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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 PURPOSES OF  
CONSIDERING:

CASE NO: 14521

THE APPLICATION OF WILLIAMS PRODUCTION CO., LLC FOR  
THE APPROVAL OF A CLOSED LOOP SYSTEM FOR THE ROSA  
SWD WELL NO. 2 AND FOR IN-PLACE BURIAL OF DRILLING  
WASTES AT ANOTHER WELL LOCATION, RIO ARRIBA COUNTY,  
NEW MEXICO

COMMISSIONER HEARING

VOLUME 2

ORIGINAL

July 30, 2010  
8:00 a.m.  
1220 S. St. Francis Drive  
Santa Fe, New Mexico

BEFORE: MARK E. FESMIRE: Commission Chair  
William C. Olson: Commissioner  
Jami Bailey, Commissioner

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1 (Note: In session at 8:00.)

2 CHAIRMAN FESMIRE: This is a continuation  
3 of Case no. 14521, the Application of Williams  
4 Production Company, LLC for Approval of A Closed  
5 Loop System for the Rosa Salt Water Disposal Well  
6 No. 2 and In-Place Burial of Drilling Waste at  
7 another well location in Rio Arriba County, New  
8 Mexico.

9 This is Friday, July 30th, the second day  
10 of the hearing. The record should reflect that all  
11 three commissioners are present. We, therefore,  
12 have a quorum. I believe Ms. Munds-Dry, you were  
13 about to begin the direct examination of your third  
14 witness, Mr. McQueen.

15 MS. MUNDS-DRY: Yes, sir.

16 KEN MCQUEEN  
17 after having been first duly sworn under oath,  
18 was questioned and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. MUNDS-DRY

21 Q. Good morning.

22 A. Good morning.

23 Q. Would you please state your full name for  
24 the record.

25 A. My full name is Kenley Haywood McQueen,



1 Jr.

2 Q. Where do you reside, Mr. McQueen?

3 A. I reside in Tulsa, Oklahoma.

4 Q. By whom are you employed?

5 A. I'm employed by Williams.

6 Q. What is your position with Williams?

7 A. I am the director for the San Juan Basin.

8 Q. Have you previously testified before the  
9 Commission?

10 A. I have not previously testified before the  
11 OCC.

12 Q. Would you please review your education and  
13 work history for the Commission, beginning with your  
14 education?

15 A. I attended Oklahoma State University from  
16 1973 until 1977 and worked for Conoco as a summer  
17 roustabout during that time period. From 1978 until  
18 1981 I worked for C-E Natco Chemicals in increasing  
19 roles of responsibility. My last assignment was  
20 working as a chemist responsible for corrosion  
21 inhibition in oilfield applications.

22 In June of 1981 I enrolled at the  
23 University of Tulsa, and after three semesters and a  
24 summer term I completed my BS in petroleum  
25 engineering in December of 1992.

1                   Following my graduation at the University  
2 of Tulsa, I have been continuously employed as a  
3 petroleum engineer in roles of increasing  
4 responsibility, first with Amerada Hess Corporation  
5 from December 1982 until July 1994. In July 1994 I  
6 began work at Vintage Petroleum and continued there  
7 until February of 2002.

8                   In February of 2002 I began my employment  
9 at Williams. During my tenure as a petroleum  
10 engineer I have worked in projects in 14 different  
11 states and three different countries. In addition  
12 to my employment at Williams, I served as an adjunct  
13 professor at the University of Tulsa, Petroleum  
14 Engineering Department. I started teaching at TU in  
15 January of 2002. I am currently offering my first  
16 textbook.

17                   I also served as the Chair of the  
18 Department's Industrial Advisory Board. I hold an  
19 EIT certification in the state of Oklahoma, No.  
20 5754. I have previously been certified as an expert  
21 witness in petroleum engineering at the OCD.

22                   I assumed my current role as Director of  
23 the San Juan Basin in March of 2008. During that  
24 time I have been responsible for permitting and  
25 rights of way acquisitions, divestments, drilling

1 and completions, locational construction, planning,  
2 budget reserves, economic evaluations, strategic  
3 initiatives, coordination of commission work, joint  
4 venture operations in both the Green River and San  
5 Juan Basin, and engineering oversight of the  
6 Williams Coal Seam Gas Royalty Trust.

7 Q. Mr. McQueen, are you familiar with the  
8 application --

9 CHAIRMAN FESMIRE: Ms. Munds-Dry, may I  
10 ask a quick question?

11 MS. MUNDS-DRY: Please, sir.

12 CHAIRMAN FESMIRE: Mr. McQueen, you said  
13 you have previously been certified as an expert  
14 before the OCD and I thought you said you never  
15 testified before.

16 THE WITNESS: At the OCC.

17 MS. MUNDS-DRY: At the Commission.

18 CHAIRMAN FESMIRE: I apologize.

19 Q. Mr. McQueen, are you familiar with the  
20 application Williams filed in this case?

21 A. I am familiar with the application.

22 Q. And have you conducted an economic  
23 analysis of the impacts on the wells subject to the  
24 application?

25 A. I have.

1 MS. MUNDS-DRY: Mr. Chairman, we tender  
2 Mr. McQueen as an expert in petroleum engineering.

3 CHAIRMAN FESMIRE: Any objection?

4 MS. MACQUESTEN: No objection.

5 Q. Mr. McQueen, would you please provide a  
6 brief overview for the Commission of Williams'  
7 operations in the San Juan Basin.

8 A. Williams' oldest exploration and  
9 production assets are those that are held in the San  
10 Juan Basin. They were acquired through the  
11 acquisition of Northwest Energy in 1983. Williams  
12 operates approximately 1076 completions in the San  
13 Juan Basin with operations in both New Mexico and  
14 Colorado. We produce approximately 162 million  
15 cubic feet daily from these wells. Our primary area  
16 of operations are concentrated in Rosa Unit located  
17 in San Juan and Rio Arriba Counties. We operate  
18 approximately 735 completions in Rosa, which produce  
19 from five different producing horizons.

20 Rosa collectively produces about 110 to  
21 120 million cubic feet a day, or about 75 percent of  
22 our total operated production in the San Juan Basin.  
23 Additionally Williams holds interests in about 2570  
24 completions across the San Juan Basin that are  
25 operated by others and produce about 62 million

1 cubic feet of equity or net production for Williams  
2 per day.

3 Q. Mr. McQueen, what has been your  
4 involvement with the Rosa Unit Salt Water Disposal  
5 Well No. 2?

6 A. My employees have been responsible for the  
7 permitting, the economics and the design of Rosa  
8 Unit SWD No. 2 and they will also be responsible for  
9 the drilling and the completion of the well. I  
10 personally prepared the most recent C 144 submittal  
11 for this well, the June 18th submittal.

12 Q. Is it usual for you, as the director of  
13 the San Juan Basin, to prepare a C 144 application?

14 A. It's actually highly unusual for directors  
15 to prepare state-required paperwork, but directors  
16 are often required to pinch-hit. My direct  
17 involvement underscores the importance of this well  
18 to the viability of the Rosa operations. I  
19 originally hoped to do the well on October 15th. We  
20 obviously thought the filing of the C 144 in the  
21 preceding November would have given us adequate time  
22 to meet the spec date, but unfortunately, this has  
23 turned out not to be the case.

24 Immediately upon the receipt of the June  
25 9th denial of our C 144 submittal, I cleared my

1 calendar and requested the earliest available  
2 appointment with representatives from the OCD  
3 Environmental Bureau to discuss their decision and  
4 make sure that the Environmental Bureau understood  
5 that Williams was not seeking an exception to the  
6 Pit Rule.

7           That meeting took place on June 15th. In  
8 an effort to clarify our intent on the C 144 for the  
9 Rosa SWD No. 2, and since Mr. Lane was out of the  
10 country, I elected to remain in Santa Fe and revise  
11 our C 144 which was resubmitted on June 18th.

12           My hope was to address all of the issues  
13 described in the Environmental Bureau as  
14 inadequacies on the April 20th C 144 application so  
15 that any subsequent denial could focus singularly on  
16 the crux of this matter; that is, the interpretation  
17 of on-site related to temporary pits in the Rosa  
18 Unit. My hope was to receive the Environmental  
19 Bureau's decision, and in the event of a denial have  
20 time for proper notice so that we could have our  
21 appeal heard at the regularly scheduled OCC docket  
22 on July 15th.

23           Q. But you did find that the Commission set  
24 this date for a special hearing docket to  
25 accommodate our timing issue?

1           A.     Correct..

2           Q.     I would like to discuss with you,  
3     Mr. McQueen, a little bit more your meeting with the  
4     representatives from the Environmental Bureau. Who  
5     did you meet with?

6           A.     I met with Mr. Jones and Mr. Von Gonten.

7           Q.     And what did you discuss at that meeting?  
8     Did you propose and discuss with them Williams'  
9     plans?

10          A.     I did. I wanted to be sure that these  
11     gentlemen understood the intent of the C 144 and  
12     that the intent of the C 144 was to haul cuttings  
13     generated at the SWD site to the 634B site. Clearly  
14     they were of the opinion that those parameters did  
15     not meet the current Pit Rule, so the bulk of the  
16     meeting was focused on the other inadequacies that  
17     were identified on the April 20th application.

18          Q.     There was some questioning yesterday about  
19     liquid management between the two well locations.  
20     Did you discuss what sort of liquid management would  
21     be -- what you expected the liquid management for  
22     this well proposal would be, for the C 144 proposal?

23          A.     We did discuss liquid management and the  
24     fact that the temporary pit was ten miles from the  
25     location. And I indicated to the gentleman at the

1 meeting and also included on my C 144 application  
2 that the primary intent for the use of the 634B  
3 temporary pit for the SWD operations were cuttings  
4 disposal.

5 Mr. Lane discussed yesterday in some  
6 detail the fact that temporary pits can be used for  
7 fluid management, but the reality of the situation  
8 is since this pit is ten miles from the SWD  
9 location, that really is not practical, in my  
10 opinion.

11 Furthermore, in the previous closed-loop  
12 systems that we have drilled, we have had on-site  
13 above-ground tanks of sufficient quantity to hold  
14 the fluids and muds that were required for our  
15 drilling operations and wells.

16 Q. And is that what you shared with Mr. Von  
17 Gonten and Mr. Jones?

18 A. I believe it was.

19 Q. Let's turn to what's been marked as  
20 Williams Exhibit No. 13. I think we have previewed  
21 this yesterday. If you could identify and review  
22 this display for the Commission?

23 A. I think 13 will help clarify some of the  
24 questions that were asked yesterday regarding the  
25 geography that's involved in the Rosa Unit. Exhibit



1 13 is a base map that shows the geographic layout of  
2 our Rosa Unit. Rosa Unit is divided by the San Juan  
3 River. We refer to the portion west of the river or  
4 on the San Juan County side as Middle Mesa. And  
5 Rosa Unit occupies the southeast corner of Middle  
6 Mesa.

7 The portion of Rosa Unit located east of  
8 the San Juan River or the Rio Arriba County portion  
9 is referred to as East Rosa. Most of the Middle  
10 Mesa portion of Rosa is managed by the BLM.  
11 However, on the east side, both the BLM and the  
12 Forest Service manage the servicing. On the map the  
13 BLM him portion is shown in yellow and the Forest  
14 Service is shown in blue.

15 The Rosa Unit 94 SWD was our first SWD in  
16 East Rosa. It became operational in 1989. This SWD  
17 met its permitted capacity in 2008. Disposal  
18 operations were suspended at the Rosa Unit 94 SWD in  
19 October of 2008. The well was plugged and abandoned  
20 on October 31, 2009.

21 Upon cessation of injection at the Rosa  
22 Unit No. 94 SWD, our Rosa Unit SWD No. 1 became the  
23 sole disposal site for produced water in East Rosa.

24 Q. I think we also touched on this yesterday.  
25 If the SWD No. 1 -- assuming SWD No. 1 doesn't take

1 all the produced water, where does the rest of the  
2 produced water go?

3 A. Well, relying upon a salt water disposal  
4 well for East Rosa, a single salt water disposal  
5 well represents an unacceptable risk to our  
6 production operations. If the Rosa Unit SWD No. 1  
7 goes down for any reason, our only course of action  
8 is to haul all of the produced water from the East  
9 Rosa to a non-unit disposal facility or to shut-in  
10 gas production. Fortunately, today we have had no  
11 down time at the Rosa SWD No. 1 since the plugging  
12 of the Rosa 94 SWD.

13 Q. And I believe Mr. Lane yesterday discussed  
14 that some of the produced water currently now goes  
15 to non-unit disposal wells?

16 A. Williams does not have an SWD facility in  
17 Middle Mesa. So all of the produced water from our  
18 Rosa operations in Middle Mesa is hauled to non-unit  
19 disposal facilities. All of our Rosa water  
20 currently generated east of the river, east of the  
21 lake, the Rio Arriba side, is going to SWD 4.

22 Q. If you could please explain to the  
23 Commission why is the Rosa Unit Well No. SWD No. 2  
24 important to Williams' operations in the Rosa Unit?

25 A. Well, the Rosa Unit SWD is essential to

1 our continued operations because it will provide 100  
2 percent redundancy in East Rosa for our disposal  
3 capabilities. Additionally, the anticipated  
4 approval of the Fruitland Coal downspacing, which we  
5 think will likely happen next year, will also be  
6 producing an additional volume of water to dispose.

7 Q. Let's turn to Williams Exhibit No. 14,  
8 Mr. McQueen. If you could review that display for  
9 the Commission.

10 A. I meet fairly regularly with the two  
11 surface agencies in East Rosa, namely the Forest  
12 Service and the Bureau of Land Management. One of  
13 their top priorities is to reduce truck traffic on  
14 the roads because truck traffic is responsible for  
15 substantial road degradation, GHG emissions, dust,  
16 and represents an increased potential for vehicular  
17 accidents as well as habitat fragmentation. The  
18 road degradation is especially noteworthy during  
19 periods of adverse weather since all of the roads in  
20 the Rosa Unit are unpaved.

21 This year we received approval, capital  
22 approval of dollars for the installation of an SWD  
23 gathering system. Those two projects are shown in  
24 the dotted blue lines on Exhibit 14. As you can  
25 see, our previous system, which is shown in black,

1 was only a couple of miles long and transported  
2 water from area wells to the now defunct 94 SWD.

3 The southern portion of the system is now  
4 in service and has eliminated four water hauling  
5 trucks from daily service. The northern portion is  
6 in the final stages of permitting and we hope to  
7 have construction underway before closure.

8 Currently all of East Rosa is served by  
9 the Rosa Unit SWD No. 1. The brown area in East  
10 Rosa represents the service area for the Rosa Unit  
11 SWD No. 1 once the Rosa Unit SWD No. 2 is in  
12 service.

13 The darker brown area represents the area  
14 where water hauling by truck will be eliminated due  
15 to our water pipeline installation. The light brown  
16 area represents the area where water hauling will  
17 continue for the new term.

18 The installation of the water gathering  
19 system has other immediate environmental benefits.  
20 Due to the topography along the pipeline, transfer  
21 pumps are required from time to time to efficiently  
22 move water from its source to the disposal well.  
23 Pumps will be powered by electrical generation  
24 through cap stone generators. These cap stones are  
25 TR 3 rated and represent the minimum GHG emission

1 alternatives generating electricity in the field.

2 A surplus electricity generated will be  
3 transmitted in electrical cables laid in the same  
4 ditches as the water lines to adjacent prime movers  
5 on our artificial lift equipment where the current  
6 gas burning equipment will be replaced by electric  
7 motors, again reducing our GHG impact.

8 Reduction of truck traffic and it's  
9 associated impacts is one of several initiatives  
10 that Williams E & P has voluntarily undertaken in  
11 recent years. We have also implemented green  
12 completions to virtually eliminate our methane  
13 emissions during the completion operation. We've  
14 also utilized produced water and recycled fullback  
15 water in our stimulation operations. This proactive  
16 approach to voluntarily solving problems has  
17 garnered Williams five different awards and  
18 recognitions by the Bureau of Land Management.

19 Our original hope was to submit a budget  
20 request for 2011 capital to continue our SWD  
21 gathering project by connecting the Rosa Unit SWD  
22 No. 1 and the Rosa SWD No. 2 by pipeline. This is  
23 shown by the orange dotted line on Exhibit 14. That  
24 connection would allow us to shuttle water between  
25 the locations in the event that repairs were

1 required at one of the SWD facilities. It would  
2 also allow us to connect additional producers along  
3 the pipeline route between Rosa SWD No. 1 and Rosa  
4 Unit SWD No. 2.

5           However, since management has indicated  
6 that we must demonstrate the viability of the salt  
7 water disposal well at the Rosa Unit SWD 2 before  
8 the pipeline extension is approved, coupled with the  
9 fact that our 2011 budget submittals are due within  
10 the next few weeks, it's probable that the delay in  
11 spudding the Rosa Unit SWD No. 2 will defer the  
12 approval of the connecting pipeline project to the  
13 2012 budget.

14           There's one final impact that relates to  
15 the delayed operational start of the Rosa SWD No. 2.  
16 That is the produced water from the east sides of  
17 Rosa would continue to be trucked to the Rosa Unit  
18 SWD No. 2 until the Rosa Unit SWD 2 begins service.

19           Q.     Mr. McQueen, let's turn to what's marked  
20 as Williams Exhibit 15. If you could explain to the  
21 Commission why Williams picked this location for the  
22 Rosa Unit SWD No. 2.

23           A.     The siting of Rosa SWD No. 2 was a  
24 function of a number of considerations. The most  
25 important of these was obtaining geographic

1 diversity so as to minimize total truck miles to  
2 their respective SWD facilities. This consideration  
3 solely suggests a U.S. forest surface location.

4           We consulted the Forest Service and they  
5 had several requirements related to surface siting.  
6 Most be significantly, the facility had to be  
7 located adjacent to an existing year-round road. In  
8 other words, the Forest Service did not want any  
9 additional surface disturbance for roads to  
10 accommodate this facility.

11           What I have shown in Exhibit 15  
12 highlighted in red are the year-round roads that  
13 were available to us for considered location for the  
14 surface.

15           The Forest Service also requested that we  
16 select the location to minimize visual blight, so  
17 this pretty much required the siting of the SWD in a  
18 valley rather than on a mesa or on a butte. An  
19 additional consideration was this facility would  
20 require a larger footprint than typical production  
21 pads in order to accommodate multiple trucks  
22 unloading and turning around, plus the required  
23 facilities for the SWD operation.

24           The forest side of East Rosa is  
25 topographically challenged. There's not an

1 abundance of flat spots and the presence of multiple  
2 archaeological sites is widespread, also reducing  
3 the viability of many potential SWD sites. When all  
4 of these surface factors were evaluated, the spot  
5 shown on Exhibit 15 was selected and approved by the  
6 U.S. Forest Service.

7           It's probably worth mentioning that the  
8 site selection for this facility began in 2008 when  
9 Rosa No. 4 -- excuse me, the Rosa Unit No. 94 SWD  
10 went offline, because it's not unusual for APDs in  
11 the forest side of Rosa to require 18 to 24 months  
12 to secure.

13           Our practice typically is to locate our  
14 surface locations at environmentally non-sensitive  
15 areas, and based on our existing cathodic wells we  
16 believe that our site would accommodate a temporary  
17 pit for our drilling operations. Unfortunately, the  
18 optimal surface site turned out to have shallow  
19 groundwater, which has led us where we are today.

20           Q.     Mr. McQueen, let's turn to Williams  
21 Exhibit 17. Would you identify and review this  
22 display for the Commission.

23           A.     No. 17 is basically a continuation of base  
24 maps that we have shown before but we have spotted  
25 some additional wells on here: The Rosa 394A, the



1 Rosa 635C and the Rosa 634B. We have also drawn to  
2 scale the distances between SWD 2 and those various  
3 locations and also noted on here that the distance  
4 to commercial disposal from the SWD 2 location to  
5 Envirotech is approximately 75 miles one way.

6 Now, yesterday there were several  
7 questions regarding BP and 394 and I thought I might  
8 take this opportunity just to clarify some of the  
9 unusual situations that we have present in San Juan  
10 Basin. In the federal units an operator is  
11 designated to operate all the wells within the  
12 federal unit regardless of working interest.

13 The intent is the operator will drill  
14 wells. Once the wells are drilled and deemed  
15 commercially viable by the BLM then those wells  
16 become part of a larger participating area, unitized  
17 property that exists within the federal unit. But  
18 until those wells come into the participating area  
19 they are referred to exist on a drill block basis  
20 with the leasehold that's in place.

21 In East Rosa, the participating area has  
22 not been expanded out there and there's a number of  
23 locations where some proration units are either 100  
24 percent owned by Williams or 100 percent owned by  
25 BP. In fact, this is quite common across San Juan

1 Basin. Williams, for example, has tracts of land  
2 that were at one time 100 percent owned entirely  
3 within the cooperating units until those became part  
4 of the participating area. So the tract of land,  
5 the proration, the 320 acres where the 394 and the  
6 394A are located are 100 percent owned by British  
7 Petroleum but are operated by Williams Production,  
8 LLC.

9 The process is as we plan for budget and  
10 drilling schedules each year, BP notifies us of  
11 their request for permitting for future wells and  
12 for wells that they would like to have drilled in  
13 the coming year. Some years ago BP had requested  
14 that both the 394 and the 394A be permitted on their  
15 behalf and previously had asked those to be  
16 scheduled for drilling this summer.

17 We received notification in March, well  
18 before the gulf incident, that they were deploying  
19 their San Juan capital in other places and they  
20 asked us to drop both of the wells from the drilling  
21 schedule.

22 So that is the explanation for why our  
23 original C 144 contemplated moving the cuttings just  
24 a mile or so up the road to the 394/394A location.

25 There was some question yesterday also of

1     whether it would be viable simply since we had an  
2     APD in place to move to the 394 location and build a  
3     pit strictly for the disposal of cuttings from the  
4     SWD No. 2. The truth of the matter is that's not  
5     really an economically viable alternative, because,  
6     first of all, we would have to construct a road into  
7     the location, clearing the location and all the rest  
8     that would go with that. That really doesn't make  
9     sense unless you are going to drill a well there.

10           The other consideration is we have an RMP  
11     in place for the San Juan Basin and we are trying to  
12     minimize our surface disturbances as much as  
13     possible so when we have a surface disturbance we  
14     want to make sure we are drilling a well on that  
15     location.

16           Q.     For the record, Mr. McQueen, what is an  
17     RMP?

18           A.     It's a resource management plan.

19           Q.     Also on this map you indicated you show  
20     the Rosa Unit 634B. Why did Williams pick the 634B  
21     to haul the cuttings to?

22           A.     The 634B was the next closest location we  
23     had on the drilling schedule for this, the next  
24     closest location to the SWD No. 2.

25                   So very simply stated, our thinking was

1 something along these lines. Previously with C 144s  
2 we had been allowed to commingle wastes of multiple  
3 wells in the same pad. So our assumption was that  
4 there was no problem with commingling wastes in a  
5 pit. Previously on a closed-loop systems we had  
6 hauled cuttings from those wells to commercial  
7 disposal so there obviously wasn't a problem with  
8 hauling cuttings.

9           So we reasoned and we believe that there's  
10 nothing in the Pit Rule that precludes this; that  
11 since we have an open operating temporary pit in the  
12 vicinity of the SWD 2 operations that it simply made  
13 logical sense to haul the cuttings ten miles for  
14 disposal rather than hauling them 75 miles for  
15 disposal.

16           There's both an economic and an  
17 environmental impact here. Clearly the  
18 environmental impact is that the truck traffic is  
19 making a ten-mile round trips rather than 150 mile  
20 round trips to Envirotech. The additional thing to  
21 consider, as I mentioned, all of the roads in Rosa  
22 are unpaved and the required time for round trip  
23 truck traffic from SWD 2 to Envirotech, round trip  
24 for 150 miles requires about seven and a half hours.

25           Q.     Have you performed any sort of economic

1 analysis or estimate of what it would cost for  
2 Williams to haul the cuttings to Envirotech?

3 A. Based on the cost of hauling cuttings,  
4 this 150-mile round trip plus the cost of disposal,  
5 we estimate that incremental cost at about \$205,000.

6 Q. Mr. McQueen, what other adverse impacts  
7 will there be if Williams is required to haul the  
8 waste to Envirotech?

9 A. Well, Mr. Lane discussed the GHG emissions  
10 related to this level of truck traffic. But in  
11 addition to the GHG, the truck traffic will  
12 adversely impact the road conditions. That is the  
13 wear and tear of the roads, generate additional  
14 dust, cause fragmentation of wildlife habitat and  
15 increase the likelihood of vehicular accidents. I  
16 think it's important that the public also is  
17 utilizing these roads, both on the BLM and the  
18 Forest Service, for recreational use.

19 Q. There were some questions yesterday,  
20 Mr. McQueen, about our timing and some of our  
21 drilling deadlines. If you could explain to the  
22 Commission, what is Williams' timing for drilling  
23 and completing the Rosa Unit SWD No. 2?

24 A. My drilling engineer said they estimated  
25 that the time required to drill the well is 42 days.

1 The time to complete it is 18 days. At that point  
2 in time we will turn the well over to the production  
3 group and they will facilitate the site and they  
4 said that requires 30 days to facilitate the site.

5 Q. If you do the math for us, how long is  
6 that?

7 A. Approximately three months from the time  
8 we spud to when we anticipate having the facility  
9 operational.

10 Q. If we back that out, is that why we said  
11 that we need to be drilling by August 1st?

12 A. That's why we would like to get underway  
13 by August 1st.

14 Q. If Williams is unable to drill by August  
15 1st, have you been exploring any ways we can try to  
16 shorten that time or give ourselves additional time  
17 in some way?

18 A. We have. And on a daily basis, that's  
19 what ends up occupying a great deal of my time is  
20 considering and making arrangements for possible  
21 contingencies for all of our projects in the event  
22 that we encounter a bump in the road. With drilling  
23 and completion activities, it seems like things  
24 never go quite according to how you hope they go, so  
25 in order to be successful, one always has multiple

1 contingencies in place.

2           Let me discuss some of these  
3 contingencies. First of all, I think it's worth  
4 mentioning that since we are on the forest side of  
5 Rosa, we typically have a winter closure imposed on  
6 us that begins November 1st primarily for wildlife  
7 considerations.

8           On the BLM side of our operations, it's  
9 mostly December 1st. It's November 1st in a few  
10 areas but mostly December 1st. Then both of those  
11 agencies allow no rig activity until April 1st.

12           The AFE estimate that my group prepared  
13 for the 42 days of drilling time was based on the  
14 assumption that we would utilize one of the existing  
15 truck-mounted double rigs that typically work in the  
16 San Juan Basin. Aztec Well Service Rig 124781 would  
17 be a typical example. These are not particularly  
18 large rigs but they are adequate for the depths that  
19 we particularly drill in the San Juan Basin.

20           We do have a larger non-San Juan rig  
21 working for us at the present time. It's a triple.  
22 We mobilized the rig into Utah because we were doing  
23 some extended depth drilling. If we were able to  
24 utilize that rig, for example, my drilling are  
25 engineer tells me we might be able to shave as much

1 as 12 days off of 42 days that was in the previous  
2 AFE. Of course these ATEs are just estimates. They  
3 are part of a plan. They are based on what we have  
4 seen in the past, averages for penetration rates and  
5 so forth. Sometimes you are lucky and you can beat  
6 the averages and sometimes you are not and the flag  
7 is a little bit longer.

8           So our first choice in all of this would  
9 be to get the well operational before closure, and  
10 again, I have mentioned that we think we can shave  
11 some time off of the drilling if we utilize a  
12 different rig than what we considered in the AFE.

13           There's some other considerations as well.  
14 If we are significantly delayed, I think our next  
15 alternative would be to drill and complete the well  
16 this fall and complete it next spring, and then the  
17 contingency beyond that, if we run even later in the  
18 schedule, would be to drill the well this fall and  
19 complete and facilitate it next spring. Obviously,  
20 that's not our first choice because if we have a  
21 problem at the SWD No. 1, it could potentially  
22 impact our production and those type of problems  
23 here in the winter months are always more difficult  
24 to deal with than they are other times. So we have  
25 looked at several contingencies. At this point my



1 planning and my contingency consideration is largely  
2 related to when I have a decision on the C 144.

3 Q. Have you discussed or approached the  
4 Forest Service about some of our timing issues given  
5 for the Rosa SWD No. 2 they are the service  
6 management agency?

7 A. We have continually discussed with the  
8 Forest Service our timelines and the delays that we  
9 have encountered in getting this facility  
10 operational because the Forest Service has been very  
11 encouraging about us proceeding on this facility.  
12 They recognize the amount of truck traffic that  
13 would be reduced by having this facility. They have  
14 also been very encouraging about connecting the two  
15 SWD lines or the two SWD facilities together. As a  
16 consequence to that, they have recognized that  
17 hunting season is typically the first month of  
18 closure and that there's a fair amount of traffic on  
19 the roads due to hunting season.

20 And that, in conjunction with the fact  
21 that this facility is located immediately adjacent  
22 to an existing road, they have indicated that if we  
23 run late on the schedule they would consider giving  
24 us a 30-day extension and closure to facilitate the  
25 facility, that is to move our equipment in to the

1 site. They have asked that all rig activities be  
2 concluded by October 31st.

3 Q. And you said they considered. They  
4 haven't given you --

5 A. We have not formally asked because we  
6 would not make that request unless it was absolutely  
7 necessary. But they have indicated a willingness to  
8 consider, and we anticipate a likelihood to approve  
9 that request for an extension of 30 days to  
10 facilitate the Rosa Unit SWD No. 2.

11 Q. You have just been discussing that you  
12 have been talking about Williams' plans with the  
13 Forest Service. Have you discussed this application  
14 with the service owners for the BLM and the Forest  
15 Service?

16 A. We have discussed this application several  
17 times with the Forest Service.

18 Q. If you could turn to what's marked as  
19 Williams Exhibit 19. What is this?

20 A. During the week of April 5, I personally  
21 met with representatives of the U.S. Forest Service,  
22 representatives of Bureau of Land Management  
23 Farmington District and representatives of the OCD  
24 Aztec Office to brief them on our approach to the  
25 SWD 2. And as part of that discussion, we indicated

1 to both surface management agencies get that our  
2 plan was to submit a C 144 whereby the drilling  
3 cuttings that would be generated at the SWD No. 2  
4 would be hauled to an adjacent open temporary pit  
5 for disposal.

6 Both the Forest Service and the BLM were  
7 aware that our original intent was to haul to either  
8 the 394 or the 394A. They were also aware that BP  
9 had pulled the funding from those wells, and they  
10 were aware the next closest location that we had on  
11 the operation schedule for Rosa was the 634B and  
12 they support the idea that we propose, that this  
13 approach represented an opportunity to minimize  
14 economic impacts as proposed to the alternative of  
15 hauling waste, and as a result of that presentation  
16 Mr. Katron, who is the district ranger for the  
17 Jicarilla District of the U.S. Forest Service, has  
18 written a letter of support to that end.

19 Q. In that same vein, what is Exhibit No. 20?

20 A. On the afternoon of April 6th I met with  
21 the BLM Farmington office and apprised them of the  
22 situation of where we stood on SWD No. 2 facility.  
23 I apprised them of our intent to explore, under the  
24 existing Pit Rule, the idea of hauling waste  
25 generated from the SWD 2 to an adjacent operational

1 temporary pit. As you can see from the letter, they  
2 also support the idea that this is the minimal  
3 environmental impact to this operation.

4 Q. Mr. McQueen -- may I approach,  
5 Mr. Chairman?

6 A. You may.

7 Q. Yesterday morning we learned that the BLM  
8 State Office had faxed a letter to Mr. Fesmire, and  
9 that's what I am handing you here today.  
10 Mr. McQueen, this has been marked as OCD Exhibit 24.  
11 For the record, I note it appears to be faxed at  
12 4:13 on July 28th, the late afternoon, the day  
13 before the hearing began. If you could go to  
14 Paragraph 2 of this letter. It notes that the BLM  
15 Field Office, Farmington Field Office, had a meeting  
16 with Williams in March. When did you indicate that  
17 you had a meeting with the BLM regarding this  
18 proposal?

19 A. I did not find a March meeting on my  
20 calendar, but I know we met with them April 6th  
21 because April 6th is my birthday and I ended up  
22 spending the week in Farmington meeting with surface  
23 management officials rather than maybe in Tulsa with  
24 my family. So I --

25 CHAIRMAN FESMIRE: And he is still mad

1 about it.

2 Q. Mr. McQueen, if you could perhaps read  
3 that first sentence in its entirety. I think this  
4 gets to the crux of what they are looking for.

5 A. "Although the Bureau of Land Management  
6 (BLM) Farmington Field Office (FFO) met with  
7 Williams in March 2010 to discuss Williams' proposal  
8 to NMOCD, no formal application for a closed loop  
9 drilling mud system and off-site burial of drilling  
10 wastes has been received by the FFO."

11 Q. If you could go down then to the next  
12 paragraph and read that to the Commission.

13 A. Beginning with since?

14 Q. Yes, sir.

15 A. "Since a closed loop drilling mud system  
16 is necessary to mitigate potential impacts to  
17 groundwater, if Williams proposed to dispose of the  
18 drilling waste at an off-site location, Williams  
19 would be required to submit a written variation  
20 request, BLM Sundry Notice, Form 3160-5 to the FFO.  
21 Upon receipt of the sundry notice the FFO will  
22 evaluate the existing environmental analysis  
23 performed for the subject wells to determine if it  
24 is adequate to allow for the variation or complete  
25 additional environmental analysis."

1           Q.     For the record, Mr. McQueen, who signed  
2     this letter?

3           A.     This letter was signed by Linda Rundell,  
4     the State Director for the BLM.

5           Q.     Have you met with Ms. Rundell to discuss  
6     the proposal with her personally?

7           A.     I have not.

8           Q.     Does Williams agree to comply with their  
9     request to submit a sundry notice?

10          A.     We will submit a sundry notice to the BLM,  
11     yes.

12          Q.     Is there anywhere in the letter that  
13     indicates that they have withdrawn their support as  
14     we have provided in Exhibit 20?

15          A.     There is not.

16          Q.     Mr. McQueen, in your opinion will the  
17     granting of this application be more efficient for  
18     Williams' operations in the Rosa Unit?

19          A.     It will.

20          Q.     In your opinion, will the granting of this  
21     application be more economic to Williams' operations  
22     in the Rosa Unit?

23          A.     It will.

24          Q.     In your opinion, will the application be  
25     in the best interest of the conservation and the

1 prevention of waste of oil and gas?

2 A. Yes.

3 Q. Will this application be protective of the  
4 environment and public health?

5 A. Yes. We believe, in fact, that the  
6 proposal that we had advanced is the least impactful  
7 of all alternatives for disposing of waste generated  
8 at the SWD No. 2.

9 Q. Were Exhibits 13, 14, 15, 17, 19 and 20  
10 either prepared by you compiled under your direct  
11 supervision or kept in Williams' business records in  
12 its normal course of business?

13 A. They were.

14 MS. MACQUESTEN: Mr. Chairman, we move the  
15 admission into evidence of Exhibits 13, 14, 15, 17,  
16 19 and 20.

17 CHAIRMAN FESMIRE: Ms. MacQuesten, any  
18 objection?

19 MS. MACQUESTEN: No objection.

20 CHAIRMAN FESMIRE: Exhibits 1, 14, 15, 17,  
21 19, and 20 will be admitted into the record. You  
22 are not going to admit the OCD Exhibit 21?

23 MS. MUNDS-DRY: OCD 24?

24 CHAIRMAN FESMIRE: They still have the  
25 option of not admitting it. It's up to you. I just

1 want to call it to your attention.

2 MS. MUNDS-DRY: Sure. We can move  
3 awkwardly the admission of OCD Exhibit No. 24 or we  
4 can label is a Williams exhibit number. Maybe that  
5 would make more sense.

6 CHAIRMAN FESMIRE: That would probably  
7 make more sense.

8 MS. MUNDS-DRY: We will call it Williams  
9 Exhibit No. 21.

10 CHAIRMAN FESMIRE: Ms. MacQuesten, do you  
11 have an objection?

12 MS. MACQUESTEN: No.

13 CHAIRMAN FESMIRE: Williams Exhibit 21 is  
14 admitted to the record.

15 (Note: Exhibits 1, 14, 15, 17, 19 and 21  
16 admitted.)

17 MS. MUNDS-DRY: Mr. Fesmire, before I pass  
18 the witness, we had the matter of Exhibit 3  
19 yesterday, and I'm not sure how you want me to  
20 handle this, if you want me to try to get this in  
21 through Mr. McQueen or just offer it to Ms.  
22 MacQuesten.

23 CHAIRMAN FESMIRE: I think you laid the  
24 proper foundation yesterday. Her objection was  
25 completeness and you are telling the Commission that



1 you have included the documents that would make that  
2 a complete exhibit.

3 MS. MUNDS-DRY: Yes, sir. As I understand  
4 it, she wanted the attachments to the letter.

5 CHAIRMAN FESMIRE: She wanted it to be  
6 complete.

7 MS. MUNDS-DRY: If I may approach, I can  
8 give her the complete exhibit?

9 CHAIRMAN FESMIRE: You may.

10 MS. MUNDS-DRY: As you can see, sir, and  
11 verify, it includes the letter with the hearing  
12 application and the hearing application's  
13 attachments which included the March 11 denial of  
14 the C 144 and their reference to the hearing  
15 application, the June 9th denial and the June 24  
16 denial. Exhibit D is not in the best order, right  
17 after the application, I believe, and it shows the  
18 addresses, the notification list of who it went to.  
19 We showed you yesterday in the Exhibit No. 37 which  
20 included the green cards.

21 CHAIRMAN FESMIRE: Ms. MacQuesten, does  
22 that satisfy your objection?

23 MS. MACQUESTEN: Yes, I have no further  
24 objection.

25 MS. MUNDS-DRY: At this time then we move

1 the admission of Williams Exhibit 3 into evidence.

2 CHAIRMAN FESMIRE: At this time Williams  
3 Exhibit No. 3 as completed will be admitted into the  
4 record.

5 (Note: Williams Exhibit 3 admitted.)

6 MS. MUNDS-DRY: At this time, that  
7 includes my direct examination of Mr. McQueen. We  
8 pass the witness.

9 CROSS-EXAMINATION

10 BY MS. MACQUESTEN

11 Q. Good morning.

12 A. Good morning.

13 Q. In your testimony you discussed several  
14 reasons that the SWD No. 2 was important, and I  
15 wanted to make sure that I understood all those  
16 reasons. What I heard was that the SWD No. 2 will  
17 provide backup to the No. 1?

18 A. 100 percent redundancy.

19 Q. That it may also become more important to  
20 Williams as they expand their operations they have  
21 more produced water to dispose of?

22 A. Correct.

23 Q. That you need to have the SWD in place in  
24 order to get your budget proposal through for the  
25 gathering system for the produced water?

1           A.     The gathering system that would connect  
2     SWD 1 and SWD 2, yes.

3           Q.     And that is important -- could you explain  
4     that reason again?

5           A.     Sure. As with the case of most drilling  
6     operations, there are no guarantees that when you  
7     get to TD that you are going to encounter porous  
8     media. And that is the case with the Entrada. We  
9     have done the best analysis of geology that we can  
10    to understand the Entrada, which is going to be the  
11    zone of injection at that site. But the fact of the  
12    matter is there's been very little Entrada drilling  
13    across the San Juan Basin, just a handful of wells,  
14    and virtually all of those have been used for  
15    disposal.

16                    So in drilling this well, I do not have  
17    100 percent guarantee that when I complete the well  
18    that there will be porous formation present to  
19    accept the injection of produced water. And what my  
20    management has indicated to me is until you can  
21    demonstrate that you have completed a viable  
22    injection well at this location that will accept the  
23    quantity or volume that is required, we are not  
24    going to approve the pipeline to connect the two SWD  
25    facilities.

1           Because clearly, if I drill this well and  
2   it would not accept water and I was unable to  
3   remediate that, clearly it would be of no benefit  
4   for us to lay a pipeline from SWD 1 to a location we  
5   were not going to inject.

6           Q.     Sure, I understand your budget folks want  
7   to know there's a working well before they build a  
8   pipeline.

9           A.     Correct.

10          Q.     But my question, probably asked in a bad  
11   manner, but my question was that connecting  
12   pipeline, what will that do for Williams?

13          A.     Well, it allows us to shuttle the entire  
14   volume of produced water from one site to another  
15   site, so if my SWD 1 well requires any type of work  
16   order, I can simply change a couple valves and shift  
17   my entire volume of produced water to the SWD No. 2  
18   through in a proposed pipeline.

19                 Alternatively, if I have work at the SWD  
20   2, I can shift work to the SWD 1. That gives me not  
21   only 100 percent redundancy, but it also makes it  
22   possible to shift that water from one SWD facility  
23   to the other SWD facility via pipeline rather than  
24   truck driving.

25                 Additionally, the SWD line between the two

1 wells runs through our producing area. So any  
2 producing wells that are adjacent to the backbone or  
3 the main line between the two wells will have the  
4 opportunity to also be connected into that main  
5 line, thereby reducing truck traffic that's  
6 required.

7           And it's worth mentioning at this point  
8 that there are other economic considerations for  
9 reducing truck traffic. As I mentioned earlier, all  
10 of the roads in Rosa are unpaved. When we have  
11 adverse weather, it becomes very difficult to  
12 transport produced water via truck. In fact, the  
13 BLM and the Forest Service have rut regulations in  
14 place. And when the roads get to a point that they  
15 are muddy, we are simply prohibited from moving  
16 these heavy SWD trucks across the lease roads.

17           So at that point I have minimal tankage  
18 located at some of the production sites. When those  
19 tanks fill, I have no alternative but to shut in my  
20 gas production. Then when the weather clears and we  
21 are able to remove the produced water by trucks,  
22 then we put those wells back on line but they don't  
23 immediately come back on line. It takes some time  
24 of pumping for them to get back to the point that  
25 they were before we shut them in.

1           So it's very much an advantage to us as  
2 operators to be able to move as much of our produced  
3 water through pipelines rather than trucks, because  
4 the pipelines obviously aren't affected by adverse  
5 weather.

6           Q.     Getting the pipeline between the SWD 1 and  
7 the SWD 2 is important so that the SWD 2 can perform  
8 its redundancy function but also so you can use that  
9 pipeline as a gathering system for the produced  
10 water in that area?

11          A.     The drilling of the SWD 2 will provide  
12 redundancy. The advantage of having the pipeline is  
13 that we have the redundancy without the requirement  
14 of truck traffic.

15          Q.     And you are concerned that a delay here  
16 may delay the budget for that pipeline?

17          A.     That's one of my concerns, yes.

18          Q.     I believe at one point in your testimony  
19 you said that getting the SWD 2 in place was  
20 essential to Williams' operations; is that right?

21          A.     Yes.

22          Q.     Well, if it's essential to the operations  
23 and the timing is so crucial, why couldn't Williams  
24 commit to dig and haul of the waste at the SWD 2  
25 back in November of last year?

1           A.     Well, I think the alternative plan, the  
2 contingency plan for SWD No. 2 was transferring --  
3 the alternative plan would be transferring cuttings  
4 from the closed-loop system to an approved disposal  
5 site. That is the alternative. In fact, we have  
6 filed the C 144 to that effect as a possible  
7 contingency if we are unsuccessful with the current  
8 pit application.

9                     But the reality is that as long as we  
10 operate in San Juan Basin, and again, as I indicated  
11 in my testimony, we try to locate our surface  
12 locations where there is not shallow groundwater,  
13 but from time to time we have no alternative but to  
14 do that. So we anticipate that closed-loop systems  
15 will be a continuing part of our operations as long  
16 as we are in San Juan Basin.

17                    To that end, if this C 144 is successful,  
18 we believe there will not be other applications to  
19 haul drilling cuttings generated at the closed-loop  
20 system to an adjacent temporary pit that's currently  
21 in operation by drilling.

22                    But you are asking the question of  
23 criticality, and that basically boils down to a  
24 business decision, an assessment of risk. And we  
25 have assessed the risks associated with the timeline

1 and we believe that as long as we get the SWD  
2 operational by closure, then we have met the  
3 requirements that we need as far as having viable  
4 redundancy in our operation.

