

1246 1 STATE OF NEW MEXICO 2 ENVIRONMENTAL IMPROVEMENT BOARD 3 4 No. EIB 21-27(R) 5 IN THE MATTER OF PROPOSED NEW REGULATION, 6 20.2.50 NMAC - Oil and Gas Sector - 7 Ozone Precursor Pollutants 8 9 10 TRANSCRIPT OF PROCEEDINGS 11 12 BE IT REMEMBERED that on the 24th day of 13 September, 2021, this matter came on for hearing before 14 FELICIA ORTH, Hearing Officer, virtually through Cisco 15 Webex Meetings video conferencing, at the hour of 9:00 16 a.m. 17 18 Volume 5 19 20 21 REPORTED BY: CHERYL ARREGUIN, RPR 22 New Mexico CCR No. 21 23 Albuquerque Court Reporting Service, LLC 24 3150 Carlisle Boulevard, Northeast 25 Suite 104 Albuquerque, New Mexico 87110 (505) 806-1202 abqcrs@gmail.com	1248 1 A P P E A R A N C E S (Continued) 2 For the New Mexico Oil and Gas Association: 3 ERIC L. HISER 4 BRANDON CURTIS 5 Jordan Hiser & Joy, PLC 6 5080 N. 40th Street 7 Suite 245 8 Phoenix, Arizona 85024 9 (480) 505-3900 10 ehiser@jhjlawyers.com 11 bcurtis@jhjlawyers.com 12 DALVA L. MOELLENBERG 13 Gallagher & Kennedy, PA 14 1239 Paseo de Peralta 15 Santa Fe, New Mexico 87501 16 (505) 982-9523 17 dlm@gknet.com 18 19 For Conservation Voters New Mexico, Dine C.A.R.E., 20 Earthworks, Natural Resources Defense Council, San Juan 21 Citizens Alliance, Sierra Club, and 350 New Mexico 22 ("Clean Air Advocates"): 23 24 TANNIS FOX 25 Attorney at Law Western Environmental Law Center 409 East Palace Avenue #2 Santa Fe, New Mexico 87501 (505) 629-0732 fox@westernlaw.org DAVID R. BAAKE Baake Law LLC 2131 North Main Street Las Cruces, New Mexico 88001 (575) 343-2782 david@baakelaw.com
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Volume 5

9/24/2021

EIB Ozone Hearing

1254	1256
1 I N D E X	1 I N D E X (Continued)
2 PAGE	2 PAGE
3 WITNESSES:	3 WITNESSES (Continued):
4 LARRY SONNTAG	4 KYLE FIORE
5 Public Comment 1264	5 Public Comment 1415
6 CULLY CAVNESS	6 JOHN R. SMITHERMAN (Topic Order 23)
7 Public Comment 1269	7 Direct Examination by Mr. Hiser 1424
8 ERNIE CARLSON	8 DAVID BROWN (Topic Order 23)
9 Public Comment 1274	9 Direct Examination by Mr. Rose 1434
10 NICK MCCLELLAND	9 Cross-Examination by Ms. Katz 1442
11 Public Comment 1280	10 Examination by the Board 1443
12 STEPHEN PICHA	11 DANNY HOLDERMAN (Topic Order 23)
13 Public Comment 1285	12 Examination by the Board 1449
14 ATHENA CHRISTODOULOU	13 MARK COPELAND (Topic Order 23)
15 Public Comment 1288	14 Direct Examination by Ms. Sheehan 1452
16 NANCY SHANE	14 Cross-Examination by Mr. Nykiel 1460
17 Public Comment 1292	15 Redirect Examination by Ms. Sheehan 1464
18 JEREMY NICHOLS (Topic Order 21)	16 LORI MARQUEZ (Topic Order 23)
19 Examination by the Board 1299	17 Direct Examination by Mr. Colclasure 1467
19 Redirect Examination by Mr. Nykiel 1311	17 Cross-Examination by Ms. Katz 1478
20	18 Examination by the Board 1479
DOUG N. BLEWITT (Topic Order 21)	19 JILL COOPER (Topic Order 23)
21	20 Direct Examination by Ms. Shpall 1485
Direct Examination by Mr. Rose 1319	20 Cross-Examination by Ms. Katz 1494
22 Cross-Examination by Mr. Nykiel 1326	21 Examination by the Board 1495
23 IL KIM (Topic Order 21)	22 JEREMY NICHOLS (Topic Order 23)
24 Direct Examination by Ms. Shpall 1335	23 Direct Examination by Mr. Nykiel 1516
24 Examination by the Board 1339	23 Cross-Examination by Mr. Colclasure 1530
25	24 Cross-Examination by Mr. Rose 1541
	24 Cross-Examination by Ms. Sheehan 1548
	25 Examination by the Board 1574
1255	1257
1 I N D E X (Continued)	1 I N D E X (Continued)
2 PAGE	2 PAGE
3 WITNESSES (Continued):	3 WITNESSES (Continued):
4 MICHAEL G. BACA (Topic Order 21 continued)	4 DAVID BOUQUIN
5 Direct Examination by Ms. Katz 1341	5 Public Comment 1554
5 Cross-Examination by Mr. Rose 1344	6 ELLEN DUEWEKE
6 Cross-Examination by Mr. Hiser 1345	7 Public Comment 1558
6 Cross-Examination by Mr. Nykiel 1346	8 JEFF STEINBORN
7 Examination by the Board 1349	9 Public Comment 1562
8 ELIZABETH BISBEY-KUEHN (Topic Order 23)	10 TARA LUJAN
9 Direct Examination by Ms. Katz 1353	11 Public Comment 1564
9 Cross-Examination by Ms. Gutierrez 1365	12 DAVID SHOUP
10 Cross-Examination by Mr. Hiser 1368	13 Public Comment 1568
10 Cross-Examination by Mr. Nykiel 1375	14 RHONDA NEWBY-TORRES
11 Examination by the Board 1376	15 Public Comment 1572
11 Examination (Continued) by the Board 1418	16 ELIZABETH BISBEY-KUEHN and MICHAEL G. BACA (Topic Order 23 continued)
12 Redirect Examination by Ms. Katz 1422	17
13 MARGARET BELL	17 Direct Examination of Elizabeth Bisbey-Kuehn 1582
14 Public Comment 1393	18 by Ms. Katz
15 KATHY MILLER	18 Direct Examination of Michael G. Baca 1588
16 Public Comment 1397	19 by Ms. Katz
17 KAREN BONIME	19 Cross-Examination of Michael G. Baca 1595
18 Public Comment 1403	20 by Mr. Nykiel
19 MARLYS LESLEY	20 Examination by the Board 1600
20 Public Comment 1405	21
21 RENEE WOLTERS	22
22 Public Comment 1409	23
23 JOHN ELLIG	24
24 Public Comment 1412	25
25	

1258		1260	
1	E X H I B I T S	1	E X H I B I T S (Continued)
2	ADMITTED	2	ADMITTED
3	NOTE: No exhibits are attached physically to this transcript. They can be found online at	3	GAS COMPRESSOR ASSOCIATION (Continued):
4	www.env.nm.gov/opf/docketed-matters/	4	GCA 14. New Mexico Environment Department's Technical Spreadsheet 1451
5	"COMMERCIAL DISPOSAL GROUP":	5	"ICE-ReductionsandCosts-NO2-6-4-21.xls" 1451
6	CDG 1. Redline Showing Recommended Modification to Proposed Regulation 1338	6	GCA 15. Advance Written Testimony of Mark Copeland 1451
7		7	GCA 16. Resume of Mark Copeland 1451
8	CDG 2. Typical Produced Water Management Unit Design - Attachment B to Direct Testimony of Il Kim 1338	8	GCA 17. Advance Written Testimony of Raymond Carr 1451
9		9	GCA 18. Resume of Raymond Carr 1451
10	CDG 3. Typical Disposal Well Operation - Attachment C to Direct Testimony of Il Kim 1338	10	GCA 19. FW Murphy SLS (Scrubber Level System) Gas Emissions Calculator Spreadsheet 1451
11	CDG 4. Streams with High Moisture Content - Attachment D to Direct Testimony of Il Kim 1338	11	GCA 20. FW Murphy Liquid Level Switches (LS200 Series) 1451
12		12	
13	CDG 5. Cost Estimate of the Economic Impacts - Attachment E to Direct Testimony of Il Kim 1338	13	GCA 21. FW Murphy Scrubber Level Control Systems 1451
14	GAS COMPRESSOR ASSOCIATION:	14	GCA 22. Report on Oil and Natural Gas Sector Pneumatic Devices, U.S. EPA Office of Air Quality Planning and Standards (April 2014) 1451
15	GCA 1. The Gas Compressor Association's Proposed Amendments to the following proposed regulations set forth in the Proposed Rule: 20.2.50.113.B(2), Table 1 and 20.2.113.B(3), Table 2 NMAC 1451	15	
16		16	GCA 23. Advance Written Testimony of Brendan Filby 1451
17	GCA 2. The Gas Compressor Association's Proposed Amendments to the following proposed regulation set forth in the Proposed Rule: 20.2.50.113.C(1) NMAC 1451	17	GCA 24. Resume of Brendan Filby 1451
18		18	GCA 25. Advance Written Testimony of Randy Bartley 1451
19		19	
20	GCA 3. The Gas Compressor Association's Proposed Amendments to the following proposed regulations set forth in the Proposed Rule: 20.2.50.7; 20.2.50.122.B(3), Tables 1 & 2; 20.2.50.122.B(4) and 20.2.50.122.C(1) & (4) NMAC 1451	20	GCA 26. Resume of Randy Bartley 1451
21		21	GCA 27. New Mexico Air Quality Bureau, NSR & TV: IC Engines Monitoring Protocol - Permit Template Language at Note 3 (Version: May 23, 2016) 1451
22		22	
23		23	GCA 28. Advance Written Rebuttal Testimony of John Dutton 1451
24		24	
25		25	

1259		1261	
1	E X H I B I T S (Continued)	1	E X H I B I T S (Continued)
2	ADMITTED	2	ADMITTED
3	GAS COMPRESSOR ASSOCIATION (Continued):	3	GAS COMPRESSOR ASSOCIATION (Continued):
4	GCA 4. The Gas Compressor Association's Proposed Amendments to the following proposed regulations set forth in the Proposed Rule: 20.2.50.115.B(4) and 20.2.50.113.C(2) NMAC 1451	4	GCA 29. Pennsylvania GP-5, Exemption 38 1451
5		5	GCA 30. Advance Written Rebuttal Testimony of Mark Copeland 1451
6	GCA 5. The Gas Compressor Association's Proposed Amendments to the following proposed regulation set forth in the Proposed Rule: 20.2.50.112.B(2) NMAC 1451	6	
7		7	GCA 31. 56 Fed. Reg. 21712 (May 10, 1991) 1451
8	GCA 6. The Gas Compressor Association's Proposed Amendments to the following proposed regulation set forth in the Proposed Rule: 20.2.50.113.C(3) NMAC 1451	8	GCA 32. Advance Written Rebuttal Testimony of Mark Davis 1451
9		9	GCA 33. Resume of Mark Davis 1451
10	GCA 7. The Gas Compressor Association's Proposed Amendments to the following proposed regulation set forth in the Proposed Rule: 20.2.50.116.C(1)(e) NMAC 1451	10	GCA 34. The Gas Compressor Association's Proposed Amendments to the following proposed regulations set forth in the Proposed Rule: 20.2.50.7; 20.2.50.122.B(3), Tables 1 & 2; 20.2.50.122.B(4) and 20.2.50.122.C(1), (3) & (4); 20.2.50.122.D(5) NMAC 1451
11		11	
12	GCA 8. The Gas Compressor Association's Proposed Amendments to the following proposed regulations set forth in the Proposed Rule: 20.2.50.112; 20.2.50.113.B(9), C(7) and D(1) & (2); 20.2.50.114.B(5); 20.2.50.115.B(3) & (4), C(2)(d), D(2)(c) and E(2)(b); 20.2.50.117.B(4) and C(3); 20.2.50.118.B(3)(d); 20.2.50.119.B(4) and C(4); 20.2.50.122.B(6), C(4) and D(6) & (7); 20.2.50.123.B(8) and C(4); and 20.2.50.123.B(8) and C(4) NMAC 1451	12	
13		13	
14	GCA 9. Advance Written Testimony of Vic Sheldon 1451	14	
15		15	
16	GCA 10. Resume of Vic Sheldon 1451	16	
17		17	
18	GCA 11. Technical Support Documentation for the Cross-State Air Pollution Rule for the 2008 Ozone NAAQS Docket ID No. EPA-HQ-OAR-2015-0500 1451	18	
19		19	
20	GCA 12. Advance Written Testimony of John Dutton 1451	20	
21		21	
22	GCA 13. Resume of John Dutton 1451	22	
23		23	
24		24	
25		25	

1262 1 HEARING OFFICER ORTH: Good morning. 2 My name is Felicia Orth. I'm the Hearing 3 Officer appointed by the Environmental Improvement Board 4 to conduct a hearing in EIB 21-27. This is a rulemaking 5 hearing on ozone precursors. 6 We begin each morning with public comment on 7 the rule petition. 8 And let me share with you the names of public 9 commenters I'll be calling on this morning. And I'll 10 call on you in this order, based on the e-mails to 11 Pamela Jones, the Board administrator, Cully Cavness, 12 Larry Sonntag, Nick McClelland, Commissioner Ernie 13 Carlson, Jack Bent, Stephen Picha, Athena Christodoulou. 14 Let's see. 15 All right. 16 In the event you're on the platform and I did 17 not just call your name, I'm still happy to accept your 18 public comment. Please reach out in the chat. Chat is 19 enabled for everyone. And in the event you have a 20 challenge with the chat function, please reach out to 21 Pam Jones at (505) 660-4305. 22 Public comment is taken under oath, as with 23 all testimony in this proceeding, and is limited to five 24 minutes, and, finally, is offered by audio rather than 25 video.	1264 1 have some better luck. 2 Mr. Sonntag? 3 Mr. Sonntag, can you hear me? 4 MR. SONNTAG: I can hear you. 5 Can you hear me? 6 HEARING OFFICER ORTH: Yes, I can. 7 Our court reporter today is Cheryl Arreguin. 8 She's making a transcript. So I would just ask you to 9 keep your voice up. 10 And would you raise your right hand. 11 Do you swear or affirm to tell the truth? 12 MR. SONNTAG: I do. 13 HEARING OFFICER ORTH: Thank you. 14 LARRY SONNTAG 15 having been first duly sworn or affirmed, gave 16 public comment as follows: 17 PUBLIC COMMENT 18 HEARING OFFICER ORTH: And if you would begin 19 by spelling your name. 20 MR. SONNTAG: Yes. Larry, L-A-R-R-Y, Sonntag, 21 S-O-N-N-T-A-G. 22 HEARING OFFICER ORTH: Thank you. 23 And I'll start your five minutes now. 24 MR. SONNTAG: Thank you, Madam Hearing Officer 25 and Members of the Environmental Improvement Board, for
1263 1 I just had a chat message from Nancy Shane, 2 and we'll add her to the -- to the list this morning. 3 Let's see here. 4 All right. So let me start with Cully 5 Cavness. 6 And let's see, Mr. Cavness. I'll find you and 7 unmute you. 8 Can you hear me? 9 Mr. Cavness? 10 I'm unmuting Mr. Cavness. Let's see here. 11 It's -- the unmute button isn't working, 12 Mr. Cavness. I'm working on this. I'm not sure why the 13 unmute button is not working. 14 Board Members, I did send you Mr. Cavness' 15 slides as a PDF so you can follow along. 16 Let's see. 17 Well, excuse me for just a moment. I'm going 18 to close out of that and reopen it and try again. Just 19 a moment, please. 20 I'm not sure why the unmute button is not 21 working for Mr. Cavness. 22 Well, I haven't had this happen before. Let 23 me see -- now Mr. Cavness has disappeared from the 24 platform. All right. 25 Let me go to Larry Sonntag. Let's see if we	1265 1 allowing the opportunity for public comment. 2 I've been in New Mexico almost all of my life. 3 I wasn't born here, but I've been here for 60 years. 4 I served in the United States Air Force for 10 5 years, guarding nuclear weapons, and then I did 20 years 6 with the Albuquerque Police Department. 7 I have skin in the game. I am very proud 8 American. I remember back in the '70s whenever energy 9 was a whole different situation. We had people that 10 were controlling oil and gas, not the United States, and 11 there were all kinds of gas rationing and issues that 12 are not the situation now. 13 I'm very proud New Mexican because our 14 national security and energy independence in a great 15 part comes from this state. Our oil and gas producers, 16 I believe, are number three or four in the nation for 17 oil and number nine in gas production. 18 I'm a resident of Bernalillo County. Just in 19 my county -- there is no oil and gas operations in 20 Bernalillo County. \$409 million in total education 21 funding come from this industry. Over 26,000 jobs just 22 in my county come from this industry. \$85 million went 23 last year to the state to help fund public safety. As 24 we all know, that's very important in Albuquerque. 25 That's a whole other story.

1266 1 But that's just the tax revenue. Oil and gas 2 companies give millions, they have given billions of 3 dollars over the last 10 years in philanthropy, not just 4 in taxes, but they support the community that they work 5 in. 6 I understand your job here is to look at the 7 environment when it comes to methane and ozone and 8 regulations, and I -- I want clean air, clean water, 9 just like everybody else does, so it's important that 10 there are regulations in place. 11 I believe over the last 10 years in particular 12 the New Mexico oil and gas industry has invested 13 billions of dollars in new technology, and toxic 14 emissions have actually come down in the midst of 15 increased productions. I encourage you to keep that in 16 mind. 17 Some of the concerns that I have, this 18 collaborative process that's been going on between the 19 industry and the Environmental Department for a couple 20 of years now is good, but agreements were made based on 21 that input, and then at the last minute things that have 22 been put in place to address smaller wells -- I guess 23 they're called stripper wells -- that was changed just 24 like at the last minute before this hearing started 25 because of input from one side of the conversation.	1268 1 the Environmental Improvement Board you are not elected 2 officials. You are the voice of reason for New 3 Mexicans, and I appreciate your service. I appreciate, 4 Madam Hearing Officer, what you're doing. 5 I just would encourage you to look at what is 6 reasonable, what is practical, what is economical, and 7 not a rule that is so broad based and one size fits all. 8 Thank you. 9 HEARING OFFICER ORTH: Thank you, Mr. Sonntag. 10 And I did at your request check to see if I 11 could change the setting to allow all attendees see the 12 names of other attendees. I certainly would have no 13 objection to that setting, and it's not a setting that's 14 available to me in Cisco Webex Event. So I'm sorry 15 about that. But I tried. 16 MR. SONNTAG: Well, thank you very much. 17 HEARING OFFICER ORTH: Thank you. 18 Let's see. We will go, then, back to 19 Mr. Cavness, who rejoined us. Let's see. 20 Mr. Cavness, let me see if I can unmute you 21 now. 22 Mr. Cavness, can you hear me? 23 MR. CAVNESS: I can hear you. 24 Can you hear me? 25 HEARING OFFICER ORTH: Yes. Yes. Terrific.
1267 1 That's concerning. 2 I'm also concerned that there's been 3 conversations that would maybe dissuade the use of 4 recycled water. Water is very important to every part 5 of our state, and I don't know if you've already got 6 this worked out, but we should be doing everything we 7 can to encourage and keep going, what the oil and gas 8 industry is doing to recycle water, and nothing to stop 9 that. 10 I'm a small business owner now, and I can tell 11 you that one size fits all does not work on any 12 government regulation. I understand that this rule that 13 you're considering could require 35 new administrative 14 rules that a company would have to follow. That is not 15 practical or realistic for a small company. 16 I understand you may be -- there's some 17 language in that says will recognize maybe some 18 different ideas for smaller producers, but they have to 19 have less than 10 employees. Okay. That's one thing. 20 The other criteria is gross revenue of less 21 than \$250,000. If any of you have ever had your own 22 business, gross revenue of less than \$250,000, that is 23 almost -- takes almost any small business out of the 24 picture for qualification. 25 I appreciate the work that you're doing. As	1269 1 This worked. 2 MR. CAVNESS: Perfect. 3 HEARING OFFICER ORTH: Would you raise your 4 right hand, please. 5 Do you swear or affirm to tell the truth? 6 MR. CAVNESS: I do. 7 HEARING OFFICER ORTH: Thank you. 8 CULLY CAVNESS 9 having been first duly sworn or affirmed, gave 10 public comment as follows: 11 PUBLIC COMMENT 12 HEARING OFFICER ORTH: And if you would start 13 by spelling your name. 14 MR. CAVNESS: My name is Cully Cavness, 15 C-U-L-L-Y C-A-V-N-E-S-S. 16 HEARING OFFICER ORTH: Thank you. 17 I'll start your five minutes now. 18 MR. CAVNESS: Well, thank you very much for 19 the time to -- to be a part of this hearing and to 20 provide a little bit of information about a technology 21 that I think might be relevant for helping to 22 economically reduce smog precursors, and especially 23 those related to the ozone and carbon monoxide VOCs and 24 nitrogen oxides that all get together to create smog. 25 So I think the previous, you know,

1270 1 presentation was -- the previous testimony was -- was 2 helpful in kind of setting up and framing the discussion 3 that there are a wide range of -- of types of operators 4 in the oil and gas industry, and some of the small and 5 medium size companies, they do have economic constraints 6 that make it difficult for them to get all their gas 7 into a pipeline. 8 Building pipeline infrastructure can be 9 costly, and when there's a well that's drilled at a 10 place that's on the perimeter or the periphery of an oil 11 field, sometimes it's so far away from the core of the 12 infrastructure that connecting that well can take time 13 and may not be, you know -- may not be economic unless 14 they've been able to see exactly how productive a well's 15 going to be and if it would justify connecting to the 16 pipeline. 17 And historically that's been a really big 18 issue, leading to flaring of natural gas. So operators 19 would drill a well looking for oil, produce that oil 20 into trucks, and the trucks would go to a refinery, and 21 then the gas, if it wasn't connected into a pipeline 22 system, would be lit on fire and flared. 23 Flaring is obviously wasteful. It -- it 24 wastes all the natural gas and the potential value and 25 productivity of that energy. But it also is a fairly	1272 1 and the benefit environmentally is that a generator 2 fully combusts the methane. It gets a 99.89 percent 3 combustion efficiency. It also really removes all those 4 smog precursors that I think are the subject of -- of 5 this environmental improvement discussion, more than 6 90 percent relative to flaring. 7 So because we're removing the methane from the 8 emission stream, it's a 63 percent reduction in CO2 9 equivalent emissions, as well. So there's a significant 10 greenhouse benefit by removing methane, which is a 11 really powerful greenhouse gas. 12 I submitted some slides to the -- to the 13 committee. It sounds like there were some technical 14 issues that might prevent that from being displayed. So 15 I think I hit on most of the key points here. 16 But, you know, our business is active in North 17 Dakota, Montana, Colorado and Wyoming. We're not 18 currently doing business in New Mexico. But it does 19 seem like there's a -- you know, there's a significant 20 challenge with flaring in the Permian Basin. 21 We'd love to be able to offer a solution and 22 just wanted everyone to be aware that this is a -- this 23 is a good solution for onsite flare capture and the 24 elimination of those emissions that are associated with 25 flaring in places that are difficult to get to with a
1271 1 inefficient way to combust the gas. Some of the methane 2 escapes into the atmosphere uncombusted, and also 3 there's no emissions control system to reduce things 4 like volatile organic compounds, NOx, carbon monoxide 5 and -- and those things that get together to create 6 smog. 7 So there's a new technology that I just wanted 8 the committee to be aware of, a company that I started 9 in 2018 with -- with a business partner here in Denver, 10 Colorado. It's called Crusoe Energy Systems. 11 What we do is we capture flaring natural gas, 12 we put it through a generator that has the best possible 13 emissions control systems installed, including catalysts 14 that reduce NOx, carbon monoxide and VOCs by more than 15 90 percent. And we generate electricity with that 16 otherwise wasted gas and then use it to power mobile 17 modular data centers that we deploy right to the well 18 site, and those data centers are connected by satellite 19 Internet to the outside world. 20 There are very energy-intensive computing 21 applications going on inside, like cryptocurrency 22 mining, graphics rendering, AI model training, 23 computational biology, things that require a lot of 24 energy on a continuous basis. 25 So we can use up that otherwise wasted energy,	1273 1 pipeline. 2 So historically there hasn't been an economic 3 way to do that. Now there is. We actually don't even 4 charge the oil companies for the service. They do 5 generate a little bit of incremental revenue from gas 6 sales with this model so it's a real win/win for them 7 and for the state. 8 And I'd be -- 9 HEARING OFFICER ORTH: Thank you very much. 10 MR. CAVNESS: -- happy to answer any 11 questions, but that's really all I wanted to say. 12 HEARING OFFICER ORTH: All right. Thank you 13 very much, Mr. Cavness. 14 I don't know if you can see the screen, but 15 it's clear that the Board Members are looking at your 16 slides while you're -- while you're speaking. 17 So thank you for all of that. 18 MR. CAVNESS: Thank you. 19 HEARING OFFICER ORTH: Thank you. 20 Let's see. I see Commissioner Carlson next. 21 Commissioner Carlson, can you hear me? 22 MR. CARLSON: Yes. 23 HEARING OFFICER ORTH: Great. Your voice is 24 coming through loud and clear. 25 If you would raise your right hand.

1274 1 Do you swear or affirm to tell the truth? 2 MR. CARLSON: I do. 3 HEARING OFFICER ORTH: Thank you. 4 ERNIE CARLSON 5 having been first duly sworn or affirmed, gave 6 public comment as follows: 7 PUBLIC COMMENT 8 HEARING OFFICER ORTH: And if you would start 9 by spelling your name, please. 10 MR. CARLSON: My name is Ernie, E-R-N-I-E, 11 Carlson, C-A-R-L-S-O-N. 12 HEARING OFFICER ORTH: Thank you. 13 I'm going to start your five minutes now. 14 MR. CARLSON: Okay. 15 Hello. I'm Ernie Carlson. I'm Eddy County 16 Commissioner for District 1. 17 I appreciate the opportunity to speak to you 18 on the subject of how important the oil and gas industry 19 is to not only Southeast New Mexico, but the entire 20 state. 21 Let me first tell you a little bit about 22 myself and my experience. 23 I spent 28 years as a chief financial officer 24 of a construction company, and when I went to work, the 25 company was a \$9 million a year company, which I helped	1276 1 economic environment. I would say to you that one 2 doesn't exist without the other. When you're 3 considering taking action on one, you darn sure better 4 consider the effect on the other. 5 As a commissioner, myself and Wes Hooper have 6 been traveling around the State of New Mexico, trying to 7 educate and enlighten the various cities and counties on 8 how important the oil and gas industry is to the overall 9 economic health of New Mexico. 10 As part of the Eddy County Commission, we 11 travel to Santa Fe each year for the legislative 12 session, except for last year due to the pandemic. 13 There -- there we advocate for infrastructure funding 14 for Southeast New Mexico to carry out -- to carry -- and 15 to carry the message of how important the oil and gas 16 industry is to all of New Mexico. 17 Each year we receive the same response. How 18 do I explain to my constituents why I would vote to 19 spend money on infrastructure in Southeast New Mexico 20 rather than bringing those dollars back to my district? 21 Our answer was and always has been the same. By 22 providing infrastructure funding to Southeast New Mexico 23 and supporting the oil and gas industry, you're helping 24 us help you. 25 This answer has always received a great deal
1275 1 grow into a \$100 million a year company. The way we did 2 this was by being a get it done company. 3 All successful companies are faced with 4 problems from time to time, but how they approach and 5 solve these problems are what separates the mediocre 6 companies from the get it done companies. 7 One of our approaches was that when you bring 8 a problem or a change of policy to the table, you have 9 to bring a workable solution with it. That solution has 10 to meet two requirements. One is that it can't have a 11 negative effect on the viability of the company. And 12 secondly, it can't have a negative impact on the 13 company's revenue and income, because when you take care 14 of the lifeblood of an entity, you create opportunity 15 and growth. 16 Everyone wants to be a part of a success 17 story, and that's how you create success. I would say 18 to you that the O and G in opportunity and growth in New 19 Mexico is spelled oil and gas, and before we enact any 20 more onerous policies and regulations, we need to check 21 the box on the two requirements that I alluded to 22 earlier. 23 Within every state there are several different 24 environments. One of those environments is the natural 25 environment, and another one is being the -- is the	1277 1 of skepticism. So we as a commission engaged the 2 Arrowhead Center at New Mexico State University to 3 study -- to do a study on showing how the economic 4 impact of each county has on the state budget as a 5 whole. This study was done on a per capita, meaning per 6 person, basis. 7 In looking at the results of the study, we can 8 readily see the major impact that Eddy and Lea Counties 9 have on the -- New Mexico's economy. These two counties 10 are the second largest producer of oil in the nation, 11 second only to Texas. These two counties contribute 12 \$102,000 per person and \$101,000 per person per year 13 respectively to the state budget, according to the 14 Arrowhead study. 15 No other county in the state even comes close 16 to contributing to the state budget and our overall 17 economy compared to Eddy and Lea Counties. In fact, 18 there are only six out of 33 counties in the entire 19 state that contribute more than they receive back in 20 fed -- in state funding. 21 The driver behind the revenues coming out of 22 Southeast New Mexico is the oil and gas industry. The 23 health of the state's economy is dependent on these 24 revenues. 25 As an example, according to our state's land

1278 1 commissioner, royalties from oil and gas produce -- oil 2 and gas produced off of state leased lands amounted to 3 \$109 million a month. That's \$1.3 billion annually just 4 off its royalty interest on state leased lands. 5 Grossing up that 12-and-a-half percent royalty interest, 6 that amount would be approximately 10-and-a-half billion 7 dollars flowing into our state's economy. Plus state 8 land leases only equate to about 30 percent of the 9 producing lands in Southeast New Mexico. 10 The other thing that we found in traveling 11 across the State of New Mexico is that people outside of 12 Southeast New Mexico aren't familiar with exactly where 13 the oil and gas activity is located and its proximity to 14 the Texas state line. 15 The thing we'd like to highlight in our 16 presentation -- that we like to highlight in our 17 presentation is every time a bill is introduced into the 18 state legislature that is punitive to the oil and gas 19 industry, whether it passes or not, the state -- the oil 20 and gas companies take notice. 21 And they have a choice. They have a choice of 22 spending their drilling and production budgets in New 23 Mexico or spending it drilling on the same formation a 24 few miles to the south or east in West Texas. 25 From an environmental impact on New Mexico --	1280 1 Commissioner. 2 We go, then, to Nick McClelland. I think I 3 saw Mr. McClelland earlier. 4 Mr. McClelland, I'm unmuting you. 5 Can you hear me? 6 MR. MC CLELLAND: Yes. 7 Can you hear me? 8 HEARING OFFICER ORTH: Oh, good. I can hear 9 you, yes. Thank you. 10 If you would please raise your right hand. 11 Do you swear or affirm to tell the truth? 12 MR. MC CLELLAND: I swear. 13 HEARING OFFICER ORTH: Thank you. 14 NICK MC CLELLAND 15 having been first duly sworn or affirmed, gave 16 public comment as follows: 17 PUBLIC COMMENT 18 HEARING OFFICER ORTH: And if you would start 19 by spelling your name. 20 MR. MC CLELLAND: Yes. It's Nick, N-I-C-K, 21 McClelland, M-C-C-L-E-L-L-A-N-D. 22 HEARING OFFICER ORTH: Thank you. 23 I'll start your five minutes now. 24 MR. MC CLELLAND: Thank you. 25 And thank you for giving me the opportunity to
1279 1 from an environmental impact on New Mexico standpoint, I 2 personally fail to see the great difference in whether 3 we are operating in Southeast New Mexico or across the 4 state line in West Texas. However, I do see a major 5 negative impact on New Mexico's economic environment 6 when they choose to spend those dollars in Texas rather 7 than New Mexico. 8 In closing, I would -- 9 HEARING OFFICER ORTH: Commissioner, would you 10 wrap up, please. 11 MR. CARLSON: I'm sorry? 12 HEARING OFFICER ORTH: Would you wrap up, 13 please? You've reached five minutes. 14 MR. CARLSON: Yes. 15 In closing, I would like to suggest that we be 16 a get it done state. 17 Let me state again, because it's so important 18 to the lifeblood, that when we create a hostile economic 19 environment for oil and gas companies and they choose to 20 spend their dollars elsewhere, borrowing from a closing 21 phrase on Dandy Don Meredith at the end of the Monday 22 night football games, you can turn out the lights and 23 the party is over. 24 Thank you. 25 HEARING OFFICER ORTH: Thank you very much,	1281 1 comment. 2 Like I said, my name is Nick McClelland. I 3 work for a small independent oil operator here in New 4 Mexico. 5 So just to get a little background on my 6 history, I'm from Roswell. My grandparents moved here 7 in 1955. My mom was a local middle school teacher. I 8 went to high school here in Roswell at NMMI, and I went 9 to New Mexico State University for my undergraduate in 10 Las Cruces. Go Aggies. 11 I also got my MBA with an energy focus at the 12 University of Oklahoma, which included studying 13 renewable energy. So I'm very familiar with the energy 14 market in this state. 15 Now, New Mexico is my home, and I love this 16 state, and I want to make it better in any way that I 17 can. I also have three children. So of course, I 18 constantly think about their future. So in that regard 19 I truly understand the concern about what future we're 20 leaving for the coming generations. But my concern is 21 that we will not be able to compete. 22 If you would please bear with me, I'd like to 23 try to paint a picture of what I believe our state is 24 facing with a lighthearted metaphor. 25 Like I said, I have three children. I have

1282 1 been teaching them to swim every summer. So 2 metaphorically speaking, I'm like fish on sources of 3 energy, like oil and natural gas, and the pool is New 4 Mexico. I'm a good swimmer, and, frankly, I swim the 5 fastest when there's nothing in my way. But I'm getting 6 older, and I would actually love for my kids to be 7 proficient swimmers, because I know our pool needs help 8 competing. 9 Now, my son is five years old, and he can swim 10 without floaties. In this sense he represents nuclear 11 power, and he has a lot of potential. Right now he's 12 very small, he's got a long way to go before he's doing 13 back flips off a high dive. Plus, ever when he's really 14 scared, he might just poop in the pool, so much so he's 15 not even allowed to compete at our pool. 16 Now, my three-year-old daughter is wind and 17 solar. She cannot swim without floaties, that the pool 18 provides, by the way. Now, these floaties represent 19 financial subsidies, but also material shortages on rare 20 earth minerals, like cobalt, graphite, lithium, and also 21 base metals, like copper, which copper specifically is 22 forecasted to have a 32 percent deficit in 2030. 23 Ironically, she can only swim when I'm holding 24 her. And by that I mean the amount of petroleum 25 products, minerals mining that goes into building wind	1284 1 is piddling, so to speak. 2 In my opinion, the lifeguard is proposing that 3 we cut my arm off for peeing in the pool, and let my 4 kids try to swim in the ocean before they're ready. 5 This represents the impact to oil and gas this rule has 6 and the immaturity and inadequacy of renewables to 7 replace our ability to compete. 8 Now, let's face it. If the number one 9 industry in this state suffers, we will all suffer. So 10 please don't cut my arm off and let my kids drown in the 11 ocean. Let me swim until the kids are good enough 12 swimmers to help us all win. 13 Thank you. 14 HEARING OFFICER ORTH: Thank you, 15 Mr. McClelland. 16 Let's see. The next name on the list was Jack 17 Bent. Let me see if Mr. Bent is on the platform. 18 I don't see him on the platform. 19 After that, I believe it was Stephen Picha. 20 Let's see here. Stephen Picha. And then Athena -- it 21 alphabetizes folks by first name. 22 All right. Mr. Picha, I'm unmuting you. 23 Can you hear me? 24 MR. PICHA: I can. 25 Can you hear me?
1283 1 turbines and solar panels. 2 My seven-month-old baby represents battery 3 storage. She is completely unprepared to be in the pool 4 by herself. Just like my youngest, battery storage is 5 in its infancy in every sense of the word, economically, 6 materially, stability-wise, efficiency-wise, and as it 7 applies to scalability. 8 Now, here's the deal. You're in a swim 9 competition in an unpredictable ocean, which is the 10 energy market. And if we lose, people will stop wanting 11 to come to our pool or leave our pool in New Mexico. 12 Now, the lifeguard, or the regulatory agencies, have 13 seen through the years that I've been peeing in the 14 pool. And I have. But I've gotten better and keep 15 getting better while winning more competition. And by 16 that I mean we've raised production, at the same time 17 reduced emission. 18 And on a side note, my kids pee in the pool, 19 too, but since they're kids, the lifeguard doesn't seem 20 to care. 21 Ironically, although the lifeguard is focused 22 on me, there are 99 other people peeing in our pool from 23 outside the pool. Like the experts that reference, this 24 represents a percentage of other states' emissions that 25 affect our state's ozone. So relatively speaking, mine	1285 1 HEARING OFFICER ORTH: Yes, very clearly. 2 Thank you. 3 If you would please raise your right hand. 4 Do you swear or affirm to tell the truth? 5 MR. PICHA: I do. 6 HEARING OFFICER ORTH: Thank you. 7 STEPHEN PICHA 8 having been first duly sworn or affirmed, gave 9 public comment as follows: 10 PUBLIC COMMENT 11 HEARING OFFICER ORTH: And if you would start 12 by spelling your name. 13 MR. PICHA: Stephen, S-T-E-P-H-E-N, Picha, 14 P-I-C-H-A. 15 HEARING OFFICER ORTH: I apologize for 16 mispronouncing that. 17 I'll start your five minutes now. 18 MR. PICHA: Thank you very much. 19 And my name is Stephen Picha. I come this 20 morning as a member of New Mexico InterFaith Power and 21 Light, as a member of a (unintelligible and/or 22 inaudible) community. I live here in Albuquerque, New 23 Mexico. 24 Earlier this week I was with an indigenous 25 friend of mine who was speaking about how he was not

1286 1 able to go outside even here in Albuquerque because of 2 the air quality and of his asthmatic condition. Having 3 a son who also is asthmatic, you know, the air quality 4 in all parts of our state, you know, are so important. 5 And I, as a member of New Mexico InterFaith 6 Power and Light, made a trip down to the Permian Basin 7 to try to educate myself and better understand what was 8 happening regarding, you know, both the importance of 9 the economics of this issue, but also what we were doing 10 for the long-term to the people in particular of that 11 area. 12 And I don't know if -- how many members of the 13 Environmental Improvement Board have made a trip to the 14 Permian Basin area, but I would encourage you to do so, 15 to get both a visual of, you know, what is happening in 16 that area, as well as maybe to speak to people, in 17 particular those who health -- have very valid concerns 18 about the health of their families, in particular their 19 children. 20 I think one of the things that I would also 21 ask, you know, that -- all of us in this state is to 22 consider, you know, who really has ownership of these 23 decisions. Is it, you know, boards like yourself, or is 24 it the dollars behind the industry? 25 I don't want us to, you know, lose the	1288 1 MS. CHRISTODOULOU: Athena, A-T-H-E-N-A, and 2 Christodoulou, C-H-R-I-S-T-O-D-O-U-L-O-U. 3 HEARING OFFICER ORTH: Thank you. 4 MS. CHRISTODOULOU: I -- thank you. 5 And I -- and I will say up front that those 6 slides are for reference only. I will not be able to 7 cover all of them. 8 HEARING OFFICER ORTH: No. That's fine. 9 Public comment in written form can be submitted in any 10 length. 11 Would you raise your right hand, please. 12 Do you swear or affirm to tell the truth? 13 MS. CHRISTODOULOU: I do. 14 HEARING OFFICER ORTH: All right. Thank you. 15 ATHENA CHRISTODOULOU 16 having been first duly sworn or affirmed, gave 17 public comment as follows: 18 PUBLIC COMMENT 19 HEARING OFFICER ORTH: I'm going to start your 20 five minutes now. 21 MS. CHRISTODOULOU: Thank you. 22 Madam Hearing Officer and Environmental 23 Improvement Board Members, thank you for -- for having 24 me here and listening to us, and thank you for switching 25 to a different platform, because the EIB review board on
1287 1 environmental -- I mean the economic importance of what 2 is created, but how do we responsibly do that. There is 3 technology that exists. That means that, you know, 4 there can be the economics and there can be the 5 long-term supporting care of both our earth and of its 6 citizens, especially those who are voiceless. 7 So I just come once again to invite all of us, 8 but in particular the Board, to be thinking about how we 9 are guardians. We are not -- I mean, I hear the 10 language of a voice of reason, but I think it's more so 11 than just being a voice of reason. We are making 12 decisions that will affect all of our children, 13 grandchildren and beyond our grandchildren in this 14 amazing, beautiful state. 15 So thank you for allowing me to speak this 16 morning. 17 HEARING OFFICER ORTH: Thank you very much, 18 Mr. Picha. 19 We will move, then, to Athena Christodoulou, 20 and -- let's see. I thought I saw you here. 21 MS. CHRISTODOULOU: I am here. 22 HEARING OFFICER ORTH: Oh. Okay. Terrific. 23 And your slides have been sent to the Board 24 Members so that they can follow along. 25 Would you please spell your name.	1289 1 the advanced clean air rules for New Mexico was 2 disappointing in its -- how it happened, as well as its 3 result. It set New Mexico back like a year or two at 4 least. 5 It's a -- I tried to get an electric vehicle. 6 A dealer wanted \$10,000 to bring it in from out of 7 state. 8 But back to myself and the issue on hand, my 9 name is Athena Christodoulou. I live in Albuquerque, 10 New Mexico. I'm an energy and environmental engineer 11 and a retired Navy commander. 12 Now let's get to the ozone precursors. 13 I want to point out first that 8.7 million 14 deaths a year are attributed to the air pollution caused 15 by fossil fuels. 8.7 million deaths a year. And that's 16 globally. 13.1 percent of deaths occur in the US 17 because of fossil fuel air pollution. 18 I had to leave Los Angeles as a teenager in 19 the early '70s because of the smog. I didn't even know 20 there was mountains around. And that pollution has 21 spread all over the world and has brought us to the edge 22 of the cliff of climate calamity. 23 One other thing I want to point out is that 24 the subsidies that the fossil fuel industry is getting 25 is basically putting them on, to use the previous

1290 1 speaker's -- one of the previous speaker's analogy, 2 fossil fuels have been lying on a raft and enjoying the 3 cruise. 4 Now let's talk about methane waste, which is 5 really what this is -- this Board is looking at. 6 And I want to point out that methane is 86 7 times more potent a greenhouse gas than carbon dioxide. 8 In other words, every molecule that gets out and escapes 9 and leaks means 86 more molecules must stay unburned. 10 And so we're asking that the New Mexico 11 Environment Department align with the Governor's goal to 12 make our rules more stringent on methane emissions. 13 We're actually trying to help the industry stay around a 14 little bit longer. 15 First, let's stop letting the fox inspect the 16 chicken coop. So we need more frequent inspections by 17 the New Mexico Environment Department. 18 Second, we need to be more stringent at the 19 end of drilling or during the redevelopment of existing 20 wells. Remember, what's leaking is methane, 86 times 21 more potent. 22 And we need to strengthen the requirements 23 concerning pneumatic controllers so that again because 24 they cause this -- they are the second highest cause of 25 New Mexico methane emissions in the oil and gas	1292 1 Raise your right hand. 2 Do you swear or affirm to tell the truth? 3 MS. SHANE: I do. 4 HEARING OFFICER ORTH: Thank you. 5 NANCY SHANE 6 having been first duly sworn or affirmed, gave 7 public comment as follows: 8 PUBLIC COMMENT 9 HEARING OFFICER ORTH: I'll start your five 10 minutes now. 11 MS. SHANE: Thank you. 12 Members of the Environmental Improvement 13 Board, thank you very much for allowing me to speak 14 today. 15 New Mexico has been my home since 1992. I 16 have earned degrees at NMSU and UNM and work now at UNM, 17 and my son just graduated from UNM. 18 I'm a member of the Unitarian Church, and like 19 most members of my congregation, I'm concerned about 20 methane and pollution because of the environmental 21 injustice concerns that plague our state, just like 22 every other, and because climate change affects all of 23 us. 24 It is our rural communities and tribal 25 communities, our very young and very old members of our
1291 1 industry, again 86 times more. 2 In other words, oil and gas is farting us to 3 the cliff of climate calamity, and we're asking you to 4 stop. You've gotten subsidies to the tune of direct 5 subsidies of \$20 billion a year, and you complain about 6 wind, water and solar and the -- and the -- and the 7 solar industry? 8 If we -- one -- during -- sorry -- doing our 9 switchover from fossil fuels to wind, water and solar, 10 it's going to mean a net increase of \$1.5 billion, I 11 suggest that some of you oil and gas industry folks 12 start learning how to weld and provide that service to 13 (unintelligible and/or inaudible). 14 Thank you. 15 HEARING OFFICER ORTH: Thank you, 16 Ms. Christodoulou. 17 All right. We will move now to Nancy Shane. 18 Ms. Shane, can you hear me? 19 MS. SHANE: I can hear you. 20 Can you hear me? 21 HEARING OFFICER ORTH: Yes. Very nice. 22 If you would please spell your name. 23 MS. SHANE: It's Nancy, N-A-N-C-Y, Shane, 24 S-H-A-N-E. 25 HEARING OFFICER ORTH: Thank you.	1293 1 state who are most affective -- affected. We know 2 asthma and other respiratory diseases are becoming more 3 prominent, and the American Lung Association gave New 4 Mexico an F this year for ozone pollution. 5 In our state we know that oil and gas 6 operators release over a million tons of methane, 7 especially through preventible leaks. There's 8 overwhelming agreement in our state to address methane 9 pollution. 10 I therefore support the common sense standards 11 and technologies the Environment Department has put 12 forward. We should also be protecting people in New 13 Mexico by requiring the oil and gas industry to inspect 14 pipelines more frequently and to find and fix leaks. 15 It should strengthen requirements to cut 16 pollution from pneumatic controllers that are used in 17 oil and gas production, and for -- for example, by 18 shortening the allowed time to retrofit equipment. 19 I understand that the oil and gas industry is 20 very important to our local economy. It's a given. We 21 need to balance that with protecting our people and 22 environment. In the long-term, harming our health, air, 23 land, water and our climate will only hurt us 24 economically and in every other way. 25 Thanks very much for hearing all of our

1294 1 comments today. 2 HEARING OFFICER ORTH: Thank you very much, 3 Ms. Shane. 4 All right. I believe we have come to the end 5 of the list of folks who indicated a desire to offer 6 public comment this morning at the nine o'clock session. 7 Please know that there are nine o'clock, one 8 o'clock and five o'clock public comment sessions every 9 day. You can send an e-mail to Pam Jones, and I will 10 call your name, or get onto the platform and reach out 11 through chat. So thank you, all, for that. 12 Let's see. Board Members, in response to your 13 request by Vice-Chair Trujillo Davis, I did ask Pam to 14 reach out to Commissioner Carlson for a copy of the 15 report that he mentioned. And if he provides that, we 16 will certainly forward that to all of the Board Members. 17 And we had a good discussion among counsel 18 this morning before getting onto the platform to accept 19 public comment, identified a number of ways in which we 20 can streamline or expedite the presentation of evidence 21 to you. I won't go through all of those ways, but I 22 think we'll be hearing a little less about the 23 provisions where there is agreement among the parties 24 with the Department's final proposal. We'll be hearing 25 a little more surrebuttal where it's possible to combine	1296 1 There was more support for going a little later in the 2 evening, say until -- until 7:00, for example. 3 I see Mr. Rose on the screen. 4 Mr. Rose? 5 MR. ROSE: Yeah. Just two things, Madam 6 Hearing Officer. 7 One, in terms of the report that you're 8 distributing to the Board Members, I assume you'll send 9 it to counsel, as well, so that we know what's before 10 the Board. 11 And then, secondly, I wanted to remind you, I 12 think we haven't completed WildEarth Guardians' 13 potential to emit proposal yet. So that's something -- 14 I don't know whether we're going to take it up this 15 morning or later, but just wanted to remind you that 16 that's -- and there may be other things, too, but that 17 came immediately to mind that's still pending. 18 HEARING OFFICER ORTH: All right. Thank you 19 for that, Mr. Rose. 20 And yes. Anything that is sent to the 21 Board -- I have just this morning, obviously, been sent 22 a number of -- of things that public commenters 23 submitted. It also goes onto the Board's web page so 24 that you'll see the entirety of the record on which the 25 Board is deliberating.
1295 1 that with direct and rebuttal so that we're not jumping 2 back and forth quite so -- quite so much. 3 And the counsel are going to talk amongst 4 themselves about potential areas of agreement through 5 the weekend. 6 We're going to hit Topics 23 through 25 hard 7 today. That's engines and turbines. We won't be able 8 to get through all of that because National Park Service 9 isn't available until early next week, but we'll be able 10 to get through a lot of that. 11 Monday will be mostly devoted to LDAR, and 12 Tuesday will be hardwired, as they say, for pneumatics. 13 And we won't hear from -- let's see -- 14 Mr. Alexander until the last day of hearing, based on 15 his availability. 16 So are there questions about that? 17 We definitely had a sincere and earnest 18 conversation this morning, and it's clear that counsel 19 is committed to try and get this hearing done by next -- 20 by next Friday. 21 There was some discussion about potentially 22 starting earlier, which is what the OCC had done in the 23 methane hearing in January, but there was not really 24 consensus around starting earlier. And I know the Board 25 itself has some challenges around starting before 9:00.	1297 1 Ms. Katz, I see you on screen. 2 MS. KATZ: Oh, thank you, Madam Hearing 3 Officer. 4 I was just going to say that I think we 5 could -- or I thought we discussed wrapping that piece 6 of WildEarth Guardians on the -- on the potential to 7 emit into this first subject that we were going to do 8 this morning. 9 But I'll let Mr. Nykiel speak to that. 10 HEARING OFFICER ORTH: Mr. Nykiel? 11 MR. NYKIEL: Yeah. That was my understanding, 12 was that we would complete that first thing this 13 morning, and our witness is prepared to do that. 14 HEARING OFFICER ORTH: All right. Thank you. 15 I didn't mean to go back on a plan. I was 16 trying to speak more generally about the -- the plan for 17 the next couple of days. 18 So if there is nothing else to talk about 19 before we go to Mr. Nykiel's witness, we can certainly 20 do that. 21 Please go ahead, Mr. Nykiel. Call your 22 witness, and if I need to make him a panelist or offer 23 screen sharing privileges -- there's Mr. Nichols. 24 Good morning, Mr. Nichols. 25 You're still under oath.

1298 1 And do you need screen sharing privileges? 2 MR. NICHOLS: I don't, Madam Hearing Officer. 3 Thank you. 4 HEARING OFFICER ORTH: All right. Thank you. 5 And I believe it was Mr. Colclasure who noted 6 that I had swept right past questioning by the other 7 parties on my way to questioning by the Board, which is 8 when we realized the web page transition had -- had 9 caused some logistical difficulties. 10 So is that where we're starting, Mr. Nykiel? 11 MR. NYKIEL: Yeah, I believe so. 12 And just as a helpful reminder to the Board, 13 our direct testimony yesterday had just focused on 14 WildEarth Guardians Exhibits 1, 2 and 3 primarily. So 15 just for your reference. 16 HEARING OFFICER ORTH: All right. Thank you 17 for that, Mr. Nykiel. 18 So, counsel, if you would, please, turn on 19 your screen in the event you have questions for 20 Mr. Nichols before I turn to the Board for their 21 questions. 22 Not seeing new screens. 23 All right, then. I will -- I guess the other 24 parties don't have questions for Mr. Nichols. 25 I'm going to turn to the Board for their	1300 1 questions got broken up. So my questions are really 2 just to clarify and make sure I understood what you said 3 yesterday. 4 I was wondering, you -- you mentioned that 5 your -- I think your major concern or one of your 6 biggest concerns was emissions from sources pre -- 7 predrilling or pre -- yeah, predrilling. 8 Is that what I understood? 9 MR. NICHOLS: I would -- and thank you for 10 that question, Vice-Chair Trujillo Davis. 11 I would characterize it as preproduction 12 sources of emissions, so emissions that are subject to 13 stationary source permitting but that may occur during, 14 for example, a drilling or -- or completion stage. 15 VICE-CHAIR TRUJILLO DAVIS: Oh, okay. So 16 you're talking about after an APD has been obtained and 17 operations have commenced as far as a drill rig is on 18 site and that -- and they're already starting to drill a 19 well and are moving forward in that -- that process, in 20 between there and between the time a well is put on to 21 production. 22 Is that the window that you're looking at? 23 MR. NICHOLS: It does seem like as we've 24 been -- you know, in reference to Exhibit 21, I would -- 25 I would add Exhibit 21 is very material to the testimony
1299 1 questions. 2 While I'm doing that, if you are on the 3 platform as an attendee and you would have a question 4 for Mr. Nichols, please reach out through the chat. 5 JEREMY NICHOLS 6 (Relating to Topic Order 21) 7 having been first duly sworn or affirmed, was 8 examined and testified as follows: 9 EXAMINATION 10 BY THE BOARD: 11 HEARING OFFICER ORTH: Madam Chair, do you 12 have questions of Mr. Nichols? 13 CHAIR SUINA: Madam Hearing Officer, I -- I 14 do, but I'll let my fellow Board Members go first. I'm 15 trying to find my questions from my notes. Thank you. 16 HEARING OFFICER ORTH: All right. Thank you. 17 Vice-Chair Trujillo Davis, do you have 18 questions for Mr. Nichols? 19 VICE-CHAIR TRUJILLO DAVIS: Yes. I have a 20 couple, I think, just to clarify Mr. Nichols' testimony 21 yesterday. 22 And, Mr. Nichols, thank you for coming and 23 talking to the Board and giving us your testimony. 24 And I apologize. You had the unfortunate slot 25 yesterday of the end of the day, and your testimony and	1301 1 I gave yesterday -- yesterday, as well. 2 And what I would say is that what we have 3 found is that there seem to be instances where 4 construction of a stationary source commences, and by 5 that I mean construction of, say, a well pad, and 6 production equipment commences prior to an operator 7 obtaining a construction permit or notice of intent, you 8 know, the -- the requisite permitting document that 9 authorizes the commencement of construction of a 10 stationary source of pollution. 11 And it does seem like in some situations 12 that -- for example, at a well site that wells are being 13 drilled, they're being constructed, for all intents and 14 purposes, and then the permit comes into play when 15 companies are seeking coverage for, say, tank batteries 16 or other production equipment on site. 17 But it all seems part of the same stationary 18 source, and so it does seem like there's a need for some 19 clarity that perhaps there is a disconnect between the 20 way the Environment Department views the development of 21 a well site and associated production equipment and as 22 it relates to permitting and the commencement of 23 construction of a stationary source. 24 VICE-CHAIR TRUJILLO DAVIS: Okay. 25 So then we are talking about predrilling,

1302 1 because you can't put a rig on a -- on an air -- on a 2 pad unless you have a pad, right? 3 MR. NICHOLS: Well, I don't -- I don't know 4 where that line is drawn. I think we're just making 5 sure that as the Environment Department undertakes its 6 oversight of the oil and gas sector, that it's cognizant 7 of all emissions that would be subject to permitting, so 8 all appropriate stationary sources or point sources of 9 emissions. 10 VICE-CHAIR TRUJILLO DAVIS: And I think you're 11 bringing up some valid points. 12 MR. NICHOLS: Um-hum. 13 VICE-CHAIR TRUJILLO DAVIS: I'm just wanting 14 to really understand what those sources are. 15 So maybe a better question would be do you 16 have examples of those sources? Because we've gone 17 through quite a list -- extensive list of equipment. So 18 has a piece of equipment failed to be identified, or do 19 you have examples of the equipment that you're talking 20 about specifically? 21 MR. NICHOLS: Yeah. That's a really good 22 question, Vice-Chair Trujillo Davis. 23 I guess the one point source that comes to 24 mind is just emissions that are coming out of the 25 wellbore during drilling or completion operations, that	1304 1 mentioned that you had evidence and found instances 2 where companies were -- were no longer -- or were 3 drilling without an APD or approved application to 4 drill. 5 Is that correct? Did I understand you -- 6 MR. NICHOLS: No. But thank you for that. 7 And I'm sorry if I caused any confusion. 8 No. We're talking solely around air 9 permitting, so not APD or OCD or Oil Conservation 10 Division permitting. 11 VICE-CHAIR TRUJILLO DAVIS: Oh, okay. Thank 12 you for clarifying that, too. That -- that did raise 13 some concern for me, and I hope that if you did find 14 something like that, that you would report it to the 15 proper authorities. 16 MR. NICHOLS: Yes. 17 VICE-CHAIR TRUJILLO DAVIS: Thank you very 18 much. 19 I don't have any more questions. 20 HEARING OFFICER ORTH: Thank you, Vice-Chair. 21 Member Cates, do you have questions? 22 MEMBER CATES: Yeah. 23 I was wondering pretty much exactly the same 24 thing that Member Trujillo Davis was talking about 25 there, and in your testimony -- thank you for doing
1303 1 are obviously coming out of a pipe in the ground, or a 2 bore, a casing, and -- and would likely qualify as 3 subject to regulation under stationary source permitting 4 requirements. 5 So that could be the case, and -- but I'm not 6 saying that there's a bright line, and we're not 7 suggesting that in every case, that those emissions 8 would be subject to permitting. Simply clarifying that 9 the Environment Department -- Environment Department 10 should account for those emissions to the extent 11 appropriate in its permitting process, to ensure 12 effective oversight and control of emissions. 13 VICE-CHAIR TRUJILLO DAVIS: Okay. So we are 14 talking once the wellbore is starting to be drilled and 15 it has hit a zone that is producing hydrocarbons, that's 16 kind of -- that's the line in which we're trying to -- 17 MR. NICHOLS: That -- that could be a 18 potential source of emissions. Yeah. That's -- that's 19 the example I'm, you know -- that pops -- 20 VICE-CHAIR TRUJILLO DAVIS: Okay. 21 MR. NICHOLS: -- immediately to mind. 22 VICE-CHAIR TRUJILLO DAVIS: Okay. That helps 23 clarify that for me. 24 MR. NICHOLS: Yeah. 25 VICE-CHAIR TRUJILLO DAVIS: And then you also	1305 1 it -- or for being here, Mr. Nichols. 2 Yesterday you said -- you used the word "may" 3 in describing, well, the possibility that activity is 4 occurring prerequisite permits. You said this may be 5 occurring. 6 And that language made me wonder whether 7 WildEarth Guardians suspects that something is kind of 8 going on under the table without the requisite permits, 9 or are they pretty sure that something is going on that 10 might not be appropriate? And -- so that's one part of 11 my question. 12 Then the other one is how -- do you have any 13 feel for how common this activity might be? 14 MR. NICHOLS: Thank you for that question, 15 Member Cates. I appreciate it. 16 So kind of two parts to that. 17 That -- I want to refer you to Exhibit 21 that 18 we submitted -- or that I submitted as part of my 19 testimony where, you know, we collaborated with the UCLA 20 Institute of the Environment and Sustainability to try 21 to assess to what extent construction of oil and gas 22 facilities may -- to what extent commencement of 23 construction may be occurring prior to permit issuance. 24 And they looked at a sampling of well sites, 25 and using permitting data and trying their best to make

1306 1 correlations between the sequence of well development or 2 well site development, to try to piece together the 3 timelines that -- that unfold as companies are 4 undertaking their projects, and they did discover that 5 it seemed that many well sites were -- that construction 6 of many well sites did commence prior to permit 7 issuance. 8 And they were looking at well sites in the San 9 Juan Basin, where there's -- especially with some of the 10 more recent development around the Mancos and Gallup 11 Shale formation, where they could -- using geographic or 12 geospatial analysis, they were able to correlate the 13 location of tank batteries with the wells that feed 14 those tank batteries or other production equipment. And 15 so they were able to make a correlation there that was 16 informative about again the sequence of development of 17 these -- of these sites. 18 And yeah. There's reason to suspect, I think, 19 that this is -- that this is for real, that this is 20 actually occurring, and, you know, from our perspective, 21 if it's happening even in one instance, then it seems 22 like there's -- there's an issue that needs to be 23 resolved and some clarity that needs to be added to the 24 rules. 25 To your -- you know, your second part of your	1308 1 was very illuminating. Thank you, Mr. Nichols. 2 HEARING OFFICER ORTH: Thank you. 3 Member Garcia. 4 MEMBER GARCIA: Yes. I have a couple of 5 questions. Thank you. 6 Can you hear me okay? 7 MR. NICHOLS: I can. Thank you. 8 MEMBER GARCIA: My question really regards a 9 little bit of the timing of your proposed new language. 10 Had you already sent this to the Department 11 previously in stakeholder meetings or anything like 12 that? I mean, how long have they had this language? 13 MR. NICHOLS: Thank you for that question, 14 Member Garcia. 15 Yes. I mean, we did present this in the 16 context of this rulemaking proceeding, which, you know, 17 is an opportunity for parties to bring forward 18 suggestions and proposals for, you know, revision 19 modification of the proposed rules. Prior to the 20 rulemaking we did not engage with the Environment 21 Department specifically to -- with regards to this 22 proposal. 23 MEMBER GARCIA: So have they given you 24 feedback regarding whether they would accept some of 25 this language or not? And why?
1307 1 question, you know, how extensive is this, we don't 2 know. It's a -- it's an open question. It's one we do 3 believe probably needs to be answered at some point. 4 But in the meantime, taking care to ensure that there's 5 adequate clarity in the rules seems like it would go a 6 long ways to maybe not eliminating the scope of the 7 problem, but kind of ensuring that if there is a 8 problem, that it's resolved. 9 MEMBER CATES: Yeah. Right. Well, thanks for 10 the answer there. 11 And by geospatial analysis, you mean satellite 12 imagery? 13 MR. NICHOLS: Yes. Yes. 14 MEMBER CATES: Oh, interesting. Yeah. 15 Okay. That's all I have. Thanks for the -- 16 thanks for the answer. 17 HEARING OFFICER ORTH: Thank you. 18 Member Bitzer, do you have questions of 19 Mr. Nichols? 20 MEMBER BITZER: I do not, Madam Hearing 21 Officer. Thank you. 22 HEARING OFFICER ORTH: Thank you. 23 Member Duval? 24 MEMBER DUVAL: No, no questions. 25 But thank you very much for those answers. It	1309 1 MR. NICHOLS: Well, in their filings they've 2 opposed what we've -- what we've suggested, and I think 3 we'll hear from the Environment Department later as to 4 why, the grounds for that opposition. 5 You know, we put this forward as -- you know, 6 from our perspective it seems like a relatively minor 7 clarification to add. It doesn't -- it's not expanding 8 the scope and applicability. And fundamentally 9 potential to emit should include these emission points 10 to the extent they exist anyway. But adding this 11 clarity, I think, could be very helpful for resolving 12 any potential problems that may -- may exist around 13 permitting currently. 14 So again coming at it from that standpoint, we 15 didn't see this as a major, major proposal, something 16 pretty minor. 17 MEMBER GARCIA: I appreciate that. I'm just 18 trying to get a sense of whether this is new to them 19 today or whether they've had time to think about it and 20 have given you feedback. I'm just trying to understand 21 where we are in the process with this proposed language. 22 Thank you very much. 23 MR. NICHOLS: Thank you. 24 HEARING OFFICER ORTH: Okay. 25 Member Honker?

1310 1 MEMBER HONKER: No questions. Thanks. 2 HEARING OFFICER ORTH: All right. Thank you 3 very much. 4 Let's see. Will there be any redirect, 5 Mr. Nykiel? 6 MR. NICHOLS: Madam Hearing Officer -- 7 HEARING OFFICER ORTH: Oh, wait. Sorry. Hold 8 on. I forgot Madam Chair. 9 Madam Chair, I needed to loop back to you. 10 Do you have questions? 11 CHAIR SUINA: Thank you, Madam Hearing 12 Officer. 13 Actually, Member Garcia asked my line of 14 questioning of just where we are with the process with 15 the language that you've put forward in your exhibits 16 and -- and maybe we'll hear from NMED and other 17 stakeholders throughout this hearing. But that's one -- 18 that was going to be my line of questioning. So if we 19 could -- you know, maybe the other stakeholders, we can 20 hear more about that later. 21 HEARING OFFICER ORTH: All right. Thank you, 22 Madam Chair. 23 I see Ms. Katz on the screen. 24 Ms. Katz? 25 MS. KATZ: And I was just going to clarify	1312 1 Mr. Nichols and Mr. Nykiel. 2 And I think it all worked out fine for folks 3 to consider your exhibits last night and have the 4 questioning this morning. So thank you for hanging in 5 there with us. 6 MR. NICHOLS: Yeah. Thank you. 7 HEARING OFFICER ORTH: All right. Ms. Katz? 8 Oh, Mr. Nykiel. 9 MR. NYKIEL: I apologize. I just -- I was 10 listening to Mr. Nichols and realized I made a mistake. 11 Would it be okay if I asked one further 12 follow-up question? 13 HEARING OFFICER ORTH: Go ahead. 14 MR. NYKIEL: Okay. 15 Q. Mr. Nichols, just to clarify, our proposal was 16 submitted -- I believe the deadline was July 29th; is 17 that right? 18 A. That's correct. That's -- 19 MS. KATZ: July 28th. 20 MR. NYKIEL: Thank you, Lara. 21 July 28th. 22 MR. NICHOLS: Thank you. That's my 23 recollection. Yes. 24 MR. NYKIEL: Okay. Thank you very much. 25 HEARING OFFICER ORTH: All right. Thank you.
1311 1 that the Department would be putting on its surrebuttal 2 witnesses to respond to those issues. 3 HEARING OFFICER ORTH: Thank you. 4 Mr. Nykiel, is there any follow-up? 5 MR. NYKIEL: Yes, just really briefly. 6 REDIRECT EXAMINATION 7 BY MR. NYKIEL: 8 Q. Mr. Nichols, did we submit this proposal when 9 the notice of intent to present technical testimony was 10 due, just as all the other parties did when they 11 submitted their proposals? 12 A. Yes, we did. We submitted it, you know, not 13 only in terms of my direct testimony and reference to 14 the proposed language, but very clear, specific 15 red-line -- red-lines to the parties, including the 16 Department. 17 Q. And I believe that submission deadline was 18 September 7th, 2021? 19 A. I don't recall a precise deadline. I thought 20 it was earlier, but -- yes. It was submitted, 21 obviously, prior to the hearing. 22 Q. Okay. 23 Thank you. 24 No further questions. 25 HEARING OFFICER ORTH: Thank you very much,	1313 1 Thank you, Mr. Nichols. 2 Thank you, Mr. Nykiel. 3 Ms. Katz? 4 MS. KATZ: I believe I did ask questions of 5 Mr. Nichols -- or -- sorry. Where are we? I'm not sure 6 where we are. 7 HEARING OFFICER ORTH: Okay. So I believe 8 we're going to move into Topics 23 to 25. 9 MS. KATZ: Got it. Thank you. 10 Okay. So -- 11 HEARING OFFICER ORTH: All right. 12 MS. KATZ: You're moving -- 13 (Simultaneous discussion.) 14 MR. ROSE: Madam Hearing Officer, we have -- 15 we have testimony in response to WildEarth Guardians' 16 PTE testimony, and I think what Ms. Katz said is that -- 17 I thought you had testimony in response to the proposal, 18 in essence, as surrebuttal. So I don't think we're done 19 with this topic at all. 20 MS. KATZ: Yes. You're right. You're right, 21 Lou. 22 HEARING OFFICER ORTH: Okay. I'm very sorry, 23 then. 24 Ms. Katz, does it make sense for the 25 Department to proceed before IPANM or --

1314 1 MS. KATZ: I believe the Department would go 2 last on this. So -- 3 HEARING OFFICER ORTH: All right. 4 MS. KATZ: -- other parties are up. 5 HEARING OFFICER ORTH: All right. 6 So Mr. Rose? 7 MR. ROSE: And I don't know if there are other 8 parties that have testimony on -- on this, as well. So 9 we can go next, but I don't remember whether NMOGA 10 actually had responses to that, because it's -- they're 11 all under 21, it's hard to tell who was responding to 12 what. So -- 13 HEARING OFFICER ORTH: Okay. 14 Mr. Hiser? 15 MR. CURTIS: This is Brandon Curtis. 16 We don't have any further testimony on this 17 issue. 18 HEARING OFFICER ORTH: Thank you. 19 I do see Mr. Blewitt on the screen. 20 MR. ROSE: He's my witness on this topic. 21 So -- 22 HEARING OFFICER ORTH: Great. 23 Mr. Blewitt, you're still under oath. And if 24 you'll be referring to exhibits, please mention that 25 first. I can also give you presentation privileges if	1316 1 We'll pause for a moment for you to do that. 2 MR. BLEWITT: What is the area code? 3 HEARING OFFICER ORTH: What is the area code? 4 Oh, hold on. 5 (650) 479-3208. 6 MR. BLEWITT: And the access code again? 7 The access code? 8 HEARING OFFICER ORTH: I'm -- I have to scroll 9 to it. 10 25947139789. 11 MR. BLEWITT: Okay. Let me call in. 12 MR. ROSE: And, Madam Hearing Officer, while 13 he's calling in, his testimony is IPANM rebuttal -- it's 14 his rebuttal testimony, Exhibit 12, and I think 15 addresses the WildEarth Guardians' proposal, as well as 16 others, but I think it's contained in his rebuttal 17 testimony. 18 HEARING OFFICER ORTH: Thank you. 19 (Proceedings in brief recess.) 20 MR. BLEWITT: Can you hear me? 21 MR. ROSE: That's better, I think, but not a 22 lot. 23 MR. BLEWITT: I apologize. This is -- this 24 is -- and I'm getting feedback. 25 MR. ROSE: I think you have to --
1315 1 you have slides. 2 MR. BLEWITT: Yes. I'm going to let Mr. Rose 3 define what exhibit this is. 4 Can you hear me? 5 HEARING OFFICER ORTH: You're very soft. 6 You're -- we're going to have to get your volume up. 7 MR. BLEWITT: It's up all the way. So I will 8 talk very loud. 9 MR. HISER: Madam Hearing Officer? 10 HEARING OFFICER ORTH: Yes. 11 MR. HISER: This is Eric Hiser. 12 I think -- I think last time we had him call 13 in and that resolved the audio issue. Perhaps he could 14 do the same this time. 15 HEARING OFFICER ORTH: Just about to say that. 16 Mr. Blewitt, would you call in again, please. 17 It makes a big difference. 18 MR. BLEWITT: Okay. Let me -- can you give me 19 the number to call in? 20 HEARING OFFICER ORTH: Let's see here. Hold 21 on. 22 (650) 479 -- 23 MR. BLEWITT: (650) -- 24 HEARING OFFICER ORTH: -- 3208. And the 25 access code is 25947139789.	1317 1 MS. KATZ: Mr. Blewitt, I think you'll need to 2 mute your computer. 3 MR. ROSE: Correct. 4 MS. KATZ: And turn down the volume on your 5 computer. 6 MR. BLEWITT: Try that. 7 MR. ROSE: Are you still getting feedback? 8 MR. BLEWITT: Yeah. I'm -- 9 HEARING OFFICER ORTH: Okay. So the other -- 10 the other thing that the court reporter helped with the 11 other day was clicking on the three dots, remember, and 12 switching audio, which is the option at the top of that 13 little dialogue box that pops up when you click on the 14 three dots. 15 If you're speaking, we can't hear you. 16 MR. ROSE: We're still having logistical 17 problems here. And I don't know whether he's now muted 18 everything by -- by hitting the switch audio. As long 19 as you -- I think you have to click it, and then it 20 gives you options to phone. So -- 21 HEARING OFFICER ORTH: How about this? How 22 about we take a 10-minute break, and Mr. Rose and 23 Mr. Blewitt and I will work this out. 24 (Simultaneous discussion.) 25 HEARING OFFICER ORTH: Oh. Did you speak?

1318 1 No. 2 We worked this out the other day with 3 Mr. Blewitt, and sorry for the inconvenience, but we're 4 focused on the transcript because it's the official 5 record of this proceeding, so we need to get it right. 6 Let's take 10 minutes and come back at 10:25. 7 (Proceedings in recess from 10:13 a.m. to 8 10:26 a.m.) 9 HEARING OFFICER ORTH: Let's come back from 10 the break, please. 11 We are back after a break to figure out some 12 technological challenges. 13 Thank you, especially Vice-Chair and 14 Mr. Davis, for getting that to work with Mr. Blewitt. I 15 think now we'll be able to hear him for the record. 16 Mr. Blewitt's screen is on the -- excuse me. 17 His slide is on the screen. 18 Mr. Rose, go ahead. 19 MR. ROSE: Yes. And I'll remind the parties 20 that Mr. Blewitt's rebuttal testimony, which he's 21 referring to, has already been admitted. 22 23 24 25	1320 1 really don't have any idea of what -- how much that well 2 is going to produce, and you really can't determine what 3 the -- what the flow of that well or the production of 4 that well is until the well becomes operational. And I 5 think this -- the issue of -- 6 HEARING OFFICER ORTH: I'm sorry -- 7 MR. BLEWITT: There's construction going on on 8 the -- 9 HEARING OFFICER ORTH: Mr. Blewitt, I'm very 10 sorry to -- 11 MR. BLEWITT: Yes. 12 HEARING OFFICER ORTH: -- interrupt your 13 testimony. 14 We have lost one of our counsel, and this 15 counsel, obviously, is particularly interested in 16 hearing your testimony. It's Mr. Nykiel. 17 So let's pause for just a moment -- 18 MR. BLEWITT: Sure. 19 HEARING OFFICER ORTH: -- to let Mr. Nykiel 20 get back on the platform. Very sorry. 21 (Proceedings in brief recess.) 22 HEARING OFFICER ORTH: I don't know if 23 Mr. Nykiel can hear me. 24 If you have rejoined us, Mr. Nykiel, let us 25 know. We're waiting.
1319 1 DOUG N. BLEWITT 2 (Relating to Topic Order 21) 3 having been first duly sworn or affirmed, was 4 examined and testified as follows: 5 DIRECT EXAMINATION 6 BY MR. ROSE: 7 Q. So, Mr. Blewitt, did you hear Mr. Nichols' 8 testimony on the WildEarth Guardians' proposed changes 9 to the definition of PTE? 10 A. I did not hear it yesterday. I heard his 11 comments today, and I have read his position. 12 Q. And do you have any response to those comments 13 or the proposal? 14 A. Yes, I do. 15 Q. And could you go ahead and give them, please. 16 A. Yes. 17 The one thing I -- I think a good place to 18 start here is what is the definition of potential to 19 emit. And it's the maximum capacity of a stationary 20 source to emit under operational design. And I think 21 this is where the issue becomes problematic for oil and 22 gas, because oil and gas is a very different emission 23 source than any other in the regulated community. 24 It is -- when you drill a well, you have some 25 belief that it's going to be a producing well, but you	1321 1 MR. NYKIEL: Thank you. I apologize. 2 MR. BLEWITT: Okay. 3 MR. NYKIEL: When it rains, it pours. But I'm 4 back. Apologize for that. 5 HEARING OFFICER ORTH: Thank you. 6 Go ahead, Mr. Blewitt. 7 MR. BLEWITT: Okay. 8 MR. ROSE: And do we need to -- 9 MR. BLEWITT: Let me -- 10 MR. ROSE: -- repeat any of his testimony 11 here? 12 I don't know when Mr. Nykiel ended up 13 getting -- being severed from this process, but we can 14 go back if we need to. 15 MR. NYKIEL: If you wouldn't mind. And again 16 I apologize, but, yeah, that would be helpful. 17 MR. BLEWITT: That -- that's fine. 18 Let me -- let me start by the definition of 19 potential to emit. And it's the maximum capacity of a 20 stationary source to emit under physical and operational 21 design. And it's the design issue that's really 22 different for oil and gas. 23 If you think about the -- any other regulated 24 air pollution source, the issue becomes -- you design a 25 plant to produce whatever, and you know what you're

1322 1 going to design the plant to emit. For example, if you 2 want to make windmill turbine bases, you -- you design 3 the plant to make so many windmill turbine bases per 4 year, and you calculate emissions based on -- on that. 5 The problem is when you drill a well, you 6 really don't know what -- what level that well is going 7 to produce. And because some emission sources are 8 related to production rate, you really can't estimate 9 the potential to emit until you actually produce the 10 well. And -- and while you may be doing some 11 construction of leveling the pad and things like that, 12 it's really not possible to estimate what that -- that 13 potential to emit becomes. 14 And, I mean, this is because the flow rate of 15 the well and emissions are related to reservoir 16 properties, and these will decrease over time. And so 17 you -- you have this issue that you can calculate the 18 PTE once you produce the well, but over that full first 19 year -- and that's what you're really interested in, is 20 tons per year of pollutants -- you really need to 21 extrapolate what the climate will be to actually get the 22 potential to emit. 23 And in some respects, PTE for a well is almost 24 a moot point, because after the first year the well will 25 never produce at the level of potential to emit. It's	1324 1 the whole process starts again. So the inclusion of 2 those emissions is not necessarily appropriate in the 3 determination of PTE. 4 If you -- Mr. Nichols characterized that you 5 might be getting emissions coming from the wellbore. 6 Well, when you drill a well, you use drilling mud to 7 make sure you don't have that happening, because if 8 you -- if you had gas flowing out of the wellbore, you 9 would be having -- you run the risk of having a blowout. 10 So that's not a logical place. 11 And it's -- when you do a completion on the 12 well, you try to get it into a flare as quickly as you 13 can, as soon as the -- the emissions will burn. And -- 14 and with green completions, you try to get that into the 15 pipeline as quickly as you can. 16 So really that -- that's all I have to say. 17 The point is that PTE is complicated for wells 18 because of decline and because you can't design an 19 estimate of emissions because you don't really know what 20 it's going to be. And the inclusion of -- of drilling 21 and fracking is really not appropriate since these are 22 really nonroad sources that are temporary in nature. 23 And remember the drilling and fracking usually 24 takes place in less than two months. So as you -- as 25 you spread those emissions over an annual period, they
1323 1 always going to be going down. 2 Okay. Let's go to the second slide. 3 And as I recall -- as I recall, what -- 4 Mr. Nichols suggested that drilling engines and fracking 5 engines be included in the PTE calculations. Well, 6 those emission sources -- 7 MR. NYKIEL: I'm sorry. Excuse me, 8 Mr. Blewitt. I apologize to interrupt you. 9 But I just wanted to object because that is 10 not what Mr. Nichols testified to. 11 HEARING OFFICER ORTH: Okay. So -- 12 MR. BLEWITT: That -- 13 HEARING OFFICER ORTH: Hold on. 14 Mr. Nykiel, I'm going to ask you to save that 15 sort of thing for cross-examination, if you would, 16 please. You can establish whether it's been 17 mischaracterized or not. 18 Go ahead, Mr. Blewitt. 19 MR. BLEWITT: As I read Mr. Nichols' 20 testimony, he was implying that drilling and fracking 21 should be included in the estimation of potential to 22 emit. 23 Those engines are nonroad engines which are 24 regulated by EPA. They're only on site two or three 25 months, and then they're moved to a new location, and	1325 1 really become quite low. 2 So that's -- that's my testimony. 3 MR. ROSE: Madam Hearing Officer, I have no 4 questions -- further questions of this witness. 5 HEARING OFFICER ORTH: All right. Thank you. 6 I believe Mr. Nykiel might have some 7 questions. 8 Mr. Nykiel? 9 And, Mr. Blewitt, if you would stop sharing 10 your screen. 11 MR. BLEWITT: I'm working on it, Madam Hearing 12 Officer. 13 MR. ROSE: Well, your PowerPoint is no longer 14 up. So -- 15 MR. BLEWITT: Yeah. 16 HEARING OFFICER ORTH: Okay. I'll -- I'll do 17 it a different way. 18 There. 19 Let's see. Do I see Mr. Nykiel on screen? 20 Yes, I do. 21 Mr. Nykiel, go ahead. 22 MR. NYKIEL: Thank you, Madam Hearing Officer. 23 24 25

1326 1 CROSS-EXAMINATION 2 BY MR. NYKIEL: 3 Q. And, Mr. Blewitt, my name is Matt Nykiel. I'm 4 here on behalf of WildEarth Guardians. 5 I apologize for interrupting you earlier. 6 Good morning. 7 I just have a couple of questions for you. 8 You agreed that emissions of NOx and VOCs from 9 oil and gas facilities can cause and contribute to 10 exceedances of the ozone NAAQS; is that right? 11 A. I will agree in a limited sense. I'm not sure 12 that VOCs are a major contributor based on the work that 13 Ramboll has done. 14 Q. Okay. 15 A. NOx is a -- NOx is appropriate and is a 16 controlling issue. 17 Q. Okay. Thank you. 18 And are ozone precursor emissions emitted 19 during wellhead construction? 20 A. Very small. You have some minor diesel 21 engines involved in that. Typically those emissions are 22 quantified and modeled during any type of EIS analysis. 23 So they have been -- they have been analyzed, and 24 they're shown to be rather insignificant, and modeling 25 is typically done to show that there are no exceedances	1328 1 And those exceedances are caused by very 2 unique meteorological conditions. They occur during the 3 wintertime, with fresh snow -- and fresh snow is very 4 important -- a low-level temperature inversion, which 5 contains the emissions and causes concentration of them, 6 very low wind speeds and very stable conditions. Under 7 those very specific cases, you see exceedances of the 8 standard in -- in the wintertime. 9 Those conditions have not been seen in New 10 Mexico and are probably not likely to be seen in New 11 Mexico. 12 So to say in any other situation that 13 monitoring reflects oil and gas contribution is 14 inappropriate because the monitor tells you total 15 concentration. The model can provide you source 16 apportionment, and you've seen those results in the 17 Ramboll work. 18 Q. Mr. Blewitt, I have a very specific question I 19 want to ask you. I'm going to restate it again. And 20 just a yes or no would be fine. But I'm going to reask 21 the question. 22 You submitted rebuttal testimony, and in that 23 you testified that Guardians claims that oil and gas 24 emissions are directly and solely responsible for 25 increased exceedances in New Mexico and other areas
1327 1 of the PM10 and PM2-and-a-half standards as a result of 2 that work. 3 Q. Okay. 4 Did you provide an EIS to that effect in your 5 testimony or rebuttal? 6 A. Yes, I did. As a matter of fact, I included 7 the Mancos EIS. My comments on the Mancos EIS is part 8 of my testimony. 9 Q. Okay. 10 One other line of questioning. 11 In your rebuttal you testified that Guardians 12 claims that oil and gas emissions are directly and 13 solely responsible for increased exceedances in New 14 Mexico and other areas where oil and gas development has 15 occurred; is that right? 16 A. Yes. I did. And I -- and I disagree with 17 your position. The position -- 18 Q. And -- 19 A. -- that I -- let me finish. 20 The position that I inferred from Mr. Nichols' 21 testimony was there are two situations where oil and gas 22 has solely caused exceedances of the ozone NAAQS. Those 23 are in the Greater Green Basin in Wyoming and in the 24 Uinta Basin in Utah. I was involved in the research on 25 both of those areas.	1329 1 where oil and gas development has occurred, yes or no? 2 A. I said yes, and I -- I use -- I made 3 statements, and I truly believe that your statement is 4 false. 5 Q. The answer -- 6 A. And I gave you examples of -- of where it 7 isn't -- it is true, and otherwise you can't make that 8 claim solely. 9 Q. So the answer is yes. 10 A. Yes. 11 Q. Okay. Thank you. 12 Mr. Blewitt, do you happen to have WildEarth 13 Guardians Exhibit 3 in front of you, titled Direct 14 Technical Testimony of Jeremy Nichols? 15 A. No, I do not. 16 MR. NYKIEL: Madam Hearing Officer, may I have 17 permission to share my screen? 18 HEARING OFFICER ORTH: Yes. I'll do that now. 19 MR. NYKIEL: Apologies. I'm just granting 20 permission to myself to allow the screen to be shared. 21 Let me figure that out. 22 Well, I can't -- it's not allowing me to 23 share. I'm trying to -- 24 Madam Hearing Officer, have you guided anyone 25 through problems with preferences before?

1330 1 HEARING OFFICER ORTH: No. You are the 2 presenter at this moment. I just double-checked. 3 If it might be simpler and if what you're 4 going to refer to is, for example, narrative testimony, 5 you might just read the pertinent part and ask 6 Mr. Blewitt to assume that it's true. 7 MR. NYKIEL: Yeah. Let me -- 8 MR. BLEWITT: I'm fine with that. 9 MR. NYKIEL: I will do my best not being able 10 to share at the moment, and I will continue. Maybe this 11 will work. 12 Q. Mr. Blewitt, do you -- could you point us to 13 the page number in WildEarth Guardians Exhibit 3, which 14 is Mr. Nichols' direct testimony, and point us to the 15 page number where he uses the word "directly"? 16 A. I don't have it in front of me so I can't 17 point to that. 18 Q. Okay. 19 And I'm just going to ask this to preserve it 20 on the record at this point, but could you point -- 21 point us to the page number in WildEarth Guardians 22 Exhibit 3 where Mr. Nichols used the word "solely"? 23 A. No. 24 Q. Okay. 25 And could you point us to the page number in	1332 1 MR. NYKIEL: No further questions. Thank you. 2 HEARING OFFICER ORTH: Thank you very much. 3 Let me pause for a moment in the event any 4 other party has questions of Mr. Blewitt based on his 5 testimony just now. 6 Oh, I see Mr. Rose on the screen. 7 Mr. Rose. 8 MR. ROSE: No. I have no further -- no 9 further questions of this witness and no redirect, Madam 10 Hearing Officer. 11 I've been on the whole time. So -- 12 HEARING OFFICER ORTH: Yeah. Thank you very 13 much. 14 Thank you, Mr. Blewitt. 15 I'm going to turn now to -- 16 MR. BLEWITT: Thank you, Madam Hearing -- 17 HEARING OFFICER ORTH: Hold on. The Board now 18 gets to question you. 19 So I'm going to turn to the Board for their 20 questions. 21 And while I'm doing that, in the event you're 22 on the platform and have a question as an attendee, 23 please reach out through the chat. 24 Madam Chair, do you have questions of 25 Mr. Blewitt?
1331 1 Mr. Nichols' direct technical testimony where 2 Mr. Nichols used the word "drilling engine"? 3 A. He used the word "drilling," and I assume that 4 that meant engines. 5 Q. Okay. 6 Thank you very much. 7 No further questions. 8 HEARING OFFICER ORTH: Yes. Mr. Colclasure? 9 MR. COLCLASURE: Madam Hearing Officer, I'd 10 like to raise an objection. The witness has stated that 11 he does not have the document in front of him. So these 12 repeated -- the witness has stated that he does not have 13 the document in front of him. These repeated questions 14 to point to a page number don't seem useful, and they 15 don't seem to be in the spirit of our earlier 16 conversation about attorneys policing themselves to move 17 along in a swift manner. 18 HEARING OFFICER ORTH: All right. Thank you 19 for that, Mr. Colclasure, but I will overrule that to 20 the extent it's an objection. I believe Mr. Nykiel is 21 trying to establish that he believes Mr. Blewitt has 22 mischaracterized Mr. Nichols' testimony, and that was 23 the quickest way to do it. 24 Mr. Nykiel, do you have other questions of 25 Mr. Blewitt?	1333 1 CHAIR SUINA: Thank you, Madam Hearing 2 Officer. I don't have any questions at this point. 3 Thank you. 4 HEARING OFFICER ORTH: Thank you. 5 Vice-Chair Trujillo Davis? 6 VICE-CHAIR TRUJILLO DAVIS: I do not have any 7 questions either. 8 Thank you, Mr. Blewitt. 9 HEARING OFFICER ORTH: Thank you. 10 Mr. -- Member Cates? 11 MEMBER CATES: No questions, Chair. Thank 12 you. 13 HEARING OFFICER ORTH: Thank you. 14 Member Bitzer? 15 MEMBER BITZER: No questions, Madam Hearing 16 Officer. 17 HEARING OFFICER ORTH: Member Duval. 18 MEMBER DUVAL: No questions. Thank you. 19 HEARING OFFICER ORTH: Member Garcia. 20 MEMBER GARCIA: No questions. 21 Thank you for your testimony, Mr. Blewitt. 22 HEARING OFFICER ORTH: And Member Honker. 23 MEMBER HONKER: No questions. Thank you. 24 HEARING OFFICER ORTH: Thank you. 25 All right. Thank you very much, Mr. Blewitt.

1334 1 We can excuse you now for the -- for the time 2 being. 3 MR. BLEWITT: Thank you very much for your 4 help. 5 Bye. 6 HEARING OFFICER ORTH: Thank you. 7 All right. And whom do we hear from next? 8 I believe Mr. Hiser said that we won't be 9 hearing from NMOGA anymore on this topic. 10 So, Ms. Katz, do I understand you have some 11 surrebuttal? 12 Oh. Wait a minute. I see Ms. Shpall on the 13 screen. 14 Ms. Shpall? 15 MS. SHPALL: Commercial Disposal Group has 16 testimony on this subject matter. 17 HEARING OFFICER ORTH: All right. So we'll go 18 to Commercial Disposal Group first. 19 If you would call your witness. 20 MS. SHPALL: Yes. My witness is Il Kim. 21 HEARING OFFICER ORTH: Ah. I believe I saw 22 witness Kim, and I've just panelized the witness. 23 Will he require screen sharing privileges? 24 MS. SHPALL: No. 25 HEARING OFFICER ORTH: Okay. Thank you very	1336 1 Ms. Shpall. 2 MS. SHPALL: Okay. Thank you. 3 Good morning, Members of the Board. 4 I am Casey Shpall, representing the Commercial 5 Disposal Group. 6 Mr. Kim's written testimony is Appendix A to 7 the group's notice of intent. And his CV is attached as 8 attachment A. His rebuttal testimony is Appendix A to 9 the Commercial Disposal Group's notice of intent to file 10 rebuttal testimony. 11 Q. Mr. Kim, please state your name, employer and 12 position for the Board. 13 A. My name is Il Kim. I'm a senior air 14 permitting engineer, and I work for NGL Energy Partners, 15 LP. 16 Q. And can you briefly summarize your experience 17 relevant to this rulemaking and the testimony you'll 18 provide? 19 A. Yeah. I have over 10 years of experience in 20 various consulting in oil and gas firms as an air 21 quality technical advisor for oil and gas operators, as 22 well as other industries. I've managed air quality 23 permitting, compliance programs, due diligence reviews, 24 numerous environmental projects that also include ESG 25 greenhouse gas calculations and sustainability.
1335 1 much. 2 I'm not yet seeing the witness on screen. Oh, 3 there we go. 4 Oh, hello, Mr. Kim. 5 MR. KIM: Hi. 6 HEARING OFFICER ORTH: Let's check your sound. 7 MR. KIM: Yeah. How does this sound? 8 HEARING OFFICER ORTH: I think it's good. 9 Thank you. 10 Would you raise your right hand. 11 Do you swear or affirm to tell the truth? 12 MR. KIM: I do. 13 HEARING OFFICER ORTH: Thank you. 14 IL KIM 15 (Relating to Topic Order 21) 16 having been first duly sworn or affirmed, was 17 examined and testified as follows: 18 DIRECT EXAMINATION 19 BY MS. SHPALL: 20 HEARING OFFICER ORTH: And if you would spell 21 your name and make sure to give us a heads up as to any 22 exhibits near the beginning here. 23 MR. KIM: My name is Il Kim, spelled I-L, last 24 name Kim, K-I-M. 25 HEARING OFFICER ORTH: Whenever you're ready,	1337 1 And I -- you know, one of my big 2 (unintelligible and/or inaudible) ensure regulatory 3 requirements are met. 4 Q. Thank you. 5 And have you prepared direct and rebuttal 6 testimony in these proceedings? 7 A. Yes, I have. I submitted direct testimony 8 regarding -- regarding, one, hydrocarbon liquid 9 transfers, and, two, storage tank vessels. I submitted 10 rebuttal testimony on the same topics, as well as 11 definition of tank battery. 12 Q. And if I ask you today in your direct and 13 rebuttal testimony, would you say the same thing that 14 you did in your written testimony? 15 A. Yes. 16 Q. Thank you. 17 And do you adopt that testimony here today? 18 A. Yes. 19 MS. SHPALL: Before I ask Mr. Kim for a verbal 20 summary of his testimony and his position on the 21 Department's current proposal, I offer his written 22 direct and rebuttal testimony into the record. 23 HEARING OFFICER ORTH: Thank you, Ms. Shpall. 24 I don't remember that there were objections -- 25 MS. SHPALL: Okay.

1338 1 HEARING OFFICER ORTH: -- to your exhibits, 2 but let me pause for a moment in the event there are. 3 No. 4 The exhibits are admitted. 5 Thank you. 6 MS. SHPALL: Thank you. 7 (Exhibits CDG 1 through 5 admitted into 8 evidence.) 9 Q. (BY MS. SHPALL) Mr. Kim, in the last red-line 10 that we received from NMED, the Department determined 11 that it was unnecessary to include a definition of tank 12 battery in the proposed rule. 13 Do you agree that a definition is not needed 14 in this rule? 15 A. Yes. The group supports the decision not to 16 include a definition of tank battery into the proposed 17 rule because it has already been defined elsewhere in 18 the New Mexico Administrative Code, in 19 section 20.2.38.7E. 20 Q. And, Mr. Kim, does that conclude your 21 testimony on this issue? 22 A. Yes. 23 MS. SHPALL: Thank you. 24 He's now available for cross-examination. 25 HEARING OFFICER ORTH: Thank you, Ms. Shpall	1340 1 HEARING OFFICER ORTH: Thank you. 2 Member Duval. 3 MR. DUVAL: No, Madam Chair. 4 HEARING OFFICER ORTH: Member Garcia. 5 MEMBER GARCIA: No questions. Thank you. 6 HEARING OFFICER ORTH: Thank you. 7 And Member Honker. 8 MEMBER HONKER: Yeah. One question. 9 Since I don't have the New Mexico 10 Administrative Code in front of me, can you explain the 11 context for the definition elsewhere in the code? 12 MR. KIM: Yes. So the definition is located 13 in another section of the New Mexico Administrative 14 Code. The definition defines tank battery as a tank or 15 group of tanks that receive crude oil or condensate from 16 a well or a storage -- or storage until shipment. 17 MEMBER HONKER: And is that in a -- in a UIC 18 context, or what -- what portion of the code is that? 19 MR. KIM: I believe that is hydrocarbon 20 storage facilities. It's -- it's for the oil and gas 21 portion of -- of the New Mexico Administrative Code. 22 MEMBER HONKER: Okay. Thank you. 23 HEARING OFFICER ORTH: All right. Thank you. 24 Will there be any follow-up or redirect, 25 Ms. Shpall?
1339 1 and Mr. Kim. 2 I'm going to pause a moment in the event other 3 parties have questions of Mr. Kim. Please turn on your 4 screen. 5 All right. I'm going to turn to the Board for 6 their questions. 7 While I'm doing that, if you are an attendee 8 on this platform and have a question, please reach out 9 through the chat. 10 EXAMINATION 11 BY THE BOARD: 12 HEARING OFFICER ORTH: Madam Chair, do you 13 have questions of Mr. Kim? 14 CHAIR SUINA: Thank you, Madam Hearing 15 Officer. I don't have any questions at this time. 16 HEARING OFFICER ORTH: Thank you. 17 Vice-Chair Trujillo Davis? 18 VICE-CHAIR TRUJILLO DAVIS: I don't have any 19 questions either. 20 Thank you, Mr. Kim. 21 HEARING OFFICER ORTH: Member Cates. 22 MEMBER CATES: No questions here. Thank you. 23 HEARING OFFICER ORTH: Member Bitzer. 24 MEMBER BITZER: No questions, Madam Hearing 25 Officer. Thank you.	1341 1 MS. SHPALL: No. Thank you. 2 HEARING OFFICER ORTH: Thank you very much. 3 And thank you for your testimony, Mr. Kim. 4 We'll excuse you for now. 5 MR. KIM: Thank you. 6 HEARING OFFICER ORTH: Ms. Katz, is it time 7 for your surrebuttal? 8 MS. KATZ: Yes, Madam Hearing Officer. 9 And the Department would call Michael Baca. 10 And I -- 11 (Simultaneous discussion.) 12 MS. KATZ: -- panelist. I don't know if you 13 did that. 14 HEARING OFFICER ORTH: I did that. 15 Will he have slides? 16 MS. KATZ: There will be no slides. 17 HEARING OFFICER ORTH: All right. Thank you. 18 MICHAEL G. BACA 19 (Relating to Topic Order 21 continued) 20 having been first duly sworn or affirmed, was 21 examined and testified further as follows: 22 DIRECT EXAMINATION 23 BY MS. KATZ: 24 HEARING OFFICER ORTH: You're still under 25 oath, Mr. Baca.

