

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 21-27 (R)

In the Matter of:

PROPOSED NEW REGULATION
20.2.50 NMAC - Oil and Gas Sector
Ozone Precursor Pollutants

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 27th day of May, 2022,
this matter came on for Deliberations and Decision on the
virtual WebEx platform, before PHOEBE SUINA, Chairperson
for the Environmental Improvement Board, commencing at the
hour of 9:00 a.m.

REPORTED BY:

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A P P E A R A N C E S

For the Environmental Improvement Board:

**PHOEBE SUINA, Chairperson
AMANDA TRUJILLO-DAVIS, Vice-Chairperson
BARRY BITZER, Board Member
KARL CATES, Board Member
KAREN GARCIA, Board Member
WILLIAM HONKER, Board Member**

Hearing Officer:

FELICIA ORTH, ESQ.

Counsel For the EIB:

**KARLA SOLARIA, Commission Counsel
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PAMELA JONES, Commission Administrator

REPORTER'S CERTIFICATE

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1 CHAIRPERSON SUINA: Good morning, everyone. I
2 hope everybody is doing well. It looks like we have a
3 quorum, and I'd like to get the meeting started, and if we
4 can to do a -- start the meeting. Maybe, Ms. Jones, could
5 you do a roll-call just to see who is all here?

6 ADMINISTRATOR JONES: Yes, ma'am. Beginning with
7 Member Bitzer, are you present?

8 BOARD MEMBER BITZER: I am indeed.

9 ADMINISTRATOR JONES: Member Cates?

10 BOARD MEMBER CATES: Yes.

11 ADMINISTRATOR JONES: Member Duvall is not with
12 us.

13 Member Garcia?

14 BOARD MEMBER GARCIA: Yes. Here.

15 ADMINISTRATOR JONES: Member Honker?

16 BOARD MEMBER HONKER: I am here.

17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis.

18 VICE-CHAIR TRUJILLO-DAVIS: Here, present.

19 ADMINISTRATOR JONES: There you are.

20 And Chair Suina?

21 CHAIRPERSON SUINA: Here.

22 ADMINISTRATOR JONES: Madam Chair, you have a
23 quorum.

24 CHAIRPERSON SUINA: Thank you so much. I
25 appreciate that, Ms. Jones. So, the next we have on our

1 agenda -- Ms. Jones, would you be able to put the agenda
2 up on the screen for me?

3 ADMINISTRATOR JONES: Counsel Soloria, do you
4 have the agenda handy? Otherwise, I can dig it out and
5 share it.

6 MS. SOLORIA: I can do that. Just give me one
7 moment to pull it up.

8 ADMINISTRATOR JONES: Thanks. We've got her cued
9 up already to share screen.

10 CHAIRPERSON SUINA: Great. I just wanted to make
11 sure we're all on the same page with our agenda. This
12 morning, fellow Board members, I have a pressing meeting
13 later or -- later this morning. And so I wanted -- as
14 we're on agenda item number 2, approval of the agenda, I
15 was asking -- I wanted to see if the fellow Board members
16 would be willing to move up EIB 21-27. That would be
17 agenda items 11 and 12, and move those above currently
18 agenda item number 5.

19 I have a pressing meeting regarding the wildfires
20 and some of the monsoon preparations that are needed for
21 New Mexican communities this morning. And so I was
22 wondering if that would be possible.

23 Ms. Soloria, I just wanted to reach out to you,
24 is that -- is that -- is that appropriate if I -- if I
25 propose that?

1 MS. SOLORIA: Yes, that's fine. It's at the
2 Board's pleasure if you want to reorder the agenda items,
3 just have that discussion and then we'll move forward.

4 CHAIRPERSON SUINA: Okay. So I look to the Board
5 and get your thoughts about my -- my request and see what
6 you think.

7 BOARD MEMBER HONKER: Fine with me.

8 VICE-CHAIR TRUJILLO-DAVIS: It's good with me.
9 Do we need to make a motion to reorder the agenda items?

10 MS. SOLORIA: Yes, you can make a motion and then
11 do a quick vote and then we'll proceed from there.

12 VICE-CHAIR TRUJILLO-DAVIS: Okay. I can make
13 that motion. Is it just items 10 and 11 that we would
14 want to move up?

15 CHAIRPERSON SUINA: It would be 11 and 12 on the
16 agenda that we have on the screen.

17 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry, I couldn't
18 see 12 down there. Okay. So I'm going to go ahead and
19 make the motion that we reorder our agenda items for
20 today's meeting on 5/27/22, moving items number 11, EIB
21 21-27 and number 12, EIB 21-27 to the top of the list. We
22 can make them item numbers 5 and 6 if that's -- does that
23 suffice for a motion?

24 MS. SOLORIA: Yes.

25 VICE-CHAIR TRUJILLO-DAVIS: Okay.

1 BOARD MEMBER BITZER: I'll second that.

2 CHAIRPERSON SUINA: Thank you so much. Is there
3 any further discussion regarding the motion?

4 And if not, Ms. Jones, would you mind doing a
5 roll-call vote.

6 ADMINISTRATOR JONES: Yes. I just want to
7 confirm the second; was that you, Member Bitzer? Did you
8 get in before Member Honker?

9 BOARD MEMBER BITZER: (Nodding head.)

10 ADMINISTRATOR JONES: Okay. So the vote on the
11 amended agenda for this morning, Member Bitzer, how do you
12 vote?

13 BOARD MEMBER BITZER: I vote yes.

14 ADMINISTRATOR JONES: Member Cates?

15 BOARD MEMBER CATES: Yes.

16 ADMINISTRATOR JONES: Member Garcia?

17 BOARD MEMBER GARCIA: Yes.

18 ADMINISTRATOR JONES: Member Honker?

19 BOARD MEMBER HONKER: Yes.

20 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes.

22 ADMINISTRATOR JONES: And Chair Suina?

23 CHAIRPERSON SUINA: Yes.

24 ADMINISTRATOR JONES: Madam Chair, the motion
25 passes.

1 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.
2 Appreciate that.

3 (Off the record discussion.)

4 CHAIRPERSON SUINA: With that, I guess we'll go
5 to the first discussion item on our agenda and that is now
6 moved up for EIB 21-27.

7 Ms. Soloria, I think -- I think you're up.

8 MS. SOLORIA: Yes, thank you, Madam Chair.

9 So you all have received the Statement of Reasons
10 that was to be put together with the assistance of Hearing
11 Officer Orth. It reflects your decision -- deliberations
12 and decisions in the ozone rulemaking -- Ozone Precursor
13 Rulemaking EIB 21-27. In compiling the Statement of
14 Reasons there were just a few items that we -- the Board
15 just didn't address during their deliberations. And so,
16 for the sake of completeness, dotting our I's, crossing
17 our T's, we're going to do a limited reopening of those
18 deliberations so you all can address those matters and
19 make sure the Statement of Reasons is as complete as we
20 can get it.

21 So I am -- I took the liberty of outlining those
22 issues that are outstanding, and my intention is to just
23 walk you through those. And then, if there's any further
24 discussion on those matters, you all are free to have
25 that, and we'll have that all on the record. And then

1 we'll take a series of votes just to make sure that,
2 again, the Statement of Reasons accurately and faithfully
3 reflects the Board's decision making.

4 And we are on the record. Ms. DuBois, you are
5 good to go?

6 COURT REPORTER: (Nodding head.)

7 MS. SOLORIA: Great. So let me share -- if I can
8 find it, I just want to put the draft on the screen
9 because I think it will be easier to follow along that
10 way.

11 BOARD MEMBER HONKER: So are we looking at the
12 highlighted in green items?

13 MS. SOLORIA: Yes. Yes, Member Honker. And let
14 me pull it up. Okay. Can you all see that? Great.

15 CHAIRPERSON SUINA: Yes, Ms. Soloria.

16 MS. SOLORIA: Okay. So the first item -- and,
17 again, just to preface this, the parties -- the Department
18 and other parties in their closing arguments and, of
19 course, in their testimony and with their evidence,
20 presented sort of general evidence that kind of went to
21 their support for the rule as a whole. And because of the
22 way that the Board progressed through its deliberations,
23 where we were going line by line, provision by provision,
24 we just -- we just didn't go back and make some of these
25 general findings that I have included in the Statement of

1 Reasons. And I think that was important to do so, so
2 we're just going to go back and make sure that we have
3 actual Board votes on those, so that it's reflective of
4 the Board's decision making.

