

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 20th day of
September, 2021, this matter came on for hearing before
FELICIA ORTH, Hearing Officer, virtually through Cisco
Webex Meetings video conferencing, commencing at 9:00 a.m.

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1 HEARING OFFICER ORTH: Okay. Good morning. My
2 name is Felicia Orth; I'm the Hearing Officer appointed by
3 the Environmental Improvement Board to conduct a hearing
4 in this matter. It's a Petition for Rulemaking docketed
5 by the Board Administrator and as EIB 21-27, related to
6 air pollutants, which are ozone precursors. The hearing
7 will be conducted in accordance with the Board's
8 rulemaking procedures, which you can find in Section
9 20.1.1 of the New Mexico Administrative Code.

10 We have Board members present, so let me
11 introduce them before I go any further. Member Suina: Is
12 there. Good morning, Madam Chair.

13 CHAIRPERSON SUINA: Good morning.

14 HEARING OFFICER ORTH: We have Vice Chair Davis
15 you see on the screen. We have -- do we have Member Cates
16 BOARD MEMBER CATES: Here, yes.

17 HEARING OFFICER ORTH: Yes. Good morning, Member
18 Cates.

19 BOARD MEMBER CATES: Thank you.

20 HEARING OFFICER ORTH: Member Bitzer, I think was
21 just speaking with us. There's Member Bitzer waving.
22 Member Duval, I know is with us. Member Duval. Member
23 Garcia , there you are. Good morning. And Member Honker,
24 I know you're on.

25 BOARD MEMBER HONKER: Good morning.

1 HEARING OFFICER ORTH: Good morning. We also
2 have the Board Administrator, whom you will hear me
3 referring to quite a bit. There, she's waving. Her name
4 is Pamela Jones and she will be a primary contact for a
5 lot of you in a couple of different ways I'll mention
6 shortly. And we have Board Counsel Karla Soloria.

7 MS. SOLORIA: Good morning.

8 HEARING OFFICER ORTH: Good morning. All right.
9 We also have -- we have a number of parties in this
10 matter; about a dozen, and many, many lawyers representing
11 those parties. I'll ask for appearances in a little bit.
12 I need to make some comments first about the case, the
13 virtual platform we're on, and our process.

14 So all documents in this case, including the
15 rulemaking petition, entries of appearance, direct and
16 rebuttal testimony, exhibits, motions, public comment
17 received at least as of this morning, all of those
18 documents can be found on the EIB webpage and in
19 particular on the page that is titled Docketed Matters.

20 As additional pleadings are filed or comments
21 submitted, that will also be posted. The Board will be
22 hearing a lot of evidence and argument on this petition
23 and no decision will be made any time soon. We expect the
24 evidentiary hearing to last two weeks. Hoping to end on
25 October 1st. And there will be a multiweek post-hearing

1 process following the close of the record.

2 If you are curious about where we are in the
3 process and it's unclear from the webpage, please reach
4 out to the Board's Administrator, Pamela Jones, whose
5 contact information is on the web page. The hearing is
6 structured to provide both for -- let's see. Member
7 Cates, please mute yourself.

8 The hearing is structured to provide for both
9 technical testimony and nontechnical public comment every
10 day. There are currently 29 opportunities to offer public
11 comment at 9 a.m., except today, 1:00 p.m. and 5 p.m. each
12 day of the hearing. If you would like to identify a day
13 and time during which I can call on you to offer public
14 comment, please send an email to Pam Jones and let her
15 know when you'd like to speak. Public comment can only be
16 offered once, so please collect your thoughts before you
17 begin, and is limited to five minutes. In the event the
18 statements you would like to share with the Board would
19 exceed five minutes, please put those statements in
20 writing. There are no page limits on written public
21 comment, and the Board will consider all of it in its
22 deliberations. Written public comment must be received
23 before we adjourn the hearing; again, likely on October
24 1st. So please, please get your written public comments
25 in before then.

1 In addition to nontechnical public comment, we
2 have, I believe it's 59 technical witnesses being
3 presented by the parties. And the parties' representatives
4 have generally agreed that the Board would find it most
5 helpful to hear as much as practicable, that testimony by
6 topic. Now, that won't be possible completely; that is to
7 say based on witness availability, for example, and other
8 factors, but a lot of the testimony in this matter will
9 come in by topic, meaning we won't hear from each party
10 all at once in order.

11 It remains one transcript. That entire
12 transcript will be considered and obviously in the
13 post-hearing process, the parties will be able to make
14 their arguments and lay out their evidence anywhere from
15 that -- from that transcript.

16 Speaking of the transcript, our court reporter
17 today is Theresa DuBois. Because the transcript is the
18 official record of this proceeding, it is important that
19 she be able to hear everyone. And she has been invited to
20 speak up at any time in the event she is struggling to
21 hear someone, and we may have to ask you to repeat
22 something if she -- if she didn't hear it the first time.

23 I have hit the record button, and eventually the
24 recording may be available, for example, on a -- on the
25 Board's webpage or another channel, but, again, it's not

1 the official record; the transcript is. So, although, we
2 have a lot of folks to hear from every day, we will
3 generally take one morning break of about 15 minutes, one
4 lunch break, which may or may not be an hour, and one
5 afternoon break. The end of the day is a little more
6 fluid. It depends in part on how much public comment is
7 offered in the 5:00 session. It depends also on whether
8 it's possible to wrap up a particular technical witness
9 before we break for the day. So that's a little fluid.

10 Let me say a few words about the platform. It is
11 true a couple of weeks ago, the Board Administrator did
12 put on the EIB calendar a link to the hearing in this
13 matter. And those links -- that link, excuse me, was
14 replaced with a different link for each day of the hearing
15 on the calendar, and was certainly there this morning when
16 everyone wanted to check in. It was driven by the fact
17 that -- the change in the link prior to this morning was
18 driven by the fact that it was important to set this event
19 up as Cisco WebEx event rather than a Cisco WebEx meeting.
20 And having said that, I tried to remove any requirement
21 for registration or passwords. Ideally, you could just
22 click on the link for that day's hearing and get to us
23 directly. I had some folks try it this morning and it
24 worked for them. Having said that, we didn't want the
25 original link to lead merely to an error message. So the

1 Department's CIO is sitting in the meeting that the
2 original link would take you to, with the information to
3 join us here on this link. And if someone actually
4 calendared the original link, it will be very easy for
5 them to see the information that would allow them to join
6 us here.

7 So the Board members and party representatives
8 have joined as panelists and can control their own sound
9 and video. Witnesses will become panelists when they are
10 called upon to testify. No one will be made a presenter,
11 meaning you can share your screen, until it is necessary
12 to assign that role. And just know that I can only
13 have -- I can only assign the presenter role to one person
14 at a time. See, I'm making Mr. Baca a panelist.

15 And lawyers and party representatives, if you
16 would, please do what a few of you have done this morning;
17 in the event you have any trouble with the panelists' link
18 or panelists' invitation, join as an attendee. Let me
19 know somehow that you've joined as an attendee and I
20 will -- I will redesignate you.

21 The remaining folks on the platform are attendees
22 and will be unmuted as necessary in order to make public
23 comment at the appropriate time. You will see that the
24 Chat function, which is in your lower right-hand corner,
25 has been configured to allow only Chat with the host. Pam

1 Jones and I will be trading off on the host duties
2 throughout this hearing. That is the only place that your
3 Chat will go. Please do not put anything in that Chat
4 that is not about, for example, platform technology. The
5 Chat will not be saved or recorded. It's certainly not
6 meant for any kind of public comment, which must come in
7 either orally or in writing to the Administrator.

8 Board members and party representatives have been
9 given a number to text in the event of serious technical
10 difficulties. Attendees may communicate with a text to
11 Pam Jones. Let me give you that number: (505) 660-4305.

12 With so many people on the platform, I will
13 encourage those folks, other than the court reporter and
14 the Board members to turn on their video only when they
15 are speaking. And if you can, please avoid the virtual
16 backgrounds, which as the court reporter has noted, can
17 interfere with the audio.

18 Today, we take public comment sessions at 1 and
19 5 p.m. We expect to be hearing opening statements and
20 some testimony, particularly from the Environment
21 Department in support of their petition. We're working
22 from a spreadsheet in which the parties have agreed to the
23 general order of the topics here. That will definitely --
24 could definitely change as we go on, again, based on
25 witness availability, but we may well be hearing on ozone

1 formation, ozone monitoring, stakeholder outreach, to
2 begin with. So I'm going to ask for appearances, Counsel.
3 Not every morning, but this morning. And on that note,
4 again, lots of Board members, lots of lawyers and other
5 party representatives. Having called for your appearances
6 at the beginning of this hearing, I am not going to ask
7 you to announce when you are coming or going. I turned
8 off attention tracking. As far as I'm concerned, if
9 you're on the platform, you're on the platform. And if
10 you're not on the platform, you're not on the platform.
11 The drawback there, obviously, is that if I call on you
12 for any questions to cross-examine a witness and you're
13 not in attendance, that time will have passed. We won't
14 be recalling witnesses. And once again, if you are not on
15 the platform and it is a serious technical emergency --
16 technological emergency, please text me and we'll work
17 through that.

18 So Ms. Katz, if you would, I'm going to call you
19 roughly in the order with one exception -- roughly in the
20 order in which we prepared the service list. Ms. Katz,
21 please.

22 MS. KATZ: Thank you, Madam Hearing Officer.
23 Good morning, Madam Chair, members of the Board: Lara
24 Katz on behalf of the New Mexico Environment Department.
25 I have with me today my colleague Andrew Knight, also with

1 the Department. Thank you.

2 HEARING OFFICER ORTH: Thank you very much.

3 Ms. Fox.

4 MS. FOX: Good morning, Madam Hearing Officer,
5 Madam Chair, members of the Board. My name is Tannis Fox,
6 with Western Environmental Law Center. I'm here today
7 with my co-counsel David Baake, and we represent nine
8 clients today throughout the hearing, whom we're referring
9 to by shorthand as "Clean Air Advocates." Thank you.

10 HEARING OFFICER ORTH: Thank you. Ms. Paranhos?

11 MS. PARANHOS: Good morning, Madam Hearing
12 Officer, Madam Chair, members of the Board. Elizabeth
13 Paranhos here this morning on behalf of the Environmental
14 Defense Fund.

15 HEARING OFFICER ORTH: Thank you. Mr. Jaynes and
16 the others on behalf of Center for Civic Policy and NAVA.

17 MR. JAYNES: Good morning, Madam Hearing Officer.
18 Daniel Jaynes with University of New Mexico on behalf of
19 Center for Civic Policy and NAVA Education Project. And I
20 have Gabe Pacyniak, Travis Shimanek and Keifer Johnson
21 here with me today.

22 HEARING OFFICER ORTH: Thank you very much.

23 National Park Service. Is Ms. Devore with us?

24 MS. DEVORE: Hi. Lisa Devore with the National
25 Park Service, and I'll turn off my virtual background in a

1 few minutes here. Thank you.

2 HEARING OFFICER ORTH: All right. Thank you.

3 WildEarth Guardians, do we have Mr. Timmons or Mr. Nykiel?

4 MR. NYKIEL: Good morning, Madam Hearing
5 Officer, Madam Chair, members of the Board. My name is
6 Matt Nykiel; I'm here with Daniel Timmons, my co-counsel,
7 on behalf of WildEarth Guardians. Thank you.

8 HEARING OFFICER ORTH: Thank you very much.
9 Mr. de Saillan.

10 MR. DE SAILLAN: Thank you. Good morning,
11 Madam Hearing Officer, Madam Chair, members of the Board.
12 I'm Charles de Saillan and I'm here on behalf of the New
13 Mexico Environmental Law Center.

14 HEARING OFFICER ORTH: Good morning. New Mexico
15 Oil and Gas Association, who you'll hear referred to as
16 NMOGA throughout the hearing.

17 MR. HISER: Good morning, Madam Hearing Officer,
18 Madam Chair, Board members. This is Eric Hiser
19 representing the New Mexico Oil and Gas Association, or
20 NMOGA. I'm here with Brandon Curtis, also of my office
21 and we have co-counsel as well, Dalva Moellenberg.

22 HEARING OFFICER ORTH: Thank you very much.
23 Mr. Rose?

24 MR. ROSE: Yes, Madam Hearing Officer, this is
25 Louis Rose on behalf of the Independent Petroleum

1 Association of New Mexico and I'm here all by myself.

2 HEARING OFFICER ORTH: All right. Mr. Janoe?

3 MR. JANOE: Good morning, Madam Hearing Officer,
4 Madam Chair and members of the Board. My name is Scott
5 Janoe; I'm here on behalf of Oxy USA, Inc.

6 HEARING OFFICER ORTH: Thank you.

7 Mr. Holmstead or Mr. Swift?

8 MR. BUTZIER: Good morning, Madam Hearing
9 Officer. This is Stuart Butzier, of the Modrall Sperling
10 Santa Fe Office, representing GCA. Also Gas Compressor
11 Association is the formal name. Whit Swift, who you
12 invited to speak, is one of our co-counsel, with the
13 national law firm of Bracewell, LLP. And I'm also
14 accompanied by my partner, Christina Sheehan, from the
15 Albuquerque office of Modrall Sperling.

16 HEARING OFFICER ORTH: Good morning.
17 Ms. Gutierrez.

18 MS. GUTIERREZ: Good morning, Madam Hearing
19 Officer, Madam Chair, and the Board members and other
20 parties. My name is Ana Gutierrez, with Hogan Lovells,
21 and I'm representing Kinder Morgan in these hearings.

22 HEARING OFFICER ORTH: Thank you. The Commercial
23 Disposal Group?

24 MR. NEUMANN: Good morning, Madam Chair. I'm
25 sorry, Madam Hearing Officer, this is Chris Neumann with

1 Greenberg Traurig. And with me are Casey Shpall and Greg
2 Tan, Matthias Sayer of NGL Energy Partners and this is
3 Chris Colclasure, representing the Commercial Disposal
4 Group.

5 HEARING OFFICER ORTH: Good morning. Let's see.
6 Do we have Ms. Witherspoon on?

7 MS. WITHERSPOON: Yes. Good morning, Madam
8 Hearing Officer, Madam Chair and the Board members.
9 Leslie Witherspoon representing Solar Turbines.

10 HEARING OFFICER ORTH: Good morning.

11 I believe those are all of the parties who
12 entered appearances and/or submitted a Notice of Intent to
13 present technical testimony. Let me turn then to some
14 motions or -- well, let me -- let me ask if other than the
15 motions and opening statements, if any of the parties have
16 another matter that we would need to address before we
17 begin taking testimony.

18 All right. I hear nothing. Let's see. Well, we
19 have -- the Department filed two motions, one to strike
20 the National Park Service NOI or Notice of Intent and
21 another to strike the Solar Turbines NOI. I did get
22 responses both from the National Park Service and from
23 Solar Turbines.

24 The National Park Service repackaged, as appeared
25 to be the request from the Department -- repackaged their

1 materials as part of a rebuttal NOI.

2 And Ms. Katz, I'm inclined to accept the rebuttal
3 NOI and their planned testimony in that format. Would you
4 have anything to add if that were my plan?

5 MS. KATZ: No, Madam Hearing Officer, we agree
6 with that decision.

7 HEARING OFFICER ORTH: All right. Thank you.
8 Moving then to Solar Turbines, I -- I understand that
9 there wasn't perfect compliance with service, for example.
10 Although, I will note there hasn't been perfect compliance
11 with the service list on behalf of a couple of parties.
12 And I'm inclined to accept -- provide Solar Turbines with
13 an opportunity to give the comments that they want to
14 give. And other than assuring that there aren't, if you
15 will, surprises that, in fact, the testimony will stick
16 closely to what was submitted, I'm wondering if you had
17 any other comment there.

18 MS. KATZ: Thank you, Madam Hearing Officer. The
19 Department doesn't object to Solar Turbines giving
20 comment. I do believe, though, that the requirements for
21 submitting technical expert testimony were not complied
22 with and that -- that's my concern is guarding that
23 process. So if there's some way to have that presented in
24 a different manner, that would be fine.

25 HEARING OFFICER ORTH: Okay. What I'd like to do

1 is make sure that Ms. Witherspoon understands that she'll
2 be invited to, you know, provide her comment at the right
3 time. And to the extent we need to draw out a little more
4 qualification, for example, or you would have very
5 specific objections about a technical statement and
6 whether, for example, she was qualified to make it, I'd
7 like to address that at the time she's giving her
8 testimony.

9 MS. KATZ: That's sounds good, Madam Hearing
10 Officer. Thank you.

11 HEARING OFFICER ORTH: All right. Thank you.
12 Let's see. There was Clean Air Advocate's motion to
13 strike the commentary in NMOGA's Exhibit B and Exhibit 47.
14 And here, let me just offer -- I think the -- I'm just
15 looking, for example, right now at Exhibit 47. This is
16 very close to something I would invite the parties to do
17 at the end of the hearing. That is to say, in your, sort
18 of, closing arguments or your post-hearing submittal, tell
19 the Board what change you would like to make in each
20 section, and then identify the testimony or exhibits that
21 supports each of those changes right below it.

22 Those of you who have been through a triennial
23 review hearing with me, and that's several of you, know
24 that I think that's the way it is easiest for the Board to
25 follow every party's proposal. And I may or may not -- at

1 the end of this hearing, I may or may not be asked to
2 compile that, for example, in a report. The Board won't
3 make that decision for a little bit.

4 But I think at this moment, it's premature and my
5 recommendation would be that the Board disregards for the
6 moment these comments throughout Exhibit B and Exhibit 47
7 because they're not, if you will, cited to testimony or to
8 exhibits just yet. That record will be made as we go
9 along. I think this sort of thing will come in very handy
10 after the end of the record, but not just yet.

11 So I don't know who would be speaking on behalf
12 of NMOGA, but I'm wondering if we can get Exhibit B and
13 Exhibit 47 without the commentary for now, understanding
14 that at the end of the hearing this may be very useful.

15 MR. HISER: Madam Hearing Officer, this is Eric
16 Hiser on behalf of NMOGA. While I don't disagree, to some
17 extent, with where you are recommending that we go, I
18 don't believe that would be appropriate to remove this
19 exhibit. And the reason is that it's referred to
20 certainly in the testimony of a number of the NMOGA
21 witnesses, but also by a number of the other parties, and
22 so it is a critical part for the administrative record
23 because you cannot understand the testimony of the other
24 parties. And so I think striking it is inappropriate.

25 I do think that we could leave it in for the

1 purposes of the redlines, and that we will then at the end
2 of this hearing, if you would be amenable to that, file an
3 evidentiary version of it, which would cross-reference
4 those pieces of it that have been properly shown to be
5 evidentiary, as opposed to a statement of reasons for the
6 change. And then that could become an evidentiary
7 exhibit, which we would move at that point, if that would
8 be acceptable to you and the other parties.

9 HEARING OFFICER ORTH: I see your hand, Ms. Fox,
10 but I'm going to talk a little bit further with Mr. Hiser.
11 So, Mr. Hiser, if I'm going to recommend that the Board
12 disregard this commentary at this point, again, I would
13 recommend that the Board look at it after the hearing when
14 you've got record citations to it. But if I'm going to
15 recommend that they disregard this, and in my mind there's
16 a distinction between what has been filed in the
17 administrative record, which I don't feel I have the
18 authority, for example, to destroy, if you will, or simply
19 remove. I mean, it was filed, it's there.

20 Having said that, I'm wondering if it would be
21 more helpful, again, knowing that it's there, it was filed
22 on May 6th, 2021, to have a substitute B and a substitute
23 47, that could also be part of the record so that the
24 Board didn't have to go through the mental exercise of
25 reading past it all.

1 MR. HISER: Madam Hearing Officer, obviously,
2 we'll do as you direct, but to the extent that witnesses
3 refer to, you know, the original document, that creates
4 problems in the understanding of the expert testimony that
5 is presented in direct and rebuttal.

6 HEARING OFFICER ORTH: Ms. Fox, do you have
7 something to add here?

8 MS. FOX: Thank you, Madam Hearing Officer. I
9 was going to make the same suggestion that you just made,
10 and that is that NMOGA file a substituted Appendix B and a
11 substituted Exhibit 47, for exactly the reason you stated.
12 And that is, so that anybody looking at those exhibits
13 doesn't have to make their way through the comments.

14 I think the extent to which this is an issue for
15 NMOGA, it's an issue that it has brought on itself. And
16 it had an opportunity to cure with its rebuttal testimony,
17 because this objection, I did raise this objection during
18 our prehearing conference. And so I think the fact that
19 NMOGA's witnesses referred to Exhibit 7, and it's a prior
20 Exhibit 7 that's going to be substituted, and a little bit
21 of a glitch there for the witnesses, I -- I think that
22 that, again, is sort of a problem they brought on. And I
23 think the record is much cleaner if they file a
24 substituted Appendix B and a substituted Exhibit 47, so
25 it's clear from the record that the commentary in those

1 exhibits is struck.

2 HEARING OFFICER ORTH: Okay. Thank you for that.
3 Mr. Hiser, if -- I really think it would serve the Board
4 to get your redline -- your proposed redline without the
5 commentary, that I have to ask them to disregard. And
6 again, I think this will be terrific in about two months,
7 but I think it's premature now.

8 MR. HISER: So, Madam Hearing Officer, do you
9 want us to file a revision of the two exhibits, or do you
10 want us to file new exhibits? Because we need to preserve
11 page numbers and other things like that. We simply can't
12 move stuff because it will cause all the line numbers to
13 shift.

14 HEARING OFFICER ORTH: I see. So if you remove
15 the commentary, but leave the line numbers, the line and
16 page numbers alone, will that be easiest for us as we all
17 sort of walk through it?

18 MR. HISER: Yes, we can do that. We'll file this
19 as revision one of each of those two exhibits, which will
20 delete the commentary. Although, my understanding is that
21 you're leaving the original document in place in case
22 somebody needed to refer to it to understand the experts.

23 HEARING OFFICER ORTH: Exactly. I'm not removing
24 the original document from the record proper. Based on my
25 reading of the Board's rulemaking procedures, having been

1 filed it's part of the underlying record proper. I am
2 asking you to submit the revised exhibits so that I don't
3 have to continue to remind the Board to disregard
4 something that was filed maybe just a little too early.

5 MR. HISER: Very well.

6 HEARING OFFICER ORTH: Thank you very much.

7 My understanding is there was one other motion.
8 It was filed yesterday, and was a motion to strike the
9 testimony of Professor Villa. Because that motion was
10 filed yesterday and UNM has not had -- excuse me -- Center
11 for Civic Policy and NAVA has not had an opportunity to
12 respond to it, and I think it's going to be a while before
13 we get to Professor Villa's testimony, in my mind it is
14 too early to address that motion this morning. Okay.

15 Anything else from counsel? I'm just going to
16 pause for a moment. Anything else from counsel?

17 MR. ROSE: Madam Hearing Officer?

18 HEARING OFFICER ORTH: Mr. Rose?

19 MR. ROSE: We had identified earlier in this
20 proceeding, I guess last week is earlier -- maybe it was
21 this week. There was -- about exhibits and testimony that
22 there was at least a question about admitting testimony
23 and exhibits en masse, without necessarily offering them
24 individually. We identified a number of exhibits and the
25 testimony related to them. We objected to -- and I don't

1 know whether it's something you want to address now or
2 after opening arguments or in the context of
3 admissibility, when those exhibits are being offered. It
4 may be prudent, because they all read -- all of the
5 objections relate to a single point -- that maybe we
6 address those after we get to opening arguments, but
7 before testimony is offered. So I think that may be the
8 most prudent way to do it, but just wanted to alert you
9 that that's still pending as well.

10 HEARING OFFICER ORTH: Thank you very much for
11 that reminder. I do have that in my short stack here
12 surrounded by boxes and a short stack of documents. I --
13 I did note that a number of the parties had no objection
14 to any of the exhibits, but that NMOGA and IPANM had
15 objections to certain of the exhibits. So when we got,
16 for example, to the Department's presentation, I was going
17 to invite Ms. Katz to offer the exhibits that could be
18 admitted en masse, if you will, and then have a discussion
19 about the exhibits that we need to have some -- we just
20 need to make a record as to the objections and have some
21 argument about it before ruling. So thank you for that.

22 Anything else? I'll pause for just a moment in
23 the event party counsel would like to identify any other
24 issues. Okay. So let's begin with opening statements.
25 I'm going to invite that each party has a choice to make

1 an opening statement now or to make an opening statement
2 at the beginning of their presentation. So the
3 Department, Ms. Katz, whenever you're ready, please make
4 your opening statement. I will call on the rest of you in
5 the order -- in the order in which I invited your
6 appearances. Ms. Katz, if you would.

7 OPENING STATEMENT BY MS. KATZ

8 MS. KATZ: Thank you, Madam Hearing Officer.

9 The Department is here before you today to
10 propose new rules to regulate emissions of ozone precursor
11 pollutants from the oil and gas sector in New Mexico.
12 These proposed rules are in furtherance of this Board's
13 mandatory duty as provided in the New Mexico Air Quality
14 Control Act, to address rising ambient ozone
15 concentrations across the state.

16 Specifically, the Board is required to adopt a
17 plan, including regulations, to control emissions of ozone
18 precursor pollutants from sources within the Board's
19 jurisdiction, that cause or contribute to ozone levels
20 exceeding 95 percent of the federal National Air Ambient
21 Quality Standards, or NAAQS. The stated purpose of the
22 statute is to provide for attainment and maintenance of
23 the federal standards.

24 Put another way, the goal is to try to avoid a
25 nonattainment designation by the U.S. Environmental

1 Protection Agency under the Clean Air Act and the
2 corresponding burdens on the Department and industry that
3 such a designation would entail.

4 In essence, the legislature wanted any
5 requirements imposed on New Mexico sources for the purpose
6 of controlling ozone levels to be prescribed by this
7 Board, not the federal government. This rulemaking is the
8 first time the Department has taken steps to seriously
9 regulate the oil and gas sector. And it is taking place
10 in the context of a massive expansion of this industry in
11 New Mexico over the last several years.

12 New Mexico is now the second largest oil
13 producing state in the country. Corresponding with the
14 drastic rise in production, the Department's air quality
15 monitors located in closest proximity to the state's two
16 largest oil and gas producing basins, have shown
17 consistently rising ozone concentrations. And that is why
18 we are all here today.

19 Before I go further, I would like to introduce
20 the Department's witnesses who will be testifying before
21 you over the next two weeks, though not all of them are
22 here this morning. Most of you have met Elizabeth
23 Bisbey-Kuehn, chief of the Department's Air Quality
24 Bureau, in previous hearings.

25 You have also met Michael Baca, manager of the

1 Bureau's control strategies -- strategies unit. Cindy
2 Hollenberg is the enforcement manager of the Bureau's
3 Compliance and Enforcement Section. Angela Raso is an air
4 dispersion modeler in the Bureau's modeling unit.

5 Brent Ellington is a supervisor with the Bureau's
6 Ambient Air Monitoring Section. Andrew Ahr is the quality
7 assurance manager of the Bureau's Operations Section. We
8 also have Brandon Powell, from our sister agency, the
9 Energy Minerals and Natural Resources Department where
10 Mr. Powell is the chief of the Oil Conversation Divisions
11 Engineering Bureau.

12 We also have some witnesses from our contractors
13 that work on this rulemaking. Ralph Morris is the
14 managing principal of Ramboll Environmental Health Central
15 West Business Unit. Mr. Morris has over 40 years of air
16 quality consulting experience and is one of the original
17 developers of many of the photochemical air quality models
18 that are used to support regulatory decision making in the
19 United States and around the world, including the model
20 that was used to evaluate the ozone impact of Part 50. He
21 is truly one of the top experts in his field.

22 We also have two witnesses from Eastern Research
23 Group, who NMED contracted to help develop the provisions
24 of the rule and estimate the cost and emission reductions
25 from implementation. Brian Palmer is a senior

1 environmental scientist with ERG where he has worked for
2 25 years. He has 30 years of experience in the
3 environmental consulting industry and has worked on
4 numerous air quality efforts -- regulatory efforts at the
5 federal level. Susan Day is a senior economist at ERG with
6 34 years of experience conducting and managing economic,
7 regulatory and data analyses supporting federal
8 environmental regulations. These witnesses are a stellar
9 team that has worked incredibly hard to provide you with
10 solid justification for adopting the Department's
11 proposal.

12 The proposed rule before you is the result of
13 over two years of outreach and engagement with
14 stakeholders and communities across the state. This
15 process began in 2019, with Governor Lujan Grisham's
16 Executive Order 2019-3 directing NMED and its sister
17 agency, the Energy, Minerals and Natural resources
18 Department to, "jointly develop a statewide enforceable
19 regulatory framework to ensure reductions in oil and gas
20 sector methane emissions and to prevent waste from new and
21 existing sources."

22 Part 50 responds to both the requirements of the
23 Air Quality Control Act, as well as the directives of the
24 Governor's Order, because regulations that reduce
25 emissions of ozone precursors pollutants have the

1 co-benefit of reducing methane emissions.

2 Ms. Kuehn will testify regarding the rule
3 development process and the numerous opportunity for
4 stakeholder and public involvement throughout that
5 process. Those opportunities have continued during this
6 formal phase of the rulemaking right up to this day.

7 The Department granted every request by the
8 parties, to meet with us. And we listened to the input
9 and concerns of the stakeholders. We've made every effort
10 to carefully consider and respond to that input as
11 evidenced by the substantial revisions we have made to the
12 rule shown in the redline version filed last week.

13 Now turning to the Department's testimony.
14 Several witnesses will provide background information for
15 testimony on the specific rule requirements. Ms. Raso and
16 Mr. Morris will discuss the chemistry of ozone and how it
17 is formed in the atmosphere. Mr. Ellington and Mr. Ahr
18 will explain the Department's air monitoring system and
19 how data on ozone levels are collected, verified and
20 provided to EPA. They will testify as to how compliance
21 with the NAAQS is established using statistics called
22 design values, and how EPA calculates those values based
23 on the monitoring data.

24 Mr. Baca will testify regarding the Department's
25 ozone attainment initiative, which was undertaken to

1 address the rising ozone concentrations in the state, and
2 to support the Board in carrying out its duties under the
3 Air Quality Control Act. Mr. Baca will explain the
4 Department's participation in EPAs Ozone Advance Program,
5 including the development of the Ozone Path Forward Plan
6 for submission to EPA.

7 The Department is proposing that the Board adopt
8 the Ozone Path Forward to meet the plan requirement of the
9 statute. That plan includes voluntary measures as well as
10 mandatory measures in the form of regulations. This
11 rulemaking is the first of the mandatory measures outlined
12 in the Ozone Path Forward Plan.

13 After this rulemaking, the Department will be
14 proposing regulations to address ozone precursor emissions
15 from the transportation sector by establishing vehicle
16 emissions standards. As Ms. Ely and I told you a couple
17 of months ago, these proposed regulations are under active
18 development and the Department will be back before you
19 later this year with its petition to formally initiate
20 that rulemaking.

21 Now, you will hear from witnesses from industry
22 that the statute constrains the Board to regulating only
23 sources in those counties that have an ozone monitor
24 located within their boundaries that is registering design
25 values in excess of 95 percent of the NAAQS. This is a

1 far too restrictive reading of the statute and it runs
2 contrary to the statute's obvious intent to keep the state
3 in compliance with federal ambient air quality standards.

4 You will hear from Mr. Baca that the ozone
5 monitors are located within air quality control regions
6 established by EPA. These regions do not follow county
7 lines, nor do the oil and gas bearing formations where the
8 target sources are located. And importantly, any
9 nonattainment designation, if that were to come about,
10 would not necessarily follow those lines. The Department
11 has used county lines for the purpose of establishing
12 well-known boundaries within which the rule applies, and
13 has proposed inclusion of all counties with a significant
14 number of emission sources that are within the air quality
15 control regions with monitors that have been exceeding 95
16 percent of the standard. This approach fully aligns with
17 the language and intent of the statute.

18 To support this rulemaking, the Department
19 contracted with Ramboll, the top modeling firm in the
20 country, to conduct regional photochemical modeling
21 predicting the effects of the rule on ozone
22 concentrations. Mr. Morris will testify to that extensive
23 effort and the results, which clearly demonstrate that
24 this rule will achieve meaningful reductions in ozone
25 concentrations that could make the difference between an

1 attainment or nonattainment designation, or a lower or
2 higher nonattainment classification.

3 The results of the modeling as well as the
4 voluminous technical support documents and work products
5 generated by Ramboll have been posted on the Western
6 Regional Air Partnership's website since May for review by
7 stakeholders and the public. Additionally, at NMOGA's
8 request, the Department arranged for Mr. Morris to provide
9 the modeling files, consisting of over 8 terabytes of
10 data, to NMOGA's modeling expert so that he could review
11 the underlying assumptions structuring the model. It is
12 important for you to note that the modeling conducted by
13 Ramboll assumed that all model sources were in compliance
14 with existing permit limits and federal regulations.

15 Cindy Hollenberg, of the Bureau's Compliance and
16 Enforcement Section, will testify regarding widespread
17 compliance problems across the industry in recent years,
18 that it resulted in the known release of millions of
19 pounds of excess emissions. Given the proposed rules
20 numerous provisions designed to aid industry and the
21 Department in assurance -- ensuring compliance, it is
22 likely that the rule will have an even greater impact on
23 ozone concentrations than what is shown by the modeling.

24 To assist with developing the provisions of the
25 rule itself, the Department contracted with Eastern

1 Research Group, a national environmental consulting firm
2 that frequently works with EPA on federal regulatory
3 efforts. To develop the rule requirements, the Department
4 and ERG drew upon the work of the methane advisory panel
5 convened under the Governor's Executive Order, as well as
6 existing regulatory provisions and information from other
7 states and EPA. Using data from the Air Quality Bureau's
8 environmental database, ERG compiled equipment
9 inventories, which were used to develop estimates of costs
10 and emissions reductions for the rules.

11 These inventories cost estimates and emission
12 reductions are thoroughly documented in numerous
13 spreadsheets, which also include detailed explanations of
14 the data. NMED posted this documentation on its website
15 in early June so that all stakeholders had access to it in
16 developing their technical testimony.

17 Ms. Kuehn's testimony details the equipment and
18 processes used target -- targeted by each section of the
19 rule and the specific applicability emission standards,
20 monitoring and recordkeeping requirements for those
21 sources.

22 Mr. Palmer discusses the requirements and
23 supporting technical data from other state and federal
24 regulatory efforts that formed the basis for the emissions
25 standards proposed in each section and the estimated costs

1 and emissions reductions from implementation of those
2 requirements.

3 NMOGA and IPANM have submitted testimony citing
4 the costs associated with the rule as a reason for the
5 Board to significantly limit the reach of the rule or to
6 outright reject it. NMOGA even commissioned its own
7 economic analysis from Juan Dunham, owner of a New York
8 City-based consulting firm, Gorilla Economics. In
9 contrast to the extensive data, thorough documentation,
10 and detailed explanations provided by the Department in
11 support of its cost -- cost estimates and modeling,
12 Mr. Dunham's ten-page analysis is severely lacking in
13 supporting data, explanations and transparency regarding
14 his model. This analysis reads less like comprehensive
15 expert testimony intended to fully inform the Board, and
16 more like lobbying material designed to induce fear in the
17 legislature and generate media headlines. And on that
18 score, it succeeded.

19 While clearly an effective lobbying piece, this
20 study does not come close to being sufficient for serious
21 consideration by the Board as the testimony from the
22 Department and other parties witnesses will show. The
23 fact that NMOGA was willing to submit this material as
24 expert technical testimony for the Board to rely on should
25 make you question the validity and reliability of other

1 representations they are making in this proceeding.

2 This rule does contain important provisions to
3 provide regulatory relief for smaller independent
4 operators. Ms. Kuehn and Ms. Day will testify regarding
5 the small business facility definition in the rule, the
6 data that support that definition, and how it limits the
7 requirements that small operators must comply with.

8 IPANM dislikes this definition and seeks to have
9 the Board return to the approach proposed in the
10 Department's first prepetition draft of the rule, which
11 broadly exempted all low-producing wells from the
12 requirements of the rule. But that approach was
13 ultimately rejected because it simply leaves too many
14 emissions on the table and is not tailored to small
15 independent operators. Low production does not
16 necessarily equal low emissions or low overall company
17 revenues.

18 The Department has repeatedly asked IPANM to
19 engage with our data and suggest ways to improve the small
20 business facility definition. For instance, they could
21 propose different thresholds that would apply to more of
22 the companies they claim should be included, or different
23 ways of calculating those thresholds, but they have simply
24 refused to do so.

25 The rule also provides relief for smaller lower

1 emitting facilities by establishing emissions thresholds
2 throughout each section of the rule that exempts sources
3 with low emissions from compliance with the requirements.
4 And there are flexibilities provided throughout the rule
5 that allow operators to determine the best way to achieve
6 compliance based on their particular operations.

7 One example is an alternative compliance plan
8 that can be proposed for Department approval, to allow
9 operators to achieve compliance with required emissions
10 reductions across their entire fleet of equipment rather
11 than on a source-by-source basis.

12 Will there be impacts on industry if the Board
13 adopts -- adopts this rule? Yes. Any new regulation will
14 necessarily entail costs to the regulated community. Will
15 there be public health and environmental impacts and costs
16 to industry in the state if EPA designates these areas as
17 nonattainment for the ozone NAAQS? You can bet on that.

18 Failure of the Board to act, while it may delay
19 such costs, will not avoid them. If the Board does not
20 take action to address sources of ozone precursors, the
21 federal government will. The Department believes, and the
22 testimony will demonstrate, that the proposed rule before
23 you is reasonable and workable for both industry and the
24 Department and appropriately balances the regulatory
25 burdens on industry against the interests of the state in

1 complying with federal air quality standards, and most
2 importantly, the interests of communities in reducing
3 harmful air pollution that is detrimental to public
4 health, welfare and the environment.

5 The Department thanks you for your service and
6 looks forward to putting on its case.

7 HEARING OFFICER ORTH: Thank you, Ms. Katz.

8 Ms. Fox, would the Clean Air Advocates like to
9 make their opening statement at this time?

10 MS. FOX: Yes, ma'am.

11 OPENING STATEMENT BY MS. FOX

12 MS. FOX: Good morning, Madam Hearing Officer,
13 Madam Chair and members of the Board. I am Tannis Fox,
14 with Western Environmental Law Center here today with my
15 co-counsel, David Baake. We thank you for your time
16 during this proceeding.

17 This rulemaking is one of the most complex, if
18 not the most complex, that has come before this body. And
19 we appreciate the significant effort and resources this
20 hearing will take. We represent nine parties in this
21 proceeding: Conservation Voters New Mexico, Diné
22 C.A.R.E., Earthworks, National Parks Conservation
23 Association, National -- Natural Resources Defense
24 Council, San Juan Citizens Alliance, Sierra Club, 350 New
25 Mexico and 350 Santa Fe. For shorthand, we refer to our

1 clients as "Clean Air Advocates."

2 All of these organizations share an interest in
3 making sure the rules adopted by the Board are as strong
4 as possible in order to reduce ozone precursors that
5 create harmful ground level ozone, reduce methane, an
6 extremely potent greenhouse gas that contributes
7 significantly to our planet's warming, and protect public
8 health, especially that of frontline communities most
9 impacted by oil and gas operations.

10 The ozone precursor Rule put forth by Secretary
11 Kenney and the Environmental Department staff is a strong
12 rule and we appreciate their work over the last two years
13 that has gotten us here today. Governor Lujan Grisham has
14 lead the way through her commitment to pass, "the
15 country's toughest methane and air pollution -- air
16 pollution rules."

17 We would like to see the Governor's commitment to
18 passing the strongest rules in the nation translated into
19 the final rules adopted by the Board. In our direct
20 testimony, Clean Air Advocates join forces with the
21 Environmental Defense Fund, Civic -- Center for Civic
22 Policy, and NAVA Education Project, to put forth four
23 proposals that strengthen NMED's proposed rule in
24 significant ways.

25 And since our filing, we engaged in highly

1 productive discussions with Oxy USA, Inc., one of the top
2 oil and gas producers in the state. In our rebuttal
3 testimony, our coalition and Oxy came to agreement on a
4 number of proposals, including on all four of our initial
5 proposals, with some modifications from our direct filing.
6 And since our rebuttal filings, we have also had
7 productive discussions with the National Park Service and
8 are very pleased that the park service supports our
9 completions, pneumatics and tank measurement proposals.

10 We believe that our proposals supported by an
11 expanded and diverse coalition that includes the top
12 producer and the federal government, deserves serious
13 consideration by the Board. And that adoption of our
14 proposals, combined with NMED's proposed rules, would put
15 New Mexico on the map with nation-leading rules, as
16 promised by the Governor.

17 I'd like to summarize our proposals and the
18 testimony we will present and support. First, we propose
19 more frequent leak detection and repair inspections for
20 LDAR at oil and gas facilities that are located 1000 feet
21 within homes, businesses and schools. Our proximity
22 proposal, as we call it, is modeled after a rule already
23 adopted in Colorado, and is set forth in Section 116 of
24 the proposed rule.

25 More frequent LDAR inspections translate into

1 greater emissions reductions. Relying on EPA technical
2 documents, NMED estimates, for example, that if conducting
3 EPA Method 21 inspections on a quarterly basis, translates
4 to an 83 percent reduction in emissions from -- the
5 emissions from leaks and that monthly inspections
6 translate into a 92 percent reduction. These are huge
7 emissions reductions and we know that leaks from oil and
8 gas operations are a major source of emissions and air
9 pollutants in New Mexico.

10 In support of our proximity proposal, you will
11 hear from Lee Ann Hill. Ms. Hill has a Master's in Public
12 Health from the University of California, Berkeley, and is
13 a senior scientist of Physicians, Scientists and Engineers
14 for Healthy Energy. Ms. Hill provides extensive testimony
15 on the public health impacts of volatile organic
16 compounds, or VOCs, including VOCs like benzene that are
17 hazardous air pollutants. She'll discuss peer-reviewed
18 studies indicating that living in close proximity to oil
19 and gas facilities results in increased health risks and
20 impacts from elevated pollution levels, and that these
21 health risks decrease further away from these operations.

22 These impacts include increased risk for cancer,
23 and risk to humans' respiratory, neurological and
24 cardiovascular systems. Our proximity proposal helps
25 protect frontline communities who bear the brunt of the

1 impacts of oil and gas operations. EDF estimates 35,000
2 New Mexicans live within 1000 feet of oil and gas sites,
3 and that over half are people of color and indigenous
4 people. This Board has the authority to consider
5 environmental justice impacts of this rule, and our
6 proximity proposal helps mitigate impacts to communities
7 of color who live close to oil and gas operations.

8 For our second proposal, you will hear about
9 these impacts from one of those people who lives next to
10 oil and gas operations, Don Schreiber, a rancher from Rio
11 Arriba County. There are 122 wells in and around
12 Mr. Schreiber's land and 33 within one mile of his home.
13 Mr. Schreiber understands the impacts of oil and gas
14 firsthand, and will provide testimony in support of our
15 proposal to require reduced emissions completions or green
16 completions during development and redevelopment of a
17 well.

18 Mr. Schreiber will explain to the Board how as
19 early as 2008, he and his wife reached agreement with
20 ConocoPhillips to undertake reduced emissions completions
21 on their land; however, after Hilcorp Energy Company
22 acquired ConocoPhillips' assets in 2017, it has refused to
23 continue ConocoPhillips' program -- reduced emissions
24 completions.

25 Our reduced emissions completions proposal has

1 already been adopted by Colorado and would require capture
2 of emissions during all stages of completion and
3 recompletion of wells, instead of allowing emissions of
4 pollutants to be vented into the atmosphere. EDF
5 technical witness, Tom Alexander, will explain why this
6 proposal set forth in newly-proposed Section 127 is
7 technically feasible.

8 Our third proposal would accelerate retrofitting
9 of pneumatic controllers with what are called zero bleed
10 controllers or controllers that do not emit gas and the
11 air pollutants contained within. Clean Air Advocates is
12 fortunate to have the expertise of a national expert,
13 Dr. David McCabe, who helped develop our proposal, and
14 will testify -- testify in support of it.

15 Dr. McCabe is an atmospheric scientist with the
16 Clean Air Task Force. He has a Bachelor of Arts in
17 Chemistry from the University of Chicago, and a Ph.D. in
18 physical chemistry from the University of Colorado. He
19 has also been heavily involved in the methane rulemakings
20 in Colorado.