1342 1 MS. KATZ: Thank you. 2 Q. Mr. Baca, can you discuss the Department's 3 position regarding the additional language proposed by 4 WildEarth Guardians with respect to the definition of 5 potential to emit. 6 A. Sure. 7 Can you hear me? 8 Thank you. 9 So NMED opposes the inclusion of this 10 additional language to the definition of PTE because we 11 want to maintain consistency with the definition as 12 provided in the Department's permitting programs. So 13 while NMED regulates equipment located at well sites, we 14 do not approve permits to drill. That is OCD's 15 jurisdiction. 16 So in effect, you know, it could be taken that 17 Mr. Nichols is requesting the Department to expand our 18 own jurisdiction to include activities that are 19 regulated by another agency. 20 Additionally, Mr. Nichols did not specify any 21 equipment that -- or provide any data for emissions, 22 control options, technical feasibility or costs 23 associated with these undefined source types. So the 24 Department has no way of determining what emissions we 25 might be talking about here. So there -- there's no	1344 1 Mr. Rose, go ahead. 2 MR. ROSE: Thank you, Madam Hearing Officer. 3 CROSS-EXAMINATION 4 BY MR. ROSE: 5 Q. Mr. Baca, are you familiar with the way the 6 term "PTE" is used in these proposed regulations? 7 A. I'm somewhat familiar with that. Yes, sir. 8 Q. And do you have an opinion or does the 9 Department have an opinion on if this Board were to 10 adopt WildEarth Guardians' proposal how that would 11 affect application of the term in the way it's being 12 used in the proposed regs and whether it's appropriate? 13 A. Yes. I -- I was not directly relating to the 14 development of the PTE definition, but I can speak to, I 15 think, maybe my own opinion on that, thinking that 16 you -- you know, I do think that if you don't properly 17 classify the sources that we're regulating as to size, 18 then you can't apply the correct requirements to 19 those -- applicable to those sources. 20 Q. And I take it that -- that the cutoffs or the 21 thresholds that the Department's proposing in these 22 rules was predicated on a definition of potential to 23 emit that did not include the types of emissions that 24 Mr. Nichols is proposing be included? 25 A. I would agree with that.
1343 1 real way to review and vet what his actual idea or 2 proposal is. 3 And we have some concerns with the report that 4 he is using to -- to make his claims. So this is not a 5 report that has undergone any sort of peer review or 6 been published to any scientific journal. 7 The methods by which the data collection and 8 analysis were conducted were not really detailed in any 9 way. And that's the same way for how they did their 10 conclusions. So there is no data presented on how they 11 found their correlations. There's no statistics to show 12 that there is a causal relationship or any real kind of 13 relationship beyond what was provided to us. It's kind 14 of unclear. You know, they -- he said that they looked 15 at permits and decided that they were related. There's 16 no established criteria for determining that. 17 So we feel that these claims are 18 unsubstantiated and they should not be relied upon by 19 the Board for this requested addition to the rule. 20 MS. KATZ: Thank you, Mr. Baca. 21 That's all we have on that point. 22 HEARING OFFICER ORTH: Thank you. 23 Let me ask the other parties to turn on their 24 screen in the event they have questions. 25 I see Mr. Rose and Mr. Hiser.	1345 1 MR. ROSE: Thank you, Madam Hearing Officer. 2 I have no further questions. 3 HEARING OFFICER ORTH: Thank you. 4 Mr. Hiser and then Mr. Nykiel. 5 MR. HISER: Sorry. 6 CROSS-EXAMINATION 7 BY MR. HISER: 8 Q. Mr. Baca, is the Department's position sort of 9 that permitting is in Part 72 and not really appropriate 10 here for Part 50? 11 A. Yes, sir. And I'll get to that a little later 12 in -- in the hearing, in the proceeding. But 13 definitely -- 14 Q. Okay. 15 A. -- this is not a permitting rule. This is an 16 emission standards rule. 17 Q. All right. 18 Then I have no further questions. 19 Thank you very much. 20 HEARING OFFICER ORTH: Okay. Thank you. 21 Mr. Nykiel? 22 MR. NYKIEL: Yes. Thank you, Madam Hearing 23 Officer. Just a few questions. 24 25

1346 1 CROSS-EXAMINATION 2 BY MR. NYKIEL: 3 Q. Mr. Baca, my name is Matt Nykiel. I'm with 4 WildEarth Guardians. 5 Good morning. 6 The first question I have is do you agree that 7 NMED is responsible for regulating stationary point 8 sources of ozone precursors? 9 A. I believe I just testified to that effect. 10 Q. Okay. 11 And if there are stationary point sources 12 involved in the construction of oil and gas wells that 13 emit ozone precursors, would you also agree that the 14 Department is responsible for regulating those 15 emissions? 16 A. Well, I mean, it would depend upon what 17 sources you're talking about. I think you really need 18 to specify what we're talking about here in order to 19 properly address and -- and speak to those issues. 20 Q. Okay. 21 So for example, what about the wellbore hole? 22 A. I would not be qualified to talk to that. I'm 23 not -- I'm not exactly sure what you're referring to -- 24 MS. KATZ: Objection. 25 MR. BACA: Okay.	1348 1 that precludes the Board from adding clarity to the 2 definition of potential to emit? 3 A. In this rule? I -- I don't think there would 4 be. But I don't believe that what is being proposed 5 would add any clarity. I actually believe that it would 6 provide more confusion. And like I spoke to before, we 7 are not even specifying what pieces of equipment we're 8 talking about in this proposal. So there is no way for 9 me to really give you a good answer on -- on what we're 10 talking about now. It's all on hypotheticals. 11 Q. Okay. 12 I think that will do. Thank you. 13 No further questions. 14 HEARING OFFICER ORTH: All right. Thank you, 15 Mr. Nykiel. 16 Any other party wish to turn on their screen 17 for questions of Mr. Baca? 18 No? 19 All right. I'm going to move to the Board 20 questions. 21 If you're an attendee on this platform and 22 have a question of Mr. Baca, please reach out through 23 the chat. 24 25
1347 1 MS. KATZ: Mr. Nykiel, Mr. -- his client did 2 not specify, I don't believe, any equipment in his 3 testimony regarding this issue. 4 HEARING OFFICER ORTH: All right. 5 Do you want to rephrase that, Mr. Nykiel, and 6 move on? 7 MR. NYKIEL: Well, I just asked that because 8 it -- Mr. Nichols gave that example as an answer to a 9 question before. 10 HEARING OFFICER ORTH: Okay. 11 Do you have other questions of Mr. Baca? 12 MR. NYKIEL: Yes. 13 One moment. 14 Q. You testified that the definition of potential 15 to emit proposed by the Department is consistent with 16 the definition in the federal regulations? 17 A. Yes. I did testify to that. 18 Q. Okay. 19 And -- 20 A. No. I'm sorry. I -- I testified that it is 21 consistent with the Department's permitting programs. 22 Q. Okay. 23 A. And the way that we calculate PTE under that. 24 Q. Okay. 25 Is there any language in the Clean Air Act	1349 1 EXAMINATION 2 BY THE BOARD: 3 HEARING OFFICER ORTH: Madam Chair? 4 CHAIR SUINA: Thank you, Madam Hearing 5 Officer. I don't have any questions at this time. 6 HEARING OFFICER ORTH: Thank you. 7 Vice-Chair Trujillo Davis? 8 VICE-CHAIR TRUJILLO DAVIS: I don't either. 9 Thank you, ma'am. 10 HEARING OFFICER ORTH: Member Cates? 11 MEMBER CATES: No questions here. Thank you. 12 HEARING OFFICER ORTH: Member Bitzer? 13 MEMBER BITZER: No questions. Thank you. 14 HEARING OFFICER ORTH: Thank you. 15 Member Duval? 16 MR. DUVAL: I have one for Mr. Baca. 17 Could you explain why it would be problematic 18 that there's not a more sophisticated statistical 19 analysis in the data? You specifically mentioned 20 that -- like correlation was referred to, but there 21 wasn't the -- like an actual rigorous statistical 22 analysis? 23 MR. BACA: Right. Nor was no protocol 24 provided for how the actual study was conducted. So to 25 actually, you know, evaluate what we would note for --

1350 1 to design this sort of study, you'd probably need to 2 develop what's called a quality assurance project plan, 3 which would outline what your data quality objectives 4 were, and, you know, you design your study to meet those 5 DQOs and make sure that you're not introducing any undue 6 influence into your findings. 7 So that was not properly explained to -- to 8 me, and it didn't give me any basis to really give any 9 credence to the report. 10 So getting to the findings, you know, that -- 11 that's -- you know, once they determine that these were 12 the facilities, you know, I'm not sure how they're 13 really saying that this is -- is a problem, whether it's 14 a causal problem or how they -- how are they relating 15 what they found could be possibly a violation to what 16 they're representing as findings in this report. 17 MR. DUVAL: And in dealing with NMED, it is -- 18 is it common practice that a QA/QC, quality 19 assurance/quality control, protocol would be provided? 20 MR. BACA: For any study that -- that NMED 21 does, our monitoring networks have QAPPs. Any study 22 that I have done regarding, you know, fieldwork, there 23 is QAPPs involved with those. So the Department does do 24 that. 25 Any of the other reports that I've seen of	1352 1 MR. ROSE: In Mr. Nykiel's examination of 2 Mr. Blewitt, they referenced an Environmental Impact 3 Statement or comments on it, which is IPANM Exhibit 9, I 4 believe, and I don't remember whether we'd offered it 5 and had it admitted. So I just wanted to make sure 6 that -- that if we hadn't, that it -- that we go ahead 7 and offer it -- admit it at this point. 8 HEARING OFFICER ORTH: My memory was that all 9 IPANM exhibits were admitted. 10 MR. ROSE: If that's the case, Madam Hearing 11 Officer, then -- then I think we're fine. 12 HEARING OFFICER ORTH: All right. And thank 13 you for pointing that out, though, for the Board's 14 benefit. They can refer to Exhibit 9. Thank you for 15 that. 16 All right. Ms. Katz? 17 MS. KATZ: Thank you. 18 So -- so for now we're on -- if we're on 19 exhibit -- sorry -- Topic 22 now, then I'm calling 20 Elizabeth Bisbey-Kuehn again for that. 21 HEARING OFFICER ORTH: Thank you. 22 23 24 25
1351 1 this type of nature do cite -- have citations to them. 2 They do explain their methods. They do provide the 3 data, the underlying data that's available to -- to 4 everyone. 5 And so I just have concerns with kind of the 6 way it was presented and -- (unintelligible and/or 7 inaudible). 8 MR. DUVAL: Thank you. 9 HEARING OFFICER ORTH: Thank you. 10 Member Garcia. 11 MEMBER GARCIA: No questions. Thank you. 12 HEARING OFFICER ORTH: And Member Honker. 13 MEMBER HONKER: No questions. Thank you. 14 HEARING OFFICER ORTH: Thank you. 15 Any follow-up, Ms. Katz? 16 MS. KATZ: Nothing from me, Madam Hearing 17 Officer. 18 HEARING OFFICER ORTH: All right. Thank you. 19 Thank you, Mr. Baca, for your testimony. 20 And, Ms. Katz, is this the end of the 21 testimony on Topic 21? Right? 22 MS. KATZ: All right. 23 MR. ROSE: Madam Hearing Officer, before we go 24 on, just a housekeeping item. 25 HEARING OFFICER ORTH: Yes, sir.	1353 1 ELIZABETH BISBEY-KUEHN 2 (Relating to Topic Order 23) 3 having been first duly sworn or affirmed, was 4 examined and testified as follows: 5 DIRECT EXAMINATION 6 BY MS. KATZ: 7 MS. KATZ: And the -- for the Board, this 8 topic is in NMED Exhibit 32, pages -- let's see -- page 9 3 through 7 and page 23 through 24, and then NMED 10 Rebuttal Exhibit 1, and I don't have a page number. I'm 11 sorry for that. 12 All right. And we have a PowerPoint on this 13 one. 14 VICE-CHAIR TRUJILLO DAVIS: I'm sorry, 15 Ms. Katz. 16 What did you say the first exhibits were? 17 MS. KATZ: That was NMED Exhibit 32. And 18 that's the -- that's going to be the exhibit for all of 19 the rest of this testimony on the rule provisions from 20 NMED, and there's a table of contents associated with 21 it. 22 And of course, I had it in front of me, and I 23 wrote down things on it, but I can't find it at the 24 moment. 25 And it was pages -- page 3 through 7 and page

1354 1 23 through 24. 2 And, Liz, we are -- I don't believe we are 3 here yet. I believe we are still on topic -- or we're 4 on General Provisions. Oh, sorry. I had the wrong 5 number in here. It should be Section 20.2.50.111. 6 All right. 7 MS. BISBEY-KUEHN: This is the correct section 8 number, 112. So where you -- 9 MS. KATZ: Okay. 10 MS. BISBEY-KUEHN: -- where it's wrong, where 11 you're referring to the -- 12 MS. KATZ: So we are not on this topic. We're 13 not on this section yet. We are in Applicability. 14 MS. BISBEY-KUEHN: So -- okay. So we -- 15 MS. KATZ: So 111. So we just finished the 16 definition of PTE in the previous topic. So now we are 17 in Section 111, Applicability, I believe. Or no? 18 MS. BISBEY-KUEHN: Which -- which we finished 19 yesterday. 20 MS. KATZ: We finished yesterday. Sorry. 21 112. 22 MS. BISBEY-KUEHN: That's okay. No. It's -- 23 MS. KATZ: Sorry. This is all so confusing. 24 MS. BISBEY-KUEHN: That's okay. I just want 25 to make sure we're all --	1356 1 specifications. 2 And we did receive several comments on this 3 section and made revisions in response to those comments 4 to clarify what specifications may be followed to ensure 5 equipment is operated properly and maintained. 6 And so on this slide before you is condition 7 A.(1), which outlines those -- that universal set of 8 requirements to maintain -- operate and maintain 9 equipment in accordance with manufacturer 10 specifications. 11 We received comments from the industry 12 partners, seeking clarification on what types of 13 specifications may be used to comply with this 14 requirement. We made significant revisions in response 15 to those comments and have addressed those comments, I 16 believe, satisfactorily. 17 I'm not going to belabor all the revisions 18 that we made, but I will be able to answer any specific 19 questions that any Board Members have. 20 Q. Okay. 21 A. This slide is -- sorry. 22 Do you have -- I'll just proceed if that's 23 okay -- 24 Q. Yes. 25 A. -- Ms. Katz. Okay.
1355 1 MS. KATZ: You're right. 2 MS. BISBEY-KUEHN: Okay. 3 CHAIR SUINA: Madam Hearing Officer and 4 Ms. Katz, I'm just making sure the same references are 5 for the -- 6 MS. KATZ: No. They're not. 7 CHAIR SUINA: Okay. 8 MS. KATZ: Sorry. This is my fault. 9 CHAIR SUINA: No problem. Thank you. 10 MS. KATZ: Let's see. Okay. So for this one, 11 the reference -- the page references are NMED page -- 12 Exhibit 32, page 24 through 30, and NMED Rebuttal 13 Exhibit 1, 21 through 27. 14 My apologies for that. 15 Q. All right. Ms. Kuehn, you have submitted your 16 testimony on this already and adopted it. 17 Can you please give us an overview of the 18 General Provisions at 20.2.50.112. 19 A. Yes. This section, the General Provisions 20 section, establishes a universal set of requirements 21 applicable to all the sources that are subject to Part 22 50, and they include operational, monitoring, 23 recordkeeping and reporting requirements. They 24 establish work practice standards and requirements to 25 operate equipment in accordance with manufacturer	1357 1 The second condition establishes a general 2 duty clause to minimize emissions, and also a 3 requirement to develop a database system capable of 4 storing the compliance information for equipment subject 5 to this part. 6 Our initial proposal had a requirement to 7 physically tag monitoring -- for monitoring equipment, 8 and the requirement to physically tag sources that are 9 subject to this rule have been removed. 10 We received extensive feedback from again the 11 industry stakeholders on the concept of the EMT, that it 12 was not technically feasible, and NMED agreed to scale 13 those requirements to a -- to a simplified form which 14 still preserves the intent to -- to monitor and capture 15 that monitoring data contemporaneously and track that 16 information in -- in some type of database system, which 17 I will speak to in detail later. 18 So changes to this Paragraph (2) in front of 19 you today reflect the comments that were received by the 20 Department, to clarify under what circumstances air 21 pollution control equipment and monitoring equipment 22 shall be maintained. We -- we made these changes in 23 response to comments, and we think that they have 24 resolved the issues that were identified by -- by the 25 industry parties.

1358 1 And again I'm not going to go into detail here 2 about what the revisions were that were made, but I can 3 be available for any specific questions that Board 4 Members have. 5 What is before you today is additional 6 clarifications that we made to the -- one second -- to 7 the paragraphs within Paragraph (3) and the 8 subparagraphs within that section. This provided 9 clarifications that were necessary to specify what type 10 of emissions were required to be kept, and other minor 11 edits that don't substantively change the intent of 12 this -- this section. 13 And then we've deleted, of course, the 14 requirement to install an equipment monitoring tag, and 15 we've clarified the information that has to be 16 maintained in the compliance database system. 17 The slide before you reflect additional edits 18 that the Department made in response to industry 19 comments on that concept of the database system. We 20 clarified that final reports must be entered into that 21 system within three business days, clarified that NMED 22 will develop a list of approved technologies to meet the 23 new contemporaneous tracking system. 24 And before you in Paragraph (8)(b) is how the 25 Department intends to work with stakeholders on	1360 1 federal standard or requirement we were referring to. 2 And so that Paragraph (10) before you specifies -- or 3 clarifies that to the extent that Part 50 is referring 4 to applicable federal standards or requirements, we are 5 referring to those standards that were in effect at the 6 time of the effective date of this part. 7 And -- 8 Q. Ms. Kuehn, can I take you back up to Paragraph 9 (9) and just make clear that the third-party audit 10 relates to the auditing of data and information that's 11 collected and reported in that database report that the 12 Department can request; is that correct? 13 A. That's correct. 14 Q. All right. Thank you. 15 A. Yes. And I should add, I'm sorry, that 16 there's an important addition that was made in response 17 to comments, that the owner/operator may request a 18 hearing on whether good cause was demonstrated by the 19 Department. 20 Q. To require that audit? 21 A. To require the audit. That's correct. 22 Paragraph (11) was necessary to clarify that 23 prior to modifying an existing source the owner/operator 24 must reevaluate the applicability -- or the potential 25 applicability of Part 50 to that source.
1359 1 identifying the type of technologies that I think will 2 comply with the requirement of this part. 3 And so we've outlined a timeline here for the 4 Department to work with stakeholders to identify those 5 technologies, and the Department intends to post those 6 approved technologies by April 1st -- by January 1st, 7 2023, and then provide an additional three months for 8 operators -- or four months to comply with that new 9 tracking system. 10 Q. And, Ms. Kuehn, this -- just for clarification 11 that this relates to the requirement for date and time 12 stamping monitoring events that are required under this 13 section? 14 A. That's correct. 15 Q. Okay. Thank you. 16 A. The Department received comments regarding the 17 third-party audit requirement that appears in this 18 section and agreed to the revision that the Department 19 shall be limited to requiring those third-party 20 audits -- third-party audits at least no more than once 21 per year. 22 The Department also added a provision which 23 was necessary to identify which federal standard -- to 24 the extent that the regulation is referring to a federal 25 standard or requirement, we need to specify which	1361 1 So that clarifies that. You do need to 2 reevaluate a source's applicability under this part 3 prior to making some type of modification to a piece of 4 equipment that could increase the emissions and bring 5 that unit under the requirements of this -- this rule. 6 Q. And can I go back one -- sorry, once more, 7 because I think we missed one other aspect of the 8 third-party audit and the hearing, that a hearing can 9 also be requested to -- if the recommendations provided 10 by -- for the owner or operator to challenge the 11 recommendations that were made by the third-party 12 auditor; is that correct? 13 A. Yes, that's correct. 14 Q. Thank you. 15 A. This slide refers to the -- provides a summary 16 of the general monitoring requirements under the general 17 provisions. We received requests for -- from the 18 industry parties that when we were referring to the term 19 "monitoring," that we add monitoring, testing or 20 inspection within the meaning of that term, and we've 21 added this first paragraph in order to clarify that when 22 the term "monitoring" is used in this part it includes 23 monitoring of equipment and testing or inspection 24 requirements. 25 And then we made other minor -- minor edits to

1362 1 refer to the concept of an alternative monitoring 2 strategy, which is limited to the -- the LDAR or the 3 fugitive leak section, which we'll get to on Monday. 4 Q. And, Ms. Kuehn, can you just briefly touch on 5 what the monitoring requirements are here, just briefly 6 summarize them? 7 A. Sure. 8 So this requires owners and operators to 9 conduct a monthly inspection of equipment unless a 10 different schedule is specified in the section to that 11 source type. So this is a -- this is a baseline 12 equipment check that's done once per month on equipment 13 subject to this part. 14 This is a slide again that summarizes the 15 general monitoring requirements. We did receive 16 comments requesting the -- the deletion of some 17 information that may -- that was duplicative as it 18 appeared in other sections. And so the Department 19 agreed that this list of specific monitoring 20 requirements were duplications of the monitoring 21 requirements in the specific sections, and so we've -- 22 we've made this requirement more concise. 23 This slide covers the general recordkeeping 24 requirements that require the actual recording of -- of 25 monitoring that's required under this general -- under	1364 1 compliance? 2 A. Sure. 3 Q. Sorry. 4 A. No. That's okay. 5 And we received extensive comment from 6 stakeholders on the -- on a previous requirement in the 7 proposal that required owners and operators to conduct a 8 full compliance evaluation before the transfer of 9 equipment. We agreed that it was improper to -- to have 10 that analysis conducted prior to transfer of ownership. 11 And so we have instead replaced that requirement with 12 the annual compliance certification. 13 This slide speaks to the general reporting 14 provisions of the part and also to the definition of 15 construction. The Department received requests about 16 the need for additional time to provide reports, and 17 especially for those instances where we're requiring 18 information on multiple facilities, and so the 19 Department made revisions to allow three business days 20 to provide that information and also the option to give 21 additional time as appropriate for multiple requests. 22 And the definition of construction was -- was 23 updated, and I know we spoke to moving this to the 24 engines and turbines section. So we can speak to that 25 again when we get to engines and turbines.
1363 1 the general provisions. We revised the recordkeeping 2 requirement to clarify what -- who can conduct the 3 record as required by this part. 4 We deleted language in Paragraph (2) because 5 the Department is already available -- is already able 6 to treat loss of -- or failure to maintain a record 7 as -- as a failure to collect that data in our 8 enforcement actions. 9 We've also added a new provision in Paragraph 10 (3) that requires an annual compliance evaluation on 11 certification of all the terms and conditions of this 12 part. We think this is an essential compliance 13 certification of the requirements of this part. And if 14 operators are correctly monitoring and recordkeeping and 15 conducting the proper recordkeeping of records required 16 under this part, the compilation of this data into an 17 annual compliance certification should be fairly 18 straightforward and should not require a -- you know, 19 additional resources. 20 This section -- oh. So we're speaking -- 21 Q. Ms. Kuehn? 22 A. Yes. 23 Q. Sorry. 24 Can you just go back, please, and discuss the 25 removal of the pre -- before transferring the	1365 1 But it was originally intended to be included 2 within the scope of this -- of this section, and so 3 I'll -- it's here before you today, and I can just go 4 through the -- the changes that were made, which are 5 important and are in line with other requirements, which 6 excludes relocations or like kind replacements from 7 triggering the definition of construction under the 8 rule. 9 That's the end of the presentation. 10 MS. KATZ: Thank you, Ms. Kuehn. 11 I don't have any more questions on this 12 section. 13 HEARING OFFICER ORTH: Thank you, Ms. Kuehn 14 and Ms. Katz. 15 Let me invite counsel to come on screen. 16 I see Ms. Gutierrez. 17 Do you have questions of Ms. Kuehn? 18 MS. GUTIERREZ: I do. Thank you, Madam 19 Hearing Officer. 20 CROSS-EXAMINATION 21 BY MS. GUTIERREZ: 22 Q. Thank you, Ms. Kuehn, for your presentation 23 today. 24 I do have what I think is just one quick 25 clarifying question. And if it's helpful, I'm referring

1366 1 to your Slide 7 of your slide deck. And this question 2 relates to the monitoring requirements at Paragraph 3 B.(1) of Section 112. 4 So I think as we all read, that requires 5 monthly monitoring, quote, unless a different schedule 6 is specified in the section applicable to that source 7 type, end quote. 8 However, in Exhibit 32, page 28 to the 9 Department's direct testimony, your testimony states 10 that this Section 112, quote, is the minimum periodic 11 requirement for sources subject to Part 50, end quote. 12 So the use of the term "minimum" creates a 13 little bit of confusion there. 14 My question is can you confirm that it is not 15 the Department's intent to require monthly monitoring in 16 each section at the minimum frequency, rather if the 17 specific section has the frequency, that frequency is 18 the authority? 19 A. It is the Department's intent that owners and 20 operators conduct a monthly inspection of equipment 21 subject to this part, and that establishes a baseline 22 set of requirements, unless a more frequent inspection 23 schedule is specified. 24 So the clarification here is that these -- 25 these are industrial sources with industrial equipment,	1368 CROSS-EXAMINATION 1 2 BY MR. HISER: 3 Q. Good morning, Ms. Kuehn. 4 First of all, we'd like to say thank you for 5 all -- going through all these many comments that you 6 received and obviously giving consideration to many of 7 them. 8 One of the ones that I think is important for 9 us is the idea of the compliance database system that 10 the Department has introduced in this rule. And in some 11 cases that appears as a system, in some cases it appears 12 as systems, in some cases it is system with the S inside 13 parentheses. 14 And I just wanted to clarify that your general 15 intent was that we can have multiple systems involved in 16 supplying the information so long as we're able to 17 produce the CDR within the required time frame or the 18 other information within the required time frame. 19 A. That's correct. 20 Q. Okay. 21 In the discussion where you talk about the 22 date and time stamp, have you done any evaluation of the 23 cost from the Department's perspective of how much that 24 would cost us to do across the state -- or at least 25 across the affected counties? Excuse me.
1367 1 that there is an expectation that operators conduct a 2 monthly inspection of that equipment, unless an -- and I 3 said more frequent inspection schedule is necessary. 4 Q. So maybe perhaps just a follow-up question 5 there. Because we have different frequencies in, for 6 example, the leak detection that are less frequent than 7 monthly, this monthly monitoring at 112 would not 8 overturn what is in Section 116. 9 A. It would not specific -- no. It would not 10 overturn the -- those frequencies in 116. 11 Q. And similarly, in the pig launching and 12 receiving section, there are certain frequencies for 13 inspection that may be less frequent than monthly if you 14 are not pigging or launching as frequently as monthly. 15 A. I think we -- 16 Q. And this -- 17 (Simultaneous discussion.) 18 A. I think we can make a clarification on the 19 rule that speaks to those specific circumstances. 20 Q. Okay. 21 Thank you. No further questions. 22 HEARING OFFICER ORTH: Thank you, 23 Ms. Gutierrez. 24 I saw Mr. Hiser on the screen. 25 MR. HISER: Thank you, Madam Hearing Officer.	1369 1 A. So that is not necessarily an added system 2 that has to be deployed. That can be implemented, I 3 think, in the current compliance monitoring program that 4 owners and operators already implement. We are hoping 5 to identify apps that can be -- that are hopefully, you 6 know, free to download, that can contain the type of 7 information that we would like to be recorded 8 contemporaneously with a monitoring event. 9 Q. Okay. 10 But at this point in time, and I think as 11 you've laid out in your proposal, you haven't identified 12 those, and so you're asking the Board to say "Trust the 13 Bureau, we're going to be able to come up with something 14 that works for all parties"? 15 A. Well, there's -- there are many existing apps 16 that you can download that have date/time stamp options 17 for those, and so I have no doubt that we'll be able to 18 identify a suite of technologies that can meet the 19 intent of that requirement, and we are not -- we are 20 going to -- the plan is to work with industry parties on 21 identifying technologies that meet that intent. And so 22 I have no doubt that we will be able to identify the 23 technologies that meet the intent. 24 Q. Have you done any database development work 25 within the Air Quality Bureau?

1370 1 A. We are frequently working on database 2 development. 3 Q. And how off -- how long does it take for a 4 typical database development project to go from start to 5 finish? 6 A. It can -- it will take a couple of years. And 7 we've given a couple of years in the rule as a timeline 8 to develop and build up that system. 9 Q. Thank you. 10 In the -- the same section on date and time 11 stamp, just a question about how you would -- how you're 12 looking at implementing that, because, of course, as 13 industry we're like, well, how do we deal with this in 14 the field. 15 If there's a GPS unavailability or device 16 failure, are you expecting us not to do or to delay or 17 to repeat the maintenance activity or inspection in that 18 situation? Because we're required to do the date and 19 time stamp in order to do the device, and so we need 20 guidance from you about how to handle device failures or 21 device unavailability. Can you give a little bit of 22 thought perhaps on how you believe the Bureau's looking 23 at handling that? 24 A. I think we would -- there needs to be some 25 reasonable understanding that equipment failures happen	1372 1 Q. I think we'd appreciate that, and I'm sure 2 that Ms. Orth and the Board would appreciate not having 3 that deadline as part of things hanging over them. 4 The second thing I had for that is have you 5 estimated -- or do you have an estimate in your -- in 6 the Department's mind how many individual sources, as 7 you've used the term, would be subject to this annual 8 compliance certification? Because we've heard that 9 there's like 30 -- I guess nearly 50,000 wells, or 10 somewhere in that range, and -- but wells are only one 11 part of this -- our rule. If you add all the other 12 pieces of equipment, do we have some sense of how many 13 pieces of equipment are potentially covered? 14 A. It depends on the facility and the universe of 15 equipment that they have on the site and whether or not 16 that equipment is subject to the part. 17 Q. But the certification requirement, doesn't it 18 go to each of the individual sources identified in your 19 rule? 20 A. It does. Correct. So the cert -- yeah. So 21 the individual certification will be per facility, and 22 the per facility will -- and the number of sources will 23 be dependent on the type of facility that that -- that 24 that facility is. And so a well site facility may have 25 10 pieces of equipment that are subject to this part, a
1371 1 and the -- that the monitoring should go on, that the 2 monitoring event should go on, and the -- in the 3 circumstance where you have some kind of GPS malfunction 4 and you're unable to make that demonstration at the 5 time. 6 Q. Thanks. That's really helpful for us as we're 7 looking at this. 8 Then later on in the rule, we appreciate the 9 Department has removed the discussion about the 10 pretransfer certification, and you've now substituted in 11 an annual compliance certification, I think, in March of 12 each year. 13 And the first rule -- first question I have 14 for you is just looking at the trajectory of this 15 rulemaking, that first certification, if this rule were 16 to be adopted prior to March of 2022, that would put us 17 with only a couple of days to implement that 18 precision -- proceeding. 19 Is that something that you would be 20 considerate of perhaps pushing it out so we have about a 21 year before the first one comes into effect? 22 A. Yes. Yes. I think that's very reasonable, 23 and I think we can extend that deadline to -- give a 24 year after the effective date of the rule to put that -- 25 put that in place.	1373 1 gas processing plant may have 20 pieces of equipment 2 that are subject to the part. 3 Q. Yeah. 4 And so if -- anyway, it's going to be 100,000 5 at least probably, just thinking about the number of 6 facilities that we have. 7 Have you given a thought to how much time in 8 the Department's view you would have to spend on each of 9 those individual sources to prepare that compliance 10 certification? 11 A. So we're not -- we're not requiring that 12 information to be reported to us. 13 Is your question how -- have we anticipated 14 how long it's going to take you all to determine the -- 15 Q. Yes. How long it would take us to do that for 16 each of these individual sources. 17 A. I think if -- so if owners and operators are 18 complying with the monitoring and recordkeeping 19 requirements that are in the rule, it should -- that -- 20 that information and that record should already exist. 21 And so if -- this will be a compilation of those 22 existing records into a certification report, which I 23 think should be automatic if you have a -- a good 24 manage -- an equipment environmental management system 25 in place.

1374 1 Q. So as the Department was looking at this, this 2 was more using our CDR database system to undertake that 3 evaluation and to, you know, basically query that to 4 make sure that the sources are -- are in compliance as 5 we're preparing to make that certification? 6 A. You're -- correct. 7 Q. Thank you. That's a very -- that's helpful to 8 understand what the Department is thinking of for our 9 obligations. 10 Then in the very last section, we had 11 proposed, and you had accepted a provision giving a 12 little bit more discretion in how much time we had to 13 respond to -- say we were to receive a request for 20 14 facilities at a time, for example. And in your 15 testimony you say "would," but in the language you say 16 "may." And there's a big difference between would and 17 may. 18 Are you guys willing to consider possibly a 19 little bit more affirmative statement on that one word, 20 maybe a "will"? 21 It still leaves you the discretion to 22 determine how much time to grant, but it's a little bit 23 stronger, that if there's a large number of facilities 24 we will get some extra time. 25 A. Yes. We can -- we can agree to that.	1376 1 questions of Ms. Kuehn on this topic? 2 I'm not seeing any new screens. 3 I'm going to turn to the Board Members for 4 their questions. 5 While I'm doing that, if you're an attendee on 6 this platform and would have a question, please reach 7 out through the chat. 8 EXAMINATION 9 BY THE BOARD: 10 HEARING OFFICER ORTH: Madam Chair, do you 11 have a questions? 12 CHAIR SUINA: Thank you, Madam Hearing 13 Officer. Yes. I have a couple questions. 14 Thank you again for your testimony, Ms. Kuehn. 15 I just want to have it clarified in -- in my 16 head. 17 You had mentioned during your testimony 18 that -- and I could see in real time some of the 19 industry representatives and your interaction about the 20 language and about basically negotiating the language. 21 As -- for any of these items that you spoke 22 about in this portion of your testimony, did you get any 23 other feedback from other organizations other than the 24 industry on these? 25 MR. BISBEY-KUEHN: Madam Chair, we did not.
1375 1 MR. HISER: I believe that that completes the 2 questions that I had for you, just mostly in the nature 3 of clarifying what the Department's intents were. 4 We appreciate your time on this, really we do. 5 Thank you. 6 HEARING OFFICER ORTH: Thank you, Mr. Hiser. 7 Let me see. Mr. Nykiel, I see you on screen. 8 MR. NYKIEL: Thank you, Madam Hearing Officer. 9 Just a few questions. 10 CROSS-EXAMINATION 11 BY MR. NYKIEL: 12 Q. Good morning, Ms. Kuehn. 13 The annual compliance certification in the 14 proposed rule, that is not required to be submitted to 15 the Department, is it? 16 A. No, it is not. 17 Q. And for the compliance database reports, those 18 are also not required to be submitted to the Department 19 unless -- or unless there's a request from the 20 Department for one or more. 21 A. That's correct. And that's in -- that's 22 consistent with how most air regulatory agencies handle 23 that type of recordkeeping. 24 MR. NYKIEL: Thank you. 25 HEARING OFFICER ORTH: Any other parties with	1377 1 CHAIR SUINA: Okay. 2 And to the annual complying certification, I 3 know also in public testimony we heard some concerns 4 from some folks from the public regarding some of the 5 added monitoring and compliance measures being proposed. 6 From your perspective and your interaction 7 with the industry, is there still that -- a large 8 concern about the added costs that the certifications 9 and the monitoring will -- will be on the -- on the 10 industry? 11 MS. BISBEY-KUEHN: Madam Chair, I misspoke, 12 and I -- so I believe WildEarth Guardians did submit 13 comments on the -- on the general provisions section. 14 And I apologize for that error. But I want to make -- 15 or clear the record on that point. 16 CHAIR SUINA: Okay. 17 MS. BISBEY-KUEHN: And in -- as far as costs 18 go, we are -- we are aware that there are concerns about 19 added costs of -- of implementing the rule. However, 20 the cornerstone, the keystone of any -- any emission 21 standard is -- is demonstrating compliance with that 22 emission standard. And so you -- you need to have 23 associated monitoring of that equipment and some type of 24 record that the monitoring was conducted to ensure 25 compliance with that standard.

1378 1 And so it necessarily follows that you must 2 have some type of -- some way to track and record that 3 information. And it is the intent of the Department to 4 work with those small operators and build a template in 5 Excel and -- and work with small operators that need 6 that extra assistance to build a type of database 7 management system for them, and with tools to -- to 8 generate reports that would meet the intent of a 9 compliance database report. 10 Most of the large operators already have 11 enhanced environmental management databases where 12 they're already tracking that information. We are aware 13 of very small operators that probably don't have that 14 type of advanced database system. And so we -- we 15 are -- we will and are working on providing some type of 16 template for those operators that need that kind of 17 assistance. 18 CHAIR SUINA: Thank you for that response. 19 And I think in your testimony you had also 20 mentioned on NMED's side and in general, you know, if 21 these provisions go forward regarding the additional 22 monitoring and the certification information, there's 23 going to be a lot of new data. I think we can all 24 agree. 25 And so on NMED's side, do you have the	1380 1 if -- if -- I guess my question is if stakeholders 2 needed that additional year or, you know, to your point 3 of two years, would that be allowable? 4 MS. BISBEY-KUEHN: The -- 5 CHAIR SUINA: Or would NMED work with those -- 6 those stakeholders? 7 MS. BISBEY-KUEHN: We certainly will work with 8 any stakeholders that are presented with real -- real 9 issues and will try and address those and give them time 10 if they need it. 11 The current requirement is that the owners and 12 operators develop this database system within two years 13 of the effective date of this part. So that gives them 14 two full years to get the system going. And it is our 15 intent to assist those small operators with a template 16 so that they have something that meets -- meets the 17 requirements of this part. 18 CHAIR SUINA: Great. Thank you for that 19 clarification. 20 That's all I have, Madam Hearing Officer. 21 HEARING OFFICER ORTH: Thank you, Madam Chair. 22 Vice-Chair Trujillo Davis, do you have 23 questions? 24 VICE-CHAIR TRUJILLO DAVIS: Yes. Thank you 25 very much.
1379 1 databases to manage this data that would be coming in 2 and this additional information? 3 MS. BISBEY-KUEHN: Yes, Madam Chair. The way 4 that the -- the way that the rule has been constructed 5 is that these are records that are maintained by owners 6 and operators, and they're not directly submitted to the 7 Department unless the Department requests the 8 information. And so -- and we do have online compliance 9 report systems that most of our permitted facilities are 10 used to dealing with. 11 So we do have the systems in place to handle 12 that data should we request that information. 13 CHAIR SUINA: Okay. Thank you so much for 14 that. 15 And then you had talked about -- I think in 16 your testimony about a -- you know, some -- because it 17 will be more -- if the rules or provisions get added 18 into the -- the rule, there will -- you know, I think 19 you mentioned a two-year, you know, time frame, and I 20 think Mr. Hiser brought this up, you know, depending on 21 timing of the rule. 22 What is your thought -- you know, you said two 23 years, and then Mr. Hiser in his cross-examination, you 24 know, was -- was also concerned about the timing, as 25 well, if -- if it got passed in the springtime, a year	1381 1 Thank you, Ms. Kuehn. I'm going to start just 2 by saying looking at this monitoring, I'm just trying to 3 wrap my head around -- around it. 4 The -- one of the companies I've worked for in 5 the past had three employees that were dedicated to air 6 inspections, and that was their full-time job, was every 7 month they -- they got a list, and they went out and 8 did -- did all of the air inspections required for LDAR, 9 AVO and flare, in addition to a voluntary inspection 10 program. 11 So the monthly inspections that NMED is 12 proposing, are they -- they are outside, as I understand 13 it, of the LDAR, AVO and flare required inspections? 14 MS. BISBEY-KUEHN: They are. This is just -- 15 this is a monthly inspection of equipment that is 16 subject to this part. It's ensuring that the equipment 17 is operating as intended. And we can provide more 18 specificity in the rule about what that monitoring 19 should entail, but it is -- it is an operational check 20 of that equipment. And it is beyond the LDAR 21 inspections, and -- 22 VICE-CHAIR TRUJILLO DAVIS: Okay. 23 MS. BISBEY-KUEHN: -- beyond the specific like 24 testing inspections or testing requirements for engines 25 and other testing requirements that are in the rule.

1382 1 VICE-CHAIR TRUJILLO DAVIS: And did you 2 receive any comments from any of the parties, or was 3 there any discussion around streamlining inspection 4 events so -- and I'm not asking outside of monthly 5 thing, but so that way a monthly inspection could cover 6 a variety of inspections, possibly including flare, 7 LDAR, any of those? 8 MS. BISBEY-KUEHN: That is exactly correct. 9 There -- we received one question about what the intent 10 of the term "monthly" was, which I spoke to a minute 11 ago. That was really, I think, the only comment we got 12 on the term "monthly." 13 But it is -- operators should be able to 14 streamline these inspections by -- by covering that same 15 inspection, or by including that same monitoring 16 requirement in their monthly inspection, to streamline 17 those requirements. 18 VICE-CHAIR TRUJILLO DAVIS: And is it a -- is 19 it the intent of the Department to require operators to 20 hire more employees that are dedicated to -- to these 21 inspections? 22 MS. BISBEY-KUEHN: So it may be necessary for 23 some owners and operators to add employees to cover 24 the -- these requirements. It's not our intent, but 25 that may be -- that may be the reality.	1384 1 which is limited to in-house engineers. There is not 2 that same requirement for conducting the monitoring 3 required under this section. The owner or operators 4 take that risk on when they -- when they hire 5 consultants to do that type of work. 6 It may result in future compliance issues 7 for -- for the company. But the rule it -- this rule 8 itself doesn't require that an engineer or that an 9 employee of the company actually conduct this type of 10 monitoring events. We fully understand that not all 11 owner or operators have access to the portable testing 12 equipment or other -- you know, just testing equipment 13 that is typically done by outside, you know, third-party 14 testing companies, for instance. 15 So that is still authorized. 16 VICE-CHAIR TRUJILLO DAVIS: Actually that 17 brings up a great question. So -- about testing 18 equipment. 19 Generally what is required for testing 20 equipment, and do you have an idea of how much those -- 21 that runs, just -- 22 MS. BISBEY-KUEHN: So each section has a 23 requirement for testing. Right? So when we get to 24 engines and turbines, we can talk about the emissions 25 testing requirements that are part of that section.
1383 1 VICE-CHAIR TRUJILLO DAVIS: And as we've seen 2 in other portions of the rule, is there any issue with 3 operators hiring consultants to do it and certifying 4 those results? 5 MS. BISBEY-KUEHN: No. They have -- if you're 6 a responsible official making decisions on behalf of a 7 company, consultants can perform that type of a 8 monitoring on behalf of the company. 9 VICE-CHAIR TRUJILLO DAVIS: And in previous 10 testimony, I think the statement was made that there 11 were -- in the past when consultants did that work, that 12 there were errors made and that it got the company into 13 some long-term compliance issues, and the Department was 14 trying to avoid that. 15 Is that not a situation that you see happening 16 here? 17 MS. BISBEY-KUEHN: So that conversation was 18 about the PTE calculation and the need for an in-house 19 engineer with specific experience to sign off on the PTE 20 calculation. 21 VICE-CHAIR TRUJILLO DAVIS: Um-hum. 22 MS. BISBEY-KUEHN: There are -- there's a 23 requirement which we'll get to when we get to the 24 control device and closed vent system section. There's 25 a requirement for a closed system device certification	1385 1 It's either a reference -- there are options provided 2 for the type of testing equipment that has to be used. 3 There's a portable analyzer or reference method test, 4 and those tests can cost, you know, hundreds -- hundreds 5 to thousands of dollars per test. 6 VICE-CHAIR TRUJILLO DAVIS: Okay. 7 Has there been any -- or is there readily 8 available information on what kind of initial investment 9 would need for testing equipment for any operator, small 10 or large? 11 MS. BISBEY-KUEHN: There has not been a 12 specific study done on -- on costs of testing equipment. 13 VICE-CHAIR TRUJILLO DAVIS: Okay. 14 And the reason I ask, because it kind of 15 sticks in my head, we've heard a lot of people reference 16 the cameras, and I believe last time I heard, it was 17 close to \$100,000 for a camera. 18 Does that sound about right? 19 MS. BISBEY-KUEHN: That's correct. 20 VICE-CHAIR TRUJILLO DAVIS: Okay. 21 MS. KATZ: Member Trujillo Davis, I would just 22 ask that -- so there's -- all of that testimony is going 23 to be presented with the LDAR section. So I think it's 24 going to be much more helpful to have those discussions 25 about the specific equipment and that type of issue when

1386 1 we get to those particular sections. 2 VICE-CHAIR TRUJILLO DAVIS: Okay. Thank you. 3 Yes. I was just trying to kind of wrap my 4 head around what monitoring would entail on a monthly 5 basis. 6 So thank you, Ms. Kuehn, for asking -- for 7 answering all my questions. 8 HEARING OFFICER ORTH: Thank you. 9 We have about another five minutes before we 10 need to break for lunch. 11 Member Cates, do you have questions? 12 MEMBER CATES: Yeah. I'm sort of interested 13 in the red-lining process. 14 So the -- the rule text that we saw today, 15 there's lots of red-lining in it, and, you know, my 16 question is along the lines of -- well, you know, part 17 of it is to address, I suppose, this -- you know, there 18 is a belief among some people out there that the state 19 writes rules at the behest of the administration to, you 20 know, tighten up the industry, and that the state writes 21 the rules and gives them to the industry and the 22 industry rewrites them. 23 And so -- so does that perception -- 24 Ms. Kuehn, I was hoping you could speak to that. So 25 specifically my questions, then, are the red-lining	1388 1 In other cases there were real technical 2 issues that were identified that had to be addressed, 3 that were addressed in the red-line version and with our 4 direct and rebuttal testimony. 5 And so we did not simply adopt changes by any 6 party. Those were vetted, those were carefully 7 reviewed, carefully considered and vetted prior to 8 making any changes to our -- our draft rule. And this 9 version of the rule reflects comments received from all 10 stakeholders. 11 MEMBER CATES: And by all stakeholders, you 12 mean like, you know, WildEarth Guardians, for instance, 13 you know, the environmentalist community and so on -- 14 MS. BISBEY-KUEHN: Correct, to the extent we 15 could agree with what the request was. 16 MEMBER CATES: Yeah. 17 And do you have any feel for how -- you know, 18 what was -- what percentage of the edits did you accept? 19 Was it half of them? Was it 80? Was it -- was it 20 100 percent? 21 MS. BISBEY-KUEHN: We received thousands and 22 thousands of pages of direct and rebuttal testimony, and 23 sometimes the parties worked together to submit versions 24 that they agreed to without consulting other parties. 25 We had other industry groups submitting their own that
1387 1 comes from -- does it come mostly from the New Mexico 2 Oil and Gas Association? Does it come mostly from 3 the -- whatever the independent operator association is? 4 Is it a combination of those things? Do you do a round 5 of edits? Do you just -- do you typically accept the 6 edits that they propose? 7 I mean, that's just my sort of general line of 8 questioning, and I was hoping you could explain -- you 9 know, go into that a little bit without taking -- 10 without taking up too much time. 11 MS. BISBEY-KUEHN: Sure, Member Cates, of 12 course. 13 We received edits from all parties that are 14 involved in this rulemaking proceeding, and accompanied 15 with their -- their direct and rebuttal testimony, 16 they're required to provide language to implement 17 their -- the comments that they've made. And so all 18 parties have submitted red-line/strike-out versions of 19 language that they would like changed. 20 We reviewed all of those comments that we 21 received. To the extent that we agreed that it provided 22 clarification or was better stated or was more clear or 23 more concise, we generally agreed that those edits could 24 be made, so long as they didn't change the intent of the 25 requirement.	1389 1 didn't necessarily agree with other parties. We had 2 three -- we had several stakeholders work together and 3 agree with each other's comments on things. 4 So it was like iterations. It was every 5 iteration of -- of work -- of collaboration and not 6 collaboration between the parties. And so we had to 7 look at the universe of the information that we 8 received, whittle it down to those things that we could 9 accept and make the necessary changes and kind of move 10 on. But the -- it -- each section was engaged with 11 differently by different stakeholders. 12 MEMBER CATES: Yeah. 13 MS. BISBEY-KUEHN: And so -- 14 MEMBER CATES: Right. 15 And as you -- as you're suggesting, it's a 16 lengthy process, it takes -- that took weeks, months? 17 MS. BISBEY-KUEHN: We worked -- yeah. We 18 worked 90 hours a week just reviewing comments and 19 making edits. I mean, we have done nothing for the 20 last -- we've done nothing but that for the last three 21 months. 22 MEMBER CATES: Okay. So this didn't occur in 23 a smoky back room in Santa Fe. 24 MS. BISBEY-KUEHN: No. No. 25 MEMBER CATES: Okay.

1390 1 Thank you for your input. I appreciate it. 2 HEARING OFFICER ORTH: Thank you, Member 3 Cates. 4 I'm sorry we will not be able to take a full 5 lunch break every day, but today we must. We do have 6 several public commenters at 1:00. So we'll accept that 7 public comment, and then we'll return to the questioning 8 of Ms. Kuehn with Member Bitzer's questions. 9 Thank you, all. 10 See you at 1:00. 11 (Proceedings in recess from 12:02 p.m. to 12 1:00 p.m.) 13 HEARING OFFICER ORTH: It's one o'clock. 14 Let's come back from the break, please. 15 All right. We are back following a lunch 16 break on the fifth day of a hearing in EIB 21-27. We've 17 come to the 1:00 p.m. public comment session. 18 We do have public comment sessions every day 19 at 9:00, 1:00 and 5:00. Public comment is taken by 20 audio, not video. It is taken under oath and is limited 21 to five minutes. In the event you have longer comment, 22 please submit it in writing to Pam Jones, the Board 23 administrator. 24 These are the folks who reached out via e-mail 25 to the administrator, and I'll call on you in this	1392 1 HEARING OFFICER ORTH: Okay. Thank you. 2 And caller 12 just disappeared. Maybe they'll 3 call back in. 4 All right. So I don't see Charles Wendler on 5 the platform. If he rejoins us, I'm happy to call on 6 him. 7 Let's see. The next one is Margaret Bell. I 8 see Ms. Bell. 9 Ms. Bell, I'm unmuting you. 10 Can you hear me? 11 MS. BELL: Yes, I can. 12 Can you hear me? 13 HEARING OFFICER ORTH: Yes, very clearly. 14 Thank you. 15 If you would spell your name, please. 16 MS. BELL: M-A-R-G-A-R-E-T B-E-L-L. 17 HEARING OFFICER ORTH: Thank you. 18 And raise your right hand. 19 Do you swear or affirm to tell the truth? 20 MS. BELL: Yes. 21 HEARING OFFICER ORTH: Thank you. 22 23 24 25
1391 1 order, Charles Wendler, Margaret Bell, Kathy Miller, 2 Karen Bonime, Paige Knight, Marlys Lesley, Renee Wolters 3 and John Ellis. 4 In the event I did not call your name and you 5 wish to offer comment at this time, please reach out 6 through the chat. Chat is enabled for everyone. Of 7 course, we also have 15 more opportunities for comment. 8 Let me look first for Mr. Wendler. 9 I don't see Mr. Wendler. 10 I do see a call-in user. Let me unmute caller 11 number 12. 12 Caller 12, would you identify yourself, 13 please. 14 I don't think that was a person. 15 All right. I don't see any other call-in 16 users. 17 So -- I'm sorry. Member Bitzer? 18 MEMBER BITZER: Yeah. I think that caller had 19 two microphones going and therefore that was why -- that 20 was why you heard the bumbo bumbo. It was an echo. 21 HEARING OFFICER ORTH: Oh, okay. I thought 22 maybe it was a fax machine or something. Okay. 23 MEMBER BITZER: You might give that one -- you 24 might give that one another try and see if they can turn 25 one of their microphones off so they don't do that.	1393 1 MARGARET BELL 2 having been first duly sworn or affirmed, gave 3 public comment as follows: 4 PUBLIC COMMENT 5 HEARING OFFICER ORTH: I'm going to start your 6 five minutes now. 7 MS. BELL: My name is Margaret Bell. 8 I want to thank the Members of the 9 Environmental Improvement Board and Ms. Orth for this 10 opportunity to provide comment. 11 I am an Albuquerque resident. I'm 73 years 12 old, recently retired, and even in the short time I have 13 remaining, I am terrified of the future with this 14 prospect of never-ending fires, floods and increasing 15 drought. 16 Unfortunately, the past and the present have 17 also been terrifying for the many New Mexicans who have 18 been living with methane leaks for decades and suffering 19 the health effects and for farmers and ranchers trying 20 to survive our years of megadrought. Now farmers are 21 being told not to plant due to lack of water. What 22 happens to our food supply when that becomes more 23 pervasive? 24 It is horrifying to know that New Mexico is a 25 significant contributor to global warming by emitting

1394 1 over 1 million metric tons of methane each year through 2 venting, flaring and leaks, since methane is a powerful 3 greenhouse gas, 84 times more potent than carbon dioxide 4 in the short-term. 5 The New Mexico Environment Department has put 6 forward a strong proposal to reduce ozone-forming VOCs 7 and methane released by the oil and gas industry. The 8 Department's proposed ozone precursor regulations for 9 oil and natural gas production, processing, storage and 10 transmission sources include rules that address 11 equipment leaks and malfunctions. They are a good 12 start. 13 Leaks due to equipment malfunction and lack of 14 maintenance account for 70 percent of the oil and gas 15 industry's methane emissions statewide. However, the 16 second largest source of oil and gas methane emissions 17 are pneumatic controllers, and they are not included in 18 the precursor rule. And I don't care if a pneumatic 19 controller costs \$55 or \$5,500. The cost to our 20 communities in terms of public health and damage to our 21 planet far outweigh the cost to the oil and gas industry 22 of stronger rules for pneumatic controllers. 23 And we've been paying that price for decades 24 while the oil and gas industry has profited from our 25 resources and pollutes our air, land and water.	1396 1 reduction. The New Mexico Environment Department's 2 final rule must do more than address the 70 percent of 3 emissions due to equipment malfunction and lack of 4 maintenance. The final rule must be strengthened with 5 those three additions to do the complete job our 6 communities and the planet need right now. 7 Thank you. 8 HEARING OFFICER ORTH: Thank you very much, 9 Ms. Bell. 10 Okay. We'll turn now to Kathy Miller, J, K 11 Miller. I see K Miller. 12 Ms. Miller, can you hear me? 13 MS. MILLER: Yes, I can. 14 HEARING OFFICER ORTH: I can hear you, as 15 well. 16 If you would please spell your name. 17 MS. MILLER: K-A-T-H-Y M-I-L-L-E-R. 18 HEARING OFFICER ORTH: Thank you. 19 Raise your right hand. 20 Do you swear or affirm that you will tell the 21 truth? 22 MS. MILLER: Yes, I do. 23 HEARING OFFICER ORTH: Thank you. 24 25
1395 1 I am asking the Environmental Board to make 2 three critical additions to the final rule which are 3 essential to meeting Governor Lujan Grisham's role of 4 enacting the country toughest methane and air pollution 5 rules. 6 I am asking that the final rule protect those 7 living closest to the development by requiring more 8 frequent inspections to find and fix leaks, that the 9 final rule be strengthened to ensure New Mexico 10 incorporates leading approaches to address pollution 11 during well completions. 12 It should require that operators capture or 13 combust emissions during completions, including the 14 initial flowback stage, as Colorado now requires. And 15 the final rule must strengthen requirements to cut 16 pollution from pneumatic controllers used in oil and gas 17 production. 18 The New Mexico Environment Department must 19 require oil and gas companies to inspect pneumatics for 20 leaks and accelerate the timeline to retrofit equipment 21 with zero bleed or zero emission pneumatic controllers, 22 as we have no more time to spare. 23 The fact that New Mexico is a major 24 contributor to the climate crisis also means we can be a 25 significant part of the solution through major methane	1397 1 KATHY MILLER 2 having been first duly sworn or affirmed, gave 3 public comment as follows: 4 PUBLIC COMMENT 5 HEARING OFFICER ORTH: I'll start your five 6 minutes now. 7 MS. MILLER: Hello. 8 My name is Kathy Miller. I'm a native New 9 Mexican, and I live in Otero County, New Mexico. 10 Thank you for the opportunity to speak with 11 you today. 12 After reading the petition for regulatory 13 change concerning New Mexico's oil and gas industry, I'm 14 concerned about the new regulations and how the 15 regulations will impact directly and indirectly my 16 county and our state. While I appreciate any effort 17 that encourages stewardship of the land and our natural 18 resources, I question how the regulations will impact 19 the almost \$26 million and 30 percent of our state's 20 annual budget that the oil and gas industry brings to 21 our state, funding education, public safety and other 22 life needs. 23 As I understand it, the Ozone Attainment 24 Initiative, the OAT, is a nation -- is the National 25 Ambient Air Quality Standards for ozone currently in

1398 1 place. Governor Grisham established an executive order 2 which directed the New Mexico Energy, Minerals and 3 Natural Resources Department to jointly develop a 4 statewide enforceable regulatory framework. 5 Did you know that New Mexico gas and oil 6 reports that emissions have since 2011 been reduced by 7 51 percent while increasing production of 125 percent? 8 It seems the oil and gas industry is already addressing 9 emissions concerns. 10 The petition lists participants who worked to 11 create the regulatory document, including neighboring 12 state standards and engineers, tech professors, experts 13 with expertise in various fields of the oil and gas 14 industry, to name a few, and I want to -- you to know I 15 appreciate the work that has been done and the diverse 16 panel that was assembled. However, I have a few 17 suggestions. 18 The petition is very specific in addressing 19 regulatory measures to reduce oil field emissions, 20 including records and more records, meters and 21 measurements of emissions, replacing or purchasing new 22 equipment or gas engines while maintaining a yearly 23 emissions goal. 24 Sadly, I found only a couple of references 25 that address the impact these regulatory measures might	1400 1 concern? 2 And along those lines, will cattle raising 3 become an environmental concern? Are these issues on 4 the table even though they are unrelated to the oil and 5 gas industry? 6 Paragraph three lists ozone side effects to 7 humans and plants, and I quote the words, can inflame 8 airways causing chest pains, can be more serious to 9 people with lung disease. Has this issue been studied 10 and documented? 11 If health is listed as a reason as to why we 12 need this petition that is going to drastically change 13 the oil and gas industry and economic stability of New 14 Mexico, we need health data that scientifically supports 15 this statement. 16 Paragraph three also states that the health 17 effects of high ozone concentration are 18 disproportionately borne by low-income and minority 19 communities. This statement also needs data to 20 scientifically support this premise. 21 Please see page 6. 22 Finally, Section 74-2-5.B.(1) states that the 23 Board shall adopt, promulgate -- I'm sorry -- publish, 24 amend and repeal rules and standards consistent with the 25 Air Quality Control Act to attain and maintain National
1399 1 have on the economy of New Mexico, and specifically the 2 economic impact on the residents of Southeast New 3 Mexico. Public forums after the fact will be held. I 4 understand that's a good thing, but is this the only 5 vehicle to address the economic impacts for the region 6 and our state? 7 As far as I can determine, there is no plan to 8 make up for the economic shortfall our state will most 9 likely experience. There is no plan to help those whose 10 jobs and communities will be impacted. There is no 11 mention of the petition's management and monitoring 12 costs for New Mexico taxpayers. 13 As a former teacher, retired teacher, my wise 14 principal always encouraged us teachers to bring a 15 solution if you have a problem and to address the 16 problems your solution might create. The economic 17 impact is a problem. 18 Another concern I have is item two, basis and 19 need for proposed regulations. Paragraph one states -- 20 or says ozone is listed. I get it. Working to 21 encourage this precious resource to burn cleaner is 22 noble. Paragraph two, man-made and nonhuman causes. 23 Does this in -- this includes forest fires, but I want 24 to know does it also include man-made wood-burning 25 stoves used for heat? Will wood heat become an emission	1401 1 Ambient Air Quality Standards and prevent or abate air 2 pollution. 3 I'm not really sure, but I think you guys that 4 are list -- are part of the panel, are you the 5 Environmental Board? Is that correct? 6 HEARING OFFICER ORTH: Ms. Miller, you've 7 reached five minutes. Please wrap up. 8 MS. MILLER: Okay. 9 I'm sorry? 10 Oh, okay. 11 HEARING OFFICER ORTH: You've reached the end 12 of your time. 13 MS. MILLER: I want to know who the local 14 board is. Who is the ultimate authority over the 15 petition? Does the local board have the authority 16 according to sections E, F, G, H to tax, inspect, 17 regulate emissions of private citizens and vehicles of 18 citizens emulated to the oil and gas industry? 19 In closing, no doubt protecting our 20 environment is a noble cause. However, regulation upon 21 regulation which passes from board to board loses its 22 objective. How can innovation flourish in this 23 environment? How can New Mexico survive without the 24 heartbeat of the oil and gas industry which contributes 25 30 percent of our state revenue?

1402 1 If this industry is forced to slow production 2 due to regulations or, worse, cancel production because 3 of upwards of 33 mandates, how will New Mexico survive? 4 We don't need mandates and environmental 5 boards. We need innovation and cooperation to address 6 this very real problem. 7 Thank you. 8 HEARING OFFICER ORTH: Thank you, Ms. Miller. 9 Next it will be Karen Bonime. 10 Ms. -- and if I'm mispronouncing your name, 11 I'm sorry. I've unmuted you. 12 Can you hear me? 13 Ms. Bonime? 14 MS. BONIME: Yes. My name -- 15 HEARING OFFICER ORTH: Ms. Bonime? 16 MS. BONIME: -- is Karen Bonime. I live in 17 Albuquerque, New Mexico. 18 Thank you very much -- 19 HEARING OFFICER ORTH: Okay. Hold on. Hold 20 on one second, please. 21 If you would, please spell your name. 22 MS. BONIME: Oh. 23 Say it again? 24 HEARING OFFICER ORTH: Spell your name, 25 please.	1404 1 regulated oil and gas production in our state and many 2 other inadequately regulated sources. 3 Children with asthma miss days of school 4 because of asthma-related illnesses. This costs them. 5 It costs them part of their education. It costs them 6 being able to participate in sports sometimes. And 7 also, children with asthma are at higher risk if they 8 become infected with COVID-19. 9 Most children under 12 have yet to receive the 10 COVID vaccine, and even once they are vaccinated, they 11 are still at risk of breakthrough infections. And not 12 only that, they can spread the virus. Anything that 13 makes our children more vulnerable to serious illness 14 must be curbed. You can't put a price on that. 15 In addition, elderly people are at risk. That 16 includes me. And more important, it includes my husband 17 who has comorbidities. Also people in the middle, 18 between childhood and elderhood, are at risk. They're 19 at risk of long COVID, damaging their ability to work 20 and contribute to our economy. And again anything that 21 increases risk of illness in this time of pandemic must 22 be addressed vigorously and aggressively. 23 You can't put a price on human health. It has 24 to be protected. 25 I think that's all I have to say.
1403 1 MS. BONIME: Oh, spell it. Yes. K-A-R-E-N 2 B-like-boy-O-N-like-Nancy-I-M-like-Mary-E. Bonime. 3 HEARING OFFICER ORTH: Thank you very much. 4 Thank you. 5 And if you would raise your right hand. 6 Do you swear or affirm to tell the truth? 7 MS. BONIME: I do. 8 HEARING OFFICER ORTH: Thank you. 9 KAREN BONIME 10 having been first duly sworn or affirmed, gave 11 public comment as follows: 12 PUBLIC COMMENT 13 HEARING OFFICER ORTH: I'm going to start your 14 five minutes now. 15 MS. BONIME: Okay. Thank you. 16 My name is Karen Bonime. I live in 17 Albuquerque, New Mexico. 18 Thank you very much for the opportunity to 19 provide comment. 20 As an elementary school teacher, now retired, 21 I have had, sadly, much opportunity to observe firsthand 22 the impacts of asthma on children. Asthma rates are 23 higher in areas with high ozone pollution. I'm sure the 24 EIB has access to the studies that show this. And other 25 air contaminants resulting from the inadequately	1405 1 Thank you very much. 2 HEARING OFFICER ORTH: Thank you very much, 3 Ms. Bonime. 4 We move now to Paige Knight? 5 No? 6 Go from M to R here on the platform. 7 And then Marlys Lesley? 8 MS. LESLEY: I'm here. 9 HEARING OFFICER ORTH: Hello. 10 MS. LESLEY: Hello. 11 Marlys Lesley. 12 HEARING OFFICER ORTH: Yes. Yes. Hello. 13 Would you spell your name, please. 14 MS. LESLEY: Yes. M-A-R-L-Y-S L-E-S-L-E-Y. 15 HEARING OFFICER ORTH: If you would raise your 16 right hand, please. 17 Do you swear or affirm to tell the truth? 18 MS. LESLEY: I do. 19 HEARING OFFICER ORTH: Thank you. 20 MARLYS LESLEY 21 having been first duly sworn or affirmed, gave 22 public comment as follows: 23 PUBLIC COMMENT 24 HEARING OFFICER ORTH: I'm going to start your 25 five minutes now.

1406 1 MS. LESLEY: I would like to thank the Board 2 for allowing this time for public comments. 3 My name is Marllys Lesley, and I am here with 4 New Mexico IPL. My faith community is La Mesa 5 Presbyterian Church, Albuquerque. 6 I am speaking today to encourage the EIB to 7 vote to support and strengthen the New Mexico 8 Environment Department's draft rule to address ozone 9 precursor pollutants from oil and gas operations. This 10 rule is critical for protecting both our health and 11 climate by reducing smog-forming volatile organic 12 compounds, as well as methane. My remarks today focus 13 on methane. 14 Close to 25 years ago my husband and I 15 retired, moved to New Mexico and bought property in the 16 East Mountain area. We had not lived in New Mexico long 17 before we began hearing about the problem of methane 18 gas. We also heard about the many other abandoned and 19 orphaned oil and gas wells across the state and how they 20 were a source of methane leaks. 21 Also that oil and gas operations in New Mexico 22 release more than 1.1 million metric tons of methane 23 every year. Methane is a powerful climate change 24 pollutant, responsible for 25 percent of the warming we 25 are experiencing today.	1408 1 changes we need to avert climate disaster will also 2 provide jobs and revenue that are more diverse and 3 sustainable besides improving local air quality. Jobs 4 and fighting climate change can go hand-in-hand. 5 My faith compels me to say that we are given 6 the job of keeping this planet liveable for future 7 generations. The time is now to adopt a strong final 8 rule that protects communities and addresses major 9 sources of air and climate pollution. 10 Sadly, my husband is no longer with me, but 11 the problem of methane pollution is. I urge you to 12 please adopt a strong final rule that addresses these 13 major sources of climate pollution. The future depends 14 on it. 15 Thank you. 16 HEARING OFFICER ORTH: Thank you very much, 17 Ms. Lesley. 18 We go now to Renee Wolters. 19 Oh, I see Renee Wolters. 20 MS. WOLTERS: Hello. 21 HEARING OFFICER ORTH: Yes. Hello, 22 Ms. Wolters. 23 Can you hear me? 24 MS. WOLTERS: I can. 25 HEARING OFFICER ORTH: I can hear you clearly.
1407 1 Here are three improvements that the 2 Environment Department should adopt to protect 3 communities and address major sources of pollution. 4 One, to protect those living closest to 5 development by requiring more inspection to find and fix 6 leaks. 7 Two, in strong -- ensure strong requirements 8 for operators to control pollution during the completion 9 of an oil or gas well. 10 Three, strengthen requirements to cut 11 pollution for pneumatic controllers that are used in oil 12 and gas production. 13 New Mexico Environmental Department should 14 require companies to inspect their equipment for leaks 15 and accelerate the time to fix their equipment with zero 16 bleed or zero emission. 17 The damage done to the health of those that 18 live closest to these operations and the damage done to 19 our climate should be enough in themselves to adopt 20 these proposals. The gas and oil industry claims that 21 New Mexico needs them because of the jobs and revenues 22 they provide. However, those jobs and revenues are 23 unstable, and many are going away as more clean energy 24 is developed. 25 There is growing evidence that making the	1409 1 Would you spell your name, please. 2 MS. WOLTERS: R-E-N-E-E W-O-L-T-E-R-S. 3 HEARING OFFICER ORTH: Thank you. 4 Raise your right hand. 5 MS. WOLTERS: Pardon? 6 HEARING OFFICER ORTH: Do you swear -- if you 7 would raise your right hand. 8 And do you swear or affirm to tell the truth? 9 MS. WOLTERS: I do. 10 HEARING OFFICER ORTH: Thank you. 11 RENEE WOLTERS 12 having been first duly sworn or affirmed, gave 13 public comment as follows: 14 PUBLIC COMMENT 15 HEARING OFFICER ORTH: I'm going to start your 16 five minutes now. 17 MS. WOLTERS: Good afternoon. 18 And thank you to the Members of the 19 Environmental Improvement Board for taking public 20 comments on these important environmental rules. 21 My name is Renee Wolters, and I live in 22 Albuquerque, New Mexico. 23 I'm a member of the First Unitarian Church of 24 Albuquerque. And as Unitarian, I affirm the Unitarian 25 principles, one of which I would like to iterate here.

1410 1 That principle is respect for the interdependent web of 2 all existence of which we are a part. To me, that 3 translates into sustainability, environmental and 4 climate justice. 5 I strongly support strong smog and ozone 6 precursor rules. Methane pollution in particular is an 7 environmental, economic and racial justice concern that 8 needs attention, and we need to strengthen requirements 9 to protect our communities from the harmful effects of 10 it. 11 In New Mexico local communities suffer the 12 greatest consequences from pollution caused by methane 13 emissions. Their health and well-being are most 14 affected. These communities are mostly rural persons of 15 color, who are often afraid to speak out against 16 powerful interests. We need to protect those living 17 closest to the sources of methane emissions. 18 Greenhouse gases produced by methane emissions 19 are 84 times more potent than carbon dioxide. They are 20 a major factor contributing to climate change. It is 21 unethical to continue with methane emissions that cause 22 the destruction of the environment. 23 Currently the industry is out of compliance 24 with the rules. It does not regulate itself. Methane 25 pollution is visible from space. We have the technology	1412 1 Do you swear or affirm to tell the truth? 2 MR. ELLIG: Yes, I do. 3 JOHN ELLIG 4 having been first duly sworn or affirmed, gave 5 public comment as follows: 6 PUBLIC COMMENT 7 HEARING OFFICER ORTH: I'm going to start your 8 five minutes now. 9 MR. ELLIG: All right. 10 I'd like to thank you, Board Members, for 11 providing public comment on this important health and 12 environmental protection issue. 13 My name is John Ellig, and I live in 14 Albuquerque. 15 By creating improvements to the proposal that 16 cuts methane and volatile organic compounds released in 17 New Mexico, this board, the EIB, has the opportunity to 18 make an immediate difference in the lives of New Mexico 19 residents and effect a healthier environment for all who 20 live on our planet. 21 I believe climate change is upon us, and as 22 residents of this planet, we have a moral responsibility 23 to protect all its living beings now and for the future. 24 Additionally, that protection needs to begin 25 now. Now is the time to make meaningful changes to the
1411 1 to address -- to address pollution and hold operators 2 accountable. New Mexico can become a national leader in 3 addressing air pollution and climate impacts by adopting 4 and strengthening requirements to cut air pollution. 5 We must take urgent action now with strong 6 NMED rules that will protect our communities, the 7 environment and the planet. Let's choose to honor the 8 dignity of every person and the interdependent web of 9 all existence. 10 Thank you. 11 HEARING OFFICER ORTH: Thank you very much, 12 Ms. Wolters. 13 Let's go now to John Ellis, if John Ellis is 14 on the platform. 15 Yes. Mr. Ellis, can you hear me? 16 MR. ELLIG: Yes, I can. 17 HEARING OFFICER ORTH: You're coming through 18 loud and clear. 19 MR. ELLIG: Great. 20 HEARING OFFICER ORTH: If you would please 21 spell your name. 22 MR. ELLIG: J-O-H-N, Ellig, E-L-L-I-G. 23 HEARING OFFICER ORTH: Oh, very sorry about 24 getting the name wrong. 25 If you would raise your right hand.	1413 1 way oil and gas producers inspect and fix leaks, control 2 pollution in their production and well development, 3 redevelopment, and to cut pollution from pneumatic 4 controllers. 5 I recognize that as a board your task is 6 complex, yet I encourage your proposals to include 7 strong rules based on the simple act of common sense 8 when it comes to the way oil and gas producers find and 9 fix leaks. 10 Leaks occur in each of our lives all the time, 11 whether it be in our roofs, our cars' tires, or the 12 plumbing where we live. Some leaks may be simple or 13 minor, but oil and gas leaks are more like the leaks in 14 the heart valves of our friends or family. They are 15 serious, with serious health consequences. Leaks 16 related to oil and gas production are not abnormal or 17 unique events, and leaks in the industry must be 18 thoroughly sought out and quickly fixed. 19 The strong proposals that you create have the 20 effect of making New Mexico and the US a healthier place 21 to live, as well as setting a leading environmental 22 standard for other states to follow. Common sense tells 23 us that it's better to fix leaks now, in the present, 24 rather than in the future. 25 I encourage the Board to make changes to

1414 1 this -- proposed changes that are necessary. Leaks in 2 this industry are not slow, hard to find or minor. 3 These leaks are dangerous, polluting, unhealthy and 4 threatening. And the technology to fix leaks in oil and 5 gas production exists. Let's use a common sense 6 approach and create proposals that get them fixed 7 effectively and in the present. 8 Thank you very much. 9 HEARING OFFICER ORTH: Thank you very much, 10 Mr. Ellig. 11 We have a final commenter who reached up 12 through the chat, name is Kyle Fiore. 13 H, I, J, K -- here we go. 14 Mr. Fiore, can you hear me? 15 MS. FIORE: Yes, I can hear you. 16 HEARING OFFICER ORTH: All right. Terrific. 17 MS. FIORE: Just a minute. I'm sorry. 18 (Simultaneous discussion.) 19 MS. FIORE: Just a second. 20 Okay. Yes. I can hear you very well. Thank 21 you. 22 Can you hear me and my dog? 23 HEARING OFFICER ORTH: Yes. 24 Please spell your name. 25 MS. FIORE: K-Y-L-E F-as-in-Frank-I-O-R-E.	1416 1 the production of methane by requiring more frequent 2 inspections to find and fix methane leaks. 3 We need to establish and enforce requirements 4 that demand operators control pollution when they are 5 completing oil and gas operations for redeveloping an 6 existing well. 7 We also need to cut methane pollution from 8 pneumatic controllers. We ask that the New Mexico 9 Environmental Department require companies to inspect 10 pneumatics for leaks and accelerate the time to retrofit 11 equipment. 12 These three -- these three requests or these 13 three proposals that I'm mentioning would not cut jobs 14 in the oil and gas industry. I -- looking at them as a 15 layperson, I see them as something that would create 16 more jobs, because you would be creating jobs for people 17 who are doing the frequent inspections, people who are 18 fixing the leaks, and people who are trying to control 19 the pollution. 20 And so I was very moved by the first speaker 21 who talked about the loss of jobs and the need -- the 22 need to continue gas and oil. I don't really -- I'm not 23 fond of the need to continue gas and oil, and I don't 24 have the same viewpoint that she does, but I do think 25 it's important to say that these three things that we
1415 1 HEARING OFFICER ORTH: Thank you. 2 And if you would raise your right hand. 3 Do you swear or affirm to tell the truth? 4 MS. FIORE: Yes. 5 HEARING OFFICER ORTH: Thank you very much. 6 KYLE FIORE 7 having been first duly sworn or affirmed, gave 8 public comment as follows: 9 PUBLIC COMMENT 10 HEARING OFFICER ORTH: I'll start your five 11 minutes now. 12 MS. FIORE: Thank you very much. 13 My name is Kyle Fiore. I'm a member of Grant 14 Chapel African Methodist Episcopal Church in 15 Albuquerque, New Mexico. I'm also a mother, a 16 grandmother and a great grandmother of young people 17 ranging in age from 22 years to 37 days. 18 I speak today to support the ozone precursor 19 and all strong methane rules, rules that will protect 20 current and future generations of New Mexican families 21 and children. 22 Locally methane is a dangerous and prevalent 23 air polluter that is causing great harm to our state. 24 We need to protect the 130,000 New Mexican families and 25 children living closest to oil and gas operations and	1417 1 are requesting right now do not appear to me to cut any 2 jobs that are currently in the industry. 3 Finally, if we are to be good stewards and 4 respect the sacred nature of this planet, this planet 5 that has cared so well for us through centuries, we need 6 to stop the worldwide damage unchecked methane can 7 cause. This damage expands far beyond New Mexico. 8 Methane is a major contributor to global warming, as we 9 all know. It is a wicked gas. It's responsible for 10 25 percent of the climate change people are experiencing 11 globally. 12 It's our responsibility as good neighbors to 13 put in place mechanisms that will check methane today 14 and, from my point of view, to end its production in the 15 future, both for New Mexicans and for our neighbors 16 across the world. 17 Thank you very much for giving me time to 18 speak. I know that I wasn't listed, and I appreciate 19 your making the extra effort. 20 HEARING OFFICER ORTH: Yes, of course. Thank 21 you very much, Ms. Fiore, for your comment. 22 At this time we will return to the technical 23 case. When we broke for lunch, we had Ms. Kuehn being 24 questioned by the Board. 25 And I need to go to Members Bitzer, Duval,

1418 1 Garcia and Honker and then back to the Vice-Chair. 2 I see Ms. Kuehn. 3 ELIZABETH BISBEY-KUEHN 4 (Relating to Topic Order 22) 5 having been first duly sworn or affirmed, was 6 examined and testified further as follows: 7 EXAMINATION (Continued) 8 BY THE BOARD: 9 MEMBER BITZER: Madam Hearing Officer, I have 10 no questions. 11 HEARING OFFICER ORTH: Oh. Thank you, Member 12 Bitzer. 13 Member Duval? 14 He may be teaching at the moment. 15 Member Garcia? 16 I can't hear you. 17 Okay. 18 MEMBER GARCIA: Can you hear me? 19 HEARING OFFICER ORTH: Now I can. 20 MEMBER GARCIA: Okay. 21 In -- I have one -- one small question. Let 22 me find where I was. Hang on one second. 23 In -- I guess it was 50.112 part A item (9), 24 there's a reference to the owner/operator may request a 25 hearing. And I think you mentioned that was a provision	1420 1 HEARING OFFICER ORTH: Thank you. 2 Let's go back to the Vice-Chair. 3 VICE-CHAIR TRUJILLO DAVIS: Yes. Thank you. 4 Ms. Kuehn, I forgot to ask these questions, 5 but we were -- I asked you about additional personnel 6 for companies, and what I forgot to ask was what about 7 additional personnel for NMED. 8 Did -- you had mentioned that the Department 9 would be working with operators to -- and I apologize, 10 but -- the exact words you used, but I think the 11 Department would be working with operators to get them 12 into a compliance schedule? Is that kind of what I 13 understood? 14 MS. BISBEY-KUEHN: Yes. Madam Trujillo Davis, 15 there is a requirement to develop a database system to 16 track -- to monitor and track the information that's 17 required to be maintained under this part. And the 18 Department will be working with industry to -- for those 19 small -- particularly the smaller operators that may not 20 already have environmental management systems. We will 21 be working with them to develop a template that can be 22 used to meet the requirements of the database system. 23 VICE-CHAIR TRUJILLO DAVIS: So has the 24 Department already allocated employees that will be 25 dedicated to this, or have they changed the scope of
1419 1 that was added in a couple of different places. 2 And I'm wondering, is that -- would that be a 3 hearing before the Board, or would that be a hearing 4 before the cabinet secretary? 5 MS. BISBEY-KUEHN: Thank you, Member Garcia. 6 I'm trying to find the reference, and the 7 hearing would be held before the EIB. 8 MEMBER GARCIA: Okay. Okay. I think there 9 were about -- at least two places where that was added. 10 MS. KATZ: I'm going to have to jump in here. 11 Ms. Kuehn, would that -- that hearing would be 12 held before the Department, correct? 13 MS. BISBEY-KUEHN: Yes. 14 Thank you for that clarification. Yes. And I 15 was thinking about the hearing that would be requested 16 if we were to add areas of the state under the scope of 17 the rule. But in the case -- in this case it would be 18 before the Department secretary. 19 MEMBER GARCIA: Okay. Thank you for that 20 clarification. I appreciate it. 21 That's all. 22 HEARING OFFICER ORTH: Thank you. 23 Member Honker, do you have questions of 24 Ms. Kuehn? 25 MEMBER HONKER: No questions. Thank you.	1421 1 some employees' work already that will -- they will be 2 dedicated, or are they planning to hire new employees 3 for this? 4 MS. BISBEY-KUEHN: In this case it will be our 5 contractors are going to be starting to work on that 6 project. 7 VICE-CHAIR TRUJILLO DAVIS: Okay. 8 And that's already in place? 9 MS. BISBEY-KUEHN: The contract is in place. 10 Correct. 11 VICE-CHAIR TRUJILLO DAVIS: Okay. Thank you 12 for answering that for me. 13 I don't have any more questions. 14 HEARING OFFICER ORTH: Thank you, Vice-Chair. 15 Ms. Katz, is there any follow-up? 16 Oh, wait. 17 Madam Chair. 18 CHAIR SUINA: I apologize. I have a follow-up 19 question to Vice-Chair's line of questioning of 20 Ms. Kuehn. 21 Thank you again, Ms. Kuehn, for your -- for 22 your testimony. 23 And I was wondering if -- I know NMOGA had 24 presented some data regarding additional costs related 25 to additional inspection and compliance.

1422 1 Have you looked at that? 2 MS. BISBEY-KUEHN: Chair Suina, I'm uncertain 3 if you're referring to the economic analysis that was 4 provided or a separate analysis. 5 CHAIR SUINA: That -- that economic analysis. 6 MS. BISBEY-KUEHN: We did review, yes, the 7 administrative costs, but that was outside of the scope 8 of my direct testimony. That was testimony put on by 9 Brian Palmer and Susan Day. 10 CHAIR SUINA: Okay. Okay. Yeah. I -- and if 11 we can ask this at a later -- I was just wondering if 12 they're given some of the changes you've made to 13 incorporate some of the industry stakeholders' comments, 14 do you think that cost would be minimum -- would be less 15 than what was presented? 16 MS. BISBEY-KUEHN: I -- I do. 17 CHAIR SUINA: Okay. Thank you for that. 18 HEARING OFFICER ORTH: All right. Thank you 19 very much. 20 Ms. Katz, is there any redirect? 21 MS. KATZ: Just -- just quickly. 22 REDIRECT EXAMINATION 23 BY MS. KATZ: 24 Q. Ms. Kuehn, will the Department be presenting 25 the costs analyses and the updated costs analyses based	1424 1 JOHN R. SMITHERMAN 2 (Relating to Topic Order 23) 3 having been first duly sworn or affirmed, was 4 examined and testified as follows: 5 DIRECT EXAMINATION 6 BY MR. HISER: 7 Q. All right. Mr. Smitherman, can you please 8 state your name for the court reporter. 9 A. John R. Smitherman. 10 Q. Thank you. 11 And you've been previously sworn in this 12 hearing; is that correct? 13 A. Correct. 14 Q. And you've previously adopted your direct and 15 rebuttal testimony exhibits, which have been admitted, 16 correct? 17 A. I have. 18 Q. Okay. 19 Did you prepare some slides that sort of 20 generally summarize your rebuttal and your direct and 21 rebuttal testimony? 22 A. I have. 23 Q. And what I'd like you to do in the interest of 24 time, as expressed by the Board yesterday, is to perhaps 25 touch on the topics, note where there may have been
1423 1 on the changes that it is proposing in connection with 2 the testimony on each section of the rule with respect 3 to the particular equipment and processes? 4 A. Yes, we will. 5 MS. KATZ: Thanks. 6 That's it. 7 HEARING OFFICER ORTH: All right. Thank you 8 very much. 9 Would you like to discuss, then, where we're 10 going from here? 11 MS. KATZ: So I believe we have a number of 12 other witnesses on this topic from other parties. 13 HEARING OFFICER ORTH: All right. 14 Go to NMOGA, then, or Mr. Smitherman? 15 MR. HISER: Hearing Officer, I believe that 16 Mr. Smitherman does have a little bit on this topic. 17 HEARING OFFICER ORTH: All right. 18 And, Mr. Smitherman, do you need screen 19 sharing privileges? 20 MR. SMITHERMAN: Yes, ma'am, please. 21 HEARING OFFICER ORTH: You have it. 22 Whenever you're ready. 23 MR. SMITHERMAN: I'm ready. 24 25	1425 1 agreement reached with NMED, and then focus your time on 2 anything where there may still be issues of concern, and 3 then perhaps hold yourself available if there are 4 questions from the Board after that on any of the 5 topics. 6 Does that seem acceptable? 7 A. Certainly. Thank you very much. 8 Q. Would you like to touch on the -- would you 9 like to proceed, then, with your summary? 10 Thank you. 11 A. I will. Thank you very much, Mr. Hiser. 12 Madam Chair, Vice-Chair, Board Members, Madam 13 Hearing Officer, we do have a few slides on the 14 Section 112, General Provisions, and the definition of 15 construction. 16 This first topic really was directed towards 17 the concept of relocation of stationary sources. NMED 18 has accepted our input on that, and so we really don't 19 have any further discussions on at least the engines. 20 And by the way, in my slide I use the word 21 "compressor" here. I've highlighted it. That was a 22 typo on my part. That should have been the word 23 "engine," because there are engine emissions limits, not 24 compressor engine limits. 25 Further, and along the same lines, there was

1426 1 also some concept -- the concept of -- in this like kind 2 replacement the concept that you might have a single 3 emitting natural pneumatic device that needed to be 4 replaced, and if the original language had held, you 5 would have had to basically replace one single emitting 6 device with a nonemitting device, which is very, very 7 impractical. And NMED has accepted that language, and 8 we appreciate that. 9 Also, in the original language the very 10 complex concept of the EMT system was included. 11 NMOGA -- excuse me -- NMED has removed that and changed 12 that to streamline that requirement. We appreciate 13 that. 14 I do want to mention, though, the Compliance 15 Database Report is still a requirement, and that is 16 still a very complex and challenging report to put 17 together. It depends on the operator, it depends on how 18 complex their current information systems are. But it 19 can be very complex, and we really appreciate the fact 20 that this can take some time to create that. I'm 21 talking about creating the application within the 22 systems to generate this report. 23 Once that's in place, once those codes are 24 written and those databases perhaps are integrated, then 25 generating the actual report should not be -- it takes a	1428 1 That is simply not enough time. 2 I have personally quite a bit of database 3 application development experience of my own. I've 4 written database applications, relatively simple ones, 5 and I've been associated with or actually managed the 6 creation of much more complex database management 7 systems within the company I used to work for. So 8 I'm -- I'm well versed, if you will, in being able to 9 understand the complexities and challenges that -- that 10 these applications represent. 11 And in my view, the time it's going to take 12 to, number one, choose which one of the available 13 technologies is listed on January 1st to acquire, to 14 integrate this data into the devices, in the current 15 company databases that already exist, to maybe modify 16 contracts that exist, employee training, both field 17 employees and office, and the always necessary 18 test-fail-repair cycles that will be necessary before 19 this can be deployed. 20 We recognize that this is an important piece. 21 We do not push back on achieving that. We stand ready 22 to do so. But we need more time to be able to integrate 23 this new technology into our existing systems, and we 24 recommend a two-year transition period before that is 25 required.
1427 1 lot of time. But getting to that point will take a lot 2 of time. We appreciate the opportunity to have time to 3 get those in place. 4 That's -- concludes my direct and rebuttal. I 5 do have surrebuttal that we can deal with at this time 6 or later. 7 MR. HISER: I think, Madam Hearing Officer, if 8 it's okay with you, why don't we touch on the 9 surrebuttal, and then if something comes up that's -- we 10 need to attest, we can come back, but hopefully that 11 won't be necessary. 12 Q. So, Mr. Smitherman, in the interest of keeping 13 us moving forward, why don't you touch on your 14 surrebuttal now. 15 A. Thank you, sir. 16 Again along the lines of this EMT, the NMED 17 has -- as we just heard from Ms. Kuehn's testimony, has 18 the obligation to identify those technologies that 19 can -- can allow operators to time and GPS stamp any 20 particular activity in the field. 21 They're going to have their list to us of, I 22 think, acceptable technologies by January 1st of 2023, 23 but they're only giving us three months to integrate 24 that into our systems and requiring us to be using 25 those -- that technology by April 1st of that same year.	1429 1 There's also a change that NMED accepted on 2 pretransaction certification. We appreciate NMED 3 accepting our proposed language on that. And if there's 4 any questions on that, I stand ready for that, as well. 5 We also appreciate the appropriate hearing 6 access that NMED has accepted. It seems to give us a 7 fair opportunity to have good consideration before, for 8 example, third-party auditors are required. And also, a 9 fair opportunity to review those third-party auditor 10 recommendations. 11 Let's talk about the annual certification and 12 excessive deviation reporting. This is language that 13 came in the September 16th red-line. 14 And I am very glad that Ms. Kuehn touched on 15 this, and the way she described what this certification 16 process is in their minds is what we had hoped that they 17 meant and thought that they meant. But the language 18 itself is not clear. We had quite a bit of debate 19 amongst ourselves as to what it meant. That is a pretty 20 good indicator that perhaps the language could be 21 improved a bit. 22 We would like to work with NMED to maybe 23 perfect that language. We've actually thought about it 24 even across the -- the lunch -- last lunch hour, thought 25 about perhaps how it might -- it might read. This is

1430 1 not anything final. We really need to have more 2 consideration and would love to have your thoughts on 3 it, as well. 4 But for example, it might say by March 1st of 5 each calendar year the owner or operator shall generate 6 a Compliance Database Report on all assets under its 7 control that are subject to the CDR requirements of this 8 rule at the time the CDR is prepared and keep this 9 report on file for five years. A responsible official 10 shall certify that this report is true, complete and 11 accurate. 12 That is a starting point. Perhaps we can work 13 together and come up with language that's satisfactory 14 to both NMED and our industry. 15 We've already talked about this -- this piece 16 here so I'll skip over that. 17 MR. HISER: I don't believe -- is -- Madam 18 Hearing Officer, is the definition of -- additional 19 definitions still in the scope of this? Are we into the 20 next topic? If this is still appropriate? 21 HEARING OFFICER ORTH: Okay. 22 MR. SMITHERMAN: Yeah. I think commencement 23 of operations is still part of this topic. 24 MR. HISER: Yeah. 25 MR. SMITHERMAN: So NMED has included the	1432 1 MR. HISER: Yeah. I think the rest of that 2 was the phases of -- 3 MR. SMITHERMAN: It is. 4 MR. HISER: -- definition, and then we've 5 already talked on the stabilized issue. 6 So I believe that completes what we were 7 hoping to cover in this -- 8 MR. SMITHERMAN: It does. Thank you. 9 MR. HISER: Thank you, Mr. Smitherman. We 10 appreciate it. 11 Madam Hearing Officer, we'll be happy to offer 12 Mr. Smitherman for questions from other parties and the 13 Board. 14 HEARING OFFICER ORTH: All right. Thank you 15 very much, Mr. Hiser and Mr. Smitherman. 16 If other counsel or party representatives 17 would like to turn on their screens if you have 18 questions of Mr. Smitherman. 19 Seeing no new screens, I will turn then to 20 questions from the Board. 21 While I'm doing that, if you are an attendee 22 on this platform and have a question, please reach out 23 through the chat, which is enabled for everyone. 24 Madam Chair, do you have questions of 25 Mr. Smitherman on this topic?
1431 1 phrase "but no later than the end of well completion 2 operation" in their definition of commencement of 3 operation. 4 Mr. Alexander of EDF has suggested the 5 definition of flowback be added, and we'll talk about -- 6 MS. KATZ: Excuse me. I'm sorry to interrupt 7 you, Mr. Smitherman, but I have -- 8 MR. SMITHERMAN: Um-hum. 9 MS. KATZ: -- commencement of operation 10 included under storage vessels, for that topic. So I 11 don't think it's meant to be included in here, in this 12 topic. 13 MR. SMITHERMAN: Okay. 14 (Simultaneous discussion.) 15 MR. HISER: Yes. That's why I said I wasn't 16 sure whether -- 17 MS. KATZ: Yeah. Sorry. I was not paying 18 attention right at that moment. But yes. That's -- 19 that's correct. It's with storage vessels. So we'll 20 be -- 21 MR. SMITHERMAN: Okay. 22 MS. KATZ: -- getting to it, but not yet. 23 MR. SMITHERMAN: I'm happy to end -- let me 24 make sure that there's nothing else in this section that 25 doesn't deal with commencement of operations.	1433 1 She may have stepped away. 2 Vice-Chair Trujillo Davis, do you have 3 questions? 4 VICE-CHAIR TRUJILLO DAVIS: I do not at this 5 time. Thank you. 6 HEARING OFFICER ORTH: Thank you. 7 Member Cates? 8 MEMBER CATES: No questions at the moment. 9 HEARING OFFICER ORTH: Thank you. 10 Member Bitzer? 11 MEMBER BITZER: I have no questions, Madam 12 Hearing Officer. Thank you. 13 HEARING OFFICER ORTH: Thank you. 14 Member Duval? Who may be in class. 15 Member Garcia. 16 MEMBER GARCIA: No questions. Thank you. 17 HEARING OFFICER ORTH: And Member Honker. 18 MEMBER HONKER: No questions. 19 Thanks, Mr. Smitherman. 20 HEARING OFFICER ORTH: All right. Thank you 21 very much. 22 I believe, then, we move to IPANM and witness 23 Brown. 24 Is that correct, Mr. Rose? 25 MR. ROSE: That is correct. Hopefully he's on

1434 1 the -- on the platform somewhere. He was earlier. 2 HEARING OFFICER ORTH: Remind me the first 3 name. 4 MR. ROSE: Dave, or David. 5 HEARING OFFICER ORTH: Dave, David. Okay. 6 Yep. I see him. 7 So this platform alphabetizes by -- oops -- 8 alphabetizes by first name for some reason. 9 I have made him a panelist so he should be 10 joining us here. 11 Mr. Brown, if you can turn on your screen -- 12 there you go. 13 I don't think you've testified yet with us. 14 If you would raise your right hand. 15 Do you swear or affirm to tell the truth? 16 MR. BROWN: Yes, ma'am. 17 HEARING OFFICER ORTH: Thank you. 18 DAVID BROWN 19 (Relating to Topic Order 23) 20 having been first duly sworn or affirmed, was 21 examined and testified as follows: 22 DIRECT EXAMINATION 23 BY MR. ROSE: 24 Q. Mr. Brown, could you state your name for the 25 record and spell it.	1436 1 Q. And, Mr. Brown, did -- have you reviewed the 2 Department's revised draft rules that were submitted, I 3 believe, on the 16th of this month? 4 A. Yes, I have. 5 Q. Rather than going -- well, first, let me get 6 you -- ask you whether you adopt your prefiled direct 7 and rebuttal testimony as your testimony in this 8 proceeding. 9 A. Yes. 10 Q. With -- with respect to the Department's 11 September 16th version, could you explain to the Board 12 your review and whether the changes the Department is 13 proposing deals with your concerns that were expressed 14 in your direct testimony, and if not, explain why not. 15 A. Yes. So I'll start -- I'll focus on the -- 16 the equipment monitoring tag provisions in the original 17 proposal. In the September 16th proposal, they have 18 been eliminated. And that is something that we totally 19 support, and that was a concern in my direct testimony, 20 as well. So we appreciate that that has been deleted. 21 I will continue on with my other parts of the 22 items I want to discuss real quick. 23 I wanted to talk about the provision that's 24 incorporated with the compliance database review, the 25 CDR, and I would echo the previous witnesses' comments
1435 1 A. David Brown, D-A-V-I-D B-R-O-W-N. 2 Q. And, Mr. Brown, could you give the Board a 3 brief description of your educational and work 4 background. 5 A. Yes. I have an undergraduate degree and a 6 master's degree. My work experience is I have 44 years 7 of experience working in the upstream oil and gas 8 industry, and that has ranged from everything from land 9 use, permitting and compliance to environmental 10 compliance, as well. 11 Q. And, Mr. Brown, with whom are you employed? 12 A. I'm currently employed by DJR Energy. 13 Q. And could you explain to the Board who DJR 14 Energy is and what you do for them? 15 A. Yes. I'm the manager of regulatory government 16 and public affairs. And DJR is a -- is an operator. 17 Our -- all of our assets are located in the San Juan 18 Basin of New Mexico. We don't operate anywhere else 19 except the San Juan Basin, New Mexico. And we have 20 vertical wells, old vertical wells, as well as newer 21 horizontal oil and gas producing wells. 22 MR. ROSE: And for the Board Members, we're 23 talking about -- Mr. Brown's direct testimony is IPANM 24 Exhibit 4, his resume is Exhibit 5, and he submitted 25 rebuttal testimony which is Exhibit 11.	1437 1 that the CDR, the Compliance Database Reports, can be 2 very cumbersome. They take some time. I think the 3 changes made here will help simplify that. 4 The biggest change I see in this section here 5 was in Subsection (8) sub (b), and there a new 6 requirement was -- was placed that had to do with date 7 and time stamps, including GPS display, for the location 8 where the monitoring event's taking place. The rule 9 change also mentioned that the Department is going to 10 publish a list of approved technologies to comply with 11 the requirement. 12 And as mentioned earlier, that would be 13 January 1st, 2023, as Ms. Kuehn testified. It's -- it 14 also says owner/operators have to comply with this by 15 April 2nd of 2023. 16 So I want to make some comments about that 17 provision in general, about -- or specific 18 recommendations to consider. 19 The thing to keep in mind is that in our 20 experience -- or my experience is that there have -- if 21 you're going to timestamp something and use it from the 22 field, you're going to have to have some type of mobile 23 application. And that would have to be uploaded into a 24 web-based software, where it can accumulate the 25 information so you can, you know, compile it and get the

1438 1 work done. 2 And to get a system to do that, not the -- not 3 the app, but just to get the system to do that can be 4 very time consuming and expensive if you don't have 5 something already. 6 And in our case it involves outside consulting 7 to help us develop that, and most of all companies that 8 are members of IPANM don't have the ability to build 9 something themselves. So you're going to be looking 10 toward outside consulting to help you develop it. 11 But I think that's an important step, is 12 that -- is that Ms. Kuehn mentioned that there could be 13 some free apps that companies could access to at least 14 load up the data, but in my estimation there has to be a 15 mechanism for it to be uploaded into some type of 16 central server so it can be used for generating reports. 17 So I have a few recommendations I just wanted 18 to mention. 19 I think Ms. Kuehn mentioned that they were 20 going to go out and maybe survey what companies already 21 have in terms of this kind of an approach. And that's 22 something we totally support, IPANM. I do think that's 23 important to do, because if companies already have 24 systems in place and it's not on the approved list, it 25 could cause some real issues for companies who already	1440 1 So I was -- I was suggesting and would be 2 offering that the language would be similar to what's in 3 (8) sub (b) that says prior to April 1st, 2023, which is 4 the date that's proposed for this to be in place by the 5 operators -- it says here that owners or operators can 6 comply or shall comply with this requirement by making a 7 written or electronic record of the data and time of any 8 affected monitoring event. 9 So I'm just suggesting in cases where 10 there's -- where there's -- where a company has very 11 limited reporting that may be something that that could 12 be considered. 13 My last item that I wanted to discuss is the 14 independent verification and data, or what I refer to as 15 a third-party audit. That was mentioned by Ms. Kuehn. 16 There were changes made to it, and -- and I'm not going 17 to get into those again. They've already been 18 discussed. We support those changes from IPANM. I just 19 want to make one point that part of the changes made was 20 to narrow the applicability of the proposal. 21 And I have one additional one I'd like to 22 make. 23 So it's important to understand that these 24 costs are not just for a third-party. I've been on the 25 receiving end of an audit, and I've done audits before.
1439 1 have something in place. 2 Secondly, four months to get this implemented 3 is just simply not enough time. As Mr. Smitherman 4 mentioned before, to get this all set up and running 5 properly is -- you just cannot do it in four months. 6 Again we have a system out here, and to change that and 7 get that to work and get all our employees trained and 8 contractors, four months is not enough time. 9 So I concur with Mr. Smitherman's 10 recommendations that we need two years to implement 11 that. 12 Third, I just want to point out that some of 13 the really small companies with limited wells production 14 are going to have a hard time trying to get this system 15 to work, particularly if we haven't uploaded to a 16 central server and they don't have one already to do 17 that. 18 So I would like to suggest that maybe there be 19 an offering for situations where the company's only 20 generating one report. And when I look at the rules, it 21 appears to me that at least -- even the smallest of 22 companies will have to do at least one leak detection 23 repair survey. And if that's true, to have to build a 24 system like this just for one report to be done annually 25 seems to -- seems to be a heavy lift.	1441 1 And it requires the company to devote resources of its 2 own to help the auditor to get the job done. And so 3 those may not be direct costs, but it takes time away 4 from people's work at the business to help the auditor 5 to get the -- get the -- or to facilitate getting the 6 audit done. 7 So the additional narrowing that we would 8 suggest is that they be limited to cases of probable 9 extensive noncompliance. 10 That's all I have to present. 11 Q. Thank you, Mr. Brown. 12 One additional item, just that we skipped over 13 in terms of your qualifications. 14 My understanding is you served on the Colorado 15 Air Quality Control Commission. 16 Could you explain that you -- what you did 17 with the commission and your years of experience there? 18 A. Yes. I served one term on the Colorado Air 19 Quality Control Commission, and similar to what all of 20 you are doing on the Board, reviewing proposed new 21 regulations, dealing with issues that come up in terms 22 of guidance to the staff, similar types of things that 23 you're doing. 24 So I definitely respect all of you who are on 25 the Board who are sitting through this process, because

1442 1 I have sat in your chair. So thank you for your 2 service, by the way. 3 MR. ROSE: Thank you, Mr. Brown. 4 I have no further questions and would offer 5 Mr. Brown for questions. 6 HEARING OFFICER ORTH: All right. Thank you. 7 I see Ms. Katz on the screen. 8 Ms. Katz? 9 MS. KATZ: Thank you, Madam Hearing Officer. 10 CROSS-EXAMINATION 11 BY MS. KATZ: 12 Q. Hello, Mr. Brown. Good to see you. 13 A. Hi. 14 Q. I am just wondering if -- I just wanted to ask 15 you if IPANM was planning to submit some suggested 16 language regarding the changes that -- suggestions that 17 you've discussed here this -- this afternoon. 18 A. I believe we are, but -- yes. I think I can 19 say that. I'll defer that to our attorney, but I think 20 that's the plan. 21 MS. KATZ: Thank you very much. 22 MR. BROWN: Thank you. 23 HEARING OFFICER ORTH: Thank you. 24 Are there any other parties who would like to 25 turn on their screen?	1444 1 cohorts said there. 2 A question for Mr. Brown just to pull it back 3 a little bit. 4 You know, I've heard anecdotally and just 5 talking to friends and acquaintances that San Juan Basin 6 as an oil -- or, well, possibly as an oil-producing 7 region, but as a gas-producing region has been in 8 decline for some years. 9 Is -- is that the case? 10 MR. BROWN: Well, all wells decline, and a lot 11 of the older wells here in the basin are natural gas, 12 and they've been around for a long time, and they are 13 declining. 14 But the area where they're seeing new 15 development is an area where we operate in. Which is 16 the southern part of the basin, where there's an oil 17 window there, and that's where a lot of the new activity 18 is taking place. And there's several companies 19 developing that right now. So there's some upside for 20 oil production in the San Juan Basin right now. 21 MEMBER CATES: And DJ -- is it DJR? Right? 22 Is -- how big a company is that, like in terms of how 23 many rigs do you have? How many employees? You know, 24 what kind of metrics could you put on it to describe how 25 big it is?
1443 1 No. I don't see any other parties. 2 I will turn to the Board for their questions. 3 While I'm doing that, in the event you're on 4 this platform as an attendee and you have a question, 5 please direct it to me in the chat. 6 EXAMINATION 7 BY THE BOARD: 8 HEARING OFFICER ORTH: Madam Chair, do you 9 have questions of Mr. Brown? 10 CHAIR SUINA: Madam Hearing Officer, as long 11 as IPANM can continue to work with NMED on some of the 12 issues that Mr. Brown brought up, as Ms. Katz was 13 mentioning, I think I don't have any questions right 14 now. 15 HEARING OFFICER ORTH: All right. Thank you. 16 Vice-Chair Trujillo Davis? 17 VICE-CHAIR TRUJILLO DAVIS: I don't have any 18 questions, but I echo Member Suina's comments. I would 19 like to see IPANM make some recommendations and at least 20 give us an opportunity to review those in writing. 21 Thank you. 22 MR. BROWN: Thank you. 23 HEARING OFFICER ORTH: Thank you. 24 Member Cates? 25 MEMBER CATES: And I would third what my	1445 1 MR. BROWN: Okay. So I'd be glad to. So we 2 have about 78, 80 employees out here in Aztec, New 3 Mexico. We have a home office in Denver, which has 16 4 people. Right now we've got 400 vertical wells, and we 5 have 126 horizontal wells, which are in the oil window. 6 We have two drilling rigs running right now. And so 7 we're active and planning to continue to be active in 8 the future. 9 MEMBER CATES: Yeah. 10 So back to the question of decline. I mean, 11 relative to the Permian, it's not as -- oh, what's the 12 word -- it's not as promising a play, I suppose, as the 13 Permian is? Is -- would that be a fair sort of 14 characterization of -- yeah. 15 MR. BROWN: Well, one thing I do want to 16 mention is that there's been some people in the northern 17 end of the basin who have drilled some horizontal gas 18 wells which have been very good wells. So there may be 19 some upside there for horizontal development in the -- 20 in the gas formations which have had a lot of vertical 21 wells, maybe additional potential there, and that's what 22 they're looking for up there. 23 So I think there's still upside for the San 24 Juan Basin. I do. 25 MEMBER CATES: All right. Yeah. That's --

1446 1 that answers what I was wondering about. 2 So I appreciate the testimony and your time. 3 Thank you, sir. 4 MR. BROWN: Okay. Thank you, sir. 5 HEARING OFFICER ORTH: Thank you. 6 Member Bitzer, any questions? 7 MEMBER BITZER: Following on Mr. Cates' line 8 of questioning about the San Juan Basin, I -- in the 9 interest of full disclosure, I drive a Honda Civic that 10 runs on natural gas, 10 percent greener than a Prius as 11 it rolls down the road, by the way. So -- 12 MR. BROWN: Okay. 13 MEMBER BITZER: According to the total carbon 14 footprint study, but -- 15 So I follow the natural gas prices with some 16 voyeuristic interest over the years, just curiosity. 17 But it seems to me that part of the problem for the San 18 Juan might also be that the price has been so low. 19 If the price were to come back, would the -- 20 would the -- is there some, like you said -- I guess I 21 heard part of the answer to that, there is some upside 22 still in San Juan. Would that be accelerated if you got 23 a 30, 40 percent increase in -- in the cost of natural 24 gas? 25 MR. BROWN: Quite possibly, yes. Yes.	1448 1 MR. BROWN: Thank you. 2 MR. JANOE: Madam -- Madam Hearing Officer, I 3 have Mr. Holderman here with me right now. 4 Oxy is really pleased to report, though, that 5 in light of conversations that the company had with the 6 environmental groups, the NMED, that our comments with 7 regard to equipment monitoring tags, timing for database 8 submittals and presale compliance certifications have 9 all been addressed in the August 16 submittal. 10 So we are prepared to put Mr. Holderman up for 11 cross-examination, but would otherwise rest on the 12 testimony that was previously submitted. 13 HEARING OFFICER ORTH: Thank you so much. Our 14 magical morning meeting is already working. All right. 15 Thank you for that. 16 Let me turn to the Board for any questions 17 they might have. 18 And while we are doing that, if you're on the 19 platform as an attendee and have a question, please put 20 it in the chat. 21 Welcome back, Mr. Holderman. 22 MR. HOLDERMAN: Thank you. 23 24 25
1447 1 MEMBER BITZER: That's all I have, Madam 2 Chair -- Madam Hearing Officer. 3 MR. BROWN: Thank you. 4 HEARING OFFICER ORTH: Thank you. 5 Has Member Duval rejoined us? Member Duval? 6 Member Garcia. 7 MEMBER GARCIA: No questions. Thank you. 8 HEARING OFFICER ORTH: Thank you. 9 And Member Honker. 10 MEMBER HONKER: Thank you, Mr. Brown, for your 11 testimony. Very interesting. 12 I have no questions. 13 HEARING OFFICER ORTH: Thank you very much. 14 Mr. Rose, any redirect? 15 MR. ROSE: No, Madam Hearing Officer. 16 That completes our presentation on this issue. 17 HEARING OFFICER ORTH: All right. 18 I see Mr. Janoe on screen. 19 Mr. Janoe, is this about Mr. Brown, or is this 20 about Mr. Holderman coming up? 21 MR. JANOE: About Mr. Holderman. 22 HEARING OFFICER ORTH: Terrific. All right. 23 Thank you again, Mr. Brown. 24 We're now going to move to Oxy and return to 25 Mr. Holderman on this topic.	1449 1 DANNY HOLDERMAN 2 (Relating to Topic Order 23) 3 having been first duly sworn or affirmed, was 4 examined and testified as follows: 5 EXAMINATION 6 BY THE BOARD: 7 HEARING OFFICER ORTH: I'll start with you, 8 Madam Chair. 9 CHAIR SUINA: Thank you, Madam Hearing 10 Officer. 11 And I'm glad to hear there's been some 12 progress on our efficiency, and I just encourage that 13 the stakeholders continue to work with NMED and the 14 others -- various stakeholders to address the concerns. 15 So I appreciate that. Thank you. 16 No -- 17 HEARING OFFICER ORTH: Thank you. 18 CHAIR SUINA: No questions at this time. 19 HEARING OFFICER ORTH: All right. Thank you. 20 Vice-Chair Trujillo Davis? 21 VICE-CHAIR TRUJILLO DAVIS: I don't have any 22 questions either. Thank you. 23 HEARING OFFICER ORTH: Thank you. 24 Member Cates? 25 MEMBER CATES: No questions here. Thank you.

