

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF:

**PROPOSED NEW REGULATION,
20.2.50 NMAC – OIL AND GAS
SECTOR –OZONE PRECURSOR POLLUTANTS**

No. EIB 21-27 (R)

**REBUTTAL TESTIMONY OF DAVID R. BROWN,
DJR OPERATING, LLC, ON BEHALF OF THE INDEPENDENT PETROLEUM
ASSOCIATION OF NEW MEXICO**

September 7, 2021

IPANM EXHIBIT 11

**Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)**

I. WITNESS BACKGROUND AND QUALIFICATIONS

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. David R. Brown. My business address is DJR Operating, LLC, 1 Road 3263, Aztec, New Mexico 87410.

Q. ON WHOSE BEHALF ARE YOU SUBMITTING REBUTTAL TESTIMONY?

A. The Independent Petroleum Association of New Mexico (“IPANM”).

Q. HAVE YOU PROVIDED PREVIOUS TESTIMONY IN THIS CASE?

A. Yes, I provided direct testimony, which includes: (i) a summary of my qualifications and experience; (ii) a discussion of IPANM’s evaluation of and proposed changes to the regulations proposed by the New Mexico Environment Department (“NMED”), Oil and Gas Sector—Ozone Precursor Pollutants, 20.2.50 NMAC (the “Regulations”); and (iii) the technical bases for certain related changes to the Regulations proposed in IPANM’s Notice of Intent to Present Technical Testimony (“IPANM’s Notice of Intent”). My direct testimony was submitted with IPANM’s Notice of Intent, filed on July 28, 2021.

II. PURPOSE OF TESTIMONY

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?

A. The purpose of my rebuttal testimony is to respond to the direct testimony of NMED and other parties to this proceeding relating to the following proposed amendments to 20.2.50 NMAC:

- 20.2.50.112 NMAC –General Provisions.
- 20.2.50.113 NMAC –Engines and Turbines;
- 20.2.50.114 NMAC –Compressor Seals;
- 20.2.50.115 NMAC –Control Devices;

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- 1 • 20.2.50.117 NMAC –Natural Gas Well Liquid Unloading;
- 2 • 20.2.50.122 NMAC –Pneumatic Controllers and Pumps, and;
- 3 • 20.2.50.123 NMAC –Storage Vessels

4 More specifically, the purpose of my rebuttal testimony is to re-affirm IPANM’s position
5 in opposition to NMED’s proposed requirement in 20.2.50.112(A)(2)-(10) and (B)(3)
6 NMAC mandating that owners or operators of sources subject to the proposed requirements
7 for Equipment Monitoring Tag (“EMT”) to physically tag each unit and specify the format
8 of each tag. My testimony also relates to EMT requirements throughout the proposed Part
9 50, including the following Sections: 20.2.50.113(B)(9), (C)(7), (D)(1)(a), and (D)(2)(a);
10 20.2.50.114(B)(5); 20.2.50.115(B)(3)-(4), (C)(2)(d), (D)(2)(c), and (E)(2)(b);
11 20.2.50.117(B)(4) and (C)(3); 20.2.50.118(B)(3)(d); 20.2.50.119(B)(4) and (C)(4);
12 20.2.50.122(B)(6), (C)(4), and (D)(6)-(7), and; 20.2.50.123(B)(8) and (C)(4), to require the
13 compliance database report in 20.250.112.A.(6) and(7) NMAC and to require an operator
14 to retain a third party to verify data retained by an operator (audit).

15 **Q. HAVE YOU REVIEWED THE NOTICE OF INTENT TO PRESENT TECHNICAL**
16 **TESTIMONY (“NOI”) AND EXHIBITS FILED BY NMED, THE COMMERCIAL**
17 **DISPOSAL GROUP (“CDG”), THE GAS COMPRESSOR ASSOCIATION**
18 **(“GCA”), OXY USA, INC., THE NEW MEXICO OIL AND GAS ASSOCIATION**
19 **(“NMOGA”), AND WILDEARTH GUARDIANS (“WEG”) RELATED TO THE**
20 **AMENDMENTS ADDRESSED IN YOUR DIRECT AND REBUTTAL**
21 **TESTIMONY?**

22 **A. Yes.**

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III. NMED PROPOSALS RELATED TO GENERAL PROVISIONS SECTION
(20.2.50.112 NMAC)