21 As Dr. McCabe will explain in his direct
22 testimony, pneumatic controllers are big emitters. Some,
23 powered by gas, are actually designed to emit gas and the
24 pollutants they contain, and many malfunction and emit
25 pollutants. The Clean Air Task Force estimates there are

1 over 118,000 pneumatic controllers in New Mexico that emit
2 an estimated 30,000 metric tons of VOCs and 108,000 metric
3 tons of methane. EDF analysis indicates pneumatic
4 controllers are the second largest source of methane from
5 oil and gas in the state. Any rule designed to reduce
6 ozone precursors must include a robust schedule to
7 retrofit pneumatics.

8 The proposal we put forth before the EIB has been
9 negotiated with Oxy. The retrofit schedule is somewhat
10 less aggressive than that in Colorado, but it is
11 nonetheless, much stronger than what NMED proposes, and it
12 is technically and financially feasible for operators, as
13 demonstrated by Oxy's support in Colorado's adoption of
14 the somewhat more aggressive schedule.

15 Dr. McCabe will also explain why our pneumatics
16 proposal set forth in Section 122 is cost effective, while
17 NMOGA's cost estimates are inaccurately high, and why
18 NMED's cost estimates -- cost estimates are conservatively
19 low.

20 Finally, Dr. McCabe will explain our fourth
21 proposal to the Board. This proposal would require tanks,
22 new or modified oil and gas sites, to use what we call a
23 storage vessel measurement system. This system gauges the
24 quantity and quality of liquids into a storage vessel or a
25 tank. Typically, liquid levels in a tank are measured by

1 opening a thief hatch on top of the tank, inserting a
2 gauging device, and samples are collected by opening the
3 hatch, but when the hatch is opened, air pollutants,
4 including VOCs and methane are released. Since gauging is
5 often performed frequently and the hatch is opened every
6 time a measurement is taken, these emissions can be
7 significant. Our proposal is set forth in Section 123 and
8 the rule is modeled after Colorado's rule and is cost
9 effective for operators.

10 That rounds out Clean Air Advocates' proposals
11 and list of witnesses. Thank you again for your time and
12 attention during this important proceeding. This
13 rulemaking is critically important for New Mexico. We
14 have a number of counties that are bumping up against the
15 ground level ozone standard. This has real implications
16 for public health. And we have a methane hotspot in the
17 Four Corners area, which is real implications for climate
18 warming. But make no mistake, this rulemaking has
19 significance beyond our borders. EPA and other states are
20 watching this proceeding. New Mexico's rule will serve as
21 a model for the federal government and other states in
22 adopting their own rules to prevent formation of ground
23 level ozone, combat climate change and protect public
24 health.

25 We urge the Board to follow through on the

1 Governor's commitment to pass nation-leading rules. Thank
2 you again for your time. We look forward to putting on
3 our case before you.

4 HEARING OFFICER ORTH: Thank you, Ms. Fox.

5 Ms. Paranhos, would you like to make your opening
6 statement now?

7 MS. PARANHOS: Yes, Madam Hearing Officer. Thank
8 you very much.

9 OPENING STATEMENT BY MS. PARANHOS

10 MS. PARANHOS: Good morning, members of the
11 Board, Madam Hearing Officer. Thank you for the
12 opportunity to present an opening statement in this
13 important proceeding.

14 I am Elizabeth Paranhos, Counsel for the
15 Environmental Defense Fund. EDF is a national membership
16 organization with more than 2.5 million members residing
17 throughout the U.S., and more than 18,000 residing in New
18 Mexico. Many of these members are deeply concerned about
19 the pollution emitted from oil and natural gas sources.

20 EDF brings a strong commitment to sound science,
21 collaborative efforts with industry partners and
22 market-based solutions to our most pressing environmental
23 and public health challenges. EDF strongly supports the
24 proposed NMED rules. We commend the agency on proposing a
25 strong rule, and recognize and appreciate the tremendous

1 amount of time and resources NMED staff has put into its
2 rule and supporting documentation. We appreciate NMED's
3 adoption of our proposal to require gas-powered pneumatic
4 controllers be included in equipment leaks inspections or
5 LDAR, as well as other revisions NMED has made in response
6 to our and our partners' suggestions.

7 That being said, we, in conjunction with other
8 NGO partners and Oxy USA, propose a suite of improvements
9 that will further reduce pollution emitted from oil and
10 gas facilities in a cost effective and technically
11 feasible way. We believe that by adoption of these
12 improvements, the Board can finalize a rule that will meet
13 Governor Lujan Grisham's goal of promulgating a
14 nationally-leading set of requirements.

15 These joint improvements include more frequently
16 leak inspections at occupied places, such as homes and
17 schools, as Ms. Fox just reviewed. A proposal to hasten
18 and increase retrofits of gas-powered pneumatic
19 controllers, a requirement to control emissions from
20 flowback vessels during well completions and
21 recompletions, installation of a tank measurement system
22 on new storage tanks, and additional clarifications and
23 revisions to the leak detection and repair and tanks
24 provisions, intended to ensure the benefits of the
25 requirements match the cost. The rule has allowed for

1 technological innovation and are clear and workable.

2 As evidence is presented, EDF will show steep
3 reductions in ozone precursor emissions are necessary in
4 order to protect the health of New Mexico residents and
5 its environment from unhealthy and dangerous levels of
6 ground level ozone. At the same time, New Mexicans are
7 experiencing increased drought, wildfires and unhealthy
8 air pollution caused by a warming climate.

9 Methane emissions co-emitted with VOCs from oil
10 and gas facilities are a primary contributor to climate
11 change; in particular to near-term warming. As NMED has
12 pointed out, reducing VOC emissions will also reduce
13 methane emissions, since the two pollutants are
14 inextricably tied and co-emitted as components of natural
15 gas.

16 The Governor directed NMED to promulgate rules to
17 reduce methane emissions. While the primary aim of this
18 rulemaking is to reduce VOCs and offset the nitrogen that
19 contribute to ground level ozone, it is incontrovertible
20 that VOC reductions will also reduce methane as a
21 co-benefit.

22 EDF's first witness will be Maureen Lackner, an
23 economist for EDF. Ms. Lackner's opinion is that the
24 Dunham report has overstated costs, fails to account for
25 the social costs of oil and gas pollution and is based on

1 a faulty model that lacks transparency and has not
2 undergone a sensitivity analysis. Ms. Lackner will tell
3 you she agrees with NMED's witness, Susan Day, that you
4 should give the report no weight.

5 You will next hear from Dr. Tammy Thompson, a
6 senior air quality scientist with EDF. Dr. Thompson will
7 explain that NMED's ozone modeling demonstrates that VOC
8 emissions from oil and gas sources are contributing to
9 unhealthy levels of ozone in New Mexico, and that adoption
10 of rules to reduce emissions, as NMED and EDF have
11 proposed, are necessary to protect air quality.

12 Next, you will hear from Dr. David Lyon, a senior
13 scientist at EDF. Dr. Lyon will discuss some of the
14 definitions EDF proposes, in conjunction with Oxy and our
15 other NGO partners for Section 116, the equipment leak
16 requirements. Dr. Lyon will next describe the results of
17 16 peer-reviewed studies, including five in the Permian
18 Basin in New Mexico, that demonstrates the cost
19 effectiveness of frequent leak inspections as proposed by
20 NMED and as proposed by the EDF, NGO, Oxy, LDAR proximity
21 proposal that requires increased inspections at public
22 occupied places, such as homes and schools.

23 The studies, which are based on direct
24 measurements, demonstrate that the pollution emitted from
25 oil and gas facilities in New Mexico is magnitudes higher

1 than traditional inventory suggests. For example, one
2 study conducted by Robertson, et al., suggests that New
3 Mexico Permian Basin methane emissions are ten times
4 higher than operator reports to EPA, pursuant to EPA's
5 greenhouse gas reporting rule.

6 As Dr. Lyon will explain, one reason for the
7 difference between operator-reported emission estimates
8 and measured emissions is the failure of traditional
9 inventory estimations to account for improperly operating
10 conditions or super emitters. Dr. Lyon will explain that
11 such super emitters are mainly intermittent, which
12 indicates the need for frequent, comprehensive inspections
13 to detect leaks from equipment.

14 You will also hear from Dr. Lyon the results of
15 the studies, including one in the Permian Basin, that
16 demonstrates the need for recurring leak inspections at
17 low producing wells. You heard a little bit about this
18 topic from Ms. Katz earlier. These studies indicate low
19 production wells are likely a disproportionately large
20 share of U.S. Oil and gas emissions.

21 Dr. Lyon will explain why the Board should reject
22 NMOGA's proposal to reduce the inspection frequency for
23 wells that have a potential to emit of less than ten tons
24 per year of VOCs, in light of the findings of these
25 scientific studies.

1 Next you will hear from Hillary Hull. She is
2 director of Research and Analytics for EDF. Ms. Hull will
3 provide evidence demonstrating the cost effectiveness of
4 NMED's proposed LDAR requirements and of the EDF, NGO, Oxy
5 LDAR proximity proposal. Ms. Hull will explain that NMED
6 has likely underestimated the costs of frequent leak
7 detection and repair requirements, not overestimated
8 costs, as NMOGA suggests.

9 Further, per Ms. Hull's analysis, the per well
10 site cost of conducting semiannual inspections is 30
11 percent lower than NMED's estimate, making NMED's estimate
12 of cost effectiveness of LDAR quite conservative.
13 Ms. Hull will also note that our joint LDAR proximity
14 proposal will increase reductions associated with NMED's
15 proposed rule by 3,600 tons of VOCs, at an average cost of
16 only \$894 per ton of VOCs reduced, within the proposed
17 1000 foot boundary of our LDAR proximity proposal.

18 Ms. Hull will also discuss the important
19 co-benefits associated with increased inspections. Per
20 her analysis, additional inspections at homes, playgrounds
21 and schools will remove 14,300 tons of methane and 150
22 tons of hazardous air pollutants, including benzene, from
23 the air annually. Importantly, these reductions will help
24 protect the air breathed by over 35,000 New Mexicans
25 living near oil and gas wells site, including 2,700

1 children under the age of five, 19,000 people of color,
2 including over 5,800 Native Americans and 4,500 adults 65
3 years or older.

4 You will hear additional testimony from
5 Dr. Thompson regarding the scientific underpinnings of our
6 LDAR proximity proposal. Ms. Thompson will underscore
7 that adoption of our proposal to increase inspections at
8 well sites near occupied places, such as homes and
9 schools, will result in the removal of additional tons of
10 VOCs, thus helping New Mexico avoid falling into ozone
11 nonattainment.

12 Second, she will discuss results of a Colorado
13 Department of Health study that found that persons living
14 within 2000 feet of oil and gas production well sites are
15 at risk of developing cancer, as well as noncancer adverse
16 health impacts due to exposure from toxic VOCs.

17 Tom Alexander, a former vice president with
18 Southwestern Energy, will provide additional support for
19 the joint LDAR proximity proposal to increase inspections
20 at well sites located near homes, based on his 18 years of
21 experience working for Southwestern Energy. Southwestern
22 Energy's experience implementing their own LDAR program
23 helped the company reduce leaks, optimize operations and
24 develop preventative maintenance procedures.

25 Moving on to the topic of liquids unloading,

1 Mr. Alexander will provide testimony in support of NMED's
2 proposed requirements to use a form of artificial lift or
3 other approved control technologies to reduce venting from
4 liquids unloading activities and minimize the need for
5 manual unloading.

6 With respect to controlling emissions from
7 natural gas-powered pneumatic controllers, one of our
8 proposals, both Dr. Lyon and Mr. Alexander will express
9 support for the joint EDF, NGO, Oxy proposal that
10 increases the pace and amount of conversion to nonemitting
11 pneumatic controllers. Mr. Alexander will note that the
12 EDF, NGO proposal is economically reasonable and practical
13 as technologies exist today to eliminate emissions from
14 pneumatic controllers.

15 Mr. Lyon's testimony is rooted in the results of
16 scientific, peer-reviewed studies that demonstrate high
17 emissions from malfunctioning gas-powered pneumatic
18 controllers. While frequent inspections can help reduce
19 emissions from malfunctioning pneumatic controllers, the
20 surest way to eliminate emissions is to replace
21 gas-powered devices with nonemitting ones.

22 You will also hear from Mr. Alexander, support
23 for our joint proposal to require operators install tech
24 measurement systems on new storage tanks and to allow for
25 the use of alternative approved control technology to

1 control emissions from low emitting storage tanks.

2 Ms. Hull will testify to the reasonableness of the NMED
3 cost effectiveness estimate for its tank control
4 requirements.

5 And lastly, you will hear from Mr. Alexander,
6 support for our joint proposal with Oxy, to require
7 operators to control emissions from flowback vessels
8 during completions and recompletions. Mr. Alexander will
9 explain why the joint proposal is safe, economically
10 feasible and technically practical.

11 Again, I greatly appreciate the opportunity to
12 testify on this important rulemaking. I appreciate the
13 hard work of NMED's staff, this Board and Madam Hearing
14 Officer. Thank you.

15 HEARING OFFICER ORTH: Thank you, Ms. Paranhos.

16 Mr. Jaynes, would you like to make an opening
17 statement now or reserve?

18 MR. JAYNES: Thank you, Madam Hearing Officer.

19 OPENING STATEMENT BY MR. SHIMANEK

20 MR. SHIMANEK: I'm going to speak for the Center
21 for the Civic Policy and the NAVA Education Project. I'd
22 like to thank you --

23 HEARING OFFICER ORTH: Mr. Shimanek, hold on.
24 Please introduce yourself so that the court reporter knows
25 who you are.

1 MR. SHIMANEK: Sorry. Yes, my name is Travis
2 Shimanek. I am a clinical law student from the University
3 of New Mexico School of Law, National Resources,
4 Environmental Law Clinic, representing the Center for
5 Civic Policy and the NAVA Education Project.

6 Thank you, Madam Hearing Officer and Madam Chair
7 and the Environmental Improvement Board members for your
8 time and effort in this matter. The focus of our clients
9 is to ensure that the regulations provide strong public
10 health protections from ozone precursors, especially those
11 in marginalized and underserved communities, such as
12 Native American populations, those with limited English
13 proficiency and for people who live near oil and gas
14 wells.

15 Some background on the Center for Civic Policy
16 and NAVA Education Project. The Center for Civic Policy
17 empowers and amplifies historic -- historically-excluded
18 and underrepresented New Mexicans for increased voter
19 participation to increase equitable representation in the
20 communities. The Center for Civic Policy is here to make
21 sure that their communities' interests are equitably
22 representative -- represented in this matter for the
23 rulemaking hearing.

24 Similarly situated is the NAVA Education Project,
25 whose missions is to unite community stakeholders to

1 actively improve the quality of life for Native American
2 communities and to protect Native American culture. NAVA
3 Education Project is committed to social, economic and
4 environmental justice principals that advance a healthy
5 and sustainable community for the Native American families
6 living in New Mexico.

7 We will be presenting three witnesses in this
8 hearing. Mr. James Povijua will be representing the
9 Center for Civic Policy. Mr. Joseph Hernandez will be
10 representing the NAVA Education Project. And Professor
11 Cliff Villa will be supporting both the Center for Civic
12 Policy and the NAVA Education Project.

13 Mr. Povijua, of the Center for Civic Policy, and
14 Mr. Hernandez, of the NAVA Education Project, will both
15 testify about their respective organizations' missions,
16 the relevant work with underserved communities, and why
17 this has led their organizations to join with the
18 Environmental Defense Fund, the Clean Air Advocates and
19 other parties in supporting amendments to strengthen the
20 proposed regulations. They will speak about the
21 particular importance of provisions to require more
22 frequent leak detection and repair on facilities in close
23 proximity to where they live, work, and their children go
24 to school.

25 Professor Cliff Villa will be supporting this

1 testimony by offering rebuttal testimony from an
2 environmental justice standpoint in response to the
3 testimony of several parties that have proposed both
4 strengthening and weakening leak detection and repair
5 regulations. He will testify on the facts presented by
6 different witnesses will relate to the disparate impacts
7 on local communities, and how that in turn, relates to the
8 Board's requirements to consider potential disparate
9 impacts of any regulation on the marginalized population.

10 We would just like to reiterate the environmental
11 justice perspective we believe the Board needs to
12 consider, and the disparate impacts they have the power to
13 mitigate for local communities through the adoption of our
14 strengthened proposals.

15 Thank you. That concludes my opening statement.

16 HEARING OFFICER ORTH: Thank you very much,
17 Mr. Shimanek.

18 Mr. Vimont or Vimont, on behalf of National Park
19 Service.

20 OPENING STATEMENT BY MR. VIMONT

21 MR. VIMONT: Okay. There, my video came up.

22 My name is John Vimont; I'm the acting chief of
23 the National Park Services Air Resources Division. It's a
24 national office and serves parks throughout the national
25 park system. Several national park service units in and

1 near New Mexico measure exceedances of the ozone air
2 quality standard, particularly Carlsbad Caverns National
3 Park.

4 We will provide information on enhanced
5 measurements of volatile organic compounds, VOCs, at --
6 and nitrogen oxides taken at Carlsbad Caverns National
7 Park, which strongly support the need for this rulemaking.
8 We will also provide some suggestions that will strengthen
9 the rule. I appreciate the opportunity to testify before
10 the Board today and I appreciate all of your work in this
11 area. Thank you.

12 HEARING OFFICER ORTH: Thank you, Mr. Vimont.
13 Let's turn then to WildEarth Guardians. Mr. Nykiel and
14 Mr. Timmons, would you like to make an opening statement
15 now?

16 MR. NYKIEL: Yes, please, Madam Hearing Officer.

17 OPENING STATEMENT BY MR. NYKIEL

18 MR. NYKIEL: Thank you, Madam Hearing Officer,
19 Madam Chair, members of the Board. My name is Matt Nykiel
20 and with me today is Daniel Timmons. Together, we -- we
21 represent WildEarth Guardians. Thank you for the
22 opportunity to present this opening statement regarding
23 the Environment Department's proposed rules, which are
24 critical to protecting the public health and environment
25 of New Mexico.

1 As you will hear from our witness, Mr. Jeremy
2 Nichols, the Department's proposed rule is a good step
3 forward, but could be made better. Mr. Nichols will
4 present evidence supporting three targeted proposals to
5 improve the rules by providing greater public
6 transparency, comprehensively addressing precursor
7 emissions, and providing a backstop to prevent the ozone
8 problem from getting worse.

9 WildEarth Guardians is a nonprofit conservation
10 organization, whose mission is to protect and restore the
11 wildlife, wild places, wild rivers and health of the
12 American West. Guardians was founded and is headquartered
13 in Santa Fe and represents thousands of members and
14 supporters, many of whom live in New Mexico and deeply
15 hope this Board adopts the strongest possible rules that
16 will finally get New Mexico's ozone problem under control.

17 To be clear, getting New Mexico's ozone problem
18 under control isn't just about complying with an abstract
19 numeric standard. It's about protecting public health and
20 giving people the peace of mind that they can safely
21 breathe the air in New Mexico. As you will hear today,
22 for the past several years, New Mexicans across the state
23 have been breathing air that is demonstrably unhealthy.
24 So far, 2021 has been no different, as the state continues
25 to wrack up ozone exceedances.

1 Responding to this serious pollution problem and
2 to actions by the Trump Administration, which stripped
3 federal air quality protections that New Mexico relied on,
4 the New Mexico State legislature and Governor Michelle
5 Lujan Grisham authorized and directed this Board to adopt
6 New Mexico-based rules to address the unique air pollution
7 challenges of this state.

8 You will hear a good deal of testimony regarding
9 air quality modeling and future projections, but the data
10 on the ground today is very clear. New Mexico has a
11 serious ozone problem, and no longer can this state afford
12 to simply do the bare minimum by meeting the basic federal
13 standards. The Ozone Attainment Initiative, including the
14 proposed rules at issue in this proceeding must go farther
15 if this Board is serious about its mission to protect
16 public health.

17 With over a decade of experience working on air
18 quality rules that address ozone pollution in states
19 including New Mexico, Colorado and Utah, Guardians'
20 witness, Mr. Nichols, will highlight the important context
21 within which the Board will consider these rules,
22 including the fact that the oil and gas industry is a
23 predominant source of ozone precursor emissions, the
24 importance of adopting strong rules the first time, to
25 avoid the persistence of ozone pollution other states have

1 experienced even after adopting similar rules, the
2 alarming number of ozone exceedances recorded just this
3 year, and how increasing ozone pollution and the
4 increasing impacts of climate change are forecast to feed
5 on each other.

6 Given the context of the ozone problem in New
7 Mexico, Mr. Nichols will present three proposals to
8 strengthen the Department's rules. First, Mr. Nichols
9 will testify in support of a rule that requires all owners
10 and operators to submit a semi-annual report to NMED,
11 identifying deviations from the rules in Part 50.
12 Reporting requirements like these are an essential feature
13 of most, if not all, pollution control rules. And these
14 reports would provide all members of the public
15 transparent access to whether or not a particular operator
16 or facility who may be in their community or their
17 backyard, is following the rules.

18 As the Department's rules are currently drafted,
19 only the Environment Department can request this
20 information, if they do so at all. Mr. Nichols will
21 explain how limiting access to this information, to a
22 chronically underfunded and short-staffed state agency, is
23 risky. And how the Department's discretion to request
24 these report could lead to inequities in oversight and
25 enforcement, and perpetuate environmental injustice

1 against historically marginalized communities.

2 Second, Mr. Nichols will testify in support of a
3 rule amendment that accounts for sources of ozone
4 precursor emissions that have historically been
5 overlooked. Mr. Nichols will explain how a recent report
6 conducted by the UCLA Institute of the Environment and
7 Sustainability identified the likelihood that a
8 significant number of oil and gas facilities emit ozone
9 precursors during wellhead construction, and that the
10 emissions during this phase of development are not
11 currently accounted for or regulated by the Environment
12 Department.

13 Finally, Mr. Nichols will testify in support of a
14 common sense rule that authorizes the Environment
15 Department to deny new air quality permits for oil and gas
16 facilities that would add more ozone precursors to areas
17 of New Mexico that already exceed 95 percent of the ozone
18 standard. Mr. Nichols will explain that despite years of
19 ozone exceedances in New Mexico, year after year the oil
20 and gas industry continues to secure new air quality
21 permits that allow more ozone precursors to be emitted,
22 making the ozone problem harder to solve.

23 This rule would create a critical backstop that
24 accounts for the facts that many of the new rules proposed
25 by the Environment Department do not become effective

1 immediately. As you will hear from the industry parties,
2 it will take owners and operators time to reduce their
3 pollution levels according to the new rules. And while
4 we're waiting for that, the rules should ensure the ozone
5 problem doesn't keep getting worse, and, therefore, more
6 difficult to solve.

7 We thank the Board for the opportunity to provide
8 an overview of our case and we thank you for your time and
9 consideration of strong New Mexico-based rules that will
10 finally start to address this state's ozone problem and
11 provide New Mexicans an essential comfort; that the air
12 they breathe is clean and healthy.

13 As you consider these rules, we encourage you to
14 bear in mind your charter, set forth in New Mexico's
15 Environmental Improvement Act, Section 74-1-2 NMSA, which
16 directs -- which directs you, as EIB members, to "ensure
17 an environment that in the greatest possible measure will
18 confer optimal health, safety, comfort and economic and
19 social well-being on its inhabitants, will protect this
20 generation, as well as those yet unborn from environmental
21 threats -- from health threats posed by the environment,
22 and will maximize the economic and cultural benefits of a
23 healthy people." Thank you.

24 HEARING OFFICER ORTH: Thank you, Mr. Nykiel.
25 Mr. de Saillan?

1 OPENING STATEMENT BY MR. DE SAILLAN

2 MR. DE SAILLAN: Thank you, Madam Hearing
3 Officer. Good morning, Madam Chair, Ms. Vice Chair,
4 members of the Board and Madam Hearing Officer. My name
5 is Charles de Saillan. I'm a staff attorney with the New
6 Mexico Environmental Law Center and I'm representing the
7 New Mexico Environmental Law Center in this proceeding.
8 We appreciate the opportunity to appear before you today
9 in this very important rulemaking proceeding. New Mexico
10 Environmental Law Center is a nonprofit public interest
11 law firm that represents environmental community
12 organizations on a wide variety of environmental and
13 environmental justice issues here in New Mexico. The New
14 Mexico Environmental Law Center has approximately 750
15 members. We have been a participate -- a participant in
16 this rulemaking proceeding from its inception. We also
17 participated in the related rulemaking proceeding before
18 the Oil Conservation Commission, addressing waste from oil
19 and natural gas production.

20 We're -- we were represented on the Methane
21 Advisory Panel, which developed the technical groundwork
22 for these regulations. We also submitted lengthy comments
23 on the oil conversation division draft waste rules. And
24 we gave public comment and expert technical testimony
25 during the Oil Conservation Commission hearing on those

1 rules.

2 We submitted detailed comments to the Environment
3 Department on earlier drafts of the proposed ozone
4 precursor rule that we're discussing here today. The
5 proposed regulations would address emissions of oxides of
6 nitrogen, or NOx, and volatile organic compounds, or VOCs,
7 from oil and natural gas production. These pollutants are
8 harmful to human health.

9 For example, one of the VOCs that emitted from
10 oil and gas production, is benzene, a known human
11 carcinogen. NOx and VOCs react with sunlight and oxygen
12 in the atmosphere to form ozone. Ground level ozone is
13 also harmful to human health. The co-benefit of these
14 regulations would be the reduction of methane emissions
15 from oil and natural gas production. Methane is a potent
16 greenhouse gas. It is approximately 86 times more potent
17 than carbon dioxide over a 20-year period. New Mexico
18 Environmental Law Center generally supports the rules that
19 the Environment Department has proposed in this
20 proceeding, with a few exceptions. We thank the
21 Environment Department and its staff for the tremendous
22 amount of work that has gone in to these proposed rules.

23 There are a few issues that I would like to
24 address. The first issue is the exemptions for
25 lower-producing wells. Now, as originally drafted, the

1 rules would have exempted so-called "stripper" wells. The
2 rule also would have exempted facilities that emit less
3 than 15 tons per year of VOCs. The proposed rule that the
4 Environment Department submitted to the Board no longer
5 includes those exemptions. We support the Department's
6 decision on this issue and we appreciate the Department's
7 actions.

8 Our witness, Theresa Pasqual, of the Acoma
9 Pueblo, will address this issue from the perspective of
10 the Native communities in the San Juan Basin. We,
11 likewise, oppose the industry's proposals to exempt wells
12 that produce less than 15 barrels, or barrel equivalents
13 per well per day.

14 The second issue is the phase out of pneumatic
15 controllers. We generally support the Environment
16 Department's proposal to phase out pneumatic controllers,
17 which are operated by natural gas. These devices are
18 among the largest sources of emissions from oil and gas
19 production. We agree with the Department that these
20 devices need to be replaced with zero emission
21 controllers. Those are -- those that are operated by
22 compressed air or by electricity. However, we think that
23 the Department's proposal to require replacement only by
24 2027 is much too long a time period.

25 We agree with and support the proposal of the

1 Environmental Defense Fund and Clean Air Advocates and
2 other organizations, to require replacements within six
3 months.

4 The third issue is the result -- excuse me. The
5 third issue is the use of storage vessel measuring
6 systems. The current practice is to measure liquids in
7 tanks by opening a hatch -- a thief hatch, and take the
8 measurement manually. This results in substantial
9 releases of pollutants into the atmosphere. We support
10 proposals to require automatic measuring systems be
11 installed in storage vessels.

12 The fourth issue is the installation of reduced
13 emission completion equipment. Again, we support the
14 proposals of several organizations to require the use of
15 equipment for the completion and reworking of wells
16 undergoing hydrologic fracturing, equipment that will
17 reduce the emissions of harmful pollutants into the
18 atmosphere.

19 The next issue is leak detection or repair, or
20 LDAR. Leaking equipment is another major source of
21 emissions of harmful air pollutants from oil and gas
22 production. Leak detection and repair requirements are
23 extremely important to reduce emissions, especially for
24 people who live, go to school, and work near oil and gas
25 production facilities. We support the strong LDAR

1 requirements.

2 We, therefore, support the proposal of Clean Air
3 Advocates, the Environmental Defense Fund, the Center for
4 Civic Policy, the NAVA Education Project to require
5 enhanced LDAR for facilities that are within 1000 feet of
6 specified occupied areas. These occupied areas include
7 schools, businesses and homes.

8 On several of these points, I -- I want to say
9 that we support the agreement that has been reached among
10 Oxy USA, EDF, Clean Air Advocates, and some of the other
11 organizations. We commend these parties for reaching an
12 agreement on these issues. We urge the Environment
13 Department to also support this agreement and we urge the
14 Board to adopt the terms of this agreement.

15 Finally, I'd -- it is important to emphasize that
16 the emissions of harmful air disproportionately affect
17 Native Americans and Hispanic communities in New Mexico.
18 Our witness, Theresa Pasqual, will also address this
19 issue. I would like to add that, although, we are playing
20 a relatively minor role in this proceeding, that should
21 not be taken as an indication of the importance of this
22 rule, in our view. It is of critical importance.

23 We thank the Board for its time and effort in
24 this complex, but very important rulemaking proceeding.
25 We urge the Board to adopt a strong ozone precursor rule.

1 Thank you.

2 HEARING OFFICER ORTH: Thank you, Mr. de Saillan.
3 We have been going for an hour and 45 minutes. Now, some
4 of us were on the platform at 8, we need a break. Let's
5 take a brief break until 11 a.m. When we return I will
6 invite NMOGA to make its opening statement and proceed
7 through the rest of the service list. Thank you.

8 (Recess taken from 10:46 a.m. to 11:00 a.m.)

9 HEARING OFFICER ORTH: All right. Who will be
10 offering -- oh, there's Mr. Hiser. Whenever you're ready,
11 Mr. Hiser, your opening statement for NMOGA.

12 OPENING STATEMENT BY MR. HISER

13 MR. HISER: Thank you, Madam Hearing Officer.
14 Good morning, Madam Hearing Officer, Madam Chair, members
15 of the Board and the other parties. My name is Eric
16 Hiser, with the firm of Hiser Joy. I'm here with Brandon
17 Curtis, also from that firm. We represent the New Mexico
18 Oil and Gas Association, or NMOGA, as you've heard us
19 referred to many times throughout this hearing. We also
20 are assisted by Dalva Moellenberg from Gallagher & Kennedy
21 in Santa Fe, as co-counsel.

22 Well, who is NMOGA? NMOGA is the New Mexico Oil
23 and Gas Association, and it comprises over 1000 operators
24 who are engaged in the oil and gas business in New Mexico.
25 And together, they represent more than 90 percent of the

1 total oil and gas activity in New Mexico. We've been
2 engaged in this rulemaking since its inception, and NMOGA
3 established a working group with over 80 member companies
4 that provided expert support in many areas and
5 participated in the process before the Department.

6 What are NMOGA's objectives in this rulemaking
7 and in this hearing? Well, contrary to the suggestion
8 that may be coming across from other parties, including
9 the Department and the environmental groups, NMOGA's
10 suggestion is not that we do not need those rules, but,
11 rather, that the rules should be crafted effectively to
12 balance the emissions reductions while maintaining the
13 viability of the important oil and gas industry to New
14 Mexico.

15 We've been actively engaged in trying to provide
16 proactive, cost effective solutions, and improve practices
17 to help reduce the emissions of ozone precursors. NMOGA
18 has also brought to NMED's attention, and will bring to
19 this Board's attention during this hearing, some certain
20 common things, such as requirements that are technically
21 infeasible, we just can't do them, where they may be
22 unworkable because of the way the oilfield works or the
23 particular way the requirement is phrased.

24 We'll also address situations where the
25 requirement may be, in our view, cost prohibitive, or

1 where the emissions benefit is trivial for the cost
2 incurred. Finally, there are some safety issues that we
3 believe this Board should consider before it proposes to
4 adopt certain regulations that may raise safety concerns
5 for our workers in the field.

6 We have also, however, proposed and agreed to a
7 series of cost effective solutions and best management
8 practices that will greatly reduce the emissions of ozone
9 and nitrogen oxide precursors. And we think that that
10 should not be overlooked as part of NMOGA's efforts in
11 this rulemaking.

12 We're pleased that many of our technical
13 feasibility and some of the workability and cost
14 prohibitive issues were addressed in the Department's
15 September 16th, 2021 revisions. So what are going to be
16 some of the themes that you, as Board members, will hear
17 throughout this testimony?

18 The first is that this is an ozone rule, and that
19 our focus needs to remain on the statutory authority and
20 the prevention of ozone and its health effects. You may
21 hear things about climate change and methane, but that's
22 really sort of peripheral to the fundamental thrust of
23 this rule.

24 Second, as you've already heard, this rule is
25 different than many of those that come before this Board.

1 Many of the rules that are brought by the Environment
2 Department are rules that have already been adopted
3 elsewhere by the Federal EPA and are being adopted and
4 customized to New Mexico. In this case, the Department,
5 consistent with that legislative directive, is bringing a
6 brand-new rule that's breaking ground. That's good news
7 in part, and shows New Mexico's leadership, but it also
8 means that you, as the Board, bear a higher burden of
9 vetting all of those aspects of the rule to make sure that
10 they are necessary and appropriate, because we don't have
11 the benefit of a different agency already having done that
12 in a different context.

13 You will also see that this rule is different
14 because it's costly. You've heard that the industry
15 expert, John Dunham's estimate is about 3.2 billion. I
16 note that even the NMED witnesses have conceded the cost
17 is perhaps in the 1.5 billion range. Whether it's 1.5 or
18 3 billion, this is a very expensive rule compared to many
19 that come before this Board. And that means that it's
20 appropriate to pay attention to questions where we may be
21 able to keep effective regulation, but do so at lower cost
22 to New Mexicans.

23 The other thing that I think is important about
24 this rule is that it has somewhat limited impact on those
25 ozone levels. It's not a silver bullet that's going to

1 solve all of New Mexico's ozone attainment issues, as much
2 as we and industry wish it would as well.

3 NMED's modeling that Ralph Morris will present
4 shows the maximum impact is about 1.5 part per billions in
5 the Northwest at one monitor location, and that's about
6 .8 part per billion, at best, in the Southeast. And the
7 average reduction is only about .8 part per billion in the
8 Northwest, and about .2 in the Southeast.

9 So we're spending a fair amount of money here for
10 not a lot of emissions reductions. The NMOGA witness,
11 Dennis McNally, from Alpine Geophysics, will testify that
12 the NMED model shows that the VOC controls reduce a
13 fraction of that total ozone amount by a controlled .1
14 and .3 part per billion across the state. So the VOC
15 component of this rule in particular is troubling to NMOGA
16 because it doesn't seem like there's a lot of bang for the
17 money that the state is being asked to put in to that
18 state and industry.

19 And Dennis McNally will also provide some
20 overview about how the industry's ozone and VOC
21 contributions are really fairly small in the overall
22 picture. You've heard a number of statements that we are
23 predominant cause of ozone formation in the State of New
24 Mexico. And this is not true. The predominant cause is
25 clearly transport, and clearly things like biogenic VOC

1 emissions that occur regardless of the industry's
2 presence. And it's important to see how all of the
3 picture and pieces of that puzzle fit together as you are
4 making decisions about the future of the state.

5 So, in general, we're generally supportive of the
6 proposals that you have from the New Mexico Environment
7 Department. We're asking this Board to give some
8 particular scrutiny to some of the VOC controls to make
9 sure that they are actually going to deliver the promised
10 benefits at a reasonable cost.

11 So let's turn, then, to some of the witnesses and
12 the issues that will be before the Board. First, there is
13 a threshold issue, which we've heard, which is that it's
14 not apparent to us at NMOGA that Rio Arriba or Chaves
15 County should be included in this rule. The current
16 design value of Rio Arriba County is less than 95 percent
17 of the NAAQS. We believe that's below the threshold
18 established by the legislature, and that's a trend in Rio
19 Arriba County, not just a one-time occurrence.

20 For Chaves County, we don't believe that an
21 adequate showing has been made that it is, in fact,
22 causing or contributing or over 95 percent of the
23 threshold. And we commend that to you, you'll hear some
24 additional testimony from Dennis McNally on that issue.

25 Turning to the substantive provisions of the

1 proposal, you will see that Section 113, on engines and
2 turbines is one of considerable concern to NMOGA. This is
3 the section that has a lot of opportunity to be very
4 disruptive to field operations, and we want to highlight
5 for you a couple of factors that are important to making
6 this part of the rule very effective.

7 The first is, we need to have the ability to
8 relocate engines and turbines as the decline in production
9 sets in, so that we don't leave overly large engines at a
10 well site. We need to be able to move those so that we
11 can reduce the emissions. We are pleased the NMED, in the
12 September 16th proposal, has recognized this.

13 Similarly, it's important for us that we have the
14 ability to take engines and turbines into the shop and
15 work on them there, where we can do better maintenance
16 than being forced to do them out in the field. And NMED's
17 latest revisions would allow that as well. We think those
18 are very significant and important developments.

19 We believe that the current September 16th
20 proposals in Table 1 and Table 2 on the emissions limits,
21 represent the maximum that is currently technically and
22 cost effectively achievable, but we are supportive of
23 those levels found in Tables 1 and 2. And we think that
24 Table 3 on turbines is also very close, with a couple of
25 minor tweaks that you'll hear about from Solar Turbines.

1 On the other hand, we do not agree with the
2 National Park Service's suggestion that we should bring in
3 all engines, regardless of size, and regulate them at
4 these levels. We believe for reasons that our expert,
5 Justin Lisowski, who is a designer and installer of these
6 engines, that that's not possible under the design and
7 capabilities of current technology for those smaller
8 horsepower engines; basically, those under 1000 or 500
9 horsepower. And so that's important. There's also some
10 workability issues in terms of the giant expansion and the
11 number of effective units. That's enough on engines and
12 turbines.

13 What's NMOGA's next concern? We also have
14 concern about the equipment monitoring provisions. Here,
15 we are pleased to say that the Department has moved in a
16 very good direction, and we're down to now discussing a
17 date and time stamp. This is in Section 112. You'll hear
18 from our expert, John Smitherman, a long time industry
19 executive, about the difficulties in trying to integrate
20 new components into electronic database systems where you
21 have to work with inherited systems already in place.

22 But you'll hear our commitment to trying to make
23 that work, and the only thing that we really need here is
24 a little bit more time to achieve that work, that
25 integration. As presently set forth by the Department,

1 they would adopt their rules in January, and we're
2 supposed to have them in place by April of the same year.
3 If anybody has ever worked with IT, we know IT doesn't
4 integrate that quickly, so there will need to be a little
5 bit more time for us to pull that off.

6 Our third issue is storage vessels addressed in
7 Section 123. You'll see by looking at the positions of
8 the parties, that there was never a verbal agreement on
9 the threshold for existing storage vessels. What you
10 didn't hear is that industry and the Department, and I
11 think the environmental groups, are all in agreement on
12 the two ton per year threshold for new facilities. So
13 there is agreement on that.

14 Why are we concerned about existing? We believe
15 that the cost estimates that we are seeing overlook the
16 single tank battery, and that when you look at single
17 tanks, of which there are quite a few in New Mexico, the
18 resulting costs are simply unacceptable and would drive
19 many of those tanks out of being used, and hence require
20 shutdown of the associated facility.

21 One of the things that you heard from EDF and
22 other groups is a number of academic studies, where they
23 say this is achievable. Well, you'll hear from NMOGA's
24 expert, Adam Meyer, whose job is to design and install
25 these tanks, that the costs are, in fact, much higher than

1 those historic studies, which may be from ten years ago,
2 are currently, and that many of these things are not
3 achievable. And so we think that you will find that to be
4 very interesting testimony.

5 We will also propose that by tweaking the
6 thresholds, this Board may be able to achieve the vast
7 majority of the emissions reductions, but cut the cost by
8 perhaps 50 percent or more, while achieving substantially
9 the same results. And that's why when we talk about
10 crafting effective rules that are also cost effective,
11 this would be an example of that.

12 We also don't disagree with automatic tank
13 gauging for new tanks. That's consistent with the OCD
14 rules, and we remain supportive of that as well, although,
15 we're not sure that the current NMED rules need to say the
16 same thing as the OCD rule does.

17 Our fourth issue is hydrocarbon liquid transfers.
18 We're pleased that there has been good movement over the
19 course of this discussion, and that NMOGA and NMED
20 basically have consulted and agreed on the draft that's
21 been presented to this Board. It excludes produced water,
22 which is not a significant source of hydrocarbons, which
23 was NMOGA's principal concern, and I think the principal
24 concern of many of the other people that you may hear from
25 on the industry side in this proceeding.

1 Industry, in its part, has agreed to adopt a
2 number of good operating practices to reduce the emissions
3 from these procedures. We think this is an example of a
4 good rule and we note that it includes beneficial
5 provisions like not requiring pipelines -- facilities that
6 pipeline their liquids, to install additional controls
7 when those aren't needed.

8 Moving to pneumatics; we're going to be talking a
9 lot about pneumatics. I think the Board has probably
10 already gathered that. There is little apparent agreement
11 amongst the proposals, but I think there's actually a fair
12 amount of actual agreement on what should be done.

13 Industry has agreed to phase out high bleed controllers,
14 that's part of our proposal that you will see. Industry
15 has agreed to the phase out of controllers on the schedule
16 that was proposed by NMED.

17 What our concerns are and what we ask the Board
18 to keep in mind, is that we need to have a program that
19 doesn't result in surprises. And a surprise occurs if a
20 controller failure at a facility requires us to suddenly
21 have to try to retrofit that entire facility at one time
22 out of its planned order. We need to preserve certain
23 gas-based controllers for certain applications for health,
24 safety and process reasons, where there's not a good
25 solution. This was accepted in Colorado. We don't

1 believe it's very controversial.

2 And we do have a concern about the proposed line
3 power, short-term phase-out because there is not adequate
4 time, six months, for us to do all of that work. And
5 you'll hear testimony from both Mr. Smitherman, our
6 industry executive and also from Adam Meyer, who is our
7 facility design and construction engineer, about why it
8 takes more time, particularly right now in the
9 post-pandemic era, where supplies are short.

10 Moving on then, you did hear that there is a
11 distinction between industry and NMED beyond production
12 percent or controller count. We have a small preference
13 for the production-based approach because it better aligns
14 with our budgeting processes; hence, it's easier for us to
15 implement and we think that creates benefits in the long
16 run for the state as well.

17 A few more issues and then we'll be done with the
18 industry position. The last of these -- or the next is
19 produced water. Our produced water, the initial proposal,
20 which was a two-ton per year cap, is very problematic. It
21 could potentially stop the recycling of produced water and
22 require industry to shift back to drinkable water or fresh
23 water for all of its activities. We regarded this as a
24 very big problem because industry has been committed to
25 recycling its water and reducing its impact on freshwater

1 resources in New Mexico. The new proposal that's been
2 brought forward on September 16th is substantially better.
3 Industry is in substantial agreement with it and we
4 commend this direction for the state moving forward.

5 On equipment leaks and fugitive emissions, or
6 LDAR, that you've heard about, there's little agreement on
7 the thresholds or frequencies for this, and we do have
8 some problems with the general story that has been brought
9 to this Board by the environmental groups and perhaps even
10 Occidental Petroleum. And that is that the current
11 approach is based on the study that we would represent is
12 historic industry practice, but they don't represent
13 current industry practice. And they don't reflect the
14 waste rules that were adopted by Oil Conservation
15 Division.

16 Those rules require us to have much more frequent
17 inspection and AVO inspections -- audiovisual olfactory
18 inspections of our facility, sometimes as frequently as
19 weekly, but never less often than monthly. And so we're
20 on these facilities, and now we're looking specifically
21 for those leaks. And we believe that these leaks that
22 have reached the level of super-emitters that you're heard
23 about, that they would be detected by this and fixed much
24 more rapidly than has historically been the case.

25 This means that some of the gains that have

1 historically been seen by LDAR, may not be seen as we move
2 into the New Mexico context. And we believe that that
3 factor needs to be looked at and considered as we evaluate
4 what should be the frequency for LDAR rules in New Mexico.

5 In light of the OCD rule -- (unintelligible) and
6 fenceline communities, with community partners, we
7 appreciate the division -- (unintelligible.)

8 HEARING OFFICER ORTH: Mr. Hiser, I'm sorry. You
9 froze about 30 seconds ago.

10 MR. HISER: Was I starting the leak detection or
11 where was I?

12 HEARING OFFICER ORTH: Hold on. Ms. DuBois,
13 where was he?

14 MR. HISER: Hopefully, our court reporter hasn't
15 froze.

16 HEARING OFFICER ORTH: Ms. DuBois, I can see that
17 you're unmuted, but we're not hearing anything from you.
18 Perhaps you could put his last few words in the Chat and
19 I'll read it. We're not hearing anything from you.

