

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 1st day of
October, 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 10

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1 HEARING OFFICER ORTH: Let's prepare to begin,
2 please.

3 Good morning.

4 My name is Felicia Orth, the Hearing Officer
5 appointed in EIB 21-27. This is a rulemaking before the
6 Environmental Improvement Board on ozone precursor air
7 pollutants.

8 We are on our final day of hearing, and we
9 have come to the 9:00 a.m. public comment session.

10 Those folks who reached out to the Board
11 administrator and who I will call on right now are James
12 Crawford, Douglas Black and Caren Cowan.

13 If you're on the platform and did not reach
14 out to the administrator, that's fine. Please reach out
15 through chat, which is enabled for everyone, and I'd be
16 happy to accept your comment. If you have any trouble
17 with the chat function, please reach out to the
18 administrator, Pam Jones, at (505) 660-4305.

19 Public comment is taken under oath pursuant to
20 the Board rules, is taken by audio, not video, and is
21 limited to five minutes.

22 Let me start with Mr. Crawford.

23 Mr. Crawford, I've unmuted you.

24 Can you hear me?

25 MR. CRAWFORD: Yes, I can.

1 HEARING OFFICER ORTH: Oh, gosh. It's hard to
2 hear you.

3 Can you -- can you speak louder?

4 MR. CRAWFORD: (Unintelligible and/or
5 inaudible).

6 HEARING OFFICER ORTH: I'm sorry,
7 Mr. Crawford. We can't make out what you're saying.

8 MR. CRAWFORD: How about now?

9 HEARING OFFICER ORTH: Oh, that's better.
10 That's better.

11 MR. CRAWFORD: Okay. How's that?

12 HEARING OFFICER ORTH: Oh, that's the best.
13 Thank you.

14 MR. CRAWFORD: Okay. Good.

15 HEARING OFFICER ORTH: All right. Would you
16 spell your name for the transcript, please.

17 MR. CRAWFORD: Yes. James, J-A-M-E-S,
18 Crawford, C-R-A-W-F-O-R-D.

19 HEARING OFFICER ORTH: Thank you.

20 If you raise your right hand.

21 Do you swear or affirm to tell the truth?

22 MR. CRAWFORD: I do.

23 HEARING OFFICER ORTH: Thank you.

24

25

1 JAMES CRAWFORD

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. CRAWFORD: Okay. Thank you, Madam Hearing
8 Officer.

9 I am opposed to passing and implementing this
10 new rule. This is an extreme exam -- extreme example of
11 bureaucratic overreach with huge economic consequences
12 to the state, to our schools, to our industry, and most
13 of all to us individual citizens. It has little or no
14 positive benefit.

15 This entire administration has been infected
16 with the brain-eating green virus originating out of
17 California. The ability to reason realistically and
18 practically seems to have been lost. Any science not
19 conforming to the green gospel is rejected out of hand
20 without consideration of weighing of the merits.

21 This is bureaucratic piling on. The methane
22 rule was already passed in May. Do we wait to see what
23 the effect will have? No. We immediately come up with
24 this new VOC bill to burden the oil and gas industry,
25 which will contribute to the ultimate goal of

1 eliminating oil and gas.

2 The chokehold on oil and gas will result in
3 nearly a billion dollar reduction in funding for schools
4 and universities. Every percent lost of production
5 results in millions of revenue losses for even marginal
6 wells which are no longer exempt. Very important.

7 Thousands of high-paying jobs will be lost due
8 to the existing rules and restrictions. Gas
9 availability in San Juan Basin has been declining and
10 forcing company consolidations and personnel layoffs.
11 Employees have had to find other jobs and move out of
12 state. My own son-in-law just had to move to Colorado
13 to keep his job.

14 These added rules will only make things worse.
15 The out-of-pocket costs to industry from this rule is
16 staggering, several billion dollars in the first year
17 and a billion -- about a billion per year after that.
18 It's estimated that about 40 percent of our oil wells
19 and 90 percent of our gas wells will become uneconomical
20 with corresponding 13 and 23 percent decline in
21 production.

22 If it were not for the brain-eating green
23 virus, you would all probably know that this rule will
24 have no significant effect on climate or even air
25 quality. The EIB already has files containing pages and

1 pages of scientific testimony to that effect from
2 previous cap and trade hearings.

3 I live in Valencia County, and it's a mystery
4 why Valencia County is singled out in this rule. You'd
5 be hard pressed to find oil and gas wells in Valencia
6 County. Our pollution is from the brown cloud drifting
7 down the river from Bernalillo County, which is excluded
8 from the rule. Choking off oil and gas production in
9 the Permian and San Juan basins won't have any effect on
10 air quality in Valencia County.

11 Besides the dollar cost, declining production
12 will cause severe problems with availability and
13 reliability of electricity. Transition to 100 percent
14 renewables is not possible or practical. PNM has
15 already warned us that we will be facing brownouts
16 because of the lack of backup fossil fuel power. Even
17 California has found that gas plants are the only way to
18 keep the lights on.

19 We need to keep our oil and gas industry going
20 and healthy. This rule needs to be tabled permanently.

21 Thank you for letting me have my say.

22 HEARING OFFICER ORTH: Thank you,
23 Mr. Crawford.

24 We'll move now to Bruce Black.

25 Mr. Black, I've unmuted you.

1 MR. BLACK: Yes, sir. Yes, ma'am. Excuse me.

2 HEARING OFFICER ORTH: Okay. Great. Your

3 voice is coming through nice and clear.

4 MR. BLACK: Good.

5 HEARING OFFICER ORTH: Would you spell your

6 name for the record, please.

7 MR. BLACK: Yes. B-L-A-C-K, like the color.

8 HEARING OFFICER ORTH: Thank you.

9 And raise your right hand.

10 Do you swear or affirm to tell the truth?

11 MR. BLACK: I do.

12 HEARING OFFICER ORTH: Thank you.

13 BRUCE BLACK

14 having been first duly sworn or affirmed, gave

15 public comment as follows:

16 PUBLIC COMMENT

17 HEARING OFFICER ORTH: I'll start your five

18 minutes now.

19 MR. BLACK: All right.

20 I previously worked for oil and gas for

21 several years as a lobbyist and also a litigator. I'm a

22 lawyer. I was a judge. I'm retired now.

23 But this bill -- or this regulation has a

24 chance to be a real opportunity for the state. Colorado

25 has implemented something similar, and it has proved to

1 be a real boon on several levels.

2 As of now New Mexico is a real disgrace to
3 climate change and also pollution. From space you can
4 see a large cloud of methane gas over the Four Corners
5 and to a lesser extent over the Permian Basin. This is
6 totally unnecessary. If we can cap and trap our
7 methane, we can do what Colorado did and produce
8 substantially more energy. This will result in several
9 positive facts.

10 To begin, produce cheaper energy because we
11 will be producing more from the same wells, we can
12 produce more taxes for the state, we can produce more
13 revenue for the energy producers. Colorado did this,
14 and it was a win/win/win. The environment benefits,
15 consumers benefit, state revenue increases, and energy
16 producers benefit from the captured methane.

17 Because New Mexico has many more small
18 producers than Colorado, we will likely need to
19 incentivize this move somehow with a tax rebate or tax
20 credit from the state to allow the initial investment,
21 which will be indeed substantial. Once it is made,
22 however, it will recoup in many cases within two or
23 three years and certainly recoup within five to 10, even
24 on the stripper wells that are common in San Juan
25 County.

1 I think this is an excellent regulation and
2 needs to be coupled with some type of a tax incentive
3 and capture method to capture the methane and use it
4 productively for our economy.

5 Thank you very much.

6 HEARING OFFICER ORTH: Thank you very much,
7 Judge.

8 I will turn now to Caren Cowan.

9 Ms. Cowan, I've unmuted you.

10 Can you hear me?

11 MS. COWAN: Thank you. Yes, ma'am.

12 Ms. Orth --

13 HEARING OFFICER ORTH: If you would spell your
14 name -- hold on. Spell your name for the transcript,
15 please.

16 MS. COWAN: My name is Caren, C-A-R-E-N,
17 Cowan, C-O-W-A-N.

18 I have worked in the --

19 HEARING OFFICER ORTH: Thank you.

20 Raise -- one second. Raise your right hand.

21 Do you swear or affirm to tell the truth?

22 MS. COWAN: Yes, ma'am.

23 HEARING OFFICER ORTH: Thank you.

24

25

1 CAREN COWAN

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. COWAN: Thank you.

8 I have worked in New Mexico in the
9 agricultural industry for 35 years now, or going on it.
10 And I find this regulation to be not a good one and
11 be -- and will end up being very harmful for the State
12 of New Mexico and its citizens.

13 In doing some research the other day, I found
14 that in 2020 33.5 percent of the state's revenue came
15 from the oil and gas industry. I was shocked to find
16 that 42.7 percent of the state's revenue comes from the
17 federal government. Agriculture puts in another 12, and
18 all of the other industries make up that final
19 12 percent. So we must be cautious with those things
20 that can -- that can provide us the things that our
21 people -- that our citizens need.

22 Understanding that the oil and gas industry
23 must be sensitive to the environment, and they are
24 working hard to do that every day, but the part of our
25 budget is irreplaceable that -- that the oil and gas

1 industry puts into -- to us today. So I think it
2 behooves us to find ways to work with them and make them
3 more successful rather than less.

4 I'm also concerned about the produced water
5 and the recycling from oil and -- oil and gas projects.
6 Water has to be recycled so that we can keep our
7 freshwater. We all know that water in New Mexico is a
8 precious commodity. The old adage, you know, whiskey's
9 for drinking and water's for fighting, and that's kind
10 of where we are. We've had to fight for every bit of
11 water we have and keep it as clean as possible.

12 I'm also concerned about all of the
13 requirements -- additional requirements -- I think there
14 are 35 -- being placed on the oil and gas industry to
15 try to meet.

16 We did a survey, it's probably been 10 years
17 ago, but at that point in time agricultural was
18 supposed -- had 31 different agencies overseeing them.
19 It is impossible for anybody to keep up with all of
20 these regulations.

21 And for these reasons that I've mentioned, we
22 respectfully hope that this regulation will be set
23 aside.

24 Thank you.

25 HEARING OFFICER ORTH: Thank you, Ms. Cowan.

1 I don't have anyone else requesting an
2 opportunity to comment this morning. We have two more
3 public comment opportunities, at 1:00 p.m. and at
4 5:00 p.m., and of course, public comment may be
5 submitted in writing to the Board administrator, Pam
6 Jones, through -- through the end of the day.

7 Let's go back to the technical case.

8 Oh, wait. Sorry. I am seeing something from
9 Samantha Kao.

10 All right. Ms. -- if I'm mispronouncing this,
11 I'm sorry. Ms. Kao, can you hear me?

12 MS. KAO: Yes, I can.

13 Can you hear me?

14 HEARING OFFICER ORTH: Yes. It's coming
15 through clearly.

16 Would you spell your name for the transcript,
17 please.

18 MS. KAO: Sure. My name is Samantha, spelled
19 S-A-M-A-N-T-H-A, last name is Kao, spelled K-A-O.

20 And I am --

21 HEARING OFFICER ORTH: Hold on.

22 Would you raise your right hand.

23 Do you swear or affirm to tell the truth?

24 MS. KAO: I do.

25

1 SAMANTHA KAO

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. KAO: Thank you.

8 I am reading in a comment on behalf of
9 Representative Patricia Roybal Caballero of House
10 District 13.

11 The community within my district has a large
12 Hispanic population who have a high rate of pediatric
13 asthma. And when my son was born, he was born with
14 respiratory ailments that led him to be hospitalized in
15 the neonatal ICU for 10 days. His respiratory issues
16 have continued into adulthood where he continues to
17 suffer from asthma. I, too, grew up in an area where
18 the number -- where the high concentrations of air
19 pollutants caused me to develop asthma, as well.

20 When the COVID pandemic started, my district
21 had the highest number of confirmed COVID cases. I have
22 been and continue to be a strong advocate for
23 legislation and rules in our state to convert our school
24 buses from diesel to electric in order to cut down on
25 children's inhalation of diesel fumes. Our kids in our

1 community should not be exposed to pollutants that can
2 affect their health and livelihoods. And the State of
3 New Mexico deserves thoughtful, effective rules that
4 protect our air quality.

5 And I hope you'll consider this going forward
6 in adopting more stringent ozone regulations that have
7 been recommended.

8 And thank you for the opportunity to share.

9 Thank you.

10 HEARING OFFICER ORTH: Thank you very much,
11 Ms. Kao.

12 All right. Now I don't have anyone else
13 seeking to offer public comment.

14 So let's go back to the technical case.

15 Ms. Paranhos or Mr. Hiser, does it make sense
16 to start with Mr. Alexander?

17 Ms. Paranhos?

18 Let me see if she's on. I think she was on.

19 Yeah, she's on.

20 Ms. Paranhos?

21 They may be having some difficulty with audio
22 or video.

23 Oh, I see Mr. Alexander joining us on the
24 screen.

25 Good morning, Mr. Alexander.

1 MR. ALEXANDER: Morning.

2 How are you, Madam Hearing Officer?

3 HEARING OFFICER ORTH: I'm good.

4 Oh, there's Ms. Paranhos.

5 If you would, please, Mr. Alexander, spell
6 your name for the transcript.

7 MR. ALEXANDER: Tom Alexander, T-O-M
8 A-L-E-X-A-N-D-E-R.

9 HEARING OFFICER ORTH: And if you would raise
10 your right hand.

11 Do you swear or affirm to tell the truth?

12 MR. ALEXANDER: I do.

13 HEARING OFFICER ORTH: Thank you very much.

14 TOM ALEXANDER

15 (Relating to Topic Orders 27, 28, 33 and 37)
16 having been first duly sworn or affirmed, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. PARANHOS:

20 HEARING OFFICER ORTH: Ms. Paranhos?

21 MS. PARANHOS: Thank you, Madam Hearing
22 Officer.

23 If I could have screen sharing privileges, I'd
24 like to share our PowerPoint.

25 Perfect.

1 MR. ALEXANDER: Excuse me one minute,
2 Elizabeth. I'm going to put my assistant out of the
3 room, because I don't want her to start barking.

4 MS. PARANHOS: No worries.

5 And can everyone see my screen, hopefully?

6 MR. ALEXANDER: I wasn't expecting to be first
7 up. So all right. Good.

8 MS. PARANHOS: Thanks.

9 Q. Can you see my PowerPoint now or your
10 PowerPoint, Tom?

11 A. I can.

12 Q. Perfect. Okay.

13 Mr. Alexander, can you please tell the Board
14 where you are employed.

15 A. Currently I'm a part-time consultant for the
16 Environmental Defense Fund and have been for the past
17 five years.

18 Q. And what is your educational background?

19 A. Well, beginning in 1973, I earned a bachelor
20 of arts in psychology from Wake Forest University, and
21 did a little work after graduation at Duke University in
22 chemistry and genetics, and then in 1981 completed and
23 earned a master of science and a bachelor of science in
24 mining engineering from the South Dakota School of Mines
25 and Technology. And then I completed the course work

1 for the master of arts on environmental policy and
2 management at the University of Denver in 1994.

3 Q. And can you please provide an overview of your
4 work experience.

5 A. Well, I'll start with current and work
6 backwards. So I've been a consultant part-time to EDF
7 for five years working on underground gas storage,
8 flaring, venting, conventional and unconventional
9 regulations in some of the Eastern states. I also
10 helped EDF in their advocacy for the New Mexico Oil
11 Conservation Commission last January when the Commission
12 adopted its flaring and venting rule.

13 Also with EDF, helping in its contributions to
14 the Interstate Oil and Gas Compact Commission and the
15 Energy Resource, Research and Technology Committee. And
16 currently working on two American Petroleum Institute
17 workgroups with respect to risk management,
18 health/safety environment, security and training.

19 Prior to working with EDF, and that happened
20 after I retired from full-time work, I worked for
21 Southwestern Energy for 18 years, 1998 through March
22 of 2016. I began as a full-time consultant and then was
23 hired full-time as a staff production and completion
24 engineer and then named the team leader for the team.
25 Our team actually wound up discovering the Fayetteville

1 Shale. And during that time when we organized, I was
2 the completion manager for three-plus years on that
3 project.

4 Then I went to work for SWN's Canadian
5 subsidiary, SWN Resources Canada, in New Brunswick, for
6 a little over two years, 2010 through most of '12, as
7 the general manager, and after that, '12 through '16,
8 when I retired, I was the vice-president of
9 health/safety/environment for Southwestern Energy.

10 Prior to SWN, I worked for New Prospect
11 Company and Revere Corporation in Fort Smith, Arkansas;
12 Habersham Energy Company in Englewood, Colorado;
13 Southwest Operating Incorporated and Altair Energy
14 Corporation in Tyler, Texas. And then I began my oil
15 and gas career in '81 with Schlumberger Offshore
16 Services out of Houston, Texas.

17 And from 1975 to 1981, I served the United
18 States Air Force as a B-52H navigator and radar
19 navigator and retired as a captain.

20 Q. Thank you.

21 And is EDF Exhibit KK an accurate copy of your
22 CV?

23 A. Yes.

24 Q. And did you submit direct and rebuttal
25 testimony on behalf of EDF in this matter?

1 A. Yes, I did. Correct.

2 Q. Is EDF Exhibit UU an accurate version of your
3 direct testimony, and is EDF Exhibit WW an accurate
4 version of your rebuttal testimony?

5 A. Yes.

6 Q. And do you have any revisions to either of
7 those testimonies?

8 A. I do not.

9 Q. Thank you.

10 Madam Hearing Officer, at this point I would
11 move to admit Tom Alexander's exhibits and testimony.
12 And for the Board's and your consideration, his exhibits
13 and testimonies appear at EDF Exhibit -- Exhibits KK, V,
14 LL, MM, NN, OO, PP, CC, UU, WW and VV.

15 HEARING OFFICER ORTH: All right. Thank you.

16 Let me pause for a moment in the event anyone
17 has an objection other than the standing objection I
18 believe Mr. Rose is pursuing.

19 Anything else?

20 Not hearing anything else, they're admitted.

21 MS. PARANHOS: Thank you.

22 (Exhibits EDF KK, LL, MM, NN, OO, PP, UU, WW
23 and VV admitted into evidence.)

24 Q. (BY MS. PARANHOS) Tom, could you please
25 summarize the opinions you will provide -- or the

1 topics, rather, and the opinions that you will provide
2 today to the Board.

3 A. Yes. I will provide testimony on several
4 topics to include liquid unloading, leak detection and
5 repair, or LDAR, pneumatic controllers, and well
6 completions.

7 First, I support NMED's liquid unloading
8 provision, in particular the requirements that operators
9 use a specific method to avoid the need for manual
10 unloading.

11 Next, I would say I support EDF's proposal to
12 require operators inspect well sites located near
13 occupied places, such as homes and schools. My
14 experience implementing and working with an LDAR program
15 at Southwestern Energy underscores the reasonableness of
16 requiring operators to check for leaks and
17 malfunctioning equipment using an advanced leak
18 detection instrument such as OGI cameras.

19 In addition, I reviewed EDF's analysis for the
20 costs in reductions associated with this proposal and
21 find the proposal to be economically feasible and
22 reasonable.

23 With respect to pneumatic controllers, my
24 experience implementing an LDAR program at Southwestern
25 underscores how reasonable it is to require operators to

1 inspect gas-powered controllers with an OGI camera or
2 similar instrument. And I appreciate NMED's including
3 this requirement in their September draft.

4 Third, EDF's proposal revisions on the
5 pneumatic controller retrofit are sensible and cost
6 effective. Technology does exist today and has for a
7 while to retrofit gas-fired controllers with nonemitting
8 devices, as Dr. McCabe explained in prior testimony
9 earlier this week.

10 And finally, EDF has proposed a safe and
11 feasible economic requirement to eliminate venting
12 during the initial flowback stage of well completions
13 and recompletions. This rule is based on a Colorado
14 rule that took effect this May and for which the
15 Colorado operators are complying without any safety or
16 other issues.

17 Q. Thank you, Mr. Alexander.

18 If you could please describe your experience
19 with liquids unloading operations to the Board.

20 A. Sure.

21 Well, actually, that began in East Texas, when
22 I left Schlumberger and worked the East Texas Basin, was
23 when I first really learned a lot about a couple of
24 particular artificial lift means, one being plunger
25 lift, the other being beam pumps.

1 And during my tenure with Southwestern Energy,
2 I initially had observed a number of different ways that
3 pumpers unloaded liquids from gas wells. And I
4 pioneered the use of plunger lifts on Southwestern
5 Energy's wells in the Arkoma Basin operations. Now,
6 that occupies Western Arkansas and Eastern Oklahoma.
7 When I started to work there in '95, there was not a
8 single plunger lift in operation in Arkoma Basin, and
9 they operated probably 350, 400 wells for SWN and most
10 other operators, as well.

11 The typical method that was used in those days
12 to produce or unload liquids to routinely soap and blow
13 the wells to unload the fluid, which is very wasteful of
14 resource and labor intensive. We quickly turned that
15 around within a couple, three years, and installed
16 plunger lifts successfully on literally dozens and
17 dozens and dozens of wells, replacing the old method of
18 soap and blow.

19 Q. Thank you.

20 And have you reviewed the Department's liquids
21 unloading provisions?

22 A. Yes, I have.

23 Q. And could you please summarize your opinion of
24 the Department's liquids unloading provision?

25 A. Sure. NMED has proposed a leading

1 technologically feasible and economical provision to
2 reduce emissions during liquids unloading. It proposes
3 that operators use specific methods or technologies such
4 as plunger lift to avoid the need for manual unloading.
5 In my experience, all the methods that NMED lists in
6 17 -- 117B.(3) are technically feasible ways to avoid
7 the need to manually unload a well.

8 Manual unloading allows an operator to vent
9 natural gas to the atmosphere in order to clear the
10 wellbore fluids, as you all know, but it is very
11 wasteful, inefficient and completely unnecessary
12 practice.

13 Q. And in your opinion, will the Department's
14 liquids unloading proposal lead to emissions reductions?

15 A. Yes. And as I noted in my rebuttal testimony,
16 the use of artificial lift or other methods avoids the
17 need to manually unload and vent natural gas to the
18 atmosphere during liquids unloading. That will
19 significantly decrease emissions. And it was our
20 experience and my experience of over 25 years or so.

21 And a simple way to understand the efficiency,
22 for example, of plunger lift is to recognize the
23 mechanical advantage or efficiency to move fluids with a
24 solid surface, i.e., the top of the plunger, versus a
25 gas-to-liquid interface, which is very inefficient and

1 absolutely no comparison in efficiency.

2 If the gas-to-liquid ratio is sufficient in a
3 well for plunger lift to work -- or is not sufficient
4 for plunger lift, then perhaps a pumping unit's in
5 order. But anything -- anything to avoid manually
6 unloading is a -- is a routine way of producing a well.

7 Q. Thank you.

8 And did you hear Mr. Ryan's testimony
9 yesterday on this topic?

10 A. Yes, I did.

11 Q. And do you agree with Mr. Ryan that manual
12 unloading is the last resort?

13 A. You know, in general, I would say no, I do
14 not, but I really want us to be careful. When we hear
15 something like that, this is our last resort, I want to
16 be careful to distinguish that it cannot be the last
17 resort as a means of producing a well. That just simply
18 is not -- it's just not true.

19 Q. And do you agree that plunger lifts can lead
20 to more manual unloading?

21 A. No. You know, if you've -- if you've
22 adequately -- if you've properly characterized the well,
23 you understand its gas to liquid ratio, you understand
24 the reservoir pressure, and you don't have a mechanical
25 disaster downhole that is unrepairable, and then you do

1 the proper design on the plunger and the cycle and the
2 settings, and you have a pumper that knows how to
3 operate it, there's no way that that -- that
4 installation is going to cause you to manually unload
5 more. Quite the opposite. It will be a whole lot more
6 efficient.

7 Q. Thank you.

8 And do you agree that the Department should
9 move the listed methods, such as the use of artificial
10 lift, that operators must use to unload a well that are
11 currently in Section 117B.(3) to Section B.(1), which
12 would make those listed methods recommended best
13 management practices rather than required methods that
14 operators must use during liquids unloading operations?

15 A. You know, I just want to be clear. In
16 117B.(3), and I'm looking at it -- thank you, NMED, for
17 putting together the presentation from yesterday to get
18 us all on the same page about what we're talking about
19 here.

20 117.(3) -- or B.(3) lists the various methods.
21 What I would object to is just taking that text away and
22 saying let's just call those best management practices.
23 If you actually transfer the text of 117B.(3) and add it
24 to what's in 117B.(1), we're okay with that, but I would
25 not want that to just disappear and let's all -- let's

1 call all this a best management practice. I think that
2 would wind up giving manual unloading an unfair
3 advantage as a means of trying to produce a well.

4 Q. So just to be clear, Mr. Alexander, you do
5 support the language that NMED proposed in 117B.(3).

6 A. Absolutely.

7 Q. Thank you.

8 If we could move on to the next topic, which
9 is leak detection --

10 A. Well, just let me --

11 Q. Oh, absolutely.

12 A. Can you go back real quick?

13 So I just --

14 Q. Yes.

15 A. -- wanted to -- to reiterate some of the main
16 points on this issue of liquid unloading that I -- we
17 support the unloading proposal that NMED has in
18 particular with respect to the requirement to use
19 artificial lift in lieu of manually unloading. That's
20 just the wrong way to produce a well.

21 Artificial lift, particularly plunger lift,
22 is -- if applicable, is very, very cost effective, and
23 it has been for decades a mainstay of production
24 engineering toolkits. Manual unloading is inefficient,
25 it wastes a natural resource, it unnecessarily depletes

1 reservoir energy, and it's wasteful of manpower, i.e.,
2 the pumper having to stand around and wait for this well
3 to unload.

4 And use of artificial lift will in the vast
5 majority of cases increase production, lead to a higher
6 EUR, estimated ultimate recovery, and enhance the well
7 economics and reduce emissions.

8 That's been my experience over decades of
9 using these instruments.

10 Thanks. Let's go. Okay.

11 Q. Thank you.

12 If you could please describe to the Board your
13 experience with respect to leak detection and repair
14 requirements.

15 A. Okay. Well, when I was with Southwestern
16 Energy and after we discovered the Fayetteville Shale,
17 we had literally a multiple thousand well program that
18 we were involved with, and we wanted to develop a leak
19 detection program. So we sought to identify any and all
20 avenues where leakage would occur from the wellhead all
21 the way through any custody that we had of the gas.

22 And in so doing, we purchased six OGI cameras
23 and set up a protocol for identifying and fixing leaks
24 at all of our operated wells and installations, to
25 include not just Arkansas, but Pennsylvania and West

1 Virginia, as well. And it was very successful. Our
2 LDAR program helped us identify useful information and
3 trends that led to significant emission reductions.

4 Q. Thank you.

5 And what kinds of leaks and equipment
6 malfunctions did SWN's LDAR program identify?

7 A. Well, it was truly the whole value chain
8 starting with the wellhead. Lots of different types of
9 equipments, fittings, connections and so -- and
10 et cetera, and procedures were identified that led to
11 unnecessary leaks. And in particular in the pneumatic
12 controller field, we saw quite a few things that had to
13 do with leaking seals, washed out seats, stuck valves,
14 controller problems, spring issues, bad stem rods,
15 et cetera.

16 Conducting these inspections with an OGI
17 camera helped us identify when a particular procedure or
18 piece of equipment was not operating as intended, which
19 then allowed us to discover the reasons for it. And we
20 spent time trying to understand that. We wanted to be
21 proactive. And an operator should be proactive rather
22 than reactive in this regard.

23 We could then fix leaks, replace equipment and
24 optimize a particular procedure. That OGI LDAR program
25 helped us identify important trends so that we could

1 optimize our operations and reduce emissions through an
2 effective PM program.

3 Now, when you say something like you could
4 have a stuck valve, I mean, that's -- there's more to it
5 than that. There's a lot of reasons why a valve is
6 stuck, and you got to take the time and be proactive to
7 figure that out, and we did. It takes a commitment from
8 the operator. It's a cultural thing. But there's no
9 question it can be done and it will yield economic,
10 operational, safety and environmental benefits.

11 Q. Thank you.

12 And in your opinion, is -- are audio, visual,
13 olfactory inspections as effective as instrument-based
14 inspections?

15 A. No. No. They -- they certainly are not. AVO
16 is better than nothing. But our program, we, as I said,
17 used an OGI camera in a protocol to -- to measure what
18 was going on on a lease-by-lease or processing
19 facilities basis. Because by their very nature an AVO
20 inspection is up to the operator or the pumper to do
21 with -- do it with vigilance and as well as an
22 operator's ability to actually hear or see anything
23 that's going on.

24 And that -- there's no way to really document
25 or verify AVO inspections other than just to take one's

1 word for it and fill out a piece of paper, whereas
2 routine OGI inspections are verifiable, and the evidence
3 is physical and can be documented.

4 Q. Thank you.

5 And does your experience support the frequent
6 leak detection and repair inspections that EDF has
7 proposed?

8 A. Yes, it does. Our experience demonstrated
9 that frequent instrument-based inspections could help
10 reduce emissions, and in particular, as I've mentioned
11 before, identifying trends and issues with certain types
12 of equipment or procedures. Implementing quarterly or
13 monthly inspections at well sites near occupied places
14 will reduce emissions of natural gas at locations near
15 homes, workplaces and schools.

16 An extra measure of vigilance is prudent,
17 always prudent, and it's always crucial to attain and
18 maintain an operator's social license.

19 Q. Thank you.

20 And did you review EDF's estimate of the cost
21 effectiveness of the LDAR proximity proposal? And if
22 so, do you have an opinion regarding that analysis?

23 A. Yes, I did. I reviewed the analysis conducted
24 by Ms. Hull, and I think it's well done, and it
25 demonstrates that EDF's proposal is reasonable and cost

1 effective.

2 Q. Thank you.

3 That concludes the questions on LDAR.

4 A. So to kind of review there, if you can go back
5 one slide, please, Elizabeth.

6 So our program at Southwestern Energy did --
7 we did identify a variety of malfunctioning equipment
8 that helped us look at trends, optimize operations, and
9 we did reduce emissions.

10 We primarily used OGI cameras. It's an
11 investment, yes, but these instruments are much more
12 definitive and diagnostic than AVO. AVO can't be
13 documented except with a piece of paper. LDAR, on the
14 other hand, can when you're using OGI.

15 The technique is cost effective and it adds
16 value to social license to operate.

17 Next slide.

18 A couple more points.

19 I support NMED's LDAR requirements and EDF's
20 proximity proposal as both will lead to emissions
21 reductions and more efficient, cleaner operations. And
22 I think N -- I thank NMED for including that gas-powered
23 controllers in LDAR. At Southwestern we identified
24 these devices as one of the major types of equipment
25 that can malfunction.

1 Q. Terrific. Thank you.

2 And moving now to pneumatic controllers, could
3 you summarize briefly for the Board EDF's revisions to
4 the pneumatic controller retrofit provision as you
5 understand them.

6 A. Well, at a high level EDF has provided -- or
7 proposed to increase the number of gas-powered pneumatic
8 controllers that must be retrofit to zero bleed devices
9 and shorten the time frame in which operators must do
10 so. Their proposal is modeled on a rule recently
11 adopted by the Colorado Air Quality Control Commission,
12 which I reviewed in preparing my testimony.

13 In my opinion, EDF's proposal is economically
14 reasonable and practical. Gas-powered pneumatic
15 controllers do vent methane, as you know, and other
16 pollutants to the atmosphere by design. As NMED's
17 proposal demonstrates, technologies exist today to
18 operate pneumatics with zero methane.