Q. HAVE YOU REVIEWED NMED'S PROPOSED REGULATIONS RELATED TO
THE GENERAL PROVISIONS SECTION?

A. Yes.

Q. PLEASE SUMMARIZE NMED'S CURRENT PROPOSALS AS IT RELATES TO
REQUIREMENTS FOR EQUIPMENT MONITORING TAG.

A. The NMED's direct testimony provides an overall summary of the proposed rule as written.

Q. BASED ON YOUR REVIEW OF KUEHN'S & PALMER'S TESTIMONY, WHAT
DO YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO
REQUIRE OWNERS OR OPERATORS OF SOURCES SUBJECT TO THE
PROPOSED REGULATIONS TO PHYSICALLY TAG EACH UNIT WITH AN
EQUIPMENT MONITORING TAG ("EMT")?

A. According to direct testimony of their witnesses, NMED believes EMT requirements will significantly improve the Department's ability to receive, review and analyze compliance monitoring for subject sources. In addition, NMED believes that these requirements will help improve and increase the public's confidence that required compliance monitoring is occurring as required because contemporaneous scanning and recordkeeping during the monitoring and testing events ensures that owners and operators are fulfilling the monitoring requirements of the rule (Page 26, lines 10-15).

Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S
PROPOSED CHANGES?

A. Yes.

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1 **Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?**

2 A. It is unknown whether the EMT will accomplish what the NMED anticipates regarding
3 regulatory compliance. If EMT remains part of the final rule, it will come at a significant
4 cost and a complex logistical regime for owner/operators to implement and maintain. In
5 addition, there is no evidence presented that implementing EMT will have any effect on
6 reducing NOx and VOC emissions which form ozone.

7 **Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING**
8 **DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON**
9 **RECOMMENDED PROPOSED REVISIONS TO 20.2.50.112 NMAC THAT WERE**
10 **STATED IN YOUR DIRECT TESTIMONY?**

11 A. No.

12 **Q. PLEASE EXPLAIN.**

13 A. As previously stated, my direct testimony dealt with the high costs to comply with Section
14 20.2.50.112.A, Paragraphs (3) through (9) and paragraph (10). The NMED witnesses
15 provided no information on the costs for owner and operators to comply with these
16 provisions, nor was there any information provided regarding how EMT reduces precursors
17 of ozone.

18 **Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE PROPOSED**
19 **EMT REQUIREMENT?**

20 A. Yes.

21 **Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.**

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1 A. The testimony of Ms. Marquez expressed serious concerns with the EMT requirement and
2 recommended deletion of Section 20.2.50.112.A(3)-(10) which includes the EMT
3 requirement. Mr. Copeland cited the extremely expensive implementation without any
4 emissions benefit and requested the EMT requirements be stricken from the proposed rule.
5 Mr. Holderman suggested that the EMT rule allow for alternative methods of monitoring
6 instead of requiring operators to scan every piece of equipment. Mr. Smitherman
7 mentioned the complexity and that the new requirement would be staggering with no
8 achievable emission reductions. The testimony of Mr. Nichols did not mention or suggest
9 any changes to the EMT requirement.

10 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
11 **IMPROVEMENT BOARD WITH RESPECT TO THE EMT REQUIREMENTS**
12 **FOUND AT 20.2.50.112.A(6) & (7).**

13 A. I recommend that EMT requirement be rejected and that all references to EMT in the
14 proposal be deleted from the final rule.

15 **Q. PLEASE SUMMARIZE NMED'S CURRENT PROPOSALS AS IT RELATES TO**
16 **REQUIREMENTS FOR THE COMPLIANCE DATABASE REPORT.**

17 A. The NMED's direct testimony provides an overall summary of the proposed rule as written,
18 which allows the Department to contemporaneously track compliance event for each
19 subject source and requirements for timely uploads of monitoring or testing event data and
20 maintaining those records for 5 years.

21 **Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO**
22 **YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO**

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1 REQUIRE OWNERS OR OPERATORS OF SOURCES SUBJECT TO THE
2 PROPOSED REGULATIONS TO REQUIRE OWNERS OR OPERATORS
3 RETAIN A THIRD PARTY AT THE OWN EXPENSE TO VERIFY DATA OR
4 INFORMATION COLLECTED, REPORTED OR RECORDED REQUIRED BY
5 THIS PART?

6 A. The witnesses mention generating a compliance database report from the owner or operator
7 in a format determined by the Department. According to direct testimony of their
8 witnesses, NMED believes that the EMT requirements, which apparently include the
9 compliance database report (CDR), strengthens the overall rule; saves limited staffing
10 resources; improves the public's confidence in compliance with the rule; will result in
11 overall better compliance; and provides owners and operators with targeted
12 recommendations on how to improve any compliance issues identified in the report.