20 COURT REPORTER: Can you hear me now?

21 HEARING OFFICER ORTH: Yes. Yes, thank you.

22 COURT REPORTER: Somehow the WebEx changed my
23 microphone earlier, it put up a message. Anyway, okay.
24 So the last part was, "We believe that that factor needs
25 to be looked at and considered as we evaluate" --

1 MR. HISER: Perfect. Thank you, Ms. DuBois.
2 I appreciate that.

3 CONTINUED OPENING STATEMENT BY MR. HISER

4 MR. HISER: We believe what these factors with
5 the OCD rule and the fact that we are out weekly or
6 monthly conducting this audiovisual olfactory review
7 suggests that there will not be issues with super emitters
8 that are not caught and captured rapidly, and that,
9 therefore, the cost effectiveness estimates based on
10 historic practices may not be accurate moving forward for
11 New Mexico. We'd like the Board to keep these factors in
12 mind as it moves to consider the leak detection and repair
13 requirements. In light of all of these elements, we
14 believe the industry proposal is satisfactory and
15 sufficient to protect our frontline and fenceline
16 communities and our community partners.

17 In summary, members -- Madam Hearing Officer,
18 Madam Chair, members of the Board, this is a big rule.
19 It's asking you to make substantial changes to how the oil
20 and gas industry has worked in the past. And we're
21 committed to working with you to achieve a good level of
22 controls of ozone and its precursors, nitrogen oxides and
23 volatile organic carbons, moving forward. We have
24 concerns about the extent of the volatile organic compound
25 controls given the small benefits that NMED's own modeling

1 tend to show, in the testimony of Mr. Morris, as
2 Mr. McNally will explain. And so we think these deserve
3 careful scrutiny.

4 We'd also ask the Board to consider the fact that
5 when we launch a regulation, and we set those words into
6 the law, we don't know how they're necessarily going to be
7 interpreted. And so care needs to be executed in making
8 sure that we don't criminalize potentially inadvertent or
9 unavoidable occurrences in the oilfield.

10 And so there will be some cases that you see in
11 NMOGA's comments, or otherwise, where we express concerns
12 about concepts like leak-free or no emissions, because
13 that may not be able to happen. And you will hear our
14 witnesses talk about that. And we'd direct your attention
15 to that so we don't set an unacceptable legal bar on those
16 issues.

17 With that, Madam Hearing Officer, Madam Chair,
18 members of the Board, that reaches the conclusion of the
19 New Mexico Oil and Gas Association's opening comments. I
20 appreciate your time, and I am, very, very grateful for
21 your consideration of what is going to be a long and
22 complex hearing, and I salute you for your volunteering to
23 do this job for the citizens of New Mexico. We are all
24 indebted to you. Thank you so much.

25 HEARING OFFICER ORTH: Thank you very much,

1 Mr. Hiser. Before I call on the Independent Petroleum
2 Association, two things: two of the Board members may
3 have misunderstood earlier, when I asked the panelists who
4 are lawyers and party representatives not to share their
5 screen unless they were speaking. And, obviously, to keep
6 themselves muted if anyone else is speaking.

7 Because we haven't seen two Board members on
8 screen, whom I know have been with us from the beginning,
9 Member Cates and Member Duval -- Dr. Duval. Member Cates
10 and Member Duval, if you have the bandwidth and are
11 comfortable being on video, we'd love to -- we'd love to
12 have you join us on video. And if your connection becomes
13 spotty or you need to step away, please feel free to go
14 dark, that's fine, but I didn't want to be misunderstood.
15 So thank you. Let's see. I see Member Duval now. Thank
16 you.

17 All right. And the other thing -- sorry, that
18 was one thing. The other thing is there was a question in
19 the Chat to me, from Mr. Colclasure, about whether the
20 order in which I was inviting opening statements -- what
21 the implications of the difference between the order in
22 which I was inviting opening statements and the order in
23 which Ms. Katz reflected witnesses being called in the
24 spreadsheet that you're looking at.

25 I do not -- I am calling for opening statements

1 roughly in the order in which we set out the service list.
2 And it does not have any implications whatsoever for the
3 spreadsheet in which the witnesses will be called, and the
4 order of the topics is set out.

5 Oh, and I see Member Garcia now on screen as
6 well. Okay. That -- that was the two things that have
7 come up since we last spoke.

8 So, Mr. Rose, will you be offering an opening
9 statement for IPANM?

10 MR. ROSE: I will, Madam Hearing Officer. And if
11 it's appropriate, I'd like to do it now as opposed to when
12 I call my first witness.

13 OPENING STATEMENT BY MR. ROSE

14 MR. ROSE: Thank you, Madam Hearing Officer.
15 members of the Board, for the record, my name is Louis
16 Rose, I'm an attorney with Montgomery and Andrews here in
17 Santa Fe. And I'm representing the Independent Petroleum
18 Association of New Mexico, which as the name implies, is
19 comprised of independent oil and gas producers in the
20 state. We're not -- we're not dealing with vertically
21 integrated companies, these are companies that produce oil
22 and gas in New Mexico. It includes a number of smaller
23 members, and the membership of IPANM is primarily
24 comprised of procedures in the Northwest part of the
25 state, but it also represents producers throughout the

1 state.

2 And if I might, in terms of trying to shorten the
3 opening statement, we agree with a number of the points
4 raised by Mr. Hiser in his opening statement, concerning
5 the effects of these rules on the ambient ozone
6 concentrations.

7 And first -- and I think it's important to note
8 that -- that what we're doing here is implementing a
9 statute, it's not a new statute, as you've heard. The
10 obligation for this Board to assure attainment and
11 maintenance of the ozone NAAQS has been -- been on the
12 books since the early 1970s, specifically in 2009, the
13 legislature adopted provisions obligating this Board when
14 ambient ozone concentrations reached 95 percent of the
15 federal National Ambient Air Quality Standards, to develop
16 a plan. And that plan was to include regulations, but
17 it's not limited to regulations. That -- that authority
18 was not executed until this proposed rulemaking. The
19 legislature in this last session amended the Act, kept the
20 obligation of this Board to develop a plan, but deleted
21 language that was designed to ensure that technology-based
22 requirement, that is, reasonably available control
23 technology be implemented.

24 And where it left the Board, in essence, is -- is
25 to look at this statute in the context of other provisions

1 in the Act, that is to prevent air pollution and make the
2 Board aware, because it's an area that hasn't been
3 addressed by this Board in some time, is that this Board
4 did regulate oil and gas as one of its earliest
5 regulatory programs. Back in 1974, the Board adopted
6 regulations dealing with -- primarily with gas processors
7 and oil refineries, but also with -- with respect to
8 storage vessels, tanks, those kinds of things. And those
9 regulations were in effect since that time.

10 This Board has also regulated oil and gas through
11 the permitting program, which requires air quality permits
12 for facilities that have a potential to emit more than 25
13 tons per year of any criteria pollutant, and a number of
14 sites within this industry, particularly compressor
15 stations and gas processing facilities, have been subject
16 to permitting authority and requirements since the late
17 1970s.

18 What -- what this is -- what is unique here is
19 that you're being called upon to regulate production
20 facilities. Most of those are below the threshold
21 requiring a permit. A number of them are below the
22 threshold that this Board has established for notice to
23 the Department, that is that Part 73, Notice of Intent
24 requirements, which relate to 10 ton -- which require that
25 any facility that emits or has a potential to emit

1 criteria pollutants in excess of 10 tons per year is
2 required to notify the Department. In that content, this
3 is unique and as -- and as, I think, Ms. Katz pointed out,
4 it's something that this Board has not done, at least with
5 respect to this industry, and probably others since the
6 very inception of the air program.

7 I'd also like to make the Board aware that when
8 it regulated the facilities under -- under the air act, to
9 prevent or abate violations of ambient air quality
10 standards, which the courts have said defines the levels
11 at which air pollution occurs, the Court of Appeals very
12 early on, in 1976 -- and that's still the law -- required
13 that -- said that the Boards's authority, while it's
14 required to assure that the standards are met, that its
15 authority is to adopt requirements that are no more
16 stringent than necessary to protect standards.

17 And you'll hear testimony in this proceeding
18 concerning what effects these emissions have on ambient
19 air quality. IPA's position is that under that statute,
20 first, the Board is obligated to make a determination on
21 whether these sources cause or contribute to levels in
22 excess of 95 percent of the ambient air quality standards.
23 And we believe it's -- it's a more difficult analysis than
24 perhaps has been portrayed.

25 Our analysis is that, impacts of these facilities

1 on ambient oil an -- on ambient ozone concentrations, in
2 effect, does not cause or contribute to the levels that
3 they are seeing in the areas of the state that exceed 95
4 percent of the NAAQS.

5 Secondly, we believe that the statute obligates
6 this Board to establish a plan to determine how it's going
7 to assure that the ambient air quality standards are not
8 exceeded. The statute does not explain or give direction
9 to this Board on what needs to be in a plan. Our
10 testimony has alluded to two areas that the Board could
11 look at for guidance as to what the contents of these --
12 this plan ought to include: that is, obligations for this
13 Board under Section 110 of the Clean Air Act, to have
14 plans to assure that ambient air quality standards are
15 attained and maintained. And also, the requirements of
16 the nonattainment provisions of the Clean Air Act specify
17 plans for areas that do not attain the ambient air quality
18 standards; particularly, what needs to be in both marginal
19 and other designations for exceedances of the standard.
20 You'll hear from our testimony, that we believe the plan
21 as being proposed by ED, meets neither of those
22 requirements.

23 And, finally, we believe that as the statute
24 proposes, that this is an ozone precursor rulemaking.
25 That is, you're looking at and obligated to regulate

1 emissions of nitrogen oxides and volatile organic
2 compounds. We believe that the testimony will -- will
3 prove that the areas we're talking about in the state are
4 what's called NAAQS-limiting. That is, the complicated
5 chemical reaction that creates ground level ozone, which
6 you've heard about, really in areas of this state that
7 were talking about, are really controlled by NAAQS
8 emissions. That is, if you're going to reduce ozone
9 concentrations, the vast majority of those reductions will
10 be created through the reduction of NAAQS emissions, not
11 VOCs.

12 And we believe that the contribution of VOCs,
13 both to the ambient ozone concentrations and to the
14 reductions that have been identified, are minimal at best;
15 and we believe do not justify the degree of controls that
16 the Department is proposing and others are proposing on
17 VOC emissions.

18 We believe that as a result of this hearing and
19 the testimony, you will agree with us that perhaps much
20 less regulation is warranted under this provision. I'd
21 warn the Board, and I indicate that our position's fairly
22 clear that this is not a methane rule. That the statute
23 provides that if the Department chose to regulate methane
24 and methane emissions, or if this Board does, there is
25 provisions of this statute that need to be met and a

1 different proceeding needs to be undertaken. As the
2 notice of this proceeding and as the Department's
3 testimony, I think, supports, this is a rulemaking
4 designed to assure ozone concentrations do not exceed the
5 NAAQS.

6 And any consideration by this Board as to methane
7 reductions and predicate -- decisions predicated on
8 methane reductions, we believe, is in error and would be
9 in violation of this statute.

10 Madam Hearing Officer, that -- that concludes my
11 opening statement, and we look forward to participating in
12 this hearing.

13 HEARING OFFICER ORTH: Thank you, Mr. Rose.
14 Mr. Janoe?

15 OPENING STATEMENT BY MR. JANOE

16 MR. JANOE: Good morning, Madam Hearing Officer,
17 Madam Chair and members of the Board. Oxy USA, Inc.
18 supports the goals of the department's rulemaking and
19 appreciates the opportunity to participate in this hearing
20 to provide practical input on the proposed rule package
21 based on Oxy USA's experience operating in the state.

22 Through coordination with the Department and
23 other stakeholders throughout this process, many of Oxy
24 USA's initial concerns have been resolved. However, there
25 are still elements of the rule that Oxy UA believes need

1 to be clarified or otherwise addressed.

2 Oxy USA's witness, Danny Holderman, is the asset
3 director for the onshore resource and carbon management
4 Delaware Basin business unit for Oxy USA, Inc.
5 Mr. Holderman will address each of Oxy USA's remaining
6 issues with the proposed rule.

7 Among other topics, Mr. Holderman will discuss
8 the changes that Oxy USA believes should be made to the
9 Department's proposed LDAR requirements for low-emitting
10 facilities, including wellhead only facilities, and the
11 Department's proposal for pneumatic controllers.
12 Mr. Holderman will also speak to the need to establish
13 practical and reasonable phase-in timelines for all of the
14 Departments -- excuse me -- proposed requirements.

15 Oxy USA has worked with various stakeholders,
16 including the Environmental NGOs. As representatives for
17 the NGOs have noted, we provided feedback on each of their
18 four main points. We've been able to agree to solution in
19 many cases that work for Oxy USA's operations, with
20 additional edits that Oxy USA will discuss during
21 Mr. Holderman's testimony. Oxy USA's testimony only
22 concerns what is workable and feasible for Oxy USA's
23 operations in the state. We can't say whether it's
24 feasible for every basin or for every other operator in
25 the state; only what is workable and feasible for Oxy.

1 Ultimately, Oxy USA appreciates the open dialogue
2 and continued efforts of all stakeholders, and believes
3 that the Department, the NGOs, and industry, can come to
4 agreement on reasonable and practical strategies designed
5 to improve air quality in New Mexico, while maintaining a
6 vibrant oil and gas industry in the state.

7 Madam Hearing Officer, this concludes our opening
8 remarks.

9 HEARING OFFICER ORTH: Thank you very much,
10 Mr. Janoe.

11 Mr. Butzier, will you be making an opening
12 statement?

13 MR. BUTZIER: I will. Thank you, Madam Hearing
14 Officer.

15 OPENING STATEMENT BY MR. BUTZIER

16 MR. BUTZIER: Madam Chair, members of the
17 Environmental Improvement Board, Madam Hearing Officer,
18 good morning. My name is Stuart Butzier, of the Modrall
19 Sperling Law Firm, Santa Fe office. I and my co-counsel,
20 my law partner, Christina Sheehan, of Modrall Sperling
21 Albuquerque office, as well as Whit Swift and others from
22 the national law firm of Bracewell, LLP, will be
23 representing the Gas Compressor Association, also referred
24 as to GCA in this proceeding.

25 In -- in my very short opening statement, I will

1 first briefly introduce the GCA, then offer some
2 observations about NMED's proposed rulemaking, and
3 finally, provide some basic context for the several
4 witnesses who will be testifying for the GCA.

5 First, about the GCA: The GCA is an association
6 whose member companies serve the oil and gas industry in
7 New Mexico as well as throughout the United States, by
8 providing compression services and related equipment to
9 oil and gas procedures and midstream companies. The
10 services and equipment provided to the GCA members
11 customers allow for the compression of natural gas, to
12 enhance its customers oil production through gas-lift
13 operations and most commonly, to aid in the transportation
14 of its customers natural gas to and through midstream
15 gathering and gas processing infrastructures, much of
16 which is in remote locations.

17 The natural gas ultimately leaves those
18 facilities and enters into larger natural gas pipeline
19 systems and storage facilities. As such, the GCA members
20 serve a vital function in the New Mexico oil and gas
21 industry, and by extension are state and local communities
22 that benefit from GCA's and the GCA's customers economic
23 activities, including, employment.

24 Second, by way of general observations regarding
25 NMED's proposed rulemaking, the GCA first and foremost,

1 commends NMED for exercising its air quality related
2 authority to propose that EIB help address ozone
3 precursors proactively in this proceeding, as well as in
4 future similar rulemakings it plans to pursue involving
5 other sectors.

6 Even though NMED's offered exhibits suggest the
7 primary sources of ozone precursors that have brought
8 certain counties to within 5 percent of reaching
9 nonattainment status under the federal National Ambient
10 Air Quality standards, or NAAQS, are from places outside
11 of our state, such as Mexico and Texas, or are due to
12 emissions-generating activities outside the oil and gas
13 sector, the GCA recognizes both the authority and general
14 prudence of NMED, in starting to offer the EIB regulatory
15 mechanisms for getting a handle on ozone precursors to
16 ensure our counties remain in compliance with those NAAQS.

17 The GCA is not antagonistic to the general
18 motivations behind NMED's proposed rulemaking and also is
19 very appreciative that NMED has remained opened and
20 attempted to be responsive to reasonable input from
21 stakeholders in the extraordinary and lengthy efforts
22 leading up to this hearing before the EIB.

23 In fact, Madam Hearing Officer and the EIB
24 members will hear a number of GCA witnesses who
25 essentially endorse certain aspects of NMED's latest

1 September 16 draft of the rulemaking as being sufficiently
2 responsive.

3 Finally, to provide the hearing officer and Board
4 members some context for the witnesses who the GCA will be
5 offering in this proceeding, it might be useful to point
6 out how the GCA has viewed its role in similar proceedings
7 that have occurred at the federal level, as well as in
8 other states, because the GCA offers its several witnesses
9 in the same spirit here.

10 That is, it offers its witnesses in a spirit of
11 cooperation, by lending their technical expertise and
12 expert familiarity with some of the engines and other
13 forms of equipment and processes that are the subject of
14 various aspects of NMED's proposed rulemaking, so that the
15 EIB will be well positioned to balance important policy
16 considerations, avoid arbitrary decision making, and
17 ultimately, do what's best for the citizens of our state.

18 The GCA has its own environmental committee
19 chaired at one time or another by two of the witnesses we
20 will be offering in this proceeding. The key goal of that
21 committee, as well as the GCA itself, is education, both
22 of its member companies to help ensure compliance with
23 applicable law, and to provide regulators with the
24 necessary insights to be able to make reasoned choices
25 and, ultimately, to adopt reasonable and balanced

1 regulations addressing this complex and highly technical
2 area of the law.

3 The GCI -- the GCA thanks NMED's counsel and
4 Madam Hearing Officer for the efforts already made to
5 sensibly organize this proceeding. And thanks to EIB
6 members in advance for their attention and diligence in
7 the coming weeks, as it considers and addresses these
8 issues of great importance to the citizens of New Mexico.

9 With that, I will yield this virtual platform to
10 whomever may be next.

11 HEARING OFFICER ORTH: Thank you,
12 Mr. Butzier.

13 Ms. Gutierrez, will you be offering an opening
14 statement for Kinder Morgan?

15 MS. GUTIERREZ: Madam Hearing Officer, yes, I
16 will. And might I ask you provide me permission to screen
17 share?

18 HEARING OFFICER: Yes, just a moment

19 MS. GUTIERREZ: Thank you.

20 HEARING OFFICER ORTH: You should have that
21 privilege now.

22 MS. GUTIERREZ: Can you seen on your screen a
23 PowerPoint?

24 HEARING OFFICER ORTH: Yes.

25 MS. GUTIERREZ: Let me relocate that screen.

1 OPENING STATEMENT BY MS. GUTIERREZ

2 MS. GUTIERREZ: Good morning, Madam Chair,
3 members of the Board, Madam Hearing Officer Orth, Board
4 Administrator Jones, New Mexico Environment Department,
5 and other parties. My name is Ana Gutierrez, with Hogan
6 Lovells and I'm representing Kinder Morgan, Inc., and its
7 subsidiaries and affiliates, El Paso Natural Gas Company,
8 Trans Colorado Gas Transmission Company and Natural Gas
9 Pipeline Company of America.

10 Throughout this hearing I'll be referring to this
11 collective group of companies as Kinder Morgan because
12 that's a mouthful, and each of our technical witnesses
13 will also refer to the companies collectively as Kinder
14 Morgan.

15 Thank you for the opportunity to present an
16 opening statement to you today. And I look forward to
17 engaging on these important issues. As far as an agenda
18 for this presentation, I'm going to spend most of my time
19 providing an introduction to Kinder Morgan and their
20 operations in New Mexico. Dovetailing on that, I'd like
21 to then describe the uniqueness of the transmission
22 segment of the natural gas supply chain.

23 Next, I want to spend just a brief bit of time
24 framing the discussion that we will be having over the
25 course of the next two weeks, and then I'll end by

1 identifying the priority of issues for which Kinder Morgan
2 is asking the Board's support.

3 While it was not on my agenda that I just walked
4 through, we do just want to take a brief moment to thank
5 the Department in particular and Hearing Officer Orth and
6 the other parties for their work in developing a really
7 robust record for the Board's consideration. And we want
8 to thank the Board for diving into all of that work in
9 preparation for this hearing. So let's -- let's jump
10 right in.

11 Kinder Morgan transports natural gas in a safe,
12 efficient and environmentally responsible manner for the
13 benefit of individuals, communities and businesses. In
14 New Mexico, Kinder Morgan operates approximately 3,595
15 miles of transmission pipeline and it owns assets in 23
16 counties throughout the state, including in counties that
17 are the subject of the proposed rules. Kinder Morgan is
18 an important member of the New Mexico community. The
19 company employs approximately 180 individuals, maintains a
20 payroll of over 16.6 million dollars and pays
21 approximately 8.8 dollars annually to local and state
22 taxing bodies.

23 This slide here just provides a visual of the
24 role that Kinder Morgan plays in our communities. The
25 company delivers affordable and dispatchable pipeline

1 quality natural gas both to industrial users and to local
2 distribution companies. The local distribution companies
3 are the city gates for natural gas to be delivered to each
4 of our homes for use in heating, stoves, water heater, all
5 of our daily uses.

6 Kinder Morgan operates in what is referred to as
7 the transmission segment of the oil and gas industry. And
8 I want to give context to that and talk about what makes
9 this segment unique and what distinguishes it from other
10 oil and gas operations. You will see this slide a couple
11 of times throughout our presentation -- presentations and
12 it's intended to help orient us.

13 What this depicts is the entire natural gas
14 system supply chain. And we show this because it's
15 important to understand where Kinder Morgan -- Kinder
16 Morgan's operations take place in this sequence.
17 Transmission compression -- compressor stations are
18 identified as number six on this schematic. Upstream
19 operations, which are identified as numbers one and two,
20 are where the product is extracted. The raw product is
21 then moved by the midstream gathering and boosting
22 segment, numbers three and four, through to the natural
23 gas processing plant, number five.

24 Because of where we sit along the supply chain,
25 Kinder Morgan's operations are distinct in a number of

1 ways. Let's walk through some of those distinctions.
2 First, the company transports pipeline quality natural
3 gas. This is referred to as "sweet" natural gas and it
4 has already been processed at the natural gas processing
5 plant, which means that the natural gas has a much lower
6 VOC content than the gas that is produced, transported and
7 processed at well sites, gathering and boosting stations,
8 and natural gas processing plants.

9 To illustrate this point, this slide summarizes a
10 data set that we analyzed. The full data set is available
11 at attachment B to the Kinder Morgan direct testimony.
12 This data was gathered over the past year from gas
13 chromatographs. Kinder Morgan operates somewhere around
14 40 gas chromatograph -- chromatographs in New Mexico that
15 continuously monitor the natural gas. These
16 chromatographs take about two to three samples every hour,
17 which are then averaged to give one numerical block hour
18 average.

19 The reason they monitor the gas so closely is
20 because these are FERC-regulated pipelines, so the company
21 is required by FERC to have certain gas composition for
22 delivery to end users. You will see in this chart that
23 the average annual VOC content at all five stations
24 evaluated is less than 1 percent and can be as low as
25 0.206 percent VOC.

1 In contrast, the VOC content of the gas processed
2 and moved through upstream and midstream operations is
3 typically much higher, depending on operation and
4 location. Another critical distinction is that day-to-day
5 operations are simply just different. Just one example
6 which you'll hear more about in other presentations from
7 us, is that Kinder Morgan pigs its transmission pipeline
8 much more infrequently than operators in the midstream
9 segment pig their gathering pipelines. This is because
10 the impurities in the gas have been removed at the gas
11 plant and there's less occasion for liquids and debris
12 buildup that would require pigging.

13 Finally, another distinction is that Kinder
14 Morgan's pipelines are interstate pipelines, meaning the
15 company moves natural gas across state lines in interstate
16 commerce. This in turn means they are highly regulated by
17 FERC. So prior to construction and operation of a
18 transmission compressor station in its network of
19 pipeline, Kinder Morgan typically must apply for and
20 obtain a certificate from FERC, which involves an
21 extensive process, including consultation with
22 stakeholders, environmental review under NEPA, project
23 planning and revision and redesign. It is a carefully
24 calibrated process.

25 Also, as a FERC-regulated operation, Kinder

1 Morgan is then obligated to deliver natural gas to certain
2 customers and there are consequences for failure to do so.
3 This makes sense because end users to Kinder Morgan's
4 product in many cases are hospitals, schools and general
5 municipal operations.

6 I'd like to next frame the discussion that we'll
7 have over the next two weeks. The Board's authority for
8 this rulemaking, as we've heard, sources from New Mexico
9 revised Statute 74.2.5 as revised by New Mexico Senate
10 Bill 8 of 2021. By direction of the New Mexico
11 legislature, the Board is directed to address certain
12 areas of the state exceeding the primary NAAQS for ozone
13 by 95 percent, by adopting rules to control emissions of
14 NOx and VOCs.

15 Consistent with this authority and direction,
16 NMED took on the task of proposing this set of rules that
17 is before us. These rules are intended to address ozone
18 precursor pollutants, namely NOx and VOCs. Thus, it is
19 the Board's objective and within the Board's authority to
20 adopt reasonable regulations to mitigate potential NOx and
21 VOC emissions from the oil and gas sector.

22 Consistent with the scope of rule, Kinder Morgan
23 conducted extensive analyses regarding the potential
24 impact of the proposed NOx and VOC emission standards on
25 their operations. And over the course of Kinder Morgan's

1 technical testimony you will hear a sum -- a summary of
2 those findings from Ms. Leslie Nolting, who is the air
3 permitting and compliance manager for Kinder Morgan, from
4 Mr. James Trent, who is a staff engineer from Kinder
5 Morgan and from Mr. Vince Brindley, who is a technical
6 supervisor for Kinder Morgan.

7 Finally, to further frame our discussions this
8 week, we respectfully remind the Board that its authority
9 requires the Board to take into account all facts and
10 circumstances, including technical practicability and
11 economic reasonableness of the proposed rules. While this
12 statutory mandate of course permits the Board to exercise
13 its professional discretion regarding the weight to
14 attribute to any particular fact or circumstance, by
15 enumerating this list the legislature made clear that of
16 the facts and circumstances to be considered, technical
17 practicability and economic reasonableness are priorities
18 of the legislature.

19 Furthermore, in matters of air quality
20 regulation, it's the common and expected practice that the
21 cost per ton of reduction of the regulated pollutant be
22 evaluated. This is true for the Department and other
23 state and federal agencies. For example, as presented in
24 the Kinder Morgan direct testimony, we researched several
25 instances of agencies determining the appropriate and

1 reasonable cost-per-ton threshold of a given regulation.

2 This slide shows just a few of those cost ton
3 evaluations. You'll see that in 2019, NMED determined
4 that \$7,000 per ton of NOx reduced was an appropriate
5 threshold for determining the cost effectiveness of
6 certain of the components of the Regional Haze rulemaking.
7 Pennsylvania, in turn, determined \$3,750 per ton of NOx
8 reduced was an appropriate threshold in the context of
9 fracked analyses for major sources. This was also in
10 2019. While we recognize that determining whether a
11 certain cost is economically reasonable is not an exact
12 science, a cost well over \$7,000 per ton warrant
13 significant scrutiny to be defensible.

14 In order to evaluate the full impact of the
15 proposed rules, Kinder Morgan conducted thorough, detailed
16 and individualized cost analyses to evaluate the cost
17 effectiveness of the various proposed VOC and NOx standard
18 as compared against the anticipated emission reductions.
19 In Kinder Morgan's technical testimony this week, we will
20 provide you with a summary of these analyses.

21 In closing, I'd like to highlight for you Kinder
22 Morgan's priority asks of the Board, which you will hear
23 more about in the coming presentation. On definitions, we
24 ask that you adopt the definitions in the September 16th
25 draft proposal that relate to transmission compressor

1 stations. For engines and turbines, we ask that you adopt
2 Tables 1, 2 and 3 of Section 113 as proposed. We ask that
3 you adopt the staggered compliance schedule set forth for
4 turbines as proposed on September 16th. And we ask that
5 you adopt workable alternate compliance options, in
6 particular to address circumstances of technical or cost
7 infeasibility. In particular, we ask that you adopt the
8 Board's Section B10 and B11 of the Section 11 as proposed
9 on September 16th.

10 For compressor seals, as we will discuss, it is
11 not cost effective to control VOC emissions from wet seals
12 at transmission compressor stations and we ask that the
13 Board adopt the rule as proposed on September 16th. For
14 leak detection, as we will present, we will ask for
15 reasonable frequencies for transmission compressor
16 stations and an opportunity to comply with the federal
17 NSPS leak detection programs on all LDAR requirements,
18 other than frequency, to avoid competing programs that
19 cause resource intensive challenges without emission
20 reduction benefits.

21 On the whole, Kinder Morgan supports reasonable
22 regulation and we look forward to discussing this with you
23 over the next several weeks. That concludes my opening
24 statement. Thank you.

25 HEARING OFFICER ORTH: We move then to Commercial

1 Disposal Group. Mr. Neumann, will you be making an
2 opening statement?

3 MR. NEUMANN: Thank you. Yes.

4 OPENING STATEMENT BY MR. NEUMANN

5 MR. NEUMANN: Good morning, Madam Hearing
6 Officer, Madam Chair, Board members. I'm Chris Neumann
7 with the law firm Greenberg Traurig, and I represent the
8 Commercial Disposal Group, which is made up of five
9 entities: NGL Energy Partners, Solaris Water Midstream,
10 OWL SWD Operating, Goodnight Midstream and 3 Bear Energy,
11 LLC. And some of our members are also members of NMOGA,
12 but as you'll hear, we are different in some fairly
13 important ways, in the assets and the operations that we
14 have that are impacted by this rule.

15 And we thought it was really important to explain
16 those differences and why in certain instances some of the
17 language and framework in the new rule might need to be
18 adjusted to make sense for what we're doing. In many
19 cases that -- that has been done and we're very grateful.

20 We appreciate the Department's consideration of
21 the comments and language that the group has proposed. In
22 particular, we're supportive of the changes to Section 111
23 on applicability of Part 50. We believe that this change
24 and others are going to allow us to greatly streamline our
25 witness testimony, which I'm sure many of you will be

1 grateful for. And we hope to yield back much of the
2 witness testimony time that we've reserved.

3 I'd like to start by telling you a little bit
4 about the Commercial Disposal Group. As I mentioned, our
5 issues are slightly different in pretty important ways.
6 Each of our members has operations in New Mexico for the
7 recycling and underground injection of produced water.

8 Most of the group had facilities -- have
9 facilities that operate and produce water management units
10 at which millions of barrels of produced water are
11 recycled each year and returned to oil and gas producers
12 for use in hydraulic fracturing and other reuse
13 operations.

14 These recycle ponds are several acres in size and
15 often have the capacity to contain several hundred
16 thousand barrels of water. Importantly, the water sent to
17 these units will have gone through pretreatment to remove
18 oil and gas, and, thereby, reduce emissions significantly.
19 To date, the group has a total of thirteen recycling
20 facilities in New Mexico and several more in the planning
21 stages.

22 In 2020, group members recycled over 18.8 million
23 barrels of water, and in the first six months of 2021, the
24 group has recycled over 16.7 million barrels of water.
25 You can see there is a significant increase and the trend

1 is for more recycling, which is -- which is a good thing.

2 If the produced water or running water at our
3 facilities is not recycled by our group members,
4 producers, our customers, will have to rely on -- more
5 heavily on freshwater resources for their water needs.

6 Produced water that is not recycled by our group
7 is treated and then responsibly disposed at an EPA
8 underground injection control program facilities
9 administered by the Oil Conservation Division.

10 The Oil Conversation Division reports that since
11 the legislature's passage of the Produced Water Act, 408
12 wells have been completed and are using an average of just
13 over 377,000 barrels of water each, and they report 55
14 percent of this water has been recycled produced water,
15 with amounts to 85 million barrels of water that's
16 recycled for this purpose.

17 Although our facilities in some instances -- in
18 some aspects may look like typical exploration and
19 production facilities, the operations and fluids at our
20 facilities are much different; and, consequently, the
21 emissions profiles of these facilities are much different
22 than from those at production facilities.

23 As I mentioned, the disposal well facilities
24 receive produced water from operators' production and
25 drilling operations, but they don't produce oil and gas.

1 Our business is recycling water or disposing of water, not
2 producing oil and gas at these facilities. The produced
3 water group members receive, receive low volatility, what
4 we'll call post-flash water that has already gone through
5 separation and processing and treatment at our customer's
6 sites. Then at our facilities, the water is further
7 separated from any remaining oil, and that oil is trucked
8 off site to market.

9 The water is then either sent to a produced water
10 management unit where it's recycled or it's injected into
11 the UIC injection well for disposal. The oil that we're
12 able to separate at our facilities is also different than
13 what you would expect at a typical production facility.
14 It's less volatile and it's considered what we call "dead"
15 oil because it has a limited flashing or emission
16 potential. A lot of those troubling hydrocarbons have
17 already been removed by the time it gets to us.

18 Because the initial language of the proposed rule
19 was crafted to address important issues at exploration and
20 production facilities, we found that it didn't fit our
21 unique operations at commercial produced water disposal
22 facilities. In many instances it would have been
23 technically infeasible or very expensive for us to
24 implement.

25 An additional concern was that parts of the

1 proposed rule might hinder further investment in or
2 operation of important water recycling efforts in New
3 Mexico. The group identified difficulties it would face
4 and offered testimony on several key areas, including
5 equipment monitoring and transfer of ownership in Section
6 112, hydrocarbon liquid transfers in Section 120, pig
7 launching and receiving in Section 121, storage vessels in
8 Section 123, and, of course, produced water management
9 units in Section 126.

10 We proposed alternative rule language to the
11 Department to achieve the goal of reducing ozone
12 precursors, but giving members more flexibility in how to
13 comply and the Department in many instances considered and
14 adopted parts of our proposals. In others, others were
15 rejected, but in the final analysis the group supports the
16 latest proposed rule as applied to its operations with
17 really only a handful of exceptions, on which we'll focus
18 our testimony.

19 So these remaining concerns would be presented
20 through our testifying witnesses. We generally support
21 the proposed rule, and our witnesses will adopt their
22 written testimony and where there are still live issues
23 that we'd like to address further, we'll offer brief
24 summary. On topics where we believe there's either been
25 no further testimony or through the September 16th

1 revisions, or otherwise the matter seems fairly settled,
2 we intend only to adopt our written testimony and be
3 available for cross-examination.

4 I'm not exactly sure how the surrebuttal and the
5 testimony will proceed, but given our approach, if someone
6 that comes after us has something important to say that we
7 think might affect matters on which we've testified, if
8 it's okay and you might consider, we'd like to raise our
9 hand and perhaps be heard for a few brief moments on those
10 issues. We think they'll be very few and really, rather
11 than give lengthy summaries to which no one might reply,
12 we'd rather yield back our time and just address those
13 issues as they might arise.

14 And then, briefly, to summarize our witnesses, we
15 have five witnesses who, again, will focus on what few
16 issues remain for our concerns. Il Kim is the senior air
17 permitting engineer for NGL. He's testified on Section
18 120, hydrocarbon liquid transfer and Section 123, storage
19 vessels. Ashley Campsie is a licensed professional
20 engineer with Evergreen Environmental Engineering and she
21 has testified on Section 113, engine and turbine issues,
22 Section 126, produced water management unit issues, and
23 Section 112, monitoring issues.

24 Lori Marquez is a senior air quality consultant
25 with Barr Engineering and she's testified on the

1 logistical challenges and costs associated with the
2 Section 112 program. Greg Jones is an air compliance
3 specialist with 3 Bear and the focus of his testimony has
4 been on Section 121, pig launching and receiving, where we
5 do still have some issues we'd like to raise. And lastly,
6 Jill Cooper is a senior principal with Geosyntec
7 Consultants and has testified on Section 112, compliance
8 evaluation issues, which we would like to speak to,
9 Section 123 storage vessels and Section 126, produced
10 water management units.

11 So we'd like to thank the Department again for
12 listening to our thoughts and suggestions, many they've
13 adopted, and look forward to speaking to our remaining
14 issues hopefully in a very abbreviated way as we move
15 forward. Thank you.

16 HEARING OFFICER ORTH: Thank you, Mr. Neumann.

17 Ms. Witherspoon, if you are on, I would invite
18 you to briefly summarize what you will be encouraging the
19 Board to do when you make your presentation.

20 OPENING STATEMENT BY MS. WITHERSPOON

21 MS. WITHERSPOON: Yes. Okay. Thank you. Madam
22 Hearing Officer and members of the Board, my name is
23 Leslie Witherspoon and I will be representing Solar
24 Turbines. We appreciate the opportunity to give technical
25 testimony with respect to the combustion turbine section

1 of the rule.

2 Solar Turbines is largely in support of the
3 September 16th, '21 version of the rule proposal, but we
4 would like to take the opportunity during our testimony to
5 make a few clarifying points and we look forward to
6 presenting. I will be the technical witness for Solar
7 Turbines. I have 30 years of air quality experience, a
8 lot of air permitting and dispersion modeling experience,
9 but for the last 23 years I've been at Solar supporting
10 the placement of our turbines worldwide, and been involved
11 in countless rulemaking processes specifically in the
12 Pennsylvania General Permit 5 Rule development process.
13 And the reason I mention that is that is the rule that New
14 Mexico modeled the turbine section of this rule after. So
15 I will be certainly available for -- for questions, if
16 there are any from the Board and others on why certain
17 numbers are the way they are because they do represent for
18 the most part our turbines and because they are prevalent
19 in the state of Pennsylvania also.

20 We have a large number of turbines installed in
21 New Mexico and have a large number of the ones affected by
22 this rule, as we've been putting turbines in in New Mexico
23 for over 60 years. So that completes -- that's all I have
24 to say today and I look forward to our testimony over the
25 next -- when we do that in the next two weeks. Thank you.

1 HEARING OFFICER ORTH: Thank you very much,
2 Ms. Witherspoon.

3 All right. I think -- oh, I did want to say,
4 Mr. Neumann had mentioned surrebuttal, and I wanted to
5 share with the Board a discussion that I had with counsel
6 and party representatives last Tuesday in a second
7 prehearing conference. I will invite surrebuttal after
8 the parties have had a chance to do their direct and
9 rebuttal. Surrebuttal is not required to fit within that
10 30-minute limitation on technical witnesses. Surrebuttal
11 will be invited in reverse order from the direct and
12 rebuttal and the Department reserves the final spot there
13 as the proponent of the rule, to address any surrebuttal
14 that they haven't already addressed.

15 We can certainly talk more about that if you'd
16 like when we get there. It's going to be a while before
17 we get there. So let's break for lunch. We do have a
18 1:00 public comment period. I don't know if the folks are
19 on as attendees right now, but the first -- the first four
20 folks -- I'll just do four at a time. The first four
21 folks I'll be inviting to offer public comment are Sharon
22 Wilson, Brent Stoneking Clinton Whisonant and John
23 Alexander. So let's reconvene at 1. Thank you very much.

24 (Recess taken from 12:11 p.m. 1:00 p.m.)

25 HEARING OFFICER ORTH: Okay. We are back after a

1 lunch break. Let me just briefly remind folks about the
2 platform protocol. If you are a Board member and are
3 comfortable on screen, you are invited to be on screen at
4 all times. If you go off screen, that's fine. It's just
5 a matter of folks wanting to know that folks are
6 listening. If you turn off your screen, maybe to walk
7 around or snack, or what have you, just -- just turn off
8 your screen, that's fine.

9 For all of the panelist, Board members, lawyers
10 and party representatives, if you would please be sure to
11 stay on mute; and for the lawyers and party
12 representatives off screen, please, if -- if you're not
13 speaking.

14 So it's 1:00 and this is one of our 29 public
15 comment sessions. It's the first of them. We have ten
16 public commenters indicating a desire to speak during this
17 session. All of you, please remember that there is a
18 five-minute limit on your comment. Certainly you don't
19 need to go five minutes if what you have to say can be
20 said less than that. Comment is taken under oath and is
21 subject to questioning because all comment testimony,
22 pursuant to the Board's statute and rulemaking rules, is
23 taken under oath and subject to questioning.

24 Let me just say for the lawyers and party
25 representatives who perhaps haven't been on a complex

1 hearing with me before, I understand it's your right to
2 cross-examine members of the public, but I discourage it.
3 And without going into a whole long discussion as to why
4 that might be, mostly, I don't think it's productive. It
5 has never been productive. And I've been doing this for
6 22 years, so I'm not going to call on you and ask you if
7 you have questions of any of these members of public. If
8 you actually have a question to the member of the public,
9 you're going to have to put something in the Chat to me to
10 indicate that, in fact, you have questions you need to ask
11 that member of the public. Otherwise, I'm going to move
12 from one public commenter to the next without stopping.

13 Board members, the same for you, please. I'm not
14 going to call on you to ask you if you have questions of a
15 particular member of the public. If you do, please put
16 something in the Chat.

17 Okay. So let me call out the order in which I
18 will be calling on you. This is the order in which the
19 request was sent to Pam Jones, our Board Administrator.
20 And just generally, I will ask you if you swear to tell
21 the truth, swear or affirm, and I will ask you to spell
22 your name so that the transcript is correct. And I will
23 ask you to speak loudly and clearly. And it may take me a
24 moment to unmute each one of you. Public comment will be
25 given by audio, not video.

1 So this is the order in which I'll be calling all
2 of you: Sharon Wilson, Brent Stoneking, Clinton
3 Whisonant, John Alexander, Syd Goodlow, Michael Parrino,
4 Todd Hawthorne, David LeBlanc and Joan Brown and Kayley
5 Shoup. Again, five minutes. And I'm going to start with
6 Sharon Wilson. So, sorry, this is just going to take me a
7 moment each time.

8 I don't see Sharon Wilson on the platform.
9 Ms. Wilson, if you are on the platform and I am missing
10 your name here, it's all alphabetical, please reach out
11 through the Chat. By the way, if someone has signed up to
12 offer public comment and finds themselves unable to be
13 there at the time they have signed up, that's perfectly
14 fine. I will take them the next time they come onto the
15 platform. It's not a problem.

16 All right. So I'm going to pass Sharon Wilson
17 and go to Brent Stoneking. Let's see if Brent Stoneking
18 is with us. I am not seeing Brent Stoneking either.
19 Mr. Stoneking, if you're on the platform, please reach out
20 through the Chat and I will unmute you.

21 Clinton Whisonant. And I'm sorry if I'm
22 mispronouncing your name. Not my intention.
23 Mr. Whisonant, can you hear me?

24 MR. WHISONANT: Yes, I can.

25 HEARING OFFICER ORTH: Great. I can hear you.

1 You're are a little soft. So if you would please raise
2 your right hand.

3 And do you swear or affirm to tell the truth?

4 MR. WHISONANT: I do.

5 HEARING OFFICER ORTH: And would you please spell
6 your first and last name?

7 MR. WHISONANT: First name is Clinton,
8 C-L-I-N-T-O-N. Last name is Whisonant, and thank you for
9 pronouncing it perfectly. W-H-I-S-O-N-A-N-T.

10 HEARING OFFICER ORTH: Thank you. Your five
11 minutes starts now.

12 CLINTON WHISONANT,
13 having been first duly sworn or affirmed, gave public
14 comment as follows:

15 PUBLIC COMMENT BY MR. WHISONANT

16 MR. WHISONANT: Okay. I'll be brief. I just
17 have read through as best I could and as quick as I could,
18 the bill. And my concern is the additional paperwork
19 requirements that it's going to impose on an already very
20 restricted in this state, industry. Gas and oil is -- I'm
21 from Bernalillo County, Albuquerque. But as a citizen of
22 this county and of the state, gas and oil contributes a
23 great deal to the economy of the state. It also
24 contributes considerably to the energy and the
25 independence of the nation.

1 And I think anything that we would -- anything
2 that we would do to hinder or restrict this industry would
3 be bad for the country and for the state and for the
4 county. So that's my concern, is that we should minimize
5 the paperwork requirements. We should let the experts
6 decide how the industry will comply with standards, which
7 I agree should be set, but not descriptions on the
8 requirements in a law or a regulation that tells the
9 industry how to meet a standard.

10 And that's essentially my comments. Thank you
11 very much for the opportunity

12 HEARING OFFICER ORTH: Thank you, Mr. Whisonant.
13 All right. Let's move to John Alexander if he is on the
14 platform us with. Let's see here. Mr. Alexander, can you
15 hear me?

