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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 10th day of March, 2022,
this matter came on for Deliberations and Decision on the
virtual WebEx platform, before PHOEBE SUINA, Chairperson
for the Environmental Improvement Board, commencing at the
hour of 9:00 a.m.

REPORTED BY:

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A P P E A R A N C E S

For the Environmental Improvement Board:

- PHOEBE SUINA, Chairperson
- AMANDA TRUJILLO-DAVIS, Vice-Chairperson
- BARRY BITZER, Board Member
- KARL CATES, Board Member
- BENJAMIN DUVAL, Board Member
- KAREN GARCIA, Board Member
- WILLIAM HONKER, Board Member

Hearing Officer:

- FELICIA ORTH, ESQ.

Counsel For the EIB:

- KARLA SOLARIA, Commission Counsel
Office of the Attorney General
- PAMELA JONES, Commission Administrator
- MADAI CORRAL, Commission Administrator

REPORTER'S CERTIFICATE

270

1 CHAIRPERSON SUINA: How's everybody doing today?
2 Good. Good. Apologize for the delay. It looks like we
3 are all here. And with that, Ms. Jones and Ms. Soloria,
4 do we have to open up the meeting with a roll call and all
5 of that logistics? Is that appropriate, or can you just
6 remind me?

7 MS. SOLORIA: Yes, Chair Suina, I think a roll
8 call is appropriate and we can get that on the record.

9 CHAIRPERSON SUINA: Great. Great. Ms. Jones,
10 would you mind doing a roll call for us?

11 ADMINISTRATOR JONES: Absolutely. Good morning,
12 everyone. We'll start with Member Bitzer. Are you
13 present?

14 BOARD MEMBER BITZER: I am present.

15 ADMINISTRATOR JONES: Good morning.

16 Member Cates?

17 Member Duval?

18 BOARD MEMBER DUVAL: Present.

19 ADMINISTRATOR JONES: Member Garcia?

20 BOARD MEMBER GARCIA: Here.

21 ADMINISTRATOR JONES: Member Honker?

22 BOARD MEMBER HONKER: I'm here.

23 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: I'm present.

25 ADMINISTRATOR JONES: Chair Suina?

1 CHAIRPERSON SUINA: I'm present as well.

2 ADMINISTRATOR JONES: Wonderful. You have a
3 quorum. One member is not signed on yet.

4 CHAIRPERSON SUINA: Okay. Thank you so much for
5 that, Ms. Jones. And good morning, Board members. How
6 you doing? And I appreciate everybody coming on today.
7 And we just wanted to maybe start off the meeting, our
8 deliberations today with a couple of discussion items of
9 logistics, some scheduling, just to make sure we get
10 everything on the record. And so, the first few minutes
11 of our meeting -- our deliberations today, we'll do that.

12 So, with that, Ms. Jones, actually, do I see -- I
13 don't think I see Hearing Officer Orth. Is she on?

14 HEARING OFFICER ORTH: I'm here, Madam Chair.
15 I'm the second Pam Jones.

16 CHAIRPERSON SUINA: Okay. All right. My stomach
17 almost dropped there when I didn't see your name up there.

18 HEARING OFFICER ORTH: I cloned myself.

19 CHAIRPERSON SUINA: Thank you.

20 BOARD MEMBER HONKER: I was wondering about the
21 two Pam Jones's.

22 CHAIRPERSON SUINA: Thank you, everybody. And I
23 just want to also thank Ms. Jones and Ms. Corral and
24 Ms. -- our Hearing Officer Orth, and Ms. Soloria for all
25 of their work, and of course, our court reporter, for

1 supporting our Board through the deliberations in
2 preparation of all the logistics. Because we all know,
3 this Webex forum isn't the easiest, as I can attest to
4 this morning, trying to figure out which password to use.
5 So, thank you so much.

6 And with that, I'll reach out to Ms. Orth and
7 Ms. Soloria for any initial logistics that we want to
8 inform the Board of.

9 HEARING OFFICER ORTH: Madam Chair, this is
10 Felicia, and I just wanted to say that if there is a
11 question from the Board members as to a particular record
12 citation, I do have the transcripts at hand and I can
13 reach for other items in the record, and I'd be happy to
14 help answer questions you might have about the record. I
15 will not obviously be offering you any legal advice. That
16 is Ms. Soloria's task.

17 And I am prepared, at the Chair's request to
18 bring up each section of Attachment A, which is the
19 expanded rule, if you will, with each of the parties final
20 proposed language. I am prepared to share that on the
21 screen as you -- as you discuss -- discuss each section,
22 so that people following along can see exactly what you're
23 discussing.

24 CHAIRPERSON SUINA: Thank you so much, Hearing
25 Officer Orth.

1 Do any of the Board members have any other
2 questions regarding what Ms. Orth shared with us?

3 Yes, Mr. Honker?

4 BOARD MEMBER HONKER: I just wanted to say, thank
5 you, Ms. Orth, for all of this work and for putting it
6 together in this format, which I found very helpful, as
7 well your -- your little shorter introduction, so, thanks
8 for that. That's been very, very -- I mean it's not easy
9 to go through, but it's well organized, so, thanks.

10 HEARING OFFICER ORTH: Thank you.

11 CHAIRPERSON SUINA: Thank you, Member Honker.
12 I'm looking out here and I think -- let's see. And then
13 I'll look here. Listen, is that all right now, Ms. Orth?

14 HEARING OFFICER ORTH: Yes, Madam Chair. Oh, I
15 want to mention that I did invite all of the parties to
16 identify errors in the compilation, if they found them,
17 because it was a long document and it was entirely
18 possible I had made an error. The only communication I
19 received along those lines, I believe, has been forwarded
20 to you. Kinder Morgan reached out, they wanted the exact
21 language in a proposed SOR in connection with Section
22 113.B (10) and (11) -- paragraphs (10) and (11). So I
23 forwarded that. It's, I believe, the same information
24 that's in the report, but it is in the SOR language that
25 they believed important. So that was the only

1 communication I got from a party.

2 CHAIRPERSON SUINA: Thank you for that, Ms. Orth,
3 that update.

4 (Board Member Cates joined hearing).

5 CHAIRPERSON SUINA: All right. I want to make
6 sure we put on the record that we have Member Cates on the
7 line now. Good morning, Member Cates, how are you doing?

8 BOARD MEMBER CATES: Good morning. I was baffled
9 by the absence of information about how to log on. I
10 don't know how you guys did it, but did I miss something?

11 CHAIRPERSON SUINA: No, we all had that little
12 hiccup. I did as well, so we are just starting.

13 BOARD MEMBER CATES: Okay.

14 CHAIRPERSON SUINA: We're just going through some
15 additional logistics from Ms. Orth and updates. And also
16 we're about to hear from Ms. Soloria about any further
17 discussions before we begin the deliberations.

18 MS. SOLORIA: Good morning, Board members: two
19 things, one just to kind of drop a pin in this, I think
20 toward the end of the day that Madam Chair, maybe we could
21 have a discussion about potential see where we're at and
22 then potentially scheduling an additional date if
23 deliberations need to continue. I'll just point out that
24 that is -- if we are going to do that we would just
25 announce that at the end of deliberations on Friday. I

1 think there is concern that we should look at a date
2 further out considering the parties who want to attend and
3 as a matter of public notice, so we'll have that
4 discussion as we go along.

5 And then, otherwise, in terms of procedure, I
6 think for myself and also members of this current Board,
7 this is the motion complex deliberation we've taken part
8 in, so I think the best way to go about it, to my mind, is
9 we just go section by section. Obviously, the Hearing
10 Officer did a great job of identifying the sections which
11 were not contested, and to the extent that we encounter
12 pockets of uncontested sections you can take all of those
13 in, essentially, a line vote to approve them.

14 I just wanted to remind the Board members that
15 their decision has to be on record as to why they took
16 that decision, so just keep that in mind. We have this
17 excellent report here to reference points made during the
18 hearing, the parties' evidence that's in the record,
19 parties' statements of reasons. So, to the extent that
20 you are discussing a section and want to rely on a
21 particular argument proffered by a party, just take care
22 to do that so that's on the record and, ultimately, that
23 will be reflected in the decision and the record of the
24 deliberation. I think that's all I have for now.

25 CHAIRPERSON SUINA: Thank you, Ms. Soloria. And

1 I think I see Member Bitzer with his hand up. Yes Member
2 Bitzer. And I think I heard you, Member Garcia, as well.

3 BOARD MEMBER GARCIA: (Shaking head.)

4 CHAIRPERSON SUINA: No, okay. Just Member
5 Bitzer.

6 BOARD MEMBER BITZER: Am I understanding
7 correctly then, that we have to verbalize our rationale
8 for support of things that were unopposed?

9 MS. SOLORIA: If it's unopposed, my advice would
10 be that your rationale would be that this position was
11 unopposed and we support it for the reasons proffered by
12 the Department. So if you look at Attachment A, for
13 example, there are certain provisions where that is noted.
14 There is no contest from -- it's not contested by any
15 party and the Department simply has provided its own
16 rationale, and so that would be -- the Board would adopt
17 that rationale if it's unopposed, and that would be the
18 basis in the record.

19 BOARD MEMBER BITZER: That will save us a lot of
20 time if we don't have to read all of that into the --
21 re-read all of that into the record.

22 MS. SOLORIA: Right. I don't think it's
23 practical or expected that we reiterate the Department's
24 rationale if -- if a provision is uncontested by any of
25 the parties preventing testimony. I just think that in

1 terms of having a clear record and also in terms of
2 eventually drafting a statement of reasons, there has to
3 be a reference in the record as to what the rationale was,
4 even if that rationale was this was uncontested and so we
5 adopt the Department's reasoning for adopting this
6 provision.

7 BOARD MEMBER BITZER: Are you the one -- are you
8 the one that has to draft that?

9 MS. SOLORIA: I am the lucky one, yes. So I
10 would appreciate a good record for me to reference and
11 also, obviously, we want -- the parties would want a good
12 record, so that the -- that the Board's decision is clear.

13 The other thing I wanted to point out just for
14 everyone's information, for purposes of rulemaking under
15 the Air Quality Control Act, the authority under the
16 Environmental and Public Improvement Board constitutes a
17 quorum, so that's four of you all, we have a quorum; but
18 any action, order or decision of the Environmental
19 Improvement Board requires the concurrence of three
20 members present at a meeting. So that's a little
21 different from rulemaking in other contexts, and that's a
22 specific carve out that the Air Quality Act contains. So
23 I did want to bring that to your attention as well.

24 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

25 Yes, Member Honker?

1 BOARD MEMBER HONKER: Just a procedural question:
2 does that mean we're going to have to take a vote on any
3 section as we go through it, or if there are several
4 uncontested sections in a row, could we possibly put them
5 together and vote on them as a group in order to save a
6 little time?

7 MS. SOLORIA: That's a good question, Member
8 Honker. And my recommendation would be to do the latter,
9 in the sense that, for example, there may be sections
10 where there's just a group of sections that were not
11 contested, and we would take that up as a group. I'm,
12 obviously, open to any suggestions on how to do this more
13 efficiently, but I think that's probably the easiest way
14 to do it and save us a little bit of time.

15 CHAIRPERSON SUINA: Yes. I think Vice-Chair
16 Trujillo-Davis, yes.

17 VICE-CHAIR TRUJILLO-DAVIS: Yes. Thank you. I
18 just want to make sure I understood that. So if we have a
19 section that is contested and we deliberated at length, do
20 we vote on that section to kind of keep us on track?

21 MS. SOLORIA: That's correct, Vice-Chair Davis.
22 I think that -- or Trujillo-Davis -- there are going to be
23 sections that are going to have a more robust deliberation
24 and at the close of those discussions, we would take a
25 vote on that specific section.

1 CHAIRPERSON SUINA: Yes, Member Bitzer.

2 BOARD MEMBER BITZER: Along this same thread,
3 when we have one of these votes on something that is
4 uncontested or a series of things that are uncontested,
5 can we do this by acclimation or do we have to have a
6 roll-call each time? Could the Chair just say, without
7 objection, and then if there's no objection, so passed?

8 MS. SOLORIA: Ordinarily, I would say if we were
9 meeting in person that would be fine, but because we're
10 meeting online and for the benefit of the public and the
11 record, I think we should do a roll-call.

12 CHAIRPERSON SUINA: Thank you for that
13 clarification, Ms. Soloria. And I understand, too, our
14 court reporter will be also documenting that for the
15 record, just so that we have everyone's vote. I know it
16 would be more efficient, but we're having to do this
17 virtually.

18 Does that address your question, Member Bitzer?

19 BOARD MEMBER BITZER: (Thumbs up.)

20 CHAIRPERSON SUINA: Okay. Member Cates?

21 BOARD MEMBER CATES: So, just in doing a word
22 search on the appendix or the attachment -- whatever we're
23 calling it -- yesterday, I just did a word search on
24 "propose" because that covers a good part of what's being
25 asked -- you know, what's being asked by different

1 parties. I got 89 hits. Actually, I searched for the
2 word "proposes." If you just do propose singular, you get
3 10. And so we're looking at, if my count is correct,
4 we're looking at 89 separate questions. Now, there's some
5 redundancy there because say an oil company will
6 propose -- the oil company will say we propose, and then
7 the NMED will come back and say so-and-so proposes, and
8 you see that in some instances. So I think we're still
9 looking at deciding and debating possibly 70 different
10 points here.

11 And so my question is, how many of those are
12 uncontested and how many of those appear to be the
13 contested? Who knows?

14 CHAIRPERSON SUINA: Yes, Member Cates, I know our
15 Hearing Officer Orth, if you're on the line, could you
16 just maybe give us a summary, and also for the record
17 today just so we're grounded in the task that we have
18 ahead of us?

19 HEARING OFFICER ORTH: Yes, Madam Chair, I'll
20 acknowledge I didn't make a -- make a count of the
21 different decisions. I would note that some of the
22 decisions you'll be making are relatively minor decisions,
23 say wording clarifications posed.

24 Some of the decisions are quite major and there's
25 simply no comparison in my mind between deliberating on

1 the question of -- well, the earliest -- I think the
2 earliest significant question you'll be asked is whether
3 two counties in New Mexico -- Rio Arriba and Chaves County
4 should be covered within the scope of the rule. That's
5 the first, I think, really challenging question you'll be
6 asked.

7 Not too long after that, you'll be asked whether,
8 for example, one word should be added to a definition or
9 three or four words should be added to a definition, and
10 whether you would find that clarifying or not. So, yeah,
11 you have dozens of decisions to make; some of them are
12 profoundly significant; some of them aren't.

13 Member Garcia?

14 CHAIRPERSON SUINA: Member Cates, can -- is it
15 okay, Member Garcia, if we finish Member Cates' question?

16 BOARD MEMBER GARCIA: Yes. I'm sorry.

17 CHAIRPERSON SUINA: Okay. Thank you. Member
18 Cates?

19 BOARD MEMBER CATES: Well, the kind of
20 information we just heard there should be in the report
21 that was submitted. Now, what we have here is as -- we
22 have -- so we have two documents: we have a report and
23 then we have a 350-page recitation of the law and the many
24 changes that are in it. And so, when I look at the
25 report, this is the kind of information I expect to see in

1 the report itself.

2 And so, over ten pages, five of those are a list
3 of people or organizations; four are mostly boilerplate
4 legal language, and then a couple of things jump out at me
5 from the report, however. One's on page one, if you guys
6 have it, where the officer notes that this has been going
7 on since 2019, so we're now in year three of this
8 revision. And, you know, I mention that because you know
9 there's -- there's timeliness about this that we should be
10 addressing.

11 Another thing that jumped out at me was number
12 five -- or page five, where it's about three paragraphs
13 down, it says it's important for the Board to adopt a
14 clear and thorough statement of reasons supporting its
15 decisions in the matter. And I can only imagine what can
16 of worms that will open for us as a part-time voluntary
17 Board to do on 70, 80, 90 questions.

18 And then I look at page -- a little deeper into
19 this rather thin document, if you look on page -- it was
20 on page -- the top of page -- the part that talks about
21 attachment to the -- if you look at the top of the page
22 ten where the Hearing Officer is taking a stab at humor, I
23 suppose, or irony -- irony being a close cousin of humor,
24 where the officer says, we're being offered Attachment A
25 as a compilation of epic length intended to aid the

1 Board's progress through deliberations -- a compilation of
2 epic length intended to ease the Board's progress.

3 And in the margins there, I wrote, oh, that's
4 very funny. However, the joke is on us, and you know, by
5 extension, the joke is on taxpayers and lawyers, on the
6 entire citizenry of the state here because we're given
7 absolutely no guidance on how to proceed through this
8 extremely long voluminous document. And so, this is all
9 by way of me wanting to make a suggestion to the Board
10 that we -- you know, we don't need to grade the report,
11 but I think we can very well stamp incomplete on it and
12 send it back to the Hearing Officer and ask the Hearing
13 Officer to give us -- give us guidelines on each question
14 and to make a recommendation on each question.

15 Now, if we go back to the time we had the hearing
16 to begin with, the Hearing Officer told us -- told us she
17 wasn't going to make a recommendation on anything, and I'm
18 not sure that that's her call. And I -- I -- I sense
19 that, you know, we have the authority to say, take this
20 back, do a more complete job and give us something that --
21 give us a manageable document, and so that's my spiel. I
22 throw it open to the Board. I'm interested in seeing if
23 anybody thinks like I do.

24 CHAIRPERSON SUINA: Thank you, Member Cates.

25 Before we go into a full discussion, I want to

1 look to our legal -- our Board legal Counsel and just
2 maybe explain kind of how we got here, what we have before
3 us, and also some of the time lines that -- as Member
4 Cates has pointed out in the officer's report, you know,
5 this has been a long process. I think we're all coming up
6 to speed on that, and have come up to speed on that. But
7 could you, Ms. Soloria, just kind of give us your
8 perspective, and then we'll maybe have our Hearing Officer
9 respond after -- after you provide us that. Thank you.

10 MS. SOLORIA: All right. Thank you, Chair Suina.

11 I -- I will echo, to the extent Member Cates'
12 reference was the Board's appointment of the Hearing
13 Officer was in this matter. It was clear from the
14 beginning that the Hearing Officer would not be making a
15 recommended decision with regard to the language of this
16 rule, which is -- which complies with the procedures
17 regarding the appointment of hearing officers for
18 rulemaking for the Board.

19 Ultimately, the Board -- this is epic in length
20 because this is an epic-sized rule. And the Board has to
21 make -- has to do the somewhat tedious task of going
22 through the language and deciding what language they're
23 going to adopt. Ultimately, that decision is up to the
24 Board. It was never allocated to this Hearing Officer and
25 should not be, considering the Board's responsibility in

1 this arena.

2 So I think given the breadth of the testimony
3 that was offered and the breadth of the hearing itself,
4 the document prepared as Attachment A to the hearing
5 report, I found to be incredibly thorough and it distilled
6 information in a way where the Board can weigh the varying
7 arguments. I -- I -- to my mind, there was no other way
8 to prepare this type of report, again, given the number of
9 parties involved, the number of arguments proffered, and
10 just the sheer breadth of this rule.

11 So I think -- I think it certainly would have
12 been more expedient if the Hearing Officer herself had
13 made recommended decisions, but that simply was not her
14 role for the hearing, and certainly it's not the purpose
15 of the preparation of the report.

16 The report is intended to, as I mentioned,
17 distill the arguments for and against each version of the
18 rule, so that -- so that the Board wouldn't have to pore
19 through thousands of pages of the transcript to distill
20 those arguments themselves. So that's really all I have
21 to say on the -- on the preparation of the report and the
22 utility of the report for your deliberations.

23 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

24 And before -- before maybe a follow-up, Member
25 Cates, I was wondering if we could hear from Hearing

1 Officer Orth real quick.

2 HEARING OFFICER ORTH: Thank you, Madam Chair. I
3 don't really have anything to add to what Ms. Soloria just
4 said. I am hopeful that maybe after moving through the
5 deliberations, Member Cates finds the format more helpful
6 than perhaps it appears to be right now.

7 The alternative really was for all of the Board
8 members to juggle 11 post-hearing submittals of varying
9 length, which stood about a foot tall in hard copy. That
10 was really the alternative for these deliberations, and
11 that's -- that's why the format of the report is that way.
12 And Member Cates, I'm not sure if you were on early enough
13 to hear that as the Board proceeds through each section,
14 for its decision making, the Chair asked that I share my
15 screen with the language under discussion, again, in the
16 hopes that that will make your discussion a little easier.

17 CHAIRPERSON SUINA: Thank you, Hearing Officer
18 Orth.

19 Yes, Member -- Member Cates?

20 BOARD MEMBER CATES: So when we -- you both just
21 asserted that it's not the Hearing Officer's role to make
22 a recommendation, and, yet, we have had many hearings,
23 many procedures where a Hearing Officer does make a
24 recommendation. What is your -- why is this an exception?
25 And who's decided that? Who's made that decision? Is

1 that not -- well.

2 HEARING OFFICER ORTH: I'm sorry.

3 BOARD MEMBER CATES: You know, I would like --

4 HEARING OFFICER ORTH: Member Cates, a hearing
5 officer recommendation is more typical in an adjudicatory
6 hearing, because there, the hearing officer is offering
7 findings of fact and often conclusions of law, is weighing
8 the credibility of witnesses, and is very close to the
9 evidence in a way that Board and Commission members are
10 not necessarily that close. Sometimes the Board and
11 Commission members, certainly the Cabinet Secretary in an
12 adjudicatory proceeding, is not going to be present at the
13 hearing. And so, in those cases, it can be important for
14 the hearing officer to offer a recommendation, and in
15 particular, recommended findings of facts.

16 In a complex rulemaking, though, with potentially
17 profound impacts on our state's largest industry, I'm an
18 administrative hearing officer, with a long career
19 affiliated with environmental protection agencies, natural
20 resource agencies. And I have -- I'm not just being
21 modest when I say that I don't think my personal
22 recommendation to this Board would be especially helpful
23 in the broad policy making that I know all of you bring to
24 this Board. I mean, that's why you were appointed by the
25 governor, was to bring that to this Board. And I'm not

1 sure there's any substitute for that; certainly, I'm not
2 offering that substitute.

3 CHAIRPERSON SUINA: Thank you, Madam Hearing
4 Officer.

5 BOARD MEMBER CATES: So if I -- so then it sounds
6 like you think of yourself as incapable of doing a more
7 useful summary, or just unwillingly. Which one is it, or
8 both?

9 CHAIRPERSON SUINA: Madam Hearing Officer, I just
10 want to make sure that, you know, I think from what I
11 hear -- and please correct me, Ms. Soloria and Ms. Orth,
12 it was basically the framework of the hearing officer's
13 task for this particular rulemaking process, was slightly
14 different than what we have, as Ms. Orth said, in the
15 adjudication or other types of decision making process.
16 Is that correct?

17 MS. SOLORIA: And Madam Chair -- that's correct,
18 Madam Chair. And I will add to what Ms. Orth stated, to
19 emphasize that the Board's rules distinguish between an
20 adjudicatory hearing and a rulemaking hearing. And the
21 Hearing Officer's duties are distinguished as between
22 those two sets of rules.

23 So, for example, in an adjudicatory hearing,
24 where there's one party contesting an action by the
25 Department, our rules speak in terms of a recommended

1 decision. There's an actual provision that states the
2 hearing officer report may prepare a recommended -- a
3 recommended decision. That's not -- that same provision
4 is not present in the rulemaking rules -- the rulemaking
5 procedures.

6 In fact, for a Hearing Officer's report in the
7 rulemaking context, it's stated that the Hearing Officer
8 shall file the report of the hearing, identify the issues
9 addressed at the hearing, identify the parties' final
10 proposals and the evidence supporting those proposals.
11 Recommendations can be included at the request of the
12 Board, but when this Board appointed the Hearing Officer,
13 that request was not made. And I would state that that
14 is -- that kind of goes hand in hand with the gravity of
15 the policy making that is going to take place with regard
16 to adopting or rejecting these rules.

17 So I would just -- you know, there's little, if
18 anything, to disagree with the way that the Hearing
19 Officer has represented her role in this process, and I
20 will represent to the Board that it fully complies with
21 this Board's rules and with this Board's appointed
22 authority.

23 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

24 And Member Garcia, I know you've had your hand up
25 and then we'll go to you, Member Honker.

1 BOARD MEMBER GARCIA: Thank you, Madam Chair. I
2 know this is a -- you know, we're a new Board. A lot of
3 the things we're going through are new to us, as a new
4 Board, and we're learning new processes as we go along,
5 and I think this is a big one. This is -- I must say, the
6 Hearing Officer's work is impressive, and I think that
7 we -- in our discussions about how to go through this in a
8 most efficient manner, I think that's our task before us
9 today.

10 And in that regard, let me ask the Hearing
11 Officer a question, if I may. I noticed in the attachment
12 on page 11, number 1, you posed the question that the
13 Board could reject the proposed rule, wholesale, I
14 guess -- the Board could reject the rule, but I noted that
15 you did not pose the opposite question; not that I'm
16 suggesting it, but the opposite question, which is whether
17 the Board could adopt the new, latest version, January
18 20th versions of the proposed rule as is, that would be
19 the opposite. And I noticed you didn't pose that.

20 And I'm wondering, is there a legal reason why
21 that is not an option for the Board?

22 HEARING OFFICER ORTH: Thank you, Member Garcia.
23 What I was doing there was signaling, if you will, or
24 marking the decisions that the parties wanted you to make,
25 that I discerned in the post-hearing submittals. And,

1 really -- how can I say -- signaling to your Board Counsel
2 and the rest of you that these were questions some parties
3 wanted you to take up as part of your deliberations, and
4 you may think it made sense to take it up before you get
5 to the rule provisions.

6 What I was trying to do in Attachment A was
7 distill the parties' final decisions as to each rule
8 provision. But, again, you have parties suggesting that
9 you shouldn't deliberate on the rule provisions at all,
10 and that's not something I would put in Attachment A
11 because Attachment A focused on rule provisions.

12 But I did want to point to those issues in the
13 post-hearing submittals because the parties raised them in
14 their final arguments to you, and it's important that you
15 know -- that you know they're exhorting you to reach
16 certain conclusions in their closing arguments.

17 CHAIRPERSON SUINA: Thank you, Ms. Orth.

18 And Member Garcia, did you have any follow-up on
19 that?

20 BOARD MEMBER GARCIA: Well, thank you. Thank
21 you, Ms. Orth. I think I heard in your answer that I
22 understand why you posed it that way; however, there
23 would -- in your answer, what I'm getting is that there
24 would not be a problem if the Board were to look at the
25 question of whether or not to adopt the rule -- the latest

1 version of the rule. It wouldn't be a problem to, at
2 least look at that, legally?

3 HEARING OFFICER ORTH: Right. So we're flirting
4 here with the line between what I was trying to do and
5 Ms. Soloria's tasks, so let me -- let me mute myself.

6 MS. SOLORIA: Yes. Thank you, Madam Hearing
7 Officer. To your question, Member Garcia, the way that
8 the question is posed in the Hearing Officer's report is
9 merely to bring that question -- that possibility to the
10 board's attention is how I interpret it. The Board can
11 proceed to adopt the language it sees fit to adopt. So it
12 is, in theory, a possibility that the Board can just adopt
13 what's been the final proposal of the Department. That is
14 an option. You're entitled to do that, of course, with
15 citations to the support and your rationale for doing
16 that.

17 I don't expect that to be the case, given the
18 controversy for various sections, but you are legally
19 entitled, if that's your question, to adopt the rules as
20 is, provided you provide a rationale, and the rationale
21 would be subject to whatever support or challenge that
22 rationale is entitled to.

23 BOARD MEMBER GARCIA: Ms. Soloria, thank you very
24 much. That's all I have. Thank you.

25 CHAIRPERSON SUINA: Thank you, Member Garcia.

1 And I want to go to Member Honker. I apologize,
2 I know you've had your hand up for awhile.

3 BOARD MEMBER HONKER: Well, I was going to try to
4 reframe this in terms of what we do have, and I think it
5 just fits with the -- with the discussion we just heard.
6 The Department is the petitioner here, and I think on most
7 of these issues we're going to have to deliberate on, they
8 have considered all of the viewpoints from the other
9 parties; in a lot of cases they've addressed and told --
10 told us why they don't recommend we do what a certain
11 party wants to do on a rule, so we do have that.

12 So instead of the Hearing Officer's
13 recommendation, we have the Department's recommendation on
14 what to do on each one of these -- these issues. And I
15 see that as our starting point that, here's the
16 petitioner, here's what they want to do finally, here are
17 the other viewpoints; what do we want to do. So I think
18 we kind of have what Member Cates was wanting, but it's
19 from the Department, it's not from the Hearing Officer.

20 CHAIRPERSON SUINA: Thank you, Member Honker.

21 Before we go to Vice-Chair Davis, I just want to
22 maybe swing back around, Member Cates, and just hear your
23 feedback on some of the other discussion items we've had.

24 BOARD MEMBER CATES: Well, you know, what Member
25 Honker said, you know, that makes me feel better, but

1 we're still looking at a very daunting document here. And
2 I go back to, isn't it possible to condense this into a
3 document that just focuses on the -- you know, the points
4 in contention. But, you know, I guess it's all here in
5 this, and, you know, I'm not sure who is going to guide us
6 through this. I guess maybe it's going to be you,
7 Chairman Suina. So, okay, yeah. So, but, you know, I
8 mean, I expressed the way I felt about it, and I am -- you
9 know, I do feel better, hearing Member Honker point out
10 that the Department has made a recommendation, so yeah.

11 CHAIRPERSON SUINA: Thank you, Member Cats -- or
12 Cates. I just want to address your concern as well, as we
13 delve into this very large task, as we've started this
14 discussion. And I think what I want to make sure we all
15 do, and I just want to get this on record, is that
16 procedurally, all of the I's get dotted, T's get crossed.
17 So for those types of procedural issues, we're going to
18 really rely on our legal Counsel to make sure that we have
19 a good process, and that we get everything documented.

20 And it's going to be a team: we have our court
21 reporter, to make sure that our discussions are documented
22 as well, as well as our votes. And I know we're still
23 virtual, so we want to make sure that we get everybody's
24 input. All of the Board members are essential to this
25 process and your insight, your perspective, your

1 expertise. And I think that's -- that's the beauty, but
2 also the challenge as we move forward regarding this very
3 daunting task, I think it was referred to earlier.

4 And that said, is, you know, we all sat
5 through -- most of us through two weeks of a lot of
6 information and experts and public input, and then
7 afterward, ended up reading as well, a lot of that
8 information. So I do -- I want to echo your feeling of
9 it's a lot, it's overwhelming. I just -- I -- I know,
10 I've felt like I've lived, breathed and slept this since
11 the hearing started. Well, even before the hearing, in
12 starting to look at some of the submittals, as many of us
13 have.

14 So I just want to make sure we're good as we move
15 forward. We're -- it's going to be, you know, Pam is
16 going to help -- Ms. Jones is going to help us on all the
17 logistics. I was stressed, too, trying to get in, trying
18 to figure out which password to use. So, again, I
19 apologize on behalf of the team and everybody. I even had
20 those issues.

21 And so, I also want to just put out there, as we
22 deliberate today, it is a lot of information; if there's a
23 point where we're confused, please raise your hand, let's
24 talk about it as we go through this. If there's other
25 concerns, please raise your hand and let's talk about it.

1 I just want to make sure we delve into this.

2 And one more follow up, as I'm talking about
3 this, is Ms. Soloria had brought up about our schedule.
4 This afternoon, I would really like to -- depending on how
5 quickly or how slowly -- how the progress goes for this
6 first part today, probably this afternoon, I would love to
7 have all of us have our schedules available. And
8 Ms. Soloria had informed me that we have an April 25th
9 deadline. Is that correct, Ms. Soloria?

10 MS. SOLORIA: Correct. The Board has 60 days to
11 make its decision. I am going to agree with that, for the
12 sake of this separate task of drafting the statement of
13 reasons, that that is -- the Board has to vote by that
14 date, and then there's some additional time to prepare the
15 statement of reasons. So that's really the drop date
16 we're looking at for you to conclude your deliberations.

17 CHAIRPERSON SUINA: So, we hope, members of the
18 Board, we hope that we're efficient. As I know, I've
19 reviewed the Hearing Officer's, you know, hard copy report
20 and pulling it up on the electronic platforms. You know,
21 in case we all need more days, let's just have our
22 calendars available later on this afternoon, and we may
23 have to talk about that. But let's start the process and
24 see how it goes.

25 And then to your point, Member Cats -- Cates,

1 that -- what I had talked with Hearing Officer is, how can
2 we efficiently go through this process so that we are
3 transparent also with the public. I know many of us
4 probably have the electronic version, the hard copy
5 version; I have mine all tabbed and written on, but our
6 members of the public and those following us on our
7 discussions, she's going to be able to put it on the
8 screen so we all know what sections we're talking about,
9 if that helps us, members of the Board as well.

10 And I am -- and we are all open to any other
11 efficient -- ideas for efficiency on the discussions and
12 so forth. So I just wanted to frame that, and I want to
13 thank you, Member Honker, for putting that other framing
14 of the recommendations from the Department. That's --
15 that is helpful as well, to have that -- that highlighted,
16 if you will, because there is a lot of preparation as
17 well.

18 And then, I think Vice-Chair Trujillo-Davis, did
19 you have another comment before we go further?

20 VICE-CHAIR TRUJILLO-DAVIS: I did not have a
21 comment about this particular issue. I was noting that we
22 have an echo that is popping up every now and then, and so
23 I just want to advise everybody to be cognizant of your
24 mute and unmute so that way we can all listen intently to
25 what the -- whoever is talking.

1 CHAIRPERSON SUINA: Thank you, Vice-Chair
2 Trujillo-Davis. All right.

3 And then, with that, I guess we will -- is there
4 anything else, Ms. Soloria, that we did not mention here
5 at the beginning?

6 MS. SOLORIA: I don't have anything else, Madam
7 Chair. And I will be with you through this, so that's all
8 I've got.

9 CHAIRPERSON SUINA: Thank you. And I just want
10 to do kind of a time check, so that we're all looking at
11 our schedules even for today. So we'll definitely have a
12 lunch and we'll need some brain food to get through this
13 process. So we'll have a lunch, and depending on where
14 that falls into, somewhere between 11, 11:30 to 1,
15 depending on, you know, when we take lunch, on where we
16 are in our deliberations and how the Board feels. So I'm
17 going to really look to our Board members to help chime in
18 about that. When you feel like you need a break, if you
19 need a five- or ten-minute break, either this morning or
20 this afternoon, in between our -- before or after our
21 lunch break. So I just want to throw that out, too. If
22 we need to move around a little bit, keep the blood
23 flowing so we can get through this.

24 So, with that, I just want to check one more time
25 with our members: Is everybody ready to go?

1 Yes, Vice-Chair Trujillo-Davis.

2 VICE-CHAIR TRUJILLO-DAVIS: Do you mind if we do
3 a biobreak about mid morning or so, when we get about --
4 when you find a good stopping place there?

5 CHAIRPERSON SUINA: Absolutely. I know I've been
6 drinking coffee, so I'll need it too. Thank you for that,
7 Vice-Chair Trujillo-Davis.

8 All right. So as we get into this -- and I'm
9 going to look to Ms. Orth. So we have the Hearing
10 Officer's report, as we've discussed. And I'm going to
11 look to the Board, too. As Ms. Orth mentioned earlier,
12 there's a couple of kind of overall considerations, that
13 if we want to talk about them here before delving into the
14 section by section, I just would love to hear your
15 thoughts on that, and if that's a good a good way to go.
16 Do you think that's good?

17 Okay. All right. Ms. Orth, would you mind
18 putting up your Hearing Officer report, the section where
19 we're talking about the overall, kind of, considerations
20 that we briefly touched upon earlier?

21 HEARING OFFICER ORTH: Oh, okay. I'm sorry, I
22 had all of the sections of Attachment A ready to pull up.

23 MS. SOLORIA: Madam Chair? Madam Chair, may I
24 make a suggestion that one of the initial issues actually
25 has to do with 20.2.50.2 and that's referring to the scope

1 of the rule. And that's right at the top of the
2 attachment, so I think we'd be fine if the Hearing Officer
3 could share that with us instead of the prefatory -- the
4 report itself.

5 CHAIRPERSON SUINA: Thank you for that
6 recommendation. Let's go there. Great.

7 So, on that section, members of the Board, as
8 Ms. Soloria pointed out, 20.2.50.2, which is the scope,
9 this part applies to sources located within areas of the
10 state under the Board's jurisdiction, that, as of the
11 effective date of this part or any time thereafter, are
12 causing or contributing to ambient ozone concentrations
13 that exceed 95 percent of the National Ambient Air Quality
14 Standards for ozone, as measured by a design value
15 calculated and based upon data from one or more Department
16 monitors.

17 So I won't read further there, but -- well,
18 actually, let me do that. "As of the effective date,
19 sources located in the following counties of the state are
20 subject to this part: Chavez, Dona Anna, Eddy, Lea, Rio
21 Arriba, Sandoval, San Juan and Valencia."

22 So, to our members of the Board, this is one of
23 those overall questions that we need to discuss and kind
24 of begin our decisions, really, about. And I'm -- before
25 I chime in, I want to really look to members of the Board

1 to see what your thoughts are regarding this particular
2 section.

3 Yes, Member Honker.

4 BOARD MEMBER HONKER: I will lead off. I think
5 the big question here is the counties, whether Rio Arriba
6 and Chaves County are included. I have read all of the
7 arguments either way. Counties are an unfortunate way
8 that we're dealing with this, and I think NMED
9 acknowledges that. Unfortunately, air sheds are not like
10 watersheds, so you don't know exactly where the air is
11 going to go. It could go any direction.

12 I think it's -- it's very reasonable to rely on
13 modeling to see where impacts are coming where you have
14 data points. My experience in the air program is -- is,
15 you're always frustrated with a lack of monitoring
16 stations. It always seems like there's never enough of
17 those and -- but we discussed modeling extensively. We
18 heard several experts on modeling.

19 I didn't -- I didn't hear of any fatal flaws with
20 NMED's approach to modeling. I realize that the counties
21 are -- are an -- kind of a -- it's a political construct
22 that is being used to designate where does this apply, but
23 on the other hand, when I was a regulator, I heard a lot
24 of, we want a level playing field from industry, but in
25 this case, it sounds like some of the industry doesn't

1 want a level playing field in those two counties, in terms
2 of what the requirements are.

3 So, on balance, I feel comfortable with the
4 Department's final recommendation to include those two
5 counties, so I just want to put that out there as my -- my
6 thought on that issue.

7 CHAIRPERSON SUINA: Thank you, Member Honker.

8 And yes, Member Duval?

9 BOARD MEMBER DUVAL: I want to just completely
10 agree with Member Honker. I -- as somebody that studies
11 greenhouse gases, yeah, like the political boundaries do
12 not -- ozone precursors do not respect political
13 boundaries, I guess is the way to say it. And I think --
14 I found -- and as someone that's done a significant amount
15 of modeling work, I found the argument compelling and I
16 would agree with Member Honker 100 percent.

17 CHAIRPERSON SUINA: Thank you for that input,
18 Member Duval.

19 And, yes, Member Garcia?

20 BOARD MEMBER GARCIA: Thank you, Madam Chair. I
21 also agree that, you know, the modeling did show that the
22 threshold is met as far as registering or contributing to
23 ozone design values exceeding 95 percent of the NAAQS.
24 Also, considering the -- I'm keeping in mind that this is
25 part of the Ozone Attainment Initiative by the Department,

1 this rulemaking. And in trying to make sure that, you
2 know, all of the counties, if they're coming into 95
3 percent of the NAAQS, that measures are taken to keep it
4 under. So I agree that Chaves and Rio Arriba counties
5 should go ahead and stay in.

6 The other thing is, considering that if they
7 weren't brought in now, if they were brought in later, it
8 would take a whole new rulemaking to bring them in, which
9 does go through quite a lot of time. So, you know,
10 considering the urgency of the issue and trying to stay
11 under the 5 percent of the NAAQS, then I think -- I think
12 it's appropriate to leave them in.

13 CHAIRPERSON SUINA: Thank you, Member Garcia.
14 And any other members have any other comments and
15 perspectives on this or discussion items or discussion on
16 this?

17 Yes, Member Bitzer.

18 BOARD MEMBER BITZER: Part and parcel here also,
19 is that there have been some proposed modifications to the
20 scope other than deleting the counties, if I'm reading
21 this right. Deleting the "are causing or contributing
22 to," and then adding the word "have" ambient ozone
23 concentrations. And then after concentrations, based on
24 data -- based on data submitted by the Department's and
25 the EPA's air quality system.

1 Anyway, are we going to consider those
2 modifications as well?

3 CHAIRPERSON SUINA: Yes. Member Bitzer, I think,
4 really, you know, all of the considerations are on the
5 table here, based upon what has been submitted by the
6 various parties. And so, again, I just want to make sure
7 we go through this discussion on this overall here.

8 Do you have any additional thoughts on that
9 maybe, Member Bitzer?

10 Oh, you're on mute.

11 BOARD MEMBER BITZER: Sorry. Yes, I'm sort of on
12 the fence at this point, interested in what others have to
13 say on that. Thank you.

14 CHAIRPERSON SUINA: Thank you, Member Bitzer.

15 Yes, Vice-Chair? Did you raise your hand,
16 Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Well, I'd like to
18 thank all of my fellow Board members here for their
19 thoughts. You all brought up some really good points. I
20 kind of want to combine Member Garcia's thoughts and
21 Member Bitzer's thoughts on this, about if you were to add
22 counties requiring an additional rulemaking process. And
23 I'm wondering, if by adding this language that IPANM has
24 proposed, that if it would require an additional
25 rulemaking process, or it would create an on-ramp for

1 counties that begin to exceed 95 percent of the
2 national -- National Ambient Air Quality Standard to roll
3 into that -- into this rule.

4 So I'm both proposing a question and kind of
5 adding that into the discussion here.

6 CHAIRPERSON SUINA: Thank you, Vice-Chair
7 Trujillo-Davis.

8 With that, do any of the members have any
9 thoughts on -- on the discussion?

10 Yes, Member Honker?

11 BOARD MEMBER HONKER: Yeah, IPANM's proposed
12 language changed or addition based on the data submitted,
13 too, by the Department to EPA's air quality system. I
14 just don't know -- that kind of sounds like it might be a
15 subset of the total data that's available. And I can't
16 remember if there was discussion on that point during the
17 hearing, but I -- I -- I wonder if we add that language,
18 if that would rule out some data from consideration that
19 should be considered. So I'm leaning toward not including
20 that.

21 The Department didn't propose to include that,
22 and I'm not sure what the impact would be if that -- if
23 that clause was included.

24 CHAIRPERSON SUINA: Thank you for that, Member
25 Honker. Any other discussion of that?

1 Yes, Member Bitzer?

2 BOARD MEMBER BITZER: At the end IPANM said,
3 "This interpretation is in direct conflict with the plain
4 language of the statute and should be rejected." Does
5 Counsel have an opinion on whether that -- that's an
6 appropriate statement?

7 CHAIRPERSON SUINA: Yes, thank you, Member
8 Bitzer.

9 Ms. Soloria?

10 MS. SOLORIA: Well, that goes to the crux of the
11 dispute here, Member Bitzer. Industry and the Department
12 clearly have different interpretations of what the statute
13 allows, which the Hearing Officer has excerpted what is
14 essentially just their purely legal argument in that
15 section of the attachment. And I -- I have my own -- I'm
16 not sure my personal thoughts with which reasoning is
17 better, is useful or appropriate for the Board.

18 I will just, again, repeat that this is a legal
19 question as to whether -- it is a question of law whether
20 or not the Board has authority to apply these rules to
21 those two counties. And the Department has said that it's
22 valid under their interpretation of the Air Quality Act --
23 Control Act language, and industry has said that it's not.

24 And it's a discussion over whether the statutes
25 referenced here within areas of the state, if we can frame

1 it the way the Department proffers, which is -- which is
2 how they -- how they've framed it, versus how industry has
3 framed it. And they've stated that you have to look at
4 this county by county and the monitoring values per
5 county.

6 So, I -- I hesitate to -- it's not my place to
7 endorse either legal interpretation because that is the
8 question of law that the Board has to decide.

9 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

10 And I think this brings up a good point, as we
11 start these areas where we have a question of law and
12 interpretation by the multiple parties, which I think
13 there's some other points throughout this information and
14 our deliberations that will come up.

15 But for this, Ms. Soloria, maybe a follow-up
16 question to Member Bitzer's. And thank you for hitting
17 the crux of the issue on this one, Member Bitzer.

18 So, these questions that are questions regarding
19 interpretation of law, say we make one decision, what is
20 that process if it's an interpretation of law, like in
21 this case, the Department?

22 MS. SOLORIA: Right.

23 CHAIRPERSON SUINA: Thank you.

24 MS. SOLORIA: I'll preface this by saying that
25 not all questions regarding the Board's authority under

1 the law are alike. So there may be issues that arise
2 during your deliberations or throughout the rule where my
3 advice would be different, where I would say, you know,
4 this is clear-cut, or it has to do with the Board's
5 process itself, and I would advise that the process that
6 you are undertaking or avoiding is not in compliance with
7 your statutory duties. So, I did want to preface that to
8 say that it's not that I am -- I am shirking my
9 responsibility to give you legal advice.

10 This issue goes to a question of law that would
11 be subject to appeal, and I think, really, the further
12 underlying of your question, Chair Suina, is what it's
13 going to take to get your decision overturned. On appeal,
14 to the Court of Appeals, a decision by the Board is --
15 would be upheld unless, arbitrary, capricious, not
16 supported by the -- I don't want to paraphrase the law;
17 it's not supported by evidence in the record or is
18 arbitrary or capricious. And certainly, acting without --
19 outside of your statutory authority would be potential
20 grounds for overturning the Board's decision.

21 But it gets us back to the same question, because
22 the Department is arguing that you do have that statutory
23 authority to do this, industry is arguing that you don't,
24 I will say that I think both arguments are within -- they
25 are not -- they are not -- what's the word I'm looking

1 for -- they're not frivolous arguments. So they are not
2 frivolous legal arguments. They both -- you know, if
3 we're looking at the broad spectrum of legal arguments, I
4 think they're well within the boundaries of what is a
5 nonfrivolous legal argument. So I don't think -- I think
6 the Board is within its authority to weigh either one.

7 I think if it was -- I think that's a good way of
8 looking at it. If I thought it was a frivolous legal
9 argument, I would say so.

10 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

11 And before I say anything more, I'll go to Member
12 Garcia.

13 BOARD MEMBER GARCIA: Madam Chair, I just --
14 also, in thinking about whether we're setting precedence
15 and what kind of precedent we would be setting, aside from
16 the question of whether it would be overturned in Court of
17 Appeals, I think the interpretation by NMED may be
18 consistent with the way they've interpreted the Air
19 Quality Control Act. And I wouldn't want to go against
20 the precedent and set a new precedent. That's all. Thank
21 you.

22 CHAIRPERSON SUINA: Thank you, Member Garcia.
23 Appreciate that input.

24 Yes, Member Cates?

25 BOARD MEMBER CATES: Just a question here. So

1 NMED's position on this particular point, is it
2 encapsulated in this document, this appendix? Or is this
3 something that Counsel will have to, you know, draft from
4 other sources or from our comments? Is it in here?

5 CHAIRPERSON SUINA: Yes. Yes, Member Cates.

6 MS. SOLORIA: And I will just add, Chair Suina,
7 that it's included in the Hearing Officer's attachment
8 because it was included in the parties closing arguments
9 and proposed statement of reason.

10 So the parties have done the heavy lifting of
11 distilling their own arguments. The Hearing Officer did
12 the additional, you know, weeding through all of that to
13 compile it this way. So the goal is that, eventually,
14 when I draft the statement of reasons, that I wouldn't be
15 doing that strictly from scratch. I wouldn't be, you
16 know, leaving out whole cloth, I would be excerpting
17 parties' proposals that the Board had endorsed.

18 BOARD MEMBER CATES: Yes. So where is it in this
19 document? Forgive me, I just don't know where it is. I
20 can't see it. Does anybody know?

21 MS. SOLORIA: Chair Suina, so it's shared on the
22 screen under 20.2.50.2 and that is pages one through
23 seven -- or pages one through six of the attachment
24 contains references to the parties' legal arguments.

25 BOARD MEMBER CATES: Okay. So there's no place

1 where it just stands alone in encapsulated form? It's
2 just kind of referred to throughout these six pages?

3 MS. SOLORIA: Yes, but that is the encapsulated
4 form, because it was -- those were excised from the
5 parties' longer closing arguments and proffered statements
6 of reason.

7 BOARD MEMBER CATES: Okay. Thanks.

8 CHAIRPERSON SUINA: Does that make sense, Member
9 Cates?

10 BOARD MEMBER CATES: Yeah. Yeah, thank you.

11 CHAIRPERSON SUINA: You're welcome. Just want to
12 make sure we're all on the same page, as the pages on the
13 screen.

14 So with that, members of the Board, any other
15 discussions? I wanted to -- I also -- if there's nothing
16 right now, I just wanted to maybe clarify if I can with
17 Ms. Soloria. So, right now, we have a recommendation or,
18 you know, a stated excerpt position here from the
19 Department, as Member Garcia mentioned. And this is based
20 upon their interpretation and their legal counsel's
21 interpretation.

22 And so, with that, though, in the information
23 we've been provided, there is that basis of statement of
24 reasons for their interpretation as well.

25 MS. SOLORIA: Correct. And so -- and this goes

1 to the larger process you-all are tasked with. When
2 you-all are ready to take a vote on this, ultimately, your
3 vote will be for option A or B or C.

4 You would state what the language is that you are
5 voting on, and you would refer -- it could be something
6 like, for the reasons offered by the Department in
7 their -- their closing arguments or statement of reasons,
8 or, you know, if you're going with industry's proposal,
9 for the reasons stated proposed by whoever it is. So
10 that's how we would navigate it.

11 And as I mentioned, that you could reference
12 whatever has been included in this attachment because
13 those references itself includes an attachment to the
14 record. So, for example, there are -- there are explicit
15 citations to parties' closing arguments, the transcript.
16 And you could just refer to those as your rationale, to
17 the extent that you endorse that rationale.

18 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

19 And Member Bitzer, I saw your hand up.

20 BOARD MEMBER BITZER: Well, I'm hearing some
21 consensus about keeping the two contested counties in, in
22 the language. Are we supposed to also in a single motion
23 decide whether the additional or the substitution of what
24 Kinder Morgan has proposed, where they delete "are causing
25 or contributing to," and add the word "have" for ambient

1 ozone concentrations?

2 And then the ones that IPANM is proposing, with
3 the independent clause, basically, that says, "based on
4 data submitted by the Department's EPA's air quality
5 system," is that all -- are those all supposed to happen
6 in a single motion? Are we going to consider all of that?

7 CHAIRPERSON SUINA: Go ahead, Ms. Soloria.

8 MS. SOLORIA: That's up to you, how the Board
9 wants to craft its motion. It may be cleaner to just do
10 it regarding -- to consider the inclusion of those
11 counties first, and then to take up the additional
12 language proposed by -- I think it was IPANM. And let me
13 look again.

14 So that's up to you. It may be cleaner to just
15 do it that way or -- or you can, you know, you can talk
16 amongst yourselves how you want to craft the motion,
17 because, ultimately, if it comes out that you don't want
18 to consider the additional language discussions, the
19 motion would be just to accept the language as the
20 Department proposes it, if that makes sense.

21 So you can hash that out in your discussions, if
22 how you want to -- if you want to piecemeal it or take it
23 up separately.

24 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

25 Yes, Member Honker?

1 BOARD MEMBER HONKER: Yeah, just wanted to point
2 something out with Kinder Morgan's proposed change. The
3 way I read that change, it would basically take modeling
4 out of the -- out of the process and say you have to have
5 a monitored site, which I -- I -- that doesn't fit with --
6 with what the Department proposed and made -- that seems
7 like it would undermine the two counties' positions. So
8 I'm not comfortable with that change.

9 I'm not crazy about the other one either, so I
10 mean, I would be -- I would be fine making a motion to
11 adopt the Department's language and rationale, as they
12 have proposed it on this section.

13 CHAIRPERSON SUINA: Thank you for that input,
14 Member Honker.

15 With that, I'm just looking to members of the
16 Board, on what your thoughts is. We're at a point now
17 where Member Honker can make the motion or if we wanted
18 more discussion.

19 BOARD MEMBER DUVAL: I second Member Honker's
20 motion.

21 CHAIRPERSON SUINA: Okay. So since we're -- just
22 looking at the other Board members here.

23 Ms. Soloria, so this is going to be our first big
24 motion here. So, can you just provide some input as to
25 what we need to include in that motion?

1 MS. SOLORIA: I actually think Member Honker did
2 a pretty good job in his proffered potential motion, which
3 would be to say, the motion would be to adopt 20.2.50.2 as
4 proposed by the Department, for the Department's proffered
5 rationale or offered rationale.

6 CHAIRPERSON SUINA: Thank you for that,
7 Ms. Soloria.

8 Yes, Member Honker?

9 BOARD MEMBER HONKER: Let me amend that because I
10 think we have to take action on 20.2.50.1 as well, so let
11 me just say I would move that we adopt 50.1 and 50.2 as
12 proposed by the Department for their proffered rationale.

13 BOARD MEMBER BITZER: I'll second that.

14 CHAIRPERSON SUINA: Thank you, Member Honker for
15 your motion and the second from Member Bitzer.

16 With that, if there's no other discussion on that
17 point, I want to look to Ms. Jones. I apologize for this
18 added step, but we're going to do a roll-call vote on that
19 motion.

20 ADMINISTRATOR JONES: Yes, Madam Chair. Okay.
21 On the motion that's before everyone, Member Bitzer, how
22 do you vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: Member Cates?

25 BOARD MEMBER CATES: Yes.

1 ADMINISTRATOR JONES: Member Duval?

2 BOARD MEMBER DUVAL: Aye.

3 ADMINISTRATOR JONES: Member Garcia?

4 BOARD MEMBER GARCIA: Yes.

5 ADMINISTRATOR JONES: Member Honker?

6 BOARD MEMBER HONKER: Yes.

7 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: Yes.

9 ADMINISTRATOR JONES: Chair Suina?

10 CHAIRPERSON SUINA: Yes.

11 ADMINISTRATOR JONES: Madam Chair, the motion
12 passes.

13 CHAIRPERSON SUINA: Thank you, Ms. Jones.
14 Appreciate that.

15 All right. One down and here we go. Appreciate
16 that discussion from our Board members. And I see our
17 Hearing Officer getting to our next section here. And
18 we're on page -- what page are you on? Sorry, there's...

19 All right. Here we are. Okay. So are we at
20 this next section?

21 HEARING OFFICER ORTH: It's page eight. I'm
22 sorry, Madam Chair. When I broke the Attachment A into 12
23 different parts, the page numbers didn't translate, but
24 this is page eight and it's section three.

25 CHAIRPERSON SUINA: Okay. Thank you so much.

1 Appreciate that.

2 So would this be Section 20.2.50.3, which is the
3 statutory authority? And this is the Environment
4 Improvement Act, Section 74-1-1 to 74-1-16 NMSA 1978,
5 including, specifically paragraphs 4 and 7 of Subsection A
6 of Section 74-1-8 NMSA 1978, and Air Quality Control Act,
7 Sections 74-2-1 to 74-2-22 NMSA 1978, including
8 specifically Subsections A, B, C, D, F and G of Section
9 7-2-5 NMSA 1978, as amended, through 2021.

10 So in this section we have Section 2.2 -- or
11 20.2.50.3 is a mandatory section for all rules promulgated
12 by New Mexico State agencies, and identifies the enabling
13 legislation that authorizes the ensuing agency -- issuing
14 agency to promulgate the rule. Section 20.2.50.30 lists
15 the statutory authorities, pursuant to which the Board is
16 authorized to adopt Part 50.

17 The Board should adopt this proposal for the
18 reasons stated in NMED Exhibit 1, pages 4 through 5, and
19 NMED Exhibit 32, pages 12 through 13. So this is the
20 rule -- I mean, this is the section from NMED submittals.

21 Yes, Member Garcia?

22 BOARD MEMBER GARCIA: Thank you, Madam Chair.
23 Happily, it appears that this is not contested, as well as
24 50.4. I think -- I'm hoping that when we identify
25 sections that -- chunks that are not contested, that we

1 could -- that we could move to adopt them, if we so
2 desire, together as a chunk.

3 CHAIRPERSON SUINA: I just want to add to that,
4 Member Garcia. We also have 20.2.50.5 as well.

5 BOARD MEMBER GARCIA: Yes, you're right. I meant
6 to say that as well. Yes, thank you.

7 HEARING OFFICER ORTH: And 6.

8 CHAIRPERSON SUINA: Well, is that --

9 BOARD MEMBER GARCIA: It doesn't look like 6 is
10 noncontested.

11 CHAIRPERSON SUINA: Because Kinder Morgan wanted
12 further clarification.

13 HEARING OFFICER ORTH: Oh, I'm sorry. That's
14 right. They wanted something in the statement of reasons.
15 Thank you.

16 CHAIRPERSON SUINA: So members of the Board, with
17 these sections, we have -- I won't go into the reading
18 again, but the Sections 3, 4 and 5, it looks like NMED --
19 everybody -- there's no contesting on this -- or no
20 parties are offering -- it looks like everybody is in
21 consensus.

22 With this, would you entertain -- could we
23 entertain a motion to just -- yes, Member Garcia?

24 BOARD MEMBER GARCIA: Yes, thank you, Madam
25 Chair.

1 I would move that 20.2.50.3, .4 and .5 be adopted
2 for reasons -- as reasons stated, with evidence stated.

3 CHAIRPERSON SUINA: Thank you, Member Garcia.

4 Do I --

5 BOARD MEMBER HONKER: I'll second.

6 CHAIRPERSON SUINA: Yes, Member Honker seconds.

7 With that, I'm looking to the Board, if there's
8 any other discussion or questions.

9 Yes, Member Bitzer?

10 BOARD MEMBER BITZER: This is a question for
11 Counsel. Does the motion need to specify that it was for
12 the reasons submitted by the Department?

13 MS. SOLORIA: I think that's an appropriate
14 amendment, Member Bitzer.

15 BOARD MEMBER BITZER: I'll propose that as a
16 friendly amendment.

17 CHAIRPERSON SUINA: Thank you, Member Bitzer.

18 Yes, Member Garcia?

19 BOARD MEMBER GARCIA: Okay. Thank you, Member
20 Bitzer. Good suggestion. So I move that 20.2.50.3, .4
21 and .5 be adopted as -- with reasons stated by NMED.

22 BOARD MEMBER HONKER: And I'll friendly second
23 that.

24 CHAIRPERSON SUINA: Thank you, Member Garcia, for
25 your motion and the second from Member Honker.

1 Is there any other discussion?

2 If not, Ms. Jones, would you mind doing a
3 roll-call vote?

4 ADMINISTRATOR JONES: Here we go. Member Bitzer,
5 how do you vote?

6 BOARD MEMBER BITZER: I vote yes.

7 ADMINISTRATOR JONES: And Member Cates, how do
8 you vote?

9 BOARD MEMBER CATES: Yes.

10 ADMINISTRATOR JONES: Member Duval?

11 BOARD MEMBER DUVAL: Yes. Aye.

12 ADMINISTRATOR JONES: Member Garcia?

13 BOARD MEMBER GARCIA: Yes.

14 ADMINISTRATOR JONES: Member Honker?

15 BOARD MEMBER HONKER: Yes.

16 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 ADMINISTRATOR JONES: Chair Suina?

19 CHAIRPERSON SUINA: Yes.

20 ADMINISTRATOR JONES: Madam Chair, the motion
21 passes.

22 CHAIRPERSON SUINA: Thank you, Ms. Jones. Great.

23 Well, we're going to just zoom right in to
24 20.2.50.6, and just for time, I'm not going to read it.

25 We have it up in front of us. And -- but it does look

1 like NMED -- or excuse me -- Kinder Morgan desired further
2 clarification in the statement of reasons. So I don't
3 know if any of our Board members have any discussion on
4 this particular one?

5 Yes, Member Honker?

6 BOARD MEMBER HONKER: Yeah, just a question, I
7 guess, for Counsel. So it looks like Kinder Morgan is not
8 objecting to the language, they just want some additional
9 language in the statement of reasons. So I guess our
10 decision is, do we include that language in the statement
11 of reasons or just use the rationale proffered by NMED?
12 Is that -- is that the decision we have here?

13 MS. SOLORIA: That's correct, Member Honker. And
14 the position is as -- is as excerpted there. Your vote
15 would be -- it sounds like there's no controversy over the
16 language of the rule itself, but because Kinder Morgan has
17 asked that of the Board, and, of course, I would need the
18 Board's permission or direction to include that additional
19 rationale, that is something that you would have to vote
20 on. And you're free to direct me to include that, or
21 you're free to rely on that, and you're free to not rely
22 on that. That's -- that's your decision.

23 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

24 Yes, Member Garcia?

25 You're on mute. Sorry about that.

1 BOARD MEMBER GARCIA: Can you hear me now?

2 CHAIRPERSON SUINA: Yes.

3 BOARD MEMBER GARCIA: Okay. Great. Thank you,
4 Madam Chair.

5 Yes, I read through their consideration and I
6 also remember this discussion during the hearing, about
7 the co-benefit of methane being reduced. I think that
8 it's -- having some familiarity with environment
9 regulations, I think it's very unusual to write the
10 co-benefit within the regulation itself.

11 I think there are many environmental regulations
12 that do have co-benefits, but you don't write down the
13 co-benefits. You don't write that there are co-benefits,
14 so I think that that's -- that's a very unusual move. So
15 I suppose for that reason, I would reject their proposal.
16 Thank you.

17 CHAIRPERSON SUINA: Thank you, Member Garcia.

18 Yes, Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: I -- I think if I
20 understand this issue -- and I'm very open to discussion
21 on this -- the issue is the term methane in this
22 definition as it's defined by the EPA. And I am going to
23 look to Member Honker on this, and his thoughts on, as to
24 why we would -- or why it was proposed to add the term
25 co-benefits and the term -- for the term methane.

1 CHAIRPERSON SUINA: Yes, Member Honker?

2 BOARD MEMBER HONKER: I don't know that I can
3 shed any big light on this, but my impression -- I mean,
4 if we throw a contaminant out there that this rule is not
5 directly addressing through regulation, it seems like
6 we're kind of muddying things up a bit.

7 And that may be what Member Garcia was -- was
8 saying, but, for instance, if EPA were to develop some new
9 rules on methane or something now, well, what does that do
10 with this rule if we finalized it and approved it?

11 I think I agree with Member Garcia, that while
12 there is an apparent co-benefit here, pointing it out, I
13 don't think, is necessary and -- and doesn't necessarily
14 strengthen the rationale for this rule. I mean, the rule
15 is what it is, and so I think I agree with Member Garcia
16 on that. That's all the insight I have.

17 CHAIRPERSON SUINA: Thank you, Member Honker.

18 Vice-Chair Trujillo-Davis, did you have a
19 follow-up?

20 VICE-CHAIR TRUJILLO-DAVIS: Yes. I think what
21 I'm trying to ask -- and I -- in full transparency, I'm
22 really not 100 percent on the answer to this, but is
23 methane considered a criteria pollutant for NAAQS?

24 BOARD MEMBER HONKER: And I don't know the answer
25 to that, so...

1 CHAIRPERSON SUINA: Yes, Member Bitzer?

2 BOARD MEMBER BITZER: My recollection on that
3 from the earlier discussion was, no, but I would look down
4 to Socorro for some expertise down that way. Professor,
5 are you -- are you on?

6 BOARD MEMBER DUVAL: I can't speak to the NAAQS
7 specifically, but, you know, the issue I see here is that
8 there are -- I mean, I agree with Member Honker that --
9 excuse me -- that it could be muddying the waters a little
10 bit. And one of the reasons why, is that, you know,
11 these -- these are co -- co-evolved situations. Right?
12 You're not going to end -- you're not going to have ozone
13 precursors without having methane pollution. I mean,
14 these are -- these are -- you have -- I'm trying to think
15 of the right verbiage here -- basically, a community of
16 gases that are being released from these scenarios.

17 So I could -- I mean, I could understand why, you
18 know, methane might be included in here, but I mean, it's
19 just part and parcel of having these venting issues. It's
20 not like it's just a single gas that's coming from these
21 wells. And so, I think the cleaner the language could be,
22 the better, because -- sorry -- it's going to take care
23 of -- you're going to have ancillary benefits,
24 irrespective of what the language is here.

25 If the rule's in place, then some of these other

1 things are going to kind of take care of themselves as
2 well. Does that -- does that make sense?

3 I mean, if you're proposing that there needs to
4 be reductions of one thing, there's necessarily going to
5 be reductions of others.

6 CHAIRPERSON SUINA: Thank you, Member Duval.

7 Yes, Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: First, thank you
9 Member Duval, for your explanation of that. And I don't
10 disagree with that, but I think that the issue here is
11 that this rule, and most of what we've seen throughout the
12 rule is based on the National Air Quality Control
13 Standards, which is your NAAQS. Right? And those
14 criteria pollutants listed in NAAQS, which, a quick
15 search, don't include methane.

16 So as we're talking the semantics of the
17 language -- and maybe semantics is too dismissive here,
18 but I think when we start throwing in the term "methane,"
19 you do start muddying the waters. And we are talking a
20 lot about methane here, so for clarity, I really think we
21 should stick to the NAAQS criteria pollutants that are --
22 that are listed. And I just want to throw that out there,
23 to keep that in mind.

24 So if we did adopt language of Kinder Morgan, I
25 would suggest that we keep that phrasing in there, as a

1 co-benefit, because methane is not -- is not a criteria
2 pollutant.

3 CHAIRPERSON SUINA: Thank you.

4 BOARD MEMBER DUVAL: Yeah, I -- excuse me, Madam
5 Chair.

6 Yeah, Member Trujillo-Davis, yeah, I very much --
7 if I was being a little bumbling in my words, I do -- I do
8 agree with what you just said. I mean, I think that
9 that's the idea here, is to make it as understandable as
10 possible, and definitely sticking with established
11 criteria is going to be of benefit for the overall aim.

12 CHAIRPERSON SUINA: Yes.

13 BOARD MEMBER BITZER: Madam Chair?

14 CHAIRPERSON SUINA: Yes. Yes, Member Bitzer.

15 BOARD MEMBER BITZER: If it's the point for a
16 motion, I would move to adopt 20.2.50.6, as proposed by
17 the Department, for the reasons proffered by the
18 Department.

19 CHAIRPERSON SUINA: Thank you, Member Bitzer.

20 BOARD MEMBER HONKER: I'll second.

21 CHAIRPERSON SUINA: Thank you, Member Honker.

22 If there's no other discussion, Ms. Jones, would
23 you do a roll-call vote?

24 ADMINISTRATOR JONES: Yes.

25 Member Bitzer, how do you vote?

1 BOARD MEMBER BITZER: I vote yes.

2 ADMINISTRATOR JONES: Member Cates?

3 BOARD MEMBER CATES: Yes.

4 ADMINISTRATOR JONES: Member Duval?

5 BOARD MEMBER DUVAL: Yes. Aye.

6 ADMINISTRATOR JONES: Member Garcia?

7 BOARD MEMBER GARCIA: Yes.

8 ADMINISTRATOR JONES: Member Honker?

9 BOARD MEMBER HONKER: Yes.

10 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes.

12 ADMINISTRATOR JONES: Chair Suina?

13 CHAIRPERSON SUINA: Yes.

14 ADMINISTRATOR JONES: Madam Chair, the motion
15 passes.

16 CHAIRPERSON SUINA: Thank you very much. It
17 looks like -- but I want to do a check with our Board
18 members -- anybody need a quick break? We're getting into
19 another section where we have, it looks like, no
20 challenges from the Department or the various parties.

21 Yes, Member Trujillo-Davis.

22 VICE-CHAIR TRUJILLO-DAVIS: I would like a quick
23 little biobreak. We could do ten minutes.

24 CHAIRPERSON SUINA: Sounds good. With that,
25 let's come back at 10:55, so 11 minutes.

1 (Recess taken from 10:44 a.m. to 10:56 a.m.)

2 CHAIRPERSON SUINA: All right. We have our court
3 reporter back and members coming back from the quick break
4 we had. Can you hear me okay? Okay. Great. All right.
5 So we just finished up the discussion -- I can share that
6 I'm on the same page with everybody, on 20.2.50.6 and now
7 we're getting into 20.2.50.7. And that has several
8 sections, that's definitions. So we'll go to definitions.
9 So we have A, B, C, D, E, all without -- it looks like
10 with NMED, just -- just with NMED's position here. So it
11 looks like we've got consensus on those.

12 And Board members, please double-check me as you
13 look at your notes that -- it looks like that's the case.

14 Yes, Member Honker?

15 BOARD MEMBER HONKER: Yeah, that's the way it
16 looks to me, so I would move that we adopt Sections
17 20.2.50.7.A through E as proffered by the Department, and
18 with the Department's proffered rationale or statement of
19 reasons.

20 CHAIRPERSON SUINA: Thank you.

21 BOARD MEMBER BITZER: I second that.

22 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
23 your second. With that, I just want to look one more time
24 to our Board, if there's any comments on that or
25 discussion. And if not, I want to look to Ms. Jones.

1 Could you do a roll-call vote on that motion from Member
2 Honker and a second from Member Bitzer?

3 ADMINISTRATOR JONES: Yes.

4 Member Bitzer, your vote?

5 BOARD MEMBER BITZER: I vote yes.

6 ADMINISTRATOR JONES: Member Cates?

7 BOARD MEMBER CATES: Yes.

8 ADMINISTRATOR JONES: Member Duval?

9 BOARD MEMBER DUVAL: Yes.

10 ADMINISTRATOR JONES: Member Garcia?

11 BOARD MEMBER GARCIA: Yes.

12 ADMINISTRATOR JONES: Member Honker?

13 BOARD MEMBER HONKER: Yes.

14 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

15 VICE-CHAIR TRUJILLO-DAVIS: Yes.

16 ADMINISTRATOR JONES: Chair Suina?

17 CHAIRPERSON SUINA: Yes.

18 ADMINISTRATOR JONES: Madam Chair, the motion

19 passes.

20 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

21 So, now, we get into -- let me get the right
22 citation here -- 20.2.50.7 F as-in-Frank. So, on this, we
23 have NMED's recommendation or position and then we also
24 have NMOGA. So I want to make sure we -- we touch upon
25 this one and all discussion that our Board members have on

1 this particular item.

2 Yes, Member Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: I'm looking at the
4 proposed language of NMOGA and I remember this discussion
5 with Mr. Smitherman's testimony. And the issue that he
6 brought up, I think is really important, is that a well
7 can be completed, shut in, and then later turned on. It
8 could be even weeks or months later, turned on, and put
9 into sales. So, there could be a definite break in time
10 for the language of, "but no later than the end of the
11 well completion operation," before the well actually goes
12 into a sales -- a sales operation, which the NMED -- or
13 which the current language says, "consistently flowing to
14 a sales line." I think that in practice there is an issue
15 there.

16 So I would agree with NMOGA's language of "no
17 later than the end of the well completion operation."

18 CHAIRPERSON SUINA: Is there any other discussion
19 from the other Board members on this one?

20 Member Bitzer?

21 BOARD MEMBER BITZER: I would concur, if I
22 understood you, Madam Vice-Chair, if you meant the
23 deletion of "but no later than the end of completion of
24 the well operation." Yeah, I would tend to concur with
25 that. I remember this discussion as well. It seemed --

1 it seemed reasonable, and given the vicissitudes of the
2 market and the idea that you want to deploy your human
3 resources and your capital in a steady way, it might be
4 advantageous to get something done while you've got excess
5 capacity, even though the market doesn't necessarily
6 demand or suggest even that you bring it on at that point,
7 because you're going to have ebbs and flows in your -- in
8 your labor supply and your -- and your need for labor.

9 CHAIRPERSON SUINA: Thank you for that, Member
10 Honker -- I mean, sorry, Member Bitzer.

11 Member Honker?

12 BOARD MEMBER HONKER: Yeah, and I think I concur
13 with Vice-Chair Trujillo-Davis and Member Bitzer. This
14 seems to be a valid point, and I can see it being an issue
15 in the -- in the field.

16 CHAIRPERSON SUINA: Member Garcia?

17 BOARD MEMBER GARCIA: Thank you, Madam Chair.
18 I'm just looking at -- I appreciate the members' comments,
19 that's helpful. I'm looking at the Department's
20 rationale, that this is consistent with Colorado Reg 7.
21 I'm not so much compelled by that. I don't think we have
22 to make it consistent with Colorado Reg 7, but the
23 following phrase, "and is consistent with the term as used
24 in Part 50," that gave me a little bit of pause because
25 I'm wondering if this term is used throughout the rule,

1 would we have to add that phrase wherever it's used?

2 I don't know. I -- I -- that just gave me pause;
3 not to say I'm opposed to it, I just thought maybe we
4 should flesh that out a little bit. Does anybody have any
5 thoughts on that?

6 CHAIRPERSON SUINA: Thank you for that, Member
7 Garcia.

8 Yes, Vice-Chair Trujillo-Davis?

9 VICE-CHAIR TRUJILLO-DAVIS: I think Member Garcia
10 has a -- has a good question there, and maybe what we
11 should do is look at the terms throughout Part 50. I
12 mean, if we could give a quick scan and see if -- how that
13 holds up.

14 CHAIRPERSON SUINA: Okay. Are you thinking that
15 Madam Hearing Officer do that, also, or just us
16 individually?

17 VICE-CHAIR TRUJILLO-DAVIS: I always want a
18 second set of eyes, and Madam Hearing Officer has intimate
19 knowledge of this document, so I would -- I would love to
20 have her weigh in on that as well.

21 HEARING OFFICER ORTH: Okay. I'm looking. I
22 don't know if you can see that I'm looking, but there it
23 is in F, the first time. I've just searched on
24 "commencement." Now, at the bottom of page 24, this
25 relates to a proposal by WildEarth Guardians in LL, on

1 potential to emit, and then there are three more examples
2 where "commencement" is used. The bottom of page 25, also
3 WildEarth Guardians. About halfway through page 47 in the
4 definition, ZZ, storage vessel. Then I have the bottom --
5 the very bottom of page 241, on pig launching. And
6 finally, near the top of page 242, also in a section about
7 pig launching.

8 CHAIRPERSON SUINA: Thank you for that, Madam
9 Hearing Officer. So with that, as we discuss this
10 "commencement of operation," as I also read this language,
11 with that, there might -- to Member Garcia's comment,
12 there might be some additional consideration there.
13 Sorry, I'm going through it myself.

14 Yes, Member Honker.

15 BOARD MEMBER HONKER: Well, one option, we could
16 table this section and take it up later after we've worked
17 through maybe the rest of the rule and then, you know, in
18 looking at other sections, it might be more clear whether
19 this would have an impact somewhere else, whenever we
20 decide on Section F here.

21 CHAIRPERSON SUINA: Thank you for that, Member
22 Honker.

23 Yes, Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: Just based on the
25 quick scan that Ms. Orth did for us, it appears that there

1 are many places in the operations where the commencement
2 of operation term is used, so pigging is one example. We
3 saw there that it has nothing to do with the beginning of
4 the well, it can be done at any time of operations, and
5 actually doesn't even -- isn't even a part of the -- it's
6 a midstream or a downstream operation, it's not an
7 upstream operation. And when we talk about well
8 completions, we're talking upstream.

9 So I feel like striking the term actually
10 clarifies the term commencement of operation. So, but I
11 also support Member Honker's suggestion to table the issue
12 until we go through the rest of the rule, but that's my
13 two cents on it.

14 CHAIRPERSON SUINA: Member Garcia?

15 BOARD MEMBER GARCIA: Thank you. I just want to
16 ask -- and, actually, this is a question for Vice-Chair
17 Trujillo-Davis because you're more familiar with the oil
18 and gas industry. It appears that NMOGA is wanting it
19 struck, and by striking it I'm trying to understand the
20 significance of striking it -- the full significance of
21 striking it. It looks like the rule would be applicable
22 more times, which -- am I reading that wrong?

23 I mean, which isn't a problem -- I don't see that
24 being a problem. So I may not have a problem with
25 striking it either so. Can you clarify that for me?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes, I think if I
2 understand your question correctly, I agree, I think that
3 by striking it, the rule will be applicable -- wait,
4 before I answer, let me look -- let me look at this again.
5 I don't want to -- I don't want to get myself in trouble
6 here.

7 CHAIRPERSON SUINA: And not to interrupt you,
8 Vice-Chair Trujillo-Davis, but to -- to Member Garcia's
9 point, it seems that "but no later than the end of well
10 completion operation," so my other question is, is there
11 operations before -- or that happens before the end of
12 well completion operation?

13 VICE-CHAIR TRUJILLO-DAVIS: There can be some
14 operations in the meantime, to get the well up and running
15 and ready for -- to go to sales. There can be some small
16 sales done at that time, but the well is not considered
17 operational and fully going to sales, and that's where the
18 term of "consistently flowing to a sales line" comes into
19 play, because any sales that occur during that time, are
20 not consistent sales, they are simply making room to get
21 rid of material and get -- to finish completions and get
22 the well running.

23 So to go back to Member Garcia's question of, if
24 the rule would be, in effect, longer -- I believe that was
25 your question, Member Garcia?

1 BOARD MEMBER GARCIA: Yes. And I'm looking at
2 the condensed version of what the Hearing Officer wrote
3 for NMOGA's position and it's talking about
4 Mr. Smitherman's testimony regarding the waste rule the
5 OCD proposed, which I know, you know, intermingles with
6 this rule. And so I'm a little unclear now that I read it
7 again, whether the time extended is for the waste rule or
8 for this rule. I assume it's for this rule, but, anyway,
9 I don't mean to confuse the issue. And perhaps this gives
10 a good reason to go with Mr. Honker's -- Member Honker's
11 suggestion, just to make sure.

12 VICE-CHAIR TRUJILLO-DAVIS: I believe, Member
13 Garcia, you are providing clarity to this section, because
14 you are correct, the waste rule -- OCD's waste rule does
15 play a role in this section here. So, I am with Member
16 Honker on possibly delaying it, because I think maybe what
17 we need clarification on it is, does that waste rule fill
18 in that gap time between during completions and going to
19 sales. Are we doubling the oversight during that time,
20 with leaving this language in?

21 CHAIRPERSON SUINA: Correct. And I think, or,
22 are we missing a gap in time as well?

23 Yes, Member -- Member Cates.

24 BOARD MEMBER CATES: Chair Suina, so it looks to
25 me like -- I'm a little reluctant on this. It looks like

1 NMOGA is asking for a pass during time in which a well is
2 drilled, and, you know, is in existence, and doesn't want
3 to be regulated unless it's operating, but there, it's my
4 understanding leaks can occur, flaring can occur, and that
5 my inclination is to -- is to not allow this change for
6 that reason.

7 CHAIRPERSON SUINA: Thank you, Member Cates.
8 What is the -- what is the pleasure of the Board?
9 Do we want to table this to Member Honker's suggestion?
10 Yes, Vice-Chair?

11 VICE-CHAIR TRUJILLO-DAVIS: I actually want to
12 pose this question to Ms. Soloria, is how do we get
13 clarification on -- because, from the beginning, NMED and
14 OCD have put out there that this rule is supposed to
15 book-end with the OCD rule. So, where we have questions
16 about how it book-ends, who can answer that for us, or how
17 can we get clarification on that?

18 MS. SOLORIA: Member Trujillo-Davis, I would have
19 to look at their submissions to see if they went into
20 detail about -- I can't recall if they went into detail
21 about kind of how it goes hand in hand with the OCD's
22 rules.

23 I'm loathe to do any kind of research during this
24 phase of the process, because the record is closed and I
25 don't want there to be a challenge regarding whether we

1 properly considered another rulemaking body's rules and
2 interpreted them correctly. So, I would say, if you want,
3 we could spend time to go -- to look back at the
4 Department's proffer on that issue, to see if they
5 discussed that point about how it would work. I don't --
6 I can't -- obviously, I can't recall off the top of my
7 head what was said during testimony, but I think that
8 would be the only way to address that question because I
9 don't -- I don't think it's appropriate for us to do our
10 own research outside of what was offered during the
11 hearing.

12 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

13 So maybe Vice-Chair Trujillo-Davis, would you
14 pull up NMED's exhibit and NMOGA's? What do you think
15 about that?

16 VICE-CHAIR TRUJILLO-DAVIS: Yes, I think that is
17 a really good suggestion, that we look back through the
18 record to see if this particular topic was covered or if
19 any -- if any party testified on it.

20 MS. SOLORIA: I don't -- I don't want to put the
21 Hearing Officer on the spot, but if she has any helpful
22 recollection on that with regard to the record, of course,
23 I'm sure the Board would welcome that. And I don't know
24 if you-all want to take the time to do that now, or what
25 the plan of the Board is on that point.

1 CHAIRPERSON SUINA: Yes, Member Honker?

2 BOARD MEMBER HONKER: I did look at NMED's
3 Rebuttal Exhibit 1, page 5, which is referenced in the
4 Hearing Officer's discussion here. And that's a
5 one-sentence thing that is basically the same as what's in
6 here. NMED does not agree with NMOGA's proposal to strike
7 "but no later than the end of well completion operations."
8 This definition is consistent with Colorado Reg. 7 and is
9 consistent with the term as used in Part 50. That's all
10 that rebuttal says on this point.

11 CHAIRPERSON SUINA: Thank you for that, Member
12 Honker.

13 Yes, Member Garcia?

14 BOARD MEMBER GARCIA: Just to clarify with the
15 Hearing Officer, I agree with you, Member Honker, for the
16 NMED exhibit, that is the correct exhibit, but she's also
17 referring to NMOGA -- NMOGA's exhibit, I think it's 41, I
18 believe. I was looking for it, I haven't found it in the
19 docketed page, but I think it would take us a lot of time
20 to try to find that. And I'm just wondering if we put a
21 pin on this, and just make sure that we don't forget to
22 come back to it. I know our counsel will not let us do
23 that, and just keep thinking about it as we go through
24 other places where there's commencement of operation, and
25 it might become more clear, as Member Honker suggested.

1 CHAIRPERSON SUINA: Thank you, Member Garcia. I
2 have noted it and Ms. Soloria, would you also note it.

3 So we'll continue going forward, if that's the
4 pleasure of the Board. And I know that will come up
5 again, and so I think also in the meantime, maybe -- I've
6 been looking as we're talking here -- to NMOGA's exhibit
7 as well, and so we'll do that so not to hang us up right
8 now on our progress.

9 Is that okay with the Board? Good. Great. I
10 see a lot of head nods there, so we'll do that, and we'll
11 go to the next item, G. We're going to table item F and
12 go to item G. And it looks like it's just NMED on H -- G
13 and H. So I was wondering if we can get those out of the
14 way, and maybe entertain a motion since all we have is
15 NMED -- NMED's position.

16 Yes, Member Honker?

17 BOARD MEMBER HONKER: Well, it looks like "I" is
18 uncontested as well.

19 CHAIRPERSON SUINA: Okay.

20 BOARD MEMBER HONKER: So we may want to do G, H
21 and I.

22 CHAIRPERSON SUINA: Oh, okay. So G, and H
23 supports on I, supports the proposed definition. Okay, I
24 see that.

25 BOARD MEMBER HONKER: So I will move that we

1 adopt --

2 CHAIRPERSON SUINA: I think that would be --

3 BOARD MEMBER HONKER: -- Sections G, H and I in
4 the definitions as proposed by NMED and supported by their
5 rationale.

6 BOARD MEMBER BITZER: I second that.

7 CHAIRPERSON SUINA: Thank you, Member Bitzer.

8 MS. SOLORIA: Yes, Madam Chair, I guess I have a
9 question or a clarification for the Board. A statement of
10 reasons can be as detailed as the Board prefers, and for
11 sections like this, where this is expressed support by
12 either an industry group or an environment group, if you
13 would like me to include that support in your statement of
14 reasons, I would suggest that you put them in there; you
15 don't have to, but I want to offer that option for the
16 Board.

17 CHAIRPERSON SUINA: Thank you for that,
18 Ms. Soloria.

19 Yes, Member Honker?

20 BOARD MEMBER HONKER: Yeah, and in keeping with
21 that, so I'll amend my motion to say we should -- I'll
22 propose we adopt sections G, H and I, as proposed by NMED,
23 and supported by their rationale, including the -- plus
24 the supporting language from GCA under "I."

25 BOARD MEMBER BITZER: I'll second that.

1 CHAIRPERSON SUINA: Thank you, Member Honker, and
2 Member Bitzer, for your second. If I don't see any
3 discussion from the Board, I will look to Miss -- oh, yes,
4 Member Garcia?

5 BOARD MEMBER GARCIA: It looks at though J is not
6 contested; am I wrong about that?

7 CHAIRPERSON SUINA: That's what I see, too.

8 BOARD MEMBER HONKER: And K as well.

9 CHAIRPERSON SUINA: And K.

10 BOARD MEMBER HONKER: So let me amend my motion
11 again to say, we adopt Sections G, H, I, J and K, as
12 proposed by the Department, with their rationale and
13 supporting language from GCA.

14 BOARD MEMBER BITZER: I'll second that one, too.

15 CHAIRPERSON SUINA: Ms. Soloria, do we need to be
16 specific on that GCA was only for section I?

17 MS. SOLORIA: I think that's specific enough,
18 only because the "I" is the only one that has GCA
19 referenced, so...

20 CHAIRPERSON SUINA: All right. Just making sure.

21 MS. SOLORIA: Thank you.

22 CHAIRPERSON SUINA: With that, if there's no
23 other discussion, Ms. Jones, would you do a roll-call
24 vote?

25 ADMINISTRATOR JONES: Yes, ma'am.

1 Member Bitzer, how do you vote?

2 BOARD MEMBER BITZER: I vote yes.

3 ADMINISTRATOR JONES: Member Cates?

4 Member Cates?

5 BOARD MEMBER CATES: Yes. Yes.

6 ADMINISTRATOR JONES: Thank you.

7 Member Duval?

8 BOARD MEMBER DUVAL: Yes.

9 ADMINISTRATOR JONES: Member Garcia?

10 BOARD MEMBER GARCIA: Yes.

11 ADMINISTRATOR JONES: Member Honker?

12 BOARD MEMBER HONKER: Yes.

13 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

14 VICE-CHAIR TRUJILLO-DAVIS: Yes.

15 ADMINISTRATOR JONES: Thank you.

16 And Chair Suina?

17 CHAIRPERSON SUINA: Yes.

18 ADMINISTRATOR JONES: Thank you.

19 Madam Chair, the motion passes.

20 CHAIRPERSON SUINA: Thank you, Ms. Jones.

21 Appreciate that.

22 So we'll get on to the next item, which is L, the

23 "Design Value," which means the "3-year average of the

24 annual fourth-highest daily maximum 8-hour ozone

25 concentration." We have a position by NMED and one by

1 NMOGA. The proposal for NMOGA, to add "at an ambient
2 ozone monitor" at the end of the sentence.

3 Do I hear any discussion on this? Yes, Member
4 Garcia? I mean -- yeah, Member Garcia?

5 BOARD MEMBER GARCIA: Thank you. Madam Chair, as
6 I looked at this I don't see any harm with adding that
7 phrase. So I have no opposition to adding that phrase.

8 CHAIRPERSON SUINA: Thank you, Member Garcia. I
9 thought I saw another member with their hand up. Is there
10 any other comments by our members? All right.

11 Yes, Ms. Soloria?

12 MS. SOLORIA: I just -- for the Board's
13 consideration, that this does touch on the issue
14 considered in the scope Section at 20.2.50.2. I'm trying
15 to -- I'm trying to think as we're going through this, if
16 a vote in the affirmative of this will be consistent with
17 your prior vote.

18 Are any of the Board members seeing,
19 understanding what I'm talking about? Because their
20 position on whether to tie it to an ozone monitor, I
21 believe -- and I could be wrong -- is -- is kind of part
22 and parcel of their position with regard to scope. That
23 may be an overread. And if the Board doesn't see that
24 issue, then I'm not going to insert my take on that, but I
25 did want to highlight that since that was a previous legal

1 issue.

2 CHAIRPERSON SUINA: Thank you for that,
3 Ms. Soloria. Appreciate it.

4 Member Honker, did I see your hand raised?

5 BOARD MEMBER HONKER: Yes. And I think that's a
6 good point. I am not sure what the ramifications would be
7 if we add this language, and with that, we weaken some
8 other rationale; for instance, for the two counties that
9 didn't have a monitor. So I'm reluctant to add that
10 because I'm not quite sure what the impact would be.

11 CHAIRPERSON SUINA: Thank you, Member Honker.

12 And Vice-Chair Trujillo-Davis, did I see your
13 hand up?

14 VICE-CHAIR TRUJILLO-DAVIS: Yes, you did. And
15 I -- Member Honker pretty much made my comment there, and
16 I would like us to consider this -- this proposition that
17 Ms. Soloria and Member Honker proposed.

18 CHAIRPERSON SUINA: And that proposition, just so
19 I'm clear, is that we should keep NMED's position because
20 of our -- it may -- it may conflict by adding "at an
21 ambient ozone monitor" when we didn't -- you know, our
22 decision regarding the previous decision earlier this
23 morning, wouldn't align with that; is that correct?

24 VICE-CHAIR TRUJILLO-DAVIS: Yes, and I apologize
25 for not being clear on that. Yes, giving consideration to

1 whether we're being inconsistent by adopting this
2 language. And I think that's an important point to look
3 at.

4 CHAIRPERSON SUINA: Thank you, Member
5 Trujillo-Davis.

6 Yes, Member Garcia?

7 BOARD MEMBER GARCIA: Thank you. And thank you,
8 Ms. Soloria and Member Honker for bringing that up. I
9 stand corrected; this -- adding this would -- would
10 actually make a big impact, so I appreciate you bringing
11 that up. And I change my mind that it would be harmless,
12 because it indeed would change the meaning in regard to
13 those two counties, so very good point taken. Thank you
14 so much.

15 CHAIRPERSON SUINA: Thank you, Member Garcia.

16 Member Honker, did I see your hand up?

17 BOARD MEMBER HONKER: Well, just for the record,
18 I did not hear Ms. Soloria making a recommendation. She
19 was just pointing out a question, which I -- which I
20 piggy-backed on. So I would move that we adopt section L,
21 as drafted by the Department with the Department's
22 proffered rationale.

23 CHAIRPERSON SUINA: Thank you, Member Honker.

24 Is there a second? Yes, Member Garcia?

25 BOARD MEMBER GARCIA: I second that motion.

1 CHAIRPERSON SUINA: Thank you for your second,
2 Member Garcia.

3 I'm looking around to see if any other Board
4 members have any other comments. If not, Ms. Jones, would
5 you do a roll-call vote?

6 ADMINISTRATOR JONES: Yes.

7 Member Bitzer, how do you vote?

8 BOARD MEMBER BITZER: I vote yes.

9 ADMINISTRATOR JONES: And Member Cates?

10 Member Cates, how do you vote?

11 We'll circle back around to him.

12 Member Duval, how do you vote?

13 BOARD MEMBER DUVAL: Yes.

14 ADMINISTRATOR JONES: Member Garcia?

15 BOARD MEMBER GARCIA: Yes.

16 ADMINISTRATOR JONES: Member Honker?

17 BOARD MEMBER HONKER: Yes.

18 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis.

19 VICE-CHAIR TRUJILLO-DAVIS: Yes.

20 ADMINISTRATOR JONES: Member Cates?

21 CHAIRPERSON SUINA: It looks like he's busy.

22 ADMINISTRATOR JONES: Okay. Chair Suina?

23 CHAIRPERSON SUINA: Yes.

24 ADMINISTRATOR JONES: So we'll try one more time.

25 Member Cates, do you want to vote on this -- on Section L?

1 Okay. Member -- Madam Chair, the motion passes,
2 with one member missing.

3 CHAIRPERSON SUINA: Okay. Thank you so much,
4 Ms. Jones. That will be for the record.

5 Let's see. Next we have another item, M,
6 Downtime definition. And so we have NMED's position and
7 also NMOGA -- NMOGA's position. So there's a difference
8 in the NMOGA's position to replace "not in operation" with
9 "inoperable."

10 I just want to share that with the Board and see
11 if Board members have any comments regarding item M, with
12 either NMED's position or NMOGA's position. And if
13 there's no discussion, I just want to point out that it's
14 interesting, the comment from NMOGA was that it was in the
15 Department's testimony, "downtime should only include time
16 the equipment is inoperable and not when it's shut off
17 because the controlled process unit is not operating."

18 I also want to note really quick, before we
19 discuss, is that the CEP and Oxy proposed additional
20 definitions related to their proposals in Sections 123 and
21 127.

22 So, yes, I apologize, there was a Board member
23 who wanted to mention -- wanted to comment? Yes, Member
24 Cates?

25 BOARD MEMBER CATES: Chair Suina, one way to read

1 this is -- NMOGA's language here is that, you know, that
2 what -- perhaps what they're saying is if our well is
3 broke, then we're not covered by these statutes, and, you
4 know, that is problematic, I would think. That's it.

5 CHAIRPERSON SUINA: Thank you, Member Cates.

6 Yes, Member Honker, you had your hand up?

7 BOARD MEMBER HONKER: Yeah, it's -- on the
8 "inoperable" versus "not in operation," it seems like "not
9 in operation" is a -- is a more broad category.
10 Inoperable implies it can't be operated. And I'm not
11 sure -- it seems like "inoperable" would be a more
12 restrictive definition of downtime than "not in
13 operation," so I don't quite understand the rationale for
14 making that change. I'm kind of puzzled by this one.
15 That's all I have to say.

16 CHAIRPERSON SUINA: Yes, Member Garcia?

17 BOARD MEMBER GARCIA: Yes, thank you, Madam
18 Chair. I tend to agree with Member Honker, that "not in
19 operation" seems to cover all of the bases. And I think
20 there's some, you know, enforcement discretion used in the
21 field and they can figure out what is the appropriate way
22 to deal with this, as they're enforcing this technical
23 section. I think they can work through that with the
24 industry, so I agree that "not in operation" covers --
25 covers all the bases.

1 CHAIRPERSON SUINA: Thank you, Member Garcia.

2 And Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: I'm going to also
4 agree with Member Honker and Member Garcia. The term
5 "inoperable" does seem to imply that it is more
6 restrictive; and "not in operation" does imply that it
7 covers more of the ambiguous situations that could occur.

8 CHAIRPERSON SUINA: Thank you. Thank you,
9 Vice-Chair Trujillo-Davis.

10 Yes, Member Honker?

11 BOARD MEMBER HONKER: And with regard to the
12 additional definitions that CEP and Oxy proposed in N, O
13 and R and S, I mean they look like good definitions, but
14 if the regulatory agency hasn't seen a need to include
15 defining those terms, I'm not sure why we should add them,
16 when the agency that's going to be implementing this rule
17 doesn't feel a need for them. So I'm inclined to -- to
18 not include those.

19 CHAIRPERSON SUINA: Yes, Vice-Chair
20 Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: I'm going to take the
22 opposing stance there, because I feel that oftentimes due
23 to the nature of industry -- and not just oil and gas, but
24 any industry that is innovating -- that their terms tend
25 to be a step ahead of regulatory agency. And so, I feel

1 that if they are proposing additional definitions, they
2 want to clarify the processes that are occurring, that
3 are -- that are listed within the rule. And so, I think
4 that these definitions are -- they seem to be well thought
5 out and just points of clarification.

6 CHAIRPERSON SUINA: Thank you, Member
7 Trujillo-Davis.

8 Member Duval?

9 BOARD MEMBER DUVAL: Yes. I would -- I would
10 reiterate Member Trujillo-Davis's point. I mean, I think
11 any time -- I think this adds clarity, not muddies the
12 water. And then, especially, if it's going to be
13 something that is going to be relied upon in future
14 context, so, yeah, I completely agree with Amanda. I
15 would say retain this language.

16 CHAIRPERSON SUINA: So keep the language -- just
17 for clarification, Member Duval and Vice-Chair
18 Trujillo-Davis, keep the position of NMED's in this
19 section?

20 BOARD MEMBER DUVAL: Yes, that's my -- that's
21 mine.

22 CHAIRPERSON SUINA: Okay. Thank you, Member
23 Duval. I just wanted to make sure I get that clarified.

24 Member Garcia, you had your hand up?

25 BOARD MEMBER GARCIA: Yes, I'm also trying to

1 make sure. Okay. So we had the discussion about
2 inoperation or inoperable, about M. Now we're talking
3 about N, O, R, S, is that correct? And it looks as though
4 N, O, R, S is related to Section 123 and 127. I wonder if
5 we should address those then, because I'm not sure -- I
6 don't remember how they're related to those sections right
7 now. But I think M is an easy one to do a motion and deal
8 with, just as a point.

9 HEARING OFFICER ORTH: Madam Chair, this is
10 Felicia. I believe by taking up the definitions proposed
11 by CEP and Oxy at the time you are taking up Sections 123
12 and 127, you will also be able to see whether, for
13 example, NMED had any opposition there, because I think
14 perhaps opposition has been assumed here when it's -- when
15 it's not true. And my understanding of the Department's
16 position on a fair number of these things, where you don't
17 see the Department necessarily providing explicit support,
18 is that they want to direct you to the proposing party's
19 support. But we're not really going to be able to see the
20 fullness of that until we get to those sections.

21 CHAIRPERSON SUINA: Thank you, Madam Hearing
22 Officer. Appreciate that clarification. And I appreciate
23 the note as well, in the attachment that you provided,
24 just to give us a head's up of those sections further down
25 our deliberation.

1 So, with that, members of the Board, I think --
2 yes, Member Garcia?

3 BOARD MEMBER GARCIA: Then, if I may, I would
4 move to adopt 20.2.50.7.M, "Downtime," the definition of
5 downtime as proposed by the Department, with the reasons
6 given by the Department.

7 BOARD MEMBER BITZER: I would second that.

8 CHAIRPERSON SUINA: Thank you. With that, if I
9 don't see any further discussion?

10 Yes, Member Cates?

11 BOARD MEMBER CATES: So, Member Garcia, could you
12 state again what the motion is?

13 BOARD MEMBER GARCIA: Yes, certainly. I would
14 move to adopt 20.2.50.7.M, "Downtime," as is, for the
15 reasons stated by NMED.

16 BOARD MEMBER CATES: Which is to say we're not
17 endorsing the -- the exception that NMOGA is asking for
18 here, right?

19 BOARD MEMBER GARCIA: Correct.

20 BOARD MEMBER CATES: Yeah.

21 BOARD MEMBER GARCIA: Correct.

22 BOARD MEMBER CATES: Okay. Great. Thank you.

23 CHAIRPERSON SUINA: Thank you. And then we have
24 a second already on that motion, so with that, if there's
25 no other discussion, Ms. Jones, would you do a roll-call

1 vote?

2 ADMINISTRATOR JONES: Yes.

3 Member Bitzer, how do you vote?

4 BOARD MEMBER BITZER: Yes.

5 ADMINISTRATOR JONES: Member Cates?

6 BOARD MEMBER CATES: Yes.

7 ADMINISTRATOR JONES: Thank you.

8 Member Duval?

9 BOARD MEMBER DUVAL: Yes.

10 ADMINISTRATOR JONES: Member Garcia?

11 BOARD MEMBER GARCIA: Yes.

12 ADMINISTRATOR JONES: Member Honker?

13 BOARD MEMBER HONKER: Yes.

14 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

15 VICE-CHAIR TRUJILLO-DAVIS: Yes.

16 ADMINISTRATOR JONES: Chair Suina?

17 CHAIRPERSON SUINA: Yes.

18 ADMINISTRATOR JONES: Madam Hearing Officer, the

19 motion passes.

20 CHAIRPERSON SUINA: Thank you, Ms. Jones.

21 Appreciate that.

22 With that, let's keep moving here to N, O, R and
23 S, that we had just talked about -- or referenced briefly.

24 And so, NMED has -- just double-checking here -- correct

25 me if I'm wrong, N, M, O.

1 BOARD MEMBER HONKER: Just a point of
2 clarification; so we're going to table consideration of
3 the CEP and Oxy for the proposed definitions -- their
4 proposed N, O, R and S, until we take up the Sections 123
5 and 127?

6 CHAIRPERSON SUINA: Yes.

7 BOARD MEMBER HONKER: That sounds good.

8 CHAIRPERSON SUINA: Is that okay with everybody?
9 Okay. I'm seeing thumbs up. Great.

10 I got myself mixed up here. So we're on page --
11 where are we now? So then do we go to P since N, O are --

12 MS. SOLORIA: Madam Chair, we would be on page 16
13 of the attachment, and it would still be N.

14 CHAIRPERSON SUINA: Okay.

15 MS. SOLORIA: Yes.

16 CHAIRPERSON SUINA: Got you, got you. Okay.
17 I've got two "Ns" over here. Thank you so much.

18 So we look at N, "Enclosed combustion device; O,
19 Existing; P, Gathering and boosting station; Q, Glycol
20 dehydrator," and as no -- as just NMED's position on R, it
21 looks like it's again back to Sections 123 and 127. So I
22 just want to look to members of the Board, how do you --
23 how do you want to capture those? And then "S,
24 Hydrocarbon liquid" does not have any -- it's just NMED's
25 position. T, U, V, W. I should be clear; U -- let me go

1 back here.

2 So we have "S, Hydrocarbon liquid; T, Inactive
3 well site; U, Injection well site; V, Intermittent
4 pneumatic controller; W, Liquid unloading; X, Liquid
5 transfer; Y, Local distribution company custody transfer
6 station; Z, Low-bleed pneumatic controller; AA, Natural
7 gas-fired heater; BB, Natural gas processing plant; CC,
8 New; DD, Non-emitting controller."

9 And then we have new sections here: EE. So, I
10 guess I'm just going forward as we're going through this,
11 we see a spectrum of, you know, where NMED doesn't -- it's
12 only NMED's position, but there's a couple where we have
13 some -- we can take care of down the road later on, when
14 we get to Sections 123 and 127. How would you guys -- how
15 would the Board like to assist?

16 Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Let me see if I
18 understand correctly. So, right above hydraulic
19 fracturing, W, there's a note there about Sections 123 and
20 127. So I'm assuming this note is for W and X?

21 CHAIRPERSON SUINA: Yes. Madam Hearing Officer,
22 can you --

23 HEARING OFFICER ORTH: Yes, that's correct. What
24 happened was, I am reflecting the proposal as it was
25 presented in the post-hearing submittals. So the CEP and

1 Oxy proposed final proposals. They presented hydraulic
2 fracturing and hydraulic refracturing as W and X. The
3 Board, you know, can choose to use this reference or some
4 other, but I didn't go about relettering things because
5 that's the sort of thing the Department will do based on
6 the -- based on the Board's decisions here. So I didn't
7 reletter things.

8 CHAIRPERSON SUINA: Thank you, Madam Hearing
9 Officer, for the clarification. Does that help Vice-Chair
10 Trujillo? It helped me, so I appreciate the question.

11 VICE-CHAIR TRUJILLO-DAVIS: Yes. So I just want
12 to clarify that we will review W and X, the proposed, when
13 we look at Sections 123 and 127? In addition to, I
14 believe it was the proposed N, O, P -- N, O, R, S, that
15 was also proposed?

16 MS. SOLORIA: Yes.

17 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.

18 CHAIRPERSON SUINA: Is everybody good with that,
19 even though some of these additional items, just to point
20 that out? Okay. I see thumbs up here.

21 So, given that, that clarifies it for me, also
22 visually. Do we want to take out -- there's a number of
23 definitions where it's just NMED's position.

24 Yes, Member Honker.

25 BOARD MEMBER HONKER: Yes. So I will move that

1 we adopt 20.2.50.7 Sections N, O, P, Q, R, S, T, U, V, X,
2 Y, Z, AA, BB, CC and DD as proposed by the Department,
3 with the Department's rationale.

4 CHAIRPERSON SUINA: Thank you, Member Honker.

5 BOARD MEMBER BITZER: I second.

6 CHAIRPERSON SUINA: Thank you, Member Bitzer.

7 Ms. Soloria, before --

8 BOARD MEMBER CATES: Madam Chair, a question on
9 the motion. So in all of the string of letters there, are
10 we omitting some in that series? I wasn't following
11 Member Honker.

12 CHAIRPERSON SUINA: Thank you. Thank you, Member
13 Cates, for that clarification.

14 So it goes back to some of our discussion, even
15 for me, when I visually was looking through this, so we
16 have some sections that were proposed by some other
17 stakeholders like Oxy and CEP, and so those are embedded
18 in this, you know, as we're going down. So, Member Honker
19 just identified those that NMED had -- that the Department
20 has identified.

21 So we're not -- those ones that are going --
22 getting kicked down the can -- down the road, will be
23 associated to Sections 123 and 127.

24 Are we good?

25 BOARD MEMBER CATES: Yeah. Good. Thanks.

1 CHAIRPERSON SUINA: Thank you, Member Cates, for
2 that.

3 So, with that, Ms. Soloria, I know that there is
4 a little bit of confusion here. Does that motion seem
5 clear?

6 MS. SOLORIA: Yes, that's fine. And I think this
7 point has been made, but just because you're tabling it
8 doesn't foreclose you adopting those definitions. And
9 then the renumbering will take place administratively, you
10 don't have to worry about it separately. That's not a
11 concern of yours. If you adopt the definitions later,
12 then they will be added.

13 CHAIRPERSON SUINA: And thank you for that point,
14 Ms. Soloria. And I think I had heard or read somewhere
15 that because of the renumbering, at some point through
16 this deliberation, we'll have to give, I guess, approval
17 or make a decision that the NMED -- the Department can
18 reformat this.

19 MS. SOLORIA: We'll do that in an abundance of
20 caution. I'll make sure that we have reordered it
21 numerically as appropriate. When you file a rule, if
22 there are minor numbering changes that need to be made,
23 they can be made by the state records, but we will be sure
24 to make sure that that's all on record, so that's clear.

25 CHAIRPERSON SUINA: Okay. That's great. That's

1 great. So, with that, we have Member Honker's motion and
2 a second. Is there any other discussion?

3 If not, Ms. Jones, would you mind doing a
4 roll-call vote?

5 ADMINISTRATOR JONES: Yes, ma'am.

6 Member Bitzer, how do you vote?

7 BOARD MEMBER BITZER: I vote yes.

8 ADMINISTRATOR JONES: Member Cates?

9 BOARD MEMBER CATES: Yes.

10 ADMINISTRATOR JONES: Member Duval?

11 BOARD MEMBER DUVAL: Aye. Yes.

12 ADMINISTRATOR JONES: Member Garcia?

13 BOARD MEMBER GARCIA: Yes.

14 ADMINISTRATOR JONES: Member Honker?

15 BOARD MEMBER HONKER: Yes.

16 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 ADMINISTRATOR JONES: Chair Suina?

19 CHAIRPERSON SUINA: Yes.

20 ADMINISTRATOR JONES: Madam Chair, the motion

21 passes.

22 CHAIRPERSON SUINA: Thank you very much. Let's
23 jump and keep -- we're moving forward fast here now -- at
24 least a little faster.

25 So we're on EE, "Occupied area" means the

1 following. So we have NMED's position and then we have
2 NMOGA's proposed changes to item 4. So we have EE (1,) EE
3 (2,) EE (3) and EE (4). It looks like NMOGA does not have
4 any changes to 1 through 3, but does have comment
5 regarding 4. And again --

6 BOARD MEMBER CATES: Chair Suina, a quick
7 question here. I don't have my copy so I can see it
8 better, but I don't see page numbers up there. What page
9 are we looking at then?

10 CHAIRPERSON SUINA: Yes, so that will be 21.

11 HEARING OFFICER ORTH: That will be 21.

12 BOARD MEMBER CATES: Thank you. 21, back to 21.

13 HEARING OFFICER ORTH: Also, Madam Chair, this is
14 Felicia.

15 CHAIRPERSON SUINA: Yes.

16 HEARING OFFICER ORTH: You may want to take this
17 up in connection with Section 116. I think it might be
18 hard to understand the impact of the different options for
19 the definition without looking at the significance of it
20 in Section 116.

21 CHAIRPERSON SUINA: Okay. Thank you for pointing
22 that out, Madam Hearing Officer. With that, I'm looking
23 at 116, just so I can make sure I'm not missing anything
24 here. Right there. Okay. So we do have the equipment
25 leaks and fugitive emissions. So, with that, members of

1 the Board, would it be -- have any meaning as to, are you
2 okay with us taking EE up during consideration of Section
3 116?

4 Great. Great. So we'll take EE up during that
5 discussion of Section 116. I'm going to note that here.

6 Okay. All right. So we're on FF, GG. And it's
7 just NMED's position, and then on it looks like HH, we
8 have IPANM offering definition of ozone precursor. Okay.
9 So could we just go through FF and GG? It looks like only
10 one position.

11 Yes, Member Garcia?

12 Oh, we can't hear you.

13 BOARD MEMBER GARCIA: Oh. Sometimes I have to
14 hit it twice. Okay. I would make a motion to adopt
15 20. 2.50.7 -- gosh, where were we? Was it FF?

16 CHAIRPERSON SUINA: Yes, FF.

17 BOARD MEMBER GARCIA: To adopt FF and GG, for
18 reasons stated by NMED.

19 BOARD MEMBER HONKER: I'll second.

20 CHAIRPERSON SUINA: Thank you, Member Garcia.

21 And a second by Member Honker.

22 Member Bitzer, you have a question?

23 BOARD MEMBER BITZER: Do we also want to include
24 HH, II, JJ, KK?

25 CHAIRPERSON SUINA: Thank you for that, Member

1 Bitzer.

2 BOARD MEMBER BITZER: On that?

3 CHAIRPERSON SUINA: Yeah. What does the Board --
4 so maybe this would be a question for the Hearing Officer.
5 So your notes here, for example, on HH, you're just noting
6 that IPANM offers a different definition of ozone
7 precursor, but it's not necessarily impacting or having
8 the statement for HH; is that correct?

9 HEARING OFFICER ORTH: That's correct. That was
10 the location of their proposal, right, under O. I was
11 trying to alphabetize everything, if you will, for me, to
12 the final proposals. And so that's where IPANM new
13 definition of ozone precursor would occur, but you are
14 right, it's not a comment on HH.

15 CHAIRPERSON SUINA: Thank you so much. And thank
16 you for clarifying that, Member Bitzer.

17 So, with that, Member Garcia, would you maybe
18 extend your -- your motion?

19 BOARD MEMBER GARCIA: Absolutely. Can you hear
20 me? Okay. Thank you. So I would move to adopt 20.2.50.7
21 FF, GG, HH, II and JJ, with reasons proffered by NMED.

22 BOARD MEMBER HONKER: And I'll second that.

23 CHAIRPERSON SUINA: Thank you. If there's any
24 other discussion?

25 If not, Ms. Jones, would you do a roll-call vote?

1 ADMINISTRATOR JONES: Yes.

2 Member Bitzer, how do you vote?

3 BOARD MEMBER BITZER: I vote yes.

4 ADMINISTRATOR JONES: And Member Cates?

5 BOARD MEMBER CATES: Yes.

6 ADMINISTRATOR JONES: Member Duval?

7 BOARD MEMBER DUVAL: Yes.

8 ADMINISTRATOR JONES: Member Garcia?

9 BOARD MEMBER GARCIA: Yes.

10 ADMINISTRATOR JONES: Member Honker?

11 BOARD MEMBER HONKER: Yes.

12 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

13 VICE-CHAIR TRUJILLO-DAVIS: Yes.

14 ADMINISTRATOR JONES: Chair Suina?

15 CHAIRPERSON SUINA: Yes.

16 ADMINISTRATOR JONES: Madam Chair, the motion
17 passes.

18 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

19 So, much like we had with EE, on the additional
20 definitions, I just don't want to lose out or, you know,
21 miss the proposals or offers of definition like, for
22 example, ozone precursor and -- let's see -- portable
23 stationary source.

24 Madam Hearing Officer, maybe -- maybe you can
25 answer this: is it -- is it best to take those up now?

1 And -- and I know we just voted on some of the ones, like
2 you said, where you had it trying to alphabetize those.

3 HEARING OFFICER ORTH: So I don't believe the
4 definition of ozone precursor would require consideration
5 of another particular section, because it's offered as a
6 clarifying definition and not one that, you know, is tied
7 to a decision you would make in a different section. It's
8 just a new definition -- a definition of ozone precursor.

9 As to the "portable stationary source"
10 definition, what IPANM has done there -- which I tried to
11 note -- was they took an NMED's proposed definition of
12 stationary source and broke off the last sentence, which
13 refers to portable stationary source, and alphabetized it
14 under "P." Again, it's meant as a clarification, not as
15 something that would be driven by a decision in another
16 section. So I think you could handle each of these as a
17 freestanding decision on a definition.

18 CHAIRPERSON SUINA: Okay. Thank you for that.
19 So what is the pleasure of the Board as we go down through
20 here? So I'm at ozone precursor, which would -- which
21 would be between owner and then permanent pond --
22 permanent pit or pond as a new definition.

23 Yes, Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: I think based on
25 Ms. Orth's comments, that it doesn't seem to affect any

1 other section. I think it would be okay to take up this
2 particular definition for consideration and then continue
3 on with the definitions.

4 CHAIRPERSON SUINA: Thank you, Vice-Chair
5 Trujillo-Davis.

6 Any other Board members? Yes, Member Garcia?

7 BOARD MEMBER GARCIA: Yes, thank you. I agree we
8 can -- we can look at this now. In regard to the
9 definition of ozone precursor, I would be concerned about
10 limiting the definition to those two items. I mean,
11 science is always changing, I wouldn't want to -- I don't
12 know if it's necessary to identify that.

13 CHAIRPERSON SUINA: Thank you, Member Garcia.
14 Yes, Member Trujillo Davis?

15 VICE-CHAIR TRUJILLO-DAVIS: I -- I'm going to
16 take a little bit of an opposing position here. I think
17 that it would be okay to adopt this particular definition
18 for a couple of reasons: one, because the term "ozone
19 precursor" is the name of the rule. And I just -- I felt
20 like, you know, having that definition there is
21 beneficial. Also, because the rule is consistent in
22 identifying nitrogen oxides and VOCs as the ozone
23 precursor is defined in the rule. So I feel like it is
24 also consistent with the message of the rule.

25 And I also think this goes back to the Section

1 20.2.50.6, where we saw that request for this language in
2 the term full benefit, but I think that this is a better
3 addition than that term that we did not adopt. So, those
4 are my comments on it.

5 CHAIRPERSON SUINA: Thank you, Vice-Chair
6 Trujillo-Davis.

7 Yes, Member Cates?

8 BOARD MEMBER CATES: Yeah, I thank those comments
9 coming from both of you. I guess, I would echo what
10 Member Garcia said, science is always changing, you know,
11 does that mean that ozone precursors will ever have
12 anything other than NOx and VOX blocking them? I don't
13 know, but if we adopt this language, then it's
14 strengthening, then it has a restrictive quality to it,
15 and that seems unnecessary. That's my two cents.

16 CHAIRPERSON SUINA: Thank you, Member Cates.
17 Appreciate that.

18 Any other Board members? Yes, Member Duval.

19 BOARD MEMBER DUVAL: Sorry, I was on mute. I'm a
20 little -- I'm really fuzzy on -- well, this is very fuzzy
21 in GG, the "optical gas imaging." It's not at all clear.
22 I mean, these are very well -- there are very
23 well-established techniques to measure this. And a
24 high-sensitivity infrared camera is not -- is -- that's
25 nothing that I am familiar with. I'm wondering where they

1 came up with that language and what specific
2 instrumentation. I don't like that language at all.

3 I think that something along the lines of
4 state-of-the-art infrared gas analysis -- I mean I could
5 definitely help draft some language there, but that -- I
6 mean, this is not -- I would need to -- I definitely am --
7 I'm inherently skeptical when I see vague methodology when
8 it comes to something like this. I am not comfortable
9 with that language at all.

10 I mean, I can -- if anyone can speak to that and
11 tell me what they're using or what the proposed
12 methodology would be, I'm happy to be corrected. I just
13 want clarification on that. I mean, is there going to be
14 a standard that's used to monitor these things? I mean,
15 that's just -- it's just incredibly vague for measuring
16 something that is -- needs to be inherently precise.

17 CHAIRPERSON SUINA: And Member Duval, can I just
18 make a point of clarification?

19 BOARD MEMBER DUVAL: Yes.

20 CHAIRPERSON SUINA: Which -- I know we're on
21 here -- the Hearing Officer has the GG section on there.

22 BOARD MEMBER DUVAL: Yeah. Yeah, that's what I'm
23 looking at right now.

24 CHAIRPERSON SUINA: Okay. Please correct me if
25 I'm wrong, Ms. Soloria, we've already voted on that

1 section, have we not?

2 MS. SOLORIA: That's correct, that was grouped
3 together.

4 BOARD MEMBER DUVAL: Okay.

5 MS. SOLORIA: With HH and II and JJ.

6 BOARD MEMBER DUVAL: Apologies. I'm skimming
7 back through.

8 CHAIRPERSON SUINA: No worries. No worries.

9 BOARD MEMBER HONKER: But if I could offer a
10 quick clarification?

11 BOARD MEMBER DUVAL: I would like to add to the
12 record that I feel like there needs to be a point of
13 clarification to the methodology, that, this is
14 incredibly vague for something that needs to be very
15 precise. I think this is a really small -- I -- I should
16 have looked at that section a little more carefully before
17 I voted, because I probably would have voted no on that
18 specific section.

19 BOARD MEMBER HONKER: Well, just in response to
20 Member Duval, I think the reference there,
21 high-sensitivity infrared camera, that is the field
22 instrument that's used in the process of -- it's a flare
23 camera that has a couple of other names, but that's the
24 common field instrument that's used for leak detection of
25 volatiles from piping and pumps and that sort of thing.

1 CHAIRPERSON SUINA: Thank you.

2 VICE-CHAIR TRUJILLO-DAVIS: And I'll second
3 Member Honker on that, that is correct.

4 BOARD MEMBER DUVAL: Okay. Yeah. Well, that
5 would definitely -- speaking with putting my other hat on
6 as an academic scientist, that would not pass muster in
7 any sort of peer-reviewed situation. Yeah, I'm -- I want
8 to be on record as saying that I'm uncomfortable with that
9 language, but I already voted yes, so I guess I have
10 adjourned that, so...

11 CHAIRPERSON SUINA: Thank you, Member Duval.
12 And, and of course, your comments are memorialized in the
13 record so -- in the written record now via the court
14 reporter. So I think that's a good point that you made.

15 We are -- we're just a little bit further down on
16 that and on line number -- what is that? It's fuzzy on
17 mine -- on IPANM section about the ozone precursor. I
18 apologize, I lost track of -- did a member have their hand
19 up regarding the ozone precursor?

20 Okay. And so, was this one that just -- maybe I
21 can also share is, I think it goes to, you know, the rules
22 and regulations of, you know, being so constricted, that
23 we don't have the Department moving forward, and us as a
24 Board, and just the regulatory departments, we could set a
25 precedent for really boxing in as technology comes about,

1 and new impacts or new constituents may be identified into
2 the future. And I just know that from my experience
3 working up at the laboratory, and looking at different
4 constituents and -- constituents that we didn't think
5 about before, saying the -- or at the laboratory, or any
6 industry saying, the eighties now are tracking those
7 constituents, or having to meet certain regulatory
8 requirements regarding those constituents. So that's just
9 my two cents is, I would hesitate to want to block it in
10 to only nitrogen oxide or VOCs.

11 And with that, I don't know if we want to discuss
12 a little bit more? Yes, Member Honker?

13 BOARD MEMBER HONKER: Well, since this was not a
14 definition included by the petitioner, I guess a question
15 for Counsel, could we just take no action on this and,
16 therefore, we wouldn't be approving it? I mean, I don't
17 know that we have to do an up-or-down vote on this if --
18 if we don't do anything, it seems like it won't be in
19 there. So it's just a procedural question on that.

20 MS. SOLORIA: Yeah, that's what I've been mulling
21 as you-all have continued your colloquy.

22 I am trying to remember -- Madam Hearing Officer,
23 was this just a freestanding definition proposal? I know
24 you mentioned that this wasn't tied to a section.

25 HEARING OFFICER ORTH: No, Ms. Soloria, in

1 IPANM's post-hearing submittal, I did not see it tied to
2 any section. And if I say there that they offered it as a
3 nonsubstantive clarification, I would have gotten that
4 language from their own submittal.

5 MS. SOLORIA: Thank you. My -- my position is
6 that, in an abundance of caution there should be --
7 because it was proposed, there should be something on
8 record that the Board declined to take up that proposal.
9 And the rationale offer would be that -- that the Board
10 found that the clarification was not necessary, because it
11 appears that they only offered it as a "nonsubstantive"
12 clarification and the Board has seen that that
13 clarification is not warranted.

14 CHAIRPERSON SUINA: Yes, Member Bitzer?

15 BOARD MEMBER BITZER: I would move that we go
16 ahead and affirmatively reject the offered definition of
17 ozone precursor for the reasons we've discussed, and
18 because the Environmental Protection Agency already has
19 described this -- described what ozone precursors are.

20 BOARD MEMBER CATES: I second.

21 CHAIRPERSON SUINA: Ms. Soloria, just making sure
22 our motion is -- again, abundance of caution, for the
23 statement of reasons, is that sufficient?

24 MS. SOLORIA: I think that's sufficient, Madam
25 Chair.

1 CHAIRPERSON SUINA: Thank you.

2 Thank you, Member Bitzer and your second, Member
3 Cates. Is there any further discussion on this?

4 Yes, Vice-Chair Trujillo-Davis?

5 VICE-CHAIR TRUJILLO-DAVIS: Given that it is a
6 nonsubstantive clarification, I'm comfortable with that
7 train of thought of rejecting it.

8 CHAIRPERSON SUINA: Thank you, Vice-Chair
9 Trujillo-Davis.

10 With that, Ms. Jones, would you mind doing a
11 roll-call vote on Member Bitzer's motion?

12 ADMINISTRATOR JONES: Yes.

13 Well, Member Bitzer, how do you vote?

14 BOARD MEMBER BITZER: Yes.

15 ADMINISTRATOR JONES: Member Cates?

16 BOARD MEMBER CATES: Yes.

17 ADMINISTRATOR JONES: Member Duval?

18 Member Duval, how do you vote on this motion?

19 We'll circle back.

20 Member Garcia?

21 BOARD MEMBER GARCIA: Yes.

22 ADMINISTRATOR JONES: Member Honker?

23 BOARD MEMBER HONKER: Yes.

24 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Yes.

1 ADMINISTRATOR JONES: Member Duval?

2 BOARD MEMBER DUVAL: Apologies. I had the thing
3 zoomed in and wasn't -- didn't see my icon for the unmute.
4 Yes.

5 ADMINISTRATOR JONES: Awesome.
6 And Chair Suina?

7 CHAIRPERSON SUINA: Yes.

8 ADMINISTRATOR JONES: Madam Chair, the motion
9 passes.

10 CHAIRPERSON SUINA: Great. Thank you, Ms. Jones.

11 And with that, I got lost in our discussion
12 earlier, but I see that we're at 12:15 -- 12:17. Just
13 want to look at the Board and see if you want to take a
14 lunch break any time soon? Do you want to go through a
15 few more? What's the pleasure of the Board?

16 Yes, Member Garcia?

17 BOARD MEMBER GARCIA: Yes, I'm fine with taking a
18 lunch break now. I see that it looks like L -- or,
19 rather, where are we? KK.

20 BOARD MEMBER HONKER: Yes, I'm just going to ask,
21 I can't remember which one was the last one we approved?

22 BOARD MEMBER GARCIA: KK would be the next that
23 we need to address; however, we have an offer of a
24 definition of a portable stationary source. After that,
25 we hit "potential to emit," which is very contested, so,

1 that -- we definitely don't want to start that right now.

2 So I'm fine with either addressing KK and then taking a
3 break now or taking a break now. I'm fine either way.

4 CHAIRPERSON SUINA: Yes, Member Duval?

5 BOARD MEMBER DUVAL: So two -- two points: for
6 one, I have all of the documentation but I am -- I can't
7 find this specific. I'm like straining my eyes to look at
8 the screen. I know I have it all in my email, I have it
9 all pulled up. I am not certain which -- it would be
10 much -- I have two screens, it would be really good. Like
11 what exact document is this that Ms. Jones has pulled up?
12 I can't tell.

13 CHAIRPERSON SUINA: Yeah, this is the Hearing
14 Officer's report.

15 BOARD MEMBER DUVAL: Okay.

16 CHAIRPERSON SUINA: That we got hard copies of.

17 BOARD MEMBER DUVAL: Yeah. Okay. Because, like,
18 I have 18 copies of everything. And I mean, I can see it
19 on the screen, but it's very tiny text, and it's kind of
20 straining my eyes. Okay. That's very -- that's very
21 useful. The other thing is --

22 BOARD MEMBER GARCIA: I can only -- I can only
23 read it on the hard copy. I cannot read that screen, it's
24 too small.

25 BOARD MEMBER DUVAL: Yeah. And then the other

1 thing that I also suggest that we take a lunch break, but
2 I have an absolute hard deadline at 4 -- or a meeting at
3 4:00 that I cannot miss. We have -- we're interviewing
4 job candidates. I absolutely cannot miss that. So I am
5 going to be -- if this deliberation goes beyond that, I
6 will be checking out at 4, so I apologize for that.

7 CHAIRPERSON SUINA: Thank you, Member Duval.

8 BOARD MEMBER DUVAL: As typical, I'm triple
9 booked, so...

10 CHAIRPERSON SUINA: Thank you, Member Duval. And
11 with that, before we take our lunch break, I just wanted
12 to, one, just reiterate -- or just for all the members
13 here today, Ms. Soloria, we still could move forward, for
14 example, if a member was not able and he or she can come
15 back in; is that correct?

16 MS. SOLORIA: That's correct. At all times that
17 there is discussion, there has to be a quorum, which we
18 would have absent Member Duval, so we can continue in his
19 absence.

20 BOARD MEMBER DUVAL: Yeah. And to at that
21 point -- and I mentioned this -- or I sent on email to
22 Chair Suina, that tomorrow morning is going to be
23 problematic. And then I also have a meeting in the
24 afternoon that I cannot skip, so I don't know if these
25 proceedings are being recorded. Potentially, I could

1 revisit that, and that would help any sort of further
2 discussion. But I mean, I will be -- I mean, I canceled
3 class this afternoon. I'm making as much time as I
4 possibly can.

5 CHAIRPERSON SUINA: Thank you for that, Member
6 Duval. Appreciate all of your juggling on your schedule
7 as well.

8 And -- and so, I mean, with that, I think it is
9 my understanding, once we make the decision as a quorum,
10 is on the meeting, then -- but Member Duval will be able
11 to see the transcripts; is that correct?

12 HEARING OFFICER ORTH: Madam Chair, a transcript
13 is being made, but also we're recording it. And I'm happy
14 to upload all of the recordings into a Dropbox folder and
15 send the link to all of you, so you'll be able to see the
16 recordings each night, if you'd like. I didn't realize
17 that folks were straining to see the type, so I'm
18 wondering if this is better if I sort of zoom it out like
19 that.

20 BOARD MEMBER DUVAL: This is much better. This
21 is much better. Thank you.

22 HEARING OFFICER ORTH: Okay. Sure.

23 CHAIRPERSON SUINA: Thank you, Madam Hearing
24 Officer. Appreciate that. And yes, I was going to
25 suggest just we do one page at a time so we can see what

1 we're looking at and making sure we're all on the same
2 page, literally.

3 With that, though, I was wondering, you know,
4 since we're going to be getting into potential to emit,
5 and we have two items or one definitely, do you think we
6 could at least do that before lunch, have -- get that out
7 of the way so that we're not having to discuss that? What
8 do you guys think? Okay. Great. Great.

9 So we have -- we ended with JJ, and then we do
10 have KK, which has just the NMED's position. Is there --
11 could I have a motion on that one, and please correct me
12 if I'm wrong or seeing something different.

13 Yes, Member Honker?

14 BOARD MEMBER HONKER: Yes, I will move we adopt
15 section KK as proposed by the Department, with the
16 Department's rationale.

17 BOARD MEMBER DUVAL: I second.

18 CHAIRPERSON SUINA: Thank you, Member Honker, and
19 Member Duval for your second. With that, I don't see any
20 discussion. Ms. Jones, could you do a vote on that?

21 ADMINISTRATOR JONES: Yes, ma'am.

22 On Section KK, Member Bitzer, how do you vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: Member Cates?

25 BOARD MEMBER CATES: Yes.

1 ADMINISTRATOR JONES: Member Duval?

2 BOARD MEMBER DUVAL: Yes.

3 ADMINISTRATOR JONES: Member Garcia?

4 BOARD MEMBER GARCIA: Yes.

5 ADMINISTRATOR JONES: Member Honker?

6 BOARD MEMBER HONKER: Yes.

7 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: Yes.

9 ADMINISTRATOR JONES: Chair Suina?

10 CHAIRPERSON SUINA: Yes.

11 ADMINISTRATOR JONES: The motion passes.

12 CHAIRPERSON SUINA: Thank you for that. Then,
13 really quick, here again, we have the portable stationary
14 source. Is this -- Madam Hearing Officer, is this
15 slightly different than the ozone precursor, in that the
16 ozone precursor, it said the language of -- basically, it
17 didn't have substantive issues with that? For the rest,
18 is this similar, along the same lines?

19 HEARING OFFICER ORTH: Yes, Madam Chair. And if
20 I were to scroll -- I don't want to make anyone dizzy; if
21 I were to scroll to NMED's definition of stationary
22 source, you would see that the final sentence in their
23 definition is this sentence: "Portable stationary source
24 means a source that can be relocated," et cetera. If I
25 can find it really fast, I can show it to you.

1 CHAIRPERSON SUINA: Thank you, Madam Hearing
2 Officer.

3 HEARING OFFICER ORTH: Close your eyes if you are
4 going to be triggered by this. Let's see here. Well,
5 here, we're getting close. Stationary source, right
6 there. YY, you see the final sentence there: "Portable
7 stationary source means a source that can be relocated."

8 And IPANM's proposal is just to break out that
9 last sentence.

10 CHAIRPERSON SUINA: Awesome. Thank you, Madam
11 Hearing Officer. And I thought I heard a Board member.

12 BOARD MEMBER CATES: Well, I was going -- I was
13 just going to say that the proposed change is superfluous
14 at best, so I would not be inclined to adopt it.

15 MADAM HEARING OFFICER: Thank you, Member Cates.
16 And then I think I also saw Member Honker.

17 BOARD MEMBER HONKER: I agree with Member Cates.
18 But we could just take this up when we get to YY.

19 CHAIRPERSON SUINA: Yes, Member Garcia?

20 BOARD MEMBER GARCIA: Yeah, I agree it's
21 unnecessary. Looking at YY, it already -- it already
22 covers it. It seems completely unnecessary. I don't
23 think YY is ambiguous at all, so I'm not even sure why
24 they want to do it. I'd be happy to make a motion if
25 we're ready.

1 CHAIRPERSON SUINA: Sure.

2 BOARD MEMBER GARCIA: Okay. I would move that we
3 reject the proposal by IPANM to include a definition for
4 portable stationary source.