1450 1 HEARING OFFICER ORTH: Member Bitzer? 2 MEMBER BITZER: No questions. Thank you. 3 HEARING OFFICER ORTH: All right. 4 Member Garcia? 5 MEMBER GARCIA: No questions. Thank you. 6 HEARING OFFICER ORTH: Thank you. 7 And Member Honker? 8 MEMBER HONKER: Yes. Just one thing. 9 I thought I heard your counsel say August 16th 10 revisions by NMED. 11 I assume you meant September 16th? 12 MR. HOLDERMAN: Yes, sir. September -- 13 September 16th. 14 MEMBER HONKER: Okay. Thank you. 15 No other questions. 16 HEARING OFFICER ORTH: Thank you very much. 17 Well, thank you, Mr. Holderman, for rejoining 18 us. 19 And thank you, Mr. Janoe, for working through 20 that. 21 I believe the next witness will be from GCA. 22 It's witness Copeland. 23 MS. SHEEHAN: Thank you. 24 Good afternoon, Madam Hearing Officer, Madam 25 Chair, Members of the Environmental Improvement Board.	1452 1 So, Mr. Copeland, I'll ask you to spell your 2 name. 3 MR. COPELAND: Yes. It's M-A-R-K 4 C-O-P-E-L-A-N-D. 5 HEARING OFFICER ORTH: Thank you. 6 And if you would raise your right hand. 7 Do you swear or affirm to tell the truth? 8 MR. COPELAND: I do. 9 HEARING OFFICER ORTH: Thank you very much. 10 MARK COPELAND 11 (Relating to Topic Order 23) 12 having been first duly sworn or affirmed, was 13 examined and testified as follows: 14 DIRECT EXAMINATION 15 BY MS. SHEEHAN: 16 MS. SHEEHAN: Thank you, Madam Hearing 17 Officer. 18 For the Board's benefit, the exhibits 19 associated with Mr. Copeland's testimony are GCA 20 Exhibits 15, which is his direct -- direct prefiled 21 written testimony; GCA Exhibit 16, which is his resume; 22 and GCA Exhibit 30, which is his direct rebuttal 23 testimony. 24 Q. Mr. Copeland, could you please state your name 25 for the record?
1451 1 My name is Christina Sheehan, and I am 2 appearing on behalf of the Gas Compressor Association in 3 this proceeding, along with co-counsel Stuart Butzier 4 and Whit Swift. 5 As a housekeeping matter, Madam Hearing 6 Officer, because this is GCA's first technical witness, 7 if it would make sense to do so at this point in time, I 8 would suggest to enter into the hearing record all of 9 the GCA's exhibits, which have been labeled GCA 10 Exhibit 1 to GCA Exhibit 34. 11 I don't think any party has submitted any sort 12 of objections to these exhibits. I will note that this 13 does not include GCA Exhibit 35, which Mr. Swift 14 circulated to the parties this morning. 15 HEARING OFFICER ORTH: All right. Thank you 16 very much for that. 17 I'm not aware that there were objections to 18 the first 34 of them, but let me pause for a moment in 19 the event there is an objection. 20 No. 21 GCA Exhibits 1 through 34, then, admitted. 22 (Exhibits GCA 1 through 34 admitted into 23 evidence.) 24 HEARING OFFICER ORTH: I did panelize 25 Mr. Copeland there.	1453 1 A. Yes. 2 Good afternoon, Madam Hearing Officer and 3 Madam Chairman and the Board. 4 My name is Mark Copeland. 5 Q. What is your current employment position? 6 A. I'm the director of field operation support 7 and service for Archrock. 8 Q. What role does Archrock play in the oil and 9 gas industry in New Mexico? 10 A. Archrock is a compression service provider. 11 We own natural gas compressing equipment that we use to 12 compress our customers' gas. This gas is both on the 13 production side of oil and gas at the well, also pushing 14 product all the way to the pipeline and processing 15 plants. The key component of a gas compressor is a 16 gas-driven engine that helps to compress that gas. 17 Q. Thank you, Mr. Copeland. 18 Can you please briefly describe your 19 educational and professional qualifications? 20 A. Sure. I have a bachelor of science in 21 mechanical engineering. I have over 30 years of 22 experience in the natural gas compressor industry and 15 23 years of exploration and production industry. 24 I have at -- I have -- the last 21 years I 25 have been with Archrock, the largest contract

1454 1 compression service company in the US. Three of the 2 years I have spent in New Mexico as a regional manager. 3 The last 15 years I have spent in the role of involving 4 monitoring compliance, among other things of air 5 regulations, NESHAP Quad Z, NSPS Quad O, and other state 6 regulatory agencies, along with developing operation and 7 maintenance process improvements. 8 Q. A copy of your resume has been provided as GCA 9 Exhibit 16; is that correct? 10 A. That is correct. 11 Q. And you have submitted prefiled direct and 12 written testimony in this proceeding, which has been 13 provided as GCA Exhibit 15; is that correct? 14 A. That is correct. 15 Q. Do you have any changes to your direct 16 prefiled written testimony? 17 A. I do not. 18 Q. Do you adopt this testimony here today? 19 A. I do. 20 Q. Mr. Copeland, what is the general purpose of 21 your direct written testimony in this proceeding 22 regarding Section 112 of the proposed rule? 23 A. The general purpose of my direct written 24 testimony regarding Section 112 was the proposed rule to 25 request the removal of equipment monitoring tags, EMTs,	1456 1 maintain records of that compliance data. The main 2 issue was the CDR database requirements in the May 6th 3 version of the proposed rule, the lack of clarity, what 4 constituted a source and the inapplicability and 5 unavailability of certain information based on the broad 6 definition of source. 7 Changes found by NMED September 16th version 8 of the proposed rule appears to have addressed our 9 concerns. 10 Q. Thank you, Mr. Copeland. 11 Have you submitted prefiled written rebuttal 12 testimony in this proceeding which has been provided as 13 GCA Exhibit 30? 14 A. Yes, I have. 15 Q. Do you have any changes to your prefiled 16 written rebuttal testimony? 17 A. I do not. 18 Q. And do you adopt your prefiled written 19 rebuttal testimony here today? 20 A. I do not. I do. I'm sorry. Yes. 21 Q. No problem. 22 Can you briefly summarize your written 23 rebuttal testimony? 24 A. Yes. My written rebuttal testimony addressed 25 the proposal by WildEarth Guardians to add a new
1455 1 and its related database requirements in 2 Section 112A.(3) through (10) in the proposed rule. 3 Q. Could you please summarize your prefiled 4 direct written testimony as it pertains to Section 112? 5 A. Yes. My prefiled direct written testimony 6 discusses the GCA's proposed deletion of 7 Section 112A.(3) through (10). The May 6th version of 8 the proposed rule contains requirements for owners and 9 operators of sources to attach EMTs to each source 10 requiring such physical tags and for the creation, 11 population and maintenance of the database of source 12 data from which a CDR may be produced. 13 In my direct testimony I explain why in my 14 opinion the EMT and the database concepts as 15 presented -- were presented in the May 6th version of 16 the proposed rule should be removed. My direct 17 testimony explained the concepts and the -- of that 18 aspect of the proposed rule are un -- were unclear and 19 hard to implement and abide by, and that is why the 20 provisions would have ended up costing a significant 21 amount of money for the owners and operators. 22 I do not -- I do not object to the obligation 23 of conducting the compliance demonstration requirements 24 established elsewhere in the proposed rule or the rule 25 language requiring that owners/operators be required to	1457 1 paragraph in Section 112 that would require all 2 owners/operators to submit records of all monitoring 3 events documenting deviations from the proposed rule on 4 a semiannual basis. 5 I explain why NMED and -- and the Board should 6 reject this proposal for a variety of reasons, including 7 the proposed rule already includes significant and 8 sufficient compliance demonstration of the requirements. 9 The new reporting requirement requested by 10 WildEarth Guardians would impose unjustified additional 11 burden and cost of both NMED and the regulatory 12 community. There is no evidence of how the additional 13 burdens and cost would result in a benefit of the NMED 14 enforcement or provide environmental improvement. 15 The kind of deviation self-reporting that 16 WildEarth Guardians is seeking has only been imposed 17 under the EPA air Operating Permit Program that applies 18 to major sources, not the minor sources which that will 19 be subject to the proposed rule. 20 Minor sources subject to state oil and gas 21 rules are not subject to that kind of self-reporting 22 requirement in Colorado or any other jurisdictions that 23 I am aware of. 24 Q. Thank you, Mr. Copeland. 25 Does that conclude your direct and rebuttal

1458 1 testimony on this section? 2 A. Yes, it does. 3 Q. For efficiency and continuity purposes, I'm 4 going to go ahead and move on to surrebuttal. 5 Mr. Copeland, were you present for the 6 Department's direct and rebuttal testimony regarding 7 Section 112? 8 A. Yes. 9 Q. And have you reviewed NMED Rebuttal 10 Exhibit 23? 11 A. I have. 12 Q. Are the GCA's proposed amendments to 13 Section 112, which you discussed, addressed in NMED 14 Rebuttal Exhibit 23? 15 A. Not in their entirety. In Section 112A, NMED 16 did remove the EMT concept, but the CDR database 17 requirements remain in section A.(3) through (6) of the 18 proposed rule. 19 Q. Are your concerns regarding Section 112 of the 20 proposed rule fully addressed by NMED's amendments to 21 the section as set forth in NMED Rebuttal Exhibit 23? 22 A. Yes. 23 Q. Would you encourage the Environmental 24 Improvement Board to adopt the Department's Section 112 25 provisions as set forth in NMED Rebuttal Exhibit 23,	1460 CROSS-EXAMINATION 2 BY MR. NYKIEL: 3 Q. Good afternoon, Mr. Copeland. 4 My name is Matt Nykiel. I'm here on behalf of 5 WildEarth Guardians. 6 So to start, you testified that the reporting 7 requirements of the proposed rule will ensure that the 8 Department will be in prompt receipt of all of the 9 compliance demonstration reports that have to be 10 maintained under the proposed rule; is that right? 11 A. That is correct. 12 Q. But would you agree that if the Department 13 doesn't request those reports they won't receive them? 14 A. I'm not -- my understanding was there was an 15 annual requirement. I could be wrong. 16 Q. Okay. 17 And do you recall if the annual requirement 18 you're thinking of is the annual compliance 19 demonstration that is required under Subsection C of 20 Section 112 of the proposed rule? 21 A. That could be. I would have to look it back 22 up. 23 Q. Okay. See if I can help direct you briefly. 24 Okay. Can you see -- this is NMED Rebuttal 25 Exhibit 23.
1459 1 which is the September 16 version of the rule? 2 A. Yes. I would encourage the EIB to adopt their 3 rules. Yes. 4 Q. Thank you, Mr. Copeland. 5 Does this conclude your testimony on this 6 issue in this proceeding? 7 A. Yes, it does. 8 Thank you, Madam Hearing Officer. 9 The GCA tenders their witness. From this 10 point I can answer questions. 11 HEARING OFFICER ORTH: Thank you very much, 12 Mr. Copeland and Ms. Sheehan. 13 Let me pause for a moment for other parties to 14 present themselves on screen. 15 I see Mr. Nykiel. 16 Mr. Nykiel, do you have questions of 17 Mr. Copeland? 18 MR. NYKIEL: Yes, please, Madam Hearing 19 Officer. 20 And before I start, I would like to try again, 21 if you wouldn't mind seeing if you could grant me 22 permission to share my screen. We'll see if it works 23 this time around. 24 Okay. I think that's going to work this time. 25 Thank you very much.	1461 1 Can you see that? 2 A. Yes. 3 Q. Okay. 4 I'm just going to direct your attention to 5 Section 112, which is the topic we're speaking of at the 6 moment, General Provisions, and Subsection C. 7 Could you read -- this would be Subsection 8 C.(3). Could you read starting at line 12, number 3 9 there? 10 A. Okay. 11 Q. Would you mind reading that out, please, for 12 the benefit of the -- 13 A. "By March 1 of each calendar year, the owner 14 or operator shall conduct a compliance evaluation and 15 prepare an electronic record certifying the compliance 16 status of each source subject to this Part with all 17 terms, conditions, and applicable requirements of this 18 Part. The compliance evaluation and certification shall 19 include all sources subject to this Part for the 20 previous calendar year." 21 Q. Thank you, Mr. Copeland. 22 So there isn't a requirement that that annual 23 compliance report be submitted to the Department, right? 24 A. Can you restate your question? 25 Q. Sure. Thank you.

1462 1 In that rule there's no language that requires 2 an owner or operator to submit that annual compliance 3 report to the Department unless it is requested. 4 A. In that language, correct. 5 Q. Thank you. 6 I'd like to move on to a different topic. 7 You testified that there's no evidence that 8 Guardians' proposal would improve environmental 9 protection or dissuade any noncompliant bad actors; is 10 that right? 11 A. I haven't seen any. That is correct. 12 Q. And did you happen to hear the Department's 13 witness, Ms. Cindy Hollenberg, testify this week? 14 A. I don't think I remember hearing hers. No. 15 Q. Okay. 16 I'm going to stop sharing this particular 17 screen for the moment. 18 MS. KATZ: And, Madam Hearing Officer, I -- 19 might I just -- sorry to jump in, but I -- might I ask 20 for the interest of time that perhaps Mr. Nykiel could 21 make these points through his witness who is scheduled 22 to come up here very soon, rather than try to do it all 23 through cross on other witnesses, right? Just in the 24 interest of time? 25 I mean, if you insist that you need to do	1464 1 Member Cates? 2 MEMBER CATES: No questions here. 3 HEARING OFFICER ORTH: Thank you. 4 Member Bitzer? 5 MEMBER BITZER: No questions. Thank you. 6 HEARING OFFICER ORTH: Thank you. 7 Member Duval, I don't think -- he's teaching. 8 Member Garcia? 9 MEMBER GARCIA: No questions. Thank you. 10 HEARING OFFICER ORTH: And Member Honker. 11 MEMBER HONKER: No questions. Thank you. 12 HEARING OFFICER ORTH: Thank you. 13 Ms. Sheehan, will there be any follow-up at 14 this time? 15 MS. SHEEHAN: Yes, Madam Hearing Officer. 16 Just one quick question for clarification. 17 REDIRECT EXAMINATION 18 BY MS. SHEEHAN: 19 Q. Mr. Copeland, did you mean that the annual 20 compliance certificate would be available to NMED upon 21 request? Is that what you meant? 22 A. That is correct. 23 MS. SHEEHAN: Thank you, Madam Hearing 24 Officer. No further questions. 25 HEARING OFFICER ORTH: All right. Thank you
1463 1 that, but I think it would move things a lot faster to 2 not do it that way. 3 HEARING OFFICER ORTH: Mr. Nykiel? It is 4 usually more efficient that way. 5 MR. NYKIEL: Give me one moment just really 6 briefly. 7 HEARING OFFICER ORTH: Okay. 8 MR. NYKIEL: I think we can do that. No -- 9 HEARING OFFICER ORTH: Thank you very much. 10 Thank you very much. 11 Let's see. Are there other parties with 12 questions of Mr. Copeland? Please turn on your screen. 13 No? 14 I'll turn, then, to questions from the Board. 15 If you're an attendee on this platform and 16 have a question, please reach out through chat. 17 Madam Chair, do you have questions of 18 Mr. Copeland? 19 CHAIR SUINA: Madam Hearing Officer, I don't 20 have any questions at this time. 21 HEARING OFFICER ORTH: Thank you. 22 Vice-Chair Trujillo Davis? 23 VICE-CHAIR TRUJILLO DAVIS: I do not have any 24 questions. Thank you. 25 HEARING OFFICER ORTH: Thank you.	1465 1 very much, Mr. Copeland and Ms. Sheehan. 2 We do need a break. Let's take 15 minutes. 3 As I understand it, we will turn next to CBG 4 and witnesses Cooper and Marquez, whom I will make 5 panelists right now. 6 So let's come back at 2:50, please. 7 (Proceedings in recess from 2:34 p.m. to 8 2:51 p.m.) 9 HEARING OFFICER ORTH: Let's come back from 10 the break, please. 11 Let me ask if the CDG witnesses have slides 12 such that they would like screen sharing privileges. 13 MR. COLCLASURE: No slides. Ms. Marquez 14 (unintelligible and/or inaudible). 15 HEARING OFFICER ORTH: All right. Thank you. 16 Mr. Colclasure, would you like to introduce 17 your witnesses, please. 18 MR. COLCLASURE: Yes. Thank you, Madam 19 Hearing Officer. 20 My name is Chris Colclasure, and I will be 21 asking questions of Ms. Lori Marquez, followed by Casey 22 Shpall who will ask questions of Ms. Jill Cooper. 23 Ms. Marquez has written direct testimony as 24 Appendix C to the Commercial Water Group's notice of 25 intent to file direct testimony. You can also find her

1466 1 curriculum vitae. Ms. Marquez' rebuttal testimony is 2 Appendix C to the group's notice of intent to file 3 rebuttal testimony, and there's one attachment to her 4 rebuttal. Neither of these documents have been assigned 5 exhibit numbers. 6 Ms. Marquez, could you -- 7 Actually, do you need to swear in Ms. Marquez 8 before I proceed? 9 HEARING OFFICER ORTH: I do, but I don't see 10 her on the screen. 11 Ah, there we go. 12 Hello, Ms. Marquez. 13 MS. MARQUEZ: Hello. 14 HEARING OFFICER ORTH: Hello. 15 Would you please spell your name. 16 MS. MARQUEZ: Yes. Lori is L-O-R-I, Marquez, 17 M-A-R-Q-U-E-Z. 18 HEARING OFFICER ORTH: All right. 19 And if you'd raise your right hand. 20 Do you swear or affirm to tell the truth? 21 MS. MARQUEZ: Yes. 22 HEARING OFFICER ORTH: Thank you. 23 24 25	1468 1 response to WildEarth Guardians' proposal to place new 2 limits on the issuance of permits. 3 Q. Can you summarize your expertise relevant to 4 these topics and the testimony you will provide? 5 A. Yeah. I have a bachelor's in electrical 6 engineering from Purdue University and a master's in 7 environmental science from the University of Colorado. 8 I have over 35 years of engineering and environmental 9 experience, with about 23 years of air quality 10 permitting experience, most of which is specific to the 11 oil and gas industry. 12 My primary expertise is in nine states, but 13 I've worked in many states. I've prepared hundreds, if 14 not more than 1,000 air permit applications for oil and 15 gas facilities, including GCPs, minor source and major 16 source permitting. I also had experience with 17 environmental databases at the user level, and I've been 18 a part of many compliance evaluations. 19 Q. If I were to ask you the questions presented 20 in your direct and rebuttal testimony again today, would 21 your answers be the same? 22 A. Yes. 23 Q. Do you adopt your written testimony as your 24 testimony here today? 25 A. Yes, I do.
1467 1 LORI MARQUEZ 2 (Relating to Topic Order 23) 3 having been first duly sworn or affirmed, was 4 examined and testified as follows: 5 HEARING OFFICER ORTH: Go ahead, 6 Mr. Colclasure. 7 MR. COLCLASURE: Thank you. 8 DIRECT EXAMINATION 9 BY MR. COLCLASURE: 10 Q. Ms. Marquez, can you tell the Board your 11 employer and your position? 12 A. Yes. I'm a senior environmental consultant 13 with Barr Engineering. 14 Q. And what are your duties with Barr? 15 A. I manage air permitting and compliance 16 projects for a variety of clients, primarily oil and gas 17 clients, across multiple states. 18 Q. Have you prepared written direct and rebuttal 19 testimony within this proceeding? 20 A. Yes. I submitted direct testimony regarding 21 equipment monitoring tags and the costs and benefits of 22 the Department's initial proposal for EMT tags. I also 23 addressed the missions profiles for saltwater disposal 24 wells and the differences between SWD wells and upstream 25 operations. And I submitted rebuttal testimony in	1469 1 MR. COLCLASURE: And before I ask Ms. Marquez 2 for a verbal summary, I offer her written, direct and 3 rebuttal testimony into the record. 4 HEARING OFFICER ORTH: Thank you. 5 Let me pause a moment in the event there are 6 objections. 7 They're admitted. Thank you. 8 MR. COLCLASURE: And I'm going to ask 9 Ms. Marquez questions to summarize her written 10 testimony, as well as move into surrebuttal of the new 11 information that we've heard during the hearing. 12 Q. So, Ms. Marquez, do you support the 13 Department's position on equipment monitoring tags in 14 their September 16th version of the proposed regulation? 15 A. Yes. The Department significantly improved 16 Section 112 by deleting the proposed requirement to 17 require the installation and use of equipment monitoring 18 tags from Sections 112A.(3) and A.(4). Installing tags 19 with unique QR codes or other identifiers would be 20 prohibitively expensive, especially for smaller 21 operators. 22 I agree with the written direct testimony of 23 NMOGA's witness, John Smitherman, that the Department's 24 original proposal for an EMT and database requirement 25 would be highly complex and difficult to implement. So

1470 1 I support striking the requirement to use tags. 2 Q. Thank you. 3 Do you support the Department's proposal to 4 allow operators the flexibility to choose a data system 5 that they'll use to comply with Section 112? 6 A. Yes. My written direct testimony describes 7 how operators would be impacted under the Department's 8 original EMT proposal. One of these impacts was 9 potential for incompatibility with existing data 10 systems. 11 Section 112A.(3) now requires operators to 12 develop and implement a database system capable of 13 storing information for each source in a manner 14 consistent with this section. This gives operators 15 flexibility to choose their own database and to work 16 from their existing software. 17 I work with many oil and gas clients. They 18 use a wide variety of data systems to keep electronic 19 records of environmental and air quality data, ranging 20 from highly sophisticated environmental management 21 systems to Excel spreadsheets. I support allowing 22 operators to use their existing data systems and giving 23 them two years to make any necessary changes to be 24 consistent with Section 112. 25 Q. Do you recommend any revisions to the language	1472 1 Turning now to the requirement for an annual 2 compliance certification, have you reviewed the 3 Department's latest proposed revisions to Section 4 112C.(3)? 5 And to be clear, I'm referring to the 6 Department's Rebuttal Exhibit 23 from September 16th. 7 A. Yes. 8 Q. Did you hear Mr. Smitherman's testimony 9 regarding the annual compliance evaluations? 10 A. Yes. 11 Q. Do you have concerns regarding the 12 Department's new proposal? 13 A. Yes. We appreciate the Department's efforts 14 to decouple the compliance evaluations from asset 15 transfers. However, the current language substantially 16 expands the scope of the rule. Operators would have to 17 conduct annual compliance evaluations whether or not the 18 operator is transferring the assets. 19 I have performed and managed many compliance 20 evaluations and self-audits for oil and gas facilities. 21 Based on my experience, conducting an annual compliance 22 evaluation and certifying compliance for each source 23 subject to Part 50 would impose a substantial burden on 24 operators. The rule applies to a large number of 25 facilities.
1471 1 in 112A.(3) requiring operators to develop and implement 2 a database system? 3 A. Yeah. The term "database system" could limit 4 operators' flexibility regarding what software they 5 select. For example, some might not consider Excel 6 spreadsheets to be a database, but a spreadsheet could 7 be enough for smaller operators to track all data points 8 required by Section 112. 9 So I recommend replacing the term "database 10 system" with "data system" to clarify that spreadsheets 11 are acceptable if they store and retrieve all of the 12 information needed to comply with Section 112. 13 And I did hear Ms. Kuehn state that NMED will 14 work on a template for small business to use. We 15 welcome the Department's efforts to develop a template, 16 but we are uncertain whether NMED is developing an 17 actual software package that operators can use or if the 18 template would be a list of requirements. So we look 19 forward to working with NMED to facilitate that effort. 20 Regardless, I think the minor language change 21 to "data system" could facilitate the state's efforts in 22 the event that they establish a spreadsheet template, 23 and it would certainly help small operators to comply 24 with the recordkeeping requirements of the rule. 25 Q. Okay.	1473 1 Some members of the Commercial Water Disposal 2 Group operate other facilities and equipment that would 3 be subject to annual compliance evaluations, even though 4 for some types of equipment, such as dehydrators, 5 engines, compressor seals, fugitives, the groups -- the 6 group did not submit much, if any, testimony on the 7 specific emission standards proposed for that equipment. 8 It's very unusual to conduct an annual 9 compliance evaluation on every source in a county or 10 other geographic area. It is much more common for 11 operators to conduct smaller periodic self-audits. In 12 my professional opinion, the potential benefits of 13 conducting annual compliance evaluations do not justify 14 the cost. 15 Q. Understood. 16 Did you have an opportunity to hear the 17 Department's witness, Mr. Palmer, testify on Wednesday 18 that if operators are complying with the recordkeeping 19 requirements of Part 50 the burden of the annual 20 compliance evaluations would be very, very minimal? 21 A. Unfortunately, I did not. 22 Q. Okay. 23 Well, even if you didn't hear him, would you 24 agree that the burden of conducting these annual 25 evaluations would be minimal?

1474 1 A. No. Compliance evaluations are not small 2 projects. And in fact, environmental consultants like 3 myself earn a sizeable share of our income from 4 compliance evaluations. 5 Q. Do you have any recommendations regarding this 6 rule language? 7 A. Section 112C.(3) should not be adopted in its 8 current form. The parties should be given an 9 opportunity to revise the rule and develop language that 10 accomplishes the Department's goals and can be 11 successfully implemented. It sounds like NMOGA may be 12 discussing rule language with the Department. I agree 13 that further stakeholder conversations on this issue are 14 needed. 15 I understand that Ms. Cooper is also going to 16 be presenting testimony on this issue. I will allow her 17 to speak, and I will be available for questions on the 18 topic, as well. 19 Q. Very good. 20 Did you hear Ms. Kuehn's testimony this 21 morning regarding calculations of the potential to emit 22 from sources? 23 A. Yes, I did. 24 Q. Is it feasible for operators to have a 25 professional engineer or an in-house engineer certify	1476 1 Q. Thank you. 2 One last topic. 3 Did your written testimony address the 4 proposal by WildEarth Guardians to restrict the issuance 5 of permits to oil and gas facilities? 6 A. Yes. My written rebuttal testimony explains 7 how WEG's proposal would conflict with existing permit 8 programs. WEG's proposal is problematic for several 9 reasons. I will flag those reasons briefly now, and I 10 may provide additional testimony on surrebuttal after 11 the Board hears WEG's verbal testimony. 12 The proposal implies that applicants for an 13 individual minor source permit would have to model the 14 ozone impacts of a single facility. This doesn't work 15 because ozone is a regional pollutant. Single source 16 ozone modeling is not required for minor sources, and 17 technical work performed by EPA demonstrates that 18 individual minor sources in New Mexico do not cause or 19 contribute to ozone NAAQS violations. 20 WEG recently asserted similar claims in a 21 permit appeal. The Board rejected WEG's claims in their 22 entirety in January of 2021. 23 Q. And can I just interrupt to clarify? 24 That permit appeal was in front of this Board; 25 is that correct?
1475 1 the calculation of each source's potential to emit? 2 A. Not for all operators. Smaller operators have 3 limited, if any, internal environmental staff and rely 4 heavily on environmental professionals to prepare their 5 permit applications. Many of these environmental 6 professionals are not registered professional engineers, 7 and many environmental professionals have bachelor's 8 degrees in science disciplines such as atmospheric 9 science, environmental science and meteorology. 10 The requirement for a registered PE stamp for 11 every permit application PTE calculation would greatly 12 increase the cost of their permit applications because 13 the PE's time would be an additional cost and they may 14 charge a premium to review and stamp emission 15 calculations. 16 Q. Would the engineer certification improve the 17 accuracy of the calculation? 18 A. In my opinion, no. The accuracy of the 19 emission calculations depends on the expertise and 20 qualifications of the person performing the 21 calculations. My experience has been that there are 22 many qualified environmental professionals who are not 23 registered professional engineers. Process knowledge 24 and attention to detail are the critical qualities to 25 assure accuracy.	1477 1 A. Yes. 2 Q. Thank you. 3 A. WEG's -- 4 Q. Did you also have any comments on their 5 proposal about general construction permits? 6 A. Yeah. WEG's proposal would call into question 7 the ability of minor sources to register under general 8 construction permits. The Board rejected similar claims 9 from WEG in January. 10 The proposal is also unworkable for major 11 source permits in ozone nonattainment areas, such as 12 Dona Ana County. The Clean Air Act prescribes a 13 comprehensive and stringent permitting program called 14 Nonattainment New Source Review, which allows the 15 construction of new or modified major sources so long as 16 the operator offsets the increases in emissions by a 17 ratio greater than one-to-one. 18 WEG's proposal could block the issuance of 19 permits that are expressly allowed under the 20 Nonattainment New Source Review program. 21 So I agree with the testimony of NMED witness 22 Michael Baca that WEG's proposal is outside the scope of 23 Part 50 because permitting requirements are addressed in 24 separate rule provisions, and I encourage you to reject 25 WEG's proposal.

1478 1 MR. COLCLASURE: I have no further questions. 2 Ms. Marquez is available for 3 cross-examination. 4 HEARING OFFICER ORTH: Thank you, Ms. Marquez 5 and Mr. Colclasure. 6 Counsel, please show up on the screen if you 7 have questions of Ms. Marquez. 8 Ms. Katz? 9 MS. KATZ: Thank you, Madam Hearing Officer. 10 CROSS-EXAMINATION 11 BY MS. KATZ: 12 Q. Hello, Ms. Marquez. 13 I just have one thing -- one question. 14 Did you -- did you hear Ms. Kuehn's -- 15 regarding the annual compliance certification, did you 16 hear Ms. Kuehn's testimony regarding how compliance with 17 the reporting and recordkeeping -- sorry -- monitoring 18 recordkeeping requirements of the rule should 19 essentially make that piece of it fairly easy in a 20 discussion with -- with NMOGA's counsel and witness 21 about working with the parties to clarify that language? 22 A. I -- if it was -- was that today? I -- 23 Q. Yes. 24 A. I missed a little bit of yesterday's. Yeah. 25 I heard her testimony today.	1480 1 MS. MARQUEZ: I didn't say every year. Many 2 of my clients have audit programs. A lot of the larger 3 operators I work with do have a revolving compliance 4 audit program where they are doing multiple facilities 5 every year, but they wouldn't do every asset that they 6 own every year. 7 CHAIR SUINA: Okay. Okay. 8 So your concern is that there might be a 9 potential new requirement to do those audits every year; 10 is that correct? 11 MS. MARQUEZ: Yeah. The new language requires 12 every facility in those counties to be audited for this 13 program every year. 14 CHAIR SUINA: Okay. Thank you for that. 15 Then I wanted to go back to your comments 16 about the data systems. 17 So would it be just additional clarification 18 language in the proposed rules to clarify that 19 spreadsheets could be also data systems? 20 MS. MARQUEZ: Yeah. I think using the phrase 21 "data system" would allow an Excel spreadsheet, which I 22 think would benefit the smaller operators who don't have 23 sophisticated database systems, because it -- an Excel 24 spreadsheet really isn't a database. So it's more of 25 a --
1479 1 Q. Okay. 2 Thank you. 3 HEARING OFFICER ORTH: Okay. Thank you. 4 Any other questions from the parties for 5 Ms. Marquez? Please share your screen there. 6 No. Okay. 7 I'm going to turn to the Board for their 8 questions. 9 While I'm doing that, if you're an attendee on 10 this platform and have a question, please reach out 11 through chat. 12 EXAMINATION 13 BY THE BOARD: 14 HEARING OFFICER ORTH: Madam Chair, do you 15 have questions of Ms. Marquez? 16 CHAIR SUINA: Thank you, Madam Hearing 17 Officer. I have a couple of questions. 18 Thank you again for your testimony. 19 Appreciate you coming to share your expertise and 20 knowledge. 21 I just wanted to go back to a couple of 22 statements you made during your testimony just so I can 23 make sure I'm clear. 24 You had mentioned that companies do do 25 self-audits every year; is that correct?	1481 1 CHAIR SUINA: Okay. 2 MS. MARQUEZ: -- clarification. 3 CHAIR SUINA: Okay. 4 And that hasn't been provided yet to NMED or 5 language regarding that? Have you provided that to -- 6 recommendation to NMED yet? 7 MS. MARQUEZ: No. No. I have not. 8 CHAIR SUINA: Okay. All right. 9 And then I have one more question. Please 10 hold on. 11 MS. MARQUEZ: Thank you. 12 CHAIR SUINA: And then you had mentioned that 13 in Mr. Baca's testimony regarding WildEarth Guardians -- 14 I think it was related to permitting, and different 15 agency permits and different types of permits. 16 Under -- would you be able to provide a 17 reference or the rule or regulation that covers the 18 permitting mechanism associated to what WildEarth 19 Guardians was saying -- proposing in terms of permits? 20 MS. MARQUEZ: They're proposing modeling, 21 single source modeling. 22 CHAIR SUINA: Right. 23 MS. MARQUEZ: That's -- are you looking for 24 the New Mexico permitting -- 25 CHAIR SUINA: Yeah. Yeah. I was just

1482 1 wondering if you had that reference -- 2 MS. MARQUEZ: Not right in front of me. 3 CHAIR SUINA: Okay. 4 But that would be under O -- would that be 5 under OCC -- I mean OCD permitting jurisdiction? 6 MS. MARQUEZ: The New Mexico -- the NMED 7 permitting -- air permitting program. 8 CHAIR SUINA: Okay. All right. I just wanted 9 a reference on that. 10 Well, thank you so much. 11 Those are all my questions. 12 MS. MARQUEZ: Okay. Thank you. 13 HEARING OFFICER ORTH: Thank you, Madam Chair. 14 Vice-Chair Trujillo Davis? 15 VICE-CHAIR TRUJILLO DAVIS: Yes. 16 Thank you, Ms. Marquez, for taking the time to 17 chat with us today. 18 I just had a couple of questions about your 19 experience working with operators. 20 Have you in your experience helped install one 21 of these tracking systems for any of your clients? 22 MS. MARQUEZ: Installing -- no, I have not. 23 VICE-CHAIR TRUJILLO DAVIS: Oh, okay. That 24 was kind of where my -- my line of questioning was 25 going.	1484 1 collaborative effort. 2 HEARING OFFICER ORTH: Okay. 3 Member Honker? 4 MEMBER HONKER: No questions. 5 HEARING OFFICER ORTH: Member Duval? 6 MR. DUVAL: No, no questions. Thank you. 7 I apologize for my absence. I have teaching 8 responsibilities that I -- I can't get around. So 9 that's -- that's why I've been popping in and out, 10 but -- 11 HEARING OFFICER ORTH: All right. Thank you 12 very much. 13 Let's see. Will there be any follow-up, 14 Mr. Colclasure? 15 MR. COLCLASURE: No more questions, Madam 16 Hearing Officer. 17 HEARING OFFICER ORTH: All right. Thank you 18 very much, Ms. Marquez, for your testimony. 19 We'll excuse you for the moment. 20 And I see Jill Cooper on the screen. 21 Ms. Cooper, would you spell your name, please. 22 MS. COOPER: Yes. 23 Can you hear me all right? 24 HEARING OFFICER ORTH: Yes. 25 MS. COOPER: Great. Thank you. Just let me
1483 1 So thank you for taking the time to talk with 2 us today. 3 MS. MARQUEZ: Sure. 4 HEARING OFFICER ORTH: Thank you. 5 Member Cates? 6 MEMBER CATES: No questions right at the 7 moment. Thanks. 8 HEARING OFFICER ORTH: All right. 9 Member Bitzer? 10 MEMBER BITZER: No questions. Thank you. 11 HEARING OFFICER ORTH: Thank you. 12 Member Garcia? 13 MEMBER GARCIA: Thank you. Just one 14 clarifying question. 15 I understand that NMOGA is working on some 16 language in that Section C.(3), I think it was, 17 112C.(3). 18 So are you going to wait and see what NMOGA 19 and NMED come up with and see if that works for you, or 20 will you all be proposing your own language? 21 MS. MARQUEZ: Hopefully it would be a 22 collaborative effort. 23 MEMBER GARCIA: Okay. Thank you. 24 MS. KATZ: And I will just say I believe it 25 would be the Department's intent for that to be a	1485 1 know if there's any sound issues. 2 J-I-L-L C-O-O-P-E-R. 3 HEARING OFFICER ORTH: Thank you. 4 If you would raise your right hand. 5 Do you swear or affirm to tell the truth? 6 MS. COOPER: I do. 7 HEARING OFFICER ORTH: Thank you. 8 JILL COOPER 9 (Relating to Topic Order 23) 10 having been first duly sworn or affirmed, was 11 examined and testified as follows: 12 MS. SHPALL: Hi. 13 This is Casey Shpall. I'll be asking 14 Ms. Cooper her questions. 15 Ms. Cooper's written direct testimony is in 16 Appendix C to the Commercial Disposal Group's notice of 17 intent to file direct testimony, and her CV is attached, 18 and her rebuttal testimony is Appendix E to our notice 19 of intent to file rebuttal testimony. 20 DIRECT EXAMINATION 21 BY MS. SHPALL: 22 Q. Ms. Cooper, please state your full name, 23 employer and your position. 24 A. Sure. My name is Jill Cooper. I'm a senior 25 principal with Geosyntec consultants.

1486 1 Q. And what are your duties at that firm? 2 A. I oversee projects related to air quality, 3 climate, water, waste, compliance, sustainability, much 4 of it for the upstream and midstream energy industry. 5 Q. And have you prepared direct and rebuttal 6 testimony in these proceedings? 7 A. Yes, I have. 8 Q. And which topics have those been on? 9 A. I submitted direct testimony regarding 112C on 10 compliance evaluations and Section 126 on produced water 11 management units, and then rebuttal testimony on several 12 of the definitions, again Section 112C, Section 123 on 13 storage vessels, and again Section 126 on produced water 14 management units. 15 Q. And could you briefly summarize your expertise 16 that's relevant to your testimony in this matter? 17 A. Absolutely. I have a JD in environmental law 18 from the University of Colorado. 19 My first role was with the State of Colorado's 20 air division, CDPHE. I was their in-house air attorney, 21 where I settled enforcement actions and also read 22 rulemaking processes. And then I moved on to run 23 sustainability and manage the Colorado self-audit 24 program. 25 After leaving CDPHE, I led several	1488 1 MS. SHPALL: -- but she's an attorney. 2 Q. Ms. Cooper, do you today agree with the 3 testimony that you filed in this matter and your direct 4 and rebuttal submissions? 5 A. Yes, I do. 6 Q. And do you adopt that testimony here today? 7 A. Yes, I do. 8 MS. SHPALL: And before I ask Ms. Cooper to 9 summarize her testimony and her position on the current 10 Department proposal, I will offer her written direct and 11 rebuttal testimony into the record. I don't believe 12 there are any objections. 13 HEARING OFFICER ORTH: Right. Let me pause 14 for the moment in the event there are objections. 15 Hearing none, they're admitted. Thank you. 16 MS. SHPALL: Thank you. 17 Q. Ms. Cooper, the Department proposes to revise 18 Section 112C.(3) to require each owner and operator to 19 conduct an annual compliance evaluation and prepare an 20 electronic record to certify the compliance status of 21 each source. 22 Please describe the level of effort that would 23 be necessary to conduct this annual compliance 24 evaluation for every source of these facilities. 25 A. In my experience in managing audit and
1487 1 environment, health and safety teams with upstream, 2 midstream oil and gas companies, in particular Encana 3 and Anadarko Petroleum. When working with the upstream, 4 midstream companies, I managed environmental regulatory, 5 compliance, data management, reporting, and the EHS 6 auditing teams and the associated data systems with the 7 audit programs. 8 So I have experience with environmental 9 databases, a certain amount of electronic data field 10 systems, and in overseeing internal compliance and audit 11 teams. I include -- I participated in or oversaw 12 hundreds of compliance assessments and audits. My 13 experience involves multiple states, including New 14 Mexico, Colorado, Texas, Utah, North Dakota, Michigan, 15 Wyoming and various others. 16 Q. Thank you. 17 And do you agree -- 18 HEARING OFFICER ORTH: I'm sorry, Ms. Shpall, 19 to interrupt. Ms. Shpall, I'm sorry. 20 Ms. Cooper, would you speak more slowly, 21 please. 22 MS. COOPER: Yes. 23 HEARING OFFICER ORTH: Thank you. 24 MS. SHPALL: She tries -- 25 MS. COOPER: I try.	1489 1 compliance programs for upstream and midstream 2 companies, the proposed rule as drafted would pose a 3 significant cost burden and overall burden on operators, 4 will likely have a diminishing benefit over time to do 5 this on an annual basis. This is my -- this opinion is 6 based on my experience in managing compliance and audit 7 programs and being involved with numerous compliance 8 evaluations and audits. 9 Compliance assessments to some degree are 10 already conducted within companies. They usually have 11 their own schedule they're following. It is usually 12 done on a regular basis, and certain environmental 13 programs are required -- regulations already have 14 compliance requirements, self-evaluation requirements. 15 In my experience, an annual assessment ends up 16 not really being that economic or practical due to the 17 level of effort it takes. Most companies that I have 18 been experience -- I have experience with, either 19 internally or working with as a peer, they usually come 20 up with an audit schedule where a site might be 21 evaluated every three years instead of every year. The 22 reason being it doesn't necessarily always make sense to 23 do that level of rigor and assessment on an annual basis 24 at every site. They may also identify certain sites 25 that do need a higher frequency of assessments.

1490 1 So it can be quite burdensome to annually 2 evaluate compliance of every facility with all of the 3 Part 50 requirements. As a part of such efforts, 4 operators often must hire external consultants and 5 attorneys to evaluate the permits, the regulatory 6 requirements, determine the standards that are 7 applicable to each facility, compile and review the 8 records, and then compare the facility's operational 9 status to the applicable requirements. 10 In addition, this requirement will complicate 11 the ability of a company to manage a voluntary 12 compliance audit program, take advantage of EPA's 13 self-audit privilege law, and be treated as other 14 sectors in New Mexico are currently treated. Based on 15 my personal knowledge, New Mexico doesn't apparently 16 require this of any other sector unless they're subject 17 to a Title V operating permit requirement to do 18 semiannual compliance evaluations. 19 And there's been discussion on these data 20 systems and advanced data systems. Even if a company 21 has an advanced data system, there is -- there can be a 22 cost associated with adding the type of modules we're 23 talking about to -- into those data systems. So I do 24 understand there's been discussions about using 25 spreadsheets which would be much more flexible and	1492 1 assessment on a records review or desktop, paper audit, 2 or whether it might require field visits to every 3 location before a certification can be completed. While 4 paper audits can still be burdensome and time-consuming, 5 it will be significantly more burdensome if site visits 6 are expected and required. 7 Mr. Smitherman representing NMOGA suggested 8 having operators run an annual Compliance Data Report 9 and certify that it is true rather than certifying the 10 compliance status of each facility. We just heard that 11 suggestion a few minutes ago, and I need to confer with 12 the Commercial Water Disposal Group, but I do feel this 13 idea could be a reasonable starting point for revising 14 that part of the regulation. 15 The proposed March 1 deadline is challenging. 16 Having led many air teams through my career and now 17 being a consultant, operators and consultants have a lot 18 of reporting requirements in the first quarter of the 19 year. Greenhouse gas reporting to EPA, the annual, 20 triennial emission inventories, EPCRA SARA Title II and 21 other federal reporting requirements can all come in at 22 the same time. 23 So this rule would impose significant 24 additional burdens during already hectic time of the 25 year, which means they will be hiring consultants and
1491 1 appropriate for many of the operators. 2 So based on the verbal testimony, we think the 3 Department intends for the rule to be less burdensome 4 than what the current draft language suggests, and we do 5 look forward to being a part of those discussions. 6 Q. Thank you, Ms. Cooper. 7 Do you have any other concerns with requiring 8 annual compliance evaluations in Section 112C.(3)? 9 A. Yes. I'm concerned that operators will need 10 to certify the compliance status. Use of the word 11 "certification" in Section 112C.(3) makes the rule even 12 more burdensome and could expose operators and the 13 certifying official to liability if something is missed. 14 Most facilities are not required to prepare 15 such periodic compliance certifications. This is 16 usually just reserved for Title V -- large Title V 17 operating sources. In my opinion, it's not appropriate 18 or necessary to impose an annual compliance 19 certification requirement on minor sources. And again I 20 don't see any requirement that New Mexico has asked any 21 other source type or sector to meet this type of 22 obligation. 23 In addition, the scope of the proposed 24 requirement is somewhat unclear. It currently doesn't 25 specify whether an operator could conduct a compliance	1493 1 lawyers to support, and there may not -- it may even be 2 difficult to meet the expectations with the external 3 support. 4 Finally, my last point is the Board already 5 has rules on the books that provide visibility into 6 sources' compliance status. Operators are required to 7 submit excess emission reports under Section 1 -- 8 20.7.7 -- or -- I'm sorry -- Section 20.2.7.110, and the 9 annual compliance evaluations would at least be 10 partially duplicative of these EERs, excessive emission 11 reports. And they also may duplicate any Title V 12 reporting requirements that are there. 13 For these reasons, I agree there's a need for 14 further discussions to revise the language of this 15 section of the proposed rule. 16 Thank you. 17 MS. SHPALL: Thank you, Ms. Cooper. 18 Ms. Cooper is now available for 19 cross-examination. 20 HEARING OFFICER ORTH: Thank you very much, 21 Ms. Shpall and Ms. Cooper. 22 Ms. Katz, I see you on the screen. 23 Do you have questions? 24 MS. KATZ: Thank you. 25

1494 1 CROSS-EXAMINATION 2 BY MS. KATZ: 3 Q. Hello, Ms. Cooper. 4 I just have a couple questions. 5 So do you -- you don't see the word "audit" in 6 the language regarding the annual compliance 7 certification; is that correct? 8 A. That is correct. 9 Q. Okay. Thank you. 10 And did the Commercial Disposal Group -- have 11 they prepared any suggested revisions to those 12 provisions that would address your concerns you've 13 outlined, or did their counsel contact NMED's counsel to 14 discuss what the intent of that provision was? 15 A. I think I would like to defer to counsel for 16 the counsel question. 17 Q. Okay. I guess we should say -- 18 (Simultaneous discussion.) 19 Q. -- do you know if? 20 A. I -- I'm -- could -- can Casey -- is Casey 21 able to respond -- Ms. Shpall able to respond to the 22 legal counsel question? 23 Q. You can just say whether you know if -- or 24 not. 25 A. Okay. I do not know that NM -- we proposed	1496 1 CHAIR SUINA: Am I frozen? 2 HEARING OFFICER ORTH: Stop your video -- 3 there you go. 4 CHAIR SUINA: Am I -- am I -- can you hear me? 5 HEARING OFFICER ORTH: I'm sorry. That didn't 6 really help. 7 I'm going to go to the other Board Members, 8 and hopefully we can get your connection strengthened. 9 CHAIR SUINA: Go ahead and (unintelligible 10 and/or inaudible). 11 HEARING OFFICER ORTH: Okay. She said go 12 ahead, and I think she hopes the other Board Members -- 13 CHAIR SUINA: Yes. 14 HEARING OFFICER ORTH: -- address her topics. 15 Vice-Chair Trujillo Davis, do you have 16 questions of Ms. Cooper? 17 VICE-CHAIR TRUJILLO DAVIS: I don't have any 18 questions at this time. 19 Thank you, Ms. Cooper. 20 HEARING OFFICER ORTH: All right. Thank you. 21 Member Cates? 22 MEMBER CATES: No questions right now. 23 HEARING OFFICER ORTH: Thank you. 24 Member Bitzer? 25 MEMBER BITZER: I really don't have any
1495 1 anything specific to NMED yet, revisions to this 2 section. 3 MS. KATZ: Okay. Thank you very much. 4 That's all I have. 5 HEARING OFFICER ORTH: Thank you. 6 Is there anyone else who would like to turn on 7 their screen among the parties? 8 Seeing no more screens, I'll turn now to the 9 Board for their questions. 10 If you're on the platform as an attendee and 11 you have a question, please reach out through the chat. 12 EXAMINATION 13 BY THE BOARD: 14 HEARING OFFICER ORTH: Madam Chair, do you 15 have questions of Ms. Cooper? 16 You seem to have frozen. 17 CHAIR SUINA: Thank you, Madam Hearing 18 Officer. I do have a few questions. 19 THE REPORTER: Her audio is cutting up -- 20 cutting out. 21 HEARING OFFICER ORTH: Yeah. Madam Chair, 22 sorry. You're freezing, and the audio is cutting out. 23 CHAIR SUINA: (Unintelligible and/or 24 inaudible). 25 HEARING OFFICER ORTH: Can we stop your --	1497 1 questions, but I feel like maybe I should stall until 2 Chair Suina's bandwidth improves. 3 So, hey, real quick, has -- have we seen or 4 heard from counsel for the Board, from the Attorney 5 General's Office? 6 I want to do a well check real quick. 7 HEARING OFFICER ORTH: Oh, you know what, 8 Member Bitzer -- 9 MEMBER BITZER: Counsel Soloria, are you out 10 there? 11 HEARING OFFICER ORTH: So -- 12 MEMBER BITZER: What's that? 13 HEARING OFFICER ORTH: Ms. Soloria has been on 14 the platform for at least virtually the whole hearing, 15 if not all of it, but she hasn't spoken up. 16 MEMBER BITZER: And I -- and I figured as 17 much, but there's so many other lawyers in the room, 18 it's sort of -- in the -- in the virtual room that she's 19 like they got this, maybe. I don't know. 20 There's Suina. So I -- no. I have no 21 questions. 22 HEARING OFFICER ORTH: All right. Thank you. 23 And there you did. You stalled long enough to 24 bring Madam Chair back. 25 Madam Chair?

1498 1 CHAIR SUINA: Thank you so much. 2 Is this better? 3 HEARING OFFICER ORTH: Definitely. 4 CHAIR SUINA: Great. I'm going to turn off my 5 video just in case. 6 All right. Thank you, Ms. Cooper. 7 And thank you, Madam Hearing Officer and 8 Member Bitzer. I appreciate the stalling for me. 9 I just wanted some clarification. 10 Again thank you for your testimony. 11 You had mentioned that again some of the 12 companies you work with do have a voluntary kind of 13 program, monitoring program. 14 Is that program done out of -- I guess it's a 15 voluntary program, but in your opinion, why would a 16 company do that? 17 MS. SHPALL: All of a sudden I can't see 18 anybody, and I couldn't see myself either. 19 MS. COOPER: Casey, I think you may want to 20 mute yourself. 21 MS. SHPALL: Yes. 22 MS. COOPER: That's a very good question. 23 And -- 24 (Simultaneous discussion.) 25 MS. COOPER: I think -- can someone mute	1500 1 compliance system, is there also a cost/benefit for 2 companies that do do that? 3 MS. COOPER: I have never been involved in 4 developing a cost/benefit analysis for compliance 5 assessments. I -- so I don't know if there's a 6 cost/benefit associated with initiating the compliance 7 program. It's more based on the risk management side. 8 CHAIR SUINA: Okay. 9 So in terms of risk management and maybe 10 associated cost, do you -- in your profession and in 11 your experience, do you see that -- and this may be very 12 obvious, but do you see that the larger companies have 13 the ability to implement the voluntary programs because 14 of the cost issue or -- because I think you had 15 mentioned it's an additional cost burden, is what I'm 16 getting at. 17 MS. COOPER: Yeah. It is an additional cost. 18 So when I had an audit team, I -- it was a large 19 company, we had a few people dedicated. But that was a 20 large company, a good-sized company. We had maybe 21 two-and-a-half people doing -- dedicated to the audit 22 program. And that was annually an expense that we 23 incurred. 24 It would be -- in my opinion, it would be much 25 more difficult for smaller operators to be able to
1499 1 Casey? 2 Okay. She's muted. Thank you. 3 Very good question. 4 And companies may develop internal compliance 5 assessment programs as part of a regular compliance 6 regulatory program, and due to the differences between 7 sizes of companies, types of operations, it could be a 8 different level of detail they go into and a different 9 frequency. But they often do it as a way to confirm 10 compliance status of their own and manage risk. 11 CHAIR SUINA: Thank you for that answer. 12 And just as a follow-up question, so in these 13 voluntary programs or initiatives that a company may -- 14 may utilize, do they have elaborate databases, or do 15 some of those -- in your -- in your experience, or do 16 they also use a spreadsheet format or another way of 17 tracking and documenting? 18 MS. COOPER: Yeah. The larger companies will 19 have a data system. More of the companies I work with 20 as a consultant will be using spreadsheets, and 21 sometimes even other types of filing systems, can even 22 be hard copies sometimes. But they -- they tend not to 23 have the more complicated data systems. 24 CHAIR SUINA: And -- and so I'm -- I was just 25 wondering, with that additional tracking or voluntary	1501 1 maintain that level of staff, because they're not only 2 auditing for air quality, they're auditing for other 3 topical requirements and safety and other things. So 4 you -- you -- it would be a burden for them to have 5 somebody dedicated to air auditing full-time on an audit 6 team. 7 I've not had a full-time air auditor in my 8 past roles. We had to pull in people from the existing 9 air team or consultants to do that work. 10 CHAIR SUINA: Thank you for those responses. 11 I appreciate them. 12 I want to go to, I think, some of the last 13 topics you covered, and one was you had mentioned that 14 the Board already has rules on the books regarding the 15 excess emission reports. 16 In your experience in working in the industry, 17 do -- do companies -- are they comprehensive and, I 18 guess, forthcoming in those reports? I mean -- 19 MS. COOPER: In my experience? 20 CHAIR SUINA: Yeah. 21 MS. COOPER: I'm sorry. Do you have a 22 follow-up? 23 CHAIR SUINA: No, no, no. Go ahead. 24 MS. COOPER: Okay. 25 In my experience, companies that I have worked

1502 1 for and I work with as a consultant do take the existing 2 environmental requirements like excess emission reports 3 very seriously, as well as things like Title V 4 semiannual reports. And they need to do a certain 5 amount of rigorous evaluation to assure it's accurate or 6 to evaluate its accuracy before they can sign or send 7 anything to the state. So in my experience, they take 8 it seriously. 9 CHAIR SUINA: And in that process of 10 submitting excess emission reports, would -- in the 11 proposed rules, would similar data and information be 12 required -- or is being proposed to be required as would 13 be in the annual inspection? 14 MS. COOPER: Not knowing the -- what the 15 detailed final requirements are going to look like, I 16 would assume that at a minimum they're asking for excess 17 emission data be provided, if you exceeded an emission 18 limit that you report it. That's an assumption I'm 19 making based on how the draft regulation looks and some 20 of the testimony we heard today. 21 So I would assume there is over -- there will 22 be a certain amount of overlap between the excess 23 emission reports and the compliance evaluations that are 24 being asked for here. 25 CHAIR SUINA: Thank you for that response.	1504 1 work. They need to be changed. You need to go make 2 sure people know how to use the system. So I always 3 ended up having one or two people dedicated to managing 4 the system, pulling out data, you know, inserting data 5 when you needed to, fixing problems. And it wasn't only 6 my IT group. I had to have dedicated EHS data people. 7 That's a really good question. Everyone 8 thinks the whole cost is in the setup. It's longer and 9 more expensive than most people may think. But the 10 ongoing recurring costs of managing it is another 11 expense that most people don't notice. 12 So thank you for asking that. 13 CHAIR SUINA: So I was wondering if you 14 already have a voluntary program within a company setup, 15 would the -- would the transition to a required 16 reporting be less? And I apologize if this -- the 17 answer is going to be obvious, but less than if somebody 18 did not have that system up and running? 19 MS. COOPER: Yes. It will -- it will be a 20 little easier for companies that already have compliance 21 management systems. And as I indicated in my testimony, 22 that, for example, I -- we would not audit the same 23 location every year unless there was a specific reason 24 to. You know, that we may be auditing for process 25 safety one year and air quality another, but typically
1503 1 And just two more follow-up. 2 So in your experience in terms of compliance, 3 once you have, say, a database or a -- some sort of data 4 management system, whether it's a spreadsheet, is the 5 cost of getting that up and running more burdensome, 6 say, the first month -- few months, year than it is to 7 maintain that over time? 8 MS. COOPER: Really good question. 9 And so I've been involved with companies, 10 including the State of Colorado, creating these kind of 11 data systems. It can take years to get them up and 12 running. If you're starting with a system that's a 13 spreadsheet-based system first, you -- we would normally 14 have a two-year process to select, establish, move data 15 into a system, set up the modules you need, and then 16 train people on how to use them, because you need to 17 train a number of people in different roles on how to 18 input data. 19 I imagine for an air only system you may be 20 able to shorten that window a little bit, but it 21 actually is complex to roll these systems out, and it is 22 expensive up front. 23 What I always got to tell my leadership when 24 we came to budget is that even once the system is up I 25 had to have dedicated staff to manage it. Things don't	1505 1 we would not audit for the same requirement at every 2 facility every year. 3 So even companies that have a program setup, 4 if the frequency is going from something they had 5 flexibility with to a mandatory annual, it will increase 6 costs for those companies. And the answer to your 7 question is yes. If you have nothing, it is going to 8 cost you more than if you had something set up. It will 9 cost them less. 10 CHAIR SUINA: Thank you, Ms. Cooper. I 11 appreciate your responses. 12 Thank you. That's all for now. 13 MS. COOPER: Thank you very much. Appreciate 14 your questions. 15 HEARING OFFICER ORTH: Member Duval? 16 MR. DUVAL: No questions. 17 HEARING OFFICER ORTH: Thank you. 18 Member Garcia? 19 MEMBER GARCIA: No questions. 20 HEARING OFFICER ORTH: Thank you. 21 Member Honker? 22 MEMBER HONKER: Yes. 23 Ms. Cooper, I did have a couple questions on 24 the annual compliance evaluation comments you made. 25 You talked about the burdensome nature.

1506 1 Do you have any sort of an estimate of dollars 2 or workload on -- you know, on some type of a facility 3 basis to give us a better understanding beyond 4 burdensome? 5 MS. COOPER: Very good question. 6 And I have not done that type of an economic 7 analysis. Perhaps when we sit down with NMED and have 8 that discussion, we might be able to come up with 9 something. I only have my past experience with 10 companies the size of Anadarko and Encana and how many 11 people I had dedicated to it. 12 MEMBER HONKER: Yeah. 13 MS. COOPER: I never went down to a dollar per 14 facility basis. We had 10,000 locations across the 15 world, and so I never narrowed it down to a cost. 16 That's a good question. I wish I had an 17 answer. 18 MEMBER HONKER: Understand. 19 And I think in follow-up discussions with NMED 20 they -- they'd appreciate any sort of insight you can 21 give on -- on what elements of it really make it 22 burdensome in your -- in your mind. 23 And then one thing you said kind of stood out 24 to me, and that was potentially an operator having to 25 get an attorney or a consultant to explain the	1508 1 And so if the EPA changes their NSPS Quad 0a, 2 we call it, and modifies it to some regards, the 3 companies will probably need to pull in experienced 4 legal counsel to figure out how it meets up with NMED. 5 I would even argue they would want to do it right now, 6 with the existing NSPSes, with existing permits they 7 already have, and general conditions in permits that 8 they have. 9 Sometimes they even may pull in a different 10 media, like a water group or a waste group, because you 11 may have something in one permit that requires something 12 and another one that requires something else. 13 So what I found, even though I'm a 14 nonpracticing attorney, I would almost always pull in 15 either internal environmental counsel, if I had one, but 16 most of these companies probably will not, or will go to 17 external specialists to help us interpret it, maybe even 18 go meet with the state from time to time, and make sure 19 we understand it right. 20 And honestly, people will read words 21 differently and things differently. So also every so 22 often we would ask legal counsel to review our audit 23 questions and our applicability to make sure we didn't 24 miss something. 25 So I may not be for every single audit, but if
1507 1 requirements to them. 2 Now, I -- I can see if you have a complex 3 Title V permit or something like that where that might 4 be necessary for -- for such a compliance certification, 5 but it seems like these requirements that an operator 6 should be working with on -- on a daily or monthly basis 7 to make sure they're in compliance wouldn't require any 8 elaborate steps such as that, especially for smaller 9 operators. 10 Do you think that's wise? 11 MS. COOPER: Good thing to pick up on. I'm 12 glad you did. 13 So having run -- like when I was running the 14 company's audit program, we would on a regular basis 15 pull legal counsel in for confidentiality, until we 16 saw -- you know, to work through the process and work 17 through compliance questions. 18 Even though regulations may seem very clear on 19 their face, when you interconnect Part 50 with the New 20 Source Performance Standards, with other state 21 requirements, with greenhouse gas other requirements, 22 you don't always notice when you're writing the rules -- 23 and I've been in the seat this amazing air team is in 24 right now with the state, and you don't always -- you 25 haven't always lined up how these rules connect.	1509 1 I'm obligated to do all of my sites once a year under 2 this rule, I'm likely going to have an attorney 3 involved, because I want them to help us interpret 4 questions, if I'm going to do every single site every 5 year. It may not be they're involved in every single 6 location, but they're going to be involved in the whole 7 process. 8 MEMBER HONKER: Okay. Thank you. 9 I -- no other questions. Thanks. 10 MS. COOPER: Thank you for that question. 11 HEARING OFFICER ORTH: Thank you. 12 I will go back to the Vice-Chair and then 13 Member Garcia. 14 VICE-CHAIR TRUJILLO DAVIS: Thank you, 15 Ms. Cooper. 16 I have to say your testimony really landed for 17 me, because in my experience lines up exactly with the 18 way you described an audit occurring, and -- it just 19 lines up with my experience. In each year that we would 20 do an audit, we -- we take a week out of the year, and 21 the entire staff was dedicated to an audit. And at the 22 end of that week, we would sit down and say, you know, 23 how -- how could we do this better next year? Because 24 it always seemed to be a little bit of a -- of a fumble 25 in one area, and then the next year it was a different

1510 1 area. 2 So in all the years that you've been 3 conducting these audits, I'm curious if you have any 4 recommendations -- 5 MS. COOPER: Um-hum. 6 VICE-CHAIR TRUJILLO DAVIS: -- that really 7 stick out in your mind that would be -- would be helpful 8 for us to consider. 9 MS. COOPER: That's a really good question, 10 and thank you for asking that. I'm glad what I'm saying 11 is having some value. 12 And yes. Typically when we would launch an 13 EHS audit or a process safety audit, it would be a 14 five-day -- one day travel, get out there, four days 15 intensive, air was one of the topics. If we did an air 16 only audit, again it was usually two or three days, and 17 you hit maybe three or four sites. So it actually takes 18 more time than you think. 19 So I think -- I think my recommendation would 20 be plan well in advance, pilot a few assessments -- and 21 I know that the division did -- I used the word "audit," 22 and I shouldn't have. I know it wasn't an audit. 23 That's just how I think about an audit. 24 But plan, evaluate, pilot a few if you haven't 25 really done these before, again pull legal in, either	1512 1 meaningful things -- because we all in the oil industry 2 want to send everyone home without any life-changing 3 events -- it's number one -- is don't forget to ask 4 those last couple questions, because sometimes the 5 operation teams are smarter than we give them credit 6 for, and they actually have a good reason why they were 7 doing something. It may not be in alignment with what 8 we think is needed for air. 9 And I would ask the state to really listen to 10 that if it comes up that way. I've had those 11 discussions with federal, state agencies onshore and 12 offshore about when a rule might be compromising 13 someone's safety. So if there was one takeaway, it's 14 don't be afraid to ask those questions and really dig 15 into why something isn't going well. 16 Thank you for asking that. 17 VICE-CHAIR TRUJILLO DAVIS: Thank you for your 18 testimony. 19 And I think Member Suina asked a lot of the 20 questions I wanted to ask, and Member Honker really had 21 some great questioning there. So thank you, both, for 22 helping me out there. 23 HEARING OFFICER ORTH: Member Garcia. 24 MEMBER GARCIA: Thank you for your testimony, 25 Ms. Cooper.
1511 1 internal or external legal counsel, hold it under 2 attorney-client privilege, don't be afraid to ask the 3 question if something doesn't make sense. Because if 4 you wait until the end and you've gone through all this 5 process of evaluating compliance and then what -- the 6 question you wish you asked in the beginning applies to 7 100 locations, you're going to wish you asked it early 8 on. 9 And then if you find compliance -- potential 10 compliance issues -- never call them a noncompliance, 11 because only the state can do that. But secondly, try 12 to evaluate the true root cause. A really good 13 compliance evaluation program, the ones that I learned 14 about at the State of Colorado and then worked on with 15 companies, they wouldn't stop at what you think the root 16 cause of the compliance issue is or the potential 17 compliance issue. You ask three questions more to 18 figure out why something isn't happening. 19 Sometimes it was field people trying to not 20 cause a safety issue. And so they did something that 21 might have gotten in the way of an air or water quality 22 requirement, but it's because in all of their safety 23 training that they've had in the field for decades it 24 was going to put someone at risk. 25 And so one of the most important and most	1513 1 I don't know which would -- can you hear me? 2 Thank you for your testimony, Ms. Cooper. 3 I don't know which would be harder, to be an 4 attorney for one of these companies or environmental 5 consultant. They're both difficult jobs, I'm sure. 6 So my question, though, involves -- and it 7 might be Ms. Katz that might end up answering this, but 8 you and the previous witness mentioned the burden to 9 small operators regarding some of these recordkeeping 10 requirements. 11 And I'm wondering, what is your -- what do you 12 consider a small operator? 13 And the reason I'm asking this is I -- and 14 this is the part Ms. Katz will probably answer. I don't 15 know if this comes under the small business exemption or 16 not, this section, or how that's impacted by the small 17 business exemption. But anyway, I would be interested 18 in your opinion of what a small operator is and how they 19 would be burdened more by this. 20 MS. COOPER: You know, that's a really good 21 question. 22 They're -- and I don't want to upset any of 23 the larger operators that are on the call, but the 24 integrated companies that have upstream, midstream, 25 downstream, sell to the market, that's not a smaller

1514 1 operator. And then there's -- I wasn't thinking the 2 definition of the Small Business Assistance Program. I 3 do know that. I used to run Colorado's when I had that 4 self-audit and other things. 5 I was thinking of more generic. I think my 6 co-testimony person (unintelligible and/or inaudible) 7 Lori. It was more like there's the integrated, there's 8 the midsize companies, of which I worked for two of 9 them, Anadarko and Encana, and then there's the group 10 that's probably one step below that. I don't think they 11 would qualify as small businesses, but they're just 12 below that middle level sets of company. And we do use 13 that term loosely. 14 So I appreciate you asking. I don't mean only 15 the small business defined companies. 16 MEMBER GARCIA: That's helpful. 17 MS. COOPER: I don't know if Ms. Katz wanted 18 to say anything with that or not, but -- 19 MEMBER GARCIA: Thank you. 20 HEARING OFFICER ORTH: Thank you. 21 Any other questions from the Board? 22 No? 23 Ms. Shpall, will there be any redirects? 24 MS. SHPALL: No. Thank you. 25 HEARING OFFICER ORTH: All right. Well, thank	1516 1 JEREMY NICHOLS 2 (Relating to Topic Order 23) 3 having been first duly sworn or affirmed, was 4 examined and testified as follows: 5 DIRECT EXAMINATION 6 BY MR. NYKIEL: 7 Q. Mr. Nichols, good afternoon. 8 You've testified to your experience already, 9 and you have adopted your direct testimony that you 10 submitted as your testimony today. 11 And so we have two proposals to discuss in 12 this topic. And our relevant exhibits for the Board 13 would be Exhibit -- WildEarth Guardians Exhibit 1, which 14 is our red-line, and then WildEarth Guardians Exhibit 3, 15 which is Mr. Nichols' direct technical testimony 16 explaining those -- the last two of our proposals. 17 So to begin with, Mr. Nichols, would you 18 briefly just summarize what our second proposal around 19 permit denial does and just summarize that for the 20 Board? 21 A. Yes. And thank you. 22 And good afternoon, Madam Hearing Officer, 23 Madam Chair, Members of the Board. 24 And just so I'm clear, you want me to speak to 25 the -- our proposal -- proposed revision or red-line to
1515 1 you very much, Ms. Cooper, for your testimony. 2 MS. COOPER: Thank you. Pleasure to be here. 3 Thank you for all your -- everybody's work, the Board 4 and the division. You guys are doing an amazing job. 5 Thank you. 6 HEARING OFFICER ORTH: Thank you. 7 So I believe we turn to -- we return to 8 Mr. Nichols. 9 Is that true? 10 MS. KATZ: Yes, Madam Hearing Officer. 11 And then I just want to -- if I can remind the 12 Board that the Department will be coming back on for the 13 surrebuttal for all of this testimony. So that you can 14 just remember that the Department -- there will be 15 Department witnesses coming back around to address all 16 of this. 17 HEARING OFFICER ORTH: All right. Thank you, 18 Ms. Katz. 19 Mr. Nykiel, I see you're on screen. 20 And, Mr. Nichols, I see you're on screen, as 21 well. You're still under oath. 22 Whenever you're ready, Mr. Nykiel. 23 MR. NYKIEL: Thank you very much, Madam 24 Hearing Officer. 25	1517 1 the general provision related to permitting? 2 Q. That's right. Yes. 3 A. Okay. 4 So what we have proposed is we're kind of 5 taking a page from New Mexico's leadership around the 6 issue of addressing ozone pollution. As this Board 7 knows, there is a statutory requirement that if ozone 8 concentrations get within 95 percent of the ambient air 9 quality standards, that a plan needs to be developed to 10 reduce those emissions and reduce emissions such that 11 ozone concentrations are kept below 95 percent of the 12 ambient air quality standard. 13 And that's a very powerful statutory 14 provision. It's -- it's a leading statutory provision. 15 We don't see this in other states' statutes. And so New 16 Mexico has already taken that big step forward to 17 identify when action is needed to address ozone 18 pollution. 19 Flowing from that, what we have proposed is a 20 regulatory provision that would ensure consistency in 21 adhering to that statutory requirement around the 22 permitting process, in an effort to ensure that 23 emissions are properly kept in check. 24 And what we have done is we have almost -- 25 almost verbatim taken language from the current

1518 1 Environment Department rules, which prohibited the 2 Department from approving permits that would cause or 3 contribute to violations of ambient air quality 4 standards, and propose to apply that in the context of 5 regulating the oil and gas sector around ozone 6 pollution. 7 And the specific language that we have put 8 forward is that if a -- if it's determined that a 9 stationary source would cause or contribute to 10 concentrations of ozone that exceed 95 percent of the 11 ambient air quality standards, then those permits must 12 be denied. And that ensures that the permitting 13 activities that are undertaken by the Department are 14 harmonizing with the efforts to ensure effective 15 emission controls and -- and ensure an effective plan to 16 reduce ozone is -- is implemented. 17 Q. And, Mr. Nichols, would you -- we've heard a 18 lot today about different compliance deadlines that are 19 proposed in the rules. 20 Could you describe what the benefit of our 21 proposal would be in regards to -- as these rules become 22 effective over time, what would the benefit of our 23 proposal be? 24 A. Well, I think it would be very complementary 25 to what the Department has put forward already, which	1520 1 concentrations that are dangerous, as acknowledged by 2 the statute, then it would compel a degree of 3 forbearance, I guess, in terms of approving these -- 4 these permits, and that will go a long way to ensuring 5 concentrations are kept in check. 6 Q. Mr. Baca also testified in rebuttal that 7 self-reporting -- I'm sorry. I'm going to move on to 8 surrebuttal for Ms. Marquez. 9 Ms. Marquez testified on rebuttal that there 10 is no -- that a problem with Guardians' proposal is 11 there is no process that exists to identify areas where 12 the ozone concentrations exceed 95 percent of the NAAQS, 13 there's no process to draw boundaries and establish 14 effective dates. 15 But isn't that all laid out in 16 Section 20.2.50.2 of the proposed rule? 17 A. Yes. I believe it is. Yes. I mean, the 18 Department has already taken a step to identify the 19 areas of concern and identify where monitors are within 20 95 percent of the ambient air quality standards, and 21 presumably their judgment will continue to be exercised 22 in the context of what we've proposed. 23 Q. Okay. 24 Ms. Marquez also testified on rebuttal that 25 Guardians' proposal would disrupt Congress' carefully
1519 1 would, you know, tighten up regulation and oversight of 2 existing sources. And this ensures that as new sources 3 are proposed and subject to review by the Department, 4 that an appropriate consideration of the impacts to 5 ozone ambient air quality standards is undertaken, and 6 ultimately that there's caution exercised, that the 7 Department doesn't inadvertently worsen the ozone 8 problem in a manner that may be inconsistent with the 9 current statutory requirement. 10 Q. And just along that line, right, it won't be 11 the case that if the Department's rules are adopted by 12 the Board, that all of the emission controls will 13 immediately apply; is that right? 14 A. Sure. There are compliance time frames. Yes. 15 Q. Right. Right. 16 Just a few brief surrebuttal questions for 17 you. 18 Mr. Baca testified in rebuttal that our 19 proposal isn't within the scope of this rulemaking. 20 Do you agree with that? 21 A. No, I don't. I believe that our proposal 22 would achieve emission reductions with a new oil and gas 23 sector, cautionary reductions likely. It's not a given 24 that permits are going to be denied. But if by chance a 25 stationary source is deemed to cause or contribute to	1521 1 crafted permitting program by setting a lower threshold 2 for the cause or contribute demonstration. 3 Do you agree with that? 4 A. I don't agree that it would be disruptive. I 5 believe that it is perhaps in some regards more bold 6 than where the federal Clean Air Act requirements are 7 at, and it's reflective of the fact that New Mexico is a 8 bold state. It's already demonstrated that by adopting 9 a statutory requirement to address ozone concentrations 10 before they violate ambient air quality standards. 11 Q. And New Mexico statute permits the state to 12 propose rules that are beyond the federal requirements? 13 A. Yes. 14 Q. Lastly on this surrebuttal, Ms. Marquez also 15 testified in her rebuttal that she wasn't -- that this 16 was unprecedented, this proposal. 17 Do you -- do you agree with that or think that 18 that is of import? 19 A. I -- I've -- it's unprecedented in that it's 20 not in the current rules. So yes. It's the first of 21 its kind. But we feel like that's a good thing. It's 22 worth giving consideration to. 23 I would just add that in terms of, you know, 24 what it would impose on the Department, I don't believe 25 it would impose any modeling requirements or any kind

1522 1 of, you know, added -- added procedure that the 2 Department doesn't already undertake. The Department 3 already reviews permit applications and makes 4 determinations as to whether or not they will cause or 5 contribute to violations of ambient air quality 6 standards, and this simply adds a complementary standard 7 that the Department should also be mindful when 8 stationary sources may contribute to concentrations 9 within 95 percent of the NAAQS. 10 And I don't believe that will require 11 modeling. The Department has been very good about 12 coming up with efficient and effective means of 13 assessing impacts to ambient air quality standards. 14 Q. Okay. Thanks, Mr. Nichols. 15 I'm going to turn us to our third proposal 16 around reporting. 17 Would you briefly summarize this proposal for 18 the Board? 19 A. Yeah. Thank you. What we have proposed is a 20 topic that has been coming up a fair amount during this 21 hearing, and it -- it's a requirement that certain 22 reports or certain monitoring data be reported to the 23 Environment Department. And that's simply to foster a 24 higher degree of transparency around the implementation 25 and oversight of the proposed regulations.	1524 1 companies are required to record be submitted to the 2 Environment Department, but simply that deviations, for 3 example, deviations from work practice standards or 4 emission limits, that those monitoring events be 5 reported to the Department so that the public can then 6 have access to that information. 7 Information submitted to the Department is 8 made available through information requests, whether 9 formal or informal, and I think that's a very important 10 means of -- of demonstrating proof of concept around 11 these rules as they're implemented. It certainly would 12 foster a higher degree of trust and -- and belief that 13 these rules are going to accomplish everything that they 14 claim to accomplish. 15 Q. And is that sort of reporting common in air 16 pollution control rules generally? 17 A. Yeah. It is. We see reporting requirements 18 be established in regulations. For example, in Colorado 19 there are many provisions of the state's oil and gas air 20 quality regulations that require reporting. 21 We are cognizant that reporting can't become 22 too burdensome for the agency and certainly should 23 accomplish an end. And that's why we really try to stay 24 laser focused on, hey, just when there are emission 25 exceedances or deviations from the rules, that's when
1523 1 What we have proposed is that reports or 2 monitoring events that document deviations to the 3 proposed regulations, that they be reported on a 4 semiannual basis, and that where the emissions are in 5 excess of like emission standards or limitations, that 6 they be reported consistent with the Department's 7 excess -- excess emission reporting rules, which are 8 under 20.2.7 NMAC. 9 And the -- I will say that where we're coming 10 from on this is that we find air quality data that is 11 within -- or in the possession of the Department to be 12 incredibly valuable for understanding how air quality is 13 being impacted, how it's being regulated, and 14 understanding whether or not certain sources are 15 operating in compliance, and whether certain sources 16 need to be doing better. 17 And while we appreciate the Department 18 exercising its judgment as an air quality regulatory 19 agency, we strongly believe the public has a very 20 important role to play in -- in being watchdogs and 21 being apprised and informed about how the air they 22 breathe is affected by sources of air pollution. 23 So what we propose is a means to try to 24 accomplish that. We're not suggesting that every 25 monitoring report that's gathered and everything that	1525 1 they -- the information should be reported. 2 So we absolutely don't want the Department to 3 be inundated with reports that simply say everything is 4 fine. We want them to be provided with reports that 5 say, hey, wait a minute, maybe things need to be 6 assessed here, and maybe some changes need to be made. 7 Q. And we've already heard generally how the 8 annual compliance report and the CDRs as proposed work 9 under the rules. 10 Do you have any concerns about the 11 Department's discretion in -- in deciding whether or not 12 to request those reports and -- well, I'll let you start 13 there. 14 A. Certainly I believe the Department will 15 exercise discretion to request those reports at times, 16 but perhaps not necessarily in response to public 17 concerns, and perhaps not when there may be more of a 18 public need for greater awareness. There is no process, 19 for example, for me to contact the Department and say 20 "Hey, can you please request the compliance reports," 21 and to have any certainty that the Department will say 22 "Yes, we will do that." 23 That would be more comforting, if there were 24 some kind of process to that effect. And it's not that 25 we believe the Department will purposely try to stick

1526 1 its head in the sand on seeking these reports. They are 2 watching these facilities to some degree. They have 3 resource limitations, obviously. We've heard that a lot 4 during this hearing. 5 So we simply want to propose a provision that 6 has certainty there, that as well intentioned as the 7 Department is, that the data will still be given to them 8 and still be available for people to -- to become aware 9 of it and to be informed about it. 10 Q. And just following on that, do you think there 11 could be equity concerns in how that discretion is used 12 for different communities, given the lack of process? 13 A. Well, given a lack of process and just 14 resource constraints, I mean -- it seems like the public 15 can be a partner with the Department in analyzing data, 16 assessing data, and being able to do their part as 17 members of communities to -- to drive effective air 18 quality regulation. 19 And that's really the important thing here, 20 is this is not -- you know, in federal Clean Air Act and 21 the way the EPA regulates, a lot of data has to be made 22 available to the public to ensure the enforceability of 23 those requirements. And here citizens obviously can't 24 sue to enforce state rules. So there's no, you know, 25 expectation or intention that that will happen.	1528 1 Q. Okay. 2 And if the current Ozone Attainment Initiative 3 does not result in ozone pollution levels dropping below 4 the federal standards, what are some of the potential 5 consequences to the state? 6 A. Well, this has been brought up. I mean, the 7 consequences are potential nonattainment designations 8 and the more stringent clean air regulatory oversight 9 that goes along with those kinds of designations and the 10 restrictions that those designations impose on air 11 pollutant-emitting activities. 12 You know, we believe the nonattainment 13 designation can be a very powerful tool for driving 14 action around clean air, and we don't view it as 15 necessarily a bad thing, but certainly there are 16 consequences. And just from a health standpoint, 17 avoiding a nonattainment designation means you're doing 18 good by people, you're keeping emissions in check. And 19 so that's really the goal that we -- that we want to see 20 achieved here. 21 And so yeah. I mean, public health, 22 absolutely, if we can't protect it effectively, then 23 that's just -- it's not good for New Mexico. 24 Q. Okay. Thank you. 25 And just a few surrebuttal questions on this
1527 1 But it there enable them to, for example, 2 getting deviation reports, sharing them with community 3 leaders, with elected officials, making sure that 4 there's awareness and understanding of what's going on 5 that transcends the Department's -- the Department's 6 world. 7 So I think it will do a lot to address equity, 8 it will do a lot to empower people, and again do a lot 9 to reassure people that these rules are going to work 10 the way they're intended. 11 Q. Thank you. 12 I just have a couple more like final questions 13 for you before we end with a few surrebuttal questions 14 on this proposal. 15 Do you believe that the Department's proposal 16 is enough to solve New Mexico's ozone problem? 17 A. I -- my apologies. I have a fire truck 18 outside. 19 I -- I have high hopes. We have high hopes. 20 And certainly these rules will be a big step forward. 21 But I think complementing them with some targeted 22 revisions, including a reporting provision, would -- 23 would go a long way to helping us and many members of 24 the public again feel reassured that they will work out 25 the way they're intended.	1529 1 proposal. 2 Mr. Baca testified that self-reporting of the 3 deviation doesn't ensure that the deviation is 4 corrected. 5 Is that -- do you agree with that, or do you 6 think that that is a legitimate point? 7 A. I -- I don't agree with that. I don't -- I 8 don't know what the basis is for that. The Department 9 already requires a fair amount of self-reporting with 10 the aim of driving compliance. So current reporting 11 structures, for example, the excess emission reporting 12 requirements under 20.2.7 NMAC, they already require 13 many sources to report excess emissions, and the reason 14 is -- is because the Department wants to keep tabs on 15 those excess emissions and to work to correct them if 16 needed. 17 And I see the same concept playing out in our 18 proposal here, where deviations can be very informative 19 and help drive a heightened degree of compliance. 20 Q. And Mr. Baca also testified that reporting 21 violations of the rule wouldn't provide pertinent health 22 information to the public. 23 I think you -- you respond to that a bit, but 24 could you just put a finer point on it? 25 A. I don't -- I don't understand that. I mean,

1530 1 this is all about regulating air pollution to protect 2 public health. If the public can better understand how 3 air quality is being impacted in the context of 4 potential deviations, that seems to have very direct 5 relevance to -- to health and safety and concern for the 6 environment. 7 Q. Okay. 8 Thank you, Mr. Nichols. 9 Those are all the questions I have for you at 10 the moment. 11 And we'd offer him for cross-examination. 12 HEARING OFFICER ORTH: Thank you very much, 13 Mr. Nykiel and Mr. Nichols. 14 Let me ask the parties to turn on their screen 15 if they have a question of Mr. Nichols. 16 Oh, I see Mr. Colclasure, and then Mr. Rose, 17 and then Ms. Sheehan. 18 Mr. Colclasure. 19 MR. COLCLASURE: Yes. Thank you, Madam 20 Hearing Officer. I do have some questions. 21 CROSS-EXAMINATION 22 BY MR. COLCLASURE: 23 Q. Mr. Nichols, regarding your proposal to add a 24 new Section 112A.(11), requiring the Department to deny 25 applications for permits in certain circumstances, did	1532 1 would prevent certain sources of air pollution from 2 being constructed if the ozone concentrations that they 3 would cause or contribute to would exceed 95 percent of 4 the ambient air quality standards. 5 Q. Did your written testimony evaluate how your 6 proposal would impact the existing process for 7 evaluating permit applications? 8 A. I'm not sure what you mean by impact the 9 existing process. 10 Q. Well, you're proposing a requirement to deny 11 certain permit applications in certain cases, and I'm -- 12 are you aware that there is already an existing process 13 for evaluating permit applications? 14 A. Yes. I'm aware there is a process. 15 Q. Did you evaluate how this proposal might 16 change that process? 17 A. Well, I think it would add a complementary 18 standard for the Department to -- to review. They 19 already assess whether sources will cause or contribute 20 to violations of ambient air quality standards, and this 21 will simply add another layer to that in the context of 22 oil and gas permitting and, of course, the statutory 23 requirement around ozone being less than 95 percent of 24 the ambient air quality standards. 25 Q. And I -- what I'm getting at is whether you
1531 1 you provide any estimate to the emission benefits that 2 your proposal might achieve? 3 A. I'm not sure I'm understanding the question. 4 Q. I'm asking whether you in your written 5 testimony provided any estimates of what emission 6 benefits might be achieved by your proposal to restrain 7 permits. 8 A. Well, if implemented as we've intended and 9 proposed here, then it would prevent sources of air 10 pollution from being constructed or permitted that would 11 cause or contribute to ozone concentrations within 12 95 percent of the NAAQS. So presumably it would prevent 13 those emissions. 14 Q. So you're presuming it would prevent 15 emissions, but did you provide any estimate of what 16 emissions might be avoided? 17 A. I -- I don't know. I mean, it all depends on 18 what's being proposed as far as a new source of air 19 pollution and what's subject to consideration under the 20 permitting process at hand. It's -- 21 Q. I'm just asking what was included in your 22 testimony. Did you provide any estimate? 23 A. I'm not sure. I mean, there's nothing to -- 24 because I don't see anything to estimate right now. 25 It's simply setting -- or proposing a threshold that	1533 1 looked at sort of the implementation of your proposal 2 and how it would affect the division's -- the 3 Department's workload. 4 A. I haven't assessed how it would affect their 5 workload. No. 6 Q. You stated in your -- sorry. 7 Were you finished, or did you have more to 8 say? 9 A. Yeah. I'm finished. Yeah. Thank you. 10 Q. You stated on your direct testimony that you 11 did not think that this would require permit applicants 12 to submit modeling. 13 Did I hear that correctly? 14 A. Yes. 15 Q. Are you aware that WildEarth Guardians filed 16 an administrative appeal with the Board in 2020, 17 challenging the issuance of an individual permit that 18 allegedly would have caused or contributed to violations 19 of the NAAQS on the basis that the Department did not 20 evaluate the impacts of that permit? 21 A. That was a part of the appeal. Yes. But 22 there was kind of the initial issue that we raised, 23 which is that all the best available information already 24 suggested that sources that were -- you know, that were 25 under appeal at the time would contribute to violations

1534 1 of the ambient air quality standards. 2 Q. Do you know whether WildEarth Guardians 3 asserted in that appeal that the applicant or the 4 Department should have modeled the ambient impacts of 5 that facility? 6 A. I don't recall that being an argument, that 7 modeling should have been prepared. The Department 8 asserted it would have to do modeling, and we provided 9 numerous sources of information indicating that that 10 wasn't necessarily the case. But that appeal's been 11 resolved. This Board resolved that, and this is -- I 12 mean, that's where we're at. 13 Q. And how did the Board resolve that appeal? 14 A. Well, the Board denied our appeals. 15 Q. Are you aware that WildEarth Guardians also 16 challenged certain general construction permit 17 registrations on the basis that they should not have 18 been issued in an area where ozone monitoring 19 concentrations exceeded the ozone NAAQS? 20 A. Yeah. Yes. 21 Q. And did the Board also reject that claim? 22 A. The Board denied our petitions for review on 23 the basis that the Department adequately demonstrated 24 that it addressed the impacts of those facilities to the 25 ozone ambient air quality standards.	1536 1 processes in a given month, roughly speaking? 2 A. Oh, I don't know. I don't -- I have no -- no 3 firm estimate. I know it's a lot. 4 Q. If the Board were unable to approve GCP 5 registrations for those facilities, would that impact 6 the Board's workload? 7 A. The Board's workload or the Department? 8 Q. Excuse me. The Department's workload. 9 A. I -- I'm not sure. 10 Q. Is it fair to say that if they had to evaluate 11 whether each GCP registration would cause or contribute 12 to an exceedance of 95 percent of the NAAQS standard, 13 that it would increase the Department's workload? 14 A. I believe the Department has shown itself to 15 be very competent when it comes to efficiently assessing 16 the impacts of sources subject to general permits to 17 ambient air quality standards. And if I remember right, 18 a core thrust of their response to our appeal last year 19 was that minor sources are presumed to not contribute to 20 ozone concentrations in excess of the ambient air 21 quality standards for ozone. 22 We may take issue with that, but operating 23 under their current framework, it would seem that they 24 would not have to deny general permits and that it 25 likely would have a minimal impact, if any, on their
1535 1 Q. So you (unintelligible and/or inaudible) the 2 Board denied that claim? Is that what I'm hearing? 3 A. The Board upheld the Department's analysis of 4 how those facilities affected ambient ozone 5 concentrations. 6 Q. Okay. 7 In your proposed Section 112A.(11), are you 8 proposing language that would constrain the Department's 9 ability to issue general construction permits in some 10 situations? 11 A. I don't -- so can I ask for some clarity? 12 When you say approve general permits, you mean approve 13 the overarching general permit or the registrations for 14 general permits? 15 Q. The registrations. Your language, I believe, 16 says that the Board must deny general construction 17 permit registrations if the source would cause or 18 contribute to an exceedance of 95 percent of the ozone 19 NAAQS. 20 A. Yes. Similar to the current standard, which 21 is a source can be subject to general permit 22 registration if it would cause or contribute to 23 violations of ozone ambient air quality standards. 24 Q. Do you have an estimate of how many general 25 construction permit registrations the Department	1537 1 workload. 2 Q. I didn't follow that response. 3 Are you testifying that the Board would 4 continue to approve GCP registrations under your new 5 rule? 6 A. I don't see any reason why not. 7 Q. Okay. I will leave it there and just turn to 8 the next -- a slightly different topic. 9 You testified on direct that there are other 10 jurisdictions that have provisions requiring operators 11 to submit reports of deviations. 12 Do you recall that? 13 A. Yes. 14 Q. And I believe you identified Colorado as a 15 jurisdiction where operators must submit deviation 16 reports? 17 A. The type of reporting varies, but there is a 18 level of reporting within the state's set of regulations 19 addressing the oil and gas sector. 20 Q. Is it your testimony that there is a provision 21 similar to what you have proposed in Colorado that would 22 require all facilities to submit a periodic report of 23 deviations? 24 A. No. Because we tailor our proposal to the 25 proposal that the Department put forward in trying to

1538 1 acknowledge existing excess emission reporting 2 requirements and trying to craft a proposal that seemed 3 to harmonize better with what the Department proposed. 4 New Mexico's regulations are -- are formatted and 5 drafted differently than Colorado's in many regards. So 6 we're trying to be mindful of that. 7 Q. So I'm just trying to clarify what your direct 8 testimony was. 9 I believe you were asked whether the type of 10 provision that you were proposing is common, and you 11 said yes? Is that accurate? Do you believe it is 12 common? 13 A. Yes. I believe emission reporting and -- and 14 deviation or excess emission reporting is common. 15 Q. And are you testifying that it is common for 16 all facilities, not just Title V sources, to have a 17 requirement to submit periodic deviation reports? 18 A. I believe reporting requirements vary by the 19 size of the source of air pollution, I don't disagree 20 with that, and that sources subject to Title V are 21 absolutely subject to more stringent reporting 22 requirements. 23 And that's why we tried to propose here a 24 reporting provision that we felt would not be as 25 stringent as Title V, but still assure that information	1540 1 that monitoring events that detected exceedances, for 2 lack of a better word, from those work practices or leak 3 detection repair, that they would be reported. 4 The phrase -- the word "deviation" seemed like 5 an appropriate term to use rather than excess emissions 6 or excess, you know, whatever. 7 Q. But just to turn you back to my question, you 8 testified on direct testimony, as I understood it, that 9 it is common for states to have provisions similar to 10 yours where you are proposing a requirement for all 11 facilities to report all deviations. 12 Is it your testimony that that is common? I'm 13 not asking about emission reports or monitoring reports. 14 I'm asking about deviation reports. Is it your 15 testimony that the provision you have proposed is -- 16 commonly appears in other jurisdictions? 17 MR. NYKIEL: Madam Hearing Officer, I'm just 18 going to object. This line of questioning has been 19 asked, and it's my recollection that Mr. Nichols has 20 responded to whether or not the reporting requirements 21 are common in general in pollution control laws and 22 rules. 23 HEARING OFFICER ORTH: Right, but I heard 24 Mr. Colclasure ask this very specific question now. 25 This is his third time, but -- and --
1539 1 regarding deviations is -- is -- ultimately has a chance 2 of becoming available to the public. 3 Q. Let me just be clear on the type of reports 4 that I'm asking about. So I'm not asking about 5 requirements to submit a report showing that monitoring 6 was done, for example, or, you know, a report that -- 7 I'll just leave -- that monitoring was done. 8 But you have proposed a requirement to submit 9 deviation reports, and what I'm asking you, is it your 10 testimony that it is common for other jurisdictions to 11 require all facilities, including minor sources, to 12 submit reports of all deviations? Is that your 13 testimony? 14 A. I -- it's -- emission reporting is common. 15 I -- and I'm not sure -- 16 Q. Yeah. I'm asking about deviation reporting. 17 Is it your testimony that there are common 18 requirements similar to what you have proposed for 19 facilities to submit reports of all deviations at all 20 facilities, including minor sources? 21 A. Well, we use the word "deviations" because 22 there are a number of requirements in the proposed regs 23 that don't relate to emission limits. There's no 24 quantitative limit. There's work practice standards or 25 leak detection and repair. And so we want to make sure	1541 1 MR. NYKIEL: Yes. 2 HEARING OFFICER ORTH: -- and Mr. Nichols is 3 very forthcoming. I can tell that he wants to answer 4 the question posed to him, but I don't think he's 5 answered this question, whether other jurisdictions 6 require -- commonly require deviation reports. 7 MR. NICHOLS: If -- and if I understand, 8 you're asking do -- is it common for other states to 9 have a provision that is almost identical to what we've 10 proposed here. Is that what I'm understanding? 11 HEARING OFFICER ORTH: As to deviation 12 reports. 13 MR. NICHOLS: As to deviations. I don't know. 14 MR. COLCLASURE: No further questions. 15 HEARING OFFICER ORTH: Thank you very much, 16 Mr. Colclasure. 17 Mr. Rose, I saw you next. 18 MR. ROSE: Thank you, Madam Hearing Officer. 19 CROSS-EXAMINATION 20 BY MR. ROSE: 21 Q. Just to be clear, I believe we're talking 22 about WildEarth Guardians Exhibit 1, and I wanted to 23 question you on the draft language on your proposed 24 addition, Subparagraph (11) to 20.2.50.112A. And I 25 think that's -- that's the cause and contribute language

1542 1 that you were alluding to earlier with Mr. -- in 2 response to questions. 3 And I was looking at this, and I was trying to 4 understand how this differs -- you're referencing Parts 5 72, 74 and 79 and how this differs from the language 6 already in existence in those sections. And the thing 7 that I could -- you know, that was apparent to me is it 8 looks like you've inserted a 95 percent of the primary 9 NAAQS as a decision-making point as opposed to the 10 regulations talking about cause or contribute to 11 violations exceedances of the NAAQS. 12 So is that what you intended to do, was to in 13 essence make a 95 percent threshold here as opposed to 14 100 percent? 15 A. Yes. Thank you for that question, Mr. Rose. 16 That's exactly what we're proposing. 17 Q. And is that predicated on your understanding 18 of the language in the state statute that gave rise or 19 obligated the Board to have a plan for ozone 20 contamination? 21 A. Yes. It's predicated on the emphasis on 22 preventing ozone concentrations from getting out of 23 control, for lack of a better phrase, and keeping them 24 definitively below unhealthy levels. 25 Q. And I guess my question is more precise than	1544 1 but that because of the emphasis on the oil and gas 2 sector here as a major contributor to ozone, this seemed 3 to make sense as a first step. 4 Q. And I guess the question -- the question I had 5 was in terms of your consideration, this would only 6 apply to specified oil and gas facilities, right? 7 A. Yes. Facilities subject to the regulations. 8 Q. And so oil and gas facilities that were 9 subject to a permitting requirement under Part 72, Part 10 74 or Part 79 wouldn't have the reduced -- would 11 still -- the criteria would still be cause or contribute 12 to a violation of the NAAQS as opposed to 95 percent of 13 the NAAQS, correct? 14 A. Yeah. I guess we would view it as there would 15 be two layers of criteria under which permits would be 16 assessed. You know, that would be the practical outcome 17 here. 18 Q. And that -- that's what I was trying to get 19 at, trying to understand. 20 And let's talk about general permit 21 registrations. 22 Are you -- and I know there was some 23 discussion earlier about WildEarth Guardians' challenges 24 to a number of general permit registrations. I was 25 curious, are you familiar with the -- with the general
1543 1 that, is do you read the state statute as setting a 2 threshold, a control level, in essence, in essence 3 reducing the standard to 95 percent as opposed to 4 100 percent or the NAAQS, which is what I -- is I read 5 this provision doing? 6 A. I guess I view what we've proposed as 7 fulfilling the overall duty for the Board to adopt a 8 plan to ensure ozone concentrations are reduced to below 9 95 percent of the ambient air quality standards. 10 That's -- 11 Q. That was -- yeah. That was my question. 12 And is there a reason why WildEarth Guardians 13 hasn't proposed these changes in the regulations 14 themselves as opposed to trying to do it in this set of 15 regulations? 16 A. Well, that's -- that's a good question, too. 17 I think we saw these proposed regs as an 18 opportunity to advance this concept. This is the first 19 time the Department has ever proposed a specific set of 20 regulations to implement the statutory requirements to 21 limit ozone concentrations. And so as kind of a first 22 step, we thought it would be useful to put that concept 23 out. 24 But we would support that concept being 25 embraced in other portions of the state's regulations,	1545 1 requirement at issue in that case? 2 A. I am. And I just want to say I'm really -- 3 I'm not sure how our permit appeals relate to what we 4 proposed here. I'm just going to offer that and get 5 that on the record. I think that they're very different 6 issues, and what we're looking at is a regulatory 7 proposal, and we're not dictating or prescribing how 8 this should be implemented, other than this needs to be 9 a threshold that is put in place. 10 Q. And I'm not questioning that at this point. 11 So I was more questioning sort of the net effect of what 12 you're proposing. 13 Are -- and the reason why I asked if you're 14 familiar with general construction permits, are you 15 aware that as a condition of the Department issuing 16 those permits, that they're subject to the language in 17 Part 72 where the Department evaluates whether a 18 proposed source would cause or contribute to a violation 19 of federal or state ambient air quality standards? 20 A. Yes. 21 Q. So that as a predicate to issuance, as I 22 understand the way the permits are written, there's 23 actually a finding in the permits that they would not 24 cause or contribute to a violation of the -- of the 25 ambient air quality standards; is that correct?