16 MR. ALEXANDER: Yes, ma'am, I can. Can you hear
17 me?

18 HEARING OFFICER ORTH: Yes, I can. Thank you.
19 Do you swear or affirm to tell the truth?

20 MR. ALEXANDER: I certainly do.

21 HEARING OFFICER ORTH: Thank you. Would you
22 please spell your first and last name?

23 MR. ALEXANDER: Yes, ma'am. It's John, J-O-H-N.
24 And then Alexander, conventional spelling:
25 A-L-E-X-A-N-D-E-R.

1 HEARING OFFICER ORTH: Thank you very much. If
2 you would please, your five minutes starts now.

3 JOHN ALEXANDER,
4 having been first duly sworn or affirmed, gave public
5 comment as follows:

6 PUBLIC COMMENT BY JOHN ALEXANDER

7 MR. ALEXANDER: Okay. Thank you very much. I
8 appreciate the opportunity to address you-all. This is
9 just an extremely important issue that all -- both
10 parties -- and when I listened to the opening statements
11 this morning, we can all -- we can all agree on that.
12 It's extremely important.

13 It's also an extremely technical issue and the
14 Environmental Improvement Board certainly has a big job in
15 front of it because of the amount of technical things that
16 are going on here. Energy is just extremely important to
17 this state and so -- as is clean air and clean water. I
18 don't think there's anyone in this group that would
19 certainly want to have any sort of activity that would
20 harm our environment.

21 I mean, we just -- we -- we -- we don't do that.
22 We all breathe the same air, we all drink the same water.
23 Energy is just extremely important. That's what drives us
24 and it's what's driven our community, our state to be
25 where we are today, which is one of the -- as was pointed

1 out earlier this morning in testimony, the second highest
2 producing state in -- of oil and gas in New Mexico.

3 And while we're all aware of that, we're aware of
4 the importance it brings to us, an issue of trying to
5 avoid adversarial positions saying it would be extremely
6 critical for you-all at this time. There's a lot of
7 testimony being presented from both sides that is going to
8 be extremely useful in making this decision. And so I
9 just -- I pray and ask that as the Board considers this,
10 it carefully considers the testimony that's being
11 presented from this very, very technical issue. Listening
12 to all of this technical stuff, it's going to get a little
13 boring, I'm sure at some point, but it's also critical.
14 And you have a big decision on your part. So thank you
15 for your time. I just ask that you seriously listen to
16 both sides and try to emote -- avoid the emotional
17 standpoints that we often get into it.

18 Society is way too -- way too divided anyway.
19 And so I want to encourage you to do that, not much
20 technical help here, but I'll be watching you-all as will
21 the state, and I just, again, thank you for your service.
22 We really appreciate it and I yield back.

23 HEARING OFFICER ORTH: Thank you very much,
24 Mr. Alexander. Now we have Mr. Goodlow. Let's see if
25 Mr. Goodlow is on the platform with us. I don't see

1 Mr. Goodlow, but if he joins us later, I'd be happy to
2 take his comment.

3 Michael Parrino, let me see if we have
4 Mr. Parrino on the platform. Yes. All right.
5 Mr. Parrino, can you hear me?

6 MR. PARRINO: Yes, I can hear you and see you. I
7 don't know if you can see me. I don't see my face on the
8 screen or my iPad.

9 HEARING OFFICER ORTH: So public comment is audio
10 rather than video. If you would raise your right hand,
11 please. Do you swear or affirm to tell the truth?

12 MR. PARRINO: I do.

13 HEARING OFFICER ORTH: Thank you very much. And
14 your -- if you would -- oh, let's see. I need the
15 spelling of your last name. The first name is standard.
16 What's the spelling of your last name?

17 MR. PARRINO: Parrino, P-A-R-R-I-N-O.

18 HEARING OFFICER: Okay. Thank you. Your five
19 minutes starts now.

20 MICHAEL PARRINO, M.D.,
21 having been first duly sworn or affirmed, gave public
22 comment as follows:

23 PUBLIC COMMENT BY MICHAEL PARRINO, M.D.

24 MR. PARRINO: Okay. I'm a retired pediatrician.
25 I just retired five months ago. I'm 78 years old, so I

1 worked a lot longer than the average person. I live here
2 in Bernalillo. This is my second time living in New
3 Mexico. I've been here since 2017. Truth in lending, as
4 they say, or truth in whatever; I do own stocks and some
5 of them are oil and natural gas, so I do follow the
6 industry with great interest. To me, it's very important
7 because I have a son who's active that's in the
8 educational business. A great deal of the budget for
9 education in the State of New Mexico comes from the
10 revenues that come from the oil and natural gas business.
11 Anything that affects those revenue, those revenues
12 affects our schools. Okay? I moved back here to be near
13 him and my grandchildren.

14 Energy demand is rising constantly. There seems
15 to be no understanding of the fact that we can't escape
16 it, that it's a necessary part of our life. If you want
17 to see what happens when you try to escape it by
18 overregulation or by forbidding exploration and
19 development, then what you get is California. And I'm not
20 sure that everybody wants to be California. Some of us
21 do, some of us don't. Okay?

22 We see in Europe right now a crisis developing in
23 energy because they don't have enough of it. They have
24 tried to rely on wind and solar which, to be honest, solar
25 might work in New Mexico, but not as much as they'd like.

1 And as for wind, Britain has a quandary right now because
2 the North Atlantic, which is supposedly a very windy ocean
3 hasn't been very windy of late and they have a shortage of
4 energy. There are shortages of coal and natural gas in
5 Europe. And there's going to be a worldwide shortage
6 beginning this year.

7 If you don't believe me, go to oilprice.com and
8 look at the price of natural gas on the market at the
9 Henry Hub Centers. It's the highest it's been in the last
10 seven years. We -- if we have a cold winter, and we're
11 predicted to have a colder-than-average winter this year,
12 we're going to see very high rises in the price of natural
13 gas. You're going to pay a lot to heat your home if you
14 heat with natural gas.

15 It seems to me folly, when we look at California
16 and see how high the price of petroleum and natural gas
17 are there, for us to do anything that further limits the
18 production of oil and natural gas. We have it, we should
19 be exploiting it. The only country in Europe that is safe
20 is France. The alternative to oil and natural gas is not
21 wind and solar, which are unreliable; it's nuclear power.
22 The only country in Europe that's doing well in the
23 present crisis is France, which gets more than 25 percent
24 of its power from the nuclear energy. We have to go that
25 way, too. If you really want to get away from the

1 extraction of oil and natural gas for energy, then you
2 have to go with nuclear power, but there are other aspects
3 that people are not aware of either.

4 The base for fertilizer is natural gas and
5 petroleum. There's a shortage of fertilizer in Europe.
6 In England, the two leading producers of fertilizer are
7 shutting their plants because they say the price of
8 natural gas is too high for them to afford to manufacture
9 it. That will drive up the price of food. It's an
10 incredibly complex world we live in. Everything we do
11 seems to drive the price of everything higher.

12 HEARING OFFICER ORTH: Mr. Parrino --
13 Mr. Parrino, I'm sorry to interrupt. Would you wrap up,
14 please?

15 MR. PARRINO: Okay. I just think we can't do
16 without it. We must have it and we must continue to
17 develop it. If we don't, then we are going to see the
18 price of everything, food, transportation, energy, heating
19 our houses, it's all going to rise. Thank you.

20 HEARING OFFICER ORTH: Thank you very much. The
21 next person who requested a spot now is Todd Hawthorne.
22 See if Mr. Hawthorne is with us. I don't see him.

23 After that is David LeBlanc. Let's see here. I
24 see Mr. LeBlanc. Mr. LeBlanc, can you hear me?

25 MR. LEBLANC: Yes, ma'am. Can you hear me?

1 HEARING OFFICER ORTH: Yes, very clearly. Do you
2 swear or affirm to tell the truth?

3 MR. LEBLANC: I do.

4 HEARING OFFICER ORTH: Thank you, very much.
5 David is the standard spelling. Would you spell LeBlanc,
6 please?

7 MR. LEBLANC: L-E-B as in boy, L-A-N-C.

8 HEARING OFFICER ORTH: Thank you. Your five
9 minutes begins now.

10 DAVID LEBLANC,
11 having been first duly sworn or affirmed, gave public
12 comment as follows:

13 PUBLIC COMMENT BY DAVID LEBLANC

14 MR. LEBLANC: Okay. I am a resident in San
15 Miguel County and I really appreciated the comments of the
16 previous gentleman about the interconnectivity of oil and
17 with so many aspects of our lives, in not just food, but
18 so many products that utilize natural gas in production of
19 those products.

20 But my real emphasis is from my perspective as an
21 engineer and project manager for over 40 years. And I
22 just wanted to say that overregulation that is a little
23 too short-sighted perhaps, tends to -- tends to diminish
24 the capability of the operators in oil and gas to manage
25 the environment themselves. And I'll just say that over

1 the last several years, the company I was working for was
2 involved in not only environmental, but water management
3 projects for oil and gas operators, both in Texas and New
4 Mexico.

5 So it's an evolving technology for environmental
6 protection technologies and, you know, the industry is
7 cognizant of the need for air and water quality. Water
8 management is one of the things that has been a huge
9 focus, especially in the Permian Basin, where we have
10 shale gas in areas where there's a shortage of water. And
11 so a lot of creative projects are under way or have been
12 already performed to help the industry manage their water
13 use on their properties, on their oil and gas properties,
14 and reuse of water as well.

15 My company employs a whole division that are
16 water experts. We deal in desalination as well as water
17 management, water use, any kind of water treatment, and
18 we're applying those technologies. And so, I just want to
19 encourage the Board to consider the fact that, you know,
20 the oil and gas industry has not just been sitting idle,
21 that we've actually participated with the oil and gas
22 industry, with my company, to improve water management, to
23 improve emissions.

24 And so, I just don't want to -- I would prefer a
25 flexible regulation, not one size that fits all. And

1 this -- this actually helps promote the problem-solving
2 and creativity. And there's going to be a cycle in
3 environmental research and innovation, and we can apply
4 those to continue to improve the environmental performance
5 in our oil and gas properties. And I want to thank the
6 environmental -- sorry, the Environmental Improvement
7 Board, how you serve our state, and for allowing me to
8 make these public comments. Thank you.

9 HEARING OFFICER ORTH: Thank you very much,
10 Mr. LeBlanc.

11 The next presenter is Ms. Brown. And let's see,
12 I'm unmuting you. Sister Brown, I did see your comment in
13 the Chat and you are correct, it is not necessary to
14 register or sign up ahead of time. I will be accepting
15 folks' public comment regardless. However, because we
16 have so many public commenters in this action, and I don't
17 have the usual signal of a sign-in sheet at the front of
18 the auditorium to tell me what order folks might have
19 joined us, I am -- before I throw the platform open to
20 anyone who reaches out through Chat, I am inviting those
21 folks who actually sent me an email ahead of time. So I
22 hope that answers your question.

23 SISTER BROWN: Yes. Thank you so much, Hearing
24 Officer Orth. I so appreciate that clarification because
25 I'm trying to get the information out to the public so

1 they know what to do and how to do it.

2 HEARING OFFICER ORTH: Sure. Sure. So if you
3 would raise your right hand, please. Do you swear or
4 affirm to tell the truth?

5 SISTER BROWN: Yes.

6 HEARING OFFICER ORTH: Thank you. And I know
7 that your first and last name are the standard spelling.
8 And let's see here. Your five minutes starts now.

9 SISTER JOAN BROWN,
10 having been first duly sworn or affirmed, gave public
11 comment as follows:

12 PUBLIC COMMENT BY SISTER JOAN BROWN

13 SISTER BROWN: Okay. Thank you so much. Good
14 afternoon and thank you, Hearing Officer Orth and also the
15 EIB for taking these public comments on this methane
16 pollution rule that's not about sides, but really is about
17 the common good. And we need to take into consideration
18 all the common good. My name is Joan Brown, I'm a
19 Franciscan Sister. And I'm the executive director of New
20 Mexico Interfaith Power and Light.

21 And our organization works with faith communities
22 and people of faith and conscience all over our precious
23 state, to reflect upon, pray about, and then act on
24 concerns of community health and environment as it relates
25 to climate justice. We learned about methane concerns

1 about ten years ago and have educated our thousands of
2 members and faith leaders and we've offered hundreds of
3 comments through various processes to regulate methane
4 pollution. So this is not a new issue.

5 We've worked with faith leaders in Southeast New
6 Mexico and we've also been into the homes of ordinary
7 people down there who have been very concerned about the
8 smells and the VOCs and what might be around them. And on
9 one occasion, we visited with some women who were mothers
10 in a lower income neighborhood who didn't understand the
11 terrible odors coming into their home. And they also had
12 had a young nephew who died of some strange cancer that
13 was unusual.

14 So we offered to take them into actually a field
15 right near their backyard to witness methane pollution
16 with powerful cameras. And a few months later, we went
17 back and we still saw this pollution coming out. These
18 women were very afraid even to go out into the field with
19 us. And many of the people that are affected don't speak
20 up because they're afraid of repercussions that might come
21 to them because of the powers that be in their
22 communities.

23 Methane pollution is an environmental, economic,
24 and a racial justice concern that needs attention and
25 strong rules, with many of the strong recommendations that

1 are being heard these days. In addition, it's a waste of
2 God's resource. We use these -- the money that comes from
3 methane in our state for our school system. And so much
4 of it being wasted and it's not going to that.

5 So it is immoral and unethical to continue with
6 business practices that disregards God's creation and our
7 communities. The only commandment that we are given from
8 all religious traditions is to love our neighbor and
9 creation. And disrespect of the health, the environment
10 and life that we are given to cherish is not acceptable
11 and it's not ethical business practices.

12 We all have to be ethical in what our work is.
13 Later this week I will submit a letter signed by about a
14 hundred faith leaders from around the state who share
15 these similar concerns about health, justice and climate.
16 And they also have been concerned about the
17 intergovernmental chatter on climate change that just said
18 we are in a code red for humanity with climate change.
19 And for us faith leaders, a code red means that we all,
20 together, must take urgent action to care for life in our
21 sacred home.

22 So we have a choice to continue life and creating
23 sacrifice zones in our state, or to live up to our true
24 identity as the Land of Enchantment and a common home that
25 respects the common good. And so we thank you for this

1 hearing and taking very seriously the strong methane rules
2 and recommendations that will be made. Thank you so much.

3 HEARING OFFICER ORTH: Thank you very much,
4 Sister.

5 All right. We'll turn then to Kayley Shoup. And
6 after Ms. Shoup, Arcelia Isaias. Let's see here.
7 Ms. Shoup, can you hear me?

8 MS. SHOUP: I can hear you.

9 HEARING OFFICER ORTH: Terrific. I can hear you
10 clearly. If you would raise your right hand, please. Do
11 you swear or affirm to tell the truth?

12 MS. SHOUP: I do.

13 HEARING OFFICER ORTH: Thank you. Would you
14 spell your first and -- first and last name, please.

15 MS. SHOUP: First name is K-A-Y-L-E-Y. And last
16 name is S-H-O-U-P.

17 HEARING OFFICER ORTH: Thank you. Your five
18 minutes starts now.

19 KAYLEY SHOUP,
20 having been first duly sworn or affirmed, gave public
21 comment as follows:

22 PUBLIC COMMENT BY KAYLEY SHOUP

23 MS. SHOUP: Hello everyone. So my name is Kayley
24 Shoup and I'm an organizer with Citizens Caring for the
25 Future in Carlsbad. And today, I will be sharing why, as

1 a frontline community member in the Permian Basin, I
2 strongly support the proposed methane and ozone rule. For
3 years, I believed, like many in my community still do, the
4 regulatory agencies were doing their best to protect
5 frontline communities like mine.

6 As every day, I was learning of more young people
7 being diagnosed with cancer, I continued to believe that
8 we were being protected, that our air was clean, that the
9 pollution couldn't be that bad, and that maybe I was just
10 a human that was trying to find a reason as to why I was
11 surrounded by so much tragedy.

12 Over the past year, I have learned that all of
13 those beliefs were false. Those of us in frontline
14 communities actually aren't being protected. I now know
15 that the state does not have one air monitor that tracks
16 methane or VOC pollution in the Permian Basin. I now know
17 after being out in the field and looking through a flare
18 video camera that the pollution is that bad and it is
19 constant. And I also understand that two years ago, I
20 wasn't just a girl trying to find meaning and seeing her
21 loved ones ravished by cancer, but a girl that was
22 starting to realize the danger that surrounds her and her
23 community.

24 Because of the abysmal lack of enforcement in the
25 Permian, we must have stronger rules such as these being

1 proposed today. Rules that require things like frequent
2 inspection, especially at sites near schools and
3 neighborhoods. Rules that can be realistically enforced,
4 such as I believe these rules can be. They are currently
5 our only line of defense against methane and VOC
6 pollution.

7 I'm not sure how the Governor or NMED plans to
8 slash methane pollution that they aren't properly
9 monitoring, but I do believe these rules are a start. As
10 a community member in the region of the state that
11 contributes the most to the New Mexico State budget, I
12 believe the least the state can do is implement the
13 proposed rules. This week concerned citizens and leaders
14 that called and have called the Permian home will be
15 submitting a letter to EIB voicing their support for
16 NMED's rules.

17 When we prioritize the needs of the communities
18 most affected by methane and VOC pollution first and
19 foremost, when we work to protect the health and lives of
20 those human beings in frontline communities, when we value
21 doing what is right and not just politically simple, we
22 set off a ripple that becomes a wave, and that wave makes
23 real and meaningful change. Thank you for your time.

24 HEARING OFFICER ORTH: Thank you very much,
25 Ms. Shoup.

1 As I go to unmute Arcelia Isaias Gastelum -- and
2 please correct me if I have mispronounced your name -- to
3 unmute her, let me ask if there's anyone else on the
4 platform who would very much like to speak now and not at
5 one of the other 28 opportunities we'll have for public
6 comment. Please reach out through the Chat.

7 So, Ms. Isaias Gastelum, can you hear me?

8 MS. ISAIAS-GASTELUM: Yes, I can hear you. Can
9 you hear me?

10 HEARING OFFICER ORTH: Yes, I can. Would you
11 raise your right hand, please? And do you swear or affirm
12 to tell the truth?

13 MS. ISAIAS-GASTELUM: I swear.

14 HEARING OFFICER ORTH: Thank you. And if you
15 would, please, both pronounce and spell all of your names.

16 MS. ISAIAS-GASTELUM: Yes, I hope you're all
17 hydrated, Madam Hearing Officer. So it's spelled Arcelia
18 Isaias-Gastelum and it's spelled A-R-C-E-L-I-A. Last
19 name, I-S-A-I-A-S-G-A-S-T-E-L-U-M.

20 HEARING OFFICER ORTH: Thank you very much. Your
21 five minutes starts now.

22 ARCELIA ISAIAS-GASTELUM,
23 having been first duly sworn or affirmed, gave public
24 comment as follows:

25 PUBLIC COMMENT BY ARCELIA ISAIAS-GASTELUM

1 MS. ISAIAS-GASTELUM: Okay. Thank you. And thank
2 you, Board members as well, and good afternoon. My name's
3 Arcelia and I'm a board member with New Mexico Interfaith
4 Power and Light. And I'm here to ask that you vote to
5 support and strengthen the New Mexico Environment
6 Department's draft rules to addresses ozone precursor
7 pollutants from oil and gas operations.

8 As a young adult who has dedicated my education
9 and entire professional career to working to address
10 climate change, I believe stopping pollution is a crucial
11 first step and is also necessary for protecting our
12 communities. From a moral, physical and spiritual
13 standpoint, we can no longer afford to keep sacrificing
14 the health of our people for short-term economic gain.

15 We saw how detrimental this was during the
16 COVID-19 pandemic, and right now we have an opportunity
17 and responsibility to learn from these hardships and do
18 better. Our state has some of the worst methane pollution
19 in the country. In addition to causing a quarter of the
20 global warming we are experiencing, methane operations
21 also release compounds into our air that cause respiratory
22 diseases and increase risks of cancer.

23 These effects have disproportionate impacts on
24 our children and it is for them that I wanted to draw
25 attention to today. This country has repeatedly empowered

1 industries who routinely put our children at risk. It's
2 become so normalized and expected, there's now an entire
3 generation of kids who are growing up and realizing
4 they're beholden to a system that agreed to put their
5 future at stake so previous generations could turn a
6 profit. And its for these kids that we need to right
7 these wrongs. They are acutely aware of everything that
8 is going on at a level that has never been as accessible
9 as it is today.

10 They are watching, and I ask that you show them
11 that we won't keep sacrificing their well being for
12 temporary gains. I share the concerns those kids have for
13 our futures. And for this reason, I ask that you
14 strengthen the meth -- the methane rules to ensure
15 frontline communities are protected by routinely
16 inspecting for and fixing leaks, where 70 percent of the
17 emissions are coming from, and by cutting pollution caused
18 by pneumatic controllers. Thank you for your time.

19 HEARING OFFICER ORTH: Thank you very much.

20 I don't have anyone else in the Chat indicating a
21 desire to offer public comment at this time. That being
22 the case, we will have another public comment session at
23 5:00 today and at 9 in the morning, 1 in the afternoon,
24 and 5:00 tomorrow. The best way to have your name called
25 is to send an email to Pamela Jones, the Board

1 Administrator and I will call on your name. And I will
2 also, as I am right now, throw it open to anyone on the
3 platform who would like to reach out through the Chat.
4 Going once. Okay. We've come to the end of public
5 comment. We'll return to the technical session at this
6 point.

7 Ms. Katz, the parties you've prepared, what we've
8 been referring to as the spreadsheet in order of topics.
9 Would you perhaps walk -- walk the Board members, just
10 describe what's happening here in the -- in the
11 spreadsheet.

12 MS. KATZ: Sure, I'm happy to do that, Madam
13 Hearing Officer. So the spreadsheet puts together -- it
14 lists all of the topics that we expect to cover in the --
15 in the rulemaking. So there's a topic rule section,
16 subsection or paragraph column in Column B. I don't -- I
17 don't know if everybody has the spreadsheet to look at.
18 And then there's a description of either -- if it's a rule
19 section, there's a description of that section or else
20 there's nothing there if it's not an actual rule section.

21 Then we have all of the parties that were -- that
22 entered appearances and submitted technical testimony.
23 There's several rows -- all the first set of rows identify
24 the witnesses who presented direct technical testimony
25 on -- prefiled testimony on that particular subject. And

1 then if you scroll across the columns to Column Q, it
2 identifies whether parties submitted rebuttal technical
3 testimony, and then there's a list of all the rebuttal
4 witnesses associated with each topic, and then there is --
5 at the end there is a column that indicates witness
6 availability issues regarding that topic. So it's to try
7 to help us manage the multiple topics and many witnesses
8 that we have in the hearing.

9 Does that -- is there some other specific thing
10 you'd like me to address?

11 HEARING OFFICER ORTH: No. I just wanted to draw
12 their attention to it and see if they had questions about
13 it. Board members, as you imagine, there may well be
14 adjustments made to it as we -- as we move along and
15 witnesses have scheduling conflicts, but it represents a
16 lot of work on Ms. Katz' part and a lot of discussion
17 among all of the -- all of the parties with us.

18 Do any of the Board members have questions about
19 it? Board Member Davis?

20 VICE-CHAIR TRUJILLO DAVIS: Thank you. First, I
21 would like to say, Ms. Katz, this is awesome, you did a
22 wonderful job on it. It helps keep us in order, so thank
23 you very much.

24 Actually, my only question on it was about the
25 topic order since that column is blank, can we just assume

1 that we're moving top to bottom here, or is that something
2 that's going to populate?

3 MS. KATZ: Yes, Member Trujillo-Davis. I'm
4 wondering if -- I'm not quite sure maybe if you are all
5 the way over on the -- if you scrolled all of the way to
6 the left, there is a -- there are numbers associated with
7 each row of the topics. And so I don't -- you might not
8 have the latest version so I am happy to send it to
9 Ms. Orth and Ms. Jones. Maybe that needs to be sent out
10 again. But, yes, you are correct, though, generally that
11 that is the order. And it's going in that order,
12 although, it kind of got tweaked a little bit this
13 weekend.

14 So, I don't know, Madam Hearing Officer, have
15 they been provided with the more recent one?

16 VICE-CHAIR TRUJILLO-DAVIS: I must have the wrong
17 one up.

18 HEARING OFFICER ORTH: Yeah, Member Bitzer was
19 just asking in the Chat who had sent it and whether we
20 have the most recent version to the Board members. I
21 believe Pam did send the most recent version to the Board
22 members, but I'll ask Pam to resend it because I know that
23 everyone involved has been just slammed with emails.
24 Especially, because I was forced to send each of you ten
25 invitations and I really am sorry about that. There was

1 no way around it.

2 So, Pam, if you would please resend the most
3 recent version.

4 MS. KATZ: And it will say -- you know, it has
5 the whole name and at the end it should say V2 because
6 some of the topics moved. So that would be the one, Pam,
7 for you to send.

8 ADMINISTRATOR JONES: Okay. Thank you.

9 HEARING OFFICER: Thank you for that. Other
10 Board member questions of Ms. Katz about the spreadsheet?
11 No? Okay.

12 So, then, Ms. Katz, would you please just briefly
13 speak to us then about the next couple of topics if you
14 would, please, and the witnesses who will be addressing
15 them.

16 MS. KATZ: Sure. Thanks. So the first topic is
17 ozone formation, and that's going to be Dr. Angela Raso.
18 The second will be ozone monitoring and that will be
19 covered by two witnesses: Andrew Ahr and Brent Ellington.
20 Then the third topic is stakeholder outreach, which is
21 Ms. Kuehn. Now, these are -- I expect we should get
22 through these fairly easily, and that this should --
23 today, for sure, and they don't have -- I don't believe
24 that there was any rebuttal testimony submitted to those.
25 And so, I would put on -- I would ask to put on all of

1 those witnesses, see where we are because I actually do
2 not have my modeling expert here and so I think we're
3 going to -- and we had asked to have the modeling
4 testimony start tomorrow morning. And so, then there are
5 certain topics that could move up if we have time after
6 these witnesses.

7 HEARING OFFICER ORTH: All right. Yeah, as far
8 as I'm concerned, I think I said this to the lawyers, that
9 my highest priority is packing as much as we can into the
10 hours we have. All right.

11 So, now, let's see. I do now have a Chat message
12 from Ms. Devore, that the National Park Services is
13 prepared to give their presentation regarding ozone
14 formation this afternoon with rebuttal, if it fits.

15 MS. KATZ: Oh, my mistake. I'm sorry.
16 Ms. Devore is right. I neglected -- they do have a
17 rebuttal witness on ozone formation.

18 HEARING OFFICER ORTH: Yes. Mr. Vimont, I
19 believe. All right. So if you would, please, Ms. Katz,
20 if there's nothing else we need to discuss, call your
21 first witness.

22 MS. KATZ: Thank you, Madam Hearing Officer. Did
23 you -- did you want to do exhibit admissions --

24 HEARING OFFICER ORTH: Oh.

25 MS. KATZ: -- at this time?

1 HEARING OFFICER ORTH: You know what? I did kind
2 of blow past that, didn't I? All right. So I was looking
3 forward to testimony.

4 MS. KATZ: That's right.

5 HEARING OFFICER ORTH: So the thing about the
6 exhibits is that most of the parties have no objection to
7 most of the exhibits. We do have a couple of parties who
8 have objections to several of the exhibits.

9 So I -- I can certainly bring Mr. Rose back on.
10 He seemed to perhaps have some strategy in mind for the
11 discussion. We can do that, or I can ask you to offer the
12 exhibits to which no one objected, we'll just admit those
13 en masse. And we can wait until you actually offer the
14 ones that were subject to an objection before we have that
15 discussion. What -- what's your preference?

16 MS. KATZ: Thank you, Madam Hearing Officer. I
17 actually don't have those specific exhibits that he's
18 objected to of mine identified in the oral testimony. So
19 it would be coming in through admission of my witnesses'
20 prefiled testimony. I do not think that any of the
21 exhibits that were associated with the next three
22 witnesses -- yes, three witnesses on the first two topics
23 are covered. But I do think he is objecting to some of
24 the exhibits associated that are coming in through
25 Ms. Kuehn's stakeholder outreach testimony.

1 So I don't really know. I mean, I can just say I
2 would move to admit all of the exhibits that do not have
3 objections at this time

4 HEARING OFFICER ORTH: Okay. So the NMED
5 exhibits -- NMOGA, I did not see had any objections to the
6 NMED exhibits.

7 MS. KATZ: That's right

8 HEARING OFFICER ORTH: IPANM objected to Exhibits
9 5, 8, 9, 10, 32, 65, 72, 92, 110, and then the rebuttal
10 Exhibit 1. And you're right, that is about the
11 stakeholder outreach.

12 MS. KATZ: Yeah, I think they -- they -- they
13 objected to every exhibit that had the word methane in it,
14 so I think that's right.

15 HEARING OFFICER ORTH: Okay. All right. So
16 please give me the numbers, if you will, of the ones --
17 other than the ones that they're objecting so we can put
18 that clearly on the transcript that they're being
19 admitted.

20 MS. KATZ: So those would be NMED Exhibit 1
21 through 110, excluding the ones identified by Ms. Orth.
22 And NMED Rebuttal Exhibits 1 through 23.

23 HEARING OFFICER ORTH: Okay. So I'm going to do
24 it this way so that the transcript is clear. I know it's
25 a little more tedious. So 1 through 4 -- NMED Exhibits 1

1 through 4, 6 and 7, 11 through 31, 33 to 64, 66 to 71, 73
2 to 91, 93 to 109. And 111 to -- did you say 123?

3 MS. KATZ: Sorry, no, Madam Hearing Officer, we
4 actually marked our rebuttal exhibits starting again
5 through 1.

6 HEARING OFFICER ORTH: No. I'm sorry. After
7 110, is it 120?

8 MS. KATZ: No, it's NMED Rebuttal Exhibit 1 --

9 HEARING OFFICER ORTH: No. I'm sorry. After
10 110, I thought there were still more after 110.

11 MS. KATZ: There were, but they are our rebuttal
12 exhibits so they start at 1 again.

13 HEARING OFFICER ORTH: So there's nothing after
14 110?

15 MS. KATZ: Right.

16 HEARING OFFICER ORTH: In the draft?

17 MS. KATZ: Correct.

18 HEARING OFFICER ORTH: So I'm sorry. So, I'm
19 sorry, Theresa. I just botched that. So 93 to 110 is
20 what I should have said. All right.

21 All right. Now it's the rebuttal exhibits.
22 Rebuttal Exhibits 2 through 23, right?

23 MS. KATZ: 1 through 23, I believe, or did he
24 object to Exhibit 1?

25 HEARING OFFICER ORTH: 1 has been objected to.

1 So 2 through 23?

2 MS. KATZ: That's my whole -- that's my -- the
3 entire testimony of -- yeah, rule testimony of Ms. Kuehn
4 and Mr. Palmer, so I guess we can take that up. And
5 that's on the rule, so that's not -- that's a different
6 one than Ms. Kuehn's testimony. That's coming up today.

7 HEARING OFFICER ORTH: Okay, but what I'm trying
8 to do is admit the ones to which there was no objection.

9 MS. KATZ: I hear that. Thank you.

10 HEARING OFFICER ORTH: So Rebuttal Exhibits 2
11 through 23, right?

12 MR. ROSE: Madam Hearing Officer, let me -- let
13 me further confuse this, so -- just to make sure. We did
14 have some conversations with the Department after we noted
15 our objections and Ms. Katz was correct, we identified
16 exhibits that related to methane. As we understand the
17 Department's testimony, we have no objections to those
18 exhibits.

19 The others we still have with the other parties,
20 but as to the Department's exhibits that we identified,
21 we're withdrawing our objection.

22 HEARING OFFICER ORTH: I'm really sorry I didn't
23 invite you up a little earlier there, Mr. Rose.

24 MR. ROSE: I wasn't sure whether to try to
25 interject or not. As we're going down this road

1 particularly far, I figured we ought to talk about that.

2 HEARING OFFICER ORTH: Right. No, any time you
3 can rescue me from going through something like that when
4 you've withdrawn the objection, that -- that would be
5 good. So all of NMED's Exhibits are admitted because as I
6 understand it, no other party objects to them. Mr. Rose's
7 objections were the only objections made and they've been
8 withdrawn. So NMED Exhibits -- the direct Exhibits 1
9 through 110 are admitted, and Rebuttal Exhibits 1 through
10 23 are admitted.

11 (NMED Exhibits 1-110 and NMED Rebuttal Exhibits
12 1-23 received into evidence at this time.)

13 HEARING OFFICER: Okay. I think we've cleared
14 that up on the record now. Oh, I see Mr. Baake.

15 MR. BAAKE: Madam Hearing Officer, this is David
16 Baake, with Clean Air Advocates. And I hate to interrupt,
17 but I think it would be really helpful for the other
18 parties to which this mainly broad objection has been
19 lodged, to have this heard earlier rather than later.

20 As you can -- as you can probably imagine, with
21 47 exhibits being objected to and large sections of
22 testimony, it makes it a little difficult for us to plan
23 our presentation if we don't know how that objection might
24 be ruled on.

25 HEARING OFFICER ORTH: I'm sorry. So do you mean

1 the IPANM objections?

2 MR. BAAKE: Yes, that's correct. And maybe -- I
3 mean, maybe we could address it first thing tomorrow or
4 something, but I think it would just be helpful, like I
5 said, to have it kind of scheduled maybe before we get to
6 the technical people that might be objecting to, because I
7 know it applies to three or four parties.

8 HEARING OFFICER ORTH: All right. Thank you.
9 Let me think about that.

10 MS. KATZ: Madam Hearing Officer, I mean, I think
11 there may be a little bit of difference as they apply. I
12 know for the Department, you know, we haven't really --
13 we've said very little about methane, and the exhibits
14 that mention methane are really just associated -- they're
15 not being used to propose specific requirements or
16 targeted at methane. So that's -- I mean, that was the
17 basis of my response to Mr. Rose and so...

18 HEARING OFFICER ORTH: As you can imagine, my
19 timing on the exhibits, once I understood that IPANM
20 objected to a couple of dozen exhibits, it didn't make --
21 it made sense to me that I would have this discussion with
22 Ms. Katz, such that in the event the objection had not
23 been withdrawn, she could have laid a foundation and made
24 her proffer while she had her witness on the screen. But
25 that's all I was thinking about in terms of timing,

1 Mr. Baake.

2 All right. Let's get back. Having admitted all
3 of NMED's Exhibits, let's get back to your witnesses. I'm
4 excited. And I believe you were calling Angela Raso.

5 DR. RASO: Raso.

6 HEARING OFFICER ORTH: Raso. Thank you,
7 Dr. Raso. If you would, please, spell your last name.

8 DR. RASO: My last name is spelled R-A-S-O.

9 HEARING OFFICER ORTH: Thank you. And if you
10 would raise your right hand. Do you swear or affirm to
11 tell the truth?

12 DR. RASO: I do.

13 HEARING OFFICER ORTH: Thank you very much.

14 Ms. Katz, your 30 minutes with Ms. Raso -- Dr. Raso
15 starts now.

16 MS. KATZ: Thank you, Madam Hearing Officer.

17 And I will say that I apologize for my reference
18 to Dr. Raso in the opening statement as "Ms. Raso." She
19 is Dr. Raso and I will want to correct that for the
20 record.

21 ANGELA RASO, Ph.D.,

22 (Relating to Topic Order 1)

23 having been first duly sworn or affirmed, was
24 examined and testified as follows:

25 DIRECT EXAMINATION OF ANGELA RASO, Ph.D.,

1 BY MS. KATZ:

2 Q. Dr. Raso, where are you employed?

3 A. I work at the Air Quality Bureau of the New
4 Mexico Environment Department.

5 Q. And how long have you worked for NMED?

6 A. Approximately, three years.

7 Q. And what is your current job title?

8 A. I'm an air dispersion modeler in the Bureau's
9 planning section.

10 Q. And what are your job duties?

11 A. I review dispersion modelings with permit
12 applications to verify that air quality standards will not
13 be violated by associated complex facilities. I also help
14 review and understand photochemical modeling results for
15 regional level projects.

16 Q. And can you please describe your educational and
17 professional qualifications?

18 A. I hold a Bachelor's degree in Chemistry from
19 Whitman College. I also hold a Ph.D. in Chemistry from
20 Purdue University. During my Ph.D. research, I studied
21 ozone chemistry and its interactions.

22 Q. Thank you. And a copy of your resume has been
23 provided as NMED Exhibit 14, correct?

24 A. Yes.

25 Q. And have you submitted written direct testimony

1 in this proceeding?

2 A. I have.

3 Q. And your full, written, direct testimony appears
4 as Exhibit 13, correct?

5 A. Yes.

6 Q. And do you have any changes to your written
7 testimony?

8 A. No.

9 Q. And do you adopt that testimony here today?

10 A. I do.

11 Q. All right. Ms. Raso -- Dr. Raso, can you please
12 describe how ozone is formed in the atmosphere?

13 A. Ozone is not directly emitted into the
14 atmosphere; rather, ozone is what's known as a secondary
15 pollutant. It seems it's produced by photochemical
16 reactions of precursor gases in the atmosphere. The
17 indicated ozone precursor gases are oxide nitrogen, which
18 we'll be referring to as NOx, and volatile organic
19 compounds known as VOCs.

20 Q. And where do these precursor emissions generally
21 come from?

22 A. NOx is predominantly produced by human
23 activities, most often combustion, burning of fossil
24 fuels. Most VOCs come from biological life plants, but in
25 some areas, human activities can produce similar amounts

1 of VOCs as plant life. Anthropogenic sources of VOCs
2 include fossil fuel production and distribution and
3 biomass burning.

4 In New Mexico, about 20 percent of total VOC
5 emissions are from the oil and gas industry. The industry
6 is the largest source of anthropogenic VOCs in New Mexico.

7 Q. And is it easy to predict ozone concentrations?

8 A. No, it's actually quite difficult. The chemical
9 reactions that form ozone are very complex. It isn't as
10 simple as assuming that 1 molecule of VOC plus 1 molecule
11 of NO_x will produce 1 ozone molecule. The oxidation of 1
12 molecule of VOCs typically produces 2 or more ozone
13 molecules, and the reactions that create ozone doesn't
14 actually destroy NO_x in the atmosphere.

15 Additionally, there are many other competing
16 reactions that are occurring in the atmosphere at the same
17 time. This is why photochemical modeling is so necessary
18 to understand the complexities and predict ozone
19 concentrations in a region. Photochemical models contain
20 hundreds of chemical reactions, in addition to physical
21 reactions and transportation of gases.

22 Q. Can regulations reduce ozone concentrations,
23 Dr. Raso?

24 A. Yes. The data has been very clear over the last
25 several decades that regulations can reduce ozone

1 concentrations.

2 Q. And did you review the work products produced by
3 Ramboll during their photochemical modeling through this
4 rule?

5 A. Yes. Ramboll conducted the photochemical
6 modeling. As they were producing work products, I
7 reviewed both draft and final work products, a list of the
8 work products that we reviewed is included in my written
9 testimony.

10 Q. Thank you, Dr. Raso.

11 MS. KATZ: I have no further questions for this
12 witness.

13 HEARING OFFICER ORTH: Thank you very much. I
14 will ask in the order of the service list again for
15 questions by counsel. After I've done that, I will invite
16 questions from Board members and anyone else. If you are
17 not a panelist and you know that you have a question for
18 this witness, please let me know in the Chat.

19 So, Ms. Fox, do you have a question of Dr. Raso?

20 MS. FOX: No, Madam Hearing Officer. Thank you.

21 MADAM HEARING OFFICER: Thank you. Ms. Paranhos?
22 She may have stepped away.

23 Mr. Jaynes? He may have stepped away.

24 Ms. Devore or Mr. Vimont?

25 MS. DEVORE: We don't have any questions. Thank

1 you.

2 HEARING OFFICER ORTH: Thank you. And I just saw
3 something in Chat from Professor Pacyniak, that CCP and
4 NAVA do not have questions.

5 WildEarth Guardians, Mr. Nykiel?

6 MR. NYKIEL: No questions, Madam Hearing Officer.

7 HEARING OFFICER ORTH: All right. Thank you.

8 Oh, and Ms. Paranhos has just texted that she had
9 no questions.

10 Mr. de Saillan?

11 MR. DE SAILLAN: No questions. Thank you, Madam
12 Hearing Officer.

13 HEARING OFFICER ORTH: Thank you. Mr. Rose?

14 MR. ROSE: No questions.

15 HEARING OFFICER ORTH: Thank you.

16 Mr. Janoe?

17 MR. JANOE: No questions, Madam Hearing Officer.

18 HEARING OFFICER ORTH: Thank you.

19 Mr. Butzier?

20 MR. BUTZIER: No questions, Madam Hearing
21 Officer.

22 HEARING OFFICER ORTH: Thank you.

23 Ms. Gutierrez?

24 MS. GUTIERREZ: No questions, Madam Hearing
25 Officer.

1 HEARING OFFICER ORTH: Thank you.

2 Mr. Neumann?

3 MR. NEUMANN: No questions, Madam Hearing
4 Officer. Thanks.

5 HEARING OFFICER ORTH: Thank you.

6 Let's see. Mister -- let's see. Oh,
7 Ms. Witherspoon? She may have stepped away.

8 All right. I'll return to the --

9 Madam Hearing Officer, NMOGA has no questions
10 either.

11 HEARING OFFICER ORTH: Oh, thank you. Did I --
12 I'm sorry. Oh, yes, that's right. I'm very sorry. Was
13 that Mr. Hiser?

14 MR. HISER: Yes, ma'am.

15 HEARING OFFICER ORTH: Okay. Thank you very
16 much. All right. Let me turn to the Board members.

17 EXAMINATION BY THE BOARD OF ANGELA RASO, Ph.D.

18 HEARING OFFICER ORTH: Madam Chair, do you have
19 questions of this witness?

20 CHAIRPERSON SUINA: I don't have any questions.

21 HEARING OFFICER ORTH: All right. Thank you.
22 Vice-Chair Davis, any questions?

23 VICE-CHAIR TRUJILLO-DAVIS: No, ma'am.

24 HEARING OFFICER ORTH: All right. Member Cates?
25 He may have stepped away.

1 Member Bitzer?

2 BOARD MEMBER BITZER: No questions.

3 HEARING OFFICER ORTH: Thank you. Member Duval?

4 BOARD MEMBER DUVAL: Yes, I have just a brief
5 question. Thank you, Dr. Raso. I was -- I was curious if
6 in part of your capacity in evaluating models, do you also
7 do -- do you do process modeling yourself in your
8 position?

9 DR. RASO: The Bureau does not process
10 photochemical models ourselves. We do process dispersion
11 models, which don't account for chemistry and can't
12 predict ozone concentrations.

13 BOARD MEMBER DUVAL: Okay. That was just a point
14 of clarification. I was just curious. Thank you for your
15 testimony.

16 DR. RASO: Uh-huh.

17 HEARING OFFICER ORTH: Thank you.

18 Member Garcia, do you have questions?

19 BOARD MEMBER GARCIA: No questions. Thank you.

20 HEARING OFFICER ORTH: Thank you. And Member
21 Honker? I'm sorry. Mr. Honker, did you say "no
22 questions"? Oh, there you are.

23 MEMBER HONKER: No questions.

24 HEARING OFFICER ORTH: All right. Thank you.

25 I think -- and I see no questions from any

1 nonpanelists in the Chat. So is there any reason not to
2 excuse Dr. Raso? Going once. All right. Thank you very
3 much, Dr. Raso, for your testimony.

4 Ms. Katz, do we then hear from Mr. Vimont? Is
5 that what we do?

6 MS. KATZ: Yes, I believe that's correct.

7 HEARING OFFICER ORTH: Okay. I'm working my way
8 across the spreadsheet there, and that was how I thought
9 we were going to walk through it. Mr. Vimont?

10 MS. KATZ: Madam Hearing Officer, I'm sorry,
11 really quick. I don't think that the spreadsheet is set
12 up in the order that we're doing the -- in the -- anyway,
13 sorry. Yes, I mean, he is the only other witness for this
14 one so it doesn't really matter.

15 HEARING OFFICER ORTH: All right. Thank you.

16 Mr. Vimont, have you joined -- oh, this is
17 Ms. Devore. I see you, Ms. Devore.

18 MS. DEVORE: May I introduce Mr. Vimont quickly?

19 MR. VIMONT: Wait a -- please wait a second here.
20 It might make more sense to go after the monitoring
21 discussion since the -- we kind of covered both in our
22 rebuttal, and, frankly, you know, they're interrelated,
23 so...

24 MS. DEVORE: How do you want to do that?

25 HEARING OFFICER ORTH: All right.

1 MR. VIMONT: It's at your pleasure; however you
2 would like to do it.

3 HEARING OFFICER ORTH: Okay. So if you would
4 like to move on, Ms. Katz.

5 MS. KATZ: Thank you, Madam Hearing Officer. The
6 Department calls Brent Ellington.

7 HEARING OFFICER ORTH: Do we have him on the
8 screen? Oh, there we are. Mr. Ellington, I can see you.
9 Would you raise your right hand, please? Do you swear or
10 affirm to tell the truth?

