

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:

ORIGINAL

DE NOVO AMENDED APPLICATION OF ENERGEN Case No. 13957
RESOURCES CORPORATION TO AMEND THE COST RECOVERY
PROVISIONS OF COMPULSORY POOLING ORDER NO. R-1960, TO
DETERMINE REASONABLE COSTS, AND FOR AUTHORIZATION TO
RECOVER COSTS FROM PRODUCTION OF POOLED MINERAL
INTERESTS, RIO ARriba COUNTY, NEW MEXICO

REOPENED APPLICATION OF THE NEW Case No. 14255
MEXICO OIL CONSERVATION DIVISION, THROUGH ITS
ENVIRONMENTAL BUREAU CHIEF, FOR ADOPTION OF AN AMENDMENT
TO 19.15.39 NMAC ADDING NEW SECTIONS TO BE CODIFIED AT
19.15.39.9 AND 19.15.39.10 NMAC ADDRESSING SPECIAL
PROVISIONS FOR SANTA FE COUNTY AND THE GALISTEO BASIN,
SANTA FE, SANDOVAL AND SAN MIGUEL COUNTIES, NEW MEXICO

APPLICATION OF THE NEW MEXICO OIL Case No. 14292
CONSERVATION DIVISION FOR ADOPTION OF AMENDMENTS
TO RULE 19.15.17 (THE "PIT RULE") STATEWIDE

Case No. 14055; Case No. 14149; Case No. 14150:
Continued to June 18, 2009

Case No. 14134; Case No. 14141; Case No. 14278
Continued to July 16, 2009

REPORTER'S TRANSCRIPT OF PROCEEDINGS
COMMISSIONER HEARING

BEFORE: MARK E. FESMIRE, Chairman
JAMI BAILEY, Commissioner
WILLIAM C. OLSON, Commissioner

May 28, 2009
Santa Fe, New Mexico

This matter came on for hearing before the New
Mexico Oil Conservation Commission, MARK E. FESMIRE,
Chairman, on Thursday, May 28, 2009, at the New Mexico
Energy, Minerals and Natural Resources Department, 1220
South Saint Francis Drive, Room 102, Santa Fe, New
Mexico.

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1 with that, I believe our deliberations are complete on
2 this case, are they not?

3 COMMISSIONER BAILEY: Yes.

4 CHAIRMAN FESMIRE: Counsel, do you have
5 enough information to draft the order? You and --

6 MR. SMITH: I certainly hope so.

7 CHAIRMAN FESMIRE: Is there anything else
8 before the Commission concerning Case Number 14255?

9 COMMISSIONER BAILEY: No.

10 CHAIRMAN FESMIRE: With that we will
11 continue Case 14255 to the June 18th regularly-scheduled
12 Commission meeting where we will consider the border
13 adopting the Commission's decision on this matter at the
14 June meeting.

15 With that the Commission will proceed to the
16 next item on the agenda, which is Case Number ~~14292~~
17 concerning the application of the New Mexico Oil
18 Conservation Division for adoption of amendments to Rule
19 19.15.17 NMAC (the "Pit Rule"). The record should
20 reflect that Commissioners Bailey, Olson and Fesmire are
21 present. We, therefore, have a quorum and we will begin
22 the public deliberations on this proposal as presented by
23 the evidence in this case. Who wants to start?

24 COMMISSIONER BAILEY: Should we go through
25 the rule as presented by the OCD and use that as the

1 foundation for our comments?

2 CHAIRMAN FESMIRE: Okay.

3 COMMISSIONER OLSON: I think that's OCD
4 Exhibit 2. This copy I have has the footnote with the
5 date January 16, 2009. Is that the same copy that you
6 all will be working from?

7 COMMISSIONER OLSON: I don't have any
8 footnote on mine. I've got the one that's got this big
9 thing that says, "OCD Exhibit 2."

10 CHAIRMAN FESMIRE: On the first page?

11 COMMISSIONER OLSON: There's no footnote.

12 COMMISSIONER BAILEY: Then I'll find that
13 exhibit.

14 CHAIRMAN FESMIRE: Before we continue, I
15 need to put on the record that we have received post
16 findings and conclusions from the New Mexico Citizens for
17 Clean Air and Water, from the Oil and Gas Accountability
18 Project, from the Oil Conservation Division, and the
19 Industry Committee and ConocoPhillips. The Industry
20 Committee and ConocoPhillips were one document. I need
21 to point out that the --

22 COMMISSIONER OLSON: What about the IPA?

23 CHAIRMAN FESMIRE: Yes. I didn't mention
24 it, but we did receive post findings and facts and
25 conclusions from the Independent Petroleum Association of

1 New Mexico. I do need to also point out that I don't
2 believe that that was timely filed.

3 COMMISSIONER OLSON: I think it was timely
4 filed, wasn't it? I think you're thinking it was things
5 they filed in their prehearing statement. Those -- I
6 think they filed that late.

7 CHAIRMAN FESMIRE: What -- did they do
8 that on April 27th?

9 MS. DAVIDSON: I think maybe it was about
10 20 minutes after 5:00 when she filed it.

11 COMMISSIONER BAILEY: Do we also work from
12 Exhibit A to the application for rule amendment that
13 shows where the proposed changes are?

14 COMMISSIONER OLSON: I thought that was
15 all on Exhibit 2, because that's what they presented at
16 the hearing. I think there was some changes, and I don't
17 know if there were but I thought there were, in the
18 exhibit --

19 MR. SMITH: Oh, there are.

20 COMMISSIONER OLSON: -- to what was
21 prefilled. Is that -- Exhibit 2 was the one I used during
22 the hearing to follow along.

23 COMMISSIONER BAILEY: I have Exhibit 1
24 that has the proposed changes and Exhibit 2 that has the
25 rule.

1 COMMISSIONER OLSON: Right. Yeah, I think
2 it's easier to follow right from the rule itself. The
3 changes are put in strike and bold.

4 CHAIRMAN FESMIRE: Okay. We have also
5 received comments in this case. Ms. Davidson has
6 included them in the record and they've been scanned into
7 the record and they've been reviewed by the Chairman.
8 Who wants to start?

9 COMMISSIONER OLSON: Do we just want to
10 start kind of like we've done some others from -- page by
11 page and just go through it? That might be the easiest
12 way.

13 CHAIRMAN FESMIRE: Yeah.

14 COMMISSIONER BAILEY: I have no comment
15 until the first proposed change at 11.1 I on page 8.

16 COMMISSIONER OLSON: I think that's the
17 first proposed change that was put forward.

18 CHAIRMAN FESMIRE: Commissioner Bailey?
19 You have some comments.

20 COMMISSIONER BAILEY: I have no issues
21 with the first proposed change at 11 I(5) --

22 CHAIRMAN FESMIRE: Okay.

23 COMMISSIONER BAILEY: -- or (6).

24 COMMISSIONER OLSON: I don't have any
25 objections to those. I think there's a typo that the

1 Division had identified in their proposed findings in
2 I(6), where there's -- the third sentence that says,
3 "singled wall." It should be "single walled."

4 COMMISSIONER BAILEY: Yes.

5 COMMISSIONER OLSON: That was the only
6 thing I noted.

7 COMMISSIONER BAILEY: The next proposed
8 change is Section 17.12 D(3).

9 MR. SMITH: So on I(5) and (6), have you
10 all considered and adopted those, or do we go through
11 those --

12 CHAIRMAN FESMIRE: We'll adopt them at the
13 end. We'll go through and discuss the differences,
14 reconcile the differences and then vote on the --

15 COMMISSIONER OLSON: Those are acceptable
16 to me.

17 CHAIRMAN FESMIRE: These are acceptable to
18 everyone. So we're at 12 D(3).

19 COMMISSIONER BAILEY: I do not agree with
20 the proposed change for the life of below-grade tanks
21 based on the fact that reports of failure are sent to the
22 OCD as they are heard, and there is, on record with the
23 OCD, the integrity history of a below-grade tank, and
24 continued recordkeeping for the life of the tank does not
25 foretell whether or not that tank will have continued

1 integrity, because we don't have any testimony on
2 predicted corrosion rates or failure rates for ages of
3 tanks. So I do not agree with the change that's
4 proposed.

5 CHAIRMAN FESMIRE: The change was to
6 change it from a five-year --

7 COMMISSIONER BAILEY: To the life of the
8 below-grade tank.

9 CHAIRMAN FESMIRE: And this would only
10 apply to the grandfather below-grade tanks; is that
11 correct?

12 COMMISSIONER BAILEY: That's correct.
13 Well, for all tanks, I don't see a reason to maintain
14 records for the life of a below-grade tank.

15 COMMISSIONER OLSON: This is for all
16 tanks, if I recall.

17 COMMISSIONER BAILEY: Because failures are
18 reported and reports are sent to the OCD.

19 CHAIRMAN FESMIRE: Do you happen to have
20 where in the rule they're -- all failures are reported to
21 the OCD?

22 COMMISSIONER BAILEY: Any failure that
23 results in a spill reportable under an additional OCD
24 rule.

25 CHAIRMAN FESMIRE: So there would be the

1 minimus level where the tank failed -- catch it before
2 they've hit the -- what is it -- five-barrel requirement?

3 COMMISSIONER BAILEY: Yes.

4 CHAIRMAN FESMIRE: And that wouldn't be
5 reported to the OCD, would it?

6 COMMISSIONER BAILEY: No, it would not.

7 CHAIRMAN FESMIRE: Does that cause a
8 problem for you? You think a series of small, for
9 instance, seeps from a rusting patch that wouldn't
10 otherwise be reported -- but they would be on the record
11 but they wouldn't be reported to the OCD unless they are
12 at the minimus level; right?