1546 1 A. That's correct. 2 Q. And so when a registration is submitted, it's 3 my understanding that the Department -- the only 4 evaluation performed by the Department is whether or not 5 the proposed source is -- meets the criteria, that is 6 it's the type of source for which the general permit's 7 issued, correct? 8 A. Yes. That's correct. 9 Q. And modeling is not a part of that review 10 because compliance with the standards was addressed upon 11 permit issuance before registrations would be submitted, 12 correct? 13 A. That's -- yes. That's correct. 14 Q. And I'm trying to figure out how the 15 Department would make a decision if the only information 16 in front of them was whether the source as proposed 17 consisted of the units that would be eligible for a 18 general permit. 19 Is what you're asking them to do is to now 20 attach another layer of review, that is look at -- do 21 modeling for those individual sources or -- 22 A. You know, again we're not prescribing how this 23 should be implemented. We're simply proposing a 24 threshold, and if the Department chooses to model, more 25 power to them. We would support that. If they choose	1548 1 And so, I mean, those are things we can 2 certainly look at in posthearing submittals and debate. 3 I think I understand what you're trying to accomplish, 4 and we may differ as to whether it's accomplishable 5 based on what you've proposed. 6 Madam Hearing Officer, that concludes my 7 questions of this witness. 8 HEARING OFFICER ORTH: Thank you very much, 9 Mr. Rose. 10 Ms. Sheehan? 11 MS. SHEEHAN: Thank you, Madam Hearing 12 Officer. 13 And thank you Mr. Nichols for your testimony 14 this afternoon. 15 I just have a couple clarifying questions. 16 CROSS-EXAMINATION 17 BY MS. SHEEHAN: 18 Q. Mr. Nichols, in your direct testimony you 19 refer to the excess emissions rule which is found at 20 20.2.7 NMAC; is that correct? 21 A. Yes. 22 Q. And just for clarification, the excess 23 emissions rule is independent from the proposed ozone 24 precursor rule, correct? 25 A. It's in a separate section of the New Mexico
1547 1 to take a more streamlined approach to assessing 2 compliance with this threshold and making determinations 3 around permits, then they -- they can do that, as well. 4 I -- I don't -- I can't foresee -- you know, 5 as it is right now, the Department doesn't deny permits, 6 at least from what we've seen, that may cause or 7 contribute to violations, presumably because they've 8 made a determination that sources aren't causing or 9 contributing. I believe they'd be able to undertake a 10 similar assessment here. 11 But in the off chance that they do catch a 12 source that may cause or contribute to ozone 13 concentrations within 95 percent of the ambient air 14 quality standards, then this provides them the mechanism 15 to prevent that source of emissions and to protect the 16 ambient air quality standards. 17 Q. And I appreciate that. 18 My point is that the time at which that 19 decision is made for general construction permits is at 20 the issuance of the permit itself, and that the point at 21 which you should challenge whether or not the general 22 permit causes or contributes to violations is when the 23 Department considers issuance of the general permit, not 24 in whether a specific source meets the requirements as 25 eligible for the general permit.	1549 1 Administrative Code. 2 Q. Do you agree that under the existing excess 3 emissions rule the owner or operator of a source that 4 has an emission or an air -- of an air contaminate that 5 is in excess of the quantity or concentrations specified 6 by an NMED rule or permit must report that excess 7 emission to NMED? 8 A. Yes. 9 Q. And would you also agree that under the 10 provisions of the excess emission report upon discovery 11 of an excess emission an excess emission report must be 12 filed with NMED by the end of the next business day? 13 A. Yes. 14 Q. So do you agree that every deviation that 15 causes excess emissions must be reported under the 16 excess emission rule within one business day after 17 discovery? 18 A. No. It's not clear that the excess emission 19 rule would require deviations from, say, work practice 20 standards or even like leak detection and repair 21 requirements, because those deviations don't necessarily 22 correlate to a quantitative excess emission. 23 And that's what we're trying to address here, 24 is that the excess emissions rule -- yes, it ensures 25 prompt reporting on excess emissions, gets that

1550 1 information to the division -- or the Department's 2 hands, but that there's a lot of stuff in the proposed 3 regs that doesn't necessarily impose quantitative 4 emission limits, and the public needs to have a chance 5 to understand whether or not those standards are being 6 met or whether there may be deviations. 7 Q. But just for clarification, any deviation that 8 causes an excess emission under the reporting 9 requirements of 20.2.7.110A.(1), those specific excess 10 emission deviations, the requirements set forth under 11 that regulation are to be reported to NMED within one 12 business day. 13 A. Yes. And it's a very helpful and important 14 excess emission reporting rule that's in place, and a 15 lot of excess emissions get reported to the Department, 16 and then we -- that data is made available to the 17 public. 18 And what we tried to do is maybe address a gap 19 between the excess emission reporting and then reporting 20 around deviations from, like I said, work practice 21 standards or leak detection and repair, where you don't 22 necessarily have a quantitative excess emission you can 23 report. It was really like a deviation in the operation 24 and making sure that that -- those instances and those 25 monitoring events are recorded, that they're provided to	1552 1 If I did not just read your name and you're on 2 the platform to offer public comment, please reach out 3 in the chat, and I will call on you after I've called on 4 the first five. 5 Thank you, all, very much. 6 We will reconvene at 5:00 p.m. 7 (Proceedings in recess from 4:43 p.m. to 8 5:00 p.m.) 9 HEARING OFFICER ORTH: Let's come back from 10 the break, please. 11 We have reached the 5:00 p.m. public comment 12 session on day five of the hearing on EIB 21-27, 13 rulemaking petition on ozone precursors. 14 Public comment is given under oath. It's 15 given by audio rather than video and is limited to five 16 minutes. 17 I have the following public commenters I'll 18 call on now. 19 In the event you've joined us and are on the 20 platform seeking to make public comment and I do not 21 read your name, please reach out through the chat. 22 Senator Steinborn, David Bouquin, Ellen 23 Dueweke, Tara Lujan and David Shoup. And let me 24 apologize in advance if I have mispronounced your name. 25 Let's see. David -- is this you, Senator
1551 1 the Department. 2 Maybe in some cases they can quantify the 3 excess emissions and they would be considered excess 4 emissions, and so yeah, absolutely, they would have to 5 report them consistent with the excess emission 6 reporting rule under 20.2.7. We just want to make sure 7 there's an added layer of reporting required so that the 8 public has a complete picture around a source's 9 compliance status. 10 MS. SHEEHAN: Thank you, Mr. Nichols. 11 No further questions, Madam Hearing Officer. 12 HEARING OFFICER ORTH: Thank you very much, 13 Ms. Sheehan. 14 Are there any other parties with a question of 15 Mr. Nichols? 16 All right. Board Members, we're going to have 17 to save your questions for after the public comment. We 18 really do need a break before we reach 5:00 p.m. 19 Mr. Nichols, public comment starts at -- 20 starts at 5:00, but we'll continue with your examination 21 after that. 22 Let me tell you the names of the folks who 23 reached out by e-mail, and I will call you in this 24 order, Senator Steinborn, David Bouquin, Ellen Dueweke, 25 Tara Lujan and David Shoup.	1553 1 Steinborn? 2 Can you hear me? 3 I've unmuted you. 4 Okay. Let's see if I can find Senator 5 Steinborn somewhere else on the -- in the list. It, 6 unfortunately, alphabetizes folks by their first name. 7 Okay. Let me go to David Bouquin. 8 Mr. Bouquin, I'm unmuting you. 9 Can you hear me? 10 MR. BOUQUIN: Yes, I can, Madam Officer. 11 HEARING OFFICER ORTH: Thank you. 12 If you would please spell your name. 13 MR. BOUQUIN: My last name -- my first name is 14 David, D-A-V-I-D, my last name is spelled Bouquin, 15 B-O-U-Q-U-I-N. 16 HEARING OFFICER ORTH: Thank you. 17 And if you would raise your right hand. 18 Do you swear or affirm to tell the truth? 19 MR. BOUQUIN: I -- yes, I do. I affirm to 20 tell the truth. 21 HEARING OFFICER ORTH: Thank you. 22 23 24 25

1554 1 DAVID BOUQUIN 2 having been first duly sworn or affirmed, gave 3 public comment as follows: 4 PUBLIC COMMENT 5 HEARING OFFICER ORTH: I'm going to start your 6 five minutes now. 7 MR. BOUQUIN: Okay. Thank you. 8 My name is David Bouquin. I live in the 9 Albuquerque North Valley. My professional position is 10 I'm a risk analyst at Los Alamos National Laboratory. 11 The reason I'm calling today is because I'm 12 very concerned about the health effects and the 13 pollution effects of oil and gas on what I've read is 14 approximately 130,000 New Mexico -- New Mexicans that 15 live within a half a mile of oil and gas development. 16 And so as I'm going to say three points that 17 I'm sure has been brought up before. I haven't been 18 able to listen to much of the hearing because I've been 19 working at LANL, but the three points, and then I'm 20 going to just say something about the process. 21 The three points are I would want the oil and 22 gas people to have frequent inspections and to 23 strengthen as much as possible those inspections of the 24 wells and the leaks. 25 The second part is a completion of oil and gas	1556 1 they go above the thresholds, they should be doing that 2 frequently, monthly. 3 They should be doing -- carrying out 4 mitigation actions all the time, and they should be 5 working on inspections to collect the data all the time 6 to be able to -- to ensure they're in compliance. If 7 they go out of compliance, they should be able to fix it 8 fairly quickly because they should know their 9 technology. So I believe they have the ability to do 10 that. 11 Let's be real. I use oil and gas in my car. 12 I drive a Prius. I use natural gas in my home. I'm 13 going to work towards more electrification from 14 (unintelligible and/or inaudible), but I do use oil and 15 gas. So I'm not asking them to stop doing that. I'm 16 asking them to -- oil and gas producers to spend a 17 strong effort to inspect, monitor and mitigate when they 18 do go out of compliance. 19 Every project has risk, everybody violates the 20 risk, and everybody should be able to have a plan and 21 mitigation action to fix those risks in a quickly and 22 timely manner. And so I want to strengthen -- make sure 23 the rules are strengthened for inspections, completion 24 of oil and gas wells, and the pneumatic controllers that 25 release methane.
1555 1 control pollution during completion of the well. So we 2 want the operators to control the pollution to the 3 completion of an oil and gas well. 4 And the third point would be pneumatic 5 controllers. We want to make sure we have strong 6 requirements on those pneumatic controllers. As you 7 know, there are a very large -- I've heard they're the 8 second largest source of oil and gas methane emissions, 9 and methane emissions is a much stronger 10 carbon-producing emission than other carbon dioxide 11 sources. 12 Let me say something about being -- as a risk 13 analyst for the lab. I'm a risk analyst of literally 14 hundreds of millions of dollars of projects. What we do 15 is we assess and we work with project managers and 16 functional managers to assess the risks of a -- of all 17 kinds of nuclear infrastructure. I work in major 18 equipment and other things, and we monitor it, and we 19 come up with mitigation actions. 20 I believe the oil and gas producers have the 21 resource to monitor leaking and emissions that exceed 22 the thresholds that are being proposed here. They can 23 do this monthly if they choose to do this, and they 24 should choose to do this. They have the resources and 25 ability to do that. If they -- they monitor the times	1557 1 That's basically my testimony. 2 HEARING OFFICER ORTH: Thank you very much, 3 Mr. Bouquin. 4 I'm going to see -- unmute someone named David 5 again. 6 Hello? Can you hear me? 7 MR. SHOUP: This is David Shoup. 8 HEARING OFFICER ORTH: Oh, David Shoup. I'm 9 sorry, Mr. Shoup. I'm going to take you in just a 10 little bit. 11 MR. SHOUP: Okay. 12 HEARING OFFICER ORTH: And Call-in User 14. 13 Call-in User 14, would you identify yourself? 14 Okay. So let me move on, then, to -- excuse 15 me -- Ellen Dueweke. 16 Hello? Can you hear me? 17 MS. DUEWEKE: Yes, I can hear you. 18 HEARING OFFICER ORTH: All right. And I can 19 hear you. 20 If you would please spell your name. 21 MS. DUEWEKE: First name is Ellen, E-L-L-E-N, 22 last name Dueweke, D-U-E-W-E-K-E. 23 HEARING OFFICER ORTH: Thank you very much. 24 If you would raise your right hand. 25 Do you swear or affirm to tell the truth?

1558 1 MS. DUEWEKE: I do. 2 HEARING OFFICER ORTH: Thank you. 3 ELLEN DUEWEKE 4 having been first duly sworn or affirmed, gave 5 public comment as follows: 6 PUBLIC COMMENT 7 HEARING OFFICER ORTH: I'm going to start your 8 five minutes now. 9 MS. DUEWEKE: Thank you. 10 Well, first of all, I'd like to thank the 11 Environmental Improvement Board for giving us this 12 opportunity to speak and for listening to our concerns. 13 And I understand that the oil and gas industry 14 may consider this proposal to be overregulation. They 15 feel the increased operating expenses will be excessive 16 and will unfairly reduce their bottom line. But they 17 have an obligation to reduce their pollutants where they 18 can. The cost to not destroy the environment and local 19 community health is just a necessary business expense 20 that they must bear. 21 And I don't understand why there should be a 22 small business exemption. This is a heavily regulated 23 industry by necessity. You don't get to pollute the 24 environment just because it creates a financial hardship 25 for you. Large companies are, of course, larger	1560 1 amount of harm as much as possible. And the oil and gas 2 industry is causing a lot of harm. It's not because 3 they're monsters. They're supplying a demand that you 4 and I are demanding every day, and the state is 5 benefitting from this industry through tax revenues and 6 job creation. 7 So if we're resigned to allowing this 8 polluting industry to exist, shouldn't we at least do 9 whatever we can to mitigate the harm? And I would think 10 the industry would want to do what they can to reduce 11 harmful emissions. If not for altruistic, then for 12 political reasons. This is the oil and gas industry's 13 opportunity to do the right thing and improve their 14 image in the community at the same time. 15 Yes, the trillions of dollars of profits they 16 make off extracting from our public lands may be 17 slightly reduced, but in the end they will be improving 18 our world and with it their own and their children's 19 futures. 20 Thank you. 21 HEARING OFFICER ORTH: Thank you very much, 22 Ms. Dueweke. 23 I have found Senator Steinborn. 24 Senator Steinborn, I'm unmuting you. 25 Can you hear me?
1559 1 polluters, and so, of course, their cost to comply is 2 higher, too. 3 But addressing pollution is costing all of us 4 financially and in our way of life. Children and 5 families have to bear the cost of lost days at school or 6 at work because of respiratory illness. The cost of 7 industrial irresponsibility is being put on them. And 8 individuals are required to bear the financial burden, 9 as well, of reducing pollution. 10 As a resident of Bernalillo County, the law 11 requires me to have my car's emissions tested every two 12 years. I must bear the expense of the test, and if my 13 vehicle is found to be polluting, I must either pay for 14 the repairs to bring it into compliance or stop driving 15 it. I don't have the right to say, well, I know I'm 16 polluting the air and adding to the global climate 17 crisis, but I'm afraid I just can't afford not to. No. 18 If I couldn't afford it, I would just have to find 19 another way to get to work. That's my responsibility. 20 We all have to do our part because we have no 21 right to add to the climate crisis and damage local air 22 quality. 23 I was kind of thinking of it like the doctor's 24 Hippocratic oath, first do no harm, but in reality we're 25 all doing harm. It's just a matter of reducing the	1561 1 MR. STEINBORN: I sure can. 2 And I don't know if you can hear me. 3 HEARING OFFICER ORTH: Oh, no. You're very, 4 very soft. 5 MR. STEINBORN: Yes. I'll do my best. 6 HEARING OFFICER ORTH: All right. 7 If you would, please, spell your -- spell your 8 last name. 9 MR. STEINBORN: Sure. Steinborn, 10 S-T-E-I-N-B-O-R-N. 11 HEARING OFFICER ORTH: All right. 12 And if you would raise your right hand. 13 Do you -- 14 MR. STEINBORN: (Unintelligible and/or 15 inaudible) video. It's not on the screen. I don't know 16 why, but -- 17 HEARING OFFICER ORTH: No, sir. No, sir. 18 Public comment is taken through audio and not video as a 19 security measure -- 20 MR. STEINBORN: Very good. 21 HEARING OFFICER ORTH: -- during this hearing 22 with, you know, 100 to 165 participants every day. 23 MR. STEINBORN: Got you. I got you. 24 My right hand is raised. 25 HEARING OFFICER ORTH: Okay.

1562 1 Do you swear or affirm to tell the truth? 2 MR. STEINBORN: I do. 3 HEARING OFFICER ORTH: Thank you. 4 JEFF STEINBORN 5 having been first duly sworn or affirmed, gave 6 public comment as follows: 7 PUBLIC COMMENT 8 HEARING OFFICER ORTH: And you're going to 9 have to really project. Thank you. 10 MR. STEINBORN: Okay. I will be brief. 11 Thank you very much, Members of the EIB, for 12 taking this comment, and even considering these rules. 13 Simply put, people cannot be sacrificial lambs 14 for the sake of making money. And when we consider the 15 health impacts of oil and gas operations, we have the 16 highest obligation as public servants, as you are, as I 17 am, to protect public health, to protect air, to protect 18 water. And so simply put, we -- we have an obligation 19 to follow best practices, to put in the best standards, 20 available science and available technologically. 21 And so I want to compliment the Governor, 22 Secretary Kenney, those that have worked very hard to 23 promulgate some very strong rules. 24 However, there are some ways that you have in 25 your jurisdiction to make them even stronger, and I will	1564 1 possible. 2 Thank you. 3 HEARING OFFICER ORTH: Thank you very much, 4 Senator Steinborn. 5 We will turn now to Representative Tara Lujan. 6 I have unmuted you, Representative. 7 Can you hear me? 8 MS. LUJAN: Yes. Thank you. I can. 9 Can you hear me? 10 HEARING OFFICER ORTH: Yes. You're coming 11 through nice and loud. 12 If you would, please, spell your name. 13 MS. LUJAN: Yes. L-U-J- -- my full name is 14 Tara, T-as-in-Tom-A-R-A, last name Lujan, L-U-J-A-N. 15 HEARING OFFICER ORTH: Thank you very much. 16 If you would raise your right hand. 17 Do you swear or affirm to tell the truth? 18 MS. LUJAN: I do. 19 HEARING OFFICER ORTH: Thank you very much. 20 TARA LUJAN 21 having been first duly sworn or affirmed, gave 22 public comment as follows: 23 PUBLIC COMMENT 24 HEARING OFFICER ORTH: You have five minutes. 25 MS. LUJAN: Thank you.
1563 1 just reiterate, I'm sure, what others have said, which 2 are that, number one, we have to consider those that are 3 living amongst the industry and protect their public 4 health, and so the only way we can do that is to require 5 frequent inspections and find and fix leaks. 6 Number two, we have to ensure strong 7 requirements for operators to control pollution as well 8 as any operations to develop or redevelop existing 9 wells. 10 And finally, I understand that the pneumatic 11 controllers contribute a lot of the pollution that 12 occurs and that we should require companies to inspect 13 pneumatics for leaks and accelerate the timeline to 14 retrofit equipment with zero bleed or zero emission 15 pneumatic controllers. 16 And so, committee, I just urge you to -- to 17 adopt as strong as possible rules. We are -- we are 18 without a doubt, as we know, one of the leaders in the 19 country on -- on production. I think regardless of how 20 strong your rules are are not going to affect that level 21 of production. We just affect how much we protect 22 people's health. So I hope that we become a leader in 23 this space, and I urge you to put people first. 24 And I thank you very much for your time today, 25 and I encourage you to adopt the strongest rules	1565 1 And I want to thank the Board for convening 2 and having these meetings and public comment. 3 Thank you, also, to our Governor and to 4 Secretary Kenney and his staff and all those who have 5 worked on these proposals and the rule proposals. It 6 takes -- it's taken a lot of time and work. We know 7 that they are understaffed, and we are working to help 8 with that issue. 9 We're -- as the senator just said, we're 10 leading the regulations in the United States, and that's 11 something we should be proud of. 12 However, we're -- even though we're off to a 13 good start, I'd like to advocate that these rules be 14 strengthened to protect communities and those living 15 close to the industries where these developments are. 16 We know that 130,000 New Mexicans live next to these 17 industrial developments and 22,000 are Native Americans 18 living in San Juan County. 19 So we also know that Colorado has already 20 implemented similar rules that are in line with stronger 21 inspections and stronger rules regulating around these 22 communities that live within close proximity to the 23 industry. I would ask that we look at those rules and 24 see how we can implement similar rules into what we are 25 doing right now.

1566 1 We owe this to our state, and as a state 2 representative, just as the senator has said, we have 3 the highest obligation to protect all those who live in 4 our state, and we also have the highest obligation to 5 protect our land, air and water quality. 6 And the net effect of these proposals that we 7 have in front of us can be strengthened, and I hope that 8 we do move towards that, and -- I don't want to sound 9 like a broken record, but -- let me just get my -- 10 I'm -- I had to stop because I'm traveling, Madam Chair. 11 Let's see. 12 So the list of things that we are working 13 towards is to protect those living closest to 14 development, requiring more frequent inspections to find 15 and fix those leaks. We know that these technologies 16 already exist and some industry is already using them. 17 We are -- we'd like you to work to ensure 18 strong requirements for operations to control pollution 19 during the completion of an oil or gas well, as well as 20 when they redevelop an existing well. 21 And third, we'd ask -- I ask and support to 22 strengthen requirements to cut pollution from pneumatic 23 controllers, their use in oil and gas production. These 24 devices are the second largest source of oil and gas 25 methane emissions in New Mexico. NMED I would ask to	1568 1 MR. SHOUP: I can hear you, Madam Chair. 2 HEARING OFFICER ORTH: Oh, and I can hear you. 3 If you would please spell your name. 4 MR. SHOUP: It's David, D-A-V-I-D, last name 5 Shoup, S-H-O-U-P. 6 HEARING OFFICER ORTH: Thank you. 7 And if you'll raise your right hand. 8 Do you swear or affirm to tell the truth? 9 MR. SHOUP: I do. 10 HEARING OFFICER ORTH: Thank you. 11 DAVID SHOUP 12 having been first duly sworn or affirmed, gave 13 public comment as follows: 14 PUBLIC COMMENT 15 HEARING OFFICER ORTH: I'm going to start your 16 five minutes now. 17 MR. SHOUP: Okay. 18 My name is David Shoup. I'm a local business 19 owner in Southeast New Mexico. I'm also presently the 20 president of the Carlsbad Municipal School -- School 21 Board. 22 I'm testifying today in favor of stronger 23 ozone and methane regulations in New Mexico. I think 24 you heard earlier today from Eddy County Commissioner 25 Ernie Carlson, who I've partnered in business with for
1567 1 require companies to inspect these pneumatics for leaks 2 and accelerate the timeline to retrofit equipment with 3 zero bleed or zero emission pneumatic controllers. 4 And like I said, some of those in industry are 5 already using technology to do some of this work, and we 6 know that this is a strong industry, and it is in the 7 Permian Basin here in New Mexico and Texas, that is a 8 world leader in oil production. And in New Mexico we 9 are going to be at a million barrels of oil production a 10 day, if not already, and so I feel like the industry -- 11 and we know that the industry can afford to take these 12 measures, and I would just asking that this support is 13 put into place. 14 Thank you to the Board, thank you to all the 15 Members and all those who participate today, and it 16 was -- I was listening to Mr. Nichols' portion during -- 17 during your meeting today, and I want to say -- and 18 thank him for all the leading views that he has moved 19 forward and support those, as well. 20 Thank you to the Board again, and that is all 21 I have to say right now. Appreciate the time. 22 HEARING OFFICER ORTH: Thank you very much, 23 Representative Lujan. 24 Let me go back to Mr. Shoup. 25 Mr. Shoup, can you hear me?	1569 1 the past 25 years. He's a lifelong friend and mentor of 2 mine. 3 I'm -- I'm third generation. We've been here 4 for 63 years. I'm the CEO of one of New Mexico's 5 largest heavy highway construction firms. We have 6 aggregate and asphalt and ready-mix locations throughout 7 Southeast New Mexico. And I employ over 400 people in 8 Eddy, Lea and Chaves County. 9 As a leader and business owner here, I must be 10 an advocate for my employees, family and friends. To be 11 completely honest, I was not a strong supporter of 12 increased regulations at all, which you can probably 13 imagine, until 2019, when my wife was diagnosed with 14 stage 3 ovarian cancer. It was definitely a 15 life-changing moment for me and my family, caused me to 16 learn more about the environmental factors that affect 17 our health and well-being as residents in Southeastern 18 New Mexico. 19 What I found is I live in a pretty dangerous 20 area with industry that's present there. And I think 21 it's way past time that we address some regulations on 22 oil and gas production so that we can, you know, 23 realistically reduce the harmful emissions that put 24 people and our environment at risk there. 25 I've testified many times, you know, in line

1570 1 with the WIPP site, and I think it was brought up here 2 today, the Waste Isolation Pilot Plant, between Carlsbad 3 and Hobbs. And I was always in support of that 4 repository, and it was because of the regulatory 5 oversight and the monitoring that I was comfortable 6 doing that. 7 You know, I have a friend that works there now 8 that, you know, his job is to go check air monitors and 9 wildlife and waterways and those kind of things, and I 10 just question as to why we don't do that in relation to 11 oil and gas. You know, my understanding, we don't even 12 have air monitors in -- in the middle of the oil area to 13 check for VOCs and methane that are emitted during 14 production. A lot of these well sites, as you're well 15 aware, are less than a mile from schools and homes. 16 They're in those areas, and we need this -- we need to 17 get serious about that. 18 Many leaders and friends of mine have not 19 quite realized economic health is the only form of 20 health that we should be prioritizing in our community. 21 As a business owner and a member of the School Board, I 22 understand the budgetary issues. I realize oil and gas 23 industry contributes a lot of money to our state, to our 24 community, to our schools. But there must be a balance 25 between revenue and the health impacts to our frontline	1572 1 RHONDA NEWBY-TORRES 2 having been first duly sworn or affirmed, gave 3 public comment as follows: 4 PUBLIC COMMENT 5 HEARING OFFICER ORTH: I'm going to start your 6 five minutes. 7 I have a request, though. We're making a 8 transcript, and you're a little soft. So if you can 9 project more, that would be really helpful. Thank you. 10 MS. NEWBY-TORRES: Thank you. 11 Thank you to the Environmental Improvement 12 Board for hearing us today about the new smog or the 13 ozone precursor rule. 14 I want to talk today about how methane 15 pollution affects me personally. I'm from Carlsbad, New 16 Mexico, and I have watched as the gas tanker next to my 17 parents' house exploded in the middle of the night and 18 caused a neighborhood emergency evacuation. I have 19 watched as temporary man camps have taken over 20 residential areas and contributed to unsafe conditions 21 in my hometown. 22 I've watched as the oil and gas industry has 23 devastated my hometown, making a few individuals 24 financially rich, but leaving the community in shambles. 25 And I've watched my childhood friends die one by one
1571 1 communities. That is why I support stronger 2 regulations. 3 And I again thank you for your time tonight 4 and good luck. 5 HEARING OFFICER ORTH: Thank you very much, 6 Mr. Shoup. 7 The last person I'm looking for for this 8 session is Rhonda, friend of Sister Brown. 9 I'm unmuting Caller 14. 10 Who is this, please? 11 Okay. I'm going to unmute Caller 15. 12 Who is Caller 15, please? 13 MS. NEWBY-TORRES: This is Rhonda 14 Newby-Torres. 15 HEARING OFFICER ORTH: Terrific. I found you. 16 If you would please spell your name. 17 MS. NEWBY-TORRES: My name is Rhonda, 18 R-H-O-N-D-A, last name is Newby, N-E-W-B-Y, hyphen 19 Torres, T-O-R-R-E-S. 20 HEARING OFFICER ORTH: Thank you. 21 If you would please raise your right hand. 22 Do you swear or affirm to tell the truth? 23 MS. NEWBY-TORRES: I do. 24 HEARING OFFICER ORTH: All right. 25	1573 1 working in the oil and gas industry, many of them 2 mysteriously from -- many of them died mysteriously, in 3 quotes, from gas leaks at work sites. And I've watched 4 my parents, my aunts and my uncles and my cousins 5 experience, quote, mysterious illnesses and health 6 issues that can't be diagnosed. 7 Methane pollution also affects me spiritually. 8 As a Christian leader, I uphold the great commandment of 9 love God and love thy neighbor. The methane pollution 10 and the oil and gas industry related is an affront to 11 this commandment. I can no longer sit by and watch my 12 neighbors be neglected, abused and killed by this 13 industry and by methane pollution. 14 In addition, methane pollution contributes to 15 the climate change and the abuse of our global 16 neighbors. 17 As a faith leader, I strongly support more 18 frequent inspections, stronger requirements to control 19 pollution, stronger requirements to cut pollution and 20 methane pollution. 21 Thank you. 22 HEARING OFFICER ORTH: Thank you very much for 23 your comment. 24 We have reached the end of the public comment 25 requested this evening. So we'll return to the

1574 1 technical case. 2 Can we get Mr. Nichols back on screen? 3 Thank you very much, Mr. Nichols. 4 I believe when we broke we had finished the 5 party questioning of you on your testimony, and I was 6 about to turn to the Board for their questions. 7 If you are on the platform as an attendee and 8 would have a question of Mr. Nichols, please reach out 9 through the chat. 10 JEREMY NICHOLS 11 (Relating to Topic Order 23) 12 having been first duly sworn or affirmed, was 13 examined and testified further as follows: 14 EXAMINATION 15 BY THE BOARD: 16 HEARING OFFICER ORTH: So, Madam Chair, do you 17 have questions of Mr. Nichols? 18 CHAIR SUINA: Thank you so much, Madam Hearing 19 Officer. 20 I think -- I think I got my signal back here. 21 Good afternoon, Mr. Nichols, and thank you so 22 much for your testimony and also through the 23 cross-examination questions. 24 I just had a few follow-up questions. 25 I know you had mentioned the concern about the	1576 1 recordkeeping and reporting requirements. But if this 2 Board believes that it may be reasonable to adopt some 3 kind of a phase-in of reporting requirements, I think 4 the end goal is ensuring that we achieve some degree of 5 transparency with the public. And if the Board decides 6 that's a reasonable approach, we -- we wouldn't oppose 7 that. 8 CHAIR SUINA: Thank you for that, Mr. Nichols. 9 I apologize. My -- again stilling having 10 bandwidth issues, had to turn off my video. 11 But I do have a couple more questions. And 12 thank you for that answer. 13 Earlier in our hearings, a couple of days ago, 14 I know Mrs. Hollenberg -- Ms. Hollenberg stated in her 15 testimony that information and data is needed to help 16 NMED regulate, I think is -- I'm paraphrasing. That's 17 not verbatim. But something to that effect. 18 And given that, do you think that the proposed 19 language would help NMED have access to accurate data on 20 facilities as it -- as the -- as the most recent set of 21 proposed language here in September? 22 MR. NICHOLS: You mean the Department's 23 proposed language? 24 CHAIR SUINA: Yeah. The Department's proposed 25 language, I think of September 16th. That --
1575 1 reporting requirements as a necessity in terms of 2 improvements to the rules and regulations. And I know 3 we had also with some of the other parties talked about 4 time frames or timelines of phasing in those 5 requirements. 6 And I just had a -- just kind of an overall 7 question. Would having the -- yes. 8 Can you hear me okay? 9 MR. NICHOLS: Yes. 10 CHAIR SUINA: Okay. Sorry. I just want to 11 make sure. 12 Would having reporting and monitoring 13 requirements included in the proposed rule -- would you 14 support having those in if it -- if longer time frames 15 were included in order for companies to get up to speed 16 in reporting and monitoring? As kind of like an offset 17 or balance of -- of the proposed rules? 18 MR. NICHOLS: Yeah. Thank you so much for 19 that question, Madam Chair, and good evening. I might 20 be -- might have crossed the threshold from afternoon to 21 evening by now. But thank you so much for that question 22 and your time today. 23 I -- I'll be totally honest. I mean, we would 24 want better regs yesterday, and we would want the most 25 expeditious time frame for compliance and meeting	1577 1 MR. NICHOLS: As I've seen their latest 2 version of the proposed rules, there would still be no 3 reporting requirements specific to implementation of 4 these rules. They would continue to receive excess 5 emission reports, which, you know, Ms. -- Ms. Hollenberg 6 flagged in her testimony and in her written 7 presentation. 8 And, you know, again part of what we're 9 suggesting is that a reporting requirement specific to 10 these rules be -- be crafted and implemented to ensure 11 that where there may be issues of deviation from more 12 practices or -- or more qualitative standards, that 13 those instances be reported. 14 Our concern is the excess emission reporting 15 requirements are very specific to quantitative emission 16 rates or limits and that the more qualitative standards, 17 such as reduced wellhead pressure, wouldn't necessarily 18 count as an excess emission, but yet are core to 19 achieving compliance with these regulations and meeting 20 the goal of keeping ozone precursors in check. 21 So I do feel that the proposal before you now 22 still does not address our core concern and would urge 23 the Board to consider -- make an improvement -- making 24 an improvement to that end. 25 CHAIR SUINA: And on your most recent

1578 1 language -- I'm just looking at timing, logistical 2 timing. So your most recent proposal on the language, 3 that was submitted prior to the September 16th revision; 4 is that correct? 5 MR. NICHOLS: Yes. It was submitted as an 6 exhibit to our notice of intent to present technical 7 testimony and as an exhibit to my written testimony. 8 And it was also laid out in my written testimony. 9 CHAIR SUINA: Yes. Okay. Thank you for that, 10 Mr. Nichols. 11 So since you've reviewed the September 16th -- 12 and you may have asked -- or answered this prior. Since 13 the most recent September 16th version, do you have any 14 further recommendations or change or modifications to 15 your recommendations on language? 16 MR. NICHOLS: Well, what we suggested is 17 modifying proposed 20.2.50.112 Paragraph E to expound on 18 the reporting requirements that are -- that are included 19 already. And the reporting requirements -- let me 20 reframe that. It's reporting requirements conceptually, 21 but the reporting as we've heard throughout this 22 hearing, operators will report only if requested by the 23 Department. 24 And what we have proposed is language that 25 would require certain instances -- certain monitoring	1580 1 MEMBER BITZER: I have no questions, Madam 2 Hearing Officer. Thank you. 3 HEARING OFFICER ORTH: Thank you. 4 I'm not sure if Member Duval is back from his 5 class or not. 6 No. 7 Member Garcia? 8 MEMBER GARCIA: I think I'll wait for the 9 Department response to Mr. Nichols. So I don't have any 10 questions right now. Thank you. 11 HEARING OFFICER ORTH: All right. 12 And Member Honker. 13 MEMBER HONKER: Thank you, Mr. Nichols. I 14 don't have any questions. 15 HEARING OFFICER ORTH: All right. Thank you 16 very much. 17 Mr. Nykiel, is there any redirect? 18 MR. NYKIEL: No, thank you. No further 19 redirect. Thank you, Madam Hearing Officer. 20 HEARING OFFICER ORTH: All right. Well, thank 21 you very much, Mr. Nykiel. 22 And thank you very much, Mr. Nichols. 23 MR. NICHOLS: Thank you. 24 HEARING OFFICER ORTH: Do I understand we'll 25 be returning to the Department now?
1579 1 event reports to be submitted to the Department where 2 they reflect deviations from the proposed regulations. 3 And so not reporting of everything and all the vast 4 information that operators are going to maintain, and 5 simply focus on ensuring that this was a matter of 6 practice that instances of deviations are reported, and 7 not necessarily just in response to Environment 8 Department requests. 9 CHAIR SUINA: Okay. 10 I think that's all I have for right now, 11 Mr. Nichols, and I appreciate your responses. Thank you 12 so much. 13 MR. NICHOLS: Thank you very much. 14 HEARING OFFICER ORTH: Thank you, Madam Chair. 15 Vice-Chair Trujillo Davis, do you have 16 questions of Mr. Nichols? 17 VICE-CHAIR TRUJILLO DAVIS: I do not have any 18 at this time. 19 Thank you, Mr. Nichols, for your time today. 20 HEARING OFFICER ORTH: Member Cates? 21 MEMBER CATES: No questions. 22 Thank you for the thorough testimony today 23 and -- thanks. 24 MR. NICHOLS: Thank you. 25 HEARING OFFICER ORTH: Member Bitzer?	1581 1 MS. GUTIERREZ: This is Ana Gutierrez with 2 Hogan Lovells. 3 I believe we were slot -- slated to go next, 4 but I will happily cede our time back to the hearing 5 process, and Kinder Morgan will not be presenting 6 testimony on this issue. 7 HEARING OFFICER ORTH: All right. My -- I 8 might be reading the spreadsheet wrong. But thank you 9 very much, Ms. Gutierrez. 10 Ms. Katz? 11 MS. KATZ: Thank you, Madam Hearing Officer. 12 I believe -- I think we are now to the last 13 part of this, unless anybody wants to jump in. Okay. 14 The Department calls Elizabeth Bisbey-Kuehn 15 and Michael Baca for surrebuttal. 16 HEARING OFFICER ORTH: Okay. I see Ms. Kuehn. 17 Let me see if I need to add Mr. Baca. Oh, 18 there he is. All right. 19 And screen sharing, Ms. Kuehn? 20 MS. KATZ: No screen sharing for either on 21 this. 22 HEARING OFFICER ORTH: All right. Go ahead. 23 MS. KATZ: Thank you. 24 25

1582 1 ELIZABETH BISBEY-KUEHN and MICHAEL G. BACA 2 (Relating to Topic Order 23 continued) 3 having been first duly sworn or affirmed, was 4 examined and testified further as follows: 5 DIRECT EXAMINATION OF ELIZABETH BISBEY-KUEHN 6 BY MS. KATZ: 7 Q. All right, Ms. Kuehn. I'm going to start with 8 you here. 9 Going back to some of the testimony from some 10 of the industry parties, would -- so now we're -- I'm 11 going to take you back to the date and time stamp 12 requirements in connection with the Compliance Data -- 13 Data Report. 14 Would the Department agree to an extension of 15 the time frame to implement the date/time stamp GPS 16 requirements as suggested by NMOGA and IPANM? 17 A. Yes, we would. 18 Q. Okay. 19 And is the Department amenable to revising the 20 language of the compliance database system to refer 21 instead to a compliance data system as suggested by 22 CDG's witness? 23 A. Yes. 24 Q. And can you just clarify about the C -- the 25 compliance data system and the Excel spreadsheet issue?	1584 1 asserted by Ms. Marquez and Ms. Cooper? 2 A. No. That is not the intent of this 3 requirement. An environmental audit is a much broader, 4 more comprehensive type of audit, with a much, much 5 larger scope than what's intended by this requirement. 6 Annual certification requirement is a compilation of the 7 compliance data that an operator is generating as 8 required by the part, and this report simply combines 9 that information that's collected over the year and -- 10 and compiles it into a single report. 11 Q. And would the proposed compliance 12 certification interfere with a formal environmental 13 audit? 14 A. No. There is no interaction between this 15 compliance -- this compliance certification with a full 16 environmental audit, which is again much more 17 comprehensive, much more involved, looking at an overall 18 overview of the organization's activities and services 19 in relation to compliance with relevant statutes and 20 other requirements, that it will no way interfere with a 21 formal environmental audit. 22 Q. And why is it important to have the -- this 23 compliance evaluation that our rule contemplates 24 certified by the owner or operator? 25 A. So this is similar to the -- having a
1583 1 Can you say something about that, please? 2 A. Sure. Yeah. So the compliance data system 3 can be many different types of systems. We did not 4 intend it to be limiting to -- to exclude certain 5 products that we think meets the intent of the rule. 6 And so for instance, as I believe I spoke 7 with -- spoke to earlier in the day, the Department is 8 working on a template database system to provide to the 9 smallest operators in the state to comply with this 10 requirement. That is an Excel spreadsheet that can 11 serve as the -- the database system and have generated 12 reports run from that same database system to -- or the 13 data system to develop a Compliance Data -- Data Report. 14 Q. Thank you. 15 And that is what you were referring to when 16 you said that we had our contractors working on a 17 template for that. 18 A. That's exactly right. 19 Q. Okay. Thank you. 20 So let's go to the annual compliance 21 certification that we heard a lot of testimony from -- 22 from CDG's witnesses. 23 Is it the intent of the annual compliance 24 certification to require companies to conduct a full 25 environmental audit of each facility every year as	1585 1 responsible official sign off on certain pieces of 2 information. This will require the owner and operator 3 to affirmatively certify to the findings of the -- of 4 the certification -- of the assessment. 5 Q. And is the -- is the Department amenable to 6 clarifying the language regarding the annual compliance 7 certifications? 8 A. Yes. To the extent that it just -- it 9 clarifies all the things that I just said, we're 10 amenable to changing that language to make that more 11 clear. 12 Q. Okay. Thank you. 13 Let's see. And does the Department suggest 14 that the parties who have raised issues with that 15 provision get together to come up with some proposed 16 language that the Department could consider? 17 A. Yes. It would be preferable for them to work 18 collaboratively together, come up with a proposal that 19 they all can agree with, and we can -- and provide that 20 to the Department for us for our consideration. 21 Q. Does the Department -- would the Department 22 agree to limiting compliance certification to only those 23 cases where there are significant compliance issues as 24 proposed by Mr. Brown, IPANM's witness, and -- and can 25 you respond to Mr. Brown's concern regarding burden --

1586 1 the burdens of the annual compliance certification 2 requirements on smaller operators? 3 A. Correct. So -- and this will -- with the data 4 system Excel spreadsheet that we are developing 5 specifically for small operators to comply with the 6 monitoring and tracking requirements and reporting 7 requirements of this rule and recordkeeping requirements 8 of this rule -- well, first let me state that it is not 9 appropriate for the certification to only address major 10 instances of compliance issues. 11 It needs to be -- and the intent was to have a 12 compilation of the -- of compliance with all terms and 13 conditions of the -- of Part 50. These owners and 14 operators are already conducting that monitoring and 15 recordkeeping. This is a compilation of all of those 16 existing records. And so it should not be a huge lift 17 to compile that information into a single report, and we 18 are putting tools in place to ensure that that is an 19 easy -- an easy thing to do for those small operators. 20 And I will also add that small business 21 facilities are not required to prepare this report. So 22 there -- there is no requirement for them to conduct 23 this kind of report. 24 Q. Okay. Thank you. 25 So moving to Kinder Morgan's witness' concern	1588 1 of both of them as they wish? 2 HEARING OFFICER ORTH: I think that's a great 3 idea. 4 MS. KATZ: Okay. 5 DIRECT EXAMINATION OF MICHAEL G. BACA 6 BY MS. KATZ: 7 Q. Okay, Mr. Baca. So regarding Mr. Nichols' 8 testimony, so -- and his language in -- proposed 9 language in Subsection A of 112 that would require the 10 Department to deny permits to all sources that emit any 11 amount of ozone precursors, do the Air Quality Control 12 Act or the Board's permitting regulations authorize the 13 Department to do this? 14 A. No. And I believe that his proposal is 15 outside the scope of the rule. So the Air Quality 16 Control Act and the Board's -- the Board's permitting 17 regulations allow the Department to deny permits -- 18 construction permits -- let me clarify -- for limited 19 reasons. And the most common reason is to deny a permit 20 when emissions from that source would cause or 21 contribute to air contaminant levels in excess or in 22 exceedance of any NAAQS. 23 So we feel that his proposal would be contrary 24 to the Air Quality Control Act and the Clean Air Act. 25 The Board's construction permitting rules are fully
1587 1 regarding the monthly inspections that are -- are 2 specified in Paragraph 112B.(2). 3 A. Correct. 4 Q. Have you taken another look at that provision? 5 A. Yes. 6 Q. So -- and would you agree that each section of 7 the rule contains specific monitoring requirements for 8 that particular equipment or process? 9 A. Yes. 10 Q. And was that general monitoring set forth in 11 Section 112 intended to be something unique from the 12 other monitoring required in the rule? 13 A. No. It was not. 14 Q. And so is the Department willing to remove 15 that monthly requirement from the general provisions and 16 rely on the monitoring specified in each section of the 17 rule? 18 A. Yes. It clarifies what the monitoring 19 requirements are. There is sufficient and effective 20 monitoring in each section, and so we agree that that 21 requirement can be struck. 22 Q. Okay. Thank you. 23 That's all I have for Ms. Kuehn. 24 So I -- if it's okay, maybe I'll -- should I 25 move to Mr. Baca, and then the Board can ask questions	1589 1 adopted and approved by EPA and New Mexico SIP, and 2 those rules also outline when a permit can be denied. 3 The rules dictate the requirements for all air quality 4 analysis from major sources, including modeling for 5 violations of the NAAQS and other screening tools. 6 So as we've heard earlier from previous 7 witness, this -- this has been hashed out before the 8 Board before and previously upheld. So we have 9 demonstrated before the Board that -- or that they have 10 found that sources -- minor sources are below the 11 Significant Impact Level established by EPA and would 12 not be considered to cause or contribute to ozone 13 concentrations in violation of the standard. So -- 14 And I believe that EPA has demonstrated 15 through modeling that minor sources will always be 16 through the SIL. So that modeling is complete and would 17 never be considered to cause or contribute to a 18 violation of standards. So, you know, to put it another 19 way, all minor sources by definition are below the 20 Significant Impact Level for ozone. 21 Q. Okay. 22 And this -- this proposed rule, though, does 23 regulate those sources, right? 24 A. It does. 25 Q. Yes. Okay.

1590 1 Does the Clean Air Act mandate that 2 development must stop in any areas of the state that are 3 exceeding the ozone NAAQS? 4 A. No, it does not. So the Clean Air Act is not 5 intended to inhibit or prohibit any activities or 6 economic activity or growth. So when -- when it was 7 constructed, Congress came up with the Nonattainment New 8 Source Review permitting program, which contains 9 provisions for permitting offsets. So any new emission 10 source must offset their emissions by a ratio of 11 1.1-to-1 or greater depending on the classification of a 12 nonattainment area. 13 So just through that provision permitting 14 doesn't stop just because an area is in nonattainment. 15 Q. And those would -- those types of requirements 16 would have to be put in place if the air -- in an area 17 of the state that was designated as nonattainment by 18 EPA, correct? 19 A. That is correct. So that would have to be for 20 a designated nonattainment area, such as the Sunland 21 Park area. That is where the nonattainment permitting 22 would come into play. 23 Q. All right. Let's move to the deviations 24 issue. 25 So Mr. Nichols has proposed requiring	1592 1 vetted or developed to evaluate whether this is really 2 needed, what the benefit would be, whether his proposal 3 is adequate, and any of the practical implications of 4 implementing this reporting system. 5 Q. If every single source subject to this rule 6 were required to report deviations as a Title V source 7 would, what implications would that have for the 8 Department's resources? 9 A. I think that would just -- just over -- 10 overwhelm us. I think in Mr. Nichols' testimony, in his 11 statement he says that his proposal might pose or could 12 pose logistical and data management challenges. I would 13 tell you right now that they would pose logical -- 14 logistical and data management challenges. So I think 15 we would be overwhelmed with the number of reports 16 provided to the Department, and there would be no way 17 for us to comprehensively review those and determine 18 what's going on with them. 19 So I fear that it would -- to -- you know, the 20 intent of the rule is really to ensure compliance with 21 the proposed emission standards and minimize emissions 22 reductions. So I think that it does that by setting 23 deadlines to complete repairs for faulty equipment 24 whenever leaks are detected, and it also requires that, 25 you know, regulated entities keep records which they can
1591 1 reporting to the Department for deviations from the -- 2 from the rule. 3 And can you explain why the Department opposes 4 these additional provisions? 5 A. Sure. I think there's been quite a -- quite 6 some confusion created with this term, deviation. 7 Deviation is a Title V concept and term that is used 8 within the regulatory scheme of permitting. So I don't 9 think it would be appropriate to apply in the context of 10 this rule. So it might be familiar to some of our Title 11 V permit holders. It would introduce, I think, 12 significant confusion for our regulated community. 13 Deviation is defined in the regs, and it holds 14 a specific technical meaning within the -- within the 15 program. So deviations are not necessarily violations 16 under the Title V program. And in order to determine if 17 a deviation is a violation, it must be reviewed by the 18 Department. So under our Title V program deviations are 19 reported to the Department under the -- under the 20 people's permits. So that's a separate program. 21 So in Mr. Nichols' proposal, he did not 22 provide any sort of definition for this term. So we had 23 no way of considering what he's really talking about 24 when he says deviation. You know, what does a deviation 25 constitute? I think Mr. Nichols' proposal is not fully	1593 1 provide to the Department upon request. 2 There is a whole section, you know, dedicated 3 to credible evidence and talking about how the 4 Department works with -- with the public on this. We 5 have a tip line that people can go to on the web to 6 enter any compliance that we look into. 7 So I just think -- you know, in our opinion 8 the Department feels that his proposal is introducing 9 additional burdens that are without any public health 10 benefits that we can see. I think the staff resources 11 for both industry and the Department are better spent 12 addressing issues with compliance that have to do with 13 emissions to the atmosphere. 14 So I think -- you know, I think just the 15 reporting -- you know, the after reporting and 16 collecting of data doesn't provide pertinent or quality 17 data related to the public. So in his proposed 18 testimony, you know, any kind of reporting would be 19 required. That not -- wouldn't necessarily provide any 20 public health information. We provide that information 21 through our monitoring network and emissions data that 22 we collect, and we provide that all to the public. 23 So we have excess emissions that we post on 24 our web site. We have Title V actuals that we collect. 25 And in 2020 we actually just completed our minor source

1594 1 emissions inventory. So we do continue -- we will plan 2 on continuing emissions inventory information from 3 sources, and we believe that this information is readily 4 available to the public. 5 And if it's in, you know, the Department's 6 possession, anyone can inspect -- do an Inspection of 7 Public Records Act request and receive that information 8 from the Department. 9 Q. Okay. 10 And Mr. Nichols also proposed reporting 11 requirements for excess emissions. 12 Can you discuss the Department's response to 13 this proposal? 14 A. Sure. Sources subject to the Board's excess 15 emissions are subject to 20.2.7 NMAC already. And we 16 don't feel that Mr. Nichols' proposal provides any 17 enhanced compliance for industry or any way for the 18 Department to more effectively implement and enforce 19 this rule. 20 I'd like to also point that there's Section 11 21 of the rule that is titled Compliance with other 22 Regulations, and that section states that compliance 23 with the proposed rule does not relieve any source from 24 compliance with any other state, federal or local law. 25 Q. And so there -- they are still subject to the	1596 1 or operator have to report anything to the Department 2 according to our proposal? 3 A. Yes. According to your proposal -- okay. Can 4 you restate that? According to your proposal would the 5 Department be required to do what now? 6 Q. Let me rephrase. 7 So hypothetically there is an owner or 8 operator of an oil or gas facility. If that facility 9 didn't have any deviations from the Department's 10 proposed rules, under our -- Guardians' proposal, that 11 owner or operator wouldn't have to report anything to 12 the Department; is that right? 13 A. I -- I believe that would be correct. If 14 there -- no deviation occurs, then no reporting would 15 be. 16 Q. Okay. 17 I also want to ask you another -- another 18 hypothetical. 19 You mentioned that -- you testified that 20 Guardians' proposal wouldn't provide any pertinent 21 information. 22 And I just want to ask you a hypothetical. If 23 there were an industrial facility in proximity to your 24 family's home that involved the use of an air pollutant, 25 like ozone precursors, would you want to know if that
1595 1 Board's excess emissions regulations at 20.2.7 NMAC, 2 correct? 3 A. That is correct. And I believe we've heard 4 testimony to that effect earlier. 5 Q. Okay. Great. 6 Thank you, Mr. Baca. 7 I have no further questions at this time. 8 HEARING OFFICER ORTH: All right. Thank you 9 very much, Ms. Katz. 10 I'm going to pause for a moment in the event 11 any of the other parties would like to come on screen to 12 ask questions of the Department panel. 13 I see Mr. Nykiel. 14 Mr. Nykiel. 15 MR. NYKIEL: Thank you, Madam Hearing Officer. 16 I just have a couple of questions for 17 Mr. Baca. 18 CROSS-EXAMINATION OF MICHAEL G. BACA 19 BY MR. NYKIEL: 20 Q. Good evening, Mr. Baca. 21 I want to start with your testimony on 22 Guardians' reporting requirement, reporting requirement 23 proposal. 24 So if -- if an owner or operator didn't have 25 any deviations from the proposed rules, would that owner	1597 1 facility was having compliance issues with the 2 Department's proposed rules that otherwise aren't 3 already reported? 4 A. Sure. And the Department has other provisions 5 to ensure that emissions from sources are collected and 6 that we do receive that information. So as I just 7 testified, we have our excess emissions reporting, we 8 have Title V reporting, and we just did a minor source 9 emission inventory. 10 So we do collect emissions data that's 11 pertinent. What my testimony said was that it's not 12 pertinent to public health. And so it -- what you're -- 13 you know, what we're calling a deviation, I'm not still 14 clear on what that is. You know, a deviation is not 15 necessarily a violation. The Department has to review 16 that deviation under the Title V program, is what I'm 17 talking about now, to determine what a violation is. 18 So I think, you know, by just reporting a 19 deviation of a work practice standard does not provide 20 public health information to the public. 21 Q. Right. 22 But my question was would you want to know -- 23 so if there was a compliance issue that's not already 24 reported under, like we talked about, the excess 25 emission reporting requirements -- but if there's a

1598 1 compliance issue with the rules that have been proposed 2 by the Department, would you want to know about that? 3 A. I believe I stated yes. That was my first 4 answer. I said yes, and the Department has emissions 5 both -- you know, collection programs. 6 Q. Okay. Thank you. 7 A. So I would -- I do think that information is 8 valuable to the public. I don't -- you know, as we -- 9 we have an undefined term right now that we're talking 10 about, and I -- I'm having a hard time kind of 11 visualizing what you have proposed. So we're talking 12 all hypotheticals, and we're not really talking about 13 well defined concepts here. 14 Q. Thank you. 15 I just want to turn to your testimony on our 16 proposal about permitting. 17 You stated that the Air Quality Control Act 18 provides essentially when the Department can deny 19 permits. 20 And I took you to mean -- or to be referring 21 to Subsection 74-2-7.C of the Air Quality Control Act. 22 Would I be -- is that the right section that 23 you were -- you had in mind? 24 A. Sounds correct. 25 Q. Okay.	1600 1 Thank you. I have no further questions. 2 HEARING OFFICER ORTH: Thank you, Mr. Nykiel. 3 If you'd stop sharing your screen, please. 4 Thank you. 5 And let me see if there are any other parties 6 who have questions of the ED panel. 7 No. 8 At this time, then, we'll turn to the Board 9 for their questions. 10 While we're doing that, if you're an attendee 11 on this platform and have a question, please reach out 12 through the chat. 13 EXAMINATION 14 BY THE BOARD: 15 HEARING OFFICER ORTH: Madam Chair. 16 CHAIR SUINA: Hi, Madam Hearing Officer. I 17 don't have any questions. Thank you. 18 HEARING OFFICER ORTH: Thank you. 19 Vice-Chair Trujillo Davis. 20 VICE-CHAIR TRUJILLO DAVIS: Yes. Thank you. 21 I just have one question just for 22 clarification after all the back and forth, which is 23 helpful and good. 24 Mr. Baca -- or is there a -- are we really 25 getting into like discussing the difference between a
1599 1 A. Sounds correct. 2 Q. I'm going to just share my screen, just an 3 image of that -- 4 A. Sure. 5 Q. -- that particular section. 6 So can you see 74-2-7? 7 A. Yes, sir. 8 Q. Okay. 9 So I'm going to just scroll to Subsection C of 10 that, that statute. And -- excuse me. 11 Would you just read Subsection C, starting at 12 C and then read through (1)(a), please. 13 A. Sure. 14 "Except as provided in Subsection 0 of this 15 section, the department or local agency may deny any 16 application for: (1) a construction permit if it 17 appears that the construction or modification: (a) will 18 not meet applicable standards, rules or requirements of 19 the Air Quality Control Act or the federal act." 20 Q. Okay. 21 And if the Department's proposed rules are 22 adopted by the Board, would you agree that these rules 23 would become rules of the Air Quality Control Act? 24 A. Yes. 25 Q. Okay.	1601 1 deviation and an excess emission report? Are they -- 2 are they being used interchangeably? Is that what you 3 were trying to -- trying to clarify there? 4 MR. BACA: Yes. Board Member Trujillo Davis, 5 I'm trying to clarify that. I really don't know what a 6 deviation is as proposed by WildEarth Guardians. 7 Deviation is a technical term pulled from Title V, but 8 as applied in this context, it really doesn't mean much 9 to anyone? So -- so what I'm saying is without a 10 definition in this rule, we really don't know what a 11 deviation is. 12 VICE-CHAIR TRUJILLO DAVIS: Okay. I just 13 wanted to be clear in my head that these two terms were 14 being used interchangeably, and you did a good job of 15 explaining the difference, and I appreciate -- 16 appreciate that. Thank you. 17 I don't have any more questions. 18 HEARING OFFICER ORTH: Thank you. 19 Member Cates? 20 MEMBER CATES: No questions here. 21 Thank you for your testimony. 22 HEARING OFFICER ORTH: Thank you. 23 Member Bitzer? 24 MEMBER BITZER: No questions here. Thank you. 25 HEARING OFFICER ORTH: All right.

1602 1 Member Garcia? 2 MEMBER GARCIA: No questions. Thank you. 3 But I appreciate you all clarifying that this 4 would be exempt for small businesses, this -- this 5 provision. Thank you. 6 HEARING OFFICER ORTH: Thank you. 7 Member Honker. 8 MEMBER HONKER: No questions. Thanks. 9 HEARING OFFICER ORTH: Thank you. 10 Ms. Katz, will there be any redirect? 11 MS. KATZ: No, Madam Hearing Officer. Nothing 12 more from me. 13 HEARING OFFICER ORTH: All right. Thank you 14 very much, Mr. Baca and Ms. Kuehn, once again. 15 Have we then by virtue of hearing some of the 16 surrebuttal earlier completed Topic 23? 17 MS. KATZ: I believe that we have. 18 HEARING OFFICER ORTH: I'm going to pause a 19 moment -- 20 MS. KATZ: Basically. 21 HEARING OFFICER ORTH: Okay. 22 I'm going to pause a moment in case there is 23 some disagreement on that point. 24 Going once, Topic 23. 25 Okay. Thank you very much.	1604 1 MS. KATZ: Madam Hearing Officer, thank you. 2 And thank you, Mr. Butzier. 3 I agree. I actually think we should not even 4 start at all with engines tonight. I think it's too 5 confusing to try to parse things out, and that -- that 6 should be presented as a whole to the Board as much as 7 possible. 8 And I also agree with that rearranging of the 9 schedule to move engines and turbines to Monday, 10 pneumatics to Tuesday and LDAR to Wednesday. 11 And so I might suggest, and I don't know if -- 12 I ask every -- others to weigh in -- if may -- we might 13 be able to pick a smaller provision of the rule that has 14 less issues, maybe -- and I -- I'll ask other people to 15 suggest one. I mean, maybe glycol dehydrators. I don't 16 know if people are ready to present on those. 17 So I guess -- I guess I'll ask for some input 18 if there might be another topic that we could take on 19 fairly easily. 20 MS. FOX: We have an agreement on credible 21 evidence. 22 HEARING OFFICER ORTH: Ms. Fox? 23 MR. HISER: That's true. There is. 24 MR. BUTZIER: Agreement on what? 25 (Simultaneous discussion.)
1603 1 Can we move to Topic 24 and perhaps at least 2 get the Department's -- oh, there's Mr. Butzier. 3 MR. BUTZIER: Madam Hearing Officer, I was 4 coming on not to talk about 23, but to make a suggestion 5 relating to Topic 24. 6 HEARING OFFICER ORTH: All righty. I'm ready. 7 MR. BUTZIER: I don't know if -- if Madam 8 Hearing Officer intend -- and the Board intend to 9 continue this evening, but if -- if it does, I -- my 10 suggestion would be that we not at this late hour jump 11 into an important topic such as is presented in 113B, 12 the emission standards relating to engines. But there 13 are some issues in 113C that perhaps we could knock out 14 if -- if, you know, people are still this late in the 15 hour and this late in the week wanting to go further. 16 But in any event, I would propose, 17 notwithstanding the earlier discussion we had among 18 counsel, that we start with the engine emission 19 standards on Monday morning after the public comment 20 session, leave Tuesday as we discussed for pneumatics, 21 and push the LDAR-related issues to Wednesday or 22 whenever they might be fit in on Monday and Tuesday 23 after the two topics I've mentioned. 24 MS. KATZ: Madam Hearing Officer? 25 HEARING OFFICER ORTH: Ms. Katz.	1605 1 MS. KATZ: On credible evidence. 2 MS. FOX: We can bang that one out. 3 MS. KATZ: I mean, we can bang that out, yeah 4 and -- but that one -- yeah, and that would just take a 5 few minutes, I would think. 6 HEARING OFFICER ORTH: Okay. 7 MS. KATZ: So we could do that. 8 HEARING OFFICER ORTH: I think that's great. 9 MS. KATZ: Okay. 10 HEARING OFFICER ORTH: Let's do that. 11 MS. KATZ: Let's see. 12 MEMBER CATES: I wonder -- if I may speak. 13 I wonder if we may hear from the Board on 14 this. I personally am of the mind that it's 6:05, 15 and -- oh, 6:09, and it's been a long day for everybody, 16 and so I -- you know, my due sense is let's start anew 17 on Monday. 18 HEARING OFFICER ORTH: Okay. 19 Any other Board member input? 20 Oh, I see Member Bitzer cheering your 21 statement. 22 Vice-Chair? 23 VICE-CHAIR TRUJILLO DAVIS: I have kind of a 24 general question, and I very much support Member Cates' 25 suggestion here, because I actually kind of want to put

1606 1 my kids to bed tonight. 2 But if we don't -- I'm concerned about the 3 timeline that -- the two-week time frame, and we only 4 have, you know, five days left in this. You know, we 5 have to get through the whole rule. 6 So if we were getting towards the end of it, 7 what -- is there a procedure? I know in previous 8 hearings when we've allotted four hours we've gone nine 9 and so on. So can somebody tell me what the -- what 10 generally happens here in a big hearing like this? 11 HEARING OFFICER ORTH: Well, there are a 12 couple of strategies. 13 One is again to start earlier or go later. I 14 felt like I heard earlier from the Board that they did 15 not want to start earlier, and several of the lawyers 16 would not be able to comfortably start earlier, which 17 leaves us going later. 18 Another strategy is for everyone to pull out 19 their calendars and find some dates later into October 20 to finish the hearing. 21 And then the strategy we -- we hoped would be 22 effective in moving us along more expeditiously in this 23 time, the two-week period, is that the lawyers agree to 24 identify those places where they could stipulate to 25 something and not put on a witness on that particular	1608 1 of time off in October, because it's been a very 2 grueling several months for the Department. So anything 3 that we can do to try to get it done, I certainly would 4 prefer that, but I do understand that everybody does 5 have lives. But we can try to get it done. 6 VICE-CHAIR TRUJILLO DAVIS: I understand that 7 some of the topics that are coming up, knowing these 8 specific topics personally, like compressors and -- I am 9 sorry for the crying in the background -- but the 10 compressors and the pneumatics, I know they're going to 11 be big topics. So I -- I think we should just try to 12 get one more thing knocked out this evening, and that's 13 just my vote on it. 14 HEARING OFFICER ORTH: Okay. 15 Professor Pacyniak? 16 MR. PACYNIK: This might be premature, but I 17 just wanted to circle back to Mr. Butzier's suggestion, 18 and -- and I didn't think I heard whether folks thought 19 that LDAR on Wednesday might be a good plan, and it 20 would be helpful to me to know if Ms. Katz agreed with 21 that. 22 MS. KATZ: I did agree with that, although, I 23 mean -- yes. I just was thinking, you know, we need 24 to -- we basically need to allocate a specific day for 25 engines and for pneumatics and LDAR. So that's how we
1607 1 point. 2 And as I think it was Mr. Janoe pointed out, 3 one of the issues with that is even as the Department 4 has done a heroic job of negotiating with industry and 5 negotiating with environmental advocates, even when they 6 agree with the Environment Department, someone else 7 might not. And so they effectively have to put on the 8 evidence regardless in order to try to persuade you to, 9 for example, go with the Department's proposal rather 10 than an alternative one. 11 So it's not just about their posture vis-a-vis 12 the Department. It's also their posture vis-a-vis other 13 parties, which is, of course, what makes some of this a 14 challenge. 15 So I certainly got a good feeling from our 16 meeting this morning at eight o'clock, and I'm hopeful 17 that the lawyers seem to be sincerely committing to 18 doing what they could to streamline things. 19 Ms. Katz, do you have something to add? 20 MS. KATZ: I -- no. I mean, I hear the Board, 21 certainly, and I hear the concerns. I guess I would -- 22 I would very much advocate to see if we can please try 23 to get it finished. It's going to be difficult for us 24 to get a lot of -- to be coming back, I think. 25 And I know I myself was hoping to take a lot	1609 1 thought may -- just move LDAR over to Wednesday. So 2 yes. We do -- we do agree with that. 3 HEARING OFFICER ORTH: Okay. 4 So is there -- I've heard now from a couple of 5 Board Members who don't want to tackle another topic 6 tonight and at least one who would like to tackle 7 something short. 8 Any other input? 9 MEMBER GARCIA: Yes. Madam Hearing Officer, 10 if I may. 11 I -- I'm certainly not voting on going late, 12 but I do have a suggestion, to revisit a topic we talked 13 about yesterday, I believe, was if we could, I think we 14 could get a lot farther if we eliminate the testimony of 15 people saying where they agree. 16 I understand -- it's wonderful, it's great to 17 know, but I understand that there was a lot of areas 18 where there's been back and forth with the parties, and 19 there's a lot of areas where there's been agreement 20 worked out. That's great. I'm happy to hear it. But I 21 don't think we need to take time talking about it during 22 the hearing. 23 I think what the Board needs to make a 24 decision about is where they don't agree. That's what 25 we're going to have to make a decision on.

1610 1 So if we -- that's just, you know, another 2 idea about making this a little more efficient. 3 Thank you. 4 HEARING OFFICER ORTH: Okay. Thank you, 5 Member Garcia. 6 And that was why I was saying earlier I know 7 counsel heard -- heard that concern on the part of the 8 Board, that they were hearing from folks who said, well, 9 now we've reached agreement with the Department, but 10 it -- it doesn't mean they reached agreement with other 11 parties who have alternative proposals. That -- that's 12 really why you're going to continue to hear a little bit 13 of that. 14 Madam Chair, did you have something to add? 15 MS. KATZ: Well, can I -- Madam Hearing 16 Officer, can I -- 17 CHAIR SUINA: Oh. 18 MS. KATZ: -- just say one thing to that 19 issue, is that the -- there have been communications 20 among the parties that we're going to try to endeavor to 21 identify things this weekend and -- and figure out 22 which -- you know, ask everybody if they're going -- if 23 there's other parties who weren't involved in that 24 agreement that are going to have an issue with it. So I 25 hope the -- I think we'll be able to work some of that	1612 1 And so I just wanted to add that to the 2 conversation. 3 HEARING OFFICER ORTH: All right. Thank you 4 very much. 5 Well, it seems -- oh, Member Honker. 6 MEMBER HONKER: Yeah. I just wanted to agree 7 with the frustration of Member Garcia, that we seem to 8 be spending time on things that have been revised and is 9 some degree of agreement, and I also wanted to agree 10 with Members Cates and Bitzer in favor of not going 11 later tonight. I -- I would have more flexibility early 12 or late next week, I think. 13 HEARING OFFICER ORTH: All right. So what if 14 we were to end -- end now, pick up Monday morning, see 15 what benefits the counsels work over the weekend are 16 able to get us in terms of streamlining. And if I 17 might, because we wouldn't be starting early Monday, if 18 the Board Members could possibly agree to go a little 19 later Monday. And I'm only talking 6:30 or 7:00. I 20 truly am not talking terribly late. 21 Ms. Katz? 22 MS. KATZ: That's -- I do want to just say 23 that I think -- I just real -- I think we are really 24 looking at that we're not -- we won't be able to get it 25 done. I hope that we will. I hope it won't come to
1611 1 out this weekend and hopefully to the benefit of what 2 Member Garcia is suggesting. 3 HEARING OFFICER ORTH: Thank you, Ms. Katz. 4 Madam Chair, you're unmuted. 5 CHAIR SUINA: Thank you so much. Sorry. I'm 6 still dealing with bandwidth over here. 7 I just wanted to share with everybody. I 8 recognize that there's some logistical discussion that 9 has to happen on the record, and that there's still 10 contention amongst various stakeholders for -- even 11 though it seems maybe a majority of stakeholders agree, 12 there still probably needs to be that discussion to -- 13 to, you know, address those that still don't agree or 14 there's still some concern. So I understand that, as 15 well, and that is a challenge. 16 I -- and if -- if what Ms. Katz had just 17 mentioned, if that can help expedite us next week, 18 that's great. I just wanted to throw out there. 19 I know we had talked about trying to go 20 earlier. If it helps, I know I was one that said I 21 already had commitments next week. I think I can move 22 those around if we do want to start earlier, maybe a 23 little bit earlier, and maybe half an hour later. Half 24 an hour on both sides would give us another hour. I'm 25 just throwing that out.	1613 1 that. So I guess we can just talk about it where we are 2 on Monday and then -- and then see if the -- if we think 3 we'll be able to get it done in the week. So that 4 sounds good. 5 HEARING OFFICER ORTH: All right. Thank you 6 very much. 7 Unless there's something else, we will adjourn 8 for the weekend. 9 Thank you, all, very much. 10 MS. FOX: Oh, I have one question. 11 HEARING OFFICER ORTH: Ms. Fox. 12 MS. FOX: Just clarification on the order next 13 week, we're going to do engines on Monday and then 14 pneumatics on Tuesday and LDAR on Wednesday; is that 15 correct? 16 HEARING OFFICER ORTH: (Nods head.) 17 MS. FOX: Great. 18 MR. BUTZIER: Correct. 19 HEARING OFFICER ORTH: Thank you, all, very 20 much. 21 (Proceedings adjourned at 6:21 p.m.) 22 23 24 25

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1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)

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Volume 5
9/24/2021

EIB Ozone Hearing

A	1486:17	1475:25	1305:3	1359:7
A-T-H-E-N-A	1525:2	1502:6	1305:13	1363:19
1288:1	1528:22	accurate	1370:17	1364:16
A.(1 1356:7	1538:21	1430:11	1427:20	1364:21
A.(3 1458:17	1551:4	1502:5	1444:17	1378:21
A.(4 1469:18	abuse 1573:15	1538:11	1590:6	1379:2, 1380:2
abandoned	abused 1573:12	1576:19	actors 1462:9	1420:5, 1420:7
1406:18	accelerate	achieve 1519:22	actual 1343:1	1421:24
abate 1401:1	1395:20	1531:2, 1576:4	1349:21	1421:25
abide 1455:19	1407:15	achieved	1349:24	1430:18
ability 1284:7	1416:10	1528:20	1362:24	1440:21
1404:19	1563:13	1531:6	1426:25	1441:7
1438:8, 1477:7	1567:2	achieving	1471:17	1441:12
1490:11	accelerated	1428:21	actuals 1593:24	1445:21
1500:13	1446:22	1577:19	add 1263:2	1457:10
1535:9	accept 1262:17	acknowledge	1300:25	1457:12
1555:25	1294:18	1538:1	1309:7, 1348:5	1475:13
1556:9	1308:24	acknowledged	1360:15	1476:10
able 1270:14	1387:5	1520:1	1361:19	1480:17
1272:21	1388:18	acquaintances	1372:11	1492:24
1281:21	1389:9, 1390:6	1444:5	1382:23	1499:25
1286:1, 1288:6	acceptable	acquire 1428:13	1419:16	1500:15
1295:7, 1295:9	1425:6	act 1347:25	1456:25	1500:17
1306:12	1427:22	1400:25	1521:23	1591:4, 1593:9
1306:15	1471:11	1413:7	1530:23	Additionally
1318:15	accepted	1477:12	1532:17	1342:20
1330:9	1374:11	1521:6	1532:21	1412:24
1356:18	1425:18	1526:20	1559:21	additions
1363:5	1426:7, 1429:1	1588:12	1581:17	1395:2, 1396:5
1368:16	1429:6	1588:16	1586:20	address 1266:22
1369:13	accepting	1588:24	1607:19	1293:8
1369:17	1429:3	1588:24	1610:14	1346:19
1369:22	access 1315:25	1590:1, 1590:4	1612:1	1380:9
1382:13	1316:6, 1316:7	1594:7	added 1306:23	1386:17
1390:4, 1404:6	1384:11	1598:17	1359:22	1394:10
1428:8	1403:24	1598:21	1361:21	1395:10
1428:22	1429:6	1599:19	1363:9, 1369:1	1396:2
1481:16	1438:13	1599:19	1377:5, 1377:8	1398:25
1494:21	1524:6	1599:23	1377:19	1399:5
1494:21	1576:19	Acting 1250:3	1379:17	1399:15
1500:25	accompanied	action 1276:3	1419:1, 1419:9	1402:5, 1406:8
1503:20	1387:14	1411:5	1431:5, 1522:1	1407:3, 1411:1
1506:8	accomplish	1517:17	1522:1, 1551:7	1411:1
1526:16	1523:24	1528:14	adding 1309:10	1449:14
1547:9	1524:13	1556:21	1348:1	1476:3
1554:18	1524:14	1614:12	1490:22	1494:12
1556:6, 1556:7	1524:23	1614:15	1559:16	1496:14
1556:20	1548:3	actions 1363:8	addition	1515:15
1604:13	accomplishable	1486:21	1343:19	1517:17
1606:16	1548:4	1555:19	1360:16	1521:9, 1527:7
1610:25	accomplishes	1556:4	1381:9	1549:23
1612:16	1474:10	active 1272:16	1404:15	1550:18
1612:24	account 1303:10	1445:7, 1445:7	1490:10	1569:21
1613:3	1394:14	activities	1491:23	1577:22
abnormal	accountable	1342:18	1541:24	1586:9
1413:16	1411:2	1518:13	1573:14	1611:13
abqcrs@gmail...	accumulate	1528:11	additional	addressed
1246:24	1437:24	1584:18	1342:3	1356:15
absence 1484:7	accuracy	1590:5	1342:10	1388:2, 1388:3
absolutely	1475:17	activity	1358:5	1404:22
	1475:18	1278:13	1358:17	1448:9, 1456:8

Volume 5
9/24/2021

EIB Ozone Hearing

1456:24	1407:19	1280:11	1511:2	1587:20
1458:13	1408:7	1285:4	1512:14	1599:22
1458:20	1408:12	1288:12	1559:17	1604:3, 1604:8
1467:23	1436:6	1292:2	African 1415:14	1606:23
1477:23	1454:18	1335:11	afternoon	1607:6
1534:24	1456:18	1392:19	1409:17	1608:22
1546:10	1458:24	1396:20	1442:17	1609:2
addresses	1459:2	1403:6	1450:24	1609:15
1316:15	1468:23	1405:17	1453:2, 1460:3	1609:24
1408:8	1488:6, 1543:7	1409:8	1516:7	1611:11
1408:12	1563:17	1409:24	1516:22	1611:13
addressing	1563:25	1412:1, 1415:3	1548:14	1612:6, 1612:9
1398:8	1576:2	1434:15	1574:21	1612:18
1398:18	adopted 1355:16	1452:7	1575:20	agreed 1326:8
1411:3, 1517:6	1371:16	1466:20	age 1415:17	1357:12
1537:19	1424:14	1485:5	agencies	1359:18
1559:3	1474:7, 1516:9	1553:18	1283:12	1362:19
1593:12	1519:11	1553:19	1375:22	1364:9
adds 1522:6	1589:1	1557:25	1454:6	1387:21
adequate 1307:5	1599:22	1562:1	1512:11	1387:23
1592:3	adopting 1411:3	1564:17	agency 1342:19	1388:24
adequately	1521:8	1568:8	1481:15	1608:20
1534:23	advance 1259:19	1571:22	1523:19	agreement
adhering	1259:23	affirmative	1524:22	1293:8
1517:21	1260:6, 1260:8	1374:19	1599:15	1294:23
adjourn 1613:7	1260:16	affirmatively	Aggies 1281:10	1295:4, 1425:1
adjourned	1260:19	1585:3	aggregate	1604:20
1613:21	1260:24	affirmed	1569:6	1604:24
administration	1261:5, 1261:7	1264:15	aggressively	1609:19
1386:19	1510:20	1269:9, 1274:5	1404:22	1610:9
administrative	1543:18	1280:15	ago 1382:11	1610:10
1267:13	1552:24	1285:8	1406:14	1610:24
1338:18	advanced 1289:1	1288:16	1492:11	1612:9
1340:10	1378:14	1292:6, 1299:7	1576:13	agreements
1340:13	1490:20	1319:3	agree 1326:11	1266:20
1340:21	1490:21	1335:16	1338:13	Ah 1334:21
1422:7	advantage	1341:20	1344:25	1466:11
1533:16	1490:12	1353:3, 1393:2	1346:6	ahead 1297:21
1549:1	advisor 1336:21	1397:2	1346:13	1312:13
administrator	advocate	1403:10	1374:25	1318:18
1247:9	1276:13	1405:21	1378:24	1319:15
1262:11	1565:13	1409:12	1388:15	1321:6
1390:23	1569:10	1412:4, 1415:7	1389:1, 1389:3	1323:18
1390:25	1607:22	1418:5, 1424:3	1460:12	1325:21
admit 1352:7	advocates	1434:20	1469:22	1344:1, 1352:6
admitted 1258:2	1248:13	1449:3	1473:24	1458:4, 1467:5
1259:2, 1260:2	1607:5	1452:12	1474:12	1496:9
1261:2	affairs 1435:16	1467:3	1477:21	1496:12
1318:21	affect 1283:25	1485:10	1487:17	1501:23
1338:4, 1338:7	1287:12	1516:3, 1554:2	1488:2	1581:22
1352:5, 1352:9	1344:11	1558:4, 1562:5	1493:13	AI 1271:22
1424:15	1533:2, 1533:4	1564:21	1519:20	aim 1529:10
1451:21	1563:20	1568:12	1521:3, 1521:4	air 1248:13
1451:22	1563:21	1572:2	1521:17	1249:18
1469:7	1569:16	1574:12	1529:5, 1529:7	1250:4
1488:15	affective	1582:3	1549:2, 1549:9	1259:22
adopt 1337:17	1293:1	afford 1559:17	1549:14	1260:15
1344:10	affiliates	1559:18	1582:14	1260:21
1388:5	1252:2	1567:11	1585:19	1265:4, 1266:8
1400:23	affirm 1264:11	affront 1573:10	1585:22	1286:2, 1286:3
1407:2	1269:5, 1274:1	afraid 1410:15	1587:6	1289:1

Volume 5
9/24/2021

EIB Ozone Hearing

1289:14	1526:20	1295:14	1532:4	1349:19
1289:17	1528:8	1431:4	1532:20	1349:22
1293:22	1528:10	alignment	1532:24	1364:10
1302:1, 1304:8	1528:14	1512:7	1534:1, 1534:4	1422:3, 1422:4
1321:24	1530:1, 1530:3	aline 1290:11	1534:25	1422:5, 1500:4
1336:13	1531:9	allegedly	1535:4	1506:7, 1535:3
1336:20	1531:18	1533:18	1535:23	1589:4
1336:22	1532:1, 1532:4	Alliance	1536:17	analyst 1554:10
1347:25	1532:20	1248:13	1536:20	1555:13
1357:20	1532:24	allocate	1543:9	1555:13
1369:25	1534:1	1608:24	1545:19	analyzed
1375:22	1534:25	allocated	1545:25	1326:23
1381:5, 1381:8	1535:23	1420:24	1547:13	analyzer 1385:3
1394:25	1536:17	allotted 1606:8	1547:16	analyzing
1395:4	1536:20	allow 1268:11	amenable	1526:15
1397:25	1538:19	1329:20	1582:19	and/or 1285:21
1400:25	1543:9	1364:19	1585:5	1291:13
1401:1, 1401:1	1545:19	1427:19	1585:10	1337:2, 1351:6
1403:25	1545:25	1470:4	amend 1400:24	1465:14
1408:3, 1408:9	1547:13	1474:16	amendments	1495:23
1411:3, 1411:4	1547:16	1480:21	1258:15	1496:10
1415:23	1549:4, 1549:4	1588:17	1258:18	1514:6, 1535:1
1441:15	1559:16	allowable	1258:21	1556:14
1441:18	1559:21	1380:3	1259:4, 1259:7	1561:14
1454:4	1562:17	allowed 1282:15	1259:9	ANDREW 1247:20
1457:17	1566:5, 1570:8	1293:18	1259:12	andrew.knigh...
1467:15	1570:12	1477:19	1259:14	1247:24
1468:9	1588:11	allowing 1265:1	1261:10	Andrews 1251:4
1468:14	1588:15	1287:15	1458:12	anecdotally
1470:19	1588:21	1292:13	1458:20	1444:4
1477:12	1588:24	1329:22	America 1252:3	anew 1605:16
1482:7, 1486:2	1588:24	1406:2	American 1265:8	Angeles 1289:18
1486:20	1589:3, 1590:1	1470:21	1293:3	annual 1324:25
1486:20	1590:4	1560:7	Americans	1363:10
1492:16	1590:16	allows 1477:14	1565:17	1363:17
1501:2, 1501:5	1596:24	alluded 1275:21	amount 1278:6	1364:12
1501:7, 1501:9	1598:17	alluding 1542:1	1282:24	1371:11
1503:19	1598:21	alphabetizes	1455:21	1372:7
1504:25	1599:19	1284:21	1487:9, 1502:5	1375:13
1507:23	1599:23	1434:7, 1434:8	1502:22	1377:2
1510:15	airways 1400:8	1553:6	1522:20	1397:20
1510:15	Alamos 1554:10	alternative	1529:9, 1560:1	1429:11
1511:21	Albuquerque	1362:1	1588:11	1460:15
1512:8, 1517:8	1246:22	1607:10	amounted 1278:2	1460:17
1517:12	1246:23	1610:11	Ana 1252:4	1460:18
1518:3	1247:23	altruistic	1477:12	1461:22
1518:11	1249:13	1560:11	1581:1	1462:2
1519:5	1265:6	AMANDA 1247:6	ana.gutierrez...	1464:19
1520:20	1265:24	amazing 1287:14	1252:7	1472:1, 1472:9
1521:6	1285:22	1507:23	Anadarko 1487:3	1472:17
1521:10	1286:1, 1289:9	1515:4	1506:10	1472:21
1522:5	1393:11	ambient 1397:25	1514:9	1473:3, 1473:8
1522:13	1402:17	1401:1, 1517:8	analogy 1290:1	1473:13
1523:10	1403:17	1517:12	analyses	1473:19
1523:12	1406:5	1518:3	1422:25	1473:24
1523:18	1409:22	1518:11	1422:25	1478:15
1523:21	1409:24	1519:5	analysis	1488:19
1523:22	1412:14	1520:20	1306:12	1488:23
1524:15	1415:15	1521:10	1307:11	1489:5
1524:19	1554:9	1522:5	1326:22	1489:15
1526:17	Alexander	1522:13	1343:8	1489:23