11 MR. ELLINGTON: I do.

12 HEARING OFFICER ORTH: Thank you. Let's spell
13 your last name, please.

14 MR. ELLINGTON: It's Ellington,
15 E-L-L-I-N-G-T-O-N.

16 HEARING OFFICER ORTH: Thank you very much.
17 Ms. Katz, your 30 minutes starts now.

18 BRENT ELLINGTON,
19 having been first duly sworn or affirmed, was
20 examined and testified as follows:

21 DIRECT EXAMINATION OF BRENT ELLINGTON

22 BY MS. KATZ:

23 Q. Thank you, Madam Hearing Officer.

24 Mr. Ellington, can you tell the Board where you
25 are employed?

1 A. The Air Quality Bureau of the New Mexico
2 Environment Department.

3 Q. And how long have you worked for the Department?

4 A. Approximately, seven years.

5 Q. And what is your current job title?

6 A. I'm an environmental scientist specialist
7 supervisor for the Air Quality Bureau.

8 Q. Can you describe your job duties?

9 A. I supervise the Bureau's Northern New Mexico
10 operation staff with respect to air quality monitoring and
11 data under federal regulatory requirements.

12 Q. And can you please describe your educational and
13 professional qualifications?

14 A. I hold a Bachelor's Degree of Science in Biology
15 from Eastern New Mexico University. I've worked as
16 environmental scientist for over 17 years with the State
17 of New Mexico, seven of which have been with the Air
18 Quality Bureau. My positions have included the
19 environmental specialist operator in Southeast New Mexico,
20 Southern New Mexico supervisor of operations, and
21 recently, the Northern New Mexico supervisor for the
22 ambient air quality monitoring section.

23 Q. And a copy of your resume has been provided as
24 NMED Exhibit 28?

25 A. Yes.

1 Q. Have you submitted written direct testimony in
2 this proceeding?

3 A. Yes.

4 Q. And your full, written, direct testimony appears
5 as NMED Exhibit 27?

6 A. Yes.

7 Q. Do you have any changes to your written
8 testimony?

9 A. No.

10 Q. Do you adopt your written testimony here today?

11 A. Yes.

12 Q. Thank you. Mr. Ellington, can you please
13 summarize for the Board your direct testimony regarding
14 the Department's air quality monitoring network?

15 A. Yes. The Department's responsible for collecting
16 ambient air data to document present air quality and
17 significant trends of pollution concentrations. This data
18 must be of high quality because its use may have
19 significant health, social and economic impacts. The NMED
20 ambient air quality consists of state and local monitoring
21 stations and special purpose monitors. The purpose of the
22 network is to support the National Ambient Air Quality
23 Standards and the Bureau is designated by the EPA to
24 operate the monitors.

25 This existing NMED air monitoring network

1 includes monitors in the areas of highest population
2 density and includes sites that measure general background
3 concentrations. There are currently 14 ozone analyzers
4 deployed at various monitoring stations throughout New
5 Mexico.

6 Q. Thank you. Can you discuss the federal
7 regulations governing the Department's air monitoring
8 network?

9 A. Yeah. The EPA specifies the general monitoring
10 site types in its regulations. The location of the
11 monitors in New Mexico meet the requirements in those
12 federal regulations. The Bureau maintains the air
13 monitoring instruments to 95 percent probability goals for
14 accuracy and precision within EPA's required limits.

15 Q. And what are the air pollutants that are required
16 to be monitored?

17 A. Currently, the Department monitors sulfur
18 dioxide, nitrogen dioxide, ozone particulate matter, PM10
19 and 2.5 micrometers in size, in areas of New Mexico where
20 the expected pollutants are expected to occur at
21 significant levels, such as at or near cities near
22 coal-fired plants -- power plants, mining operations, oil
23 and gas operations and petroleum plants.

24 Q. And can you describe the ozone monitoring
25 conducted by the Department?

1 A. Yeah. The Department collects ozone data at each
2 of the 14 monitoring sites in the state and uploads that
3 data to the EPA's AirNow program every hour. The air
4 pollution data are also available on the Bureau's website.

5 Information on this site includes pollutant
6 concentrations, values, and are color-coded in the ambient
7 air quality index, so the public can better understand
8 that. And that represents the current ambient air quality
9 for each monitoring location.

10 Q. And what equipment does the Department use to
11 monitor ozone pollution and how are ambient ozone levels
12 monitored?

13 A. Yeah, the Bureau currently uses the Thermo Fisher
14 Model 49i Ultraviolet Photometric Ozone Analyzer. We just
15 call it the 49i, to monitor ozone. This equipment's
16 approved by the EPA for measuring ambient concentrations
17 of ozone pursuant to federal regulations. The thermo
18 analyzer calculates the ambient air concentration of ozone
19 at a monitoring station by counting the molecules of ozone
20 that are present as they pass by an ultraviolet lamp
21 inside the analyzer over a defined period of time. And
22 that calculated ozone concentration is then reported to
23 the station data logger computer and is available
24 thereafter on the Bureau's website for public review.

25 Q. Can you please describe how the Department

1 complies with auditing and calibration requirements for
2 this ozone monitoring equipment?

3 A. Yes. The in-station computer calibration systems
4 perform weekly calibration checks. The Bureau evaluates
5 the results of these checks as part of the data validation
6 process, and the results are reported to the EPA. The
7 Bureau follows standard operating procedures for
8 uniformity and uniform practices and quality control of
9 each one of our ambient air monitoring stations.

10 Q. Thank you, Mr. Ellington. I have no further
11 questions for this witness

12 HEARING OFFICER ORTH: Thank you, Ms. Katz.
13 We're going to go through the list again. Ms. Fox, do you
14 have questions of Mr. Ellington?

15 MS. FOX: No, thank you, Madam Hearing Officer.

16 HEARING OFFICER ORTH: Ms. Paranhos? She may
17 have frozen again.

18 Professor Pacyniak or Mr. Jaynes?

19 PROFESSOR PACYNIK: No questions, Madam Hearing
20 Officer.

21 HEARING OFFICER ORTH: Thank you.

22 Ms. Devore or Mr. Vimont?

23 MS. DEVORE: No questions, Madam Hearing Officer.

24 HEARING OFFICER ORTH: All right.

25 Mr. Nykiel?

1 MR. NYKIEL: No questions, Madam Hearing Officer.

2 Thank you.

3 HEARING OFFICER ORTH: Thank you.

4 Mr. de Saillan?

5 MR. DE SAILLAN: No.

6 HEARING OFFICER ORTH: Thank you.

7 Mr. Hiser?

8 MR. HISER: No questions and thank you.

9 HEARING OFFICER ORTH: Thank you.

10 Mr. Rose?

11 MR. ROSE: I just have one question for
12 clarification.

13 CROSS-EXAMINATION OF BRENT ELLINGTON

14 BY MR. ROSE:

15 Q. And that is, are the monitors that you identified
16 for ozone include monitors in Bernalillo County, or are
17 those maintained by the city as opposed to the state?

18 A. Yes, those are maintained by the City of
19 Albuquerque's monitoring network. That's -- that's out of
20 our scope.

21 Q. Do you know how many monitors they maintain?

22 A. You know, that, I don't have readily available.
23 I don't know how many stations they operate.

24 MR. ROSE: Thank you. I have no further
25 questions.

1 HEARING OFFICER ORTH: Thank you.

2 Mr. Janoe?

3 MR. JANOE: No questions, Madam Hearing Officer.

4 HEARING OFFICER ORTH: All right. Thank you.

5 Mr. Butzier?

6 MR. BUTZIER: No questions on behalf of GCA.

7 HEARING OFFICER: Thank you.

8 Ms. Gutierrez?

9 MS. GUTIERREZ: No questions. Thank you.

10 HEARING OFFICER ORTH: Thank you.

11 Mr. Neumann?

12 MR. NEUMANN: No questions. Thank you.

13 HEARING OFFICER ORTH: Thank you. And

14 Ms. Witherspoon, if you're with us?

15 All right. I'm going to turn to the Board now.

16 In the event you are not a panelist, please reach -- and

17 you have a question for this witness, please reach out

18 through the Chat.

19 EXAMINATION BY THE BOARD OF BRENT ELLINGTON

20 HEARING OFFICER ORTH: Madam Chair, do you have
21 questions of Mr. Ellington?

22 CHAIRPERSON SUINA: Madam Hearing Officer, I
23 don't have any questions. Thank you.

24 HEARING OFFICER ORTH: Thank you.

25 Vice-Chair Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: Thank you, Madam
2 Chair. I just have one question for clarification.
3 Mr. Ellington, how many air monitors are in Eddy County
4 and how many area monitors are in Lea County?

5 MR. ELLINGTON: Did you say -- I got Eddy County;
6 we have one monitor there. And then --

7 VICE-CHAIR TRUJILLO-DAVIS: And Lea County?

8 MR. ELLINGTON: In Lea County, we have a station
9 in Hobbs, New Mexico as well, so that's one in each
10 county.

11 VICE-CHAIR TRUJILLO-DAVIS: And where are those
12 located at? I don't need specifics. I was looking more
13 for close to population, out in the middle of the county,
14 kind of just general?

15 MR. ELLINGTON: Yeah, in Eddy County, our station
16 is on the western side of Carlsbad, kind of on the
17 Southwestern side; very, very close to populated areas.
18 And in Hobbs, it is in a city wellyard in the
19 neighborhoods, close to an elementary school.

20 VICE-CHAIR TRUJILLO-DAVIS: Thank you. I
21 appreciate it. And thank you for your testimony.

22 MR. ELLINGTON: You're welcome.

23 HEARING OFFICER ORTH: Thank you.

24 Member Cates, do you have questions of
25 Mr. Ellington?

1 BOARD MEMBER CATES: I do not. Thank you.

2 HEARING OFFICER ORTH: All right. Thank you.

3 Member Bitzer?

4 BOARD MEMBER BITZER: No. Sorry

5 HEARING OFFICER ORTH: Thank you. Thank you.

6 Member Duval, I believe, had to step away.

7 Member Garcia?

8 MEMBER GARCIA: No questions.

9 HEARING OFFICER ORTH: No, okay. Thank you.

10 And Member Honker?

11 BOARD MEMBER HONKER: I have no questions. Thank
12 you.

13 HEARING OFFICER ORTH: All right. Thank you.

14 Is there any reason not to excuse Mr. Ellington?

15 Thank you very much, Mr. Ellington.

16 MR. ELLINGTON: You are very welcome, Madam
17 Hearing Officer.

18 MS. KATZ: I can't hear you.

19 HEARING OFFICER ORTH: I'm sorry. I was reading
20 a message from Professor Pacyniak, asking me to make a few
21 of the law students panelists. I guess they weren't able
22 to come in through the panelist link, so let me take just
23 a moment to do that. So Mr. Jaynes -- and who else was
24 it? Keifer Johnson. All right. I'm sorry, I don't
25 multitask as well as I think I do. Okay. Make panelists.

1 All right. I have taken care of that little bit of
2 business.

3 So should we turn now at this point, Ms. Katz, to
4 the rebuttal from Mr. Vimont and Ms. Devore before you go
5 to stakeholder information?

6 MS. KATZ: Madam Hearing Officer, I still have
7 one other witness for the monitoring, and so I believe it
8 would be appropriate to have Mr. Vimont go after that.

9 HEARING OFFICER ORTH: Oh, very sorry. Thank
10 you. Please call your next witness.

11 MS. KATZ: Thank you. The Department calls
12 Andrew Ahr.

13 HEARING OFFICER ORTH: Mr. Ahr, I see you on the
14 screen. If you would raise your right hand, please.

15 Thank you very much. And Andrew is the standard
16 spelling. Ahr, if you would spell it, please.

17 MR. AHR: Okay. My last name is spelled A-H-R.

18 HEARING OFFICER ORTH: Thank you. Ms. Katz, your
19 30 minutes starts now.

20 ANDREW AHR,
21 having been first duly sworn or affirmed,
22 was examined and testified as follows:

23 DIRECT EXAMINATION OF ANDREW AHR

24 BY MS. KATZ:

25 Q. Thank you. Mr. Ahr, where are you employed?

1 A. I'm employed at the Air Quality Bureau of the New
2 Mexico Environment Department.

3 Q. And how long have you worked for the Department?

4 A. I've been with the Department approximately four
5 years.

6 Q. And what is your current job title?

7 A. Currently, I'm the quality assurance staff
8 manager.

9 Q. And what are your job duties?

10 A. I manage the quality assurance auditors who
11 perform audits of the air monitoring equipment at all of
12 the air monitoring sites. I also manage the quality
13 assurance data handling specialists, who validate the
14 ambient air data reports precision and accuracy data to
15 EPA's air quality system and performs data certification.

16 Q. Thank you. And a copy of your resume has been
17 provided as NMED Exhibit 31?

18 A. Yes.

19 Q. And have you submitted written direct testimony
20 in this proceeding?

21 A. Yes, I have.

22 Q. And your full, written, direct testimony appears
23 as Exhibit 30?

24 A. Yes.

25 Q. Do you have any changes to your written

1 testimony?

2 A. No.

3 Q. And do you adopt your written testimony here
4 today?

5 A. I do, yes.

6 Q. Thank you. Mr. Ahr, can you describe for the
7 Board what a design value is and how design values for
8 ozone are determined?

9 A. Okay. A design value is a statistic that is used
10 to determine the compliance status of a given location
11 with respect to the National Ambient Air Quality
12 Standards, or NAAQS. Design values are typically used to
13 designate and classify nonattainment areas, as well as to
14 assess progress toward meeting the NAAQS. Design values
15 are computed and published annually by EPA's Office of Air
16 Quality Planning and Standards, and reviewed in
17 conjunction with EPA's Regional Offices.

18 The current NAAQS for ozone is 0.070 PPM or parts
19 per million. This ozone standard has been in effect since
20 October 26, 2015. The NAAQS is met at an ambient air
21 monitoring site when the three-year average of the
22 fourth-highest daily maximum 8-hour average ozone
23 concentration, or the design value, is less than 0.070
24 parts per million. The three-year average is computed
25 using the three most recent consecutive years of ambient

1 ozone monitoring data. Design values are also reported in
2 parts per million to three decimal places.

3 Federal regulations specify what is considered
4 ozone season for each state. Ozone season for most states
5 is generally considered to be from May through September;
6 however, in New Mexico -- because those are considered the
7 warmest months of the year. However, New Mexico's ozone
8 season is designated as all 12 months.

9 Hourly ozone -- let me start again. Hourly
10 average ozone concentrations are recorded at each ozone
11 monitor, parts per million, to the third decimal place,
12 with digits to the right of the third decimal place
13 truncated. The daily maximum 8-hour average ozone
14 concentrations are determined each day with ambient ozone
15 monitoring data.

16 Q. And can you discuss the quality assurance
17 requirements for design value data?

18 A. Yes. Four daily 8-hour average ozone
19 concentrations data is submitted to the EPA. The data is
20 reviewed by QA personnel at the Bureau to meet validity
21 requirements. Ozone monitoring equipment must pass an
22 annual accuracy audit to ensure that all flows, pressures,
23 lamp intensities, temperatures and instrument response to
24 ozone concentrations are within specifications.

25 Quarterly calibrations are performed on all ozone

1 monitoring instruments by personnel from the Bureau's
2 monitoring section. Ozone monitoring instruments -- ozone
3 monitoring instruments must pass quality control checks
4 which are performed automatically. If any ozone monitors
5 do not pass this weekly check, monitoring personnel make
6 required adjustments or fixes to the failing instrument to
7 bring it back within specifications.

8 QA personnel verify that all ozone monitoring
9 instruments pass this check and then submit the weekly
10 data to EPA through the air quality system website. Daily
11 checks are also performed by monitoring personnel to
12 ensure ozone monitoring equipment is recording and
13 operating within specifications. They look for any
14 equipment alarms and note any unusual or high value
15 concentrations above 0.070 parts per million.

16 The quality assurance data steward performs a
17 daily check of ozone data each morning to ensure the
18 instruments are recording, takes note of any data
19 abnormalities. Lastly, QA personnel perform annual data
20 certification on all data -- on all -- excuse me -- on all
21 monitoring data. The Bureau then submits the
22 certification letter and related reports to the EPA.

23 Q. Thank you. Can you describe the process for
24 submission of monitoring data to EPA, for calculation of
25 design values?

1 A. Yes. The Bureau's QA personnel review all data
2 to ensure that it meets all validity requirements and
3 submits it to the EPA on a quarterly basis. Once the
4 hourly ozone data is submitted, EPA uses it to calculate
5 the 8-hour average ozone concentration for each day, to
6 determine the first, second, third, fourth -- and fourth
7 highly daily -- highest daily maximum 8-hour ozone
8 concentrations. This is for the entire year, to produce
9 the design value. EPA, therefore, determines the design
10 value, not the Bureau.

11 Q. Thank you, Mr. Ahr, and I have no further
12 questions for this witness.

13 HEARING OFFICER ORTH: Thank you very much. I
14 will go through the list for questioning. Ms. Fox?

15 MS. FOX: No questions, Madam Hearing Officer.

16 HEARING OFFICER ORTH: Thank you.

17 Ms. Paranhos?

18 Professor Pacyniak? I saw you briefly.

19 PROFESSOR PACYNIK: No questions, Madam Hearing
20 Officer.

21 HEARING OFFICER ORTH: Thank you.

22 Ms. Devore or Dr. Vimont?

23 MS. DEVORE: No questions. Thank you.

24 HEARING OFFICER ORTH: All right. Mr. Nykiel?

25 MR. NYKIEL: No questions. Thank you.

1 HEARING OFFICER ORTH: All right.

2 Mr. de Saillan?

3 MR. DE SAILLAN: No questions. Thank you.

4 HEARING OFFICER ORTH: Thank you. And

5 Ms. Paranhos is unable to unmute herself at the moment,
6 but she has no questions.

7 Mr. Hiser?

8 MR. HISER: Thank you, Madam Hearing Officer. I
9 do have a question or two.

10 CROSS-EXAMINATION OF ANDREW AHR

11 BY MR. HISER:

12 Q. Mr. Ahr, you said that the Department itself does
13 not calculate the design value, but EPA does; is that
14 correct?

15 A. That's correct.

16 Q. And has EPA calculated a design value for Chaves
17 County or not?

18 A. I do not believe so.

19 MR. HISER: Thank you.

20 HEARING OFFICER ORTH: Thank you.

21 MR. HISER: No further questions, Madam Hearing
22 Officer.

23 HEARING OFFICER ORTH: Oh, thank you.

24 Mr. Rose, do you have questions of Mr. Ahr?

25 MR. ROSE: I have no questions of this witness.

1 HEARING OFFICER ORTH: All right. Mr. Janoe?

2 No questions. Thank you.

3 HEARING OFFICER ORTH: Thank you. Mr. Butzier?

4 MR. BUTZIER: No questions on behalf of GCA.

5 HEARING OFFICER ORTH: Thank you.

6 Ms. Gutierrez?

7 MS. GUTIERREZ: No questions. Thank you.

8 HEARING OFFICER ORTH: Thank you.

9 Mr. Neumann?

10 MR. NEUMANN: No questions. Thank you.

11 HEARING OFFICER ORTH: All right. And

12 Ms. Witherspoon, if you're with us. No?

13 I'm going to turn to the Board now.

14 If you are not a panelist and you have a question of
15 this witness, please reach out through the Chat.

16 Madam Chair?

17 EXAMINATION BY THE BOARD OF ANDREW AHR

18 CHAIRPERSON SUINA: Thank you, Madam Hearing

19 Officer. I do have one question to follow up from

20 Mr. Hiser's line of questioning. So as you responded to

21 Mr. Hiser, you don't have a value for Chaves County. Just

22 so I can clarify in my mind, is that -- so, therefore,

23 only the values are calculated for the monitoring stations

24 in those locations where the county -- where the

25 monitoring station is within the county; is that correct?

1 MR. AHR: How I understand it, yes.

2 CHAIRPERSON SUINA: Okay. So those -- a
3 follow-up question, Hearing Officer, if I may. So those
4 counties without a monitoring station don't have those
5 design values -- or the comparison to the design values
6 calculated; is that correct?

7 MR. AHR: That's correct.

8 CHAIRPERSON SUINA: Okay. Thank you so much.

9 HEARING OFFICER ORTH: All right. Thank you.
10 Vice-Chair Trujillo-Davis?

11 VICE-CHAIR TRUJILLO-DAVIS: Thank you, Madam
12 Hearing Officer. I only have a couple of follow-up
13 questions. So when the -- when you submit three years of
14 data to the EPA for your design value, how long does that
15 take to receive a design value back from the EPA?

16 MR. AHR: We don't -- we don't submit three years
17 at a single time. As I've stated, we submit the data
18 quarterly each year, and so -- and then -- then we certify
19 all of that data once a year, too. But EPA, I mean, they
20 have all of that data, they can come up with the come up
21 with the design value for the year after it's been -- say,
22 after it's been certified. The certifications are done at
23 the end of May. That's when we certify the previous
24 year's data. The requirement -- the required date is by
25 May 30th of the following year.

1 So I would imagine that the EPA would probably
2 have that data after they receive -- after they receive
3 our certifications for it.

4 VICE-CHAIR TRUJILLO-DAVIS: So as we move through
5 this hearing and we're looking at data for these counties,
6 how -- what's the time frame we're actually looking at?
7 Are we looking at 2020, '19, '18, or are we looking
8 further back into those years?

9 MR. AHR: You mean for the current design value?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 MR. AHR: The current design value is based on
12 2018, 2019 and 2020. So those are the latest design
13 values.

14 VICE-CHAIR TRUJILLO-DAVIS: Okay. And do you
15 request from EPA which counties you want to have design
16 values for?

17 MR. AHR: No, because it's dependent upon where
18 we have air monitor -- ozone air monitors for that. So,
19 EPA, they calculate what the design values are, and then
20 they assign those to the specific county or our monitoring
21 site.

22 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.
23 And I'm just trying to get a picture of how those
24 interactions between EPA and NMED work. So thank you for
25 taking the time to answer my questions.

1 MR. AHR: You're welcome

2 MS. KATZ: Member Trujillo-Davis, I think with
3 witness Mike Baca, we'll also be addressing some of that
4 information so you can also ask him about that as well.

5 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you very
6 much.

7 HEARING OFFICER ORTH: Thank you, both.

8 Member Cates, do you have questions of Mr. Ahr?

9 BOARD MEMBER CATES: I do not.

10 HEARING OFFICER ORTH: All right. Thank you.

11 Member Bitzer, do you have questions of Mr. Ahr?

12 BOARD MEMBER BITZER: I do. Mr. Ahr, just one
13 question. You mentioned that the equipment you use is
14 subject to an annual check, accuracy verification type of
15 deal. How often is it spot on, and are there occasions
16 when it's substantially off at the time of it?

17 MR. AHR: It has to meet -- it has to fall within
18 a specific range of specifications. It can't -- if it's
19 off at all, then it doesn't pass the annual audit. Then,
20 the monitoring people -- personnel -- the monitoring
21 personnel, the AQB go in and make the adjustments, the
22 calibrations to the tool. We don't -- the auditors -- the
23 QA auditors do not fix the tool. That's up to the
24 monitoring people to bring it back within specification.

25 Once it's back within the specifications,

1 according to the monitoring people, then we'll re-perform
2 the audit to make sure that it is passing.

3 BOARD MEMBER BITZER: So they do have to be
4 recalibrated fairly often? Is that what I'm hearing?

5 MR. AHR: No, I wouldn't say so. I mean, most of
6 the time they do pass their audit. Because it's --

7 BOARD MEMBER BITZER: And you said it had to be
8 audited. Is that 1 percent, 2 percent? How -- how plus
9 or minus could it be and still pass?

10 MR. AHR: I don't have that in front of me right
11 now. I wish I could get that to you. I don't know that
12 number right off the top of my head. I'm sorry.

13 BOARD MEMBER BITZER: No rush. We're going to be
14 here for a couple of weeks.

15 MR. AHR: Okay. Yeah, because we do have it --
16 it's specified on -- there's a -- we do have a document
17 that has all of that written on there, that says, yes, it
18 has to be within these specifications in order to pass.

19 MS. KATZ: We can provide that information.

20 MR. AHR: Yeah, we can submit that. I just don't
21 have it in front of me.

22 BOARD MEMBER BITZER: I'm just wondering what
23 constitutes good data and what the variations or
24 deviations are likely to be. That's good. Thank you.

25 MR. AHR: All right.

1 HEARING OFFICER ORTH: Thank you.

2 Member Garcia, do you have questions of Mr. Ahr?

3 BOARD MEMBER GARCIA: Yes, I do have one
4 question. Can you hear me okay?

5 MR. AHR: Yes.

6 BOARD MEMBER GARCIA: So who decides where the
7 monitor is located? Is that something that NMED proposes
8 and EPA approves?

9 MR. AHR: That's -- that's really beyond my
10 scope, I mean, how that's done. I think that the EPA, you
11 know, pretty much, you know, proposes where they go.

12 BOARD MEMBER GARCIA: Okay. Perhaps somebody
13 else can answer that a little later. That will be fine.
14 Thank you.

15 HEARING OFFICER ORTH: All right. Thank you.

16 Member Honker, do you have questions of Mr. Ahr?

17 BOARD MEMBER HONKER: No questions at this time.
18 Thank you.

19 HEARING OFFICER ORTH: All right. Thank you.

20 No one else has reached out through Chat.

21 Ms. Katz, did you have any redirect or can we
22 excuse Mr. Ahr?

23 MS. KATZ: We can excuse Mr. Ahr. Thank you.

24 HEARING OFFICER ORTH: All right. Thank you very
25 much, Mr. Ahr, for your testimony.

1 Is it time now to turn to Mr. Vimont and
2 Ms. Devore?

3 All right. So, Ms. Devore, I see you on the
4 screen. And I believe you said you wanted to introduce
5 Mr. Vimont. What I'd like to do is swear both of you in.
6 If you would, each of you, raise your right hand.

7 LISA DEVORE AND JOHN VIMONT

8 having been first duly sworn or affirmed, were
9 examined and testified as follows:

10 HEARING OFFICER ORTH: Thank you. That was both
11 Ms. Devore: First name, Lisa, last name, D-E-V-O-R-E and
12 Mr. Vimont, V-I-M-O-N-T.

13 Go ahead, Ms. Devore.

14 DIRECT EXAMINATION OF JOHN VIMONT

15 MS. DEVORE: Okay. So I'd like to introduce
16 Mr. Vimont, with the National Parks Service. He holds a
17 Bachelor of Science in Atmospheric Sciences, as well as a
18 Master of Science in Atmospheric Science. And he has
19 worked for the park service since 1991. And before that,
20 held positions with the Environmental Protection Agency
21 and the State of New Mexico Air Quality Bureau. And he is
22 currently the acting chief for the Air Resource --
23 National Air Resources Division for the National Park
24 Service and has also served in roles as meteorologist, and
25 is the chief of the Research and Monitoring Branch of the

1 Air Resources Division in the park services. And his
2 curriculum vitae was submitted as National Park Services
3 Exhibit A in our rebuttal testimony.

4 And he will be providing a presentation today
5 focusing on ozone formation and monitoring, with emphasis
6 on the study that the National Park Service did in
7 Carlsbad Caverns. Thank you.

8 MR. VIMONT: Is it possible to share my screen?
9 I have a PowerPoint presentation.

10 HEARING OFFICER ORTH: Yes, I will make you a
11 presenter. Just give me a moment and remember, you have
12 30 minutes.

13 MR. VIMONT: Yep.

14 HEARING OFFICER ORTH: Let's see here. Change
15 role, make presenter. All right. It should be coming up
16 for you.

17 MR. VIMONT: Okay. Now, the next trick is to
18 figure out how it's -- which window it's going to want to
19 share here. These are always tricky when we get into the
20 presentation things here on a webinar. But let me share.
21 Okay. Let me try sharing screen two and then I will go to
22 presentation mode, which I hope -- I did that. Well,
23 interesting. Let's try that.

24 HEARING OFFICER ORTH: There we go.

25 MR. VIMONT: Okay. We have that. Let me -- what

1 happens if I do this? Are you seeing the one with the
2 slides on the side or are you seeing the presentation
3 mode?

4 HEARING OFFICER ORTH: It was better earlier,
5 because now we see something that is split.

6 MR. VIMONT: Okay. Let me get out of this. We
7 can do it either way. All right. Okay. So you're seeing
8 it okay now?

9 HEARING OFFICER ORTH: Yes, I see one large
10 screen and then the -- see one large slide and then, you
11 know, little thumb nails of the slides along the left
12 margin which aren't distracting. Please go ahead.

13 MR. VIMONT: Yeah, let's just do that. It gets
14 the point across at any rate. So we're the National Park
15 Service that we're offering technical comments on the
16 proposed rule. We have a quick synopsis of our results
17 that we want to present. First of all, ozone
18 concentrations exceed the level of National Ambient Air
19 Quality Standards for ozone at Carlsbad Caverns National
20 Park in New Mexico.

21 We'll go over our monitoring here in a minute,
22 but the -- basically, our monitoring at Carlsbad Caverns
23 follows the EPA guidelines that were outlined by the
24 previous presenters for the state. It's certified data
25 just like the state data is.

1 Volatile organ -- excuse me. Volatile organic
2 compounds measured at Carlsbad Caverns National Park
3 indicate that the main sources of volatile organic
4 compounds affecting ozone formation are from oil and gas
5 activities. Nitrogen oxide emissions that affect high
6 ozone concentrations at Carlsbad Caverns National Park are
7 from localized sources, meaning somewhere in the vicinity
8 of Eddy County, or that kind of a scale, not from the long
9 distance transport.

10 The measures proposed in this rule will help to
11 reduce high ozone concentrations. We'll talk about this
12 more as a rebuttal later on. And based on the data that
13 we have, we think that the NOx and VOC control measures
14 are necessary to reduce ozone.

15 Okay. There we go. First, go over some of the
16 general information about air quality at national parks.
17 There's a variety of laws out there that we operate under
18 to protect our resources in national parks and wilderness
19 areas. The National Park Service relies on states and the
20 EPA to implement air quality regulations so that it can
21 protect park resources. We do not have regulatory
22 authority, but we do have authority to measure what's
23 happening in our national parks. Actually, I should say
24 your national parks. It's all of our national parks.

25 The ground level ozone formation, one of the

1 previous speakers discussed this; it's formed from a
2 complex reaction of nitrogen oxides and VOCs in the
3 presence of sunlight. It's just a little cartoon to kind
4 of illustrate that. It can impact vegetation and human
5 health. You can see here some of the chlorotic model we
6 see on leaves that can happen from high ozone
7 concentrations. And it's an EPA-regulated pollutant and
8 that's why we're all here.

9 You know, we're focusing today on VOC and NOx.
10 The other aspect of this is we have visitors that come and
11 they exercise in the park. We have staff itself that are
12 working outside and ozone can affect the health of the
13 visitors and our staff, so we are concerned about that.

14 The sources of ozone, this schematic illustrates
15 that air pollutants are transported into parks; they're
16 generally not formed in the park or, you know, the source
17 are not in the park so it comes to the park from outside
18 sources. And it affects our staff and visitors, as I said
19 before.

20 We have extensive oil and gas activities
21 throughout the Midwest and the West. There's been
22 certainly an increase in oil and gas development in many
23 areas of the country, and including the areas that are
24 going to be affected by this proposed rule. The several
25 parks that we -- that are in New Mexico, you know, are

1 located, you know, and affected by this: Carlsbad Caverns
2 National Park; Guadalupe Mountains National Park at Chaco
3 Cultural National Historical Park and Mesa Verde National
4 Park in Colorado. Most of the data presented here are
5 focused on studies from Carlsbad Caverns. We do also have
6 ozone monitors at Chaco Cultural and at Mesa Verde.

7 The managers of Carlsbad Caverns National Park
8 have been concerned about the development there, and asked
9 us to put in some monitoring down there several years ago.
10 As we monitored air, we've -- as we said, the ozone
11 monitoring we have meets the EPA criteria that was
12 described earlier. It meets the design concentrations
13 down in here for the various years.

14 As we get back into here, the particular monitor
15 we had was not being operated that way, but in recent
16 years it has been operated according to EPA specs. You
17 know, they're asked -- in looking at this, if you look at
18 trends in nitrogen oxide, it's from satellite data. Lots
19 of -- it's going down to claim the urban areas, we see
20 that. But areas such as the Permian Basin down here, you
21 can see the -- this little pink box down in here is
22 showing increases in NOx over this time period.

23 Given that, we have -- we did some special
24 studies down there in 2019 -- in 2017 and 2019. In 2017
25 we did a -- we did kind of a survey study around a number

1 of parks in the Western United States. And from that,
2 Carlsbad Caverns showed up as having very unique
3 signatures of volatile organic compounds.

4 We talk about how ozone formation takes place
5 from reactions of VOC and NOx in the presence of sunlight.
6 The different VOCs have varying reactivities and in turn,
7 they affect ozone formation to varying degrees. The
8 different types of VOCs and the mix of the VOCs also
9 provide unique markers for identifying sources. The types
10 and the emission, you know, emission origins.

11 The remainder of this presentation will show that
12 the markers indicate the dominance of oil and gas sources
13 are found at Carlsbad Caverns National Park. The -- you
14 know, during the studies we've been able to identify more
15 than 70 different VOCs through our monitoring efforts.

16 We did the survey study in April to September of
17 2017, where we took RAD samples that you can see in the
18 picture here on the side where at times they were
19 evacuated canisters that are inert, to allow us to sample.

20 The studies were done at four national parks and
21 they measured high ozone so we wanted to determine the mix
22 of VOC that we were seeing that in these areas across the
23 country or across the West at least: Carlsbad Caverns is
24 one, Great Basin National Park, Grand Canyon National Park
25 and Joshua Tree National Park. Each has their own unique

1 source regions, but we wanted to see what the differences
2 were between them.

3 Average VOC concentrations here are of different
4 types, sources. Alkanes are related to oil and gas and
5 transportation. The alkenes, ag -- and transportation.
6 Ethyne is a combustion product. Biogenics are measured
7 here, natural emissions. And aromatics from urban oil and
8 gas operations.

9 The -- we use park abbreviations here. CAVE is
10 Carlsbad Caverns. Great Basin is -- or GRAB is Great
11 Basin. GRCA is Grand Canyon and Joshua Tree is JOTR. And
12 ROMO is also on here, it was a separate study just for
13 comparison, which is Rocky Mountain National Park. If you
14 notice, the total VOCs, and especially the alkanes
15 associated with oil and gas are up to 5 to 10s higher --
16 excuse me -- 5 to 10 times higher at Carlsbad Caverns than
17 they are at the other parks.

18 So there's extensive oil and gas in the area east
19 of Carlsbad Caverns, which raises the question: Where
20 does the air come from during periods of high ozone?
21 Using back trajectory analysis, you know, during the 2017
22 study, we found that the high ozone corresponds to airflow
23 from the East and Southeast toward Carlsbad Caverns
24 National Park.

25 The warm colors are more likely to be coming from

1 these areas during the high concentrations. The cool
2 colors are less likely to come from these areas. So you
3 can kind of see that this area where previously we showed
4 high NOx emissions in the satellite data, the same area
5 here where we're seeing high ozone, correlating with that
6 transport direction.

7 When -- based on the 2017 study, we conducted
8 another study in 2019. And it showed in the picture
9 earlier, the 2017 study, used evacuated sampler containers
10 which we also had some of those during this study. But
11 the -- we had many specialized research grid instruments
12 where we could get high time resolution measurements of
13 the VOC and nitrogen compounds that affect ozone
14 formation.

15 Carlsbad Caverns National Park, there's some
16 objectives, it was to figure out what the primary VOC
17 drivers are of regional ozone formation. You know, what
18 is the nitrogen budget, that helps produce ozone, and what
19 are the species of the various compounds that contribute
20 to or limit the aerosol formation, which we're not talking
21 about here, but at the park service we're also interested
22 in that. That was one of the objectives. And what's
23 shown on the following slides, oil and gas emissions are
24 driving the formation of ozone in Carlsbad Caverns. Okay.
25 All right. How do these VOC and NOx interact?

1 The next slide is going to show average
2 concentrations of ozone, NO and VOCs during the 2019
3 study. Each figure shows the average ozone and the
4 sunlight intensity for each hour of the day. And the
5 three charts show the hourly daily patterns of different
6 compound classes. So, how the NO, which is unreacted
7 NOx -- think of it that way; most of what comes out of a
8 combination source, a tailpipe or a smoke -- or a stack
9 like a compressor station, comes out as NO and then reacts
10 the NO2 and keeps going.

11 Ethane is one of the most abundantly-emitted
12 VOCs, built up -- it builds up and is reacted away then.
13 Then the formation of alkyl nitrates, it's one of the
14 classes of VOCs that's formed through this set of
15 reactions in the atmosphere. It has a similar pattern to
16 ozone, as you can see.

17 So these three charts show the average
18 concentration of NO, VOCs, ethane and 2-butyl nitrate and
19 ozone throughout the day. Concentrations are plotted
20 along with this daily solar insolation, it's an idealized
21 solar insolation plot -- oops, sorry about that.

22 You can see that the ozone peaks in the later
23 afternoon; it's a typical ozone production. There's a
24 spike in fresh NOx emissions in the morning, that tapers
25 off as it reacts during the daylight hours. Similarly,

1 there are more ethane -- there's more ethane peaking in
2 the morning that subsequently reacts in the ozone forming
3 process, so it diminishes later on in the day.

4 The 2-butyl nitrate, which is a reaction product
5 that peaks around the time the ozone peaks, indicating the
6 reactions of the ozone-forming pollutants occurred during
7 that day and that that ozone wasn't transported to the
8 area from afar.

9 The 2017 and 2019 study -- studies both showed
10 similar results at Carlsbad. This slide is a little
11 confusing. We have the 2017 chart here and then some
12 average values from 2019. Ethane is a distinctive
13 indicator of emissions from oil and gas operations that
14 can be seen in Carlsbad Caverns. The 2017 study stands
15 out from the other parks that we studied. In most areas
16 when ethane is measured in the background, you'd expect
17 around 1 ppv -- 1 ppb by volume. In 2019, the average for
18 the six-week study was just over 17 ppv -- ppb -- excuse
19 me. And similarly, some values exceeded 100, so
20 definitely Carlsbad stands out from other areas that we
21 studied.

22 Oil and gas emission tracers, something called the
23 i-to-pentane ratio. Fresh gasoline emissions typically
24 have a ratio of 1 and 1/2 to 3. Fuel evaporation runs
25 around 1.8 to 4. Vehicular exhaust, 2.2 to 3.8. As you

1 can see in both 2017 and 2019, the i-to-pentane ratio is
2 less than 1, indicating oil and gas again. It's
3 consistent between these two years.

4 And the reason why 2019 are higher is because
5 they cover all hours of the day, whereas we were only
6 sampling in the afternoon in 2017. So, again another
7 indication to the ethane, i- and n-to-pentane ratio that
8 we were seeing in oil and gas contributing to ozone
9 formation at Carlsbad Caverns National Park.

10 This slide shows that there's a fresh buildup of
11 NOx at night, which is then processed with the VOCs and
12 sunlight reactions to form ozone. The NOx is generated in
13 the vicinity; NOx from the farther away would have a much
14 lower NOx to NOy. NOy is all different compounds. And
15 NOx is usually defined as NO plus NO2, whereas, NOy is NO
16 plus NO2 and everything else -- nitric acid, different --
17 lots of different compounds. So it's really the total of
18 all of the reactants. So, NOx from farther away would
19 have a lower NOx to NOy ratio than we have in this chart.

20 And while this slide is showing a particular
21 multiday event, it is important to note that the same NOx
22 to NOy ratio is persistent throughout the entire study
23 period, indicating fresh NOx emissions. So it's not
24 coming from very far distances away.

25 Air mass aging, alkyl nitrates are products of

1 the -- during the VOC NOx reactions that form ozone. The
2 ratios of the alkyl nitrates to their parent compounds can
3 give us a good estimate of how long the air pollutants
4 have been reacting when they reach the park. This graph
5 shows that the vast majority of the reaction times
6 between -- below 12 hours. This clearly shows the ozone
7 forming NOx and VOCs were nearby, the fact that the points
8 fall off the idealized model, it's very idealized. It
9 implies that the model doesn't capture everything that is
10 occurring. But the majority of things are happening in
11 there fairly quickly.

12 At this point I'm going to deviate from here. I
13 think the ozone concentrations at Carlsbad Caverns
14 National Park, they frequently exceed the National Ambient
15 Air Quality Standards for ozone. The information
16 presented highlights the need for both NOx and VOC
17 reductions and supports the 18 proposed engine and turbine
18 standards.

19 The rest of the -- this part of the slide will be
20 discussed later when we're -- when you're talking about
21 the actual elements of the rule. Let's see. This is also
22 on that.

23 So our summary again: Ozone concentrations
24 exceed the level of the National Ambient Air Quality
25 Standards for ozone at Carlsbad Caverns National Park.

1 These are done with regulatory monitors following the EPA
2 requirements for operation and quality assurance. The NPS
3 has studied ozone formation at a number of parks.
4 Carlsbad Caverns National Park stands out as being the
5 most affected by oil and gas sources. Two should have
6 been done at Carlsbad in 2017 and 2019, during these times
7 when peak ozone concentrations are measured there. The
8 two studies show consistent results.

9 The volatile organic compounds measured at
10 Carlsbad indicate that the main sources of VOCs affecting
11 ozone formation are from the oil and gas activities.
12 Nitrogen oxide emissions that affect high ozone
13 concentrations at Carlsbad National Park are from nearby
14 sources. The measures proposed in the rule will help to
15 reduce high ozone. And NOx and VOC control measures are
16 necessary to reduce ozone at the park, and really in the
17 region in general.

18 That's my presentation and thank you for your
19 listening.

20 HEARING OFFICER ORTH: Thank you, Mr. Vimont.
21 Let me ask about exhibits. Ms. Devore mentioned Exhibit
22 A. And I'm wondering -- I didn't see objections from
23 either NMOGA or AP -- IPANM to any of your exhibits, or
24 anyone else to any of your exhibits. I'm wondering if you
25 just want to offer all of your exhibits right now.

1 MS. DEVORE: Yes, we have Exhibits A through E.

2 HEARING OFFICER ORTH: A through E. Unless
3 someone has changed their mind and reaches out right now,
4 I'm going to admit Exhibits A through E for the National
5 Park Service. No?

6 Thank you very much. National Park Service
7 Exhibits A through E are admitted.

8 (National Park Service Exhibits A - E received
9 into evidence at this time.)

10 Ms. Katz, do you have questions of Mr. Vimont?

11 MS. KATZ: I do not, Madam Hearing Officer.

12 HEARING OFFICER ORTH: Thank you.

13 Ms. Fox?

14 MS. FOX: No, Madam Hearing Officer.

15 HEARING OFFICER ORTH: Thank you.

16 Ms. Paranhos?

17 MS. PARANHOS: No questions, Madam Hearing
18 Officer.

19 HEARING OFFICER ORTH: Thank you.

20 Professor Pacyniak?

21 PROFESSOR PACYNIK: No questions, Madam Hearing
22 Officer.

23 HEARING OFFICER ORTH: Thank you.

24 Let's see. Mr. Nykiel?

25 MR. NYKIEL: No questions, Madam Hearing Officer.

1 Thank you.

2 HEARING OFFICER ORTH: All right.

3 Mr. De Saillan?

4 MR. DE SAILLAN: No questions. Thank you.

5 HEARING OFFICER ORTH: Thank you.

6 Mr. Hiser?

7 MR. HISER: Madam Hearing Officer, yes, I will
8 have just a few questions for Mr. Vimont. Thank you.

9 HEARING OFFICER: All right. Go ahead.

10 CROSS-EXAMINATION OF JOHN VIMONT

11 BY MR. HISER:

12 Q. Mr. Vimont, in your testimony, you testified that
13 you looked at ethane and at one point you characterized it
14 as a volatile organic compound. Are you testifying here
15 today that you believe that ethane is a significant
16 contributor to ozone formation, or were you using that as
17 a tracer to identify putative impacts from oil and gas
18 sources?

19 A. Definitely as a tracer. If Dr. Sive is on the --
20 he should be here, one of our other witnesses, he may be
21 able to better answer the -- about the reactivity of
22 ethane. I know it's less. It contributes but I -- to
23 what degree -- if he can get unmuted, I'm not sure.

24 HEARING OFFICER ORTH: So let me see.

25 MR. HISER: Barkley Sive.

1 HEARING OFFICER ORTH: I'm sorry. Mr. Hiser,
2 did you say something? Oh, there you are.

3 MR. HISER: Madam Hearing Officer, obviously,
4 Mr. Sive is not listed as a witness.

5 HEARING OFFICER ORTH: Right.

6 MS. DEVORE: He is listed as a witness for the
7 park service in our exhibits.

8 MR. HISER: My mistake.

9 HEARING OFFICER ORTH: I'm going to see if he is
10 among the attendees. I think he is because he just
11 reached out to Chat. Hold on one second while I make him
12 a panelist.

