

STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 21-27(R)

IN THE MATTER OF PROPOSED NEW REGULATION,
20.2.50 NMAC - Oil and Gas Sector -
Ozone Precursor Pollutants

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 24th day of
September, 2021, this matter came on for hearing before
FELICIA ORTH, Hearing Officer, virtually through Cisco
Webex Meetings video conferencing, at the hour of 9:00
a.m.

Volume 5

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E X H I B I T S

ADMITTED

NOTE: No exhibits are attached physically to this transcript. They can be found online at www.env.nm.gov/opf/docketed-matters/

"COMMERCIAL DISPOSAL GROUP":

CDG 1. Redline Showing Recommended Modification to Proposed Regulation 1338

CDG 2. Typical Produced Water Management Unit Design - Attachment B to Direct Testimony of Il Kim 1338

CDG 3. Typical Disposal Well Operation - Attachment C to Direct Testimony of Il Kim 1338

CDG 4. Streams with High Moisture Content - Attachment D to Direct Testimony of Il Kim 1338

CDG 5. Cost Estimate of the Economic Impacts - Attachment E to Direct Testimony of Il Kim 1338

GAS COMPRESSOR ASSOCIATION:

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

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

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

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ADMITTED

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20.2.50.115.B(4) and 20.2.50.113.C(2) NMAC

GCA 5. The Gas Compressor Association's Proposed 1451
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20.2.50.112.B(2) NMAC

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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)
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GCA 9. Advance Written Testimony of Vic Sheldon 1451

GCA 10. Resume of Vic Sheldon 1451

GCA 11. Technical Support Documentation for the 1451
Cross-State Air Pollution Rule for the 2008
Ozone NAAQS Docket ID No. EPA-HQ-OAR-2015-0500

GCA 12. Advance Written Testimony of John Dutton 1451

GCA 13. Resume of John Dutton 1451

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GCA 32. Advance Written Rebuttal Testimony of Mark Davis 1451

GCA 33. Resume of Mark Davis 1451

GCA 34. The Gas Compressor Association's Proposed Amendments to the following proposed regulations set forth in the Proposed Rule: 1451
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

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.

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

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

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.

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.

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

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.

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,

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

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,

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

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.

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

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

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

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

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 --

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,

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

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

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

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

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?

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

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

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.

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

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

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

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.

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

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

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

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.

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.

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.

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

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

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

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,

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

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

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

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

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

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

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?

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?

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

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,

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.

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 --

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

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.

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 --

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?

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.

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DOUG N. BLEWITT

(Relating to Topic Order 21)

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

DIRECT EXAMINATION

BY MR. ROSE:

Q. So, Mr. Blewitt, did you hear Mr. Nichols'
testimony on the WildEarth Guardians' proposed changes
to the definition of PTE?

A. I did not hear it yesterday. I heard his
comments today, and I have read his position.

Q. And do you have any response to those comments
or the proposal?

A. Yes, I do.

Q. And could you go ahead and give them, please.

A. Yes.

The one thing I -- I think a good place to
start here is what is the definition of potential to
emit. And it's the maximum capacity of a stationary
source to emit under operational design. And I think
this is where the issue becomes problematic for oil and
gas, because oil and gas is a very different emission
source than any other in the regulated community.

It is -- when you drill a well, you have some
belief that it's going to be a producing well, but you

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.

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

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

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

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

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

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

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.

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

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?

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

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?

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?

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.

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

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,

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.

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.

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

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.

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?

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.

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

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.

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.

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

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.

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

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

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 --

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

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.

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

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

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 --

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

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.

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.

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

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

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.

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

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

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

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.

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

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,

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.

1 CROSS-EXAMINATION

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.

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?

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

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.

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

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.

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.

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

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.

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.

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

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

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.

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.

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.

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

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.

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

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

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.

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

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.

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

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.

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

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

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.

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

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

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

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

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

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

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?

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.

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

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.

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.

1 MS. LESLEY: I would like to thank the Board
2 for allowing this time for public comments.

3 My name is Marlys 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.

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

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.

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.

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

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.

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

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

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.

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

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

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,

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

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.

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

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.

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

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

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

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

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

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.

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.

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

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

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.

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?

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

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.

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.

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

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

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

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.

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.

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

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?

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

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?

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 --

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.

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.

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.

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DANNY HOLDERMAN

(Relating to Topic Order 23)

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

EXAMINATION

BY THE BOARD:

HEARING OFFICER ORTH: I'll start with you,
Madam Chair.

CHAIR SUINA: Thank you, Madam Hearing
Officer.

And I'm glad to hear there's been some
progress on our efficiency, and I just encourage that
the stakeholders continue to work with NMED and the
others -- various stakeholders to address the concerns.
So I appreciate that. Thank you.

No --

HEARING OFFICER ORTH: Thank you.