13 COMMISSIONER BAILEY: Right.

14 CHAIRMAN FESMIRE: Commissioner Olson, do
15 you have a thought on that?

16 COMMISSIONER OLSON: I'm just thinking
17 that the overall -- the reporting is -- I would agree is
18 really the important part, and this is not -- doesn't
19 have anything to do with reporting of leaks. It's just
20 maintaining written records of inspections. I don't know
21 that I necessarily have a problem with the current
22 five-year period, just because if something is happening
23 and it was not reported, it's coming about as a result of
24 a Division inspection, and at that point you ask for the
25 records for the last five years. And if they haven't

1 been doing it, that's -- I think it would be shown that
2 they haven't been inspecting it, then, if there isn't a
3 leak. I guess I don't know what the reporting
4 requirement is. Is there a reporting requirement in
5 here? I can't remember.

6 CHAIRMAN FESMIRE: I believe there is, but
7 I don't remember where it's at. It probably wouldn't be
8 under this rule. It would be -- there's an integrity
9 failure reporting requirement in this rule, but a leak
10 requirement would fall into the general --

11 COMMISSIONER BAILEY: And this is simply
12 for inspections, as Commissioner Olson pointed out.

13 COMMISSIONER OLSON: As long as they're
14 having to notify, based upon the integrity, or take an
15 action based upon the integrity --

16 CHAIRMAN FESMIRE: The idea behind this
17 was that we're extending the lives and grandfathering in
18 these tanks. But maybe five years wasn't adequate. But
19 the Commissioners feel that the five years would be
20 adequate?

21 COMMISSIONER BAILEY: More than adequate.

22 CHAIRMAN FESMIRE: Commissioner Olson?

23 COMMISSIONER OLSON: I think so. I think
24 it comes back again to maybe the provision back in I(5)
25 again, where they're not required to retrofit it as long

1 as it demonstrates integrity. If they're doing a monthly
2 inspection, they're getting even de minimis leaks,
3 obviously, it doesn't have integrity and they're already
4 in violation of the rule if they don't replace it at that
5 point. So I don't know that it's actually necessary.

6 CHAIRMAN FESMIRE: I would go along with
7 the five years, and then Commissioner Olson -- heaven
8 knows he's got more experience in this than I do.

9 COMMISSIONER OLSON: I've seen a lot of
10 those de minimis leaks.

11 CHAIRMAN FESMIRE: Okay. The next change
12 provision --

13 COMMISSIONER BAILEY: -- is Section 12
14 D(5). I have no issues with the proposed changes.

15 CHAIRMAN FESMIRE: Okay.

16 COMMISSIONER OLSON: I don't have any
17 issues with that, either.

18 CHAIRMAN FESMIRE: Nor do I. The next one
19 is 12 D(6)?

20 COMMISSIONER BAILEY: That's right, and I
21 have no issues.

22 CHAIRMAN FESMIRE: 12 D(6) is acceptable?

23 COMMISSIONER OLSON: My only issue was --
24 and I brought this up during the testimony -- that that
25 language -- it looks like it starts about the fifth line

1 down when it talks about demonstrating to the Division
2 whether there is evidence of contamination. I guess I
3 was just kind of confused on how do you do that without
4 just going and sampling it? It seems kind of vague, the
5 way it's written, and I asked some questions about that
6 with Mr. Jones when he was testifying. I didn't quite
7 understand why they just didn't follow the procedures in
8 13, some of those closure requirements for sampling.

9 I think what his testimony was is that they
10 were trying to just make something rather
11 straightforward, that if you see wet, discolored soils,
12 you'll make some demonstration to the Division. So I'm
13 not sure. It just seems a little vague to me as to how
14 that actually occurs. I don't know that this really
15 gives real clarity to the operators, but at the same
16 time, I don't recall the operators really objecting to
17 that language that was in there. It just seemed to me
18 that it doesn't give real specific clarity to the
19 operators, but --

20 COMMISSIONER BAILEY: Do you have a
21 suggestion to fix 'it?

22 COMMISSIONER OLSON: I think I may just
23 leave it alone, since there was no objection from the
24 industry on that, and they can make those demonstrations
25 to the Division. I'm just bringing it up because I asked

1 questions about it during the hearing, and I don't think
2 we had specific proposals from those parties as to what
3 that language should be if we were going to change it.
4 So I think I prefer to maybe leave it as is without any
5 absence of some proposed language.

6 CHAIRMAN FESMIRE: That's acceptable to
7 the Commission as is?

8 COMMISSIONER OLSON: Yes.

9 CHAIRMAN FESMIRE: The next one is 13
10 A(5)? Is that the next one?

11 COMMISSIONER BAILEY: There was some
12 comment -- this one says that an operator shall close a
13 tank prior to any sale or transfer of ownership. The
14 suggestion was made that if a new operator can
15 demonstrate technical and financial capability to
16 maintain tank integrity and to undertake any required
17 cleanup, and if that tank has not had any integrity
18 failures within five years, then it's not at the end of
19 its useful life.

20 CHAIRMAN FESMIRE: These are the tanks
21 that we're most concerned about in the grandfathering
22 provision. Otherwise, they would have been grandfathered
23 out, taken out and replaced. And what the Division was
24 trying to do here, and I believe the testimony shows
25 this, is that they were -- we were giving the operator

1 the opportunity to leave them in as long as they
2 maintained integrity. We weren't going to transfer
3 ownership without addressing the problem that would have
4 otherwise been addressed by them being grandfathered in.
5 So this was -- the idea here was that in lieu of the
6 grandfathering, we would make sure that they were not
7 transferred without -- these are the tanks that otherwise
8 would have been taken out, but they're left in and
9 removed --

10 COMMISSIONER BAILEY: Because they have
11 not shown any lack of integrity.

12 CHAIRMAN FESMIRE: But, remember, these
13 are also tanks that would not otherwise have been
14 conforming with the original proposal.

15 COMMISSIONER BAILEY: Was the assumption
16 made that transfer of ownership would go from a more
17 financially-stable company to a less-financially stable
18 company that would not be able to maintain the integrity
19 or any kind of required cleanup?

20 CHAIRMAN FESMIRE: I don't think that --
21 that may have been implicit in some folks' thinking, but
22 I don't think that was ever stated in evidence. The
23 problem here is that these are tanks that under the
24 existing provision would have been grandfathered out.
25 They would have had to have been replaced. These are

1 nonconforming tanks.

2 What we're asking is, while we have given the
3 operators the ability to leave them in place as long as
4 they demonstrate integrity, before they transfer that
5 property to another owner, they have to address this
6 issue. So there's no advantage in just deferring this
7 cost, because before they transfer ownership of the
8 property, they're going to have to address this tank.
9 It's one means of providing assurance to the State that
10 an operator who -- these tanks are a threat, and we've
11 determined that as long as they're tested and maintain
12 integrity, they don't have to come out unless they're
13 going to transfer ownership of the property.

14 COMMISSIONER BAILEY: I can see a gray
15 area of ownership or operatorship.

16 COMMISSIONER OLSON: I will say that the
17 Division in their proposed findings -- I think it's
18 Finding 32 -- suggested changing "ownership" to "transfer
19 of operation," instead of, "transfer of ownership."

20 CHAIRMAN FESMIRE: I think, Commissioner,
21 that you're probably right about that.

22 COMMISSIONER OLSON: I didn't really have
23 a big problem with it. I was just thinking that -- I
24 think the Division has a good suggestion to change that
25 to "operation" instead of "ownership." That was the only

1 thing I had on that.

2 CHAIRMAN FESMIRE: Is that acceptable,
3 Commissioner?

4 COMMISSIONER BAILEY: Apparently so.

5 CHAIRMAN FESMIRE: What's the next one?

6 COMMISSIONER BAILEY: 13 F(3)(c).

7 CHAIRMAN FESMIRE: Okay. This is the one
8 that changes the chloride content for otherwise
9 qualifying deep-trench in-place burial -- let's just
10 leave it at deep-trench burial, on-site deep-trench
11 burial -- from 3,000 milligrams per liter --

12 COMMISSIONER BAILEY: -- from 250 to
13 3,000.

14 CHAIRMAN FESMIRE: It gives me a little
15 heart burn. Commissioner Bailey, did you have anything
16 to say about it?

17 COMMISSIONER BAILEY: I think the Division
18 demonstrated that 3,000 would still be protective of
19 human health, safety, et cetera. And I believe that
20 background is something that should be included here,
21 because it's not reasonable to expect a producer to bury
22 something even cleaner than background already is. My
23 issue comes up with the suggestion that all other
24 inorganics on 3103 should also be taken to background.
25 That was brought up, and Brad Jones did indicate that he

1 would not object to other inorganics going to background,
2 as well as chlorides, from 3103 standards.

3 CHAIRMAN FESMIRE: The only thing about it
4 that concerns me is the chloride standard is an aesthetic
5 standard and I think we've had testimony to that effect.
6 The harm, the long-term harm, you're going to cease using
7 that water for harmful purposes long before it's going
8 to -- I mean, you know what are doing. The problem with
9 the 3103 constituents, you know, they had arsenic,
10 barium, cadmium, BTEX, they are health-based standards,
11 not an aesthetic standard.

12 COMMISSIONER BAILEY: You included
13 organics when you said BTEX. I was talking strictly
14 inorganics.

15 CHAIRMAN FESMIRE: So the BTEX heavy
16 metals is what you're concerned about?

17 COMMISSIONER BAILEY: BTEX is an organic.

18 CHAIRMAN FESMIRE: I mean the 3103
19 inorganics?

20 COMMISSIONER BAILEY: Right, the
21 inorganics.

22 CHAIRMAN FESMIRE: Commissioner Olson,
23 what's your opinion?

24 COMMISSIONER OLSON: I will say that we do
25 have various specimens of arsenic in the Rio Grande

1 Valley where we have elevated arsenic levels, so -- I
2 mean, that's just part of the nature of our volcanic
3 soils in certain areas. So I don't know that I
4 necessarily -- go ahead.