5 Q. You mentioned that it's essentially a  
6 business decision.

7 A. Uh-huh.

8 Q. The dollar figure I heard was that it's  
9 going to cost -- if you had to dig and haul it would  
10 be \$205,000 more?

11 A. That's correct.

12 Q. So you are with a weighing the cost of  
13 \$205,000 versus the risk that you may not be able to  
14 produce additional wells because you can't dispose  
15 of the water; that you may have the SWD No. 1 go  
16 down and have to haul and produce water off of your  
17 unit; that you may risk losing the pipeline between  
18 SWD No. 1 and SWD No. 2 and your business decision  
19 is it's better to fight about the \$205,000?

20 A. Those are all small contingent of many  
21 business risks that we assess on a daily basis. And  
22 the fact that we have had no down time at SWD 1 over  
23 the last year or so gives us a fair amount of  
24 confidence that everything is operating as designed  
25 and we are not anticipating any down time during the



1 next several months.

2 Q. \$205,000, what --

3 A. Well, \$205,000 is really quite a lot of  
4 money. The fact of the matter is this will be the  
5 sixth closed-loop system that we have employed since  
6 the pit was revised. If I had saved this equivalent  
7 amount of money on the preceding wells, I could have  
8 basically drilled a new producer in my field for the  
9 cost of disposing of those cuttings.

10 Clearly that investment of drilling a new  
11 well yields much more benefit to Williams and to the  
12 State and to the federal government than hauling  
13 those wastes to Envirotech.

14 So I would say, \$205,000 is a significant  
15 consideration in my operations.

16 Q. That \$205,000, what percentage of the  
17 total cost of drilling fields SWD 1 and SWD 2 would  
18 that represent?

19 A. Well, I don't have my calculator, but the  
20 well is AFE'd at 5.5 million dollars.

21 Q. You mentioned --

22 A. And 2 percent -- 1 percent may sound like  
23 an insignificant amount, but the reality is that all  
24 of our capital projects are evaluated from a greater  
25 return standpoint to a larger corporation. And

1     unfortunately, our corporation is capital  
2     constrained. We do not -- we have far more projects  
3     that we would like to undertake than we have the  
4     money to fund.

5             So all of those projects, not just mine in  
6     the San Juan Basin, but all of those projects are  
7     prioritized across the company, and my SWD project  
8     and my drilling projects have to compete  
9     economically with my colleague's projects in Peonce  
10    and Marcellus and Green River, Powder River, and the  
11    other places we have operations.

12            And 1 percent rate of return can make the  
13    difference of whether a project is funded or whether  
14    a project is not funded. And I am already at a  
15    disadvantage from having assets in New Mexico from a  
16    standpoint that I have to pay 9 percent severance  
17    tax in New Mexico for our operations. My colleagues  
18    in Pennsylvania drilling the Marcellus well have no  
19    state severance tax.

20            So my projects have to compete with all of  
21    the broad projects that are going on across the  
22    company. So every dollar that I can save on my  
23    project, every hundred dollars, every thousand  
24    dollars I can save on my projects make my projects  
25    more viable to compete for capital from the larger

1 corporate budget.

2 Q. You talked about the August 1st deadline  
3 and suggested that we might have a little  
4 flexibility in the August 1st deadline; is that  
5 correct? In other words, if you can't get an order  
6 allowing you to drill under your current C 144  
7 application by August 1, you still might like to  
8 have that order on August 2 or August 3 or August 4  
9 or some other date; is that right?

10 A. That's a fair statement. Time is of the  
11 essence here. Sooner is better. But the longer the  
12 time lapses that I don't have the C 144, then that  
13 addresses some of my contingency plan. Some  
14 contingencies, if we are delayed here, are not  
15 possible alternatives. If we get a sooner decision,  
16 then other contingencies may be possible to  
17 consider.

18 Q. You also mentioned that you have a backup  
19 plan of a pending application to dig and haul the  
20 waste.

21 A. We have a pending C 144 as a possible  
22 contingency to haul the waste generated from the  
23 closed-loop system to Envirotech, yes.

24 Q. Is there some point in time at which you  
25 would say if I don't have a permit from the OCC on

1 my June 18 application I'm going to ask that the dig  
2 and haul permit be granted so I can proceed with  
3 this well?

4 A. There is a date. There will be a date.  
5 But it's not possible for me to ascertain what that  
6 date would be today because there are other  
7 considerations in place that could potentially  
8 affect whether we elect to pursue down the road the  
9 contingency that I described in my testimony. Those  
10 contingencies would be drill and complete this year,  
11 facilitate after winter closure stops next year,  
12 drill this year, complete and facilitate next year,  
13 or drill, complete and facilitate next year after  
14 the winter closure ends. All of those are  
15 complicated business decisions and have multiple  
16 things to consider in electing whether we move  
17 forward or not.

18 If we elect to defer the drilling and the  
19 completion until next spring, we are clearly  
20 accepting a higher level of business risk for  
21 operations during the summer, and that will -- that  
22 decision, frankly, is above my pay grade. So I can  
23 make the recommendations to the vice presidents  
24 based on where we stand. In fact, we update those  
25 folks on a weekly basis of where all the operational

1 considerations are going, and they advise us whether  
2 they believe waiting for a decision from the  
3 Commission on the C 144 is worth the operational  
4 risk of the deferring the drilling of the SWD No. 2.

5 Q. If the decision to move the dig and  
6 haul -- let me rephrase. Is the idea of digging and  
7 hauling so that you can complete the well by the  
8 November 1 deadline or by some extension the Forest  
9 Service can give you this fall, is that on the table  
10 for Williams?

11 A. I'm sorry, could you restate the question?

12 Q. Is Williams considering moving to the dig  
13 and haul option to get this well completed this  
14 fall?

15 A. I would say that one of our potential  
16 contingencies for consideration is hauling the waste  
17 to commercial disposal. That's one of several  
18 possible outcomes that are under consideration for  
19 this well.

20 Q. Well, that decision would have to move  
21 very quickly, wouldn't it? In order for you to meet  
22 the fall deadline?

23 A. Well, here is the issue. If I dig and  
24 haul from SWD 2, I still don't have an answer on the  
25 C 144 of whether I could have the waste generated

1 from SWD 2 and dispose of those wastes into an  
2 existing operational temporary pit. And quite  
3 frankly, I don't want to go through the process that  
4 I have been through since November in another C 144  
5 application on down the road raising the same  
6 question of whether our proposal is allowed under  
7 the existing Pit Rule.

8 Q. Well, let's turn to that. We had a lot of  
9 questions yesterday about what exactly Williams'  
10 proposal is.

11 A. Our proposal -- well, our request here  
12 today, our appeal of the C 144 that we submitted,  
13 the reason we are here today, is to request that the  
14 Commission approve our C 144 application. The  
15 Commission can clearly approve that application with  
16 certain stipulations if they feel the inaccuracies  
17 or inadequacies that have been defined or discussed  
18 by the Environmental Bureau should be considered in  
19 our granting of the application.

20 Q. And those stipulations would be the issues  
21 that Ms. Munds-Dry discussed with Mr. Lane yesterday  
22 in his testimony?

23 A. The stipulations are up to the OCC. I  
24 don't mean to sit here and tell the OCC what they  
25 should be doing. I am saying that Williams is here

1 on the appeal of their C 144 application. We are  
2 asking the Commission to approve our application  
3 because we believe the application meets the letter  
4 of the law under the Pit Rule.

5 Q. You met with the Environmental Bureau  
6 before you submitted the June 17 application; is  
7 that right?

8 A. I met with them on June 15, yes.

9 Q. And that was to discuss a prior  
10 application?

11 A. Correct.

12 Q. And they discussed with you the various  
13 issues they had with that application?

14 A. They did.

15 Q. And rather than pursue that application,  
16 you submitted the June 18 application?

17 A. That's correct.

18 Q. And decided to proceed to hearing on that  
19 application?

20 A. Correct.

21 Q. But there were still i in that application  
22 that the environmental bureau had discussed with  
23 you?

24 A. That's correct.

25 Q. And you chose not to address them in the

1 June 18 application?

2 A. Well, it's not that I chose not to address  
3 them. I attempted to address all of their concerns  
4 after the meeting. Clearly I don't submit C 144s as  
5 a daily part of my work, but in my simple mind,  
6 there were major inadequacies in the application and  
7 minor inadequacies in the application. And I would  
8 characterize this question of whether we can dispose  
9 of cuttings at an alternative location as the single  
10 major consideration that we need addressed with this  
11 application.

12 And my intent in submitting the second --  
13 the June 18th C 144 was an attempt to put to rest  
14 the other inadequacies that have been identified by  
15 the Environmental Bureau on the April 20th  
16 application: Things like signage, fencing and those  
17 sorts of issues.

18 Q. Well, one of the issues that took up a lot  
19 of our time yesterday was discussing what pit  
20 Williams was asking for in its June 18th  
21 application. Was it asking to build a new pit 100  
22 by 100? Or as we heard from Mr. Lane yesterday, the  
23 intent all along was to use the 80 by 40 pit that  
24 was already there. Why wasn't that clarified in the  
25 June 18 application?



1           A.       Well, I guess it's a function that I am  
2       unable to write English clearly. Because I had met  
3       with the Environmental Department three days before  
4       I submitted the application and I think they were  
5       completely clear on our intent. And our intent was  
6       to move the cuttings from the SWD No. 2 to an  
7       alternative site.

8                   Now, you have raised the question about  
9       the dimensions of the pit, and frankly, that got far  
10      too much discussion yesterday than it was worth. So  
11      let me try to clarify a couple of those issues. In  
12      my preparation of the C 144, I recognize that a  
13      larger pit would be required if we disposed of  
14      cuttings from two wells rather than one well. So I  
15      asked for a larger permit permitted pit in the C 144  
16      that I put forth.

17                  Unfortunately, Mr. Lane was out of the  
18      country and I had not had the opportunity to consult  
19      with him on the specifics of what would be required  
20      in a larger pit. And what I learned when he  
21      returned after the C 144 was submitted was that it's  
22      not a big problem to enlarge a pit if you do so  
23      before operations commence. But once operations  
24      commence and cuttings and drilling material is put  
25      into the pit, then it becomes quite an ordeal to

1 expand that pit size.

2 Had timing worked out as we had originally  
3 hoped, the sequence of events that would have  
4 happened here is that we would have permitted the  
5 634B C 144 temporary pit and then we would have  
6 permitted the SWD No. 2 pit and then we would have  
7 executed a transfer between those two and that would  
8 have all happened in a timely manner such that the  
9 ultimate temporary pit that was constructed would  
10 hold the cutting volumes from those wells.

11 Unfortunately, the time frame did not  
12 unfold that way. So what we are faced with today is  
13 a pit at the 634B that may or may not be sufficient  
14 to hold all of the cuttings that are generated from  
15 the operations in 634B and the SWD No. 2.

16 So our proposal is still to haul cuttings  
17 from the SWD No. 2 to that 634B pit. And under the  
18 rules, we cannot exceed two feet of free board in  
19 that pit. So at the point that the pit rises to the  
20 two foot of free board, we have no alternative left  
21 under the rules but to haul any remaining cuttings  
22 to off-site commercial disposal.

23 Q. So Mr. McQueen, when you signed off on the  
24 June 18 application, you signed the operator  
25 application certification?

1           A.     I do.

2           Q.     That states, "I hereby certify that the  
3 information submitted with this application is true,  
4 accurate and complete to the best of my knowledge."

5           A.     Correct.

6           Q.     Knowing at that time that the pit you were  
7 asking for was going to be the existing pit of the  
8 634B?

9           A.     My understanding of the rules and the  
10 process at that point was that the pit could be  
11 enlarged, and I later learned that the pit could be  
12 enlarged but the requirements to do so were not  
13 really a reasonable prudent or economic alternative.

14          Q.     And your application didn't try to  
15 describe how this enlargement would take place,  
16 right?

17          A.     No.

18          Q.     And since filing the June 18 application,  
19 you have received the Environmental Bureau's denial  
20 letter that's set out issues that they had with the  
21 June 18th application?

22          A.     We have received that letter.

23          Q.     And you were here yesterday for Mr. Lane's  
24 testimony in which he went through the various  
25 issues raised by the Environmental Bureau and

1 suggested that he felt the application was complete,  
2 but if the Commission disagreed, that Williams would  
3 be willing to accept language to correct those  
4 issues?

5 A. I heard that, yes.

6 Q. And that's Williams' position?

7 A. Our position is we are submitting a C 144  
8 for approval by the Commission. If the Commission  
9 finds that parts of that application are inadequate  
10 or incomplete and can stipulate how those actions  
11 need to be met.

12 Q. Do you think it would have sped up the  
13 process if Williams had alerted the OCD to what it  
14 was really asking for before the hearing?

15 A. Well, clearly what I have learned from  
16 this entire process is that Monday morning  
17 quarterbacking is always 100 percent. Had I known  
18 that this process would unfold as it has, I would  
19 have done a number of things differently during the  
20 process. But quite simply, all we are trying to do  
21 here is to get confirmation from the OCC that our  
22 proposal represents an alternative under the Pit  
23 Rule that is less of an environmental impact as  
24 compared to the other alternatives.

25 Q. To be clear, though, you are not asking

1 for an alternative closure method. You are asking  
2 for the OCC to accept your proposal --

3 A. For the 16th time, I am asking for the OCC  
4 to approve our C 144, period. The Commission, can  
5 stipulate as they choose how any inadequacies on the  
6 application should be addressed.

7 Q. And Williams has not submitted any  
8 language for any of those stipulations that you  
9 recognized yesterday in Mr. Lane's testimony?

10 A. The application stands on what we have  
11 submitted.

12 Q. And it wasn't up to you to speed the  
13 process along by suggesting any language so that  
14 this order could be issued in the timeline that  
15 would be required of us?

16 A. Well, my intent with meeting with the  
17 Environmental Bureau on June 15th was specifically  
18 for that reason, was to attempt to understand their  
19 interpretation of inadequacies and address those in  
20 a subsequent C 144.

21 Q. I have no more questions.

22 CHAIRMAN FESMIRE: Commissioner Bailey?

23 COMMISSIONER BAILEY: I am very  
24 understanding of the duress under which Williams is  
25 operating right now with the timelines and the

1 restrictions from BLM and Forest Service and OCD. I  
2 also understand that any decision this Commission  
3 makes, given these circumstances, would have  
4 far-reaching implications in setting the precedent  
5 in which all units would rely on that decision to  
6 get around Rule 36 requirements for surface waste  
7 facilities. How do you respond to that?

8 THE WITNESS: We are not trying to get  
9 around Rule 36. Our desire is to operate entirely  
10 under the Pit Rule. The Pit Rule provides for  
11 temporary pits, temporary disposal. Rule 36  
12 represents a whole other level of complication and  
13 permanence that is in place.

14 And frankly, from our perspective, the Pit  
15 Rule allows us to operate completely with regard to  
16 cuttings disposal and we just don't see the need to  
17 do the Rule 36. I'm not a Rule 36 expert, but from  
18 what I hear from my colleagues in other companies  
19 who have Rule 36 operations is they do take a fair  
20 amount of paperwork oversight and ongoing oversight.

21 So Rule 36 is not a temporary -- I don't  
22 want to say temporary fix. But under the Pit Rule a  
23 temporary rule is just that. It's temporary. We  
24 comply with the rule, we finish with the pit, we are  
25 done. Rule 36 goes on forever essentially, and we

1 just don't see that additional business overhead as  
2 a requirement that we could pursue when we have an  
3 avenue that fully meets our requirements under the  
4 existing Pit Rule.

5 COMMISSIONER BAILEY: But is Rule 36 an  
6 alternative, given the potential for downsizing of  
7 the Fruitland Coal exploration wells and the  
8 possible expansion of the drilling program in the  
9 Rosa Unit.

10 THE WITNESS: Our preference would always  
11 be to utilize temporary pits for disposal of cutting  
12 waste under Rule 36, and we believe that is the  
13 intent of the Pit Rule. Clearly had that not been  
14 the intent, temporary pits would not have been  
15 allowed under the Pit Rule.

16 COMMISSIONER BAILEY: Does the Rosa Unit  
17 prepare a plan of development each year?

18 THE WITNESS: We do.

19 COMMISSIONER BAILEY: Is it filed with  
20 Forest Service and BLM and the State Land Office?

21 THE WITNESS: That's a better question  
22 directed to Mr. Hanson, our landman. But I am  
23 certain that the annual P.O.D. is filed with the BLM  
24 prior to March 1st of each year.

25 COMMISSIONER BAILEY: Was there any hint

1 of the proposal that you brought today in this  
2 year's or last year's plan of development?

3 THE WITNESS: The BLM P.O.D. does not  
4 require a discussion or documentation related to  
5 operations required by the disposal of cuttings.  
6 The plan of development basically is a list of wells  
7 of what we have already drilled and a reconciliation  
8 of what our plan of development was last year  
9 compared to this year. So we document for the BLM  
10 this is what we told you we were going to do last  
11 year, this is what we have done, this is what we  
12 have not done, this is what we are rolling forward  
13 into future years along with other potential  
14 drilling sites out there.

15 So the plan of development that we are  
16 required to submit has never contemplated addressing  
17 the other issues associated with our activities.  
18 It's primarily geared to indicate to the BLM what  
19 our level of activity will be for the coming year.

20 COMMISSIONER BAILEY: Did the latest  
21 P.O.D. reflect drilling of the SWD 2 in a 634B?

22 THE WITNESS: Again, I will have to say I  
23 am uncertain without that document here in front of  
24 me. Again, that's prepared by our land group and  
25 they have responsibility for that P.O.D. I will say



1 that as I mentioned earlier, as a point of  
2 clarification, as I mentioned earlier, for a number  
3 of reasons our drill plans change as we progress  
4 through the year. And we do provide addendums to  
5 the P.O.D. during the course of the year if we find  
6 that wells are going to be drilled out of sequence  
7 with the original submittal for the P.O.D.

8 CHAIRMAN FESMIRE: Commissioner Olson?

9 COMMISSIONER OLSON: Yes. Mr. McQueen,  
10 you were talking about some of the costs for hauling  
11 the waste from the SWD No. 2 to Envirotech at  
12 \$205,000. I was just wondering what the costs are  
13 to enlarge the pit at the Rosa 634B to the size that  
14 you proposed and the costs of hauling waste there  
15 for comparison.

16 THE WITNESS: Let me answer the second  
17 question first, because it's the easiest one, and I  
18 think it's simply a function of taking the ratio of  
19 miles traveled, 20 miles round trip compared to 150  
20 round trip. So it's simply that we could take the  
21 ratio of the \$205,000 and I could get close to --

22 CHAIRMAN FESMIRE: So a proper incremental  
23 analysis is basically less one-seventh of the  
24 \$205,000.

25 THE WITNESS: Correct.

1                   COMMISSIONER OLSON: I guess you also have  
2 the costs of the construction, the pit and the  
3 closure. What's the costs of that as well?

4                   THE WITNESS: Well, let me be clear on our  
5 intent of enlarging the pit. After Mr. Lane  
6 returned from his time out of the country and  
7 briefed me on the details of pit enlargement after a  
8 pit is in service or after a pit is in use, and as I  
9 attempted to mention in my testimony, I don't think  
10 that's going to be an option for us. From an  
11 economic standpoint, it's not really a viable  
12 alternative.

13                   So again, what our intent would be is to  
14 haul cuttings from SWD 2 to the 635B temporary pit.  
15 When the pit meets its maximum as far as free  
16 board -- that is, when the cuttings get to the  
17 two-foot level -- then we are required to cease  
18 using that pit. And if any additional cuttings were  
19 generated beyond that, they would be hauled to a  
20 commercial disposal.

21                   Again, as I mentioned in my testimony, had  
22 the calendar worked in perfect order, we would have  
23 constructed that pit to the size required for  
24 multiple cuttings to begin with.

25                   COMMISSIONER OLSON: I guess that pit

1 already has cuttings in it now; isn't that correct?

2 THE WITNESS: That's correct.

3 COMMISSIONER OLSON: So how much of the  
4 cuttings from the Rosa SWD No. 2 will be able to be  
5 accommodated in that pit? Sounds like you are not  
6 going to be able to take all of the cuttings in  
7 there as it's currently constructed; is that  
8 correct?

9 THE WITNESS: We are concluding the  
10 operations on the 635B well, and I spoke with my  
11 drilling engineer last night and he tells me that  
12 there's six to eight feet of free board remaining in  
13 that pit, so I believe that we will be able to get  
14 the bulk of those cuttings from SWD 2 into the 635B  
15 pit. But without going out and actually measuring  
16 and surveying the exact contour of the cuttings and  
17 the pit, I can't say for certainty. But what I can  
18 say is that we get to two feet of free board on the  
19 635B pit, we are done. And our only alternative  
20 under the Pit Rule is to haul cuttings to Envirotech  
21 at that point.

22 That's no different than any of our  
23 drilling pits, and we have had literally hundreds of  
24 drilling pits over the years, but under the current  
25 rule, when we reach two foot of free board in the

1 pit, we are done, and we have to make some  
2 alternative consideration at that point. It usually  
3 means -- almost always means hauling those cuttings  
4 to the commercial disposal site.

5 COMMISSIONER OLSON: But you would  
6 acknowledge then that you have changed your plan  
7 from what was submitted on June 18th then, which was  
8 for 100 by 100 foot --

9 THE WITNESS: I would submit that we are  
10 not going to enlarge the pit on the application that  
11 I submitted to the 100 by 100.

12 COMMISSIONER OLSON: But you would  
13 acknowledge you are changing your plan now to use  
14 the existing pit as it's constructed to whatever  
15 capacity can be held, and then to haul any remaining  
16 cuttings to the Envirotech facility?

17 THE WITNESS: If there are remaining  
18 cuttings, yes.

19 COMMISSIONER OLSON: You presented this --  
20 I'm not sure, was this an exhibit? The letter from  
21 BLM of July 28, 2010 letter?

22 CHAIRMAN FESMIRE: It's admitted as an  
23 exhibit.

24 COMMISSIONER OLSON: Which number?

25 MS. MUNDS-DRY: Williams 21.

1                   COMMISSIONER OLSON: And I did note that  
2 the BLM in that letter repeatedly referred to  
3 disposal of wastes that are moved from the Rosa SWD  
4 No. 2 to the Rosa 634B -- or I guess -- you were  
5 saying 635? I guess I was getting a little confused  
6 here. I thought things were moving to the 634.  
7 Maybe you can correct me. You were saying 635 and I  
8 think before you said 634, just to correct the  
9 record on that.

10                  THE WITNESS: 634 is the pad location. I  
11 apologize because we have two operations going on  
12 this summer, one at the 634 and one at the 635. It  
13 has been a big confusion. But the temporary pit  
14 that we are discussing is at the 634 location.

15                  COMMISSIONER OLSON: And I would just note  
16 that the BLM in here repeatedly referred to the  
17 moving and the wastes from the SWD No. 2 to the 634B  
18 as being moved to an off-site location; is that  
19 correct? I think I see that in the first paragraph  
20 and in the third paragraph it occurs multiple times  
21 in here, is that correct?

22                  THE WITNESS: It's correct that off-site  
23 appears in the letter, yes.

24                  COMMISSIONER OLSON: So is that correct  
25 then that the BLM considers this off-site disposal?

1 THE WITNESS: I think they consider it  
2 off-site from the standpoint of the well location.

3 COMMISSIONER OLSON: I think this came up  
4 with the questioning of Mr. Lane. It appears there  
5 hasn't been a problem in the past for drilling on  
6 one location to have the pit be used for multiple  
7 wells; is that correct? On the location?

8 THE WITNESS: That's correct.

9 COMMISSIONER OLSON: But now we are  
10 looking at what you are proposing here is that  
11 multiple wells can go to some off-site -- you are  
12 saying on-site but off the site well location so it  
13 can take -- you are proposing that pit can take  
14 wastes on a temporary basis from multiple locations,  
15 correct?

16 THE WITNESS: That's right. It's unit  
17 waste. The waste are generated within the unit, so  
18 from an environmental standpoint, from an economic  
19 standpoint, it just seems logical to us if we have  
20 temporary pits out there with free board available,  
21 to utilize those for unit wastes rather than hauling  
22 those to Envirotech.

23 COMMISSIONER OLSON: Isn't that  
24 essentially a centralized location for unit wastes?

25 THE WITNESS: No, sir. A centralized

1 location would be one location within Rosa where we  
2 haul all of the waste generated in Rosa. That would  
3 be a centralized facility. Our proposal is not a  
4 centralized facility.

5 COMMISSIONER OLSON: I guess just  
6 following up on that, do you see any -- you are  
7 saying you can haul wastes from within the unit. I  
8 guess do you see that there's any limit on the  
9 number of wells that you can haul to that temporary  
10 location?

11 THE WITNESS: We are limited by the  
12 constraints of the Pit Rule.

13 COMMISSIONER OLSON: The constraint is  
14 that it's in use for a six-month period, right?

15 THE WITNESS: Correct.

16 COMMISSIONER OLSON: So if you are  
17 drilling ten wells in a six-month period, could you  
18 put the waste from all ten wells in that one  
19 location? Is that possible under what you are  
20 proposing?

21 THE WITNESS: That's possible, and  
22 actually, as Mr. Lane mentioned, it's our plan on a  
23 go-forward basis that -- we currently have to be  
24 careful about confidential information here, but we  
25 are currently exploring a shell play within the San

1 Juan Basin and, of course, shell plays require  
2 closely spaced wells, high density wells, and based  
3 on our preliminary analysis of microseismic  
4 information suggests that the vertical well bores  
5 are draining areas of about ten acres, and if that  
6 is confirmed by subsequent drilling confirmation  
7 that drainage area is ten acres, then we could  
8 potentially be requesting a downspacing in that  
9 formation so we could drill on ten acres.

10 Because of the RMP that's in place, we  
11 obviously want to save as many of those disturbances  
12 for future use as possible, so our plan would be to  
13 drill 22, 24 wells from a pad. All of those wastes  
14 generated on that pad would go into the temporary  
15 pit located on the allocation, 24 wells. Wastes  
16 from those 24 wells under the Pit Rule would not be  
17 construed as a Rule 36. They would be construed as  
18 a temporary pit usage.

19 So again, in my feeble mind, it's a very  
20 logical extension that this would work in other  
21 places and in Rosa as well.

22 COMMISSIONER OLSON: I guess it sounds to  
23 me like the division is already approving those  
24 because it's on -- you are drilling wells from the  
25 same location. Isn't that correct? Isn't that what



1 the division is already allowing for that?

2 THE WITNESS: Absolutely. That's why I  
3 fail to see that it's a leap of any type to go from  
4 disposing multiple wells, commingling wastes in a  
5 temporary pit on a single pad to multiple temporary  
6 pits. I mean, to me that's the next logical  
7 extension of what we are doing today. And the  
8 beauty of that extension is it's less expensive to  
9 the operator and less impactful to the environment.

10 I just can't believe that forcing the  
11 Environmental Bureau's view of the Pit Rule on us is  
12 intentionally increasing environmental impact. I  
13 mean, are we here -- is our true efforts here to  
14 decrease environmental impact? Or is it simply that  
15 we have a Pit Rule and we are going to follow it  
16 explicitly as the Environmental Department  
17 interprets? I think that if we are, in fact,  
18 wanting to decrease our environmental impacts  
19 related to drilling operations that we all need to  
20 collectively -- us, OCD, surface management  
21 agencies -- look for what are the least impactful  
22 economic alternatives to producing natural gas for  
23 the good of the citizens of New Mexico and the  
24 United States.

25 COMMISSIONER OLSON: But I guess it still

1     seems to me that for the type of proposal that you  
2     have going forward for multiple locations, multiple  
3     uses of the pit is typically going to occur on the  
4     same location. So it sounds to me that the -- and  
5     that which is already being approved by the  
6     division. So sounds to me like in this case you are  
7     looking at something that's more an unusual  
8     circumstance. Because this is something that you  
9     haven't necessarily done before. You have done  
10    these other types of systems, but you haven't done  
11    the system where you are taking things to -- I say  
12    off-site, off of the drilling location to -- you  
13    know, ten miles away obviously is remote from the  
14    drilling pad. So this is the first time this has  
15    been proposed, correct?

16               THE WITNESS: I understand. But that's  
17    part of my job is to continually look for ways to  
18    optimize. Better, quicker, cheap, less impactful.  
19    Those are all my challenges every day. We  
20    continually look for opportunities to improve our  
21    operations in that regard and we feel that we have  
22    found an opportunity which is fully compliant under  
23    the rules, is encouraged by the surface management  
24    agencies, that will decrease our costs and will  
25    decrease the impact to the environment.

1           Again, in my mind it's just that simple.  
2   What we are proposing is better for the environment  
3   than what the Environmental Department is dictating  
4   under their very strict interpretation of the Pit  
5   Rule.

6           Rules are just that. I mean, I know we  
7   have all been involved in writing some types of  
8   rules, regulations. What I find is despite our very  
9   best efforts to write the perfect set of rules, as  
10   time passes there are always unintended consequences  
11   that arise that are not met by the letter of the law  
12   or the letter of the rule. Thereby, that's our  
13   purpose here today. Can this novel approach that we  
14   are suggesting be allowed under the current Pit  
15   Rule? We believe it can. We believe it will  
16   minimize the impact on the environment. We believe  
17   it will benefit Williams in that it's an  
18   economically more viable alternative.

19           And that's an important aspect not to be  
20   lost here, because when we reduce our costs we  
21   decrease our economic cutoff for each of the wells  
22   that we produce. And when we decrease that cutoff,  
23   it allows us to produce those wells longer in time.  
24   And the longer in time we are able to produce a  
25   well, the state of New Mexico benefits through the

1 collection of severance tax and the U.S. government  
2 benefits through the collection of royalties, and  
3 the users of natural gas benefit from having a  
4 relatively inexpensive and plentiful source of  
5 energy.

6 COMMISSIONER OLSON: But I guess it still  
7 sounds to me like the division has worked with  
8 industry to look at these multiple disposals on one  
9 location as long as it's occurring on the area  
10 that's being drilled, and that's not covered --  
11 that's not explicitly covered by the rule, is it?

12 THE WITNESS: I completely agree. But  
13 again, we think co-loading, co-locating widths from  
14 multiple wells on pad drilling makes all the sense  
15 in the world. So we are delighted that we don't  
16 have to go through this process to ask for approval  
17 of those C 144s under the Pit Rule. But we think  
18 our proposal today here stands in the same light.  
19 It's a novel approach, hasn't been tried before.  
20 It's a creative approach. Again, it will minimize  
21 the environmental impact. It will improve  
22 operational economics. It's a win/win situation.

23 COMMISSIONER OLSON: Sounds to me like the  
24 division has worked with you in the one  
25 circumstance. Here it's not willing to take it to

1     this other level where it seems to me -- that's why  
2     I come back -- seems to me more of an exception  
3     where you would then apply for an exception, which  
4     could be done administratively if there's no request  
5     for a hearing and be relatively streamlined. There  
6     are some additional requirements, but sounds to me  
7     this is the first time this has come up. Whereas  
8     the other circumstance you were mentioning has come  
9     up quite a number of times and has been allowed.  
10    Now you are proposing something that just seems a  
11    little bit more of an exception to the rule that  
12    they have allowed.

13                 THE WITNESS: The process that we just  
14    spoke about regarding co-locating on the same pad  
15    did not go through the exception process.

16                 COMMISSIONER OLSON: Right.

17                 THE WITNESS: And again, in my mind, what  
18    we are proposing here is very similar to that and  
19    does not rise to the level of requiring an  
20    exception.

21                 COMMISSIONER OLSON: I guess that depends  
22    on how you define on-site and off-site. I think  
23    that's all.

24                 CHAIRMAN FESMIRE: Mr. McQueen, I think  
25    I'm going to start with just a few questions and

1 probably have to continue after the break. How long  
2 has Well 94 been out of service? When did you quit  
3 injecting into the disposal Well 94?

4 THE WITNESS: I believe my testimony  
5 indicated October of 2008.

6 CHAIRMAN FESMIRE: So you have been  
7 without that redundancy for almost two years now?

8 THE WITNESS: That's absolutely correct.  
9 But we knew, because of the permitting process on  
10 the Forest Service, that there was no way we could  
11 have a permit in place to avoid being without  
12 redundancy last winter.

13 CHAIRMAN FESMIRE: How much gas is at  
14 risk? How much are we talking about? How much  
15 would you have to shut in if you couldn't inject  
16 into -- say if the Salt Water Disposal No. 2 or No.  
17 1 went down completely.

18 THE WITNESS: I think I testified earlier  
19 as to what the production rates were in Rosa in  
20 total. I do not have those broken apart for the  
21 impacted area, which would be the East Rosa portion.  
22 But I think the question is how long would you  
23 expect --

24 CHAIRMAN FESMIRE: I was asking for a  
25 rate. How much gas on a clear day basis would be at

1 risk if you lost that injection well for some  
2 reason?

3 THE WITNESS: I will be happy to follow up  
4 with the split between East Rosa and Middle Mesa,  
5 but it's fair to say that the bulk of our production  
6 is on East Rosa.

7 CHAIRMAN FESMIRE: Now, Williams Exhibit  
8 21, it indicates that you have some processing to do  
9 to get through the BLM. How long will that take, do  
10 you know?

11 THE WITNESS: The sundry?

12 CHAIRMAN FESMIRE: The sundry is mentioned  
13 in the letter.

14 THE WITNESS: Mr. Lane is going to  
15 complete that on Monday when he returns to Aztec.

16 CHAIRMAN FESMIRE: How long will it take  
17 to get processed?

18 THE WITNESS: That's a question for the  
19 BLM.

20 CHAIRMAN FESMIRE: What about the formal  
21 application for a closed-loop system? Do you know  
22 how long that would take?

23 THE WITNESS: That's a question for the  
24 Aztec OCD office. Typically those do not take very  
25 long.

1           CHAIRMAN FESMIRE: Okay. They don't take  
2 very long? I have been told it takes months. The  
3 OCD doesn't take very long, but I have been told it  
4 takes up to months to get through the BLM for a  
5 formal application like that.

6           THE WITNESS: My understanding from the  
7 letter here is that they are requiring a sundry.

8           CHAIRMAN FESMIRE: That's for one part of  
9 it. But they also mention in the other paragraph it  
10 would take a formal application for the closed-loop  
11 system.

12          THE WITNESS: I think that is an option  
13 that they may elect to pursue if they are not  
14 satisfied with the --

15          CHAIRMAN FESMIRE: Well, let me read the  
16 paragraph for you or part of the paragraph.  
17 "Although the Bureau of Land Management BLM  
18 Farmington Field Office met with Williams in March  
19 of 2010 to discuss Williams' proposal to the NMOCD,  
20 no formal application for the closed-loop drilling  
21 mud system and off-site burial of drilling waste has  
22 been received by the FFO." So you are going to have  
23 to start that process with the BLM, aren't you?

24          THE WITNESS: Well, I don't think that  
25 letter correctly characterizes what's happened.



1 Because I think Mr. Lane testified yesterday that  
2 the BLM received all of our C 144 applications -- a  
3 copy of all of our C 144 applications.

4 CHAIRMAN FESMIRE: This is the application  
5 for permit to drill on the federal form, looks like  
6 to me. They are saying that there's no formal  
7 application been received by the BLM for the  
8 three-year proposal for a closed-loop drilling  
9 system and off-site burial of drilling waste.

10 THE WITNESS: Well, in reference to the  
11 APDs, the time involved there has varied quite a lot  
12 of time. Three years ago, for example, when the BLM  
13 office was processing 8- or 900 APDs a year,  
14 obviously it was much lower than it is today. I  
15 think they are saying 3- or 400 APDs a year is what  
16 they are saying now. So I think the expectation is  
17 the amount of turnaround on the BLM APD is shorter  
18 now than what it was before.

19 CHAIRMAN FESMIRE: Even if it's shorter  
20 than what it was before, it's still going to take  
21 some time. I mean, you are going to be pushing it  
22 if this BLM letter is correct. You will be pushing  
23 your window, aren't you?

24 THE WITNESS: We are already pushing our  
25 window.

1 CHAIRMAN FESMIRE: I have other questions  
2 but at this time we will have to take a break. I  
3 would estimate at least 20 minutes, so why don't we  
4 get back at 20 after and I will continue.

5 (Note: The hearing stood in recess at  
6 10:00 to 10:45.)

7 CHAIRMAN FESMIRE: This is a continuation  
8 of case No. 14521, the application of Williams  
9 Production Company, LLC for approval of the  
10 closed-loop system for the Rosa Salt water Disposal  
11 Well No. 2 and in-place burial of drilling waste at  
12 another drill location. We were in the middle of  
13 the examiner's questioning of Mr. McQueen.

14 Mr. McQueen, we ended with the question  
15 about how long it was going to take the BLM to  
16 accomplish the tasks they say in Williams Exhibit  
17 No. 21 need to be accomplished before you can stud  
18 the well. Do you have a definitive estimate of how  
19 long that will take?

20 THE WITNESS: During the break, in  
21 reviewing the letter in conjunction with the MOU  
22 that's in place, I think it's our opinion is that  
23 all that's required is the sundry, and that can be  
24 accomplished next week.

25 CHAIRMAN FESMIRE: What about the formal

1 application for a closed-loop drilling and mud  
2 system and off-site burial? You are saying that can  
3 be accomplished under the MOU?

4 THE WITNESS: I believe in the context of  
5 the MOU and what's mentioned in this letter is that  
6 all we are required to provide the BLM is a sundry  
7 notice.

8 CHAIRMAN FESMIRE: You are saying that  
9 would take no time?

10 THE WITNESS: Mr. Lane could finish that  
11 on Monday and they usually turn the sundries around  
12 pretty quick.

13 CHAIRMAN FESMIRE: Has BLM ever approved  
14 off-site disposal?

15 THE WITNESS: This is the first time that  
16 we have asked for the transfer of cuttings from a  
17 closed-loop system to a --

18 CHAIRMAN FESMIRE: I notice you are  
19 carefully avoiding the phrase off-site disposal.

20 THE WITNESS: Clearly after two days  
21 there's been enough discussion on what's on-site and  
22 off-site that I think that just muddies the water.  
23 What I want to say is that this is the first time --

24 CHAIRMAN FESMIRE: Tell you what. Let me  
25 ask the question in light of what you just said.

1 Has the BLM ever approved this sort of process  
2 before?

3 THE WITNESS: No.

4 CHAIRMAN FESMIRE: And you think that it  
5 will be done overnight?

6 THE WITNESS: I think the sundry will be,  
7 because we met with field office numerous times  
8 regarding our intent all along the way since we  
9 first conceived of constructing a second SWD  
10 facility. None of this will surprise the folks --  
11 Jim Lovato, the rest of the folks in the field  
12 office. I would say they are fully versed on what  
13 our plans are.

14 CHAIRMAN FESMIRE: And the State Office's  
15 letter doesn't change your opinion that they can  
16 basically approve the sundry in a very short period  
17 of time?

18 THE WITNESS: No.

19 CHAIRMAN FESMIRE: Even though it's never  
20 been done before?

21 THE WITNESS: No.

22 COMMISSIONER OLSON: May I follow up on  
23 that?

24 CHAIRMAN FESMIRE: Sure.

25 COMMISSIONER OLSON: Mr. McQueen, look at

1 the second page of that letter, and look at that  
2 first paragraph on the top of Page 2. When I read  
3 the last sentence, BLM is saying, "We feel it's  
4 imperative that both agencies and other relevant  
5 parties work together in evaluating acceptable  
6 methods of drilling waste disposal." That doesn't  
7 sound, especially for this type of system that's  
8 being discussed, that doesn't sound like a rubber  
9 stamp that's going to occur.

10 THE WITNESS: No, but I think the other  
11 fellow is familiar enough that they are prepared to  
12 move ahead. Actually, I am quite encouraged to see  
13 this paragraph in the letter because in the past the  
14 State Office has not shown much enthusiasm about  
15 meeting with us on these issues, but on a go-forward  
16 basis, I plan to invite them to the same meetings  
17 that we are meeting with the FFO in Farmington  
18 because we would look forward to having their input  
19 and basically having everyone on board at the same  
20 time.

21 COMMISSIONER OLSON: But if they seem to  
22 be suggesting that people need to get together and  
23 discuss this, it doesn't sound like something that  
24 they are going to just readily approve without  
25 working through it. That's kind of the way I read

1 this. You don't read it the same way?

2 THE WITNESS: It would be speculation on  
3 my part. I haven't worked with the State BLM office  
4 very much. We primarily interface with the folks in  
5 Farmington. I guess it's a question of how much the  
6 State Office is going to micromanage the decisions  
7 of the folks in Farmington. As I said earlier, the  
8 Farmington folks are well versed on what our plans  
9 are.

10 COMMISSIONER OLSON: But they never  
11 approved an off-site -- I mean, off the drilling  
12 location disposal location before, correct?

13 THE WITNESS: Not before, but they have  
14 written us a letter of support that they believe  
15 that's a good idea. So again, I don't think it  
16 would take an extended amount of time to get it  
17 approved in the Farmington office.

18 CHAIRMAN FESMIRE: Now, you were here  
19 yesterday when Ms. MacQuesten asked Mr. Lane -- it  
20 may have been you -- to look at the order  
21 implementing the Pit Rule. Do you remember the  
22 suggestion that was read out loud, Paragraph 67?

23 THE WITNESS: I do.

24 CHAIRMAN FESMIRE: Or was it 68? 68.

25 THE WITNESS: What exhibit?

1 CHAIRMAN FESMIRE: OCD Exhibit 18.

2 THE WITNESS: And the page number?

3 CHAIRMAN FESMIRE: Page No. 11, Paragraph  
4 68. In a parenthetical there it says -- let me go  
5 ahead and read the whole sentence. "Subsection C of  
6 19-15-17.10 NMAC specifies those locations where an  
7 operator may not implement an on-site closure method  
8 (where the waste that is generated from the drilling  
9 or workover of the well is buried on or near the  
10 well pad)."

11 Do you agree with me that that pretty much  
12 gives us the definition of what on-site means in the  
13 rule?

14 THE WITNESS: My reading of that indicates  
15 that on-site is an adjective that describes the  
16 closure method particular to the location of the  
17 temporary pit.

18 CHAIRMAN FESMIRE: What's the need for the  
19 parenthetical?

20 THE WITNESS: Well, I think it would be  
21 for me to speculate what the intent of the OCC was.

22 CHAIRMAN FESMIRE: For a minute let's  
23 accept the idea that on-site means on or near the  
24 pad. The twinning locations that you have done out  
25 there where you used the same pad, you got

1 permission from the OCD to use the same pad, would  
2 they fall under this definition, my definition of  
3 on-site?

4 THE WITNESS: I think they would fall  
5 under your definition of on-site.

6 CHAIRMAN FESMIRE: Would they fall under  
7 your definition of on-site? Obviously, I would  
8 assume.

9 THE WITNESS: Yes.

10 CHAIRMAN FESMIRE: Can you see that the  
11 definition of on-site that I am, for lack of a  
12 better word, going to assume was what was intended  
13 here in the rule would allow the type of disposal  
14 that you are talking about on a twin location on the  
15 same pad?

16 THE WITNESS: I think that the on-site  
17 should have been defined in the rule. On-site  
18 appears in the rule more than 35 times, and yet it's  
19 not specifically laid out in the definitions of the  
20 Pit Rule as to what that means.

21 CHAIRMAN FESMIRE: You are right, it's not  
22 defined in the Pit Rule, but this order seems to  
23 give us a pretty good insight as to what on-site  
24 means, doesn't it?

25 THE WITNESS: I am gathering from your



1     comments that you are clear on what it means.

2     Again, our position is we are relying on what's in  
3     the Pit Rule. The language in the Pit Rule.

4             CHAIRMAN FESMIRE: Okay. Let me state  
5     that I applaud what you are trying to do. I think  
6     it's great idea with regard to transporting the  
7     waste a shorter distance and using an existing pit.  
8     But the one thing that concerns me is that to do  
9     that, instead of going to the Commission or the  
10    Division and asking for an alternative closure  
11    method or -- and I'm going to ask these questions of  
12    the OCD witnesses -- or perhaps a small land farm to  
13    treat these wastes, that you are trying to force a  
14    strained interpretation of the phrase on-site, and  
15    basically create a weakness in the Pit Rule that I'm  
16    not sure exists that would cause a problem.