Volume 5
9/24/2021

EIB Ozone Hearing

1491:8	1299:24	1490:7, 1490:9	1449:15	1427:25
1491:18	1312:9	1599:18	1472:13	1437:15
1492:8	1316:23	applicant	1479:19	1440:3
1492:19	1321:1, 1321:4	1534:3	1498:8	Archrock 1453:7
1493:9, 1494:6	1321:16	applicants	1501:11	1453:8
1502:13	1323:8, 1326:5	1476:12	1505:11	1453:10
1505:5	1377:14	1533:11	1505:13	1453:25
1505:24	1420:9	application	1506:20	area 1286:11
1525:8	1421:18	1304:3	1514:14	1286:14
1583:20	1484:7	1344:11	1523:17	1286:16
1583:23	1504:16	1426:21	1547:17	1316:2, 1316:3
1584:6, 1585:6	1552:24	1428:3	1567:21	1406:16
1586:1	1576:9	1437:23	1579:11	1444:14
annually 1278:3	app 1438:3	1475:11	1601:15	1444:15
1439:24	apparent 1542:7	1599:16	1601:16	1473:10
1490:1	apparently	applications	1602:3	1509:25
1500:22	1490:15	1271:21	apprised	1510:1
answer 1273:10	appeal 1476:21	1428:4	1523:21	1534:18
1276:21	1476:24	1428:10	approach 1275:4	1569:20
1276:25	1533:16	1468:14	1414:6	1570:12
1307:10	1533:21	1475:5	1438:21	1590:12
1307:16	1533:25	1475:12	1547:1, 1576:6	1590:14
1329:5, 1329:9	1534:3	1522:3	approaches	1590:16
1347:8, 1348:9	1534:13	1530:25	1275:7	1590:20
1356:18	1536:18	1532:7	1395:10	1590:21
1446:21	appeal's	1532:11	appropriate	areas 1295:4
1459:10	1534:10	1532:13	1302:8	1327:14
1499:11	appeals 1534:14	applied 1601:8	1303:11	1327:25
1504:17	1545:3	applies 1283:7	1305:10	1328:25
1505:6	appear 1417:1	1457:17	1324:2	1403:23
1506:17	appeared	1472:24	1324:21	1419:16
1513:14	1362:18	1511:6	1326:15	1477:11
1541:3	appearing	apply 1344:18	1344:12	1520:11
1576:12	1451:2	1518:4	1345:9	1520:19
1598:4	appears 1359:17	1519:13	1364:21	1570:16
answered 1307:3	1368:11	1544:6, 1591:9	1429:5	1572:20
1541:5	1368:11	appointed	1430:20	1590:2
1578:12	1439:21	1262:3	1491:1	1609:17
answering	1456:8	apportionment	1491:17	1609:19
1386:7	1540:16	1328:16	1519:4, 1540:5	argue 1508:5
1421:12	1599:17	appreciate	1586:9, 1591:9	argument 1534:6
1513:7	Appendix 1336:6	1267:25	approve 1342:14	Arizona 1248:5
answers 1307:25	1336:8	1268:3, 1268:3	1535:12	arm 1284:3
1446:1	1465:24	1274:17	1535:12	1284:10
1468:21	1466:2	1305:15	1536:4, 1537:4	Arreguin
anticipated	1485:16	1309:17	approved 1304:3	1246:21
1373:13	1485:18	1371:8, 1372:1	1358:22	1264:7, 1614:6
anybody 1498:18	applicability	1372:2, 1375:4	1359:6	Arrowhead
1581:13	1309:8	1390:1	1437:10	1277:2
anymore 1334:9	1354:13	1397:16	1438:24	1277:14
anyway 1309:10	1354:17	1398:15	1589:1	asked 1310:13
1373:4	1360:24	1417:18	approving	1312:11
1513:17	1360:25	1419:20	1518:2, 1520:3	1347:7, 1420:5
APD 1300:16	1361:2	1426:8	approximately	1491:20
1304:3, 1304:9	1440:20	1426:12	1278:6	1502:24
apologies	1508:23	1426:19	1554:14	1511:6, 1511:7
1329:19	applicable	1427:2, 1429:2	apps 1369:5	1512:19
1355:14	1344:19	1429:5	1369:15	1538:9
1527:17	1355:21	1432:10	1438:13	1540:19
apologize	1360:4, 1366:6	1436:20	April 1260:15	1545:13
1285:15	1461:17	1446:2	1359:6	1578:12

Volume 5
9/24/2021

EIB Ozone Hearing

asking 1290:10 1291:3 1369:12 1382:4, 1386:6 1395:1, 1395:6 1465:21 1485:13 1502:16 1504:12 1510:10 1512:16 1513:13 1514:14 1531:4 1531:21 1539:4, 1539:4 1539:9 1539:16 1540:13 1540:14 1541:8 1546:19 1556:15 1556:16 1567:12 aspect 1361:7 1455:18 asphalt 1569:6 assembled 1398:16 asserted 1476:20 1534:3, 1534:8 1584:1 assess 1305:21 1532:19 1555:15 1555:16 assessed 1525:6 1533:4 1544:16 assessing 1522:13 1526:16 1536:15 1547:1 assessment 1489:15 1489:23 1492:1, 1499:5 1547:10 1585:4 assessments 1487:12 1489:9 1489:25 1500:5 1510:20 asset 1472:14 1480:5 assets 1430:6	1435:17 1472:18 assigned 1466:4 assist 1380:15 assistance 1378:6 1378:17 1514:2 Assistant 1247:11 1247:16 1247:21 associated 1272:24 1301:21 1342:23 1353:20 1377:23 1428:5 1452:19 1481:18 1487:6 1490:22 1500:6 1500:10 association 1248:2, 1251:2 1251:14 1258:14 1259:3, 1260:3 1261:3, 1293:3 1387:2, 1387:3 1451:2 Association's 1258:15 1258:18 1258:20 1259:4, 1259:6 1259:9 1259:11 1259:14 1261:10 assume 1296:8 1330:6, 1331:3 1450:11 1502:16 1502:21 assumption 1502:18 assurance 1350:2 assurance/qu... 1350:19 assure 1475:25 1502:5 1538:25 asthma 1293:2 1403:22 1403:22 1404:3, 1404:7 asthma-related	1404:4 asthmatic 1286:2, 1286:3 Athena 1254:14 1262:13 1284:20 1287:19 1288:1 1288:15 1289:9 atmosphere 1271:2 1593:13 atmospheric 1475:8 attach 1455:9 1546:20 attached 1258:3 1336:7 1485:17 attachment 1258:8 1258:10 1258:11 1258:13 1336:8, 1466:3 attain 1400:25 Attainment 1397:23 1528:2 attendee 1299:3 1332:22 1339:7 1348:21 1376:5 1432:21 1443:4 1448:19 1463:15 1479:9 1495:10 1574:7 1600:10 attendees 1268:11 1268:12 attention 1410:8 1431:18 1461:4 1475:24 attest 1427:10 attorney 1247:11 1247:11 1248:15 1249:11 1250:18 1442:19 1486:20 1488:1, 1497:4	1506:25 1508:14 1509:2, 1513:4 1614:10 1614:13 attorney-client 1511:2 attorneys 1331:16 1490:5 attributed 1289:14 audio 1262:24 1315:13 1317:12 1317:18 1390:20 1495:19 1495:22 1552:15 1561:18 audit 1359:17 1360:9 1360:20 1360:21 1361:8 1440:15 1440:25 1441:6, 1480:2 1480:4, 1487:7 1487:10 1488:25 1489:6 1489:20 1490:12 1492:1, 1494:5 1500:18 1500:21 1501:5 1504:22 1505:1 1507:14 1508:22 1508:25 1509:18 1509:20 1509:21 1510:13 1510:13 1510:16 1510:21 1510:22 1510:23 1583:25 1584:3, 1584:4 1584:13 1584:16 1584:21 audited 1480:12 auditing 1360:10	1487:6, 1501:2 1501:2, 1501:5 1504:24 auditor 1361:12 1429:9, 1441:2 1441:4, 1501:7 auditors 1429:8 audits 1359:20 1359:20 1440:25 1480:9 1487:12 1489:8, 1492:4 1510:3 August 1448:9 1450:9 aunts 1573:4 Austin 1251:18 authorities 1304:15 authority 1366:18 1401:14 1401:15 authorize 1588:12 authorized 1384:15 authorizes 1301:9 automatic 1373:23 availability 1295:15 available 1268:14 1295:9 1338:24 1351:3, 1358:3 1363:5, 1385:8 1425:3 1428:12 1464:20 1474:17 1478:2 1493:18 1524:8, 1526:8 1526:22 1533:23 1539:2 1550:16 1562:20 1562:20 1594:4 Avenue 1247:22 1248:16 1251:17 1252:18 avert 1408:1 AVO 1381:9 1381:13
--	---	--	---	---

Volume 5
9/24/2021

EIB Ozone Hearing

avoid 1383:14	1587:25	1281:5, 1435:4	1445:24	1312:16
avoided 1531:16	1588:5, 1588:7	1608:9	1446:8, 1567:7	1313:4, 1313:7
avoiding	1595:6	bad 1462:9	basis 1271:24	1314:1, 1325:6
1528:17	1595:17	1528:15	1277:6, 1350:8	1329:3
aware 1271:8	1595:18	Baker 1251:10	1386:5	1331:20
1272:22	1595:20	balance 1293:21	1399:18	1334:8
1377:18	1600:24	1570:24	1457:4, 1489:5	1334:21
1378:12	1601:4	1575:17	1489:12	1340:19
1451:17	1602:14	bandwidth	1489:23	1346:9, 1347:2
1457:23	Baca's 1481:13	1497:2	1506:3	1348:4, 1348:5
1526:8	bachelor	1576:10	1506:14	1352:4, 1354:2
1532:12	1453:20	1611:6	1507:6	1354:3
1532:14	bachelor's	bang 1605:2	1507:14	1354:17
1533:15	1468:5, 1475:7	1605:3	1523:4, 1529:8	1356:16
1534:15	back 1265:8	Barr 1467:13	1533:19	1370:22
1545:15	1268:18	1467:14	1534:17	1375:1
1570:15	1276:20	barrels 1567:9	1534:23	1377:12
awareness	1277:19	BARRY 1247:7	batteries	1385:16
1525:18	1282:13	Bartley 1260:19	1301:15	1412:21
1527:4	1289:3, 1289:8	1260:20	1306:13	1423:11
Aztec 1445:2	1295:2	base 1282:21	1306:14	1423:15
	1297:15	based 1262:10	battery 1283:2	1430:17
B	1310:9, 1318:6	1266:20	1283:4	1432:6
	1318:9	1268:7	1337:11	1433:22
B-E-L-L 1392:16	1318:11	1295:14	1338:12	1436:3
B-like-boy-0...	1320:20	1322:4	1338:16	1442:18
1403:2	1321:4	1326:12	1340:14	1450:21
B-O-U-Q-U-I-N	1321:14	1332:4, 1413:7	bcurtis@jhjl...	1483:24
1553:15	1360:8, 1361:6	1422:25	1248:7	1488:11
B-R-O-W-N	1363:24	1456:5	bear 1252:21	1515:7
1435:1	1389:23	1472:21	1281:22	1519:21
B. (1 1366:3	1390:14	1489:6	1558:20	1520:17
Baake 1248:19	1390:15	1490:14	1559:5, 1559:8	1521:5
1248:19	1392:3, 1418:1	1491:2, 1500:7	1559:12	1521:24
baby 1283:2	1420:2	1502:19	Beatty 1252:22	1522:10
Baca 1255:4	1427:10	1548:5	beautiful	1523:19
1257:16	1428:21	baseline	1287:14	1525:14
1257:18	1444:2	1362:11	becoming 1293:2	1525:25
1257:19	1445:10	1366:21	1539:2	1527:15
1341:9	1446:19	bases 1322:2	bed 1606:1	1528:12
1341:18	1448:21	1322:3	began 1406:17	1535:15
1341:25	1460:21	basically	beginning	1536:14
1342:2	1465:6, 1465:9	1289:25	1335:22	1537:14
1343:20	1479:21	1374:3	1511:6	1538:9
1344:5, 1345:8	1480:15	1376:20	behalf 1326:4	1538:11
1346:3	1497:24	1426:5, 1557:1	1383:6, 1383:8	1538:13
1346:25	1509:12	1602:20	1451:2, 1460:4	1538:18
1347:11	1515:12	1608:24	behest 1386:19	1541:21
1348:17	1515:15	basin 1272:20	beings 1412:23	1547:9
1348:22	1540:7, 1552:9	1286:6	belabor 1356:17	1555:20
1349:16	1567:24	1286:14	belief 1319:25	1556:9, 1574:4
1349:23	1574:2	1306:9	1386:18	1581:3
1350:20	1574:20	1327:23	1524:12	1581:12
1351:19	1580:4, 1581:4	1327:24	believe 1265:16	1583:6
1477:22	1582:9	1435:18	1266:11	1588:14
1519:18	1582:11	1435:19	1281:23	1589:14
1520:6, 1529:2	1600:22	1444:5	1284:19	1594:3, 1595:3
1529:20	1607:24	1444:11	1294:4, 1298:5	1596:13
1581:15	1608:17	1444:16	1298:11	1598:3
1581:17	1609:18	1444:20	1307:3	1602:17
1582:1	background	1445:17	1311:17	1609:13

Volume 5
9/24/2021

EIB Ozone Hearing

believes 1331:21 1576:2 Bell 1255:13 1391:1, 1392:7 1392:8, 1392:9 1392:11 1392:16 1392:20 1393:1, 1393:7 1393:7, 1396:9 benefit 1272:1 1272:10 1352:14 1452:18 1457:13 1461:12 1480:22 1489:4 1518:20 1518:22 1592:2, 1611:1 benefits 1467:21 1473:12 1531:1, 1531:6 1593:10 1612:15 benefitting 1560:5 BENJAMIN 1247:8 Bent 1262:13 1284:17 1284:17 Bernalillo 1265:18 1265:20 1559:10 1614:3 best 1271:12 1305:25 1330:9 1533:23 1561:5 1562:19 1562:19 better 1264:1 1276:3 1281:16 1283:14 1283:15 1286:7 1302:15 1316:21 1387:22 1413:23 1498:2, 1506:3 1509:23 1523:16 1530:2, 1538:3 1540:2	1542:23 1575:24 1593:11 beyond 1287:13 1343:13 1381:20 1381:23 1417:7, 1506:3 1521:12 big 1270:17 1315:17 1337:1 1374:16 1444:22 1444:25 1517:16 1527:20 1606:10 1608:11 biggest 1300:6 1437:4 bill 1278:17 billion 1278:3 1278:6, 1291:5 1291:10 billions 1266:2 1266:13 biology 1271:23 bird's 1588:16 Bisbey-Kuehn 1255:8 1257:16 1257:17 1352:20 1353:1, 1354:7 1354:10 1354:14 1354:18 1354:22 1354:24 1355:2 1376:25 1377:11 1377:17 1379:3, 1380:4 1380:7 1381:14 1381:23 1382:8 1382:22 1383:5 1383:17 1383:22 1384:22 1385:11 1385:19 1387:11 1388:14 1388:21 1389:13 1389:17	1389:24 1418:3, 1419:5 1419:13 1420:14 1421:4, 1421:9 1422:2, 1422:6 1422:16 1581:14 1582:1, 1582:5 bit 1269:20 1273:5 1274:21 1290:14 1308:9 1366:13 1370:21 1374:12 1374:19 1374:22 1387:9 1423:16 1428:2 1429:18 1429:21 1444:3 1478:24 1503:20 1509:24 1529:23 1557:10 1610:12 1611:23 Bitzer 1247:7 1307:18 1307:20 1333:14 1333:15 1339:23 1339:24 1349:12 1349:13 1391:17 1391:18 1391:23 1417:25 1418:9 1418:12 1433:10 1433:11 1446:6, 1446:7 1446:13 1447:1, 1450:1 1450:2, 1464:4 1464:5, 1483:9 1483:10 1496:24 1496:25 1497:8, 1497:9 1497:12 1497:16 1498:8	1579:25 1580:1 1601:23 1601:24 1605:20 1612:10 Bitzer's 1390:8 bleed 1395:21 1407:16 1563:14 1567:3 Blewitt 1254:20 1314:19 1314:23 1315:2, 1315:7 1315:16 1315:18 1315:23 1316:2, 1316:6 1316:11 1316:20 1316:23 1317:1, 1317:6 1317:8 1317:23 1318:3 1318:14 1319:1, 1319:7 1320:7, 1320:9 1320:11 1320:18 1321:2, 1321:6 1321:7, 1321:9 1321:17 1323:8 1323:12 1323:18 1323:19 1325:9 1325:11 1325:15 1326:3 1328:18 1329:12 1330:6, 1330:8 1330:12 1331:21 1331:25 1332:4 1332:14 1332:16 1332:25 1333:8 1333:21 1333:25 1334:3, 1352:2 Blewitt's 1318:16 1318:20 blockout 1477:18 blowout 1324:9	board 1246:1 1247:4 1254:19 1254:24 1255:7 1255:11 1255:11 1256:10 1256:12 1256:18 1256:21 1256:25 1257:20 1262:3 1262:11 1263:14 1264:25 1268:1 1273:15 1286:13 1287:8 1287:23 1288:23 1288:25 1290:5 1292:13 1294:12 1294:16 1295:24 1296:8 1296:10 1296:21 1296:25 1298:7 1298:12 1298:20 1298:25 1299:10 1299:14 1299:23 1332:17 1332:19 1336:3 1336:12 1339:5 1339:11 1343:19 1344:9, 1348:1 1348:19 1349:2, 1353:7 1356:19 1358:3 1369:12 1372:2, 1376:3 1376:9 1390:22 1393:9, 1395:1 1400:23 1401:5 1401:14 1401:15
---	--	---	---	---

Volume 5
9/24/2021

EIB Ozone Hearing

1401:21	1558:11	bought 1406:15	1361:4	build 1370:8
1401:21	1565:1	Boulder 1249:4	1399:14	1378:4, 1378:6
1406:1	1567:14	Boulevard	1497:24	1438:8
1409:19	1567:20	1246:22	1559:14	1439:23
1412:10	1568:21	boundaries	bringing	building 1270:8
1412:17	1570:21	1520:13	1276:20	1282:25
1413:5	1572:12	Bouquin 1257:4	1302:11	bumbo 1391:20
1413:25	1574:6	1551:24	brings 1384:17	1391:20
1417:24	1574:15	1552:22	1397:20	burden 1457:11
1418:8, 1419:3	1576:2, 1576:5	1553:7, 1553:8	broad 1268:7	1472:23
1424:24	1577:23	1553:10	1456:5	1473:19
1425:4	1587:25	1553:13	broader 1584:3	1473:24
1425:12	1589:8, 1589:9	1553:14	broke 1417:23	1489:3, 1489:3
1432:13	1599:22	1553:19	1574:4	1500:15
1432:20	1600:8	1554:1, 1554:7	broken 1300:1	1501:4, 1513:8
1435:2	1600:14	1554:8, 1557:3	1566:9	1559:8
1435:13	1601:4, 1603:8	box 1249:20	brought 1289:21	1585:25
1435:22	1604:6	1250:5, 1251:5	1379:20	burdened
1436:11	1605:13	1251:23	1443:12	1513:19
1441:20	1605:19	1275:21	1528:6	burdens 1457:13
1441:25	1606:14	1317:13	1554:17	1492:24
1443:2, 1443:7	1607:20	Bracewell	1570:1	1586:1, 1593:9
1448:16	1609:5	1251:16	Brown 1256:8	burdensome
1449:6	1609:23	Brandon 1248:3	1433:23	1490:1, 1491:3
1450:25	1610:8	1314:15	1434:11	1491:12
1453:3, 1457:5	1612:18	break 1317:22	1434:16	1492:4, 1492:5
1458:24	Board's 1296:23	1318:10	1434:18	1503:5
1463:14	1352:13	1318:11	1434:24	1505:25
1467:10	1452:18	1386:10	1435:1, 1435:2	1506:4
1476:11	1536:6, 1536:7	1390:5	1435:11	1506:22
1476:21	1588:12	1390:14	1436:1	1524:22
1476:24	1588:16	1390:16	1441:11	Bureau 1260:21
1477:8, 1479:7	1588:25	1465:2	1442:3, 1442:5	1369:13
1479:13	1594:14	1465:10	1442:12	1369:25
1493:4, 1495:9	1595:1	1551:18	1442:22	Bureau's
1495:13	boards 1286:23	1552:10	1443:9	1370:22
1496:7	1402:5	breakthrough	1443:12	burn 1324:13
1496:12	bold 1521:5	1404:11	1443:22	1399:21
1497:4	1521:8	breathe 1523:22	1444:2	business
1501:14	Bonime 1255:17	Brendan 1260:16	1444:10	1267:10
1514:21	1391:2, 1402:9	1260:18	1445:1	1267:22
1515:3	1402:13	Brian 1422:9	1445:15	1267:23
1515:12	1402:14	brief 1316:19	1446:4	1271:9
1516:12	1402:15	1320:21	1446:12	1272:16
1516:20	1402:16	1435:3	1446:25	1272:18
1516:23	1402:16	1519:16	1447:3	1358:21
1517:6	1402:22	1562:10	1447:10	1364:19
1519:12	1403:1, 1403:2	briefly 1311:5	1447:19	1441:4
1522:18	1403:7, 1403:9	1336:16	1447:23	1471:14
1533:16	1403:15	1362:4, 1362:5	1448:1, 1571:8	1513:15
1534:11	1403:16	1453:18	1585:24	1513:17
1534:13	1405:3	1456:22	Brown's 1435:23	1514:2
1534:14	books 1493:5	1460:23	1585:25	1514:15
1534:21	1501:14	1463:6, 1476:9	budget 1277:4	1549:12
1534:22	bore 1303:2	1486:15	1277:13	1549:16
1535:2, 1535:3	born 1265:3	1516:18	1277:16	1550:12
1535:16	borne 1400:18	1522:17	1397:20	1558:19
1536:4, 1537:3	borrowing	bright 1303:6	1503:24	1558:22
1542:19	1279:20	bring 1275:7	budgetary	1568:18
1543:7	bottom 1558:16	1275:9, 1289:6	1570:22	1568:25
1551:16	Botts 1251:10	1308:17	budgets 1278:22	1569:9

Volume 5
9/24/2021

EIB Ozone Hearing

1570:21 1586:20 businesses 1514:11 1602:4 button 1263:11 1263:13 1263:20 Butzier 1251:21 1451:3, 1603:2 1603:3, 1603:7 1604:2 1604:24 1613:18 Butzier's 1608:17 Bye 1334:5	1475:19 1475:21 Calculator 1260:11 calendar 1430:5 1461:13 1461:20 calendars 1606:19 California 1253:6 call 1262:10 1262:17 1294:10 1297:21 1315:12 1315:16 1315:19 1316:11 1334:19 1341:9 1390:25 1391:4, 1392:3 1392:5, 1477:6 1508:2 1511:10 1513:23 1551:23 1552:3 1552:18 call-in 1391:10 1391:15 1557:12 1557:13 called 1266:23 1271:10 1350:2 1477:13 1552:3 caller 1391:10 1391:12 1391:18 1392:2, 1571:9 1571:11 1571:12 calling 1262:9 1316:13 1352:19 1554:11 1597:13 calls 1581:14 camera 1385:17 cameras 1385:16 camps 1572:19 cancel 1402:2 cancer 1569:14 capable 1357:3 1470:12 capacity 1319:19 1321:19	capita 1277:5 capture 1271:11 1272:23 1357:14 1395:12 car 1556:11 car's 1559:11 carbon 1269:23 1271:4 1271:14 1290:7, 1394:3 1410:19 1446:13 1555:10 carbon-produ... 1555:10 care 1275:13 1283:20 1287:5, 1307:4 1394:18 cared 1417:5 career 1492:16 carefully 1388:6, 1388:7 1520:25 Carlisle 1246:22 Carlsbad 1568:20 1570:2 1572:15 Carlson 1254:8 1262:13 1273:20 1273:21 1273:22 1274:2, 1274:4 1274:10 1274:11 1274:14 1274:15 1279:11 1279:14 1294:14 1568:25 Carr 1260:8 1260:9 carry 1276:14 1276:14 1276:15 carrying 1556:3 cars 1413:11 case 1303:5 1303:7 1352:10 1417:23 1419:17 1419:17 1421:4, 1438:6 1444:9, 1498:5 1519:11	1534:10 1545:1, 1574:1 1602:22 cases 1328:7 1368:11 1368:11 1368:12 1388:1, 1440:9 1441:8 1532:11 1551:2 1585:23 Casey 1252:12 1336:4 1465:21 1485:13 1494:20 1494:20 1498:19 1499:1 casing 1303:2 catalysts 1271:13 catch 1547:11 Cates 1247:7 1304:21 1304:22 1305:15 1307:9 1307:14 1333:10 1333:11 1339:21 1339:22 1349:10 1349:11 1386:11 1386:12 1387:11 1388:11 1388:16 1389:12 1389:14 1389:22 1389:25 1390:3, 1433:7 1433:8 1443:24 1443:25 1444:21 1445:9 1445:25 1446:7 1449:24 1449:25 1464:1, 1464:2 1483:5, 1483:6 1496:21 1496:22 1579:20 1579:21	1601:19 1601:20 1605:12 1605:24 1612:10 cattle 1400:2 causal 1343:12 1350:14 cause 1290:24 1290:24 1326:9 1360:18 1401:20 1410:21 1417:7 1438:25 1476:18 1511:12 1511:16 1511:20 1518:2, 1518:9 1519:25 1521:2, 1522:4 1531:11 1532:3 1532:19 1535:17 1535:22 1536:11 1541:25 1542:10 1544:11 1545:18 1545:24 1547:6 1547:12 1588:20 1589:12 1589:17 caused 1289:14 1298:9, 1304:7 1327:22 1328:1 1410:12 1533:18 1569:15 1572:18 causes 1328:5 1399:22 1547:22 1549:15 1550:8 causing 1400:8 1415:23 1547:8, 1560:2 caution 1519:6 cautionary 1519:23 Cavness 1254:6 1262:11 1263:5, 1263:6
C				
C(2)(d 1259:16 C(3 1259:17 C(4 1259:17 1259:17 1259:18 1259:18 C(7 1259:15 C-A-R-L-S-O-N 1274:11 C-A-V-N-E-S-S 1269:15 C-H-R-I-S-T-... 1288:2 C-O-O-P-E-R 1485:2 C-O-P-E-L-A-N-D 1452:4 C-U-L-L-Y 1269:15 C.(3 1461:8 1483:16 C.A.R.E 1248:12 cabinet 1419:4 calamity 1289:22 1291:3 calculate 1322:4 1322:17 1347:23 calculation 1383:18 1383:20 1475:1 1475:11 1475:17 calculations 1323:5 1336:25 1474:21 1475:15				

Volume 5
9/24/2021

EIB Ozone Hearing

1263:9	1456:5, 1487:9	1475:16	1422:10	Chairman 1453:3
1263:10	1489:12	1478:15	1422:17	challenge
1263:12	1489:24	1491:11	1425:12	1262:20
1263:14	1502:4	1491:19	1432:24	1272:20
1263:21	1502:22	1492:3, 1494:7	1442:1, 1443:8	1361:10
1263:23	1522:21	1507:4	1443:10	1547:21
1268:19	1522:22	1583:21	1447:2, 1449:8	1607:14
1268:20	1523:14	1583:24	1449:9	1611:15
1268:22	1523:15	1584:6	1449:18	challenged
1268:23	1530:25	1584:12	1450:25	1534:16
1269:2, 1269:6	1532:1	1584:15	1463:17	challenges
1269:8	1532:11	1585:4	1463:19	1295:25
1269:14	1532:11	1585:22	1479:14	1318:12
1269:14	1534:16	1586:1, 1586:9	1479:16	1428:9
1269:18	1578:25	certifications	1480:7	1544:23
1273:10	1578:25	1377:8, 1448:8	1480:14	1592:12
1273:13	1583:4, 1585:1	1491:15	1481:1, 1481:3	1592:14
1273:18	certainly	1585:7	1481:8	challenging
CBG 1465:3	1268:12	certified	1481:12	1426:16
ccolclasure@...	1294:16	1584:24	1481:22	1492:15
1252:25	1297:19	certify 1430:10	1481:25	1533:17
CCR 1246:21	1380:7, 1425:7	1474:25	1482:3, 1482:8	chance 1519:24
1614:18	1471:23	1488:20	1482:13	1539:1
ccs@modrall.com	1524:11	1491:10	1495:14	1547:11
1251:25	1524:22	1492:9, 1585:3	1495:17	1550:4
cdesaillan@n...	1525:14	1614:7	1495:21	change 1268:11
1250:21	1527:20	certifying	1495:23	1275:8
CDG 1258:6	1528:15	1383:3	1496:1, 1496:4	1292:22
1258:7, 1258:9	1548:2	1461:15	1496:9	1358:11
1258:11	1607:15	1472:22	1496:13	1387:24
1258:12	1607:21	1491:13	1497:2	1397:13
1338:7	1608:3	1492:9	1497:24	1400:12
1465:11	1609:11	chair 1247:5	1497:25	1406:23
CDG's 1582:22	certainty	1299:11	1498:1, 1498:4	1408:4
1583:22	1525:21	1299:13	1499:11	1410:20
CDPHE 1486:20	1526:6	1310:8, 1310:9	1499:24	1412:21
1486:25	certificate	1310:11	1500:8	1417:10
CDR 1368:17	1464:20	1310:22	1501:10	1429:1, 1437:4
1374:2, 1430:7	certification	1332:24	1501:20	1437:9, 1439:6
1430:8	1363:11	1333:1	1501:23	1471:20
1436:25	1363:13	1333:11	1502:9	1532:16
1437:1	1363:17	1339:12	1502:25	1573:15
1455:12	1364:12	1339:14	1504:13	1578:14
1456:2	1371:10	1340:3, 1349:3	1505:10	changed 1266:23
1458:16	1371:11	1349:4, 1355:3	1516:23	1387:19
CDRs 1525:8	1371:15	1355:7, 1355:9	1566:10	1420:25
cede 1581:4	1372:8	1376:10	1568:1	1426:11
Center 1248:15	1372:17	1376:12	1574:16	1504:1
1249:7	1372:21	1376:25	1574:18	changes 1319:8
1250:17	1373:10	1377:1	1575:10	1357:18
1250:19	1373:22	1377:11	1575:19	1357:22
1277:2	1374:5	1377:16	1576:8	1365:4, 1388:5
centers 1271:17	1375:13	1378:18	1576:24	1388:8, 1389:9
1271:18	1377:2	1379:3	1577:25	1408:1
central 1438:16	1378:22	1379:13	1578:9, 1579:9	1412:25
1439:16	1383:25	1380:5	1579:14	1413:25
centuries	1429:2	1380:18	1600:15	1414:1
1417:5	1429:11	1380:21	1600:16	1422:12
CEO 1569:4	1429:15	1421:17	1610:14	1423:1
cert 1372:20	1461:18	1421:18	1610:17	1436:12
certain 1367:12	1472:2	1422:2, 1422:5	1611:4, 1611:5	1437:3

Volume 5
9/24/2021

EIB Ozone Hearing

1440:16	1605:20	Cindy 1462:13	1360:3, 1361:1	1360:9
1440:18	Cheryl 1246:21	circle 1608:17	1585:9	1377:15
1440:19	1264:7, 1614:6	circulated	1587:18	1387:22
1442:16	chest 1400:8	1451:14	clarify 1299:20	1411:18
1454:15	chicken 1290:16	circumstance	1300:2	1429:18
1456:7	chief 1250:3	1371:3	1303:23	1472:5
1456:15	1274:23	circumstances	1310:25	1479:23
1470:23	childhood	1357:20	1312:15	1507:18
1508:1, 1525:6	1404:18	1367:19	1356:4	1516:24
1543:13	1572:25	1530:25	1357:20	1539:3
changing	children	Cisco 1246:14	1360:22	1541:21
1585:10	1281:17	1268:14	1361:21	1549:18
Chapel 1415:14	1281:25	citations	1363:2	1585:11
characteriza...	1286:19	1351:1	1368:14	1597:14
1445:14	1287:12	cite 1351:1	1471:10	1601:13
characterize	1403:22	cities 1276:7	1476:23	clearly 1285:1
1300:11	1404:3, 1404:7	citizens	1478:21	1392:13
characterized	1404:9	1248:13	1480:18	1408:25
1324:4	1404:13	1287:6	1538:7	CLELLAND 1280:6
charge 1273:4	1415:21	1401:17	1582:24	1280:12
1475:14	1415:25	1401:18	1588:18	1280:14
Charles 1250:18	1559:4	1526:23	1601:3, 1601:5	1280:20
1391:1, 1392:4	children's	Civic 1249:7	clarifying	1280:24
chat 1262:18	1560:18	1446:9	1303:8	click 1317:13
1262:18	choice 1278:21	claim 1329:8	1304:12	1317:19
1262:20	1278:21	1524:14	1365:25	clicking
1263:1	choose 1279:6	1534:21	1375:3	1317:11
1294:11	1279:19	1535:2	1483:14	client 1347:1
1299:4	1411:7	claims 1327:12	1548:15	clients 1467:16
1332:23	1428:12	1328:23	1585:6, 1602:3	1467:17
1339:9	1470:4	1343:4	clarity 1301:19	1470:17
1348:23	1470:15	1343:17	1306:23	1480:2
1376:7, 1391:6	1546:25	1407:20	1307:5	1482:21
1391:6	1555:23	1476:20	1309:11	cliff 1289:22
1414:12	1555:24	1476:21	1348:1, 1348:5	1291:3
1432:23	chooses 1546:24	1477:8	1456:3	climate 1289:22
1443:5	Chris 1465:20	clarification	1535:11	1291:3
1448:20	Christian	1309:7	class 1433:14	1292:22
1463:16	1573:8	1356:12	1580:5	1293:23
1479:11	Christina	1359:10	classification	1322:21
1482:17	1251:21	1366:24	1590:11	1395:24
1495:11	1451:1	1367:18	classify	1406:11
1552:3	Christodoulou	1380:19	1344:17	1406:23
1552:21	1254:14	1387:22	clause 1357:2	1407:19
1574:9	1262:13	1419:14	clean 1248:13	1408:1, 1408:4
1600:12	1287:19	1419:20	1266:8, 1266:8	1408:9
Chaves 1569:8	1287:21	1464:16	1289:1	1408:13
check 1268:10	1288:1, 1288:2	1480:17	1347:25	1410:4
1275:20	1288:4	1481:2, 1498:9	1407:23	1410:20
1335:6	1288:13	1548:22	1477:12	1411:3
1362:12	1288:15	1550:7	1521:6	1412:21
1381:19	1288:21	1600:22	1526:20	1417:10
1417:13	1289:9	1613:12	1528:8	1486:3
1497:6	1291:16	clarifications	1528:14	1559:16
1517:23	CHRISTOPHER	1358:6, 1358:9	1588:24	1559:21
1520:5	1252:11	clarified	1590:1, 1590:4	1573:15
1528:18	1252:22	1358:15	cleaner 1399:21	Clinic 1249:12
1570:8	Church 1292:18	1358:20	clear 1273:15	Clinical 1249:8
1570:13	1406:5	1358:21	1273:24	1249:9
1577:20	1409:23	1376:15	1295:18	1249:10
cheering	1415:14	clarifies	1311:14	close 1263:18

Volume 5
9/24/2021

EIB Ozone Hearing

1277:15	1540:24	come 1265:21	1564:10	1390:18
1385:17	1541:14	1265:22	1603:4	1390:19
1406:14	1541:16	1266:14	1607:24	1390:21
1565:15	collaborated	1283:11	1608:7	1391:5, 1391:7
1565:22	1305:19	1285:19	commander	1393:3, 1393:4
closed 1383:24	collaboration	1287:7, 1294:4	1289:11	1393:10
1383:25	1389:5, 1389:6	1318:6, 1318:9	commandment	1397:3, 1397:4
closest 1395:7	collaborative	1365:15	1573:8	1403:11
1407:4	1266:18	1369:13	1573:11	1403:12
1407:18	1483:22	1387:1, 1387:2	commence 1306:6	1403:19
1410:17	1484:1	1390:14	commenced	1405:22
1415:25	collaboratively	1390:17	1300:17	1405:23
1566:13	1585:18	1427:10	commencement	1409:13
closing 1279:8	collect 1363:7	1430:13	1301:9	1409:14
1279:15	1556:5	1441:21	1301:22	1412:5, 1412:6
1279:20	1593:22	1446:19	1305:22	1412:11
1401:19	1593:24	1462:22	1430:22	1415:8, 1415:9
Club 1248:13	1597:10	1465:6, 1465:9	1431:2, 1431:9	1417:21
co-counsel	collected	1483:19	1431:25	1551:17
1451:3	1360:11	1489:19	commences	1551:19
co-testimony	1584:9, 1597:5	1492:21	1301:4, 1301:6	1552:2
1514:6	collecting	1506:8, 1552:9	comment 1254:5	1552:11
C02 1272:8	1593:16	1555:19	1254:7, 1254:9	1552:14
cobalt 1282:20	collection	1585:15	1254:11	1552:20
code 1315:25	1343:7, 1598:5	1585:18	1254:13	1554:3, 1554:4
1316:2, 1316:3	color 1410:15	1590:22	1254:15	1558:5, 1558:6
1316:6, 1316:7	Colorado 1249:4	1595:11	1254:17	1561:18
1338:18	1249:20	1612:25	1255:14	1562:6, 1562:7
1340:10	1250:5	comes 1265:15	1255:16	1562:12
1340:11	1250:10	1266:7	1255:18	1564:22
1340:14	1252:6	1277:15	1255:20	1564:23
1340:18	1252:14	1301:14	1255:22	1565:2
1340:21	1252:24	1302:23	1255:24	1568:13
1549:1	1271:10	1371:21	1256:5, 1257:5	1568:14
codes 1426:23	1272:17	1387:1, 1413:8	1257:7, 1257:9	1572:3, 1572:4
1469:19	1395:14	1427:9	1257:11	1573:23
cognizant	1441:14	1512:10	1257:13	1573:24
1302:6	1441:18	1513:15	1257:15	1603:19
1524:21	1457:22	1536:15	1262:6	commenter
cohorts 1444:1	1468:7	comfortable	1262:18	1414:11
Colclasure	1486:18	1570:5	1262:22	commenters
1252:22	1486:23	comfortably	1264:16	1262:9
1256:17	1487:14	1606:16	1264:17	1296:22
1256:23	1503:10	comforting	1265:1	1390:6
1298:5, 1331:8	1511:14	1525:23	1269:10	1552:17
1331:9	1524:18	coming 1273:24	1269:11	comments 1294:1
1331:19	1537:14	1277:21	1274:6, 1274:7	1319:11
1465:13	1537:21	1281:20	1280:16	1319:12
1465:16	1565:19	1299:22	1280:17	1327:7, 1352:3
1465:18	Colorado's	1302:24	1281:1, 1285:9	1356:2, 1356:3
1465:20	1486:19	1303:1	1285:10	1356:11
1467:6, 1467:7	1514:3, 1538:5	1309:14	1288:9	1356:15
1467:9, 1469:1	combination	1324:5, 1379:1	1288:17	1356:15
1469:8, 1478:1	1387:4	1411:17	1288:18	1357:19
1478:5	combine 1294:25	1447:20	1292:7, 1292:8	1357:23
1484:14	combines 1584:8	1479:19	1294:6, 1294:8	1358:19
1484:15	combust 1271:1	1515:12	1294:19	1359:16
1530:16	1395:13	1515:15	1364:5	1360:17
1530:18	combustion	1522:12	1382:11	1362:16
1530:19	1272:3	1522:20	1390:7	1368:5
1530:22	combusts 1272:2	1523:9	1390:17	1377:13

Volume 5
9/24/2021

EIB Ozone Hearing

1382:2	1538:14	1438:7	1500:19	1416:5
1387:17	1538:15	1438:13	1500:20	completion
1387:20	1539:10	1438:20	1500:20	1300:14
1388:9, 1389:3	1539:14	1438:23	1504:14	1302:25
1389:18	1539:17	1438:25	1514:12	1324:11
1406:2	1540:9	1439:13	company's	1407:8, 1431:1
1409:20	1540:12	1439:22	1275:13	1554:25
1422:13	1540:21	1444:18	1439:19	1555:1, 1555:3
1436:25	1541:8	1479:24	1507:14	1556:23
1437:16	1588:19	1487:2, 1487:4	compare 1490:8	1566:19
1443:18	commonly	1489:2	compared	completions
1448:6, 1477:4	1540:16	1489:10	1277:17	1324:14
1480:15	1541:6	1489:17	compel 1520:2	1395:11
1505:24	communications	1498:12	compels 1408:5	1395:13
Commercial	1610:19	1499:4, 1499:7	compete 1281:21	complex 1413:6
1252:10	communities	1499:18	1282:15	1426:10
1258:5	1292:24	1499:19	1284:7	1426:16
1334:15	1292:25	1500:2	competent	1426:18
1334:18	1394:20	1500:12	1536:15	1426:19
1336:4, 1336:9	1396:6	1501:17	competing	1428:6
1465:24	1399:10	1501:25	1282:8	1469:25
1473:1	1400:19	1503:9	competition	1503:21
1485:16	1407:3, 1408:8	1504:20	1283:9	1507:2
1492:12	1410:9	1505:3, 1505:6	1283:15	complexities
1494:10	1410:11	1506:10	compilation	1428:9
commission	1410:14	1508:3	1363:16	compliance
1276:10	1411:6	1508:16	1373:21	1336:23
1277:1	1526:12	1511:15	1584:6	1357:4
1441:15	1526:17	1513:4	1586:12	1358:16
1441:17	1565:14	1513:24	1586:15	1363:10
1441:19	1565:22	1514:8	compile 1437:25	1363:12
1614:20	1571:1	1514:15	1490:7	1363:17
commissioner	community	1524:1	1586:17	1364:1, 1364:8
1262:12	1266:4	1558:25	compiles	1364:12
1273:20	1285:22	1563:12	1584:10	1368:9, 1369:3
1273:21	1319:23	1567:1	complain 1291:5	1371:11
1274:16	1388:13	1575:15	complementary	1372:8, 1373:9
1276:5, 1278:1	1406:4	1583:24	1518:24	1374:4
1279:9, 1280:1	1457:12	company 1252:2	1522:6	1375:13
1294:14	1527:2	1252:3	1532:17	1375:17
1568:24	1558:19	1267:14	complementing	1377:5
commitments	1560:14	1267:15	1527:21	1377:21
1611:21	1570:20	1271:8	complete	1377:25
committed	1570:24	1274:24	1297:12	1378:9, 1379:8
1295:19	1572:24	1274:25	1396:5	1383:13
committee	1591:12	1274:25	1430:10	1384:6
1271:8	comorbidities	1275:1, 1275:2	1551:8	1410:23
1272:13	1404:17	1275:11	1589:16	1420:12
1563:16	companies	1383:7, 1383:8	1592:23	1421:25
committing	1266:2, 1270:5	1383:12	completed	1426:14
1607:17	1273:4, 1275:3	1384:7, 1384:9	1296:12	1430:6, 1435:9
common 1293:10	1275:6, 1275:6	1428:7	1492:3	1435:10
1305:13	1278:20	1428:15	1593:25	1436:24
1350:18	1279:19	1440:10	1602:16	1437:1, 1448:8
1413:7	1301:15	1441:1	completely	1454:4
1413:22	1304:2, 1306:3	1444:22	1283:3	1455:23
1414:5	1381:4	1448:5, 1454:1	1569:11	1456:1, 1457:8
1473:10	1384:14	1490:11	completes	1460:9
1524:15	1395:19	1490:20	1375:1, 1432:6	1460:18
1538:10	1407:14	1498:16	1447:16	1461:14
1538:12	1416:9, 1420:6	1499:13	completing	1461:15

Volume 5
9/24/2021

EIB Ozone Hearing

1461:18	1529:10	1453:15	1532:2	concerns
1461:23	1529:19	compounds	1534:19	1266:17
1462:2	1546:10	1271:4	1535:5	1286:17
1464:20	1547:2, 1551:9	1406:12	1536:20	1292:21
1467:15	1556:6, 1556:7	1412:16	1542:22	1300:6, 1343:3
1468:18	1556:18	comprehensive	1543:8	1351:5, 1377:3
1472:2, 1472:9	1559:14	1477:13	1543:21	1377:18
1472:14	1575:25	1501:17	1547:13	1398:9
1472:17	1577:19	1584:4	1549:5	1436:13
1472:19	1582:12	1584:17	1589:13	1449:14
1472:21	1582:20	comprehensively	concept 1357:11	1456:9
1472:22	1582:21	1592:17	1358:19	1458:19
1473:3, 1473:9	1582:25	compress	1362:1	1472:11
1473:13	1583:2	1453:12	1425:17	1491:7
1473:20	1583:13	1453:16	1426:1, 1426:1	1494:12
1474:1, 1474:4	1583:20	compressing	1426:2	1525:10
1478:15	1583:23	1453:11	1426:10	1525:17
1478:16	1584:7	compression	1458:16	1526:11
1480:3, 1486:3	1584:11	1453:10	1524:10	1558:12
1486:10	1584:15	1454:1	1529:17	1607:21
1487:5	1584:15	compressor	1543:18	concise 1362:22
1487:10	1584:19	1251:14	1543:22	1387:23
1487:12	1584:23	1258:14	1543:24	conclude
1488:19	1585:6	1258:15	1591:7	1338:20
1488:20	1585:22	1258:18	concepts	1457:25
1488:23	1585:23	1258:20	1455:14	1459:5
1489:1, 1489:6	1586:1	1259:3, 1259:4	1455:17	concludes
1489:7, 1489:9	1586:10	1259:6, 1259:9	1598:13	1427:4, 1548:6
1489:14	1586:12	1259:11	conceptually	conclusions
1490:2	1592:20	1259:14	1578:20	1343:10
1490:12	1593:6	1260:3, 1261:3	concern 1281:19	concur 1439:9
1490:18	1593:12	1261:10	1281:20	condensate
1491:8	1594:17	1425:21	1300:5	1340:15
1491:10	1594:21	1425:24	1304:13	condition
1491:15	1594:22	1451:2	1377:8	1286:2, 1356:6
1491:18	1594:24	1453:15	1399:18	1357:1
1491:25	1597:1	1453:22	1400:1, 1400:3	1545:15
1492:8	1597:23	1473:5	1410:7, 1425:2	conditions
1492:10	1598:1	compressors	1436:19	1328:2, 1328:6
1493:6, 1493:9	complicate	1608:8	1480:8	1328:9
1494:6, 1499:4	1490:10	1608:10	1520:19	1363:11
1499:5	complicated	compromising	1530:5	1461:17
1499:10	1324:17	1512:12	1574:25	1508:7
1500:1, 1500:4	1499:23	computational	1577:14	1572:20
1500:6	compliment	1271:23	1577:22	1586:13
1502:23	1562:21	computer 1317:2	1585:25	conduct 1262:4
1503:2	comply 1356:13	1317:5	1586:25	1362:9, 1363:2
1504:20	1359:2, 1359:8	computing	1610:7	1364:7
1505:24	1437:10	1271:20	1611:14	1366:20
1507:4, 1507:7	1437:14	concentration	concerned	1367:1, 1384:9
1507:17	1440:6, 1440:6	1328:5	1267:2	1461:14
1511:5, 1511:9	1470:5	1328:15	1292:19	1472:17
1511:10	1471:12	1400:17	1379:24	1473:8
1511:13	1471:23	concentrations	1397:14	1473:11
1511:16	1559:1, 1583:9	1517:8	1491:9	1488:19
1511:17	1586:5	1517:11	1554:12	1488:23
1518:18	complying	1518:10	1606:2	1491:25
1519:14	1373:18	1520:1, 1520:5	concerning	1583:24
1523:15	1377:2	1520:12	1267:1	1586:22
1525:8	1473:18	1521:9, 1522:8	1290:23	conducted
1525:20	component	1531:11	1397:13	1343:8

1349:24	1513:12	1301:4, 1301:5	contaminate	1453:25
1364:10	1558:14	1301:7, 1301:9	1549:4	contractors
1377:24	1562:14	1301:23	contamination	1421:5, 1439:8
1489:10	1563:2	1305:21	1542:20	1583:16
conducting	1577:23	1305:23	contemplates	contracts
1363:15	1585:16	1306:5, 1320:7	1584:23	1428:16
1384:2	considerate	1322:11	contemporaneous	contrary
1455:23	1371:20	1326:19	1358:23	1588:23
1472:21	consideration	1346:12	contemporane...	contribute
1473:13	1368:6, 1429:7	1364:15	1357:15	1277:11
1473:24	1430:2, 1519:4	1364:22	1369:8	1277:19
1510:3	1521:22	1365:7	Content 1258:11	1326:9
1586:14	1531:19	1425:15	contention	1404:20
confer 1492:11	1544:5	1477:5, 1477:8	1611:10	1476:19
conferencing	1585:20	1477:15	contents	1518:3, 1518:9
1246:15	considered	1534:16	1353:20	1519:25
confidentiality	1388:7	1535:9	context 1308:16	1521:2, 1522:5
1507:15	1440:12	1535:16	1340:11	1522:8
confirm 1366:14	1551:3	1535:25	1340:18	1531:11
1499:9	1589:12	1545:14	1518:4	1532:3
conflict 1476:7	1589:17	1547:19	1520:22	1532:19
confusing	considering	1569:5	1530:3	1533:25
1354:23	1267:13	1588:18	1532:21	1535:18
1604:5	1276:3	1588:25	1591:9, 1601:8	1535:22
confusion	1562:12	1599:16	continue	1536:11
1304:7, 1348:6	1591:23	1599:17	1330:10	1536:19
1366:13	considers	consultant	1410:21	1541:25
1591:6	1547:23	1467:12	1416:22	1542:10
1591:12	consisted	1492:17	1416:23	1544:11
congregation	1546:17	1499:20	1436:21	1545:18
1292:19	consistency	1502:1	1443:11	1545:24
Congress	1342:11	1506:25	1445:7	1547:7
1251:17	1517:20	1513:5	1449:13	1547:12
1520:25	consistent	consultants	1520:21	1563:11
1590:7	1347:15	1383:3, 1383:7	1537:4	1588:21
connect 1507:25	1347:21	1383:11	1551:20	1589:12
connected	1375:22	1384:5, 1474:2	1577:4, 1594:1	1589:17
1270:21	1400:24	1485:25	1603:9	contributed
1271:18	1470:14	1490:4	1610:12	1533:18
connecting	1470:24	1492:17	continued	1572:20
1270:12	1523:6, 1551:5	1492:25	1248:1, 1249:1	contributes
1270:15	constantly	1501:9	1250:1, 1250:2	1401:24
connection	1281:18	consulting	1251:1, 1252:1	1547:22
1423:1, 1496:8	constituents	1336:20	1253:1, 1255:1	1570:23
1582:12	1276:18	1388:24	1255:3, 1255:4	1573:14
consensus	constitute	1438:6	1255:11	contributing
1295:24	1591:25	1438:10	1256:1, 1256:3	1277:16
consequences	constituted	consuming	1257:1, 1257:3	1410:20
1410:12	1456:4	1438:4	1257:16	1547:9
1413:15	constrain	contact 1494:13	1259:1, 1259:3	contribution
1528:5, 1528:7	1535:8	1525:19	1260:1, 1260:3	1328:13
1528:16	constraints	contain 1369:6	1261:1, 1261:3	contributor
Conservation	1270:5	contained	1341:19	1326:12
1248:12	1526:14	1316:16	1418:7, 1582:2	1393:25
1304:9	constructed	contains 1328:5	continuing	1395:24
consider 1276:4	1301:13	1455:8, 1587:7	1594:2	1417:8, 1544:2
1286:22	1379:4	1590:8	continuity	control 1260:13
1312:3	1531:10	contaminant	1458:3	1271:3
1374:18	1532:2, 1590:7	1588:21	continuous	1271:13
1437:18	construction	contaminants	1271:24	1303:12
1471:5, 1510:8	1274:24	1403:25	contract 1421:9	1342:22

Volume 5
9/24/2021

EIB Ozone Hearing

1350:19	1465:22	1452:1, 1452:3	1454:14	1503:5, 1504:8
1357:21	1474:15	1452:8	1460:11	1505:8, 1505:9
1383:24	1484:20	1452:10	1462:4	1506:15
1400:25	1484:21	1452:24	1462:11	1558:18
1407:8, 1413:1	1484:22	1453:4	1464:22	1559:1, 1559:5
1416:4	1484:25	1453:17	1476:25	1559:6
1416:18	1485:6, 1485:8	1454:20	1479:25	cost/benefit
1430:7	1485:14	1456:10	1480:10	1500:1, 1500:4
1441:15	1485:22	1457:24	1494:7, 1494:8	1500:6
1441:19	1485:24	1458:5, 1459:4	1529:15	costing 1455:20
1524:16	1487:20	1459:12	1544:13	1559:3
1540:21	1487:22	1459:17	1545:25	costly 1270:9
1542:23	1487:25	1460:3	1546:1, 1546:7	costs 1342:22
1543:2, 1555:1	1488:2, 1488:8	1461:21	1546:8	1377:8
1555:2, 1563:7	1488:17	1463:12	1546:12	1377:17
1566:18	1491:6	1463:18	1546:13	1377:19
1573:18	1493:17	1464:19	1548:20	1385:12
1588:11	1493:18	1465:1	1548:24	1394:19
1588:16	1493:21	Copeland's	1578:4, 1586:3	1399:12
1588:24	1494:3	1452:19	1587:3	1404:4, 1404:5
1598:17	1495:15	copies 1499:22	1590:18	1404:5
1598:21	1496:16	copper 1282:21	1590:19	1421:24
1599:19	1496:19	1282:21	1595:2, 1595:3	1422:7
1599:23	1498:6	copy 1294:14	1596:13	1422:25
controller	1498:19	1454:8	1598:24	1422:25
1394:19	1498:22	core 1270:11	1599:1	1440:24
controllers	1498:25	1536:18	1613:15	1441:3
1290:23	1499:18	1577:18	1613:18	1467:21
1293:16	1500:3	1577:22	corrected	1504:10
1394:17	1500:17	cornerstone	1529:4	1505:6
1394:22	1501:19	1377:20	correctly	Council 1248:12
1395:16	1501:21	correct 1304:5	1363:14	counsel 1247:16
1395:21	1501:24	1312:18	1533:13	1247:17
1407:11	1502:14	1317:3	correlate	1247:21
1413:4, 1416:8	1503:8	1344:18	1306:12	1247:21
1555:5, 1555:6	1504:19	1354:7	1549:22	1294:17
1556:24	1505:10	1359:14	correlation	1295:3
1563:11	1505:13	1360:12	1306:15	1295:18
1563:15	1505:23	1360:13	1349:20	1296:9
1566:23	1506:5	1360:21	correlations	1298:18
1567:3	1506:13	1361:12	1306:1	1320:14
controlling	1507:11	1361:13	1343:11	1320:15
1265:10	1509:10	1368:19	cost 1258:12	1365:15
1326:16	1509:15	1372:20	1368:23	1432:16
controls	1510:5, 1510:9	1374:6	1368:24	1450:9, 1478:6
1518:15	1512:25	1375:21	1385:4	1478:20
1519:12	1513:2	1382:8	1394:19	1494:13
convening	1513:20	1385:19	1394:21	1494:13
1565:1	1514:17	1388:14	1422:14	1494:15
conversation	1515:1, 1515:2	1401:5	1446:23	1494:16
1266:25	1584:1	1419:12	1457:11	1494:22
1295:18	Cooper's	1421:10	1457:13	1497:4, 1497:9
1331:16	1485:15	1424:12	1473:14	1507:15
1383:17	cooperation	1424:13	1475:12	1508:4
1612:2	1402:5	1424:16	1475:13	1508:15
conversations	Copeland	1431:19	1489:3	1508:22
1267:3, 1448:5	1256:13	1433:24	1490:22	1511:1
1474:13	1260:6, 1260:7	1433:25	1500:10	1603:18
coop 1290:16	1261:5	1454:9	1500:14	1610:7
Cooper 1256:19	1450:22	1454:10	1500:15	1614:10
1465:4	1451:25	1454:13	1500:17	1614:13

Volume 5
9/24/2021

EIB Ozone Hearing

counsels 1612:15 count 1577:18 counties 1276:7 1277:8, 1277:9 1277:11 1277:17 1277:18 1368:25 1480:12 country 1395:4 1563:19 county 1265:18 1265:19 1265:20 1265:22 1274:15 1276:10 1277:4 1277:15 1397:9 1397:16 1473:9 1477:12 1559:10 1565:18 1568:24 1569:8, 1614:3 couple 1266:19 1297:17 1299:20 1308:4, 1326:7 1370:6, 1370:7 1371:17 1376:13 1398:24 1419:1 1479:17 1479:21 1482:18 1494:4 1505:23 1512:4 1527:12 1548:15 1576:11 1576:13 1595:16 1606:12 1609:4 course 1281:17 1353:22 1358:13 1370:12 1387:12 1391:7 1417:20 1532:22 1558:25 1559:1 1607:13	court 1246:22 1253:5, 1264:7 1317:10 1424:8 cousins 1573:4 cover 1288:7 1382:5 1382:23 1432:7 coverage 1301:15 covered 1372:13 1501:13 covering 1382:14 covers 1362:23 1481:17 COVID 1404:10 1404:19 COVID-19 1404:8 craft 1538:2 crafted 1521:1 1577:10 create 1269:24 1271:5 1275:14 1275:17 1279:18 1398:11 1399:16 1413:19 1414:6 1416:15 1426:20 created 1287:2 1591:6 creates 1366:12 1558:24 creating 1412:15 1416:16 1426:21 1503:10 creation 1428:6 1455:10 1560:6 credence 1350:9 credible 1593:3 1604:20 1605:1 credit 1512:5 crisis 1395:24 1559:17 1559:21 criteria 1267:20 1343:16 1544:11 1544:15 1546:5 critical 1395:2	1406:10 1475:24 cross 1462:23 cross-examin... 1254:22 1255:5, 1255:6 1255:6, 1255:9 1255:10 1255:10 1256:9 1256:14 1256:17 1256:20 1256:23 1256:24 1256:24 1257:19 1323:15 1326:1 1338:24 1344:3, 1345:6 1346:1 1365:20 1368:1 1375:10 1379:23 1442:10 1448:11 1460:1, 1478:3 1478:10 1493:19 1494:1 1530:11 1530:21 1541:19 1548:16 1574:23 1595:18 Cross-State 1259:22 crossed 1575:20 Cruces 1248:20 1281:10 crude 1340:15 cruise 1290:3 Crusoe 1271:10 crying 1608:9 cryptocurrency 1271:21 Cully 1254:6 1262:11 1263:4, 1269:8 1269:14 cumbersome 1437:2 curbed 1404:14 curiosity 1446:16 curious 1510:3 1544:25 current 1337:21	1369:3 1380:11 1415:20 1426:18 1428:14 1453:5 1472:15 1474:8, 1488:9 1491:4 1517:25 1519:9 1521:20 1528:2 1529:10 1535:20 1536:23 currently 1272:18 1309:13 1397:25 1410:23 1417:2 1435:12 1490:14 1491:24 curriculum 1466:1 Curtis 1248:3 1314:15 1314:15 customers 1453:12 cut 1284:3 1284:10 1293:15 1395:15 1407:10 1411:4, 1413:3 1416:7 1416:13 1417:1 1566:22 1573:19 cutoffs 1344:20 cuts 1412:16 cutting 1495:19 1495:20 1495:22 CV 1336:7 1485:17 cycles 1428:18	D-U-E-W-E-K-E 1557:22 daily 1507:6 Dakota 1272:17 1487:14 DALVA 1248:8 damage 1394:20 1407:17 1407:18 1417:6, 1417:7 1559:21 damaging 1404:19 Dandy 1279:21 dangerous 1414:3 1415:22 1520:1 1569:19 DANIEL 1249:8 1250:12 DANNY 1256:11 1449:1 darn 1276:3 data 1271:17 1271:18 1305:25 1342:21 1343:7 1343:10 1349:19 1350:3, 1351:3 1351:3 1357:15 1360:10 1363:7 1363:16 1378:23 1379:1 1379:12 1400:14 1400:19 1421:24 1428:14 1438:14 1440:7 1440:14 1455:12 1456:1, 1470:4 1470:9 1470:18 1470:19 1470:22 1471:7 1471:10 1471:21 1480:16 1480:19 1480:21 1487:5, 1487:6 1487:9
				D
				D(1 1259:15 D(2)(c 1259:16 D(6 1259:17 D-A-V-I-D 1435:1 1553:14 1568:4

Volume 5
9/24/2021

EIB Ozone Hearing

1490:19	1455:11	1248:21	1601:4	1289:15
1490:20	1455:14	Davis 1247:6	1601:12	1289:16
1490:21	1456:2	1261:8, 1261:9	1605:23	debate 1429:18
1490:23	1458:16	1294:13	1608:6	1548:2
1492:8	1469:24	1299:17	day 1246:12	decades 1393:18
1499:19	1470:12	1299:19	1294:9	1394:23
1499:23	1470:15	1300:10	1295:14	1511:23
1502:11	1471:2, 1471:3	1300:15	1299:25	decided 1343:15
1502:17	1471:6, 1471:9	1301:24	1317:11	decides 1576:5
1503:3	1480:23	1302:10	1318:2, 1390:5	deciding
1503:11	1480:24	1302:13	1390:16	1525:11
1503:14	1503:3	1302:22	1390:18	decision
1503:18	1582:20	1303:13	1422:9	1338:15
1504:4, 1504:4	1583:8	1303:20	1510:14	1546:15
1504:6	1583:11	1303:22	1549:12	1547:19
1522:22	1583:12	1303:25	1549:16	1609:24
1523:10	databases	1304:11	1550:12	1609:25
1526:7	1378:11	1304:17	1552:12	decision-making
1526:15	1379:1	1304:24	1560:4	1542:9
1526:16	1426:24	1318:14	1561:22	decisions
1526:21	1428:15	1333:5, 1333:6	1567:10	1286:23
1550:16	1468:17	1339:17	1583:7	1287:12
1556:5	1487:9	1339:18	1605:15	1383:6
1576:15	1499:14	1349:7, 1349:8	1608:24	deck 1366:1
1576:19	date 1359:11	1353:14	days 1297:17	decline 1324:18
1582:12	1360:6	1380:22	1358:21	1444:8
1582:13	1368:22	1380:24	1364:19	1444:10
1582:21	1370:10	1381:22	1371:17	1445:10
1582:25	1370:18	1382:1	1404:3	declining
1583:2	1371:24	1382:18	1415:17	1444:13
1583:13	1380:13	1383:1, 1383:9	1510:14	decouple
1583:13	1437:6, 1440:4	1383:21	1510:16	1472:14
1583:13	1582:11	1384:16	1559:5	decrease
1584:7, 1586:3	date/time	1385:6	1576:13	1322:16
1592:12	1369:16	1385:13	1606:4	dedicated
1592:14	1582:15	1385:20	de 1248:9	1381:5
1593:16	dates 1520:14	1385:21	1250:18	1382:20
1593:17	1606:19	1386:2, 1420:3	1251:5	1420:25
1593:21	daughter	1420:14	1251:22	1421:2
1597:10	1282:16	1420:23	deadline	1500:19
database 1357:3	Dave 1434:4	1421:7	1311:17	1500:21
1357:16	1434:5	1421:11	1311:19	1501:5
1358:16	David 1248:19	1433:2, 1433:4	1312:16	1503:25
1358:19	1256:8, 1257:4	1443:16	1371:23	1504:3, 1504:6
1360:11	1257:12	1443:17	1372:3	1506:11
1368:9	1434:4, 1434:5	1449:20	1492:15	1509:21
1369:24	1434:18	1449:21	deadlines	1593:2
1370:1, 1370:4	1435:1	1463:22	1518:18	deemed 1519:25
1374:2	1551:24	1463:23	1592:23	Defense 1248:12
1375:17	1551:25	1482:14	deal 1276:25	1249:2
1378:6, 1378:9	1552:22	1482:15	1283:8	defer 1442:19
1378:14	1552:23	1482:23	1370:13	1494:15
1380:12	1552:25	1496:15	1427:5	deficit 1282:22
1420:15	1553:7	1496:17	1431:25	define 1315:3
1420:22	1553:14	1509:14	dealer 1289:6	defined 1338:17
1426:15	1554:1, 1554:8	1510:6	dealing 1350:17	1514:15
1428:2, 1428:4	1557:4, 1557:7	1512:17	1379:10	1591:13
1428:6, 1430:6	1557:8, 1568:4	1579:15	1441:21	1598:13
1436:24	1568:11	1579:17	1611:6	defines 1340:14
1437:1, 1448:7	1568:18	1600:19	deals 1436:13	definitely
1455:1	david@baakel...	1600:20	deaths 1289:14	1295:17

Volume 5
9/24/2021

EIB Ozone Hearing

1345:13	deletion	1308:10	1515:15	1591:18
1441:24	1362:16	1308:21	1518:1, 1518:2	1591:19
1498:3	1455:6	1309:3, 1311:1	1518:13	1592:16
1569:14	deliberating	1311:16	1518:25	1593:1, 1593:4
definition	1296:25	1313:25	1519:3, 1519:7	1593:8
1319:9	Delone 1249:3	1314:1	1520:18	1593:11
1319:18	1249:3	1338:10	1521:24	1594:8
1321:18	demand 1416:4	1341:9	1522:2, 1522:2	1594:18
1337:11	1560:3	1342:17	1522:7	1595:12
1338:11	demanding	1342:24	1522:11	1596:1, 1596:5
1338:13	1560:4	1344:9	1522:23	1596:12
1338:16	demonstrated	1346:14	1523:11	1597:4
1340:11	1360:18	1347:15	1523:17	1597:15
1340:12	1521:8	1350:23	1524:2, 1524:5	1598:2, 1598:4
1340:14	1534:23	1357:20	1524:7, 1525:2	1598:18
1342:4	1589:9	1358:18	1525:14	1599:15
1342:10	1589:14	1358:25	1525:19	1607:3, 1607:6
1342:11	demonstrates	1359:4, 1359:5	1525:21	1607:12
1344:14	1476:17	1359:16	1525:25	1608:2, 1610:9
1344:22	demonstrating	1359:18	1526:7	Department's
1347:14	1377:21	1359:22	1526:15	1260:4
1347:16	1524:10	1360:12	1529:8	1294:24
1348:2	demonstration	1360:19	1529:14	1337:21
1354:16	1371:4	1362:18	1530:24	1342:2
1364:14	1455:23	1363:5	1532:18	1342:12
1364:22	1457:8, 1460:9	1364:15	1533:19	1344:21
1365:7	1460:19	1364:19	1534:4, 1534:7	1345:8
1425:14	1521:2	1368:10	1534:23	1347:21
1430:18	denial 1516:19	1371:9, 1374:1	1535:25	1366:9
1431:2, 1431:5	denied 1518:12	1374:8	1536:7	1366:15
1432:4, 1456:6	1519:24	1375:15	1536:14	1366:19
1514:2	1534:14	1375:18	1537:25	1368:23
1589:19	1534:22	1375:20	1538:3	1372:6, 1373:8
1591:22	1535:2, 1589:2	1378:3, 1379:7	1543:19	1375:3, 1394:8
1601:10	Denver 1249:20	1379:7	1545:15	1396:1, 1406:8
definitions	1250:5, 1252:6	1382:19	1545:17	1436:2
1430:19	1252:14	1383:13	1546:3, 1546:4	1436:10
1486:12	1252:24	1394:5	1546:15	1458:6
definitively	1271:9, 1445:3	1395:18	1546:24	1458:24
1542:24	deny 1530:24	1398:3, 1407:2	1547:5	1462:12
degree 1435:5	1532:10	1407:13	1547:23	1467:22
1435:6, 1489:9	1535:16	1416:9	1550:15	1469:13
1520:2	1536:24	1419:12	1551:1	1469:23
1522:24	1547:5	1419:18	1578:23	1470:3, 1470:7
1524:12	1588:10	1420:8	1579:1, 1579:8	1471:15
1526:2	1588:17	1420:11	1580:9	1472:3, 1472:6
1529:19	1588:19	1420:18	1580:25	1472:12
1576:4, 1612:9	1598:18	1420:24	1581:14	1472:13
degrees 1292:16	1599:15	1422:24	1582:14	1473:17
1475:8	department	1436:12	1582:19	1474:10
dehydrators	1247:15	1437:9, 1460:8	1583:7, 1585:5	1483:25
1473:4	1247:17	1460:12	1585:13	1519:11
1604:15	1247:22	1461:23	1585:16	1523:6
Delaware	1265:6	1462:3	1585:20	1525:11
1252:21	1266:19	1469:15	1585:21	1527:5, 1527:5
delay 1370:16	1290:11	1474:12	1585:21	1527:15
deleted 1358:13	1290:17	1488:10	1587:14	1533:3, 1535:3
1363:4	1293:11	1488:17	1588:10	1535:8, 1536:8
1436:20	1301:20	1491:3	1588:13	1536:13
deleting	1302:5, 1303:9	1515:12	1588:17	1550:1
1469:16	1303:9	1515:14	1591:1, 1591:3	1576:22

Volume 5
9/24/2021

EIB Ozone Hearing

1576:24	1499:8	1306:16	1549:19	1419:1, 1462:6
1592:8, 1594:5	detailed 1343:8	1327:14	1549:21	1481:14
1594:12	1502:15	1329:1	1550:6	1481:15
1596:9, 1597:2	detected 1540:1	1344:14	1550:10	1499:8, 1499:8
1599:21	1592:24	1369:24	1550:20	1503:17
1603:2, 1607:9	detection	1370:2, 1370:4	1579:2, 1579:6	1508:9
depend 1346:16	1367:6	1395:7, 1407:5	1590:23	1509:25
dependent	1439:22	1413:2, 1428:3	1591:1	1518:18
1277:23	1539:25	1444:15	1591:15	1526:12
1372:23	1540:3	1445:19	1591:18	1537:8, 1545:5
depending	1549:20	1554:15	1592:6	1583:3
1379:20	1550:21	1566:14	1595:25	differently
1590:11	determination	1590:2	1596:9	1389:11
depends 1372:14	1324:3, 1547:8	developments	device 1370:15	1508:21
1408:13	determinations	1565:15	1370:19	1508:21
1426:17	1522:4, 1547:2	1565:17	1370:20	1538:5
1426:17	determine	deviation	1370:21	differs 1542:4
1475:19	1320:2	1429:12	1383:24	1542:5
1531:17	1350:11	1457:15	1383:25	difficult
deploy 1271:17	1373:14	1527:2, 1529:3	1426:3, 1426:6	1270:6
deployed 1369:2	1374:22	1529:3	1426:6	1272:25
1428:19	1399:7, 1490:6	1537:15	devices 1260:15	1469:25
describe	1591:16	1538:14	1428:14	1493:2
1444:24	1592:17	1538:17	1566:24	1500:25
1453:18	1597:17	1539:9	DEVORE 1249:18	1513:5
1488:22	determined	1539:16	devote 1441:1	1607:23
1518:20	1338:10	1540:4	devoted 1295:11	difficulties
described	1518:8	1540:14	diagnosed	1298:9
1429:15	determining	1541:6	1569:13	dig 1512:14
1509:18	1342:24	1541:11	1573:6	dignity 1411:8
describes	1343:16	1549:14	dialogue	diligence
1470:6	devastated	1550:7	1317:13	1336:23
describing	1572:23	1550:23	dictate 1589:3	diminishing
1305:3	develop 1350:2	1577:11	dictating	1489:4
description	1357:3	1591:6, 1591:7	1545:7	Dine 1248:12
1435:3	1358:22	1591:13	die 1572:25	dioxide 1290:7
design 1258:8	1370:8	1591:17	died 1573:2	1394:3
1319:20	1380:12	1591:24	Diego 1253:6	1410:19
1321:21	1398:3	1591:24	diesel 1326:20	1555:10
1321:21	1420:15	1596:14	differ 1548:4	direct 1254:21
1321:24	1420:21	1597:13	difference	1254:24
1322:1, 1322:2	1438:7	1597:14	1279:2	1255:5, 1255:9
1324:18	1438:10	1597:16	1315:17	1256:7, 1256:9
1350:1, 1350:4	1470:12	1597:19	1374:16	1256:14
designated	1471:1	1601:1, 1601:6	1412:18	1256:17
1590:17	1471:15	1601:7	1600:25	1256:20
1590:20	1474:9, 1499:4	1601:11	1601:15	1256:23
designation	1563:8	deviations	differences	1257:17
1528:13	1583:13	1457:3, 1523:2	1467:24	1257:18
1528:17	developed	1524:2, 1524:3	1499:6	1258:8
designations	1407:24	1524:25	different	1258:10
1528:7, 1528:9	1517:9, 1592:1	1529:18	1265:9	1258:11
1528:10	developing	1530:4	1267:18	1258:13
desire 1294:5	1444:19	1537:11	1275:23	1291:4, 1295:1
desktop 1492:1	1454:6	1537:23	1288:25	1298:13
destroy 1558:18	1471:16	1539:1	1319:22	1311:13
destruction	1500:4, 1586:4	1539:12	1321:22	1319:5
1410:22	development	1539:19	1325:17	1329:13
detail 1357:17	1301:20	1539:21	1362:10	1330:14
1358:1	1306:1, 1306:2	1540:11	1366:5, 1367:5	1331:1
1475:24	1306:10	1541:13	1389:11	1335:18

Volume 5
9/24/2021

EIB Ozone Hearing

1337:5, 1337:7	1330:15	1414:18	1435:16	1385:5, 1506:1
1337:12	1344:13	1431:14	1444:21	1555:14
1337:22	1379:6	1478:20	dln@gknet.com	1560:15
1341:22	1397:15	1490:19	1248:10	Don 1279:21
1353:5, 1366:9	director 1453:6	1494:18	Docket 1259:22	Dona 1477:12
1387:15	disagree	1498:24	doctor's	dots 1317:11
1388:4	1327:16	1506:8	1559:23	1317:14
1388:22	1538:19	1544:23	document 1301:8	double-checked
1422:8, 1424:5	disagreement	1603:17	1331:11	1330:2
1424:14	1602:23	1604:25	1331:13	doubt 1369:17
1424:20	disappeared	1611:8	1398:11	1369:22
1427:4	1263:23	1611:12	1523:2	1401:19
1434:22	1392:2	discussions	documentating	1563:18
1435:23	disappointing	1385:24	1499:17	DOUG 1254:20
1436:6	1289:2	1425:19	Documentation	1319:1
1436:14	disaster 1408:1	1490:24	1259:21	download 1369:6
1436:19	disciplines	1491:5	documented	1369:16
1441:3, 1443:5	1475:8	1493:14	1400:10	downstream
1452:14	disclosure	1506:19	documenting	1513:25
1452:20	1446:9	1512:11	1457:3	DQOs 1350:5
1452:20	disconnect	disease 1400:9	documents	draft 1388:8
1452:22	1301:19	diseases 1293:2	1466:4	1406:8, 1436:2
1454:11	discover 1306:4	display 1437:7	dog 1414:22	1491:4
1454:15	discovery	displayed	doing 1267:6	1502:19
1454:21	1549:10	1272:14	1267:8	1541:23
1454:23	1549:17	disposal	1267:25	drafted 1489:2
1455:4, 1455:5	discretion	1252:10	1268:4	1538:5
1455:13	1374:12	1258:5, 1258:9	1272:18	drastically
1455:16	1374:21	1334:15	1282:12	1400:12
1457:25	1525:11	1334:18	1286:9, 1291:8	draw 1520:13
1458:6	1525:15	1336:5, 1336:9	1299:2	Drawer 1247:12
1460:23	1526:11	1467:23	1304:25	drawn 1302:4
1461:4	discuss 1342:2	1473:1	1322:10	drill 1270:19
1465:23	1363:24	1485:16	1332:21	1300:17
1465:25	1423:9	1492:12	1339:7, 1376:5	1300:18
1467:8	1436:22	1494:10	1416:17	1304:4
1467:18	1440:13	disproportio...	1432:21	1319:24
1467:20	1494:14	1400:18	1441:20	1322:5, 1324:6
1468:20	1516:11	disrupt 1520:25	1441:23	1342:14
1469:2	1594:12	disruptive	1443:3	drilled 1270:9
1469:22	discussed	1521:4	1448:18	1301:13
1470:6	1297:5	dissuade 1267:3	1479:9, 1480:4	1303:14
1485:15	1440:18	1462:9	1500:21	1445:17
1485:17	1442:17	distributing	1512:7, 1515:4	drilling
1485:20	1458:13	1296:8	1523:16	1278:22
1486:5, 1486:9	1603:20	district	1528:17	1278:23
1488:3	discusses	1274:16	1543:5, 1556:1	1290:19
1488:10	1455:6	1276:20	1556:3	1300:14
1516:5, 1516:9	discussing	dive 1282:13	1556:15	1302:25
1516:15	1474:12	diverse 1398:15	1559:25	1304:3, 1323:4
1530:4	1600:25	1408:2	1565:25	1323:20
1533:10	discussion	division 1250:4	1570:6	1324:6
1537:9, 1538:7	1270:2, 1272:5	1304:10	1600:10	1324:20
1540:8	1294:17	1486:20	1607:18	1324:23
1548:18	1295:21	1510:21	dollar 1506:13	1331:2, 1331:3
1582:5, 1588:5	1313:13	1515:4, 1550:1	dollars 1266:3	1445:6
directed 1398:2	1317:24	division's	1266:13	drive 1247:18
1425:16	1341:11	1533:2	1276:20	1249:13
directly	1367:17	DJ 1444:21	1278:7, 1279:6	1446:9
1327:12	1368:21	DJR 1435:12	1279:20	1526:17
1328:24	1371:9, 1382:3	1435:13	1286:24	1529:19

Volume 5
9/24/2021

EIB Ozone Hearing

1556:12 driver 1277:21 driving 1528:13 1529:10 1559:14 dropping 1528:3 drought 1393:15 drown 1284:10 dtimmons@wil... 1250:15 due 1276:12 1311:10 1336:23 1393:21 1394:13 1396:3, 1402:2 1489:16 1499:6 1605:16 Dueweke 1257:6 1551:24 1552:23 1557:15 1557:17 1557:21 1557:22 1558:1, 1558:3 1558:9 1560:22 duly 1264:15 1269:9, 1274:5 1280:15 1285:8 1288:16 1292:6, 1299:7 1319:3 1335:16 1341:20 1353:3, 1393:2 1397:2 1403:10 1405:21 1409:12 1412:4, 1415:7 1418:5, 1424:3 1434:20 1449:3 1452:12 1467:3 1485:10 1516:3, 1554:2 1558:4, 1562:5 1564:21 1568:12 1572:2 1574:12 1582:3 duplicate 1493:11 duplications 1362:20	duplicative 1362:17 1493:10 duties 1467:14 1486:1 Dutton 1259:23 1259:24 1260:24 duty 1357:2 1543:7 Duval 1247:8 1307:23 1307:24 1333:17 1333:18 1340:2, 1340:3 1349:15 1349:16 1350:17 1351:8 1417:25 1418:13 1433:14 1447:5, 1447:5 1464:7, 1484:5 1484:6 1505:15 1505:16 1580:4 E E(2)(b 1259:16 E-L-L-E-N 1557:21 E-L-L-I-G 1411:22 e-mail 1294:9 1390:24 1551:23 e-mails 1262:10 E-R-N-I-E 1274:10 earlier 1275:22 1280:3 1285:24 1295:22 1295:24 1311:20 1326:5 1331:15 1434:1 1437:12 1542:1 1544:23 1568:24 1576:13 1583:7, 1589:6 1595:4 1602:16 1603:17	1606:13 1606:14 1606:15 1606:16 1610:6 1611:20 1611:22 1611:23 early 1289:19 1295:9, 1511:7 1612:11 1612:17 earn 1474:3 earned 1292:16 earnest 1295:17 earth 1282:20 1287:5 Earthworks 1248:12 easier 1504:20 easily 1604:19 east 1248:16 1278:24 1406:16 easy 1478:19 1586:19 1586:19 echo 1391:20 1436:25 1443:18 economic 1258:12 1270:5 1270:13 1273:2, 1276:1 1276:9, 1277:3 1279:5 1279:18 1287:1, 1399:2 1399:5, 1399:8 1399:16 1400:13 1410:7, 1422:3 1422:5 1489:16 1506:6 1570:19 1590:6 economical 1268:6 economically 1269:22 1283:5 1293:24 economics 1286:9, 1287:4 economy 1277:9 1277:17 1277:23 1278:7 1293:20	1399:1 1404:20 ED 1600:6 Eddy 1274:15 1276:10 1277:8 1277:17 1568:24 1569:8 EDF 1431:4 edge 1289:21 edits 1358:11 1358:17 1361:25 1387:5, 1387:6 1387:13 1387:23 1388:18 1389:19 educate 1276:7 1286:7 education 1249:7 1265:20 1397:21 1404:5 educational 1435:3 1453:19 EERs 1493:10 effect 1275:11 1276:4, 1327:4 1342:16 1346:9, 1360:5 1371:21 1412:19 1413:20 1525:24 1545:11 1566:6 1576:17 1595:4 effective 1303:12 1360:6 1371:24 1380:13 1518:14 1518:15 1518:22 1520:14 1522:12 1526:17 1587:19 1606:22 effectively 1414:7 1528:22 1594:18 1607:7 effects 1393:19	1400:6 1400:17 1410:9 1554:12 1554:13 efficiency 1272:3 1449:12 1458:3 efficiency-wise 1283:6 efficient 1463:4 1522:12 1610:2 efficiently 1536:15 effort 1397:16 1417:19 1471:19 1483:22 1484:1 1488:22 1489:17 1517:22 1556:17 efforts 1471:15 1471:21 1472:13 1490:3 1518:14 ehiser@jhjla... 1248:6 EHS 1487:5 1504:6 1510:13 EIB 1246:3 1262:4 1288:25 1390:16 1403:24 1406:6 1412:17 1419:7, 1459:2 1552:12 1562:11 eight 1607:16 EIS 1326:22 1327:4, 1327:7 1327:7 either 1333:7 1339:19 1349:8, 1385:1 1449:22 1489:18 1498:18 1508:15 1510:25 1559:13 1581:20 EI 1252:2
---	---	---	--	--

Volume 5
9/24/2021

EIB Ozone Hearing

elaborate 1499:14 1507:8 elderhood 1404:18 elderly 1404:15 elected 1268:1 1527:3 electric 1289:5 electrical 1468:5 electricity 1271:15 electrification 1556:13 electronic 1440:7 1461:15 1470:18 1487:9 1488:20 elementary 1403:20 elements 1506:21 eligible 1546:17 1547:25 eliminate 1609:14 eliminated 1436:18 eliminating 1307:6 elimination 1272:24 Elizabeth 1249:3, 1255:8 1257:16 1257:17 1352:20 1353:1, 1418:3 1581:14 1582:1, 1582:5 elizabeth@de... 1249:5 Ellen 1257:6 1551:24 1552:22 1557:15 1557:21 1558:3 Ellig 1255:23 1411:16 1411:19 1411:22 1411:22 1412:2, 1412:3 1412:9 1412:13 1414:10	Ellis 1391:3 1411:13 1411:13 1411:15 embraced 1543:25 emergency 1572:18 emission 1272:8 1283:17 1309:9 1319:22 1322:7, 1323:6 1345:16 1377:20 1377:22 1395:21 1399:25 1407:16 1473:7 1475:14 1475:19 1492:20 1493:7 1493:10 1501:15 1502:2 1502:10 1502:17 1502:17 1502:23 1518:15 1519:12 1519:22 1523:5, 1523:7 1524:4 1524:24 1529:11 1531:1, 1531:5 1538:1 1538:13 1538:14 1539:14 1539:23 1540:13 1549:4, 1549:7 1549:10 1549:11 1549:11 1549:16 1549:18 1549:22 1550:4, 1550:8 1550:10 1550:14 1550:19 1550:22 1551:5 1555:10 1563:14 1567:3, 1577:5	1577:14 1577:15 1577:18 1590:9 1592:21 1597:9 1597:25 1601:1 1603:12 1603:18 emissions 1260:11 1266:14 1271:3 1271:13 1272:9 1272:24 1283:24 1290:12 1290:25 1300:6 1300:12 1300:12 1302:7, 1302:9 1302:24 1303:7 1303:10 1303:12 1303:18 1322:4 1322:15 1324:2, 1324:5 1324:13 1324:19 1324:25 1326:8 1326:18 1326:21 1327:12 1328:5 1328:24 1342:21 1342:24 1344:23 1346:15 1357:2 1358:10 1361:4 1384:24 1394:15 1394:16 1395:13 1396:3, 1398:6 1398:9 1398:19 1398:21 1398:23 1401:17 1410:13 1410:17 1410:18	1410:21 1425:23 1477:16 1517:10 1517:10 1517:23 1523:4 1528:18 1529:13 1529:15 1531:13 1531:15 1531:16 1540:5 1547:15 1548:19 1548:23 1549:3 1549:15 1549:24 1549:25 1550:15 1551:3, 1551:4 1555:8, 1555:9 1555:21 1559:11 1560:11 1566:25 1569:23 1588:20 1590:10 1592:21 1593:13 1593:21 1593:23 1594:1, 1594:2 1594:11 1594:15 1595:1, 1597:5 1597:7 1597:10 1598:4 emit 1296:13 1297:7, 1309:9 1319:19 1319:20 1321:19 1321:20 1322:1, 1322:9 1322:13 1322:22 1322:25 1323:22 1342:5 1344:23 1346:13 1347:15 1348:2 1474:21 1475:1 1588:10	emitted 1326:18 1570:13 emitting 1393:25 1426:3, 1426:5 emphasis 1542:21 1544:1 employ 1569:7 employed 1435:11 1435:12 1614:11 1614:14 employee 1384:9 1428:16 1614:13 employees 1267:19 1381:5 1382:20 1382:23 1420:24 1421:1, 1421:2 1428:17 1439:7 1444:23 1445:2 1569:10 employer 1336:11 1467:11 1485:23 employment 1453:5 empower 1527:8 EMT 1357:11 1426:10 1427:16 1455:14 1458:16 1467:22 1469:24 1470:8 EMTs 1454:25 1455:9 emulated 1401:18 enable 1527:1 enabled 1262:19 1391:6 1432:23 enact 1275:19 enacting 1395:4 Encana 1487:2 1506:10 1514:9 encourage 1266:15 1267:7, 1268:5 1286:14
--	--	---	--	---

Volume 5
9/24/2021

EIB Ozone Hearing

1399:21	1289:10	ensuring 1307:7	1264:25	1275:24
1406:6, 1413:6	1336:14	1381:16	1266:19	EPA 1260:15
1413:25	1383:19	1520:4, 1576:4	1268:1, 1272:5	1323:24
1449:12	1384:8	1579:5	1278:25	1457:17
1458:23	1474:25	entail 1381:19	1279:1	1476:17
1459:2	1474:25	1386:4	1286:13	1492:19
1477:24	1475:16	enter 1451:8	1287:1	1508:1
1563:25	engineering	1593:6	1288:22	1526:21
encouraged	1453:21	entered 1358:20	1289:10	1589:1
1399:14	1467:13	entire 1274:19	1292:12	1589:11
encourages	1468:6, 1468:8	1277:18	1292:20	1589:14
1397:17	engineers	1509:21	1336:24	1590:18
endeavor	1384:1	entirety	1352:2	EPA's 1490:12
1610:20	1398:12	1296:24	1373:24	EPA-HQ-OAR-2...
ended 1321:12	1475:6	1458:15	1378:11	1259:22
1455:20	1475:23	1476:22	1393:9, 1395:1	EPCRA 1492:20
1504:3	engines 1260:22	entities	1400:3, 1401:5	Episcopal
ends 1489:15	1295:7, 1323:4	1592:25	1402:4	1415:14
energy 1252:9	1323:5	entity 1275:14	1407:13	equate 1278:8
1252:17	1323:23	environment	1409:19	equipment
1265:8	1323:23	1247:15	1409:20	1293:18
1265:14	1326:21	1247:17	1410:3, 1410:7	1301:6
1270:25	1331:4	1247:22	1412:12	1301:16
1271:10	1364:24	1260:4, 1266:7	1413:21	1301:21
1271:24	1364:25	1275:25	1416:9	1302:17
1271:25	1381:24	1276:1, 1279:5	1420:20	1302:18
1281:11	1384:24	1279:19	1435:9, 1448:6	1302:19
1281:13	1398:22	1290:11	1450:25	1306:14
1281:13	1425:19	1290:17	1457:14	1342:13
1282:3	1473:5	1293:11	1458:23	1342:21
1283:10	1603:12	1293:22	1462:8	1347:2, 1348:7
1289:10	1604:4, 1604:9	1301:20	1467:12	1355:25
1336:14	1608:25	1302:5, 1303:9	1468:7, 1468:8	1356:5, 1356:9
1398:2	1613:13	1303:9	1468:17	1357:4, 1357:7
1407:23	enhanced	1305:20	1470:19	1357:21
1435:12	1378:11	1308:20	1470:20	1357:21
1435:14	1594:17	1309:3, 1394:5	1474:2, 1475:3	1358:14
1486:4	enjoying 1290:2	1395:18	1475:4, 1475:5	1361:4
energy-inten...	enlighten	1396:1	1475:7, 1475:9	1361:23
1271:20	1276:7	1401:20	1475:22	1362:9
enforce 1416:3	ensure 1303:11	1401:23	1486:17	1362:12
1526:24	1307:4, 1337:2	1406:8, 1407:2	1487:4, 1487:8	1362:12
1594:18	1356:4	1410:22	1489:12	1364:9
enforceability	1377:24	1411:7	1502:2	1366:20
1526:22	1395:9, 1407:7	1412:19	1508:15	1366:25
enforceable	1460:7	1487:1, 1518:1	1513:4	1367:2
1398:4	1517:20	1522:23	1558:11	1370:25
enforcement	1517:22	1524:2, 1530:6	1569:16	1372:12
1363:8	1518:14	1558:18	1572:11	1372:13
1457:14	1518:15	1558:24	1583:25	1372:15
1486:21	1526:22	1569:24	1584:3	1372:16
engage 1308:20	1529:3, 1543:8	1579:7, 1607:6	1584:12	1372:25
engaged 1277:1	1556:6, 1563:6	environmental	1584:16	1373:1
1389:10	1566:17	1246:1, 1247:4	1584:21	1373:24
engine 1331:2	1577:10	1248:15	1607:5	1377:23
1425:23	1586:18	1249:2	environmenta...	1381:15
1425:23	1592:20	1249:12	1388:13	1381:16
1425:24	1597:5	1250:17	environmentally	1381:20
1453:16	ensures 1518:12	1250:19	1272:1	1384:12
1603:18	1519:2	1253:3, 1253:4	environments	1384:12
engineer	1549:24	1262:3	1275:24	1384:18

Volume 5
9/24/2021

EIB Ozone Hearing

1384:20	1323:16	1461:14	1540:1	1353:5, 1376:8
1385:2, 1385:9	1331:21	1461:18	1550:25	1418:7
1385:12	1355:24	1472:22	everybody	1422:22
1385:25	1416:3	1473:9	1266:9	1424:5
1394:11	1471:22	1488:19	1556:19	1434:22
1394:13	1503:14	1488:24	1556:20	1443:6, 1449:5
1395:20	1520:13	1502:5	1605:15	1452:14
1396:3	established	1505:24	1608:4	1464:17
1398:22	1343:16	1511:13	1610:22	1467:8
1407:14	1398:1	1546:4	1611:7	1479:12
1407:15	1455:24	1584:23	everybody's	1485:20
1416:11	1524:18	evaluations	1515:3	1495:12
1423:3	1589:11	1468:18	evidence	1516:5
1436:16	establishes	1472:9	1294:20	1551:20
1448:7	1355:20	1472:14	1304:1, 1338:8	1574:14
1453:11	1357:1	1472:17	1407:25	1582:5, 1588:5
1454:25	1366:21	1472:20	1451:23	1600:13
1467:21	estimate	1473:3	1457:12	examined 1299:8
1469:13	1258:12	1473:13	1462:7, 1593:3	1319:4
1469:17	1322:8	1473:20	1604:21	1335:17
1473:2, 1473:4	1322:12	1473:25	1605:1, 1607:8	1341:21
1473:7	1324:19	1474:1, 1474:4	exact 1420:10	1353:4, 1418:6
1555:18	1372:5, 1506:1	1486:10	exactly 1270:14	1424:4
1563:14	1531:1	1489:8	1278:12	1434:21
1567:2, 1587:8	1531:15	1490:18	1304:23	1449:4
1592:23	1531:22	1491:8, 1493:9	1346:23	1452:13
equity 1526:11	1531:24	1502:23	1382:8	1467:4
1527:7	1535:24	evening 1296:2	1509:17	1485:11
equivalent	1536:3	1573:25	1542:16	1516:4
1272:9	estimated	1575:19	1583:18	1574:13
Eric 1248:3	1372:5	1575:21	examination	1582:4
1315:11	estimates	1595:20	1254:19	example 1277:25
Ernie 1254:8	1531:5	1603:9	1254:19	1293:17
1262:12	estimation	1608:12	1254:21	1296:2
1274:4	1323:21	event 1262:16	1254:24	1300:14
1274:10	1438:14	1262:19	1254:24	1301:12
1274:15	evacuation	1268:14	1255:5, 1255:7	1303:19
1568:25	1572:18	1298:19	1255:9	1322:1, 1330:4
error 1377:14	evaluate	1332:3	1255:11	1346:21
errors 1383:12	1349:25	1332:21	1255:11	1347:8, 1367:6
escapes 1271:2	1490:2, 1490:5	1338:2, 1339:2	1255:12	1374:14
1290:8	1502:6	1343:24	1256:7, 1256:9	1429:8, 1430:4
ESG 1336:24	1510:24	1369:8, 1371:2	1256:10	1471:5
especially	1511:12	1390:21	1256:12	1504:22
1269:22	1532:5	1391:4, 1440:8	1256:14	1524:3
1287:6, 1293:7	1532:15	1443:3	1256:15	1524:18
1306:9	1533:20	1451:19	1256:17	1525:19
1318:13	1536:10	1469:5	1256:18	1527:1
1364:17	1592:1	1471:22	1256:20	1529:11
1469:20	evaluated	1488:14	1256:21	1539:6, 1607:9
1507:8	1489:21	1552:19	1256:23	examples
essence 1313:18	evaluates	1579:1	1256:25	1302:16
1542:13	1545:17	1595:10	1257:17	1302:19
1543:2, 1543:2	evaluating	1603:16	1257:18	1329:6
essential	1511:5, 1532:7	event's 1437:8	1257:20	exceed 1518:10
1363:12	1532:13	events 1359:12	1299:9, 1311:6	1520:12
1395:3	evaluation	1382:4	1319:5	1532:3
essentially	1363:10	1384:10	1335:18	1555:21
1478:19	1364:8	1413:17	1339:10	exceedance
1598:18	1368:22	1457:3, 1512:3	1341:22	1535:18
establish	1374:3	1523:2, 1524:4	1349:1, 1352:1	1536:12

Volume 5
9/24/2021

EIB Ozone Hearing

1588:22	1588:21	1451:10	1538:1, 1549:2	1489:18
exceedances	1593:23	1451:13	1563:8	1489:18
1326:10	1594:11	1452:21	1566:20	1499:15
1326:25	1594:14	1452:22	1586:16	1500:11
1327:13	1595:1, 1597:7	1454:9	exists 1287:3	1501:16
1327:22	1597:24	1454:13	1414:5	1501:19
1328:1, 1328:7	1601:1	1456:13	1520:11	1501:25
1328:25	excessive	1458:10	expand 1342:17	1502:7, 1503:2
1524:25	1429:12	1458:14	expanding	1506:9
1540:1	1493:10	1458:21	1309:7	1509:17
1542:11	1558:15	1458:25	expands 1417:7	1509:19
exceeded	exclude 1583:4	1460:25	1472:16	1516:8, 1573:5
1502:17	excludes 1365:6	1466:5, 1472:6	expectation	experienced
1534:19	excuse 1263:17	1516:13	1367:1	1508:3
exceeding	1318:16	1516:13	1526:25	experiencing
1590:3	1323:7, 1334:1	1516:14	expectations	1406:25
Excel 1378:5	1341:4	1541:22	1493:2	1417:10
1470:21	1368:25	1578:6, 1578:7	expected 1492:6	expertise
1471:5	1426:11	exhibits 1258:3	expecting	1398:13
1480:21	1431:6	1298:14	1370:16	1468:3
1480:23	1484:19	1310:15	expedite	1468:12
1582:25	1536:8	1312:3	1294:20	1475:19
1583:10	1557:14	1314:24	1611:17	1479:19
1586:4	1599:10	1335:22	expeditious	1486:15
excess 1493:7	executive	1338:1, 1338:4	1575:25	experts 1283:23
1501:15	1398:1	1338:7, 1352:9	expeditiously	1398:12
1502:2	exempt 1602:4	1353:16	1606:22	Expires 1614:18
1502:10	exemption	1424:15	expense 1500:22	1614:20
1502:16	1261:4	1451:9	1504:11	explain 1276:18
1502:22	1513:15	1451:12	1558:19	1340:10
1523:5, 1523:7	1513:17	1451:21	1559:12	1349:17
1523:7	1558:22	1451:22	expenses	1351:2, 1387:8
1529:11	exercise	1452:18	1558:15	1435:13
1529:13	1525:15	1452:20	expensive	1436:11
1529:15	exercised	1516:12	1438:4	1436:14
1536:20	1519:6	exist 1276:2	1469:20	1441:16
1538:1	1520:21	1309:10	1503:22	1455:13
1538:14	exercising	1309:12	1504:9	1457:5
1540:5, 1540:6	1523:18	1373:20	experience	1506:25
1548:19	exhibit 1300:24	1428:15	1274:22	1591:3
1548:22	1300:25	1428:16	1336:16	explained
1549:2, 1549:5	1305:17	1560:8	1336:19	1350:7
1549:6	1315:3	1566:16	1383:19	1455:17
1549:10	1316:14	existence	1399:9, 1428:3	explaining
1549:11	1329:13	1410:2, 1411:9	1435:6, 1435:7	1516:16
1549:11	1330:13	1542:6	1437:20	1601:15
1549:15	1330:22	existing	1437:20	explains 1476:6
1549:16	1352:3	1290:19	1441:17	exploded
1549:18	1352:14	1360:23	1453:22	1572:17
1549:22	1352:19	1369:15	1468:9	exploration
1549:24	1353:8	1373:22	1468:10	1453:23
1549:25	1353:10	1416:6	1468:16	expose 1491:12
1550:8, 1550:9	1353:17	1428:23	1472:21	expound 1578:17
1550:14	1353:18	1470:9	1475:21	expressed
1550:15	1355:12	1470:16	1482:19	1424:24
1550:19	1355:13	1470:22	1482:20	1436:13
1550:22	1366:8	1476:7, 1501:8	1487:8	expressly
1551:3, 1551:3	1435:24	1502:1, 1508:6	1487:13	1477:19
1551:5, 1577:4	1435:24	1508:6, 1519:2	1488:25	extend 1371:23
1577:14	1435:25	1532:6, 1532:9	1489:6	extension
1577:18	1451:10	1532:12	1489:15	1582:14