5 CHAIRMAN FESMIRE: No. Go ahead, because
6 I'm -- this is one of the areas that I have to defer to
7 the geologists and the hydrologists.

8 COMMISSIONER OLSON: I guess the
9 difference, to me, we're talking about the soil, so I
10 just wonder if you're still adding more mass of a
11 contaminant, and this -- the key to that is whether it's
12 something that's going to migrate to the groundwater.
13 I'm not exactly sure what to say. I've worked through a
14 number of sites where we have applied soil criteria, such
15 as down at the Brooklyn refinery. That's an OCD case
16 down in -- near El Paso which is near the Asarco Smelter,
17 and there is elevated lead in the soils in that area due
18 to smelting operations in that area.

19 At that time that the cleanup was going on,
20 the Division only required cleanup to the background
21 levels of lead, which were actually quite high. They're
22 equivalent to the EPA's residential exposure levels of
23 400 milligrams per liter of lead. So there is past
24 history of the Division applying that in cleanups. I
25 don't know if they've ever necessarily done that in the

1 disposal setting, for allowing for disposal versus an
2 allowance for that in the cleanup of contamination.

3 CHAIRMAN FESMIRE: Is there going to be an
4 appreciable difference between the surface concentration?
5 Is there any testimony that would allow us to consider
6 the difference between surface concentration, the 3103 --
7 I guess what I'm saying is would we increase the
8 concentration in the water if we were -- because this
9 is -- you know, our objective is to keep these
10 contaminants out of the water. If they are in the
11 background numbers, is there any detriment to allowing
12 the waste to come up to that level?

13 COMMISSIONER OLSON: I don't know if there
14 is.

15 COMMISSIONER BAILEY: I don't know that
16 there is. Plus, the mobility is not as great as it would
17 be --

18 CHAIRMAN FESMIRE: So how would you
19 propose we change it, Commissioner?

20 COMMISSIONER BAILEY: "And that the
21 concentrations of the water contaminants specified do not
22 exceed" -- can we, at that point, say, "and the
23 concentrations of the inorganic water contaminants"?

24 CHAIRMAN FESMIRE: No. We want to leave
25 the organics in the prohibition.

1 COMMISSIONER BAILEY: Okay. So should it
2 be, "shall demonstrate that the chloride concentration
3 and other inorganic" --

4 CHAIRMAN FESMIRE: Will that put it under
5 the 3,000?

6 COMMISSIONER BAILEY: That doesn't work.

7 CHAIRMAN FESMIRE: My water's only got
8 3,000 milligrams per liter arsenic. Want to buy my
9 house?

10 COMMISSIONER BAILEY: Do we have any
11 suggested language in there? We'll just insert another
12 language that says -- yeah, I think that's what you
13 absolutely have to do.

14 COMMISSIONER OLSON: Yeah.

15 CHAIRMAN FESMIRE: Is there anything on
16 the record that would support that change?

17 COMMISSIONER BAILEY: Yes. Because I
18 specifically asked Brad Jones about background levels for
19 inorganics, and my statement was, "Organics show
20 contamination, but high levels of arsenic, mercury and
21 selenium are naturally occurring higher than 3103 in
22 certain cases. Would you object to other inorganics for
23 background, as well as chloride?" And he said he would
24 not.

25 CHAIRMAN FESMIRE: What if we were to

1 insert the language that "The concentrations of the water
2 contaminants specified in Subsection A as determined by
3 appropriate EPA methods do not exceed the standards
4 specified in Subsection A -- provided, however, that
5 the" --

6 COMMISSIONER OLSON: You have to leave,
7 "unless otherwise specified above," because there is some
8 different levels for -- no. I guess that's just TPH. I
9 don't know why it says, "otherwise specified above."

10 CHAIRMAN FESMIRE: Where are you looking
11 at?

12 COMMISSIONER OLSON: At the end of that
13 sentence where -- I don't see any other constituents of
14 3103 A above. Chloride is not a constituent of 3103 A,
15 and nor is TPH.

16 CHAIRMAN FESMIRE: So you think strike,
17 "unless otherwise specified above"?

18 COMMISSIONER OLSON: You have to leave it
19 there because there's no testimony about removing it and
20 why it should be removed, but it is existing language.

21 CHAIRMAN FESMIRE: What we want to do is
22 allow for the inorganic portion of the 3103 constituents,
23 a concentration equivalent to or less than background.
24 Is that your understanding?

25 COMMISSIONER OLSON: You just want to say

1 the inorganic metals, I guess, because that's what we're
2 talking about, right, metals?

3 COMMISSIONER BAILEY: What other
4 constituents are there that --

5 CHAIRMAN FESMIRE: BTEX.

6 COMMISSIONER BAILEY: BTEX is organic.

7 CHAIRMAN FESMIRE: It's in the 3103
8 standards.

9 COMMISSIONER BAILEY: So we have to say
10 specifically, inorganic.

11 COMMISSIONER OLSON: But you also have one
12 for -- is radium considered a --

13 CHAIRMAN FESMIRE: Radium is inorganic.

14 COMMISSIONER OLSON: I wouldn't think
15 you'd want to allow adding more radium.

16 CHAIRMAN FESMIRE: But if it's a
17 background --

18 COMMISSIONER OLSON: Adding to the
19 radioactivity level? It looks like it's just the metals
20 that are in A1, 2, 3, 4 -- I'm looking at the standards
21 myself, so there's arsenic, barium, cadmium, chromium,
22 cyanide, fluoride -- no. Fluoride is a metal -- cyanide,
23 lead, mercury -- do we have any testimony that we can
24 list specific metals versus something broad?

25 CHAIRMAN FESMIRE: It's broad enough to

1 list inorganics.

2 COMMISSIONER BAILEY: Inorganic
3 constituents.

4 CHAIRMAN FESMIRE: As long as we can list
5 those, I guess we can list -- as long as the criteria was
6 inorganics, we could list those.

7 COMMISSIONER OLSON: Okay.

8 COMMISSIONER BAILEY: Just another
9 sentence to add in there?

10 CHAIRMAN FESMIRE: How many of the
11 inorganics are there in the 3103 constituents?

12 COMMISSIONER OLSON: Looks like about 11.
13 Approximately, 11. I mean, if you actually include that,
14 it's probably 13.

15 CHAIRMAN FESMIRE: Is nitrate considered
16 an inorganic?

17 COMMISSIONER BAILEY: Um-hum.

18 COMMISSIONER OLSON: Yeah.

19 CHAIRMAN FESMIRE: That one -- well,
20 what's the background concentration of the nitrate going
21 to be?

22 COMMISSIONER OLSON: I've never seen high
23 nitrate in the soil outside of a septic tank.

24 CHAIRMAN FESMIRE: And that's not going to
25 be considered background.

1 COMMISSIONER OLSON: Right.

2 MR. SMITH: Why do you need to specify
3 these?

4 COMMISSIONER OLSON: I don't think we need
5 to.

6 COMMISSIONER BAILEY: I don't think we
7 even need to put the number of them.

8 COMMISSIONER OLSON: I think we just list
9 them as more generic, as inorganic constituents.

10 CHAIRMAN FESMIRE: Constituents of the
11 contaminants -- 3103 contaminants?

12 COMMISSIONER OLSON: They're not
13 constituents. They're contaminants.

14 CHAIRMAN FESMIRE: That the concentrations
15 of inorganic constituents of the 3103 contaminants may
16 exceed those standards -- may -- what do we want to say
17 in --

18 COMMISSIONER BAILEY: May reach below --
19 or may reach background or below --

20 CHAIRMAN FESMIRE: May exceed the 3103
21 concentrations but may not exceed the background.

22 COMMISSIONER OLSON: It would be nice to
23 use a similar language to what's already in the formal
24 proposal, but I'm not sure how to do it. Unless you just
25 say, "or the background concentration of the" -- so you

1 say, "after" -- where it says, "the concentrations of the
2 water contaminants specified in Subsection A of
3 20.6.2.3103 NMAC as determined by appropriate EPA methods
4 do not exceed the standards specified in Subsection A of
5 20.6.2.3103 NMAC or the background concentration for
6 inorganic contaminants."

7 CHAIRMAN FESMIRE: -- or the background
8 contamination for inorganic contaminants?

9 COMMISSIONER BAILEY: Background
10 concentration.

11 COMMISSIONER OLSON: "Concentration of
12 inorganic contaminants of Subsection A of 20.6.2.3103."

13 CHAIRMAN FESMIRE: Background
14 contamination of the inorganic --

15 COMMISSIONER OLSON: Um-hum.

16 MR. SMITH: Is it background contamination
17 or concentration?

18 COMMISSIONER OLSON: Concentration --
19 whichever is greater. Then we have at least similar
20 language.

21 CHAIRMAN FESMIRE: Of the inorganic
22 constituents --

23 COMMISSIONER OLSON: Contaminants.

24 CHAIRMAN FESMIRE: -- whichever is
25 greater. Okay. So let me test read this once before we

1 do this. "The operator shall collect at minimum, a five
2 point -- okay. Using EPA SW-846 method 1312 or other EPA
3 leaching procedure that the Division approves, the
4 operator shall demonstrate that the chloride
5 concentration, as determined by EPA method 300.1 or other
6 EPA method that the Division approves, does not exceed
7 3,000 milligrams per liter, or the background
8 concentration, whichever is greater, and that the
9 concentration of the water contaminants specified in
10 Subsection A of 20.6.2.3103 NMAC as determined by
11 appropriate EPA methods do not exceed the standards
12 specified in Subsection A of 20.6.2.3103 NMAC, unless
13 otherwise specified above, or the background
14 concentrations of inorganic contaminants, whichever is
15 greater." I misplaced that. How about that?