19 EDF's proposal does not require the use of any
20 new types of technologies that could theoretically
21 increase costs, abnormally so, and rather we simply seek
22 to require operators to retrofit more devices in a more
23 timely manner than NMED has proposed. It's good policy,
24 we think, and will result in a decrease of emissions
25 from normally functioning pneumatic controllers, as well

1 as malfunctioning controllers.

2 So in -- in summary again, the proposal from
3 EDF is economically reasonable and practical. Zero
4 emitters are available. Our experience at Southwestern
5 Energy with over a 4,000 well program in Arkansas,
6 Pennsylvania and West Virginia, where we retrofitted and
7 outfitted with up-to-date equipment over 10 years ago.
8 There was more gas to sales, less to the air, and it's
9 the right thing to do.

10 Q. Thank you, Mr. Alexander.

11 If we could turn now to the next topic, which
12 is EDF's well completion proposal. Could you provide a
13 summary of our well completion proposal to the Board,
14 please.

15 A. Sure. EDF in conjunction with Oxy USA, Clean
16 Air Advocates, NAVA Education Fund and the Center for
17 Civic Policy propose to require operators to control
18 emissions during the initial flowback stage of a well.

19 Excuse me.

20 To comply with this, operators can use a
21 control device such as an enclosed combustion device.

22 Q. And is EDF's proposal based on a rule adopted
23 in another jurisdiction?

24 A. Yes, it is. It's based on or modeled on a
25 rule adopted by the Colorado Air Quality Control

1 Commission in 2020.

2 Q. Did the Colorado Air Quality Control
3 Commission conduct an analysis of the cost effectiveness
4 of its rule?

5 A. Yes. I reviewed that and their economic
6 impact analysis for the rule, and I agree that
7 controlling emissions during the initial flowback phase
8 is cost effective.

9 Q. Could you please provide a summary of that
10 analysis to the Board.

11 A. Yes. Sure. Key points. To estimate that,
12 Colorado assumed that operators required 10 to 15
13 500-barrel flowback vessels at a multi-well production
14 facility with 10 wells. They estimated the cost of each
15 new storage vessel to be 30,500, cost for used tanks to
16 be between 7,000 and 19,500. Colorado assumed a
17 one-time capital cost of 500 bucks for steel piping, to
18 install, operate and maintain that \$500. They assumed a
19 15-year lifetime for this equipment.

20 Colorado concluded that the annualized cost
21 for flowback tank could be about \$4,830. Assuming an
22 average of 12 tanks, this equates to an annualized cost
23 of 57,958 per well site.

24 Now, this is a worst case scenario estimate,
25 because it assumed an operator would use the 12 flowback

1 tanks only once at one well site. That would not
2 happen. Most likely operators would use the same
3 flowback tank at multiple wells for the lifetime of the
4 tanks. And they estimated a 15-year lifetime for
5 flowback tanks with which I agree.

6 I would also want to say that in -- in my
7 experience with Southwestern Energy and when I was the
8 completion manager -- I mean, we're talking about 10 or
9 15 wells here in their assumptions, which is fine. It's
10 a place to start. We were completing 400 to 500
11 horizontal wells a year with 10-plus frac stages each.
12 We had our own sets of equipment, and we understood the
13 costs. We had it together.

14 And this -- these numbers here are very, very
15 reasonable. And like I say, I -- I have derived my
16 analysis of this from the experience that I had as a
17 completion manager with Southwestern Energy on a major
18 large project.

19 Q. Thank you.

20 And did EDF prepare a cost effectiveness
21 analysis for its proposal? And if so, did you review
22 that? And what is your opinion of that analysis?

23 A. Yes. And using the cost estimates contained
24 in the Colorado EIA, Ms. Hull analyzed the cost
25 effectiveness of its initial flowback proposal using the

1 New Mexico-specific completion data. I've reviewed it.
2 I think it's cost effective, and in my opinion, EDF's
3 analysis demonstrates the cost effectiveness of its
4 proposal.

5 Q. Thank you.

6 A. So in -- in summary again, the proposal
7 requires -- ah. Sorry.

8 (Simultaneous discussion.)

9 Yeah. Requires emission control during the
10 initial flowback phase. The phase is not covered --

11 Is this the right slide, Elizabeth?

12 Q. Yes.

13 A. Yes. Yeah. It's not covered by the EPA
14 reduced emission completion rule, and the proposal --
15 our proposal is based on a Colorado Air Quality Control
16 Commission rule of 2020. It is cost effective and can
17 be done quite safely.

18 Q. Terrific.

19 And just for the Board's understanding,
20 Ms. Hull will be providing her summary of her analysis
21 of the EDF flowback proposal hopefully after
22 Mr. Alexander this morning.

23 If we could then turn to a few points on
24 surrebuttal, beginning with liquids unloading.

25 Mr. Alexander, you stated that the

1 Department's liquids unloading proposal, which requires
2 operators to use a specific method to unload a well,
3 will result in emissions reductions; is that correct?

4 A. Yes, it is.

5 Q. And will it also lead to gas savings?

6 A. Yes. No question about it, it will. The
7 interface of the fluid tells a story which I brought up
8 earlier about the efficiency of moving fluid. You know,
9 a solid face -- interface with fluid versus a gas
10 interface is always going to be more efficient than the
11 gas-to-fluid interface. It's basic physics.

12 And also, the use of well designed and
13 operated artificial lifts, such as a plunger lift, that
14 will keep the well producing at a higher and more
15 consistent rates, that fact isn't debatable. Manually
16 unloading a well again I would say is wasteful of the
17 resource. If you're using this as a routine way of
18 producing a well, it's wasteful of reservoir energy and
19 manpower.

20 And obviously, every well has its own
21 characteristics, but there are literally thousands of
22 examples in the Permian and worldwide where artificial
23 lift is a preferred method of keeping a well unloaded
24 and producing efficiently. And again in the end, a well
25 that is produced properly will have a higher estimated

1 ultimate recovery.

2 Q. Thank you.

3 And there has been some testimony submitted in
4 rebuttal -- written prefiled rebuttal testimony that
5 indicates that there are potential safety issues with
6 our flowback proposal.

7 Can you speak to that issue?

8 A. Yeah. I don't believe our proposal really
9 proposes or poses any safety concerns. It's based on a
10 rule adopted by the Colorado Air Quality Control
11 Commission, as I said earlier, last year. And the rule
12 has been in effect since May of this year. EDF has had
13 discussions with the Colorado AQCC regulators back in
14 August, and no operators reported any concerns or issues
15 with complying with that rule.

16 And in conversations with Oxy USA, EDF has
17 revised the language of their proposal. The current
18 proposal does not require the use of vapor type flowback
19 vessels as Colorado does. Rather our current proposal
20 simply requires that a control device be used to control
21 the flowback vessels operating as a closed vent system.

22 I believe that the operation is safe. Now, if
23 operators will design and install and properly operate
24 the pressure relief system, bond and ground all
25 equipment to prevent dangerous static buildup and

1 discharge, perhaps use a system of closed flares and
2 have an effective liquid vapor balancing system, this
3 operation is safe. It is being done now as we speak.
4 So I do believe that the system is safe. You've got to
5 do it right, but it is safe.

6 Q. Thank you.

7 And are you familiar with the New Mexico Oil
8 Conservation Division rule that requires control of
9 emissions during the initial flowback stage, quote, if
10 technically feasible under the applicable well
11 conditions, end quote?

12 A. Yes, I am.

13 Q. Do you believe that this rule addresses our
14 concerns regarding venting during the initial flowback
15 stage of a well completion?

16 A. No, I do not. The OCD rule only requires
17 control of emissions during the initial flowback
18 stage -- excuse me -- if technically feasible under the
19 applicable well conditions, but there's a big loophole
20 that gives operators too much latitude, I think. The
21 EDF Oxy proposal provides a very clear, in my opinion,
22 safe requirement controlling emissions during --
23 throughout flowback.

24 Note that the OCC rule requires capture or
25 control during the separation flowback stage also. Our

1 proposal applies during completions on and after
2 flowback begins.

3 However, given the OCC rule, the only gap
4 we're trying to fill here is respect to the initial
5 flowback stage, when neither EPA nor New Mexico OCC
6 require control.

7 Q. Thank you.

8 And you mentioned the EPA rule.

9 Does the EPA reduced emission completion
10 requirement that's in Quad 0a and Quad 0 adequately
11 address emissions during completions in particular
12 during the initial flowback stage?

13 A. No. EPA's REC rules for oil and gas wells do
14 not require operators to control emissions during the
15 initial flowback stage. Indeed in the Code of Federal
16 Regulations, they say any gas present in the initial
17 flowback stage is not subject to control under this
18 section. The REC rules also allow for venting during
19 the separation flowback stage.

20 So note that the EPA rules only apply to
21 hydraulically fractured wells, as well.

22 Q. Thank you, Mr. Alexander.

23 And then if we could turn to the subject of
24 low-producing wells and shut-ins.

25 In your direct testimony you noted that the

1 Department's rules will in some cases result in, quote,
2 measurable payouts.

3 Could you expand on this?

4 A. Of course. A number of their proposals
5 require an investment of some nature and quantity, and
6 so in many cases the amount of gas that winds up in the
7 sales line versus the atmosphere will be sufficient to
8 pay out the capital investment over a period of time.

9 Q. Thank you.

10 And you also noted in your direct testimony
11 that, quote, where payout is difficult to define or may
12 not occur, implementing practices that reduce emissions
13 is simply the right thing to do.

14 Could you also explain a little more what you
15 mean by that?

16 A. Yes. I will. And I think too often a
17 decision to do anything tends to be predicated solely on
18 a measurable economic return. The argument is that if
19 one can't measure a success with a discrete KPI or
20 payout or rate of return, then -- then don't do it. And
21 this appears to be the case in many of these
22 deliberations.

23 I would submit to you that there are many
24 things that we do in the oil and gas industry that don't
25 individually always have a payout in this classic sense,

1 as I said earlier. Indeed many times in the entire
2 scenario of drilling and completion, production and
3 abandonment of a well, the decisions are based on things
4 such as an operator's risk tolerance, their view of
5 their social license, or just plain old experience in a
6 given area.

7 So for example, there are a number of
8 variables in -- in the process of selecting a casing
9 program or cementing techniques that are going to be
10 used, logging programs, well prep and cutting and
11 completion. The list could go on and on, and we could
12 be here for hours talking about it.

13 And they all have very different costs, and
14 yet we make decisions about these variables and
15 frequently don't attach a number to them in terms of
16 payout, you know. So what do we do as operators? Well,
17 we assemble all the costs in a particular project or a
18 well and decide if the overall return is worth the risk.

19 And so it should be with a lot of these
20 measures designed to reduce emissions as much as is
21 practical. These measures are simply the right thing to
22 do in many cases. These measures are not overly
23 expensive, and if wells can't tolerate these modest
24 investments, then perhaps they are a plugging candidate.

25 Q. Thank you.

1 And are you aware that there has been
2 testimony during this hearing that the Department's
3 rules will cause operators to shut in certain older,
4 low-producing wells rather than pay compliance costs?

5 A. Yes, I am.

6 Q. And as a former oil and gas operator, do you
7 have an opinion related to this topic you would like to
8 share with the Board?

9 A. Yeah. Let me -- let me share three kind of
10 key ideas or key -- key pieces of what I think about
11 this.

12 First, you know, definition of strippers don't
13 change frequently, and they're not therefore generally
14 tied to current product prices for oil and gas. You
15 know, for example, today if I have a stripper well
16 that's defined as anything less than 10 BOPD and I'm --
17 I've got a well that's making eight, nine barrels a day
18 as a stripper, I'd love to have several of those when
19 I'm getting paid \$50 for a barrel of oil.

20 Point here is that to just jump out there in
21 defense of all strippers as they're currently defined
22 may or may not be really a valid argument. I'd be much
23 more inclined to argue a definition or a policy, if you
24 will, tied to current economics rather than just strict
25 production rates.

1 And claims that operators evaluate wells
2 individually always is not true as a blanket statement.
3 For example, if I operate 100 so-called stripper wells
4 that are located all over hell's half acre, then I might
5 very well examine them closely individually as to their
6 economics, because it -- you can have a really -- a
7 discrete cost associated with each of these wells that
8 are all over the county.

9 On the other hand, though, if I have 100 wells
10 and they're in a single field and very close together
11 geographically, I'm much less likely to evaluate a
12 single well. I will more likely treat the accumulation
13 wells as a single entity. It's frequently done that
14 way.

15 For example, case in point, recently an
16 operator in Western PA that operates 2,000-plus wells
17 that produce a grand total 238 barrels of oil a day,
18 easy math on that, that's five gallons of oil per day
19 per well. I will argue there is absolutely nothing that
20 can be done on any one well in that field that is
21 economic in the classic sense or in the sense being
22 argued, but as a whole they tend to keep operating them.

23 And finally, from a policy perspective, we've
24 got to, I think, keep -- quit trying to legislate into
25 perpetuity the existence of every well that makes a snip

1 of gas or a gallon of oil per day. If we do and
2 continue to do this, I guarantee you state by state will
3 find itself the proud owner of tens of thousands more
4 wells that are already -- than are already orphaned, and
5 the public will then have the opportunity to foot the
6 bill to plug them and restore the land.

7 As we all know, many operators or many states
8 today are already heavily burdened with thousands upon
9 thousands of wells that operators just walk away from.
10 This has to stop, and the avenues provided to operators
11 to do this sort of thing has to stop. If the wells that
12 are so valiantly being defended can't shoulder minimal
13 costs, then they should be plugged while the operators
14 and the well revenue is still viable.

15 The argument to keep these wells going on and
16 on and on is tired. It's been going on for decades.
17 Look where it has gotten us now.

18 MS. PARANHOS: Thank you so much,
19 Mr. Alexander.

20 And that concludes Mr. Alexander's testimony.
21 He is now available for cross-examination.

22 HEARING OFFICER ORTH: Thank you,
23 Ms. Paranhos.

24 Would you minimize the slide for just a
25 moment.

1 MS. PARANHOS: Absolutely. Unshare my screen
2 so you don't have to get my horse picture, if I can
3 figure out how to do that. That's a big caveat. Let me
4 see if I can figure out how to do that. That might take
5 me a little while. I haven't unshared it before.

6 HEARING OFFICER ORTH: If you are a party with
7 questions of Mr. Alexander, please turn on your camera.
8 I'll just look up here.

9 I'm not seeing -- oh, I see Mr. Hiser.

10 Mr. Hiser, do you have questions?

11 MR. HISER: I do, just a few.

12 CROSS-EXAMINATION

13 BY MR. HISER:

14 Q. Good morning, Mr. -- Mr. Alexander.

15 My name is Eric Hiser. I'm the attorney
16 representing the New Mexico Oil and Gas Association in
17 this.

18 Appreciate the breadth of your testimony this
19 morning.

20 I'd like to start with your discussion on
21 liquid unloading.

22 And I think you talked about the positive
23 experience that you had with plunger lifts; is that
24 correct?

25 A. Yes.

1 Q. And when you're using a plunger lift, is your
2 point there that that is a good general technique to
3 minimize the amount of manual unloading?

4 A. I would say this. If you can actually
5 successfully unload a well manually, it will probably
6 run on plunger lift, and I would whole lot rather be
7 running a well on plunger lift than manually unloading
8 it. You're -- you're just -- it's more efficient,
9 you're making more gas, you're not wasting the resource
10 to the atmosphere as much, and you're not wasting
11 manpower.

12 Q. So basically -- and my understanding of the
13 plunger lift technology is that it's a way to keep that
14 well running without having to do manual unloading.

15 A. It's a way to unload fluids. Yes.

16 Q. Right.

17 But doesn't plunger lift itself periodically
18 require maintenance and possible manual unloading to
19 continue to perform optimally?

20 A. It does require annual maintenance. Yeah.
21 You have to run a new plunger in there depending on the
22 well conditions and what kind of plunger you're running
23 and what kind of fluids you're producing. Sure. That
24 does have a cost to it. And from time to time, you may
25 have to manually unload a well to get a plunger to

1 surface.

2 Q. That was my question, is that it's not a way
3 to preclude all manual loading, it's just a method to
4 minimize it; is that correct?

5 A. Yeah. Yeah. I'm not saying that you'll never
6 have to manually unload a well if you put in a plunger.
7 But, you know, as a means of producing a well, it is
8 hands-down better than just manually unloading a well
9 time and time again.

10 Q. Okay.

11 Let's then turn to your leak detection and
12 repair experiences that you've had.

13 You talked a lot about your experience with
14 Southwestern Energy; is that correct?

15 A. I did.

16 Q. Do you know what the Southwestern Energy's
17 leak rate was prior to the initiation of that program?

18 A. I don't.

19 Q. And if you were to have a relatively high leak
20 rate, would that be something that would make the
21 economic return on that program more beneficial than if
22 you had a lower leak rate?

23 A. It would.

24 Q. You quoted the Colorado Air Pollution Control
25 Division that inspection and recordkeeping costs are

1 likely minimal for adding pneumatics to LDAR controls,
2 and I think you said since operators will incorporate
3 numerous controllers into the LDAR programs.

4 But New Mexico doesn't have an LDAR program at
5 this point in time, does it?

6 A. No.

7 Q. So it would be a little bit higher in cost as
8 a result of that?

9 A. Um-hum.

10 Q. And then you also, I believe, quoted their
11 report with approval that the cost of returning an
12 improperly operated controller to normal operation could
13 be up to \$600 a year; is that correct?

14 A. I think that's a number that I recall. Yeah.

15 Q. And then let's go on and talk about the
16 flowback discussion that we spent some time on, as well.

17 A. Yes.

18 Q. And can you define for me what you are calling
19 initial flowback?

20 Because I'm trying to understand how early in
21 the process you are trying to suggest that we begin
22 these control procedures. I think the back end of the
23 process is better defined. I'm just trying to
24 understand the front part of the process.

25 A. Well, you know, we talk about this initial

1 flowback and then the separation phase. You turn a well
2 around after a frac job. And it's flowing on its own,
3 and it's not -- you're not able to run it through a
4 separator. Okay? It's just flowing mostly fluids, and
5 you're just unloading to a tank.

6 And I look at the definition that New Mexico
7 has here, following stimulation either in terms of a
8 subsequent phase of treatment or preparation for cleanup
9 and placing the well into production also means that
10 fluids and entrained fluids are solids flowing from a
11 well after drilling or hydraulic fracture and
12 refracture. It ends when all temporary flowback
13 equipment is removed from service.

14 So I would go with the New Mexico definition.
15 I think as soon as we can, you know, begin to capture
16 emissions and whatnot is -- is certainly much better.

17 Q. Isn't that already the Oil Conservation
18 Commission requirement, is to do it as soon as
19 practicable?

20 I'm just trying to see if we have --
21 (Simultaneous discussion.)

22 -- actually disagreement on the point where
23 separation is put in or you're trying to control prior
24 to separation. That's what I'm trying to understand.
25 When we're still --

1 (Simultaneous discussion.)

2 -- with liquids and solids or if you're trying
3 to put this in once we begin to produce significant
4 gases. I'm just trying to figure out where exactly you
5 believe we need to start the process of flowing through
6 the enclosed vessel.

7 A. Immediately I would.

8 Q. Okay. So from the very -- soon as we
9 basically pull it out and we begin to produce liquids,
10 that's when you --

11 A. Yeah.

12 Q. -- would go? Okay.

13 A. Yeah.

14 Q. Thank you. We're just -- just trying to
15 understand what the actual parameters of the
16 recommendation is.

17 You talked a little bit about what would be
18 involved in this and the use of temporary or permanent
19 vessels.

20 Talk to me -- just explain maybe for me and
21 for the Board what it would look like if you were set up
22 for temporary vessels and then what it would look like
23 if you were set up for permanent vessels. Physically
24 what would it look like on the ground?

25 A. Well, what we did, we had mobile flowback

1 units and -- and equipment that we went from well to
2 well with. You know, you had -- you had your equipment
3 on location that you were going to use to produce the
4 well once you pretty much flowed the frac back. Okay?
5 That is the standard package of equipment that would be
6 on a well.

7 What we had is mobile tanks, mobile
8 separators, and we had a battery of flowback tanks
9 associated with. Those were all mobile and moved around
10 from well to well.

11 Q. By mobile --

12 (Simultaneous discussion.)

13 I'm sorry. Let me just ask a question.

14 By mobile did you have them like on skids or
15 on a trailer, or were they permanently on a semi truck
16 or --

17 A. Oh, no. They -- you know, it's your basic
18 frac tanks that you'd haul around behind a truck. You
19 know, it had wheels on it. We would set them over on
20 what we call duck ponds, you know, to capture any
21 spilled fluids and whatnot and ground them and bond them
22 all together.

23 Q. Okay.

24 And then you also said that they could be used
25 permanently.

1 Did that mean in the sense of staying at the
2 site or moving around from site to site?

3 A. Move around from site to site.

4 Q. Okay.

5 And then -- so what would be the process -- so
6 you've got these tanks, I assume you kept them at a
7 central dispatch yard if they weren't at a site already?

8 A. We did. We had about a 200-acre yard.

9 Q. Okay. So you'd have to pick them up, put them
10 on the truck, haul them out to the site.

11 Then what did you do once you got to the site
12 to set up the site for the -- this initial flowback?

13 A. Well, we would spot the tanks in -- in a
14 convenient place. We would also provide for easy
15 loadout for removing fluids and solids. We would
16 connect with -- with Chiksan lines and various other
17 manifold systems to be able to go right to the wellhead
18 so that we can start moving fluid as soon as the -- as
19 soon as we were done fracking the well.

20 I mean, I --

21 Q. Okay.

22 A. Do you want to go through this whole --

23 Q. No, no. That's -- I think that's a pretty
24 good adequate thing.

25 But I think you also said you did some bonding

1 and grounding --

2 A. Yes.

3 Q. -- and you were also talking about setting up
4 some sort of controlled vent system; is that correct?

5 To go to your --

6 A. Well --

7 Q. -- whole device?

8 A. I mean, we -- and -- and I would say, too,
9 that some of the stuff that we studied in Colorado
10 that -- the way that they were doing this with the vapor
11 and liquid balancing systems and whatnot is -- it's very
12 ingenious and -- and done very well.

13 Q. Okay.

14 So is -- under the Colorado cost estimate you
15 have is that that can all be done for \$500 a year? Is
16 that consistent with your experience that by the time
17 you did the moving, the placing, the grounding, the
18 putting all the piping in place, the CVS in place, that
19 you could do that for \$500 a year at multiple sites?

20 A. No, no, no, no, no. What the 500 -- so
21 Colorado assumed a one-time capital cost of 500 bucks
22 for the steel piping and a one-time cost of 500 to
23 install it, and operation and maintenance of \$500. So
24 you've got -- you've got initial installation, and
25 you've got an annualized maintenance of that system.

1 You know, there are three different \$500 here. Okay?

2 Q. There's one for initial steel. I agree with
3 that.

4 A. Yeah.

5 Q. And one for -- it says --

6 A. And installation.

7 Q. Installation is --

8 (Simultaneous discussion.)

9 A. And then operation --

10 HEARING OFFICER ORTH: Gentlemen, sorry. One
11 at a time, please.

12 MR. HISER: I'm sorry.

13 Q. Go ahead, Mr. --

14 A. Go ahead.

15 Q. Okay. I was --

16 A. I --

17 Q. -- asking whether you thought you could take
18 all the steps that you've laid out for that approximate
19 \$500 a year installation moving, say, 12 tanks from
20 place to place.

21 A. No, no, no, no. That's only with the piping.

22 Q. Okay.

23 A. No. You're not going to be able to maintain
24 tanks for \$500 a year.

25 Q. Okay.

1 And then are you aware that under the New
2 Mexico rules that have been proposed by the New Mexico
3 Environment Department, that for the CVS system, that it
4 also has to have a professional in-house engineer assess
5 each one and provide an assessment report to the
6 Department?

7 A. I think I recall reading that.

8 Q. Would that add to the cost of doing this?

9 A. It could. Yes. And I don't disagree with it.
10 I think it's a good idea.

11 MR. HISER: Okay. I think those are the
12 questions that I had just to get a better understanding
13 of the scope of your proposal.

14 Thank you very much for --

15 MR. ALEXANDER: Okay.

16 MR. HISER: -- sharing your thoughts on that.

17 MR. ALEXANDER: All right, Mr. Hiser. Thank
18 you.

19 HEARING OFFICER ORTH: Thank you, Mr. Hiser.

20 Any other party with questions of

21 Mr. Alexander?

22 Mr. Rose?

23 MR. ROSE: Thank you, Madam Hearing Officer.
24
25

1 CROSS-EXAMINATION

2 BY MR. ROSE:

3 Q. Mr. Alexander, my name is Louis Rose, and I
4 represent the Independent Petroleum Association of New
5 Mexico, and I have just a couple of questions to clarify
6 your testimony on Section 117, which is the liquids
7 unloading.

8 A. Okay.

9 Q. When you -- when you're ready.

10 A. Go ahead.

11 Q. What I was -- okay. What I was looking for is
12 clarification of your testimony on 117B.(1). I believe
13 you testified that you did not agree with Mr. Davis'
14 recommendation about including the methods under B.(3)
15 and B.(1).

16 Did I understand that testimony correctly?

17 A. No. Here, maybe I can be more clear, and I'm
18 sorry if it was unclear. I -- I am in agreement that
19 the methods that are delineated in B.(3). I like those.
20 I think they should remain.

21 I want to be careful, though, that if we -- if
22 we just say that, well, they're best management
23 practices so we think that 117B.(1) covers those. If we
24 were to take the text of B.(3) and just add it to B.(1),
25 I would be okay with that. I just want to be careful

1 that we don't eliminate the text of B.(3).

2 Does that make -- am I clear now?

3 Q. Yeah. No. I understand. And I was going to
4 ask you in terms of best management practices what you
5 understand those to be and how they differ from the list
6 in B.(3).

7 A. Well, you know, best management practices can
8 mean anything on the earth, and they change with time.
9 I think to be more specific in terms of -- instead of a
10 best management practice on how to manually unload a
11 well, I think it's better to be specific about the use
12 of artificial lift or some control device as they
13 stipulate in B.(3).

14 MR. ROSE: Well, thank you.

15 That was -- that was all I have, Madam Hearing
16 Officer.

17 MR. ALEXANDER: Okay.

18 HEARING OFFICER ORTH: Thank you, Mr. Rose.

19 Any other party with a question of
20 Mr. Alexander? Please turn on your camera.

21 No?

22 In that case, I will turn to questions from
23 the Board.

24 If you're an attendee on this platform with a
25 question, please reach out through chat.

1 EXAMINATION

2 BY THE BOARD:

3 HEARING OFFICER ORTH: Madam Chair?

4 CHAIR SUINA: Thank you, Madam Hearing
5 Officer.

6 And thank you, Mr. Alexander, for your
7 testimony. It's been trying to go back to a lot of
8 topics that have already been discussed.

9 So at this point, though, I don't have any
10 other questions, and I'll -- I may have some after some
11 of the other Board Members if they have questions.
12 Thank you.

13 MR. ALEXANDER: Okay.

14 HEARING OFFICER ORTH: All right. Thank you.
15 Vice-Chair Trujillo Davis.

16 VICE-CHAIR TRUJILLO DAVIS: Yes.

17 Thank you, Mr. Alexander. I appreciate your
18 testimony today.

19 I have lots of questions, but I'll try to make
20 them concise here. So I just wanted to clarify a few
21 things and also to get your recommendation on a couple
22 of things.

23 You mentioned that you operated about 1,000
24 wells at one point and you had to retrofit those 1,000
25 wells.

1 And so I was curious, how -- how long does a
2 project like that generally take when you're going well
3 to well retrofitting --

4 MR. ALEXANDER: Okay. Well, let me be clear
5 about how many wells we operated first. We operated
6 more than that. The -- when I mentioned the
7 Fayetteville Shale and the discovery of that, that
8 ultimately resulted in the drilling and completion and
9 production of about 4,500 wells. That took place over a
10 period of -- let me think. That took place over a
11 period of about six to eight years, I'm going to say.

12 Now, during the really heavy part of that
13 project, I said that we were completing 400 to 500 wells
14 a year, and that's true. And at the same time we had
15 operations in Pennsylvania and West Virginia. It was a
16 much smaller project in terms of number of wells.

17 So how long did it take? We did not
18 experience any backlog of acquiring equipment during
19 that period of time. The discovery of the Fayetteville
20 Shale was in the 2006 range, and all this development
21 took place during the next 10 years or so. So how long
22 did it take? I mean, we just outfitted the wells, the
23 new wells with those -- those types of equipment, just
24 as we drilled them. So --

25 And as far as retrofitting, what did we

1 retrofit? You know, we operated -- at the time that we
2 made that discovery, we operated probably
3 400-and-some-odd wells, conventional wells, in the
4 Arkoma Basin, near the Oklahoma border. So going back
5 to them was -- you know, we just -- boy, I can't give
6 you an answer. We just did, you know.

7 VICE-CHAIR TRUJILLO DAVIS: Okay.

8 I guess I was wondering, you know, since you
9 did -- you did engage in that kind of a project where
10 you went back and you retrofitted facilities and wells,
11 that you had recommendations on things you've learned
12 from that. I would imagine given that -- the distance
13 it took a little while to do that, and you probably
14 learned a few things along the way.

15 MR. ALEXANDER: We did. You know, the major
16 operation for the Fayetteville Shale, for example, was
17 an area about the size of the State of Connecticut in
18 North Central Arkansas, and our field office, I
19 mentioned earlier, was a 200-acre or so operation, and
20 we had quite a bit -- it was a huge supply chain
21 accomplishment that I can't claim any -- any part of. I
22 was in the operation side and engineering side.

23 And, you know, the transportation and moving
24 of men, equipment and materials was a major, major deal.
25 We had an operation center in Conway, Arkansas, and we

1 tracked every truck and every drop of water that went
2 anywhere and everywhere and every piece of equipment.
3 So the supply chain and operations guys did a great job.

4 The PM program that we did with respect, for
5 example, with pneumatics, pneumatic controllers, we
6 worked really hard to try and find, well, what breaks
7 and why, and how can we do proper PM so that we're not
8 always chasing problems, and we can be in front -- as I
9 call it from my Air Force days, in front of the airplane
10 instead of behind it. But we did.

11 And again it's a cultural thing, and it takes
12 commitment to do it and do it well.

13 I hope that answers your question.

14 VICE-CHAIR TRUJILLO DAVIS: It -- it does.
15 You know, as we've gone through this rule process, we're
16 trying to get an understanding of the implementation of
17 the rules. That's -- I was going off --

18 MR. ALEXANDER: Okay.

19 VICE-CHAIR TRUJILLO DAVIS: -- your many years
20 of experience in asking you about that recommendation.

21 And speaking of your many years of experience,
22 I'm wondering if you've had an opportunity to work in
23 the Permian or the San Juan Basin.

24 MR. ALEXANDER: You know, I never did. I
25 worked Texas, North Texas, East Texas, South Texas, but

1 I never actually -- we had some small operations in the
2 Permian, Southwestern, but I never was involved with
3 that division.

4 VICE-CHAIR TRUJILLO DAVIS: Okay.

5 And you were speaking directly about the
6 plunger lifts and the practice of manual liquid
7 unloading.

8 I'm curious if there is a characteristic of a
9 well in which you would choose to not put a plunger lift
10 on it?

11 MR. ALEXANDER: Yeah. You know, let me get
12 back in my memory banks.

13 There are some things to think about in terms
14 of qualifying a well for plunger lift. One, the
15 gas-to-liquid ratio. If you're making, you know, very
16 little gas and mostly liquid, then it won't work,
17 because you're using that gas energy to remove fluid out
18 of the well. All right?

19 So I'm thinking that the standard formula for
20 it is something like 400 standard cubic feet per barrel
21 of fluid a day per 1,000 feet.