Volume 5
9/24/2021

EIB Ozone Hearing

extensive 1302:17 1307:1 1357:10 1364:5, 1441:9 extent 1303:10 1305:21 1305:22 1309:10 1331:20 1359:24 1360:3 1387:21 1388:14 1585:8 external 1490:4 1493:2 1508:17 1511:1 extra 1374:24 1378:6 1417:19 extracting 1560:16 extrapolate 1322:21	1539:19 1539:20 1540:11 1544:6, 1544:7 1544:8 1576:20 1586:21 facility 1372:14 1372:21 1372:22 1372:23 1372:24 1372:24 1476:14 1480:12 1490:2, 1490:7 1492:10 1505:2, 1506:2 1506:14 1534:5 1583:25 1596:8, 1596:8 1596:23 1597:1 facility's 1490:8 facing 1281:24 fact 1277:17 1327:6 1395:23 1399:3 1426:19 1474:2, 1521:7 factor 1410:20 factors 1569:16 fail 1279:2 failed 1302:18 failure 1363:6 1363:7 1370:16 failures 1370:20 1370:25 fair 1429:7 1429:9 1445:13 1522:20 1529:9 1536:10 fairly 1270:25 1363:17 1478:19 1556:8 1604:19 faith 1406:4 1408:5 1573:17 false 1329:4 familiar 1278:12	1281:13 1344:5, 1344:7 1544:25 1545:14 1591:10 families 1286:18 1415:20 1415:24 1559:5 family 1413:14 1569:10 1569:15 family's 1596:24 far 1270:11 1300:17 1377:17 1394:21 1399:7, 1417:7 1531:18 farmers 1393:19 1393:20 farther 1609:14 farting 1291:2 faster 1463:1 fastest 1282:5 fault 1355:8 faulty 1592:23 favor 1568:22 1612:10 fax 1391:22 Fe 1247:12 1247:18 1248:9 1248:17 1250:14 1250:20 1251:6 1251:23 1252:19 1276:11 1389:23 fear 1592:19 feasibility 1342:22 feasible 1357:12 1474:24 fed 1261:6 1277:20 federal 1347:16 1359:23 1359:24 1360:1, 1360:4 1492:21 1512:11 1521:6 1521:12 1526:20 1528:4	1545:19 1594:24 1599:19 feed 1306:13 feedback 1308:24 1309:20 1316:24 1317:7 1357:10 1376:23 feel 1305:13 1343:17 1388:17 1492:12 1497:1 1521:21 1527:24 1558:15 1567:10 1577:21 1588:23 1594:16 feeling 1607:15 feels 1593:8 Felicia 1246:14 1247:3, 1262:2 felicia.l.or... 1247:3 fellow 1299:14 felt 1538:24 1606:14 field 1270:11 1370:14 1398:19 1427:20 1428:16 1437:22 1453:6, 1487:9 1492:2 1511:19 1511:23 fields 1398:13 fieldwork 1350:22 Fifteenth 1252:13 fifth 1390:16 fighting 1408:4 figure 1318:11 1329:21 1508:4 1511:18 1546:14 1610:21 figured 1497:16 Filby 1260:17 1260:18 file 1336:9 1430:9 1465:25	1466:2 1485:17 1485:19 filed 1488:3 1533:15 1549:12 filing 1499:21 filings 1309:1 final 1294:24 1358:20 1395:2, 1395:6 1395:9 1395:15 1396:2, 1396:4 1408:7 1408:12 1414:11 1430:1 1502:15 1527:12 finally 1262:24 1400:22 1417:3, 1493:4 1563:10 financial 1274:23 1282:19 1558:24 1559:8 financially 1559:4 1572:24 1614:14 find 1263:6 1293:14 1299:15 1304:13 1353:23 1395:8, 1407:5 1413:8, 1414:2 1416:2 1418:22 1419:6 1465:25 1511:9 1523:10 1553:4 1559:18 1563:5 1566:14 1606:19 finding 1545:23 findings 1350:6 1350:10 1350:16 1585:3 fine 1288:8 1312:2 1321:17 1328:20 1330:8
F				
F-as-in-Fran... 1414:25 face 1284:8 1507:19 faced 1275:3 facilitate 1441:5 1471:19 1471:21 facilities 1305:22 1326:9 1340:20 1350:12 1364:18 1373:6 1374:14 1374:23 1379:9 1468:15 1472:20 1472:25 1473:2, 1476:5 1480:4 1488:24 1491:14 1526:2 1534:24 1535:4, 1536:5 1537:22 1538:16 1539:11				

Volume 5
9/24/2021

EIB Ozone Hearing

1352:11 1525:4 finer 1529:24 finish 1327:19 1370:5 1606:20 finished 1354:15 1354:18 1354:20 1533:7, 1533:9 1574:4 1607:23 Fiore 1256:4 1414:12 1414:14 1414:15 1414:17 1414:19 1414:25 1415:4, 1415:6 1415:12 1415:13 1417:21 fire 1270:22 1527:17 fires 1393:14 1399:23 firm 1486:1 1536:3 firms 1336:20 1569:5 first 1264:15 1269:9, 1274:5 1274:21 1280:15 1284:21 1285:8 1288:16 1289:13 1290:15 1292:6, 1297:7 1297:12 1299:7 1299:14 1314:25 1319:3 1322:18 1322:24 1334:18 1335:16 1341:20 1346:6, 1353:3 1353:16 1361:21 1368:4 1371:13 1371:13 1371:15 1371:21 1391:8, 1393:2	1397:2 1403:10 1405:21 1409:12 1409:23 1412:4, 1415:7 1416:20 1418:5, 1424:3 1425:16 1434:2, 1434:8 1434:20 1436:5, 1449:3 1451:6 1451:18 1452:12 1467:3 1485:10 1486:19 1492:18 1503:6 1503:13 1516:3 1521:20 1543:18 1543:21 1544:3, 1552:4 1553:6 1553:13 1554:2 1557:21 1558:4 1558:10 1559:24 1562:5 1563:23 1564:21 1568:12 1572:2 1574:12 1582:3, 1586:8 1598:3 firsthand 1403:21 fish 1282:2 fit 1603:22 fits 1267:11 1268:7 five 1262:23 1264:23 1269:17 1274:13 1279:13 1280:23 1282:9 1285:17 1288:20 1292:9, 1294:8 1386:9 1390:21 1393:6, 1397:5 1401:7	1403:14 1405:25 1409:16 1412:8 1415:10 1430:9, 1552:4 1552:12 1552:15 1554:6, 1558:8 1564:24 1568:16 1572:6, 1606:4 five-day 1510:14 fix 1293:14 1395:8, 1407:5 1407:15 1413:1, 1413:9 1413:23 1414:4, 1416:2 1556:7 1556:21 1563:5 1566:15 fixed 1413:18 1414:6 fixing 1416:18 1504:5 flag 1476:9 flagged 1577:6 flare 1272:23 1324:12 1381:9 1381:13 1382:6 flared 1270:22 flaring 1270:18 1270:23 1271:11 1272:6 1272:20 1272:25 1394:2 flexibility 1470:4 1470:15 1471:4, 1505:5 1612:11 flexible 1490:25 flips 1282:13 floaties 1282:10 1282:17 1282:18 floods 1393:14 flourish 1401:22 flow 1320:3 1322:14 flowback	1395:14 1431:5 flowing 1278:7 1324:8 1517:19 focus 1281:11 1406:12 1425:1 1436:15 1579:5 focused 1283:21 1298:13 1318:4 1524:24 folks 1284:21 1291:11 1294:5, 1312:2 1377:4 1390:24 1551:22 1553:6 1608:18 1610:8 follow 1263:15 1267:14 1287:24 1413:22 1446:15 1537:2 1562:19 follow-up 1311:4 1312:12 1340:24 1351:15 1367:4 1421:15 1421:18 1464:13 1484:13 1499:12 1501:22 1503:1 1506:19 1574:24 followed 1356:4 1465:21 following 1258:15 1258:18 1258:21 1259:4, 1259:7 1259:9 1259:12 1259:14 1261:10 1390:15 1446:7 1489:11 1526:10 1552:17	follows 1264:16 1269:10 1274:6 1280:16 1285:9 1288:17 1292:7, 1299:8 1319:4 1335:17 1341:21 1353:4, 1378:1 1393:3, 1397:3 1403:11 1405:22 1409:13 1412:5, 1415:8 1418:6, 1424:4 1434:21 1449:4 1452:13 1467:4 1485:11 1516:4, 1554:3 1558:5, 1562:6 1564:22 1568:13 1572:3 1574:13 1582:4 fond 1416:23 food 1393:22 football 1279:22 footprint 1446:14 forbearance 1520:3 Force 1265:4 forced 1402:1 forecasted 1282:22 foregoing 1614:7 foresee 1547:4 forest 1399:23 forget 1512:3 forgot 1310:8 1420:4, 1420:6 form 1288:9 1357:13 1474:8 1570:19 formal 1524:9 1584:12 1584:21 format 1499:16 formation 1278:23 1306:11 formations 1445:20
--	--	---	---	--

Volume 5
9/24/2021

EIB Ozone Hearing

formatted 1538:4 former 1399:13 forth 1258:16 1258:19 1258:21 1259:5, 1259:7 1259:10 1259:12 1259:15 1261:11 1295:2 1458:21 1458:25 1550:10 1587:10 1600:22 1609:18 forthcoming 1501:18 1541:3 forums 1399:3 forward 1293:12 1294:16 1300:19 1308:17 1309:5 1310:15 1378:21 1394:6 1427:13 1471:19 1491:5 1517:16 1518:8 1518:25 1527:20 1537:25 1567:19 fossil 1289:15 1289:17 1289:24 1290:2, 1291:9 foster 1522:23 1524:12 found 1258:3 1278:10 1301:3, 1304:1 1343:11 1350:15 1398:24 1456:7 1508:13 1548:19 1559:13 1560:23 1569:19 1571:15 1589:10 four 1265:16 1359:8, 1439:2	1439:5, 1439:8 1510:14 1510:17 1606:8 fox 1248:14 1290:15 1604:20 1604:22 1605:2 1613:10 1613:11 1613:12 1613:17 fox@westernl... 1248:18 fracking 1323:4 1323:20 1324:21 1324:23 frame 1368:17 1368:18 1379:19 1575:25 1582:15 1606:3 frames 1519:14 1575:4 1575:14 framework 1398:4 1536:23 framing 1270:2 Francis 1247:18 frankly 1282:4 free 1369:6 1438:13 freezing 1495:22 frequencies 1367:5 1367:10 1367:12 frequency 1366:16 1366:17 1366:17 1489:25 1499:9, 1505:4 frequent 1290:16 1366:22 1367:3, 1367:6 1367:13 1395:8, 1416:1 1416:17 1554:22 1563:5 1566:14 1573:18 frequently 1293:14	1367:14 1370:1, 1556:2 fresh 1328:3 1328:3 Friday 1295:20 friend 1285:25 1569:1, 1570:7 1571:8 friends 1413:14 1444:5 1569:10 1570:18 1572:25 front 1288:5 1329:13 1330:16 1331:11 1331:13 1340:10 1353:22 1357:18 1476:24 1482:2 1503:22 1546:16 1566:7 frontline 1570:25 frozen 1495:16 1496:1 frustration 1612:7 fuel 1289:17 1289:24 fuels 1289:15 1290:2, 1291:9 fugitive 1362:3 fugitives 1473:5 fulfilling 1543:7 full 1322:18 1364:8 1380:14 1390:4, 1446:9 1485:22 1564:13 1583:24 1584:15 full-time 1381:6, 1501:5 1501:7 fully 1272:2 1384:10 1458:20 1588:25 1591:25 fumble 1509:24 function 1262:20 functional	1555:16 fund 1249:2 1265:23 fundamentally 1309:8 funding 1265:21 1276:13 1276:22 1277:20 1397:21 further 1311:24 1312:11 1314:16 1325:4, 1331:7 1332:1, 1332:8 1332:9 1341:21 1345:2 1345:18 1348:13 1367:21 1418:6 1425:19 1425:25 1442:4 1464:24 1474:13 1478:1 1493:14 1541:14 1551:11 1574:13 1578:14 1580:18 1582:4, 1595:7 1600:1 1603:15 future 1281:18 1281:19 1384:6 1393:13 1408:6 1408:13 1412:23 1413:24 1415:20 1417:15 1445:8 futures 1560:19 FW 1260:10 1260:12 1260:13	gap 1550:18 Garcia 1247:6 1308:3, 1308:4 1308:8 1308:14 1308:23 1309:17 1310:13 1333:19 1333:20 1340:4, 1340:5 1351:10 1351:11 1418:1 1418:15 1418:18 1418:20 1419:5, 1419:8 1419:19 1433:15 1433:16 1447:6, 1447:7 1450:4, 1450:5 1464:8, 1464:9 1483:12 1483:13 1483:23 1505:18 1505:19 1509:13 1512:23 1512:24 1514:16 1514:19 1580:7, 1580:8 1602:1, 1602:2 1609:9, 1610:5 1611:2, 1612:7 gas 1246:4 1248:2 1251:14 1252:2, 1252:3 1252:3 1258:14 1258:15 1258:18 1258:20 1259:3, 1259:4 1259:6, 1259:9 1259:11 1259:14 1260:3 1260:10 1260:14 1261:3 1261:10 1265:10 1265:11 1265:15 1265:17 1265:19
				G
				GABRIEL 1249:11 Gallagher 1248:8 Gallup 1306:10 game 1265:7 games 1279:22

Volume 5
9/24/2021

EIB Ozone Hearing

1266:1	1398:13	1556:12	1452:19	1547:23
1266:12	1398:22	1556:15	1452:21	1547:25
1267:7, 1270:4	1400:5	1556:16	1452:22	1587:10
1270:6	1400:13	1556:24	1454:8	1587:15
1270:18	1401:18	1558:13	1454:13	1605:24
1270:21	1401:24	1560:1	1456:13	General's
1270:24	1404:1, 1406:9	1560:12	1459:9	1497:5
1271:1	1406:18	1562:15	GCA's 1451:6	generally
1271:11	1406:19	1566:19	1451:9, 1455:6	1297:16
1271:16	1406:21	1566:23	1458:12	1384:19
1272:11	1407:9	1566:24	GCP 1536:4	1387:23
1273:5	1407:12	1569:22	1536:11	1424:20
1274:18	1407:20	1570:11	1537:4	1524:16
1275:19	1413:1, 1413:8	1570:22	GCPs 1468:15	1525:7
1276:8	1413:13	1572:16	general 1247:11	1606:10
1276:15	1413:16	1572:22	1247:11	generate
1276:23	1414:5	1573:1, 1573:3	1247:16	1271:15
1277:22	1415:25	1573:10	1247:17	1273:5, 1378:8
1278:1, 1278:2	1416:5	1596:8	1247:21	1426:22
1278:13	1416:14	gas-driven	1247:21	1430:5
1278:18	1416:22	1453:16	1354:4	generated
1278:20	1416:23	gas-producing	1355:18	1583:11
1279:19	1417:9, 1435:7	1444:7	1355:19	generating
1282:3, 1284:5	1435:21	gases 1410:18	1357:1	1426:25
1290:7	1444:11	gathered	1361:16	1438:16
1290:25	1445:17	1523:25	1361:16	1439:20
1291:2	1445:20	GCA 1258:15	1362:15	1584:7
1291:11	1446:10	1258:18	1362:23	generation
1293:5	1446:15	1258:20	1362:25	1569:3
1293:13	1446:24	1259:4, 1259:6	1363:1	generations
1293:17	1451:2, 1453:9	1259:9	1364:13	1281:20
1293:19	1453:11	1259:11	1368:14	1408:7
1302:6	1453:12	1259:14	1377:13	1415:20
1305:21	1453:12	1259:19	1378:20	generator
1319:22	1453:13	1259:20	1387:7	1271:12
1319:22	1453:15	1259:21	1425:14	1272:1
1321:22	1453:16	1259:23	1437:17	generic 1514:5
1324:8, 1326:9	1453:22	1259:24	1454:20	geographic
1327:12	1457:20	1260:4, 1260:6	1454:23	1306:11
1327:14	1467:16	1260:7, 1260:8	1461:6, 1477:5	1473:10
1327:21	1468:11	1260:9	1477:7, 1508:7	geospatial
1328:13	1468:15	1260:10	1517:1	1306:12
1328:23	1470:17	1260:12	1534:16	1307:11
1329:1	1472:20	1260:13	1535:9	Geosyntec
1336:20	1476:5, 1487:2	1260:14	1535:12	1485:25
1336:21	1492:19	1260:16	1535:13	getting 1282:5
1336:25	1507:21	1260:18	1535:14	1283:15
1340:20	1518:5	1260:19	1535:16	1289:24
1346:12	1519:22	1260:20	1535:21	1294:18
1373:1, 1387:2	1524:19	1260:21	1535:24	1316:24
1394:3, 1394:7	1532:22	1260:24	1536:16	1317:7
1394:9	1537:19	1261:4, 1261:5	1536:24	1318:14
1394:14	1544:1, 1544:6	1261:6, 1261:7	1540:21	1321:13
1394:16	1544:8	1261:9	1544:20	1324:5
1394:21	1554:13	1261:10	1544:24	1350:10
1394:24	1554:15	1450:21	1544:25	1411:24
1395:16	1554:22	1451:9	1545:14	1427:1
1395:19	1554:25	1451:10	1546:6	1431:22
1397:13	1555:3, 1555:8	1451:13	1546:18	1441:5
1397:20	1555:20	1451:21	1547:19	1500:16
1398:5, 1398:8	1556:11	1451:22	1547:21	1503:5, 1527:2

Volume 5
9/24/2021

EIB Ozone Hearing

1532:25	1573:15	1508:18	1358:1, 1368:5	1557:4, 1557:9
1542:22	globally	1509:12	1369:13	1558:7, 1562:8
1600:25	1289:16	1520:4	1369:20	1563:20
1606:6	1417:11	1527:23	1373:4	1567:9
give 1266:2	glycol 1604:15	1553:7, 1556:1	1373:14	1568:15
1314:25	go 1263:25	1556:7	1376:3	1571:11
1315:18	1268:18	1556:18	1378:23	1572:5, 1579:4
1319:15	1270:20	1567:24	1380:14	1582:7, 1582:9
1335:21	1280:2	1570:8, 1581:3	1381:1	1582:11
1348:9, 1350:8	1281:10	1581:22	1385:22	1592:18
1350:8	1282:12	1583:20	1385:24	1595:10
1355:17	1286:1	1593:5	1391:19	1599:2, 1599:9
1364:20	1294:21	1603:15	1393:5	1602:18
1370:21	1297:15	1606:13	1400:12	1602:22
1371:23	1297:19	1607:9	1403:13	1602:24
1380:9	1297:21	1611:19	1405:24	1606:17
1391:23	1299:14	1612:18	1407:23	1607:23
1391:24	1307:5	goal 1290:11	1409:15	1608:10
1429:6, 1435:2	1312:13	1398:23	1412:7	1609:11
1443:20	1314:1, 1314:9	1528:19	1419:10	1609:25
1463:5, 1506:3	1318:18	1576:4	1421:5	1610:12
1506:21	1319:15	1577:20	1423:10	1610:20
1512:5	1321:6	goals 1474:10	1427:21	1610:22
1611:24	1321:14	God 1573:9	1428:11	1610:24
given 1266:2	1323:2	goes 1282:25	1436:5, 1437:9	1612:10
1293:20	1323:18	1296:23	1437:21	1613:13
1308:23	1325:21	1528:9	1437:22	GONZALES 1251:4
1309:20	1334:17	going 1263:17	1438:9	good 1262:1
1370:7, 1373:7	1335:3, 1344:1	1266:18	1438:20	1266:20
1408:5	1351:23	1267:7	1439:14	1272:23
1422:12	1352:6, 1358:1	1270:15	1440:16	1280:8, 1282:4
1474:8	1361:6	1271:21	1447:24	1284:11
1519:23	1363:24	1274:13	1458:4	1294:17
1526:7	1365:3, 1370:4	1288:19	1459:24	1297:24
1526:12	1371:1, 1371:2	1291:10	1461:4	1302:21
1526:13	1372:18	1295:3, 1295:6	1462:16	1319:17
1536:1	1377:18	1296:1	1469:8	1326:6, 1335:8
1552:14	1378:21	1296:14	1474:15	1336:3, 1346:5
1552:15	1387:9, 1405:6	1297:4, 1297:7	1479:7	1348:9
1576:18	1408:4	1298:25	1482:25	1360:18
gives 1317:20	1408:18	1305:8, 1305:9	1483:18	1368:3
1380:13	1411:13	1310:18	1496:7, 1498:4	1373:23
1386:21	1414:13	1310:25	1502:15	1375:12
1470:14	1417:25	1313:8, 1315:2	1504:17	1394:11
giving 1280:25	1420:2	1315:6	1505:4, 1505:7	1399:4
1299:23	1423:14	1319:25	1509:2, 1509:4	1409:17
1368:6	1434:12	1320:2, 1320:7	1509:6, 1511:7	1417:3
1374:11	1438:20	1322:1, 1322:6	1511:24	1417:12
1417:17	1458:4	1323:1, 1323:1	1512:15	1429:7
1427:23	1466:11	1323:14	1519:24	1429:20
1470:22	1467:5	1324:20	1520:7	1442:12
1521:22	1479:21	1328:19	1522:15	1445:18
1558:11	1480:15	1328:20	1524:13	1450:24
glad 1429:14	1496:3, 1496:7	1330:4	1527:4, 1527:9	1453:2, 1460:3
1445:1	1496:9	1330:19	1540:18	1474:19
1449:11	1496:11	1332:15	1545:4	1498:22
1507:12	1499:8	1332:19	1551:16	1499:3, 1503:8
1510:10	1501:12	1339:2, 1339:5	1554:5	1504:7, 1506:5
global 1393:25	1501:23	1348:19	1554:16	1506:16
1417:8	1504:1	1353:18	1554:20	1507:11
1559:16	1508:16	1356:17	1556:13	1510:9

Volume 5
9/24/2021

EIB Ozone Hearing

1511:12	1282:20	1508:10	guess 1266:22	1561:24
1512:6	great 1265:14	1508:10	1298:23	1564:16
1513:20	1273:23	1514:9	1302:23	1568:7
1516:7	1276:25	group's 1336:7	1372:9, 1380:1	1571:21
1516:22	1279:2	1336:9	1418:23	hand-in-hand
1521:21	1314:22	1465:24	1446:20	1408:4
1522:11	1380:18	1466:2	1494:17	handle 1370:20
1528:18	1384:17	1485:16	1498:14	1375:22
1528:23	1411:19	groups 1388:25	1501:18	1379:11
1543:16	1415:16	1448:6, 1473:5	1520:3	handling
1561:20	1415:23	grow 1275:1	1542:25	1370:23
1565:13	1484:25	growing 1407:25	1543:6, 1544:4	hands 1550:2
1571:4	1498:4	growth 1275:15	1544:14	Hang 1418:22
1574:21	1512:21	1275:18	1604:17	hanging 1312:4
1575:19	1573:8, 1588:2	1590:6	1604:17	1372:3
1595:20	1595:5, 1605:8	grueling 1608:2	1607:21	happen 1263:22
1600:23	1609:16	Guadalupe	1613:1	1329:12
1601:14	1609:20	1250:13	guidance	1370:25
1607:15	1611:18	guardians	1370:20	1462:12
1608:19	1613:17	1250:8	1441:22	1526:25
1613:4	greater 1327:23	1250:13	guided 1329:24	1611:9
good-sized	1477:17	1287:9	Gutierrez	happened 1289:2
1500:20	1525:18	1296:12	1252:4, 1255:9	happening
Goodnight	1590:11	1297:6	1365:16	1286:8
1252:9	greatest	1298:14	1365:18	1286:15
gotten 1283:14	1410:12	1305:7	1365:21	1306:21
1291:4	greatly 1475:11	1313:15	1367:23	1324:7
1511:21	green 1324:14	1316:15	1581:1, 1581:1	1383:15
government	1327:23	1319:8, 1326:4	1581:9	1511:18
1267:12	Greenberg	1327:11	guys 1374:18	happens 1393:22
1435:15	1252:12	1328:23	1401:3, 1515:4	1606:10
Governor 1395:3	greener 1446:10	1329:13		happily 1581:4
1398:1	greenhouse	1330:13	H	happy 1262:17
1562:21	1272:10	1330:21		1273:10
1565:3	1272:11	1342:4	half 1388:19	1392:5
Governor's	1290:7	1344:10	1554:15	1431:23
1290:11	1336:25	1346:4	1611:23	1432:11
GP-5 1261:4	1394:3	1377:12	1611:23	1609:20
GPS 1370:15	1410:18	1388:12	hand 1264:10	hard 1295:6
1371:3	1492:19	1456:25	1269:4	1314:11
1427:19	1507:21	1457:10	1273:25	1414:2
1437:7	GREGORY 1252:11	1457:16	1280:10	1439:14
1582:15	Grisham 1398:1	1460:5, 1462:8	1285:3	1455:19
graduated	Grisham's	1468:1, 1476:4	1288:11	1499:22
1292:17	1395:3	1481:13	1289:8, 1292:1	1562:22
grandchildren	gross 1267:20	1481:19	1335:10	1598:10
1287:13	1267:22	1516:13	1392:18	harder 1513:3
1287:13	Grossing 1278:5	1516:14	1396:19	hardship
grandmother	ground 1303:1	1520:10	1403:5	1558:24
1415:16	grounds 1309:4	1520:25	1405:16	hardwired
1415:16	group 1252:10	1533:15	1409:4, 1409:7	1295:12
grandparents	1258:5	1534:2	1411:25	harm 1415:23
1281:6	1334:15	1534:15	1415:2	1559:24
grant 1374:22	1334:18	1541:22	1434:14	1559:25
1415:13	1336:5	1543:12	1452:6	1560:1, 1560:2
1459:21	1338:15	1544:23	1466:19	1560:9
granting	1340:15	1595:22	1485:4	harmful 1410:9
1329:19	1473:2, 1473:6	1596:10	1531:20	1560:11
graphics	1492:12	1596:20	1553:17	1569:23
1271:22	1494:10	1601:6	1557:24	harming 1293:22
graphite	1504:6	guarding 1265:5	1561:12	harmonize

Volume 5
9/24/2021

EIB Ozone Hearing

1538:3 harmonizing 1518:14 Harris 1251:22 hashed 1589:7 head 1376:16 1381:3 1385:15 1386:4, 1526:1 1601:13 1613:16 heads 1335:21 health 1276:9 1277:23 1286:17 1286:18 1293:22 1393:19 1394:20 1400:11 1400:14 1400:16 1404:23 1406:10 1407:17 1410:13 1412:11 1413:15 1487:1 1528:16 1528:21 1529:21 1530:2, 1530:5 1554:12 1558:19 1562:15 1562:17 1563:4 1563:22 1569:17 1570:19 1570:20 1570:25 1573:5, 1593:9 1593:20 1597:12 1597:20 healthier 1412:19 1413:20 hear 1263:8 1264:3, 1264:4 1264:5 1268:22 1268:23 1268:24 1273:21 1280:5, 1280:7 1280:8 1284:23 1284:25	1287:9 1291:18 1291:19 1291:20 1295:13 1308:6, 1309:3 1310:16 1310:20 1315:4 1316:20 1317:15 1318:15 1319:7 1319:10 1320:23 1334:7, 1342:7 1392:10 1392:12 1396:12 1396:14 1402:12 1408:23 1408:25 1411:15 1414:14 1414:15 1414:20 1414:22 1418:16 1418:18 1449:11 1462:12 1471:13 1472:8 1473:16 1473:23 1474:20 1478:14 1478:16 1484:23 1496:4, 1513:1 1533:13 1553:2, 1553:9 1557:6 1557:16 1557:17 1557:19 1560:25 1561:2, 1564:7 1564:9 1567:25 1568:1, 1568:2 1575:8 1605:13 1607:20 1607:21 1609:20 1610:12 heard 1319:10 1372:8, 1377:3 1385:15	1385:16 1391:20 1406:18 1427:17 1444:4 1446:21 1450:9 1469:11 1478:25 1492:10 1497:4 1502:20 1518:17 1525:7, 1526:3 1540:23 1555:7 1568:24 1578:21 1583:21 1589:6, 1595:3 1606:14 1608:18 1609:4, 1610:7 1610:7 hearing 1246:13 1246:14 1247:2, 1262:1 1262:2, 1262:4 1262:5, 1264:6 1264:13 1264:18 1264:22 1264:24 1266:24 1268:4, 1268:9 1268:17 1268:25 1269:3, 1269:7 1269:12 1269:16 1269:19 1273:9 1273:12 1273:19 1273:23 1274:3, 1274:8 1274:12 1279:9 1279:12 1279:25 1280:8 1280:13 1280:18 1280:22 1280:14 1285:1, 1285:6 1285:11 1285:15 1287:17 1287:22 1288:3, 1288:8	1288:14 1288:19 1288:22 1291:15 1291:21 1291:25 1292:4, 1292:9 1293:25 1294:2 1294:22 1294:24 1295:14 1295:19 1295:23 1296:6 1296:18 1297:2 1297:10 1297:14 1298:2, 1298:4 1298:16 1299:11 1299:13 1299:16 1304:20 1307:17 1307:20 1307:22 1308:2 1309:24 1310:2, 1310:6 1310:7 1310:11 1310:17 1310:21 1311:3 1311:21 1311:25 1312:7 1312:13 1312:25 1313:7 1313:11 1313:14 1313:22 1314:3, 1314:5 1314:13 1314:18 1314:22 1315:5, 1315:9 1315:10 1315:15 1315:20 1315:24 1316:3, 1316:8 1316:12 1316:18 1317:9 1317:21 1317:25 1318:9, 1320:6	1320:9 1320:12 1320:16 1320:19 1320:22 1321:5 1323:11 1323:13 1325:3, 1325:5 1325:11 1325:16 1325:22 1329:16 1329:18 1329:24 1330:1, 1331:8 1331:9 1331:18 1332:2 1332:10 1332:12 1332:16 1332:17 1333:1, 1333:4 1333:9 1333:13 1333:15 1333:17 1333:19 1333:22 1333:24 1334:6, 1334:9 1334:17 1334:21 1334:25 1335:6, 1335:8 1335:13 1335:20 1335:25 1337:23 1338:1 1338:25 1339:12 1339:14 1339:16 1339:21 1339:23 1339:24 1340:1, 1340:4 1340:6 1340:23 1341:2, 1341:6 1341:8 1341:14 1341:17 1341:24 1343:22 1344:2, 1345:1 1345:3 1345:12 1345:20
--	---	--	---	--

Volume 5
9/24/2021

EIB Ozone Hearing

1345:22	1408:25	1449:19	1496:14	1567:22
1347:4	1409:3, 1409:6	1449:23	1496:20	1568:2, 1568:6
1347:10	1409:10	1450:1, 1450:3	1496:23	1568:10
1348:14	1409:15	1450:6	1497:7	1568:15
1349:3, 1349:4	1411:11	1450:16	1497:11	1571:5
1349:6	1411:17	1450:24	1497:13	1571:15
1349:10	1411:20	1451:5, 1451:8	1497:14	1571:20
1349:12	1411:23	1451:15	1497:22	1571:24
1349:14	1412:7, 1414:9	1451:24	1498:3, 1498:7	1572:5
1351:9	1414:16	1452:5, 1452:9	1505:15	1572:12
1351:12	1414:23	1452:16	1505:17	1573:22
1351:14	1415:1, 1415:5	1453:2, 1459:8	1505:20	1574:16
1351:16	1415:10	1459:11	1509:11	1574:18
1351:18	1417:20	1459:18	1512:23	1578:22
1351:23	1418:9	1462:14	1514:20	1579:14
1351:25	1418:11	1462:18	1514:25	1579:20
1352:8	1418:19	1463:3, 1463:7	1515:6	1579:25
1352:10	1418:25	1463:9	1515:10	1580:2, 1580:3
1352:12	1419:3, 1419:3	1463:19	1515:17	1580:11
1352:21	1419:7	1463:21	1515:24	1580:15
1355:3	1419:11	1463:25	1516:22	1580:19
1360:18	1419:15	1464:3, 1464:6	1522:21	1580:20
1361:8, 1361:8	1419:22	1464:10	1526:4	1580:24
1365:13	1420:1	1464:12	1530:12	1581:4, 1581:7
1365:19	1421:14	1464:15	1530:20	1581:11
1367:22	1422:18	1464:23	1535:2	1581:16
1367:25	1423:7	1464:25	1540:17	1581:22
1375:6, 1375:8	1423:13	1465:9	1540:23	1588:2, 1595:8
1375:25	1423:15	1465:15	1541:2	1595:15
1376:10	1423:17	1465:19	1541:11	1600:2
1376:12	1423:21	1466:9	1541:15	1600:15
1380:20	1424:12	1466:14	1541:18	1600:16
1380:21	1425:13	1466:18	1548:6, 1548:8	1600:18
1386:8, 1390:2	1427:7, 1429:5	1466:22	1548:11	1601:18
1390:13	1430:18	1467:5, 1469:4	1551:11	1601:22
1390:16	1430:21	1469:11	1551:12	1601:25
1391:21	1432:11	1478:4, 1478:9	1552:9	1602:6, 1602:9
1392:1	1432:14	1479:3	1552:12	1602:11
1392:13	1433:6, 1433:9	1479:14	1553:11	1602:13
1392:17	1433:12	1479:16	1553:16	1602:15
1392:21	1433:13	1482:13	1553:21	1602:18
1393:5, 1396:8	1433:17	1483:4, 1483:8	1554:5	1602:21
1396:14	1433:20	1483:11	1554:18	1603:3, 1603:6
1396:18	1434:2, 1434:5	1484:2, 1484:5	1557:2, 1557:8	1603:8
1396:23	1434:17	1484:11	1557:12	1603:24
1397:5, 1401:6	1442:6, 1442:9	1484:16	1557:18	1603:25
1401:11	1442:23	1484:17	1557:23	1604:1
1402:8	1443:8	1484:24	1558:2, 1558:7	1604:22
1402:15	1443:10	1485:3, 1485:7	1560:21	1605:6, 1605:8
1402:19	1443:15	1487:18	1561:3, 1561:6	1605:10
1402:24	1443:23	1487:23	1561:11	1605:18
1403:3, 1403:8	1446:5, 1447:2	1488:13	1561:17	1606:10
1403:13	1447:4, 1447:8	1488:15	1561:21	1606:11
1405:2, 1405:9	1447:13	1493:20	1561:21	1606:20
1405:12	1447:15	1495:5	1561:25	1608:14
1405:15	1447:17	1495:14	1562:3, 1562:8	1609:3, 1609:9
1405:19	1447:22	1495:17	1564:3	1609:22
1405:24	1448:2	1495:21	1564:10	1610:4, 1610:8
1406:17	1448:13	1495:25	1564:15	1610:15
1408:16	1449:7, 1449:9	1496:2, 1496:5	1564:19	1611:3, 1612:3
1408:21	1449:17	1496:11	1564:24	1612:13

Volume 5
9/24/2021

EIB Ozone Hearing

1613:5	1298:12	1248:4, 1255:6	1450:17	1563:22
1613:11	1309:11	1255:10	holders 1591:11	1566:7
1613:16	1321:16	1256:7	holding 1282:23	1610:25
1613:19	1365:25	1314:14	holds 1591:13	1612:25
hearings	1371:6, 1374:7	1315:9	hole 1346:21	1612:25
1576:13	1385:24	1315:11	Hollenberg	hoped 1429:16
1606:8	1510:7	1315:11	1462:13	1606:21
hears 1476:11	1514:16	1334:8	1576:14	hopeful 1607:16
heart 1413:14	1550:13	1343:25	1576:14	hopefully
heartbeat	1572:9	1345:4, 1345:5	1577:5	1369:5
1401:24	1600:23	1345:7	HOLMSTEAD	1427:10
heat 1399:25	1608:20	1367:24	1251:15	1433:25
1399:25	helping 1269:21	1367:25	home 1281:15	1483:21
heavily 1475:4	1276:23	1368:2, 1375:1	1292:15	1496:8, 1611:1
1558:22	1512:22	1375:6	1445:3, 1512:2	hopes 1496:12
heavy 1439:25	1527:23	1379:20	1556:12	1527:19
1569:5	helps 1303:22	1379:23	1596:24	1527:19
hectic 1492:24	1453:16	1423:15	homes 1570:15	hoping 1369:4
heightened	1611:20	1424:6	hometown	1386:24
1529:19	hereto 1614:14	1425:11	1572:21	1387:8, 1432:7
held 1399:3	heroic 1607:4	1427:7	1572:23	1607:25
1419:7	hey 1497:3	1430:17	Honda 1446:9	horizontal
1419:12	1524:24	1430:24	honest 1569:11	1435:21
1426:4	1525:5	1431:15	1575:23	1445:5
hello 1274:15	1525:20	1432:1, 1432:4	honestly	1445:17
1335:4, 1397:7	Hi 1335:5	1432:9	1508:20	1445:19
1405:9	1442:13	1432:15	Honker 1247:8	horrifying
1405:10	1485:12	1604:23	1309:25	1393:24
1405:12	1600:16	historically	1310:1	hostile 1279:18
1408:20	high 1258:11	1270:17	1333:22	hour 1246:15
1408:21	1281:8	1273:2	1333:23	1429:24
1442:12	1282:13	history 1281:6	1340:7, 1340:8	1603:10
1466:12	1400:17	hit 1272:15	1340:17	1603:15
1466:13	1403:23	1295:6	1340:22	1611:23
1466:14	1527:19	1303:15	1351:12	1611:24
1478:12	1527:19	1510:17	1351:13	1611:24
1494:3, 1557:6	higher 1403:23	hitting 1317:18	1418:1	hours 1389:18
1557:16	1404:7	Hobbs 1570:3	1419:23	1606:8
help 1265:23	1489:25	Hogan 1252:5	1419:25	house 1572:17
1276:24	1522:24	1581:2	1433:17	housekeeping
1282:7	1524:12	hold 1310:7	1433:18	1351:24
1284:12	1559:2	1315:20	1447:9	1451:5
1290:13	highest 1290:24	1316:4	1447:10	Houston 1251:11
1334:4, 1399:9	1562:16	1323:13	1450:7, 1450:8	huge 1586:16
1437:3, 1438:7	1566:3, 1566:4	1332:17	1450:14	human 1404:23
1438:10	highlight	1402:19	1464:10	humans 1400:7
1441:2, 1441:4	1278:15	1402:19	1464:11	hundreds 1385:4
1460:23	1278:16	1411:1, 1425:3	1484:3, 1484:4	1385:4
1471:23	highlighted	1481:10	1505:21	1468:13
1496:6	1425:21	1511:1	1505:22	1487:12
1508:17	highly 1469:25	Holderman	1506:12	1555:14
1509:3	1470:20	1256:11	1506:18	hurt 1293:23
1529:19	highway 1569:5	1447:20	1509:8	husband 1404:16
1565:7	Hippocratic	1447:21	1512:20	1406:14
1576:15	1559:24	1447:25	1580:12	1408:10
1576:19	hire 1382:20	1448:3	1580:13	hydrocarbon
1611:17	1384:4, 1421:2	1448:10	1602:7, 1602:8	1337:8
helped 1274:25	1490:4	1448:21	1612:5, 1612:6	1340:19
1317:10	hiring 1383:3	1448:22	honor 1411:7	hydrocarbons
1482:20	1492:25	1449:1	Hooper 1276:5	1303:15
helpful 1270:2	Hiser 1248:3	1450:12	hope 1304:13	hyphen 1571:18

Volume 5
9/24/2021

EIB Ozone Hearing

hypothetical 1596:18 1596:22 hypothetically 1596:7 hypotheticals 1348:10 1598:12	illness 1404:13 1404:21 1559:6 illnesses 1404:4, 1573:5 illuminating 1308:1 image 1560:14 1599:3 imagery 1307:12 imagine 1503:19 1569:13 immaturity 1284:6 immediate 1412:18 immediately 1296:17 1303:21 1519:13 impact 1275:12 1277:4, 1277:8 1278:25 1279:1, 1279:5 1284:5, 1352:2 1397:15 1397:18 1398:25 1399:2 1399:17 1532:6, 1532:8 1536:5 1536:25 1589:11 1589:20 impacted 1399:10 1470:7 1513:16 1523:13 1530:3 impacts 1258:12 1399:5 1403:22 1411:3, 1470:8 1476:14 1519:4 1522:13 1533:20 1534:4 1534:24 1536:16 1562:15 1570:25 implement 1369:4 1371:17 1387:16 1439:10 1455:19 1469:25	1470:12 1471:1 1500:13 1543:20 1565:24 1582:15 1594:18 implementation 1522:24 1533:1, 1577:3 implemented 1369:2, 1439:2 1474:11 1518:16 1524:11 1531:8, 1545:8 1546:23 1565:20 1577:10 implementing 1370:12 1377:19 1592:4 implications 1592:3, 1592:7 implies 1476:12 implying 1323:20 import 1521:18 importance 1286:8, 1287:1 important 1265:24 1266:9, 1267:4 1274:18 1276:8 1276:15 1279:17 1286:4 1293:20 1328:4 1360:16 1365:5, 1368:8 1404:16 1409:20 1412:11 1416:25 1428:20 1438:11 1438:23 1440:23 1511:25 1523:20 1524:9 1526:19 1550:13 1584:22 1603:11 impose 1457:10 1472:23 1491:18	1492:23 1521:24 1521:25 1528:10 1550:3 imposed 1457:16 impractical 1426:7 improper 1364:9 improve 1462:8 1475:16 1560:13 improved 1429:21 1469:15 improvement 1246:1, 1247:4 1262:3 1264:25 1268:1, 1272:5 1286:13 1288:23 1292:12 1393:9 1409:19 1450:25 1457:14 1458:24 1558:11 1572:11 1577:23 1577:24 improvements 1407:1 1412:15 1454:7, 1575:2 improves 1497:2 improving 1408:3 1560:17 in-house 1383:18 1384:1 1474:25 1486:20 inadequacy 1284:6 inadequately 1403:25 1404:2 inadvertently 1519:7 inapplicability 1456:4 inappropriate 1328:14 inaudible 1285:22 1291:13 1337:2, 1351:7 1465:14	1495:24 1496:10 1514:6, 1535:1 1556:14 1561:15 include 1309:9 1336:24 1338:11 1338:16 1342:18 1344:23 1355:22 1394:10 1399:24 1413:6 1451:13 1461:19 1487:11 included 1281:12 1323:5 1323:21 1327:6 1344:24 1365:1 1394:17 1426:10 1430:25 1431:10 1431:11 1531:21 1575:13 1575:15 1578:18 includes 1361:22 1399:23 1404:16 1404:16 1457:7 including 1271:13 1311:15 1382:6 1382:15 1395:13 1398:11 1398:20 1437:7, 1457:6 1468:15 1487:13 1503:10 1527:22 1539:11 1539:20 1589:4 inclusion 1324:1 1324:20 1342:9 income 1275:13
I				
I-L 1335:23 IC 1260:22 ICE-Reductio... 1260:5 idea 1320:1 1343:1, 1368:9 1384:20 1492:13 1588:3, 1610:2 ideas 1267:18 identical 1541:9 identified 1294:19 1302:18 1357:24 1369:11 1372:18 1388:2 1537:14 identifiers 1469:19 identify 1359:4 1359:23 1369:5 1369:18 1369:22 1391:12 1427:18 1489:24 1517:17 1520:11 1520:18 1520:19 1557:13 1606:24 1610:21 identifying 1359:1 1369:21 II 1492:20 Il 1254:23 1258:8 1258:10 1258:11 1258:13 1334:20 1335:14 1335:23 1336:13				

Volume 5
9/24/2021

EIB Ozone Hearing

1474:3 incompatibility 1470:9 inconsistent 1519:8 inconvenience 1318:3 incorporate 1422:13 incorporated 1253:4 1436:24 incorporates 1395:10 increase 1291:10 1361:4 1446:23 1475:12 1505:5 1536:13 increased 1266:15 1327:13 1328:25 1558:15 1569:12 increases 1404:21 1477:16 increasing 1393:14 1398:7 incredibly 1523:12 incremental 1273:5 incurred 1500:23 independence 1265:14 independent 1251:2, 1281:3 1387:3 1440:14 1548:23 indicated 1294:5 1504:21 indicating 1534:9 indicator 1429:20 indigenous 1285:24 indirectly 1397:15 individual 1372:6 1372:18 1372:21	1373:9 1373:16 1476:13 1476:18 1533:17 1546:21 individuals 1559:8 1572:23 industrial 1366:25 1366:25 1559:7 1565:17 1596:23 industries 1336:22 1565:15 industry 1265:21 1265:22 1266:12 1266:19 1267:8, 1270:4 1274:18 1276:8 1276:16 1276:23 1277:22 1278:19 1284:9 1286:24 1289:24 1290:13 1291:1, 1291:7 1291:11 1293:13 1293:19 1356:11 1357:11 1357:25 1358:18 1361:18 1369:20 1370:13 1376:19 1376:24 1377:7 1377:10 1386:20 1386:21 1386:22 1388:25 1394:7 1394:21 1394:24 1397:13 1397:20 1398:8 1398:14 1400:5	1400:13 1401:18 1401:24 1402:1 1407:20 1410:23 1413:17 1414:2 1416:14 1417:2 1420:18 1422:13 1430:14 1435:8, 1453:9 1453:22 1453:23 1468:11 1486:4 1501:16 1512:1 1558:13 1558:23 1560:2, 1560:5 1560:8 1560:10 1563:3 1565:23 1566:16 1567:4, 1567:6 1567:10 1567:11 1569:20 1570:23 1572:22 1573:1 1573:10 1573:13 1582:10 1593:11 1594:17 1607:4 industry's 1394:15 1560:12 inefficient 1271:1 infancy 1283:5 infected 1404:8 infections 1404:11 inferred 1327:20 inflamm 1400:7 influence 1350:6 informal 1524:9 information 1269:20 1357:4 1357:16 1358:15	1360:10 1362:17 1364:18 1364:20 1368:16 1368:18 1369:7 1373:12 1373:20 1378:3 1378:12 1378:22 1379:2, 1379:8 1379:12 1385:8, 1389:7 1420:16 1426:18 1437:25 1456:5 1469:11 1470:13 1471:12 1502:11 1524:6, 1524:7 1524:8, 1525:1 1529:22 1533:23 1534:9 1538:25 1546:15 1550:1 1576:15 1579:4, 1584:9 1585:2 1586:17 1593:20 1593:20 1594:2, 1594:3 1594:7 1596:21 1597:6 1597:20 1598:7 informative 1306:16 1529:18 informed 1523:21 1526:9 infrastructure 1270:8 1270:12 1276:13 1276:19 1276:22 1555:17 inhibit 1590:5 initial 1357:6 1385:8 1395:14 1467:22	1533:22 initiating 1500:6 Initiative 1397:24 1528:2 initiatives 1499:13 injustice 1292:21 innovation 1401:22 1402:5 input 1266:21 1266:25 1390:1 1425:18 1503:18 1604:17 1605:19 1609:8 inserted 1542:8 inserting 1504:4 inside 1271:21 1368:12 insight 1506:20 insignificant 1326:24 insist 1462:25 inspect 1290:15 1293:13 1395:19 1401:16 1407:14 1413:1, 1416:9 1556:17 1563:12 1567:1, 1594:6 inspection 1361:20 1361:23 1362:9 1366:20 1366:22 1367:2, 1367:3 1367:13 1370:17 1381:9 1381:15 1382:3, 1382:5 1382:15 1382:16 1407:5 1421:25 1502:13 1594:6 inspections 1290:16 1381:6, 1381:8 1381:11
---	---	---	---	--

Volume 5
9/24/2021

EIB Ozone Hearing

1381:13	1359:5, 1491:3	1614:14	1368:15	1447:16
1381:21	intensive	interesting	1387:14	1456:2, 1459:6
1381:24	1510:15	1307:14	1489:7, 1500:3	1474:13
1382:6	intent 1301:7	1447:11	1503:9, 1509:3	1474:16
1382:14	1311:9, 1336:7	interests	1509:5, 1509:6	1500:14
1382:21	1336:9	1410:16	1584:17	1511:16
1395:8, 1416:2	1357:14	InterFaith	1596:24	1511:17
1416:17	1358:11	1285:20	1610:23	1511:20
1554:22	1366:15	1286:5	involves 1438:6	1517:6
1554:23	1366:19	interfere	1487:13	1533:22
1556:5	1368:15	1584:12	1513:6	1535:9
1556:23	1369:19	1584:20	involving	1536:22
1563:5	1369:21	Intermountain	1454:3	1545:1, 1565:8
1565:21	1369:23	1249:19	IPANM 1313:25	1581:6
1566:14	1378:3, 1378:8	internal 1475:3	1316:13	1582:25
1573:18	1380:15	1487:10	1352:3, 1352:9	1590:24
1587:1	1382:9	1499:4	1433:22	1597:23
install 1358:14	1382:19	1508:15	1435:23	1598:1
1482:20	1382:24	1511:1	1438:8	1610:19
installation	1387:24	internally	1438:22	1610:24
1469:17	1465:25	1489:19	1440:18	issued 1534:18
installed	1466:2	Internet	1442:15	1546:7
1271:13	1483:25	1271:19	1443:11	issues 1265:11
Installing	1485:17	interpret	1443:19	1272:14
1469:18	1485:19	1508:17	1582:16	1311:2
1482:22	1494:14	1509:3	IPANM's 1585:24	1346:19
instance	1578:6, 1583:5	interrupt	IPL 1406:4	1357:24
1306:21	1583:23	1320:12	Ironically	1380:9
1384:14	1584:2	1323:8, 1431:6	1282:23	1383:13
1388:12	1586:11	1476:23	1283:21	1384:6, 1388:2
1583:6	1592:20	1487:19	irresponsibi...	1400:3, 1425:2
instances	intention	interrupting	1559:7	1438:25
1301:3, 1304:1	1526:25	1326:5	Isolation	1441:21
1364:17	intentioned	introduce	1570:2	1443:12
1550:24	1526:6	1465:16	issuance	1485:1
1577:13	intents 1301:13	1591:11	1305:23	1511:10
1578:25	1375:3	introduced	1306:7, 1468:2	1545:6
1579:6	interaction	1278:17	1476:4	1570:22
1586:10	1376:19	1368:10	1477:18	1573:6
Institute	1377:6	introducing	1533:17	1576:10
1305:20	1584:14	1350:5, 1593:8	1545:21	1577:11
integrate	interchangeably	inundated	1546:11	1585:14
1427:23	1601:2	1525:3	1547:20	1585:23
1428:14	1601:14	inventories	1547:23	1586:10
1428:22	interconnect	1492:20	issue 1270:18	1593:12
integrated	1507:19	inventory	1286:9, 1289:8	1597:1
1426:24	interdependent	1594:1, 1594:2	1306:22	1603:13
1513:24	1410:1, 1411:8	1597:9	1314:17	1603:21
1514:7	interest 1278:4	inversion	1315:13	1604:14
intend 1583:4	1278:5	1328:4	1319:21	1607:3
1603:8, 1603:8	1424:23	invested	1320:5	issuing 1545:15
intended 1365:1	1427:12	1266:12	1321:21	item 1351:24
1381:17	1446:9	investment	1321:24	1399:18
1527:10	1446:16	1385:8	1322:17	1418:23
1527:25	1462:20	invite 1287:7	1326:16	1440:13
1531:8	1462:24	1365:15	1338:21	1441:12
1542:12	interested	involved	1347:3, 1383:2	items 1376:21
1584:5	1320:15	1326:21	1385:25	1436:22
1587:11	1322:19	1327:24	1400:9	iterate 1409:25
1590:5	1386:12	1346:12	1412:12	iteration
intends 1358:25	1513:17	1350:23	1432:5	1389:5

Volume 5
9/24/2021

EIB Ozone Hearing

iterations 1389:4	John 1250:3 1255:23 1256:6 1259:23 1259:24 1260:24 1391:3 1411:13 1411:13 1412:3 1412:13 1424:1, 1424:9 1469:23 john_vimont@... 1250:6 johnsoke@law... 1249:15 JOHNSON 1249:9 joined 1552:19 joining 1434:10 jointly 1398:3 Jones 1247:9 1262:11 1262:21 1294:9 1390:22	1540:16 1541:5 justice 1410:4 1410:7 justify 1270:15 1473:13	1351:20 1351:22 1352:16 1352:17 1353:6, 1353:7 1353:15 1353:17 1354:9 1354:12 1354:15 1354:20 1354:23 1355:1, 1355:4 1355:6, 1355:8 1355:10 1356:25 1365:10 1365:14 1385:21 1419:10 1421:15 1422:20 1422:21 1422:23 1423:5 1423:11 1431:6, 1431:9 1431:17 1431:22 1442:7, 1442:8 1442:9 1442:11 1442:21 1443:12 1462:18 1478:8, 1478:9 1478:11 1483:24 1493:22 1493:24 1494:2, 1495:3 1513:7 1513:14 1514:17 1515:10 1515:18 1581:10 1581:11 1581:20 1581:23 1582:6, 1588:4 1588:6, 1595:9 1602:10 1602:11 1602:17 1602:20 1603:24 1603:25 1604:1, 1605:1 1605:3, 1605:7 1605:9	1605:11 1607:19 1607:20 1608:20 1608:22 1610:15 1610:18 1611:3 1611:16 1612:21 1612:22 keep 1264:9 1266:15 1267:7 1283:14 1430:8 1437:19 1470:18 1529:14 1592:25 keeping 1408:6 1427:12 1528:18 1542:23 1577:20 KEIFER 1249:9 Kennedy 1248:8 Kenney 1562:22 1565:4 kept 1358:10 1517:11 1517:23 1520:5 key 1272:15 1453:15 keystone 1377:20 kids 1282:6 1283:18 1283:19 1284:4 1284:10 1284:11 1606:1 killed 1573:12 Kim 1254:23 1258:8 1258:10 1258:11 1258:13 1334:20 1334:22 1335:4, 1335:5 1335:7 1335:12 1335:14 1335:23 1335:23 1335:24 1336:11 1336:13
J		K		
J-I-L-L 1485:2 J-O-H-N 1411:22 Jack 1262:13 1284:16 Janoe 1251:10 1447:18 1447:19 1447:21 1448:2 1450:19 1607:2 January 1295:23 1359:6 1427:22 1428:13 1437:13 1476:22 1477:9 JAYNES 1249:8 jaynesda@law... 1249:14 JD 1486:17 JEFF 1257:8 1562:4 jeff.holmste... 1251:19 JEFFREY 1251:15 Jennine 1249:4 Jeremy 1254:18 1256:22 1299:5 1329:14 1516:1 1574:10 Jill 1256:19 1465:22 1484:20 1485:8 1485:24 job 1266:6 1381:6, 1396:5 1408:6, 1441:2 1515:4, 1560:6 1570:8 1601:14 1607:4 jobs 1265:21 1399:10 1407:21 1407:22 1408:2, 1408:3 1416:13 1416:16 1416:16 1416:21 1417:2, 1513:5	Jordan 1248:4 journal 1343:6 Joy 1248:4 Juan 1248:12 1306:9 1435:17 1435:19 1444:5 1444:20 1445:24 1446:8 1446:18 1446:22 1565:18 judgment 1520:21 1523:18 July 1312:16 1312:19 1312:21 jump 1419:10 1462:19 1581:13 1603:10 jumping 1295:1 jurisdiction 1342:15 1342:18 1482:5 1537:15 1562:25 jurisdictions 1457:22 1537:10 1539:10	K-A-R-E-N 1403:1 K-A-T-H-Y 1396:17 K-I-M 1335:24 K-Y-L-E 1414:25 Karen 1247:6 1255:17 1391:2, 1402:9 1402:16 1403:9 1403:16 KARI 1251:3 KARL 1247:7 KARLA 1247:10 Kathy 1255:15 1391:1 1396:10 1397:1, 1397:8 Katz 1247:16 1255:5, 1255:9 1255:12 1256:9 1256:17 1256:20 1257:18 1257:19 1297:1, 1297:2 1310:23 1310:24 1310:25 1312:7 1312:19 1313:3, 1313:4 1313:9 1313:12 1313:16 1313:20 1313:24 1314:1, 1314:4 1317:1, 1317:4 1334:10 1341:6, 1341:8 1341:12 1341:16 1341:23 1342:1 1343:20 1346:24 1347:1 1351:15 1351:16		

Volume 5
9/24/2021

EIB Ozone Hearing

1337:19 1338:9 1338:20 1339:1, 1339:3 1339:13 1339:20 1340:12 1340:19 1341:3, 1341:5 Kim's 1336:6 kind 1270:2 1303:16 1305:7 1305:16 1307:7 1343:12 1343:13 1351:5, 1365:6 1371:3 1378:16 1385:8 1385:14 1386:3, 1389:9 1420:12 1426:1 1438:21 1444:24 1457:15 1457:21 1482:24 1498:12 1503:10 1506:23 1517:4 1521:21 1521:25 1525:24 1533:22 1543:21 1559:23 1570:9, 1575:6 1575:16 1576:3 1586:23 1593:18 1598:10 1605:23 1605:25 Kinder 1252:2 1581:5 1586:25 kinds 1265:11 1528:9 1555:17 Knight 1247:20 1391:2, 1405:4 knock 1603:13 knocked 1608:12 know 1265:24 1267:5 1269:25	1270:13 1272:16 1272:19 1273:14 1282:7, 1286:3 1286:4, 1286:8 1286:12 1286:15 1286:21 1286:22 1286:23 1286:25 1287:3 1289:19 1293:1, 1293:5 1294:7 1295:24 1296:9 1296:14 1300:24 1301:8, 1302:3 1303:19 1305:19 1306:20 1306:25 1307:1, 1307:2 1308:16 1308:18 1309:5, 1309:5 1310:19 1311:12 1314:7 1317:17 1320:22 1320:25 1321:12 1321:25 1322:6 1324:19 1337:1 1341:12 1342:16 1343:14 1344:16 1349:25 1350:4 1350:10 1350:11 1350:12 1350:22 1363:18 1364:23 1369:6, 1374:3 1377:3 1378:20 1379:16 1379:18 1379:19 1379:20 1379:22 1379:24	1380:2 1384:12 1384:13 1385:4 1386:15 1386:16 1386:17 1386:20 1387:9 1388:12 1388:13 1388:17 1393:24 1398:5 1398:14 1399:24 1401:13 1417:9 1417:18 1421:23 1437:25 1444:4 1444:23 1485:1 1494:19 1494:23 1494:25 1497:7 1497:19 1500:5, 1504:2 1504:4 1504:24 1506:2 1507:16 1509:22 1510:21 1510:22 1513:1, 1513:3 1513:15 1513:20 1514:3 1514:17 1519:1 1521:23 1522:1 1526:20 1526:24 1528:12 1529:8 1531:17 1533:24 1534:2, 1536:2 1536:3, 1539:6 1540:6 1541:13 1542:7 1544:16 1544:22 1546:22 1547:4, 1555:7 1556:8	1559:15 1561:2 1561:15 1561:22 1563:18 1565:6 1565:16 1565:19 1566:15 1567:6 1567:11 1569:22 1569:25 1570:7, 1570:8 1570:11 1574:25 1575:2 1576:14 1577:5, 1577:8 1589:18 1591:24 1592:19 1592:25 1593:2, 1593:7 1593:14 1593:15 1593:18 1594:5 1596:25 1597:13 1597:14 1597:18 1597:22 1598:2, 1598:5 1598:8, 1601:5 1601:10 1603:7 1603:14 1604:11 1604:16 1605:16 1606:4, 1606:4 1606:7 1607:25 1608:10 1608:20 1608:23 1609:17 1610:1, 1610:6 1610:22 1611:13 1611:19 1611:20 knowing 1502:14 1608:7 knowledge 1475:23 1479:20 1490:15 knows 1517:7 kolson@monta...	1251:7 ksoloria@nma... 1247:13 Kuehn 1355:15 1359:10 1360:8, 1362:4 1363:21 1365:10 1365:13 1365:17 1365:22 1368:3 1375:12 1376:1 1376:14 1381:1, 1386:6 1386:24 1390:8 1417:23 1418:2 1419:11 1419:24 1420:4 1421:20 1421:21 1422:24 1429:14 1437:13 1438:12 1438:19 1440:15 1471:13 1581:16 1581:19 1582:7 1587:23 1602:14 Kuehn's 1427:17 1474:20 1478:14 1478:16 Kyle 1256:4 1414:12 1415:6 1415:13
				L
				L-A-R-R-Y 1264:20 L-E-S-L-E-Y 1405:14 L-O-R-I 1466:16 L-U-J 1564:13 L-U-J-A-N 1564:14 La 1406:4 lab 1555:13 labeled 1451:9 Laboratory 1554:10

Volume 5
9/24/2021

EIB Ozone Hearing

lack 1393:21 1394:13 1396:3, 1456:3 1526:12 1526:13 1540:2 1542:23 laid 1369:11 1520:15 1578:8 lambs 1562:13 land 1277:25 1278:8 1293:23 1394:25 1397:17 1435:8, 1566:5 landed 1509:16 lands 1278:2 1278:4, 1278:9 1560:16 language 1260:22 1267:17 1287:10 1305:6, 1308:9 1308:12 1308:25 1309:21 1310:15 1311:14 1342:3 1342:10 1347:25 1363:4 1374:15 1376:20 1376:20 1387:16 1387:19 1426:4, 1426:7 1426:9, 1429:3 1429:12 1429:17 1429:20 1429:23 1430:13 1440:2 1442:16 1455:25 1462:1, 1462:4 1470:25 1471:20 1472:15 1474:6, 1474:9 1474:12 1478:21 1480:11 1480:18 1481:5 1483:16	1483:20 1491:4 1493:14 1494:6 1517:25 1518:7, 1535:8 1535:15 1541:23 1541:25 1542:5 1542:18 1545:16 1576:19 1576:21 1576:23 1576:25 1578:1, 1578:2 1578:15 1578:24 1582:20 1585:6 1585:10 1585:16 1588:8, 1588:9 LANL 1554:19 Lara 1247:16 1312:20 lara.katz@st... 1247:19 large 1374:23 1377:7 1378:10 1385:10 1472:24 1491:16 1500:18 1500:20 1555:7 1558:25 larger 1480:2 1499:18 1500:12 1513:23 1558:25 1584:5 largest 1277:10 1394:16 1453:25 1555:8 1566:24 1569:5 Larry 1254:4 1262:12 1263:25 1264:14 1264:20 Las 1248:20 1281:10 laser 1524:24 Lastly 1521:14 late 1603:10	1603:14 1603:15 1609:11 1612:12 1612:20 latest 1472:3 1577:1 launch 1510:12 launching 1367:11 1367:14 law 1248:15 1248:15 1248:19 1249:3, 1249:8 1249:9 1249:10 1249:12 1250:17 1250:19 1486:17 1490:13 1559:10 1594:24 laws 1540:21 lawyers 1493:1 1497:17 1606:15 1606:23 1607:17 layer 1532:21 1546:20 1551:7 layers 1544:15 layperson 1416:15 LDAR 1295:11 1362:2, 1381:8 1381:13 1381:20 1382:7 1385:23 1604:10 1608:19 1608:25 1609:1 1613:14 LDAR-related 1603:21 Lea 1277:8 1277:17 1569:8 leader 1411:2 1563:22 1567:8, 1569:9 1573:8 1573:17 leaders 1527:3 1563:18 1570:18 leadership	1503:23 1517:5 leading 1270:18 1395:10 1413:21 1517:14 1565:10 1567:18 leak 1362:3 1367:6 1439:22 1539:25 1540:2 1549:20 1550:21 leaking 1290:20 1555:21 leaks 1290:9 1293:7 1293:14 1393:18 1394:2 1394:11 1394:13 1395:8 1395:20 1406:20 1407:6 1407:14 1413:1, 1413:9 1413:10 1413:12 1413:13 1413:13 1413:15 1413:17 1413:23 1414:1, 1414:3 1414:4, 1416:2 1416:10 1416:18 1554:24 1563:5 1563:13 1566:15 1567:1, 1573:3 1592:24 learn 1569:16 learned 1511:13 learning 1291:12 leased 1278:2 1278:4 leases 1278:8 leave 1283:11 1289:18 1537:7, 1539:7 1603:20 leaves 1374:21 1606:17 leaving 1281:20	1486:25 1572:24 led 1486:25 1492:16 left 1606:4 legal 1494:22 1507:15 1508:4 1508:22 1510:25 1511:1 legislative 1276:11 legislature 1278:18 legitimate 1529:6 length 1288:10 lengthy 1389:16 Lesley 1255:19 1391:2, 1405:7 1405:8 1405:10 1405:11 1405:14 1405:18 1405:20 1406:1, 1406:3 1408:17 LESLIE 1253:3 letting 1290:15 level 1260:10 1260:12 1260:13 1322:6 1322:25 1468:17 1488:22 1489:17 1489:23 1499:8, 1501:1 1514:12 1537:18 1543:2 1563:20 1589:11 1589:20 leveling 1322:11 levels 1528:3 1542:24 1588:21 liability 1491:13 License 1614:18 life 1265:2 1397:22 1559:4 life-changing 1512:2 1569:15
--	--	--	--	--

Volume 5
9/24/2021

EIB Ozone Hearing

lifeblood	1425:25	1509:24	located 1278:13	1546:20
1275:14	1427:16	1557:10	1340:12	1548:2
1279:18	1509:17	1572:8, 1610:2	1342:13	1565:23
lifeguard	1509:19	1610:12	1435:17	1587:4, 1593:6
1283:12	liquid 1260:12	1611:23	location	looked 1305:24
1283:19	1337:8	1612:18	1306:13	1343:14
1283:21	LISA 1249:18	live 1285:22	1323:25	1422:1, 1533:1
1284:2	lisa_devore@...	1289:9, 1397:9	1437:7, 1492:3	looking 1270:19
lifelong 1569:1	1249:21	1402:16	1504:23	1273:15
lift 1439:25	list 1263:2	1403:16	1509:6	1277:7, 1290:5
1586:16	1284:16	1407:18	locations	1300:22
light 1285:21	1294:5	1409:21	1506:14	1306:8
1286:6, 1448:5	1302:17	1412:13	1511:7, 1569:6	1370:12
lighthearted	1302:17	1412:20	logical 1324:10	1370:22
1281:24	1358:22	1413:12	1592:13	1371:7
lights 1279:22	1362:19	1413:21	logistical	1371:14
limit 1471:3	1381:7, 1401:4	1554:8	1298:9	1374:1, 1381:2
1502:18	1427:21	1554:15	1317:16	1416:14
1539:24	1437:10	1565:16	1578:1	1438:9
1543:21	1438:24	1565:22	1592:12	1445:22
limitations	1471:18	1566:3	1592:14	1481:23
1523:5, 1526:3	1553:5	1569:19	1611:8	1542:3, 1545:6
limited 1262:23	1566:12	liveable 1408:6	long 1282:12	1571:7, 1578:1
1326:11	listed 1399:20	lived 1406:16	1307:6	1584:17
1359:19	1400:11	lives 1412:18	1308:12	1612:24
1362:2, 1384:1	1417:18	1413:10	1317:18	looks 1502:19
1390:20	1428:13	1608:5	1368:16	1542:8
1439:13	listen 1512:9	living 1393:18	1370:3	loop 1310:9
1440:11	1554:18	1395:7, 1407:4	1373:14	loosely 1514:13
1441:8, 1475:3	listening	1410:16	1373:15	Lori 1256:16
1552:15	1288:24	1412:23	1387:24	1465:21
1588:18	1312:10	1415:25	1404:19	1466:16
limiting 1583:4	1558:12	1563:3	1406:16	1467:1, 1514:7
1585:22	1567:16	1565:14	1443:10	Los 1289:18
limits 1425:23	lists 1398:10	1565:18	1444:12	1554:10
1425:24	1400:6	1566:13	1477:15	lose 1283:10
1468:2, 1524:4	lit 1270:22	Liz 1354:2	1497:23	1286:25
1539:23	literally	LLC 1246:22	1520:4	loses 1401:21
1550:4	1555:13	1248:19	1527:23	loss 1363:6
1577:16	lithium 1282:20	1252:2, 1252:3	1605:15	1416:21
Lincoln 1252:18	little 1269:20	1252:3, 1252:9	long-term	lost 1320:14
line 1278:14	1273:5	1252:9	1286:10	1559:5
1279:4, 1302:4	1274:21	1252:10	1287:5	lot 1271:23
1303:6	1281:5	1252:21	1293:22	1282:11
1303:16	1290:14	LLP 1251:10	1383:13	1295:10
1310:13	1294:22	1251:16	longer 1290:14	1316:22
1310:18	1294:25	1252:5	1304:2	1378:23
1327:10	1296:1, 1308:9	1252:12	1325:13	1385:15
1365:5, 1387:7	1317:13	load 1438:14	1390:21	1427:1, 1427:1
1421:19	1345:11	local 1281:7	1408:10	1444:10
1446:7, 1461:8	1366:13	1293:20	1504:8	1444:17
1482:24	1370:21	1401:13	1573:11	1445:20
1519:10	1374:12	1401:15	1575:14	1463:1, 1480:2
1540:18	1374:19	1408:3	look 1266:6	1492:17
1558:16	1374:22	1410:11	1268:5, 1389:7	1512:19
1565:20	1387:9	1558:18	1391:8	1518:18
1569:25	1423:16	1559:21	1439:20	1526:3
1593:5	1444:3	1568:18	1460:21	1526:21
lined 1507:25	1478:24	1594:24	1471:18	1527:7, 1527:8
lines 1386:16	1503:20	1599:15	1491:5	1527:8, 1536:3
1400:2	1504:20	Locally 1415:22	1502:15	1550:2

Volume 5
9/24/2021

EIB Ozone Hearing

1550:15	lung 1293:3	1376:10	1574:18	1287:11
1560:2	1400:9	1376:12	1575:19	1302:4, 1355:4
1563:11	lying 1290:2	1376:25	1579:14	1361:3, 1383:6
1565:6		1377:11	1580:1	1388:8
1570:14	M	1379:3	1580:19	1389:19
1570:23		1380:20	1581:11	1407:25
1583:21	M-A-R-G-A-R-E-T	1380:21	1595:15	1413:20
1607:24	1392:16	1418:9	1600:15	1417:19
1607:25	M-A-R-K 1452:3	1420:14	1600:16	1440:6
1609:14	M-A-R-L-Y-S	1421:17	1602:11	1502:19
1609:17	1405:14	1425:12	1603:3, 1603:7	1527:3, 1547:2
1609:19	M-A-R-Q-U-E-Z	1425:12	1603:24	1550:24
lots 1386:15	1466:17	1427:7	1604:1, 1609:9	1562:14
Lou 1313:21	M-C-C-L-E-L-...	1430:17	1610:14	1572:7
loud 1273:24	1280:21	1432:11	1610:15	1572:23
1315:8	M-I-L-L-E-R	1432:24	1611:4	1577:23
1411:18	1396:17	1433:11	magical 1448:14	1610:2
1564:11	ma'am 1349:9	1442:9, 1443:8	main 1248:20	malfunction
LOUIS 1251:3	1423:20	1443:10	1456:1	1371:3
Louisiana	1434:16	1447:1, 1447:2	maintain	1394:13
1251:11	machine 1391:22	1447:15	1342:11	1396:3
love 1272:21	1614:8	1448:2, 1448:2	1356:8, 1356:8	malfunctions
1281:15	Madam 1264:24	1449:8, 1449:9	1363:6	1394:11
1282:6, 1430:2	1268:4	1450:24	1400:25	man 1572:19
1573:9, 1573:9	1288:22	1450:24	1456:1, 1501:1	man-made
Lovells 1252:5	1296:5, 1297:2	1451:5	1503:7, 1579:4	1399:22
1581:2	1298:2	1452:16	maintained	1399:24
low 1325:1	1299:11	1453:2, 1453:3	1356:5	manage 1373:24
1328:6	1299:13	1459:8	1357:22	1379:1
1446:18	1307:20	1459:18	1358:16	1467:15
low-income	1310:6, 1310:8	1462:18	1379:5	1486:23
1400:18	1310:9	1463:17	1420:17	1490:11
low-level	1310:11	1463:19	1460:10	1499:10
1328:4	1310:22	1464:15	maintaining	1503:25
lower 1521:1	1313:14	1464:23	1398:22	managed 1336:22
LP 1252:9	1315:9	1465:18	maintenance	1428:5
1252:17	1316:12	1478:9	1370:17	1472:19
1336:15	1325:3	1479:14	1394:14	1487:4
lrose@montan...	1325:11	1479:16	1396:4, 1454:7	management
1251:7	1325:22	1482:13	1455:11	1258:7
LS200 1260:12	1329:16	1484:15	major 1277:8	1373:24
luck 1264:1	1329:24	1495:14	1279:4, 1300:5	1378:7
1571:4	1331:9, 1332:9	1495:17	1309:15	1378:11
Luisa 1250:19	1332:16	1495:21	1309:15	1399:11
Lujan 1257:10	1332:24	1497:24	1326:12	1420:20
1395:3	1333:1	1497:25	1395:23	1428:6
1551:25	1333:15	1498:7	1395:25	1470:20
1552:23	1339:12	1515:10	1407:3, 1408:8	1486:11
1564:5, 1564:8	1339:14	1515:23	1408:13	1486:14
1564:13	1339:24	1516:22	1410:20	1487:5, 1500:7
1564:14	1340:3, 1341:8	1516:23	1417:8	1500:9, 1503:4
1564:18	1344:2, 1345:1	1530:19	1457:18	1504:21
1564:20	1345:22	1540:17	1468:15	1592:12
1564:25	1349:3, 1349:4	1541:18	1477:10	1592:14
1567:23	1351:16	1548:6	1477:15	manager 1253:3
lunch 1386:10	1351:23	1548:11	1544:2	1435:15
1390:5	1352:10	1551:11	1555:17	1454:2
1390:15	1355:3	1553:10	1586:9, 1589:4	managers
1417:23	1365:18	1566:10	majority	1555:15
1429:24	1367:25	1568:1	1611:11	1555:16
1429:24	1375:8	1574:16	making 1264:8	managing

Volume 5
9/24/2021

EIB Ozone Hearing

1488:25	1479:15	1287:1, 1287:9	1398:21	1308:14
1489:6, 1504:3	1480:1	1291:10	measures 1377:5	1308:23
1504:10	1480:11	1297:15	1398:19	1309:17
Mancos 1306:10	1480:20	1301:5	1398:25	1309:25
1327:7, 1327:7	1481:2, 1481:7	1307:11	1567:12	1310:1
mandate 1590:1	1481:11	1308:12	mechanical	1310:13
mandates 1402:3	1481:20	1308:15	1453:21	1333:10
1402:4	1481:23	1322:14	mechanism	1333:11
mandatory	1482:2, 1482:6	1346:16	1438:15	1333:14
1505:5	1482:12	1387:7	1481:18	1333:15
manner 1331:17	1482:16	1388:12	1547:14	1333:17
1470:13	1482:22	1389:19	mechanisms	1333:18
1519:8	1483:3	1445:10	1417:13	1333:19
1556:22	1483:21	1462:25	media 1508:10	1333:20
manufacturer	1484:18	1464:19	mediocre 1275:5	1333:22
1355:25	1520:8, 1520:9	1482:5	medium 1270:5	1333:23
1356:9	1520:24	1501:18	meet 1275:10	1339:21
March 1371:11	1521:14	1514:14	1350:4	1339:22
1371:16	1584:1	1520:17	1358:22	1339:23
1430:4	Marshall 1250:9	1526:14	1369:18	1339:24
1461:13	master's 1435:6	1528:6	1369:21	1340:2, 1340:4
1492:15	1468:6	1528:21	1369:23	1340:5, 1340:7
Margaret	material	1529:25	1378:8	1340:8
1255:13	1282:19	1531:17	1420:22	1340:17
1391:1, 1392:7	1300:25	1531:23	1491:21	1340:22
1393:1, 1393:7	materially	1532:8	1493:2	1349:10
MARIA 1252:4	1283:6	1534:12	1508:18	1349:11
Mark 1256:13	Matt 1326:3	1535:12	1599:18	1349:12
1260:6, 1260:7	1346:3, 1460:4	1548:1	meeting 1395:3	1349:13
1261:5, 1261:8	matter 1246:4	1575:23	1448:14	1349:15
1261:9	1246:13	1576:22	1567:17	1351:10
1452:10	1327:6	1598:20	1575:25	1351:11
1453:4	1334:16	1601:8	1577:19	1351:12
market 1281:14	1451:5	1604:15	1607:16	1351:13
1283:10	1486:16	1605:3	meetings	1385:21
1513:25	1488:3	1607:20	1246:15	1386:11
Marlys 1255:19	1559:25	1608:23	1308:11	1386:12
1391:2, 1405:7	1579:5	1610:10	1565:2	1387:11
1405:11	MATTHEW 1250:9	meaning 1277:5	meets 1380:16	1388:11
1405:20	MATTHIAS	1361:20	1380:16	1388:16
1406:3	1252:17	1591:14	1508:4, 1546:5	1389:12
Marquez 1256:16	matthias.say...	meaningful	1547:24	1389:14
1465:4	1252:20	1412:25	1583:5	1389:22
1465:13	maximum 1319:19	1512:1	megadrought	1389:25
1465:21	1321:19	means 1287:3	1393:20	1390:2, 1390:8
1465:23	MBA 1281:11	1290:9	member 1285:20	1391:17
1466:1, 1466:6	MC 1280:6	1395:24	1285:21	1391:18
1466:7	1280:12	1492:25	1286:5	1391:23
1466:12	1280:14	1522:12	1292:18	1409:23
1466:13	1280:20	1523:23	1304:21	1415:13
1466:16	1280:24	1524:10	1304:22	1418:9
1466:16	McClelland	1528:17	1304:24	1418:11
1466:21	1254:10	meant 1331:4	1305:15	1418:13
1467:1	1262:12	1429:17	1307:9	1418:15
1467:10	1280:2, 1280:3	1429:17	1307:14	1418:18
1469:1, 1469:9	1280:4	1429:19	1307:18	1418:20
1469:12	1280:21	1431:11	1307:20	1419:5, 1419:8
1478:2, 1478:4	1281:2	1450:11	1307:23	1419:19
1478:7	1284:15	1464:21	1307:24	1419:23
1478:12	mean 1282:24	measure 1561:19	1308:3, 1308:4	1419:25
1479:5	1283:16	measurements	1308:8	1433:7, 1433:8

Volume 5
9/24/2021

EIB Ozone Hearing

1433:10	1514:19	1426:14	1394:7	1248:2, 1248:9
1433:11	1570:21	1438:18	1394:15	1248:12
1433:14	1579:20	1445:16	1394:16	1248:13
1433:15	1579:21	mentioned	1395:4	1248:17
1433:16	1579:25	1294:15	1395:25	1248:20
1433:17	1580:1, 1580:4	1300:4, 1304:1	1406:12	1249:12
1433:18	1580:7, 1580:8	1349:19	1406:13	1249:13
1443:18	1580:12	1376:17	1406:17	1250:14
1443:24	1580:13	1378:20	1406:20	1250:17
1443:25	1601:4	1379:19	1406:22	1250:19
1444:21	1601:19	1418:25	1406:23	1250:20
1445:9	1601:20	1420:8, 1437:9	1408:11	1251:2, 1251:6
1445:25	1601:23	1437:12	1410:6	1251:23
1446:6, 1446:7	1601:24	1438:12	1410:12	1252:19
1446:13	1602:1, 1602:2	1438:19	1410:17	1260:4
1447:1, 1447:5	1602:7, 1602:8	1439:4	1410:18	1260:21
1447:5, 1447:6	1605:12	1440:15	1410:21	1265:2
1447:7, 1447:9	1605:19	1479:24	1410:24	1266:12
1447:10	1605:20	1481:12	1412:16	1272:18
1449:24	1605:24	1498:11	1415:19	1274:19
1449:25	1609:9, 1610:5	1500:15	1415:22	1275:19
1450:1, 1450:2	1611:2, 1612:5	1501:13	1416:1, 1416:2	1276:6, 1276:9
1450:4, 1450:5	1612:6, 1612:7	1513:8	1416:7, 1417:6	1276:14
1450:7, 1450:8	members 1263:14	1574:25	1417:8	1276:16
1450:14	1264:25	1596:19	1417:13	1276:19
1464:1, 1464:2	1273:15	1603:23	1555:8, 1555:9	1276:22
1464:4, 1464:5	1286:12	1611:17	1556:25	1277:2
1464:7, 1464:8	1287:24	mentioning	1566:25	1277:22
1464:9	1288:23	1416:13	1568:23	1278:9
1464:10	1292:12	1443:13	1570:13	1278:11
1464:11	1292:19	mentor 1569:1	1572:14	1278:12
1483:5, 1483:6	1292:25	Meredith	1573:7, 1573:9	1278:23
1483:9	1294:12	1279:21	1573:13	1278:25
1483:10	1294:16	Mesa 1406:4	1573:14	1279:1, 1279:3
1483:12	1296:8	message 1263:1	1573:20	1279:7, 1281:4
1483:13	1299:14	1276:15	method 1385:3	1281:9
1483:23	1336:3	met 1337:3	Methodist	1281:15
1484:3, 1484:4	1356:19	1550:6	1415:14	1282:4
1484:5	1358:4, 1376:3	metals 1282:21	methods 1343:7	1283:11
1496:21	1393:8	metaphor	1351:2	1285:20
1496:22	1409:18	1281:24	metric 1394:1	1285:23
1496:24	1412:10	metaphorically	1406:22	1286:5, 1289:1
1496:25	1417:25	1282:2	metrics 1444:24	1289:3
1497:8, 1497:9	1425:12	meteorological	Mexican 1265:13	1289:10
1497:12	1435:22	1328:2	1397:9	1290:10
1497:16	1438:8	meteorology	1415:20	1290:17
1498:8	1450:25	1475:9	1415:24	1290:25
1505:15	1473:1, 1496:7	meters 1398:20	Mexicans 1268:3	1292:15
1505:18	1496:12	methane 1266:7	1393:17	1293:4
1505:19	1516:23	1271:1, 1272:2	1417:15	1293:13
1505:21	1526:17	1272:7	1554:14	1327:14
1505:22	1527:23	1272:10	1565:16	1328:10
1506:12	1551:16	1290:4, 1290:6	Mexico 1246:1	1328:11
1506:18	1562:11	1290:12	1246:21	1328:25
1509:8	1567:15	1290:20	1246:23	1338:18
1509:13	1609:5	1290:25	1247:12	1340:9
1512:19	1612:10	1292:20	1247:15	1340:13
1512:20	1612:18	1293:6, 1293:8	1247:17	1340:21
1512:23	memory 1352:8	1295:23	1247:18	1387:1
1512:24	mention 1314:24	1393:18	1247:22	1393:24
1514:16	1399:11	1394:1, 1394:2	1247:23	1394:5, 1395:9

Volume 5
9/24/2021

EIB Ozone Hearing

1395:18	1341:18	1510:7	1269:17	1481:21
1395:23	1477:22	1598:23	1274:13	1521:25
1396:1, 1397:9	1581:15	1605:14	1279:13	1522:11
1398:2, 1398:5	1582:1, 1588:5	mindful 1522:7	1280:23	1533:12
1399:1, 1399:3	1595:18	1538:6	1285:17	1534:7, 1534:8
1399:12	Michigan	minds 1429:16	1288:20	1546:9
1400:14	1487:14	mine 1283:25	1292:10	1546:21
1401:23	microphones	1285:25	1318:6, 1386:9	1589:4
1402:3	1391:19	1569:2	1390:21	1589:15
1402:17	1391:25	1570:18	1393:6, 1397:6	1589:16
1403:17	middle 1281:7	minerals	1401:7	modification
1406:4, 1406:7	1404:17	1282:20	1403:14	1258:6
1406:15	1514:12	1282:25	1405:25	1308:19
1406:16	1570:12	1398:2	1409:16	1361:3
1406:21	1572:17	minimal 1473:20	1412:8	1599:17
1407:13	midsize 1514:8	1473:25	1415:11	modifications
1407:21	midst 1266:14	1536:25	1465:2	1578:14
1409:22	midstream	minimize 1357:2	1492:11	modified
1410:11	1252:9, 1252:9	1592:21	1552:16	1477:15
1411:2	1486:4, 1487:2	minimum 1366:10	1554:6, 1558:8	modifies 1508:2
1412:17	1487:4, 1489:1	1366:12	1564:24	modify 1428:15
1412:18	1513:24	1366:16	1568:16	modifying
1413:20	mile 1554:15	1422:14	1572:6, 1605:5	1360:23
1415:15	1570:15	1502:16	mischaracter...	1578:17
1416:8, 1417:7	miles 1278:24	mining 1271:22	1323:17	Modrall 1251:22
1435:18	Miller 1255:15	1282:25	1331:22	modular 1271:17
1435:19	1391:1	minor 1309:6	mispronounced	modules 1490:22
1445:3, 1453:9	1396:10	1309:16	1552:24	1503:15
1454:2	1396:11	1326:20	mispronouncing	MOELLENBERG
1476:18	1396:11	1358:10	1285:16	1248:8
1481:24	1396:12	1361:25	1402:10	Moisture
1482:6	1396:13	1361:25	missed 1361:7	1258:11
1487:14	1396:17	1413:13	1478:24	molecule 1290:8
1490:14	1396:22	1414:2	1491:13	molecules
1490:15	1397:1, 1397:7	1457:18	missions	1290:9
1491:20	1397:8, 1401:6	1457:20	1467:23	mom 1281:7
1517:16	1401:8	1468:15	misspoke	moment 1263:17
1521:7	1401:13	1471:20	1377:11	1263:19
1521:11	1402:8	1476:13	mistake 1312:10	1316:1
1528:23	million 1265:20	1476:16	mitigate	1320:17
1548:25	1265:22	1476:18	1556:17	1330:2
1554:14	1274:25	1477:7	1560:9	1330:10
1566:25	1275:1, 1278:3	1491:19	mitigation	1332:3, 1338:2
1567:7, 1567:8	1289:13	1536:19	1555:19	1339:2
1568:19	1289:15	1539:11	1556:4	1347:13
1568:23	1293:6, 1394:1	1539:20	1556:21	1353:24
1569:7	1397:19	1589:10	mnykiel@wild...	1418:14
1569:18	1406:22	1589:15	1250:11	1431:18
1572:16	1567:9	1589:19	mobile 1271:16	1433:8
1589:1, 1614:1	millions 1266:2	1593:25	1437:22	1451:18
Mexico's 1277:9	1555:14	1597:8	model 1271:22	1459:13
1279:5	mind 1266:16	minority	1273:6	1461:6
1397:13	1296:17	1400:18	1328:15	1462:17
1517:5	1302:24	minute 1266:21	1476:13	1463:5, 1469:5
1527:16	1303:21	1266:24	1546:24	1483:7
1538:4, 1569:4	1321:15	1334:12	modeled 1326:22	1484:19
Michael 1255:4	1372:6	1382:10	1534:4	1488:14
1257:16	1437:19	1414:17	modeling	1530:10
1257:18	1459:21	1525:5	1326:24	1569:15
1257:19	1461:11	minutes 1262:24	1476:16	1595:10
1341:9	1506:22	1264:23	1481:20	1602:19

Volume 5
9/24/2021

EIB Ozone Hearing

1602:22	1399:11	1382:12	1503:14	1535:19
Monday 1279:21	1436:16	1382:16	1520:7	1536:12
1295:11	1437:8, 1440:8	1386:4, 1507:6	1557:14	1542:9
1362:3	1448:7, 1454:4	1555:23	1566:8	1542:11
1603:19	1454:25	1556:2, 1587:1	1587:25	1543:4
1603:22	1457:2	1587:15	1590:23	1544:12
1604:9	1467:21	months 1323:25	1603:1, 1604:9	1544:13
1605:17	1469:13	1324:24	1609:1	1588:22
1612:14	1469:17	1359:7, 1359:8	1611:21	1589:5, 1590:3
1612:17	1478:17	1389:16	moved 1281:6	name 1262:2
1612:19	1498:13	1389:21	1323:25	1262:17
1613:2	1522:22	1427:23	1406:15	1264:19
1613:13	1523:2	1439:2, 1439:5	1416:20	1269:13
money 1276:19	1523:25	1439:8, 1503:6	1486:22	1269:14
1455:21	1524:4	1608:2	1567:18	1274:9
1562:14	1534:18	moot 1322:24	moving 1300:19	1274:10
1570:23	1539:5, 1539:7	moral 1412:22	1313:12	1280:19
monitor 1328:14	1540:1	Morgan 1252:2	1364:23	1281:2
1357:14	1540:13	1581:5	1427:13	1284:16
1420:16	1550:25	Morgan's	1586:25	1284:21
1555:18	1570:5	1586:25	1606:22	1285:12
1555:21	1575:12	morning 1262:1	mud 1324:6	1285:19
1555:25	1575:16	1262:6, 1262:9	multiple	1287:25
1556:17	1578:25	1263:2	1364:18	1289:9
monitoring	1586:6	1285:20	1364:21	1291:22
1260:22	1586:14	1287:16	1368:15	1294:10
1328:13	1587:7	1294:6	1467:17	1326:3
1350:21	1587:10	1294:18	1480:4	1335:21
1355:22	1587:12	1295:18	1487:13	1335:23
1357:7, 1357:7	1587:16	1296:15	Municipal	1335:24
1357:15	1587:18	1296:21	1568:20	1336:11
1357:21	1587:20	1297:8	Murphy 1260:10	1336:13
1358:14	1593:21	1297:13	1260:12	1346:3, 1391:4
1359:12	monitors	1297:24	1260:13	1392:15
1361:16	1520:19	1312:4, 1326:6	mute 1317:2	1393:7
1361:19	1570:8	1336:3, 1346:5	1498:20	1396:16
1361:19	1570:12	1368:3	1498:25	1397:8
1361:22	monoxide	1375:12	muted 1317:17	1398:14
1361:23	1269:23	1448:14	1499:2	1402:10
1362:1, 1362:5	1271:4	1451:14	mysterious	1402:14
1362:15	1271:14	1474:21	1573:5	1402:21
1362:19	monsters 1560:3	1603:19	mysteriously	1402:24
1362:20	Montana 1272:17	1607:16	1573:2, 1573:2	1403:16
1362:25	Montgomery	1612:14	MZ:SP3-Q 1253:5	1405:13
1363:14	1251:4	mother 1415:15		1406:3, 1409:1
1366:2, 1366:5	month 1278:3	Mountain	N	1409:21
1366:15	1362:12	1406:16		1411:21
1367:7, 1369:3	1381:7, 1436:3	mountains	N-A-N-C-Y	1411:24
1369:8, 1371:1	1503:6, 1536:1	1289:20	1291:23	1412:13
1371:2	monthly 1362:9	move 1287:19	N-E-W-B-Y	1414:12
1373:18	1366:5	1291:17	1571:18	1414:24
1377:5, 1377:9	1366:15	1313:8	N-I-C-K 1280:20	1415:13
1377:23	1366:20	1331:16	NAAQS 1259:22	1424:8, 1434:3
1377:24	1367:2, 1367:7	1347:6	1326:10	1434:8
1378:22	1367:7	1348:19	1327:22	1434:24
1381:2	1367:13	1389:9, 1405:4	1476:19	1451:1, 1452:2
1381:18	1367:14	1433:22	1520:12	1452:24
1382:15	1381:11	1447:24	1522:9	1453:4, 1460:4
1383:8, 1384:2	1381:15	1458:4, 1462:6	1531:12	1465:20
1384:10	1382:4, 1382:5	1463:1	1533:19	1466:15
1386:4	1382:10	1469:10	1534:19	1484:21

Volume 5
9/24/2021

EIB Ozone Hearing

1485:22	1282:3, 1394:9	1321:14	1517:17	1246:23
1485:24	1397:17	1322:20	1529:16	1247:12
1552:1	1398:3, 1426:3	1346:17	1576:15	1247:15
1552:21	1444:11	1350:1	1592:2	1247:17
1552:24	1446:10	1359:25	needs 1282:7	1247:18
1553:6	1446:15	1361:1	1306:22	1247:22
1553:12	1446:23	1364:16	1306:23	1247:23
1553:13	1453:11	1370:19	1307:3	1248:2, 1248:9
1553:13	1453:22	1377:22	1370:24	1248:12
1553:14	1556:12	1378:5	1397:22	1248:13
1554:8	nature 1324:22	1378:16	1400:19	1248:17
1557:20	1351:1, 1375:2	1380:10	1407:21	1248:20
1557:21	1417:4	1383:18	1410:8	1249:12
1557:22	1505:25	1385:9	1412:24	1249:13
1561:8	NAVA 1249:7	1386:10	1517:9, 1545:8	1250:14
1564:12	Navy 1289:11	1396:6	1550:4	1250:17
1564:13	near 1335:22	1399:19	1586:11	1250:19
1564:14	nearly 1372:9	1400:12	1609:23	1250:20
1568:3, 1568:4	necessarily	1400:14	1611:12	1251:2, 1251:6
1568:18	1324:2, 1369:1	1402:4, 1402:5	negative	1251:23
1571:16	1378:1, 1389:1	1408:1, 1410:8	1275:11	1252:19
1571:17	1489:22	1410:16	1275:12	1260:4
1571:18	1525:16	1415:24	1279:5	1260:21
named 1557:4	1528:15	1416:3, 1416:7	neglected	1265:2
names 1262:8	1534:10	1416:21	1573:12	1265:13
1268:12	1549:21	1416:22	negotiating	1266:12
1551:22	1550:3	1416:23	1376:20	1266:13
Nancy 1254:16	1550:22	1417:5	1607:4, 1607:5	1267:13
1263:1	1577:17	1417:25	neighbor 1573:9	1268:2, 1271:7
1291:17	1579:7	1423:18	neighborhood	1272:18
1291:23	1591:15	1427:10	1572:18	1274:19
1292:5	1593:19	1428:22	neighboring	1275:18
narrative	1597:15	1430:1	1398:11	1276:6, 1276:9
1330:4	necessary	1439:10	neighbors	1276:14
narrow 1440:20	1358:9	1462:25	1417:12	1276:16
narrowed	1359:23	1465:2, 1466:7	1417:15	1276:19
1506:15	1360:22	1489:25	1573:12	1276:22
narrowing	1367:3	1491:9	1573:16	1277:2, 1277:9
1441:7	1382:22	1492:11	neither 1466:4	1277:22
nation 1265:16	1389:9, 1414:1	1493:13	1614:10	1278:9
1277:10	1427:11	1502:4	NESHAP 1454:5	1278:11
1397:24	1428:17	1503:15	net 1291:10	1278:12
national	1428:18	1503:16	1545:11	1278:22
1249:17	1470:23	1504:1, 1504:1	1566:6	1278:25
1250:2	1488:23	1508:3	network 1593:21	1279:1, 1279:3
1265:14	1491:18	1523:16	networks	1279:5, 1279:7
1295:8	1507:4	1525:5, 1525:6	1350:21	1281:3, 1281:9
1397:24	1558:19	1525:18	NEUMANN 1252:11	1281:15
1400:25	necessity	1551:18	neumannc@gtl...	1282:3
1411:2	1558:23	1570:16	1252:15	1283:11
1554:10	1575:1	1570:16	never 1322:25	1285:20
native 1397:8	need 1275:20	1581:17	1500:3	1285:22
1565:17	1290:16	1608:23	1506:13	1286:5, 1289:1
natural 1248:12	1290:18	1608:24	1506:15	1289:3
1249:12	1290:22	1609:21	1511:10	1289:10
1252:2, 1252:3	1293:21	needed 1310:9	1589:17	1290:10
1260:14	1297:22	1338:13	never-ending	1290:17
1270:18	1298:1	1380:2, 1426:3	1393:14	1290:25
1270:24	1301:18	1471:12	new 1246:1	1292:15
1271:11	1317:1, 1318:5	1474:14	1246:4	1293:3
1275:24	1321:8	1504:5, 1512:8	1246:21	1293:12