5 BOARD MEMBER CATES: Second.

6 BOARD MEMBER GARCIA: I didn't say, for the
7 reasons stated. Thank you.

8 BOARD MEMBER CATES: Second again.

9 CHAIRPERSON SUINA: We need a clarification on
10 the reasons, right?

11 MS. SOLORIA: Member Garcia, if you want to amend
12 your motion, that clarification is unnecessary.

13 BOARD MEMBER GARCIA: So I would -- I would move
14 to reject the proposal by IPANM for a new definition of
15 portable stationary source due to the fact that it is
16 unnecessary to include that new definition. It's already
17 clear in YY.

18 CHAIRPERSON SUINA: Thank you, Member Garcia. Is
19 there a second?

20 BOARD MEMBER HONKER: I will second.

21 CHAIRPERSON SUINA: Thank you, Member Honker. Is
22 there any other discussion?

23 If not, Ms. Jones, would you mind doing a
24 roll-call vote?

25 ADMINISTRATOR JONES: Yes. Member Bitzer, how do

1 you vote?

2 BOARD MEMBER BITZER: Yes.

3 ADMINISTRATOR JONES: Member Cates?

4 BOARD MEMBER CATES: Yes.

5 ADMINISTRATOR JONES: Member Duval?

6 BOARD MEMBER DUVAL: Yes.

7 ADMINISTRATOR JONES: Member Garcia?

8 BOARD MEMBER GARCIA: Yes.

9 ADMINISTRATOR JONES: Member Honker?

10 BOARD MEMBER HONKER: Yes.

11 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

12 VICE-CHAIR TRUJILLO-DAVIS: Yes.

13 ADMINISTRATOR JONES: Chair Suina?

14 CHAIRPERSON SUINA: Yes.

15 ADMINISTRATOR JONES: Madam Chair, the motion

16 passes.

17 CHAIRPERSON SUINA: Thank you, Ms. Jones.

18 All right. So we're right here at potential to

19 emit, and a good stopping point for lunch. And I just

20 look to the members on what you think in terms of lunch

21 break: Half an hour, hour? I'm open. Yes, Member Duval?

22 BOARD MEMBER DUVAL: One hour.

23 CHAIRPERSON SUINA: One hour?

24 BOARD MEMBER DUVAL: (Nodding head.)

25 CHAIRPERSON SUINA: What about you, Vice-Chair

1 Trujillo-Davis?

2 VICE-CHAIR TRUJILLO-DAVIS: I was going to
3 propose a half hour. We've got a lot of stuff to get
4 through in two days, so that was just my suggestion.

5 CHAIRPERSON SUINA: Sure. Anybody else, any
6 other members have any input?

7 BOARD MEMBER CATES: Let's split the difference
8 and say 45 minutes. I've got to walk my dog here, it will
9 take me a while.

10 CHAIRPERSON SUINA: Okay. So 45 minutes, does
11 that work? Okay. So we'll see you back at 1:15. Thank
12 you.

13 (Recess taken from 12:31 p.m. to 1:15 p.m.)

14 CHAIRPERSON SUINA: Thank. Okay. Thank you so
15 much, Madam Hearing Officer, Ms. Orth.

16 HEARING OFFICER ORTH: Madam Chair, for those
17 following along at home in the hard copy we are in the
18 middle of page 24.

19 CHAIRPERSON SUINA: Thank you, Ms. Orth.

20 Yes. Good afternoon, everybody. We're here for
21 our afternoon portion of today. And I see Member Bitzer,
22 you have a question.

23 BOARD MEMBER BITZER: Madam Chair, I'm a little
24 concerned that at our current pace we're going to spend
25 six to seven days, and there is language because of COVID,

1 these rules were delayed and so forth. I have got a sense
2 of urgency that we need to get this done in two to three
3 days, and not take it to a further date hearing. So I
4 know we talked about this earlier, but I have a
5 contingency scenario I'd like to propose, and that is we
6 go back and revisit the idea of a blanket endorsement for
7 the Department's position, its proposal in these areas
8 where it's uncontested, with the proviso, with the caveat,
9 that any one of us can come back over the next remainder
10 of the hearing and move to reconsider that should there be
11 some problem with going ahead and doing that for the
12 reasons stated -- for the reasons that the Department has
13 proposed.

14 I know there is some concern about that, but it
15 will give us time between our days and downtime during our
16 days to further review the things that were -- that I'm
17 proposing that we -- we endorse by acclimation, since
18 there's no opposition. And I don't know it's going to
19 peel three days off of our hearing, but it will make a
20 dent. So that's -- that's my suggestion.

21 CHAIRPERSON SUINA: Thank you for that, Member
22 Bitzer. And I -- and I -- once we did see the Hearing
23 Officer's report, there was some discussion with legal
24 counsel and the support staff of the logistics of how we
25 go through this.

1 So with that, Ms. Soloria, I just would want to
2 make sure you've got an opportunity to chime in on, you
3 know, how the logistics of, you know, all of these items
4 that are uncontested, or where there is consensus. I know
5 it's rather difficult because we do have to give statement
6 of reasons from my understanding, but I just want to hear
7 your thoughts on Member Bitzer's question.

8 MS. SOLORIA: Okay. A few things. First of all,
9 so there wasn't a previous discussion about doing a
10 blanket approval. There was a previous discussion about
11 whether or not a voice vote would be required, and I had
12 offered the advice that it's advisable because of the
13 virtual format.

14 The way I see it, you know, I'm all for saving
15 time, but I'm not for cutting corners. So I think -- I
16 think we've managed so far, in terms of grouping sections
17 that we can see on the face are uncontested, and you've
18 taken that all up in one group vote, which has saved some
19 time. My concern, you know, subject to whatever the
20 pleasure of the Board, is that if you do a blanket
21 approval of things that aren't contested and rely on
22 reasons offered by the Department, then you've missed the
23 opportunity to identify other -- other parties' rationale
24 that you would like to include in your statement of
25 reasons. So that's one thing to consider.

1 The second thing to consider is that you are a
2 public body deliberating for the public's observation, so
3 that's something that I would advise you as Counsel, too,
4 you know, whether or not that's the route you want to take
5 in terms of how you handle all of the sections.

6 Yeah, so those are my two thoughts. It's
7 whatever the Board wants to do, as long as the record is
8 clear on what you decide, it's fine by me, but I just
9 wanted to -- oh, the third thing was logistically, if we
10 do a blanket approval that way, like I said, we're not --
11 I'm not sure how we'd -- how we'd go through piece by
12 piece because you're going to have to do that anyway to
13 identify what's contested and what's not, and to consider
14 the opposing positions for each provision. So those are
15 my two cents on that point.

16 CHAIRPERSON SUINA: Thank you, Ms. Soloria. I
17 did see Member Cates' hand up first. Go ahead.

18 BOARD MEMBER CATES: Well, so, first of all,
19 thanks to Counsel there for that input. It doesn't sound
20 like -- it doesn't sound like adamant opposition to the
21 notion, and so I would be in line to support Member
22 Bitzer's line of thinking.

23 CHAIRPERSON SUINA: Thank you, Member Cates.
24 Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Again, thank you

1 Ms. Soloria for your thoughts on that. I think we've
2 already kind of seen an example -- Member Duval brought up
3 an issue that was in a definition that was uncontested,
4 and it did give the Board an option to review that and to
5 have some discussion around it. And also, for consistency
6 purposes, you know, as we're reading through things that
7 are -- even if they're uncontested, it still gives us
8 context for things that are contested. And so, I don't
9 think a blank approval -- I think we might miss a lot of
10 issues in there if we do a blanket approval of uncontested
11 things.

12 CHAIRPERSON SUINA: Thank you, Vice-Chair
13 Trujillo-Davis.

14 Anybody else have anything to chime in, share,
15 add? If -- if I may, I do know that this has been a
16 lengthy morning that we had today, and I think we're -- we
17 hit a good stride there, where we were grouping things and
18 moving through very quickly and -- but even that said,
19 even if we're going to move through quickly and as we
20 started the meeting this morning, you know, to have our
21 calendars up and I think -- I think if we're going to be
22 consistent with how we handled it before this morning, and
23 then moving through, that might be really important
24 because, you know, much like the legal question we talked
25 about earlier, this record will be memorialized and maybe

1 the -- you know, it may go into exhibits and down the
2 line. So just to be, I guess, mindful of that; I know it
3 is a lot, so, you know, we're balancing that.

4 So I think with -- given the system that we're
5 trying to navigate this, I don't know, I kind of lean
6 toward what Vice-Chair Trujillo-Davis mentioned earlier.
7 It's, you know, we should be efficient, but I don't want
8 to also miss anything with a blanket approval. Plus, I
9 want to make sure we have statement of reasons for all of
10 the decisions that we make for all of the clauses. Thank
11 you.

12 Yes, Member Bitzer?

13 BOARD MEMBER BITZER: As an alternative, could I
14 suggest that we go a little late tonight, see where we are
15 by the end of the day?

16 CHAIRPERSON SUINA: I think that's a great
17 suggestion, Member Bitzer, and it's going to -- looking at
18 the other members of the Board, I think we will be having
19 to be flexible.

20 And just remind me, Ms. Soloria, we didn't give a
21 time, did we, just on our notice?

22 MS. SOLORIA: We have 9 to 6 on the notice. We
23 can -- I'm a little leery of going past 6 since that's
24 what's on the notice. And I know we had conversations off
25 line, Chair, about going to another date, which we have

1 more flexibility of going to another date without having
2 additional hours.

3 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

4 Yes, Member Cates?

5 BOARD MEMBER CATES: Chair Suina, could we go
6 back to Member Bitzer's motion? And would you allow us to
7 formulate a motion, to go down that road and just put it
8 to a vote? I mean, it sounds like a couple -- a couple of
9 people are opposed, and so that's -- that's my request, I
10 guess.

11 CHAIRPERSON SUINA: Thank you, Member Cates.

12 And Member Garcia?

13 BOARD MEMBER GARCIA: So I appreciate Member
14 Bitzer and Member Cates thinking about how to make this
15 more efficient. I'm all for that, and I thought about
16 this yesterday, and, of course, thinking about how in the
17 world can we tackle this and make it the most efficient.
18 And I thought about that, and as I see what we're doing
19 today, I think we're doing it about the most efficient way
20 we can. If we were to try to go through and figure out
21 all the sections that are not contested, that would just
22 take as long as the process we're going through now. I
23 don't think it would really shorten it.

24 I mean, that would -- that would take a long
25 time. It would be very confusing, very disjointed, so

1 I -- I'm afraid that we would get ourselves all mixed up,
2 and it's confusing enough as it is. So I'm not -- the
3 more I thought about this yesterday, the more I thought
4 that that wouldn't work so well for us. Thank you.

5 CHAIRPERSON SUINA: Thank you, Member Garcia.

6 Yes, Member Honker?

7 BOARD MEMBER HONKER: Yeah, I might as well weigh
8 in on this, and I think I agree with Member Garcia. I
9 mean, this is a big deal. And I -- I think we need to --
10 as painful as it is, give it the time it needs. And I
11 also -- I would hate for us to take any shortcuts in the
12 interests of expediency, which sounds really good, but I'd
13 hate to do anything that would jeopardize anything about
14 the way we do this. And I think we just need to get the
15 process right. So I think I -- I -- I agree with Member
16 Garcia and the Vice-Chair.

17 CHAIRPERSON SUINA: Thank you.

18 BOARD MEMBER BITZER: Madam Chair, if I could?

19 CHAIRPERSON SUINA: Yes, Member Bitzer?

20 BOARD MEMBER BITZER: I can count, so I withdraw
21 the suggestion.

22 CHAIRPERSON SUINA: Thank you, Member Bitzer. I
23 think it was good for clarification, I really do, so I
24 appreciate you bringing up that discussion point.

25 Yes, Vice-Chair Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: I was also going to
2 thank Member Bitzer. I think having these discussions is
3 good for us to at least explore other avenues, and I
4 really appreciate that our Board has got a lot of good
5 ideas to bring forward. So keep them coming.

6 CHAIRPERSON SUINA: Thank you, Vice-Chair
7 Trujillo-Davis. Appreciate that.

8 So I do just want to do a quick check. Do we
9 want to talk about schedules at the end of the day or now,
10 because Member Duval might not be on the call later on.
11 So I just wanted to do that before we start jumping in.
12 What's -- what's the pleasure of the Board?

13 BOARD MEMBER DUVAL: I have my calendar pulled
14 up, I'm happy to discuss potential dates at this point.

15 CHAIRPERSON SUINA: Great. Great. And I see
16 that Ms. Soloria jumped off.

17 Ms. Jones, do you know, because she's an integral
18 part of this process, do you know if she's going to be
19 jumping back on?

20 ADMINISTRATOR JONES: Yes, she texted me that her
21 office internet has crashed, and she's trying to get back
22 on.

23 CHAIRPERSON SUINA: Well, why don't we just keep
24 moving forward on our schedules and then hopefully when
25 she comes back in, I do know in trying to -- if I recall,

1 organize everything next week, Ms. Soloria is on travel.
2 She might be available Monday, but let's just all look at
3 our schedules and see our schedules and we'll see what can
4 work. So, you know, let's go forward.

5 And I do recall, Ms. Jones, or -- that there's a
6 72-hour notification, isn't there, of public notification?

7 ADMINISTRATOR JONES: Yes. Yes, there is.

8 CHAIRPERSON SUINA: Okay. So just pointing that
9 out in the back of our minds, you know, we're looking.

10 HEARING OFFICER ORTH: Madam Chair?

11 CHAIRPERSON SUINA: Yes.

12 HEARING OFFICER ORTH: I'm sorry, this is
13 Felicia. I thought that Ms. Soloria had indicated that
14 what was required wasn't necessarily a whole new set of
15 notice, but rather that the continuance date be announced
16 before we adjourned Friday. So I think we're probably
17 going to want to have her -- have her back on the platform
18 before any more of that discussion occurs.

19 CHAIRPERSON SUINA: Okay. Thank you. Yeah,
20 there was some updates last minute, early this morning --

21 HEARING OFFICER ORTH: Oh, okay.

22 CHAIRPERSON SUINA: -- on some of those legal
23 positions. And just, again, in terms of making sure we
24 dot all the I's and cross all the T's on such an important
25 rulemaking process. Well, all of the rules are important,

1 but one that's this complicated. So let me -- let's wait
2 a minute here.

3 Ms. Jones, you said maybe a few more minutes?

4 ADMINISTRATOR JONES: Oh, she's on by phone. I
5 think she might have gone into as an -- as an attendee.
6 We have three call-in numbers.

7 Counsel Soloria?

8 HEARING OFFICER ORTH: Let me unmute them and see
9 which one it is. Hello, Caller 4, can you hear me?
10 Caller 4? That may not be working. I'm requesting that
11 they unmute. I've unmuted them. Let me try Caller 13.
12 Request unmute. Unmute. Caller 13, can you hear me? No?

13 Hello, this is Felicia.

14 MS. SOLORIA: Hi. I apologize, I am in my office
15 and we have apparently lost internet.

16 HEARING OFFICER ORTH: I'm glad you're with us.

17 MS. SOLORIA: I appreciate everyone's patience on
18 that. I'll try to contact IT some other way, but I can
19 hear everyone and I am on the platform this way.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria. We
21 were just discussing our schedules, since Member Duval
22 might not be on the meeting later on today. We were
23 talking about maybe needing some extra days or a day on
24 this process. Given our notice constraints of public
25 notice, would you mind sharing the latest with the Board

1 of maybe your thoughts on extra days?

2 MS. SOLORIA: Certainly. So, as a matter of
3 background, the Open Meetings Act allows the Board to
4 continue this meeting or any meeting if -- if more time is
5 needed, so long as the date that you will be reconvening
6 is announced at the close of the notice date. So, in this
7 case, if we were to wrap at 6 p.m., on Friday, we can have
8 the next deliberation date any time thereafter, so long as
9 we announce when that's going to be at 6 p.m. on Friday.

10 I know there was previous discussion possibly of
11 going to Saturday. I think there are -- while that would
12 be technically permissible under the Open Meetings Act, I
13 think there are issues with, one, it being a Saturday,
14 and, two, to the extent that the parties were not noticed
15 about that. And I know -- I know that some parties have
16 already noted that they would be unable to attend on
17 Saturday. And that's an issue given, you know, the work
18 that's been put into the rule and the public interests
19 this particular rule has drawn.

20 So I guess the summation is that the Board can
21 certainly pick another day to continue their
22 deliberations, but we would have to announce that at the
23 close of the deliberations on Friday, that we're
24 reconvening; we would state the date, and how we're
25 reconvening. And, hopefully, I think that you should pick

1 a date that's -- you know, at least gives the public three
2 or four days' notice, that we're reconvening so that
3 parties and the public have an opportunity to observe as
4 they see fit.

5 So, that's the latest and kind of what your
6 constraints are.

7 CHAIRPERSON SUINA: Yes, Member Bitzer.

8 BOARD MEMBER BITZER: I'll argue the like
9 counterpoint on this, because I think we heard from the
10 Hearing Officer earlier that -- or was it staff, was it
11 Pam that said we were going to post all of this in a
12 Dropbox, so it would be reviewable for those who can't
13 make Saturday or need more than two or three days -- or
14 need the two or three day's notice.

15 I'm just concerned that we're going to start
16 kicking the can so far down, that we're going to be
17 dwelling on this when we should be getting on to mobile
18 point sources.

19 CHAIRPERSON SUINA: Sure. So, are you saying,
20 Member Bitzer, that we -- we shouldn't identify new dates
21 or we should? I'm sorry if I...

22 BOARD MEMBER BITZER: I was -- I was arguing that
23 we should feel free to roll into Saturday, for starters,
24 if we can get a quorum. We need four, and then three of
25 those four have to agree in order to be -- if I heard the

1 rule correctly -- for us to continue to do business, but
2 we seem to have no problem reaching consensus on each
3 point, so I'm not concerned about us not having all seven.

4 And then, you know, Saturday makes great sense to
5 me. We've already talked about it, so we've already been
6 put on some degree of notice. I know not everybody may be
7 able to make it, but if five of us could make it, that
8 would be terrific in my mind. And then, I'd say pick up
9 on Monday. We've got to rock'n'roll at some point. This
10 is -- this is, you know, we're way behind where I think
11 the governor would expect us to be.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer. Is
13 there any comment to that?

14 MS. SOLORIA: Well, I would just mention that I'm
15 not available next week beginning, really, Sunday. So
16 I'll just mention that as a point of scheduling. And I
17 know that there were potentially other members with
18 conflicts for the next two weeks beginning the 14th, but I
19 won't -- I won't speak for those members.

20 CHAIRPERSON SUINA: So -- so, Ms. Soloria, just
21 so I'm clear, and I know, you know, out of making sure we
22 do all of the logistics, could we meet on Saturday and
23 then find another date if you're not going to be available
24 next week, since you'll be one of the main authors of one
25 of the major deliverables.

1 MS. SOLORIA: Right. I think, strictly speaking,
2 under OMA, I think that the Board, it can continue its
3 meeting, its deliberation meeting on Saturday. I think
4 that there's going to be some pushback and I think there
5 already has been some pushback from parties who only
6 recently found out the Board was considering extending
7 their deliberations to Saturday. I think those points are
8 well taken since they didn't have prior notice.

9 I think the OMA allows us to do that. I'm just
10 saying that, given the context of this particular rule,
11 the public involvement, the number of parties, that it may
12 be that the Board doesn't want to opt to -- wants to give
13 an additional notice period so that the deliberations are,
14 you know, pushed further out so that people can make an
15 accommodation to attend.

16 And that just -- I'm just mentioning that because
17 you just have to weigh that against Member Bitzer's point
18 about getting this done. And, you know, the Board's own
19 time constraints in getting this done. And I do think his
20 point about the deliberation -- the recording being posted
21 right after each day is a fact that I didn't really
22 appreciate before he mentioned it, so that's something to
23 consider, but it's really the Board preference.

24 I don't -- I don't think that having continuing
25 deliberations is violative of any -- certainly not the

1 Open Meetings Act. I just -- this is just the particular
2 context of this rule, is to really be mindful of notice to
3 the public, openness to the public participation just
4 because it is kind of subject to challenge from a lot of
5 different directions. So that's what I wanted to add.

6 CHAIRPERSON SUINA: Thank you, Ms. Soloria. And
7 members of the Board, do you have any other thoughts? Are
8 you -- so are we -- so are we -- yes, Member Bitzer?

9 BOARD MEMBER BITZER: I'm hearing -- I'm hearing
10 that I think she thinks we're okay with Saturday, and I
11 for one certainly don't want to try to roll without
12 Counsel, because, yeah, she's pivotal. So -- but I think
13 Saturday should be doable, it sounds like, and if we've
14 got four or five who can participate, then we should be
15 good.

16 BOARD MEMBER DUVAL: Yeah, to all of those
17 points, I am reluctant to do it on a Saturday, but this
18 upcoming Saturday would actually work for me. If I need
19 to do it and it's going to help with expedience, but I
20 think that counsel's point should be well taken, that this
21 is -- there's a lot of contentious issues here and we want
22 to make sure that, you know, there's full transparency and
23 that the public is aware, and this doesn't -- this doesn't
24 come off as like a slap-dash effort, which certainly
25 that's not what this is. I mean, this has been going on

1 for a really long time, but I personally would be -- I
2 could attend on Saturday.

3 MS. SOLORIA: And I'll just -- Chair Suina, I'll
4 just -- the way that Member Duval framed it, just, you
5 know, I guess my position is that having -- continuing the
6 deliberations on Saturday is defensible under OMA, but
7 it's not necessarily -- the Board is not tied to do that
8 considering the context of this rule and the work that's
9 gone into it and the public attention that it has drawn,
10 to not give parties and the public a little bit more time
11 and notice.

12 And I don't think we're tied to the ten days. If
13 you decide not to do Saturday, we're not tied to ten days'
14 notice, but it would give a little bit of a notice period.
15 So you're -- you know, you're fine going on Saturday, but
16 there are just those other considerations that I wanted to
17 offer the Board.

18 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

19 I'm looking to members of the Board, if you have
20 anything. Yes, Member Garcia?

21 BOARD MEMBER GARCIA: It certainly is an
22 advantage to continuing one day after another for our own
23 mental ability to once we get going, I think we do well.
24 So, you know, there's already been a poll about whether
25 we're available on Saturday, and I think we have a quorum

1 unless you correct me if I'm wrong. I think we have a
2 quorum, so it sounds like it's possible to do that.

3 I think that after that, it was going to be
4 difficult to get a quorum, so we might want to grab the
5 day that we have and use it, knowing that there's going to
6 be some folks that can't make it that -- you know, some
7 members of the public and parties that can't make it that
8 day, but I would assume any day we pick, there's going to
9 be folks that can't, you know, join that day. So,
10 luckily, they can see the recorded version.

11 CHAIRPERSON SUINA: Thank you for that, Member
12 Garcia. And I think for me it was the added information
13 that we would have this recorded, and that it would be
14 posted and available for parties as well as the general
15 public, for access -- as well as ourselves, if we want to
16 go back through and watch.

17 But I think Member Bitzer, you pointing that out
18 has been -- makes me feel a little bit more comfortable on
19 transparency, and accessibility to the public, given that
20 we are, you know, in this deliberation amongst the parties
21 that we're discussing right now.

22 So, with that, yes, Member Honker?

23 BOARD MEMBER HONKER: Yeah, I think that's a
24 significant point, and the fact that -- other than those
25 of us who are panelists, everybody else is just in

1 listening mode, and the fact that there's an alternative
2 for folks to catch up if they miss any portion of any day.
3 I am available Saturday, with the exception of, I would
4 have to be unavailable from about 11:15 to 1:15 or so,
5 because of another commitment, but I'm okay with Saturday.
6 It looks like we'd be looking at the week of the 21st
7 or -- yeah, the 21st, if that doesn't work, at the
8 earliest. It would be nice to keep going while we can.

9 CHAIRPERSON SUINA: Thank you, Member Honker.

10 So it looks like we have sort of consensus that
11 we would roll into Saturday. Would that -- if that looks
12 to be a -- and I think we just noticed at the end of the
13 hearing on Friday, is that -- Ms. Soloria, and then my
14 other question is what about the time. I know on the
15 notice date we had 9 to 6, but we don't have a notice time
16 frame on Saturday. Is that flexible if we -- and then,
17 would that be a decision by the Board as to what time we
18 start and end on Saturday?

19 MS. SOLORIA: That would just be up to the Board,
20 Chair, and you would have to announce the start time and
21 how it's taken -- taking place -- I assume via WebEx, at
22 least by the close of -- well, I'll just be sure that we
23 announce it at the close of deliberations on Friday,
24 because that's -- that's the provision in the Open
25 Meetings Act that allows you to do that. You can

1 reconvene, so long as before recessing, you announce when
2 and where you're going to reconvene.

3 MADAM HEARING OFFICER: Thank you, Ms. Soloria.

4 So, is that a plan? We're going into Saturday?
5 I'm personally good with it and I'll make my schedule
6 work. And it looks like we have some Board members that
7 say, yeah, and it looks like we'll have a quorum Saturday.

8 All right. Well, with that -- and knock on wood
9 that we can finish it by Saturday. Great. Okay. So
10 let's -- oh, yes, Ms. Soloria?

11 MS. SOLORIA: I just wanted to mention that my
12 internet is still down, I've been trying to get ahold of
13 IT, so I'm going to keep my self unmuted on the phone, and
14 I will do my best to reduce any background noise.

15 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

16 HEARING OFFICER ORTH: And, Ms. Soloria, I
17 think -- I'm not sure if I make you a panelist -- I'm not
18 sure I can make a call-in user a panelist, but if I try it
19 right now, that might give you the option to mute and
20 unmute, as needed.

21 MS. SOLORIA: You know what? Actually, I'm
22 realizing I can mute my physical desk phone, so I'll do it
23 that way. And hope that works.

24 HEARING OFFICER ORTH: Okay.

25 CHAIRPERSON SUINA: Okay. Sounds good. Thank

1 you, so much. And just jump in if you need to,
2 Ms. Soloria.

3 MS. SOLORIA: Okay. Thank you and thank you for
4 your patience. I apologize for the internet.

5 CHAIRPERSON SUINA: We're learned to be flexible
6 with this internet. So, thank you so much, everybody.

7 VICE-CHAIR TRUJILLO-DAVIS: I'm just thinking --
8 I think it's just a function of the world we're living in
9 right now. Sometimes we just lose internet.

10 CHAIRPERSON SUINA: Absolutely, Vice-Chair.

11 So with that, members, are we ready to jump back
12 in and look at LL and potential to emit, that particular
13 section? And so, what we have -- and then, Madam Hearing
14 Officer, can you put it up on the screen as well, so that
15 folks know what we're looking at here?

16 So it's -- we have NMED, NMOGA, WEG. Let's see,
17 so various proposals -- I'm still scrolling down on
18 mine -- as feedback on this LL, which is potential to
19 emit. Members of the Board, do you have any -- want to
20 just jump in and provide some -- some thoughts on this?

21 Yes, Member Garcia?

22 BOARD MEMBER GARCIA: Madam Chair, just a point
23 of clarification; it looks as though NMOGA agrees with
24 NMED's opposition to WildEarth Guardians' proposal. So
25 they don't have their --

1 CHAIRPERSON SUINA: Go ahead, Member Garcia.

2 BOARD MEMBER GARCIA: So, looking through the
3 record and -- and back through the Exhibit 32, et cetera,
4 I think there's an issue with, there's often -- often an
5 issue with the overlap of whether there's overlap with OCD
6 regulations and air quality regulations regarding oil and
7 gas, and the Department's concern about not wanting to mix
8 those two up and -- and definitely we, you know, if -- it
9 appears that if we were to change this definition, it
10 could -- it could potentially expand the jurisdiction of
11 the Air Quality Bureau, which, you know, I imagine is why
12 NMOGA is opposed to it as well.

13 So -- so I think Mr. Baca's testimony was very
14 clear on this, and I would -- I would support leaving it
15 the way it is, leaving the NMED definition the way it is,
16 and not -- not get confused with making it appear as
17 though it would expand NMED's jurisdiction. Nobody is
18 trying to do that, so...

19 CHAIRPERSON SUINA: Thank you, Member Garcia.
20 Anybody else have any comments on this?

21 Yes, Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: I totally support
23 Member Garcia's thoughts on this particular issue. I
24 agree with her.

25 CHAIRPERSON SUINA: Thank you, Vice-Chair.

1 Yes, Member Cates?

2 BOARD MEMBER CATES: So, yeah, the same here.
3 The Guardians use the phrase "potential to emit --
4 potential to emit," which is really, you know, it's very
5 broad. And then I would note also that in some of the
6 testimony here, the research showing, which Guardian --
7 based some of its assertions, it seems a little wobbly,
8 too, so, yeah, I'm going to agree as well. Thank you.

9 CHAIRPERSON SUINA: Thank you, Member Cates.

10 And Member Honker? Oh, okay. All right.

11 Member Duval?

12 BOARD MEMBER DUVAL: Yeah, I -- I like this
13 language, especially the last sentence, because I think
14 some of these, you know, per my earlier statements about
15 methane and how that might play into other release of
16 gases, like, you know, these -- the nitrogen gases are
17 really reactive in the atmosphere, and so I think I really
18 like this language of potential, because it's based on the
19 total oxides of nitrogen. So I just want to be on record
20 as saying that I think this is clean language. I like it.

21 CHAIRPERSON SUINA: Thank you, Member Duval.

22 Yes, any other comments on this one? If not, I
23 also wanted just to say, you know, just how I looked at
24 this as well. We have, you know, this consensus between
25 the regulated entities and the regulators on how to define

1 PTE, potential to emit, and that that is really -- that
2 consistency, and also, that we have it from, you know,
3 pretty -- with NMED's discussion about this term, and the
4 documentation of the reasons stated, I think also makes it
5 very concise and clear.

6 Oh, great, I see Ms. Soloria. Great. Thank you.

7 MS. SOLORIA: I'm back. Thank you.

8 CHAIRPERSON SUINA: Welcome. Welcome back. All
9 right.

10 And then, also, I think once we start adding
11 language that might not have been incorporated within
12 other rules or regulations, or text, that can also cause
13 other issues of conflict with -- within the same
14 regulation. So I feel pretty comfortable with the
15 recommendation or the Department's definition.

16 So, yes, Member Garcia?

17 BOARD MEMBER GARCIA: So I would move to adopt
18 the definition "potential to emit," LL, for reasons stated
19 by NMED and for reasons stated in Mr. Baca's testimony.

20 CHAIRPERSON SUINA: Thank you.

21 BOARD MEMBER BITZER: I second that.

22 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
23 your second. If there's no other discussion on this,
24 Ms. Jones, would you mind doing a roll-call vote?

25 ADMINISTRATOR JONES: Member Bitzer, how do you

1 vote?

2 BOARD MEMBER BITZER: I vote yes.

3 ADMINISTRATOR JONES: Member Cates?

4 BOARD MEMBER CATES: Yes.

5 ADMINISTRATOR JONES: Member Duval?

6 BOARD MEMBER DUVAL: Yes.

7 ADMINISTRATOR JONES: Member Garcia?

8 BOARD MEMBER GARCIA: Yes.

9 ADMINISTRATOR JONES: Member Honker?

10 Do we have Member Honker?

11 CHAIRPERSON SUINA: Oh, wow, it looks like he
12 fell off the meeting.

13 ADMINISTRATOR JONES: I don't see him in the
14 list. We'll give him a minute to get back on.

15 Vice-Chair Trujillo-Davis?

16 VICE-CHAIR TRUJILLO-DAVIS: Yes.

17 ADMINISTRATOR JONES: Thank you.

18 Chair Suina?

19 CHAIRPERSON SUINA: Yes.

20 ADMINISTRATOR JONES: And let me call Mr. Honker
21 again. He's not on.

22 Madam Chair, the motion passes, with one member
23 missing.

24 CHAIRPERSON SUINA: Thank you, Ms. Jones.

25 Appreciate that. Another internet connectivity challenge

1 here, but thank you for that, Board members. And so that
2 takes us to the new definition from CEP and Oxy,
3 "Pre-production operations," means the drilling through
4 the hydrocarbon bearing zones, hydraulic fracturing or
5 refracturing, drill-out, and flowback of an oil or natural
6 or natural gas well." So there we go.

7 Madam Hearing Officer, is there -- I know in the
8 other new proposed definitions by other stakeholders, you
9 had a note that it was not substantive or?

10 HEARING OFFICER ORTH: No, actually, Madam Chair,
11 in this case, this is another example of a definition
12 associated with CEP and Oxy's proposal in Sections 123
13 and/or 127.

14 CHAIRPERSON SUINA: Thank you for that
15 clarification. So, members of the Board, can we also
16 include this when we take up those particular sections?
17 Great. All right. I'm seeing some head nods here.

18 And next, therefore, we have MM, "Produced
19 water." And that looks like it's a definition provided by
20 NMED, and no other positions. Could we entertain a motion
21 to approve this?

22 BOARD MEMBER BITZER: I move that we approve
23 section MM as is, for the reasons stated by the
24 Department.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer. A

1 second?

2 BOARD MEMBER CATES: Second.

3 CHAIRPERSON SUINA: Thank you, Member Cates.

4 Is there any discussion on this item? If not,
5 Ms. Jones, would you do a roll-call vote for us?

6 ADMINISTRATOR JONES: Yes.

7 Member Bitzer?

8 BOARD MEMBER BITZER: I vote yes.

9 ADMINISTRATOR JONES: Member Cates?

10 BOARD MEMBER CATES: Yes.

11 ADMINISTRATOR JONES: Member Duval?

12 BOARD MEMBER DUVAL: Yes.

13 ADMINISTRATOR JONES: Member Garcia?

14 BOARD MEMBER GARCIA: Yes.

15 ADMINISTRATOR JONES: Member Honker?

16 BOARD MEMBER HONKER: Yes.

17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes.

19 ADMINISTRATOR JONES: Thank you.

20 Chair Suina?

21 CHAIRPERSON SUINA: Yes.

22 ADMINISTRATOR JONES: Madam Hearing Officer, the
23 motion passes.

24 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

25 So next we are on NN, "Produced water management

1 unit." It looks like we have a position by --

2 HEARING OFFICER ORTH: Madam Chair?

3 CHAIRPERSON SUINA: Yes.

4 HEARING OFFICER ORTH: I'm sorry, this is
5 Felicia. I would strongly recommend that you take this up
6 when you take up Section 126.

7 CHAIRPERSON SUINA: Okay. Do I hear any
8 discussion or concurrence on that? Thumbs up, on looking
9 at this for Section 126? Thumbs up on that. It looks
10 like we lost Member Honker again, but we'll keep on
11 moving.

12 BOARD MEMBER HONKER: I'm here. Can you not hear
13 me?

14 CHAIRPERSON SUINA: Oh, sorry, on my screen.
15 Okay. There you are.

16 BOARD MEMBER HONKER: I did have to drop off and
17 switch machines because of technical problem. So did we
18 approve LL, as the Department proposed it?

19 CHAIRPERSON SUINA: Yes.

20 BOARD MEMBER HONKER: Okay. Thanks for catching
21 me up on that.

22 CHAIRPERSON SUINA: You're welcome.

23 And so, we're on -- we're going to push NN to
24 when we discuss subsequent sections.

25 And then, let's see. And looks to have NMED's

1 portion, PP, QQ, all are -- there's no opposing or
2 alternate positions on those ones. Could we entertain a
3 motion for approval on those?

4 BOARD MEMBER BITZER: Madam Chair, I would move
5 that we approve Sections OO, PP and QQ for the reasons
6 proffered by the Department.

7 CHAIRPERSON SUINA: Thank you, Member Bitzer. Is
8 there a second?

9 BOARD MEMBER GARCIA: I second that.

10 CHAIRPERSON SUINA: Thank you, Member Garcia, for
11 your second.

12 With that, is there any further discussion on
13 this one? If there is not, Ms. Jones, could you do a
14 roll-call vote on this?

15 ADMINISTRATOR JONES: Yes.

16 Member Bitzer, how do you vote?

17 BOARD MEMBER BITZER: I vote yes.

18 ADMINISTRATOR JONES: Member Cates?

19 BOARD MEMBER CATES: Yes.

20 ADMINISTRATOR JONES: Member Duval?

21 BOARD MEMBER DUVAL: Aye.

22 ADMINISTRATOR JONES: Member Garcia?

23 BOARD MEMBER GARCIA: Yes.

24 ADMINISTRATOR JONES: Member Honker?

25 Thank you.

1 BOARD MEMBER HONKER: Yes.

2 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes.

4 ADMINISTRATOR JONES: Chair Suina?

5 CHAIRPERSON SUINA: Yes.

6 ADMINISTRATOR JONES: Madam Chair, the motion
7 passes.

8 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

9 And that takes us into RR, "Recycling facility."

10 HEARING OFFICER ORTH: Madam Chair, here's
11 another one that should be taken up with Section 126.

12 CHAIRPERSON SUINA: Thank you so much, Madam
13 Hearing Officer. Is that okay with the Board, if we move
14 that to when we take up Section 126? Okay, I see multiple
15 head nods and thumbs up, so we'll do that for RR.

16 And now we're on SS and TT. Okay. And scrolling
17 down. Those ones that I just mentioned, SS, TT, it looks
18 like business -- or "Small business facility" has some
19 lengthy text and discussion. So could we entertain a
20 motion for SS and TT? Please review them and make sure
21 you don't have any -- or if there's any other further
22 considerations on those sections, but it looks like NMED
23 is the -- the Department has the position on this and no
24 alternate.

25 Yes, Member Garcia?

1 BOARD MEMBER GARCIA: I move that we approve
2 definition SS and TT for reasons proffered by NMED.

3 CHAIRPERSON SUINA: Thank you.

4 BOARD MEMBER HONKER: I second.

5 CHAIRPERSON SUINA: Member Honker seconds.

6 Is there any discussion on SS and TT? If not,
7 Ms. Jones, would you mind doing a roll-call vote?

8 ADMINISTRATOR JONES: You bet.

9 Member Bitzer?

10 BOARD MEMBER BITZER: I vote yes.

11 ADMINISTRATOR JONES: Member Cates?

12 BOARD MEMBER CATES: Yes.

13 ADMINISTRATOR JONES: Member Duval?

14 BOARD MEMBER DUVAL: Yes.

15 ADMINISTRATOR JONES: Member Garcia?

16 BOARD MEMBER GARCIA: Yes.

17 ADMINISTRATOR JONES: Member Honker?

18 BOARD MEMBER HONKER: Yes.

19 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

20 VICE-CHAIR TRUJILLO-DAVIS: Yes.

21 ADMINISTRATOR JONES: And Chair Suina?

22 CHAIRPERSON SUINA: Yes.

23 ADMINISTRATOR JONES: Madam Chair, the motion
24 passes.

25 CHAIRPERSON SUINA: Thank you, Ms. Jones.

1 Okay. That takes us to UU, "Small business
2 facility."

3 HEARING OFFICER ORTH: Madam Chair?

4 CHAIRPERSON SUINA: Yes, Madam Hearing Officer.

5 HEARING OFFICER ORTH: Oh, I'm sorry. This part
6 of the definition attracted an awful lot of materials from
7 a variety of parties and is best addressed when you take
8 up Section 127.

9 CHAIRPERSON SUINA: Thank you, Madam Hearing
10 Officer. Is that -- what's the pleasure of the Board, or
11 is the Board fine with that? Is that thumbs up? Are we
12 good with that?

13 Okay. Great. So, thanks, for that, Madam
14 Hearing Officer.

15 That takes us down -- there is rather an
16 extensive discussion on that, but then the next one is VV,
17 as in Victor-Victor. Then WW, XX, YY. And I just want to
18 note that YY was the one we looked at briefly earlier with
19 the portable stationary source. And then ZZ, AAA. The
20 AAA has CDG supporting this definition, the NMED -- the
21 Department's recommendation, or language, I should say.
22 And then BBB.

23 So, members of the Board, can you just review
24 those as we're -- we're considering these, and see if
25 there's a way we can group all of these together with

1 our -- move forward for an approval of this language where
2 there is no opposing -- no opposition.

3 Yes, Member Garcia?

4 BOARD MEMBER GARCIA: Yes, I'll take a stab at
5 making a motion that we approve definitions VV, WW, XX,
6 YY, ZZ -- yeah, ZZ, AAA and BBB, for reasons stated by
7 NMED.

8 BOARD MEMBER HONKER: I'll second.

9 CHAIRPERSON SUINA: Thank you, Member Garcia, and
10 second, Member Honker.

11 Is there any discussion from the Board on any of
12 these before we do a roll-call vote?

13 I took a quick look, I know there's a lot of text
14 here. There's no discussion on these. I just also want
15 to note that on AAA, and just in terms of discussion, that
16 CDG also supports this definition.

17 I think we had this come up earlier. It looks
18 like Ms. Soloria fell off as well. Ms. Jones, do you
19 have -- is Ms. Soloria going to be calling in again?

20 ADMINISTRATOR JONES: Yes, she said she just --
21 she lost internet connection again, but she's going to be
22 calling in as she did before.

23 CHAIRPERSON SUINA: Okay.

24 ADMINISTRATOR JONES: I don't see her yet on it.

25 CHAIRPERSON SUINA: Okay. Great. I just want to

1 make sure we do this. I think in a previous motion, where
2 we had one of the parties supporting the Department's
3 position, we just noted that also in the motion. There
4 she is. Ms. Soloria, are you there?

5 MS. SOLORIA: Yes. Can you hear me?

6 CHAIRPERSON SUINA: Yes.

7 MS. SOLORIA: Okay. I'm sorry, my internet hates
8 me today or the office's internet hates me today. So I'm
9 back on and listening and trying to work my internet
10 issues out at the same time, so I'm here and I apologize
11 again.

12 CHAIRPERSON SUINA: Thank you, Ms. Soloria. I
13 just had one question. We went through -- Member Garcia
14 put a motion for multiple sections and I know that some of
15 these sections -- for example, AAA, which is part of the
16 motion has also the support of CDG, which is one of the
17 other parties. And I recall we had done in the motion,
18 just additional language regarding that support; isn't
19 that correct? I just want to double-check with you.

20 MS. SOLORIA: That is correct. So if you -- if
21 the Board's preference is to include a party's reasoning
22 in their statement of reason, I would prefer that be
23 included in the motion, so that's correct.

24 Unfortunately, I dropped off when you-all were
25 considering SS and TT. So, was that approved?

1 CHAIRPERSON SUINA: Yes.

2 MS. SOLORIA: Okay. And so, are we on -- what
3 letter are we on? I'm sorry.

4 CHAIRPERSON SUINA: No, no problem. So UU, we
5 are -- we are taking that, too, when we consider section
6 127.

7 MS. SOLORIA: Okay.

8 CHAIRPERSON SUINA: And then we went to VV, WW --
9 or how about this: Court reporter, could you read back
10 Ms. Garcia's motion?

11 COURT REPORTER: Yes, give me just one moment.

12 "BOARD MEMBER GARCIA: Yes, I'll take a stab at
13 making a motion that we approve definitions VV, WW, XX,
14 YY, ZZ -- yeah, ZZ, AAA and BBB, for reasons stated by
15 NMED." And Board Member Honker seconded.

16 CHAIRPERSON SUINA: Thank you, court reporter.

17 So that's where we're at, Ms. Soloria, and we're
18 about to -- I just wanted that clarification on some of
19 those others. And I'm just noting, for example, we had
20 discussed on YY, the portable stationary source, where we
21 had talked about that before, so we kept that in this
22 language as part of Member Garcia's motion. And I just
23 wanted to make sure we didn't need to call out anything
24 else?

25 MS. SOLORIA: I looked -- reviewing the position

1 and support, I don't believe that anything else is needed
2 for that motion.

3 CHAIRPERSON SUINA: Thank you, Ms. Soloria. And
4 so with that, is there any other comment from the Board?

5 And if not, Ms. Jones, would you mind doing a
6 roll-call vote?

7 ADMINISTRATOR JONES: Member Bitzer, how do you
8 vote?

9 BOARD MEMBER BITZER: I vote yes.

10 ADMINISTRATOR JONES: Member Cates?

11 BOARD MEMBER CATES: Yes.

12 ADMINISTRATOR JONES: Member Duval?

13 BOARD MEMBER DUVAL: Yes.

14 ADMINISTRATOR JONES: Member Garcia?

15 BOARD MEMBER GARCIA: Yes.

16 ADMINISTRATOR JONES: Member Honker.

17 BOARD MEMBER HONKER: Yes.

18 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Yes.

20 ADMINISTRATOR JONES: Chair Suina?

21 CHAIRPERSON SUINA: Yes.

22 ADMINISTRATOR JONES: The motion passes.

23 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

24 All right. So we get to CCC, which is

25 "Transmission compressor station." And we have NMED and

1 Kinder Morgan -- two -- two positions to consider here.

2 And yes, Member Garcia?

3 BOARD MEMBER GARCIA: It appears Kinder Morgan is
4 supporting the changes that NMED made, so I'm not sure
5 there's an opposition here. Am I reading that correctly?

6 CHAIRPERSON SUINA: Thank you for that. Yes,
7 appreciate the other set of eyes on these, because
8 everything -- there's a lot of material here. So, with
9 that, do you want to do a motion, any Board members?

10 Yes, Vice-Chair Trujillo-Davis?

11 VICE-CHAIR TRUJILLO-DAVIS: Since there's not an
12 opposition here, can we just roll to DD and then --

13 CHAIRPERSON SUINA: Got it, yes. Yes. Thank
14 you. So you mean capturing both of them together?

15 BOARD MEMBER HONKER: Well, and if I might
16 interject? This "Wellhead only facility" is a proposed
17 new definition, which isn't a comment on any of the
18 existing definitions, so we could roll it all the way
19 through DDD, EEE and FFF, because those all appear to be
20 uncontested definitions, and then we could come back to
21 the CEP and Oxy proposed "Wellhead only Facility"
22 definition.

23 CHAIRPERSON SUINA: Thank you for that, Member
24 Honker.

25 Is there any discussion or a motion from the

1 Board?

2 BOARD MEMBER HONKER: So I would move that we
3 approve CCC, DDD, EEE and FFF, as proposed by the
4 Department, with the Department's rationale and the
5 addition of the supporting language from Kinder Morgan on
6 CCC.

7 BOARD MEMBER BITZER: I second that.

8 CHAIRPERSON SUINA: Thank you, Member Honker, and
9 thank you, Member Bitzer, for your second.

10 If there is no other discussion -- I'm looking to
11 the Board -- then Ms. Jones, would you mind doing a
12 roll-call vote on Member Honker's motion?

13 ADMINISTRATOR JONES: Member Bitzer, how do you
14 vote?

15 BOARD MEMBER BITZER: I vote yes.

16 ADMINISTRATOR JONES: Member Cates, how do you
17 vote?

18 BOARD MEMBER CATES: Yes.

19 ADMINISTRATOR JONES: Member Duval?

20 BOARD MEMBER DUVAL: Yes.

21 ADMINISTRATOR JONES: Member Garcia?

22 BOARD MEMBER GARCIA: Yes.

23 ADMINISTRATOR JONES: Member Honker?

24 BOARD MEMBER HONKER: Yes.

25 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes.

2 ADMINISTRATOR JONES: Chair Suina?

3 CHAIRPERSON SUINA: Yes.

4 ADMINISTRATOR JONES: The motion passes.

5 CHAIRPERSON SUINA: Thank you, Ms. Jones.

6 All right. So we're back to the CEP and Oxy and
7 EDF proposing a new definition related to their proposals
8 below, which is for the "Wellhead only facility."

9 Madam Hearing Officer, is there any other --

10 HEARING OFFICER ORTH: I'm sorry, I didn't quite
11 catch the rest of your sentence, but this is another
12 definition related to either Section 123 or 127.

13 CHAIRPERSON SUINA: Thank you for that. That's
14 exactly what was my question, if there was any other
15 sections this was related to.

16 Then, is it the Board's pleasure to take this up
17 when we look at those sections? Yes? All right. I see a
18 lot of head nods and thumbs up on that, so we'll do that
19 for this proposed new definition. Thank you so much.

20 Great. All right. So we will be going --
21 heading into a new section out of definitions. Raise the
22 roof. All right.

23 It's 20.2.50.8, "Severability." There looks to
24 be only NMED's position on that one. On 20.2.50.9 as
25 well, 10, 11, 12. And then we have the 111, if we wanted

1 to take it that far. And so, any Board members want to
2 make a motion on this?

3 BOARD MEMBER BITZER: Madam Chair, I would move
4 that we approve 20.2.50.8, .9, .10, .11, .12, and
5 20.2.23.13 - 20.2.23.110, for the reasons stated by the
6 Department.

7 VICE-CHAIR TRUJILLO-DAVIS: I will second that.

8 CHAIRPERSON SUINA: Okay.

9 BOARD MEMBER GARCIA: It looks like 111.A. was
10 uncontested, as far as if you want to add that one.

11 CHAIRPERSON SUINA: Yes. What are your thoughts,
12 Member Bitzer?

13 BOARD MEMBER BITZER: Sorry, I just touched the
14 wrong button and my screen went away. I'm sorry, I
15 thought I did. If I didn't, I'll amend that to mean
16 instead of 20.2.50.111, it will be 20.2.50.111, Subsection
17 A., for the reasons stated by the Department.

18 CHAIRPERSON SUINA: Thank you. For the record,
19 that was just an amendment to his previous version. And
20 there was a second?

21 VICE-CHAIR TRUJILLO-DAVIS: I seconded Member
22 Bitzer's motion.

23 CHAIRPERSON SUINA: Vice-Chair Trujillo-Davis.

24 Is there any other discussions from the Board?
25 Yes, Member Honker?

1 BOARD MEMBER HONKER: Well, this reserve section,
2 110, I assume the Department put that in there in case
3 they need that in the future, so it sounds like Member
4 Bitzer deleted that and added 111 A, so we may need to add
5 110 back in. I don't know. Counsel, what do you think on
6 that?

7 MS. SOLORIA: This is -- can everyone hear me?

8 CHAIRPERSON SUINA: Yes.

9 MS. SOLORIA: Okay. All right. I think that
10 that's a good suggestion by Member Honker, just to be
11 clear and he can repeat the motion if that's preferable.

12 BOARD MEMBER HONKER. I thought I did read -- I
13 thought I did read 110 in and I added 111 later.

14 MS. SOLORIA: Well, if that's your motion, then
15 you can adopt that as your amendment and we can go from
16 there. That's fine.

17 BOARD MEMBER BITZER: I thought that was my
18 amended motion.

19 CHAIRPERSON SUINA: Thank you. Just point of
20 clarification on that. Thank you, everybody, for the
21 record.

22 So with that, if there's no other discussion,
23 Ms. Jones, would you mind giving a roll-call vote?

24 ADMINISTRATOR JONES: Member Bitzer?

25 BOARD MEMBER BITZER: I vote yes.

1 ADMINISTRATOR JONES: Member Cates?

2 BOARD MEMBER CATES: Yes.

3 ADMINISTRATOR JONES: Member Duval?

4 BOARD MEMBER DUVAL: Yes.

5 ADMINISTRATOR JONES: Thank you. Member Garcia?

6 BOARD MEMBER GARCIA: Yes.

7 ADMINISTRATOR JONES: Member Honker?

8 BOARD MEMBER HONKER: Yes.

9 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 ADMINISTRATOR JONES: Thank you.

12 Chair Suina?

13 CHAIRPERSON SUINA: Yes.

14 ADMINISTRATOR JONES: Madam Chair, the motion

15 passes.

16 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

17 All right. So we are now to 20.2.50.111 Part B, where we

18 have NMED's position as well as NMOGA's and IPANM. Do we

19 have any -- yes, Member Honker?

20 BOARD MEMBER HONKER: Yeah, this section B, the

21 whole -- the whole issue seems to be whether it's required

22 to be an engineer or call it something else. And I read

23 through all of this, I believe at some point the

24 Department revised their wording from a "professional

25 engineer" to including the "in-house engineer," which is

1 what their -- what their current proposal says.

2 My experience is a company -- and there's --
3 there's no definition of in-house engineer, and I've dealt
4 with a lot of companies that use that term fairly
5 liberally. It wouldn't have to be somebody who is a
6 registered PE or necessarily even had an engineering
7 degree. So my take on this is that already gives the
8 regulated industry some flexibility.

9 There was a proposal to use an air consultant;
10 well, I'm not sure what an air consultant is. I think
11 "engineer" is a better term, but I think there's already
12 some flexibility in that, in that it's not a registered
13 professional engineer. It could be somebody else who --
14 who meets the company's definition of an engineer, so I'm
15 inclined to go with the Department's language on this one.

16 CHAIRPERSON SUINA: Thank you for your thoughts,
17 Member Honker.

18 Yes, Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Just as a point of
20 clarification to Member Honker's comment, I believe we've
21 actually seen quite a few air consultants in front of the
22 Board recently, so I would consider somebody like
23 Mr. Baca's experience, at a level of an air consultant,
24 and a few additional people who do modeling and that kind
25 of work that we've seen testify before us as experts. I

1 would consider them at an air consultant level, so I do
2 feel it's -- since we do review it as a technical --
3 people like that as a technical witness, I would qualify
4 them as somebody who could -- could -- could make those
5 determinations -- calculations and determinations.

6 CHAIRPERSON SUINA: Thank you, Vice-Chair
7 Trujillo-Davis.

8 Member Garcia?

9 BOARD MEMBER GARCIA: Yes. Thank you, Madam
10 Chair. And I do remember this extensive discussion during
11 the hearing, and I think it was great for the Department
12 to accommodate smaller businesses who don't -- can't
13 afford to hire a PE, so that they use the term "in-house
14 engineer," which -- which I also know, in many businesses,
15 a lot of folks are called engineers that, you know, you
16 wonder how they got that title. But, anyway, because the
17 term "in-house engineer" is not even defined, maybe you
18 could even call an air consultant an in-house engineer.

19 But I'm not sure that you need to add the words
20 air consultant. I think they were very accommodating in
21 putting in in-house engineer. I think that makes it less
22 expensive for small businesses to be able to work through
23 this section. Thank you.

24 CHAIRPERSON SUINA: Thank you, Member Garcia.

25 Any other discussions? Yes, Member Bitzer?

1 You're on mute.

2 BOARD MEMBER BITZER: I wanted to augment the
3 Vice-Chair's comment about the air consultant. As I
4 recall in the testimony, there also was a considerable
5 degree of expense with -- or added expense with the
6 potential need to go out and get a PE-type engineer,
7 rather than someone who's earned this moniker through some
8 other means, like real world experience.

9 And so I would -- I would be inclined to -- to
10 add air consultant, but I'm not -- I'm not hard-wedded to
11 it. But I think -- I think the fact that we're having
12 this conversation adds to the record, and that would be we
13 want to see in the future -- I know this Department --
14 this particular iteration of the Department is amenable
15 to, with some degree of flexibility, but I'm concerned in
16 the future, some other administration might bring in
17 people who aren't. So that's my concern.

18 CHAIRPERSON SUINA: Thank you, Member Bitzer.

19 Member Garcia?

20 BOARD MEMBER GARCIA: So, Member Bitzer, I -- I
21 agree with you, it's expensive to hire a professional
22 engineer, so the Department did indeed add "a professional
23 engineer or an in-house engineer," so they don't have to
24 hire a professional engineer. So they have accommodated
25 industry's concerns already by putting in the loose term

1 "in-house engineer," which could be an air consultant,
2 so -- maybe, I don't know.

3 CHAIRPERSON SUINA: Yes, Vice-Chair
4 Trujillo-Davis?

5 VICE-CHAIR TRUJILLO-DAVIS: I see both Member
6 Bitzer and Member Garcia's point on this. I would offer
7 that an in-house engineer, the difference in experience
8 from an in-house engineer to somebody who trains as an air
9 quality professional, is vastly different.

10 And I -- I think to Member Bitzer's point, that
11 changes in administration that could maybe reduce the
12 definition to not include an in-house engineer, would
13 throw out that air consultant or air quality professional,
14 which is a highly-technical degree and experience level.
15 So I'm inclined to include the definition of air
16 consultant or air quality professional as a means of
17 elevating that and separating that out a little bit.

18 CHAIRPERSON SUINA: Thank you Vice-Chair
19 Trujillo-Davis.

20 Yes, Member Duval?

21 BOARD MEMBER DUVAL: So, this is really ironic in
22 some ways, because the reason I need to leave at 4:00 is
23 because I'm on the -- I'm on a committee to hire a new
24 civil engineering professor here at New Mexico Tech. And
25 I was unaware of these different designations and

1 certifications, and these are really vague.

2 Like, I mean are they talking about a PE, like
3 somebody that can put PE after their name when they're
4 saying "professional engineer"? Because that's -- and
5 then there's also -- so that requires a specific
6 registration or progress toward licensure. You can get
7 what's -- you can put the letters FE after your name.

8 This is pretty vague. And so, when they're
9 saying "in-house," I think that really does open up an
10 incredibly -- you know, to the earlier point, that, you
11 know, differences in -- differences in the political
12 landscape might allow for someone that is not
13 necessarily -- I mean, there's no like specification here
14 as far as like degree or certification.

15 Now, that's not to say -- and absolutely not to
16 say that someone couldn't be completely qualified to do
17 the work, but like those -- I mean, if you're talking to
18 engineers, when you say "professional engineer," that
19 means you have a specific qualification and you have
20 licensure. Like, that is a very specific thing, that they
21 take really seriously, and should. So it's like -- I
22 mean, is that a requisite for this?

23 I don't -- I don't -- like, thinking about that,
24 I don't like the language, just based on that. Because if
25 they're talking about -- if they're talking about a

1 professional engineer, that should be in capitals. That
2 should be capital P, capital E. That means something very
3 specific; not just someone that's paid to be an engineer
4 because if it's in lower case letters, it could -- it
5 could just be somebody that's an engineer, that's getting
6 paid for it. Right?

7 Like, I'm a professional musician, I got paid one
8 time to play at a bar. I'm not a professional musician.
9 Right? I mean, do you understand, like, where I'm coming
10 at with this?

11 CHAIRPERSON SUINA: Yes, Member Duval. Thank
12 you.

13 And Member Garcia, I see your hand up.

14 BOARD MEMBER GARCIA: Yes. Thank you, Member
15 Duval. And you're absolutely right, and I can tell you,
16 having come from the regulatory world, when a regulation
17 says "professional engineer," they mean PE, and I think
18 the regulated community knows that.

19 And during the discussion -- and this was
20 discussed a lot between the industry and NMED. And -- and
21 as I recall, the industry, it brought great pain that they
22 would have to hire a professional, a PE, so the Department
23 then added "in-house engineer" to accommodate that problem
24 for small businesses.

25 So you're right, professional engineer has a

1 specific meaning, and I think the regulated community
2 understands that. And so they opened it up to call -- to
3 say in-house engineer for those folks that do this work
4 and are competent and capable of doing this work. So
5 having said that, I see no harm in adding the words air
6 consultant. We could add -- we could add, you know, three
7 or four different terms that are used in the industry.

8 I don't know that it's necessary. I'm not -- I'm
9 not entirely opposed to it, so that's all. Thank you.

10 HEARING OFFICER ORTH: Madam Chair, may I
11 interrupt for a moment? This is Felicia.

12 CHAIRPERSON SUINA: Yes, Ms. Orth.

13 HEARING OFFICER ORTH: On page 30 of the hard
14 copy, and you have already adopted this on the reason
15 given by the Department. It's definition OO, the
16 definition of qualified professional engineer. That was
17 in your definitions. I can read it or I can scroll back
18 to it, if that would be helpful.

19 CHAIRPERSON SUINA: Thank you, Madam Hearing
20 Officer.

21 BOARD MEMBER DUVAL: Yeah, that would -- yeah,
22 that would be really helpful, because I was just a little
23 uncomfortable with that language, especially with the
24 "in-house." It just seems very loose for interpretation.
25 And I apologize that I was unaware that there might have

1 been another articulation of that.

2 HEARING OFFICER ORTH: Let's see here. I've got
3 too many documents open here, but let me go to it. It's
4 on page 30. No, that's page 250. There we go.

5 CHAIRPERSON SUINA: Thank you, Madam Hearing
6 Officer. And while the Board reads that, one of the other
7 things I just wanted to mention where -- and I know we're
8 looking at the detail of the text here, and I'm just going
9 to say, you know, the PTE calculation must be certified by
10 a qualified professional engineer or in-house engineer
11 with expertise in the specified field.

12 But as we heard, you know, on some other -- other
13 items, and also from some of the testimony provided during
14 the hearing, even if -- my concern is even if we confine
15 it to just "in-house engineer," with expertise in the
16 operation of oil and gas, that does not allow the
17 flexibility for a small business to hire a consultant that
18 fits in here, because it's either a PE, which it can be a
19 consultant, and outside from their business, but -- or the
20 qualified in-house, in their own business person --
21 in-house engineer with expertise of the operation of oil
22 and gas. And -- but there is no flexibility of hiring a
23 consultant that is not a professional engineer, but does
24 have the expertise in air.

25 Yes, Member Duval?

1 BOARD MEMBER DUVAL: Yeah, and that's -- and
2 that's -- I mean, I guess I was just looking for clarity
3 in the language, because there -- because, again, on this
4 job search that I'm working on, like, I mean there are
5 people with Ph.D.s in engineering that are not PEs, that
6 would clearly be qualified to make these kinds of -- or
7 there are people that have Master's degrees in -- or
8 Bachelor's degrees in engineering that have been working
9 in a field for a certain number of years.

10 I was just concerned that like the -- like that
11 PE, lower -- I don't know, I'm a stickler when it comes to
12 that kind of stuff. So if that's like actually the
13 requisite. And I agree, there should be room for a
14 consultant or somebody that has sufficient -- I mean, I
15 don't know how the state is going to gauge whether or not
16 people have sufficient background to make these decisions.

17 CHAIRPERSON SUINA: Yes.

18 BOARD MEMBER DUVAL: I guess I'm leaning
19 toward -- well, I don't want to -- I don't want to be too
20 lenient because that could end up, somebody hires their
21 high school kid for a summer job to do this. But I also
22 don't want to shut out somebody that might have -- you
23 know, has a Bachelor's degree, but they've got 20 years of
24 experience, you know.

25 So I don't know -- I don't know how to phrase

1 this correct. I mean, maybe this is the best language.

2 CHAIRPERSON SUINA: Thank you, Member Duval.

3 BOARD MEMBER DUVAL: I guess that's why we're
4 talking about this, because this stuff is tricky.

5 CHAIRPERSON SUINA: Yes. Absolutely.

6 And Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: To Member Duval's
8 point there, there are -- there are -- there is precedence
9 in other state regulations and other state requirements
10 that if somebody doesn't have a degree in this specific
11 issue that we're discussing, that they meet a minimum
12 requirement, and then their minimum requirements are
13 listed out. And generally it says, five years of
14 experience under the supervision of a professional. And
15 so, we do -- we do have precedence in other areas that I
16 believe some -- that could be leaned on to fill the gap.

17 BOARD MEMBER DUVAL: Okay. Yeah, I see that now.
18 So, no, I -- I -- I'm good. I'm good with it.

19 CHAIRPERSON SUINA: So, with that, Vice-Chair
20 Trujillo-Davis, I know you've had experience in the oil
21 and gas permitting, the compliances. So I'm reading on
22 page 52 of the attachment, that the Department says "It's
23 imperative that PTE calculations be certified by engineers
24 with relevant background and experience."

25 So in your -- in your -- in your experience,

1 there are some that are not -- so I guess I'm getting to
2 Member Duval's point, getting wrapped around engineers --
3 the term "engineers." Is your -- in your experience,
4 aren't they, like, a qualified professional engineer or --
5 anyway, I'm just -- I would love to hear your thoughts.

6 VICE-CHAIR TRUJILLO-DAVIS: Well, this is just my
7 opinion based on my experience, but, you know, when you
8 figuring your PET -- PTE, what you're looking at for those
9 calculations is all of the pieces of equipment you have on
10 location and your throughput, and so on to make that
11 calculation. And somebody who is not a professional
12 engineer, as far as passing the certification, would still
13 be able, based on experience, to know what those
14 equipment -- or what their capacity is, what their
15 potential to emit is, and be able to figure that for a --
16 for a facility.

17 Now, to the Department's point, I think they make
18 a great point here, that, you know, somebody who maybe
19 could miscalculate that if they aren't -- they don't have
20 the experience level that they need. But I also think
21 that there are a lot of people out there, because there's
22 so many air permits that are being processed, and PTE is
23 the cornerstone to most or all air quality permitting.

24 So, I think that there's a lot of experience out
25 there and people are hiring air quality professionals and

1 professional engineers to do this work. And when we look
2 at a regulation, or I guess, like a part of a rule -- part
3 of this rule here, we have to remember that we are looking
4 at a broad spectrum of companies. We're looking at
5 everything from a two-person company that's operating 80
6 stripper wells, to a large, major oil and gas company.

7 So, I think by keeping a broad definition here,
8 we're -- we are getting that broad spectrum of companies.
9 So, hopefully, that answers your question.

10 CHAIRPERSON SUINA: Real quick, just a follow-up.
11 And I guess as an -- as I'm going back here and also
12 thinking about the extensive discussion during the hearing
13 on this point, I also -- I also want to look back to our
14 state licensing requirements that when we have -- as you
15 said, Vice-Chair Trujillo-Davis, is that, you know, the
16 PTE calculation is an important cornerstone of the
17 application process, and to determine that is very
18 important.

19 And so, you know, when somebody who has a PE
20 are -- are those, in your recollection, stamped, or is
21 there a signing off, saying, you know, the engineer
22 certifies that this is their calculation?

23 VICE-CHAIR TRUJILLO-DAVIS: I lost my mute button
24 for a second. I do not recall, and I don't know if the
25 permit itself includes a place to be stamped by a PE.

1 The review by a PE certainly is done -- or could
2 be done when they're available, but I don't have any
3 knowledge of if there's a place on the permit itself where
4 it is stamped by a PE or -- I know it's certified, but I
5 don't know if it's stamped.

6 CHAIRPERSON SUINA: Yes, Member Garcia? And I do
7 see that text here, too, but I'll let Member Garcia go
8 ahead.

9 BOARD MEMBER GARCIA: Yes. Thank you, Madam
10 Chair. I want to make sure we're on the same page, and
11 I'm not quite sure that we are. So let me put out a
12 statement and see if everybody agrees.

13 It appears that this definition accommodated
14 industry's concern about the expense, and they wrote that
15 the potential to emit, PTE calculations certified by a
16 qualified -- qualified professional engineer or an
17 in-house engineer with expertise in the operation, et
18 cetera, so, are we all on the same page that it doesn't
19 have to be a PE, but it does need to be a qualified
20 professional -- well, a professional with expertise in the
21 operation of oil and gas equipment? So are we on that
22 same page?

23 BOARD MEMBER DUVAL: Yeah, I'm glad I brought
24 this up, because I think we just circled back to the
25 language being totally fine. I just wanted to walk

1 through it and get some clarification but, no, I agree
2 with you, Member Garcia. I'm in agreement with what you
3 just articulated.

4 CHAIRPERSON SUINA: Thank you.
5 Vice-Chair Trujillo-Davis?

6 VICE-CHAIR TRUJILLO-DAVIS: First, I would like
7 to thank Member Garcia. You have a knack for bringing the
8 question back around. And I noticed it in our last
9 hearing and I just want to say it's a tactic that is just
10 underappreciated. So thank you very much.

11 And I think that the question that we're
12 really -- I thought we were really debating was if the
13 addition of air consultant, which I believe was NMOGA's,
14 they proposed to insert "air consultant" after the word
15 qualified, so "qualified air consultant" into the final
16 sentence there. If we're in agreeance on the PE and
17 in-house, then I think the next point is the air --
18 "qualifying air consultant."

19 BOARD MEMBER GARCIA: If I may? I -- I agree
20 with you, I think that's where we are. And in addition to
21 that, I would add -- I would like to point out also that
22 that seems to be the only addition that anybody suggested,
23 but also I want to point out that Oxy testified in support
24 of NMED's changes to allow for in-house engineer, to
25 certify the PTE calculations. So Oxy is in agreement with

1 the NMED definition.

2 So the only definition -- I mean, the only
3 addition I see proposed, other than the NMED definition,
4 is to add the term "air consultant." And I guess, you
5 know, as I said earlier, I don't see a harm in doing that
6 if it helps the industry somehow not have to call their
7 person an engineer. I'm not saying "professional
8 engineer," I'm saying just an engineer. So -- so I don't
9 have a problem with adding "air consultant."

10 BOARD MEMBER DUVAL: I would agree with that. I
11 would agree. Yeah, I think that addition of air
12 consultant could be valuable for the language here, a
13 little less restrictive, and perhaps include some people
14 that are highly qualified to be making those decisions.

15 CHAIRPERSON SUINA: Yes, Member Trujillo-Davis?

16 VICE-CHAIR TRUJILLO-DAVIS: I'll concur, and I
17 also think that Chair Suina brought up a good point, that
18 without including it, you could exclude a consultant who
19 is not an engineer, but an air quality professional, for a
20 company to be able to retain their services. So I think
21 it's an important addition.

22 CHAIRPERSON SUINA: Thank you for that,
23 Vice-Chair. I just wanted to add one more thing, and it
24 goes back to, you know, the qualified professional
25 engineer, the "title." But, also, I just want

1 clarification from fellow Board members.

2 So it would be NMOGA who proposed to insert "air
3 consultant" after the word "qualified." So if we go back
4 up to NMED's discussion, would it be -- excuse me. Would
5 it be -- I don't want to read the whole thing, but
6 "calculate the potential to emit of such source and shall
7 have the PTE calculation certified by a qualified
8 professional engineer," is that where we would stick "air
9 consultant"? Is that what we're looking at? I just --
10 I'm just trying to figure out. I don't see any other
11 "qualify" term in this sentence.

12 BOARD MEMBER GARCIA: Yeah, I was a little
13 confused by their propose as well, by putting it after the
14 word "qualified." Because "qualified professional
15 engineer" goes together. I think it needs to stay
16 together. That has a particular meaning defined in the
17 rule and I don't think we should mess with that.

18 But if we were to add air consultant, it could
19 go, "air consultant or in-house engineer." So I wouldn't
20 want to separate term qualified professional engineer,
21 because that is -- that is a term that is defined.

22 CHAIRPERSON SUINA: Thank you, Member Garcia.

23 Yes, Member Honker.

24 BOARD MEMBER HONKER: Yeah, I agree with Member
25 Garcia. If we're going to put it in, that would be the

1 place to put it in. We don't want to put it in after
2 "in-house," because a consultant implies that it's not an
3 in-house person.

4 And -- and back to the question of the
5 certification, the way I read it as a -- as a person who
6 has been a professional engineer and I actually have a
7 stamp in my drawer, but I don't see -- I don't read it as
8 something has to be stamped. I mean, there has to be a
9 certification, you know, a signing by whoever is
10 certifying that these PTE calculations are good in their
11 opinion. So that's probably just a letter or something at
12 the end of the PTE calculation, that would be a
13 certification by whoever is doing that.

14 But I agree, the place to put "air consultant"
15 would be after professional engineer.

16 CHAIRPERSON SUINA: Thank you, Member Honker.

17 Yes, Member Garcia?

18 BOARD MEMBER GARCIA: Well, then the question
19 becomes -- assuming we agree to that, the question
20 becomes, if we were to do that and this is a little
21 different from -- from the proposed language by NMOGA, I
22 would want to get counsel's input on whether we could do
23 that or not, you know, as long as we support it with the
24 evidence. And I'm not sure there was discussion about
25 that, where to put it in there. So I'm not sure about

1 that one.

2 CHAIRPERSON SUINA: Thank you, Member Garcia.

3 Ms. Soloria, do you have any thoughts on that?

4 MS. SOLORIA: Yeah, I was just pulling up NMOGA's
5 final proposed offer to make sure that that's -- I think
6 you would have to craft the motion to say that you are
7 accepting NMOGA's addition of the words "air consultant"
8 and you would say, placing it after "qualified
9 professional engineer," to maintain consistency with the
10 definition already approved for a qualified professional
11 engineer is -- I think that's how we could handle it.

12 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

13 And I guess I asked that question earlier because
14 I was a little bit confused on NMOGA's proposal, one,
15 because of breaking up that professional engineer --
16 qualified professional engineer term, but also, how it
17 fits, and just, again, looking at -- re-reading what the
18 Department said in terms of the certification of the PTE
19 calculations. And -- and, again, in the industry and to
20 Member Duval's points, there's probably Ph.D. folks that
21 don't have their PE, but they've got, you know, a
22 doctorate in air -- in the air specific field, or
23 expertise.

24 So that's why I was asking about the stamp as
25 well, if something had to be stamped, because then that

1 meets that level of criteria if it was in the permitting
2 process.

3 But I think from what I read -- and I'm throwing
4 this back out to the Board, in case you see anything else,
5 there is no, like, where they have to stamp it, which,
6 again, would be something that even an in-house engineer
7 couldn't do. So just check me that I'm reading this
8 correctly, because I -- I think there's no requirement for
9 a PE stamp on the application.

10 Yes, Member Honker?

11 BOARD MEMBER HONKER: Yeah, the way I read it is,
12 somebody has to say, I certify these PTE calculations are
13 complete and accurate to the best of my knowledge and
14 then -- and then sign on the line. That's -- that's the
15 way I read it.

16 CHAIRPERSON SUINA: Thank you for that, Member
17 Honker.

18 Yeah, I just want to make sure we're -- we're all
19 considering all of the components. In the attachment
20 provided by the Hearing Officer, it says for the reasons
21 outlined in the Department's testimony, the Board should
22 reject the proposal to allow nonengineer consultants
23 certify -- or to allow nonengineer consultants to certify
24 PTE calculations for applicability of Part 50.

25 So I just want to make sure that we're certain

1 that there's no requirements within Part 50 that require
2 that. But I guess what I'm saying -- I'm seeing, is there
3 are none. Is that what everybody else is looking at or
4 reading, too?

5 BOARD MEMBER GARCIA: Well, by the very fact that
6 they defined qualified professional engineer in the
7 definitions tells me it is throughout the rule. And there
8 may be other areas in the rule -- and I don't recall --
9 but there may be other areas in the rule that they
10 explicitly require other types of certification than this
11 particular piece.

12 CHAIRPERSON SUINA: Got you. Thank you for that,
13 Member Garcia.

14 BOARD MEMBER GARCIA: Would you entertain a
15 motion?

16 CHAIRPERSON SUINA: Yeah. Yeah, I was just going
17 to do one more real quick check here. Let's see how that
18 goes. I read through industry's text as well, so, yeah,
19 keep going. If we want to entertain a motion, I think
20 that's -- we're open for that.

21 Yes, Member Trujillo Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Just based on Member
23 Garcia's last point there, I did a quick search through
24 the rest of the document, and it looks like professional
25 engineer is only tied to this PTE determination, so if

1 that maybe helps clarify it a little bit.

2 CHAIRPERSON SUINA: Sure. Yes, so I guess -- I
3 did a quick check, too, and there's other sections that --
4 it looks like there's that we may consider later,
5 regarding -- it says "a qualified" -- sorry, I'm on 152 --
6 let's see. It's page 140 of the attachment. We have a
7 proposal with language, "have the assessment certified by
8 a qualified professional engineer or an in-house engineer
9 with expertise," and this is in regards to flowback --
10 flowback vessel.

11 But it's just something we may need to keep in
12 the back of our head as we continue to go through this.
13 Under section -- sorry, I'm trying to find the section
14 here.

15 VICE-CHAIR TRUJILLO-DAVIS: That section, Chair
16 Suina, that you just referenced, I believe that's also in
17 reference to the emissions during flowback, so that would
18 again come back to PTE.

19 CHAIRPERSON SUINA: Okay.

20 VICE-CHAIR TRUJILLO-DAVIS: If I'm reading that
21 correctly. I'm open to anybody who tells me I'm wrong.
22 Really, I am.

23 CHAIRPERSON SUINA: All right.

24 VICE-CHAIR TRUJILLO-DAVIS: But that's the way I
25 was reading it right now.

1 CHAIRPERSON SUINA: Okay. Yeah, I just want to
2 be careful if we make this determination here, that we
3 consider all of the areas. I don't know if it has a --
4 a -- a domino effect. Because there are -- excuse me.
5 There are other sections that talk about a qualified
6 professional engineer or in-house engineer.

7 So I guess I did say that, because as we
8 continue, will we also consider air consultants? That's
9 just something to think about, if we change it here, in
10 those other sections. But that was not -- that may or may
11 not have been something that was proposed of in those
12 other sections by industry, to add air consultants. I
13 don't know.

14 Madam Hearing Officer or Ms. Soloria, do you have
15 any input on that?

16 MS. SOLORIA: Yeah, I was just going to mention,
17 Madam Chair, that I searched NMOGA's draft final proposal
18 in particular, and this is the only provision where they
19 proposed to insert the words "air consultant." So I would
20 suggest that if they -- if they saw the need to offer it
21 elsewhere, they would have put that in their final
22 proposal. And I don't see that.

23 CHAIRPERSON SUINA: Okay. Thank you.

24 HEARING OFFICER ORTH: Madam Chair, this is
25 Felicia. My memory of NMED's testimony is that PTE is

1 what determines the applicability of the entire rule, and
2 that's why they were so enthusiastic or insistent, really,
3 that it be certified by an engineer.

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

6 Yes, Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: I might be able to
8 lend some clarity here as well. So, since kind of
9 building off of what Ms. Orth said, was that, it does
10 determine applicability. So, generally, you have two --
11 we're talking about two different groups. We're talking
12 about the permitting group that is putting together the
13 initial permit for a facility, and determining
14 applicability.

15 And by the time we get to flowback, we're talking
16 about operations and operational engineers, who are
17 setting up that stage of a business's operation. So you
18 wouldn't necessarily have an air quality professional at
19 the stage of a flowback, but you definitely would at the
20 beginning of when you are determining your applicability.
21 So I could see why they wouldn't propose it anywhere else.

22 CHAIRPERSON SUINA: All right. So it would just
23 be engineers, then, at those other portions, or areas in
24 times of operation or checks for monitoring?

25 VICE-CHAIR TRUJILLO-DAVIS: It would likely be

1 either an engineer, or going back to our previous
2 conversation, the term "in-house engineer." Maybe not
3 necessarily somebody who has an engineering degree, but
4 somebody who has the experience level and they are termed
5 an "in-house engineer."

6 But the definition the term air quality
7 professional would not necessarily be applicable on an
8 operational level, as it would be in a permitting level.

9 CHAIRPERSON SUINA: Thank you for that,
10 Vice-Chair.

11 So -- so would it be another way I can think
12 about it in my open head is, the PTE calculation, based
13 upon the Department's testimony and submittals, is that
14 it's essential because of the cornerstone of the whole --
15 you know, the importance of the PTE, to have the engineer
16 to that level. So I guess maybe I'm backtracking a little
17 bit.

18 Is there any -- any certification that air
19 consultants have to be -- to be developing PTE and
20 calculating PTE, that you're aware of, in the industry, or
21 is it just engineers or in-house engineers?

22 VICE-CHAIR TRUJILLO-DAVIS: I'm not aware of it.
23 It doesn't mean it doesn't exist. I just don't know if
24 there's a certification for an air quality professional.

25 I would say that the ones that I've met, the ones

1 that we've met, that have come before the Board in the
2 last two years it seems, have come from many different
3 backgrounds. Some of them are engineers, some of them are
4 computer specialists, who are great at modeling. So I
5 don't know the answer to your question.

6 CHAIRPERSON SUINA: Thank you, Vice-Chair
7 Trujillo-Davis.

8 Any other thoughts? I mean, I guess I'm going
9 back and forth as -- as, you know, looking back at what
10 the Department said, of the importance of the
11 calculation -- the PTE calculations. And I can now see
12 why that's important to have a qualified person, but what
13 does "qualified" mean? What's a "qualified" consultant?
14 Is there any -- with this being the first time an air
15 consultant being, I guess, and maybe the only section
16 where it's proposed, does that -- we don't have a
17 definition of what an air consultant is.

18 I don't know if we need one, but we don't have
19 that.

20 VICE-CHAIR TRUJILLO-DAVIS: I'd say we also don't
21 have a definition of an "in-house engineer," for that
22 matter.

23 CHAIRPERSON SUINA: Right.

24 BOARD MEMBER DUVAL: Well, and that was as much
25 of my concern as the PE thing. I don't think that's as

1 big of a deal, but, yeah, what does the "in-house" mean?

2 CHAIRPERSON SUINA: And it seems to me that the
3 Department was also trying to be -- listen to industry by
4 adding the "in-house engineer" term.

5 Yes, Member Bitzer?

6 BOARD MEMBER BITZER: May I be so bold as to
7 suggest we're straying into territory that's outside the
8 record, since no one complained? At least, I'm not
9 finding anybody having complained about "in-house," that
10 we're finding heartburn with that after the fact.

11 The question before us was whether or not we were
12 going to add air -- "air consultant." It seems to me that
13 should be the only question. And I'm sorry if I'm missing
14 something.

15 CHAIRPERSON SUINA: Yes, Member Honker?

16 BOARD MEMBER HONKER: Yeah, I agree with Member
17 Bitzer. I think the crux of the argument here is the way
18 it's currently worded, if you -- if you don't have
19 "in-house" expertise that you can qualify as an in-house
20 engineer, you've got to go to an external party. It's
21 going to a professional -- a registered professional
22 engineer.

23 And the issue is, do we want to expand that to
24 allow an air consultant to be a -- a consulting person
25 that makes this certification or -- or do we keep it more

1 rigid than that, and it's a registered professional
2 engineer?

3 CHAIRPERSON SUINA: Thank you, Member Honker.
4 Yes, Member Garcia?

5 BOARD MEMBER GARCIA: Yes, I think -- I think
6 we're kind of back where we started, which is, you're
7 right, Member Honker, where we -- do we add "air
8 consultant." I absolutely would not put it after
9 "qualified," to change the requirement for a qualified
10 professional engineer. I wouldn't do that.

11 So, now, I'm beginning to think maybe we should
12 just leave it as is just to be on the safe side. I
13 appreciate trying to accommodate industry in adding terms
14 that they use regularly, like air consultant, but I don't
15 think that if they use -- I think if they used an air
16 consultant to do the certification, it would not be
17 disqualified by NMED. You know, they could call them an
18 "in-house engineer."

19 So I think that this definition that is existing,
20 I think the safe thing to do would be to leave it as is,
21 and let industry and NMED work through this after this
22 rule is implemented, what is -- you know, what an in-house
23 engineer is. I think that's -- that's something they're
24 going to have to work through anyway. I think there's --
25 you know, so I think that it would be safer to just go

1 ahead and leave it as it is, and I'd be happy to make a
2 motion to do that.

3 CHAIRPERSON SUINA: Thank you, Member Garcia.

4 BOARD MEMBER CATES: Chair Suina, I'm just going
5 to add a little bit here, the fact that it's during this
6 discussion, and some kind of stutter steps and
7 backtracking. And, you know, if we -- if we -- it's
8 probably better left alone; otherwise, it becomes a
9 Pandora's box or a can of worms, or whatever the metaphor
10 is here. So, yeah.

11 CHAIRPERSON SUINA: Thank you, Member Cates.

12 With that, Member Garcia, do you want to?

13 BOARD MEMBER GARCIA: Yes. Thank you, Madam
14 Chair. I would move that we adopt definition 111 B., as
15 written, for the reasons stated by the Department.

16 BOARD MEMBER HONKER: I second that.

17 VICE-CHAIR TRUJILLO-DAVIS: Said I'll third that.
18 Sorry, I missed my opportunity there.

19 CHAIRPERSON SUINA: Member Bitzer is quick.

20 Thank you, Member Bitzer.

21 Yes, Member Honker?

22 BOARD MEMBER HONKER: Yeah, and just to add my
23 thoughts to Member Garcia's; I do think if you had an
24 external air consultant develop calculations, and then you
25 had an in-house person with expertise to certify those,

1 that would still meet this wording, so I think that would
2 be a workable situation.

3 CHAIRPERSON SUINA: Thank you, Member Honker.

4 And if there's no other discussion on this item,
5 Ms. Jones, would you mind doing a roll-call vote?

6 ADMINISTRATOR JONES: Member Bitzer, how do you
7 vote?

8 BOARD MEMBER BITZER: I vote yes.

9 ADMINISTRATOR JONES: Member Cates?

10 BOARD MEMBER CATES: Yes.

11 ADMINISTRATOR JONES: Member Duval?

12 BOARD MEMBER DUVAL: Yes.

13 ADMINISTRATOR JONES: Member Garcia?

14 BOARD MEMBER GARCIA: Yes.

15 ADMINISTRATOR JONES: Member Honker?

16 BOARD MEMBER HONKER: Yes.

17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes.

19 ADMINISTRATOR JONES: Chair Suina?

20 CHAIRPERSON SUINA: Yes.

21 ADMINISTRATOR JONES: Madam Chair, the motion
22 passes.

23 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

24 And then we're jumping to item C. I just want to also do
25 a time check, if anybody needs a quick break -- a biobreak

1 or walking-around break? What's the pleasure of the
2 Board? Do we want to do a break soon? We have been going
3 about two hours now.

4 Okay. Can we hit C? It looks like it's a clean
5 one, just the NMED position on C.

6 And/or I want to throw out there, I know Member
7 Duval has to leave at 4, so do we want to try to push
8 ahead, knowing Member Duval will have to leave at 4? We
9 can do a break at 4.

10 BOARD MEMBER DUVAL: I would love to be able to
11 push on. I could use just, like, five minutes.

12 CHAIRPERSON SUINA: Okay. Okay.

13 BOARD MEMBER DUVAL: Yeah, can we do that?

14 CHAIRPERSON SUINA: Yep. Do you want to do that
15 now or after item C?

16 BOARD MEMBER DUVAL: Let's do item C, yeah, let's
17 push through that. Yeah.

18 CHAIRPERSON SUINA: Okay. Great.

19 HEARING OFFICER ORTH: Madam Chair, this is
20 Felicia. D is not opposed, CDG offers supporting that.

21 CHAIRPERSON SUINA: Thank you so much for that.
22 And then it looks like some of the next in the general
23 provisions are unopposed as well.

24 Yes, Member Honker, did you have your hand up?

25 BOARD MEMBER HONKER: Yeah, I was going to make a

1 motion. I wasn't going to go into the general provisions.

2 CHAIRPERSON SUINA: Okay.

3 BOARD MEMBER HONKER: But just to wrap this up, I
4 would move that -- let's see -- what section is this? I
5 will just say I would move that Sections C and D of the
6 section we've been dealing with, that we approve those as
7 worded by the Department, with the Department's rationale
8 and the CDG supporting rationale under Section D.

9 CHAIRPERSON SUINA: Thank you, Member Honker.

10 Do we have a second?

11 BOARD MEMBER BITZER: I'll second that.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer.

13 Any discussion? If not, Ms. Jones, would you
14 mind doing a roll-call for us on this?

15 ADMINISTRATOR JONES: Okay. Member Bitzer?

16 BOARD MEMBER BITZER: I vote yes.

17 ADMINISTRATOR JONES: Member Cates?

18 BOARD MEMBER CATES: Yes. Yes.

19 ADMINISTRATOR JONES: Member Cates, okay.

20 Member Duval?

21 BOARD MEMBER DUVAL: Yes.

22 ADMINISTRATOR JONES: Member Garcia?

23 BOARD MEMBER GARCIA: Yes.

24 ADMINISTRATOR JONES: Member Honker?

25 BOARD MEMBER HONKER: Yes.

1 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

2 VICE-CHAIR TRUJILLO-DAVIS: Yes.

3 ADMINISTRATOR JONES: Chair Suina?

4 CHAIRPERSON SUINA: Yes.

5 ADMINISTRATOR JONES: The motion passes.

6 CHAIRPERSON SUINA: Thank you, Ms. Jones.

7 So, with that, members of the Board, do you want
8 to just take a quick five-minute break, and we will be
9 back at 3:26.

10 (Recess taken from 3:21 p.m. to 3:27 p.m.)

11 CHAIRPERSON SUINA: All right. So we're back.
12 It's 3:27. I know we said a five-minute break. I want to
13 see if we can get some more decisions done before Member
14 Duval has to jump off. All right. So --

15 COURT REPORTER: I don't think it's being
16 recorded yet. Excuse me. This is Theresa. I don't think
17 it's being recorded yet.

18 CHAIRPERSON SUINA: Okay. Thank you for that,
19 Theresa. We'll hold tight for that recording to restart
20 here. Appreciate that. We want to make sure we have this
21 recorded. Is that the host who would do that?

22 ADMINISTRATOR JONES: Yes, it's Madam Hearing
23 Officer. There she goes. Okay.

24 CHAIRPERSON SUINA: Okay. Thank you so much. I
25 think I see a recording now. Okay. All right. Here we

1 go.

2 So, make sure I'm on the right one. So now we're
3 on section 20.2.50.112, "General Provisions." Under
4 Section A, "general requirements" -- excuse me. And I
5 believe it looks like it's only NMED's position on A (1)
6 and then I believe -- again, members, please check me on A
7 (2,) because IPANM has its proposal. So, then (3) looks
8 like we have NMED paragraphs 3 through 8 -- let me look
9 here. Can we have some discussion on that 3 through 8?
10 So, before that, though, we have some sections where there
11 is no opposition.

12 Would members of the Board -- I would love to
13 entertain a motion. Yes, Member Garcia?

14 BOARD MEMBER GARCIA: I would move that the Board
15 adopt section 112 A (1) and (2) as written, for the
16 evidence proffered by NMED.

17 BOARD MEMBER BITZER: I second that.

18 CHAIRPERSON SUINA: Thank you, Member Garcia and
19 Member Bitzer, for your second. If there's no -- let me
20 make sure. I know the cameras aren't on yet for some of
21 the other members. Yes, Member Duval. Great.

22 So, if we're good, I'm just looking to make sure
23 no members have any questions or discussion points on
24 these. If not, Ms. Jones, would you mind doing a
25 roll-call vote on this motion from Member Garcia and a

1 second from Member Bitzer?

2 ADMINISTRATOR JONES: Yes.

3 Member Bitzer, how do you vote?

4 BOARD MEMBER BITZER: I vote yes.

5 ADMINISTRATOR JONES: Member Cates?

6 BOARD MEMBER CATES: Yes. Yes.

7 ADMINISTRATOR JONES: Member Duval?

8 BOARD MEMBER DUVAL: Yes.

9 ADMINISTRATOR JONES: Member Garcia?

10 BOARD MEMBER GARCIA: Yes.

11 ADMINISTRATOR JONES: Member Honker?

12 BOARD MEMBER HONKER: Yes.

13 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

14 VICE-CHAIR TRUJILLO-DAVIS: I'm going to abstain

15 because I missed the motion.

16 ADMINISTRATOR JONES: Chair Suina?

17 CHAIRPERSON SUINA: Yes.

18 ADMINISTRATOR JONES: Madam Chair, the motion

19 passes, with one abstention.

20 CHAIRPERSON SUINA: Thank you so much.

21 Appreciate that.

22 And so we are under 112 A. (3) through (8.) And

23 we have NMED's position and text, and it looks like we do

24 have some discussions from the other parties with IPANM

25 proposing to delete -- sorry, I'm going back and forth

1 here. Bear with me a little. I'm sorry.

2 So we have (3) through (9,) and then IPANM
3 proposing to delete (9) in its entirety, but then we have
4 GCA supporting NMED's removal on A (3.)

5 HEARING OFFICER ORTH: Madam Chair?

6 CHAIRPERSON SUINA: Yes.

7 HEARING OFFICER ORTH: This is Felicia. IPANM
8 proposed to delete paragraphs (3) through (9) in their
9 entirety.

10 CHAIRPERSON SUINA: Okay. So not just section
11 (9); is that correct? I think it was --

12 HEARING OFFICER ORTH: That's correct.

13 CHAIRPERSON SUINA: Okay. Okay. So, just in
14 terms of the record, I don't know -- I know you had asked
15 for some revisions. Can you go to -- let's see. Go to
16 the IPANM section under this (3) through (8.) I just want
17 to make sure. Yes. Right there. So, right there.

18 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. What
19 section are you on? I lost my place in the last
20 discussion.

21 CHAIRPERSON SUINA: So we're on section 112 A.
22 (3) through (9.)

23 VICE-CHAIR TRUJILLO-DAVIS: Thank you very much.

24 CHAIRPERSON SUINA: Okay. Thank you so much,
25 Madam Hearing Officer. There was another section under --

1 I think the NMED summary, where it talks about -- at the
2 end of NMED's summary, so that's where I got -- right
3 there, where it was only section (9). I didn't scroll all
4 the way down. I apologize to the Board.

5 Members of the Board, if you want to start
6 discussion on this, we have industry-suggested deletions
7 and industry that suggests additions. I don't know how
8 you want to tackle this one.

9 I know -- Madam Hearing Officer, this one looks
10 like has different -- we have WildEarth Guardians as well,
11 with some additions on here.

12 Members of the Board, how would you -- do you
13 want to take this, number by number or -- or do you just
14 want to jump in and start discussing each of NMED's
15 proposals? I'm open to -- we're open to however you want
16 to jump in on this one.

17 VICE-CHAIR TRUJILLO-DAVIS: That is a big
18 section. Maybe we should go number by number.

19 CHAIRPERSON SUINA: Okay. Okay.

20 So let's start with section (3), "Within two
21 years of the effective date of this Part," and (3) has
22 Subparts (a), (b), (c), (d), (e), (f). So, Madam Hearing
23 Officer, on this section, I know the summaries just
24 summarizes, you know, multiple numbered sections. Is it
25 easy to do one by one on this, in your recollection, on

1 capturing the testimony and various points of the parties?

2 HEARING OFFICER ORTH: Well, so the way the
3 Department set out their support was by breaking
4 paragraphs (3) through (8) into one discussion, which, by
5 the way, starts on page 60 of the hard copy of the
6 attachment. And then they address IPANM's proposal to
7 delete paragraphs (3) through (8) in their entirety. And
8 that's starting at the bottom of page 61 in the hard copy.
9 Then the Department addresses paragraph (9) and IPANM's
10 proposal to delete paragraph (9).

11 GCA is supportive of the Department's (A) (3).
12 They wanted to specifically comment on the removal of the
13 EMT requirements.

14 CDG support -- supports much of 112 (A) and (C)
15 and has its own proposal around the word "data system"
16 versus "database system."

17 NMOGA proposed a number of changes in paragraphs
18 (3) through (9), most of which NMED adopted in its final
19 proposal. And on page 65 of the hard copy, I mention the
20 only two changes that were not -- were not adopted by
21 NMED.

22 Then you have the discussion around IPANM
23 proposing to delete (3) through (9) in their entirety.
24 NMOGA, sort of, providing, I would say, additional support
25 for some of what IPANM is doing. And then the proposal

1 from WildEarth Guardians, which would come after (9) and
2 be a new A. (12).

3 And I suspect that the best way to do this would
4 be to decide whether you want to keep paragraphs (3)
5 through (8) at all, whether you want to keep paragraph (9)
6 at all, knowing about IPANM and NMOGA's objections. If,
7 then, you choose to keep them, you could address the more
8 minor adjustments, for example, that NMOGA and the other
9 party would make, the other little adjustment around
10 database, CDG. Because these are minor adjustments, you
11 know, once you have actually decided to keep them.

12 The more existential question is whether you want
13 to have paragraphs (3) through (9) at all.

14 CHAIRPERSON SUINA: Thank you, Madam Hearing
15 Officer. Appreciate that summary.

16 Members of the Board? Yes, Member Garcia?

17 BOARD MEMBER GARCIA: Yes. Thank you, Madam
18 Chair. I do recall extensive time spent on this during
19 the hearing, and I recall that the Department also
20 negotiated through this before the hearing and made some
21 changes, and then it looks like the -- some of the parties
22 wanted additional changes, which it looks like NMED
23 accommodated, and I can see that those changes are
24 supported. So, it looks like various parties support a
25 lot of the changes NMED made; some want NMED to make more

1 changes; and then IPANM wants the whole thing thrown out,
2 that section, (3) through (9).

3 So -- so I guess -- I guess I feel -- I feel
4 pretty good that the Department -- I do recall that the
5 Department went through this extensively with industry. I
6 remember they made some changes and I suppose they came to
7 agreement on most things, but as you know, as -- as it
8 happens, not everybody is happy with what you end up with,
9 but they did compromise quite a bit. So I would be -- I
10 guess I'm leaning toward including (3) through (9) in the
11 rule.

12 So that would -- that would mean that I'm
13 rejecting IPANM's proposal to eliminate it.

14 CHAIRPERSON SUINA: Thank you, Member Garcia.
15 Member Cates?

16 BOARD MEMBER CATES: Yeah, I agree with all of
17 that. Member Garcia says it much better than I can or
18 could have. I mean, and I just would pull back from this
19 and reiterate that a lot of negotiations already went into
20 this, the state Department sought compromise. It seemed
21 to have gotten compromise from most parties.

22 IPANM seems to want the whole ball of wax here,
23 and, you know, that's not usually how compromise goes.
24 And I'm just generally in favor of compromise. And I
25 think that the way the language as written is a good

1 compromise.

2 CHAIRPERSON SUINA: Thank you, Member Cates.

3 Member Duval?

4 BOARD MEMBER DUVAL: Yeah, looking at, you know,
5 (3) through (5), this is really standard operating
6 procedure. I mean, I don't think any of this is overly
7 burdensome at all. I mean, this is just good -- good
8 practice and good data repetition. Or, you know, will
9 allow for -- will allow for people to evaluate how things
10 are done. And I don't think -- and, like, all of this is
11 SOP. So I fully agree that this needs to stay included.

12 CHAIRPERSON SUINA: Thank you, Member Duval.

13 Any other discussion? Member Honker?

14 BOARD MEMBER HONKER: Yeah, I agree as well. I
15 mean, it's basic recordkeeping, which is essential to any
16 sort of a program like this. So I definitely think we
17 should keep (3) through (9).

18 CHAIRPERSON SUINA: Thank you, Member Honker.

19 Vice-Chair Trujillo-Davis?

20 VICE-CHAIR TRUJILLO-DAVIS: I don't remember --
21 my fellow Board members said this, but I also agree that
22 the -- there was quite a bit of negotiation that went into
23 this section and there was a lot of compromise made by all
24 parties, so I think it should remain as it has been
25 rewritten and is presented to us currently.

1 CHAIRPERSON SUINA: Thank you, Member
2 Trujillo-Davis.

3 So -- so I think to jump off what -- from where
4 Vice-Chair Trujillo-Davis mentioned, you know, all of the
5 discussion, the negotiations that went through on this
6 particular section, are you -- are you leaning toward
7 adopting it now as NMED has framed it in their last
8 submittal?

9 I'm just wondering about the other sections or
10 the other stakeholders now that -- if we're going to
11 consider keeping it, how you want to move through that
12 discussion. Or if there's no discussion on that.

13 Yes, Member Bitzer?

14 BOARD MEMBER BITZER: I'm wondering if maybe the
15 Hearing Officer or Counsel can advise, but it seems to me
16 that the appropriate thing to do is to have a motion to
17 reject the deletion of sections (3) through (8) and
18 section (9). And maybe we can make that one motion, or
19 maybe that has to be two, but wouldn't that be the first
20 course of action?

21 MS. SOLORIA: Chair Suina, I would suggest that
22 consistent with what we're doing -- done for other
23 sections, if the intent of the Board is to reject the
24 deletions, that the motion can be adopt the Board's -- or
25 excuse me -- the Department's proposed language based on

1 their proffered rationale, because the rationale as
2 stated, included here in the report, addressed those
3 deletions and why the Department didn't agree with them to
4 begin with.

5 HEARING OFFICER ORTH: Ms. Soloria, I believe
6 he's referring to the fact that there were four minor
7 adjustments offered in the event the paragraphs were not
8 deleted, and should the Board take each of those four
9 minor adjustments up before they make the larger motion.

10 MS. SOLORIA: Thank you, Madam Chair, for that
11 clarification.

12 I would suggest that the -- I think you should
13 take the -- the minor clarifications up first, so it's
14 clear what language you're voting on. So, yes, separate
15 them, and so that what you're voting on is settled.

16 CHAIRPERSON SUINA: Thank you.

17 HEARING OFFICER ORTH: I'm happy to address them
18 while we're looking at this screen, if you'd like.

19 CHAIRPERSON SUINA: Thank you, Madam Hearing
20 Officer, that would be helpful.

21 HEARING OFFICER ORTH: All right. The first one,
22 these are proposed edits by CDG. There are two of them on
23 page 64 of the hard copy. They would insert the words,
24 looking at the end of A. (5), so right here, would insert
25 after -- at the very end of that sentence there, "as

1 required by 20.2.50.112 C. (3) and 112 D."

2 The other edit they propose is to change "data
3 system" to "database system" throughout. Those are the
4 two edits proposed by CDG.

5 Then, NMOGA -- while we're looking at it -- at
6 the end of paragraph (5), a similar edit actually to what
7 CDG proposed: First, as required by paragraph (3) of
8 Subsection C. and Subsection D. of 20.2.50.112 NMAC. So
9 they're making the same suggestion right there.

10 Their second suggestion is to delete the word
11 "contemporaneously" in paragraph (8) before the word
12 "track." So, right here: "Contemporaneously track."
13 They believe the word "contemporaneously" is ambiguous.

14 CHAIRPERSON SUINA: Madam Hearing Officer, can
15 you go back to the -- just so I'm clear here, so on the
16 CDG inserting, as required by 20.2 -- what you had just
17 described, C. Section (3) and 112 D. at the end of
18 paragraph A (5) -- at the end of the summary, it says
19 that: "Hearing transcript: Proposal by CDG," and then
20 afterward, "Acceptance by NMED." So, what -- I don't know
21 if you can go to that section on page 64 of our hearing --
22 of the attachment there.

23 So, I guess my question is, so if it was
24 accepted, why wasn't it put in the last version by NMED?

25 HEARING OFFICER ORTH: Let's see here.

1 "Acceptance by NMED." So that may well -- so it refers to
2 Ms. Bisbey-Kuehn there. We would look in the
3 transcript -- which I'm happy to do -- I imagine that was
4 a response to a cross-examination question. And that
5 particular reference is to the change from data system to
6 database system or vice versa. My impression is that the
7 language about being required by Section C and D proposed
8 by both CDG and NMOGA is offered as more of a clarifying
9 change, but CDG doesn't address it right there.

10 Let me see if NMOGA says anything about it. So
11 what NMOGA says about this language -- and I can scroll
12 down to it. Let's see. It's on page 65. "The data
13 systems can be one or more systems so long as they are
14 capable of producing the compliance data report within the
15 required time frame. NMOGA appreciates the new
16 terminology. NMOGA is supportive of CDG's suggested
17 language addition," that -- that language there about, as
18 required by Section C and D.

19 So let me -- I have to go past all of this IPA's
20 stuff here to get to it. Well, now, there we go.

21 As required by C (3) and D.

22 CHAIRPERSON SUINA: I guess I was just a little
23 bit confused.

24 And Member Garcia, go ahead.

25 BOARD MEMBER GARCIA: Yeah, I just wanted to go

1 back to the original question of -- I thought that what we
2 have been doing -- and please, I may have missed a nuance
3 there, Hearing Officer. But I thought that the way we
4 have been doing this is where there's several changes
5 proposed, including elimination and, et cetera, if we
6 adopt the section as is, as written, then by definition we
7 are not -- then, by definition, we are rejecting all of
8 those proposed changes.

9 And so what we've been doing is, we have not gone
10 through individual proposed changes and voted on them.
11 What we have done is, it seems to me, but I may be missing
12 a nuance here that you identified and I missed it.

13 CHAIRPERSON SUINA: And I apologize, Member
14 Garcia. I might be confused as well. I just want to make
15 sure that if -- if they, meaning the parties, were in
16 alignment, I just want to make sure that if they're -- if
17 it was in alignment, and then it was reflected in the
18 final NMED text.

19 Is that correct, Ms. Orth, on this particular
20 point?

21 HEARING OFFICER ORTH: Yes.

22 CHAIRPERSON SUINA: Okay.

23 HEARING OFFICER ORTH: So as you know, NMED was
24 in negotiation with all other parties throughout the
25 proceeding. And as you can see on the screen right here,

1 when I was parsing NMOGA's final proposal in paragraphs
2 (3) through (9), I noticed that their final redline
3 included several changes that had already been
4 incorporated by NMED. And so, I didn't offer that to you
5 here as, you know, some distinction to be drawn. It was
6 incorporated.

7 But then I felt I needed to identify the two
8 changes proposed by NMOGA in their redline, that had not
9 been incorporated as part of NMED's final proposal.

10 CHAIRPERSON SUINA: Thank you. And then, I
11 think -- I apologize, fellow Board members. I just wanted
12 that clarification, because I thought there was that
13 consensus during the hearing. So I just wanted to make
14 sure I was reading that correctly, that even though there
15 was consensus, it was not provided as a final redline. Is
16 that correct, Madam Hearing Officer?

17 HEARING OFFICER ORTH: I'm sorry. Yes, so NMOGA
18 proposed several changes in its final redline, most of
19 which NMED had already incorporated in its final redline.
20 The only two changes in NMOGA's final redline, that were
21 not in NMED's final redline are the two I've identified
22 here: this business about "as required by paragraph (3)"
23 and the business about deleting the word
24 "contemporaneously" in paragraph (8).

25 CHAIRPERSON SUINA: Okay. Thank you. Sorry for

1 that, Vice-Chair. I know you want to -- yes, Ms. Soloria.

2 MS. SOLORIA: Was your point about it being
3 accepted, going to CDG's proposal data?

4 CHAIRPERSON SUINA: (Nodding head.)

5 MS. SOLORIA: So I think -- and the Hearing
6 Officer would have more background on this, but I think
7 you're suggesting that this excerpt here, it's suggested
8 by what happened at the hearing, was that the Department
9 accepted that during the hearing. And for one reason or
10 another, it wasn't in the Department's final proposal.
11 And I'll note that they didn't appear to address that in
12 their statement of reasons as well.

13 I know that upon submission of their statement of
14 reasons there was -- the Department didn't necessarily
15 have time to -- didn't receive everyone's final version --
16 other parties' final version before they compiled their
17 own statement of reasons. So this might be one of the,
18 hopefully, narrow cases where something was compromised
19 upon during the hearing, but wasn't necessarily captured
20 in NMED's final redline.

21 And I don't know if I've misrepresented that, but
22 if that's the case, then I would think that the Board
23 would consider the actual record of what was agreed to at
24 the hearing.

25 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

1 That's exactly where I'm getting to. And I just wasn't
2 sure if I was confused and I was misreading the summary
3 and some of the text, and what we had sat through all of
4 the hearing. I just want to make sure if we got consensus
5 on something. And if there was some other reason that it
6 was not incorporated in the final redline, that, you know,
7 just in terms of transparency with the public and those
8 parties on the line, and throughout all of the hearings,
9 that we have something of record of why it was, or if it
10 was consensus, can we indeed address that at this point?
11 So, thank you so much, Ms. Soloria.

12 Yes, Member Duval?

13 BOARD MEMBER DUVAL: Yeah, thank you. I wanted
14 to make a quick point, if we could go -- so I, as someone
15 that deals with this on a daily basis, I really don't have
16 an issue with the verbiage of "data" versus "database."
17 If you can go back down to -- I think it was point (5),
18 that we were looking at before we went up to this
19 language, what concerns -- yes, this section.

20 So I -- the use of the term "data" or "database"
21 does not really bother me at all. But "upon request" at
22 the end of the statement -- or the end of that sentence,
23 that's what bothers me. I mean, I think that that should
24 be more of a, you know, "shall be submitted on" -- on
25 some, you know, sort of regular basis. You know, like

1 dealing with large -- like these are -- these are not --
2 these are not uncomplicated data sets.

3 I mean, this isn't just like a simple Excel sheet
4 that somebody can just, you know, email you at -- whenever
5 you ask for it. You know, I would like some more specific
6 language, as far as at least an update or, you know, a
7 timeline. Like, some reporting period, not just like, oh,
8 well, yeah, we're going to trust you to be keeping good
9 records and, you know, whenever we ask for it, you're
10 going to have it.

11 I don't -- I don't think that works all that well
12 in these contexts. I think it would be much better to
13 have like A., like, just putting the word annual or
14 biannual or some sort of more specific language, as
15 opposed to "upon request."

16 And I would also put "raw data," because somebody
17 has to process -- this is coming off of some
18 instrumentation. I mean it's not like this magically ends
19 up in an Excel spreadsheet. You know, this is getting
20 pulled off of an instrument that has to get processed.
21 And so, I think that access to the raw data, if we're
22 interested in absolute transparency, like that has to be
23 available.

24 CHAIRPERSON SUINA: Thank you, Member Duval.

25 Vice-Chair Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: Just to Member
2 Duval's comments, I think I might be able to help shed
3 some light on that.

4 NMED has the ability to conduct an inspection at
5 any time without announcement. And this gives them -- the
6 wording "upon request," gives them the ability to request
7 the data at the time of that surprise inspection, which I
8 believe -- and this is my interpretation of this
9 section -- actually makes it more restrictive, because
10 they don't have -- a company can't say, well, my report's
11 not due until whatever date. They have to produce the
12 information upon request during a surprise inspection. So
13 I think that that may be -- might change the context a
14 little bit.

15 BOARD MEMBER DUVAL: Okay. No, that -- yeah,
16 Member Trujillo-Davis, that -- that -- that makes it a
17 lot -- that helps me out. That helps me out a lot. Okay.
18 That gives me some clarity there.

19 CHAIRPERSON SUINA: Thank you.

20 BOARD MEMBER DUVAL: Yeah, my idea of "upon
21 request" is, like, not the -- yeah, it was not the same
22 framework that you just put it in, so I appreciate that.
23 And so, okay, I'm -- I'm comfortable with that language
24 now after -- if that's -- if that's your understanding of
25 the articulation, and that's -- and that's what can

1 happen, then I'm good with it.

2 CHAIRPERSON SUINA: Thank you, Member Duval.

3 Member Honker?

4 BOARD MEMBER HONKER: Yes, and just to echo what
5 Vice-Chair Trujillo-Davis said, having worked in the
6 regulatory arena a long time, this is -- this is not an
7 unusual construction of a requirement. You've got to
8 maintain the data there, you've got to make it available
9 if the inspectors come around, or if it's asked for. The
10 regulatory agency doesn't necessarily want it submitted,
11 because that's an additional burden on the industry, plus,
12 if it comes into the agency, then they've got to do
13 something with it, and you've got to manage all of that.
14 So I think that's a -- it's a fairly standard approach.

15 But on the issue of data system and database
16 system, I actually like the term "data system" better. It
17 just sounds a little more flexible for the regulated
18 community to utilize whatever they need. Database just
19 sounds a little more formal and restricted to me. So I --
20 I think I would vote to stay with data system, as the
21 Department has proposed it.

22 HEARING OFFICER ORTH: Madam Chair, on that point
23 if I might?

24 CHAIRPERSON SUINA: Uh-huh. Yes.

25 HEARING OFFICER ORTH: So I may have -- this

1 report may have included a typographical error that I
2 carried into it around the data system and database
3 system.

4 I have received communication from the two
5 lawyers involved in that negotiation, and it appears that
6 the Department accepted the proposal from CDG and
7 incorporated it, and no opposition there should have been
8 shown.

9 CHAIRPERSON SUINA: Thank you for that.

10 Yes, Member Duval?

11 BOARD MEMBER DUVAL: I am already -- I really
12 need to take off. And I will just, as a parting note, it
13 made me absolutely cringe that C -- or excuse me -- (3) D
14 clarifies things as in pounds per hour, and didn't use
15 metric system nomenclature. So I just want to be on the
16 record, that I think that should be changed, too, to
17 kilograms per hour, instead of pounds per hour. But other
18 than that, I will join you guys tomorrow morning. And
19 thank you for your time and I appreciate that you
20 appreciate that I have other obligations.

21 CHAIRPERSON SUINA: Thank you, Member Duval.

22 We'll see you tomorrow morning.

23 And I believe a member had their hand up. I
24 apologize if I missed you. Member Garcia?

25 BOARD MEMBER GARCIA: Thank you. And I

1 appreciate the Hearing Officer's clarification in that. I
2 was thinking I was in the twilight zone here because I
3 kept seeing it in the rule, so I appreciate that. Thank
4 you so much, Hearing Officer.

5 So, with that, may I make -- oh, wait. Did you
6 have something?

7 CHAIRPERSON SUINA: Yes.

8 VICE-CHAIR TRUJILLO-DAVIS: Yes, I -- before you
9 make a motion, I have one more question to clarify here.
10 I remember a statement during this particular portion of
11 the hearing, and I have notes on it, so I just want to see
12 where I missed it, because I can't seem to find it in all
13 of this information. But I thought one of the things that
14 they had agreed to during the hearing was to not have
15 equipment tags on each -- on each piece of equipment. And
16 I'm not sure if I'm seeing that reflected in the text, so
17 I'm asking my fellow Board members and the --

18 BOARD MEMBER CATES: It is in there. Member
19 Trujillo-Davis, it's in there.

20 VICE-CHAIR TRUJILLO-DAVIS: That they reviewed
21 it?

22 BOARD MEMBER CATES: I can't find it, but I just
23 read it a minute ago.

24 VICE-CHAIR TRUJILLO-DAVIS: So it appears it was
25 kept in, and I'm curious if there was further discussion

1 from the parties on the agreement to remove that portion
2 of it.

3 MADAM HEARING OFFICER: Thank you.

4 BOARD MEMBER CATES: I don't -- I don't think it
5 was kept in.

6 VICE-CHAIR TRUJILLO-DAVIS: Do you believe it was
7 removed?

8 HEARING OFFICER ORTH: I believe it was removed.

9 VICE-CHAIR TRUJILLO-DAVIS: Thank you. And I
10 remembered it because I was surprised by the agreement, so
11 I just wanted to make sure that I was indeed seeing the
12 most current version and it wasn't left out.

13 BOARD MEMBER CATES: Yeah, it's on page 61.

14 CHAIRPERSON SUINA: Can we go to that, to just
15 make sure that we're all on the same page? Oh, yeah, the
16 Department removed the tagging and scanning requirements.

17 VICE-CHAIR TRUJILLO-DAVIS: Thank you for helping
18 me find that and for pointing it out. I appreciate it.

19 BOARD MEMBER CATES: Sure.

20 CHAIRPERSON SUINA: Thank you.

21 All right. With that, is there any other
22 discussion on this section? If not, and thank you all for
23 those clarifications, and Madam Hearing Officer, for the
24 clarification, too, on -- on the typo or what got carried
25 forward, who shared that.

1 With that, I'm looking to members of the Board,
2 if you have any other discussion items. If not, maybe
3 entertain a motion. Yes, Member Garcia.

4 BOARD MEMBER GARCIA: Thank you, Madam Chair. I
5 would move to adopt Sections (3) through (9) as written in
6 the proposed rule, with reasons stated by NMED.

7 BOARD MEMBER CATES: Second.

8 CHAIRPERSON SUINA: Thank you, Member Garcia.

9 I apologize. Who was that that seconded?

10 BOARD MEMBER CATES: (Raised hand).

11 CHAIRPERSON SUINA: Member Cates seconded it.

12 BOARD MEMBER CATES: Yeah.

13 CHAIRPERSON SUINA: With that, I'm looking to see
14 if there's any other discussion. If not, Ms. Jones, would
15 you mind doing a roll-call vote?

16 ADMINISTRATOR JONES: Yes.

17 Member Bitzer, how do you vote?

18 BOARD MEMBER BITZER: I vote yes.

19 ADMINISTRATOR JONES: Member Cates?

20 BOARD MEMBER CATES: Yes.

21 ADMINISTRATOR JONES: Thank you. Let's see.

22 Member Duval is not with us.

23 Member Garcia?

24 BOARD MEMBER GARCIA: Yes.

25 ADMINISTRATOR JONES: Member Honker?

1 BOARD MEMBER HONKER: Yes.

2 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes.

4 ADMINISTRATOR JONES: Chair Suina?

5 CHAIRPERSON SUINA: Yes.

6 ADMINISTRATOR JONES: Madam Chair, the motion
7 passes with six yes and one member absent.

8 CHAIRPERSON SUINA: Thank you, Ms. Jones.

9 And Madam Hearing Officer, I know we're scrolling
10 on to the next section here. I do want to get to -- yeah,
11 there we go -- the section with WildEarth Guardians'
12 proposal for a new section A. (12).

13 And I know Madam Hearing Officer has it up, but
14 it's on page 69 of our hard copy for members of the Board.
15 This is a new section.

16 Yes, Member Honker.

17 BOARD MEMBER HONKER: Yeah, I've read through all
18 of this, and it seems like this proposed new section has
19 to do with permitting policy and procedures, which really
20 seems to be outside the scope of the rule we're working on
21 here. It seems like that is not really the focus of this
22 rule, so that would be better considered in permit rules
23 elsewhere, so I'm inclined not to consider adding it.

24 CHAIRPERSON SUINA: Thank you for your input,
25 Member Honker.

1 Members of the Board, do you have any other
2 input? Yes, Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: I'm inclined to agree
4 with Member Honker.

5 I apologize for my coworker back there, making
6 noise. But I'm inclined to agree with Member Honker here
7 because I believe that this is -- this particular portion
8 is slightly out of scope for this regulation. And I think
9 there's some question on regulatory authority for -- for
10 incorporating it into this rule. And I'm not comfortable
11 incorporating something that I feel is that far out of
12 scope.

13 CHAIRPERSON SUINA: Thank you, Vice-Chair
14 Trujillo-Davis.

15 Is there any other discussion from our Board
16 members regarding this proposed new section? I'll give
17 you a minute.

18 And I know -- let's see. In our attachment that
19 we have in front of us, there's a lot of discussion on
20 this, with opposition on this proposal from NMED, and CDG
21 as well.

22 BOARD MEMBER HONKER: Yeah, and I would also
23 point out that NMED states that there's other regulations
24 that already prohibit air quality permits for facilities
25 causing to or contributing to exceedances of ozone NAAQS.

1 That's near the bottom of page 70, so I just wanted to
2 make sure everybody was aware of that.

3 CHAIRPERSON SUINA: Thank you for that, Member
4 Honker. If there's no other discussion on this -- or any
5 other Board members want to highlight any other written
6 text submittals regarding this?

7 And I just also want to echo what Member Honker
8 and Vice-Chair Trujillo-Davis mentioned. You know, as
9 we -- the regulated community has to abide by the
10 regulations if there's -- if we're going beyond the
11 regulatory authority, you get into gray areas and so
12 forth. So I want to make sure that we stay in alignment
13 with and support our Department -- New Mexico
14 Environmental Department in making sure we stay within
15 those regulatory guidelines and guardrails. Although, I
16 also support what Board Member Honker and Vice-Chair
17 Trujillo-Davis mentioned.

18 With that, yes, Member Garcia?

19 BOARD MEMBER GARCIA: I just want to agree with
20 my fellow Board members that it's unnecessary to put in
21 there. I'm afraid it would cause more problems than it
22 would solve, so I would not agree with including that
23 language. Thank you.

24 CHAIRPERSON SUINA: Thank you, Member Garcia.

25 And with that, and if I may ask, if we could

1 entertain a motion or further discussion? Yes, Member
2 Honker?

3 BOARD MEMBER HONKER: Yeah, I will move that we
4 reject the new section A. (12) that WildEarth Guardians
5 has proposed, and use -- in light of the rationale
6 presented by NMED on the issue.

7 BOARD MEMBER BITZER: I'll second that.

8 CHAIRPERSON SUINA: Thank you, Member Honker and
9 Member Bitzer. If there's no further discussion on this
10 item, may I -- Ms. Jones, could we have a roll-call vote?

11 ADMINISTRATOR JONES: Yes.

12 Member Bitzer, how do you vote?

13 BOARD MEMBER BITZER: I vote yes.

14 ADMINISTRATOR JONES: Member Cates?

15 BOARD MEMBER CATES: Yes.

16 ADMINISTRATOR JONES: Member Garcia?

17 BOARD MEMBER GARCIA: Yes.

18 ADMINISTRATOR JONES: Member Honker?

19 BOARD MEMBER HONKER: Yes.

20 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes.

22 ADMINISTRATOR JONES: Chair Suina?

23 CHAIRPERSON SUINA: Yes.

24 ADMINISTRATOR JONES: Madam Chair, the motion
25 passes, with one member absent.

1 CHAIRPERSON SUINA: Thank you, Ms. Jones.

2 With that, I just want to do another check with
3 our Board members. Is everybody good? Nobody needs any
4 breaks or anything? We're good to keep moving? Good.

5 Okay. So, next, we're on section 10. The
6 Hearing Officer has it up on the screen as well. And we
7 don't -- it looks like it's NMED's -- the Department's
8 position on (10), (11), and there looks to be no
9 opposition. Wondering if we could get a motion regarding
10 these particular two sections? Double-check me, fellow
11 Board members, that there's no opposition. I don't see
12 any.

13 BOARD MEMBER CATES: It looks good. I would make
14 a motion to adopt (10) and (11) for the reasons stated by
15 NMED.

16 BOARD MEMBER BITZER: Second.

17 VICE-CHAIR TRUJILLO-DAVIS: I think there's
18 opposition on (11) B., subsection B. from Kinder Morgan.

19 CHAIRPERSON SUINA: B. is the start of a new
20 section, if I'm correct in that.

21 BOARD MEMBER CATES: Yeah.

22 HEARING OFFICER ORTH: That's correct, Madam
23 Chair.

24 VICE-CHAIR TRUJILLO-DAVIS: Oh, sorry. I
25 thought it was (11) B. I apologize.

1 CHAIRPERSON SUINA: You're good. You're good,
2 Vice-Chair.

3 So I think we had a second by Member Bitzer; is
4 that correct?

5 ADMINISTRATOR JONES: Yes.

6 CHAIRPERSON SUINA: On Member Cates' motion.
7 With that, if there's no further discussion, could we have
8 a roll-call vote on that?

9 ADMINISTRATOR JONES: Yes. Member Bitzer?

10 BOARD MEMBER BITZER: I'll vote yes.

11 ADMINISTRATOR JONES: Member Cates?

12 BOARD MEMBER CATES: Yes.

13 ADMINISTRATOR JONES: Member Garcia?

14 BOARD MEMBER GARCIA: Yes.

15 ADMINISTRATOR JONES: Member Honker.

16 BOARD MEMBER HONKER: Yes.

17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes.

19 ADMINISTRATOR JONES: Chair Suina?

20 CHAIRPERSON SUINA: Yes.

21 ADMINISTRATOR JONES: Madam Chair, the motion
22 passes, with one member absent.

23 CHAIRPERSON SUINA: Thank you, Ms. Jones.

24 All right. A new section here, Section B.

25 "Monitoring requirements." It looks like as Vice-Chair

1 Trujillo-Davis mentioned, we have NMED's position and then
2 we have Kinder Morgan's position, as well as NMOGA.

3 HEARING OFFICER ORTH: Madam Chair?

4 CHAIRPERSON SUINA: Yes.

5 HEARING OFFICER ORTH: Oh, I'm sorry. When I'm
6 screening share, it's really hard not to step on the end
7 of your sentence. I'm very sorry.

8 CHAIRPERSON SUINA: Sure.

9 HEARING OFFICER ORTH: Kinder Morgan is
10 supportive here, because NMED moved toward its proposed
11 edits in its most recent draft, the January 2022 draft.
12 However, NMOGA has a proposal for a second sentence in B.
13 (1). If you look at B. (1) on the screen, their second
14 sentence would be: "Unless otherwise specified in this
15 Part, monitoring is required to commence upon the date
16 that the associated control requirements become
17 effective."

18 And they say they're proposing this in case
19 some -- some applicability date has been missed in this
20 enormous rule.

21 CHAIRPERSON SUINA: Thank you, Madam Hearing
22 Officer.

23 We'll take a minute for our Board members to look
24 at the proposed text and just...

25 BOARD MEMBER CATES: That seems reasonable to me,

1 that proposed addition from NMOG -- or NMOGA.

2 CHAIRPERSON SUINA: Thank you, Member Cates.

3 Any other discussion from the Board? I'll give
4 you a minute. Yes, Member Bitzer.

5 BOARD MEMBER BITZER: I would concur with Member
6 Cates, that it looks entirely reasonable.

7 CHAIRPERSON SUINA: Yes, Member Honker?

8 BOARD MEMBER HONKER: I would just question for
9 the Hearing Officer; I don't see any language from NMED
10 addressing NMOGA's proposed addition, so I just want to
11 make sure there wasn't any that we're not aware of.

12 CHAIRPERSON SUINA: Thank you, Member Honker.

13 HEARING OFFICER ORTH: Thank you, Member Honker.
14 I did not see anything specifically from NMED opposing
15 this. NMED had made a general statement that to the
16 extent they didn't incorporate something, you should
17 understand that they oppose it, but this is possibly a
18 late-breaking proposal from NMOGA.

19 It would take me a bit to figure out exactly the
20 first time they proposed this.

21 CHAIRPERSON SUINA: Yes, Member Garcia?

22 BOARD MEMBER GARCIA: Thank you, Madam Chair.
23 Yes, I agree with Member Cates and others. It appears to
24 bring more clarity; however, I would -- I would ask Member
25 Trujillo-Davis, "upon the date that the associated control

1 requirements become effective," it seems obvious that
2 that's what has to happen, but this doesn't kick in until
3 the associated control requirements become effective.
4 That seems to be without saying, but do you know why they
5 would have proposed to add it, just because you know more
6 about this -- you know, this equipment?

7 VICE-CHAIR TRUJILLO-DAVIS: I think the answer to
8 that is actually less about the type of equipment and more
9 about clarification on when it actually comes into effect,
10 and any changes that need to be -- or, basically, the time
11 frame that they're working within.

12 Because if I remember correctly during this
13 discussion, it had to do with default times, and so there
14 was some concern that it might default to a sooner date.
15 I'd have to go back and look in my notes for that, but I
16 think that was the issue; it was a point of clarification
17 for a time frame.

18 BOARD MEMBER GARCIA: I appreciate that.

19 With that, I don't have a problem with that
20 addition, that clarification. Thank you.

21 CHAIRPERSON SUINA: Thank you, Member Garcia and
22 Vice-Chair Trujillo-Davis.

23 If there's any other discussion on this, to our
24 Board, if not, I would entertain a motion on this. So, on
25 this one, so I think this is one where there is -- we have

1 an addition here. So, how would we do this, Ms. Soloria?
2 Would we accept NMED's text and then amend it, or do the
3 NMED text with the NMOGA's addition?

4 MS. SOLORIA: I think the motion can be to adopt
5 section B., based on the rationale offered by the
6 Department and Kinder Morgan, with the revision proposed
7 by NMOGA, based on NMOGA's rationale.

8 CHAIRPERSON SUINA: Yes, Member Garcia?

9 BOARD MEMBER GARCIA: Thank you. One other
10 cautionary note is that, there's pretty standard
11 requirements throughout the rule on monitoring
12 requirements and recordkeeping. And so, I'm not sure -- I
13 mean, that's just standard throughout the rule, I've seen
14 it repeatedly over and over and over. So I'm not sure
15 if -- if it -- if NMOGA is asking it -- is asking for it
16 to be put in everywhere or not. Do you -- you all that
17 are -- do you all see -- have you seen that in other parts
18 of the rule?

19 I have. It's monitoring requirements and
20 recordkeeping requirements are just sort of standard
21 language throughout the rule.

22 CHAIRPERSON SUINA: Yes, Member Garcia, I do see
23 that as well.

24 So, I think one of the discussion points is that,
25 you know, it's just in terms of consistency as well. If

1 we have similar sections, but it's not in a -- referenced
2 in those other sections, if I may say that. I don't know
3 if any of the Board members have any other discussion on
4 this.

5 Yes, Vice-Chair Trujillo-Davis?

6 VICE-CHAIR TRUJILLO-DAVIS: I think if I'm
7 understanding this correctly, NMOGA's comment is
8 insinuating that the monitoring dates are -- that when
9 they become effective are different than the associated
10 control requirement dates becoming effective. And that's
11 how I'm reading it. Does anybody have any clarification
12 on that?

13 CHAIRPERSON SUINA: Give us a second there,
14 Vice-Chair Trujillo-Davis, and look at it as well again.

15 So I think I see -- yes, Member Honker.

16 BOARD MEMBER HONKER: Well, since NMOGA has
17 included the language, "unless otherwise specified in this
18 Part," it seems like if there's any other language that
19 specifies when monitoring is required to commence
20 elsewhere in the rule, then that would still stand. This
21 would just -- I guess this would just fill in the gap in
22 case there was any question about when the monitoring was
23 required to commence. That's the way I read it.

24 CHAIRPERSON SUINA: Yes, Member Garcia?

25 BOARD MEMBER GARCIA: Thank you for that, Member

1 Honker. I think that that helps, "unless otherwise
2 specified," I think that's a good point. So I'd be happy
3 to propose a motion if we're at that point, to include it.

4 CHAIRPERSON SUINA: Okay. I just have one other
5 question on this one. And I apologize, getting into the
6 details here; so my other question is, so as it's written
7 or proposed by NMOGA, it says, "unless otherwise specified
8 in this Part, monitoring is required to commence," so
9 just -- it's just talking about monitoring.

10 Is that, "unless otherwise specified," the term
11 "monitoring," I guess I'm getting myself wrapped around,
12 it's not limited to monitoring. Again, we have
13 monitoring, testing or inspection requirements.

14 So am I reading monitoring, testing or inspection
15 requirements, is all under the umbrella of monitoring --
16 the term monitoring? And, therefore, would apply to this?
17 So monitoring would include testing, inspection
18 requirements, and then the word monitoring. I guess I
19 feel like we keep using "monitoring" for different terms.
20 And I just want to make sure that we're not putting more
21 monitoring terms in here where it's not needed.

22 Yes, Member Garcia.

23 BOARD MEMBER GARCIA: Yes. Thank you, Madam
24 Chair. I think that's already in the NMED's proposed
25 language: "In addition to any monitoring requirements

1 specified," so the only thing they're adding -- well, I
2 don't know, that's how I interpret it, that it's not --
3 it's not any different from what they're already saying,
4 except that they're talking about, to commence upon the
5 date that the associated control requirements become
6 effective.

7 CHAIRPERSON SUINA: Is there any -- any gap when
8 the control requirements become effective from -- so, in
9 the text itself, as proposed by the Department, there's no
10 under item D. (1), there's no, I guess, commencement.
11 There's no start date.

12 And maybe that's NMOGA's point, but I don't
13 see -- is there any other area -- again, looking to
14 members of the Board -- that I'm missing? If I'm missing
15 something that -- where we actually -- where the proposed
16 rules, texts state where it's proposed -- where it's
17 required to commence monitoring. Because I don't see it
18 here.

19 BOARD MEMBER GARCIA: Madam Chair, I also don't
20 know if that's a gap. And I -- I must say, I don't recall
21 the discussion about this, and when I read this yesterday,
22 I didn't -- I couldn't find in my notes any -- any notes
23 about this, so this might be a late addition by NMOGA.

24 And I -- I -- it just seems -- it just seems
25 obvious that it is -- it is going to kick in when the

1 requirements become effective.

2 CHAIRPERSON SUINA: Exactly. And I just want to
3 make sure that we're not going to conflict with other
4 times when monitoring has kicked in. All monitoring
5 occurs when the control requirements become effective; is
6 that -- there is no other monitoring prior to when control
7 requirements become effective. Am I -- I don't -- I
8 haven't seen that. I just want to make sure with members
9 of the Board. Because I don't see it, but I just want to
10 make sure we're not conflicting ourselves.