16 COMMISSIONER OLSON: "Unless otherwise
17 specified above," should stay at the end.

18 CHAIRMAN FESMIRE: Okay. So this would
19 read, "approved EPA methods do not exceed the standards
20 specified in Subsection A of 20.6.2.3103 NMAC or the
21 background concentration of the inorganic contaminants,
22 whichever is greater, unless otherwise specified above."
23 Is that what you need?

24 COMMISSIONER BAILEY: I think so. I'll
25 have to see it written out.

1 CHAIRMAN FESMIRE: Okay.

2 COMMISSIONER OLSON: You may need some
3 words that our attorney --

4 MR. SMITH: How do you feel about this,
5 because I'm in the dark with this chemical stuff. I want
6 to make sure I'm doing this right. As I appreciate it,
7 what you have just added with respect to the background
8 concentration, you want to limit that to inorganic
9 contaminants?

10 CHAIRMAN FESMIRE: Right. The chlorides
11 are limited by the background contamination. The
12 inorganics in that list are limited by the background
13 contamination. The organics on that list shouldn't be.

14 MR. SMITH: Now, the reference earlier on
15 in that sentence after the comma, "and that the
16 concentrations of the water contaminants," do you see
17 that? That reference to water contaminants is --
18 includes organic and inorganic; correct?

19 CHAIRMAN FESMIRE: Right.

20 MR. SMITH: So how about this? After,
21 "NMAC," Mark, where you wanted to put, "or the background
22 concentration," blah, blah, blah, after the "or," just to
23 make it perfectly clear, how about, "or with respect to
24 inorganic contaminants," comma, "the background
25 concentration of inorganic contaminants, whichever is

1 greater"?

2 CHAIRMAN FESMIRE: I think we lose
3 something there, but I'm not -- why do we need, "with
4 respect"?

5 MR. SMITH: It concerns me that you have
6 this reference to the concentrations of water
7 contaminants, and then you have a conjunction with your
8 "or," and you start talking about inorganic contaminants.
9 And it just seems to me that you're better off having a
10 recognition that you are now -- I mean, a verbal
11 recognition that you are now talking about a subset of
12 water contaminants.

13 COMMISSIONER OLSON: It should be
14 "inorganic water contaminants," so it is that subset of
15 water contaminants.

16 COMMISSIONER BAILEY: It would be clearer
17 if we also put in after the wording, "or the background
18 concentration, whichever is greater, and that the
19 concentration of the organic water contaminants specified
20 in," blah, blah, "do not exceed the standards."

21 MR. SMITH: Yeah, I think that's right.

22 COMMISSIONER BAILEY: Then we would have
23 specified inorganic and organic.

24 MR. SMITH: I think that's right. The
25 point is you're staying silent about the organic, and I

1 think it's better that you either address them or make it
2 plain that you're intending to be silent about that.

3 COMMISSIONER OLSON: So you could just add
4 to that -- take out the "and," and it would just be a
5 three-part now. So it would be a comma, "that the
6 concentration of organic water contaminants specified
7 in" -- and then say, "and the concentrations of the
8 inorganic water contaminants specified in Subsection A
9 of" --

10 COMMISSIONER BAILEY: "Do not exceed the
11 standards or background, whichever is greater."

12 COMMISSIONER OLSON: Right. That way it's
13 a three-part --

14 COMMISSIONER BAILEY: And we're
15 clarifying.

16 CHAIRMAN FESMIRE: Mark, we'll leave you a
17 little leeway in the drafting here, but you understand
18 what we're trying to do? The background concentration of
19 the chlorides shall not exceed -- I mean, the
20 concentration of chlorides in the waste shall not exceed
21 3,000 or the background, whichever is greater. The
22 concentration of the inorganics will not exceed the
23 limits or background, whichever is greater, and the
24 concentration of the organics will not exceed the limits
25 in the 3103.

1 COMMISSIONER OLSON: I think that makes a
2 little more sense. That way you're specifically
3 addressing the organic situation.

4 COMMISSIONER BAILEY: That should
5 eliminate confusion.

6 CHAIRMAN FESMIRE: What's the next
7 provision?

8 COMMISSIONER OLSON: Before we go on, I
9 think -- I kind of agree with Commissioner Bailey. It
10 seems that the evidence presented supported changing the
11 level to 3,000. However, it still -- I had extensive
12 questions again about them -- in order to do this, since
13 they are allowing higher levels of contaminants, that
14 they should require surface owner written agreement that
15 they are allowed to bury this in place.

16 And I had asked this of most every witness .
17 that was up and pointed out some of the problems in
18 future access to these areas. There is nothing that
19 limits anybody from coming in and digging up these areas
20 in the future. And I had less of a concern of that when
21 it was 250 milligrams per liter of chlorides, but when
22 you're looking at now considerably higher levels --

23 CHAIRMAN FESMIRE: A major breach should
24 be a major problem?

25 COMMISSIONER OLSON: Yes. So we do have

1 right now for small land farms, we currently require a
2 written certification -- or certification that they have
3 a written agreement with the surface owner authorizing
4 the site's use for a small land farmer. So I didn't see
5 why that couldn't apply in this case, especially since
6 we're now looking at significant increases in
7 concentrations, which would pose a much more severe
8 threat of migration to groundwater.

9 So I guess I would make a motion that we add
10 some language to (3)(a) to address that, and it would
11 be -- right now it reads, "Where the operator meets the
12 siting criteria in Paragraph (4) of Subsection C of
13 19.15.17.10 NMAC," right after, "NMAC," I would add, "and
14 the operator furnishes a certification that has a written
15 agreement with the surface owner authorizing the site's
16 use for on-site trench burial." The language is
17 consistent then with the language of --

18 CHAIRMAN FESMIRE: The Surface Waste
19 Management Rule.

20 COMMISSIONER OLSON: -- the Surface Waste
21 Management Rule for small land farms.

22 And that language in 19.15.36.16 A(1), just
23 for your reference, says, "If the operator is not the
24 surface estate owner of a proposed site, the operator
25 shall furnish with its Form C137EZ its certification that

1 it has a written agreement with the surface estate owner
2 authorizing the site's use for the proposed small land
3 farm."

4 I think with the change in the contaminant
5 level to have a significant increase, I think it's
6 warranted to have agreement with the landowners so that
7 there is some type of agreement that this will not be
8 disturbed in the future. That would typically be part of
9 that type of agreement.

10 CHAIRMAN FESMIRE: Would we need an
11 agreement or notice?

12 COMMISSIONER OLSON: I think the -- I was
13 following the language that we already have for
14 consistency. I like to have consistency between our
15 rules where we can.

16 CHAIRMAN FESMIRE: You're playing with the
17 wrong set of rules here.

18 COMMISSIONER OLSON: The language there
19 was it was a certification of a written agreement with
20 the surface estate owner authorizing the site's use.

21 CHAIRMAN FESMIRE: That's for full
22 occupancy. This is going to be buried in place.

23 COMMISSIONER OLSON: Right. But my issue
24 here was we're doing this for a small-scale operation
25 which is actually remediating it so there is no threat

1 when it's done. And then here it is that now we're going
2 to allow something significantly higher -- it wouldn't
3 even be allowed in this circumstance, in a small land
4 farm -- and we'd be allowing that without the surface
5 owner's written agreement. And when they don't own the
6 land, they can't control access, I think it's really
7 problematic that there's no way to control that burrito
8 from being disturbed in the future, and you can't really
9 do that without some type of written agreement with the
10 owner. I think it's very problematic for those higher
11 level wastes like that.

12 CHAIRMAN FESMIRE: Commissioner Bailey?

13 COMMISSIONER BAILEY: I bring up, again,
14 the Surface Owner's Protection Act and the agreements
15 that are reached between the operator and the surface
16 owner under that act. I believe that that would cover
17 the issues that Commissioner Olson talks about.

18 I also see where any agreement with the
19 current surface owner would not be binding on any future
20 owner of that tract of land and so it would not take care
21 of the issue that he's concerned about for the long-term
22 use or misuse of that area.

23 CHAIRMAN FESMIRE: What would the Surface
24 Owner's Protection Act provide specifically?

25 COMMISSIONER OLSON: That's really for

1 damages a lot more than for limiting any type of future
2 activities. I don't know that that that would
3 necessarily be covered, because they can still go
4 forward -- if they can't reach an agreement with the land
5 owner, they can still go forward and conduct the
6 activity, and then they're left to come back and try to
7 deal with it in the courts at that point.

8 At that point this would already be there, and
9 I don't know how that -- I just think this gives me more
10 comfort that there is some type of agreement
11 acknowledging that this is going on and some way to
12 potentially control the future access. I would agree
13 with Commissioner Bailey that unless it's actually a
14 legally-recorded covenant that the land owner puts on it,
15 it may be difficult with future owners. But I think it
16 gives us some more comfort that they would actually be
17 doing this with the agreement of the land owner and the
18 acknowledgment, as well, that they shouldn't be
19 disturbing this.

20 MR. SMITH: I mean if that's what you
21 want, why not require a covenant to be recorded, if it's
22 important?

23 COMMISSIONER OLSON: I think it is. It's
24 important not to disturb it. If it is disturbed, it's
25 going to end up in -- highly likely that it could cause

1 groundwater contamination.