5 The first item I have on the screen has to do
6 with the Air Quality Control Act's requirement that the
7 Board shall adopt a plan, including rules, to control
8 emissions of oxide of nitrogen, or NOx, and volatile
9 organic compounds, or VOCs, to provide for the attainment
10 and maintenance of the standards.

11 So, you all adopted the rules. We did not go
12 back and consider the "plan," as required by the Air
13 Quality Control Act. The Department proffered, during
14 their evidence, that their Ozone Path Forward, which was
15 their Exhibit 4 in testimony, and I believe the witness
16 proffering that was Mr. Baca, as their plan. So the Board
17 needs to make a finding whether or not to accept that as
18 the plan required to satisfy the statute. So, the
19 proposed language I have there is highlighted in green,
20 and you all can discuss that. And if that is acceptable
21 to you, someone can offer a motion to that effect.

22 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
23 Appreciate that.

24 Fellow Board members, do you have any questions?
25 Yes, Ms. Garcia.

1 BOARD MEMBER GARCIA: I don't have any questions.

2 At this point I would be ready to put forth a motion if
3 there's no other discussion. I'll wait and see.

4 CHAIRPERSON SUINA: Okay. Wonderful.

5 Board members, does anybody else have any
6 comments or discussion regarding this? All right. I
7 don't see any, looking here.

8 So, Member Garcia, I guess your offer is on the
9 table to make a motion, and I'd just maybe request that
10 you do.

11 BOARD MEMBER GARCIA: So I move that the Board
12 adopt the Ozone Path Forward as set forth in Exhibit 4, as
13 the plan required to satisfy 74-2-5 of the New Mexico Air
14 Quality Control Act.

15 CHAIRPERSON SUINA: Thank you, Member Garcia.

16 BOARD MEMBER HONKER: I'll second.

17 CHAIRPERSON SUINA: Thank you, Member Honker.

18 BOARD MEMBER BITZER: I would offer a friend
19 amendment if I could; Exhibit 4 amended. I don't think
20 she said "amended," as the plan required to satisfy the
21 mandatory statutory directive to the Board under Section
22 74-2-5 of the AQCA.

23 CHAIRPERSON SUINA: Thank you, Member Bitzer.

24 Is that all right with you, Member Garcia?

25 BOARD MEMBER GARCIA: Yes, absolutely. That's

1 great. Thank you.

2 CHAIRPERSON SUINA: Wonderful. Does your second
3 hold, Member Honker?

4 BOARD MEMBER HONKER: Yes. Yes, I amend my
5 second.

6 CHAIRPERSON SUINA: Thank you so much. With
7 that, if there is no further discussion, I'm looking at
8 our Board members.

9 Ms. Jones, would you mind doing a roll-call vote
10 on Member Garcia's?

11 ADMINISTRATOR JONES: Member Bitzer, how do you
12 vote?

13 BOARD MEMBER BITZER: I vote yes.

14 ADMINISTRATOR JONES: Member Cates?

15 BOARD MEMBER CATES: I vote yes.

16 ADMINISTRATOR JONES: Member Garcia?

17 BOARD MEMBER GARCIA: Yes.

18 ADMINISTRATOR JONES: Member Honker?

19 BOARD MEMBER HONKER: Yes.

20 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes.

22 ADMINISTRATOR JONES: Chair Suina?

23 CHAIRPERSON SUINA: Yes.

24 ADMINISTRATOR JONES: The motion passes.

25 CHAIRPERSON SUINA: Thank you, Ms. Jones.

1 And back to you, Ms. Soloria.

2 MS. SOLORIA: Thank you. Okay. So the next
3 piece to consider, the Department proposed a couple of
4 findings; the first is here in paragraph 99. And it has
5 to do with the modeling the Department conducted for the
6 Ozone Attainment Initiative. And they asked the Board to
7 find that the modeling conducted for the OAI provides a
8 reliable basis for the emission reductions strategy
9 statutory, such as proposed by Part 50, for reducing ozone
10 concentrations in New Mexico.

11 So I'll just mention that I did find this
12 language consistent with the Board's deliberations as a
13 whole, in the sense that, ultimately, you-all did adopt
14 Part 50. And, of course, you did discuss the Board's
15 evidence and found it in favor of supporting the adoption.
16 So I will just proffer that in consideration of adopting
17 this language.

18 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

19 And fellow Board members, do you have any
20 questions or comments regarding this? I don't see any.
21 Vice-Chair Trujillo-Davis.

22 VICE-CHAIR TRUJILLO-DAVIS: I just -- as a point
23 of clarification for Ms. Soloria, is that we -- this
24 statement would be consistent with just adopting the rule
25 that we did; is that correct?

1 MS. SOLORIA: Right. So -- so the history of
2 this provision is all of the parties offered their
3 proposed Statement of Reasons. This was in the
4 Department's kind of prefatory proposed statements of
5 reasons before they got into the support for every
6 line-by-line provision of the rule. And so I would
7 represent that they -- that their modeling was -- well,
8 thinking back to the hearing, they presented their
9 modeling as supporting the rule as a whole because they
10 had to show -- you know, they had to show that the rule
11 could reduce emissions in pursuit of the NAAQS.

12 So, yeah, this would be general to the rule.
13 It's subject -- you know, this portion can say what you
14 want it to say. This was -- this was proposed by the
15 Department, but as I said before, I do think that the
16 Board's deliberations as a whole, fairly reflected that
17 you gave due weight to the modeling performed by the
18 Department, in the sense that ultimately you accepted the
19 emission standards that they proposed.

20 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for
21 clarifying that for me.

22 MS. SOLORIA: I'm not sure if I did, but if you
23 have another question, I can take a stab at it.

24 VICE-CHAIR TRUJILLO-DAVIS: No, I think we're
25 good. Thank you.

1 CHAIRPERSON SUINA: Thank you, Vice-Chair
2 Trujillo-Davis.

3 Member Bitzer.

4 BOARD MEMBER BITZER: Counsel, do we want to do
5 this as one motion or two?

6 MS. SOLORIA: Well, we're only considering
7 paragraph 99 right now, so I would do it as one.

8 BOARD MEMBER BITZER: I'll take a stab at this if
9 we're ready for it.

10 CHAIRPERSON SUINA: Thank you, Member Bitzer.

11 BOARD MEMBER BITZER: I move that we find that
12 the modeling conducted for the OAI provides a reliable
13 basis for evaluating emission reductions strategies, such
14 as proposed Part 50, for reducing ozone concentrations in
15 New Mexico.

16 CHAIRPERSON SUINA: Thank you, Member Bitzer.

17 BOARD MEMBER HONKER: And I'll second.

18 HEARING OFFICER ORTH: Thank you, Member Honker.

19 Is there any further discussion? If not,
20 Ms. Jones, would you mind doing a roll-call vote for us on
21 this motion?

22 ADMINISTRATOR JONES: Yes, I will.

23 Member Bitzer, what is your vote?

24 BOARD MEMBER BITZER: I vote yes.

25 ADMINISTRATOR JONES: And Member Cates?

1 BOARD MEMBER CATES: Yes.

2 ADMINISTRATOR JONES: Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR JONES: Member Honker?

5 BOARD MEMBER HONKER: Yes.

6 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: Yes.

8 ADMINISTRATOR JONES: Thank you.

9 Chair Suina?

10 CHAIRPERSON SUINA: Yes.

11 ADMINISTRATOR JONES: The motion passes.

12 CHAIRPERSON SUINA: Thank you, Ms. Jones.

13 That takes us to number 100, and Ms. Soloria, do
14 you have anything to share with us on this one?

15 MS. SOLORIA: Yes. So, this statement that the
16 modeling demonstrates, the oil and gas sources in Chaves,
17 Doña Ana, Eddie, Lee, Rio Arriba, Sandoval, San Juan and
18 Valencia Counties are causing or contributing to ambient
19 ozone concentrations that exceed 95 percent of the NAAQS,
20 I would view this as a companion finding to the Board's
21 acceptance of the scope of the rule. So if you recall,
22 there was some back and forth between the parties
23 regarding monitors only being in certain counties. And
24 you recall that industry argued that because certain
25 counties didn't have the monitors showing exceedances,

1 that the rules shouldn't apply to those counties. And, of
2 course, the Department's counter-argument was that areas,
3 for purpose of considering attainment, aren't by county
4 line and there was a whole, you know, argument presented
5 by both sides.