13 **Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S**
14 **PROPOSED CHANGES?**

15 A. Yes.

16 **Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?**

17 A. As noted in my direct testimony, the costs to implement a computer-based record system
18 to compile the information will be cost prohibitive for small operators or owners. Based
19 upon our inquiries to company to develop the system necessary to achieve what the
20 proposed rule requires is between \$95,000 and \$145,000 plus another \$10,000 to annually
21 maintain the system. In addition, after the system is developed the owner and operator
22 must populate it with the data required to be input into the system. This will likely require

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1 contractors since most small companies do not have in-house staff capable of developing
2 a data base system. While companies could merely populate the CDR without the use of
3 an automated system, the amount of staff time could rival that of an automated system
4 depending upon what constitutes the CDR. Either option will present a formidable task for
5 small companies, in terms of costs, logistics and the time of employees.

6 **Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE PROPOSED**
7 **CDR REQUIREMENT?**

8 A. Yes.

9 **Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.**

10 A. The testimony of Ms. Marquez and Mr. Copeland suggested elimination of the EMT
11 requirement. Mr. Holderman expressed concerns about the EMT and CDR requirements
12 but suggested the rule be modified to allow the use of any data base that can produce a
13 report providing NMED reasonable compliance assurance. Mr. Smitherman expressed
14 concerns as well and noted that careful planning is needed in developing what is needed
15 for the system which should include input from the regulated community. The testimony
16 of Mr. Nichols did not mention or suggest any changes to the EMT requirement.

17 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
18 **IMPROVEMENT BOARD WITH RESPECT TO THE CDR REQUIREMENT?**

19 A. The CDR requirement should be eliminated from the final rule.

20 **Q. PLEASE SUMMARIZE NMED'S CURRENT PROPOSALS AS IT RELATES TO**
21 **REQUIREMENTS FOR THIRD PARTY AUDIT IN 20.2.50.112.A(10) NMAC.**

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1 A. The proposed rule allows the Department to request an owner or operator retain a third
2 party, at the owner and operator's expense, to verify information collected, reported, or
3 recorded as required in this rule. The third party would be required to make
4 recommendations to correct or improve the collocation of data or information. The owner
5 or operators then must submit a report of the verification and recommendations made by
6 the third party to the department.

7 **Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO**
8 **YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO**
9 **REQUIRE OWNERS OR OPERATORS OF SOURCES SUBJECT TO THE**
10 **PROPOSED REGULATIONS TO REQUIRE OWNERS OR OPERATORS**
11 **RETAIN A THIRD PARTY AT THE OWN EXPENSE TO VERIFY DATA OR**
12 **INFORMATION COLLECTED, REPORTED OR RECORDED REQUIRED BY**
13 **THIS PART?**

14 A. NMED's direct testimony provides an overall summary of the proposed rule as written.
15 According to direct testimony of their witnesses, they believe including the third-party
16 audits, are part of an effort that strengthens the overall rule; saves limited staffing
17 resources; improves the public's confidence in compliance with the rule; will result in
18 overall better compliance; and provides owners and operators with targeted
19 recommendations on how to improve any compliance issues identified in the report.

20 **Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S**
21 **PROPOSED CHANGES?**

22 A. Yes.

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Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?

A. As noted in my direct testimony, the cost to conduct a third-party audit is another cost which must be incurred by owners or operators, including small businesses, to comply with the proposed rule. The cost of audits is not limited to the costs of the third party; companies must devote a significant amount of staff time to arrange and accompany the third party for field tours to inspect sites and equipment, provide files and make copies, answer questions, and respond to findings. These audits are very resource intensive, both for costs and logistics. What is not known is whether NMED could request these be done for an entire company's assets in New Mexico or would be on a site-by site or permit-by-permit basis. We provided costs of applying the requirement on a site-by-site basis; \$5000 for a single vertical well and \$7,600 for a multiple well horizontal pad. Instead of a third-party contractor, the alternative should be to simply request the operator provide required records of concern to the NMED staff as requested. The additional costs of a third-party audit are costly and is difficult to demonstrate reductions in emissions of ozone precursors.

Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE PROPOSED THIRD-PARTY AUDIT?

A. Yes.

Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.