11 BOARD MEMBER CATES: Well, Madam Chair, you know,
12 it seems potentially useful and innocuous, at worst, so I
13 think it does no harm to include it.

14 CHAIRPERSON SUINA: Okay.
15 Yes, Vice-Chair Trujillo-Davis?

16 VICE-CHAIR TRUJILLO-DAVIS: I think I'll propose
17 a question this way: Based on NMOGA's statements, is this
18 an applicability -- a monitoring applicability date, and
19 if there is, then this statement is not needed. And if
20 there isn't, then we probably should consider it.

21 CHAIRPERSON SUINA: Right. Right.

22 And I don't see it. I've been going back and
23 forth, like Member Garcia, just trying to do some homework
24 prior to this. I have not seen that applicability date,
25 but I just wanted to double-check that I didn't miss

1 something.

2 HEARING OFFICER ORTH: Madam Chair, it might also
3 be because this proposal wasn't made during the hearing,
4 it was made as part of a post-hearing submittal.

5 It may also be wise to address that question to
6 Ms. Soloria, about whether the Board can include a general
7 applicability date at this point.

8 CHAIRPERSON SUINA: Thank you for that, Madam
9 Hearing Officer.

10 So, with that, Ms. Soloria, do you have any
11 thoughts on this discussion?

12 MS. SOLORIA: My -- I would phrase my concern in
13 the sense that if it wasn't brought up during the hearing,
14 and parties didn't have an attempt -- an opportunity to
15 oppose it, to bring their own evidence to bear on it, I
16 think that that really -- that would undercut the Board's
17 authority to impose that type of requirement, for a number
18 of reasons. Just for the opportunity -- for the sake of
19 the other parties' rights to present their own evidence on
20 it, and also, that it wasn't noticed in the proposed rule.
21 So there are a couple of issues there.

22 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
23 Appreciate that.

24 With that additional discussion, do members of
25 the Board have other comments?

1 BOARD MEMBER CATES: Well, Chair Suina, I would
2 say, you know, I said it struck me as innocuous, and you
3 know, that's not a good enough reason to add it, and
4 especially after hearing from Counsel. So I'd be inclined
5 to not include it.

6 MADAM HEARING OFFICER: Yes, Vice-Chair
7 Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: Given the information
9 that it came in a post-hearing submittal, I'm also in
10 agreeance with Member Cates, that I don't think it's
11 necessary to add.

12 CHAIRPERSON SUINA: Thank you, Vice-Chair
13 Trujillo-Davis.

14 Could we entertain a motion or further
15 discussion? What's the pleasure of the Board?

16 Yes, Board Member Garcia?

17 BOARD MEMBER GARCIA: I'll take a stab at a
18 motion, but since there's not any supporting documentation
19 by NMED, this one's a little more tricky, but let me take
20 a stab at it.

21 I would move that the Board retain the original
22 language proposed by NMED, and reject the addition
23 proposed by NMOGA, because the language proposed by NMED
24 is supported by evidence already established by NMED.

25 CHAIRPERSON SUINA: Thank you, Member Garcia, for

1 taking that stab.

2 And I just want to -- before we have any other --
3 oh, maybe a second or -- I don't know, but at this point,
4 Ms. Soloria, I did want to get your thoughts on how our
5 Board is going to frame this, given that we had this
6 proposal and how we addressed the statements of reason for
7 not adding NMOGA's proposal.

8 Because we don't have -- we don't have additional
9 discussion in writing with NMED -- from NMED.

10 MS. SOLORIA: I would phrase the first part of
11 the motion to adopt -- what section are we on -- Section
12 B. as offered by the Department, based on the Department's
13 rationale, and supported rationale offered by Kinder
14 Morgan, and to reject the proposal by NMOGA, as it was not
15 presented during -- during the hearing. Yes, that's
16 correct.

17 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

18 Member Garcia, what do you think about
19 Ms. Soloria's suggestion?

20 BOARD MEMBER GARCIA: Okay. Let me try this
21 again. So I would move that we adopt B. (1) and (2) for
22 the reasons stated by NMED and supported by Kinder Morgan,
23 and not adopt the proposed language by NMOGA because it
24 was not supported with evidence during the hearing.

25 BOARD MEMBER CATES: Second.

1 MADAM HEARING OFFICER: Thank you, Member Garcia,
2 and thank you for your second, Member Honker.

3 BOARD MEMBER HONKER: I think that was Member
4 Cates?

5 CHAIRPERSON SUINA: Oh, sorry. Member Cates.

6 BOARD MEMBER HONKER: He beat me to the buzzer.

7 CHAIRPERSON SUINA: Thank you.

8 BOARD MEMBER CATES: It's okay to give credit
9 where credit is due.

10 CHAIRPERSON SUINA: There you go. There you go.

11 So, just for record clarification, it was a
12 motion by Member Garcia and a second by Member Cates.

13 With that, if there's no further discussion,
14 Ms. Jones, would you mind doing a roll-call vote on this?

15 ADMINISTRATOR JONES: Yes.

16 Member Bitzer, how do you vote?

17 BOARD MEMBER BITZER: I vote yes.

18 ADMINISTRATOR JONES: Member Cates?

19 BOARD MEMBER CATES: Yes.

20 ADMINISTRATOR JONES: Member Garcia?

21 BOARD MEMBER GARCIA: Yes.

22 ADMINISTRATOR JONES: Member Honker?

23 BOARD MEMBER HONKER: Yes.

24 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Yes.

1 ADMINISTRATOR JONES: Chair Suina?

2 CHAIRPERSON SUINA: Yes.

3 ADMINISTRATOR JONES: Madam Chair, the motion
4 passes, with one member absent.

5 CHAIRPERSON SUINA: Thank you, Ms. Jones.

6 All right. That takes us to item C., and that's
7 Section 20.2.50.112 Section C., that we're at. And I'm
8 just scrolling down.

9 And it looks like we have agreement between the
10 Department and NMOGA on this. Yes, Vice-Chair
11 Trujillo-Davis?

12 VICE-CHAIR TRUJILLO-DAVIS: I was actually kind
13 of hoping that I could just discuss real quick the evening
14 plans. If we're going to push through, would the Board be
15 opposed to taking like a half hour dinner break or
16 something like that?

17 CHAIRPERSON SUINA: Thank you, Vice-Chair
18 Trujillo-Davis. I think we have a stop at 6:00. I don't
19 know if that factors into the timing here and all of our
20 dinner for our families and ourselves, but, yeah.

21 What do you think?

22 VICE-CHAIR TRUJILLO-DAVIS: That sounds good. I
23 guess I was stuck in the mindset of when we were doing the
24 hearing and we went until like 8:00 one night. I just
25 wanted to see if we could factor that in, if we were going

1 to go late. So 6:00 sounds fine to me.

2 CHAIRPERSON SUINA: Great. And just one check, I
3 know we had a quick five-minute break because we wanted
4 Member Duval to hang on as much -- as long as possible.
5 Does anybody need a quick break before we hit this last --
6 about an hour and so minutes, or are we good to go?

7 VICE-CHAIR TRUJILLO-DAVIS: I'd say, let's do a
8 quick break. I mean, it doesn't have to be too long, but
9 a quick biorun.

10 CHAIRPERSON SUINA: Okay. Yes. So we're looking
11 at five minutes. Is that good? Okay. We'll come back
12 here at 4:50.

13 (Recess taken from 4:45 p.m. to 4:51 p.m.)

14 CHAIRPERSON SUINA: There we are. All right.
15 Let me jump back to mine. Thank you, Madam Hearing
16 Officer. We're on section C., yes. "C. Recordkeeping
17 requirements." Make sure we're here. Great. Okay.

18 And I see NMOGA has agreed and appreciates the
19 clarification, so it doesn't look like there's any
20 opposition to NMED -- the Department's text on C. (1), (2)
21 and (3).

22 And please, again, Board members, check me on if
23 there's not any comments, discussion, we'll entertain a
24 motion here.

25 Yes, Member Honker?

1 BOARD MEMBER HONKER: Yes, I move we adopt
2 Section C. as proposed by NMED, with NMED's supporting
3 rationale and support from NMOGA.

4 BOARD MEMBER BITZER: I would second that.

5 CHAIRPERSON SUINA: Thank you, Member Honker and
6 Member Bitzer.

7 I'm just checking if there's any further
8 discussion on this. If not, Ms. Jones, would you please
9 do a roll-call vote?

10 ADMINISTRATOR JONES: Yes. Member Bitzer?

11 BOARD MEMBER BITZER: I'll vote aye.

12 ADMINISTRATOR JONES: Member Cates?

13 BOARD MEMBER CATES: Yes.

14 ADMINISTRATOR JONES: Member Garcia?

15 BOARD MEMBER GARCIA: Yes.

16 ADMINISTRATOR JONES: Member Honker?

17 BOARD MEMBER HONKER: Yes.

18 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Yes.

20 ADMINISTRATOR JONES: Chair Suina?

21 CHAIRPERSON SUINA: Yes.

22 ADMINISTRATOR JONES: Madam Chair, the motion
23 passes, with one member absent.

24 CHAIRPERSON SUINA: Thank you, Ms. Jones.
25 Appreciate it.

1 HEARING OFFICER ORTH: Madam Chair?

2 CHAIRPERSON SUINA: Yes.

3 HEARING OFFICER ORTH: I'm sorry, this is
4 Felicia. If I might, I think I can give you a thumbnail
5 here. Section D. as in dog, the last section of Section
6 112, you have NMED's proposal, GCA's support, NMOGA
7 encouraging you to assure that it does not extend beyond
8 the CDR, IPANM proposing to delete D. in its entirety, and
9 WildEarth Guardians proposing to add two paragraphs. So
10 there's a fair number of positions on paragraph D.

11 CHAIRPERSON SUINA: Thank you for that verbal
12 summary, Madam Hearing Officer. That's helpful. All
13 right. So it looks like even on this -- sorry, I'm
14 scrolling here again, to remind myself of this section.
15 We have quite a bit of discussion amongst the parties on
16 this. And thank you again, Madam Hearing Officer, for
17 compiling this.

18 As Madam Hearing Officer mentioned, this is the
19 last one in Section 112. Does anybody -- let me go back
20 up there. So it looks just like one paragraph, but we
21 have a great deal of parties chiming in on this particular
22 paragraph. If anybody wants to jump in.

23 BOARD MEMBER HONKER: I'm jumping in. It's
24 really, I think, a question for the Hearing Officer.
25 NMOGA's comments about if it extended beyond the CDR, is

1 what they're really saying is that their opposition to the
2 WildEarth Guardians proposed language? I just am not sure
3 how to interpret NMOGA's language there.

4 HEARING OFFICER ORTH: Let's see here. Well,
5 they certainly oppose the deviation reporting, which is
6 the crux of the Guardians' proposal addition. They
7 mention the words "requested expansion" in the
8 Department's January redline. And I had actually found
9 that ambiguous, because I wondered if they were actually
10 suggesting that the Department was expanding beyond the
11 CDR.

12 But I certainly don't see an expansion beyond the
13 CDR. Here on its face, it seems to refer specifically to
14 the CDR, so I think NMOGA is referring in its opposition,
15 not to the Department, but to the deviation reporting
16 requested by WildEarth Guardian. This is, however, a
17 direct quote from their post-hearing submittal, so this is
18 what we have from NMOGA.

19 BOARD MEMBER HONKER: Thank you.

20 CHAIRPERSON SUINA: Thank you, Madam Hearing
21 Officer. That's helpful. And so we have, I think, that
22 discussion or various viewpoints from NMOGA and WildEarth
23 Guardians, and then we have IPANM proposing to delete the
24 section in its entirety.

25 But other than -- making sure. And then we

1 have -- okay. So, just for my clarification, Madam
2 Hearing Officer, so, basically, it looks like NMOGA is
3 providing that opposition to the WildEarth Guardians'
4 proposal, as identified here in the summary report?

5 HEARING OFFICER ORTH: That's my understanding as
6 I look at their language. And, of course, they join --
7 they join the Department in that. The Department also
8 opposes the Guardians' deviation reporting. And there
9 might have been another party as well -- GCA.

10 So, NMED, NMOGA and GCA have all weighed in
11 opposing the Guardians' proposal.

12 CHAIRPERSON SUINA: Thank you for that
13 clarification.

14 Yes, Member Bitzer?

15 BOARD MEMBER BITZER: My heartburn would focus on
16 page 80 in the hard copy where IPA talks about how the
17 date stamp requirement is going to be due on April 2nd,
18 but the software that the Department will approve isn't
19 even going to be known until January 1st. Also, it says
20 they've got four months; I think they're overestimating,
21 that's actually three months; all of January, February and
22 March. And you're only two days into April, so three days
23 and two months -- or three months and two days.

24 And we've seen throughout the testimony, and I
25 remember hearing it, this is not simple, especially for

1 small operators. Some of the big ones may already have
2 this software in place. But the four months, they said
3 four months just wasn't enough time. This is down below
4 the middle of that page 80.

5 And I'm wondering if it would be possible to
6 grant an extension here, instead of April 2nd, maybe say
7 June 30th or July 1st, so they have six months?

8 HEARING OFFICER ORTH: Member Bitzer, that may
9 have already been done.

10 BOARD MEMBER BITZER: I was reading this
11 recently, that was something that jumped out at me. Maybe
12 it's touched on elsewhere.

13 HEARING OFFICER ORTH: Yeah, let's see here.

14 CHAIRPERSON SUINA: It says right there in the
15 last sentence, Member Bitzer: The Department cites the
16 CDR, that additional time will be given, as appropriate.

17 I don't know if that addresses -- Madam Hearing
18 Officer, is that what you were going to point out? I
19 apologize if I spoke over you.

20 HEARING OFFICER ORTH: Yeah. No, no. That is
21 what I had in mind, I just couldn't read it fast enough.

22 BOARD MEMBER BITZER: Do we know if there is a
23 reason why they have to stick with April 2nd?

24 CHAIRPERSON SUINA: Member Bitzer, and I'm just
25 looking at my notes. I do recall this coming up in the

1 hearing and this was about the hard date, and then this
2 additional text to have that flexibility so that some of
3 the small -- the small businesses could adjust, and so I
4 just recall that conversation. I have it noted here in my
5 notes.

6 I don't -- and it looks like -- and maybe this is
7 a question for Madam Hearing Officer. On IPANM's proposed
8 deletion, was that after the hearing submittals? I mean,
9 after our hearing as well? Because I wasn't sure if they
10 still felt that even with that language, it didn't -- it
11 didn't give them that flexibility, or there was still that
12 concern?

13 HEARING OFFICER ORTH: So I think -- I believe,
14 Madam Chair, the dates have already been extended in other
15 sections. And, of course, the -- I think this is old
16 information, basically, that was included in the -- in the
17 IPANM closing argument.

18 There may have been some movement by the
19 Department, for example, right after they reflected on
20 IPANM's proposal. There was discussion of all of this at
21 the hearing. You can see references in the closing
22 argument, the various citations to transcripts for the
23 testimony.

24 Let's see here. It might -- it might take me a
25 little bit, though, to track down where these other --

1 where these other dates are. If that's going to be
2 important to your deliberation, Member Bitzer, it may be
3 good just to give me a little bit of time to find the
4 other dates.

5 BOARD MEMBER BITZER: That's all right. I just
6 wanted to point that out, because the additional room in
7 the proposed language is itself fairly ambiguous, that
8 additional time would be given as appropriate. That puts
9 somebody behind the curtain, if you will, in charge of
10 deciding what qualifies as appropriate, so -- but, anyway,
11 it's not worth slowing us down for.

12 CHAIRPERSON SUINA: Thank you for that
13 discussion, though, Member Bitzer.

14 Let me know if other members have any other
15 comments regarding either IPANM's statements or others.
16 And it looks to me, I think -- I guess a starting point,
17 of course, is we have the Department's, and then whether
18 or not it is, you know, I think maybe with IPANM's
19 proposal to delete in its entirety, as maybe one decision
20 point. And then what the -- and then if we don't do that,
21 then we have also IPANM's concern about -- as Member
22 Bitzer's brought up -- about the timing, but it's actually
23 not in -- those -- those dates are not anywhere in this
24 particular section.

25 Anyway, go ahead, Member Honker.

1 BOARD MEMBER HONKER: Yeah, I -- I don't find
2 IPANM's argument to be compelling. They seem to be
3 talking about other stuff that's not in this section that
4 we're considering here. So it seems like there's some
5 somewhat irrelevant stuff in the argument, so I'm in favor
6 of keeping this section in there.

7 HEARING OFFICER ORTH: Madam Hearing Officer, I
8 can point you to one specific place and scroll to it if
9 you'd like. The GPS requirement data is in 112.A. (8)
10 (b). You remember when we went through A. (3) through
11 (9), and the date now is two years from the effective
12 date, not April 2nd, 2023.

13 Again, I can scroll back to that if you'd like,
14 or you can find it maybe on the hard copy at page 59 and
15 60. In particular, page 60, about two-third's of the way
16 down the page. (8) (b).

17 CHAIRPERSON SUINA: Yes, I see that. So, you
18 know, (8) (b), I just want to read it out real quick.
19 "Certain sections of this Part require a date and time
20 stamps, including a GPS display of the location, for
21 certain monitoring events. No later than one year from
22 the effective date of this Part, the Department shall
23 finalize a list of approved technologies to comply with
24 date and time stamp requirements, and shall post the
25 approved list on its website. Owners and operators shall

1 comply with this requirement using an approved technology
2 no later than two years from the effective date of this
3 Part."

4 So, I hope that clarifies it for the Board a
5 little bit, on IPANM's discussion under section (b). Is
6 that helpful?

7 Thank you for that, Madam Hearing Officer.

8 BOARD MEMBER CATES: I'm sorry, Madam Hearing
9 Officer, could you repeat that?

10 HEARING OFFICER ORTH: Yes, sir. If you look at
11 the hard copy, it would take me, I think, too long to
12 scroll here, but if you look at the hard copy of
13 Attachment A on page 60, about two-third's of the way down
14 the page in bold, paragraph (8) subparagraph (b), you'll
15 see that the effective date for the GPS requirements is
16 two years from the effective date of this rule, which will
17 not be April of 2023.

18 BOARD MEMBER CATES: Well, then, yeah, I was
19 going to say, how do we -- the rule seems to be
20 contradicting itself on this point, so how do we go about
21 fixing that?

22 HEARING OFFICER ORTH: No. I'm sorry, Member
23 Cates, I don't believe the rule is contradicting itself.
24 I believe what happened is, again, the Department
25 displayed a lot of energy around edits and adjustments to

1 its provisions, based on comments from industry. And
2 based in particular on comments from industry, that April
3 2023 was too soon to meet the provisions of this section
4 that's up on the screen, and the GPS requirements in 112
5 A. (8) (b), they moved it later.

6 And we don't have then -- IPANM's is proposing to
7 delete this section in its entirety, but the portion of
8 IPANM's final arguments around why the deletion is
9 necessary, include an argument that's moot now -- at least
10 that part of the argument is moot now, because that April
11 2023 compliance deadline simply isn't in the rule in this
12 case.

13 BOARD MEMBER CATES: Oh, okay. Got it. Thank
14 you.

15 CHAIRPERSON SUINA: Yes, Member Garcia?

16 BOARD MEMBER GARCIA: Yes, thank you.

17 I just have a procedural question for Counsel
18 Soloria. So I know there are -- we've gone through this
19 once before, and there's several items that come up like
20 this, where there's a section where parties agree with
21 NMED, and then there may be proposed new language, there
22 may be a piece here and there, where somebody wants to
23 change language. And my question is, if we -- do we need
24 to go through each item that a party brings up and vote on
25 it, or if we were to adopt the rule as written, with --

1 with SOR, would that, by default, mean that we are
2 rejecting those other proposals, or do we need to go
3 through each proposal and vote?

4 MS. SOLORIA: I'll give you a piecemeal -- a
5 complicated answer to that question. If you're going to
6 vote to accept the language as the Department has
7 proposed, and that motion, then you would, by default, as
8 you stated, reject any deletions or additions.

9 The purpose of perhaps of going into more detail
10 about the parties' arguments, is in consideration of the
11 Board's preference of how detailed you want this statement
12 of reasons to be. So there should be a reason for your --
13 for your vote. And so, for example, on this case, where
14 there's various parties' positions, you can state that
15 you're adopting one party's position based on that party's
16 associated rationale, but it may be because of the
17 particular context of the arguments raised, the particular
18 content of those arguments, that you would want to
19 explicitly say, we're rejecting the rationale proposed --
20 as proposed by whatever party.

21 There has been a pattern that's emerged as
22 you-all have been going: where it is somewhat simpler if
23 the party has proposed a revision, especially in the
24 context -- I mean, excuse me -- in a deletion, especially
25 in the context where the Department has offered in their

1 own rationale a reason to reject that revision.

2 So, by adopting the Department's rationale,
3 you've also referenced why you should reject that party's
4 revision. So it's sort of on a case by case; I think that
5 the pattern you've developed is a sound one, but just be
6 open to the possibility that the context of the particular
7 provision you're examining may require more detail in what
8 you want to include in the statement of reasons.

9 BOARD MEMBER GARCIA: Thank you very much. I
10 appreciate that.

11 CHAIRPERSON SUINA: Thank you, Counsel Soloria.
12 Appreciate that. And I also appreciate that we have a
13 case-by-case basis, and unique aspects for each subsection
14 that we're looking at as well, in terms of responses and
15 timing and so forth. So if the members of the Board and
16 legal counsel are supporting the input, can remind us when
17 we need to make sure we're consistent and we're clear on
18 our statement of reasons when we need to have that
19 additional detail. That would -- that would help the
20 record on our decisions.

21 All right. With that said, I think Member Cates,
22 that there's the clarification by Madam Hearing Officer
23 that addresses some of the confusion here, just to kind of
24 wrap that one up. It looks like IPANM, in some of the
25 comments in here, regarding timing seem to be moot at this

1 point because it was addressed by the Department in terms
2 of what Member Bitzer mentioned earlier, about January
3 2023 being a fixed technology, and then be having the
4 April 2nd, 2023, that is actually not a concern, given the
5 most recent proposed version by the Department -- in other
6 sections, I should say.

7 Does that help, Member Cates, on that, and Member
8 Bitzer, on your concern as well?

9 BOARD MEMBER CATES: Yeah, it does. Thank you.

10 BOARD MEMBER BITZER: Great.

11 CHAIRPERSON SUINA: All right. So, with that, do
12 we have any further discussion regarding the Department's
13 language, and also some of the other comments by the other
14 parties?

15 HEARING OFFICER ORTH: Madam Chair, I'll scroll
16 down to the deviation language proposed by WildEarth
17 Guardians for this section, if that's what you'd like.

18 CHAIRPERSON SUINA: Yes, just so that we can keep
19 the conversation going on this. I know, that this is one
20 where we have a number of parties commenting.

21 So, on this one we see WildEarth Guardians with
22 this additional language. I believe -- and correct me if
23 I'm wrong, Madam Hearing Officer -- I think this was
24 addressed in NMED's? Or, no, it was not addressed.

25 HEARING OFFICER ORTH: Oh, Madam Chair, it was

1 addressed below this proposal because -- which, I
2 formatted it that way because it was proposing a new
3 section. So I can scroll down to the Department's
4 opposition, if you'd like.

5 Hold on. There it is.

6 CHAIRPERSON SUINA: Thank you.

7 HEARING OFFICER ORTH: In the hard -- yeah, in
8 the hard copy --

9 BOARD MEMBER HONKER: It's page 85, about
10 two-third's of the way down.

11 HEARING OFFICER ORTH: Thank you.

12 BOARD MEMBER CATES: Chair, I wanted to comment
13 on that when the time is right.

14 CHAIRPERSON SUINA: Sure.

15 BOARD MEMBER CATES: I am -- you know, I'm
16 feeling with the state here on this one. So, Guardians
17 were asking for deviations reports, that include stuff
18 like work practice standards. And my sympathies are
19 tilting toward the state here. And it talks about --
20 where they talk about the inherent damage in the language
21 that Guardians is using there, and I'm reading here, and
22 it would create unclear expectations, and pose
23 implementation challenges. So, to me, that's just a place
24 that we probably best not go.

25 CHAIRPERSON SUINA: Thank you for that.

1 Is there any other discussion on that? Yes,
2 Member Honker?

3 BOARD MEMBER HONKER: Yeah, I agree with Member
4 Cates. I thought NMED's arguments against this language
5 were pretty well thought out and very good points, so I
6 think I agree that we should not adopt this additional
7 language.

8 CHAIRPERSON SUINA: Thank you, Member Honker.

9 Any other discussion? Yes, Member Garcia?

10 BOARD MEMBER GARCIA: Yes, I have an observation,
11 and also I note that GCA supports not including that
12 language as well. I think NMED is the one that has to
13 enforce this, ultimately, and they know the sticking
14 points they're going to come across by enforcing language
15 that is ambiguous. So -- so I would not support including
16 that language.

17 CHAIRPERSON SUINA: Thank you, Member Garcia.

18 So it sounds like we're -- members of the Board
19 are leaning toward not including or not -- yeah, not
20 including or entertaining WildEarth Guardians' proposed
21 language. Is that what I'm hearing?

22 I know we'll make an official motion, you know,
23 action on this, but I'm just trying to take a pulse as we
24 navigate this particular section. So, given that, it
25 looks like we have -- if that's where we're leaning

1 toward, we have the NMED -- the Department's proposed
2 language, and then GCA supporting, also industry not
3 supporting the amendment proposed by WildEarth Guardians.

4 And then, I think all that we are missing is, I
5 think, NMOGA's position on -- sorry. NMOGA said on NMED's
6 original proposed language, that if NMED agrees that it
7 will give additional time if multiple facilities' CDR are
8 requested.

9 Yes, thank you, Madam Hearing Officer. We can go
10 back up. So I'm on NMOGA's summary of their responses.
11 So I don't know if we want to focus on that. I think we
12 have kind of hammered through most of the other points.

13 Yes, Member Garcia.

14 BOARD MEMBER GARCIA: I'll try to propose a
15 motion.

16 CHAIRPERSON SUINA: Sure.

17 BOARD MEMBER GARCIA: I say "try." This is a
18 tricky one. So I move to adopt Section D., as written by
19 NMED, for the reasons as given by NMED, specifically
20 rejecting the proposal by IPANM to delete section D.,
21 because it is no longer necessary, considering the
22 accommodation on dates that NMED made. Also, rejecting
23 the proposal by WildEarth Guardians for a new definition
24 or new description of reporting requirements under D.,
25 with reasons being, for evidence submitted by the

1 Department's Mr. Baca, and Ms. Hollenberg.

2 CHAIRPERSON SUINA: Thank you.

3 BOARD MEMBER BITZER: I'll second that.

4 CHAIRPERSON SUINA: Thank you, Member Garcia. I
5 apologize, I spoke over the member that was seconding.
6 Who was that?

7 Member Bitzer.

8 MS. SOLORIA: Madam Chair, this is one of the
9 instances where there were supportive parties' rationale
10 for both the Department's language and against WildEarth
11 Guardians' proposal. Can I take a stab at a revised -- a
12 revised motion based on Member Garcia's description?

13 CHAIRPERSON SUINA: Thank you, Counsel Soloria.
14 That would be great.

15 MS. SOLORIA: This is a complex one, but the
16 motion would be to adopt the Department's language based
17 on rationale offered by the Department and GCA and NMOGA's
18 rationale and support, and to reject WildEarth Guardians'
19 proposed language based on the same parties' rationale and
20 to delete IPANM's proposal, as moot.

21 CHAIRPERSON SUINA: Thank you.

22 Member Garcia, are you good with that?

23 BOARD MEMBER GARCIA: Well, but that doesn't
24 address WildEarth Guardians. Do I need to do that in a
25 separate motion?

1 MS. SOLORIA: I did insert that it would reject
2 WildEarth Guardians' proposed language based on the same
3 parties' rationale, when I said same parties' it was
4 because I referenced the Department, CGA and NMOGA prior
5 to that. Because they also -- if I'm correct -- right --
6 I think they were also in support of rejecting it. I'm
7 sorry, I might have overcomplicated this.

8 Did I overcomplicate this?

9 CHAIRPERSON SUINA: You are -- you are correct.
10 The GCA and NMOGA did support, from my reading. I'm
11 looking at NMOGA's right now, and did support not -- or
12 sorry, WildEarth Guardians' proposal. And then GCA --

13 COURT REPORTER: I'm sorry. I'm sorry. GCA,
14 what? You faded off. I'm sorry.

15 CHAIRPERSON SUINA: I'm sorry. That GCA, as
16 well, did not -- did support not -- not adopting or
17 including WildEarth Guardians proposal.

18 BOARD MEMBER GARCIA: Anyone else want to take a
19 stab? Go right ahead, because my brain is very tired.

20 MS. SOLORIA: I can repeat that, and then go from
21 there?

22 CHAIRPERSON SUINA: Yes.

23 MS. SOLORIA: Okay. The motion is to adopt the
24 Department's language based on the rationale offered by
25 the Department, as well as GCA and NMOGA's rationale in

1 support, and to reject WildEarth Guardians' proposed
2 language based on the same parties' rationale. And to
3 delete IPANM's proposal, as moot.

4 BOARD MEMBER GARCIA: Okay. Here goes.

5 MS. SOLORIA: You can just adopt that motion.

6 BOARD MEMBER GARCIA: Oh, wonderful. Thank you.
7 I will -- I would like to adopt that motion as stated by
8 Counsel. Thank you very much. I mean, I would propose
9 that motion as stated by Counsel.

10 BOARD MEMBER CATES: I'll second.

11 CHAIRPERSON SUINA: Thank you, Member Cates and
12 Member Garcia. If there's no other discussion, Ms. Jones,
13 could you do a roll-call vote on Member Garcia's motion?

14 ADMINISTRATOR JONES: Yes.

15 Member Bitzer, how do you vote?

16 BOARD MEMBER BITZER: I vote yes.

17 ADMINISTRATOR JONES: Okay. Member Cates?

18 BOARD MEMBER CATES: Yes.

19 ADMINISTRATOR JONES: Member Garcia?

20 BOARD MEMBER GARCIA: Yes.

21 ADMINISTRATOR JONES: Member Honker?

22 BOARD MEMBER HONKER: Yes.

23 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: Yes.

25 ADMINISTRATOR JONES: Chair Suina?

1 CHAIRPERSON SUINA: Yes.

2 ADMINISTRATOR JONES: Madam Chair, the motion
3 passes.

4 CHAIRPERSON SUINA: Thank you, and thank you, all
5 of the Board members for wading through that section.
6 Appreciate it, and Member Garcia and Member Cates for your
7 motions.

8 So we're on -- and correct me if I'm wrong,
9 because my brain is getting there, toward the end here,
10 20.2.50.113, "Engines and turbines."

11 MS. SOLORIA: Madam Chair, Pam had to drop off,
12 so Ms. Corral, also with the Department, will be
13 conducting the votes. She'll do that for us.

14 CHAIRPERSON SUINA: Thank you so much, and have a
15 good evening, Pam. And thank you for your help and
16 support today. All right.

17 BOARD MEMBER GARCIA: So it looks like there's no
18 opposition to that piece, unless I'm reading this wrong.

19 CHAIRPERSON SUINA: And I think we can keep
20 going, because we have subsection A., B.

21 BOARD MEMBER HONKER: Well, B. (1), I think is
22 unopposed, but I think on B. (2), there is some other
23 proposed language by the National Park Service.

24 So I would move that we adopt Section 113 A. and
25 B. (1) as proposed by NMED, for the reasons supported by

1 NMED's rationale.

2 BOARD MEMBER BITZER: I'll second that.

3 CHAIRPERSON SUINA: Thank you, Member Honker and
4 Member Bitzer, for the motion. Is there any -- any
5 discussion regarding this? If not, I look to Ms. Corral,
6 if you could do our roll-call vote for us?

7 ADMINISTRATOR CORRAL: Yes.

8 Member Bitzer, how do you vote?

9 BOARD MEMBER BITZER: I vote yes.

10 ADMINISTRATOR CORRAL: Member Cates?

11 BOARD MEMBER CATES: Yes.

12 ADMINISTRATOR CORRAL: Member Duval?

13 Member Garcia?

14 BOARD MEMBER GARCIA: Yes.

15 ADMINISTRATOR CORRAL: Member Honker?

16 BOARD MEMBER HONKER: Yes.

17 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes.

19 ADMINISTRATOR CORRAL: Chair Suina?

20 CHAIRPERSON SUINA: Yes.

21 ADMINISTRATOR CORRAL: Madam Chair, the motion
22 passes.

23 CHAIRPERSON SUINA: Thank you for your support on
24 that roll-call vote.

25 So we're on Section -- let me see.

1 HEARING OFFICER ORTH: It's 133 B. (2). Excuse
2 me. And I just wanted to interject, Madam Chair, that I
3 have it on this screen so that you can see the entirety of
4 subsection (2). And I'll read from a later page, the
5 proposal from the National Park Service, which is to add a
6 subsection E. as in Edward here. "Companies shall
7 maintain a plan that demonstrates how the owner or
8 operator will meet the emission standards as outlined in
9 the schedule above."

10 CHAIRPERSON SUINA: Thank you for that, Ms. Orth.
11 I appreciate that. And just in terms of a check on this,
12 Ms. Orth, I just wanted to note, so the National Park
13 Service proposed that new paragraph. And I apologize if I
14 missed it. Did NMED or NMOGA provide response to that?

15 HEARING OFFICER ORTH: I didn't see arguments
16 going either way. And without being able to guarantee
17 this, I believe this may have been another late breaking,
18 you know, suggestion in the closing argument redline.
19 Because, typically, if it was not late breaking, NMED
20 certainly would have addressed it. I mean, they usually
21 would have addressed it, and other parties might have
22 addressed it as well, but I didn't see arguments from any
23 side.

24 CHAIRPERSON SUINA: Thank you, Ms. Orth, for that
25 additional information. I just wanted to make sure I

1 didn't miss anything.

2 Yes, Member Bitzer?

3 BOARD MEMBER BITZER: I'm a little concerned that
4 if we rejected something else earlier, based on the fact
5 that it was a Johnny-come-lately, at least in part,
6 because it came very late, too late to have been publicly
7 noticed -- that was Counsel's insert, that we should be
8 consistent or at least should lean toward being
9 consistent, unless there is some compelling reason of why
10 we need to adopt the Park Service's recommendation.
11 Otherwise, we open ourselves up.

12 MS. SOLORIA: And if I could ask a follow-up
13 question to the Hearing Officer. So when you say "late
14 breaking," that -- I take that to mean that it wasn't
15 discussed in the hearing-in-chief, and it was only -- it
16 was proposed for the first time in the party's final
17 submission?

18 HEARING OFFICER ORTH: Yes. Thank you for
19 clarifying, Ms. Soloria. That is what I was trying to
20 convey.

21 MS. SOLORIA: So, to Member Bitzer's point, I
22 think my earlier comment stands. I guess, I think a
23 public notice issue is part of it, but more so, that, you
24 know, evidence wasn't brought to bear on this issue during
25 the -- no party had an opportunity to both support it in

1 evidence or oppose it in evidence during the hearing. And
2 I think that might be a little bit outside of the Board's
3 power to consider, based on that late presentation.

4 BOARD MEMBER CATES: Well, a question, Chair
5 Suina?

6 CHAIRPERSON SUINA: Yes.

7 BOARD MEMBER CATES: I guess it's a question for
8 the Hearing Officer. Does this also -- does this also
9 apply to revisions in the table that National Park Service
10 and CEP is asking for?

11 HEARING OFFICER ORTH: No, I was only referring
12 to their proposed in the section E. as in Edward, right
13 here in subparagraph (2). We'll get to the tables next.

14 BOARD MEMBER CATES: Well, you know, I'm a fan of
15 the National Park Service, of course, but I think I'm in
16 line with Chairman Bitzer and the comments he made on this
17 particular point as well.

18 CHAIRPERSON SUINA: Thank you, Member Cates.
19 Appreciate that.

20 And I think, Ms. Soloria, I -- I appreciate your
21 clarification on some of the discussion points that we had
22 earlier regarding the other sections. And I just want to
23 double-check, again, for the record, that that was similar
24 to what we had discussed -- I mean, similar circumstances
25 regarding our previous items. And maybe it's a question

1 for Madam Hearing Officer on that.

2 Where we had our -- you know, not -- not consider
3 or not included some of the proposals that were in the
4 last submittal and they didn't go through the hearing
5 process; is that correct?

6 HEARING OFFICER ORTH: That's correct, Madam
7 Chair.

8 MS. SOLORIA: And one more comment, Madam Chair,
9 that I believe the last section where this was raised, the
10 proffered rationale for rejecting it was that there was no
11 evidence in the record to support it, which if it wasn't
12 discussed at the hearing would be, that would be the case.

13 CHAIRPERSON SUINA: Thank you, Counsel Soloria.
14 That's helpful.

15 Member Honker, did you have a comment?

16 BOARD MEMBER HONKER: Yeah, I just wanted to
17 agree with Member Cates and Member Bitzer. And,
18 additionally, this would require a planning -- it sounds
19 like it would require a document that is not currently
20 required by the rule. That would be an additional burden
21 on the regulated community, which has not been, you know,
22 thoroughly discussed by all parties, as we've discussed.
23 So I agree not to include it.

24 CHAIRPERSON SUINA: Thank you, Member Honker.

25 Vice-Chair Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes, I'd like to also
2 agree with my fellow Board members here. And Member
3 Honker may say -- oh, look at that, my dinner's right here
4 delivered. Look at that. I'll thank him later.

5 But I think that the point Member Honker makes
6 about the plan itself, it lacks clarity that may need us
7 to weigh in on. What are the contents of that -- of that
8 plan? What is the expectation of that plan? And not only
9 does it place some of that responsibility on the
10 Department to do something with, but it places
11 responsibility on them to create a new structure that
12 hasn't previously been discussed.

13 CHAIRPERSON SUINA: Thank you, Vice-Chair
14 Trujillo-Davis. Appreciate that.

15 Input? So with that said, I think we go back to
16 the original Department's language as proposed, and then
17 just ensure that we take into consideration the NMOGA
18 comments, and make sure I didn't miss anything -- or we
19 didn't miss anything in terms of something needing to
20 consider in NMOGA's comments.

21 It looks like there's -- am I missing anything?
22 I don't see if there is any opposition. It's just
23 clarification.

24 Please double-check me, fellow Board members.

25 And Madam Hearing Officer, maybe this will be a

1 question for you, as the -- as the start of that
2 paragraph, "NMOGAs provide supporting history." Is that
3 also right there? Yes. And that's providing supporting
4 history for the --

5 HEARING OFFICER ORTH: For the SOR, yes.

6 CHAIRPERSON SUINA: Got it.

7 Just making sure we're all clear.

8 Yes, Member Honker?

9 BOARD MEMBER HONKER: Yeah, I think the question
10 would be since some of NMOGA's discussion has to do with
11 the tables, do we want to take action on section B. (2)
12 above the tables, and then there's more issues on the
13 tables, more discussion on the tables in the following
14 pages. So do we want to keep rolling on this or do we
15 want to kind of address this Park Service proposal, and
16 then go on to the tables with a separate consideration?

17 CHAIRPERSON SUINA: Sure. What's the -- I'm good
18 with that. Or members -- fellow Board members, if you
19 have any opposition or support of Member Honker's
20 suggestion.

21 So, with that, Member Honker, what are you -- so
22 are you saying to make a motion on -- I lost my place.
23 Oh, here we are.

24 B. (2) (a), (b), (c), (d), and then also in that
25 motion address proposed B. 2 "e" in one motion? And then

1 go to the table, is that what I was hearing?

2 BOARD MEMBER HONKER: Well, that was more of a
3 question than a proposal. I mean, I'd be comfortable
4 going on to the tables, but we're just -- this is going to
5 be tough to keep all of the pieces, kind of like the last
6 section, when it comes to making a decision, we've got to
7 keep all of these pieces in it, so...

8 CHAIRPERSON SUINA: So it would open up
9 discussion on Table 1 as well?

10 Yes, Member Garcia?

11 BOARD MEMBER GARCIA: Yes, just for
12 clarification; maybe this is a question for the Hearing
13 Officer. It appears to me, going through what she's
14 written up here, I'm not seeing -- I'm seeing a lot of
15 opposition to the proposal by the Park Service, but I'm
16 not seeing -- so it looks like -- and this just supports,
17 you know, the SOR. So I'm not sure that we need to break
18 it up, because unless I'm missing something, Madam Hearing
19 Officer, it looks like all of this discussion is really
20 saying why they -- many of -- NMED and many parties do not
21 want to include the Park Service language.

22 HEARING OFFICER ORTH: So, Member Garcia, the --
23 I called attention to this right here: the new paragraph
24 B. (2) (e) because it stood alone. It was a proposal:
25 The companies shall maintain a plan that demonstrates how

1 they're going to meet the emissions standards. And it was
2 a late proposal, and there were no arguments on it. And I
3 thought it would be a fairly quick discussion, for the
4 Board to say whether they wanted to include it or not.

5 The discussion around the tables is going to be
6 more elaborate. You have the tables proposed by NMED and
7 largely supported by industry. Then, you have tables
8 proposed jointly between the community and environment
9 parties, and the National Park Service. CEP there is an
10 acronym for Community Environment Parties. And around
11 emissions standards for both engines and turbines.

12 It -- it might be easier when you get to the
13 tables -- and by the way, all of the tables are part of
14 section 2, so Member Honker's suggestion, that you just
15 sort of finish the discussion with the tables before, you
16 know, making a wrap-up motion, I think is a good one.
17 Because these are -- these are section 2 tables for
18 engines and for turbines, and you have -- you have
19 different tables to consider.

20 This -- this -- this coming discussion around the
21 tables is going to be reasonably -- reasonably intricate.

22 BOARD MEMBER GARCIA: Thank you for that
23 clarification. I appreciate you pointing that out.
24 You're absolutely right. We probably do need to go with
25 Member Honker's suggestion.

1 CHAIRPERSON SUINA: Thank you for that.

2 BOARD MEMBER GARCIA: Madam Hearing Officer, one
3 other observation considering the time; we could deal with
4 the NPS proposal, and then if we get into the other part,
5 which is more complicated, it may go beyond -- well beyond
6 6, so that's something to consider. Thank you.

7 CHAIRPERSON SUINA: Thank you, Member Garcia.
8 What is the pleasure of the Board? Do we want to maybe
9 just address that one aspect, and then as Member Garcia
10 said, I think if we look at the other tables, we're going
11 to have a further discussion beyond ten minutes.

12 Yes, Member Honker?

13 BOARD MEMBER HONKER: Yes, I agree. So I will
14 move that we -- we disapprove the National Park Service's
15 proposal to add a new paragraph B. (2) (e) because it was
16 not properly -- it was not thoroughly discussed or
17 considered during the hearing process.

18 CHAIRPERSON SUINA: Thank you.

19 BOARD MEMBER BITZER: I'll second that.

20 CHAIRPERSON SUINA: Thank you, Member Bitzer for
21 your second with that. Is there any further discussion?
22 If not, Ms. Corral, if you would do a roll-call vote on
23 Member Honker's motion?

24 ADMINISTRATOR CORRAL: Member Bitzer, how do you
25 vote?

1 BOARD MEMBER BITZER: I vote yes.

2 ADMINISTRATOR CORRAL: Member Cates?

3 Member Cates? Yes?

4 BOARD MEMBER CATES: (Thumbs up.)

5 ADMINISTRATOR CORRAL: Okay. Member Garcia?

6 BOARD MEMBER GARCIA: Yes.

7 ADMINISTRATOR CORRAL: Member Honker?

8 BOARD MEMBER HONKER: Yes.

9 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 ADMINISTRATOR CORRAL: Chair Suina?

12 CHAIRPERSON SUINA: Yes.

13 ADMINISTRATOR CORRAL: Madam Chair, the motion
14 passes.

15 CHAIRPERSON SUINA: Thank you, Ms. Corral. I
16 appreciate your assistance on that.

17 And I just want to, for the record, clarify that
18 Member Cates did have a thumbs up on that.

19 And with that, I know we've got eight minutes.

20 MS. SOLORIA: Madam Chair, I think for sake of
21 completeness in the record, I don't think we had a motion
22 to approve the language of 2 (a) through (d), unless I
23 missed that. So if we could go ahead and do that.

24 CHAIRPERSON SUINA: Yes, that would be fine.

25 Member Honker?

1 BOARD MEMBER HONKER: Okay. I will move we
2 approve the language of -- let me get back to it --
3 Section B. 2 (a) through (d), reserving consideration of
4 the tables, based on the rationale provided by NMED and
5 supported by NMOGA.

6 BOARD MEMBER BITZER: I'll second that.

7 CHAIRPERSON SUINA: Thank you, Member Honker, and
8 Member Bitzer for your second.

9 Is there any discussion from Board members? If
10 not, Ms. Corral, would you mind doing another roll-call
11 vote on Member Honker's motion?

12 ADMINISTRATOR CORRAL: Yes, Madam Chair.

13 Member Bitzer, how do you vote?

14 BOARD MEMBER BITZER: I vote yes.

15 ADMINISTRATOR CORRAL: Member Cates?

16 BOARD MEMBER CATES: Yes.

17 ADMINISTRATOR CORRAL: Thank you.

18 Member Garcia?

19 BOARD MEMBER GARCIA: Yes.

20 ADMINISTRATOR CORRAL: Member Honker?

21 BOARD MEMBER HONKER: Yes.

22 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

23 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry, I have a
24 quick question. I was just double-checking this, and it
25 appears that the language is in direct reference to the

1 table, so should we consider them as one?

2 CHAIRPERSON SUINA: Thank you for that, Member
3 Trujillo-Davis. And I -- I don't know what we think here.
4 I know we started going down the roll-call vote. So, what
5 do members think before we finish out? I know you voted.

6 BOARD MEMBER CATES: Are you talking to me, Chair
7 Suina?

8 CHAIRPERSON SUINA: I'm talking to all of the
9 members.

10 BOARD MEMBER CATES: Oh, I'm sorry.

11 CHAIRPERSON SUINA: No, no. Go ahead.
12 Yes, Member Honker?

13 BOARD MEMBER HONKER: Well, just to clarify, I
14 reserved consideration of the tables.

15 BOARD MEMBER CATES: Yeah, he did.

16 BOARD MEMBER HONKER: They were not part of the
17 motion. I guess the question is, in discussion of the
18 tables, could we be pointed back to the language preceding
19 the tables? And so, I don't know the answer to that.
20 We'll -- we'll know that when we get there. So, I was
21 just responding to Counsel's suggestion that we go ahead
22 and address the language preceding the tables.

23 MS. SOLORIA: Yes. And my suggestion may or may
24 not have been misguided, but in any case, I think Member
25 Honker's reservation of consideration of the table

1 resolved any issue with that suggestion since we -- since
2 the Board is reserving the consideration of the content of
3 the tables themselves.

4 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

5 And Member Garcia, yes, before?

6 BOARD MEMBER GARCIA: Yes, I just wasn't clear.

7 I think we're all getting tired. I think that I just
8 wasn't clear on Member Honker's -- maybe I'm too close. I
9 just wasn't clear on Member Honker's motion, that there
10 was an explicit rejection of the Park Service proposed
11 language. So I don't know if that was in there.

12 BOARD MEMBER HONKER: We already took a vote on
13 rejecting that.

14 BOARD MEMBER GARCIA: Okay. Never mind. Thank
15 you.

16 BOARD MEMBER HONKER: And I just --

17 CHAIRPERSON SUINA: Go ahead, Member Honker.

18 BOARD MEMBER HONKER: I have a question for
19 Counsel. So, as we discuss the tables tomorrow, if it --
20 if it becomes apparent we should reconsider some of the
21 language in the (a) through (d), can we go back to that or
22 if we make a decision now, is that -- is that irrevocable?

23 MS. SOLORIA: I think that we can go back to that
24 because your deliberations are still open, but if it's
25 cleaner, recognizing that my earlier suggestion was

1 perhaps a product of fatigue, we could just retract the
2 motion and we could take it all up as one tomorrow, or
3 however -- however the Board desires. I didn't mean to
4 complicate things.

5 CHAIRPERSON SUINA: Thank you for that, legal
6 Counsel. Appreciate you. And I know I think we're all
7 getting tired. So, with that, members of the Board -- and
8 I appreciate that, Vice-Chair Trujillo-Davis for your
9 question and thinking that through the roll-call voting,
10 that we just maybe table it to tomorrow morning, once we
11 have gotten some good shut-eye, rest our brains a little,
12 walk around. What do you-all think?

13 BOARD MEMBER HONKER: I will retract my motion.

14 CHAIRPERSON SUINA: Thank you, Member Honker.
15 All right.

16 Ms. Soloria, just making sure we don't miss
17 anything, as we have a couple more minutes for our
18 deliberations today.

19 Oh, we can't hear you.

20 MS. SOLORIA: I don't want to take up much of the
21 Board's time for the rest of the evening, and perhaps we
22 could have a conversation, you and I, off line, but I have
23 received more pushback regarding deliberations running
24 into Saturday. As I relayed, I don't -- I certainly don't
25 mean to beat this, but as I relayed in my description this

1 morning, I do think it was -- it was fairly late notice to
2 the parties, that we would be potentially deliberating on
3 Saturday.

4 And as we saw today, there is utility to having
5 the parties being able to attend these deliberations live,
6 considering that they've caught at least one issue where
7 there was simply an error in the report, regarding what
8 had already been accepted by the Department. And that's
9 just, you know, by reasons of this being a very lengthy
10 and detailed report, that it was just going to happen.

11 So I just wanted to reiterate that, to
12 communicate that I have received that information, that
13 the preference of the Department and also, I would
14 suspect, other parties, but, obviously, not speaking for
15 them, would be to have a block of days to continue
16 deliberations a little bit further out, especially because
17 it's apparent; I don't think we're going to finish on
18 Saturday anyway.

19 But I'll leave -- that's obviously within the
20 Board's discretion and preference. And I'll leave it at
21 that and we can perhaps discuss that in more detail
22 tomorrow to see where we're at.

23 CHAIRPERSON SUINA: Thank you, legal Counsel.
24 And so I'm looking to our Board members. Do you think
25 maybe a good night's sleep to think about how today went,

1 and look at our schedules. And then we'll have Member
2 Duval back in the morning as well.

3 And Ms. Soloria, maybe just open up -- or I don't
4 know if we can -- I want to again be very mindful of
5 making sure we're dotting all the I's, crossings all the
6 T's on this and being compliant. So I know Member Duvall
7 is not here. Is there a way we could get that -- this
8 discussion point maybe first thing in the morning when
9 he's also online?

10 MS. SOLORIA: Sure. And, you know, just the
11 concluding point that I think everyone involved would
12 rather us do this, not only get it done, but get it done
13 right. So it's just, again, something to sleep on.

14 CHAIRPERSON SUINA: Thank you so much.

15 Are we good with that, members? Thumbs up? I
16 just want to thank everybody. I know this has been
17 overwhelming. And we could, you know, getting toward the
18 end here, I was getting tired. I was forgetting what page
19 I was on, what section I was on. But I just appreciate
20 everybody's due diligence and your attention. And I
21 think, although it's taking some time, I think once we get
22 our legs underneath us again tomorrow, we'll make some
23 good progress.

24 With that, thank you all again. And we'll see
25 you in the morning. Appreciate everybody's attendance and

1 those also watching our deliberations. Have a wonderful
2 evening and we'll see you in the morning.

3 BOARD MEMBER CATES: Thanks. Good night.

4 CHAIRPERSON SUINA: Good night.

5 (Proceedings adjourned at 6:05 p.m., on March 10,
6 2022.)

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STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 23-27 (R) 20-51(R)

In the Matter of:

PROPOSED NEW REGULATION
20.2.50 NMAC - Oil and Gas Sector
Ozone Precursor Pollutants

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on March 10, 2022, the Deliberations Hearing
of the New Mexico Environmental Improvement Board, was
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by the
rules) any of the parties or attorneys in this matter, and
that I have no interest whatsoever in the final
disposition of this matter.



THERESA E. DUBOIS, RPR
New Mexico CCR #29
License Expires: 12/31/2022

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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 11th day of March, 2022,
this matter came on for Deliberations and Decision on the
virtual WebEx platform, before PHOEBE SUINA, Chairperson
for the Environmental Improvement Board, commencing at the
hour of 9:00 a.m.

REPORTED BY:

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A P P E A R A N C E S

For the Environmental Improvement Board:

- PHOEBE SUINA, Chairperson
- AMANDA TRUJILLO-DAVIS, Vice-Chairperson
- BARRY BITZER, Board Member
- KARL CATES, Board Member
- BENJAMIN DUVAL, Board Member
- KAREN GARCIA, Board Member
- WILLIAM HONKER, Board Member

Hearing Officer:

- FELICIA ORTH, ESQ.

Counsel For the EIB:

- KARLA SOLARIA, Commission Counsel
Office of the Attorney General
- PAMELA JONES, Commission Administrator
- MADAI CORRAL, Commission Administrator

REPORTER'S CERTIFICATE 255

1 CHAIRPERSON SUINA: Thank you, Pam. Thank you,
2 Madam Hearing Officer. Appreciate your support on all the
3 technological logistics we have for our meeting and our
4 deliberations.

5 Good morning, everybody. Welcome to the second
6 day of our deliberations. And at this point I just want
7 to again acknowledge that we have -- I don't know if we
8 did this yesterday. Ms. Soloria, do we need to also note
9 whenever -- which Board members are on the line and so
10 forth through these deliberations or only when we don't
11 have a quorum?

12 MS. SOLORIA: I think we can go ahead and start
13 the day and just note for the record who's present. As we
14 did yesterday, if a member has to leave, if that could be
15 noted for the record as well, but it seems like I expect
16 we'll have a full quorum today.

17 BOARD MEMBER CATES: Can anybody hear me?

18 CHAIRPERSON SUINA: Yes, we can hear you.

19 BOARD MEMBER CATES: I can't hear anybody. Okay.
20 I've got to try this again. I'll be back.

21 CHAIRPERSON SUINA: Okay. All right. Again,
22 navigating our -- our world of teleconference here today.
23 Well, thank you for that guidance, Ms. Soloria, I
24 appreciate that. And I just want to note, therefore, that
25 we have all our Board members here this morning.

1 Mr. Cates is in process to reconnect.

2 And just starting the day off, I think I'm going
3 to hold on until he comes back on and see if he gets sound
4 so we can have a discussion with all of our Board members
5 present.

6 Can you hear us now? Can you hear us now?

7 BOARD MEMBER CATES: Yeah. Yeah. Thank you.

8 CHAIRPERSON SUINA: Great. Great. I was kind of
9 filling the time, Member Cates. I just wanted to make
10 sure you were on board while we continued to discuss and
11 move forward. But I wanted to open up this morning just
12 once again thanking everybody. And also recognizing,
13 going back over the -- the Hearing Officer's report and
14 some of the hearing records, and the breadth of
15 information that we're navigating through these
16 deliberations.

17 So, with that said, I know it came up a number of
18 times yesterday and we're trying to navigate the
19 realization that we probably won't finish today with all
20 of our deliberations, so I just wanted to take a moment
21 this morning and since we have all of the members here
22 today, to talk about looking at another set of days into
23 the future.

24 And the -- and maybe, Ms. Soloria, I want to also
25 give you some time to share some of the logistical

1 challenges that we're dealing with and also some of, you
2 know, your input in how we navigate going forward with our
3 schedule. Thank you.

4 Oh, wait. Hold on. Member Bitzer?

5 BOARD MEMBER BITZER: Yes, since I was the one
6 pressing for Saturday, I guess I'll say, since we're not
7 going to make it Saturday, I'm not wedded to Saturday any
8 longer. I know she got some more pushback from probably
9 counsel somewhere. So, yeah, I'm not wedded to Saturday
10 anymore since I know we're not going to make it anyway and
11 since I'm realizing that the kick-the-can date isn't
12 months from now or weeks from now, it's probably a week or
13 two or 10 or 15 days or something. So I'm not having so
14 much heartburn anymore.

15 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
16 that input and I appreciate that.

17 And with that, Ms. Soloria, would you mind maybe
18 chiming in on your thoughts?

19 MS. SOLORIA: Sure. Well, as I raised late
20 yesterday afternoon, there -- there has been concern
21 raised as to continuing Saturday. It sounds like the
22 Board won't be going that direction, so that's mooted.
23 But in terms of our timeline for making a decision, the
24 rule provides that the decision has to be made within 60
25 days of the Hearing Officer report, so that date that I

1 had mentioned previously is April 25th. And that's just
2 the date by which the Board has to conclude its
3 deliberations, and in effect announce its decision
4 orally.

5 There is consensus that we would have time
6 thereafter to draft the statement of reasons and finesse
7 that and make sure that that is in good shape to go out.
8 So that's really the date that we're working with, before
9 which we need to finish these deliberations. I think that
10 the preference would be to have a block of days -- two,
11 maybe three, so that we have that continuity and have that
12 flexibility. And, you know, I did just want to reiterate
13 that the concerns that have been shared with me by
14 parties' counsel, and in particular, the Department, being
15 the implementing agency for these rules, the importance of
16 their ability to attend the deliberation and to observe
17 the Board's reasoning.

18 So that's all I have to say. I think there have
19 been some discussions about possible dates and I think now
20 would probably be a good a time to do that and have that
21 settled. We can announce that during -- at the close of
22 today's deliberations, when we will be reconvening. And I
23 will work with Pam to make sure that the parties are
24 noticed and that's posted for the public as well.

25 Oh, one other thing that I thought of last night.

1 Depending on how it works -- and I don't mean to throw a
2 wrench in this, you can take it or leave it -- but there
3 is the option to meet in person. I had just -- the
4 thought just occurred to me last night. Obviously, we
5 would have to make considerations for public
6 participation. I don't know if that can be done last
7 minute, and I certainly don't want to complicate things.
8 If it's easier to do it by WebEx, we can do it by WebEx,
9 but I did want to -- I know -- I know members have
10 expressed a desire for that in the past, so I wanted to
11 mention that.

12 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
13 Appreciate that.

14 And I just also want to note, too, after thinking
15 about it last night and even this morning, seeing we have
16 29 and 30 now, other folks on the line watching our
17 deliberations, and I know we had that instance where it
18 was helpful to maybe note a typo in a document, but I just
19 want to note that I think it will be helpful to make sure
20 that we do have and provide our parties and members of the
21 public that opportunity, to also know when we're going to
22 be continuing deliberations. And I think that
23 participation will be helpful, and for the entire process,
24 which, you know, our deliberation is part of that entire
25 process.

1 With that said, Member Duval? Yes.

2 BOARD MEMBER DUVAL: Yeah, I -- I'll make it work
3 whatever the date is, but I just want to go on record
4 saying that I would -- I would very much be in favor of
5 in-person meetings when it's -- I think at this point it's
6 fully appropriate. And I understand for, like, the
7 recording purposes and others in public, maybe not for
8 this iteration, but moving forward, I am fully in support
9 of in-person.

10 CHAIRPERSON SUINA: Thank you, Member Duval. I
11 see a thumbs up from Member Bitzer. Member Garcia?

12 BOARD MEMBER GARCIA: Thank you, Madam Chair.
13 And thank you, Ms. Soloria, for giving us the parameters
14 we need to be within. I recall that a couple of folks
15 were going to be out of town, including you, Ms. Soloria,
16 I think next week. So I'm thinking that if we push it --
17 go ahead and push it out into April, since that gives
18 everybody more time to look at their calendar and clear
19 their calendar. And then, I agree with you that a block
20 of days, maybe if we choose three and we don't need three,
21 that's fine, but I'd rather, you know, err on having more
22 days than less, and then have to do this again.

23 So if we choose a block of three days and push it
24 out until April, maybe folks may be able to clear their
25 calendar farther out that way. I know it's easier for me.

1 I'm looking at the week of the 11th through the 15th and
2 I'm clear that week. I know that's a ways out, but it
3 also gives us more time to go back through this report and
4 this -- you know, review this complicated rule. So a
5 little more time is very helpful. So that's -- that's my
6 push. Thank you.

7 CHAIRPERSON SUINA: Thank you, Member Garcia.

8 And Vice-Chair Trujillo-Davis, I saw your hand
9 and then I saw your hand, Member Cates. Yes, Vice-Chair?

10 VICE-CHAIR TRUJILLO-DAVIS: So, yes, I'd like to
11 also give support in Member Duval's comment that I do
12 think starting to meet back in person would be very
13 valuable, whether it's after we finish this particular one
14 or move on to the next one. But, also, I wanted to
15 confirm the date that Ms. Soloria mentioned about when we
16 had to complete the deliberations by. I just wanted to
17 note that date. What was it again?

18 MS. SOLORIA: That's April 25th.

19 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you very
20 much.

21 CHAIRPERSON SUINA: Yes, Member Cates?

22 BOARD MEMBER CATES: Yeah, I'm going to be out of
23 pocket the first two weeks of April. I've got a work trip
24 and it will just be hard for me to attend that during that
25 time, but I wonder if people would be open to the last

1 week of this month.

2 CHAIRPERSON SUINA: I see some -- yes,
3 Ms. Soloria?

4 MS. SOLORIA: I'll just note that that would
5 fall -- your regular meeting would have been on the 22nd
6 anyway, so I know I'm -- I'm pretty flexible week of the
7 11th and of the 18th, so...

8 CHAIRPERSON SUINA: So, just making sure we've
9 got all of our dates here. I thought our meeting was on
10 March 20, 2022 -- or the 25th.

11 MS. SOLORIA: I'm talking about the April. Oh, I
12 was just noting that if we were to -- because of Member
13 Cates' constraints, if we were looking at the week of
14 April 18th, you would have had your, you know, in theory
15 that you would have had the 22nd blocked anyway because
16 that's the Board's regular meeting.

17 CHAIRPERSON SUINA: Okay. Thank you,
18 Ms. Soloria.

19 Yes, Member Garcia?

20 BOARD MEMBER GARCIA: Unfortunately, I'm going to
21 be out of town from the 22nd to the 30th. It doesn't mean
22 that if there's a quorum; otherwise, I don't have to be
23 there, but just noting I'll be -- the last week in April
24 I'll be gone.

25 The other advantage of pushing out -- I mean, I'm

1 sorry, the last week in March I'll be gone. The other
2 advantage of pushing out into April is that -- is that,
3 you know, more likely, we can meet in person, having the
4 time to set up a venue for that, et cetera, if we wanted
5 to do that.

6 CHAIRPERSON SUINA: Really quick, Member Garcia,
7 just to be clear; you're going to be out of town in March,
8 right?

9 BOARD MEMBER GARCIA: Yes, the 22nd through the
10 30th, I'll be out of town, yes.

11 CHAIRPERSON SUINA: Okay. And then you'll be
12 here in April?

13 BOARD MEMBER GARCIA: Yes. Yes, ma'am, I will be
14 here in April.

15 And so, Member Cates suggested the week of the
16 18th in April, and as Ms. Soloria pointed out, we have a
17 meeting the 22nd anyway, so that works for me as well.

18 CHAIRPERSON SUINA: Okay. Thank you so much on
19 that. And I saw a bunch of members hands up, and I didn't
20 see the sequence, but I see Member Honker's hand is up.
21 Go ahead, Member Honker.

22 BOARD MEMBER HONKER: Okay. Just my
23 availability, I'm fairly open through the 19th of April,
24 but beginning the 20th of April I'm going to be out of the
25 country for two weeks. I'll have to miss our normal April

1 22nd meeting because I will be -- I will be beyond any
2 availability to dial in, so, but I'm fairly available
3 through the 19th of April.

4 CHAIRPERSON SUINA: Thank you so much. And I
5 thought I saw Member Bitzer's hand up, too. Member
6 Bitzer? No.

7 Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: I will also -- I'm
9 planning to be out of town April 21st through the 26th, so
10 I probably won't make that EIB meeting if we're going to
11 be meeting in person. So I actually prefer earlier in the
12 month of April, if that is -- if anybody is open to that.

13 CHAIRPERSON SUINA: Okay. Member Cates, can you
14 also share with me -- I got my notebook out here, I didn't
15 write down your availability.

16 BOARD MEMBER CATES: Yeah, I'll be traveling the
17 first two weeks of April, but looking at the dates, so I
18 could actually attend from -- well, I mean, we're all
19 attending from afar now, but the first week of April
20 actually would work for me during most of the daytime
21 hours.

22 CHAIRPERSON SUINA: Okay. So just to be clear,
23 Member Cates, April 4th through the 8th you're available?

24 BOARD MEMBER CATES: Yeah.

25 CHAIRPERSON SUINA: Okay. But not the 11th

1 through the 15th?

2 BOARD MEMBER CATES: Yeah, sorry. But, you know,
3 again, you don't -- you don't have to hold it up for me if
4 you have a quorum.

5 CHAIRPERSON SUINA: Okay. And then I want to
6 swing back around to Member Duval. Can you reiterate your
7 availability?

8 BOARD MEMBER DUVAL: Yeah.

9 CHAIRPERSON SUINA: Or not?

10 BOARD MEMBER DUVAL: I'm in and out of town.
11 I'll try to make it work. I mean, these are -- like, this
12 is always tough for me because I have -- you know, I have
13 a lot of responsibilities that are hard to shift. So I
14 mean, I'm making time for it today. So I had to cancel
15 class and my boss isn't really happy about that, but,
16 yeah, I can make it work pretty much any time, because
17 when I'm out on -- the trips that I have coming up, I'll
18 have -- I'll have internet access.

19 CHAIRPERSON SUINA: Okay.

20 BOARD MEMBER DUVAL: So I think just -- I'll roll
21 with whatever needs to happen. I'll make it work. Yeah,
22 there's no hard dates that don't work for me so -- or that
23 I can't make work somehow.

24 CHAIRPERSON SUINA: Appreciate that, Member
25 Duval.

1 Member Bitzer, I just want to swing back around
2 with you. What was your not-available dates? How about
3 we put it that way?

4 BOARD MEMBER BITZER: There's Easter Sunday and
5 Easter Monday, I think, we have off, it's all hands on
6 deck for us around here then, so I'll be a little busy on
7 that Sunday and Monday, but, otherwise, I'm in town.
8 Wife's going to Tahoe, but she's not taking me, so...

9 I want to remind folks while I'm on the line that
10 when we do come back to in-person, we were also talking
11 about doing a hybrid. So, if you're stuck out of the town
12 or out of the country, but have internet access, you can
13 still attend. I'm planning on doing that in May because
14 I'll be in New Orleans and then I'll be in Alaska sometime
15 this summer, I don't know exactly when yet, but as long as
16 there's internet, I'd love to be able to attend.

17 CHAIRPERSON SUINA: Thank you, Member Bitzer.
18 And I appreciate that comment, since we're kind of coming
19 out of this pandemic -- knock on wood -- that we can -- we
20 can make that availability for as much participation as
21 possible.

22 With that said, is -- so I'm looking at my little
23 chicken scratch here, and I'm also looking at my calendar
24 as well. Can someone remind me if someone is not
25 available the first week of April? That's April 4th

1 through the 8th.

2 MS. SOLORIA: I have three other publicly-noticed
3 meetings for other clients that week, so I cannot do that
4 week.

5 CHAIRPERSON SUINA: Oh, okay. So, Ms. Soloria,
6 what other -- what other constraints do you have? I
7 apologize, I did not write that down.

8 MS. SOLORIA: Sure. I'm -- I'm available the
9 11th through the 14th and the 18th through the 21 -- 22nd,
10 sorry. So, basically, those two weeks.

11 CHAIRPERSON SUINA: Okay. And nothing before
12 that?

13 MS. SOLORIA: I had the 30th and 31st of March.
14 I wasn't sure if March was still on the table, but in
15 April, it's basically the week of the fourth that's not
16 good for me.

17 CHAIRPERSON SUINA: Okay. So we're looking --
18 when I'm looking at all of the constraints -- and I know,
19 Member Cates, you said that the 11th wouldn't work. And
20 if we push it to the 18th, we have a number of members,
21 Member Vice-Chair Trujillo-Davis, Member Honker, that
22 starting around the 20th, 21st, I'm not available on the
23 21st that week, but we could have possibly -- but Member
24 Bitzer pointed out the 18th was Easter Monday and he might
25 not be available that day.

1 So if we go back to -- I'm looking at April 11th
2 through the 15th, if Ms. Soloria is available then.

3 MS. SOLORIA: I can be through the 14th. I have
4 a conflict on the 15th, but the 11th through the 14th, I'm
5 fine.

6 CHAIRPERSON SUINA: Okay. So the one that we do
7 have that has a conflict is Member Cates.

8 Is there anybody else in that time frame on the
9 11th through the 14th? No, okay. So we have -- so I'm
10 just writing this down, and please, members, please keep
11 track for me as well. So that's in April, it looks like
12 the most participation.

13 And then -- so let's go back to March just to
14 take the full breadth here. So, March, Ms. Soloria, you
15 can do March except for next week?

16 MS. SOLORIA: Right. I can do the 23rd and the
17 24th. We have another rule hearing on the 25th and the
18 following week, the 30th and the 31st. So I, basically,
19 have only two, two-day blocks left in March -- two sets of
20 two-day blocks left in March.

21 CHAIRPERSON SUINA: Okay. So that would be at
22 the beginning, Monday, Tuesday?

23 MS. SOLORIA: It would be the blocks I have
24 available are both Wednesdays and Thursdays, so the 23rd
25 and the 24th, and the 30th and the 31st in March.

1 CHAIRPERSON SUINA: Okay. But Member Garcia,
2 you're not available the 22nd through the 31st; is that
3 correct?

4 BOARD MEMBER GARCIA: (Nodding head.)

5 CHAIRPERSON SUINA: Okay. All right. And I'm
6 not available on the 24th of March. Really, that looks
7 like I can move everything else around, if need be. Yes.
8 Okay.

9 But we want to get a chunk, so I'm going to throw
10 this out there, and it may go nowhere, but is it
11 possible -- because if we want to get another set of days,
12 to do a weekend, like a Saturday or a Sunday and then go
13 into -- I'm just throwing it out there and looking for
14 reaction. Yeah, okay. Some thumbs up there.

15 Yes, Member Duval?

16 BOARD MEMBER DUVAL: I mean, to be honest, I
17 almost prefer a Saturday, because then I don't -- then I
18 don't have to shift around my normal commitments, but I
19 understand that people don't like -- I don't like giving
20 up my weekend either, but it would actually be a little
21 easier for me to do it over a weekend or at least on a
22 Saturday.

23 CHAIRPERSON SUINA: And I echo your sense of it,
24 Member Duval, so I'm good. That's one of the reasons why
25 I wanted to put it on the table. So I'm looking at other

1 members, if we look at a Saturday or weekend day, is
2 that -- as Member Duval said, and we also want to be
3 respectful that it is family or personal time as well.

4 MS. SOLORIA: I don't mind weekends, but it
5 depends on the weekend because there are some -- there are
6 some obligations that I have on a couple of Saturdays.

7 CHAIRPERSON SUINA: And what are those Saturdays?

8 MS. SOLORIA: So the 2nd and the 16th. I gave
9 you the weekdays that I -- I'll stick to what I offered
10 before on the weekday availability, because I do have some
11 weekend conflicts for travel and family stuff.

12 CHAIRPERSON SUINA: Okay. Okay. I apologize
13 then. This is really hard trying to navigate this. And
14 so I'm going to throw out, what about a -- I'm looking at
15 maybe -- so right now, I think -- and, again, chime in,
16 folks. Right now, it looks like April 11th through the
17 14th is probably the best day, and someone said they
18 couldn't do the 15th. Right? Is that you, Ms. Soloria?

19 MS. SOLORIA: Correct, Madam Chair.

20 CHAIRPERSON SUINA: Let's see. And that is
21 Easter week; just noting that for everybody, and making
22 sure. So I have that one, and then, can anybody else
23 propose if I missed another block of days, like maybe two
24 to three days? Does anybody see another opening that I
25 don't see? Nope? Okay. So, Member Honker, yes.

1 BOARD MEMBER HONKER: There were those two
2 two-day things that Ms. Soloria had available that Member
3 Garcia could not make, but it sounds like the rest of us
4 would be available those days maybe, just as another
5 option.

6 CHAIRPERSON SUINA: Yes. I won't be available on
7 the 24th of March, so it would probably be just the 30th
8 and 31st. And so, well, I think we wanted to do maybe
9 three days, in the hopes that if we went over, then -- if
10 it was there, then, but we finished early, but at least we
11 had them tagged.

12 So I know Member Cates, we had talked about on
13 your schedule, not available the 11th through the 15th.
14 Is there any way you could maybe chime in one of those
15 days or a couple of those days while you were on travel or
16 it's just a no-go?

17 BOARD MEMBER CATES: Yeah, Chair Suina, yeah, I
18 could be present some of the time and maybe by phone, too.
19 So, sure, thank you for raising that possibility. Yeah.

20 CHAIRPERSON SUINA: Okay. Okay. I just want to
21 make sure, you know, we're all busy people.

22 BOARD MEMBER CATES: Yeah. No. Yeah, yeah.

23 CHAIRPERSON SUINA: And I appreciate everybody
24 being flexible. And to Member Duval, I was hoping we
25 could get a weekend date in here, but right now it looks

1 like the 11th through the 14th is the best. So, maybe
2 earlier in the week, since it is Easter week, maybe the
3 11th, 12th and 13th? What do folks think about that?
4 Thumbs up? All right. Okay. I see thumbs up from Member
5 Cates, Member Bitzer, Member Garcia, Member Honker, Member
6 Trujillo-Davis.

7 And Member Duval, what does that look like for
8 you? We'll try to make it work, right?

9 BOARD MEMBER DUVAL: So it was 11th?

10 CHAIRPERSON SUINA: The 11th, 12th and 13th.

11 BOARD MEMBER DUVAL: Yeah. Yes.

12 CHAIRPERSON SUINA: Okay. Great. Awesome. So
13 let's pencil that in and get that, and look forward to at
14 least that block of -- chunk of time to continue whatever
15 we don't finish today. Great. Awesome. Okay. I'm
16 happy. We've accomplished a big task there.

17 Okay. If there's no other -- more discussion on
18 that, why don't we -- Ms. Soloria or Ms. Jones, did we --
19 or Madam Hearing Officer, is there anything else we need
20 to talk about before we jump back into the -- into our
21 task here today?

22 MS. SOLORIA: I don't have anything further,
23 Chair Suina.

24 HEARING OFFICER ORTH: Nor I.

25 CHAIRPERSON SUINA: Thank you. Member Bitzer?

1 BOARD MEMBER BITZER: So we're canceling
2 Saturday?

3 CHAIRPERSON SUINA: Yes. No Saturdays. Thank
4 you. All right. Great. Great.

5 So we'll jump back into the task at hand, looking
6 back through our report and the rules and regulations. So
7 we ended yesterday with -- let me make sure I'm at the
8 right spot here. Madam Hearing Officer, can you also put
9 it up on the screen so that we're all on the same page
10 here?

11 So we're at the tables -- Table 1 and 2. There
12 we go. So, yesterday, we ended on -- let me make sure I
13 got -- "Emissions standards," B. (2) and then the tables.
14 So we -- last night, it had got kind of late on us so we
15 tabled the discussion until today for B. (2) and also to
16 include the tables. So that's where we're at this
17 morning, members. And so, I look to see if anybody has
18 any comments. Who wants to speak on this? Sorry, I'm
19 readjusting my schedule here -- I mean, my papers.

20 So, Member Duval?

21 BOARD MEMBER DUVAL: Yes. What page in the
22 document are you on? I can't see the page. What's the
23 page number that you're on right now?

24 CHAIRPERSON SUINA: Page 90. Around 90, 91.

25 BOARD MEMBER DUVAL: Okay. Okay. Thank you.

1 CHAIRPERSON SUINA: You're welcome.

2 So we had wanted to look at the tables, if I
3 recall, Table 1 and 2, which is part of item B. (2),
4 before we made a decision on the weight of B. (2). And
5 so, that's where we're at this morning. If anybody has
6 any thoughts on the tables, I think is the next discussion
7 point, love to -- yes, Member Cates?

8 BOARD MEMBER CATES: Chair Suina, so I think what
9 we're looking at, the proposed changes as I read it, are
10 on page 99 and there are two changes: one is to the Table
11 1. I don't see any changes to Table 2, and then Table 3,
12 there's some language change in the heading. I think I'm
13 looking at the right thing.

14 CHAIRPERSON SUINA: I believe so. So we -- just
15 to go over, we have NMOGA supporting the changes in Table
16 1, just a high summary here. Kinder Morgan supporting the
17 changes. GCA supports the changes. And then it's CEP and
18 NPS would like to revise Table 1. Let's handle Table 1
19 first, and then we'll jump -- jump on further.

20 Yes, Member Bitzer?

21 BOARD MEMBER BITZER: It seems to be the point to
22 start would be with those who want to revise, since
23 everyone else is putting their thumbs up with the
24 Department's revised tables.

25 CHAIRPERSON SUINA: Absolutely.

1 So, Madam Hearing Officer, that would be on the
2 CEP and NPS section. That's going to be a little bit
3 further down, would revise Table 1.

4 BOARD MEMBER CATES: Chair Suina, so I said --
5 I'm looking -- I'm looking at page 99 here. And I imagine
6 there are two of those changes -- actually, there's four.
7 And so, the headings on each table, there are tweaks in
8 the language on those, too. Just FYI.

9 CHAIRPERSON SUINA: You're right. You are
10 correct, Member Cates.

11 So with that, Madam Hearing Officer, I'm just
12 making sure that we consider everything the way that this
13 is formatted. I apologize, I was looking -- we have that
14 Section (3) that kind of divides here, and then it jumps
15 back to 99 talking back, again, about Table 1. Can you
16 just explain a little bit more on your report just so that
17 we don't miss anything in this section?

18 HEARING OFFICER ORTH: Yes. Give me a second
19 here. I think I've scrolled to the place you would want
20 to be looking at the new proposed table from CEP, which is
21 Community Environmental Parties and NPS, the National Park
22 Service.

23 The narrative starts on page 94 of the hard copy
24 of the report. And, essentially -- and we did hear a fair
25 amount about this during the hearing; CEP and NPS proposed

1 returning to the Department's original proposal in its
2 petition, among other things here. The Department had
3 moved toward proposals being made by industry. And CEP
4 and NPS would encourage you to adopt their earlier
5 proposal, in terms of whether engines or turbines are
6 installed after the effective date of the rule, or more
7 equipment subject to the more stringent standards.

8 Let's see. So that's why they've lined out there
9 the word "existing" and then added "constructed,
10 reconstructed and installed," before the effective date.
11 They have also changed the emissions for four-stroke lean
12 burn engine there, in terms of BHP per hour as you see
13 here.

14 CHAIRPERSON SUINA: Thank you, Madam Hearing
15 Officer. With that, I'd love to hear some thoughts from
16 our Board members on some of these proposed changes.

17 Yes, Member Honker?

18 BOARD MEMBER HONKER: Yeah, I think a question
19 for the Hearing Officer: I see on the proposed -- going
20 back to the original Table 1, I see rebuttal from IPANM
21 and Kinder Morgan on that. I didn't see any response to
22 that by NMED. Is it somewhere in here that I haven't
23 found?

24 HEARING OFFICER ORTH: Let me -- I believe there
25 was -- let's see here -- a place where it is probably a

1 little later because, of course, I set out the proposal
2 before setting out the opposition. We have IPANM's
3 opposition on page 103, Kinder Morgan's opposition on 105.
4 NMED also opposed the NPS proposals, but let me find where
5 that is. Sometimes NMED put that right up front. One
6 second.

7 CHAIRPERSON SUINA: Thank you for your question,
8 Member Honker. I was also trying to find that as well.

9 HEARING OFFICER ORTH: That has to be here.

10 CHAIRPERSON SUINA: Yes, Member Cates?

11 BOARD MEMBER CATES: So I want to see if I have
12 this right. It's my understanding that the -- what's
13 being questioned here is essentially an easing of some
14 rules here. Right? Some less stringent rules, as they're
15 embodied in this table here. And NMED's -- the change,
16 this easing of rules, do I have that right, that is being
17 questioned by the Park Service and the environmental
18 groups?

19 HEARING OFFICER ORTH: Right. They would prefer
20 that NMED had gone back to its original proposal.

21 BOARD MEMBER CATES: Yes. Okay.

22 HEARING OFFICER ORTH: And NMOGA on page 92 of
23 the hard copy of the report, you see the references to the
24 transcript where Ms. Bisbey-Kuehn spoke about the
25 extensive engagement with industry that resulted in the

1 Department easing its formerly more aggressive standards
2 for existing and new engines and turbines.

3 You can go to the sixth volume of the transcript
4 if you'd like, but, basically, industry has said unless it
5 was adjusted the way ED did adjust the petition, there
6 weren't enough -- there were too many economic challenges
7 and not enough off ramps, but there's a -- there's a good
8 discussion on page 92 of the report.

9 BOARD MEMBER CATES: Okay. Thank you.

10 CHAIRPERSON SUINA: And I think to Member
11 Honker's question, that's where I see the references
12 regarding the Department's thoughts on this particular
13 table -- set of tables.

14 HEARING OFFICER ORTH: Yeah. So, the Department
15 itself is addressing that right above the NMOGA comment on
16 page 92, at the top of page 92, saying that the limits
17 originally proposed by the Department set forth in
18 Ms. Bisbey-Kuehn's prefiled direct, had been based on
19 standards from other states: Pennsylvania, Colorado,
20 California and Ohio.

21 They proposed revisions that they did based on
22 information submitted from industry here, in particular
23 NMOGA, Kinder Morgan and GCA. They also made a further
24 analysis of staff emissions testing data available from
25 Ohio and NMED's equipment. And then there's a reference

1 to their rebuttal testimony, Exhibit 1, if you'd like to
2 delve into the details of the adjustments that they made
3 to their earlier proposal.

4 CHAIRPERSON SUINA: Thank you, Madam Hearing
5 Officer. That's helpful in highlighting some of the
6 discussion and points made by multiple parties.

7 Yes, Member Garcia?

8 BOARD MEMBER GARCIA: Yes, thank you, Madam
9 Hearing Officer. I guess I'll start by saying, I note
10 that this is one of those sections that has a delayed
11 implementation, quite a bit of delayed implementation,
12 which is very reasonable for the industry. I know that
13 this area, there was a lot of painstaking research and
14 thought that went into this. I can remember it in the
15 hearing and I remember it in my notes. A lot of work went
16 into analyzing this.

17 I know the Department did a lot of negotiation
18 back and forth, including getting manufacturer's comments
19 on manufacturing specs and, you know, what this equipment
20 is capable of with stricter controls. I must say I'm
21 compelled -- I am compelled by the arguments of the
22 consortium of environmental groups: CEP, and that they
23 point out that the Colorado Air Pollution Control Division
24 conducted a regulatory impact analysis for its 2019 rule,
25 and found the standard to be cost effective and achievable

1 for all existing four-stroke lean burn engines. So I am
2 taking into account the need for stricter controls.

3 On the other hand, I understand that the
4 Department took kind of a middle ground on balance. They
5 took a middle ground, which is -- which is often what you
6 have to do as a regulator. And so, I'm -- I'm of mixed
7 mind still on this. So I'd be interested in hearing what
8 other members have to say. Thank you.

9 CHAIRPERSON SUINA: Thank you, Member Garcia.
10 Let's see what other members want to add to this
11 discussion point.

12 Yes, Member Honker?

13 BOARD MEMBER HONKER: I'm kind of the same place
14 that Member Garcia is. I mean, I can certainly see the
15 desire on behalf of the environmental agencies and the
16 Park Service to maintain the -- the more stringent
17 requirements that were in the original proposal by NMED.

18 On the other hand, I -- I recall the extensive
19 testimony on this, and a lot of expert testimony regarding
20 specifics for implementation of this and impacts and that
21 sort of thing. I mean, the way I see it, NMED proposed
22 something, they got a lot of push-back from the industry,
23 they listened, they came up with something, as Member
24 Garcia said, that was a compromise. Obviously, NMED feels
25 like this is still acceptable in their eyes, in terms of

1 getting these sorts of controls in place, maybe -- maybe
2 not quite as stringently as they originally proposed, but
3 I do think there's -- one has to be a bit pragmatic in a
4 situation like this, and, certainly, if we finalized
5 the -- the Table 1, as NMED has proposed it here, it would
6 be certainly moving -- advancing the ball in terms of air
7 quality improvement.

8 So, I'm kind of leaning toward going with NMED's
9 proposal here while -- while also certainly understanding
10 and appreciating the interest to get a little more benefit
11 sooner on this.

12 CHAIRPERSON SUINA: Thank you, Member Honker.

13 Member Bitzer? You're on mute.

14 BOARD MEMBER BITZER: All right. I guess I had
15 been unmuted the whole time and didn't realize it.

16 When I went back through this last night, I was
17 struck by the Park Service's concern over Carlsbad in
18 particular. I don't know if we wanted to consider a
19 break-out between that region's or that county
20 specifically and everything else, but the data showed that
21 they were going in the wrong direction. And it's a --
22 what, a Class 1 or top-level area of concern since it's a
23 place where people gather and so forth.

24 However, I'm also hearing what you-all are saying
25 about the -- about the Department having throttled back on

1 its more aggressive stance. I know New Mexico is not
2 Colorado and we're not Pennsylvania, we're not Ohio. The
3 -- the particulars are different in each -- in each area,
4 and I also know some of those other states, as I recall
5 from the testimony, had a wrath of exceptions to their
6 more strict requirements, so -- which we're not offering.
7 So, anyway, things to consider.

8 Like I say, I also want to go after those mobile
9 sources as well. I think that will help us augment
10 whatever we're going to do here, whatever that ends up
11 being, to help places like Farmington and Carlsbad.
12 That's all I've got at the moment, but I'm loving the --
13 loving the discussion.

14 CHAIRPERSON SUINA: Thank you, Member Bitzer.
15 Member Cates?

16 BOARD MEMBER CATES: A question for Member
17 Garcia. Where is that passage you were reading from
18 Colorado, I believe, where, again, they're saying it's not
19 a -- it's not a cost breaking proposal in that state to --
20 to implement this kind of rule. Is Member Garcia up
21 there?

22 BOARD MEMBER GARCIA: Yes. Yes. I was reading
23 from page 97 on the Hearings Officer's attachment at
24 the -- at the last paragraph: "The weight of the evidence
25 shows that a standard," do you see that? And then if

1 you -- the next sentence: "Colorado did an impact
2 analysis of its 2019 rule and found that the standard was
3 achievable."

4 So they're talking about four-stroke lean burns
5 there, but the rule has been implemented without
6 difficulty, according to CEP and NPS. So I mean, you
7 know, I think it's -- it's always helpful to look at other
8 states and what -- how it's worked in other states, and we
9 do have to take into account economic considerations. And
10 so, in thinking about that, it's helpful to look at other
11 states.

12 And, you know, where it's -- where a similar rule
13 has been implemented, have a lot of oil and gas companies
14 left the state, et cetera, those kinds of things. It's
15 good to look at that. I remember the testimony in my
16 memory about that testimony. I think I may have even
17 specifically asked a question like that. And there wasn't
18 a massive exodus from Colorado because of their Rule 7.
19 So -- so that's -- that's something to weigh, definitely.

20 CHAIRPERSON SUINA: Thank you for that.

21 BOARD MEMBER CATES: Chair Suina?

22 CHAIRPERSON SUINA: Yes.

23 BOARD MEMBER CATES: Hey, I just wanted to share
24 a thought. You know, Member Bitzer alluded to this; when
25 we're talking about Carlsbad, being a national park, and

1 national parks, they are -- you know, they're out here
2 unless we take them for granted in some ways, but they're
3 few and far between and across the country, you know,
4 they're national treasures. And, you know, that colors
5 some of my thinking about this. They are very special
6 places and Carlsbad, as I understand it, is especially a
7 delicate one for, you know, just the characterize of what
8 it is. So, yeah, that's it. Thank you.

9 CHAIRPERSON SUINA: Thank you, Member Cates.
10 Appreciate that comment. And just to add to the
11 conversation and discussion, just looking back through my
12 notes last night, and I'm actually glad that we took an
13 evening break before delving into this particular area and
14 the tables.

15 We did have extensive discussion and there was
16 rebuttal and this is one of these areas in the rule where
17 we are looking at the air quality standards and what can
18 be achieved. And I remember there were some discussion
19 too -- I can look in my notes, of, you know, to your
20 point, Member Garcia, so if it's -- if it's a standard
21 that is in an adjacent area, one of the concerns was would
22 companies, you know, basically, because of an imaginary
23 line between Colorado and New Mexico, the jurisdiction
24 line, that does not go -- you know, that dissects
25 airsheds, as Member Honker mentioned yesterday.

1 You know, what -- what is the difference between
2 that, in that airshed and that imaginary line, and we have
3 companies on this side of the airshed operating to a
4 different set of standards that is more strict, would that
5 mean that companies then within the same airshed and the
6 same area, come over to New Mexico with the less -- less
7 strict standards?

8 And what does that mean for those parks, as you
9 shared, Member Cates, and those communities, the frontline
10 communities that are adjacent to these areas as well. So,
11 I remember we had some discussion about that from the
12 various parties. So I just wanted to add that point that
13 I remembered. I don't know what others --

14 Yes, Member Honker?

15 BOARD MEMBER HONKER: Just to continue on that,
16 we also have Texas as a neighbor, and we've got Carlsbad
17 and we've got Guadalupe Mountains right across the state
18 line down there. And I believe the situation is, if we
19 finalize a rule here, we will be more stringent than what
20 Texas is doing. So it kind of works both ways, whether
21 you're looking at Colorado or Texas. So I just wanted to
22 throw that in because that's part of the picture.

23 CHAIRPERSON SUINA: Thank you, Member Honker.

24 And Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Thank you. In

1 reviewing the National Park Service's proposal, I'm -- I
2 have to ask myself this question and it's given me some
3 pause. You know, the National Park Service did represent
4 themselves and put together some really interesting
5 information.

6 The National Park Service falls under the
7 Department of Interior, and so does the Bureau of Land
8 Management. And the Bureau of Land Management has land
9 surrounding this whole area, and they remained rather
10 silent on this issue. And so, it seems like a kind of
11 broken message from a public land standpoint. And I'm not
12 fully sure what to do with that, but I am inclined to just
13 default back to what the Department has put together and
14 agreed with, based on that -- that presentation.

15 CHAIRPERSON SUINA: Thank you, Vice-Chair
16 Trujillo-Davis. And I see Member Bitzer's hand up as
17 well.

18 BOARD MEMBER BITZER: I'm looking at the map and
19 the caverns themselves are smack dab on the Mexican
20 border, I mean, right there next to the Guadalupe
21 Mountains on both sides of the border. And we're talking
22 about fugitive emissions sometimes. And I know that in
23 the testimony they talked about how you could discern
24 fresh -- fresh emissions from aging ones. I'm forgetting
25 the chemical technique they specified, but even if it

1 was -- when they were talking about how it would -- it
2 was -- it was seemingly young, fresh nearby emissions, but
3 you could have emissions from Mexico that are still pretty
4 fresh when they -- when they reach Carlsbad, if the wind
5 is coming up from the south, as it often does.

6 So I was impressed by that -- that that notation,
7 that point that they made in support of going back to the
8 original state proposal, but I'm not sure it would solve
9 the problem, if we're getting recently emitted precursors
10 from Mexico. Anyway, just something else to think about.
11 That's it.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer.
13 Looking to see -- I thought I saw another member with
14 their hand up.

15 Yes, Member Garcia?

16 BOARD MEMBER GARCIA: Yes, just a -- just a point
17 to Member Honker's statement about Texas. I do see on
18 page 97 of the attachment, that Texas does indeed have a
19 stricter standard in the Dallas area because they're a
20 nonattainment area, so that's kind of interesting.

21 CHAIRPERSON SUINA: Thank you, Member Garcia.

22 I just wanted to really quickly share with
23 Vice-Chair Trujillo-Davis that in the -- in my notes, I
24 also noted, you know, there was an interaction between one
25 of the -- those that were testifying on behalf of the

1 National Park Service, and I believe one of the parties'
2 attorneys from industry, asking if this were -- if
3 their -- the National Park Service's position was indeed
4 the official position of the National Park Service, to
5 your point about they're both under the Department of
6 Interior, BLM, and Park Service. And they, I remember
7 specifically noting they said, yes, the National Park
8 Service did.

9 And so, I do just recall that because that is a
10 pretty strong statement on behalf of the National Park
11 Service. So I just wanted to share that I remember noting
12 that. Thank you.

13 VICE-CHAIR TRUJILLO-DAVIS: Thank you for sharing
14 that. And I agree, I remember when that comment was made.
15 And I think it's a very powerful statement. And what I --
16 what I find interesting with that is that the BLM is
17 charged with enforcing. I mean, there's lots of oil and
18 gas places on BLM property, you know, they issue APDs --
19 or I'm sorry -- applications to drill, and they're charged
20 with a lot of -- as a regulatory agency, to oversee many
21 of these issues. So, to me, it seemed rather divisive.

22 CHAIRPERSON SUINA: Yes, I see that point.

23 And I think I saw a member with their hand up.
24 Just making sure I didn't miss anybody. And I think also
25 to your point, Member Garcia -- thank you for pointing

1 that out about Texas, and one of the cities in Texas. And
2 I think we're going to continue to see, you know, this
3 intersection of level of regulations in one area, as you
4 said, Member Honker, yesterday, the airsheds, and that we
5 would think that they would all be in alignment, but we do
6 see these as this mosaic of airsheds -- or regulation
7 standards even within the same airshed.

8 Yes, Member Bitzer?

9 BOARD MEMBER BITZER: To Member Garcia's point,
10 when she said Dallas, maybe I'm just running it all
11 together in my head, but I thought it was Houston. Do you
12 have a specific page, Karen, where you were talking about
13 that, that it's a nonattainment jurisdiction?

14 BOARD MEMBER GARCIA: Yes. I'm looking at the
15 Hearing Officer's attachment, the very bottom of page 97
16 and the top of page 98. "For example, since 2007, Texas
17 has required existing lean-burn engines in the Dallas-Fort
18 Worth ozone nonattainment area to meet a standard of .7
19 grams of NOx per horsepower hour."

20 BOARD MEMBER BITZER: It was probably somewhere
21 else that I saw Houston referenced as a nonattainment
22 then, but I read the whole document. All right. Never
23 mind. I thought I was -- I am -- I am -- I was
24 misinforming myself. Thank you.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer.

1 Member Honker?

2 BOARD MEMBER HONKER: Yeah, and I can comment a
3 little bit on Dallas-Fort Worth area since I used to live
4 there. And that's like six or eight counties, the
5 nonattainment area there. And there are oil and gas
6 operations within those counties, so that, I believe, was
7 set up because of the nonattainment issue in that
8 metropolitan area.

9 CHAIRPERSON SUINA: Thank you, Member Honker.

10 Member Bitzer?

11 BOARD MEMBER BITZER: Member Honker, correct me
12 if I'm wrong, Albuquerque-Bernalillo County is a
13 nonattainment area, too, is it not? Aren't we an AQMD?

14 BOARD MEMBER HONKER: Well, it depends what the
15 nonattainment is for, though. And I'm -- off the top of
16 my head, I can't remember Albuquerque's status, but I
17 think this says -- right up here it actually says, it's an
18 ozone nonattainment area in Dallas-Fort Worth, so I'm not
19 sure how that compares with Albuquerque.

20 BOARD MEMBER BITZER: My hunch is it was ozone
21 for Albuquerque as well, because we were oft referred to
22 as a "little Los Angeles," because of the box where the
23 air comes in and recirculates. It makes hot air
24 ballooning a lot of fun, but it also doesn't flush our air
25 out when the weather patterns are such. So we became --

1 and I worked down at city hall for a number of years, and
2 I remember the environmental health Department at the
3 city, at JPA with the county, to deal with the fact that
4 we were under EPA supervision.

5 But I think that there were other elements that
6 we were in some risk of falling away from, like fine or
7 gross particulate, but my hunch is it was originally
8 ozone. But I haven't worked at city hall for a number of
9 years, so my information is a bit dated.

10 CHAIRPERSON SUINA: Thank you for that, Member
11 Bitzer.

12 Yes, Member Garcia?

13 BOARD MEMBER GARCIA: Yes. Thank you, Madam
14 Chair. I guess, kind of thinking through this, circling
15 back around to the question of whether or not we make
16 these even tighter than NMED's proposal or not, is sort of
17 the question before us. And I suppose at this point, I'm
18 not entirely comfortable second-guessing NMED's position
19 here. They -- they know this equipment, they've
20 negotiated with the industry back and forth, back and
21 forth. There are limitations on a variety of
22 manufacturing recommendations, et cetera, so I'm -- I've
23 convinced myself that I'm comfortable with the NMED
24 position on these -- on these limits that they've
25 proposed.

1 CHAIRPERSON SUINA: Thank you, Member Garcia.

2 Yes, Member Honker?

3 BOARD MEMBER HONKER: And I think I agree with
4 Member Garcia. I mean, this is a tough issue because,
5 obviously, other states have got more restrictive
6 standards here, but there's extensive testimony, NMED
7 ended up at a place they were comfortable with. And --
8 and the industry that was pushing back on the -- on the
9 original proposal is accepting of that -- that area, so,
10 yeah, I'm inclined to go with the State's draft here, or
11 final version here, even recognizing that the different --
12 their original proposal is in place in some other areas.

13 CHAIRPERSON SUINA: And just for clarification,
14 Member Honker; their original proposal, are you referring
15 to National Park Service's original proposal?

16 BOARD MEMBER HONKER: No, I meant -- because Park
17 Services is proposing what NMED originally proposed, so
18 that's what I was referring to. So, yeah, the Park
19 Service is proposing what was the original NMED proposal.

20 But I'm agreeing with Member Garcia, that I'd be
21 supportive of what -- what NMED has finalized as their
22 position here in terms of Table 1.

23 CHAIRPERSON SUINA: Thank you, Member Honker.

24 And Madam Hearing Officer, I just had a quick
25 question. For this Table 1 -- I'm looking at it, too, on

1 my end here -- this is the -- what we have on the screen
2 is the National Park Service and CEP's revisions on NMED's
3 latest revisions; is that -- is that correct, on the
4 January 2022 revision?

5 HEARING OFFICER ORTH: Right. So it had become
6 clear during the hearing that NMED was moving toward
7 industry, so the -- this was not just a proposal in their
8 closing argument, this is something they put on evidence
9 of. So it's -- it's not one of those late-breaking ones
10 we were dealing with earlier.

11 There's evidence in the record to support this
12 decision, this proposal by CEP and NPS. And there's
13 evidence in the record to support the Department's
14 proposal. So it's good you've been having the
15 conversation you've been having.

16 CHAIRPERSON SUINA: Thank you, Ms. Orth. I just
17 wanted to make sure I clarified that. So, can you just
18 remind me one more time? This table came from CEP/NPS's
19 during the hearing record submittals; is that correct?
20 Was it before or after the hearing started?

21 HEARING OFFICER ORTH: Well, okay. So it would
22 take me a minute to find out -- refresh my memory on
23 exactly when they offered this, but, again, it's --
24 it's -- they were objecting to NMED's movement toward
25 industry in plenty of time for the Board to have these

1 deliberations.

2 CHAIRPERSON SUINA: Absolutely. I'm just, I
3 guess, on my -- my timeline, I'm just -- I understand
4 there was that movement. And I'm just trying to see where
5 in that movement, then CEP and NPS said, oh, maybe that's
6 too much.

7 HEARING OFFICER ORTH: Okay. So I would have to
8 refresh my memory. I can do that on a break. I'm not
9 sure I can -- can do it sufficiently quickly, too.

10 CHAIRPERSON SUINA: Yeah. I apologize, Madam
11 Hearing Officer. The only reason why I just, again, want
12 to make sure that we -- i have a full picture of how this
13 discussion has evolved. And there's been a great deal of
14 testimony on this, on these tables. So I just want to,
15 you know, even for my own thought process, know kind of
16 the timeline. And I've gone back and I have all of their
17 submittals, too, pulled up, so I'm trying to figure out
18 just where we are on this table.

19 And if there was movement, and then if there was
20 also some movement back, to address some of CEP's concerns
21 and NPS' concerns. Or if there was just the one-way
22 movement, I guess.

23 I don't know if that made sense. But Board
24 members, I apologize in trying to delve into this, but I
25 just want to make sure I understand the evolution. Okay.

1 Is it okay if we take five minutes?

2 Or how long do you think you'll need, Madam
3 Hearing Officer?

4 HEARING OFFICER ORTH: Well, let's see. First,
5 I'm going to go to Ms. Kuehn's -- Ms. Bisbey-Kuehn's
6 testimony in the sixth transcript. Let's see. It appears
7 just from -- from doing this on the fly, that CEP did it
8 in rebuttal, but NPS -- excuse me -- the National Park
9 Service had it in its direct. And I do remember NPS had
10 it in its direct, they came with this.

11 And I think the CEP or maybe it was the CAA, the
12 Clean Air Advocates, and when that broadened to the CEP,
13 added it to their rebuttal and joined NPS's original
14 direct position, which, of course, was based on what they
15 were seeing in Carlsbad.

16 CHAIRPERSON SUINA: Okay. Well, great. I think
17 that's helpful for me. Because I do recall, there was --
18 I remember National Park Service just, again, from my
19 notes, and then the other environmental advocates looking
20 at this as well, so I just didn't know at what point.

21 HEARING OFFICER ORTH: Also, one more thing. I'm
22 sorry, Madam Chair. I believe the Clean Air Advocates had
23 a Ph.D. witness supporting, again, during the -- during
24 the hearing. This was NPS's whole case, if you will.
25 Clean Air Advocates addressed a lot more throughout the --

1 throughout rule, but this was -- this was NPS's whole case
2 from the beginning. However, you could find support among
3 CAA's witnesses as well during that -- during the hearing.

4 CHAIRPERSON SUINA: Yeah. And that's what I
5 recall that, throughout the hearing, there was -- well,
6 even though we've talked about this, then in other days
7 there was some references back to the stricter standards
8 that were proposed by NPS, is what I recall.

9 Is that what you recall or you've documented,
10 Madam Hearing Officer, as well?

11 HEARING OFFICER ORTH: I'm sorry. The question
12 again?

13 CHAIRPERSON SUINA: Just, you know, like I said,
14 we had talked about this, these tables, with NPS during
15 the hearing, but there were references in other
16 testimonies noting or referring back to these tables and
17 the -- you know, trying to advocate for not the strict
18 tables that NPS was recommending.

19 HEARING OFFICER ORTH: That's right. That's
20 right. There -- there really is extensive substantial
21 evidence supporting NMED's tables and supporting these
22 revisions -- the proposed revisions to NMED's tables. You
23 really do -- and Ms. Soloria, this is really for her to
24 confirm, I think. But I think you really do have
25 substantial evidence supporting your decision here in this

1 section.

2 CHAIRPERSON SUINA: Okay.

3 MS. SOLORIA: Right. And I would -- I would echo
4 what the Hearing Officer said. This isn't -- this is
5 distinct from those other situations, where it might have
6 just been raised at the post-hearing, eleventh hour, I
7 think, as the Hearing Officer noted, this was kind of the
8 crux of one party's case.

9 I also wanted to note, it's been flagged by a
10 party that I believe CAA did not say anything about this
11 issue until surrebuttal. It's been noted, but I'd have to
12 go back and look at that, if the Hearing Officer has
13 anything to bear on that, but I think one of the parties
14 wanted to clarify that.

15 CHAIRPERSON SUINA: Thank you, Counsel Soloria.
16 Did we want to clarify that now or?

17 MS. SOLORIA: That's at your discretion, Chair.
18 There was, I believe, an objection to that presentation in
19 surrebuttal, by NMOGA. That's what has been represented
20 to me, but I would have to refresh my memory as well,
21 based on the record.

22 CHAIRPERSON SUINA: Could we verify that, Madam
23 Hearing Officer?

24 HEARING OFFICER ORTH: Let's see. So you'd like
25 to verify whether CAA/CEP joined the National Park Service

1 on rebuttal or surrebuttal; is that what you're asking?

2 CHAIRPERSON SUINA: Yes.

3 HEARING OFFICER ORTH: Okay. I'm sorry. It's --
4 I would actually have to dig through some -- some
5 pleadings here. I think, regardless, they -- how can I
6 put this? In any complex rulemaking you are going to
7 have, you know, movement among the parties. And it's -- I
8 don't think it's inappropriate at all. It helps kind of
9 narrow the issues, but if it's important to your
10 deliberations to know whether CAA/CEP joined the NPS
11 proposal on rebuttal or surrebuttal, I would have to do
12 that on a break.

13 MS. SOLORIA: And --

14 CHAIRPERSON SUINA: Go ahead, Ms. Soloria.

15 MS. SOLORIA: I was just going to say, I think
16 what's implied there is that the Board has to decide
17 whether or not that -- when it was raised, how
18 important -- how you're going to weigh that. If you want
19 to have her go back through the record to refresh your
20 recollection, that's fine, but, ultimately, you will have
21 to decide how you'll weigh the fact that they raised it in
22 surrebuttal versus at another point in the testimony.
23 That's up to you.

24 CHAIRPERSON SUINA: Yeah, and I think also -- I
25 think you brought up the point, Ms. Soloria, that there

1 was some discussion about whether it was appropriate. It
2 was appropriate, I guess, that's, too, what I wanted to
3 verify as well.

4 MS. SOLORIA: My recollection -- and the Hearing
5 Officer would know better -- was that if -- I think it was
6 admitted -- that evidence provided by CAA, ultimately, was
7 admitted on surrebuttal. There was an objection by NMOGA,
8 but that's the kind of case where if it's admitted, then
9 it's -- then it's in the record for consideration.

10 Unless the Hearing Officer has a different
11 interpretation, but I'm also doing this on the fly. I
12 would have to go back and look at the transcript to see
13 the order of things. I just wanted to raise that that was
14 flagged by a party, that we perhaps were misremembering
15 the order of how CAA brought in their support.

16 CHAIRPERSON SUINA: Okay. Okay. Thank you for
17 that clarification. All right. Sorry to go into a rabbit
18 hole there. I just wanted full clarity on how this has
19 evolved, and looking at the iterations as well, of this
20 table over -- over time. So I think, for me, I'm good.

21 I think, Madam Hearing Officer, I'm good with
22 that, with the discussion. I just wanted to vet that out
23 a little bit.

24 HEARING OFFICER ORTH: Thank you.

25 CHAIRPERSON SUINA: So, with that, I'm looking at

1 our Board? Yes, Member Garcia?

2 BOARD MEMBER GARCIA: So I guess back to this
3 table, I think, you know, I'm reminded by what the Hearing
4 Officer has said as well, is there was a great deal of
5 testimony about the feasibility of needing these standards
6 that the environmental groups have proposed. And -- and I
7 think they did an outstanding job proving that the
8 industry probably can meet these tighter standards that
9 they're proposing on some of these particular pieces of
10 equipment.

11 I have no doubt that the industry could meet
12 these standards; it would be more economically painful, no
13 doubt. However, it's been done in other states. It's
14 been done in even Texas. So, to me, I don't question
15 that. I think they did a great job showing that the
16 industry could meet the standard if they had to.

17 Now, I understand that the Department, you know,
18 once again, had to compromise and took the middle
19 ground -- middle road and -- and I'm comfortable with
20 that. So, while I don't -- while I don't doubt that
21 industry could meet this, I still think the Department
22 knows what they have to enforce. And they have to live
23 with these folks and so, I think where they landed is
24 probably a reasonable position. That's all. Thank you.

25 CHAIRPERSON SUINA: Thank you, Member Garcia.

1 And I thought he saw another member's -- oh, Vice-Chair
2 Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: Thank you. First,
4 I'd like to say I think both parties did a really good job
5 of compiling their information here. And I am inclined to
6 agree with Member Garcia, that I think over time with
7 work, these numbers could be met. But the thing that does
8 give me pause is that this change -- and I apologize, I
9 lost my place on this -- on this report here, where NPS
10 says that it's a slight change, I believe is their
11 wording, for the amount of work that went into negotiating
12 this table and the number of parties that were able to
13 agree on it, I'm comfortable with leaving the table as
14 NMED has -- has proposed.

15 In the future, I think if there's -- if there's
16 more of a question of that, it can be approached at that
17 time, but, overall, I think we're looking at a really
18 strong rule here. And so, I would be reluctant to adopt
19 NPS's proposal for a slight change. That's about it.

20 CHAIRPERSON SUINA: Thank you, Vice-Chair
21 Trujillo-Davis. And I thought I saw somebody else's hand
22 up.

23 And with that, if there's no other discussion on
24 this, I don't know if we want to jump in here and look
25 at -- so just, again, remembering -- recalling from last

1 night, we also probably need to go back up to the text as
2 well. I know we've been having a lot of discussion on the
3 tables, but just -- just reiterating that we still have to
4 make a decision on the text related to these table
5 sections.

6 Yes, Member Bitzer?

7 BOARD MEMBER BITZER: Do you want to make the --
8 maybe this is a question for counsel, but do we want to
9 make a motion en blanc for this section that includes
10 tables, or are we breaking out the tables for some reason?

11 MS. SOLORIA: I think -- I think it would make
12 more sense to take the tables first, because the tables
13 are, I think where we had landed last night was that the
14 tables were referred to by the rules, so it made more
15 sense to approve or disapprove the tables before you take
16 up the text of the rule incorporating reference to the
17 tables.

18 CHAIRPERSON SUINA: Thank you for that
19 clarification. With that, do we want to delve into a
20 motion? I know we've had some extensive discussions.

21 BOARD MEMBER BITZER: Madam Chair, it's three
22 tables. Yes? Will that -- I'm counting here Tables 1, 2
23 and 3?

24 CHAIRPERSON SUINA: Yes, Member Bitzer.

25 BOARD MEMBER BITZER: All right. I will go ahead

1 and move adoption of NMED's Tables 1, 2 and 3 for the
2 reasons submitted by the Department and other parties,
3 including -- do you want me to name them? Well, I'm not
4 going to name them.

5 MS. SOLORIA: If we're not going to name them,
6 Member Bitzer, I would propose to amend the motion to
7 state parties' rationale and support. That way we can
8 distinguish -- we could do it that way, identify them that
9 way.

10 BOARD MEMBER BITZER: Thank you, Counsel. I'll
11 consider that my motion.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer. Do
13 we have a second? Yes, Member Garcia?

14 BOARD MEMBER GARCIA: Second.

15 CHAIRPERSON SUINA: Thank you. With that, and
16 looking at our Board, if we don't have any other
17 discussion, I think we go to Ms. Jones. Would you mind
18 doing a roll-call vote on our motion regarding Tables 1, 2
19 and 3?

20 ADMINISTRATOR JONES: Sure. Member Bitzer,
21 starting with you, how do you vote?

22 BOARD MEMBER BITZER: I vote yes.

23 ADMINISTRATOR JONES: And Member Cates?

24 BOARD MEMBER CATES: I vote no.

25 ADMINISTRATOR JONES: And Member Duval?

1 BOARD MEMBER DUVAL: Yes, I vote yes.

2 ADMINISTRATOR JONES: And Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR JONES: Member Honker?

5 BOARD MEMBER HONKER: Yes.

6 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: Yes.

8 ADMINISTRATOR JONES: Chair Suina?

9 CHAIRPERSON SUINA: I vote no.

10 ADMINISTRATOR JONES: Member -- okay. Let's see.

11 One, two, three -- Chair Suina, you have five votes in the
12 affirmative and two votes in the negative. It passes.

13 CHAIRPERSON SUINA: Thank you, Ms. Jones.

14 Appreciate that. And so, let's go to the text for this
15 section. And we were almost there last night regarding
16 the text on Section B (2). Am I correct in that? Can my
17 fellow Board members --

18 HEARING OFFICER ORTH: I believe this is B (4),
19 and we're on page 106 of the hard copy of the report.
20 There are several sections, then, that are not -- are not
21 contested.

22 MS. SOLORIA: But I believe we have to go back
23 just quickly to the language of the actual text of the B
24 (2), I guess B (2) through (d).

25 HEARING OFFICER ORTH: Oh, I'm sorry. Because --

1 sorry, we started taking that vote and then stopped.

2 Okay. Very sorry.

3 CHAIRPERSON SUINA: No worries.

4 HEARING OFFICER ORTH: Let's see here, B (2),
5 there's B (3), which included Table 2. Up here is B (2).

6 CHAIRPERSON SUINA: There we are. So this would
7 be B (2), (a), (b), (c), (d). So, with that, I know we
8 were very close last night on our vote on this. Now that
9 we've resolved our tables, are we good here with the
10 language of B (2)? And if so, I don't know if we want
11 more discussion. It seems pretty clear with the
12 references -- just reference this section -- this section
13 references just Table 1, it looks like.

14 And then, is it just, again, we have NMED, the
15 Department, and then we have NMOGA also supporting this.
16 And I think -- and please correct me if I'm wrong -- we
17 did address the proposed B (2) (e), right, already?

18 HEARING OFFICER ORTH: That's my memory, Madam
19 Chair. I believe you already had a vote on that
20 particular proposal.

21 CHAIRPERSON SUINA: Great.

22 Yes, Member Bitzer?

23 BOARD MEMBER BITZER: Yes. Madam Chair, I'm
24 drawn to page 91 in NPS's proposed new paragraph under
25 this Section B (2) (e).

1 CHAIRPERSON SUINA: Correct.

2 BOARD MEMBER BITZER: "Companies shall maintain a
3 plan that demonstrated how the owner or operator will meet
4 the emissions standards as outlined in the schedule
5 above."

6 Did anybody -- I'm not recalling now if there was
7 any Department or industry objection to that particular
8 addition.

9 CHAIRPERSON SUINA: We -- we -- I don't believe
10 so, but we did address this last night and we voted not to
11 take up this one.

12 BOARD MEMBER BITZER: All right.

13 HEARING OFFICER ORTH: I believe primarily
14 because it was a late-breaking proposal.

15 CHAIRPERSON SUINA: Exactly. Thank you, Member
16 Bitzer. All right. So we're back to B (2), (a), (b),
17 (c), (d).

18 Yes, Member Honker?

19 BOARD MEMBER HONKER: And I may be getting lost
20 in all of the -- in all of the lettering and numbering
21 scheme here, but it seems like B 2 (d) goes all the way to
22 page 116 in the material we have? If I'm reading this
23 right.

24 HEARING OFFICER ORTH: I believe, Member Honker,
25 that what you're seeing is the fact that the tables are

1 part of B 2, and so you've had a separate table discussion
2 and now we have returned to what was a shortened
3 discussion, if you will, of the narrative portion of B
4 (2).

5 BOARD MEMBER HONKER: Right, but doesn't B 2 (d)
6 continue here? There's a bunch of additional sections as
7 I'm reading it.

8 MS. SOLORIA: Member Honker, those are separate.
9 So it's not -- we're dealing with Subsection 2, and I
10 think you're looking at a separate Subsection 4 and
11 continuing. So it's number, letter, number, and we're
12 still on the number letter associated with Section 2.

13 BOARD MEMBER HONKER: Okay.

14 MS. SOLORIA: Are you following that? Because I
15 can see where you're seeing that it's continuing, but
16 those are different, those are distinct from the
17 Subsection 2 that we're considering.

18 BOARD MEMBER HONKER: Okay. I just wanted to
19 make sure we weren't taking action on these additional
20 sections that follow.

21 CHAIRPERSON SUINA: Thank you for that
22 clarification. And I think it's just those. And I know
23 to your point, this one section is with the tables and
24 everything, and there was a lot of text.

25 BOARD MEMBER HONKER: So we're just talking about

1 the paragraph B 2 (d) text that precedes the tables,
2 right?

3 CHAIRPERSON SUINA: That is correct.

4 BOARD MEMBER HONKER: Okay.

5 CHAIRPERSON SUINA: So I don't know if we have
6 further discussion. It seems that we're just
7 incorporating -- just looking at this text and looking at,
8 you know -- and then, please, correct me if I'm wrong,
9 fellow Board members and Madam Hearing Officer. It looks
10 like, you know, just on the text, minus the tables,
11 there's -- there was concurrence by industry, as we have
12 the Department and then industry providing support.

13 BOARD MEMBER BITZER: Madam Chair, I would move
14 adoption of B, Emissions standards, Section 2 (a), (b),
15 (c) and (d), for reasons proffered by the Department.

16 CHAIRPERSON SUINA: Thank you, Member Bitzer.

17 Did you want to share anything, Member Garcia?

18 BOARD MEMBER GARCIA: Yeah. I was just -- I was
19 just thinking he would go on and said, and supported by
20 NMOGA, but not necessary.

21 MS. SOLORIA: Member Garcia read my mind, so I
22 would support that amendment as well.

23 BOARD MEMBER BITZER: Did I neglect to say "and
24 NMOGA?"

25 CHAIRPERSON SUINA: Yes.

1 BOARD MEMBER BITZER: All right. Let me start
2 over. I move -- I'm forgetting what verb I want to use.
3 Move is the verb. Support, endorsement -- I move --

4 CHAIRPERSON SUINA: To adopt.

5 BOARD MEMBER BITZER: Adoption, there's the word.
6 I move adoption of B, Emissions standards, Section 2 (a),
7 (b), (c,) and (d), for reasons proffered by the Department
8 and NMOGA.

9 CHAIRPERSON SUINA: Thank you so much, Member
10 Bitzer. And I'm looking at --

11 BOARD MEMBER HONKER: I'll second.

12 CHAIRPERSON SUINA: Thank you, Member Honker.

13 If there's no other discussion, Ms. Jones, would
14 you mind doing a roll-call vote?

15 ADMINISTRATOR JONES: Member Bitzer?

16 BOARD MEMBER BITZER: I vote yes.

17 ADMINISTRATOR JONES: Member Cates?

18 BOARD MEMBER CATES: Yes.

19 ADMINISTRATOR JONES: Member Duval?

20 BOARD MEMBER DUVAL: Yes.

21 ADMINISTRATOR JONES: Member Garcia?

22 BOARD MEMBER GARCIA: Yes.

23 ADMINISTRATOR JONES: Member Honker?

24 BOARD MEMBER HONKER: Yes.

25 ADMINISTRATOR JONES: Okay. I'll come back

1 around. Vice-Chair Trujillo-Davis?

2 VICE-CHAIR TRUJILLO-DAVIS: Yes.

3 ADMINISTRATOR JONES: Chair Suina?

4 CHAIRPERSON SUINA: Yes. Did you not hear Member
5 Honker's response?

6 ADMINISTRATOR JONES: I didn't. Member Honker,
7 how do you vote?

8 BOARD MEMBER HONKER: Yes. I vote yes.

9 ADMINISTRATOR JONES: Okay. I'm sorry, I didn't
10 hear you.

11 Madam Chair, the motion passes.

12 CHAIRPERSON SUINA: Thank you, Ms. Jones, and
13 appreciate that. I just want to check in with our Board
14 members. We've been online for about an hour and 42
15 minutes. Does anybody need a quick biobreak or anything?
16 Yes, I see some head nods. Do you want to take a
17 five-minute break, or ten minutes? What do you think?
18 Ten minutes?

19 BOARD MEMBER DUVAL: I would be good with five,
20 ten, whatever.

21 CHAIRPERSON SUINA: Why don't we do ten. That
22 was a good section. So, see you back at 10:53.

23 (Recess taken from 10:43 a.m. to 10:54 a.m.)

24 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.
25 Appreciate that. I know our members are coming back here.

1 Hopefully we got to stretch some legs. So, now, thank you
2 to our members. A good start to the morning on a very
3 lengthy discussion on B (2), where we just passed, and
4 some of the tables earlier.

5 Now we are at Section 20.2.50.113 B (3) text.
6 And please correct me, anyone, if I'm incorrect on that.
7 And the text is "The owner or operator of a natural
8 gas-fired spark ignition engine shall ensure the engine
9 does not exceed the emissions standards on Table Two of
10 paragraph (3) of Subsection B of 20.2.50.113 NMAC upon
11 startup."

12 Yes, Member Duval?

13 BOARD MEMBER DUVAL: Yes, Chair Suina, just a
14 request. I have a meeting at 1 and if we could stretch
15 until then for lunch break, then I wouldn't have to miss
16 any, but I mean that's just me, personally. If folks have
17 objections, that's fine, but I need to be away from 1 to
18 about 2. And so if we could do the lunch break then, then
19 I wouldn't have to miss anything, but I mean that's just a
20 personal request. If folks have an objection, then I just
21 won't be on from 1 to about 2.

22 CHAIRPERSON SUINA: Thank you, Member Duval. I
23 appreciate you sharing that with us. Looking at our
24 members, do you think we could stretch until 1:00? Good.
25 Great. Thank you for sharing, Member Duval. We're all

1 doing our best to accommodate max participation, so thanks
2 for that. All right. So let's give up two more hours
3 here.

4 Yes, Member Honker?

5 BOARD MEMBER HONKER: Question: Didn't we just
6 approve B 2 (d) in the prior -- prior vote, or did --
7 that's why I was raising the question before about, it
8 seems like what we voted on was all of B 2 (d), but I
9 can't remember for sure. So I think we need to check back
10 with -- with counsel on that.

11 CHAIRPERSON SUINA: Yes. I'll let legal counsel
12 or Hearing Officer answer that.

13 HEARING OFFICER ORTH: Madam Chair, I believe the
14 course of your deliberations last night and today referred
15 to, I believe B (2), the narrative. Then you moved to the
16 tables, and then you actually addressed both of the
17 tables. And now we're moving back through the narrative
18 on B (3), and then there's B (4), (5), (6), (7), (8) and
19 then we'll go to C. But you are still in B.

20 And so, correct me if I'm wrong, Ms. Soloria, but
21 I believe at this point their task here is not to
22 readdress Table 2, but to take on the narrative in
23 paragraph (3).

24 MS. SOLORIA: Correct. And I think -- I think
25 the confusion is that Member Honker might be reading (4)

1 as a subpart to (d), which is not the case. It is a
2 distinct numerical subpart under capital B.

3 BOARD MEMBER HONKER: Okay. Yes, you broke the
4 code for me. So, sorry about that.

5 MS. SOLORIA: Sure.

6 BOARD MEMBER HONKER: I'm with the -- I'm with
7 the program now.

8 CHAIRPERSON SUINA: Thank you, Member Honker.
9 And I think that clarification helps all of us. So
10 appreciate that. So, to Hearing Officer's summary there,
11 it looks like we're just looking at paragraph (3) of
12 subsection B of Section 20.2.50.113.

13 So we have NMED's position, as well as NMOGA and
14 GCA. And please correct me if I'm wrong, Madam Hearing
15 Officer, we also, it looks like -- so looking at the
16 hearing report, I might have misconstrued this. Can you
17 share with us, Madam Hearing Officer, if NMOGA -- if all
18 of these -- NMOGA, GCA, CEP and NPS refer to paragraph 3,
19 or is it just -- I'm trying to look at it.

20 HEARING OFFICER ORTH: Yes, Madam Chair. So,
21 most of the commentary by the other parties related to the
22 tables. And in the tables, as I said earlier, the primary
23 two issues raised by CEP and NPS in the tables was, first,
24 about the emissions standard, but then also about when
25 they apply.

1 And so, if I go back to -- let's see. If we were
2 to return to the screen I had up earlier, of the CEP and
3 NPS proposal, you would see not just the change in the
4 emissions standard per hour, but also the strikeout and
5 redline of when those standards become effective; namely,
6 changing existing engines to those constructed,
7 reconstructed and installed, before the -- before the
8 standards take effect. That was the other major change in
9 the tables.

10 So, most of the commentary -- I'm sorry. To
11 summarize, the commentary went to the tables and the
12 issues I just mentioned. The commentary was not really so
13 much about what you see as the narrative in these
14 paragraphs.

15 CHAIRPERSON SUINA: Thank you, Madam Hearing
16 Officer. That's the clarification I was looking for, for
17 myself, and our -- my fellow members.

18 So, yes, Member Garcia?

19 BOARD MEMBER GARCIA: Yes. If the Hearing
20 Officer could point me to the page on the report on the
21 attachment where this discussion begins. I got myself
22 mixed up here.

23 HEARING OFFICER ORTH: This is page 90 -- oh,
24 hold on.

25 CHAIRPERSON SUINA: 96.

1 HEARING OFFICER ORTH: 96, yeah.

2 BOARD MEMBER GARCIA: Thank you.

3 HEARING OFFICER ORTH: Page 96.

4 CHAIRPERSON SUINA: Does that help our Board
5 members? So, all we're looking at is the text that we see
6 here. We have already discussed Table 2, so it's just the
7 text. Is there any discussion?

8 Yes, Member Honker?

9 BOARD MEMBER HONKER: Well, since there was no
10 real comment or disagreement with the text portion of
11 this, I would move that we approve the text portion of 113
12 B (3) as supported by NMED's rationale.

13 CHAIRPERSON SUINA: Thank you, Member Honker. Is
14 there any other?

15 BOARD MEMBER BITZER: I'll second that.

16 CHAIRPERSON SUINA: Member Bitzer seconds. Thank
17 you so much.

18 If there's no other discussion, could
19 Ms. Jones -- and Ms. Soloria, I just want to make sure
20 that's clear. We're good? I know we were confused here a
21 little bit.

22 MS. SOLORIA: Yes, Madam Chair. That's good to
23 go.

24 CHAIRPERSON SUINA: Okay. Ms. Jones, would you
25 mind doing a roll-call vote?

1 ADMINISTRATOR JONES: Happy to.

2 Member Bitzer, how do you vote?

3 BOARD MEMBER BITZER: I vote yes.

4 ADMINISTRATOR JONES: Member Cates?

5 BOARD MEMBER CATES: Yes.

6 ADMINISTRATOR JONES: Member Duval?

7 BOARD MEMBER DUVAL: Yes.

8 ADMINISTRATOR JONES: Member Garcia?

9 BOARD MEMBER GARCIA: Yes.

10 ADMINISTRATOR JONES: Member Honker?

11 BOARD MEMBER HONKER: Yes.

12 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

13 VICE-CHAIR TRUJILLO-DAVIS: Yes.

14 ADMINISTRATOR JONES: Thank you.

15 Chair Suina?

16 CHAIRPERSON SUINA: Yes.

17 ADMINISTRATOR JONES: Madam Chair, the motion
18 passes.

19 CHAIRPERSON SUINA: Thank you, Ms. Jones, and
20 thank you members of the Board. We'll go on to our next
21 section, which is --

22 HEARING OFFICER ORTH: Page 106, yeah.

23 CHAIRPERSON SUINA: 20.2.50.113 B (4).

24 HEARING OFFICER ORTH: So, Madam Chair, it's on
25 page 106 of the hard copy of the attachment -- the report

1 attachment. And as I am about to scroll past the CEP/NPS,
2 in Table 3, you can see that there for their proposal, we
3 see again the applicability date there. And that is part
4 of Section 7, which is why I'm mentioning it. Again, I
5 realize you've already addressed the tables, but I -- I
6 didn't want there to be confusion when I got to Section
7 7 about exactly where that table would be located. I'm
8 not suggesting you readdress it. I was just trying to
9 avoid confusion.

10 CHAIRPERSON SUINA: Thank you, Madam Hearing
11 Officer. Appreciate that.

12 HEARING OFFICER ORTH: So as we go to (4), again
13 this is page 106 in the attachment, you'll see that (4),
14 (5), and (6) don't have comment from other parties. And
15 (7) includes Table 3, which is why it would otherwise be a
16 decision for you here. NMOGA provides support
17 specifically in (7), and the other thing about Section --
18 excuse me -- paragraph (7) is that solar turbines had
19 raised an issue, which is that if the table were corrected
20 to 4,100 bhp for existing turbines, it was achievable, and
21 so, NMED did make that change in its table. And this is
22 page 110 in the hard copy and you see the 4,100 there.

23 CHAIRPERSON SUINA: Thank you, Madam Hearing
24 Officer. That's helpful.

25 HEARING OFFICER ORTH: And then -- sorry, one

1 more comment, which is that paragraphs (8) and (9) are
2 uncontested. Kinder Morgan provides support in paragraph
3 (9).

4 CHAIRPERSON SUINA: And Madam Hearing Officer, I
5 think in that you're pointing out some of the connections
6 to Table 3. The discussion by other parties is in respect
7 to -- in this area, in this section is in respect to the
8 time, is that correct, the effective?

9 HEARING OFFICER ORTH: So we had two -- well, let
10 me put it this way -- three comments on Table 3. You have
11 the applicability language that had been submitted by CEP
12 and NPS around "new" versus "existing" turbines. And
13 then, the other comment came from -- which they disagree
14 with the Department.

15 And then, you had the language from Solar
16 Turbines around the turbine rating right there in the
17 first column, and in that case NMED adopted Solar
18 Turbines' proposal and so now both Solar Turbines and
19 NMOGA support this for that reason.

20 CHAIRPERSON SUINA: Thank you for that
21 clarification.

22 HEARING OFFICER ORTH: I can go back up to (4),
23 if you would like to start there.

24 CHAIRPERSON SUINA: Yes, please.

25 HEARING OFFICER ORTH: Okay. I might have been

1 looking a little too far ahead, but I got excited.

2 CHAIRPERSON SUINA: Thank you. All right. And
3 what page are you on? Oh, there, I'm there, 106. All
4 right.

5 Okay. Members of the Board, we have in front of
6 us Section (4), where we have NMED's position; Section
7 (5), (5) (a), (5) (b), which we have NMED's position.
8 Section (6), where we also have NMED's position. Let's
9 see, that, I think those are pretty straightforward. I
10 don't know if we want to look at that, and then we'll jump
11 into (7) and make sure we don't get confused here.

12 Yes, Member Honker?

13 BOARD MEMBER HONKER: I -- I would move that we
14 adopt Section 113 B (4), (5) and (6) as submitted by NMED,
15 with NMED's supporting rationale.

16 CHAIRPERSON SUINA: Thank you, Member Honker.

17 BOARD MEMBER BITZER: Second that.

18 CHAIRPERSON SUINA: I think Barry -- Mr. Bitzer
19 beat you. So we'll do a second by Member Bitzer.

20 If there's no discussion on that, Ms. Jones,
21 would you mind doing a roll-call vote on that motion?

22 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
23 you vote?

24 BOARD MEMBER BITZER: I vote yes.

25 ADMINISTRATOR JONES: Member Cates, how do you

1 vote?

2 BOARD MEMBER CATES: Yes. Yes.

3 ADMINISTRATOR JONES: Member Duval?

4 BOARD MEMBER DUVAL: Yes.

5 ADMINISTRATOR JONES: Member Garcia?

6 BOARD MEMBER GARCIA: Yes.

7 ADMINISTRATOR JONES: Member Honker?

8 BOARD MEMBER HONKER: I vote yes.

9 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 ADMINISTRATOR JONES: Chair Suina?

12 CHAIRPERSON SUINA: Yes.

13 ADMINISTRATOR JONES: Madam Chair, the motion

14 passes.

15 CHAIRPERSON SUINA: Thank you, Ms. Jones. All
16 right. Let's jump to Section (7). And (7), which
17 includes 7 (a) (i) -- or (i), (ii), Roman -- I don't know
18 if that's Roman, (iii), (iv). This looks like where we
19 have Table 3, which we've already voted on. And we have
20 NMED's position, and we have NMOGA support on that.