Volume 5
9/24/2021

EIB Ozone Hearing

1298:22	1445:2, 1453:9	1297:23	1548:13	1529:12
1308:9	1454:2	1297:24	1548:18	1548:20
1309:18	1456:25	1298:2	1551:10	1594:15
1323:25	1457:9, 1468:1	1298:20	1551:15	1595:1
1327:13	1469:10	1298:24	1551:19	NMED 1310:16
1328:9	1472:12	1299:4, 1299:5	1567:16	1338:10
1328:10	1476:18	1299:12	1574:2, 1574:3	1342:9
1328:25	1477:14	1299:18	1574:8	1342:13
1338:18	1477:15	1299:20	1574:10	1346:7
1340:9	1477:20	1299:22	1574:17	1350:17
1340:13	1480:9	1300:9	1574:21	1350:20
1340:21	1480:11	1300:23	1575:9	1353:8, 1353:9
1358:23	1481:24	1302:3	1575:18	1353:17
1359:8, 1363:9	1482:6	1302:12	1576:8	1353:20
1376:2	1487:13	1302:21	1576:22	1355:11
1378:23	1490:14	1303:17	1577:1, 1578:5	1355:12
1387:1	1490:15	1303:21	1578:10	1357:12
1393:17	1491:20	1303:24	1578:16	1358:21
1393:24	1507:19	1304:6	1579:11	1380:5
1394:5, 1395:9	1517:5	1304:16	1579:13	1381:11
1395:18	1517:15	1305:1	1579:16	1411:6, 1420:7
1395:23	1519:2	1305:14	1579:19	1425:1
1396:1, 1397:8	1519:22	1307:13	1579:24	1425:17
1397:9	1521:7	1307:19	1580:9	1426:7
1397:13	1521:11	1308:1, 1308:7	1580:13	1426:11
1397:14	1527:16	1308:13	1580:22	1427:16
1398:2, 1398:5	1528:23	1309:1	1580:23	1429:1, 1429:2
1398:21	1530:24	1309:23	1588:7	1429:6
1399:1, 1399:2	1531:18	1310:6, 1311:8	1590:25	1429:22
1399:12	1537:4, 1538:4	1312:1, 1312:6	1591:21	1430:14
1400:13	1548:25	1312:10	1591:25	1430:25
1401:23	1554:14	1312:15	1592:10	1443:11
1402:3	1554:14	1312:22	1594:10	1448:6
1402:17	1565:16	1313:1, 1313:5	1594:16	1449:13
1403:17	1566:25	1319:7, 1323:4	Nick 1254:10	1450:10
1406:4, 1406:7	1567:7, 1567:8	1323:10	1262:12	1456:7, 1457:5
1406:15	1568:19	1323:19	1280:2	1457:11
1406:16	1568:23	1324:4	1280:14	1457:13
1406:21	1569:4, 1569:7	1327:20	1280:20	1458:9
1407:13	1569:18	1329:14	1281:2	1458:13
1407:21	1572:12	1330:14	night 1279:22	1458:15
1409:22	1572:15	1330:22	1312:3	1458:21
1410:11	1589:1, 1590:7	1331:1, 1331:2	1572:17	1458:25
1411:2	1590:9, 1614:1	1331:22	nine 1265:17	1460:24
1412:17	Newby 1571:18	1342:17	1294:6, 1294:7	1464:20
1412:18	Newby-Torres	1342:20	1468:12	1471:13
1413:20	1257:14	1344:24	1606:8	1471:16
1415:15	1571:13	1347:8, 1515:8	nitrogen	1471:19
1415:20	1571:14	1515:20	1269:24	1477:21
1415:24	1571:17	1516:1, 1516:7	NM 1252:21	1481:4, 1481:6
1416:8, 1417:7	1571:23	1516:15	1494:25	1482:6
1417:15	1572:1	1516:17	NMAC 1246:4	1483:19
1421:2	1572:10	1518:17	1258:17	1495:1, 1506:7
1428:23	newer 1435:20	1522:14	1258:19	1506:19
1432:19	NGL 1252:9	1530:8	1258:23	1508:4, 1549:6
1435:18	1252:17	1530:13	1259:5, 1259:8	1549:7
1435:19	1336:14	1530:15	1259:10	1549:12
1437:5	nice 1291:21	1530:23	1259:13	1550:11
1441:20	1564:11	1540:19	1259:18	1566:25
1444:14	Nichols 1254:18	1541:2, 1541:7	1261:12	1576:16
1444:17	1256:22	1541:13	1523:8	1576:19

Volume 5
9/24/2021

EIB Ozone Hearing

NMED's 1378:20 1378:25 1458:20 1494:13 NMMI 1281:8 NMOGA 1314:9 1334:9 1421:23 1423:14 1426:11 1474:11 1483:15 1483:18 1492:7 1582:16 NMOGA's 1469:23 1478:20 NMSU 1292:16 noble 1399:22 1401:20 Nods 1613:16 nonattainment 1477:11 1477:14 1477:20 1528:7 1528:12 1528:17 1590:7 1590:12 1590:14 1590:17 1590:20 1590:21 noncompliance 1441:9 1511:10 noncompliant 1462:9 nonemitting 1426:6 nonhuman 1399:22 nonpracticing 1508:14 nonroad 1323:23 1324:22 normally 1503:13 North 1248:20 1272:16 1487:14 1554:9 Northeast 1246:22 1247:22 1249:13 northern 1445:16 NOTARY 1614:17 note 1258:3	1260:22 1283:18 1349:25 1424:25 1451:12 noted 1298:5 notes 1299:15 notice 1278:20 1301:7, 1311:9 1336:7, 1336:9 1465:24 1466:2 1485:16 1485:18 1504:11 1507:22 1578:6 notwithstanding 1603:17 NOx 1271:4 1271:14 1326:8 1326:15 1326:15 NPS-Air 1249:19 1250:4 NSPS 1454:5 1508:1 NSPSes 1508:6 NSR 1260:21 nuclear 1265:5 1282:10 1555:17 number 1265:16 1265:17 1284:8 1294:19 1296:22 1315:19 1330:13 1330:15 1330:21 1330:25 1331:14 1353:10 1354:5, 1354:8 1372:22 1373:5 1374:23 1391:11 1423:11 1428:12 1461:8 1472:24 1503:17 1512:3 1539:22 1544:24 1563:2, 1563:6 1592:15 1614:18	numbers 1466:5 numerous 1336:24 1489:7, 1534:9 Nykiel 1250:9 1254:19 1254:22 1255:6 1255:10 1256:14 1256:23 1257:20 1297:9 1297:10 1297:11 1297:21 1298:10 1298:11 1298:17 1310:5, 1311:4 1311:5, 1311:7 1312:1, 1312:8 1312:9 1312:14 1312:20 1312:24 1313:2 1320:16 1320:19 1320:23 1320:24 1321:1, 1321:3 1321:12 1321:15 1323:7 1323:14 1325:6, 1325:8 1325:19 1325:21 1325:22 1326:2, 1326:3 1329:16 1329:19 1330:7, 1330:9 1331:20 1331:24 1332:1, 1345:4 1345:21 1345:22 1346:2, 1346:3 1347:1, 1347:5 1347:7 1347:12 1348:15 1375:7, 1375:8 1375:11 1375:24 1459:15 1459:16 1459:18 1460:2, 1460:4	1462:20 1463:3, 1463:5 1463:8 1515:19 1515:22 1515:23 1516:6 1530:13 1540:17 1541:1 1580:17 1580:18 1580:21 1595:13 1595:14 1595:15 1595:19 1600:2 Nykiel's 1297:19 1352:1 0 o'clock 1294:6 1294:7, 1294:8 1294:8 1390:13 1607:16 Oa 1508:1 OAT 1397:24 oath 1262:22 1297:25 1314:23 1341:25 1390:20 1515:21 1552:14 1559:24 object 1323:9 1455:22 1540:18 objection 1268:13 1331:10 1331:20 1346:24 1451:19 objections 1337:24 1451:12 1451:17 1469:6 1488:12 1488:14 objective 1401:22 objectives 1350:3 obligated 1509:1	1542:19 obligation 1427:18 1455:22 1491:22 1558:17 1562:16 1562:18 1566:3, 1566:4 obligations 1374:9 observe 1403:21 obtained 1300:16 obtaining 1301:7 obvious 1500:12 1504:17 obviously 1270:23 1296:21 1303:1 1311:21 1320:15 1368:6, 1526:3 1526:23 OCC 1295:22 1482:5 occur 1289:16 1300:13 1328:2 1389:22 1413:10 occurred 1327:15 1329:1 occurring 1305:4, 1305:5 1305:23 1306:20 1509:18 occurs 1563:12 1596:14 OCD 1304:9 1482:5 OCD's 1342:14 ocean 1283:9 1284:4 1284:11 October 1606:19 1608:1 offer 1272:21 1294:5 1297:22 1337:21 1352:7, 1391:5 1432:11 1442:4, 1469:2 1488:10 1530:11 1545:4, 1552:2
--	---	--	---	---

Volume 5
9/24/2021

EIB Ozone Hearing

offered 1262:24 1352:4 offering 1439:19 1440:2 office 1247:11 1247:12 1247:17 1247:21 1249:20 1250:5, 1251:5 1251:23 1260:15 1428:17 1445:3, 1497:5 officer 1246:14 1247:2, 1262:1 1262:3, 1264:6 1264:13 1264:18 1264:22 1264:24 1268:4, 1268:9 1268:17 1268:25 1269:3, 1269:7 1269:12 1269:16 1273:9 1273:12 1273:19 1273:23 1274:3, 1274:8 1274:12 1274:23 1279:9 1279:12 1279:25 1280:8 1280:13 1280:18 1280:22 1284:14 1285:1, 1285:6 1285:11 1285:15 1287:17 1287:22 1288:3, 1288:8 1288:14 1288:19 1288:22 1291:15 1291:21 1291:25 1292:4, 1292:9 1294:2, 1296:6 1296:18 1297:3 1297:10 1297:14	1298:2, 1298:4 1298:16 1299:11 1299:13 1299:16 1304:20 1307:17 1307:21 1307:22 1308:2 1309:24 1310:2, 1310:6 1310:7 1310:12 1310:21 1311:3 1311:25 1312:7 1312:13 1312:25 1313:7 1313:11 1313:14 1313:22 1314:3, 1314:5 1314:13 1314:18 1314:22 1315:5, 1315:9 1315:10 1315:15 1315:20 1315:24 1316:3, 1316:8 1316:12 1316:18 1317:9 1317:21 1317:25 1318:9, 1320:6 1320:9 1320:12 1320:19 1320:22 1321:5 1323:11 1323:13 1325:3, 1325:5 1325:12 1325:16 1325:22 1329:16 1329:18 1329:24 1330:1, 1331:8 1331:9 1331:18 1332:2 1332:10 1332:12 1332:17	1333:2, 1333:4 1333:9 1333:13 1333:16 1333:17 1333:19 1333:22 1333:24 1334:6 1334:17 1334:21 1334:25 1335:6, 1335:8 1335:13 1335:20 1335:25 1337:23 1338:1 1338:25 1339:12 1339:15 1339:16 1339:21 1339:23 1339:25 1340:1, 1340:4 1340:6 1340:23 1341:2, 1341:6 1341:8 1341:14 1341:17 1341:24 1343:22 1344:2, 1345:1 1345:3 1345:20 1345:23 1347:4 1347:10 1348:14 1349:3, 1349:5 1349:6 1349:10 1349:12 1349:14 1351:9 1351:12 1351:14 1351:17 1351:18 1351:23 1351:25 1352:8 1352:11 1352:12 1352:21 1355:3 1365:13 1365:19 1367:22	1367:25 1375:6, 1375:8 1375:25 1376:10 1376:13 1380:20 1380:21 1386:8, 1390:2 1390:13 1391:21 1392:1 1392:13 1392:17 1392:21 1393:5, 1396:8 1396:14 1396:18 1396:23 1397:5, 1401:6 1401:11 1402:8 1402:15 1402:19 1402:24 1403:3, 1403:8 1403:13 1405:2, 1405:9 1405:12 1405:15 1405:19 1405:24 1408:16 1408:21 1408:25 1409:3, 1409:6 1409:10 1409:15 1411:11 1411:17 1411:20 1411:23 1412:7, 1414:9 1414:16 1414:23 1415:1, 1415:5 1415:10 1417:20 1418:9 1418:11 1418:19 1419:22 1420:1 1421:14 1422:18 1423:7 1423:13 1423:15 1423:17 1423:21 1425:13 1427:7	1430:18 1430:21 1432:11 1432:14 1433:6, 1433:9 1433:12 1433:13 1433:17 1433:20 1434:2, 1434:5 1434:17 1442:6, 1442:9 1442:23 1443:8 1443:10 1443:15 1443:23 1446:5, 1447:2 1447:4, 1447:8 1447:13 1447:15 1447:17 1447:22 1448:2 1448:13 1449:7 1449:10 1449:17 1449:19 1449:23 1450:1, 1450:3 1450:6 1450:16 1450:24 1451:6 1451:15 1451:24 1452:5, 1452:9 1452:17 1453:2, 1459:8 1459:11 1459:19 1462:18 1463:3, 1463:7 1463:9 1463:19 1463:21 1463:25 1464:3, 1464:6 1464:10 1464:12 1464:15 1464:24 1464:25 1465:9 1465:15 1465:19 1466:9 1466:14 1466:18 1466:22
--	---	--	--	---

Volume 5
9/24/2021

EIB Ozone Hearing

1467:5, 1469:4	1553:21	1603:25	1605:20	1394:24
1478:4, 1478:9	1554:5, 1557:2	1604:1	1610:17	1395:16
1479:3	1557:8	1604:22	1612:5	1395:19
1479:14	1557:12	1605:6, 1605:8	1613:10	1397:13
1479:17	1557:18	1605:10	oil 1246:4	1397:20
1482:13	1557:23	1605:18	1248:2	1398:5, 1398:8
1483:4, 1483:8	1558:2, 1558:7	1606:11	1260:14	1398:13
1483:11	1560:21	1608:14	1265:10	1398:19
1484:2, 1484:5	1561:3, 1561:6	1609:3, 1609:9	1265:15	1400:4
1484:11	1561:11	1610:4	1265:17	1400:13
1484:16	1561:17	1610:16	1265:19	1401:18
1484:17	1561:21	1611:3, 1612:3	1266:1	1401:24
1484:24	1561:25	1612:13	1266:12	1404:1, 1406:9
1485:3, 1485:7	1562:3, 1562:8	1613:5	1267:7, 1270:4	1406:19
1487:18	1564:3	1613:11	1270:10	1406:21
1487:23	1564:10	1613:16	1270:19	1407:9
1488:13	1564:15	1613:19	1270:19	1407:11
1493:20	1564:19	1614:6	1273:4	1407:20
1495:5	1564:24	official 1318:4	1274:18	1413:1, 1413:8
1495:14	1567:22	1383:6, 1430:9	1275:19	1413:13
1495:18	1568:2, 1568:6	1491:13	1276:8	1413:16
1495:21	1568:10	1585:1	1276:15	1414:4
1495:25	1568:15	officials	1276:23	1415:25
1496:2, 1496:5	1571:5	1268:2, 1527:3	1277:10	1416:5
1496:11	1571:15	offset 1575:16	1277:22	1416:14
1496:14	1571:20	1590:10	1278:1, 1278:1	1416:22
1496:20	1571:24	offsets 1477:16	1278:13	1416:23
1496:23	1572:5	1590:9	1278:18	1435:7
1497:7	1573:22	offshore	1278:19	1435:21
1497:11	1574:16	1512:12	1279:19	1444:6
1497:13	1574:19	oh 1280:8	1281:3, 1282:3	1444:16
1497:22	1579:14	1287:22	1284:5	1444:20
1498:3, 1498:7	1579:20	1297:2	1290:25	1445:5, 1453:8
1505:15	1579:25	1300:15	1291:2	1453:13
1505:17	1580:2, 1580:3	1304:11	1291:11	1457:20
1505:20	1580:11	1307:14	1293:5	1467:16
1509:11	1580:15	1310:7, 1312:8	1293:13	1468:11
1512:23	1580:19	1316:4	1293:17	1468:14
1514:20	1580:20	1317:25	1293:19	1470:17
1514:25	1580:24	1332:6	1302:6, 1304:9	1472:20
1515:6	1581:7	1334:12	1305:21	1476:5, 1487:2
1515:10	1581:11	1335:2, 1335:4	1319:21	1512:1, 1518:5
1515:17	1581:16	1354:4	1319:22	1519:22
1515:24	1581:22	1363:20	1321:22	1524:19
1516:22	1588:2, 1595:8	1391:21	1326:9	1532:22
1530:12	1595:15	1401:10	1327:12	1537:19
1530:20	1600:2	1402:22	1327:14	1544:1, 1544:6
1540:17	1600:15	1403:1	1327:21	1544:8
1540:23	1600:16	1408:19	1328:13	1554:13
1541:2	1600:18	1411:23	1328:23	1554:15
1541:11	1601:18	1418:11	1329:1	1554:21
1541:15	1601:22	1421:16	1336:20	1554:25
1541:18	1601:25	1445:11	1336:21	1555:3, 1555:8
1548:6, 1548:8	1602:6, 1602:9	1482:23	1340:15	1555:20
1548:12	1602:11	1497:7	1340:20	1556:11
1551:11	1602:13	1530:16	1346:12	1556:14
1551:12	1602:18	1536:2, 1557:8	1387:2, 1394:7	1556:16
1552:9	1602:21	1561:3, 1568:2	1394:9	1556:24
1553:10	1603:3, 1603:6	1581:17	1394:14	1558:13
1553:11	1603:8	1603:2	1394:16	1560:1
1553:16	1603:24	1605:15	1394:21	1560:12

Volume 5
9/24/2021

EIB Ozone Hearing

1562:15	1348:11	1479:1, 1479:3	1281:12	1320:4
1566:19	1354:9	1479:6, 1480:7	old 1282:9	1321:20
1566:23	1354:14	1480:7	1292:25	1355:22
1566:24	1354:22	1480:14	1393:12	1381:19
1567:8, 1567:9	1354:24	1481:1, 1481:3	1435:20	1490:8
1569:22	1355:2, 1355:7	1481:8, 1482:3	older 1282:6	operations
1570:11	1355:10	1482:8	1444:11	1265:19
1570:12	1356:20	1482:12	OLSON 1251:3	1300:17
1570:22	1356:23	1482:23	once 1287:7	1302:25
1572:22	1356:25	1483:23	1303:14	1406:9
1573:1	1359:15	1484:2, 1494:9	1322:18	1406:21
1573:10	1364:4	1494:17	1350:11	1407:18
1596:8	1367:20	1494:25	1359:20	1415:25
oil-producing	1368:20	1495:3	1361:6	1416:5
1444:6	1369:9, 1377:1	1496:11	1362:12	1430:23
okay 1267:19	1377:16	1499:2, 1500:8	1404:10	1431:25
1274:14	1379:13	1501:24	1426:23	1467:25
1287:22	1381:22	1509:8, 1517:3	1426:23	1499:7
1300:15	1385:6	1520:23	1503:3	1562:15
1301:24	1385:13	1522:14	1503:24	1563:8
1303:13	1385:20	1528:1	1509:1	1566:18
1303:20	1386:2	1528:24	1602:14	operator 1281:3
1303:22	1389:22	1530:7, 1535:6	1602:24	1301:6
1304:11	1389:25	1537:7, 1553:4	one-to-one	1361:10
1307:15	1391:21	1553:7, 1554:7	1477:17	1385:9, 1387:3
1308:6	1391:22	1557:11	onerous 1275:20	1426:17
1309:24	1392:1	1557:14	ones 1368:8	1430:5
1311:22	1396:10	1561:25	1428:4	1435:16
1312:11	1401:8	1562:10	1511:13	1461:14
1312:14	1401:10	1568:17	ongoing 1504:10	1462:2
1312:24	1402:19	1571:11	online 1258:3	1472:18
1313:7	1403:15	1575:8	1379:8	1477:16
1313:10	1414:20	1575:10	onshore 1512:11	1488:18
1313:22	1418:17	1578:9, 1579:9	onsite 1272:23	1491:25
1314:13	1418:20	1581:13	oops 1434:7	1506:24
1315:18	1419:8, 1419:8	1581:16	open 1307:2	1507:5
1316:11	1419:19	1582:18	operate 1355:25	1513:12
1317:9, 1321:2	1421:7	1583:19	1356:8	1513:18
1321:7, 1323:2	1421:11	1585:12	1435:18	1514:1, 1549:3
1323:11	1422:10	1586:24	1444:15	1584:7
1325:16	1422:10	1587:22	1473:2	1584:24
1326:14	1422:17	1587:24	operated 1356:5	1585:2
1326:17	1424:18	1588:4, 1588:7	operating	1595:24
1327:3, 1327:9	1427:8	1589:21	1252:9	1596:1, 1596:8
1329:11	1430:21	1589:25	1252:21	1596:11
1330:18	1431:13	1594:9, 1595:5	1279:3	operators
1330:24	1431:21	1596:3	1381:17	1270:3
1331:5	1434:5, 1445:1	1596:16	1457:17	1270:18
1334:25	1446:4	1598:6	1490:17	1293:6
1336:2	1446:12	1598:25	1491:17	1336:21
1337:25	1450:14	1599:8	1523:15	1359:8, 1362:8
1340:22	1459:24	1599:20	1536:22	1363:14
1345:14	1460:16	1599:25	1558:15	1364:7
1345:20	1460:23	1601:12	operation	1366:20
1346:10	1460:24	1602:21	1258:9, 1431:2	1367:1, 1369:4
1346:20	1461:3	1602:25	1431:3, 1431:9	1373:17
1346:25	1461:10	1605:6, 1605:9	1453:6, 1454:6	1378:4, 1378:5
1347:10	1462:15	1605:18	1512:5	1378:10
1347:18	1463:7	1608:14	1550:23	1378:13
1347:22	1471:25	1609:3, 1610:4	operational	1378:16
1347:24	1473:22	Oklahoma	1319:20	1379:6

Volume 5
9/24/2021

EIB Ozone Hearing

1380:12	1513:18	1418:4, 1424:2	1288:14	1333:17
1380:15	1593:7	1434:19	1288:19	1333:19
1382:13	opportunities	1449:2	1291:15	1333:22
1382:19	1391:7	1452:11	1291:21	1333:24
1382:23	opportunity	1467:2, 1485:9	1291:25	1334:6
1383:3, 1384:3	1265:1	1516:2	1292:4, 1292:9	1334:17
1384:11	1274:17	1551:24	1294:2	1334:21
1395:12	1275:14	1574:11	1296:18	1334:25
1407:8, 1411:1	1275:18	1575:15	1297:10	1335:6, 1335:8
1416:4, 1420:9	1280:25	1582:2	1297:14	1335:13
1420:11	1308:17	1591:16	1298:4	1335:20
1420:19	1393:10	1607:8	1298:16	1335:25
1427:19	1397:10	1613:12	1299:11	1337:23
1440:5, 1440:5	1403:18	organic 1271:4	1299:16	1338:1
1455:9	1403:21	1406:11	1304:20	1338:25
1455:21	1412:17	1412:16	1307:17	1339:12
1469:21	1427:2, 1429:7	organization's	1307:22	1339:16
1470:4, 1470:7	1429:9	1584:18	1308:2	1339:21
1470:11	1443:20	organizations	1309:24	1339:23
1470:14	1473:16	1376:23	1310:2, 1310:7	1340:1, 1340:4
1470:22	1474:9	original 1426:4	1310:21	1340:6
1471:1, 1471:4	1543:18	1426:9	1311:3	1340:23
1471:7	1558:12	1436:16	1311:25	1341:2, 1341:6
1471:17	1560:13	1469:24	1312:7	1341:14
1471:23	oppose 1576:6	1470:8	1312:13	1341:17
1472:16	opposed 1309:2	originally	1312:25	1341:24
1472:24	1542:9	1365:1	1313:7	1343:22
1473:11	1542:13	orphaned	1313:11	1345:3
1473:18	1543:3	1406:19	1313:22	1345:20
1474:24	1543:14	Orth 1246:14	1314:3, 1314:5	1347:4
1475:2, 1475:2	1544:12	1247:3, 1262:1	1314:13	1347:10
1480:3	opposes 1342:9	1262:2, 1264:6	1314:18	1348:14
1480:22	1591:3	1264:13	1314:22	1349:3, 1349:6
1482:19	opposition	1264:18	1315:5	1349:10
1489:3, 1490:4	1309:4	1264:22	1315:10	1349:12
1491:1, 1491:9	option 1317:12	1268:9	1315:15	1349:14
1491:12	1364:20	1268:17	1315:20	1351:9
1492:8	options 1317:20	1268:25	1315:24	1351:12
1492:17	1342:22	1269:3, 1269:7	1316:3, 1316:8	1351:14
1493:6	1369:16	1269:12	1316:18	1351:18
1500:25	1385:1	1269:16	1317:9	1351:25
1507:9, 1513:9	order 1254:18	1273:9	1317:21	1352:8
1513:23	1254:20	1273:12	1317:25	1352:12
1537:10	1254:23	1273:19	1318:9, 1320:6	1352:21
1537:15	1255:4, 1255:8	1273:23	1320:9	1365:13
1555:2, 1563:7	1256:6, 1256:8	1274:3, 1274:8	1320:12	1367:22
1578:22	1256:11	1274:12	1320:19	1372:2, 1375:6
1579:4, 1583:9	1256:13	1279:9	1320:22	1375:25
1586:2, 1586:5	1256:16	1279:12	1321:5	1376:10
1586:14	1256:19	1279:25	1323:11	1380:21
1586:19	1256:22	1280:8	1323:13	1386:8, 1390:2
opinion 1284:2	1257:16	1280:13	1325:5	1390:13
1344:8, 1344:9	1262:10	1280:18	1325:16	1391:21
1344:15	1299:6, 1319:2	1280:22	1329:18	1392:1
1455:14	1335:15	1280:14	1330:1, 1331:8	1392:13
1473:12	1341:19	1285:1, 1285:6	1331:18	1392:17
1475:18	1346:18	1285:11	1332:2	1392:21
1489:5	1353:2	1285:15	1332:12	1393:5, 1393:9
1491:17	1361:21	1287:17	1332:17	1396:8
1498:15	1370:19	1287:22	1333:4, 1333:9	1396:14
1500:24	1391:1, 1398:1	1288:3, 1288:8	1333:13	1396:18

Volume 5
9/24/2021

EIB Ozone Hearing

1396:23	1449:19	1530:12	1602:21	1367:10
1397:5, 1401:6	1449:23	1540:23	1603:6	overview
1401:11	1450:1, 1450:3	1541:2	1603:25	1355:17
1402:8	1450:6	1541:11	1604:22	1584:18
1402:15	1450:16	1541:15	1605:6, 1605:8	overwhelm
1402:19	1451:15	1548:8	1605:10	1592:10
1402:24	1451:24	1551:12	1605:18	overwhelmed
1403:3, 1403:8	1452:5, 1452:9	1552:9	1606:11	1592:15
1403:13	1459:11	1553:11	1608:14	overwhelming
1405:2, 1405:9	1463:3, 1463:7	1553:16	1609:3, 1610:4	1293:8
1405:12	1463:9	1553:21	1611:3, 1612:3	owe 1566:1
1405:15	1463:21	1554:5, 1557:2	1612:13	OWL 1252:9
1405:19	1463:25	1557:8	1613:5	owner 1267:10
1405:24	1464:3, 1464:6	1557:12	1613:11	1361:10
1408:16	1464:10	1557:18	1613:16	1384:3
1408:21	1464:12	1557:23	1613:19	1384:11
1408:25	1464:25	1558:2, 1558:7	Otero 1397:9	1430:5
1409:3, 1409:6	1465:9	1560:21	outcome 1544:16	1461:13
1409:10	1465:15	1561:3, 1561:6	outline 1350:3	1462:2
1409:15	1466:9	1561:11	1589:2	1488:18
1411:11	1466:14	1561:17	outlined 1359:3	1549:3
1411:17	1466:18	1561:21	1494:13	1568:19
1411:20	1466:22	1561:25	outlines 1356:7	1569:9
1411:23	1467:5, 1469:4	1562:3, 1562:8	outside 1271:19	1570:21
1412:7, 1414:9	1478:4, 1479:3	1564:3	1278:11	1584:24
1414:16	1479:14	1564:10	1283:23	1585:2
1414:23	1482:13	1564:15	1286:1	1595:24
1415:1, 1415:5	1483:4, 1483:8	1564:19	1381:12	1595:25
1415:10	1483:11	1564:24	1382:4	1596:7
1417:20	1484:2, 1484:5	1567:22	1384:13	1596:11
1418:11	1484:11	1568:2, 1568:6	1422:7, 1438:6	owner/operator
1418:19	1484:17	1568:10	1438:10	1360:17
1419:22	1484:24	1568:15	1477:22	1360:23
1420:1	1485:3, 1485:7	1571:5	1527:18	1418:24
1421:14	1487:18	1571:15	1588:15	owner/operators
1422:18	1487:23	1571:20	outweigh	1437:14
1423:7	1488:13	1571:24	1394:21	owners 1362:8
1423:13	1493:20	1572:5	ovarian 1569:14	1364:7
1423:17	1495:5	1573:22	overall 1276:8	1366:19
1423:21	1495:14	1574:16	1277:16	1369:4
1430:21	1495:21	1579:14	1489:3, 1543:7	1373:17
1432:14	1495:25	1579:20	1575:6	1379:5
1433:6, 1433:9	1496:2, 1496:5	1579:25	1584:17	1380:11
1433:13	1496:11	1580:3	overarching	1382:23
1433:17	1496:14	1580:11	1535:13	1440:5, 1455:8
1433:20	1496:20	1580:15	overlap 1502:22	1455:21
1434:2, 1434:5	1496:23	1580:20	overregulation	1586:13
1434:17	1497:7	1580:24	1558:14	owners/opera...
1442:6	1497:11	1581:7	overrule	1455:25
1442:23	1497:13	1581:16	1331:19	1457:2
1443:8	1497:22	1581:22	oversaw 1487:11	ownership
1443:15	1498:3	1588:2, 1595:8	oversee 1486:2	1286:22
1443:23	1505:15	1600:2	overseeing	1364:10
1446:5, 1447:4	1505:17	1600:15	1487:10	oxides 1269:24
1447:8	1505:20	1600:18	oversight	Oxy 1251:9
1447:13	1509:11	1601:18	1302:6	1447:24
1447:17	1512:23	1601:22	1303:12	1448:4
1447:22	1514:20	1601:25	1519:1	ozone 1246:5
1448:13	1514:25	1602:6, 1602:9	1522:25	1259:22
1449:7	1515:6	1602:13	1528:8, 1570:5	1262:5, 1266:7
1449:17	1515:17	1602:18	overturn 1367:8	1269:23

Volume 5
9/24/2021

EIB Ozone Hearing

1283:25	1394:6	1390:22	1305:18	1577:8
1289:12		Pamela 1247:9	1306:25	1581:13
1293:4	P	1262:11	1327:7, 1330:5	1584:8
1326:10		pandemic	1345:9	1586:13
1326:18	P-I-C-H-A	1276:12	1345:10	1610:7
1327:22	1285:14	1404:21	1355:21	partially
1346:8	p.m 1390:11	panel 1398:16	1357:5, 1359:2	1493:10
1346:13	1390:12	1401:4	1360:3, 1360:6	participants
1394:8	1390:17	1595:12	1360:25	1398:10
1397:23	1465:7, 1465:8	1600:6	1361:2	1561:22
1397:25	1551:18	panelist	1361:22	participate
1399:20	1552:6, 1552:7	1297:22	1362:13	1404:6
1400:6	1552:8	1341:12	1363:3	1567:15
1400:17	1552:11	1434:9	1363:12	participated
1403:23	1613:21	panelists	1363:13	1487:11
1406:8, 1410:5	PA 1248:8	1465:5	1363:16	particular
1415:18	1251:4	panelize	1364:14	1266:11
1476:14	1251:22	1451:24	1366:11	1286:10
1476:15	package 1471:17	panelized	1366:21	1286:17
1476:16	Pacyniak	1334:22	1372:3	1286:18
1476:19	1249:11	panels 1283:1	1372:11	1287:8, 1386:1
1477:11	1608:15	paper 1492:1	1372:16	1410:6, 1423:3
1517:6, 1517:7	1608:16	1492:4	1372:25	1427:20
1517:11	pacyniak@law...	paragraph	1373:2	1462:16
1517:17	1249:16	1357:18	1380:13	1487:2, 1587:8
1518:5	pad 1301:5	1358:7	1380:17	1599:5
1518:10	1302:2, 1302:2	1358:24	1381:16	1606:25
1518:16	1322:11	1360:2, 1360:8	1384:25	particularly
1519:5, 1519:7	page 1254:2	1360:22	1386:16	1320:15
1520:12	1255:2, 1256:2	1361:21	1395:25	1420:19
1521:9	1257:2	1363:4, 1363:9	1401:4, 1404:5	1439:15
1527:16	1296:23	1366:2	1410:2	parties 1294:23
1528:2, 1528:3	1298:8	1399:19	1418:23	1298:7
1531:11	1330:13	1399:22	1420:17	1298:24
1532:2	1330:15	1400:6	1425:22	1308:17
1532:23	1330:21	1400:16	1430:23	1311:10
1534:18	1330:25	1457:1	1440:19	1311:15
1534:19	1331:14	1578:17	1444:16	1314:4, 1314:8
1534:25	1353:8, 1353:9	1587:2	1446:17	1318:19
1535:4	1353:10	paragraphs	1446:21	1339:3
1535:18	1353:25	1358:7	1461:16	1343:23
1535:23	1353:25	PARAMHOS 1249:3	1461:18	1357:25
1536:20	1355:11	paraphrasing	1461:19	1361:18
1536:21	1355:11	1576:16	1468:18	1369:14
1542:19	1355:12	Pardon 1409:5	1472:23	1369:20
1542:22	1366:8	parentheses	1473:19	1375:25
1543:8	1400:21	1368:13	1477:23	1382:2
1543:21	1517:5	parents 1572:17	1490:3, 1490:3	1387:13
1544:2	pages 1353:8	1573:4	1491:5	1387:18
1547:12	1353:25	Park 1249:17	1492:14	1388:23
1548:23	1388:22	1250:2, 1253:5	1499:5	1388:24
1552:13	Paige 1391:2	1295:8	1507:19	1389:1, 1389:6
1568:23	1405:4	1590:21	1513:14	1423:12
1572:13	pains 1400:8	parse 1604:5	1526:16	1432:12
1577:20	paint 1281:23	part 1265:15	1533:21	1442:24
1588:11	Palace 1248:16	1267:4	1544:9, 1544:9	1443:1
1589:12	Palmer 1422:9	1269:19	1544:10	1451:14
1589:20	1473:17	1275:16	1545:17	1459:13
1590:3	Pam 1262:21	1276:10	1546:9	1463:11
1596:25	1294:9	1301:17	1554:25	1474:8
ozone-forming	1294:13	1305:10	1559:20	1478:21

Volume 5
9/24/2021

EIB Ozone Hearing

1479:4, 1495:7	1283:22	1282:22	1286:14	1481:15
1530:14	1284:3	1289:16	1445:11	1481:19
1551:14	peer 1343:5	1388:20	1445:13	1490:5, 1508:6
1575:3	1489:19	1394:14	1567:7	1508:7, 1518:2
1582:10	pending 1296:17	1396:2	permission	1518:11
1585:14	Pennsylvania	1397:19	1329:17	1519:24
1595:11	1261:4	1398:7, 1398:7	1329:20	1520:4
1600:5	people 1265:9	1401:25	1459:22	1521:11
1607:13	1278:11	1406:24	permit 1260:22	1530:25
1609:18	1283:10	1417:10	1301:7	1531:7, 1535:9
1610:11	1283:22	1446:10	1301:14	1535:12
1610:20	1286:10	1446:23	1305:23	1535:14
1610:23	1286:16	1517:8	1306:6	1536:16
1614:11	1293:12	1517:11	1457:17	1536:24
1614:14	1293:21	1518:10	1468:14	1544:15
partner 1271:9	1385:15	1520:12	1475:5	1545:14
1526:15	1386:18	1520:20	1475:11	1545:16
partnered	1400:9	1522:9	1475:12	1545:22
1568:25	1404:15	1531:12	1476:7	1545:23
partners 1252:9	1404:17	1532:3	1476:13	1547:3, 1547:5
1252:17	1415:16	1532:23	1476:21	1547:19
1336:14	1416:16	1535:18	1476:24	1588:10
1356:12	1416:17	1536:12	1490:17	1588:17
parts 1286:4	1416:18	1542:8	1507:3	1588:18
1305:16	1417:10	1542:13	1508:11	1591:20
1436:21	1445:4	1542:14	1516:19	1598:19
1542:4	1445:16	1543:3, 1543:4	1522:3, 1532:7	permitted
party 1279:23	1500:19	1543:9	1532:11	1379:9
1332:4	1500:21	1544:12	1532:13	1531:10
1348:16	1501:8	1547:13	1533:11	permitting
1388:6	1503:16	percentage	1533:17	1300:13
1432:16	1503:17	1283:24	1533:20	1301:8
1451:11	1504:2, 1504:3	1388:18	1534:16	1301:22
1574:5	1504:6, 1504:9	perception	1535:13	1302:7, 1303:3
Paseo 1248:9	1504:11	1386:23	1535:17	1303:8
1251:5	1506:11	perfect 1269:2	1535:21	1303:11
1251:22	1508:20	1429:23	1535:25	1304:9
Paso 1252:2	1511:19	perform 1383:7	1544:20	1304:10
passed 1379:25	1526:8, 1527:8	Performance	1544:24	1305:25
passes 1278:19	1527:9	1507:20	1545:3	1309:13
1401:21	1528:18	performed	1546:11	1336:14
pause 1316:1	1554:22	1472:19	1546:18	1336:23
1320:17	1562:13	1476:17	1547:20	1342:12
1332:3, 1338:2	1563:23	1546:4	1547:22	1345:9
1339:2	1569:7	performing	1547:23	1345:15
1451:18	1569:24	1475:20	1547:25	1347:21
1459:13	1593:5	perimeter	1549:6	1435:9
1469:5	1603:14	1270:10	1588:19	1467:15
1488:13	1604:14	period 1324:25	1589:2	1468:10
1595:10	1604:16	1428:24	1591:11	1468:16
1602:18	1609:15	1606:23	1599:16	1477:13
1602:22	people's 1441:4	periodic	permit's 1546:6	1477:23
pay 1559:13	1563:22	1366:10	permits 1305:4	1481:14
paying 1394:23	1591:20	1473:11	1305:8	1481:18
1431:17	Peralta 1248:9	1491:15	1342:14	1481:24
PC 1252:22	1251:5	1537:22	1343:15	1482:5, 1482:7
PDF 1263:15	1251:22	1538:17	1468:2, 1476:5	1482:7, 1517:1
PE 1475:10	percent 1271:15	periphery	1477:5, 1477:8	1517:22
PE's 1475:13	1272:2, 1272:6	1270:10	1477:11	1518:12
pee 1283:18	1272:8, 1278:5	Permian 1272:20	1477:19	1521:1
peeing 1283:13	1278:8	1286:6	1481:15	1531:20

Volume 5
9/24/2021

EIB Ozone Hearing

1532:22	philanthropy	place 1249:4	1453:15	1348:22
1544:9	1266:3	1266:10	platform	1355:17
1588:12	PHOEBE 1247:5	1266:22	1262:16	1363:24
1588:16	Phoenix 1248:5	1270:10	1263:24	1376:6
1588:25	phone 1317:20	1319:17	1284:17	1390:14
1590:8, 1590:9	phrase 1279:21	1324:10	1284:18	1390:22
1590:13	1431:1	1324:24	1288:25	1391:5
1590:21	1480:20	1371:25	1294:10	1391:13
1591:8	1540:4	1373:25	1294:18	1392:15
1598:16	1542:23	1379:11	1299:3	1396:16
person 1277:6	physical	1398:1	1320:20	1400:21
1277:12	1321:20	1413:20	1332:22	1401:7
1277:12	1455:10	1417:13	1339:8	1402:20
1391:14	physically	1421:8, 1421:9	1348:21	1402:21
1411:8	1258:3, 1357:7	1426:23	1376:6, 1392:5	1402:25
1475:20	1357:8	1427:3, 1437:8	1405:6	1405:13
1514:6, 1571:7	Picha 1254:12	1438:24	1411:14	1405:16
personal	1262:13	1439:1, 1440:4	1432:22	1408:12
1490:15	1284:19	1444:18	1434:1, 1434:7	1409:1
personally	1284:20	1468:1, 1545:9	1443:4	1411:20
1279:2, 1428:2	1284:22	1550:14	1448:19	1414:24
1572:15	1284:24	1567:13	1463:15	1423:20
1605:14	1285:5, 1285:7	1586:18	1479:10	1424:7
1608:8, 1614:8	1285:13	1590:16	1495:10	1432:22
personnel	1285:13	placed 1437:6	1497:14	1443:5
1420:5, 1420:7	1285:18	places 1272:25	1552:2	1448:19
persons 1410:14	1285:19	1419:1, 1419:9	1552:20	1452:24
perspective	1287:18	1606:24	1574:7	1453:18
1306:20	pick 1507:11	plague 1292:21	1600:11	1455:3
1309:6	1604:13	plan 1297:15	play 1301:14	1459:18
1368:23	1612:14	1297:16	1445:12	1461:11
1377:6	picture 1267:24	1350:2	1453:8	1463:12
persuade 1607:8	1281:23	1369:20	1523:20	1463:16
pertains 1455:4	1551:8	1399:7, 1399:9	1590:22	1465:6
pertinent	piddling 1284:1	1442:20	playing 1529:17	1465:10
1330:5	piece 1297:5	1510:20	PLC 1248:4	1465:17
1529:21	1302:18	1510:24	please 1262:18	1466:15
1593:16	1306:2, 1361:3	1517:9	1262:20	1478:6, 1479:5
1596:20	1428:20	1518:15	1263:19	1479:10
1597:11	1430:15	1542:19	1269:4, 1274:9	1481:9
1597:12	1478:19	1543:8	1279:10	1484:21
pervasive	pieces 1348:7	1556:20	1279:13	1485:22
1393:23	1372:12	1594:1	1280:10	1487:21
petition 1262:7	1372:13	1608:19	1281:22	1488:22
1397:12	1372:25	planet 1394:21	1284:10	1495:11
1398:10	1373:1, 1585:1	1396:6, 1408:6	1285:3	1525:20
1398:18	pig 1367:11	1411:7	1287:25	1552:2
1400:12	pigging 1367:14	1412:20	1288:11	1552:10
1401:15	pilot 1510:20	1412:22	1291:22	1552:21
1552:13	1510:24	1417:4, 1417:4	1294:7	1553:12
petition's	1570:2	planning	1297:21	1557:20
1399:11	pipe 1303:1	1260:15	1298:18	1561:7
petitions	pipeline 1252:3	1421:2	1299:4	1564:12
1534:22	1270:7, 1270:8	1442:15	1314:24	1568:3
petroleum	1270:16	1445:7	1315:16	1571:10
1251:2	1270:21	plant 1321:25	1318:10	1571:12
1282:24	1273:1	1322:1, 1322:3	1319:15	1571:16
1487:3	1324:15	1373:1	1323:16	1571:21
phase-in 1576:3	1453:14	1393:21	1332:23	1574:8, 1583:1
phases 1432:2	pipelines	1570:2	1336:11	1599:12
phasing 1575:4	1293:14	plants 1400:7	1339:3, 1339:8	1600:3

Volume 5
9/24/2021

EIB Ozone Hearing

1600:11	1377:15	1559:16	1283:3	1249:20
1607:22	1380:2	1560:8	1283:11	1250:5, 1251:5
pleased 1448:4	1417:14	pollution	1283:11	1251:23
Pleasure 1515:2	1427:1	1259:22	1283:14	1359:5
plumbing	1430:12	1289:14	1283:18	1593:23
1413:12	1439:12	1289:17	1283:22	posthearing
Plus 1278:7	1440:19	1289:20	1283:23	1548:2
1282:13	1451:7	1292:20	1284:3	posture 1607:11
PM10 1327:1	1459:10	1293:4, 1293:9	poop 1282:14	1607:12
PM2-and-a-half	1492:13	1293:16	popping 1484:9	potent 1290:7
1327:1	1493:4, 1529:6	1301:10	pops 1303:19	1290:21
pneumatic	1529:24	1321:24	1317:13	1394:3
1260:15	1542:9	1357:21	population	1410:19
1290:23	1545:10	1395:4	1455:11	potential
1293:16	1547:18	1395:10	portable	1270:24
1394:17	1547:20	1395:16	1384:11	1282:11
1394:18	1555:4	1401:2	1385:3	1295:4
1394:22	1594:20	1403:23	portion 1340:18	1296:13
1395:16	1602:23	1407:3, 1407:8	1340:21	1297:6
1395:21	1607:1	1407:11	1376:22	1303:18
1407:11	pointed 1607:2	1408:9	1567:16	1309:9
1413:3, 1416:8	pointing	1408:11	portions 1383:2	1309:12
1426:3, 1555:4	1352:13	1408:13	1543:25	1319:18
1555:6	points 1272:15	1410:6	pose 1489:2	1321:19
1556:24	1302:11	1410:12	1592:11	1322:9
1563:10	1309:9	1410:25	1592:12	1322:13
1563:15	1462:21	1411:1, 1411:3	1592:13	1322:22
1566:22	1471:7	1411:4, 1413:2	posed 1541:4	1322:25
1567:3	1554:16	1413:3, 1416:4	position	1323:21
pneumatics	1554:19	1416:7	1319:11	1342:5
1295:12	1554:21	1416:19	1327:17	1344:22
1395:19	Police 1265:6	1517:6	1327:17	1347:14
1416:10	policies	1517:18	1327:20	1348:2
1563:13	1275:20	1518:6	1336:12	1360:24
1567:1	policing	1523:22	1337:20	1445:21
1603:20	1331:16	1524:16	1342:3, 1345:8	1470:9
1604:10	policy 1249:7	1528:3, 1530:1	1453:5	1473:12
1608:10	1275:8	1531:10	1467:11	1474:21
1608:25	political	1531:19	1469:13	1475:1, 1480:9
1613:14	1560:12	1532:1	1485:23	1511:9
point 1289:13	pollutant	1538:19	1488:9, 1554:9	1511:16
1289:23	1406:24	1540:21	possession	1528:4, 1528:7
1290:6, 1302:8	1476:15	1554:13	1523:11	1530:4
1302:23	1596:24	1555:1, 1555:2	1594:6	potentially
1307:3	pollutant-em...	1559:3, 1559:9	possibility	1295:21
1322:24	1528:11	1563:7	1305:3	1372:13
1324:17	pollutants	1563:11	possible	1506:24
1330:12	1246:5	1566:18	1271:12	pours 1321:3
1330:14	1322:20	1566:22	1294:25	power 1271:16
1330:17	1406:9	1572:15	1322:12	1282:11
1330:20	1558:17	1573:7, 1573:9	1554:23	1285:20
1330:20	pollute 1558:23	1573:13	1560:1	1286:6
1330:21	polluter	1573:14	1563:17	1546:25
1330:25	1415:23	1573:19	1564:1, 1604:7	powerful
1331:14	polluters	1573:19	possibly	1272:11
1333:2	1559:1	1573:20	1350:15	1394:2
1343:21	pollutes	pool 1282:3	1374:18	1406:23
1346:7	1394:25	1282:7	1382:6, 1444:6	1410:16
1346:11	polluting	1282:14	1446:25	1517:13
1352:7	1414:3	1282:15	1612:18	1528:13
1369:10	1559:13	1282:17	post 1247:12	PowerPoint

Volume 5
9/24/2021

EIB Ozone Hearing

1325:13	prefer 1608:4	1278:17	preventing	1334:23
1353:12	preferable	1294:20	1542:22	1423:19
practical	1585:17	1314:25	previous	1465:12
1267:15	preferences	1365:9	1269:25	probable 1441:8
1268:6	1329:25	1365:22	1270:1	probably 1307:3
1489:16	prefiled 1436:6	1447:16	1289:25	1328:10
1544:16	1452:20	1577:7	1290:1	1350:1, 1373:5
1592:3	1454:11	presented	1354:16	1378:13
practice	1454:16	1343:10	1364:6, 1383:9	1508:3
1350:18	1455:3, 1455:5	1351:6, 1380:8	1436:25	1508:16
1355:24	1456:11	1385:23	1461:20	1513:14
1524:3	1456:15	1421:24	1513:8, 1589:6	1514:10
1539:24	1456:18	1422:15	1606:7	1569:12
1549:19	premature	1455:15	previously	1611:12
1550:20	1608:16	1455:15	1308:11	problem 1275:8
1579:6	premise 1400:20	1468:19	1424:11	1307:7, 1307:8
1597:19	premium 1475:14	1603:11	1424:14	1322:5
practices	prepare 1373:9	1604:6	1448:12	1350:13
1540:2	1424:19	presenter	1589:8	1350:14
1562:19	1461:15	1330:2	price 1394:23	1355:9
1577:12	1475:4	presenting	1404:14	1399:15
pre 1300:6	1488:19	1422:24	1404:23	1399:17
1300:7	1491:14	1474:16	1446:18	1402:6
1363:25	1586:21	1581:5	1446:19	1406:17
precious	prepared	presently	prices 1446:15	1408:11
1399:21	1297:13	1568:19	primarily	1446:17
precise 1311:19	1337:5, 1430:8	preserve	1298:14	1456:21
1542:25	1448:10	1330:19	1467:16	1519:8
precision	1467:18	preserves	primary 1468:12	1520:10
1371:18	1468:13	1357:14	1542:8	1527:16
precludes	1486:5	president	principal	problematic
1348:1	1494:11	1568:20	1399:14	1319:21
precursor	1534:7	pressure	1485:25	1349:17
1246:5	preparing	1577:17	principle	1476:8
1326:18	1374:5	presumably	1410:1	problems 1275:4
1394:8	preproduction	1520:21	principles	1275:5
1394:18	1300:11	1531:12	1409:25	1309:12
1406:9, 1410:6	prerequisite	1547:7	prior 1301:6	1317:17
1415:18	1305:4	presumed	1305:23	1329:25
1548:24	presale 1448:8	1536:19	1306:6	1399:16
1572:13	Presbyterian	presuming	1308:19	1504:5
precursors	1406:5	1531:14	1311:21	procedure
1262:5	prescribes	pretransaction	1360:23	1522:1, 1606:7
1269:22	1477:12	1429:2	1361:3	proceed 1313:25
1272:4	prescribing	pretransfer	1364:10	1356:22
1289:12	1545:7	1371:10	1371:16	1425:9, 1466:8
1346:8	1546:22	pretty 1304:23	1388:7, 1440:3	proceeding
1346:13	present 1308:15	1305:9	1578:3	1262:23
1552:13	1311:9	1309:16	1578:12	1308:16
1577:20	1393:16	1429:19	prioritizing	1318:5
1588:11	1413:23	1569:19	1570:20	1345:12
1596:25	1414:7	prevalent	Prius 1446:10	1371:18
predicate	1441:10	1415:22	1556:12	1387:14
1545:21	1458:5	prevent 1272:14	private 1401:17	1436:8, 1451:3
predicated	1459:14	1401:1, 1531:9	privilege	1454:12
1344:22	1569:20	1531:12	1490:13	1454:21
1542:17	1578:6	1531:14	1511:2	1456:12
1542:21	1604:16	1532:1	privileges	1459:6
predrilling	presentation	1547:15	1297:23	1467:19
1300:7, 1300:7	1270:1	preventible	1298:1	1614:12
1301:25	1278:16	1293:7	1314:25	proceedings

Volume 5
9/24/2021

EIB Ozone Hearing

1246:10	1410:18	1473:12	1449:12	1457:6, 1462:8
1316:19	1455:12	1474:25	prohibit 1590:5	1467:22
1318:7	1486:10	1475:6	prohibited	1468:1
1320:21	1486:13	1475:23	1518:1	1469:24
1337:6	producer	1554:9	prohibitively	1470:3, 1470:8
1390:11	1277:10	professionals	1469:20	1472:12
1465:7, 1486:6	producers	1475:4, 1475:6	project 1249:7	1476:4, 1476:7
1552:7	1265:15	1475:7	1350:2, 1370:4	1476:8
1613:21	1267:18	1475:22	1421:6	1476:12
1614:7, 1614:8	1413:1, 1413:8	Professor	1555:15	1477:5, 1477:6
1614:10	1555:20	1608:15	1556:19	1477:10
process 1266:18	1556:16	professors	1562:9, 1572:9	1477:18
1300:19	producing	1398:12	projects 1306:4	1477:22
1303:11	1278:9	proficient	1336:24	1477:25
1309:21	1303:15	1282:7	1467:16	1488:10
1310:14	1319:25	profiles	1474:2, 1486:2	1516:18
1321:13	1435:21	1467:23	1555:14	1516:25
1324:1	product 1453:14	profited	prominent	1518:21
1386:13	production	1394:24	1293:3	1518:23
1389:16	1265:17	profits 1560:15	promising	1519:19
1429:16	1278:22	program 1253:3	1445:12	1519:21
1441:25	1283:16	1369:3	prompt 1460:8	1520:10
1454:7	1293:17	1381:10	1549:25	1520:25
1475:23	1300:21	1457:17	promulgate	1521:16
1502:9	1301:6	1477:13	1400:23	1522:15
1503:14	1301:16	1477:20	1562:23	1522:17
1504:24	1301:21	1480:4	proof 1524:10	1527:14
1507:16	1306:14	1480:13	proper 1304:15	1527:15
1509:7	1320:3, 1322:8	1482:7	1363:15	1529:1
1510:13	1394:9	1486:24	properly	1529:18
1511:5	1395:17	1490:12	1344:16	1530:23
1517:22	1398:7, 1402:1	1498:13	1346:19	1531:2, 1531:6
1520:11	1402:2, 1404:1	1498:13	1350:7, 1356:5	1532:6
1520:13	1407:12	1498:14	1439:5	1532:15
1525:18	1413:2	1498:15	1517:23	1533:1
1525:24	1413:16	1499:6, 1500:7	properties	1537:24
1526:12	1414:5, 1416:1	1500:22	1322:16	1537:25
1526:13	1417:14	1504:14	property	1538:2, 1545:7
1531:20	1439:13	1505:3	1406:15	1558:14
1532:6, 1532:9	1444:20	1507:14	proposal	1577:21
1532:12	1453:13	1511:13	1294:24	1578:2
1532:14	1453:23	1514:2, 1521:1	1296:13	1585:18
1532:16	1563:19	1590:8	1308:22	1588:14
1554:20	1563:21	1591:15	1309:15	1588:23
1581:5, 1587:8	1566:23	1591:16	1311:8	1591:21
processes	1567:8, 1567:9	1591:18	1312:15	1591:25
1423:3	1569:22	1591:20	1313:17	1592:2
1486:22	1570:14	1597:16	1316:15	1592:11
1536:1	productions	programs 1253:4	1319:13	1593:8
processing	1266:15	1336:23	1337:21	1594:13
1373:1, 1394:9	productive	1342:12	1343:2	1594:16
1453:14	1270:14	1347:21	1344:10	1595:23
produce 1270:19	productivity	1476:8, 1480:2	1348:8, 1357:6	1596:2, 1596:3
1278:1, 1320:2	1270:25	1487:7, 1489:1	1364:7	1596:4
1321:25	products	1489:7	1369:11	1596:10
1322:7, 1322:9	1282:25	1489:13	1394:6	1596:20
1322:18	1583:5	1499:5	1412:15	1598:16
1322:25	profession	1499:13	1436:17	1607:9
1368:17	1500:10	1500:13	1436:17	proposals
produced 1258:7	professional	1598:5	1440:20	1308:18
1278:2	1453:19	progress	1456:25	1311:11

Volume 5
9/24/2021

EIB Ozone Hearing

1407:20	1454:24	1576:21	1565:14	1350:19
1413:6	1455:2, 1455:6	1576:23	1566:3, 1566:5	1358:8, 1361:9
1413:19	1455:8	1576:24	1566:13	1385:1
1414:6	1455:16	1577:2	protected	1387:21
1416:13	1455:18	1578:17	1404:24	1422:4, 1454:8
1516:11	1455:24	1578:24	protecting	1454:13
1516:16	1456:3, 1456:8	1579:2	1293:12	1456:12
1565:5, 1565:5	1457:3, 1457:7	1584:11	1293:21	1481:4, 1481:5
1566:6	1457:19	1585:15	1401:19	1502:17
1610:11	1458:12	1585:24	1406:10	1525:4, 1531:5
propose 1387:6	1458:18	1588:8	protection	1534:8
1518:4	1458:20	1589:22	1412:12	1550:25
1521:12	1460:7	1590:25	1412:24	1592:16
1523:23	1460:10	1592:21	1462:9	1599:14
1526:5	1460:20	1593:17	protects 1408:8	provider
1538:23	1469:14	1594:10	protocol	1453:10
1603:16	1469:16	1594:23	1260:22	provides
proposed 1246:4	1472:3, 1473:7	1595:25	1349:23	1282:18
1258:6	1480:18	1596:10	1350:19	1294:15
1258:15	1489:2	1597:2, 1598:1	proud 1265:7	1361:15
1258:15	1491:23	1598:11	1265:13	1547:14
1258:16	1492:15	1599:21	1565:11	1594:16
1258:18	1493:15	1601:6	provide 1269:20	1598:18
1258:18	1494:25	proposes	1291:12	providing
1258:19	1502:11	1488:17	1327:4	1276:22
1258:20	1502:12	proposing	1328:15	1378:15
1258:21	1516:25	1284:2	1336:18	1412:11
1258:21	1517:4	1344:21	1342:21	provision
1259:4, 1259:4	1517:19	1344:24	1348:6, 1351:2	1359:22
1259:5, 1259:6	1518:19	1381:12	1359:7	1363:9
1259:7, 1259:7	1519:3	1423:1	1364:16	1374:11
1259:9, 1259:9	1520:16	1436:13	1364:20	1418:25
1259:10	1520:22	1481:19	1381:17	1436:23
1259:11	1522:19	1481:20	1387:16	1437:17
1259:12	1522:25	1483:20	1393:10	1494:14
1259:12	1523:1, 1523:3	1531:25	1403:19	1517:1
1259:14	1525:8, 1531:9	1532:10	1407:22	1517:14
1259:14	1531:18	1535:8	1408:2	1517:14
1259:15	1535:7	1538:10	1457:14	1517:20
1261:10	1537:21	1540:10	1468:4	1526:5
1261:10	1538:3, 1539:8	1542:16	1476:10	1527:22
1261:11	1539:18	1545:12	1481:16	1537:20
1308:9	1539:22	1546:23	1493:5	1538:10
1308:19	1540:15	prospect	1529:21	1538:24
1309:21	1541:10	1393:14	1531:1	1540:15
1311:14	1541:23	protect 1395:6	1531:15	1541:9, 1543:5
1319:8	1543:6	1407:2, 1407:4	1531:22	1585:15
1338:12	1543:13	1410:9	1583:8	1587:4
1338:16	1543:17	1410:16	1585:19	1590:13
1342:3, 1344:6	1543:19	1411:6	1591:22	1602:5
1344:12	1545:4	1412:23	1593:1	1604:13
1347:15	1545:18	1415:19	1593:16	provisions
1348:4	1546:5	1415:24	1593:19	1294:23
1374:11	1546:16	1528:22	1593:20	1353:19
1375:14	1548:5	1530:1	1593:22	1354:4
1377:5, 1394:8	1548:23	1547:15	1596:20	1355:18
1399:19	1550:2	1562:17	1597:19	1355:19
1414:1, 1429:3	1555:22	1562:17	provided	1361:17
1440:4	1575:13	1562:17	1342:12	1363:1
1441:20	1575:17	1563:3	1343:13	1364:14
1454:22	1576:18	1563:21	1349:24	1377:13

Volume 5
9/24/2021

EIB Ozone Hearing

1378:21	1280:16	1564:22	1422:8	1400:25
1379:17	1280:17	1564:23	1426:16	1401:1, 1408:3
1425:14	1285:9	1565:2	1444:24	1441:15
1436:16	1285:10	1568:13	1448:10	1441:19
1455:20	1288:9	1568:14	1448:19	1468:9
1458:25	1288:17	1572:3, 1572:4	1511:24	1470:19
1461:6	1288:18	1573:24	1518:7	1486:2, 1501:2
1477:24	1292:7, 1292:8	1576:5, 1593:4	1518:25	1504:25
1494:12	1294:6, 1294:8	1593:9	1529:24	1511:21
1524:19	1294:19	1593:17	1537:25	1517:9
1537:10	1296:22	1593:20	1543:22	1517:12
1540:9	1377:3, 1377:4	1593:22	1545:9, 1559:7	1518:3
1549:10	1390:6, 1390:7	1594:4, 1594:7	1562:13	1518:11
1587:15	1390:17	1597:12	1562:18	1519:5
1590:9, 1591:4	1390:18	1597:20	1562:19	1520:20
1597:4	1390:19	1597:20	1563:23	1521:10
proximity	1393:3, 1393:4	1598:8	1567:13	1522:5
1278:13	1394:20	1603:19	1569:23	1522:13
1565:22	1397:3, 1397:4	1614:17	1589:18	1523:10
1596:23	1397:21	publish 1400:23	1590:16	1523:12
PTE 1313:16	1399:3	1437:10	1605:25	1523:18
1319:9	1403:11	published	1606:25	1524:20
1322:18	1403:12	1343:6	1607:7	1526:18
1322:23	1405:22	pull 1444:2	putting 1289:25	1530:3, 1532:4
1323:5, 1324:3	1405:23	1501:8	1311:1	1532:20
1324:17	1406:2	1507:15	1586:18	1532:24
1342:10	1409:13	1508:3, 1508:9		1534:1
1344:6	1409:14	1508:14	Q	1534:25
1344:14	1409:19	1510:25	QA/QC 1350:18	1535:23
1347:23	1412:5, 1412:6	1606:18	QAPPs 1350:21	1536:17
1354:16	1412:11	pulled 1601:7	1350:23	1536:21
1383:18	1415:8, 1415:9	pulling 1504:4	QR 1469:19	1543:9
1383:19	1435:16	punitive	Quad 1454:5	1545:19
1475:11	1523:19	1278:18	1454:5, 1508:1	1545:25
public 1254:5	1524:5	purchasing	qualification	1547:14
1254:7, 1254:9	1525:16	1398:21	1267:24	1547:16
1254:11	1525:18	Purdue 1468:6	qualifications	1559:22
1254:13	1526:14	purpose 1454:20	1441:13	1566:5
1254:15	1526:22	1454:23	1453:19	1588:11
1254:17	1527:24	purposely	1475:20	1588:15
1255:14	1528:21	1525:25	qualified	1588:24
1255:16	1529:22	purposes	1346:22	1589:3
1255:18	1530:2, 1530:2	1301:14	1475:22	1593:16
1255:20	1539:2, 1550:4	1458:3	qualify 1303:2	1598:17
1255:22	1550:17	push 1428:21	1514:11	1598:21
1255:24	1551:8	1603:21	qualitative	1599:19
1256:5, 1257:5	1551:17	pushing 1371:20	1577:12	1599:23
1257:7, 1257:9	1551:19	1453:13	1577:16	quantified
1257:11	1552:2	put 1266:22	qualities	1326:22
1257:13	1552:11	1271:12	1475:24	quantify 1551:2
1257:15	1552:14	1293:11	quality 1249:18	quantitative
1262:6, 1262:8	1552:17	1300:20	1260:15	1539:24
1262:18	1552:20	1302:1, 1309:5	1260:21	1549:22
1262:22	1554:3, 1554:4	1310:15	1286:2, 1286:3	1550:3
1264:16	1558:5, 1558:6	1371:16	1336:21	1550:22
1264:17	1560:16	1371:24	1336:22	1577:15
1265:1	1561:18	1371:25	1350:2, 1350:3	quantity 1549:5
1265:23	1562:6, 1562:7	1394:5	1350:18	quarter 1492:18
1269:10	1562:16	1404:14	1369:25	query 1374:3
1269:11	1562:17	1404:23	1397:25	question 1299:3
1274:6, 1274:7	1563:3	1417:13		1300:10

Volume 5
9/24/2021

EIB Ozone Hearing

1302:15	1543:11	1333:20	1450:15	1574:17
1302:22	1543:16	1333:23	1459:10	1574:23
1305:11	1544:4, 1544:4	1339:3, 1339:6	1459:16	1574:24
1305:14	1551:14	1339:13	1463:12	1576:11
1307:1, 1307:2	1570:10	1339:15	1463:14	1579:16
1308:8	1574:8, 1575:7	1339:19	1463:17	1579:21
1308:13	1575:19	1339:22	1463:20	1580:1
1312:12	1575:21	1339:24	1463:24	1580:10
1328:18	1597:22	1340:5	1464:2, 1464:5	1580:14
1328:21	1600:11	1343:24	1464:9	1587:25
1332:18	1600:21	1345:2	1464:11	1595:7
1332:22	1605:24	1345:18	1464:24	1595:12
1339:8, 1340:8	1613:10	1345:23	1465:21	1595:16
1346:6, 1347:9	questioned	1347:11	1465:22	1600:1, 1600:6
1348:22	1417:24	1348:13	1468:19	1600:9
1365:25	questioning	1348:17	1469:9	1600:17
1366:1	1298:6, 1298:7	1348:20	1474:17	1601:17
1366:14	1310:14	1349:5	1478:1, 1478:7	1601:20
1367:4	1310:18	1349:11	1479:4, 1479:8	1601:24
1370:11	1312:4	1349:13	1479:15	1602:2, 1602:8
1371:13	1327:10	1351:11	1479:17	quick 1365:24
1373:13	1387:8, 1390:7	1351:13	1482:11	1436:22
1376:6, 1380:1	1421:19	1356:19	1482:18	1464:16
1382:9	1446:8	1358:3	1483:6	1497:3, 1497:6
1384:17	1482:24	1365:11	1483:10	quickest
1386:16	1512:21	1365:17	1484:4, 1484:6	1331:23
1397:18	1540:18	1367:21	1484:15	quickly 1324:12
1418:21	1545:10	1375:2, 1375:9	1485:14	1324:15
1421:19	1545:11	1376:1, 1376:4	1493:23	1413:18
1432:22	1574:5	1376:11	1494:4, 1495:9	1422:21
1443:4, 1444:2	questions	1376:13	1495:15	1556:8
1445:10	1273:11	1380:23	1495:18	1556:21
1448:19	1295:16	1386:7	1496:16	quite 1295:2
1461:24	1298:19	1386:11	1496:18	1295:2
1463:16	1298:21	1386:25	1496:22	1302:17
1464:16	1298:24	1390:8	1497:1	1325:1, 1428:2
1477:6	1299:1	1418:10	1497:21	1429:18
1478:13	1299:12	1419:23	1505:14	1446:25
1479:10	1299:15	1419:25	1505:16	1490:1
1481:9	1299:18	1420:4	1505:19	1570:19
1483:14	1300:1, 1300:1	1421:13	1505:23	1591:5, 1591:5
1494:16	1304:19	1425:4, 1429:4	1507:17	quote 1366:5
1494:22	1304:21	1432:12	1508:23	1366:7
1495:11	1307:18	1432:18	1509:4, 1509:9	1366:10
1498:22	1307:24	1432:20	1511:17	1366:11
1499:3	1308:5, 1310:1	1432:24	1512:4	1400:7, 1573:5
1499:12	1310:10	1433:3, 1433:8	1512:14	quotes 1573:3
1503:8, 1504:7	1311:24	1433:11	1512:20	
1505:7, 1506:5	1313:4, 1325:4	1433:16	1514:21	
1506:16	1325:4, 1325:7	1433:18	1519:16	
1509:10	1326:7, 1331:7	1442:4, 1442:5	1527:12	
1510:9, 1511:3	1331:13	1443:2, 1443:9	1527:13	
1511:6, 1513:6	1331:24	1443:13	1528:25	
1513:21	1332:1, 1332:4	1443:18	1530:9	
1530:15	1332:9	1446:6, 1447:7	1530:20	
1531:3, 1540:7	1332:20	1447:12	1541:14	
1540:24	1332:24	1448:16	1542:2, 1548:7	
1541:4, 1541:5	1333:2, 1333:7	1449:18	1548:15	
1541:23	1333:11	1449:22	1551:11	
1542:15	1333:15	1449:25	1551:17	
1542:25	1333:18	1450:2, 1450:5	1574:6	

R

R-E-N-E-E

1409:2

R-H-O-N-D-A

1571:18

racial 1410:7

raft 1290:2

rains 1321:3

raise 1264:10

1269:3

1273:25

1280:10

Volume 5
9/24/2021

EIB Ozone Hearing

1285:3	1479:10	realistically	1528:19	1337:5
1288:11	1495:11	1569:23	1545:2	1337:10
1292:1	1551:18	reality 1382:25	1550:23	1337:13
1304:12	1552:2	1559:24	1551:18	1337:22
1331:10	1552:21	realize 1570:22	1562:9, 1572:9	1353:10
1335:10	1574:8	realized 1298:8	1591:23	1355:12
1392:18	1600:11	1312:10	1592:1	1387:15
1396:19	reached 1279:13	1570:19	1592:20	1388:4
1403:5	1390:24	really 1270:17	1598:12	1388:22
1405:15	1401:7	1272:3	1600:24	1424:15
1409:4, 1409:7	1401:11	1272:11	1601:5, 1601:8	1424:20
1411:25	1414:11	1273:11	1601:10	1424:21
1415:2	1425:1	1282:13	1610:12	1427:4
1434:14	1551:23	1286:22	1612:23	1435:25
1452:6	1552:11	1290:5	rearranging	1436:7
1466:19	1573:24	1295:23	1604:8	1452:22
1485:4	1610:9	1300:1	reask 1328:20	1456:11
1553:17	1610:10	1302:14	reason 1268:2	1456:16
1557:24	read 1319:11	1302:21	1287:10	1456:19
1561:12	1323:19	1308:8, 1311:5	1287:11	1456:23
1564:16	1330:5, 1366:4	1320:1, 1320:2	1306:18	1456:24
1568:7	1429:25	1321:21	1385:14	1457:25
1571:21	1461:7, 1461:8	1322:6, 1322:8	1400:11	1458:6, 1458:9
raised 1283:16	1486:21	1322:12	1434:8	1458:14
1533:22	1508:20	1322:19	1489:22	1458:21
1561:24	1543:1, 1543:4	1322:20	1504:23	1458:25
1585:14	1552:1	1324:16	1512:6	1460:24
raising 1400:2	1552:21	1324:19	1513:13	1466:1, 1466:3
Ramboll 1326:13	1554:13	1324:21	1529:13	1466:4
1328:17	1599:11	1324:22	1537:6	1467:18
ranchers	1599:12	1325:1, 1343:8	1543:12	1467:25
1393:19	readily 1277:8	1345:9	1545:13	1468:20
Randy 1260:19	1385:7, 1594:3	1346:17	1554:11	1469:3, 1472:6
1260:20	reading 1397:12	1348:9, 1350:8	1588:19	1476:6
range 1270:3	1461:11	1350:13	reasonable	1485:18
1372:10	1581:8	1371:6, 1375:4	1268:6	1485:19
ranged 1435:8	ready 1284:4	1382:11	1370:25	1486:5
ranging 1415:17	1335:25	1401:3	1371:22	1486:11
1470:19	1423:22	1416:22	1492:13	1488:4
rare 1282:19	1423:23	1425:16	1576:2, 1576:6	1488:11
rate 1322:8	1428:21	1425:18	reasons 1457:6	1519:18
1322:14	1429:4	1426:19	1476:9, 1476:9	1520:6, 1520:9
rates 1403:22	1515:22	1430:1	1493:13	1520:24
1577:16	1603:6	1439:13	1560:12	1521:15
ratio 1477:17	1604:16	1448:4, 1463:5	1588:19	recall 1311:19
1590:10	ready-mix	1480:24	reassure 1527:9	1323:3, 1323:3
rationing	1569:6	1489:16	reassured	1460:17
1265:11	real 1273:6	1496:6	1527:24	1534:6
Raymond 1260:8	1306:19	1496:25	rebuttal	1537:12
1260:9	1343:1	1503:8, 1504:7	1260:24	receipt 1460:8
reach 1262:18	1343:12	1506:21	1261:5, 1261:7	receive 1276:17
1262:20	1376:18	1509:16	1295:1	1277:19
1294:10	1380:8, 1380:8	1510:6, 1510:9	1316:13	1340:15
1294:14	1388:1, 1402:6	1510:25	1316:14	1356:2
1299:4	1436:22	1511:12	1316:16	1362:15
1332:23	1438:25	1512:9	1318:20	1374:13
1339:8	1497:3, 1497:6	1512:14	1327:5	1382:2, 1404:9
1348:22	1556:11	1512:20	1327:11	1460:13
1376:6, 1391:5	1612:23	1513:20	1328:22	1577:4, 1594:7
1432:22	realistic	1524:23	1336:8	1597:6
1463:16	1267:15	1526:19	1336:10	received

Volume 5
9/24/2021

EIB Ozone Hearing

1276:25	1377:24	redevelo	1582:20	1421:24
1338:10	1378:2	1563:8	reference	1442:16
1356:11	1434:25	1566:20	1283:23	1454:22
1357:10	1440:7, 1451:8	redeveloping	1288:6	1454:24
1357:19	1452:25	1416:5	1298:15	1458:6
1359:16	1461:15	redevelopment	1300:24	1458:19
1361:17	1469:3	1290:19	1311:13	1467:20
1364:5	1488:11	1413:3	1355:11	1471:4, 1472:9
1364:15	1488:20	redirect	1385:1, 1385:3	1472:11
1368:6, 1382:9	1524:1, 1545:5	1254:19	1385:15	1474:5
1387:13	1566:9, 1611:9	1255:12	1418:24	1474:21
1387:21	1614:9	1256:15	1419:6	1478:15
1388:9	recorded 1369:7	1310:4, 1311:6	1481:17	1478:16
1388:21	1550:25	1332:9	1482:1, 1482:9	1481:5
1389:8	1614:8	1340:24	referenced	1481:13
receiving	recording	1422:20	1352:2	1486:9, 1494:6
1367:12	1362:24	1422:22	references	1501:14
1440:25	recordkeeping	1447:14	1355:4	1513:9
recess 1316:19	1355:23	1464:17	1355:11	1530:23
1318:7	1362:23	1580:17	1398:24	1539:1, 1585:6
1320:21	1363:1	1580:19	referencing	1585:25
1390:11	1363:14	1602:10	1542:4	1587:1, 1588:7
1465:7, 1552:7	1363:15	redirects	referred	regardless
recognize	1373:18	1514:23	1349:20	1471:20
1267:17	1375:23	Redline 1258:6	referring	1563:19
1413:5	1471:24	reduce 1269:22	1314:24	1607:8
1428:20	1473:18	1271:3	1318:21	regards 1308:8
1611:8	1478:17	1271:14	1346:23	1308:21
recollection	1478:18	1394:6	1354:11	1508:2
1312:23	1513:9, 1576:1	1398:19	1359:24	1518:21
1540:19	1586:7	1517:10	1360:1, 1360:3	1521:5, 1538:5
recommend	1586:15	1517:10	1360:5	region 1249:19
1428:24	records 1363:15	1518:16	1361:18	1399:5, 1444:7
1470:25	1373:22	1558:16	1365:25	1444:7
1471:9	1379:5	1558:17	1422:3, 1472:5	regional 1454:2
recommendation	1398:20	1560:10	1583:15	1476:15
1481:6	1398:20	1569:23	1598:20	register 1477:7
1510:19	1456:1, 1457:2	reduced 1283:17	refers 1361:15	registered
recommendations	1470:19	1398:6, 1543:8	refinery	1475:6
1361:9	1490:8, 1492:1	1544:10	1270:20	1475:10
1361:11	1586:16	1560:17	reflect 1357:19	1475:23
1429:10	1592:25	1577:17	1358:17	registration
1437:18	1594:7	reducing	1579:2	1535:22
1438:17	recurring	1406:11	reflective	1536:11
1439:10	1504:10	1543:3, 1559:9	1521:7	1546:2
1443:19	recycle 1267:8	1559:25	reflects	registrations
1474:5, 1510:4	recycled 1267:4	reduction	1328:13	1534:17
1578:14	red-line	1272:8, 1396:1	1388:9	1535:13
1578:15	1311:15	reductions	reframe 1578:20	1535:15
Recommended	1338:9, 1388:3	1519:22	Reg 1261:6	1535:17
1258:6	1429:13	1519:23	regard 1281:18	1535:25
reconvene	1516:14	1592:22	1448:7	1536:5, 1537:4
1552:6	1516:25	reevaluate	regarding	1544:21
record 1296:24	red-line/str...	1360:24	1286:8	1544:24
1318:5	1387:18	1361:2	1308:24	1546:11
1318:15	red-lines	refer 1305:17	1337:8, 1337:8	regs 1344:12
1330:20	1311:15	1330:4	1342:3, 1347:3	1539:22
1337:22	red-lining	1352:14	1350:22	1543:17
1363:3, 1363:6	1386:13	1362:1	1359:16	1550:3
1373:20	1386:15	1440:14	1377:4	1575:24
1377:15	1386:25	1548:19	1378:21	1591:13

Volume 5
9/24/2021

EIB Ozone Hearing

regular 1489:12 1499:5 1507:14 regulate 1401:17 1410:24 1576:16 1589:23 regulated 1319:23 1321:23 1323:24 1342:19 1404:1, 1404:2 1523:13 1558:22 1591:12 1592:25 regulates 1342:13 1526:21 regulating 1344:17 1346:7 1346:14 1518:5, 1530:1 1565:21 regulation 1246:4, 1258:6 1258:19 1259:7 1259:10 1259:12 1267:12 1303:3 1359:24 1401:20 1401:21 1469:14 1481:17 1492:14 1502:19 1519:1 1526:18 1550:11 regulations 1258:16 1258:21 1259:5 1259:15 1261:11 1266:8 1266:10 1275:20 1344:6 1347:16 1394:8 1397:14 1397:15 1397:18 1399:19	1402:2 1441:21 1454:5 1489:13 1507:18 1522:25 1523:3 1524:18 1524:20 1537:18 1538:4 1542:10 1543:13 1543:15 1543:20 1543:25 1544:7 1565:10 1568:23 1569:12 1569:21 1571:2, 1575:2 1577:19 1579:2 1588:12 1588:17 1594:22 1595:1 regulatory 1283:12 1337:2 1375:22 1397:12 1398:4 1398:11 1398:19 1398:25 1435:15 1454:6 1457:11 1487:4, 1490:5 1499:6 1517:20 1523:18 1528:8, 1545:6 1570:4, 1591:8 reiterate 1563:1 reject 1457:6 1477:24 1534:21 rejected 1476:21 1477:8 rejoined 1268:19 1320:24 1447:5 rejoining 1450:17 rejoins 1392:5	relate 1539:23 1545:3 related 1269:23 1322:8 1322:15 1343:15 1413:16 1421:24 1455:1 1481:14 1486:2, 1517:1 1573:10 1593:17 1614:11 relates 1301:22 1359:11 1360:10 1366:2 relating 1299:6 1319:2 1335:15 1341:19 1344:13 1350:14 1353:2, 1418:4 1424:2 1434:19 1449:2 1452:11 1467:2, 1485:9 1516:2 1574:11 1582:2, 1603:5 1603:12 relation 1570:10 1584:19 relationship 1343:12 1343:13 relative 1272:6 1445:11 1614:13 relatively 1283:25 1309:6, 1428:4 release 1293:6 1406:22 1556:25 released 1394:7 1412:16 relevance 1530:5 relevant 1269:21 1336:17 1468:3 1486:16 1516:12 1584:19 relied 1343:18	relieve 1594:23 relocation 1425:17 relocations 1365:6 rely 1475:3 1587:16 remain 1458:17 remaining 1393:13 remarks 1406:12 remember 1265:8 1290:20 1314:9 1317:11 1324:23 1337:24 1352:4 1462:14 1515:14 1536:17 REMEMBERED 1246:12 remind 1296:11 1296:15 1318:19 1434:2 1515:11 reminder 1298:12 removal 1363:25 1454:25 remove 1458:16 1587:14 removed 1357:9 1371:9 1426:11 1455:16 removes 1272:3 removing 1272:7 1272:10 rendering 1271:22 Renee 1255:21 1391:2 1408:18 1408:19 1409:11 1409:21 renewable 1281:13 renewables 1284:6 reopen 1263:18 repair 1439:23 1539:25 1540:3 1549:20 1550:21 repairs 1559:14 1592:23	repeal 1400:24 repeat 1321:10 1370:17 repeated 1331:12 1331:13 rephrase 1347:5 1596:6 replace 1284:7 1426:5 replaced 1364:11 1426:4 replacement 1426:2 replacements 1365:6 replacing 1398:21 1471:9 report 1260:14 1294:15 1296:7 1304:14 1343:3, 1343:5 1350:9 1350:16 1360:11 1373:22 1378:9, 1379:9 1426:15 1426:16 1426:22 1426:25 1430:6, 1430:9 1430:10 1439:20 1439:24 1448:4 1461:23 1462:3, 1492:8 1502:18 1523:25 1525:8 1529:13 1537:22 1539:5, 1539:6 1540:11 1549:6 1549:10 1549:11 1550:23 1551:5 1578:22 1582:13 1583:13 1584:8 1584:10 1586:17 1586:21 1586:23
--	---	---	--	--

Volume 5
9/24/2021

EIB Ozone Hearing

1592:6, 1596:1 1596:11 1601:1 reported 1246:21 1360:11 1373:12 1522:22 1523:3, 1523:6 1524:5, 1525:1 1540:3 1549:15 1550:11 1550:15 1577:13 1579:6 1591:19 1597:3 1597:24 reporter 1264:7 1317:10 1424:8 1495:19 reporting 1246:22 1355:23 1364:13 1429:12 1440:11 1457:9, 1460:6 1478:17 1487:5 1492:18 1492:19 1492:21 1493:12 1504:16 1522:16 1523:7 1524:15 1524:17 1524:20 1524:21 1527:22 1529:10 1529:11 1529:20 1537:17 1537:18 1538:1 1538:13 1538:14 1538:18 1538:21 1538:24 1539:14 1539:16 1540:20 1549:25 1550:8 1550:14	1550:19 1550:19 1551:6, 1551:7 1575:1 1575:12 1575:16 1576:1, 1576:3 1577:3, 1577:9 1577:14 1578:18 1578:19 1578:20 1578:21 1579:3, 1586:6 1591:3, 1592:4 1593:15 1593:15 1593:18 1594:10 1595:22 1595:22 1596:14 1597:7, 1597:8 1597:18 1597:25 reports 1350:25 1358:20 1364:16 1375:17 1378:8, 1398:6 1437:1 1438:16 1460:9 1460:13 1493:7 1493:11 1501:15 1501:18 1502:2, 1502:4 1502:10 1502:23 1522:22 1523:1, 1525:3 1525:4 1525:12 1525:15 1525:20 1526:1, 1527:2 1537:11 1537:16 1538:17 1539:3, 1539:9 1539:12 1539:19 1540:13 1540:13 1540:14 1541:6 1541:12 1577:5, 1579:1 1583:12	1592:15 repository 1570:4 represent 1282:18 1428:10 representative 1564:5, 1564:6 1566:2 1567:23 representatives 1376:19 1432:16 representing 1336:4 1350:16 1492:7 represents 1282:10 1283:2 1283:24 1284:5 request 1268:10 1294:13 1360:12 1360:17 1374:13 1375:19 1379:12 1388:15 1418:24 1454:25 1460:13 1464:21 1525:12 1525:15 1525:20 1572:7, 1593:1 1594:7 requested 1343:19 1361:9 1419:15 1457:9, 1462:3 1573:25 1578:22 requesting 1342:17 1362:16 1417:1 requests 1361:17 1364:15 1364:21 1379:7 1416:12 1524:8, 1579:8 require 1267:13 1271:23 1334:23 1360:20	1360:21 1362:24 1363:18 1366:15 1382:19 1384:8 1395:12 1395:19 1407:14 1416:9, 1457:1 1469:17 1488:18 1490:16 1492:2, 1507:7 1522:10 1524:20 1529:12 1533:11 1537:22 1539:11 1541:6, 1541:6 1549:19 1563:4 1563:12 1567:1 1578:25 1583:24 1585:2, 1588:9 required 1358:10 1359:12 1362:25 1363:3 1363:15 1364:7 1368:17 1368:18 1370:18 1375:14 1375:18 1381:8 1381:13 1384:3 1384:19 1387:16 1420:17 1428:25 1429:8 1455:25 1460:19 1471:8 1476:16 1489:13 1491:14 1492:6, 1493:6 1502:12 1502:12 1504:15 1524:1, 1551:7 1559:8, 1584:8 1586:21	1587:12 1592:6 1593:19 1596:5 requirement 1356:14 1357:3, 1357:6 1357:8 1358:14 1359:2 1359:11 1359:17 1359:25 1360:1 1362:22 1363:2, 1364:6 1364:11 1366:11 1369:19 1372:17 1380:11 1382:16 1383:23 1383:25 1384:2 1384:23 1387:25 1420:15 1426:12 1426:15 1437:6 1437:11 1440:6, 1457:9 1457:22 1460:15 1460:17 1461:22 1469:16 1469:24 1470:1, 1472:1 1475:10 1480:9 1490:10 1490:17 1491:19 1491:20 1491:24 1505:1 1511:22 1517:7 1517:21 1519:9, 1521:9 1522:21 1532:10 1532:23 1538:17 1539:8 1540:10 1544:9, 1545:1 1577:9 1583:10
---	---	---	--	---

Volume 5
9/24/2021

EIB Ozone Hearing

1584:3, 1584:5	1493:12	1592:24	1593:10	responsibly
1584:6	1501:3, 1502:2	requiring	respect 1342:4	1287:2
1586:22	1502:15	1293:13	1410:1, 1417:4	rest 1353:19
1587:15	1507:1, 1507:5	1359:19	1423:2	1432:1
1587:21	1507:21	1364:17	1436:10	1448:11
1595:22	1507:21	1373:11	1441:24	restate 1328:19
1595:22	1513:10	1395:7, 1407:5	respectively	1461:24
requirements	1521:6	1416:1	1277:13	1596:4
1275:10	1521:12	1427:24	respects	restrain 1531:6
1275:21	1521:25	1455:10	1322:23	restrict 1476:4
1290:22	1524:17	1455:25	respiratory	restrictions
1293:15	1526:23	1471:1, 1491:7	1293:2, 1559:6	1528:10
1303:4, 1337:3	1529:12	1530:24	respond 1311:2	result 1289:3
1344:18	1538:2	1537:10	1374:13	1327:1, 1384:6
1355:20	1538:18	1566:14	1494:21	1457:13
1355:23	1538:22	1590:25	1494:21	1528:3
1355:24	1539:5	requisite	1529:23	resulting
1356:8	1539:18	1301:8, 1305:8	1585:25	1403:25
1357:13	1539:22	research	responded	results 1277:7
1360:4, 1361:5	1540:20	1327:24	1540:20	1328:16
1361:16	1543:20	reserved	responding	1383:4
1361:24	1547:24	1491:16	1314:11	resume 1259:20
1362:5	1549:21	reservoir	response	1259:24
1362:15	1550:9	1322:15	1276:17	1260:7, 1260:9
1362:20	1550:10	resident	1294:12	1260:18
1362:21	1555:6, 1563:7	1265:18	1313:15	1260:20
1362:24	1566:18	1393:11	1313:17	1261:9
1363:13	1566:22	1559:10	1319:12	1435:24
1365:5, 1366:2	1573:18	residential	1356:3	1452:21
1366:22	1573:19	1572:20	1356:14	1454:8
1373:19	1575:1, 1575:5	residents	1357:23	retired 1289:11
1380:17	1575:13	1399:2	1358:18	1393:12
1381:24	1576:1, 1576:3	1412:19	1360:16	1399:13
1381:25	1577:3	1412:22	1378:18	1403:20
1382:17	1577:15	1569:17	1468:1	1406:15
1382:24	1578:18	resigned 1560:7	1502:25	retrieve
1384:25	1578:19	resolve 1534:13	1525:16	1471:11
1395:15	1578:20	resolved	1536:18	retrofit
1407:7	1582:12	1306:23	1537:2, 1542:2	1293:18
1407:10	1582:16	1307:8	1579:7, 1580:9	1395:20
1410:8, 1411:4	1584:20	1315:13	1594:12	1416:10
1416:3	1586:2, 1586:6	1357:24	responses	1563:14
1420:22	1586:7, 1586:7	1534:11	1314:10	1567:2
1430:7, 1455:1	1587:7	1534:11	1501:10	return 1390:7
1455:8	1587:19	resolving	1505:11	1417:22
1455:23	1589:3	1309:11	1579:11	1447:24
1456:2, 1457:8	1590:15	resource	responsibili...	1515:7
1458:17	1594:11	1399:21	1484:8	1573:25
1460:7	1597:25	1526:3	responsibility	returning
1461:17	1599:18	1526:14	1412:22	1580:25
1471:18	requires 1362:8	1555:21	1417:12	revenue 1266:1
1471:24	1363:10	resources	1559:19	1267:20
1473:19	1366:4	1248:12	responsible	1267:22
1477:23	1395:14	1249:12	1327:13	1273:5
1478:18	1441:1, 1462:1	1250:4	1328:24	1275:13
1489:14	1470:11	1363:19	1346:7	1401:25
1489:14	1480:11	1394:25	1346:14	1408:2
1490:3, 1490:6	1508:11	1397:18	1383:6	1570:25
1490:9	1508:12	1398:3, 1441:1	1406:24	revenues
1492:18	1529:9	1555:24	1417:9, 1430:9	1277:21
1492:21	1559:11	1592:8	1585:1	1277:24

Volume 5
9/24/2021

EIB Ozone Hearing

1407:21	rewrites	1349:23	1481:22	1601:25
1407:22	1386:22	1351:18	1482:2, 1482:8	1602:13
1560:5	rgonzales@mo...	1351:21	1483:6, 1483:8	1612:3
review 1288:25	1251:8	1351:22	1484:11	1612:13
1343:1, 1343:5	Rhonda 1257:14	1352:12	1484:17	1613:5
1422:6, 1429:9	1571:8	1352:16	1484:23	righty 1603:6
1436:12	1571:13	1353:12	1485:4	rigor 1489:23
1436:24	1571:17	1354:6, 1355:1	1488:13	rigorous
1443:20	1572:1	1355:15	1496:20	1349:21
1475:14	RICARDO 1251:4	1360:14	1496:22	1502:5
1477:14	rich 1572:24	1384:23	1497:22	rigs 1444:23
1477:20	Ridge 1250:10	1385:18	1498:6	1445:6
1490:7, 1492:1	rig 1300:17	1389:14	1507:24	rise 1542:18
1508:22	1302:1	1390:15	1508:5	risk 1324:9
1519:3	right 1262:15	1391:15	1508:19	1384:4, 1404:7
1532:18	1263:4	1392:4	1514:25	1404:11
1534:22	1263:24	1392:18	1515:17	1404:15
1546:9	1264:10	1396:6	1517:2	1404:18
1546:20	1269:4	1396:19	1519:10	1404:19
1590:8	1271:17	1403:5	1519:13	1404:21
1592:17	1273:12	1405:16	1519:15	1499:10
1597:15	1273:25	1409:4, 1409:7	1519:15	1500:7, 1500:9
reviewed	1280:10	1411:25	1531:24	1511:24
1387:20	1282:11	1412:9	1536:17	1554:10
1388:7, 1436:1	1284:22	1414:16	1540:23	1555:12
1458:9, 1472:2	1285:3	1415:2, 1417:1	1544:6, 1547:5	1555:13
1578:11	1288:11	1422:18	1551:16	1556:19
1591:17	1288:14	1423:7	1553:17	1556:20
reviewing	1291:17	1423:13	1557:18	1569:24
1389:18	1292:1, 1294:4	1423:17	1557:24	risks 1555:16
1441:20	1296:18	1424:7	1559:15	1556:21
reviews 1336:23	1297:14	1431:18	1559:21	road 1446:11
1522:3	1298:4, 1298:6	1432:14	1560:13	Roehl 1251:22
revise 1474:9	1298:16	1433:20	1561:6	role 1395:3
1488:17	1298:23	1434:14	1561:11	1453:8, 1454:3
1493:14	1299:16	1442:6	1561:12	1486:19
revised 1363:1	1302:2, 1307:9	1443:13	1561:24	1523:20
1436:2, 1612:8	1310:2	1443:15	1564:16	roles 1501:8
revising	1310:21	1444:19	1565:25	1503:17
1492:13	1312:7	1444:20	1567:21	roll 1503:21
1582:19	1312:17	1444:21	1568:7	rolls 1446:11
revision	1312:25	1445:4, 1445:6	1571:21	roofs 1413:11
1308:18	1313:11	1445:25	1571:24	room 1389:23
1359:18	1313:20	1447:17	1579:10	1497:17
1516:25	1313:20	1447:22	1580:10	1497:18
1578:3	1314:3, 1314:5	1448:3	1580:11	root 1511:12
revisions	1318:5, 1325:5	1448:14	1580:15	1511:15
1356:3	1326:10	1449:19	1580:20	Rose 1251:3
1356:14	1327:15	1450:3	1581:7	1254:21
1356:17	1331:18	1451:15	1581:18	1255:5, 1256:9
1358:2	1333:25	1452:6	1581:22	1256:24
1364:19	1334:7	1460:10	1582:7	1296:3, 1296:4
1450:10	1334:17	1461:23	1583:18	1296:5
1470:25	1335:10	1462:10	1589:23	1296:19
1472:3	1339:5	1462:23	1590:23	1313:14
1494:11	1340:23	1464:25	1592:13	1314:6, 1314:7
1495:1	1341:17	1465:5	1595:8	1314:20
1527:22	1345:17	1465:15	1596:12	1315:2
revisit 1609:12	1347:4	1466:18	1597:21	1316:12
revolving	1348:14	1466:19	1598:9	1316:21
1480:3	1348:19	1481:8	1598:22	1316:25

Volume 5
9/24/2021

EIB Ozone Hearing

1317:3, 1317:7 1317:16 1317:22 1318:18 1318:19 1319:6, 1321:8 1321:10 1325:3 1325:13 1332:6, 1332:7 1332:8 1343:25 1344:1, 1344:2 1344:4, 1345:1 1351:23 1352:1 1352:10 1433:24 1433:25 1434:4 1434:23 1435:22 1442:3 1447:14 1447:15 1530:16 1541:17 1541:18 1541:20 1542:15 1548:9 Roswell 1281:6 1281:8 roughly 1536:1 round 1387:4 royalties 1278:1 royalty 1278:4 1278:5 RPR 1246:21 rule 1258:16 1258:19 1258:21 1259:5, 1259:7 1259:10 1259:12 1259:15 1259:22 1261:11 1262:7 1267:12 1268:7, 1284:5 1338:12 1338:14 1338:17 1343:19 1345:15 1345:16 1348:3 1353:19 1357:9, 1361:5	1365:8 1367:19 1368:10 1370:7, 1371:8 1371:13 1371:15 1371:24 1372:11 1372:19 1373:19 1375:14 1377:19 1379:4 1379:18 1379:21 1381:18 1381:25 1383:2, 1384:7 1384:7 1386:14 1388:8, 1388:9 1394:18 1395:2, 1395:6 1395:9 1395:15 1396:2, 1396:4 1406:8 1406:10 1408:8 1408:12 1419:17 1423:2, 1430:8 1437:8 1454:22 1454:24 1455:2, 1455:8 1455:16 1455:18 1455:24 1455:24 1456:3, 1456:8 1457:3, 1457:7 1457:19 1458:18 1458:20 1459:1, 1460:7 1460:10 1460:20 1462:1 1471:24 1472:16 1472:24 1474:6, 1474:9 1474:12 1477:24 1478:18 1481:17 1489:2, 1491:3 1491:11 1492:23 1493:15	1509:2 1512:12 1520:16 1529:21 1537:5 1548:19 1548:23 1548:24 1549:3, 1549:6 1549:16 1549:19 1549:24 1550:14 1551:6, 1565:5 1572:13 1575:13 1583:5 1584:23 1586:7, 1586:8 1587:7 1587:12 1587:17 1588:15 1589:22 1591:2 1591:10 1592:5 1592:20 1594:19 1594:21 1594:23 1601:10 1604:13 1606:5 rulemaking 1262:4 1308:16 1308:20 1336:17 1371:15 1387:14 1486:22 1519:19 1552:13 rules 1267:14 1289:1 1290:12 1306:24 1307:5 1308:19 1344:22 1379:17 1386:19 1386:21 1394:10 1394:22 1395:5 1400:24 1409:20 1410:6 1410:24	1411:6, 1413:7 1415:19 1415:19 1436:2 1439:20 1457:21 1459:3 1480:18 1493:5 1501:14 1502:11 1507:22 1507:25 1518:1 1518:19 1518:21 1519:11 1521:12 1521:20 1523:7 1524:11 1524:13 1524:16 1524:25 1525:9 1526:24 1527:9 1527:20 1540:22 1556:23 1562:12 1562:23 1563:17 1563:20 1563:25 1565:13 1565:20 1565:21 1565:23 1565:24 1575:2 1575:17 1577:2, 1577:4 1577:10 1588:25 1589:2, 1589:3 1595:25 1596:10 1597:2, 1598:1 1599:18 1599:21 1599:22 1599:23 run 1324:9 1486:22 1492:8 1507:13 1514:3 1583:12 running 1439:4 1445:6, 1503:5	1503:12 1504:18 1507:13 runs 1384:21 1446:10 rural 1292:24 1410:14 S S-H-A-N-E 1291:24 S-H-O-U-P 1568:5 S-O-N-N-T-A-G 1264:21 S-T-E-I-N-B-... 1561:10 S-T-E-P-H-E-N 1285:13 sacred 1417:4 sacrificial 1562:13 sadly 1398:24 1403:21 1408:10 safety 1265:23 1397:21 1487:1, 1501:3 1504:25 1510:13 1511:20 1511:22 1512:13 1530:5 SAILLAN 1250:18 sake 1562:14 sales 1273:6 saltwater 1467:23 sampling 1305:24 San 1248:12 1253:6, 1306:8 1435:17 1435:19 1444:5 1444:20 1445:23 1446:8 1446:17 1446:22 1565:18 sand 1526:1 Santa 1247:12 1247:18 1248:9 1248:17 1250:14 1250:20 1251:6
---	---	---	--	--

Volume 5
9/24/2021

EIB Ozone Hearing

1251:23	1570:21	1484:20	1359:18	1530:24
1252:19	schools 1570:15	1493:22	1362:3	1535:7
1276:11	1570:24	1495:7	1362:10	1548:25
1389:23	science 1453:20	1515:19	1363:20	1587:6
SARA 1492:20	1468:7, 1475:8	1515:20	1364:24	1587:11
sat 1442:1	1475:9, 1475:9	1530:14	1365:2	1587:16
satellite	1562:20	1561:15	1365:12	1587:20
1271:18	scientific	1574:2	1366:3, 1366:6	1593:2
1307:11	1343:6	1581:19	1366:10	1594:20
satisfactorily	scientifically	1581:20	1366:16	1594:22
1356:16	1400:14	1595:11	1366:17	1598:22
satisfactory	1400:20	1599:2, 1600:3	1367:8	1599:5
1430:13	scope 1307:6	screening	1367:12	1599:15
save 1323:14	1309:8, 1365:2	1589:5	1370:10	sections
1551:17	1419:16	screens 1298:22	1374:10	1362:18
saw 1280:3	1420:25	1376:2	1377:13	1362:21
1287:20	1422:7	1432:17	1383:24	1386:1
1334:21	1430:19	1432:19	1384:3	1401:16
1367:24	1472:16	1495:8	1384:22	1469:18
1386:14	1477:22	scroll 1316:8	1384:25	1542:6
1507:16	1491:23	1599:9	1385:23	sector 1246:4
1541:17	1519:19	Scrubber	1389:10	1260:14
1543:17	1584:5	1260:10	1400:22	1302:6
SAYER 1252:17	1588:15	1260:13	1423:2	1490:16
saying 1303:6	SCOTT 1251:10	seals 1473:5	1425:14	1491:21
1350:13	scott.janoe@...	seat 1507:23	1431:24	1518:5
1381:2	1251:12	second 1277:10	1437:4	1519:23
1481:19	screen 1273:14	1277:11	1454:22	1537:19
1510:10	1296:3, 1297:1	1290:18	1454:24	1544:2
1601:9	1297:23	1290:24	1455:2, 1455:4	sectors 1490:14
1609:15	1298:1	1306:25	1455:7, 1457:1	security
1610:6	1298:19	1323:2, 1357:1	1458:1, 1458:7	1265:14
says 1267:17	1310:23	1358:6, 1372:4	1458:13	1561:19
1399:20	1314:19	1394:16	1458:15	see 1262:14
1437:14	1318:16	1402:20	1458:17	1263:3, 1263:6
1440:3, 1440:5	1318:17	1414:19	1458:19	1263:10
1535:16	1325:10	1418:22	1458:21	1263:16
1591:24	1325:19	1516:18	1458:24	1263:23
1592:11	1329:17	1554:25	1460:20	1263:25
scalability	1329:20	1555:8	1461:5	1268:10
1283:7	1332:6	1566:24	1469:16	1268:11
scale 1357:12	1334:13	secondly	1470:5	1268:18
scared 1282:14	1334:23	1275:12	1470:11	1268:19
schedule	1335:2, 1339:4	1296:11	1470:14	1268:20
1362:10	1343:24	1439:2	1470:24	1270:14
1366:5	1348:16	1511:11	1471:8	1273:14
1366:23	1365:15	secretary	1471:12	1273:20
1367:3	1367:24	1419:4	1472:3, 1474:7	1273:20
1420:12	1375:7	1419:18	1483:16	1277:8, 1279:2
1489:11	1423:18	1562:22	1486:10	1279:4
1489:20	1434:11	1565:4	1486:12	1284:16
1604:9	1442:7	section 1338:19	1486:12	1284:17
scheduled	1442:25	1340:13	1486:13	1284:18
1462:21	1447:18	1354:5, 1354:7	1488:18	1284:20
scheme 1591:8	1459:14	1354:13	1491:8	1287:20
school 1281:7	1459:22	1354:17	1491:11	1294:12
1281:8	1462:17	1355:19	1493:7, 1493:8	1295:13
1403:20	1463:12	1355:20	1493:15	1296:3
1404:3, 1559:5	1465:12	1356:3, 1358:8	1495:2	1296:24
1568:20	1466:10	1358:12	1513:16	1297:1
1568:20	1478:6, 1479:5	1359:13	1520:16	1309:15

Volume 5
9/24/2021

EIB Ozone Hearing

1310:4	1553:4, 1557:4	1560:24	serve 1583:11	1505:3
1310:23	1565:24	1564:4, 1565:9	served 1265:4	seven-month-old
1314:19	1566:11	1566:2	1441:14	1283:2
1315:20	1581:16	send 1263:14	1441:18	severed 1321:13
1325:19	1581:17	1294:9, 1296:8	server 1438:16	Shale 1306:11
1325:19	1585:13	1502:6, 1512:2	1439:16	shambles
1328:7, 1332:6	1593:10	senior 1336:13	service 1246:22	1572:24
1334:12	1595:13	1467:12	1249:17	Shane 1254:16
1343:25	1599:6, 1600:5	1485:24	1250:2, 1268:3	1263:1
1353:8	1605:11	sense 1282:10	1273:4	1291:17
1355:10	1605:20	1283:5	1291:12	1291:18
1365:16	1607:22	1293:10	1295:8, 1442:2	1291:19
1375:7, 1375:7	1612:14	1309:18	1453:7	1291:23
1376:18	1613:2	1313:24	1453:10	1291:23
1383:15	seeing 1298:22	1326:11	1454:1	1292:3, 1292:5
1390:10	1335:2, 1376:2	1372:12	services	1292:11
1391:9	1432:19	1413:7	1584:18	1294:3
1391:10	1444:14	1413:22	session 1276:12	share 1262:8
1391:15	1459:21	1414:5, 1451:7	1294:6	1329:17
1391:24	1495:8	1489:22	1390:17	1329:23
1392:4, 1392:7	seeking 1301:15	1511:3, 1544:3	1552:12	1330:10
1392:8	1356:12	1605:16	1571:8	1459:22
1396:11	1457:16	sent 1287:23	1603:20	1474:3, 1479:5
1400:21	1526:1	1296:20	sessions 1294:8	1479:19
1408:19	1552:20	1296:21	1390:18	1599:2, 1611:7
1416:15	seen 1283:13	1308:10	set 1258:16	shared 1329:20
1418:2, 1434:6	1328:9	separate 1422:4	1258:19	sharing 1297:23
1437:4, 1442:7	1328:10	1477:24	1258:21	1298:1, 1325:9
1442:12	1328:16	1548:25	1259:5, 1259:7	1334:23
1443:1	1350:25	1591:20	1259:10	1423:19
1443:19	1383:1	separates	1259:12	1462:16
1447:18	1462:11	1275:5	1259:15	1465:12
1459:15	1497:3, 1547:6	September	1261:11	1527:2
1459:22	1577:1	1246:13	1289:3	1581:19
1460:23	select 1471:5	1311:18	1355:20	1581:20
1460:24	1503:14	1429:13	1356:7	1600:3
1461:1	self-audit	1436:11	1366:22	Sheehan 1251:21
1463:11	1486:23	1436:17	1439:4	1256:14
1466:9	1490:13	1450:11	1458:21	1256:15
1483:18	1514:4	1450:12	1458:25	1256:24
1483:19	self-audits	1450:13	1503:15	1450:23
1484:13	1472:20	1456:7, 1459:1	1505:8	1451:1
1484:20	1473:11	1469:14	1537:18	1452:15
1491:20	1479:25	1472:6	1543:14	1452:16
1493:22	self-evaluation	1576:21	1543:19	1459:12
1494:5	1489:14	1576:25	1550:10	1464:13
1498:17	self-reporting	1578:3	1576:20	1464:15
1498:18	1457:15	1578:11	1587:10	1464:18
1500:11	1457:21	1578:13	sets 1514:12	1464:23
1500:12	1520:7, 1529:2	sequence 1306:1	setting 1268:11	1465:1
1507:2	1529:9	1306:16	1268:13	1530:17
1515:19	sell 1513:25	Series 1260:12	1268:13	1548:10
1515:20	semiannual	serious 1400:8	1270:2	1548:11
1517:15	1457:4	1404:13	1413:21	1548:17
1524:17	1490:18	1413:15	1521:1	1551:10
1528:19	1502:4, 1523:4	1413:15	1531:25	1551:13
1529:17	senator 1551:24	1570:17	1543:1	Sheldon 1259:19
1530:16	1552:22	seriously	1592:22	1259:20
1531:24	1552:25	1502:3, 1502:8	settled 1486:21	SHIMANEK
1537:6	1553:4	servants	setup 1504:8	1249:10
1552:25	1560:23	1562:16	1504:14	shimantr@law...

