (c) if you wanted to
25 allow future systems like that where the sides are visible.

1 I mean, I had a question on that in the below-
2 grade tanks, you know, for -- just for discussion. Do we
3 want to continue on with new ones like -- that are
4 constructed like that too, you know, which is a little
5 different than the Conoco, you know, Phillips design.
6 There's a couple options in there.

7 CHAIRMAN FESMIRE: I think the objective is to
8 make sure that you have a way of detecting leaks. And the
9 ConocoPhillips design clearly does that, at least in my
10 understanding of it. And I think that ought to be
11 encouraged because it also keeps these tanks, you know,
12 relatively secure and -- I mean, it's just a good way of
13 doing it.

14 COMMISSIONER BAILEY: So use into the future --

15 CHAIRMAN FESMIRE: I have no problem with --

16 COMMISSIONER OLSON: I have no problem with that.

17 COMMISSIONER BAILEY: -- accomplishes the goal
18 here, yes.

19 COMMISSIONER OLSON: I guess the other question
20 is, do you want to allow into the future the other design
21 of, you know, a liner underneath and putting it on a pad so
22 that technically if it gets leaks you should see things
23 coming out to the side, but you cannot visually inspect the
24 bottom?

25 Do you want to just grandfather those in for the

1 existing systems, or do you want to allow that to also go
2 forward in the future? I mean, I think what we're
3 discussing here, we clearly want to --

4 CHAIRMAN FESMIRE: Yeah.

5 COMMISSIONER OLSON: -- grandfather those in, but
6 do we want to allow more design construction of those type
7 of tanks? I mean, I was kind of going either way on that,
8 you know, so...

9 CHAIRMAN FESMIRE: I do have a preference, and I
10 think the evidence will support it, that the superiority of
11 the design where you actually have some sort of a gap where
12 you can inspect the -- for lack of a better word, inspect
13 the bottoms, has got a significant value.

14 Whether that's enough value to -- I don't think
15 it's enough value not to grandfather in the systems that
16 we've been, and people have spent money to put in the new
17 systems.

18 But from this point forward, I would think that
19 it would be more protective of the environment at a
20 relatively little detriment to the operators to encourage
21 the kind of facilities that ConocoPhillips has put in or
22 the kind of facilities where you can actually inspect the
23 bottom before failure. The problem with leaving it on the
24 liner is that, you know, you can -- it has to fail before
25 you get -- even a minimal failure, before you get notice of

1 that potential failure.

2 So I don't know, I would lean towards not doing
3 that kind of thing in the future but addressing it as a
4 grandfather -- you know, as long as the tank is competent,
5 to leave it the way it is now.

6 Commissioner Bailey, you --

7 COMMISSIONER BAILEY: So your proposal would be
8 to raise up all tanks on some sort of piping or something
9 so that mirrors could be used for inspection of the bottom?

10 CHAIRMAN FESMIRE: I think you would have better
11 control of any potential release that way, I think the
12 testimony would show that.

13 COMMISSIONER OLSON: I think what he's saying is,
14 that's an option, because you still have the option of a
15 double-bottom --

16 CHAIRMAN FESMIRE: Right.

17 COMMISSIONER OLSON: -- tank, then, which --
18 you're not physically being able to inspect it, you've just
19 got a leak-detection system.

20 COMMISSIONER BAILEY: Okay, as long as that is
21 included in --

22 COMMISSIONER OLSON: Right.

23 COMMISSIONER BAILEY: -- as one of the options.

24 CHAIRMAN FESMIRE: Oh, yeah, the --

25 COMMISSIONER BAILEY: Okay.

1 CHAIRMAN FESMIRE: -- the double-walled tanks
2 are --

3 COMMISSIONER BAILEY: -- are always --

4 CHAIRMAN FESMIRE: -- an option, yeah.

5 COMMISSIONER BAILEY: Okay.

6 CHAIRMAN FESMIRE: So can anybody summarize how
7 we're going to address this, then?

8 MS. BADA: Well, I don't know the exact language,
9 but this is my understanding, being highly nontechnical,
10 that you'll either have double-walled, double-bottomed
11 tanks, or you'll have the ConocoPhillip design in the
12 future --

13 CHAIRMAN FESMIRE: Or --

14 MS. BADA: -- and --

15 CHAIRMAN FESMIRE: -- a functionally
16 equivalent --

17 MS. BADA: Or a functional equivalent. Or -- and
18 then you'll grandfather in the -- I think, like the Dugan
19 design and --

20 COMMISSIONER OLSON: Uh-huh.

21 MS. BADA: -- when they have a thin one, they
22 eventually replace those, they'll be the --

23 CHAIRMAN FESMIRE: Right --

24 MS. BADA: -- one or the other --

25 CHAIRMAN FESMIRE: -- right, you've still got the

1 competence requirements. If the tanks aren't competent and
2 they replace it, they may have to go to the other side.

3 COMMISSIONER BAILEY: So no new approvals of that
4 design, but no requirement to remove them at this time?

5 MS. BADA: As long as they're sound.

6 COMMISSIONER OLSON: Uh-huh --

7 COMMISSIONER BAILEY: Right.

8 COMMISSIONER OLSON: -- that they are allowed by
9 rule.

10 COMMISSIONER BAILEY: Yes.

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: And address the problem from
13 this point forward.

14 COMMISSIONER BAILEY: Yeah.

15 COMMISSIONER OLSON: And if they did have to
16 replace them, say they leaked, they'd replace them with a
17 new design, I guess.

18 COMMISSIONER BAILEY: Right, so it's no more
19 approvals of the old design --

20 COMMISSIONER OLSON: Uh-huh.

21 COMMISSIONER BAILEY: -- but no requirement for
22 removal of them until --

23 COMMISSIONER OLSON: Right.

24 COMMISSIONER BAILEY: -- they fail.

25 CHAIRMAN FESMIRE: Right.

1 COMMISSIONER BAILEY: Okay.

2 COMMISSIONER OLSON: And then I guess you have
3 the other issue for things that are in there that have been
4 installed that either the sides are buried or they don't
5 meet those requirements, then they've got five years to
6 retrofit them. I think that's what the Division had. So
7 there's an allowance that they've got, you know, plenty of
8 time to be able to factor the economics of replacement of
9 the ones that don't meet those requirements.

10 COMMISSIONER BAILEY: They have the banded --

11 COMMISSIONER OLSON: And they have the banded
12 ones or --

13 MS. BADA: -- single-wall buried.

14 COMMISSIONER OLSON: -- yeah, single-wall buried
15 types.

16 MS. BADA: Do you want to craft language, or do
17 you want me to craft language and send it out to you?

18 COMMISSIONER OLSON: I'd kind of like that,
19 because I think we might have a hard time --

20 (Laughter)

21 CHAIRMAN FESMIRE: Punt?

22 MS. BADA: Okay.

23 COMMISSIONER BAILEY: In the matter of time
24 allowed here --

25 MS. BADA: Let me make notes to myself.

1 CHAIRMAN FESMIRE: I think we're pretty sure
2 where we want to go. I think the exact language to get
3 there is probably a function for counsel.

4 COMMISSIONER OLSON: Uh-huh. Because I think
5 it's kind of a -- it's really a blend of the --

6 CHAIRMAN FESMIRE: -- the two systems and --

7 COMMISSIONER OLSON: -- of the two languages,
8 with just getting rid of the banded liner tank system,
9 because it doesn't work.

10 Because also in -- the one part that might be
11 added to some too, which came out of -- it looks like it's
12 really in both proposals, industry's and OCD's, was how you
13 install that geomembrane liner system. I think in (4)
14 here, as proposed by industry, it just says you'll have
15 this geomembrane-lined collection system. What we might
16 add to that is to --

17 MS. BADA: I think --

18 COMMISSIONER OLSON: -- some of the language.

19 MS. BADA: -- from OCD's changes, I think --

20 COMMISSIONER OLSON: Right, yeah, from OCD's
21 changes or from -- just kind of looks like industry's --

22 MS. BADA: -- or ConocoPhillips' testimony --

23 COMMISSIONER OLSON: Right.

24 MS. BADA: -- I think there's some pretty clear.

25 Okay, see if I've got this right. In the future,

1 either double-walled or equivalent, or ConocoPhillip
2 design. Grandfather in the Dugan-type design, then replace
3 upon failure. And then anything else that doesn't meet
4 those, five years.

5 CHAIRMAN FESMIRE: That's my intention. Is that
6 your intention, Commissioner Bailey?

7 COMMISSIONER BAILEY: Uh-huh.

8 CHAIRMAN FESMIRE: Commissioner Olson?

9 COMMISSIONER OLSON: Yeah.

10 CHAIRMAN FESMIRE: Okay. That was relatively
11 painless. We'll see how long it takes counsel to come up
12 with the language to do that.

13 The next section is section J, 11.J. CRI and the
14 Oil and Gas Accountability Project --

15 COMMISSIONER OLSON: Oh, I just saw something
16 that I missed up in -- just a clarification that I had up
17 on H.(1) -- or H.(2), excuse me, where it talks about, you
18 know, operator of closed-loop system that uses temporary
19 pits. Just for clarification, I think it should be that
20 uses temporary pits for solids management, because there's
21 not -- if they've got a closed-loop system, it's not for
22 managing liquids, it's for managing solids.

23 MS. BADA: That was in H?

24 COMMISSIONER OLSON: H.(2) Because the whole
25 point of a closed-loop system is to manage your liquids --

1 MS. BADA: And that was in H.(2) --

2 COMMISSIONER OLSON: -- and fluids and your mud.

3 MS. BADA: -- for solids management?

4 COMMISSIONER OLSON: Yeah, and then the temporary
5 pits are for drying, drying beds or something like that,
6 for dealing with your solids. They're not for --

7 CHAIRMAN FESMIRE: Oh, yeah, okay.

8 COMMISSIONER OLSON: -- not for holding liquids.
9 So just a clarification to add "for solids management"
10 after "temporary pits".

11 CHAIRMAN FESMIRE: Okay. Now are we ready to go
12 on to J?

13 Two commentators, CRI and the Oil and Gas
14 Accountability Project, asked that the section be stricken.

15 MS. BADA: I think this is an issue you need to
16 decide as far as your burial.

17 COMMISSIONER OLSON: Yeah, this fits into the --
18 you know, this is the deep-trench burial, so we hadn't
19 resolved that issue under our points of understanding. We
20 deferred that till this meeting. So it's just a matter of
21 how we want to allow that.

22 I think what we talked about already was looking
23 at the in-place closure, I guess, if you -- if that's the
24 way industry had referred to it, for the sites that meet
25 the landfarm criteria, based upon, again, depth to

1 groundwater, the varying criteria. And then how do we deal
2 with those other sites for deep-trench burial? And what
3 kind of levels are allowed for the wastes that go into
4 them? We didn't resolve that.

5 COMMISSIONER BAILEY: Do we go taco or burrito?

6 COMMISSIONER OLSON: Right.

7 MS. BADA: And when do you allow it?

8 COMMISSIONER OLSON: Right.

9 MS. BADA: Do you allow it? I don't think that
10 was resolved either.

11 CHAIRMAN FESMIRE: Well, that's going to be a
12 pretty lengthy issue. It's 11:30. Does anybody want to
13 break for lunch before we start into it?

14 COMMISSIONER BAILEY: Sure.

15 COMMISSIONER OLSON: That would be a good
16 suggestion.

17 CHAIRMAN FESMIRE: Okay. What do you say we
18 break now for lunch and reconvene at a quarter to one?
19 You've got a little more than an hour, and we'll see you
20 back here.

21 (Thereupon, noon recess was taken at 11:34 a.m.)

22 (The following proceedings had at 12:47 p.m.)

23 CHAIRMAN FESMIRE: Let's go back on the record.

24 Let the record reflect that we've returned from
25 lunch. It's now a quarter till one o'clock on Wednesday,

1 March 12th.

2 The record should also reflect that this is the
3 continuation of Case Number 14,015, that Commissioners
4 Olson, Bailey and Fesmire are all present, that we do have
5 a quorum, and that we will pick up where we left off.

6 The next issue before us was 19.15.17.11.J, and
7 that is the section on deep trench burial for closure.

8 This is a remnant of the original proposal that
9 had a 100-mile radius for transporting waste and was
10 intended to be used outside of that 100-mile radius. The
11 Commission has decided that the 100-mile radius is not
12 something that we want to use in this rule, and therefore
13 we have to decide what to do with deep-trench burial.

14 Philosophically, I think we need to make clear
15 that the idea behind this is, in most cases, to dig and
16 haul the waste and remove it from where it's located. That
17 having been said, there are some situations where on-site
18 burial may be necessary and may be acceptable, but not very
19 many. And I think the thing that we need to do is make
20 sure that whatever provision we make for on-site deep-
21 trench burial, that folks understand that it is intended to
22 be an exception, and a rather rare exception, to proper
23 disposal of the waste.

24 Commissioner Bailey, have you got anything to say
25 on that?

1 COMMISSIONER BAILEY: I think we should look for
2 consistency and alignment with the surface waste management
3 facilities, because it seems contradictory to allow waste
4 with surface waste facilities, but to not allow burial of
5 waste at temporary pits, smaller volumes, and I think it
6 all depends on what's in it and what's the depth to water.

7 CHAIRMAN FESMIRE: So how are we going to
8 structure that? Commissioner Olson, do you have any
9 thoughts before I --

10 COMMISSIONER OLSON: Well, I still have a, I
11 guess, long-standing disagreement. I think that there
12 should be surface owner approval. I could see
13 circumstances where we'd allow it, you know, just based on
14 the -- purely the, you know, potential environmental
15 impacts. I just still kind of maintain that it's a
16 landfilling, and it should be -- have surface owner
17 approval for it.

18 But in terms of what could be allowed in terms
19 for environmental protections, there's a lot of interesting
20 information that was given to us from testimony on the
21 levels of contaminants that would go into deep-trench
22 burial. I think all the modeling that was done was based
23 on the 50-foot depth to groundwater, but I still think that
24 the 50- to 100-foot depth to groundwater is shallow
25 groundwater. I don't like the idea of deep-trench burial

1 in those area.

2 So over 100 foot to groundwater, I can see that.
3 And I think that's also more consistent with the surface
4 waste management rule, because that's where those types of
5 facilities are permitted, is for depths of greater than 100
6 feet to groundwater. So I think over that, I think we can
7 make some allowances for that.

8 The -- I guess the issue comes in, then, as to
9 what levels of contaminants we would allow. And the most
10 interesting thing I found -- and I saw that again in going
11 back through the transcripts -- was that the industry's
12 proposal, when you started looking at their modeling -- and
13 I questioned that pretty extensively when Dan Stephens, Dr.
14 Stephens, testified that his model uses 50-foot mixing
15 zone, and when you actually took it to 10 foot,
16 coincidentally you came up with 250 parts per million of
17 the SPLP leachate, which equates to about 5000 parts per
18 million total chlorides.

19 And Dr. Thomas, industry's representative, was
20 highly stressing using SPLP and TCLP leachate methods for
21 determining what's posing a threat. And the level that you
22 would look at there is a 20-fold dilution again, so you
23 essentially end up with the same number of what he's saying
24 is protective of 5000 total chlorides, or 250 by SPLP.

25 So I was kind of wondering if we could look at

1 allowing up to essentially 250 parts per million or
2 milligrams per liter of SPLP chloride levels in there, and
3 essentially it's lower than what OCD had proposed, but it
4 still seems to me entirely consistent with all the industry
5 testimony on this.

6 CHAIRMAN FESMIRE: Okay, so if I understand what
7 you're saying correctly, is that we should be able to allow
8 deep-trench burial by exception under certain conditions,
9 and some of those conditions are, for instance, the 250
10 limit that we're talking about.

11 COMMISSIONER OLSON: And greater than 100 feet.

12 CHAIRMAN FESMIRE: And greater than 100 feet
13 depth to groundwater.

14 MS. BADA: Can I ask a question? How does that
15 relate to the on-site burial where you have greater than
16 100 feet?

17 COMMISSIONER OLSON: It's actually -- you're
18 leaving a higher level. I think what we're looking at for
19 the in-place burial is the landfarm criteria, which is 1000
20 of total chlorides --

21 CHAIRMAN FESMIRE: After 100 feet -- below 100
22 feet.

23 COMMISSIONER OLSON: Right, or above 100 feet.

24 MS. BADA: No, below.

25 CHAIRMAN FESMIRE: Below 100 feet.

1 MS. BADA: It's more than 100 feet.

2 COMMISSIONER BAILEY: It's 500 --

3 MS. BADA: -- 100, which is the 500.

4 COMMISSIONER OLSON: Right, and then if it's --

5 MS. BADA: -- greater than 100 --

6 COMMISSIONER OLSON: -- greater than 100 feet,
7 it's 1000 chlorides under the landfarming criteria. And so
8 this would allow, then, an extra 4000 milligrams per liter
9 of chlorides to go in for deep-trench burial. So I think
10 everybody -- all the testimony that was there acknowledged
11 that it was just a matter of time before the liners fail,
12 you know, whether it's 100 years or 50 years or --

13 CHAIRMAN FESMIRE: -- 270 --

14 COMMISSIONER OLSON: -- 250 years, whatever.
15 There was a lot of ranges in there, but all the testimony
16 was that those are going to fail eventually.

17 Dr. Thomas was really strong on pushing leachate
18 and saying that, Look, if it can't generate the leachate
19 it's not going to pose a threat.

20 So this is giving that allowance of a higher
21 level, but still when it does fail the leachate that should
22 be generated really shouldn't pose a problem. So I kind of
23 like that concept. It's a little bit of a blend of what
24 industry had done and OCD too, so --

25 CHAIRMAN FESMIRE: Are you talking about it as an

1 exception or --

2 COMMISSIONER OLSON: As an exception by rule. It
3 would be allowed by -- you know, as an exception by rule.

4 MS. BADA: So why would you have a different one
5 for on-site burial and deep-trench burial, I guess is what
6 I'm not understanding? They're both over 100 feet.

7 COMMISSIONER OLSON: Right, but there's a --

8 MS. BADA: They're both assuming the liner will
9 not last, so how is it different?

10 COMMISSIONER OLSON: Because the in-place burial,
11 or the taco system, which doesn't have a top liner at that
12 point, is done to the same standards that we'd allow
13 material to be left at on the surface. So it's assuming
14 that it's really remediated and it's kind of okay.

15 The deep-trench burial would allow an additional
16 4000 parts, certainly, of chloride to be left in site, but
17 now it would need to be capped because this has a higher
18 level of contaminants, and it's --

19 MS. BADA: But how does the cap change what's
20 going down? I guess that's what I'm not understanding.

21 COMMISSIONER OLSON: It keeps moisture out of
22 that and has less of a potential, then, for generation of
23 leachate. That's kind of the way I look at it. It's
24 material that we wouldn't allow to be left under
25 landfarming scenario on the surface, so it should have an

1 additional layer of protection. That's at least the logic
2 I was thinking.

3 MS. BADA: Are you looking at a different soil
4 cover, or is it just the liner itself?

5 COMMISSIONER OLSON: It's the entire -- I see the
6 entire construction scenario that OCD gave for it being
7 buried a minimum of -- you know, whatever, four feet below
8 the surface or three feet.

9 CHAIRMAN FESMIRE: In proposal -- in the J part
10 of --

11 COMMISSIONER OLSON: In J.

12 CHAIRMAN FESMIRE: -- the proposal.

13 COMMISSIONER OLSON: So -- but I looked at --
14 right now everybody's looking at the limitation of a
15 relatively high level. I looked at the OCD level, and
16 actually even the industry level, they're talking about
17 essentially industry's level is 70,000 parts per million
18 chloride, OCD's is 100,000. That's essentially untreated
19 waste that's going into it.