2 CHAIRMAN FESMIRE: Don't we have a
3 requirement that they mark bits?

4 COMMISSIONER OLSON: We do, but not to
5 record them. We did have a requirement that they place a
6 marker there but markers disappear, as I've seen with PNA
7 markers before.

8 COMMISSIONER BAILEY: And it's recorded on
9 the plats.

10 MR. SMITH: It would just be recorded in
11 the real property records of the county, the way you
12 would record any other covenant relative to the land like
13 you have in your neighborhood, maybe have restrictions
14 and covenants, the same sort of thing. You just record
15 in the county real property records.

16 CHAIRMAN FESMIRE: What we're looking for
17 is notice to the surface owner? Are you looking for
18 their permission, that the operator has to have their
19 permission, or are you looking for notice?

20 COMMISSIONER OLSON: I'm looking that they
21 do have their permission, because with their permission,
22 then, obviously, they recognize that they shouldn't be
23 disturbing this in the future. Because, to me, I think,
24 you know, it's pretty straightforward that burying waste
25 on someone else's property is not necessary for the

1 development of the minerals.

2 I know we've been through that before, but I,
3 you know, strongly believe that that is not a necessary
4 activity to produce the minerals, and they should have a
5 written agreement authorizing use of that site,
6 especially for a burial. You couldn't put a landfill --
7 essentially what they're doing is they're landfilling on
8 someone's property, and we wouldn't allow that under the
9 Surface Waste Management Rule, somebody to create a
10 landfill on someone else's property without their
11 permission. It's essentially no different than a -- very
12 little difference from this than from an actual landfill.

13 CHAIRMAN FESMIRE: Why don't we come back
14 to this on that issue and see what he can accomplish?

15 COMMISSIONER OLSON: I was looking at,
16 myself, just consistency with Rule 36, where we have even
17 much less contamination where it requires land owner
18 approval.

19 CHAIRMAN FESMIRE: That's 17.13 F(3)(c)?

20 COMMISSIONER OLSON: Right.

21 CHAIRMAN FESMIRE: We agree on the other
22 issue, but we don't -- we still need to talk about notice
23 and permission of surface owner. Okay. What's the next
24 one, Commissioner?

25 COMMISSIONER BAILEY: 17.16.F, transfer of

1 a permit.

2 COMMISSIONER OLSON: I didn't have a
3 problem. I think the one thing was, again, the OCD in
4 their finding of fact 32, proposed changing it from
5 transfer of ownership to transfer of operation.

6 COMMISSIONER BAILEY: I have no problem.

7 CHAIRMAN FESMIRE: With F or just that
8 one?

9 COMMISSIONER BAILEY: With all of F.

10 CHAIRMAN FESMIRE: Okay. With the proviso
11 that we follow the amended recommendation from the OCD to
12 change ownership to operatorship?

13 COMMISSIONER OLSON: Operation.

14 CHAIRMAN FESMIRE: Operation.

15 MR. SMITH: Where are you?

16 CHAIRMAN FESMIRE: Okay.

17 COMMISSIONER BAILEY: I have a thought on
18 that. An operator does not necessarily have any
19 financial interest in the well or any controlling
20 interest in the well.

21 CHAIRMAN FESMIRE: You mean a contract
22 operator or minority owner operator or both?

23 COMMISSIONER BAILEY: Both. If they don't
24 have any financial interest in the well, and if operators
25 can be changed by the lessee, the owner, are we going

1 after the wrong person there in there?

2 CHAIRMAN FESMIRE: Well, let's think about
3 that. Yeah, because a contract operator with the working
4 interest -- one operating agreement, and the operator
5 hires -- I think the definition of operator is they have
6 to have an interest in it, isn't it?

7 COMMISSIONER BAILEY: I don't know.

8 COMMISSIONER OLSON: Don't the rules apply
9 to changes of operators?

10 CHAIRMAN FESMIRE: Yeah.

11 COMMISSIONER BAILEY: "Operator means
12 person who is in charge of a lease's development or a
13 producing a property's operation or who is in charge of a
14 facility's operation or management.

15 CHAIRMAN FESMIRE: That can be a
16 contractor.

17 COMMISSIONER BAILEY: Yeah. And it's the
18 owner or the lessee who's held liable for cleanup of
19 contamination, not the operator.

20 COMMISSIONER OLSON: In our current rule,
21 19.15.9.9, provisions for change of operator. Maybe we
22 should just say it the same way. Would that work?

23 CHAIRMAN FESMIRE: Where did that
24 definition that you just read me come from?

25 COMMISSIONER BAILEY: Your OCD rules.

1 CHAIRMAN FESMIRE: General definitions?

2 COMMISSIONER BAILEY: Uh-huh.

3 CHAIRMAN FESMIRE: We just discovered
4 another -- I think we ought to -- I think your point is
5 very well taken, but I think it's a bigger change than we
6 can make here. I think the operator is proper within the
7 context of what we've got going here.

8 COMMISSIONER OLSON: What if we just said,
9 instead of, "transfer of ownership," say, "prior to any
10 sale or change of operator"?

11 CHAIRMAN FESMIRE: Well, that's what she's
12 trying to get around. You can change operators. You can
13 go from one contract operator to another contract
14 operator.

15 COMMISSIONER BAILEY: "Owner means a
16 person who has the right to drill into or produce from a
17 pool and to appropriate the production even though" -- so
18 that's the person who has the financial interest.

19 CHAIRMAN FESMIRE: Right. But every time
20 a minority interest changes, and --

21 COMMISSIONER BAILEY: That's not going to
22 work.

23 COMMISSIONER OLSON: You don't want to the
24 do that. Prior to any sale?

25 COMMISSIONER BAILEY: Why not leave it at

1 sale?

2 MR. SMITH: Your goal here, right, is to
3 see that these below-grade tanks are either closed or
4 brought into compliance; right?

5 CHAIRMAN FESMIRE: Or transfer of the
6 operating interest or change in the operating interest.

7 COMMISSIONER OLSON: But by practice isn't
8 that really done when there's a change of operator under
9 the rules?

10 CHAIRMAN FESMIRE: An operating interest
11 is a person who has the right to operate or appoint the
12 operator. If a person has the operating interest and
13 they hire a contract operator, under the way we're
14 proposing, they would change -- if they change contract
15 operators, they would change -- they would trigger this
16 provision, so they would have to bring the tanks into
17 compliance.

18 COMMISSIONER OLSON: If they change the
19 contract operator, do they actually file a change of
20 operation, then, or change of operator under the rules?

21 CHAIRMAN FESMIRE: If they're going to be
22 filing the documents, yes. If the contract operator is
23 going to be filing the documents, they should.

24 COMMISSIONER OLSON: But do they? Because
25 I'm just thinking the way this has been used is for sales

1 of properties.

2 CHAIRMAN FESMIRE: Right. And the
3 corresponding change of operatorship of the sale of the
4 operating interest.

5 COMMISSIONER BAILEY: Why can't we just
6 put a period at the end of sale?

7 CHAIRMAN FESMIRE: Well --

8 COMMISSIONER OLSON: What if they just
9 swap it?

10 CHAIRMAN FESMIRE: I like, "or transfer of
11 the operating interest," because that would include if it
12 transfers from one working interest owner to another or
13 if it sells and -- if the working interest sells, the
14 operating interest sells, and the new operator takes over
15 operations, but we've also made this change one other
16 place.

17 COMMISSIONER OLSON: Yeah. It's just
18 consistency.

19 CHAIRMAN FESMIRE: Are you guys happy with
20 that?

21 COMMISSIONER BAILEY: I think so.

22 COMMISSIONER OLSON: When you look in
23 here, there's distinctions between change of operator and
24 change of name.

25 CHAIRMAN FESMIRE: They're changing the

1 name of the operator.

2 COMMISSIONER OLSON: Right. But the
3 entity does not change.

4 CHAIRMAN FESMIRE: Right. And, like I
5 said, in light of what we just said now, there's a very
6 small number of -- given the definition of operator that
7 we have --

8 COMMISSIONER OLSON: I just think you want
9 to link it to a change of operator. That's the way it's
10 used within the rules.

11 CHAIRMAN FESMIRE: That's probably a good
12 idea, "or change of operator pursuant to 19.15" --

13 COMMISSIONER OLSON: "Pursuant to
14 19.15.9.9."

15 CHAIRMAN FESMIRE: There you go.

16 COMMISSIONER BAILEY: So that is also in
17 17.13 A(5).

18 CHAIRMAN FESMIRE: Yes. Did you get that
19 one, Mark?

20 MR. SMITH: I'm not sure. I'll check.

21 COMMISSIONER OLSON: Everywhere that
22 occurs where it says, "transfer of ownership," it would
23 now be, "or a change of operator pursuant to 19.15.9.9."

24 MR. SMITH: "Change of operator," not --
25 you want to leave out "operating interest" at that point?

1 CHAIRMAN FESMIRE: Yes. We've decided to
2 tie it to the requirement that they notify us of change
3 of operator, rather than the act that triggers that
4 itself.

5 MR. SMITH: Okay. So in F, looking at the
6 second addition that begins, "The operator of a
7 below-grade tank," it goes -- four lines down there's a
8 reference to 19.15.17.11 NMAC, then the words, "prior
9 to" --

10 CHAIRMAN FESMIRE: -- "any sale"?

11 MR. SMITH: Yeah. Do you want that to be,
12 "any sale or transfer of anything," or is it just, "prior
13 to any change of operator."