6 Ultimately, the Board adopted the scope of the
7 rules proposed by the Department, which included these
8 counties. So I find that this particular statement
9 regarding the modeling is consistent with that, and I
10 would say is kind of a companion finding to the Board's
11 acceptance of the rules applying to those specific
12 counties.

13 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

14 Yes, Member Garcia.

15 BOARD MEMBER GARCIA: I'll go ahead and -- unless
16 there's any discussion, I'll go ahead and make a motion.

17 CHAIRPERSON SUINA: Wonderful.

18 BOARD MEMBER GARCIA: So I move that the Board
19 find that the modeling demonstrates that oil and gas
20 sources in Chaves, Doña Ana, Eddie, Lee, Rio Arriba,
21 Sandoval, San Juan and Valencia Counties in New Mexico are
22 causing or contributing to ambient ozone concentrations
23 that exceed 95 percent of the NAAQS.

24 BOARD MEMBER BITZER: I'll second that.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer.

1 I don't see any further discussion. Ms. Jones,
2 would you please take a roll-call vote for us.

3 ADMINISTRATOR JONES: Yes, Madam Chair.
4 Member Bitzer, how do you vote?

5 BOARD MEMBER BITZER: I vote yes.

6 ADMINISTRATOR JONES: Member Cates?

7 BOARD MEMBER CATES: Yes.

8 ADMINISTRATOR JONES: Member Garcia?

9 BOARD MEMBER GARCIA: Yes.

10 ADMINISTRATOR JONES: Member Honker?

11 BOARD MEMBER HONKER: I vote yes.

12 ADMINISTRATOR JONES: Thank you.

13 Vice-Chair Trujillo-Davis?

14 VICE-CHAIR TRUJILLO-DAVIS: Yes.

15 ADMINISTRATOR JONES: Chair Suina?

16 CHAIRPERSON SUINA: Yes.

17 ADMINISTRATOR JONES: The motion passes.

18 CHAIRPERSON SUINA: Thank you, Ms. Jones.

19 So, back to you, Ms. Soloria.

20 MS. SOLORIA: Okay. So this item is regarding
21 the industry's cost analysis that, again, was discussed at
22 the top of the hearing, way back when, sort of with the
23 first -- the first witnesses. And I recall the Department
24 framing the industry's cost analysis, of course, in their
25 opening statement. So this item may -- I think I would

1 encourage the Board maybe to have a little bit of
2 discussion on.

3 Essentially, in the Department's proposed
4 statement -- Statements of Reasons, they propose that the
5 Board find that the industry's cost analysis, which is
6 referred to as the JDA analysis here, to be given no
7 weight by the Board.

8 Looking back at your deliberations, I didn't feel
9 that that -- that the Board gave that cost analysis zero
10 weight. You all are welcome to have your own
11 recollection, and, of course, I would encourage any
12 discussion at this point because these are reopened
13 deliberations. So the competing -- I guess for this
14 portion, the competing versions of the language would be
15 that you gave the industry analysis -- the industry cost
16 analysis zero weight, or what I propose here, that you did
17 give it its due weight in consideration of the critiques
18 that the Department and other parties brought to bear on
19 that analysis. Or we could put some other language that
20 you all think is more appropriately reflective of how you
21 all weighed industry's cost analysis.

22 So I have these -- these two paragraphs are sort
23 of companion paragraphs with each other. And you're
24 welcome to review it. And like I said, if you don't feel
25 that it fairly accounts for how the Board considered that

1 analysis, then we can amend it.

2 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

3 Board members, do you have any comments or
4 questions regarding number 137? Yes, Vice-Chair
5 Trujillo-Davis.

6 VICE-CHAIR TRUJILLO-DAVIS: I guess I'll start us
7 off here. If I remember correctly, I feel like we did
8 discuss at length the different cost analyses presented by
9 both the Department and the JDA. I don't believe that we
10 disregarded any of them, so I feel like we did give them
11 their due weight in consideration.

12 Unless anybody else has any other thoughts on
13 that.

14 CHAIRPERSON SUINA: Thank you, Vice-Chair
15 Trujillo-Davis.

16 Yes, Member Honker.

17 BOARD MEMBER HONKER: Yeah, I agree with the
18 Vice-Chair. I remember there was a lot of discussion of
19 the JDA analysis. There was comments by the other
20 parties. I remember we, as Board members, had discussions
21 about that versus the other cost estimates, so I think the
22 language you've presented, Counselor, is accurate from my
23 perspective.

24 CHAIRPERSON SUINA: So, thank you, Member Honker.

25 Any other Board members have any comments or

1 input?

2 BOARD MEMBER CATES: Chair Suina. Chair Suina.

3 CHAIRPERSON SUINA: Yes, Member Cates.

4 BOARD MEMBER CATES: The choice of the word "due
5 weight" is perfect. It doesn't say we gave it too much
6 weight, it doesn't say we ignored it. You know, we gave
7 it due weight, so I like it as well.

8 CHAIRPERSON SUINA: Thank you, Member Cates.

9 All right. If there's no other comments, looking
10 to our Board, see if anybody wants to propose a motion.

11 BOARD MEMBER BITZER: I'll move that we gave the
12 JDA analysis its due weight in considering the economic
13 reasonableness of Part 50.

14 BOARD MEMBER GARCIA: I second that motion.

15 HEARING OFFICER ORTH: Okay. Thank you, Member
16 Bitzer, for your motion, and I think Member Garcia just
17 got in there for the second.

18 With that, if there's no further discussion,
19 Ms. Jones, would you please do a roll-call vote on Member
20 Bitzer's motion?

21 ADMINISTRATOR JONES: Well, Member Bitzer, how do
22 you vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: Member Cates?

25 BOARD MEMBER CATES: Yes.

1 ADMINISTRATOR JONES: Member Garcia?

2 Member Garcia, I didn't -- I didn't hear your
3 vote. I'm sorry.

4 BOARD MEMBER GARCIA: Yes. Can you hear me?

5 ADMINISTRATOR JONES: Yes, I can hear you.
6 Appreciate that.

7 Member Honker?

8 BOARD MEMBER HONKER: Yes.

9 ADMINISTRATOR JONES: Vice Chair Trujillo-Davis?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 ADMINISTRATOR JONES: Chair Suina?

12 CHAIRPERSON SUINA: Yes.

13 ADMINISTRATOR JONES: The motion passes.

14 CHAIRPERSON SUINA: Thank you, Ms. Jones.

15 With that, Ms. Soloria, we turn it back to you
16 for item 138.

17 MS. SOLORIA: This item is something we're going
18 to go see repeated a few times. The general notion that
19 the Board make a specific finding that certain costs were
20 reasonable and necessary to further the statutory purpose
21 of attaining and maintaining the ozone NAAQS in the areas
22 of the State specified in Part 50.

23 So, the Board presented that here, and I've put
24 it here kind of in the prefatory section of the Statement
25 of Reasons. Again, I think that following your finding

1 just now, that you gave due weight to opposing cost
2 analyses, that's it's reasonable that you adopt that you
3 found the Department's costs entailed by proposed Part 50,
4 as reasonable and necessary for the statutory purpose.

5 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

6 Members -- fellow Board members, do you have any
7 comments? Discussion?

8 Yes, Vice-Chair Trujillo-Davis.

9 VICE-CHAIR TRUJILLO-DAVIS: I will say that I did
10 not find the Department's costs reasonable; although, I
11 found them necessary. I didn't think that they used
12 quality data in determining their costs. That wouldn't
13 change my vote for an approval of this section, but just
14 thought I'd better say it.

15 CHAIRPERSON SUINA: Thank you, Vice-Chair
16 Trujillo-Davis.

17 Any other Board members have any comments or
18 discussion?

19 BOARD MEMBER GARCIA: Just a question. Is that
20 language right out of the act, Ms. Soloria?

21 MS. SOLORIA: It's not in the act. It is -- so
22 the economic reasonableness is a factor that the Board
23 should consider in adopting the whole rule. So this
24 doesn't track the act, but it does -- it's a finding
25 proposed by the Department that makes sense, in light of

1 the fact that you-all must consider economic
2 reasonableness in adopting these rules.