20 So this would make an allowance that there is
21 some treatment that's going on, because it's got to meet
22 this level, and it still -- it's high enough that it
23 warrants additional protections for protecting underlying
24 groundwater.

25 COMMISSIONER BAILEY: Cheryl, I think your

1 confusion lies -- the on-site closure has lesser amounts of
2 the nasties.

3 MS. BADA: No, I'm just not understanding the
4 difference between the two, because -- maybe it's my
5 misunderstanding of the in-place burial, but my
6 understanding was, you have four foot of cover there or
7 two, so I just don't see -- I guess I'm not understanding
8 the difference.

9 COMMISSIONER OLSON: The difference is in the
10 construction of the cell that's allowed. So you're
11 allowing -- you're actually -- it's the difference between
12 -- I guess the description is the taco and the burrito, you
13 know? You've got essentially an open-top thing that's
14 left, because that's the same material that could just
15 reside at the surface under a landfarm --

16 MS. BADA: And just -- you're relying on the
17 liner then?

18 COMMISSIONER OLSON: Not relying on the liner in
19 -- it's just being allowed to be left in place.

20 MS. BADA: No, but you're relying on the liner
21 for deep-trench burial then.

22 COMMISSIONER OLSON: You're relying on --
23 actually, you're relying on a top liner to help shed --

24 MS. BADA: That's what I'm asking, you're relying
25 on the liner --

1 COMMISSIONER OLSON: -- fluid --

2 MS. BADA: -- not the soil, because that depth --
3 my understanding was, that was the intention no matter what
4 you did, you have four foot of cover.

5 COMMISSIONER BAILEY: Deep-trench burial does not
6 mean buried deeper, probably.

7 COMMISSIONER OLSON: No, it's probably the same
8 depth, that's the way I'm looking at it. Because the key
9 is -- and this has been a problem on even ones that have
10 been done in place in the past, they're done in place near
11 the surface, especially in the southeast, and then you'll
12 see a number of sites where -- I've seen a number of those
13 where later on the plastic is there at the surface, and
14 it's just shredded and all over, and cattle are choking on
15 plastic and everything.

16 So that -- it is an issue, so it does need to be
17 at a depth below the surface, just so you don't have
18 surface eating plastic.

19 But I don't see the depth of burial as really a
20 lot different, it's just -- one's called deep-trench,
21 versus in-place.

22 CHAIRMAN FESMIRE: One has a new liner too. I
23 mean, you've got a replacement liner.

24 COMMISSIONER OLSON: Right.

25 CHAIRMAN FESMIRE: So basically what you're doing

1 is proposing the adoption of J as proposed by the OCD,
2 right?

3 COMMISSIONER OLSON: Right.

4 CHAIRMAN FESMIRE: And under what conditions
5 would they be allowed to do this? Because --

6 COMMISSIONER OLSON: And that comes in later in
7 the closure requirements, then, I believe, where --

8 COMMISSIONER BAILEY: Depending on the level of
9 contaminants, right?

10 COMMISSIONER OLSON: The level of contaminants
11 that are allowed to go for that scenario.

12 CHAIRMAN FESMIRE: Okay, so what we're saying is,
13 that is a discussion for a later period, right? But we're
14 pretty much in tune with the idea that there is a need for
15 J, that it will be done as an exception, in an exception
16 process, and we're to talk about the conditions for doing
17 it when we get to the closure requirements, right?

18 COMMISSIONER OLSON: Right, this is -- J is just
19 saying that if you do it, this is how you construct it.

20 CHAIRMAN FESMIRE: Okay.

21 COMMISSIONER OLSON: That's all it's really
22 saying.

23 CHAIRMAN FESMIRE: Commissioner Bailey, is
24 that --

25 COMMISSIONER BAILEY: That's fine.

1 CHAIRMAN FESMIRE: -- acceptable to you? Okay.

2 COMMISSIONER OLSON: So I guess -- well, I have
3 one -- maybe a clarification, and I guess it's down on
4 J.(9), just to kind of clarify that a little bit. It says,
5 The operator shall install a geomembrane cover over the
6 excavated material. I would cross off excavated and just
7 put waste, because it's really the waste material in the
8 lined trench, just to clarify that.

9 CHAIRMAN FESMIRE: That change is acceptable to
10 me.

11 Commissioner Bailey?

12 COMMISSIONER BAILEY: Fine.

13 CHAIRMAN FESMIRE: Okay. Before we go much
14 farther there were two other issues, one in J.(4) and the
15 industry committee objected to the mil thickness, which
16 I'll bet was 20 -- yes, the 20-mil string-reinforced.
17 Their recommendation was 12. I think it would go along
18 with the other decisions that we've made today and be
19 pursuant to the evidence presented at the hearing that the
20 12-mil or less than 20-mil has not been an acceptable, and
21 that we need to stick with the 20-mil for consistency and
22 sufficiency of protection; is that --

23 COMMISSIONER BAILEY: I think we're all in
24 agreement with that.

25 CHAIRMAN FESMIRE: Commissioner Olson?

1 COMMISSIONER OLSON: Yeah, I would concede it. I
2 guess -- I don't know, there's times I thought that maybe
3 it should be 30-mil, because that's consistent with the
4 land -- essentially the way we're doing them under the --
5 under Rule 36, part 36. But if we look at a lower level, I
6 have less of a concern with the liner thickness, if we can
7 vary the criteria for the wastes that go into it.

8 CHAIRMAN FESMIRE: Okay. In Section 11.J.(5) OCD
9 had some questions about the welded seams. Liner seams
10 shall be welded. We changed that wording earlier, didn't
11 we?

12 COMMISSIONER OLSON: I think on the second
13 sentence we had -- used factory welded seams where
14 possible.

15 CHAIRMAN FESMIRE: Right.

16 COMMISSIONER OLSON: And I think the OCD's other
17 language is contained in the last sentence.

18 CHAIRMAN FESMIRE: Liner seams shall be welded.

19 COMMISSIONER OLSON: Uh-huh.

20 CHAIRMAN FESMIRE: Okay. Do we want to put field
21 liner seams shall be welded, or the redundancy we've got --
22 all factory seams will be welded, and liner seams shall be
23 welded. Just leave them both, leave the redundancy?

24 COMMISSIONER OLSON: I think that's fine.

25 MS. BADA: I can work on it.

1 CHAIRMAN FESMIRE: Okay.

2 MS. BADA: Something to indicate that it's a
3 field seaming, that it needs to be welded.

4 CHAIRMAN FESMIRE: The industry committee brought
5 up the issue of mil thickness on 11.J.(10) also. I think
6 the same argument that we talked about in 11.J.(4) is
7 appropriate here. And I don't think -- I don't think there
8 is any evidence -- well, I think there's a lot of strong
9 evidence to support the need for the 20-mil thickness in
10 the record.

11 COMMISSIONER OLSON: And also the idea that if we
12 use it for a temporary pit, it seems like you'd also be --
13 at least get a minimum -- be the same criteria for a
14 permanent burial like that.

15 CHAIRMAN FESMIRE: Absolutely.

16 The next one is 19.15.17.12, operational
17 requirements, A.(1). The industry committee has again
18 introduced their issue on subgrade tanks, and I think we
19 took care of that previously. I -- from the -- my reading
20 of their documents, this is the same issue that we were
21 talking about earlier, and that we've addressed that in the
22 prior changes.

23 Commissioner Bailey, is that your understanding?

24 COMMISSIONER BAILEY: Yes, it is.

25 CHAIRMAN FESMIRE: Commissioner Olson?

1 COMMISSIONER OLSON: That's mine too.

2 CHAIRMAN FESMIRE: And under 12.A.(2) everybody
3 objected but for different reasons. The industry committee
4 and the OCD -- the industry committee and the OCD, I don't
5 generally see those on the same line. They have got the
6 phrase "or dispose". CRI would like "Division approval of
7 the facility", and the independents, "or otherwise
8 dispose".

9 The operator shall recycle or otherwise dispose
10 -- reuse, reclaim or otherwise dispose of all drilling
11 fluids in a manner that prevents the contamination of
12 freshwater and protects public health and the environment.

13 Recycle, reuse or reclaim.

14 We're trying to encourage the reuse, but would
15 this -- as it's proposed by the OCD, wouldn't it foreclose
16 the injection -- disposal by injection? And while we're
17 trying to encourage the other, we don't want to foreclose
18 that, do we?

19 COMMISSIONER BAILEY: That's why I think it's
20 important to put in "dispose".

21 COMMISSIONER OLSON: I think it is important to
22 put that in.

23 CHAIRMAN FESMIRE: Okay, we'll go ahead and make
24 that change, 19.15.17.12.A.(2). The operator shall
25 recycle, reuse, reclaim or otherwise of all drilling fluids

1 in a manner that prevents the contamination of freshwater
2 and protects public health and the environment.

3 COMMISSIONER BAILEY: Did you not want to
4 include, as approved by Division rules?

5 CHAIRMAN FESMIRE: Or add a Division-approved
6 facility, the CRI objection?

7 COMMISSIONER BAILEY: In a manner approved by
8 Division Rules that prevents the contamination of
9 freshwater, et cetera?

10 CHAIRMAN FESMIRE: Oh, yeah, did I skip that?

11 COMMISSIONER BAILEY: Yes.

12 CHAIRMAN FESMIRE: I'm sorry, I went from -- Yes,
13 the next question is, do we want to mandate that as a
14 Division-approved facility, or is that a redundancy?

15 COMMISSIONER OLSON: Well, I think Commissioner
16 Bailey just mentioned another part too about approved by
17 Division rules. That was also part of the industry
18 proposal. But I don't know that it's necessary. I mean, I
19 look at that final language that says that it's a --
20 essentially, you're disposing of it somehow in a manner
21 that's approved by the OCD, the appropriate district
22 office, and I don't have a problem with that.

23 COMMISSIONER BAILEY: No, we don't want the
24 midnight dumpers in the borrow ditch.

25 COMMISSIONER OLSON: Right.

1 CHAIRMAN FESMIRE: So what are you proposing,
2 Commissioner? I guess I missed it.

3 COMMISSIONER BAILEY: To go ahead and put in
4 "reuse, reclaim or dispose of all drilling fluids in a
5 manner approved by Division Rules that prevents the
6 contamination of freshwater."

7 CHAIRMAN FESMIRE: Okay, in a manner approved by
8 Division Rules?

9 COMMISSIONER BAILEY: Uh-huh.

10 CHAIRMAN FESMIRE: Do we need to add the
11 facility?

12 COMMISSIONER BAILEY: No.

13 CHAIRMAN FESMIRE: Commissioner Olson?

14 COMMISSIONER OLSON: I don't think you need the
15 facilities, because in some cases it may --

16 CHAIRMAN FESMIRE: Well, either way, it's got to
17 be a facility approved by us, even if it's a facility --

18 COMMISSIONER OLSON: Yeah, but then -- not if
19 it's recycled. It may not be going back to a facility; it
20 may be going back to another location. So it could be a
21 variety of things. I think if you say a facility, you're
22 limiting the options on that.

23 CHAIRMAN FESMIRE: Okay, and we're not going to
24 approve anything that's not to a Division-approved
25 facility, so...

1 COMMISSIONER OLSON: Right, for actual disposal.
2 But in terms of recycling, reuse or reclaiming, different
3 things could happen that we haven't envisioned at the
4 moment. It allows some latitude to the district office to
5 review and approve those.

6 CHAIRMAN FESMIRE: Okay. Counsel, did you get
7 all those changes?

8 MS. BADA: Uh-huh.

9 CHAIRMAN FESMIRE: The next one we've got, A.(3),
10 again comes from the industry committee, and that is the
11 concern about the subgrade tank. Again, I think we've
12 addressed it.

13 Commissioner Bailey, do you --

14 COMMISSIONER BAILEY: No, I'm fine with going
15 ahead.

16 CHAIRMAN FESMIRE: Okay. Next is 12.A.(4), (5)
17 and (6), the Citizens for Clean Air and Water. I've got
18 the note, Visible ruler. Does anybody know what I meant?

19 Their proposal is, in (4), replace "integrity of
20 the pit liner" with "integrity of any pit liner". In (5),
21 to add the phrase -- after the first word, "if", add the
22 phrase, "any liner of a lined pit". And in (6) they are
23 proposing to add a sentence on the end that says, As an
24 example, a visible ruler marked in intervals of one foot on
25 the sidewall of the liner of a pit would satisfy this

1 requirement.

2 COMMISSIONER BAILEY: I think the paragraph in
3 the industry recommendations to explain why they want to
4 just delete that entire number (6) makes a lot of sense.

5 COMMISSIONER OLSON: I mean, to me it seems the
6 main criteria in all this is, if you maintain your two feet
7 of freeboard for a temporary pit or three feet for a
8 permanent pit, I don't know that it matters that you're --

9 COMMISSIONER BAILEY: You've achieved the goal.

10 COMMISSIONER OLSON: Yeah, as long as -- at any
11 point if you're in violation of that, you're in violation
12 of the rules, and then it could be -- it's fairly simple
13 enforcement, and it might be that the inspector has got a
14 ruler in his truck or something, so that if he goes out
15 there and looks at it they can actually assess that. But
16 that seems more of a compliance -- inspection and
17 compliance issue for OCD, versus requiring that for a --
18 especially for a temporary pit. I don't -- you know, I
19 mean they are going to have some major fluctuations as
20 they're drilling, maybe, in fluid level, but I don't know
21 that that's necessary --

22 COMMISSIONER BAILEY: And what is it telling you?

23 COMMISSIONER OLSON: Right.

24 COMMISSIONER BAILEY: You've got more fluid.

25 COMMISSIONER OLSON: Right. As long as you stay

1 below your freeboard limit, I don't know that it matters.

2 CHAIRMAN FESMIRE: And you don't think we need
3 any kind of a marker to show them, you know, what that
4 freeboard limit is?

5 COMMISSIONER OLSON: I mean, I don't mind putting
6 it on a permanent pit, maybe, but on a temporary pit I
7 don't see a need for it.

8 MS. BADA: Don't you think the intent probably
9 was to not show an increase but rather a decrease? But I
10 don't know how that relates to whether it's a leak or it's
11 evaporation.

12 CHAIRMAN FESMIRE: Well, this provision applies
13 not only to temporary pits, but it applies to permanent
14 pits also, right?

15 COMMISSIONER OLSON: Right. I mean, if you
16 wanted it to apply to permanent pits, I guess I don't have
17 big heartburn about that, but I don't think they need it on
18 the temporary pits. I mean, you're supposed to keep your
19 supposed to keep your two feet of freeboard, the thing is
20 there, it's not there for very long, so...

21 CHAIRMAN FESMIRE: Well, if we're talking about
22 permanent pits, we're also talking about multiple liners,
23 right?

24 COMMISSIONER BAILEY: And evaporation --

25 COMMISSIONER OLSON: Uh-huh.

1 COMMISSIONER BAILEY: -- which is going to have
2 an impact.

3 CHAIRMAN FESMIRE: So I see Dr. -- the Citizens
4 for Clean Air's reason for using the word "any" in (4)
5 and --

6 COMMISSIONER OLSON: Yes.

7 CHAIRMAN FESMIRE: -- "any liner of" in (5). And
8 (6), I see you all's point. What if we made it just apply
9 to permanent pits?

10 COMMISSIONER BAILEY: And it's simply going to
11 measure how much evaporation occurred that month. I mean,
12 because there's no reporting -- I mean, there's nothing --
13 you just say, Yup, there's a change of fluid level.

14 COMMISSIONER OLSON: It does make it a little
15 easier for the inspector if he's out there, just to --
16 especially on permanent pits that have just continual
17 water, and to show that they're below their freeboard
18 limit. I've seen a lot of ponds that have some kind of
19 either painted lines on the side of the pond or something,
20 so that they can see where their freeboard --

21 CHAIRMAN FESMIRE: How about we just mark the
22 maximum liquid content in the pit, the freeboard?

23 COMMISSIONER BAILEY: That works for me.

24 CHAIRMAN FESMIRE: Okay, so we'll change (4) and
25 (5) as recommended by the Clean -- or -- by the Clean

1 Citizens for Air and Water? --

2 (Laughter)

3 CHAIRMAN FESMIRE: -- and on (6) we will change
4 that to a requirement that the -- on permanent pits, the
5 operator mark the maximum permissible fluid level.

6 COMMISSIONER OLSON: You might take it out of
7 there, because that's a general specification. Put it down
8 below in C as a required -- specific requirement for a
9 permanent pit.

10 COMMISSIONER BAILEY: Yeah.

11 CHAIRMAN FESMIRE: Okay, let's do that.

12 COMMISSIONER OLSON: Just take --

13 COMMISSIONER BAILEY: Okay, and then that means
14 just changing C.(1) to require a marker.

15 CHAIRMAN FESMIRE: Yeah, the operator shall
16 maintain --

17 COMMISSIONER BAILEY: So we can just totally
18 delete (6).

19 CHAIRMAN FESMIRE: Delete (6). And in C.(1), The
20 operator shall maintain at least three feet of freeboard
21 for a permanent pit. Such level shall be marked in the pit
22 -- shall be prominently marked in the pit.

23 COMMISSIONER BAILEY: Uh-huh.

24 COMMISSIONER OLSON: Uh-huh.

25 CHAIRMAN FESMIRE: Okay?

1 MS. BADA: Where is that?

2 COMMISSIONER OLSON: So that would be, Such level
3 shall be -- permanently --

4 CHAIRMAN FESMIRE: I also have in my notes from
5 the prior meeting on 12.A.(4) and (5), Commissioner Olson,
6 notification.

7 COMMISSIONER OLSON: Yeah, I guess what I was
8 worried about, right now -- I don't know if this is
9 necessary or not.

10 Right now we've got in there requirements for if
11 a lined pit develops a leak, there's a -- and this is
12 specifically in 19.15.17.12.A.(5), where if it's below the
13 liquid surface the tank leak should be reported to the
14 Division as well, because they may be below the reporting
15 requirements under 116, but that may just be because they
16 don't know how much leaked from it. It may have a small
17 pinhole leak that's been leaking for some period of time.
18 It could be a problem, it may not be a problem.

19 But I think just the idea that if we're going to
20 report those for a lined pit, it seems like they should be
21 reported for below-grade tanks as well.

22 CHAIRMAN FESMIRE: Wouldn't this -- any notice
23 requirement be in the general release notification
24 requirements?

25 MS. BADA: Huh-uh.

1 CHAIRMAN FESMIRE: No?

2 COMMISSIONER OLSON: I think this is the only
3 place it really occurs here in the proposed regulations
4 here, is in the operational requirements. I looked, and I
5 didn't see it in other reporting requirements.

6 So I'd maybe suggest that if it's just -- if a
7 lined pit or a below-grade tank develops a leak, or if any
8 penetration of the liner or a below-grade tank occurs below
9 the liquid surface, then the operator shall remove all
10 liquid above the damage or lined leak from the pit within
11 48 hours and repair the damage and replace the liner or
12 below-grade tank.

13 So just adding those systems to the reporting
14 requirements as well.

15 COMMISSIONER BAILEY: Looking at this first line
16 under A it says, General specs, An operator shall maintain
17 a pit... Because everything is listed there, if we can
18 just make (5) refer to everything listed there in A, it
19 would make a lot of sense. That way we're holding closed-
20 loop systems that may develop a leak, and also sumps.