13 Mr. Sive, would you join us on the screen,
14 please? Mr. Vimont, should we take down your slide?

15 MR. VIMONT: Yes, and we can bring them back up
16 if we need to here. Let me see if I can release them
17 here.

18 HEARING OFFICER ORTH: All right. Mr. Sive, are
19 you with us?

20 MR. SIVE: Yes, I am. To answer the question --

21 HEARING OFFICER ORTH: Well, hold on. Hold on
22 one second. First, we need you to spell your first and
23 last name.

24 MR. SIVE: First name is Barkley, B-A-R-K-L-E-Y.
25 Last name is Sive, S-I-V-E.

1 HEARING OFFICER ORTH: Okay. And if you would,
2 please, raise your right hand. Do you swear or affirm to
3 tell the truth?

4 MR. SIVE: I do.

5 HEARING OFFICER ORTH: Thank you very much.
6 Please, go ahead and answer the question. And thank you
7 for your help.

8 MR. SIVE: Sure. It's primarily a tracer, but in
9 this case, too, the reactivity comes into play because
10 you're looking at levels that are two orders of magnitude
11 higher than typical background levels. Normally, the
12 lifetime of ethane -- we'll just take the annual
13 average -- it's two to three months in the atmosphere.
14 More like two months, to pick a nice round number.

15 However, when we look at the reactivity, the fact
16 that now you are two orders of magnitude higher in
17 concentration, the fact -- the rate of reaction with
18 hydroxyl radicals, which is the primary removal mechanism
19 of ethane from the atmosphere, you have to factor that in,
20 so now ethane actually becomes important as a potential
21 ozone-producing molecule.

22 So the fact that the concentrations are so high
23 balance out the fact that the rate of reaction in the
24 atmosphere is slow.

25 MR. VIMONT: Thank you, Dr. Sive.

1 MR. SIVE: So there is the two-fold -- it is, in
2 fact, utilized in two different ways. I'll stop there.

3 CONTINUED CROSS-EXAMINATION OF JOHN VIMONT

4 Q. (BY MR. HISER) Mr. Vimont, in the draft or in
5 the slides that you presented today, you showed a -- I
6 think a back calculation of the sources of the oil and gas
7 that showed hot and warmer temperatures versus cooler
8 temperatures?

9 A. Yes.

10 Q. And I think that exhibit tended to show that
11 those -- that the gas was coming solely from New Mexico
12 sources, or was there also a significant Texas component
13 to that?

14 A. That particular slide shows transport during high
15 ozone emits from both New Mexico and Texas.

16 Q. Thank you. And then, in the evaluation that
17 you've done, and the recommendations you're making here,
18 have you given any consideration to the impact of the Oil
19 conservation Division's rules that are now restricting the
20 flaring, particularly to the venting of natural gas,
21 moving forward?

22 A. No. This was a measurement program primarily
23 that we were showing and analysis of that data. There
24 were no projections made. It's strictly what was
25 happening on the ground in 2017 and 2019 at Carlsbad

1 Caverns.

2 Q. But to the extent that those rules will reduce
3 the venting of natural gas, would you expect that to
4 decrease local ethane concentrations around Carlsbad?

5 A. Honestly, I -- I -- I -- I really don't know the
6 answer to that.

7 Q. Thank you. Appreciate it.

8 MR. HISER: No more questions, Madam Hearing
9 Officer.

10 HEARING OFFICER ORTH: All right. Thank you,
11 Mr. Hiser.

12 Mr. Rose, do you have questions of Mr. Ahr or --

13 MR. ROSE: I think we're on Mr. Vimont, but I
14 think Mr. Ahr was talking --

15 HEARING OFFICER ORTH: I'm sorry.

16 MR. ROSE: It's been a while.

17 HEARING OFFICER ORTH: I'm sorry about that.
18 Did you say no questions or do you have some?

19 MR. ROSE: I have no questions.

20 HEARING OFFICER ORTH: Okay. Thank you.

21 Let's see. Mr. Janoe?

22 MR. JANOE: No questions.

23 HEARING OFFICER ORTH: All right.

24 Mr. Butzier?

25 MR. BUTZIER: No questions.

1 HEARING OFFICER ORTH: Okay. Ms. Gutierrez?

2 MS. GUTIERREZ: No questions.

3 HEARING OFFICER ORTH: Okay. Mr. Neumann?

4 MR. NEUMANN: No questions. Thank you.

5 HEARING OFFICER ORTH: All right.

6 And Ms. Witherspoon? She may have stepped away.

7 MS. WITHERSPOON: No questions.

8 HEARING OFFICER ORTH: Oh.

9 MS. WITHERSPOON: No questions.

10 HEARING OFFICER ORTH: Thank you.

11 So I'm going to turn to the Board members now.

12 And while I do that, if you are not a panelist and you
13 have a question of Mr. Vimont, please indicate that in the
14 Chat.

15 EXAMINATION BY THE BOARD OF JOHN VIMONT

16 HEARING OFFICER ORTH: Madam Chair, do you have
17 questions of Mr. Vimont?

18 CHAIRPERSON SUINA: Thank you, Madam Hearing
19 Officer. Yes, I have a couple of questions. So I think
20 on one of your slides you had presented some -- some data
21 regarding the 8-hour fourth-high ozone data between 2016
22 to 2022. And I was just wondering, how many -- was it
23 just from one monitoring station or were there multiple
24 monitoring stations around Carlsbad that you -- that --
25 that were utilized to capture this data?

1 MR. VIMONT: This is at one -- one station that
2 we have in the park, it's up near the visitors' center
3 area if you're familiar with the park, and it's just the
4 one station.

5 Now as I indicated in my talk, the early years --
6 we see 2016, '17 there, we had a portable station, we call
7 it, that was not a regulatory station, to see what was
8 even going on. And in the later years here, we have the
9 full regulatory station there. So, like, from '73 to
10 2020, we calculated the design value following the EPA
11 guidance. We could also -- you could go to the EPA's
12 database that was referenced by the state earlier. Our --
13 our data goes in there as well, so you could get that same
14 thing from there. But it does -- the 8-hour fourth-high
15 ozone concentration exceeds the ambient air quality
16 standards in the park.

17 CHAIRPERSON SUINA: Thank you for that, and you
18 answered all of my follow-up questions in your answer so I
19 appreciate that. Thank you, Mr. Vimont, and thank you,
20 Madam Hearing Officer. Those are all the questions I have
21 for now.

22 HEARING OFFICER ORTH: Thank you. Vice-Chair
23 Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: Thank you, Madam
25 Hearing Officer. I actually don't have any questions. I

1 just wanted to thank you for your presentation.

2 HEARING OFFICER ORTH: Member Cates, do you have
3 questions of Mr. Vimont?

4 BOARD MEMBER CATES: I do. Sir, do you happen to
5 know what the visitation count to that park is annually?
6 And if we can take the COVID years, I guess, and set them
7 aside, how many people visit Carlsbad annually? Do you
8 have any idea?

9 MR. VIMONT: I do not, but we do definitely
10 within the park service have those statistics and I can
11 get them for you.

12 BOARD MEMBER CATES: And so do you feel like --
13 so I -- I'm guessing you probably don't know this one
14 either, but I'm just wondering what -- has anyone ever
15 done an economic impact study on what the -- how valuable
16 that park is to the economy of that community?

17 MR. VIMONT: Again, within the park service, we
18 do those kind of economic studies. I do -- I don't know
19 if we have it specific to Carlsbad Caverns, but I can also
20 find that as a follow-up, if you'd like.

21 BOARD MEMBER CATES: Do you live down there, sir?

22 MR. VIMONT: No, I am currently in -- living up
23 near Denver, Colorado, up in the foothills west of Denver.

24 BOARD MEMBER CATES: Yeah, and then I'm wondering
25 if you think -- if you've heard, if there's any evidence

1 for the possibility that the, you know, the oil and gas
2 industry as we're describing it here, you know,
3 specifically with regard to the emissions, if we can call
4 it that generally, has it affected the -- the quality of
5 the experience of visitors, do you think?

6 MR. VIMONT: Yes. Certainly, as a -- well, ozone
7 is a visible gas, I mean at some point the -- these levels
8 that are above the national ambient air quality standard
9 certainly affects the ability of some visitors to recreate
10 outdoors. An aside to this, it's not an air quality
11 issue, but certainly at night, looking out from the mesa,
12 out toward the east, certainly the lights and the flaring
13 are extremely visible from the park, rather than having a,
14 you know, dark sky that we had experienced in a lot of
15 parks, it's a semi-industrial sort of a look to it out
16 there.

17 BOARD MEMBER CATES: And then, just to kind of
18 follow-up, I'm wondering about the impact on the -- oh,
19 what's the word on the -- I don't know, the branding of
20 the park. You know, if it were -- if it were a business,
21 which it sort of is, but not really, but if it were, you
22 know, a product, do you think the product is blemished
23 by -- has been blemished over the years by the -- what
24 we're talking about here?

25 MR. VIMONT: Yes. I mean, the -- within the

1 parks themselves -- parks are usually -- not all of them,
2 but most of them are usually in fairly remote areas. And
3 when the park was first established, that area would have
4 been considered fairly remote, but now the -- well, it has
5 to be near oil and gas and development of oil and gas is
6 and industrial operation, so, you know, we -- as that has
7 increased, yes, it's a -- we normally think of parks as
8 being pristine remote areas. And with development around
9 the park it's not as pristine and remote as it could be.

10 BOARD MEMBER CATES: Yeah, right. And so, what
11 about the encroachability? I haven't been to Carlsbad in
12 years. And I'm just, you know, I've heard that the roads
13 are congested and things, and you know, it's just harder
14 and harder to get around there as it used to be. Have you
15 heard that kind of thing?

16 MR. VIMONT: I have not, but I'm not down there
17 myself, so.

18 BOARD MEMBER CATES: Yeah, yeah. All right.
19 Well, and so my questions are slightly off topic perhaps,
20 but I appreciate it, so thanks. Thanks for the testimony.
21 Thank you, sir.

22 MR. VIMONT: Uh-huh.

23 HEARING OFFICER ORTH: All right. Thank you,
24 Member Cates.

25 Member Bitzer, do you have questions?

1 BOARD MEMBER BITZER: I do not.

2 HEARING OFFICER ORTH: All right. Thank you.

3 Member Garcia?

4 MEMBER GARCIA: No questions.

5 HEARING OFFICER ORTH: Thank you.

6 And Member Honker?

7 MEMBER HONKER: Yes, I did have follow-up to
8 Chair Suina's question. The data collected in the 2019
9 study, was that all collected from the one station you
10 mentioned earlier that's near the visitors' center, or did
11 you have some additional stations while you were
12 conducting that study?

13 MR. VIMONT: Most of what I presented here, the
14 high resolution, high-time resolution data that was
15 collected in one of the slides that showed a picture of
16 all the instruments there, it was near the visitors'
17 center. It's not right at the visitors' center, but that
18 general area, there's -- there's other park service office
19 buildings and things there, near there. That was all
20 there.

21 We did also collect canister samples out in
22 various places around the region at different times and
23 those -- those were not included in this presentation
24 right now. We're still analyzing some of that and seeing
25 how it all fits together.

1 BOARD MEMBER HONKER: Okay. Thank you,
2 Mr. Vimont. No further questions. Thanks.

3 MR. VIMONT: Thank you.

4 HEARING OFFICER ORTH: Thank you, Member Honker.
5 I see in Chat, no one reaching out to request the
6 opportunity to question. Oh, let's see. Member Bitzer
7 has a question. Go ahead.

8 BOARD MEMBER BITZER: Sorry. I meant to ask this
9 question, and then, "squirrel." Yeah, the data was
10 collected on a quarterly basis through '18, '19 and '20;
11 is that correct?

12 MR. VIMONT: You're referring to the ozone data?

13 BOARD MEMBER BITZER: Yeah.

14 MR. VIMONT: Actually, it's -- the instruments
15 collect the data on like a one-second basis. It gets
16 aggregated into an hour, which then gets aggregated into
17 these other things, and then it gets reported to EPA, I
18 believe it's on a quarterly basis, but --

19 BOARD MEMBER BITZER: I think I may have heard --
20 I think I may have heard somebody else mention the
21 quarterly report earlier. But I'm wondering if we have
22 any data from the first couple of quarters yet from 2021.

23 MR. VIMONT: We do. I don't have that on the tip
24 of my tongue right now, but...

25 BOARD MEMBER BITZER: That would be interesting

1 to get a look at over the next couple of weeks, I would
2 think.

3 MR. VIMONT: Dr. Sive was actually down there.
4 He's still on the call, he may be able to tell you if he's
5 seen any other exceedances in the last couple of months.

6 HEARING OFFICER ORTH: Dr. Sive, are you still
7 with us?

8 DR. SIVE: I am. Yes, I think we -- July and
9 August we had, I think, about eight exceedances if I'm
10 remembering, six in July. I know for sure six in July.

11 BOARD MEMBER BITZER: So, overall, the trend is
12 still upward, or is the trend between '19 and '20 --
13 because it went down a little bit between '19 and '20. I
14 think it peaked in '19 and down a bit in '20. So are
15 we -- are we trending down or up so far in '21?

16 DR. SIVE: I would say we have at least as many
17 exceedances this year as sort of like 2019. This is just,
18 you know -- this isn't referencing final data yet and we
19 aren't through the entire year either, but, you know,
20 across the entire U.S., and globally, too, you saw
21 decreases in things like ozone because of the total
22 pandemic. So I think that's one of the reasons why we
23 saw, you know, everything sort of tick down in 2020. And
24 I would say comparatively, 2021 looks to be more like 2019
25 than, per se, 2020.

1 MR. VIMONT: And I would say that I -- at this
2 point we can't make any definitive statements about any
3 trends with 2021 data, it's not been finalized yet. But
4 the preliminary data indicates that we are still -- still
5 exceeding the standard at the park.

6 BOARD MEMBER BITZER: Thank you.

7 HEARING OFFICER ORTH: All right. Thank you very
8 much.

9 So Ms. Devore, I appreciate your attempt to be
10 helpful by putting certain links to data around the park
11 in the Chat, but nothing that comes through the Chat is
12 going to be made part of the record. So what I'd like to
13 do -- I really do appreciate you responding to Member
14 Cates's questions with all of that. If you would,
15 yourself, go to this link, PDF whatever it is you find
16 there that would be responsive, put a new exhibit letter
17 on it and send it to the service list, including Pam, of
18 course. And Pam will forward it to the Board members.

19 MS. DEVORE: Okay. Will do.

20 HEARING OFFICER ORTH: Now I see Todd Hawthorne
21 has a question for -- I'm not sure if it's for Mr. Vimont
22 or Dr. Sive: "When was the standard established"?

23 MR. VIMONT: Well, this -- the current
24 standard -- Barkley, do you remember which?

25 DR. SIVE: I didn't hear the question, I'm sorry.

1 MR. VIMONT: When was the standard established?

2 DR. SIVE: The ozone standard?

3 MR. VIMONT: Yeah, this current one.

4 DR. SIVE: It was 2015.

5 MR. VIMONT: 2015, okay.

6 HEARING OFFICER ORTH: I think we heard testimony
7 about that earlier from the Department actually. Okay.

8 So do you have anything by way of follow-up,
9 Mr. Vimont, following all of these questions to you?

10 MR. VIMONT: No, other than to say, you know, I
11 think the evidence is fairly clear that there's -- there's
12 exceedances of the ozone standard there, and that a part
13 of the solution is going to be looking at the oil and gas
14 emissions in that area to -- I think that's what the data
15 shows us.

16 HEARING OFFICER ORTH: All right. Thank you very
17 much. You're Excused.

18 MR. VIMONT: Thank you.

19 HEARING OFFICER ORTH: And does that complete the
20 rebuttal testimony on the ozone formation and monitoring
21 from the National Park Service?

22 MR. VIMONT: It does.

23 HEARING OFFICER ORTH: Thank you both very much.

24 Well, we've been going now for quite some time,
25 an hour and 20 minutes, so let's take a 15-minute break

1 and return at 3:35. Thank you.

2 (Recess taken from 3:20 p.m. to 3:36 p.m.)

3 HEARING OFFICER ORTH: Ms. Katz, will you join on
4 the screen? There you are. So are we going from here to
5 the stakeholder outreach?

6 MS. KATZ: Yes, that's correct. So the
7 Department calls Elizabeth Bisbey-Kuehn.

8 HEARING OFFICER ORTH: Okay. Ideally, she can
9 join us on screen.

10 MS. KATZ: Is she a panelist? Has she been
11 admitted as a panelist?

12 HEARING OFFICER ORTH: She should -- she should
13 be, although -- you know what? She might have -- yeah,
14 okay, sorry, let me re-add her. I added her earlier, but
15 I need to add her again. Hold on. I don't see her among
16 the attendees either.

17 MS. KATZ: Hang on one second. She says she's on
18 there.

19 HEARING OFFICER ORTH: If she's on under a
20 different name, I just need the name. Oh, Liz Kuehn,
21 sorry.

22 MS. KATZ: Sorry. I was just asking her if she
23 was Liz or Elizabeth on there.

24 HEARING OFFICER ORTH: Sorry. Yeah, I was
25 looking under "E". There she is. Ms. Kuehn, would you

1 please spell your last name? Elizabeth is the standard
2 spelling.

3 MS. BISBEY-KUEHN: It is. Thank you, Madam
4 Hearing Officer. My last name is Kuehn, K-U-E-H-N.

5 HEARING OFFICER ORTH: All right. Would you
6 raise your right hand? Do you swear or affirm to tell the
7 truth?

8 MS. BISBEY-KUEHN: I do.

9 HEARING OFFICER ORTH: Thank you very much. Go
10 ahead, Ms. Katz.

11 MS. KATZ: Thank you.

12 ELIZABETH BISBEY-KUEHN,
13 (Relating to Topic Order 3)

14 having been first duly sworn or affirmed, was
15 examined and testified as follows:

16 DIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN
17 BY MS. KATZ:

18 Q. Oops. Sorry, I have the wrong questions up here.
19 One second. All right. Ms. Kuehn, can you tell the Board
20 where you're employed?

21 A. I'm employed with the New Mexico Environment
22 Department Air Quality Bureau.

23 Q. And how long have you worked for the Department?

24 A. Approximately 16 years.

25 Q. And what is your current job title?

1 A. I am the Bureau Chief of the Air Quality Bureau.

2 Q. And can you describe your job duties?

3 A. I manage the section chiefs, who oversee the
4 Bureau's four sections: planning, permitting, compliance
5 and enforcement and operations. I direct the overall
6 management of the Bureau, including technical and
7 administrative staff, air quality-related planning and
8 policy, operational permitting and compliance and
9 enforcement services, financial oversight of the Bureaus'
10 federal grant and state matching funds and other support
11 services.

12 Q. And can you please describe your educational and
13 professional qualifications?

14 A. I have a Bachelor of Science in Environmental
15 Studies from the University of Iowa. I've worked at the
16 Air Quality Bureau for approximately 16 years and my
17 positions have included permit specialist, minor resource
18 manager, major source permit writer, and Bureau Chief.

19 Q. And a copy of your resume has been provided as
20 NMED Exhibit 5?

21 A. Yes.

22 Q. And have you submitted prefiled, direct testimony
23 on this topic in this proceeding?

24 A. Yes.

25 Q. And your full, written, direct testimony on the

1 stakeholder outreach for proposed Part 50 is marked at
2 NMED Exhibit 6, correct?

3 A. Yes, correct.

4 Q. Do you have any changes to that written
5 testimony?

6 A. No.

7 Q. And do you adopt your written testimony here
8 today?

9 A. Yes.

10 Q. And can you please summarize for the Board the
11 Department's public outreach and stakeholder engagement on
12 the draft rule?

13 A. I will. And I will share demonstrative exhibits
14 to walk us through those. And it looks like I need a
15 permission to share. Oh, it's the share. Okay. So I
16 don't need special permission, the share button is running
17 for me.

18 As Mrs. Katz mentioned earlier today, our
19 Governor Michelle Lujan Grisham issued Executive Order
20 2019-003 directing us and our sister agency -- the New
21 Mexico Environment Department and our sister agency, the
22 Energy, Minerals and Natural Resources Department to
23 develop a statewide enforceable -- enforceable regulatory
24 framework to secure reductions in the oil and gas sector
25 methane emissions and to prevent waste.

1 At the time that that Executive Order was issued,
2 then the Board did not have the authority under the Air
3 Quality Control Act to pass regulations for methane that
4 were more stringent than federal regulations, but it did
5 have authority to pass more stringent regulations for VOC
6 and NOx for the purposes of reducing ambient ozone
7 concentrations. And because ozone is emitted -- or
8 because the ozone precursor VOC is emitted, along with
9 methane and oil and gas operations, requirements that
10 reduce VOC emissions necessarily reduce emissions of
11 methane.

12 New Mexico Environment Department held numerous
13 public engagement sessions after issuance of the Executive
14 Order, with their sister agency around the state to
15 provide initial public outreach on the plan that was being
16 developed. And on the slide here you'll note the bottom
17 half of this presentation outlines the dates and the
18 locations of those five initial public stakeholder
19 meetings that were held.

20 Following the initial public outreach meetings in
21 the summer of 2019, community members expressed a strong
22 interest in holding a community impact meeting to discuss
23 the health, cultural and economic impacts of the oil and
24 gas industry, and NMED hosted, and with EMNRD, a community
25 impact meeting as well on March 19th, 2020.

1 In addition, both agencies convened the methane
2 advisory panel, which brought several technical
3 stakeholders together to identify processes and equipment
4 used in oil and gas sector, to develop emissions and
5 waste-free standards for those processes and to propose
6 standards, including monitoring, recordkeeping and
7 reporting for those -- those standards.

8 The MAP process yielded a technical background
9 document identifying specific oil and gas equipment and
10 processes for consideration in moving forward with that
11 enforceable regulatory strategy. The MAP was comprised of
12 27 individual members representing environmental
13 organizations, the Nation tribes and pueblos, oil and gas
14 industry, including small and large independent operators
15 as well as nonindependent companies.

16 Industry representatives included companies from
17 both the Permian and San Juan Basins. And additional
18 technical expertise was provided by professionals from Los
19 Alamos National Labs, Colorado State University and New
20 Mexico Institute of Mining and Technology.

21 The MAP process, as I indicated before,
22 culminated with a draft technical report which provided an
23 informational foundation on the technical side of the ways
24 in which the oil and gas sector emits methane, and
25 therefore, VOC, under our statute, and what methods could

1 be used to curb those emissions and prevent waste.

2 The draft MAP technical report was issued on
3 December 19, 2019 for public comment, and approximately 42
4 comments were received on that report. In addition to
5 this effort, the New Mexico Environment Department also
6 undertook an extensive public outreach campaign related to
7 its ozone attainment initiative, which is the state
8 program developed by the Department in which our expert,
9 Mike Baca, will speak to you later on. The New Mexico
10 Environment Department held numerous public meetings
11 related to the ozone attainment initiative and those dates
12 and locations of those public meetings are listed on this
13 slide.

14 Over the last two years during the development of
15 the rule, we have promised to continue to seek comment and
16 feedback from the public and the regulated entities and
17 other stakeholders. As part of that effort, the
18 Department conducted extensive prepetition outreach on the
19 proposed rule, including a prepetitioned full draft rule
20 that was issued for stakeholder and public input on July
21 20th, 2020, for essentially a 45-day public comment
22 period.

23 We received extensive public comments on that
24 prepetitioned draft, which are posted on the website. And
25 based on the comments received on that draft, the

1 Department made substantial revisions to the proposed rule
2 that are reflected in the version included as part of the
3 Department's petition for regulatory change filed with the
4 Board on May 6th, 2021.

5 Q. And Ms. Kuehn, can you just briefly talk about
6 the engagement with the parties following the filing of
7 the petition and the -- just overview of just changes that
8 were made based on that process?

9 A. Sure. We have engaged in multiple party
10 communications, extensive communications since the draft
11 was issued, made significant edits and revisions to the --
12 to the proposed rule in response to those comments. We
13 have met with each stakeholder, and as Ms. Katz mentioned
14 before, we have accommodated each meeting request that we
15 have received and we have made edits to the rule up until
16 the filing of the September 16th version.

17 Q. Thank you, Ms. Kuehn. I have no further
18 questions for Ms. Kuehn on this topic.

19 HEARING OFFICER ORTH: All right. Thank you very
20 much, Ms. Katz. We'll turn now to questioning. Ms. Fox,
21 do you have questions of Ms. Kuehn?

22 MS. FOX: None, Madam Hearing Officer. Thank
23 you.

24 HEARING OFFICER ORTH: Thank you.

25 Ms. Paranhos?

1 MS. PARANHOS: No questions, Madam Hearing
2 Officer.

3 HEARING OFFICER ORTH: All right. Professor
4 Pacyniak?

5 PROFESSOR PACYNIK: No questions, Madam Hearing
6 Officer.

7 HEARING OFFICER ORTH: All right. Ms. Devore?

8 MS. DEVORE: No questions. Thank you.

9 HEARING OFFICER ORTH: I'm sorry?

10 MS. DEVORE: No questions. Thank you.

11 HEARING OFFICER ORTH: Oh, okay. Thank you.

12 Mr. Nykiel?

13 MR. NYKIEL: No questions. Thank you.

14 HEARING OFFICER ORTH: Thank you.

15 Mr. de Saillan?

16 MR. DE SAILLAN: No questions. Thank you.

17 HEARING OFFICER ORTH: Thank you.

18 Mr. Hiser?

19 MR. HISER: No questions. Thank you.

20 HEARING OFFICER ORTH: Thank you.

21 Mr. Rose?

22 MR. ROSE: No questions.

23 HEARING OFFICER ORTH: All right.

24 Mr. Janoe?

25 MR. JANOE: No questions. Thank you

1 HEARING OFFICER ORTH: Mr. Butzier?

2 MR. BUTZIER: No questions.

3 HEARING OFFICER ORTH: Ms. Gutierrez?

4 MS. GUTIERREZ: No questions. Thank you.

5 HEARING OFFICER ORTH: Mr. Neumann.

6 MR. NEUMANN: No questions. Thank you.

7 HEARING OFFICER ORTH: All right.

8 Ms. Witherspoon?

9 MS. WITHERSPOON: No questions. Thank you.

10 HEARING OFFICER ORTH: All right. Thank you.

11 I'm going to turn to the Board members now to see if they
12 have questions of Ms. Kuehn. While I'm doing that, in the
13 event you are not a panelist and you have a question for
14 Ms. Kuehn, please reach out through the Chat.

15 EXAMINATION BY THE BOARD OF ELIZABETH BISBEY-KUEHN

16 HEARING OFFICER ORTH: Madam Chair, do you have a
17 question of Ms. Kuehn?

18 CHAIRPERSON SUINA: Madam Hearing Officer, I
19 don't have any questions. Thank you.

20 HEARING OFFICER ORTH: Thank you.

21 Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: I don't have any
23 questions. Thank you, Madam Hearing Officer.

24 HEARING OFFICER ORTH: Thank you.

25 Member Cates?

1 BOARD MEMBER CATES: No questions. Thanks.

2 HEARING OFFICER ORTH: All right. Member Bitzer?

3 BOARD MEMBER BITZER: One question. And thank
4 you by the way, for what has to have been an interesting
5 year of extra -- extra duty here, getting to this point.

6 Has there been any complaint from anybody, any
7 quarter -- any stakeholders, anybody in the community,
8 that they didn't get adequate notice or proper procedural
9 due process to this point?

10 MS. BISBEY-KUEHN: Member Bitzer, not that I am
11 aware of.

12 HEARING OFFICER ORTH: All right.

13 Member Garcia? Member Garcia, were you speaking?

14 MEMBER GARCIA: (Shaking head.)

15 HEARING OFFICER ORTH: No questions. All right.

16 Member Honker?

17 MEMBER HONKER: I have no questions. Thanks.

18 HEARING OFFICER ORTH: All right. Thank you.

19 Thank you so much, Ms. Kuehn. Is there any reason not to
20 excuse Ms. Kuehn?

21 MS. KATZ: (Shaking head.)

22 HEARING OFFICER ORTH: No? I see no questions in
23 the Chat, so thank you very much. Ms. Kuehn, you're
24 excused.

25 MS. BISBEY-KUEHN: Thank you.

1 HEARING OFFICER ORTH: Ms. Katz, where are we
2 going from here?

3 MS. KATZ: Madam Hearing Officer, I mean, we
4 could -- so we could go to -- to number -- Topic Number 7
5 on the spreadsheet that I did send to Ms. Jones, and I
6 believe she sent it to the Board members. And so that
7 will be the Ozone Attainment Initiative and the Ozone Path
8 Forward Plan, and that will be Department witness Michael
9 Baca, and Mr. Knight is going to put on Mr. Baca.

10 HEARING OFFICER ORTH: Terrific. Let me look
11 among the attendees for Mr. Baca. And oh, there you are
12 right there. And Mr. Knight, if you would join us on
13 screen. Oh, there you are. Terrific. We have Mr. Baca
14 and Mr. Knight.

15 Mr. Baca, and it's standard spelling, Theresa.
16 If you would, please, raise your right hand. Do you swear
17 or affirm that you will tell the truth?

18 MR. BACA: I do.

19 HEARING OFFICER ORTH: Thank you very much.
20 Mr. Knight, whenever you're ready.

21 MICHAEL BACA,

22 (Relating to Topic Order 7)

23 having been first duly sworn, was examined and
24 testified as follows:

25 DIRECT EXAMINATION OF MICHAEL BACA

1 BY MR. KNIGHT:

2 Q. Thank you, Madam Hearing Officer and Madam Chair,
3 members of the Board, good afternoon.

4 Mr. Baca, could you tell us where you are
5 employed?

6 A. Yes. Madam -- Madam Chair, members of the Board
7 and Madam Hearing Officer, I'm employed with the New
8 Mexico Environment Department Air Quality Bureau.

9 Q. And how long have you worked for NMED?

10 A. Approximately 17 years.

11 Q. And what is your current job title?

12 A. Control Strategies Manager.

13 Q. What are your job duties?

14 A. I manage the Bureau's Control Strategies Unit,
15 overseeing a staff of six that are responsible for the
16 development and -- of air quality plans and regulations,
17 including the State Implementation Plan or SIP for the
18 State of New Mexico. This unit also participates in
19 regional air quality improvement groups and oversees
20 mitigation projects, air quality grants and air quality
21 studies, especially as they pertain to achieving and
22 attaining the National Ambient Air Quality Standards.

23 Q. Thank you. Could you please describe your
24 educational and professional qualifications?

25 A. Sure. I hold a Bachelor of Arts in Chemistry

1 from Carleton College and I have worked for the Air
2 Quality Bureau for over 13 years. I -- my positions have
3 included staff manager and environmental analyst advanced
4 in the control strategies unit of the planning section.

5 Q. And a copy of your resume has been provided as
6 NMED Exhibit 2?

7 A. Yes.

8 Q. And have you submitted written, direct testimony
9 in this proceeding?

10 A. Yes.

11 Q. And is your full, written, direct testimony --
12 does that appear as NMED Exhibit 1, and your full,
13 written, rebuttal testimony appears as NMED Rebuttal
14 Exhibit 22?

15 A. Yes.

16 Q. Do you have any changes to your written
17 testimony?

18 A. No.

19 Q. And do you adopt that written testimony here
20 today?

21 A. Yes, I do.

22 Q. Okay. I'm going to walk you through your direct
23 testimony and rebuttal testimony, and have you summarize
24 that testimony on the various topics that you covered.
25 All right?

1 MS. KATZ: Mr. Knight, sorry. Mr. Baca is very
2 quiet for some of us. I don't know if that's an issue for
3 others. So, Mike, if you could maybe get moved closer and
4 speak a little louder.

5 MR. KNIGHT: Thank you.

6 Q. (BY MR. KNIGHT) All right. Can you summarize
7 the Clean Air Act regulatory framework for ozone?

8 A. Sure. The Clean Air Act requires EPA to set
9 National Ambient Air Quality Standards or NAAQS, for air
10 pollutants that are determined by EPA to be harmful to the
11 public health and environment. EPA has set NAAQS for six
12 principal pollutants called criteria pollutants. The six
13 criteria pollutants are ozone, carbon monoxide, nitrogen
14 dioxide, sulfur dioxide, lead and particulate matter 10
15 microns or smaller and 2.5 microns and smaller or less, so
16 that's PM10 and PM 2.5. The current --

17 HEARING OFFICER ORTH: Mr. Baca, sorry.

18 A. For the 2015 NAAQS -- (inaudible)

19 HEARING OFFICER ORTH: Mr. Baca. Mr. Baca, I'm
20 sorry to interrupt you. You are still too quiet. Can you
21 sit closer to the microphone maybe?

22 MR. BACA: I'm using ear buds, so let me see if I
23 can adjust some settings on my microphone.

24 Okay. Is that any better?

25 HEARING OFFICER: It's a tiny bit better, but not

1 enough better.

2 COURT REPORTER: If I turn him up on my end,
3 Mr. Knight is screaming, so I need Mr. Baca to speak much
4 louder, please.

5 HEARING OFFICER ORTH: Thank you, Ms. DuBois.

6 Mr. Baca, can you raise the volume any more?

7 MR. BACA: Yes. How does -- does that sound any
8 better?

9 HEARING OFFICER ORTH: Oh, that's fantastic.
10 Yes.

11 MR. BACA: Okay. Let me -- let me take these ear
12 buds out and speak to you this way, through my microphone
13 computer. Sorry about that.

14 HEARING OFFICER ORTH: Thank you.

15 Q. (BY MR. KNIGHT) Mr. Baca, you, I think -- well,
16 maybe we should ask the court reporter how far back should
17 we -- oh, she's good. Okay.

18 Okay. So you had just mentioned that -- what the
19 six criteria pollutants were. Could you talk about the
20 current ozone National Ambient Air Quality Standard?

21 A. Sure. So the current NAAQS is set at 70 parts
22 per billion, and the standard was set in 2015, when they
23 revised the previous standard, the 2008 standard, from 75
24 parts per billions down to 70 parts per billion.

25 Q. Thank you. These are health-based standards,

1 correct?

2 A. That is correct. As I discussed in my prefiled
3 testimony, the primary NAAQS are health -- health-based
4 standards and are set at levels meant to prevent the
5 public -- the public that are most at risk from being
6 harmed from ozone in the ambient air, and that including
7 asthmatics, children, older adults and people who are
8 active outdoors, such as construction workers and others
9 that work outdoors. So children are at the greatest risk
10 from ozone exposure because their lungs are still
11 developing and they are more likely to be active outdoors
12 when ozone levels are high, so which increases their ozone
13 exposure.

14 Health problems caused by ozone include coughing,
15 sore throat, difficulty breathing, inflammation and damage
16 to airways, increased frequency of asthma attacks and
17 aggravation of lung diseases, such as asthma, emphysema
18 and chronic bronchitis.

19 The EPA also set secondary NAAQS to protect
20 public welfare, including protection against decreased
21 visibility and damage to animals, crops, vegetation and
22 buildings. The secondary standard is identical to the
23 primary standard, in averaging time, level and form of the
24 2015 ozone NAAQS. The Clean Air Act under Section 108
25 requires EPA to re-evaluate the NAAQS on a periodic basis,

1 which may result in the standards being revised, based on
2 help and environmental criteria set by EPA.

3 Q. So what process is triggered when the national
4 Ambient Air Quality Standard for a particular pollutant is
5 revised?

6 A. The established or revision of a NAAQS triggers a
7 review of all areas throughout the country to determine if
8 pollutant concentrations are below or above the new
9 standards. The culmination of the process results in EPA
10 promulgating designations for all areas as an attainment
11 of the standard or nonattainment of the standard for each
12 pollutant.

13 So this process requires EPA to collaborate with
14 states and tribes and take into consideration air quality
15 data, emissions and emissions-related data, meteorology,
16 geography and topography and areas -- and jurisdictional
17 boundaries. If the air quality in a geographic region
18 meets or is below the standard, it is designated as an
19 attainment area. If the region is above the standard, it
20 is designated as a nonattainment area.

21 And for areas that do not have monitoring or when
22 modeling is not an appropriate tool for designation, EPA
23 designates areas as unclassifiable or
24 attainment/unclassifiable. EPA is required to make these
25 designations within two years of promulgating a new or

1 revised NAAQS with a one-year extension when insufficient
2 information exists to promulgate such a designation.

3 So as discussed in the testimony of Mr. Ahr, the
4 determination of whether concentrations of a criteria
5 pollutant in an area are meeting or exceeding the NAAQS is
6 based on the design value for that pollutant. For ozone,
7 the design value is determined by calculating the
8 three-year average of the annual or highest daily maximum
9 8-hour ozone concentration.

10 Q. All right. So what is the current designation of
11 the areas where the source is at issue in this proposed
12 rule, are located?

13 A. Most of the areas are designated as attainment
14 areas. There is one ozone nonattainment area in the state
15 and that is in Doña Ana County near Sunland Park, New
16 Mexico. That's on the outskirts of El Paso, Texas.

17 Q. Okay. Thank you. Can the Board or the
18 Department designate ozone nonattainment areas?

19 A. No. Neither the Clean Air Act, nor the Air
20 Quality Control Act give the Board or the Department the
21 authority to designate an area as nonattainment. It is
22 fully within the EPA's authority to designate attainment
23 and nonattainment areas.

24 Q. Okay. Who decides to designate or redesignate an
25 area under an existing National Ambient Air Quality

1 Standard?

2 A. Under the Clean Air Act, EPA is responsible for
3 designating and redesignating areas -- excuse me -- within
4 a state, with respect to the criteria of air pollutants.
5 EPA may at any time notify the Governor of any state that
6 available information indicates that the designation of an
7 area or portion of an area within a state should be
8 revised. Likewise, the Governor of any state may, on
9 their own motion, request a redesignation of any area
10 within the state.

11 A decision to redesignate is based on air quality
12 data, findings and control considerations, or any other
13 air quality-related considerations that EPA deems
14 appropriate.

15 Q. In making that decision, can EPA consider
16 measures being implemented by a state to address monitored
17 exceedances?

18 A. Yes. Under the EPA's order and own guidance,
19 when an area that is designated attainment has monitors
20 showing violations of an existing NAAQS, EPA can consider
21 measures being implemented by the state to address those
22 monitored exceedances when determining whether or not the
23 area should be designated nonattainment.

24 And emissions reductions that are achieved
25 through the ozone advanced program could be credited in

1 any future nonattainment SIPs developed under Part D of
2 the Clean Air Act.

3 Q. Does the Air Quality Control Act define
4 nonattainment area?

5 A. Yes, it does. That definition is at Section
6 74-2-2 (N) Air Quality Control Act, and it is the same as
7 the current definition in the Clean Air Act.

8 Q. Okay. And how does the Air Quality Control Act
9 direct the Board to act with respect to an area with
10 elevated ozone?

11 A. So Section 74-2-5 of the Air Quality Control Act
12 or AQCA mandates that the Board take action to control VOC
13 and NOx emissions when the Board determines -- and this is
14 quotes: "Determines that emissions from sources within
15 its jurisdiction cause or contribute to ozone
16 concentrations in excess of 95 percent of the primary
17 ozone NAAQS."

18 So under the statutory provision, the Board is
19 required to adopt a plan, including rules to control the
20 NOx and VOCs to provide for the attainment and maintenance
21 of the standard.

22 Q. And what is the Department doing to assist the
23 Board in carrying out this duty under the Air Quality
24 Control Act?

25 A. So NMED has undertaken the Ozone Advance

1 Initiative and the Ozone Attainment Initiative, or the
2 OAI, to propose the plan as well as regulations required
3 by the statute.

4 Q. And can you discuss what the Department's Ozone
5 Attainment Initiative entails?

6 A. Sure. There are currently nine counties under
7 the Board's jurisdiction that have or are adjacent to
8 monitoring sites registering ozone concentrations in
9 excess of 95 percent of the standard.

10 To address this issue, and as required by the --
11 by law, the Department has undertaken its Ozone Attainment
12 Initiative to develop a plan and a series of rules to
13 bring before the Board, as well as other voluntary
14 measures to mitigate the emissions of NOx and VOCs from
15 all contributing sources.

16 The OAI is a plan the state is following in order
17 to meet the statutory requirements of the Air Quality
18 Control Act. So under the umbrella of the OAI, the
19 Department is also participating in the EPA's Ozone
20 Advance Program to promote proactive and early actions in
21 designated attainment areas to reduce ozone for the
22 continued maintenance of the standard.

23 The Department developed a draft Ozone Advance
24 Path Forward as part of the program, which is included as
25 NMED Exhibit 4, to demo -- to demonstrate to EPA how the

1 state plans to address high ozone concentrations before
2 EPA promulgates a nonattainment designation for any of the
3 counties. Since the Air Quality Control Act does not
4 prescribe what the plan should contain, the Department
5 followed the EPA guidelines to develop the Ozone Advance
6 Path Forward.

7 This plan is sufficient to satisfy the
8 requirements of the Air Quality Control Act and the
9 Department is proposing that the Board adopt the Ozone
10 Advance Path Forward to comply with the Board's statutory
11 duties. A fundamental aspect of the OAI is determining
12 what sources are contributing to ozone concentrations.

13 To this end, the Department contracted with
14 Western States Air Resources Council and Ramboll to
15 conduct photochemical grid modeling for ozone to determine
16 which sectors within the Board's regulatory jurisdiction
17 are contributing to ozone concentrations and to support
18 the rulemaking efforts.

19 The results of this modeling are presented in
20 Ralph Morris's testimony at NMED Exhibit 106. The Air
21 Quality Control Act also requires the Board to adopt
22 regulations as part of its plan to address these rising
23 ozone concentrations. So the proposed Part 50 is the
24 first set of rules that the Department is bringing before
25 the Board. These will be followed by regulations to

1 control emissions from other mobile sources, which the
2 Department will bring before the Board later this year.

3 These regulations will set standards for low
4 emissions vehicles or LEV vehicles and zero-emission
5 vehicles, or ZEV that will provide further mitigation of
6 ozone precursors.

7 Q. Okay. Thank you for that. Is it possible that
8 even with all of the regulatory efforts of the OAI, some
9 areas may not be able to reach or stay in attainment of
10 the ozone NAAQS?

11 A. Yes, that's -- that's definitely a possibility,
12 especially with EPA currently reviewing the 2020 decision
13 to retain the ozone NAAQS as is. The Biden
14 Administration, if they lower the standards or these areas
15 of New Mexico do not attain the standard in a timely
16 fashion, the regulatory path forward could be an oral
17 nonattainment designation by the EPA.

18 So the intent behind the Board's mandatory duties
19 are outlined in the Air Quality Control Act, is to take
20 these -- take actions to avoid a nonattainment
21 designation, and the planning, regulatory and financial
22 burdens of the obtaining of a nonattainment designation.

23 Generally, the Clean Air Act outlines a
24 nonattainment process that will last a minimum of 25
25 years, so that gives five years for designations and an

1 attainment standard, and two ten-year meetings periods
2 before an area can be redesignated as attainment.

3 If an area fails to contain the standard by its
4 attainment date, it is reclassified into a more stringent
5 classification, to include additional planning
6 requirements that progressively become more stringent with
7 every class -- reclassification. So this prolongs an area
8 of attainment date, to allow for the implementations of
9 additional control strategies.

10 So the nonattainment process triggers planning
11 and permitting requirements, including emission
12 inventories, transportation conformity, reasonable further
13 progress, permitting offsets and lowest achievable
14 emission rate for equipment. All of these are time
15 consuming and costly to both the industry and the
16 Department and can cause competitive disadvantages to New
17 Mexico businesses and communities.

18 Q. So is it likely that even if the proposed rule is
19 adopted, some areas of the state would still go into
20 nonattainment status?

21 A. Well, the Department acknowledges that the
22 modeling indicates that the reduction in ozone
23 concentrations achievable by the proposed rule would not
24 be sufficient to bring some of the areas into compliance
25 with the standard.

1 However, incremental reductions can keep an area
2 from receiving a higher classification in the future and
3 avoid the more rigorous and costly requirements for such a
4 classification.

5 MR. KNIGHT: Okay. Thank you, Mr. Baca.

6 Madam Hearing Officer, those are all the
7 questions I have for this witness at this time. Mr. Baca
8 will come back for surrebuttal testimony following the
9 other parties on this topic.