17            When I think it would have been a simpler  
18    process -- and again, I will ask the witnesses to  
19    make sure -- why did you go this way instead of  
20    asking for an alternative closure method or an  
21    exception?

22            THE WITNESS: At the time we thought this  
23    would be the quickest route to conclusion. With  
24    regard to the exception, there's no established  
25    track record right now for how long an operator

1 might expect that process to last from start to  
2 finish. Clearly, if there had been a number of  
3 exceptions processed to date, and based on the  
4 complexity or the question addressed in those  
5 exceptions, I think operators like myself would have  
6 a better indication from a planning standpoint of  
7 how long that process might take.

8           Clearly, being an engineer, I like to draw  
9 lines through straight points and predict the future  
10 based on what I have seen in the past. So if we  
11 have 15 exceptions that have been through the  
12 Commission and they took close to two years or two  
13 months, whatever that time is, that gives me a time  
14 frame by which I can factor into my consideration  
15 also.

16           But without that, it's a big unknown and  
17 really an unacceptable unknown from a planning  
18 process. But even before we get to the exception  
19 process, again, I will repeat what I mentioned  
20 earlier. In our analysis, we felt this was the  
21 quickest way to resolve the question and we did not  
22 feel that the question rose to the level of an  
23 exception.

24           CHAIRMAN FESMIRE: To me, it looks like  
25 instead of following the procedure in the rule that

1 specifically is set there to allow the kind of  
2 innovation and planning and considerations that you  
3 are talking about, we are forcing a definition on  
4 the rule that -- well, so far I am not convinced is  
5 correct. And it concerns me that Williams has got a  
6 deadline due to the need for redundancy, and being  
7 an engineer, I do understand that need for  
8 redundancy, but we haven't had that redundancy in  
9 two years and now we are coming to the Commission  
10 and saying that we have to do this so that we don't  
11 lose that -- so that we minimize the time where we  
12 don't have the redundancy. And to do that we are  
13 having to make what looks to me a very strained  
14 interpretation of the phrase in the rule as opposed  
15 to going through a procedure that's established in  
16 the rule for exactly the kind of innovation that you  
17 are talking about, I think. I will, like I said,  
18 ask the OCD witnesses if that's viable.

19 THE WITNESS: Well, clearly we view the  
20 rule interpretation a bit differently. Again, as I  
21 said, our position is what we are proposing is  
22 allowed under the rule.

23 CHAIRMAN FESMIRE: Like I said, I applaud  
24 your objectives. I think it would be an ideal  
25 situation to apply for an alternative closure method

1 or a variance, and I think it's probably available  
2 but I will have to ask some witnesses.

3 Let me propose a hypothetical to you,  
4 using your interpretation now. You put a pit out  
5 there, you use it for one well. It sits six months  
6 before it has to be closed, right? Before you have  
7 to close it or get an extension. You start drilling  
8 another well over here after six months and haul to  
9 it. Under your interpretation that triggers another  
10 six months before you have to close it.

11 THE WITNESS: I think that would be  
12 correct. But that interpretation for extension  
13 falls within the realm of the OCD Office in Aztec.

14 CHAIRMAN FESMIRE: Isn't that basically  
15 what you are asking for here, that first step?

16 THE WITNESS: Our intent is not to have  
17 pits open for extended periods of time.

18 CHAIRMAN FESMIRE: Right.

19 THE WITNESS: It exposes you to business  
20 risk having those pits open.

21 CHAIRMAN FESMIRE: Absolutely. And we  
22 know that. But doesn't your interpretation of the  
23 rule facilitate that sort of -- I don't want to say  
24 misuse, but use of the pits?

25 THE WITNESS: I think it's a potential

1     that you could construe the rule in that fashion,  
2     but that's not our intent.

3                 CHAIRMAN FESMIRE: Could you construe the  
4     OCD interpretation of the rule in that fashion?

5                 THE WITNESS: Which interpretation?

6                 CHAIRMAN FESMIRE: That it requires  
7     on-site closure or a dig and haul? This new  
8     location that you are talking about.

9                 THE WITNESS: The 634B?

10                CHAIRMAN FESMIRE: What we would call  
11     off-site but I will call on-site. That's going to  
12     be off-site, too, depending on which testimony you  
13     go with. That's going to be on-site to any well  
14     drilled in the unit, and under some of the testimony  
15     we have heard, it may be on-site for wells that are  
16     not on the unit.

17                THE WITNESS: Well, let me clarify the  
18     whole problem. I can't see situations whereby  
19     non-unit waste would be disposed in our unit. The  
20     surface management agencies just are not open to  
21     that consideration. The unit wastes needs to be  
22     handled by the unit, so let me -- because I know  
23     that was of some question yesterday.

24                CHAIRMAN FESMIRE: So even though your  
25     interpretation -- you being Williams' interpretation

1 of the Pit Rule would allow that, we should rely on  
2 the surface management agencies to not allow it?

3 THE WITNESS: Well, I don't think the  
4 surface management agencies would allow it. I'm not  
5 aware that they have ever allowed it to date.

6 CHAIRMAN FESMIRE: Can I correctly assume  
7 that's a yes to the question?

8 THE WITNESS: Can you repeat the question?

9 CHAIRMAN FESMIRE: Can you read it back,  
10 please?

11 (Note: Question read back.)

12 THE WITNESS: I think that's really your  
13 decision to decide whether you feel that the surface  
14 management agencies provide sufficient protections.  
15 But as an operator, I can say that I wouldn't even  
16 consider asking to move waste from one unit to  
17 another unit because I think the answer is going to  
18 be no every time.

19 COMMISSIONER OLSON: Can I follow up on  
20 that? I guess along that same line, with your  
21 interpretation, what limits it to the surface waste  
22 management agency's approval? What if there is  
23 no -- what if it's fee land? Why couldn't it be  
24 done on any land within the state?

25 THE WITNESS: Well, that requires

1 conjecture on my part. Our application is specific  
2 to the federal exploratory unit.

3 COMMISSIONER OLSON: But you are assuming  
4 that according to your definition, on-site is  
5 wherever the pit occurs. It's not limited by land;  
6 it's where, according to your interpretation of  
7 on-site, it's where the pit occurs. Doesn't  
8 have to be where the drilling pad is, doesn't have  
9 to be where the unit is. How does land status have  
10 anything to do with that?

11 THE WITNESS: Well, in the Rosa, land  
12 status is controlled by the road surface agencies.

13 COMMISSIONER OLSON: What I am looking at  
14 is potential implications of what you are proposing  
15 and there is no limitations to, in your  
16 interpretation, to surface land use. Your  
17 interpretation is that on-site is wherever the pit  
18 occurs. It has nothing to do with land status. So  
19 I guess I don't understand how that works in the  
20 concept of fee lands.

21 If you have, you know, something on one  
22 piece of land, you can go dispose -- put the pit on  
23 some other land and if the landowner says it's okay,  
24 that's what I get from your interpretation. It  
25 could just -- essentially you could place pits

1       wherever you want regardless of there being a well  
2       location there.

3               THE WITNESS: Well, I think the rules are  
4       in place and the governance is in place to address  
5       that issue when whatever operator might propose  
6       that. I mean, it can be addressed at that time.  
7       Fee acreage is really not a consideration for us.  
8       Again, we are strictly within the bounds of the  
9       federal exploratory unit.

10              CHAIRMAN FESMIRE: Well, you understand  
11       that the rules that we have apply to other than  
12       Williams properties on federal lands. They also  
13       apply to other ownership in the state. So if this  
14       rule is interpreted the way you are requesting us  
15       to, it has an effect to set precedent not only for  
16       this land but federal land and state lands.

17              Now, you have mentioned that you have a  
18       triple that drills faster than the doubles you  
19       normally employ. Where is the rig now? Did you  
20       send it to Utah?

21              THE WITNESS: It's finishing up the 634B.

22              CHAIRMAN FESMIRE: That's the rig on the  
23       634B?

24              THE WITNESS: Yes, sir.

25              CHAIRMAN FESMIRE: Then you're going to



1 send it to Utah?

2 THE WITNESS: It's my understanding that  
3 they don't have a job in Utah, so --

4 CHAIRMAN FESMIRE: It came from Utah here  
5 to drill the 634B?

6 THE WITNESS: Yes, and it will go back to  
7 wherever their next job is, whether it be -- whether  
8 another operator in San Juan utilizes the rig or it  
9 goes back to Utah or Grand Junction, wherever the  
10 next operator wants to pick it up and move it on to.  
11 But it's available to drill the SWD well. And my  
12 intent, I think, with the timing is to utilize that  
13 well to drill SWD 2.

14 CHAIRMAN FESMIRE: I misunderstood. I  
15 thought you planned to drill it with the double and  
16 had a 42-day AFE.

17 THE WITNESS: Correct. The AFE  
18 contemplated using a double. Since the triple is  
19 available and can drill in a faster time, then we  
20 would probably go that route.

21 CHAIRMAN FESMIRE: So the time constraints  
22 you are concerned with is using the double or is  
23 that using the triple? I mean, the time window  
24 where we have to get something done by the first of  
25 August.

1           THE WITNESS: The use of the triple will  
2 shave -- again, my engineer estimates 12 days off of  
3 the 42 days required. So that would move the start  
4 date from August 1 to August 12 or 13.

5           CHAIRMAN FESMIRE: You mentioned that  
6 there's a nine percent state severance tax in New  
7 Mexico and the drillers in the Marcellus shale,  
8 including Williams, don't have the severance tax?

9           THE WITNESS: I don't believe there's a  
10 severance tax in Pennsylvania.

11          CHAIRMAN FESMIRE: So even with that  
12 advantage, the nine percent advantage, New Mexico  
13 does adequately compete for capital in the Williams  
14 capital-constrained budgeting system, right?

15          THE WITNESS: Some of our projects do.

16          CHAIRMAN FESMIRE: Just like some of the  
17 Pennsylvania projects acquire capital?

18          THE WITNESS: Correct. My fear is that an  
19 increasing number of the Pennsylvania projects are  
20 going to compete competitively for our capital.

21          CHAIRMAN FESMIRE: Assuming those massive  
22 cracks don't preclude that, right?

23          THE WITNESS: Right, and assuming we can  
24 continue to conduct that.

25          CHAIRMAN FESMIRE: And that is a concern.

1 THE WITNESS: It is a big concern.

2 CHAIRMAN FESMIRE: There's a whole lot of  
3 things circulating about --

4 THE WITNESS: Absolutely.

5 CHAIRMAN FESMIRE: You used a phrase that  
6 I loved, topographically challenged. You mean less  
7 than flat?

8 THE WITNESS: You have been to Rosa, I  
9 think, and you have seen that there is a lot of  
10 elevation differences, a lot of elevation changes,  
11 so there's not a lot of flat spots.

12 CHAIRMAN FESMIRE: With that, I'm going to  
13 make one more statement and end my examination.  
14 Adjunct professor, I learned recently, means less  
15 than minimum wage to teach a college class, right?

16 THE WITNESS: That's a fair assessment.

17 CHAIRMAN FESMIRE: Redirect?

18 REDIRECT EXAMINATION

19 BY MS. MUNDS-DRY

20 Q. Mr. McQueen, Ms. MacQuesten asked you  
21 questions about the pending C 144 and I think you  
22 characterized it as the contingent plan to use the  
23 closed-loop system to haul to Envirotech. What is  
24 the status of that C 144?

25 A. The April 20th C 144 was submitted and

1 declined by the department and --

2 Q. No, I'm sorry. I didn't mean that way. I  
3 meant the C 144 and I believe it's an OCD exhibit to  
4 use closed-loop at the SWD No. 2 and haul to  
5 Envirotech.

6 A. That application is currently pending in  
7 the Aztec office, is my understanding. OCD Aztec.

8 Q. And also Ms. MacQuesten asked you  
9 questions about the issues that were discussed in  
10 the June 24th denial, and you referred to the  
11 application as having major and minor inaccuracies.  
12 I want it clear from the record for the Commission  
13 which application you were referring to.

14 A. I was referring to the April 20th  
15 application. And my characterization of major and  
16 minor issues is that we have completed a large  
17 number of C 144s in the past. I am cognizant, I  
18 think, of how we can address some of the issues that  
19 are identified in the denial. So that's the reason  
20 for my characterization.

21 But my intent in coming to Santa Fe and  
22 visiting with the Environmental Bureau in recent --  
23 amending the application for consideration was  
24 trying to remove, again, as many of those -- what I  
25 would characterize as minor distractions such as

1     fencing requirements and the other. I don't mean to  
2     say that those are not legitimate concerns. I am  
3     just saying that those are easily addressed on our  
4     part.

5           Q.     Is the language that Williams used in the  
6     C 144, the June 18th C 144, language that has been  
7     approved in the past?

8           A.     Yes.

9           Q.     And Commissioner Olson asked you about the  
10    various costs involved with hauling to Envirotech.  
11    He asked you also the cost to enlarge the pit and  
12    the cost to haul to the 634. What other costs are  
13    involved in hauling and disposing of the waste to  
14    Envirotech that were included in the number that you  
15    gave us previously?

16          A.     The \$205,000 that I stated earlier covers  
17    both the cost of the disposal and the trucking cost  
18    from the SWD 2 do Envirotech.

19          Q.     I believe both Commissioner Olson and  
20    Chairman Fesmire are concerned and had questions  
21    about how do we keep the pit from being open for an  
22    indefinite period of time. What is your  
23    understanding of the agency's continued monitoring  
24    and control over a temporary pit, Williams'  
25    temporary pits?

1           A.     Well, the agency is ultimately responsible  
2     for the oversight of the pits. They regularly  
3     inspect our locations and provide oversight, and  
4     again, I think it's worth mentioning that from a  
5     liability standpoint, it's not in Williams' interest  
6     to keep the temporary pits open any longer than is  
7     necessary.

8           Q.     Does the Division approve each  
9     modification and transfer process that Mr. Lane  
10    tried to explain to us yesterday but I'm not sure I  
11    still understand?

12          A.     I believe they do.

13          Q.     I would like to make sure we are clear on  
14    that Williams Exhibit No. 21.

15                 MS. MUNDS-DRY: May I approach?

16                 CHAIRMAN FESMIRE: You may, ma'am.

17          Q.     Handing you a copy of the MOU between the  
18    OCD and the Farmington Field Office, I know we  
19    talked about this a couple of times during the  
20    hearing. Could I ask you to turn to the final page  
21    of this MOU. Do you have that?

22          A.     I don't have the MOU.

23          Q.     I'm sorry. Do you have that in front of  
24    you?

25          A.     I do.

1 Q. Would you read Paragraph 5, surface owner  
2 notification?

3 A. "In order to minimize the burden on the  
4 SMA and the NMOCD, the surface owner notification  
5 requirements of Part 17 on federal surface lands  
6 shall be deemed satisfied upon a showing by the  
7 operator that the SMA has received and approved the  
8 application for permit to drill or the sundry notice  
9 of intent described in the actions requiring surface  
10 owner notification."

11 By that interpretation, the word "or"  
12 suggests to me that the sundry notice of intent is  
13 what we need to file with the BLM next week.

14 Q. Chairman Fesmire asked you about the order  
15 of Paragraph 68, the order that adopts the Pit Rule.  
16 Did that parenthetical make it into the rule?

17 A. No.

18 Q. That's all the questions I have. Thank  
19 you.

20 CHAIRMAN FESMIRE: Ms. MacQuesten?

21 MS. MACQUESTEN: No questions.

22 CHAIRMAN FESMIRE: Thank you very much.  
23 You may step down. Anything further?

24 MS. MUNDS-DRY: We have nothing further.

25 CHAIRMAN FESMIRE: I assume we are

1 switching to Mr. Swazo?

2 MR. SWAZO: Yes.

3 CHAIRMAN FESMIRE: Do you have an opening  
4 statement?

5 MR. SWAZO: I do, but we will have to --  
6 my first witness is Mr. Glenn Von Gonten. He will  
7 use a computer and a screen, so we will need five  
8 minutes to rearrange things to get him set up to  
9 testify.

10 (Note: The hearing stood in recess at  
11 11:20 to 11:23.)

12 CHAIRMAN FESMIRE: We have one issue this  
13 we have to take up.

14 MS. MUNDS-DRY: I apologize. I would like  
15 to move Williams Exhibit 22 which is the MOU into  
16 evidence.

17 MS. MACQUESTEN: No objection.

18 CHAIRMAN FESMIRE: It will be admitted for  
19 the record.

20 (Note: Williams Exhibit 22 admitted.)

21 MR. SWAZO: I would like to begin my  
22 opening statement.

23 CHAIRMAN FESMIRE: Speak up.

24 MR. SWAZO: I will try to. Williams is  
25 seeking an order from the Commission allowing it to



1 take the drilling waste from Well A and transfer it  
2 to Well B some miles away. Under the Pit Rule,  
3 there's three options for disposal of drilling  
4 waste. One is waste removal; the other is on-site  
5 burial; the other is alternative closure method.

6 Williams claims its proposal falls within  
7 the on-site burial provisions. It does not. It's  
8 an off-site burial and as an off-site burial it  
9 falls squarely within Part 36. In order for  
10 Williams to deposit its waste, dispose of its waste  
11 in well B, they need to pursue a Part 36 permit.

12 Now, anything that doesn't fit within the  
13 on-site or the waste removal provisions of Part 17  
14 is an alternative closure method that requires the  
15 operator to go through the extension process of Part  
16 17. This proposal does not fit within the on-site  
17 burial provisions of Part 17. And as such,  
18 Williams, at minimum, would have to go through the  
19 exception process.

20 Williams has not gone through the  
21 exception process. As Williams stated today and  
22 yesterday, they are not seeking an exception. But  
23 in any event, you guys cannot give them an exception  
24 because they have not gone through the exception  
25 process which requires giving public notice, the

1 opportunity for public comment and hearing. It also  
2 requires the operator to apply with the Santa Fe  
3 Environmental Bureau for approval or for an  
4 exception. It also requires Williams to demonstrate  
5 that the proposal -- that the exception protects  
6 groundwater, public health and the environment.

7 Again, the Commission cannot give Williams  
8 the exception because they have not gone through the  
9 exception process.

10 What Williams needs to do in this case is  
11 they need to pursue the -- if they want to go ahead  
12 and dispose in this pit, they need to pursue a  
13 Service Waste Management Facility under Part 36, and  
14 that's the end of my opening statement,  
15 Mr. Chairman.

16 CHAIRMAN FESMIRE: First witness is  
17 Mr. Von Gonten, I assume?

18 GLENN VON GONTEN

19 (being duly sworn, testified as follows:)

20 DIRECT EXAMINATION

21 BY MR. SWAZO

22 Q. Good morning, Mr. Von Gonten.

23 A. Good morning.

24 Q. I'm going to try to go through this stuff  
25 rather quickly, so would you please state your name

1 for the record.

2 A. Glenn Von Gonten.

3 Q. And you are employed with the OCD?

4 A. I am working with the Environmental Bureau  
5 and the OCD.

6 Q. Your title is acting OCD environmental  
7 bureau chief?

8 A. I'm a senior hydrologist presently acting  
9 as environmental bureau chief.

10 Q. Part of your work duties include  
11 overseeing and supervising the Environmental Bureau?

12 A. Yes.

13 Q. You deal with oil field related  
14 groundwater and soil contamination cases?

15 A. Yes.

16 Q. You issue discharge permits?

17 A. The division issues them and I sign them.

18 Q. You deal with other assigned issues?

19 A. Yes, I do.

20 Q. Exhibit No. 1, OCD Exhibit 1, that's a  
21 copy of your resume?

22 A. Yes, it is.

23 Q. And the resume describes your educational  
24 experience?

25 A. Yes. I have a bachelor's in geology from

1 Texas A & M and a master's in geology from the  
2 University of Texas at Arlington.

3 Q. And it also describes your work  
4 experience?

5 A. That's correct.

6 Q. And it indicates that you have more than  
7 30 years of experience as a geologist?

8 A. That's correct.

9 Q. And you worked as an environmental  
10 regulator responsible for the investigation and  
11 remediation of contamination sites for the past 17  
12 years?

13 A. That's correct.

14 Q. What is your experience with Part 36?

15 A. The surface waste management facility's  
16 Rules Part 36, I was heavily involved with the  
17 public outreach on that. I have been involved with  
18 the task force associated with the rule-making and I  
19 testified extensively at that rule-making.

20 Q. And what about your experience with Part  
21 17?

22 A. Very similar. I have been involved with  
23 the Pit Rule, with the outreach, with the task force  
24 that was created for the Pit Rule, and I testified  
25 during the Pit Rule extensively.

1 Q. And you have testified in other cases  
2 before the OCC?

3 A. Yes. I have testified as a expert  
4 witness, I believe, four times before the Commission  
5 and once as a factual witness.

6 Q. Mr. Chairman, at this time I would like to  
7 qualify Mr. Von Gonten as an expert in management of  
8 oil field waste, OCD Regulatory Process Part 17 and  
9 Part 36.

10 MS. MUNDS-DRY: No objection.

11 CHAIRMAN FESMIRE: Mr. Von Gonten's  
12 credentials will be so accepted.

13 Q. Mr. Von Gonten, will you give the  
14 Commission a short description of what you will be  
15 testifying about today?

16 A. Yes. I intend to very briefly provide an  
17 overview of the Pit Rule and Part 36 and how they  
18 interact, talk about closed-loop systems, talk about  
19 closure as specified under the Pit Rule, and I will  
20 turn my attention to Williams' proposal for off-site  
21 disposal. I will point out the requirements of the  
22 exception process in the Pit Rule. I'll compare in  
23 some detail what is needed under Part 36. I will  
24 discuss on-site, and I will briefly conclude by  
25 pointing out some consequences of this case.

1           Q.     So what options does Part 17 give an  
2 operator for disposal of waste?

3           A.     Part 17 allows operators three  
4 opportunities for disposal of closure. The first is  
5 to dig and haul waste excavation removal; the second  
6 is on-site burial, on-site closure, rather; the  
7 third is to request an exception for an alternative.

8           Q.     I think I jumped the gun.

9           A.     Yes. Just briefly I wanted to point out  
10 the location of the two wells that we are talking  
11 about, located in Rio Arriba county, northern New  
12 Mexico. The SWD No. 2 is located or depicted here  
13 in this map in blue and the 634B is located about  
14 precisely one township west.

15                   I want to begin by reminding the  
16 Commission of what the Pit Rule in Part 36 is. The  
17 objective of the Pit Rule is to regulate pits,  
18 closed-loop systems, below-grade tanks and sumps  
19 used in connection with the oil and gas operations  
20 for the protection of public health, welfare and the  
21 environment. The objective of Part 36 is to  
22 regulate the disposal of oil field waste and the  
23 construction, operation and closure of surface waste  
24 management facilities. Drill cuttings, in the  
25 particular case before us, are a subset of oil field

1 waste.

2 Part 17 requires operators to either dig  
3 and haul drilling waste in an OCD-approved facility  
4 or to dispose of drilling waste in an on-site  
5 burial. Operators who dig and haul must take  
6 drilling waste to an OCD-approved facility and  
7 operators may not dispose of drilling waste anywhere  
8 else.

9 There are 17 sections in Part 17. We are  
10 not going through all of them. We are going to go  
11 through two of them, closure and exceptions, very  
12 quickly.

13 Closed-loop systems are contemplated by  
14 the Pit Rule. They are obviously steel tanks used  
15 to manage drilling mud. Mud, gas and solids are  
16 conditioned in a closed-loop system using shale  
17 shakers, degassers, desanders, desilters and  
18 cyclones.

19 Mud circulated through a closed-loop  
20 system is discharged either to a temporary pit, a  
21 drying pad or haul-off bins. I would point out that  
22 the Pit Rule does not expressly address the use of  
23 haul-off bins. It refers many times to drying pads  
24 associated with closed-loop systems but not to  
25 haul-off bins.

1           Again, the steel tanks in our view, I  
2 believe, when we were doing the rule making, was  
3 that you would have a closed-loop system, and  
4 immediately adjacent to it you might have a drying  
5 pad and then you have opportunities for a trench  
6 burial or temporary pit burial. As it turns out,  
7 the hybrid systems are being used by the industry.  
8 They are not expressly addressed in the Pit Rule.  
9 These include the use of drilling and workover pits,  
10 which are a type of temporary pit; disposal pits,  
11 which are a type of temporary pit; closed-loop  
12 systems, drying pads and the haul-off bins.

13           As I mentioned, the Pit Rule doesn't  
14 address the hybrid systems, doesn't prohibit them.  
15 Operators may use temporary fits for drilling  
16 through shallow fresh groundwater and then switch to  
17 closed-loop system when they drill with brine or  
18 with oil-based mud. I believe that's what's  
19 happening at the 634. The Pit Rule does not address  
20 haul-off bins, but Form C 144 and C 144 CLEZ do  
21 address haul-off bins. There's a checklist on those  
22 forms for operators to indicate whether they are  
23 operating haul-off bins.

24           Both temporary pits and closed-loop  
25 closure requirements in 1713 B and 1713 D specified



1 almost identical provisions. Waste excavation  
2 removal in the case of temporary pits, but just  
3 waste removal from haul-off bins, because you are  
4 not excavating haul-off bins. On-site burial, and  
5 the third alternative is an alternative closure  
6 method, which one would have to pursue through an  
7 exception process.

8           As has been pointed out, the Pit Rule does  
9 not expressly define what on-site means. However,  
10 in its order implementing the Pit Rule, R 12939, the  
11 Commission found in Paragraph 68 that 1710 C  
12 "Specifies those locations where an operator may not  
13 implement on-site closure methods (where waste that  
14 is generated from the drilling or the workover of  
15 the well is buried on or near the well pad).  
16 On-site closure includes burial in-place in a  
17 temporary pit or trench burial in a lined trench  
18 constructed specifically for the burial of the  
19 waste.

20           "On-site closure methods include (2)  
21 In-place and on-site trench burial."

22           Again, in-place burial is burial in the  
23 existing temporary pit. For a drilling or workover  
24 pit this is very easy to follow. If you meet the  
25 certain siting criteria and the closure standards,

1 the closure criteria, then you may indeed bury --  
2 leave the waste in-place after stabilization. And  
3 the commissioners will remember many discussions,  
4 I'm sure, about the taco and the burrito. These are  
5 the two closure methods that the Commission  
6 approved.

7 In its order, in the finding in Paragraph  
8 71, the Commission noted that the division proposal  
9 would have prohibited on-site burial with an  
10 exception for a facility beyond 100-mile radius  
11 unless did obtained an exception. The Commission  
12 does not adopt this requirement because on-site  
13 closure should be based on the level of various  
14 constituents in the waste and site-specific  
15 information, rather than on the distance to a  
16 disposal facility.

17 I would remind the Commission that it  
18 noted in Paragraph 72 that the New Mexico Citizens  
19 for Clean Air and Water, the Oil and Gas  
20 Accountability Project and CRI proposed that no  
21 on-site burial of waste be allowed, and the  
22 Commission does not accept these proposals because  
23 the Commission finds there are circumstances where  
24 waste can be buried on-site.

25 On-site closure methods specified in

1 1713F(2), in-place burial. One of the provisions  
2 that talks about for the burial of the contents from  
3 a drying pad associated with a closed-loop system,  
4 the operator shall construct a temporary pit within  
5 100 feet of the drying pad associated with the  
6 closed-loop system unless the appropriate division  
7 district office approves an alternative distance and  
8 location. The operator shall use a separate  
9 temporary pit for closure of each drying pad  
10 associated with the closed-loop system.

11 As I mentioned earlier, operators are  
12 using haul-off bins as part of a hybrid system. Mr.  
13 Lane used the term, and I actually used it, too. We  
14 think of the haul-off bins as being a superior  
15 version to the drying pad. They are associated with  
16 a closed-loop system. The drying pad is there  
17 because of the closed-loop system, just as the  
18 haul-off bin would be associated with it. We think  
19 that the Pit Rule specifies this 100 feet for a very  
20 important reason.

21 Also, the requirement that each temporary  
22 pit, there can only be one temporary pit for closure  
23 or disposal associated with each closed-loop system.

24 17.13F(2) clearly specifies that operators  
25 may use an on-site closure method but the cuttings

1 must be buried either in place, which is burial in  
2 the existing temporary pit used for drilling or  
3 workover, or in a temporary pit that the operator  
4 constructs solely for disposal that is located no  
5 more than 100 feet away from the drying pad or the  
6 closed-loop system. Drilling wastes from two  
7 different closed-loop systems may not be comingled.

8 CHAIRMAN FESMIRE: Would you be specific  
9 of where you are quoting the statute when we talk  
10 about interpretation?

11 THE WITNESS: This is 19.15.17.13F(2).  
12 This is my summary of that section. The previous  
13 slides are actual citations with some of the  
14 language removed because it's repetitious. In the  
15 exhibits before you, these notes basically are  
16 shorthand. I have cut out 19.15 to just speed this  
17 along.

18 The Commission found in its order in  
19 Paragraph 217, the location of the temporary pit  
20 within 100 feet of the drying pad limits additional  
21 surface disturbance and prevents the accumulation of  
22 multiple drying pads from other locations being  
23 buried on-site, in effect creating a mini landfill.  
24 The Commission expressed in this order and in this  
25 finding that it explicitly wanted disposal temporary

1 pits to be located in close proximity to the  
2 closed-loop system and why it wanted that. It  
3 wanted to prevent additional surface disturbance and  
4 it wanted to prevent operators creating mini  
5 landfills.

6 Now, for on-site trench burial, which is  
7 the other on-site method specified in 17.13F, the  
8 Pit Rule states, "Where the operator meets the  
9 siting criteria, an operator may use an on-site  
10 trench burial for closure of the drying pad  
11 associated with the closed-loop system or for  
12 closure of the temporary pit when the waste meets  
13 the criteria, provided that the operator certifies  
14 to the Division that it has given written notice to  
15 the surface owner that it intends to do so. The  
16 operator shall use a separate on-site trench for  
17 closure of each drying pad associated with the  
18 closed-loop system or each temporary pit."

19 I think this is instructive in that the  
20 Commission made the on-site burial requirements a  
21 little more burdensome on the operator. And that's  
22 because there might be a second pit or surface  
23 disturbance being imposed upon a surface owner.  
24 Whereas, in-place burial in the drilling and  
25 workover pit, there was just that one surface

1 disturbance. Now you are talking about a second,  
2 potentially a second one. That's why, I believe,  
3 the Commission added the requirement that it had to  
4 give written notice to the surface owner.

5 Continuing, 17.13F(3)D, again on-site  
6 trench burial, if the contents from the drying pad  
7 associated with the closed-loop system or from the  
8 temporary pit do not exceed the criteria -- this is  
9 citing the criteria, the cuttings closure  
10 criteria -- the operator shall construct a trench  
11 lined with a geomembrane liner located within 100  
12 feet of the drying pad associated with the  
13 closed-loop system or temporary pit.

14 Again, the disposal in an on-site trench  
15 burial had to be within 100 feet of the drying pad  
16 associated with the closed-loop. By extension, we  
17 believe this provision would also apply to haul-off  
18 bins.

19 1713F(3) clearly specifies that operators  
20 may use the other on-site closure method; that is,  
21 on-site trench burial, but the cuttings must be  
22 burden in a lined trench located within 100 feet of  
23 the drying pad associated with the closed-loop  
24 system. The Commission found in its order in  
25 Paragraph 221, the location of the trench within 100

1 feet of the drying pad limits additional surface  
2 disturbance and prevents the accumulation of  
3 multiple drying pads from other locations being  
4 buried on-site, in effect creating a mini landfill.

5 The Commission, once again, expressed its  
6 requirement that the Pit Rule imposes that burial of  
7 pit contents should occur no more than 100 feet away  
8 from the drying pad associated with the closed-loop  
9 system, or by extension, the haul-off bin.

10 To summarize, 1713B and 1713D both specify  
11 three closure methods for both temporary pits and  
12 closed-loop systems. First is waste excavation and  
13 removal to an OCD-approved facility or waste removal  
14 in the case of a closed-loop system; on-site burial;  
15 or an alternative closure method that must be  
16 pursued under the exception process.

17 1713F specifies two on-site closure  
18 methods: In-place burial, which again, is burial in  
19 the existing temporary pit used for drilling or  
20 workover, and on-site trench burial are both on-site  
21 closure methods. It is inconsistent to interpret  
22 on-site burial to mean disposal both in the existing  
23 temporary pit used for drilling and to also mean an  
24 off-site burial at a remote location in a trench or  
25 temporary pit constructed to dispose of waste from a

1 closed-loop system.

2 Now, in Williams' proposal, Williams is  
3 requesting approval from the Commission to close a  
4 closed-loop system at its Salt Water Disposal No. 2  
5 by waste removal and to dispose those drill cuttings  
6 off-site in a disposal pit located more than six  
7 miles away at the Rosa Unit 634B. Williams is not  
8 proposing to remove the waste to a division-approved  
9 facility nor is it proposing on-site burial.  
10 Therefore, what it is proposing is an exception to  
11 the Pit Rule.

12 Some documents, and Mr. Jones will address  
13 this in more detail, indicate that -- we did not  
14 realize this early on and it's only become very  
15 clear to us during this hearing that Williams  
16 planned to commingle two wells all along. In its  
17 two denial letters, OCD clearly informed Williams  
18 that its proposal would be a definite exception to  
19 the Pit Rule and would also violate the requirement  
20 that Williams dispose of waste off-site in a  
21 permitted Part 36 surface waste management facility.

22 I will talk briefly about exceptions.  
23 19.15.17.15 NMAC is the exception provisions of the  
24 Pit Rule. It says that the Environmental Bureau may  
25 grant an exception from a requirement or provision



1 of the Pit Rule if the operator demonstrates to the  
2 satisfaction of the Environmental Bureau that the  
3 granting of the exception provides equivalent or  
4 better protection of fresh water for public health  
5 and the environment.

6 To apply -- to submit a permit  
7 application, for both permanent pits and exceptions,  
8 those must be submitted to the Environmental Bureau  
9 and a copy submitted to the District Office.

10 The exception provisions specify that  
11 written notice must be given, that public notice  
12 must be given, and the opportunity for any person to  
13 file comments or request a hearing must be provided.  
14 None of Williams' five applications indicate that it  
15 recognized that what it was, in fact, requesting  
16 wasn't an exception.

17 Williams' March hearing application asked  
18 for an exception in the alternative. However, later  
19 Williams amended its application to remove the  
20 exception language. The Environmental Bureau has  
21 twice reviewed and twice denied the application and  
22 stated that although OCD -- although what Williams  
23 was requesting was an exception, OCD did not treat  
24 the application as an exception request because,  
25 among other things, they didn't file it as an

1     exception request and they didn't provide notice.

2                 Williams failed to submit an exception  
3     request to the Environmental Bureau despite being  
4     told it must exhaust its administrative options  
5     before requesting a hearing.

6                 The Commission found in its order for the  
7     Pit Rule in Paragraph 56 that applications for  
8     permanent pits and for many exceptions must be filed  
9     with the Environmental Bureau due to their technical  
10    complexity. The Commission also found in Paragraph  
11    246 that the intent of the exception provisions is  
12    to allow industry to develop and apply new methods  
13    or practices that protect fresh water, public health  
14    and the environment but that may not be addressed by  
15    the existing sections on design, construction,  
16    operations and closure.

17                However, the Environmental Bureau would  
18    have rejected any such request because it would be  
19    in violation of Part 36, the surface waste  
20    management facility's ruling. Based on its review  
21    of Williams C 144 and also discussions with  
22    Mr. McQueen, the Environmental Bureau determined the  
23    proposed pit would be used solely for off-site  
24    disposal of oil field waste.

25                At that time we did not understand that

1 Williams planned to commingle waste at the 634. The  
2 disposal of oil field waste in an off-site location  
3 is only allowed at an OCD-approved facility.

4 Part 36. The surface waste management  
5 rules specify in 36.8A, "No person shall operate a  
6 surface waste management facility except pursuant to  
7 and in accordance with the terms and conditions of  
8 the division-issued surface waste management  
9 facility permit.

10 The application requirements are rigorous.  
11 They include a detailed description of the facility,  
12 engineering designs that are certified by an  
13 engineer, an oil field waste management plan,  
14 inspection and maintenance plan, best management  
15 practice plan, waste tracking, groundwater  
16 monitoring and long-term closure plans.

17 There are also requirements for extensive  
18 notice requirements when one proposes to operate a  
19 surface waste management facility. There's the  
20 opportunity for public comments and to request a  
21 hearing on the application. There's a requirement  
22 that Part 36 facilities provide financial assurance.

23 The Division has the authority to approve  
24 the permit, to deny it, to revoke, suspend, modify  
25 or transfer such permits. There are siting and

1 operational requirements applicable to all permitted  
2 Part 36 facilities.

3           The specific requirements for a landfill  
4 such as a centralized landfill, which we believe is  
5 what Williams really would like to operate, are  
6 generally operating requirements: Groundwater  
7 monitoring program, landfill design, liner specs,  
8 specs for soil component of composite liners, the  
9 leachate collection and removal system, landfill gas  
10 control system, landfill gas response program.

11           There's also the requirement for closure  
12 and post-closure which provide that the facility may  
13 be closed by the operator and the operator would  
14 retrieve its financial assurance. However, there's  
15 also the opportunity for the Division to require  
16 that the facility close and forfeit its financial  
17 assurance, and there are surface waste management  
18 facility and cell closure and post-closure  
19 standards.

20           There is no comparison to the design,  
21 construction and operational standards and the  
22 closure of the centralized OCD permitted landfill  
23 with an in-place burial or on-site trench burial.  
24 The Commission determined to allow on-site closure  
25 of pit wastes because the Pit Rule closure standards

1 prohibited the construction of mini landfills which  
2 would be scattered across New Mexico.

3           The Commission found in its order,  
4 Paragraph 217, "The location of the temporary pit  
5 within 100 feet of the drying pad limits additional  
6 surface disturbance and prevents the accumulation of  
7 multiple drying pads from other locations being  
8 buried on-site in effect creating a mini landfill."

9           It found similarly in Paragraph 221 for  
10 trench burial that the 100-foot limit provision  
11 would limit additional surface disturbance and  
12 prevent the accumulation of mini landfills.

13           Williams' proposal to dispose of its  
14 drilling waste off-site can only be done pursuant to  
15 a Part 36 permit for a centralized landfill. OCD in  
16 general would support either a centralized or  
17 commercial landfill in the northwest, but if  
18 operators can get exceptions to the Pit Rule which  
19 allows commingling of put waste off-site in mini  
20 landfills, then there will never be an economic  
21 incentive for an OCD-permitted landfill in the  
22 northwest.

23           I will now talk about what on-site means.  
24 On-site means just what it says, on the site at  
25 which the activity occurred. I provided a couple of

1 dictionary definitions. Done or located at the  
2 site, as of a particular activity. Accomplished or  
3 located at the site of a particular activity.

4 The activity we are talking about is the  
5 drilling of the well. It isn't that there are pits  
6 scattered across New Mexico that have to be closed.  
7 There are pits that are used for the drilling and  
8 workover operations. It's completely in that  
9 context that on-site must be considered.

10 On-site is not defined in the Pit Rule.  
11 This is Paragraph 68 of the order. It specifies  
12 that 1710C specifies "Those locations where an  
13 operator may not implement on-site closure methods,  
14 which is where the waste that is generated from the  
15 drilling or workover of the well is buried on or  
16 near the well pad. On-site closure includes burial  
17 in-place in a temporary pit or trench burial in a  
18 lined trench constructed specifically for burial of  
19 the waste."

20 The Rulebook uses on-site at least 40  
21 times, mostly in the Pit Rule. There are other  
22 citations which use on-site. It must be interpreted  
23 consistently from one section of the Rulebook to  
24 another. One is it refers to a facility located in  
25 an oil and gas production facility used for

1 temporary storage of oil field waste generated  
2 on-site from normal operations.

3 In the H2S rule there's a citation that  
4 uses on-site. It refers to training and drills  
5 including training in the responsibilities and  
6 duties of the central personnel and periodic on-site  
7 or classroom drills or exercises.

8 This would make no sense if you were to  
9 interpret you were going to have safety training  
10 drills for H2S but you were going to do it at some  
11 other facility. An example of this would be what  
12 about having a fire drill in this building. You  
13 wouldn't go train for a fire drill over at the  
14 Runnels building.

15 Also the fencing requirements specify,  
16 "The operator shall ensure that all gates associated  
17 with the fence are closed and locked when  
18 responsible personnel are not on-site." If on-site  
19 means anywhere, it means that you could never lock  
20 the gate because personnel are always on-site by  
21 that interpretation.

22 If there is on-site equipment associated  
23 with the permanent pit, again, how is the equipment  
24 associated with the permanent pit going to be  
25 anywhere except associated on-site with the

1 permanent pit?

2 The design of the proposed gas recovery  
3 system in the systems major on-site components --  
4 very similar concept to on-site equipment.

5 The Rulebook uses on-site trench at least  
6 eight times, on-site closure at least 11 times, and  
7 on-site burial at least 14 times.

8 These are all in the Pit Rule. I think  
9 they all have to be interpreted in comity with the  
10 Rulebook as a whole.

11 In its Pit Rule deliberations, the  
12 commission used on-site approximately 40 times and  
13 its implementing order R 12939, the Commission used  
14 on-site approximately 51 sometimes. In the Pit Rule  
15 Amendment R 12939A, the Commission used on-site  
16 approximately 12 times. It's very clear that the  
17 Commission gave a great deal of consideration to  
18 what on-site meant.

19 In fact, in Paragraph 74 the Commission  
20 found the disbursed on-site closure of temporary  
21 pits that contain waste with levels of constituents  
22 that will likely result in contamination of  
23 groundwater is not preferable to disposing of the  
24 waste in a limited, known number of commercial  
25 landfill. Disbursed burial sites decrease the



1 number of sites where groundwater contamination may  
2 occur, increase the number of sites that require  
3 regulatory oversight, and make it more difficult to  
4 determine the source of the contamination.

5 I think that it is instructive to consider  
6 the order of the closure methods. The first closure  
7 method that the Commission found for was dig and  
8 haul. Secondly, on-site burial if you met certain  
9 siting criteria and closure criteria. Third, you  
10 were allowed an exception.

11 In its finding, again, the Commission  
12 found that the location of temporary pit within 100  
13 feet of the drying pad or in this case haul-off bin  
14 limits additional surface disturbance and prevents  
15 the accumulation of multiple drying pads from other  
16 locations being buried on-site, in effect creating a  
17 mini landfill. The Pit Rule order explains why the  
18 Commission was very interested in this. It wanted  
19 close proximity to the -- burial of waste to occur  
20 in close proximity to the wellhead. It found an  
21 equivalent finding for the trench burial.

22 Now, this issue has been before the  
23 Division since the Pit Rule was actually issued. We  
24 issued a Frequently Asked Questions as part of  
25 training. I believe it was about October of 2008.

1     Shortly after the implementation of the Pit Rule,  
2     and FAQ 40 says, "How many on-site disposal trenches  
3     are allowed at a single well site?" Answer, "Part  
4     17 specifies one trench per drying pad or temporary  
5     pit. An operator can request an exception for more  
6     than one trench or one for closure of more than one  
7     drying pad or temporary pit from the same well site  
8     with proper justifications. Operators cannot bury  
9     pit contents from another well in an off-site trench  
10    burial."

11                 Two things. This has been our guidance  
12     since the Pit Rule has been issued, and we have  
13     initially recognized very early on that having a  
14     drilling pad with multiple wells was quite different  
15     than commingling wastes from different well sites.

16                 To conclude with the consequences. If the  
17     Commission approves Williams' application, then  
18     other operators will also begin disposing of pit  
19     contents at the nearest convenient location. Some  
20     of these operators are not operating in a unit, they  
21     are operating on fee land. Pit waste could be  
22     disposed of at sites at which there is no present  
23     drilling or workover activities. I believe that has  
24     been explored by the Commission.