A. Ms. Marquez and Mr. Copeland requested deletion of Section 20.2.50.112.A(3)-(10). Mr. Copeland stated these provisions are unclear, extremely onerous, and extremely expensive to implement which includes the third-party audit. Mr. Smitherman of NMOGA expressed concerns with the third-party audit and recommended a process whereby an operator could

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1 challenge the findings and recommendations thus providing for fair protection for all
2 parties. Mr. Holderman expressed concerns about the third-party audit and recommended
3 it be modified to limit the number of times NMED can require an operator to retain a third
4 party to verify data to once a year. The testimony of Mr. Nichols did not mention the third-
5 party audit provision.

6 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
7 **IMPROVEMENT BOARD WITH RESPECT TO THE THIRD-PARTY AUDIT**
8 **REQUIREMENTS?**

9 A. The third-party audit provision should be eliminated.

10 **IV. NMED'S PROPOSED EMT REQUIREMENT VIS-À-VIS ENGINES AND**
11 **TURBINES SECTION (20.2.50.113 NMAC)**
12

13 **Q. HAVE YOU REVIEWED NMED'S PROPOSED REGULATIONS RELATED TO**
14 **THE ENGINES AND TURBINES SECTION?**

15 A. Yes.

16 **Q. PLEASE SUMMARIZE NMED'S PROPOSED REGULATIONS FOR THE**
17 **ENGINES AND TURBINES SECTION AS THEY RELATE TO THE EMT**
18 **REQUIREMENT.**

19 A. The testimony indicates that EMT will be required for engines and turbines.

20 **Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO**
21 **YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO THE**
22 **ENGINE AND TURBINES SECTION AS IT RELATES TO THE EMT**
23 **REQUIREMENT?**

24 A. No basis is provided other than stating "install EMT on all units subject to this subpart."

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Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S PROPOSED CHANGES?

A. Yes.

Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?

A. While NMED justified EMT as being advantageous to the Department, it did not address costs or logistic implications to owners and operators, nor was there any information provided regarding how EMT reduces precursors of ozone.

Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.113 NMAC CONTAINED IN YOUR DIRECT TESTIMONY?

A. No.

Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON RECOMMENDED PROPOSED REVISIONS TO 20.2.50.113 NMAC THAT WERE STATED IN YOUR DIRECT TESTIMONY?

A. No.

Q. PLEASE EXPLAIN.

A. Since the NMED testimony did not include any cost data relative to the regulated community, the need to change my testimony is not warranted.

Q. PLEASE SUMMARIZE NMED'S CURRENT PROPOSALS AS IT RELATES TO REQUIREMENTS FOR EQUIPMENT MONITORING TAG.

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1 A. The NMED's direct testimony provides an overall summary of the proposed rule as
2 written.

3 **Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO**
4 **YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO**
5 **REQUIRE OWNERS OR OPERATORS OF SOURCES SUBJECT TO THE**
6 **PROPOSED REGULATIONS TO PHYSICALLY TAG EACH UNIT WITH AN**
7 **EQUIPMENT MONITORING TAG ("EMT")?**

8 A. According to their direct testimony, they believe EMT requirements will significantly
9 improve the Department's ability to receive, review and analyze compliance monitoring
10 for subject sources. In addition, they believe that these requirements will help improve and
11 increase the public's confidence that required compliance monitoring, is in fact occurring
12 as required because contemporaneous scanning and recordkeeping during the monitoring
13 and testing events ensures that owners and operators are fulfilling the monitoring
14 requirements of the rule (Page 26, lines 10-15).

15 **Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S**
16 **PROPOSED CHANGES?**

17 A. Yes.

18 **Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?**

19 A. It is unclear to me that the EMT will accomplish what the NMED anticipates regarding
20 regulatory compliance. If EMT remains part of the final rule, it will come at a significant
21 cost and a complex logistical regime for owner/operators to implement and maintain. In

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1 addition, there is no evidence presented that implementing EMT will have any effect on
2 reducing the emissions of precursors which form ozone.

3 **Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY**
4 **NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE**
5 **STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.113 NMAC**
6 **CONTAINED IN YOUR DIRECT TESTIMONY?**

7 A. No.

8 **Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING**
9 **DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON**
10 **RECOMMENDED PROPOSED REVISIONS TO 20.2.50.113 NMAC THAT WERE**
11 **STATED IN YOUR DIRECT TESTIMONY?**

12 A. No.

13 **Q. PLEASE EXPLAIN.**

14 A. As previously stated, my testimony dealt with the high costs to comply with 20.2.50.112,
15 Paragraphs (3) through (9) and paragraph (10). The NMED witnesses provided no
16 information on the costs for owner and operators to comply with these provisions, nor was
17 there any information provided regarding how EMT reduces precursors of ozone.