14 CHAIRMAN FESMIRE: "Prior to any sale or
15 change of operator pursuant to" --

16 MR. SMITH: "Sale or transfer or change of
17 any operator" or "change of operator"?

18 COMMISSIONER OLSON: "Change of operator"
19 covers transfers.

20 CHAIRMAN FESMIRE: We don't care if some
21 other interest transfers the nonworking interest.

22 MR. SMITH: So, "sale or change of
23 operator pursuant to" --

24 COMMISSIONER OLSON: -- "to 19.15.9.9."

25 MR. SMITH: Okay. And the same on 13A(5)?

1 CHAIRMAN FESMIRE: Yes.

2 COMMISSIONER BAILEY: Yes.

3 COMMISSIONER OLSON: It appears in about
4 three, four places. It also appears in 19.15 -- proposed
5 language, 19.15.17.16F, and 19.15.17.17B and 17D, as
6 well. There's four places.

7 MR. SMITH: Okay.

8 COMMISSIONER BAILEY: Are we ready to go
9 on?

10 CHAIRMAN FESMIRE: Um-hum.

11 COMMISSIONER BAILEY: I have no issues
12 with proposed changes of 17.17.

13 COMMISSIONER OLSON: I have a couple -- I
14 think it's more of an editing -- I don't have any
15 problems with B. I think we just changed that transfer
16 ownership issue. In C, I think they talked about doing C
17 for registration purposes. That's what this is about,
18 and I had asked some questions about this. Because right
19 now the language talks about "the operator require a
20 permit or permit modification." That was in my
21 questioning. What they were looking was essentially just
22 registering these things. And I guess maybe on the
23 beginning of the second line, for a little clarity it
24 needs to say where this needs to be submitted.

25 So on the second line after, "submit," I would

1 say, "submit to the Division" --

2 COMMISSIONER BAILEY: Okay.

3 COMMISSIONER OLSON: -- "a list of the
4 lined permitted permanent pit or pits of which it is the
5 operator," and I was going to strike "that require a
6 permit or permit modification," because that's something
7 they don't make the determination of. The Division
8 determines whether a permit modification and some of this
9 is going to be required. So I would say, "for which is
10 the operation for registration purposes. That's what
11 they are looking at doing is just registering these
12 things.

13 Because here, the next sentence talks about
14 the registration list, so it is a registration.

15 COMMISSIONER BAILEY: You would strike
16 where?

17 COMMISSIONER OLSON: I would strike after,
18 "operator," on the second line, "that require a permit or
19 permit modification to the Division for registration."

20 COMMISSIONER BAILEY: The rest of that
21 whole sentence?

22 COMMISSIONER OLSON: Yes. And I would
23 replace after, "operator," "for registration purposes."

24 CHAIRMAN FESMIRE: And you included that
25 the Division was in there.

1 COMMISSIONER OLSON: And I included that
2 they're submitting it to the Division.

3 CHAIRMAN FESMIRE: I would have no problem
4 with that.

5 COMMISSIONER BAILEY: No problem.

6 COMMISSIONER OLSON: I'll leave that as
7 that first line. At the end it talks about that the
8 operator, though, is providing a determination if a
9 permit modification is required. It's the Division
10 that's really going to make that determination. I would
11 think you could replace the word, "determination," with,
12 "evaluation." If it's really necessary, I think they're
13 going to need to deal with it. It's kind of making it
14 seem like the final determination is with the operator
15 and not with the Division.

16 CHAIRMAN FESMIRE: Right. I have no
17 problem with that.

18 COMMISSIONER BAILEY: Fine with me.

19 MR. SMITH: Show me that last one that you
20 have.

21 COMMISSIONER OLSON: Change this word
22 to -- instead of, "and a determination," strike, "a
23 determination," and replace it with, "an evaluation."
24 And then the same thing occurs in D again.

25 COMMISSIONER BAILEY: "Shall submit to the

1 Division"?

2 COMMISSIONER OLSON: Yeah. After, "shall
3 submit to the Division" -- that's correct -- "a list of
4 the below-grade tank or tanks of which it is the
5 operator," strike the remainder -- well, strike, "that
6 require a permit or permit modification to the Division,"
7 and it should read again similar to C, so it should be,
8 "for registration purposes."

9 COMMISSIONER BAILEY: Okay.

10 COMMISSIONER OLSON: Then down on the --
11 down below towards the end of D, instead of, "a
12 determination," it should be, "an evaluation."

13 COMMISSIONER BAILEY: Okay.

14 COMMISSIONER OLSON: So keep that language
15 consistent. I think that's the only thing I have on that
16 section was just clarifying that.

17 CHAIRMAN FESMIRE: Okay. That was 17.17.
18 I think we're pretty much done except for addressing the
19 thing we put on hold on 13F(3).

20 MR. SMITH: F(3)(a).

21 COMMISSIONER OLSON: Yeah. That's where I
22 was proposing to insert that language to address my
23 concerns.

24 CHAIRMAN FESMIRE: I thought it was
25 F(3)(c).

1 COMMISSIONER OLSON: I'm linking what they
2 need to do in their submissions to be consistent with
3 what we've done in Rule 36, and it seemed like the proper
4 place to put that because it's specifying when they can
5 do this. (3)(c) is just specifying what the contaminant
6 criteria are.

7 CHAIRMAN FESMIRE: You're proposing that
8 they mark it and record it?

9 COMMISSIONER OLSON: I just propose --
10 they're already required to mark it, but I would propose
11 that we put on the -- under (3)(a) after the "Subsection
12 C of 19.15.17.10 NMAC," add the language, "and the
13 operator furnishes a certification that it has a written
14 agreement with the surface owner authorizing the site's
15 use for on-site trench burial."

16 CHAIRMAN FESMIRE: After a written
17 agreement, like the initial written lease?

18 COMMISSIONER OLSON: Whatever. That it
19 has a written agreement. That's the way the language
20 in Part 36 reads for small land farms, so I was just
21 being consistent with the language that we already have.

22 CHAIRMAN FESMIRE: Commissioner Bailey?

23 COMMISSIONER BAILEY: I cannot agree. I
24 believe we're treading too close to contractual
25 agreements, the Surface Owner Protection Act. I don't

1 think that we have the right to put that into this rule.

2 CHAIRMAN FESMIRE: Commissioner Olson, I
3 would offer a compromise. It's probably not going to
4 make either one of you happy. I see the need for
5 consistency. And I understand what you're trying to do,
6 I really do. But would notice to the surface owner be
7 sufficient? Getting their permission seems like it might
8 be a little -- although, I do understand it.

9 COMMISSIONER OLSON: I guess -- yeah. I
10 just see that we require it already for less intrusive
11 and less contaminated soils and disposal operations, so
12 I don't see why we wouldn't require the same thing for
13 higher-level actual landfilling. On land farming, you're
14 actually remediating the soil, so it poses no threat.
15 Here it is we're actually landfilling now, and that is at
16 higher levels than what is being allowed at a land farm.

17 CHAIRMAN FESMIRE: That's a temporary
18 occupation of the surface, whereas this is a permanent
19 occupation of the subsurface.

20 COMMISSIONER OLSON: That's correct. So I
21 think it just makes sense. Maybe I'll just make that as
22 a motion.

23 CHAIRMAN FESMIRE: I assume, Commissioner
24 Bailey, you're not going to second it?

25 COMMISSIONER BAILEY: No, I'm not going to

1 second. But I am willing to compromise and have notice.

2 CHAIRMAN FESMIRE: Commissioner Olson,
3 would that be -- I see your argument for consistency.
4 But, to me, the difference is a surface occupation as
5 opposed to a subsurface occupation. The problem I see is
6 if it would otherwise qualify for deep-trench burial and
7 we've determined that that's acceptable, we'd be giving
8 the surface owner a veto. How would it affect federal
9 and state leases? We've already had to negotiate an MOU
10 with the Feds in the northwestern part of the state with
11 respect to the dry-hole markers -- not dry-hole
12 markers -- the markers for pits. We've allowed them to
13 put a welded surface plate instead of the four-foot
14 marker required for as long as the well was operational.
15 But once they plug the well, they have to come back in
16 and re-establish that marker.

17 COMMISSIONER OLSON: Do you have any type
18 of agreement for them on land farms, though?

19 CHAIRMAN FESMIRE: No.

20 COMMISSIONER OLSON: It's required under
21 the rule.

22 CHAIRMAN FESMIRE: Yeah. That's just for
23 pits, and that's for pits where the well is still active.

24 COMMISSIONER OLSON: I just have a problem
25 for us requiring it for less toxic sites that are

1 actually remediated and pose no threat when they're done
2 versus long-term essentially entombment or landfilling on
3 a property. It doesn't seem to be consistent.

4 CHAIRMAN FESMIRE: Theoretically, I agree
5 with you, and I see the purpose. Do we have enough --

6 COMMISSIONER OLSON: Do you want to take a
7 break for a minute?

8 CHAIRMAN FESMIRE: You guys want to take a
9 long lunch break and come back at 2:30?

10 COMMISSIONER OLSON: This is last issue
11 we've got.

12 MR. SMITH: That would help me with my
13 2:30 meeting. That way I wouldn't have to find a
14 substitute.

15 CHAIRMAN FESMIRE: Why don't we take a
16 10-minute break and run to the restroom?

17 (A recess was taken.)

18 CHAIRMAN FESMIRE: This is a continuation
19 of Case Number 14292. We were in the middle of
20 deliberations. The record should reflect that all three
21 Commissioners are present after the break. We,
22 therefore, have a quorum. This is the public
23 deliberations on the proposed rule change.

24 We were in the middle of a motion. I believe
25 Commissioner Olson had a motion to, in essence, require

1 surface owners' permission prior to the deep trench
2 burial.