21 So if a leak develops --

22 CHAIRMAN FESMIRE: Yeah.

23 COMMISSIONER BAILEY: -- and not confine it to
24 lined pits --

25 COMMISSIONER OLSON: Uh-huh.

1 COMMISSIONER BAILEY: -- if a leak develops, or
2 if any penetration of a pit liner --

3 COMMISSIONER OLSON: Uh-huh. Okay.

4 CHAIRMAN FESMIRE: -- of the pit liner occurs? --

5 COMMISSIONER BAILEY: Uh-huh.

6 CHAIRMAN FESMIRE: -- then the operator shall
7 remove all liquids above the damage or leak line for the
8 pit -- above the damage or leak line, scratch from the
9 pit --

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: -- within 48 hours, notify the
12 OCD and repair the damage or replace the liner --

13 COMMISSIONER BAILEY: Yes.

14 CHAIRMAN FESMIRE: Notify the OCD.

15 COMMISSIONER OLSON: Do you want to read (5)
16 again? Because I think we're a little confused.

17 CHAIRMAN FESMIRE: Okay, If a leak develops or if
18 any penetration of the pit liner occurs below the liquid
19 surface, then the operator shall remove all liquid above
20 the damage or leak line within 48 hours and repair the
21 damage -- within 48 hours, notify the OCD, and repair the
22 damage or replace the liner.

23 MS. BADA: So wouldn't you want to add if a leak
24 develops in a pit, closed-loop system, below-grade tank or
25 sump, so that it's --

1 CHAIRMAN FESMIRE: Well --

2 MS. BADA: -- clear that it applies to all of
3 them?

4 CHAIRMAN FESMIRE: -- that was Commissioner
5 Bailey's point. These general specifications all apply to
6 a pit or closed-loop system.

7 MS. BADA: But not all of these do. Not every
8 one of these requirements applies to --

9 COMMISSIONER OLSON: Some of these -- like when
10 you talk about repair the damage or replace the liner,
11 you're only talking about the liner, not tanks then, so...

12 MS. BADA: Because (1) lists them all --

13 COMMISSIONER OLSON: Uh-huh.

14 CHAIRMAN FESMIRE: (2) lists them all, (3) lists
15 them all. (4) doesn't.

16 MS. BADA: (7) doesn't.

17 CHAIRMAN FESMIRE: Commissioner Bailey, what do
18 you think?

19 COMMISSIONER BAILEY: Whatever legal counsel
20 feels the most comfortable with.

21 MS. BADA: I would list them.

22 CHAIRMAN FESMIRE: Me too.

23 Okay, so we've gotten that taken care of,
24 Commissioner Olson's notification issues.

25 COMMISSIONER OLSON: And then we deleted item

1 A.(6), right?

2 CHAIRMAN FESMIRE: We deleted A.(6). A.(8),
3 again we have the subgrade tank issue, and like I said, I
4 think we've addressed that issue.

5 On B.(4), the industry committee, drilling to
6 temporary. The operator shall remove all free liquids from
7 a drilling pit or a temporary pit. I think that's a good
8 change.

9 Commissioner Bailey?

10 COMMISSIONER BAILEY: That's fine with me.

11 CHAIRMAN FESMIRE: Commissioner Olson?

12 COMMISSIONER OLSON: Yeah, I thought that was
13 fine.

14 CHAIRMAN FESMIRE: Okay. And then change the
15 number of days:

16 ...shall remove all free liquids from a temporary
17 pit within 30 days from the date the operator releases the
18 drilling rig. The appropriate Division district office may
19 grant an extension of up to three months.

20 Again, I go back to the testimony, the
21 significant volumes of testimony, that attests to the fact
22 that the longer you leave fluids in the pit, the higher the
23 risk of fluid release and an escape, the bigger your
24 problem. Is 30 days unreasonable?

25 COMMISSIONER BAILEY: Well, we're retaining the

1 sentence that says the district office may grant an
2 extension for three months. So if they go beyond the 30
3 days, they can always get the three-month extension.

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER OLSON: I think there's a
6 distinction here too, that I was -- we'd be now applying
7 this to the -- you know, the workover pits, which I don't
8 really have a problem with. You know, 30 days, applying
9 the same time limit to both, I think, is simpler to
10 enforce.

11 So I don't have a problem with keeping it at 30
12 days, since they're allowed to get extensions anyway.

13 CHAIRMAN FESMIRE: Okay.

14 MS. BADA: I've got one question on this.
15 Shouldn't we require that the operator notify the district
16 office when they release the rig, or how will they be able
17 to determine that?

18 CHAIRMAN FESMIRE: You know, that may be a little
19 bit problematic.

20 COMMISSIONER OLSON: I know I'd asked about that
21 during cross-examination and didn't really get a good
22 answer about what the best way to do that is.

23 CHAIRMAN FESMIRE: Do you remember who you asked?

24 COMMISSIONER OLSON: I don't.

25 CHAIRMAN FESMIRE: Commissioner Bailey, do you

1 remember who we talked to about that?

2 COMMISSIONER BAILEY: I don't.

3 CHAIRMAN FESMIRE: Well, we can each take a
4 volume. It's only 5000 pages.

5 MS. BADA: I think you could just require
6 notification.

7 (Laughter)

8 COMMISSIONER OLSON: I mean, I think maybe from a
9 district perspective, they've got a lot of stuff coming
10 into them for notifications, and if they go out there and
11 they see fluid and they think it's been there for a long
12 time, I think they just call the company and find out when
13 the rig was released. It might just be an enforcement
14 issue that they have to provide that information. I'm sure
15 they'd have something that says when they released the rig.

16 CHAIRMAN FESMIRE: They do. It's a contractually
17 significant date in time, so it will be able to be
18 determined, I'm sure.

19 MS. BADA: Actually, I think you should just put
20 something in. If you don't, you cannot require it.

21 CHAIRMAN FESMIRE: What do you mean, put
22 something in?

23 MS. BADA: You need to put something in that they
24 can either ask for information or that they've been
25 notified. Otherwise you can't require it.

1 One way is notification, or you can say the
2 district office may request.

3 CHAIRMAN FESMIRE: Yeah, let's do it that way
4 because, you know, that's another form and recording and --

5 COMMISSIONER OLSON: Uh-huh.

6 CHAIRMAN FESMIRE: -- sending in. The district
7 office may request --

8 COMMISSIONER BAILEY: Isn't it going to show up
9 on the C-103 and the C-105?

10 CHAIRMAN FESMIRE: That's what I'm thinking.

11 MS. BADA: No.

12 CHAIRMAN FESMIRE: No?

13 COMMISSIONER BAILEY: C-105 is going to have
14 completion date.

15 MS. BADA: But it doesn't tell you when the rig
16 is released.

17 COMMISSIONER BAILEY: C-103 is going to have the
18 date of workover.

19 CHAIRMAN FESMIRE: Do you -- Don't know.

20 COMMISSIONER BAILEY: Are we going to assume
21 completion date is date of rig release?

22 CHAIRMAN FESMIRE: We had this discussion on the
23 record, and I can't remember who we had it with.

24 How about, The operator shall provide the
25 Division district office the date of release upon request?

1 Or, the date of release shall be noted on the Form C-103,
2 comments?

3 COMMISSIONER BAILEY: I think that's -- Because
4 they're going to have to file C-103 anyway --

5 COMMISSIONER OLSON: Uh-huh.

6 COMMISSIONER BAILEY: -- so why not just go ahead
7 and put it all right there, and that way they're not --
8 there's not extra notification, there's not extra effort on
9 anybody's part, because a 103 or a 105 is going to be
10 filed.

11 CHAIRMAN FESMIRE: Well, you've got all your
12 requirements for a C-103 under Rule 103, and then you've
13 got this tucked over here in the corner.

14 MS. BADA: Actually, your forms do not list your
15 requirements under C-103, and so you probably ought to
16 include it in your rule.

17 COMMISSIONER OLSON: I think that's a simple way
18 to do it. It's within an already-filed form.

19 CHAIRMAN FESMIRE: Yeah.

20 COMMISSIONER OLSON: It's nothing additional
21 that's going to -- a separate notification that comes in.

22 CHAIRMAN FESMIRE: Yeah, the date of rig release
23 shall be noted on the Form C-103, filed upon completion.

24 MS. BADA: Okay.

25 COMMISSIONER BAILEY: 103 and/or 105?

1 CHAIRMAN FESMIRE: Right.

2 Guys, we're already at page 10.

3 COMMISSIONER OLSON: Well, I don't know if you --
4 there's still another part of the industry proposal that we
5 didn't just discuss.

6 You know, they -- they're suggesting to add, Or -
7 - this is for the last sentence. It right now reads, The
8 appropriate district office may grant an extension of up
9 to three months. And they suggest adding, Or approve an
10 alternate method providing equal -- equivalent protection.
11 I think that's necessary language.

12 CHAIRMAN FESMIRE: Well, we don't want to stifle
13 creativity, but --

14 COMMISSIONER OLSON: Right.

15 CHAIRMAN FESMIRE: -- the objective is to get the
16 liquid out of the pit.

17 COMMISSIONER OLSON: But you still want to do it
18 in some kind of reasonable time frame. This seems to me to
19 be -- that they could grant it even for a year or something
20 else, you know? It seems -- doesn't seem appropriate.

21 CHAIRMAN FESMIRE: I'm not in favor of that.

22 COMMISSIONER BAILEY: I don't see any need for
23 it.

24 COMMISSIONER OLSON: Right.

25 CHAIRMAN FESMIRE: Now can we go to page 10?

1 COMMISSIONER OLSON: I think -- I think so.

2 CHAIRMAN FESMIRE: Didn't think that's the way
3 that was going to go.

4 12.C, the Citizens for Clean Air and Water had
5 some additional requirements.

6 COMMISSIONER OLSON: Oh, actually counsel just
7 pointed out to me that we need to back up.

8 Under -- in taking those changes, we did -- with
9 changing B.(4), we need to, as industry suggested, strike
10 B.(5), then, because we covered it under --

11 COMMISSIONER BAILEY: Yes.

12 COMMISSIONER OLSON: -- the --

13 MS. BADA: -- by changing (4).

14 COMMISSIONER OLSON: -- by changing (4), you need
15 to delete (5).

16 CHAIRMAN FESMIRE: Okay. 12.C, the Citizens for
17 Clean Air and Water had a -- that I noted as additional
18 requirements on 12.C.

19 ...permanent pit in accordance with the following
20 requirements. The operator shall maintain at least three
21 foot of freeboard -- and we've already changed that to
22 include a marker -- and, No oil or floating hydrocarbons
23 shall be present in a permanent pit.

24 The Citizens for Clean Air and Water -- I think
25 we need to add the word, An operator shall maintain and

1 operate a permanent in accordance with the following
2 additional requirements, but I don't seem to see the
3 additional requirements.

4 MS. BADA: No, what they're saying, these are in
5 addition to --

6 COMMISSIONER OLSON: Oh, that -- yeah, conditions
7 (1) and (2) are additional.

8 CHAIRMAN FESMIRE: So that it's not limiting
9 language it's additional, okay. I agree with that.
10 Commissioner Bailey?

11 COMMISSIONER BAILEY: Sure.

12 COMMISSIONER OLSON: Uh-huh. I agree too.

13 CHAIRMAN FESMIRE: Okay, 12.D. I have an OCD
14 comment on reporting, et cetera. But I don't -- Do you
15 have the list of the additions?

16 COMMISSIONER OLSON: Yeah, this is what -- this
17 is what they have proposed. I don't know if it's reflected
18 in the -- in counsel's draft. No, it's not.

19 CHAIRMAN FESMIRE: What are the additional
20 requirements that they're recommending? Talking about C?

21 COMMISSIONER OLSON: Well, they had added --

22 MS. BADA: They added (2) through (6)

23 COMMISSIONER OLSON: Oh, they also added a
24 preface language to D to read that, An operator shall
25 maintain and operate the below-grade tank in accordance

1 with the following requirements.

2 And then they put six bullets under that, with
3 the -- the current sentence there now becomes the first
4 bullet. Then they add bullets (2) through (6).

5 CHAIRMAN FESMIRE: Commissioner Bailey, do you
6 have those?

7 COMMISSIONER BAILEY: No.

8 CHAIRMAN FESMIRE: Okay, I'll read them out.

9 The first one is the -- parsing out the sentence
10 that's already there, The operator shall not allow below-
11 grade tank to overflow or allow surface water run-on to
12 enter the below-grade tank.

13 (2) -- this is new language -- The operator shall
14 remove any visible or measurable layer of oil from the
15 fluid surface of a below-grade tank.

16 (3), The operator shall inspect the below-grade
17 tank at least monthly and maintain a written record of each
18 inspection for at least five years.

19 (4), The operator shall report any release from
20 the tank and remediate the release as a major release
21 pursuant to 19.15.3.116 NMAC, regardless of the quantity of
22 fluid released.

23 (5), The operator may allow rain or snow to
24 percolate or evaporate unless the water contains pollutants
25 or is in contact with the bottom of the tank where the

1 water shall be removed within 72 hours. And there's a
2 question mark on that one because I don't understand it
3 either.

4 And (6), The operator shall maintain at least six
5 inches of freeboard for a below-grade tank.

6 COMMISSIONER OLSON: Yeah, I didn't have any
7 problem with those. My only question was bullet number
8 (5). I didn't really understand it. I'm assuming they
9 don't want water to remain in the bottom -- I'm assuming in
10 the bottom, it doesn't really say. But I'm assuming it's
11 in the bottom of an excavation where the tank is sitting.
12 But it's not particularly clear.

13 MS. BADA: Yes, I'm not sure how it would not be
14 in contact with the bottom of the tank.

15 CHAIRMAN FESMIRE: I see (2), (3), (4) and (6) --

16 COMMISSIONER OLSON: Uh-huh.

17 CHAIRMAN FESMIRE: -- but (5), I don't think we
18 need to speculate on what the intended -- The operator may
19 allow rain or snow --

20 MS. BADA: Do you know what the basis for adding
21 this was?

22 CHAIRMAN FESMIRE: I've got it right here. It's
23 15.17.12 --

24 COMMISSIONER OLSON: -- D.

25 CHAIRMAN FESMIRE: Commissioner, do you know?

1 COMMISSIONER BAILEY: I apparently don't have
2 that.

3 COMMISSIONER OLSON: Because I would think you
4 wouldn't be allowing rain or snow to percolate into a
5 double-lined -- into the interstitial space of a double-
6 lined system. I mean, I'm assuming it's intended for a
7 tank in a vault, essentially like the Conoco- --

8 CHAIRMAN FESMIRE: So they're saying --

9 COMMISSIONER OLSON: -- -Phillips design.

10 CHAIRMAN FESMIRE: -- you can leave rain or snow
11 in the vault and allow it to percolate or evaporate unless
12 the water contains pollutants or is in contact with the
13 bottom of the tank.

14 But like the ConocoPhillips design, it's my
15 understanding that that has a drain that you can --

16 COMMISSIONER OLSON: Because you wouldn't want
17 water sitting -- even if they got a foot of water in the
18 bottom of their system, so it comes into contact with the
19 tank, you wouldn't --

20 CHAIRMAN FESMIRE: Yeah.

21 COMMISSIONER OLSON: -- they wouldn't want that
22 either, so...

23 CHAIRMAN FESMIRE: Commissioner, could we adopt
24 the change that results in (1), (2), (3) and (4), and re-
25 number (6) as (5)?

1 COMMISSIONER BAILEY: Let me come look over your
2 shoulder, because I just don't have -- Okay, where are we
3 talking?

4 Okay, that's pretty much standard.

5 CHAIRMAN FESMIRE: Right.

6 COMMISSIONER BAILEY: That's pretty much
7 standard.

8 Okay, now I have a question about this one,
9 because we have a spill -- unintended release rule --

10 CHAIRMAN FESMIRE: Uh-huh.

11 COMMISSIONER BAILEY: -- and just because the
12 fluid's in a tank --

13 CHAIRMAN FESMIRE: But the one thing that this is
14 doing is going down below the *de minimis* release threshold.

15 COMMISSIONER OLSON: Well, I thought we addressed
16 that in the general requirements just a little while ago,
17 where we said the reporting of all of those types of --
18 leaks from all those types of systems are reported. So I
19 don't know that --

20 CHAIRMAN FESMIRE: So (4) is redundant.

21 COMMISSIONER OLSON: (4) is redundant.

22 COMMISSIONER BAILEY: And could create
23 conflict --

24 CHAIRMAN FESMIRE: Okay.

25 COMMISSIONER BAILEY: -- with the -- that portion

1 above, and also with the spill rule.

2 COMMISSIONER OLSON: I think you can delete that.

3 COMMISSIONER BAILEY: I don't think we need (4).

4 I'm not real sure about that one.

5 CHAIRMAN FESMIRE: I don't think we can speculate
6 on what it means.

7 COMMISSIONER BAILEY: All right.

8 COMMISSIONER OLSON: And I don't know -- Well, I
9 don't really recall testimony that supports that language
10 in the record.

11 COMMISSIONER BAILEY: Do we have testimony on
12 freeboard for a tank?

13 CHAIRMAN FESMIRE: Well, we have --

14 COMMISSIONER OLSON: I mean, I think there needs
15 to be some kind of a freeboard, but -- and I think it comes
16 to the general idea that you need to maintain it. I think
17 we could -- there's enough, I think, in the record just to
18 support -- there needs to be some kind of freeboard.

19 COMMISSIONER BAILEY: They have the goal, but --

20 COMMISSIONER OLSON: Right, but the exact
21 amount --

22 COMMISSIONER BAILEY: Okay, so we don't do (4),
23 (5) and (6)?

24 COMMISSIONER OLSON: I'd do (6).

25 CHAIRMAN FESMIRE: I would do (6) too.

1 COMMISSIONER OLSON: I think there's enough
2 support that you need to have freeboard for systems so that
3 don't overflow, and we can set an amount.

4 COMMISSIONER BAILEY: So at least an adequate
5 amount of freeboard for a below-grade tank?

6 COMMISSIONER OLSON: But then you can't really
7 enforce --

8 COMMISSIONER BAILEY: -- adequate.

9 COMMISSIONER OLSON: -- adequate, right.

10 COMMISSIONER BAILEY: I will go along with it, I
11 just don't know how that could stand up if it were changed,
12 because of the lack of testimony on it. Is six inches
13 better than a foot?

14 COMMISSIONER OLSON: Six inches isn't a whole
15 lot.

16 COMMISSIONER BAILEY: Or six inches less than a
17 foot?

18 CHAIRMAN FESMIRE: Okay, so the operator shall
19 maintain adequate freeboard on a below-grade tank to
20 prevent a release.

21 COMMISSIONER OLSON: Or to prevent overtopping of
22 the tank --

23 CHAIRMAN FESMIRE: A release.

24 COMMISSIONER OLSON: -- so if it's overtopping,
25 you've got a problem.

1 COMMISSIONER BAILEY: Yeah. Okay.

2 CHAIRMAN FESMIRE: Okay.

3 COMMISSIONER OLSON: I want to make sure that
4 counsel's got that.

5 MS. BADA: -- to prevent --

6 COMMISSIONER OLSON: -- to prevent overtopping of
7 the tank.

8 MS. BADA: Okay.

9 COMMISSIONER OLSON: And then we deleted (5)
10 and --

11 MS. BADA: -- (4).

12 COMMISSIONER OLSON: -- (4).

13 CHAIRMAN FESMIRE: Okay, the industry committee
14 suggests that we add a section on subgrade tanks to be
15 numbered 12.F. Again, I think we've addressed that issue.

16 And we're ready to move on to 19.15.17.13, and --
17 A.(1) -- the industry has asked, both in A.(1) and A.(2),
18 that we specify a time.

19 ...shall close a pit --

20 COMMISSIONER OLSON: Did you just -- did you say
21 you just moved up to 13?

22 CHAIRMAN FESMIRE: Yeah, I just moved up to 13.
23 Do you have something else on --

24 COMMISSIONER OLSON: Yeah, this is something that
25 I had asked on, I believe, cross-examination of the

1 Division witnesses under 19.15.17.12.E.(2), and industry, I
2 guess, had raised this as a concern as to how you do this.

3 There's language in (2) right now that, The
4 operator shall test other sumps by appropriate mechanical
5 means. And it wasn't really clear how you're going to do
6 that.