22 You got that?

23 VICE-CHAIR TRUJILLO DAVIS: Um-hum.

24 MR. ALEXANDER: Anyway, that's a rule of thumb
25 in terms of qualifying a well for plunger lift. So if

1 you've got a well that's making a couple hundred Mcf a
2 day and two, three, four barrels of water and/or oil,
3 it's going to run on a plunger, no problem, no problem.
4 You also got to have the mechanics, the wellbore has got
5 to be configured to run a plunger, but that's usually
6 pretty easy to do and inexpensive.

7 It's really straightforward figuring out if a
8 plunger lift will work in a well.

9 VICE-CHAIR TRUJILLO DAVIS: So would you --
10 would you suspect that if, you know, a plunger lift
11 wasn't a feasible option for a well, that it would just
12 be P&Aed at that point?

13 MR. ALEXANDER: No. No, no. No. No. If
14 you've got a well that's making a lot of fluid and a
15 little gas, then it becomes a candidate, for example,
16 for a pumping unit. Okay? Plunger lift is used in a --
17 in a scenario, it's a gas well scenario mostly, as the
18 well is classified as either a gas well or an oil well.
19 Okay?

20 So no. I'm not saying that if it doesn't run
21 on a plunger you got to plug it. No. No, not at all.
22 There are other means of artificial lift to produce a
23 well that is producing a lot more fluid than gas.

24 VICE-CHAIR TRUJILLO DAVIS: Okay.

25 So in the -- in the spectrum of wells that are

1 out there, is there any type of well that would only use
2 manual liquid unloading? And I guess I'm thinking of
3 maybe like on a dry gas scale or something on that -- on
4 that end?

5 MR. ALEXANDER: I -- I will say this. It's
6 not necessarily going to be 100 percent correct, but
7 it's going to be close. If -- if you can manually
8 unload fluid from a gas well, if I can actually do that,
9 or if I have to drop a soap stick to help me out getting
10 that fluid out of the hole, it will run on a plunger
11 lift.

12 I hope I'm answering your question.

13 VICE-CHAIR TRUJILLO DAVIS: You are. You are,
14 actually.

15 I was wondering, is there a column that --
16 like a standard column that a soap stick won't work on?

17 MR. ALEXANDER: Well, there are different
18 types of soap sticks. You know, some are better for
19 wells that are predominantly water, and some are better
20 for wells that are predominantly oil in terms of the
21 fluid that they produce.

22 And I think to kind of go back to your -- your
23 question about manually unloading, are there types of
24 wells where that is the only way that we can produce it?
25 I would say in general no. I don't -- if you take a

1 look at any production engineering book, there is not
2 going to be a session -- or a section in there that
3 talks about wells that can only be produced.

4 I would say a well that is a mechanical
5 disaster downhole, and I can't fix it without spending a
6 ton of money, and because of that mechanical problem,
7 you know, we can't run a plunger, we can't run a pumping
8 unit, we can't run gas lift, we can't run hydraulic
9 pump, we can't do anything, then you may be stuck with
10 manually unloading it and just using a soap stick or
11 something.

12 Does that make sense?

13 VICE-CHAIR TRUJILLO DAVIS: Yes, sir, it does.

14 MR. ALEXANDER: Okay.

15 VICE-CHAIR TRUJILLO DAVIS: I appreciate you
16 answering those for me. And -- yeah. Actually that
17 leads me to my next kind of question.

18 At the end of your presentation, you were
19 talking about abandoned wells and, you know, not being
20 able to -- if they can't support their own economics,
21 then maybe they should be P&Aed while there is still
22 revenue available for them.

23 And so I'm wondering what your thoughts are
24 on, you know, if we -- if we include these stripper
25 wells and marginal wells in this rule, the way that they

1 are currently included, you know, one of the fears is
2 that maybe people will just walk away from some of them
3 if they are -- if they're not worth producing.

4 Is that something that you looked at when you
5 reviewed this rule?

6 MR. ALEXANDER: You know, I didn't, and I --
7 not specifically here. I am aware that that is a real
8 problem, not just for New Mexico, but other states, and
9 I would just say that one of the things that I have from
10 time to time commented on, and I think we got involved
11 with this in Pennsylvania, with EDF was talking about
12 bonding requirements, you know, financial surety and
13 assurance.

14 It's something that a lot of states -- and I
15 don't know what New Mexico's status is on this, but a
16 lot of states in the past have wound up in a pickle
17 because they didn't have any leverage whatsoever. And
18 that is an issue over on the east side right now where
19 operators of some sort are coming in and buying
20 thousands of wells from people, and they squeeze the
21 last drop out, and then they go file bankruptcy. Here
22 you go.

23 So I just think that we need to be careful
24 anywhere we are that the state maintains a position of
25 leverage and that the state doesn't get backed into a

1 corner of legislating wells into existence that really
2 shouldn't be there.

3 Does that make sense?

4 VICE-CHAIR TRUJILLO DAVIS: Yes, sir, it does.

5 And I would say that's quite consistent with my
6 experience, as well. So I think you brought up an
7 interesting point on that.

8 Well, I think that that's probably the end of
9 my questions for right now.

10 I appreciate you taking the time to talk with
11 us today, and I will yield my time to the next Board
12 Member.

13 MR. ALEXANDER: Thank you.

14 HEARING OFFICER ORTH: Thank you.

15 Member Cates?

16 MEMBER CATES: Yeah. A couple questions,
17 Mr. Alexander.

18 Thanks for your testimony --

19 MR. ALEXANDER: Sure.

20 MEMBER CATES: -- which is (unintelligible
21 and/or inaudible) in no small part because, you know,
22 you're an oil man, as Daniel Day-Lewis said in that
23 movie, and -- and so you're taking a position here that
24 we haven't heard from much -- you know, we haven't heard
25 a lot of corroboration along these lines from industry

1 people, perhaps some. But I -- so just my questions are
2 by way of clarification. I'm just wanting to understand
3 that I'm understanding you correctly.

4 So I think you're saying that the proposed
5 rule that we're considering, or at least the parts of it
6 that you've studied closely, that it is, in fact,
7 economically feasible for the industry to comply.

8 Is -- is that a roughly correct
9 characterization?

10 MR. ALEXANDER: It is. Yes. I would say
11 that.

12 Can I add something to that just to be clear?

13 MEMBER CATES: Sure.

14 MR. ALEXANDER: I am not implying that every
15 well can stand these economics. And that's why I say if
16 a well can't stand modest investment to do the right
17 thing, then maybe it needs to be plugged.

18 MEMBER CATES: Right.

19 And when -- again when we're talking about the
20 proposal before us, which is -- which is complex and
21 there are many components to it --

22 MR. ALEXANDER: Right.

23 MEMBER CATES: -- is it your opinion that the
24 rule in its totality can be sustained by the industry,
25 or -- or is it possible that those we've heard from who

1 believe that it will destroy the industry -- is there a
2 possibility that they're correct?

3 MR. ALEXANDER: Well, I have -- I can't -- I
4 can't comment, unfortunately, on every element of this
5 rule. I'm just not -- I didn't study it, and I'm -- and
6 some of the stuff I'm really not qualified to comment
7 on. So -- but if I had to make a statement, and you're
8 asking me to make a statement, of what I have read, in
9 addition to what I have studied and prepared testimony
10 on, I don't see anything in here that is going to
11 destroy the industry.

12 MEMBER CATES: Yeah. Okay.

13 Well, one caller we had this morning, also a
14 former oil man, a lobbyist and a lawyer for the
15 industry, he -- he characterized it as a win/win/win
16 because it -- you know, by his estimation, it will help
17 the environment, and it will also force efficiencies
18 upon the industry that will, to his thinking, actually
19 enhance revenues, and then the knock-on effect there
20 would be actually increased revenues to the state. So
21 that's his win/win/win.

22 Does that sound outlandish to you?

23 MR. ALEXANDER: Absolutely not. I heard part
24 of his testimony, and I would just say to you, sir, that
25 in -- in the turn of the century the natural gas

1 production in this country was on the decline, and the
2 Barnett Shale was the only unconventional resource that
3 had been brought to an economic return, and people
4 thought that was it.

5 Look what happened. Look what has happened in
6 this country. We were number two with the Fayetteville
7 Shale, and then you get the Marcellus, and then the
8 Permian blows up. And again when you -- when you -- and
9 through all of that time, and I -- this is some of the
10 things that we learned and I learned, if you do the
11 right thing, if you're protecting the health and safety
12 of folks and the environment, it is almost always
13 economic.

14 And it will cause you to think out of the box
15 and do things that you can't ever imagine. So I'm
16 always in favor of doing that. And we learned it in
17 spades. Our CEO forced it on us, and we learned a lot.

18 MEMBER CATES: Yeah. All right.

19 The only -- the other thing that I wondered
20 about, you used the phrase in your testimony "a cultural
21 thing" --

22 MR. ALEXANDER: Yes.

23 MEMBER CATES: -- and then it came up again
24 later.

25 So I'm just trying to understand what -- I'm

1 trying to get a feel for what you mean by that. Do you
2 mean there's sort of an institutional resistance across
3 the industry to additional regulation just because,
4 well, it's a cultural thing? And then -- and then maybe
5 you can just elaborate on that a little bit?

6 MR. ALEXANDER: Well, I don't think it's a --
7 it's something that's necessarily across the industry.
8 And I certainly can't speak for -- for a lot of -- you
9 know, the majority of the operators. I -- but I would
10 say I think that the majority of operators really do try
11 to do the right thing.

12 So when I talk about the cultural thing, let
13 me put it this way. And we -- we -- we changed the
14 company's culture when I was the vice-president of HSE,
15 and as a regulator, you'll understand what I'm saying.

16 We want to do the right thing, or we want to
17 follow the rules and the regulations because we want to,
18 it's the right thing to do versus we have to. All
19 right? That's a profoundly different approach. So if
20 the culture is one of let's do the right thing and let's
21 figure out how to make this work, and we'll discover new
22 ways of doing things, and we'll, yeah, I know I can do
23 that, I just don't want to, well, let's get busy and do
24 it.

25 So that's the culture thing that I talk about,

1 and that's what we had at our company. It was a vastly
2 different culture.

3 MEMBER CATES: Different from the way
4 larger --

5 MR. ALEXANDER: Just doing the same old thing,
6 you know, and it's -- you know, for example, you know,
7 in completing these horizontal wells, you know, we
8 learned a lot about interfacing with shale reservoirs.
9 And I had an old Aggie engineer on my team, and he would
10 always say "Yeah, but, Tom, you know, we've always done
11 it this way." And any time anybody says we've always
12 done it this way, I guarantee you there's almost
13 100 percent chance there's a better way and a cheaper
14 way to do it.

15 So having that attitude, well, we've always
16 done it this way, is a failing attitude, in my opinion.

17 MEMBER CATES: Yeah.

18 And then --

19 MR. ALEXANDER: It is not a good culture.

20 MEMBER CATES: Yeah. Got you.

21 Well, thank you. You know, your testimony
22 today is -- has been very helpful to me personally. So
23 I appreciate it. Thank you.

24 MR. ALEXANDER: You're welcome.

25 HEARING OFFICER ORTH: Thank you.

1 Member Bitzer?

2 MEMBER BITZER: The Q&A so far has been pretty
3 thorough. I don't have any questions.

4 Just want to thank you for your service in the
5 big -- big ugly up there in the stratosphere.

6 (Simultaneous discussion.)

7 MR. ALEXANDER: Yeah. Okay.

8 HEARING OFFICER ORTH: All right.

9 Member Garcia.

10 MEMBER GARCIA: Thank you for your testimony,
11 and I very much appreciate the great questions from
12 Vice-Chair Trujillo Davis and Member Cates. That was
13 very informative. This whole session has been very
14 informative.

15 And I guess I would -- I would add one more
16 question to sort of what Member Cates was talking about,
17 which is I understand there's a matter of culture, but I
18 also understand that, you know, business has to make a
19 profit, and if -- and if they don't, what are they
20 doing?

21 So what we've heard from the industry is
22 they're willing to accommodate regulations, and they
23 live with regulations all the time, and they have the
24 federal regulations and the state regulations that
25 already exist. But I'm hearing that, you know, be

1 careful, don't tip too far to where we -- we can't
2 accommodate extreme regulations.

3 And I appreciate that the industry is willing
4 to accept many of these, they've been very accommodating
5 on many of these regulations. But for instance -- let
6 me give you an example. The use of plunger lifts as you
7 talked about, it sounded like it was just, you know, so
8 much better than the alternative of -- the other
9 alternative such as manual unloading.

10 So why wouldn't it be used already? Why would
11 there need to be a reg requiring it now?

12 MR. ALEXANDER: Let me tell you a story. And
13 this is a true, true story.

14 So when I wound up in Fort Smith, Arkansas,
15 and that's right on the border of Oklahoma, and we'd be
16 working on wells south of Fort Smith, and literally 100
17 yards over there is Oklahoma, wells producing out of the
18 same reservoir as what we're producing in Arkansas.

19 And I can hear these words today just like it
20 was -- you know, right in front of me now, the pumper.
21 And I would look over there, and that well has got a
22 plunger lift on it. And this was when I first moved
23 there.

24 And I said "Well, how come you're producing
25 the well this way?"

1 "Well, it's the way we've always done it."

2 I said "Well, it's a lot better and easier to
3 run a plunger lift."

4 "Tom, them things don't work in Arkansas."

5 I'm serious. I'm serious as a heart attack.
6 I couldn't believe my words -- or my ears.

7 And when we first started going around with a
8 slickline truck, you know, running a quick little
9 flowing bottom hole pressure and brushing the tubing,
10 making sure that everything's mechanically okay, and
11 some of the words that came out of those pumpers about
12 "Don't put that thing."

13 So the problem was -- is that they were being
14 installed on wells that would -- you know, wouldn't work
15 if you put a nuclear weapon in them. They were just
16 busted, down, not working, mechanical disasters. But if
17 you put it in the right well.

18 And so we started installing them, and I
19 started getting calls. I was the production engineer
20 from these pumpers. "Hey, would you come look at this
21 well or that." I couldn't get out there quick enough.
22 I had these guys calling me. And well after well after
23 well.

24 So that's my story. That's what happened in
25 Arkansas. And I'm sure that's not the only state in the

1 world that that attitude in the field was "It's the way
2 we've always done it," that they found that their wells
3 made more gas, they were more efficient, and guess what,
4 they could go bass fishing earlier in the afternoon.

5 I'm serious. I am dead serious. That's
6 exactly what happened.

7 So there you go.

8 MEMBER GARCIA: Sir, that's very helpful.

9 Thank you.

10 That's all my questions.

11 HEARING OFFICER ORTH: Member Honker?

12 MEMBER HONKER: Yes.

13 Mr. Alexander, your testimony has been very
14 interesting and helpful and your experiences in the
15 Fayetteville Shale.

16 In my EPA days I dealt with issues in the
17 Fayetteville and the Woodford and the Barnett and Eagle
18 Ford, and kind of brought back some memories.

19 But being the last in line to ask questions, I
20 have no further questions from what my --

21 MR. ALEXANDER: Okay.

22 MEMBER HONKER: -- fellow Board Members asked.

23 Thank you, sir.

24 MR. ALEXANDER: Wow. You're welcome.

25 HEARING OFFICER ORTH: All right. Vice-Chair

1 Trujillo Davis, I understand you have another question.

2 VICE-CHAIR TRUJILLO DAVIS: Yes.

3 I apologize, sir, but my background is in oil
4 and gas so I end up with more questions.

5 MR. ALEXANDER: Oh, that's fine.

6 VICE-CHAIR TRUJILLO DAVIS: You know, when I
7 started out in the industry, pumpers knew all their
8 wells. They -- they knew every piece of equipment on
9 there. They knew how to just tweak the engines just
10 right to make them run and exactly what each well was
11 doing.

12 Unfortunately nowadays, most pumpers are --
13 well, they're lease ops now, they're not pumpers
14 anymore --

15 MR. ALEXANDER: Yeah.

16 VICE-CHAIR TRUJILLO DAVIS: -- and they rotate
17 more quickly so they don't know their wells -- their
18 wells as well as they used to.

19 But I always appreciate talking to an old
20 pumper, because they got a lot of good information.
21 So --

22 MR. ALEXANDER: Agree.

23 VICE-CHAIR TRUJILLO DAVIS: My question for
24 you is actually more about the economics. I was
25 wondering, the companies you worked for in the past,

1 would you classify them as small, midsize or large
2 operator?

3 MR. ALEXANDER: Well, East Texas would have
4 been a small operator. Colorado, when I lived there and
5 worked for Habersham, was a small operator. And then
6 moved to Arkansas, the first couple of companies I
7 worked for were small operators.

8 But then the last half of my career, 18 years
9 with Southwestern Energy, I -- you know, we started out
10 as kind of a medium operator, and by the time we sort of
11 hit our peak stride in 2015-ish, you know, we'd run that
12 company from a 250 million market cap to 16 billion, and
13 we were -- I think we got to third largest natural gas
14 producer in the US. I mean, we weren't an integrated
15 company, but we were a good size independent.

16 Not that big now, but -- so mostly small, but,
17 you know, Southwestern became something of significance.

18 VICE-CHAIR TRUJILLO DAVIS: Well, I'm curious
19 about your experience working for a small operator. You
20 know, as you look at these regulations, I'm in -- I'm
21 wondering, would you have any concerns if -- as you
22 would try to implement them if you were a small
23 operator, as far as financially, or -- yeah. I guess
24 that's where I'm going with that.

25 MR. ALEXANDER: Well, if -- looking at the --

1 at the pieces of this reg that I spent the most time on,
2 no, I would not have any issues with that. But as far
3 as, you know, looking at the entire regulation, I can't
4 comment on all of those, unfortunately.

5 VICE-CHAIR TRUJILLO DAVIS: Okay. Yeah.

6 (Simultaneous discussion.)

7 MR. ALEXANDER: But the ones I spoke about --
8 yeah. The ones I spoke about I don't think would cause
9 any issues. And again if -- if you can't tolerate doing
10 things more safely and more friendly to the environment
11 and public health and safety, you know, it -- those
12 wells don't have to always exist. I know that sounds
13 mean, and I -- but -- and yes, I'm an oil and gas
14 person, and I love the industry, but there is a point
15 where it gets to be unreasonable.

16 Does that make sense?

17 VICE-CHAIR TRUJILLO DAVIS: Yes, sir, it does.

18 Thank you. And I appreciate your testimony
19 today and so --

20 MR. ALEXANDER: You're welcome.

21 HEARING OFFICER ORTH: Madam Chair, you have
22 another question?

23 CHAIR SUINA: Thank you, Madam Hearing
24 Officer.

25 And thank you, Mr. Alexander, again for your

1 questions and -- for your responses and to the Board
2 Members for the questions.

3 And I think I just want to also maybe ask you
4 a little bit more -- and it sounds like you have a lot
5 of experience in the industry and working in other areas
6 where -- and jurisdictions where new regulations were
7 being -- rules and regulations were being developed.

8 Do you see that in some areas where industry
9 has been proactive we've -- I think you mentioned that
10 where industry some companies are proactive and based on
11 their culture, if they want to, you know -- and I think,
12 as you said, do the right thing, and then maybe for --
13 you know, there's maybe some financial reasons for some
14 businesses to be proactive and use the latest technology
15 or best management practices, I think you mentioned, as
16 well.

17 So given that, though, for those proactive
18 ones, and I want to see if you have an opinion about
19 in -- in your experience seeing those that maybe aren't
20 as proactive, and where regulation -- new rules or
21 revised regulations help kind of push them along -- have
22 you seen that in the work that you've done?

23 MR. ALEXANDER: Yeah. Yeah. And please don't
24 anybody think that I'm claiming that San Juan operators
25 or Permian operators in Lea and Eddy County are not

1 culturally great people. I know that there's just tons
2 of wonderful people there. A couple of examples here of
3 regulations and pushing things along.

4 Southwestern Energy was on the tip of the
5 spear with what we called green completions, and we kind
6 of talked a little bit about that. You're flowing wells
7 back and getting gas to sales as soon as possible and --
8 and not venting and whatnot.

9 When we first started our -- after our
10 discovery of the Fayetteville Shale, we were flowing
11 wells back to just about like everybody else did, to a
12 tank, an open top tank, and then once things cleaned up
13 a little bit, we'd run it through the production system.

14 We -- we pioneered the green completion and
15 having these mobile units, and I never will forget our
16 chief legal officer, who was also a geologist,
17 testifying and speaking at a -- some sort of a
18 presentation at MIT, and API was claiming there's no way
19 on earth that green completions are economic. But wait
20 a minute. Ho -- ho -- ho -- hold on. We have evidence
21 to prove otherwise.

22 And we did. And we actually -- you know, it
23 cost a lot of money, but guess what, we were selling a
24 lot more gas.

25 So it took some thinking out of the box to do

1 that. So that pushed the industry along in the sense of
2 other people said, well, you know, these guys over here
3 said you couldn't do it economically so I'm not going to
4 do it, but these guys are proving that it can be done.
5 So you do it by setting the example. Right?

6 That's one that is just kind of always on the
7 front of my mind that -- that happened for us. And
8 there's many more examples of, you know, integrating
9 services.

10 You know, we did other things and -- and how
11 we kept costs down as the price of gas started coming
12 back down after those big, high peaks in the early
13 2000s. We cleaned up a -- an old sand mine outside of
14 Little Rock and got rid of some environmental problems.
15 And instead of paying Schlumberger or Halliburton seven
16 or eight cents for sand, we got it to our well sites for
17 three.

18 So nobody stipulated that you had to do that,
19 but there was a lot of hurdles and -- and environmental
20 things and regulations that we had to jump -- and hoops
21 we had to jump through to make those kinds of things
22 happen.

23 So maybe that helps answer your question.

24 I think when people get busy and they work
25 together and their attitude is one of we're doing these

1 things because we want to do them as opposed to have to
2 do them, good things happen. They really do. It's not
3 necessarily always the case, but it often is.

4 CHAIR SUINA: And just to bring it back to
5 your testimony, so that experience and what you've been
6 sharing with the Board this morning is what informs your
7 recommendations in terms of the language; is that
8 correct?

9 MR. ALEXANDER: Yes, ma'am.

10 CHAIR SUINA: That -- okay.

11 MR. ALEXANDER: Yes, ma'am.

12 CHAIR SUINA: All right. Well, thank you so
13 much. I appreciate it.

14 MR. ALEXANDER: You're welcome.

15 CHAIR SUINA: Thank you, Madam Hearing
16 Officer. That's all I have.

17 HEARING OFFICER ORTH: Thank you.

18 Ms. Paranhos, any redirect?

19 MS. PARANHOS: No redirect.

20 HEARING OFFICER ORTH: Thank you very much,
21 Mr. Alexander, for your testimony, and Ms. Paranhos.

22 MR. ALEXANDER: You're welcome.

23 Have a nice day.

24 HEARING OFFICER ORTH: Thank you.

25 We need a break. Let's come back at 11:00,

1 please.

2 (Proceedings in recess from 10:46 a.m. to

3 11:00 a.m.)

4 HEARING OFFICER ORTH: Let's come back from
5 the break, please.

6 Ms. Paranhos, I see Ms. Hull on the -- on the
7 screen.

8 Are we moving -- are we moving to Ms. Hull's
9 testimony?

10 MS. PARANHOS: Yes, Madam Hearing Officer.
11 That would be our --

12 HEARING OFFICER ORTH: Thank you.

13 And I think I've already sworn you in, right,
14 Ms. Hull?

15 MS. HULL: You have. Yes.

16 HEARING OFFICER ORTH: Thank you very much.
17 Go ahead.

18 MS. PARANHOS: Thank you.

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HILLARY HULL

(Relating to Topic Order 37)

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

DIRECT EXAMINATION

BY MS. PARANHOS:

MS. PARANHOS: Board Members, Ms. Hull will be
testifying briefly on EDF's flowback proposal and --

HEARING OFFICER ORTH: Hold on. I'm sorry.
Ms. Paranhos?

MS. PARANHOS: Yes.

HEARING OFFICER ORTH: You're breaking up.
You might need to turn off your video.

MS. PARANHOS: Sure.

Is that better?

HEARING OFFICER ORTH: Speak again. I'm
sorry.

MS. PARANHOS: Yeah. (Unintelligible and/or
inaudible.)

HEARING OFFICER ORTH: It's not better. I'm
sorry.

MS. PARANHOS: Is it better now? I just
turned off my Bluetooth?

HEARING OFFICER ORTH: Not -- not really, no.

MS. PARANHOS: That's strange. Still not

1 better. No. Huh. Strange.

2 Let me restart, I guess.

3 HEARING OFFICER ORTH: Okay.

4 (Proceedings in brief recess.)

5 MS. PARANHOS: Can you hear me now?

6 HEARING OFFICER ORTH: Yes. It's clear.

7 Thank you.

8 MS. PARANHOS: Terrific. Of course.

9 So just Ms. Hull's testimonies have already
10 been submitted, I believe. However, I don't think I
11 introduced them all into evidence due to the objections.

12 So at this point she will be discussing in
13 terms of her exhibits Exhibit EE, and her testimony
14 is -- I just put aside my page with all of her testimony
15 written down on it. This is in her direct testimony.

16 While I find it, if I could admit into
17 evidence all of Ms. Hull's exhibits and testimony
18 subject to the outstanding objection.

19 HEARING OFFICER ORTH: Thank you. Let me
20 pause a moment in the event there are other objections.

21 Not hearing anything, they're admitted. Thank
22 you.

23 MS. PARANHOS: Terrific.

24 (Exhibit EDF EE admitted into evidence.)

25 Q. (BY MS. PARANHOS) Ms. Hull, did you do a cost

1 effectiveness analysis of the costs and emission
2 reductions that EDF anticipates would accrue if the
3 Board adopted our well completion proposal?

4 A. Yes, I did.

5 Q. And could you please just explain that
6 analysis to the Board.

7 A. Sure thing. So EDF used the CDPHE
8 cost/benefit analysis for revisions to Regulation 7 from
9 September, 2020 to evaluate costs and cost effectiveness
10 associated with the emissions control requirements for
11 flowback vessels and associated equipment. And that's
12 Exhibit EE.

13 HEARING OFFICER ORTH: Ms. Hull?

14 MS. HULL: The CDPHE requirements --

15 HEARING OFFICER ORTH: Ms. Hull?

16 MS. HULL: Yes.

17 HEARING OFFICER ORTH: I'm sorry to interrupt
18 you.

19 MS. HULL: Slow down?

20 HEARING OFFICER ORTH: I think because you're
21 reading you're speaking very fast.

22 MS. HULL: The CDPHE requirements include
23 using vapor type flowback tanks and conducting periodic
24 visual inspections of the flowback tanks and of the
25 associated equipment.

1 The analysis found that these requirements
2 could be implemented at a cost of \$53.79 per ton reduced
3 during the three-year average for a number of
4 completions over 15 years, and that was per ton of
5 methane. So we used the statewide average of
6 methane-to-VOC ratio as we did for other analytics for
7 completions specifically, and we found that this comes
8 to \$259.48 per ton of VOC reduced.

9 As such, EDF finds that these measures are a
10 cost effective means of mitigating flowback.

11 MS. PARANHOS: Thank you, Ms. Hull.

12 And that concludes the summary of Ms. Hull's
13 testimony on this particular issue. She is available
14 for cross-examination.

15 HEARING OFFICER ORTH: Oh. Thank you very
16 much, Ms. Paranhos and Ms. Hull.

17 If you're a party with questions, please turn
18 on your screen.

19 I'm not seeing anyone.

20 I will turn to the Board for their questions.

21 In the event you're an attendee on the
22 platform, please reach out through chat with any
23 questions.

24 Madam Chair.

25 CHAIR SUINA: Thank you, Ms. Hull and Madam

1 Hearing Officer. I don't have any questions at this
2 time.

3 HEARING OFFICER ORTH: Thank you.
4 Vice-Chair Trujillo Davis?

5 VICE-CHAIR TRUJILLO DAVIS: Thank you. I
6 don't have any questions at this time either.

7 HEARING OFFICER ORTH: All right.
8 Member Cates?

9 MEMBER CATES: No questions here. Thank you.

10 HEARING OFFICER ORTH: Thank you.
11 Member Bitzer?

12 MEMBER BITZER: No questions. Thank you.

13 HEARING OFFICER ORTH: All right.
14 Member Garcia?

15 MEMBER GARCIA: No questions. Thank you.

16 HEARING OFFICER ORTH: And Member Honker.

17 MEMBER HONKER: No questions. Thank you.

18 HEARING OFFICER ORTH: Thank you very much.

19 Thank you, Ms. Hull, for your testimony.

20 And thank you, Ms. Paranhos.

21 MS. HULL: Thank you, Madam Chair.

22 HEARING OFFICER ORTH: Let's see. Ms. Katz or
23 anyone else really at this point, does it make sense to
24 go back to Mr. Smitherman?

25 MR. HISER: Madam Hearing Officer, it seems as

1 if -- is Mr. Schreiber going to appear? Because he was
2 speaking to the flowback issues, maybe we should hear
3 the environmental case and have industry respond and
4 then the Department.

5 HEARING OFFICER ORTH: Thank you. That's -- I
6 see lot of nodding.

7 MS. FOX?

8 MS. FOX: That's what I was going to suggest,
9 too, Madam Hearing Officer.

10 Thank you, Mr. Hiser.

11 Mr. Schreiber is on a panelist screen and --
12 well, there he is.

13 HEARING OFFICER ORTH: There he is.

14 Mr. Schreiber, would you spell your name for
15 the record, please.

16 MR. SCHREIBER: (Unintelligible and/or
17 inaudible.)

18 HEARING OFFICER ORTH: Can't hear you.

19 MR. SCHREIBER: How about now?

20 HEARING OFFICER ORTH: Very low.

21 MS. FOX: We could hear you at the end. So
22 what -- speak a little.

23 MR. SCHREIBER: I never speak a little,
24 Ms. Fox, as you well know, but I'm usually well heard.

25 MS. FOX: Too well, all too well.

1 MR. SCHREIBER: Is that any better, Madam --

2 HEARING OFFICER ORTH: That's much better.

3 Thank you, Mr. Schreiber.

4 MR. SCHREIBER: Okay.

5 HEARING OFFICER ORTH: Would you spell your
6 name for the record, please.

7 MR. SCHREIBER: Yes. It's Don, D-O-N, last
8 name Schreiber, S-C-H-R-E-I-B-like-in-boy-E-R.

9 HEARING OFFICER ORTH: Thank you.

10 And raise your right hand.

11 Do you swear or affirm to tell the truth?

12 MR. SCHREIBER: I do.

13 HEARING OFFICER ORTH: Thank you very much.

14 DON SCHREIBER

15 (Relating to Topic Order 37)

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

18 DIRECT EXAMINATION

19 BY MS. FOX:

20 MS. FOX: Thank you, Madam Hearing Officer.

21 Q. Please state your name.

22 A. Don Schreiber.

23 Q. What is your educational background?

24 A. I have a bachelor's degree in science from the
25 University of New Mexico.

1 Q. And what is your work experience,
2 Mr. Schreiber?

3 A. Well, for 22 years, from 1976 to 1998, I owned
4 Schreiber Insurance Agency in Farmington. We provided
5 risk management services for the oil and gas industry,
6 including oil and gas producers, service contractors,
7 drillers, geologists. We investigated, evaluated and
8 adjusted claims throughout the San Juan Basin, including
9 inspecting rigs for drilling, completion and workovers.

10 Q. Do you have any educational certificates
11 related to the oil and gas industry?

12 A. Yes. To learn about safety and drilling and
13 production operations, I received an elementary drilling
14 certificate that included instruction in well
15 completions from the University of Texas Permian Basin
16 in Odessa.