21 Is that correct, Madam Hearing Officer? And then
22 we have NMOGA and Kinder Morgan's earlier proposal to
23 delete not part of their final; is that correct?

24 HEARING OFFICER ORTH: And I think you'll want to
25 mention Solar Turbines' accepted revision there.

1 CHAIRPERSON SUINA: Thank you. Then we also
2 again have NMOGA's support on this one. So I don't know
3 if we want to discuss this or if there's any additional
4 discussion on this point. It looks like we do have
5 support on the text and the language.

6 BOARD MEMBER GARCIA: You're talking about (7)
7 and (8) having no opposition, correct? And perhaps (9)?

8 HEARING OFFICER ORTH: Yes.

9 BOARD MEMBER GARCIA: (7), (8) and (9).

10 CHAIRPERSON SUINA: So you could do it all in one
11 motion. I know we have some support and some parties, for
12 example, on (7) that made it unique, but we can definitely
13 roll it up into a motion, however -- whoever wants to make
14 the motion -- wants the complexity of the motion to be.

15 Yes, Member Garcia?

16 BOARD MEMBER GARCIA: So I'll go ahead and move
17 to adopt Section 7 (a), (i), (ii), (iii), (iv) and Section
18 (8) and Section (9) based on the supporting evidence
19 proffered by NMED, NMOGA and Solar Turbines.

20 MS. SOLORIA: And I believe Kinder Morgan.

21 BOARD MEMBER GARCIA: And Kinder Morgan.

22 BOARD MEMBER HONKER: I'll second.

23 CHAIRPERSON SUINA: Thank you, Member Garcia for
24 wrapping that motion, and your second, Member Honker.

25 If we don't have any other discussion, Ms. Jones,

1 would you mind doing a roll-call vote on that?

2 ADMINISTRATOR JONES: Member Bitzer, how do you
3 vote?

4 BOARD MEMBER BITZER: I vote yes.

5 ADMINISTRATOR JONES: Member Cates?

6 BOARD MEMBER CATES: Yes.

7 ADMINISTRATOR JONES: Member Duval?

8 BOARD MEMBER DUVAL: Yes.

9 ADMINISTRATOR JONES: Member Garcia?

10 BOARD MEMBER GARCIA: Yes.

11 ADMINISTRATOR JONES: Member Honker?

12 BOARD MEMBER HONKER: Yes.

13 ADMINISTRATOR JONES: Vice Chair Trujillo-Davis?

14 VICE-CHAIR TRUJILLO-DAVIS: Yes.

15 ADMINISTRATOR JONES: Chair Suina?

16 CHAIRPERSON SUINA: Yes.

17 ADMINISTRATOR JONES: Madam Chair, the motion
18 passes.

19 CHAIRPERSON SUINA: Thank you, Ms. Jones.

20 So we get into Section (10) which includes (a),
21 (b), (c), (d), (e). It looks like we just have the
22 Department's position on that, as well as 11 (a), (b),
23 (c), (d), (e), (f) and (g), where we have the Department's
24 position and then we have Kinder Morgan supporting.

25 BOARD MEMBER HONKER: And I believe (12) is also

1 uncontested.

2 CHAIRPERSON SUINA: Yes, you are correct, Member
3 Honker. So I don't know if you want to discuss maybe a
4 motion to capture all of those sections: (10) through, it
5 looks like (12).

6 Yes, Member Honker?

7 BOARD MEMBER HONKER: Yes. I would move we adopt
8 Section 113 B (10), (11) and (12) as submitted to us by
9 NMED, with NMED's supporting rationale and supporting
10 statements by NMOGA and Kinder Morgan.

11 CHAIRPERSON SUINA: Thank you, Member Honker.

12 BOARD MEMBER BITZER: I'll second that.

13 CHAIRPERSON SUINA: Thank you, Member Bitzer. Is
14 there any discussion on this?

15 If not, Ms. Jones, would you mind doing a
16 roll-call vote?

17 ADMINISTRATOR JONES: Member Bitzer, how do you
18 vote?

19 BOARD MEMBER BITZER: I vote yes.

20 ADMINISTRATOR JONES: Member Cates?

21 BOARD MEMBER CATES: Yes.

22 ADMINISTRATOR JONES: Member Duval?

23 BOARD MEMBER DUVAL: Yes.

24 ADMINISTRATOR JONES: Member Garcia?

25 BOARD MEMBER GARCIA: Yes.

1 ADMINISTRATOR JONES: Member Honker?

2 BOARD MEMBER HONKER: Yes.

3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 ADMINISTRATOR JONES: Chair Suina?

6 CHAIRPERSON SUINA: Yes.

7 ADMINISTRATOR JONES: The motion passes.

8 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

9 And that got --

10 HEARING OFFICER ORTH: Madam Hearing Officer?

11 CHAIRPERSON SUINA: Yes.

12 HEARING OFFICER ORTH: I'm sorry. This is
13 Felicia. I would just like to put a marker here in the
14 transcript for Ms. Soloria, that when the statement of
15 reasons is prepared, it was important to Kinder Morgan
16 that the language of their particular supporting language
17 for the SOR be referred to.

18 MS. SOLORIA: Thank you, Madam Chair.

19 HEARING OFFICER ORTH: I'm not saying to change
20 your motion. I'm saying when the SOR is prepared, that's
21 all.

22 MS. SOLORIA: Thank you, Madam Chair -- I mean
23 Madam Hearing Officer.

24 CHAIRPERSON SUINA: Yeah, Madam Hearing Officer.

25 All right. So that brings us to a new Section,

1 C, "Monitoring requirements." And that's on the hard copy
2 page 117. So we have NMED's basis for all of Section C.
3 in the attachment -- in the Hearing Officer's attachment.
4 We have that CDG proposed changes to Section (4) (h).
5 Let's see. Sorry, I'm reading this as well. Section (5).

6 So, Madam Hearing Officer, in looking at this, on
7 the proposed changes for CDG, if we take (4) (h) -- okay.
8 Sorry. And then (5), so CDG proposed changes only to
9 Section (4) (h); is that correct?

10 HEARING OFFICER ORTH: Madam Chair, it's (4) (h)
11 and (5). And then you see NMOGA supporting a similar
12 change to CDG in (4) (h), which goes to the 8,760 hours of
13 operation. So CDG -- CDG and NMOGA proposed similar
14 language there, as opposed to once every calendar year.
15 Then CDG had an additional change in (5).

16 CHAIRPERSON SUINA: And I guess it was just
17 clarification, because I know I see that CDG proposal
18 changes in Section (5) as well. But (4) goes to (4) (h)
19 and then -- (4) (h) -- or (4) (i) and then we get into
20 (5). So I'm on pages 118 and 119.

21 HEARING OFFICER ORTH: Yes, 118 and 119, that's
22 right.

23 CHAIRPERSON SUINA: Okay. So just in terms of
24 our -- or the attachment, I just didn't want to get myself
25 confused. My suggestion was just that we focus on the (4)

1 series to (4) (i), and then take up (5). Is there a
2 reason why we need to consider it immediately after (4) (
3 on the CDG proposal?

4 HEARING OFFICER ORTH: Well, I think NMED
5 addresses the proposed changes sort of in the bottom part
6 of page 119. So, yeah, it might -- I'm sorry. If your
7 question was taking up proposed revisions to (4) (h) and
8 (5), was that your question, together?

9 CHAIRPERSON SUINA: Yeah, because it looks like
10 we're looking at -- I guess I'm just making sure I'm not
11 missing anything in the formatting and the sequence in the
12 attachment. So, is there any -- other than NMED's
13 position for (4) -- sorry -- for C (1), (2), (3), (4)
14 through (g)?

15 HEARING OFFICER ORTH: I don't see any other
16 party commenting on 4 -- I'm sorry -- C (1), (2), (3), (4)
17 (a) through (g).

18 CHAIRPERSON SUINA: Correct. So I was just going
19 to throw out for the Board, if we -- if there's no
20 opposition to those sections and then, when we get into
21 the other proposals for (4) (h) then we can -- but I
22 didn't want to -- I just wanted to make sure, Madam
23 Hearing Officer, that I didn't miss something. Is that
24 correct?

25 HEARING OFFICER ORTH: That's my understanding,

1 Madam Chair.

2 CHAIRPERSON SUINA: Board members, I don't know
3 what your thoughts are. Yes, Member Garcia?

4 BOARD MEMBER GARCIA: Yes. So it looks like we
5 could -- I would go ahead and move to adopt C, Monitoring
6 requirements, (1), (2), (3), (4) (a) through (g) for the
7 reasons proffered by NMED.

8 BOARD MEMBER DUVAL: I -- I would second that. I
9 think it's very well articulated and very clear.

10 CHAIRPERSON SUINA: Thank you, Member Garcia and
11 Member Duval. Is there any other questions or comments
12 from our Board, on the motion?

13 If not, Ms. Jones. Oh, yes, Vice Chair
14 Trujillo-Davis?

15 VICE-CHAIR TRUJILLO-DAVIS: I apologize. Just
16 for clarity, I don't want to get lost in here. So the CDG
17 proposed changes are in (4) (h). Did Member Garcia's
18 motion include that?

19 HEARING OFFICER ORTH: It did not.

20 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.
21 Thank you for that clarification.

22 CHAIRPERSON SUINA: Thank you, Vice-Chair.
23 Member -- I mean, Ms. Jones, would you mind?

24 MS. SOLORIA: Madam Chair, I just wanted to
25 clarify. I just -- there's supporting evidence from GCA

1 with regard to those portions of the rule. Am I reading
2 this correctly? I just wondered if the Board wanted to
3 include language in regard to that?

4 BOARD MEMBER GARCIA: I'm sorry, I wasn't able to
5 hear that.

6 MS. SOLORIA: I -- I'm looking at the section
7 after the rule language and I believe there is
8 supporting -- there is support from GCA with regard to
9 this language.

10 HEARING OFFICER ORTH: There is. It's on the
11 hard copy, pages 120 and 121.

12 CHAIRPERSON SUINA: So, Member Garcia, it would
13 be only to note those supports for GCA on your motion.

14 BOARD MEMBER GARCIA: Correct. Madam Chair,
15 thank you. I would amend my motion to add for reasons not
16 only proffered by NMED, but also supported by GCA.

17 CHAIRPERSON SUINA: Thank you, Member Garcia.
18 And is our second still good with the second?

19 BOARD MEMBER DUVAL: (Nodding head.)

20 CHAIRPERSON SUINA: Thank you, Member Duval.

21 Is that -- Ms. Jones, would you mind doing a
22 roll-call vote on this one?

23 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
24 you vote?

25 BOARD MEMBER BITZER: I vote yes.

1 ADMINISTRATOR JONES: Member Cates?

2 BOARD MEMBER CATES: Yes.

3 ADMINISTRATOR JONES: Member Duval?

4 BOARD MEMBER DUVAL: Yes.

5 ADMINISTRATOR JONES: Member Garcia?

6 BOARD MEMBER GARCIA: Yes.

7 ADMINISTRATOR JONES: Member Honker?

8 BOARD MEMBER HONKER: Yes.

9 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 ADMINISTRATOR JONES: Chair Suina?

12 CHAIRPERSON SUINA: Yes.

13 ADMINISTRATOR JONES: The motion passes.

14 CHAIRPERSON SUINA: Thank you, Ms. Jones.

15 All right. Now we can take up to Vice-Chair's
16 point, CGA's recommendation here. So we are going to do C
17 (4) (h). Would you mind scrolling down, Madam Hearing
18 Officer? Thank you so much. My mouse went away here.

19 So we do have the CDG proposed changes to (4)
20 (h). Is there any -- yes, Member Honker?

21 BOARD MEMBER HONKER: Yeah, the proposals from
22 CDG and NMOGA seem to be based on consistency with some
23 federal requirements. NMED, at the top of page 120,
24 suggests we reject this proposal because annual emissions
25 test requirement is reasonable and necessary to

1 demonstrate the compliance. So it seems -- it seems like
2 NMED is pushing this as reasonable and necessary, and
3 NMOGA and CDG are just saying, well, it's not consistent
4 with federal law. So, that, I don't see a financial
5 argument here or -- it's just a consistency with federal
6 law. And this -- NMED's proposing to be -- have more
7 frequent monitoring just because they think it's necessary
8 from the environmental standpoint, and make sure the
9 program is working. So I'm -- I'm supportive of NMED's
10 rationale on this one.

11 CHAIRPERSON SUINA: Thank you, Member Honker. Is
12 there any other discussion on this?

13 Yes, Member Garcia?

14 BOARD MEMBER GARCIA: Thank you, Madam Chair.
15 And I appreciate Member Honker pointing that out. I also
16 see that CDG and NMOGA are interested in the potential to
17 go out to every three years, and I think it's -- it's
18 probably more wise to check every year. I think it's not
19 burdensome on the industry, as you say. There doesn't
20 appear to be a financial burden, at least it wasn't
21 brought up. So I think that every year is probably
22 reasonable -- a reasonable time frame regardless of the
23 number of hours of operation.

24 CHAIRPERSON SUINA: Thank you, Member Garcia.
25 And any other discussion on this? Yes, Vice-Chair

1 Trujillo-Davis?

2 VICE-CHAIR TRUJILLO-DAVIS: Thank you. I was
3 very in line with what Member Honker was saying of the
4 summary of the particular issue. I would like to ask the
5 Board and maybe Madam Hearing Officer, if NMED -- and I'm
6 not seeing it right here, but if NMED provided testimony
7 as to why it thought the federal regulations were
8 inadequate and it needed to strength those? Those --
9 actually, I guess my question is, did NMED answer the
10 question of why it felt federal regulations were
11 inadequate?

12 HEARING OFFICER ORTH: Madam Vice-Chair, looking
13 at the top of page 120 in the hard copy, I can scroll to
14 it on screen if you'd like. NMED noted that the annual
15 testing accords with the Department's protocol for engine
16 testing for construction permits, you know, their air
17 quality permits. I think that was the thrust of their
18 response.

19 I would also note that although someone was
20 speaking as though NMOGA and CDG were in agreement on this
21 language, NMOGA actually says -- let's see. This is page
22 119 of the hard copy, that NMOGA agrees with the
23 three-year change, 8,760 hours of operation for
24 nonemergency engines, but not emergency engines. Let me
25 go to that real quick.

1 There. So, I think there's also a little
2 daylight between CDG and NMOGA. Does that -- I'm sorry,
3 Madam Vice-Chair, does that answer your question?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes, I think so. I
5 got lost in the pages here a little bit. Which -- which
6 page does NMED's comments start on? Is it --

7 HEARING OFFICER ORTH: It starts on the bottom of
8 119, that's the business about the air quality permits and
9 annual testing, the protocol for engine testing for their
10 air quality permits is at the top of 120.

11 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you very
12 much.

13 CHAIRPERSON SUINA: Thank you, Madam Hearing
14 Officer. Is there any other discussion as we look at this
15 section?

16 If not, Vice-Chair Trujillo-Davis, were you able
17 to locate that section to address your -- your questions?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes, I was able to
19 locate it. Thank you. And I'm reviewing it again with
20 some of the context that Member Honker provided.

21 CHAIRPERSON SUINA: Thank you, Vice-Chair
22 Trujillo-Davis.

23 Is there any other discussion on this as you've
24 reviewed that? So, really, Madam Hearing Officer, just so
25 I'm clear, it's really that there's still, as you

1 indicated, daylight between NMOGA and CDG over
2 nonemergency versus emergency engines on this? And so,
3 it's not that they both support the same change; is that
4 basically what you were saying?

5 HEARING OFFICER ORTH: That's what I was trying
6 to say, yeah. Thank you.

7 CHAIRPERSON SUINA: Okay. I was just making
8 sure.

9 HEARING OFFICER ORTH: Right. Apart from the
10 fact that CDG -- CDG's changes were proposed in both (4)
11 (h) and (5).

12 CHAIRPERSON SUINA: Okay. That's a good point.
13 So would you mind going back up to (4)(h) and (5) section?
14 Is there any other discussion? Yes, Vice-Chair
15 Trujillo-Davis?

16 VICE-CHAIR TRUJILLO-DAVIS: Yes, I just want to
17 make sure that I'm understanding this correctly. It
18 doesn't appear that NMED addressed the federal regulations
19 directly, other than them saying that -- that --
20 reiterating CDG's proposal or point, but they did say that
21 it's reasonable to have them tested annually because it's
22 in accordance with current Department protocols for
23 construction -- engine testing for construction permits.

24 Is that what -- is that what everybody else is
25 getting from this? I see some -- I see Member Garcia's

1 head nodding, but I don't...

2 CHAIRPERSON SUINA: Yes, Member Duval?

3 BOARD MEMBER DUVAL: Yeah, that's how I
4 understand it.

5 VICE-CHAIR TRUJILLO-DAVIS: So, based on that, I
6 still feel there's -- there's a failure to answer a
7 question of, are the federal regulations inadequate? And
8 the Department didn't actually answer that question.

9 CHAIRPERSON SUINA: Thank you, Vice Chair
10 Trujillo-Davis.

11 Yes, Member Honker?

12 BOARD MEMBER HONKER: Yeah, and I realize the
13 Department doesn't seem to have answered that, but I did a
14 quick check of the federal rules that are referenced in at
15 least CDG's comments here. These are either new source
16 performance standards for stationary sources or they're
17 national emissions standards for hazardous air pollutants.
18 I mean, I would say from my knowledge of these rules,
19 they're general rules that apply to all sources. They're
20 not -- they're not rules that are targeted at ozone in
21 particular or -- or they're generally applicable rules,
22 they're not -- they're not tailored for an area where
23 ozone exceedances are at issue.

24 I think it's kind of an apples and oranges thing,
25 a bit. I mean, there is inconsistency obviously with the

1 schedules, but I think it's rules that have different --
2 different goals.

3 MS. SOLORIA: Madam Chair, may I make a comment?

4 CHAIRPERSON SUINA: Yes.

5 MS. SOLORIA: I just wanted to generally caution
6 the Board with regard to the extent of their outside
7 references, just to limit your deliberations to what's in
8 the record, especially -- I think if a party has
9 referenced a federal standard, they've opened the door to
10 the Board to consider that generally, but the Board should
11 limit their consideration of whatever version of that
12 federal standard was presented by the parties themselves.
13 So I just wanted to make sure those parameters were clear
14 so that we stick to the record.

15 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

16 Yes, Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes. I wanted to
18 kind of follow-up on Ms. Soloria's recommendation there.
19 So in this -- this is a great case to ask this question on
20 then. Should we -- if we feel that a party failed to
21 present a certain piece of information there or presents
22 their case in that -- in a particular topic, should we
23 not -- or should we only make the decision based on what
24 we're seeing directly in the -- in the testimony?

25 MS. SOLORIA: Member Trujillo-Davis, generally,

1 your decision has to be based on evidence in the record.
2 So you can -- you can base your -- your decision has to be
3 supported by something in the record. So if you found
4 that you can't make a decision because there's no evidence
5 to support that decision, or that -- that take, then,
6 that's valid.

7 So I guess, in other words, the absence of
8 evidence has a function. You know, if there's no -- if
9 there is no evidence to support you taking a certain
10 position, then it's reasonable that you wouldn't take that
11 position because there's no evidence in there. And,
12 indeed, that's really your -- the boundaries of your
13 decision-making is each decision has to be supported by
14 evidence in the record.

15 CHAIRPERSON SUINA: And with that, Ms. Soloria,
16 to kind of wrap that around, too, if -- if there isn't
17 evidence -- how should I say? If we made -- we can't not
18 make a decision if there isn't evidence. I don't know how
19 else to say that, but, like...

20 MS. SOLORIA: I think I understand. And I failed
21 to articulate it clearly myself as well. So if a party is
22 asking you to take a position based on certain facts, and
23 the party has not proven those facts, then you are
24 certainly inclined to deny that request. So I don't know
25 if that -- if I framed it better that way. It may have

1 been worse.

2 But, yeah, I mean, you have to base your decision
3 based on facts and evidence. And if the party -- whoever
4 is proposing that position, if they -- if you have deemed
5 that they haven't presented adequate facts or sufficient
6 facts, or the weight of the evidence does not support
7 their position, then you're inclined to decide against
8 that position.

9 CHAIRPERSON SUINA: And maybe if I can go a step
10 further? If they -- if they note something that is not in
11 the record -- if they refer to something that is not in
12 the record, we can't really make a decision on what they
13 referenced; is that correct?

14 MS. SOLORIA: Yes. I think this goes to how you
15 all weigh, as fact finders, and decision-makers, evidence
16 generally. For example, if a party has referenced some
17 material, but you -- you -- well, I'm going to -- I'm
18 going to stop that line of thinking. But if they've
19 referred to something or they've relied on a fact and you
20 find that they haven't proven that fact, then you lack
21 support for endorsing their position.

22 And it's kind of the standard, if they have to
23 prove facts to support their position, and they haven't
24 done it, then you're less inclined to support that
25 position. That's all about weighing the evidence. I

1 think I'm overcomplicating this, but I was trying to -- I
2 was trying to kind of explain what I think you were
3 getting at generally.

4 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
5 Appreciate that.

6 Vice-Chair Trujillo-Davis, does that clear it or
7 just add more mud to the waters?

8 VICE-CHAIR TRUJILLO-DAVIS: That helps, but I
9 think this is a complicated issue and question to begin
10 with. So I'm not sure that there was going to be a very
11 clear water answer to that. And so I appreciate
12 Ms. Soloria's attempts to even address it with us. So
13 thank you very much.

14 I think, as far as my thoughts on this particular
15 issue go -- and I'd love to hear the Board's thoughts back
16 on it -- but I do feel that NMED didn't adequately address
17 the issue of why the federal regulation isn't adequate.
18 And then, to go on and say that the emission standard
19 section is in accordance with the Department's protocol
20 for engine testing per regular construction permits, makes
21 me wonder, like, was it already in place? Are we -- are
22 we doubling up something and we're not proving -- if it's
23 already in place, and then, also, not making the case for
24 why the federal regulation isn't adequate, is it -- is it
25 necessary?

1 So I'd love to hear the Board's thoughts on that.

2 CHAIRPERSON SUINA: Thank you, Vice-Chair
3 Trujillo-Davis.

4 Yes, Member Garcia?

5 BOARD MEMBER GARCIA: Thank you, Madam Chair.
6 Appreciate your wanting to look at why isn't the federal
7 standard adequate. I think that's a very good question,
8 Vice-Chair Trujillo-Davis. I don't believe this is --
9 this is doubling up on the same thing. I think that
10 what -- what NMED is doing is looking at the enforcement
11 of this. And their normal protocol for enforcement of
12 other regular construction permits is on an annual basis
13 for some of these emissions testing requirements -- other
14 emissions testing requirements.

15 So, I mean, I don't think this is -- I mean, I
16 think that in terms of in how they enforce this, they're
17 already -- with their other protocols, they're already
18 doing it annually for other requirements for construction
19 permits, so it makes sense for them to go ahead and look
20 at this at the same time, rather than every three years.

21 And for greater protection of the environment
22 every year, rather than three years, it appears to me,
23 anyway. I may be wrong, but that's what it looks like to
24 me.

25 CHAIRPERSON SUINA: Thank you, Member Garcia.

1 Is there any other discussion? Yes, Member
2 Honker?

3 BOARD MEMBER HONKER: And I don't read NMED's
4 argument as saying the federal standard's inadequate.
5 They don't really -- they just -- they just address why
6 they think annual is reasonable and necessary for this.
7 So I'm not -- I'm not seeing any questioning of the
8 federal standard there. I'm just seeing, this is our
9 rationale and -- and there's a consistency issue with
10 other Department requirements.

11 CHAIRPERSON SUINA: Thank you, Member Honker.
12 Member Cates?

13 BOARD MEMBER CATES: Just to build on what Member
14 Garcia was saying there, or just to echo it, I suppose,
15 and also add that, you know, the size of the ask is pretty
16 huge here. With three years, I mean, and it's as written,
17 is one year, that's a huge difference. And so I think we
18 ought to take that into consideration, just the size of
19 the ask as well.

20 CHAIRPERSON SUINA: Thank you, Member Cates. Any
21 other discussion on this item?

22 Maybe this would be a good time to just chime in
23 on some thoughts here as well. I went back and forth here
24 to your point, Vice-Chair. I wanted to make sure that I
25 wasn't missing something, but to what Member Honker said,

1 I don't really see -- not that they didn't address it, I
2 think -- and, again, I mean, there's no explicit place
3 where NMED says that federal -- federal standards are
4 not -- not good enough. But I also see where they don't
5 necessarily call out or address that, but I don't -- back
6 to, I guess, our discussion earlier, I don't see where
7 maybe it might not need to -- NMED might not have needed
8 to do that with a -- and so, that's kind of where I was
9 going toward, what Member Honker just mentioned is, is
10 that also to jump off and add more is, I think -- I think
11 the Department and the state is in a pretty good position
12 to -- to maybe not even -- maybe add or have more robust
13 measures on top of -- above and beyond the federal
14 standards. So I just wanted to add that. Thank you.

15 VICE-CHAIR TRUJILLO-DAVIS: Well, I appreciate
16 everybody's thoughts on how to -- and the willingness to
17 have this discussion. I think that you-all make really
18 good points, and Member Honker provided some good clarity
19 on that. So I think my decision on this is made and I
20 appreciate you guys acting as sounding board back to me on
21 that.

22 CHAIRPERSON SUINA: Thank you, Vice-Chair
23 Trujillo-Davis. Is there any other questions? More
24 discussion on this item? If not, do we want to -- yes,
25 Member Bitzer?

1 BOARD MEMBER BITZER: I'm just flashing back to
2 the original testimony, and I don't know if I verbalized
3 this or not at the time, or if someone else did it and I
4 absorbed it, but when you times 365 times 24, you come out
5 with the number 8,760. So that's basically running the
6 thing 24/7 year around.

7 So that's a shorthand way of saying if the
8 machine is running full-time, then it would be inspected
9 every year; otherwise, they're looking for more leniency
10 in inspections, if it's down from that. Anyway, that was
11 just my two cents.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer.
13 Appreciate that.

14 With that, I'm looking to the Board. If you'd
15 like to discuss this item more or maybe make the motion.
16 Yes? Looking around here. Yes, Member Bitzer?

17 BOARD MEMBER BITZER: I'll take a stab at it if
18 no one else wants to do it. Counsel, get ready to fix it
19 when I mess it up. I would -- I would move adoption of
20 (4) (h) and (5) as submitted by the Department, for the
21 reasons proffered by the Department.

22 VICE-CHAIR TRUJILLO-DAVIS: I will second that,
23 if the counsel is good with the way that that was
24 structured.

25 MS. SOLORIA: Yes. Sorry, my silence was

1 affirmation there.

2 CHAIRPERSON SUINA: Thank you.

3 VICE-CHAIR TRUJILLO-DAVIS: Way to go, Barry.

4 CHAIRPERSON SUINA: Thank you. So we've got a
5 motion by Member Bitzer and a second by Vice-Chair
6 Trujillo-Davis. Is there any further discussion on that?

7 If not, I look to Ms. Jones. Can you do a
8 roll-call vote?

9 ADMINISTRATOR JONES: Yes. Member Bitzer?

10 BOARD MEMBER BITZER: I vote yes.

11 ADMINISTRATOR JONES: Member Cates?

12 BOARD MEMBER CATES: Yes.

13 ADMINISTRATOR JONES: Member Duval?

14 BOARD MEMBER DUVAL: Yes.

15 ADMINISTRATOR JONES: Member Garcia?

16 BOARD MEMBER GARCIA: Yes.

17 ADMINISTRATOR JONES: Member Honker?

18 BOARD MEMBER HONKER: Yes.

19 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

20 VICE-CHAIR TRUJILLO-DAVIS: Yes.

21 ADMINISTRATOR JONES: Chair Suina?

22 CHAIRPERSON SUINA: Yes.

23 ADMINISTRATOR JONES: The motion passes, Madam
24 Chair.

25 CHAIRPERSON SUINA: Thank you so much. And I

1 just want to make sure because we went from (4) (h) to --
2 and included (5). I didn't want to disrupt the three
3 here. Is there a 4 (i) that we need to consider as well?
4 Ms. Soloria or Madam Hearing Officer?

5 HEARING OFFICER ORTH: It's on the screen, Madam
6 Chair.

7 CHAIRPERSON SUINA: Okay. Great. So we have (4)
8 (h) and (5) we just voted on. So we've got to look at (4)
9 (i).

10 BOARD MEMBER HONKER: Was it (4) (h) or was it
11 just (4) and (5)? I can't remember the motion.

12 HEARING OFFICER ORTH: The motion related to both
13 (4) (h) and (5).

14 BOARD MEMBER BITZER: (4) (h).

15 HEARING OFFICER ORTH: Correct.

16 BOARD MEMBER BITZER: And (5).

17 HEARING OFFICER ORTH: That's correct.

18 CHAIRPERSON SUINA: So am I correct, Madam
19 Hearing Officer or Ms. Soloria, that we just need to
20 consider (4) (i).

21 MS. SOLORIA: That's correct.

22 CHAIRPERSON SUINA: Okay. Just making sure.

23 HEARING OFFICER ORTH: Well, and Madam Chair,
24 there's also (5), (6), (7) and (8) there, which didn't
25 draw comment or objection.

1 CHAIRPERSON SUINA: Thank you for that
2 clarification. Well, (5) -- but we did just do (5).

3 HEARING OFFICER ORTH: Right. I'm sorry if I
4 said (5). I meant (6), (7) and (8).

5 CHAIRPERSON SUINA: Okay. All right. Thank you
6 so much.

7 Yes, Member Bitzer?

8 BOARD MEMBER BITZER: Madam Chair, I would move
9 adoption of (4) (i), (6), (7) and (8) for reasons
10 proffered by the Department.

11 CHAIRPERSON SUINA: Thank you, Member Bitzer.

12 HEARING OFFICER ORTH: Madam Chair, I'm sorry to
13 interrupt. GCA also provides support for (4) (i) and
14 potentially others, but definitely for (4) (i) which is
15 apparent at the top of 121 in the hard copy.

16 BOARD MEMBER BITZER: Did I fail to mention GCI?

17 CHAIRPERSON SUINA: GCA.

18 BOARD MEMBER BITZER: Sorry. Did I fail to
19 mention GCA in (i). I would move adoption of (4) (i),
20 (6), (7) and (8) for reasons proffered by the Department
21 and GCI -- GCA.

22 BOARD MEMBER CATES: I'd second that.

23 CHAIRPERSON SUINA: Thank you, Member Bitzer,
24 Member Cates. With that, did we get that clear as mud,
25 Ms. Soloria, for you?

1 MS. SOLORIA: Yes, that's sufficient. Thank you,
2 Madam Chair.

3 CHAIRPERSON SUINA: Thank you. If there's no
4 other discussion can I look to -- I'm looking at the Board
5 here. Ms. Jones, can you provide us with a roll-call vote
6 on that motion?

7 ADMINISTRATOR JONES: Yes. Member Bitzer?

8 BOARD MEMBER BITZER: I vote yes.

9 ADMINISTRATOR JONES: Member Cates?

10 BOARD MEMBER CATES: Yes.

11 ADMINISTRATOR JONES: Member Duval?

12 BOARD MEMBER DUVAL: Yes.

13 ADMINISTRATOR JONES: Member Garcia?

14 BOARD MEMBER GARCIA: Yes.

15 ADMINISTRATOR JONES: Member Honker?

16 BOARD MEMBER HONKER: Yes.

17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes.

19 ADMINISTRATOR JONES: Chair Suina?

20 CHAIRPERSON SUINA: Yes.

21 ADMINISTRATOR JONES: The motion passes.

22 CHAIRPERSON SUINA: Thank you, Ms. Jones.

23 Appreciate that.

24 All right. That takes us to a new Section D,
25 "Recordkeeping requirements." And that takes us to NMED's

1 position on that; on E, NMED's position on that as well.

2 HEARING OFFICER ORTH: Madam Chair, on
3 D-as-in-dog, there were earlier industry challenges, but
4 they were addressed. And there were not challenges on E,
5 so I believe you have uncontested sections in both D & E.

6 CHAIRPERSON SUINA: Thank you so much.
7 Appreciate that. And we do on E -- and correct me if I'm
8 wrong, Madam Hearing Officer -- NMOGA's also supporting
9 section E.; is that right?

10 HEARING OFFICER ORTH: Well, they don't challenge
11 it. It was NMOGA and Kinder Morgan's earlier challenges
12 to D-as-in-dog that I was referring to.

13 CHAIRPERSON SUINA: Okay. So they just don't
14 challenge it?

15 HEARING OFFICER ORTH: Right, I don't believe
16 anyone did, yeah.

17 CHAIRPERSON SUINA: Okay. And then the same
18 thing --

19 MS. SOLORIA: I think you were correct, Madam
20 Chair. I think when you were referring to part E or
21 subpart E, that there is support of testimony from NMOGA
22 as to part E.

23 CHAIRPERSON SUINA: Thank you. And that's
24 E-as-in-effort?

25 MS. SOLORIA: Correct.

1 BOARD MEMBER CATES: Chair Suina, I'd make a
2 motion that we adopt sections D and E based -- for reasons
3 stated by NMED and NMOGA.

4 BOARD MEMBER BITZER: I'll second that.

5 CHAIRPERSON SUINA: Thank you, Member Cates and
6 Member Bitzer.

7 I'm going to look one more time to Ms. Soloria
8 and Madam Hearing Officer. Do we need to include any
9 other parties above NMOGA? I see a note on IPANM, but
10 it's just that they had a previous challenge but withdrew
11 that.

12 MS. SOLORIA: I would say that the motion is fine
13 as it stands, since IPANM, it's just a note there that
14 they withdrew their objection. There's no additional
15 testimony.

16 CHAIRPERSON SUINA: Thank you for that
17 clarification. With that, is there any other discussion
18 on that section?

19 And if not, Ms. Jones, would you mind doing a
20 roll-call vote on that?

21 ADMINISTRATOR JONES: Member Bitzer, how do you
22 vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: And Member Cates?

25 BOARD MEMBER CATES: Yes.

1 ADMINISTRATOR JONES: Member Duval?

2 BOARD MEMBER DUVAL: Yes.

3 ADMINISTRATOR JONES: Member Garcia?

4 BOARD MEMBER GARCIA: Yes.

5 ADMINISTRATOR JONES: Member Honker?

6 BOARD MEMBER HONKER: Yes.

7 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: Yes.

9 ADMINISTRATOR JONES: Chair Suina?

10 CHAIRPERSON SUINA: Yes.

11 ADMINISTRATOR JONES: The motion passes.

12 CHAIRPERSON SUINA: All right. Great job, Board
13 let's keep going here. Let's see. "Compressor seals,"
14 Section 20.2.50.112 -- I mean, I'm sorry -- 114. 114,
15 "Compressor Seals."

16 BOARD MEMBER CATES: Chair Suina, which page are
17 we on now?

18 CHAIRPERSON SUINA: Okay. We are on page 127 in
19 the Hearing Officer's report attachment.

20 BOARD MEMBER CATES: Okay. Thank you.

21 CHAIRPERSON SUINA: You're welcome. All right.
22 So we have here, NMED's position here.

23 And Madam Hearing Officer, in this section we
24 have up here just, you're just showing us the description
25 of equipment or process by NMED, right, and not just --

1 and not the text in the rule; is that correct?

2 HEARING OFFICER ORTH: Right. I think, Madam
3 Chair, this will provide a little relief for you. I think
4 you have a pretty clear path here in Section 114. That
5 first section, Description of Equipment or Process is NMED
6 sort of encapsulating, you know, what this section is
7 about. And at the end of this discussion they actually
8 note that it's based that -- the requirements here are
9 based on similar requirements in subpart 0000a, which is
10 probably 0000, actually.

11 Then, in Section A, we have NMED's explanation
12 and the fact that NMED agreed to a number of revisions
13 proposed by NMOGA, and that there didn't seem to be
14 anything further in their final proposal. Kinder Morgan's
15 support for NMED's proposal. And in B, quite similarly,
16 really, we don't have contention here.

17 And then just -- I hope I'm not making anyone
18 dizzy by scrolling like this. This is C. Again, we don't
19 have contention. We do have NMOGA adding their support
20 and then D, with no contention. D, as in other parts of
21 Section 114, was revised pursuant to a number of proposed
22 revisions by NMOGA and then E.

23 And then the way the Department had structured a
24 lot of its closing argument was to talk about economic
25 reasonableness or the reasonableness of costs affiliated

1 with each section at the end of the section, so that's
2 what we have here.

3 And then we're in Section 115. So, again, I
4 think this is going to provide some relief for you-all.

5 CHAIRPERSON SUINA: Thank you, Madam Hearing
6 Officer. I'm looking at Member Garcia.

7 BOARD MEMBER GARCIA: Madam Hearing Officer, this
8 is what we like to see, some agreement on an entire
9 section.

10 HEARING OFFICER ORTH: That's where I could help.

11 BOARD MEMBER GARCIA: So I would move that we
12 adopt Section 114 A through E, for the reasons proffered
13 by NMED, with support from Kinder Morgan and NMOGA.

14 BOARD MEMBER HONKER: I'll second.

15 CHAIRPERSON SUINA: Thank you, Member Garcia and
16 Member Honker.

17 Yes, Member Bitzer, I know you had your hand up.

18 BOARD MEMBER BITZER: Did Kinder Morgan proffer
19 support there? I know NMOGA did. I didn't see any Kinder
20 Morgan.

21 BOARD MEMBER GARCIA: Yes, on page 130, Kinder
22 Morgan supports NMED's reasonable position.

23 BOARD MEMBER BITZER: Thank you.

24 CHAIRPERSON SUINA: Thank you, Member Bitzer for
25 that clarification as well. It's always good to notice

1 for the record.

2 With that, if there's no further discussion,
3 Ms. Jones, would you mind doing a roll-call vote on Member
4 Garcia's motion?

5 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
6 you vote?

7 BOARD MEMBER BITZER: I vote yes.

8 ADMINISTRATOR JONES: Member Cates?

9 BOARD MEMBER CATES: Yes.

10 ADMINISTRATOR JONES: Member Duval, how do you
11 vote?

12 BOARD MEMBER DUVAL: Yes.

13 ADMINISTRATOR JONES: Member Garcia?

14 BOARD MEMBER GARCIA: Yes.

15 ADMINISTRATOR JONES: Member Honker?

16 BOARD MEMBER HONKER: Yes.

17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes.

19 ADMINISTRATOR JONES: Chair Suina?

20 CHAIRPERSON SUINA: Yes.

21 ADMINISTRATOR JONES: Madam Chair, the motion
22 passes.

23 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

24 All right. We've got a whole section out of the
25 way here and addressed. Appreciate that. Let's go on to

1 20.2.50.115, "Control Devices and Closed Vent Systems."

2 For this section, Madam Hearing Officer, would
3 you mind taking us through a little bit of the beginning
4 here and a summary?

5 HEARING OFFICER ORTH: Yes, Madam Chair. So you
6 have --

7 BOARD MEMBER CATES: Can we get what page we're
8 on?

9 HEARING OFFICER ORTH: It's 136 in the hard copy.

10 BOARD MEMBER CATES: Okay. Thanks.

11 HEARING OFFICER ORTH: I meant to say that. So,
12 again, we begin with NMED's encapsulating discussion on
13 what this section is all about. And that goes on for some
14 time, and there is a lot of citation. Let me just scroll
15 to this -- a lot of citation to the bases in the
16 federal -- in the federal regulations and other state
17 regulations for the language here.

18 Now, there are a number of proposals by other
19 parties. Here's that rule language there. So there are a
20 number of proposals by other parties, language changes;
21 not in A. So, A. would be easy picking right there. When
22 we get to B. and in particular B (5), I might offer a
23 suggestion, which is Oxy proposes to insert "flowback
24 vessel" here.

25 What you might want to do because unless you want

1 to leap into the discussion of 127 first -- and I can't
2 think of a good reason to do that -- is to table or set
3 aside temporarily this particular proposal. Any time, you
4 know, it's going to be related to a later section, I think
5 you probably want to consider those together.

6 There were earlier changes to subsection B. from
7 GCA and NMOGA, but whatever adjustments have been made
8 have not carried through there. Now, in C., you have a
9 requested change from NMOGA regarding whether there's
10 sufficient gas sent to a flare to sustain combustion.
11 NMED opposes that.

12 Another proposed change regarding the
13 auto-igniter reignition cycle in C., proposing the
14 insertion of the word "raised" by NMOGA, just a number of
15 wording changes proposed by NMOGA throughout here. So,
16 other than suggesting to you that discussion of the Oxy
17 proposal related to Section 127 be set aside, I think
18 probably we just want to move through this.

19 CHAIRPERSON SUINA: Thank you, Madam Hearing
20 Officer. Appreciate that. Would you mind taking us back
21 to the -- yes, right there.

22 So, with that summary from our Hearing Officer,
23 I'm looking at again Section 115 and starting out with A.,
24 which it looks like there's no -- yes, Member Garcia?

25 BOARD MEMBER GARCIA: Yes. It looks like A. is

1 all we can pick off right now, correct? So I would move
2 to adopt Section 115 A. as written and supported -- as
3 supported by NMED.

4 BOARD MEMBER BITZER: Second.

5 CHAIRPERSON SUINA: Thank you, Member Garcia and
6 Member Bitzer for your second.

7 Yes, Member Honker?

8 BOARD MEMBER HONKER: Do we want to add section B
9 (1) through (4) since we're going to reserve (5), but (1)
10 through (4) don't appear to have any other proposed
11 changes.

12 CHAIRPERSON SUINA: Okay. What is the pleasure
13 of the Board on that one? Just again, double-check us
14 here.

15 BOARD MEMBER GARCIA: Okay. I thought the
16 Hearing Officer said A. was the only one, but I see you're
17 correct. B. doesn't appear to have opposition either, so
18 I will amend my motion to adopt Section 115 A., and B. (1)
19 through (6) for the reasons and evidence proffered by
20 NMED.

21 BOARD MEMBER BITZER: I'll second that.

22 HEARING OFFICER ORTH: Member Garcia, I'm sorry,
23 there is a proposal from Oxy in (5).

24 CHAIRPERSON SUINA: Yes, so I think we might just
25 get through to (4).

1 BOARD MEMBER GARCIA: All right, then. I move we
2 adopt Section 115 A. for reasons approved by NMED.

3 CHAIRPERSON SUINA: Thank you, Member Garcia.

4 Is there a second?

5 BOARD MEMBER BITZER: Second.

6 BOARD MEMBER HONKER: I'll second that.

7 CHAIRPERSON SUINA: On record it was a tie, so
8 I'll go with alphabetical and call it Mr. Bitzer as the
9 second.

10 Is there any further discussion on
11 Ms. Garcia's -- or Member Garcia's motion?

12 If not, Ms. Jones, would you mind taking a
13 roll-call vote?

14 ADMINISTRATOR JONES: Member Bitzer, how do you
15 vote?

16 BOARD MEMBER BITZER: I vote aye.

17 ADMINISTRATOR JONES: Member Cates?

18 BOARD MEMBER CATES: Yes.

19 ADMINISTRATOR JONES: Member Duval?

20 BOARD MEMBER DUVAL: Yes.

21 ADMINISTRATOR JONES: Member Garcia?

22 BOARD MEMBER GARCIA: Yes.

23 ADMINISTRATOR JONES: Member Honker?

24 BOARD MEMBER HONKER: Yes.

25 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes.

2 ADMINISTRATOR JONES: Chair Suina?

3 CHAIRPERSON SUINA: Yes.

4 ADMINISTRATOR JONES: Madam Chair, the motion
5 passes.

6 CHAIRPERSON SUINA: Thank you, Ms. Jones. All
7 right. So next -- yes, Member Honker?

8 BOARD MEMBER HONKER: I would move that we adopt
9 the language on 115 B. (1) through (4) and (6) as
10 submitted by NMED, for the rationale proffered by NMED.

11 CHAIRPERSON SUINA: Thank you, Member Honker. Is
12 there a second or further discussion?

13 BOARD MEMBER HONKER: And that would reserve
14 section (5) for future consideration with Oxy's proposed
15 Section 127, but we can take action on the remainder of
16 section B.

17 CHAIRPERSON SUINA: Thank you for that
18 clarification, Member Honker.

19 For our Board members, does that help clarify the
20 motion? Yes, Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. Could I
22 hear that motion one more time?

23 CHAIRPERSON SUINA: Yes. Member Honker?

24 BOARD MEMBER HONKER: Yes, I move we approve the
25 language in Section 115 B. (1) through (4) and (6) as

1 submitted by NMED, with the rationale proffered by NMED.

2 CHAIRPERSON SUINA: Thank you, Member Honker.

3 And Madam Hearing Officer, just to make sure that
4 we clarify it for all of us, the only additional input
5 from any party was Oxy's proposal on Section (5); is that
6 correct?

7 HEARING OFFICER ORTH: That's correct, and I have
8 flagged that to return to when you take up your discussion
9 in 127, based on your earlier discussions with Board
10 members.

11 CHAIRPERSON SUINA: Thank you, Ms. Orth.

12 Then I look to the Board and seeing if there's
13 further discussion or if there's a second to Member
14 Honker's motion.

15 BOARD MEMBER GARCIA: Yes, I second.

16 CHAIRPERSON SUINA: Thank you, Member Garcia.
17 All right. Fellow Board members, do we have any more
18 discussion on this -- on Member Honker's motion?

19 If not, Ms. Jones, would you mind doing a
20 roll-call vote on Member Honker's motion?

21 ADMINISTRATOR JONES: Okay. Member Bitzer, how
22 do you vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: And Member Cates?

25 BOARD MEMBER CATES: Yes.

1 ADMINISTRATOR JONES: Member Duval?

2 BOARD MEMBER DUVAL: Aye.

3 ADMINISTRATOR JONES: Member Garcia?

4 BOARD MEMBER GARCIA: Yes.

5 ADMINISTRATOR JONES: Member Honker?

6 BOARD MEMBER HONKER: Yes.

7 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: Yes.

9 ADMINISTRATOR JONES: Chair Suina?

10 CHAIRPERSON SUINA: Yes.

11 ADMINISTRATOR JONES: The motion passes.

12 CHAIRPERSON SUINA: Thank you, Ms. Jones.

13 All right. And then just for clarity for all of
14 us, we're going to move discussion for Section 115
15 B.-as-in-boy, (5), when we discuss Section 127. Are we
16 good with that? Okay. Great.

17 So, with that, we'll keep moving along here, to
18 C., "Requirements for open flares." And so, here, we have
19 some discussion with NMOGA, and NMED's opposition as well
20 to NMOGA's revision -- proposed revision. And that is (4)
21 C (1) (a).

22 Do you want to go through each one like we've
23 been doing here on this section? We can discuss this one,
24 because it looks like subsequent sections also have
25 NMOGA's proposals as well to discuss. So let's just

1 tackle this one here. All right. Board members, is there
2 any discussion on this section C(1)(a)?

3 Yes, Member Cates?

4 BOARD MEMBER CATES: Well, I would just -- Chair
5 Suina, I just would note that on page 142 in NMED's
6 response to NMOGA, they do point out that NMOGA's
7 objections, that there's not sufficient gas to be able to
8 vent. You know, the ambiguity of that term -- and I'll
9 just read here: This proposal by NMOGA would create
10 uncertainty in what amount of gas shall be deemed
11 sufficient. And it's not defined, so I'd just call that
12 to other Board members' attention.

13 CHAIRPERSON SUINA: Thank you, Member Cates.
14 Member Garcia?

15 BOARD MEMBER GARCIA: Thank you, Madam Chair. I
16 want to ask the Hearing Officer a question about some of
17 the proposed new language throughout this piece. Well, I
18 guess we'll just talk about the first two. Could you --
19 could you tell me if this was discussed during the hearing
20 or is this something that was -- that was brought up later
21 in a post-hearing submittal, this new language?

22 HEARING OFFICER ORTH: Okay. Great question,
23 Member Garcia. And I would actually have to take a few
24 moments to find that. If we could take a few minutes,
25 Madam Chair, I could -- I could probably locate that

1 information, but I don't have it offhand.

2 CHAIRPERSON SUINA: Would five minutes suffice
3 for you, Hearing Officer?

4 HEARING OFFICER ORTH: I believe it would. I
5 believe it would.

6 CHAIRPERSON SUINA: Member Honker, before we
7 break?

8 BOARD MEMBER HONKER: One additional question for
9 the Hearing Officer. So NMED's rebuttal here addresses
10 the "sufficient" term, but it does not address -- it does
11 not seem to address the last sentence that NMOGA proposed
12 to add there, "failure to combust during the auto-igniter
13 reignition cycle is not a violation of this requirement."

14 I didn't see any discussion of that by NMED, so
15 it's just a question as to whether there is some of that
16 elsewhere.

17 HEARING OFFICER ORTH: Okay. And, typically,
18 when NMED is aware of a proposed revision, that it was,
19 you know, either accepting or rejecting, that was included
20 in their discussion. So they must have known that NMOGA
21 was proposing the addition of the word "sufficient" and
22 they may have known about that second proposal, which
23 might go to Member Garcia's point about when it was made.
24 But I'm sorry, I don't -- I don't have that specific
25 information at hand.

1 I would need to walk back through their final
2 redline and then their earlier proposals to identify when
3 that was introduced.

4 CHAIRPERSON SUINA: Thank you, Member Honker, for
5 that additional question. So, would about five minutes
6 still work for you, Madam Hearing Officer?

7 HEARING OFFICER ORTH: I hope that it would. It
8 depends on how far I have to walk back is the thing,
9 that's all.

10 CHAIRPERSON SUINA: Okay. Ten minutes, would
11 that give you some time?

12 HEARING OFFICER ORTH: Certainly. Certainly.

13 CHAIRPERSON SUINA: Okay. Let's take a
14 ten-minute break and get some blood flowing again, before
15 our final push to lunch. Thank you. And we will be back
16 at 12:37.

17 (Recess taken from 12:27 p.m. to 12:38 p.m.)

18 CHAIRPERSON SUINA: The recording is back on and
19 in progress. And we are back. And Madam Hearing Officer,
20 I think I wanted to check in with you here at the start.
21 Were you able to follow up?

22 HEARING OFFICER ORTH: So I do not have a
23 complete answer for you, unfortunately. Let me just say I
24 went all the way back to their direct testimony, and their
25 original proposal was in C (1), the flares shall be

1 properly sized and designed to ensure proper combustion
2 efficiency, which was an insertion to the Department's
3 original proposal, to combust the gas sent to the flare.

4 Then they crossed out "and combustion shall be
5 maintained for the duration of time the gas is sent to the
6 flare." And then they also changed the last sentence:

7 "The owner or operator shall not send gas to the flare
8 outside the bounds of the design capacity."

9 So, one of my challenges here is that they were
10 definitely trying to capture a particular thought there
11 around proper combustion efficiency from the beginning,
12 but they used different language between their original
13 proposal and their final redline. And so I don't want to
14 say to you that, well, gosh, they weren't trying to
15 capture that from the beginning, they were. They were
16 just using different language. I -- I was able to confirm
17 that NMED knew about the sufficiency, which I already
18 could see here, because they are addressing it here. So
19 they definitely knew about it.

20 That last sentence, though, I've been unable
21 to -- I've been unable to locate: "failure to combust
22 during the auto-igniter reignition cycle is not a
23 violation of this requirement." All I can see is that in
24 their final redline, I did not see a citation to
25 transcript testimony or a particular exhibit, so that may

1 have been a closing argument proposal.

2 But, again, I'm sorry, this is -- it's a
3 challenge to track exactly where they were raising these
4 issues for the first time. And I'm sorry I can't do that
5 in realtime for you.

6 CHAIRPERSON SUINA: Thank you, Madam Hearing
7 Officer. And I see member Vice-Chair Trujillo-Davis.

8 VICE-CHAIR TRUJILLO-DAVIS: Thank you. I think I
9 might be able to shed a little bit of light on here. And
10 Madam Hearing Officer's information she just read back to
11 us is super helpful. I think the issue that is being
12 discussed in -- I think we see that in NMED's first draft
13 was that there's a -- there's a mechanism here that they
14 are trying to capture, and that's at a certain point
15 there's not enough gas to trigger the auto-igniter.

16 And the concern on NMOGA's part, it appears, is
17 that if there's not enough gas to trigger the igniter,
18 they're either -- it's going to be a violation. And I
19 remember during the hearing, it was the saltwater disposal
20 group's, in their testimony, that they suggested that that
21 was going to cause them to purchase fuel to burn during
22 the process to ignite the small amounts of fuel that would
23 not ignite by the flare from the auto-igniter. And I
24 think that's the crux of this particular argument here.

25 CHAIRPERSON SUINA: And Vice-Chair, you're

1 talking about the argument from the industry, with the
2 industry's proposal? Is that what you're referring to?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes, but I'm also
4 referring to the discussion also from NMED, about the term
5 "sufficient." So that's where I think that that comes, is
6 that the gas that is not triggering the auto-igniter, how
7 do you define "sufficient." And I think NMED addresses
8 that as well as NMOGA.

9 So I was just providing -- I felt like maybe I
10 was providing clarity here, in what we were about to
11 deliberate.

12 CHAIRPERSON SUINA: Thank you, Vice-Chair.
13 Member Garcia?

14 BOARD MEMBER GARCIA: Thank you, Madam Chair and
15 thank you, Vice-Chair. I was -- I was thinking that's
16 what we were talking about, and I appreciate you
17 clarifying that.

18 I think that it's a -- it's a concern -- I can
19 see it's a concern that industry has, but I'm not sure
20 that it's necessary -- the language is necessary. I can't
21 imagine NMED is going to be out there hitting them with
22 citations for that gap of time before it ignites. I don't
23 think that's going to happen.

24 So, I'm not sure that that language is necessary.
25 And as Member Cates pointed out, NMED's concern with the

1 word "sufficient" is fairly obvious. I would -- I would
2 agree with that. So I guess I'm thinking that language is
3 just not necessary, I don't think. I don't think NMED is
4 going to be enforcing with violations for that period of
5 time before it ignites.

6 CHAIRPERSON SUINA: Thank you, Member Garcia.
7 Member Bitzer?

8 BOARD MEMBER BITZER: I would disagree on the
9 word "sufficient." I think it's self-explanatory, because
10 it either ignites or it doesn't, but I agree with Member
11 Garcia overall. And I don't think NMED is going to parse
12 to that point, where there's some residual of
13 on-the-market bit of emission. The idea is that this
14 device will work and get the preponderance of what it's
15 intended to burn. I think that's good.

16 CHAIRPERSON SUINA: Thank you, Member Bitzer.

17 Is there any further discussion on this?

18 And Madam Hearing Officer, can you put the --
19 where we're at again on the screen?

20 Yes, Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes, I remember this
22 being a real issue for the saltwater disposal group that
23 testified.

24 Did they -- Madam Hearing Officer, did they
25 submit any comments on this or was it -- I'm trying to

1 remember if they were represented by NMOGA or if they were
2 by themselves.

3 HEARING OFFICER ORTH: I'm -- I'm not
4 remembering. You're thinking of Caruso Energy, right? I
5 think that was the group that presented to you on the
6 saltwater disposal. And they didn't have an attorney, if
7 I remember correctly. It was the -- a gentleman from --
8 who was either in management or ownership sharing the
9 information about that presentation.

10 VICE-CHAIR TRUJILLO-DAVIS: I believe they were
11 identified as Commercial Disposal Group.

12 HEARING OFFICER ORTH: Oh, I'm sorry. CDG, I'm
13 sorry. Not -- what am I saying? Not Caruso Energy. So
14 CDG had its own counsel. I'm sorry, was that your
15 question?

16 VICE-CHAIR TRUJILLO-DAVIS: Yes, I think so. So
17 CDG had their own counsel and it doesn't appear that they
18 submitted any comments on that, then I'm good with it.

19 CHAIRPERSON SUINA: Thank you.

20 HEARING OFFICER ORTH: Right. If they had, I
21 would have reflected them in here.

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

24 Member Honker?

25 BOARD MEMBER HONKER: I agree with Member Garcia

1 and Member Bitzer. I do understand the issue here with
2 igniting the flares; however, adding "sufficient" and
3 "auto-igniter reignition" in there, these terms aren't
4 defined, and it doesn't seem like this language would
5 really be necessary.

6 And I'm kind of in the same mind thought as
7 Member Garcia, that it's unlikely that NMED would be out
8 there, knocking heads over emissions during flare startup,
9 et cetera.

10 CHAIRPERSON SUINA: Thank you, Member Honker. Is
11 there any other discussion? And I just want to swing back
12 to Vice-Chair Trujillo-Davis. So, some of the discussion
13 you brought up, so with Madam Hearing Officer confirming
14 that the Commercial Disposal Group did not submit
15 additional language or concerns regarding this, are you
16 comfortable with some of the discussions that you brought
17 up, regarding the saltwater disposal concerns?

18 VICE-CHAIR TRUJILLO-DAVIS: Yes, I am comfortable
19 with -- with that. And I was just going back through many
20 of the notes that I had on this particular section.

21 I do have one question, and I'm asking it because
22 I don't like to leave some of these questions on the table
23 as we move through this rule. But I'm curious, is it a
24 violation for that short amount of time? I'm reluctant to
25 say -- I don't think NMED would pick on or pick -- I can't

1 remember the language exactly that Member Garcia and
2 Member Honker used -- but be basically nit-picky on that
3 amount of volume. I think that's highly dependent on the
4 inspector that you get, whether they want to do that or
5 not.

6 So I really feel like the language should be
7 clear and concise for anybody who is picking up the rule
8 and intending to operate a facility. So I'd ask the
9 question, is it a violation or not?

10 CHAIRPERSON SUINA: And I guess just so I
11 clarify, under the prepared language that NMED has
12 proposed?

13 VICE-CHAIR TRUJILLO-DAVIS: Yes, correct. Under
14 their language, is it a violation?

15 CHAIRPERSON SUINA: Yes, Member Garcia?

16 BOARD MEMBER GARCIA: I don't know the answer to
17 Vice-Chair Trujillo-Davis's question in particular;
18 however, I guess going back to the language, it looks like
19 the main point -- it appears the main point NMED is making
20 here is the owner or operator shall not send gas to the
21 flare in excess of the manufacturer maximum rated
22 capacity.

23 So, I think that's -- that's part of the point
24 here. And I don't think -- I don't think industry would
25 intend to do that if they -- and if there's a short time

1 period before the flare ignites, I don't know whether an
2 inspector would say, okay, that's a violation. I just
3 don't know. I doubt -- I kind of doubt it, but I don't
4 know, so, better not to say.

5 HEARING OFFICER ORTH: Madam Chair, if I might
6 interject? This is Felicia.

7 CHAIRPERSON SUINA: Yes, Madam Hearing Officer.
8 Go ahead.

9 HEARING OFFICER ORTH: Okay. The second
10 sentence, the "failure to combust" sentence did not appear
11 in any prior NMOGA proposals. I'm sorry it took me a
12 while to walk back all the way there.

13 CHAIRPERSON SUINA: Thank you, Madam Hearing
14 Officer.

15 Yes, Vice-Chair Trujillo-Davis?

16 VICE-CHAIR TRUJILLO-DAVIS: I think that the last
17 sentence that Member Garcia pointed out, the owner and
18 operator shall not send gas to the flare in excess of the
19 manufacturer maximum rated capacity, I do think that
20 suffices. I think that NMOGA was trying to ensure that it
21 was not a violation by really solidifying with the
22 language that they put in -- that they've proposed.

23 And perhaps there is some ambiguity in the last
24 sentence, but I am comfortable with the way that it's
25 written.

1 CHAIRPERSON SUINA: Thank you, Vice-Chair
2 Trujillo-Davis.

3 And so any -- yes, Member Garcia?

4 BOARD MEMBER GARCIA: So just to kind of wrap
5 this up with a ribbon, the last sentence, then, because
6 the Hearing Officer pointed out it was not -- it was not
7 proposed during the hearing, we will not consider that.
8 So that leaves "sufficient," the word -- the addition of
9 the word "sufficient," which many of us have -- or a few
10 of us have agreed with NMED, that it's -- it could be an
11 ambiguous term.

12 So -- so I think it's just that one word addition
13 now that we're considering.

14 CHAIRPERSON SUINA: Thank you, Member Garcia, for
15 that clarification.

16 And Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: I would argue that
18 "proper" is also an ambiguous term; so designed to ensure
19 "proper combustion." Generally, combustion rates are
20 based on percentages, so I would also argue that "proper"
21 is also ambiguous.

22 CHAIRPERSON SUINA: Thank you for that,
23 Vice-Chair Trujillo-Davis.

24 And I just want to clarify on this, Madam Hearing
25 Officer, on this language -- these underlines, those are

1 your underlines just to note that where the changes are or
2 where the focus of the comments are; is that correct?

3 HEARING OFFICER ORTH: The underlined or, you
4 know, redline strike-out that you see wherever I note that
5 a party proposed a revision, comes from their final
6 redline.

7 CHAIRPERSON SUINA: Okay.

8 HEARING OFFICER ORTH: So this is -- this is in
9 NMOGA's final redline, which was submitted on, what,
10 January 20th, I believe.

11 CHAIRPERSON SUINA: Okay. Thank you. So that is
12 their emphasis on those areas, the text?

13 HEARING OFFICER ORTH: Right, correct.

14 CHAIRPERSON SUINA: Thank you for that
15 clarification.

16 Yes, Member Garcia?

17 BOARD MEMBER GARCIA: Yes, just to clarify, Chair
18 Suina, those underlined portions are the new language they
19 would propose. Okay. Great. Thanks.

20 CHAIRPERSON SUINA: Thank you for that
21 clarification, Member Garcia.

22 All right. And I apologize if I'm seeming a
23 little bit out of whack here. My computer wanted to shut
24 down where I had everything all organized, so I'm having
25 to juggle a little bit and go back to the screenshot here.

1 So, with that, members of the Board, do we want
2 further discussion? Yes, Vice-Chair Trujillo-Davis.

3 VICE-CHAIR TRUJILLO-DAVIS: I'm looking back at
4 the language here and "sufficient" is -- where it's added,
5 I was under -- I'm sorry, I was looking at it like it was
6 going to be added instead of "proper," so I pull my
7 statement on that. I do think "proper" is ambiguous, but
8 it's not in the same place, so...

9 CHAIRPERSON SUINA: Thank you, Vice-Chair
10 Trujillo-Davis for that clarification.

11 With that, is there any further discussion? And
12 if not, would we want to attempt a motion by the -- by the
13 Board? All right.

14 If there's further discussion, I know Member
15 Duval, you've got one more minute, so not to hurry up
16 anybody, but just noting time here.

17 MS. SOLORIA: Madam Hearing Officer, I have an
18 ugly motion based on discussions that have transpired that
19 I could offer for further refinement.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria. I
21 appreciate that. Please do.

22 MS. SOLORIA: Sure. The motion would be to adopt
23 C -- section C (1) (a) as proposed by the Department, for
24 reasons offered by the Department. And with regard to
25 NMOGA's proposal of adding the sentence beginning with

1 "failure," rejecting such proposal as not supported by
2 evidence at the hearing.

3 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

4 Yes, Member Garcia?

5 BOARD MEMBER GARCIA: I make the motion as stated
6 by Counsel Soloria.

7 BOARD MEMBER BITZER: I'll second.

8 CHAIRPERSON SUINA: Thank you. Second by Member
9 Bitzer.

10 Is there any further discussion?

11 If not, Ms. Jones, would you mind doing a
12 roll-call vote?

13 ADMINISTRATOR JONES: Member Bitzer, how do you
14 vote?

15 BOARD MEMBER BITZER: I vote yes.

16 ADMINISTRATOR JONES: Member Cates?

17 BOARD MEMBER CATES: Yes.

18 ADMINISTRATOR JONES: Member Duval?

19 BOARD MEMBER DUVAL: Yes.

20 ADMINISTRATOR JONES: Member Garcia?

21 BOARD MEMBER GARCIA: Yes.

22 ADMINISTRATOR JONES: Member Honker?

23 BOARD MEMBER HONKER: Yes.

24 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Yes.

1 ADMINISTRATOR JONES: Chair Suina?

2 CHAIRPERSON SUINA: Yes.

3 ADMINISTRATOR JONES: The motion passes.

4 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

5 And with that, I know Member Duval has a 1:00,
6 and we have reached our goal here of holding out for lunch
7 until 1:00. You're welcome.

8 BOARD MEMBER DUVAL: Thank you. I've got to go.

9 CHAIRPERSON SUINA: Okay. And so, with that, how
10 long would you like to have lunch today? Looking for
11 suggestions from the Board: 30 minutes, one hour?

12 BOARD MEMBER GARCIA: Fine with me.

13 CHAIRPERSON SUINA: All right.

14 BOARD MEMBER DUVAL: I'll be back on as soon as
15 possible. It's the -- it's our last staff meeting before
16 spring break so it might run a little long, but I will hop
17 back on as soon as I can.

18 CHAIRPERSON SUINA: Thank you, Member Duval.

19 BOARD MEMBER DUVAL: Yep. Thank you.

20 CHAIRPERSON SUINA: Uh-huh. All right. Members,
21 thumbs up about, we're at 1:00, do you want to shoot for
22 like we did yesterday, 1:45, cut the difference? Sounds
23 good. So we'll come back at 1:45. Have a wonderful
24 lunch.

25 (Recess taken from 1:02 p.m. to 1:45 p.m.)

1 CHAIRPERSON SUINA: Good afternoon, everybody.
2 Thank you for starting the recording.

3 ADMINISTRATOR JONES: Recording on.

4 CHAIRPERSON SUINA: Thank you so much.

5 And Ms. DuBois, if you ever need any break, like
6 I said yesterday, just raise your hand. I know you're
7 doing a big task for us, so I appreciate your support.

8 COURT REPORTER: Thank you.

9 CHAIRPERSON SUINA: You're welcome.

10 All right. I see Member Garcia and Ms. Soloria.
11 I just want to make sure we have all of our Board members.
12 I know I was eating rather quickly as well. It went by
13 really fast. Member Cates and Member Honker. All right.
14 All right.

15 So, with that, thank you, Madam Hearing Officer,
16 for putting up where we left off. All right.

17 HEARING OFFICER ORTH: Madam Chair, I was able to
18 spend a little time anticipating some questions from you
19 regarding this subsection, so you can safely ask me about
20 the next couple of things coming up.

21 CHAIRPERSON SUINA: Thank you so much, Madam
22 Hearing Officer. Appreciate that. And the report as
23 well. Can you just let myself and the Board members know
24 what page we're on, on your report.

25 HEARING OFFICER ORTH: Yes, I believe we're on

1 page 142. Let's see here. C (1) (a). Yeah, 141 and then
2 we're going to move to 142 here, just scroll down a little
3 teeny.

4 CHAIRPERSON SUINA: Okay.

5 HEARING OFFICER ORTH: This is 142.

6 CHAIRPERSON SUINA: Thank you so much.

7 Appreciate that.

8 HEARING OFFICER ORTH: So what I would offer here
9 is that this is similar to the proposal here in (b) (i),
10 is to add language similar to what they had proposed in,
11 you know, up above in -- what was it -- (a). And I would
12 say the same thing about this proposed insertion, it was
13 not proposed prior to the closing arguments.

14 CHAIRPERSON SUINA: Thank you for that
15 clarification.

16 And so, members of the Board, we are at item (b)
17 (i) with NMOGA's additional sentence to the end of section
18 C (1) (b) (i). And then we have -- is that the same as
19 well on section -- Madam Hearing Officer, on Section C (1)
20 (b) (iv) as well, with NMOGA's request there to insert
21 "waste"?

22 HEARING OFFICER ORTH: Yes, Madam Chair. I
23 believe this one and also the next one -- let's see here.
24 Let me scroll up a little -- no, let me scroll down a bit.
25 It was the insertion of the words "if any." I believe

1 that none of them were, you know, offered in redline prior
2 to closing argument. And I believe essentially that
3 they're offered by way of -- there we go, "if any."
4 They're offered as clarification, as I understand it.

5 CHAIRPERSON SUINA: Thank you for that
6 clarification. And so, fellow Board members, it looks
7 like -- and please correct me if I'm wrong, Madam Hearing
8 Officer -- it looks like this was language proposed by the
9 Department, and then other than those after-hearing
10 requests by NMOGA, there was no other opposition to this
11 language; is that correct?

12 HEARING OFFICER ORTH: Right as to the sections
13 we've been discussing. Now, if we go down a little
14 further, we have another clarification under paragraph 4,
15 which is that NMOGA would delete paragraph 4. It
16 basically says, "The owner or operator shall comply with
17 the Section 112 reporting requirements." NMOGA would
18 delete that because the language already appears in
19 Subsection G. I think it's another attempt at
20 clarification.

21 Then, if any one that I pointed you to, in (3) D,
22 all the way until we get to Section E, which is on page
23 148, where in that case, NMOGA proposed an insertion that
24 they did address at hearing.

25 CHAIRPERSON SUINA: Okay. Thank you for that

1 clarification. So, members of the Board -- sorry, I was
2 looking at my language here, if I missed anybody's hand
3 raised, I apologize.

4 I want to look at these sections and I'm open --
5 we're open to suggestions of how we want to address these
6 sections here. If you have any questions from Hearing
7 Officer as to any opposition or proposals.

8 Yes, Member Garcia.

9 BOARD MEMBER GARCIA: Thank you, Madam Chair. I
10 guess in the interest of time, I would say because some of
11 these items were added -- proposed language after the
12 hearing and some of these items are a little bit stylized
13 language additions, which I don't see adds -- I don't see
14 that it improves the clarity of the rule very much, I
15 would not support taking out number 4, "Reporting
16 requirements." I would not support that.

17 So I -- in my mind, I'm ready to approve these
18 all the way to E. But if others wish to have discussions
19 about this language, that's fine with me. Thank you.

20 CHAIRPERSON SUINA: Thank you, Member Garcia.
21 And just so that I'm clear, and we're all clear for the
22 record as well, we are starting -- I don't think I
23 mentioned this at the start here, we are -- Ms. Soloria, I
24 hate to put you on the spot, which section did we end with
25 right before lunch and where are we on the sections?

1 MS. SOLORIA: The last section that the Board
2 approved was 115 C (1) (a). So we would be taking up
3 starting with C (1) (b).

4 CHAIRPERSON SUINA: Thank you, Ms. Soloria. I
5 was getting myself confused on my scrolling here. Okay.

6 Member Garcia and other members of the Board, I
7 just said Member Garcia because I know you had mentioned
8 you might be ready to make a motion or we might be ready.

9 Is there any discussion or clarification that we
10 need with what Member Garcia -- yes, Member Honker.

11 BOARD MEMBER HONKER: Yeah, I'm just checking
12 with the Hearing Officer again. So (iv) -- or Section 4,
13 where NMOGA would delete paragraph 4, the Reporting
14 requirements -- remind me, was that a final submittal
15 comments or was that submitted earlier?

16 HEARING OFFICER ORTH: I believe that that was a
17 final comment, but let me just double-check here. All
18 right. This will just take me just a second.

19 CHAIRPERSON SUINA: And Member Honker, for my
20 clarification, you're talking about where NMOGA would
21 insert the word "waste" in that section?

22 HEARING OFFICER ORTH: No, it's about deleting
23 what appears to be -- what I imagine they would say is a
24 redundant statement; namely, that the reporting
25 requirements of 112 are necessary to meet.

1 I'm not seeing that in the earlier proposal,
2 Member Honker, and there is no citation to the transcript
3 or an exhibit connected with those changes. So, again, I
4 believe it's offered as a clarification.

5 BOARD MEMBER HONKER: Yeah, and this is C (4)
6 "Reporting requirements" near the bottom of page 145. So
7 it appears all of these proposed changes came in the last
8 round of the final submittals from the parties. And if
9 we're going to be consistent, we haven't -- we haven't
10 accepted any of the changes that came in that way before,
11 so it's just -- just my observation.

12 CHAIRPERSON SUINA: Thank you, Member Honker.
13 And thank you, Madam Hearing Officer. I just wanted to
14 make sure we were all on the same page. So I appreciate
15 you scrolling to that page.

16 BOARD MEMBER HONKER: So getting back to Member
17 Garcia, I think I would concur with her if she wants to
18 make a motion I'd be ready to vote on the remainder of D.

19 CHAIRPERSON SUINA: Thank you, Member Honker.

20 Members of the Board, is there any other
21 discussion? And it looks -- to Member Honker's point, it
22 looks like we've got clarity on when there was some
23 additional language from NMOGA being proposed on some of
24 these sections.

25 BOARD MEMBER HONKER: And I misspoke. So it's

1 the remainder of C, plus D, I think is what Member Garcia
2 was proposing to deal with.

3 HEARING OFFICER ORTH: I believe you have to deal
4 with both of them, the remainder of C and D-as-in-dog.

5 CHAIRPERSON SUINA: Thank you for that
6 clarification. And just so -- for my clarity as well,
7 that would be section D-as-in-dog, through D (iv), is that
8 correct, Member Honker? Is that what you were looking at?

9 BOARD MEMBER HONKER: Yes. That would be 115 C
10 (1) (b), C, D, E, F or -- well, through two C (2), and
11 then section D. So it would be all the way from 115 C (1)
12 (b) through section D, I think is what we're talking
13 about.

14 CHAIRPERSON SUINA: Thank you.

15 BOARD MEMBER HONKER: So that would be near the
16 bottom of page 142 all the way through 147.

17 CHAIRPERSON SUINA: Thank you, Member Honker.

18 HEARING OFFICER ORTH: The top of 148, actually,
19 Member Honker, because NMOGA makes the same proposal to
20 delete the reporting -- the reference to the "Reporting
21 requirements."

22 BOARD MEMBER HONKER: Indeed, yes, I stand
23 corrected, through the first line of page 148.

24 CHAIRPERSON SUINA: Yes, Member Garcia?

25 BOARD MEMBER GARCIA: Yes, I'm not hearing any

1 other discussion, I don't want to jump the gun, but shall
2 I go ahead? Okay. So I would move -- one second here.
3 We're talking about 115, right?

4 CHAIRPERSON SUINA: Yes.

5 BOARD MEMBER GARCIA: I would move to adopt C (1)
6 (b), (c), (d), (e) (2), (a), (b), (c), (d), e, (3), (a),
7 (b), (c), (d), (e), (4) D, all the way through to (e).
8 Well, not including (e), but all of the entirety of D, for
9 the reasons proffered by NMED and -- for the reasons
10 proffered by NMED.

11 CHAIRPERSON SUINA: Thank you, Member Garcia.

12 BOARD MEMBER BITZER: Second.

13 CHAIRPERSON SUINA: Thank you, Member Bitzer.

14 Ms. Soloria?

15 MS. SOLORIA: For the -- for the sake of
16 completeness, I don't believe C (1) (b) (ii), (iii) and
17 (iv) were included there, but they should be. So I would
18 suggest a revision to adopting Section 15, C (1) (b) (i)
19 through (iv), Section C (2) in its entirety, Section C (3)
20 in its entirety, and Section D in its entirety, for
21 reasons proffered by NMED -- to adopt language offered by
22 NMED for reasons offered by NMED. And with regard to the
23 NMOGA's proposed language, rejecting such language as not
24 supported by evidence at the hearing.

25 BOARD MEMBER GARCIA: I move to adopt those

1 sections stated -- as stated by Counsel Soloria.

2 BOARD MEMBER BITZER: Second to your motion
3 there, Member Garcia.

4 CHAIRPERSON SUINA: Thank you, Member Garcia and
5 Member Bitzer and Ms. Soloria for providing us clarity on
6 the language.

7 With that, if there's no further discussion on
8 these items, Ms. Jones, would you please do a roll-call
9 vote?

10 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
11 you vote?

12 BOARD MEMBER BITZER: I vote yes.

13 ADMINISTRATOR JONES: Member Cates?

14 BOARD MEMBER CATES: Yes.

15 ADMINISTRATOR JONES: Let's see. Member Duval --
16 oh, Member Duval, you are here. How do you vote?

17 Oh, maybe he's not.

18 Member Garcia?

19 BOARD MEMBER GARCIA: Yes.

20 ADMINISTRATOR JONES: Member Honker?

21 BOARD MEMBER HONKER: Yes.

22 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

23 VICE-CHAIR TRUJILLO-DAVIS: Yes.

24 ADMINISTRATOR JONES: Thank you.

25 Chair Suina?

1 CHAIRPERSON SUINA: Yes.

2 ADMINISTRATOR JONES: Let me just ask one more
3 time. Is Member Duval with us? Okay. Madam Chair, the
4 motion passes with one member absent.

5 CHAIRPERSON SUINA: Thank you, Ms. Jones.
6 Appreciate that.

7 So we'll move on to section E, "Requirements for
8 vapor recovery -- or recover units, VRU."

9 HEARING OFFICER ORTH: Madam Chair, in this
10 section you have two proposals from NMOGA, both of which
11 were discussed during the hearing and one proposal from
12 Oxy, which was discussed during the hearing.

13 CHAIRPERSON SUINA: Thank you, Madam Hearing
14 Officer. So let's take a look at this. And members of
15 the Board, I'll keep looking here, but feel free to jump
16 in, starting discussions on this section.

17 Yes, Vice-Chair Trujillo-Davis.

18 VICE-CHAIR TRUJILLO-DAVIS: Are we going to just
19 deliberate E (1) (a), and then move on to E (1) (b)?

20 CHAIRPERSON SUINA: Sure.

21 VICE-CHAIR TRUJILLO-DAVIS: It seems like the way
22 to go about that.

23 CHAIRPERSON SUINA: Yep, that's fine.

24 As we begin discussions on E (1) (a), I just
25 wanted to ask -- let's see -- so I know we see NMOGA here.

1 Is there an NMED position on this, that I missed Madam
2 Hearing Officer?

3 HEARING OFFICER ORTH: I did not see that they
4 addressed it in their final argument. I have a memory
5 that they declined to accept that at the hearing, but I
6 don't remember that they set out their objection in
7 their -- in their final argument. I can keep looking.

8 CHAIRPERSON SUINA: Thank you, Madam Hearing
9 Officer. And I just want to bring that up as we make a
10 decision, we'll need a statement of reasons or a basis for
11 our decision, members of the Board.

12 Yes, Member Bitzer.

13 BOARD MEMBER BITZER: So it seems to me we're
14 back to that question of inspector discretion that we had
15 talked about previously, that Vice-Chair Davis --
16 Trujillo-Davis had brought up. And because I think their
17 concern is that you're never going to catch 100 percent,
18 there's always going to be some de minimis seepage,
19 leakage. So that -- to me, that's, I guess, what this
20 pivots on.

21 And I'm not from the industry, so I would look
22 forward to hearing from perhaps Vice-Chair Trujillo-Davis
23 or someone else who has got some other experience
24 regulating in this area.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer.

1 Yes, Vice-Chair Trujillo-Davis.

2 VICE-CHAIR TRUJILLO-DAVIS: I'll volley this one.

3 Just some initial thoughts here. I think Member
4 Bitzer raises some valuable points. It may be not
5 necessarily with capturing 100 percent, but the
6 maintenance times -- and that's one that really sticks out
7 to me is maintenance; if that is occurring on a -- on a
8 VRU, are you expected to have the 100 percent capture.
9 And 100 percent also seems very definitive, when most of
10 the air quality regulations are based on some level up to
11 100 percent. So those are just my initial thoughts as we
12 start this discussion.

13 CHAIRPERSON SUINA: Thank you, Vice-Chair
14 Trujillo-Davis.

15 Yes, Member Garcia.

16 BOARD MEMBER GARCIA: Yes, I think -- I think you
17 hit the nail on the head, Member Bitzer, that it's -- I
18 call it enforcement discretion. I think it's normal to
19 see the term "all" used in a lot of regulations, and the
20 hope is that all will be captured, but once -- you know,
21 once you're on the ground, the intent is for the operator
22 to try to capture all. I think it comes down to, if
23 there's a violation, they have to analyze -- they have to
24 analyze what went wrong and what was the -- what was the
25 reason for it.

1 So it is a matter of enforcement discretion, so I
2 wouldn't worry about the word "all." It's commonly used
3 in enforcement language, in regulatory language.

4 CHAIRPERSON SUINA: Thank you, Member Garcia, for
5 your comments.

6 Is there any other -- yes, Member Honker.

7 BOARD MEMBER HONKER: Well, I do think in the
8 absence of "all," then what is it, "some"? It's
9 undefined, which is I think why they probably put "all" in
10 there.

11 And as Member Garcia said, that's a frequent
12 regulatory approach, because if you don't quantify it
13 somehow and leave it vague, then it's open for dispute.

14 CHAIRPERSON SUINA: Thank you, Member Honker, for
15 that point.

16 Is there any other discussions from our members
17 on this point? And I just want to chime in, if nobody
18 else is going to speak. Oh, I hear an echo here. Thank
19 you.

20 So, I think to Member Honker's point, just having
21 been on multiple sides of the regulations, on the industry
22 or the regulated and then on the other side of compliance,
23 the "all" allows for that inclusion to be identified, as
24 to Member Honker's position or discussion point, I should
25 say. That if you say without "all" there, is it some? So

1 I lean toward listening to that point and leaning toward
2 having "all" remain in the phrase. Thank you.

3 Vice-Chair Trujillo-Davis.

4 VICE-CHAIR TRUJILLO-DAVIS: Thank you. I decided
5 to look at this from a different perspective, and the way
6 I'm kind of viewing it now is that the intent is to route
7 facility emissions to the VRU, the vapor recovery unit.
8 And the language "all" does -- which I think was a great
9 way -- I don't remember how Member Honker and Member
10 Garcia posed it, but it was in the absence of all.

11 So then they thought, well, which -- if you
12 didn't send all of it to VRU, where would it go? And
13 there are other options, right, like, you do have -- you
14 do have other mechanisms to send it places and you also
15 have fugitive emissions, which I think it pulls into that.

16 So, ultimately, I'm thinking that the term "all"
17 should remain because it's the intent of this -- of the
18 standard to send all to the VRU, even if it doesn't all go
19 to the VRU.

20 CHAIRPERSON SUINA: Thank you, Vice-Chair
21 Trujillo-Davis. Sorry if I cut you off.

22 With that, I'm looking at our members, is there
23 further discussion on this point? If not, would there be
24 a motion? Yes, Member Garcia?

25 BOARD MEMBER GARCIA: Yes, I would move to adopt

1 Section E (1) (a) for reasons provided by NMED.

2 BOARD MEMBER HONKER: I'll second.

3 CHAIRPERSON SUINA: Thank you, Member Garcia, and
4 thank you, Member Honker. Is that -- is there any further
5 discussion on that?

6 If not, I'll look to Ms. Jones -- oh, member --
7 Legal Counsel Soloria, yes.

8 MS. SOLORIA: Yes, Chair. I'm just trying to
9 keep us clear for the statement of reasons. In the past
10 we've seen that the Department would have explicitly
11 addressed this, and we don't see that here. I think -- I
12 think the Board has done that logically, and said that --
13 someone said that it was contrary to the intent. So if
14 the Board desires the motion can be crafted to say, and we
15 reject NMOGA's proposal as contrary to the intent of
16 NMED's rule. I don't say that is strictly necessary, but
17 since this is a little bit distinct from -- from
18 circumstances we've had in the past, where the Department
19 has directly addressed a proposal and the Board has opted
20 to reject the proposal.

21 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

22 Member Garcia?

23 BOARD MEMBER GARCIA: Thank you, Ms. Soloria.
24 That's -- I wasn't quite sure what to do with this one,
25 but I think your proposal is perfect. So I would amend my

1 motion to say, my motion is to adopt Section E (1) (a) as
2 written by the Department, and to reject the deletion of
3 the word "all" as proposed by NMOGA, because it is
4 necessary to keep the word "all" in the language because
5 that is the intent of this provision, is for all VOC
6 emissions to be captured.

7 BOARD MEMBER HONKER: And I'll second that.

8 BOARD MEMBER BITZER: Second that.

9 CHAIRPERSON SUINA: Member Honker was faster this
10 time. Thank you, Member Honker, for your second.

11 BOARD MEMBER HONKER: And I would point out that
12 a little further along on page 151, starting in the middle
13 of the page, NMED does kind of address this, not specific
14 to section E (1), but the general -- the general issue of
15 capturing VOCs is addressed in their discussion there.

16 CHAIRPERSON SUINA: Thank you, Member Honker.

17 With that, I think we're good on our motion and
18 Member Honker as a second. If there's no further
19 discussion, I'd like to go to Ms. Jones for a roll-call
20 vote.

21 ADMINISTRATOR JONES: Member Bitzer, how do you
22 vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: Member Cates?

25 BOARD MEMBER CATES: Yes.

1 ADMINISTRATOR JONES: I think, Member Duval, are
2 you still gone?

3 Member Garcia?

4 BOARD MEMBER GARCIA: Yes.

5 ADMINISTRATOR JONES: Member Honker?

6 BOARD MEMBER HONKER: Yes.

7 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: Yes. Yes.

9 ADMINISTRATOR JONES: I'm sorry for missing it
10 that time. No, no, we got you.

11 And Chair Suina?

12 CHAIRPERSON SUINA: Yes.

13 ADMINISTRATOR JONES: The motion passes.

14 CHAIRPERSON SUINA: Thank you, Ms. Jones.

15 All right. Next item E (1) (b).

16 And, yes, Member Cates?

17 BOARD MEMBER CATES: Chair Suina, so the -- I'll
18 make one comment on this, the way I read what NMOGA is
19 asking for in its exception language, where it says
20 "except during a facility-wide upset." So, to me, what
21 they're saying is we will comply until we don't. And, you
22 know, on those grounds I would be not inclined to include
23 this language.

24 CHAIRPERSON SUINA: Thank you, Member Cates.

25 Vice-Chair Trujillo-Davis.

1 VICE-CHAIR TRUJILLO-DAVIS: But I believe that
2 those words are intended to encompass facility situations
3 that occur either out of a safety issue or of a big
4 failure, that could come from either that facility or an
5 upstream situation, or even a downstream situation that
6 affected that facility. Generally, the term "facility
7 upset" encompasses a lot of those things, so that's just a
8 point of clarity there.

9 CHAIRPERSON SUINA: Thank you, Vice-Chair
10 Trujillo-Davis.

11 And, Member Bitzer, I think I saw your hand up.

12 BOARD MEMBER BITZER: You did, Madam Chair. My
13 question was going to be about what a facility-wide
14 upset -- was a term of industrial art. And I think
15 Vice-Chair Trujillo-Davis alluded to the fact that it is
16 maybe not formally, but I guess it's part of the
17 nomenclature. That's all I had.

18 CHAIRPERSON SUINA: Thank you, Member Bitzer.

19 Is there any further discussion? Yes, Member
20 Garcia.

21 BOARD MEMBER GARCIA: I know there are a variety
22 of reasons for operators to shut down processes
23 facility-wide. An upset or shut down, you might recall
24 that there are many terms of art for processes they use to
25 shut down temporarily. There are -- I don't remember the

1 term used in the regulation, but there are provisions in
2 the air quality regulations that allow for these routine
3 and sometimes emergency shutdowns and upsets.

4 The Air Quality Bureau is aware of these issues
5 coming up with industry, and many times if industry can
6 explain what is going on, or they -- you know, they send a
7 report to the Air Quality Bureau, the Bureau works with
8 industry to analyze what was going on and whether or not
9 it was a justifiable lapse. So I think this is -- this is
10 part of the enforcement process with the Air Quality
11 Bureau and the oil and gas industry.

12 So I guess in saying that, what I'm -- what I
13 mean is that I'm not sure that that language is necessary
14 because even beyond a facility-wide upset, there are other
15 times that they may not meet this requirement temporarily,
16 so I'm not sure that we need that language. I think
17 that's something that the Department and industry work
18 through on a regular basis.

19 CHAIRPERSON SUINA: Thank you, Member Garcia.
20 And I thought I saw Member Honker's hand up as well.

21 BOARD MEMBER HONKER: Yes. Just following on
22 that, I think this is a tough issue to deal with because I
23 think everybody realizes there are emergency situations
24 where -- where you can't do what you would normally do
25 from an environmental protection standpoint.

1 Crafting this language to go in here and using a
2 "facility-wide upset" term, I don't know if that term is
3 defined anywhere. I don't know if this concept is
4 addressed elsewhere in NMED's rules. In the absence of
5 any context for defining it, drawing some sort of
6 boundaries around what is a facility-wide upset, it's
7 tough to throw a term like that into these rules and then
8 leave it open to everybody's interpretation, in terms of
9 what qualifies for that situation.

10 CHAIRPERSON SUINA: Thank you, Member Honker.

11 And I saw Vice-Chair Trujillo-Davis, your hand
12 was up.

13 VICE-CHAIR TRUJILLO-DAVIS: Yes, thank you. I
14 think that Member Garcia put it very eloquently in
15 summarizing this section. I'm inclined to agree. I think
16 that the way that it's phrased in -- as it's currently
17 written, where it mentions that there is a backup -- let
18 me phrase it here -- "shall control VOC emissions during
19 startup, shutdown, maintenance, or other VRU downtime with
20 a backup device -- a control device, e.g., a flare, ECD or
21 TO. And I think oftentimes during a -- even a major
22 facility upset, in upset conditions, the default is
23 generally to go to flare. And so, since that is already
24 in the language, and the lack of definition around
25 facility-wide upset, I -- I don't see value in adding the

1 term to this -- to this portion of it. And I think that
2 it would actually cause some difficulty in interpretation
3 down the road.

4 CHAIRPERSON SUINA: Thank you, Vice-Chair
5 Trujillo-Davis for your comments. And I just want to note
6 for the record that I see Member Duval is back with us.
7 Good afternoon. Thank you for coming back to us.

8 And just to catch you up to speed, I just want to
9 make sure since you're back with us that you're on the
10 same page as we are. And so we're on section E,
11 Requirements for vapor units, VRU, (1) (b)-as-in-boy.
12 Thank you.

13 Yes, Member Bitzer.

14 BOARD MEMBER BITZER: On 149, NMOGA references
15 that there's no federal corollary; two, that there's no
16 cost analysis done with this requirement, and then also it
17 says, "as such, the Board must find that these
18 requirements are more protective than federal law to
19 support their adoption. There is no evidence in the
20 record to suggest that the minimal emissions reductions
21 associated with redundant controls would have a
22 demonstrable impact on ozone concentrations."

23 So they're asserting that we're exceeding our
24 authority here, with this -- well, with this rule as it's
25 being proposed, with or without their language. Do we

1 have any heartburn about that? Maybe that's an Attorney
2 General Counsel question. Are we exceeding our authority?

3 HEARING OFFICER ORTH: Member Bitzer, I might
4 just insert right here, that on page 153 of the hard
5 copy -- I can scroll to it if you'd like -- NMED discusses
6 costs, but I don't have any other guidance, just to say
7 that page 153 has some NMED stuff about costs.

8 CHAIRPERSON SUINA: Thank you, Madam Hearing
9 Officer. And I think I want to go back to Ms. Soloria.
10 Do you have any input to Member Bitzer's question?

11 MS. SOLORIA: Yes, Madam Chair. If you could
12 just give me one second, I was looking at the wrong page
13 that the Hearing Officer just referred to. If I could
14 just have a second to digest that before I answer Member
15 Bitzer's question.

16 CHAIRPERSON SUINA: Absolutely.

17 And maybe to follow up on Member Bitzer's
18 question, I have a question really quick for Madam Hearing
19 Officer. So we have at the start of this, on page 148 of
20 the hard copy Hearing Officer Report Attachment, NMOGA --
21 the first sentence talks about adding the words "except
22 during a facility-wide upset," and it goes into that
23 discussion.

24 And then, I guess we get another kind of section,
25 "Moreover, NMOGA does not believe redundant control

1 requirements for VRUs are appropriate." So is that -- I
2 just, again, want clarity, maybe from the Hearing Officer.
3 So was there a request from NMOGA to also take out that,
4 or address that language in this particular section?

5 HEARING OFFICER ORTH: I believe I faithfully
6 carried their final redline into this report. Let's see.
7 NMED notes that -- and I'm sorry, this is in pieces,
8 where, you know, NMED was speaking to, for example, more
9 than one section at a time, I put it under the later
10 section. At the bottom of page 151, ED notes that they
11 authorized an exemption from the requirement, to install a
12 redundant VRU based on proposals from NMOGA, if it's
13 authorized in a state permit and to authorizes owners and
14 operators to shut down and isolate the source being
15 controlled.

16 So it may be that that was resolved, which is why
17 I didn't see it in their final redline.

18 CHAIRPERSON SUINA: Thank you, Madam Hearing
19 Officer. So you're saying that language that the
20 Department -- that we have that we're looking at, was not
21 in the final redline because it was resolved?

22 HEARING OFFICER ORTH: That's my best
23 understanding here.

24 CHAIRPERSON SUINA: Okay. But -- but did NMOGA
25 carry it through on their final submittals as a

1 continuance to their comments?

2 HEARING OFFICER ORTH: So I'll double check right
3 this second, but I believe I have faithfully reflected
4 NMOGA's -- NMOGA's final redline right here for you.
5 Let's see here.

6 It was all -- it was except during a
7 facility-wide upset, and that's the only change found in
8 their final redline to subparagraph (b). And then -- oh,
9 well, on 96, does not believe -- well, does not believe
10 redundant control requirements for VRUs are appropriate,
11 and that is a footnote to the word "part" there in the
12 middle of (b), effective date of this "part," but there's
13 nothing in -- there's no redline shown. That is to say
14 there's no words struck and no words underlined. It's a
15 footnote -- footnote 96, just saying that NMOGA does not
16 believe redundant control requirements for VRUs are
17 appropriate.

18 I had understood, though, from NMED's discussion
19 at the bottom of page 151, though, that they had moved,
20 you know, to include NMOGA's concerns, so -- but that's
21 where we are. A footnote without proposed redline
22 language.

23 CHAIRPERSON SUINA: Thank you for that
24 clarification. I just was a little bit confused by the
25 text as we're looking at this section. I just wanted to

1 make sure I understood where we were on redline submittals
2 and so forth.

3 So, and I guess to Member Bitzer's point as well
4 because I just wanted clarity on how we would address that
5 section on page 148, where NMOGA -- because, to me, I
6 think we're just looking at NMOGA's added words, "except
7 during a facility-wide upset." Is that -- I guess, given
8 all of our discussion on this point on the submittals and
9 the text that was provided, is that -- is that how I'm
10 hearing it, Madam Hearing Officer?

11 HEARING OFFICER ORTH: That's my understanding.
12 I'm not sure how to work with that footnote without, you
13 know, a proposed strike-out or underline. And maybe
14 Ms. Soloria has something to add, but I -- other than an
15 objection registered in a footnote, without redline, I'm
16 not sure how to handle that.

17 CHAIRPERSON SUINA: Thank you.

18 Member Bitzer, before Ms. Soloria goes, I know
19 you had your hand up. Go ahead, Member Bitzer.

20 BOARD MEMBER BITZER: It occurs to me that NMOGA
21 "buried the lead," I think is what the journalism term
22 might be here. They sort of start out by conceding the
23 validity of the point, that being (b) here, that we're
24 going to put in redundant backup VRU systems.

25 But then they argue against that point down here

1 on page 149. And that was the point I went to Counsel
2 with, to see if they're arguing that we really don't have
3 the authority since we haven't done a cost analysis or
4 demonstrable, meaningful ozone reductions associated with
5 this.

6 And they say the costs will be -- will be
7 considerable, really, sort of, doubling that cost of that
8 portion of the equipment if you have to put in a backup, a
9 double -- double down on the system.

10 So, Counsel, what say you?

11 CHAIRPERSON SUINA: Hold on one second. Member
12 Garcia, I want to give you a moment before Counsel
13 responds.

14 BOARD MEMBER GARCIA: Thank you, Madam Hearing
15 Officer, too. To answer Member Bitzer's question earlier,
16 regarding authority, he pointed to page 149, the middle of
17 the page, to the question of whether we -- I think the
18 question whether New Mexico can go -- that these would be
19 more protective than the federal law, that's a stringency
20 question.

21 And I do know that New Mexico has the ability to
22 be more stringent than the feds. That was just passed in
23 this past legislative session. I'm sorry, in 2021, it was
24 passed.

25 CHAIRPERSON SUINA: Thank you, Member Garcia.

1 Ms. Soloria, I would like to give you time at
2 this time.

3 MS. SOLORIA: Thank you, Madam Chair. I'll sort
4 of piggyback off what Member Bitzer said, that the
5 paragraph -- the first full paragraph there on 149, NMOGA
6 suggests that the redundant control requirements, overall,
7 itself, so separate from this language regarding "except
8 during a facility-wide upset," is outside of the authority
9 to the Board.

10 That is in reliance on the statutory provision
11 that Member Garcia actually just referred to regarding the
12 stringency and the Board's powers. And I'll cite that to
13 you for your consideration.

14 "Before the Environmental Improvement Board
15 adopts a rule that is more stringent than the federal act
16 or federal regulations, the Environmental Improvement
17 Board shall make a determination, based on substantial
18 evidence and after notice and public hearing, that the
19 proposed rule will be more protective of public health and
20 the environment."

21 So, NMOGA appears to be suggesting in the context
22 of that statute, that those are the parameters the Board
23 has to work with. If they're going to require something
24 more stringent than a federal act or federal regulation,
25 that there has to be -- it has to be based on substantial

1 evidence that the proposed rule will be more preventive --
2 protective, excuse me, of public health and the
3 environment. So they -- they appear to argue that that's
4 not the case, that the record does not provide that
5 substantial evidence.

6 I think it's useful to view their argument in the
7 context of the portion the Hearing Officer pointed out for
8 the Board, regarding how the Department has characterized
9 their own evidence regarding emissions reductions and
10 associated costs.

11 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

12 Can -- Madam Hearing Officer, can you just point
13 us to that section again, to what Ms. Soloria --
14 Ms. Soloria mentioned on NMED's discussion?

15 HEARING OFFICER ORTH: Okay. So we have -- all
16 right. So we have -- I have pointed, I think, earlier to
17 NMED's language on page 152, the top part of 152. And
18 I've got too many panels here. Actually, before that --
19 what?

20 MS. SOLORIA: I believe it was 153.

21 HEARING OFFICER ORTH: 153, okay, yeah. So, 151,
22 152 and 153, and the reason I'm confusing myself here is
23 that on 151, I had mentioned that the Department had
24 already included some provisions requested by NMOGA to
25 authorize an exemption from the redundant VRU, if it's

1 approved in a state permit. So they had already made that
2 change.

3 Then 152, NMED discussion continues around the
4 VRUs and then on 153, they're discussing the estimated
5 emissions reductions and cost of those reductions. I
6 think those are all the sections I referred to.

7 BOARD MEMBER BITZER: Those were quantified
8 somewhere? The reductions in cost?

9 HEARING OFFICER ORTH: Yes. So, on 153, ED
10 refers to NMED Exhibit 32, page 79. We could -- we could
11 refer to NMED Exhibit 32, page 79 if you're -- if you're
12 able to access that. If you gave me a minute, I could
13 find it on ED's web page and pull it up. Sorry?

14 CHAIRPERSON SUINA: I apologize. I'm sorry, that
15 was my parents. I apologize. Keep going.

16 BOARD MEMBER BITZER: Counsel, I don't think it's
17 necessary to pull it up as long as they documented that
18 there was an identifiable cost estimate and some
19 quantifiable reductions in the ozone, I think we're good.

20 CHAIRPERSON SUINA: Thank you, Member Bitzer.

21 MS. SOLORIA: For the members of the Board, I
22 just wanted to -- there's a separate -- I'm doing this a
23 bit on the fly here in response to Member Bitzer's
24 question, but the stringency provision referenced by
25 Member Garcia is more recent than the one -- the one that

1 I cited has been on the books, and so I don't want to
2 confuse the Board. I'm going to clarify that for myself
3 before I add any more to that discussion, but I think,
4 hopefully, you get the point here that NMOGA is making
5 regarding the Board's obligation to make that preliminary
6 finding, should they adopt a more stringent standard.

7 CHAIRPERSON SUINA: Thank you, Ms. Soloria. And
8 I think, though, what we're hearing looking at the hearing
9 record and the discussion is, there is -- there is some
10 language; is that -- is that what I'm understanding? I
11 apologize, I had to step away for a minute.

12 Yes, Vice-Chair Trujillo-Davis.

13 VICE-CHAIR TRUJILLO-DAVIS: Yes. Just a
14 clarifying question for Madam Hearing Officer. So I found
15 the Exhibit 32, page 79, where it talks about estimated
16 costs. And in it, it says the details on emissions costs
17 and reductions are found in the reductions and cost
18 spreadsheets for each of the various equipment and process
19 categories under the proposed rule.

20 So does that mean that in another exhibit the
21 cost and reductions spreadsheet -- that exhibit isn't --
22 isn't cited, so I'm just curious where it's at.

23 HEARING OFFICER ORTH: Okay. We can try to track
24 that down. Just give me a minute here.

25 BOARD MEMBER BITZER: Meanwhile --

1 CHAIRPERSON SUINA: Yes, Member Bitzer?

2 BOARD MEMBER BITZER: -- we have fresher --
3 fresher legislative language. If I remember correctly,
4 Member Garcia had that at her fingertips.

5 MS. SOLORIA: Yeah, Member Bitzer, I'm trying to
6 do a little bit of legislative history here so the more
7 recently adopted provision -- that provision of the Air
8 Quality Control Act, 74-2-5 states that the rules adopted
9 by the Environmental Improvement Board may include rules
10 to protect visibility and mandatory Class I areas to
11 prevent significant deterioration of air quality and to
12 achieve national ambient air quality standards in
13 nonattainment areas, provided that the rule shall be at
14 least as stringent as required -- sorry -- by the federal
15 act or regulations pertaining to visibility, protection
16 mandatory Class I areas, pertaining to prevention of
17 significant deterioration and pertaining to nonattainment
18 areas.

19 I don't -- that is the more recent provision. I
20 don't want to speak out of turn here because I'm being
21 asked to go back and look at the legislation, sort of on
22 the fly, but so those are the more recent provisions than
23 the ones that I relied upon. The one that I had
24 previously cited has been on the books for some time.

25 BOARD MEMBER BITZER: Does this supercede that?

1 CHAIRPERSON SUINA: Sorry about that.

2 BOARD MEMBER GARCIA: So the one that you're
3 looking at, it just isn't clear, is 74-2-5 C, Counsel
4 Soloria? This last --

5 MS. SOLORIA: Sorry. Okay. My apologies, Board.
6 I don't want to misguide you here.

7 CHAIRPERSON SUINA: Thank you. Should we take,
8 like, a five-minute break?

9 MS. SOLORIA: Yeah, I think -- I think I could
10 use a five-minute break, Chair, to be more useful to the
11 Board.

12 CHAIRPERSON SUINA: Of course. Of course. So
13 five minutes, we'll come back at 2:55. Thank you, all.

14 (Recess taken from 2:49 p.m. to 2:55 p.m.)

15 CHAIRPERSON SUINA: Good afternoon again. I
16 apologize, Member Garcia, I just wanted to let you know
17 you were unmuted. I didn't mean to tell you to be quiet,
18 I just wanted to let you know.

19 All right. It looks like we're all coming back.
20 All right. So it's 2:56. And Ms. Soloria, I think we're
21 back to you.

22 MS. SOLORIA: Thank you, Madam Chair. And I
23 appreciate the Board's patience for a moment there. It's
24 getting a bit late in the day and I think I confused even
25 myself.

1 So, let's backtrack. And we were discussing the
2 Board's statutory authority to consider this redundant
3 control requirement, and it was offered -- proposed by
4 NMOGA that that was outside the Board's authority. I
5 wanted to clarify, going back to 74-2-5, the newly
6 codified stringency rules that Member Garcia alluded to
7 don't apply in this case.

8 There is already a separate carve out in 74-2-5
9 for ozone regulations. So I won't read that to you. That
10 is what's pertinent to this argument because we are
11 considering the context of ozone regulations. And that
12 states, "if the Environmental Improvement Board determines
13 that emissions from sources within the Environmental
14 Improvement Board's jurisdiction, cause or contribute to
15 ozone concentrations in excess of 95 percent of the
16 primary national ambient air quality standards for ozone
17 promulgated pursuant to the federal act, the Environmental
18 Improvement Board shall adopt a plan, including rules to
19 control emissions of oxide -- of nitrogen and volatile
20 organic compounds to provide for attainment and
21 maintenance of the standard. Rules adopted pursuant to
22 this subsection shall be weighted to areas within the
23 areas of the state where there are ozone concentrations
24 that exceed the 95 percent of the national ambient air
25 quality standard.

1 So there's -- the Board doesn't have to make a
2 finding, as proposed by NMOGA, in the context of ozone
3 regulation is the conclusion there.

4 CHAIRPERSON SUINA: Thank you, Counsel Soloria,
5 for that clarification.

6 HEARING OFFICER ORTH: Madam Chair, may I offer a
7 comment in response to Vice-Chair's question?

8 CHAIRPERSON SUINA: Yes, of course.

9 HEARING OFFICER ORTH: So the Vice-Chair had
10 asked about, you know, a particular spreadsheet or listing
11 of the cost for the VRUs, and there is not a separate
12 spreadsheet for that. The VRUs were included on the
13 control device spreadsheet.

14 CHAIRPERSON SUINA: Thank you, Madam Hearing
15 Officer.

16 Yes, Member Bitzer.

17 BOARD MEMBER BITZER: Sounds like we don't need
18 those at any rate, given the new authority of the Board in
19 terms of ozone.

20 HEARING OFFICER ORTH: Sure. Sure. I just
21 wanted to show off I had done my homework. That's all.

22 CHAIRPERSON SUINA: Thank you, Madam Hearing
23 Officer. And, of course, just trying to make sure we
24 respond to all of our comments and concerns. So, thank
25 you for doing your homework, Madam Hearing Officer.

1 With that -- and thank you for that
2 clarification, Member Bitzer, as well. Where we are now,
3 again, back to the discussion at hand, on (b) -- E (1)
4 (b), is looking at NMOGA's language, which I think we've
5 talked about at length prior to our -- our brief recess.

6 And then, I think we have resolved the issues
7 brought up on -- by NMOGA about authority. We have
8 discussed that. So given that, are we ready for more
9 discussion or a motion?

10 Yes, Member Honker?

11 BOARD MEMBER HONKER: Well, there's another issue
12 on (b), and that's Oxy's proposed change from three years
13 to five. So if -- if we're done with the prior
14 discussion, I'd like to jump into that one.

15 CHAIRPERSON SUINA: Thank you, Member Honker.
16 Yes, go ahead.

17 BOARD MEMBER HONKER: Oxy seems to raise some --
18 some valid points here in terms of availability of VRUs
19 and other equipment and supplies. I can't remember if
20 this issue was discussed in the hearing or not. So I
21 wanted to ask our Hearing Officer when this issue was
22 raised by Oxy.

23 CHAIRPERSON SUINA: Madam Hearing Officer.

24 HEARING OFFICER ORTH: I might have anticipated
25 this question, but I hadn't -- hadn't made it that deep

1 into the document. I can certainly speak to the fact that
2 Oxy, during the hearing, had its questions about the time
3 here, and that although the Environment Department had
4 started with something even less than three years, based
5 on Oxy's comments, had added, you know, had gone to three
6 years, to accommodate supply chain issues. That's in
7 NMED's Rebuttal Exhibit 1, page 56. And I'm looking at
8 page 151 on that.

9 But now they're promoting to move from three to
10 five. And I'm sorry to say this, Madam Chair, I would
11 need a little time to look that up. One of my issues is I
12 can't both screen-share and go to the NMED webpage to look
13 at Oxy's three different redlines. Right. That's --
14 that's one major dilemma.

15 So I'm trying to find this stuff in hard copy,
16 which I also have, but I've got about four banker boxes.
17 So I'm sorry, I would need time.

18 CHAIRPERSON SUINA: Thank you, Madam Hearing
19 Officer.

20 Member Honker, what are your thoughts about --
21 should we -- do you want to give Madam Hearing Officer
22 more time or what are you --

23 Yes, Member Bitzer?

24 BOARD MEMBER BITZER: I'm thinking that the
25 supply chain challenges are well established. They're

1 mentioned in the record here, and I could certainly vouch
2 from personal experience trying to build some units in
3 town. I've got three two-bedroom units that I'm trying to
4 put next to Roosevelt Park in Albuquerque on a
5 quarter-acre parcel, sort of a side gig, a side hustle, if
6 you will. But, yes, it's a train wreck in terms of supply
7 and labor shortages and so forth.

8 So I don't know if we need to give them two extra
9 years. Maybe we'd give them -- go from three to four and
10 split the difference if that's within the scope, since
11 it's within the -- it's between what the state's asking and
12 what the party is requesting.

13 CHAIRPERSON SUINA: Thank you, Member Bitzer.

14 I thought I saw someone else. Member Cates?

15 BOARD MEMBER CATES: Again, on the first two
16 paragraphs, first off, it is a big ask and the size of the
17 ask makes it suspect. And then just hearing from the
18 Hearing Officer, we're reminded that Oxy got more time
19 written in to the rule than it was originally proposed, so
20 they've got some leeway there.

21 As to the supply chain stuff, you know, supply
22 change construction is very well established today. It
23 began less than two years ago, and, you know, it's kind of
24 like -- kind of like inflation; if you -- I mean, there
25 are some economists, financial analysts and such who think

1 today that inflation is here to stay with us; however, the
2 preponderance of, you know, the conventional wisdom is
3 that that's probably not the case. And I think the same,
4 you know, you can make a parallel between that topic and
5 the supply chain issues, that, you know, there are people
6 who say we're going to be plagued forever by supply chain
7 issues and several other issues as well.

8 And I think the preponderance of thought out
9 there is that the supply chain issues are not here for the
10 long-term, neither are labor shortages. And so, you know,
11 I just flag the fact that, you know, they're asking for
12 more time to deal with issues that are probably not long
13 term and are actually in some ways quite transient. So,
14 thank you.

15 HEARING OFFICER ORTH: Madam Chair, I'm sorry to
16 interrupt. I'm looking at the redline proposal from Oxy
17 back in May of last year and in E (1) (b), they do propose
18 to insert a sentence there for sites that already have a
19 VRU installed as of the effective date of this part, the
20 owner or operator shall install backup control devices for
21 redundant VRUs within five years of the effective date of
22 this part. So it's been a longstanding proposal by them
23 to go to five.

24 CHAIRPERSON SUINA: And I think just to clarify,
25 Member Cates's point, Madam Hearing Officer, did the

1 Department start out at one year? Was that what I heard?

2 HEARING OFFICER ORTH: Sorry. I need to go to
3 other documents now.

4 CHAIRPERSON SUINA: All right. Thank you.

5 BOARD MEMBER BITZER: I like where you're going
6 with that, Madam Chair, that they've perhaps already split
7 the difference.

8 CHAIRPERSON SUINA: Yes, you read my mind, Member
9 Bitzer.

10 BOARD MEMBER BITZER: But if they didn't, then
11 maybe my suggestion of an extra year could still work. I
12 mean, I know Mr. Cates's point is well taken, that this is
13 transient, but when you're talking heavy industry and so
14 forth, the retooling and upgrading and so forth, time
15 is... And then there's a whole lot of backlog of other
16 folks like me, who are trying to get steel or concrete
17 delivered. So the supply chain will catch up, but there's
18 pent-up demand across the economic board, for sure.

19 CHAIRPERSON SUINA: Yes, Member Honker.

20 BOARD MEMBER HONKER: Yeah, and it's helpful to
21 be reminded that NMED already made an adjustment in the
22 time frame, and it is true that if it's three years and it
23 turns out to be a serious problem, there would be time to
24 extend that deadline either through amending the rule or
25 perhaps NMED has an administrative way to do that, I don't

1 know. But there would be some time to adjust the
2 deadline, if indeed the supply chain issues continue for
3 an extended period.

4 CHAIRPERSON SUINA: Thank you, Member Honker.

5 HEARING OFFICER ORTH: I'm sorry, Madam Chair, I
6 have to stop sharing in order to find some of this stuff.
7 I'm sorry. I can't use my computer both ways.

8 CHAIRPERSON SUINA: Sure.

9 HEARING OFFICER ORTH: I'll be back in just a
10 moment.

11 CHAIRPERSON SUINA: Sure. Thank you so much.

12 So with that, Member Honker, I'm trying to read
13 through this again, and re-review this language.

14 BOARD MEMBER BITZER: Did Member Honker find that
15 the state's position had originally been one year?

16 BOARD MEMBER HONKER: No, I didn't find it
17 specifically at one year. I just...

18 BOARD MEMBER BITZER: I thought she was looking.

19 BOARD MEMBER HONKER: I just recall -- and I
20 think the Hearing Officer is looking for that, but I do
21 recall them making an adjustment over whatever their
22 opening proposal was.

23 CHAIRPERSON SUINA: Yes, I do have a note on
24 that, so I'm trying to find it as well. I don't know if
25 any of the other members have anything else to discuss.

1 Yes, Member Vice-Chair Trujillo-Davis?

2 VICE-CHAIR TRUJILLO-DAVIS: Yes, I actually just
3 didn't want us to move on quite yet, until we got an
4 answer to that question.

5 CHAIRPERSON SUINA: Thank you, Vice-Chair.

6 Yes, I'm thinking the same thing here. And if
7 anybody else has any input on this one? I'm looking
8 through my old -- or the record as well. We're all trying
9 to juggle here.

10 Madam Hearing Officer, just jump in when you get
11 it. Ms. Soloria, did you want to say anything?

12 MS. SOLORIA: (Shaking head.)

13 CHAIRPERSON SUINA: Okay. Sorry.

14 HEARING OFFICER ORTH: I'm almost there, I'm
15 closing in.

16 CHAIRPERSON SUINA: Okay. Thank you so much.

17 VICE-CHAIR TRUJILLO-DAVIS: So I'm looking at the
18 original draft of the rule that was submitted to the Board
19 and the entire second half of this section from
20 "alternatively," is not -- which includes that three-year
21 period is not -- was not included in the first draft of
22 the rule that was submitted to us, but may appear in a
23 different version somewhere. So that's the one I found at
24 this point. And that's on our -- in the Board submissions
25 for this topic.

1 HEARING OFFICER ORTH: I found the same thing,
2 Vice-Chair, so I'm looking in the second one.

3 CHAIRPERSON SUINA: Thank you so much, Madam
4 Hearing Officer. Thank you, too. And please, I'm looking
5 at the screen if somebody --

6 HEARING OFFICER ORTH: Okay. I'm sorry. Madam
7 Chair?

8 CHAIRPERSON SUINA: Yes.

9 HEARING OFFICER ORTH: So the original proposal
10 did not have any delay in implementation. It just would
11 have been applicable on the -- at the date of the rule.
12 And then in September is when the Department added three
13 years. And, again, that was -- that was in response to
14 Oxy at the time, in September, but Oxy wanted five.

15 CHAIRPERSON SUINA: Thank you for that
16 clarification. So it went from between zero to five, and
17 then now to three, so they cut the difference here.

18 Yes, Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: If we were to -- when
20 does this rule -- and I apologize, I probably know this
21 but my brain has so much information in it right now --
22 when is this rule supposed to go into effect?

23 CHAIRPERSON SUINA: Yes, Member Garcia.

24 BOARD MEMBER GARCIA: The date is not written in
25 the latest version, I've noted, but it's because, you

1 know, it depended on when it's finalized here, but there
2 are several different portions of the rule that come into
3 effect at different times depending on the piece of the
4 rule. This particular piece, I don't remember, it had a
5 delayed start time, but there are many places in the rule
6 that have a delayed start time.

7 CHAIRPERSON SUINA: Thank you, Member Garcia.
8 And let's see. I also want to point out, I think one of
9 the other members pointed this out as well in this
10 section; I think we also have maybe some language the
11 Department -- you know, that the Department did try to
12 compromise or accommodate and take into account, however
13 you want to say it, some of the industry's concern about
14 the time and Oxy's -- from Oxy, in particular, on this
15 issue.

16 Also noting -- I think it was said by another
17 member, if there indeed continue to be major supply chain
18 issues or other issues, that the Department would work
19 with those -- the industry entities. Is that what I
20 heard? I think it was from you, Member Garcia and Member
21 Honker.

22 Yes, Member Honker.

23 BOARD MEMBER HONKER: What I said was there would
24 be time to either revise the rule, which would take an
25 action from us or NMED might have an administrative way to

1 do an extension. I don't know, but there would be some
2 time to make an accommodation if the three years stands,
3 is my point.

4 CHAIRPERSON SUINA: Thank you, Member Bitzer.

5 BOARD MEMBER BITZER: Mr. Honker's point --
6 Member Honker's point reminds me that any party can
7 petition us at any time. So if it turns out in a year or
8 two that we haven't seen improvement in supply chain,
9 then, I guess, Oxy would be free to come back and/or
10 NMOGA, or others and say, we have ongoing shortages of
11 steel, there's more in Europe and the Far East and we need
12 a further extension. So with that, I'm ready to move on.

13 CHAIRPERSON SUINA: Thank you, Member Bitzer.

14 And thank you, Member Honker, for your clarification.

15 And I hope I didn't -- I didn't mean to misstate
16 what you had mentioned earlier. Did I see Member Cates's
17 hand up? No, okay.

18 With that said, that discussion, and is there any
19 further discussion or clarification that we need on this
20 point? And if there isn't, I know in this section we had
21 NMOGA's comments and then we also had -- I just drew a
22 blank -- Oxy -- Oxy's comments. And so, if we are to make
23 a motion, just we'll need to address those as well.

24 Yes, Member Bitzer.

25 BOARD MEMBER BITZER: I'll take a stab at it.

1 Madam Chair, I move paragraph E section -- I'm sorry.
2 Section E (b) be approved as presented by the Department
3 for the reasons proffered by the Department, and that we
4 reject the proposed additions by NMOGA and Oxy for the
5 reasons that we have stated and for the reasons also that
6 the Department has presented.

7 CHAIRPERSON SUINA: Thank you, Member Bitzer.

8 And I just want to double-check; is that good,
9 Ms. Soloria?

10 MS. SOLORIA: (Nodding head.)

11 CHAIRPERSON SUINA: Okay. Do we have a second?

12 BOARD MEMBER HONKER: I will second.

13 CHAIRPERSON SUINA: Thank you, Member Honker.

14 And if there's no further discussion, may I look to
15 Ms. Jones for a roll-call vote.

16 ADMINISTRATOR JONES: Yes, you may.

17 Member Bitzer, how do you vote?

18 BOARD MEMBER BITZER: I vote yes.

19 ADMINISTRATOR JONES: Member Cates, how do you
20 vote?

21 BOARD MEMBER CATES: Yes.

22 ADMINISTRATOR JONES: Member Duval?

23 BOARD MEMBER DUVAL: Yes.

24 ADMINISTRATOR JONES: Member Garcia?

25 BOARD MEMBER GARCIA: Yes.

1 ADMINISTRATOR JONES: Member Honker?

2 BOARD MEMBER HONKER: Yes.

3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 ADMINISTRATOR JONES: Chair Suina?

6 CHAIRPERSON SUINA: Yes.

7 ADMINISTRATOR JONES: The motion passes.

8 CHAIRPERSON SUINA: Thank you, Ms. Jones. So
9 we'll continue to move on to E (1) -- or let me make sure
10 here. Sorry. E (2) Monitoring requirements. And it
11 looks like NMOGA would like to delete paragraph 4 in that
12 section. I don't know if you want to take that on its
13 own. And it looks like F, we don't have any other -- we
14 have concurrence, no other opposing.

15 Yes, Member Cates?

16 BOARD MEMBER CATES: Yeah, Chair Suina, I was
17 kind of curious that there was no response from NMED on
18 this. I mean, are we to take -- are we to accept as an
19 article of faith that the language from NMED does appear
20 in Subsection G. It probably does, but...

21 CHAIRPERSON SUINA: Madam Hearing Officer, would
22 you like to respond to Member Cates's question?

23 HEARING OFFICER ORTH: I'm sorry. Would Member
24 Cates repeat the question, please?

25 BOARD MEMBER CATES: So, yeah, I'm just wondering

1 if -- it says NMOGA would delete paragraph 4, and then
2 this is language in question; it says this language
3 appears in Subsection G. Are we -- should we accept as an
4 article of faith that is fact and that language does
5 appear as, you know, asserted?

6 HEARING OFFICER ORTH: Yes, Member Cates. This
7 is the third instance actually of the same sort of
8 proposal from NMOGA in Section 115. And paragraph 4, of
9 course, refers to the reporting requirements in Section
10 112 there. You can see that. So I think in their mind
11 it's redundant, but I think NMED included it just to be
12 very clear about it throughout this section, about the
13 reporting requirements that were also necessary.

14 BOARD MEMBER CATES: Right, okay. You know, I
15 wonder about just the general idea of policing for
16 redundancy. What harm does redundancy do, if we're going
17 to apply the redundancy standard across the board, then --
18 well, that might be a whole mess. So those are my
19 thoughts. Thank you.

20 CHAIRPERSON SUINA: Thank you, Member Cates.
21 And I think Member Honker, did I see your hand
22 up?

23 BOARD MEMBER HONKER: I was just going to point
24 out that Section G. is right down the page, so it is
25 indeed there. But I believe in the prior cases where this

1 has come up we have -- we have kept the redundancy. So if
2 we're going to be consistent, we'd do the same thing here.

3 CHAIRPERSON SUINA: Thank you, Member Honker.

4 Vice-Chair Trujillo-Davis, did you have your hand
5 up?

6 VICE-CHAIR TRUJILLO-DAVIS: I did. I just want
7 to make sure I understand Member Cates's comment about the
8 redundancy of -- and I apologize, it kind of cut out on me
9 a little bit. But were you saying the redundancy in the
10 control devices or the redundancy in the recordkeeping
11 paperwork part of that?

12 BOARD MEMBER CATES: Yeah, I'm talking about the,
13 you know, the one that's in front of us.

14 HEARING OFFICER ORTH: Vice-Chair Trujillo-Davis,
15 it's simply a reference to the reporting requirements.

16 VICE-CHAIR TRUJILLO-DAVIS: Oh, okay. Thank you.
17 I apologize. I got lost in the text here. I'm back on
18 the same page as everybody.

19 CHAIRPERSON SUINA: Thank you, Vice-Chair
20 Trujillo-Davis.

21 So, with that, I don't know if we want to just
22 take this section up on its own and have a motion?

23 Yes, Member Garcia.

24 BOARD MEMBER GARCIA: Yes, if there's not any
25 other discussion I would be willing to make a motion to

1 that effect. Okay. So I would move to adopt item 2,
2 Monitoring requirements, and 3 and 4 and reject the
3 deletion proposed by NMOGA of the paragraph 4, for reasons
4 stated by NMED. And we feel that the deletion of that
5 language is unnecessary.

6 CHAIRPERSON SUINA: Thank you, Member Garcia. We
7 have a motion on the floor. Do I have a second?

8 BOARD MEMBER DUVAL: Yeah, I'll second.

9 CHAIRPERSON SUINA: Member Duval seconded.

10 As we consider this motion, I just want to
11 double-check with our legal counsel.

12 MS. SOLORIA: (Nodding head.)

13 CHAIRMAN SUINA: All right. Thank you so much.
14 With that, if there's no further discussion, Ms. Jones,
15 can you -- would you mind doing a roll-call vote?

16 ADMINISTRATOR JONES: Yep. Member Bitzer, how do
17 you vote?

18 BOARD MEMBER BITZER: I vote yes.

19 ADMINISTRATOR JONES: Member Cates?

20 BOARD MEMBER CATES: Yes.

21 ADMINISTRATOR JONES: Thank you. Member Duval?

22 BOARD MEMBER DUVAL: Yes.

23 ADMINISTRATOR JONES: Member Garcia?

24 BOARD MEMBER GARCIA: Yes,

25 ADMINISTRATOR JONES: Member Honker?

1 BOARD MEMBER HONKER: Yes.

2 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes.

4 ADMINISTRATOR JONES: Okay. Chair Suina?

5 CHAIRPERSON SUINA: Yes.

6 ADMINISTRATOR JONES: The motion passes.

7 CHAIRPERSON SUINA: Thank you, Ms. Jones. And
8 we'll go into the Section 115 F-as-in-frank. It looks
9 like we see only NMED's position there, as well as it
10 looks like, G. I don't know if we want to take those two
11 sections. It looks like they're pretty clear. And then
12 we can start on 116 as a separate section. What do you
13 think about that?

14 Yes, Member Honker?

15 BOARD MEMBER HONKER: Well, okay. So I will move
16 that we adopt the language 115 F and G, as NMED has
17 presented it, with that rationale that NMED gave for those
18 sections.

19 CHAIRPERSON SUINA: Thank you, Member Honker.

20 BOARD MEMBER BITZER: Second that.

21 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
22 your second. Is there any discussion?

23 If not, Ms. Jones would you please do a roll-call
24 vote for us?

25 ADMINISTRATOR JONES: Yes. Member Bitzer?

1 BOARD MEMBER BITZER: Yes.

2 ADMINISTRATOR JONES: Member Cates?

3 BOARD MEMBER CATES: Yes.

4 ADMINISTRATOR JONES: Member Duval?

5 BOARD MEMBER DUVAL: Yes.

6 ADMINISTRATOR JONES: Member Garcia?

7 BOARD MEMBER GARCIA: Yes.

8 ADMINISTRATOR JONES: Member Honker?

9 BOARD MEMBER HONKER: Yes.

10 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes.

12 ADMINISTRATOR JONES: Chair Suina?

13 CHAIRPERSON SUINA: Yes.

14 ADMINISTRATOR JONES: The motion passes.

15 CHAIRPERSON SUINA: Thank you, Ms. Jones.

16 So we'll jump in -- right into Section 116. And
17 I would love to just have Madam Hearing Officer maybe do a
18 quick verbal summary on 116 for us. It looks like we do
19 have some discussion here in the beginning and then we
20 jump right into the A., B. and C., it looks like.

21 HEARING OFFICER ORTH: Madam Chair, I'm
22 wondering -- I certainly don't want to get too luxurious
23 with breaks or anything, but I'm wondering if a short
24 break would be appropriate. And the reason I'm suggesting
25 it is this may be the single longest section of Attachment

1 A., in the hard copy. It goes from page 153, all the way
2 to 50 pages, to page 202. You have a lot of things to
3 consider here, including a joint proposal as to LDAR --
4 excuse me -- the leak detection. You have a joint LDAR
5 proposal which has supporters and detractors. You have a
6 proximity proposal that has supporters and detractors.
7 There are a lot of moving parts in 116.

8 I'm prepared to list some of the definitions that
9 would be included as part of your conversation here. And
10 I think -- I'm sorry, I'm trying -- but this might be the
11 section where we had that disputed economic information
12 from NMOGA, which would also be something you'd have to
13 discuss. It's just there are a lot of moving parts in 116
14 and I'm wondering if programs people would want a little
15 bit of time to center themselves for it.

16 CHAIRPERSON SUINA: Thank you for that
17 suggestion.

18 Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Sorry, I couldn't
20 find the mute button. I think that -- first of all, thank
21 you, Ms. Orth, for giving us a heads-up on this because
22 based on that, I think it's going to take up the remainder
23 of our -- of our afternoon here if it's that in-depth.
24 And I would like the five minutes to make dinner
25 reservations for my family and get them out. So I would

1 dig that. Thank you.

2 CHAIRPERSON SUINA: Thank you, Vice-Chair. I see
3 some other thumbs up. Okay. How long would you like,
4 members of the Board?

5 BOARD MEMBER GARCIA: Well, I think it would take
6 a fair amount of time to review some of this, so ten --
7 you know, ten minutes at least.

8 CHAIRPERSON SUINA: Okay. Ten minutes, we've
9 got. So let's come back at 3:42.

10 (Recess taken from 3:32 p.m. to 3:43 p.m.)

11 CHAIRPERSON SUINA: Okay. We're back to start a
12 new section.

13 VICE-CHAIR TRUJILLO-DAVIS: I appreciate the
14 quick little break. I shipped the kids off to Nana's, so
15 thank you for that.

16 CHAIRPERSON SUINA: You're welcome. Of course.
17 We're starting Section 116. So, Madam Hearing Officer, I
18 know you had done a very brief description at the
19 complexity of this section. Is there anything you wanted
20 to add to that brief description as we delve into this
21 section?

22 HEARING OFFICER ORTH: Not necessarily. Just
23 you're going to be taking up the joint proposal and then
24 the proximity proposal. And this is the section where
25 NMOGA had made a proffer of evidence regarding this

1 section, when I concluded that the few slides and a
2 spreadsheet had been surprising economic evidence that was
3 unwelcome, but they've included their argument on that
4 point and made a proffer. And as I asked, that was a
5 separate document filed on January 20th. And CEP
6 addressed that proffer and defended the ruling, that it
7 was surprising economic testimony in their post-hearing
8 submittal. Those are the two -- the two arguments you
9 have on that.

10 CHAIRPERSON SUINA: Thank you, Madam Hearing
11 Officer. Appreciate that.

12 So, with that, yes, Member Garcia?

13 BOARD MEMBER GARCIA: Yes, just a point of
14 clarification for our Hearing Officer. You mentioned
15 about the proffer. I do recall that -- is this something
16 that we will then need to make a final decision about your
17 ruling on that proffer?

18 HEARING OFFICER ORTH: Yes, Member Garcia. And
19 after I answer this question, I should probably just refer
20 you to your counsel. I made an evidentiary ruling and it
21 was the only evidentiary ruling that was pursued in
22 closing argument, and for which a proffer was made
23 especially.

24 Your options, as I understand them, are to uphold
25 the ruling and exclude the evidence from consideration; to

1 overrule the ruling and consider the evidence proffered by
2 NMOGA and give it the weight that it's due.

3 If there are any other options, I'm not -- I'm
4 not aware of them. Those are your options, and I think
5 your counsel will talk you through that.

6 CHAIRPERSON SUINA: Thank you, Madam Hearing
7 Officer. And Legal Counsel Soloria?

8 MS. SOLORIA: Yes, Chair Suina. I can only
9 endorse that the explanation that the Hearing Officer
10 offered, that when we get to that portion of this section
11 for which that evidence was proffered in support, that's
12 the process we'll take. And she articulated exactly the
13 options the Board will have at that time.

14 I will reiterate that these issues were briefed
15 during the course of the hearing, so there were separate
16 submissions by the parties arguing against and for the
17 admission of that evidence. And then a formal proffer was
18 made, so that the Board has that evidence to consider
19 whether or not they want to uphold the Hearing Officer's
20 decision. And, of course, to preserve the proffering
21 parties' rights on appeal.

22 CHAIRPERSON SUINA: Thank you, Counsel Soloria.
23 Appreciate that.

24 BOARD MEMBER GARCIA: What section -- what
25 section -- I mean we're in Section 116, but is that coming

1 up or is that farther -- farther down, where this is going
2 to happen?

3 CHAIRPERSON SUINA: Thank you, Member Garcia.

4 HEARING OFFICER ORTH: I believe it relates to
5 the proximity proposal, Member Garcia.

6 CHAIRPERSON SUINA: Thank you, Member Garcia, and
7 those are my thoughts as well. So appreciate that
8 response, Hearing Officer.

9 With that said, are we -- yes, Member Honker?

10 BOARD MEMBER HONKER: Just to get us started, I
11 was going to make the observation that it appears, though,
12 Section 116 A, B, and C (1) are not contested. There's
13 some support from GCA there, so we could go ahead and make
14 a -- make a decision on those before we get into the more
15 contested areas of this section.

16 CHAIRPERSON SUINA: Thank you, Member Honker. Is
17 that comfortable with the Board? Yes, I see some thumbs
18 up. So, Member Honker?