25                 Exhibit 23 -- and I should point out that

1 the maps that I showed earlier on were Exhibit 4.  
2 And now I am referring to Exhibit 23, which is a  
3 letter exception request from another operator from  
4 the southeast. Read & Stevens are also seeking  
5 off-site disposal. They recognize that it was, at  
6 the very least, an exception to the Pit Rule. I  
7 point out that this letter was submitted to the  
8 Division as part of its exception request package by  
9 Read & Stevens, and they included this to document  
10 that they had given notice to the landowner. You  
11 also notice in the second paragraph an additional  
12 \$500 per well will be sent as these wells are  
13 drilled and disposed of on this landowner's  
14 property.

15               This will set the bar down. \$500 an open  
16 dump is what's going to happen if the Commission  
17 were to find for this proposal by Williams. The  
18 protections afforded by the Pit Rule and Part 36  
19 would be lessened. There would be no exception  
20 process, no notice given, no opportunity to request  
21 a hearing. Operators could buy land or acquire land  
22 to bury waste. It would be more road traffic if  
23 it's cheaper to haul waste further past an  
24 OCD-approved facility and there would be many more  
25 waste sites because operators wouldn't have to bury

1 on-site or haul to a disposal facility.

2 Q. Are you done?

3 A. Yes.

4 Q. There's some questions that I wanted to  
5 ask you just to kind of fill in the holes of your  
6 testimony.

7 A. I'm sorry, before I conclude may I point  
8 one thing out?

9 Q. Sure.

10 A. Commissioner Bailey stated, I think, quite  
11 correctly that this application has far-reaching and  
12 would be precedent-setting. I would like to point  
13 out that this issue of what's on-site has been dealt  
14 with partly in the Part 36 rule-making, and I refer  
15 you now to 19.15.36.16A(2) which deals with small  
16 land farms. This issue had been proposed that  
17 operators would be allowed to operate a small land  
18 farm on its lease, which I believe that during the  
19 deliberations or during task force that language was  
20 changed to be one governmental section.

21 Now, small land farms on a lease, we only  
22 have two or three of them, I understand from  
23 Mr. Jones. That would be for remediation of the  
24 spill on-site. Housekeeping was really what small  
25 land farms were about. That would be remediation

1 that had to be completed in three years and then the  
2 remediated soil had to be dealt with appropriately.

3 But the Commission already found that no,  
4 you can't put it all over 54,000 acres. You have to  
5 do it on one governmental section. And this is  
6 compared to a disposal pit where the drilling  
7 cuttings are going to be left in perpetuity.

8 The Commission has already addressed this  
9 in a similar fashion, that it had to be very close.  
10 It could be on a part of the lease as long as the  
11 lease was restricted to one section.

12 Q. Thank you. Now, the application that  
13 Williams submitted in this case, it submitted its  
14 application and it has fallen within the on-site  
15 burial according to Williams?

16 A. Could you repeat the question?

17 Q. The application, the C 144 application  
18 that Williams has submitted in this case that is the  
19 basis for this hearing, that was submitted --  
20 Williams submitted that as an on-site burial falling  
21 within the on-site burial provisions?

22 A. That was their interpretation of the Pit  
23 Rule, yes. We do not share it.

24 Q. I'm sorry, did you explain what the OCD's  
25 understanding of closed-loop systems were at the

1 time?

2 A. I may have gone through that too fast. At  
3 the time of the Pit Rule, we had a definite image  
4 that there would be a closed-loop system and a  
5 drying pad associated with the closed-loop system.  
6 That was the way it was depicted by several  
7 consultants who actually attended the task force or  
8 presented things.

9 There are a number of innovative or  
10 different methods that are coming about. I think  
11 the simplest is the use of haul-off bins rather than  
12 a drying pad. We generally support that, although  
13 the Pit Rule, as I mentioned, did not mention it.  
14 We addressed it in the C 144 application form. We  
15 think that any time you can put something in a steel  
16 tank other than a lined container you are better  
17 off.

18 Q. And you mentioned that the Pit Rule does  
19 not mention anything about haul-off bins?

20 A. That's correct. It doesn't prohibit it  
21 but it doesn't mention it.

22 Q. How does the OCD treat haul-off bins for  
23 the purposes of the Pit Rule?

24 A. We think they are functionally equivalent  
25 to the drying pad. Throughout the Pit Rule, the

1 language is always about a drying pad associated  
2 with the closed-loop system. We think they serve  
3 the same purpose. They do serve the same purpose,  
4 to manage the cuttings the same way that those  
5 cuttings would be managed or staged in a drying pad.

6 Q. Now, are there closure methods for on-site  
7 burial in the Pit Rule?

8 A. Yes.

9 Q. And that would be 13F?

10 A. 1713F.

11 Q. And has the Commission explained what  
12 on-site closure methods are?

13 A. We think it did in its order, in Paragraph  
14 68, very clearly.

15 Q. If I understand you correctly, in-place  
16 burial is either burial in an existing temporary pit  
17 or a temporary pit constructed for the disposal of  
18 the drying pad contents?

19 A. That is correct.

20 Q. You indicated that the rule has a distance  
21 restriction for in-place burial. Actually, let me  
22 go ahead and rephrase my question. One thing that I  
23 saw was that the in-place burial method and also the  
24 on-site trench burial method have similar  
25 requirements. One of them was the 100-foot

1 restriction; is that correct?

2 A. No. The 100-foot restriction deals with  
3 the trench burial, I believe. The in-place burial  
4 is actually in the pit, the drilling or workover pit  
5 used to drill the well. If you meet the closure  
6 standards, then you were able to close in-place  
7 without having to move the drill cut. You still  
8 have to stabilize it to make sure that it reaches  
9 bearing capacity for any sort of cover.

10 But yes, the closure methods in 1713 do  
11 specify a distance provision for trench burial, and  
12 it is very clear that with the possibility for  
13 exceptions that I can imagine, siting constraints  
14 that might not be able to do the trench burial  
15 within 100 feet, the District Office could certainly  
16 approve something that was maybe a certain distance  
17 off. But not six miles.

18 Q. The rule has a distance restriction for  
19 closed-loop systems; is that correct?

20 A. Right.

21 Q. What is the restriction?

22 A. It's 100 feet of the drying pad associated  
23 with the closed-loop system.

24 Q. What significance do you draw from having  
25 the 100-foot restriction?



1           A.     I think I would go to what the Commission  
2     found in its order, that it's ensuring that the  
3     trench burial occurred in close proximity to the  
4     well, to the closed-loop system. It specified 100  
5     feet from the drying pad, but not every well that  
6     uses a closed-loop system has a drying pad.

7           Q.     And I just want to be clear on this. What  
8     is an exception under the Pit Rule?

9           A.     Well, in the particular case of closure  
10    here, it's either dig and haul, or you dispose of it  
11    in on-site closure, or you request an exception for  
12    the alternative.

13          Q.     I don't think I asked my question very  
14    clearly. What is a Pit Rule exception? What would  
15    be an exception -- not a specific exception to the  
16    Pit Rule, but -- let me step back. Anything that  
17    deviates from Part 17's requirements, what would in  
18    a be?

19          A.     That would be an exception.

20          Q.     And the rule also mentions alternative  
21    closure method. Would that be -- is that also an  
22    exception under the Pit Rule?

23          A.     Yes.

24          Q.     And so if a burial method does not meet  
25    the waste rule requirements of Part 17 or the

1 on-site burial requirements of Part 17, that would  
2 be an exception?

3 A. Definitely.

4 Q. And that exception would be an alternative  
5 closure method?

6 A. The alternative closure method is an  
7 exception.

8 Q. And the operator would have to go through  
9 the exception process in order --

10 A. Yes, it would have to comply with  
11 19.15.17.15, I believe is the exception provision.

12 Q. And part of the exception process requires  
13 the operator to demonstrate that the exception  
14 protects fresh water, public health --

15 A. Equivalent or better protection of health  
16 and environment, fresh water.

17 Q. So at the very minimum in this case, if  
18 Williams' proposal does not fit the waste removal or  
19 on-site burial requirements of the Pit Rule, what  
20 would it be?

21 A. It is a de facto exception request, and we  
22 pointed that out to Williams in both of our denial  
23 letters during the C 144 applications.

24 Q. Did they follow up with the exception  
25 process?

1           A.     No, they refused to acknowledge that it is  
2     an exception.

3           Q.     Now, one of your exhibits expressed the  
4     intent of the Commission in terms of exceptions.  
5     Does the proposal that Williams -- does Williams'  
6     proposal fit that intent for the exception?

7           A.     If I can just find that one without  
8     flipping through. Paragraph 246 of the Commission's  
9     order states that "The intent of the exception  
10    provision is to allow industry to develop and apply  
11    new methods or practices that protect fresh water,  
12    public health and the environment that may not be  
13    addressed by the existing sections in design,  
14    construction, operations and closure."

15                There's nothing new about Williams'  
16    proposal. They just want to take waste to the  
17    nearest convenient location.

18          Q.     So what would Williams need to do in order  
19    to dispose of the No. 2 drilling waste in the pit at  
20    the 634B?

21          A.     We think that can only be done if they  
22    obtain a centralized landfill permit under Part 36.

23          Q.     That means going through the Part 36  
24    permitting process?

25          A.     Yes.

1           Q.     Do you draw any significance in the  
2 Commission's use of on-site to describe the on-site  
3 closure methods?

4           A.     I think the Commission considered the term  
5 many, many times during its deliberation and the  
6 drafting of the Pit Rule and chose it very  
7 carefully, specifically because they didn't use the  
8 term anywhere -- or a pit. They talk about an  
9 on-site closure, an on-site temporary pit,  
10 constructed for that purpose.

11          Q.     The closure methods talk about the  
12 activity where the waste is generated.

13          A.     The drilling of a well or the worker of a  
14 well is the reason why there's a pit in the first  
15 place, for temporary pits.

16          Q.     I just was that to go through the exhibits  
17 real quick just to identify them. Exhibit No. 4,  
18 that's a map that you created?

19          A.     Yes. There are two maps. Exhibit 4. I  
20 prepared both of them.

21          Q.     Then Exhibit No. 6, the June 24, 2010  
22 denial letter, that's a letter that you created?  
23 Helped create?

24          A.     Yes. I signed this letter and I worked on  
25 it with Mr. Jones. I was acting in my capacity of

1 acting environmental bureau chief. I signed it.

2 Q. And the June 9, 2010 letter, that was  
3 also -- you helped create that document as well?

4 A. Which exhibit is that?

5 Q. That's OCD's Exhibit No. 9.

6 A. Yes.

7 Q. And it has your signature?

8 A. Yes, I signed this letter dated June 9th.

9 Q. And OCD Exhibit No. 12, the July 8th  
10 administrative modification for the 634B permit.

11 A. Yes, I signed that as well.

12 MR. SWAZO: At this time, Mr. Chairman, I  
13 don't have any other questions, and I would move for  
14 admission of Exhibit No. 1 -- OCD 1, 4, 6, 9 and 12.

15 CHAIRMAN FESMIRE: Any objection?

16 MS. MUNDS-DRY: I might have an objection  
17 to Exhibit 12 but if I could voir dire the witness  
18 briefly, I might be able to solve that.

19 CHAIRMAN FESMIRE: Go ahead.

20 VOIR DIRE EXAMINATION

21 BY MS. MUNDS-DRY

22 Q. Good afternoon, Mr. Von Gonten. Exhibit  
23 No. 12 is a July 8th letter, I believe?

24 A. Yes.

25 Q. Did you write this letter?

1 A. I was involved with the writing of it.

2 Q. What does that mean?

3 A. I mean that I worked with Brad Jones on it  
4 and signed it.

5 Q. Did you actually put finger to keyboard?

6 A. Yes.

7 MS. MUNDS-DRY: That's all I had. I have  
8 no objection to those exhibits, 1, 4, 6, 9 and 12.

9 CHAIRMAN FESMIRE: With that OCD Exhibits  
10 1, 4, 6, 9 and 12 will be admitted to the record.

11 (Note: OCD Exhibits 1, 4, 6, 9 and 12  
12 admitted.)

13 MR. SWAZO: Briefly, there are other  
14 exhibits that I overlooked. I would like to move  
15 for the admission of Exhibit No. 18.

16 CHAIRMAN FESMIRE: Don't you need to lay a  
17 foundation first? Or we could take administrative  
18 notice of that.

19 MR. SWAZO: That's what I was going to  
20 say. I ask the Commission to take administrative  
21 notice of its own order.

22 CHAIRMAN FESMIRE: Identify the order.

23 MR. SWAZO: The order number is R 12939,  
24 the order adopting the Pit Rule.

25 CHAIRMAN FESMIRE: At this time the

1 Commission will take administrative notice of OCD  
2 Exhibit No. 18, R 12939, the order adopting the Pit  
3 Rule. Anything else?

4 (Note: OCD Exhibit 18 admitted.)

5 MR. SWAZO: Yes, Exhibit No. 19 and 23.

6 CHAIRMAN FESMIRE: You'll have to identify  
7 Exhibit 19.

8 MR. SWAZO: No. 19 is Pages 1091 through  
9 1092 of the Pit Rule hearing transcript.

10 CHAIRMAN FESMIRE: The Commission will  
11 take administrative notice of Exhibit No. 19, which  
12 is Pages 1091 and 1092 of the transcript of the Case  
13 No. 14521.

14 (Note: OCD Exhibit 19 admitted.)

15 MR. SWAZO: Exhibit 20, Pages 1100 through  
16 1101.

17 CHAIRMAN FESMIRE: Same transcript?

18 MR. SWAZO: Yes, sir.

19 CHAIRMAN FESMIRE: The Commission will  
20 take administrative notice of Exhibit No. 20, which  
21 is the Pages 1100 and 1101 of the same transcript.

22 (Note: OCD Exhibit 20 admitted.)

23 MR. SWAZO: Exhibit No. 21, pages 5014  
24 through 5023, which is again Pit Rule hearing  
25 transcript.

1 CHAIRMAN FESMIRE: The Commission will  
2 take administrative notice of OCD Exhibit No. 21,  
3 Pages 5094 through 5023 of the same transcript.

4 (Note: OCD Exhibit 21 admitted.)

5 MR. SWAZO: Exhibit 22, the FAQ,  
6 frequently asked questions, No. 40, which is on Mr.  
7 Von Gonten's slide presentation.

8 CHAIRMAN FESMIRE: Any objection?

9 MS. MUNDS-DRY: No objection.

10 CHAIRMAN FESMIRE: Exhibit No. 22 will be  
11 admitted for the record.

12 (Note: OCD Exhibit 22 admitted.)

13 MR. SWAZO: And Exhibit No. 23, the Read &  
14 Stevens letter.

15 MS. MUNDS-DRY: I do strongly object to  
16 the admission of the letter.

17 CHAIRMAN FESMIRE: What grounds?

18 MS. MUNDS-DRY: Mr. Von Gonten went  
19 through this quickly in his presentation. But as I  
20 understand it, this letter has absolutely no bearing  
21 on our application. This has nothing to do with  
22 Williams, has nothing to do with a federal unit.  
23 This is dealing strictly with a -- I am guessing a  
24 fee property owner. It has no relevance to our  
25 case. I know Mr. Von Gonten went through this



1 quickly, but I'm not sure he established any  
2 foundation of why this has any relevance to our  
3 case.

4 CHAIRMAN FESMIRE: He stated that it came  
5 from the OCD records.

6 MS. MUNDS-DRY: Again, it doesn't have any  
7 relevance to our case, nor is Williams asking for  
8 any money.

9 CHAIRMAN FESMIRE: Did he not use as an  
10 example of what could happen if the Commission  
11 adopted Williams definition?

12 MS. MUNDS-DRY: He uses it as an example,  
13 I guess, of consequences if the Commission had an  
14 application before it that had anything to do with  
15 this letter. Our application has absolutely  
16 nothing -- it's not asking for money, not dealing  
17 with a private landowner. We are going well beyond  
18 the relevance to this case.

19 MR. SWAZO: If I may respond?

20 CHAIRMAN FESMIRE: You may.

21 MR. SWAZO: In her opening statement she  
22 said it was easy to predict the dire consequences in  
23 this case. Mr. Von Gonten testified that this  
24 letter was a part of a C 144 permit application that  
25 was submitted to the OCD through the exception

1 process. And he testified it was used to show that  
2 he has a valid basis -- that a basis does exist for  
3 the proposal that Williams is asking for in this  
4 case.

5 CHAIRMAN FESMIRE: I think the foundation  
6 is adequate. The question is as to relevance. What  
7 I will do is not admit it at this time pending  
8 further exploration of the relevance of the letter.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. SWAZO

11 Q. Mr. Von Gonten, talking about Exhibit No.  
12 23, why are you concerned about that letter?

13 A. It is an exception request, part of the  
14 exception request, and what it is proposing is  
15 off-site disposal of drilling waste. I think it's  
16 very on point to the issue before the Commission  
17 today, and it shows a very concrete example of a  
18 consequence. This has already happened. Other  
19 people in the southeast are also applying for  
20 exceptions to the Pit Rule, in particular the idea  
21 of off-site disposal location. I think it's very  
22 analogous to what is before the Commission today.  
23 That is, the generation of --

24 CHAIRMAN FESMIRE: Mr. Von Gonten, you  
25 testified this is part of a request for an exception

1 under the Pit Rule; is that correct?

2 THE WITNESS: Correct.

3 CHAIRMAN FESMIRE: How is that relevant to  
4 the question before the Commission concerning the  
5 definition of on-site/off-site?

6 THE WITNESS: In this particular case, the  
7 applicant, Read & Stevens, recognized that it was an  
8 exception request. My testimony was that the  
9 Division has determined that what they are  
10 proposing, although they have not followed through  
11 with it administratively, is, in fact, an exception  
12 request.

13 CHAIRMAN FESMIRE: So this exception  
14 request hasn't gone to completion? Hasn't been  
15 ruled on by the Division, has it?

16 THE WITNESS: The initial application was  
17 denied because it was incomplete. This was included  
18 in its application, the Read & Stevens' application  
19 for an exception to the Pit Rule.

20 CHAIRMAN FESMIRE: Ms. Munds-Dry, I do see  
21 a relevance to the case, so I will admit this  
22 exhibit, Exhibit 23 over your objection. The  
23 objection will be noted.

24 MS. MUNDS-DRY: For the record, our  
25 objection continues.

1 CHAIRMAN FESMIRE: Okay.

2 (Note: OCD Exhibit 23 admitted.)

3 MR. SWAZO: No further questions.

4 CHAIRMAN FESMIRE: At this time why don't  
5 we take an hour for lunch and reconvene at 1:25.

6 (Note: The hearing stood in recess at  
7 12:25 to 1:30.)

8 CHAIRMAN FESMIRE: At this time we will go  
9 back on the record in Case No. 14521. The record  
10 should reflect that it is about 1:30 on Friday, July  
11 30th. We were at the point where Mr. Swazo was  
12 about to begin his cross-examination of Mr. Von  
13 Gonten. Mr. Swazo?

14 MR. SWAZO: I am passing the witness.

15 CHAIRMAN FESMIRE: Ms. Munds-Dry was going  
16 to begin her cross-examination of the witness.

17 CROSS-EXAMINATION

18 BY MS. MUNDS-DRY

19 Q. Mr. Von Gonten, I'm going to try, in an  
20 organized fashion if I can, go through your  
21 presentation today. Do you have your presentation  
22 in front of you?

23 A. Yes, I do.

24 Q. The page -- the third page entitled  
25 closed-loop systems, could you turn to that for me,

1 please.

2 A. It has some bullets and below an image of  
3 the closed-loop system?

4 Q. Yes, sir.

5 A. Okay.

6 Q. The last bullet states that the Pit Rule  
7 does not address haul-off bins, and you explained, I  
8 believe, for the Commission how that evolved. Does  
9 the Division allow solids and liquids to be disposed  
10 of in haul-off bins?

11 A. Well, I don't think they would be disposed  
12 of in haul-off bins either way. But I think --

13 Q. I apologize. That was a bad question.

14 A. I think the --

15 CHAIRMAN FESMIRE: Why don't you let her  
16 rephrase the question.

17 Q. I'm sorry, I asked it poorly. Does the  
18 Division allow solids and liquids to be stored in  
19 haul-off bins?

20 A. My understanding is they do not. It's for  
21 the management of drill cuttings. A haul-off bin, I  
22 would continue, can be in many configurations, and  
23 the definition of a closed-loop system is it's  
24 merely a steel tank. So I don't think it's usual  
25 and customary to handle the cuttings in a

1 closed-loop system. I think that the cuttings are  
2 discharged over the shell shaker and the other  
3 solids such as -- that which is managed by desilters  
4 and so on would also be discharged into a haul-off  
5 bin or discharged to an area where it's staged and  
6 from there to a drying pad.

7 Q. Okay. But if I understood you correctly,  
8 they could contain solids, which would be the drill  
9 cuttings?

10 A. Right. These cuttings would not be --  
11 they would be still moist.

12 Q. Okay. Fair enough. But the rule does not  
13 address how you handle haul-off bins in this  
14 process, closed-loop systems; isn't that correct?

15 A. It does not specify the use of haul-off  
16 bins at all.

17 Q. So you would agree with me that it doesn't  
18 specify where haul-off bins have to be located?

19 A. No, it doesn't.

20 Q. I believe you said it was your testimony  
21 that the Division has allowed for haul-off bins  
22 because it's more protective of the environment?

23 A. Correct.

24 Q. I believe you also said it was an  
25 innovative approach, is that correct?

1           A.     What I was trying to point out is it's  
2 something that came up right after rule-making where  
3 people started using it and it was not considered by  
4 the Pit Rule, but if it had been brought before the  
5 Division during task force or I'm sure before the  
6 Commission during the rule-making, they would have  
7 generally addressed it.

8           Q.     Is it fair to say that you can't  
9 anticipate every situation that might come up?

10          A.     That is certainly true.

11          Q.     Would you agree that Williams' proposal  
12 today is more protective of the environment?

13          A.     No.

14          Q.     Would you agree that its proposal  
15 decreases truck traffic?

16          A.     I have not studied their proposal of truck  
17 traffic, and I don't know that I would agree with  
18 that since they have not -- they had an opportunity  
19 to drill and complete the Salt Water Disposal No. 2  
20 and in the interim they have been hauling produced  
21 water when they didn't necessarily need to. And I  
22 don't think I necessarily heard actually a  
23 calculation on how much traffic had been on the road  
24 as a result of the business decision of Williams to  
25 pursue the course it has over the past few months.

1           Rather than just deciding to do a dig and  
2     haul for the Salt Water Disposal No. 2, truck those  
3     wastes away, they testified how much that was, how  
4     much it would cost, but they haven't told us how  
5     much they are paying for haulage -- or I don't  
6     remember hearing the testimony on how much they are  
7     actually paying to haul the produced water  
8     currently, which they wouldn't necessarily have to  
9     do if they had put the SWD No. 2 online.

10          Q.     If I understand what you are saying, you  
11     understood Williams to be saying that they are  
12     having to haul water by truck now because they do  
13     not have additional disposal systems in place?

14          A.     That's my understanding.

15          Q.     Do you understand that the difference, I  
16     think, in what Williams was proposing is that the  
17     truck traffic would be for the disposal of waste and  
18     not water?

19          A.     Produced water is a waste.

20          Q.     Okay. Fair enough. Do you disagree with  
21     Williams that its proposal would decrease the  
22     surface footprint on the unit?

23          A.     If they didn't -- they are not  
24     proposing -- which unit are you talking about?

25          Q.     The Rosa Unit. I'm sorry.



1           A.     The whole unit, the 54,000 acres? Or are  
2     you talking specifically about SWD No. 2?

3           Q.     Let's start with the Rosa Unit.

4           A.     Could you rephrase your question?

5           Q.     Yes. If I remember it. Do you disagree  
6     with Williams that it would decrease the surface  
7     footprint with its proposal on the Rosa Unit?

8           A.     I don't know whether I agree with it or  
9     not. I would have to look specifically at the  
10    proposal again. I didn't pay attention to that  
11    argument.

12          Q.     Let me ask you this: If Williams is  
13    allowed to proceed with what it's proposed here  
14    today, wouldn't that decrease the number of trucks  
15    that are required to be used to haul waste off of  
16    the unit?

17          A.     Again, going back to, I think, right now  
18    they are using trucks that they wouldn't have to if  
19    they were using the Salt Water Disposal No. 2. If  
20    they had drilled at the earliest window of  
21    opportunity back in April, I don't know what the  
22    calculation would be for that, so I don't know  
23    whether to accept that or not.

24          Q.     So if I understand what you are saying,  
25    you are comparing the trucks that would be used --

1 the trucks having to be used, assuming that there is  
2 trucks that are having to be used to haul produced  
3 water, with the trucks that would have to be used to  
4 haul the waste off of the unit?

5 A. Right. I understand this is a large unit.  
6 There are a large number of wells. We are talking  
7 about the closure of one well, and I don't know what  
8 the math would be on how many trucks would be used  
9 to haul the 35,000 barrels that they indicate would  
10 be the pit volume. They would have to haul the  
11 water used -- fluids for drilling, so I don't know  
12 if they included that in their calculation or if  
13 they were just talking about -- I believe it was  
14 1200 cubic yards of cuttings.

15 Q. Do you disagree that there would be a  
16 substantial decrease between having to haul the  
17 waste -- between the SWD No. 2 and the 634B compared  
18 to hauling it to Envirotech?

19 A. It's a longer distance to Envirotech,  
20 certainly.

21 Q. I'm not sure that answers my question. Do  
22 you disagree that it would be less truck traffic?

23 A. It would be less truck traffic if they  
24 were allowed to dispose of it under 634B than if  
25 they were to dig and haul it to Envirotech, for

1 example.

2 Q. Just to clarify, you understand that  
3 Williams' proposal is not to dig and haul but to use  
4 a closed-loop system and then haul to Envirotech if  
5 the application is not granted?

6 A. Yes, I believe that's one of the  
7 contingent applications, that they would do a dig  
8 and haul in the closed-loop system of SWD 2 and take  
9 it to Envirotech.

10 Q. I'm not sure, dig and haul. Is there any  
11 digging involved in the closed-loop system?

12 A. You are correct. It would be waste  
13 removal using the terms of 17.13. It would be waste  
14 removal. They are not actually having to remove  
15 anything from the pit. They are not -- I don't know  
16 if they are having to stabilize before they take it  
17 to the disposal site or not.

18 Q. But are you aware of any proposal that  
19 Williams has ever presented to the Division that  
20 they are requesting to use a pit or to dig anything,  
21 any of the waste, use a drying pad, for example?

22 A. Their closed-loop system does not propose  
23 the use of a drying pad. They are proposing the use  
24 of a temporary pit used for disposal, which is also  
25 a pit being used or has recently been used for the

1 drilling of SW 634B.

2 Q. Mr. Von Gonten, if you could turn to the  
3 next page behind Closed-loop Systems. It's entitled  
4 Hybrid Systems.

5 A. Yes.

6 Q. Isn't Williams' proposal a hybrid system?

7 A. I would consider it to be. In the sense  
8 that it is not -- does not conform exactly or  
9 precisely with the language of the closed-loop  
10 system provisions, which presume, I would say, that  
11 there's a use of a drying pad.

12 Q. I see. You also mentioned during your  
13 testimony, and it's addressed here on this bullet  
14 point, that even though haul-off bins weren't  
15 addressed in the rule, you or somebody at the  
16 Division decided to include them as an option on the  
17 C 144.

18 A. That's correct.

19 Q. Why put them on the C 144 if not allowed  
20 under the rule?

21 A. They were put on there because of a matter  
22 of practicality. The rule does not address or use  
23 the term haul-off bins, but we quickly learned that  
24 our vision of a closed-loop system wedded to a  
25 drying pad was not actually what was being used by

1 the industry.

2 Q. And I believe you said that --

3 A. If I may continue.

4 Q. I'm sorry. I thought you were finished.

5 Go ahead.

6 A. I think it was an attempt to accommodate  
7 what we saw on the ground that we generally  
8 supported.

9 Q. And I believe you said that the rule  
10 doesn't prohibit it, but it doesn't mention it.

11 A. That's correct.

12 Q. Isn't that the same for Williams'  
13 application today?

14 A. No. My testimony was what they were  
15 proposing was prohibited by Part 36.

16 Q. Is it prohibited by Rule 17?

17 A. It would be an exception request under  
18 Rule 17.

19 Q. What part of Rule 17 would Williams be  
20 asking for an exception to?

21 A. Their not meeting the two opportunities  
22 for closure. The two opportunities are waste  
23 excavation and removal to an OCD-approved facility,  
24 which they are not proposing, or on-site burial,  
25 which they are not proposing. They are proposing

1 off-site burial.

2 Q. Would you agree that Williams has a  
3 different interpretation of in-place burial from the  
4 Division?

5 A. Yes. I would continue my answer by saying  
6 it's the business of a regulatory agency to  
7 interpret its regulations. Williams did not contact  
8 us on the interpretation of the regulation. It went  
9 off on its own. We could have saved them a great  
10 deal of time and trouble. The courts -- if this was  
11 before the courts, the courts would defer to the  
12 regulatory agency's interpretation of its  
13 regulation.

14 Q. Are you a lawyer, Mr. Von Gonten?

15 A. No, I'm not.

16 Q. Are you aware that Williams did discuss  
17 this application with the District Office before it  
18 filed its application?

19 A. Yes.

20 Q. So when you said it didn't discuss this  
21 application with the Division, you meant it didn't  
22 discuss it from you or someone from the  
23 Environmental Bureau?

24 A. Right. They didn't come back and ask for  
25 our interpretation, for example, after the meeting

1 with Mr. McQueen.

2 Q. Speaking of the meeting with Mr. McQueen,  
3 did he propose to you what Williams is trying to do  
4 in its application?

5 A. He explained what they were proposing to  
6 do.

7 Q. And I believe you agreed to disagree about  
8 the interpretation of on-site?

9 A. Yes.

10 Q. Could you please turn to -- I'm sorry,  
11 these aren't numbered so I will have to try to refer  
12 you to the next page. At the bottom, Mr. Von  
13 Gonten, of your presentation, it says 17.13 On-site  
14 Closure Methods. Do you see that?

15 A. Yes.

16 Q. The language for in-place burial, does it  
17 indicate that there should be a proximity to  
18 anything or closure of the pit?

19 A. It says in the existing temporary pit.

20 Q. Does it indicate where that pit should be  
21 located?

22 A. Where that pit is is co-located next to  
23 the well site.

24 Q. I understand that's your interpretation.  
25 But does it say in the rule where the pit should be

1 located?

2 A. The location of the pit is not specified  
3 in the rule. The particular location of the pit is  
4 something that the operator informs the OCD of its  
5 proposed location on the C 144. Obviously, the  
6 site-specific conditions, side slope, gradient and  
7 roads and power lines, dictate where the final  
8 location of a pit would be, but it will always be  
9 very close. A drilling and workover pit in which  
10 you have in-place burial is going to be in close  
11 proximity to the well.

12 Q. It will always be in close proximity to  
13 the well?

14 A. As practically as the operator can make  
15 it, is my experience.

16 Q. But you would agree that not every well  
17 site looks the same?

18 A. Absolutely not. Excuse me, I do agree  
19 with that statement.

20 Q. Would you agree with me that depending on  
21 the well site the equipment might look different?

22 A. Yes.

23 Q. Would you agree with me that sometimes  
24 there's not enough of a surface location for all of  
25 the equipment to be located on the well pad?



1 A. Yes.

2 Q. Would you agree with me that when an  
3 operator seeks to surface commingle, that the tank  
4 battery is not located next to the well?

5 A. I'm sorry?

6 Q. When an operator surface commingles that  
7 the tank battery is not always located next to the  
8 well?

9 A. I haven't been involved very much with  
10 production.

11 Q. If you could please turn to the next page.  
12 I think this is entitled on-site closure methods.  
13 The same thing, maybe just more of the section of  
14 the rule. Is that correct? This is just more of  
15 the rule that you have highlighted here?

16 A. I went and specifically pulled out  
17 divisions in 17.13F to talk about in-place and in  
18 another section I talk about trench burial. Are we  
19 looking at the F(2) in-place burial now?

20 Q. Yes, sir. Do you understand Williams'  
21 application to be proposing to use a drying pad?

22 A. No. I understand that it is proposing not  
23 to use a drying pad. It is proposing to use  
24 haul-off bins.

25 Q. Let me ask you this: When the OCD, the

1 Division, proposed the Pit Rule, did it include  
2 in-place burial as an option?

3 A. No. Excuse me, I should elaborate on  
4 that. There was -- our proposal originally, and I  
5 believe if you look at the page before that, it  
6 starts off with Paragraph 71 of the Commission's  
7 finding in its order. The Division's proposal for  
8 the Pit Rule generally banned on-site burial of pit  
9 wastes with the exception by rule that if the  
10 distance was more than 100 miles away, then it would  
11 be an allowance made for what we referred to at that  
12 time as deep trench burial.

13 Q. Right. And as I think you indicated, this  
14 Paragraph 71, which is the part of Order R 12939,  
15 indicates that the Commission adopted the option of  
16 in-place burial; is that correct?

17 A. That is correct.

18 Q. And did not adopt the 100-mile radius  
19 provision in the rule?

20 A. That is correct.

21 Q. The Commission did, however, adopt  
22 language -- and I don't remember if it was identical  
23 or not since it's been a while -- to keep the  
24 language in there for a closed-loop system with a  
25 drying pad and also for deep trench burial; is that

1 correct?

2 A. It specifies in F(2) in-place burial, and  
3 it specifies in F(3), I believe, the trench burial.  
4 Those are the two types of on-site closure methods  
5 that the Pit Rule specified.

6 Q. Do you recall if the Commission adopted  
7 the Division's proposed language?

8 A. I don't.

9 Q. I don't either.

10 A. I would speculate --

11 Q. I thought your memory might be better than  
12 mine.

13 A. Since we didn't actually have the proposal  
14 for the in-place burial, that it was crafted by the  
15 commission, the trench burial they may have borrowed  
16 from what we had proposed.

17 Q. In the next paragraph, which is 17.13F,  
18 On-site Closure Methods, I believe you stated that  
19 you summarized the rule; is that correct?

20 A. Right.

21 Q. And the last sentence here says, "Drilling  
22 waste from two different closed-loop systems may not  
23 be comingled."

24 A. That's correct.

25 Q. Is that in the rule?

1           A.     Yes. Well, let me see if I can find it.

2           Q.     Could you show me? Do you happen to have  
3 a copy of the rule?

4           A.     I do. I would point to the next page  
5 which addresses on-site trench burial. It says,  
6 "The operator shall use a separate on-site trench  
7 for closure of each drying pad associated with the  
8 closed-loop system or each temporary pit." I  
9 believe that makes it very clear that there could be  
10 no commingling, and, in fact, the order above that  
11 in Paragraph 217 specifies -- prevents the  
12 accumulation of multiple drying pads from other  
13 locations being buried on-site, in effect creating a  
14 landfill.

15          Q.     What about in a situation where you are  
16 not using a drying pad?

17          A.     Okay.

18          Q.     Could you commingle waste from different  
19 closed-loop systems in a temporary pit?

20          A.     Are you using a -- let me ask a question  
21 to make sure I understand your question. Are you  
22 referring to closed-loop system where they are using  
23 haul-off bins?

24          Q.     Does it matter, in your estimation?

25          A.     I am trying to work with you on what your

1 issue is.

2 Q. Say we are using haul-off bins.

3 A. And they wish to dispose of the cuttings  
4 in a managed or staged in the haul-off bin in a  
5 temporary pit?

6 Q. Yes.

7 A. Right.

8 Q. Could the operator commingle the waste  
9 under that system?

10 A. Without getting an exception, I don't  
11 believe so. An alternative.

12 Q. Okay.

13 A. And I believe that an example of that is  
14 the horizontal well pads where there may be a number  
15 of wells drilled basically on the same location.  
16 The division has always encouraged that will be  
17 staged -- that waste would be handled in a single  
18 pit used for disposal.

19 Q. So are you talking about there's a  
20 situation where there's one multiple well bore but  
21 multiple laterals or were there twinning wells?

22 A. Both situations. If you twin a well and  
23 it's basically the same location, I think we would  
24 be in support of that. I think the District has  
25 approved that.

1           Q.     How is that different from going from a  
2     closed-loop system to a temporary pit for multiple  
3     wells?

4           A.     I'm not sure I understand it. Are we  
5     talking about disposal purposes? Obviously if you  
6     have a closed-loop system the use of the temporary  
7     pit is only for disposal.

8           Q.     Okay.

9           A.     And you are talking about a single  
10    closed-loop system or two?

11          Q.     Let's say we have a closed-loop system for  
12    two different wells and you want to put that waste  
13    in one common pit.

14          A.     No. That's not allowed.

15          Q.     Is that in the rule?

16          A.     Yes.

17          Q.     Where is that in the rule?

18          A.     "Operator shall use a separate on-site  
19    trench for closure of each drying pad associated  
20    with a closed-loop or each temporary pit," is what  
21    the language of it says. If you are using a  
22    haul-off bin, we would assume that a haul-off bin is  
23    functionally equivalent to, for the purposes of  
24    managing drill cuttings in the drying pad.

25          Q.     But the rule says drying pad.

1 A. It does.

2 Q. So you infer that you can replace haul-off  
3 bin for drying pad?

4 A. Yes.

5 Q. If you could please turn to the next page.  
6 This refers to Paragraph 217 of Order R 12939.

7 A. What is the paragraph number, please?

8 Q. The top of the page is Order R 12939.

9 A. Yes. And the paragraph?

10 Q. You highlighted --

11 A. Which paragraph?

12 Q. 217.

13 A. I found it.

14 Q. Thank you. You highlighted Surface  
15 Disturbance here, correct?

16 A. Correct.

17 Q. You also highlighted Mini Landfill; is  
18 that correct?

19 A. Correct.

20 Q. Is use of a common pit, which combines the  
21 waste of multiple wells, considered a mini landfill?

22 A. I believe the Commission considered it to  
23 be in creation of a mini landfill, yes. I believe  
24 that's what this finding in Paragraph 217 is given  
25 to.

1           Q.     What about in the case where you are  
2     using -- when you have multiple wells on one well  
3     pad and you are using a common pit?

4           A.     Yes.

5           Q.     That is a mini landfill?

6           A.     No, it's a disposal pit.

7           Q.     How do you differentiate?

8           A.     Well, the Commission saw a difference in  
9     this and they referred to it as a mini landfill. I  
10    didn't, but I pointed it out. Actually, that gets  
11    into what is similar and what is different between a  
12    pit used for disposal and a pit used as a landfill.  
13    They are very similar. It's, you know, Part 17 and  
14    Part 36 are complementary rule-making. They both  
15    address the disposition of nondomestic wastes, but  
16    the Pit Rule was specifically for drilling  
17    operations whereas other well waste is managed in a  
18    landfill. But, of course, drilling cuttings are  
19    frequently disposed of in landfills. So for your  
20    example of saying that there are -- at a single well  
21    site where there are multiple horizontal wells, you  
22    are forming a centralized disposal pit at that  
23    location, in effect.

24          Q.     Can you dispose of liquids in a landfill?

25          A.     No.



1 Q. You can dispose of liquid in a pit?

2 A. No.

3 Q. You cannot?

4 A. You cannot.

5 Q. Can you store liquids in a pit?

6 A. Yes.

7 Q. Can you store liquids in a landfill?

8 A. No. Landfills are designed to collect

9 leachate that percolates through the waste material

10 before the final closure of a landfill. It is an

11 inherent part of the design that liquids must be

12 managed.

13 Q. Going back to the example of multiple

14 wells on a well pad sharing a common pit, does that

15 reduce surface disturbance?

16 A. Yes.

17 Q. Going down to the bottom paragraph on that

18 same page, please, Mr. Von Gonten --

19 A. I must be on a different page.

20 Q. I'm sorry, we somehow lost each other. I

21 am at the back of Page 5 or 6, depending on how you

22 want to call it.

23 A. The page actually is On-site Closure

24 Methods, 1713F(3), On-site Trench Burial?

25 Q. Thank you. Again, I just want to make

1     sure that you understand that Williams is not  
2     proposing an on-site trench burial.

3           A.     Correct.

4           Q.     I guess what has me puzzled, if the  
5     Commission included in the rule the distance from a  
6     drying pad to either the closed-loop system or a  
7     trench burial to a temporary pit, why not -- why did  
8     they not include that same language for a temporary  
9     pit?

10          A.     Well, a temporary pit that was used for  
11     drilling, they are talking about in-place burial.  
12     Perhaps I misunderstood your question. You are  
13     saying it says associated with the closed-loop  
14     system or for closure of a temporary pit. Is that  
15     where you are looking?

16          Q.     Right.

17          A.     This section does not use the phrase 100  
18     feet.

19          Q.     Well, I guess what I am saying is I am  
20     looking at your presentation. You walked us through  
21     the language that shows us that the closed-loop  
22     system has to be -- the drying pad has to be within  
23     100 feet of the closed-loop system, right?

24          A.     Right. This provision A does not specify  
25     that, but that provision is specified in D.

1           Q.     Then you gave us the language that a  
2     trench has to be located within a certain distance  
3     of the pit.

4           A.     Right. D does specify that located within  
5     100 feet of the drying pad associated with the  
6     closed-loop system or temporary pit.

7           Q.     But if we go back to the in-place burial  
8     provision on the previous page, the Commission  
9     didn't use any language that specified the temporary  
10    pit has to be located within some certain distance  
11    of the well site, right?

12          A.     No, it does not specify this is to the  
13    well site.

14          Q.     Does it specify a distance to anything but  
15    the drying pad?

16          A.     The specific language of the pit refers to  
17    within 100 feet of the drying pad associated with  
18    the closed-loop system.

19          Q.     Mr. Von Gonten, if you could turn to the  
20    next page. I'm sorry, at the top it says 17.13F,  
21    On-site Closure Methods, and it's referring to F(3)  
22    on-site trench burial?

23          A.     On D? Yes.

24          Q.     You referenced this language and said by  
25    extension, this would also apply to haul-off bins,

1 correct?

2 A. Yes.

3 Q. That's your interpretation?

4 A. Yes. If we allow haul-off bins and if you  
5 are arguing that we don't allow haul-off bins, that  
6 would be a change in the way the operators are  
7 actually operating. We are trying to accommodate  
8 them. We view haul-off bins as being functionally  
9 equivalent to drying pads.

10 Q. If you could turn a couple of pages back  
11 to where you discuss Williams' proposal.

12 A. Yes.

13 Q. The language says some documents indicate  
14 that Williams also plans to commingle the waste.  
15 Which documents are you referring to?

16 A. I won't be able to provide those to you  
17 but Mr. Jones will be addressing this in some  
18 detail. I believe it was actually -- we were only  
19 aware of this possibility after reviewing -- I  
20 believe it was one of your responses to a motion,  
21 and it was an attachment to that is where I remember  
22 is the first time we understood from reading  
23 something that there was a plan to commingle.

24 Q. So is that the question I should better  
25 ask Mr. Jones?

1 A. Yes.

2 Q. In the next paragraph here it says, "OCD  
3 was clearly informed that its proposal would be a  
4 definite exception to the Pit Rule and would also  
5 violate the requirement that Williams dispose of  
6 waste off-site at a permanent Part 36 facility."  
7 Did you mean here that Williams could not get an  
8 exception?

9 A. We were telling them that this particular  
10 exception for off-site disposal would be a violation  
11 of Part 36, and yes, we were telling them that you  
12 could not get an exception to this.

13 Q. So if we went through the exercise of  
14 getting an exception, you determined it would not be  
15 granted; is that correct?

16 A. It would have been denied on that basis  
17 alone.

18 Q. If you could turn to the next page where  
19 you begin to discuss exceptions. At the top it  
20 refers to 19.15.17.9?

21 A. Yes.

22 Q. Have any applications for exceptions been  
23 submitted to the Environmental Bureau?

24 A. Yes.

25 Q. Have any exceptions been granted?

1           A.     No. But I would point out that there was  
2     a proposal by a consultant for multiple clients to  
3     get an exception, and it was the same issue with  
4     those. One of those was processed to the point of  
5     determining that the application was  
6     administratively incomplete and that has since been  
7     resubmitted. It was the second application which  
8     was withdrawn, if I remember correctly. So we have  
9     one application pending and one application  
10    withdrawn for operations in the southeast where the  
11    operators are requesting an exception.