18 **Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE PROPOSED**
19 **EMT REQUIREMENT?**

20 A. Yes.

21 **Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.**

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1 A. The testimony of Ms. Marquez, Mr. Copeland, Mr. Holderman, and Mr. Smitherman all
2 expressed concerns and opposition to the proposed EMT requirements. The testimony of
3 Mr. Nichols only addressed monitoring, but there were no specific references to EMT.

4 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
5 **IMPROVEMENT BOARD WITH RESPECT TO THE EMT REQUIREMENTS?**

6 A. I recommend that all references to the EMT requirement in the proposal be deleted from
7 the final rule.

8 **V. NMED'S PROPOSED EMT REQUIREMENT VIS-À-VIS COMPRESSOR SEALS**
9 **SECTION (20.2.50.114 NMAC)**

10
11 **Q. HAVE YOU REVIEWED NMED'S PROPOSED REGULATIONS RELATED TO**
12 **THE COMPRESSOR SEALS SECTION?**

13 A. Yes.

14 **Q. PLEASE SUMMARIZE NMED'S PROPOSED REGULATIONS FOR THE**
15 **COMPRESSOR AND SEALS SECTION AS THEY RELATE TO THE EMT**
16 **REQUIREMENT.**

17 A. Section 20.2.50.114(B)(5) requires that the owner or operator of a centrifugal or
18 reciprocating compressor "install an EMT on the compressor in accordance with
19 20.2.50.112."

20 **Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY**
21 **NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE**
22 **STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.114 NMAC**
23 **CONTAINED IN YOUR DIRECT TESTIMONY?**

24 A. No.

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Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S PROPOSED CHANGES?

A. Yes, the basic premise of the regulation was discussed.

Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?

A. The Department did not consider the costs to industry to comply with the requirements in 20.2.50.114, nor was there any information provided regarding how EMT reduces precursors of ozone.

Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO THE COMPRESSOR SEALS SECTION AS IT RELATES TO THE EMT REQUIREMENT?

A. That compressor seals is a component which can be an emission source and should be included as part of the EMT program.

Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON RECOMMENDED PROPOSED REVISIONS TO 20.2.50.114 NMAC THAT WERE STATED IN YOUR DIRECT TESTIMONY?

A. No.

Q. PLEASE EXPLAIN.

A. As discussed earlier, I believe that the cost to meet the EMT requirements is substantial and is not warranted. The NMED witnesses did not provide any cost information related to the cost to industry to comply with EMT.

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1 **Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE**
2 **COMPRESSOR SEALS SECTION ON THE BASIS OF THE EMT**
3 **REQUIREMENT IN 20.2.50.114 NMAC?**

4 A. Yes.

5 **Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.**

6 A. Kinder Morgan, Gas Compressor Association, the Commercial Disposal Group and the
7 New Mexico Oil and Gas Association all proposed removal of the requirement from the
8 proposed rule.

9 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
10 **IMPROVEMENT BOARD WITH RESPECT TO THE COMPRESSOR SEALS**
11 **SECTION AS IT RELATES TO THE EMT REQUIREMENT?**

12 A. I recommend that all references to the EMT requirement in the proposal should be deleted
13 from the final rule.

14 **VI. NMED'S PROPOSED EMT REQUIREMENT VIS-À-VIS CONTROL DEVICES**
15 **SECTION (20.2.50.115 NMAC)**
16

17 **Q. HAVE YOU REVIEWED NMED'S PROPOSED REGULATIONS RELATED TO**
18 **THE CONTROL DEVICES SECTION?**

19 A. Yes.

20 **Q. PLEASE SUMMARIZE NMED'S PROPOSED REGULATIONS FOR THE**
21 **CONTROL DEVICES SECTION AS THEY RELATE TO THE EMT**
22 **REQUIREMENT.**

23 A. NMED's proposal extends the EMT requirements to enclosed combustion devices and
24 thermal oxidizers (20.2.50.115(D)) and Vapor Recovery Units (20.2.50.115(E)).

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Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.115 NMAC CONTAINED IN YOUR DIRECT TESTIMONY?

A. No.

Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S PROPOSED CHANGES?

A. Yes.

Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?

A. The cost of compliance does not warrant the application of EMT to this equipment.

Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO THE CONTROL DEVICES SECTION AS IT RELATES TO THE EMT REQUIREMENT?