3 COMMISSIONER OLSON: I said have written
4 agreement authorizing --

5 CHAIRMAN FESMIRE: Commissioner Bailey did
6 not second the motion, and I was in the middle of having
7 to make a decision. Commissioner Olson, I'm not going to
8 second that, either, but propose -- and the motion will
9 die. I'm going to propose a substitute motion that we
10 require notice to the surface owner prior to a deep
11 trench burial and proof of that notice by -- or maybe
12 something like proof of mailing to the last address of
13 record on the property records or the tax records. Would
14 that be an exceptional compromise?

15 I hate to do that because I do agree with you,
16 but that would also give the surface owner a veto that
17 I'm not comfortable with, either.

18 COMMISSIONER OLSON: I guess I don't know
19 if I accept it as a substitute, but I think it's better
20 than what we have now.

21 CHAIRMAN FESMIRE: In other words, we've
22 just agreed to disagree.

23 COMMISSIONER OLSON: But I would accept it
24 as something that is necessary. I guess I don't accept
25 it as a substitute. I guess I'll put it that way.

1 CHAIRMAN FESMIRE: How could we include --
2 Commissioner Bailey, would that be acceptable to you?

3 COMMISSIONER BAILEY: Yes.

4 CHAIRMAN FESMIRE: How would we include it
5 in that language?

6 COMMISSIONER OLSON: You'd probably add it
7 in the same area, I would think.

8 MR. SMITH: You could make it a proviso at
9 the end of that sentence

10 COMMISSIONER BAILEY: (3)(a); correct?

11 MR. SMITH: Yeah. After "NMAC," you can
12 put, "provided that," and put whatever you wanted to in
13 terms of notice.

14 CHAIRMAN FESMIRE: At the beginning of the
15 second line?

16 MR. SMITH: No. I'm sorry. At the fourth
17 line down, at the very end of the entire sentence where,
18 "the operator meets the siting criteria may use on-site
19 trench burial for closure associated with a closed
20 loop" -- "for closure of a temporary pit and waste,
21 meets," blah, blah, blah. And after the reference to
22 19.15.17.13 NMAC, you could put, "provided that," and I
23 would underline, "provided that," and you could put
24 whatever notice requirement you wanted to.

25 CHAIRMAN FESMIRE: Something to the

1 effect, "provided that the operator has notified the
2 surface owner by mailing to" --

3 COMMISSIONER BAILEY: Pick up the language
4 from the notice rule.

5 COMMISSIONER OLSON: Yeah, because I think
6 there's some language about proof of notice.

7 CHAIRMAN FESMIRE: Okay. Does anybody
8 have that?

9 MR. SMITH: You might think about whether
10 you want to put a time frame on there, any time prior
11 to," or --

12 CHAIRMAN FESMIRE: Yeah, notified like one
13 week prior to the beginning of the trench burial. Would
14 one week be enough?

15 COMMISSIONER BAILEY: Um-hum.

16 MR. SMITH: What do we expect the land
17 owner to do with that week's notice?

18 CHAIRMAN FESMIRE: They may want to be
19 present, you know, to -- Commissioner Olson wanted to
20 make sure they knew where it was, and we also need to
21 probably think about a marker similar to the pit markers
22 that we're going to be requiring for the pit rule.

23 MR. SMITH: If these people are going to
24 be out of town, a week might not be enough.

25 CHAIRMAN FESMIRE: Anything more than

1 that, you start cutting into the operator's timing for
2 equipment and personnel and things like that.

3 COMMISSIONER OLSON: Yeah. I don't know
4 where that's at, to tell you the truth.

5 CHAIRMAN FESMIRE: What we can do is
6 instruct counsel to draft a provision in there for notice
7 that complies or matches.

8 MR. SMITH: What you want is a notice
9 provision within a week or whatever is standard.

10 COMMISSIONER OLSON: Provide proof of
11 notice.

12 CHAIRMAN FESMIRE: Commissioner Bailey, do
13 we need -- we do need sort of a dry-hole marker like we
14 provided for in other places. Does anybody remember
15 where that was? There's a provision for in-place
16 markers -- I mean for markers for in-place --

17 COMMISSIONER BAILEY: Why don't you look
18 for that and I'll look for the notice.

19 CHAIRMAN FESMIRE: We've already got that
20 provision under J, "Closure notice. The operator shall
21 notify the surface owner by certified mail, return
22 receipt requested, that the operator plans to close a
23 temporary pit, a permanent pit, a below-grade tank or
24 where the operator has approval for on-site closure.
25 Evidence of mailing of the notice to the address of the

1 surface owner shown in the county tax records is
2 sufficient to demonstrate compliance with this
3 requirement." Doesn't that already --

4 COMMISSIONER OLSON: Um-hum.

5 CHAIRMAN FESMIRE: What we don't have is
6 the requirement for -- I don't see the markers.

7 MR. SMITH: Could I just bring up one
8 thing? By placing the notice provision under (3)(a), you
9 make the operator's right to do the on-site burial
10 subject to the notice provision. If they don't give the
11 notice, then they don't have the right. If you rely
12 solely on the closure notice, it is arguable that they
13 still have the right under (3)(a) --

14 CHAIRMAN FESMIRE: Um-hum.

15 MR. SMITH: -- but that they just messed
16 up on the closure notice. What you could do, if you
17 wanted, was under (3)(a), still put the proviso in and
18 make it, "provided that the operator complies with the
19 notice provision under J(1)" and shortcut it that way.

20 CHAIRMAN FESMIRE: Prior to closure. Is
21 that acceptable?

22 COMMISSIONER BAILEY: Yes.

23 COMMISSIONER OLSON: It may already be in
24 13F(1)(B). It's the general requirements for on-site
25 closure. Under F(1)(b) it says, "The operator shall

1 provide the surface owner notice of the operator's
2 proposal of an on-site closure method. The operator
3 shall attach the proof of notice to the permanent
4 application," so they're already required by the rule to
5 notify the land owner.

6 COMMISSIONER BAILEY: So we don't need to
7 change --

8 COMMISSIONER OLSON: So that doesn't need
9 to change. That's right. And that's actually prior to
10 getting approval, so --

11 COMMISSIONER BAILEY: So we're good.

12 CHAIRMAN FESMIRE: Except for the marker.

13 COMMISSIONER OLSON: Yeah. It's right
14 under (1)(d). "The operator shall place a steel marker
15 at the center of an on-site burial." That talks about
16 descriptions of the marker.

17 CHAIRMAN FESMIRE: Is that good enough for
18 you? I mean, given your reservations.

19 COMMISSIONER OLSON: I think it's where I
20 was at last time when we adopted this, so I just kind
21 of -- well, it's there for the record. I think it should
22 be done. I'd just like that noted for the record.

23 CHAIRMAN FESMIRE: Do we have a rule that
24 you can agree to, Commissioner?

25 COMMISSIONER BAILEY: Yes.

1 CHAIRMAN FESMIRE: Commissioner Olson, do
2 we have a rule that you can agree to?

3 COMMISSIONER OLSON: I think -- yes, I
4 agree with what we are proposing here with the
5 reservations that I've expressed about the surface owner
6 agreements.

7 CHAIRMAN FESMIRE: With that we will
8 instruct counsel to draft a proposed rule and order for
9 consideration. Can it be done at the June 16th or
10 18th --

11 MS. DAVIDSON: June 18th.

12 CHAIRMAN FESMIRE: -- June 18 Commission
13 meeting?

14 MR. SMITH: What is that, three weeks?

15 CHAIRMAN FESMIRE: About three weeks.

16 MR. SMITH: I believe it can. If not,
17 maybe I'll seek relief. But if that's when you want it,
18 I will definitely get it.

19 CHAIRMAN FESMIRE: Let me go on record
20 saying I'll help if I have to. Is there anything more
21 concerned with Case Number 14292 that the Commission
22 needs to address at this time?

23 COMMISSIONER BAILEY: No.

24 COMMISSIONER OLSON: No.

25 CHAIRMAN FESMIRE: With that --

1 COMMISSIONER OLSON: Wait. Let me see.
2 Do we need to address -- I mean, we have other proposals
3 here. I don't know if we have to address why we're not
4 adopting those in some of the proposed findings and
5 conclusions.

6 CHAIRMAN FESMIRE: I'll ask counsel. I
7 will state for the record that I reviewed all of the
8 proposed submissions, and they have been part of the
9 deliberations and been part of my consideration in making
10 the changes that we have made.

11 COMMISSIONER BAILEY: As have I.

12 COMMISSIONER OLSON: Actually -- because I
13 think there was one other one here I was noticing on the
14 OCD's -- let me check here. Like they had one in 52
15 where they talked about a definition of background should
16 be adopted to effectuate the Division's intent in
17 proposing a background standard. But I don't recall
18 there being any testimony on what the proposed language
19 should be. They don't propose any here, either.

20 MR. SMITH: Do you know off the top of
21 your head where in the rule proposed amendments are
22 authorized for submission?

23 CHAIRMAN FESMIRE: That would be in the
24 rules of rule making. I believe that's a new Section 4,
25 Part 3.

1 COMMISSIONER BAILEY: Three?

2 CHAIRMAN FESMIRE: Yeah. What was your
3 question, counsel?

4 MR. SMITH: Where in the rule is
5 submission of alternative amendments provided for? I
6 think I can find it now that you've --

7 CHAIRMAN FESMIRE: I believe what you're
8 looking for is 15.3.11C. It starts there and goes
9 through 12. I think what you're looking for will be in
10 there.

11 CHAIRMAN FESMIRE: Commissioner, did you
12 want to elaborate on Section 52 of the --

13 COMMISSIONER OLSON: I guess, from what I
14 recall at the hearing, there was no testimony on this, so
15 I don't know how we could adopt a definition since we
16 have none proposed to it. So I was just going to leave
17 it at that because there was no testimony on it.