10 HEARING OFFICER ORTH: Okay. Thank you very
11 much, Mr. Knight.

12 MR. KNIGHT: And Madam Hearing Officer, I would
13 also like to note that we have an amended Exhibit 4, which
14 we have sent out earlier today to all of the other
15 parties. And I don't know, perhaps it might be premature
16 to see if anyone has an objection to it or not, but I just
17 wanted to note that we are going to ask that -- that that
18 amended Exhibit 4 be made part of the record subject to
19 any objections and your ruling on those objections.

20 HEARING OFFICER ORTH: Okay. I believe it might
21 have just been sent and so I'm not sure the other parties
22 have had a chance to -- to review it. Maybe we'll take
23 that up a little later.

24 MR. KNIGHT: I think that's fine

25 HEARING OFFICER ORTH: Okay.

1 MR. ROSE: Madam Hearing Officer, if you would,
2 the Amended Exhibit 4 doesn't appear as though it
3 identifies the changes from the previously filed Exhibit
4 4. I was wondering if the Department either could explain
5 it or have something that identifies the changes that they
6 made. I'm not suggesting it's going to be objectionable,
7 and probably won't, but I can't tell based on the
8 submittal, exactly what was changed.

9 HEARING OFFICER ORTH: All right. Thank you,
10 Mr. Rose.

11 MS. KATZ: Yeah, and Mr. Baca is going to be
12 testifying about those changes in his surrebuttal. And we
13 could identify them, but maybe Mike, can you maybe point
14 to where they are in the document?

15 MR. BACA: The changes were made in response to
16 rebuttal testimony provided by NMOGA and IPNME -- IPANM.
17 And so the main changes were to the description of the
18 photochemical modeling, that one section. There -- there
19 was changes made to that, and that was it.

20 MS. KATZ: Do you have a page number or I don't
21 have -- Lou, do you need a page number?

22 MR. ROSE: I'll see if I can find it, but it
23 isn't -- even as those changes would be helpful, and I'm
24 not suggesting you're required to do it, but if we had a
25 redline version, it would certainly be a lot easier to

1 determine whether there's a problem with any of that.

2 And since Mr. Baca is going to testify on
3 surrebuttal after everyone else, if we're going to address
4 the amended exhibit, we'll need to know what the changes
5 are.

6 MS. KATZ: Sure. I can work on making a redline
7 and sending that around.

8 MR. ROSE: That would be helpful. Thank you.

9 HEARING OFFICER ORTH: Thank you, Mr. Rose and
10 Ms. Katz.

11 So time is now to ask questions of Mr. Baca.
12 I'll start with the parties. Ms. Fox, do you have
13 questions of Mr. Baca?

14 MS. FOX: None, Madam Hearing Officer. Thank
15 you.

16 HEARING OFFICER ORTH: Thank you.

17 Ms. Paranhos? You may be muted again.

18 Professor Pacyniak?

19 PROFESSOR PACYNIK: No questions at this time,
20 Madam Hearing Officer

21 HEARING OFFICER ORTH: Thank you.

22 Ms. Devore? She may have stepped away.

23 Mr. Nykiel?

24 MR. NYKIEL: No questions -- no questions at this
25 time. Thank you.

1 HEARING OFFICER ORTH: All right. And I have a
2 text from Ms. Paranhos saying she has no questions.

3 Mr. de Saillan?

4 MR. DE SAILLAN: No questions. Thank you.

5 HEARING OFFICER ORTH: Thank you.

6 Mr. Hiser.

7 MR. HISER: No questions. Thank you.

8 HEARING OFFICER ORTH: All right. Mr. Rose?

9 MR. ROSE: Yes, Madam Hearing Officer, I have a
10 few questions of this witness

11 CROSS-EXAMINATION OF MICHAEL BACA

12 BY MR. ROSE:

13 Q. Mr. Baca, are you familiar with the state's
14 current implementation plan provisions as they relate to
15 ozone?

16 A. Yes, I am.

17 Q. And did you review those in developing the path
18 forward and the ozone initiative?

19 A. Not as part of this, no.

20 Q. How does this plan differ from what's currently
21 in the implementation plan?

22 A. Okay. This plan is in response to ozone events,
23 so this is not a plan that's developed as required by the
24 Clean Air Act. The provision that you're talking about,
25 it sounds like -- it sounds like a SIP requirement.

1 Q. Correct, under Section 110.

2 And are you familiar with what would be required
3 in terms of a plan where an area's designated
4 nonattainment by EPA?

5 A. Yes, I am.

6 Q. And would -- would the path forward or the ozone
7 initiative satisfy the requirements of EPA if the areas
8 were designated nonattainment?

9 A. As stated earlier, the Ozone Advance Path Forward
10 is not to address any requirement of the Clean Air Act.

11 Q. In terms -- in terms of looking at the path
12 forward, it appears as though the Department made a
13 decision whether or not to regulate oil and gas first, and
14 then transportation-related pollutants second.

15 Is there any explanation in this document about
16 how those priorities were set and why the Department
17 decided to regulate oil and gas first?

18 A. Can you -- can you maybe repeat that question so
19 I can try to gather that all together.

20 Q. Sure. No, that's fine. And if you need
21 clarification, just ask.

22 You testified in terms of the Department's
23 decision to -- that it was regulating oil and gas, this
24 proposal was the first, and that the Department intended
25 to propose transportation-related requirements for mobile

1 sources or cars and trucks later.

2 I was wondering whether or not the document which
3 is Exhibit 4, explains how the Department made the
4 decision to regulate oil and gas first,
5 transportation-related pollutants second, and then any
6 other controls after that?

7 A. Well, I guess we can discuss a little bit about
8 how the Department arrived at regulating oil and gas
9 first. Is that -- is that the main question?

10 Q. I was wondering if -- excuse me for
11 interrupting -- whether Exhibit 4 explains that or if it's
12 in some other exhibit that the Department -- or testimony
13 the Department submitted?

14 A. That would probably be under another exhibit.
15 The Ozone Advance Path Forward is not intended to justify
16 the rulemaking or justify any of the source sectors
17 included in the rulemaking. This -- the Ozone Advance
18 Path Forward is intended to satisfy the requirements of
19 the EPA program.

20 Q. Thank you.

21 A. It's mandatory. It's in an explanatory document.

22 Q. Okay. Thank you, Mr. Baca.

23 I think you also, in the document, discuss NOx
24 emission reductions, and I was curious as to whether or
25 not when you did that, whether you included potential

1 reductions that would be necessitated by the Regional Haze
2 Program, whether or not any of those anticipated
3 reductions were factored into any of the decision making
4 here.

5 A. Well, unlike this -- this matter, regional haze
6 is required under the Clean Air Act. So any emissions
7 reductions we do under regional haze have to be federally
8 enforceable, which we are not doing here today. We are
9 not adopting this as a SIP rule today.

10 Q. And so --

11 A. Any -- any emissions that we do achieve through
12 regional haze would be through that Clean Air Act program.

13 Q. And were those factored into any of the analysis
14 here, in terms of like the regulatory program that you're
15 proposing looks like?

16 A. I'm not sure I understand what you're -- what
17 you're asking as what it pertains to.

18 Q. Let me be -- (unintelligible)

19 A. The program -- (unintelligible) its focus,
20 we're -- we're only looking at certain sources for
21 control, so it's a whole different scope.

22 Q. And -- and are you aware of -- I take it the
23 Department has not yet proposed to the Board its regional
24 haze proposal, and that would have to go before the Board
25 before it was submitted to EPA; is that correct?

1 A. That is correct.

2 Q. And as you currently understand it, is the
3 Department intending to regulate certain oil and gas
4 sources as part of the Regional Haze Program as well?

5 A. The Department has not made a determination on
6 that as of -- as of this time.

7 Q. I take it, though, that in terms of the
8 facilities or the sources for which the Department
9 required a four-factor analysis, those did include certain
10 oil and gas sources, particularly in the Southeast,
11 correct?

12 A. That is correct. So we screened about 23 sources
13 under NMED's jurisdiction, and I believe 20 of those
14 sources were oil and gas sources. So those represented
15 the type of pollution sources that we screened, which are
16 the largest sources in the state.

17 MR. ROSE: Thank you, Mr. Baca. I have no
18 further questions.

19 HEARING OFFICER ORTH: Thank you, Mr. Rose.

20 Mr. Janoe?

21 MR. JANOE: No questions

22 HEARING OFFICER ORTH: Okay. Mr. Butzier?

23 MR. BUTZIER: No questions.

24 HEARING OFFICER ORTH: Thank you. Ms. Gutierrez?

25 MS. GUTIERREZ: No questions.

1 HEARING OFFICER ORTH: All right. Mr. Neumann?

2 MR. NEUMANN: No questions. Thank you.

3 HEARING OFFICER ORTH: All right. Thank you.

4 And Ms. Witherspoon? She may have stepped away.

5 Mr. Knight, do you -- oh, I'm sorry. I'm going to
6 turn to Board members now. And while I am doing that, if
7 you are not a panelist and you have a question of this
8 witness, please reach out in the Chat.

9 Madam Chair, do you have questions of Mr. Baca?

10 CHAIRPERSON SUINA: Madam Hearing Officer, I
11 don't have any questions at this time. Thank you.

12 HEARING OFFICER ORTH: Thank you. Vice-Chair
13 Trujillo-Davis?

14 VICE-CHAIR TRUJILLO-DAVIS: I don't have any
15 questions at this time. Thank you.

16 HEARING OFFICER ORTH: All right. Thank you.
17 Member Cates?

18 BOARD MEMBER CATES: No questions.

19 HEARING OFFICER ORTH: Thank you. Member Bitzer?

20 BOARD MEMBER BITZER: No questions.

21 HEARING OFFICER ORTH: Okay. Thank you. Member
22 Garcia?

23 BOARD MEMBER GARCIA: (Shaking head.)

24 HEARING OFFICER ORTH: I see you're shaking your
25 head no.

1 Member Honker?

2 BOARD MEMBER HONKER: I have no questions.

3 HEARING OFFICER ORTH: All right. Thank you. I
4 see no one reaching out through the Chat.

5 Mr. Knight, did any of Mr. Rose's questioning
6 raise in you a need to redirect Mr. Baca?

7 MR. KNIGHT: Yes, Madam Hearing Officer. I just
8 have a few redirect questions.

9 REDIRECT EXAMINATION OF MICHAEL BACA

10 BY MR. KNIGHT:

11 Q. Mr. Baca, did Dr. Raso testify this morning that
12 the oil and gas sector is the largest anthropogenic
13 sources of VOCs in New Mexico?

14 A. Yes, she did. Yes, she did, that's correct.

15 Q. Okay. And does the Department have the resources
16 to adopt -- to adopt multiple regulations under the OAI
17 simultaneously?

18 A. No, we do not. So we -- we had to prioritize
19 which sectors we are looking at based on which ones are
20 the most impactful.

21 Q. And is the Department currently working on the --
22 developing the clean cars rules for the transportation
23 sector right now, and preparing to petition the Board
24 right within the next few months?

25 A. That is correct. The Department is currently

1 undergoing early stakeholder engagement. I believe they
2 have held at least one meeting and another one happening
3 shortly, if not already. I do believe the plan is to
4 propose their rule to the Board for a hearing in May.

5 MR. KNIGHT: Okay. Thank you very much. Okay.
6 That's all the redirect questions I have, Madam Hearing
7 Officer.

8 HEARING OFFICER ORTH: All right. Thank you very
9 much. I had one question in the Chat.

10 EXAMINATION FROM CHAT QUESTION TO MICHAEL BACA

11 HEARING OFFICER ORTH: Asking for a repetition of
12 Mr. Baca's job title, and so I'll just offer it. He
13 testified he was the Control Strategies Manager for the
14 Air Quality Bureau of the Environment Department.

15 Is there any reason not to excuse Mr. Baca?

16 MR. KNIGHT: No, he may be excused.

17 HEARING OFFICER ORTH: Thank you so much for your
18 testimony, Mr. Baca.

19 All right. Where are we going from here,
20 Mr. Knight?

21 MR. KNIGHT: Madam Hearing Officer, I will defer
22 to my co-counsel, Ms. Katz.

23 MS. KATZ: So Madam Hearing Officer, there were
24 rebuttal witnesses on this topic, so I believe Mr. --
25 NMOGA has Mr. Smitherman listed and IPANM has Mr. Blewitt,

1 and so we would -- I believe those witnesses would go up
2 and then the Department would do its surrebuttal.

3 HEARING OFFICER ORTH: All right.

4 MR. HISER: Madam, this is Eric Hiser for NMOGA
5 and we are not going to call Mr. Smitherman for this
6 issue.

7 HEARING OFFICER ORTH: All right. And is
8 Mr. Smitherman with us? Shall I make him a panelist? Or
9 I might have already done that.

10 MR. HISER: Madam Hearing Officer, we are not
11 planning to ask Mr. Smitherman to say anything on this
12 rebuttal issue.

13 HEARING OFFICER ORTH: Oh, I'm sorry. Oh, okay.
14 I'm sorry. I didn't hear that correctly. All right. So
15 we will not be hearing from Mr. Smitherman.

16 Mr. Rose, will we be hearing from Mr. Blewitt?

17 MR. ROSE: Madam Hearing Officer, I believe he is
18 currently viewing this as an attendee, but not a panelist
19 so you may have to admit him. He's available to testify
20 this afternoon and he has some other topics which he'll
21 testify on later as well.

22 Madam Hearing Officer, you're muted so...

23 HEARING OFFICER ORTH: I muted myself as I made
24 Mr. Blewitt a panelist. We should be able to bring him up
25 on screen. Mr. Blewitt, can you hear me?

1 MR. BLEWITT: I can hear you. Can you hear me?

2 HEARING OFFICER ORTH: Oh, gosh, no. You sound
3 like you're talking through a blanket.

4 MR. BLEWITT: I'm as close to my computer as I
5 can -- I can get.

6 HEARING OFFICER ORTH: Is there a volume setting
7 you might be able to control?

8 MR. BLEWITT: I'm at 100 percent volume.

9 HEARING OFFICER ORTH: Okay.

10 Theresa, are you going to be able to turn this
11 up?

12 MS. BLEWITT: I'm not hearing you very well right
13 now.

14 COURT REPORTER: I can turn it up, but Mr. Rose
15 will need to speak a little lower.

16 MR. ROSE: Or softer. I'm not sure I can go
17 lower.

18 HEARING OFFICER ORTH: Okay. All right.
19 Mr. Rose, use your soft voice.

20 Okay. So Mr. Blewitt, if you would, please,
21 spell your last name. Doug is the standard spelling?

22 MR. BLEWITT: B-L-E-W-I-T-T.

23 HEARING OFFICER ORTH: Thank you. And if you
24 would raise your right hand, please. Do you swear or
25 affirm to tell the truth?

1 MR. BLEWITT: I'm not -- you're going to have to
2 speak up.

3 HEARING OFFICER ORTH: Do you swear or affirm to
4 tell the truth?

5 MR. BLEWITT: Yes.

6 HEARING OFFICER ORTH: All right. Thank you.
7 Mr. Rose, if you would, please.

8 DOUG BLEWITT,

9 (Relating to Topic Order 3)

10 having been first duly sworn or affirmed, was
11 examined and testified as follows:

12 DIRECT EXAMINATION OF DOUG BLEWITT

13 BY MR. ROSE:

14 Q. Yes. Mr. Blewitt, could you -- you've already
15 identified yourself. Could you explain your educational
16 and work background?

17 A. Yes. I have a Bachelor's Degree in Chemistry and
18 Physics. I've done graduate work at the University of
19 Wisconsin and the University of -- or University of
20 Illinois Institute of Technology. I have over 45 years of
21 air quality experience. I have been involved in
22 development of accidental release models for dense gases
23 that are specific to hydrogen fluoride. I've published
24 numerous papers on modeling and monitoring and analysis of
25 data.

1 I have -- was a Colorado Air Commissioner. I
2 served as secretary for six years. I've been involved in
3 numerous research programs regarding air quality issues in
4 the West. I think that concludes.

5 Q. Mr. Blewitt, did you -- did you prepare a written
6 direct and rebuttal testimony for this proceeding?

7 A. Yes, I did.

8 Q. With respect to the direct testimony, do you have
9 any corrections or -- to that written testimony?

10 A. No corrections.

11 Q. If you were asked those same questions that are
12 in your written testimony, would your answers be the same
13 here in person as they were in your written submittal?

14 A. Yes.

15 MR. ROSE: Madam Hearing Officer, I'd offer
16 Mr. Blewitt's testimony -- I can't remember the Exhibit
17 No. here, but as in this proceeding.

18 HEARING OFFICER ORTH: Okay, but I'll need an
19 Exhibit No. Take a moment to find that.

20 MR. ROSE: I'll have to find that. I've got it
21 somewhere.

22 MR. BLEWITT: Can you share the screen so I can
23 present slides?

24 HEARING OFFICER ORTH: Yes, I can, just give me a
25 sec.

1 MR. BLEWITT: Okay.

2 MR. ROSE: Madam Hearing Officer, I don't seem to
3 have the list here. I didn't expect to have Mr. Blewitt
4 testify this afternoon, so I'm not quite as prepared as I
5 might have been. We only have a handful of exhibits,
6 so... Rather than trying to delay this even further, I
7 was hoping someone would have that list handier than I do.
8 I have it, I just can't immediately find it.

9 MR. BUTZIER: This is Stuart Butzier and this is
10 Exhibit 12, I believe.

11 MR. ROSE: That's the direct testimony?

12 MR. BUTZIER: No, I'm sorry.

13 HEARING OFFICER ORTH: No, it's the rebuttal.

14 MR. ROSE: Right, we'll get to the rebuttal here
15 in a sec.

16 HEARING OFFICER ORTH: You have too many boxes,
17 Lou.

18 MR. ROSE: It's okay, I have more binders than I
19 care to look at here, but...

20 HEARING OFFICER ORTH: So we'll -- we'll -- let's
21 check on the right Exhibit No. so we can keep a clean
22 record.

23 MR. HISER: Madam Hearing Officer, his direct is
24 Exhibit 6.

25 HEARING OFFICER ORTH: Exhibit 6 and that was

1 Mr. Hiser.

2 MR. HISER: That is correct.

3 HEARING OFFICER ORTH: So thank you.

4 MR. ROSE: I'm glad Mr. Hiser's more together
5 than I am on this.

6 HEARING OFFICER ORTH: So thank you for that.

7 All right. So the direct testimony is Exhibit 6. Were
8 there any -- I don't believe there were any -- any
9 objections to IPANM Exhibit 6, so unless someone speaks up
10 right now, it's admitted.

11 (IPANM Exhibit 6 received into evidence at this
12 time.)

13 MR. ROSE: Madam Hearing Officer, I'd note that
14 Mr. Blewitt's direct and rebuttal relate to topics beyond
15 just this one. So I assume that when it's admitted here I
16 won't have to offer pieces later as to admission.

17 HEARING OFFICER ORTH: I agree with you.

18 MR. ROSE: Thank you, Madam Hearing Officer.

19 Q. (BY MR. ROSE) Mr. Blewitt, did you prepare
20 written rebuttal testimony in this proceeding? I think
21 he's adjusting his head gear here.

22 A. Can you hear me now?

23 Q. It's about the same.

24 A. Well, I can hear you much better.

25 Q. Okay. Did you -- did you prepare written

1 rebuttal testimony in this proceeding?

2 A. Lou, are we ready to start this?

3 Q. Yes. Well, no, not the slides yet. I'm just
4 trying to -- talking about your rebuttal testimony.

5 Did you prepare written rebuttal testimony in
6 this proceeding?

7 A. Yes, I did.

8 Q. And do you have any corrections to your written
9 rebuttal testimony?

10 A. No, I do not.

11 Q. And if I were to ask you the questions here that
12 we asked in the written rebuttal, would your answers be
13 the same as they were in your written testimony?

14 A. Yes.

15 MR. ROSE: Madam Hearing Officer, I would offer
16 IPANM, I guess it's Exhibit 12 in this proceeding and ask
17 that it be admitted.

18 HEARING OFFICER ORTH: All right. I don't
19 remember any objections to IPANM Exhibit 12, so unless
20 someone speaks up right now, it is admitted. Thank you.

21 (IPANM Exhibit 12 received into evidence at this
22 time.)

23 Q. (BY MR. ROSE) Mr. Blewitt, could you briefly
24 summarize your direct and rebuttal testimony? And Madam
25 Hearing Officer, I believe he has a demonstrative exhibit

1 which we circulated yesterday, that he's going to use for
2 his summary.

3 MR. BLEWITT: Can you see my slides on your
4 screens?

5 HEARING OFFICER ORTH: No.

6 MR. BLEWITT: How do I share my screen?

7 MR. ROSE: There should be a button there that
8 allows you to share

9 HEARING OFFICER ORTH: There's probably a "share"
10 button.

11 MR. ROSE: He's got it. It's now starting

12 HEARING OFFICER ORTH: There you go. There you
13 go. It's happening.

14 MR. BLEWITT: Great.

15 Q. (BY MR. ROSE) You need to increase the size of
16 that if you can. There we go. That's better.

17 A. Okay. Sorry for my technical ineptness. Let me
18 start out by saying we're here to address ozone, and
19 that's -- that's really what this is all about. And the
20 Board has taken a very interesting position, wanting to
21 protect air quality. And I think it's in some respects,
22 it's a very good idea, that if concentrations get in
23 excess of 95 percent of the -- of the NAAQS for ozone,
24 that they need to develop a plan.

25 And the purpose of this regulatory action is to

1 protect New Mexico from new violations of the current
2 NAAQS, by sort of establishing a safety factor. And it
3 basically establishes that NMED and the Board need to
4 establish a plan to reduce ozone concentrations. This is
5 not a regulatory action about reducing methane. And the
6 plan really must develop a control strategy. And control
7 strategies are difficult and they need to combine
8 monitoring and modeling to try to draw out as much
9 information as possible, to ensure that the NAAQS is -- is
10 maintained.

11 I think it's also important to use modeling to
12 identify culpable sources of what sources contribute to
13 monitors, and those potential contributions must address
14 significant impacts. And significant is a word here that
15 has some regulatory meaning, so we want to make sure that
16 the reductions we're -- we're achieving are meaningful.
17 And I think that's -- that's part of the whole process, to
18 identify how to achieve compliance.

19 I think from my perspective, I'm not sure that
20 the plan and the modeling that have been developed satisfy
21 these requirements. Let's -- we'll go to the next slide.

22 I think one of the things that's really important
23 in reviewing the modeling is a discussion of emission
24 inventories. Emission inventories are one of the main
25 inputs to models. And Ramboll developed three emission

1 inventories: A 2014 based case, which is based on the NEI
2 inventory, and there were some adjustments made to that,
3 which were appropriate. They also develop -- and the 2014
4 inventory was used basically to test the accuracy of the
5 model. And I have no real objections to the model testing
6 that was done.

7 They also developed a 2028 future-year base case.
8 And this is -- this inventory is really important in this
9 proceeding because it shows -- it demonstrates very
10 significant reductions in NOx and VOC emissions, but,
11 unfortunately, there's no documentation provided regarding
12 what sources are included, calculation methods,
13 future-year assumptions going from 2014 to 2028.

14 MS. KATZ: Madam Hearing Officer, I'm sorry to
15 interrupt. I'm concerned that this is modeling testimony
16 and not directed at Mr. Baca's. And if -- if that could
17 be explained, because, to me, this seems to have to do
18 with Mr. Morris's testimony.

19 MR. BLEWITT: It is -- Madam --

20 HEARING OFFICER ORTH: Mr. Rose? Let's -- I'm
21 going to call on Mr. Rose.

22 MR. BLEWITT: Okay.

23 MR. ROSE: Yes, Madam Hearing Officer, I believe
24 what -- what the witness is testifying to is the
25 adequacies, or in his view the inadequacies of the plan.

1 And the plan as it references the modeling and uses the
2 modeling as a decisional tool in the plan, I believe is
3 what he's addressing.

4 Now, I can't remember if Mr. Blewitt had other
5 slides. Most of this will probably be addressed when the
6 Department's modeling witness testifies, I think,
7 tomorrow, as to the adequacy of the modeling itself. But
8 as to the plan, I believe --

9 Mr. Blewitt, I thought you had other slides
10 specifically addressed to the plan that we circulated
11 yesterday, and this is really modeling-related.

12 HEARING OFFICER ORTH: Okay. Ms. Katz has drawn
13 a distinction that's helpful here.

14 MR. ROSE: There it is. This looks like right --
15 now we've got the right slide there.

16 MS. KATZ: Thank you. Yes, I agree.

17 HEARING OFFICER ORTH: Okay.

18 MR. ROSE: Ms. Katz, I think you're muted.

19 HEARING OFFICER ORTH: Yeah. Okay. Go ahead.

20 A. I thought this was a modeling discussion, which
21 is why I pulled up those slides. I'm sorry.

22 The first slide we really talked about, which was
23 the same in both of them, and I think the plan also needs
24 to address the cost to control in terms of ambient
25 impacts. And this is -- this directly relates back to

1 modeling, so it's very hard to separate all of these
2 issues.

3 I think the procedural issue that we have -- and
4 this really goes to the other presentation -- this
5 future-year base case, which is really crucial in -- in
6 the modeling and the impacts and the benefits, has no
7 documentation whatsoever. There's some emission totals
8 presented, but they're not -- they're very vague and we
9 really can't address what's going on there.

10 That 2028 emissions inventory needs to talk about
11 reductions from controls that will be implemented from
12 recently promulgated sources. That's not discussed.
13 Retired sources that have changed -- have changed fuel
14 type from oil to natural gas, that's -- retired sources
15 are not discussed.

16 Growth calculations, that's a very important
17 issue for oil and gas because of the unique nature of oil
18 and gas emissions, which I will talk about at another time
19 in this. The calculation methodology that was used did
20 not, in my opinion -- although I can't confirm this --
21 address the issue of decline from natural gas wells which
22 affects both long-term VOC and NOx emissions.

23 Natural gas wells decline. The reason many new
24 wells are being drilled is to offset the decline in
25 production with new production, and these -- these wells

1 decline exponentially. And some emission sources, such as
2 compressors, dehydration units, tank emissions will -- are
3 directly related to production rate.

4 There are some inconsistencies in VOC emissions
5 presented in the Ramboll technical support document that
6 need to be resolved. And the 2028 emission inventory
7 really needs stakeholder and public review. I think those
8 are all important issues that really pertain to spending
9 some more time looking at what's been done to make sure we
10 actually achieve what we're looking for.

11 If the 2028 future-year base case were
12 implemented -- and we don't know what that is -- how would
13 NMED address enforceability? The last thing we want to do
14 is have sources have emission limits that are state-only
15 emissions limits, versus federally enforceable emission
16 limits.

17 And Mr. Baca sort of alluded to the fact that
18 some of what we're talking about here might not be
19 federally enforceable. And I think that's -- that's an
20 important issue that has to be addressed. The modeling
21 did not separate NOx and VOC emissions. And we have heard
22 discussions about impacts from various oil and gas
23 segments, but it's been combined.

24 And we really don't know the relative importance
25 of NOx or VOCs. Mr. Morris's testimony that will be given

1 tomorrow, he indicated there were only a few grid cells,
2 areas where concentrations were computed that --

3 MS. KATZ: Objection. I'm sorry. Mr. Morris is
4 not testifying and so it's inappropriate to be addressing
5 his testimony here

6 HEARING OFFICER ORTH: I thought we had drawn
7 that distinction, Mr. Rose.

8 MR. ROSE: Madam Hearing Officer, it relates to
9 adequacy of the plan. And that's what I thought
10 Mr. Baca's testimony was related to, that the modeling
11 deficiencies and some of the information that Mr. Blewitt
12 is identifying were not included in and they're not part
13 of the plan, and, therefore, the plan itself was
14 insufficient, in addition to the modeling having problems.

15 HEARING OFFICER ORTH: Okay. And, again, to the
16 extent that he's expressly referring to testimony we
17 haven't heard yet, I don't know that he's walking on the
18 right side of that line. And I understand they're all
19 interconnected, but we're now down to his last seven
20 minutes of testimony, so I'm hoping he can get back to
21 rebutting Mr. Baca's testimony.

22 A. Let me restate that. NMED needs to carefully
23 review ozone formation of NOx versus VOCs, and that was --
24 and what was done in the modeling combined both NOx and
25 VOCs together, and it is not possible to separate that.

1 I think an iterative process needs to be
2 established to resolve all of the identified technical
3 issues that I've pointed out here, and that concludes my
4 remarks.

5 MR. ROSE: Thank you, Mr. Blewitt.

6 HEARING OFFICER ORTH: Thank you.

7 MR. ROSE: I have no further questions of this
8 witness.

9 HEARING OFFICER ORTH: All right. Thank you,
10 Mr. Rose.

11 Ms. Katz, do you have questions of Mr. Blewitt at
12 this time?

13 MS. KATZ: No, I do not and neither does
14 Mr. Knight. He will be doing the -- the surrebuttal.

15 HEARING OFFICER ORTH: Oh, okay. Thank you.
16 Ms. Fox?

17 MS. FOX: None, Madam Hearing Officer. Thank
18 you.

19 HEARING OFFICER ORTH: Thank you. Ms. Paranhos?

20 MS. PARANHOS: No questions, Madam Hearing
21 Officer.

22 HEARING OFFICER ORTH: Thank you. Professor
23 Pacyniak?

24 PROFESSOR PACYNIK: No questions right now,
25 Madam Hearing Office.

1 HEARING OFFICER ORTH: Thank you. Ms. Devore?

2 MS. DEVORE: No, thank you.

3 HEARING OFFICER: Oh, okay. Thank you.

4 Mr. Nykiel?

5 MR. NYKIEL: No questions, Madam Hearing Officer.

6 HEARING OFFICER ORTH: All right. Mr. de

7 Saillan?

8 MR. DE SAILLAN: No questions. Thank you.

9 HEARING OFFICER ORTH: Thank you. Mr. Hiser?

10 MR. HISER: No questions, Madam Hearing Officer.

11 HEARING OFFICER ORTH: Thank you. Mr. Janoe?

12 MR. JANOE: No questions, Madam Hearing Officer.

13 HEARING OFFICER ORTH: Thank you. Mr. Butzier?

14 MR. BUTZIER: No questions.

15 HEARING OFFICER ORTH: Thank you. Ms. Gutierrez?

16 MS. GUTIERREZ: No questions. Thank you.

17 HEARING OFFICER ORTH: Thank you. Mr. Neumann?

18 MR. NEUMANN: No questions. Thank you.

19 HEARING OFFICER ORTH: Thank you. And

20 Ms. Witherspoon?

21 MS. WITHERSPOON: No questions.

22 HEARING OFFICER ORTH: Thank you. I'm going to
23 turn now to see if the Board has any questions. While I'm
24 doing that, in the event you are not a panelist and you
25 have a question for Mr. Blewitt, please reach out in the

1 Chat.

2 EXAMINATION BY THE BOARD OF DOUG BLEWITT

3 HEARING OFFICER ORTH: Madam Chair, do you have a
4 question of Mr. Blewitt?

5 CHAIRPERSON SUINA: No questions from me, Madam
6 Hearing Officer. Thank you.

7 HEARING OFFICER ORTH: Thank you. Vice-Chair
8 Trujillo-Davis?

9 VICE-CHAIR TRUJILLO-DAVIS: Yes, I have a couple
10 of questions. Thank you, Madam Hearing Officer. And my
11 questions actually -- I had a very difficult time hearing
12 the full testimony, so I just want to clarify. Is the
13 basis of your testimony that the 2028 projections are too
14 conservative in their calculation because they failed to
15 account for well decline and recently promulgated rules?

16 MR. BLEWITT: Let me answer that in several
17 parts. The emission -- I believe that the emissions in
18 the 2028 inventory may be -- may not be accurate. They
19 may be inflating NOx emissions and VOC emissions. I have
20 reviewed the Mancos EIS emission inventories, and I saw
21 that that was the case in those inventories.

22 And that this emission inventory was developed
23 directly from the Mancos, I believe. This -- if emissions
24 are -- are overstated, that means air quality will
25 actually be better. And also, it will affect the cost to

1 control calculations because you won't see as much of a
2 reduction.

3 The good news is that the modeling shows very
4 dramatic reductions in ozone from the 2028 case. So it's
5 kind of an interesting situation. The -- there's
6 tremendous reduction in ozone concentrations predicted by
7 the model for this technical emission inventory. We think
8 it may be biased on the high side, which would mean even
9 lower -- lower emissions or lower ozone impacts. Does
10 that answer your question?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes, I think so.
12 Thank you for clarifying your testimony.

13 HEARING OFFICER ORTH: All right. Thank you.
14 Member Cates?

15 BOARD MEMBER CATES: No questions.

16 HEARING OFFICER ORTH: All right. Member Bitzer?

17 BOARD MEMBER BITZER: No questions.

18 HEARING OFFICER: Thank you. Member Garcia?

19 MEMBER GARCIA: (Shaking head.)

20 HEARING OFFICER: No. No questions. And Member
21 Honker?

22 BOARD MEMBER HONKER: No questions.

23 HEARING OFFICER ORTH: Thank you very much.

24 Did any of that raise anything for you on
25 redirect, Mr. Rose?

1 MR. ROSE: No, I have no redirect questions for
2 this witness.

3 HEARING OFFICER ORTH: All right. Thank you very
4 much, Mr. Rose and Mr. Blewitt.

5 Let me encourage Mr. Blewitt to review his
6 settings or perhaps find another computer. I have to say
7 listening to technical modeling testimony is hard enough,
8 you know, to really follow for those of us that are not
9 air quality modelers without the challenge of listening to
10 the sound from a -- from a distance.

11 MR. BLEWITT: I will do my best, Madam Chairman.

12 HEARING OFFICER ORTH: Thank you so much. All
13 right. It is 4:57, we do have a 5:00 public comment
14 session. I think we should take a five-minute stand-up
15 break before we do that, just five minutes just to stand
16 up.

17 Let me speak the names of those I have who have
18 made requests to make public comment at 5. If I do not
19 read your name and you wish to make public comment in the
20 5:00 slot, please reach out in the Chat. I have Sandra
21 Ely, Ernie Carlson, Rob Rodriguez, Mary Ingam, Dora
22 Luccini-Lucero, Richard Raynaud, and Nick King.

23 Let's take five minutes. Let's come back at 5:05
24 and I will begin with the names there.

25 And then I have a question for Ms. Gutierrez:

1 After public comment, will we be discussing the forecasted
2 schedule, or should we address that before public comment?

3 Ms. Katz, do you have an opinion about that.

4 MS. KATZ: Well, Madam Hearing Officer, Mr. Baca
5 still needs to do his surrebuttal on this topic. So I'm
6 not sure when -- did Kinder Morgan submit testimony on
7 this or?

8 MS. GUTIERREZ: We did not submit testimony. I
9 was just asking for, you know, the next couple of days,
10 what the schedule would look like generally.

11 MS. KATZ: Oh, sorry. I didn't realize that that
12 was the question.

13 HEARING OFFICER ORTH: All right. So let's come
14 back at 5:05, we'll take some public comment.

15 (Recess taken from 4:59 p.m. to 5:05 p.m.)

16 HEARING OFFICER ORTH: All right. We have at
17 the 5 p.m. public comment session for Monday, September
18 20th in the rulemaking on EIB Petition 21-27. I will ask
19 you to collect your thoughts, as I'll be asking for your
20 comments just once. In the event you have more to say,
21 more than five minutes, I will ask you to put your
22 comments in writing and submit them to Pamela Jones, whose
23 contact information is on the EIB web page.

24 I do have to ask folks to be sworn to tell the
25 truth, and I will, if you have a nonstandard spelling of

1 your name, I will ask you to spell your name. And let me
2 get my little stop-clock up. I will call you in this
3 order. Sandra Ely, Ernie Carlson, Rob Rodriguez, Mary
4 Ingam, Dora Luccini-Lucero, Richard Reynaud and Nick King.

5 If you can hear me and you would like to speak in
6 this slot, rather than one of the three slots available
7 every other day of the hearing, please reach out through
8 the Chat and I will add you this evening.

9 So Sandra Ely, I am unmuting you. Ms. Ely, would
10 you raise your right hand, please. Do you swear or affirm
11 to tell the truth?

12 MS. ELY: Yes.

13 HEARING OFFICER ORTH: Thank you very much. I'm
14 starting your five minutes now.

15 SANDRA ELY,
16 having been first duly sworn or affirmed, gave
17 public comment as follows:

18 PUBLIC COMMENT BY SANDRA ELY

19 MS. ELY: Good afternoon, Madam Hearing Officer,
20 members of the Board. My name is Sandra Ely and I am the
21 Environmental Protection Division Director at the New
22 Mexico Environment Department. Executive order 2019-003
23 to address climate change and energy waste prevention,
24 sets a greenhouse gas emission reduction goal of at least
25 45 percent below 2005 levels by 2030.

1 The order also established the interagency
2 climate change task force and directed the agency to
3 implement specific greenhouse gas emission reduction
4 strategies. Some of these strategies have already been
5 implemented, including passing of the Energy Transition
6 Act by the legislature in 2019, and adoption of the -- of
7 new energy conservation codes by the Regulation and
8 Licensing Department in 2020. The order directed both the
9 Environment Department and the Energy and Minerals
10 Department to reduce methane emissions and energy waste in
11 new and existing sources in the oil and gas industry, as
12 soon as practicable.

13 The agencies worked together with stakeholders
14 for a period of two years to draft separate, yet
15 complimentary rules that do not duplicate, conflict, or
16 leave regulatory gaps. The two sets of rules are designed
17 to work together to provide full coverage of the industry,
18 to achieve the waste and pollution reduction New Mexicans
19 deserve.

20 While the Environment Department proposed rule
21 focuses on NOx and VOC emission reductions as required by
22 state law, reducing industry VOCs will also result in
23 methane reductions. The Energy and Minerals Department
24 natural gas waste reduction rules were adopted by the Oil
25 Conservation Commission in March of this year. It is now

1 time for the EIB to consider and adopt regulations to help
2 the state fight climate change and reduce ozone pollution.

3 These rules are important for many reasons: One,
4 because New Mexico's oil and gas industry accounts for 53
5 percent of the greenhouse gas emissions in the state, the
6 vast majority of which is methane. We must curb emissions
7 in this industry to meet our greenhouse gas reduction
8 target.

9 Two, these rules provide an opportunity for New
10 Mexico to do its part to reduce global temperatures in the
11 short-term. While methane emissions -- methane is an
12 extremely potent greenhouse gas, it is short-lived in the
13 atmosphere compared to carbon dioxide. Reducing the
14 atmospheric concentrations of methane now can slow
15 temperature rise through midcentury.

16 Three, these rules will serve as an example to
17 U.S. EPA as they move forward with regulations to reduce
18 methane and VOC emissions in the oil and gas industry, as
19 directed by President Biden on his first day in office.
20 We anticipate EPA's proposal will also be released any day
21 now. In developing and finalizing their rules, EPA has
22 and will continue to look to states like New Mexico to see
23 what is possible to achieve significant emission
24 reductions.

25 Finally, these rules will represent ozone

1 pollution in parts of the state close to exceeding federal
2 health-based standards. Elevated levels of ozone
3 pollution not only put the public health at risk from
4 breathing unhealthy air, but could result in EPA stepping
5 in to mandate that the state implement federal
6 requirements to reduce ozone pollution.

7 Federal requirements will include newly-imposed
8 and extensive permitting protocols that will be costly to
9 industry and will require the Department to step up
10 significantly.

11 Thank you for the opportunity -- opportunity to
12 provide public comment today. And thank you in advance
13 for your efforts to ensure that these complicated and
14 highly technical rules are protective of public health and
15 the environment.

16 HEARING OFFICER ORTH: Thank you very much,
17 Ms. Ely. Ernie Carlson is next on my list, but I do not
18 see him among the attendees under either Ernie or Carlson.
19 Mr. Carlson, in the event that you are with us under a
20 different name, please reach out through the Chat or reach
21 out through text to (505)660-4305.

22 MR. ROSE: Madam Hearing Officer, I have a
23 question with respect to Ms. Ely's testimony, was that
24 intended to be part of the Department's affirmative case
25 since Ms. Ely, in fact, is a Department employee? I

1 noticed it was -- it was labeled as public comment, but it
2 appears to be comment on behalf of the Department, as
3 opposed to really public comment. And I was curious as to
4 whether it will be considered part of the Department's
5 case or will it be public comment and given the weight the
6 Board normally does to just public comment?

7 HEARING OFFICER ORTH: All right. Ms. Katz or
8 Mr. Knight, would you like to address that? It may have
9 been designated as public comment because it was more
10 policy than technical, but let's see. Ms. Katz, there you
11 are.

12 MS. KATZ: I believe it was a statement by
13 Ms. Ely -- a nontechnical statement by Ms. Ely.

14 MR. ROSE: Madam Hearing Officer, there were
15 certainly technical representations as to impacts and how
16 this ought to be regulated. It seemed to me this is much
17 more akin to testimony that would normally come in under
18 the Department's case-in-chief or rebuttal case, as
19 opposed to public comment.

20 HEARING OFFICER ORTH: And so, let's say that it
21 would be more typically part of the Department's or
22 petitioner's affirmative case. Is it because you want to
23 ask questions?

24 MR. ROSE: Well, in fact, we would normally -- if
25 that were part of the Department's case, they would submit

1 prefiled direct and rebuttal testimony that all of the
2 parties would have the ability to respond to, as well as
3 then ask questions. I think a lot of what Ms. Ely covered
4 was actually covered by Ms. Bisbey-Kuehn in terms of her
5 testimony that was prefiled, but it sort of deprives us of
6 the real ability to question it.

7 I'm not sure I have any questions, but it's hard
8 to -- it's hard to decide whether to ask questions based
9 on the fly here without -- without having access to this
10 prefiled testimony.

11 HEARING OFFICER ORTH: Okay. So I disagree with
12 you about the prefiled testimony because it wasn't
13 technical. And nontechnical testimony, that is to say
14 more of the nature of policy is often not prefiled. But
15 as I said, you are always entitled to question anyone
16 testifying, so if you have a question of Ms. Ely, I will
17 ask her to rejoin us.

18 MR. ROSE: I do not.

19 HEARING OFFICER ORTH: Okay.

20 MR. ROSE: It was more of a question of weight to
21 be given it from the beginning of the statement as opposed
22 to --

23 HEARING OFFICER ORTH: All right. My
24 understanding is that the Board will be weighing all of
25 the technical testimony and all of the nontechnical

1 testimony as part of their deliberations, but thank you
2 for speaking your concern.

3 We're going to move to Rob Rodriguez, but I do
4 not see Mr. Rodriguez on the platform. Again, anyone who
5 doesn't necessarily -- isn't necessarily able to join us
6 at the exact time they said they wanted a slot can
7 certainly choose any one of the other 28 opportunities to
8 offer comment.

9 We move then to Mary Ingam. Do we see Mary
10 Ingam? I do not. Dora Luccini-Lucero. Let me see if
11 I -- it just takes a minute to scroll through 160 names so
12 I don't see Dora. Let's see. Richard Reynaud, I believe
13 I saw Richard Reynaud. There we go.

14 Mr. Reynaud, can you hear me?

15 MR. REYNAUD: Yes, I can.

16 HEARING OFFICER ORTH: Terrific. I can hear you,
17 but you're a little soft. If you would keep your voice
18 up, please.

19 MR. REYNAUD: Okay.

20 HEARING OFFICER ORTH: And if you would raise
21 your right hand first. And do you swear or affirm to tell
22 the truth?

23 MR. REYNAUD: Yes, I do.

24 HEARING OFFICER ORTH: And would you spell your
25 last name, please?

1 MR. RAYNAUD: Yes, it's R-E-Y-N-A-U-D.

2 HEARING OFFICER ORTH: All right. Your five
3 minutes starts now.

4 RICHARD REYNAUD,
5 having been first duly sworn or affirmed, gave
6 public comment as follows:

7 PUBLIC COMMENT BY RICHARD REYNAUD

8 MR. REYNAUD: Okay. I've got -- I've only got
9 about a minute and a half, but can you guys see me on
10 video or is it just my voice?

11 HEARING OFFICER ORTH: No, it's just your voice.
12 The public comment is coming through audio, not video.

13 MR. REYNAUD: Okay. That's fine. I was just
14 wondering, you know. Okay. All right. Hello, my name is
15 Richard Reynaud, I'm a lifelong Las Cruces resident,
16 except for three years in Roswell, New Mexico in oil pump
17 development work. I graduated from NMSU in 1982 with a
18 degree in ME. I'm retired now and am a small business
19 owner and DE. Thank you to the New Mexico Environmental
20 Improvement Board for allowing these hearings.