17 Q. What activities have you been engaged in since
18 your retirement in 1998?

19 A. Well, I retired from my business, and then my
20 wife and I started and operate now a ranch, the Devil's
21 Springs Ranch, in Northwest Rio Arriba County, in the
22 area Gobernador, an old ranching community here. Our
23 objective was to create a scaleable model for
24 sustainable agriculture using nontraditional ranching
25 practices. Today we lease our deeded and permit land

1 for cattle operations when range conditions permit.

2 Q. Is Clean Air Advocates Exhibit 9 an accurate
3 copy of your resume?

4 A. Yes, it is.

5 Q. And you submitted direct testimony on behalf
6 of Clean Air Advocates, which is Exhibit 10 for the
7 Board's information.

8 Mr. Schreiber, is that testimony accurate to
9 the best of your knowledge?

10 A. Yes, it is.

11 Q. Are there oil and gas wells on and around your
12 ranch in Rio Arriba County?

13 A. Yes. There are approximately 122 gas wells on
14 and around our ranch. 33 of those wells are within a
15 mile of our home.

16 Q. After you purchased the ranch, what did you
17 begin to learn about the oil and gas operations there?

18 A. Well, in the early 2000s, drilling pressures
19 in the area had really increased, and ConocoPhillips
20 leased the subsurface rights to our land and wanted to
21 drill 44 new wells on and around the ranch. We were
22 concerned about the impacts to our land and our health,
23 including emissions from well completions, as well as
24 surface disturbance and spills.

25 Q. Hold on one second there.

1 I'm going to ask the Hearing Officer for
2 sharing -- screen sharing authority, please.

3 And then please continue, Mr. Schreiber.

4 A. Ready? Okay.

5 Well completions and recompletions were of
6 particular concern to us because well completions, which
7 is the process of taking a drilled well to a producing
8 one, were still being essentially done in the same
9 manner they had been done in the San Juan Basin for the
10 last 50 years. So before production, flowback gases,
11 water and debris were pushed to the surface, the solid
12 wastes were discharged into an earthen pit, and gases
13 were vented or burned from the wellhead via a line
14 called a blewie line.

15 Q. Here, let me bring that up. I just -- I just
16 messed up here. Hold on one second. Hold on. I just
17 really messed -- okay. My apologies.

18 There we go.

19 A. So here's a photo of a blewie line in
20 operation in 1958, here in the San Juan Basin, where I
21 grew up.

22 And then if we have the next slide, these are
23 photos of blewie line completions on and around our
24 ranch in 2005 and '6.

25 Q. What impacts did you see from well

1 completions?

2 A. Well, the environmental impacts of blewie line
3 completions are obvious. You know, hear -- hear it, see
4 it, smell it. These impacts came into sharp focus one
5 time when our ranch was covered in black snowflakes that
6 came from a blewie line completion about a
7 mile-and-a-quarter to the northeast of our home.

8 Q. What actions did you take in response to these
9 impacts from completions?

10 A. Well, moving away from blewie line completions
11 and avoiding the harmful and toxic waste from the
12 completions was a priority as we began this 44-well
13 drilling program with ConocoPhillips in 2008. Our
14 concerns led us to the discovery that gas capture
15 completions or reduced emission completions could help
16 prevent the harmful emissions that we were worried about
17 and we found that were already being used in the San
18 Juan Basin.

19 Q. What are EPA reduced emissions completions?

20 A. Well, according to EPA, reduced emissions
21 completions, and I'm going to read this, quote, is a
22 term used to describe an alternate practice that
23 captures gas produced during well completions and well
24 workovers following hydraulic fracturing, instead of
25 venting or flaring those emissions. These emissions

1 include volatile organic compounds, ozone precursors,
2 methane, all -- all of that, toxic air pollutants,
3 including things like benzene.

4 Q. How did you learn about reduced emissions
5 completions?

6 A. Actually an oil company introduced us to the
7 equipment. Devon Energy Corporation introduced us to
8 the equipment, and then that same equipment was brought
9 to our ranch and then used by ConocoPhillips between
10 2008 and 2012, or versions of that equipment.

11 Before that we didn't know about gas capture
12 technology, but we did learn it was in -- in wide use.
13 As a matter of fact, NMOGA, the New Mexico Oil and Gas
14 Association, along with the EPA and the NMED, put on
15 workshops for producers here in Farmington, both in 2006
16 and then again in 2012, promoting gas capture
17 technology, reduced emissions completions.

18 And we --

19 Q. Were those --

20 A. I'm so sorry.

21 Q. No. Go ahead.

22 A. I was just going to say we have that in our
23 Exhibit 15. When and if that comes, we can look at it.

24 Q. I can share that if you would like.

25 A. Let's just -- let's just keep it handy, and we

1 can go back.

2 Q. And then we also have Exhibit 14, correct,
3 from one of those workshops?

4 A. Yes. Well, there are -- there are the Gas
5 STAR Program, in cooperation with the American Petroleum
6 Institute, the New Mexico Oil and Gas Association and
7 various environmental departments. There are many,
8 many, many examples. We've chosen a few.

9 Q. You said that you learned that RECs are a
10 common practice.

11 A. Ms. Fox, I think I -- I confused you, and I
12 apologize. I wanted to say with regard to Exhibit 14
13 and Exhibit 15 that there is an example included in
14 Exhibits 14 and 15 from a workshop that is -- of an
15 operator, Weatherford in this case, that captured and
16 sold 2 million cubic feet of gas recovered from only
17 three gas capture completions, and that was nearby in
18 the Durango, Colorado area.

19 That amount of gas is enough to meet the
20 natural gas needs of 28 households for a year.

21 Q. Thank you.

22 And you had said that you had learned that
23 RECs was a common -- RECs, or reduced emission
24 completions, was a common practice within the San Juan
25 Basin, correct?

1 A. Well, yes, and more broadly. We knew that
2 Devon was using gas capture equipment and as were many
3 others, ExxonMobil, ConocoPhillips, British Petroleum,
4 to name a few. In fact, Devon described its use of gas
5 capture or REC equipment as, quote, standard practice,
6 end quote.

7 Q. How did REC equipment come to be used at your
8 ranch between 2008 and 2012?

9 A. Well, we worked with ConocoPhillips and BLM to
10 develop a program for the 44 wells that were going to be
11 drilled on us to reduce impacts to the land, air and
12 water, including impacts from well completions by the
13 use of gas capture equipment. So between those years of
14 2008 and 2012, 22 of the 44 wells in the program were
15 drilled, and -- or -- and completed or recompleted.

16 So that we visited those well sites many times
17 to be sure that they were following the agreement
18 understanding that we had, which they were. And then we
19 observed REC equipment on the locations and in use. And
20 then in 2012 the price of natural gas declined, and the
21 drilling in that program stopped.

22 Q. What happened after that?

23 A. Well, in 2017 Hilcorp Energy Company bought
24 out ConocoPhillips in the San Juan Basin. So in early
25 2018 Hilcorp first gave us notice that it would be

1 recompleting a well on our federal grazing permit land.

2 When we met with Hilcorp, we were shocked to
3 learn that Hilcorp didn't necessarily commit to using
4 REC equipment and that they were claiming that Hilcorp
5 didn't have any REC equipment, that they had no trained
6 crews, and that perhaps formation pressures in the area
7 were too low.

8 However, my wife and I already knew that REC
9 equipment was widely available and that there was a
10 large pool of oil -- skilled oil field workers in San
11 Juan Basin, and that further we knew that formation
12 pressures were adequate, or in the instance that they
13 weren't, those formation pressures could be boosted so
14 that REC equipment could be used.

15 Q. What was your reaction to this news from
16 Hilcorp?

17 A. Well, we believe that Hilcorp should honor the
18 agreement we had with ConocoPhillips to conduct gas
19 capture during completions and recompletions. And since
20 2012 emissions from hydraulically fractured natural gas
21 wells for completions and recompletions were being
22 regulated by the EPA under their Quad 0a rule, later
23 strengthened in the Quad 0a rule.

24 Q. What happened then?

25 A. Hilcorp proceeded with recompletion of another

1 well site, approximately a mile-and-a-quarter from our
2 home, without even giving us the benefit of an on site
3 meeting. We learned that the well was to be fracked on
4 March 7th, 2018, and when we arrived that day, we found
5 out that the fracking operations were being concluded
6 and that preparations for a recompletion were in place
7 with flowback gases to be vented directly to the
8 atmosphere, into the space where we live and work.

9 Yes. We have -- that's from -- blow up
10 pictures -- there we go. Okay. So this is the exact
11 well that March 8th date. So that -- Hilcorp went ahead
12 with their recompletion with no REC equipment in place,
13 and you can see -- or we have -- thank you. We have
14 identified that no REC equipment was in place.

15 So we can see that the flowback line goes
16 directly into an open container, called a flowback box.
17 The fluids are -- sorry. The solids and the liquids are
18 no longer thrown on the ground as -- or discharged onto
19 the ground as they were in blowie line completions. Now
20 they are captured in that box you see, but the box is
21 open at the top all the way, fully open, and all of the
22 gases vent directly to the atmosphere.

23 And that's the method that Hilcorp use -- uses
24 to this day.

25 Q. What has happened more recently,

1 Mr. Schreiber?

2 A. Well, Hilcorp divides the San Juan Basin into
3 five operating areas. And in 2012, in February, we
4 learned that 22 recompletions were to be done in our
5 area alone. So since those recompletions took place
6 back in 2018, we learned that Hilcorp, which has been
7 identified as the worst methane polluter of oil and gas
8 companies in the country, has met -- they went on to
9 recomplete a well recently on us, about a mile from our
10 ranch house last August, just a few months ago.

11 So I observed that recompletion every day that
12 it was in process, and I can say with certainty that
13 Hilcorp did not capture one molecule of methane or VOCs
14 during that entire recompletion process.

15 Q. Mr. Schreiber, you were appointed to Governor
16 Michelle Lujan Grisham's Energy Transition Team in 2018,
17 correct?

18 A. Yes. And I served on the Methane Advisory
19 Panel sponsored by NMED and the Energy, Minerals and
20 Natural Resources Department. I also attended the
21 signing of the Governor's -- one of her first executive
22 orders, Order 2019-003, targeting climate change. That
23 order acknowledged both the potency of methane as a
24 greenhouse gas, and it also for the very first time
25 assigned the oil and gas industry as the largest

1 industrial source of methane and ozone precursor
2 pollutions.

3 The Governor committed then to passing the
4 strongest methane rules in the nation. To keep that
5 commitment, the EIB must require control of emissions
6 during completions and recompletions. New Mexico's
7 rules should be at least as strong as Colorado's.

8 Q. What do you mean by that, Mr. Schreiber?

9 A. Well, as been stated today in testimony, last
10 fall the Colorado Air Quality Control Commission,
11 Colorado's analog to the EIB, passed regulations on
12 completions and recompletions that generally require
13 during completions and recompletions all methane be
14 captured, not vented or flared.

15 Colorado's regulations actually go beyond the
16 EPA's Quad 0a regulations in their regulation of
17 recompletions and completions, and they require capture
18 of emissions during the entire flowback process, as
19 Mr. Alexander stated in his testimony.

20 So I strongly support New Mexico adopting
21 Colorado's approach, which would place New Mexico at the
22 forefront of emissions control during completions and
23 recompletions. This proposal to capture emissions
24 during completions and recompletions is set forth in the
25 joint proposed revised amendments from Clean Air

1 Advocates, EDF, from the Center for Civic Policy and
2 NAVA Education Fund and is now supported by Oxy USA, a
3 major operator in the state, and by the National Park
4 Service, as well.

5 Q. Mr. Schreiber, do you have any closing
6 thoughts for the EIB to consider?

7 A. Yes. Failure to capture these emissions
8 represents a gaping hole in New Mexico's regulation, and
9 that will plague my family and families like mine who
10 work, live and go to school close to oil and gas
11 operations.

12 Standing on my ranch, I can see Colorado,
13 which is less than 25 miles away. To know that the same
14 operators that are allowed to vent ozone precursors,
15 methane, toxic pollutants from completions and
16 recompletions here in New Mexico are prevented from
17 doing so in Colorado is deeply troubling. These
18 operators drill into the same formations, they vent the
19 same pollutants into the same air sheds, and they
20 threaten the same communities right here in the same
21 region of the country.

22 New Mexico, like our sister state, should
23 adopt reduced emission completion requirements. These
24 requirements are technically feasible, they reduce
25 waste, and they protect our health and our environment

1 especially in rural communities like mine.

2 MS. FOX: Thank you for your testimony,
3 Mr. Schreiber.

4 He now stands for cross-examination.

5 HEARING OFFICER ORTH: Thank you,
6 Mr. Schreiber and Ms. Fox.

7 If you're a party with questions, please turn
8 on your screen.

9 Mr. de Saillan, I see you.

10 MR. DE SAILLAN: Thank you, Madam Hearing
11 Officer.

12 Can you hear me okay?

13 HEARING OFFICER ORTH: I'm very sorry,
14 Mr. de Saillan. It sounds like you're coming through
15 water. Perhaps if you turn off your video.

16 MR. DE SAILLAN: I'll get my snorkel.

17 Is that better, Madam Hearing Officer?

18 HEARING OFFICER ORTH: Yes, it is. Thank you.

19 MR. DE SAILLAN: Very good. Thank you.

20 CROSS-EXAMINATION

21 BY MR. DE SAILLAN:

22 Q. Good morning, Mr. Schreiber.

23 Just for the record, my name is Charlie de
24 Saillan. I'm an attorney with the New Mexico
25 Environmental Law Center.

1 And I just have one question for you.

2 Regarding your -- the proposal for controlling
3 emissions during completions and recompletions, is it
4 your understanding that the New Mexico Environmental Law
5 Center also supports that proposal?

6 A. Yes, it is.

7 MR. DE SAILLAN: Thank you. That's all I
8 have.

9 Thank you, Madam Hearing Officer.

10 HEARING OFFICER ORTH: Thank you,
11 Mr. de Saillan.

12 If you are a party with a question of
13 Mr. Schreiber, please turn on your camera.

14 I'm not seeing anyone else.

15 I'll turn now to the Board for their
16 questions.

17 If you're an attendee on the platform with a
18 question, please reach out through chat.

19 EXAMINATION

20 BY THE BOARD:

21 HEARING OFFICER ORTH: Madam Chair?

22 CHAIR SUINA: Thank you, Madam Hearing
23 Officer.

24 And thank you, Mr. Schreiber, for your
25 testimony to provide us a, you know, in -- on-the-ground

1 perspective. So I appreciate that.

2 At this time, though, I don't have any
3 questions.

4 HEARING OFFICER ORTH: Thank you.
5 Vice-Chair Trujillo Davis.

6 VICE-CHAIR TRUJILLO DAVIS: Yes.

7 Mr. Schreiber, thank you for taking the time
8 to talk with us and share your experience with us.

9 I'm curious, were you able to get resolution
10 on the issues that you have on your ranch?

11 MR. SCHREIBER: No, ma'am. Previously we did,
12 but since 2018, no.

13 VICE-CHAIR TRUJILLO DAVIS: Well, I'm very
14 sorry to hear that.

15 And I don't have any other questions, but
16 again thank you for sharing your experience with us.

17 HEARING OFFICER ORTH: Thank you.

18 Member Cates?

19 MEMBER CATES: No questions here. Thank you.

20 HEARING OFFICER ORTH: Thank you.

21 Member Bitzer?

22 MEMBER BITZER: No questions. Thank you.

23 HEARING OFFICER ORTH: Thank you.

24 Member Garcia?

25 MEMBER GARCIA: No questions. Thank you.

1 HEARING OFFICER ORTH: And Member Honker.

2 MEMBER HONKER: No questions. Thank you.

3 HEARING OFFICER ORTH: Thank you.

4 Any follow-up, Ms. Fox?

5 MS. FOX: No. Thank you, Madam Hearing
6 Officer.

7 HEARING OFFICER ORTH: All right. Thank you
8 very much, Mr. Schreiber, for joining us.

9 And thank you, Ms. Fox.

10 MR. SCHREIBER: Thank you, ma'am.

11 HEARING OFFICER ORTH: All right.

12 Does it make sense now to return to the
13 Department or to go to Mr. Smitherman?

14 I'm not sure what other witnesses we'll be
15 hearing from.

16 MR. HISER: If I could just take temperature.
17 I would think we would want to hear from Mr. Smitherman
18 before we go back to the Department.

19 MS. KATZ: Yes. We agree with that.

20 HEARING OFFICER ORTH: All right. Thank you.

21 Mr. Hiser.

22 MR. HISER: Is there -- is there anybody else?

23 Are we down to just Mr. Smitherman and then Ms. Kuehn
24 and Mr. Palmer? Do you know?

25 HEARING OFFICER ORTH: Let me pause. Those

1 are the only ones I know of, but let me pause for a
2 moment.

3 I did ask Pam to reach out to Ms. Witherspoon,
4 because I -- I know she was on the platform yesterday.
5 I wanted to invite her comment today. But I haven't
6 heard back yet whether we'll be able to hear from her
7 today. And she indicated she may put her comment in
8 writing. So if she -- if she rejoins us, I will invite
9 her to speak.

10 MS. KATZ: Madam Hearing Officer, I'm
11 wondering if Oxy -- if Mr. Janoe has any witnesses on
12 this, since they were part of the -- I believe they had
13 supported that proposal, but --

14 MR. HISER: That's a good question from
15 Ms. Katz.

16 HEARING OFFICER ORTH: That's -- I think we
17 were going to hear one more time from Mr. Holderman,
18 weren't we?

19 Let's see. Mr. Janoe?

20 MR. JANOE: Yes, Madam Hearing Officer.
21 Mr. Holderman is going to speak. I apologize. I had
22 stepped out for a second to find Mr. Holderman. But
23 this is on -- in connection with the workover from --
24 yes. He's prepared to speak on that briefly in
25 surrebuttal. We could also do that -- he has testimony

1 in connection with the flowback proposal. We could do
2 that at that time, too.

3 MR. HISER: Why don't we let Mr. -- if
4 Mr. Holderman is available, why don't we let him cover
5 all his remaining topics in one fell swoop, and then we
6 were going to do the same with Mr. Smitherman.

7 HEARING OFFICER ORTH: Great idea.

8 MR. JANOE: That would be great. And he's
9 literally walking through the door. So we'll get him up
10 here in two seconds.

11 HEARING OFFICER ORTH: Thank you, everyone.

12 Whenever you're ready, Mr. Janoe.

13 DANNY HOLDERMAN

14 (Relating to Topic Orders 35 and 37)

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

17 DIRECT EXAMINATION

18 BY MR. JANOE:

19 MR. JANOE: So, Madam Hearing Officer, I have
20 Mr. Holderman with me. He is going to be addressing
21 Section 124 on well workovers. This is a surrebuttal
22 point. So this is developed posttestimony. So it is
23 not one found in either Oxy Exhibit 2 or Oxy Rebuttal
24 Exhibit 2. And then has comments on the proposal for
25 flowback presented by EDF, CAA, CPP and NAVA, which is

1 at the new Section 127.

2 So with that, I will turn it over to
3 Mr. Holderman.

4 HEARING OFFICER ORTH: Thank you.

5 Q. (BY MR. JANOE) Mr. Holderman, you remain
6 under oath.

7 And would you please summarize your
8 surrebuttal testimony concerning well workovers.

9 A. Sure. Although not addressed in my direct or
10 rebuttal testimony, after reviewing the supplement filed
11 by EDF, Clean Air Advocates and NAVA on September 19th,
12 2021, concerning the process for measuring the 1,000
13 foot distance for occupied areas, Oxy US believes that
14 the notification requirements in Section 124E.(2) should
15 be modified to be consistent with this clarification in
16 the use of occupied areas.

17 Specifically, the quarter mile distance used
18 in the provision should cover the distance from the
19 latitude and longitude of wellheads to either the
20 property line for schools, property line for outdoor
21 venues and recreation areas, location of buildings or
22 structures used as a place of residence, and/or the
23 location of commercial buildings.

24 In addition, notification to residents should
25 cover anyone in manufactured, mobile or modular homes,

1 except that any such manufactured, mobile or modular
2 homes intended for temporary occupancy or for business
3 purposes should be excluded.

4 These clarifications will help ensure more
5 accurate evaluations and consistent application of the
6 requirement.

7 Q. Thank you, Mr. Holderman.

8 Does that conclude your surrebuttal
9 testimony --

10 A. It does.

11 Q. -- on well workovers?

12 Madam Hearing Officer, we can either present
13 Mr. Holderman for cross-examination on this point now or
14 just run through the flowback proposal.

15 HEARING OFFICER ORTH: Please run through the
16 flowback.

17 MR. JANOE: Sure.

18 Q. So, Mr. Holderman, could you please summarize
19 your direct and rebuttal testimony on Section 127, the
20 flowback proposal.

21 A. Sure. As noted in my rebuttal testimony, Oxy
22 USA supports the proposed requirements for flowback
23 vessels in preproduction operations by EDF, Clean Air
24 Advocates and NAVA, with two important changes to the
25 original proposal.

1 First, Oxy USA removed the vapor tight
2 reference because it could be read to exclude pressure
3 relief systems which are an essential safety feature for
4 control systems. The general control language Oxy USA
5 has proposed would not restrict pressure relief systems
6 and is more consistent with safe operation.

7 Second, Oxy USA has also proposed to require
8 compliance for existing facilities beginning one year
9 following the rules' effective date so that existing
10 facilities have the time needed to ensure the required
11 vessels and control devices are in place. Oxy USA
12 understands that EDF, Clean Air Advocates and NAVA have
13 included both these changes in their rebuttal testimony,
14 and we appreciate their agreement.

15 I would also like to note that while this new
16 section is workable for Oxy USA's New Mexico operations,
17 with the modifications discussed, I can't say whether
18 these are feasible for other operators in the state.
19 I'm only speaking to Oxy USA's (unintelligible and/or
20 inaudible).

21 MR. JANOE: Madam Hearing Officer, with that,
22 we would present Mr. Holderman for cross-examination on
23 his surrebuttal to Section 124, as well as his rebuttal
24 testimony on 127.

25 HEARING OFFICER ORTH: Thank you very much,

1 Mr. Holderman and Mr. Janoe.

2 If you're a party with a question of

3 Mr. Holderman, please turn on your camera.

4 I'm not seeing anyone.

5 I'll turn now to the Board.

6 If you're an attendee with a question, please
7 reach out through chat.

8 Madam Chair?

9 CHAIR SUINA: Thank you, Madam Hearing
10 Officer.

11 And thank you, Mr. Holderman. I don't have
12 any questions at this point.

13 HEARING OFFICER ORTH: Thank you.

14 Vice-Chair Trujillo Davis.

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

17 HEARING OFFICER ORTH: Thank you.

18 Member Cates?

19 I can see that he's on the platform. He may
20 have stepped away.

21 Member Bitzer?

22 MEMBER CATES: No questions. Thank you.

23 HEARING OFFICER ORTH: Was that you, Member
24 Cates?

25 MEMBER CATES: Yes. No questions here.

1 Thanks.

2 HEARING OFFICER ORTH: Thank you.

3 Member Garcia.

4 MEMBER GARCIA: No questions. Thank you.

5 HEARING OFFICER ORTH: And Member Honker.

6 MEMBER HONKER: No questions. Thank you.

7 HEARING OFFICER ORTH: Thank you.

8 Thank you very much, Mr. Holderman, for

9 rejoining us.

10 And thank you, Mr. Janoe.

11 MR. HOLDERMAN: Thank you.

12 MR. JANOE: Thank you.

13 HEARING OFFICER ORTH: Shall we go to

14 Mr. Smitherman.

15 MR. HISER: Yes, Madam Hearing Officer. I

16 believe he should be on the panel.

17 JOHN R. SMITHERMAN

18 (Relating to Topic Orders 37 and 34 continued)

19 having been first duly sworn or affirmed, was

20 examined and testified further as follows:

21 DIRECT EXAMINATION

22 BY MR. HISER:

23 MR. HISER: And just to help everybody, we're

24 going to be talking about the commence operation, which

25 is one of the definitions that he had spoken to in his

1 direct and rebuttal, but it's in a section when he was
2 not here. We'll talk about automatic tank measurement
3 and then the flowback and associated definitions that
4 we've been having with the environmental proposals
5 today. Sort of what he's going to be covering.

6 I do not see him yet. Okay.

7 MR. SMITHERMAN: My video's on.

8 Can you hear me?

9 MR. HISER: Yes. I can hear you now.

10 Q. Good morning, Mr. Smitherman.

11 Can you please state your name for the court
12 reporter?

13 A. John R. Smitherman.

14 Q. Thank you.

15 And you've been previously sworn in this
16 matter; is that correct?

17 A. Yes, I have.

18 Q. And your rebuttal testimony is found at NMOGA
19 Exhibit 41; is that correct?

20 A. That's correct.

21 Q. There is a definition that you had found
22 important to discuss, and that's the definition of
23 commence operation.

24 Can you explain your concern to the Board
25 about that definition? And did you have a slide that

1 sort of shows this?

2 A. I do. Let me share my slides.

3 I think that's the wrong slide.

4 It's always a challenge.

5 Give me just a moment, please.

6 I think that's the correct slide deck.

7 Q. Yes. This one talks about flowback.

8 A. Let me see if I can minimize this.

9 Great. Thank you very much for that
10 opportunity.

11 I'm going to talk to you about the process of
12 drilling a well, completing a well and flowing back
13 hydraulic fracture stimulations, not only as the
14 industry perceives it, but also as the OCD rules now
15 define and require operators to -- to meet their new
16 requirements under the recent waste rules that were
17 worked on through the hearing in January and are now in
18 place.

19 I'm going to -- NMED has included the phrase
20 "but no later than the end of well completion operation"
21 in their definition of commencement of operation. I'm
22 going to address that in detail in just a few minutes.

23 Mr. Alexander has also suggested that the
24 definition of flowback be added and then suggests that
25 vessels used for flowback, I think, now may not be vapor

1 tight. I see some movement there, but also with
2 automatic tank gauging systems.

3 To address those issues, I need to kind of
4 start from the physical understanding of what goes on.
5 I'll try to, as carefully as I can, define for you all
6 of these phases, both in their physical reality and then
7 how they relate to the OCD rules.

8 This is a slide I used in the OCD hearing in
9 January.

10 Is it large enough? Can you see it? Perhaps
11 I could make it a little bigger?

12 Q. Bigger would be better, Mr. Smitherman.

13 A. Is that helpful?

14 Q. That is better. Yes.

15 A. Too large.

16 What I'm showing here today is a timeline
17 where -- you see this blue bar at the top. Time
18 actually starts here at this spud. This is basically
19 the life of a well. So time begins here when the well
20 is spudded. And then moves across to the right until
21 the well's end of life when it's plugged and abandoned.

22 Obviously, this is not to scale. All of these
23 drilling and completion operations take place within a
24 couple of months at the longest usually, and the
25 production operations could easily be 30 years or

1 longer. So it's really more of a conceptual process
2 that I'll walk you through.

3 This line here describes the physical things
4 that are happening. This is the drilling operation
5 section, this is the completion operation section, and
6 then the production operations in this third section
7 here.

8 I want to skip this line here, move to the
9 bottom, where I give a little more detail about what's
10 in this -- this period of time. This is when the well
11 is drilled, casing strings are run and cemented, and in
12 essence, it ends when the production casing has been
13 set, cemented and the wellhead installed.

14 Then the completion operations begin. Some of
15 those completion operations deal with running additional
16 strings of pipe in the hole to prepare for the
17 completion -- hydraulic stimulation process. There's
18 some other things that have to happen before, in
19 essence, you perforate your first stage, your first
20 section or first area that you're going to hydraulically
21 fracture.

22 And by the way, this is typically -- this is
23 not anything really different for a conventional well,
24 but it is more specific to an unconventional well that's
25 a horizontal well with many frac stages.

1 The first perforation occurs sometime during
2 that completion process. Obviously, not the very first.
3 There's some other things that have to happen before
4 then.

5 And then this is all the time frame that
6 hydraulic fracture stages are pumped, plugs are put in
7 place for subsequent stages to be pumped. And until
8 that process is finished, you could have 30 stages, you
9 could have 50 stages or more. All of that process goes
10 until you finished completing all -- hydraulically
11 stimulating all the stages that you intend to -- to
12 stimulate in this -- in this phase.

13 At that point, the well is drilled out. The
14 stage plugs that have been put in the well are drilled
15 out, and those fluids that are used to drill them out,
16 the debris from the frac plugs is brought to the
17 surface, and at some point you begin flowing the well
18 back. And that's what we call initial flowback.

19 And in this particular box here, I put that
20 initial flowback. It could have started before the end
21 of this completion phase, but it typically does not.
22 You typically finish your drill-out and cleanly go from
23 drill-out to initial flowback.

24 Now, the flowback period is in two separate
25 phases that are very clearly demarked in both the

1 physical operations and the rules that govern them.

2 The initial flowback on a well is when --
3 let's talk about a well that is hydraulically fracked
4 with a water-based fluid. That's easier to talk about
5 to start with. Initial flowback begins with virtually
6 all water. It takes a little while before the well
7 starts giving up any of its hydrocarbons. Doesn't take
8 long, I think very typically a few days. We used to
9 look for a significant oil percentage within about two
10 or three days, but certainly no less than two weeks.

11 At some point in this initial flowback, the
12 well -- well, let me say it differently. All during
13 this initial flowback, the well is flowing back, but it
14 doesn't have the surface pressure and rate and gas rate
15 to operate a separator. But as soon as the well's
16 flowback fluids have that, have enough gas and enough --
17 can hold enough back pressure on the well to operate a
18 separator, at that moment you move from initial flowback
19 stage to separation flowback stage. And that's
20 important relative to the OCD rules in place now.

21 Separation flowback is then fluids are all run
22 through a separator, and the -- according to the OCD
23 rules, at that point all gases that come from the
24 separator must be routed to sales. There is a provision
25 for flaring during separation flowback if there's safety

1 issues involved or if the gas is not salable to -- due
2 to contaminants.

3 Separation flowback then, in essence, is like
4 normal production. It's just through an initial
5 separator on site, typically what we call a four-phase
6 separator. The first -- those faces are gas, oil, water
7 and solids. So all during the separation flowback, all
8 of those fluids except the solids are sent basically to
9 the -- to the production facilities for sale, in most
10 cases.

11 Separation flowback ends when that separation
12 equipment is not needed and you can go straight to
13 normal production operations, with an asterisk. The OCD
14 requires that separation flowback end and normal
15 operations begin no more than 30 days after the initial
16 flowback starts. So it's a limited time that you have
17 the ability to operate under that set of regulations.

18 And then production operations are normal
19 production operations. This is where the fluids from
20 the well are going straight to your production
21 facilities and are being handled normally.

22 Make this a little too big here.

23 So I've just talked about the fact that
24 drilling operations end when casings set.

25 EDF has suggested that drilling or drilled --

1 a little unclear as to the endpoint of drilling
2 operations, but they also --

3 Q. Mr. Smitherman?

4 A. Yes.

5 Q. You're getting progressively fainter and
6 fainter as you're going along.

7 A. Oh, I'm sorry.

8 Q. Maybe you could move your phone to a point
9 where it's closer to right in front of you.

10 A. I'm going to try to take a piece of equipment
11 out of the process. Just give me a second.

12 Is that any better?

13 Q. Yes, it is.

14 A. I had an extension cord. Perhaps that was
15 causing a problem.

16 EDF also adds the concepts of drilling or
17 drilled to be added to definitions and drill-out, which
18 they say ends after the removal of all stage plugs and
19 the initial wellbore cleanup.

20 We believe that that suggested definition
21 lacks clarity. For one thing, how is initial wellbore
22 cleanup itself defined? So NMOGA recommends not
23 accepting the EDF definitions of drilling or drill-out.