7 I think there was some testimony that said, Well,
8 it's not really a good way to do that. And the -- so I
9 think what makes more sense is that they'll just somehow
10 visually inspect it. I mean, there's relatively small
11 things that they should be able to -- just to empty out and
12 look at it and see if -- periodically, to see if it's got
13 cracks in it or holes.

14 COMMISSIONER BAILEY: So you want to delete the
15 last sentence of E.(2)?

16 COMMISSIONER OLSON: Well, except that the first
17 sentence implies that you'll remove the sump, and probably
18 not all sumps can maybe be physically removed.

19 CHAIRMAN FESMIRE: Pick up the barrel -- the
20 bucket.

21 COMMISSIONER OLSON: Right.

22 COMMISSIONER BAILEY: Test the pump by visual --
23 by visual inspection.

24 COMMISSIONER OLSON: Or maybe just say the
25 operator shall clean out and visually inspect all other

1 sumps. That means once a year they just have to look at
2 it, so...

3 COMMISSIONER BAILEY: Uh-huh.

4 CHAIRMAN FESMIRE: And that's -- specify a time
5 period. The industry committee is asking -- no, that's --
6 I'm sorry --

7 COMMISSIONER OLSON: I think up above it says
8 that they shall test its integrity annually.

9 CHAIRMAN FESMIRE: Annually.

10 COMMISSIONER OLSON: Maybe it shouldn't say test,
11 because --

12 MS. BADA: Inspect?

13 COMMISSIONER OLSON: Shall inspect, because the
14 testimony that I heard was that, Well, how are you going to
15 do that? And it was like, Well, you put some water in it,
16 but -- and measure its fluid level. But that seems kind of
17 a difficult thing to do in an open-topped system.

18 COMMISSIONER BAILEY: Why not combine (2) into
19 (1) and just say, The operator shall visually inspect a
20 sump's integrity annually --

21 COMMISSIONER OLSON: Right.

22 COMMISSIONER BAILEY: -- and just delete (2)?

23 COMMISSIONER OLSON: I like that.

24 CHAIRMAN FESMIRE: Okay.

25 MS. BADA: And then take out "and testing" on

1 (3)?

2 COMMISSIONER OLSON: Uh-huh.

3 MS. BADA: Okay. And on the ones that you
4 changed where it says "fails the integrity test", to "fails
5 the inspection"?

6 COMMISSIONER OLSON: Inspection -- it should be
7 inspection instead of test at the end of line 1.

8 CHAIRMAN FESMIRE: Satisfactory?

9 COMMISSIONER BAILEY: Heading on.

10 COMMISSIONER OLSON: Uh-huh.

11 CHAIRMAN FESMIRE: Good. Okay, now we go to
12 19.15.17.13, Closure requirements.

13 The industry committee on (1) and (2) have asked
14 that we specify a time. I don't think we can until we know
15 what the effective date of the rule change is.

16 COMMISSIONER BAILEY: But they want it from the
17 closure plan approval --

18 MS. BADA: Yeah.

19 COMMISSIONER BAILEY: -- within two years after
20 approval of the -- of closure plan that's required.
21 Because OCD is going to have to go through and approve the
22 closure plans.

23 COMMISSIONER OLSON: Right.

24 CHAIRMAN FESMIRE: So in (1), the existing
25 unlined, permitted or registered permanent pit shall be

1 closed within two years after -- the approval of a closure
2 plan?

3 COMMISSIONER BAILEY: Uh-huh.

4 CHAIRMAN FESMIRE: Do we want...

5 COMMISSIONER BAILEY: Because as they explained,
6 the backlog is going to keep --

7 COMMISSIONER OLSON: Well, actually, I kind of
8 like that it's two years from the effective date, because
9 in -- Well, I guess I can see the issue. I was thinking
10 that those -- an unlined pit would be in violation of the
11 current regulations, but right now there's exempt areas
12 where they are allowed to have unlined pits, so something
13 has been allowed in those areas.

14 I don't think I have a real problem with their
15 proposed language. If there are some of those exempt
16 areas, which they're now having to close unlined pits --

17 CHAIRMAN FESMIRE: Well, the problem I have with
18 it is, they have to come to us with a proposed closure
19 plan, and we have to approve that closure plan. Well, if
20 it's two years after the closure plan, nobody will ever
21 start the procedure, will they?

22 COMMISSIONER BAILEY: But if they go ahead and do
23 a closure plan that doesn't meet OCD approval --

24 MS. BADA: They may never do --

25 COMMISSIONER BAILEY: -- then everybody's going

1 to --

2 MS. BADA: If you're going to do that, you have
3 to require a closure plan within a certain --

4 COMMISSIONER OLSON: -- within a specified time.
5 Uh-huh, that's right.

6 CHAIRMAN FESMIRE: How about, An existing unlined
7 permanent or registered pit -- a closure plan for an
8 existing permitted -- unlined permitted or registered
9 permanent shall be submitted within one year and shall be
10 closed within one year of the approval of the plan? How's
11 that?

12 COMMISSIONER BAILEY: That's a nice compromise.

13 COMMISSIONER OLSON: So it's allowing three
14 years?

15 CHAIRMAN FESMIRE: Well, no, it's allowing two
16 years, plus the time it takes us to approve the plan.

17 COMMISSIONER OLSON: Do you want to state that --
18 what the language would be again?

19 CHAIRMAN FESMIRE: A closure plan for an existing
20 unlined, permitted or registered permanent pit shall be
21 submitted to the OCD within one year after the effective
22 date of this rule. The existing unlined, permitted or
23 registered permanent pit shall be closed within one year of
24 the -- one year of the --

25 COMMISSIONER BAILEY: -- approval.

1 CHAIRMAN FESMIRE: -- approval of the closure
2 plan. What's to keep somebody from submitting a dummy --
3 when I say dummy, I mean deliberately dumbed-down closure
4 plan? They submit a closure plan within one year, it's not
5 acceptable, goes back and forth for the next 14 years.

6 COMMISSIONER BAILEY: An acceptable plan for
7 closure --

8 CHAIRMAN FESMIRE: -- shall be submitted --

9 COMMISSIONER BAILEY: -- must be submitted within
10 one year.

11 COMMISSIONER OLSON: So is that the first place
12 the unlined pits come up?

13 CHAIRMAN FESMIRE: Yeah, I think.

14 COMMISSIONER OLSON: That's what I was just
15 looking for.

16 MS. BADA: No, it talks in C.(2), in section 9.

17 CHAIRMAN FESMIRE: Okay.

18 COMMISSIONER OLSON: Okay, there's also
19 transitional provisions in 17.

20 CHAIRMAN FESMIRE: Okay, so C.(2) just requires
21 the closure plan.

22 MS. BADA: There already is a closure plan
23 requirement in B, 17.B.

24 COMMISSIONER OLSON: So under the transitional
25 provisions, on the effective date of the rule, the unlined

1 pits are prohibited. And then under 17.B you have to
2 submit a closure plan within 30 days of the effective date
3 of the rule.

4 So maybe the industry's proposal is okay. You
5 have to submit it within 30 days of the effect- -- your
6 plan within 30 days. You've got two years after the plan
7 is approved to get it done.

8 MS. BADA: Assuming you get a complete plan.

9 CHAIRMAN FESMIRE: A complete or acceptable or --
10 you know, a plan that -- And where is that provision?

11 COMMISSIONER OLSON: If you go back to 17.B.

12 COMMISSIONER BAILEY: Very last page.

13 COMMISSIONER OLSON: They have to submit their
14 plan within 30 days of when this rule becomes effective,
15 which is probably not going to happen right away, because
16 that's going to be probably -- not become effective till
17 probably June or -- at least.

18 CHAIRMAN FESMIRE: Okay, so what are you telling
19 me?

20 COMMISSIONER OLSON: I'm -- don't think I have a
21 problem with their -- with their proposal. I mean, the
22 plan is submitted within 30 days of the effective date of
23 the rule. It just depends on when the OCD gets it
24 approved. They've got two years after that to do it,
25 because -- I'm thinking in some circumstances, like the

1 exempt areas in the San Juan Basin that are currently
2 exempt under the rules, some operators can have a number of
3 pits up there, that might take that awhile to actually get
4 that accomplished.

5 COMMISSIONER BAILEY: And based on that, is it
6 reasonable to expect all these plans in within 30 days?

7 CHAIRMAN FESMIRE: Well --

8 COMMISSIONER OLSON: Well, I don't have a problem
9 with that. I think my problem is going to be that OCD is
10 going to get a bunch of plans come in in 30 days, and it's
11 going to take them some time to get those approved.

12 COMMISSIONER BAILEY: But industry is not going
13 to be able to submit within 30 days all of their closure
14 plans on site-specific --

15 MS. BADA: Depends on when you make the effective
16 date.

17 COMMISSIONER BAILEY: Huh?

18 MS. BADA: Depends on when your effective date
19 is.

20 COMMISSIONER BAILEY: But think of some of those
21 big operators --

22 MS. BADA: Yeah, that's what I'm saying, it would
23 depend on what --

24 COMMISSIONER BAILEY: -- with hundreds --

25 MS. BADA: -- when -- if you -- your -- when your

1 effective date of your rule was set.

2 COMMISSIONER BAILEY: Well, that's not going to
3 be a year out.

4 COMMISSIONER OLSON: It's probably this summer
5 sometime, by the time it becomes effective.

6 MS. BADA: Because there's two ways you can do
7 it. You can delay that effective date for that provision,
8 or you can increase the -- keep your effective date -- you
9 know, whenever the order and rule is published, and move
10 that time out, so there's two ways to address it.

11 COMMISSIONER OLSON: I see what you're saying.

12 COMMISSIONER BAILEY: Yeah.

13 COMMISSIONER OLSON: Well, if they're ceasing use
14 of them, that, to me, is the main criteria on the effective
15 date. Now you're allowing --

16 COMMISSIONER BAILEY: Because you're concerned
17 about the unlined pits, but this also includes permitted or
18 registered permanent pits --

19 COMMISSIONER OLSON: But it's only for an unlined
20 permitted or registered. Isn't that --

21 COMMISSIONER BAILEY: But the way (1) is written,
22 it says an existing unlined or permitted or registered --

23 COMMISSIONER OLSON: Oh --

24 COMMISSIONER BAILEY: -- permanent pit, see?

25 MS. BADA: I don't think that was the intent

1 of --

2 COMMISSIONER OLSON: I don't think that's -- I
3 think this was intended to deal with the pits that are in
4 those exempt areas that are currently unlined.

5 CHAIRMAN FESMIRE: We've got one too many commas
6 here. An existing unlined, permitted or registered --

7 MS. BADA: Actually, we're missing a comma.

8 CHAIRMAN FESMIRE: Where?

9 MS. BADA: It should just say an existing
10 unlined, comma, permitted or registered, comma, permanent
11 pit.

12 COMMISSIONER OLSON: Because if there's a
13 permitted -- a permitted --

14 CHAIRMAN FESMIRE: No, no, no, no, no.

15 COMMISSIONER OLSON: Is that right?

16 CHAIRMAN FESMIRE: No.

17 COMMISSIONER BAILEY: No.

18 CHAIRMAN FESMIRE: No, no, no.

19 MS. BADA: For a --

20 CHAIRMAN FESMIRE: An existing unlined permitted
21 or registered permanent pit. So existing unlined permitted
22 or unlined registered permanent pits, unlined permanent --
23 permitted permanent pit or registered unlined -- registered
24 permanent pit shall be closed within two years after the
25 effective date.

1 So what we're talking about here is unlined --
2 unlined pits --

3 MS. BADA: -- that are either permitted or
4 registered --

5 CHAIRMAN FESMIRE: -- or registered, shall be
6 closed within two years after -- let's make that a little
7 more -- an existing --

8 COMMISSIONER BAILEY: Does it matter if it's
9 permitted or registered? Isn't it all unlined pits?

10 COMMISSIONER OLSON: I was thinking the same
11 thing.

12 CHAIRMAN FESMIRE: All unlined pits should be
13 permitted or registered.

14 COMMISSIONER BAILEY: Yeah, but if we eliminate
15 those two words, three words, then it could be clearer --

16 COMMISSIONER OLSON: Right.

17 COMMISSIONER BAILEY: -- that it's all unlined
18 pits --

19 COMMISSIONER OLSON: -- all unlined pits.

20 COMMISSIONER BAILEY: -- doesn't matter.

21 MS. BADA: That's why there's two different
22 dates, though. That's why you have (1) and (2).

23 CHAIRMAN FESMIRE: Yeah, if they've been
24 permitted or registered, they've got two years. If they
25 haven't been permitted or registered they've got 60 days.

1 COMMISSIONER OLSON: Because it was illegal to
2 start with.

3 CHAIRMAN FESMIRE: Right. How about, An existing
4 permitted or registered permanent pit that is unlined shall
5 be closed within two years after the effective date of
6 this? Does that make it clearer?

7 MS. BADA: Either that or take out the comma, I
8 don't care which.

9 COMMISSIONER BAILEY: I like putting -- the way
10 you said it. But do we want to have it for a closure plan
11 so that they don't close it without having approval?

12 CHAIRMAN FESMIRE: It just dawned on me the way
13 to do this.

14 MS. BADA: You already have a requirement for a
15 closure plan.

16 COMMISSIONER OLSON: Right.

17 COMMISSIONER BAILEY: Uh-huh.

18 CHAIRMAN FESMIRE: They have 30 days to submit a
19 closure plan.

20 COMMISSIONER OLSON: Uh-huh.

21 CHAIRMAN FESMIRE: Why don't we start the clock
22 running after they -- two years after they submit their
23 closure plan and not leave it excepted, you know -- No, no,
24 we can't do that.

25 COMMISSIONER OLSON: I don't have any problem

1 with doing it from when it's approved, because there's been
2 -- likely going to be some backlog of doing this.

3 CHAIRMAN FESMIRE: I agree with you a hundred
4 percent. But one way to stall and not get this done is to
5 submit an unapprovable plan.

6 MS. BADA: An incomplete plan.

7 CHAIRMAN FESMIRE: An incomplete plan.

8 COMMISSIONER BAILEY: To call it -- a complete
9 approvable closure plan must be submitted within one year.

10 CHAIRMAN FESMIRE: Well, we've already got the
11 earlier provision with the 30 days.

12 COMMISSIONER BAILEY: Have we agreed on 30 days
13 as a reasonable amount of time for everybody, for
14 ConocoPhillips and Yates and all these operators that have
15 huge numbers of --

16 CHAIRMAN FESMIRE: Okay --

17 COMMISSIONER BAILEY: -- locations?

18 CHAIRMAN FESMIRE: -- so instead of 30 days, a
19 complete approvable plan shall be submitted within one
20 year, and the closures will occur within a year after
21 approval of the plan.

22 COMMISSIONER BAILEY: I can support that.

23 CHAIRMAN FESMIRE: How about it? Can you draft
24 it?

25 MS. BADA: What's going to constitute complete

1 and approvable? I would feel better if you had a deadline
2 that said, you know, if it's not then it still has to be
3 closed. Shouldn't be any arguments about what it is.

4 COMMISSIONER BAILEY: But I don't want the idea
5 of industry going ahead and closing something and OCD
6 coming back a year later and saying, Whoops, we didn't have
7 time to get around to you, but we don't like the way you
8 did something, and you've spent \$15 million doing this for
9 all your wells.

10 COMMISSIONER OLSON: I mean, it almost seems to
11 me to be handled through OCD's enforcement. If somebody
12 submits a plan and it's incomplete, you ask them for the
13 information, and if they give you incomplete information
14 again, you -- you know --

15 COMMISSIONER BAILEY: The clock has started --

16 COMMISSIONER OLSON: -- reject it and take a -- a
17 compliance action.

18 COMMISSIONER BAILEY: The clock starts when they
19 get something to you that's reasonable.

20 CHAIRMAN FESMIRE: So that still doesn't satisfy
21 my problem. What's to keep them from giving you something
22 unreasonable --

23 COMMISSIONER BAILEY: Yeah.

24 CHAIRMAN FESMIRE: -- just to stall?

25 COMMISSIONER BAILEY: Is there an apparent

1 completeness review that OCD does when something is
2 submitted? Would that be helpful if we have these time
3 limitations, to have an apparent completeness review like
4 MMD does for coal mines or something?

5 CHAIRMAN FESMIRE: That's a whole different
6 procedure that we haven't started, and if you -- you know,
7 I don't think I have the budget to do anything like that
8 this year.

9 COMMISSIONER BAILEY: Yeah, but you've got all
10 these closure plans coming in for your limited people
11 anyway, so to do it efficiently and effectively, they need
12 some way -- here I am, talking about management processes
13 -- some way to efficiently take care of the volume so that
14 they don't have another four years' backlog sitting on the
15 floors.

16 CHAIRMAN FESMIRE: Another four years? I guess I
17 don't --

18 COMMISSIONER BAILEY: Well, the testimony was,
19 there were -- what -- how many years' worth of --

20 CHAIRMAN FESMIRE: Well, I don't --

21 COMMISSIONER BAILEY: -- paper sitting on --

22 CHAIRMAN FESMIRE: I think it was --

23 COMMISSIONER BAILEY: -- Wayne Price's floor?

24 CHAIRMAN FESMIRE: -- that there were 40 of these
25 applications sitting on his floor.

1 COMMISSIONER BAILEY: But there was something
2 about --

3 CHAIRMAN FESMIRE: We're almost caught up now.

4 COMMISSIONER BAILEY: -- a two-year backlog on
5 his review.

6 CHAIRMAN FESMIRE: I don't remember that, and --

7 COMMISSIONER OLSON: Well, I can speak from
8 experience. On the prior expansion of the vulnerable area
9 that we did in 1993, I believe, there was a lot of pits in
10 the expanded vulnerable area that were required to be
11 closed. There wasn't an outer limit placed on that, but
12 there was a lot of pits, and it took years for companies
13 that had large numbers of pits just to get them done,
14 because there's only so much equipment that can get up
15 there running around to close them, so...

16 And in some cases I think -- I don't remember
17 what the exact numbers were. John Roe with Dugan had said
18 they still have a number of unlined pits out there.
19 They're not doing any more new ones, but I think he said
20 they had -- Well, I can't remember the number. I thought
21 it was around 100 or --

22 CHAIRMAN FESMIRE: No, I was thinking --

23 COMMISSIONER OLSON: -- something

24 CHAIRMAN FESMIRE: -- it was --

25 COMMISSIONER OLSON: -- that were left out there.

1 So if you try to do 100 pits in two years, is -- That's a
2 lot of work.

3 The key to me is, they're not being used. That's
4 the -- that you're not -- at least they're not putting
5 anything new in them.

6 MS. BADA: I don't think there's anything that
7 says they're not being used, though.

8 COMMISSIONER OLSON: Well, there's --

9 CHAIRMAN FESMIRE: If they're permitted or
10 registered and not closed now, they should legally be being
11 used.

12 COMMISSIONER OLSON: No, it's after the effective
13 date, unlined temporary pits are prohibited. So if it's
14 prohibited, you can't put anything in the transitional
15 provisions.

16 CHAIRMAN FESMIRE: But if they're permitted or
17 registered now, they -- we're only permitting and
18 registering --

19 MS. BADA: Yeah, that's that --

20 CHAIRMAN FESMIRE: -- new active pits, not --

21 COMMISSIONER OLSON: Uh-huh, I see what you're
22 saying.

23 CHAIRMAN FESMIRE: Why don't we take a break for
24 15 minutes and come back at 25 after and see if we can
25 solve this problem?

1 (Thereupon, a recess was taken at 2:08 p.m.)

2 (The following proceedings had at 2:25 p.m.)