3 So there's no -- attaining and maintaining the
4 ozone NAAQS, that's from the Air Quality Control Act, but
5 this isn't -- this isn't pulled directly from the statute.

6 BOARD MEMBER GARCIA: Did we -- did we not vote
7 on the economic reasonableness during the other
8 deliberations?

9 MS. SOLORIA: Well, we did -- you did a couple of
10 things. One, at the end of the deliberations, the Board
11 found sort of a blanket finding, where that tracked the
12 factors of the statute, that you considered the economic
13 reasonableness, technical feasibility, the public
14 interest; those three sets of factors are laid out in the
15 Air Quality Control -- Air Quality Control Act.

16 So the Board found all of those favors -- all of
17 those factors weighed in favor of adopting the rule as a
18 whole. For purposes of this Statement of Reasons, there's
19 this -- this finding here, and the Department also
20 proposed for each specific section, that the same finding
21 be made. I would say that the fact that you-all
22 ultimately accepted each of those provisions, taking into
23 consideration economic reasonableness, which I think is
24 just reflected in the course of your deliberations,
25 you-all were discussing costs, cost benefit, throughout,

1 so I do think making this finding is consistent with what
2 your ultimate decision was, but this -- this is proposed
3 language. This is not -- you know, this was proposed by
4 the Department. You-all are able to justify your adoption
5 in any way you see fit, so -- but that's my take on it.
6 That the findings -- the finding that the Department's
7 proposed costs were reasonable, was sort of implicit in
8 the fact that you-all adopted the full rule provisions,
9 considering that you were required by the Act, to consider
10 economic reasonableness.

11 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

12 So, I think just so maybe I can get my head
13 around this one, we still can sort of look at the language
14 here, but it seems to me that we need to also tie it to
15 that reasonable -- excuse me -- the costs reasonable --
16 reasonableness -- I can't talk this morning. The
17 reasonable costs in some way related to the costs, in
18 terms of supporting some of our -- our -- our decisions.
19 Is that what I'm hearing, Ms. Soloria?

20 MS. SOLORIA: Right. And I guess I would say
21 that this language and, you know, that punch list I sent
22 all of you, where this finding is -- this specific finding
23 is made for each and every section, I would say it says
24 explicitly -- it says explicitly, the reason that you all
25 adopted, in the sense that -- I think you could fairly say

1 that if you had found that the costs were unreasonable and
2 unnecessary -- unnecessary, you wouldn't have adopted
3 those sections because there was a discussion and you
4 ultimately came to the conclusion that you should adopt
5 it.

6 So, that is my impression of your deliberations,
7 but, again, if you feel differently, it's your Statement
8 of Reasons. So we can amend it as -- as you see fit.

9 CHAIRPERSON SUINA: Thank you, Ms. Soloria. And
10 so I guess I just want to -- not to put you on the spot,
11 Vice-Chair Trujillo-Davis, I know you brought up some
12 concerns regarding the current language that we're looking
13 at right now. Do you, by chance, have any other
14 suggestions to address some of your thoughts you shared
15 with the Board earlier?

16 VICE-CHAIR TRUJILLO-DAVIS: I think that the
17 language is -- it should be adopted as it is. I think
18 those concerns that I had came out during our other
19 deliberations, and at this point we are kind of tying the
20 bow on this -- this particular rule. So I don't think
21 it's necessary to change the language, but I just wanted
22 to make -- for the record, that there were the costs that
23 the Department presented, I thought were underestimated.

24 Although, I do think that for the purposes of
25 this rule and for the reduction of the ozone and

1 maintaining those numbers in those counties, that they are
2 necessary, so I do suggest that we keep the language as it
3 is.

4 CHAIRPERSON SUINA: Okay. Thank you, Vice-Chair.
5 Is there any other discussion from the Board? If
6 not -- yes, Member Garcia.

7 BOARD MEMBER GARCIA: Yes, I'll go ahead and move
8 that the Board finds that the costs entailed by proposed
9 Part 50, as presented in the Department's testimony and
10 exhibits, are reasonable and necessary to further the
11 statutory purpose of attaining and maintaining the ozone
12 NAAQS in the areas of the State specified in Part 50.

13 CHAIRPERSON SUINA: Thank you, Ms. Garcia.

14 BOARD MEMBER HONKER: I'll second.

15 CHAIRPERSON SUINA: Thank you, Member Honker.

16 If there's no further discussion, Ms. Jones,
17 would you please do a roll-call vote for Member Garcia's
18 motion?

19 ADMINISTRATOR JONES: Member Bitzer, how do you
20 vote?

21 BOARD MEMBER BITZER: I vote yes.

22 ADMINISTRATOR JONES: Member Cates?

23 BOARD MEMBER CATES: Yes.

24 ADMINISTRATOR JONES: Member Garcia?

25 BOARD MEMBER GARCIA: Yes.

1 ADMINISTRATOR JONES: Member Honker?

2 BOARD MEMBER HONKER: Yes.

3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 ADMINISTRATOR JONES: Chair Suina?

6 CHAIRPERSON SUINA: Yes.

7 ADMINISTRATOR JONES: Madam Chair, the motion
8 passes.

9 CHAIRPERSON SUINA: Thank you, Ms. Jones.

10 All right. Ms. Soloria, back to you.

11 MS. SOLORIA: And since we've had that
12 discussion, I'm going to hop around. And as I mentioned
13 previously, the Department, in their proposed Statement of
14 Reasons, asked us to adopt that federal finding specific
15 to each section, so let me see if I can just -- I'll show
16 you an example.

17 So, here, estimated costs associated with Section
18 113, are reasonable and necessary to achieve the purpose
19 of the Air Quality Control Act. Let me show you a
20 different -- so, here, it's with regard to Section 121.
21 So, that language is found in each section, save 115,
22 because that was -- those were emission control -- sorry.

23 So, that language was for every section of the
24 rule where there would have been supporting costs
25 proffered by NMED. So my proposal was consistent with the

1 vote you-all just had, that we do a consolidated motion
2 adopting this language for each section that it was
3 proposed, and I would open that up for discussion.

4 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

5 Fellow Board members, do you have any comments,
6 discussion? Questions?

7 BOARD MEMBER CATES: Chair Suina?

8 CHAIRPERSON SUINA: Yes, Member Cates.

9 BOARD MEMBER CATES: Just one point in discussing
10 reasonableness and -- well, need. So the conversation is
11 tending toward reasonableness, and has glossed over the
12 necessary part of it -- the "necessary" word, so I just
13 want to point out that we're talking about both, to enact
14 this rule; does it require, you know, does it put us in
15 the position of requiring or expressing the need for, you
16 know, the cost associated with it. So that's it.

17 CHAIRPERSON SUINA: Thank you, Member Cates.
18 Appreciate that.

19 Any other discussion? Comments?

20 So, Ms. Soloria, are we looking for a motion for
21 all of these sections or how would you or --

22 MS. SOLORIA: Yes, Madam Chair. And I took the
23 liberty of putting one together, if the Board would
24 consider it. And the motion would be that the Board finds
25 that NMED's estimated costs associated with Sections 113,

1 114, and Sections 116 through 124, are reasonable and
2 necessary to achieve the purposes of Section 74-2-5 C of
3 the Air Quality Control Act.

4 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

5 BOARD MEMBER BITZER: I'll adopt that language as
6 offered by Counsel, as my motion.

7 HEARING OFFICER ORTH: Thank you, Member Bitzer.

8 BOARD MEMBER HONKER: I'll second.

9 CHAIRPERSON SUINA: Thank you, Member Honker.

10 If there's no further discussion, Ms. Jones,
11 would you please do a roll-call vote on Member Bitzer's
12 motion?

13 ADMINISTRATOR JONES: Member Bitzer, your vote,
14 please.

15 BOARD MEMBER BITZER: I vote yes.

16 ADMINISTRATOR JONES: Member Cates, how do you
17 vote?

18 BOARD MEMBER CATES: Yes.

19 ADMINISTRATOR JONES: Member Garcia?

20 BOARD MEMBER GARCIA: Yes.

21 ADMINISTRATOR JONES: Member Honker?

22 BOARD MEMBER HONKER: Yes.

23 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: Yes.