19 BOARD MEMBER HONKER: I will -- I will move that
20 we adopt the language in 116 A, B and C (1), including C
21 (1) subparts, as presented by NMED and supported by the
22 rationale given by NMED, with supporting statement from
23 GCA.

24 BOARD MEMBER CATES: I second that.

25 CHAIRPERSON SUINA: Yes, Member Cates?

1 BOARD MEMBER CATES: I was just seconding the
2 motion.

3 CHAIRPERSON SUINA: Okay. Thank you, Member
4 Cates. So I'm going to just put on record a motion by
5 Member Honker with a second by Member Cates.

6 Is there any discussion on this motion? If not,
7 Ms. Jones, would you please do a roll-call vote?

8 ADMINISTRATOR JONES: Member Bitzer, how do you
9 vote?

10 BOARD MEMBER BITZER: I vote yes.

11 ADMINISTRATOR JONES: Member Cates?

12 BOARD MEMBER CATES: Yes.

13 ADMINISTRATOR JONES: Member Duval?

14 BOARD MEMBER DUVAL: Yes.

15 ADMINISTRATOR JONES: Member Garcia?

16 BOARD MEMBER GARCIA: Yes.

17 ADMINISTRATOR JONES: Member Honker?

18 BOARD MEMBER HONKER: Yes.

19 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

20 VICE-CHAIR TRUJILLO-DAVIS: Yes.

21 ADMINISTRATOR JONES: Chair Suina?

22 CHAIRPERSON SUINA: Yes.

23 ADMINISTRATOR JONES: The motion passes.

24 CHAIRPERSON SUINA: Thank you, Ms. Jones.

25 With that, we'll jump and keep moving along here

1 to section -- let's make sure I've got my mind straight.

2 C (1) -- or sorry -- C (2), where we do have NMED's

3 position and then we have NMOGA.

4 HEARING OFFICER ORTH: Madam Chair, this is
5 Felicia. I think you may want to have your proximity LDAR
6 discussion first and then consider this.

7 CHAIRPERSON SUINA: Thank you for that
8 suggestion, Madam Hearing Officer. Is that -- is that
9 comfortable with the Board? Yes, I see the thumbs up from
10 members of the Board. All right. Okay.

11 So, with that, thank you for that suggestion,
12 Madam Hearing Officer. Did I see somebody's hand raised?
13 I apologize if I missed it. All right. I'm looking. So
14 do we want to wait on this or do we want to jump into that
15 discussion? Maybe that's the next question.

16 Yes, Member Garcia?

17 BOARD MEMBER GARCIA: Yeah, I'm a little
18 confused. What do you mean? I'm looking for the page
19 you're talking about, or are we talking about this proffer
20 issue we need to vote on?

21 HEARING OFFICER ORTH: No. I'm sorry, Member
22 Garcia. What I was suggesting was the proposal from NMOGA
23 right here in the middle of -- I'm sorry, at the top of
24 page 158 in the hard copy, to the effect that in the event
25 EIB adopts the proximity proposal, which you're going to

1 be talking about in a little bit, then they would like
2 their audiovisual olfactory language placed here. That's
3 why I was suggesting you have your LDAR conversation
4 first.

5 So, then, I was moving down to 3 (a), this is
6 another NMOGA proposal. And in the hard copy that's in
7 the middle of page 158. And their reasoning is here. And
8 my memory is that you'll find NMED's defense of its
9 paragraphs A, B and C on page 159.

10 CHAIRPERSON SUINA: Thank you for that, Madam
11 Hearing Officer.

12 So, maybe we have that LDAR discussion and then
13 we can go back, because it looks like -- and again,
14 please, correct me if I'm wrong, we're getting rather late
15 into a Friday afternoon. But other than that, NMOGA's
16 comment here would only come into effect or with changes
17 in Section (2) after the LDAR discussion, like Hearing
18 Officer said. So maybe we have that first and then
19 depending on the outcome of that discussion, we can come
20 back to (2). Does that sound good?

21 Okay. All right. I see thumbs up and head nods.
22 I know this is one of the items we spent a lot of time on
23 during the hearing, and we have a lot of information
24 before us. So, with that, I'm going to go -- we'll go
25 to -- as Madam Hearing Officer has us, at (3) -- 3 (a),

1 NMOGA's, and then we have NMED's position before us on the
2 Hearing Officer's report attachment. Just for those that
3 are following with a hard copy, that would be page 158.

4 HEARING OFFICER ORTH: Madam Chair, NMED's
5 discussion of this section actually is on page 159,
6 because NMED addressed paragraphs A, B and C together.

7 CHAIRPERSON SUINA: Thank you, Madam Hearing
8 Officer, for that addition and clarification. Appreciate
9 that.

10 With that, I don't know if we want to jump into
11 the conversation here, discussion. Yes, Member Bitzer?

12 BOARD MEMBER BITZER: Just a quick question. Why
13 is it that NMOGA's contending that we might not have
14 authority over proximity LDAR?

15 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
16 your question. And for my clarification, can you point me
17 to where you're reading that just so I can...

18 BOARD MEMBER BITZER: Well, I'm looking at the
19 top of page 158, where it says "If the EIB determines
20 proximity LDAR is within its statutory authority, then
21 they want to go ahead and propose that language, but I'm
22 not sure where it is they argue -- I read this last night,
23 but I'm not sure where they argue that it's beyond our
24 authority.

25 HEARING OFFICER ORTH: So that's coming up,

1 Member Bitzer. We're going to be deep into the 160 before
2 we get to the proximity proposal.

3 BOARD MEMBER BITZER: Don't we want to discuss
4 that now, Chapter 160 then?

5 HEARING OFFICER ORTH: I thought Madam Chair had
6 concurrence that you would take up this particular
7 sentence after you've had your proximity LDAR discussion.

8 BOARD MEMBER BITZER: I'm missing something here,
9 because part and parcel of the LDAR proximity discussion
10 would include NMOGA's contention about that. No?

11 HEARING OFFICER ORTH: No, I understand, but
12 we're not to the part of 116 that is addressing the
13 proximity proposal, by the people who actually -- by the
14 parties who actually proposed it, supporting or opposing.

15 And it seems easier to address, for example, the
16 other changes and then go back to what is essentially a
17 Plan B, in the event you decide on the LDAR proposal. But
18 the LDAR proximity proposal is going to be a big
19 discussion. If you want to have that now, we can go much
20 deeper into Part 116.

21 BOARD MEMBER BITZER: I thought that's where we
22 were headed, but I'm happy to start wherever you want us
23 to start. I just thought that that's where the discussion
24 took us.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer. I

1 apologize, too. As I keep scrolling through here, as
2 Madam Hearing Officer mentioned, there's a lot of
3 discussion here on this point. And so I apologize, I had
4 gone ahead into the next area, into the 160 and 170,
5 looking into that text of Madam Hearing Officer's report
6 attachment.

7 So, are we good, Member Bitzer, to start that
8 discussion? The LDAR?

9 MS. SOLORIA: Madam Chair, I think as we've done
10 in other instances where there was a discrete language
11 proposal that had to do with a substantive section, going
12 on, we've used the phrase that we're "tabling" it, so
13 that's exactly what we're doing here. It's the same
14 situation, where there's an extended section having to do
15 with that subject area, and we're just tabling it so that
16 we can be consistent.

17 CHAIRPERSON SUINA: Thank you, Counsel Soloria.

18 BOARD MEMBER HONKER: So we would be moving on to
19 116 B (3) and we'll come back to 116 C (2) after we've
20 discussed the LDAR issues later on; is that -- is that
21 what we're doing?

22 CHAIRPERSON SUINA: Yes. Yes, Member Honker.

23 MS. SOLORIA: For clarity sake, the section that
24 we will -- that we're tabling this for is for the LDAR
25 proximity specific sections.

1 CHAIRPERSON SUINA: Thank you, Legal Counsel
2 Soloria. All right. I hope that's helpful, clear as
3 mud -- muddy water.

4 Member Bitzer, I think you're on mute.

5 BOARD MEMBER BITZER: Then are we picking up with
6 page 157, number (2), owner or operator?

7 CHAIRPERSON SUINA: Yeah, 158, (3), the one
8 that's on the screen here. "The owner or operator of the
9 following facilities shall conduct an inspection," that's
10 where we're at. Does that make sense? Great, I think
11 we're all here on the same page. All right.

12 As we begin this discussion, if anybody wants to
13 open up, jump right into -- jump into the swimming pool
14 here. And as we look through here, just pointing out some
15 items. So we have the (3) (a) revision by NMOGA, to
16 revise paragraph (a) -- (3) (a). But we have to make sure
17 that we look at NMED's position as well, starting on 159
18 of the Hearing Officer's report attachment, which
19 addresses subparagraphs A, B and C. And that section is
20 rather lengthy.

21 And then we jump back around to NMOGA having
22 proposed changes in paragraphs B and C as well. A little
23 bit of jumping around here.

24 Yes, Vice-Chair Trujillo-Davis.

25 VICE-CHAIR TRUJILLO-DAVIS: I'm just going to air

1 my confusion.

2 CHAIRPERSON SUINA: Okay.

3 VICE-CHAIR TRUJILLO-DAVIS: In looking at NMOGA's
4 proposed language, it appears that they are expanding
5 the -- expanding the facilities that would be subject to
6 this portion of the rule.

7 And I'm -- I'm unclear in NMED's response -- and
8 I am open to anybody who can just clear this up for me.
9 I'm unclear in NMED's response of why the Department wants
10 to expand the definition. So somebody, please, educate
11 me.

12 CHAIRPERSON SUINA: Thank you, Vice-Chair
13 Trujillo-Davis.

14 BOARD MEMBER HONKER: And I have exactly the same
15 confusion as the Vice-Chair, so I'm trying to find that
16 myself.

17 CHAIRPERSON SUINA: Thank you, Member Honker.

18 I'm looking at it myself. So, again, looking at
19 NMOGA's response and then going to NMED's, I'm looking at
20 it, too. And then maybe another question. And Madam
21 Hearing Officer, maybe that's a question to have you help
22 us with some questions. On the rebuttal, was there
23 rebuttal specific or final submittals specific to
24 NMOGA's -- from NMED to NMOGA's proposed revisions for A?

25 Yes, Member Garcia.

1 BOARD MEMBER GARCIA: I would venture to say that
2 NMOGA is not expanding enforcement areas. I think they're
3 wanting more areas to come under the 2 year effective
4 date, is what they're doing. But I'm trying to find where
5 these -- they're putting these underlined pieces under
6 this section. They want it under this section, but I'm
7 trying to find where would they be otherwise. Inactive
8 well sites.

9 HEARING OFFICER ORTH: That was exactly my
10 reaction, Member Garcia. And I'm looking through their
11 redline to see if I can confirm that.

12 CHAIRPERSON SUINA: Thank you, Madam Hearing
13 Officer. And thank you for that clarification, Member
14 Garcia.

15 BOARD MEMBER HONKER: Another question related to
16 that is, was this an earlier comment from NMOGA or was
17 this one that was in the final -- the final redline and
18 wasn't discussed earlier?

19 HEARING OFFICER ORTH: Yeah, that's what I'm
20 looking for, Member Honker. I think it might have been a
21 late breaking one, but I don't want to say that without
22 confirming it.

23 MS. SOLORIA: Madam Hearing Officer, I'm seeing
24 it presented as a footnote on page 24 of their redline.

25 CHAIRPERSON SUINA: And, Ms. Soloria, is that

1 their last redline submittal?

2 MS. SOLORIA: I believe so. It's what -- I don't
3 think they -- hold on. It's what is attached to their
4 post-hearing submission, but let me make sure.

5 HEARING OFFICER ORTH: Right. The issue is that
6 that redline was prepared after the hearing and it
7 includes both things they proposed during the hearing and
8 things they proposed afterward.

9 I did notice a pattern; usually when it's a
10 late-breaking proposal, the footnote does not cite to a
11 transcript, but, yeah, so these footnotes in (3) (a) do
12 not cite to the transcript. So they may be -- let's see.
13 At least to footnotes 99 and 100, I think that refers to
14 late-breaking language, frankly.

15 In (B) they cite to the testimony of John
16 Smitherman, but that's "b," that's not "a."

17 CHAIRPERSON SUINA: Okay. So we're looking at,
18 and maybe confirming that NMOGA's revision -- I think what
19 I'm hearing, Madam Hearing Officer, and Ms. Soloria, that
20 NMOGA's revision as we see here on the screen, has some
21 components that were discussed during the hearing
22 process -- or during the hearing, and some that were
23 post-hearing submittals; is that correct?

24 HEARING OFFICER ORTH: Well, I believe all of
25 what we're seeing here, right here at the bottom of this

1 page was in their final closing brief, and not a proposal
2 before that.

3 And Member Garcia is also correct, about the
4 effect of this, which is, they're proposing that certain
5 things be subject to the two-year compliance requirements,
6 rather than earlier. That is to say, they're extending
7 the time for compliance here, by putting in the two-year.

8 CHAIRPERSON SUINA: Thank you for the
9 clarification.

10 Vice-Chair Trujillo-Davis and Member Honker, does
11 that clarify your reading as well?

12 VICE-CHAIR TRUJILLO-DAVIS: Yes, it does. Thank
13 you.

14 BOARD MEMBER HONKER: Yes, very helpful. Thanks.

15 CHAIRPERSON SUINA: Thank you. So, with that
16 said, Ms. Soloria, are we in the realm here with this
17 proposed language that we had in previous proposed
18 language, where it's -- it wasn't fully -- we don't have a
19 full record of this on -- during the hearing?

20 MS. SOLORIA: Yes, Madam Chair, I think we're in
21 that late-breaking realm, which we have adopted as our own
22 term-of-art here.

23 CHAIRPERSON SUINA: Thank you for that
24 clarification. So, members of the Board, given that
25 information and that discussion, when we think about this

1 language that we're looking for, specifically for (3) (a),
2 and then we can handle (3) (b) later.

3 Yes, Member Garcia.

4 BOARD MEMBER GARCIA: So I'll go ahead and take a
5 stab at a motion to adopt 3 -- item (3) (a) as written by
6 NMED, and reject the proposed revision by NMOGA because
7 the revision prepared by NMOGA was not provided into
8 evidence at the time of the hearing. And we are
9 comfortable with the language presented by NMED as it is
10 and supported by NMED, as stated.

11 CHAIRPERSON SUINA: Thank you, Member Garcia.

12 BOARD MEMBER HONKER: I'll second.

13 CHAIRPERSON SUINA: Thank you, Member Honker, for
14 the second. I'm looking around, making sure we don't have
15 any discussion or further amendments. Are we good,
16 Ms. Soloria?

17 MS. SOLORIA: Yes, Madam Chair.

18 CHAIRPERSON SUINA: Thank you.

19 With that, Ms. Jones, would you mind or please do
20 a roll-call vote on the motion by Ms. Garcia.

21 ADMINISTRATOR JONES: Okay. Member Bitzer, how
22 do you vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: Member Cates, how do you
25 vote?

1 BOARD MEMBER CATES: Yes.

2 ADMINISTRATOR JONES: Member Duval?

3 BOARD MEMBER DUVAL: Yes.

4 ADMINISTRATOR JONES: Thank you.

5 Member Garcia?

6 BOARD MEMBER GARCIA: Yes.

7 ADMINISTRATOR JONES: Member Honker?

8 BOARD MEMBER HONKER: I vote yes.

9 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 ADMINISTRATOR JONES: Chair Suina?

12 CHAIRPERSON SUINA: Yes.

13 ADMINISTRATOR JONES: Madam Chair, the motion
14 passes.

15 CHAIRPERSON SUINA: Thank you, Ms. Jones.

16 That takes us into (3) (b). And here, we have
17 NMED's position and we have proposed changes by NMOGA for
18 paragraphs (b) and (c), which do have reference to
19 testimony during the hearing. I just wanted to point that
20 out.

21 And I do recall this discussion about the costs
22 and impacts from NMOGA regarding here, and some of the
23 other discussion from other parties as well. We did spend
24 a great deal of time, if you recall, during the hearing on
25 this particular topic. And so as we look at all of the

1 material here, it looks like --

2 HEARING OFFICER ORTH: Madam Chair, I would also
3 draw your attention -- NMED addressed NMOGA's proposal,
4 also CEP did. And that is on page 167 of the hard copy.

5 BOARD MEMBER BITZER: Madam Chair, if I might,
6 the Environmental Defense Fund referenced their witness,
7 David Lyon, testified in support of the NMED position as
8 well.

9 HEARING OFFICER ORTH: Yes. So at the hearing
10 the environmental protection groups were referring to
11 themselves as CAA, Clean Air Advocates. Post-hearing,
12 they joined with EDF to submit one post-hearing proposal
13 as CEP, Community Environmental Parties. So you will see
14 EDF's substantial evidence and witness support exhibits --
15 excuse me -- as part of the CEP discussion because that
16 was a single closing argument.

17 CHAIRPERSON SUINA: And with that said, Madam
18 Hearing Officer, so as I scroll through here, I just want
19 to make sure. So under CEP, they then supported NMED's
20 proposal and didn't provide any additional changes to
21 NMED's proposal; is that correct?

22 HEARING OFFICER ORTH: That's correct. The point
23 of their argument in this section was to oppose NMOGA's
24 reduced frequencies there.

25 CHAIRPERSON SUINA: Thank you for that

1 clarification. And also, thank you for the clarification
2 between CAA and EDF, with the joint proposal or combined
3 proposal under CEP. I meant to ask that earlier, but I
4 appreciate that clarification as well.

5 With that, so it looks like we have NMED's
6 proposal and then we have NMOGA's proposed changes. And
7 it looks like -- I'm scrolling back and forth on my copy.
8 So I'm looking to the Board, and whoever wants to jump in
9 on this, to start us off with some discussion. Then, does
10 anybody want to jump in on discussion between the two?
11 Sorry, I'm trying to navigate here between the two. I
12 have them side by side as well.

13 BOARD MEMBER BITZER: One thing I find
14 interesting, Madam Chair, is that NMED is attempting to
15 lock in our level regulations that meet or exceed the
16 federal level for some concern that future federal
17 administrations might lessen, attempt to lessen the
18 standards.

19 They point out the Obama Administration's numbers
20 versus the Trump Administration regulations. I just found
21 that interesting, that there's a bit of strategy involved
22 in the -- long-term strategy involved in the Department's
23 position here; a hedge against the vicissitudes of the
24 federal government.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer, for

1 your comment, and for starting our discussion.

2 BOARD MEMBER BITZER: I have another question
3 maybe for somebody from the industry or regulatory
4 background. But the term "standalone tank battery," as
5 opposed to a tank battery that's part of the facility, is
6 that the distinction? That it's aside from the -- it
7 stands apart from the location; is that what that means?

8 CHAIRPERSON SUINA: Yes, Member Vice-Chair
9 Trujillo-Davis.

10 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I can field
11 this one. The term "standalone tank battery" means that
12 the site itself has one well and one tank and so -- or
13 multiple tanks; it can have multiple tanks, but that one
14 well flows to those tanks. So it's a facility that has
15 one well going to it and that well goes to those tanks.

16 Where you have a facility -- and the other
17 term -- the term facility that they're using in this
18 context, you can have multiple wells flowing to one
19 central tank battery or one facility. So, that one, so
20 that's the distinguished -- it's distinguishing there
21 between those two types.

22 BOARD MEMBER BITZER: Thank you. I'm remembering
23 that discussion now from the testimony, because you've got
24 a variety of layouts here. Does that depend on whether
25 it's a high production well, perhaps, or a low yield well,

1 whether you need multiple or one tank can handle multiple
2 wells?

3 VICE-CHAIR TRUJILLO-DAVIS: No, not necessarily.
4 It can be for a variety of reasons; one can be
5 availability; you may drill a well that is far out from
6 the rest of your infrastructure, so you put just it by
7 itself with its own tank. It also has -- you can reduce
8 the amount of surface disturbance you have, by having one
9 centralized facility; and then you have -- you reduce the
10 amount of equipment, where your personnel is, and they're
11 going to one place versus lots of other places around.

12 So it's really more of a -- based on what works
13 for that operation in that specific area. And, lastly,
14 the other reason has to do with commingling issues, which
15 gets into much deeper areas, but oil from different leases
16 can't always be commingled into one facility, so sometimes
17 you have to separate those facilities out. So that's the
18 other issue.

19 HEARING OFFICER ORTH: Madam Chair, may I
20 interrupt?

21 CHAIRPERSON SUINA: Yes.

22 HEARING OFFICER ORTH: So on page 46 of the hard
23 copy, the Board has already adopted the definition
24 "standalone tank battery." For the purposes of this rule,
25 it's definition WW at this point. And that definition was

1 worked out between NMED and NMOGA.

2 CHAIRPERSON SUINA: Thank you for that reminder,
3 Madam Hearing Officer. So, as we look to this rule here,
4 I'm open to further discussion. Yes, Member Bitzer.

5 BOARD MEMBER BITZER: So the meat and potatoes of
6 NMOGA's initial argument here is that -- well, part of it
7 is that volatile organic compounds, the VOC emissions,
8 aren't really the culprit in New Mexico. So this perhaps
9 is the NOx, I guess. And that you're not getting much
10 reduction. Yeah, so they argue that there's undue harm
11 here, potentially, given the return on that -- on that
12 investment.

13 I don't know what necessarily to think of that
14 just yet. I'm interested in other people's perspectives.

15 CHAIRPERSON SUINA: Thank you, Member Bitzer.
16 Member Duval.

17 BOARD MEMBER DUVAL: Yeah, I -- I read -- thank
18 you, Madam Chair. I read it the same way as Member
19 Bitzer. I -- I would like, if you could clarify what you
20 mean by "undue harm." Do you mean like to business or to
21 the environment? Yeah, okay. Yeah, okay. That's all, I
22 just wanted a point of clarification on that.

23 CHAIRPERSON SUINA: Thank you, Member Duval.
24 Appreciate that. And I know this one is one of those
25 ones, like I said earlier, we spent a lot of time on

1 through the hearing. And also with rebuttal testimony
2 back and forth, there was a lot of information provided
3 regarding impacts, and various definitions and information
4 provided to either demonstrate impacts or demonstrate
5 nonimpacts of financially, and as well as to the
6 environment, if I recall.

7 This is being also summarized in our Hearing
8 Officer's report attachment. Yes, Member Honker.

9 BOARD MEMBER HONKER: Yeah, just some thoughts
10 here. In a nutshell, it seems like NMOGA's argument is
11 NMED overestimated benefits, reductions and underestimated
12 costs. There's one part of NMED's response that jumped
13 out at me, and it's near the bottom of page 159, where
14 apparently NMOGA used some data from NSPS subpart OOOO,
15 and they point out that facilities subject to that part
16 were still no more than three years old at the time the
17 surveys were completed. And then, later on, they say the
18 average storage tank in New Mexico is over ten years old,
19 so that does seem to be a significant point that could
20 explain some of the differences between NMED's estimates
21 of reductions to be gained, versus NMOGA's.

22 CHAIRPERSON SUINA: Thank you for that. And if I
23 recall as well in this, in the hearing -- and I'm just
24 looking back at my notes as well in some of the hearing
25 records; we also had some discussion from CAA and EDF as

1 well, witnesses about, if I recall -- and Madam Hearing
2 Officer, maybe correct me if I'm wrong or members of the
3 Board -- that those entities also -- or parties wanted
4 even stricter requirements here; is that correct -- at one
5 point?

6 HEARING OFFICER ORTH: It's a little tricky to
7 answer, I'm sorry, because there's also the proximity
8 proposal and the joint proposal. But, yeah, they
9 wouldn't -- there wasn't, like, opposition expressed by
10 them to this part of the rule, if that was your question.
11 I'm sorry.

12 CHAIRPERSON SUINA: Right, right. And I was just
13 looking at -- you know, I know we're looking at all of
14 these parts, but I do recall there was some discussion
15 which -- which went to the impacts -- financial impacts
16 and the modeling and the financial -- both, you know, the
17 financial models as well.

18 HEARING OFFICER ORTH: Also, Madam Chair, EDF had
19 presented evidence showing that fugitive emissions were
20 higher than previously estimated. Is that the sort of
21 thing you're thinking about?

22 CHAIRPERSON SUINA: Yes, absolutely. Yes.

23 I don't know if -- as I'm going through here, if
24 that was also captured here on the latest submittals.
25 Because I know there was also some contention between -- I

1 think it was EDF's witnesses and the Department's, and
2 then the Department to NMOGA, and NMOGA -- or industry's
3 and then back to EDF witnesses as well.

4 So I just wanted to continue the conversation,
5 just reminding us of how much discussion we looked at and
6 heard over the hearing in September. Yes, Member Bitzer.

7 BOARD MEMBER BITZER: On page 164 in NMOGA's
8 argument, they're talking about how most -- most leak
9 detection is satisfied with an annual, and then semiannual
10 gets 60 percent versus 40 percent and 80 percent.

11 And Smitherman tried to make the point that there
12 was a law of diminishing returns, but I thought that the
13 jump between, say 80 percent and 60 percent, was actually
14 substantial. I wasn't really seeing a dropoff as much as
15 he was presenting. So that argument failed to impress me
16 at the time.

17 I get the law of diminishing returns, but the
18 returns still seemed to be pretty substantial.

19 CHAIRPERSON SUINA: Thank you for that note,
20 Member Bitzer.

21 Yes, Member Garcia.

22 BOARD MEMBER GARCIA: Thank you, Madam Chair.
23 I'm just sort of looking at the overall point of this.
24 Their point is to increase the frequency of leak detection
25 inspections. And I think that it was established in the

1 evidence that with an increase, you're going to catch
2 more -- you're going to, you know, catch more problems,
3 have to repair more leaks, and that's the whole point
4 here. It's -- it's -- I can't remember who -- which
5 party -- which entity showed the large cloud over the Four
6 Corners area, of pollution, I will call it.

7 And we know that in areas of oil and gas
8 production in the oil patch or in the -- and in the
9 Northwest part of the state, there certainly are a lot of
10 sources from leaks, aside from just flaring. There's a
11 lot of sources from leaks. So the point of this section
12 is to address that.

13 And this rule is attempting to address that. And
14 so, I think the frequency is very important, for the
15 sooner they find the leak, the sooner they're going to be
16 able to repair it. So that's my observation. Thank you.

17 CHAIRPERSON SUINA: Thank you, Member Garcia.
18 Appreciate that. Yes, Vice-Chair Trujillo-Davis.

19 VICE-CHAIR TRUJILLO-DAVIS: Yes, I'm looking back
20 through my notes here. And I have a lot of notes on it.
21 So but I -- I'm inclined to agree with Member Bitzer. I
22 think the crux of the argument was frequency and
23 diminishing return.

24 And I just wanted to add that note as we're
25 trying to wade through this particular issue. I think

1 that was one of the biggest points that was on NMOGA's
2 agenda there.

3 CHAIRPERSON SUINA: Thank you. Yes, Member
4 Bitzer.

5 BOARD MEMBER BITZER: They also made the point
6 that we were after the wrong precursor, the NOx versus --
7 VOC versus NOx argument. But then they did allow as to
8 how the only exception was in the San Juan area, but I
9 think that's a particularly important area.

10 As Member Garcia pointed out, there's a big, old
11 cloud hanging over there, and since we border another
12 state, we have good neighbor issues to consider, I think,
13 as well. Not that that's -- well, actually, it is
14 probably germane to our role. But, anyway, so I'm pretty
15 much ready to move on this if everybody else is.

16 CHAIRPERSON SUINA: Yes, I just want a point of
17 clarification. Member Bitzer, I think earlier when you
18 had mentioned the law of diminishing returns in regard to
19 NMOGA, you still saw actual value, and it wasn't such a
20 diminishing return. Was that your statement earlier?

21 BOARD MEMBER BITZER: Yes, Madam Chair. It was a
22 drop from 80 to 60, that is still a 20 point drop, so I
23 considered that not diminished.

24 CHAIRPERSON SUINA: Thank you, Member Bitzer. I
25 just wanted to clarify that.

1 Yes, Member Honker.

2 BOARD MEMBER HONKER: Yeah, just a comment on
3 costs. And Vice-Chair Trujillo-Davis can correct me if
4 I'm -- if I'm off base here, but the actual OGI survey in
5 itself, I don't think costs much. I mean, it's a
6 relatively quick thing to do. The cost comes in when you
7 have to fix something. So part of the reason why you see
8 incremental costs with doing things more frequently, is
9 the actual fact that you're going to have to perform some
10 repairs on a more frequent basis than -- than if you do it
11 less frequently. At least, that's my interpretation.

12 CHAIRPERSON SUINA: Thank you, Member Honker.

13 Vice-Chair Trujillo-Davis.

14 VICE-CHAIR TRUJILLO-DAVIS: Well, I can give you
15 my experience with using the OGI equipment, and that's
16 that generally a flare camera costs around \$100,000 to
17 purchase. And the camera operators have to be specially
18 trained to operate the camera. So even a large company
19 only has a couple of cameras in-house, if they have them.
20 Generally, smaller companies can't afford them. They
21 don't have them. It's a big investment.

22 So, most -- most companies will take -- have
23 personnel that is dedicated to going around and conducting
24 a survey. And those surveys are on a scheduled basis.
25 And the challenge they have, that I saw with them, was

1 that you could send an individual out to run his survey or
2 her survey, and having a crew there to also make any
3 necessary repairs wasn't always easy to do, and also
4 maintaining the schedule that the camera operator was on.

5 Because they would have to complete so many
6 throughout the day. And it's -- I think it's worth noting
7 that when you're talking about hitting facilities -- so
8 many facilities during the day, you know, the distance
9 between them can be really great, especially in the
10 Permian Basin. So you'd be lucky if you hit eight during
11 the day, and that's going consecutively, not waiting for
12 somebody to repair something.

13 So, ultimately, what I'm saying is, the challenge
14 that was faced with availability of the equipment to hit a
15 number of facilities at a time and fix something while the
16 equipment was on location, and not have to circle back,
17 and also meet the reporting requirements for the ones that
18 were had. So, hopefully, that provides you some insight.
19 I don't know if it answered any of your questions, but
20 that was my experience.

21 BOARD MEMBER HONKER: That's very helpful. I
22 think that's very helpful, that perspective. I was hoping
23 the cost of those cameras had come down, but apparently
24 they haven't, so... I understand especially for a small
25 operator, to have to contract and get somebody out there

1 and also have folks to do repair work would be a
2 considerable undertaking.

3 VICE-CHAIR TRUJILLO-DAVIS: Yes, and sometimes
4 that repair work is reaching a valve or a piece of
5 equipment that is required, you know, a manlift to come on
6 location, which takes some scheduling. And so there was
7 some conflicts there, frequently.

8 CHAIRPERSON SUINA: Thank you for that discussion
9 as well on the costs.

10 Yes, Member Garcia.

11 BOARD MEMBER GARCIA: Just -- just one more note,
12 is that the -- there's some argument that the industry is
13 arguing that the Department's estimates of actual emission
14 reductions are too high. The environmental group, as I'm
15 reading, are saying, oh, no, it's quite the opposite; the
16 emission reductions that the Department is assuming here
17 are much too low. So it looks like the Department has,
18 you know, is kind of in the middle of both -- both sides
19 here.

20 CHAIRPERSON SUINA: Thank you for that, Member
21 Garcia. And just to add my thoughts on that as well, is
22 that's what I was seeing. And it takes me back to, you
23 know, inputs into a model. We're all trying to make
24 apples to apples comparison, and we're comparing --
25 comparing in some case apples to watermelons. And it's so

1 hard to have clear comparisons across the board.

2 And I do recall, I see in my notes that, you
3 know, talking and having clarification questions to
4 industry's witnesses and then the environmental
5 organizations' witnesses, as well as NMED's. We could see
6 that there was different -- different inputs and different
7 assumptions into the models, and then, what those models
8 meant.

9 Yes, Vice-Chair Trujillo-Davis.

10 VICE-CHAIR TRUJILLO-DAVIS: Yes, I agree with
11 you, Chair Suina. In my notes what I noted was that there
12 was some disagreement over the data sources used by the
13 parties. And I'm not sure that we got any clarification
14 on that from anybody. So I think this is a difficult
15 point to -- to really sort through because we don't
16 have -- we have a very large disagreement over the data
17 sources that were used to come up with these numbers.

18 CHAIRPERSON SUINA: Thank you for that,
19 Vice-Chair. And I think that's where as I was going back
20 through this section, and through my notes, and really
21 interested to see that -- I know -- I know the
22 environmental groups didn't offer different language on
23 this section, but their discussion, and what the Hearing
24 Officer's report attachment shows, is even though there
25 was differences even between the modelers and the results

1 of those models from the environmental groups' assessments
2 and experts, they ended up then supporting NMED's, if you
3 will, proposal on this section.

4 So I wanted to also point that out as well. I
5 know they didn't propose different language, but I know
6 there was a lot of discussion on this as well. And I
7 guess just to, I guess, wrap that up is, in what I'm
8 reading is, therefore, you know, the environmental -- CEP
9 then supported NMED's position on this as well.

10 And I just want to make a point of the
11 clarification, Hearing Officer. In the record, the
12 environmental groups did not -- and I know it's getting
13 late, I just want a reminder; they did not provide any --
14 throughout this process, any additional language on this
15 section; is that correct?

16 HEARING OFFICER ORTH: That's correct. They're
17 providing support for the Department's proposal and
18 opposing NMOGA's proposal.

19 I wanted to raise just a little something here as
20 well, which is, I believe this may be one of the sections,
21 along with the proximity LDAR, in which NMOGA felt it
22 wanted you to consider all of its economic evidence.

23 You've clearly been considering economic
24 evidence, but I'm wondering if Ms. Soloria thinks it would
25 be a good idea to address the evidentiary ruling, and then

1 you can decide to exclude or decide to give it the weight
2 it's deemed, decide to reopen the record, if you think
3 that's necessary, for other parties to address it.

4 But I feel like perhaps the ruling should be
5 addressed sooner rather than later.

6 CHAIRPERSON SUINA: Thank you for that, Madam
7 Hearing Officer. And I just want to check in with Member
8 Duval. I just saw your hand being raised, and it kind of
9 blended in with the background. Do you want to say
10 something now?

11 BOARD MEMBER DUVAL: Yeah, I have a hard stop; I
12 need to go pick up my child from day-care. I don't have
13 an option right now. My wife is disposed. So I need to
14 go get my kid.

15 CHAIRPERSON SUINA: Okay.

16 BOARD MEMBER DUVAL: So I didn't know if there
17 was going to be a vote in the next, like, couple of
18 minutes. I could probably wiggle that, but if not, if
19 this conversation is going to take more than like
20 literally a minute, I can't. I need to go.

21 CHAIRPERSON SUINA: Okay. Thank you for that
22 notification, Member Duval. I think it will take more
23 than a minute.

24 BOARD MEMBER DUVAL: Okay.

25 CHAIRPERSON SUINA: So do you have any --

1 anything else to add?

2 BOARD MEMBER DUVAL: No. I think this is --
3 yeah, this is obviously an in-depth conversation and I
4 wish I had more time to be involved, but I literally need
5 to leave, so...

6 CHAIRPERSON SUINA: Okay.

7 BOARD MEMBER DUVAL: Thank you everyone for your
8 time and moving lunch today. That really helped me out.
9 And I guess we'll just stay in touch as far as when we're
10 going to reconvene.

11 CHAIRPERSON SUINA: Yes.

12 BOARD MEMBER DUVAL: I'm very responsive to
13 emails, so whenever things happen, that would be great.

14 CHAIRPERSON SUINA: Thank you, Member Duval.

15 BOARD MEMBER GARCIA: We did set dates for
16 reconvening, didn't we?

17 CHAIRPERSON SUINA: Yes, April 11, 12 and 13.

18 BOARD MEMBER DUVAL: Okay. Thank you very much.
19 Have a great weekend.

20 CHAIRPERSON SUINA: Okay. Thank you.

21 All right. Ms. Soloria, I apologize. I just saw
22 his hand up, but please go ahead.

23 MS. SOLORIA: No, thank you, Madam Chair. And I
24 appreciate the Hearing Officer's prompt there. I, myself,
25 was sitting here wondering if this was a good -- I think

1 this is an appropriate time to raise it, because you-all
2 have generally been touching on costs.

3 So -- excuse me. As a procedural refresher, in
4 the -- during the hearing, when the parties were
5 presenting evidence on LDAR, a motion was filed in
6 opposition to surrebuttal evidence that was offered by
7 NMOGA. And, really, I would point to -- there was a
8 formal motion filed during the course of the hearing.
9 NMOGA had an opportunity to brief that in response.

10 The Hearing Officer heard the argument on the
11 record and opted to exclude certain evidence presented in
12 surrebuttal by NMOGA. NMOGA was permitted to make a
13 proffer of that evidence for the Board's consideration
14 now.

15 So the -- where we are now, as stated before, is
16 the Board has the option to uphold the Hearing Officer's
17 decision to exclude that evidence. And, therefore, the
18 Board would not consider it part of the record at this
19 stage and would not rely on it -- rely on it as part of
20 its deliberations.

21 The Board can disagree and overturn the Hearing
22 Officer's determination to exclude that evidence. And
23 I'll summarize the basis of the Hearing Officer's
24 decision. And, of course, this is laid out and was
25 repeated in closing arguments; that it was on the basis of

1 unfair surprise at that point in this proceeding, she
2 concluded. And I don't want to misquote the transcript.
3 The parties have done that in their closing arguments, but
4 that is the crux of that evidentiary issue.

5 If you opt not -- if you let the Hearing
6 Officer's ruling stand, then you would proceed on the
7 record, understanding that that evidence was excluded
8 pursuant to her order. If you decide to overturn it, then
9 you could really consider that evidence as properly -- as
10 admitted and properly consider it in your deliberations.

11 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

12 And I think I first saw Member Garcia's hand up,
13 and then we'll go to you, Vice-Chair.

14 BOARD MEMBER GARCIA: Thank you very much,
15 Ms. Soloria, for that summary. I can tell you that's an
16 easy one for me; I would not -- I would not overrule the
17 Hearing Officer's ruling. I think it was well-founded and
18 I'm fine with the Hearing Officer's ruling.

19 But one -- one point of clarification just on
20 this, I know the ruling was not to include the evidence
21 based on unfair surprise, and so they proffered it.

22 Now, once it's proffered, if they -- if there is
23 an appeal and it goes to Court of Appeals, this would be
24 in the record of the Court of Appeals; is that correct?
25 It would be considered?

1 MS. SOLORIA: So it would be in the record as a
2 proffer. So the parties moving for entry of that evidence
3 do have the right of appeal, to appeal the officer's --
4 your decision to exclude that evidence.

5 So it was, of course, necessary for the proposing
6 party to proffer it, so that if they wanted to appeal the
7 Hearing Officer's determination and your determination
8 upholding that decision of exclusion, that that proffer
9 would be in the record.

10 So a Court on appeal could evaluate --
11 essentially do the same analysis you're doing today, to
12 evaluate whether or not the exclusion of that evidence was
13 proper or not. The Court wouldn't -- because it was a
14 proffer, wouldn't be weighing that evidence at that moment
15 because it's not part of the record. They would have to
16 make a preliminary determination that it was admitted
17 properly, excluded, or whatnot.

18 BOARD MEMBER GARCIA: Thank you for that. I was
19 just curious about that.

20 I sense that this -- this rule will be appealed
21 one way or another. It's quite controversial, so there.
22 probably will be an appeal.

23 So back to the issue at hand, I myself am
24 absolutely comfortable with the Hearing Officer's ruling,
25 so I would support the Hearing Officer's ruling. Thank

1 you.

2 CHAIRPERSON SUINA: Thank you, Member Garcia and
3 Ms. Soloria. And Vice-Chair Trujillo-Davis, and then
4 we'll go to Member Honker.

5 VICE-CHAIR TRUJILLO-DAVIS: Just for
6 clarification; the evidence that was in question was the
7 spreadsheet with costs on it; is that correct?

8 MS. SOLORIA: That's correct. I'm trying to --
9 well, I can't share my screen, but...

10 VICE-CHAIR TRUJILLO-DAVIS: I just wanted to make
11 sure I had the correct piece of evidence that was in
12 discussion there.

13 MS. SOLORIA: I'm trying to determine which
14 filing has this best summarized for you-all. I'm leaning
15 toward CEP's closing argument, only because they
16 summarized the Hearing Officer's order.

17 Madam Hearing Officer, am I correct that NMOGA
18 did not -- did not summarize that order in their closing?
19 I just -- I want to make sure that I'm remembering that
20 correctly.

21 CHAIRPERSON SUINA: Madam Hearing Officer?

22 HEARING OFFICER ORTH: I'm sorry. What was the
23 question?

24 MS. SOLORIA: I apologize. I was proffering to
25 the Board that the best summation of what your ruling was

1 during the hearing was -- or at least the most succinct
2 one was offered in CEP's closing argument.

3 I'm not recalling that NMOGA delved into that
4 ruling in their closing, but I could be wrong.

5 HEARING OFFICER ORTH: Actually, NMOGA did
6 address the ruling in their closing argument. So you have
7 two closing arguments that address the ruling. NMOGA
8 asserted that I was writing a new rule, I guess, into the
9 procedures by basing the ruling on surprise. And they
10 said that they -- it was proper surrebuttal, which was
11 allowed from other parties. So, yeah, you do have NMOGA's
12 argument and you do have CEP's argument.

13 Also, I just made you the presenter, Ms. Soloria,
14 so you should be able to share a screen.

15 MS. SOLORIA: Okay.

16 CHAIRPERSON SUINA: Thank you, Madam Hearing
17 Officer. And I would love to see that, Ms. Soloria. I'm
18 looking at it.

19 MS. SOLORIA: Of course it makes perfect sense
20 that NMOGA would also put it in their closing brief, but I
21 couldn't -- sometimes I can visually remember where it is
22 in their brief and I couldn't in that moment. So let me
23 see if I can pull that up.

24 BOARD MEMBER BITZER: Madam Chair, if I might
25 while she's pulling something up? To Board Member

1 Garcia's point, damned if we do, damned if we don't -- or
2 excuse me -- darned if we do, darned if we don't.

3 I do see a path, a third way, where we get what
4 we -- what we think we want to get done, done, and
5 minimize our lateral exposure to litigation at the appeals
6 court level, is if we admitted it, and considered it, but
7 then didn't find it necessarily persuasive. So they
8 wouldn't be able to argue that they hadn't had a chance to
9 present all of their evidence, but it's still up to us to
10 decide what kind of weight to give it, or whether to give
11 it, really, any weight at all. Just a thought.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer.
13 Member Garcia.

14 BOARD MEMBER GARCIA: I guess I'm -- the reason I
15 find this very easy is because I've never seen a situation
16 where we have a Hearing Officer designated to be the
17 Hearing Officer and make these rulings. She made rulings
18 throughout the two-week period on objections and
19 rejections of evidence to be submitted, et cetera. She
20 did that throughout the two-week period.

21 I would not question those rulings because that's
22 why we have a Hearing Officer, is to make those decisions.
23 These are -- these are legal -- very legal questions,
24 whether they violated unfair surprise, et cetera. I'm --
25 I'm not equipped, I'm not a lawyer; I'm not -- I don't

1 have the expertise to be able to make that decision, so
2 that's why I rely on the Hearing Officer, who is a lawyer,
3 to make that decision.

4 BOARD MEMBER BITZER: But once the Hearing
5 Officer has made that decision, we have outside -- we have
6 the Assistant Attorney General, who is also an attorney,
7 to bounce things off of as well. So, have her -- and I
8 don't mean to second-guess the Hearing Officer. I'm
9 confident that she's fully competent and within the law to
10 make those kind of rulings, and that they could stand up.

11 I'm just suggesting a path wherein we deprive a
12 litigant of a claim that they didn't have a chance to
13 submit all of the evidence.

14 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
15 your comment. And before we go to Ms. Soloria, I want to
16 go to Vice-Chair Trujillo-Davis and then Member Honker.

17 VICE-CHAIR TRUJILLO-DAVIS: Yes, I agree that the
18 Hearing Officer's decision, like that's why we have a
19 Hearing Officer appointed. And I support those decisions.
20 The reason that I was asking about the evidence that
21 was -- that was in discussion, I thought that it was a
22 spreadsheet with costs on it.

23 And in the Hearing Officer's report, I'm seeing
24 on pages 165 and so on, costs listed. And -- and I feel
25 like part of that evidence that was -- was in question was

1 the dataset that was used, which NMOGA was saying that
2 NMED's dataset's from 1996. So I'm seeing it in the
3 Hearing Officer's report.

4 So I wanted to make clarification, that that is
5 the evidence that we are discussing.

6 MS. SOLORIA: Vice-Chair Trujillo-Davis, that may
7 be resolved if I can attempt to share with you the
8 summation and also the actual proffer. And now I'm
9 remembering -- going to my earlier question about whether
10 or not NMOGA had covered it in their hearing -- or excuse
11 me -- in their closing argument is, I believe they had a
12 separate proffer with their legal argument that was filed
13 on January 20th, and then a separate closing argument that
14 did not contain that argument.

15 And someone correct me if I'm wrong, but that's
16 why I think I wasn't referring to their argument in their
17 closing argument and proposed statements of reasons,
18 because they actually have a separate filing. And I'll go
19 ahead and pull that up.

20 CHAIRPERSON SUINA: Thank you.

21 MS. SOLORIA: If I can do that.

22 CHAIRPERSON SUINA: In the meantime, Member
23 Honker, I don't want to forget you.

24 BOARD MEMBER HONKER: Kind of a similar question
25 that the Vice-Chair had, and that was, I was wondering if

1 there was some of that data that was in the proffer that
2 we're actually seeing in the Hearing Officer's report.
3 And I'm specifically looking at the table on 165 and the
4 cost estimates. I'm wondering if those were part of the
5 excluded testimony or if those came from somewhere else.

6 CHAIRPERSON SUINA: Thank you, Member Honker.

7 Ms. Soloria or Madam Hearing Officer, would you
8 be able to address that as we look through the proffer
9 language and exhibits?

10 HEARING OFFICER ORTH: I'm looking. Yeah, that's
11 the proffer.

12 MS. SOLORIA: Am I -- am I sharing?

13 HEARING OFFICER ORTH: Yes, you are.

14 MS. SOLORIA: Okay. Great. There is no way
15 where I can tell. Sorry, I have three screens going on.
16 Sorry if I'm looking in a weird direction.

17 BOARD MEMBER BITZER: Can you make it bigger?

18 MS. SOLORIA: Let's see. So this was the
19 subject -- these three items were the subject of opposing
20 party's motion to exclude that evidence. And the
21 actual -- so let me pull up the -- are you all seeing a
22 PowerPoint right now?

23 CHAIRPERSON SUINA: Yes.

24 MS. SOLORIA: Okay. So these were the actual --
25 I want to look at both of those things. Let me see if I

1 can -- let me see if I can compare them.

2 CHAIRPERSON SUINA: And as I recall, I think
3 there is like overlap. Just what I recalled in the
4 hearing, there was some data that NMOGA had already
5 presented with their experts, and spreadsheets and so
6 forth. And then there was some additional data -- I don't
7 know if it was in specific columns, but in addition to
8 what they had already presented. Was that correct? I
9 think.

10 And I might be wrong. It was in September, and
11 many months have passed.

12 MS. SOLORIA: Okay. I think it might be helpful
13 if we just try to go through this.

14 CHAIRPERSON SUINA: Okay.

15 MS. SOLORIA: So --

16 CHAIRPERSON SUINA: Can you blow it up a little
17 bit more?

18 MS. SOLORIA: Sure. And you're still seeing the
19 slide show, right?

20 CHAIRPERSON SUINA: Yes.

21 MS. SOLORIA: Okay. I want to make sure I pull
22 up the opposing party's brief on this as well. Okay.

23 So the parties objected to -- and when I say the
24 opposing party, it's the environmental groups, but I want
25 to capture -- let me see...

1 BOARD MEMBER GARCIA: Was it in the document
2 somewhere, their opposition to this?

3 MS. SOLORIA: Yes.

4 BOARD MEMBER GARCIA: I'm having trouble seeing
5 your screen, so I was going to pull it up on my other
6 screen here.

7 CHAIRPERSON SUINA: Yes. Thank you for that
8 question, Member Garcia. I don't know.

9 BOARD MEMBER GARCIA: So to be able to read their
10 reasons for not wanting this evidence.

11 My memory is that they basically said unfair
12 surprise, it was brought up too late. They haven't had an
13 opportunity to -- to rebut it. I may be wrong. Correct
14 me, please, if I'm wrong.

15 MS. SOLORIA: I'm just -- I'm just trying to find
16 in the proffer -- in the proffer what's referred to as in
17 the motion. And if I could have a minute.

18 CHAIRPERSON SUINA: Sorry. Yeah, are you good,
19 Ms. Soloria? Do you want a little break?

20 MS. SOLORIA: Well, let's try to get through.
21 I'm going to go off of NMOGA's. NMOGA filed a separate
22 brief contemporaneously with their other closing argument
23 as to why the Board should accept this evidence. So I'm
24 going to -- I'm going to go off of that because they're
25 addressing the joint motion filed by the environmental

1 advocates and NMED.

2 So mainly it objected because the tables at
3 Exhibit 58, which is what this slide shows -- and so this
4 is 10. And I can compare this. Okay. So 10, 11 and 29.
5 So this was excluded by the Hearing Officer. Yeah, it was
6 also objecting to Exhibit 7.

7 It may be worth it that we take a little time. I
8 don't -- I don't -- this is not productive or efficient
9 for me to be doing this piecemeal, this way. If I have a
10 few minutes, I might be able to get this in order so that
11 you-all can consider what the proffer is. I don't know if
12 there's something you-all want to take up in the meantime,
13 or if you want to take a little break.

14 CHAIRPERSON SUINA: If we take a little break,
15 it's okay. If we take a little break, Ms. Soloria, what
16 would you suggest, five, ten?

17 MS. SOLORIA: Let's do ten and then, hopefully,
18 we can -- I can give you everything you need then.

19 CHAIRPERSON SUINA: Okay. What is the pleasure
20 of the Board? Good? Okay. Ten? Okay, Member Bitzer.
21 All right. We'll take a quick ten-minute break and come
22 back at 5:22.

23 (Recess taken from 5:12 p.m. to 5:22 p.m.)

24 CHAIRPERSON SUINA: Thank you again, Counsel
25 Soloria. I appreciate all your work. It's a lot of

1 information.

2 MS. SOLORIA: I appreciate the Board's indulgence
3 and the break, and the patience, as I try to assist.

4 Okay. So, first of all, I think one question --
5 separate question that the Board had was whether the
6 tables included in the Hearing Officer's report were --
7 had been excluded below, i.e., were part of the proffer.

8 And based on my reading, that is not the case.
9 What is included in the Hearing Officer's report was
10 evidence that was admitted. The basis for that is that if
11 you look at the prefatory language preceding those tables,
12 for example, at the bottom of 164, the following tables
13 summarize the cost of transitioning from annual to
14 semiannual, NMOGA Exhibit 58 at 46. That was not a
15 topic -- that was not an excluded slide, for example.
16 That wasn't the subject of the motion.

17 So I'm going to pull up first -- if I can pull it
18 up here, which I think I can. Okay. So, here, this is
19 part of the community environmental groups. Excuse me.
20 So, this is these parties' closing arguments. Is it
21 Exhibit 51, did I say?

22 And, here, they've summarized what was in the
23 original motion to exclude. So these are the items that
24 these parties' joined with NMED to move to exclude. I'm
25 going to try to go through that and show you those

1 exhibits as the proffer.

2 CHAIRPERSON SUINA: Thank you.

3 MS. SOLORIA: So I can share two screens, but the
4 first bullet that I just showed you was two Excel
5 spreadsheet entitled "LDAR Gathering Boosting Stations
6 Incremental Analysis," and the second entitled "LDAR Well
7 Sites Incremental Analysis."

8 So, which one are we looking at? Let me show you
9 them in order. So this is the first spreadsheet that was
10 proffered. Again, proffer -- excluded and then proffered.
11 And then, this is the second spreadsheet that was excluded
12 and then proffered.

13 CHAIRPERSON SUINA: Okay.

14 MS. SOLORIA: So the second bullet point, where
15 certain slides amended by the parties to include Slides
16 10, 11, and 29 from a PowerPoint entitled "Topic 27S
17 20.2.50.116," and continuing, "a/k/a the LDAR Surrebuttal
18 PowerPoint." So let me pull that up.

19 So this is the PowerPoint that that objection
20 referred to, and it was Slide 10. So you will see the
21 proffer there: 11 and 29 and then Slide 52 and 56 -- 52
22 and 56. And I believe that was it.

23 My concern: NMOGA has a detailed table in their
24 proffer that is more expansive than the list in the
25 environmental groups' summary. And I'm trying to find the

1 reason for that distinction, because I, obviously, don't
2 want to miss it if it's significant.

3 Madam Hearing Officer, do you have any
4 recollection as to --

5 HEARING OFFICER ORTH: What was the question?
6 I'm sorry.

7 MS. SOLORIA: I don't -- as we figured out, NMOGA
8 had a response to -- when was that filed? Sorry, I may
9 have gotten ahead of myself.

10 HEARING OFFICER ORTH: So this relates to the
11 proximity proposal, as I understand it. The first part of
12 their economic analysis went to the model plans.

13 MS. SOLORIA: I am -- okay. I was -- okay.
14 Yeah, I backtracked. I was looking at their original
15 motion response -- in response to motion to exclude. So
16 ignore what I said about the more detailed table.

17 We've covered the slides that were excluded based
18 on the motion and were proffered as a result of that
19 exclusion.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

21 Yes, Vice-Chair Trujillo-Davis.

22 VICE-CHAIR TRUJILLO-DAVIS: So just to confirm,
23 the tables that we're looking at in the Hearing Officer's
24 report are not the slides that were proffered?

25 MS. SOLORIA: Correct. That's correct. And

1 that's -- the description for the tables point to the
2 exhibits that those were pulled from, which were admitted
3 into the record.

4 VICE-CHAIR TRUJILLO-DAVIS: And my last question
5 is, I recall that the first table that you showed us, it
6 was an Excel spreadsheet, I believe, and it had the data
7 sources that NMED used. And I believe that was also
8 proffered.

9 MS. SOLORIA: Correct. And now that I'm
10 reading --

11 VICE-CHAIR TRUJILLO-DAVIS: And not to interrupt
12 your train of thought, but just to finish mine.

13 MS. SOLORIA: Yeah. Can you repeat your
14 question, Vice-Chair.

15 VICE-CHAIR TRUJILLO-DAVIS: So my observation
16 here is that, I believe, that the data -- that one of the
17 slides that was proffered had a data source in it that was
18 NMED's data source, which was dated 1996. And that
19 information shows up additionally in their response in the
20 Hearing Officer's report.

21 So, my question is, should it be there? Should
22 we be giving that --

23 MS. SOLORIA: I think that you are -- I think
24 that you are describing the actual argument there. Right?
25 That they're -- because in the Hearing Officer's report,

1 NMOGA discusses why that evidence should have been
2 admitted, based on, they were basing that spreadsheet off
3 of what NMED had offered. Am I -- am I following you?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes. They used in
5 their argument about why -- or that NMED relied on this
6 data. And my question is, essentially, are they allowed
7 to make that argument if the -- if that slide was not
8 allowed in?

9 CHAIRPERSON SUINA: Are you saying that in
10 NMOGA's -- what we have in NMOGA's submittals, I guess,
11 its final submittal, that we see in the Hearing Officer's
12 attachment? Is that what you're referring to, Vice-Chair?

13 VICE-CHAIR TRUJILLO-DAVIS: Yes. It's on page
14 166, line 13.

15 MS. SOLORIA: Yes, I see that.

16 Page 156, line 13?

17 VICE-CHAIR TRUJILLO-DAVIS: Page 166.

18 MS. SOLORIA: Oh, sorry.

19 VICE-CHAIR TRUJILLO-DAVIS: It's okay,
20 Ms. Soloria. It's been a long day and we've asked you a
21 lot of questions.

22 MS. SOLORIA: Well, I think -- I think it's
23 important, if we can, to resolve this issue, so I do want
24 to take the time, if you will indulge me.

25 VICE-CHAIR TRUJILLO-DAVIS: I think this is an

1 important point to resolve, because when we had an earlier
2 discussion about data sources, and making those
3 comparisons, and I think this is a very important point.
4 So thank you for looking for that.

5 MS. SOLORIA: I think -- so this -- these are the
6 two paragraphs that I was trying to refer to that my -- my
7 reading is that, and especially in the second paragraph on
8 167, NMOGA is repackaging their argument for why -- why
9 the ruling to exclude the evidence was wrong. And that it
10 wasn't an unfair surprise, that this evidence should have
11 been admitted, and they've explained that in this
12 paragraph on page 167.

13 CHAIRPERSON SUINA: Yes, and they -- I think your
14 follow-up question, Vice-Chair, just for my clarification
15 is, should it be in the report if it was excluded? Is
16 that correct?

17 MS. SOLORIA: Correct. I want to ask the Hearing
18 Officer for clarification here, although I'm not sure she
19 could give it, but I'm going to ask. If this -- I
20 don't -- I don't think this paragraph refers -- because it
21 refers to something in the transcript. I don't think it's
22 referring to stuff that was excluded, to evidence that was
23 excluded.

24 But that prefatory -- that language here at the
25 very beginning of that paragraph, was referring generally

1 to the fact that their incremental -- that their
2 incremental cost analysis had been excluded.

3 HEARING OFFICER ORTH: Right. I think they're
4 also making the point that -- how can I put this? The
5 exclusion covered a lot of information that was already in
6 the record by other means. And I think that's part of the
7 support for their opposition to the ruling, is that there
8 are at least some fraction -- I don't know -- some
9 fraction, large or small, that is already in the record by
10 other means, if I understand them correctly.

11 CHAIRPERSON SUINA: Yes, I think that's what I'm
12 seeing, too.

13 So, I guess to the Vice Chair's question, it
14 doesn't necessarily mean that it shouldn't show up here
15 because it was by other means -- that the specific
16 exhibits, if you will, or slides that we were talking
17 about -- like 10, 11, 29, 52, 56, there was additional
18 information on those slides, or reframing on those slides
19 is my understanding. Reframing of the information that
20 already existed in exhibits.

21 MS. SOLORIA: Correct.

22 CHAIRPERSON SUINA: Is another way to put it.

23 MS. SOLORIA: It's tied to their argument. So
24 it's generally their argument against exclusion was that
25 the stuff that we were offering in surrebuttal was

1 properly based on other evidence that we simply distilled
2 in a different way. And so it wasn't "unfair surprise."
3 And this argument is tied to that, because there is
4 related evidence elsewhere in the record.

5 So, kind of trying to bring us back, I've -- I've
6 demonstrated for you what the exhibits that were excluded,
7 were offered as a proffer, bringing us back to where we
8 are in your process is, you can uphold the Hearing
9 Officer's exclusion. You are within your discretion to do
10 that. You can overturn it and consider this evidence as
11 part of the record.

12 And I did want to kind of dovetail off of what
13 Member Bitzer said about the idea of weighing evidence.
14 That is a necessary consequence, if you decide to admit it
15 to the record. You would treat it like any other
16 evidence, and you could give it the weight that it's due.

17 So I think he framed it that it's sort of a
18 middle option; whereas, I see it as that would be a
19 necessary consequence if you -- if you admit the evidence,
20 then you're going to give it the weight that you see fit,
21 as with the rest of the evidence.

22 CHAIRPERSON SUINA: Thank you, Ms. Soloria, for
23 wading through -- wading through that for us and
24 clarifying, Vice-Chair Trujillo-Davis.

25 VICE-CHAIR TRUJILLO-DAVIS: So if I understand

1 correctly, if we admitted it and it went to appeal -- or
2 if we didn't admit it and it went to appeal, would it be
3 admitted at that point?

4 MS. SOLORIA: My -- my understanding, getting
5 into appellate procedure, would be that the Court would
6 have to make a determination that it was wrongly excluded.
7 And I believe -- and I would have to go look at the cases
8 and the procedure -- but they could remand -- the Court,
9 for the Board to consider evidence that was properly
10 excluded, so that their finding was based on the record.

11 And I may be speaking out of turn. If the
12 Hearing Officer has -- has thoughts on this, because I
13 know this is -- I know this is strictly my role as your
14 counsel, but I -- I have to give you the answer that I'm
15 not sure if the Court would make the determination that it
16 was wrongly excluded, and then admit it there and weigh it
17 as evidence. I -- I don't want to give you an answer that
18 I'm not sure about, unfortunately.

19 MS. SOLORIA: Thank you, Ms. Soloria.

20 HEARING OFFICER ORTH: Ms. Soloria, I would agree
21 with you, that the Court of Appeals, based on the case law
22 that I'm familiar in New Mexico on boards and commissions,
23 and even cabinet secretaries, is that they would be
24 unlikely to weigh the evidence in the first instance.
25 They would look to the Board to do that, and so would

1 probably remand, rather than weigh it themselves directly.

2 MS. SOLORIA: Thank you, Madam Hearing Officer.

3 So, in layman's terms, if they decided that the
4 evidence was wrongly excluded, they'd send it back to you
5 for a do-over to consider it.

6 CHAIRPERSON SUINA: Thank you for that
7 clarification. I think we're all learning together on
8 this process. And I don't know if there's any -- yes,
9 Member Garcia?

10 BOARD MEMBER GARCIA: Yes, I appreciate that.
11 With that information, we definitely do not want to get to
12 that place. So in order to avoid that, I guess I would
13 vote to let the evidence in now and not have it remanded
14 back to us later.

15 CHAIRPERSON SUINA: Thank you, Member Garcia.

16 And Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: I'm inclined to agree
18 with Member Garcia, given all of this additional
19 information we have on it. This is a -- it's an important
20 piece of information, but we have a lot of other evidence
21 that were also, and I would hate to see everything kicked
22 back to us for this one piece. So I'm inclined to agree
23 with Member Garcia.

24 MS. SOLORIA: And I just wanted to clarify, that
25 the Court wouldn't make you redo the whole deliberation,

1 that it would be -- the question on appeal would be
2 whether or not the proffer was correct, or this exclusion
3 was correct or incorrect. And it would remand based on
4 that issue and you'd have to do your fact finding
5 diligence based on admission of that evidence.

6 And the second point of that is that, I cannot
7 speak for the Court of Appeals whether or not they would
8 uphold your decision to exclude, or overturn it. So
9 either could happen.

10 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

11 In that, I just want to make sure that we don't
12 set a precedent as well, to Member Garcia's point early in
13 this discussion as well, because we do have other probably
14 deliberations on other hearings coming up.

15 Would we be setting a precedent by doing this, or
16 can -- maybe, Ms. Soloria, what your thoughts are, or even
17 Hearing Officer Orth, I just wanted to just check in on
18 that; if there's any other collateral considerations we
19 need to make in this -- in this -- in this instance.

20 MS. SOLORIA: Well, I will say that setting a
21 precedent is a loaded phrase, in the sense that I don't
22 think that what you decide, for example, you're going to
23 publish eventually a statement of reasons. I don't think
24 there is anything that binds a particular Board or a
25 particular iteration of a Board to be bound by what

1 another Board's reasoning process.

2 I don't think -- this isn't like we're writing a
3 case decision, and then there's some issues. So that's
4 really up to you-all, as in terms of what you want to
5 establish. I think, ultimately, your decision is limited
6 to the facts of this case, and just as any subsequent
7 rulemaking would be limited to the facts of that
8 rulemaking.

9 So, I guess I would caution against -- I think
10 the term -- using the term "precedent" is somewhat
11 limited.

12 CHAIRPERSON SUINA: Thank you, Ms. Soloria, for
13 that.

14 HEARING OFFICER ORTH: Madam Chair, when you used
15 the word "corollary," I wondered if you were also
16 referring to the fact that the CEP had encouraged you to
17 allow them to present evidence on this question as well,
18 that they would not have had time to prepare for.

19 CHAIRPERSON SUINA: Yeah, exactly, and any other
20 collateral considerations. I see Member Garcia's hand up
21 as well.

22 BOARD MEMBER GARCIA: Well, I was just going to
23 say, going back to my original point is, this is highly
24 unusual for the Board to be asked to overturn a Hearing
25 Officer's ruling on allowing evidence or not. This is

1 highly unusual and so -- so that's why my initial gut
2 reaction was, no, that's not our job, that's her job.

3 But, you know, I -- I guess I -- and I also am
4 persuaded by the notion that it is unfair that the -- and
5 I don't recall if it was just CEP or also the Environment
6 Department. I believe the Environment Department also was
7 opposed to allowing this evidence because they had not had
8 a chance to digest it and rebut it, so it was unfair.

9 So that was my original gut feeling. The only
10 thing that would really compel me to bring it in, would be
11 to, you know, make sure that it wasn't remanded to us back
12 later, this question. So that -- you know, that's where I
13 went in that circle. Thank you.

14 CHAIRPERSON SUINA: Thank you, Member Garcia.

15 Is there any other thoughts from members of the
16 Board? Yes, Vice-Chair Trujillo-Davis.

17 VICE-CHAIR TRUJILLO-DAVIS: I just want to say I
18 completely agree with Member Garcia.

19 CHAIRPERSON SUINA: Thank you. And I keep going
20 back and forth. Really quick, Member Honker, it seems to
21 me some of the information is already in the record, too,
22 so I don't know what more it would, you know, change our
23 decision based upon some additional information. I guess
24 I'm going all over the place.

25 Member Honker?

1 BOARD MEMBER HONKER: Well, I am kind of, too,
2 but I think it would have been -- the appropriate way to
3 deal with this would have been that it was -- it had been
4 presented prior to the hearing. And I mean, we had
5 extensive testimony on cost estimates from several
6 parties, and that was very in depth and lengthy
7 discussions.

8 The kind of late breaking nature of this, I think
9 would have prevented that kind of thorough analysis in the
10 hearing process. Now, parties could have commented on it
11 in post-hearing submittals if it had been allowed, but I
12 do think the most appropriate way to handle it would have
13 been if everybody had a chance to look at it prior to the
14 hearing, and we'd have had an extensive discussion on all
15 of the particulars of it during the hearing process
16 itself.

17 So it's unfortunate it didn't happen in time to
18 do that. So it's just a comment, an observation.

19 CHAIRPERSON SUINA: Thank you, Member Honker.

20 Any other Board members have any comments
21 regarding this item?

22 Yes, Member Bitzer.

23 BOARD MEMBER BITZER: Madam Chair, at this point
24 I would -- I'm -- obviously I'm in favor of admitting this
25 evidence. I don't want it to reflect, however -- my vote

1 to reflect on counsel, our Hearing Officer, who I think
2 was perfectly within probably legally optimal bounds to
3 reject this at her -- at her level.

4 But I have -- I have a lot of experience of
5 getting legal advice, and sometimes legal advice and the
6 optimal path of -- the legally optimal path and the policy
7 and program optical path aren't always the same path.
8 I've learned that lesson the hard way when I had a
9 two-billion-dollar-a-year agency to run in the Johnson
10 Administration, the Human Services Department.

11 And I've learned that lesson over and over again,
12 actually, at federal, state and local government. So I
13 take good counsel for what it is, a key input, but I
14 don't -- I end up -- I don't always end up doing what my
15 attorney's best advice is.

16 But like I said, I don't want it to reflect
17 poorly on the -- on the Hearing Officer. I think she
18 did -- I think she's done an excellent job, including on
19 this point.

20 CHAIRPERSON SUINA: Thank you, Member Bitzer.
21 And I saw Counsel Soloria's hand up.

22 MS. SOLORIA: Yes. And, again, I hate to derail
23 this or throw a wrench in it, but it was mentioned briefly
24 when we were talking about this issue by the Hearing
25 Officer, the Board does have the option -- and this was

1 discussed when the proffer was being worked out in the
2 hearing. The Board does have an option, if during the
3 course of its deliberations, it wants to reopen for the --
4 for the submission -- for taking additional evidence.

5 So this is potentially one of those, an option
6 that you have, is that if you admit -- decide to overrule
7 the exclusion and admit the proffered evidence, if you
8 want to give the other parties an opportunity to respond
9 to that, I know I feel that's incumbent on me to mention
10 that, because I know that was discussed during the
11 hearing, in the context of formulating the proffer.

12 CHAIRPERSON SUINA: Thank you, Ms. Soloria. More
13 worms coming out of the can.

14 MS. SOLORIA: And I can read you that regulation,
15 just so you know -- just so you know.

16 CHAIRPERSON SUINA: Sure. Sure.

17 MS. SOLORIA: If, during the course of its
18 deliberations, the Board determines that additional
19 testimony or documentary evidence is necessary for a
20 proper decision on the proposed regulatory change, the
21 Board may, consistent with the requirements of due
22 process, reopen the hearing for such additional evidence
23 only.

24 So that's -- you're not obligated to do that, but
25 it's -- it was raised in the context of formulating this

1 proffer.

2 CHAIRPERSON SUINA: Thank you.

3 And Vice-Chair Trujillo-Davis.

4 VICE-CHAIR TRUJILLO-DAVIS: Okay. Here's my
5 issue with this: and I think that, Ms. Soloria, I just --
6 I think this is the time to bring this up. So, part of my
7 concern here with the evidence that we -- that's in
8 question is that it's tied to data points that NMED used
9 1996 data.

10 And that wasn't addressed in NMED's response as
11 far as I can tell. It wasn't addressed in there. And, to
12 me, that is significantly old data, when there is other
13 data that's newer and more available, like data from
14 Subpart W, that is submitted annually and has been since
15 2013 or '14, right in there.

16 So I feel like that is a very significant point.
17 And if we were to open the record back up, I think it's
18 valuable for the other parties to weigh in on that point.
19 And that has been one of the sticking points for me, as
20 far as getting the costs and data tied in; not necessarily
21 NMOGA's tables that were held back, but the data sources
22 that were used.

23 CHAIRPERSON SUINA: Thank you, Vice-Chair
24 Trujillo-Davis. And I see Member Honker.

25 BOARD MEMBER HONKER: Yeah, a question for our

1 counselor. If -- if we reopened an issue for further
2 input, does that change our April 25th deadline or does
3 that deadline stand?

4 CHAIRPERSON SUINA: Thank you, Member Honker,
5 that you were reading my mind.

6 Ms. Soloria?

7 MS. SOLORIA: If there's an award for best
8 question of the day.

9 In looking at this, the deadline for your
10 decision speaks in terms of closure of the record or the
11 Hearing Officer's report, whichever is later. And if
12 you're going to admit additional evidence, I think that it
13 would move the timeline, only because that presumably
14 would have been included as an addendum to the Hearing
15 Officer's report.

16 Or if you haven't used a Hearing Officer, you
17 know, you're reopening the record, so it's moving the
18 finish line. So that's -- that is my interpretation upon
19 being asked that question. In full candor, I hadn't
20 considered that until it was posed by Member Honker. But
21 that is -- that is my interpretation, based on the context
22 of the other rules, setting the guardrails for your
23 decision.

24 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

25 But I do want to point out, I mean the goalpost

1 could be moved, but we still could be efficient.

2 Is there a possibility of, you know, if we set
3 our next meeting date for these deliberations in April, to
4 meet that?

5 MS. SOLORIA: I -- I'm only hesitating to answer
6 because I'm not sure what the note -- the notice
7 requirements for having a hearing, how that ties in,
8 because I've never dealt with this potential reopening
9 before. Because, you know, they are strict for the
10 hearing-in-chief that we have the notice deadlines. And
11 I'm not sure if we fall in some sort of gray area, where
12 that timing would have to be met.

13 I would have to -- I can't answer that right now,
14 without going back and analyzing how those potentially
15 interact.

16 CHAIRPERSON SUINA: Okay. Thank you.

17 Member Bitzer.

18 BOARD MEMBER BITZER: It seems to me -- maybe I'm
19 wrong, Counsel, but it seems to me that the parties who
20 have standing are very limited in number, because we have
21 a very narrow scope that we're going to reopen, or we were
22 considering reopening for, and a very limited narrow group
23 of folks.

24 And let's say the notice is 30 days, but if they
25 were -- if they were able to compact that or waive the

1 period requirement, we'd reach out to them maybe and ask
2 if they would be willing to meet our April -- when's our
3 next meeting -- April 22nd, if we were going to reconvene
4 on this at any rate, and carve out some time?

5 CHAIRPERSON SUINA: Yes, Member Bitzer, that was
6 April 11th, 12th and 13th.

7 BOARD MEMBER BITZER: April 11, I'm sorry.

8 So, we're -- oh, heck, we're at 30 days
9 basically right now anyway. So could we ask them to
10 resubmit? Do we have to do this in writing, by mail, and
11 how is that done?

12 HEARING OFFICER ORTH: If I might interject for
13 just a moment? It might be worth it, if you're heading
14 toward a decision to reopen, it might be worth me or
15 Karla -- Ms. Soloria, reaching out to the affected parties
16 and asking them if, in fact, they would submit new
17 evidence. It might be worth touching base with the
18 parties on this before marching further.

19 CHAIRPERSON SUINA: Thank you, Hearing Officer.
20 Member Garcia.

21 BOARD MEMBER GARCIA: I appreciate the Board's
22 interest in considering opening the record, but talk about
23 opening a can of Pandora's, as Governor King used to say.
24 Talk about opening a can of Pandora's. I must say that I
25 appreciate that Vice-Chair Trujillo-Davis is interested in

1 the information.

2 I think we could allow the information. I'm not
3 sure -- I think that we allow the information, we go ahead
4 and make a decision on this section. I forget what even
5 section we're on now, but we'll have to take it up next
6 time because we're at the end here, but that we go ahead
7 and make a decision on that section. I'm not sure that
8 opening up the record and having all new submittals -- and
9 I'm not sure how -- how different we would come out on
10 this, truly, on the final decision about what's before us.

11 So I'm -- I would not vote for opening up the
12 hearing record again. Thank you.

13 CHAIRPERSON SUINA: Thank you, Member Garcia.

14 And before we continue this discussion, do we
15 have any issues if our discussion goes over 6:00?

16 MS. SOLORIA: I know there was issues that our
17 notice said 9 to 6. So I'd like to stick, for the -- for
18 the sake of transparency, as close to closing by 6, where
19 we're at right now.

20 I think perhaps making a decision on whether to
21 reopen -- reopen or not can be our final act for today.
22 And we can take up the vote on the proffer, or we could do
23 that today. I'll leave that to you, Chair. I think we're
24 still within a reasonable -- reasonable approximation to
25 6:00 right now.

1 CHAIRPERSON SUINA: Okay. Thank you,
2 Ms. Soloria.

3 Member Honker, and then we'll go to Member Cates.

4 BOARD MEMBER HONKER: Just a legal vulnerability
5 question, I guess, and for you, Ms. Soloria. So if we
6 were to allow this evidence and not reopen the record for
7 other folks to comment on it, would that, in turn, leave
8 us vulnerable on appeal from parties who felt they were
9 denied the chance to comment on this, because we hadn't
10 reopened the record?

11 MS. SOLORIA: I preface this by saying that
12 you're always vulnerable to appeal, but I don't -- my
13 impression here is that the Court is going to consider
14 what other evidence the parties in contention would have
15 offered, if the record had been reopened.

16 And, you know, it's really a balancing, I think.
17 I think the idea of decisional efficiency here is a valid
18 reason for you to make your decision, because you'd
19 balance that against what -- if you were to reopen the
20 case, what else are the parties going to offer at that
21 point?

22 So, yes, in theory, there's always -- the Court
23 of Appeals can decide that you made the wrong call and you
24 should have opened the evidence. I'm not going to -- my
25 thought is that, that is not a huge, huge possibility, but

1 I can't say that it's not there. But that's what --
2 that's what that Court would consider, that same reason
3 that you're considering now. Like if you were to reopen
4 the evidence, is it worth it, considering what the parties
5 would do with that time?

6 CHAIRPERSON SUINA: Thank you, Ms. Soloria. And
7 then we'll go to Member Cates.

8 BOARD MEMBER CATES: Thank you, Chair Suina. So
9 I hadn't said anything in about an hour and a half, but
10 I've been listening. And what Member Garcia just said was
11 really compelling and powerful. You know, in terms of,
12 you know, reopening the record, taking new evidence,
13 does -- you know, it suggests to me that the can of worms
14 and Pandora's Box and all of that.

15 And, you know, I'll also -- just stepping back
16 and looking at the big picture here, you know, our public
17 wants us -- you know, wants some resolution here. I think
18 that's on both sides, there's urgency around climate
19 change and how to manage it, and environmental issues that
20 are pressing.

21 And then, on the other side, though, the industry
22 always wants, you know, always seeks -- and rightly so --
23 is looking for regulatory certainty, so they want to get
24 things resolved. So, you know, I think there's a common
25 responsibility here to reach some resolution and, you

1 know, along the time that, I believe, we have established.

2 So that's my spiel. Thank you.

3 CHAIRPERSON SUINA: Thank you, Member Cates.

4 Appreciate that.

5 All right. So we have -- we're just over 6:00,
6 and I know we have gone around and around on these
7 questions. What -- after our discussion, I think maybe to
8 summarize, you know, we could make some decisions tonight
9 on -- I also want to voice, Member Garcia, thank you for
10 making your point, and not just a can of worms, but it's
11 Pandora's box by opening the record back up. And that
12 also was very insightful. And I noticed to myself, I even
13 wrote it down.

14 So I'm -- I'm kind of cautious, just to share
15 with you, my position about opening the record back up.
16 But I do see Vice Chair Trujillo-Davis's hand up as well.

17 VICE-CHAIR TRUJILLO-DAVIS: I was going to make a
18 suggestion, but just that we vote on to admit or not, and
19 if we choose to admit, then vote on if we open the record
20 or not. Just a suggestion.

21 CHAIRPERSON SUINA: Thank you, Vice-Chair
22 Trujillo-Davis.

23 And Member Garcia.

24 BOARD MEMBER GARCIA: Yeah, just one more point.

25 We do have about 50 pages of information on this one

1 section, 50 pages of information. That's enough for me.
2 It covers a lot of data and evidence, and we spent a lot
3 of time on this during the hearing, a lot of time on this
4 during the hearing. So I -- yeah, I'm ready to vote on
5 both. And then -- and then, next time we meet, we go into
6 the rule again.

7 CHAIRPERSON SUINA: Thank you so much, Member
8 Garcia, for making that point, and also Vice-Chair
9 Trujillo-Davis, on your points as well.

10 With that, I don't know the pleasure of the
11 Board. If somebody wants to make a motion, if we're done,
12 kind of, discussing. Member Bitzer.

13 BOARD MEMBER BITZER: I move to admit the
14 proffered evidence.

15 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
16 your motion.

17 Do I see a second to Member Bitzer's motion?
18 Ms. Soloria, on that, is that -- is that a full
19 motion? We don't have to address, you know?

20 MS. SOLORIA: That's satisfactory, Chair.

21 CHAIRPERSON SUINA: Okay. Thank you.

22 With that, members of the Board, is there a
23 second?

24 No. Okay. Since there's not a second, I guess
25 that motion will die. Is that correct? Just being very

1 careful and making sure we get everything on record. Is
2 that correct, Ms. Soloria?

3 BOARD MEMBER BITZER: I've move then to not admit
4 the evidence.

5 BOARD MEMBER GARCIA: I second the motion.

6 VICE-CHAIR TRUJILLO-DAVIS: I second that.

7 CHAIRPERSON SUINA: Thank you. We have a motion
8 by Member Bitzer and then a second, I think, by Member
9 Garcia. First, is that correct, Member Garcia?

10 BOARD MEMBER GARCIA: (Nodding head.)

11 CHAIRPERSON SUINA: Thank you. There was a head
12 nod, for the court reporter, on that.

13 So, with that, we have a motion on the floor by
14 Member Bitzer and a second. If there's no further
15 discussion, I would like to look to Ms. Jones and see if
16 we can do a roll-call vote.

17 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
18 you vote?

19 BOARD MEMBER BITZER: I vote no.

20 ADMINISTRATOR JONES: Member Cates?

21 BOARD MEMBER CATES: Point of clarification
22 question here. Did Member Bitzer just make a motion that
23 he voted no on?

24 BOARD MEMBER BITZER: (Nodding head.)

25 BOARD MEMBER CATES: I'll pass for the moment.

1 ADMINISTRATOR JONES: Okay. Member Duval is out.
2 Member Garcia?

3 BOARD MEMBER GARCIA: The motion is to not allow
4 the evidence in, and this would mean to uphold the Hearing
5 Officer's decision, and I vote to not allow the evidence,
6 and uphold the Hearing Officer's decision.

7 ADMINISTRATOR JONES: Member Garcia, for the
8 record, your vote is in the affirmative of the motion,
9 correct? That's a yes?

10 BOARD MEMBER GARCIA: Oh, I'm sorry to confuse
11 the matter. Yes, my vote is a yes.

12 ADMINISTRATOR JONES: Member Bitzer's vote was a
13 no. Member Cates has passed for the moment. Member
14 Garcia is a yes.

15 Member Honker, how do you vote?

16 BOARD MEMBER HONKER: I vote yes.

17 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis,
18 how do you vote?

19 VICE-CHAIR TRUJILLO-DAVIS: I vote no.

20 ADMINISTRATOR JONES: Member Cates, do you want
21 to make a vote?

22 BOARD MEMBER CATES: I vote yes.

23 ADMINISTRATOR JONES: Chair Suina?

24 CHAIRPERSON SUINA: Thank you. I also vote yes.

25 ADMINISTRATOR JONES: Okay. So we have one, two,

1 three -- we have four votes in the affirmative; we have
2 two votes in the negative and one member absent. The
3 motion passes.

4 CHAIRPERSON SUINA: Thank you, Ms. Jones.

5 And so, we do address that.

6 Yes, Member Honker?

7 BOARD MEMBER HONKER: I just want to say, I
8 appreciate Member Bitzer's flexibility to move us along on
9 this. Thank you.

10 CHAIRPERSON SUINA: Thank you, Member Bitzer and
11 Member Honker.

12 And I think right now we're at that point in
13 time. I don't know, if given we just made that decision,
14 what the pleasure of the Board is, to keep moving or to
15 close up?

16 VICE-CHAIR TRUJILLO-DAVIS: I think we have to
17 wrap it up because of the time limits on the notice.

18 CHAIRPERSON SUINA: Okay.

19 MS. SOLORIA: I would agree with that, Madam
20 Chair. And I would state for the record and for those in
21 attendance that the Board has decided to reconvene these
22 deliberations on April 11, beginning at 9 a.m.

23 And I would suggest we notice it that it begins
24 at 9 a.m., and continues through April 13th without any
25 time constraints. I'm not suggesting that we go all

1 night, but so that we avoid potential notice issues with
2 an explicit time constraint.

3 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

4 And I see Member Garcia's hand up.

5 BOARD MEMBER GARCIA: One point. I think what
6 got us in trouble on this notice was that it wasn't -- it
7 didn't have a caveat at the end to -- maybe we should do
8 that this time also?

9 MS. SOLORIA: I've noted it, Member Garcia, and
10 I'll be sure in the posted notice that that language is
11 included.

12 CHAIRPERSON SUINA: Great.

13 And then Vice-Chair Trujillo-Davis.

14 VICE-CHAIR TRUJILLO-DAVIS: I just wanted to
15 thank all of my fellow Board members and our legal counsel
16 here, because I have certainly felt the weight of our
17 decisions here and the conversations that we're having
18 that are very in-depth and are important decisions, but I
19 appreciate the willingness to listen to each other and to
20 discuss things through.

21 So I know we're going to have another three days
22 that are going to be hard days ahead of us, and so thank
23 you for the last two at least.

24 CHAIRPERSON SUINA: Thank you, Vice-Chair.

25 Appreciate that.

1 And before we close-up, I just want one more
2 logistical item regarding our deliberations. Will it be
3 on the same format, WebEx? Or I don't know if the Board
4 wanted to talk about that, or Ms. Jones and Ms. Soloria on
5 that.

6 Yes, Ms. Soloria.

7 MS. SOLORIA: We could notice it that it would be
8 in person or online, with the option of the public to
9 attend in person or online. I think because we're in this
10 gray area, and I know some members were planning on
11 attending virtually, that we can do it that way. So, that
12 is an option, to at least give you the option.

13 I don't know. Pam might have some logistical
14 thoughts on that, as would the Hearing Officer, but I
15 believe that is an option logistically.

16 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

17 Ms. Jones, do you have any other things that we
18 need to think about?

19 ADMINISTRATOR JONES: I can set it as a hybrid
20 meeting, having -- having -- finding a location that's got
21 audiovisual capability that we can broadcast this. I just
22 simply need to know the preference of the Board, so I can
23 get started on that.

24 CHAIRPERSON SUINA: Thank you, Ms. Jones.

25 And so I look back to our Board members. What

1 are your thoughts on this? I just wanted to make sure we
2 clarify it going forward. As we prepare for April 11.

3 BOARD MEMBER BITZER: I vote hybrid.

4 CHAIRPERSON SUINA: Okay. Member Bitzer has a
5 vote for hybrid. I'm looking to other members, what your
6 thoughts are.

7 BOARD MEMBER CATES: Madam Chair, Chair Suina,
8 I'm going to be on the road anyway, so I'll be attending
9 remotely, I believe, so.

10 CHAIRPERSON SUINA: Thank you. Thank you, Member
11 Cates for that reminder. And so, yes, if we do, you know,
12 decide to go in person, we would have to make sure we
13 tried to include Member Cates through a virtual option,
14 for him as well.

15 So, with that, Member Honker, did you have your
16 hand up?

17 BOARD MEMBER HONKER: I'm fine with hybrid.

18 Now, we have a regular monthly meeting, and I
19 think we have a couple of hearings at that, on the 25th, I
20 believe, of this month. I assume we have advertised that
21 one as a virtual, so we'll stay virtual for that one.

22 CHAIRPERSON SUINA: Yes.

23 BOARD MEMBER HONKER: Okay. I'm fine either way,
24 with the continuation of this deliberation.

25 CHAIRPERSON SUINA: Thank you, Member Honker.

1 And just for completeness, Member Garcia, what
2 are your thoughts?

3 BOARD MEMBER GARCIA: I'm fine with a hybrid.

4 CHAIRPERSON SUINA: Thank you. So it looks like
5 we'll be going to hybrid. And, hopefully, seeing us in
6 3D, some of us. I'm excited for that.

7 And I just want to echo Vice-Chair's comments
8 earlier. Thank you all so much. I do feel that these
9 conversations are very important for our deliberations,
10 and I appreciate everybody's willingness to go through and
11 wade through these conversations because we do need to
12 make sure that we document it, and that we have a good
13 statement of reasons and the basis for our decisions as we
14 go forward. Also, for transparency among -- for all our
15 parties and everybody here in New Mexico.

16 So I just want to just kind of share that, my
17 final thoughts here. And, of course, Ms. Soloria and
18 Ms. Orth, I know we've put you on the spot with a number
19 of questions, and I appreciate the due diligence that
20 you've provided to the Board and your work in supporting
21 us through this process.

22 It is indeed an extensive record that we're --
23 we're looking at, and I just want to note that as well.
24 And also, that we're trying to be as complete as possible
25 with all considerations.

1 So, with that, if there's no other comments, I
2 just want to wish everybody a good weekend. And I'm a
3 basketball fan, so, yeah, March Madness.

4 VICE-CHAIR TRUJILLO-DAVIS: I think you meant, go
5 Aggies.

6 CHAIRPERSON SUINA: Oh, man. Yes, yes, a number
7 of -- I'm a big basketball -- high school basketball fan,
8 so it's been a big sacrifice this week to be sitting here
9 while I know games are going on in the Pit. But I welcome
10 the challenge. And I appreciate going through this with
11 everybody on the Board. Thank you so much.

12 BOARD MEMBER HONKER: Thanks, everybody.

13 (Deliberations adjourned on March 11, 2022, at
14 6:20 p.m.)

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STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 23-27 (R) 20-51(R)

In the Matter of:

PROPOSED NEW REGULATION
20.2.50 NMAC - Oil and Gas Sector
Ozone Precursor Pollutants

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on March 11, 2022, the Deliberations Hearing
of the New Mexico Environmental Improvement Board, was
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by the
rules) any of the parties or attorneys in this matter, and
that I have no interest whatsoever in the final
disposition of this matter.



THERESA E. DUBOIS, RPR
New Mexico CCR #29
License Expires: 12/31/2022

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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 11th day of April, 2022,
this matter came on for Deliberations and Decision on the
virtual WebEx platform, before PHOEBE SUINA, Chairperson
for the Environmental Improvement Board, commencing at the
hour of 9:29 a.m.

REPORTED BY:

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A P P E A R A N C E S

For the Environmental Improvement Board:

- PHOEBE SUINA, Chairperson
- AMANDA TRUJILLO-DAVIS, Vice-Chairperson
- BARRY BITZER, Board Member
- KARL CATES, Board Member
- BENJAMIN DUVAL, Board Member
- KAREN GARCIA, Board Member
- WILLIAM HONKER, Board Member

Hearing Officer:

- FELICIA ORTH, ESQ.

Counsel For the EIB:

- KARLA SOLARIA, Commission Counsel
Office of the Attorney General
- PAMELA JONES, Commission Administrator
- MADAI CORRAL, Commission Administrator

REPORTER'S CERTIFICATE

224

1 MS. SOLORIA: Madam Chair, I think everybody is
2 caffeinated and seated and ready to begin the meeting.

3 CHAIRPERSON SUINA: Wonderful. Wonderful. Well,
4 just want to thank our guests online as well, for being
5 patient with us this morning, trying -- trying this hybrid
6 approach. And thankful for the flexibility and the
7 ability for us to finally meet in person. So, good
8 morning, everybody.

9 And it looks like everybody's ready to roll. And
10 so, with that, Ms. Soloria, do we need to do a roll call
11 just to document who's all here, or what would you
12 recommend?

13 MS. SOLORIA: Yes, Madam Chair. If you could
14 just open and ensure the quorum and have that roll call,
15 that's great.

16 CHAIRPERSON SUINA: With that, Ms. Jones, would
17 you mind doing a roll call on our presence this morning?

18 ADMINISTRATOR JONES: Of course. Good morning.
19 Member Bitzer, are you present?

20 BOARD MEMBER BITZER: Present.

21 ADMINISTRATOR JONES: Member Cates?

22 BOARD MEMBER CATES: Here.

23 ADMINISTRATOR JONES: Member Duval?
24 Member Garcia?

25 BOARD MEMBER GARCIA: Here.

1 HEARING OFFICER ORTH: Member Honker?

2 HEARING OFFICER HONKER: I'm here; I'm kind of
3 off camera, even though I'm here.

4 ADMINISTRATOR JONES: All right. Vice-Chair
5 Trujillo-Davis? She joined us. And Chair Suina?

6 CHAIRPERSON SUINA: Here.

7 ADMINISTRATOR JONES: Madam Chair, you have a
8 quorum.

9 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.
10 Member Garcia or Vice-Chair Trujillo-Davis, can you do a
11 sound check for our court reporter again?

12 BOARD MEMBER GARCIA: Yes, I'll start. Can you
13 hear me okay?

14 VICE-CHAIR TRUJILLO-DAVIS: How about me?

15 COURT REPORTER: Barely.

16 CHAIRPERSON SUINA: You will have to talk a
17 little loud, Vice-Chair Trujillo-Davis.

18 We'll continue to work on the audio. Thank you,
19 Vice-Chair Trujillo-Davis. With that, good morning again.
20 And we're on our third day of deliberations. It's April
21 11th and we're excited to continue to move through our
22 rulemaking process.

23 Ms. Soloria or Ms. Orth, I know we had talked
24 about putting up the -- where we are on the screen. With
25 that said, I know we just want to ground ourselves, make

1 sure we're all on the same page, literally and
2 figuratively. And let us know where we are on our
3 rulemaking process, what section. And if you could put
4 that up on the screen?

5 Ms. Soloria, I know we had talked about this over
6 email, what section we are on.

7 HEARING OFFICER ORTH: We're on 116. Do you want
8 me to orient them?

9 CHAIRPERSON SUINA: Sure.

10 HEARING OFFICER ORTH: Okay. Madam Chair, can
11 you hear me?

12 CHAIRPERSON SUINA: Yes.

13 HEARING OFFICER ORTH: Okay. Good morning. I
14 wanted to just reorient the Board to your place in the
15 deliberations. When we broke on March 11th, you were in
16 Section 116. That's 20.2.50.116, which is "Equipment
17 Leaks and Fugitive Emissions." In your hard copy of the
18 attachment to the Hearing Officer report, it begins on
19 page 153. It continues for 50 pages, and I believe it's
20 the longest of the sections -- you know, the single
21 sections -- the single longest section in Board
22 deliberations.

23 Before you ended on the day -- for the day on
24 March 11th, you had adopted sections A, B, and A and B are
25 on page 155. And you had adopted C (1), which is on page

1 156, including its subparts. You had decided to table for
2 later C (2), which is on page 157, until after your
3 discussion of the proximity LDAR proposal; LDAR being
4 detection and repair. And when you moved to C (3) (a),
5 you voted to reject NMOGA's proposed modification there
6 because it was proposed after the -- after the hearing.

7 Now, when we arrived at C (3) sections (b) and
8 (c), and now, again, we are on page 158 and following. We
9 found NMED's proposal and NMOGA's proposed changes. NMED
10 was joined in its opposition to NMOGA's changes by CEP,
11 that's the Community of Environmental Parties, and all of
12 those arguments are found between pages 167 and 174.

13 There is additional supporting argument and
14 material that is cited there by CEP set out in the
15 post-hearing submissions. Before you were able to get to
16 a decision, though, on 3 (b) and (c), you took up the
17 question of whether to support or reverse an evidentiary
18 ruling I had made to exclude certain documents offered by
19 NMOGA, that I found were improper surrebuttal;
20 specifically, pages 10, 11, 29 and 56 of Mr. Smitherman's
21 Exhibit 58 PowerPoint, and two spreadsheets noted as
22 Exhibits 59-P and 60-P. And you upheld the exclusion.
23 And that was all we had by way of time on March 11th.

24 So we need to return in the hard copy to pages
25 158 to 174. I wanted to clarify this was Member Honker's

1 question at one point, of whether the information received
2 from NMOGA, for example, on pages 164, 65 and 66, include
3 the proffered evidence that was excluded. It does not.
4 This is the evidence that was properly in the record. And
5 their proffer was separately submitted.

6 So you see NMED's proposal, with its explanation,
7 NMOGA's proposal with its explanation, and CEP's
8 opposition to NMOGA, with its explanation. Just a few
9 notes: ED's cost-effective analysis for the entire
10 section are actually set out back on pages 201 and 202, so
11 you won't want to neglect that.

12 And it's -- you know, there's some -- what is it,
13 corporate motivational speakers, who talk about the best
14 way to organize your day is if you have to eat a frog, eat
15 it first thing. Well, this is probably the froggiest
16 section that you have to deliberate on, and we're hitting
17 it when you've just been caffeinated. So I'll -- unless
18 you have a question, I'll just try to keep up by scrolling
19 through the pages that you're discussing.

20 CHAIRPERSON SUINA: Thank you, Madam Hearing
21 Officer, for that summary. It's much appreciated. So I
22 was busy unpacking again over here. I hadn't unpacked
23 everything. So if you would, though, for our guests, you
24 know, like you said, put that on the screen so we know
25 what sections we're on and what we're talking about. That

1 would be so helpful.

2 HEARING OFFICER ORTH: I'm sorry. I'm showing it
3 on our screen here in the room, without showing it to
4 everyone else. Okay. Here we go. There it is.

5 CHAIRPERSON SUINA: Wonderful. Thank you. Thank
6 you so much. All right. Members of the Board, so here we
7 are, as the Hearing Officer put it at one of our most
8 in-depth discussions that we need to take up. I
9 apologize, I was going in and out here.

10 So we're at 20.2.50.116. And with that, do you
11 all want to start off our discussions on this and where we
12 want to go for today? Please just jump in. I know you
13 all are in the room. In your discussions.

14 BOARD MEMBER GARCIA: If I might ask?

15 CHAIRPERSON SUINA: Yes, Member Garcia.

16 BOARD MEMBER GARCIA: Just for clarification: so
17 just to reiterate what our Hearing Officer pointed out, to
18 make sure I'm correct here, that we are in Section 116 and
19 we already made a decision on A, B and C (1), C (2)
20 tables. So what we're going to look at now is C (3) (b);
21 is that correct?

22 CHAIRPERSON SUINA: That is my understanding.

23 BOARD MEMBER GARCIA: Okay. Great. Just wanted
24 to make sure. Okay.

25 HEARING OFFICER ORTH: And you might also include

1 in (b), the (c) and (d) as well, because the parties
2 talked about (b), (c) and (d) together.

3 BOARD MEMBER GARCIA: Yes, thank you.

4 CHAIRPERSON SUINA: Thank you so much for that
5 summary. So, yes, if we can go to those sections, that
6 would be great. All right. Members of the Board, do you
7 want to just jump in and start our discussions today on
8 any one point? Please feel free to jump in. Go ahead.
9 So we are at C (3) (b), I believe.

10 Yes, Member Garcia.

11 BOARD MEMBER GARCIA: We're discussing (b); is
12 that right?

13 HEARING OFFICER ORTH: We're going to start with
14 (b). And you will see that (d) is coming also; (b), (c),
15 (d).

16 CHAIRPERSON SUINA: Great. Wonderful. Anyone
17 want to start our discussion?

18 BOARD MEMBER HONKER: Well, I'll jump in.

19 CHAIRPERSON SUINA: Yes, Member Honker.

20 BOARD MEMBER HONKER: So I'm looking at the
21 differences between NMED's final version and NMOGA's
22 proposal. And one of the big -- one of the big threshold
23 differences is 2 tons versus 10 tons per year. In
24 reviewing this stuff, I couldn't easily find how many
25 facilities or units that that difference represented. I

1 was just curious as to whether anybody else had seen that.
2 I know that would have been a question better for NMED or
3 NMOGA during the course of the hearing, but I was just
4 curious as to in our wealth of materials that we have
5 available, I wasn't able to find that quickly, so...

6 VICE-CHAIR TRUJILLO-DAVIS: I believe that
7 question was asked, about how many facilities fall in that
8 range. And if I remember correctly, I think it's
9 Mr. Ryan -- I want to say his name was Ryan Davis -- was
10 the one that gave those numbers in his testimony. You
11 might want to look back and see it.

12 CHAIRPERSON SUINA: Thank you, Member Honker and
13 Vice-Chair Trujillo-Davis.

14 Yes, Member Garcia.

15 BOARD MEMBER GARCIA: So, in talking about the
16 potential to emit, and Vice-Chair Trujillo-Davis, when
17 we're talking about small emitters, is there any quite too
18 small facilities? Because I remember Mr. Davis talking
19 about how many and I do have it in my notes somewhere, and
20 it was quite a high number. It will take me a second to
21 find it, but it just seemed like it was, like,
22 thousands --

23 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

24 BOARD MEMBER GARCIA: -- of facilities. If
25 that's what you mean, the same thing, is that they're

1 stripper wells. It was the number of stripper wells, I
2 believe.

3 VICE-CHAIR TRUJILLO-DAVIS: Stripper wells or
4 marginal wells.

5 BOARD MEMBER GARCIA: And I did write down the
6 number and it was -- it was quite high. It seemed like it
7 was more than 40 percent of the entire.

8 CHAIRPERSON SUINA: And Vice-Chair
9 Trujillo-Davis, can you reiterate who was -- who did you
10 recall the witness was?

11 VICE-CHAIR TRUJILLO-DAVIS: I believe the witness
12 was Mr. Ryan Davis; I believe he was from Merrion Energy
13 and he was -- I think he was a witness for Independent
14 Petroleum Association. And he was giving testimony on
15 marginal wells or stripper wells, more focusing on small
16 oil and gas -- small businesses.

17 CHAIRPERSON SUINA: Thank you.

18 BOARD MEMBER GARCIA: And if I may? I did find
19 in my notes that Mr. Davis said 60 to 65 percent of wells
20 are stripper wells in the San Juan Basin; 60 to 65 percent
21 are stripper wells in the San Juan Basin, is what I have
22 in my notes. So that's quite a lot. So, one of the
23 things because of -- Member Honker and I agree that was an
24 important point that you made, that since the matter was
25 the potential to emit, and one of the things I noted in

1 the CEP information in the Hearing Officer's report was
2 that they were pointing out that there is not necessarily
3 a correlation between potential to emit -- the amount of
4 potential to emit, and the potential for having leaks;
5 that even small facilities can be -- what did they use --
6 I think the term is "super emitter" or something like
7 that.

8 So that was one point and I don't -- I don't know
9 exactly where I read that in here, but I do remember
10 reading that.

11 CHAIRPERSON SUINA: Thank you, Member Garcia.

12 Anybody else have any other items that we want to
13 consider as part of this?

14 VICE-CHAIR TRUJILLO-DAVIS: I'd just like to
15 clarify what our issues are we're really looking at on
16 this particular topic. I apologize; I'm just getting into
17 the rhythm of our discussions here, but I think Member
18 Honker, you were asking a question about how many of these
19 facilities fall in this 2-ton range.

20 I'm sitting next to her, and you should see her
21 notes. It's like she has an entire notebook here; I'm
22 impressed. But she has that answer for us. So does that
23 help us answer this particular question here? And I
24 believe we're talking about inspections, right, the number
25 of inspections per year?

1 BOARD MEMBER HONKER: Pretty much, yeah.

2 VICE-CHAIR TRUJILLO-DAVIS: So maybe we should
3 look to the Board to see how this fits into rule with that
4 the information.

5 CHAIRPERSON SUINA: Thank you. Yes, Member
6 Garcia.

7 BOARD MEMBER GARCIA: Yes, I think that's spot
8 on, Vice-Chair Trujillo-Davis. And it appears that -- so
9 NMOGA is wanting to reduce the frequency and increase the
10 threshold from 2 tons per year to 25 tons per year, et
11 cetera. So they want to inspect less frequency -- less
12 frequently and also not have to inspect at that frequency
13 for some of the facilities that are -- that are less than
14 25 tons per year.

15 So as I read through the information both from
16 NMOGA and the various environmental parties, CEP, it
17 looked as though it got into a big discussion about, as I
18 mentioned, you know, how the potential to emit relates to
19 whether or not more frequently checking for leaks is going
20 to reduce emissions.

21 And then, there was a battle of studies. And
22 NMOGA referenced certain studies, where they said that the
23 estimates of emissions that would be reduced was too high
24 that NMED had, the environmental groups -- CEP had said
25 that the estimates for reducing emissions that NMED had

1 was too low. So they all kind of talked about various
2 studies that they relied on.

3 One of the things I do remember from the
4 testimony is the testimony from Dr. Lyon, who talked about
5 the studies that were happening at the time of the
6 hearing; in fact, I think there were sites happening at
7 the time he was speaking. He was doing some -- or his
8 group was doing some surveys over the Permian Basin and
9 they were finding a great deal of emissions coming from
10 the Permian Basin.

11 And so, as I said, it was -- it was competing
12 studies: one side said that their studies weren't good
13 and the other side said, yes, our studies are great, and
14 this is what they say. So it's a matter of, I guess for
15 us, is to decide which studies we think are more
16 compelling. I guess I was very compelled by Dr. Lyon's
17 testimony about what they were seeing on the ground in the
18 Permian Basin. And also that the, kind of, how large or
19 small the facility was, in terms of potential to emit;
20 they did not necessarily find a correlation with leaks
21 that were found.

22 So, the other item is the frequency; which I
23 think Mr. Smitherman suggested that you have diminishing
24 returns, with a higher frequency, you're not going to
25 find, you know -- your first inspections, you'll find a

1 lot and then you have diminishing returns as you increase
2 the frequency. That was refuted.

3 And one thing that Dr. Lyon's pointed out is that
4 leaks are intermittent, so you could -- if you reduced the
5 frequency, you could still miss leaks because leaks are
6 intermittent.

7 VICE-CHAIR TRUJILLO-DAVIS: It's confusing.

8 BOARD MEMBER GARCIA: Well, no, no, that's okay.
9 I guess what it meant to me -- and for those of you that
10 didn't hear, Vice-Chair Trujillo-Davis said it was
11 confusing to say leaks are intermittent and how that
12 related to all of this.

13 And I guess the way it struck me -- and I could
14 be misinterpreting -- but the way it struck me was, you
15 could do more frequent inspections and still miss leaks
16 because they're intermittent. You might catch it in one
17 inspection, you do another one in three months, and then
18 you catch it because it's intermittent; but if you don't
19 do it until six months, that leak could be happening, it
20 could be continuing.

21 So that was kind of interesting. I didn't think
22 about that before that leaks were intermittent, that they
23 find that, you know, malfunctioning equipment is
24 intermittent. And so, I guess it rang true to me that
25 with increased frequency, you would probably be able to

1 reduce emissions from these leaks. Now, of course, that's
2 going to cost the industry more money, and so there were
3 competing estimates about the cost, depending on whether
4 you're looking at the cost represented by Mr. Smitherman
5 or the cost represented by ERG, with the Environment
6 Department, or what estimates you're looking at, you know,
7 it's another one of those things where, well, the truth
8 may lie somewhere in the middle is the way I always look
9 at it.

10 So, I guess if we're talking about overall
11 reducing precursors for ozone, the leaks stand out as a
12 huge part of that. And increasing frequency seems like a
13 good idea to me. That's all.

14 CHAIRPERSON SUINA: Thank you, Member Garcia.

15 Yes, Member Honker.

16 BOARD MEMBER HONKER: Yes, just to follow on
17 there; just looking at the comparison of NMED's proposed
18 final version and the NMOGA proposal, the jump from less
19 than 2 tons per year to less than 10 tons per year, for
20 annual inspections seems like a big jump.

21 I mean, if you look at that, let's say you have a
22 7-ton-per-year PTE facility, that would be a quarterly
23 inspection under NMED's proposal and an annual under
24 NMOGA's. So, that's a big difference. And, apparently,
25 we're talking about a lot of -- a lot of facilities that

1 would be in this universe between the 2 tons per year and
2 10 tons per year.

3 I also look at this, it's the operator that does
4 and submits the PTE calculation; so, I would assume that's
5 going to be as favorable to the operator as they can make
6 it. And then the operator chooses when to -- when to
7 inspect within the -- within the confines of having to get
8 a contractor out there -- and I realize that's not totally
9 the operator's decision -- but it does seem like the
10 operators of the facilities will have some choices here in
11 terms of how this is implemented.

12 So, I think I'm in agreement with Member Garcia,
13 that I'm more comfortable with the NMED's proposed
14 frequency than NMOGA's current proposal.

15 CHAIRPERSON SUINA: Yes, Vice-Chair
16 Trujillo-Davis.

17 VICE-CHAIR TRUJILLO-DAVIS: Yes, I'd just like to
18 follow that up with saying that when an operator is
19 determining their PTE, they want to determine it based on
20 what they think the facility will make, and then to not
21 make -- to not, like, lowball it, because of the
22 possibility that they'd break that threshold -- right --
23 they don't want to do that because then that causes
24 additional compliance. But they want to hit it so it
25 doesn't look too high, where it puts you into the next

1 compliance bracket.

2 And so, I think that helps explain the distance
3 between the 2 and 10 and 25, as far as, like, the numbers
4 we're looking at. So that just provides some clarity in
5 determining how they would logically determine there,
6 where they want to fall with their PTE, if that helps.

7 CHAIRPERSON SUINA: Thank you, Vice-Chair.

8 Yes, Member Bitzer.

9 BOARD MEMBER BITZER: Are we stuck picking 2 or
10 10, or could we split the baby, perhaps, and go with 4?

11 MS. SOLORIA: You would have to cite --

12 BOARD MEMBER BITZER: Say that again.

13 MS. SOLORIA: You would have to cite to specific
14 data.

15 BOARD MEMBER BITZER: To cite some specific data,
16 so I'm not going to touch that bit. So we're going to go
17 with 2 or 10, because there was no -- there was no -- as I
18 recall, there was no intermediate level, secondary
19 proposal supported by any evidence.

20 CHAIRPERSON SUINA: And I think -- yes,
21 Vice-Chair Trujillo-Davis.

22 VICE-CHAIR TRUJILLO-DAVIS: I think part of the
23 other issue that I remember on this was the impact on
24 small operators because they were -- mostly small
25 operators operate the marginal and stripper wells, and

1 that's kind of impacting the small business. That was the
2 other point that they discussed on this topic.

3 CHAIRPERSON SUINA: Thank you, Vice-Chair
4 Trujillo-Davis.

5 And I think, initially, on this one if I may, on
6 this section, the environmental groups had a little bit --
7 a different proposal starting out during the hearing, but
8 it looks like -- and correct me if I'm wrong, Madam
9 Hearing Officer, they then supported NMED's proposal; is
10 that correct?

11 HEARING OFFICER ORTH: That's correct. And they
12 opposed NMOGA, and that's the discussion you see set
13 out -- let's see -- between pages 167 and 174.

14 CHAIRPERSON SUINA: Yes.

15 So, I think Member Bitzer, to your point, there
16 was already a range, and then the environmental groups
17 then moved to compromise and support NMED's position.

18 Yes, Member Garcia.

19 BOARD MEMBER GARCIA: Yes, I did find the
20 statement that -- I think it was Dr. Lyon who said that
21 most wells can be significant emitters, must be inspected,
22 at least the air quality, as proposed by NMED. The
23 scientific studies, including one conducted in New Mexico
24 Permian in 2018, show a weak relationship between well
25 transmissions and production. That's what I had

1 remembered reading, and I did find it.

2 You know, I might add one of the things that I
3 thought about in this discussion, kind of looking a little
4 more big picture, is, you know, the whole purpose of this
5 rule -- or one of the main purposes of this rule, which
6 was set out by the legislature and the statute is to, you
7 know, prevent a lot of these areas in the Permian and the
8 San Juan from becoming nonattainment areas. And we're
9 close. We're close in many of these areas. We're close
10 to becoming nonattainment.

11 If we do become nonattainment, it's going to be
12 bad for everybody: the industry, everybody. The industry
13 is going to be hurt by that. So I would think anything
14 the industry can do to reduce emissions is going to help
15 them in the long run. It may be painful financially, a
16 bit, but in the long run, we've got to reduce these
17 emissions in these areas where we're 95 percent of the
18 NAAQS and even more, 98 percent in some cases. So, the
19 overall goal is to reduce emissions, and it means upping
20 the game. And I think that's going to be good for
21 everybody in the industry. Thank you.

22 CHAIRPERSON SUINA: Thank you, Member Garcia.

23 Is there any other comments regarding this
24 section?

25 And I appreciate the conversation over the

1 weekend. Yesterday, I was able to go back and regroup
2 myself and relook at everything. And in this particular
3 section, as I shared with -- in response to Member
4 Bitzer's comments, or are in alignment with his comments,
5 is that, there has been, you know, a lot of studies. I
6 tried to go back and look at the financial models that
7 were presented during the hearing. I know we had a great
8 deal of questioning -- questions and answers of all of our
9 experts that were on during the hearing.

10 And to Vice-Chair Trujillo-Davis's point, about
11 the impact to smaller operators and small business, trying
12 to relook at everything. And one thing that was very
13 difficult to look at was apples to apples, on any of the
14 assessments. And I think each -- each study had its own
15 way of looking at things, its own base assumptions.

16 I think that again, we had a great deal of
17 discussions, Q and A on them as well. And so, as I looked
18 back through that over the last few days, you know,
19 looking at the base assumptions in any model, really, is
20 important because then, you know, the outcomes are
21 different. But all in all, I think there was a great deal
22 of information and analysis that was provided by all
23 parties.

24 And I did want to note, you know, in Dr. Lyon's
25 and some of the other environmental groups' experts, you

1 know, there was a spectrum of analysis where we see, you
2 know, the very high or very low on those analyses, whether
3 we're talking dollar figures or whether we're talking
4 potential emissions and impact, but all in all, I found it
5 really important.

6 And the end, as I said earlier, some of the
7 environmental groups ended up coming -- you know,
8 compromising in the end to look at supporting NMED's
9 proposal as, you know, they were on the spectrum even with
10 NMED's analysis.

11 I know NMED didn't -- their experts had done
12 their own analysis and kind of was in the middle, and then
13 depending on what we were talking about, high or low in
14 favor of the industry or in favor of the environmental
15 groups -- but I did note that in my review of this
16 section. So I just wanted to share that.

17 So, I mean with that said, to Member Honker's and
18 Member Garcia's points, I see that in a way, NMED's
19 proposal was a compromise -- the last proposal, what we
20 see today.

21 BOARD MEMBER BITZER: Real quick, to Member
22 Garcia's point of finding the -- Mr. McNally's testimony,
23 where he said the additional controls on oil and gas VOC
24 emissions are not an effective means of controlling the
25 ambient ozone levels, except for possibly a very limited

1 area in northeastern San Juan County.

2 To her point, even if that's the only place where
3 we hit nonattainment, once the state is in nonattainment
4 we have bit off a whole new set of challenges there. I'm
5 familiar with the EPA's regulations for Albuquerque and
6 Bernalillo County, the zone AQAD, because it was a
7 nonattainment. And so, that's a forever thing. You don't
8 ever get out from under that.

9 Anyway, so I would -- I would say even if it's
10 only one little sliver of one part of New Mexico, it all
11 pays to get the camel's nose in the tent.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer.

13 BOARD MEMBER BITZER: Some imagery, there.
14 Sorry. We need to get that one on the record, about the
15 EPA and the camel.

16 CHAIRPERSON SUINA: Thank you, Member Bitzer.

17 And Madam Court Reporter, I was just noting
18 that -- is the discussion okay? Can you hear everything?

19 COURT REPORTER: (Thumbs up.)

20 CHAIRPERSON SUINA: Okay. Good.

21 Yes. With that, I don't know if anybody has any
22 other questions or comments on this section. Just want to
23 check in with Member Cates as well. Do you have any
24 comments?

25 BOARD MEMBER CATES: Chair Suina, I'm sorry. No

1 comments, but I am listening along here. Thank you.

2 CHAIRPERSON SUINA: Thank you, Member Cates.

3 Okay.

4 So with this section here, C (3) (b), I'm just
5 making sure I'm keeping myself straight here. And so do
6 we have any more -- yes -- comments on this? Yes, Member
7 Honker.

8 BOARD MEMBER HONKER: Well, I would be willing to
9 make a motion that we adopt NMED's proposed Sections 116 C
10 (3) (b) and (c) for the reasons outlined by NMED and
11 supported by CEP.

12 CHAIRPERSON SUINA: Thank you, Member Honker, for
13 your motion.

14 BOARD MEMBER BITZER: I'll second that.

15 CHAIRPERSON SUINA: Thank you, Member Bitzer.

16 And I know we're getting back in the groove here.

17 Ms. Soloria, is that motion comprehensive enough?

18 MS. SOLORIA: It is. I did want to clarify the
19 letters you cited, Member Honker, it was (b) (c) and (d).

20 BOARD MEMBER HONKER: No, (b) and (c). I don't
21 think we have come to (d) yet.

22 MS. SOLORIA: Oh, just (b) and (c). I just
23 wanted to verify. Thank you.

24 BOARD MEMBER HONKER: (d) is the AVO
25 inspection -- (inaudible.)

1 MS. SOLORIA: (Inaudible.) Thank you.

2 CHAIRPERSON SUINA: Yes, Madam Court Reporter?

3 COURT REPORTER: Ms. Soloria and Member Honker
4 were speaking over one another, so I did not hear
5 Ms. Soloria.

6 MS. SOLORIA: I think the last thing I stated was
7 that was a well-stated motion by Mr. Honker.

8 CHAIRPERSON SUINA: Thank you.

9 So, with that? Yes, Member Garcia.

10 BOARD MEMBER GARCIA: Well, I was just looking at
11 (d), and it looks like everybody is in agreement on (d)
12 unless I'm reading this wrong.

13 HEARING OFFICER ORTH: Member Garcia, Madam
14 Chair, may I speak to that?

15 CHAIRPERSON SUINA: Yeah, Madam Hearing Officer.

16 HEARING OFFICER ORTH: So section 116 C (3)
17 (d)-as-in-dog, which you see way back on page 174 on the
18 hard copy is effectively part of the larger discussion of,
19 you know, the frequency of inspections. Unlike (b), which
20 is the well sites and standalone tank batteries and (c),
21 which was gathering and boosting stations and natural gas
22 processing plants, (d) is LDAR for transmission compressor
23 stations. And in (d), the Department adopted in December
24 as its final proposal, a joint proposal that had been
25 crafted last September by Kinder Morgan and CEP.

1 NMOGA opposed it -- and this goes to your
2 question, Member Garcia -- NMOGA opposed it, but I didn't
3 see that they offered their own language for it. I think
4 they probably would prefer to go back to NMED's original
5 language from last summer. But their discussion -- and
6 this is what was tricky -- the discussion of their
7 opposition to (d) was lumped together with the discussion
8 of their opposition to (b) and (c).

9 BOARD MEMBER BITZER: Do you want to amend your
10 motion, perhaps, to include section (d)? Or do you want
11 to do (d) separate?

12 BOARD MEMBER HONKER: I excluded (d) because I
13 thought there might be further discussion on (d). So it
14 seems to be a little different because it's a little
15 different approach. So I'll still stick with my original
16 motion.

17 CHAIRPERSON SUINA: Thank you, Member Honker and
18 Member Bitzer, for your second on that.

19 BOARD MEMBER BITZER: Indeed. Go ahead.

20 CHAIRPERSON SUINA: Great. Great.

21 Yes, Member Garcia.

22 BOARD MEMBER GARCIA: Well, just to understand
23 where we are, we did a motion, it was seconded. Do we
24 need to do a roll-call on that?

25 CHAIRPERSON SUINA: Yes.

1 BOARD MEMBER GARCIA: Okay. Just wanted to check
2 and see.

3 CHAIRPERSON SUINA: Yeah, Member Garcia, I just
4 wanted to make sure on that motion, though, to your point,
5 if there's any other discussion or comments regarding
6 Member Honker's motion. So I appreciate you bringing that
7 up.

8 And if there's no other discussion, Ms. Jones,
9 would you mind doing a roll-call vote on Member Honker's
10 motion? Yeah, go ahead.

11 ADMINISTRATOR JONES: Okay. Member Bitzer, how do
12 you vote?

13 BOARD MEMBER BITZER: I vote yes.

14 ADMINISTRATOR JONES: Member Cates?

15 BOARD MEMBER CATES: Yes.

16 ADMINISTRATOR JONES: Member Garcia?

17 BOARD MEMBER GARCIA: Yes.

18 ADMINISTRATOR JONES: Member Honker?

19 BOARD MEMBER HONKER: Yes.

20 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes.

22 ADMINISTRATOR JONES: Chair Suina?

23 CHAIRPERSON SUINA: Yes.

24 ADMINISTRATOR JONES: Madam Chair, the motion
25 passes.

1 CHAIRPERSON SUINA: Thank you, Ms. Jones.

2 Appreciate that.

3 And so, that takes us to C (3) (d)-as-in-dog.

4 BOARD MEMBER BITZER: Page 174, if I recall,
5 correct?

6 HEARING OFFICER ORTH: Yes.

7 CHAIRPERSON SUINA: I think we can now get into
8 the added discussion that Madam Hearing Officer referred
9 to a few minutes ago. And thank you again, Madam Hearing
10 Officer, for that summary. So just to clarify, from what
11 I have been reading and understand is, we only have NMED's
12 proposal, right, on this? And no other language proposed
13 by any other entity; is that correct?

14 HEARING OFFICER ORTH: That's right.

15 CHAIRPERSON SUINA: Yes, Member Garcia.

16 BOARD MEMBER GARCIA: Well, I do see on page 178
17 of the Hearing Officer's report, where NMOGA opposes the
18 joint proposal. They say the Board should find a similar
19 two-year phase-in for inactive well sites -- let's see.

20 Okay. It does include transmission compressor
21 stations. So it looks like they're saying there should be
22 a two-year phase-in for transmission compressor stations.
23 And I'm reading the first paragraph there under "NMOGA
24 opposes the joint proposal." It's the last sentence of
25 the first paragraph of that. So I'm not sure if that's

1 what their proposal is here.

2 HEARING OFFICER ORTH: So I didn't see -- I
3 mentioned they opposed it. They kind of went with the
4 crux of their discussion of, you know, their opposition to
5 (b) and (c), but I didn't see separate language proposed.

6 BOARD MEMBER GARCIA: Got you. Okay.

7 HEARING OFFICER ORTH: That's what I was trying
8 to say.

9 BOARD MEMBER GARCIA: Right. Okay. Got you.
10 They didn't propose language, they just argued.

11 BOARD MEMBER BITZER: Absent that, all we can
12 really do is adopt in toto or reject in toto since we
13 didn't get handed a...

14 CHAIRPERSON SUINA: Vice-Chair.

15 VICE-CHAIR TRUJILLO-DAVIS: Wouldn't it be in the
16 record, though, the previous proposal if -- just so I
17 understand the method of the hearing. If NMOGA wants or
18 if they're asking for the previous NMED language, and it's
19 already stated in the record, so that if we were to adopt
20 that it would be part of -- would it be acceptable?

21 HEARING OFFICER ORTH: Vice-Chair Trujillo-Davis,
22 I would have to double-check that; in fact, that's what
23 they wanted, because I can't place it in here right now,
24 but there isn't anything referring to any of the original
25 draft by NMED.

1 VICE-CHAIR TRUJILLO-DAVIS: Even if NMOGA didn't
2 want it, is that an option to the Board, if we were to
3 look at their previous proposal?

4 MS. SOLORIA: Yeah, if you could rely --
5 (inaudible due to multiple speakers.)

6 COURT REPORTER: I'm sorry. I'm sorry. You two
7 ladies need to speak up and please not speak over one
8 another. I didn't get either one of you. Thank you. I'm
9 sorry.

10 VICE-CHAIR TRUJILLO-DAVIS: I apologize.

11 MS. SOLORIA: Will you repeat your question?

12 VICE-CHAIR TRUJILLO-DAVIS: My question was if
13 the Board can adopt a previous proposal by NMED, even if
14 it didn't make it into the final version of the rule, if
15 that was available to us.

16 MS. SOLORIA: And I had responded that if
17 there's -- if there is basis in the record or if there's
18 evidence in the record to that effect, which Hearing
19 Officer had mentioned that we would have to go back and
20 look, but, yes, that is an available option for the Board.

21 CHAIRPERSON SUINA: Thank you so much,
22 Ms. Soloria and Vice-Chair Trujillo-Davis.

23 And Madam Hearing Officer.

24 HEARING OFFICER ORTH: Thank you, Madam Chair.

25 So I'm looking at NMOGA's final proposed redline, and you

1 can look there at (d). Their (d) matches the (d), I
2 believe, that I see on the screen.

3 CHAIRPERSON SUINA: So you're saying, Madam
4 Hearing Officer, what's on the screen is in NMOGA's final
5 redline?

6 HEARING OFFICER ORTH: Correct. But, again, I
7 didn't want to not mention that they, nevertheless,
8 registered their opposition to what's referred to
9 colloquially when the party does a joint proposal between
10 Kinder Morgan and CEP.

11 CHAIRPERSON SUINA: Thank you, Madam Hearing
12 Officer.

13 So, fellow Board members, is that -- I think --
14 yes, Member Garcia.

15 BOARD MEMBER GARCIA: Yes. If that's the case,
16 we have more agreement than we don't, so I would propose a
17 motion that we adopt 116 B (3) (d) as proposed by NMED,
18 for the reasons outlined by NMED and supported by Kinder
19 Morgan and CEP.

20 BOARD MEMBER BITZER: I'll second that motion.

21 CHAIRPERSON SUINA: Thank you, Member Garcia, for
22 your motion, and Member Bitzer, for your second. Is there
23 any further discussion on the motion at hand?

24 HEARING OFFICER ORTH: Yes, Madam Chair, I
25 misspoke on the info leading up to the motion. The

1 agreement was between Oxy and CEP. Kinder Morgan, though,
2 supported it, as I am going back to it. I was looking at
3 the words "Kinder Morgan," so I said the words "Kinder
4 Morgan." But the -- I'm sorry, the agreement was
5 originally crafted between Oxy and CEP.

6 BOARD MEMBER BITZER: That's what I recall, too.

7 BOARD MEMBER GARCIA: Then, should I change my
8 motion? It won't be the last time.

9 BOARD MEMBER HONKER: Did Kinder Morgan support?

10 MS. SOLORIA: You are very good at making the
11 motions, though.

12 HEARING OFFICER ORTH: No, we don't have
13 opposition, except from NMOGA.

14 CHAIRPERSON SUINA: Can you repeat that, Madam
15 Hearing Officer? I didn't catch that.

16 HEARING OFFICER ORTH: I'm sorry. We didn't have
17 opposition to the joint proposal, except from NMOGA.

18 BOARD MEMBER BITZER: Counsel, do we want a fresh
19 motion, then?

20 BOARD MEMBER HONKER: Just a question about your
21 report. I mean, your report says September 21st, 2021;
22 Kinder Morgan and EDF filed a joint proposal. So should
23 that be "Oxy"?

24 CHAIRPERSON SUINA: Thank you for that, Member
25 Honker. You read my mind earlier.

1 HEARING OFFICER ORTH: I have just confused
2 myself. And it's not even very long into the day.

3 CHAIRPERSON SUINA: Yeah. In the report, I think
4 I see Kinder Morgan a number of times as filing the joint
5 motion.

6 HEARING OFFICER ORTH: Well, so this is correct.
7 The proposal -- their proposal with Oxy is in a different
8 part of the rule. I'm sorry for that. So I think Member
9 Garcia's motion is perfectly fine for the motion.

10 CHAIRPERSON SUINA: Thank you. Yes, Vice-Chair
11 Trujillo-Davis?

12 VICE-CHAIR TRUJILLO-DAVIS: I just wanted to make
13 sure I understood this correctly, because I think there is
14 a lot of agreement on this particular topic. So I looked
15 back at NMOGA's opposition to it, and if I'm understanding
16 this correctly, they want -- or they say here that the
17 leak detection and repair efforts conducted pursuant to
18 these or any other state- or federally-mandated program
19 satisfy the condition of 20.2.50.116, to the extent that
20 they require identical or more stringent monitoring
21 activities.

22 And if I understand the language in the rule
23 correctly, that is exactly what it's saying, that as long
24 as the facility has leaks -- equipment leakage of fugitive
25 emissions, that requirements are at least as stringent as

1 the research performance -- (inaudible.) So I'm not
2 seeing a difference there. Is anybody else seeing a
3 difference?

4 CHAIRPERSON SUINA: Madam Court Reporter, before
5 we go on, could you hear Vice-Chair Trujillo-Davis?

6 COURT REPORTER: I could hear part of it, but
7 once she was reading, she was muffled when she was looking
8 down.

9 CHAIRPERSON SUINA: Thank you.

10 (Inaudible due to multiple speakers.)

11 BOARD MEMBER BITZER: During our break, you and I
12 should probably sit over here and move this way.

13 VICE-CHAIR TRUJILLO-DAVIS: Do I need to repeat
14 that?

15 CHAIRPERSON SUINA: Yes. Would you mind,
16 Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Sure. Okay. In the
18 NMOGA's opposition, they were -- they stated that the
19 Board should find the leak detection and repair efforts
20 conducted pursuant to these or any other state- or
21 federally-mandated programs to satisfy the conditions of
22 20.2.50.116 NMAC, to the extent that they require
23 identical or more stringent monitoring activities.

24 And I was asking if that was indeed what was in
25 the rule itself, where it says that as long as the federal

1 equipment leak-and-fugitive emissions monitoring
2 requirements are at least as stringent as the new source
3 performance standards of 0000a, 40 CFR Part 60, in
4 existence, as the effective date of this part; if that was
5 indeed the same sentiment for what NMOGA was opposing.

6 CHAIRPERSON SUINA: Yes, that's what it looks
7 like to me.

8 VICE-CHAIR TRUJILLO-DAVIS: So if that is the
9 case, I think there's more agreement than we originally
10 thought.

11 CHAIRPERSON SUINA: Thank you, Vice-Chair
12 Trujillo-Davis.

13 Is there any further discussion on the motion at
14 hand? And that's Member Garcia's motion for
15 (d)-as-in-dog. And if there's no further discussion,
16 Ms. Jones, would you mind doing a roll-call vote on Member
17 Garcia's motion?

18 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
19 you vote?

20 BOARD MEMBER BITZER: I vote yes.

21 ADMINISTRATOR JONES: Member Cates?

22 BOARD MEMBER CATES: Yes.

23 ADMINISTRATOR JONES: Member Garcia?

24 BOARD MEMBER GARCIA: Yes.

25 ADMINISTRATOR JONES: Member Honker, how do you

1 vote?

2 BOARD MEMBER HONKER: Yes.

3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

4 (Inaudible.)

5 ADMINISTRATOR JONES: Chair Suina?

6 CHAIRPERSON SUINA: Yes.

7 ADMINISTRATOR JONES: The motion passes.

8 CHAIRPERSON SUINA: Thank you, Ms. Jones.

9 Appreciate it.

10 And Madam Court Reporter, did you get Vice-Chair
11 Trujillo-Davis's?

12 COURT REPORTER: (Shaking head.)

13 CHAIRPERSON SUINA: No, okay.

14 Ms. Soloria, I know I couldn't hear Vice-Chair
15 Trujillo-Davis. I just checked to see if Madam Court
16 Reporter did. So do we -- how do we record her vote?

17 MS. SOLORIA: She can repeat her vote if the
18 issue is that we didn't get her -- get her vote? Okay.
19 So, Member Trujillo-Davis, if you could repeat your vote.

20 VICE-CHAIR TRUJILLO-DAVIS: I voted yes.

21 CHAIRPERSON SUINA: Thank you. Thank you. I
22 just -- I'm keeping an eye on our court reporter here and
23 making sure she can hear. So, thank you again.

24 Appreciate it.

25 VICE-CHAIR TRUJILLO-DAVIS: She's like in this

1 screen, it's smaller, it's like a teeny little thumbnail
2 in there.

3 BOARD MEMBER HONKER: So perhaps at a break you
4 would like to switch.

5 CHAIRPERSON SUINA: Okay. Thank you.

6 BOARD MEMBER BITZER: Or get a fog horn.

7 VICE-CHAIR TRUJILLO-DAVIS: You know, my
8 neighbors probably think I'm very loud with my children
9 and myself.

10 BOARD MEMBER BITZER: Those sounds travel far
11 farther than this sound, but not from the exhibits.

12 CHAIRPERSON SUINA: Right. Appreciate that.

13 And so with that, we'll go to the next section.
14 116 C (3) (e)-as-in-Everett.

15 HEARING OFFICER ORTH: Madam Chair?

16 CHAIRPERSON SUINA: Yes.

17 HEARING OFFICER ORTH: I have it on the screen,
18 and this is where I was confusing Kinder Morgan and EFD
19 with Oxy and CEP. So I was getting ahead of myself. I'm
20 sorry. Section (e), this is 116 C (3) (e). It's on page
21 181 of the hard copy. The discussion continues from 181
22 to 192. We have a proposal and proximity here refers
23 to -- (inaudible.)

24 CHAIRPERSON SUINA: Madam Hearing Officer, our
25 court reporter didn't get it.

1 HEARING OFFICER ORTH: This is where we have a
2 proposed proximity proposal, referring to the proximity of
3 well sites to occupied areas. We do need to look at the
4 definition of "occupied area" or you will probably want
5 to. I believe that's on page 21 of your hard copy in
6 connection with this discussion. And the point of these
7 proximity proposals is to require enhanced inspection
8 frequency for well sites within 1,000 feet of an occupied
9 area.