Volume 5
9/24/2021

EIB Ozone Hearing

1249:15 shipment 1340:16 short 1393:12 1609:7 short-term 1394:4 shortages 1282:19 shorten 1503:20 shortening 1293:18 shortfall 1399:8 shorthand 1614:9 Shoup 1257:12 1551:25 1552:23 1557:7, 1557:7 1557:8, 1557:9 1557:11 1567:24 1567:25 1568:1, 1568:4 1568:5, 1568:9 1568:11 1568:17 1568:18 1571:6 show 1326:25 1343:11 1403:24 1478:6 showing 1258:6 1277:3, 1539:5 shown 1326:24 1536:14 Shpall 1252:12 1254:24 1256:20 1334:12 1334:14 1334:15 1334:20 1334:24 1335:19 1336:1, 1336:2 1336:4 1337:19 1337:23 1337:25 1338:6, 1338:9 1338:23 1338:25 1340:25 1341:1 1465:22 1485:12 1485:13 1485:21	1487:18 1487:19 1487:24 1488:1, 1488:8 1488:16 1493:17 1493:21 1494:21 1498:17 1498:21 1514:23 1514:24 shpallc@gtla... 1252:16 side 1266:25 1283:18 1378:20 1378:25 1400:6 1453:13 1500:7 sides 1611:24 Sierra 1248:13 sign 1383:19 1502:6, 1585:1 signal 1574:20 significant 1272:9 1272:19 1356:14 1393:25 1395:25 1455:20 1457:7, 1489:3 1492:23 1585:23 1589:11 1589:20 1591:12 significantly 1469:15 1492:5 SIL 1589:16 similar 1440:2 1441:19 1441:22 1476:20 1477:8 1502:11 1535:20 1537:21 1539:18 1540:9 1547:10 1565:20 1565:24 1584:25 similarly 1367:11 simple 1413:7 1413:12	1428:4 simpler 1330:3 simplified 1357:13 simplify 1437:3 simply 1303:8 1388:5, 1428:1 1439:3, 1522:6 1522:23 1524:2, 1525:3 1526:5 1531:25 1532:21 1546:23 1562:13 1562:18 1579:5, 1584:8 Simultaneous 1313:13 1317:24 1341:11 1367:17 1414:18 1431:14 1494:18 1498:24 1604:25 sincere 1295:17 sincerely 1607:17 single 1426:2 1426:5 1476:14 1476:15 1481:21 1508:25 1509:4, 1509:5 1584:10 1586:17 1592:5 SIP 1589:1 sir 1344:7 1345:11 1351:25 1427:15 1446:3, 1446:4 1450:12 1561:17 1561:17 1599:7 Sisk 1251:22 Sister 1571:8 sit 1506:7 1509:22 1573:11 site 1271:18 1300:18 1301:12 1301:16 1301:21 1306:2	1323:24 1372:15 1372:24 1489:20 1489:24 1492:5, 1509:4 1570:1 1593:24 sites 1305:24 1306:5, 1306:6 1306:8 1306:17 1342:13 1489:24 1509:1 1510:17 1570:14 1573:3 sitting 1441:25 situation 1265:9 1265:12 1328:12 1370:18 1383:15 situations 1301:11 1327:21 1439:19 1535:10 six 1277:18 size 1267:11 1268:7, 1270:5 1344:17 1506:10 1538:19 sizeable 1474:3 sizes 1499:7 skepticism 1277:1 skin 1265:7 skip 1430:16 skipped 1441:12 Sky 1253:5 slated 1581:3 slide 1318:17 1323:2, 1356:6 1356:21 1358:17 1361:15 1362:14 1362:23 1364:13 1366:1, 1366:1 1425:20 slides 1263:15 1272:12 1273:16 1287:23 1288:6, 1315:1 1341:15	1341:16 1424:19 1425:13 1465:11 1465:13 slightly 1537:8 1560:17 slot 1299:24 1581:3 slow 1402:1 1414:2 slowly 1487:20 SLS 1260:10 small 1267:10 1267:15 1267:23 1270:4, 1281:3 1282:12 1326:20 1378:4, 1378:5 1378:13 1380:15 1385:9 1418:21 1420:19 1439:13 1471:14 1471:23 1474:1, 1513:9 1513:12 1513:15 1513:16 1513:18 1514:2 1514:11 1514:15 1558:22 1586:5 1586:19 1586:20 1602:4 smaller 1266:22 1267:18 1420:19 1469:20 1471:7 1473:11 1475:2 1480:22 1500:25 1507:8 1513:25 1586:2 1604:13 smallest 1439:21 1583:9 smarter 1512:5 Smitherman 1256:6 1423:14
--	---	---	--	---

Volume 5
9/24/2021

EIB Ozone Hearing

1423:16	1275:9, 1275:9	1414:17	1455:11	1373:9
1423:18	1395:25	1431:6	1456:4, 1456:6	1373:16
1423:20	1399:15	1431:17	1461:16	1374:4
1423:23	1399:16	1456:20	1468:15	1394:10
1424:1, 1424:7	solve 1275:5	1462:19	1468:16	1404:2, 1407:3
1424:9	1527:16	1478:17	1470:13	1408:9
1427:12	somebody 1501:5	1487:18	1472:22	1408:13
1430:22	1504:17	1487:19	1473:9	1410:17
1430:25	1606:9	1493:8	1476:13	1425:17
1431:7, 1431:8	someone's	1495:22	1476:15	1455:9
1431:13	1512:13	1496:5	1477:11	1457:18
1431:21	somewhat 1344:7	1501:21	1477:14	1457:18
1431:23	1491:24	1520:7, 1533:6	1477:20	1457:20
1432:3, 1432:8	son 1282:9	1557:9	1481:21	1461:19
1432:9	1286:3	1575:10	1488:21	1474:22
1432:12	1292:17	1608:9, 1611:5	1488:24	1476:16
1432:15	Sonntag 1254:4	sort 1323:15	1491:21	1476:18
1432:18	1262:12	1343:5, 1345:8	1507:20	1477:7
1432:25	1263:25	1350:1	1518:9	1477:15
1433:19	1264:2, 1264:3	1386:12	1519:25	1491:17
1439:3	1264:4	1387:7	1531:18	1491:19
1469:23	1264:12	1424:19	1535:17	1493:6, 1519:2
1492:7	1264:14	1445:13	1535:21	1519:2, 1522:8
Smitherman's	1264:20	1451:11	1538:19	1523:14
1439:9, 1472:8	1264:20	1497:18	1545:18	1523:15
smog 1269:22	1264:24	1503:3, 1506:1	1546:5, 1546:6	1523:22
1269:24	1268:9	1506:20	1546:16	1529:13
1271:6, 1272:4	1268:16	1524:15	1547:12	1531:9, 1532:1
1289:19	soon 1324:13	1533:1	1547:15	1532:19
1410:5	1462:22	1545:11	1547:24	1533:24
1572:12	sophisticated	1591:22	1549:3, 1555:8	1534:9
smog-forming	1349:18	sought 1413:18	1566:24	1536:16
1406:11	1470:20	sound 1335:6	1588:20	1536:19
smoky 1389:23	1480:23	1335:7	1590:8	1538:16
snow 1328:3	sorry 1268:14	1385:18	1590:10	1538:20
1328:3	1279:11	1485:1, 1566:8	1592:5, 1592:6	1539:11
soft 1315:5	1291:8, 1304:7	sounds 1272:13	1593:25	1539:20
1561:4, 1572:8	1310:7, 1313:5	1474:11	1594:23	1546:21
software	1313:22	1598:24	1597:8	1547:8
1437:24	1318:3, 1320:6	1599:1, 1613:4	source's 1361:2	1555:11
1470:16	1320:10	source 1300:13	1475:1, 1551:8	1588:10
1471:4	1320:20	1301:4	sources 1282:2	1589:4
1471:17	1323:7, 1345:5	1301:10	1300:6	1589:10
solar 1253:2	1347:20	1301:18	1300:12	1589:10
1253:4	1352:19	1301:23	1302:8, 1302:8	1589:15
1282:17	1353:11	1302:23	1302:14	1589:19
1283:1, 1291:6	1353:14	1303:3	1302:16	1589:23
1291:7, 1291:9	1354:4	1303:18	1322:7, 1323:6	1594:3
Solaris 1252:9	1354:20	1319:20	1324:22	1594:14
solely 1304:8	1354:23	1319:23	1344:17	1597:5
1327:13	1355:8	1321:20	1344:19	south 1278:24
1327:22	1356:21	1321:24	1346:8	Southeast
1328:24	1360:15	1328:15	1346:11	1274:19
1329:8	1361:6	1342:23	1346:17	1276:14
1330:22	1363:23	1360:23	1355:21	1276:19
Soloria 1247:10	1364:3, 1390:4	1360:25	1357:8	1276:22
1497:9	1391:17	1362:11	1366:11	1277:22
1497:13	1400:23	1366:6	1366:25	1278:9
solution	1401:9	1394:16	1372:6	1278:12
1272:21	1402:11	1406:20	1372:18	1279:3, 1399:2
1272:23	1411:23	1455:9	1372:22	1568:19

Volume 5
9/24/2021

EIB Ozone Hearing

1569:7 Southeastern 1569:17 southern 1444:16 space 1410:25 1563:23 spare 1395:22 speak 1274:17 1284:1 1286:16 1287:15 1292:13 1297:9 1297:16 1317:25 1344:14 1346:19 1357:17 1364:24 1386:24 1397:10 1410:15 1415:18 1417:18 1474:17 1487:20 1516:24 1558:12 1605:12 speaker 1416:20 speaker's 1290:1, 1290:1 speaking 1273:16 1282:2 1283:25 1285:25 1317:15 1363:20 1406:6, 1461:5 1536:1 speaks 1364:13 1367:19 Specialist 1249:18 specialists 1508:17 specific 1311:14 1328:7 1328:18 1356:18 1358:3 1362:19 1362:21 1366:17 1367:9 1367:19 1381:23 1383:19	1385:12 1385:25 1398:18 1437:17 1468:10 1473:7, 1495:1 1504:23 1518:7 1540:24 1543:19 1547:24 1550:9, 1577:3 1577:9 1577:15 1587:7 1591:14 1608:8 1608:24 specifically 1282:21 1302:20 1308:21 1349:19 1386:25 1399:1, 1586:5 specifications 1356:1, 1356:4 1356:10 1356:13 specificity 1381:18 specified 1362:10 1366:6 1366:23 1544:6, 1549:5 1587:2 1587:16 specifies 1360:2 specify 1342:20 1346:18 1347:2, 1358:9 1359:25 1491:25 specifying 1348:7 speed 1575:15 speeds 1328:6 spell 1287:25 1291:22 1335:20 1392:15 1396:16 1402:21 1402:24 1403:1 1405:13 1409:1 1411:21 1414:24	1434:25 1452:1 1466:15 1484:21 1553:12 1557:20 1561:7, 1561:7 1564:12 1568:3 1571:16 spelled 1275:19 1335:23 1553:14 spelling 1264:19 1269:13 1274:9 1280:19 1285:12 spend 1276:19 1279:6 1279:20 1373:8 1556:16 spending 1278:22 1278:23 1612:8 spent 1274:23 1454:2, 1454:3 1593:11 Sperling 1251:22 spirit 1331:15 spiritually 1573:7 spoke 1348:6 1364:23 1376:21 1382:10 1583:6, 1583:7 spoken 1497:15 sports 1404:6 spread 1289:21 1324:25 1404:12 spreadsheet 1260:4 1260:11 1471:6 1471:22 1480:21 1480:24 1499:16 1503:4, 1581:8 1582:25 1583:10 1586:4 spreadsheet-... 1503:13 spreadsheets	1470:21 1471:6 1471:10 1480:19 1490:25 1499:20 springtime 1379:25 srb@modrall.com 1251:24 ss 1614:2 St 1247:18 stability 1400:13 stability-wise 1283:6 stabilized 1432:5 stable 1328:6 staff 1250:18 1441:22 1475:3, 1501:1 1503:25 1509:21 1565:4 1593:10 stage 1300:14 1395:14 1569:14 stakeholder 1308:11 1474:13 stakeholders 1310:17 1310:19 1357:11 1358:25 1359:4, 1364:6 1380:1, 1380:6 1380:8 1388:10 1388:11 1389:2 1389:11 1422:13 1449:13 1449:14 1611:10 1611:11 stall 1497:1 stalled 1497:23 stalling 1498:8 stamp 1368:22 1369:16 1370:11 1370:19 1427:19 1475:10 1475:14 1582:11 1582:15	stamping 1359:12 stamps 1437:7 stand 1428:21 1429:4 standard 1328:8 1359:23 1359:25 1360:1 1377:21 1377:22 1377:25 1413:22 1517:12 1522:6 1532:18 1535:20 1536:12 1543:3 1589:13 1597:19 standards 1260:15 1293:10 1327:1 1345:16 1355:24 1360:4, 1360:5 1397:25 1398:12 1400:24 1401:1, 1473:7 1490:6 1507:20 1517:9, 1518:4 1518:11 1519:5 1520:20 1521:10 1522:6 1522:13 1523:5, 1524:3 1528:4, 1532:4 1532:20 1532:24 1534:1 1534:25 1535:23 1536:17 1536:21 1539:24 1543:9 1545:19 1545:25 1546:10 1547:14 1547:16 1549:20 1550:5 1550:21 1562:19
---	--	---	--	--

Volume 5
9/24/2021

EIB Ozone Hearing

1577:12	1300:18	1454:5	1399:19	1524:23
1577:16	1303:14	1457:20	1400:16	Steinborn
1589:18	1421:5	1471:13	1400:22	1257:8
1592:21	1430:12	1485:22	1413:22	1551:24
1599:18	1461:8	1486:19	1467:17	1552:22
1603:12	1492:13	1502:7	1468:12	1553:1, 1553:5
1603:19	1503:12	1503:10	1468:13	1560:23
standpoint	1599:11	1507:20	1487:13	1560:24
1279:1	1612:17	1507:24	1517:15	1561:1, 1561:5
1309:14	starts 1324:1	1508:18	1540:9, 1541:8	1561:9, 1561:9
1528:16	1551:19	1511:11	1565:10	1561:14
Stanford	1551:20	1511:14	1594:22	1561:20
1249:13	state 1246:1	1512:9	statewide	1561:23
start 1263:4	1265:15	1512:11	1394:15	1562:2, 1562:4
1264:23	1265:23	1521:8	1398:4	1562:10
1269:12	1267:5, 1273:7	1521:11	stationary	1564:4
1269:17	1274:20	1526:24	1300:13	step 1438:11
1274:8	1275:23	1528:5	1301:4	1514:10
1274:13	1276:6, 1277:2	1542:18	1301:10	1517:16
1280:18	1277:4	1543:1	1301:17	1520:18
1280:23	1277:13	1545:19	1301:23	1527:20
1285:11	1277:15	1560:4, 1566:1	1302:8, 1303:3	1543:22
1285:17	1277:16	1566:1, 1566:4	1319:19	1544:3
1288:19	1277:19	1570:23	1321:20	Stephen 1254:12
1291:12	1277:20	1583:9, 1586:8	1346:7	1262:13
1292:9	1278:2, 1278:4	1590:2	1346:11	1284:19
1319:18	1278:7	1590:17	1425:17	1284:20
1321:18	1278:11	1594:24	1518:9	1285:7
1370:4, 1381:1	1278:14	1614:1	1519:25	1285:13
1393:5	1278:18	state's 1277:23	1522:8	1285:19
1394:12	1278:19	1277:25	statistical	stepped 1433:1
1397:5	1279:4	1278:7	1349:18	steps 1507:8
1403:13	1279:16	1283:25	1349:21	stewards 1417:3
1405:24	1279:17	1397:19	statistics	stewardship
1409:15	1281:9	1471:21	1343:11	1397:17
1412:7	1281:14	1524:19	status 1461:16	stick 1510:7
1415:10	1281:16	1537:18	1488:20	1525:25
1436:15	1281:23	1543:25	1490:9	sticks 1385:15
1449:7	1284:9, 1286:4	stated 1331:10	1491:10	stilling 1576:9
1459:20	1286:21	1331:12	1492:10	stipulate
1460:6	1287:14	1387:22	1493:6	1606:24
1525:12	1289:7	1533:6	1499:10	stood 1506:23
1554:5, 1558:7	1292:21	1533:10	1551:9	stop 1267:8
1565:13	1293:1, 1293:5	1576:14	statute 1520:2	1283:10
1568:15	1293:8	1598:3	1521:11	1290:15
1572:5, 1582:7	1336:11	1598:17	1542:18	1291:4, 1325:9
1595:21	1368:24	statement	1543:1	1417:6
1603:18	1386:18	1329:3, 1352:3	1599:10	1462:16
1604:4	1386:20	1374:19	statutes	1495:25
1605:16	1397:16	1383:10	1517:15	1496:2
1606:13	1397:21	1400:15	1584:19	1511:15
1606:15	1398:12	1400:19	statutory	1556:15
1606:16	1399:6, 1399:8	1592:11	1517:7	1559:14
1611:22	1401:25	1605:21	1517:13	1566:10
started 1266:24	1404:1	statements	1517:14	1590:2
1271:8	1406:19	1329:3	1517:21	1590:14
starting	1415:23	1479:22	1519:9, 1521:9	1600:3
1295:22	1419:16	states 1265:4	1532:22	storage 1283:3
1295:24	1424:8	1265:10	1543:20	1283:4, 1337:9
1295:25	1434:24	1283:24	stay 1290:9	1340:16
1298:10	1452:24	1366:9	1290:13	1340:16

Volume 5
9/24/2021

EIB Ozone Hearing

1340:20 1394:9 1431:10 1431:19 1486:13 store 1471:11 storing 1357:4 1470:13 story 1265:25 1275:17 stoves 1399:25 straightforward 1363:18 strategies 1606:12 strategy 1362:2 1606:18 1606:21 stream 1272:8 streamline 1294:20 1382:14 1382:16 1426:12 1607:18 streamlined 1547:1 streamlining 1382:3 1612:16 Streams 1258:11 Street 1248:4 1248:20 1250:9 1250:13 1250:19 1251:11 1252:5 1252:13 1252:23 strengthen 1290:22 1293:15 1395:15 1406:7 1407:10 1410:8 1554:23 1556:22 1566:22 strengthened 1395:9, 1396:4 1496:8 1556:23 1565:14 1566:7 strengthening 1411:4 striking 1470:1 stringent 1290:12	1290:18 1477:13 1528:8 1538:21 1538:25 stripper 1266:23 strong 1394:6 1407:7, 1407:7 1408:7 1408:12 1410:5, 1411:5 1413:7 1413:19 1415:19 1555:5 1556:17 1562:23 1563:6 1563:17 1563:20 1566:18 1567:6 1569:11 stronger 1374:23 1394:22 1555:9 1562:25 1565:20 1565:21 1568:22 1571:1 1573:18 1573:19 strongest 1563:25 strongly 1410:5 1523:19 1573:17 struck 1587:21 structures 1529:11 Stuart 1251:21 1451:3 Student 1249:8 1249:9 1249:10 studied 1400:9 studies 1403:24 study 1277:3 1277:3, 1277:5 1277:7 1277:14 1349:24 1350:1, 1350:4 1350:20 1350:21 1385:12 1446:14 studying	1281:12 stuff 1550:2 sub 1437:5 1440:3 subject 1272:4 1274:18 1297:7 1300:12 1302:7, 1303:3 1303:8 1334:16 1355:21 1357:4, 1357:9 1362:13 1366:11 1366:21 1372:7 1372:16 1372:25 1373:2 1381:16 1430:7 1457:19 1457:20 1457:21 1461:16 1461:19 1472:23 1473:3 1490:16 1519:3 1531:19 1535:21 1536:16 1538:20 1538:21 1544:7, 1544:9 1545:16 1592:5 1594:14 1594:15 1594:25 submission 1311:17 submissions 1488:4 submit 1311:8 1377:12 1388:23 1390:22 1442:15 1457:2, 1462:2 1473:6, 1493:7 1533:12 1537:11 1537:15 1537:22 1538:17 1539:5, 1539:8 1539:12 1539:19	submittal 1448:9 submittals 1448:8, 1548:2 submitted 1272:12 1288:9 1296:23 1305:18 1305:18 1311:11 1311:12 1311:20 1312:16 1328:22 1337:7, 1337:9 1355:15 1375:14 1375:18 1379:6 1387:18 1435:24 1436:2 1448:12 1451:11 1454:11 1456:11 1461:23 1467:20 1467:25 1486:9 1516:10 1524:1, 1524:7 1546:2 1546:11 1578:3, 1578:5 1579:1 submitting 1388:25 1502:10 Subparagraph 1541:24 subparagraphs 1358:8 Subsection 1437:5 1460:19 1461:6, 1461:7 1588:9 1598:21 1599:9 1599:11 1599:14 subsidiaries 1252:2 subsides 1282:19 1289:24 1291:4, 1291:5 substantial 1472:23	substantially 1472:15 substantively 1358:11 substituted 1371:10 success 1275:16 1275:17 successful 1275:3 successfully 1474:11 sudden 1498:17 sue 1526:24 suffer 1284:9 1410:11 suffering 1393:18 suffers 1284:9 sufficient 1457:8 1587:19 suggest 1279:15 1291:11 1439:18 1441:8, 1451:8 1585:13 1604:11 1604:15 suggested 1309:2, 1323:4 1431:4 1442:15 1492:7 1494:11 1533:24 1578:16 1582:16 1582:21 suggesting 1303:7 1389:15 1440:1, 1440:9 1523:24 1577:9, 1611:2 suggestion 1492:11 1603:4 1603:10 1605:25 1608:17 1609:12 suggestions 1308:18 1398:17 1442:16 suggests 1491:4 Suina 1247:5 1299:13 1310:11 1333:1
---	---	---	---	--

Volume 5
9/24/2021

EIB Ozone Hearing

1339:14	1250:20	supports	1334:11	swim 1282:1
1349:4, 1355:3	1251:17	1338:15	1341:7, 1427:5	1282:4, 1282:9
1355:7, 1355:9	1252:6	1400:14	1427:9	1282:17
1376:12	1252:13	suppose 1386:17	1427:14	1282:23
1377:1	1252:18	1445:12	1458:4	1283:8, 1284:4
1377:16	1252:23	sure 1263:12	1469:10	1284:11
1378:18	1369:18	1263:20	1476:10	swimmer 1282:4
1379:13	summarize	1276:3, 1300:2	1515:13	swimmers 1282:7
1380:5	1336:16	1302:5, 1305:9	1519:16	1284:12
1380:18	1362:6	1313:5	1520:8	switch 1317:18
1421:18	1424:20	1320:18	1521:14	Switches
1422:2, 1422:5	1455:3	1324:7	1527:13	1260:12
1422:10	1456:22	1326:11	1528:25	switching
1422:17	1468:3, 1469:9	1335:21	1581:15	1288:24
1443:10	1486:15	1342:6	1602:16	1317:12
1449:9	1488:9	1346:23	survey 1438:20	switchover
1449:18	1516:18	1350:5	1439:23	1291:9
1463:19	1516:19	1350:12	survive 1393:20	sworn 1264:15
1479:16	1522:17	1352:5	1401:23	1269:9, 1274:5
1480:7	summarizes	1354:25	1402:3	1280:15
1480:14	1362:14	1355:4, 1362:7	Susan 1422:9	1285:8
1481:1, 1481:3	summary 1337:20	1364:2, 1372:1	suspect 1306:18	1288:16
1481:8	1361:15	1374:4	suspects 1305:7	1292:6, 1299:7
1481:12	1425:9, 1469:2	1387:11	sustainability	1319:3
1481:22	summer 1282:1	1401:3	1305:20	1335:16
1481:25	Sunland 1590:20	1403:23	1336:25	1341:20
1482:3, 1482:8	Supervising	1431:16	1410:3, 1486:3	1353:3, 1393:2
1495:17	1249:11	1431:24	1486:23	1397:2
1495:23	supply 1393:22	1453:20	sustainable	1403:10
1496:1, 1496:4	supplying	1461:25	1408:3	1405:21
1496:9	1368:16	1479:23	SWD 1252:9	1409:12
1496:13	1560:3	1483:3	1467:24	1412:4, 1415:7
1497:20	support 1259:21	1485:24	swear 1264:11	1418:5, 1424:3
1498:1, 1498:4	1266:4	1504:2, 1507:7	1269:5, 1274:1	1424:11
1499:11	1293:10	1508:18	1280:11	1434:20
1499:24	1296:1	1508:23	1280:12	1449:3
1500:8	1400:20	1513:5	1285:4	1452:12
1501:10	1406:7, 1410:5	1519:14	1288:12	1467:3
1501:20	1415:18	1527:3, 1531:3	1292:2	1485:10
1501:23	1436:19	1531:23	1335:11	1516:3, 1554:2
1502:9	1438:22	1532:8, 1536:9	1392:19	1558:4, 1562:5
1502:25	1440:18	1539:15	1396:20	1564:21
1504:13	1453:6	1539:25	1403:6	1568:12
1505:10	1469:12	1545:3	1405:17	1572:2
1512:19	1470:1, 1470:3	1550:24	1409:6, 1409:8	1574:12
1574:18	1470:21	1551:6	1412:1, 1415:3	1582:3
1575:10	1493:1, 1493:3	1554:17	1434:15	system 1260:10
1576:8	1543:24	1555:5	1452:7, 1466:7	1270:22
1576:24	1546:25	1556:22	1466:20	1271:3, 1357:3
1577:25	1566:21	1561:1, 1561:9	1485:5	1357:16
1578:9, 1579:9	1567:12	1563:1	1553:18	1358:16
1600:16	1567:19	1575:11	1557:25	1358:19
1610:17	1570:3, 1571:1	1580:4, 1583:2	1562:1	1358:21
1611:5	1573:17	1591:5	1564:17	1358:23
Suina's 1443:18	1575:14	1594:14	1568:8	1359:9, 1368:9
1497:2	1605:24	1597:4, 1599:4	1571:22	1368:11
suite 1246:23	supporter	1599:13	swept 1298:6	1368:12
1247:23	1569:11	surrebuttal	swift 1251:16	1369:1, 1370:8
1248:5	supporting	1294:25	1331:17	1373:24
1250:10	1276:23	1311:1	1451:4	1374:2, 1378:7
1250:14	1287:5	1313:18	1451:13	1378:14

Volume 5
9/24/2021

EIB Ozone Hearing

1380:12	1490:20	1547:1, 1557:9	1346:18	1487:6
1380:14	1490:23	1567:11	1348:8	1487:11
1383:24	1499:21	1582:11	1348:10	1492:16
1383:25	1499:23	1604:18	1426:21	1512:5
1420:15	1503:11	1605:4	1435:23	tech 1398:12
1420:22	1503:21	1607:25	1444:5	technical
1426:10	1504:21	1609:21	1490:23	1259:21
1438:2, 1438:3	1583:3	takeaway	1541:21	1260:4
1439:6		1512:13	1542:10	1272:13
1439:14	T	taken 1262:22	1591:23	1311:9
1439:24		1342:16	1593:3	1329:14
1470:4	T-as-in-Tom-...	1390:19	1597:17	1331:1
1470:12	1564:14	1390:20	1598:9	1336:21
1471:2, 1471:3	T-O-R-R-E-S	1517:16	1598:11	1342:22
1471:10	1571:19	1517:25	1598:12	1388:1
1471:10	table 1258:16	1520:18	1609:21	1417:22
1471:21	1258:17	1561:18	1612:19	1451:6
1480:21	1275:8, 1305:8	1565:6	1612:20	1476:17
1490:21	1353:20	1572:19	TAN 1252:11	1516:15
1499:19	1400:4	1587:4, 1614:7	tangr@gtlaw.com	1574:1, 1578:6
1500:1, 1503:4	Tables 1258:22	1614:12	1252:15	1591:14
1503:12	1261:11	takes 1267:23	tank 1301:15	1601:7
1503:13	tabs 1529:14	1324:24	1306:13	technically
1503:15	tackle 1609:5	1389:16	1306:14	1357:12
1503:19	1609:6	1426:25	1337:9	technological
1503:24	tag 1357:7	1441:3	1337:11	1318:12
1504:2, 1504:4	1357:8	1489:17	1338:11	technologically
1504:18	1358:14	1510:17	1338:16	1562:20
1582:20	1436:16	1565:6	1340:14	technologies
1582:21	tags 1448:7	talk 1290:4	1340:14	1293:11
1582:25	1454:25	1295:3	tanker 1572:16	1358:22
1583:2, 1583:8	1455:10	1297:18	tanks 1340:15	1359:1, 1359:5
1583:11	1467:21	1315:8	TANNIS 1248:14	1359:6
1583:12	1467:22	1346:22	Tara 1257:10	1369:18
1583:13	1469:13	1368:21	1551:25	1369:21
1586:4, 1592:4	1469:18	1384:24	1552:23	1369:23
systems 1260:13	1469:18	1429:11	1564:5	1427:18
1271:10	1470:1	1431:5	1564:14	1427:22
1271:13	tailor 1537:24	1436:23	1564:20	1428:13
1368:12	take 1270:12	1483:1	targeted	1437:10
1368:15	1275:13	1544:20	1527:21	1566:15
1379:9	1278:20	1572:14	task 1413:5	technology
1379:11	1296:14	1603:4, 1613:1	tax 1266:1	1266:13
1420:20	1317:22	talked 1379:15	1401:16	1269:20
1426:18	1318:6	1416:21	1560:5	1271:7, 1287:3
1426:22	1344:20	1430:15	taxes 1266:4	1410:25
1427:24	1360:8, 1370:3	1432:5	taxpayers	1414:4
1428:7	1370:6	1505:25	1399:12	1427:25
1428:23	1373:14	1575:3	teacher 1281:7	1428:23
1438:24	1373:15	1597:24	1399:13	1556:9, 1567:5
1470:10	1384:4, 1390:4	1609:12	1399:13	teenager
1470:18	1411:5	1611:19	1403:20	1289:18
1470:21	1426:20	talking 1299:23	teachers	tell 1264:11
1470:22	1427:1	1300:16	1399:14	1267:10
1480:16	1428:11	1301:25	teaching 1282:1	1269:5, 1274:1
1480:19	1437:2, 1465:2	1302:19	1418:14	1274:21
1480:23	1490:12	1303:14	1464:7, 1484:7	1280:11
1482:21	1502:1, 1502:7	1304:8	team 1500:18	1285:4
1487:6	1503:11	1304:24	1501:6, 1501:9	1288:12
1487:10	1509:20	1342:25	1507:23	1292:2
1490:20	1536:22	1346:17	teams 1487:1	1314:11

Volume 5
9/24/2021

EIB Ozone Hearing

1335:11	terms 1296:7	1529:20	1333:21	1458:1, 1458:6
1392:19	1311:13	1537:9, 1540:8	1334:16	1459:5
1396:20	1363:11	1569:25	1336:6, 1336:8	1465:23
1403:6	1394:20	1574:13	1336:10	1465:25
1405:17	1438:21	1582:4	1336:17	1466:1, 1466:3
1409:8, 1412:1	1441:13	1596:19	1337:6, 1337:7	1467:19
1415:3	1441:21	1597:7	1337:10	1467:20
1434:15	1444:22	testify 1347:17	1337:13	1467:25
1452:7	1461:17	1462:13	1337:14	1468:4
1466:20	1481:19	1473:17	1337:17	1468:20
1467:10	1500:9, 1503:2	testifying	1337:20	1468:23
1485:5	1520:3	1537:3	1337:22	1468:24
1503:23	1521:23	1538:15	1338:21	1469:3
1541:3	1544:5, 1575:1	1568:22	1341:3, 1347:3	1469:10
1551:22	1586:12	testimony	1351:19	1469:22
1553:18	1601:13	1258:8	1351:21	1470:6, 1472:8
1553:20	1612:16	1258:10	1353:19	1473:6
1557:25	terribly	1258:11	1355:16	1474:16
1562:1	1612:20	1258:13	1366:9, 1366:9	1474:20
1564:17	Terrific	1259:19	1374:15	1476:3, 1476:6
1568:8	1268:25	1259:23	1376:14	1476:10
1571:22	1287:22	1260:6, 1260:8	1376:17	1476:11
1592:13	1414:16	1260:16	1376:22	1477:21
1606:9	1447:22	1260:19	1377:3	1478:16
tells 1328:14	1571:15	1260:24	1378:19	1478:25
1413:22	terrified	1261:5, 1261:7	1379:16	1479:18
temperature	1393:13	1262:23	1383:10	1479:22
1328:4	terrifying	1270:1	1385:22	1481:13
template	1393:17	1298:13	1387:15	1484:18
1260:22	test 1385:3	1299:20	1388:4	1485:15
1378:4	1385:5	1299:23	1388:22	1485:17
1378:16	1559:12	1299:25	1421:22	1485:18
1380:15	test-fail-re...	1300:25	1422:8, 1422:8	1485:19
1420:21	1428:18	1304:25	1423:2	1486:6, 1486:9
1471:14	tested 1559:11	1305:19	1424:15	1486:11
1471:15	testified	1311:9	1424:21	1486:16
1471:18	1299:8, 1319:4	1311:13	1427:17	1488:3, 1488:6
1471:22	1323:10	1313:15	1435:23	1488:9
1583:8	1327:11	1313:16	1435:25	1488:11
1583:17	1328:23	1313:17	1436:7, 1436:7	1491:2
temporary	1335:17	1314:8	1436:14	1498:10
1324:22	1341:21	1314:16	1436:19	1502:20
1572:19	1346:9	1316:13	1446:2	1504:21
tend 1499:22	1347:14	1316:14	1447:11	1509:16
tenders 1459:9	1347:20	1316:17	1448:12	1512:18
term 1344:6	1353:4, 1418:6	1318:20	1452:19	1512:24
1344:11	1424:4	1319:8	1452:21	1513:2, 1515:1
1361:18	1434:13	1320:13	1452:23	1515:13
1361:20	1434:21	1320:16	1454:12	1516:9
1361:22	1437:13	1321:10	1454:16	1516:10
1366:12	1449:4	1323:20	1454:18	1516:15
1372:7	1452:13	1325:2, 1327:5	1454:21	1531:5
1382:10	1460:6, 1462:7	1327:8	1454:24	1531:22
1382:12	1467:4	1327:21	1455:4, 1455:5	1532:5
1441:18	1485:11	1328:22	1455:13	1533:10
1471:3, 1471:9	1516:4, 1516:8	1329:14	1455:17	1537:20
1514:13	1519:18	1330:4	1456:12	1538:8
1540:5, 1591:6	1520:6, 1520:9	1330:14	1456:16	1539:10
1591:7	1520:24	1331:1	1456:19	1539:13
1591:22	1521:15	1331:22	1456:23	1539:17
1598:9, 1601:7	1529:2	1332:5	1456:24	1540:8

Volume 5
9/24/2021

EIB Ozone Hearing

1540:12	1279:24	1313:9	1349:14	1412:10
1540:15	1279:25	1314:18	1351:8, 1351:9	1414:8, 1414:9
1548:13	1280:9	1316:18	1351:11	1414:20
1548:18	1280:13	1318:13	1351:13	1415:1, 1415:5
1557:1, 1574:5	1280:22	1321:1, 1321:5	1351:14	1415:12
1574:22	1280:24	1325:5	1351:18	1417:17
1576:15	1280:25	1325:22	1351:19	1417:20
1577:6, 1578:7	1284:13	1326:17	1352:12	1418:11
1578:7, 1578:8	1284:14	1329:11	1352:14	1419:5
1579:22	1285:2, 1285:6	1331:6	1352:17	1419:14
1581:6, 1582:9	1285:18	1331:18	1352:21	1419:19
1583:21	1287:15	1332:1, 1332:2	1355:9	1419:22
1588:8	1287:17	1332:12	1359:15	1419:25
1592:10	1288:3, 1288:4	1332:14	1360:14	1420:1, 1420:3
1593:18	1288:14	1332:16	1361:14	1421:11
1595:4	1288:21	1333:1, 1333:3	1365:10	1421:14
1595:21	1288:23	1333:4, 1333:8	1365:13	1421:21
1597:11	1288:24	1333:9	1365:18	1422:17
1598:15	1291:14	1333:11	1365:22	1422:18
1601:21	1291:15	1333:13	1367:21	1423:7
1609:14	1291:25	1333:18	1367:22	1424:10
testing 1361:19	1292:4	1333:21	1367:25	1425:7
1361:23	1292:11	1333:23	1368:4, 1370:9	1425:10
1381:24	1292:13	1333:24	1374:7, 1375:5	1425:11
1381:24	1294:2	1333:25	1375:6, 1375:8	1427:15
1381:25	1294:11	1334:3, 1334:6	1375:24	1432:8, 1432:9
1384:11	1296:18	1334:25	1376:12	1432:14
1384:12	1297:2	1335:9	1376:14	1433:5, 1433:6
1384:14	1297:14	1335:13	1378:18	1433:9
1384:17	1298:3, 1298:4	1336:2, 1337:4	1379:13	1433:12
1384:19	1298:16	1337:16	1380:18	1433:13
1384:23	1299:15	1337:23	1380:21	1433:16
1384:25	1299:16	1338:5, 1338:6	1380:24	1433:20
1385:2, 1385:9	1299:22	1338:23	1381:1, 1386:2	1434:17
1385:12	1300:9, 1304:6	1338:25	1386:6, 1386:8	1441:11
tests 1385:4	1304:11	1339:14	1390:1, 1390:2	1442:1, 1442:3
Texas 1251:11	1304:17	1339:16	1390:9, 1392:1	1442:6, 1442:9
1251:18	1304:20	1339:20	1392:14	1442:21
1277:11	1304:25	1339:22	1392:17	1442:22
1278:14	1305:14	1339:25	1392:21	1442:23
1278:24	1307:17	1340:1, 1340:5	1393:8, 1396:7	1443:15
1279:4, 1279:6	1307:21	1340:6	1396:8	1443:21
1487:14	1307:22	1340:22	1396:18	1443:22
1567:7	1307:25	1340:23	1396:23	1443:23
text 1386:14	1308:1, 1308:2	1341:1, 1341:2	1397:10	1446:3, 1446:4
thank 1264:13	1308:5, 1308:7	1341:3, 1341:5	1402:7, 1402:8	1446:5, 1447:3
1264:22	1308:13	1341:17	1402:18	1447:4, 1447:7
1264:24	1309:22	1342:1, 1342:8	1403:3, 1403:4	1447:8
1268:8, 1268:9	1309:23	1343:20	1403:8	1447:10
1268:16	1310:2	1343:22	1403:15	1447:13
1268:17	1310:11	1344:2, 1345:1	1403:18	1447:23
1269:7	1310:21	1345:3	1405:1, 1405:2	1448:1
1269:16	1311:3	1345:19	1405:19	1448:13
1269:18	1311:23	1345:20	1406:1	1448:15
1273:9	1311:25	1345:22	1408:15	1448:22
1273:12	1312:4, 1312:6	1348:12	1408:16	1449:9
1273:17	1312:20	1348:14	1409:3	1449:15
1273:18	1312:22	1349:4, 1349:6	1409:10	1449:17
1273:19	1312:24	1349:9	1409:18	1449:19
1274:3	1312:25	1349:11	1411:10	1449:22
1274:12	1313:1, 1313:2	1349:13	1411:11	1449:23

Volume 5
9/24/2021

EIB Ozone Hearing

1449:25	1493:16	1553:21	1595:6, 1595:8	things 1266:21
1450:2, 1450:5	1493:17	1554:7, 1557:2	1595:15	1271:3, 1271:5
1450:6	1493:20	1557:23	1598:6	1271:23
1450:14	1493:24	1558:2, 1558:9	1598:14	1286:20
1450:16	1494:9, 1495:3	1558:10	1600:1, 1600:2	1296:5
1450:17	1495:5	1560:20	1600:4	1296:16
1450:19	1495:17	1560:21	1600:17	1296:22
1450:23	1496:19	1562:3, 1562:9	1600:18	1322:11
1451:15	1496:20	1562:11	1600:20	1353:23
1452:5, 1452:9	1496:23	1563:24	1601:16	1372:3, 1387:4
1452:16	1497:22	1564:2, 1564:3	1601:18	1389:3, 1389:8
1453:17	1498:1, 1498:6	1564:8	1601:21	1416:25
1456:10	1498:7	1564:15	1601:22	1441:22
1457:24	1498:10	1564:19	1601:24	1454:4, 1463:1
1459:4, 1459:8	1499:2	1564:25	1602:2, 1602:5	1501:3, 1502:3
1459:11	1499:11	1565:1, 1565:3	1602:6, 1602:9	1503:25
1459:25	1501:10	1567:14	1602:13	1508:21
1461:21	1502:25	1567:14	1602:25	1512:1, 1514:4
1461:25	1504:12	1567:18	1604:1, 1604:2	1525:5, 1548:1
1462:5, 1463:9	1505:10	1567:20	1610:3, 1610:4	1555:18
1463:10	1505:12	1567:22	1611:3, 1611:5	1566:12
1463:21	1505:13	1568:6	1612:3, 1613:5	1570:9, 1585:9
1463:24	1505:17	1568:10	1613:9	1604:5
1463:25	1505:20	1571:3, 1571:5	1613:19	1607:18
1464:3, 1464:5	1509:8	1571:20	thanks 1293:25	1610:21
1464:6, 1464:9	1509:10	1572:9	1307:9	1612:8
1464:11	1509:11	1572:10	1307:15	think 1269:21
1464:12	1509:14	1572:11	1307:16	1269:25
1464:23	1510:10	1573:21	1310:1, 1371:6	1272:4
1464:25	1512:16	1573:22	1423:5	1272:15
1465:15	1512:17	1574:3	1433:19	1280:2
1465:18	1512:21	1574:18	1483:7, 1509:9	1281:18
1466:22	1512:24	1574:21	1522:14	1286:20
1467:7, 1469:4	1513:2	1575:18	1579:23	1287:10
1469:7, 1470:2	1514:19	1575:21	1602:8	1294:22
1476:1, 1477:2	1514:20	1576:8	thing 1267:19	1296:12
1478:4, 1478:9	1514:24	1576:12	1278:10	1297:4
1479:2, 1479:3	1514:25	1578:9	1278:15	1299:20
1479:16	1515:2, 1515:3	1579:11	1289:23	1300:5, 1302:4
1479:18	1515:5, 1515:6	1579:13	1297:12	1302:10
1480:14	1515:17	1579:14	1304:24	1306:18
1481:11	1515:23	1579:19	1317:10	1309:2
1482:10	1516:21	1579:22	1319:17	1309:11
1482:12	1522:19	1579:24	1323:15	1309:19
1482:13	1527:11	1580:2, 1580:3	1337:13	1312:2
1482:16	1528:24	1580:10	1372:4, 1382:5	1313:16
1483:1, 1483:4	1530:8	1580:13	1399:4	1313:18
1483:10	1530:12	1580:15	1437:19	1315:12
1483:11	1530:19	1580:18	1445:15	1315:12
1483:13	1533:9	1580:19	1450:8	1316:14
1483:23	1541:15	1580:20	1478:13	1316:16
1484:6	1541:18	1580:22	1506:23	1316:21
1484:11	1542:15	1580:23	1507:11	1316:25
1484:17	1548:8	1581:8	1521:21	1317:1
1484:25	1548:11	1581:11	1526:19	1317:19
1485:3, 1485:7	1548:13	1581:23	1528:15	1318:15
1487:16	1551:10	1583:14	1542:6	1319:17
1487:23	1551:12	1583:19	1560:13	1319:20
1488:15	1552:5	1585:12	1586:19	1320:5
1488:16	1553:11	1586:24	1608:12	1321:23
1491:6	1553:16	1587:22	1610:18	1335:8

Volume 5
9/24/2021

EIB Ozone Hearing

1344:15	1481:14	1597:18	thoughts 1430:2	time 1269:19
1344:16	1483:16	1598:7, 1604:3	thousands	1270:12
1346:17	1491:2	1604:4, 1605:5	1385:5	1275:4, 1275:4
1348:3	1494:15	1605:8, 1607:2	1388:21	1278:17
1348:12	1496:12	1607:24	1388:22	1283:16
1352:11	1498:19	1608:11	threatening	1293:18
1357:23	1498:25	1608:18	1414:4	1300:20
1359:1, 1361:7	1500:14	1609:13	three 1265:16	1309:19
1363:12	1501:12	1609:21	1281:17	1315:12
1365:24	1504:9	1609:23	1281:25	1315:14
1366:4	1506:19	1610:25	1317:11	1322:16
1367:15	1507:10	1611:21	1317:14	1332:11
1367:18	1510:18	1612:12	1323:24	1334:1
1368:8, 1369:3	1510:19	1612:23	1358:21	1339:15
1369:10	1510:19	1612:23	1359:7	1341:6, 1349:5
1370:24	1510:23	1613:2	1364:19	1359:11
1371:11	1511:15	thinking 1287:8	1381:5, 1389:2	1360:6
1371:22	1512:8	1344:15	1389:20	1364:16
1371:23	1512:19	1373:5, 1374:8	1395:2, 1396:5	1364:21
1372:1	1514:5	1419:15	1400:6	1368:17
1373:17	1514:10	1460:18	1400:16	1368:18
1373:23	1518:24	1514:1, 1514:5	1407:1	1368:22
1378:19	1521:17	1559:23	1407:10	1369:10
1378:23	1524:9	1608:23	1416:12	1370:10
1379:15	1526:10	thinks 1504:8	1416:12	1370:19
1379:18	1527:7	third 1439:12	1416:13	1371:5, 1373:7
1379:20	1527:21	1443:25	1416:25	1374:12
1382:11	1529:6	1522:15	1427:23	1374:14
1383:10	1529:23	1540:25	1454:1	1374:22
1385:23	1532:17	1555:4	1489:21	1374:24
1391:14	1533:11	1566:21	1510:16	1375:4
1391:18	1541:4	1569:3	1510:17	1376:18
1401:3	1541:25	third-party	1511:17	1379:19
1404:25	1543:17	1359:17	1554:16	1380:9
1416:24	1545:5, 1548:3	1359:19	1554:19	1385:16
1418:25	1560:9	1359:20	1554:21	1387:10
1419:8	1563:19	1360:9, 1361:8	three-year-old	1391:5
1420:10	1568:23	1361:11	1282:16	1393:12
1422:14	1569:20	1384:13	threshold	1395:22
1427:7	1570:1	1429:8, 1429:9	1521:1	1401:12
1427:22	1574:20	1440:15	1531:25	1404:21
1430:22	1574:20	1440:24	1542:13	1406:2
1431:11	1576:3	thorough	1543:2, 1545:9	1407:15
1432:1	1576:16	1579:22	1546:24	1408:7
1434:13	1576:18	thoroughly	1547:2	1412:25
1437:2	1576:25	1413:18	1575:20	1413:10
1438:11	1579:10	thought 1287:20	thresholds	1416:10
1438:19	1580:8	1297:5	1344:21	1417:17
1438:22	1581:12	1311:19	1555:22	1417:22
1442:18	1583:5, 1588:2	1313:17	1556:1	1424:24
1442:19	1591:5, 1591:9	1370:22	throw 1611:18	1425:1
1443:13	1591:11	1373:7	throwing	1426:20
1445:23	1591:25	1379:22	1611:25	1427:1, 1427:2
1451:11	1592:9	1391:21	thrust 1536:18	1427:2, 1427:5
1459:24	1592:10	1429:17	thy 1573:9	1427:19
1462:14	1592:14	1429:23	tighten 1386:20	1428:1
1463:1, 1463:8	1592:22	1429:24	1519:1	1428:11
1464:7	1593:7	1450:9	Tijeras 1247:22	1428:22
1471:20	1593:10	1543:22	TIM 1251:15	1430:8, 1433:5
1480:20	1593:14	1608:18	tim.wilkins@...	1437:2, 1437:7
1480:22	1593:14	1609:1	1251:19	1438:4, 1439:3

Volume 5
9/24/2021

EIB Ozone Hearing

1439:8	times 1290:7	1482:17	1430:23	1482:21
1439:14	1290:20	1483:2, 1488:2	1431:10	1499:17
1440:7, 1441:3	1291:1, 1394:3	1488:6	1431:12	1499:25
1444:12	1410:19	1502:20	1432:25	1586:6
1446:2	1525:15	1516:10	1434:19	train 1503:16
1449:18	1555:25	1518:18	1447:25	1503:17
1451:7	1569:25	1554:11	1449:2	trained 1439:7
1459:23	timestamp	1563:24	1452:11	training
1459:24	1437:21	1567:15	1461:5, 1462:6	1271:22
1462:20	timing 1308:9	1567:17	1467:2	1428:16
1462:24	1379:21	1568:22	1474:18	1511:23
1463:20	1379:24	1568:24	1476:2, 1485:9	trajectory
1464:14	1448:7, 1578:1	1570:2	1516:2	1371:14
1475:13	1578:2	1572:12	1516:12	transcends
1482:16	TIMMONS 1250:12	1572:14	1522:20	1527:5
1483:1, 1489:4	tip 1593:5	1575:22	1537:8	TransColorado
1492:22	tires 1413:11	1579:19	1574:11	1252:3
1492:24	Title 1490:17	1579:22	1582:2	transcript
1496:18	1491:16	told 1393:21	1602:16	1246:10
1503:7	1491:16	tonight 1571:3	1602:24	1258:3, 1264:8
1508:18	1492:20	1604:4, 1606:1	1603:1, 1603:5	1318:4, 1572:8
1508:18	1493:11	1609:6	1603:11	1614:9
1510:18	1502:3, 1507:3	1612:11	1604:18	transfer 1364:8
1518:22	1538:16	tons 1293:6	1609:5	1364:10
1519:14	1538:20	1322:20	1609:12	transferring
1533:25	1538:25	1394:1	topical 1501:3	1363:25
1540:25	1591:7	1406:22	topics 1295:6	1472:18
1543:19	1591:10	tool 1528:13	1313:8	transfers
1547:18	1591:16	tools 1378:7	1337:10	1337:9
1556:4, 1556:5	1591:18	1586:18	1424:25	1472:15
1560:14	1592:6	1589:5	1425:5, 1468:4	transition
1563:24	1593:24	top 1317:12	1486:8	1298:8
1565:6	1597:8	topic 1254:18	1496:14	1428:24
1567:21	1597:16	1254:20	1501:13	1504:15
1569:21	1601:7	1254:23	1510:15	translates
1571:3, 1575:4	titled 1329:13	1255:4, 1255:8	1603:23	1410:3
1575:14	1594:21	1256:6, 1256:8	1608:7, 1608:8	transmission
1575:22	today 1264:7	1256:11	1608:11	1252:3
1575:25	1292:14	1256:13	Torres 1571:19	1394:10
1579:18	1294:1, 1295:7	1256:16	total 1265:20	transparency
1579:19	1309:19	1256:19	1328:14	1522:24
1581:4	1319:11	1256:22	1446:13	1576:5
1582:11	1337:12	1257:16	totally 1436:18	Traurig 1252:12
1582:15	1337:17	1299:6	1438:22	travel 1276:11
1595:7	1357:19	1313:19	1575:23	1510:14
1598:10	1358:5, 1365:3	1314:20	touch 1362:4	traveling
1600:8, 1606:3	1365:23	1319:2, 1334:9	1424:25	1276:6
1606:23	1386:14	1335:15	1425:8, 1427:8	1278:10
1608:1	1390:5	1341:19	1427:13	1566:10
1609:21	1397:11	1351:21	touched 1429:14	TRAVIS 1249:10
1612:8	1406:6	1352:19	toughest 1395:4	treat 1363:6
time-consuming	1406:12	1353:2, 1353:8	toxic 1266:13	treated 1490:13
1492:4	1406:25	1354:3	track 1357:15	1490:14
timeline 1359:3	1415:18	1354:12	1378:2	tribal 1292:24
1370:7	1417:13	1354:16	1420:16	tried 1268:15
1395:20	1454:18	1376:1, 1418:4	1420:16	1289:5
1563:13	1456:19	1423:12	1471:7	1538:23
1567:2, 1606:3	1468:20	1423:16	tracking	1550:18
timelines	1468:24	1424:2	1358:23	triennial
1306:3, 1575:4	1478:22	1425:16	1359:9	1492:20
timely 1556:22	1478:25	1430:20	1378:12	tries 1487:24

Volume 5
9/24/2021

EIB Ozone Hearing

triggering 1365:7 trillions 1560:15 trip 1286:6 1286:13 truck 1527:17 trucks 1270:20 1270:20 true 1329:7 1330:6 1430:10 1439:23 1492:9 1511:12 1515:9 1604:23 1614:9 Trujillo 1247:6 1294:13 1299:17 1299:19 1300:10 1300:15 1301:24 1302:10 1302:13 1302:22 1303:13 1303:20 1303:22 1303:25 1304:11 1304:17 1304:24 1333:5, 1333:6 1339:17 1339:18 1349:7, 1349:8 1353:14 1380:22 1380:24 1381:22 1382:1 1382:18 1383:1, 1383:9 1383:21 1384:16 1385:6 1385:13 1385:20 1385:21 1386:2, 1420:3 1420:14 1420:23 1421:7 1421:11 1433:2, 1433:4 1443:16 1443:17 1449:20	1449:21 1463:22 1463:23 1482:14 1482:15 1482:23 1496:15 1496:17 1509:14 1510:6 1512:17 1579:15 1579:17 1600:19 1600:20 1601:4 1601:12 1605:23 1608:6 truly 1281:19 1329:3 1612:20 trust 1369:12 1524:12 truth 1264:11 1269:5, 1274:1 1280:11 1285:4 1288:12 1292:2 1335:11 1392:19 1396:21 1403:6 1405:17 1409:8, 1412:1 1415:3 1434:15 1452:7 1466:20 1485:5 1553:18 1553:20 1557:25 1562:1 1564:17 1568:8 1571:22 try 1263:18 1281:23 1284:4, 1286:7 1295:19 1305:20 1306:2, 1317:6 1324:12 1324:14 1380:9 1391:24 1459:20 1462:22 1487:25	1511:11 1523:23 1524:23 1525:25 1604:5, 1607:8 1607:22 1608:3, 1608:5 1608:11 1610:20 trying 1276:6 1290:13 1297:16 1299:15 1303:16 1305:25 1309:18 1309:20 1329:23 1331:21 1381:2 1383:14 1386:3 1393:19 1416:18 1419:6 1439:14 1511:19 1537:25 1538:2, 1538:6 1538:7, 1542:3 1543:14 1544:18 1544:19 1546:14 1548:3 1549:23 1601:3, 1601:3 1601:5 1611:19 Tuesday 1295:12 1603:20 1603:22 1604:10 1613:14 tune 1291:4 turbine 1322:2 1322:3 turbines 1253:2 1253:4, 1283:1 1295:7 1364:24 1364:25 1384:24 1604:9 turn 1279:22 1298:18 1298:20 1298:25 1317:4 1332:15 1332:19	1339:3, 1339:5 1343:23 1348:16 1376:3 1391:24 1396:10 1432:17 1432:19 1434:11 1442:25 1443:2 1448:16 1463:12 1463:14 1465:3, 1479:7 1495:6, 1495:8 1498:4, 1515:7 1522:15 1530:14 1537:7, 1540:7 1564:5, 1574:6 1576:10 1598:15 1600:8 Turning 1472:1 TV 1260:21 two 1275:10 1275:21 1277:9 1277:11 1289:3, 1296:5 1305:16 1323:24 1324:24 1327:21 1337:9 1379:22 1380:3 1380:12 1380:14 1391:19 1399:18 1399:22 1407:7, 1419:9 1439:10 1445:6 1470:23 1503:1, 1504:3 1510:16 1514:8 1516:11 1516:16 1544:15 1559:11 1563:6 1601:13 1603:23 two-and-a-half 1500:21 two-week 1606:3 1606:23	two-year 1379:19 1428:24 1503:14 type 1326:22 1351:1 1357:16 1358:9, 1359:1 1361:3 1362:11 1366:7, 1369:6 1372:23 1375:23 1377:23 1378:2, 1378:6 1378:14 1378:15 1383:7, 1384:5 1384:9, 1385:2 1385:25 1437:22 1438:15 1490:22 1491:21 1491:21 1506:2, 1506:6 1537:17 1538:9, 1539:3 1546:6, 1584:4 types 1270:3 1342:23 1344:23 1356:12 1441:22 1473:4 1481:15 1499:7 1499:21 1583:3 1590:15 typical 1258:7 1258:9, 1370:4 typically 1326:21 1326:25 1384:13 1387:5 1504:25 1510:12 typo 1425:22 U UCLA 1305:19 UIC 1340:17 Uinta 1327:24 ultimate 1401:14 ultimately 1519:6, 1539:1 Um-hum 1302:12
--	--	--	--	--

Volume 5
9/24/2021

EIB Ozone Hearing

1383:21 1431:8, 1510:5 un 1455:18 unable 1371:4 1536:4 unavailability 1370:15 1370:21 1456:5 unburned 1290:9 uncertain 1422:2 1471:16 unchecked 1417:6 unclear 1343:14 1455:18 1491:24 uncles 1573:4 uncombusted 1271:2 undefined 1342:23 1598:9 undergone 1343:5 undergraduate 1281:9, 1435:5 underlying 1351:3 understaffed 1565:7 understand 1266:6 1267:12 1267:16 1281:19 1286:7 1293:19 1302:14 1304:5 1309:20 1334:10 1374:8 1381:12 1384:10 1397:23 1399:4, 1428:9 1440:23 1465:3 1474:15 1483:15 1490:24 1506:18 1508:19 1529:25 1530:2, 1541:7 1542:4 1544:19 1545:22 1548:3, 1550:5	1558:13 1558:21 1563:10 1570:22 1580:24 1608:4, 1608:6 1609:16 1609:17 1611:14 understanding 1297:11 1370:25 1441:14 1460:14 1506:3 1523:12 1523:14 1527:4, 1531:3 1541:10 1542:17 1546:3 1570:11 understood 1300:2, 1300:8 1420:13 1473:15 1540:8 undertake 1374:2, 1522:2 1547:9 undertaken 1518:13 1519:5 undertakes 1302:5 undertaking 1306:4 undue 1350:5 unethical 1410:21 unfairly 1558:16 unfold 1306:3 unfortunate 1299:24 unfortunately 1393:16 1473:21 1553:6 unhealthy 1414:3 1542:24 unintelligible 1285:21 1291:13 1337:2, 1351:6 1465:14 1495:23 1496:9, 1514:6 1535:1 1556:14	1561:14 unique 1328:2 1413:17 1469:19 1587:11 unit 1258:7 1361:5 Unitarian 1292:18 1409:23 1409:24 1409:24 United 1265:4 1265:10 1565:10 units 1486:11 1486:14 1546:17 universal 1355:20 1356:7 universe 1372:14 1389:7 University 1249:12 1277:2, 1281:9 1281:12 1468:6, 1468:7 1486:18 unjustified 1457:10 UNM 1292:16 1292:16 1292:17 unmute 1263:7 1263:11 1263:13 1263:20 1268:20 1391:10 1557:4 1571:11 unmuted 1402:11 1553:3, 1564:6 1611:4 unmuting 1263:10 1280:4 1284:22 1392:9, 1553:8 1560:24 1571:9 unnecessary 1338:11 unprecedented 1521:16 1521:19 unpredictable 1283:9 unprepared	1283:3 unrelated 1400:4 unsafe 1572:20 unstable 1407:23 unsubstantiated 1343:18 unusual 1473:8 unworkable 1477:10 updated 1364:23 1422:25 upheld 1535:3 1589:8 uphold 1573:8 uploaded 1437:23 1438:15 1439:15 upset 1513:22 upside 1444:19 1445:19 1445:23 1446:21 upstream 1435:7 1467:24 1486:4, 1487:1 1487:3, 1489:1 1513:24 upwards 1402:3 urge 1408:11 1563:16 1563:23 1577:22 urgent 1411:5 USA 1251:9 use 1267:3 1271:16 1271:25 1289:25 1324:6, 1329:2 1366:12 1414:5 1425:20 1435:9 1437:21 1453:11 1469:17 1470:1, 1470:5 1470:18 1470:22 1471:14 1471:17 1491:10 1499:16 1503:16 1504:2 1514:12 1539:21 1540:5	1556:11 1556:12 1556:14 1566:23 1596:24 useful 1331:14 1543:22 user 1391:10 1468:17 1557:12 1557:13 users 1391:16 uses 1330:15 usually 1324:23 1463:4 1489:10 1489:11 1489:19 1491:16 1510:16 Utah 1327:24 1487:14 utilize 1499:14 V vaccinated 1404:10 vaccine 1404:10 valid 1286:17 1302:11 Valley 1554:9 valuable 1523:12 1598:8 value 1270:24 1510:11 valves 1413:14 varies 1537:17 variety 1382:6 1457:6 1467:16 1470:18 various 1276:7 1336:20 1398:13 1449:14 1487:15 1611:10 vary 1538:18 vast 1579:3 vehicle 1289:5 1399:5 1559:13 vehicles 1401:17 vent 1383:24 venting 1394:2 verbal 1337:19 1469:2 1476:11
--	---	---	--	--

Volume 5
9/24/2021

EIB Ozone Hearing

1491:2 verbatim 1517:25 1576:17 verification 1440:14 versed 1428:8 version 1260:23 1388:3, 1388:9 1436:11 1455:7 1455:15 1456:3, 1456:7 1459:1 1469:14 1577:2 1578:13 versions 1387:18 1388:23 vertical 1435:20 1435:20 1445:4 1445:20 vessels 1337:9 1431:10 1431:19 1486:13 vet 1343:1 vetted 1388:6 1388:7, 1592:1 viability 1275:11 Vic 1259:19 1259:20 Vice-Chair 1247:6 1294:13 1299:17 1299:19 1300:10 1300:15 1301:24 1302:10 1302:13 1302:22 1303:13 1303:20 1303:22 1303:25 1304:11 1304:17 1304:20 1318:13 1333:5, 1333:6 1339:17 1339:18 1349:7, 1349:8 1353:14 1380:22	1380:24 1381:22 1382:1 1382:18 1383:1, 1383:9 1383:21 1384:16 1385:6 1385:13 1385:20 1386:2, 1418:1 1420:2, 1420:3 1420:23 1421:7 1421:11 1421:14 1425:12 1433:2, 1433:4 1443:16 1443:17 1449:20 1449:21 1463:22 1463:23 1482:14 1482:15 1482:23 1496:15 1496:17 1509:12 1509:14 1510:6 1512:17 1579:15 1579:17 1600:19 1600:20 1601:12 1605:22 1605:23 1608:6 Vice-Chair's 1421:19 video 1246:15 1262:25 1390:20 1496:2, 1498:5 1552:15 1561:15 1561:18 1576:10 view 1373:8 1417:14 1428:11 1528:14 1543:6 1544:14 viewpoint 1416:24 views 1301:20 1567:18	vigorously 1404:22 VIMONT 1250:3 violate 1521:10 violates 1556:19 violation 1350:15 1544:12 1545:18 1545:24 1589:13 1589:18 1591:17 1597:15 1597:17 violations 1476:19 1518:3, 1522:5 1529:21 1532:20 1533:18 1533:25 1535:23 1542:11 1547:7 1547:22 1589:5 1591:15 virtual 1497:18 virtually 1246:14 1497:14 virtue 1602:15 virus 1404:12 vis-a-vis 1607:11 1607:12 visibility 1493:5 visible 1410:25 visits 1492:2 1492:5 visual 1286:15 visualizing 1598:11 vitae 1466:1 VOCs 1269:23 1271:14 1326:8 1326:12 1394:6 1570:13 voice 1264:9 1268:2 1273:23 1287:10 1287:11 voiceless 1287:6 volatile 1271:4	1406:11 1412:16 volume 1246:18 1315:6, 1317:4 voluntary 1381:9 1490:11 1498:12 1498:15 1499:13 1499:25 1500:13 1504:14 vote 1276:18 1406:7 1608:13 Voters 1248:12 voting 1609:11 voyeuristic 1446:16 vulnerable 1404:13 W W-O-L-T-E-R-S 1409:2 wait 1310:7 1334:12 1421:16 1483:18 1511:4, 1525:5 1580:8 waiting 1320:25 want 1266:8 1281:16 1286:25 1289:13 1289:23 1290:6 1305:17 1322:2 1328:19 1342:11 1347:5 1354:24 1376:15 1377:14 1393:8 1398:14 1399:23 1401:13 1426:14 1436:22 1437:16 1439:12 1440:19 1445:15 1497:6 1498:19 1501:12	1508:5, 1509:3 1512:2 1513:22 1515:11 1516:24 1525:2, 1525:4 1526:5 1528:19 1539:25 1545:2, 1551:6 1554:21 1555:2, 1555:5 1556:22 1560:10 1562:21 1565:1, 1566:8 1567:17 1572:14 1575:10 1575:24 1575:24 1595:21 1596:17 1596:22 1596:25 1597:22 1598:2 1598:15 1605:25 1606:15 1609:5 1611:22 1612:22 wanted 1271:7 1272:22 1273:11 1289:6 1296:11 1296:15 1323:9, 1352:5 1368:14 1436:23 1438:17 1440:13 1442:14 1479:21 1480:15 1482:8, 1498:9 1512:20 1514:17 1541:22 1601:13 1608:17 1611:7 1611:18 1612:1, 1612:6 1612:9 wanting 1283:10 1302:13 1603:15 wants 1275:16
---	---	---	---	--

Volume 5
9/24/2021

EIB Ozone Hearing

1529:14	1378:2, 1379:3	1606:8, 1606:8	1577:17	1330:21
1541:3	1379:4, 1382:5	1610:9	wells 1266:22	1342:4
1581:13	1413:1, 1413:8	weapons 1265:5	1266:23	1344:10
warming 1393:25	1425:20	web 1296:23	1290:20	1346:4
1406:24	1429:15	1298:8, 1410:1	1301:12	1377:12
1417:8	1442:2	1411:8, 1593:5	1306:13	1388:12
waste 1290:4	1446:11	1593:24	1324:17	1456:25
1486:3	1453:14	web-based	1346:12	1457:10
1508:10	1463:2, 1463:4	1437:24	1372:9	1457:16
1570:2	1499:9	Webex 1246:15	1372:10	1460:5, 1468:1
wasted 1271:16	1499:16	1268:14	1406:19	1476:4
1271:25	1509:18	Wednesday	1435:20	1481:13
wasteful	1511:21	1473:17	1435:20	1481:18
1270:23	1512:10	1603:21	1435:21	1516:13
wastes 1270:24	1520:4	1604:10	1439:13	1516:14
watch 1573:11	1526:21	1608:19	1444:10	1533:15
watchdogs	1527:10	1609:1	1444:11	1534:2
1523:20	1527:23	1613:14	1445:4, 1445:5	1534:15
watched 1572:16	1527:25	week 1285:24	1445:18	1541:22
1572:19	1545:22	1295:9	1445:18	1543:12
1572:22	1559:4	1389:18	1445:21	1544:23
1572:25	1559:19	1462:13	1467:24	1601:6
1573:3	1563:4	1509:20	1467:24	wildlife 1570:9
watching 1526:2	1569:21	1509:22	1554:24	WILKINS 1251:15
water 1252:9	1584:20	1603:15	1556:24	WILLIAM 1247:8
1258:7, 1266:8	1589:19	1611:17	1563:9	willing 1374:18
1267:4, 1267:4	1591:23	1611:21	Wendler 1391:1	1587:14
1267:8, 1291:6	1592:16	1612:12	1391:8, 1391:9	win 1284:12
1291:9	1594:17	1613:3	1392:4	win/win 1273:6
1293:23	ways 1294:19	1613:13	went 1265:22	wind 1282:16
1393:21	1294:21	weekend 1295:5	1274:24	1282:25
1394:25	1307:6	1610:21	1281:8, 1281:8	1291:6, 1291:9
1465:24	1562:24	1611:1	1381:7	1328:6
1473:1, 1486:3	we've 1283:16	1612:15	1506:13	windmill 1322:2
1486:10	1300:23	1613:8	Wes 1276:5	1322:3
1486:13	1302:16	weeks 1389:16	West 1278:24	window 1300:22
1492:12	1309:2, 1309:2	WEG 1476:20	1279:4	1444:17
1508:10	1358:13	1477:9	Western 1248:15	1445:5
1511:21	1358:15	WEG's 1476:7	Wewatta 1252:5	1503:20
1562:18	1359:3	1476:8	Wheat 1250:10	winning 1283:15
1566:5	1361:20	1476:11	Whit 1251:16	wintertime
waterways	1362:21	1476:21	1451:4	1328:3, 1328:8
1570:9	1362:22	1477:3, 1477:6	whit.swift@b...	WIPP 1570:1
way 1271:1	1363:9, 1370:7	1477:18	1251:20	wise 1399:13
1273:3, 1275:1	1372:8, 1383:1	1477:22	whittle 1389:8	1507:10
1281:16	1385:15	1477:25	wicked 1417:9	wish 1348:16
1282:5	1389:20	weigh 1604:12	wide 1270:3	1391:5
1282:12	1390:16	welcome 1448:21	1470:18	1506:16
1282:18	1394:23	1471:15	wife 1569:13	1511:6, 1511:7
1293:24	1429:23	weld 1291:12	WildEarth	1588:1
1298:7	1430:15	well's 1270:14	1250:8	WITHERSPOON
1301:20	1432:4, 1445:4	well-being	1250:13	1253:3
1315:7	1469:11	1410:13	1296:12	witherspoon_...
1325:17	1518:17	1569:17	1297:6	1253:7
1331:23	1520:22	wellbore	1298:14	witness 1297:13
1342:24	1525:7, 1526:3	1302:25	1305:7	1297:19
1343:1, 1343:9	1531:8, 1541:9	1303:14	1313:15	1297:22
1343:9, 1344:5	1543:6, 1547:6	1324:5, 1324:8	1316:15	1314:20
1344:11	1569:3	1346:21	1319:8, 1326:4	1325:4
1347:23	1578:21	wellhead	1329:12	1331:10
1348:8, 1351:6	1589:6, 1595:3	1326:19	1330:13	1331:12

Volume 5
9/24/2021

EIB Ozone Hearing

1332:9	1504:13	1471:14	1478:21	1454:23
1334:19	1513:11	1476:14	1482:19	1455:4, 1455:5
1334:20	wood 1399:25	1476:17	1483:15	1456:11
1334:22	wood-burning	1480:3	1487:3	1456:16
1334:22	1399:24	1498:12	1489:19	1456:18
1335:2	word 1283:5	1499:19	1501:16	1456:22
1433:22	1305:2	1501:9, 1502:1	1507:6	1456:24
1450:21	1330:15	1504:1	1554:19	1465:23
1450:22	1330:22	1507:16	1556:5, 1565:7	1467:18
1451:6, 1459:9	1331:2, 1331:3	1507:16	1566:12	1468:23
1462:13	1374:19	1515:3, 1524:3	1573:1, 1583:8	1469:2, 1469:9
1462:21	1425:20	1525:8, 1527:9	1583:16	1469:22
1469:23	1425:22	1527:24	workload 1506:2	1470:6, 1476:3
1473:17	1445:12	1529:15	1533:3, 1533:5	1476:6
1477:21	1491:10	1539:24	1536:6, 1536:7	1485:15
1478:20	1494:5	1540:2	1536:8	1488:10
1513:8, 1548:7	1510:21	1549:19	1536:13	1531:4, 1532:5
1582:22	1539:21	1550:20	1537:1	1545:22
1585:24	1540:2, 1540:4	1555:15	works 1369:14	1577:6, 1578:7
1586:25	words 1290:8	1555:17	1459:22	1578:8
1589:7	1291:2, 1400:7	1556:13	1483:19	wrong 1354:4
1606:25	1420:10	1559:6	1570:7, 1593:4	1354:10
witnesses	1508:20	1559:19	world 1271:19	1411:24
1254:3, 1255:3	work 1266:4	1565:6	1289:21	1460:15
1256:3, 1257:3	1267:11	1566:17	1417:16	1581:8
1311:2	1267:25	1567:5, 1573:3	1506:15	wrote 1353:23
1423:12	1274:24	1585:17	1527:6	www.env.nm.g...
1436:25	1281:3	1597:19	1560:18	1258:4
1462:23	1292:16	1610:25	1567:8	Wyoming 1272:17
1465:4	1317:23	1612:15	worldwide	1327:23
1465:11	1318:14	workable 1275:9	1417:6	1487:15
1465:17	1326:12	worked 1267:6	worse 1402:2	
1515:15	1327:2	1269:1, 1312:2	worsen 1519:7	Y
1583:22	1328:17	1318:2, 1381:4	worth 1521:22	
Wolters 1255:21	1330:11	1388:23	Wozniak 1252:22	yeah 1296:5
1391:2	1336:14	1389:17	wrap 1279:10	1297:11
1408:18	1355:24	1389:18	1279:12	1298:11
1408:19	1358:25	1398:10	1381:3, 1386:3	1300:7
1408:20	1359:4	1468:13	1401:7	1302:21
1408:22	1369:20	1501:25	wrapping 1297:5	1303:18
1408:24	1369:24	1511:14	writes 1386:19	1303:24
1409:2, 1409:5	1378:4, 1378:5	1514:8	1386:20	1304:22
1409:9	1380:5, 1380:7	1562:22	writing 1390:22	1306:18
1409:11	1383:11	1565:5	1443:20	1307:9
1409:17	1384:5, 1389:2	1609:20	1507:22	1307:14
1409:21	1389:5	working 1263:11	written 1259:19	1312:6, 1317:8
1411:12	1398:15	1263:12	1259:23	1321:16
wonder 1305:6	1404:19	1263:13	1260:6, 1260:8	1325:15
1605:12	1421:1, 1421:5	1263:21	1260:16	1330:7
1605:13	1428:7	1325:11	1260:19	1332:12
wonderful	1429:22	1370:1	1260:24	1335:7
1609:16	1430:12	1378:15	1261:5, 1261:7	1336:19
wondering	1435:3, 1435:6	1399:20	1288:9, 1336:6	1340:8
1300:4	1438:1, 1439:7	1420:9	1337:14	1372:20
1304:23	1439:15	1420:11	1337:21	1373:3
1419:2	1441:4	1420:18	1426:24	1386:12
1421:23	1443:11	1420:21	1428:4, 1440:7	1388:16
1422:11	1449:13	1435:7	1452:21	1389:12
1442:14	1459:24	1448:14	1454:12	1389:17
1446:1, 1482:1	1470:15	1450:19	1454:16	1391:18
1499:25	1470:17	1471:19	1454:21	1422:10

Volume 5
9/24/2021

EIB Ozone Hearing

1430:22 1430:24 1431:17 1432:1, 1445:9 1445:14 1445:25 1468:5, 1471:3 1477:6 1478:24 1480:11 1480:20 1481:25 1481:25 1495:21 1499:18 1500:17 1501:20 1506:12 1522:19 1524:17 1528:21 1533:9, 1533:9 1534:20 1539:16 1543:11 1544:14 1551:4 1575:18 1576:24 1583:2, 1605:3 1605:4, 1612:6 year 1265:23 1274:25 1275:1 1276:11 1276:12 1276:17 1277:12 1289:3 1289:14 1289:15 1291:5, 1293:4 1322:4 1322:19 1322:20 1322:24 1359:21 1371:12 1371:21 1371:24 1379:25 1380:2, 1394:1 1406:23 1427:25 1430:5 1461:13 1461:20 1479:25 1480:1, 1480:5 1480:6, 1480:9 1480:13	1489:21 1492:19 1492:25 1503:6 1504:23 1504:25 1505:2, 1509:1 1509:5 1509:19 1509:20 1509:23 1509:25 1536:18 1583:25 1584:9 yearly 1398:22 years 1265:3 1265:5, 1265:5 1266:3 1266:11 1266:20 1274:23 1282:9 1283:13 1336:19 1370:6, 1370:7 1379:23 1380:3 1380:12 1380:14 1393:11 1393:20 1406:14 1415:17 1430:9, 1435:6 1439:10 1441:17 1444:8 1446:16 1453:21 1453:23 1453:24 1454:2, 1454:3 1468:8, 1468:9 1470:23 1489:21 1503:11 1510:2 1559:12 1569:1, 1569:4 Yep 1434:6 yesterday 1298:13 1299:21 1299:25 1300:3, 1301:1 1301:1, 1305:2 1319:10 1354:19 1354:20 1424:24	1575:24 1609:13 yesterday's 1478:24 young 1292:25 1415:16 youngest 1283:4 Z zero 1395:21 1395:21 1407:15 1407:16 1563:14 1563:14 1567:3, 1567:3 zone 1303:15 1 1 1258:6 1258:15 1258:16 1258:22 1261:11 1274:16 1298:14 1338:7 1353:10 1355:13 1394:1 1451:10 1451:21 1451:22 1461:13 1492:15 1493:7 1516:13 1541:22 1599:16 1)(a 1599:12 1,000 1468:14 1.1 1406:22 1.1-to-1 1590:11 1.3 1278:3 1.5 1291:10 1:00 1390:6 1390:10 1390:12 1390:17 1390:19 10 1259:20 1261:6, 1265:4 1266:3 1266:11 1267:19 1318:6 1336:19 1360:2	1372:25 1446:10 1455:2, 1455:7 10,000 1289:6 1506:14 10:13 1318:7 10:25 1318:6 10:26 1318:8 100 1275:1 1388:20 1511:7 1542:14 1543:4 1561:22 100,000 1373:4 1385:17 1000 1247:23 101,000 1277:12 102,000 1277:12 104 1246:23 109 1278:3 10-and-a-half 1278:6 10-minute 1317:22 11 1259:21 1360:22 1435:25 1541:24 1594:20 1100 1252:23 111 1251:17 1354:15 1354:17 1117 1249:13 112 1354:8 1354:21 1366:3 1366:10 1367:7 1425:14 1454:22 1454:24 1455:4, 1457:1 1458:7 1458:13 1458:19 1458:24 1460:20 1461:5 1469:16 1470:5 1470:24 1471:8 1471:12 1587:11 1588:9 112A 1458:15 112A.(11 1530:24 1535:7	112A.(3 1455:2 1455:7 1469:18 1470:11 1471:1 112B.(2 1587:2 112C 1486:9 1486:12 112C.(3 1472:4 1474:7 1483:17 1488:18 1491:8 1491:11 113B 1603:11 113C 1603:13 1144 1252:13 116 1367:8 1367:10 1190 1247:18 12 1259:23 1316:14 1391:11 1391:12 1392:2, 1404:9 1461:8 12/12/23 1614:20 12/31/2021 1614:18 12:02 1390:11 121 1247:22 123 1486:12 1239 1248:9 1251:22 125 1252:18 1398:7 126 1445:5 1486:10 1486:13 1264 1254:5 1269 1254:7 1274 1254:9 1280 1254:11 1285 1254:13 1288 1254:15 1292 1254:17 1299 1254:19 12-and-a-half 1278:5 13 1259:24 13.1 1289:16 130,000 1415:24 1554:14 1565:16 1311 1254:19 1319 1254:21 1326 1254:22 1335 1254:24 1338 1258:6 1258:7, 1258:9
---	---	--	---	---

Volume 5
9/24/2021

EIB Ozone Hearing

1258:11	1452 1256:14	1992 1292:15	1259:13	1254:23
1258:12	1460 1256:14	1st 1359:6	20.2.50.117.B(4	1255:4
1339 1254:24	1464 1256:15	1359:6	1259:16	1260:13
1341 1255:5	1467 1256:17	1427:22	20.2.50.118....	1299:6
1344 1255:5	1478 1256:17	1427:25	1259:17	1300:24
1345 1255:6	1479 1256:18	1428:13	20.2.50.119.B(4	1300:25
1346 1255:6	1485 1256:20	1430:4	1259:17	1305:17
1349 1255:7	1494 1256:20	1437:13	20.2.50.122.B(3	1314:11
1353 1255:9	1495 1256:21	1440:3	1258:22	1319:2
1365 1255:9	15 1260:6		1261:11	1335:15
1368 1255:10	1391:7	2	20.2.50.122.B(4	1341:19
1375 1255:10	1452:20		1258:22	1351:21
1376 1255:11	1453:22	2 1248:16	1261:12	1355:13
1393 1255:14	1454:3	1258:7	20.2.50.122.B(6	1453:24
1397 1255:16	1454:13	1258:17	1259:17	1614:18
14 1260:4	1465:2	1258:18	20.2.50.122.C(1	21-27 1262:4
1557:12	1571:11	1258:22	1258:22	1390:16
1557:13	1571:12	1259:16	1261:12	1552:12
1571:9	1508 1247:12	1261:11	20.2.50.122.D(5	21-27(R 1246:3
1403 1255:18	1516 1256:23	1298:14	1261:12	2131 1248:20
1405 1250:19	1530 1256:23	1357:18	20.2.50.123.B(8	216 1252:23
1255:20	1541 1256:24	1363:4	1259:18	216-1430
1409 1255:22	1548 1256:24	2:34 1465:7	1259:18	1252:19
1412 1255:24	1554 1257:5	2:50 1465:6	20.2.50.2	2168 1251:23
1415 1256:5	1555 1249:4	2:51 1465:8	1520:16	21712 1261:6
1418 1255:11	1558 1257:7	20 1260:12	20.2.50.7	22 1260:14
1422 1255:12	1562 1257:9	1265:5, 1291:5	1258:22	1352:19
1424 1256:7	1564 1257:11	1373:1	1261:11	1415:17
1434 1256:9	1568 1257:13	1374:13	20.2.7 1523:8	1418:4
1442 1256:9	1572 1257:15	20.2.113.B(3	1529:12	22,000 1565:17
1443 1256:10	1574 1256:25	1258:16	1548:20	222 1252:18
1449 1256:12	1582 1257:17	20.2.38.7E	1551:6	229-1421
1451 1258:15	1588 1257:18	1338:19	1594:15	1251:12
1258:18	1595 1257:19	20.2.50 1246:4	1595:1	23 1255:8
1258:20	16 1260:7	20.2.50.111	20.2.7.110	1256:6, 1256:8
1259:4, 1259:6	1445:3, 1448:9	1354:5	1493:8	1256:11
1259:9	1452:21	20.2.50.112	20.2.7.110A.(1	1256:13
1259:11	1454:9, 1459:1	1259:15	1550:9	1256:16
1259:14	1600 1257:20	1355:18	20.7.7 1493:8	1256:19
1259:19	1601 1252:5	1578:17	2008 1259:22	1256:22
1259:20	165 1561:22	20.2.50.112.B(2	201 1250:14	1257:16
1259:21	16th 1252:23	1259:8	2011 1398:6	1260:16
1259:23	1429:13	20.2.50.112A	2014 1260:15	1260:23
1259:24	1436:3	1541:24	2016 1260:23	1295:6, 1313:8
1260:4, 1260:6	1436:11	20.2.50.113.B(2	2018 1271:9	1353:2, 1353:9
1260:7, 1260:8	1436:17	1258:16	2019 1569:13	1354:1, 1424:2
1260:9	1450:9	20.2.50.113.B(9	2020 1533:16	1434:19
1260:10	1450:11	1259:15	1593:25	1449:2
1260:12	1450:13	20.2.50.113.C(1	2021 1246:13	1452:11
1260:13	1456:7	1258:19	1311:18	1458:10
1260:14	1469:14	20.2.50.113.C(2	1476:22	1458:14
1260:16	1472:6	1259:5	2022 1371:16	1458:21
1260:18	1576:25	20.2.50.113.C(3	2023 1359:7	1458:25
1260:19	1578:3	1259:10	1427:22	1460:25
1260:20	1578:11	20.2.50.114.B(5	1437:13	1467:2, 1468:9
1260:21	1578:13	1259:16	1437:15	1472:6, 1485:9
1260:24	17 1260:8	20.2.50.115.B(3	1440:3	1516:2
1261:4, 1261:5	18 1260:9	1259:16	2030 1282:22	1574:11
1261:6, 1261:7	19 1260:10	20.2.50.115.B(4	21 1246:21	1582:2
1261:9	1955 1281:7	1259:5	1254:18	1602:16
1261:10	1991 1261:6	20.2.50.116....	1254:20	1602:24

Volume 5
9/24/2021

EIB Ozone Hearing

1603:4 2300 1251:17 2307 1251:5 24 1260:18 1353:9, 1354:1 1355:12 1603:1, 1603:5 245 1248:5 24th 1246:12 25 1260:19 1295:6, 1313:8 1406:14 1406:24 1417:10 1569:1 250,000 1267:21 1267:22 25287 1249:20 1250:5 25947139789 1315:25 1316:10 26 1260:20 1397:19 26,000 1265:21 27 1260:21 1355:13 277-2146 1249:14 28 1260:24 1274:23 1366:8 28th 1312:19 1312:21 29 1261:4 29th 1312:16 2nd 1437:15	1401:25 1446:23 1452:22 1453:21 1456:13 301 1250:13 303 1249:5 1250:6 1250:11 1252:7 1252:14 1252:24 31 1261:6 3150 1246:22 32 1261:7 1282:22 1353:8 1353:17 1355:12 1366:8 3208 1315:24 325 1251:5 33 1261:9 1277:18 1402:3 3300 1252:13 34 1261:10 1451:10 1451:18 1451:21 1451:22 343-2782 1248:21 35 1267:13 1451:13 1468:8 350 1248:13 37 1415:17 3798 1250:9 38 1261:4	470-8215 1247:24 472-7800 1251:18 479 1315:22 479-3208 1316:5 480 1248:6 490-4054 1247:13	6 6 1259:9 1400:21 1458:17 6:05 1605:14 6:09 1605:15 6:21 1613:21 6:30 1612:19 60 1265:3 629-0732 1248:17 63 1272:8 1569:4 650 1315:22 1315:23 1316:5 660-0108 1249:21 660-4305 1262:21 694-6609 1253:6 6th 1455:7 1455:15 1456:2	8 8 1250:10 1259:14 1437:5, 1440:3 8)(b 1358:24 8.7 1289:13 1289:15 80 1388:19 1445:2 80033 1250:10 80202 1252:6 1252:14 1252:24 80225-0287 1249:20 1250:5 80304 1249:4 806-1202 1246:24 819-9058 1250:21 827-2985 1247:19 84 1394:3 1410:19 848-1800 1251:24 85 1265:22 85024 1248:5 858 1253:6 86 1290:6 1290:9 1290:20 1291:1 87102 1247:23 87103-2168 1251:23 87106 1249:13 87110 1246:23 87501 1248:9 1248:17 1250:14 1252:19 87504-1508 1247:12 87504-2307 1251:6 87505 1247:18 1250:20 88001 1248:20
3	4	5	7	9
3 1252:21 1258:9 1258:20 1260:22 1261:12 1298:14 1329:13 1330:13 1330:22 1353:9 1353:25 1358:7 1363:10 1461:8 1516:14 1569:14 30 1261:5 1278:8 1355:12 1372:9 1397:19	4 1258:11 1258:22 1259:4 1259:16 1261:12 1435:24 4:43 1552:7 40 1446:23 400 1445:4 1569:7 407-4455 1252:24 409 1248:16 1265:20 40th 1248:4 44 1435:6 442-0610 1249:5 454-2514 1252:7	5 1246:18 1250:20 1258:12 1259:6, 1338:7 1435:24 5,500 1394:19 5:00 1390:19 1551:18 1551:20 1552:6, 1552:8 1552:11 50 1345:10 1355:22 1360:3 1360:25 1366:11 1472:23 1473:19 1477:23 1490:3 1507:19 1586:13 50,000 1372:9 50.112 1418:23 501-5763 1250:11 505 1246:24 1247:13 1247:19 1247:24 1248:10 1248:17 1249:14 1250:15 1250:21 1251:6 1251:24 1252:19 1262:21 505-3900 1248:6 5080 1248:4 51 1398:7 512 1251:18 55 1394:19 56 1261:6 572-6500 1252:14 575 1248:21	6 1259:11 1259:17 1353:9 1353:25 1366:1 7:00 1296:2 1612:19 70 1394:14 1396:2 70s 1265:8 1289:19 713 1251:12 72 1345:9 1542:5, 1544:9 1545:17 720 1249:21 73 1393:11 74 1542:5 1544:10 74-2-5.B.(1 1400:22 74-2-7 1599:6 74-2-7.C 1598:21 77002 1251:11 78 1445:2 78701 1251:18 79 1542:5 1544:10 7th 1311:18	9 1259:19 1274:25 1352:3 1352:14 1360:9 1418:23 9:00 1246:15

Volume 5
9/24/2021

EIB Ozone Hearing

1295:25 1390:19 90 1271:15 1272:6 1389:18 900 1252:6 910 1251:11 92123-5398 1253:6 9330 1253:5 95 1517:8 1517:11 1518:10 1520:12 1520:20 1522:9 1531:12 1532:3 1532:23 1535:18 1536:12 1542:8 1542:13 1543:3, 1543:9 1544:12 1547:13 969-2808 1250:6 982-3873 1251:6 982-9523 1248:10 988-9126 1250:15 99 1283:22 99.89 1272:2				
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