3 CHAIRMAN FESMIRE: Let's go back on the record in
4 Case Number 14,015.

5 Let the record reflect it is 2:25 p.m. on
6 Wednesday, March 12th, 2008.

7 Let the record also reflect that Commissioners
8 Olson, Bailey and Fesmire are present, we therefore have a
9 quorum.

10 We were in the process of deliberating the final
11 order in the aforementioned case.

12 We had kind of come to an impasse on some of the
13 requirements under the closure, and I'm hoping that over
14 the break somebody came up with a decent idea on how to get
15 through the problems that we were having.

16 COMMISSIONER BAILEY: I think Willie got
17 brilliant there.

18 COMMISSIONER OLSON: I have a thought here. I
19 think the key, to me, seems to be, if we've got unlined
20 pits, we want to stop using them. That seems to me the
21 real focus. The closure that comes after that can take
22 some longer period of time, as long as it's not being used.

23 And I wonder if we could set out the requirement
24 that within two years of the effective date of the rule,
25 you'll cease discharges to permitted unlined pits, the ones

1 that are already out there that may be in the -- outside
2 the vulnerable areas of the San Juan Basin, for example.
3 And there might be a number of those for some operators.

4 So if we could say, Look, you'll stop using them
5 in two years, and then for unpermitted ones, unlined pits
6 that aren't permitted now, they should be ceased on the
7 effective date of the rule. I mean, they're illegal now,
8 so there shouldn't be any continuation of that, it's a
9 violation of the current rules, and maybe it would be good
10 to state that.

11 The other issue seems to be, once -- and the
12 reason I mention this this way is because I see two
13 different things that are going to have to occur. They're
14 going to have to cease discharge, and they're going to have
15 to retrofit tanks out onto those sites. And the testimony
16 that we've had, and the experience I've had in the past, is
17 about five grand just to come in and do that alone.

18 You also, then, now have the closure. That's --
19 Once the discharge has ceased to the unlined pit, the
20 closure can take some longer period of time, especially if
21 it's outside the vulnerable areas, there's a very low --
22 there's a low risk that those are going to pose a problem,
23 you know?

24 So I would almost think that maybe we could just
25 give some direction to our counsel to say, Let's focus this

1 on ceasing discharge within two years and submission of the
2 closure plans, whatever, if you want to say within one
3 year. And the schedule for closure of those pits could be
4 part of the closure plans. I mean, there should be a
5 schedule that comes as part of that, and that's something
6 that can just be negotiated with OCD at that point. I
7 don't see that that's -- I see that as a less critical
8 issue than ceasing discharge.

9 CHAIRMAN FESMIRE: Okay, what time period --

10 COMMISSIONER OLSON: And I think right now, the
11 way that OCD has this written -- and maybe I'm interpreting
12 this wrong, but I kind of -- the way I see it is that
13 they're kind of trying to roll these two things together,
14 ceasing the discharge and the closure plan all together,
15 and to me they're two distinctly different activities that
16 have distinctly different costs with the operators as well.

17 And it seems to be, you know, fair to the
18 operators to say, Look, okay, in two years you've got to
19 retrofit these things and get this stuff taken care of, and
20 you've got more flexibility in the time to get them closed.

21 And that's the way -- essentially the way the old
22 pit rules had worked. There was cease-discharge deadlines.

23 COMMISSIONER BAILEY: I like your reasoning
24 because it keeps focus on what the issue is. And the issue
25 is, no more discharges. That's the result we want. And

1 then closure, if there's no more discharge, can come at its
2 time --

3 COMMISSIONER OLSON: Uh-huh.

4 COMMISSIONER BAILEY: -- under approval by the
5 OCD.

6 I like your reasoning, because it's keeping focus
7 on what's important.

8 CHAIRMAN FESMIRE: Okay, so how long until we
9 cease discharge to -- under your proposal, how long would
10 it be to cease discharge in registered or permitted
11 permanent pits?

12 COMMISSIONER OLSON: Well, I think the rest of
13 the stuff is okay, that a deadline with the -- needs to be
14 in applications and things like that.

15 But I think two years on ceasing discharge is
16 giving them adequate time to make sure they can get tanks
17 and get the system retrofitted, because that's going to
18 be -- that's really a major focus that I just see, and I
19 thought maybe two years from the effective date, or unless
20 you want to set a specific time, you know, a specific, you
21 know, year that it's done by --

22 COMMISSIONER BAILEY: So you're saying A.(1)
23 should read, Discharge to an existing unlined permitted or
24 regist- -- or -- decided to change that language -- shall
25 be -- shall cease within two years?

1 COMMISSIONER OLSON: I'm thinking actually you
2 put it back in the transitional provisions where you have
3 right now 17.A, that after it's got, you know, effective
4 date, unlined temporary pits are prohibited, and you could
5 say -- add to that to say that --

6 CHAIRMAN FESMIRE: Well, since it's two different
7 concepts, let's leave it in two different places. Let's
8 talk about the closure requirements here, and then the
9 transitional provisions, talk about ceasing discharge to
10 those permits.

11 MS. BADA: You also have closure requirements in
12 B of 17, though, also, so you need to deal with them
13 simultaneously, or you'll end up with conflicting
14 provisions.

15 CHAIRMAN FESMIRE: Okay, let's decide what we
16 want to do and leave it up to counsel to draft the
17 appropriate --

18 COMMISSIONER OLSON: Right.

19 CHAIRMAN FESMIRE: -- language.

20 (Laughter)

21 CHAIRMAN FESMIRE: So what we want to do is cease
22 discharge to the permitted or registered permitted pits
23 within two years. Is that too long? That seems like an
24 awful long time. The test- --

25 MS. BADA: That's what you're doing in A.

1 CHAIRMAN FESMIRE: What do you mean?

2 MS. BADA: That's what you're already doing in
3 A.(1), because you don't have anything --

4 COMMISSIONER OLSON: Uh-huh.

5 MS. BADA: -- that talks about discharge.

6 COMMISSIONER OLSON: Right.

7 CHAIRMAN FESMIRE: Right.

8 MS. BADA: So it just depends on whether you
9 think that's reasonable, that that was what -- essentially
10 what was proposed.

11 CHAIRMAN FESMIRE: But that -- you know, there's
12 a different time requirement to get a -- and this is the
13 crux of Commissioner Olson's discussion, is that there's a
14 different time period to get them closed. What we want to
15 do is get discharge ceased.

16 MS. BADA: But that's what I'm saying, there's
17 nothing in the rule as proposed that makes those different.
18 Initially it was, you closed it, so two years essentially.

19 COMMISSIONER OLSON: Uh-huh.

20 CHAIRMAN FESMIRE: Right.

21 MS. BADA: Whether you think that's reasonable is
22 another question, but that's essentially the --

23 COMMISSIONER OLSON: Which means it's kind of --
24 you stop discharging and close it within two years where
25 it's synonymous, versus now breaking it out to say -- which

1 could be just for the transitional provisions, that they'll
2 cease discharges within, you know, a certain period of
3 time, which means it has to be permitted, retrofitted, and
4 they've got the time to work that through, you know?

5 And to tell you the truth, the closure is got
6 more flexibility, in my opinion, once you stop the
7 discharge.

8 COMMISSIONER BAILEY: And that can happen within
9 a year after closure plan approval.

10 COMMISSIONER OLSON: Uh-huh. I was thinking
11 along the lines that you don't even need to put a time
12 frame, it would just be that the closure plan would include
13 a schedule for implementation, and it's worked out through
14 OCD as part of the approval.

15 COMMISSIONER BAILEY: You've done it before.

16 COMMISSIONER OLSON: Because some -- it may be
17 different for different operators. If somebody's got two
18 pits and wants to take, you know, two years to do it, that
19 seems a little excessive. If you've got somebody that's
20 got 100 pits, actually it may take them two to three years
21 to get it done, you know?

22 CHAIRMAN FESMIRE: Well, if we're going to get it
23 done, we need to put a time limit on it.

24 I think two years to stop discharge is too much.
25 You know, we need to get it done quicker than that.

1 I can understand -- you know, and that would take
2 some of the pressure off, you know, give them -- I think it
3 would be reasonable, given some of the testimony, including
4 some of the testimony we heard from the northwest
5 operators, Mr. Dugan and his employee, that a year to cease
6 discharge into an existing unlined or permitted or
7 registered pit -- existing permitted or registered unlined
8 pit -- and at the same time give them a year to submit a
9 closure plan and then a year to get it closed after the
10 adoption of the closure -- after the acceptance of the
11 closure plan, the approval of the closure plan.

12 Is that too stringent?

13 COMMISSIONER OLSON: I'm just thinking that for
14 some cases, if you've got 100 of them, which I think they
15 were in the range of that for unlined pits, and you now
16 have to get tankage systems for all those. That's a lot of
17 folks constructing tanks.

18 And then the physical installation, they've
19 probably got to come and probably move the equipment or
20 replumb it, because you're probably going to set it next to
21 the other pit because you're going to have to close that
22 out and dig it out, unless you plan on doing it all at
23 once. And that's what happened in the past, was, often
24 they would come and sit it adjacent to the old pit
25 somewhere and then come back and dig out the pit.

1 But the focus up front was on ceasing the
2 discharge and getting things retrofitted, and I'm just
3 wondering on the time frame if that's going to be enough
4 time, unless you allow an -- you know, an option for an
5 extension of that for, you know, good cause shown,
6 something like that. That could be a way to do it, I --
7 that's fine.

8 I'm just thinking, I don't know if one year is
9 going to be enough time to -- because they've got to submit
10 their permit application as well and get the permit
11 approved for the new system.

12 COMMISSIONER BAILEY: And there'll be a backlog
13 for that.

14 COMMISSIONER OLSON: And there'll be a backlog
15 for that. And this actually allows the Division to focus
16 more on the pollution prevention first and then the
17 cleanup, which the pollution prevention seems more
18 important.

19 CHAIRMAN FESMIRE: Okay. So how would you
20 propose we do it, then?

21 COMMISSIONER OLSON: I'm just thinking two years.
22 That should be enough time for them, you know, to get the
23 permit applications in and get things retrofitted and
24 redone. And then when you come to the closure, not having
25 the time frame -- or if you want a time frame, pushing it

1 out --

2 CHAIRMAN FESMIRE: I want a time frame, because I
3 know, you know, there's always better ways to spend your
4 money, for an operator to spend their money. And, you
5 know, they're going to -- I think there needs to be a time
6 requirement. As long as it's a specific requirement, given
7 some of the testimony we've heard, specifically from Mr.
8 Dugan and his employees -- his employee -- and there are a
9 significant number of these. But at the same time we need
10 to drive the process.

11 But why don't you go ahead and give us a proposal
12 and -- you know, what are we looking at, what kind of -- ?

13 COMMISSIONER OLSON: Well, I think the two -- if
14 we looked at -- if you wanted to say two years for ceasing
15 the discharge and three years for --

16 CHAIRMAN FESMIRE: A total of three years to get
17 it closed?

18 COMMISSIONER OLSON: Right, and then from --
19 three years of the effective date they'll have them closed.
20 You're giving them an extra year in there to help get them
21 closed. A three-year period to close them. And sometimes
22 it might go concurrently, they -- and some companies did
23 that before, they come in and do it all at the same time.
24 They've got a backhoe out there to do the work that they've
25 got going on, they're going to do both things at once so

1 they don't have to remobilize the equipment.

2 CHAIRMAN FESMIRE: Right.

3 COMMISSIONER OLSON: So if you -- maybe if you
4 did it that way --

5 CHAIRMAN FESMIRE: Okay. Commissioner Bailey, is
6 that your --

7 COMMISSIONER BAILEY: To cease discharges in two
8 years and complete closure within three years --

9 COMMISSIONER OLSON: -- of the effective date
10 for --

11 COMMISSIONER BAILEY: Of the effective -- sure.

12 CHAIRMAN FESMIRE: And that's for registered
13 pits. How do you propose to handle nonregistered or
14 nonpermitted pits?

15 COMMISSIONER OLSON: Well, I'd say that there
16 shouldn't be any discharges as of the effective -- there
17 shouldn't be any discharges now --

18 CHAIRMAN FESMIRE: Right.

19 COMMISSIONER OLSON: -- so they're illegal
20 anyways. And I'd give them a tight time frame, since it's
21 an illegal activity, to --

22 CHAIRMAN FESMIRE: Sixty days to cease --

23 COMMISSIONER OLSON: Yes.

24 CHAIRMAN FESMIRE: -- or 60 days from closure,
25 immediate discharge cease --

1 COMMISSIONER OLSON: Right.

2 CHAIRMAN FESMIRE: -- cessation.

3 COMMISSIONER OLSON: Or -- yeah, immediacy of
4 cessation, I think that's the key. You know, close them
5 out and -- They still have to submit a plan, though, don't
6 they? And that has to be approved by OCD.

7 COMMISSIONER BAILEY: And that's not going to
8 happen in 60 days.

9 COMMISSIONER OLSON: That's not going to happen
10 in 60 days, no.

11 MS. BADA: At least, I think it does.

12 COMMISSIONER BAILEY: Yeah, on (2) --

13 MS. BADA: Yeah, it does.

14 COMMISSIONER BAILEY: -- A.(2).

15 CHAIRMAN FESMIRE: Okay.

16 COMMISSIONER OLSON: And I agree it needs to be a
17 short time frame, because that's -- It shouldn't even be
18 there in the first place, it's really illegal under the
19 current regulations.

20 CHAIRMAN FESMIRE: So would six months be a
21 reasonable time period to get their application -- their
22 plan in, approved, and get the site closed?

23 COMMISSIONER BAILEY: Can Division personnel do
24 that?

25 CHAIRMAN FESMIRE: Yeah, they -- That won't take

1 long to get those turned around.

2 COMMISSIONER BAILEY: Six months?

3 CHAIRMAN FESMIRE: Very -- very quickly.

4 COMMISSIONER BAILEY: Okay, so A.(2), date
5 becomes within six months after effective date?

6 COMMISSIONER OLSON: Becomes six months instead
7 of 60 days?

8 COMMISSIONER BAILEY: That's -- He's saying that
9 that could work.

10 COMMISSIONER OLSON: That's --

11 MS. BADA: -- three years.

12 COMMISSIONER OLSON: That's fine with me.

13 CHAIRMAN FESMIRE: Okay.

14 COMMISSIONER OLSON: Is that okay with you?

15 CHAIRMAN FESMIRE: It's okay with me.

16 COMMISSIONER BAILEY: Let's go for it.

17 CHAIRMAN FESMIRE: Counsel, do you think you can
18 draft that?

19 MS. BADA: And on unlined pits, when did you -- I
20 mean the unregistered, when did you want it to cease?

21 CHAIRMAN FESMIRE: Cessation the effective date
22 of the --

23 MS. BADA: Effective date of the rule.

24 CHAIRMAN FESMIRE: -- the rule, because it's
25 already a violation of the rule.

1 MS. BADA: Okay. While we're on this, go to 17.B
2 and decide whether plan submittal -- closure plan submittal
3 within 30 days is reasonable.

4 CHAIRMAN FESMIRE: 17.B?

5 MS. BADA: Uh-huh.

6 COMMISSIONER OLSON: I think it's reasonable for
7 the unpermitted pit that may be out there, because that's
8 -- and again, that's illegal.

9 MS. BADA: It also applies to unlined temporary
10 pits and existing below-grade tanks that don't meet the
11 requirements.

12 COMMISSIONER OLSON: I think it's going to be a
13 flood of them coming in, though.

14 COMMISSIONER BAILEY: Can we just eliminate 17.B
15 and go with what we're talking about in 13.A, so that we
16 don't have redundancy or contradict ourselves? Because
17 17.B tries to lump it all together, and we've been real
18 specific in 13.A that unlined registered, unlined not
19 registered, temporary, permanent --

20 MS. BADA: The problem is, when you go back to
21 your initial application, it refers to 17.B.

22 COMMISSIONER BAILEY: Well, can we change that
23 reference?

24 MS. BADA: I think it talks about closure plans,
25 is the problem.

1 COMMISSIONER BAILEY: Because we're looking at
2 each situation in a different light, and when you try to
3 lump it all together in 17.B it's --

4 MS. BADA: Yeah, if you --

5 COMMISSIONER BAILEY: -- getting contradictory.

6 MS. BADA: -- go back to 9.C, section 9,
7 paragraph C, particularly C.(2) and C.(3) --

8 COMMISSIONER BAILEY: Well, let's just scratch
9 that language to say, submit the respective closure plan
10 required under 13 --

11 MS. BADA: But 13 --

12 COMMISSIONER BAILEY: -- A.

13 MS. BADA: -- doesn't talk about closure plans,
14 it just says when it has to be closed by.

15 COMMISSIONER BAILEY: Okay.

16 CHAIRMAN FESMIRE: Well, counsel can clean up
17 those references, she knows what we're --

18 COMMISSIONER BAILEY: Yeah.

19 CHAIRMAN FESMIRE: -- trying to accomplish.

20 COMMISSIONER OLSON: Well, yeah, that's maybe
21 what's confusing too, because it seems like you've got --

22 MS. BADA: One --

23 COMMISSIONER OLSON: -- transitional provisions
24 in different places, instead of all in one in one place.

25 MS. BADA: One deals with your closure plan,

1 so --

2 COMMISSIONER OLSON: Right.

3 MS. BADA: -- I think the question is, when do
4 you want to have to have those in? The other deals with
5 the date you have to have it closed by.

6 COMMISSIONER BAILEY: Well, that's what we are
7 figuring out here --

8 MS. BADA: Yeah.

9 COMMISSIONER BAILEY: -- in 13. So in 13 we're
10 being --

11 MS. BADA: 13 talks about closed --

12 COMMISSIONER BAILEY: -- specific according to
13 the situation.

14 MS. BADA: 13 talks about when you have to have
15 it closed by, and then B talks about when you have to get
16 your plan in. And so does C, 9.C.

17 COMMISSIONER OLSON: I mean, I could see the 30
18 days for the unpermitted ones -- and that would be a high
19 focus then, I think, for the Division because I think these
20 things are noncompliant, and maybe 60 days -- or six months
21 for submitting them for things that are already permitted,
22 you know?

23 CHAIRMAN FESMIRE: Or registered.

24 COMMISSIONER OLSON: Or registered, right. And
25 that way, there's some time for folks to get the plans

1 together. It's not -- it does take a little time even for
2 industry to figure out how they want to address these
3 things, what method they're going to use to do it, line up
4 their resources and figure out a schedule for those things.

5 CHAIRMAN FESMIRE: Okay.

6 MS. BADA: Well, you can't do your closure
7 without your plan, but -- because I mean, you have a drop-
8 dead date anyway, but is it reasonable to -- 30 days?

9 COMMISSIONER OLSON: Uh-huh.

10 CHAIRMAN FESMIRE: I -- You know, these are folks
11 that have resisted the --

12 MS. BADA: No, I'm not talking about the
13 unregistered. I'm talking about below-grade tanks, within
14 five years you're going to have to retrofit or replace or
15 -- for the unlined temporary pits, those type of things.

16 CHAIRMAN FESMIRE: Do you have enough to do what
17 needs to be done? Do you need --

18 MS. BADA: No, I need you to tell me when you
19 want your closure plans. And I've got it for the unlined,
20 unregistered, unpermitted, but what about the others?

21 CHAIRMAN FESMIRE: I think we decided for the
22 permitted ones six months.

23 MS. BADA: Okay. That also applies to below-
24 grade tanks that are -- retrofitted, and unlined temporary
25 pits, so I just want to make sure --

1 CHAIRMAN FESMIRE: Right.

2 MS. BADA: Okay.

3 CHAIRMAN FESMIRE: That's my interpretation.
4 Commissioner Bailey?

5 COMMISSIONER BAILEY: I thought a while ago we
6 said A.(2) would be six months for existing lined or
7 unlined, not permitted or registered.