A. NMED is proposing the requirement to reduce its cost of enforcing compliance with the regulation.

Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON RECOMMENDED PROPOSED REVISIONS TO 20.2.50.115 NMAC THAT WERE STATED IN YOUR DIRECT TESTIMONY?

A. No.

Q. PLEASE EXPLAIN.

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1 A. The NMED witnesses did not provide an analysis on the cost to industry to comply with
2 EMT and did not provide any information regarding how requiring EMT results in a
3 reduction of ozone precursors.

4 **Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE CONTROL**
5 **DEVICES SECTION ON THE BASIS OF THE EMT REQUIREMENT IN**
6 **20.2.50.115 NMAC?**

7 A. Yes.

8 **Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.**

9 A. Yes. Kinder Morgan, Gas Compressor Association, the Commercial Disposal Group and
10 the New Mexico Oil and Gas Association all requested removal of the requirement from
11 the proposed rule.

12 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
13 **IMPROVEMENT BOARD WITH RESPECT TO THE COMPRESSOR SEALS**
14 **SECTION AS IT RELATES TO THE EMT REQUIREMENT?**

15 A. All references to the EMT requirement in the proposal should be deleted from the final
16 rule.

17 **VII. NMED'S PROPOSED EMT REQUIREMENT VIS-À-VIS NATURAL GAS WELL**
18 **LIQUID UNLOADING SECTION (20.2.50.117 NMAC)**

19
20 **Q. HAVE YOU REVIEWED NMED'S PROPOSED REGULATIONS RELATED TO**
21 **THE NATURAL GAS WELL LIQUID UNLOADING SECTION?**

22 A. Yes.

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**Q. PLEASE SUMMARIZE NMED'S PROPOSED REGULATIONS FOR THE
NATURAL GAS WELL LIQUID UNLOADING SECTION AS THEY RELATE TO
THE EMT REQUIREMENT.**

A. The proposed rule requires EMT to be installed on natural gas well liquid unloading equipment.

**Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY
NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE
STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.117 NMAC
CONTAINED IN YOUR DIRECT TESTIMONY?**

A. No.

**Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S
PROPOSED CHANGES?**

A. Yes.

Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?

A. While NMED proposed the application of EMT to liquids unloading equipment to reduce its costs to monitor compliance, the direct testimony did not explain how NMED considered the costs for owners or operators to install EMT or demonstrate that implementation of EMT will reduce the emissions or precursors that contribute to form ozone.

**Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO
YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO THE**

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**LIQUID UNLOADING SECTION AS IT RELATES TO THE EMT
REQUIREMENT?**

A. NMED's basis for the proposal is to assure that monitoring data related to liquids unloading will be retained and available for review.

**Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING
DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON
RECOMMENDED PROPOSED REVISIONS TO 20.2.50.117 NMAC THAT WERE
STATED IN YOUR DIRECT TESTIMONY?**

A. No.

Q. PLEASE EXPLAIN.

A. The NMED witnesses did not provide evidence on the cost to industry to comply with EMT nor or explain how the EMT requirement reduces precursors of ozone.

**Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE NATURAL
GAS WELL LIQUID UNLOADING SECTION ON THE BASIS OF THE EMT
REQUIREMENT IN 20.2.50.117 NMAC?**

A. Yes.

Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.

A. Yes. Kinder Morgan, Gas Compressor Association, the Commercial Disposal Group and the New Mexico Oil and Gas Association all requested removal of the requirement from the proposed rule.

**Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL
IMPROVEMENT BOARD WITH RESPECT TO THE NATURAL GAS WELL**

**Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)**

**LIQUID UNLOADING SECTION AS IT RELATES TO THE EMT
REQUIREMENT?**

A. I recommend that all references to the EMT requirement in the proposal be deleted from the final rule.

**VIII. NMED'S PROPOSED EMT REQUIREMENT VIS-À-VIS HEATERS SECTION
(20.2.50.119 NMAC)**

**Q. HAVE YOU REVIEWED NMED'S PROPOSED REGULATIONS RELATED TO
THE HEATERS SECTION?**

A. Yes.

**Q. PLEASE SUMMARIZE NMED'S PROPOSED REGULATIONS FOR THE
HEATERS SECTION AS THEY RELATE TO THE EMT REQUIREMENT.**

A. EMT is required to be install on heaters greater than 10 MMBtu/hr.

**Q. BASED ON YOUR REVIEW OF KUEHN & PALMER'S TESTIMONY, WHAT DO
YOU UNDERSTAND TO BE THE BASIS FOR NMED'S PROPOSAL TO THE
HEATERS SECTION AS IT RELATES TO THE EMT REQUIREMENT?**

A. Heaters greater in size than 10 MMBtu/hr are an emission source that should be subject to EMT.

**Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASES FOR NMED'S
PROPOSED CHANGES?**

A. Yes.

Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?