25 ADMINISTRATOR JONES: Chair Suina?

1 CHAIRPERSON SUINA: Yes.

2 ADMINISTRATOR JONES: The motion passes.

3 CHAIRPERSON SUINA: Thank you, Ms. Jones.

4 I'll turn it back to you, Ms. Soloria.

5 MS. SOLORIA: Okay. This is back -- these two
6 provisions are back in the definition section. If you-all
7 recall, we tried very hard to make sure that we went back
8 and adopted all of the definitions that we had tabled for
9 discussions of the related proposals.

10 The Hearing Officer caught that we had not gone
11 back to these technical terms, which is "flowback" and
12 "flowback vessels." You-all adopted Section 127, which
13 entailed these two terms, so this would be consistent with
14 that. And, again, this was more of just an oversight that
15 we didn't go back and adopt -- officially adopt these
16 definitions.

17 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

18 Yes, Vice-Chair Trujillo-Davis.

19 VICE-CHAIR TRUJILLO-DAVIS: I feel like I
20 remember we had a discussion on this. Did we just not
21 vote on it?

22 MS. SOLORIA: I believe that's the case because
23 you-all had a discussion of 127, and we just didn't go
24 back and formally adopt the specific definitions relevant
25 to that section.

1 Well, we did for other definitions, but these two
2 terms, we just didn't catch, so. And, again, I would
3 proffer that it sort of necessarily that -- it's necessary
4 that you would adopt these definitions because you adopted
5 Section 1237 where they are used.

6 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
7 Member Honker.

8 BOARD MEMBER HONKER: Yeah, I'll go ahead and
9 move that we adopt the definitions of "flowback" and
10 "flowback vessel" as proposed by CEP and Oxy USA, in
11 connection with their joint completions, recompletions
12 proposals set out and adopted in Section 127.

13 CHAIRPERSON SUINA: Thank you, Member Honker.

14 BOARD MEMBER BITZER: I'll second that.

15 CHAIRPERSON SUINA: Thank you, Member Bitzer.

16 Is there any discussion on this one?

17 If not, Ms. Jones, would you mind doing a
18 roll-call vote for Member Honker's motion.

19 ADMINISTRATOR JONES: Member Bitzer, how do you
20 vote?

21 BOARD MEMBER BITZER: I vote yes.

22 ADMINISTRATOR JONES: Member Cates?

23 BOARD MEMBER CATES: Yes.

24 ADMINISTRATOR JONES: Member Garcia?

25 BOARD MEMBER GARCIA: Yes.

1 ADMINISTRATOR JONES: Member Honker?

2 BOARD MEMBER HONKER: Yes.

3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 ADMINISTRATOR JONES: Chair Suina?

6 CHAIRPERSON SUINA: Yes.

7 ADMINISTRATOR JONES: The motion passes.

8 CHAIRPERSON SUINA: Thank you, Ms. Jones.

9 All right. Back to you, Ms. Soloria.

10 MS. SOLORIA: All right. Okay. So, this
11 particular provision, if you recall, a number of times
12 industry proposed that certain provisions and their rules
13 were more stringent than federal law, and for the sake of
14 addressing that argument, and, again, for the sake of
15 completeness, the Board made the finding required under
16 Section G of the Air Quality Control Act, that that
17 provision, to the extent it would be found more stringent
18 than federal law, is more protective of health and the
19 environment.

20 Again, going through compiling the Statement of
21 Reasons, there was a particular argument made by -- I
22 believe it was NMOGA -- that the requirement that a
23 professional engineer conduct the applicability
24 certification for the rule, that that was, in particular,
25 was more stringent than federal law. So, again, for the

1 sake of addressing that, and consistent with what the
2 Board did when the argument was presented, I just made the
3 finding here -- or proposed the finding here, that you
4 found that proposal to be more protective of public health
5 and the environment, based on substantial evidence.

6 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

7 Any discussion by the Board? Questions? Yes,
8 Member Garcia.

9 BOARD MEMBER GARCIA: Or was -- Member Bitzer had
10 his hand up. I'll let him go.

11 HEARING OFFICER ORTH: Okay. Thank you.
12 Member Bitzer.

13 BOARD MEMBER BITZER: I'm just looking on the
14 screen. I don't see anything in green.

15 MS. SOLORIA: That's because I forgot to put it
16 in green before, so it's in yellow now.

17 BOARD MEMBER BITZER: I thought maybe you ran out
18 of green highlighter -- digital green highlighter or
19 something else. I don't know.

20 While I've got the mic, I guess I'll go ahead and
21 make the motion. I move that to the extent the proposal
22 is more stringent than federal law, than requiring the
23 qualified professional engineer, the Board finds that
24 based on substantial evidence, that the proposed rule is
25 more protective of public health and the environment.

1 CHAIRPERSON SUINA: Thank you, Member Bitzer.

2 And I saw Vice-Chair Trujillo-Davis, your hand up.

3 VICE-CHAIR TRUJILLO-DAVIS: Yes. I just wanted
4 to ask a point of clarification. And I'm sorry I didn't
5 catch Member Bitzer before his motion there. I'm just
6 filing back through our many discussions in our
7 deliberations. So maybe one of the other Board members or
8 Ms. Soloria can clarify this for me, but I remember having
9 extensive discussions on this. I felt like we decided
10 that it was -- it could be more than just a professional
11 engineer. I could be in the wrong spot, too. So I'm
12 asking for a little -- a little help just remembering and
13 clarifying what we had discussed there.

14 MS. SOLORIA: Right. Well, this is the language
15 that I have scrolled up -- this is the language that
16 you-all ultimately adopted. So, you're correct, in that
17 there was extensive discussion about -- because there was
18 a proposal about allowing for a qualified "air quality
19 professional," but ultimately what's reflected here is
20 what you-all adopted.

21 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.
22 And I apologize, we had a lot of discussions there.

23 CHAIRPERSON SUINA: Thank you, Vice-Chair.

24 We do have a motion on the floor. And a second?

25 BOARD MEMBER GARCIA: Second.

1 CHAIRPERSON SUINA: Yes, Member Garcia, second.

2 BOARD MEMBER GARCIA: Second.

3 CHAIRPERSON SUINA: Wonderful.

4 If there's no further discussion or questions,
5 Ms. Jones, would you mind doing a roll-call vote on Member
6 Bitzer's motion and Member Garcia's second.

7 ADMINISTRATOR JONES: Member Bitzer, your vote?

8 BOARD MEMBER BITZER: I vote yes.

9 ADMINISTRATOR JONES: Member Cates?

10 BOARD MEMBER CATES: I vote yes.

11 ADMINISTRATOR JONES: Thank you, Member Cates.
12 Member Garcia?

13 BOARD MEMBER GARCIA: Yes.

14 ADMINISTRATOR JONES: Member Honker?

15 BOARD MEMBER HONKER: Yes.

16 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 ADMINISTRATOR JONES: Chair Suina?

19 CHAIRPERSON SUINA: Yes.

20 ADMINISTRATOR JONES: The motion passes.

21 CHAIRPERSON SUINA: Thank you.

22 And back to you, Ms. Soloria.

23 MS. SOLORIA: Okay. We have just a handful more,
24 I promise. Okay. So, this has to do with Section 116,
25 kind of thoroughly, as to subsection -- or Section 116.

1 Again, this is another finding proposed by the Department,
2 which is that the Board finds that NMED properly relied on
3 the model plants included in the 2016 CTG as the basis for
4 its cost effectiveness analysis for this section.

5 So, part 116, which, you know, was one of the
6 biggest frogs that the Board had to handle, on LDAR, the
7 Department proffered its cost estimate -- its cost -- or
8 I'm sorry -- its model plant -- and that's discussed --
9 again, this was all presented in their proposed Statement
10 of Reasons. And it was summarized by the Hearing Officer,
11 so you all considered this in the deliberations. There
12 were extensive comments on that by NMOGA, an argument
13 against using that data, again.