12          Q.     How many applications have been submitted  
13    for an exception to date?

14          A.     I believe I just told you that there was  
15    one that was submitted, still being processed, and  
16    the second submitted, which was withdrawn. Two.

17          Q.     I'm sorry, I thought you said that you had  
18    multiple applications but they had one issue. So I  
19    wanted to make sure we are talking about all of the  
20    exceptions that have been --

21          A.     Some of the information submitted on the  
22    cover sheet indicated that they wanted us to process  
23    this as kind of a test case so they could follow up  
24    with other applications from other operators, if I  
25    remember correctly.

1 Q. But there was just one application that  
2 was submitted?

3 A. I remember one application definitely, and  
4 the reason it was incomplete is because they didn't  
5 go through the process of beginning their exception  
6 request by filing the notice and so on and so forth  
7 and having someone authorized to submit the  
8 application in the first place sign off on it.

9 Q. How long did those exception requests take  
10 to process to get them to that point of being  
11 administratively complete?

12 A. Several days, I think. Over a period of  
13 several days. I don't think we worked on them eight  
14 hours a day.

15 Q. When was that application submitted to the  
16 Environmental Bureau?

17 A. It's been within the past six or eight  
18 weeks.

19 Q. When you told me how long it took to  
20 process, you were talking about the time it actually  
21 took once you were able to look at it?

22 A. Right.

23 Q. Would you agree with me that you have a  
24 heavy workload?

25 A. I would.

1 Q. Would you agree with me that Mr. Jones  
2 also has a heavy workload?

3 A. Yes, he does.

4 Q. On the back of the page which is entitled  
5 19.15.17.15 Exceptions, the second bullet refers to  
6 a March 16th hearing application. Is that the  
7 hearing application that's before the Commission  
8 today?

9 A. I don't believe so. I think it was an  
10 earlier application. March 16th is for the previous  
11 application, which is withdrawn, I believe. That  
12 was case 14463.

13 Q. And do you know if that hearing  
14 application was amended to make it clear it wasn't  
15 seeking an exception?

16 A. That's my understanding.

17 COMMISSIONER OLSON: Excuse me. I'm not  
18 sure where you are.

19 MS. MUNDS-DRY: I'm sorry, they are not  
20 numbered. The top of the page says 19.15.17.15  
21 Exceptions, and I am looking at the second bullet  
22 which starts "Williams March 16, 2010 hearing."

23 COMMISSIONER OLSON: Is the first  
24 bullet --

25 THE WITNESS: Would it be helpful for me



1 to bring it back on the screen?

2 CHAIRMAN FESMIRE: I don't think so.

3 COMMISSIONER BAILEY: I am following.

4 MS. MUNDS-DRY: I will try to clearly set  
5 it out.

6 Q. Let's turn to the next page. The top of  
7 it says Order R 12939. At the bottom it's again  
8 referring to 19.15.17.15, Exceptions.

9 A. Yes.

10 Q. It states, "However, the Environmental  
11 Bureau would have rejected any such exception  
12 request because it would be in violation of Part 36,  
13 surface waste management facilities rule." Did I  
14 read that correctly?

15 A. Yes.

16 Q. I believe we talked about that before.  
17 When did the Environmental Bureau make the  
18 determination that an exception request would not be  
19 granted and that it would be in violation of Part  
20 36?

21 A. We actually made that determination, I  
22 believe, last November or December when we first  
23 talked about this with the District Office. They  
24 called and had a question for us and they posed a  
25 hypothetical. They didn't use the operator names or

1 locations or anything, and we told them off-site  
2 disposal is a Part 36.

3 Q. And you believe that conversation took  
4 place last November or December?

5 A. Yes. With Brandon Powell.

6 Q. So let me understand what happened there.  
7 Mr. Powell called you?

8 A. I believe it was me. It might have been  
9 Brad, but I believe we both sat in on the  
10 conversation with Mr. Powell.

11 Q. And he explained to you what was being  
12 proposed?

13 A. I believe it went along the following. He  
14 said, "We have an operator who is proposing to  
15 either commingle or dispose of drilling waste from  
16 two separate locations into a single pit." And at  
17 that point, I think we made it very clear that's  
18 off-site disposal. You are taking it from one  
19 location to another location. That's off-site  
20 disposal.

21 CHAIRMAN FESMIRE: Ms. Munds-Dry, I have  
22 to remind you we are running short of time.

23 MS. MUNDS-DRY: I will speed it up. Thank  
24 you.

25 Q. If we could go to four pages, the back of

1 the page says On-site?

2 A. What's on the top?

3 Q. On-site.

4 A. What's below that?

5 Q. Order R 12939, referring to Paragraph 68.

6 A. Yes, I am there.

7 Q. Your bullet says, "On-site means where the  
8 activity occurs," correct?

9 A. Right.

10 Q. If we look at your first definition that  
11 you provided us from American Heritage Dictionary,  
12 couldn't the activity just as easily be at the pit?

13 A. If we are talking about on-site closure,  
14 we are talking about closure of drilling wastes  
15 associated with the well, associated with the  
16 activity to be drilling.

17 Q. If you are talking about closure of the  
18 pit, couldn't the activity be the activity of the  
19 closure of the pit?

20 A. I don't think so. I think what you would  
21 have to argue is the Pit Rule is designed to chase  
22 pits that are roaming around the state of New Mexico  
23 and have to be closed. The pits are associated with  
24 drilling or workover activity in the case of  
25 temporary pits, and finally, in disposal for all the

1 various ways that one can drill a well.

2 Q. The next definition defines on-site as  
3 accomplished or located at the site of a particular  
4 activity or concern. That's from Random House  
5 Webster's Dictionary; is that correct?

6 A. That's correct.

7 Q. Couldn't you just as easily have  
8 accomplished closure of a pit?

9 A. On-site again, for the same reason I just  
10 elaborated, is dealing with a pit, associated with  
11 the drilling or workover of a well. The well is the  
12 reason, and the cuttings that are generated from  
13 advancing that well is the waste that is being  
14 handled and disposed of in an on-site closure.

15 Q. Over the next several pages you  
16 highlighted for us several examples of where on-site  
17 is used in the OCD rules; is that correct?

18 A. Yes.

19 Q. Doesn't on-site depend on what it's  
20 modifying in these examples?

21 A. I think the concept is the same. On-site  
22 as a definition in the dictionaries -- it may not  
23 have been defined in the Pit Rule. I don't think it  
24 was necessary to do so because of context, but also  
25 the Commission did, in Paragraph 68 on the previous

1 page, tell you what they meant. Where the waste  
2 that is generated from the drilling or workover of  
3 the well is buried on or near the well pad.

4 Q. But they didn't include that language in  
5 the rule, right?

6 A. No, they did not include that language in  
7 the rule. However, the order implemented the rule.

8 Q. But in these examples you have given us,  
9 we have on-site equipment, on-site components,  
10 on-site trench, on-site closure, on-site burial. So  
11 wouldn't the definition of on-site depend on what  
12 it's modifying?

13 A. You have asked that question before, and I  
14 would say I think that on-site has a particular  
15 meaning and it may or may not be modifying  
16 something. In this particular case, on-site is  
17 specifying the components that are there, for  
18 example. Not the off-site components.

19 Q. But it's modifying on-site components.  
20 It's modifying components, right?

21 A. Yes.

22 Q. If we could go -- we are making progress,  
23 Mr. Chairman. We are going past on-site and then  
24 three pages where you have frequently asked  
25 questions.

1           A.     Yes.

2                   MS. MUNDS-DRY:   May I approach,  
3   Mr. Chairman?

4                   CHAIRMAN FESMIRE:   You may, ma'am.

5           Q.     I put before you the full set of  
6   frequently asked questions.   First of all, could you  
7   read for me the first page, the disclaimer language.  
8   On the very first, the cover page.

9           A.     "This is meant for guidance only.   These  
10   answers may change with ongoing input from operators  
11   and OCD staff.   The answers given should not be  
12   construed to be the language in Part 17 or OCD  
13   policy.   Please watch for updates and always please  
14   contact OCD for clarifications."

15          Q.     This states on here it was updated and  
16   revised as of October 31, 2008.   Has there been any  
17   updates or revisions since that time?

18          A.     Not that I am aware of.

19          Q.     If you would please turn to Page 4 of the  
20   frequently asked questions.   This frequently asked  
21   question addresses the filing of deed notices, I  
22   believe; is that correct?

23          A.     Yes.

24          Q.     And what is the answer given for filing a  
25   deed notice?

1           A.     The answer, although I didn't justify the  
2 deed notices, "No. If there is no deed recorded  
3 with the county clerk for public or tribal lands  
4 then you must send a notice of the on-site closure  
5 to the appropriate state or federal or tribal  
6 agency."

7           Q.     You signed the letter June 24th, didn't  
8 you, denying Williams' application?

9           A.     Which exhibit was that?

10          Q.     I think you have it in your exhibits. We  
11 can stick with yours if that's easier for you.  
12 Exhibit 6.

13          A.     Yes, I did.

14          Q.     And in this denial letter you cited as a  
15 reason for the denial of Williams' application that  
16 it didn't include a deed notice?

17          A.     What page were you looking at, please?

18          Q.     Page 5.

19          A.     Yes. Which paragraph?

20          Q.     The second paragraph.

21          A.     Okay.

22          Q.     Which reads, "The operator shall file a  
23 deed notice identifying the exact location of the  
24 off-site burial with the county clerk."

25                 MR. SWAZO: Mr. Chairman, if I may just

1 lodge an objection, Mr. Von Gonten is testifying  
2 about the overall regulatory structure. Mr. Jones  
3 is going to testify about the denial letter and the  
4 review of the applications.

5 CHAIRMAN FESMIRE: Mr. Von Gonten signed  
6 the denial letter, didn't he?

7 MR. SWAZO: Yes, he did.

8 CHAIRMAN FESMIRE: I think he ought to be  
9 able to answer the questions. If he doesn't know,  
10 he can always say that and defer to Mr. Jones.

11 Q. If you don't know, Mr. Von Gonten, please  
12 let me know if I need to ask the question of  
13 Mr. Jones. Doesn't this frequently asked question  
14 address whether a deed needs to be recorded?

15 A. It does. I believe our language here and  
16 our intent was Williams failed to address this  
17 provision within its permanent application. If  
18 Williams was unable to do that, it needed to note  
19 that in its application.

20 Q. Okay. So Williams should have included  
21 language that said there's no deed on federal lands?  
22 Is that correct?

23 A. Yes.

24 Q. If you could please turn to Page 12 of the  
25 frequently asked questions. Frequently Asked



1 Question 17 says, "Is an operator is allowed to put  
2 a new pit on top of an old closed pit?" What is the  
3 answer?

4 A. The answer is, "Yes. The new pit is  
5 covered by Part 17 and must satisfy all the  
6 requirements, including the release confirmation  
7 sampling criteria."

8 Q. So the division does allow a new pit on  
9 top of the old pit?

10 A. The old closed pit we are talking about  
11 here was probably a site that had been used and  
12 closed under the existing Rule 50 or the lack of a  
13 Pit Rule prior to the implementation of Rule 50.

14 Q. It doesn't specify that, though, in the  
15 frequently asked questions, does it? What kind of  
16 rule pit we are talking about?

17 A. We get a lot of interest from operators  
18 about historical legacy pits, and this was  
19 addressing that. They refer to it as an old closed  
20 pit but they might have referred to it as a legacy  
21 pit. Perhaps these questions were actually direct  
22 citations from questions that were either posed at a  
23 training session or were submitted.

24 Q. I see. If you could turn to Page 16.  
25 Frequently Asked Question 28 asks, "If one pit is

1     used for two or more well sites, will the operator  
2     still have to file a closure of time frames?"   What  
3     is the answer?

4           A.     "Yes.   If the time from when the first rig  
5     released and the second well is spudded exceeds the  
6     time frame, then the operator will have to close the  
7     pit.   However, if the operator spuds the second well  
8     before the time period is exceeded, then it would  
9     not have to close the pit until after the rig is  
10    released from the second well."

11          Q.     So this question contemplates that one pit  
12    can be used for two or more well sites; is that  
13    correct?

14          A.     The question is, "What if one pit is used  
15    for two or more well sites.   Would the operator  
16    still have to follow the closure time frame?"   I  
17    have already read the answer.   I am kind of confused  
18    by the question and the answer.

19          Q.     Fair enough.   I believe this is going back  
20    to your presentation of Frequently Asked Question 40  
21    that you included in your PowerPoint here.   It  
22    indicates, as I think you stated, that you can have  
23    one trench per drying pad or temporary pit, correct?

24          A.     That's what Q 40 states.

25          Q.     Also states that operators cannot bury

1 contents from one well in an off-site trench burial,  
2 correct?

3 A. That's correct.

4 Q. How is it different than commingling of  
5 one pit from one well -- commingling and sharing a  
6 common pit from multiple wells on one well site?

7 A. The difference is, as I said, the drilling  
8 of a well. Drilling of multiple wells from a single  
9 well pad is essentially a completion operation.  
10 There's proximity there. The wells are being  
11 drilled from the single well pad. They are being  
12 drilled horizontally or directionally. We have  
13 found that that is something where the people are  
14 not trying to circumvent the Pit Rule, so it makes  
15 sense to go ahead and manage the drilling waste that  
16 is generated from the drilling of those wells to a  
17 single location.

18 I think, however, we have seen that if you  
19 are talking 22 or 24 wells, as has been mentioned by  
20 Williams' witnesses, I think you are going to run  
21 out of room and still need the ten acre foot  
22 criteria, which I think is around 77,000 barrels.  
23 Given that the SWD No. 2, as indicated on the C 144,  
24 I believe, a 35 000 pit barrel capacity. You could  
25 see that you could run into the upper limit of what

1 the pit is from taking it to an extreme.

2 Q. So at some point the rule limits how  
3 many -- how much waste can you put in a pit?

4 A. There is that provision that the pit can  
5 only be ten acre feet.

6 Q. So there's a certain practical element to  
7 how many wells realistically could take the  
8 waste from the drilling of completion wells --

9 A. Yes. You are going to have a room  
10 problem, yes.

11 Q. If you could turn back to your  
12 presentation to your consequences on the bottom of  
13 where we were on frequently asked questions. You  
14 first state that operators will begin disposing of  
15 pit contents at the nearest convenient location. Is  
16 there anything about Williams' application that is  
17 asking the Commission to forego the C 144 process in  
18 any other proposals?

19 A. Not that I am aware of.

20 Q. Would operators still be required to go  
21 through the C 144 process even if the application  
22 were granted?

23 A. Yes.

24 Q. Would an operator still be required to  
25 demonstrate it complied with the rule before the C

1 144 was granted?

2 A. Well, I would say that disposing off-site  
3 is not in compliance with the rule, but if that was  
4 the determination of the Commission, you would have  
5 had to look at that. Perhaps you could restate the  
6 question for me.

7 Q. If the Commission granted this  
8 application, wouldn't the operator still have to  
9 demonstrate that it complied with every provision of  
10 the Pit Rule?

11 A. Yes, they would have to or get an  
12 alternative under the exception process.

13 Q. So they would still have to meet the  
14 siting criteria, for example?

15 A. Yes.

16 Q. And they still have to meet all the  
17 closure limits, chloride, everything else?

18 A. Right.

19 Q. On your second bullet, you indicate that  
20 pit waste can be disposed of at sites which there is  
21 no present drilling or workover activities. Again,  
22 if this application were granted, operators would  
23 still have to submit a C 144 and get it approved,  
24 wouldn't they?

25 A. Yes.

1 Q. And Williams is not seeking to dispose at  
2 a site that contains no drilling or workover  
3 activities, right?

4 A. Williams is not, but I am addressing maybe  
5 the hypothetical consequences of this which, as  
6 Commissioner Bailey pointed out, have far-reaching  
7 ramifications.

8 Q. You included Exhibit 23 and you state in  
9 your presentation here that it indicates the going  
10 rate would be \$500 for disposal pits?

11 A. That is the number that Read & Stevens  
12 indicates they have already had an agreement with  
13 for this landowner to take pit contents from other  
14 locations and dispose of on this property.

15 Q. You base the going rate on one letter?

16 A. Yes, that's what we have now.

17 Q. Did you perform any sort of market  
18 analysis of what operators would pay to dispose of?

19 A. No.

20 Q. You also state that many small landowners  
21 would welcome the opportunity to operate, quote,  
22 mini landfills. Which small landowners would  
23 welcome that opportunity?

24 A. I think that there was some discussion at  
25 some of the outreach and training I attended where

1 people asked about that and we explicitly told them,  
2 "No, you are not going to be able to operate a  
3 landfill without a permit." So there are a lot of  
4 people who may have some land which they are not  
5 able to successfully farm, and some of these people  
6 right now are operating land farms under a permit  
7 from us, but it remains to be seen if they will be  
8 able to meet the closure standards. Certainly I  
9 think some people would jump at the opportunity for  
10 some steady income and they would, in fact, operate  
11 mini landfills.

12 Q. How many are we talking about here?

13 A. I would speculate, and speculation only is  
14 that there may be dozens given that we have dozens  
15 of land farm operators, many times small mom and pop  
16 operations.

17 Q. Williams' application is for disposal on  
18 federal land, correct?

19 A. That's correct, although I understand by  
20 discussion that the unit included, I believe, a 3  
21 percent fee. I wasn't clear as to whether in their  
22 discussion here that those fee operators would be  
23 excluded or state land would be excluded.

24 Q. I'm not sure I understand what you mean.  
25 Williams' proposal today is for disposal on federal

1 lands, correct?

2 A. The immediate case before us, yes.

3 Q. On the next page you state that the  
4 protections afforded in the Pit Rule in Part 36  
5 would be lessened. Is Williams asking for any of  
6 the protections to be lessened in the Pit Rule in  
7 its application?

8 A. It is not, but that could be a consequence  
9 of the Commission approving their application.

10 Q. And how would the protections afforded by  
11 Part 36 be lessened if Williams' application is  
12 granted?

13 A. Then off-site disposal, which is right now  
14 covered solely by Part 36, would be largely undone  
15 as well as significant parts of Part 17. They  
16 would, in fact, be able to operate a de facto  
17 landfill, but there would be no necessity under Part  
18 17 to provide notice. There would be no opportunity  
19 for an interested person to request a hearing.

20 Q. You mentioned a de facto landfill, but I  
21 believe you told me before that an operator cannot  
22 dispose of liquids in a landfill; is that correct?

23 A. That's correct. Nor may they leave  
24 liquids after the pit is closed in the pit.

25 Q. Right. And a landfill is considered



1 permanent, is it not?

2 A. Yes.

3 Q. A temporary pit is if just that,

4 temporary, correct?

5 A. The original definition of temporary pit  
6 was that -- and still is -- that the expectation is  
7 it would be used for less than six months and then  
8 be closed. In fact, with a disposal temporary pit,  
9 it is in perpetuity. The pit waste or the drilling  
10 waste will remain there forever, so the temporary  
11 pit is actually permanent in that particular case,  
12 but a drilling workover pit do not have to be  
13 permanent.

14 Q. Sure. I understand that. You state  
15 that -- next bullet is operators could acquire land  
16 to bury waste. Did Williams ask to acquire any land  
17 to bury waste?

18 A. No.

19 Q. You also state that more road traffic  
20 would occur if it was cheaper to haul waste further.  
21 You do understand that Williams is trying to lessen  
22 its truck traffic?

23 A. I understand in the particular case before  
24 us. But one of the consequences would be that  
25 people might be willing to drive right by an

1   OCD-approved facility to someone else who is willing  
2   to take it at a lesser fee. Or if they own the  
3   property to go ahead and dispose of it on their own  
4   property.

5       Q.     I understand market can sometimes rule in  
6   these sorts of things, but Williams -- and I am not  
7   sure I have heard you say that you agree, but you  
8   don't have any evidence to dispute that they are  
9   trying to lessen the truck traffic with their  
10  application.

11       A.     They have certainly addressed the fact  
12  that hauling pit contents from the SWD No. 2 to  
13  Envirotech would involve a certain amount of truck  
14  traffic. I'm not sure how much of that would be on  
15  leased roads and how much of that would be on a  
16  state highway.

17       Q.     Your final bullet here says there would be  
18  more waste sites. If there's one pit already and  
19  Williams is proposing to share that pit, how does  
20  that create more waste sites?

21       A.     They are creating -- and could create  
22  under the discussion we have seen -- that they would  
23  take it to another site rather than taking it to a  
24  centralized or OCD-approved landfill.

25       Q.     So that doesn't create more waste sites,

1 does it?

2 A. I think it could end up creating more  
3 waste sites. Let's say that the deciding criteria,  
4 10 percent of Williams' locations they are unable to  
5 close in-place or trench burial for whatever reason.  
6 And right now they have to take those 10 percent of  
7 their drilling program to an OCD-approved facility.  
8 If you allow them to take it over to another site, I  
9 think you are creating more waste sites.

10 Q. I'm going to try to read this question to  
11 you. Mr. Von Gonten, do you understand that NMOCD  
12 approval of a commercial landfill does not relieve  
13 the waste generator of liabilities for use of the  
14 landfill?

15 A. I'm not sure about that.

16 Q. Me neither. Let's switch to a different  
17 topic. Actually, before we leave that subject, you  
18 stated you are familiar with Rule 36?

19 A. Yes.

20 Q. Are you familiar with the definition for a  
21 centralized facility?

22 A. I got my rulebook here and I could pop it  
23 out pretty quickly.

24 Q. What is the difference between a  
25 centralized facility and a temporary pit?

1           A.     A centralized facility handles waste from  
2 multiple sites, multiple types of waste.

3           Q.     How is that different from a pit?

4           A.     Well, there's many operational  
5 differences, but the general concept is that you are  
6 handling oil field waste. The temporary pit or used  
7 for disposal is handling only drilling cuttings or  
8 other waste that was part of the drilling fluid in  
9 the drilling program.

10          Q.     Could a salt water disposal well be  
11 considered a centralized facility?

12          A.     Yes. It could be considered one. It's  
13 authorized under Part 26.

14          Q.     Last topic, Mr. Chairman, I promise. Did  
15 you contact the Thea Land Farmington Office on July  
16 9th regarding the letter of support to Williams?

17          A.     I don't remember the date but I did  
18 contact Mr. Lovato at least once.

19          Q.     Why did you call him?

20          A.     We had just discovered the letter from  
21 Mr. Lovato and Mr. Swazo had come across it, and  
22 this actually was inconsistent with what's happening  
23 with BLM's policies and practices in the southeast.  
24 I and Mr. Daniel Sanchez, who is my supervisor,  
25 called Tony Brownhall in Santa Fe with BLM. I'm not

1 particularly familiar with Mr. Brownhall but  
2 Mr. Sanchez and Mr. Brownhall meet, I believe, once  
3 a month.

4 We were concerned to see BLM's position.  
5 Even though it was a petroleum engineer in the local  
6 office or the district office and not really a state  
7 position for BLM, we contacted him and he suggested  
8 we give a call to Mr. Lovato. We did.

9 After talking with Mr. Lovato, we posed  
10 the question would he be all right with 500 pits  
11 being disposed of on that particular section of  
12 634B, and he said sure, he was fine with that. We  
13 had a little heartburn with that, so we again called  
14 Mr. Brownhall and he referred me to the acting --  
15 I'm not sure what his title is for the Farmington  
16 office, but the current Carlsbad district manager or  
17 whatever he is. He is also -- Mr. Stovall is the  
18 acting Farmington district manager. We expressed  
19 our concerns and sent him a copy of that letter that  
20 was sent -- I think it was this week -- Monday  
21 afternoon of this week.

22 Q. Did you ask the BLM to withdraw their  
23 support?

24 A. We suggested that they do so.

25 Q. And --

1           A.       Actually, I would say we wanted to know if  
2       that was the State's BLM's position that they were  
3       in support of it. I pointed out to them that BLM  
4       has been burned badly before by allowing a landfill  
5       on federal land. It's now a superfund site, Lea  
6       Acres Landfill.

7           Q.       Did the State withdraw its support?

8           A.       They sent a letter to Director Fesmire  
9       which I have yet still not had an opportunity to  
10      read, but I understand it was entered as an exhibit,  
11      but I am not familiar with the contents of that  
12      letter.

13                  CHAIRMAN FESMIRE: Ms. Munds-Dry, this is  
14      where the telephone conversation I was telling you  
15      about initially came in. After that, they called  
16      me. The BLM called me.

17                  MS. MUNDS-DRY: Okay. I was mostly trying  
18      to understand the history of that.

19           Q.       One final question, I promise, Mr. Von  
20      Gonten. Why did the Environmental Bureau review  
21      Williams C 144 instead of the district office?

22           A.       Which C 144?

23           Q.       The April 20th C 144?

24           A.       May I refer to my chronology and make sure  
25      I understand which is which?

1 MR. SWAZO: Mr. chairman, this question is  
2 probably more appropriate to Mr. Jones. He can  
3 answer that question.

4 CHAIRMAN FESMIRE: Mr. Von Gonten can  
5 inform the Commission of that.

6 A. The April 20th?

7 Q. Yes, sir.

8 A. That was the one we first reviewed and  
9 first denied. That was -- as we were directed by  
10 Director Fesmire, we would review the application,  
11 and if it was denied then Williams would have a  
12 legal basis for its application having received a  
13 denial and could apply for a hearing to get the  
14 matter before the Commission de novo.

15 Q. And this is delicate since Mr. Fesmire is  
16 here, but did Mr. Fesmire direct you, rather than  
17 the district office, to review that C 144?

18 A. Yes.

19 Q. The rules direct the C 144s get reviewed  
20 by the district office, right?

21 A. That's correct.

22 Q. Nothing further.

23 COMMISSIONER BAILEY: Williams Exhibit No.  
24 16 indicates that there were five or six different  
25 instances where the OCD approved the use of one pit

1 | by several wells that were located on the well pad.

2           THE WITNESS: Are you referring to  
3 Williams exhibit?

4           COMMISSIONER BAILEY: Yes.

5           THE WITNESS: I don't have a copy of that  
6 Williams' exhibits.

7           COMMISSIONER BAILEY: But you heard us  
8 discuss the precedent that we set with OCD approving  
9 multiple wells from one well pad into one single  
10 pit?

11          THE WITNESS: Yes. These were usually  
12 horizontally drilled wells from a single pad.

13          COMMISSIONER BAILEY: That was part of my  
14 question. Under what circumstances was that  
15 approval given? What were the factors that were  
16 taken into account in that?

17          THE WITNESS: I don't know specifically,  
18 Commissioner Bailey. I was not involved in that  
19 decision. I believe that was handled in the  
20 district.

21          COMMISSIONER BAILEY: If you are now  
22 reviewing C 144s, under what circumstances would you  
23 approve such a situation? What factors would you  
24 take into account?

25          THE WITNESS: I think proximity is one of



1 the things I mentioned to Ms. Munds-Dry. If you are  
2 on essentially a single location and you are just  
3 basically moving your rig to drill a program, a  
4 series of directional wells, then I think it does  
5 make sense in that context to commingle the waste  
6 into a disposal pit.

7 COMMISSIONER BAILEY: If they are  
8 directionally drilled wells and the reach of each  
9 well is a mile, which is not unreasonable these days  
10 because of technological advances, we could be  
11 talking about cuttings from formations that are two  
12 miles separated laterally; is that right?

13 THE WITNESS: It could be.

14 COMMISSIONER BAILEY: If we are talking  
15 about cuttings from formations that are two miles  
16 apart from each other being allowed to be comingled  
17 into one pit, what is the difference of vertical  
18 well cuttings that are transported from one well  
19 site two miles away to the other well site? What  
20 harm is there in allowing that?

21 THE WITNESS: The harm, I would say, is  
22 this: Part 17 and Part 36 are complimentary  
23 rule-making. One deals well a broader issue of oil  
24 field waste and the other deals with drill cuttings  
25 primarily and the temporary pits that we are talking

1 about.

2 The intent is to make sure that people  
3 manage their waste appropriately in all cases, under  
4 both sets of regulations. The similarity of the  
5 waste that would be co-located in a single pit from  
6 two different locations or two different well bores,  
7 that is where we would draw the line, and it is the  
8 line that was drawn by the Commission. Again, we  
9 are trying to make sure that operators do not go  
10 down the road of some of these consequences that I  
11 have pointed out a few of them. And this is where  
12 the line is drawn in the Pit Rule and in Part 36.

13 COMMISSIONER BAILEY: OCD rules up until  
14 very recently were predicated on the vertical well  
15 bores because the technology and the industry were  
16 not open to directional drills. So now that the  
17 advances have been made where it is technologically  
18 advantageous and financially advantageous, would you  
19 recommend the Commission review some of these rules  
20 in the very near future for determination of  
21 applicability when we are now discussing  
22 directionally drilled wells that are being combined  
23 into a single pit?

24 THE WITNESS: I would not recommend to  
25 this Commission that they reopen the Pit Rule.

1 COMMISSIONER BAILEY: How about Rule 36?

2 THE WITNESS: My answer would be the same.

3 I would not recommend that they reopen Part 36.

4 Both of these rules have only been in place a  
5 relatively short period of time. The issue about  
6 the directional wells doesn't really enter into  
7 that, in my opinion, the disposal practices that the  
8 industry would follow. Disposal is what we are  
9 talking about, and I take your point is that the  
10 waste that is generated from the drilling of either  
11 two vertical wells or two directionally drilled  
12 wells can be quite different, and the decision by  
13 the division to allow commingling from a single well  
14 pad was a considered opinion, I believe. It is  
15 allowed as an alternative by the district under the  
16 Pit Rule. It's not a true exception.

17 The point of the Pit Rule was to really --  
18 or the Pit Rule and Part 36 have to dovetail with  
19 each other. I believe what the Commission intended,  
20 and there was some early discussion in the  
21 deliberations of the Commission that referred to an  
22 exception by rule for what became on-site burial and  
23 trench burial and was originally referred to as deep  
24 trench burial.

25 The preference was that the division's

1 proposal to essentially prohibit on-site burial was  
2 too stringent but that it could be allowed by  
3 exception, and eventually it was allowed as a  
4 provision under the Pit Rule.

5 But I think the intent was always to make  
6 sure that the Pit Rule did not undermine Part 36.

7 COMMISSIONER BAILEY: Let's look to the  
8 scientific intent and purpose behind those two  
9 rules. What harm to the environment can there be  
10 for commingling the waste of directionally drilled  
11 wells two miles apart reach? What harm is there in  
12 commingling those drill cuttings?

13 THE WITNESS: I don't believe that there  
14 is harm in the sense that I understand your term.

15 COMMISSIONER BAILEY: That's all I have.

16 CHAIRMAN FESMIRE: Commissioner Olson?

17 COMMISSIONER OLSON: Commissioner Bailey  
18 was asking questions along the same line I have.  
19 Maybe I will just follow up on that a little bit. I  
20 think it was we had the testimony through Williams  
21 and I think here now that the division has allowed  
22 multiple wells drilled from the same pad to go into  
23 one pit; is that correct.

24 THE WITNESS: That's my understanding.

25 COMMISSIONER OLSON: And where is that

1 allowed in the rule?

2 THE WITNESS: May I refer to it? I  
3 believe it may be an administrative approval that is  
4 granted to the district office. I don't have a  
5 direct answer. I will have to search if you would  
6 like to me to. I can give you the short answer,  
7 which is I don't know directly.

8 COMMISSIONER OLSON: I guess why would  
9 that not qualify for a permit under Rule 36?

10 THE WITNESS: I'm sorry, could you restate  
11 the question, please?

12 COMMISSIONER OLSON: I think you were  
13 testifying that if the waste was off-site for  
14 multiple wells to an off-site location, that  
15 qualifies it as a surface waste management facility  
16 as receiving multiple locations' waste. I mean,  
17 effectively the way a horizontal well drills, it's  
18 effectively receiving waste from multiple locations.  
19 It just happens to be drilled from one point, but  
20 it's allowing multiple uses of the same pit, and  
21 that's not considered a surface waste management  
22 facility?

23 THE WITNESS: I believe it's associated  
24 with drilling practices so it falls under the  
25 temporary pit for drilling.

1                   COMMISSIONER OLSON: But it seems to me if  
2 the only difference is that in one instance it all  
3 occurs on the same location, you are commingling  
4 different wells on one location and in the other  
5 circumstance you are commingling, again, wells but  
6 it just happens to be at a different location.

7                   THE WITNESS: Correct. Of course, as I  
8 tried to testify and bring to the Commission's  
9 attention, there are significant differences between  
10 the Part 36 facility and the way it's designed and  
11 operated and closed and post-closure care,  
12 groundwater monitoring, than what is allowed for  
13 drilling pits. That is, I would assume, a  
14 considered issue by the Commission and also by the  
15 division, is we were going to allow -- if the  
16 Commission determined to allow on-site disposal, as  
17 originally proposed, the division proposed that it  
18 would be not about closure -- it was about  
19 operations and closure, but there would be no  
20 disposal on-site.

21                   So the Commission essentially determined  
22 that it could be done and it could be done safely as  
23 long as certain siting criteria were met and the  
24 contents met certain closure standards.

25                   COMMISSIONER OLSON: It seems to me the

1     only distinction is there's really the same activity  
2     occurring, just that one is now occurring at an  
3     off-site location and the same thing, though, is  
4     occurring on the on-site location. So as long as it  
5     meets the criteria of the rule, it seems like along  
6     the lines of what Commissioner Bailey's question  
7     was, seems like there isn't a harm then -- I  
8     understand what you are saying how this may be a  
9     distinction within the rule. I am looking at the  
10    practical aspect of whether it really causes a harm.  
11    Doesn't seem like if it meets all of the same  
12    criteria, how -- doesn't seem like it's causing  
13    harm.

14               THE WITNESS: The Commission's closure  
15    requirements with respect to siting and soil ensure  
16    that they don't have excessive concentrations or are  
17    not located in an environmentally sensitive area.

18               However, the restriction here was  
19    basically the operational requirements for a  
20    landfill, again, are quite a bit more stringent. So  
21    at some point you could make the argument well, if  
22    we just co-locate two well contents in one pit, then  
23    by extension how far is that going to be pushed? We  
24    have heard 22, 24 wells. I don't think that's  
25    practical to disclose every single pit. How big

1 would that pit have to be? I don't believe that the  
2 language of the Commission in its order supported  
3 forming large landfills or mini landfills.

4 COMMISSIONER OLSON: I guess when you do  
5 it on the same location, say -- I don't know, just  
6 as an example, say four wells on the same location,  
7 that still almost seems like a mini landfill to me.

8 THE WITNESS: I would agree with you on  
9 that.

10 COMMISSIONER OLSON: So I guess would you  
11 agree with me the only real distinction is the  
12 portions we have in the rules whether it's on-site  
13 or off-site? That's really -- it's not the  
14 potential environmental harm, it's how this fits  
15 within the rule?

16 THE WITNESS: I think that's part of it.  
17 Again, you mentioned on-site and off-site. Again,  
18 the Pit Rule specifies only on-site closure methods,  
19 and there's two of those: Trench burial and in  
20 burial.

21 COMMISSIONER OLSON: I guess what I am  
22 coming to now is the Division is allowing the  
23 multiple locations or multiple uses commingling on  
24 the same location. And you were saying that the  
25 Division wouldn't approve an exception, though,



1 because it would be a violation of Rule 36. So that  
2 makes me wonder why the activity that's occurring  
3 all on one well pad is not a violation of Rule 36?

4 THE WITNESS: I see where you are going  
5 with that, and I would just say as far as testifying  
6 today, I was not involved with that decision at a  
7 district level to allow that, so I cannot speak to  
8 the internal discussions that the prior bureau chief  
9 might have had with the district supervisors.

10 COMMISSIONER OLSON: It would almost seem  
11 if it's already being approved for all the  
12 locations, all the wells that happened on that  
13 location, it seems like it would qualify for an  
14 exception if it was at an off-site location.  
15 Because essentially you are doing the same thing  
16 that you are allowing on-site, you are just doing it  
17 at a different location. Still subject to all of  
18 the criteria of the rule, the ten acre feet and  
19 location and everything and that it's just a matter  
20 of the location.

21 THE WITNESS: Well, I believe that on-site  
22 has to have a particular meeting. I believe the  
23 Commission deliberated it any number of times, in  
24 the Pit Rule and the order implementing the Pit  
25 Rule, and I personally believe as a regulator that

1 the regulation means what it says.

2 COMMISSIONER OLSON: Right. I understand  
3 that. But I am thinking -- because I think you  
4 stated, though, that you wouldn't approve an  
5 exception for that at an off-site location, but if  
6 it's the same activity that's occurring that the  
7 Division approves of on-site, why wouldn't they  
8 approve the exception if it's off-site and it meets  
9 all the same criteria that's happening on-site?

10 THE WITNESS: I believe that the  
11 Commission intended that disposal of waste occur in  
12 close proximity to the well. I went through my  
13 testimony on why I believe that. The statement had  
14 to be within 100 feet of a drying pad. Wells are in  
15 close proximity to their fluid management system.  
16 In other words, a temporary pit used for drilling or  
17 a closed-loop system.

18 Necessarily they have to be in close  
19 proximity. I don't think the Commission wanted to  
20 encourage people to go dispose of waste somewhere  
21 else merely for their convenience. If they didn't  
22 meet the siting criteria, then the Pit Rule  
23 indicates that they have to excavate the waste and  
24 remove it to an OCD-approved facility.

25 COMMISSIONER OLSON: Well, I think I would

1 agree with you for the aspect of it just going  
2 anywhere at an off-site location. But if it's going  
3 to another drilling pit, so its -- I mean,  
4 essentially you are centralizing it. Whether that  
5 meets the definitions of Rule 36 I guess is an issue  
6 whether that's a centralized facility. But it seems  
7 like we are already doing a centralized facility  
8 on-site, so if we did it at another well which is  
9 still in close proximity to that if well, and it's  
10 all the other criteria, seems like it's the same  
11 thing to me.

12 THE WITNESS: I don't disagree that there  
13 are significant similarities. I point out that  
14 there is a practical aspect of this. We would  
15 encourage the centralized landfill. If someone is  
16 going to have a drilling program where they are  
17 coming in and they are going to be drilling close  
18 space wells and have a 200-well drilling program,  
19 then I would strongly urge them to consider a  
20 centralized landfill.

21 COMMISSIONER OLSON: I think I come back  
22 to the issue of whether it's an exception or not. I  
23 think I may agree that I don't consider something  
24 ten miles away to be an on-site location. But it  
25 seems to me that you are effectively doing the same

1     thing. So it seems to me it would then qualify for  
2     an exception. I guess my problem is you were saying  
3     that the Division wouldn't approve that as an  
4     exception, even though it's the same thing and it  
5     seems to have the same environmental protections  
6     that are placed on it that occur on-site. So it  
7     would seem like I guess maybe I'm not sure. Maybe  
8     you need to explain to me why that wouldn't qualify  
9     for an exception.

10           CHAIRMAN FESMIRE: Mr. Von Gonten,  
11     Commissioner Olson allowed me to take a few minutes  
12     of his time. Are Rule 17 and Rule 36 mutually  
13     exclusive? If a facility falls under Rule 17 does  
14     it also fall under Rule 36.

15           THE WITNESS: I believe they are. In the  
16     definitions they say that surface waste management  
17     includes except, and one of the things that is  
18     excluded, I believe, is a temporary pit.

19           CHAIRMAN FESMIRE: Right. So if a Rule 17  
20     application is made and an exception to a part of  
21     Rule 17 is granted and that application is approved?

22           THE WITNESS: Yes.

23           CHAIRMAN FESMIRE: And say it's ten miles  
24     away, that is not a violation of Rule 36, is it?

25           THE WITNESS: If it was a temporary pit

1 under Part 17. In the particular example if I  
2 follow you, it would not be a Part 36 facility.

3 CHAIRMAN FESMIRE: So it could be a Part  
4 17 exception without violating Part 36, couldn't it?

5 THE WITNESS: If it met the definition in  
6 particular locations being a temporary pit, yes.

7 CHAIRMAN FESMIRE: And, for instance,  
8 on-site, if we assume it means on-site and Williams  
9 in this case or in this well were to apply for an  
10 exception, that expected location would still fall  
11 under Rule 17. It would fall under the permit that  
12 was drafted for it, but it wouldn't be a violation  
13 of Rule 36, would it?

14 THE WITNESS: If you were granted an  
15 exception under Part 17, yes.

16 COMMISSIONER OLSON: I think that got  
17 right to why I was having confusion about that  
18 inter-relationship with Rule 17 and 36. Because  
19 that was my understanding that what happens in the  
20 exception under Rule 17 is an exception to Rule 17.  
21 It's already exempt from Rule 36 by the definition  
22 of the surface waste management facility.

23 THE WITNESS: If it meets the temporary  
24 pit definition.

25 COMMISSIONER OLSON: Right. That's why I

1 was confused when it came back with the idea that  
2 you wouldn't approve an exception for it. It seems  
3 to me that if they came in with an exception for  
4 this, it seems to me it would be approved if it's  
5 similar to the same activity that's occurring  
6 on-site. That's all.

7 CHAIRMAN FESMIRE: Mr. Von Gonten, what is  
8 the reason that we don't commingle waste, that we do  
9 have that prohibition?

10 THE WITNESS: Commingling waste from two  
11 different locations?

12 CHAIRMAN FESMIRE: Yes.

13 THE WITNESS: It's actually trying to  
14 prevent people going down a certain road. We want  
15 to make sure that they have proper waste management.  
16 We allow operators to do on-site disposal. It's not  
17 necessarily our preferred method as far as being  
18 environmentalists, and I believe I pointed out one  
19 of the Commission's findings that it's something, in  
20 fact, that a centralized facility is superior to a  
21 large number of scattered disposal sites. In some  
22 ways it's a philosophical approach.

23 CHAIRMAN FESMIRE: We also don't want to  
24 take two dissimilar wastes and, in essence, give the  
25 operator another delusion factor? Is that one of

1 the considerations?

2 THE WITNESS: That's correct. I don't  
3 think that that would happen, but in the particular,  
4 you can't imagine that someone would cherry-pick a  
5 clean pit to mix with the contents of a dirty pit to  
6 avoid meeting those criteria that have been  
7 specified in the Pit Rule closure standards.

8 CHAIRMAN FESMIRE: And Commissioner Bailey  
9 was speaking about, you know, with today's  
10 directional valves, if we allow the commingling of  
11 waste on a single pit we can get diverge of waste.  
12 But basically you are drilling through the same  
13 formations to get down there and staying in the same  
14 formations, so you can expect the waste to be pretty  
15 similar, can't you?

16 THE WITNESS: I would imagine they would  
17 be pretty similar. In the case of the horizontal  
18 wells I would think they would be more likely to be  
19 dissimilar because of a change in the mud program.  
20 They might decide after one well to change to a  
21 different mud system.

22 CHAIRMAN FESMIRE: So one of the things we  
23 would be concerned about is not just what's coming  
24 up from the ground but what we added to the system  
25 that's in the wastes?

1 THE WITNESS: Absolutely. It's part of  
2 the pit contents.

3 CHAIRMAN FESMIRE: Okay. Now, I believe  
4 Ms. Munds-Dry was talking about some of the rules  
5 apply to drying pads and temporary pits. What is  
6 the purpose of a temporary pit?

7 THE WITNESS: The temporary pit is used  
8 primarily for drilling a workover. There is a third  
9 use for the drilling pit allowed which is permanent  
10 disposal of well cuttings.

11 CHAIRMAN FESMIRE: And a drying pad has a  
12 significant -- at least in the long-run -- a  
13 different purpose, doesn't it?

14 THE WITNESS: It is used to stage and  
15 allow the cuttings to dry down further. One of the  
16 closure requirements is that the cuttings have to  
17 pass the paint filter test, so this allows  
18 additional moisture that was not originally -- that  
19 passed over the shaker with the cuttings and was now  
20 on the drying pad to actually separate. It was the  
21 benefit of actually being able to separate the  
22 fluids out and not having to haul them off with the  
23 cuttings. It's also a requirement that you have to  
24 stabilize that waste so it's able to be handled  
25 appropriately.