24 As I mentioned before, completion operations
25 start with the first perforation and ends at the end of

1 separation flowback with a limit of 30 days. That's
2 from the OCD.

3 Flowback, as I've said, is -- consists of the
4 initial flowback, which ends when it's technically
5 feasible to operate a separator, and then separation
6 flowback begins at that moment and lasts until normal
7 production facilities are used with a limit of 30 days.

8 So production operations begins at the end of
9 separation flowback, but again no later than 31 days
10 after flowback.

11 Now, this is related to the commencement of
12 operations, and I'm going to go into some little detail
13 about that.

14 The current definition as proposed by the NMED
15 of commencement of operations is very consistent with
16 the OCD rules except for the endpoint, where they say no
17 later than the end of well completion operations.

18 The problem with that is, and I think it
19 probably is rare, but especially now with the waste rule
20 in place, wells that do not have facilities that are
21 completed or adequate gas takeaway are not allowed to
22 produce and flare gas until they have adequate gas
23 takeaway. And so there can be wells that are completed,
24 fracked, flowback, and then shut in, awaiting the
25 completion of facilities or completion of a gas

1 takeaway -- a gas sales line.

2 The inclusion of the term "but no later than
3 the end of well completion operation" would have the
4 effect in those circumstances of that operator having to
5 do inspections, including LDAR and AVOs and other type
6 of monitoring activities, basically on a facility that's
7 idle if this was the very first well to go to that
8 facility.

9 And all we're recommending is we remove that
10 term to simply begin the completion operation -- or the
11 commencement of operations when production actually does
12 begin as appropriate.

13 EDF also offers a new definition of
14 preproduction operations. This apparently includes
15 drilling through some of the well, just the part
16 drilling through the hydrocarbon bearing zones, and
17 extending through fracturing, refracturing, drill-out
18 and flowback.

19 We believe that that's unnecessary and it's
20 going to add confusion for at least the reason that
21 refracturing can take place months or even years after
22 the initial completion. We don't believe that this
23 suggested definition adds any value, and we suggest that
24 NMED reject that, or that the Board reject that.

25 So let's talk about flowback vessels. We've

1 had a lot of conversation about those today.

2 Some parties have recommended that vessels
3 that receive flowback fluid from wells after completion
4 be required to be vapor tight, I've heard some other
5 terms, and have automatic tank gauging systems.

6 This is not advisable for safety concerns. By
7 the way, we expressed that at the OCD hearing -- OCC
8 hearing in January, and the OCD staff expressed their
9 same concerns.

10 Let's talk about that a little bit. We heard
11 some of the testimony earlier today about the safety
12 issues and some of the steps that can be taken to
13 mitigate against those issues. What I have also heard
14 is, well, they're doing it in Colorado, and so far it's
15 been -- there have been no events, if you will. It's
16 been event-free or incident-free.

17 I always get a little skeptical when I hear
18 someone talking about something being safe because it's
19 been incident-free. And I'm going to give you a little
20 story from my experience at my former company I worked
21 for, BOPCO, where we were flowing a well back -- let's
22 start with a different one.

23 We actually used a technique for intervening
24 with wells called foam air. It basically takes water, a
25 surfactant and air, and creates a foam, a lot like

1 shaving cream, quite frankly, and uses it to circulate a
2 well. We had done it many times before without
3 incident, until one day we did have an incident. We had
4 a downhole explosion at around 700 feet from the
5 surface. The shockwave from that explosion came to the
6 surface, destroyed the wellhead and killed a 21-year-old
7 young man.

8 We dove deeply into understanding what
9 happened and discovered that that process, unless very,
10 very well understood, is fundamentally unsafe. We
11 didn't have incidents because for many, many times we
12 simply got lucky. The stars didn't line up against us,
13 and we had incident-free use of that technique, until we
14 didn't.

15 It is possible to make that technique safe,
16 but it takes a deep knowledge of the physics, deep
17 knowledge of the risks, and careful planning. There's
18 better ways to do it. In fact, I've just finished a
19 Society of Petroleum Engineers distinguished lecture
20 series talking about how that should be done more
21 safely.

22 So here you have a fundamentally unsafe issue.
23 It's like closing your eyes and walking across the
24 street. You can do that, you may get away with it, but
25 it's fundamentally unsafe, and at some point the stars

1 are going to line up against you and you're going to be
2 hurt or killed.

3 Now, how does that relate to flowback? We had
4 a workover, recompletion in Texas, this is a few years
5 ago, who were flowing the well back through a very
6 similar flowback vessel that we're talking about here
7 today, and the vessel blew up. We had no idea why. No
8 one was smoking. There was no flames on the site. And
9 after our deep dive into what happened, we determined
10 that, in essence, what had happened was a flammable mix
11 of air and gas had accumulated in the vessel and that a
12 static spark had set off.

13 Fluid flows can create static buildup. It's
14 just like sliding your foot across carpet. And so,
15 unfortunately, we had just the right incident, right --
16 all the stars lined up against us there, and the vessel
17 blew up. Thank goodness, no one was hurt. But it
18 brings to mind the safety aspects of trying to flow back
19 fluids safely to the surface.

20 Now, Mr. Alexander talked in great detail
21 about some of the steps that they took to mitigate that
22 risk. I doubt that there's a lot of operators out there
23 that understand it perhaps as deeply as they do. I know
24 in my conversation with operators through my
25 distinguished lecture series and my conversations with

1 providers of foam air, many people did not understand
2 those risks properly. I suspect the same is -- is
3 occurring here.

4 So when people tell me that it's incident-free
5 in Colorado after those rules have only been put in
6 place for a short time, I'm a little skeptical that
7 that's really fundamentally safe.

8 But let's also put that against -- that risk
9 against the volumes of gas that we're talking about.
10 The OCD rules require operators to capture for sale
11 gases as soon as a separator can physically operate. It
12 is -- it's days -- literally just days, maybe two or
13 three days, maybe as much as 10 days, before flowback
14 occurs such that your separator can function. And then
15 from then on those gases are sold or flared.

16 So the amount of gas that we're talking about
17 during the initial flowback periods is really tiny.
18 If -- if the well was producing a lot more gas during
19 the initial flowback period, then a separator could
20 operate. So it's self -- it's really kind of
21 self-correcting. If a well starts making a lot of gas,
22 then the separator will work, and you'll capture it. In
23 essence, OCD has created a definition or requirement for
24 a green completion.

25 And that concludes my surrebuttal. Mr. Hiser,

1 I may have left something out. Could you remind me if
2 I've done so.

3 Q. So thank you, Mr. Smitherman, as I bounce my
4 buttons the wrong direction and just disappeared.

5 Is NMOGA recommending to the Board that the
6 EDF proposal be adopted?

7 A. No. We're recommending that they reject EDF's
8 proposal.

9 Q. And NMOGA's position basically is that the OCC
10 has already really sort of pushed to the edge of what's
11 technically and practically feasible and safe with their
12 definition of when you need to put the separator in?

13 A. That's true. And I would also point out that
14 the OCD really is the agency that has the most deep
15 operational knowledge of oil and gas operations.
16 That -- I compare them to the NMED staff. As wonderful
17 as they are and as technically gifted as they are, it's
18 just not the area that they're -- that they focus on.

19 And so I would suggest that the OC -- OCD's
20 and OCC's decision to not include this -- by the way,
21 this proposal was -- was considered during the OCC
22 hearing in January and was rejected. And I think that
23 that speaks volumes.

24 Q. Now, I believe that there was also some
25 testimony that we heard about automatic tank

1 measurement.

2 Did you wish to touch on that, as well?

3 A. Certainly. Let's split that into two phases,
4 if you will.

5 One, part of the proposal -- part of EDF's
6 proposal on this completion and flowback was that those
7 flowback tanks have automatic tank gauges. That really
8 is unnecessary. If you don't -- if you don't close
9 them, if you allow the small amounts of gases to escape
10 and not have them under pressure, even small amount of
11 pressures in these vessels, they really aren't
12 necessary. They won't do anything for you. So it
13 doesn't make any sense in that -- in that particular
14 context.

15 They have also recommended that automatic tank
16 gauges be installed on regular production facilities
17 during normal production operations. The OCD already
18 has looked at this concept, and they are requiring that
19 automatic tank gauging systems be required on all new
20 facilities. That makes sense. Retrofitting an
21 automatic tank gauging system can be expensive, can
22 really be almost technically infeasible on some tanks.

23 What that technology requires is that there be
24 a connection, if you will, a place to hook up this
25 device on the top of a tank. Some tanks have a

1 connection that's available to use, but some tanks that
2 were not designed for that just don't. And so those
3 tanks, those existing tanks, would be extraordinarily
4 expensive to modify, to retrofit.

5 NMOGA supports the idea of requiring automatic
6 tank gauging on new facilities.

7 I think there's also some discussion of LACT
8 units, if that fits within this context, too.

9 Q. Okay.

10 But we don't believe that it should be applied
11 to modified units, and can you explain our concerns with
12 the modification proposal?

13 A. Correct. Modified as defined, you can add a
14 new tank to an existing facility, and that would be then
15 a modified facility. That facility can still have older
16 existing tanks that again may or may not have the
17 capability of having an automatic tank gauging system
18 added to them without extraordinary costs.

19 So we really believe it's appropriate for new
20 facilities, but it's not appropriate elsewhere.

21 Q. And, Mr. Smitherman, is -- does NMOGA have
22 some language changes that it would like to make to the
23 automatic tank gauge -- the automatic tank measurement
24 provisions that have been suggested to sort of clarify
25 these points?

1 A. Yes, we do. We've thought deeply about how to
2 put this language in the rule so that it's effective and
3 it requires operators to utilize that technology when
4 it's appropriate. And we got that language for NMED to
5 consider and the Board to consider.

6 Q. And looking at some of the language changes
7 that you might like to see, we'd like to see allowance
8 for 180 days; is that correct? For certain of these
9 changes to go into effect?

10 A. That's correct. There's -- as we've talked
11 about before, there's simply logistical supply chain
12 issues that are involved, but also some locations you
13 may actually have to do some contract modification if
14 you're going to change the basis for any sales of crude
15 oil. Those contracts may have to be modified in some
16 cases. And we want to give operators sufficient time to
17 address both of those two issues, physical and
18 contractual.

19 Q. Okay.

20 And so then in Section C.(1), you're thinking
21 that maybe adding a allowance there for 180 days would
22 be appropriate; is that correct?

23 A. That's correct.

24 Q. And that this is also the same provision where
25 we recommend to the Environmental Improvement Board to

1 strike the language about facilities that are modified
2 on or after the effective date for the reasons that you
3 just explained?

4 A. That's correct.

5 Q. And then in Section C.(2), yesterday there was
6 testimony from Dr. McCabe that the purpose of this
7 provision to keep thief hatches closed was not to
8 prevent our opening of the thief hatches or pressure
9 relief devices for maintenance purposes.

10 Do we think that that should be made clear in
11 Section C.(2)?

12 A. Yes. It seems much more restrictive than
13 that, and I think that those are reasonable. There are
14 reasonable times that those tank hatches must be opened
15 for maintenance issues.

16 Q. And then do we have just a couple of minor
17 conforming changes to the language that we're going to
18 recommend to the Board and to the Department --

19 A. Yes, we do.

20 Q. -- about the time of the conclusion of your
21 testimony?

22 A. Yes.

23 Q. Thank you.

24 Is there anything else that we -- oh. There's
25 a little bit of a strange reference in this first

1 section where it talks about covering natural -- or
2 compressor transmission stations potentially because it
3 uses the old term "natural gas compressor stations."

4 Do we believe it's necessary for transmission
5 compressor stations to have automatic tank gauging, or
6 are they sufficiently different?

7 A. They're sufficiently different. Their amounts
8 of fluids that they get, the rates of accumulation of
9 fluids, they are so low that the addition -- the cost of
10 adding this equipment on those is not justified by the
11 very, very small amounts of liquids that they deal with.

12 Q. And transmission compressor stations aren't
13 included in the scope of the Colorado rules; is that
14 correct? For automatic tank gauging? Do you know?

15 A. That's correct. I -- I think I recall that.
16 Yes.

17 Q. Okay. Thank you.

18 Is there anything, Mr. Smitherman, that you
19 would like to add to your testimony to this point with
20 the Board?

21 A. I guess the only thing that I would like to
22 just mention is I took it from Mr. Alexander -- and
23 congratulations to Mr. Alexander and Southwest Energy
24 for their -- their thought -- their forward thinking and
25 their culture, if you will. But I want to make sure

1 that the Board understands that they're not unique.

2 Our company, BOPCO, is very proud of our work,
3 and we worked very hard early on, for example, to reduce
4 the amount of freshwater that was used in fracs, and we
5 started 2013 with using produced water in fracs as an
6 exception, and we ended that year with using freshwater
7 as an exception. There are lots of companies out there
8 that are forward thinking and don't just do what they
9 used -- what they did before. And I just want to make
10 sure that that's well understood.

11 MR. HISER: Okay. Thank you, Mr. Smitherman.

12 Madam Hearing Officer, that completes his
13 testimony in this matter, and I would turn him over to
14 the other parties for questions, and the Board, as well.

15 Thank you.

16 HEARING OFFICER ORTH: Thank you,
17 Mr. Smitherman and Mr. Hiser.

18 Thank you for getting us to 12:14. I think
19 this is a good time for a lunch break. I see some
20 nodding heads among the Board Members.

21 Let's come back at 1:00. We do have a number
22 of public commenters at 1:00, and then we will return to
23 Mr. Smitherman and questions of him.

24 Thank you, all.

25 (Proceedings in recess from 12:14 p.m. to

1 12:59 p.m.)

2 HEARING OFFICER ORTH: Let's come back from
3 the lunch break, please.

4 Good afternoon.

5 My name is Felicia Orth, Hearing Officer in
6 EIB 21-27. This is a rulemaking before the
7 Environmental Improvement Board related to ozone
8 precursors.

9 We are on the final day of our hearing, day
10 10, and we have reached the 1:00 p.m. public comment
11 period.

12 Public comment is taken under oath, it is
13 taken by audio, not video, and is limited to five
14 minutes.

15 Many of you reached out to the Board
16 administrator with your names, and I will call on you
17 first. If you're on the platform and did not reach out
18 to the administrator, I'm happy to accept your comment.
19 Just reach out in the chat, which is enabled for
20 everyone.

21 Let's start with Larry Scott.

22 Representative Scott, can you hear me?

23 MR. SCOTT: Yes, I can.

24 Can you hear me?

25 HEARING OFFICER ORTH: Yes. I hear you

1 clearly.

2 If you would please spell your name for the
3 transcript.

4 MR. SCOTT: I am State Representative Larry
5 Scott, that's L-A-R-R-Y S-C-O-T-T.

6 HEARING OFFICER ORTH: Thank you.

7 And raise your right hand.

8 Do you swear or affirm to tell the truth?

9 MR. SCOTT: I do.

10 HEARING OFFICER ORTH: Thank you.

11 LARRY SCOTT

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

14 PUBLIC COMMENT

15 HEARING OFFICER ORTH: I'll start your five
16 minutes now.

17 MR. SCOTT: My comment would be in addition to
18 my night job, if you will, as a state representative, my
19 day job is as a small, independent production company
20 located in Hobbs, New Mexico, and operating
21 exclusively -- have operated exclusively in Lea and Eddy
22 Counties for the past 40 years.

23 I have seen the Environment Department
24 estimates of the cost of compliance of \$350 million if
25 this rule is enacted as proposed. And I believe that

1 this grossly underestimates the true cost, because it
2 does not take into consideration over 100,000 barrels a
3 day of low-volume oil well production that will be
4 placed at risk as a consequence.

5 Now, in recent years I have had difficulty
6 getting low-volume gas production connected to midstream
7 gathering systems because those folks do not consider
8 keeping a meter and pipeline available to low-volume
9 leases economic so that there is a charge associated
10 with being able to keep your gas connected to a sales
11 line.

12 In addition to that charge, there would be a
13 substantial investment required for equipment to recover
14 these very low volumes of gas that are vented from stock
15 tanks, and there is no economic benefit whatsoever that
16 can accrue to the installation of this equipment. It
17 will just be -- the investment required there would
18 never be recovered.

19 So the consequence of that -- and I'm -- I'm
20 one of the people that will be directly impacted. I
21 have already prepared notices to plug and abandon one of
22 the wells that would be directly impacted as a
23 consequence of this. The low well makes about four
24 barrels a day, there is no gas connection available, and
25 it's going to be plugged. There are thousands of wells

1 in this similar situation that will be similarly
2 impacted.

3 I urge the folks considering adoption of this
4 rule to reconsider a reasonable cost for equivalent CO2
5 emissions I read is in the \$30 to \$50 a ton range. I do
6 not believe that that analysis has been fully applied or
7 implemented to this rule, and I would urge all of the
8 folks that have this under consideration to go through
9 that process before making a final decision.

10 Thank you very much for listening, and that's
11 all I had.

12 HEARING OFFICER ORTH: Thank you very much,
13 Representative Scott.

14 We'll move to Mara Yarbrough.

15 Ms. Yarbrough, can you hear me?

16 MS. YARBROUGH: Yes. I'm here.

17 Can you hear me?

18 HEARING OFFICER ORTH: Yes, I can.

19 Would you spell your name for the transcript,
20 please.

21 MS. YARBROUGH: Yes, ma'am. My first name is
22 Mara, M-A-R-A, and my last name is Yarbrough,
23 Y-A-R-B-R-O-U-G-H.

24 HEARING OFFICER ORTH: Thank you.

25 And if you raise your right hand.

1 Do you swear or affirm to tell the truth?

2 MS. YARBROUGH: Yes, I do.

3 HEARING OFFICER ORTH: Thank you.

4 MARA YARBROUGH

5 having been first duly sworn or affirmed, gave
6 public comment as follows:

7 PUBLIC COMMENT

8 HEARING OFFICER ORTH: I'll start your five
9 minutes now.

10 MS. YARBROUGH: Thank you, Madam Hearing
11 Officer and Members of the Environmental Improvement
12 Board, for this opportunity to comment today on the
13 proposed ozone precursor rule.

14 My name is Mara Yarbrough. I live in Rio
15 Arriba County, which is where I was raised and where I
16 raised my own children.

17 In addition to being a mom, I was an
18 elementary school teacher for over a decade, and I'm
19 currently involved with a diverse range of organizations
20 that work on issues related to oil and gas in
21 Southeastern New Mexico.

22 Thank you to NMED for your support of both
23 auto gauging and the proximity proposal put forth by
24 Clean Air Advocates. While I appreciate NMED's proposed
25 rule, this rule can still be stronger, and, in fact,

1 must be stronger to truly protect New Mexicans from
2 health harms.

3 The EIB has the authority and a duty to apply
4 principles of environmental justice in its
5 decision-making. In holding to these principles, the
6 EIB must achieve the fair treatment and meaningful
7 involvement of all New Mexicans.

8 Many, many voices have been heard
9 throughout -- through testimony and public comment over
10 these past two weeks calling for strong rules to protect
11 the health of our communities, and it is up to the EIB
12 to render this public involvement meaningful by actually
13 hearing and acting upon what people have urged. You can
14 do this by approving stringent ozone precursor rules as
15 recommended by much, if not most, of the testimony and
16 public feedback you have heard.

17 You should also aim to achieve the fair
18 treatment of all New Mexicans and in particular of those
19 people and communities who live in close proximity to
20 oil and gas operations. You've heard testimony and
21 comments that a large percentage of folks who live in
22 close proximity to these operations are rural,
23 low-income communities and communities of color.

24 And these frontline communities along with
25 especially vulnerable populations of children and the

1 elderly already suffer disparate and cumulative impacts
2 from pollution. A weak ozone precursor rule would only
3 worsen health outcomes for those -- these vulnerable
4 populations.

5 The EIB can prevent additional health harms
6 with strong ozone precursor rules by requiring more
7 frequent inspections for leak detection and repair, by
8 improving pollution control during well completion, by
9 implementing stronger requirements to cut pollution from
10 pneumatic controllers, and by tightening NOx limits from
11 engines along the lines recommended by the National Park
12 Service and Clean Air Advocates.

13 New Mexicans are looking to you to be
14 courageous in your decision-making and to approve rules
15 that put the health and well-being of New Mexicans
16 first. We're counting on you.

17 I appreciate your time and your hard work, and
18 I thank you again for this opportunity to speak today.

19 HEARING OFFICER ORTH: Thank you,
20 Ms. Yarbrough.

21 Go then to Judith Gabriele.

22 Ms. Gabriele, can you hear me?

23 MS. GABRIELE: I can hear you.

24 And, unfortunately, my camera is not working.

25 Is that okay?

1 HEARING OFFICER ORTH: We don't take video.

2 So it's just right.

3 MS. GABRIELE: Oh.

4 HEARING OFFICER ORTH: Thank you.

5 Would you spell your name for the transcript,
6 please.

7 MS. GABRIELE: J-U-D-I-T-H G-A-B-R-I-E-L-E.

8 HEARING OFFICER ORTH: Thank you.

9 And raise your right hand.

10 Do you swear or affirm to tell the truth?

11 MS. GABRIELE: I do.

12 HEARING OFFICER ORTH: Thank you so much.

13 JUDITH GABRIELE

14 having been first duly sworn or affirmed, gave
15 public comment as follows:

16 PUBLIC COMMENT

17 HEARING OFFICER ORTH: I'll start your five
18 minutes now.

19 MS. GABRIELE: My name is Judith Gabriel, and
20 I live in Santa Fe.

21 I'm a retired public health professional and
22 longtime member of the New Mexico Public Health
23 Association.

24 I'd like to share some facts that I'm sure
25 you're well aware of and that bear repeating.

1 More than 130,000 New Mexicans live within a
2 half mile of oil and gas development. Oil and gas
3 operations in New Mexico emit 337,500 tons of
4 smog-forming volatile organic compounds and more than
5 1.1 million metric tons of methane pollution, a powerful
6 greenhouse gas.

7 Leaks due to equipment malfunction and lack of
8 maintenance account for about 70 percent of the oil and
9 gas industry's emissions statewide. Children, older
10 people and communities of color are impacted most by
11 these emissions. These inequities should be of great
12 concern to all of us.

13 I'm pleased that New Mexico is addressing
14 methane and ozone through the regulatory process and
15 would like to see the rules strengthened with three
16 critical additions.

17 Protect those living closest to development by
18 requiring more frequent inspections to find and fix
19 leaks.

20 Ensure strong requirements for operators to
21 control pollution during the completion of an oil or gas
22 well as well as when they redevelop an existing well.

23 And finally, strengthen requirements to cut
24 pollution from pneumatic controllers that are used in
25 oil and gas production. The devices are the second

1 largest source of oil and gas methane emissions in New
2 Mexico. NMED should require companies to inspect
3 pneumatics for leaks and accelerate the timeline to
4 retrofit equipment with zero bleed or zero emission
5 pneumatic controllers.

6 With these enhancements, New Mexico's air
7 quality rules can lead the nation in reducing methane
8 and ozone emissions. Please keep all New Mexicans safer
9 from these toxins, especially individuals in communities
10 who are most affected, by adding these additions to the
11 final rules.

12 Thank you.

13 HEARING OFFICER ORTH: Thank you,
14 Ms. Gabriele.

15 Move then to Kaitlin Bryson.

16 Ms. Bryson, can you hear me?

17 MS. BRYSON: Yes, I can.

18 HEARING OFFICER ORTH: I can hear you clearly.

19 If you would spell your name, please.

20 MS. BRYSON: Okay. K-A-I-T-L-I-N, last name
21 B-R-Y-S-O-N.

22 HEARING OFFICER ORTH: Thank you.

23 If you'd raise your right hand.

24 Do you swear or affirm to tell the truth?

25 MS. BRYSON: I do.

1 HEARING OFFICER ORTH: Thank you.

2 KAITLIN BRYSON

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

5 PUBLIC COMMENT

6 HEARING OFFICER ORTH: I'll start your five
7 minutes now.

8 MS. BRYSON: Great.

9 Hello.

10 My name is Kaitlin Bryson, and I am an
11 environmental artist, activist and educator living
12 nomadically between New Mexico and California.

13 I recently received my MFA in art and ecology
14 at UNM, and my work is centered around environmental
15 justice and earth repair.

16 I want to thank the Environmental Improvement
17 Board for the opportunity to provide comment today.

18 I'm currently working on a bioremediation
19 project and awareness campaign of fracking flowback
20 spill in Dinetah, near Counselor, New Mexico, from 2019,
21 alongside Beata Tsosie-Pena and Tewa Women United. This
22 incident, Number NCS1905249442, released 1,400 barrels
23 of fracking flowback fluid and over 300 barrels of crude
24 oil into an ephemeral stream in the Escavada Wash, which
25 is a tributary of the Chaco Wash.

1 The project seeks to bring justice, healing
2 and political advocacy to this land and its peoples
3 through bio- and mycoremediation. These attempts have
4 been enacted in outreach and education through free
5 hands-on workshops and lectures about the potentials of
6 healing through bioremediation, as well as holding
7 community conversations and hearings about policy
8 reformation regarding the handling of future spills.

9 One of the resounding comments we hear from
10 folks during our workshops is that local residents are
11 not informed -- or -- excuse me -- were not informed of
12 this spill until weeks later. Upon talking with more
13 people in and around the fracking leases, we find that
14 this lack of communication about any contamination,
15 ground or air, is nearly ubiquitous. It is commonplace
16 that people living nearby who are most at risk tend to
17 find out last.

18 This injustice has to change, and responsible
19 parties need to be held accountable.

20 Oil and gas pollution are taking a toll on New
21 Mexicans' air, water and health, but rural communities,
22 tribal communities, children and the elderly are
23 especially at risk. More than 130,000 New Mexicans live
24 within a half mile of oil and gas development, including
25 communities of color that face disproportionate impacts

1 from climate change and air pollution. This is
2 certainly what we saw with the incident mentioned above.

3 Leaks due to equipment malfunction and lack of
4 maintenance account for 70 percent of the oil and gas
5 industry's emissions statewide. I support Governor
6 Michelle Lujan Grisham's call for nation-leading oil and
7 gas pollution rules. To achieve that goal the
8 Environmental Improvement Board must strengthen the New
9 Mexico Environmental Department's proposed ozone
10 precursor rules to protect those living closest to
11 development.

12 I am encouraged by the fact that leading
13 producers at the federal and state level are standing up
14 to support firm regulations that cut pollution and
15 methane and protect our communities.

16 This includes Occidental Petroleum, the
17 largest acreage holder and one of the top producers in
18 New Mexico's Permian Basin, who has joined forces with
19 public health and environmental advocates in support of
20 even stronger state rules that will protect frontline
21 communities from pollution and ensure New Mexico's
22 regulations lead the nation, which is especially
23 important as the EPA considers federal rules.

24 While NMED has put forward a strong proposal,
25 here are three critical improvements that the EIB should

1 make to protect communities and address major sources of
2 pollution.

3 One, protect those living closest to
4 development by requiring more frequent inspections to
5 find and fix leaks.

6 Two, ensure strong requirements for operations
7 to control pollution during the completion of an oil or
8 gas well, as well as when they redevelop an existing
9 well.

10 And three, strengthen requirements to cut
11 pollution from pneumatic controllers that are used in
12 oil and gas production. The devices are the second
13 largest source of oil and gas methane emissions in New
14 Mexico. NMED should require companies to inspect
15 pneumatics for leaks and accelerate the timeline to
16 retrofit equipment with zero bleed or zero emission
17 pneumatic controllers.

18 I thank you for hearing me today and for
19 considering these vital policy changes that if enacted
20 will have a positive impact on those most vulnerable and
21 the environment at large.

22 Thank you.

23 HEARING OFFICER ORTH: Thank you, Ms. Bryson.

24 We're now going to move to Sheila Fox.

25 MS. FOX: Can you hear me?

1 HEARING OFFICER ORTH: Oh. Ms. Fox, I've
2 unmuted you. I can hear you. Just be sure to speak up.
3 Would you spell your name for the transcript,
4 please.

5 MS. FOX: Sure.

6 Am I speaking loud enough before you now?

7 HEARING OFFICER ORTH: Yes. That's terrific.

8 MS. FOX: Sheila Fox, S-H-E-I-L-A, last name
9 F-O-X.

10 HEARING OFFICER ORTH: Thank you.

11 If you would raise your right hand.

12 Do you swear or affirm to tell the truth?

13 MS. FOX: I do.

14 HEARING OFFICER ORTH: Thank you.

15 SHEILA FOX

16 having been first duly sworn or affirmed, gave
17 public comment as follows:

18 PUBLIC COMMENT

19 HEARING OFFICER ORTH: I'll start your five
20 minutes now.

21 MS. FOX: Thank you.

22 Greetings.

23 I am taking time from my day today to express
24 to you from a deep heart and deep concern. Air
25 pollution from the oil and gas development is such a

1 serious threat to the state of health, not only here in
2 New Mexico, our region, our country, but the globe, as
3 well.

4 I'm a grandmother, a mother, a wife and a
5 health care practitioner here in Albuquerque. And I am
6 witness to the breakdown of individuals' respiratory and
7 immune systems which is then followed by a breakdown of
8 peace of mind, happiness and mental health, as well. I
9 have traveled to pueblos with a veterans clinic that I
10 and two colleagues created to treat native veterans and
11 their families, and I am witness to the health struggles
12 there.

13 It's time overdue to connect the dots to
14 health, climate change, the environment and the human
15 practices and lack of consciousness that contributes to
16 the toxicity that is grown by gross proportions during
17 my lifetime. The harmful emissions from oil and gas
18 operations disproportionately impacts the children, the
19 elderly and Native Americans and those living in rural
20 areas. Our beautiful Native American communities are
21 paying the price dearly, as many live within a half a
22 mile from invasive and harmful well sites that spew oil
23 and gas emissions.

24 I am sad and embarrassed at the fact that New
25 Mexico is home to some of the worst methane pollution in

1 the country. Methane is a powerful greenhouse gas that
2 is 84 times more potent than carbon dioxide in the
3 short-term. This is avoidable. The Department's
4 proposed ozone precursor regulations are a good start to
5 address oil and gas equipment leaks and malfunctions,
6 and technology exists today to control leaks, and
7 operators need to be accountable for the pollution they
8 create.

9 When the -- you know, the pandemic created an
10 opportunity for folks to spend more time in nature. And
11 in the beginning, when planes, trains and automobiles
12 ceased so abruptly, the air pollution cleared. I really
13 noticed a difference in my breathing and the fresh air
14 which helped my brain to receive more oxygen, and the
15 chronic sinus problems I have were improved.

16 We have solutions to our toxic problems. I
17 really encourage you to check out the movie Fantastic
18 Fungi and Call of the Forest. Very inspiring.

19 Please support the New Mexico Environmental
20 Department rule that ban the practice of routine venting
21 and flaring at new and existing wells. I am hopeful
22 that my embarrassment of our state can turn to pride
23 with the commitment of our Governor to lead the nation
24 in methane emissions rules.

25 One of my favorite Yiddish sayings is

1 (speaking in Yiddish). If you have your health, you can
2 be happy.

3 Thank you for your time and willingness to
4 hear my concerns for myself, my family and the
5 generations that are inheriting what we are leaving them
6 with.

7 Thank you.

8 HEARING OFFICER ORTH: Thank you very much,
9 Ms. Fox.

10 We're going to move to Susan Homer.

11 Ms. Homer, can you hear me?

12 MS. HOMER: Yes. I do.

13 HEARING OFFICER ORTH: Good. I can hear you.
14 If you would spell your name for the record,
15 please.

16 MS. HOMER: It's Susan, S-U-S-A-N, Homer,
17 H-O-M-E-R.

18 HEARING OFFICER ORTH: Thank you.
19 And if you would raise your right hand.
20 Do you swear or affirm to tell the truth?