14 I would say that finding that the Board properly
15 relied on its model plants is consistent with the fact
16 that you ultimately adopted Part 116. But, again, this is
17 a specific finding that the Board didn't really explicitly
18 address during its deliberation, so this is proposed
19 language reflecting that decision.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

21 Fellow Board member, is there any discussion,
22 questions or comments? No?

23 Yes, Member Garcia.

24 BOARD MEMBER GARCIA: I'll go ahead and move that
25 the Board find that the NMED properly relied on the model

1 plants, included in the 2016 CTG as the basis for its
2 cost-effectiveness analysis for this section.

3 CHAIRPERSON SUINA: Thank you, Member Garcia.

4 BOARD MEMBER HONKER: I'll second.

5 CHAIRPERSON SUINA: Thank you, Member Honker.

6 With that, if there's no further discussion,
7 Ms. Jones, would you please do a roll-call vote on Member
8 Garcia's motion?

9 ADMINISTRATOR JONES: Member Bitzer, how do you
10 vote?

11 BOARD MEMBER BITZER: I vote yes.

12 ADMINISTRATOR JONES: Member Cates, how do you
13 vote?

14 BOARD MEMBER CATES: Yes.

15 ADMINISTRATOR JONES: Member Garcia?

16 BOARD MEMBER GARCIA: Yes.

17 ADMINISTRATOR JONES: And Member Honker?

18 BOARD MEMBER HONKER: Yes.

19 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

20 VICE-CHAIR TRUJILLO-DAVIS: Yes.

21 ADMINISTRATOR JONES: Chair Suina?

22 CHAIRPERSON SUINA: Yes.

23 ADMINISTRATOR JONES: The motion passes.

24 CHAIRPERSON SUINA: Thank you, Ms. Jones.

25 All right. Ms. Soloria.

1 MS. SOLORIA: Okay. All right. So this is,
2 again, a related finding which had to do with the
3 competing critiques of using that 2016 model plan for the
4 costs in the 2016 CTG here. And so, here is the proposed
5 language, which is the specific finding.

6 This is in light of NMOGA's comments that -- up
7 here, the language -- it's here, comments submitted to the
8 EPA on the draft CTG by the API. So, again, this is a
9 specific finding that the Department has asked for
10 regarding how you could -- how you considered that
11 critique by NMOGA.

12 So, again, this is subject to any revision. I
13 will represent this is -- I didn't make any changes of
14 this language. This was proposed by the Department in
15 their proposed Statement of Reasons.

16 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

17 Any comments, questions, discussion from the
18 Board?

19 If not, is there a move toward a motion from
20 fellow Board members?

21 BOARD MEMBER CATES: Well, Chair Suina, I could
22 do one.

23 CHAIRPERSON SUINA: Okay. Member Cates.

24 BOARD MEMBER CATES: I move that the Board finds
25 that it's beyond the scope of this rulemaking to reassess

1 the EPA's response to these particular API comments on the
2 2016 CTG, in the absence of any additional information
3 from API or NMOGA, relative to those original comments,
4 and EPA's response, and NMED's Rebuttal Exhibit 1, page
5 63. And further, that the Board find that NMED's
6 estimated costs associated with Section 20.2.50.116 are
7 reasonable and necessary to achieve the purpose of Section
8 74-2-5 C of the AQCA.

9 BOARD MEMBER BITZER: I'll second that.

10 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
11 your second.

12 If there's no other discussion, looking to the
13 Board here, Ms. Jones, would you please do a roll-call
14 vote for us.

15 ADMINISTRATOR JONES: Member Bitzer, how do you
16 vote?

17 BOARD MEMBER BITZER: I vote yes.

18 ADMINISTRATOR JONES: And Member Cates?

19 BOARD MEMBER CATES: Yes.

20 ADMINISTRATOR JONES: And Member Garcia?

21 BOARD MEMBER GARCIA: Yes.

22 ADMINISTRATOR JONES: Member Honker?

23 BOARD MEMBER HONKER: Yes.

24 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Yes.

1 ADMINISTRATOR JONES: Chair Suina?

2 CHAIRPERSON SUINA: Yes.

3 ADMINISTRATOR JONES: Motion passes.

4 CHAIRPERSON SUINA: Thank you, Ms. Jones.

5 Back to you, Ms. Soloria.

6 MS. SOLORIA: Okay. Okay. So this one is just
7 a -- after our deliberations, the Department -- so the
8 Board adopted this highlighted paragraph here, which was
9 proposed by Oxy as a clarification change; stating that
10 alternative monitoring -- monitoring plans may utilize
11 alternative monitoring methods. The Board accepted that
12 as paragraph A.

13 Subsequent to the deliberations, the Department,
14 with the approval of those proposing parties, suggested
15 that we go ahead and move instead of having a new
16 paragraph A, we would just move it to paragraph D. And
17 actually, let me just pull that up real quick.

18 This is purely a stylistic and drafting
19 clarification. It makes the rule more consistent and I'll
20 just show you what I'm talking about.

21 CHAIRPERSON SUINA: Yes, Ms. Soloria.

22 Board members, is there any comments?

23 MS. SOLORIA: I'm just trying to think of how to
24 show this. So, this is the change: it's just the
25 Department brought up if the rest of Subparagraph 1 has to

1 do with the technicalities of the monitoring plan -- it's
2 like kind of an administrative thing. So it made it less
3 awkward to put it here in the prefatory paragraph. And
4 the parties agreed to that, so it's really just a
5 stylistic drafting clarification for purposes of
6 subparagraph D.

7 So this is where you had it, where you accepted
8 it, and it's moved here. (Indicating.)

9 BOARD MEMBER GARCIA: Is there any way that you
10 could make that screen just a little bit bigger?

11 MS. SOLORIA: Yes. Is that better?

12 BOARD MEMBER GARCIA: Yes, thank you.

13 So it was turned into subpart A?

14 MS. SOLORIA: Yes. Yes, so the Board accepted it
15 as a new paragraph A, but if you look, so paragraph (i),
16 the little letters, talk about compliance. Right? So
17 timing, administrative, and the notion that an alternative
18 monitoring plan may utilize alternative monitoring
19 methods, that was a general concession the Department made
20 at the request of Oxy and CEP. It doesn't change the
21 substance of it; it's just to put it here in paragraph D.

22 And that was requested by the Department; one,
23 they didn't have to put in this new paragraph at A, and it
24 keeps -- it keeps paragraph (i) a little bit more
25 consistent as to the substance. So, and they reached out

1 to CEP and Oxy, and those proposing parties are fine with
2 it.

3 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

4 BOARD MEMBER HONKER: So, do we needed to make a
5 motion on that, or is that just letting us know?

6 MS. SOLORIA: You can go ahead and take an action
7 on it because it is -- it is now a change from what you
8 voted on during deliberations. And also, they would make
9 this change in actually how this provision is drafted.
10 So, again, I have taken the liberty of putting something
11 together, if the Board would consider that motion.

12 CHAIRPERSON SUINA: Thank you, Ms. Soloria. Can
13 you share that?

14 MS. SOLORIA: Sure. The motion would be that the
15 Board find -- oops, I'm reading the wrong one.

16 The motion would be that the Board revise the
17 prior accepted revision at Section 116, subsection D.
18 (1)(a), by moving the proposal by CEP and Oxy to Section
19 116 paragraph D., for reasons offered by CEP and Oxy, and
20 for clarity and to keep paragraph 1 consistent, as
21 requested by NMED, and agreed to by the proposing parties.

22 BOARD MEMBER BITZER: I would adopt Counsel's
23 proposed language as my motion.

24 CHAIRPERSON SUINA: Thank you, Member Bitzer.

25 BOARD MEMBER HONKER: And I'll second that.

1 CHAIRPERSON SUINA: Thank you, Member Honker.
2 Ms. Jones, would you mind doing a roll-call vote?
3 ADMINISTRATOR JONES: Member Bitzer, your vote?
4 BOARD MEMBER BITZER: I vote yes.
5 ADMINISTRATOR JONES: Member Cates?
6 BOARD MEMBER CATES: Yes. Yes.
7 ADMINISTRATOR JONES: Member Garcia?
8 BOARD MEMBER GARCIA: Yes.
9 ADMINISTRATOR JONES: Member Honker?
10 BOARD MEMBER HONKER: Yes.
11 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?
12 VICE-CHAIR TRUJILLO-DAVIS: Yes.
13 ADMINISTRATOR JONES: Chair Suina?
14 CHAIRPERSON SUINA: Yes.
15 ADMINISTRATOR JONES: The motion passes.
16 CHAIRPERSON SUINA: Thank you, Ms. Jones.
17 And Ms. Soloria, back to you.
18 MS. SOLORIA: Just two more. Okay. So, this was
19 again, just one of those catches we made while we were
20 drafting the Statement of Reasons, that if you recall,
21 when the Board explicitly rejected a party's proposal, we
22 noted that in the record. And this was an instance where
23 NMOGA had proposed -- this is Section 120 -- that
24 hydrocarbon liquid transfers at existing gathering and
25 boosting stations without any controlled storage vessels,

1 be made subject to a compliance schedule, and the
2 different provision of the rule, which is Section 123.