1                   CHAIRMAN FESMIRE:   Going back to what  
2   Commissioner Olson and you and I were talking about,  
3   given that realization, do you think that you could  
4   have -- if Williams had applied for an exception to  
5   Rule 17 to make the short haul and commingle the  
6   waste from two wells and one pit, could you have  
7   granted that exception under the proper  
8   circumstances?

9                   THE WITNESS:   That would be their  
10   obligation to submit it and demonstrate the  
11   equivalent or better protection.   Also that their  
12   exception is showing some sort of innovation and  
13   creativity.   I would have to see their application.  
14   They did not submit one.   In fact, they gave us very  
15   little information about what they were actually  
16   going to do.   It's become very clear during the  
17   testimony.

18                  CHAIRMAN FESMIRE:   Mr. Swazo?

19                  MR. SWAZO:   Nothing further.

20                  CHAIRMAN FESMIRE:   Thank you very much.

21                  MR. SWAZO:   We would call Brad Jones to  
22   the stand.

23                                       BRAD JONES

24                                       (being duly sworn, testified as follows:)

25                                       DIRECT EXAMINATION

1 BY MR. SWAZO

2 Q. Please state your full name for the  
3 record?

4 A. Brad Jones.

5 Q. And you are employed with the OCD?

6 A. Yes.

7 Q. And you are an environmental engineer at  
8 the OCD?

9 A. Yes.

10 Q. And as part of your duties, do you review  
11 permits, permit modification, closure plans under  
12 Part 17 and Part 36?

13 A. Yes.

14 Q. And your duties also include reviewing  
15 ground water and hydrostatic test discharge  
16 applications, permit modifications and removals and  
17 under the Oil and Gas Act WTCC regulations?

18 A. Yes.

19 Q. Do you have a bachelor of science in  
20 environmental health?

21 A. Environmental health science, yes.

22 Q. OCD Exhibit 2 is a copy of a resume that  
23 you provided?

24 A. Yes.

25 Q. And it lists your work experience?

1           A.     Yes.

2           Q.     Significant environmental work experience?

3           A.     Yes. All my work experience has been  
4 environmental.

5           Q.     Would you describe your Part 17  
6 experience?

7           A.     I was, I guess you could say, part of the  
8 committee that put together the language that OCD  
9 proposed from the Commission under the initial Pit  
10 Rule hearing. I also participated and kind of led  
11 the Pit Rule training throughout the state, and I  
12 was also involved in the amendments to the Pit Rule  
13 testifying on behalf of the OCD.

14          Q.     You said that you testified on Part 17 of  
15 the OCD?

16          A.     Yes.

17          Q.     And you testified before the Oil  
18 Conservation Commission in prior cases?

19          A.     Yes. I believe this is my fourth time in  
20 front of them.

21          Q.     And you have been accepted as an expert in  
22 those cases?

23          A.     Yes.

24                 MR. SWAZO: At this time, Mr. Chairman, I  
25 would like to qualify Mr. Jones as an expert in the

1 management of oil field waste, regulatory processing  
2 and expert in Part 17 and 36.

3 MS. MUNDS-DRY: No objection.

4 CHAIRMAN FESMIRE: Mr. Jones' credentials  
5 will be so accepted.

6 Q. Briefly, your testimony is going to  
7 involve addressing the applications that are  
8 associated with the Rosa Unit Salt Water Disposal  
9 No. 2 and also the issues related to Williams'  
10 proposals?

11 A. Yes. I also plan to clarify some of the  
12 testimony these been stated yesterday and today.

13 Q. Do you wish to clarify the Environmental  
14 Bureau's position in this hearing?

15 A. Yes. And some other statements made from  
16 Williams as well about the rule itself. This line  
17 of questioning with Mr. Von Gonten just recently  
18 about the horizontal directional drilling and  
19 collating waste from the same pad generated by the  
20 same pad, I would like to clarify.

21 One of the reasons this came up, and it  
22 was something that was approached by us during our  
23 Pit Rule training that we tried to address is that  
24 in these locations where we have the pads where the  
25 wells are either directionally or horizontally

1 drilled, if the applicant were to apply for  
2 individual pits for those wells to be drilled and  
3 then they met the siting requirement, they could  
4 meet the burial standards -- say there were three of  
5 them drilled from that same location -- we would end  
6 up with three pits buried in place if we could meet  
7 the standards, the criteria. Our logic at that time  
8 was if that was feasible, why not reduce the surface  
9 impact and allow them to commingle this waste for  
10 that purpose so there would be less of an impact in  
11 those areas. It would also help certain agencies  
12 like the surface management agencies. So that's why  
13 that kind of developed itself.

14           If you look at the rule, the in-place  
15 provisions only prohibit the drying pads associated  
16 with the closed-loop systems. They put the  
17 limitation only on those for one pad per pit. It  
18 never mentions a limitation on just temporary pits  
19 that are used.

20           One can look at that and say well, the  
21 expectation would be I'm drilling in this pit, I'll  
22 bury in that pit and that would be in that pit, but  
23 the limitations are only placed for the drying pads  
24 for in-place.

25           As Mr. Von Gonten stated, he referenced

1 about the trench burial. The trench is different.  
2 It states that limitation of either a temporary pit  
3 or a dry pad associated with a closed-loop system is  
4 limited to one trench. One for one, so to speak.

5 So there's a difference. There are  
6 limitations for commingling. When you do a trench,  
7 it applies to both the temporary pit and the drying  
8 pad associated with the closed-loop system. But for  
9 in-place, it only identifies that it only applies to  
10 the drying pad associated with the closed-loop  
11 system. I just wanted to clarify that up front  
12 because there was a lot of questions on this and  
13 everyone was asking where the logic came from of  
14 commingling.

15 Q. Turn to OCD Exhibit No. 5. Are you  
16 familiar with OCD Exhibit No. 5?

17 A. Yes.

18 Q. What is it?

19 A. It's actually the application in front of  
20 the Commission today. It's also the application  
21 that we denied.

22 Q. Have you reviewed the permit application?

23 A. Yes. And our review is expressed in  
24 Exhibit 6, the June 24 denial letter.

25 Q. What is the significance of the

1 application and the review?

2 A. I mean, the first step is it brought us  
3 here today. This is something that we are trying to  
4 express to Williams in our motions to dismiss, that  
5 you have to have a denial of an application to  
6 request a hearing pursuant to the rule.

7 But the big issue, of course, is the  
8 off-site/on-site thing. But I also would like to  
9 remind the Commission that this application that's  
10 in front of us still has to be reconciled.

11 Q. Why was the June 18th 2010 C 144 permit  
12 application for the OCD Salt Water Disposal No. 2  
13 Well denied?

14 A. Well, the big issue would be the off-site  
15 burial. This concept is not contemplated by Part  
16 17, but it is addressed under Part 36.

17 We denied the Williams' application  
18 because it would require a centralized landfill  
19 permit under Part 36 rather than a temporary pit  
20 permit under Part 17.

21 Q. How did you come to this conclusion?

22 A. Well, the in-place provisions were  
23 something that OCD did not recommend in our  
24 rule-making. It was something that seemed to be  
25 developed between a recommendation from industry and

1 a development or expansion of that concept from the  
2 Commission. So for us to understand it, we have to  
3 go back to the order to see what was the intent of  
4 the Commission. Because it wasn't our proposal.

5           So we count on the definition for on-site  
6 closure that was in Paragraph 68, and once again, I  
7 would like to clarify. This is a definition for  
8 on-site closure, not just on-site, on-site closure.  
9 We are talking about an on-site closure method. And  
10 that is -- that right there describes on-site  
11 closure method in that paragraph. So we were  
12 deferring to the Commission's findings for that  
13 purpose.

14           Q.     Were there any other reasons for the  
15 denial?

16           A.     Well, there were some deficiencies in the  
17 application. I think it's been mentioned. The  
18 surface notice for the proposal for on-site closure,  
19 once again, I think it's already been discussed that  
20 that was pursued two days after the application was  
21 submitted. The regulation requires it be submitted  
22 with the application, so we didn't have it. We  
23 didn't know if they would fulfill that obligation  
24 until days later. Once again, we haven't received  
25 an official submittal. We had an E-mail to the



1 district office for that.

2           The other thing would be the design of the  
3 temporary pit. We couldn't figure out what the  
4 drawing was for. The only mention of the 634B in  
5 the application itself was it was stating that the  
6 pit that was proposed in the application would be or  
7 will be located there, meaning that it didn't allude  
8 to any existing pit. It said the one they were  
9 recommended, the 100 by 100 by 20 pit would be  
10 located there or will be located there, meaning it  
11 wasn't there at all.

12           So the drawing that we had didn't add up  
13 some of the dimensions, based upon the scale.  
14 Actually, they showed some type of impalement, or by  
15 definition it's a pit, it's the BB cross-section of  
16 something that's over 200 feet wide. So we had no  
17 idea, because there was nothing presented to us that  
18 would have those dimensions.

19           The last thing was the permit application  
20 didn't address anything regarding to the reclamation  
21 of the area associated with the closed-loop system  
22 which is required by the rule. They specifically  
23 addressed it for the temporary pit but never  
24 addressed it for the closed-loop activity.  
25 Especially when they were proposing to scrape all

1 the topsoil off at that location.

2 Q. Now, based upon your review, did Williams  
3 propose anything in its application that is contrary  
4 to the regulatory language of the Pit Rule?

5 A. Yes, I believe this came up yesterday.  
6 It's the fencing requirement. I was kind of  
7 confused because Mr. Lane quoted the requirements  
8 for the fencing around the pit and the condition in  
9 which any side of the pit could be left open. He  
10 stated several times the only condition which the  
11 fencing could be removed and left open would be when  
12 there's a rig adjacent to that pit.

13 In this case I never got it clear from  
14 him. As it's stated here, they are wanting it open,  
15 as they put it, the front side open during  
16 operational purposes. So does that mean what they  
17 are drilling to ten miles away, are they going to  
18 leave this unmanned and open? We didn't know.  
19 There was no mention of the conditions. But it did  
20 not meet the regulatory language in the caveat  
21 that's in that language, that provision that says  
22 you can only leave it open if the rig is adjacent to  
23 it. In this case it's ten miles away and is not  
24 adjacent to it, so that would be a true exception  
25 request.

1           Now, we had actually recognized this in  
2     the previous denial and notified them that it would  
3     be an exception request. We talked about it in our  
4     meeting with Mr. McQueen and also identified this  
5     discrepancy here about the fencing. Once again, the  
6     same language when the previous denial was put in  
7     this application, so they disregarded our comments  
8     on that.

9           Q.     To your knowledge, was Williams aware that  
10    their fencing proposal would require an exception  
11    pursuant to Section 15 of the Pit Rule prior to  
12    submitting this application?

13          A.     Yes. Once again, that goes back to the  
14    previous note I just discussed and the fact that we  
15    discussed that in our meeting with Mr. McQueen.

16          Q.     Let's go back and talk about the off-site  
17    disposal concept. Can you explain why off-site  
18    disposal in a temporary pit is not allowed under  
19    Part 17?

20          A.     Well, once again, the rule doesn't  
21    contemplate off-site, it talks about on-site  
22    disposal and on-site closures. So once again, we go  
23    back to the order to support that. It was not our  
24    proposal under rule-making. It was something  
25    developed by the Commission with a start from

1 industry. I think all they wanted to do was just  
2 put it in the pit as they were doing previous to the  
3 Pit Rule and backfill it and walk away from it.  
4 That's what they called in-place. What happened, it  
5 seemed like the Commission had used some of our  
6 trench burial provisions to modify it to be similar,  
7 but not the same.

8           So we definitely looked at that. Of  
9 course, you know, Williams' proposal here, which is  
10 on-site closure of a temporary pit ten miles away  
11 from where the waste is generated, that position is  
12 not supported by the Commission's order for on-site  
13 closure as it's defined in paragraph 68.

14       Q.     And if you will look at OCD Exhibit 18,  
15 Page No. 2, fourth finding of the Commission.

16       A.     I'm sorry, where are you.

17       Q.     OCD Exhibit 18, top of the page. I'm  
18 sorry, Page 2.

19       A.     Yes, it's on Page 2. This is why we do  
20 this, because, I mean, as a division, we can only  
21 present what we hope to be the rule at the end, and,  
22 of course, that's always subject to change and this  
23 is a good example so we have to go back to the  
24 Commission to determine this.

25           At the top of Page 2 of the order,

1 Paragraph 4, the last sentence says, "The following  
2 statement of reasons indicate the Commission's  
3 analysis of certain key provisions and of the entire  
4 proposal. Additional reasons are included in the  
5 hearing transcript of the Commission's  
6 deliberations."

7 The importance of this is when you go here  
8 to look at what may be in the order, in this case  
9 the Commission took the time to clarify on-site  
10 closure. That was good. You will see references to  
11 the transcript. So if you notice in Mr. Von  
12 Gonten's -- I guess his PowerPoint presentation  
13 because it's not really an exhibit, he would mention  
14 things like mini landfills and all of that. That  
15 was actually my direct testimony at the hearing.

16 Our intent when we proposed just trench  
17 burial was that we did not -- we wanted to put  
18 limitations on the -- you could say disposal of  
19 waste under the Pit Rule because Part 36 covered the  
20 landfill issues. I mean, that's what waste disposal  
21 is about. So --

22 CHAIRMAN FESMIRE: Mr. Jones, I hate to do  
23 this to you. We have gone all day. I have to take  
24 a break and I'm sure there are other people in a  
25 similar situation.

1 (Note: A discussion was held off the  
2 record).

3 (Note: The hearing stood in recess at  
4 3:25 to 3:35.)

5 CHAIRMAN FESMIRE: I believe, Mr. Jones,  
6 we are in the midst of direct examination and I  
7 interrupted you and I apologize.

8 A. I will let my attorney ask me a question  
9 then.

10 Q. What is the Bureau's position with regard  
11 to Williams being required to do to comply with Part  
12 17 and Part 36?

13 A. We were looking at the objectives of the  
14 rule. You have Part 17, you have Part 36. Mr. Von  
15 Gonten had slides up about the objective, and, you  
16 know, for the objective of Part 36, it's also in  
17 Section 6 of the rule if you want to look at that.  
18 It's titled Objective. It states, "To regulate the  
19 disposal of oil field waste and the construction,  
20 operation and closure of surface waste management  
21 facilities."

22 Now, the objective to Part 17, which is  
23 expressed in Section 6 of this states "To regulate  
24 pits, closed-loop systems, below-grade tanks and  
25 subs used in connection with oil and gas operations

1 for the protection of public health, welfare and the  
2 environment."

3 It's really clear that one of the primary  
4 objectives under Part 36 is disposal of oil field  
5 waste. That is not the primary objective of Part  
6 17.

7 Q. Would it be fair to say June C 144  
8 application is a stand-alone application that only  
9 addresses those activities associated with the  
10 drilling of the SWD No. 2 well?

11 A. As it was submitted, yes.

12 Q. What's the basis for your conclusion?

13 A. Well, if you go to the application, it's  
14 Exhibit 5 of the OCD exhibit or Exhibit A of  
15 Williams. I'm going to Page 6 of it. I think it's  
16 where the first written text outside the C 144 form  
17 is past that. It's the first paragraph at the top  
18 of the page. It says, "In accordance with rule  
19 19.15.17 NMAC, the following plans describe the  
20 design and construction, operational requirements  
21 and closure of the closed-loop system and the  
22 temporary pit system to be used for the drilling and  
23 completion of Rosa Unit SWD No. 2 by Williams  
24 Company, LLC."

25 It doesn't state that it's going to be in

1 conjunction with anything else, it will be used with  
2 anything else. It clearly states the purpose of  
3 this application within it.

4 I would like to add to that. If you go  
5 down to the second paragraph -- this is what I was  
6 getting at earlier midway through it, and you will  
7 see a reference there to the Rosa Unit 634B, it says  
8 the temporary pit will be located at a less  
9 environmental sensitive new drill location. Says it  
10 will be located, not that it is located there now.

11 Once again, this application is dated June  
12 18th. As Mr. Lane had testified, they had  
13 constructed the pit out at 634B in March. We have  
14 exhibits here within our exhibits with photos of  
15 that pit which we obtained for the district office  
16 and that exhibit is -- let me make sure I find it  
17 here. It's Exhibit 11. We had the district office.  
18 We lucked out. They had a person out near the site  
19 the day we called to see what the status was of the  
20 location, and we had Monica -- I don't know how to  
21 pronounce the last name -- K-U-E-L-I-N-G -- one of  
22 our inspectors. She went out there and took photos.  
23 She didn't know why she was taking photos at the  
24 time, but she took photos of the pit itself.

25 CHAIRMAN FESMIRE: Mr. Jones, where are



1     you at?

2                   THE WITNESS:   Exhibit 11.

3           Q.     OCD Exhibit 11?

4           A.     Yes.   And these were taken -- these were  
5   taken on June 23rd of this year, and if you look at  
6   the -- they are all in the same order.   The third  
7   photo, you will see the pit as it was on June 23rd,  
8   and this is the other thing I would like to clarify.  
9   This morning Mr. McQueen said they could fill this  
10  up to the two-foot free board, up to that level if  
11  they were going to transfer the waste over to this  
12  pit.   That's an operational requirement.   You have  
13  to maintain a two-foot free board when you are  
14  operating the pit.   As it's done this, this is a pit  
15  in operation.   When it comes to closure, you are  
16  required to have a four-foot cover to existing  
17  grade.

18                   So if you have it filled up to two feet  
19  for the free board, you wouldn't be able to put that  
20  cover, the required cover on it, the final cover.  
21  If you look at this, the berm, there's a berm  
22  incorporated into the design that's maybe a foot  
23  high, and I would guess that there's maybe five feet  
24  of liner showing on June 23rd.   If that liner -- if  
25  that is truly a berm that is a foot high, that

1 leaves four feet left.

2 Now, they have to solidify this in order  
3 to put the cover on. There's a three to one mixing  
4 ratio. That means once they remove the fluids,  
5 which it doesn't look like -- there's a lot of  
6 fluids. There's a lot of solid. They will have a  
7 hard time as it is today just to close it in place  
8 as it looks in this photo.

9 So the concept of taking waste over there,  
10 which is not expressed in their application but has  
11 been undoubtedly expressed in this hearing, I don't  
12 even know if it's reasonable to anticipate doing it  
13 based upon the requirements of the rule. They are  
14 saying if we can comply with the requirements of the  
15 rule. I think as it stands, they are going to have  
16 a hard time closing it in place as it is right now  
17 with the waste in it from 634B.

18 So that's just an observation for the  
19 Commission there to consider this. I don't know if  
20 they assess the condition of it, but the waste does  
21 require that solidification and it does have a  
22 limitation. When you are looking at this, the three  
23 to one mixing ratio means four times the original  
24 volume of waste for that to occur. So just keep  
25 that in mind. It has to be able to maintain or

1 support the four-foot cover. That's the purpose of  
2 the solidification process there in the rule.

3 Q. And you asked for the site inspection --

4 CHAIRMAN FESMIRE: May I ask a quick  
5 question? The four-foot cover also has to be capped  
6 by a minimum thickness of one foot of soil or  
7 existing soil.

8 THE WITNESS: Well, that's part of the  
9 cover design. If you do any type of on-site closure  
10 under 13H(2) in the regulation for on-site closure,  
11 you are required to put at least a four-foot cover  
12 on there. And if we go to the regulation -- I will  
13 read that provision. This is under Section 13 of  
14 rule, which is closure requirements. I am in 13-8,  
15 Soil Cover Design. And I am looking at H(2). "Soil  
16 cover for in-place or burial in-place or trench  
17 burial shall consist of a minimum of four feet of  
18 compacted non-waste containing earthen material.  
19 The soil cover shall include either the background  
20 thickness of topsoil or one foot suitable material  
21 to establish vegetation at the site, whichever it  
22 greater."

23 So just the minimum standard for in-place  
24 or on-site closure implemented would always require  
25 four feet. The reason I say to existing grade, if

1     you look at 3 below it, "The operator shall  
2     construct the soil cover to the site's existing  
3     grade and prevent ponding of water and erosion of  
4     the cover material."

5                 So they are required to make sure this  
6     goes to existing grade. Based upon the photos, I  
7     have some concerns if what they have currently there  
8     that's been generated from the drilling of 634B, if  
9     they can meet the requirement as it stands today.

10            Q.     (By Mr. Swazo) Are you familiar with OCD  
11     Exhibit No. 10?

12            A.     Yes.

13            Q.     What is it?

14            A.     That is the permit application for 634B.

15            Q.     And have you reviewed this permit  
16     application?

17            A.     For this hearing, yes.

18            Q.     And can you provide us with a brief  
19     summary of Williams' proposal in this application?

20            A.     It's a brief summary, so basically they  
21     are looking at the hybrid system again, the  
22     closed-loop system of the temporary pit. In this  
23     case they met the siting requirements of the  
24     location for that. This is a good example to a  
25     certain extent of where you can -- well, I wouldn't

1 say this is the perfect example. The reason they  
2 were using the closed-loop is because of the  
3 oil-based mud, but let me stick to the question, I  
4 guess.

5 Here they are using the hybrid system.  
6 The temporary pit will be used to drill the upper  
7 portion of the well. The closed-loop is for the  
8 directional horizontal drilling because they are  
9 having to use the oil-based muds to keep the hole  
10 open. The temporary pit would be closed on-site by  
11 the method of in-place burial and the closed-loop  
12 waste will be hauled to Envirotech.

13 Now, they keep talking about cost on  
14 their -- the cost of hauling as it's associated with  
15 SWD 2. Here is a situation where they have a  
16 closed-loop system that they are having to haul this  
17 waste from this site but that doesn't seem to be an  
18 issue since it's required by rule to do it.

19 We are saying that if you can't have a pit  
20 of SWD 2, then you are required to haul it away.  
21 Just like the waste that they are having to do at  
22 this one. They are not before us with this one  
23 complaining about the cost of hauling this material  
24 away but I would like to point out they will have to  
25 haul everything in the closed-loop system to

1     Envirotech. That's how it's approved. That's not  
2     an issue at that site. So it's kind of like a food  
3     for thought kind of thing.

4           Q.     Are there any other wells or sites  
5     mentioned in this permit application?

6           A.     No, there's no mention of SWD 2.

7           Q.     Based upon your review, would it be fair  
8     to say that this C 144 permit application is a  
9     stand-alone application that only addresses those  
10    activities associated with the drilling of 634B?

11          A.     Yes.

12          Q.     What's the basis for your conclusion?

13          A.     Well, I believe this is Exhibit 10. If  
14    you went to Page 17 -- and I believe they have got  
15    their Exhibit -- this is 17 of 22. They have theirs  
16    number.

17                   In the first paragraph at the top of the  
18    page it reads just like or very similar to the SWD  
19    one. "In accordance with the rule 19.15.17 NMAC,  
20    the following plans describe the design,  
21    construction, the maintenance and operation, the  
22    closure of the closed-loop and temporary pit system  
23    to be used for the drilling and completion of Rosa  
24    Unit 634B by Williams Production Company, LLC."

25                   Once again, they state at the very

1 beginning what the purpose of the application is  
2 for. We can't interpret what their internal  
3 policies are or what they propose to do if they  
4 don't put it in here. We review the application in  
5 front of us as it's written. We are expecting the  
6 applicant to tell us what they plan to do for us to  
7 consider how to assess it, if it could be approved.

8 Yesterday's testimony was pretty much a  
9 shock to me, because all the things discussed by Mr.  
10 Lane are not in any of these applications. The plan  
11 to combine the waste, all of that, never mentioned.  
12 SWD 2 is not even mentioned in this application. So  
13 for us to anticipate that they are going to  
14 commingle waste from all sites into this pit as they  
15 stated, there's nowhere to take that leap to assume  
16 that because there's no mention of it. If there's  
17 no mention, we have no knowledge of it.

18 Q. What's the significance of this  
19 application?

20 A. Well, the significance of this is  
21 basically on Page 14 of this, if you go back, the  
22 pit that's proposed in this one, which we have just  
23 looked at the photographs of -- I'm sorry, I  
24 apologize. I apologize. I have the wrong page  
25 number. For some reason I can't find it. But I was

1     trying to find the pad. For some reason mine  
2     doesn't have -- here we go. I'm sorry.'S Page 7 of  
3     this application. It would be the second page after  
4     the end of the C 144 form. It illustrates the  
5     location of this pit is in the same location of the  
6     pit in SWD 2, that application.

7             Without them telling us what they plan to  
8     do, the fact that there's two different sizes for  
9     two different pits, we didn't know what to do about  
10    this. We have got, you know -- but it illustrates  
11    that they were proposing the same pit. As far as we  
12    were concerned in our review, because we were told  
13    nothing different, they were proposing a pit in the  
14    same location where this pit had been approved for  
15    in-place burial in SWD No. 2. We discussed that in  
16    our last denial of the complications because it  
17    wasn't addressed how that was going to be resolved.

18            Q.     Is this an issue?

19            A.     Absolutely.

20            Q.     Please explain.

21            A.     Well, in a sense I just did about the size  
22    of the pits and what they represent. Once again,  
23    our pictures in Exhibit 11 illustrate this pit is  
24    real. I mean, it's there today. Our concern at the  
25    time -- because all this has changed since



1 yesterday, my testimony as it's put together. All  
2 this that came about yesterday was stuff that was  
3 not proposed in any of the applications, and I don't  
4 know whether Williams thinks that the OCD can -- I  
5 don't know -- realize they are going to do something  
6 other than what's in the application if it's not  
7 written there.

8           So when we were assessing this, we were  
9 considering how is this going to work? You have two  
10 pits there. You have the next one that follows is  
11 larger than the first one. The first one is buried  
12 on-site. Are you going to do something about that?  
13 What is going to be done about that? We were really  
14 concerned.

15           A lot of their application talks about  
16 their proposals to reduce the surface disturbance.  
17 My concern with that is how, when you are required  
18 to haul it away? Actually, you are increasing the  
19 surface disturbance by adding more waste there as  
20 it's proposed and written in the application because  
21 if you follow the rule, you wouldn't be able to have  
22 a pit at SWD 2. You would be forced to use a  
23 closed-loop system and indirectly forced to haul it  
24 away so the waste would never go to this other well  
25 site.

1           By taking this as it's written in the  
2     application, taking this waste over there, you are  
3     increasing the surface disturbance because the waste  
4     would never go there by the rule.

5           Q.     Have any other concepts other than the  
6     ones mentioned in the C 144 permit application been  
7     expressed to the OCD by Williams?

8           A.     Well, yesterday's testimony is a good  
9     example. But for exhibits, yes. This concept of  
10    commingling is something that was alluded to in  
11    responses to requests for hearing, the application  
12    from hearing from Williams' legal counsel. They  
13    alluded there might be some commingling. It wasn't  
14    direct in their response. It wasn't in the  
15    applications, the C 144 permit applications. It was  
16    in their briefs or whatever you want to call the  
17    application for hearing, I guess is the best way to  
18    put it.

19           This was reconfirmed if you look at -- I  
20    believe it's Exhibit 13. This is a letter from Ms.  
21    Munds-Dry to Commissioner Fesmire that kind of lays  
22    it out here. It's mainly in the second paragraph  
23    about half-way down. It says, "Additionally, I am  
24    told by Williams that a modified or amended C 144  
25    for the Rosa Unit is not required. In the past, the

1 district office has required Williams to file two  
2 separate C 144s for each well when it  
3 co-locates/shares a pit. Williams files the first C  
4 144 to reflect the pit. The pit will take waste  
5 from the first well. Then when the well is drilled  
6 to completed Williams files the next C 144 assigning  
7 the pit to the second well. No modification has  
8 been required on the first C 144; thus, Williams did  
9 not amend its C 144 for 634B."

10 This is when they are expressing this  
11 commingling here. Once again, this was dated June  
12 3rd. Two applications were -- yeah, I believe two  
13 applications were either -- well, this led to the  
14 April 20th review, this right here. When we  
15 expressed the concerns about this off-site/on-site  
16 and the commingling, one would anticipate it would  
17 be at least in the amended one that's before us  
18 today since they have discussed it and we recognized  
19 it in meetings with them. We discussed it.

20 Once again, they failed to even put it in  
21 this amended application. They just say we are  
22 going to have this 100 by 100 by 20 pit.

23 In the next application submitted, the one  
24 before us today, and they said it will be  
25 constructed at that site. They didn't mention this

1 commingling. The discussion yesterday with Mr.  
2 Lane, that was not in the application even though we  
3 talked about it with Mr. McQueen.

4           Once again, we told them it's never been  
5 expressed in the application. We can't consider  
6 something if it's not presented to us in the  
7 application. That's the format in which we would  
8 approve the application. The C 144 permit  
9 application under Part 17. The hearing for  
10 application for hearing is something different.  
11 It's a different mechanism, serves a different  
12 purpose. That is not the application that we  
13 consider for permitting under Part 17.

14           Some of the other things that were talked  
15 about, I think Mr. Lane had stated that the use of a  
16 closed-loop system is limited to the separation of  
17 groundwater. It's limited in its use. Like you are  
18 forced to use it in all situations where you don't  
19 meet the siting requirements. I would beg to differ  
20 on that because our operators in the southeast they  
21 have converted over to closed-loop system for  
22 everything.

23           A good example of this -- and this is why  
24 I wanted to bring this up compared to their 634 --  
25 they are forced to use the closed-loop system on the

1     634 because they are using oil based muds.  
2     Actually, there's a provision under temporary pits  
3     if you use oil-based muds you must use steel tanks  
4     to contain that. So that's why they are having to  
5     use closed-loop to begin with. I believe they said  
6     yesterday they can't close it in place because they  
7     think it's going to be too high.

8             But in the southeast, they have converted  
9     their whole system over to closed-loop. Doesn't  
10    matter what the separation of groundwater is. It  
11    could be greater than or it could be 200 feet. They  
12    are going to use closed-loop. What a lot of them  
13    are doing are similar actions that are occurring at  
14    634B. They are drilling that top hole part with a  
15    pit because it's not in the formation. And they  
16    believe they can meet the closure standards for  
17    on-site closure method for that waste, but when they  
18    go to the other stuff and they get into the  
19    formations and they have to drill through the salt  
20    zones and all that, they are just hauling that away.  
21    They are not even attempting to do that.

22            But they are able to have a pit there, and  
23    they are also able to drill there. It's not because  
24    you can't have a pit there that they are forced to  
25    use closed-loop. They just converted over to

1 closed-loop. When we were looking at the provisions  
2 of things, of stating using a temporary pit in lieu  
3 of a drying pad, we thought about that. We  
4 suggested that language. Our thought was that you  
5 are not restricted to only use closed-loop systems  
6 when you don't meet the siting requirements for a  
7 pit because as the operators in the southeast have  
8 done, they converted totally into closed-loop so  
9 they will always have closed-loop. But they can  
10 also have a pit with that now.

11           The logic in the pit is if I meet the  
12 siting requirements and I think my waste can be  
13 buried on-site and I can meet the in-place -- for  
14 some reason they don't have to drill through a salt  
15 section or something and they can meet the on-site  
16 standards -- why would I construct a drying pad when  
17 I have to follow that by constructing the pit to  
18 bury it? Why not construct the pit to begin with  
19 and put my waste inside there and say -- the rule  
20 allows for that. The rule allows for that.

21           So why create the extra step of cost  
22 surface disturbance when you can have a one-time  
23 surface disturbance in that case. So, you know,  
24 there's reasons why the rule was written. Specific  
25 language is in there to address various things. I

1 just wanted to clarify that point, because yesterday  
2 it was under the assumption that you were forced to  
3 use closed-loop and you can only use it under these  
4 conditions. I like to clarify that you can use it  
5 any time you want to. But what you do with waste  
6 may restrict certain things.

7 So it's not that you are only required to  
8 use it -- or the only use for it is when you don't  
9 meet the siting requirements where they have a pit,  
10 a temporary pit, it can be used where you meet the  
11 siting requirements for the temporary pit. You can  
12 use closed-loop there as well.

13 Q. I don't know if we touched upon this,  
14 Mr. Jones, but when an operator gets a C 144 permit,  
15 is the permit on this for the well in which it was  
16 permitted or does it give the operator the right to  
17 dispose or take any waste from any other sites into  
18 that pit?

19 A. Well, that's my concern from the testimony  
20 yesterday. The applications that were submitted in  
21 front of us, the 634 that was approved didn't talk  
22 about anything other than dealing with the waste  
23 from that one well. The C 144 that's in front of us  
24 today for the hearing states the same thing. For  
25 SWD No. 2, it doesn't mention 634B, but based upon

1 the testimony yesterday, I have some grave concerns  
2 because we have an operator that is telling us that  
3 all they need is an application that meets the  
4 requirements of Part 17 and once we get that, I  
5 believe Mr. Lane said that the dimensions of the pit  
6 doesn't matter.

7           You know, as long as we get a pit, we can  
8 make it bigger, smaller. And that concerned me  
9 yesterday, because when you do some of the setbacks,  
10 when you start looking at the site requirements --  
11 and a good example is look at the dimensions for  
12 634B. They are 40 by 80. If you were to increase  
13 that to 100 by 100 -- say for some reason they were  
14 looking at increasing that pit. What would have  
15 made the site requirements for the 80 by 40 pit --  
16 say on the 40 side where it's only 40 feet wide or  
17 the length of the side is 40 feet. If you were to  
18 increase that 60 feet more, you may fail to meet a  
19 site requirement. Sixty feet when the site  
20 requirement is 200 feet away. Now you just barely  
21 met it and they decide to change this and change the  
22 size of the pit, they can't have a pit there.

23           Once again, they would fail the site  
24 requirements. They are saying they have the luxury  
25 of modifying the length and width of the pit. I am



1 saying what's presented, what we see in front of us  
2 in the application is what we expect to see in the  
3 field. You can be at 99 feet or 101 feet in length.  
4 We are not going to sweat that. But if the pit says  
5 it's going to be a certain size, like the 80 by 40  
6 pit and then they convert that into 100 by 100, I am  
7 concerned about that because the 80 by 40 may have  
8 met the setbacks but the 100 by 100 may not.

9 So there's not that luxury to modify it  
10 that much. You have to demonstrate you meet all the  
11 siting requirements. I am using this as an example  
12 because the reality is this one meets the siting  
13 requirements, but that's not going to be the case in  
14 all cases, and I just want -- that's why I am  
15 concerned about it, is because they are doing this  
16 now.

17 The other part to comes into this would be  
18 things like the commingling of this waste. Once  
19 again, never expressed in the application. But as  
20 we were told yesterday, that's their plan. That's  
21 their plan. That's what they actually want to  
22 implement. This was reconfirmed by the Read &  
23 Stevens letter, by that operator. That proposal, as  
24 it was submitted to us, was once again on-site.  
25 Even though it was an exception request because it

1 was -- actually, it was a cross -- it rides the line  
2 of an exception request or an alternative closure  
3 because of what they were asking changes to. But  
4 once again, it's one well, one pit, and they were  
5 asking for a form of on-site closure of that one  
6 pit.

7           The letter, though, that was used to  
8 demonstrate their notice to the surface owner told  
9 us more waste was coming to that pit. That was not  
10 expressed in the application. So the point I am  
11 trying to make is this is a widespread concept that  
12 once you get your permit you don't have to tell OCD  
13 everything in the permit and once you get the permit  
14 you can do things you don't tell us.

15           That's my concern, because that's what's  
16 been presented to us today. We have the application  
17 and it speaks for itself. But the testimony  
18 yesterday told us all this stuff that's not in the  
19 application. We had no idea. I mean, that was  
20 shock yesterday, because a lot of the stuff that was  
21 discussed wasn't even mentioned in the meetings.

22           Q.     In order for us to approve a permit,  
23 wouldn't we need to know the information to give  
24 them permission to do whatever they wanted to do?

25           A.     Our expectations when we approve the

1 permit application, we are approving what's in the  
2 application and nothing more, nothing less than  
3 that. It is as it's presented in writing in the  
4 application. It comes back to even the rules state  
5 under Section 16 of the rule -- it's 16G titled  
6 Division Approvals. "The division shall grant and  
7 confirm any division approval authorized by  
8 provision of 19.15.17 NMAC by written statement."  
9 Once again, when we sign this thing and we say we  
10 approve it, they have to have written approval for  
11 us. When they go out and start commingling things  
12 without telling us, where is the written approval?  
13 That's my concern.

14 Q. Mr. Jones, there's been a lot of testimony  
15 about the commingling of waste being approved in the  
16 past by the OCD. Is this correct?

17 A. Yes, and that's why I was starting out to  
18 clarify. It is correct. And the way we read that  
19 in-place provision, once again, it was not our  
20 proposal. It was something that evolved out of the  
21 hearing process because it wasn't specifically the  
22 industry's direct proposal. It was evolved and the  
23 Commission modified it.

24 If you look at the language in that -- we  
25 can go to that section, if you don't mind, in the

1 regulations. This is Section 13F and we are looking  
2 at F(2), which is in-place. The only caveat here  
3 would be in F(2)F for the drying pad. Once again,  
4 that is F(2)F, states "For burial of contents from a  
5 drying pad associated with the closed-loop system,  
6 operators can construct a temporary pit in  
7 accordance with," and it refers to specific  
8 provisions. Paragraphs 1 through 6 and 10 of  
9 Subsection F of Section 11. "And within 100 feet of  
10 the drying pad associated with the closed-loop  
11 system." Then it goes on to state, "The operator  
12 shall use a separate temporary pit for the closure  
13 of each drying pit associated with the closed-loop  
14 system."

15 Now, this provision, as Mr. Von Gonten  
16 stated, further up above -- let me make sure I find  
17 that. I believe it's in 2A -- allows for the -- I  
18 will go here as well. It states, "An operator may  
19 use an in-place burial in the existing temporary pit  
20 of the closure of the temporary pit." It also  
21 allows for that, but it doesn't put this caveat of  
22 limiting one pit for pit as it does for the  
23 closed-loop portion.

24 I don't know why that was done. This is,  
25 once again -- this language was never proposed by

1 any certain party, it was developed from proposals  
2 from industry, and it seems to be something  
3 comingled from what we propose for our trench  
4 burial. But this specifically left out the  
5 temporary pit part.

6           You know, if you were to go and look back  
7 at the order when it talks about the temporary pit  
8 under F(2)F, it talks about the mini landfills. The  
9 goal was not to have mini landfills. I cannot  
10 explain why the Commission left the temporary pits  
11 out. There was no mention.

12           But with that in mind, since there are  
13 caveats under the trench burial, one trench per  
14 temporary pit or drying pad associated with  
15 closed-loop system, under this for in-place, the  
16 caveat specifically for the drying pads, then for  
17 the commingling there are provisions addressing it,  
18 meaning that they prohibit it for those or limit it.

19           I believe there was a question yesterday  
20 to Mr. Lane, are there any provisions within the  
21 rule to discuss commingling. I think those discuss  
22 it because they prohibit it. But for the temporary  
23 pits under in-place, there's no specific language  
24 that puts that limitation on it.

25           Q.     So if I understand your testimony,

1 commingling is allowed only when the wells share the  
2 same well pad?

3 A. Yes.

4 Q. That's where the waste would be generated?

5 A. Yes, and that goes back, once again, to  
6 the order where it describes on-site closure. Not  
7 on-site, on-site closure, which we are talking about  
8 specifically today. We are not discussing  
9 on-site/off-site. We are talking about on-site  
10 closure and what does it mean.

11 The order itself provides that definition  
12 under Paragraph 68.

13 Q. Commingling would not be allowed if the  
14 two different well pads were being used; is that  
15 correct?

16 A. That would be off-site.

17 Q. Now, Williams has indicated that they  
18 wouldn't have to amend any of their existing permit  
19 applications, the application for the SWD No. 2, the  
20 application for the 634B. Is that a correct  
21 assumption?

22 A. Well, I have heard that statement multiple  
23 times. Then yesterday they state that they actually  
24 fill out that special form with the district office  
25 to modify their permits, so I am confused by their

1 assessment that they don't have to modify something  
2 even though they told us yesterday their process is  
3 to provide the supplemental form to the district  
4 office to indicate that they are modifying that pit.

5           So in a sense, it is a modification. I  
6 don't know what else you call it when you are saying  
7 we are submitting this form to modify our pit when  
8 you submit to the district office, and then coming  
9 back to say we don't need to modify our permit.

10           The difference is that is waste generated  
11 on the same well pad at the same location compared  
12 to hauling it from a great distance for off-site  
13 disposal somewhere else.

14           Q.     Could you describe some of the problems  
15 that would arise with the Pit Rule if off-site  
16 disposal is allowed as proposed by Williams?

17           A.     There are other provisions that go with  
18 closure like the sign that goes with the pit. If I  
19 have a pit ten miles away at 634B and I am using  
20 that pit to drill SWD No. 2, what do I put on the  
21 sign that's required to be by that pit? Do I put  
22 the information from SWD 2 which is ten miles away?  
23 Even though 634B has a well, they have multiple  
24 wells there.

25           It's my understanding based on the drawing

1 for the site plan for the well pad there's a couple  
2 wells there, would it truly represent that pit if I  
3 used their sign there? Would that be an accurate  
4 reflection of what the pit is for? The rule doesn't  
5 even address these type of things because when we  
6 said on-site closure, on-site and the expectation of  
7 where the pit would be, we expected it to be with  
8 the well we are drilling.

9           So with that, it would have addressed  
10 well, if the pit is at a separate location of  
11 drilling, you would have to have this on your sign.

12           The regulations don't address it. They  
13 don't provide that kind of instruction. Because the  
14 expectation would be when I construct my pit, it's  
15 right where I am drilling, so I have to have the  
16 sign there. If I have my well sign there and the  
17 provision says if you comply with 16.8 which means  
18 you are the owner/operator of the well and you have  
19 the well sign out there, you don't have to follow  
20 the specified requirements under Part 17 for the  
21 sign because you are the owner/operator that's  
22 linked to this pit.

23           Q.     What about fencing?

24           A.     Well, for the fencing, once again, we go  
25 back to this request where it's only open -- it's



1     only allowed to be open on one side if the rig is  
2     adjacent to it. So if you have a pit -- in this  
3     case as Williams has requested in this permit  
4     application, to allow that front side of the pit to  
5     be open during operational purposes, well, there's  
6     no rig adjacent to it.

7             If the anticipation was that you would  
8     have all these pits like this, it would address the  
9     conditions in which you could allow that fence to be  
10    open if it wasn't adjacent to a rig, and there's not  
11    any language. The language specifically says the  
12    only caveat to have fencing open is the rig is  
13    adjacent to the pit or vice verse appear.

14            Q.     Would there be any problem with the --  
15    would another problem be the temporary pit  
16    inspection?

17            A.     Yes. The frequency of inspections are  
18    based on the presence of the rig. If the rig is  
19    on-site, it says, you got to inspect it daily. If  
20    it's not on-site, it's weekly. So the question is  
21    which one is it? The rig is on-site at SWD 2 ten  
22    miles away, but it's not on-site where they are  
23    proposing their pit. So which inspection do they  
24    do, the daily or the weekly?

25                   We don't know the answers because we

1 didn't consider this when we were proposing the  
2 language. The language doesn't specify which one  
3 you have to do. If your pit is away from your  
4 drilling site or if it's -- it's more addressed for  
5 it to be on your drilling site, because the  
6 expectation is that if the rig is on-site, that  
7 means it's there, and you would be there as well so  
8 you could inspect it daily.

9 Q. Would it cause any problems for the  
10 release date?

11 A. Well, that goes back to a couple things.  
12 For the rig release date, the importance of that, it  
13 also goes back to even closures. When do you have  
14 to implement closures? If you go to the closure  
15 requirements and the timeline specified within the  
16 rule, and that's Section 13A -- if I'm not mistaken  
17 it is A(7) -- it states, "An operator shall close  
18 any other permitted temporary pit within six months  
19 from the date of the operator's release of the  
20 drilling or rig."

21 Now, if there's not a rig there by the  
22 pit, how do we determine that if it's ten miles  
23 away? How do we link that? What if in this case it  
24 sounds like they got a rig there today. They got a  
25 closed-loop system. They are drilling 634B and they

1 want to start this one as soon as possible. What if  
2 that rig is on-site but it's linked to the other  
3 pit? How does that work? How do we figure out  
4 which rig to release from the site?