A. Larger size rated heaters are subject to EMT, but it is not clear what monitoring requirements the NMED is requiring be included with EMT.

Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)

1 **Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY**
2 **NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE**
3 **STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.119 NMAC**
4 **CONTAINED IN YOUR DIRECT TESTIMONY?**

5 A. No.

6 **Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING**
7 **DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON**
8 **RECOMMENDED PROPOSED REVISIONS TO 20.2.50.119 NMAC THAT WERE**
9 **STATED IN YOUR DIRECT TESTIMONY?**

10 A. No.

11 **Q. PLEASE EXPLAIN.**

12 A. The NMED did not address the costs to install EMT, which will be significant for
13 owner/operator or demonstrate that requiring EMT will reduce the emissions of ozone
14 precursors that contribute to form ozone.

15 **Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE HEATERS**
16 **SECTION ON THE BASIS OF THE EMT REQUIREMENT IN 20.2.50.111 NMAC?**

17 A. Yes.

18 **Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.**

19 A. Yes. Kinder Morgan, Gas Compressor Association, the Commercial Disposal Group and
20 the New Mexico Oil and Gas Association all requested removal of the requirement from
21 the proposed rule.

Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)

1 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
2 **IMPROVEMENT BOARD WITH RESPECT TO THE HEATERS SECTION AS IT**
3 **RELATES TO THE EMT REQUIREMENT?**

4 **A. I recommend that all references to the EMT requirement in the proposal be deleted from**
5 **the final rule.**

6 **IX. NMED’S PROPOSED EMT REQUIREMENT VIS-À-VIS PNEUMATIC**
7 **CONTROLLERS AND PUMPS SECTION (20.2.50.122 NMAC)**
8

9 **Q. HAVE YOU REVIEWED NMED’S PROPOSED REGULATIONS RELATED TO**
10 **THE PNEUMATIC CONTROLLERS AND PUMP SECTION?**

11 **A. Yes.**

12 **Q. PLEASE SUMMARIZE NMED’S PROPOSED REGULATIONS FOR THE**
13 **PNEUMATIC CONTROLLERS AND PUMP SECTION AS THEY RELATE TO**
14 **THE EMT REQUIREMENT.**

15 **A. The proposal requires that an EMT be affixed to equipment subject to this rule and that the**
16 **owner or operator “scan the EMT” prior to a monitoring, inspection, maintenance, or repair**
17 **event.**

18 **Q. BASED ON YOUR REVIEW OF KUEHN & PALMER’S TESTIMONY, WHAT DO**
19 **YOU UNDERSTAND TO BE THE BASIS FOR NMED’S PROPOSAL TO THE**
20 **PNEUMATIC CONTROLLERS AND PUMPS SECTION AS IT RELATES TO**
21 **THE EMT REQUIREMENT?**

22 **A. NMED’s basis for the EMT requirement is to assure operational data, control device data**
23 **and any records involving certification that control emissions is infeasible, are properly**
24 **recorded and maintained.**

Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)

1 **Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASIS FOR NMED'S**
2 **PROPOSED CHANGES?**

3 A. Yes.

4 **Q. WHAT IS YOUR ANALYSIS OF NMED'S BASIS FOR ITS POSITIONS?**

5 A. The NMED EMT requirement for pneumatic controllers is not cost effective and will not
6 result in lower emissions of the precursors of ozone.

7 **Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY**
8 **NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE**
9 **STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.119 NMAC**
10 **CONTAINED IN YOUR DIRECT TESTIMONY?**

11 A. No.

12 **Q. BASED ON YOUR REVIEW OF NMED'S PROPOSALS AND SUPPORTING**
13 **DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON**
14 **RECOMMENDED PROPOSED REVISIONS TO 20.2.50.119 NMAC THAT WERE**
15 **STATED IN YOUR DIRECT TESTIMONY?**

16 A. No.

17 **Q. PLEASE EXPLAIN.**

18 A. The NMED witnesses did not provide any information on the cost to industry to comply
19 with EMT or demonstrate that EMT will reduce the emissions of precursors that contribute
20 to form ozone.

**Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)**

**1 Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE PNEUMATIC
2 CONTROLLERS AND PUMPS SECTION ON THE BASIS OF THE EMT
3 REQUIREMENT IN 20.2.50.119 NMAC?**

4 A. Yes.

5 Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.

6 A. Yes. Kinder Morgan, Gas Compressor Association, the Commercial Disposal Group and
7 the New Mexico Oil and Gas Association all requested removal of the requirement from
8 the proposed rule.

**9 Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL
10 IMPROVEMENT BOARD WITH RESPECT TO THE PNEUMATIC
11 CONTROLLERS AND PUMPS SECTION AS IT RELATES TO THE EMT
12 REQUIREMENT?**

13 A. I recommend that all references to the EMT requirement in the proposal be deleted from
14 the final rule.

**15 X. NMED'S PROPOSED EMT REQUIREMENT VIS-À-VIS STORAGE VESSELS
16 SECTION (20.2.50.123 NMAC)**

**17
18 Q. HAVE YOU REVIEWED NMED'S PROPOSED REGULATIONS RELATED TO
19 THE STORAGE VESSELS SECTION?**

20 A. Yes,

**21 Q. PLEASE SUMMARIZE NMED'S PROPOSED REGULATIONS FOR THE
22 STORAGE VESSELS SECTION AS THEY RELATE TO THE EMT
23 REQUIREMENT.**

24 A. The owner or operator of a new or existing storage vessel is required to install EMT.

Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)

1 **Q. BASED ON YOUR REVIEW OF KUEHN & PALMER’S TESTIMONY, WHAT DO**
2 **YOU UNDERSTAND TO BE THE BASIS FOR NMED’S PROPOSAL TO THE**
3 **STORAGE VESSELS SECTION AS IT RELATES TO THE EMT**
4 **REQUIREMENT?**

5 A. The EMT requirement will allow NMED to better address emissions from storage vessels.

6 **Q. DID YOUR DIRECT TESTIMONY ADDRESS THE BASES FOR NMED’S**
7 **PROPOSED CHANGES?**

8 A. Yes.

9 **Q. WHAT IS YOUR ANALYSIS OF NMED’S BASIS FOR ITS POSITIONS?**

10 A. I believe that requiring EMT is not cost effective and has not been demonstrated to lower
11 precursors of ozone.

12 **Q. DID THE ANALYSIS IN PRE-FILED DIRECT TESTIMONY PROVIDED BY**
13 **NMED WITNESSES KUEHN & PALMER CAUSE YOU TO RECONSIDER THE**
14 **STATEMENTS AND PROPOSED REVISIONS TO 20.2.50.123 NMAC**
15 **CONTAINED IN YOUR DIRECT TESTIMONY?**

16 A. No.

17 **Q. BASED ON YOUR REVIEW OF NMED’S PROPOSALS AND SUPPORTING**
18 **DIRECT TESTIMONIES, ARE YOU CHANGING YOUR POSITION ON**
19 **RECOMMENDED PROPOSED REVISIONS TO 20.2.50.123 NMAC THAT WERE**
20 **STATED IN YOUR DIRECT TESTIMONY?**

21 A. No.

22 **Q. PLEASE EXPLAIN.**

Rebuttal Testimony of David R. Brown
No. EIB 21-27 (R)

1 A. The NMED witnesses did not provide information on the cost to industry to comply with
2 EMT or how EMT reduces precursors of ozone.

3 **Q. DID ANY OTHER PARTY PROPOSE MODIFICATIONS TO THE STORAGE**
4 **AND VESSELS SECTION ON THE BASIS OF THE EMT REQUIREMENT IN**
5 **20.2.50.123 NMAC?**

6 A. Yes.

7 **Q. PLEASE SUMMARIZE THOSE PROPOSED CHANGES.**

8 A. Yes. Kinder Morgan, Gas Compressor Association, the Commercial Disposal Group and
9 the New Mexico Oil and Gas Association all requested removal of the requirement from
10 the proposed rule.

11 **Q. WHAT IS YOUR RECOMMENDATION TO THE ENVIRONMENTAL**
12 **IMPROVEMENT BOARD WITH RESPECT TO THE STORAGE VESSELS**
13 **SECTION AS IT RELATES TO THE EMT REQUIREMENT?**

14 A. I recommend that all references to the EMT requirement in the proposal should be
15 deleted from the final rule.

16 **XI. CONCLUSION**

17 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

18 A. Yes.