10 The Department is proposing that the Board adopt
11 a proposal that was offered by Clean Air Advocates, the
12 Environmental Defense Fund, the other community
13 environmental parties and Oxy; all of those folks support
14 the proximity proposal.

15 IPANM and NMOGA oppose it. NMOGA also offers a
16 modification on page 191 for quarterly inspection
17 frequency, not monthly and weekly AVO, audiovisual
18 olfactory inspections. So, my suggestion to you -- and
19 I'm about to refer here to Ms. Soloria, is that you first
20 decide whether you have the legal authority to adopt this
21 LDAR proposal. IPANM and NMOGA's primary argument here is
22 that it's unrelated to the regulation of ozone precursors
23 for the implementation of ozone NAAQS, so they challenge
24 your authority to adopt the proximity proposal at all.

25 If you decide, based on your discussion with

1 Ms. Soloria, that you have that authority, NMOGA has a
2 more limited proposal at that point than the proximity
3 proposal supported by all of the other parties, which is
4 weekly AVO and quarterly, not monthly, inspections. So
5 you put those two things together and then you have
6 NMOGA's proposal. I think that's all I have to say.

7 CHAIRPERSON SUINA: Thank you, Madam Hearing
8 Officer.

9 And Ms. Soloria -- Ms. Soloria, on the legal
10 authority, can you take us through some of the
11 considerations that we need to consider as a Board on that
12 question?

13 MS. SOLORIA: Sure, Madam Chair. So, NMOGA has
14 raised legal challenges to the Board's authority to adopt
15 the proposal. There are three main points that NMOGA has
16 raised, and I think we should just approach it that way.
17 The foremost threshold question is whether or not the
18 Board has Statute authority under the Air Quality Control
19 Act, which is the basis for this rulemaking, to accept
20 this proposal.

21 So, the question that has to be asked in that
22 regard is, is this proposal, the rule, that provides for
23 the attainment and maintenance of the primary ozone NAAQS?
24 So NMOGA has suggested that it is not and the proponents
25 of the proposal have suggested that it is. And it is up

1 to you to decide whether you are swayed that there is
2 evidence in the record that this is a rule for the
3 attainment and maintenance of the NAAQS or that it's not.

4 If the answer is it is not, then you are without
5 authority to consider to adopt the rule. So that's where
6 we need to start your discussion.

7 CHAIRPERSON SUINA: Yes, Vice-Chair.

8 VICE-CHAIR TRUJILLO-DAVIS: So, let's see if I
9 understand this correctly. Is the issue whether we are
10 looking at a rule that is protecting the counties and
11 attainment, and that's our main focus, or are we doing the
12 public health in this particular section, that could
13 affect the residents in a nearby home or an occupied
14 building.

15 MS. SOLORIA: I think if I can read into your
16 question, Vice-Chair, there is a little bit of crossover
17 regarding -- I mean, it has to do with how the proponents
18 of the proposal framed their arguments regarding
19 considerations other than strictly -- strictly producing
20 precursors to ozone. So, the considerations of the public
21 interest aspect of it, the benefits of health, I would
22 frame it, and this is in line with how NMOGA has presented
23 their opposition, that you have to consider the statutory
24 question first, because the questions of the other
25 co-benefits of the rule, or the public interest aspect of

1 passing this proposal, have to do, one, with the
2 general -- the general points that you -- the general
3 points you have to weigh for every rule: those three
4 points: public interest, economic feasibility. And the
5 other separate issue that I don't want you to focus on
6 right now, is the stringency issues, because we will not
7 get to the stringency issue unless you decide first and
8 foremost, on whether or not this is a rule within the
9 statute authority.

10 Did that clarify everything?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes, it did. Thank
12 you.

13 CHAIRPERSON SUINA: Yes. Does anybody have any
14 other questions? Yes, Member Garcia.

15 BOARD MEMBER GARCIA: So my question would be
16 then, is this a point where we need to vote on whether we
17 have this authority before we move forward?

18 MS. SOLORIA: I think if you were to move
19 forward, then you would be saying that you consider
20 yourself to have the authority, but I don't think that it
21 would -- I don't think there would be any harm in putting
22 on the record that you voted on the issue for the sake of
23 the record.

24 But that being said, if you were to go ahead and
25 proceed, and consider and adopt the proposal, then any

1 appealing body would see that you considered yourself to
2 have that authority.

3 CHAIRPERSON SUINA: Thank you. I saw Member
4 Honker's hand up.

5 BOARD MEMBER HONKER: Well, I was just going to
6 ask -- I'm just thinking of scenarios here. So if we go
7 ahead and make a decision on this section, it would be
8 subject to legal challenge by NMOGA, or somebody else who
9 didn't think we had the authority. Would that potentially
10 endanger the whole rule, or would it just be that section
11 that would be stayed potentially, or is there any
12 precedent for how that might play out, I guess?

13 MS. SOLORIA: I wouldn't say that a legal
14 challenge to this specific provision would imperil the
15 rule entirely, no, I would not say that.

16 But in terms of -- NMOGA's argument is that if
17 you lack -- if the -- if this Board lacks statutory
18 authority to pass such a rule, then an appealing body --
19 an appellant body, rather, could find that the rule is
20 invalid -- this provision of the rule. So it would not
21 imperil the rule entirely.

22 BOARD MEMBER HONKER: Okay. Thanks for that.

23 CHAIRPERSON SUINA: Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: I just want to follow
25 on Member Garcia's question. I think because of the

1 volue -- that was -- sorry, court reporter, that wasn't a
2 real word. Because of the volume of information that we
3 have before us, I think making a vote on whether or not we
4 are -- we have the authority or not, helps clarify this
5 point. And because I think it can get maybe -- during our
6 discussions, might get lost, and so maybe we just make it
7 very clear whether we decide that we have that authority
8 or not.

9 CHAIRPERSON SUINA: Yes. Thank you.

10 Member Bitzer, did you have a comment?

11 BOARD MEMBER BITZER: I do have a question for
12 Counsel. Do you consider that we have the authority?
13 You're our attorney and general adviser on this; do we
14 have the authority to move forward on this?

15 MS. SOLORIA: I have an opinion. I have my own
16 stance on that question, but as your counsel, I don't
17 think it's appropriate for me to have to share that
18 position with you, in the sense that you-all are deciding
19 a question of law. And I do not want to endorse either
20 one, as I am not in that position. Was that a
21 lawyerly-enough answer then?

22 VICE-CHAIR TRUJILLO-DAVIS: That's a
23 lawyerly-enough answer.

24 CHAIRPERSON SUINA: Yes, Member Honker.

25 BOARD MEMBER HONKER: But it does appear that

1 NMED, in recommending that we adopt this proposal, NMED is
2 basically saying they think it's within our legal
3 authority.

4 BOARD MEMBER BITZER: And they have attorneys
5 working on this, so...

6 BOARD MEMBER HONKER: Yes, that's my
7 interpretation.

8 CHAIRPERSON SUINA: Thank you.

9 BOARD MEMBER HONKER: And in the absence of any
10 specific legal --

11 BOARD MEMBER BITZER: But you're not a lawyer,
12 right.

13 CHAIRPERSON SUINA: Thank you, Member Honker.
14 Yes, Vice Chair Trujillo-Davis.

15 VICE-CHAIR TRUJILLO-DAVIS: I would like to go
16 back to the beginning of the rule, then, to make this
17 decision. And looking at the scope and the intent that
18 the rule is drafted under, and use that as a guidance
19 for -- for this particular question.

20 CHAIRPERSON SUINA: Okay. Are you going to
21 mention a reference or?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes. Thank you. I
23 was finding my pages here. So the scope is on page five
24 and the objective is on page nine of the Hearing Officer's
25 report.

1 CHAIRPERSON SUINA: Okay. Sorry. I'm scrolling
2 down to -- okay. So are you referring to 20.2.50.2?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes, that's the
4 objective.

5 BOARD MEMBER BITZER: That's page six.

6 VICE-CHAIR TRUJILLO-DAVIS: I apologize. That's
7 the scope. And 20.2.50.6 is the objective for this -- for
8 this rule.

9 CHAIRPERSON SUINA: Oh, sorry, Member Garcia. I
10 was reading. Go ahead.

11 BOARD MEMBER GARCIA: Yes. May I ask Ms. Soloria
12 to state the question again. I started writing, but I
13 didn't finish it. Is the question before us, what we're
14 about to answer, I wrote: Was this rule for reaching
15 attainment of NAAQS -- and I'm paraphrasing -- so I want
16 to write exactly what you said.

17 MS. SOLORIA: Well, I think it would -- thank you
18 for that. I think it would be helpful for me to refer to
19 the statute for the language for the Board's reference,
20 because the -- NMOGA's challenge is based on that this
21 proposal does not fall within the Board's statutory
22 authority for this rulemaking.

23 So the question you-all have to answer is: is
24 this a rule that controls emissions of oxides of nitrogen
25 and volatile organic compounds to provide for attainment

1 and maintenance of the standard.

2 So that is, in effect, a yes-or-no question. Is
3 this a rule -- is this a proposal that does that? And
4 NMOGA has proffered that it is not and, therefore, you
5 have no authority to pass it, and the proponents of the
6 proposal argue that it is -- that the rule does accomplish
7 that.

8 BOARD MEMBER CATES: Chair Suina, hey, so a quick
9 question then. So the Counselor was saying -- I was
10 just -- I was going to ask Karla to just restate the top
11 of her statement there, where you kind of summed up the
12 gist of how to think about this.

13 MS. SOLORIA: Okay. Yes, Member Cates, I will
14 repeat the question before the Board.

15 NMOGA has challenged whether or not the Board has
16 statute -- has statutory -- statutory authority under this
17 rulemaking, to pass this proposal. And so we have to
18 refer back to the statutory authority for this rulemaking,
19 which is in the Air Quality Control Act.

20 And so I've -- I'm essentially excerpting the
21 language from that provision. And so the question you
22 have to ask yourselves is, are these proposed rules -- do
23 they control emissions of oxides of nitrogen and volatile
24 organic compounds, to provide for attainment and
25 maintenance of the standard. That would be the NAAQS

1 standard.

2 BOARD MEMBER CATES: Got it. Thank you.

3 CHAIRPERSON SUINA: Yes, Member -- or Vice-Chair
4 Trujillo-Davis.

5 VICE-CHAIR TRUJILLO-DAVIS: So I would say, no,
6 in the way you phrased it, because the only difference
7 between (d) and (b) and (c) is the occupied area. So,
8 therefore, (b) and (c) accomplished the goal of the rule,
9 and (e) just comments -- I guess I don't think (e)
10 contributes, unless it's an occupied area. That's the
11 only thing that changes.

12 BOARD MEMBER BITZER: What I'm hearing is that
13 the record contains no evidence that ozone forms within
14 1,000 feet of a wellhead, so the Board has no evidence
15 upon which to conclude the standard is more protective of
16 the primary benefits targeted by this rulemaking of ozone
17 reductions, that is. So that is the question.

18 Can we find some evidence submitted to the record
19 that says that it does have ozone-proposed reductions,
20 more than the federal rule -- (Inaudible.)

21 CHAIRPERSON SUINA: Wait, wait. Hold on one
22 second. Hold on one second. Madam Court Reporter, did
23 you have difficulty on that one?

24 COURT REPORTER: Member Bitzer, I didn't hear the
25 last four words that you said. You said, "Can we find

1 some evidence submitted to the record that said that it
2 does --"

3 BOARD MEMBER BITZER: That it does effectively
4 enhance ozone reductions.

5 CHAIRPERSON SUINA: Thank you.

6 BOARD MEMBER BITZER: In other words, we need to
7 find evidence within the record that it does enhance ozone
8 reductions; otherwise, perhaps, we're out of our element
9 here.

10 CHAIRPERSON SUINA: And Madam Vice-Chair, you had
11 a comment. I apologize for interrupting.

12 VICE-CHAIR TRUJILLO-DAVIS: No, that's okay.
13 This is a bit challenging, learning our new format here.

14 I think Member Bitzer brought up a really good
15 point, but I'm wondering if maybe that's a question better
16 answered once we decide if we have authority or not.

17 MS. SOLORIA: Let me try to -- I think there are
18 two issues underlying Member Bitzer's point. One is --
19 one was properly based on this question of whether there
20 is evidence in the record to show that this rule would
21 have an impact on ozone precursors, as that is the purpose
22 of this rulemaking.

23 He mentioned a part of that statement, which
24 would go to the element of, is this more protective of
25 public health, that is a separate question, that I think

1 for the Board's thought process, we shouldn't get to right
2 now and inflate that inquiry with this primary inquiry,
3 because once you make the decision on the statutory
4 authority question, those other inquiries will flow from
5 that.

6 CHAIRPERSON SUINA: Yes, Member Garcia.

7 BOARD MEMBER GARCIA: Yes. Thank you for that
8 clarification, Ms. Soloria, because I kind of got started
9 getting lost in the weeds. And going back to the original
10 question: does this rule control emissions of oxides of
11 nitrogen and volatile organic compounds, to provide for
12 attainment and maintenance of the standard. It's the
13 whole purpose of the rule.

14 It's stated in the scope, it's stated in the
15 objectives. Of course, that is what the rule is doing, so
16 I'm not seeing the controversy about that.

17 MS. SOLORIA: Well, the question is whether or
18 not this specific provision -- this proximity proposal is
19 in line with that objective and that statutory authority.

20 So, NMOGA's attack at this point is not for the
21 whole rule. And I would point to the question of whether
22 or not there is evidence in the record in answering that
23 question. So CEP's --

24 CHAIRPERSON SUINA: And I think the CEP's witness
25 did mention that.

1 MS. SOLORIA: So CEP's discussion of their
2 proposal or their supports are on page 182 through 185.

3 HEARING OFFICER ORTH: The summary is on 185.

4 BOARD MEMBER BITZER: Thank you for that.

5 CHAIRPERSON SUINA: I apologize, Member Honker.
6 We'll get to your question after this discussion.

7 So, in essence, I think there's one line in that
8 Section 182, the second paragraph, to your point, Member
9 Bitzer, the -- what CEP and Oxy are saying is
10 implementing -- "Implementation of the proximity proposal
11 will help keep New Mexico in compliance with federal ozone
12 standards." And then it goes on about the co-benefits.

13 But is the question at hand whether it does or it
14 doesn't, in terms of this proximity? In terms of to --
15 for it to be in our regulatory or in other statutory
16 authority? Is that the question?

17 MS. SOLORIA: That's correct, Madam Chair. And
18 the parties have obviously taken opposite positions on
19 what the record shows. I would point -- I pointed you to
20 the summary of the proponents of this proposal, because it
21 appears they have stated there is evidence in the record
22 that shows that this is a -- this proposal is aimed at
23 achieving the ozone NAAQS.

24 And then you would have to, of course, review
25 NMOGA's framing of the issue, to decide if you endorse

1 their -- how they see the record, and whether or not there
2 is a showing that this rule -- this proposal, does achieve
3 attainment of the NAAQS.

4 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
5 Member Honker.

6 BOARD MEMBER HONKER: Yeah, just, I mean this --
7 this section regarding frequency of inspection for
8 facilities -- I mean, it doesn't -- it doesn't set any
9 different standards for these facilities. It's a
10 frequency-of-inspection issue. And in my mind, more
11 frequent inspection gives you more reduction in the
12 pollutants we're talking about. And, in fact, on page
13 185, there's estimates here reducing 14,300 tons of
14 methane and 150 ton of hazardous air pollutants. I guess
15 that's co-benefits, since those are not the primary things
16 we're looking at here.

17 But I do think more frequent inspections will
18 reduce pollutants more. So the question is, is this a
19 reasonable way to go about setting up inspection
20 frequency, not do we have authority to do this. I don't
21 really see it as a legal authority issue. I think it's a
22 reasonableness of approach.

23 I mean, we could have said every facility in the
24 state has to meet these inspection frequencies. We would
25 have had authority to do that, but we're just talking

1 about a subset here, so...

2 CHAIRPERSON SUINA: Thank you, Member Honker.

3 And Vice-Chair Trujillo-Davis.

4 VICE-CHAIR TRUJILLO-DAVIS: I don't -- I'm going
5 to take the opposition. I don't think that it helps meet
6 the attainment of NAAQS because the section previously was
7 supposed to establish that, (b) and (c). And this PTE's
8 laid out for those facilities that establishes the
9 protection of NAAQS.

10 So the only difference in this particular one is
11 the "occupied areas." So, this is more of a human health
12 perspective than proximity. And I guess I'm saying that
13 I'm not quite convinced we have the authority, but if we
14 did have the authority, I think it belongs in there. But
15 I'm not quite convinced that we have the authority for
16 this, the way it's laid out there, because those -- those
17 standards should have already been established in the
18 previous bullet points.

19 CHAIRPERSON SUINA: Yes, Member Garcia.

20 BOARD MEMBER GARCIA: Thank you, Vice-Chair
21 Trujillo-Davis. Just to help me understand your point, so
22 the way I'm looking at this is, if the question is --
23 well, maybe I'm asking the wrong question.

24 But if the question is, okay, we are reducing NOx
25 and VOC in this rule, that's the goal. And then, if we're

1 doing that and we reduce it within 1,000 feet of an
2 occupied area, then are you saying there may not be NOx
3 and VOC within 1,000 feet of an occupied area or?

4 VICE-CHAIR TRUJILLO-DAVIS: No. What I'm saying
5 is, so this particular section (e), it's applying to the
6 facilities that are less than 5 tons per year VOC, so
7 that's with their quarterly inspections there. And then,
8 monthly for facilities that are greater than 5 tons per
9 year for VOC.

10 And if we look back at the section that we just
11 deliberated, those facilities also fall in that section as
12 far as inspections for -- they talk about it, inspections
13 for facilities with greater than 5 tons per year, and
14 then, again, for anything over that 5-tons-per-year
15 threshold.

16 So the question is, are these meeting the goal of
17 being in a -- achieving the attainment for NAAQS -- then
18 that was already established in the previous section, that
19 we are indeed being protective of NAAQS. So, then, I
20 think the question then goes to what Member Bitzer was
21 saying: is there enough evidence to say that in 1,000
22 feet that becomes more of an issue?

23 So, yeah, does that answer your question?

24 BOARD MEMBER GARCIA: Yes, thank you. That
25 really helped clarify. Thank you.

1 CHAIRPERSON SUINA: So, if I may, Vice-Chair
2 Trujillo-Davis? Are you saying that because there's a
3 health and safety aspect to this that is unique, that then
4 it becomes outside of our statutory authority?

5 VICE-CHAIR TRUJILLO-DAVIS: I'm not saying that
6 it's outside of our statutory authority, in general.

7 What I'm saying is that when it comes to this
8 rule, particularly -- and that's why I wanted to go back
9 to the objective and to the scope -- was that what was
10 laid out in the objective and the scope. And is it -- do
11 we have the authority in this particular rule to say that
12 that also -- this (e) also accomplishes that goal?

13 If the question is, are we in attainment, I'd say
14 this does not help us because we've already established
15 it. And then, we're saying that human health -- or the
16 health and safety aspect is within this rule, then it is
17 within our purview to say, yes, it is. I hope that was
18 clear.

19 MS. SOLORIA: Madam Chair, may I add to that
20 inquiry?

21 CHAIRPERSON SUINA: Sure.

22 MS. SOLORIA: I just wanted to, again, for the
23 sake of framing the discussion, because it is easy to get
24 lost in the health and safety and public interest point.
25 Those are factors to -- factors you weigh generally when

1 considering a rule. And then those factors are also going
2 to play into the additional finding; if the Board finds
3 that they have the authority for this rule, there is an
4 additional finding that needs to be made.

5 So I don't want you to frame it as because there
6 are health benefits to this rule it is potentially outside
7 of our statutory authority, because that's not the case.
8 The question, as you posed it, is, I think, correct;
9 whether or not this proximity proposal accomplishes what
10 the statute says this rule is allowed to -- is meant to
11 accomplish.

12 And, again, I would point back to the competing
13 parties' summaries and how they have framed the evidence,
14 whether or not it does that.

15 CHAIRPERSON SUINA: And if I may? And maybe add
16 to what you're saying or maybe go a little bit further; is
17 to Member Honker's point, any additional, I guess,
18 inspection, would reduce, potentially, which fits within
19 added -- added requirements within our authority -- or the
20 rule's authority.

21 And as we said, we could -- I mean, not that we
22 would, but there could be a more wide spread, but any
23 additional still meets within that statutory authority,
24 because, ultimately, any additional requirements could
25 potentially reduce those things that we are addressing in

1 this rule.

2 Yes, Member Garcia.

3 BOARD MEMBER GARCIA: Yes, on that point, and
4 Member Honker raised this before: On 182, where the
5 witness said it would reduce volatile organic compounds
6 that contribute to ozone pollution, she also went on to
7 quantify that it will reduce -- and this is the proximity
8 proposal -- will reduce VOC emissions by 3,600 tons per
9 year and will increase VOC emission reductions at those
10 sites by 73 percent. So these reductions in VOCs will
11 help New Mexico reduce local formation of ozone and help
12 New Mexico stay in attainment, so local formation of
13 ozone.

14 So, somebody already said, there is evidence in
15 the record. I'm not sure if we're still questioning that,
16 but there is evidence in the record that it would reduce
17 VOCs.

18 CHAIRPERSON SUINA: Yes, Member Bitzer.

19 BOARD MEMBER BITZER: Perhaps the ironic choice
20 here is, if it's -- if it's not already covered in
21 sections (b) and (c), thus making this redundant, the fact
22 of the matter is that it's going to increase the economic
23 costs, and that in and of itself will reduce emissions
24 because there will just be less activity.

25 You know, you'll -- you'll have some folks on the

1 margin, decide that it's not worth continuing to produce
2 and that itself will -- will help us with attainment,
3 ironically.

4 CHAIRPERSON SUINA: And if I may, Ms. Soloria?
5 So I guess the question I had is whether or not these
6 additional requirements, as proposed by NMED and -- who
7 was this initially? Or is it NMED, which is adopting the
8 proposal of Clean Air Advocates and EDF and Oxy?
9 Basically, I think we're going around the question and
10 we're probably going off into additional discussion of the
11 point -- to Member Bitzer's point, the implications of
12 this rule. It would still -- I mean, we're going back to
13 within our statutory authority.

14 MS. SOLORIA: I'm not sure I got your question,
15 Madam Chair, but what I -- I -- let me -- if you'll
16 indulge me.

17 CHAIRPERSON SUINA: Sure.

18 MS. SOLORIA: Let me try to paraphrase the
19 parties' -- let me try to paraphrase the parties' positions
20 and how that discussion should follow. So the proponents
21 of the proposal have stated this provision is a rule
22 that -- that reduces ozone precursors and pursues
23 attainment of the NAAQS, and it also has additional health
24 benefits.

25 The opponents of the proposal says -- say that

1 this -- this proximity proposal does not -- does not do
2 what the statute has empowered us to do, so that the rule
3 does not reduce ozone precursors and pursue attainment of
4 the NAAQS. I know that was a very off, and not exact
5 paraphrase.

6 And so, you have to decide whose position you
7 believe. Does the -- does the proposal -- have the
8 proponents of the proposal put in evidence to show, yes,
9 this rule does that, and has all of these other
10 co-benefits that the Board can consider once you have
11 decided that you have authority to do it.

12 So, I think to your question regarding Member
13 Bitzer's comments, we're continuing to conflate these
14 other co-benefit health issues. And I just think it would
15 be helpful to consider, again, that the threshold question
16 is, is this a rule that accomplishes attainment of the
17 NAAQS.

18 And, as you said, there are -- the parties
19 disagree on that, and the members here disagree on that,
20 and so that is the question. If you vote in the
21 affirmative, that the Board does have authority, then my
22 position is the Board can properly consider the economic
23 values versus the public interests and the protection of
24 public health.

25 And then there's the secondary additional finding

1 that the Board would have to find with regard to
2 stringency, but we can't get to that yet. You have to
3 decide that primary question about what this rule
4 accomplishes.

5 CHAIRPERSON SUINA: Yes, Vice-Chair
6 Trujillo-Davis.

7 VICE-CHAIR TRUJILLO-DAVIS: Thank you. When
8 you're saying "rule," are you just meaning this one
9 section we're talking about?

10 MS. SOLORIA: When I was saying "rule," I was
11 referring to the proximity proposal.

12 VICE-CHAIR TRUJILLO-DAVIS: Okay.

13 MS. SOLORIA: So it's this specific provision.

14 VICE-CHAIR TRUJILLO-DAVIS: Okay.

15 CHAIRPERSON SUINA: Yes, Member Garcia.

16 BOARD MEMBER GARCIA: Well, I just want to also
17 point out an inaccuracy in NMOGA's statement that is
18 inaccurate, and it is germane to this topic and very
19 serious. So let me -- let me point it out; it's on
20 page -- well, the discussion -- NMOGA's discussion starts
21 on 191. At the top of 192, they say -- they're talking
22 about emissions, not from ozone, which expert testimony
23 admitted would not form in the 1,000-foot distance
24 described.

25 I've looked that up in the transcript. The

1 transcript citation is here; it was Lee Ann Hill.
2 Ms. Hill did not make that statement. And so, for the
3 record, anyone can go and look at this transcript, and I
4 can tell you, Ms. Hill did not make that statement. But
5 what she did say was that she did not evaluate within
6 1,000 feet, was the statement she made. She didn't say
7 that there was no ozone formed within 1,000 feet. So I
8 think that's very important for the record to clarify.
9 Thank you.

10 CHAIRPERSON SUINA: Thank you, Member Garcia.
11 Appreciate that.

12 BOARD MEMBER CATES: Chair Suina?

13 CHAIRPERSON SUINA: Yes, Member Cates.

14 BOARD MEMBER CATES: So we just -- I'm sitting
15 here listening carefully along with this. I -- I -- I
16 agree with Members Garcia and Honker. I don't see the
17 controversy here. I mean, this is like -- to me, this is
18 spinning off into a sort of a graduate seminar in
19 semantics, and, you know, that's not what we're here for.

20 Member Garcia's point is an important inaccuracy.
21 I think, okay, that's good to know. I get the sense that
22 the industry is playing us a little bit here, by
23 questioning our competence and some members are playing to
24 that doubt. I just would encourage the Board to not take
25 that bait and to move forward. And let's have a vote on

1 this question and move ahead.

2 CHAIRPERSON SUINA: Thank you, Member Cates.

3 BOARD MEMBER CATES: That's all.

4 CHAIRPERSON SUINA: Yes, Ms. Soloria.

5 MS. SOLORIA: Yes, Madam Chair. I just wanted to
6 mention for the Board that previous to another legal issue
7 we had encountered, if I thought either of the positions
8 were frivolous, I would say so. Either position, I think,
9 is grounded enough -- there is enough in the record and
10 enough in the law that either position the Board took on
11 this issue is defensible. So I don't want you to think
12 that one is completely out of the ballpark and the other
13 is not. They are both defensible positions, should you
14 take one or the other.

15 CHAIRPERSON SUINA: Okay. Thank you,
16 Ms. Soloria.

17 And I think, you know, with this -- I think it's
18 good as we started this discussion to clarify our
19 positions and to clarify, you know, some of the
20 discussions that -- both in the hearing and is in written
21 text as well in the submittals. And thank you for all of
22 your work, Madam Hearing Officer, in your report as well.
23 So appreciate that.

24 And I think for me, I guess I go back to Member
25 Honker's point of any additional requirements will

1 mitigate the -- any -- sorry; any contaminants. And we
2 did, in general terms, whether we're talking about how
3 much or conflating the argument. And I see where, you
4 know, on any one point -- right -- any piece of paper, ten
5 different lawyers will come up with ten different
6 arguments in their analysis. Right? Just like any
7 engineer -- right -- looks at a problem and any engineer
8 will come up with -- you know, ten different engineers
9 will come up with ten different solutions.

10 But I think in general terms, if we go back to
11 core basis, it's, you know, the reduction of or the added
12 requirements, in general terms, is a reduction. And I --
13 I see -- I guess, for me, it's just very clear. And I
14 thank our Member Honker, that, you know, for pointing that
15 out. And that's what sticks with me just on this rule.
16 And whether or not it's -- yes, Member Honker?

17 BOARD MEMBER HONKER: Well, it sounds like we
18 wanted to make a decision on whether we think we have
19 legal authority to consider such a requirement. I mean,
20 should we take a vote on that, or what, is that like a
21 voting thing or not?

22 MS. SOLORIA: Yeah.

23 BOARD MEMBER HONKER: Or I'll make a motion
24 unless there is more discussion.

25 CHAIRPERSON SUINA: Member -- oh, Vice-Chair

1 Trujillo-Davis.

2 VICE-CHAIR TRUJILLO-DAVIS: I think I want to
3 clarify it. I think we're getting -- as many have said,
4 we're getting a little lost in the weeds here. But I
5 think the discussion was supposed to be on whether we had
6 legal authority or not. And if we do indeed establish
7 that we have legal authority, I agree with my members that
8 it should be included.

9 So I just want to make that clear, that that is
10 really the crux of what I think we should be discussing,
11 is whether or not we do indeed have it. And then we can
12 debate whether it should be in there, which I think most
13 of us agree on.

14 CHAIRPERSON SUINA: Yes, Member Bitzer.

15 BOARD MEMBER BITZER: I don't -- I want -- I want
16 to defend NMOGA's honor here for a moment, if I might. I
17 don't think they're intentionally meaning to mislead us
18 because on page 189, where they talked about Ms. Hill's
19 testimony, they quoted her as saying she had not
20 personally evaluated the ozone formation, given particular
21 distances from oil and gas sites. And then you were
22 looking at page 192 later. But, earlier, they had already
23 sort of already given that. So I'm not sure if that's --
24 if that's helpful or not.

25 But, anyway, I just wanted to point out that

1 because you actually went and saw the transcripts, but
2 they did give her quote here so -- in the record -- in
3 this part of the record. But I agree that if we decide we
4 have the authority, then this should be pretty much a
5 no-brainer.

6 CHAIRPERSON SUINA: And if I may? I wanted to
7 just ask Ms. Soloria one more thing -- one more question.
8 Is the rule -- the whole rule as we discussed a couple of
9 weeks ago, is related to these particular counties; is
10 that correct?

11 MS. SOLORIA: That's correct, Madam Chair.

12 CHAIRPERSON SUINA: Where we have -- where we
13 have concerns about attainment and nonattainment.

14 MS. SOLORIA: Yes, that's correct, Madam Chair.

15 CHAIRPERSON SUINA: Okay. So -- so I just want
16 to be clear, that we're not talking about all of New
17 Mexico; we're talking, these communities -- I mean, well,
18 this rule -- I won't even go into what it says, but item
19 (e) will only pertain to those areas that the rule covers?

20 MS. SOLORIA: Correct, Madam Chair. And as you
21 went on, I came to understand your question. So, if you
22 recall at the very beginning of our deliberations, the
23 rule at the beginning states to which counties this
24 rule -- the rule, in its entirety, applies. So this
25 provision would also apply to only those counties because

1 the rule has been stated to apply to those counties right
2 at the top.

3 CHAIRPERSON SUINA: Okay. Thank you so much.

4 With that, members -- fellow members, is there
5 any other discussion or if we want to make a motion? I
6 know we went up and around. Yes, Member Honker.

7 BOARD MEMBER HONKER: Yes. Well, I will move
8 that we, as a Board, find we have the legal authority
9 to -- to enact Section 116 C (3), as proposed here in this
10 form.

11 BOARD MEMBER CATES: I second that.

12 I don't know if Member Honker was done, but I
13 would like to second his motion.

14 BOARD MEMBER HONKER: Okay.

15 MS. SOLORIA: I -- I would suggest, for clarity,
16 that -- it was a well-stated motion, but if you could add
17 that, otherwise known as the proximity proposal.

18 BOARD MEMBER HONKER: Okay. All right. I will
19 rephrase my motion to say that the Board finds we do have
20 legal authority to -- to adopt a proximity proposal, such
21 as we see before us in Section 116 C (3), for the record.

22 MS. SOLORIA: That was an excellent motion.

23 BOARD MEMBER HONKER: Thank you, Counsel.

24 BOARD MEMBER CATES: Chair Suina, I would second
25 that one.

1 CHAIRPERSON SUINA: Thank you, Member Cates --
2 Member Honker for your motion and Member Cates for your
3 second.

4 With that, Ms. Soloria, do we need to add in our
5 statement of reasons? A basis?

6 MS. SOLORIA: No, Madam Chair. No.

7 CHAIRPERSON SUINA: Okay. Just wanted to
8 double-check.

9 If there's no other discussion, could we do a
10 roll-call vote, Ms. Jones?

11 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
12 you vote?

13 BOARD MEMBER BITZER: I'll vote no.

14 ADMINISTRATOR JONES: Member Cates?

15 BOARD MEMBER CATES: Yes.

16 ADMINISTRATOR JONES: Member Garcia?
17 Member Honker?

18 CHAIRPERSON SUINA: Oh, wait, wait. Member
19 Garcia, we didn't hear your vote.

20 BOARD MEMBER GARCIA: I'm sorry. Yes.

21 ADMINISTRATOR JONES: And Member Honker?

22 BOARD MEMBER HONKER: Yes.

23 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: No.

25 ADMINISTRATOR JONES: And Chair Suina?

1 CHAIRPERSON SUINA: Yes.

2 ADMINISTRATOR JONES: Madam Chair, you have one,
3 two, three, four votes in the affirmative, and two votes
4 in the negative.

5 CHAIRPERSON SUINA: Thank you.

6 ADMINISTRATOR JONES: It passes.

7 CHAIRPERSON SUINA: Thank you, Ms. Jones.
8 Appreciate that.

9 And go ahead, Ms. Soloria.

10 HEARING OFFICER ORTH: I'm sorry. Madam Chair,
11 we have been going more than two hours now, so I think a
12 break would be a good idea.

13 CHAIRPERSON SUINA: Yes, I agree. So do you want
14 to take a ten-minute break? Okay. Sounds good. We will
15 be back at 11:30.

16 (Recess taken from 11:20 a.m. to 11:33 a.m.)

17 CHAIRPERSON SUINA: All right. Are we good to
18 go? All right. Can you hear me? Apologies, guys. You
19 ready? You all ready? There's an echo. That's much
20 better. Can someone do a sound check for our court
21 reporter?

22 HEARING OFFICER ORTH: Madam Chair?

23 CHAIRPERSON SUINA: There's an echo.

24 BOARD MEMBER CATES: It's not me.

25 CHAIRPERSON SUINA: No, I think it's them in the

1 room. Did we change the audio setup on break?

2 ADMINISTRATOR JONES: Stand by. Can you hear us?

3 CHAIRPERSON SUINA: Yes. Can we do a sound
4 check?

5 HEARING OFFICER ORTH: Madam Chair, can you hear
6 me?

7 CHAIRPERSON SUINA: Yes. How about you,
8 Ms. Soloria?

9 MS. SOLORIA: Can you hear me?

10 CHAIRPERSON SUINA: And how about you, Vice-Chair
11 Trujillo Davis?

12 VICE-CHAIR TRUJILLO-DAVIS: Hello. Do you want
13 me to be louder? All right.

14 CHAIRPERSON SUINA: And Member Garcia?

15 BOARD MEMBER GARCIA: Yes. Can you hear me?

16 CHAIRPERSON SUINA: And Member Bitzer?

17 BOARD MEMBER BITZER: Yes, hello.

18 CHAIRPERSON SUINA: Okay. I think Member Honker,
19 you're good as well.

20 BOARD MEMBER HONKER: Yeah, I'm here.

21 CHAIRPERSON SUINA: All right. Sounds great.

22 Thank you, all.

23 HEARING OFFICER ORTH: Madam Chair, would you
24 like me to orient you again, briefly?

25 CHAIRPERSON SUINA: Yes. That will be wonderful,

1 Madam Hearing Officer.

2 HEARING OFFICER ORTH: So, we remain in section
3 116 C (3) (e). And having voted just before the break,
4 that you have the authority to adopt a proximity proposal,
5 we have effectively two proposals before you.

6 The more limited proposal is from NMOGA, and is a
7 combination of switching monthly inspections to quarterly;
8 you find that on page 191, and you combine that with the
9 weekly AVO -- excuse me -- audiovisual olfactory
10 inspections. So NMOGA's proposal is essentially those two
11 things together.

12 Then, the other proposal -- the proximity
13 proposal that has been largely under discussion here this
14 morning is the one proposed or drafted by CEP and Oxy, and
15 offered for your adoption by the Department.

16 CHAIRPERSON SUINA: Thank you, Madam Hearing
17 Officer. Do our members want to jump in and begin
18 discussion?

19 MS. SOLORIA: Madam Chair, may I preface this
20 discussion with a point?

21 CHAIRPERSON SUINA: Yes. Thank you, Ms. Soloria.

22 MS. SOLORIA: Thank you, Madam Chair. So, in
23 considering the alternative proposals, I think that that
24 conversation should happen, and at some point there is an
25 issue of stringency here, because there's no federal

1 counterpart to a proximity proposal. So, I think you-all
2 should discuss the pros and cons of the alternative
3 language. And I just wanted to preface that with that the
4 Board will have to make an additional finding that the
5 language you're considering will be more protective of
6 public health and the environment.

7 CHAIRPERSON SUINA: Did you catch that, court
8 reporter?

9 COURT REPORTER: (Nodding head.)

10 CHAIRPERSON SUINA: Okay. Good.

11 HEARING OFFICER ORTH: Madam Chair, the weekly
12 AVO proposal by NMOGA that joins the proposal on 181, is
13 on page 158. So they are quite some distance from each
14 other.

15 CHAIRPERSON SUINA: Okay. And that's 158 of the
16 Hearing Report, correct?

17 HEARING OFFICER ORTH: Correct.

18 CHAIRPERSON SUINA: And 158, just so that we're
19 all on the same page, would you mind going there so we're
20 making sure we're on the same page of that?

21 HEARING OFFICER ORTH: Certainly. It's section C
22 (2), and the Board, knowing that the proximity proposal
23 would have to be discussed first, tabled it, if you will,
24 until this point, too. I'm almost there. Sorry if I'm
25 making anyone dizzy.

1 Okay. Do you see that in the middle of the page?

2 CHAIRPERSON SUINA: Yes. Got it. Got it. Okay.

3 I just want to make sure we don't miss anything here.

4 Okay. Does anyone have any questions or want to jump in,
5 starting the discussion on this?

6 So, Madam Hearing Officer, maybe just to start
7 the discussion here, so NMOGA is suggesting we put in --
8 or proposing we put in the AVO language here under (2)?

9 HEARING OFFICER ORTH: Yes. NMOGA's proposal
10 consists of two parts: what you see on the screen, which
11 is the weekly AVO in C (2), plus what you see on page 191
12 in the hard copy, which changes "monthly" frequency to
13 "quarterly" frequency. So if you put those two elements
14 together, you have NMOGA's proposal, which they would
15 exhort you to adopt, instead of the proximity proposal
16 from Oxy and CEP.

17 CHAIRPERSON SUINA: Thank you.

18 VICE-CHAIR TRUJILLO-DAVIS: The whole thing or
19 just the last part?

20 HEARING OFFICER ORTH: The two parts of NMOGA's
21 proposal are what you see on the screen there: the weekly
22 AVO, and what you see on page 191, which changes "monthly"
23 frequency to "quarterly" frequency.

24 CHAIRPERSON SUINA: Is that helpful, Vice-Chair
25 Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes, thank you.

2 CHAIRPERSON SUINA: Is there any discussion or
3 anyone want to jump in?

4 Yes, Member Garcia.

5 BOARD MEMBER GARCIA: Yes. So just to make sure
6 I'm clear about this, so we just have the two proposals:
7 the NMED proposal of quarterly at facilities which have a
8 threshold of 5 tons per year VOC, monthly PTE greater than
9 5. So that's NMED's proposal.

10 And then NMOGA is just saying, they're cutting
11 out the threshold and they're just saying "quarterly" for
12 those sites under this scope, right?

13 CHAIRPERSON SUINA: Yes, Member Garcia, that's
14 what I understand this is on.

15 Yes, Vice-Chair Trujillo-Davis.

16 VICE-CHAIR TRUJILLO-DAVIS: Thank you, Member
17 Garcia, for that summary. I think that then begs the
18 question: is there a difference if you're cutting out the
19 threshold and including all sites, is there a difference
20 in the level of protection met? If there's not, then I
21 would say, then, why change what's already written here?

22 CHAIRPERSON SUINA: And Vice-Chair
23 Trujillo-Davis, which one are you saying why change?
24 Which test? Would it be NMOGA's or NMED's?

25 VICE-CHAIR TRUJILLO-DAVIS: Well, NMED's. If the

1 level of protectiveness is the same between what NMOGA is
2 proposing and what NMED proposed in their rule, then why
3 change NMED's text, is still my question.

4 CHAIRPERSON SUINA: Okay. I just wanted to
5 clarify. Thank you.

6 Yes, Member Honker.

7 BOARD MEMBER HONKER: Well, I think the way I'm
8 looking at it, it's the facilities with a PTE equal to or
9 greater than 5, which would be done monthly under NMED's
10 version, which is the joint version from the other
11 parties; or just quarterly under NMOGA's proposal.

12 So that's the real question, is that difference
13 in "monthly" versus "quarterly" under the higher
14 potential-to-emit facilities. And I guess since economic
15 impact is part of our -- well, part of our criteria, you
16 know, how much more of a burden does that put on the
17 industry to go monthly versus quarterly?

18 So I'm kind of on the fence here. I see merits
19 in both approaches. So I think even the quarterly at all
20 of the facilities would be -- would give us more benefit,
21 in terms of pollutant reduction, and be more protective
22 for communities and neighbors to these facilities within
23 1,000 feet. So, it's a question of how much more do we
24 get with the monthly on the larger potential emitters?

25 CHAIRPERSON SUINA: Thank you, Member Honker.

1 Any other comments? Yes, Vice-Chair
2 Trujillo-Davis.

3 VICE-CHAIR TRUJILLO-DAVIS: I would just like to
4 say that I'm inclined to support Member Honker on his
5 statements. I think he makes some valid points on that.

6 CHAIRPERSON SUINA: Thank you, Vice-Chair
7 Trujillo-Davis. Any other comments?

8 Yes, Member Garcia?

9 BOARD MEMBER GARCIA: Yes. I guess I just also
10 have to say, I pointed out earlier that Dr. Lyon mentioned
11 that for the leaks they were finding, the potential to
12 emit -- no, actually, what he said was, the size of the
13 facility didn't make as big -- didn't have as big a
14 bearing for whether there were leaks or not. And that the
15 potential to emit is tied with the size, which it is,
16 right?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 BOARD MEMBER GARCIA: Yes. Well, then, I guess
19 the same holds, that perhaps whether or not the potential
20 to emit is -- or whether or not to increase frequency
21 based on PTE, that what matters is the frequency, not so
22 much the PTE, I guess is what I've gathered out of that
23 discussion from Dr. Lyon. I may be wrong, but they also,
24 you know, throw in the weekly AVO, which, you know, is a
25 good thing. That's pretty frequent, though. I don't know

1 how effective AVO is, but it is, you know, important to
2 do. So, obviously, not as good as the rest of LDAR, but I
3 guess I don't have too much heartburn over this.

4 CHAIRPERSON SUINA: Yes, Vice-Chair
5 Trujillo-Davis?

6 VICE-CHAIR TRUJILLO-DAVIS: I'd just like to pull
7 in a few more details on this. So we're saying that this
8 is going to include all facilities, not just -- not based
9 on size of 5 or less or 5 or greater. So, it will apply
10 to more facilities and I believe -- and I went back to
11 this a couple of times when I was looking at it, but the
12 methods that we're discussing here, as far as this
13 section -- let me get myself oriented.

14 Okay. So the section we're discussing -- or
15 section methods we're discussing -- I apologize; is method
16 21 or an optical gas imaging, so a camera. And an AVO is
17 an accepted method. So I guess what I'm saying is, since
18 AVO is an accepted method, it is cheaper and easier to do
19 than to pull a camera out once a month.

20 I apologize if I'm talking in circles here. I'm
21 just trying to figure out which method is actually more
22 protective or not: having somebody do a quick, monthly
23 inspection, or having a camera, which would be -- to
24 Member Honker's point, a lot more expensive on the
25 economic side of things.

1 CHAIRPERSON SUINA: Madam Vice-Chair, so is it
2 that -- I'm looking at (3), just the overall. I know
3 we're in subsection C or -- I think we're in -- I'm making
4 sure I'm on the right path here. Because we are split
5 between C (2) and C (3) in terms of NMED's -- I mean,
6 sorry, NMOGA's proposal. But on (3) it says, "The owner
7 or operator of the following facilities shall conduct an
8 inspection using U.S. EPA method 21 or optical gas
9 imaging, OGI, of thief hatches, closed vent systems, pumps
10 compressors, pressure relief devices, open-ended valves or
11 lines, valves, flanges, connectors, piping, and associated
12 equipment to identify leaking components at frequencies
13 determined according to the following schedules and upon
14 request by the Department for good cause shown."

15 And then we go into all of the subsections. So I
16 just -- maybe with your background, Vice-Chair
17 Trujillo-Davis; so it seems like there's USA EPA method
18 21, or optical gas imaging as the header for this section
19 as two different methods. Is that how you read it?

20 VICE-CHAIR TRUJILLO-DAVIS: Yes, that's how I
21 read it. I'm not sure I understand, you know, your
22 question.

23 CHAIRPERSON SUINA: And so AVO is separate,
24 right? And that's why they have it in (2), NMOGA?

25 VICE-CHAIR TRUJILLO-DAVIS: Actually, I was

1 double-checking that right now.

2 Yes, AVO is audiovisual and olfactory
3 inspections, which we've discussed in other portions of
4 the rule as being an acceptable method.

5 BOARD MEMBER BITZER: That means, basically,
6 listen and smell?

7 VICE-CHAIR TRUJILLO-DAVIS: Right.

8 BOARD MEMBER BITZER: It gives it away.

9 CHAIRPERSON SUINA: Yes, Member Garcia.

10 BOARD MEMBER GARCIA: I also -- so, Member
11 Trujillo-Davis, you mentioned AVO is an accepted method.
12 I think in this section they're saying -- they're talking
13 about LDAR, not just AVO. So they would not be able to
14 just do AVO in (e). They would have to do -- they'd have
15 to do the LDAR method, which includes method 21 and OGI,
16 and then, plus, they would do the weekly AVO.

17 VICE-CHAIR TRUJILLO-DAVIS: Oh, okay. I agree.

18 BOARD MEMBER GARCIA: Okay.

19 BOARD MEMBER BITZER: Yeah.

20 VICE-CHAIR TRUJILLO-DAVIS: So I guess -- I think
21 we're agreeing on is that they're doing both, right?

22 BOARD MEMBER HONKER: They're proposing to do
23 both, as the NMOGA proposal.

24 HEARING OFFICER ORTH: So, right. NMOGA's
25 proposal stands against the proximity proposal. Those are

1 the two things you're weighing right now. This is not in
2 addition to the proximity proposal. This is instead of
3 the proximity proposal.

4 CHAIRPERSON SUINA: All right. Wait. Instead
5 of -- Madam Hearing Officer, but they're -- NMOGA's
6 proposal still contains for the quarterly, right, or no?
7 Did I miss that?

8 HEARING OFFICER ORTH: Right. They moved from
9 "monthly" to "quarterly." And on page 191, and then to
10 AVO inspection here, in (2) and those two pieces for NMOGA
11 should be instead of the proximity proposal.

12 CHAIRPERSON SUINA: Okay.

13 So, yes, Vice-Chair.

14 VICE-CHAIR TRUJILLO-DAVIS: All right. Just to
15 make sure I understand here. So their text says within
16 1,000 feet of occupied area on page 191. So I'm confused;
17 is that -- that, to me, is a proximity component of that.

18 CHAIRPERSON SUINA: Yes, that's how I -- that's
19 why I was getting confused as well.

20 BOARD MEMBER GARCIA: Isn't that proximity?

21 HEARING OFFICER ORTH: Right, it's a different
22 frequency for proximity, so that it would change the
23 proximity proposal.

24 VICE-CHAIR TRUJILLO-DAVIS: Oh.

25 HEARING OFFICER ORTH: I'm sorry.

1 MS. SOLORIA: So if it helps the Board, so NMOGA
2 has proposed that if the Board proceeds with some version
3 of a proximity proposal, they have amended the
4 requirements.

5 HEARING OFFICER ORTH: Yes.

6 MS. SOLORIA: Okay. Good.

7 CHAIRPERSON SUINA: Yes, Member Honker.

8 BOARD MEMBER HONKER: I'm still not clear where
9 the AVO piece goes. That's in another section?

10 HEARING OFFICER ORTH: That's right. You tabled
11 this on March 11th.

12 BOARD MEMBER HONKER: 158?

13 HEARING OFFICER ORTH: 158, you tabled this
14 because we thought it would be better for you to discuss
15 the proximity LDAR and whether it was within your
16 authority before you looked at this.

17 CHAIRPERSON SUINA: Yes, Vice-Chair
18 Trujillo-Davis.

19 VICE-CHAIR TRUJILLO-DAVIS: Where is the revised
20 text that includes the AVO?

21 HEARING OFFICER ORTH: Page 158.

22 BOARD MEMBER GARCIA: She says you put this into
23 (e), what we're talking about now.

24 BOARD MEMBER HONKER: Oh, okay.

25 BOARD MEMBER GARCIA: Yeah.

1 BOARD MEMBER HONKER: Sorry. My question was,
2 where would the actual AVO language go? So it would be
3 tacked onto --

4 HEARING OFFICER ORTH: C (2).

5 BOARD MEMBER HONKER: C (2).

6 MS. SOLORIA: It would be C (2).

7 BOARD MEMBER HONKER: Big C (2).

8 HEARING OFFICER ORTH: On page 158. Look on page
9 158.

10 BOARD MEMBER HONKER: Actually, 157.

11 HEARING OFFICER ORTH: 157, paragraph 2, not
12 "ii."

13 CHAIRPERSON SUINA: Yes, Madam -- I mean Member
14 Garcia.

15 BOARD MEMBER GARCIA: So, then, what we would be
16 deciding would be not only (e), we'd be deciding B (2).

17 HEARING OFFICER ORTH: The NMOGA thing, that's
18 right, that was tabled. The addition of the NMOGA AVO
19 language was here.

20 CHAIRPERSON SUINA: So I guess, right here, do
21 we -- how are -- maybe Madam Hearing Officer? For (2), C
22 (2), how would we include that here? Would it just be
23 after or an addition to the paragraph, or would it be like
24 another subsection?

25 HEARING OFFICER ORTH: Let's see. I think that's

1 probably just a matter of style. Let's see. "Except that
2 an owner or operator" -- well, at least monthly conducts
3 AVO, blah, blah, blah. Yeah, that would be an extremely
4 long sentence if you just put a comma at the end to fix
5 that.

6 BOARD MEMBER HONKER: Well, that whole section is
7 one sentence now.

8 HEARING OFFICER ORTH: Right. It would be a
9 longer sentence.

10 BOARD MEMBER HONKER: It would be longer.

11 HEARING OFFICER ORTH: We could leave it to the
12 folks who have stylistic strength, to incorporate it.

13 CHAIRPERSON SUINA: And I just asked that
14 because, you know, if we put it here, there's a different
15 section -- I mean, a difference description of the
16 entities or the items than, I mean, just (3). And I know
17 3 is related just below here, you can see the text of (3).
18 If you'd scroll down a little bit, Madam Hearing Officer,
19 on your report. Right there.

20 So I just want to make sure if, you know, we're
21 comparing apples to apples here. If the AVO proposal also
22 is comprehensive enough or comprehensive to what (3) is.

23 HEARING OFFICER ORTH: Yeah. So, if you look up
24 above there in (2), which I'm kind of sneaking up on here,
25 "shall at least monthly conduct an AVO inspection."

1 Right? And then the point of their addition is, except,
2 you know, where you are 1,000 feet from an occupied area,
3 the AVO inspection is done weekly. So there are a couple
4 of different ways they could do that: leave the period
5 where it is, and then say, just add it, turn it into a
6 comma or a semicolon and add it, or bring it in to maybe
7 (2) (a) or (2) (b).

8 BOARD MEMBER GARCIA: I mean, you couldn't add
9 the weekly on to (e)? You couldn't just do that?

10 HEARING OFFICER ORTH: On (e)?

11 BOARD MEMBER GARCIA: Well, what we're discussing
12 right now.

13 HEARING OFFICER ORTH: You mean on page 191? No,
14 because that's -- I don't think that's specific to AVO;
15 (e) isn't specific to AVO, which is why NMOGA is
16 recommending it here.

17 I don't think you need to get hung up on that,
18 though. I think the rule drafters can work with that.

19 CHAIRPERSON SUINA: Okay. And I just wanted to
20 be careful that we didn't, I guess, amend something that
21 would have, by -- by just essence of formatting in this --
22 in this case, where we would change the meaning of the
23 proposed amendment.

24 Or how else am I putting it? I didn't want to
25 just throw it somewhere and then it change by -- by maybe

1 in a stricter or less strict context.

2 HEARING OFFICER ORTH: This seems fairly
3 straightforward, Madam Chair, in this section, if you're
4 not going with the full LDAR proximity proposal.

5 CHAIRPERSON SUINA: Thank you, Madam Hearing
6 Officer. And really quick, I know at the beginning of
7 this section today, Madam Hearing Officer, we had talked
8 about definitions. Did we finalize -- just remind me, did
9 we finalize the definition of "occupied area"?

10 HEARING OFFICER ORTH: No, that should be part of
11 your discussion now, and you can adopt it or not as part
12 of this discussion. It's on page 21 of the hard copy.

13 CHAIRPERSON SUINA: So fellow Board members, I
14 just want to -- I just wanted to note that.

15 Yes, Member Bitzer, did you have something to
16 say?

17 BOARD MEMBER BITZER: We have it on 21, yes, I
18 went back and looked at it. Here's the occupied area
19 definition, it's EE on page 21.

20 CHAIRPERSON SUINA: Yes, Member Garcia.

21 BOARD MEMBER GARCIA: This is the same question.

22 HEARING OFFICER ORTH: I think it probably is.

23 BOARD MEMBER GARCIA: So I guess I'm starting to
24 get a little bit stuck here. And I'm wondering if it
25 would be helpful to perhaps decide, what are we going to

1 decide on first. Are we going to vote on all of three of
2 these or are we going to do a motion for each of them?
3 And if we do it in that order, would it make the most
4 sense?

5 HEARING OFFICER ORTH: I think you can spend a
6 little time on the definition of "occupied area," so, you
7 know, sort of how it's used in Section 116.

8 And I will say we didn't have a different
9 proposal -- oh, wait, yeah, there was a different proposal
10 on page 22 from NMOGA. So that's worth spending some time
11 on, and I would do that separately. But then, ultimately,
12 I think you just need to make a decision between NMOGA's
13 proposal to add weekly AVO and quarterly LDAR, versus the
14 full LDAR proximity proposal as proposed by Oxy and CEP.

15 CHAIRPERSON SUINA: Yes, Member Garcia.

16 BOARD MEMBER GARCIA: Well, it seems -- I
17 appreciate that. It seems to make sense that we decide on
18 the "occupied area" definition because it is within
19 this -- the other items here, EE. So it makes sense to
20 decide on that and discuss that first. Once we decide
21 that, then we go on into NMOGA's alternative proposal or
22 NMED's proposal.

23 CHAIRPERSON SUINA: Okay. Thank you, Member
24 Garcia and Madam Hearing Officer for that.

25 So, with that, members of the Board, I guess,

1 let's focus on the definition first. Yes, Vice-Chair
2 Trujillo-Davis.

3 VICE-CHAIR TRUJILLO-DAVIS: I just want to know
4 if this definition is consistent with the other -- I'm
5 sure "occupied area" is in other NMED rules. And I'm just
6 curious if there's consistency in these definitions.

7 CHAIRPERSON SUINA: Thank you, Vice-Chair.

8 HEARING OFFICER ORTH: Madam Chair and Madam
9 Vice-Chair, I don't believe we have that evidence in the
10 record.

11 CHAIRPERSON SUINA: So, Madam Hearing Officer, on
12 your -- within your report here, it's just really the
13 two -- I don't really recall too much conversation about
14 discussion during the hearing about occupied areas in
15 various -- I don't know if other members of the Board do.

16 Do you recall that, Madam Hearing Officer?

17 Yes, Member Garcia?

18 BOARD MEMBER GARCIA: Yes, I do recall an
19 extensive discussion about occupied area, yes.

20 CHAIRPERSON SUINA: Okay.

21 HEARING OFFICER ORTH: Mr. Smitherman spent a
22 fair amount of time on it for NMOGA.

23 CHAIRPERSON SUINA: Okay. Yes, Vice-Chair
24 Trujillo-Davis.

25 VICE-CHAIR TRUJILLO-DAVIS: Just for recap, can

1 you just give us a recap of what -- the high points on
2 that? Maybe the -- where they're in conflict, because I
3 don't recall that discussion.

4 HEARING OFFICER ORTH: So, Mr. Smitherman --
5 looking at the top of page 22, Mr. Smitherman testified
6 that the term "recreation area," which sometimes refers to
7 national forests and very large areas, was vague. That
8 was his feeling, that it was vague, and that much of New
9 Mexico then would be considered occupied area. We're
10 surrounded by forests and other open spaces.

11 So he wanted to offer some language to limit this
12 scope and make it less vague. And so you see there at the
13 top, that one does include areas used for dispersed
14 recreation, such as nondeveloped areas, national forests,
15 parks or similar reserves.

16 CHAIRPERSON SUINA: Yes, Member Garcia.

17 BOARD MEMBER GARCIA: Yes, and I do recall that
18 discussion. And I see in the summary that the Hearing
19 Officer provided, their concern that recreation area --
20 that someone might think that it's a large area, and it
21 is. I think the way it's written: an outdoor venue or
22 recreation area, such as a playground, permanent sports
23 field, et cetera, it qualifies it a bit.

24 I really am not concerned that -- that that's
25 going to be taken out of context. I'm just not worried

1 about that, so I'm not -- I just don't think we need to
2 worry about that. Thank you.

3 CHAIRPERSON SUINA: Thank you. Is there any
4 other comments on that?

5 And just to make a comment, I think NMOGA and the
6 industry may be wanting to clarify this because of all of
7 the discussion regarding our national parks and monuments.
8 And so, I think that's where, you know, with the -- with
9 the witnesses for White Sands down in Southern New Mexico,
10 and then also, you know, the ongoing discussions for near
11 the San Juan Basin.

12 But to your point, Member Garcia, I don't think
13 that -- as I -- as I look at this, that there would be
14 really a way of expanding this or -- I don't know what
15 other term -- for misapplying it.

16 Yes, Member Honker.

17 BOARD MEMBER HONKER: Well, I agree with you and
18 Member Garcia. And, in fact, I can read the NMOGA
19 proposal as more restrictive. It says, "Outdoor venue or
20 recreational area does not include areas normally used for
21 dispersed recreation, such as nondeveloped areas of
22 national forests, parks or similar reserves."

23 I don't even know what "nondeveloped areas"
24 means. Does that mean if there's a trail there, it's a
25 developed area and it wouldn't be excluded?

1 So I think the NMED wording is okay.

2 CHAIRPERSON SUINA: Thank you, Member Honker.

3 Yes, Member Bitzer.

4 BOARD MEMBER BITZER: I'll concur on that -- on
5 that point, and you know, start to get a coalescent
6 consensus around here. I think the definition is
7 sufficient that the Department proposed.

8 CHAIRPERSON SUINA: Thank you, Member Bitzer.

9 Yes, Member Honker.

10 BOARD MEMBER HONKER: I was going to make a
11 motion, but I've got to see which section we're talking
12 about here. Hang on.

13 HEARING OFFICER ORTH: It's on pages 21 and 22.

14 VICE-CHAIR TRUJILLO-DAVIS: Section 7.

15 HEARING OFFICER ORTH: And you see it's
16 subsection EE.

17 BOARD MEMBER HONKER: So it's Section 7.

18 HEARING OFFICER ORTH: Section 7.

19 BOARD MEMBER HONKER: Okay. So I will move that
20 we adopt Section 7 EE "occupied area" definition as
21 proposed by NMED, for the rationale put forth by NMED.

22 BOARD MEMBER BITZER: I'll second that.

23 CHAIRPERSON SUINA: Thank you, Member Honker and
24 Member Bitzer, for your second. Is there any further
25 discussion? If not, Ms. Jones, would you do a roll-call

1 vote on that?

2 ADMINISTRATOR JONES: I will. Member Bitzer, how
3 do you vote?

4 BOARD MEMBER BITZER: I vote yes.

5 ADMINISTRATOR JONES: Member Cates, how do you
6 vote?

7 BOARD MEMBER CATES: Yes.

8 ADMINISTRATOR JONES: Member Garcia?

9 BOARD MEMBER GARCIA: Yes.

10 ADMINISTRATOR JONES: Member Honker?

11 BOARD MEMBER HONKER: Yes.

12 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

13 VICE-CHAIR TRUJILLO-DAVIS: Yes.

14 ADMINISTRATOR JONES: Chair Suina?

15 CHAIRPERSON SUINA: Yes.

16 ADMINISTRATOR JONES: Madam Chair, the motion
17 passes.

18 CHAIRPERSON SUINA: Thank you, Ms. Jones.

19 All right. We've got one out of a slew of these
20 on this point. So, members, which part would you like to
21 tackle next? I'm just looking.

22 Yes, Member Honker.

23 BOARD MEMBER HONKER: Well, I would say let's go
24 to the proximity proposal because the OVA (sic) AVO --
25 sorry. The AVO proposal was put forth by NMOGA, as I

1 understand it, to go with their proximity proposal
2 language. Therefore, it may be irrelevant if we decide to
3 go with the other proximity proposal language.

4 CHAIRPERSON SUINA: Sounds good.

5 BOARD MEMBER HONKER: Maybe.

6 CHAIRPERSON SUINA: We're going all the way back
7 to 181. I'll get there as well. And that's page 181; is
8 that correct?

9 HEARING OFFICER ORTH: 191, correct.

10 BOARD MEMBER BITZER: No, 181.

11 HEARING OFFICER ORTH: Oh, yeah. Sorry.

12 BOARD MEMBER GARCIA: The NMED is 181.

13 HEARING OFFICER ORTH: Correct.

14 CHAIRPERSON SUINA: So just to make sure we're
15 all -- yep, I see it on the page; NMED's proposed
16 language.

17 Is there any discussion? I know we've discussed
18 this a little bit already, and just swinging back and
19 seeing if we can move forward. Yes, Member Honker.

20 BOARD MEMBER HONKER: Well, I know I was very
21 adamant that I thought we had legal authority for this.
22 On the other hand, I think NMOGA's proposal to go
23 quarterly for the well sites within the 1,000 feet,
24 coupled with the AVO weekly inspections, would give us a
25 substantial more -- substantially more coverage of

1 emissions from -- from sources within 1,000 feet, so I
2 would -- I think I would be okay with NMOGA's proposal on
3 this. I'd also be okay with the original one, but...

4 CHAIRPERSON SUINA: Thank you, Member Honker.
5 Yes, Vice-Chair Trujillo-Davis.

6 VICE-CHAIR TRUJILLO-DAVIS: I also think that
7 both of these are pretty good proposals. I like -- in
8 NMOGA's proposal, I do like that no matter the size of the
9 facility, if it's within 1,000 feet of an occupied area,
10 that somebody is looking at it at least once a week.

11 BOARD MEMBER BITZER: Yeah.

12 VICE-CHAIR TRUJILLO-DAVIS: And I think that that
13 is a strong component of that. So on that -- on that side
14 of things, that definitely gets my support. But, again, I
15 think these are two fairly strong proposals.

16 CHAIRPERSON SUINA: Thank you, Vice-Chair
17 Trujillo-Davis.

18 Anybody else? And I do recall as we were
19 discussing this on this particular one, that we went back
20 and around with Mr. Smitherman and NMOGA's witnesses on
21 this, in general terms, just -- but more talking about
22 the -- maybe not "the" proximity proposal, but "a"
23 proximity proposal.

24 At one point I think NMOGA -- Mr. Smitherman had
25 mentioned that the industry would propose something, so

1 this was their compromise, I think, on this aspect. And I
2 think I'm in agreement that it is a compromise, and I'm
3 also leaning toward -- you know, either one is a move
4 toward -- a move toward that compromise, especially with
5 NMOGA's proposal.

6 Yes, Member Garcia.

7 BOARD MEMBER GARCIA: Yes. And I just want to
8 make sure -- I want to ask Madam Hearing Officer. It
9 scares me that -- to use language like this is as an
10 alternate to the proximity proposal, you said that, and
11 it's, like, wait a minute, this is still proximity, right?

12 HEARING OFFICER ORTH: It's still proximity,
13 yeah.

14 BOARD MEMBER GARCIA: Okay. Great. I just, you
15 know, you know this better than I do, so I just want to
16 make sure that I'm not missing something here, that we're
17 not approving (a) -- if we approve this, it's still part
18 of a proximity proposal, but it's just less frequent.

19 HEARING OFFICER ORTH: Right. That's the way it
20 reads. And I'm sorry, I was focused so hard on trying to
21 make sure that I conveyed that it was in conjunction with
22 the AVO.

23 BOARD MEMBER GARCIA: Okay.

24 HEARING OFFICER ORTH: I may have detracted from.

25 BOARD MEMBER GARCIA: Okay. All right. Great.

1 That's great. That makes me feel better. I'm like, okay.

2 BOARD MEMBER HONKER: I'm leaning toward this.

3 BOARD MEMBER GARCIA: So if we're all in
4 agreement, we're just talking about frequency here. We're
5 still talking about doing more inspections and doing the
6 weekly AVO. I'm okay with it.

7 CHAIRPERSON SUINA: Thank you, Member Garcia.

8 Yes, does anybody -- I think it sounds like the
9 conversation is going toward one direction. And I don't
10 know, I'm looking to the members to see if you want to
11 entertain a motion at this point or if we have further
12 discussion.

13 MS. SOLORIA: Madam Chair, may I make a few
14 points?

15 CHAIRPERSON SUINA: Yes. Yes, of course,
16 Ms. Soloria.

17 MS. SOLORIA: So the first point is that to the
18 extent you're considering adopting NMOGA's alternative
19 version of the proximity proposal, there may be an issue
20 here of mixed rationale, so just think about that in how
21 you craft your motion, in the sense that NMOGA has
22 provided -- provides the language, but the underlying
23 rationale for the proximity proposal was proposed by the
24 environmental parties. So we can work on that and how to
25 best encapsulate that in a motion.

1 The second point is before adoption of any
2 version of this proximity rule, you'll have to make the
3 preliminary finding regarding that proposal being more
4 protective of public health because this is more stringent
5 than the federal regulation.

6 BOARD MEMBER BITZER: Do we want to do that
7 motion first?

8 MS. SOLORIA: I think you have to decide which
9 version you're going with before we can craft either of
10 those motions.

11 BOARD MEMBER BITZER: Okay.

12 MS. SOLORIA: Because the finding has to be made
13 on whatever version you're ultimately going to take.

14 CHAIRPERSON SUINA: Yes, Vice-Chair
15 Trujillo-Davis.

16 VICE-CHAIR TRUJILLO-DAVIS: So, just to reflect
17 on the points made; since the proximity proposal, it
18 will -- just being a proximity proposal, it is more
19 protective because there is not a federal regulation for
20 that. Do we have any issue establishing the basis --
21 either if we go with NMED's or with NMOGA's?

22 MS. SOLORIA: The statute requires the finding be
23 based on substantial evidence. So if you make that
24 finding, then you are stating that you have found
25 substantial evidence in the record.

1 VICE-CHAIR TRUJILLO-DAVIS: Okay.

2 CHAIRPERSON SUINA: Yeah, Vice-Chair.

3 VICE-CHAIR TRUJILLO-DAVIS: So did we make that
4 finding when we said that we had the authority to?

5 MS. SOLORIA: No, you did not. That was a
6 separate statutory provision, but if you have found the
7 authority under the substantive authority to pass this
8 type of proposal -- once you've made that -- you have made
9 that finding to actually pass this, the statute requires
10 you to make that finding, of more protective. That's an
11 additional requirement.

12 VICE-CHAIR TRUJILLO-DAVIS: Thank you. I
13 appreciate that. I felt like I was tripping over my feet
14 there for a minute.

15 CHAIRPERSON SUINA: So, with that, Ms. Soloria,
16 thank you for bringing those points up. So I just want to
17 be clear in my mind as well. For NMOGA's proposal -- and
18 maybe this would be a question for Madam Hearing Officer;
19 did they provide -- would we run into an issue on their
20 proposal, that they did or did not provide support for the
21 added benefit of their proposal?

22 HEARING OFFICER ORTH: I believe, Madam Chair,
23 that what Ms. Soloria has said is exactly right, which is
24 that the underlying support that you will have to
25 establish in your statement of reasons for adoption of any

1 proximity proposal, is going to come largely from the
2 community environmental parties and Oxy, the folks who
3 actually drafted it to begin with.

4 And then for the specific language here on page
5 191, NMOGA's version of it, she will also have to craft a
6 statement of reasons that goes further, to say why you
7 went to NMOGA's version. So she -- so the basis for your
8 decision will be drawn from the original drafters of the
9 proximity proposal and from NMOGA, if you choose NMOGA's
10 version here.

11 CHAIRPERSON SUINA: Thank you, Madam Hearing
12 Officer. And I'm just trying to remember, too, was there
13 calculations or a comparison between the inspections under
14 Section 3 versus AVO? I don't specifically recall that in
15 the -- in the testimony. Do any of the Board members
16 recall that or Madam Hearing Officer?

17 HEARING OFFICER ORTH: No.

18 CHAIRPERSON SUINA: Okay. So that may mean --
19 I'm just working through this in my head -- if we have a
20 mixed set of proposals and we don't have a good statement,
21 we would have to be clear about our basis of our decision
22 for amended language, right, Ms. Soloria, even if it's
23 from another party?

24 MS. SOLORIA: That's correct. Well, so, if I
25 were to take a very preliminary stab at this, if, for

1 example, you were to consider NMOGA's proposal that's
2 showing on the screen right now, the motion would be
3 something to the effect of, we move to adopt the proximity
4 proposal as proposed by CEP and -- as proposed by the
5 Department and supported by CEP and Oxy for the reasons
6 stated by those parties, with the amendments proposed by
7 NMOGA, for the reasons stated by NMOGA.

8 I mean, that was not a very good motion, but that
9 gives you kind of an overview of where we have to go if
10 you're considering adopting that language, because NMOGA
11 was not the proponent of the proximity proposal in any
12 sense.

13 CHAIRPERSON SUINA: Okay.

14 MS. SOLORIA: Their language assumes that you
15 followed the proposing parties' rationale to some extent.

16 CHAIRPERSON SUINA: Thank you for that,
17 Ms. Soloria.

18 And Madam Vice-Chair, I saw your hand up.

19 VICE-CHAIR TRUJILLO-DAVIS: Yes. I was trying to
20 understand your question, Madam Chair, so I was going to
21 ask you to repeat it, but we went too far down the road
22 and now I'm -- I don't know. You can repeat it if you
23 want.

24 CHAIRPERSON SUINA: Well, I think she --
25 Ms. Soloria addressed my question, in that, I was

1 wondering if, you know, with two different motions, and if
2 one party, you know, proposed language, but it wasn't as
3 substantive, I guess, in its backing of it, it was, like,
4 okay, if you're going to do it, then here's another set of
5 language to consider, without a very robust discussion of
6 the support of that same language; I guess that's where I
7 was getting at.

8 Yes, Member Garcia.

9 BOARD MEMBER GARCIA: I think I understand your
10 question, but I'm also ready to try a motion if we're at
11 that point. Everybody is nodding.

12 MS. SOLORIA: I will start -- if your motion -- I
13 would have you propose the motion so that the Board is
14 clear on what language is under consideration before you
15 make the motion to duly adopt that language, you would
16 have to do a preliminary finding motion regarding
17 stringency.

18 BOARD MEMBER GARCIA: Okay.

19 MS. SOLORIA: Just because we have to check that
20 box.

21 BOARD MEMBER GARCIA: Okay.

22 CHAIRPERSON SUINA: So should we do the
23 preliminary finding motion or do Member Garcia's?

24 MS. SOLORIA: Excuse me. Sorry, Madam Court
25 Reporter. I was going to have -- I would suggest that

1 Member Garcia proffer what her motion is going to be
2 because otherwise we don't know what the stringency motion
3 or the stringency finding is considering.

4 CHAIRPERSON SUINA: Thank you.

5 BOARD MEMBER GARCIA: Okay.

6 BOARD MEMBER BITZER: Go ahead and take a stab at
7 it.

8 BOARD MEMBER GARCIA: Okay. So I would move that
9 we adopt the proximity proposal proposed by NMED and CEP
10 for the reasons proffered by NMED and CEP, and testimony
11 from Ms. Hill and Dr. Lyon, and amended by NMOGA; I would
12 adopt that motion.

13 BOARD MEMBER BITZER: I'll second that.

14 MS. SOLORIA: Well, we are not -- we are not
15 considering this motion.

16 BOARD MEMBER BITZER: That's a proffer of a
17 draft, and a second to that motion.

18 MS. SOLORIA: And Member Garcia, I would
19 respectfully suggest that we amend that slightly, that to
20 adopt the proximity proposal proposed by NMED, CEP and
21 Oxy, for reasons offered by both parties and their
22 witnesses, as amended by NMOGA, for reasons stated by
23 NMOGA. So that's the proffered motion to actually
24 consider the language at (e).

25 And so, prior to adopting that -- so prior to

1 putting that motion on the table, there needs to be a
2 finding for the Air Quality Control Act. And I'll just
3 read that for you. Before the -- before the Board adopts
4 a rule that is more stringent than the federal act or
5 federal regulation, the Board shall make a determination
6 based on substantial evidence, and after notice of public
7 hearing, that the proposed rule will be more protective of
8 public health and the environment.

9 CHAIRPERSON SUINA: So when -- oh, yes, go ahead,
10 Member Garcia.

11 BOARD MEMBER GARCIA: No, you go ahead, Madam
12 Chair.

13 CHAIRPERSON SUINA: I was just making sure I
14 understood Ms. Soloria. So we need to provide a basis for
15 public health and/or the environment for the stricter
16 rule?

17 MS. SOLORIA: So, Madam Chair, that statutory
18 provision, because there is no federal counterpart to a
19 proximity requirement that we're looking at here, it does
20 require the Board to make that finding before you can
21 adopt that type of rule.

22 CHAIRPERSON SUINA: Okay. And in making that
23 finding -- sorry, Vice-Chair. We have to have a
24 discussion and then have a vote on what that finding is;
25 is that correct?

1 MS. SOLORIA: Yes. The vote would be that there
2 is -- that based on substantial evidence you have found
3 that the proposed -- the proposal is more protective of
4 public health and the environment. So the Board is
5 welcome to have a discussion, and then at the end, if you
6 want to consider voting on the rule itself, you have to
7 also vote on making the finding first.

8 BOARD MEMBER BITZER: Then the proposal is --
9 what is the numerology of the proposal?

10 BOARD MEMBER HONKER: 116 B (3) (e).

11 BOARD MEMBER BITZER: I'll take a stab at that
12 for the sake of discussion. I move that based on
13 substantial evidence that the proposal is more protective
14 of public health and the environment, that we approve --
15 that we approve section -- or 116 Section C (3) (e).

16 MS. SOLORIA: May -- may I proffer something?

17 BOARD MEMBER BITZER: Sure.

18 MS. SOLORIA: So I would suggest that it be --
19 the motion be, I move that based on substantial evidence,
20 the Board finds the proposal at 116 C (3) (e) as proposed
21 by the Department, CEP and Oxy, and amended -- and amended
22 by NMOGA, before "protection of public health and the
23 environment."

24 BOARD MEMBER BITZER: That's what I said. I
25 adopt that as what I said, as a proposed -- as a motion.

1 CHAIRPERSON SUINA: And Ms. Soloria or Madam
2 Hearing Officer, because it's under C (3) (e), but we also
3 on the amended version for NMOGA, we run into the
4 complication there in C (2) language. Does that have --
5 does that affect the motion or the...

6 BOARD MEMBER HONKER: We'll go back and do that
7 as a separate motion.

8 MS. SOLORIA: Sorry, again, court reporter; I
9 believe we can address that as a separate motion.

10 CHAIRPERSON SUINA: Okay. Okay.

11 BOARD MEMBER GARCIA: Did you have a second?

12 BOARD MEMBER BITZER: No one has seconded my
13 motion.

14 BOARD MEMBER HONKER: I'll re-second it.

15 CHAIRPERSON SUINA: Okay. So we have a motion by
16 Member Bitzer and then a second by Member Honker; is that
17 correct?

18 BOARD MEMBER HONKER: Yes.

19 CHAIRPERSON SUINA: Okay. That's just for
20 clarity for the court reporter.

21 Yes, Member -- Member Garcia, you had your hand
22 up. Sorry about that.

23 BOARD MEMBER GARCIA: Oh, no. It's moot now.
24 Thank you.

25 CHAIRPERSON SUINA: Okay. All right. Is there

1 any further discussion about that motion -- about Member
2 Bitzer's motion? And is there any further guidance from
3 Ms. Soloria, just to make sure?

4 MS. SOLORIA: That's a pretty good motion. I
5 sign off on the motion, Madam Chair.

6 CHAIRPERSON SUINA: Okay. All right. And
7 members of the Board, if there's no further discussion on
8 Member Bitzer's motion, I look to Ms. Jones to do a
9 roll-call vote on that.

10 ADMINISTRATOR JONES: Member Bitzer?

11 BOARD MEMBER BITZER: I'll vote yes.

12 ADMINISTRATOR JONES: Member Cates?

13 BOARD MEMBER CATES: Yes.

14 ADMINISTRATOR JONES: Member Garcia?

15 BOARD MEMBER GARCIA: Yes.

16 ADMINISTRATOR JONES: Member Honker?

17 BOARD MEMBER HONKER: Yes.

18 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Yes.

20 ADMINISTRATOR JONES: And Chair Suina?

21 CHAIRPERSON SUINA: Yes.

22 ADMINISTRATOR JONES: The motion passes.

23 CHAIRPERSON SUINA: Thank you so much, Ms. Jones.

24 All right. Getting there. So the next part is
25 we've got the basis, and then now we need to move toward

1 the amended language. I mean, the motion on the language,
2 I should say.

3 And that was back to Member Garcia's initial
4 discussion and drafted motion; is that correct,
5 Ms. Soloria?

6 MS. SOLORIA: We're going to go ahead and adopt
7 the language at (3) (e) first, correct.

8 BOARD MEMBER BITZER: Yes.

9 MS. SOLORIA: So you want to make the motion -- I
10 can refresh your recollection if you need it.

11 BOARD MEMBER GARCIA: Okay. So I move to adopt
12 the proximity proposal proposed by NMED and CEP and Oxy,
13 for reasons proffered by those parties, and for reasons
14 stated by on the amendment proposed by NMOGA, for reasons
15 stated by NMOGA.

16 MS. SOLORIA: Very good.

17 BOARD MEMBER HONKER: I'll second.

18 CHAIRPERSON SUINA: Thank you. So we have a
19 motion by Member Garcia and then I saw Member Bitzer's
20 hand raised, but I thought it was Member Honker. Member
21 Honker, all right. Member Honker was the second.

22 All right. I see head nods from the court
23 reporter, she got it. And so, if there's no other
24 discussion, I'm looking around. Ms. Jones, would you mind
25 doing a roll-call vote?

1 ADMINISTRATOR JONES: Sure. Member Bitzer, how
2 do you vote?

3 BOARD MEMBER BITZER: I vote yes.

4 ADMINISTRATOR JONES: Member Cates, how do you
5 vote?

6 BOARD MEMBER CATES: Yes.

7 ADMINISTRATOR JONES: Member Garcia?

8 BOARD MEMBER GARCIA: Yes.

9 ADMINISTRATOR JONES: Member Honker?

10 BOARD MEMBER HONKER: Yes.

11 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

12 VICE-CHAIR TRUJILLO-DAVIS: Yes.

13 ADMINISTRATOR JONES: Chair Suina?

14 CHAIRPERSON SUINA: Yes.

15 ADMINISTRATOR JONES: The motion passes.

16 CHAIRPERSON SUINA: Thank you, Ms. Jones.

17 All right. Next, I think we have the next
18 amendment; is that correct?

19 HEARING OFFICER ORTH: We would go now to B (2)
20 on your screen.

21 CHAIRPERSON SUINA: Yes, Vice-Chair.

22 VICE-CHAIR TRUJILLO-DAVIS: Before we move on,
23 does anybody need to take a lunch break? Can we talk
24 about our lunch break?

25 BOARD MEMBER GARCIA: After this.

1 CHAIRPERSON SUINA: Yeah, I mean, are we going
2 to -- oh, what was the discussion? Sorry, I didn't hear
3 that.

4 BOARD MEMBER GARCIA: I just -- I just said maybe
5 after this vote, so we can kind of finish this piece.

6 BOARD MEMBER BITZER: Yeah, let's get closure.

7 CHAIRPERSON SUINA: Okay. Is that all right? Is
8 that all right, Vice-Chair?

9 VICE-CHAIR TRUJILLO-DAVIS: Yes, that's fine with
10 me.

11 CHAIRPERSON SUINA: I'm excited to head up, so I
12 agree with you, Vice-Chair.

13 All right. So the next one, Ms. Soloria, is the
14 amendment, right? So, go ahead.

15 MS. SOLORIA: So, having now adopted NMOGA's
16 amendments to the proximity proposal part of that
17 adoption, that amendment package with the added language
18 to D (2,) which was the AVO provision. Weekly.

19 CHAIRPERSON SUINA: Weekly.

20 Yes, Member Honker.

21 BOARD MEMBER HONKER: And we deferred action on
22 116 C (2) previously, so we still haven't voted on this
23 section yet.

24 MS. SOLORIA: That's correct.

25 CHAIRPERSON SUINA: So I just want to be clear

1 for myself and the record. Right now, we have the motion
2 for -- so far, for 116 C (3) (e)-as-in-Everett, already on
3 the record.

4 MS. SOLORIA: Correct, Madam Chair. That has
5 been voted and passed.

6 CHAIRPERSON SUINA: Okay. And so, now, if we
7 want to go further, it is to amend C (3) (e) as we
8 moved -- I mean, as we just voted on, to adjust that and
9 to go back to C (2)?

10 HEARING OFFICER ORTH: It's not C (3), it's C
11 (2).

12 BOARD MEMBER GARCIA: It's just C (2) right now.

13 HEARING OFFICER ORTH: And it's on your screen.
14 Let me point this out a little bit more. There, so you
15 have NMED's C (2) there at the top of the page and their
16 support for it.

17 And then NMOGA's addition to it, which is of a
18 piece with their version of the proximity proposal, and
19 which calls for weekly AVO where there's a well site
20 within 1,000 feet of an occupied area, instead of monthly
21 AVO.

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

24 And with that, Ms. Soloria, since this is another
25 section, do we have to go through that process again,

1 because it will be more strict, about in the -- in the --
2 as we did for C (3) (e)?

3 MS. SOLORIA: That's a very good question, Madam
4 Chair. I would say in an abundance of caution, we repeat
5 that finding, because the previous finding was specific to
6 section (e), and this is part and parcel of the proximity
7 proposal, generally, so I would advise repeating it.

8 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

9 MS. SOLORIA: Would you like me to propose a
10 motion?

11 CHAIRPERSON SUINA: Yes, please.

12 MS. SOLORIA: Based on substantial -- the proper
13 motion is based on substantial evidence, the language
14 offered by NMOGA at Section 116 (B) (2) is more protective
15 of public health and the environment.

16 BOARD MEMBER BITZER: I adopt that as my motion,
17 what she said.

18 CHAIRPERSON SUINA: Thank you, Member Bitzer.

19 BOARD MEMBER HONKER: I'll second.

20 CHAIRPERSON SUINA: Thank you, Member Honker, for
21 your second.

22 Is there any discussion on that point? If not,
23 Ms. Jones, would you do a roll-call vote on that motion --
24 on Member Bitzer's motion?

25 ADMINISTRATOR JONES: Yes. Member Bitzer?

1 BOARD MEMBER BITZER: I vote yes.

2 ADMINISTRATOR JONES: Member Cates, how do you
3 vote?

4 BOARD MEMBER CATES: Yes.

5 ADMINISTRATOR JONES: Member Garcia?

6 BOARD MEMBER GARCIA: Yes.

7 ADMINISTRATOR JONES: Member Honker?

8 BOARD MEMBER HONKER: Yes.

9 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes.

11 ADMINISTRATOR JONES: And Chair Suina?

12 CHAIRPERSON SUINA: Yes.

13 ADMINISTRATOR JONES: The motion passes.

14 CHAIRPERSON SUINA: Thank you, Ms. Jones.

15 HEARING OFFICER ORTH: I'm sorry to do this,
16 Madam Chair, but you will also need to adopt Section (2)
17 because that was tabled.

18 BOARD MEMBER GARCIA: Oh, in that motion?

19 HEARING OFFICER ORTH: Well, no.

20 MS. SOLORIA: I'm -- I'm thinking whether or not
21 I need to revise that finding motion because...

22 CHAIRPERSON SUINA: So, Ms. Soloria, should we
23 have -- oh, go ahead.

24 MS. SOLORIA: The finding motion is fine, because
25 NMOGA did raise that to its previously adopted motion, so

1 that motion is fine -- (inaudible.)

2 CHAIRPERSON SUINA: Ms. Soloria, Madam Court
3 Reporter couldn't hear what you were saying.

4 MS. SOLORIA: So to repeat, we'll stand on the
5 previous motion that was just heard about the finding. We
6 don't need to expand that because NMOGA didn't raise that
7 B (2) as drafted, was more stringent than federal
8 standards. So we've addressed what we needed to address
9 regarding stringency.

10 The motion the Board needs to consider now is to
11 adopt the language at C (2) as proposed by the Department,
12 for the reasons offered by the Department, with the
13 amendments proposed by NMOGA, for the reasons offered by
14 NMOGA.

15 BOARD MEMBER BITZER: Take a stab at it.

16 BOARD MEMBER HONKER: I will move that we adopt
17 the language in 116 C (2) proposed by NMED, for the
18 rationale given by NMED, with the addition of the language
19 proposed by NMOGA concerning weekly AVO -- AVO
20 inspections, for the rationale provided by NMOGA under
21 this section and the proximity proposal.

22 BOARD MEMBER BITZER: I'll second that.

23 CHAIRPERSON SUINA: Thank you, Member Honker,
24 Member Bitzer.

25 And Ms. Soloria, do we need to add anything to

1 the motion?

2 MS. SOLORIA: I would. In a turn, of course, I
3 would actually excise something from this motion that we
4 don't need. It's the last in regard to the proximity
5 proposal is limited to this particular section.

6 BOARD MEMBER HONKER: Okay.

7 MS. SOLORIA: So, with that amendment --

8 BOARD MEMBER HONKER: Yes, I will withdraw the
9 last portion of my motion.

10 BOARD MEMBER BITZER: I'll second that
11 withdrawal.

12 CHAIRPERSON SUINA: Thank you, Member Honker and
13 Member Bitzer. And with that, let's have -- if there's
14 any further discussion? If not, I'm looking around.
15 Ms. Jones, would you do a roll-call vote?

16 ADMINISTRATOR JONES: I will. Member Bitzer, how
17 do you vote?

18 BOARD MEMBER BITZER: I vote yes.

19 ADMINISTRATOR JONES: And Member Cates, how do
20 you vote?

21 BOARD MEMBER CATES: Yes. Yes.

22 ADMINISTRATOR JONES: Thank you.
23 Member Garcia?

24 BOARD MEMBER GARCIA: Yes.

25 ADMINISTRATOR JONES: Member Honker?

1 BOARD MEMBER HONKER: Yes.

2 HEARING OFFICER ORTH: Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes.

4 ADMINISTRATOR JONES: Chair Suina?

5 CHAIRPERSON SUINA: Yes.

6 ADMINISTRATOR JONES: The motion passes.

7 CHAIRPERSON SUINA: Thank you, Ms. Jones.

8 And so, now, Ms. Soloria, our next -- do we have
9 a next? I'm sorry, I'm trying to keep track.

10 MS. SOLORIA: I think, Madam Chair, may I suggest
11 that the next item be a lunch break? And when we
12 reconvene we would proceed with considering the language
13 at 116 C (3) (f).

14 CHAIRPERSON SUINA: Okay. Wonderful. So,
15 members of the Board, I know you probably have to go out
16 and get food. Or I don't know how that is. With that, I
17 know we're just at the tail end of probably the area lunch
18 rush. What would you suggest? Maybe an hour?

19 BOARD MEMBER GARCIA: An hour should work.

20 CHAIRPERSON SUINA: Okay. So we'll come back at
21 1:55, an hour and two minutes.

22 HEARING OFFICER ORTH: To be exact, okay.

23 CHAIRPERSON SUINA: I'm zooming up there now.
24 We'll see you soon.

25 (Recess taken from 1:55 p.m. to 2:04 p.m.)

1 CHAIRPERSON SUINA. Thank you, all. I have
2 something I've got to figure out. I'm still settling here
3 to my notes. Where we are, we just went through?

4 HEARING OFFICER ORTH: B (3) (f)-as-in-Felicia.

5 CHAIRPERSON SUINA: All right. So we're going to
6 B (3) (f).

7 HEARING OFFICER ORTH: So, Madam Chair, here's a
8 moment of agreement. The Department is proposing that the
9 Board adopt Oxy's proposal and no other party offered
10 otherwise.

11 CHAIRPERSON SUINA: Okay. Great. With that,
12 members of the Board?

13 MS. SOLORIA: We have to remember to keep our
14 voice up here. I think the court reporter is struggling.

15 CHAIRPERSON SUINA: Oh, okay.

16 Yes Vice-Chair?

17 VICE-CHAIR TRUJILLO-DAVIS: Can we make the court
18 reporter any larger on this screen, because we're looking
19 at a split screen of us and the court reporter.

20 HEARING OFFICER ORTH: So, unfortunately, because
21 I'm sharing a document, unless --

22 CHAIRPERSON SUINA: Let me -- let me get on here,
23 and then I'll be able to see her in case something
24 happens. Let me log on here.

25 So a real quick update from Mr. Cates; he'll be

1 in high country transit this afternoon. He'll try to
2 attend by phone, but for -- so just to let everybody know,
3 I just got that in from Member Cates.

4 There's just NMED guest?

5 HEARING OFFICER ORTH: Yes, NMED wifi over there.

6 CHAIRPERSON SUINA: Okay. All right. While I do
7 this, I'll make sure I can see the court reporter.

8 But, members, do you have any discussion items or
9 entertain a motion?

10 Member Garcia?

11 BOARD MEMBER GARCIA: Sure. I'll go ahead and
12 start with a motion to adopt 116 C (3) (f) as proposed by
13 NMED, for the reasons proffered by NMED and Oxy.

14 BOARD MEMBER HONKER: I'll second.

15 CHAIRPERSON SUINA: Hang on. Thank you, Member
16 Garcia, and the second from Member Honker. If there's no
17 further discussion, Ms. Jones, would you mind doing a
18 roll-call vote?

19 ADMINISTRATOR JONES: I will. Member Bitzer, how
20 do you vote?

21 BOARD MEMBER BITZER: I vote yes.

22 ADMINISTRATOR JONES: Member Cates, is he getting
23 on? We don't know.

24 CHAIRPERSON SUINA: No, he's not on right now.

25 ADMINISTRATOR JONES: Okay. Member Garcia?

1 BOARD MEMBER GARCIA: Yes.

2 ADMINISTRATOR JONES: Member Honker?

3 BOARD MEMBER HONKER: Yes.

4 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

5 VICE-CHAIR TRUJILLO-DAVIS: Yes.

6 ADMINISTRATOR JONES: Chair Suina?

7 CHAIRPERSON SUINA: Yes.

8 ADMINISTRATOR JONES: The motion passes.

9 HEARING OFFICER ORTH: Moving on to C (3) (g),
10 this is another proposal from NMED based on -- which
11 originated with Oxy. If I scroll down just a little bit,
12 you can see that -- oh, you can see that NMOGA proposes to
13 delete (g) (i), and I would need to scroll pretty far
14 back. And I'll do it if you'd like, but if you look on
15 page 158, where we were before lunch, you will note that
16 the Board already rejected the companion, if you will,
17 proposal to this; the effect of which was to change 6
18 months to 2 years for the requirement being applicable.

19 CHAIRPERSON SUINA: Thank you, Madam Hearing
20 Officer.

21 So, did you have a question, Member Garcia?

22 BOARD MEMBER GARCIA: Not a question, but as I
23 read this, correct me if I'm wrong, it appears that NMED
24 is saying all inactive well sites need to have annual
25 inspections at a particular time. And NMOGA is saying,

1 oh, before the effective date of this part -- NMOGA is
2 saying, before the effective date of this part, they don't
3 want to do any. They don't want the well sites before the
4 effective date of this part, to be included; is that
5 right?

6 HEARING OFFICER ORTH: No. In my opinion, the
7 real effect is to change a 6-month implementation date to
8 a 2-year implementation date, based on what the Board has
9 already discussed on page 158 in C -- let's see. I think
10 it was C (2) or maybe C (3) (a). I think it was C (3)
11 (a).

12 BOARD MEMBER GARCIA: No, it's 158.

13 HEARING OFFICER ORTH: It's 158. I can scroll
14 back to it or you can just look at the hard copy.

15 BOARD MEMBER GARCIA: And we had already voted
16 not to do that.

17 HEARING OFFICER ORTH: That's right, because it
18 was a post-hearing submittal.

19 CHAIRPERSON SUINA: So, this is another
20 post-hearing item, is that what you were going to say?

21 HEARING OFFICER ORTH: Did I say that? I'm
22 not -- so there was no citation to evidence in the record
23 under this proposed change in the post-hearing submittal.

24 More to the point, I think, you have already
25 rejected the notion that the requirement for well sites

1 that are inactive, before the rule is passed, would be
2 stretched from 6 months to 2 years. You've already voted
3 on that.

4 BOARD MEMBER BITZER: So it falls that we should
5 probably reject this one as well.

6 CHAIRPERSON SUINA: Or -- or, yeah.

7 BOARD MEMBER BITZER: Or adopt NMED's as
8 proposed. It's section (g).

9 HEARING OFFICER ORTH: (g) (i).

10 BOARD MEMBER BITZER: Just (g) (i), not (g) (ii)?

11 HEARING OFFICER ORTH: Right.

12 BOARD MEMBER BITZER: Oh, (i), but not (ii).

13 I would move we adopt 116 C (3) (g), subparagraph
14 (i) as proposed by the Department, for the reasons
15 proffered by the Department.

16 MS. SOLORIA: That's fine for this one.

17 BOARD MEMBER HONKER: Can't we do all of (g)?

18 HEARING OFFICER ORTH: Yes.

19 CHAIRPERSON SUINA: Would it be that we're just
20 adopting (g)?

21 HEARING OFFICER ORTH: (g) (i), (ii). Let's see
22 here. Did I separate them?

23 BOARD MEMBER BITZER: I might have to go back to
24 (ii).

25 HEARING OFFICER ORTH: Right. So, all that (g)

1 is -- please ignore that 4 in the bottom, that's an
2 orphan. All (g) is (g) (i) and (g) (ii).

3 BOARD MEMBER BITZER: I don't need to mention the
4 (i). I could just say (g).

5 MS. SOLORIA: I would just make a small
6 amendment, of what we have done in the other section,
7 which is to adopt the language as proposed by NMED, for
8 reasons stated by NMED, and reject NMOGA's proposed
9 language on the basis that it was not presented --
10 (inaudible.)

11 COURT REPORTER: It was not presented, what?

12 MS. SOLORIA: In evidence.

13 COURT REPORTER: Thank you.

14 BOARD MEMBER BITZER: All right. So I'll move
15 that we adopt section 116 C (3) (g), as proposed by the
16 Department, for the reasons proposed by the Department,
17 and that we reject NMOGA's proposal for lack of supporting
18 admitted evidence.

19 MS. SOLORIA: That suffices.

20 BOARD MEMBER HONKER: I'll second.

21 CHAIRPERSON SUINA: Thank you, Member Honker, for
22 your second. Is there any further discussion? If not,
23 Ms. Jones, would you do a roll-call vote?

24 ADMINISTRATOR JONES: Yes. Member Bitzer?

25 BOARD MEMBER BITZER: I vote aye, yes.

1 ADMINISTRATOR JONES: No Member Cates.
2 Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR JONES: Member Honker?

5 BOARD MEMBER HONKER: Yes.

6 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: Yes.

8 ADMINISTRATOR JONES: Chair Suina?

9 CHAIRPERSON SUINA: Yes.

10 ADMINISTRATOR JONES: The motion passes.

11 HEARING OFFICER ORTH: I'm moving to C (4), which
12 starts at the bottom of page 192 and proceeds on to page
13 193. I would also mention C (5) and C (6). We have just
14 the Department's proposals for C (4), C (5) and C (6).

15 The note I made for myself was if Member Duval
16 was on the platform, I was going to draw his attention to
17 the fact that this is where the OGI language appeared, the
18 optical -- optical imaging.

19 CHAIRPERSON SUINA: Thank you.

20 Yes, Member Honker?

21 BOARD MEMBER HONKER: Well, I will move that we
22 adopt 116 C (4), (5) and (6) as proposed by NMED, with the
23 rationale given by NMED.

24 BOARD MEMBER BITZER: I'll second that.

25 CHAIRPERSON SUINA: Thank you for your second,

1 Member Bitzer. With that, is there any further
2 discussion? If not, Ms. Jones, would you do a roll-call
3 vote?

4 ADMINISTRATOR JONES: Yes. Member Bitzer?

5 BOARD MEMBER BITZER: I vote yes.

6 ADMINISTRATOR JONES: Member Garcia?

7 BOARD MEMBER GARCIA: Yes.

8 ADMINISTRATOR JONES: Member Honker?

9 BOARD MEMBER HONKER: Yes.

10 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes.

12 ADMINISTRATOR JONES: Chair Suina?

13 CHAIRPERSON SUINA: Yes.

14 ADMINISTRATOR JONES: Motion passes, Madam Chair.

15 CHAIRPERSON SUINA: Thank you?

16 HEARING OFFICER ORTH: So we're moving to C (7)

17 and (8). And I believe you'll want to discuss them

18 together because NMOGA's -- well, you -- this --

19 separately or together. Excuse me. In (7), we have

20 NMED's proposal, which is based on the proximity proposal

21 provided by the Clean Air Advocates and the Environmental

22 Defense Fund. There's an additional proposed insertion

23 there from the Community of Environmental Parties about

24 homeowners being able to contact NMED to request an owner

25 or operator conduct the evaluation that is mentioned

1 there.

2 In (8), we have again NMED's proposal around
3 these evaluations, again related to the proximity
4 proposal. What it does is it gives them the information
5 they need to say that the LDAR requirements are actually
6 applicable.

7 Then, we have NMOGA proposing changes in both (7)
8 and (8). You see that there, that's based on page 195.

9 CHAIRPERSON SUINA: Thank you for that, Madam
10 Hearing Officer. Sorry, I'm getting there.

11 Is there any opening discussion on this? Any
12 thoughts first? Yes, Member Garcia.

13 BOARD MEMBER GARCIA: Well, just one -- one
14 thought about the CEP proposal for that one sentence
15 insert. They want to add, "Homeowners may contact NMED to
16 request an owner-operator to conduct an evaluation." I'm
17 not sure that language needs to go in because they can do
18 that anyway, for what's going on.

19 CHAIRPERSON SUINA: Yes, Vice-Chair
20 Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: I thought that
22 anybody could contact the agency to -- if they -- if they
23 suspect that there was an issue going on. And also I'm a
24 little unclear about, with this particular language, what
25 kind of evaluation would be required if the homeowner was

1 to request it.

2 HEARING OFFICER ORTH: Madam Vice-Chair, it's the
3 evaluation that is necessary to determine whether this
4 particular provision applies.

5 CHAIRPERSON SUINA: The applicability of subpart
6 (8) paragraph (b) subparts.

7 HEARING OFFICER ORTH: Great. The LDAR proximity
8 proposal.

9 VICE-CHAIR TRUJILLO-DAVIS: Okay. So I was
10 thinking in terms of the actual LDAR test, so I'm straight
11 now.

12 CHAIRPERSON SUINA: Yes, Ms. Soloria.

13 MS. SOLORIA: I will just mention for the sake of
14 completeness, because these provisions relate to the
15 proximity proposal, that we would need to make that
16 finding once again prior to adoption.

17 CHAIRPERSON SUINA: Thank you for that.

18 So, do we want to target this in terms of a
19 process? So I think I heard discussion about CEP's
20 proposed language maybe not being necessary because they
21 can always request to NMED, if there's something barring
22 that. My understanding is it's a process, and so I think
23 that one seems pretty clear.

24 And, really, I think other than that, and then
25 it's just looking at NMED's proposal, like which one to

1 accept; is that correct?

2 HEARING OFFICER ORTH: Correct.

3 CHAIRPERSON SUINA: Oh, no. I mean NMOGA's.

4 HEARING OFFICER ORTH: NMOGA's.

5 CHAIRPERSON SUINA: I saw "NMED" and I said it.

6 HEARING OFFICER ORTH: I do the same thing.

7 BOARD MEMBER BITZER: Should I tidy up the CEP
8 proposal first, to get that out of the way, by
9 affirmatively rejecting it, I guess? I don't hear
10 anybody's support. So I'll move that we reject CEP's
11 proposed additional language in paragraph (7) of 116 C
12 (3), as decided.

13 BOARD MEMBER GARCIA: I second.

14 MS. SOLORIA: It's paragraph C (7), sorry to
15 interrupt.

16 BOARD MEMBER BITZER: I said it's (7) of C,
17 right? Oh, yeah. Let me rephrase that. I move that we
18 reject CEP's proposed insert to 116 C (7) as redundant,
19 that it's already -- for the reasons that it's already
20 available, so it would be redundant.

21 CHAIRPERSON SUINA: Thank you, Member Bitzer.

22 BOARD MEMBER GARCIA: So does that mean we're
23 wanting to adopt (7) then the way it is?

24 BOARD MEMBER BITZER: No, it just means we're not
25 going to add. I just wanted to tidy up this question

1 here, because we have 7 and 8 which could be handled
2 together --

3 BOARD MEMBER GARCIA: Oh, okay.

4 BOARD MEMBER BITZER: -- once we get rid of the
5 proposed CEP amendment. I was just proposing that we get
6 rid of the CEP amendment.

7 CHAIRPERSON SUINA: Thank you, Member Bitzer.

8 BOARD MEMBER HONKER: I'll second Member Bitzer's
9 motion.

10 CHAIRPERSON SUINA: Thank you, Member Honker, for
11 your second.

12 With that, is there any further discussion on
13 that? If not, Ms. Jones, would you mind doing a roll-call
14 vote on it?

15 ADMINISTRATOR JONES: Member Bitzer?

16 BOARD MEMBER BITZER: I vote yes.

17 ADMINISTRATOR JONES: Member Garcia?

18 BOARD MEMBER GARCIA: Yes.

19 ADMINISTRATOR JONES: Member Honker?

20 BOARD MEMBER HONKER: Yes.

21 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes.

23 ADMINISTRATOR JONES: Chair Suina?

24 CHAIRPERSON SUINA: Yes.

25 ADMINISTRATOR JONES: Passes.

1 HEARING OFFICER ORTH: So, moving to the NMOGA's
2 on the screen. I was able to see that the proposed
3 changes in (a) --

4 CHAIRPERSON SUINA: The court reporter can't
5 hear.

6 HEARING OFFICER ORTH: I'm sorry. I was able to
7 determine that the proposed changes in (8) were offered as
8 a post-hearing -- as a clarification, and you can see
9 their support for their proposed changes indicates that
10 it's effectively a clarification. And I think in Section
11 (7), they mean this as a clarification as well.

12 So it's not -- it was offered post-hearing, but
13 that doesn't mean it's, you know, not a -- not a valid
14 suggestion, if, in fact, you agree that it's a
15 clarification or that what they've mentioned here provides
16 support.

17 CHAIRPERSON SUINA: Thank you, Madam Hearing
18 Officer.

19 Is there any discussion from our members? All
20 right. Let's see. Yes, Ms. Garcia.

21 BOARD MEMBER GARCIA: Yes. I'm just looking at
22 their clarification language, if that's what it is.
23 They're saying an evaluation is not required if the
24 frequency requirements in subparagraph (e) are being met.
25 Is that true, I mean?

1 CHAIRPERSON SUINA: And you're talking about
2 NMOGA's?

3 BOARD MEMBER GARCIA: Yes, I'm talking about
4 NMOGA's proposal, which as the Hearing Officer
5 characterized these changes as being for clarification
6 purposes, though they were offered post-hearing.

7 HEARING OFFICER ORTH: Right. So, again, I'm not
8 saying they're clarifying or not. I'm just saying that's
9 how NMOGA's offered them.

10 BOARD MEMBER HONKER: Well, I see a problem with
11 that sentence which says "an evaluation is not required if
12 the frequency of the requirements in subparagraph (e) are
13 being met."

14 Since we added the AVO condition to the prior
15 section, that would not be in subparagraph (e), so that
16 would not necessarily have to be met if an evaluation was
17 not conducted. So the frequency of inspections, other
18 than AVO might -- might be being met for a given facility,
19 but in order to make the AVO apply, you would have to do
20 an evaluation that concludes that it's within the
21 distance.

22 CHAIRPERSON SUINA: Yes, Member Garcia.

23 BOARD MEMBER GARCIA: I guess for both of my
24 comments, this is not clarifying. So I'm not finding it
25 to be clarifying, so maybe we should stick with what NMED

1 wrote.

2

3 CHAIRPERSON SUINA: Yes, thank you for that,
4 Member Garcia.

5 Is there any other comments on this?

6 BOARD MEMBER BITZER: In (8) (c) they bring up
7 the point that "used," meaning past tense, or I think that
8 was what they said; that "used" could mean used in the
9 past, so they added the word "being." Do we have any
10 heartburn with that?

11 BOARD MEMBER GARCIA: That would misunderstand,
12 it's "being used" as I don't have -- (inaudible.)

13 COURT REPORTER: I'm sorry, I can't hear you.

14 BOARD MEMBER GARCIA: Sorry. I was -- this is
15 Member Garcia; I was saying that the way NMED wrote, "or
16 structures used as a place of residency," I understand
17 that to mean now, so I don't have -- I don't have a
18 problem with the way it's written. And putting "being" in
19 there doesn't add to it, I don't think.

20 CHAIRPERSON SUINA: Yes, Member Honker.

21 BOARD MEMBER HONKER: Well, and there's also an
22 issue because the word "being" is not in the definition of
23 "occupied area" that we've already approved. So inclusion
24 of that kind of gives you an inconsistent wording on what
25 that's referring to.

1 CHAIRPERSON SUINA: Thank you, Member Honker.

2 BOARD MEMBER HONKER: So I think since we've
3 already approved the definition, it would muddy the waters
4 by approving the addition of extra words in this section.

5 CHAIRPERSON SUINA: Thank you.

6 Vice-Chair.

7 VICE-CHAIR TRUJILLO-DAVIS: I'm just curious for
8 my own personal clarification, too, what the other members
9 think about this. But, to me, what kind of sticks out in
10 my head is where you have old ranch buildings in the
11 middle of nowhere, that may or may not be fit for
12 occupancy, how does that fit into this? I'm really poling
13 you-all. I'm not really sure, but I'm just thinking of
14 things that I've seen, and it might affect, or maybe not.

15 CHAIRPERSON SUINA: Thank you, Vice-Chair. So
16 you're saying like if there was an old house or an old
17 building that's no longer occupied and being lived in?

18 VICE-CHAIR TRUJILLO-DAVIS: Right.

19 CHAIRPERSON SUINA: Then, that's why they
20 probably are wanting the word "being."

21 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I'm thinking in
22 terms of just what your -- what you actually might see out
23 there as being occupied by somebody, or potentially. And
24 I know living in New Mexico, we have a lot of old ranch
25 houses that are abandoned out there.

1 BOARD MEMBER HONKER: Yeah, I think that's a good
2 point, but it seems the way this is set up, I mean, you do
3 a review of your site to see if the proximity proposal is
4 triggered, and you would just say, no, it's not triggered
5 because that's an unoccupied building, no one has lived
6 there in recent memory, so it wouldn't apply.

7 It seems like that's what the -- what the
8 operator would do under this review.

9 CHAIRPERSON SUINA: And I think, to your point,
10 Member Honker, is we have accepted or, you know, defined
11 already by definition what "occupied area" is.

12 With added clarification, we could get more
13 unclarity, I think is what I'm hearing. Thank you.

14 Yes, Member Bitzer.

15 BOARD MEMBER BITZER: How about that first
16 sentence under (8), where they want us to add "the center
17 of" and delete light "well at a." Their explanation was
18 that these locations can be irregularly shaped and greatly
19 increase costs to try to do some sort of calculation as to
20 where the lines should be.

21 CHAIRPERSON SUINA: Thank you for that, Member
22 Bitzer.

23 BOARD MEMBER BITZER: I think that's the last of
24 our questions on (7) and (8), the last of our post-changes
25 to consider.

1 CHAIRPERSON SUINA: Yes, Member Garcia.

2 BOARD MEMBER GARCIA: I guess, again, I want to
3 say if they're irregularly shaped, then we can argue about
4 what the center is.

5 CHAIRPERSON SUINA: Right. I'm trying to picture
6 this, too, as I'm re-reading on the screen. So there's
7 probably more clarity in just saying "the center of each."

8 HEARING OFFICER ORTH: Of each well site.

9 CHAIRPERSON SUINA: Or no?

10 Vice-Chair Trujillo-Davis?

11 VICE-CHAIR TRUJILLO-DAVIS: Well, I'm thinking
12 not every site has a well on it. I mean, you have to
13 remember that. So, yeah, I want to keep thinking through
14 this.

15 CHAIRPERSON SUINA: So if that's the case, then,
16 the center of each well -- each well site, or is it --
17 yeah, let me look at that.

18 Yeah, so NMED says "shall measure the distance
19 from the latitude and longitude of each well at a well
20 site." So, would that address your -- your -- what you
21 were talking about, where it was not each well site may
22 have a well, but this one goes to the well itself?

23 VICE-CHAIR TRUJILLO-DAVIS: Yeah, and -- well, I
24 may have gotten lost in the text here, but I was thinking
25 well sites and facilities, and maybe this is not a

1 facility issue. Maybe it's just a well site issue.

2 BOARD MEMBER GARCIA: It seems to be only talking
3 about well sites, and I'm going back to the beginning.

4 BOARD MEMBER HONKER: Yeah.

5 CHAIRPERSON SUINA: Thank you, Member Garcia.
6 And Member Honker?

7 BOARD MEMBER HONKER: Yeah. So I think if we
8 approve on Section (e) says "well sites" -- "for well
9 sites within 1,000 feet."

10 BOARD MEMBER BITZER: So you're saying we should
11 accept this change?

12 VICE-CHAIR TRUJILLO-DAVIS: No, I'm not
13 necessarily saying that. I was just trying to be clear.

14 BOARD MEMBER BITZER: I was wondering if that was
15 what was Member Honker was talking about.

16 BOARD MEMBER HONKER: We're talking about well
17 sites, so we're not -- the proximity proposal doesn't
18 apply to something that isn't a well site. It says, "well
19 sites." But it doesn't -- I mean, it's up to this section
20 to define how you measure from a well site to an occupied
21 area.

22 CHAIRPERSON SUINA: So, what was the reference
23 you gave, Member Honker, earlier, that we accepted? Just
24 so I have clarity what you were talking about.

25 BOARD MEMBER HONKER: Well, I was talking about

1 116 C (3) (e).

2 CHAIRPERSON SUINA: Okay.

3 BOARD MEMBER HONKER: I believe, yes, where we --
4 it says "quarterly for well sites within 1,000 feet," and
5 the NMED proposal also used the words "well site," so...

6 CHAIRPERSON SUINA: Yes, Vice-Chair.

7 VICE-CHAIR TRUJILLO-DAVIS: I think I understand
8 what the difference in language is. If you think of a
9 well site that has multiple wells on it, and so they're --
10 NMOGA is making the point to clarify they want to use the
11 "center" of that whole well site, versus the end of each
12 individual well on site. Or, yeah, that's essentially
13 what it's coming down to.

14 CHAIRPERSON SUINA: And how NMED is written, it's
15 each well.

16 VICE-CHAIR TRUJILLO-DAVIS: Each well, yes.

17 BOARD MEMBER BITZER: So it's not so much that
18 it's the irregular-shaped well site, it's that there's
19 multiple wells.

20 CHAIRPERSON SUINA: And it would seem like if
21 there's multiple wells, and they just want to do the
22 shape, and the center of, then there's another level of
23 unclarity, discussion -- or definition. I can't even say
24 it.

25 Yes, Member Honker?

1 BOARD MEMBER HONKER: Well, I guess the situation
2 is, you could have a well site where the center of the
3 well site was more than 1,000 feet away, but you could
4 have an individual well that was 900 feet away. So, I
5 think the definition is important in terms of which of
6 those scenarios we want to go with.

7 BOARD MEMBER BITZER: So, in effect, we would be
8 potentially putting wells -- specific wells at the edge of
9 a well site closer to an occupied dwelling, than the 1,000
10 feet.

11 CHAIRPERSON SUINA: Yes, Vice-Chair
12 Trujillo-Davis?

13 VICE-CHAIR TRUJILLO-DAVIS: It would be unlikely
14 only because you build the well sites so your drilling rig
15 can sit on it. Right? So you need to put the wells
16 basically in the middle so that your rig has room to
17 anchor and move. So I can't picture a scenario where you
18 would drill a well that was at the edge or somewhere --

19 BOARD MEMBER HONKER: In a corner?

20 VICE-CHAIR TRUJILLO-DAVIS: -- in a corner, yeah,
21 to get out of it, because that would create you some
22 logistical problems with actually drilling the well. So,
23 that's just my two cents on that.

24 BOARD MEMBER GARCIA: Yes. I'd like to ask
25 Vice-Chair Trujillo-Davis a question. So when we're

1 talking about a well site, how big -- how big of an area
2 might that be? So, in other words, if they're trying to
3 say you need to say "center" because this would be so big,
4 we could, you know, get into this, trigger this or not?
5 So how big of an area are we talking about for a well?

6 VICE-CHAIR TRUJILLO-DAVIS: So, a single well
7 site will be somewhere in the neighborhood -- and
8 depending on the rig that's put on it, it would be
9 somewhere greater than 300 by 300 feet. So if you have
10 multiple wells on that site, the area gets bigger.

11 BOARD MEMBER GARCIA: Right, but we're talking
12 about each well. Both -- both proposals say "each well."

13 HEARING OFFICER ORTH: No.

14 BOARD MEMBER GARCIA: No? "Longitude and
15 latitude of each well at a well site." And then, NMOGA
16 says, "Latitude and longitude at the center of each well
17 site."

18 HEARING OFFICER ORTH: Well site.

19 BOARD MEMBER GARCIA: Okay. Got it. Thank you.

20 VICE-CHAIR TRUJILLO-DAVIS: For what it's worth,
21 I think it should be as NMOGA wrote it. I don't think
22 that there is an issue with measuring from the well, and
23 especially if you're talking a distance of 100 feet or so,
24 like, I don't think that there's too big of an issue
25 measuring from each well on the site or 1,000 feet.

1 CHAIRPERSON SUINA: So that would, therefore, be
2 NMED's?

3 VICE-CHAIR TRUJILLO-DAVIS: NMED's, yeah. I'm
4 sorry, did I says "NMOGA"?

5 CHAIRPERSON SUINA: Yes.

6 VICE-CHAIR TRUJILLO-DAVIS: I apologize. I meant
7 NMED's version of it. I don't think that it's
8 significantly different.

9 BOARD MEMBER BITZER: So it --

10 CHAIRPERSON SUINA: Sorry. Go ahead.

11 BOARD MEMBER BITZER: It sounds like (7) and (8)
12 as proposed by the Department then; is that the consensus?

13 CHAIRPERSON SUINA: Member Honker?

14 BOARD MEMBER HONKER: No, I agree.

15 BOARD MEMBER BITZER: I would move that we adopt
16 116 C (3) -- I'm sorry. C (7) and C (8) as proposed by
17 the Department, for the reasons proffered by the
18 Department.

19 MS. SOLORIA: And I would just add if you could
20 table that motion to make our preliminary finding that
21 will support that motion.

22 CHAIRPERSON SUINA: Yes. So, remember, this is
23 the one --

24 BOARD MEMBER BITZER: I'll withdraw that motion.

25 CHAIRPERSON SUINA: -- this is one that

1 Ms. Soloria was mentioning, just so that we could
2 reiterate for the public health and environment.

3 BOARD MEMBER BITZER: Will you reiterate it for
4 us?

5 MS. SOLORIA: So I will -- I will reiterate for
6 you, for your consideration, that the Board move that
7 based on substantial evidence, the Board finds the
8 language proposed by NMED and supported by EDF and CAA,
9 for Section 116 (7) and (8) are more protective of public
10 health and the environment.

11 BOARD MEMBER BITZER: I adopt that as my motion.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer.

13 VICE-CHAIR TRUJILLO-DAVIS: Second.

14 CHAIRPERSON SUINA: And Vice-Chair seconds.

15 BOARD MEMBER BITZER: Since you said it so
16 eloquently.

17 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

18 If there's no further discussion, Ms. Jones,
19 would you mind doing a roll-call vote on Member Bitzer's
20 motion?

21 ADMINISTRATOR JONES: Yes, I will.

22 Member Bitzer, how do you vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: And Member Garcia?

25 BOARD MEMBER GARCIA: Yes.

1 ADMINISTRATOR JONES: Member Honker?

2 BOARD MEMBER HONKER: Yes.

3 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 ADMINISTRATOR JONES: Chair Suina?

6 CHAIRPERSON SUINA: Yes.

7 ADMINISTRATOR JONES: Madam Chair, the motion
8 passes.

9 CHAIRPERSON SUINA: Thank you so much.

10 HEARING OFFICER ORTH: Hopefully we can optimize
11 a little something here. You're going to have to stick
12 with me for a minute.

13 CHAIRPERSON SUINA: Okay.

14 HEARING OFFICER ORTH: All right.

15 BOARD MEMBER BITZER: Well, I have to do my
16 motion on (7) and (8), don't I?

17 HEARING OFFICER ORTH: Oh, you're right.

18 CHAIRPERSON SUINA: One more motion.

19 BOARD MEMBER BITZER: No, I withdrew --

20 CHAIRPERSON SUINA: It's okay.

21 BOARD MEMBER BITZER: I withdrew my motion for
22 (7) and (8), so I would now move adoption of 116 C (7) and
23 (8) as proposed by the Department, for the reasons
24 proffered by the Department.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer, for

1 your motion.

2 BOARD MEMBER HONKER: I'll second.

3 CHAIRPERSON SUINA: And Member Honker seconds.

4 If there's no further discussion on that,
5 Ms. Jones, would you do a roll-call vote for us, please?

6 ADMINISTRATOR JONES: Yes, ma'am.

7 Member Bitzer?

8 BOARD MEMBER BITZER: I vote yes.

9 ADMINISTRATOR JONES: Member Garcia, how do you
10 vote?

11 BOARD MEMBER GARCIA: Yes.

12 ADMINISTRATOR JONES: Member Honker?

13 BOARD MEMBER HONKER: Yes.

14 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

15 VICE-CHAIR TRUJILLO-DAVIS: Yes.

16 ADMINISTRATOR JONES: Chair Suina?

17 CHAIRPERSON SUINA: Yes.

18 ADMINISTRATOR JONES: Madam Chair, the motion

19 passes.

20 CHAIRPERSON SUINA: Thank you, Ms. Jones.

21 All right. To you, Madam Hearing Officer.

22 HEARING OFFICER ORTH: Just to get out of C,
23 we've been in C since 9:00 this morning. So there are
24 only two more sections left in Section 116 C, and that is
25 Subsections (9) and (10). (9) and (10), which, by the

1 way, it starts on page 195 -- yeah, 195. We have just the
2 Department's proposals.

3 What I'd like to do is move on again in the hopes
4 of optimizing a little something here. Now, we move to
5 D-as-in-dog. This is 116 D, that's page 196. We have the
6 Department's proposal, and then a requested addition by
7 Oxy and CEP. You see it there on the screen. It's a new
8 (a): "Proposed alternative monitoring plans may utilize
9 alternative monitoring methods." Oxy and CEP proposed
10 that because they believe that it was actually NMED's
11 intent to propose it -- or their intent to convey that and
12 it just wasn't written down.

13 And the Department does not object to that
14 characterization of their intent, so in D, we don't have a
15 dispute.

16 CHAIRPERSON SUINA: Okay.

17 HEARING OFFICER ORTH: And then E, the
18 Department's language has already incorporated NMOGA's
19 proposed changes in E (4). And F, this is now -- we're at
20 hard copy page 199. The Department's proposal has already
21 incorporated NMOGA's proposed changes in F (2), F (2) (c),
22 and I just scrolled past it. In any event, NMOGA's
23 changes are already incorporated.

24 And then G, which is on page 200 of the hard
25 copy, I'll scroll to that; we have no disputes there. So

1 we can actually move all the way from C (9) and (10)
2 through D, E, F and G, without dispute. Just remember to
3 incorporate the amendment proposed by CEP and Oxy.

4 CHAIRPERSON SUINA: Thank you for that summary.
5 I just want to have a minute for our Board to review
6 everything. Yes, Member Honker?

7 BOARD MEMBER HONKER: Just a question. The Oxy
8 and CEP sentence, would that be a new section A, or would
9 that be added to the language of the existing Section A?

10 HEARING OFFICER ORTH: Okay. So it -- I think we
11 would leave that to the drafter.

12 BOARD MEMBER HONKER: Okay.

13 HEARING OFFICER ORTH: If we can do that,
14 Ms. Soloria.

15 MS. SOLORIA: That's correct. That would just be
16 a numerical fix.

17 BOARD MEMBER HONKER: Okay.

18 CHAIRPERSON SUINA: Yes, Member Garcia.

19 BOARD MEMBER GARCIA: Thank you, Madam Chair.

20 I would move that we adopt 116 C (9) and (10) and
21 subsection D -- or Section D, with the language proposed
22 by Oxy and CEP, added to D, also adopt E, F and G.

23 BOARD MEMBER BITZER: I'll second that.

24 CHAIRPERSON SUINA: For?

25 BOARD MEMBER GARCIA: For reasons proffered by

1 NMED and CEP and Oxy, we move to adopt language.

2 BOARD MEMBER BITZER: My fault. I second the --
3 I'll second that motion.

4 CHAIRPERSON SUINA: Is that comprehensive enough,
5 Ms. Soloria?

6 BOARD MEMBER GARCIA: For reasons proffered by
7 NMED and CEP and Oxy.

8 MS. SOLORIA: That's sufficient.

9 BOARD MEMBER GARCIA: Thank you.

10 CHAIRPERSON SUINA: Thank you. Is there any
11 further discussion on these?

12 If not, Ms. Jones, would you mind doing a
13 roll-call vote?

14 ADMINISTRATOR JONES: Yes, ma'am. Member Bitzer,
15 how do you vote?

16 BOARD MEMBER BITZER: I vote yes.

17 ADMINISTRATOR JONES: Member Garcia?

18 BOARD MEMBER GARCIA: Yes.

19 ADMINISTRATOR JONES: Member Honker?

20 BOARD MEMBER HONKER: Yes.

21 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes.

23 ADMINISTRATOR JONES: Chair Suina?

24 CHAIRPERSON SUINA: Yes.

25 ADMINISTRATOR JONES: The motion passes.

1 CHAIRPERSON SUINA: Thank you, Ms. Jones.

2 And Madam Hearing Officer, for thinking of that.

3 HEARING OFFICER ORTH: Soon, we'll stop talking
4 about Section 116. And the other good news is that the
5 next couple of sections have some, you know, discussion,
6 but we won't run into other frog until 122.

7 So I need to -- sorry, I have to stop sharing
8 116. 116, this will take me a second.

9 CHAIRPERSON SUINA: No worries.

10 HEARING OFFICER ORTH: We're going on to 117.

11 CHAIRPERSON SUINA: 117.

12 HEARING OFFICER ORTH: Through 120.

13 CHAIRPERSON SUINA: Page 203 on the Hearing
14 Officer's report.

15 HEARING OFFICER ORTH: So Section 117, let me
16 just share this. This begins on page 203 as Madam Chair
17 just noted. Section 117 proceeds through page 213. It
18 would probably be easiest to consider it as a whole
19 section rather than proceed subsection by subsection,
20 because the changes proposed by NMOGA and IPANM are in
21 every section.

22 And give me a moment. This is "Natural Gas Well
23 Liquid Unloading." CEP opposes -- supports the
24 Department's proposal and opposes IPANM's revisions. So,
25 because IPANM's proposed edits are just all the way

1 through 117, and it's a fairly short section, that's why
2 I'm suggesting you take it up all at once. I'll scroll to
3 wherever you'd like.

4 CHAIRPERSON SUINA: Okay. Thank you, Madam
5 Hearing Officer. Please, members of the Board --

6 BOARD MEMBER BITZER: It starts on page 208
7 maybe. Is that it?

8 HEARING OFFICER ORTH: I'm sorry. It's 203 --
9 203 to 213 in the hard copy.

10 BOARD MEMBER BITZER: But I'm not seeing anything
11 underlined.

12 BOARD MEMBER HONKER: IPANM's proposal --

13 BOARD MEMBER BITZER: Isn't until we get to 208.
14 That's where they propose adding "Manual" to
15 "Applicability."

16 HEARING OFFICER ORTH: And I believe NMOGA
17 supports that -- supports this.

18 CHAIRPERSON SUINA: Supports IPANM?

19 HEARING OFFICER ORTH: Yes, that's right.

20 CHAIRPERSON SUINA: Yes, Member Garcia.

21 BOARD MEMBER GARCIA: Well, to that point, it
22 seems that NMED is saying they don't want it to be
23 restricted to manual liquid unloading because they're
24 intending for it to cover both liquid, automated and
25 manual.

1 CHAIRPERSON SUINA: Thank you, Member Garcia, for
2 your comments.

3 MS. SOLORIA: May I have one moment? I wanted to
4 clarify for Section D, since we're taking this all at
5 once.

6 CHAIRPERSON SUINA: Uh-huh.

7 MS. SOLORIA: There is just a discrepancy in
8 NMED's argument section, that section there in the Hearing
9 Officer's report. NMED accepted that deletion, so the
10 paragraph beginning on page 207, where IPANM in
11 Subparagraph D (1) (g), and the Board should reject this
12 proposal. For NMED's final submission, they actually
13 accepted that deletion.

14 CHAIRPERSON SUINA: Thank you for that,
15 Ms. Soloria.

16 So I just want to make sure so that we're looking
17 at Subparagraph -- (inaudible.)

18 COURT REPORTER: I'm sorry. You need to speak
19 up, please. "I just want to make sure so that we're
20 looking at subparagraph," what?

21 CHAIRPERSON SUINA: Section subparagraph D (1)
22 (g). Yes, that's what I want to clarify. So even though
23 on our Hearing Officer's report, 206 to 207.

24 HEARING OFFICER ORTH: I'm sorry.

25 CHAIRPERSON SUINA: Go ahead.

1 HEARING OFFICER ORTH: I had meant to mention
2 this: what you see there in the report and on the screen
3 is correct; if you looked at the Department's argument,
4 they said that they opposed the deletion of some former
5 language there.

6 CHAIRPERSON SUINA: Okay.

7 HEARING OFFICER ORTH: At (g), but they didn't
8 oppose it; it's actually been deleted. They agreed to the
9 deletion and it's been deleted. So what you're looking at
10 is correct.

11 It's just in the argument -- and this was
12 Ms. Soloria's point -- in the argument it said, we don't
13 agree with that, but they did.

14 BOARD MEMBER BITZER: So they're arguing against
15 something that's not there.

16 HEARING OFFICER ORTH: Right. Their argument
17 reflects a former position and not their current position,
18 which is that what you're looking at is just fine.

19 BOARD MEMBER BITZER: Sweet. It keeps it simple.

20 HEARING OFFICER ORTH: I see that one sentence,
21 you've still got to grapple with "manual."

22 BOARD MEMBER BITZER: This is an
23 antiestablishment segue; maybe you could just establish
24 it.

25 CHAIRPERSON SUINA: So, I guess just in summary,

1 to get my head around it, between Ms. Soloria and Madam
2 Hearing Officer, you're saying everything was accepted
3 except for the "manual."

4 HEARING OFFICER ORTH: No, no, no.

5 MS. SOLORIA: No.

6 HEARING OFFICER ORTH: Ms. Soloria was referring
7 to just this one place where you see (g).

8 CHAIRPERSON SUINA: Okay.

9 HEARING OFFICER ORTH: There was some additional
10 language about a calculation and that has gone away. And
11 so, Ms. Soloria's point is -- I'll pull it up right here.
12 Do you see in the middle of the screen?

13 CHAIRPERSON SUINA: Yes.

14 HEARING OFFICER ORTH: It says, "IPANM proposed
15 to remove D (1) (g) to record the type of control device
16 or technique. The Board should reject this proposal."
17 Well, it's already -- it's already incorporated. They
18 don't think you should reject it, and it's reflected
19 properly in the language that is in front of you to adopt.

20 CHAIRPERSON SUINA: Clear as mud.

21 HEARING OFFICER ORTH: Am I making it worse?

22 MS. SOLORIA: I may have made it confusing from
23 the way I introduced it. But, essentially, at some point,
24 IPANM had proposed a deletion of this reference to type of
25 control device or technique. They stayed on that deletion

1 in their redline. And the final redline proposed by NMED
2 actually adopted that deletion, but for some reason,
3 NMED's argument still rejected the deletion.

4 So we are suggesting that if you just stand on
5 what NMED's final redline was, that that language that's
6 bolded there, which has accepted IPANM's deletion.

7 BOARD MEMBER BITZER: It reminds me of the
8 commercial where the executive is sitting in his ivory
9 tower with his assistant, he's talking about insurance or
10 whatever it is, and he says, this is my way of sticking it
11 to the man. And the kid says, but you are the man, so
12 you'd be sticking it to yourself. And he's, like, okay.

13 Clear as mud. But, yes, that's -- yeah, it's
14 just residual language in their argument has been taken
15 out.

16 CHAIRPERSON SUINA: Thank you. Member Garcia?

17 BOARD MEMBER GARCIA: Yes. So in looking at the
18 various small changes that IPANM and NMOGA -- or IPANM
19 anyway, are proposing to 117, the big one is they just
20 want it to be "manual" liquid unloading. And as I
21 mentioned earlier, the Department intentionally wanted to
22 include all unloading, not just manual. So I would -- I
23 would reject that change that they propose.

24 Some of the other changes seem to be very
25 stylistic, such as in (3) (e), to say "practices" instead

1 of "control," I don't see how that makes a huge
2 difference. They have in G and H, they say change the
3 word "vented" to "emitted." I don't see that that helps a
4 whole lot, to make that change. So some of the changes
5 are stylistic and they don't seem to make a huge
6 difference. So, just kind of picking through what they've
7 changed, those are what jump out at me.