5           Once again, the rule doesn't contemplate  
6 those things because the rule had certain -- there  
7 were certain assumptions when the OCD presented the  
8 language for the rule that the pit would be linked  
9 to the drilling activity and the rig release date  
10 would be linked to the rig release beside that pit.

11       Q.     Would it cause any problems for the  
12 surface owner notification?

13       A.     Well, it could. Let me go back. Yes, it  
14 would. This scenario was too close to home for the  
15 area in which this would impact this scenario.  
16 Because they are both federal agencies and they are  
17 under the Bureau -- I'm sorry, the Department of  
18 Interior, both agencies, so they have a unified body  
19 representing them.

20           But let's say that when you notify these  
21 parties, let's say they are not at this type of  
22 environment. Because this consideration goes  
23 state-wide if it's considered. I mean, Williams has  
24 got their case here today. They don't realize the  
25 implications of this.

1           Let's say for notification for the on-site  
2 closure method that's required under Section F of  
3 13, you got in your application you got to notify  
4 that party. Who do you notify? The party at the  
5 drilling site that you are going to take your waste  
6 over there? Or do you notify the party that you are  
7 going to bury the waste on their side?

8           These could be two separate parties. They  
9 could be two separate landowners, surface owners.  
10 Who do you notify? In this case it's easy because  
11 you got the Department of the Interior, but there's  
12 a big picture application to this. It goes beyond  
13 their proposal. We have got to look at that. We  
14 honestly have to look at that.

15           That's why we are here today. Who do you  
16 notify? What if it's in a different district and  
17 you are doing closure. The pit is in District 3 and  
18 your drilling site is in District 4. Which district  
19 office do you notify that you are going to close the  
20 pit and implement closure? I mean, this is a  
21 reality of this situation is that you could have  
22 your drilling activity in one district and your pit  
23 in another one. How does that work? Once again,  
24 the rule doesn't contemplate that because the  
25 expectation is that they shouldn't be that far

1     apart.

2           Q.     Would it cause any problems with regard to  
3     the burial markers?

4           A.     Well, this is a question -- I mean, the  
5     rule doesn't address this. What do you put on the  
6     burial marker if we were to allow it? I mean, would  
7     you put -- you are required to put the legal  
8     description, well name, API number, all that  
9     information on the marker where you bury something  
10    on-site when you implement on-site closure. What  
11    would you put on it?

12                   In this case, as they have stated here in  
13    the hearing, you would have waste from 634B and SWD  
14    2, two wells, two legal descriptions. Would someone  
15    question that? Does it make sense or is that  
16    applicable? Or would you just put 634B on there?  
17    Where would you put it? What information would you  
18    choose to put on there? Once again, the rule  
19    doesn't have specific language to address these  
20    off-site type things because once again, it would be  
21    linked to the well you are drilling.

22                   I believe if you go through the  
23    deliberations, we did provide some pages, the one in  
24    the 5000s. There's a huge discussion by  
25    Commissioner Olson here about the concern or the

1 expectation that when you put the marker down, it  
2 would be near the well that's been plugged and  
3 abandoned if that were the case. There was a  
4 discussion of that in there.

5           Once again, I go back to that Paragraph 4  
6 I mentioned. It alludes to the findings or the  
7 reasons for the regulatory language that was adopted  
8 or accepted by the Commission or presented, that it  
9 also counts on the deliberations. So you have to  
10 look at those to understand the thought process at  
11 the time. The expectation was expressed by  
12 Commissioner Olson of what that marker would  
13 represent.

14       Q.     Would it cause any problems with regard  
15 to -- would OCD and the public know -- would it  
16 cause any problems in when Part 36 would apply or  
17 Part 17 would apply?

18       A.     In all honesty, if this is to be  
19 considered, I think I implement both programs, Part  
20 17 and Part 36, because I have the primary Part 36.  
21 If this is considered, I would have a hard time  
22 knowing which one to apply at which time. You know,  
23 it goes into these things. You know, it's been  
24 discussed that you can have as many as 23 wells  
25 buried in one site for this commingling. It was

1 mentioned by Williams that that's a possibility. If  
2 this is considered, there's a possibility that it  
3 becomes a reality. Then I wouldn't even know what a  
4 centralized facility is anymore.

5 Right now it's crystal clear the way the  
6 rule is implemented, the way it's supported by the  
7 order. It's clear to us what it means. It's clear  
8 for on-site closure method what it means because of  
9 what the Commission has told us what it means in the  
10 order itself.

11 But if that is to change, I don't really  
12 know what it means anymore. I don't know when Part  
13 36 applies. I wouldn't know how to recommend or  
14 tell the people which regulation actually absolutely  
15 applies anymore. I am talking personally as a  
16 regulator, I wouldn't know what to tell them if this  
17 comes about. I would be at a loss.

18 Q. What would be some of the potential  
19 outcomes if Williams' application is approved?

20 A. Well, I think Commissioner Bailey made the  
21 statement. It would set a precedent for all future  
22 submittals from all other applicants. Once again,  
23 big picture. It goes beyond Williams' proposal. It  
24 becomes something that could be applied throughout  
25 the whole entire state.

1           Some of the other issues is that operators  
2 could get this off-site burial through  
3 administrative approvals and the only restriction  
4 would be the signing requirements and the burial  
5 standards. That's the only limitations for this.  
6 That's what it would lead to. That concerns us  
7 because right now we have other limiting factors.  
8 If this is considered -- because of the Paragraph 68  
9 that says on-site closures is where the waste is  
10 generated. That puts a limit on that.

11           We look at it as we are hoping that even  
12 the spacing requirements would even put a more  
13 limiting factor on it as well. Because if you have  
14 a well pad, this is my well pad and I have six  
15 wells, due to spacing if that location meets the  
16 sign requirements and they think that the pit -- so  
17 they have a pit there and then on top of it they  
18 think the waste they generate from drilling those  
19 six wells can meet the burial standards, then you  
20 can have six pits buried in place there.

21           That's allowed through the rule. There's  
22 nothing to prevent that. But the thing is we are  
23 hoping that the spacing would also create some other  
24 limitations so we don't have 23 of these or 200 of  
25 these there.



1           But the biggest concern is this off-site  
2   burial would just become a common request if there's  
3   a siting issue. If I can't have a pit and meet the  
4   sign requirements to implement the sign requirements  
5   to meet the on-site closure at the place I am  
6   drilling, I just go somewhere else and put the pit  
7   over there where I can meet the requirements. It  
8   kind of defeats the whole purpose of limitations.

9           Disposal through the Pit Rule is limited  
10   application. Part 36 is permanent full-on disposal  
11   of oil field waste. That's what it handles. But  
12   Part 17 is limited or else we would have said let's  
13   replace Part 36 with Part 17. There's limited  
14   applications for consideration for disposal of waste  
15   under Part 17 is what I am trying to get at. Part  
16   36 handles -- that's its primary objective. So it's  
17   specifically designed to deal with that issue.

18           With this, when you think about that, you  
19   would be basically creating a loophole in the  
20   regulations that would allow them to bypass Part 36.  
21   That's a reality of it. Instead of having -- if I  
22   can have my pit anywhere where it's in a  
23   non-environmental sensitive area, I can put it  
24   anywhere. And even if we restrict how much could be  
25   comingled or couldn't be comingled, I could have 500

1 of these individual pits out there and that wouldn't  
2 stop that process if it's considered to be approved  
3 today because there's no limitations within the rule  
4 stating how many you could have. Individuals pits I  
5 am talking about. Side by side, not comingled. I  
6 could have 500 of them if I want to and still meet  
7 the requirements of the rule if this is considered,  
8 this Williams proposal is considered.

9           And, of course, if you are smart, if I was  
10 a party that was looking at a Part 36 permit, I  
11 would buy land and ask the operators to come in and  
12 permit their pits, these off-site disposal pits on  
13 my property. I wouldn't have to pay the cost for  
14 the construction of the pit and all of that but I  
15 could work out some arrangement with them for  
16 disposal. I wouldn't even have to get a Part 36  
17 permit. There would be no need for it.

18           You know, with that, when you start losing  
19 that, you lose things like financial assurance to  
20 deal with contamination. People walk away from  
21 those type of things. The Part 36 requires that.  
22 If the operator walks away and there's  
23 contamination, that's what the financial assurance  
24 is for. It's there to address that. It's there to  
25 ensure closure takes place, everything takes place,

1 and we can hold on to that.

2 Other things are the permits under Part  
3 36, they are required to be renewed every ten years.  
4 They have to go through a hearing or potential  
5 hearing if there's issues or modifications. If you  
6 go this route they don't have to worry about a  
7 permit that requires a renewal every ten years.

8 Of course, if you had issues, Part 36  
9 allows the Division to deny an application if the  
10 operator has a poor environmental history. Once  
11 again, that operator can cut this deal and have that  
12 operator, the generator of the waste, put one of  
13 these on-site disposal pits on their property, and  
14 that's a non-issue. They are out of the loop.  
15 That's not even a consideration if they should be  
16 managing this waste at all.

17 Of course, for the true landfill --  
18 because we are talking about permanent disposal,  
19 it's not land farming. Land farming is remediation.  
20 This is permanent disposal. So we have to compare  
21 it to a landfill. That requires 100 foot separation  
22 from to groundwater from the bottom of the design.  
23 Temporary pit in this case for the 634 is less than  
24 100 feet already.

25 The separation there, the minimum

1 separation is it 50 feet to groundwater, but a Part  
2 36 landfill permit requires 100 foot separation, an  
3 extra level of separation for protection.

4 All waste that goes into the landfill must  
5 past the paint filter test. It's odd that when the  
6 destruction of the Part 17 came about, that only  
7 applies for a trench under Part 17. If you read the  
8 provisions for trench, it talks about transferring  
9 the waste from the pit or drying pad over into the  
10 trench, it says it must pass the paint filter when  
11 you stabilize it to be able to put it in there. For  
12 some reason, that didn't get transferred over to in  
13 place. They still have to be stabilized to hold the  
14 top but it doesn't have to pass the paint filter  
15 test. When they are commingling these things, it  
16 concerns us with it.

17 I mean, for the drying pad situation of  
18 the closed-loop system, it's one per pit. The idea  
19 of the drying pad is you don't have a hydraulic head  
20 anyway so it shouldn't be sloppy waste anyway. It  
21 should be dry so you wouldn't have it like in a pit.  
22 Of course, there's manifesting required up under 36  
23 if you are going to accept waste so you know what's  
24 in there. You always know what's going in there and  
25 the volume. You always know that.

1           If there's fresh water at the site, you  
2   are required to do groundwater monitoring. Under  
3   Part 17 there's no such thing, no groundwater  
4   monitoring.

5           Then, of course, the design for landfill  
6   is a double liner with leachate and a leak detection  
7   system, and then on top of all that the liner is  
8   either a 30 mill PVC or 60 mill HDP so it's  
9   double-lined, leak detection, and like the super  
10   liner, they are compared to the 20 mill string  
11   re-enforced required under the temporary pit.  
12   That's a low layer density polyethylene liner.

13           The big thing is that a landfill requires  
14   a 30-year closure requirement. Even once they close  
15   it, the fact that they have groundwater monitoring,  
16   it's monitored for an additional 30 years after it's  
17   closed. Nothing comes with Part 17 that addresses  
18   that.

19           I mean, these things to prepare -- you  
20   were asking earlier about the comparison of Part 36  
21   to this landfill to the temporary pit. This is it.  
22   This is super level protection for permanent  
23   disposal compared to this temporary pit in which  
24   they want to start consolidating waste from off-site  
25   at a location where they already have a pit.

1           When you look at the level of protection  
2   that Part 36 provides, it's amazing. There's a  
3   reason for it because of that consolidation. But  
4   under their proposal, you wouldn't have any of those  
5   levels of protection.

6           Another -- a lot of these other type of  
7   things I have listed here Mr. Von Gonten has already  
8   talked about. You know, more landowners would be  
9   willing to bury their waste on their land, and  
10   that's easiest demonstration of that is the Read &  
11   Stevens letter. I mean, that is a real letter,  
12   submitted an application, to show that it's not  
13   something we just thought could happen, it's  
14   something that is happening behind the scenes that  
15   we are not aware of again.

16           Then it leads to the less regulatory  
17   control over the pits. I mean, when you compare the  
18   part of Part 36 to Part 17 temporary pit and  
19   landfill, absolutely there's less regulatory  
20   control. You don't get to walk away from the  
21   landfill. You have 30 years post-closure. You walk  
22   away from the pit here. Just walk away from it.

23           It kind of goes back to Williams'  
24   position. They say hey, well, we have got  
25   operational control, I think is the term Mr. Lane

1    used yesterday.  What if they sell that well site  
2    and the wells with it?  They no longer have  
3    operational control over it.  They get to leave  
4    their buried waste there.  They don't dig it up and  
5    take it with them to keep control over it.  They  
6    leave it behind.  So operational control is only  
7    limited to when they are operating it.  If they sell  
8    it, it becomes someone else's problem.

9                   CHAIRMAN FESMIRE:  Do we have a lot more  
10   to go?

11                   MR. SWAZO:  How much more do we have to  
12   go.

13                   THE WITNESS:  Not much.  We are down to  
14   the final part.  Next question.

15           Q.     In your opinion, would the granting of  
16   Williams' application be a change to Part 17?

17           A.     Yes.  You know, our opinion is it's a  
18   substantive change to Part 17.  Because it's going  
19   to be applied -- whatever is decided today is going  
20   to be applied throughout the whole entire state.  It  
21   sets precedent.  If it's done through this hearing,  
22   basically the message is you can come in front of  
23   the Commission to get this.

24                   And Williams' proposal, once again, it's  
25   stated kind of differently in different things.

1 It's been told here on-site is where the pit is at.  
2 That's on-site as it's described. On-site closure  
3 in our request for hearings and so forth,  
4 applications for hearings, state that on-site  
5 closure is where the waste is buried.

6 So there are two things that have been  
7 expressed. If either of those -- and I believe that  
8 for in-place they say it's where the pit is located.  
9 So this would be something that will eventually -- I  
10 mean, if it's allowed here, any operator should be  
11 able to get it. In all honesty, if you guys  
12 consider it, any operator should get it.

13 But my concern is the on-site closure that  
14 they describe being where the waste is buried and in  
15 writing and then their testimony is where the pit is  
16 located, it leads to a change of what's in that  
17 Paragraph 68 of the order. The order states on-site  
18 closure is where the waste is generated. Then you  
19 go back and read that, so I can get the whole  
20 statement in.

21 CHAIRMAN FESMIRE: Page 11, No. 18.

22 A. It states, "On-site Closure Methods.  
23 Where the waste as generated from the drilling  
24 workover of the well is buried on or near the well  
25 pad."



1           That leads to the change of this, to the  
2 order itself. And the venue for that would be at a  
3 rule amendment hearing. Because if it's decided  
4 here today to change this, those parties that  
5 participated through the whole entire Pit Rule  
6 hearing process, when they left and read the order,  
7 this was their understanding of what this meant.  
8 The parties that didn't appeal, the environmental  
9 groups that didn't appeal had this understanding.  
10 This is what it meant. If we were to change it  
11 today, they are not here. They are not here. They  
12 have no say, they have no knowledge that this change  
13 would be occurring and what they thought from the  
14 order was their understanding of what this meant now  
15 means something else and they are left out of the  
16 loop.

17           That's why I am saying, it's our  
18 understanding that it would take more of a rule  
19 amendment hearing to allow those parties to come in  
20 to participate in the changing of the rule, the  
21 meaning of the concepts of the rule that are  
22 expressed in the order.

23           So we have some concerns about it because  
24 it is a substantive change. Because we went here,  
25 we found our answers here from the Commission of

1 what they had considered. That's what the mechanism  
2 to discover that is. These are findings of fact and  
3 conclusions of law and reasons why the Commission  
4 chose the language it chose and what it meant.

5 Q. What would the result be for the parties  
6 that were involved in the initial rule-making if  
7 Williams' application is granted?

8 A. Well, once again, that's what I was  
9 saying. They would have no voice in the decision to  
10 direct change of the order. They are not here.  
11 They are not a direct party to this hearing because  
12 this is a specific hearing with specific locations  
13 on a specific application, so they were not -- they  
14 would not be subject to be party to this.

15 But once again, that would be such a  
16 substantive change to the rule itself, based upon  
17 what's stated in the order, it would be contrary to  
18 what's stated in the order actually.

19 Q. Has Williams submitted a permit  
20 application that would resolve the issue before us  
21 today?

22 A. Absolutely. They have the C 144. It's  
23 called the Closed-loop Easy Form. We refer to it as  
24 the CL Easy Form. They've got it. They submitted  
25 it March 23rd. It's Exhibit 14 if you want to look

1 at it. The easy form does have restrictions. If  
2 you look at the instructions up at the top, it  
3 basically tells you, you submit one per closed-loop  
4 system request and then for any application request  
5 other than a closed-loop system that uses  
6 above-grade tanks or haul-off bins or proposes to  
7 implement waste removal for closure, please submit a  
8 C 144 and not the C 144 CLEZ form. So it's saying  
9 that if you use haul-off bins and you haul it away,  
10 this is the form to use. So they definitely have  
11 this in the queue.

12 This is pending, and it's pending because  
13 we have this hearing in front of us for a different  
14 application for the same use. We want to make sure  
15 when the hearing is done we know what we approved.  
16 If we have multiple applications submitted for one  
17 well site and we start approving them, then we have  
18 multiple approvals, and the question would be which  
19 one applies. We just want to make sure whatever is  
20 decided that whatever we approve is what we approve  
21 and we don't have multiple approvals for different  
22 activities. So in this way we can anticipate  
23 exactly what's going to occur at the site.

24 Q. Now, as I understand Williams' testimony,  
25 the reason why we have been going through this

1 months-long process and why we are here late on a  
2 Friday afternoon is because they want direction from  
3 the Commission as far as what on-site means; namely,  
4 whether on-site means where the waste is generated  
5 or where the waste is buried. Has the Commission  
6 given clear direction with regard to what on-site  
7 means?

8       A.     I believe it has in the order. I mean,  
9 that's where it's supposed to be expressed, in the  
10 order. The purpose of the order is to support the  
11 provisions that are within the rule that they  
12 propose. They have to support it based on either  
13 testimony or deliberations. You have to be able --  
14 other than that, any rule that's designed and  
15 approved by a Commission could be challenged if  
16 there's nothing to support it. So they have to link  
17 it to either direct testimony or state their  
18 opinions of this is what this means here and why we  
19 did this, why we didn't do that.

20             That's what the whole order is about. If  
21 you read the order, it's interesting because they  
22 put people's perspectives, what everyone considered  
23 or why they chose or didn't choose something. They  
24 state in this case what on-site closure method  
25 meant, and it did not mean off-site disposal at a

1 different location.

2 Q. What did it say that on-site meant?

3 A. I think I just read that a few minutes  
4 ago. I don't think we want to do it again. I think  
5 the point is clear.

6 Q. Is there anything else that you want to  
7 clarify with regard to any other evidence or  
8 testimony?

9 A. I kind of did some of that up front and  
10 throughout my testimony. I think for the most part  
11 for this I think I have covered everything.

12 Q. Let's go through the exhibits. Exhibit  
13 No. 2, that's a copy of your resume that you  
14 prepared for the case?

15 A. Yes. The question you just asked, I would  
16 like to comment on one thing, and that's the  
17 administrative mod that we issued for the Rosa Unit  
18 634B. There was a reason that we did this. First,  
19 it states based upon the letters and the  
20 conversations with Williams, especially after the  
21 submittals that we received, we had grave concerns  
22 that they thought they had this free will once they  
23 have the permit to start commingling stuff without  
24 approval or modifications to their permit, and  
25 that's expressed in the June 3rd letter from legal

1 counsel of Williams. Their position was they didn't  
2 have to modify anything in order to commingle or  
3 co-share, co-locate those pits.

4 We wanted to make sure, number one, it was  
5 crystal clear that the in-place burial that they  
6 were approved for was only for the pit that was  
7 permitted under that permit application.

8 The other thing that they had to do in  
9 that letter was also address, you could say, the  
10 alternative closure plan because they do address it  
11 in the permit application to a certain extent but it  
12 was incorrect. If we go to the 634 permit  
13 application, Exhibit 10, if you go find the closure  
14 plan in the application -- I apologize. I didn't  
15 mark that but it should be near the end of the  
16 document.

17 I am on Page 21 and 22 of the application  
18 of Exhibit 10. I am looking at No. 8 on their  
19 closure plan. This is referring to the sampling of  
20 the pit. The regulatory references, they talk  
21 about, they said they are going to sample and test  
22 per 19.15.17.13(B(1)(b)). I would like the  
23 Commission, if they could, to go to that in the  
24 rule. This addresses the closure of a temporary  
25 pit. And this reference specifically addresses

1 waste excavation and removal when they were  
2 proposing in-place burial. The difference in the  
3 testing is in waste excavation removal, which they  
4 are not proposing anywhere in the language here, you  
5 test beneath the pit after you have removed it and  
6 in-place you test the contents of the pit.

7           So if they are saying they are sampling  
8 and testing per waste excavation site removal, they  
9 should have been referencing section F(2), which  
10 addresses the sampling of the pit contents for  
11 in-place burial.

12           So once again, we wanted to ensure, number  
13 one, that they test the right place. But it also  
14 goes on, "In the event that the criteria are not  
15 met, all contents are to be handled per 19.15.17.13  
16 (B)(1)(a)." Now, (B)(1)(a), if you look at this  
17 (B)(1)(a), (B)(1)(a) is the first step of waste  
18 excavation removal. All it states is that the  
19 operator shall close the temporary pit by excavating  
20 all of the contents, and if applicable, synthetic  
21 pit liners and transferring those materials to a  
22 division-approved facility.

23           They are only stating in this application  
24 that they are only willing to comply with the first  
25 step. They are not going to confirm, not going to

1 do the confirmation testing beneath the pit. They  
2 are not going to report the results to us. They are  
3 not going to determine if a release has occurred.  
4 They are not going to revegetate it.

5           We had to do this administrative  
6 modification because they were proposing to do  
7 one -- do A instead of A through D. That's a huge  
8 distinction to us. That means they are only stating  
9 they will do the first step. We wanted to make sure  
10 it was clarified that they have to do all the  
11 requirements for waste excavation removal if they  
12 were to pursue this. So we just wanted to make sure  
13 it was crystal clear they weren't going to dig out  
14 the pit, haul it and walk away from it. This is the  
15 literal proposal here in their application. So we  
16 just wanted to make sure it was crystal clear that  
17 they were required to do all of those requirements.

18           MR. SWAZO: I would like to -- getting  
19 back to my question about Mr. Jones' resume, OCD  
20 Exhibit 2, I would like to move for the admission of  
21 that.

22           A. I wasn't quite finished. The other thing  
23 with this is that for the in-place burial aspect of  
24 this -- and we state this, I believe, in the mod as  
25 well -- the other thing was a discovery that is in



1 the current application. The current application  
2 says this location, groundwater is less than 100  
3 feet below the pit. It's 20 feet deep. So it's  
4 less than 100 feet. Between 50 and 100 feet.

5 In order to consider in-place closure in  
6 that condition, the chloride standards for burial  
7 standards would have to be 500. They submitted the  
8 application that's in front of us today stating that  
9 if this location, 634B -- that's what groundwater is  
10 at. If you look in this application, the 634B  
11 application, they say it's greater than 100, which  
12 means the chloride burial standards are 1,000.

13 So we said hey, now you are updating your  
14 status of what groundwater is. You have to change  
15 your burial standards for chloride. It should be  
16 5000. It has to be greater -- the separation from  
17 the bottom of the pit to the groundwater has to be  
18 greater than 100 feet and they are stating it's not  
19 that now. So we made sure if they were going to do  
20 this, they would use the correct burial standards  
21 for that for 634B.

22 CHAIRMAN FESMIRE: You want to get Exhibit  
23 2 in?

24 MR. SWAZO: That's correct.

25 CHAIRMAN FESMIRE: Is that the only

1 exhibit you want in through the witness?

2 MR. SWAZO: No. If we will do it that way  
3 I will go through the exhibits and move for  
4 admission all at once.

5 Q. Mr. Jones, turn to Exhibit No. 3. Is this  
6 a document that you helped prepare?

7 A. Yes.

8 Q. What's the significance of this document?

9 A. It's to give the Commission a chronology  
10 of the activities that led us here today. The  
11 important things to look at would be how things were  
12 presented to us. Once again, the first two  
13 applications were denied by the District Office and  
14 then it was followed by a request for hearing on the  
15 potential exceptional alternative.

16 CHAIRMAN FESMIRE: We are looking to admit  
17 the document now, right?

18 THE WITNESS: Yes, I participated in  
19 creating the document.

20 Q. Exhibit No. 5, that document is a C 144  
21 application that was filed in this case?

22 A. Yes.

23 Q. And it's part of OCD's records?

24 A. Yes, I reviewed the permit and wrote a  
25 response letter, a denial letter.

1 Q. Exhibit 7 --

2 A. I apologize, I looked at Exhibit 5.  
3 Exhibit 6 is my denial letter that I participated in  
4 writing.

5 CHAIRMAN FESMIRE: We were talking about  
6 No. 5.

7 THE WITNESS: Oh, I'm sorry. I heard 6.

8 Q. Exhibit No. 7, this is a OCD inspection of  
9 is the 634B?

10 A. Which exhibit?

11 Q. OCD Exhibit 7.

12 A. No. This is the notice that was forwarded  
13 to the District Office. It was forwarded to us  
14 demonstrating they did the notice two days after  
15 they submitted the application for the surface  
16 owners.

17 Q. OCD Exhibit 8, that's the C 144 for the  
18 SWD 2?

19 A. Yes. That's the application I reviewed  
20 for the first denial letter.

21 CHAIRMAN FESMIRE: Kept in the ordinary  
22 course of business of the OCD.

23 THE WITNESS: I'm sorry?

24 CHAIRMAN FESMIRE: This was kept and the  
25 performed that duty in the ordinary course of

1 business?

2 THE WITNESS: Yes.

3 Q. OCD Exhibit 10, identify that exhibit.

4 A. No. 10 is the 634B permit application.

5 Q. And that exhibit is also kept in the  
6 normal course of the division's business?

7 A. Yes. I also reviewed it to prepare for  
8 this hearing.

9 Q. OCD Exhibit No. 11, identify that exhibit.

10 A. That's the inspection performed by our  
11 district office upon my request and the photo  
12 documentation of the pit is 634B.

13 Q. This document is kept in the normal course  
14 of OCD business?

15 A. This was requested because of the hearing  
16 and the nature of the matter of the request.

17 Q. But it is part of the OCD's records?

18 A. Yes.

19 CHAIRMAN FESMIRE: Are you the recipient  
20 of the document?

21 THE WITNESS: I believe so. I believe it  
22 says "To Brad Jones from Brandon Powell," and I  
23 forwarded it to Mr. Swazo.

24 Q. The Exhibit No. 13, this is part of the  
25 administrative record for Case No. 14463?

1           A.     Yes, I testified on the comments provided  
2     in the letter.

3           Q.     It's part of the OCD's --

4           CHAIRMAN FESMIRE: We will take  
5     administrative notice that it's part of the record.

6           MR. SWAZO: Exhibit No. 14, I would also  
7     like you to take administrative notice of that  
8     because that's kept in the normal course of the OCD  
9     records. I can ask the witness that.

10          THE WITNESS: Yes.

11          CHAIRMAN FESMIRE: Is it part of the OCC  
12     file in this case? Are you going to object?

13          MS. MUNDS-DRY: I don't object. I just  
14     want to get through the exhibits.

15          CHAIRMAN FESMIRE: We will put on the list  
16     of exhibits that you move for admission.

17          MR. SWAZO: I will move for the admission  
18     of 2, 3, 5, 7, 8, 10, 11, 13, 14.

19          CHAIRMAN FESMIRE: For the record, is  
20     there any objection?

21          MS. MUNDS-DRY: There's no objection. In  
22     fact, many of the exhibits are already Williams  
23     exhibits.

24          CHAIRMAN FESMIRE: So Exhibits 2, 3, 5, 7,  
25     8, 10, 11, 13 and 14 will be admitted to the record.

1 MR. SWAZO: I would also briefly, on  
2 Exhibits 15, 16 and 17.

3 Q. Mr. Jones, are those part of the  
4 Commission's records?

5 A. Yes.

6 Q. Quickly, what's the relevance of the  
7 documents?

8 A. If I got them in the correct order, I  
9 believe -- and I'm going to start from the back on  
10 17 moving upwards so I can explain the progression.  
11 17 is the March 25th application for hearing, and if  
12 you notice in the request for hearing it also  
13 requests an alternative closure method or exception  
14 to the Pit Rule. No. 16 is a response from Richard  
15 Ezeanyim of our office. I believe he is a hearing  
16 examiner or in regard to a hearing examiner  
17 instructing Williams that they have to go through  
18 the administrative process of Part 17 if they were  
19 to pursue an exception well alternative closure  
20 method. What was the other one? 15?

21 Q. Yes.

22 A. This is an application for hearing in  
23 which Williams identifies on Page 3 two potential  
24 locations other than the ones that were denied by  
25 the District Office without a supplemental

1 application, and it's either/or 634 C as they refer  
2 to 634B back then. They have misreferenced that,  
3 and 635B. They have messed up on the B and C, but  
4 we didn't know and we didn't have anything to assess  
5 it with. There were no applications submitted with  
6 this. No new applications for consideration, and  
7 this is not a request for hearing on the denial of  
8 the old application.

9 MR. SWAZO: Again, I move for admission of  
10 the exhibits.

11 CHAIRMAN FESMIRE: Which ones?

12 MR. SWAZO: 15, 16 and 17.

13 CHAIRMAN FESMIRE: Any objection?

14 MS. MUNDS-DRY: I think it's water under  
15 the bridge. I wouldn't object to the Commission  
16 taking administrative notice which might keep the  
17 record cleaner.

18 CHAIRMAN FESMIRE: At this time the  
19 Commission will take administrative notice of  
20 Exhibits 15, 16 and 17.

21 MR. SWAZO: I pass the witness.

22 (Note: OCD Exhibits 2, 3, 5, 7, 8, 10,  
23 11, 13, 14, 15, 16 and 17 admitted.)

24 CHAIRMAN FESMIRE: Ms. Munds-Dry?

25 CROSS-EXAMINATION

1 BY MS. MUNDS-DRY

2 Q. At the top, you explained to the  
3 Commission that you wanted to clarify why the  
4 Division had allowed multiple wells to use a common  
5 pit when it's on the well pad. Do you remember  
6 that?

7 A. Yes.

8 Q. And you said commingling reduces surface  
9 impact?

10 A. That was part. The other part was if they  
11 were applied for separately and closed separately  
12 they would still exist on the pad.

13 Q. And I'm going to ask you just so we can  
14 try to get through this, Mr. Jones, and I don't mean  
15 to be rude but if you will just answer the question  
16 I ask and if your lawyer needs to follow up. Again,  
17 I don't mean any disrespect, but since we are late  
18 in the evening.

19 A. I just wanted to clarify. You asked what  
20 my statement was and I was clarifying it.

21 Q. Of course. Isn't that what Williams is  
22 proposing?

23 A. No.

24 Q. They are not proposing to reduce surface  
25 impact?



1           A.     You asked if -- the preface to your  
2     question was that the waste was at the same -- the  
3     waste being buried or comingled at the site was  
4     generated from wells at the same pad. So no,  
5     Williams is not proposing that.

6           Q.     But you gave us your answer for the reason  
7     why you allowed for the comingling of the waste is  
8     because it reduces surface impact, correct?

9           A.     Yes, because it would already be three  
10    individual pits there, yes.

11          Q.     Isn't Williams' proposal also reducing  
12    surface impact?

13          A.     No, it's not. Can I finish my answer or  
14    explain why?

15          Q.     Why don't you let your lawyer do that.

16          A.     You asked me if they are doing it.

17                 CHAIRMAN FESMIRE: Mr. Jones, your  
18    attorney will have a chance to ask you.

19          Q.     You said, Mr. Jones, that to understand  
20    the rule you went to the order that adopted the  
21    rule, the Pit Rule in this case. Do we have to go  
22    to the order if the rule is clear?

23          A.     In what sense clear?

24          Q.     If you can understand the language in the  
25    rule, the plain language in the rule, why do you go

1 to the order?

2 A. We went to the order because the proposal  
3 for in-place burial was not our proposal and it was  
4 not as it was presented by any other party. So we  
5 had to go to the order to understand what the  
6 condition meant.

7 Q. Fair enough. Let me ask you this: Even  
8 if Williams' proposal today wasn't contemplated, it  
9 could still be allowed, couldn't it?

10 A. I don't understand the question.

11 Q. Well, let's go back to the example that we  
12 discussed during Mr. Von Gonten's testimony.  
13 Haul-off bins weren't contemplated in the rule, were  
14 they?

15 A. Well, it depends. They are mentioned in  
16 the rule.

17 Q. I thought Mr. Von Gonten said they were  
18 not mentioned in the rule.

19 A. They are in the definition of the  
20 closed-loop system. If you want me to read that, I  
21 can read it, but it specifically talks about  
22 haul-off bins.

23 Q. Does it talk about how an operator uses a  
24 haul-off bin in its closed-loop process?

25 A. No. But we did look at haul-off bins as

1 being similar to serve the equivalent of a drying  
2 pad because you could locate your solid without the  
3 hydraulic head in those and not impact the surface.

4 Q. So you extrapolated from the rule that it  
5 would be similar to a drying pad; is that correct?

6 A. Yes, if it served that purpose. If it was  
7 done in that manner.

8 Q. So why couldn't a proposal not  
9 contemplated in the rule as Williams suggested today  
10 be allowed by the Commission?

11 A. Well --

12 Q. Why is that any different?

13 A. We are always asked by industry to be  
14 flexible within the rule. We could stop doing that.  
15 That's easy. If the Commission decides that we are  
16 doing that wrong, we will stop that today and we  
17 will never let it happen again, ever again. And  
18 actually, Williams has benefited from this  
19 interpretation. So if it's the intent of the  
20 Commission that we are not applying that provision  
21 correctly, then we will just stop it and we are fine  
22 with that. We will just make it clear to the  
23 District Office not to approve those type of  
24 conditions.

25 Q. So if I understand the answer to your

1 question is yes, the division can be flexible under  
2 the rule; is that correct?

3 A. We try to be. But we have limitations  
4 based upon the language in the order.

5 Q. You said that Williams should have  
6 submitted an exception to the fencing requirement in  
7 its application, I believe; is that correct?

8 A. Yes.

9 Q. If Williams had submitted an exception,  
10 would its application have been granted?

11 A. They would have to provide more than what  
12 they had stated in their application. It could be  
13 considered, but they didn't provide anything. They  
14 came here and testified all the stuff they were  
15 planning on doing, but it wasn't in the application  
16 in front of us. So to say we would approve it,  
17 possibly. I don't know. There's other parties  
18 involved, other considerations that are outside of  
19 our decision because there's a potential for  
20 hearing.

21 Q. Exhibit 11 is the inspection report on the  
22 634B, I believe.

23 A. Yes.

24 Q. Was this inspection report -- I believe  
25 you said you requested this for hearing?

1           A.     We actually just requested photos is what  
2 we requested. The District Office inspector decided  
3 to put some comments in there.

4           Q.     Okay. I misunderstood that. Was the  
5 photos or the inspection report a basis of your June  
6 24th denial?

7           A.     Well, it couldn't be because this was done  
8 prior to that. This was actually done -- I'm sorry.  
9 The dates, you are right. No, it's not. The basis  
10 of our denial is stated in our denial letter. The  
11 primary being off-site disposal and the others being  
12 the deficiencies. This is something in which we  
13 presented that this pit is there. It didn't  
14 contemplate commingling with this pit, and we were  
15 asking at the end of our letter, this is not  
16 addressing how the next pit is going to be, you  
17 know, what's going to be considered there.

18          Q.     Mr. Jones, you went through the pictures  
19 and expressed your opinion that you think that  
20 Williams is going to have a hard time complying with  
21 meeting the closure requirements if it brings the  
22 waste from the SWD No. 2; is that correct?

23          A.     No, actually I stated it would have  
24 problems closing it in place under the current  
25 permit as it's approved. That's my concerns.

1           Q.     As I understand your testimony, you didn't  
2 visit the pit site at the 634B, did you?

3           A.     No.

4           Q.     So you are basing your opinion on the  
5 pictures that you received?

6           A.     Yes. And actually if you look at the  
7 report itself -- I want to look here where it states  
8 it. But my understanding is they were done drilling  
9 that portion of the well and that they had already  
10 gone to using closed-loop, which meant that other  
11 than completion, they wouldn't be using that  
12 anymore. They still have completion to complete  
13 using that pit.

14          Q.     But is it fair to say that you are  
15 speculating about whether Williams can comply with  
16 the closure requirements in the Pit Rule for this  
17 pit?

18          A.     Well, the requirements require  
19 stabilization of this material. As you can see,  
20 it's very wet and they have to remove the fluids  
21 from it.

22          Q.     Now, does it require it or is it something  
23 that the operator may do?

24          A.     It actually requires stabilization, and  
25 stabilization is to ensure that -- if you want me to

1 read the provision I can read the provision itself.  
2 To ensure that it can hold forth the cover on top of  
3 it. The idea is the cover shouldn't subside over  
4 time because you didn't stabilize the contents  
5 beneath it and collect water and it becomes a giant  
6 bathtub of collection of additional fluids in the  
7 pit after it's been closed.

8 Q. Okay. Also when you were talking about  
9 this 634B, you mentioned that Williams is using the  
10 closed-loop system in bringing the cuttings to  
11 Envirotech?

12 A. Yes.

13 Q. And that's because it's using oil-based  
14 cuttings once it switches over to the horizontal  
15 drill, correct?

16 A. Well, they are required to use steel tanks  
17 to circulate the oil-based muds per the requirements  
18 of operation for the temporary pits. So that's one  
19 of the reasons why.

20 Q. But you can't bury oil-based cuttings in  
21 the pit, can you?

22 A. It depends on what their concentrations  
23 are. I don't see -- I haven't seen anything within  
24 the rule that would prohibit it except for the  
25 burial standards. So my understanding from Mr.

1 Lane's testimony, they stated that they were  
2 concerned about the high concentrations. That's why  
3 they weren't proposing them to be buried on-site.

4 Q. Exhibit No. 10 is, in fact, the C 144 for  
5 the 634B. This C 144 has been approved by the  
6 division, has it not?

7 A. Yes.

8 Q. You discussed the importance of the  
9 dimensions, the operator giving you the dimensions  
10 in the C 144 application. Does the rule require the  
11 operator to provide dimensions?

12 A. Well, it goes to how do you determine the  
13 separation of groundwater from the pit if you don't  
14 know how deep it's going to be. That's one of the  
15 requirements to even consider to even have a pit.  
16 So dimensions are something that we ask for to help  
17 support their demonstration and for our  
18 determination if it meets that criteria. So yes, it  
19 should be submitted or else we wouldn't know if you  
20 could have a pit there.

21 Q. But my question was: Is it in the rule?

22 A. No.

23 Q. Let's go to Exhibit 6, Page 6 if you  
24 would, please. The June 24th denial letter?

25 A. Okay.



1           Q.     Under the heading Additional Issues  
2     Regarding Williams' Proposal, it states, "Although  
3     OCD's denial of Williams SWD No. 2 is based solely  
4     on Williams' permit application of June 18, 2010 the  
5     OCD also considered the activities currently  
6     approved for the 634B." And I believe that's where  
7     you go on to discuss your concerns about the  
8     dimensions of the pit, correct?

9           A.     Yes.

10          Q.     But the letter signed by Mr. Von Gonten  
11     says that these considerations were not part of the  
12     denial of the June 18th C 144; is that correct?

13          A.     Yes. There were unresolved issues. We  
14     don't know if we were going to get an additional  
15     amended application at the end because the things  
16     were unresolved. We knew we were going to hearing  
17     with the application. If it was denied, we wanted  
18     to inform the Commission also of the additional  
19     concerns with these two separate sites and separate  
20     proposals.

21          Q.     So you wrote the letter for the  
22     Commission?

23          A.     I wrote it for Williams and the  
24     Commission. And since they denied the application  
25     and discussed the other pit to be used in

1 conjunction with any other site, we had to address  
2 this. This is an issue that exists for this  
3 proposal that Williams presented.

4 Q. You stated that one of the reasons this  
5 application should not be granted is it will, in  
6 fact, increase surface disturbance?

7 A. Yes.

8 Q. How does sharing a pit increase surface  
9 disturbance?

10 A. Well, you asked me about the proposal  
11 first. Your question doesn't address the proposal  
12 itself. Are you asking two separate questions -- or  
13 you prefaced it with that. I am asking does it  
14 relate to their proposal or your question? They are  
15 two separate things.

16 Q. Well, I'm not sure what you are asking me.  
17 But what I am asking you is does Williams' proposal  
18 increase surface disturbance?

19 A. Absolutely.

20 Q. Does sharing a pit increase surface  
21 disturbance?

22 A. Can you give me a scenario? Because  
23 there's different scenarios in which my answer will  
24 be different depending on the scenario.

25 Q. Let's deal with Williams' proposal here

1 today. Williams is proposing to take its waste to  
2 the 634B pit and commingle the waste in that pit for  
3 in-place burial. Does that increase surface  
4 disturbance?

5 A. It does, because under the current rule  
6 it's not allowed. The waste would never go there  
7 but go to the OCD-approved facility. It would never  
8 arrive on the site. Therefore, there would be no  
9 surface impact from that application for 634B if  
10 they were to haul it away. There would be no  
11 surface disturbance from the activity related to  
12 634B.

13 Q. You discussed that from what you  
14 understood from the testimony that Williams was  
15 saying they wouldn't have to amend their C 144 for  
16 the 634B for the Rosa No. 2?

17 A. It wasn't my opinion. It was stated in  
18 the June 3rd letter that you sent to Chairman  
19 Fesmire.

20 Q. Did you help develop the modification and  
21 transfer form process when co-locating a pit?

22 A. You know, it's interesting that was  
23 brought up. It was presented to us from the  
24 District Office. In all honesty, I thought it was  
25 dead in the water. I looked at it one time,

1 provided some comments, and after that I never saw  
2 where it went. At the time we had a different  
3 bureau chief. It was Wayne Price. What he may have  
4 decided during that time I have no knowledge of  
5 because I never saw it again.

6 Q. So you are not familiar with the process  
7 that's followed, I guess, with the district office  
8 to modify a C 144 and transfer it to the next pit?

9 A. Well, I would say in my understanding,  
10 Williams and the District Office undoubtedly  
11 formulated this. So it's not a common for every  
12 operator, it's specifically to Williams from what I  
13 can tell from the document. It doesn't apply to all  
14 operators.

15 Q. Do you know if other operators are using  
16 that same process?

17 A. I don't know of any.

18 Q. So you don't know if it's just Williams?

19 A. All I can say is the document says  
20 Williams on it.

21 Q. Would you agree that the transfer signed  
22 by the District Office is written approval of  
23 commingling waste?

24 A. It is under specific conditions in which  
25 they have been doing it, which is allowed up under

1 the rule as I testified to. That's the way we are  
2 interpreting it today.

3 Q. You mentioned that one of your concerns if  
4 the application is granted, how would we deal with  
5 the signage for the pit. Couldn't we just add Rosa  
6 Unit SWD No. 2 to the sign?

7 A. I think it would be confusing to anyone  
8 that goes out there when that well is not at that  
9 location that Williams is proposing to put the pit.  
10 It wouldn't make sense. Someone would question is  
11 the sign correct? Especially when the sign is  
12 required to give a legal description of the well,  
13 the well name, the well ADI number.

14 Q. I am a little confused about the  
15 requirement in C 144. Could you, for example, look  
16 at Exhibit 8.

17 A. Okay.

18 Q. And Page 2 of that C 144 provides the  
19 requirements -- looks to me like you have to check  
20 one of the boxes there?

21 A. Yes.

22 Q. One of the options is signed in compliance  
23 with 19.15.3.101?

24 A. Yes. That's an old reference. We have a  
25 regulation saying if the references change you have

1 to still comply with the appropriate requirement.