21 MS. HOMER: I do.

22

23

24

25

1 SUSAN HOMER

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. HOMER: Good.

8 I live in Albuquerque, and I wasn't born here,
9 but I've lived here since 1969, over 50 years.

10 I want to thank the EIB for allowing me to
11 comment on the proposed ozone prevention rules.

12 During the years that -- those 50 years that
13 I -- plus, 50 years plus that I've been here, I've seen
14 an increase in awareness and understanding of both the
15 dangers and the costs of polluted air for all of us. We
16 know now that New Mexico has some of the worst pollution
17 in the country because of our very leaky oil and gas
18 basins.

19 I've also seen increased knowledge and
20 understanding of what must be done to prevent damaging
21 air pollution. We know what to do to prevent it, and we
22 know how to prevent it. And that's why the EIB's work
23 on these rules is so important. And we thank you for
24 that.

25 The proposed rules before you are strong, but

1 they can be strengthened. Requiring better control of
2 leaks, for example, would decrease methane emissions in
3 the most impacted areas.

4 I understand that New Mexico ED, Environmental
5 Department, is now supporting increased leak detection
6 and repair in close proximity to residences. So I'm
7 grateful for that. But I keep wondering who benefits
8 from seeing the proposed protections not put in place?
9 Are there a few people and companies squeezing out extra
10 profits at the expense of all the rest of us? Who
11 benefits when the protections are not put in place?

12 I urge you to set the strongest rules possible
13 for the benefit and protection of all New Mexicans and
14 for all those beyond, as well.

15 Thank you.

16 HEARING OFFICER ORTH: Thank you, Ms. Homer.

17 All right. Let's see. I have two more who
18 signed up to give public comment.

19 Chad Ingram?

20 I'm not seeing Mr. Ingram by name. I do have
21 one unidentified caller.

22 Caller 16, who is this?

23 Hello?

24 Okay. I'm not hearing anything from Caller
25 16.

1 And then finally, Creston Miles, or Preston
2 Miles.

3 I don't see Preston Miles either.

4 Give Caller 16 one more try.

5 Is this Mr. Ingram or Mr. Miles?

6 Okay. That is all for -- oh, wait.

7 Oh. Ms. Kao, you offered comment earlier
8 today, and public comment is taken just once.

9 Let's see. I think, then, at this point we
10 can return to the technical case.

11 We had Mr. Smitherman up, and we were about to
12 begin his questioning.

13 Oh, there's Ms. Fox, Mr. Hiser and
14 Mr. Smitherman.

15 All right. Ms. Fox, if you would.

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

17 JOHN R. SMITHERMAN

18 (Relating to Topic Orders 37 and 34 continued)

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

21 CROSS-EXAMINATION

22 BY MS. FOX:

23 Q. Good afternoon, Mr. Smitherman.

24 Let's see. You heard Mr. Holderman's
25 testimony today in support of the Clean Air Advocates'

1 and EDF's -- I'll call it the completion proposal,
2 correct?

3 A. I'm sorry. I was a little distracted when he
4 was testifying. So I didn't hear all of it.

5 Q. Did you hear that he testified or did you read
6 in his written testimony that Oxy believes that the
7 completions proposal is feasible for Oxy to undertake?

8 A. I generally remember that.

9 Q. And it sounded as if from your testimony that
10 you're aware that Clean Air Advocates and EDF amended
11 the original language we proposed in our initial direct
12 filing at the request of Oxy to delete the vapor tight
13 language in our completions proposal.

14 You're aware of that, correct?

15 A. Yes, I am.

16 Q. And that was deleted out of safety concerns,
17 correct?

18 A. I understand that. Yes.

19 Q. And then it sounds like this morning you heard
20 Mr. Alexander's testimony in support of Clean Air
21 Advocates' and EDF's completion proposal, correct?

22 A. And again I heard much of his testimony. I
23 didn't hear all of it.

24 Q. Did you understand that Mr. Alexander was
25 actually a completions manager for Southwestern Energy

1 for a time?

2 A. Yes. We basically held similar roles at
3 different companies.

4 Q. What are the responsibilities of a completions
5 manager?

6 A. Well, I don't know what his responsibilities
7 were particularly.

8 Q. In general.

9 A. My responsibilities at the time were
10 overseeing all operations, which included drilling and
11 completion and normal production operations.

12 Q. And then you heard that Mr. Alexander was --
13 also served as vice-president of health, safety and
14 environment at Southwestern Energy for four years?

15 A. I did hear that.

16 Q. And did you hear his testimony that our
17 completions proposal is technically feasible and cost
18 effective?

19 A. I did. I don't agree with that.

20 Q. And --

21 A. I think that -- may I finish?

22 I think that that might have been in
23 context -- maybe in a different context. But when you
24 look at the OCD rule requirements now in New Mexico, the
25 amount of gas that is, in essence, not captured during

1 initial flowback is a very, very small amount, and it
2 makes these costs not cost effective.

3 Q. And you understand that the Clean Air
4 Advocates' and EDF's completions proposal is taken
5 nearly verbatim from a rule that the Colorado Air
6 Pollution Control Commission passed last year, correct?

7 A. I -- I understand it generally. I don't --
8 I'm not an expert on those particular rules.

9 Q. Do you have some familiarity with that
10 Colorado rule on completions?

11 A. Only basically in context of discussions
12 during this rulemaking process. I was not involved in
13 the rule -- Colorado rulemaking process itself, and so a
14 lot of those maybe fine points were -- were discussed
15 during that process, but they didn't come up in
16 conversations or in our research.

17 Q. I'm going to --

18 Madam Hearing Officer, if you could give me
19 screen sharing privileges, please.

20 Mr. Smitherman, I'm going to pull up what is
21 Clean Air Advocates Exhibit 19, which is that Colorado
22 rule, which is under what's often referred to as
23 Colorado Regulation 7, which you might -- you might be
24 familiar with.

25 Hold on one second here. Let me see if this

1 is the right one.

2 Let me get the other one. Hold on one second
3 here. I need to do a little -- need to bring this up
4 first on my full screen, and then I can bring it up for
5 sharing.

6 Okay. So this, Mr. Smitherman, is Clean Air
7 Advocates Exhibit 19, as I said. It's in part the
8 Colorado -- part of Colorado Regulation 7, which is
9 their completions proposal that we've talked about, that
10 was passed last year, that became effective May of this
11 year.

12 I'm just going to scroll through it. Some of
13 these parts that are highlighted are just, you know,
14 parts that are in our proposed rule. And I'm going to
15 scroll down to the statement basis here for the rule.

16 And part of what this rule says -- I won't
17 read the entire statement of basis for flowback vessels,
18 but I'm going to read a little bit, which says, starting
19 in about the third sentence in, that highlighted
20 paragraph, "NSPS 0000a allows operators to use open
21 vessels to contain flowback fluids and solids and does
22 not consider a well completion vessel a storage vessel,
23 which means operators are not required to control well
24 completion vessel emissions. Therefore, to build on the
25 NSPS reduced emission completion requirements and

1 further reduce preproduction tank emissions, owners or
2 operators of preproduction operations must use enclosed
3 flowback vessels after the drill-out phase, which the
4 Commission recognizes has a high ratio of solids to
5 liquids, and route emissions from flowback vessels to
6 air pollution equipment."

7 Stop sharing.

8 So you understand from that that the Colorado
9 Air Pollution Control Commission recognizes the high
10 ratio of solids to liquids during preproduction,
11 correct?

12 A. Yes.

13 Q. What in Colorado is the equivalent agency to
14 New Mexico's Oil Conservation Commission?

15 A. I don't know. I don't recall.

16 Q. Are you familiar at all with the Colorado Oil
17 and Gas Conservation Commission?

18 A. Yes. Now that you reminded me, I remember
19 that. Yes, certainly.

20 Q. So that would be the agency in Colorado that,
21 you know, is the equivalent of OCC here that you
22 described as -- can't remember your exact words this
23 morning, but something to the effect of, you know,
24 that's the agency that like knows the ins and outs of
25 oil and gas, something like that, correct?

1 A. That's close enough.

2 Q. I am now going to pull up Clean Air Advocates
3 Exhibit 20.

4 Uh-oh, I did it wrong. Hold on.

5 Okay. I'm going to do this, and then I'm
6 going to do this. There.

7 Are you at all familiar with the Colorado Oil
8 and Gas Commission's recently promulgated rule on
9 completions?

10 A. Not in specificity.

11 Q. Are you aware that the Colorado Oil and Gas
12 Commission adopted the Colorado Air Pollution Control
13 Commission's rule on completions that we've been talking
14 about?

15 A. Ask the question again, please.

16 Q. Are you aware of the fact that the Colorado
17 Oil and Gas Commission also adopted the completions
18 provisions that the Colorado Air Pollution Commission
19 adopted?

20 A. I'm not familiar with that. And of course,
21 the circumstances in Colorado may be different, and I
22 know the OCD considered their -- their knowledge of the
23 industry when looking at the EDF suggestions in last
24 January's hearing, when they decided to not require the
25 same type of flowback flows vessel motif, if you will,

1 on New Mexico operators, when they have the --
2 established regulations that require once separation
3 flowback is technically feasible, that those gases would
4 be sent to -- and generally sent to sales.

5 There are a couple of exceptions for safety
6 and for pipeline quality issues, but I think that they
7 recognize that.

8 And they also had these rules in place at the
9 time, as I recall.

10 Q. So, then, as I understand it, you were not
11 aware that the Colorado Oil and Gas Commission adopted
12 the completions proposal that Clean Air Advocates and
13 EDF are putting forward; is that my understanding?

14 A. I think that that's correct.

15 Q. Now, there was testimony -- and then so you're
16 not aware of when that rule went in effect.

17 A. No, ma'am.

18 Q. There was testimony from Mr. Alexander this
19 morning that I believe you heard that -- because you
20 referenced it, that EDF had communicated with the air --
21 with the Colorado Air Pollution Control Commission and
22 inquired whether they had experienced any problems with
23 implementing their completions provision, correct? You
24 heard that testimony this morning?

25 A. I think I heard that. Yes.

1 Q. And so -- and then I also take it from what
2 you said that you did not do any due diligence with
3 either the Colorado Air Pollution Control Commission or
4 the Colorado Oil and Gas Commission to find out if
5 either of those agencies had experienced any problems
6 with implementing the completions provisions that they
7 adopted; is that correct?

8 A. Well, no, I did not, because, I mean -- and
9 let's also put -- keep in mind that these rules have
10 been in place a really short time in Colorado, and so
11 the -- the issues that I'm concerned about, they -- they
12 may lead to rare incidents, but it doesn't mean that
13 they're fundamentally safe. So it may take time before
14 an incident shows up and causes problems.

15 Q. And were you aware that the Colorado Oil and
16 Gas Commission rule on completions went into effect in
17 January of this year?

18 A. Generally.

19 MS. FOX: Okay. Thank you very much,
20 Mr. Smitherman.

21 That's all I have, Madam Hearing Officer.

22 HEARING OFFICER ORTH: Okay. Thank you,
23 Ms. Fox.

24 Any other parties with questions of
25 Mr. Smitherman, please turn on your camera.

1 Not seeing anyone.

2 I'll turn, then, to the Board for their
3 questions.

4 While I'm doing that, if you're an attendee on
5 this platform, please reach out through chat.

6 EXAMINATION

7 BY THE BOARD:

8 HEARING OFFICER ORTH: Madam Chair?

9 CHAIR SUINA: Madam Hearing Officer, I don't
10 have any questions. Thank you.

11 HEARING OFFICER ORTH: Okay. Thank you.

12 Vice-Chair Trujillo Davis?

13 VICE-CHAIR TRUJILLO DAVIS: Yes. I just have
14 one clarifying question.

15 Mr. Smitherman, did I understand correctly
16 that you were saying that EDF's proposed language for
17 completions was duplicative of the OCD's recent rule
18 that they passed in January?

19 MR. SMITHERMAN: I don't think it's
20 duplicative. I think that they go beyond what the OCD
21 requires. In essence, the OCD in their structure or
22 their regulations have, in essence, squeezed down the
23 period of time that operators are allowed to, in
24 essence, vent gas, down to a very, very small period of
25 time, and therefore, in essence, a very, very small

1 volume of gas.

2 Because once a well is flowing back with
3 enough gas and enough pressure to allow a separator to
4 work, you move out of that initial flowback stage and
5 into separation flowback stage, in which the OCD
6 requires that gas be flared, or really, for the most
7 part, sold. It's supposed to go to a productions
8 vessels and be sold.

9 But there is a provision if there's some -- a
10 safety issue related to that, that you're allowed to
11 flare it. And another possible exception is if your gas
12 does not meet pipeline specs at that point, again you're
13 allowed to flare it, not vent it.

14 So what they've done is, in essence, almost
15 eliminated the volumes of gas that, in essence, EDF's
16 proposals would target. And the costs and the
17 complexities and the risks involved in that, in my view,
18 don't warrant their -- their suggested requirements.

19 VICE-CHAIR TRUJILLO DAVIS: Oh, okay. I
20 believe I understand now.

21 So if we -- if we were to consider putting it
22 in the current rule that we're evaluating, then it would
23 be dup -- we would have some duplicate -- I am sorry.
24 It's the last day of this hearing, and I have very
25 little words left. I've used a lot, too.

1 So if we -- if we looked at their language for
2 this current rule, we could be kind of duplicating some
3 of the requirements in the OCD rule and in this NMED
4 rule?

5 MR. SMITHERMAN: I'm going to still say not
6 duplicating, because what their requirements would do
7 would be add on additional requirements just during the
8 initial flowback period where the OCD does not have
9 requirements for capture.

10 And we believe that the volumes of gas during
11 that time, because of how the OCD has structured their
12 regulations, are very small and do not warrant the risks
13 and the costs associated with trying to capture them.

14 VICE-CHAIR TRUJILLO DAVIS: Okay. I
15 understand that.

16 Thank you for your patience in explaining
17 that.

18 MR. SMITHERMAN: Certainly.

19 VICE-CHAIR TRUJILLO DAVIS: And I also wanted
20 to note I'm very sorry for the loss of that young man
21 that you mentioned earlier. Deaths in the oil field hit
22 very, very hard. So I'm very sorry about that.

23 And thank you for taking the time to clarify
24 some of these issues.

25 MR. SMITHERMAN: Thank you, ma'am.

1 HEARING OFFICER ORTH: Member Cates?

2 I saw him on the platform.

3 Member --

4 MEMBER CATES: I'm sorry. No questions here.

5 Thank you.

6 HEARING OFFICER ORTH: Oh, thank you, Member

7 Cates.

8 Member Bitzer?

9 MEMBER BITZER: Madam Chair -- I'm sorry.

10 Madam Hearing Officer, I have -- I have no questions.

11 Thank you.

12 HEARING OFFICER ORTH: Thank you.

13 Member Garcia?

14 MEMBER GARCIA: Yes. Thank you. I have a

15 question.

16 Mr. Smitherman, your testimony reminded me

17 that yesterday Mr. McCabe mentioned that there was a

18 NIOSH, National Institute of Occupational Safety and

19 Health, health alert about measuring fluids.

20 And I'm wondering, do you know if there is a

21 NIOSH health alert associated with this problem

22 you've -- you're concerned about?

23 MR. SMITHERMAN: I'm not familiar with that.

24 It wouldn't surprise me to find that API has opined on

25 the general topic of static electricity building up with

1 fluids -- moving fluids. But I don't know of any that
2 address this particular set of circumstances.

3 HEARING OFFICER ORTH: Member Honker.

4 MEMBER HONKER: No questions. Thank you.

5 HEARING OFFICER ORTH: Thank you.

6 Mr. Hiser, will there be any redirect?

7 MR. HISER: Madam Hearing Officer, I don't
8 believe that we do.

9 HEARING OFFICER ORTH: All right. Thank you
10 so much, Mr. Smitherman.

11 CHAIR SUINA: Madam Hearing Officer, one more
12 question.

13 HEARING OFFICER ORTH: Okay.

14 CHAIR SUINA: Thank you again, Mr. Smitherman,
15 for your presentation and also all the slides that go
16 along with the presentation. It makes it really easy
17 for us to follow what you're saying.

18 But with that, I just had one more
19 clarification to follow up on Vice-Chair Trujillo Davis'
20 question -- or comment. So I just wasn't -- I was a
21 little confused.

22 So did that individual -- that wasn't on a --
23 on this process that we're talking about, that -- that
24 death of that individual, it was on a different type of
25 process, or type of situation; is that correct?

1 MR. SMITHERMAN: That's correct. I described
2 two incidents, one of which was very, very much directly
3 related to this process, and we got lucky that no one
4 was hurt when that incident occurred, did the exact same
5 concept where static electricity set off an explosion in
6 a flowback vessel.

7 The other incident was related to a different
8 technique, but it really points to the idea that you can
9 have incident-free use of a technique for long periods
10 of time. If it's still fundamentally unsafe, at some
11 point the stars are going to line up against you, and
12 you're going to have a problem.

13 And that's what I'm concerned about here, is
14 that -- that maybe there's some operators that
15 understand this fully and take proper measures, but
16 there's a lot of operators out there, and maybe some of
17 them are not plugged in and understand these -- these
18 details of the physical nature of the risk, and they
19 don't take those precautions, and we're going to end up
20 hurting or killing someone. That's -- that's my
21 concern.

22 CHAIR SUINA: So -- and thank you for that
23 added information.

24 So are you saying that there are -- there's
25 companies out there that don't do this, take this added

1 measure because of the safety concerns?

2 MR. SMITHERMAN: Well, let me try to address
3 that maybe a little bit differently.

4 What we're trying to -- the point I think that
5 I'm trying to make is that we're looking at the
6 possibility of putting a requirement in place in New
7 Mexico. And I look at that, and I want to balance the
8 risks versus the rewards.

9 And the rewards are capturing the gases that
10 would escape. But as I've mentioned, they're very, very
11 small amounts of gas, because of how the OCD has
12 structured their regulations. So that small benefit
13 is -- is then balanced by the cost to capture those --
14 those gases and also the inherent risks that go with
15 that.

16 And we just don't believe that the risk is --
17 the reward is worth the risk.

18 Does that make sense?

19 CHAIR SUINA: That makes sense.

20 I guess I was just going back to some of the
21 information and some of your statements in that it
22 seemed to imply that companies are not doing this
23 because of those safety risks. And so I was just
24 wondering, because we heard a little bit of different
25 testimony and commentary throughout this hearing. So

1 I'm just trying to reconcile that.

2 So are companies doing this still?

3 MR. SMITHERMAN: I think that there's
4 companies that are -- I think that there are companies
5 that are capturing -- let me say it differently.

6 I didn't do a poll of lots and lots of
7 companies to understand which ones already are doing
8 some of these techniques and which ones are not. So I
9 really can't necessarily opine on that.

10 I'm really focused in on what is going to come
11 from these rules and the requirements that are going to
12 come from here. If it's required, then all operators
13 will have to do it, and that, in essence, says, well,
14 I'm now going to put this technique in -- in many --
15 repeat this technique many, many times in New Mexico,
16 and then if those companies aren't doing it with the --
17 with all those risk mitigations in place, you're causing
18 a risk opportunity.

19 CHAIR SUINA: Thank you for, I guess,
20 clarifying how your -- your explanation is in some of
21 your -- your testimony is focused on and not necessarily
22 on the -- the -- I guess the -- that companies are doing
23 this.

24 I think there must be some, right? Because
25 Colorado has this rule already in place --

1 MR. SMITHERMAN: Right.

2 CHAIR SUINA: -- so there must be some --

3 MR. SMITHERMAN: Right.

4 CHAIR SUINA: -- companies doing this, right?

5 MR. SMITHERMAN: Exactly.

6 CHAIR SUINA: Okay.

7 MR. SMITHERMAN: And if those companies are
8 taking all the proper measures, then they've at least
9 mitigated that risk part of it.

10 But again there's the other part that's the
11 cost versus the benefit. With OCD's regulations driving
12 those volumes down because the flowback -- initial
13 flowback period is getting so short, that it just
14 doesn't -- the risk -- the costs don't offset the
15 benefit.

16 CHAIR SUINA: Oh, thank you for that added
17 explanation, because I was just wondering and a little
18 bit confused on how an adjacent jurisdiction in the
19 State of Colorado was making companies do this if it was
20 unsafe.

21 So what you're saying is because of the OCD
22 rules, then that makes it a little bit more -- not less
23 safe, but that there's that shorter time frame or
24 shorter period -- or shorter -- in your -- in your graph
25 there that these rules would then maybe address, but

1 there's that cost.

2 Is that correct? Am I framing it that --

3 MR. SMITHERMAN: That -- that is correct. And
4 I'm certainly not blaming the Colorado regulators for
5 doing something that intentionally puts people at risk.
6 I am concerned that perhaps this was not vetted as well
7 as it may -- may should have been, and I'm also
8 concerned that operators in Colorado which have to do
9 this process may not understand the physics associated
10 with it and may not understand how to mitigate those
11 risks.

12 Colorado may be very thoughtful in their
13 process, but an individual operator must know how to
14 mitigate risks --

15 MS. FOX: Objection, speculation, Madam
16 Hearing Officer.

17 HEARING OFFICER ORTH: Ms. Fox?

18 MS. FOX: Objection, speculation. All of
19 this -- he testified he didn't know about the Colorado
20 process, he doesn't know about Colorado operators. This
21 is all speculation.

22 HEARING OFFICER ORTH: All right.

23 Mr. Smitherman, I'd like you to answer without
24 speculating, based on your own personal experience and
25 knowledge of -- of the rules.

1 MR. SMITHERMAN: Certainly. Let me try again
2 without naming Colorado.

3 Any regulatory body can put rules out, and if
4 operate -- in my -- my experience is that if operators
5 don't really understand the risks involved in particular
6 techniques, that they can cause problems.

7 In fact, I'll use the incident that killed
8 that young man on our -- on our location. Now, that was
9 not required, didn't have a requirement under the
10 regulations, but operators tend to not understand the
11 physics of that particular technique, and, quite
12 frankly, all of the service providers that provide that
13 service, I have not run into one that fully understands
14 the risks there.

15 So what I'm saying to you is if there are
16 fundamental risks involved in a process, you need to be
17 careful about them, and if -- if you're requiring -- if
18 New Mexico requires a process, we need to make sure that
19 operators are fully aware of the risks that are involved
20 in that.

21 I don't believe that it is worth putting these
22 risks in place in New Mexico, because the volume of gas
23 that we're going to capture is so small.

24 CHAIR SUINA: Thank you for that response,
25 Mr. Smitherman. And I apologize if I took us down a

1 rabbit hole and got us off track there.

2 MR. SMITHERMAN: I thought it was a good
3 question. I thought it was a good question.

4 CHAIR SUINA: Thank you.

5 HEARING OFFICER ORTH: Thank you, Madam Chair
6 and Mr. Smitherman.

7 Is there any reason not to excuse
8 Mr. Smitherman at this point?

9 MR. HISER: None from me, Madam Hearing
10 Officer.

11 HEARING OFFICER ORTH: All right. Thank you,
12 Mr. Hiser.

13 Thank you again, Mr. Smitherman.

14 We are going to turn now to Ms. Witherspoon,
15 Lesley Witherspoon, who entered an appearance as a party
16 on behalf of Solar Turbines.

17 I see you on screen, Ms. Witherspoon.

18 MS. WITHERSPOON: Hi.

19 HEARING OFFICER ORTH: Hi.

20 Would you spell your name, please, for the
21 transcript.

22 MS. WITHERSPOON: Sure. Leslie Witherspoon,
23 L-E-S-L-I-E W-I-T-H-E-R-S-P-O-O-N.

24 HEARING OFFICER ORTH: Thank you.

25 And raise your right hand.

1 Do you swear or affirm to tell the truth?

2 MS. WITHERSPOON: I do.

3 HEARING OFFICER ORTH: Thank you.

4 LESLIE WITHERSPOON

5 (Relating to Topic Order 24 and a general request)

6 having been first duly sworn or affirmed, was

7 examined and testified as follows:

8 DIRECT TESTIMONY

9 HEARING OFFICER ORTH: Go ahead.

10 MS. WITHERSPOON: Okay.

11 Good afternoon.

12 And thank you, Madam Hearing Officer, Madam

13 Chair and Board Members.

14 I am not a lawyer, and everything's been very
15 formal and lawyerly, so I apologize for anything I might
16 not do process-wise.

17 I work for Solar Turbines, and -- but I will
18 try to follow the format everyone else has here who has
19 testified.

20 I work for Solar Turbines, and I have for over
21 23 years, as the environmental program manager. And in
22 this capacity it's my responsibility to assist in the
23 development, interpretation and implementation of air
24 emission regulations around the world.

25 I act as a liaison between our customers and

1 the regulatory community and our engineering folks so
2 that new products and existing product improvements and
3 new regulations are developed with consideration of the
4 environment, technology limitations, cost, efficiency,
5 safety, fuels, all the parameters.

6 I routinely support customers with air
7 emissions data and air permitting strategies in over a
8 hundred countries around the world, though due to the
9 complexity of the US regulatory structure, it consumes
10 the bulk of my efforts.

11 Prior to joining Solar, I worked as an air
12 quality consultant for seven years, assisting industrial
13 clearance with air permitting dispersion modeling and
14 regulatory compliance.

15 I have a bachelor's in chemical engineering
16 and an MBA from the University of Kansas.

17 The -- my employer is Solar Turbines, and --
18 who is the original equipment manufacturer of many of
19 the units and turbines that are situated in New Mexico.
20 We have over 16,000 turbines in over a hundred
21 company -- countries worldwide. 8,000 or so of those
22 are in the states. And like I said, since 1960 we've
23 sold over 150 of those units that are primarily in oil
24 and gas applications in New Mexico.

25 The reason I wanted to -- the opportunity to

1 submit technical testimony versus just coming in in a
2 public comment arena was so that the Board and New
3 Mexico Environmental Department had the opportunity to
4 question the actual OEM should any questions arise in --
5 during the process.

6 Saying that, my need to comment or provide
7 testimony has kind of morphed over the process. I had
8 intended to address several issues in my testimony, but
9 the NMED has done a good job at addressing those
10 concerns through several of the comment letters that I
11 have written and submitted during the process, and in
12 addition to one that was submitted -- some comments that
13 were submitted and addressed during this hearing
14 process.

15 So I would like to thank the NMED for
16 addressing stakeholder concerns while drafting a rule
17 for turbines that does reduce emissions from these
18 existing turbines, and we support the changes -- Solar
19 supports the changes made to Section 113 as of the
20 September 16th version, and the requested change that we
21 made during the hearing process for one of the minor
22 threshold changes from 4,000 to 4,100 horsepower that
23 allows for all the ratings -- or all the temperature
24 matches of one of our ratings to be all in the same
25 category. So we appreciate that.

1 There's only really one other comment that I'd
2 like to make that hasn't been addressed, I guess I
3 say -- should say, but NMED, and it was also mentioned
4 by Justin Lisowski, but -- from NMOGA, with relation to
5 carbon monoxide.

6 Solar has requested in our -- in our comments
7 to remove all references to carbon monoxide from the
8 proposed rule in the turbines section. At least there's
9 a couple sections that I reference in my comment letter
10 that clearly -- that clearly state that the scope and
11 objective of this rule is to establish emissions
12 standards for specific ozone precursors, namely VOCs and
13 nitrogen oxides.

14 So including emission standards for
15 monitoring, recordkeeping, reporting, testing
16 requirements from -- for carbon monoxide we don't feel
17 should belong in these rulemakings. And from my
18 experience in working with other ozone standards in
19 other states, they're -- CO is commonly not part of
20 those standards either.

21 So that concludes what I wanted to say today.

22 So I appreciate the time. Thank you very
23 much.

24 HEARING OFFICER ORTH: Thank you,
25 Ms. Witherspoon.

1 If you're a party with questions of
2 Ms. Witherspoon, please turn on your camera.

3 I'm not seeing anyone.

4 I'll turn to the Board for their questions.

5 If you're an attendee on the platform with a
6 question, reach out through chat.

7 Madam Chair?

8 CHAIR SUINA: Thank you, Madam Hearing
9 Officer. I don't have any questions at this time.

10 HEARING OFFICER ORTH: Okay.

11 Vice-Chair Trujillo Davis?

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

14 HEARING OFFICER ORTH: Thank you.

15 Member Cates?

16 Member Bitzer?

17 MEMBER BITZER: I have no questions. Thank
18 you.

19 HEARING OFFICER ORTH: Member Garcia?

20 MEMBER GARCIA: No questions. Thank you.

21 HEARING OFFICER ORTH: And Member Honker.

22 MEMBER HONKER: No questions. Thank you.

23 HEARING OFFICER ORTH: All right.

24 Well, thank you very much, Ms. Witherspoon.

25 MS. WITHERSPOON: Thank you for the

1 opportunity.

2 HEARING OFFICER ORTH: Thank you.

3 I need to go back to Samantha Kao. I had
4 thought she was trying to give public comment twice,
5 which we don't allow given the number of public
6 commenters, but it turns out she had a statement from a
7 different person.

8 Ms. Kao, I've unmuted you.

9 Can you hear me?

10 Ms. Kao?

11 Well, all right. I'll look for Ms. Kao at
12 five o'clock, then.

13 And anyone, by the way, on the platform or if
14 you have a friend or colleague who would like to offer
15 comment, we have just one more oral comment period at
16 5:00, but written public comments can be submitted to
17 Pam Jones through the end of the day. So thank you.

18 All right. Do I understand correctly that
19 we're going back to the Department and we have no other
20 technical testimony besides the Department's wrap-up
21 surrebuttal?

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

23 I believe that's the case, but I would -- I
24 don't see anybody else popping up to say otherwise.

25 So if that is indeed the case, I will have

1 Ms. Kuehn and Mr. Palmer join us.

2 Thank you.

3 ELIZABETH BISBEY-KUEHN and BRIAN PALMER

4 (Various continued topics)

5 having been first duly sworn or affirmed, were

6 examined and testified further as follows:

7 DIRECT EXAMINATION

8 BY MS. KATZ:

9 MS. KATZ: All right. So starting with
10 Mr. Palmer, so this is relating to the testimony from
11 yesterday from NMOGA, IPANM on storage tanks, and
12 Vice-Chair Trujillo Davis had asked a question regarding
13 the tanks subject to NSPS Subpart Kb and asked -- and
14 there was a request for the Department to provide
15 information regarding those tanks.

16 Can you discuss that information, Mr. Palmer?

17 MR. PALMER: Yes. Subpart Kb is the NSPS for
18 volatile organic liquid storage vessels, including
19 petroleum liquid storage vessels for which construction,
20 reconstruction or modification commenced after
21 July 23rd, 1984. And they asked for me to try to
22 provide some numbers from the Department's equipment
23 spreadsheets.

24 The equipment spreadsheet for storage tanks
25 includes data for 53 storage tanks that are subject to

1 the NSPS Subpart Kb. 12 of these storage tanks are at
2 four facilities that have major source Title V permits,
3 11 of these 53 storage tanks have vapor recovery units,
4 and two have flares listed as control devices, three of
5 the storage tanks have floating roofs or seals listed as
6 controls.

7 MS. KATZ: Okay. Thank you.

8 And then, Ms. Kuehn, last week -- or Madam
9 Chair Suina inquired about the number of wells located
10 on tribal land and who was responsible for the
11 regulatory oversight of those wells.

12 Could you provide a summary of the data you've
13 collected?

14 MS. BISBEY-KUEHN: Yes. The -- we queried
15 OCD's web site for wells that are located on tribal
16 lands. There are 2,663 active oil and gas wells located
17 on tribal land.

18 Also, EPA Region 9 implements the Clean Air
19 Act for the Navajo -- on behalf of the Navajo Nation.
20 They do have a delegated Title V program at the Navajo
21 Nation for the Navajo Nation EPA, but for minor source
22 permitting those -- that minor source permitting program
23 is implemented by EPA Region 9.