18 CHAIRMAN FESMIRE: Commissioner Bailey, do
19 you have anything to add?

20 COMMISSIONER BAILEY: No.

21 COMMISSIONER OLSON: The only other
22 question I had was on OCD's Items Number 59 and 60. They
23 were proposing some changes and I've just got a question
24 mark. So I'm not sure I understood what they were
25 doing -- what they were requesting, at least in 59.

1 They're looking at the transitional provisions of the
2 rule in D, because they say it should be changed to this,
3 but they don't say what the -- they say, "in lieu of the
4 language quoted," but I'm not quite sure what they're
5 changing.

6 CHAIRMAN FESMIRE: 17D?

7 COMMISSIONER OLSON: And then they
8 reference it, "in lieu of the language quoted immediately
9 preceding the finding," which would be C, wouldn't it?
10 Because that's why I was getting confused. I guess it
11 was 58, maybe. I'm sorry. Because the problem I was
12 seeing, I didn't see the language they're quoting here.
13 I didn't see it in D, though, so maybe they were
14 referring to something else.

15 CHAIRMAN FESMIRE: That's on the very back
16 page, page 20 of their exhibit. "Upon discovery that the
17 below-grade tank does not demonstrate integrity or prior
18 to any sale or transfer of ownership."

19 COMMISSIONER OLSON: They want to strike
20 that, and replace it --

21 COMMISSIONER BAILEY: Or do they want to
22 change it? "An operator" -- at the very last line on
23 page 19, "An operator of an existing below-grade tank
24 shall comply with the construction requirements of
25 19.15.17.11 NMAC within the time provided by applicable

1 provisions of Paragraph 5 or 6 of Subsection 1 or 11 or
2 prior to any transfer of operation."

3 COMMISSIONER OLSON: I see.

4 COMMISSIONER BAILEY: And scratch the
5 underlined proposal, "upon discovery."

6 CHAIRMAN FESMIRE: I didn't catch the
7 inconsistency, but it would appear it is something we
8 need to consider -- five years after the effective date.
9 Whereas, if we left it the way it is, we've got the
10 inconsistency of five years in the preceding section
11 and --

12 COMMISSIONER OLSON: Right.

13 CHAIRMAN FESMIRE: -- and here it would be
14 upon discovery.

15 COMMISSIONER OLSON: Right. I think for
16 consistency it is something that needs to be clarified.

17 CHAIRMAN FESMIRE: Okay. Commissioner
18 Bailey, it's going to change -- well, there's an
19 inconsistency in there under --

20 COMMISSIONER OLSON: Because those other
21 provisions make -- I believe in subsection I, provide for
22 failure of integrity already.

23 COMMISSIONER BAILEY: Okay. "An operator
24 of an existing below-grade tank shall apply for a permit
25 or permit modification within two years. After June

1 16th, an operator of an existing below-grade tank shall
2 comply with the construction requirements."

3 CHAIRMAN FESMIRE: Within five years,
4 essentially, is what was intended under I(6).

5 COMMISSIONER OLSON: Right.

6 CHAIRMAN FESMIRE: But here it's kind of
7 ambiguous.

8 COMMISSIONER BAILEY: Let's make it
9 consistent.

10 CHAIRMAN FESMIRE: Okay. Counsel, did you
11 pick up that change?

12 MR. SMITH: I did not

13 CHAIRMAN FESMIRE: It's pursuant to
14 Section 58, and to a lesser extent to -- 59 and to a
15 lesser extent, 58 of the OCD's proposed findings and
16 conclusions. And what we would be doing is scratching,
17 "upon discovery that the below-grade tank does not
18 demonstrate integrity or prior to any sale or transfer of
19 ownership," and replace it with, "within the time
20 provided by acceptable provisions of Paragraph 5 and 6 of
21 Subsection I of 19.15.17.11 NMAC and prior to any
22 transfer of operation."

23 MR. SMITH: Okay. Thank you.

24 CHAIRMAN FESMIRE: Okay.

25 MR. SMITH: And in answer to your prior

1 question, I don't think that you're required to go
2 through each and every proposed amendment made in any
3 submissions to the Commission, but I do think that you
4 are required to go through them and do just what
5 Commissioner Olson has done, and if there are any that
6 you think need consideration, to bring it before the
7 Commission.

8 COMMISSIONER OLSON: In that same vein, I
9 see in their Number 60, as well, Finding of Fact 60,
10 they're trying to clarify the effective date of these
11 proposed changes that they're -- 60 days after these
12 amendments are adopted in an order.

13 COMMISSIONER BAILEY: I think that's
14 important to have.

15 CHAIRMAN FESMIRE: Me too. Okay.

16 COMMISSIONER OLSON: Because right now
17 it's within one year after June 16th, 2008, which is
18 coming up quite shortly.

19 CHAIRMAN FESMIRE: Right.

20 COMMISSIONER OLSON: Let me check one more
21 thing.

22 MR. SMITH: You want 60 days after the
23 order?

24 CHAIRMAN FESMIRE: We want to comply with
25 Section 60.

1 COMMISSIONER OLSON: Finding of Fact 60 in
2 the OCD's clarification.

3 CHAIRMAN FESMIRE: Since we're talking
4 about the numbering, Mr. Brooks uses lawyer's numbering
5 and goes from 45 to 56 to 47.

6 COMMISSIONER OLSON: I think that's the
7 only other things I found in there.

8 CHAIRMAN FESMIRE: Commissioner Bailey, do
9 you have anything to add on that case?

10 COMMISSIONER BAILEY: No.

11 CHAIRMAN FESMIRE: On that, we will
12 continue Case Number 14292 to the next regularly
13 scheduled meeting of the Oil Conservation Commission --
14 which is June 16th?

15 MS. DAVIDSON: 18th.

16 CHAIRMAN FESMIRE: I got it wrong again --
17 which is June 18.

18 We will address the next items before the
19 Commission. The first is Case Number 14055, the
20 application of the New Mexico Oil Conservation Division
21 for a compliance order against C&D Management Company
22 d/b/a Freedom Ventures Company. It has been continued to
23 the --

24 MS. DAVIDSON: I don't know which hearing
25 you want to continued it to. They didn't ask for a

1 specific date.

2 CHAIRMAN FESMIRE: It will be continued.

3 The next case before the Commission is Case Number 14149,
4 the de novo application of El Paso E&P Company, L.P., to
5 abolish the Van Bremmer Canyon-Vermejo Gas Pool, expand
6 the Castle Rock Park-Vermejo Gas Pool and establish
7 special rules and regulations for the Castle Rock
8 Park-Vermejo Gas Pool in Colfax County, New Mexico. This
9 case will be continued to the June 18, 2009 Commission
10 meeting.

11 The next case before the Commission is Case
12 Number ~~14150~~, the application of El Paso E&P Company,
13 L.P., to expand the Stubblefield Canyon Raton-Vermejo Gas
14 Pool, and to establish special rules and regulations for
15 the pool, in Colfax County, New Mexico. This case will
16 also be continued to the June 18th, 2009 Commission
17 meeting.

18 The next matter before the Commission is Case
19 Number 14134, the application of the Board of County
20 Commissioners of Rio Arriba County for cancellation or
21 suspension of application for permits to drill (APDs)
22 filed by Approach Operating, LLC, Rio Arriba County, New
23 Mexico. This case will be continued to the July 16th,
24 2009 Commission meeting.

25 The next case before the Commission is Case

1 Number 14141. It is the application of Approach
2 Operating, LLC, for approval of six applications for
3 permits to drill, in Rio Arriba County, New Mexico. This
4 is a related case and it will be continued also to the
5 July 16th, 2009 Commission meeting.

6 The next case before the Commission is also
7 related to the previous two. It's Case Number 14278, the
8 application of Approach Operating, LLC, for approval of
9 14 applications for permits to drill in Rio Arriba
10 County, New Mexico. This case will also be continued to
11 the July 16th, 2009 Commission meeting.

12 MS. DAVIDSON: Could you continue that
13 Case Number 14055 to the June 18th Commission meeting so
14 we don't have to readvertise it?

15 CHAIRMAN FESMIRE: This --

16 MS. DAVIDSON: The compliance case.

17 CHAIRMAN FESMIRE: Against C&D?

18 MS. DAVIDSON: Um-hum.

19 CHAIRMAN FESMIRE: I need to make a
20 correction here. Case Number 14055, the application of
21 the New Mexico Oil Conservation Division for a compliance
22 order against C&D Management Company d/b/a Freedom
23 Ventures, will be continued to the June 18th regularly
24 scheduled Commission meeting and not continued
25 indefinitely. I want to repeat. Case Number 14055 will

1 be continued to the June Commission meeting. Is there
2 any other business before the Commission?

3 COMMISSIONER BAILEY: No.

4 COMMISSIONER OLSON: No.

5 CHAIRMAN FESMIRE: The Chair would
6 entertain a motion to adjourn, if anybody were so
7 inclined.

8 COMMISSIONER BAILEY: I so move.

9 COMMISSIONER OLSON: Second.

10 CHAIRMAN FESMIRE: All those in favor
11 signify by saying aye. The record should reflect that we
12 were adjourned at 1:00 p.m. on the 28th of May. Thank
13 you all very much.

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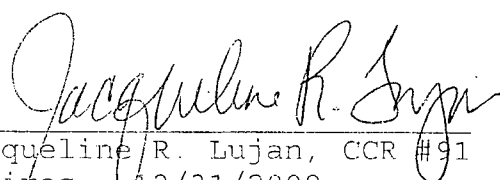
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REPORTER'S CERTIFICATE

I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on May 28, 2009, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 9th day of June, 2009.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009