21 Now, I have been following this rule. I've read
22 summaries from proponents and opponents of this rule, and
23 the rule, the lengthy rule. I am not in favor of this
24 rule. When I assess this situation, the economic
25 impact -- impacts stand out to me. The State of New

1 Mexico's own legislative finance committee expressed its
2 concerns about future revenues, mainly affecting education
3 in New Mexico, or largely affecting and the Small Business
4 Exemption; \$250,000 gross income, for employees less than
5 ten just doesn't make any sense to me. To gross out
6 \$250,000 with ten employees, that's a lot of work for
7 almost no profit. Does this simply mean no exemptions?

8 Now, unemployment: From today's Las Cruces Sun
9 News, New Mexico was tied along with Connecticut and New
10 Jersey for the nation's fourth highest unemployment rate.
11 You go to page 4A, and you find that Lea County -- Hobbs,
12 Lovington, has the second highest unemployment rate in New
13 Mexico. Is this the right time to do this?

14 So, in summary, I recommend to not pass this
15 rule. Let Southeast New Mexico residents decide if they
16 want to go beyond EPA restrictions. You know, where is
17 the complaints about air quality from Hobbs, Carlsbad,
18 Lovington? I -- I haven't heard any. During my time in
19 Roswell in the oil company business, I met people in
20 Artesia, people who were working small module production
21 wells. They are hard-working, honest people, making
22 honest living, and have been painted in a bad light, in my
23 opinion, and I will speak up for them.

24 Thank you again to the New Mexico Environmental
25 Improvement Board.

1 HEARING OFFICER ORTH: Thank you, Mr. Reynaud.

2 All right. I see Mr. King, Nicholas King, standard
3 spelling. I'm unmuting you, Mr. King. Can you hear me?

4 MR. KING: Yes, I can.

5 HEARING OFFICER ORTH: I can hear you very
6 clearly. If you would raise your right hand, please. Do
7 you swear or affirm to tell the truth?

8 MR. KING: I so affirm.

9 HEARING OFFICER ORTH: Thank you. Your five
10 minutes starts now.

11 PASTOR NICHOLAS KING,
12 having been first duly sworn or affirmed, gave
13 public comment as follows:

14 PUBLIC COMMENT BY PASTOR NICHOLAS KING

15 MR. KING: Well, first of all, I would like to
16 thank all of this panel for the hard work on these life
17 and death issues. It's no small thing to deal with all of
18 these tedious issues and I thank you for doing that for
19 all of us. My name is Nick King, and I'm pastor of the
20 Carlsbad Mennonite Church.

21 Caring for God's creation is a God-given
22 responsibility that we are all charged with. Caring for
23 the health of our neighbors and caring for future
24 generations in the middle of this climate change is what
25 we are all obligated to, unless we just serve our own

1 immediate economic interests, which Jesus would call
2 selfishness; one of the most basic of sins. It's
3 self-interest versus the best for all. That's the
4 question.

5 In the last few years a lot has been improved in
6 the oilfield as we see considerably fewer flaring in the
7 area now, that's just one of the visible effects, so
8 things can be changed. Improvements can be done, as we
9 see in Colorado, but we need more monitoring. There's
10 very little monitoring down here to see what the air
11 quality is. And we need more regulation, although none of
12 us likes regulation, but we need regulation of leakage, of
13 pneumatic valves and of emissions for completion and
14 redevelopment projects.

15 This may cost a little more or will cost a little
16 more, but as in construction, there are all kinds of costs
17 of doing business. The question is, do the companies for
18 profit pay now, or do we, as taxpayers and healthcare
19 providers, pay way more in the future for this upcoming
20 fiasco. But we, as taxpayers, need to front the money for
21 much more reasonable inspections or we will all certainly
22 pay later, that there is way too little money for
23 inspection and enforcement of that kind of stuff.

24 I've been out in the oilfield and leaks can
25 easily be seen with the flare camera. We have the

1 technology to do this. Although, we all need to do our
2 part in consuming less, we included, and producing less
3 carbon, we, as a society, need to make realistic
4 regulations that manage the larger entities for the good
5 of all.

6 May God give each of you wisdom and strength to
7 move ahead, in spite of the strong opposition of some
8 economic interests. Thank you.

9 HEARING OFFICER ORTH: Thank you, Pastor King.
10 All right. Let me ask if there's anyone else who would
11 like to make a public comment at this session. There are
12 28 more sessions at 9, 1 and 5, between now and October
13 1st. I see no one reaching out through the Chat.

14 Ms. Katz, it seems to me like it would be
15 worthwhile, so long as it wouldn't be too lengthy, to
16 return to Mr. Baca -- I'm sorry, Mr. Knight, to return to
17 Mr. Baca for his surrebuttal unless you think that would
18 be a more lengthy exercise.

19 MR. KNIGHT: We would like to do that, Madam
20 Hearing Officer. Mr. Baca has prepared a demonstrative
21 PowerPoint for this and I acknowledge that we were -- we
22 should have sent it around to the other parties. I will
23 represent that it consists of the figures and maps that
24 were attached to some of his written testimony, so I don't
25 think there's anything surprising or controversial in this

1 PowerPoint. And so I would ask that he be allowed to
2 present that PowerPoint along with his surrebuttal
3 testimony if there is no objection. And I would say if --
4 you know, if someone -- I would ask that we be allowed to
5 present it and if -- if any party has an objection along
6 the way, we can, you know, we can deal with it at that
7 time.

8 HEARING OFFICER ORTH: All right. I think that's
9 a good strategy. Did I hear someone trying to say
10 something? No? All right.

11 MR. ROSE: Just one question. I was wondering if
12 Mr. Knight would make sure that the rest of us get a copy
13 of that demonstrative exhibit. It doesn't have to be this
14 evening, it could be tomorrow at some point, that would be
15 fine.

16 MR. KNIGHT: Yes. I appreciate that and we will
17 certainly -- certainly send that out to all the parties
18 very soon.

19 MR. ROSE: Thank you, Madam Hearing Officer.

20 HEARING OFFICER ORTH: Thank you, Mr. Rose.
21 Thank you, Mr. Knight.

22 To the extent any other party believes that they
23 have been subjected to some unreasonable surprise as we go
24 through Mr. Baca's surrebuttal, please -- I'll give you an
25 opportunity to put that on the record at the right time.

1 In the meantime, I'm going to make Mr. Baca a presenter.

2 MR. KNIGHT: Thank you.

3 HEARING OFFICER ORTH: Mr. Baca, you should have
4 the privilege of sharing your PowerPoint.

5 MR. BACA: Thank you, Madam Hearing Officer. I
6 do have that privilege now.

7 MICHAEL BACA,
8 having been previously duly sworn, was examined and
9 testified as follows:

10 SURREBUTTAL DIRECT EXAMINATION OF MICHAEL BACA

11 BY MR. KNIGHT:

12 Q. Mr. Baca, let me know when you're ready for me to
13 begin the questions for your surrebuttal.

14 A. Okay. Is my screen sharing at this time?

15 Q. Not yet.

16 There it is. All right. Shall we begin? Okay.
17 Mr. Baca, now I'm going to have you address issues that
18 were raised by Mr. McNally and Mr. Blewitt in their
19 prefiled rebuttal testimony. So this is surrebuttal.
20 Let's see.

21 Mr. McNally's -- just for everyone's information,
22 Mr. McNally's rebuttal testimony was NMOGA Rebuttal
23 Exhibit 45 and Mr. Blewitt's rebuttal testimony was IPANM
24 Rebuttal Exhibit 12, as previously pointed out.

25 So, Mr. Baca, Mr. McNally contends that Chaves

1 and Rio Arriba County should not be included in the
2 geographic scope of the Ozone Attainment Initiative, the
3 Ozone Advance and the proposed rule. Why did the
4 Department decide to include those two counties in the
5 proposed rule?

6 Mr. Baca, you are on mute.

7 HEARING OFFICER ORTH: I've unmuted him.

8 A. Can you hear me now?

9 Q. (BY MR. KNIGHT) Yes, much better. Go ahead.

10 A. Okay. Yes, in short, Madam Chair, members of the
11 Board, Madam Hearing Officer, in short, these counties are
12 widely recognized as part of the respective oil and gas
13 basins and contain oil and gas sources that -- that emit
14 precursor pollutants and thereby cause or contribute to
15 ozone concentrations. The statute does not require an
16 analysis to quantify the retrieving impacts from sources
17 to determine if they cause or contribute to elevate ozone
18 beyond any given threshold amount in any area of the
19 state. Excuse me.

20 Q. Yes. So why are some of the assertions
21 Mr. McNally -- or excuse me. What are some of the
22 assertions that Mr. McNally makes in his prefiled rebuttal
23 testimony to support his position?

24 A. Yeah, Mr. McNally's testimony is premised on the
25 incorrect assertion that the Air Quality Control Act

1 restricts the applicability of any regulations promulgated
2 by the Board under this provision, to only those sources
3 in counties with monitors. Therefore, he reasons that
4 because Chaves County lacks an ozone monitor, sources in
5 that county cannot be regulated under the Board's
6 authority provided in 74-2-5 of the Air Quality Control
7 Act.

8 He also assumes that the Board is limited to
9 considering only monitoring in modeling data when
10 determining the geographic scope of regulations that
11 promulgate under the statutory provision. He points out
12 that the most recent ozone design value for Rio Arriba
13 County for 2018 through 2020 is 65 parts per billion, and
14 that does not exceed the 95 percent of the standard. He
15 also claims that the Department did not provide for
16 photochemical modeling results to justify including Chavez
17 County in the proposed rule.

18 Q. I see. And what does the statute say about this
19 issue?

20 A. Yeah, the stated purpose of the regulations
21 adopted by the Board under the statute is to provide for
22 the attainment and maintenance of the standard. To
23 achieve this, the purpose of the statute directs the Board
24 to regulate sources within areas of the state that cause
25 or contribute to ozone concentrations exceeding 95 percent

1 of the NAAQS.

2 The statute does not say that the regulations can
3 only apply to counties with monitors showing
4 concentrations exceeding 95 percent, so, logically, the
5 boundaries of any designated nonattainment area would not
6 be restricted to county lines or counties with monitors.

7 Q. What factors are considered in determining the
8 boundaries for a newly-designated nonattainment area?

9 A. Yeah, air quality agencies and EPA consider five
10 factors when recommending and promulgating designations in
11 nonattainment area boundaries. This includes --

12 COURT REPORTER: I'm sorry. Mr. Baca, you need
13 to slow down. You're reading and you need to slow down.
14 It's been a long day. Please. Okay?

15 MR. BACA: Okay.

16 COURT REPORTER: Thank you.

17 MR. BACA: Can you -- can you read back where I
18 was at?

19 COURT REPORTER: Yes. "Air quality agencies and
20 EPA consider five factors."

21 A. Air quality and EPA consider five factors when
22 recommending and promulgating designations and
23 nonattainment area boundaries, including the nearby areas
24 that contribute to exceedances in violating or
25 nonattainment areas. These factors include air quality

1 data, emissions and emissions-related data, meteorology,
2 geography, topography and jurisdictional boundaries.

3 So these are the appropriate factors for the
4 Board to consider as they provide the information to build
5 a conceptual model of how ozone is formed and transported
6 in a region. So, although photochemical modeling data and
7 source contribution data may be used, it has not been
8 required for past nonattainment designations when
9 including nearby areas in the nonattainment boundary.

10 So, social apportionment would generally be used
11 only when evaluating nonattainment areas that span
12 multiple -- multiple jurisdictions or states.

13 Q. Okay. So, how would you respond to Mr. McNally's
14 testimony regarding the monitored readings at the Rio
15 Arriba air monitor and the lack of a monitor in Chaves
16 County?

17 A. So, regarding the most recent design value at the
18 Rio Arriba monitor, you know, we -- they are correct in
19 stating that the 2016 to 2000 -- or 2018 to 2020 design
20 value is below the standard as we can see on the
21 PowerPoint here.

22 So the Rio Arriba monitor is this green line
23 here. So we can see over the past year, that that fell
24 below, so the 95 percent is this orange line here, and we
25 can see that for the two previous averaging periods that

1 the monitor was actually exceeding 95 percent of the
2 standard.

3 Q. Okay. Let's see. NMED -- well, okay.

4 A. I guess I can -- let me move on to this slide
5 here. So NME -- NMED does not operate an ozone monitor in
6 Chaves County; however, the statute requires that the
7 Board regulate sources of emissions that cause or
8 contribute to elevated concentrations greater than 95
9 percent of the standard. So we have two contiguous
10 counties, Eddy and Lea County, that have monitoring sites
11 of ozone concentrations above that threshold. The trend
12 has been rise -- has been rising in concentrations at this
13 site.

14 So if we take a look, I mean you can see that in
15 Southeastern New Mexico, that, you know, over time, that
16 ozone concentrations are actually rising, and this is very
17 dramatic here. You can see in Carlsbad especially,
18 concentrations are going up and also in Lea County.

19 Now, there was a dropoff in the past year, but if
20 you look from the beginning of this chart, all the way to
21 the end of the chart, there's a general direction upward.
22 So, in one conclusion and in wrapping it up, although
23 county level source apportionment modeling results do not
24 exist, the photochemical modeling conducted by Ramboll
25 clearly showed the influence of the oil and gas sector on

1 ozone levels in New Mexico.

2 So the proposed rule targets the control of ozone
3 precursor emissions from that sector. Chaves and Rio
4 Arriba County have substantial oil and gas sector activity
5 and are widely recognized as part of the Permian and San
6 Juan production basins, respectively. So the emission
7 profiles of these two counties do not differ significantly
8 from the other counties in their respective basins.
9 Including Chaves and Rio Arriba County, it acknowledges
10 that they are part of the production basins and that the
11 oil and gas sector contributes to regional formation.

12 A conceptual model of ozone in the two basins
13 would not be complete without including these two
14 counties. Without them, the nature and cause of elevated
15 ozone would not be fully characterized, the scope and
16 scale of the problem would not be identified, and a
17 complete description of nearby emissions sources that
18 contribute to the problem would not be complete.

19 Recognizing and disclosing formation and
20 transport is not limited in geographic scope. EPA
21 establishes nonattainment boundaries by evaluating
22 relevant information for the entire area containing
23 violating monitors, and any adjacent counties or nearby
24 areas that have the potential to contribute to that
25 nonattainment violation.

1 Using a weight of evidence to determine the
2 narrative boundaries allows both states and EPA to
3 evaluate and determine on a case-by-case basis the
4 specific facts and circumstances unique to the area.

5 NMED followed these principals when considering
6 whether or not to propose the inclusion of these counties
7 in the scope of the OAI, the Ozone Advance, and the
8 proposed rule.

9 Q. Okay. Thank you for that. And so let's -- let's
10 talk about some of the terms here. What are air quality
11 control regions, or AQCRs, as we call them, and why did
12 the Department choose to use county boundaries in this
13 rule rather than AQCRs?

14 A. All right. So now I have a map of what we call
15 air quality control regions just for illustration
16 purposes. So NMED evaluated the boundaries of the state's
17 air quality regions, as we can see there, there's
18 approximately nine -- I'm sorry, eight air quality control
19 regions in the state. And these air quality control
20 regions share similar climate, meteorology, topography,
21 vegetation, land use patterns, demographics. And so these
22 are areas of the state that are highly similar in more
23 ways than just one.

24 So, EPA, as I said earlier, we have eight air
25 quality control regions in the state, and we have the

1 counties in question -- Chaves County, in air quality
2 control region 155, and we have Rio Arriba County split
3 into two different air quality regions. So you can see
4 that Rio Arriba, which is this county up here, is split
5 between AQCR 157 and AQCR 14.

6 So the Carlsbad and Hobbs monitoring sites
7 provide ozone data in the air quality control region that
8 includes Chaves County. So down here, we have monitors in
9 both Eddy and -- Lea and Eddy Counties here, that cover
10 this air quality control region.

11 So in the Northwestern part of the state, we have
12 three monitors that cover San Juan County that provides
13 data for the air quality control region that contains more
14 of Rio Arriba and the majority of the oil and gas in that
15 county, so we have an air quality monitor up in San Juan
16 right here, we have one in Farmington and we have one
17 closer to the east. So we have three air quality monitors
18 in close proximity.

19 We also have an air quality monitor in air
20 quality control region 157, and that is the Rio Arriba
21 monitoring site that's near the Coyote Ranger District in
22 the national forest there.

23 So, you know, in closing, we chose to use county
24 jurisdiction lines instead of air quality control regions
25 because county boundaries are widely recognized by -- by

1 everyone and they're well established -- well established
2 lines that most of the oil and gas sources, whom we are
3 targeting, are contained within these counties.

4 Q. Thank you. And regarding some of the testimony
5 from Mr. Blewitt, I believe regarding the locations of
6 monitors, is the Department required to have an ozone
7 monitor in Chaves County, and who approves the number and
8 siting of monitors for an area?

9 A. No, we do not have a monitoring -- a monitor in
10 Chaves County. So NMED's monitoring network is fully
11 approved by EPA. So the EPA takes the reins in
12 approving -- reviewing and approving NMED's plans for
13 monitoring the air quality. And as a matter of fact, the
14 Department actually operates more ozone monitors than is
15 required by EPA regulations.

16 Every year, the Department undertakes an annual
17 review of their monitoring network to -- to evaluate the
18 adequacy of the network and to document any changes that
19 the Department would like to make to those -- make to any
20 monitoring site.

21 In addition, that annual review includes a
22 statement of purposes for each monitor and also includes
23 evidence that the siting and operation of each monitor
24 meets the requirement of the regulations. So, all of our
25 plans are subject -- subject to public comment and we

1 submit these to EPA first.

2 Q. So what about Mr. McNally's statements concerning
3 the lack of photochemical modeling to -- that would
4 justify including Chaves or Rio Arriba Counties -- what --
5 what about his statements concerning the lack of
6 photochemical modeling?

7 A. Yeah, as I -- as I said before, technical
8 assessments are supposed to define the magnitude or
9 relative magnitude of contribution from nearby areas, but
10 EPA does not set any threshold contribution level or
11 bright-line test for determining whether the contributing
12 area should be included within the boundaries of a given
13 nonattainment area.

14 So Section 107(d) of the Clean Air Act does not
15 require EPA to set this threshold contribution. And
16 although the photochemical modeling results would be
17 insightful, they are not required; they're just one of
18 many tools available to an air quality agency or EPA to
19 determine an area's influence on another nonattainment
20 area.

21 So the statute does not require the Department to
22 provide photochemical modeling results to justify
23 inclusion in any of the areas, or county in this case,
24 within the scope of our proposed plan. And EPA's past
25 guidance for nonattainment boundary determination, which

1 are the five factors I reviewed earlier, are considered
2 the appropriate framework to determine which counties
3 should be included in the OAI and the proposed rule.

4 So, although, the Department did not complete a
5 five-factor analysis for each basin, the Board can
6 consider those factors and include that, one, the
7 available air quality data indicates that we have elevated
8 ozone levels in excess of 95 percent of the standard, and
9 that's in and nearby both of the counties in question.

10 As you can see by this slide, 12 of the 14 ozone
11 monitors operated by the Department are greater than 95
12 percent of the standards. Two, we can say that there is
13 significant oil and gas activity in both of these
14 counties, and that they share similar emission profiles as
15 either Eddy and Lea County, or San Juan County in the
16 Northwest. So, with both their basins, they -- they do
17 not differ significantly.

18 Three, I think we can say that the counties share
19 climatological and meteorological condition, as
20 demonstrated by them being within the same area quality
21 control region within the respective basins. And, you
22 know, we can also say, four, that the counties are
23 adjacent to the monitors that are exceeding this
24 threshold. So they're in close proximity to -- to the
25 monitors that are reaching 95 percent of the standard.

1 So, additionally, any of the topography or
2 geographical features of the area do not allow for
3 unrestricted air flow, or transfer of pollutants in the
4 areas.

5 So, I think, five, you know, all of the areas
6 that are considered right now are under the jurisdiction
7 of the EIB. They're easily identifiable, and I think the
8 Board should include Chaves and Rio Arriba County within
9 the scope of this rule. This would probably address
10 emissions from the oil and gas sector, and lower ozone
11 concentrations across the state.

12 I think failing to include these areas and
13 emissions would be contrary to the intent of the statute,
14 and ignore the fact that these two counties are part of
15 the common oil and gas production basins within their
16 respective areas.

17 Q. Thank you, Mr. Baca.

18 Mr. McNally has concerns with the photochemical
19 modeling section of our Ozone Advance Path Forward, which
20 was, again, the NMED Exhibit 4 that was discussed a little
21 earlier. Did you review his concerns with the Ozone
22 Advance Path Forward, and how has the Department responded
23 to those concerns?

24 A. I have reviewed Mr. McNally's rebuttal testimony
25 in this regard and agree with his assessment, so in

1 response to that, the Department revised the Ozone Advance
2 Path Forward and have entered it as NMED's Exhibit No. 4
3 Amended.

4 Q. Okay.

5 A. So the discussion that was included in the
6 original path forward is not -- was not ever intended to
7 provide any technical support or justification of -- of
8 the rule. It's only explanatory for EPA and the public,
9 and the Department to provide information to -- to them on
10 the modeling study and the important sectors that are
11 contributing to ozone formation. It also outlines how the
12 Department plans on addressing the issue.

13 So, some of the changes that I made to the Path
14 Forward in NMED Exhibit 4 Amended includes a more complete
15 description of the modeling, additional commentary to
16 support the conceptual models of ozone formation in the
17 state. I included the updated modeling and source
18 apportionment results for the future-year oil and gas
19 control scenario as proposed in the rule.

20 And I included a discussion of the sectors that
21 will be addressed with the Ozone Attainment Initiative,
22 including the impacts of the oil and gas sector throughout
23 the state, as well as other sectors that impact ozone
24 levels in the state, and that the Department intends to
25 target for control strategies and future rulemaking.

1 Q. Thank you.

2 MR. KNIGHT: And Madam Hearing Officer, we have
3 made the Amended Exhibit 4 -- we have sent that to all of
4 the other parties and after they've had a chance to look
5 at it, maybe I can renew my motion to have that admitted
6 into the record. Perhaps we can do that tomorrow morning
7 after everyone has had a chance to review it. And now we
8 have surrebuttal to Mr. Blewitt's rebuttal testimony.

9 And Mr. Baca, thank you.

10 Mr. Baca, IPANM witness, Mr. Blewitt, who
11 testified earlier today, in his written rebuttal testimony
12 he suggests that the Department should follow Sections 110
13 and 172 of the Clean Air Act to develop the plan to
14 address ozone as required by the Air Quality Control Act.
15 Do you agree?

16 A. No, I don't. Mr. Blewitt is trying to apply a
17 State Implementation Plan and writing concepts to --
18 concepts and framework both to the Board's duties, to act
19 under the Air Quality Control Act.

20 So these concepts and frameworks he has termed
21 such as cause, contribute, and significant, but there's no
22 context with what he was providing these terms in his --
23 in his rebuttal testimony.

24 So the concepts he describes and framework he
25 suggests are inappropriate for determining the boundaries

1 for this purpose, for the OAI, the Ozone Advance, and for
2 the proposed rules. And what he is suggesting would be
3 used to comply with requirements of the Clean Air Act, not
4 the New Mexico Air Quality Control Act.

5 So when I say that, you know, I'm talking about
6 he brought up Section 110(a) of the Clean Air Act, which
7 requires states to develop SIPs for the implementation,
8 maintenance and enforcement of new or revised standards.
9 So these SIPs are commonly referred as a infrastructure
10 SIPs or ISIPs because they ensure that the basic
11 authorities and programs are in place to implement any new
12 or revoked NAAQS that the EPA may promulgate.

13 The Department has submitted its ISIP to EPA
14 under Section 110 of the 2015 Ozone NAAQS in two separate
15 submissions. So the EPA has fully approved New Mexico's
16 first ISIP submission that addressed all but one of the
17 required elements under Section 110. The second
18 submission this Board just considered this past summer and
19 that -- that was for the interstate transport of ozone or
20 what we commonly refer to as a Good Neighbor SIP. And
21 this was adopted by the Board and submitted to EPA, I
22 believe, in July of this year. So that -- that was just
23 recently done. And the EPA is required to act on that
24 submission on or before January 4th, 2022.

25 So in short, the plan described by Mr. Blewitt,

1 already exists for the State of New Mexico and it is not
2 intended to encourage any of the early and proactive
3 measures to reduce emissions before a nonattainment
4 designation, only to ensure that the Department has the
5 capability of implementing, maintaining, and enforcing the
6 standard.

7 Section 172, on the other hand, outlines the
8 planning requirements for ozone nonattainment areas. So
9 the Department also completed a SIP submission under
10 Section 172, but only for the Sunland Park nonattainment
11 area. So that this was submitted in three submissions to
12 EPA this past summer, and it's of note that the Sunland
13 Park area is the only designated ozone nonattainment area
14 in the state. And I believe, in my opinion, that it's the
15 only one where Section 172 requirements apply.

16 The OAI uses EPA's established framework for the
17 Ozone Advance Program, to develop their moving forward.
18 The program is a successor of the Early Action Compact
19 that EPA was engaged in, in which NMED participated in, in
20 the early 2000s in the San Juan Basin, as we started
21 addressing rising concentrations in that area.

22 So, the Department feels that the intent of this
23 statute closely aligns with the principles, practices and
24 goals of the Advance Program and continues down that path.

25 Q. Now, Mr. Blewitt concludes in his rebuttal that

1 the statutory requires a plan in Doña Ana County only
2 since future-year modeling shows compliance with the ozone
3 NAAQS in all other areas of the state. Is that your
4 understanding of the statute?

5 A. No. Modeling is not a required component to
6 demonstrate cause or contribute in this context of
7 boundary determinations. So, you know, additionally, you
8 know, the requirement for a plan is triggered when the
9 ozone concentration is in excess of 95 percent of the
10 standard, and could be reasonably attributed to sources
11 within the Board's jurisdiction, including the oil and gas
12 sector, any of the -- and any other sectors they determine
13 to cause elevated ozone concentrations tracings.

14 Q. Okay. Thank you, Mr. Baca.

15 MR. KNIGHT: Madam Hearing Officer, those are all
16 the questions that I have for this witness, and he is
17 available for questions from anyone else.

18 HEARING OFFICER ORTH: All right. Thank you very
19 much. I think there are so many of us, I will put the
20 presentation screen away. There you go. Thank you.

21 Ms. Fox, do you have questions of Mr. Baca based
22 on his surrebuttal testimony?

23 MS. FOX: No. Thank you, Madam Hearing Officer.
24 Mr. Baca, thank you for your testimony today.

25 HEARING OFFICER ORTH: Thank you. Ms. Paranhos?

1 MS. PARANHOS: No questions.

2 HEARING OFFICER ORTH: Thank you. All right.

3 Professor Pacyniak. I think that was a no.

4 Ms. Devore?

5 MR. VIMONT: We have no questions.

6 HEARING OFFICER ORTH: All right. I think that
7 was Mr. Vimont speaking.

8 MR. VIMONT: Yes, it was. Sorry.

9 HEARING OFFICER: Okay. It's all right.

10 Let's see here. Mr. Nykiel?

11 MR. NYKIEL: No questions. Thank you

12 HEARING OFFICER ORTH: Thank you. Mr. de
13 Saillan?

14 MR. DE SAILLAN: No questions. Thank you.

15 HEARING OFFICER ORTH: Thank you. Mr. Hiser?

16 MR. HISER: Madam Hearing Officer, this is Eric
17 Hiser. We are going to have multiple questions for
18 Mr. Baca on this. And I must say that we're a little bit
19 surprised to find that there's revisions to Exhibit 4 that
20 we need to evaluate specifically in response to the
21 comments from our witness, Dennis McNally.

22 As was known to the Department, Mr. McNally was
23 in surgery today, and, hence, in no position at this point
24 to review or provide any thoughts on the documents that
25 are revisions, and ostensibly change it, so I would like

1 to be able to not have to take up that exhibit right now
2 because I don't have my expert that they're responding to,
3 to provide me any thoughts on that.

4 HEARING OFFICER ORTH: All right. So we can
5 certainly take up the question of the admissibility of the
6 exhibit on another day. It seems like we're going to be
7 together for a long time, but do you have questions of
8 Mr. Baca?

9 MR. HISER: I do have questions of Mr. Baca, and
10 I don't know that I can do my questions about his exhibit
11 because I haven't had an opportunity to review it. So if
12 I can reserve my questions on the changes to the exhibit
13 until some -- you know, some time in the future, I'd
14 appreciate it, but I do have questions on his other
15 testimony otherwise.

16 HEARING OFFICER ORTH: All right. Go ahead.

17 SURREBUTTAL CROSS-EXAMINATION OF MICHAEL BACA

18 BY MR. HISER:

19 Q. Mr. Baca, in the development of the plan and of
20 this rule, has not the Department itself stated that it's
21 relying upon the design value?

22 A. Relying on the "design value"? Can you expand on
23 that, to rely on the design value for what?

24 Q. To designate the areas of the state that are
25 subject to the scope of this rule?

1 A. We are using monitoring data as one of the
2 factors to consider the boundaries of the rule, the scope
3 of the rule, and the Ozone Attainment Initiative.

4 Q. So is it not true that in Section 20.2.50.2 of
5 the Department's proposal that you specifically reference
6 design value as the criterion that's being used, yes or
7 no?

8 A. Yes.

9 Q. Now, in the files that you did, you talked about
10 the statute that the legislature passed that is
11 authorizing this action; is that correct?

12 A. Yes.

13 Q. And in that, you talked about the "cause and
14 contribute," but if we look at that statutory provision,
15 does the cause and contribute finding go to the areas that
16 are subject to regulation, or does it go to the types of
17 sources that are subject to regulation under this program?

18 A. No, it says that emissions sources within the
19 environmental proving or its jurisdiction.

20 Q. Right.

21 A. Cause or contribute.

22 Q. Right. So in order for you to regulate a source,
23 is it the Department's duty to show that they cause or
24 contribute to ozone concentrations in excess of 95 percent
25 of the standard?

1 A. I do not believe so. I just believe that we have
2 to show that there is a 95 percent -- an exceedance of 95
3 percent of the standard at the monitoring site.

4 Q. So is it your testimony that the Department's
5 belief is that as long as some area of the state is in
6 excess of 95 percent, you may regulate any source of any
7 type?

8 A. If we have reason to believe that it's causing
9 the impact, yes, we can.

10 Q. So you do believe that you have to show a cause
11 or contribute in order to regulate under this program?

12 A. No, I don't. We can't -- I mean, it's part of
13 the tools that you can use, but it's not the only tool.
14 So we do have many other tools to show that emission
15 sources or the magnitude of emissions could reasonably
16 impact an adjacent area, let's say, or any other area in
17 the state, for that matter.

18 Q. So what, then, does the first sentence of Section
19 C of the statute direct the Department to do?

20 A. The first sentence, it doesn't direct the
21 Department to do anything. It directs the Board to do --
22 to determine -- it determines that the emissions sources,
23 that they have to adopt a plan.

24 Q. I accept your correction, that it doesn't direct
25 the Department. But the Department is recommending to the

1 Board, is it not, that the Board do something, correct?

2 A. Correct.

3 Q. Okay. And what are you recommending to the Board
4 that it do under this first sentence of Subsection C?

5 A. So what we are planning to do is outlined in the
6 Ozone Attainment Initiative. That has not changed from
7 the initial Exhibit 4. The purpose of the Ozone
8 Attainment Initiative and Ozone Advance is to take
9 proactive steps to avoid a nonattainment area designation.

10 Q. So how do you know which sources to regulate
11 under the Ozone Attainment Initiative or Ozone Advance?

12 A. Well, you would evaluate which sources are in the
13 area, in the emissions, as we've provided in Exhibit 4,
14 that are a part of what is being emitted. And I think I
15 went over the five factors that we considered. And the
16 five factors would be what we considered for including or
17 determining which areas cause or contribute to exceedances
18 of 95 percent of the standard.

19 Q. Okay. But does the statute speak to areas that
20 cause or contribute, or does it speak about sources that
21 cause or contribute?

22 A. Sources.

23 Q. Okay. So not areas.

24 With respect to areas, what does the last
25 sentence of Subsection C of the statute speak to? And I

1 can read it for you. It says, "Rules adopted pursuant to
2 this subsection shall be limited to sources of emissions
3 within the area of the state where the ozone
4 concentrations exceed 95 percent of the primary National
5 Ambient Air Quality Standards."

6 Does that establish a geographic limit to the
7 area which regulations may be applied to sources?

8 A. No, it does not. It just says it's limited to
9 sources with emissions, within any area of the state where
10 ozone concentrations exceed. So it could be any emissions
11 anywhere in the state that -- within the area of the state
12 that the ozone concentrations exceed 95 percent, so...

13 Q. So is it your testimony that the first sentence
14 of Subsection C has no bearing on the last sentence of
15 Subsection C?

16 A. No.

17 Q. Then how do you -- how do you reconcile the first
18 and last sentences of subsection C? How do they fit
19 together, in your view?

20 A. So the rules are limited to the sources within
21 the Department's jurisdiction that can -- within areas of
22 the state where ozone concentrations are monitored at 95
23 percent. So the rules can apply to any part of any area
24 of the state where monitoring -- and reasonably be
25 attributed as exceeding 95 percent of the standard. So it

1 would be -- an air quality control region would definitely
2 be the first area you would look at, would be the air
3 quality control region.

4 Q. But right now the Department has chosen to do
5 counties for the moment?

6 A. Right. And in my surrebuttal, I said that we
7 started evaluating from the air quality control regions,
8 to come down.

9 Q. Okay. Now, in the testimony, you talked about
10 the five-factor analysis for cause and contribute, I
11 believe. That comes from the federal program; is that
12 true, those five factors?

13 A. Right. This is not for cause and contribute,
14 these five factors comes from EPA guidance on when they
15 designate nonattainment areas.

16 So when EPA considers what nearby areas are
17 causing exceedances of 95 percent of the standard, they
18 will undertake these five factors, and not necessarily
19 include control determinations.

20 Q. And is the Department's analysis of those five
21 factors set forth in any place in its materials prior to
22 your explanation today in your surrebuttal?

23 A. No. This is, I believe, a policy decision that
24 was not technical testimony within the Ozone Advance
25 Program and so we did not include that.

1 We determined the appropriate method to develop
2 the plan, in other words.

3 Q. Now, there was a question where you responded to
4 Mr. Blewitt's interpretation of plan. And you said that
5 you didn't agree with that, correct?

6 A. Correct.

7 Q. Did you -- did you provide any citation authority
8 for what you suggested, or is that your interpretation,
9 what plan means to you?

10 A. Can you restate that? Can you clarify that?

11 Q. In other words, were you -- when you gave your
12 response to Mr. Blewitt, were you relying upon a
13 Department policy or a regulation or a state statute or a
14 guidance manual that you've developed within the
15 Department that sets forth the view of what a plan is, or
16 were you giving your feel for what it is, based on your
17 position in the planning unit?

18 A. The Air Quality Control Act just states plan.
19 That's all it states. It doesn't say State Implementation
20 Plan, it just says plan.

21 Q. And what does "plan" mean to you, as an air
22 quality professional in the regulatory field?

23 A. A plan?

24 Q. Yes.

25 A. Well, it could mean anything. It could mean

1 education and outreach. It can mean any control strategy
2 that you're taking to improve air quality.

3 MR. HISER: Okay. Madam Hearing Officer, that's
4 all I have for him right now. Thank you.

5 HEARING OFFICER ORTH: Thank you very much,
6 Mr. Hiser.

7 Mr. Rose, do you have questions of Mr. Baca?

8 MR. ROSE: Yes, Madam Hearing Officer, just a
9 couple of questions, I hope.

10 SURREBUTTAL CROSS-EXAMINATION OF MICHAEL BACA

11 BY MR. ROSE:

12 Q. Mr. Baca, when you discussed the ozone levels
13 potentially in Rio Arriba County, you indicated that there
14 was a monitored location, I believe, somewhere in the
15 middle of the county. Could you explain where that is and
16 who maintains that monitor?

17 A. Yes, that is the Coyote Ranger District in Rio
18 Arriba County, and that is maintained by the New Mexico
19 Environment Department.

20 Q. And are there other monitors in Rio Arriba or is
21 that the only one?

22 A. That's the only monitor.

23 MR. ROSE: Okay. Thank you, Madam Hearing
24 Officer. I have no further questions.

25 HEARING OFFICER ORTH: Thank you, Mr. Rose.

1 Mr. Janoe?

2 MR. JANOE: No questions, Madam Hearing Officer.

3 HEARING OFFICER ORTH: Thank you.

4 Mr. Butzier?

5 MR. BUTZIER: No questions.

6 HEARING OFFICER ORTH: Thank you. Ms. Gutierrez?

7 MS. GUTIERREZ: No questions. Thank you.

8 HEARING OFFICER ORTH: Thank you. Mr. Neumann?

9 MR. NEUMANN: No questions. Thank you.

10 HEARING OFFICER ORTH: Thank you. And

11 Ms. Witherspoon? She may have stepped away.

12 All right. I'm going to turn now to the Board
13 members to see if they have any questions of Mr. Baca.
14 While I'm doing that, if you are not a panelist and you
15 have a question of Mr. Baca, please reach out to me in the
16 Chat.

17 EXAMINATION BY THE BOARD OF MICHAEL BACA

18 HEARING OFFICER ORTH: Madam Chair, do you have
19 questions of Mr. Baca?

20 CHAIRPERSON SUINA: Madam Hearing Officer, I
21 don't have any questions at this time

22 HEARING OFFICER ORTH: Thank you. Vice-Chair
23 Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: I don't have any
25 questions at this time. Thank you.

1 HEARING OFFICER ORTH: Thank you. Member Cates?

2 BOARD MEMBER CATES: No questions. Thank you for
3 asking.

4 HEARING OFFICER ORTH: Okay. Thank you. Member
5 Bitzer?

6 BOARD MEMBER BITZER: Probably a real simple,
7 real quick question. My municipal level of government
8 work is really dated, but is -- is the -- is there a
9 difference between an AQMD and the AQCR? The old air
10 quality management district that I dealt with in
11 Bernalillo County, is that different than the AQCRs that
12 you're talking about now?

13 MR. BACA: Member Bitzer, Madam Chair and Madam
14 Hearing Officer, yes, an air quality management district
15 generally refers to a local air quality control agency,
16 such as Albuquerque/Bernalillo, but that term is much more
17 applied in California, where they have a lot of local air
18 quality jurisdictions, which they call air quality
19 management districts.

20 BOARD MEMBER BITZER: They had one in Bernalillo
21 County back in -- they probably still do.

22 MR. BACA: We still do.

23 BOARD MEMBER BITZER: Yeah. Once you're under
24 those, it's hard to get out. So, thank you. That's all I
25 had.

1 HEARING OFFICER ORTH: Thank you, Member Bitzer.
2 Member Garcia?

3 BOARD MEMBER GARCIA: Yes, Madam Hearing Officer,
4 I have one quick question.

5 Mr. Baca, you mentioned that there's no monitor
6 in Chaves County. Could you tell me, does the Department
7 have a plan to put an ozone monitor in Chaves County?

8 MR. BACA: I do not believe so at this time. As
9 I mentioned in my -- my testimony, the requirements for
10 ozone monitoring are far exceeded in that area of the
11 state. We have more than required monitors throughout the
12 state.

13 BOARD MEMBER GARCIA: Thank you, sir. That's
14 all.

15 HEARING OFFICER: Thank you. Member Honker?

16 MEMBER HONKER: I have no questions.

17 HEARING OFFICER ORTH: All right. Thank you very
18 much.

19 Mr. Knight, did that line of questioning earlier
20 raise any need to do redirect for you?

21 MR. KNIGHT: Yes, Madam Hearing Officer. I think
22 maybe just one or two redirect questions, if I may.

23 SURREBUTTAL REDIRECT EXAMINATION OF MICHAEL BACA
24 BY MR. KNIGHT:

25 Q. Mr. Baca, now, is it true that Chaves County is

1 in the air quality -- the same air quality control region
2 that the Carlsbad air monitor is in?

3 A. Yes, it is. It's within the same control region
4 as the Carlsbad and Hobbs monitor.

5 Q. And is it true that the Rio Arriba County is --
6 or at least a portion of Rio Arriba County or half of it
7 is in the air quality control region -- the same air
8 quality control region as San Juan County?

9 A. That is correct. The three monitors in San Juan
10 County are within the same air quality control region as
11 the oil and gas sources in Rio Arriba County. So if
12 you'll remember, the Rio Arriba County at the Continental
13 Divide is split east and west. And then on the west side
14 of the Continental Divide is heavy oil and gas activity
15 right along the San Juan border and really close to our
16 Navajo Lake San Juan monitor.

17 MR. KNIGHT: Okay. Thank you. That's all the
18 questions I have for this witness.

19 HEARING OFFICER ORTH: All right. Thank you. Is
20 there any reason not to excuse Mr. Baca? No?

21 Thank you very much, Mr. Baca. As I understand
22 it, other parties may or may not have questions once
23 they've had a chance to look at amended Exhibit 4, but so
24 far as I know, that would be the only reason to recall him
25 based on the events of the last hour. So, thank you,

1 Mr. Knight, for that.

2 Two things: We should -- we should adjourn for
3 the day, I believe, but two things: One is a request from
4 the Board of all parties, which is when you call your
5 witness, if you would please as part of your calling that
6 witness, or in the earliest remarks of that witness,
7 identify the exhibits that represent their testimony and
8 the other exhibits they'll be talking about. It helps
9 those of us who are surrounded by boxes and scrolling
10 through thousands of pages of documents that are on the
11 screen. So please do that.

12 The other thing is, Ms. Katz, if you would,
13 please, address the topics we're going to be able to cover
14 tomorrow. We have just a little bit of public comment, so
15 far as I can tell right now, at 9. And then, as I
16 understand it, we're going to be leaping into modeling.

17 MS. KATZ: Yes, Madam Hearing Officer. That's
18 the plan, and I believe all of the parties -- I haven't
19 heard any issues with that. I believe all of the modeling
20 witnesses are available tomorrow except for EDS witness
21 and perhaps she can be -- she can put on her testimony
22 Wednesday at some point. And so, yes, I think modeling,
23 the -- so the economic analysis and the small business
24 facility definition, so topics 5 and 6 need to go on
25 Wednesday, and, hopefully, first thing in the morning

1 because of our -- the Department's witness who is in the
2 UK. So I think what I would propose would be we do the
3 modeling and then we maybe move it down into some of the
4 topics on 8, 9, 10, and some of those, and see what we get
5 through.

6 HEARING OFFICER ORTH: Thank you for that,
7 Ms. Katz. Mr. Hiser, I see you on screen. Do you have a
8 comment?

9 MR. HISER: Thank you, Madam Hearing Officer. I
10 just had a question -- actually two questions for you.
11 The first is, the order's a little bit unclear, but is it
12 your intent that we circulate surrebuttal materials in
13 advance as well, or not? We just need to know for
14 purposes of timing and planning.

15 HEARING OFFICER ORTH: Yeah, I think it would --
16 things would go more smoothly if you could -- you could do
17 that.

18 MR. HISER: Okay.

19 HEARING OFFICER ORTH: Any -- any comment on
20 that, Ms. Katz?

21 MS. KATZ: Yes, ideally -- yes, ideally, that
22 would be better than not, if they're -- if they're
23 prepared.

24 MR. HISER: I think that -- we certainly
25 understand that there may be times that parties run into

1 problems. I just was trying to understand the expectation
2 of us as well, so that we knew when we needed to have
3 things available.

4 And then the second question is somewhat related
5 to that, Madam Hearing Officer, is that Mr. Rose was a bit
6 flustered as were you during the discussion with his
7 witness, Blewitt, and I don't know if we actually touched
8 on all of the exhibits that were related to Mr. Blewitt's
9 testimony for today. And so I just wanted to make sure
10 that we had appropriately put the record together for
11 that.

12 HEARING OFFICER ORTH: Yeah. So we can clear
13 that up tomorrow. I'm looking at the wrong -- when we
14 pulled up the wrong slide stack, it was confusing and I
15 wasn't sure why I was confused. But let's --

16 MR. HISER: Thank you.

17 HEARING OFFICER ORTH: Let's clear that up when
18 we next see Mr. Blewitt. I'll try to make a note of all
19 of these loose ends.

20 MR. HISER: Thank you.

21 HEARING OFFICER ORTH: Is there anything else
22 that we can discuss while we're together this evening
23 before we adjourn?

24 Otherwise, we'll see you at 9:00 tomorrow
25 morning. Again, I don't have a lot of public commenters

1 at this moment, and then we'll -- we'll leap into the
2 modeling and go from there. Thank you, all. Have a good
3 evening.

4 (Proceedings adjourned 09/20/2021 at 6:18 p.m.)
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STATE OF NEW MEXICO
BEFORE THE NEW MEXICO ENVIRONMENTAL IMPROVEMENT BOARD
PROPOSED ADOPTION OF RULE 21-27 NMAC
RULES HEARING

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on September 20, 2021, the Public 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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