8 MS. BADA: Right that's when they have to be
9 closed.

10 CHAIRMAN FESMIRE: Closed by, that's not the --

11 COMMISSIONER BAILEY: Okay.

12 CHAIRMAN FESMIRE: -- requirement --

13 MS. BADA: That's when it -- yeah.

14 CHAIRMAN FESMIRE: -- plan.

15 COMMISSIONER BAILEY: And the plans --

16 COMMISSIONER OLSON: Submit a closure plan within
17 six months, close them within three years --

18 CHAIRMAN FESMIRE: For the registered permitted
19 -- and permitted. But you're talking about the
20 unpermitted, unregistered ones?

21 COMMISSIONER BAILEY: Okay, no, I just hadn't
22 gotten it clear where we were.

23 CHAIRMAN FESMIRE: Is that satisfactory?

24 COMMISSIONER BAILEY: Is it reasonable? Six
25 months for everybody that has a pit out there, to submit a

1 closure plan?

2 CHAIRMAN FESMIRE: For the unlined pits, yeah.

3 COMMISSIONER BAILEY: For the -- ?

4 CHAIRMAN FESMIRE: -- unlined, registered or
5 permitted pits.

6 COMMISSIONER BAILEY: Okay. How about for the
7 closed-loop systems, below-grade tanks?

8 CHAIRMAN FESMIRE: Well, below-grade tanks would
9 be included, but a closed-loop system would be a temporary.

10 COMMISSIONER BAILEY: Okay, I'm just looking at
11 13.(A) talks about closing pits, closed-loop systems or
12 below-grade tanks.

13 MS. BADA: And you have to remember, right now
14 13.(A).(3) says an unlined temporary pit has to be closed
15 within three months after the effective date, so you can't
16 give them six months to get in a closure plan --

17 COMMISSIONER OLSON: Uh-huh.

18 MS. BADA: -- unless you change it.

19 COMMISSIONER OLSON: I didn't have a problem with
20 those being closed in three months, so...

21 MS. BADA: So are you okay with the closure plan
22 being 30 days for that one?

23 CHAIRMAN FESMIRE: Yes.

24 COMMISSIONER OLSON: Uh-huh.

25 CHAIRMAN FESMIRE: That should be a relatively

1 small number.

2 MS. BADA: Okay, so a closure plan -- submit a
3 closure plan within 30 days for unlined temporary pits or
4 unlined, unregistered, unpermitted permanent pits?

5 CHAIRMAN FESMIRE: That's my understanding.

6 MS. BADA: And in six months for below-grade
7 tanks and the registered --

8 CHAIRMAN FESMIRE: -- registered, permitted --

9 MS. BADA: -- permitted.

10 CHAIRMAN FESMIRE: Registered or permitted.

11 MS. BADA: Okay.

12 CHAIRMAN FESMIRE: Anything else we need to
13 address in there? Okay.

14 Okay, going to 19.15.17.13.B, CRI and the
15 independents both had a comment on this.

16 CRI is interested in having the authority in the
17 district -- I mean in Santa Fe instead of the district
18 office.

19 And the independents, I've got the word
20 "evaporate". Does anybody know what I'm talking about?

21 COMMISSIONER BAILEY: And that was for B.(1)?

22 CHAIRMAN FESMIRE: 17.B. It didn't get specific.

23 MS. BADA: 13.B, you mean?

24 CHAIRMAN FESMIRE: Yeah.

25 COMMISSIONER OLSON: I'm seeing their December

1 13th submittal, their only issue was the -- be done by the
2 Environmental Bureau versus the district.

3 CHAIRMAN FESMIRE: Yeah.

4 COMMISSIONER OLSON: I think it should be done at
5 the district level.

6 COMMISSIONER BAILEY: The closure time limit for
7 temporary pits --

8 CHAIRMAN FESMIRE: Back up on 13.A?

9 COMMISSIONER OLSON: Uh-huh.

10 COMMISSIONER BAILEY: -- for temporary pits, we
11 give them three months after release of the rig? What do
12 we give them?

13 CHAIRMAN FESMIRE: Where are you at?

14 COMMISSIONER BAILEY: Okay, 12.B.(4) says all
15 free liquids have to be removed within 30 days after rig
16 release. So I don't think in 30 days evaporation is going
17 to be a very effective means of removal of fluids.

18 CHAIRMAN FESMIRE: And that causes a conflict.
19 Where are you showing that?

20 COMMISSIONER BAILEY: IPA's suggestion to use
21 evaporation as a method for closure of temporary pits, I
22 don't think, is a very effective method if we're only
23 giving them 30 days to remove free liquids out of the
24 temporary pit.

25 CHAIRMAN FESMIRE: Okay.

1 COMMISSIONER BAILEY: I mean, some may evaporate,
2 but --

3 CHAIRMAN FESMIRE: Anything that evaporates is
4 fluid you don't have to truck --

5 COMMISSIONER BAILEY: Right.

6 CHAIRMAN FESMIRE: -- but the testimony has been
7 extremely -- there's been a lot of the testimony that the
8 longer you leave the fluid in there, the higher the head,
9 the more the --

10 COMMISSIONER BAILEY: Uh-huh.

11 CHAIRMAN FESMIRE: -- the risk of contamination,
12 the more the risk of release. So I agree with you on that.

13 The independents also want B.(1) to G.(3)
14 eliminated. That would be the methods for closing. I
15 guess they don't want to ever close pits.

16 MS. BADA: I think they moved it.

17 CHAIRMAN FESMIRE: Oh, did they?

18 MS. BADA: If I remember correctly. I could be
19 wrong, but --

20 CHAIRMAN FESMIRE: Well, that would drastically
21 decrease the amount of time we have to spend on this.

22 In the specifics, the industry committee wanted
23 to change the TPH to DRO, 100 to 2500, 250 to 5000, testing
24 visually impacted soils, and the Citizens for Clean Air and
25 Water wanted to eliminate the word "hot spots".

1 I think, counsel Bada, you have done that --

2 MS. BADA: Uh-huh.

3 CHAIRMAN FESMIRE: -- in most of these, haven't
4 you?

5 MS. BADA: I have, because you agreed to that
6 during your December 14th deliberations.

7 CHAIRMAN FESMIRE: Okay. The Citizens, CRI and
8 OGAP on B.(2) all want to delete "on-site deep-trench
9 burial", and the industry committee wanted to delete the
10 words "deep-trench". B.(2).

11 COMMISSIONER OLSON: I mean, the thing we haven't
12 accounted for in here at the moment is the distinction
13 between the in-place burial, the tacos versus the burritos,
14 deep-trench burial. And we may just need to have that get
15 reflected in here as part of those changes.

16 CHAIRMAN FESMIRE: That's not reflected in --
17 what is it, 11.J?

18 COMMISSIONER BAILEY: I think if we change the
19 wording, the word, the terminology, instead of calling it
20 deep-trench burial, which was confusing even to our counsel
21 because she thought it mean a deeper location --

22 COMMISSIONER OLSON: Uh-huh.

23 COMMISSIONER BAILEY: So I think we need to
24 change the words to better describe on-site closure with
25 the taco as opposed to on-site closure with the burrito.

1 CHAIRMAN FESMIRE: I'm trying to avoid the formal
2 use of the words taco and burrito.

3 (Laughter)

4 COMMISSIONER BAILEY: Exactly, that's why I'm
5 just suggesting that we get creative in thinking of
6 different terms that eliminate the use of the term deep-
7 trench.

8 MS. BADA: How about we can just say trench
9 burial? I could live with that.

10 CHAIRMAN FESMIRE: Well, we're proposing as a --
11 I think we're proposing as an exception to the general rule
12 of dig-and-haul two possible ways to do it.

13 Up north, if they can meet the closure standards
14 for a landfill -- landfarm, not landfill, landfarm -- if
15 they can meet the closure standards, we're proposing to let
16 them dispose in place, correct?

17 COMMISSIONER OLSON: It's not limited to the
18 north.

19 COMMISSIONER BAILEY: Yeah, that's where I got
20 hung up --

21 CHAIRMAN FESMIRE: Okay, no --

22 COMMISSIONER BAILEY: -- because --

23 COMMISSIONER OLSON: Right.

24 COMMISSIONER BAILEY: -- no, we're not just
25 saying northwest.

1 CHAIRMAN FESMIRE: You're right.

2 COMMISSIONER BAILEY: We're saying if they can
3 meet depth to groundwater and contaminant levels the on-
4 site burial is okay.

5 CHAIRMAN FESMIRE: Okay. And we're also talking
6 about as an exception to the general rule of dig-and-haul,
7 the -- I can't -- the trench burial as an alternative
8 method, on rare occasions that we have yet to establish the
9 criteria for; is that correct?

10 COMMISSIONER BAILEY: Based on depth to
11 groundwater and level of contaminants.

12 CHAIRMAN FESMIRE: Right.

13 COMMISSIONER BAILEY: Yes.

14 CHAIRMAN FESMIRE: So when we start talking about
15 the taco versus the burrito, that is a subset of the
16 discussion on trench burial; is that correct?

17 MS. BADA: I think what you have -- this is my
18 understanding, you have in-place burial where you don't
19 move the wastes in the pit, you leave it. That's what
20 we've talked about so far, that's what you agreed to on
21 December 14th.

22 I think what you're discussing now is the deep-
23 trench burial where you actually dig another hole and move
24 it. That's my --

25 COMMISSIONER OLSON: That's for the --

1 MS. BADA: -- understanding.

2 COMMISSIONER OLSON: -- higher-level
3 contaminants.

4 COMMISSIONER BAILEY: With a lid on top.

5 COMMISSIONER OLSON: Uh-huh.

6 CHAIRMAN FESMIRE: Okay.

7 COMMISSIONER OLSON: I think the problem at the
8 moment is that we're working through off of the OCD
9 version, which didn't acknowledge that. So it's something
10 that's going to have to be added to this.

11 MS. BADA: Yeah, it doesn't address in-place
12 burial --

13 COMMISSIONER OLSON: Yeah.

14 MS. BADA: -- so that's going to have to be
15 addressed. And I think I've noted it somewhere where we
16 can get to that, but --

17 COMMISSIONER OLSON: Uh-huh.

18 CHAIRMAN FESMIRE: So we're at 17.13.B, right?

19 MS. BADA: Right.

20 CHAIRMAN FESMIRE: Closure methods for temporary
21 pits.

22 MS. BADA: Yeah.

23 CHAIRMAN FESMIRE: The operator of a temporary
24 pit shall remove all liquids from the temporary pit prior
25 to implementing a closure method and dispose of the liquids

1 in a Division-approved facility or recycle, reuse or
2 reclaim the liquids in a manner that the appropriate
3 Division district office approves. The operator shall
4 close the temporary pit by one of the following methods.

5 Waste evacuation and removal, B.(1). The
6 comments come from the industry committee --

7 MS. BADA: -- add in, in-place burial.

8 CHAIRMAN FESMIRE: Right, that's going to be --
9 that's going to be --

10 MS. BADA: Maybe the new (2).

11 CHAIRMAN FESMIRE: -- B.(2)?

12 COMMISSIONER OLSON: Be a new B.(2).

13 MS. BADA: Yeah.

14 COMMISSIONER OLSON: (2) would become (3), and
15 (3) would become (4).

16 CHAIRMAN FESMIRE: Okay.

17 COMMISSIONER OLSON: I mean, I didn't have any
18 problem with the language in the -- outside of, we just
19 need to add this extra method of in-place burial.

20 CHAIRMAN FESMIRE: Okay. Well, let's talk about
21 B.(1).

22 We don't intend to allow any closure in place
23 where it's less than 50 foot to groundwater, correct?

24 COMMISSIONER OLSON: Right, but that doesn't
25 really come in here, does it?

1 CHAIRMAN FESMIRE: Right, but --

2 COMMISSIONER OLSON: I think what this is -- this
3 part is just talking about the methods that you use. All
4 we're just trying to do is set out these are the methods
5 that you use, and for the others it actually refers to --

6 MS. BADA: -- F.

7 COMMISSIONER OLSON: -- section F, which comes up
8 later, like for deep-trench burial.

9 CHAIRMAN FESMIRE: Right.

10 COMMISSIONER OLSON: So --

11 CHAIRMAN FESMIRE: And that's under B.(2) so far.

12 COMMISSIONER OLSON: Right. And F would also now
13 have to include the taco system, because it's an on-site
14 closure method.

15 CHAIRMAN FESMIRE: F? Okay.

16 COMMISSIONER OLSON: I mean, it might just say --
17 instead of just take out deep-trench entirely, just say on-
18 site burial.

19 MS. BADA: Yeah, shall comply with.

20 COMMISSIONER OLSON: And shall comply with F, and
21 then that's all consistent, and then you go to F if you
22 want to see where -- what you have to do.

23 CHAIRMAN FESMIRE: Okay.

24 MS. BADA: And we -- in-place burial.

25 COMMISSIONER OLSON: And then that could be added

1 to F, right.

2 MS. BADA: Yeah. Why don't we just say -- why
3 don't we say, involves on-site burial and take out the --

4 CHAIRMAN FESMIRE: Okay. So before we get to
5 that, let's talk about the waste evacuation and removal.

6 MS. BADA: Excavation.

7 COMMISSIONER OLSON: Excavation.

8 (Laughter)

9 CHAIRMAN FESMIRE: Damn, you're right. Okay.
10 Okay, one of the things that occurred to me in
11 reviewing some of the work we've done in part 36, and I
12 need to make this consistent, is the delineation standards
13 that we've got built into B, B.(1).(b) -- No?

14 MS. BADA: B.(1).(b).

15 CHAIRMAN FESMIRE: Our intent was to -- at least
16 with respect to the chlorides, was to make that consistent
17 with the closure standards for the small landfarms -- yeah,
18 landfarms.

19 MS. BADA: Might be something that you want to
20 do. Right now you have one delineation standard, but you
21 have two different scenarios for being able to do in-place
22 burial. One is if it's 50 to 100, and one is if it's over
23 100 foot to groundwater. The question, really, is, do you
24 want two different standards for delineation that
25 recognizes those scenarios? Right now, we -- it's pretty

1 much based on the 50 to 100 foot.

2 CHAIRMAN FESMIRE: Yeah. Well, everything in
3 this delineation standard is based on the 50 to 100 foot.

4 Can we incorporate the same -- I realize it would
5 be something that we'd have to chase the -- you know, if
6 you can meet this standard, the standard from part 36,
7 with, you know, 50 foot to water or 100 foot to water, you
8 know, it would be a moving standard. But can we
9 incorporate that in here so it's relatively consistent? If
10 it's good enough to meet those standards on the surface
11 with that depth to water, can we use that as a delineation
12 standard in this area?

13 COMMISSIONER OLSON: I think you could -- I
14 easily see using it as the evidence of a release. If it's
15 below that level you don't have to do anything more.

16 I kind of wonder about on the delineation side,
17 if it is above that, you have to delineate it till you get
18 back to using 250 versus 500, you know.

19 And just for -- the key thing to keep in mind --
20 and I think that we had -- I looked back in the transcripts
21 in our prior discussion, because we kind of deferred that
22 back in December, so there's a lot of confusion, and it's
23 been -- and industry -- I've worked with this for a long
24 time, where everybody is always confused that, Look, where
25 you're trying to find out what we need for delineation

1 purposes, that's not necessarily the cleanup level.

2 CHAIRMAN FESMIRE: Right.

3 COMMISSIONER OLSON: If you want to clean up to
4 that, fine, we'd approve it, but it doesn't mean you have
5 to. And sometimes folks would take that as the -- both the
6 delineation and the cleanup level, and it's a point of
7 confusion.

8 CHAIRMAN FESMIRE: Right.

9 COMMISSIONER OLSON: So I could see in terms of
10 -- definitely for a release if it meets -- if they sample
11 underneath the pit, now -- the question comes on the taco
12 system, are you still going to be sampling under the pit?

13 CHAIRMAN FESMIRE: Well, I'm talking about the --

14 COMMISSIONER OLSON: You're talking about
15 excavation.

16 CHAIRMAN FESMIRE: -- excavation right now. I'm
17 talking about excavation, you've had a release, you're
18 going to do a delineation. And you take a sample 10 foot
19 under the release, and you reach -- you've got 1000 parts
20 per million chloride. That's what you would have to --
21 that's the standard you would have to achieve in a closure
22 on a part 36 landfarm.

23 MS. BADA: For over 100 foot to groundwater.

24 COMMISSIONER OLSON: For over 100 --

25 CHAIRMAN FESMIRE: If you're over 100 foot to

1 groundwater.

2 So can't we say that if you have 100 -- if you
3 achieve that standard and you have over 100 foot to
4 groundwater, can you not go --

5 COMMISSIONER OLSON: Oh, I see what you're
6 saying.

7 CHAIRMAN FESMIRE: -- make that -- and add some
8 consistency to what we're trying to do? I realize again,
9 we're crossing delineation standards and cleanup standards,
10 but if you've got 100 foot to groundwater and you've gotten
11 down to the 1000 parts per million, most of the time you
12 can assume that you're not going to exceed that as you go
13 farther down, notwithstanding some of the chloride bulge
14 testimony that we've heard.

15 But when we were talking about 10 foot under a
16 pit, 20 foot under a pit, you've still got 100 feet to go
17 to the groundwater, wouldn't that be an acceptable standard
18 and add some consistency to -- you know, to what we're
19 trying to accomplish, to make this like the Rule 36?

20 MS. BADA: And you're going to have to know your
21 depth to groundwater, because --

22 CHAIRMAN FESMIRE: -- you've got to report it
23 in --

24 MS. BADA: -- if you want to put a pit or you
25 want to do burial --

1 CHAIRMAN FESMIRE: Exactly. Or if -- and, you
2 know, adopt the standard, if you've got 500, you know,
3 between 50 and 100 foot remaining to groundwater, well,
4 shouldn't that be considered sufficient? It would be
5 sufficient, you know, and we've already tested that, you
6 know, in the part 36 testimony and the appeals, and the
7 court has ruled in support if it.

8 COMMISSIONER OLSON: I think that -- I like that,
9 actually.

10 COMMISSIONER BAILEY: I'm all for consistency.

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: It's not -- you know, it's --
13 we're going to have to make it clear in the evaluation -- I
14 mean, in the write-up -- that it's a moving target. If you
15 go down 10 foot, it's 110 foot below the bottom of the pit,
16 till you get to the water level.

17 MS. BADA: Well, whatever you're measuring from,
18 either your waste --

19 CHAIRMAN FESMIRE: Exactly.

20 COMMISSIONER OLSON: But for example, if you're
21 in the 50-to-100-foot range and you go down --

22 CHAIRMAN FESMIRE: -- to 500 --

23 COMMISSIONER OLSON: -- 30 feet --

24 MS. BADA: -- and hit water --

25 COMMISSIONER OLSON: -- now it's 20 feet to

1 water, that --

2 CHAIRMAN FESMIRE: No, that's --

3 COMMISSIONER OLSON: -- you'd still need to
4 delineate that further.

5 CHAIRMAN FESMIRE: Right.

6 COMMISSIONER OLSON: I like that. Actually, I
7 think it's consistent with what we're allowing, too, to be
8 left in place, because of those varying depths to water.

9 I -- might be hard to write.

10 MS. BADA: Well, I'll take a stab at it.

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: Let's -- if --

13 MS. BADA: I think all I have to do -- and I'm
14 assuming -- I'll have to check 36 and make sure all these
15 standards match, but I think what I can do is, we can just
16 say if it's 50 foot to 100, it's the standard you already
17 have in here. And I think we agreed at the last --

18 COMMISSIONER OLSON: It had the BTEX and the
19 TPH --

20 MS. BADA: -- in December --

21 COMMISSIONER OLSON: -- and the chlorides --

22 MS. BADA: -- that you changed it to 500, so I
23 think that one -- I'll just clarify that that's 50 to 100,
24 and then we'll add one to 100 foot.

25 CHAIRMAN FESMIRE: Commissioner Bailey, does that

1 seem reasonable to you?