2 But --

3 Q. What is the requirement now? Because I  
4 can't find 19.15.3.103?

5 A. It's 19.15, I believe, 16.8. It should be  
6 in the new version. If I go to Signs -- yes, 16.8  
7 under Section 11C. I think I testified to that  
8 change.

9 Q. I'm sorry, I missed that. Thank you. I  
10 was mostly curious about that. You went through --  
11 and I don't want to belabor the point given the late  
12 hour, but you mentioned several issues with how you  
13 addressed the time for the six-month window for  
14 temporary pits, how you addressed surface owner  
15 notification, burial marker, et cetera.

16 Couldn't we address the issues as they  
17 come up on a case-by-case basis? Or are you asking  
18 the Commission to decide all the issues under this  
19 application?

20 A. It goes with this proposal and any future  
21 ones that may be considered if they consider this  
22 proposal. Currently, the language doesn't address  
23 separate pits being in separate places, separate  
24 signs, on-site/off-site, those types of things. And  
25 if the rig is not near the pit but there's a rig

1 associated with the pit, when the rig is on-site you  
2 do certain inspections and if it's not -- the  
3 regulation doesn't contemplate that, doesn't address  
4 it.

5           These are things that have to be resolved.  
6 How does it work when you have them in different  
7 locations? I am just saying these are not  
8 contemplated by the regulation because they don't  
9 have special provisions for on-site pits and  
10 off-site pits. Most of them are linked to rigs  
11 being on-site or adjacent or rig release dates,  
12 those types of things.

13       Q.     Sir, are you asking the Commission to  
14 decide how you would address all of these issues if  
15 the --

16       A.     I'm saying I don't know because the rule  
17 doesn't address it.

18       Q.     One thing I can't quite get clear in my  
19 mind is you were explaining the difference between  
20 Rule 17 and Rule 36 and that a temporary pit is  
21 temporary, whereas landfill, for example, is  
22 permanent. Isn't when you bury in place, isn't that  
23 permanent?

24       A.     I think my discussion was the protective  
25 measures that are granted by Part 36 compared to the

1 minimum standards for a temporary pit under Part 17.

2 A lot of -- I would say almost all of my discussion  
3 on that is the comparison of those two.

4 Q. And I understand that. You mentioned  
5 under Rule 36 an operator of an approved disposal  
6 facility has to have financial assurance?

7 A. Yes.

8 Q. Doesn't an operator also have to have  
9 bonding for reclamation?

10 A. It's for plug and abandonment of the well.  
11 It has nothing to do with the pit.

12 Q. Is the operator given back its bond or is  
13 the bond released if it hasn't been cleaned?

14 A. When the well is properly plugged and  
15 abandoned, yes. But once again, it's nothing to do  
16 with the pit.

17 Q. Let's go to Exhibit 18. And you  
18 referenced, I believe, Paragraph 68 on Page 11. I  
19 think that's burned into my mind by now. I would  
20 like you to turn to Page 12. Could you read  
21 Paragraph 71.

22 A. "The division's proposal would have  
23 prohibited on-site burial where there was a  
24 division-approved disposal facility or an  
25 out-of-state waste management facility with 100-mile



1 radius of the site unless operator obtained division  
2 approval for the site. The Commission does not  
3 adopt this requirement because on-site closure  
4 should be based on the level of various constituents  
5 in the waste and the site-specific information  
6 rather than the distance to the disposal facility."

7 Q. Now, you said that Paragraph 68 shows the  
8 intent of the Commission. Doesn't this also show  
9 the intent of the Commission?

10 A. The whole document in its entirety has to  
11 be read to assess this. This is only one thing, but  
12 on-site closure is clearly defined in Paragraph 68.

13 Q. But again, that didn't make it into the  
14 rule, did it?

15 A. No.

16 Q. And here the Commission seems to be  
17 indicating that it's not concerned about the  
18 100-mile provision. That, rather, on-site closure  
19 should be based on the level of various constituents  
20 in the waste and site-specific information, rather  
21 than on the distance to a disposal facility.

22 A. Yes, that's one consideration. But 68  
23 says it's where the waste is generated from the  
24 drilling workover of the well -- that's another  
25 consideration. This goes to siting. This specific

1 requirement goes to the siting requirements for the  
2 on-site closure methods, the implementation of where  
3 you can and cannot implement on-site closure.

4 Q. Is it fair to say that these should be  
5 read in conjunction? In fact, you should read the  
6 whole order together?

7 A. Absolutely. One thing does not stand  
8 alone and is one consideration. It's the whole  
9 order.

10 Q. Mr. Jones, this is my last set of  
11 questioning.

12 MS. MUNDS-DRY: May I approach?

13 CHAIRMAN FESMIRE: You may.

14 Q. I am handing you what we have marked as  
15 Williams 23, Mr. Jones. This will have to be  
16 Exhibit 24. I will correct that. I apologize. I  
17 will make sure the court reporter gets the right  
18 number. Mr. Jones, I believe you said you testified  
19 extensively, as I remember, during the Pit Rule  
20 proceedings.

21 A. Just a little bit.

22 Q. If I could ask you to read beginning at  
23 Line 24 of -- depending on how you want to read the  
24 page. The top is 1139, also Bate-stamped 1222. Do  
25 you see what I am talking about?

1           A.     Yes.

2           Q.     If you could read 24 and 25 and complete  
3 on to the end of your discussion.

4           A.     "The OCD's intent is not to limit the  
5 imagination of the applicant by listing which  
6 alternatives are approvable."

7           Q.     If you could go on one more sentence.

8           A.     "If we identify which ones are approvable,  
9 it would be a restriction on the applicants for the  
10 purposes of something different and that's not the  
11 intent of this provision." And I would like to  
12 clarify, I am talking about alternative closure  
13 methods.

14          Q.     I was going to ask you that. You were  
15 talking about alternative closure methods. And I  
16 think as we covered with Mr. Von Gonten, the  
17 Division, as I understand, did not propose in-place  
18 burial in its proposed rule, correct?

19          A.     No, the Commission chose that, and they  
20 get to choose what's in the regulation.

21          Q.     I think we can both agree to on that.  
22 Mr. Jones, my question for you is aren't we limiting  
23 the imagination of the applicant when it's  
24 requesting something that's within the confines of  
25 the rule?

1           A.     Well, it goes back to what's in the rule.  
2     If you go look at Section 8 of the rule where it  
3     says permit required, it makes a distinction that if  
4     you don't require a permit under WTCC or Part 36,  
5     then you can pursue the permit under Part 17.  
6     There's some considerations on that. That's what we  
7     consider. We looked at the order for the intent of  
8     that provision of on-site closure methods, because  
9     that is what we are talking about, and the proposal  
10    was contrary to that. But it was absolutely within  
11    the realm of Part 36 for a centralized facility just  
12    by definition alone.

13          Q.     I'm not sure that answers my question. If  
14    something is allowed under the rule, and  
15    specifically I am asking about Williams' proposal,  
16    aren't we limiting their innovative approach here?

17          A.     I am confused because Williams' proposal  
18    is not allowed by the rule, so I don't understand  
19    your question.

20          Q.     Okay.

21          A.     I think we make that clear.

22          Q.     I have nothing further.

23                   CHAIRMAN FESMIRE: Commissioner Bailey?

24                   COMMISSIONER BAILEY: I don't have any  
25    questions.

1 CHAIRMAN FESMIRE: Mr. Olson?

2 COMMISSIONER OLSON: Just a couple.

3 Mr. Jones, you were mentioning that -- I guess you  
4 were talking at one point about loopholes to bypass  
5 Rule 36, but I guess isn't there already that  
6 loophole put into Rule 36 because the definition of  
7 surface waste management facility directly excludes  
8 a temporary pit?

9 THE WITNESS: Well, it does. But that  
10 temporary pit under Part 17 has limited application  
11 for disposal. It's not free range, meaning that  
12 there are signing requirements, burial standards.  
13 There's limited application to it.

14 You've got to go back to the main language  
15 of that definition. Does it store, does it treat,  
16 can it be used for disposal. They have to say  
17 what's not of that where it could also apply. Under  
18 Part 17 it's allowed under limited application.  
19 Under certain conditions disposal is allowed.  
20 Storage of fluids, oil field waste is allowed or  
21 else every impowment permitted out there would fall  
22 under a surface waste management permit so you have  
23 to make those distinctions.

24 Q. If they got an exception do Rule 17,  
25 wouldn't they still be staying exempt from Rule 36?

1 It's still a temporary pit and getting an alternate  
2 method of disposal, I guess, as an exception.

3 THE WITNESS: I guess we go back to the  
4 order, what was stated in the order, On-site Closure  
5 Method. Under that Paragraph 68, "Where the waste  
6 that is generated from the drilling and workover of  
7 the well is buried on or near the well pad." They  
8 would have to clarify -- I mean, this is pretty  
9 clear what it means in it the rule, on-site closure  
10 method. So to grant such an exception means  
11 changing this definition. If you were to ask for an  
12 exception, you have to ask for an exception that  
13 demonstrates better or equivalent protection.

14 Our assessment of this is that the options  
15 that they have now is to use closed-loop and haul it  
16 away. How is burying the waste at a different  
17 location better or more protective than that?  
18 Because once again, it doesn't have the oversight  
19 that the Part 36 has. It doesn't have the  
20 monitoring, the 30-year post-closure, doesn't have  
21 any of that. How is it equivalent or better  
22 protection than hauling it away to one of these  
23 types of facilities?

24 COMMISSIONER OLSON: Well, I guess if  
25 the -- is it the Division's position that if they

1 met all the other requirements -- I know you  
2 identified a number of deficiencies in their  
3 application. But if they had met the other  
4 requirements and proposed this as an exception, is  
5 it possible it would be approved?

6 THE WITNESS: I think we would be in  
7 another hearing just like this stating the same  
8 case. The thing we can't say is you can't apply for  
9 exception. What we are trying to do, since there's  
10 a sense of urgency that's been expressed on this, we  
11 are letting Williams know that you can apply for  
12 exception, but our stance doesn't change. The  
13 hearing that we are hearing today would be the same  
14 we would have for the exception request, as far as  
15 I'm concerned. So we are just letting them know  
16 where we stand on that. But they have every right  
17 to apply for exception if they want to. We can't  
18 prohibit that. You can apply for exception to  
19 anything, but it doesn't mean it's approvable or  
20 that we agree with it.

21 COMMISSIONER OLSON: So you are saying the  
22 division wouldn't recommend any type of  
23 administrative approval?

24 THE WITNESS: Absolutely not. I think  
25 everything that we presented today, we would request

1 the hearing for this application.

2 CHAIRMAN FESMIRE: Until you get guidance  
3 from the Commission on that issue, right?

4 THE WITNESS: Right. But if they were to  
5 pursue that other than going through this process.  
6 That's why -- if they were to pursue the exception  
7 process outside of this. Let me clarify that, yes.

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

10 CHAIRMAN FESMIRE: My biggest concern is  
11 the inspection report. I think it's Exhibit 11.

12 THE WITNESS: Yes.

13 CHAIRMAN FESMIRE: If I understood you  
14 correctly, what you are saying is that by the time  
15 they get it stabilized and prepared for closure  
16 there's going to be no room in that pit.

17 THE WITNESS: That's my concern. I mean,  
18 your limit is up to three to one mixing ratio, so  
19 you can have four times the volume of the waste.

20 CHAIRMAN FESMIRE: But you can't tell from  
21 the pictures how deep it is to solids under the  
22 liquid on top.

23 THE WITNESS: I see quite a few solids on  
24 top. This is clear observation. My personal  
25 opinion. I'm not saying it's fact; I'm just stating



1 my concerns. Because it was stated earlier that you  
2 could fill it up to two feet to free board, and I am  
3 here to say that's for operational purposes. You  
4 can't shorten that. You have to maintain two feet  
5 of free board at all times for operation purposes.

6 Mr. McQueen was expressing that they could  
7 put it up to two feet of free board to close it.  
8 And I am saying that's not the same thing because it  
9 requires the four-foot cover to existing grade.

10 CHAIRMAN FESMIRE: And then return to  
11 existing grade, but existing grade could be  
12 substantially above the pit, couldn't it?

13 THE WITNESS: It's hard to tell in the  
14 photo, in all honestly. In the other photos if you  
15 look where the rig is located it looks pretty flat  
16 there. On the far side of the pit, it looks like  
17 they may have mounded the soil. I think in the  
18 inspection they did state that they did mound the  
19 soil there.

20 CHAIRMAN FESMIRE: So there's a pretty  
21 good likelihood that all this argument, this pit  
22 wouldn't take the cuttings from the SWD No. 2,  
23 right?

24 THE WITNESS: That's what I am thinking.  
25 That's my opinion.

1                   CHAIRMAN FESMIRE: Now, you said  
2 absolutely the Williams proposal isn't as  
3 protective. Why would do you say that?

4                   THE WITNESS: Part 36, just by -- start  
5 out with the design. We are talking about disposal  
6 so we have to talk about landfills, not land farms,  
7 but landfills.

8                   CHAIRMAN FESMIRE: Let me rephrase that a  
9 little bit. One of the reasons that you want to  
10 limit the number of land -- mini landfills, pits in  
11 a given location, is to decrease the mass influx of  
12 contaminants into the water?

13                  THE WITNESS: Yes.

14                  CHAIRMAN FESMIRE: So hauling this earth  
15 or these cuttings from one site to another is going  
16 to essentially double the amount of material in the  
17 pit, right?

18                  THE WITNESS: I'm not sure I am  
19 understanding your question.

20                  CHAIRMAN FESMIRE: Well --

21                  THE WITNESS: Hauling it where?

22                  CHAIRMAN FESMIRE: From the Salt Water  
23 Well No. 2 to this location is going to essentially  
24 double the amount of cuttings in this pit or better,  
25 because the SWD well is a bigger well.

1           THE WITNESS: Oh, I think somewhere is  
2   there APD and they are drilling far deeper. I can't  
3   remember -- 9,000 feet? I can't remember.  
4   Something like that. It's quite deep and a larger  
5   bore hole.

6           CHAIRMAN FESMIRE: So one of the things  
7   you would have to look at to make that determination  
8   is whether moving that material here as opposed to  
9   leaving it down there is more protective.

10          THE WITNESS: Well, if you are asking for  
11   exception -- let me clarify this. If you are asking  
12   for exception pursuant to the rule, you are asking  
13   for exceptions to specific provisions within the  
14   rule, meaning a good example would be like the  
15   chloride concentration. For some reason I want it  
16   higher than what it is for on-site burial. That's a  
17   specific provision in which you are asking exception  
18   to.

19          CHAIRMAN FESMIRE: Right. But the rule  
20   allows that and they would have to show that the  
21   higher chloride concentration would be more  
22   protective, and I think that would be difficult  
23   under most conditions, but not all. There are  
24   situations where it would work.

25          THE WITNESS: Right. But then there's the

1 alternative closure method, okay? One could almost  
2 say this is bordering on that because you are  
3 talking off-site instead of on-site. You are  
4 talking a commingling in this respect of all site  
5 material with on-site material, not addressed within  
6 the rule at all. There are no provisions addressing  
7 that. So you could look at that now.

8 If you look at the alternative closure  
9 provisions, they have stipulations for  
10 consideration. And those conditions are in 15B. I  
11 am reading specifically 15B(3) in which it states,  
12 "The operator demonstrates to the satisfaction of  
13 the Environmental Bureau and the Division of Santa  
14 Fe Office that the proposed alternative closure  
15 method will implement one of the following  
16 practices: Waste minimization." It's not doing  
17 that. Because you are going to increase it to  
18 stabilize it. And you are actually increasing the  
19 waste at that location, because now you are going to  
20 have SWD 2 plus 634B.

21 CHAIRMAN FESMIRE: Let's talk about that  
22 for a minute, though. The material coming from SWD  
23 2 is going to be considerably drier than what's in  
24 the pit now, right?

25 THE WITNESS: Not from their own

1 testimony. They are stating -- this is why they  
2 used closed-loop when they use muds and that's what  
3 they are having to use to drill the SWD. They do  
4 not implement closed-loop systems operations as they  
5 do in the southeast. They are not able to extract  
6 the fluids. They testified to that yesterday  
7 actually. There was testimony on that. I referred  
8 to it as the sloppy closed-loop system because you  
9 are not able to extract the full amount of fluids to  
10 even consider using a drying pad because it would be  
11 too wet.

12 CHAIRMAN FESMIRE: So you are saying that  
13 they are going to be essentially the same moisture  
14 content from both operations?

15 THE WITNESS: To a certain extent.

16 CHAIRMAN FESMIRE: So there's not going to  
17 be an advantage to stabilizing this pit with the  
18 contents of the closed-loop system.

19 THE WITNESS: No, not at all. Not from  
20 the testimony yet.

21 CHAIRMAN FESMIRE: How do you answer the  
22 arguments that, you know, less truck traffic, which  
23 is a major consideration of the surface management,  
24 less carbon emissions, things like that? Is that  
25 not to be considered in the analysis?

1           THE WITNESS: Well, it's interesting.  
2   It's not considered by the Pit Rule by any means. I  
3   can tell you that. But they are trying to pull --

4           CHAIRMAN FESMIRE: But the Pit Rule  
5   doesn't limit those considerations to just what we  
6   addressed in the Pit Rule, does it?

7           THE WITNESS: What I was trying to get at  
8   is if you are going to consider this, you have to  
9   look at your total operations to put it in  
10   perspective. You can't take this one event and say,  
11   "We are concerned about it today but we are not  
12   worried about it tomorrow." I don't see them making  
13   the argument for the closed-loop system that they  
14   are hauling away that oil-based mud, the same  
15   argument for hauling all that material to  
16   Envirotech, that doesn't seem to be an issue for  
17   hauling that waste.

18          CHAIRMAN FESMIRE: But that wouldn't  
19   satisfy -- other than the fact that it would have to  
20   be transported to a different pit, those oil-based  
21   muds would not meet the other criteria necessary for  
22   in-place burial, would it? I mean, the TPH, Benzine  
23   the --

24          THE WITNESS: I don't know. I honestly  
25   don't know. I don't know what's in the mud so I

1     can't comment on that.

2                   CHAIRMAN FESMIRE: That gives us a little  
3     bit of a hint, doesn't it?

4                   THE WITNESS: Yeah, but if they mixed it  
5     with the pit that's there, which is the upper  
6     portion of the hole that has none of that, the  
7     question is could the mixing of that allow it to be  
8     disposed on-site? That's another consideration.

9                   CHAIRMAN FESMIRE: Okay. But they are not  
10    asking for an exception to that.

11                  THE WITNESS: No, but you are asking about  
12    transportation, increased emissions. That's what I  
13    was talking about. That seems to be an argument for  
14    this case, justification for it, when it's not in  
15    comparison to anything other than the options that  
16    they limit it to for comparison.

17                  CHAIRMAN FESMIRE: But is this not an  
18    alternative closure procedure? I am not talking  
19    about what I referred to as the strained definition  
20    of on-site. I am not talking about that.

21                  But if they were to come to us and ask for  
22    an alternative closure procedure where they wanted  
23    to haul this material to this other location and  
24    here is what they are going to -- according to our  
25    criteria, at least as environmentally sound, it will

1 prevent waste and all of that, would we not have to  
2 consider this? Is this not at least something that  
3 we would have to consider?

4 THE WITNESS: As I say before, part --  
5 well, again, I will clarify. Alternative closure  
6 method is covered under the exception process and at  
7 the end of it Provision B(4) states that pretty much  
8 you got to follow and comply with everything in 15A,  
9 which means you have to go through the rest of the  
10 process.

11 So as it stated earlier, you can apply for  
12 exception for anything, so we would look at it in  
13 consideration to the requirements of the rule for  
14 consideration. So yes, we would contemplate it.

15 CHAIRMAN FESMIRE: And do we not have to  
16 consider the fact that instead of a 150-round trip  
17 haul they have a 20-mile round trip haul?

18 THE WITNESS: Once again, under B it  
19 states the things we have to consider for  
20 alternative closure method. It says at least one or  
21 more of these have to be demonstrated. Implement  
22 one or more of the following practices. That's part  
23 of that consideration. So the considerations are  
24 stipulated within the regulation already.

25 CHAIRMAN FESMIRE: And they can be read



1 broadly enough to include this sort of a proposal,  
2 couldn't they?

3 THE WITNESS: For this type of proposal?

4 CHAIRMAN FESMIRE: Notwithstanding the  
5 on-site definition. But if they hadn't come to us  
6 with that on-site definition, if they had just come  
7 to us asking for an exception or alternative closure  
8 procedure.

9 THE WITNESS: Can I go through them and  
10 give examples of where they wouldn't meet those  
11 requirements? I mean, there's only three or four of  
12 them.

13 CHAIRMAN FESMIRE: Okay. But are they  
14 going to be something that could be argued or are  
15 they something that you can pretty definitively make  
16 the statement?

17 THE WITNESS: The first is waste  
18 minimization. If your option is to haul it away and  
19 your other option in this proposal would be to bury  
20 is in place it's still --

21 CHAIRMAN FESMIRE: Is carbon dioxide a  
22 waste?

23 THE WITNESS: Is it waste covered under  
24 Pit Rule? No.

25 CHAIRMAN FESMIRE: No, is it a waste?

1 THE WITNESS: Yes.

2 CHAIRMAN FESMIRE: Does that in any way --  
3 does that definition in any way exclude carbon  
4 dioxide from the definition?

5 THE WITNESS: Does is it exclude it?

6 CHAIRMAN FESMIRE: Yes.

7 THE WITNESS: No.

8 CHAIRMAN FESMIRE: When we consider waste  
9 minimization, we have to take a pretty broad look.

10 THE WITNESS: I think when we proposed  
11 this language, our intent was you minimize the waste  
12 that you generate and the difference in my response  
13 would be that when you take it and you bury it  
14 in-place, you still have to stabilize it, which  
15 means increasing the waste at that point. Maybe  
16 possibly making it four times what it was  
17 originally.

18 CHAIRMAN FESMIRE: Okay. But there are  
19 other things we have to consider, right? Like the  
20 argument about minimizing the truck exhaust?

21 THE WITNESS: Yeah. I think once again,  
22 personally, if I were looking at this, I think that  
23 would be a far stretch because --

24 CHAIRMAN FESMIRE: Pretend you are a  
25 couple -- three strangers reading the rule.

1 THE WITNESS: Okay.

2 CHAIRMAN FESMIRE: What's the other ones?

3 THE WITNESS: The next one is treatment  
4 using best demonstrated available technology. They  
5 are not treating this material.

6 CHAIRMAN FESMIRE: Don't you consider the  
7 closed-loop system and the stuff that they are  
8 taking out of it there as a type of treatment?

9 THE WITNESS: Absolutely not. It's  
10 allowed under the rule. It's not even an  
11 alternative to the rule.

12 CHAIRMAN FESMIRE: So that's not a best --  
13 what's the phrase? Best available.

14 THE WITNESS: It's actually approvable  
15 without exception to use a closed-loop system.

16 CHAIRMAN FESMIRE: These are alternatives,  
17 right?

18 THE WITNESS: Alternative closure methods  
19 we are talking about?

20 CHAIRMAN FESMIRE: No, I mean the four  
21 things you are talking about.

22 THE WITNESS: These are things we consider  
23 for closure methods.

24 CHAIRMAN FESMIRE: The second to the last  
25 word, it's not "and" it is "or", isn't it?

1 THE WITNESS: Yes, any of these.

2 CHAIRMAN FESMIRE: What are the others.

3 THE WITNESS: Reclamation.

4 CHAIRMAN FESMIRE: Should we not consider  
5 that?

6 THE WITNESS: I don't see where their  
7 proposal addresses it.

8 CHAIRMAN FESMIRE: Okay. What's the last  
9 one?

10 THE WITNESS: There's reuse. I guess you  
11 can put these together. Reuse, recycling with  
12 reclamation. None of those are being proposed. Not  
13 for on-site closure method.

14 CHAIRMAN FESMIRE: So you don't think  
15 there's any advantage to --

16 THE WITNESS: There's one more.

17 CHAIRMAN FESMIRE: Go ahead.

18 THE WITNESS: Reduction and available  
19 contaminant concentration.

20 CHAIRMAN FESMIRE: Available contaminant  
21 concentrations. What are we talking about there?

22 THE WITNESS: The contents in which you  
23 propose to do something with the alternative manner.  
24 This is, once again, alternative closure methods.

25 CHAIRMAN FESMIRE: So you don't think

1     there's any benefit to looking at this new way of  
2     looking at it?

3                 THE WITNESS:  No.  Once again, we state  
4     our case.  Our position is based upon the order  
5     provided by the Commission to us to give us guidance  
6     of how to interpret the rules.

7                 CHAIRMAN FESMIRE:  And when you made that  
8     decision the other values, for instance, the  
9     reduction in carbon that they are talking about,  
10    that is not something that you would consider?

11                THE WITNESS:  Without an exception  
12    request, no.

13                CHAIRMAN FESMIRE:  I am going into the  
14    hypothetical that they made an exception request.

15                THE WITNESS:  Then everything has to be  
16    considered.

17                CHAIRMAN FESMIRE:  Okay.  I have nothing  
18    further.  Mr. Swazo, redirect?

19                MR. SWAZO:  No.

20                CHAIRMAN FESMIRE:  Mr. Jones, thank you  
21    very much.

22                MR. SWAZO:  That concludes our case.  We  
23    rest.

24                CHAIRMAN FESMIRE:  Are you ready to close?

25                MS. MUNDS-DRY:  Yes.  May I move the

1 admission of Exhibit 24 into evidence?

2 CHAIRMAN FESMIRE: Any objection?

3 MR. SWAZO: No objection.

4 CHAIRMAN FESMIRE: Exhibit 24 will be  
5 admitted. Ready to close?

6 MS. MUNDS-DRY: Yes, sir.

7 CHAIRMAN FESMIRE: You did not admit 23.

8 MS. MUNDS-DRY: I ask we admit 23 into  
9 evidence as well.

10 CHAIRMAN FESMIRE: Any objection.

11 MR. SWAZO: No objection.

12 CHAIRMAN FESMIRE: Exhibit 23 will be also  
13 admitted and we better make clear those are Williams  
14 Exhibits 23 and 24.

15 (Note: Williams Exhibits 23 and 24  
16 admitted.)

17 MS. MUNDS-DRY: Thank you, Mr. Chairman.  
18 Williams has proposed an innovative -- using  
19 Mr. Jones' term -- imaginative approach that  
20 benefits both the operator and the environment and  
21 that complies with the Pit Rule. This is the  
22 Commission's opportunity to demonstrate that it, and  
23 the Division, will consider and approve such  
24 innovative approaches.

25 You heard Mr. Hanson explain to you his

1 definition of on-site as on the unit means anywhere  
2 within the boundaries of the unit. You heard  
3 testimony from Mr. Lane about why we brought the  
4 proposal to the OCD and to the Commission. He told  
5 you that the application meets the rule; that we are  
6 not seeking an exception, and as the Division has  
7 confirmed for you today, that even if we did bring  
8 an exception it would be futile because the  
9 Environmental Bureau has already decided it would  
10 violate Rule 36.

11 The application in the C 144, the June 18  
12 C 144, is the same application, same language that  
13 has been approved in the past by the Division, but  
14 this time we have a different set of eyes that led  
15 to different results. We tried to remedy the issues  
16 that the Environmental Bureau had because, as you  
17 heard from Mr. McQueen, we were unable, as is clear  
18 today, we were unable to satisfy their concerns.

19 Understanding that you only have this  
20 application before you and that you can't judge the  
21 other language that's been used in the past, it is,  
22 of course, within your purview to provide conditions  
23 in any order approving this application if you felt  
24 that you needed additional language to ensure  
25 compliance with the rule. Williams submits to you

1     that it did submit language to indicate that it  
2     intends to comply with the rule, understanding that  
3     this is a plan, C 144 is a plan, and that it  
4     attempted to demonstrate in the best language that  
5     it had used in the past and had been successful with  
6     in the past to demonstrate that compliance.

7             You heard testimony from Mr. McQueen that  
8     the Rosa SWD No. 2 is critical to unit operations.  
9     You heard from Mr. Lane and Mr. McQueen that this  
10    application will be more protective of the  
11    environment in that it minimizes footprints, surface  
12    footprints, reduces greenhouse gases by reducing  
13    truck traffic than any of the other alternatives.  
14    The division did not provide you any evidence that  
15    refuted what Williams presented to you over the last  
16    two days.

17            The surface management agency also still  
18    supports this application. Nothing in what was  
19    submitted as Williams Exhibit 21 withdraws that  
20    support.

21            There was a lot of discussion about what  
22    does on-site mean, off-site, what was the intent of  
23    the Division. I submit to you that first the  
24    Commission should look at the plain language of the  
25    rule. If the plain language of the rule is clear



1 then it's not necessary for you to look at any other  
2 documents. You should stick within the four corners  
3 of the rule. If it's not clear to you, then we  
4 submit to you that the order that the Commission  
5 submitted to submit the rule should be read as a  
6 whole to try to attempt to ascertain what your  
7 intent was then or what it is now.

8           Consider this. That not every well site  
9 looks the same. So when we talk about what does  
10 on-site and what does off-site mean, you heard the  
11 testimony from Mr. Von Gonten that not all equipment  
12 is on a well pad nor is it always the same. A tank  
13 battery can be located miles away from a well site.

14           So when we are talking about the ideas of  
15 on-site or off-site, we have to be careful about  
16 what it is, in fact, modifying. We believe it's  
17 clear in the rule that when you read on-site closure  
18 methods, it's modifying closure. When you, the  
19 Commission, submitted the language of in-place  
20 burial, you had the option by limiting it by some  
21 distance to the well site or a drying pad or some  
22 other piece of equipment or piece of the closure pie  
23 but you did not.

24           We appreciate you again taking this on a  
25 special docket and we appreciate that you understand

1 the timelines we are under. You heard the testimony  
2 we are trying to do what we can to be flexible in  
3 our timing. You heard testimony today that the  
4 division is very concerned about what this decision  
5 of this Commission could mean to future  
6 applications, administration of the Pit Rule and  
7 administration of Rule 36, and perhaps if I were  
8 you, and I don't presume to be you, that you would  
9 look at how to put side boards on such an order,  
10 given the precedential effect that the order  
11 potentially has.

12 But remember this: Each application for C  
13 144, and the Division did not disagree, each  
14 application for C 144 is evaluated, reviewed and  
15 approved or denied on a case-by-case basis. It  
16 still remains within this Commission's control to  
17 retain jurisdiction in any future issues that might  
18 arise by virtue of other applications that come  
19 before you. But I also ask you to keep in mind that  
20 this application is before you and that any snowball  
21 effect or slippery slope type of arguments are not  
22 before you today. Please look at this application  
23 before you.

24 We ask you to look at the plain language  
25 of the rule and determine whether this application

1 can be granted. We believe you will find what that  
2 Williams has proposed to you today is not prohibited  
3 by the rule, and while innovative and perhaps while  
4 not even contemplated during the Pit Rule  
5 proceedings, is in compliance with the rule and it  
6 is more protective of the environment. Thank you  
7 very much for your time today and yesterday.

8 CHAIRMAN FESMIRE: I do have to ask you  
9 one question. You stated in your closing argument  
10 that Williams' position is it's just on the unit?  
11 Is on-site? My interpretation of Mr. Lane's  
12 testimony was broader. What is Williams' position?

13 MS. MUNDS-DRY: Williams' position is that  
14 on-site has to be viewed in view of the rule, which  
15 is on-site closure, and it's where the temporary pit  
16 is located. We have in this circumstance somewhat a  
17 unique circumstance. We are on a unit and we have  
18 unit operations. That's the only reason why I  
19 reminded you of his testimony.

20 CHAIRMAN FESMIRE: Ms. MacQuesten?

21 MS. MACQUESTEN: Thank you, Commissioners.  
22 If I leave you with one key message from this  
23 closing argument, it's this: You can't get there  
24 from here. Williams is seeking approval to dispose  
25 of drilling waste from one well at a remote

1 location. The question for you is how can they make  
2 such a request and get it approved?

3 We have spent a lot of time talking about  
4 whether it's a good idea or not, and the Commission  
5 has been intrigued with Williams' proposal in  
6 certain respects. So the question is how do they  
7 get there.

8 The rules identify three paths and that's  
9 what I wanted to talk about today. Part 17 offers  
10 the path of administrative approval of an  
11 application. It also offered the path of seeking an  
12 exception. There's a third path, and that would be  
13 a Part 36 permit application.

14 Williams chose one path. They chose the  
15 path of seeking administrative approval for their  
16 proposal. The OCD's position is that administrative  
17 approval of this proposal is not allowed under Part  
18 17. And the question is -- that really is the only  
19 issue for you today in this case because that's the  
20 application that is in front of you, administrative  
21 approval. But we have talked a lot about the other  
22 two options and I want to go there so you know why  
23 we took the position we did.

24 It's our position that they could  
25 certainly seek an exception, but just because you

1 can seek it doesn't mean it should be granted. And  
2 the reason that we have said that we don't think an  
3 exception would be available in this case is we  
4 don't want to lead them down the path and then say,  
5 when they do file for exception, "Oh, sorry,  
6 actually we don't think an exception should be  
7 granted. We think you should go to Part 36."

8 We are being very straightforward and  
9 above-board in saying we believe that the correct  
10 path should have been a Part 36 permit application.

11 Now, this decision of which path to take  
12 is something that we have had to face in a lot of  
13 different circumstances. There's been discussion  
14 about that, too, and you've heard how we have made  
15 decisions on certain issues such as haul-off bins or  
16 bins that accept waste from multiple wells from a  
17 single well pad.

18 Whether we made the right decisions in  
19 those cases is not before you today but it will help  
20 illustrate how difficult a struggle it can be to  
21 decide whether this should be something that could  
22 be approved administratively or by exception, or  
23 whether it's Part 36. I will limit myself to what  
24 Williams is proposing, and that is what we call  
25 off-site disposal. Taking waste off from the well

1 site and disposing of it somewhere else.

2 I think the key to answering that question  
3 is found in the structure of Part 17. That gets you  
4 half-way to the answer I'm going to propose. What  
5 takes you to the rest of the answer is when you look  
6 at how Part 17 dovetails with Part 36.

7 The reason I say the structure of Part 17  
8 is key is that Part 17 recognizes two categories of  
9 closure, disposal of waste at an OCD-approved  
10 facility and on-site closure. We had a lot of  
11 discussion about on-site closure. That is the  
12 heading in Rule 17 under which the Commission  
13 described various forms of closure.

14 On-site trench burial, in-place burial of  
15 an existing temporary pit, construction of a pit for  
16 disposal of waste. You have to remember what  
17 category these different types of disposal fall  
18 under, and they are all under the category of title  
19 of on-site closure.

20 Now, the Commission could have called that  
21 category closure by operating as opposed to closure  
22 at an OCD-approved facility or it could have said  
23 other approved closure methods, but it didn't. It  
24 used the words on-site closure.

25 Now, in her opening statement Ms.

1 Munds-Dry said the word is irrelevant. I suggest  
2 it's not irrelevant, and if you look at the law and  
3 how you interpret statutes and rules, you try to  
4 assume that words are there for a purpose. In this  
5 case, I think when you look at Part 17 and you look  
6 at the Commission's orders adopting Part 17, it's  
7 clear that when they were talking -- when you were  
8 talking about on-site closure, what you were telling  
9 us was closure where you were disposing of the waste  
10 at or near where the waste is generated.

11 Now, I'm not going to go into an  
12 exhaustive description of why I believe that's true,  
13 because we have submitted a brief to you on that  
14 point, and I would ask you to consider the arguments  
15 and the examples that were given in that brief. So  
16 I won't go into that in detail today.

17 But, you see, it's that structure of Part  
18 17 that gives us the answer. I suggest that Part 17  
19 was written the way it was on closure for a purpose.  
20 It gave us those two categories, disposal at an  
21 approved facility or on-site closure, because it  
22 wanted to dictate -- it wanted to do two things with  
23 those categories. First, it wanted to dictate how  
24 an operator would get approval for a particular  
25 closure. It also told us what categories closure

1 came under, Part 17 at all.

2           You see, Part 36 covers closure, treatment  
3 of waste, treatment of oil field waste, and it gives  
4 a very broad definition, but it does provide  
5 exceptions, and the exceptions were to recognize  
6 where Part 17 covered things they would be Part 17  
7 closures and they wouldn't come under Part 36. But  
8 if they are not under Part 17 or certain other  
9 exceptions listed, they are going to be under Part  
10 36. Our argument basically is if you don't come  
11 within the two categories that are recognized by  
12 Part 17 then you go to Part 36.

13           It talked about two purposes of the  
14 structure, the other being how do you get approval.  
15 And this is important. This is why I wanted to talk  
16 about why we think that administrative approval  
17 isn't appropriate with Williams' proposal.

18           You see, that administrative approval  
19 path, the path that they chose, is only available if  
20 an operator is seeking a closure method that is  
21 recognized by Part 17. My suggestion is that to be  
22 recognized by Part 17 it has to fall into one of  
23 those two categories, the disposal of waste in an  
24 approved facility or the on-site closure method.  
25 Once you get into one of those categories, you then



1 have to meet all of the requirements that the rule  
2 sets out for that particular type of closure.

3 If you don't fall into one of the approved  
4 categories and you don't meet all of the  
5 requirements set out in the rule for the type of  
6 closure you are asking for within that category then  
7 you have to ask for an exception. But if you fit  
8 within the category and all of the requirements,  
9 then it's administrative approval.

10 So to get that administrative approval,  
11 Williams would have to show that they meet all of  
12 the requirements of the category and the specific  
13 type of closure that they have sent notice to the  
14 surface owner and they get approval from the  
15 District Office.

16 All you have to do is show you fit. You  
17 fit clearly within the rule and you can get the  
18 administrative approval.

19 Now, they don't have to make any special  
20 showing that the method is protective of the  
21 environment. If it's an approved method, that  
22 battle was fought during the Pit Rule hearing, and  
23 the Commission has decided that if it's an approved  
24 method, and you can show you fit squarely within  
25 that approved method, you are in. You can get

1 administrative approval. You don't have to make any  
2 other showing.

3 But if you don't fit squarely within Part  
4 17, if you are not in the right category in one of  
5 those recognized categories, if you don't meet the  
6 requirements of the type of closure that you are  
7 asking for, then Part 17 will send you to the  
8 exception process. That requires application to the  
9 Environmental Bureau. There the burden is on the  
10 operator to show that the closure is protective of  
11 the environment, to show and to go through the  
12 factors that Mr. Fesmire went through with Brad  
13 Jones going through what is required.

14 Another key feature is there is extensive  
15 public hearing required, the opportunity for public  
16 comment and hearing. So again, this would be  
17 something that wasn't already fought and decided in  
18 the Pit Rule hearing. This is something different.  
19 It's going to require you to go back to the public  
20 setting.

21 We don't believe that the path Williams  
22 chose gets them where they want to go. We don't  
23 believe that their proposal can be approved under  
24 the administrative approval process. First and  
25 foremost, because it's not even a category of

1 closure recognized by Part 17. Part 17 simply does  
2 not recognize off-site closure.

3           There are plenty of other reasons why  
4 administrative approval wouldn't be appropriate in  
5 this case, but I want to stick to the big issue in  
6 this case, and that is that on-site/off-site. The  
7 remaining question -- again, you don't have to  
8 answer that in this case. If you decided that they  
9 can't get administrative approval your job is done  
10 in this hearing. The question is what kind of  
11 guidance can we give them to get where they want to  
12 go. So the question is if they brought it as an  
13 exception could it be granted as an exception.

14           Again, we get back to the structure of  
15 Part 17. The reason we believe it doesn't fall  
16 within Part 17 and instead would have to come under  
17 Part 36 is that Part 17, again, recognized two  
18 categories and this isn't even one of them. If it's  
19 not within the categories established within Part  
20 17, our belief is you go to Part 36.

21           We feel you have to be very careful about  
22 where you draw the line between Part 17 and Part 36  
23 because if you allow the exception provisions in  
24 Part 17 to go beyond the two categories that it  
25 recognizes, then you really are opening the door to

1 allowing people to get permission to deal with  
2 disposal methods under Part 17 instead of Part 36.  
3 Where would you draw the line if not at the  
4 categories that are set out in the structure in Part  
5 17? Size of pit?

6 That's one thing that's brought up. Well,  
7 you can't have too large of a temporary pit under  
8 the Pit Rule so, therefore, that's a natural  
9 distinction. Why not? Can't you ask for an  
10 exception for that? Could somebody ask for an  
11 exception under the Pit Rule for a larger disposal  
12 pit to take waste from multiple wells, from multiple  
13 sites or multiple drilling pads? Where do you draw  
14 the line?

15 We feel the line was drawn by how the  
16 Commission structured the rule. That gives us a  
17 bright line test.

18 That's why we believe that the answer is  
19 it can't be granted administratively. They could  
20 have gone for an exception, but our position would  
21 be you can't give them the exception. They would  
22 have to go to Part 36.

23 When I started this, I said there were  
24 three paths, but really I want to suggest that  
25 there's a fourth path if you don't like the answer I

1 have given you. That path was suggested by  
2 Mr. Jones. The rule was structured a certain way,  
3 and it's our job as the administrative agency to  
4 carry out what we believe is the intent of the  
5 Commission. And the only thing that we can see in  
6 the rule is if the rule is structured to allow two  
7 categories and this doesn't fit within one of those  
8 categories, it's not under that rule.

9 But if you would like it to be under Part  
10 17 then really what we need is a rule change. If  
11 you wanted this to be in Part 17, change that  
12 category. Don't call it on-site closure. Call it  
13 other closure methods and tell us what they are.  
14 Tell us what the boundary is so we can provide it,  
15 and do it in that forum where there is public  
16 comment, where there is going to be a public  
17 hearing.

18 We are trying to do the best job we can of  
19 enforcing the rule as it's given to us and we have  
20 drawn the line where we think the line is  
21 appropriate.

22 We work with what we are given. When we  
23 have a rule that sets out two categories and a  
24 request that doesn't fall within those categories,  
25 we feel that it is our responsibility to say that

1 that proposal does not come within that. Thank you.

2 CHAIRMAN FESMIRE: Thank you. Short  
3 rebuttal?

4 MS. MUNDS-DRY: No, sir.

5 CHAIRMAN FESMIRE: Thank you all very  
6 much. If counsel will indulge me just a second, I  
7 have a proposal. We have to go into executive  
8 session to deliberate on this. I don't think  
9 there's anybody who wants to do this tonight.  
10 Apparently, I am the only weak-willed person here.

11 So I guess at this time we go into  
12 executive session.

13 COMMISSIONER BAILEY: I so move.

14 COMMISSIONER OLSON: Second.

15 CHAIRMAN FESMIRE: Those in favor signify  
16 by saying aye. At this time we will do go into  
17 executive session.

18 Counsel brings up an interesting point.  
19 If we don't finish deliberating tonight, we will  
20 have to reconvene at some point in time. We will  
21 reconvene Monday morning at 9:00 still in executive  
22 session. I don't know when we will come out of  
23 executive session, but we will reconvene Monday  
24 morning at 9:00 o'clock in the OCC conference room  
25 on the third floor, and like I said, we will still

1 be in executive session when we meet. I don't know  
2 how long we will stay in executive session. We will  
3 stay in executive session until we either have to  
4 break or finish our deliberations and we will let  
5 the attorneys know where we stand at that point when  
6 we come on Monday morning.

7 MR. SMITH: So as I understand this, just  
8 to make it clear, when you finish with your  
9 executive session on Monday, if you are not yet  
10 finished and you are going to have to carry to  
11 another day, once you come out of executive session  
12 you will announce at that point when your next  
13 executive session meeting is going to be.

14 CHAIRMAN FESMIRE: Right.

15 MR. SMITH: So if people want to know when  
16 you will meet after Monday, they will need to be  
17 there at the end of your deliberations on Monday to  
18 hear what your next schedule is going to be.

19 CHAIRMAN FESMIRE: Right. It will be in  
20 the OCC conference room on the third floor.

21 (Note: The hearing was concluded at  
22 6:20).

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## REPORTER'S CERTIFICATE

I, JAN GIBSON, Certified Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

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

  
JAN GIBSON, CCR-RPR-CRR  
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