3 So, the Board didn't make a finding rejecting --
4 rejecting that. I would say finding that that proposal
5 was not supported by the evidence is consistent with
6 your -- with the Board's ultimate acceptance of Paragraph
7 A. here.

8 So that, what you ultimately accepted was the two
9 years' compliance part or compliance requirement, where
10 NMOGA was arguing for an alternative compliance time
11 frame. So, again, for the sake of completeness, I would
12 suggest that the Board go ahead and make that finding;
13 that you rejected their proposal, consistent with your
14 adoption of the language at Subparagraph A.

15 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

16 Fellow Board members, do you have any questions,
17 comments? If not --

18 BOARD MEMBER HONKER: Yeah, I'm still a little
19 foggy on what NMOGA's proposal was, that the -- was it a
20 different schedule? I'm just trying to get that straight
21 in my mind.

22 MS. SOLORIA: Right. I will -- let me pull up
23 the argument, for reference. I'm searching. I'm trying
24 to find the reference in the record, but --
25 (unintelligible and/or inaudible.)

1 So the argument, it's actually, they wanted to
2 have the schedule -- the compliance schedule at 123, which
3 was --

4 CHAIRPERSON SUINA: Excuse me real quick.

5 Court reporter, are you having a little trouble
6 hearing Ms. Soloria?

7 COURT REPORTER: Yes.

8 CHAIRPERSON SUINA: Okay. Ms. Soloria, I know
9 when you moved your head around, it kind of got muffled
10 there.

11 MS. SOLORIA: I apologize, Ms. DuBois. When I
12 share a screen, I can't see everyone so I couldn't catch
13 your difficulties, so I will try to do better.

14 So, NMOGA had proposed the hydrocarbon liquid at
15 gathering and boosting stations on the schedule that was
16 proposed at 123 B. (1), which had -- had different year
17 compliance schedules for storage vessels. So they wanted
18 to make it consistent with that, because they disagreed
19 with the two-year compliance.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

21 Does that help, Member Honker?

22 BOARD MEMBER HONKER: Yes. Yeah, that's what I
23 was wanting to know, so I'm good.

24 HEARING OFFICER ORTH: Wonderful.

25 Any other questions or comments? Yes, Member

1 Garcia?

2 BOARD MEMBER GARCIA: Okay. So I would go ahead
3 and move that the Board reject NMOGA's proposal that
4 hydrocarbon liquid transfers at existing gathering and
5 boosting stations, including associated tank batteries
6 without any controlled storage vessels, be made subject to
7 the requirements of Section 120 on the schedule in
8 20.2.50.123 B.(1), as not supported by the evidence.

9 MS. SOLORIA: And I will -- I will pause you
10 right there. I just want to -- Madam Hearing Officer, are
11 you on? I don't want to put her on the spot, but I'm now
12 catching this may have been...

13 HEARING OFFICER ORTH: Yes.

14 MS. SOLORIA: I'm looking at the actual rule here
15 with this -- the one which was accepted, so I'm wondering
16 if I mistakenly had a holdover of this reasoning. Seeing
17 as that was actually in the rule. And I'm seeing that
18 now.

19 HEARING OFFICER ORTH: Okay.

20 MS. SOLORIA: I have the wrong reference in the
21 attachment to this section, so I'm trying to find it.

22 BOARD MEMBER GARCIA: I sort of have a vague
23 memory that we voted on this, rejecting it already, but
24 maybe I'm mixing it up with something else.

25 MS. SOLORIA: Again, I just want to make sure

1 that this is reflective of what we actually did.

2 CHAIRPERSON SUINA: Yes.

3 MS. SOLORIA: 126.

4 CHAIRPERSON SUINA: Madam Hearing Officer, do you
5 have any thoughts on this one? Just making sure we
6 support our Board and Ms. Soloria.

7 HEARING OFFICER ORTH: All right. I'm looking
8 through my papers.

9 CHAIRPERSON SUINA: Okay.

10 MS. SOLORIA: I just want to look.

11 CHAIRPERSON SUINA: I just want to make sure we
12 get all of the I's dotted and T's crossed.

13 MS. SOLORIA: I'm wondering if this is -- and I'm
14 speaking out loud to Madam Hearing Officer. If this was
15 an accepted change that I may have mistakenly noticed --
16 noticed -- noted was rejected, because it's in the
17 language of the rule.

18 HEARING OFFICER ORTH: I think you're correct
19 about that, Ms. Soloria.

20 MS. SOLORIA: Okay. So we don't need to vote on
21 this.

22 BOARD MEMBER GARCIA: I withdraw my motion.

23 CHAIRPERSON SUINA: Thank you, Member Garcia.

24 MS. SOLORIA: I don't know why -- I don't know
25 why that was in there. I honestly don't know why that was

1 in there. Let me just -- there we go.

2 CHAIRPERSON SUINA: Are we good, Ms. Soloria?

3 MS. SOLORIA: Yes. Yes. And I apologize for
4 that. I overstepped. Sorry.

5 HEARING OFFICER ORTH: Ms. Soloria, I think the
6 confusion was maybe the Board had rejected a NMOGA change
7 in 120 B., and somehow that made its way up to 120 A.
8 That's my best guess.

9 MS. SOLORIA: Okay. And we do have that noted
10 here. Okay. Thank you. Thank you, Madam Hearing
11 Officer. And I apologize for putting you on the spot
12 there, but we don't have to address that.

13 CHAIRPERSON SUINA: Okay.

14 MS. SOLORIA: Okay. So it's the final item.
15 Okay. This is -- again, this is the final cost item. And
16 I put -- I didn't include this in the consolidated motion
17 because the language proposed here was slightly different,
18 which is that the Board found the costs associated with
19 Section 126 are reasonable and that the requirements of
20 that Section help achieve important emission reductions,
21 while continuing to encourage the use of produced water
22 instead of freshwater resources throughout the industry.

23 So this -- this finding was just a little bit
24 more specific to the Section itself. And so, it was
25 proposed by the Department, so I left that separate for

1 you-all to consider adoption of that provision.

2 BOARD MEMBER GARCIA: What page is that?

3 MS. SOLORIA: This is page 275, Member Garcia.

4 CHAIRPERSON SUINA: So, is there any question or
5 discussion on this?

6 Yes, Member Honker.

7 BOARD MEMBER HONKER: I'll go ahead and make a
8 motion that we find the costs associated with Section 126
9 are reasonable and the requirements of Section 126 help
10 achieve important emissions reductions while continuing to
11 encourage the use of produced water instead of freshwater
12 resources throughout the industry.

13 BOARD MEMBER BITZER: I'll second that.

14 CHAIRPERSON SUINA: Thank you, Member Honker and
15 Member Bitzer.

16 If there's no further discussion, Ms. Jones,
17 would you please do a roll-call vote on Member Honker's
18 motion?

19 ADMINISTRATOR JONES: Member Bitzer, how do you
20 vote?

21 BOARD MEMBER BITZER: I'll vote yes.

22 ADMINISTRATOR JONES: Member Cates?

23 BOARD MEMBER CATES: Yes. Excuse me. Yes.

24 ADMINISTRATOR JONES: Member Garcia?

25 BOARD MEMBER GARCIA: Yes.

1 ADMINISTRATOR JONES: Member Honker?

2 BOARD MEMBER HONKER: Yes.

3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 ADMINISTRATOR JONES: Thank you.