2 COMMISSIONER BAILEY: It seems reasonable, and
3 without confusing -- in this case you have that, and in
4 that case you have that -- The consistency, I think, is a
5 nice goal for us.

6 CHAIRMAN FESMIRE: Okay, and that's my proposal
7 for the change -- to change B.(1).(b).

8 COMMISSIONER OLSON: So we'll leave that for our
9 counsel to try to take a stab at.

10 MS. BADA: I just have one question on A.7 --

11 CHAIRMAN FESMIRE: A.7?

12 MS. BADA: -- because it talks about rig release.
13 Should we have the same type of notification on the C-103
14 or the C-105?

15 COMMISSIONER OLSON: Should be.

16 CHAIRMAN FESMIRE: Yes.

17 MS. BADA: Also in B, before you get to (1), it
18 talks about recycle, reuse or reclaim. Do we need to talk
19 about "or otherwise dispose of"?

20 COMMISSIONER OLSON: I think it's already got it
21 in the prior part of the sentence in the line right
22 above --

23 MS. BADA: Okay --

24 COMMISSIONER OLSON: -- where it talks about --

25 MS. BADA: -- okay --

1 COMMISSIONER OLSON: -- and --

2 MS. BADA: -- and dispose of or --

3 COMMISSIONER OLSON: -- so it's written a little
4 bit --

5 MS. BADA: Okay, all right.

6 COMMISSIONER OLSON: -- differently, yeah.

7 CHAIRMAN FESMIRE: Yeah.

8 MS. BADA: Maybe a good way to --

9 CHAIRMAN FESMIRE: Okay. So we're through B and
10 into C.

11 The Citizens for Clean Air and Water had the same
12 change with the hot spot, but you changed that to wet,
13 discolored or showing other evidence of a release, prior --
14 prior agreement? Is that you all's understanding?

15 COMMISSIONER OLSON: Uh-huh.

16 CHAIRMAN FESMIRE: Okay.

17 COMMISSIONER OLSON: I guess just one thing we
18 didn't address there -- you've brought this up before --
19 was in B.(1).(b). We had the -- you know, the proposed
20 change onto just making it based on DRO, and I disagree
21 with that. I think looking at overall TPH, it's a measure
22 of gross contamination; it's not saying you have to clean
23 it up to those levels. But it should be based upon not
24 just DRO.

25 CHAIRMAN FESMIRE: Okay. And we are going to --

1 Counsel is going to draft the language to include the -- in
2 B --

3 MS. BADA: B.(2)?

4 CHAIRMAN FESMIRE: -- (2) --

5 MS. BADA: This is what I'm proposing. You know,
6 like I said -- like Commissioner Olson said, just say on-
7 site burial, and then refer -- and then in that last line
8 where it talks about on-site deep-trench burial, just
9 strike deep-trench and then deal with the different on-site
10 closure methods in F.

11 CHAIRMAN FESMIRE: Okay. And we'll probably need
12 to talk a little bit more when we get to F, won't we?

13 MS. BADA: Yeah.

14 CHAIRMAN FESMIRE: Okay.

15 Okay, and under Alternative closure methods, If
16 the Environmental Bureau in the Division's Santa Fe office
17 grants an exception approving a closure method for a
18 specific temporary pit other than as specified in -- and
19 we'll need to change those references --

20 MS. BADA: I think we're still okay for that one.

21 CHAIRMAN FESMIRE: Are we going to be? Okay.

22 ...then the operator shall close that temporary
23 by the method -- So that provides a general exceptions
24 process.

25 MS. BADA: Uh-huh.

1 CHAIRMAN FESMIRE: Do we need to reference the
2 standards that we're going to establish in F there?

3 MS. BADA: No --

4 CHAIRMAN FESMIRE: Okay.

5 COMMISSIONER OLSON: I don't think so.

6 MS. BADA: -- because right now it just
7 references either dig-and-haul or on-site burial --

8 CHAIRMAN FESMIRE: Okay.

9 MS. BADA: -- as an alternative, one of those
10 two.

11 CHAIRMAN FESMIRE: Okay, for Closure methods for
12 permanent pits in C, there's actually a pretty significant
13 dearth of comments. What did come out came from the
14 Citizens, and we've already addressed one of them.

15 In C.(3) they talk about 50 milligrams per
16 kilogram, and I'm not sure what that was referring to.

17 MS. BADA: Well, the question on C.(3) --

18 CHAIRMAN FESMIRE: Yeah.

19 MS. BADA: -- did you want the same type of
20 delineation, permanent pits, that we discussed in B?

21 CHAIRMAN FESMIRE: In the last three lines down
22 there?

23 MS. BADA: Do you want that to be based on depth
24 to groundwater? C, C.(3)?

25 COMMISSIONER OLSON: I'm inclined to say no for a

1 permanent pit, because it could be a long-term release.

2 CHAIRMAN FESMIRE: Yeah.

3 COMMISSIONER OLSON: On the temporary pits you're
4 looking at something that's not there very long, and
5 there's less potential for an impact than -- a permanent
6 pit with a really small leak could have been going on for
7 20 years, and then it gets a little more important there.

8 MS. BADA: Okay, so which chloride level did you
9 want on that one?

10 COMMISSIONER OLSON: Well, I think it's already
11 got 250 in here.

12 MS. BADA: Okay, did you want to change that to
13 500 also, or did you want to leave it at 250?

14 COMMISSIONER OLSON: I think for the permanent
15 ones, 250. I don't think anybody had a problem with that.

16 CHAIRMAN FESMIRE: Huh-uh, not on the permanent
17 pits. Like I said, there was a pretty significant dearth
18 of comments on that one.

19 In D.(2), closure methods for closed-loop
20 systems, CRI and the Citizens wanted to delete section
21 D.(2).

22 COMMISSIONER OLSON: But just looking at the
23 title of it, we should be moving towards on-site burial
24 now.

25 CHAIRMAN FESMIRE: Okay.

1 COMMISSIONER OLSON: Does that take care of that?

2 CHAIRMAN FESMIRE: Yeah, there -- CRI and
3 Citizens for Clean Air and Water are concerned about on-
4 site deep-trench burial. We're going to want to change --

5 COMMISSIONER OLSON: Well, some are just
6 concerned about burial, period, they just --

7 CHAIRMAN FESMIRE: Right.

8 COMMISSIONER OLSON: -- don't want burial,
9 period, and I think we've passed that part, at least in our
10 discussion.

11 CHAIRMAN FESMIRE: Okay. Closure methods for
12 below-grade tanks. The independent committee [sic] wanted
13 to delete the phrase "all", and I don't see what they're
14 talking about.

15 COMMISSIONER BAILEY: In the first line of E.(1)?

16 CHAIRMAN FESMIRE: Yes. What do you have there?

17 COMMISSIONER OLSON: You said that was under the
18 industry committee's --

19 CHAIRMAN FESMIRE: Industry committee, not the
20 independents.

21 COMMISSIONER BAILEY: That paragraph explains why
22 deletion of the word "all" makes sense, because sometimes
23 it's beyond the ability of the vacuum truck to remove every
24 single bit.

25 COMMISSIONER OLSON: That's fine with me. Kind

1 of says the same thing, to me.

2 COMMISSIONER BAILEY: Uh-huh.

3 CHAIRMAN FESMIRE: Shall we just delete it, or
4 use their proposal by normal means?

5 COMMISSIONER BAILEY: Let's go with by normal
6 means, because that's --

7 MS. BADA: Where does it say that?

8 COMMISSIONER BAILEY: -- as much as --

9 COMMISSIONER OLSON: Where does it say that? I
10 don't see it saying that in their proposal.

11 CHAIRMAN FESMIRE: This is in their write-up.

12 COMMISSIONER OLSON: Oh, it wasn't in their --

13 CHAIRMAN FESMIRE: Yeah --

14 COMMISSIONER OLSON: -- attachment.

15 CHAIRMAN FESMIRE: -- you've got the deal and
16 then the write-ups back here, Attachment B.

17 COMMISSIONER OLSON: Okay, they didn't reflect it
18 in their --

19 CHAIRMAN FESMIRE: Yeah.

20 COMMISSIONER OLSON: -- that language. What page
21 is that?

22 CHAIRMAN FESMIRE: 16, about a third of the way
23 down.

24 COMMISSIONER OLSON: I think you can just take
25 out the word "all", that's fine.

1 CHAIRMAN FESMIRE: Shall remove liquids and
2 "sludge.

3 COMMISSIONER OLSON: Uh-huh.

4 CHAIRMAN FESMIRE: Commissioner Bailey -- ?

5 COMMISSIONER BAILEY: It really doesn't make that
6 much difference.

7 CHAIRMAN FESMIRE: Okay.

8 COMMISSIONER OLSON: You're giving two options, I
9 think just take out "all" is fine.

10 CHAIRMAN FESMIRE: It's simpler.

11 COMMISSIONER OLSON: Uh-huh.

12 CHAIRMAN FESMIRE: Okay, the industry committee
13 also -- Replace TPH with DRO, EPA method values, add line
14 about testing soils at E.(4).

15 By agreement, we've already adopted the Citizens
16 for Clean Air and Water's --

17 COMMISSIONER OLSON: Uh-huh.

18 CHAIRMAN FESMIRE: -- proposal, and I think we've
19 -- this is part of the same argument that we've had in the
20 past, that the TPH is the indicator that we want to use and
21 that we've rejected the DRO as the proper indicator for
22 what we're seeking to determine.

23 Commissioner Bailey, do you have any problem with
24 that?

25 COMMISSIONER BAILEY: No, that's fine.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER OLSON: We replace that term "hot
3 spot" again?

4 CHAIRMAN FESMIRE: Yeah.

5 COMMISSIONER OLSON: Okay, let's see, the
6 Citizens, CRI and the Oil and Gas Accountability Project
7 want to delete F for on-site closure methods --

8 COMMISSIONER BAILEY: Before we leave E --

9 CHAIRMAN FESMIRE: Uh-oh.

10 COMMISSIONER BAILEY: -- industry also had the
11 suggestion that they be able to use the Division-approved
12 field test for visually impacted soils for chlorides.

13 CHAIRMAN FESMIRE: Where is that?

14 COMMISSIONER BAILEY: E.(1).(4) [sic], to insert
15 the sentence, The operator shall also test any visually
16 impacted soils for chloride using a Division-approved field
17 test to ensure that such visually impacted soils do not
18 exceed -- certain volume. They say 5000, but...

19 CHAIRMAN FESMIRE: On which constituent, I guess,
20 in --

21 MS. BADA: Chlorides.

22 COMMISSIONER BAILEY: Chlorides.

23 CHAIRMAN FESMIRE: Chlorides?

24 COMMISSIONER BAILEY: I mean, I don't have any
25 problem if it's Division-approved field test, if the

1 Division's --

2 COMMISSIONER BAILEY: The Division uses it too,
3 so...

4 COMMISSIONER OLSON: Yeah, if the Division is
5 comfortable with it, that's fine with me.

6 CHAIRMAN FESMIRE: Boy, I'm not -- You know, this
7 is a below-grade tank with the potential for a long-term
8 release. I think we need a little more. I mean, the
9 screening tests are -- I think I would go -- I wouldn't be
10 satisfied with that. I don't think that -- you know, for
11 the potential here, I think we need to be more sure than
12 the screening test.

13 MS. BADA: Also proposed that in temporary pits.

14 CHAIRMAN FESMIRE: And we didn't adopt it in
15 temporary pits, did we?

16 MS. BADA: I don't think --

17 COMMISSIONER OLSON: No.

18 MS. BADA: -- we addressed it.

19 COMMISSIONER BAILEY: Well, we didn't even talk
20 about it.

21 COMMISSIONER OLSON: We didn't really talk about
22 it, no.

23 CHAIRMAN FESMIRE: Well, we can talk about it
24 now.

25 COMMISSIONER BAILEY: Seems like they would be

1 able to close a temporary pit faster if they could use the
2 Division-approved field testing methods for chlorides,
3 without having to wait for results from the laboratory.

4 MS. BADA: Of course, they would have to wait for
5 the lab on the others.

6 CHAIRMAN FESMIRE: Yeah.

7 MS. BADA: So that's --

8 CHAIRMAN FESMIRE: I think we're going to have
9 to -- I'm not comfortable with that on the closure. This
10 is not a screening deal, this is...

11 Commissioner Olson, you've got more experience
12 than I do, but I've seen those field tests fail.

13 COMMISSIONER OLSON: Yeah, I don't mind using
14 them on a delineation purpose, with a confirmation,
15 usually, on a -- especially for the final closure. I mean,
16 if you're looking at trying to delineate that through
17 depth, then you're trying to screen it and you get to where
18 you think it's okay, then you take a final confirmation
19 sample for the lab, that's kind of the typical way that
20 that's used, as a screening method versus a final
21 confirmation.

22 I think I kind of prefer having the lab analysis
23 for a final closure like that.

24 CHAIRMAN FESMIRE: I think I do too,
25 Commissioner.

1 COMMISSIONER BAILEY: Okay.

2 CHAIRMAN FESMIRE: Okay, where are we at?

3 COMMISSIONER BAILEY: F.

4 CHAIRMAN FESMIRE: We're at F? Lots of comments
5 on F.

6 COMMISSIONER OLSON: And this is, again, I think
7 where we're going to have to have counsel take a crack at
8 adding the enclosed burial.

9 MS. BADA: I just need what you --

10 COMMISSIONER OLSON: We did take out F.(1).(a),
11 which was the 100-mile-radius requirements, so that would
12 be deleted.

13 CHAIRMAN FESMIRE: Right. Theoretically, what do
14 we want to have? Do we want to be able to close in place
15 anything that achieves the surface landfill -- I mean the
16 small landfill closure standards?

17 COMMISSIONER BAILEY: The landfarm --

18 CHAIRMAN FESMIRE: Landfarm, I'm sorry.

19 MS. BADA: You've already allowed that in -- Was
20 it 8 or 9? Whatever section --

21 CHAIRMAN FESMIRE: Right.

22 MS. BADA: -- that was.

23 COMMISSIONER OLSON: Uh-huh.

24 MS. BADA: So my question is, if you're going to
25 leave it in place, what do you want? Taco -- There's just

1 nothing that addresses what you're requiring.

2 CHAIRMAN FESMIRE: Right. Well, before we get
3 there, don't we need to determine what criteria we would
4 have for the exception?

5 MS. BADA: Well, that exception you already
6 decided back in December, for the in-place --

7 CHAIRMAN FESMIRE: Right, right, now that was --

8 MS. BADA: -- so I mean, you meet the criteria
9 for that, no matter what else you decide.

10 CHAIRMAN FESMIRE: Right. But now we're talking
11 about the --

12 MS. BADA: Now as far as other exceptions, yes,
13 you need to discuss them.

14 CHAIRMAN FESMIRE: -- the trench burial. You
15 know, is there -- what reason is there to use a trench
16 burial? What are we going to look at in terms of setting
17 criteria for the exceptions?

18 COMMISSIONER BAILEY: Didn't we --

19 COMMISSIONER OLSON: We were talking about that
20 earlier. I mean, I kind of come back to the concept of
21 using the -- you know, higher levels than landfarming but
22 lower levels that were proposed by both parties, because I
23 wasn't real comfortable with either leaving 70,000 or
24 100,000 chlorides, even in a deep-trench burial.

25 So I kind of like that idea of using -- which was

1 stressed heavily by industry's representative, Dr. Thomas,
2 and it was supported as well, once you start looking at the
3 modeling for Dr. Stephens, of using a level of 250 SPLP
4 here, leave it up to 5000 chlorides and a deep-trench
5 burial where it's greater than 100 feet to water, and if
6 you've got some portions that are above that, those are
7 portions you may need to haul off, then, to appropriate
8 disposal at a more controlled site.

9 It is allow- -- it's giving some allowance to
10 that. I'm a little bit more comfortable with that,
11 especially since we're not going to have any type of, you
12 know, surface owner approval of these things, because I
13 still think that should be in there. But I'm more
14 comfortable with allowing a level like that for the deep-
15 trench burial if there's not going to be a surface owner
16 approval, so...

17 And it's not -- so essentially, you're going to
18 be allowing -- they can -- you know, similar to the in-
19 place, they can do some kind of blending and get it to
20 5000, which I think we saw from a lot of the testimony
21 they're probably going to be able to do in the northwest.

22 Now the southeast, that might be a more difficult
23 problem, for a couple of reasons. One, there's a lot of
24 areas that are less than 100 -- especially in the Ogallala,
25 that are less than 100 feet to water. And then they have

1 much higher range of chlorides, which are really a much
2 more serious problem than in the northwest.

3 So that was -- kind of be my recommendation, was,
4 try to use that as the waste contaminant levels allowed to
5 be buried.

6 CHAIRMAN FESMIRE: So given the testimony, what's
7 that going to do to the -- I mean, there's still going to
8 be an awful lot of -- you know, our objective is to
9 minimize the number -- I mean, to reasonably minimize the
10 number of sites where we leave waste buried on site, but
11 allow this exception, you know, for areas where we can do
12 it truly safely.

13 "What's that going to do to our numbers, do you
14 suppose?

15 CHAIRMAN FESMIRE: I think it's largely going to
16 be allowing more of it in the northwest. I don't think
17 we'll see as much of it in the southeast, because they'll
18 have a hard time reaching those -- those levels. And then
19 some areas which are over 100 feet to water.

20 So I think the testimony -- because I asked about
21 this a number of times, how many wells are actually located
22 in the current vulnerable areas? And there was some rough
23 estimates that I think industry agreed that, well, it might
24 be somewhere in the range of -- and this is just an
25 estimate, but maybe somewhere in the range of 6000, you

1 know, that are in there out of all the sites that are up in
2 the San Juan Basin -- and that's maybe one-third of the
3 locations -- are going to be most likely 100 feet or less
4 to water. So it's not going to happen in those -- in the
5 vulnerable areas.

6 The only place, it's going to be up in the higher
7 areas, which are greater depth to groundwater. And so
8 that's -- you know, potentially could be allowed at two-
9 thirds of the area up there that's being drilled.

10 MS. BADA: How many of them would already meet
11 the other -- the in-place burial, do you think?

12 COMMISSIONER OLSON: Right, I think a number of
13 them would, based upon the testimony that was presented to
14 us, they're already going to meet the in-place.

15 How many -- the differential for the San Juan
16 Basin, I don't know that there's going to be that many that
17 would need deep-trench burial. I don't know. I just don't
18 know. I think it would be a lesser amount, because the
19 testimony from industry was that in most cases, with the
20 3-to-1 dilution, they're getting these things down more in
21 the range -- which I think, as I understand it, of the in-
22 place burial.

23 COMMISSIONER BAILEY: I disagree with your
24 statement that the focus of this rule is to eliminate the
25 number of burials.

1 CHAIRMAN FESMIRE: Well, I didn't say eliminate,
2 I said minimize the number of waste -- buried waste on
3 site.

4 COMMISSIONER BAILEY: And I still disagree with
5 that. I believe that the focus -- the purpose of this rule
6 is to protect groundwater --

7 CHAIRMAN FESMIRE: Well, that's --

8 COMMISSIONER BAILEY: -- to protect the
9 environment.

10 CHAIRMAN FESMIRE: -- we're saying the same
11 thing, just a different way of saying it.

12 COMMISSIONER BAILEY: No, I don't think you can
13 say, we can't allow 1500, we have to have 1100, which is
14 what you're saying.

15 CHAIRMAN FESMIRE: Commissioner Bailey, that's
16 not what I said. In my mind, the way to minimize the risk
17 to groundwater is to minimize the number of on-site burials
18 that are going to cause a threat to groundwater.

19 COMMISSIONER BAILEY: Well, and I think what we
20 need to focus on is, how do we keep those burials from
21 contaminating freshwater and the environment? So my focus
22 is to agree with Bill, Commissioner Olson, who says that if
23 we go with burial at those levels that he was recommending,
24 then we are accomplishing that goal of protecting the
25 groundwater.