CHAIR SUINA: No questions at this time.

HEARING OFFICER ORTH: All right. Thank you.

Vice-Chair Trujillo Davis?

VICE-CHAIR TRUJILLO DAVIS: I don't have any
questions either. Thank you.

HEARING OFFICER ORTH: Thank you.

Member Cates?

MEMBER CATES: No questions here. Thank you.

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.

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.

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?

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

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,

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

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

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

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,

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.

1 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.

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.

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

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.

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

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

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.

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LORI MARQUEZ

(Relating to Topic Order 23)

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

HEARING OFFICER ORTH: Go ahead,
Mr. Colclasure.

MR. COLCLASURE: Thank you.

DIRECT EXAMINATION

BY MR. COLCLASURE:

Q. Ms. Marquez, can you tell the Board your
employer and your position?

A. Yes. I'm a senior environmental consultant
with Barr Engineering.

Q. And what are your duties with Barr?

A. I manage air permitting and compliance
projects for a variety of clients, primarily oil and gas
clients, across multiple states.

Q. Have you prepared written direct and rebuttal
testimony within this proceeding?

A. Yes. I submitted direct testimony regarding
equipment monitoring tags and the costs and benefits of
the Department's initial proposal for EMT tags. I also
addressed the missions profiles for saltwater disposal
wells and the differences between SWD wells and upstream
operations. And I submitted rebuttal testimony in

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.

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

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

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.

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.

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?

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

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.

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?

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.

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.

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?

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 --

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

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 0 -- 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.

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

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

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.

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

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.

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

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.

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

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

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

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

CROSS-EXAMINATION

BY MS. KATZ:

Q. Hello, Ms. Cooper.

I just have a couple questions.

So do you -- you don't see the word "audit" in the language regarding the annual compliance certification; is that correct?

A. That is correct.

Q. Okay. Thank you.

And did the Commercial Disposal Group -- have they prepared any suggested revisions to those provisions that would address your concerns you've outlined, or did their counsel contact NMED's counsel to discuss what the intent of that provision was?

A. I think I would like to defer to counsel for the counsel question.

Q. Okay. I guess we should say --

(Simultaneous discussion.)

Q. -- do you know if?

A. I -- I'm -- could -- can Casey -- is Casey able to respond -- Ms. Shpall able to respond to the legal counsel question?

Q. You can just say whether you know if -- or not.

A. Okay. I do not know that NM -- we proposed

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 --

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

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?

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

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 documentating?

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

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

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

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.

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

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

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.

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

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.

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

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

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

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

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.

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

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

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.

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JEREMY NICHOLS

(Relating to Topic Order 23)

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

DIRECT EXAMINATION

BY MR. NYKIEL:

Q. Mr. Nichols, good afternoon.

You've testified to your experience already,
and you have adopted your direct testimony that you
submitted as your testimony today.

And so we have two proposals to discuss in
this topic. And our relevant exhibits for the Board
would be Exhibit -- WildEarth Guardians Exhibit 1, which
is our red-line, and then WildEarth Guardians Exhibit 3,
which is Mr. Nichols' direct technical testimony
explaining those -- the last two of our proposals.

So to begin with, Mr. Nichols, would you
briefly just summarize what our second proposal around
permit denial does and just summarize that for the
Board?

A. Yes. And thank you.

And good afternoon, Madam Hearing Officer,
Madam Chair, Members of the Board.

And just so I'm clear, you want me to speak to
the -- our proposal -- proposed revision or red-line to

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

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

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

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

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

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.

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

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

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

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.

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.

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

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,

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

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

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

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

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.

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

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

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

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

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

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 --

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

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

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,

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

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?

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

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.

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

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

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

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.

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

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

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

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

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.

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?

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

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

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?

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.

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

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

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.

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.

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

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?

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

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

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

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

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

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

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

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

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 --

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

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

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?

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?

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

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?

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

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

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 --

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

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

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 bird'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

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.

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

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

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

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

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

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

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

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

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.

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.

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

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.

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.

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.

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.)

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

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

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

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

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.

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

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.

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

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.

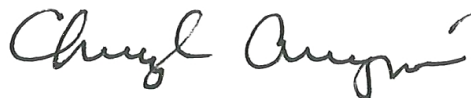
18 MR. BUTZIER: Correct.

19 HEARING OFFICER ORTH: Thank you, all, very
20 much.

21 (Proceedings adjourned at 6:21 p.m.)
22
23
24
25

1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
4
5

6 I, CHERYL ARREGUIN, the officer before whom the
7 foregoing proceedings was taken, do hereby certify that
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9 shorthand; that said transcript is a true record of the
10 proceedings; that I am neither attorney nor counsel for,
11 nor related to or employed by any of the parties to the
12 action in which this proceeding is taken, and that I am
13 not a relative or employee of any attorney or counsel
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