6 Chair Suina?

7 CHAIRPERSON SUINA: Yes.

8 ADMINISTRATOR JONES: The motion passes.

9 CHAIRPERSON SUINA: Thank you, Ms. Jones.

10 All right. Back to you, Ms. Soloria, to wrap it
11 up. I think that was it, right?

12 MS. SOLORIA: That was it.

13 I would open the floor to any other discussions
14 the Board wants to have in terms of deliberations that
15 they feel they need to express or voice.

16 If not, we would close out our reopened
17 deliberations and move on to the next item of the agenda,
18 which would be adoption of the Statement of Reasons.

19 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

20 Fellow Board members, is there any more
21 discussion since we do have this very defined opening here
22 for deliberations and discussions?

23 If not, Ms. Soloria, do we have to make a formal
24 motion to close deliberations again?

25 MS. SOLORIA: No. We can just -- the

1 deliberations are closed, and you-all can move on to -- I
2 don't know what the reorder number is, but it would be EIB
3 21-27, the discussion of possible action on the Statement
4 of Reasons.

5 So this would be the point where you actually
6 vote whether or not to adopt the Statement of Reasons and
7 Final Order and delegate the signature to the Chair.

8 CHAIRPERSON SUINA: Thank you so much,
9 Ms. Soloria.

10 So, if there's no further discussions, just one
11 more time on the deliberations. If there isn't, we will
12 close deliberations and move on to the next agenda item
13 that Ms. Soloria referenced, which is EIB 21-27. And this
14 is the discussion and possible action on the Statement of
15 Reasons.

16 With that, it looks like Ms. Soloria, we'll turn
17 it over to you and see how to proceed on this -- this next
18 agenda item.

19 MS. SOLORIA: All right. Thank you, Madam Chair.
20 So, with the close of the deliberations, you-all have
21 tackled all of the findings and decisions you had to make.
22 So the Statement of Reasons that you would be adopting
23 would include all of the language that you-all accepted
24 and, of course, the rest of the Statement of Reasons that
25 you reviewed prior to today.

1 And you-all can have a discussion whether or not
2 to accept that, if you -- if you'd like to see some
3 changes, you can note those as well. And then the Board
4 would take a final vote to kind of sign, seal and deliver
5 this thing. So, yeah, that's where we are.

6 HEARING OFFICER ORTH: Thank you, Ms. Soloria.

7 And so, fellow Board members, I know this has
8 been a long process, and I know for NMED and the parties,
9 years' long process -- multiple years.

10 And so, I'm just looking to you-all and seeing
11 what you're feeling right now and how we want to proceed
12 on the Statement of Reasons, and this next step, as we've
13 gone through. And I know the Statement of Reasons was
14 provided to us prior to the meeting and, hopefully, the
15 Board has been able to review some of that information and
16 the materials that Ms. Soloria has put together for us.

17 Personally -- well, I'll leave it to the Board
18 here and see what your thoughts are before sharing any of
19 mine.

20 Yes, Member Garcia.

21 BOARD MEMBER GARCIA: I would like to commend our
22 Counsel for doing a great job on the Statement of Reasons
23 and Final Order. I know it was a big job, a very
24 complicated rule. Appreciate all of her work on this.
25 And I'm ready to make a motion, unless there's any other

1 discussion.

2 CHAIRPERSON SUINA: If there's no other
3 discussion, before you make a motion, Member Garcia, you
4 took the words out of my mouth. And I just want to say,
5 thank you, Ms. Soloria. I had time to look through what
6 you provided the Board, and it seemed very clear. I love
7 Excel spreadsheets, so it was my kind of formatting.
8 Thank you so much.

9 MS. SOLORIA: Madam Chair, I would just be remiss
10 if I didn't recognize Hearing Officer Orth, who offered
11 tremendous help preparing the Statement of Reasons, so I
12 did want to mention that as well.

13 CHAIRPERSON SUINA: Thank you, Ms. Soloria, and
14 of course, Ms. Orth, Madam Hearing Officer. I know you've
15 helped us through this process, and so I echo
16 Ms. Soloria's words here, and thank you as well.

17 With that, I guess, Member Garcia -- and
18 Ms. Soloria, is there -- just again, just to making sure
19 we dot our I's and cross our T's, is there a motion that
20 we need to consider the language specific in a motion?

21 MS. SOLORIA: I would -- I would just say, Madam
22 Chair, that the Board move to adopt the Statement of
23 Reasons for EIB 21-27 and ask the Chair to sign it on
24 behalf of the Board.

25 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

1 Yes, Member Garcia.

2 BOARD MEMBER GARCIA: That would be my motion.

3 HEARING OFFICER ORTH: Thank you, Member Garcia.

4 BOARD MEMBER HONKER: I'll add my thanks to my
5 fellow Board members and for Ms. Soloria and the Hearing
6 Officer. And I second Member Garcia's motion.

7 CHAIRPERSON SUINA: Thank you, Member Honker.

8 Fellow Board Members, if there's -- I'm looking
9 around here -- any other further discussion.

10 One thing I just wanted to also get on the
11 record, just after reviewing the document for the
12 Statement of Reasons, going back through my notes, and so
13 forth, in addition to clarifying some of those items that
14 we clarified earlier, I just want to note that for the
15 record, that, you know, it did track. And I did also do
16 that -- that review as well. So I feel fairly confident
17 as well in the Statement of Reasons. I just wanted to put
18 that on record.

19 MS. SOLORIA: I'll offer a friendly, suggested
20 amendment to my proposed motion, that also includes the
21 Final Order, which is appended today on the end of the
22 Statement of Reasons, actually, adopting the rule.

23 CHAIRPERSON SUINA: Yes, Member Garcia.

24 BOARD MEMBER GARCIA: So I'll go ahead and
25 restate the motion would be in the matter of EIB 21-27,

1 that we adopt the Statement of Reasons and Final Order as
2 proposed, and that the Chair sign the Statement of Reasons
3 and Final Order.

4 BOARD MEMBER HONKER: I'll second that.

5 CHAIRPERSON SUINA: Thank you, Member Garcia and
6 Member Honker.

7 With that, Ms. Jones, I don't see any other
8 discussion from our Board members. Ms. Jones, would you
9 mind doing a roll-call vote for Member Garcia's motion and
10 Member Honker's second?

11 ADMINISTRATOR JONES: Member Bitzer, how do you
12 vote?

13 BOARD MEMBER BITZER: I vote yes.

14 ADMINISTRATOR JONES: Member Cates, how do you
15 vote?

16 BOARD MEMBER CATES: Yes.

17 ADMINISTRATOR JONES: Member Garcia?

18 BOARD MEMBER GARCIA: Yes.

19 ADMINISTRATOR JONES: Member Honker?

20 BOARD MEMBER HONKER: I vote yes.

21 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes.

23 ADMINISTRATOR JONES: Chair Suina?

24 CHAIRPERSON SUINA: Yes.

25 ADMINISTRATOR JONES: The motion passes.

1 CHAIRPERSON SUINA: Thank you, Ms. Jones.

2 Appreciate that.

3 I did also want to thank Ms. Jones as well, with
4 this process, now that we're wrapping up EIB 21-27, for
5 your support through the deliberations, in organizing all
6 of the logistics, and checking that the thing on the roof
7 didn't fall on us during deliberations and everything. So
8 thank you as well, Ms. Jones, and your colleague Madai as
9 well.

10 With that, I guess we'll continue on, if that's
11 it. Ms. Soloria, do you have anything to add?

12 MS. SOLORIA: That's it, Madam Chair. And I
13 would just mention that the court reporter, Ms. DuBois, is
14 excused. And thank you so much for your support during
15 this process.

16 CHAIRPERSON SUINA: Yes, thank you, Ms. DuBois,
17 as well, and your colleagues through this process as well.

18 (Deliberations adjourned on May 27, 2022, at
19 10:27 a.m.)

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STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 21-27 (R)

In the Matter of:

PROPOSED NEW REGULATION
20.2.50 NMAC - Oil and Gas Sector
Ozone Precursor Pollutants

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on May 27, 2022, the Reopened Deliberation
Hearing of the New Mexico Environmental Improvement Board,
was taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by the
rules) any of the parties or attorneys in this matter, and
that I have no interest whatsoever in the final
disposition of this matter.



THERESA E. DUBOIS, RPR
New Mexico CCR #29
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