8 BOARD MEMBER BITZER: Isn't "vented" a term of
9 art, meaning intentional?

10 CHAIRPERSON SUINA: Yes, Vice-Chair.

11 VICE-CHAIR TRUJILLO-DAVIS: I believe it means
12 uncontrolled, not necessarily intentional.

13 BOARD MEMBER BITZER: Okay. So I think you're
14 right. But up there on (3) (c), they're asking for
15 deletion of "use of a control device" at the top of page
16 209 -- or near the top.

17 CHAIRPERSON SUINA: Yes.

18 BOARD MEMBER GARCIA: If I may ask Madam Hearing
19 Officer, are these post-hearing?

20 HEARING OFFICER ORTH: No. There was, I thought,
21 a fair amount of discussion about the -- oh, their
22 proposal to limit it to manual loading and unloading.

23 BOARD MEMBER GARCIA: Oh, okay. Thank you.

24 CHAIRPERSON SUINA: Would you mind scrolling back
25 down? Or back up.

1 HEARING OFFICER ORTH: Yes. The witness, I think
2 who spoke for IPANM, was Davis. Here?

3 CHAIRPERSON SUINA: Yes. Any other discussion to
4 this section? Yes, Member Garcia?

5 BOARD MEMBER GARCIA: Yes. So to the question
6 about 117 (3) (c), where they took out "use of a control
7 device," it seems that's more limiting for them to take
8 that out. From the discussion, it looks like NMED
9 intended to add flexibility to allow operators to use a
10 different control that meets the needs of their source.
11 So, I'm not sure why they would want it taken out of it if
12 it's less flexibility, but maybe I'm misreading. I'm
13 talking about the -- they crossed out "use of a control
14 device" in (3) (c).

15 CHAIRPERSON SUINA: Yes, Member Bitzer, did you
16 have a question?

17 Yes, Member Honker?

18 BOARD MEMBER HONKER: Well, that section 117 B
19 (3) is kind of unclear. It says, "shall employ
20 methodologies, blah, blah, blah, and then it lists five
21 things. Is that, such as the following, or is that
22 including all of the following? It's -- to me, it's not
23 clear how that was intended.

24 CHAIRPERSON SUINA: Yes, Member Garcia.

25 BOARD MEMBER GARCIA: Well, I see your point, but

1 I read it to mean these are what you can use, and any
2 other practice approved by the Department. So if they
3 went to propose something else, then the Department may or
4 may not approve it, so that also adds flexibility.

5 CHAIRPERSON SUINA: Yes, Vice-Chair.

6 VICE-CHAIR TRUJILLO-DAVIS: I think either of
7 those practices, they would control.

8 BOARD MEMBER GARCIA: Right. And as I mentioned
9 earlier, that I'm not sure if those stylistic changes like
10 that, I'm not sure if it makes too much of a difference.

11 CHAIRPERSON SUINA: Madam Hearing Officer,
12 could -- I'm trying to look at all of my screens here and
13 my paper. So, NMED's last proposed language is on 205; is
14 that correct, for B -- Section B?

15 HEARING OFFICER ORTH: Section B.

16 CHAIRPERSON SUINA: 117 B?

17 HEARING OFFICER ORTH: Yeah.

18 CHAIRPERSON SUINA: Okay. And that looks
19 different than what we have on IPANM's language that
20 they're crossing out on page 208. Or am I missing
21 something? Sorry.

22 HEARING OFFICER ORTH: 217. Wow, interesting.
23 Yeah, it looks like there's a (3) in IPANM's. A (3),
24 that's interesting.

25 CHAIRPERSON SUINA: That's with all of my

1 screens.

2 BOARD MEMBER GARCIA: Very good catch.

3 CHAIRPERSON SUINA: So I just want to make sure,
4 Madam Hearing Officer, that we're looking at the right
5 language.

6 HEARING OFFICER ORTH: Yeah.

7 CHAIRPERSON SUINA: As to the changes.

8 BOARD MEMBER HONKER: Oh, okay.

9 HEARING OFFICER ORTH: Okay. So --

10 CHAIRPERSON SUINA: Yes.

11 BOARD MEMBER GARCIA: I was going to say (3) is
12 actually (1), right?

13 CHAIRPERSON SUINA: Yes.

14 BOARD MEMBER GARCIA: IPANM's (3) is NMED's (1).

15 MS. SOLORIA: Yes.

16 CHAIRPERSON SUINA: Ms. Soloria.

17 MS. SOLORIA: Madam Chair, that reordering was
18 suggested by IPANM, and NMED accepted it. That's why it's
19 there. So if you look at the final version of NMED's
20 language, they've moved -- yeah, they agreed to move that
21 up to (1).

22 BOARD MEMBER GARCIA: Oh, I remember that.

23 CHAIRPERSON SUINA: Yes, Member Honker.

24 BOARD MEMBER HONKER: And getting back to my
25 earlier point, that the language in NMED's final version

1 is clear that it's "shall implement at least one of the
2 following." So it's not as vague as I thought.

3 So, yeah, we were looking at very different
4 language on the NMED -- on the IPANM markup.

5 BOARD MEMBER GARCIA: Okay.

6 CHAIRPERSON SUINA: Good catch. That's why I
7 have all of these screens.

8 So, Madam Hearing Officer, so it looks like -- so
9 this was IPANM's last submittal?

10 HEARING OFFICER ORTH: Yes.

11 CHAIRPERSON SUINA: And -- but some of the
12 changes had already been made in NMED's last submittal; is
13 that what I've seen?

14 HEARING OFFICER ORTH: Yes.

15 CHAIRPERSON SUINA: So, to look at this one, it's
16 kind of, some of them have already been incorporated?

17 HEARING OFFICER ORTH: Yes.

18 CHAIRPERSON SUINA: Okay.

19 HEARING OFFICER ORTH: You still have the major
20 issue of whether to limit it to "manual" unloading and
21 some other minor changes that Member Garcia called out.

22 BOARD MEMBER BITZER: I would think about making
23 a motion on this one, on paragraph (1) and maybe paragraph
24 (3).

25 CHAIRPERSON SUINA: So, Ms. Soloria, on this one,

1 it looks like they made some of these changes already.

2 MS. SOLORIA: Correct.

3 CHAIRPERSON SUINA: So how do we --

4 MS. SOLORIA: The bolded language is excerpted on
5 page 205, 206 and 207.

6 CHAIRPERSON SUINA: Uh-huh.

7 MS. SOLORIA: Those are -- those are NMED's final
8 proposal. And they have incorporated some of the changes
9 that are discussed in IPANM's proposal; one, being the
10 reordering of the section. In IPANM'S proposal, the
11 section is Section (3), NMED approved would be made D (1),
12 so that matches their proposal.

13 But the deletion in what was formerly 3 (C), that
14 deletion is not reflected in NMED's final proposal in
15 section (B). All of the references to "manual," as has
16 been mentioned -- and I think that's it. And the
17 stylistic practices in relation to Subsection (e), you
18 have to look at page 205, and NMED didn't accept that as
19 well.

20 CHAIRPERSON SUINA: So, just to clarify, the main
21 points are still the "manual" language -- sorry for that,
22 court reporter. And then the references to 20- or
23 20.2.50.112.

24 MS. SOLORIA: The Department has accepted that
25 deletion.

1 CHAIRPERSON SUINA: Okay. So --

2 MS. SOLORIA: Are you talking about on page 209?

3 CHAIRPERSON SUINA: Yes.

4 MS. SOLORIA: IPANM's proposal at C (3)?

5 CHAIRPERSON SUINA: Yes.

6 MS. SOLORIA: The Department accepted that. I
7 would say that the Department accepted that because it's
8 not contained -- oh, yes it is.

9 CHAIRPERSON SUINA: It is.

10 MS. SOLORIA: So they did not -- they rejected
11 that deletion.

12 HEARING OFFICER ORTH: It's in "E." That's where
13 they always note that the owner-operator shall comply with
14 the reporting requirements in 112. They always put that
15 in the last section, which in this case is E Section.

16 MS. SOLORIA: Right. Oh, was their basis for
17 doing the deletion, was that it was redundant then?

18 HEARING OFFICER ORTH: That's correct.

19 MS. SOLORIA: And NMED kept it in C (3), okay.

20 HEARING OFFICER ORTH: That's my understanding.

21 MS. SOLORIA: So to answer you -- or maybe not
22 answer your question, Chair Suina, NMED included that the
23 owner or operator shall comply with the monitoring
24 requirements of the section, at section C (3), and it's
25 also included in that section.

1 CHAIRPERSON SUINA: So, those are all reporting
2 requirements, but now C is monitoring requirements.

3 MS. SOLORIA: You're correct. You're correct,
4 yes.

5 CHAIRPERSON SUINA: So anyone for coffee?
6 Yes, Vice-Chair.

7 VICE-CHAIR TRUJILLO-DAVIS: Oh, Madam Hearing
8 Officer, I'm curious; can you point me to which page the
9 NMED's response is on?

10 HEARING OFFICER ORTH: To IPANM?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes, to IPANM, to
12 them adding "manual."

13 HEARING OFFICER ORTH: Yes, certainly.

14 We also have CEP. So, on page 204, right in the
15 middle, IPANM proposed to change the term "liquid
16 unloading" to "manual liquid unloading."

17 "The Board should reject this proposal because it
18 would restrict the type of unloading events covered under
19 this section. NMED intended to regulate both manual and
20 automated liquid unloading events that result in venting
21 of natural gas."

22 And CEP's addressing of IPANM's proposal is way
23 back on page 212, and their argument was based on the
24 testimony of Mr. Alexander. And he specifically addressed
25 best industry practices and artificial lift technologies

1 and what it would mean for emissions reductions.

2 CHAIRPERSON SUINA: Yes, Vice-Chair?

3 VICE-CHAIR TRUJILLO-DAVIS: So, I'm inclined to
4 agree with the rejection of the "manual" -- the addition
5 of "manual" as IPANM has proposed it. It seems like --
6 sorry. It seems that the NMED is -- their intent is to
7 regulate both automated and manual liquid unloading
8 events, so I -- and Mr. Alexander, I believe he was also
9 from Oxy. He was Oxy's representative. And I'm compelled
10 by his argument in there. So, just me, personally, I'm
11 inclined to reject IPANM's argument on that.

12 HEARING OFFICER ORTH: I'm sorry. Mr. Alexander
13 was EDF's witness.

14 VICE-CHAIR TRUJILLO-DAVIS: Oh, EDF's. I
15 apologize.

16 CHAIRPERSON SUINA: Thank you, Vice-Chair.

17 Yes, Member Honker?

18 BOARD MEMBER HONKER: Vice-Chair, I remember
19 Mr. Alexander's testimony and it's -- it was very good.

20 CHAIRPERSON SUINA: Member Garcia.

21 BOARD MEMBER GARCIA: Yes, I also would reject
22 their change to make it manual -- to limit it to manual.
23 So, since the rest of it, then -- the only thing, I mean,
24 I'm assuming everybody is okay with it. And I don't mean
25 to cut you out, Member Bitzer, but then the only other

1 thing left is the stylistic changes they've made, which,
2 again, I don't see that it improves or clarifies to make
3 those changes.

4 So I'm about -- I'm about ready to just leave
5 NMED's proposal as is, unless there is further discussion.

6 CHAIRPERSON SUINA: Thank you, Member Garcia.

7 Vice-Chair Trujillo-Davis?

8 VICE-CHAIR TRUJILLO-DAVIS: The only change that
9 sticks out to me is on -- let's see -- B (3) (e), so
10 "practices" versus "control."

11 To me, "control" is an engineering term, like an
12 engineering control, versus "practices," which could be --
13 could be a number of other methods of controlling
14 emissions.

15 CHAIRPERSON SUINA: Court reporter, did you get
16 that?

17 COURT REPORTER: (Thumbs up.)

18 VICE-CHAIR TRUJILLO-DAVIS: So I'm inclined on
19 this one to actually go with the term "practices," because
20 I believe it opens up more opportunities for innovation
21 right there.

22 BOARD MEMBER BITZER: That was one of their big
23 points, was they wanted some flexibility for other big
24 ways to further reduce emissions.

25 VICE-CHAIR TRUJILLO-DAVIS: Yes. And I believe

1 one of the things that was talked about -- I'm not sure
2 what page it's on anymore -- were things like sensors and
3 some other items like that. So, in that -- in that sense,
4 those two words to me have different intent. That's all
5 that is sticking out to me at this point.

6 HEARING OFFICER ORTH: Vice-Chair, on page 212,
7 there's a reference to Mr. Smitherman's testimony about
8 the development of smart systems. Is that what you're
9 talking about?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes, that's what I
11 was thinking of.

12 BOARD MEMBER HONKER: And I would point out in
13 the NMED final version, that change would be in B (1) (e).

14 CHAIRPERSON SUINA: Yes. Thank you, Member
15 Honker.

16 Is there any other discussion regarding this
17 section? Yes, Member Bitzer.

18 BOARD MEMBER BITZER: From what I'm hearing, I
19 would concur with the Department's language in toto,
20 except for changing practices, swapping out "control" for
21 "practices." I see that as a gateway to mentioning
22 further reductions.

23 CHAIRPERSON SUINA: Thank you, Member Bitzer.
24 Yes, Member Garcia?

25 BOARD MEMBER GARCIA: I just want to say, I'm not

1 opposed to that, but I can tell you, it appears that the
2 intent of the Department is if anybody comes to them
3 with -- whether it's a practice or a control or innovative
4 new, because they mentioned there may be in the future,
5 new techniques. They are open to -- they will be open to
6 it, I have no doubt, as long as it accomplishes the same
7 thing. So whether you call it "practice" or "control," I
8 don't think they care. But I'm -- you know, if we want to
9 change that word, I don't have a problem with it.

10 CHAIRPERSON SUINA: Thank you, Member Garcia.
11 I'm just doing a quick check to see if there's any other
12 "control" mentioned.

13 So we have some references to control a flame of
14 a control device.

15 MS. SOLORIA: Well, "control device" is
16 separately defined.

17 CHAIRPERSON SUINA: Okay. Oh, got it, right
18 there.

19 So do we run into any issues from changing it
20 from "control" -- I mean from "control" to "practice", if
21 it's within one of the definitions?

22 MS. SOLORIA: I would say on the discussion
23 that's taken place about the potential difference between
24 those two terms, I just wanted to note that when you're
25 searching and you see "control device," control device,

1 already, itself is a defined term, as used -- wherever it
2 is in the rule, as applying it to definitions, actually.

3 CHAIRPERSON SUINA: Oh, okay.

4 Court reporter, did you --

5 COURT REPORTER: I'm okay.

6 CHAIRPERSON SUINA: Okay. Is there any other
7 discussion on this? If not, is there a motion that one of
8 our Board members would like to make on this one?

9 BOARD MEMBER BITZER: I would move adoption of
10 117 with the substitution of the word "practices" for the
11 word "control" in B (1) (e), but, otherwise, adopting the
12 proposal of the Department for the reasons proffered by
13 the Department.

14 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
15 your motion.

16 MS. SOLORIA: And I would suggest adding, for the
17 reasons offered by IPANM. I think we might have to
18 recount that. You have to reference the substitution --
19 the rationale for the substitution.

20 BOARD MEMBER BITZER: IPANM, all right.

21 I move adoption of the Department's proposal for
22 Section 117, the section -- for the reasons proffered by
23 the Department, with the exception of changing the word
24 "control" to "practices" in B (1) (e) for the reasons
25 offered by IPANM.

1 BOARD MEMBER HONKER: I'll second.

2 CHAIRPERSON SUINA: With that, I have one more
3 question on this. So I looked at XX definition:
4 "startup," meaning the setting into operation of air
5 pollution control equipment." Will, by changing the
6 definition from "practice" -- or from "control" to
7 "practice," affect that definition?

8 MS. SOLORIA: I missed what you were referring
9 to.

10 CHAIRPERSON SUINA: It's "startup." It's the
11 definition, meaning a setting into operation of air
12 pollution control equipment.

13 VICE-CHAIR TRUJILLO-DAVIS: I don't think it
14 should because this is -- we're talking about one event
15 and in the -- going back up, we're talking about getting
16 approval from the Department, so it would -- I don't think
17 the two are related.

18 CHAIRPERSON SUINA: Okay. Just double-checking.

19 VICE-CHAIR TRUJILLO-DAVIS: A great question.

20 CHAIRPERSON SUINA: Yeah, just want to cover all
21 of the bases.

22 Yes, Member Garcia.

23 BOARD MEMBER GARCIA: Yes. I can just tell you
24 from my experience with other regulatory agencies, that is
25 fairly common language to add, that when they -- when they

1 cite certain things that a company has to do or an
2 industry has to do, there's often a caveat that says, or
3 any other blah-blah event the Department approves.

4 And I've also seen where industry gets nervous
5 about the language, but I know from doing it myself, if it
6 accomplishes the goal of reducing whatever it is you're
7 trying to reduce, the Department will approve it
8 because -- and that language is often put into regulations
9 because there's new devices and new technology coming up
10 all the time. And they don't want to limit the industry
11 from using new techniques and new devices, so there's
12 often that caveat in regulations.

13 So, as I said, you know, I have no problem with
14 whatever word you use. I know the intention of the
15 Department, so...

16 CHAIRPERSON SUINA: Thank you, Member Garcia.

17 I think, with that, and there's no other
18 discussion, Ms. Jones, would you mind doing a roll-call
19 vote?

20 ADMINISTRATOR JONES: I will. On Member Bitzer's
21 motion, how do you vote?

22 BOARD MEMBER BITZER: I vote yes.

23 ADMINISTRATOR JONES: And Member Garcia?

24 BOARD MEMBER GARCIA: Yes.

25 ADMINISTRATOR JONES: Member Honker?

1 BOARD MEMBER HONKER: Yes.

2 ADMINISTRATOR JONES: Member Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes.

4 ADMINISTRATOR JONES: And Chair Suina?

5 CHAIRPERSON SUINA: Yes.

6 ADMINISTRATOR JONES: The motion passes.

7 CHAIRPERSON SUINA: Thank you. I realize I
8 called you "Member," and not "Vice-Chair." Sorry.

9 HEARING OFFICER ORTH: As we now complete through
10 Section 117, we're on our way into Section 118 about
11 glycol dehydrators. In your hard copy it is on --

12 CHAIRPERSON SUINA: I just wanted to do a quick
13 check. Does anybody need a bio break? Five minutes?

14 Sorry, Madam Hearing Officer.

15 HEARING OFFICER ORTH: No, it's all right.

16 CHAIRPERSON SUINA: We're going to take a
17 five-minute break to -- maybe seven minutes, to 3:35.

18 (Recess taken from 3:28 p.m. to 3:41 p.m.)

19 CHAIRPERSON SUINA: Welcome back. We're back and
20 recording. So I'm turning it over to Madam Hearing
21 Officer.

22 HEARING OFFICER ORTH: Thank you. I have good
23 news: Section 118 on Glycol Dehydrators and Section 119,
24 on Heaters, this takes us in the hard copy from 213 all
25 the way to 225, are not protested. I need to be a little

1 more specific about 118.

2 So in A, 118 A, on page 214, NMOGA's changes were
3 either incorporated or abandoned. In Section D, NMOGA's
4 change was incorporated or it's called out right here at
5 the bottom of page 216. You see the words "controlled
6 equipment," replace the word "facility." And then there's
7 an insertion about superseding any inconsistent
8 requirement in Section 115. This was based on
9 Ms. Bisbey-Kuehn's own testimony, and so the Department is
10 not opposing that.

11 Then, in C -- 118 C on page 217, NMOGA's changes
12 were either incorporated or no longer being pursued. And
13 in D and E, we have no alternate proposals at all, so
14 that's 118. You can safely, or without controversy, adopt
15 118 as proposed by NMED, with the changes requested by
16 NMOGA in Section B.

17 And then 119, which starts on page 220, there are
18 simply no alternate proposals at all. And that takes us
19 to A through E, and that's one thing.

20 CHAIRPERSON SUINA: Thank you for that summary.

21 Is there any questions? Yes, Ms. Soloria.

22 MS. SOLORIA: I just had a question on page 216.
23 Was Ms. Bisbey-Kuehn agreeable to the switch from
24 "facility" to "controlled equipment?" Was her agreement
25 inclusive of that change as well?

1 HEARING OFFICER ORTH: Yes.

2 MS. SOLORIA: Okay.

3 CHAIRPERSON SUINA: Member Garcia.

4 BOARD MEMBER GARCIA: Is this change in D not
5 reflected in the final version?

6 HEARING OFFICER ORTH: That's correct. That is
7 to say, if you look at B, we're looking at Subsection B,
8 right? B-as-in-boy, right?

9 BOARD MEMBER GARCIA: Yes.

10 HEARING OFFICER ORTH: It didn't get into NMED's
11 final redline, but NMOGA's redline is consistent with
12 Ms. Bisbey-Kuehn's testimony, and they don't object.

13 BOARD MEMBER GARCIA: Okay.

14 CHAIRPERSON SUINA: Thank you, Member Garcia.

15 BOARD MEMBER GARCIA: Yes. And with that, I
16 would propose we adopt Section 118, Glycol Dehydrators,
17 with the change proposed by NMOGA, for B, and with the --
18 for the reasons proffered by NMED and NMOGA.

19 BOARD MEMBER HONKER: I second that.

20 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
21 your second.

22 Is there any discussion? If not, Ms. Jones,
23 would you do a roll-call vote, please.

24 ADMINISTRATOR JONES: Yes, ma'am. Member Bitzer,
25 how do you vote?

1 BOARD MEMBER BITZER: I vote yes.

2 ADMINISTRATOR JONES: And Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR JONES: Member Honker?

5 BOARD MEMBER HONKER: Yes.

6 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: Yes.

8 ADMINISTRATOR JONES: Chair Suina?

9 CHAIRPERSON SUINA: Yes.

10 ADMINISTRATOR JONES: The motion passes.

11 CHAIRPERSON SUINA: Thank you, Ms. Jones.

12 All right. Next is -- oh, sorry, I'm excited
13 about moving forward.

14 HEARING OFFICER ORTH: Then, we'll take turns.

15 CHAIRPERSON SUINA: Yes, Member Honker.

16 BOARD MEMBER HONKER: Yes. I see no push-back
17 from any parties on Section 119 here, so I would move that
18 we adopt Section 119, Heaters, as proposed by NMED in its
19 entirety for the reasons stated by NMED.

20 BOARD MEMBER GARCIA: Second that.

21 CHAIRPERSON SUINA: Thank you, Member Honker, and
22 Member Garcia, for your second.

23 And with that, if there's no discussions on that
24 one, Ms. Jones, would you do a roll-call vote, please.

25 ADMINISTRATOR JONES: I will.

1 Member Bitzer, how do you vote?

2 BOARD MEMBER BITZER: I vote yes.

3 ADMINISTRATOR JONES: And Member Garcia?

4 BOARD MEMBER GARCIA: Yes.

5 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

6 VICE-CHAIR TRUJILLO-DAVIS: Yes.

7 ADMINISTRATOR JONES: Chair Suina?

8 CHAIRPERSON SUINA: Yes.

9 ADMINISTRATOR JONES: Motion passes.

10 CHAIRPERSON SUINA: Thank you, Ms. Jones.

11 HEARING OFFICER ORTH: 120, this is section on
12 Hydrocarbon Liquid Transfers. In the hard copy it starts
13 on page 225 and goes through page 235.

14 120 A includes a number of proposed changes that
15 were desired by NMOGA and CDG, Commercial Disposal Group.
16 And so, A is, ultimately, not contested.

17 B, NMOGA, proposed an edit on page 230. It's a
18 minor edit that they offered as a post-hearing
19 clarification; namely, switching the words "leak free" to
20 "free of leaks." And that's in the middle of page 230.

21 In C, NMOGA's proposed changes have already been
22 incorporated, but Oxy proposed a deletion there at the
23 bottom of page 231.

24 And D and E, NMOGA's changes might have been
25 incorporated or were not pursued in their final redline.

1 And NMOGA and IPANM actually supported E. Let's see. And
2 IPANM supports a limitation of 13 hydrocarbon liquid
3 load-out events to trucks per year, which was not in the
4 other E. All right.

5 So, I'm sorry. To go back, A is uncontested. B,
6 there's a minor clarification offered by NMOGA. C, Oxy
7 proposes a deletion. Right? D and E, I didn't see any
8 others.

9 CHAIRPERSON SUINA: Okay. Thank you, Madam
10 Hearing Officer, for that summary.

11 Is there any discussion on any proposed changes
12 either by NMOGA or Oxy?

13 Yes, Vice-Chair Trujillo-Davis.

14 VICE-CHAIR TRUJILLO-DAVIS: Madam Chair, is there
15 any justification from NMOGA on their -- on their word
16 changes?

17 HEARING OFFICER ORTH: No.

18 VICE-CHAIR TRUJILLO-DAVIS: No, okay.

19 HEARING OFFICER ORTH: I believe they intended it
20 as a clarification.

21 CHAIRPERSON SUINA: And were these discussed
22 during the hearing?

23 HEARING OFFICER ORTH: The clarification offered
24 by NMOGA in 120 B was offered post-hearing.

25 CHAIRPERSON SUINA: About the Oxy and C?

1 HEARING OFFICER ORTH: Oxy, I think had --
2 pardon. Let me see. So Oxy's argument does include
3 reference to the transcript there.

4 CHAIRPERSON SUINA: Okay.

5 HEARING OFFICER ORTH: And testimony from
6 Mr. Holderman. So, there's at least apparent support
7 for -- for the proposal in the record.

8 CHAIRPERSON SUINA: Yes, Member Honker.

9 BOARD MEMBER HONKER: But NMOGA and IPANM did not
10 concur on this change? I didn't see any mention of them.

11 HEARING OFFICER ORTH: No. If any other party
12 had suggested the same deletion, we would see it.

13 BOARD MEMBER HONKER: Okay. Thank you.

14 HEARING OFFICER ORTH: NMOGA and IPANM were
15 generally pretty happy with this section, and they were
16 particularly happy with the limits in A, around 13
17 hydrocarbon liquid load-out events to trucks per year.

18 CHAIRPERSON SUINA: Yes, Vice-Chair.

19 VICE-CHAIR TRUJILLO-DAVIS: Madam Hearing
20 Officer, where is Oxy's proposed language into -- into the
21 rule?

22 HEARING OFFICER ORTH: At C (1), so if you look
23 at NMED's C (1) on page 230, after the words "dripping or
24 leaking," there -- one, two, three, four lines down into C
25 (1) on page 230, the next sentence is: "NMED's proposal,

1 at least once per calendar year, the inspection shall
2 occur during a transfer operation." Oxy proposes to
3 delete that.

4 Oh, you know what? I'm not sharing on the
5 screen, am I? I'm very sorry. Let me go to that.

6 CHAIRPERSON SUINA: So Oxy's only comment is to
7 delete that one sentence, right?

8 HEARING OFFICER ORTH: Correct. I'll put it up
9 here on the screen.

10 BOARD MEMBER BITZER: NMOGA is proposing that on
11 the page before that, the addition of "free of," where
12 they delete "leak-free condition."

13 HEARING OFFICER ORTH: Right. That was a
14 proposed post-hearing clarification.

15 BOARD MEMBER BITZER: So, no one has objected to
16 that one?

17 HEARING OFFICER ORTH: Well, they wouldn't have
18 had an opportunity to. NMOGA made that proposal after the
19 hearing.

20 BOARD MEMBER BITZER: Okay.

21 BOARD MEMBER GARCIA: Just so I'm clear, so we've
22 made the previous decisions, when a stakeholder or an
23 entity proposed something after the hearing, we haven't
24 accepted those. I don't recall a situation where we did;
25 is that correct?

1 HEARING OFFICER ORTH: I think that's correct.

2 CHAIRPERSON SUINA: Yes, Vice-Chair.

3 VICE-CHAIR TRUJILLO-DAVIS: I'm going to talk to
4 Oxy's proposed language. And I have to -- I should
5 preface this by saying, I understand Mr. Holderman's
6 comments, in that, when you have a liquids unloading
7 event, you have third-party operators come in to transfer,
8 so, you know, a load hauler of several different
9 companies, comes in, do the transfer, and off they go.
10 And often it's at unstaffed locations.

11 So if you walk through an inspection annually,
12 you don't necessarily get a good sample size of all of
13 your operators; you just get one transfer by one company.
14 So I'm not -- I see his point in saying, what does that
15 achieve for protection, when you're just seeing one
16 company, watching them conduct one transfer.

17 And so I'm inclined to agree with what he's
18 saying there, and in that, it doesn't actually protect
19 anything additionally. And it also doesn't tell you
20 anything about the transfer operations. It won't tell you
21 anything about the company who's coming in to do the
22 transfer.

23 CHAIRPERSON SUINA: Thank you, Vice-Chair.

24 VICE-CHAIR TRUJILLO-DAVIS: Madam Hearing
25 Officer, Does NMED speak to that?

1 HEARING OFFICER ORTH: So, on 230 and 231 would
2 be their support for C. Right, in fact, in the middle of
3 231, Oxy USA proposes removing the requirements of at
4 least one inspection per calendar year be conducted during
5 a transfer operation. The Department did not agree.

6 Ms. Kuehn testified it was an important component
7 of the inspection requirements.

8 BOARD MEMBER GARCIA: It looks like there was
9 rebuttal testimony, too. Where is that?

10 HEARING OFFICER ORTH: It's right in the middle
11 of page 231.

12 BOARD MEMBER GARCIA: Oh, okay.

13 CHAIRPERSON SUINA: Yes, Vice-Chair.

14 VICE-CHAIR TRUJILLO-DAVIS: So, I guess for me
15 the question is, does one inspection a year or two, if
16 it's a staffed location, get -- does it accomplish the
17 goal of inspecting, because that was the rationale NMED
18 used for it.

19 CHAIRPERSON SUINA: You're talking about, to
20 support the calendar year?

21 VICE-CHAIR TRUJILLO-DAVIS: Yeah. And I'm just
22 walking through the rationale on both sides here. So I
23 understand that Mr. Holderman is saying, you have multiple
24 companies, you have different pieces of equipment managed
25 by different companies that are going to come in and do

1 this, and so what does one inspection here get?

2 So on the other things, from NMED's side, does
3 one inspection on one random company speak to the whole of
4 the -- of the monitoring for this particular part of it?

5 CHAIRPERSON SUINA: Yes, Member Garcia.

6 BOARD MEMBER GARCIA: I'm looking at Holderman's
7 testimony, saying that the majority of the leaks that
8 happen during transfers tend to happen because of
9 operator -- operator error, not because the equipment is
10 leaking. I'm just wondering what NMED is after, and
11 that's why they want the inspection during a transfer
12 operation. Is that why they --

13 VICE-CHAIR TRUJILLO-DAVIS: Well, I believe this
14 section is for equipment itself. Yes, so NMED's paragraph
15 (1) on page 230, "visually inspect the transfer equipment
16 for leaks monthly at staffed locations." And so, I
17 believe it's after the equipment itself.

18 And I do agree that I think it's a personnel
19 issue, more times than a piece of equipment issue. But I
20 still think it goes back to the question, is one time
21 enough to really capture what they're after here? But I
22 don't see a proposal for more than once either.

23 BOARD MEMBER GARCIA: Uh-huh.

24 BOARD MEMBER HONKER: A question for Vice-Chair.
25 I think with your experience, so are we talking about tank

1 batteries here, a problem with transferring? I mean,
2 transferring from trucks.

3 VICE-CHAIR TRUJILLO-DAVIS: I believe so.

4 BOARD MEMBER HONKER: And I'm not seeing any
5 requirements for the truck operators either. This is all
6 about the equipment at the well site. So I could see if
7 you had a sloppy truck driver, who wasn't the equipment
8 operator, essentially, having, basically, which he should
9 have otherwise, but that's not discussed here, so...

10 VICE-CHAIR TRUJILLO-DAVIS: I believe it also
11 includes rail -- rail cars.

12 BOARD MEMBER HONKER: Yeah, okay.

13 CHAIRPERSON SUINA: Yes, Member Garcia. Sorry.

14 BOARD MEMBER GARCIA: Yes. Unfortunately, the
15 notation by Ms. Kuehn doesn't shed any light on that. She
16 just said, to have an inspection during a transfer is an
17 important component, but I wish that they had elucidated a
18 little bit more on why does it have to be set for that.

19 CHAIRPERSON SUINA: Okay. I'm trying to pull --
20 do you recall, Madam Hearing Officer, if there's anything
21 else in the notes in rebuttal?

22 HEARING OFFICER ORTH: I don't. And,
23 unfortunately, while I'm displaying my screen I can't do
24 what you're doing, which is presumably looking through the
25 pleadings. We can certainly take a moment to stop and

1 look.

2 CHAIRPERSON SUINA: Yeah, why don't we take a
3 moment to stop and look. I'm trying to find it, but
4 you're probably more organized than mine is. So, with the
5 exhibits, what's the reference here?

6 Yes.

7 VICE-CHAIR TRUJILLO-DAVIS: Member -- sorry. I
8 almost said, "Member Bitzer" and I knew it wasn't coming
9 from that direction.

10 I think to your -- to your previous point about
11 it being the haulers themselves, Mr. Holderman does say
12 that to minimize the emissions, it needs to be on the
13 protocol that allows us to more frequently inspect
14 third-party of these operators, than those making the
15 connections -- that are making those connections, rather
16 than an arbitrary once-a-year. So it's about the truck
17 drivers, rather than the trucking companies themselves.

18 BOARD MEMBER HONKER: Yeah.

19 CHAIRPERSON SUINA: Okay.

20 HEARING OFFICER ORTH: I'm looking.

21 CHAIRPERSON SUINA: I'm trying to find the
22 rebuttal.

23 BOARD MEMBER GARCIA: It's pretty hard.

24 CHAIRPERSON SUINA: Two screens. Sorry, it's
25 taking me a minute.

1 HEARING OFFICER ORTH: Yeah.

2 VICE-CHAIR TRUJILLO-DAVIS: I wish there was a
3 proposal on the table for it. I see what NMED is after.
4 I understand Oxy's side. I really wish there was some
5 sort of another amendment proposed or something.

6 CHAIRPERSON SUINA: Yes. I'm looking at this --
7 sorry. I'm going all the way back. I don't see that
8 statement of reasons for this section, from NMED yet.
9 Give me one second.

10 BOARD MEMBER HONKER: Well, I'm looking at the
11 NMED Rebuttal Exhibit 1, page 78. And I think it reads, I
12 believe there is a short discussion in there that says --
13 this is aimed at regulating transfer activities, not just
14 equipment associated with those activities.

15 That, at least some inspections must occur during
16 the actual transfer operations in order to better inform
17 the operators of any leaks that occurred during those
18 operations.

19 VICE-CHAIR TRUJILLO-DAVIS: And if that's the
20 goal, then -- because I don't think that it's a bad
21 practice. I just don't know if it's sufficient either.

22 CHAIRPERSON SUINA: I only see it in their
23 statement of reasons for this, at their closing. This
24 says, "At least once per calendar year, the required
25 inspection must occur during a transfer operation."

1 Again, it's a discovery thing, prior to the mixed
2 transfer, the leaks must be mitigated until the necessary
3 repairs are complete. And then they go back to -- this is
4 based upon the Rebuttal Exhibit 1, page 78. That's the
5 one, Member Honker, you just read. So...

6 HEARING OFFICER ORTH: So I looked at the
7 transcript referenced there, and that was just the very
8 simple statement right on the transcript from
9 Ms. Bisbey-Kuehn. Now, looking at Exhibit 32, pages 112
10 to 116, and it talks about the requirements being based on
11 the requirements in Colorado.

12 CHAIRPERSON SUINA: Uh-huh.

13 HEARING OFFICER ORTH: And Pennsylvania and Utah.

14 CHAIRPERSON SUINA: Yes, Member Garcia.

15 BOARD MEMBER GARCIA: While you're continuing to
16 look, the other item that popped out at me after Member
17 Honker read page 78, the next paragraph says, "NMOGA
18 proposes revisions to paragraph 1, to allow for mitigation
19 during transfer operations to repair, blah, blah, blah.

20 That implies that NMOGA knows that there are
21 leaks during transfer operations, and now they're asking
22 for, you know, the time to repair it. So that, you
23 know -- so, at least that tells us, okay, while Holderman
24 says, mostly, it's happened because of operator problems,
25 this tells me -- NMOGA says, there are leaks during

1 transfer operations, and we need time to fix them. So
2 that tells me they acknowledge there's leaks during
3 transfers.

4 CHAIRPERSON SUINA: Yes, Vice-Chair.

5 VICE-CHAIR TRUJILLO-DAVIS: Yes. I think that's,
6 at least from my perspective, it's been established that
7 there are leaks, but does one -- does one inspection a
8 year on a third-party operator -- does that accomplish the
9 goal of reducing leaks? And I mean, I guess the other
10 side of it is, you know, maybe at least once a year
11 somebody sees something. But it seems weak.

12 CHAIRPERSON SUINA: Member Honker.

13 BOARD MEMBER HONKER: Well, and -- yeah, I see
14 Vice-Chair's point. But I do think you've got this
15 equipment at your well site, if you're out there when
16 you're actually observing a transfer operation, you may
17 see something you hadn't thought of, or you may think of,
18 you know, some signage you need to put up for the haulers
19 that are working with some of this stuff, that would
20 reduce leaks, and you might not see that unless you
21 actually watched the operation.

22 So, it sounds like it's a -- it's a good minimum
23 thing to do, but whether it's adequate overall, I don't
24 know. It's better than not seeing the operation at all.

25 VICE-CHAIR TRUJILLO-DAVIS: And I agree, I think

1 maybe at least one time a year is better than nothing. I
2 mean, there are transfers that have to be witnessed
3 because they're on federal land, and they're required to
4 be witnessed. But I mean, maybe one time a year is better
5 than nothing.

6 CHAIRPERSON SUINA: Member Bitzer, did you have
7 something? Oh, sorry.

8 BOARD MEMBER BITZER: I'm thinking about it.

9 VICE-CHAIR TRUJILLO-DAVIS: He's going to give us
10 his words of wisdom after all.

11 BOARD MEMBER BITZER: Are we able to get any
12 other pathway?

13 HEARING OFFICER ORTH: No.

14 BOARD MEMBER BITZER: So, I suggest we go ahead
15 and hang on to the language.

16 CHAIRPERSON SUINA: Thank you, Member Bitzer.

17 VICE-CHAIR TRUJILLO-DAVIS: Great words of wisdom
18 there.

19 CHAIRPERSON SUINA: So, with that, does the Board
20 want to entertain a motion?

21 Vice-Chair.

22 VICE-CHAIR TRUJILLO-DAVIS: I have to take some
23 notes from Member Garcia. Okay. So I make a motion that
24 we adopt 20.2.50.120 C.

25 MS. SOLORIA: The whole thing?

1 VICE-CHAIR TRUJILLO-DAVIS: Okay. So I make a
2 motion to adopt 20.2.50.120 in its entirety, as proposed
3 by NMED, for the reasons offered.

4 MS. SOLORIA: For the reasons offered by NMED.

5 VICE-CHAIR TRUJILLO-DAVIS: For the reasons
6 offered by NMED, and reject NMOGA. Right?

7 CHAIRPERSON SUINA: NMOGA on B, right.

8 HEARING OFFICER ORTH: The clarification.

9 VICE-CHAIR TRUJILLO-DAVIS: And reject the
10 clarification by NMOGA on B (3) and Oxy on C (1).

11 BOARD MEMBER BITZER: Second.

12 CHAIRPERSON SUINA: Do we have to offer a basis
13 for those objections as well?

14 MS. SOLORIA: Yes. I would amend that to say,
15 rejecting the proposal by NMOGA, as unsupported by
16 evidence at the hearing, and for Oxy's proposal, as
17 defined as optional.

18 BOARD MEMBER HONKER: It would be less
19 protective.

20 MS. SOLORIA: Sufficient.

21 VICE-CHAIR TRUJILLO-DAVIS: So I'm amending my
22 motion to include that we would be rejecting NMOGA's
23 proposal because it lacks support in evidence, and Oxy's
24 proposal, because it would be less restrictive.

25 MS. SOLORIA: I believe, less protective.

1 VICE-CHAIR TRUJILLO-DAVIS: Oh, less protective.

2 BOARD MEMBER BITZER: I'll second that.

3 CHAIRPERSON SUINA: Thank you, Vice-Chair
4 Trujillo-Davis and Member Bitzer, for the second.

5 And if there's no further discussion, Ms. Jones,
6 would you please do a roll-call vote?

7 ADMINISTRATOR JONES: I will. Member Bitzer, how
8 do you vote?

9 BOARD MEMBER HONKER: I vote yes.

10 ADMINISTRATOR JONES: Member Garcia?

11 BOARD MEMBER GARCIA: Yes.

12 ADMINISTRATOR JONES: Member Honker?

13 BOARD MEMBER HONKER: Yes.

14 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

15 VICE-CHAIR TRUJILLO-DAVIS: Yes.

16 ADMINISTRATOR JONES: Chair Suina?

17 CHAIRPERSON SUINA: Yes.

18 ADMINISTRATOR JONES: The motion passes.

19 CHAIRPERSON SUINA: Thank you, Ms. Jones.

20 Next section.

21 HEARING OFFICER ORTH: All right. So it's our
22 last section before the sort of other intricate ones.
23 It's 121, and it's "Pig Launching and Receiving." Let me
24 pull it up here. I had to break them out or I never would
25 have been able to navigate them. All right.

1 So, here is Section 112, "Pig Launching and
2 Receiving." The Department has an introduction to the
3 section there at the front. And then the Department's
4 rule language is set out as usual in bold.

5 I will say, this might be another discussion for
6 Ms. Soloria. And NMOGA and Kinder Morgan believe that
7 this section should be removed entirely. And they made
8 similar statements to the statements we heard with the
9 LDAR proposal. That is to say, it wasn't, I think, what,
10 necessary to implement the ozone NAAQS or some other
11 similar statement there.

12 You're right, there would not be an impact on
13 attainment or maintenance. So that seems to be a
14 threshold question. In the event the Board proposes to
15 proceed with the adoption of a section on Pig Launching
16 and Receiving, we have some changes proposed in Sections B
17 and C. The only other thing I would note about this
18 section is that, as usual, NMED's cost-effectiveness
19 analysis follows the final section, Section D.

20 So the entirety of it is set out between pages
21 236 and 246 in the hard copy.

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

24 Yes, Vice-Chair Trujillo-Davis.

25 VICE-CHAIR TRUJILLO-DAVIS: You need to have an

1 "aye."

2 So, Ms. Soloria, do we need to ask you, is there
3 a question of having the authority in this?

4 MS. SOLORIA: Yes. Well, NMOGA hasn't posed it
5 as directly as it did with regards to the LDAR proposal.
6 What they're essentially saying in their argument -- and
7 it's summarized starting on page 237, is that the evidence
8 didn't demonstrate that these rules would contribute --
9 their language is "contribute demonstrably to ensuring
10 attainment or maintenance of the primary ozone standards."

11 So, there's -- and then, they go on to say,
12 "Their adoption is not supported by the record and would
13 imperil the legal soundness of the rule." So their
14 position is that the record doesn't demonstrate that this
15 -- that these particular provisions do what we're supposed
16 to be doing, which is ensuring attainment of the NAAQS.
17 And, therefore, the Board shouldn't -- shouldn't adopt
18 them. So it is -- it is a threshold question that you
19 would have to discuss.

20 I don't think it's necessarily -- it wouldn't be
21 necessarily a separate vote; if you proceed to consider
22 adoption of the rule, then it's assumed that you have
23 found -- you have found that the rule does accomplish some
24 attainment or maintenance of the NAAQS.

25 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

1 So just so I don't put the cart before the horse,
2 it's really about the threshold -- the question about
3 applicability here, is it more of a threshold of whether
4 by regulating it, we would get a resulting improvement?

5 MS. SOLORIA: Right. And pardon me, Madam Chair,
6 I'm just pulling up their final submission.

7 So, NMOGA relies on -- they're critical of the
8 modeling that NMED used to support it in this rule, and so
9 this is -- I think this is a little bit more of an
10 evidentiary analysis for the Board right now, because
11 it's, you know, a battle about the weight of that model.

12 And so, NMOGA, their argument would be that
13 NMED's evidence doesn't support that this rule actually
14 accomplishes its attainment. And so that's why NMOGA
15 would argue that the Board shouldn't adopt this rule.

16 So, I guess, the threshold question is really how
17 you're weighing the evidence, and it would be offered in
18 support for how this rule achieves attainment.

19 CHAIRPERSON SUINA: Thank you, Ms. Soloria, for
20 that additional explanation.

21 BOARD MEMBER BITZER: So we're back to that whole
22 argument we've covered earlier, about it being of
23 negligible benefit except, perhaps, in a small part in San
24 Juan County.

25 We made a point earlier, that I think even if it

1 only helps us in one small part, that one part might pull
2 us under. So I don't think it's negligible.

3 CHAIRPERSON SUINA: NMED provided -- excuse me --
4 provided data from ten facilities with this operation --
5 with these operations.

6 BOARD MEMBER BITZER: In other states?

7 CHAIRPERSON SUINA: Right. In the Hearing
8 Officer's report, it also notes that, however, NMED did
9 propose significant revisions to this section, to
10 incorporate most of the changes proposed by the industry.

11 So I just wanted to note that as well, as the
12 Department trying to work with the industry on
13 incorporating the industry's language.

14 BOARD MEMBER BITZER: There's also no federal
15 counterpart either.

16 MS. SOLORIA: That's correct. It's important to
17 note that should the Board consider adopting this rule,
18 there would have to be that preliminary finding of greater
19 protectiveness, due to there being no federal rule.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

21 BOARD MEMBER BITZER: It's small enough that we
22 need a cheat sheet, if we're going to keep saying the same
23 thing each time.

24 CHAIRPERSON SUINA: Vice-Chair, did you have a
25 comment?

1 VICE-CHAIR TRUJILLO-DAVIS: I was just thinking
2 that I thought I heard that the EPA was looking at
3 promulgating some federal rules.

4 CHAIRPERSON SUINA: It does note in the Hearing
5 Officer's report that -- and also some of the testimony
6 references about the testimony is based off similar
7 requirements of other states, being particularly,
8 Pennsylvania and Ohio.

9 Am I speaking loud enough?

10 COURT REPORTER: (Thumbs up.)

11 HEARING OFFICER ORTH: Madam Chair, you might be
12 thinking of the testimony and exhibits that are referenced
13 on page 245 where NMED has referred to the information
14 prepared for the EPA fact sheet on the cost and benefits
15 of capturing liquids and gas from pigging operations.

16 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I think that's
17 exactly where I was thinking.

18 CHAIRPERSON SUINA: Thank you, Madam Hearing
19 Officer.

20 So, in this section on 245, I do see additional
21 discussion from -- and information from NMED regarding
22 their ten facilities for the pigging operations, and some
23 discussion of what they're seeing in terms of concerns
24 regarding VOCs -- VOC emissions, excuse me.

25 Yes, Vice-Chair.

1 VICE-CHAIR TRUJILLO-DAVIS: As you said, our
2 current challenge is to decide if there's enough evidence
3 presenting, that that's NMOGA's challenge in this?

4 CHAIRPERSON SUINA: Correct.

5 VICE-CHAIR TRUJILLO-DAVIS: Okay. And we do that
6 best by looking back at the models?

7 MS. SOLORIA: Well, the way that NMOGA has framed
8 their challenge is that, there is negligible ozone benefit
9 and, therefore, this rule doesn't accomplish and take the
10 place of that. And the evidence in support of that
11 position is, they've critiqued -- and you will see this
12 again on 237, they've critiqued the modeling that was
13 discussed by NMED.

14 VICE-CHAIR TRUJILLO-DAVIS: Thank you for
15 clarifying that.

16 CHAIRPERSON SUINA: Is there any other
17 discussion? Is it -- I'm trying to go back through the
18 call-outs here as well, and references to the data in the
19 models.

20 Does -- Madam Hearing Officer, does the industry
21 provide their own model or data for this, for this
22 section, do you recall?

23 HEARING OFFICER ORTH: I don't recall that they
24 did. Again, their first position is that it should be
25 removed altogether. And their second position is to

1 offer, you know, redline on the changes that go to
2 applicability, for example, in the -- in the C. Yeah,
3 let's see.

4 MS. SOLORIA: Madam Chair, just for the sake of
5 clarity, I've used the terminology "critiqued the model,"
6 but the Board can see for itself that NMOGA's position
7 is -- I think it's more proper to say that their position
8 is that the model results show you what they would
9 characterize as a -- not a "demonstrable" effect on ozone.
10 So it may not be proper to say they were critiquing the
11 model itself, but characterizing the model results in a
12 certain way.

13 CHAIRPERSON SUINA: Thank you, Ms. Soloria, for
14 that clarification.

15 So I think if I recall -- let me look at my notes
16 here. This was also -- there was some testimony on the
17 description of what was -- from NMED -- I mean, from
18 NMOGA's, for lack of a better word, critique or comments
19 on the witnesses -- the expert witnesses for NMED on what
20 was demonstrative or what was a lot, if I recall, on this
21 discussion.

22 So I think I might need to go back to some of
23 those, back and forth.

24 HEARING OFFICER ORTH: So if you look, starting
25 at the bottom of page 237, it's where they -- NMOGA's own

1 statement is about the negligible ozone effects it
2 promotes. See their comments on the testimony of NMOGA's
3 Witness McNally.

4 And their understanding of Mr. Morris's -- NMED's
5 expert, Mr. Morris's testimony is at the top of page 238.

6 CHAIRPERSON SUINA: Thank you for that reference,
7 Madam Hearing Officer.

8 Is there any thoughts on this language or on the
9 reductions potentially from this language?

10 VICE-CHAIR TRUJILLO-DAVIS: I have thoughts. So
11 I think that there is no basis to exclude it. I think
12 that NMED presented a significant amount of evidence, and
13 I remember we discussed this particular topic at length.
14 So I don't think that there's any reason to exclude
15 pigging, or that we should cut it out as Kinder Morgan and
16 NMOGA both suggested.

17 That's the first question that we have to answer.

18 CHAIRPERSON SUINA: Thank you, Vice-Chair.

19 Yes, Member Garcia.

20 BOARD MEMBER GARCIA: Right. And in terms of
21 what the impact would be, whether it's demonstrable,
22 NMED's reference on page 237, that their data shows that
23 at least 10 facilities with these operations, and that it
24 would reduce VOC emissions by at least 24 tons per year.

25 I'm trying to find some data. And then they're

1 also pointing out that Pennsylvania, Ohio and Colorado
2 thought it was worthwhile to regulate this. They had it
3 in all of those rules, because they feel it's necessary to
4 reduce emissions from this process.

5 Yeah, it's a little thin on data.

6 VICE-CHAIR TRUJILLO-DAVIS: Since it's a little
7 thin on data, that's why NMOGA is making their statement.
8 And my -- I mean, I understand the issue here is that
9 pigging events are infrequent. And there are stipulations
10 on how wet your gas can be as it goes into the line.

11 So if you're meeting those stipulations --
12 meeting those requirements, your events would be even less
13 frequent. But I don't think that takes away from the
14 events that do occur; should be -- those emissions from
15 those events should be reduced. So, maybe that goes
16 beyond that question of whether the events of pigging are
17 common.

18 BOARD MEMBER BITZER: Or is the reduction going
19 to meet any sort of threshold of measurability and
20 reasonableness? It's just that's part of their argument
21 as well; you're not getting a lot of bang for your buck
22 with this.

23 VICE-CHAIR TRUJILLO-DAVIS: That's a good point.
24 And I think that is also -- that's not answered within our
25 evidence either.

1 CHAIRPERSON SUINA: I was trying to see -- I was
2 looking at NMED's proposed statement of reasons. So, in
3 closing arguments, and the references in that section in
4 that document, talk about the EPA fact sheets, for fact
5 sheet number 505.

6 HEARING OFFICER ORTH: All of which is referenced
7 on page 245 of the report.

8 CHAIRPERSON SUINA: And so in their closing
9 statement, NMED relies heavily on the summary that Madam
10 Chair just pointed to as well.

11 I think in terms of any threshold questions, I
12 think what they're presenting here -- just from what I'm
13 reviewing again -- your point, Vice-Chair is -- I don't
14 know if there's any -- if they're not, because it looks
15 like there is a concern.

16 VICE-CHAIR TRUJILLO-DAVIS: I'm agreeing with
17 that, yeah, right.

18 CHAIRPERSON SUINA: But I don't know about the
19 amount, if there's a threshold that needs to be -- I mean,
20 a reduction of -- a reduction threshold.

21 VICE-CHAIR TRUJILLO-DAVIS: So I think that that
22 speaks to what they were talking about in the modeling
23 specifically, of how much does it actually reduce. And I
24 think that's a more difficult question to answer.

25 CHAIRPERSON SUINA: So, Ms. Soloria, if we don't

1 have, like, specific data to -- I mean, we have some
2 models that were refuted or questioned by industry on this
3 point in their arguments. Is that -- how would -- yeah,
4 how would we frame this.

5 MS. SOLORIA: Well, I'll go back and say this
6 again: similar to other proposals, there's a couple of
7 layers of analysis that they want to execute there.

8 So, the way NMOGA has framed it is, there isn't
9 enough evidence as presented by NMED, to show that these
10 rules have an effect of ozone. So, that's a very
11 high-level basis of their argument. And if there's no --
12 if these rules will not have a demonstrable effect on
13 ozone for the attainment or maintenance, then there's no
14 basis to pass this rule.

15 If you disagree with that, and find that there is
16 evidence that this rule has an effect on ozone, and,
17 therefore, that nexus is with maintenance or attainment of
18 the NAAQS, then you can move on to the inquiry of what
19 your general -- what your general factors are for weighing
20 of each rule: is the benefit reasonable in proportion to
21 the economic -- the economic feasibility.

22 So that's where you do weigh the evidence, to
23 say, you know, if the evidence is really strong, or,
24 again, if the benefit is a high benefit, how are we going
25 to weigh that against the negligible or high

1 reasonableness factor.

2 BOARD MEMBER GARCIA: That's very interesting.

3 CHAIRPERSON SUINA: Yeah, it helps reframe it for
4 us to make that -- those steps on the analysis, at least
5 for me. So, thank you, Ms. Soloria.

6 Members, do you have any -- yes, Member Honker?

7 BOARD MEMBER HONKER: Well, I think there is some
8 good information from the NMED on page 245, when they're
9 talking about the 10 facilities, and with that, that five
10 of them would be over the threshold for 1 ton per year.
11 And then they've calculated reductions at 98 percent of
12 reductions, and since changed to 95 percent, but that
13 would be substantial.

14 MS. SOLORIA: Would you speak up, Member Honker?
15 I'm sorry.

16 BOARD MEMBER HONKER: Okay. So, but the
17 reductions they -- they calculated at 23.6 tons per year
18 VOC are based on 98 percent control requirement. I
19 believe that NMED has changed it to 95 percent in their
20 final proposal. But there does seem to be a substantial
21 reduction.

22 CHAIRPERSON SUINA: Yes, Vice-Chair
23 Trujillo-Davis.

24 VICE-CHAIR TRUJILLO-DAVIS: Did NMED say what
25 types of facilities -- of the ten facilities, what types

1 of facilities they looked at?

2 CHAIRPERSON SUINA: Let me see.

3 HEARING OFFICER ORTH: I'm going to stop sharing
4 for a moment.

5 CHAIRPERSON SUINA: Okay.

6 HEARING OFFICER ORTH: I'm looking at Exhibit 32,
7 page 121, which is what's cited there, but it says
8 essentially what you already see in the report.

9 CHAIRPERSON SUINA: It just says ten facilities
10 with pigging operations.

11 HEARING OFFICER ORTH: The ERG report, I think,
12 may -- because it was ERG who identified the ten
13 facilities. Do you want me to pull up the ERG?

14 VICE-CHAIR TRUJILLO-DAVIS: The reason I'm
15 asking, is because if we're looking at ten small
16 facilities, then it would reason that a larger facility
17 would have larger emissions off of pigging operations,
18 so -- but if we're looking at ten large facilities,
19 then -- so I'm just trying to reason out here, where are
20 we falling in this spectrum.

21 BOARD MEMBER HONKER: Well, NMED's discussion
22 says that only five out of the ten were over the one-ton
23 per year threshold. So they weren't all large, they
24 weren't all small.

25 BOARD MEMBER BITZER: We'd have to do some

1 detective work here.

2 VICE-CHAIR TRUJILLO-DAVIS: I don't know, I'm
3 just trying to figure it out if I have enough evidence
4 here because it's --

5 BOARD MEMBER BITZER: That it stands to reason.

6 BOARD MEMBER HONKER: And it's probably a
7 question for Vice-Chair, with her field experience, but it
8 seems like pigging operations are infrequent. They bring
9 equipment on site to do them, and it seems like the -- the
10 capture of VOCs could be done with your portable equipment
11 that you bring in to do the pigging operation, and
12 wouldn't necessarily have to be something permanently
13 installed at the facility. Just trying to --

14 VICE-CHAIR TRUJILLO-DAVIS: I'm inclined to agree
15 with you. Pigging operations are infrequent, and from my
16 experience, usually, you bring out a truck or a temporary
17 tank to catch your liquids, and that was always the bigger
18 concern. That's where you pig, to catch your -- to catch
19 your liquids.

20 And so, I do think that it is reasonable to be
21 able to have their combuster brought in to deal with the
22 VOC portion of that. But that fugitive, I don't know, I
23 can't answer that question. But it does stand to reason
24 that you could bring in a portable piece of equipment to
25 deal with the VOC emissions off there.

1 BOARD MEMBER BITZER: And what you recapture
2 would be perhaps imported back into the product?

3 VICE-CHAIR TRUJILLO-DAVIS: Not necessarily. You
4 might not be able to recapture it; it might just be --
5 especially, if you're on an offset, like a pig receiver
6 somewhere, you might not have anything to send it to.
7 There might not be a sales line or any piece of equipment
8 to --

9 BOARD MEMBER BITZER: The sales line is what I
10 was looking for.

11 VICE-CHAIR TRUJILLO-DAVIS: Yeah. You may not
12 have one. You may not have any other option but to
13 combust it.

14 And so, I did think that point was interesting in
15 the estimated costs on 245, that it could be sent to a
16 sales line, and that's -- that's not necessarily true.

17 BOARD MEMBER BITZER: Not there.

18 CHAIRPERSON SUINA: We're looking for the part.

19 HEARING OFFICER ORTH: And the exhibit for that.

20 (Inaudible.)

21 COURT REPORTER: I'm sorry. What was that?

22 VICE-CHAIR TRUJILLO-DAVIS: I apologize. It was
23 me, Trujillo-Davis. I was saying, I don't know if it's
24 worth finding the answer to what the facility's question
25 was.

1 COURT REPORTER: Thank you.

2 HEARING OFFICER ORTH: It looks like that
3 spreadsheet might have been NMED Exhibit 84, but on the
4 docketed matters page, I'm not seeing Exhibit 84. It
5 jumps from 83 to 85.

6 CHAIRPERSON SUINA: And that's NMED's exhibits?

7 HEARING OFFICER ORTH: Yes, because the ERG
8 spreadsheets were broken up by section, so there were lots
9 and lots of them.

10 BOARD MEMBER GARCIA: I see.

11 CHAIRPERSON SUINA: So I apologize. I'm just
12 making sure we have all of the information in front of us.

13 BOARD MEMBER GARCIA: I'm still trying to
14 ascertain whether we have this info at the reduction that
15 NMED -- this is Member Garcia, sorry.

16 That the amount of reduction that NMED was
17 proposing that it would be reduced, you know, the question
18 is, is that a significant enough amount to say that it
19 would have an effect on the environment.

20 BOARD MEMBER BITZER: I'm going to throw out
21 there a preliminary no, from my perspective, unless we --
22 unless we find some more, I think that might simplify our
23 lives if we go forward with that.

24 CHAIRPERSON SUINA: Yes.

25 BOARD MEMBER BITZER: To establish that.

1 CHAIRPERSON SUINA: So we note that the time is
2 4:58. So I know we're kind of still trying to get some
3 information together. How long are we going to go
4 tonight?

5 VICE-CHAIR TRUJILLO-DAVIS: I think we're
6 supposed to go to 6. I think the meeting notes said until
7 6. Is that right?

8 CHAIRPERSON SUINA: Okay. I just wanted to
9 double-check our schedule, and see if we needed to take a
10 break or if we can look.

11 HEARING OFFICER ORTH: I'll keep looking, but if
12 you need a break before you go any further.

13 CHAIRPERSON SUINA: What's that? Take a break.
14 All right. So let's take -- what would you say, members,
15 so five, ten minutes?

16 HEARING OFFICER ORTH: Yes.

17 CHAIRPERSON SUINA: All right. Let's take a
18 ten-minute break.

19 (Recess taken from 4:59 p.m. to 5:13 p.m.)

20 CHAIRPERSON SUINA: So we'll go back through with
21 the Hearing Officer's summary of Exhibit 84.

22 HEARING OFFICER ORTH: Thank you, Madam Chair.
23 So, as indicated on page 245 of the Hearing Officer
24 report, ERG identified ten facilities -- representative
25 facilities with pigging operations. Those ten facilities

1 did not represent a complete inventory of pigging
2 operations and are not identified separately in any of the
3 databases.

4 ERG gave sworn testimony about these ten
5 facilities, and what they found there, and with the model,
6 but did not create a separate spreadsheet the way they had
7 for some of the other sections. So when I thought perhaps
8 that spreadsheet was in Exhibit 84, I was not correct.
9 The basis for their proposal is sworn testimony, not a
10 separate spreadsheet.

11 VICE-CHAIR TRUJILLO-DAVIS: Then -- this is
12 Member Trujillo-Davis. I asked a follow-up question, if
13 those ten facilities were used to do the modeling and that
14 was presented as testimony.

15 CHAIRPERSON SUINA: And then, that's where we're
16 at today -- I mean, caught up to speed with everybody.

17 HEARING OFFICER ORTH: And we believe that to be
18 true based on what we're seeing in Exhibit 32.

19 CHAIRPERSON SUINA: Yes.

20 HEARING OFFICER ORTH: But we were trying to
21 confirm. Yeah, again, the rule was based on the data that
22 they reviewed for those ten facilities. They don't --
23 they don't have separate reporting data from pigging
24 facilities. Apparently, they are often co-located with
25 other facilities.

1 VICE-CHAIR TRUJILLO-DAVIS: And compressor
2 stations.

3 HEARING OFFICER ORTH: Right.

4 CHAIRPERSON SUINA: All right.

5 HEARING OFFICER ORTH: I'm sorry. Madam Chair,
6 one more thing. They are also not quantifying separately
7 in the data from EPA's Greenhouse Gas Reporting Program,
8 and that's on page 120 of Exhibit 32.

9 CHAIRPERSON SUINA: Yes. So, however -- so,
10 based on NMED's equipment data, they identified ten
11 facilities with the sample, this is not a complete
12 inventory of pigging operations, because they are most
13 often located within other facilities, or not identified
14 separately in NMED's permitting and facility databases.

15 So, in addition to what Madam Chair said, it does
16 go on, where she had mentioned the pigging operations are
17 not quantified separately in the data from EPA's
18 Greenhouse Gas Reporting Program. I don't know if that
19 gives us any more clarity.

20 VICE-CHAIR TRUJILLO-DAVIS: I think it does,
21 because I mean, it's all relative right now. But I think
22 it does because it's not a federally-regulated -- pigging
23 is not federally regulated at this point, so it wouldn't
24 be found in inventory in subparts deleted.

25 BOARD MEMBER BITZER: I'm going to try, if it's

1 all right, Madam Chair, I'm going to perhaps jump the
2 shark here a little bit. And if we need a gold stone, we
3 might as well find out now. If not, then, of course,
4 we're going to find a way forward.

5 But I will go ahead and move that we remove
6 Section 20.2.50.121 in its entirety for the reasons
7 suggested by NMOGA.

8 HEARING OFFICER ORTH: And Kinder Morgan.

9 BOARD MEMBER BITZER: And Kinder Morgan. And if
10 I don't have a second, I won't have my feelings hurt at
11 all.

12 CHAIRPERSON SUINA: Thank you, Member Bitzer.

13 VICE-CHAIR TRUJILLO-DAVIS: I'm not going to
14 second you, I'm just contemplating this.

15 BOARD MEMBER BITZER: I don't have a problem with
16 seconds.

17 HEARING OFFICER ORTH: I'm sorry. And maybe this
18 interruption is not appropriate, but there is another path
19 if this motion dies for lack of second, which is NMOGA and
20 Kinder Morgan offered up changes to Sections B and C,
21 which would limit the applicability to being within the
22 facility.

23 BOARD MEMBER BITZER: But then we have to go
24 through that threshold twice, to go on. I'm trying to
25 eliminate even that with this pending motion.

1 HEARING OFFICER ORTH: Oh.

2 BOARD MEMBER BITZER: Yeah, thank you. That's
3 well taken. Part of my other line of argument is also
4 that if the Department feels strongly about this, they can
5 always re-petition us, come back with one section of this
6 that we didn't do to their satisfaction. They know how to
7 petition us and we will already be partway along the line
8 for visit number two, and they'll know where -- where
9 they're at in these stages.

10 CHAIRPERSON SUINA: Thank you, Member Bitzer.

11 Yes, Member Honker.

12 BOARD MEMBER HONKER: Well, I would point out in
13 Section A, applicability, as proposed by NMED, it says,
14 "Operations with a PTE equal to or greater than 1 ton per
15 year VOC located within the property boundary of, and
16 under common ownership or control with, well sites, tank
17 batteries," et cetera. So it seems that like that concern
18 from NMOGA has been addressed.

19 CHAIRPERSON SUINA: Thank you, Member Honker.

20 BOARD MEMBER GARCIA: Would you -- can you
21 expound on that, what do you mean, their concern is
22 addressed?

23 BOARD MEMBER HONKER: Well, the Hearing Officer
24 just pointed out that NMOGA and Kinder Morgan had
25 suggested some changes, but it seems like this is limited

1 to operations within the property boundary of, and under
2 common ownership with well sites and tank batteries, et
3 cetera. It seems like it's already limited to that.

4 CHAIRPERSON SUINA: Yes, Member Garcia.

5 BOARD MEMBER GARCIA: Yeah. I guess, we're
6 really struggling here, unfortunately, to the question of
7 whether, you know, some other numbers that NMED cited 24
8 times.

9 BOARD MEMBER BITZER: Madam Chair, I'll withdraw
10 that motion. I understand that, but --

11 BOARD MEMBER GARCIA: Thank you.

12 BOARD MEMBER BITZER: -- I just wanted to keep
13 the parliamentary procedure right back there.

14 CHAIRPERSON SUINA: Thank you, Member Bitzer.
15 Yes, Member Garcia.

16 BOARD MEMBER GARCIA: So the question being, you
17 know, we're trying to decipher whether 24 tons -- are we
18 all agreeing on the numbers here, that NMED cites? Let me
19 ask that question. Does anybody have any larger numbers
20 on the VOC emissions being reduced. The 24 tons is what I
21 see. Does anybody see any other numbers?

22 VICE-CHAIR TRUJILLO-DAVIS: I don't see any
23 numbers, but I don't have any issue with the 24 tons. I
24 think it comes down to, where does that 24 tons come from.

25 BOARD MEMBER GARCIA: Yeah. Well, what I'm

1 getting at is whether that's enough to say that it's
2 protective of health and the environment. So that's, you
3 know, the first question we're struggling with, is whether
4 that's protective of health and if that's enough. And
5 it's a matter of putting it into context.

6 I mean, and compared to what? The 24 tons, it's
7 more than 5. I mean, you know, is 24 tons -- I mean, when
8 you said 24 tons isn't enough, earlier, and I'm thinking,
9 why is it not enough?

10 BOARD MEMBER BITZER: The other numbers that I
11 see us standing ground on, that have been included in the
12 record is some substantially larger than that. You know,
13 thousands of tons, reportedly more than 24, that -- is it
14 relatively undersubstantiated or unsubstantiated?

15 BOARD MEMBER GARCIA: Right. And I appreciate
16 you saying that, Member Bitzer, because I also went back
17 through, and, well, compared to some of the other things
18 that we've been reading about, and you're right, we've
19 talked about thousands in other places.

20 BOARD MEMBER BITZER: My car probably produces 24
21 tons a year.

22 VICE-CHAIR TRUJILLO-DAVIS: And that is what
23 bothers me, where did the 24 tons come from? If you look
24 at the facilities that are 5 tons, 2 tons, you know, so
25 we're looking at pigging operations from everything from

1 small sites to large transmission sites. So it lacks
2 perspective right now.

3 BOARD MEMBER GARCIA: Yeah. I'm sure that I'm
4 not finding very much evidence in support of this being
5 covered, if we have to pass that threshold, saying that
6 it's, you know, substantial evidence that it will be
7 protective of public health, substantial evidence.

8 CHAIRPERSON SUINA: Yes, Member Honker.

9 BOARD MEMBER HONKER: Well, and given the
10 infrequency of pigging operations, that 24 tons could be
11 spread out over several years, I would guess. I mean, if
12 you only pig once every couple of years, then the per year
13 reduction is reduced -- could be reduced. I think I may
14 be wrong, but I'm just guessing that given the infrequency
15 of it, but we haven't seen that calculation, I don't
16 believe.

17 HEARING OFFICER ORTH: I'm wondering if
18 Ms. Soloria would think it wise to have a discussion about
19 what "substantial evidence" means. It doesn't mean sort
20 of vast quantities of evidence. It's more about whether
21 it is evidence a reasonable person would rely upon.

22 So, do you think you can rely upon ERG's
23 consultants, for example? Do you think you can rely on
24 the fact that other states found it worthwhile to regulate
25 pigging or EPA's concern in their fact sheets?

1 Do you have anything?

2 MS. SOLORIA: Yes. I echo what the Hearing
3 Officer added and advised. And the other piece of that,
4 in terms of substantial evidence, if you look at it
5 through the lens that NMOGA has framed it, which we're
6 doing because they framed it that way, or they objected
7 that way, is, even given -- if you accept that NMED has
8 offered this evidence of some quantum number of reduction,
9 is there a nexus to ozone reduction?

10 That's -- that's the threshold question about
11 whether this rule actually is in pursuit of maintenance or
12 attainment. And I know that's what you-all have been
13 struggling with, but I think you keep circling around that
14 question, to Member Bitzer's point earlier, if you -- if
15 you find that that -- that they have not established that
16 nexus, then your inquiry could end there. I'm not
17 suggesting that it does, but that -- that's certainly an
18 important point underlying for your substantial evidence
19 inquiry.

20 BOARD MEMBER BITZER: So, to your other point
21 also, I just went to the EPA website and asked what an
22 average vehicle produces, in terms of CO2 per year: 4.6
23 metric tons, the average car in the average amount of time
24 per year in the United States.

25 So I know 24 tons sounds like a lot, but that's,

1 you know, when I drove up here in my Ford Focus, it's
2 probably your average sedan, so five -- four or five of
3 those is what we're talking about here.

4 Obviously, it's apples to oranges in terms of
5 what's coming out, being emitted. But in terms of how big
6 a ton is, or how much 24 tons is, it's about five
7 vehicles -- four or five vehicles' worth of emissions.

8 CHAIRPERSON SUINA: Thank you, Member Bitzer.
9 Member Garcia?

10 BOARD MEMBER GARCIA: I appreciate you-all
11 helping with and thinking about how to -- that really
12 helps a lot. So, I guess I feel more comfortable with --
13 as I read the 5 (G) in the statute, that we have to find
14 that based on substantial evidence, that the -- I will --

15 MS. SOLORIA: We haven't gotten to that inquiry
16 yet.

17 BOARD MEMBER GARCIA: I thought that's what we
18 were doing first.

19 MS. SOLORIA: Go on. I interrupted you. Go on.

20 BOARD MEMBER GARCIA: I thought we had to answer
21 that first before we decide that we would possibly approve
22 part of this.

23 MS. SOLORIA: I may have -- I may have
24 misoffered. I was offering a perspective with regard to
25 NMOGA's preliminary question about whether or not there is

1 evidence of this rule being in support of maintenance or
2 attainment of the ozone NAAQS.

3 BOARD MEMBER GARCIA: Oh, okay.

4 MS. SOLORIA: But substantial evidence, yes, that
5 would still also be part of the theory there. But you
6 still have to proceed along, to my mind, proceed along
7 with that analysis. I'm not actually sure where we are
8 right now, just to be frank. Because I'm not getting --
9 I'm not sure where the Board is right now. And I don't
10 want to steer you all in one direction or the other.

11 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
12 Appreciate that.

13 BOARD MEMBER GARCIA: Well, let me -- let me just
14 say that, with what you-all just added to the discussion,
15 it helps me because not only can I see a nexus with
16 reducing the formation of ozone, because if you reduce
17 VOCs, you're going to reduce the ozone, period, no matter
18 what quantity. So, that, I feel comfortable with.

19 Then, if I look at if the proposed rule will be
20 more protective of public health and the environment, if I
21 think about it in terms of if we had these requirements
22 under 121, then you would reduce ozone formation. How
23 much is what folks are talking about, but you would reduce
24 ozone formation, so therefore, it would be more protective
25 of public health, as opposed to not doing it. So, I guess

1 that's kind of where I'm coming around to now.

2 CHAIRPERSON SUINA: Yes, Vice-Chair
3 Trujillo-Davis.

4 VICE-CHAIR TRUJILLO-DAVIS: So I think about,
5 that we each have air permitting. We always use the
6 phrase, does it cause or contribute to the degradation of
7 the air quality. And in trying to reduce every amount of
8 VOC or ozone precursors as possible, I have to come back
9 to the famous EPA case of, you know, do we take benzenes
10 down to 1 part per million or leave it at 5 parts per
11 million. Right? And the Supreme Court decided that, you
12 know, 1 is definitely more protective, but 5 is more
13 reasonable in practice.

14 And so, I think we have to keep that in mind as
15 we -- as we move through this and make those reasonable
16 determinations of, you know, are we -- can we reasonably
17 capture every VOC that is being released? That's just my
18 thoughts on it.

19 CHAIRPERSON SUINA: Thank you, Vice-Chair. So
20 it's still circling.

21 BOARD MEMBER BITZER: Could we consider tabling
22 this and coming back to it when we've had a chance to
23 sleep on it?

24 CHAIRPERSON SUINA: Yeah. We can consider, you
25 know, how the Board feels.

1 BOARD MEMBER BITZER: I offer that we table this
2 and move on to 22.

3 HEARING OFFICER ORTH: 22 is just as --

4 MS. SOLORIA: We should start 122 in the morning.

5 BOARD MEMBER BITZER: Okay. I propose we table
6 that and move on to 123.

7 VICE-CHAIR TRUJILLO-DAVIS: In the interest of
8 moving on, I think that this section should be included.
9 I am very reluctant to exclude the entire pigging section.
10 And I think it just points us back to the topic of, did
11 they present enough evidence. Is there substantial
12 evidence? And I really feel like it should be in there.

13 BOARD MEMBER BITZER: Well, I'll reiterate my
14 point that if the Department feels strongly that this is
15 going to contribute, they can always bring it back. We
16 can move fairly quickly on it, to reverse the depths of
17 this particular question, but I don't think they've met
18 the threshold. I think we're really opening ourselves up
19 by planning that this real small amount of tonnage will
20 meet some sort of meaningful threshold.

21 HEARING OFFICER ORTH: Madam Chair?

22 CHAIRPERSON SUINA: Yes.

23 HEARING OFFICER ORTH: This may or may not be my
24 place, Member Bitzer. But are you basing your statement
25 on the notion that the 24 tons saved would be the tonnage

1 saved if this rule were adopted? Is that your
2 understanding?

3 BOARD MEMBER BITZER: Well, I understand that
4 there is undocumented experts and there's an unknown
5 variable because they only did ten. Yeah, I get that.

6 HEARING OFFICER ORTH: But the 24 tons were --
7 only came from five facilities.

8 BOARD MEMBER BITZER: Right.

9 HEARING OFFICER ORTH: Because of the other five
10 facilities.

11 BOARD MEMBER BITZER: Well, I'm basing my
12 argument on the fact that it's supposed to be a high
13 threshold, and I don't think we're meeting that. And
14 if -- and like I said before, if the Department feels
15 strongly when the dust settles from this, that we missed
16 the ball on that, I think they'd resubmit it. I'd be
17 happy -- more than happy to be further educated and
18 further informed and further data-enabled.

19 But we've talked about very large leaks and so
20 forth in terms of the tonnage, and this doesn't seem -- I
21 mean, half of them don't meet the 1 ton threshold, so...
22 And it's an infrequent -- it's an infrequent process, so I
23 think that -- I just don't think that because of all that
24 that these figures would meet that threshold.

25 CHAIRPERSON SUINA: Thank you, Member Bitzer.

1 Vice-Chair Trujillo-Davis?

2 VICE-CHAIR TRUJILLO-DAVIS: I think the fact that
3 we're still having this discussion nearly an hour later
4 does speak to the fact that we're, you know, it's not a
5 clearly-answered question. And, for me, the hangup is not
6 so much the ten facilities and the 24 tons, but the
7 discrepancies between the two models that were presented,
8 and not being -- having clear evidence that one model was
9 a better representation than the other, and just having a
10 lot of open questions around the modeling for the two.

11 And so, I feel -- I struggle with the evidence on
12 that portion of it, in addition to the evidence that
13 Member Bitzer discussed.

14 CHAIRPERSON SUINA: Thank you, Vice-Chair.

15 Oh, yes, Member Garcia.

16 BOARD MEMBER GARCIA: Well, you know, I know
17 we've been talking about this a long time, but with each
18 discussion, I get a little, tiny bit more information and
19 a different look at it, is that, I guess I'm looking at
20 this wrong; 24 tons doesn't seem like a lot, but that's
21 only for those five facilities. So if you multiply that
22 by all the facilities that would be covered by this rule,
23 we could be talking, you know --

24 BOARD MEMBER BITZER: That's the estimate of how
25 many facilities --

1 BOARD MEMBER GARCIA: And what NMED did not do is
2 make that extrapolation.

3 BOARD MEMBER BITZER: Right.

4 BOARD MEMBER GARCIA: And now I'm realizing, oh,
5 there is an extrapolation here. And so, I am also
6 compelled by the fact that Pennsylvania, Ohio, Colorado,
7 they all thought it was necessary to regulate this, so,
8 you know.

9 BOARD MEMBER BITZER: Did they operate under the
10 same state mandate that we did, that we meet that high
11 threshold since we're going beyond -- I guess that's a
12 federal requirement. And so they met -- Counsel, is that
13 a federal requirement or a state requirement, that we --
14 if we're going beyond the EPA's standards, that we
15 administrate?

16 MS. SOLORIA: So the required finding that a
17 rule, if it is more stringent than a federal standard,
18 that the Board make a preliminary finding, it's more
19 protective of public health, is a creature of the New
20 Mexico Air Quality Control Act.

21 BOARD MEMBER BITZER: So those states may not
22 have that restriction, so...

23 CHAIRPERSON SUINA: Okay.

24 VICE-CHAIR TRUJILLO-DAVIS: I'm saying that if
25 you extrapolate the facilities, it's only facilities with

1 pig -- or pig launchers and receivers; we don't know that
2 number. But I agree, I think 24 tons per year could be
3 significant, if we had the information of, is it -- is it
4 a lot of facilities, is it not a lot of facilities?

5 CHAIRPERSON SUINA: So, yes, Member Honker.

6 BOARD MEMBER HONKER: And another thing, at the
7 end of the paragraph at least on page 245, where the state
8 is talking about these reductions, they say, total
9 emissions from the pigging operations, further emissions
10 below the 1 ton per year of VOC and control applicability
11 threshold are 1.6 tons per year. So, apparently, there's
12 a big difference between pig launching and receiving
13 facilities that have a PTE over a ton per year, versus
14 under, because if all five of them that were under the 1
15 ton per year of threshold, only total 1.6 tons per year of
16 VOC, that's a huge difference from the 5 that totaled the
17 24.1 tons per year.

18 CHAIRPERSON SUINA: Thank you, Member Honker.

19 Yes, Vice-Chair Trujillo-Davis.

20 VICE-CHAIR TRUJILLO-DAVIS: And I think that goes
21 back to my question about what kinds of facilities. And
22 they did pick compressor stations, but you can put a pig
23 launcher or pig receiver on any facility, even -- there
24 are some located on batteries. So where are we falling in
25 this threshold between 1.6 and 24 tons?

1 CHAIRPERSON SUINA: Thank you. Earlier,
2 Ms. Soloria, I saw you.

3 MS. SOLORIA: Oh, no. I didn't want to say
4 anything.

5 CHAIRPERSON SUINA: Okay. Okay. I just wanted
6 to make sure.

7 BOARD MEMBER BITZER: So I have to -- so thank
8 you, actually, I said that before as well. But maybe we
9 should go ahead and then move in the direction, since it
10 seems to be consensus to bringing pigging in, maybe we
11 should go ahead and get that portion -- that first portion
12 out of the way.

13 And that would entail -- there's some words that
14 this thing comes first, if we're going to go ahead and
15 decide that pigging is in our review.

16 CHAIRPERSON SUINA: Thank you, Member Bitzer. I
17 think that we're still trying to get past that door,
18 right?

19 MS. SOLORIA: Right. I think -- I believe that
20 Member Bitzer is suggesting that a motion be offered to,
21 you know, go through those steps and then it would be up
22 or down at this point, so... And I -- I do feel because
23 of the way that the discussion has proceeded -- and,
24 again, I think it's because of the way the objection was
25 raised by NMOGA, that I'll revise what I said earlier

1 about perhaps making that preliminary determination that
2 this is within the subject matter of the rule. I'm not as
3 wedded to that as I was before, so that's up to you. You
4 can do that that way.

5 If you're inclined to do that, then you would
6 move on to the finding in Section G, and you would vote up
7 or down on that. But before -- and similar to the other
8 proposal, you're going to have to decide whose language
9 you're potentially adopting, to proffer this motion.

10 So it was mentioned that while NMOGA and Kinder
11 Morgan affected, you know, objected to this rule on its
12 face, they did offer alternative revised language if the
13 Board wants to adopt some version of this regulation.

14 BOARD MEMBER BITZER: That's -- (inaudible)

15 COURT REPORTER: I'm sorry, I didn't hear Member
16 Bitzer.

17 BOARD MEMBER BITZER: I'm sorry. That's why I
18 was suggesting we go at this point since we're not willing
19 to say no pigging, that we go ahead and move in that
20 direction, and then consider NMOGA's modification
21 proposals.

22 CHAIRPERSON SUINA: Thank you, Member Bitzer.

23 BOARD MEMBER BITZER: I think there's a chance
24 for that motion.

25 VICE-CHAIR TRUJILLO-DAVIS: And I don't mean to

1 put you on the spot, Chair Suina; I'm curious if you have
2 any additional thoughts.

3 CHAIRPERSON SUINA: Well, I keep looking back at
4 all of the exhibits because I have, I don't know how many
5 here. And really, I guess my concern, I guess, I'll just
6 follow your lead from earlier, is I'm hesitant at not
7 including this section. And for some of the initial
8 references in NMED's testimony, as well as in their post-
9 or their closing arguments, and also with what Madam
10 Hearing Officer had in the report.

11 But they're high-level references, so I guess for
12 me, in order to make sure that we're consistent and we're
13 solid, I'm, like, trying to quickly go back through these
14 references to make sure that we have the detail in the
15 references because they just pulled high-level, I guess,
16 references to these documents.

17 And so -- so, to your question, Vice-Chair, is
18 I'm leaning toward that way, and so before I can get there
19 I want to look at these documents. I'm trying to read and
20 watch you guys, so I mean that's where I am. I'm seeing
21 every, like -- like, even now, I'm on NMED Exhibit 32,
22 page 120, and they're talking about, you know, some
23 evidence and they point to some evidence here for the VOC
24 emissions limit in Pennsylvania, GP-5 and GP-5A, to
25 pigging operations that still have emissions equal to or

1 greater than 2.7 tpy after employing best management
2 practices.

3 The Pennsylvania emissions limits requires the
4 owner-operator to control VOC from all pigging operations
5 by at least 95 percent with a control device. So, now, it
6 references another section, so I'm trying to see if that
7 pulls in -- or we're saying, okay, we're limiting, and
8 they provided the references, but we're having -- I feel
9 like I'm having to go on a thread, so that's where I'm at.

10 VICE-CHAIR TRUJILLO-DAVIS: Thank you. I didn't
11 mean to put you on the spot or anything. I just value
12 your input.

13 CHAIRPERSON SUINA: Yeah. And I want to be
14 solid, to Member Bitzer's points earlier. I want to be
15 solid in making a recommendation either way, or making a
16 decision either way.

17 Yes, Member Garcia.

18 BOARD MEMBER GARCIA: Yes, I have taken a look at
19 NMOGA's changes. They're basically just saying -- unless
20 I'm missing something, they're just saying if you're
21 concerned on the use of a portal device, you follow the
22 manufacturer's specifications. What's the harm in that, I
23 mean? Oh, and it's not subject to the requirements of
24 115, oh, okay.

25 VICE-CHAIR TRUJILLO-DAVIS: Yes, I see that

1 reference.

2 BOARD MEMBER HONKER: And NMED countered that by
3 saying they thought portable control devices had to meet
4 the requirements that other control devices have to meet
5 in section 115, so...

6 VICE-CHAIR TRUJILLO-DAVIS: I think the issue
7 with that is that if you pull out a combuster or a flare,
8 it has to operate at a certain -- it has to have a certain
9 amount of gas coming through it to operate at the
10 efficiency level it needs, and so if your line that you're
11 pigging doesn't have that gas composition or to meet the
12 manufacturer's measuring, then you have to bring in
13 additional gas.

14 CHAIRPERSON SUINA: Okay. So, thanks,
15 Vice-Chair. So I think we're circling again.

16 VICE-CHAIR TRUJILLO-DAVIS: No, I don't think so.
17 We're still on the same question. What about you,
18 Counsel?

19 MS. SOLORIA: Thank you for being so attentive.

20 CHAIRPERSON SUINA: Thank you to our court
21 reporter here. And I just want to make sure we include
22 everybody's thoughts and items, what you see. So, I mean,
23 I see we're at 5:50, so I don't know if we want to
24 entertain a motion.

25 BOARD MEMBER GARCIA: By default now, we're going

1 to -- if we stop at 6, we're probably going to do what
2 that says. I'm just not sure we're going to have any more
3 clarity tomorrow, you know. I mean, we're not finding
4 it -- finding the stuff in here. So, not this long today,
5 though.

6 VICE-CHAIR TRUJILLO-DAVIS: May I make a
7 suggestion here?

8 CHAIRPERSON SUINA: Sure.

9 VICE-CHAIR TRUJILLO-DAVIS: I would like to see
10 NMED resubmit this section, but I'm struggling with the
11 evidence we have before us. So I'm going to echo Member
12 Bitzer's motion to exclude this section, but I am putting
13 it on the record that I would like to see NMED resubmit
14 this section, and then perhaps with greater clarity for
15 us, because I do -- I see the many points that they have
16 made and the value that they're trying to bring to it,
17 so...

18 BOARD MEMBER BITZER: Is that a motion?

19 VICE-CHAIR TRUJILLO-DAVIS: No, I'm just throwing
20 this out there. So it's open for discussion.

21 CHAIRPERSON SUINA: Yes, Member Honker.

22 BOARD MEMBER HONKER: Let me just, I guess
23 there's a procedural question on that would be, I would
24 assume we'd take final action on the other sections of
25 this; that would be a separate petition, or is there a

1 way -- well, we'd have to reopen comment periods and stuff
2 on this, so that would have to be, I assume, a separate
3 rulemaking -- separate rulemaking for the future?

4 MS. SOLORIA: That's correct.

5 CHAIRPERSON SUINA: So we're talking another
6 whole process.

7 BOARD MEMBER BITZER: If they feel it's a
8 significant enough issue, they will have to. If there's
9 more to it than the 24, but I doubt it, to be far in
10 excess of that. It seems to me that we're still talking
11 relatively small numbers here.

12 CHAIRPERSON SUINA: Yes, Member Garcia.

13 BOARD MEMBER GARCIA: And I mean, I'm sure they
14 they're probably listening to us right now.

15 BOARD MEMBER BITZER: Oh, yes.

16 BOARD MEMBER GARCIA: And they don't want to go
17 through another whole rulemaking; however, this being such
18 a new, large, complicated rule, there may be adjustments
19 to it in the future anyway. There may be some amendments
20 that are appropriate one way or the other, because it
21 is -- it's a monster rule.

22 And so, I'm -- I guess I'm not opposed to the
23 idea of letting them come back to do rulemaking if...

24 CHAIRPERSON SUINA: Yes, Member Honker.

25 BOARD MEMBER HONKER: I was just going to agree,

1 for the fact, that after an hour, we come back to Member
2 Bitzer's motion again; I'm laughing.

3 CHAIRPERSON SUINA: Well, I was going to throw
4 out there, much like our next section tomorrow, we're
5 going to be rested, fully caffeinated or teed up.

6 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

7 CHAIRPERSON SUINA: And maybe we table it, I
8 mean, it's just one night, table it. And we're not
9 wrecking anything either way and then we can come back
10 tomorrow.

11 BOARD MEMBER BITZER: Is there consensus that
12 we're tabling it, then?

13 CHAIRPERSON SUINA: Just until tomorrow morning.

14 BOARD MEMBER BITZER: You're the Chair.

15 CHAIRPERSON SUINA: Oh, no, I'm just throwing it
16 out there for all.

17 BOARD MEMBER GARCIA: I'm good with that. It
18 gives us time to even look further.

19 CHAIRPERSON SUINA: Yes. Does that sound good
20 for right now?

21 BOARD MEMBER BITZER: We don't need a motion for
22 that?

23 MS. SOLORIA: No, if you would just -- I'm not
24 even sure we're tabling this. We're just recessing it
25 until tomorrow.

1 BOARD MEMBER GARCIA: Yes, until tomorrow.

2 Exactly.

3 CHAIRPERSON SUINA: And is there any other
4 procedure or logistics that we need to talk about for
5 tomorrow since we have a few more minutes before 6?

6 MS. SOLORIA: Sure. Well, one, do we need to
7 like make the trek?

8 ADMINISTRATOR JONES: No, no, no. When you come
9 tomorrow, come to the side door, where you'll go out
10 tonight. It's just easier. If I'm not standing there or
11 if Madai is not --

12 MS. SOLORIA: Can we adjourn the meeting and
13 release the court reporter?

14 CHAIRPERSON SUINA: Yes.

15 MS. SOLORIA: We will adjourn for this afternoon.
16 Thank you, Madam Court Reporter.

17 CHAIRPERSON SUINA: Yes, thank you, again.

18 (Proceedings adjourned at 5:55 p.m. on April 11,
19 2022.)

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1 STATE OF NEW MEXICO
2 ENVIRONMENTAL IMPROVEMENT BOARD

3 No. EIB 21-27 (R)

4 In the Matter of:

5 PROPOSED NEW REGULATION
6 20.2.50 NMAC - Oil and Gas Sector
7 Ozone Precursor Pollutants

8 REPORTER'S CERTIFICATE

9 I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
10 CERTIFY that on April 11, 2022, the Deliberations Hearing
11 of the New Mexico Environmental Improvement Board, was
12 taken before me, that I did report in stenographic
13 shorthand the Proceedings set forth herein, and the
14 foregoing pages are a true and correct transcription to
15 the best of my ability.

16 I FURTHER CERTIFY that I am neither employed by
17 nor related to nor contracted with (unless excepted by the
18 rules) any of the parties or attorneys in this matter, and
19 that I have no interest whatsoever in the final
20 disposition of this matter.

21 

22 THERESA E. DUBOIS, RPR
23 New Mexico CCR #29
24 License Expires: 12/31/2022
25

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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 12th day of April, 2022,
this matter came on for Deliberations and Decision on the
virtual WebEx platform, before PHOEBE SUINA, Chairperson
for the Environmental Improvement Board, commencing at the
hour of 9:10 a.m.

REPORTED BY:

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A P P E A R A N C E S

For the Environmental Improvement Board:

- PHOEBE SUINA, Chairperson
- AMANDA TRUJILLO-DAVIS, Vice-Chairperson
- BARRY BITZER, Board Member
- KARL CATES, Board Member
- BENJAMIN DUVAL, Board Member
- KAREN GARCIA, Board Member
- WILLIAM HONKER, Board Member

Hearing Officer:

FELICIA ORTH, ESQ.

Counsel For the EIB:

- KARLA SOLARIA, Commission Counsel
Office of the Attorney General
- PAMELA JONES, Commission Administrator
- MADAI CORRAL, Commission Administrator

REPORTER'S CERTIFICATE

227

1 CHAIRPERSON SUINA: Thank you to everybody here
2 for getting the audio addressed. So, thanks, everybody.
3 And with that, I wanted just to open up and say welcome to
4 everybody. Also we are going to continue our second day
5 of deliberations this week. And we have -- I want to open
6 up the meeting with a roll call just to see who is all
7 here. If you would, Ms. Corral.

8 ADMINISTRATOR CORRAL: Yes. Member Bitzer?

9 BOARD MEMBER BITZER: Here.

10 ADMINISTRATOR CORRAL: Member Cates? Is he going
11 to be on today?

12 CHAIRPERSON SUINA: No.

13 ADMINISTRATOR CORRAL: Member Duval?

14 MS. SOLORIA: No.

15 ADMINISTRATOR CORRAL: Member Garcia?

16 BOARD MEMBER GARCIA: Yes.

17 ADMINISTRATOR CORRAL: Member Honker?

18 Member Honker?

19 BOARD MEMBER GARCIA: Yeah, he's there, but he
20 can't hear you.

21 MS. SOLORIA: Member Honker, are you here? He's
22 unmuted.

23 HEARING OFFICER ORTH: Member Honker, you're
24 unmuted. Can you hear?

25 BOARD MEMBER GARCIA: It doesn't look like he can

1 hear us, but I bet his audio -- I think his audio might
2 still be out.

3 BOARD MEMBER HONKER: Hello. Good morning. I'm
4 here.

5 BOARD MEMBER GARCIA: Can you hear us?

6 BOARD MEMBER HONKER: The video and audio from
7 the conference room are cutting out. So I haven't seen or
8 heard more than about two or three seconds.

9 BOARD MEMBER GARCIA: I wonder if that's true for
10 the court reporter.

11 CHAIRPERSON SUINA: No, she's good. Okay.

12 COURT REPORTER: I can hear and see everybody.

13 HEARING OFFICER ORTH: Also, Member Honker,
14 backgrounds such as the one you have tend to interfere
15 with audio and video.

16 CHAIRPERSON SUINA: Do you want to try maybe to
17 log off and log back on and see if that helps?

18 BOARD MEMBER GARCIA: Can you log off and back
19 on?

20 ADMINISTRATOR CORRAL: Should I continue?

21 CHAIRPERSON SUINA: Should we wait a minute to
22 see if Member Honker -- let's see if we can get him.
23 Thank you for telling me this, Ms. Corral.

24 HEARING OFFICER ORTH: I'll send him a Chat.

25 CHAIRPERSON SUINA: Apologies to everybody,

1 again. We're just getting through some audio technical
2 difficulties here.

3 So, Member Honker just emailed me said, WebEx is
4 a little cutting out. I haven't seen or heard more than a
5 second or two before it cuts out. I think my connection
6 is fine, but will reboot my modem in case it's on my end.

7 HEARING OFFICER ORTH: You might suggest that he
8 either take away his background or keep his camera off,
9 unfortunately.

10 ADMINISTRATOR CORRAL: So I was able to get his
11 phone number.

12 (Off record discussion.)

13 VICE-CHAIR TRUJILLO-DAVIS: You know, he can also
14 call in on WebEx.

15 (Off record discussion.)

16 CHAIRPERSON SUINA: Member Honker, can you hear
17 us?

18 BOARD MEMBER HONKER: I can.

19 CHAIRPERSON SUINA: There you are.

20 BOARD MEMBER HONKER: I can't see anybody, but I
21 can hear you.

22 HEARING OFFICER ORTH: Okay. Are you comfortable
23 proceeding this way?

24 BOARD MEMBER HONKER: Yeah, that's fine.

25 CHAIRPERSON SUINA: Wonderful. Okay.

1 BOARD MEMBER BITZER: We can see you.

2 BOARD MEMBER HONKER: Well, that's unfair.

3 BOARD MEMBER BITZER: Just FYI.

4 MS. SOLORIA: Okay.

5 CHAIRPERSON SUINA: Wonderful. Thank you, Member
6 Honker, for working with us.

7 With that, Ms. Corral, can you proceed on your
8 ongoing through the roll call?

9 ADMINISTRATOR CORRAL: Yes. Member Honker?

10 BOARD MEMBER HONKER: I'm here.

11 ADMINISTRATOR CORRAL: Chair Suina?

12 CHAIRPERSON SUINA: Here.

13 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

14 VICE-CHAIR TRUJILLO-DAVIS: Here.

15 ADMINISTRATOR CORRAL: We have five persons, we
16 have a quorum.

17 CHAIRPERSON SUINA: Thank you, Ms. Corral.

18 So, Madam Court Reporter, could you hear
19 Ms. Corral?

20 COURT REPORTER: (Thumbs up.)

21 CHAIRPERSON SUINA: Awesome. Okay. Just making
22 sure.

23 All right. Well, we have a quorum this morning
24 so we're going to start our second day this week of
25 deliberations. And I'm going to turn it over briefly this

1 morning to start us off and ground us into our next day of
2 deliberations, to Ms. Soloria and Madam Hearing Officer.

3 HEARING OFFICER ORTH: All right. When it's the
4 right time I will share Section 121, which is where we
5 broke at the end of the day yesterday.

6 Ms. Soloria, is this the right time?

7 MS. SOLORIA: Yes.

8 HEARING OFFICER ORTH: Okay.

9 MS. SOLORIA: And Madam Chair, if I could have a
10 few moments just to make some orienting points for us
11 here. I know that the Board yesterday afternoon had some
12 questions regarding substantial evidence and the steps of
13 analysis the Board has to go -- has to go through for each
14 part of these rules. And I did want to clarify, because I
15 don't think the answer -- the answer was clear yesterday,
16 what is "substantial evidence." And I think that's
17 important for a number of reasons.

18 One, we've been referring to Subsection G of the
19 statute which uses the term "substantial evidence." It's
20 also important to note because substantial evidence is
21 also one of the points for the standard of review of this
22 rule, if this position were to get appealed. So it's
23 generally good to know what the substantial evidence is.
24 It is, "such relevant evidence as a reasonable mind might
25 accept as adequate to support a conclusion."

1 So I think just gathering from the discussion
2 yesterday, there may have been a notion that it's more
3 heightened than that. And I wanted to reassure you all
4 that that's not the case. That is what substantial
5 evidence is, and to the extent one party wants to make it
6 a heightened or lessened standard, just take that at face
7 value for considering their motivations there. So that's
8 the first point.

9 The second point I wanted to make, again, just
10 observing your discussions yesterday is that, you know the
11 Board is entitled to consider, you know, overall, the rule
12 as a whole. That is a valid consideration when evaluating
13 each party's pros and cons against each specific
14 provision. So, you know, it's easy to get lost, you know,
15 not see the forest from the trees kind of thing. And you
16 know, it is within your purview to consider the overall
17 purpose of the rule.

18 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

19 Fellow Board members, do you have any questions
20 regarding what Ms. Soloria shared with us this morning?
21 Comments?

22 BOARD MEMBER BITZER: I'm probably disqualified
23 on that reasonable minds category. I don't know how much
24 reasonable is left up there.

25 VICE-CHAIR TRUJILLO-DAVIS: We'll see if you're

1 good to go.

2 BOARD MEMBER BITZER: We shall see.

3 CHAIRPERSON SUINA: Thank you, Member Bitzer.

4 Any other members have any questions or comments? All
5 right.

6 If not -- and Member Honker, if you need to jump
7 in, just jump in or raise your hand and I'll try to keep
8 an eye out on the screen, if you need -- if you would like
9 to speak, but just try to jump in if you need to.

10 BOARD MEMBER HONKER: That's good. I'll do that.

11 CHAIRPERSON SUINA: Okay. Thank you, Member
12 Honker, because we're having different connections here.
13 I see him on my side. So all right. But we'll make do.
14 We're working hard here.

15 HEARING OFFICER ORTH: There he is.

16 CHAIRPERSON SUINA: Okay. Madam Hearing Officer.

17 HEARING OFFICER ORTH: I have put up Section
18 121 --

19 CHAIRPERSON SUINA: Okay.

20 HEARING OFFICER ORTH: -- on the screen. I will
21 scroll anywhere in that rule you would like. And I don't
22 have anything to add to what I said yesterday. I think
23 the Board has some -- has some further discussion.

24 CHAIRPERSON SUINA: Yes. Yes, Member Garcia.

25 BOARD MEMBER GARCIA: Yes. Thank you, Madam

1 Chair. I appreciate having the time last night to go over
2 a lot of this material. And I looked at the EPA fact
3 sheet number 505. And once I read through that, it really
4 helped a lot with understanding where NMED might be coming
5 from.

6 And one of the things that we were asking about
7 or talking about yesterday afternoon was, you know, how
8 often does this happen? If it happens once a year, what
9 are we getting out of it? And this EPA fact sheet uses --
10 does a cost and emissions savings table. And that
11 estimate is based on a gathering system at -- well, it's
12 based on pigging 30 to 40 times per year, 30 to 40 times
13 per year. So that's a whole lot more than I thought was
14 happening at these facilities. So, that gives me more --
15 shoot, sorry.

16 That gives me more perspective about how often
17 this happens. So this -- this sheet also goes into them
18 recovering the cost for putting in this equipment. And
19 some of the time frames are two months, three months, five
20 months, which isn't a long time for such a high cost, but
21 they do recover gas when they use the proper equipment,
22 they can recover a lot of gas. So this fact sheet helped
23 a lot to review this.

24 I also reviewed NMED's Exhibit 32, where they go
25 into a bit more detail about pig launching and receiving,

1 and some of the thoughts behind it. And one of the things
2 that struck me as I read through that, and read through
3 this, is they compromised a lot apparently, from the
4 original -- the original version. It looks like they --
5 they listened to NMOGA and others, and made changes -- a
6 lot of changes to the original. So it looks like there
7 was a lot of compromise with this version that they
8 finally came out with. So that was interesting to make
9 note of last night.

10 BOARD MEMBER HONKER: I just lost the audio.

11 BOARD MEMBER GARCIA: Can you hear me now? No?

12 CHAIRPERSON SUINA: Member Honker, can you hear
13 us?

14 BOARD MEMBER HONKER: Yes. Yes, I can hear you.

15 CHAIRPERSON SUINA: We were wondering if --

16 BOARD MEMBER HONKER: I can hear you now, but you
17 cut out there for about ten seconds.

18 CHAIRPERSON SUINA: Okay. Would it be possible
19 for you to call in on the numbers? I think they're on the
20 email for the log-in.

21 BOARD MEMBER HONKER: Yeah, yeah. Yeah, I was in
22 the process of doing that when the audio came back on my
23 computer, so let me -- let me call in and that way it
24 should be reliable.

25 CHAIRPERSON SUINA: Okay. We'll hang tight here

1 for a few minutes while you call in.

2 (Off record discussion.)

3 BOARD MEMBER HONKER: Okay. I'm on, on the
4 phone.

5 BOARD MEMBER BITZER: Great.

6 CHAIRPERSON SUINA: Member Honker, can you hear
7 us okay now?

8 BOARD MEMBER HONKER: Yes.

9 CHAIRPERSON SUINA: Wonderful. Like I said
10 earlier, just jump in since you are on the phone. If you
11 have something to say, we'll defer to you since we can't
12 see you.

13 BOARD MEMBER HONKER: Okay. Great.

14 CHAIRPERSON SUINA: All right. Member Garcia,
15 please continue.

16 BOARD MEMBER GARCIA: Thank you. I don't know
17 exactly where I got cut off, but I'll quickly recap. I
18 reviewed the EPA fact sheet number 505, which helped
19 inform me a lot about the process and that pigging can
20 happen 30 to 40 times a year. Of course, this is an
21 estimate. I'm sure there's facilities that do it less,
22 facilities that do it more, but this was, I think, a
23 sample estimate that they used to determine the time it
24 takes to recover costs that they put in to buying this
25 equipment. And it's, in some cases, two months, three

1 months, or five months, which is pretty good for
2 recovering costs when they recover gas that otherwise
3 would have been lost.

4 And we also struggled with the only amount that
5 NMED cited was from their review of ten facilities where
6 five had 24 tons per year of VOC emissions, and it's hard
7 to extrapolate when we don't know the entire universe out
8 there, but it's large. And so, I would think that, you
9 know, there could be a significant recovery of emissions
10 by using this equipment. And then, also -- oh, my
11 goodness, something fell over.

12 CHAIRPERSON SUINA: Yeah. Let's -- we're taking
13 a quick break. We heard something fall in the building.
14 So we're just going to be safe and so let's --

15 BOARD MEMBER GARCIA: I bet it was a compressor
16 on the roof.

17 CHAIRPERSON SUINA: Yeah, let's take a ten-minute
18 break.

19 BOARD MEMBER HONKER: Sounds prudent. Be safe.

20 CHAIRPERSON SUINA: Thanks, everybody. We will
21 be back here online at 9:45.

22 (Recess taken from 9:35 a.m. to 9:45 a.m.)

23 CHAIRPERSON SUINA: All right. We're back on the
24 record with Madam Court Reporter and Member Honker. All
25 right. Sorry for the brief break there. We had -- we

1 heard a large something fall down on the roof over here,
2 just wanted to make sure we were safe. So it sounds like
3 we are and we'll continue on.

4 And members, where were we?

5 VICE-CHAIR TRUJILLO-DAVIS: She's working on this
6 for a moment here.

7 BOARD MEMBER GARCIA: Okay. I'll finalize what I
8 was saying. Just one more point, that the -- there were
9 significant revisions to the original proposal based on
10 comments from NMOGA, Kinder Morgan and CDG. And so,
11 that -- all of this information gives me a little more
12 comfort. And I also am considering the entire rule and
13 what this adds to reducing emissions, which, once again,
14 is the goal for all of these different methodologies, for
15 reducing emissions. And in this case, it will allow them
16 to recover more gas, so it's not just expending money and
17 they get nothing out of it. They can recover more gas, so
18 that's all. Thank you.

19 CHAIRPERSON SUINA: Thank you, Member Garcia.

20 Other members? Do you have any other comments,
21 Member Bitzer?

22 BOARD MEMBER BITZER: What motion is in order at
23 this point? We still need to establish that we have the
24 authority here?

25 VICE-CHAIR TRUJILLO-DAVIS: Well, I believe we

1 were establishing if there was enough evidence presented
2 to continue on with the pigging section.

3 BOARD MEMBER BITZER: Is that the motion, like
4 that, with the same verbiage we were using?

5 MS. SOLORIA: For this provision, I don't think
6 that we have to make the formal finding of it being within
7 the authority, because that argument wasn't raised
8 directly by NMOGA. You can. I mean, my position is that
9 if you go on to consider the rule, then you consider
10 yourselves to have authority to pass it. But we were
11 going back and forth, I know, yesterday afternoon between
12 that threshold question and the Subsection G pigging
13 question. So we're trying -- we're kind of going back to
14 the threshold question as Member Trujillo-Davis
15 articulated it.

16 HEARING OFFICER ORTH: Theresa is having trouble.

17 MS. SOLORIA: Oh, I'll sit closer.

18 CHAIRPERSON SUINA: Do you want to do another
19 sound check, Ms. Soloria?

20 MS. SOLORIA: Sound check one, two, three. Thank
21 you.

22 CHAIRPERSON SUINA: So, Ms. Soloria, basically,
23 if we go forward, then we're assuming or we're implying
24 that we do feel, as a Board, that we have the authority to
25 include this section.

1 MS. SOLORIA: Correct.

2 CHAIRPERSON SUINA: Is that clear to members? I
3 know it was late last night and we were getting a little
4 tired there toward the end, and circling around this
5 issue. So what's -- what's the feeling of the Board about
6 moving forward on this?

7 Yes, Vice-Chair Trujillo-Davis.

8 VICE-CHAIR TRUJILLO-DAVIS: I think I'm just
9 trying to reorient myself here. Our biggest discussion
10 was just around the evidence and --

11 MS. SOLORIA: Speak up.

12 VICE-CHAIR TRUJILLO-DAVIS: Oh, I'm sorry. Our
13 biggest discussion was just, at this point, was just
14 around the evidence. And I guess, if anybody wants to
15 recap where we were. Can I ask for a recap of where the
16 evidence was that we were discussing?

17 CHAIRPERSON SUINA: Absolutely. I think from
18 what I recall from yesterday is that, as Member Bitzer
19 mentioned earlier, is did we have enough evidence. We
20 were circling around, whether we had enough to proceed
21 going forward within our authority and within the rule
22 itself to consider this section.

23 VICE-CHAIR TRUJILLO-DAVIS: Uh-huh.

24 CHAIRPERSON SUINA: Given the evidence that was
25 provided by New Mexico Environmental Department in the

1 testimony and the exhibits.

2 So, for me, I just can say last night, as I
3 shared during the meeting yesterday, was to go back
4 through the documents. And Member Garcia gave a good
5 summary this morning of some of those additional -- that
6 additional information that was provided by NMED.

7 And that was referenced high-level in the Hearing
8 Officer's report, the closing argument for NMED, and also
9 in their verbal testimony in September.

10 VICE-CHAIR TRUJILLO-DAVIS: So just a follow-up
11 question. First, I really appreciate Member Garcia's
12 pulling the fact sheet 505. And so, I think it has some
13 valuable information there. I guess this question would
14 be for Ms. Soloria, is that, is it okay to use this fact
15 sheet?

16 MS. SOLORIA: Yes, that was cited by NMED in
17 evidence.

18 BOARD MEMBER GARCIA: Yes, more than once.

19 MS. SOLORIA: So I had a question about that, but
20 you've confirmed, yes, it's in evidence and you're able to
21 weigh it.

22 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.
23 That was my only follow-up question on that.

24 CHAIRPERSON SUINA: And so, given that it was in
25 evidence, and does that provide any more support for the

1 Board to move forward on this? I guess that's the next
2 discussion point here.

3 BOARD MEMBER HONKER: This is Member Honker. If
4 I can interject?

5 CHAIRPERSON SUINA: Yes.

6 BOARD MEMBER HONKER: And I would like to thank
7 Member Garcia for researching the record last night. And
8 I think with -- with the information she shared, I feel
9 more comfortable going forward with considering this
10 section and just talking about which versions to use.

11 CHAIRPERSON SUINA: Thank you, Member Honker.

12 BOARD MEMBER BITZER: Is that a motion?

13 CHAIRPERSON SUINA: And we can make a motion,
14 right, Ms. Soloria, just to have some clarity for
15 ourselves? That we're going to proceed.

16 MS. SOLORIA: If you would like to. It's not --
17 I wouldn't say a motion is necessary until you're adopting
18 something, but if you want to make it.

19 VICE-CHAIR TRUJILLO-DAVIS: I think we should
20 make a motion just because it was updated quite a bit.
21 And it was a point NMOGA raised, and if it is taken to
22 appeal, then at least the record is clear on what we
23 decided as a Board.

24 MS. SOLORIA: Sure. She said it better than
25 Counsel.

1 CHAIRPERSON SUINA: Thank you, Vice-Chair
2 Trujillo-Davis.

3 With that, would any of the members want to
4 propose a motion?

5 VICE-CHAIR TRUJILLO-DAVIS: I'll propose a
6 motion. I'll take a shot at it here. So I make a motion
7 to reject NMOGA's claim that there wasn't enough evidence
8 in the record to support pigging being included in Section
9 20.2.50.121.

10 MS. SOLORIA: Great motion.

11 BOARD MEMBER GARCIA: I second.

12 CHAIRPERSON SUINA: Thank you. If there's no
13 further discussion, Ms. Corral, would you mind doing a
14 roll-call vote for us?

15 ADMINISTRATOR CORRAL: Yes. Member Bitzer, how
16 do you vote?

17 BOARD MEMBER BITZER: I vote yes.

18 ADMINISTRATOR CORRAL: Member Garcia?

19 BOARD MEMBER GARCIA: Yes.

20 ADMINISTRATOR CORRAL: Member Honker?

21 BOARD MEMBER HONKER: I vote yes.

22 ADMINISTRATOR CORRAL: Chair Suina?

23 CHAIRPERSON SUINA: Yes.

24 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Yes.

1 ADMINISTRATOR CORRAL: Madam Chair, the motion
2 passes.

3 CHAIRPERSON SUINA: Thank you, Ms. Corral.

4 And with that, let's proceed on looking at the
5 pigging proposals that we had. Would you mind putting
6 that on the screen?

7 Yes, Ms. Garcia.

8 BOARD MEMBER GARCIA: Just to review as we were
9 discussing yesterday, NMOGA's proposal, which they're
10 wanting to eliminate being subject to the requirements of
11 115. To me, that's a deal breaker. I wouldn't -- I
12 wouldn't -- I wouldn't go for that. And that's their
13 suggestion, so I would reject that proposal.

14 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry, Karen.
15 What -- what --

16 BOARD MEMBER GARCIA: I'm sorry, I should have
17 said. Okay. I'm looking at NMOGA's suggested change to B
18 (4).

19 HEARING OFFICER ORTH: It's on the screen.

20 BOARD MEMBER GARCIA: And it's on page 241 of the
21 Hearing Officer's report, and they have a new sentence:
22 "An owner or operator complying through use of portable
23 control device shall install the device consistent with
24 manufacturer's specifications and is not subject to the
25 requirements of 115."

1 So that's what I was talking about. To me,
2 that's not something I would consider.

3 VICE-CHAIR TRUJILLO-DAVIS: Can we start on the
4 previous section and then --

5 CHAIRPERSON SUINA: So you want to go back to A?

6 VICE-CHAIR TRUJILLO-DAVIS: No, to B. We have
7 some suggestions from NMOGA, CDG -- and CDG on B (2) (b).
8 Oh, yeah, both of them are B (2) (b). So it's the section
9 right above where Karen was referencing.

10 CHAIRPERSON SUINA: Okay. Okay. So you're just
11 suggesting going in order?

12 BOARD MEMBER GARCIA: Yeah, good idea.

13 CHAIRPERSON SUINA: Yes, Vice-Chair, do you have
14 any comments on that?

15 VICE-CHAIR TRUJILLO-DAVIS: No, other than just
16 we should start there.

17 CHAIRPERSON SUINA: Okay.

18 BOARD MEMBER BITZER: Can we talk about the word
19 "prevent" switched with the word "minimize"? At the very
20 top of the page.

21 BOARD MEMBER GARCIA: What page?

22 BOARD MEMBER BITZER: 241, the first line.

23 BOARD MEMBER GARCIA: Oh, got it.

24 BOARD MEMBER BITZER: NMOGA proposes to replace
25 the word "prevent" with "minimize."

1 BOARD MEMBER GARCIA: Okay.

2 HEARING OFFICER ORTH: As does CDG.

3 BOARD MEMBER GARCIA: That would be for (B) (2)
4 (b).

5 CHAIRPERSON SUINA: Yes, Vice-Chair
6 Trujillo-Davis.

7 VICE-CHAIR TRUJILLO-DAVIS: So, to me, when I
8 read this section and the suggestion by the additional
9 parties, what sticks out to me is that they are -- they
10 are attempting to address an issue, it seems like not
11 directly, but the wording in the NMED language here, where
12 it talks about, "Such as installing liquid ramps or drain,
13 routing a high-pressure camera to a low-pressure line or
14 vessel, using a ball valve type chamber, or using multiple
15 pig chambers."

16 So I -- if I'm reading this correctly -- and I
17 want everybody else to weigh in on this -- I think the
18 issue has to do with removing the pigging line and trying
19 to "minimize," as they use that word, versus "prevent."
20 So we're talking zero emissions versus minimizing
21 emissions when you pull the pig out of the line.

22 And my larger concern is that I wouldn't want to
23 discourage the use of pigging because they don't have
24 maybe all of the available techniques that they need to
25 pig a line.

1 BOARD MEMBER BITZER: So the perfect would be the
2 enemy of the good, basically, and then if they -- if
3 they -- if they don't have -- if they don't have the
4 ability to prevent, then they just don't pig in the first
5 place; is that what you're saying?

6 VICE-CHAIR TRUJILLO-DAVIS: Yes. That would be
7 my concern.

8 BOARD MEMBER BITZER: So pigging is a good thing,
9 as opposed to not doing it?

10 VICE-CHAIR TRUJILLO-DAVIS: Right. You know, you
11 line your pigs to reduce corrosion and prevent an
12 explosion of the line.

13 BOARD MEMBER BITZER: That would be bad.

14 VICE-CHAIR TRUJILLO-DAVIS: That would be bad.
15 There's a pretty well known case in New Mexico, I think in
16 Carlsbad in 2004 that --

17 BOARD MEMBER BITZER: Killed some people.

18 VICE-CHAIR TRUJILLO-DAVIS: Yeah, a whole family
19 there, so pigging is very important.

20 BOARD MEMBER BITZER: That was for lack of
21 pigging on that line?

22 VICE-CHAIR TRUJILLO-DAVIS: Yeah. Water -- or
23 I'm sorry, liquid settled into that line and caused
24 corrosion and caused an explosion. So I -- I -- that's my
25 larger concern. I wouldn't want somebody not to pig a

1 line because they didn't have the appropriate... And I'm
2 not sure of how the context -- how appropriate that
3 context is for this particular section.

4 CHAIRPERSON SUINA: Yes, Member Garcia.

5 BOARD MEMBER GARCIA: Thank you. Thank you,
6 Vice-Chair Trujillo-Davis. I guess I don't -- I don't
7 read this as possibly not allowing them to pig. I
8 think -- I think pigging is just absolutely, you know,
9 they have to.

10 VICE-CHAIR TRUJILLO-DAVIS: Right.

11 BOARD MEMBER GARCIA: And so all -- at least
12 where I've read of the material and the EPA 505, it's
13 assumed they're going to pig, they have to, to get liquids
14 out. There's going to be liquids condensing in a gas,
15 especially in the wintertime and so they have to. So
16 there's various methods to get rid of that or capture the
17 gas. And NMED has opened it up to a variety of methods,
18 but I guess I don't read it to possibly preclude them from
19 being able to pig.

20 -- I mean, that's not -- yeah, that's not the way
21 I read it. But, you know, one point, though, I find it
22 interesting, in A, they used the word "minimize." In B,
23 they used the word "prevent." But in A, it's minimize the
24 liquid present; in B, it's prevent emissions.

25 HEARING OFFICER ORTH: And in C, it's minimize

1 again.

2 BOARD MEMBER GARCIA: And in C, it's minimize.
3 So they seem to use that word on purpose. I mean, they
4 could have used "minimize" and they used "prevent." So I
5 think -- I think in the rule where they talk about
6 preventing emissions, I'm not sure that anybody thinks
7 it's going to be prevented 100 percent. That just seems
8 to be the word they use throughout the rule. They talk
9 about the purpose is to prevent emissions.

10 So, in fact, they're talking about 95 percent.
11 They each -- you know, they went from 98 percent down to
12 95 percent. So I don't think anybody thinks it's going to
13 be prevented 100 percent.

14 CHAIRPERSON SUINA: Yes, Vice-Chair
15 Trujillo-Davis.

16 VICE-CHAIR TRUJILLO-DAVIS: And Member Garcia, I
17 didn't mean to give the impression that they wouldn't pig,
18 but the frequency might decline based on availability of
19 equipment and things like that.

20 BOARD MEMBER GARCIA: Uh-huh. Right. Okay.

21 VICE-CHAIR TRUJILLO-DAVIS: I was looking at it
22 from a safety perspective, and not wanting to discourage
23 anybody from pigging as frequently as possible.

24 BOARD MEMBER GARCIA: Uh-huh, I understand.

25 BOARD MEMBER BITZER: One of those borderline,

1 six of one, half-dozen of the other decisions, that gets
2 pushed over the edge because there's a higher or ultimate
3 standard that you've got to meet, or you perceive that
4 you've got an ultimate standard.

5 Although, I hear where you're coming from in
6 terms of -- Karen, in terms of your suggestion that they
7 use that term specifically for a reason. I just don't
8 know what that reason is. Otherwise, that's very telling:
9 "minimize, minimize, minimize, prevent." I don't know. I
10 bet Mr. Honker has got something.

11 CHAIRPERSON SUINA: Yes, Member Honker, did you
12 have anything to add?

13 BOARD MEMBER HONKER: Yeah. I don't think the
14 word choice is critical here. To me, the -- the gist of
15 this section is the percent reduction thing. So, whether
16 you -- whether you say "minimize" or "prevent," I'm okay
17 with either one there. I wouldn't object to changing it.
18 I don't think that's the critical impact of this -- of
19 this section.

20 CHAIRPERSON SUINA: Thank you, Member Honker.
21 And I was looking back at some of the testimony in the
22 presentations during the hearing. And it looked like
23 there -- there was agreement for paragraph B (2) (a) and
24 (c) to use "minimize," as it was paraphrased in the
25 exhibit for Ms. Textor's summary. So, again, I don't feel

1 like there's concern with changing it to "minimize."

2 Yes, Member Garcia.

3 BOARD MEMBER GARCIA: I just found a sentence in
4 the -- on page 240, where NMED is supporting the rule.
5 They're saying -- and this is at line 36: And owners --
6 these are the changes they made. They agreed to numerous
7 revisions that NMOGA and CDG suggested, and then they're
8 saying going from 98 to 95, compliance deadline two years,
9 and then they say "owners and operators to minimize
10 emissions rather than prevent them."

11 CHAIRPERSON SUINA: Correct.

12 BOARD MEMBER GARCIA: But yet they left some
13 words.

14 VICE-CHAIR TRUJILLO-DAVIS: So is this just an
15 oversight?

16 CHAIRPERSON SUINA: I think we have multiple,
17 multiple points of text that show NMED wasn't in agreement
18 from "prevent" to "minimize."

19 BOARD MEMBER GARCIA: Okay.

20 CHAIRPERSON SUINA: So if we're at a point where
21 we can make a motion, at least on this? Yes.

22 VICE-CHAIR TRUJILLO-DAVIS: It seems consistent
23 with what NMED put in their text.

24 CHAIRPERSON SUINA: So that gives us B (2), the
25 question on B (2), and I don't know if we want to wait for

1 a motion to look at the other points of section -- of this
2 section. We have NMOGA's proposal to B (4).

3 MS. SOLORIA: Madam Chair, I would suggest you
4 wait only because you haven't voted on the previous
5 sections as well.

6 CHAIRPERSON SUINA: Okay. So do we feel
7 comfortable moving forward, either doing a motion on the
8 previous section, including B (2), or going to B (4)?
9 What's the pleasure of the Board?

10 VICE-CHAIR TRUJILLO-DAVIS: I just say let's go
11 for (4).

12 CHAIRPERSON SUINA: After what you had shared
13 with us earlier about B (4), from that section?

14 BOARD MEMBER GARCIA: Right. So there wasn't
15 anything in front of the B (2) (b), and now we're going to
16 B (4) and then after B (4), the other change is -- the
17 only other change is (3). No, I guess it's C (3). Okay.
18 C (3), I'm just kind of finding it. Okay.

19 And the changes to B (4) and C (3) are the same
20 suggested change. Right? Basically, the same.

21 You know, so I -- I already mentioned that I
22 would not agree with that change on B (4) and C (3), so
23 whatever anybody else thinks.

24 CHAIRPERSON SUINA: Thank you, Member Garcia.

25 Any other members have any comments on this

1 section and on the proposed addition by NMOGA?

2 VICE-CHAIR TRUJILLO-DAVIS: I just need a second.

3 CHAIRPERSON SUINA: Sure. Still looking through
4 the details here.

5 Member Honker, do you have any comments or
6 questions?

7 BOARD MEMBER HONKER: Well, I -- this is Member
8 Honker. I do agree with Member Garcia that I don't like
9 the -- the language proposed by NMOGA in sections B (4)
10 and C (3). And that "prevent" versus "minimize" thing,
11 I'm fine either way on that.

12 CHAIRPERSON SUINA: Thank you.

13 Yes, Vice-Chair Trujillo-Davis?

14 VICE-CHAIR TRUJILLO-DAVIS: Is the issue the
15 temporary flare or a temporary piece of equipment?

16 HEARING OFFICER ORTH: Portable, that's right.

17 VICE-CHAIR TRUJILLO-DAVIS: Portable, okay.
18 That's what was sticking in my head.

19 CHAIRPERSON SUINA: Yes, Vice-Chair
20 Trujillo-Davis.

21 VICE-CHAIR TRUJILLO-DAVIS: Okay. So it appears
22 to me that NMOGA's issue with this is that it's a portable
23 piece of equipment. That's why they put that revision in,
24 but I think looking back at Section 115, the portable
25 equipment appears to be addressed well enough, unless

1 somebody thinks differently. It appears to be addressed
2 in 115, and so I would think that they would have -- that
3 that addition would not need to be added to the rule, but
4 that's just my two cents on that.

5 BOARD MEMBER HONKER: This is Member Honker. I
6 think that's a good point. And I'm still going back to
7 the 95 percent reduction requirement, and it seems like
8 that is going to override any manufacturer's specifications
9 issue with portable control devices.

10 CHAIRPERSON SUINA: Thank you, Member Honker.
11 Are there any other questions on there regarding
12 this? It seems like we're moving forward.

13 BOARD MEMBER GARCIA: How do you feel about it?

14 BOARD MEMBER BITZER: That was going to be my
15 question, too. What do you think, Madam Chair?

16 CHAIRPERSON SUINA: I'll go back to, you know, B
17 (4), and my thoughts on that are -- I'm kind of hesitant
18 about much of what Member Garcia said at the start of this
19 discussion, that that line in there -- and the line I'm
20 referring to is "An owner or operator complying through
21 the use of a portable control device shall install the
22 device consistent with manufacturer's specifications and
23 is not subject to the requirement of 20.20.50.115 NMAC."

24 So, Vice-Chair? Is there a direction to the
25 speaker mic?

1 Can you hear me now, Madam Court Reporter?

2 COURT REPORTER: Yes.

3 CHAIRPERSON SUINA: So I don't know if we're at a
4 point where we need to have more discussion or if we're at
5 a point to make a motion.

6 Yes, Member Garcia.

7 BOARD MEMBER GARCIA: Well, I'm wondering if the
8 next proposed change by NMOGA, if we could touch on that,
9 and then that would be it and then we'd be ready to.

10 CHAIRPERSON SUINA: Okay.

11 BOARD MEMBER GARCIA: So it looks likes on --
12 what is this -- gosh, I wish the letters were there, too.
13 C (3) on page 244, C (3), is that right, C (3)? They are
14 wanting a change to add a phrase "a portable control
15 device used to comply with paragraph," so that's for
16 clarification. Used to comply with paragraph 121, shall
17 be installed consistent with manufacturer's specifications
18 and is not subject to the monitoring requirements in
19 Section 115.

20 So, here, they're not saying they want to not be
21 subject to all of the requirements of 115, they're just
22 saying monitoring requirements. So I went back to look at
23 the monitoring requirements in 115, and they are quite
24 extensive. There's 2, (a), (b), (c), 3 (a), (b), (c),
25 (d). There's quite a lot of detail in the monitoring

1 requirements. So it seems that NMED took a great deal of
2 care in pointing out how the monitoring needs to be done,
3 so I think that's a pretty important requirement and they
4 probably should follow it.

5 CHAIRPERSON SUINA: Yes, Ms. Soloria.

6 MS. SOLORIA: I was fixing the mic. So just to
7 be clear, this was a suggestion by the Board, assuming
8 that -- a suggestion by the Department, assuming the Board
9 was inclined to accept NMOGA's proposal.

10 BOARD MEMBER GARCIA: Oh, thank you for that.
11 Okay. Okay.

12 MS. SOLORIA: If you were to not insert the
13 language, then you want to get to that suggested language.

14 BOARD MEMBER GARCIA: Okay. Thank you. I should
15 have read a little more carefully. Thank you.

16 CHAIRPERSON SUINA: Thank you, Ms. Soloria, for
17 that clarification.

18 BOARD MEMBER GARCIA: So if we didn't accept
19 NMOGA's suggestion, then we don't even have to deal with
20 this at all?

21 MS. SOLORIA: Right.

22 CHAIRPERSON SUINA: Okay. Madam Vice-Chair?

23 VICE-CHAIR TRUJILLO-DAVIS: And I believe I
24 understand correctly -- and this is kind of right to my
25 point, that their issue seems to be with the portable

1 equipment. And so, I think that NMED addressed that in
2 their -- in the rule, and so -- and ultimately addressing
3 the monitoring portion of that as well.

4 So I'm just inclined to rejection NMOGA's
5 proposal on this.

6 BOARD MEMBER GARCIA: Okay. In that case, I'm
7 ready to propose a motion that we adopt 20.2.50.121 with
8 the change in B (2) (b) suggested by NMOGA, to change the
9 word "prevent" to "minimize," and reject NMOGA's
10 suggestion on -- to change B (4) and C (3) for the reasons
11 proffered by NMED. And is that enough, or should I say
12 anybody else?

13 VICE-CHAIR TRUJILLO-DAVIS: I think we missed a
14 section.

15 BOARD MEMBER GARCIA: Oh, did we?

16 VICE-CHAIR TRUJILLO-DAVIS: Yeah, Kinder Morgan
17 has an -- has an addition on "Monitoring requirements."

18 BOARD MEMBER GARCIA: Where is that?

19 VICE-CHAIR TRUJILLO-DAVIS: On page 242.

20 MS. SOLORIA: I think they were in support.

21 HEARING OFFICER ORTH: They support, yeah.

22 CHAIRPERSON SUINA: They support what NMOGA had
23 proposed.

24 VICE-CHAIR TRUJILLO-DAVIS: Okay. I apologize.
25 I thought we missed a section in all of this.

1 BOARD MEMBER GARCIA: No, that's good.

2 BOARD MEMBER BITZER: Well, I'll second the
3 motion on the off chance it was sufficient. Is it?

4 MS. SOLORIA: I think we should go back and
5 rework it just because there were a couple of pieces
6 there.

7 CHAIRPERSON SUINA: So any suggestions,
8 Ms. Soloria, on the motion?

9 MS. SOLORIA: Yes. I'm trying to put one
10 together.

11 CHAIRPERSON SUINA: Okay.

12 MS. SOLORIA: Sorry, just give me a minute.

13 VICE-CHAIR TRUJILLO-DAVIS: That was a good job,
14 though, Karen.

15 BOARD MEMBER BITZER: I thought so.

16 BOARD MEMBER GARCIA: It's the first one of the
17 day, so it's not going to be right off the bat.

18 BOARD MEMBER BITZER: I was trying to put one
19 together, too. It sounded good, I would have done the
20 same thing. Except it wasn't just NMOGA, it was CDG.

21 HEARING OFFICER ORTH: CDG.

22 BOARD MEMBER BITZER: I keep wanting to say "CBD"
23 from the pot shops or something.

24 MS. SOLORIA: Okay. I would suggest the motion
25 to accept the language as proposed by NMED, with support

1 for the reasons proffered by NMED and supported by Kinder
2 Morgan, accepting the revision of the word "prevent" to
3 "minimize," for the reasons offered by NMOGA and CDG, and
4 rejecting further revisions by NMOGA, for the reasons
5 offered by NMED.