1 CHAIRMAN FESMIRE: What about the testimony that
2 said that the liners -- all liners will fail and that
3 they'll fail in a range of 70 to 280 years?

4 COMMISSIONER OLSON: But see, I come back to the
5 levels, then, that I'd like to set, 250 by an SPLP, because
6 the idea with that is that you're not going to generate,
7 then, a leachate that can cause an exceedence of the
8 standards. The standard is 250.

9 If you can only generate a leachate at 250, even
10 though you're allowing up to 5000 of chlorides, you should
11 be accomplishing the goal of saying any leachate that is
12 generated won't impact groundwater, and it's only allowed
13 in areas where it's greater than 100 feet to groundwater.

14 So you're allowing also the idea that -- you
15 know, they have a higher level of waste, anything less than
16 100 feet to groundwater is vulnerable from that type of
17 activity, even though, you know, it's at a -- this certain
18 level. You're trying to set a buffer to that, to ensure
19 that groundwater is not --

20 COMMISSIONER BAILEY: You've eliminated the
21 threat.

22 COMMISSIONER OLSON: That's what I'm seeing, that
23 you've eliminated the threat, because you're making sure
24 that it's -- you know, you can only generate a leachate of
25 250 milligrams per liter chlorides, and it's still got 100

1 feet of earth material to account for tying up anything
2 that potentially could come out of that, so I'm just seeing
3 that --

4 CHAIRMAN FESMIRE: So -- so how do we keep a big
5 market in just diluting it -- how do we keep -- you know,
6 the objective then is going to be just dilute it, dilute
7 it, dilute it, add more and more uncontaminated material
8 until it reaches those standards.

9 COMMISSIONER OLSON: There is that possibility,
10 but then I think you come down to some of the lease
11 restrictions they may have with BLM for the size of their
12 pad, they're only going to get so much space from -- to be
13 able to do that, unless BLM is going to allow them to make,
14 you know --

15 COMMISSIONER BAILEY: And you still have four
16 feet of --

17 COMMISSIONER OLSON: -- a giant --

18 COMMISSIONER BAILEY: -- cover.

19 COMMISSIONER OLSON: Right.

20 MS. BADA: Would you have to haul in -- to
21 dilute, would you have to haul in extra soil? Would you
22 have sufficient soil on site to do that, or is the cost of
23 hauling it in going to --

24 COMMISSIONER BAILEY: You run out of space.

25 COMMISSIONER OLSON: Uh-huh.

1 CHAIRMAN FESMIRE: Well, how do we keep this from
2 being business as usual, then? This is what we're doing
3 now, isn't it?

4 COMMISSIONER OLSON: No.

5 CHAIRMAN FESMIRE: No?

6 COMMISSIONER OLSON: Huh-uh. Right now it's
7 burying whatever concentration you've got, so -- and I --
8 see, I'm looking at this, this is a lower level than either
9 -- than I think is supported by the evidence, but it's a
10 lower level than is proposed by either industry or OCD.

11 I thought OCD's levels -- I mean, admittedly -- I
12 understand what they did in their modeling, but I'm just
13 not real comfortable with that.

14 I think this allows -- what you were mentioning
15 about the number of sites, this -- I see this as having
16 less sites with this than you would at OCD's proposed
17 level, you know, for deep-trench burial, because --

18 CHAIRMAN FESMIRE: Well, remember --

19 COMMISSIONER OLSON: -- essentially it's --

20 CHAIRMAN FESMIRE: -- in deep trench burial when
21 it was originally proposed it was simply for anything
22 outside of the 100-mile radius.

23 COMMISSIONER OLSON: Right. But the problem I
24 was having -- and this is the testimony that's coming out
25 -- there's an inconsistency, because at the same time OCD

1 was saying that this doesn't pose a threat to groundwater.

2 So if it doesn't pose a threat to groundwater,
3 why can't you do it in the 100-mile radius as well as
4 outside? because it's based solely on a technical merit.

5 And I think the key point to the 100-mile radius
6 is just, there just -- was not really supported by, you
7 know, evidence as to why this is the 100 vers- -- I mean, I
8 asked that of every witness that was up there, you know,
9 why not a 50, why not 100, why is it 200 -- and it's kind
10 of a number that was chosen for convenience.

11 CHAIRMAN FESMIRE: Okay --

12 COMMISSIONER OLSON: But I -- this idea of
13 setting it with the depth to groundwater criteria and then
14 the waste acceptance criteria as limiting the potential for
15 impacts, as well as probably limiting the sites that it
16 could occur at.

17 It's going to be costly to get out there and do
18 that and install the system like that as well. It might be
19 something that might be more cost-effective at that point,
20 and the operators would probably look at it on the
21 economics. Okay, is it -- you know, as well as the
22 liability, do I want, you know, to spend the money to make
23 a burrito out there or just haul it off? You know? It's
24 their call as to which way they go. It's not being
25 mandated upon them. It's their economics, then, that will

1 drive that factor.

2 MS. BADA: -- is the use of soil that otherwise
3 would not be impacted?

4 COMMISSIONER OLSON: Right.

5 CHAIRMAN FESMIRE: The generation of large
6 volumes of waste when we could sequester a much smaller
7 volume.

8 MS. BADA: Couldn't you address that by
9 prohibiting that?

10 COMMISSIONER OLSON: Well, there are already --

11 CHAIRMAN FESMIRE: There's going to be some level
12 -- I mean, most of the time, if you're going to do this,
13 you've got to stabilize the waste.

14 MS. BADA: Yeah, but you -- you've got to dig the
15 pit. I mean, is there a way to write an exception so that
16 you don't allow hauling in other dirt or digging the pits
17 larger than they need to be or --

18 CHAIRMAN FESMIRE: It sets a maximum ratio to
19 stabilize the material, yeah.

20 If we were to do that, I could see it. But I
21 just -- you know, the original objective was to minimize
22 the number of waste sites i, the field, and --

23 COMMISSIONER OLSON: Well, I can see --

24 CHAIRMAN FESMIRE: -- and protect the groundwater
25 from that.

1 COMMISSIONER OLSON: I can see the one thing --
2 concern you've got, that you're creating a larger waste
3 volume.

4 CHAIRMAN FESMIRE: Randy, are you enjoying this?
5 Would you be so kind as to leave?

6 MR. HICKS: I'm sorry.

7 CHAIRMAN FESMIRE: This is an important decision,
8 we need to concentrate on it. You're entitled to be here
9 to listen.

10 MR. HICKS: And that's what I'll do.

11 CHAIRMAN FESMIRE: Okay.

12 COMMISSIONER OLSON: And I think the problem I
13 heard was that there was a variety of ratios that could
14 come up depending on how -- what that material is.
15 Sometimes it could be 2-to-1, sometimes it could be 3-to-1,
16 sometimes it could be 4-to-1, that was the testimony that
17 we had.

18 So I don't know how you -- I can understand what
19 you're doing, because then you're trying to make sure that
20 you have a maximum waste volume of some sort, that you're
21 not creating huge volumes, just -- if you want to take
22 100,000 chlorides and dilute it down to 5000, that's going
23 to be a rather large burrito. So I can understand that
24 concern that way.

25 But I don't have a problem if we wanted to try to

1 put some kind of limitation on the mixing, the amount
2 necessary to stabilize it or a maximum of --

3 COMMISSIONER BAILEY: But what you're envisioning
4 is a mound, but the re-vegetation reclamation requirements
5 don't allow mounding such as that, because they talk about
6 back to the original contours, as close as possible. And
7 so through the reclamation and re-vegetation requirements,
8 we're not allowing them to build manmade hills at each well
9 site.

10 So the volume has to be limited just by that
11 requirement for recontouring as close as possible to the
12 original contours.

13 CHAIRMAN FESMIRE: Okay, is there any way we can
14 -- based on the testimony that you were talking about, the
15 mixing ratios, is there any way we can limit the amount of
16 material necessary to stabilize -- I mean, other than the
17 physical -- you know, the limits on the mounding and things
18 like that?

19 COMMISSIONER BAILEY: Depends on the weather, it
20 depends on what they use, it depends on how much they've
21 been able to dry out the solids. I don't see how you can
22 say no more than 5-to-1 if they have a very small amount of
23 cuttings.

24 CHAIRMAN FESMIRE: Okay.

25 COMMISSIONER OLSON: I mean, I don't know if you

1 want to -- We could maybe drafting it the way I suggested,
2 and then think about -- and just defer that till -- that
3 issue until the next --

4 CHAIRMAN FESMIRE: I think I can agree to that,
5 go ahead and draft it that way. I do want to reconsider
6 the issue of a maximum mixing ratio.

7 COMMISSIONER OLSON: Because I can understand the
8 concern. You don't want to make -- you're taking
9 something, and you're making a larger volume --

10 CHAIRMAN FESMIRE: -- a larger volume of waste.

11 COMMISSIONER OLSON: -- of waste, right. So I
12 understand that's a -- I have the same concern, because
13 you're -- you know, it's always the old rule, dilution is
14 not the solution to pollution.

15 CHAIRMAN FESMIRE: Right.

16 MS. BADA: I guess I just -- When they dig the
17 pit and they dig the trench, I mean, do they -- is that the
18 -- what they use to mix?

19 CHAIRMAN FESMIRE: That's where most of it would
20 come from, yeah. The material that they've stripped below
21 the topsoil layer and the material from the deep trench, or
22 from the trench.

23 MS. BADA: Is there a way to use that to address
24 your concern? They don't bring in other material, or they
25 don't --

1 CHAIRMAN FESMIRE: You know, that may be one way
2 of doing it, and -- you know, a prohibition on importing
3 material, but --

4 MS. BADA: The economics would probably do that,
5 but --

6 CHAIRMAN FESMIRE: Yeah. Well, why don't we --

7 COMMISSIONER OLSON: On the other side of it,
8 you're going to have -- you've got your lease, you've got a
9 certain pad size, right? You're not going to be able to do
10 a whole lot more than the size of your pad. You've got a
11 lot of limitations, you've got to be able to use the pad
12 too. And you're going to be limited to a couple acres.
13 So...

14 COMMISSIONER BAILEY: You're not going to build
15 mountains there.

16 COMMISSIONER OLSON: Right. If you do anything
17 different, you're going to have to get, I would think, some
18 kind of agreement with the landowner. Well, that's -- yo
19 know, that might be a thing to think about, because, I
20 mean, we don't have the answer right at the moment.

21 CHAIRMAN FESMIRE: Well, I think I'm on board,
22 you know, as an exception -- and we'll to make, you know,
23 provisions for an exception -- use of the --

24 COMMISSIONER BAILEY: -- trench.

25 CHAIRMAN FESMIRE: -- the trench burial. I can't

1 get past the deep-trench burial. Use of the trench burial
2 as one of two kinds of exceptions, the first one being the
3 in-place burial under specific conditions, the conditions
4 that we've talked about, and where it would meet the
5 standards that you've talked about that would limit the --
6 you know, the discharge and the contaminant level,
7 transport it in the dis- -- in the F.(1).

8 So I'm not opposed to that idea, I just -- there
9 has to be some mechanism to limit the amount of material
10 that's going to be used to --

11 COMMISSIONER OLSON: You have a --

12 CHAIRMAN FESMIRE: -- stabilize --

13 COMMISSIONER OLSON: -- pretty huge trench if
14 you --

15 CHAIRMAN FESMIRE: Yeah.

16 COMMISSIONER OLSON: I think the costs of that
17 would start to outweigh the costs of disposal, once you
18 start doing a major trenching, and trying to line that too.
19 The liner costs are going to start getting to be
20 significant the larger you get, so --

21 CHAIRMAN FESMIRE: Okay.

22 COMMISSIONER OLSON: -- especially with the
23 current prices of --

24 CHAIRMAN FESMIRE: -- oil?

25 COMMISSIONER OLSON: -- liners. And oil, I was

1 going to say that too.

2 CHAIRMAN FESMIRE: Okay, is there anything else
3 in F we need to address before we --

4 COMMISSIONER BAILEY: F.(1).(b). I agree with
5 the first sentence, I think the second sentence is left
6 over and should be deleted.

7 CHAIRMAN FESMIRE: ...shall provide the surface
8 -- Yup.

9 Counsel, do you have enough to --

10 COMMISSIONER OLSON: I'm sorry, where are we at
11 again? You're on --

12 CHAIRMAN FESMIRE: We were talking about
13 F.(1).(b), the second sentence is a remnant.

14 MS. BADA: (3).(b)?

15 CHAIRMAN FESMIRE: F.(1).(b).

16 MS. BADA: F.(1).(b). Okay, maybe I have my
17 pages scrambled, hang on.

18 COMMISSIONER OLSON: Shouldn't they maybe provide
19 the copy of the notice, though, with the application so
20 that the notice is done prior to --

21 COMMISSIONER BAILEY: That would be okay --

22 COMMISSIONER OLSON: -- the submission of
23 application?

24 COMMISSIONER BAILEY: -- evidence of notice.

25 COMMISSIONER OLSON: Right.

1 MS. BADA: We just need to take out the signed
2 consent, right?

3 CHAIRMAN FESMIRE: Right.

4 COMMISSIONER OLSON: I guess say -- you could
5 just say proof of notice.

6 COMMISSIONER BAILEY: Uh-huh.

7 MS. BADA: Shall attach the proof of notice to
8 the permit application?

9 COMMISSIONER OLSON: Uh-huh.

10 MS. BADA: Okay. I had a question on 1.(d).

11 CHAIRMAN FESMIRE: 1.(d)?

12 MS. BADA: 1.(d) for drying pads. What chloride
13 level would you have? Would you have the 500 or 250 -- I
14 mean the -- yeah, the 500 or the 250?

15 CHAIRMAN FESMIRE: Again, shouldn't this go back
16 to the --

17 COMMISSIONER OLSON: Uh-huh.

18 CHAIRMAN FESMIRE: -- stuff from part 36?

19 COMMISSIONER BAILEY: We should be consistent all
20 the way through.

21 COMMISSIONER OLSON: Uh-huh, all the way through.

22 MS. BADA: So you would have the two depths for a
23 drying pad, or would you just --

24 COMMISSIONER OLSON: I would think it would all
25 be the same, just depending on whether the method is, you

1 know, in place or deep trench. You're going to have
2 different levels --

3 MS. BADA: Well, yeah.

4 COMMISSIONER OLSON: -- and requirements.

5 Oh, you're talking about testing the soils under
6 the --

7 MS. BADA: -- under the drying pad --

8 COMMISSIONER OLSON: -- under the drying pad.

9 MS. BADA: What would you use there?

10 COMMISSIONER OLSON: Should be consistent with
11 the --

12 MS. BADA: -- temporary pits?

13 COMMISSIONER OLSON: -- the temporary pits --

14 MS. BADA: Okay, all right.

15 COMMISSIONER OLSON: -- because it's a temporary
16 action. Is that okay?

17 CHAIRMAN FESMIRE: Uh-huh, that's okay with me.
18 That's what I was thinking.

19 MS. BADA: All right.

20 COMMISSIONER OLSON: And then one issue I was, I
21 think, looking at before, I'm not sure if this is the place
22 for it, but one thing I talked about when we looked at --
23 and maybe this comes in in the final closure but, you know,
24 the idea of deed-noticing and the -- is that someplace?

25 COMMISSIONER BAILEY: That got added somewhere.

1 COMMISSIONER OLSON: I think that --

2 MS. BADA: I thought that -- but I wouldn't swear
3 to it.

4 COMMISSIONER OLSON: It may be in the final --
5 final closure. Looks like it's on page 13, for in-place
6 burial --

7 MS. BADA: Okay, so we --

8 COMMISSIONER OLSON: -- because it's really only
9 an issue for any type of on-site burial. It should be more
10 than in-place. If we're doing deep-trench --

11 MS. BADA: We should also add the deep trenches.

12 COMMISSIONER OLSON: -- it would be the same
13 thing.

14 MS. BADA: Okay. So in the in-place burial it
15 would basically just be the -- just leave the liner in
16 place and then put the cover requirements? Is that what
17 you would be looking at?

18 CHAIRMAN FESMIRE: As long as the material --

19 MS. BADA: -- as long as it --

20 CHAIRMAN FESMIRE: -- met the small land- --

21 MS. BADA: -- met the requirements back in 8 or
22 -- I can't remember if it was section 8 or section 9.

23 COMMISSIONER OLSON: Yeah, the methods were in
24 the other section, right.

25 MS. BADA: Yeah, it just talks about leaving it

1 in place, so -- I think industry had something on it.

2 Let's see.

3 COMMISSIONER OLSON: I mean, for the in-place
4 burial you're essentially --

5 MS. BADA: Yeah.

6 COMMISSIONER OLSON: -- having to make sure
7 you're meeting the requirements and then --

8 MS. BADA: Do you care if the liner was lapped
9 over or cut off, or did you have any thoughts on that?

10 COMMISSIONER OLSON: Well, I was thinking that
11 the liner shouldn't be near the surface, because that's
12 been a big problem --

13 CHAIRMAN FESMIRE: Right.

14 COMMISSIONER OLSON: -- in the southeast.

15 MS. BADA: So you would still have the four-foot
16 cover?

17 CHAIRMAN FESMIRE: The four foot cover over --

18 MS. BADA: Yes.

19 CHAIRMAN FESMIRE: -- the --

20 MS. BADA: But would you leave it --

21 COMMISSIONER OLSON: There's no --

22 MS. BADA: But would you leave the sides of the
23 liner, or would you just cut the edges?

24 COMMISSIONER OLSON: They could fold them in,
25 they could cut them off --

1 MS. BADA: Don't care, okay.

2 COMMISSIONER OLSON: -- however they wanted, uh-
3 huh.

4 MS. BADA: There's no -- Okay.

5 I wouldn't assume there would be any delineation
6 for this because -- right?

7 CHAIRMAN FESMIRE: We're not going to remove the
8 liner, so -- unless there's, you know, been a breach of
9 liner, in which case it falls under the release provisions.

10 MS. BADA: Okay, all right.

11 COMMISSIONER OLSON: Yeah, and that's a
12 significant change, not delineating under the in-place
13 burials.

14 CHAIRMAN FESMIRE: But if the material meets the
15 closure standards before you start, there shouldn't be a
16 release --

17 MS. BADA: Okay, so just refer to the re-veg and
18 the recontouring.

19 CHAIRMAN FESMIRE: Right. So where are we at?

20 COMMISSIONER BAILEY: G?

21 CHAIRMAN FESMIRE: We've addressed 13.F?

22 Commissioner Bailey, would this be a good place
23 for you to stop?

24 COMMISSIONER BAILEY: Oh, yes, it would.

25 COMMISSIONER OLSON: Uh-huh, yes, please.

1 (Laughter)

2 CHAIRMAN FESMIRE: Okay, tomorrow morning we will
3 start with 13.G.

4 COMMISSIONER OLSON: Actually, we've got a --

5 CHAIRMAN FESMIRE: Oh, I'm sorry, I -- tomorrow
6 morning at nine o'clock we will have the regularly
7 scheduled Commission meeting. It will -- there are two
8 cases on that docket. Both of them can either go for a
9 long time or a short time. If I had to guess, I'd say that
10 we would be done relatively early, but I sure wouldn't --
11 if you're not interested in hearing those, I wouldn't get
12 up real early to get here.

13 Immediately after the regularly scheduled
14 Commission meeting and the two hearings on that docket, we
15 will go back and take up where we left off on 13.G -- 15 --
16 13.G, I'm sorry.

17 And at this time we will adjourn until sometime
18 very soon after nine o'clock in the morning in this room.

19 Thank you all.

20 (Thereupon, evening recess was taken at 3:54
21 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 March 19th, 2008.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2010