24 EPA Region 6 has tribal authority -- or has
25 implementing authority over all remaining tribal pueblo

1 lands within New Mexico. In the event that there's
2 different mineral right owners, there -- BLM may do some
3 inspections in the event that they have -- they have
4 very limited oversight on federally owned land within
5 those areas, as well, where there's different mineral
6 and surface right owners.

7 MS. KATZ: Okay.

8 And let's see. Let's move over to NMOGA's
9 proposed revisions to the definition of commencement of
10 operations in the rule.

11 Ms. Kuehn, what is the Department's position
12 on those revisions?

13 MS. BISBEY-KUEHN: The Department is agreeable
14 to revising the definition to more closely align with
15 the Oil Conservation's definition of commencement of
16 operation.

17 MS. KATZ: And so that would not mean the
18 exact language that Mr. Smitherman was providing or, I
19 guess, asking for the Department to remove, but it --
20 but you're saying we would align our definition with
21 OCD's definition, correct?

22 MS. BISBEY-KUEHN: Correct. Yes.

23 MS. KATZ: Okay. Thank you.

24 And, Ms. Kuehn, can you -- can you just state
25 what the Department's position is regarding the proposed

1 requirement -- requirements for flowback vessels and
2 preproduction operations?

3 MS. BISBEY-KUEHN: Yes. And the Department
4 really does not have the technical expertise in this
5 area in order to evaluate the proposal, and so we are
6 not able to take a position on that specific proposal.
7 The Department believes the Board should decide the
8 issue based on the testimony provided by the other
9 parties.

10 MS. KATZ: Thank you.

11 And that is, I believe, all I have for the
12 Department's wrap-up here.

13 HEARING OFFICER ORTH: Okay. Thank you.

14 If you are a party with a question of the
15 Department panel, please turn on your camera.

16 Mr. Hiser.

17 MR. HISER: Thank you, Madam Hearing Officer.

18 CROSS-EXAMINATION

19 BY MR. HISER:

20 MR. HISER: Ms. Kuehn, it's good to see you
21 this afternoon.

22 And I just wanted to touch briefly just so we
23 understand sort of where we are on the question of a
24 floating roof tank. This had been raised initially, I
25 think, in NMOGA's attempt to come up with a stabilized

1 definition to address that, in which it was suggested
2 perhaps Subpart Kb might be adequate for those tanks,
3 and then the Department was -- seemed a little bit more
4 unsure of its position yesterday or the day before,
5 whenever we last talked about this. They sort of have
6 blended together.

7 I'm just trying to understand what the
8 Department's position is on a floating roof tank,
9 whether you believe that the current language in Part 50
10 is appropriate for those, or if that's an issue that's
11 under advisement, or what you're proposing to do on
12 those.

13 MS. BISBEY-KUEHN: So we do need to regroup on
14 that. We don't have a, you know, specific answer on
15 whether or not Kb subject tanks should also be subject
16 to Part 50 requirements.

17 MR. HISER: Okay. That's --

18 MS. BISBEY-KUEHN: That was -- that was a new
19 issue that came up, and we haven't landed on that.

20 MR. HISER: Right. So we understand that
21 that's an issue that came up late, and I appreciate your
22 clarification that it's still a little bit up in the
23 air.

24 Thank you very much.

25 HEARING OFFICER ORTH: Any other parties with

1 questions of Ms. Kuehn?

2 Not seeing anyone.

3 I'll turn to the Board for their questions.

4 While I'm doing that, if you're an attendee on
5 the platform with a question, please reach out through
6 chat.

7 EXAMINATION

8 BY THE BOARD:

9 HEARING OFFICER ORTH: Madam Chair?

10 CHAIR SUINA: Thank you, Madam Hearing
11 Officer.

12 And thank you, Ms. Kuehn, for coming back and
13 explaining the NMED's position on some of the discussion
14 for today and over the last few days.

15 So I just want to make sure I'm clear. So
16 right now I think you mentioned a few minutes ago NMED
17 really doesn't have a technical position regarding some
18 of our discussion today.

19 Is that for the proposed Section 127 language?

20 MS. BISBEY-KUEHN: Madam Chair, that's
21 correct.

22 CHAIR SUINA: Okay.

23 So I was just wondering, and I might have
24 missed it, there's been so much information over the
25 last few days, that there wasn't any analysis by NMED on

1 the cost/benefit of that language; is that correct?

2 MS. BISBEY-KUEHN: Madam Chair, that's
3 correct. That was not the proposal made by NMED, and so
4 we did not prepare -- provide or prepare any economic or
5 feasibility analysis on that proposal.

6 CHAIR SUINA: Okay.

7 And could I -- may I ask if NMED has -- I
8 don't know if this question is appropriate, but if NMED
9 also heard some of the -- since it was brought up
10 earlier, some of the testimony regarding this under the
11 OCC process earlier this year? And if so, what your --
12 if anything came from any comments regarding that
13 process.

14 MS. BISBEY-KUEHN: Madam Hearing Officer, I
15 did not attend that hearing so I'm not privy to all the
16 discussion that went into it. I think that probably the
17 transcript from that hearing could provide some
18 important information for the Board's consideration for
19 this -- this subject.

20 CHAIR SUINA: Okay. Well, I appreciate that,
21 Ms. Kuehn.

22 And I just have a quick follow-up on -- on
23 some of the responses you had for Vice-Chair Trujillo
24 Davis.

25 So the -- some of the wells that you mentioned

1 are on tribal lands.

2 Are most of those on Navajo tribal lands, or
3 are some also on Jicarilla?

4 MS. BISBEY-KUEHN: There -- Madam Chair, there
5 are 1,950 wells located on Jicarilla and 500 wells
6 located on the Navajo Nation.

7 CHAIR SUINA: Okay.

8 So Jicarilla would fall under EPA Region 6, I
9 think is how --

10 MS. BISBEY-KUEHN: That's correct.

11 CHAIR SUINA: And then you had mentioned that
12 Navajo Nation is a Title V program.

13 Does Jicarilla, as well? Do you know?

14 MS. BISBEY-KUEHN: Madam Chair, I do not
15 believe that Jicarilla has any delegated authority under
16 the Clean Air Act, and so EPA implements the Clean Air
17 Act on behalf of that government.

18 CHAIR SUINA: Okay.

19 And do you know if any of the other tribes or
20 pueblos in New Mexico have treatment as a state or
21 regulate their air quality?

22 MS. BISBEY-KUEHN: Madam Chair, Santa Ana and
23 Santo Domingo, I believe, both have treatment as state
24 in a very limited manner. I do not believe any of the
25 other pueblo has full -- I know that no pueblo has full

1 delegation, but a couple of them have very limited
2 partial designation as treatment of state under the act.

3 CHAIR SUINA: Okay.

4 Thank you so much again, Ms. Kuehn. I
5 appreciate all of the time on this issue and for you
6 following up with Vice-Chair Trujillo Davis' question.
7 Thank you.

8 HEARING OFFICER ORTH: Vice-Chair Trujillo
9 Davis?

10 VICE-CHAIR TRUJILLO DAVIS: I don't have any
11 additional questions.

12 I just want to thank the NMED for taking the
13 time to research the questions we did ask and for having
14 patience with us in all of our questions. So thank you.

15 HEARING OFFICER ORTH: Member Cates?

16 Member Bitzer?

17 MEMBER CATES: Sorry about the delay again.
18 No questions here.

19 HEARING OFFICER ORTH: Oh, thank you, Member
20 Cates.

21 Member Bitzer?

22 MEMBER BITZER: Yeah. Real quick, following
23 that -- following the Chair's line of questioning about
24 tribal sovereignty.

25 And do -- do the Navajo Nation government or

1 Jicarilla government receive any royalties from those
2 wells, that we know of?

3 MS. BISBEY-KUEHN: Member Bitzer, the
4 royalties would be associated with the owner of that
5 well. So they'll be the recipient of the royalties.
6 And I can't, unfortunately, speak to the ownership
7 structure of those assets.

8 MEMBER BITZER: So it could be that there's
9 wells on tribal land and the tribes don't benefit at
10 all.

11 MS. BISBEY-KUEHN: Member Bitzer, that would
12 depend on the -- on the ownership structure, the mineral
13 owners.

14 MEMBER BITZER: Okay.

15 That's all -- that's all I have, Madam Chair.

16 HEARING OFFICER ORTH: Thank you.

17 Member Garcia?

18 MEMBER GARCIA: No questions. Thank you.

19 HEARING OFFICER ORTH: And Member Honker.

20 MEMBER HONKER: One clarifying question on
21 LDAR, if I -- if I can raise that.

22 The frequency at which a facility would have
23 to do the leak detection and repair is -- is set out in
24 the rules now.

25 Will that remain constant as long as the

1 facility is in that category, or is there -- I guess my
2 question is if -- if they show to be in compliance for
3 several years, is there any change in that frequency
4 that's required, or is that just constant over time?

5 MS. BISBEY-KUEHN: Member Honker, these are
6 enduring requirements and ongoing surveillance of
7 equipment and processes that are known to break down and
8 leak, and so continuous maintenance and surveillance of
9 those components is appropriate and -- for this type of
10 emission source, and there's not a specific off ramp
11 from these requirements.

12 MEMBER HONKER: Okay.

13 All right. Thanks for that clarification, and
14 thanks for asking -- or answering all of our questions
15 over the course of this two weeks.

16 HEARING OFFICER ORTH: Thank you.

17 Any follow-up, Ms. Katz?

18 MS. KATZ: No follow-up.

19 And I just would like to just thank the Board
20 and for just how involved they've been and -- and it's
21 really been a great experience to see that. That hasn't
22 always been the case. So thank you so much.

23 HEARING OFFICER ORTH: Thank you.

24 Thank you so much, Ms. Kuehn and Ms. Katz.

25 MS. BISBEY-KUEHN: May I make one more

1 comment?

2 Also, I appreciate all the comp -- the
3 questions and the interest, as well.

4 And there were questions brought up last week
5 about our consultation with tribal entities, and we will
6 provide information on that in our -- in our final
7 findings of fact. I just wanted to let you know that we
8 did perform government-to-government consultation. We
9 did make presentations to -- to the All Pueblo Governors
10 association and then did some presentations in
11 Counselor, as well. So just to answer that question,
12 also.

13 Thanks.

14 HEARING OFFICER ORTH: Okay. Thank you.

15 Let's see. So thank you very much, Ms. Kuehn
16 and Ms. Katz.

17 Is there anything -- any other testimony?

18 We do have a little bit of public comment at
19 5:00, but before we get there, I'd like to talk about
20 the posthearing process when the time is right.

21 Ms. Paranhos?

22 MS. PARANHOS: Thank you, Madam Hearing
23 Officer.

24 I think just one more item. So when I
25 initially put on a few of my witnesses before, you had

1 ruled on the motions to exclude some of their testimony
2 and exhibits. I did not offer their testimony or
3 exhibits into evidence so I just wanted to close the
4 loop with this. I believe your instruction was for the
5 attorneys to request that all testimony and exhibits
6 were entered into evidence. So that is my request.

7 HEARING OFFICER ORTH: Thank you.

8 So yes. All of EDF's exhibits and the
9 testimony adapted by the witnesses is admitted. We need
10 to get a complete list of the numbers and letters,
11 et cetera, to the court reporter --

12 MS. PARANHOS: Okay. Thank you.

13 HEARING OFFICER ORTH: -- so we can tie that
14 up.

15 Mr. Hiser, I see you on screen.

16 MR. HISER: Yeah. I guess I had a very
17 similar question to Ms. Paranhos.

18 We had submitted the revised red-lines for the
19 initial NMOGA B and 47, and so if they're in the
20 position of needing to be admitted, as well.

21 I believe -- I'm not sure about the status of
22 Adam Meyer's exhibit which was submitted yesterday, our
23 NMOGA Exhibit 61. That was the spreadsheet that was put
24 on the screen and discussed and has to -- to recall the
25 Hearing Officer's attention, it's the tank issue. And

1 we and Ms. Katz suggested that they would also put in
2 Mr. Palmer's that had a different number. And I think
3 Ms. Katz has submitted that, and I don't remember the
4 number of hers, in her most recent e-mail submittal to
5 Ms. Jones.

6 So I think those should probably go in because
7 they were both testified to and addressed by the Board
8 with examination questions.

9 And then the question for the Hearing
10 Officer's preference is we'd submitted NMOGA Exhibit 63,
11 which was our proposal for the Department's
12 consideration on automatic tank measurement. There's
13 been some variance between whether those are just
14 filings or if those are exhibits.

15 Do you have a preference whether we leave that
16 as a filing or as an exhibit just to make it easy to
17 find?

18 HEARING OFFICER ORTH: So the -- the pleadings
19 are all part of the record, but not necessarily
20 evidence. So to the extent -- I guess that's my -- my
21 instant reaction is if it looks more like evidence, I
22 think it's good to call it an exhibit and mark it and
23 offer it as an exhibit. The Board Members get all
24 pleadings, as well, but --

25 MR. HISER: Okay. So that would mean that

1 maybe our Exhibits 63 and 64 we'll just leave as filings
2 instead.

3 And then the one that we did is that
4 Mr. Smitherman testified pretty extensively in his
5 direct and covered the issues that were in the original
6 NMOGA red-line, and just to make it a little bit
7 cleaner, we thought we should extract what he had
8 adopted out of that original Exhibit B and put it just
9 as its own exhibit so that the Board didn't have to have
10 recourse to original Exhibit B, and could just look at
11 the one he testified about on that specific section.

12 That means that the comments in the rest of
13 Exhibit B are constantly back in front of the Board.
14 It's just what he talked about on the LDAR issue.

15 HEARING OFFICER ORTH: Okay. I guess I
16 thought you had already remedied that, but --

17 Ms. Fox?

18 MS. FOX: Thank you, Madam Hearing Officer.

19 That was my question. I don't understand the
20 need for that exhibit, because that is -- those LDAR
21 comments have been excluded, and then we went through a
22 pretty careful and detailed analysis the other day about
23 what NMOGA could introduce and that we wouldn't object
24 to in all those -- you know, in Mr. Smitherman's
25 surrebuttal slides, which got a lot of that evidence in.

1 So I -- I guess it was my impression that the
2 evidence on LDAR had come in, and I'm not understanding
3 the need now for the comments that have been struck.

4 HEARING OFFICER ORTH: I guess that's my
5 question, too, Mr. Hiser.

6 Are --

7 MR. HISER: So the -- the rationale, Madam
8 Hearing Officer, is that Mr. Smitherman's direct
9 discusses the comments in the NMOGA red-line, and you
10 can't really understand his comments without knowing
11 what he's talking about, because he's talking about how
12 things are being done on that other sheet. And so
13 without having that, you're sort of at sea about what it
14 is he's talking about.

15 So this is only his direct, and we agree that
16 on the -- on his surrebuttal, that those are already in,
17 as you've admitted, with the exception of a couple
18 issues for proffer. So this is just the original
19 testimony of Mr. Smitherman in his original Exhibit A1,
20 NMOGA A1. But it talks about the stuff that's in NMOGA
21 Exhibit B.

22 And we were trying to come up with a way to
23 have it so that you could see what he was talking about
24 in his testimony without importing all the other
25 comments in Exhibit B into the record, in respect to

1 Ms. Fox had moved and you had previously ruled.

2 HEARING OFFICER ORTH: Okay. So to go back
3 just to the concept of striking again B and 47, I --
4 they're in the record as you filed them, because they
5 were filed, and no one reaches into the record to tear
6 them up or anything like that.

7 So I don't know that any -- any further effort
8 there is -- is necessary. I mean, if someone really
9 doesn't understand his direct testimony without going to
10 B and 47, they're there.

11 MR. HISER: Okay. If that's the case, then
12 Madam Hearing Officer, it may not be necessary.

13 HEARING OFFICER ORTH: Okay.

14 So but I think we still need to admit
15 Exhibit 61? Is that what I understand?

16 MR. HISER: Yes. We would need to -- NMOGA
17 Exhibit 61.

18 HEARING OFFICER ORTH: Okay.

19 MR. HISER: (Unintelligible and/or inaudible.)

20 So I think we're good.

21 HEARING OFFICER ORTH: All right.

22 Any objections?

23 No?

24 61 is admitted.

25 (Exhibit NMOGA 61 admitted into evidence.)

1 HEARING OFFICER ORTH: And then, Ms. Katz, do
2 you want to give a number to the Palmer information?

3 MS. KATZ: Yes. And I guess I probably should
4 just formally move for these exhibits that I -- so
5 Mr. Palmer's -- the single tank -- sorry. I'm trying to
6 find this.

7 The single -- NMED single tank process submit
8 is marked as NMED Rebuttal Exhibit 29.

9 And then I sent around -- so NMED Rebuttal
10 Exhibit 26 is an updated turbines reductions and costs
11 for NOx spreadsheet.

12 NMED Rebuttal Exhibit 27 is updated heaters
13 reductions and costs NOx spreadsheet.

14 NMED Rebuttal Exhibit 28 is an updated storage
15 tanks reductions and costs VOC spreadsheet.

16 NMED Rebuttal Exhibit 25 -- sorry -- these are
17 out of order -- is the updated ICE reductions and costs
18 NOx spreadsheet.

19 Then we had a -- we had NMED Exhibit 4
20 amended, which was the amended ozone path forward plan
21 that Mr. Baca testified to.

22 We had the NMED Rebuttal Exhibit 24, which is
23 the air quality control regions in New Mexico map that
24 was included in Mr. Baca's surrebuttal.

25 And then we had the resumes of Mike Pring and

1 Stephen Treimel which are NMED Rebuttal Exhibits 30 and
2 31, which were -- which I had indicated we would put
3 into the record based on Mr. Janoe's cross-examination
4 of Mr. Palmer.

5 So I would just move admission of those
6 exhibits.

7 HEARING OFFICER ORTH: All right. So NMED
8 amended Exhibit 4 and Rebuttal Exhibits 24 through 31
9 are admitted.

10 (Exhibits NMED 4 (amended) and Rebuttal 24
11 through 31 admitted into evidence.)

12 HEARING OFFICER ORTH: All right. Let's see.
13 I have a query from Member Garcia about asking NMED
14 another question.

15 Member Garcia?

16 MS. KATZ: Can't hear you.

17 MEMBER GARCIA: Oh. There. Okay. Thanks.

18 Sorry to make you go back to a technical
19 question, but I just saw in my notes something I meant
20 to ask yesterday and I forgot to ask. This would be a
21 question for Ms. Kuehn.

22 Under 117B.(3), the plunger lift, et cetera,
23 I -- I recall Mr. Davis, IPANM and maybe NMOGA agreed
24 that those items -- they're agreeing to those items as
25 long as they get moved to B.(1).

1 And I'm unclear the difference. If you could
2 explain to me what's the difference in having them as
3 number (3) by themselves or moved to B.(1)? Would they
4 not be enforceable -- would those four items not be
5 required if they were put under B.(1)? I'm not clear
6 what the difference is.

7 MS. BISBEY-KUEHN: Madam Garcia, I believe
8 that their concern was that these are best management
9 practices that should be utilized during the life of the
10 well and not specific types of technology that should be
11 used during a specific liquid unloading event.

12 And we agreed to move those technologies under
13 the definition of best management practices. They will
14 be required to utilize one of those technologies. So it
15 does not change the requirement fundamentally or change
16 the enforceability of the requirement.

17 MEMBER GARCIA: Great. Thank you.

18 That takes care of all my questions. Thank
19 you so much. Appreciate you answering all the
20 questions. You've done a fabulous job. Thank you.

21 HEARING OFFICER ORTH: Thank you, Member
22 Garcia and Ms. Kuehn.

23 Ms. Gutierrez, I see you on screen.

24 MS. GUTIERREZ: Yes, Madam Hearing Officer.

25 I just out of an abundance of caution want to

1 make sure I understand some of the exhibit entrances.

2 As you know, EDF and Kinder Morgan filed a
3 joint notice of filing of revised language.

4 Would it be your preference, Madam Hearing
5 Officer, that we refile that as exhibits respective to
6 our previous filings?

7 HEARING OFFICER ORTH: No. Thank you.

8 MS. GUTIERREZ: Okay. Okay.

9 HEARING OFFICER ORTH: No. Thank you.

10 MS. GUTIERREZ: Thank you very much for
11 clarity.

12 HEARING OFFICER ORTH: All right. Is there
13 any reason not to move now into a discussion of the
14 posthearing process on our way to the Board
15 deliberations?

16 MR. HISER: Madam Hearing Officer, there is
17 still the issue of the NMOGA proffer on a couple of
18 points, and I don't know if the -- maybe we go through
19 the rest of the posthearing, and then maybe we can get
20 the Board counsel on to talk about how she would like to
21 handle that, or the two of you would like to handle that
22 issue between us.

23 (Simultaneous discussion.)

24 MR. HISER: This would be on the two
25 spreadsheets and the excluded section of

1 Mr. Smitherman's surrebuttal.

2 HEARING OFFICER ORTH: So I guess I thought
3 that the proffer had been made not this time, but the
4 last time Mr. Smitherman was testifying.

5 MR. HISER: Correct. And I guess I'm just
6 trying to clarify with you and with her when we would
7 get a ruling from the Board so that we know their
8 status.

9 HEARING OFFICER ORTH: Not until the beginning
10 of the deliberations --

11 MR. HISER: Okay.

12 HEARING OFFICER ORTH: -- as I understand
13 Ms. Soloria.

14 But there she is. I'll let her say it.

15 MS. SOLORIA: Right. I have nothing to add.
16 I -- I'm not clear what the -- what final point has to
17 be resolved today. I thought our decision was that they
18 would take that up at the top of the deliberations at
19 the time that that was set.

20 MR. HISER: I wasn't sure, Ms. Soloria,
21 whether you were going to look at it then or there --
22 there's another Board meeting, I think, between when
23 those things might happen. So it just depends a little
24 bit about how you would want me to cite stuff that might
25 be in that section, and --

1 MS. SOLORIA: Right. I think -- I think maybe
2 we might be putting the cart before the horse here. I
3 think a discussion of the posthearing submission and
4 how -- how the Hearing Officer wants that to work --
5 we'll have that discussion, and then we can slide back
6 to this and see if there is anything specific to the
7 proffer that needs to be addressed.

8 MR. HISER: I think that makes sense.

9 MS. SOLORIA: And I don't -- we -- timing-wise
10 we would not be taking this up at the next Board
11 meeting.

12 MR. HISER: Thank you.

13 HEARING OFFICER ORTH: I see Professor
14 Pacyniak on screen.

15 MR. PACYNIK: Madam Hearing Officer,
16 similarly, I'm not 100 percent clear whether our
17 exhibits were admitted because of the continuing
18 objection, I believe, when my co-counsel was talking
19 about them, and there was some discussion of that. It
20 wasn't clear to us whether they were admitted.

21 So I'd like to move to admit CCP and NAVA EP
22 Exhibits 1 through 5 and Exhibit 8.

23 HEARING OFFICER ORTH: All right. Thank you,
24 Professor Pacyniak. I believe I might have said that
25 they were admitted, but I'll say it again.

1 MR. PACYNIAK: Thank you.

2 HEARING OFFICER ORTH: Thank you very much.

3 (Exhibits CCP and NAVA EP 1 through 5 and 8
4 admitted into evidence.)

5 HEARING OFFICER ORTH: All right. Now is
6 there any reason not to move to the posthearing process?

7 So let me describe how I've handled the
8 posthearing process for complex rulemakings in the past.
9 And I'm happy to accept comment from anyone on this.

10 It does typically take a matter of weeks after
11 the end of a hearing -- a long hearing to get all of the
12 transcripts in hand. Once the transcripts are in hand,
13 the Board administrator does forward them to the Board
14 Members and Board counsel.

15 As to the parties, she sends what's called a
16 notice of transcript filing. This isn't the
17 transcripts, but it is a notice that she has, in fact,
18 received all of the transcripts and has them in hand.
19 And she won't send that until she has all 10
20 transcripts.

21 Typically from the date in which all
22 transcripts are in hand, we set a deadline, and I like
23 to put the deadline right on the face of the notice of
24 transcript filing for posthearing submissions by the
25 parties.

1 In a rulemaking, those posthearing submissions
2 would typically include closing arguments, which closing
3 arguments would include also any legal argument that you
4 would want to make on legal issues that have been
5 raised. That's often contained in one document. And
6 then proposed findings and conclusions that would become
7 part of a statement of reasons.

8 I know all of the lawyers involved know that
9 it's imperative that this Board when they adopt whatever
10 rule they're going to adopt provide a very detailed
11 explanation of why they're adopting each of the
12 provisions, and that explanation, if you will, is called
13 a statement of reasons, which would include findings of
14 fact -- paragraphs that look like findings of fact and
15 paragraphs that look like conclusions of law.

16 So the legal closing arguments, the proposed
17 statement of reasons, and then what I found is one of
18 the most helpful things to assist the Board in their
19 deliberations is effectively an exploded version of the
20 rule and an explanation beneath each paragraph that you
21 would support, below each of those, citing to the
22 evidence you believe supports that particular change.

23 I know those of you who have been, for
24 example, in the Triennial Review with me, Mr. Rose,
25 Ms. Fox, you know exactly what I'm talking about. And

1 by the way, I'll happy to send a sample of what that
2 would look like to anyone who would -- who would like to
3 see it.

4 Then if you would send me that in Word, I
5 would synthesize what the parties' recommendations are
6 as to each of the provisions, and provide a roadmap, if
7 you will, for the Board, again without any kind of
8 policy recommendations.

9 Typically then on the front of that I would
10 have a very short Hearing Officer report that simply
11 laid out the facts of the -- of the hearing, the fact
12 that we had the hearing, a few comments about the
13 platform, a brief summary of the sorts of public
14 comments that we received, who the party representatives
15 were and the technical witnesses and a recommendation --
16 effectively a recommendation, at least a discussion of
17 how I felt about the admissibility of some of the
18 evidence.

19 So all of that then gets bundled to the Board.
20 All the parties would be informed in addition to the
21 usual public notice of the meeting of the Board where
22 they would deliberate. And of course, you would also
23 be informed as to the result of those deliberations and
24 provided with a copy of the -- of the Order and
25 Statement of Reasons.

1 So I have a request here -- yeah. A sample of
2 the rule revision description from Ms. Gutierrez. I'll
3 just send everyone a copy of a sample so you can see
4 what I'm talking about.

5 Again I -- I haven't quite found anything else
6 that is as helpful to the Board during their
7 deliberations as that document, because it allows them
8 to spend time in one document in order to see every
9 party's last best final proposal, instead of what they
10 used to do, which was to have a posthearing submittal
11 from every party, and in this case that's a dozen
12 parties.

13 To have 12 documents open in front of them, we
14 needed a dais that was about 40 feet long so that every
15 Board Member could -- could have all of these documents
16 in front of them to try to understand as they walk
17 through the rule. So if I synthesize that, folks --
18 Board Members and Commission Members have actually been
19 pretty enthusiastic about that document.

20 So are there any questions from the parties
21 about any of that?

22 I know some of you know exactly what this
23 looks like, but some of -- for some of you it might
24 sound mysterious.

25 Mr. Rose.

1 MR. ROSE: Yeah. Are we going -- I assume
2 we'll talk about timing here, too, but is it only the
3 draft rule and explanations that you want in Word, or do
4 you want other parts of the submittals in Word so that
5 you can cut and paste in terms of putting your report
6 together?

7 HEARING OFFICER ORTH: I typically just ask
8 for that -- that one sort of exploded document where you
9 have cited to the evidence beneath each provision. I
10 typically don't ask, for example, for the legal argument
11 in -- in Word. I'm not sure. I -- it's usually just
12 that one -- that one document.

13 MR. ROSE: Okay.

14 And the other question is since the Board
15 hasn't asked for a recommendation -- I mean, at times
16 we've provided -- or at least I think you've provided
17 for the opportunity to comment or object to the Hearing
18 Officer's report, but since you're not making a
19 recommendation, I assume you're not looking at creating
20 a timeline to do that either.

21 HEARING OFFICER ORTH: I guess I wouldn't
22 include that in the timeline. Certainly, if I were to
23 get something wrong, if I did not properly cut and paste
24 from your posthearing submittal, then I would want you
25 to point that out so that the Board knows about that.

1 But again I'm not making any recommendations around the
2 substance of any of this petition.

3 All right. So as to the timing, while I have
4 you there, Mr. Rose, timelines following the receipt of
5 the final transcript have ranged from 30 days to 45
6 days. This was a big rulemaking, but I'm wondering if
7 you have a suggestion.

8 MR. ROSE: It was more a function of what it's
9 going to take Cheryl to put the record -- or the
10 transcript together and get it to us. Since we're
11 already in October, November and December get a little
12 strange in terms of holidays. So -- and so I'd -- it
13 depends on -- I mean, I would assume -- they got the
14 transcript in the triennial together in, I think, about
15 two weeks, and that was half as long as this.

16 So I don't know whether we're looking at three
17 or four weeks for a transcript and if we're running into
18 the end of October at that point. So 30 days would get
19 us into Thanksgiving and -- which is fine, or 45 days
20 given -- which is what we did for the triennial.
21 Probably makes more sense, although no great surprise.
22 Most of us will wait until the very end to do it anyway.

23 So I don't know whether you give us 30 or 45
24 days whether it's going to make that much difference.
25 But I think with the holidays 45 would make more sense.

1 HEARING OFFICER ORTH: All right. I agree
2 with you. I was once asked by a paralegal whether they
3 taught that in law school, to wait until the last day.

4 Ms. Katz?

5 MS. KATZ: Oh, I was just going to say that I
6 would greatly appreciate 45 days at least. Thank you.

7 HEARING OFFICER ORTH: All right. So 45 days
8 after -- from the date that Pam has all 10 transcripts
9 in hand and sends all of you a notice of transcript
10 filing. The date will be on the face of that notice.
11 And we'll do 45 days and land on a -- land on a business
12 day instead of a holiday.

13 Then I'm happy to take just 30 days for my
14 part of it. And I think we need to make sure the Board
15 has everyone's posthearing submittals and my report at
16 least a couple of weeks before whatever meeting they
17 would be taking this up at. So I'm not sure that we can
18 identify exactly which meeting that will be now.
19 Obviously, it will be after the first of the year.

20 I do know that the Board -- at least in the
21 past the Board has not wanted to meet during -- during
22 the session really.

23 But perhaps I'll leave that to you, Madam
24 Chair, to have that discussion with your -- with your
25 Board Members.

1 I don't think we should press the parties
2 any -- any further than 45 days. And I'd like 30 days
3 just because it's a lot of cutting and pasting.

4 But if you, having heard that schedule,
5 know -- and I'm sure Ms. Soloria would advise you on
6 this, too. It's possible to set a special meeting and
7 not just stick to whenever your regular meeting is.

8 So, Ms. Soloria, anything to ask or add?

9 MS. SOLORIA: I was just going to add for the
10 Board's information, for our final time constraint once
11 the Hearing Officer's report is drafted and submitted to
12 you all, that starts the clock on a 60-day window for
13 you all to make the decision. So like we don't
14 really -- that's kind of a moving target right now, but
15 I did want to give you that in terms of expectations.

16 HEARING OFFICER ORTH: That's helpful. Thank
17 you, Ms. Soloria.

18 So are there any other questions about the
19 essential process?

20 Member Garcia.

21 MEMBER GARCIA: I think I'm unmuted, right?

22 Thank you, Madam Hearing Officer.

23 And I must commend you for doing a fabulous
24 job of -- with facilitating this hearing, with all the
25 technical challenges, being virtual, et cetera. It's

1 been a very complicated hearing, and you did a really
2 good job guiding us through it. So thank you.

3 And I was -- and I am so happy to hear you say
4 that you would help facilitate the process of making
5 decisions on the various interpretations of the rule
6 that are -- that are being asked of us. That -- I was
7 already getting a headache thinking about how we were
8 going to do that. So hearing you say that makes me feel
9 a lot better. That's going to be a huge help. So thank
10 you.

11 And one other item. You know, your procedural
12 order that you had in the beginning was very helpful to
13 follow along and understand what's due when. So I'm
14 wondering if it would -- I just couldn't write fast
15 enough. I'm wondering if it would be possible for you
16 to write out some of these dates and timelines and
17 things for us to -- to know what's happening when. That
18 would be very helpful.

19 HEARING OFFICER ORTH: I'd be happy to do
20 that. Thank you.

21 Let's see. Any other questions about the
22 basic process?

23 All right. We should probably loop back to
24 Mr. Hiser's question.

25 Mr. Hiser, do you have a suggestion --

1 Or, Ms. Soloria, do you have a suggestion for
2 how Mr. Hiser should handle, if you will, the excluded
3 data?

4 MS. SOLORIA: I think it would be most
5 appropriate for -- to discuss the proffer in the
6 posthearing bundle. The Board Members would have access
7 to that, and I still think it's -- practically speaking,
8 it would be best to just take that up for whenever they
9 schedule deliberations.

10 And in terms of scheduling, we would -- we
11 would aim to schedule the deliberation early enough in
12 the 60-day window that if there was a chance that a
13 hearing -- the Board Members wanted to reopen evidence
14 based on what you've discussed with regard to your
15 proffer, that we would have flexibility to do that.

16 But I'm welcome to other suggestions. That's
17 kind of where I've landed having heard the Hearing
18 Officer's preferred process.

19 MR. HISER: I think that's fine. We can
20 certainly address it at that point in time. The --
21 what's in dispute now is essentially two Excel tables
22 and six slides of which I -- I'm sorry -- seven slides.
23 And so it's not a very big corpus of material.

24 And what we could do is in our filing we could
25 simply note that this -- that if we do cite anything

1 that might be in the proffer, that this is proffer and
2 just make that clear, and then Madam Hearing Officer
3 could sort of put that into a separate section or
4 something like that. Because it's just a pretty small
5 little piece, and that might be the simplest way to do
6 it.

7 If that makes sense, because that would allow
8 us to make our argument on the same schedule and not
9 cause any real delay to the Board, I think, as it's
10 moving forward.

11 HEARING OFFICER ORTH: Ms. Fox?

12 MS. FOX: Thank you, Madam Hearing Officer.

13 I don't think it's appropriate for a proffer
14 to come in in your proposed findings of fact and
15 conclusions of law. That's really only for the evidence
16 that's been admitted. And so maybe there is a middle
17 ground there -- here, but I don't think putting a
18 proffer in proposed findings is proper.

19 MR. HISER: That's fair for Ms. Fox.

20 What we could do would be to put that in our
21 argument on whether it should come in, would be to maybe
22 include the additional proposed findings or other things
23 in that, which would then be in that proffer package,
24 and if the Board were to decide to admit it, then they
25 would have access to those additional findings of fact.

1 MS. FOX: In, yes, a separate document from --

2 MR. HISER: Yeah, separate document.

3 MS. FOX: -- the proposed findings, you're
4 saying.

5 MR. HISER: Yeah.

6 MS. FOX: I think that makes more sense.

7 And then I think what we talked about is that
8 there be, you know, an opportunity for the Department or
9 whichever party wanted to respond to respond to that
10 material.

11 MR. HISER: I think that should come in at the
12 same time if possible, though. That otherwise will
13 delay the Board.

14 That's up to the Hearing Officer and the
15 Board.

16 HEARING OFFICER ORTH: All right. So I think
17 you will have to make your arguments about the proffer
18 in the -- in the posthearing submittal, and again the
19 Board will be taking this up at the beginning of their
20 deliberations.

21 Mr. Rose?

22 MR. ROSE: Yes. Something similar in terms of
23 my objections to the introduction of evidence, I said I
24 was probably or most likely going to bring that before
25 the Board. At least at this juncture, I still plan to,

1 although I'll take a look at that. If I do, my plan was
2 to include it in my closing argument and then leave it
3 up to the Board.

4 But since closing arguments are filed all at
5 the same time by all of the parties, I didn't know if
6 you wanted to have some iterative process or whether
7 because we argue that -- and I'll let folks know if we
8 decide not to raise it so that, you know, if they want
9 to brief it, they certainly can, but -- but not to
10 include it if we decide to -- to not bring that to the
11 Board.

12 So that was the only question I had.

13 HEARING OFFICER ORTH: Yeah. I wouldn't
14 really think that the Board would want to lengthen this
15 process with an iterative discussion about an
16 evidentiary ruling. I think it would be very gracious
17 of you to let the other parties know if you're not going
18 to argue it. It will save them -- save them a little
19 time in their own closing arguments.

20 MR. ROSE: Yeah. I'll try to do that as --
21 hopefully before the transcript is filed, so that folks
22 will be on notice whether or not they're going to need
23 to brief that, or may want to.

24 HEARING OFFICER ORTH: All right. Well, thank
25 you for that.

1 Is there anything else that we can talk about
2 while we're all together?

3 There's a question from Member Bitzer, and
4 about, I guess, a potential interview, Member Bitzer?
5 It may be that you want to raise that with Board
6 counsel?

7 MEMBER BITZER: Yeah. I'm not sure if this is
8 an appropriate time to discuss this or not. I'm not
9 sure how much longer today's meeting is going.

10 But I've been approached by my hometown paper
11 about doing a piece on what we're up to, why, you know,
12 what the implications are and so forth, and I don't know
13 if that's -- if that's -- I'm not an attorney, and I
14 don't -- I don't know if that's -- I know lawyers are
15 generally averse to trying their cases in the court of
16 public opinion, but I'm not a lawyer, and I'm not -- I'm
17 not trying the case, although I know a few attorneys who
18 aren't so averse to that.

19 But anyway, I just thought I'd throw it out
20 there. I can -- I can certainly tell them no. It's not
21 the Albuquerque Journal. I live in Corrales. So it's
22 the Corrales Comment.

23 HEARING OFFICER ORTH: Yeah. Until the Board
24 acts, I think there are some dangers there.

25 But Ms. Soloria?

1 MS. SOLORIA: I was just going to advise that
2 we can speak offline about -- I can advise you on that,
3 and we can discuss your concerns. I'm happy to do that,
4 Member Bitzer.

5 MEMBER BITZER: Okay. I wanted to let the
6 rest of the Board know that I've been asked to in case
7 any of them has any heartburn about me saying something.
8 I'm also happy to run a draft by everybody if anybody
9 wants to see it. I don't plan on taking any positions
10 at this time in that piece. I just want to explain to
11 my neighbors why I'm here and partly how I got here.
12 Kind of like why are you on this Board? And -- anyway.

13 So I thought I'd -- yeah. We can have that
14 conversation offline.

15 HEARING OFFICER ORTH: Thank you, Member
16 Bitzer.

17 Madam Chair?

18 CHAIR SUINA: Yes. Thank you, Madam Hearing
19 Officer.

20 I just had a quick question, hopefully it's
21 quick, about just the process, so -- I guess since you
22 said we're all together and the Board's here.

23 So just so I'm clear, as well, we will get all
24 this information. And at a future Board meeting, when
25 it's on our agenda, we will then identify the date that

1 we will meet for deliberation; is that correct?

2 HEARING OFFICER ORTH: Yeah. So it's not --
3 it's not that one-two business where you have to decide
4 at one meeting that you're going to deliberate at a
5 subsequent meeting, the way you do have to set a hearing
6 that way.

7 CHAIR SUINA: Okay.

8 HEARING OFFICER ORTH: You would simply look
9 at your upcoming agendas, consider -- because you will
10 be close to the session, consider whether you want to
11 meet during the session, and notice it up in the usual
12 way.

13 But the other part of that, apart from the
14 Open Meetings Act requirements, publishing the agenda,
15 putting it on the web page, et cetera, we would also
16 specifically let the parties know that that was the
17 meeting where you were going to deliberate.

18 I'm sorry. Ms. Soloria, I see you on screen.

19 Did you have something to add?

20 MS. SOLORIA: No. I have nothing further to
21 add. I just wanted to be available if -- for any
22 further questions from the Board on that point.

23 And to that point, Chair Suina, if it works
24 out better that we could schedule a special meeting for
25 this, it most likely would be a meeting specifically

1 devoted to the deliberation, I would advise not having
2 anything else on the agenda for that time, and as I
3 mentioned previously, it's a moving target, and we can
4 certainly discuss the best date for that.

5 CHAIR SUINA: Okay. Thank you so much for
6 that. And --

7 Go ahead, Member Honker.

8 MEMBER HONKER: Yes. Sorry, Chair.

9 I was just going to say I was going to suggest
10 the same thing, because it sounds like this could be a
11 full day of just discussing -- deliberating on this.

12 CHAIR SUINA: Thank you, Member Honker.

13 And I just wanted to take a moment since we
14 are still all together to thank all of the counsels, all
15 of the witnesses, as well as all the public that came to
16 provide testimony during these hearings, and, of course,
17 to my fellow Board Members, and -- and the support --
18 support -- your support, Madam Hearing Officer, legal
19 counsel, Pam, and -- and others that have helped guide
20 us -- guiding us through this process.

21 And I also just want to reiterate that I
22 really do appreciate on such a -- I guess a very high --
23 high-profile topic, that I believe we all conducted
24 ourselves with respect and within the process. So I
25 really very much appreciate that. And we will continue

1 to do our best to do that, and again just thank you,
2 all. Appreciate it.

3 HEARING OFFICER ORTH: Thank you, all. It's
4 just been a uniformly excellent hearing with a high
5 level of professionalism on everyone's part.

6 Mr. Rose, I see you on screen.

7 MR. ROSE: Yeah. Just one -- and it's not
8 clarification. I think that some of the folks who
9 haven't appeared before the Board may not know, but when
10 the Board deliberates, there won't be argument from
11 counsel or any participation. It's we get to watch all
12 of this happen without any way to intervene. So I just
13 want to make sure folks are aware of that and prepared
14 for it.

15 HEARING OFFICER ORTH: Thank you for
16 mentioning that, Mr. Rose. I meant to mention that,
17 myself. It's all true.

18 All right. We do have some public comment at
19 5:00, but we can break between now and 5:00. The event
20 will remain open, and I'll be back -- I'll be back at
21 5:00 to accept the comment. I didn't want to, you know,
22 say, oh, well, we ended at 3:00, too bad for you.

23 So I will be back on the platform at 5:00 to
24 accept public comment and -- and then I'll adjourn.

25 Thank you, all.

1 (Proceedings in recess from 3:00 p.m. to
2 5:00 p.m.)

3 HEARING OFFICER ORTH: Good evening.

4 My name is Felicia Orth, I'm Hearing Officer
5 for EIB 21-27. It's a rulemaking before the
6 Environmental Improvement Board relating to ozone
7 precursor.

8 And we have reached the final public comment
9 session, the five o'clock session on the 10th day of
10 hearing.

11 If you have comment to offer -- I do have some
12 folks who reached out to the Board administrator. I'll
13 call on you first. If you did not reach out to the
14 Board administrator, I'm still happy to accept your
15 comment. Please reach out through the chat which is
16 enabled for everyone.

17 And in the event you would prefer it, please
18 set out your comment in writing and -- by the end of the
19 day, let's say the end of October 1st, and e-mail that
20 to Pam Jones, the Board administrator.

21 Public comment is taken under oath as required
22 by the Board rulemaking rules, is taken by audio, not
23 video, and is limited to five minutes.

24 So I'll call on you in this order, Antoinette
25 Sedillo Lopez, Samantha Kao, Liliana Castillo, Oscar

1 Simpson and Akaisha Begay.

2 So let's start with you, Senator Lopez.

3 Hello. Can you hear me?

4 MS. SEDILLO LOPEZ: Yes. Thank you.

5 Can you hear me?

6 HEARING OFFICER ORTH: I can.

7 If you would please spell your name for the
8 transcript.

9 MS. SEDILLO LOPEZ: Yes. It's Antoinette
10 Sedillo Lopez, it's A-N-T-O-I-N-E-T-T-E
11 S-as-in-Sam-E-D-I-L-L-O, Lopez, L-O-P-E-Z. And no --

12 HEARING OFFICER ORTH: Thank you, ma'am.

13 MS. SEDILLO LOPEZ: No hyphen.

14 HEARING OFFICER ORTH: Okay. Thank you.

15 And if you would raise your right hand.

16 Do you swear or affirm to tell the truth?

17 MS. SEDILLO LOPEZ: Yes. I -- I will tell the
18 truth.

19 HEARING OFFICER ORTH: All right.

20 ANTOINETTE SEDILLO LOPEZ

21 having been first duly sworn or affirmed, gave
22 public comment as follows:

23 PUBLIC COMMENT

24 HEARING OFFICER ORTH: I'll start your five
25 minutes now.

1 MS. SEDILLO LOPEZ: Thank you, Members of the
2 Board. I appreciate the opportunity to speak.

3 My name is Antoinette Sedillo Lopez. I'm a
4 Senator in District 16 in Albuquerque, New Mexico.

5 Addressing the climate crisis and
6 environmental protections in New Mexico is my highest
7 legislative priority, and it is one reason that I am in
8 public service as a legislator. I want to preserve the
9 beauty and the healthfulness of the land we all live in
10 and share together.

11 First I want to thank -- I want to thank the
12 Department, the Environmental Department, for joining
13 proximity rules and frequent inspections of homes and
14 schools, nearby homes and schools. I think that is very
15 important, and I'm glad that they have joined. That is
16 very important for the Board to consider and to adopt.

17 In addition, I wanted to say that climate
18 change, methane and the associated toxins, including
19 VOCs, volatile organic compounds, contribute not only to
20 ozone pollution, which harms the respiratory system, and
21 triggers asthma attacks and makes emphysema worse, it
22 also contributes to climate change. And we are seeing
23 the climate crisis unfold before us.

24 The other rule that needs strengthening is the
25 completion of wells. They must be regulated to ensure

1 that emissions are minimized during the completions of
2 wells process. Pneumatics must be inspected frequently.

3 Finally, polluters need to be accountable for
4 the -- for the harm they cause to our communities,
5 especially to communities of color. It is the state's
6 responsibility to protect all of our communities, and
7 these state advances that are adopted by this Board
8 today, or whenever they're adopted, need to be protected
9 by the passage of an environment -- of a constitutional
10 amendment which will preserve the advances so that they
11 can not be summarily undone.

12 This requires a constitutional amendment that
13 will give us all citizens the right to clean air, land
14 and water, and ensure that they are a constitutionally
15 protected right of the people within our state.

16 I very much appreciate the opportunity to
17 speak to you. I urge you to make sure that we have the
18 best ozone rules in the country. And I urge you to
19 protect the environmental and climate -- to protect our
20 state. It is a delicate but environmentally fragile and
21 beautiful state, and it is your responsibility to ensure
22 everything that we can do to make sure that it stays
23 that way.

24 Thank you very much.

25 HEARING OFFICER ORTH: Thank you very much,

1 Senator.

2 Let me go to Samantha Kao. Oh. Let's see.

3 Ms. Kao, I've unmuted you.

4 Can you hear me?

5 Hello. Ms. Kao?

6 Okay. I will go back to Ms. Kao.

7 Let's see. I'm now looking for Liliana

8 Castillo.

9 Okay. I don't see Ms. Castillo.

10 Next is Oscar Simpson.

11 Mr. Simpson, can you hear me?

12 MR. SIMPSON: Hi. This is -- yes. Can you
13 hear -- this is Oscar Simpson.

14 Can you hear me, Felicia?

15 HEARING OFFICER ORTH: I can. Hello.

16 Would you spell your name for the transcript,
17 please.

18 MR. SIMPSON: My name -- my spelling of my
19 name is Oscar, O-S-C-A-R S-I-M-P-S-O-N.

20 HEARING OFFICER ORTH: And if you would raise
21 your right hand.

22 Do you swear or affirm to tell the truth?

23 MR. SIMPSON: I do.

24 HEARING OFFICER ORTH: Thank you.

25

1 OSCAR SIMPSON

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 MR. SIMPSON: Thank you very much.

8 I want to thank the Environmental Improvement
9 Board for taking -- for allowing the public to comment
10 on these regulations. These are critical regulations
11 that need to protect public health, but also to minimize
12 impacts of climate change. This is a critical step.

13 Michelle Lujan Grisham has proposed superior
14 regulations to control climate change by controlling
15 methane emissions and VOCs from oil and gas development
16 and also to help improve the regulations to control
17 emissions.

18 In order to protect and improve these
19 regulations, there's three areas that need to help --
20 that need to be improved other than what the
21 environmental -- Environment Department has proposed.
22 To protect public health, they need to have frequent
23 inspections and find and fix leaks, especially related
24 to pneumatic controllers. They also need to expedite
25 the replacement of pneumatic controllers to devices that

1 don't require such use of pneumatics.

2 I'm trying to read my notes here, and they got
3 lost here. Sorry.

4 So I have for the last 30 years worked on NGO
5 campaigns to improve and strengthen oil and gas
6 development throughout the West, and especially in New
7 Mexico. I'm a native New Mexican. I got 30 years
8 dealing with oil and gas development and its impacts,
9 especially on wildlife habitat and with limited a little
10 bit to air quality. And mainly because air quality
11 couldn't be moved, and it wouldn't be -- and the
12 regulations wouldn't improve and to protect public
13 health.

14 So now is a perfect opportunity for the
15 Environmental Improvement Board to increase the -- to
16 strengthen the regulations to control the volatile
17 organic hydrocarbons and methane, to improve public
18 health, and especially those that are very close to oil
19 and gas development.

20 The key aspect of this regulation is to, in my
21 opinion, protect the health and environment of New
22 Mexico's living closest to the oil and gas development,
23 but also to minimize impacts of climate change.

24 So that's all I've got to say, and thank you
25 very much.

1 HEARING OFFICER ORTH: Thank you very much,
2 Mr. Simpson.

3 Let me go back to Ms. Kao.

4 Ms. Kao, can you hear me?

5 No. She may have stepped away.

6 Let me go back to Liliana Castillo.

7 Ms. Castillo, can you hear me?

8 MS. CASTILLO: Yes, I can.

9 Can you hear me?

10 HEARING OFFICER ORTH: Yes. Just speak up a
11 little bit.

12 And would you spell your name for the
13 transcript, please.

14 MS. CASTILLO: Absolutely. It's Liliana,
15 L-I-L-I-A-N-A, Castillo, C-A-S-T-I-L-L-O.

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 MS. CASTILLO: I do.

20 HEARING OFFICER ORTH: Thank you.

21 LILIANA CASTILLO

22 having been first duly sworn or affirmed, gave
23 public comment as follows:

24 PUBLIC COMMENT

25 HEARING OFFICER ORTH: I'll start your five

1 minutes now.

2 MS. CASTILLO: Great.

3 Thank you for the opportunity to provide
4 comments today.

5 My name is Liliana Castillo, and I'm the
6 deputy director of CAVU, Climate Advocates Voces Unidas.
7 We are a nonprofit that focuses on story -- on sharing
8 stories as a way to bring people together to find local
9 solutions to the global climate problem.

10 Communities in New Mexico have been calling
11 for better regulations to mitigate methane and ozone
12 pollution from the oil and gas industry for years, and
13 CAVU has been helping to tell these stories, starting
14 with our Unearthed video series.

15 Science has shown over and over again that
16 reducing these emissions is one of the most impactful
17 and cost effective ways to better protect the health of
18 our people and our air, climate and cultural resources.

19 Most recently the United Nations International
20 Panel on Climate Change identified methane pollution as
21 one of the key drivers of the climate crisis. Their
22 report made it clear that cutting human-caused methane
23 emissions, largely from the oil and gas industry, is the
24 fastest way to slowly -- to slow warming in the near
25 term. And these rules are designed to do just that.

1 Governor Michelle Lujan Grisham and Secretary
2 Jim Kenney deserve credit for being responsive to the
3 concerns of New Mexicans when it comes to their health
4 and climate.

5 We applaud the Environment Department for
6 joining environmental community groups and some industry
7 leaders in supporting strong leak inspection
8 requirements near schools and homes. This is a vital
9 recognition of the impacts to New Mexicans who live
10 closest to oil and gas infrastructure.

11 The New Mexicans concerned about climate,
12 public health and environmental health, combined with
13 this administration's reliance on scientifically derived
14 information, have led to this important moment, this
15 hearing right here. We encourage the EIB and the NMED
16 to take this chance to strengthen the rules by adopting
17 the proximity improvements and making two further
18 improvements that will ensure the greatest possible
19 reduction in harmful greenhouse gases.

20 First is that the final rule must be -- must
21 be strengthened to ensure New Mexico incorporates
22 leading approaches to address pollution created during
23 well completions. Right now the rules do not cover
24 this.

25 And the final rule should also strengthen

1 pollution-cutting measures on pneumatic controllers, as
2 they are the second largest source of oil and gas
3 methane pollution in New Mexico.

4 These two changes fall within the scope and
5 the intention of these rules. This is our one chance to
6 pass these rules. Let's do the best job possible.

7 I encourage you to respond to the pleas of the
8 New Mexicans who have spoken up and given public comment
9 during the two weeks of this hearing. Make these
10 improvements so we can meet the Governor's goal of
11 enacting nation-leading rules to reduce methane and
12 ozone pollution from the oil and gas industries, thereby
13 improving the lives and health of the citizens of our
14 state.

15 Thank you again for the opportunity to speak.

16 HEARING OFFICER ORTH: Thank you very much,
17 Ms. Castillo.

18 Let me go to Beverly Singer.

19 Ms. Singer, I've unmuted you.

20 Can you hear me?

21 MS. SINGER: Yes.

22 Can you hear me?

23 HEARING OFFICER ORTH: Oh, very nice. Thank
24 you.

25 If you would spell your name for the record,

1 please.

2 MS. SINGER: B-E-V-E-R-L-Y S-I-N-G-E-R.

3 HEARING OFFICER ORTH: Thank you.

4 And if you would raise your right hand.

5 Do you swear or affirm to tell the truth?

6 MS. SINGER: Yes, I do.

7 HEARING OFFICER ORTH: Thank you.

8 BEVERLY SINGER

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

11 PUBLIC COMMENT

12 HEARING OFFICER ORTH: I'll start your five
13 minutes now.

14 MS. SINGER: Good afternoon.

15 And thank you, Environmental Improvement
16 Board, for this opportunity to provide comment.

17 As a member of Santa Clara Pueblo with Dine,
18 Navajo, ancestry and an heir to land near Chaco Canyon
19 at Pueblo Pintado, my lifelong history of traveling out
20 to my great great grandfather's and grandmother's land
21 has been a tragic narrative as the one pristine region
22 near Farmington has been contaminated with oil and gas
23 fields.

24 I want to call attention to the investors of
25 the gas and oil industry who are untouched by this

1 erosion of the land, the soil, the water, the polluted
2 air. They simply can go on with nonchalant ignorance of
3 what's happening to my relatives out there and the
4 residents in the Four Corners area. Not to mention that
5 much of it probably drifts over us here at Santa Clara
6 Pueblo in Northern New Mexico.

7 I'm asking that this opportunity that we have
8 before us to put stricter restrictions on the emissions
9 of these pollutants into the air and into our lives be
10 carried out and conducted properly, and that, you know,
11 the leaks are prevented and that efforts are seriously
12 taken to look at this issue here in our state.

13 Saying it cost too much to reduce the methane
14 gas releases is no more expensive than what it costs for
15 all the health care costs, for the infrastructure, for
16 all the suffering that happens to the -- the needs that
17 are required by allowing this development to continue
18 un- -- you know, just un- -- it's unleashed on us.

19 And I see that the State of New Mexico at this
20 time, you know, receives a -- is 20 -- what, 23 percent
21 of its income from this industry. And according to the
22 Bureau of Geology and Mineral Resources, you know, part
23 of that is that it only creates 11,000 jobs. I mean,
24 that is not enough, you know, for the kinds of damage
25 that is being done.

1 So I would really like to see efforts placed
2 by this administration and certainly all around the rest
3 of this nation to look at other ways in which we can
4 create energy. And I know that the State of Colorado
5 has done a lot to control its release of gases, but I'm
6 thinking more smaller in terms of business communities,
7 people power, wind and solar farms, and ways in which,
8 you know, innovation can be created.

9 What we have seen as a result of COVID is the
10 fact that we don't need huge office buildings anymore.
11 People can work remotely. You know, you don't need the
12 heating and the cooling and the electricity of those
13 buildings. I mean, New York City is just completely
14 dark as a result of this, and people are working
15 remotely. We learned that. Students are going to
16 school remotely.

17 So I just offer these ideas up today because
18 I'm really touched by what's happened to our state. We
19 live in a poverty consciousness, we are the -- what, the
20 third of the bottom from poverty lists, and that is
21 unconscionable.

22 You know, we are an incredible people here,
23 with a lot of strength and ideas and willingness to be
24 able to work together with this industry to redirect its
25 emphasis upon the extraction and move toward some kind

1 of inversion where we come together and really look at
2 how we can improve not only the opportunities for better
3 business practices, but also to look at the way in which
4 we can educate our children and our youth. I think I've
5 spoken on this before.

6 But I am a former university professor in
7 anthropology, and what I've learned in terms of looking
8 at the impacts of this industry out there at Chaco
9 Canyon is just devastating in terms of wanting to
10 increase and enhance it, and I will not stand by and not
11 say anything, because if I don't say anything, no one's
12 going to say anything.

13 And as a native person from this state, as an
14 indigenous person, I just feel that it is enough that we
15 have put up with over this period of time since the 20s,
16 when this industry began in the state, but it's time for
17 us to -- to change our thinking about who we are and
18 what we want for the future of our children.

19 In closing, I just want to say that, you know,
20 I've attended and participated in many United Nations
21 meetings. You know, I was sitting in Italy some years
22 ago at a meeting of all these folks who -- with the
23 World Bank who were working in the Niger Delta and
24 hearing about the statistics and the -- you know, just
25 the impact that the oil and gas industry has done and

1 just left those nations in disarray.

2 We aren't those nations. We are very, very
3 wise people here in New Mexico. And so I really feel as
4 if though, you know, it is time for us to take a look
5 and -- and take -- really believe in ourselves, you
6 know, so that we aren't left in these dark spaces of not
7 having opportunities to develop and improve the
8 conditions for all the citizens of New Mexico. I love
9 this -- this place. It is our homeland.

10 Thank you.

11 HEARING OFFICER ORTH: Thank you very much,
12 Ms. Singer.

13 I see Akaisha Begay.

14 Ms. Begay, can you hear me?

15 Hello?

16 MS. BEGAY: Oh. Hello?

17 HEARING OFFICER ORTH: Yes. Hello.

18 MS. BEGAY: Hello.

19 HEARING OFFICER ORTH: Would you spell your
20 name, please.

21 MS. BEGAY: It's A-K-A-I-S-H-A.

22 HEARING OFFICER ORTH: Begay, B-E-G-A-Y?

23 MS. BEGAY: Yes.

24 HEARING OFFICER ORTH: All right. Thank you.

25 If you would raise your right hand.

1 Do you swear or affirm to tell the truth?

2 MS. BEGAY: Oh, I -- oh, wait.

3 What was that again?

4 HEARING OFFICER ORTH: Do you swear or affirm
5 to tell the truth?

6 MS. BEGAY: I do, and I swear to tell the
7 truth.

8 HEARING OFFICER ORTH: Thank you.

9 AKAISHA BEGAY

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

12 PUBLIC COMMENT

13 HEARING OFFICER ORTH: I'll start your five
14 minutes now.

15 MS. BEGAY: Okay.

16 I support sorrel rules and for the tough air
17 quality with -- oh. I support sorrel rules, tough air
18 quality and -- oh, I'm -- and -- oh, I'm sorry. I'm
19 kind of nervous.

20 HEARING OFFICER ORTH: Take your time.

21 MS. BEGAY: Okay.

22 Okay. I support the surreal -- sorrel rules,
23 tough air quality. While the NMMD has put forward a
24 strong proposal, the key additional (unintelligible
25 and/or inaudible) to meet Government Lujan

1 (unintelligible and/or inaudible) of interacting the
2 country toughest men and air pollution rules, to protect
3 those living close to the department by require more
4 frequencies inspection, to fix -- to find and fix leaks.

5 Thank you for the New NMED for adding your
6 support for this proposal.

7 I am from Shiprock, New Mexico.

8 HEARING OFFICER ORTH: Thank you very much,
9 Ms. Begay.

10 MS. BEGAY: Oh, okay. Thank you.

11 HEARING OFFICER ORTH: Oh. Did you have more?

12 MS. BEGAY: Oh. Oh, and then, also, I want --
13 yeah. I'm from Shiprock, New Mexico. I'm in -- high
14 schooler. I'm in the tenth grade. So yeah. That's --
15 and like the air quality is like really bad where I live
16 because of the power plants that are around.

17 Yeah. That's what -- that's all I wanted to
18 say.

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

21 I will return to Samantha Kao.

22 Ms. Kao, I've unmuted you.

23 Are you there?

24 Okay. We're unable to connect with Ms. Kao.

25 I have come to the end of those indicating a

1 desire to offer public comment in this session, which is
2 the final public comment session of this hearing. We
3 finished the technical case just a little bit ago and at
4 this point would only adjourn.

5 Madam Chair, Vice-Chair Trujillo Davis, Member
6 Cates, Member Bitzer, Member Garcia, Member Honker, I
7 see all of you on the platform now listening to public
8 comment. If there's anything you would like me to do
9 other than adjourn, please let me know right now.

10 VICE-CHAIR TRUJILLO DAVIS: I would just like
11 to say thank you to all the people who gave public
12 comment. I realize it is a very intimidating platform
13 to -- to get on and to give your thoughts. But I think
14 that they carry a lot of weight, and it's important for
15 the community to participate and -- and give us their --
16 their opinion on things.

17 So I really appreciate it, and I appreciate
18 everybody who worked on this. And I believe Member
19 Suina kind of gave those sentiments earlier, and I echo
20 them.

21 So it was a -- it was a long two weeks, but
22 everybody did a fabulous job, especially our court
23 reporters who really had to sort us all out. So thank
24 you very much.

25 HEARING OFFICER ORTH: Thank you, Vice-Chair.

1 I certainly echo those sentiments.

2 Anything else before we adjourn?

3 CHAIR SUINA: Madam Hearing Officer, and I
4 don't -- I just want to make sure that we thank you and
5 your service to the Board and to this process, just
6 wholeheartedly appreciate that, along with what
7 Vice-Chair Trujillo Davis mentioned a few minutes ago,
8 but -- and as well as all the court reporters, your
9 quick fingers capturing all of this for our transcript.
10 Thank you so much, and appreciate it, and I hope
11 everybody has a restful weekend and next -- on to the
12 next steps of this process.

13 HEARING OFFICER ORTH: Thank you so much.
14 It's been a privilege.

15 So we are adjourning this hearing on the day
16 we had hoped to adjourn this hearing, day 10. There is
17 a fairly lengthy posthearing process. If you're curious
18 about where the Board is in that posthearing process on
19 the way to their decision, which will likely occur in
20 the first quarter of 2022, please contact Pam Jones, the
21 Board administrator.

22 Thank you, all.

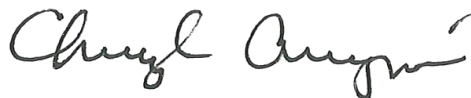
23 We'll adjourn for now. Good night.

24 (Proceedings adjourned at 5:25 p.m.)

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
8 I personally recorded the proceedings by machine
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
14 employed by the parties hereto or financially interested
15 in the action.

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