6 BOARD MEMBER GARCIA: I second that.

7 BOARD MEMBER BITZER: That's your motion, or I'll
8 second Karen's motion.

9 CHAIRPERSON SUINA: So, Member Garcia made the
10 motion, as -- suggested or as framed by Ms. Soloria, to
11 capture all of the appropriate proffers and notations, and
12 a second by Member Bitzer.

13 If there is no further discussion, Ms. Corral,
14 would you mind doing a vote on that -- a roll-call vote?

15 ADMINISTRATOR CORRAL: Yes. Member Bitzer, how
16 do you vote?

17 BOARD MEMBER BITZER: I vote yes.

18 ADMINISTRATOR CORRAL: Member Garcia?

19 BOARD MEMBER GARCIA: Yes.

20 ADMINISTRATOR CORRAL: Member Honker?

21 BOARD MEMBER HONKER: I vote yes.

22 ADMINISTRATOR CORRAL: Chair Suina?

23 CHAIRPERSON SUINA: Yes.

24 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

25 VICE-CHAIR TRUJILLO-DAVIS: Yes.

1 ADMINISTRATOR CORRAL: The motion passes.

2 CHAIRPERSON SUINA: Ms. Soloria?

3 MS. SOLORIA: Madam Chair, just for the sake of
4 completeness, NMOGA did raise a suggestion that there is
5 no federal counterpart for this rule, so if you want to go
6 ahead and make that statement during this.

7 So the suggested motion there would be that the
8 Board finds based on substantial evidence, that the rule
9 is more protective of public health and the environment.

10 CHAIRPERSON SUINA: Thank you. Thank you.

11 So just to clarify, because there's no federal
12 counterpart to this, just for completeness, maybe a Board
13 member can entertain an appropriate motion to make our
14 record whole.

15 BOARD MEMBER BITZER: I'll move that we find the
16 rule more protective of public health and environment
17 based on -- based on substantial evidence.

18 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
19 your motion.

20 BOARD MEMBER HONKER: I'll second.

21 CHAIRPERSON SUINA: Member Honker seconds.

22 If there's no further discussion, Ms. Corral,
23 would you mind doing another roll-call vote?

24 ADMINISTRATOR CORRAL: Member Bitzer, how do you
25 vote?

1 BOARD MEMBER BITZER: Yes.

2 ADMINISTRATOR CORRAL: Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR CORRAL: Member Honker?

5 BOARD MEMBER HONKER: Yes.

6 ADMINISTRATOR CORRAL: Chair Suina?

7 CHAIRPERSON SUINA: Yes.

8 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

9 VICE-CHAIR TRUJILLO-DAVIS: Yes.

10 ADMINISTRATOR CORRAL: The motion passes.

11 CHAIRPERSON SUINA: Thank you very much,

12 Ms. Corral. All right.

13 HEARING OFFICER ORTH: Madam Chair, section 122
14 is going to be, I think, a fairly long discussion and I'm
15 wondering if a short break would be appropriate.

16 CHAIRPERSON SUINA: Sure. What would the -- what
17 would the Board suggest?

18 VICE-CHAIR TRUJILLO-DAVIS: Ten minutes.

19 CHAIRPERSON SUINA: Ten minutes. Okay. So we
20 will be back at 10:36.

21 (Recess taken from 10:26 a.m. to 10:37 a.m.)

22 CHAIRPERSON SUINA: Can you start us off, Madam
23 Hearing Officer?

24 HEARING OFFICER ORTH: Absolutely. The next
25 section is 122. I have it up on the screen here. In the

1 Hearing Officer's report it exceeds 50 pages. We get all
2 the way from page 246 to page 299. This is on "Pneumatic
3 Controller and Pumps."

4 Because the parties had so much to say in this
5 section, I think one logistical question you're going to
6 have to decide -- well, let me start at the beginning.
7 You'll remember from the hearing that in this section the
8 industry parties had proposed adoption of the controllers
9 similar to something that was adopted by Colorado back in
10 2021.

11 The environmental parties had initially supported
12 the Department's proposed approach, but then they wanted
13 to accelerate some compliance deadlines. So you will see
14 in here a number of proposals and supporting evidence from
15 the environmental parties, to accelerate the compliance
16 deadlines here. You will also see a number of proposed
17 changes by NMOGA, which they referred to as "workability"
18 changes.

19 Now, there's a little bit of good news on those
20 changes; as noted by the Department on page 248, the
21 Department actually accepts those workability changes. So
22 you won't have to be considering that as a disputed matter
23 when you see NMOGA's changes to NMED's language.

24 Member Bitzer?

25 BOARD MEMBER BITZER: What about the other

1 parties here?

2 HEARING OFFICER ORTH: So they do not -- NMED
3 does not support the accelerated compliance timelines
4 proposed by the environmental parties.

5 BOARD MEMBER BITZER: But NMOGA proposed -- I
6 forgot the term you used --

7 HEARING OFFICER ORTH: "Workability."

8 BOARD MEMBER BITZER: Workability, but the other
9 petitioner's interveners are standing as well, did they
10 not weigh in?

11 HEARING OFFICER ORTH: They did not weigh in,
12 presumably because the workability changes were proposed
13 pretty late in the game. They are still supported by
14 evidence; namely, from the Department's own staff.
15 Ms. Bisbey-Kuehn's testimony provided support for a lot of
16 NMOGA's workability changes.

17 BOARD MEMBER BITZER: Which is great news on some
18 of this stuff, some parties that -- the key parties agree
19 on and the other key parties don't object to.

20 HEARING OFFICER ORTH: Yeah.

21 BOARD MEMBER BITZER: That's what I mean.

22 HEARING OFFICER ORTH: Then, here's where it gets
23 tricky, is beyond, at least, you know, reviewing NMOGA's
24 workability changes, and the accelerated timelines offered
25 by the environmental parties, IPANM made extensive

1 proposed changes throughout the whole section because
2 their approach was production-based, and less
3 controller-based.

4 And the reason this is tricky is because there
5 was such a volume of material and it was too hard to go
6 back and forth in terms of, you know, each and every
7 proposal, you kind of had to see IPANM's proposal as a
8 whole because again, they were taking a different approach
9 entirely. So the IPANM stuff is set out at the end of
10 this section, starting around -- I think it was page 289.
11 And so this is the tricky part, is you can say, well, in
12 A, we're going to adopt "X" instead of "Y," but then you
13 also have to consider what IPANM is doing later, because
14 maybe you would embrace the entirety of their approach.
15 So, I'm sorry, there's going to be flipping back and
16 forth.

17 CHAIRPERSON SUINA: Yes, Vice-Chair?

18 VICE-CHAIR TRUJILLO-DAVIS: Would you say looking
19 at IPANM's proposal in its entirety, that maybe we look at
20 that section first and then start at the beginning?

21 HEARING OFFICER ORTH: So the problem with
22 that -- and thank you, you're actually helping me make my
23 point -- the parties' feelings about the approach taken by
24 IPANM at the end, will have already been set out as you
25 went through the other sections.

1 VICE-CHAIR TRUJILLO-DAVIS: Okay.

2 HEARING OFFICER ORTH: Okay. So that's why I put
3 them at the end.

4 VICE-CHAIR TRUJILLO-DAVIS: So, then, should we,
5 instead of doing the voting in sections, should we vote at
6 the end of the whole thing?

7 HEARING OFFICER ORTH: Yes.

8 VICE-CHAIR TRUJILLO-DAVIS: Exactly. That's
9 great.

10 CHAIRPERSON SUINA: So we're probably going to
11 have to keep going back and forth on the sections to
12 IPANM.

13 HEARING OFFICER ORTH: Unless you just want to
14 look at the workability and environmental party stuff, not
15 make any final decisions, but at least discuss that, and
16 then look at IPANM's, you know, as a second point. So
17 that's all I have to say. That's the logistical challenge
18 here.

19 CHAIRPERSON SUINA: Okay. Thank you, Madam
20 Hearing Officer. And members of the Board, ready to dive
21 into Section 122? Anyone want to start us off on the
22 discussion?

23 BOARD MEMBER GARCIA: Yeah. Just one point: it
24 looks like Oxy supports accelerating the time frame. Oxy
25 supports accelerating the transition to zero emitting

1 devices that CEP had proposed, so that's interesting.

2 CHAIRPERSON SUINA: Yes, thank you for pointing
3 that out, Member Garcia.

4 Yes, Vice-Chair Trujillo-Davis.

5 VICE-CHAIR TRUJILLO-DAVIS: So, just for clarity
6 on my side, and I appreciate us going through this from
7 the beginning -- was the accelerated workability issue,
8 was that in reference and surrounding the January 19, 2022
9 date; is that what the issue was there?

10 HEARING OFFICER ORTH: So, the accelerated
11 timelines and workability are two sets -- two different
12 sets.

13 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.

14 HEARING OFFICER ORTH: And I would say the
15 fastest place to understand where the accelerated
16 deadlines are is in the table.

17 CHAIRPERSON SUINA: So, with that, members, do
18 you want to -- where would you like to start?

19 VICE-CHAIR TRUJILLO-DAVIS: I would like to take
20 a few minutes to take in what Ms. Orth told us and just
21 orient myself with the papers a little bit, but you can
22 continue on.

23 CHAIRPERSON SUINA: Thank you, Vice-Chair. So,
24 we're taking a few minutes to look at what we have before
25 us, before starting substantive discussion.

1 Yeah, Member Garcia.

2 BOARD MEMBER GARCIA: Just one question I have,
3 Madam Hearing Officer, are all of these changes by CEP
4 during the hearing, nothing post-hearing?

5 HEARING OFFICER ORTH: Hold on one second. My
6 memory is that CEP provided testimony during the hearing
7 in support of -- yeah, there was a lot of testimony about
8 it.

9 BOARD MEMBER GARCIA: Okay.

10 HEARING OFFICER ORTH: And in particular about
11 Clean Air Advocates' Exhibit 23, for example, is
12 referenced on page 257. They spent a lot of time talking
13 about how if the Department's proposal is accepted instead
14 of operators controlling a certain percentage of their
15 controllers by 2024, and the CEP says 2027, for example.
16 They spent a fair amount of time on that.

17 BOARD MEMBER GARCIA: Okay. Thank you.

18 CHAIRPERSON SUINA: Yes.

19 BOARD MEMBER GARCIA: One other question: did
20 Clean Air Advocates change to CEP?

21 HEARING OFFICER ORTH: Clean Air Advocates are
22 part of CEP.

23 BOARD MEMBER GARCIA: Okay. So if I look for
24 that exhibit, I wonder if it would be under Clean Air
25 Advocates.

1 HEARING OFFICER ORTH: It would be CAA.

2 BOARD MEMBER GARCIA: Okay. Great. Thank you.

3 HEARING OFFICER ORTH: CAA Exhibit 23, did I say
4 that?

5 BOARD MEMBER GARCIA: Yes, thank you.

6 HEARING OFFICER ORTH: Oxy had a rebuttal
7 exhibit, Rebuttal Exhibit 1, which also supported the
8 accelerated transition.

9 BOARD MEMBER HONKER: Just a general thought --
10 this is Member Honker. Re-reading the IPANM redraft, it
11 is -- it is so -- so comprehensive and so detailed and it
12 adds so many more things, for instance, on Table 1, it's
13 changing the headings of the various columns there. I
14 have a hard time figuring out how we would assess the
15 impacts and the support for a lot of this stuff in IPANM's
16 proposal. I just don't know how the record ties to it
17 because it's just very different, and it's changing
18 classifications and definitions of things that are covered
19 by various sections.

20 So I'm going to have a hard time dealing with
21 most of what's in their proposal because it is just such a
22 drastic change from the NMED redline.

23 HEARING OFFICER ORTH: So, Member Honker, I can
24 understand why that would be a daunting thing to consider.
25 As I said, their approach is production-based, which is

1 why it looks so comprehensively different, but the best
2 readable explanation of the support for their approach
3 starts on page 295 of the report and continues for another
4 three or four pages to page 299. So that's going to be
5 the best place to look for their support in the narrative
6 fashion as to the basis for their proposal.

7 BOARD MEMBER HONKER: Yes, thanks.

8 CHAIRPERSON SUINA: Vice-Chair Trujillo-Davis.

9 VICE-CHAIR TRUJILLO-DAVIS: Just to still make
10 sure I'm on the right page here, so the accelerated
11 table -- or the accelerated timeline proposed by CEP
12 starts in 2023 and NMED starts in 2024, so...

13 HEARING OFFICER ORTH: I think it was 2027, but
14 you'll want to look at the table.

15 CHAIRPERSON SUINA: Yeah, the table.

16 VICE-CHAIR TRUJILLO-DAVIS: Okay. So this is
17 NMED's, right, on page 262?

18 HEARING OFFICER ORTH: Yes, that's my
19 understanding. And then the proposed table is 264.

20 VICE-CHAIR TRUJILLO-DAVIS: Okay. So, 2023,
21 uh-huh.

22 HEARING OFFICER ORTH: You're right.

23 CHAIRPERSON SUINA: So this section is
24 complicated. So, NMED -- I mean, NMOGA's supporting
25 NMED's timetable.

1 HEARING OFFICER ORTH: Right.

2 CHAIRPERSON SUINA: So we just have one table --
3 or two tables to look at. Okay.

4 (Board Member Duval joined hearing at this time.)

5 BOARD MEMBER GARCIA: So they not only changed
6 the time frame -- the time frame, but the procedures
7 follow that time frame, too.

8 VICE-CHAIR TRUJILLO-DAVIS: Right.

9 CHAIRPERSON SUINA: Yeah, Member Garcia.

10 BOARD MEMBER GARCIA: Yes, I guess just two
11 points. This doesn't elucidate anybody's view here, but
12 the two points that jump out at me is that, I'm sure it
13 took a tremendous amount of time and work and energy, I
14 mean, for the industry and NMED to come together on a
15 proposal is pretty amazing. I'm sure that took a lot of
16 time and a lot of concessions, certainly on NMED's part as
17 well the industry. So I have a huge appreciation for
18 that.

19 On the other hand, I'm always keeping in mind the
20 need to prevent us from going into nonattainment, and the
21 more you slow down the measures to reduce emissions, the
22 higher the chance we'll go into nonattainment. I mean, it
23 could happen anyway, no matter what, but... So, I guess
24 that, you know, that makes me appreciate CEP's position as
25 well, to move this up a bit. But, anyway, those are the

1 two points I wanted to make, not that you-all didn't
2 already see that, but just thought I'd put that out there.
3 Thank you.

4 CHAIRPERSON SUINA: Thank you so much, Member
5 Garcia.

6 Yes, Member Bitzer.

7 BOARD MEMBER BITZER: To your earlier point, that
8 Oxy and CEP, I think it was, or CAA, I forget which one --
9 were of a like mind. The Department makes reference to
10 the fact that they need to protect the smaller interests
11 as well, because Oxy has got the deep pockets. And so,
12 they potentially have a business self-interest in an
13 accelerated timeline because if the smaller guys can't do
14 it, they have to sell out for cents on the dollar.

15 So, I'd just keep that in mind, that there's a
16 reason that the big fish and the environmental advocates
17 might be on the same page, other than altruism.

18 CHAIRPERSON SUINA: Uh-huh. Thank you, Member
19 Bitzer.

20 Yes, Vice-Chair Trujillo-Davis.

21 VICE-CHAIR TRUJILLO-DAVIS: I think I'd like to
22 caution the Board that, you know, we're very concerned
23 about making sure that -- or our concern is, is that these
24 counties don't go into become a nonattainment area, but I
25 think the Board had had enough experience with air quality

1 issues that one of the messages that's come across to us a
2 lot is that there's a lot of pieces that go into becoming
3 a nonattainment area, you know, global sources and things
4 like that.

5 So I think this challenge is we should stay
6 focused on reductions within this rule and not reductions
7 on a whole county level of -- to keep us out of
8 attainment, because I think in the next few months we're
9 going to see a few more rules come before us that would
10 kind of piece that altogether.

11 BOARD MEMBER BITZER: Which reminds me also of a
12 question, Madam Chair, if I might? We're going back some
13 time in the discussion, but it seems to me that the EPA
14 also takes into consideration what you've got in the
15 pipeline. And maybe Member Honker can speak to this since
16 he's worked with the EPA. But I think if they see we put
17 it on the books, and that there's light on the end of the
18 tunnel, I think it may potentially delay a trigger or
19 stall a trigger if they see that we're -- that we've made
20 the move.

21 Am I off base with that, Member Honker?

22 BOARD MEMBER HONKER: Well, I wouldn't say you're
23 off base with that, but I have never been part of the
24 decision making chain on nonattainment areas being
25 designated. And certainly, my perspective of EPA is about

1 five years old at this point, so... But what you're
2 saying could be -- could be valid, I think.

3 BOARD MEMBER BITZER: I don't remember where I
4 heard it, is the problem. I know it was in one of these
5 discussions, that the EPA has that; and it may have been
6 from the Department, actually, talking about their work
7 with the EPA; they want to see that we're putting things
8 into place even if our timeline isn't as accelerated as it
9 might be.

10 CHAIRPERSON SUINA: Thank you, Member Bitzer.
11 Member Garcia.

12 BOARD MEMBER GARCIA: Yes, I think that very well
13 could be the case. I know that what triggers already
14 happened is, the Department is required to do this by EPA.
15 And EPA sees on the horizon the nonattainment in certain
16 areas. And so I think I asked the question -- I don't
17 remember who, if it was Ms. Kuehn or not, but I think I
18 asked the question: what happens, you know, if there's
19 more rules -- if an area goes into nonattainment. And
20 there would be many more restrictions and also it would
21 affect future permits. And I think that would happen
22 pretty quick.

23 So that's why I was saying it would impact the
24 industry in a negative way because future permits would be
25 more restrictive, was the answer that I recall. I'm not

1 sure I'm getting that right, but, anyway, so, but as far
2 as whether they'd give more time because we're already
3 making steps, I don't know about that. I don't know, you
4 know, whether they do that or not.

5 BOARD MEMBER BITZER: To your point also, once
6 going into nonattainment, the designation, I think there's
7 no -- I mean, Bernalillo County is there after going into
8 nonattainment decades ago, but they're still AQDA, they're
9 called, in the air quality district.

10 CHAIRPERSON SUINA: Thank you, Member Bitzer.

11 And I just want to note Member Duval, are you on
12 online now?

13 BOARD MEMBER DUVAL: Yes, I am. Sorry, I've had
14 a very busy day. I've been having to mute, dealing with
15 various other issues, but I am on.

16 CHAIRPERSON SUINA: Okay. I just want to make
17 sure you're caught up to us and what section we're on. I
18 don't know how much you've heard of the discussion, but
19 we're on Section 122.

20 BOARD MEMBER DUVAL: Thank you.

21 CHAIRPERSON SUINA: And that's -- the page from
22 the Hearing Officer's report is 246.

23 BOARD MEMBER DUVAL: Got it. Yep, I see it on my
24 screen. Thank you.

25 CHAIRPERSON SUINA: You're welcome.

1 BOARD MEMBER DUVAL: Thank you.

2 CHAIRPERSON SUINA: And since you're on the
3 WebEx, just jump in if you have anything to add. We're
4 having some issues, so it's to just jump right in. Sorry
5 to interrupt the discussion, Member Bitzer and Member
6 Garcia. We're good?

7 BOARD MEMBER GARCIA: Uh-huh, uh-huh.

8 CHAIRPERSON SUINA: Okay. So, with that, then
9 discussing some of the challenges regarding this section,
10 on whether or not if, you know, if by passing a rule,
11 whether the agencies, like EPA, would have some -- some
12 other way or have a -- how can I phrase it -- consider
13 that when they're working with the state on air quality
14 issues. I think Member Bitzer's comment, he summarized
15 that at a high level.

16 Member Duval, just to bring you up to speed as
17 well, this is a bit complicated section, so I'm going to
18 ask if Hearing Officer Orth can kind of reiterate some of
19 the complications in the hearing report, the proposals by
20 industry, by the environmental groups, as well as NMED's
21 proposed language. If you would, Madam Hearing Officer.

22 HEARING OFFICER ORTH: Certainly, Madam Chair.
23 Member Duval --

24 BOARD MEMBER DUVAL: Thank you for the -- thank
25 you for the understanding. Yeah, I would greatly

1 appreciate that. I don't need everyone to relitigate
2 everything due to my schedule, but I sincerely appreciate
3 a little bit of background information. Thank you.

4 HEARING OFFICER ORTH: Yeah. So this section
5 takes up more than 50 pages in the Hearing Officer
6 attachment, and I would just highlight a few things. One,
7 we have the Department's proposal, which is supported by
8 NMOGA. And to the extent you see proposed changes by
9 NMOGA, which they referred to as "workability" changes
10 throughout the rule, you should understand that the
11 Department does not object. So you won't be adjudicating,
12 if you will, between the Department and NMOGA as you walk
13 through this section.

14 And the environmental parties and Oxy believe
15 that the timelines for compliance and the percentage of
16 controllers, for example, that should make the transition
17 should be accelerated. And the easiest way to understand
18 the acceleration, to see that for yourself, is to compare
19 the two tables on page -- I think it's 262 and 264.

20 Then, finally, IPANM took a very different
21 approach to pneumatic controllers -- a production-based
22 approach rather than a controller-based approach. And
23 because their rewrite of the section was so comprehensive,
24 you will find that after all of the NMOGA changes and the
25 community and environmental and Oxy changes toward the end

1 of the section, beginning on page 289. And the best way
2 to understand their -- the basis for their rewrite is to
3 read the explanation following -- immediately following
4 their redline. That's really all I have to say.

5 CHAIRPERSON SUINA: And Member Duval, do you have
6 any follow-up questions of clarity on all of the proposals
7 in this section?

8 BOARD MEMBER DUVAL: No, Chair Suina. And I have
9 read through this and I -- I came to the same conclusion
10 that was already proffered. It's sort of, you know, as
11 the summary as was proffered. So thank you for your time
12 in going back.

13 CHAIRPERSON SUINA: Thank you.
14 Yes, Vice-Chair?

15 VICE-CHAIR TRUJILLO-DAVIS: So are we starting
16 with the tables?

17 HEARING OFFICER ORTH: Or you could walk through
18 Oxy has a proposed change on the way to the tables.

19 VICE-CHAIR TRUJILLO-DAVIS: Oh, okay.

20 CHAIRPERSON SUINA: Yes. Thank you for this walk
21 through. Yes, go ahead, Madam Hearing Officer.

22 HEARING OFFICER ORTH: I have it on the screen.
23 Oxy proposes an addition to the end of paragraph 122 A,
24 exempting artificial lift controllers. The Department
25 opposes.

1 BOARD MEMBER HONKER: If I could interject just
2 for a moment.

3 CHAIRPERSON SUINA: Yes.

4 BOARD MEMBER HONKER: Having read through all of
5 this again, and the IPANM version, just in terms of moving
6 forward, I would suggest we focus on the NMED draft or
7 final version, which all of the other commenters commented
8 on. And so we have, basically, all of the input from the
9 other parties, except for IPANM in the one section.

10 As we go through it, we can take a look at
11 IPANM's corresponding section and see if there's anything
12 we think we might want to incorporate, but I think we
13 could do that as we go through and -- and also take into
14 account IPANM's rewrite of each one of these sections and
15 just go section by section and -- and -- and try to
16 finalize decisions that way. Just a suggestion.

17 CHAIRPERSON SUINA: Thank you, Member Honker. I
18 think that's what -- yeah, and I'm in agreement with that.
19 It's just trying to see how we can walk down this path
20 together when it's a number of proposals. So I support
21 that, Member Honker.

22 BOARD MEMBER HONKER: And one other thing; there
23 doesn't seem to be a lot of rebuttal or discussion of
24 IPANM's proposals. You know, they've got their support,
25 but it's kind of hanging out there with a lot -- without a

1 lot of back and forth from the other parties. So we just
2 have to take that into account as well.

3 HEARING OFFICER ORTH: Actually, Member Honker,
4 if I might? A lot of what the other parties have to say
5 about the IPANM proposals is incorporated, if you will,
6 into the other comments on each section. So we'll run
7 across it as we go.

8 CHAIRPERSON SUINA: Yeah. So we'll just go
9 through each section, as you suggested, Member Honker, and
10 then if we have to flip to IPANM, then we'll do that and
11 we'll flip back and forth. That sound good?

12 BOARD MEMBER HONKER: (Thumbs up.)

13 CHAIRPERSON SUINA: Will do. All right. So,
14 with that, Vice-Chair, I -- I know we were starting down
15 that path to your comments.

16 HEARING OFFICER ORTH: Let me orient folks in the
17 hard copy. A appears on page 260. I have scrolled down
18 to, though, page 261, to show you Oxy's proposed addition.
19 So there's NMED -- unless I make it really small I can't
20 show it all.

21 CHAIRPERSON SUINA: Right. Right.

22 HEARING OFFICER ORTH: However, you do have NMED's
23 opposition to Oxy's proposal right there.

24 CHAIRPERSON SUINA: Right. So does that help
25 here. So it looks like -- it looks like we have Section

1 A, the proposed language by NMED. And then we have Oxy's
2 proposed addition to the end of paragraph Section 122 A,
3 "Artificial lift controllers located at wellheads only
4 facilities are exempt from these requirements."

5 And then there is a reference -- IPANM earlier
6 proposed to exempt well sites tank batteries.

7 HEARING OFFICER ORTH: Do you want me to scroll
8 down to that?

9 CHAIRPERSON SUINA: No, just keep this there and
10 we can see.

11 HEARING OFFICER ORTH: It's page 289 if you have
12 numbered pages.

13 CHAIRPERSON SUINA: So Section A for IPANM looks
14 like...

15 Yes, Member Garcia.

16 BOARD MEMBER GARCIA: Just looking at this one
17 point, the change that Oxy wanted, it's just interesting
18 to me that NMOGA's point, you know, they're okay with what
19 NMED proposed and the flexibility built in there, which
20 NMED says, the artificial lift can be included in the
21 percentage of controllers that do not need to be
22 nonemitting and can be addressed through the flexibilities
23 provided in this section. So, apparently, that was okay
24 with NMOGA, but not with Oxy. And I'm not sure why that
25 would be. Maybe you could illuminate us.

1 VICE-CHAIR TRUJILLO-DAVIS: I thought that was an
2 interesting point as well. And so I was looking back in
3 the record because there was some rebuttal testimony on
4 it, and so I was looking back at that same point.

5 BOARD MEMBER GARCIA: Uh-huh.

6 HEARING OFFICER ORTH: Member Garcia, it might
7 have been because NMOGA and NMED -- and I'm just
8 speculating, I don't know -- were engaged in some fairly
9 intense attempts at comprehensive negotiations, so it
10 might have been a negotiated finding, I don't know.

11 And I'm sorry, Madam Chair, as to your reading
12 here in this paragraph, that was IPANM's earlier proposal.
13 I don't see it in the current A that they're suggesting.

14 CHAIRPERSON SUINA: Exactly.

15 VICE-CHAIR TRUJILLO-DAVIS: Is anybody else
16 having any connection problems?

17 CHAIRPERSON SUINA: Well, I was, but I'm good.
18 It's going in and out. There you go. Are you good now?

19 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I think so. I
20 was having trouble downloading documents.

21 BOARD MEMBER BITZER: Member Honker was raising
22 his hand up.

23 CHAIRPERSON SUINA: Yes, Member Honker.

24 BOARD MEMBER HONKER: No, that was a thumbs up,
25 because I wasn't having any connection problem, so...

1 CHAIRPERSON SUINA: I just wanted to add to what
2 Madam Hearing Officer said. When I look at IPAN --
3 IPANM's proposed language, it's very -- it's not -- it's
4 different than with some additions -- additional language.
5 So we might need to take a look at that, too, as we
6 consider this section here.

7 So do you want to take -- discuss Oxy's proposal
8 first, and then we'll look at IPANM's? So what are the
9 thoughts on Oxy's proposal? Yeah, Vice-Chair.

10 VICE-CHAIR TRUJILLO-DAVIS: Well, I will say I
11 went back to the rebuttal exhibits, and it doesn't seem to
12 give any more -- any additional information; at least, I'm
13 not seeing -- seeing it in there.

14 CHAIRPERSON SUINA: And that's Oxy's?

15 VICE-CHAIR TRUJILLO-DAVIS: Yes. NMED -- NMED's
16 response says that the -- let's see here. It says it can
17 be addressed through flexibilities provided in the section
18 that allow owners operators to prioritize controllers, are
19 retrofitted or replaced, then it gives a citation for that
20 information. So I went back to the rebuttal exhibit and
21 it doesn't seem to shed more light on where those
22 flexibilities were provided in that section. So I think
23 that was answering Karen's question there -- or sorry,
24 Member Garcia's.

25 CHAIRPERSON SUINA: Thank you, Vice-Chair.

1 I think, too, Member Honker's question earlier --
2 Vice-Chair, sorry to put you on the spot.

3 VICE-CHAIR TRUJILLO-DAVIS: That's fine.

4 CHAIRPERSON SUINA: In the Hearing Officer's
5 report on 261, it talks about Oxy's, you know, reasoning
6 behind its proposed language, talking about the airlifts
7 being located at wellhead facilities. Really, because of
8 access -- issues with access to commercial line electrical
9 power, noting that wellhead facilities are often in remote
10 areas.

11 Could that also be another reason why Oxy wanted
12 to maintain that or propose this language from your --
13 your experience?

14 VICE-CHAIR TRUJILLO-DAVIS: Well, it's definitely
15 an issue. I mean, if that energy is, you know,
16 continuously building lines down there just to bring power
17 to as many locations as possible, and they certainly have
18 struggled to meet the demand. So there are a number of
19 locations that do not have electric power. And I think
20 that's the issue that Mr. Holderman is drawing, is that,
21 you know, it's a difficult task to meet.

22 But what I -- I wanted to take that further and
23 that's why I went back and looked at NMED's response, in
24 saying that there were flexibilities provided in that
25 section. So I want to identify those flexibilities to

1 maybe help either justify or understand Mr. Holderman's
2 point a little bit better. So if anybody can point that
3 out.

4 BOARD MEMBER GARCIA: Well, I -- I remember there
5 was a lot of discussion about whether or not they had
6 power or not. We spent hours and hours talking about
7 that, so it was something that NMED and the operators
8 were -- apparently worked out to NMOGA's satisfaction.
9 That's the curious thing about this. So I'm just trying
10 to understand why did it work out this power issue, they
11 worked it out to NMOGA's satisfaction but not to Oxy's
12 satisfaction.

13 So I'm trying to understand the difference in
14 this. I'm looking through the record as well, the Exhibit
15 32, I'm looking at, where they're talking about -- they're
16 talking about sites with electric power. And now I'm
17 trying to find out sites without electric power, what was
18 the concession, as you were looking for, or what was the
19 concessions and why isn't it -- why isn't it enough for
20 Oxy? That's what I'm trying to figure out.

21 They're talking about sites without electric
22 power, the least expensive option for retrofitting
23 pneumatics devices is to install solar electric controller
24 systems, solar-powered pumps, et cetera.

25 Do you know, Member Trujillo-Davis, if that's

1 used in the field a lot, solar? Because I'm sure there's
2 lots of sites that don't have power, so they must use
3 solar pumps and things, I suppose.

4 VICE-CHAIR TRUJILLO-DAVIS: Solar is used
5 frequently in the oilfield. Generally, there's -- it's to
6 run smaller pieces of equipment, to -- yeah, usually, it's
7 just generally smaller pieces of equipment, like meters
8 and things like that, but I don't know the full
9 capabilities of it.

10 I think any reasonable person can deduce what
11 types of limitations solar has in general, but as far as
12 the extensive use in the oilfield, they are used in many
13 locations, but to the extent of the power that they can
14 pull to run a particular piece of equipment, I'm not sure.

15 BOARD MEMBER GARCIA: Okay. Thank you.

16 CHAIRPERSON SUINA: And Oxy, are they -- what
17 size of a company is Oxy? Is it a pretty big company?

18 BOARD MEMBER BITZER: It's Occidental Petroleum.

19 CHAIRPERSON SUINA: Okay.

20 VICE-CHAIR TRUJILLO-DAVIS: They're a
21 publicly-traded company and I believe that they're based
22 out of California.

23 CHAIRPERSON SUINA: Okay. Just looking for what
24 IPANM mentioned for this section, to see if they had
25 similar concerns.

1 I don't see that IPANM supported that language,
2 Madam Hearing Officer.

3 HEARING OFFICER ORTH: Right. Looking at the
4 hard copy of the report at page 289, they are proposing to
5 exempt pumps that operate less than 90 days per calendar
6 year, but I don't see any reference to controllers used
7 for artificial lifts.

8 CHAIRPERSON SUINA: Because IPANM is some of the
9 smaller companies, right, that are under IPANM?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes. It stands for
11 Independent Petroleum association, it's mom-and-pops, the
12 smaller independents.

13 CHAIRPERSON SUINA: Right.

14 So what are the thoughts on the Oxy's language?
15 I mean, I find that it's not in IPANM's proposal -- or
16 IPANM's not making a comment about Oxy's proposed
17 language, to support, I guess. Because Oxy's language
18 came during the whole process in the hearing; is that
19 correct?

20 HEARING OFFICER ORTH: Yes.

21 CHAIRPERSON SUINA: So they would have had the
22 opportunity to --

23 HEARING OFFICER ORTH: I'm sorry. Looking at the
24 top of page 299, it looks like IPANM had similar concerns
25 to Oxy, about getting commercial line power to its remote

1 sites, especially in Northwest New Mexico.

2 CHAIRPERSON SUINA: They didn't -- IPANM didn't
3 necessarily provide support for the proposed Oxy language;
4 is that correct?

5 HEARING OFFICER ORTH: I don't see it certainly
6 in their proposed Section A. Whether they included it in
7 some other section, I can take a quick look.

8 CHAIRPERSON SUINA: Yes, Member Garcia.

9 BOARD MEMBER GARCIA: I guess I'll go ahead and
10 be bold and say, because Oxy didn't provide enough
11 information to understand why airlift controllers in
12 particular should be taken out of this -- out of these
13 requirements. They're just talking about the difficulty
14 of getting power, which was discussed extensively at the
15 hearing, and, apparently, worked out probably partly with
16 the long period of time given to the industry and a
17 variety of flexibilities built in. So I'm inclined to
18 stick with NMED's language.

19 CHAIRPERSON SUINA: Thank you, Member Garcia.

20 Yes, Vice-Chair Trujillo-Davis.

21 VICE-CHAIR TRUJILLO-DAVIS: I'm inclined to
22 agree. I'm struggling to find the connection between
23 Oxy's issue with electrical availability and -- and the
24 portions in the rule discussing the conversion of the
25 pneumatic valve itself. And so, with struggling to find

1 what their -- I'm struggling to find that connection. I
2 feel that they didn't provide enough evidence to support
3 that change.

4 CHAIRPERSON SUINA: Thank you for your comment,
5 Vice-Chair Trujillo-Davis.

6 So we have a motion -- a proposed motion by
7 Member Garcia -- or

8 BOARD MEMBER GARCIA: Well, I didn't, but I can.

9 CHAIRPERSON SUINA: Wishful thinking over there.

10 BOARD MEMBER GARCIA: Yeah, wishful thinking.

11 BOARD MEMBER BITZER: And then I'll second that
12 wishful.

13 BOARD MEMBER GARCIA: I'll second that wish.

14 CHAIRPERSON SUINA: Member Garcia.

15 BOARD MEMBER GARCIA: Okay. I will go ahead and
16 make a motion that -- gosh, where are we?

17 HEARING OFFICER ORTH: It's on 261.

18 BOARD MEMBER GARCIA: Yeah, but I'm looking for
19 the notation of that. I make a motion that 122 A be
20 adopted as NMED proposed, with the support provided by
21 NMED, and not adopt the change that Oxy proposed, for lack
22 of sufficient evidence to make that change.

23 CHAIRPERSON SUINA: So, just a point of order,
24 Ms. Soloria. Since we're talking about A, do we want
25 to -- do we have to address IPANM's?

1 MS. SOLORIA: Yes, but because I was reading
2 her -- interpreting her motion to include IPANM's, because
3 NMED's section under A addresses IPANM's argument.

4 BOARD MEMBER GARCIA: Yes, that's what I meant.

5 BOARD MEMBER BITZER: I'll second that.

6 CHAIRPERSON SUINA: Just making sure we're
7 covered with our language.

8 BOARD MEMBER BITZER: I'll second that.

9 CHAIRPERSON SUINA: Thank you, Member Bitzer. We
10 have a motion on the floor by Member Garcia and a second
11 by Member Bitzer. Is there any discussion to our members
12 online as well?

13 If not, I think we're at a point to do a
14 roll-call vote, Ms. Corral.

15 ADMINISTRATOR CORRAL: Member Bitzer, how do you
16 vote?

17 BOARD MEMBER BITZER: I vote yes.

18 ADMINISTRATOR CORRAL: Member Duval?

19 BOARD MEMBER DUVAL: I vote yes.

20 ADMINISTRATOR CORRAL: Member Garcia?

21 BOARD MEMBER GARCIA: Yes.

22 ADMINISTRATOR CORRAL: Member Honker?

23 BOARD MEMBER HONKER: I vote yes.

24 ADMINISTRATOR CORRAL: Chair Suina?

25 CHAIRPERSON SUINA: Yes.

1 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

2 VICE-CHAIR TRUJILLO-DAVIS: Yes.

3 ADMINISTRATOR CORRAL: Okay. The motion passes.

4 CHAIRPERSON SUINA: Wonderful. Thank you, Member
5 Garcia.

6 So we'll go to B. And on the screen we have our
7 Section B, "Emissions standards."

8 HEARING OFFICER ORTH: Which nobody argued over.

9 BOARD MEMBER GARCIA: Except IPANM.

10 CHAIRPERSON SUINA: Oh, except for IPANM.

11 BOARD MEMBER GARCIA: Yes.

12 CHAIRPERSON SUINA: So let's take a look at
13 IPANM's proposed.

14 HEARING OFFICER ORTH: Yeah, page 289 and page
15 290 in the hard copy.

16 CHAIRPERSON SUINA: Did you say 291?

17 HEARING OFFICER ORTH: 289, that's too far.

18 CHAIRPERSON SUINA: So it looks like we have two
19 revisions to B (1) proposed by IPANM, and also additions
20 to NMED proposed language. Then, we also have major
21 revisions on (2), a replacement of 2, basically --
22 proposed language. And then (3), an addition -- additions
23 in there. And of course we have the proposal.

24 Yes, Member Garcia.

25 BOARD MEMBER GARCIA: I guess, as I look at this,

1 to Member Honker's point that they -- that PANM -- IPANM
2 made such extensive changes, not only for the time frame,
3 but also the facilities that it applies to, I think it
4 kind of erases all of the -- all of the work that NMED and
5 NMOGA and perhaps Kinder Morgan and Oxy or others put into
6 coming to agreement. And now, they're changing a lot. So
7 I'm not swayed to make such big changes to that section.

8 CHAIRPERSON SUINA: Thank you, Member Garcia, for
9 your comment.

10 Member Honker.

11 BOARD MEMBER HONKER: Yeah, I agree with Member
12 Garcia. And it looks like the other parties, other than
13 IPANM, are okay with 122 B (1) and (2). I don't see any
14 alternative wording there, other than the different
15 proposal by IPANM. So, if that's the case, I mean maybe
16 we could take care of B (1) and (2) and then move on to B
17 (3), unless I'm missing something here. So I'm just
18 checking in on that.

19 CHAIRPERSON SUINA: Thank you, Member Honker.
20 I'm in alignment with how you framed it. So I think B (1)
21 and (2) seem more straightforward. And I imagine we can
22 handle those, and wait on B (3), which includes the
23 tables.

24 Yes, Vice-Chair.

25 VICE-CHAIR TRUJILLO-DAVIS: To me, it appears

1 that the difference with IPANM's proposal is that they're
2 trying to flesh out some definitions here, whereas NMED's
3 is more simplistic, in saying, you know, a natural
4 gas-driven pneumatic controller pump.

5 And because of the complexities of this rule --
6 and it really does have to be workable in action, I think
7 that NMED's is better to go with because it is more
8 simplistic and straightforward about what the goal of the
9 discussion is, versus identifying each type of facility,
10 as proposed by IPANM.

11 CHAIRPERSON SUINA: Thank you, Madam Vice-Chair.

12 Is there any -- yes, Member Honker.

13 BOARD MEMBER HONKER: Well, I will make a motion
14 that we adopt 122 B (1) and (2), as proposed by NMED in
15 their final version for the rationale supplied by NMED.

16 CHAIRPERSON SUINA: Thank you, Member Honker.

17 BOARD MEMBER BITZER: I'll second that.

18 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
19 your second on Member Honker's motion. If there's no
20 other discussion, I look to Ms. Corral for our roll-call
21 vote.

22 ADMINISTRATOR CORRAL: Member Bitzer, how do you
23 vote?

24 BOARD MEMBER BITZER: I vote yes.

25 ADMINISTRATOR CORRAL: Member Duval?

1 BOARD MEMBER DUVAL: I vote yes.

2 ADMINISTRATOR CORRAL: Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR CORRAL: Member Honker?

5 BOARD MEMBER HONKER: I vote yes.

6 ADMINISTRATOR CORRAL: Chair Suina?

7 CHAIRPERSON SUINA: Yes.

8 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

9 VICE-CHAIR TRUJILLO-DAVIS: Yes.

10 ADMINISTRATOR CORRAL: The motion passes.

11 CHAIRPERSON SUINA: Thank you, Ms. Corral.

12 All right. Let's go on to section B (3) -- 122,

13 B-as-in-boy, item (3). And this will get us into

14 NMOGA's -- well, first, the Department's proposal, then

15 NMOGA as well as IPANM's. So just to point out -- sorry,

16 I lost my place here.

17 And Oxy's proposed -- or CEP's proposed language

18 for B (3) as well to consider. So let's see.

19 HEARING OFFICER ORTH: I would note that the

20 argument CEP supporting their tables appears at pages 264

21 and 265.

22 CHAIRPERSON SUINA: As well as on 264; is that

23 correct, Madam Hearing Officer, for CEP's?

24 HEARING OFFICER ORTH: Yes.

25 CHAIRPERSON SUINA: Okay. So any comments as we

1 start discussion on B (3)?

2 BOARD MEMBER HONKER: I do have a comment on B
3 (3).

4 CHAIRPERSON SUINA: Yes, sure.

5 BOARD MEMBER HONKER: I actually like NMOGA's
6 proposed change to the -- to the start of that section,
7 because NMED's version says, "The pneumatic controller
8 shall comply," and NMOGA's making it clear that an owner
9 or operator shall ensure that they comply. And I -- I
10 think that's better language, because how do you take
11 enforcement action against a controller that complies? So
12 I actually like that language.

13 CHAIRPERSON SUINA: Thank you, Member Honker.

14 And that's interesting because I don't see that
15 additional proposal for number (2) either.

16 HEARING OFFICER ORTH: Oh, right.

17 BOARD MEMBER GARCIA: And (2) is the pump shall
18 comply, yeah.

19 CHAIRPERSON SUINA: Good point, Member Honker.

20 Yes, Member Duval.

21 BOARD MEMBER DUVAL: I completely agree. It's
22 much cleaner language in NMOGA's iteration of it. So
23 thank you, Member Honker, for pointing that out. I
24 missed that.

25 BOARD MEMBER HONKER: Well, and, unfortunately,

1 they didn't make that suggestion on (2), but at least for
2 me, for this section which has all of the deadlines, I
3 think it's better language.

4 HEARING OFFICER ORTH: And Member Honker,
5 remember, that as we walk through this section, all of
6 NMOGA's changes are shared, if you will, by NMED. That is
7 to say, NMED supports NMOGA's changes as we walk through
8 this section.

9 CHAIRPERSON SUINA: Yes.

10 Vice-Chair Trujillo-Davis.

11 VICE-CHAIR TRUJILLO-DAVIS: So since NMED
12 supports some of these changes, should they be reflected
13 in this version that we're looking at, or are they not in
14 them?

15 HEARING OFFICER ORTH: What do you mean?

16 BOARD MEMBER GARCIA: In the rule, you mean?

17 VICE-CHAIR TRUJILLO-DAVIS: Yeah. And I
18 apologize, this is for clarification on my part. But if
19 NMOGA has the point that Member Honker was just pointing
20 out.

21 HEARING OFFICER ORTH: Yes.

22 VICE-CHAIR TRUJILLO-DAVIS: Are you saying that
23 NMED is in support of this language?

24 HEARING OFFICER ORTH: Yes, that language and all
25 of the NMOGA changes in this section.

1 VICE-CHAIR TRUJILLO-DAVIS: Okay. So then I'm
2 just confused on why.

3 HEARING OFFICER ORTH: NMED explained that they
4 did not have time to rewrite the section to incorporate
5 all of NMOGA's changes, but they support them.

6 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for
7 clarifying that.

8 CHAIRPERSON SUINA: And just for that
9 clarification, which sections are you referring to?

10 HEARING OFFICER ORTH: Section 122.

11 BOARD MEMBER GARCIA: The entire section.

12 HEARING OFFICER ORTH: Right.

13 BOARD MEMBER GARCIA: The entire section.

14 MS. SOLORIA: To the extent there are NMOGA
15 changes for this section, we should assume that NMED
16 agrees to those.

17 BOARD MEMBER GARCIA: Okay.

18 BOARD MEMBER BITZER: That simplifies our life.

19 BOARD MEMBER GARCIA: Yeah, thank you. Thank
20 you. You said it, but I didn't -- it didn't sink in.
21 Thank you.

22 MS. SOLORIA: Exactly.

23 VICE-CHAIR TRUJILLO-DAVIS: So then the debatable
24 point here is IPANM's number (3).

25 BOARD MEMBER GARCIA: No, CEP.

1 HEARING OFFICER ORTH: And Oxy. I think the
2 biggest discussion here is about the accelerated timelines
3 in the tables.

4 BOARD MEMBER GARCIA: Uh-huh, okay.

5 CHAIRPERSON SUINA: Okay.

6 BOARD MEMBER GARCIA: So if I may ask a legal
7 question, I think; for the tables -- not that I'm
8 proposing this, but we couldn't come up with a date out of
9 the blue, but we could agree with some of the dates, but
10 not others?

11 CHAIRPERSON SUINA: Is that correct?

12 BOARD MEMBER GARCIA: In other words, if we could
13 like say on one column a date, and NMED has another, we
14 could agree with that one, but not necessarily the entire
15 table? Do you see what I'm saying?

16 MS. SOLORIA: I see what you're saying. I'm
17 thinking on it.

18 BOARD MEMBER GARCIA: Okay. All right.

19 MS. SOLORIA: I would say, yes, but you would
20 have to be specific about the evidence you're relying on
21 for the -- it's not really a discrepancy, but the
22 difference.

23 BOARD MEMBER GARCIA: Okay. Thank you.

24 BOARD MEMBER BITZER: That's the advice that you
25 were giving me when I was suggesting to split the baby.

1 You have to have evidence in the record.

2 CHAIRPERSON SUINA: Yes.

3 BOARD MEMBER BITZER: To support that different
4 number. You're consistent.

5 MS. SOLORIA: I try.

6 VICE-CHAIR TRUJILLO-DAVIS: I need one more
7 clarification question.

8 CHAIRPERSON SUINA: Yes, Vice-Chair.

9 VICE-CHAIR TRUJILLO-DAVIS: So in CEP's proposal,
10 they added a number (4). And just so I'm straight on
11 this, they've just got it in their -- in their table; is
12 that right, it's in their table?

13 BOARD MEMBER GARCIA: Well, their table --

14 HEARING OFFICER ORTH: Is page 264.

15 BOARD MEMBER GARCIA: -- is larger than the NMED
16 table.

17 VICE-CHAIR TRUJILLO-DAVIS: That's what I was
18 thinking was that number (4) would be incorporated into
19 their table.

20 HEARING OFFICER ORTH: Right.

21 VICE-CHAIR TRUJILLO-DAVIS: Again, just a
22 clarification point. Making sure I was reading it
23 correctly.

24 MS. SOLORIA: Vice-Chair, are you talking about
25 the language that's inserted in (4)?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes.

2 CHAIRPERSON SUINA: I think that that is -- so
3 that would be changed to that provisional language. The
4 table is also something different. Are you -- are you
5 looking at it like the actual verbiage on the middle of
6 page 264?

7 VICE-CHAIR TRUJILLO-DAVIS: Yes. I was under the
8 impression that number (4) was in addition to the rule.

9 HEARING OFFICER ORTH: Right. It's a new number
10 4, right.

11 MS. SOLORIA: Right.

12 VICE-CHAIR TRUJILLO-DAVIS: So the verbiage in it
13 is suggesting a different schedule, so two different types
14 of schedules.

15 MS. SOLORIA: I'm reading it that it changes the
16 original written. It's substantially changing the objects
17 of compliance. Right?

18 HEARING OFFICER ORTH: That's what I'm seeing.

19 MS. SOLORIA: So they don't have access.

20 HEARING OFFICER ORTH: I'm sorry. So they
21 address the controllers that don't have access to
22 commercial electric power, but the other point is to
23 accelerate the requirement.

24 VICE-CHAIR TRUJILLO-DAVIS: So the facilities
25 that have access to electrical power, they are asking that

1 they're brought in under 6 months, and then facilities
2 that are -- that do not have access, that's the new
3 schedule -- or that's in addition to that schedule, and
4 then they changed the time.

5 CHAIRPERSON SUINA: Thank you. So let me make
6 sure. I think I got myself confused as well. So, on
7 CEP's proposed language for B (3), that's kind of
8 standalone: 6 months from the check-in date. And then B
9 (4) in CEP's proposed language, refers to it -- so only B
10 (4).

11 HEARING OFFICER ORTH: Right. So B (3), this
12 table replaces NMED's B (3) Table 1. There was a second
13 table, Table 2, but this one at the bottom of page 264
14 replaces Table 1.

15 CHAIRPERSON SUINA: Correct. But it will be
16 put -- it's under -- if adopted, I'm not saying it is --
17 under B (4)? Table 1 will now be under B (4).

18 BOARD MEMBER GARCIA: Instead of (4).

19 HEARING OFFICER ORTH: Right. Yes.

20 CHAIRPERSON SUINA: I was just making sure.

21 HEARING OFFICER ORTH: Which is different from
22 NMED's (4).

23 BOARD MEMBER GARCIA: All right. And so NMED's
24 (4) in the current rule would turn to (5). Okay.

25 HEARING OFFICER ORTH: Right.

1 CHAIRPERSON SUINA: Vice-Chair.

2 VICE-CHAIR TRUJILLO-DAVIS: Okay. So then that
3 changes what I was thinking about there, their proposal
4 for accelerated timeline because -- so they relied heavily
5 on Colorado's Air Quality Control Commission's adoption of
6 their regulations as evidence for why -- why to
7 accelerate.

8 And on page 256, they're talking about that
9 schedule. And it says that Colorado adopted these rules
10 in 2020. I'm not sure when in 2020, but in 2020, and then
11 they started requiring the retrofit by May of 2023. So
12 we're talking a three-year mark there. And based on their
13 proposal for (3), that moves anything with electrical
14 power -- which is a substantial amount of facilities --
15 which we just discussed, about availability, to 6 months.
16 Am I understanding that correctly?

17 HEARING OFFICER ORTH: Yes, that's how I read it.

18 VICE-CHAIR TRUJILLO-DAVIS: Okay.

19 BOARD MEMBER GARCIA: That's what Colorado did,
20 right?

21 VICE-CHAIR TRUJILLO-DAVIS: No, Colorado did 3
22 years.

23 BOARD MEMBER GARCIA: Oh, okay. I thought they
24 had a 6-month time in there. Where did I see 6 months for
25 Colorado?

1 HEARING OFFICER ORTH: On page 264, right in the
2 middle, it says, "In December of 2017 Colorado required
3 operators."

4 BOARD MEMBER GARCIA: There it is. I knew I read
5 it somewhere.

6 CHAIRPERSON SUINA: Within 6 months.

7 BOARD MEMBER GARCIA: Within 6 months, yeah.

8 HEARING OFFICER ORTH: Of gas processing plants.

9 VICE-CHAIR TRUJILLO-DAVIS: But this schedule
10 isn't for just gas processing plants, this is for all
11 facilities, correct?

12 CHAIRPERSON SUINA: Correct, from my
13 understanding of CEP's.

14 BOARD MEMBER GARCIA: Controller of a
15 transmission compressor station or a natural gas
16 processing plant.

17 CHAIRPERSON SUINA: Yeah, because it seems to be
18 for existing natural gas-driven pneumatic controllers at a
19 site with access.

20 VICE-CHAIR TRUJILLO-DAVIS: And I believe in
21 NMED's response, they mentioned -- let's go back a few
22 pages here, that gas processing plants had already made
23 the change.

24 BOARD MEMBER HONKER: Could I ask a question just
25 to make sure I'm --

1 CHAIRPERSON SUINA: Yes, Member Honker.

2 BOARD MEMBER HONKER: -- understanding these
3 proposals correctly? So the way I'm seeing this between
4 NMED's proposed language and the CEP/Oxy proposal, it's
5 kind of -- it's different approaches. NMED is talking
6 about time frames for all well sites, standalone tank
7 batteries, gathering and boosting stations, with their
8 table of compliance deadlines and percentages.

9 CEP is saying sites with electric power only have
10 6 months to comply; all others have to comply with a
11 different Table 1. That's based on historic liquids
12 production. And so -- well, let me stop there. So is
13 that -- am I reading this right?

14 HEARING OFFICER ORTH: So, Member Honker, if you
15 look at page 267 just above the midway point, CEP points
16 out that their proposal is that operators be required to
17 achieve a fixed increase in the percentage of nonemitting
18 controllers, rather than a fixed end point, and that Table
19 2 is not needed at all, because all transmission
20 compressor stations and gas processing plants have access
21 to commercial line electric power, and so the 6 months is
22 long enough.

23 BOARD MEMBER HONKER: Okay. Got it.

24 HEARING OFFICER ORTH: Then to look at Clean Air
25 Advocates Exhibit 3, page 16 is the supporting evidence.

1 CHAIRPERSON SUINA: What's the page?

2 HEARING OFFICER ORTH: Page 267.

3 BOARD MEMBER HONKER: And one other question.

4 So, in terms of the revised language on page 264 near the
5 top of the page, that CEP proposes, it doesn't say that
6 Oxy also proposed that, so is that CEP but not Oxy that --
7 that proposed that language, but they agreed on the
8 revised table?

9 HEARING OFFICER ORTH: Let's see. I think we
10 have Oxy and CEP agreeing on the table at a minimum. And
11 then, on page 265, we have further Oxy support here.

12 CHAIRPERSON SUINA: Oh, on the proposed language?

13 HEARING OFFICER ORTH: Okay. So, Oxy -- on 265,
14 Oxy encourages the Board to adopt the modified
15 implementation schedule previously proposed in Oxy
16 Rebuttal Exhibit 1, also supported by the environmental
17 parties.

18 That's a good question, though, Member Honker. I
19 don't see Oxy -- the new B (4), for example. My
20 impression was that the Oxy and the environmental parties
21 were fairly closely aligned when it came to the compliance
22 deadlines.

23 CHAIRPERSON SUINA: So just so I'm clear, because
24 I'm getting myself mixed up here. Table 1 and CEP's/Oxy's
25 proposal kind of groups everything together that is in

1 Table 1 and 2 in NMED's; is that correct?

2 HEARING OFFICER ORTH: What I -- what I read a
3 little bit ago is in their mind, Table 2 was not necessary
4 because Table 1 is for well sites, standalone tank
5 batteries, gathering and boosting stations. Table 2 is
6 for transmission compressor station and gas processing
7 plants, but because all compressor stations and processing
8 plants have commercial power, they think just a flat
9 6-month compliance deadline should suffice.

10 CHAIRPERSON SUINA: Thank you.

11 Yes, Vice-Chair.

12 VICE-CHAIR TRUJILLO-DAVIS: I just want to go
13 back to what I was -- like, my comment was about the 6
14 months. I found -- I went back and found NMED's
15 response. And I didn't find the exact language that I
16 thought I had seen, but what I did find was significant
17 testimony from Ms. Bisbey-Kuehn about why the accelerated
18 time frame wouldn't work. And it all went back to the
19 prior regulatory efforts in Colorado, in meeting that
20 reduction.

21 BOARD MEMBER GARCIA: What page are you on?

22 VICE-CHAIR TRUJILLO-DAVIS: 250.

23 BOARD MEMBER GARCIA: Thank you.

24 VICE-CHAIR TRUJILLO-DAVIS: And her response
25 there starts on 249, at the bottom of 249.

1 BOARD MEMBER GARCIA: Okay.

2 BOARD MEMBER BITZER: I think she may be the one
3 that also weighs in about cautions about comparing
4 Colorado, on page 297 and 298. Colorado's sort of and
5 apples to oranges comparison.

6 CHAIRPERSON SUINA: I apologize. Vice-Chair, can
7 you give that page reference again?

8 VICE-CHAIR TRUJILLO-DAVIS: Sure. It starts on
9 249 and then it continues on to 250.

10 CHAIRPERSON SUINA: Yes, Member Garcia.

11 BOARD MEMBER GARCIA: I don't even have to raise
12 my hand, just take a breath.

13 MS. SOLORIA: She's good.

14 BOARD MEMBER GARCIA: So can someone explain to
15 me why Colorado doesn't apply? I mean, why Colorado and
16 New Mexico are apples to oranges? Why did Colorado's oil
17 and gas industry agree to the 6-month time frame, but...

18 HEARING OFFICER ORTH: Yeah. Department staff
19 actually spent a fair amount of time describing that.

20 BOARD MEMBER GARCIA: Okay.

21 HEARING OFFICER ORTH: And that is, in fact, what
22 Vice-Chair was referring to, starting on 249, continuing
23 to 250 and 251.

24 BOARD MEMBER GARCIA: Oh, because they had
25 already achieved, got it. Got it. Okay. I see.

1 BOARD MEMBER BITZER: I think there's other
2 differences, too. One, just the volume of production in
3 New Mexico is much higher, so we run into some danger that
4 you're going to -- with just the supply chain, to supply
5 you with this equipment, if you're a big -- you're
6 modifying a larger area all at once, we're reminded of
7 Texas, in terms of production. So we're much bigger than
8 Colorado. So if Colorado had to change their rules, the
9 interruption in the supply and demand curve for the
10 equipment is smaller than what New Mexico does. It's just
11 from an Economics 101 perspective.

12 And I think they mention that -- somebody
13 mentioned that in testimony as well, but I couldn't
14 remember where. And then, I think we have less power.
15 You know, there's whole communities in the Navajo Nation,
16 for example, in the Northwest part of the state there that
17 are off the grid.

18 BOARD MEMBER GARCIA: Uh-huh.

19 BOARD MEMBER BITZER: It's, again, on page 297,
20 298, yeah. Off of 298, Colorado -- NMED explained that
21 it's inappropriate for New Mexico, and Colorado already
22 has the compliance in place for pneumatics and had already
23 achieved reductions, whereas, New Mexico doesn't have it
24 in place. That's said at the bottom of -- or the top of
25 297 as well. It's basically the same statement.

1 CHAIRPERSON SUINA: Thank you, Member Bitzer.

2 Do you know, Member Bitzer, where we are in terms
3 of the State of New Mexico, in respect to Colorado? Are
4 we -- in terms of oil production and oil and gas.

5 BOARD MEMBER GARCIA: Gas production, we're
6 number two in the nation.

7 BOARD MEMBER BITZER: That sounds about right.
8 And I know we're right up there with oil, too, because of
9 the Permian. And then the Bakken up there in the Dakotas
10 is huge. I don't know, but the EPA might have it.

11 MS. SOLORIA: I just -- yeah, if you know off the
12 top of your head.

13 BOARD MEMBER GARCIA: OCD's is energy minimum and
14 uses.

15 CHAIRPERSON SUINA: So, does that language,
16 Member Garcia, help kind of address your question about
17 why Colorado would be different than New Mexico?

18 BOARD MEMBER GARCIA: Yes, it does. Thank you.

19 CHAIRPERSON SUINA: So, with that, then, we have
20 the CEP/Oxy-proposed table and then NMED, which has
21 support from NMOGA on NMED's proposed table. So then we
22 still have IPANM's table, and Section B (3) to look at and
23 consider. So I want to make sure we're -- yes, Member
24 Garcia.

25 BOARD MEMBER GARCIA: Yes. I do like that CEP

1 separated having access to power and not having access to
2 power. It seems having access to power is the big
3 limitation for a lot of companies. However, 6 months does
4 seem rather early, so... But we can't say a year
5 ourselves, so it's either 6 months or it's what NMED --
6 the way NMED did it, so -- or IPANM.

7 CHAIRPERSON SUINA: Yes. So let's take a quick
8 look at IPANM.

9 HEARING OFFICER ORTH: Page 290, if you were
10 going to ask.

11 CHAIRPERSON SUINA: I was lost in my pages.

12 BOARD MEMBER GARCIA: Yeah, I had to flag my
13 pages just because.

14 CHAIRPERSON SUINA: I believe, in looking at
15 IPANM's, it's the same schedule -- or time, I should say,
16 not the headers, but the time that NMOGA -- I mean, that
17 the Department, with NMOGA's support, has on the
18 percentages associated with the dates. Just comparing
19 numbers to numbers. Is that correct?

20 HEARING OFFICER ORTH: Well, sure. The numbers
21 in the tables are the same, but the introduction, if you
22 will, to the tables is rather different. In IPANM's, they
23 say that the facility or tank battery has to have four or
24 more controllers before they comply with this table, for
25 example.

1 CHAIRPERSON SUINA: Yes, Vice-Chair.

2 VICE-CHAIR TRUJILLO-DAVIS: I believe that's an
3 attempt to kind of parse out some of those stripper wells
4 and marginal wells that are single tank batteries, but
5 that's what I gathered from that -- from that statement.

6 HEARING OFFICER ORTH: There was opposition to
7 the exemption of stripper wells, which I can find if you'd
8 like, just for re-reading.

9 CHAIRPERSON SUINA: And that was from CEP?

10 HEARING OFFICER ORTH: Also NMED.

11 CHAIRPERSON SUINA: Oh, NMED.

12 Yes, Member Honker.

13 BOARD MEMBER HONKER: I guess the way I'm seeing
14 it is we kind of have an apples approach and an orange
15 approach and a banana approach here, which makes it very
16 difficult to blend anything from any one approach with one
17 of the others, because they're -- they're -- they really
18 take different approaches toward this reduction.

19 And I guess -- and I appreciate the environmental
20 groups' desire to accelerate the time frame for compliance
21 in getting reductions, but I'm also greatly impressed -- I
22 think as Member Garcia said today earlier in today's
23 session, that the regulatory agency and NMOGA have come to
24 agreement on -- on the apples approach. So I'm kind of
25 leaning toward that one since that took a lot of work to

1 get to that point, I know.

2 But I think it's -- it's an approach that takes a
3 look at the whole universe of situations and tries to
4 create a workable time frame for compliance for -- for the
5 various facility situations. So that's kind of where I am
6 at this point in the discussion.

7 CHAIRPERSON SUINA: Thank you, Member Honker.
8 Any others? Vice-Chair, Trujillo-Davis.

9 VICE-CHAIR TRUJILLO-DAVIS: So, looking at CEP's
10 proposal, part of the evidence that they rely on is
11 Colorado's, and they cite that that larger gas processing
12 plants and -- were used as their evidence for the 6-month
13 time frame.

14 And if we were to look at New Mexico in those
15 terms, New Mexico only has 137 plants that would fall in
16 that -- in that range, that would need to go through that
17 6-month process, which I think is achievable, but the way
18 that they've submitted their proposal, it's all
19 facilities. And so, I think that 6 months for all
20 facilities is an unachievable number.

21 And NMED also supported that, in that Colorado is
22 not equivalent in that sense, and Colorado had done a lot
23 of prior work. So, for that, I'm inclined to reject CEP's
24 time frame and rely on NMED's work that they did on that.
25 So that's where I'm at in this conversation.

1 CHAIRPERSON SUINA: Thank you, Vice-Chair.

2 Yes, Member Garcia.

3 BOARD MEMBER GARCIA: Yes, I think we're all
4 coming to the same place. Just keeping in mind all of the
5 work on collaborating and compromising that they did with
6 the parties, not only NMOGA, but presumably Kinder Morgan
7 and others as well.

8 And I know there was a lot of discussion about
9 time frames and power, and who has power and the supply
10 chain issues they might run into, which 6 months could
11 present a problem for that. So I'm inclined to go with
12 NMED's table.

13 CHAIRPERSON SUINA: Thank you, Member Garcia.

14 BOARD MEMBER BITZER: I would concur. You-all
15 have stated it well. If I was going to deviate from that,
16 it would be to say the timelines that the Department and
17 NMOGA have are important. I would be amenable to upping
18 the ultimate numbers, but I don't want to open a can of
19 worms there either.

20 CHAIRPERSON SUINA: Thank you, Member Bitzer.

21 Member Duval, just want to check in, did you have
22 any comments.

23 BOARD MEMBER DUVAL: No comments. I think that
24 Members Honker and Garcia articulated the points well.

25 CHAIRPERSON SUINA: Thank you, Member Duval.

1 I just wanted to add my thoughts on this section
2 as well is, I'm looking at CEP and Oxy's which, you know,
3 we have an industry stakeholder and one of the
4 environmental groups coming together for their proposal.
5 And -- but I also look to the Department's experts, and
6 Ms. Bisbey-Kuehn's testimony, of where we are here in the
7 State of New Mexico, in relation to what CEP had presented
8 in terms of their arguments and basis for the accelerated
9 timelines.

10 So, for me, I'm looking at balancing the
11 feasibility. You know, and having run through projects,
12 and I mean having been regulated, you know, sometimes we
13 have to take that into consideration about the feasibility
14 of the regulations. If it's not feasible, then we run
15 into issues for our industry. And -- and I think, for me,
16 looking at the timelines, we're going to -- with NMED's
17 proposed proposal, along with NMOGA's support of it, we
18 are moving toward having that phasing and that conversion.

19 Albeit, I wish we could snap our fingers and have
20 it tomorrow, but feasibility, we have to take into
21 consideration as well. So that's where I'm coming at in
22 our discussion today. And also leaning toward NMED's
23 proposed language.

24 Yes, Vice-Chair.

25 VICE-CHAIR TRUJILLO-DAVIS: I completely agree

1 and see where you're coming from for that. I think if New
2 Mexico would have had a similar, like, headstart, like in
3 Colorado, I think this discussion would be totally
4 different for our type of discussion here.

5 CHAIRPERSON SUINA: Thank you, Vice-Chair.

6 Is there any other discussion on this? If not, I
7 would look to the Board to see if anyone would like to
8 propose a motion.

9 Yes, Member Honker.

10 BOARD MEMBER HONKER: Yeah, I would suggest we
11 handle Section (3) -- so this is 122, Section (3) --
12 Section B (3), that there's more comments on Section B (4)
13 in here. So I would -- I would make a motion that we
14 adopt Section 122 B (3) as proposed by NMED, with the
15 modification that NMOGA proposed, for the rationale
16 supplied by NMED and NMOGA.

17 CHAIRPERSON SUINA: Does he have to say the
18 table?

19 MS. SOLORIA: I would view the table as inclusive
20 of Section (3), so that's fine.

21 BOARD MEMBER BITZER: I'll second that.

22 CHAIRPERSON SUINA: Thank you, Member Honker and
23 Member Bitzer, for your second.

24 Would we have to address IPANM's proposed?

25 MS. SOLORIA: You can. We did not do that for

1 the previous section.

2 HEARING OFFICER ORTH: I thought you did,
3 actually.

4 BOARD MEMBER GARCIA: Yes, we did. So we would
5 then reject -- in the motion, probably reject IPANM's, I
6 think is the way I did it before.

7 MS. SOLORIA: Yeah, we didn't -- no, we didn't.

8 BOARD MEMBER GARCIA: Oh, okay.

9 MS. SOLORIA: I thought we did, but we can go
10 back and do it.

11 BOARD MEMBER GARCIA: Oh, okay.

12 MS. SOLORIA: For the statement of reasons.

13 BOARD MEMBER GARCIA: Yes, yes.

14 MS. SOLORIA: We did it for Oxy in Section A.

15 VICE-CHAIR TRUJILLO-DAVIS: That's where I have
16 it noted.

17 CHAIRPERSON SUINA: And then we didn't in B (1)
18 or (2).

19 MS. SOLORIA: So just to -- just to clean it up,
20 why don't we go back to B (1) and (2).

21 CHAIRPERSON SUINA: Okay.

22 MS. SOLORIA: And I would suggest a motion that
23 you reject -- you're rejecting IPANM's proposal for the
24 reasons -- for various reasons. I jotted some down from
25 what I heard.

1 CHAIRPERSON SUINA: Okay.

2 MS. SOLORIA: It's against the evidence or
3 recognition or something to that effect of -- or mainly,
4 the concurrence of other parties contrary to the intent of
5 the rule. Those are some suggested rationales.

6 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

7 Yes, Madam Hearing Officer.

8 HEARING OFFICER ORTH: I have a question,
9 Ms. Soloria. I -- I don't want to be a troublemaker, but
10 the Board is kind of agreeing that they hadn't inserted a
11 couple of clarifying words in B (1) and (2), which is
12 "owner-operator" rather than "the pump shall."

13 CHAIRPERSON SUINA: Yes.

14 MS. SOLORIA: I didn't follow that. Sorry.

15 HEARING OFFICER ORTH: If we go back to B (1) and
16 (2), NMOGA had actually proposed a clarifying couple of
17 words; not the "controllers shall comply," but the "owner
18 operator" of the controller shall comply. And the Board
19 was like, well, we would have made that change in B (1)
20 and B (2) if we had thought about it.

21 BOARD MEMBER GARCIA: But they didn't suggest it
22 in B.

23 HEARING OFFICER ORTH: No, but as a clarifying
24 change. My question of you is, is that something the
25 Board can do?

1 MS. SOLORIA: Oh. I would say no because it
2 wasn't proffered by a party.

3 BOARD MEMBER BITZER: All right.

4 MS. SOLORIA: It wasn't in evidence.

5 CHAIRPERSON SUINA: Thank you, Madam Hearing
6 Officer, for that, and Ms. Soloria.

7 So, are you suggesting before we move on B (3),
8 to go back to B (1) and (2)?

9 MS. SOLORIA: Yes. I'm just taking a moment to
10 make sure -- and someone correct me if I'm wrong, but we
11 did not address IPANM's objections to Sections (1) and
12 (2).

13 CHAIRPERSON SUINA: Should we ask the court
14 reporter to see if we recited it.

15 MS. SOLORIA: It would be Member Garcia's last
16 motion.

17 CHAIRPERSON SUINA: Madam Court Reporter, would
18 you mind reiterating her motion?

19 COURT REPORTER: Sure. Give me just a moment. I
20 need to search back for it.

21 BOARD MEMBER HONKER: I thought I made the motion
22 on (1) and (2).

23 MS. SOLORIA: I apologize, it was Member Honker.

24 CHAIRPERSON SUINA: It was Member Honker and
25 Bitzer seconded it.

1 BOARD MEMBER HONKER: Before we do that, let me
2 withdraw my motion on 122 B (3) until we deal with this.

3 CHAIRPERSON SUINA: Thank you for that point of
4 order, Member Honker.

5 BOARD MEMBER GARCIA: That must have been A.

6 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

7 MS. SOLORIA: I'm sorry, I didn't catch that.

8 COURT REPORTER: Are you still wanting me to go
9 back and search?

10 CHAIRPERSON SUINA: Yes, I apologize. I
11 apologize. We had it incorrect. It was Member Honker who
12 made the motion for Section 122 (B)-as-in-boy (1) and (2).

13 COURT REPORTER: Okay. Give me just a moment,
14 please.

15 CHAIRPERSON SUINA: We'll be quiet.

16 COURT REPORTER: Thank you.

17 (Off record discussion.)

18 COURT REPORTER: Okay. You want me to read the
19 motion back; is that correct?

20 CHAIRPERSON SUINA: Yes, please.

21 COURT REPORTER: Okay. So Board Member Honker
22 said, "Well, I will make a motion that we adopt 122 B (1)
23 and (2), as proposed by NMED in their final version for
24 the rationale supplied by NMED." And then Hearing Officer
25 says -- or I'm sorry -- chairperson Suina says, "Thank

1 you, Member Honker. And Board Member Bitzer said, "I'll
2 second that."

3 CHAIRPERSON SUINA: Thank you, Ms. DuBois.
4 Appreciate it. And so, it does sound like we'll have to
5 maybe clarify that motion just to include how we address
6 IPANM's proposal.

7 MS. SOLORIA: Correct. So I would suggest that
8 you can just make an additional motion addressing that.

9 CHAIRPERSON SUINA: Okay. So, Board, does that
10 sound like a plan, to address just with an additional
11 motion to address IPANM's proposal?

12 BOARD MEMBER HONKER: Okay. So this doesn't
13 replace the earlier motion, this would just be a new and
14 additional motion. I -- I move that we supplement our
15 earlier approval of 122 B (1) and (2) as drafted by NMED,
16 with a statement that we respectively -- respectfully
17 reject IPAM -- IPANM's proposal for those sections, due to
18 lack of support in the record and inconsistency with other
19 parties' documentation.

20 CHAIRPERSON SUINA: Thank you, Member Honker.

21 BOARD MEMBER BITZER: I'll second that.

22 CHAIRPERSON SUINA: Member Bitzer seconded.

23 And Ms. Soloria, is that -- is that motion
24 sufficient?

25 MS. SOLORIA: If those ground are sufficient to

1 the Board, then that motion is sufficient.

2 CHAIRPERSON SUINA: Thank you.

3 With that, if there's no other discussion,
4 Ms. Corral, would you mind doing a roll-call vote for us?

5 ADMINISTRATOR CORRAL: Yes. Member Bitzer, how
6 do you vote?

7 BOARD MEMBER BITZER: I vote yes.

8 ADMINISTRATOR CORRAL: Member Duval?

9 BOARD MEMBER DUVAL: Yes.

10 ADMINISTRATOR CORRAL: Member Garcia?

11 BOARD MEMBER GARCIA: Yes.

12 ADMINISTRATOR CORRAL: Member Honker?

13 BOARD MEMBER HONKER: Yes.

14 ADMINISTRATOR CORRAL: Chair Suina?

15 CHAIRPERSON SUINA: Yes.

16 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 ADMINISTRATOR CORRAL: The motion passes.

19 CHAIRPERSON SUINA: Thank you. Wonderful. So
20 we're back to B (3).

21 MS. SOLORIA: Correct.

22 CHAIRPERSON SUINA: Okay. Great. So do any of
23 the Board members want to propose a motion for B (3)? I
24 think we're at that point in our discussion.

25 MS. SOLORIA: And I'll preface that by noting, if

1 you recall, there was that small change by NMOGA, so...

2 VICE-CHAIR TRUJILLO-DAVIS: Was that accepted?

3 MS. SOLORIA: Yes.

4 VICE-CHAIR TRUJILLO-DAVIS: Okay.

5 MS. SOLORIA: So just for the sake of the motion,
6 it should include that reference to NMOGA's change.

7 CHAIRPERSON SUINA: Yes. Thank you, Ms. Soloria.
8 Yes, Member Honker.

9 BOARD MEMBER HONKER: I move that we approve
10 NMED's language for section 122 B (3), including Tables 1
11 and 2, as drafted by NMED, with the change proffered by
12 NMOGA, for the rationale supplied by NMED and NMOGA. And
13 we reject alternate proposals by CEP, Oxy and IPANM, that
14 were less substantial in the record and the inconsistency
15 with NMED and NMOGA's approach.

16 CHAIRPERSON SUINA: Thank you, Member Honker.

17 BOARD MEMBER BITZER: I'll second that.

18 CHAIRPERSON SUINA: And Member Bitzer seconded.

19 I'm going to just double-check with our legal
20 counsel to see if that's -- if that motion is
21 comprehensive enough.

22 MS. SOLORIA: I did not catch from "less
23 substantial." Member Honker, I apologize, I didn't catch
24 the phrase you used.

25 BOARD MEMBER HONKER: I'm not sure if I can

1 restate it, but I --

2 MS. SOLORIA: I think it was sufficient. I
3 believe it was the effect of less substantial record or
4 support. And if not, then I would suggest that amendment
5 that it be less -- due to less support in the evidence and
6 let that be adopted.

7 CHAIRPERSON SUINA: I think he mentioned
8 inconsistencies.

9 MS. SOLORIA: Yeah, I did catch that.

10 CHAIRPERSON SUINA: Great. So we should for
11 clarity, amend the motion to include what Ms. Soloria
12 said. Are you all right with that, Member Honker? You
13 got muted.

14 BOARD MEMBER HONKER: Do I need to restate the
15 motion?

16 CHAIRPERSON SUINA: No, no. I just wanted
17 confirmation that you're okay with the amendment.

18 BOARD MEMBER HONKER: Yes. Yes, so amended.

19 BOARD MEMBER BITZER: My second is still good
20 with his okay of her added clarified language.

21 CHAIRPERSON SUINA: Thank you, Member Bitzer.

22 If there's no other discussion, I look to
23 Ms. Corral for a roll-call vote.

24 ADMINISTRATOR CORRAL: Member Bitzer, how do you
25 vote?

1 BOARD MEMBER BITZER: I vote yes.

2 ADMINISTRATOR CORRAL: Member Duval?

3 BOARD MEMBER DUVAL: Yes.

4 ADMINISTRATOR CORRAL: Member Garcia?

5 BOARD MEMBER GARCIA: Yes.

6 ADMINISTRATOR CORRAL: Member Honker?

7 BOARD MEMBER HONKER: Yes.

8 ADMINISTRATOR CORRAL: Chair Suina?

9 CHAIRPERSON SUINA: Yes.

10 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis

11 VICE-CHAIR TRUJILLO-DAVIS: Yes.

12 ADMINISTRATOR CORRAL: The motion passes.

13 CHAIRPERSON SUINA: Thank you.

14 So, I see it's 12:37, but I want to make sure we
15 don't interrupt, and what your thoughts are, members.

16 HEARING OFFICER ORTH: This would be a good
17 breaking point for all the backlog.

18 BOARD MEMBER GARCIA: There's a big section
19 coming up.

20 CHAIRPERSON SUINA: Great. So what would you
21 suggest? How long did it take yesterday for lunch?

22 MS. SOLORIA: An hour was good.

23 CHAIRPERSON SUINA: Okay. So why don't we come
24 back at 1:40. It's right now 12:37, so we'll resume at
25 1:40. Thank you, everybody.

1 (Recess taken from 12:37 p.m. to 1:45 p.m.)

2 HEARING OFFICER ORTH: There we are. So, the
3 challenges we'll have in the next bit of discussion, it's
4 entirely possibly I might have been able to organize the
5 respectful proposals in a better way. When I'm looking at
6 this, I'm just horrified. And it might be easier to pull
7 out in your hard copy, pages 273 to -- all the way to --
8 well, from 273 to 282 or 283. And you might even want to
9 walk through the rest of the -- the rest of the sections.
10 The reason is -- and let me just point this out as you're
11 looking at it.

12 We have NMED's proposed (4) on page 273. We have
13 NMOGA's proposed changes to NMED (4) starting on page 275.
14 Then we have the (4) that would have been (5) in the CEP
15 and Oxy proposal, which kind of went along with the table,
16 you know, their suggestion to delete Table 2. That's on
17 279. And then -- and this is where I think I could have
18 done a better job here -- attached to their proposed new
19 (5) and (4), I just went into C and D.

20 Then I went back to NMED's (5) on 281 -- I'm
21 really sorry about that. And then NMED's C, and then the
22 proposal by Oxy on 283, NMOGA's changes to C. And then we
23 don't get to NMED's D until 285, and then NMOGA's changes
24 to D.

25 So I'm thinking it might be easier to flip

1 through the hard copy than for me to scroll in realtime
2 just because the different suggestions are pages apart.

3 CHAIRPERSON SUINA: But at least maybe -- just so
4 we're on NMED's (4).

5 HEARING OFFICER ORTH: This is NMED's (4),
6 exactly.

7 CHAIRPERSON SUINA: And we'll just stay there for
8 the benefit of those listening in.

9 HEARING OFFICER ORTH: And then, of course, we
10 have IPANM's proposal on top of all of them.

11 CHAIRPERSON SUINA: Okay. Is that clear as mud?

12 VICE-CHAIR TRUJILLO-DAVIS: Maybe we should take
13 our time through these.

14 CHAIRPERSON SUINA: Thank you, Madam Hearing
15 Officer, for walking us through that.

16 VICE-CHAIR TRUJILLO-DAVIS: Madam Hearing
17 Officer, you mentioned earlier in the day when we started
18 on this section -- I'm trying to remember the word you
19 used. You said NMOGA had a --

20 HEARING OFFICER ORTH: Workability

21 VICE-CHAIR TRUJILLO-DAVIS: A workability
22 portion.

23 HEARING OFFICER ORTH: Here is another example.
24 You've already had a couple of them. Here's another one.

25 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.

1 HEARING OFFICER ORTH: If I just focus on Section
2 (4), what you have in front of you, are NMED's original
3 proposal, Kinder Morgan's support, NMOGA's, effectively
4 supporting, with changes that are accepted by NMED, CEP
5 and Oxy's (4) and IPANM's (4).

6 CHAIRPERSON SUINA: So, just for my clarity, so I
7 think like the other sections, NMED agrees with NMOGA, but
8 it's not in the latest version they have.

9 HEARING OFFICER ORTH: That's right. So if you
10 look at page 275, where it says NMOGA proposed extensive
11 changes, going all the way down to 276, and even a few
12 words at the top of 277, NMED supports all of that.

13 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you.
14 Did that support find in the submitted --

15 HEARING OFFICER ORTH: Yes, I read the page
16 number earlier, it was near the beginning of the narrative
17 for Section 122. NMED expressly in their post-hearing
18 submittal said, we agree that NMOGA's workability
19 revisions -- let's see, it's page 248. The Department has
20 reviewed these proposed revisions and agrees they are an
21 improvement to the current proposed language. The
22 Department was unable to include the revisions in its
23 final proposal due to insufficient time, but supports
24 adoptions of these changes by (4).

25 CHAIRPERSON SUINA: Thank you for that.

1 And that's all the proposed changes for NMOGA?

2 HEARING OFFICER ORTH: Yes, Madam Chair.

3 BOARD MEMBER GARCIA: So a question on the CEP
4 version of the new (5), where they mention -- well,
5 they're, again, separating out who has access to electric
6 power versus not. But then they also reference, would
7 have to meet the deadlines in Table 1. Would that be
8 their Table 1?

9 HEARING OFFICER ORTH: Yes.

10 BOARD MEMBER GARCIA: Okay.

11 HEARING OFFICER ORTH: And you will also see them
12 lining out references to Table 2, yes, in this section.

13 BOARD MEMBER GARCIA: Okay. So since we already
14 did not approve that, then, that if we approved any part
15 of this, we'd have to --

16 HEARING OFFICER ORTH: I think this is a
17 companion.

18 BOARD MEMBER GARCIA: Yeah, okay.

19 VICE-CHAIR TRUJILLO-DAVIS: So, yeah, we voted on
20 the tables, so does that mean --

21 CHAIRPERSON SUINA: We have to address it as far
22 as --

23 BOARD MEMBER GARCIA: Yeah. Well, is --

24 MS. SOLORIA: You still have to address the
25 adoption, but the reasoning would flow from your prior

1 option.

2 BOARD MEMBER GARCIA: Okay.

3 VICE-CHAIR TRUJILLO-DAVIS: Thank you for being
4 here. Watch out for the last one.

5 HEARING OFFICER ORTH: We haven't heard any
6 screaming.

7 (Off the record.)

8 CHAIRPERSON SUINA: Sorry, Madam Court Reporter.
9 We just had some workers come through.

10 BOARD MEMBER HONKER: So are you using multiple
11 microphones today?

12 BOARD MEMBER GARCIA: Yes.

13 BOARD MEMBER HONKER: It's working really well.
14 I just wanted to interject that.

15 CHAIRPERSON SUINA: Thank you.

16 BOARD MEMBER GARCIA: Thanks to Ms. Jones for
17 buying these.

18 VICE-CHAIR TRUJILLO-DAVIS: Thanks to Ms. Jones'
19 husband for picking them up.

20 CHAIRPERSON SUINA: So is that -- is that clear,
21 Vice-Chair Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Uh-huh. I wasn't
23 sure how to officially address that portion of it.

24 CHAIRPERSON SUINA: So, to your point, Member
25 Garcia, I think some of the proposed changes in Oxy/CEP's

1 proposal -- proposed language become -- or cannot be
2 accepted because we've made previous decisions on the
3 tables in Section (3).

4 VICE-CHAIR TRUJILLO-DAVIS: Right.

5 BOARD MEMBER GARCIA: Right, only where it refers
6 to the tables.

7 CHAIRPERSON SUINA: Yes.

8 HEARING OFFICER ORTH: IPANM proposed to delete
9 the entirety of the section -- oh, I'm sorry, not the
10 entirety; most of it. There is still some language left
11 there on page 292.

12 CHAIRPERSON SUINA: So I'm just asking just for
13 clarity. So, since NMED agrees to NMOGA's changes --

14 HEARING OFFICER ORTH: Yes.

15 CHAIRPERSON SUINA: -- should we look at NMOGA's
16 as the baseline on this one?

17 HEARING OFFICER ORTH: Right. Right. I think
18 that would be the quickest thing to do.

19 CHAIRPERSON SUINA: Okay.

20 HEARING OFFICER ORTH: Let me scroll there.

21 CHAIRPERSON SUINA: Yeah.

22 HEARING OFFICER ORTH: There's Kinder Morgan's
23 support that I just scrolled through.

24 CHAIRPERSON SUINA: Okay.

25 HEARING OFFICER ORTH: And here's NMOGA's.

1 CHAIRPERSON SUINA: Okay. All right. I've got
2 myself organized.

3 Any discussion on this Section (4)? Yes.

4 BOARD MEMBER GARCIA: I guess I'm still trying to
5 find CEP's competing language, because when I look at
6 their -- I guess it's old (4), new (5), it's not the same
7 as (4), right? It's on 279, right, but I'm trying to
8 compare the language.

9 HEARING OFFICER ORTH: Standards for natural
10 gas-driven pneumatic controllers.

11 BOARD MEMBER GARCIA: Yes.

12 CHAIRPERSON SUINA: So if you look at NMOGA's,
13 which is supported by NMED.

14 BOARD MEMBER GARCIA: Okay. So, NMOGA added more
15 language than what CEP wishes to add on A. And on B, it's
16 considerably different. Do you see what I mean? It
17 doesn't seem to be the --

18 VICE-CHAIR TRUJILLO-DAVIS: Would it be easier to
19 go down the -- down the list, like start with "4" A and go
20 through that?

21 BOARD MEMBER GARCIA: Right. Right, yeah.

22 CHAIRPERSON SUINA: Okay. So, right now on the
23 screen, we have NMOGA's proposal, which NMED and Kinder
24 Morgan support. It's just that NMED did not find --

25 BOARD MEMBER GARCIA: I understand. So I'm

1 already ahead of there. I'm realizing that's agreed upon.

2 And now I'm looking at the language that CEP wants.

3 CHAIRPERSON SUINA: Okay.

4 BOARD MEMBER GARCIA: And I'm trying to
5 understand what's different about what they want, compared
6 to what everybody else has agreed to here.

7 CHAIRPERSON SUINA: Okay. Okay.

8 HEARING OFFICER ORTH: So, Member Garcia, I think
9 one of your challenges might be that CEP proposed an
10 entirely new (d) to electrical.

11 BOARD MEMBER GARCIA: Yes, exactly. That's what
12 I'm seeing, that it's different -- quite different from
13 that.

14 CHAIRPERSON SUINA: All right. So any -- so to
15 go back to just (a), and maybe go to (4) (a).

16 BOARD MEMBER GARCIA: Okay.

17 CHAIRPERSON SUINA: See if we get -- compare
18 NMOGA's and CEP's and IPANM's. So IPANM have deleted (a).

19 VICE-CHAIR TRUJILLO-DAVIS: In the entirety?

20 CHAIRPERSON SUINA: Yes.

21 And then CEP is just the one sentence. And then
22 NMOGA, the Department and Kinder Morgan supports adding in
23 "a natural gas-driven pneumatic controller."

24 BOARD MEMBER GARCIA: Yeah, they're just -- it's
25 kind of a definition they're clarifying there, yeah. And

1 that makes sense. I mean, it's harmless to clarify that
2 definition. Right?

3 CHAIRPERSON SUINA: Okay. So IPANM's deletion,
4 if they have it -- they deleted it, right?

5 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. Can you
6 tell me where IPANM is, what page.

7 BOARD MEMBER GARCIA: 289.

8 BOARD MEMBER BITZER: The bottom of 289.

9 VICE-CHAIR TRUJILLO-DAVIS: Oh, thank you. I
10 forgot.

11 BOARD MEMBER GARCIA: That makes it a lot easier
12 today. I brought them today for flagging stuff.

13 VICE-CHAIR TRUJILLO-DAVIS: Oh, thank you

14 CHAIRPERSON SUINA: Do you have something?

15 MS. SOLORIA: Oh, no. I'm sorry. My gesturing
16 is nothing.

17 CHAIRPERSON SUINA: I just want to make sure of
18 the conversation and the discussion.

19 VICE-CHAIR TRUJILLO-DAVIS: Yeah. Sorry, I was
20 asking about a clarification, but in IPANM's proposal,
21 does their new language start above (4) on 291, under the
22 table and --

23 HEARING OFFICER ORTH: Yes.

24 VICE-CHAIR TRUJILLO-DAVIS: Yes, that's the new
25 language proposed?

1 HEARING OFFICER ORTH: Yes, but I believe that
2 was part of (3).

3 VICE-CHAIR TRUJILLO-DAVIS: Oh, okay. That's
4 what I was wondering. Okay. I'm sorry.

5 BOARD MEMBER GARCIA: Yeah, they're just crossing
6 out (4). Yeah, it's hard to figure out.

7 CHAIRPERSON SUINA: Yes, Member Garcia.

8 BOARD MEMBER GARCIA: So I'm already on (B). I'm
9 sorry, I keep moving ahead.

10 CHAIRPERSON SUINA: Okay. Go ahead.

11 BOARD MEMBER GARCIA: But I'm also realizing that
12 the -- that because it refers to Table 1 once again,
13 then -- and I'm talking about -- wait a minute. I'm
14 talking about -- no, I'm sorry. CEP's B is a new B.

15 CHAIRPERSON SUINA: Yes, a new B.

16 BOARD MEMBER GARCIA: So, never mind.

17 CHAIRPERSON SUINA: I know that we're juggling
18 the various sections on this one, but just maybe to help
19 the conversation, it looks like I'm just going to start
20 here. So, under IPANM's proposal to delete (4) (a), it
21 seems, to me, it goes back to their proposal in general
22 and how they're framing it; is that correct, Madam Hearing
23 Officer?

24 HEARING OFFICER ORTH: Yes. Yes.

25 CHAIRPERSON SUINA: I'm just throwing this out

1 there. Some of the discussions we had, in terms of
2 approving the Department's language in other sections
3 under Section 122, for lack of a better way of framing it,
4 might -- it's like -- I think Member Honker said this,
5 this morning, comparing apples to oranges.

6 HEARING OFFICER ORTH: And bananas.

7 CHAIRPERSON SUINA: So I think that's one of the
8 comments he brought up earlier, Member Honker. And I
9 think I see that right now, even in IPANM's proposed
10 language that was deleted. Is that --

11 HEARING OFFICER ORTH: Yes, Madam Chair. And in
12 particular, IPANM had hoped the Board would move away from
13 language, driven by controller count. And you see that a
14 lot of where that is from, "controller count" would take a
15 more production-based focus. So, yeah, they would delete
16 everything that mentions "controller count."

17 CHAIRPERSON SUINA: Thank you, Madam Hearing
18 Officer.

19 VICE-CHAIR TRUJILLO-DAVIS: I think -- it's an
20 observation I had, and one of the challenges with IPANM's
21 proposal is that it is a drastically different approach.
22 And to evaluate appropriately line by line, I struggle
23 with how to incorporate their thoughts.

24 CHAIRPERSON SUINA: And if I may, Madam Hearing
25 Officer?

1 HEARING OFFICER ORTH: Yes. Would a larger
2 motion then be appropriate?

3 CHAIRPERSON SUINA: Yes, because I think we've
4 already -- that's where I was going as well, is that we
5 have already gone this way, to one type of fruit -- if he
6 can use that metaphor, versus the bananas.

7 BOARD MEMBER GARCIA: Get rid of the banana.

8 CHAIRPERSON SUINA: Yes, member Vice-Chair
9 Trujillo-Davis.

10 VICE-CHAIR TRUJILLO-DAVIS: May I suggest this in
11 terms of the record, that we maybe take up a discussion
12 to -- to evaluate their proposal, and then decide to move
13 on from it, so that it's part of the record that we gave
14 it proper consideration.

15 MS. SOLORIA: So that is wise counsel.

16 CHAIRPERSON SUINA: Thank you. Thank you,
17 Vice-Chair Trujillo-Davis.

18 So, with that, Member Honker and Member Duval,
19 you're online, and I know it's past 2, so he's probably in
20 class. But does that seem appropriate? Or what are your
21 thoughts on that, Member Honker?

22 BOARD MEMBER HONKER: I missed a little bit of
23 that, so if the Vice-Chair could kind of repeat the
24 suggestion and the wise counsel, I didn't -- I didn't
25 quite catch all of it.

1 VICE-CHAIR TRUJILLO-DAVIS: I was suggesting that
2 we maybe take up a discussion about IPANM's proposal, so
3 that we give it proper consideration for the record, and
4 that we have -- in our review up to this point, we've made
5 some decisions that have made it a little difficult to
6 continue looking at them, as you pointed out, as apples to
7 apples, so that was my suggestion.

8 BOARD MEMBER HONKER: Sounds good to me.

9 BOARD MEMBER BITZER: Agreed.

10 CHAIRPERSON SUINA: Thank you, Member Bitzer and
11 Member Honker.

12 Yes, Member Garcia.

13 BOARD MEMBER GARCIA: Yes, I agree. And as we
14 look at IPANM's proposal, it is so expansively different,
15 I think that it would have been better for them to bring
16 this into the negotiations with NMED and others earlier in
17 the process. For these kinds of big changes, it's
18 uncomfortable for me to make such big changes to the
19 proposal that others have agreed upon, and took -- took a
20 great deal of time and effort to negotiate.

21 And then, to make such big changes, it doesn't
22 seem fair to the process that they took. So, that's -- I
23 understand their issues are valid. I'm not saying their
24 issues are not valid. I just think that it's -- it's
25 moving too far away from what the agreement is, so..

1 HEARING OFFICER ORTH: Member Garcia, they did
2 spend a fair amount of time during the hearing trying to
3 persuade the Board to do the production-based proposal.

4 BOARD MEMBER GARCIA: Right, I -- yes, I
5 understand that this was discussed a lot during the
6 hearing, and others came to agreement with some of the
7 suggestions, but not these.

8 So, yes -- yes, you're right. This is not
9 post-hearing or anything. This is just stuff that they
10 wanted in that just didn't get in during the hearing.

11 CHAIRPERSON SUINA: Yes, Vice-Chair.

12 VICE-CHAIR TRUJILLO-DAVIS: I think that from
13 their discussions and from their testimony, I think what
14 their major issue is, is that they're small operators.
15 They tend to be small operators, and they didn't -- and
16 this is just, based on the information that I'm seeing in
17 their proposal, is that they are trying to fit that small
18 operator operation into this -- this rule, that is at this
19 point, trying to encompass a lot of -- it's mostly, mostly
20 after bigger operators. So I see their struggle in that.

21 What I, personally, am struggling with, is that
22 it doesn't necessarily fit into this section either
23 because it's such a divergent from what we're seeing as to
24 what was agreed upon. So, if that clarifies where they
25 were coming from in their submittals.

1 CHAIRPERSON SUINA: Oh, yes, Member Honker.

2 BOARD MEMBER HONKER: Yeah. And I agree with
3 Member Garcia and the Vice-Chair, and would add that since
4 they've taken a production-based approach, I don't know --
5 I see where that is advantageous for small producers. I
6 don't know that the impact that approach would have on
7 larger producers, has been thoroughly explored in here.

8 And, obviously, they did not convince NMOGA to go
9 this way, nor NMED, nor the other parties. So just --
10 just to kind of continue in the vein that -- there's --
11 there's an overall lack of support for this approach, as
12 valid as it may be. And as good of an approach as it may
13 be for the small operators, but I -- I can't really gauge
14 it in terms of the impact on the regulated community as a
15 whole. And it doesn't seem to be as thoroughly explored
16 and vetted as the other approaches.

17 CHAIRPERSON SUINA: Thank you, Member Honker.
18 Vice-Chair.

19 VICE-CHAIR TRUJILLO-DAVIS: I think Member Honker
20 touched on a really important point in there, in that,
21 there isn't, at least as far as I can see, evidence to
22 support the opposing side of things, where, how would
23 taking this IPANM's approach affect larger producers as
24 well.

25 So I -- I like that, you know, they provided a

1 lot of evidence on how it would support small producers,
2 but I think the record lacks evidence on how it would
3 impact larger producers.

4 CHAIRPERSON SUINA: Thank you, Vice-Chair.

5 Did Member Bitzer weigh in on this?

6 BOARD MEMBER BITZER: I haven't, but I would -- I
7 would concur. You know, in considering the motion as I
8 understand it, would be that we're just going to take
9 IPANM en blanc, and reject it, basically, because it's so
10 out of format with what we've accomplished so far, and
11 what else is there consensus. But is that a fair
12 summation?

13 CHAIRPERSON SUINA: Well, and also, I think what
14 we're also discussing is the support for it. I think
15 Vice-Chair and Member Honker, whether the -- or whether
16 through the hearing, I know -- I know it was discussed
17 during the hearing by IPANM, but maybe the applicability
18 or workability for bigger producers.

19 VICE-CHAIR TRUJILLO-DAVIS: Yes, yes. I see that
20 their proposal is aiming at smaller producers and helping
21 smaller producers, but we don't -- as Member Honker
22 pointed out, we don't know the effect on bigger producers.

23 BOARD MEMBER BITZER: And just to make sure that
24 we don't roll over the little -- over the little guys, it
25 doesn't really seem practical to go down this cul-de-sac,

1 for lack of a better bit of imaginary.

2 CHAIRPERSON SUINA: Thank you, Member Bitzer.

3 Yes, and I think that comes out in NMED's
4 responses, right, to IPANM's proposed language, which is
5 included in the Hearing Officer's report. IPANM's --

6 HEARING OFFICER ORTH: Yes.

7 CHAIRPERSON SUINA: Am I accurate in saying that,
8 Madam Hearing Officer?

9 HEARING OFFICER ORTH: Yes. The Department did
10 expressly address IPANM's proposal. Let me find some
11 pages for you.

12 BOARD MEMBER GARCIA: Page 299 at the very end is
13 one of the things they agreed to.

14 HEARING OFFICER ORTH: Okay. Yes. So I know
15 this isn't the only place, but NMED responded to IPANM's
16 proposal to include an exception for lower-producing
17 wells, by saying, it would exempt 269 out of 324 well
18 operators who have oil production. The Board should find
19 that IPANM's production-based approach is not. That was
20 in Palmer's testimony.

21 CHAIRPERSON SUINA: Thank you, Madam Hearing
22 Officer. So does that give some additional background on
23 the differences between what we're referring to as apples
24 and bananas or oranges or watermelons?

25 BOARD MEMBER GARCIA: Are we ready for a motion?

1 CHAIRPERSON SUINA: Yes, Member Garcia.

2 BOARD MEMBER GARCIA: Okay. I'm not sure I'm
3 going to do this right, but I'm sure you'll help. So, I
4 would move that we reject the proposal by IPANM, for their
5 changes starting with 122 A, and going all the way
6 through -- let's see -- C (5), for reasons that -- because
7 the suggested changes do not have adequate support in the
8 record for --

9 CHAIRPERSON SUINA: Hold on.

10 HEARING OFFICER ORTH: Oh, yes. Sorry. It's
11 through D -- D-as-in-dog.

12 BOARD MEMBER GARCIA: Oh, okay. So 122 A through
13 D, for the reason that they do not have adequate evidence
14 to support such changes that diverge from the agreement
15 made by other parties, and adequate evidence to support
16 their position.

17 MS. SOLORIA: Can I take some artistic license?

18 BOARD MEMBER GARCIA: Please.

19 CHAIRPERSON SUINA: Please, Ms. Soloria.

20 MS. SOLORIA: The offered motion would be to
21 reject IPANM's proposed language for Subsections A through
22 D, as against the weight of the evidence and inconsistent
23 with the concurrence of other -- (inaudible)

24 BOARD MEMBER BITZER: I'll second that.

25 COURT REPORTER: I'm sorry. Ms. Soloria, you

1 faded off at the end.

2 MS. SOLORIA: I'll repeat that, Madam Court
3 Reporter. I apologize. The motion is to reject IPANM's
4 proposed language for Subsections A through D, as against
5 the weight of the evidence, and inconsistent with the
6 concurrence of other parties.

7 BOARD MEMBER HONKER: I'll second that.

8 CHAIRPERSON SUINA: All right. So we have a
9 motion on the floor from Member Garcia, and a second by
10 Member Honker, regarding IPANM's proposed language.

11 Is there any further discussion? All right. I'm
12 looking around. Ms. Corral, could you do a roll-call vote
13 on that?

14 ADMINISTRATOR CORRAL: Yes. Member Bitzer, how
15 do you vote?

16 BOARD MEMBER BITZER: I vote yes.

17 ADMINISTRATOR CORRAL: Member Duval?

18 BOARD MEMBER DUVAL: Yes.

19 ADMINISTRATOR CORRAL: Member Garcia?

20 BOARD MEMBER GARCIA: Yes.

21 ADMINISTRATOR CORRAL: Member Honker?

22 BOARD MEMBER HONKER: Yes.

23 ADMINISTRATOR CORRAL: Chair Suina?

24 CHAIRPERSON SUINA: Yes.

25 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes.

2 ADMINISTRATOR CORRAL: The motion passes.

3 CHAIRPERSON SUINA: Thank you, Ms. Corral.

4 Appreciate that.

5 All right. We're still in this Section 4.

6 HEARING OFFICER ORTH: Now, you have two
7 proposals instead of three.

8 CHAIRPERSON SUINA: Yes. All right.

9 HEARING OFFICER ORTH: One frog down.

10 CHAIRPERSON SUINA: I hear people like to eat
11 frog legs.

12 HEARING OFFICER ORTH: They taste like tuna.

13 CHAIRPERSON SUINA: All right. We've got one leg
14 down. All right.

15 HEARING OFFICER ORTH: So right now you are
16 comparing, Madam Chair --

17 CHAIRPERSON SUINA: Yes.

18 HEARING OFFICER ORTH: -- the proposal that
19 begins on page 275 and the proposal that begins on page
20 279. And you have already -- I think Member Garcia did
21 this -- identified a few respects in which the CEP
22 proposal here is -- would be of a piece or would have been
23 of a piece with Section 3. But I'm not sure that that was
24 the end of the discussion.

25 CHAIRPERSON SUINA: Yes, Member Garcia.

1 BOARD MEMBER GARCIA: Yes. To jump -- thank you.
2 To jump right back into that, for 4 (a), I would just
3 point out that both parties are in agreement that
4 pneumatic controllers should have an emission rate of
5 zero. The only difference is the clarifying language
6 NMOGA wanted to put in to clarify a definition. And so
7 that's a good thing. I don't think CEP would be opposed
8 to that. So (a), we're pretty good with.

9 CHAIRPERSON SUINA: Do you want to just get that
10 one out of the way with a motion?

11 BOARD MEMBER GARCIA: I could, or wait until we
12 discuss more.

13 CHAIRPERSON SUINA: Okay. We can discuss.

14 BOARD MEMBER GARCIA: I know, we're so excited.

15 HEARING OFFICER ORTH: Don't slice that sausage
16 too thinly.

17 CHAIRPERSON SUINA: Put the checkmarks over
18 there. All right. Let's continue discussion.

19 VICE-CHAIR TRUJILLO-DAVIS: So (b) on CEP's is a
20 completely new addition?

21 CHAIRPERSON SUINA: Yes.

22 VICE-CHAIR TRUJILLO-DAVIS: Okay.

23 CHAIRPERSON SUINA: Yes, Member Honker.

24 BOARD MEMBER HONKER: Well, I would just say with
25 regard to CEP's proposed 5 (b), I guess it is, since we --

1 since we rejected this approach in Section 3, I think it
2 would be hard to go back and split things this way in
3 Section 4. So it just seems like we have already, for
4 consistency with the approach we've taken before, it would
5 be difficult to -- to -- to embrace this approach on this
6 section.

7 CHAIRPERSON SUINA: Thank you, Member Honker.
8 Appreciate that perspective.

9 Yes, Vice-Chair.

10 VICE-CHAIR TRUJILLO-DAVIS: I concur with Member
11 Honker on that.

12 BOARD MEMBER BITZER: Me, too.

13 CHAIRPERSON SUINA: Member Bitzer, thank you.

14 And I also concur or support or feel the same way
15 that Member Honker just articulated.

16 And Member Duval, I know you're juggling on your
17 side, but I just want to make sure that you check in if
18 you have any comments.

19 BOARD MEMBER DUVAL: No comments. I'm going to
20 have to log off.

21 CHAIRPERSON SUINA: Thank you so much, Member
22 Duval.

23 Yes, Member Garcia.

24 BOARD MEMBER GARCIA: I guess I'm not quite there
25 yet. Not to say that I agree with their language, I'm

1 just not sure that it's mutually exclusive, that because
2 we didn't do it somewhere else, we can't do it here. I'm
3 not sure I agree with that. This is talking about -- it
4 is, as before, talking about if they have access to power,
5 but here we're talking about pneumatic controllers,
6 whereas, before, we were talking about -- well, we are
7 talking about pneumatic controllers; whether they should
8 have an emission rate of zero. So it's a little
9 different.

10 CHAIRPERSON SUINA: Yes.

11 Yes, Vice-Chair --

12 BOARD MEMBER GARCIA: Now, whether they should
13 comply in 6 months, is what we were talking about at the
14 other place, where they have power, can we convert in 6
15 months. And here, we're talking about a different
16 concept, which is an emission rate of zero, so it's a
17 little bit different, so...

18 BOARD MEMBER HONKER: Well, it also appears to be
19 immediate; I mean, there's no compliance time frame. I
20 assume it's as of the effective date of the rule, would be
21 the timing for this zero.

22 BOARD MEMBER GARCIA: Correct, I would read it
23 that way as well. So they're, as with new pneumatic
24 controllers that have to be zero, they're saying the
25 existing ones, where they have power, they have to make it

1 zero, right.

2 CHAIRPERSON SUINA: Thank you, Member Garcia.

3 That's a great point. Appreciate that.

4 And I think Vice-Chair, you had a comment.

5 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I think I was
6 just trying to read a little more into Member Garcia's
7 point there. And if I'm understanding this correctly --
8 and to Member Honker's point as well, so (a) is for new
9 controllers; (b) in CEP's, is for existing. And (b) in
10 NMED's version is also for existing. And then it comes
11 into that time -- it gives a timetable there.

12 So if we're looking back at CEP's, again, it
13 breaks it out like the table did. So (c) is for sites
14 that had existing, but do not have power. And that's
15 where, then, (c) (i) starts that timetable of -- well,
16 they still have January 1st on there.

17 So, just kind of reading a little further down,
18 it does appear that with the addition of (b), it gives
19 no -- no timetable for retrofitting any existing.

20 BOARD MEMBER GARCIA: Well, whatever their
21 timetable was -- and I don't remember now, they had an
22 accelerated timetable, but it wasn't immediate for this,
23 right? On (b) but -- I mean on (c).

24 But going back to (b) if I may?

25 CHAIRPERSON SUINA: Yes.

1 BOARD MEMBER GARCIA: So I'm looking at this with
2 new eyes, not necessarily with what we did before, but
3 with a new set of eyes. And, you know, to say that if
4 they had power, they need to have an emission rate of zero
5 I'm not sure how feasible that is.

6 I think NMED is being very reasonable in giving a
7 phased approach, to be able to deal with the existing
8 pneumatic controllers; whereas, CEP is proposing that they
9 don't get a phased approach. So just looking at (b), I
10 think it's more reasonable what NMED has done.

11 CHAIRPERSON SUINA: Thank you, Member Garcia.

12 Yes, Member Honker.

13 BOARD MEMBER HONKER: Yeah, I concur with Member
14 Garcia. And I guess it's the same -- the issue is the
15 same one we dealt with in Section 3, in that, what CEP is
16 proposing to do is take the ones with power and give them
17 a very short timetable to comply, and then put the rest of
18 the ones without power onto a compliance schedule,
19 whereas, the agreed approach between NMED and NMOGA
20 addresses the compliance turntable -- or compliance
21 timetable for the whole universe, which would allow the
22 regulated community to take advantage of their ones with
23 power, and get early -- get early compliance with those,
24 and have flexibility for the ones that don't have power.

25 And it's hard to compare the compliance schedules

1 for these two proposals because I would guess each -- each
2 company, each operator has a different mix of sites with
3 power and sites without power. So I'm back where I was
4 with Section 3, that the approach that's been agreed on
5 between NMED and NMOGA seems to have an approach that
6 takes a variety of situations into account; whereas, this
7 one, even though it's logical that you have a shorter
8 timetable for facilities that have power, I don't really
9 know how to evaluate that on the universe.

10 And since we have an agreed approach by the other
11 parties, I'm -- I'm more swayed by that.

12 CHAIRPERSON SUINA: Thank you, Member Honker.

13 Yes, Vice-Chair.

14 VICE-CHAIR TRUJILLO-DAVIS: I think if we were to
15 adopt (b) as written by CEP, we would have a conflict in
16 the rule because we didn't adopt the language from 3. And
17 if we had adopted the language from CEP in 3, we would
18 have given a timetable for (b) in (4). So I think we
19 could potentially create a conflict there.

20 CHAIRPERSON SUINA: Thank you, Vice-Chair.

21 BOARD MEMBER GARCIA: So it sounds like we're
22 leaning toward NMED's proposal.

23 BOARD MEMBER BITZER: Agreed.

24 BOARD MEMBER GARCIA: For (b).

25 CHAIRPERSON SUINA: For me, I went back to the

1 NMED's section or proposal on 274 -- the discussion on
2 page 274 of the Hearing Officer's report. And just again,
3 the main part, I think you mentioned this, Member Garcia,
4 is the cooperation between the NMED, the Department and
5 the industry, on coming to a balancing act. And, you
6 know, on moving toward dates and moving toward timelines
7 and moving toward additional requirements, but, again, as
8 we said before lunch, not being able to do that at the
9 drop of a hat.

10 So we have to look at the feasibility of
11 implementation as well. And Ms. Bisbey-Kuehn also
12 mentioned that in the discussion part that is summarized
13 in the Hearing Officer's report, for the proposed language
14 by CEP and Oxy. So, yes, Member Garcia, I think that's
15 what we're leaning toward.

16 So, with that, members of the Board, we have
17 looked at NMOGA's language, which, again, just want to
18 reiterate the Department does support in this section,
19 just in terms of time. They did not have the time to
20 revise their last submittal, but we do have it noted that
21 NMED does support NMOGA's, so we have NMOGA's.

22 I don't know if you want to -- if we're ready for
23 a motion yet? I guess.

24 VICE-CHAIR TRUJILLO-DAVIS: So are we only doing
25 a motion on --

1 CHAIRPERSON SUINA: Well, we would have to
2 address --

3 HEARING OFFICER ORTH: It's (c) and (d) in
4 Section 4.

5 BOARD MEMBER GARCIA: Yeah, we could continue
6 discussing it if we want to.

7 VICE-CHAIR TRUJILLO-DAVIS: Yeah. I think we
8 should keep going, only because I was thinking of how to
9 raise a motion. And since we have a renumbering, it may
10 like be better to just keep going.

11 CHAIRPERSON SUINA: Okay.

12 BOARD MEMBER GARCIA: So, where NMED, under (b),
13 they have (i) through (v) and (vi) under (b.) They have
14 six points under (b). And it all kind of goes with (b) as
15 far as the phasing in. So, I would go so far as to say,
16 we're agreeing with those points already.

17 So, if everybody's in agreement with that, then,
18 we'd be looking at (c), right?

19 CHAIRPERSON SUINA: Yeah. Yes.

20 BOARD MEMBER GARCIA: Okay. Except for the
21 change that I guess we didn't -- we didn't address the
22 change that CEP was proposing for (i) -- for the first
23 (i).

24 CHAIRPERSON SUINA: Correct.

25 BOARD MEMBER GARCIA: I'm not sure if that's just

1 a clarification. Well, no, it's more than that.

2 VICE-CHAIR TRUJILLO-DAVIS: So I see what you're
3 pointing out there, and I'm wondering if by not accepting
4 (b) --

5 BOARD MEMBER GARCIA: Okay. So we wouldn't
6 accept (i) either. I see.

7 VICE-CHAIR TRUJILLO-DAVIS: Well, I think because
8 they added (c) and then all of 1, 2, 3, 4 -- I don't know
9 the exact -- 6 additional points are added underneath (c),
10 which is included, so maybe we should take that up as one
11 whole section because it -- it may be dependent on CEP's
12 (b), had they made those suggestions for their other point
13 alone.

14 BOARD MEMBER GARCIA: Okay. So their (c) (i) is
15 actually (b) (i) in the NMED rule.

16 CHAIRPERSON SUINA: Yes.

17 VICE-CHAIR TRUJILLO-DAVIS: Okay.

18 CHAIRPERSON SUINA: In the NMED/NMOGA.

19 BOARD MEMBER GARCIA: Right, right, yeah. I'm
20 looking at the January 20th version. Yeah.

21 CHAIRPERSON SUINA: I would just like to point
22 out one thing as one point when we're trying to compare
23 CEP to the NMED/NMOGA, is CEP's redline of NMED's last
24 proposal, and not redline NMOGA's last proposal, which
25 NMED accepted.

1 BOARD MEMBER GARCIA: Yeah, yeah.

2 CHAIRPERSON SUINA: Just noting that.

3 BOARD MEMBER GARCIA: Yeah, that's a better way
4 to look at, right.

5 CHAIRPERSON SUINA: Yeah.

6 So, Member Honker, jump in if you have any
7 comments. Your video went out, I just want to throw that
8 out.

9 BOARD MEMBER GARCIA: I wonder if he's still
10 there.

11 CHAIRPERSON SUINA: I meant, you know, like his
12 video.

13 HEARING OFFICER ORTH: Yeah, the video.

14 BOARD MEMBER GARCIA: Member Honker, are you
15 there?

16 CHAIRPERSON SUINA: All right. You know, it's so
17 hard to get back to what we're comparing. I find it a
18 little bit difficult because -- oh, there he is.

19 There's new language proposed that's not --

20 BOARD MEMBER GARCIA: I think he's talking and we
21 can't hear him.

22 CHAIRPERSON SUINA: Yeah, Member Honker, can you
23 hear us?

24 BOARD MEMBER HONKER: Yeah, I had to step away
25 for a moment, so...

1 BOARD MEMBER GARCIA: Oh, okay.

2 CHAIRPERSON SUINA: That's allowed. Okay.

3 And it's over in the details here, but it seems
4 very difficult to look at the CEP proposed language while
5 trying to compare it back to the NMOGA, which is the one
6 that NMED has now supported as well, but we don't have the
7 CEP redline for NMOGA.

8 BOARD MEMBER GARCIA: Well, for the first (i),
9 let's see, I think the first small (i) is the same as the
10 January 20th version.

11 CHAIRPERSON SUINA: The first, so --

12 BOARD MEMBER GARCIA: So (b) (i) is in the
13 redline.

14 VICE-CHAIR TRUJILLO-DAVIS: I think the important
15 difference in those two is that NMED kept the language in
16 that talks about exceptions for pneumatic controllers, and
17 CEP wanted to strike that language and it instead makes
18 reference to a different portion of the rule.

19 CHAIRPERSON SUINA: Yes.

20 HEARING OFFICER ORTH: Their previous 4, I think.
21 It's in paragraph 4 of 122; B (4), because this is their
22 new one.

23 CHAIRPERSON SUINA: Oh.

24 BOARD MEMBER GARCIA: Thank you for pointing that
25 out because I was looking at D under this (4). Okay.

1 Because it does bring back in safety because that was one
2 thing I was concerned about is they were crossing out the
3 safety piece, but it's back in this D, I don't know if
4 it's back in the other D. So the original (4) --

5 CHAIRPERSON SUINA: Right, that's why it's making
6 it very difficult.

7 BOARD MEMBER GARCIA: The original (4), meaning
8 in the January 20th version?

9 HEARING OFFICER ORTH: So, one thing that might
10 be easier if you just want to spread out three sheets of
11 paper in front of you, which is 273, which shows one side
12 of the paper, 275, which is on the front of a second sheet
13 of paper and 279 -- oh, I'm sorry, it's 277.

14 BOARD MEMBER GARCIA: Oh, okay, 279 is what I was
15 missing, okay.

16 VICE-CHAIR TRUJILLO-DAVIS: Okay. So then their
17 reference is for D.

18 CHAIRPERSON SUINA: Who is that?

19 VICE-CHAIR TRUJILLO-DAVIS: Oh, I'm sorry, CEP.
20 I'm going to try to get the right portion that I'm looking
21 at here: D -- I feel like I'm playing bingo right now. D
22 paragraph 4 of.

23 CHAIRPERSON SUINA: D-as-in-dog or B-as-in-boy?

24 BOARD MEMBER BITZER: D-as-in-dog. So it's
25 subparagraph (d), which is the temporary pneumatic

1 controllers.

2 HEARING OFFICER ORTH: No, because it's their old
3 (4).

4 CHAIRPERSON SUINA: Yes.

5 BOARD MEMBER GARCIA: So what page is that on?

6 HEARING OFFICER ORTH: So, now we're looking at
7 page 264, those are about the electrical power.

8 BOARD MEMBER GARCIA: Oh.

9 CHAIRPERSON SUINA: Say that again. I thought we
10 already had addressed this.

11 HEARING OFFICER ORTH: You did, but there is a
12 reference to (d) (4) in their proposed.

13 CHAIRPERSON SUINA: Yep, on their proposed (5)
14 (c).

15 HEARING OFFICER ORTH: Exactly.

16 CHAIRPERSON SUINA: Got it.

17 BOARD MEMBER GARCIA: But it's subparagraph (d)
18 of (4), right?

19 CHAIRPERSON SUINA: On which, on CEP's?

20 BOARD MEMBER GARCIA: Yeah, subparagraph (d) (4).

21 VICE-CHAIR TRUJILLO-DAVIS: I feel like we're
22 going to temporary pneumatic controllers.

23 BOARD MEMBER GARCIA: Yes, on 273.

24 VICE-CHAIR TRUJILLO-DAVIS: Yes, that would --
25 that can't be right.

1 CHAIRPERSON SUINA: No, we're at 280, right?

2 That's where I'm at.

3 VICE-CHAIR TRUJILLO-DAVIS: No.

4 HEARING OFFICER ORTH: 273.

5 CHAIRPERSON SUINA: 273, okay.

6 HEARING OFFICER ORTH: And 279.

7 CHAIRPERSON SUINA: Maybe I'm the one wrong here.

8 BOARD MEMBER GARCIA: Would you agree, Madam
9 Hearing Officer, that what they're referring to is then
10 back to 273, the (d) under (4) at the bottom of 273. Is
11 that the (d) they're referring to?

12 HEARING OFFICER ORTH: I thought it was the (4)
13 on page 264, but I'll admit now that I'm confused.

14 BOARD MEMBER GARCIA: I'm glad I'm not the only
15 one.

16 CHAIRPERSON SUINA: Yeah, and I'll apologize,
17 because I had that order to NMOGA's, assuming that NMED
18 approved NMOGA's. So that's why I was going way past
19 NMED's proposed language on 273.

20 Yes, Ms. Soloria.

21 MS. SOLORIA: Is it possible that their reference
22 to paragraph (4) on page 271 is incorrect because they
23 propose a new paragraph (3)?

24 CHAIRPERSON SUINA: Yes.

25 MS. SOLORIA: That didn't previously exist, which

1 prompted (4) and (5). And I've lost where I was.

2 CHAIRPERSON SUINA: I had a glimmer.

3 VICE-CHAIR TRUJILLO-DAVIS: I did, too.

4 MS. SOLORIA: I had a glimmer of why it didn't
5 make sense.

6 CHAIRPERSON SUINA: Yes, because in what we've
7 accepted, we don't have a paragraph (4).

8 VICE-CHAIR TRUJILLO-DAVIS: Okay. Right, but
9 then how do we -- because it says they are permanent under
10 this subsection, so we don't know what we are -- what we
11 are getting.

12 MS. SOLORIA: Is it -- sorry to interrupt. Is it
13 also referring to paragraph (5), there is a subsection
14 (d), if that makes sense?

15 BOARD MEMBER GARCIA: Except that it doesn't
16 relate to this topic.

17 CHAIRPERSON SUINA: Right.

18 BOARD MEMBER GARCIA: So I wonder if because
19 paragraph (4), we've already decided we weren't going to
20 go with that concept, maybe we don't need to, you know,
21 find (d) because we already -- it wouldn't make sense to
22 go with this if we've already eliminated the notion of
23 power versus no power.

24 BOARD MEMBER BITZER: Makes sense.

25 MS. SOLORIA: Well, I'm going back to -- I think

1 I was on the right trail there. I think on page 279, (c)
2 little (i), it should say subparagraph (5); is that
3 correct? Because paragraph (5) of this section does
4 discuss -- so they're saying those --

5 BOARD MEMBER GARCIA: Well, that's where I was to
6 begin with, because they brought the safety in that topic.

7 MS. SOLORIA: So I think that it's possible that
8 there's an error in here because the section is renumbered
9 (5), this reference to paragraph (4) should also have been
10 bumped to paragraph (5), and so then, internally,
11 paragraph (5) section --

12 HEARING OFFICER ORTH: That makes more sense when
13 we discussed 264, though.

14 CHAIRPERSON SUINA: So it will be paragraph (5)
15 of subsection (b)?

16 BOARD MEMBER GARCIA: (d).

17 MS. SOLORIA: So, subparagraph (d) on this
18 section that we're looking at, that line should have been
19 updated to paragraph (5), and then if you look to
20 subparagraph (d) of that section.

21 BOARD MEMBER GARCIA: On 280?

22 VICE-CHAIR TRUJILLO-DAVIS: So that should start
23 with "owner operator."

24 BOARD MEMBER GARCIA: Oh, no. "A pneumatic
25 controller with a bleed rate greater than zero." So if

1 you go to 280, and then (c) -- (inaudible due to multiple
2 speakers.)

3 COURT REPORTER: Excuse me. You folks are all
4 talking over one another. You need to take your turns.

5 MS. SOLORIA: Sorry, Madam Court Reporter.

6 BOARD MEMBER BITZER: We're sorting out a
7 typographical error. She doesn't need to write all of
8 that, does she? Where on page 280, we're confusing (e)
9 for (d). Yeah, we need to restate.

10 BOARD MEMBER GARCIA: Yeah, so now we're looking
11 at (d) on page 280, being the (d) that is referred to in
12 (c) (i) on page 279 in CEP's proposal.

13 CHAIRPERSON SUINA: So, to correct the typo in
14 that section, it should be paragraph (5)?

15 HEARING OFFICER ORTH: Under CEP's proposal it
16 would be paragraph (5).

17 BOARD MEMBER BITZER: Paragraph (5) of Subsection
18 (d) of 20.2.50.122. Yep.

19 CHAIRPERSON SUINA: All right. Does that clarify
20 where we're at?

21 BOARD MEMBER BITZER: I think it does.

22 CHAIRPERSON SUINA: And does it -- I don't know
23 if it helps us with moving the conversation along? Madam
24 Vice-Chair.

25 VICE-CHAIR TRUJILLO-DAVIS: I think it clarifies

1 where we're at. I think it raises a couple of more
2 questions because it's saying we would be removing
3 language for safety or process purposes that are permitted
4 under the identified one that we just argued over, or
5 spent time trying to find.

6 So when you go to that reference, that reference
7 changes -- that has its own proposed language that removes
8 a bleed rate of 6 standard cubic feet to zero. So if I'm
9 understanding this correctly, that doesn't make -- that
10 doesn't make an exemption, because you go from 6 to
11 zero -- 6 to zero, which is for everybody, and then you
12 removed --

13 BOARD MEMBER GARCIA: No, they're saying greater
14 than zero.

15 CHAIRPERSON SUINA: Yes.

16 VICE-CHAIR TRUJILLO-DAVIS: Right. So I'm not
17 understanding where the exemption is in there. That's why
18 it was drafted that way to begin with, because NMED made
19 that exemption for safety. So are we removing that
20 completely?

21 CHAIRPERSON SUINA: So you're saying on
22 NMED/NMOGA's proposal language under (i) they made the
23 exemption, "except that pneumatic controllers necessary
24 for a safety or process purpose that cannot otherwise be
25 met without emitting natural gas shall not be included in

1 the total controller count."

2 VICE-CHAIR TRUJILLO-DAVIS: Right. So, then,
3 they added the language -- CEP added the language to
4 follow that reference for -- except for things that are
5 permitted under their reference. And so, then we go to
6 that reference, and additional language is proposed there
7 and so I'm --

8 BOARD MEMBER GARCIA: And just one other item
9 that is curious, under (d), I was reading the whole
10 sentence and then you get to the end and it says "or
11 in-house engineer..."

12 HEARING OFFICER ORTH: That's because they didn't
13 have any more changes, then you could look at ED's
14 language.

15 BOARD MEMBER GARCIA: Behind in-house engineer?

16 BOARD MEMBER BITZER: So those dots refer you
17 back to the --

18 HEARING OFFICER ORTH: CEP point.

19 BOARD MEMBER GARCIA: Oh, okay. So that was
20 their purpose. Okay. So they did that several times in
21 these.

22 BOARD MEMBER BITZER: I was just mulling those
23 dots myself.

24 HEARING OFFICER ORTH: Oh, I'm sorry. I did not
25 mean to be unclear, but the document was already 350 pages

1 long.

2 BOARD MEMBER GARCIA: Okay. That's okay. Sorry,
3 Vice-Chair, to stop your train of thought.

4 VICE-CHAIR TRUJILLO-DAVIS: No, it's just...

5 BOARD MEMBER BITZER: Yeah, in one instance
6 there's a dot-dot-dot and then a space and then the dots.
7 Then in another place they're just solid dots.

8 HEARING OFFICER ORTH: I'm a terrible typist.

9 BOARD MEMBER BITZER: And I figured as much when
10 I looked at those incomplete sentences. It's like, yeah,
11 there were no more words after that.

12 MS. SOLORIA: We'll forgive you a few dots in 370
13 pages.

14 BOARD MEMBER BITZER: You know you're in trouble
15 when you dot the T's and you cross the I's.

16 VICE-CHAIR TRUJILLO-DAVIS: So I don't think it
17 eliminates the exception, is my concern. I think it just
18 tightens the exemption, based on only CEP's proposal
19 language.

20 HEARING OFFICER ORTH: So Madam Vice-Chair,
21 looking at NMOGA's language and looking at this language
22 here from CEP, they seem similar to me, and maybe I'm
23 wrong. In NMOGA's language, it further is identified as,
24 you know, required for safety or process, and don't affect
25 the total controller count.

1 In CEP's, the controllers that are permitted
2 under (d) on 280, which go to documenting that they're for
3 safety or process, are not included in the total
4 controller count. That's the end of that sentence. Back
5 on 279, you kind of have to flip back and forth between
6 279 and 280. So they don't seem all that different to me,
7 but...

8 VICE-CHAIR TRUJILLO-DAVIS: And I apologize. I
9 was looking at NMED's original text and neglected to
10 reference back to the NMOGA text.

11 CHAIRPERSON SUINA: Okay. So I just have a
12 clarification question. So on the dot-dot-dot, where do I
13 look to see what is after that?

14 HEARING OFFICER ORTH: I would go back to ED's
15 language, which may or may not have been amended by NMOGA.
16 This is (4).

17 CHAIRPERSON SUINA: I guess, because in --

18 HEARING OFFICER ORTH: Okay. So, CEP -- looking
19 at page 273, CEP changes in this section -- Section (4)
20 ended after the words "in-house engineer." So I didn't
21 include (d) and (e).

22 CHAIRPERSON SUINA: Oh, got it. Got it. Okay.
23 Just (d) and (e); is that correct?

24 HEARING OFFICER ORTH: Right.

25 CHAIRPERSON SUINA: Okay.

1 VICE-CHAIR TRUJILLO-DAVIS: I think the
2 difference is the bleed rate itself, so 6 versus 1, yeah.

3 CHAIRPERSON SUINA: Right. Okay. So after --
4 I'm sorry.

5 BOARD MEMBER GARCIA: Let me ask a real basic
6 question. So when the CEP stuff on 79 -- on 279 and 280,
7 when they cross out language, the language they're
8 crossing out is the NMOGA's -- no, it's the original
9 January 20th? Well, I'm having trouble finding it on
10 January 20th is the problem. That's what I've thought,
11 and I've gone back and looked, and I'm having trouble
12 finding it on the January 20th under (4). So that's
13 NMOGA's.

14 VICE-CHAIR TRUJILLO-DAVIS: No, this one is the
15 NMED's on 273.

16 BOARD MEMBER GARCIA: Oh, page 273.

17 HEARING OFFICER ORTH: I'm sorry. They bumped
18 (b) to (c).

19 BOARD MEMBER GARCIA: Oh, okay. I see it. Got
20 it. Okay. Thank you.

21 CHAIRPERSON SUINA: That's why I said earlier,
22 it's so difficult.

23 BOARD MEMBER GARCIA: It's each one of them.

24 CHAIRPERSON SUINA: It's the January one by NMED,
25 then we have NMOGA's, which NMED accepts, but we have CEP

1 pointing back to the January NMED language changes.

2 BOARD MEMBER GARCIA: Right.

3 CHAIRPERSON SUINA: Did I catch that, Member
4 Honker?

5 BOARD MEMBER HONKER: (Nodding head.)

6 CHAIRPERSON SUINA: I think you might be way
7 ahead of us. We get ourselves confused in this room.

8 BOARD MEMBER HONKER: I'm here, I'm listening.
9 I've got my three piles out here, yeah.

10 CHAIRPERSON SUINA: Okay.

11 VICE-CHAIR TRUJILLO-DAVIS: Is there any harm in
12 this specific section, of just looking at the updated
13 version for NMOGA's?

14 HEARING OFFICER ORTH: I don't see any harm in
15 doing that, so that we don't have to keep referring back
16 to that.

17 VICE-CHAIR TRUJILLO-DAVIS: I believe that's
18 where we started, and then, when we were cross-checking
19 references, we got lost in the paperwork then.

20 CHAIRPERSON SUINA: Yeah, and that's where, right
21 there is where we're at, so just looking at NMOGA's.

22 BOARD MEMBER GARCIA: It's just that when you
23 look at CEP's, and you see language crossed out, then you
24 have to figure out where was that language to begin with,
25 and that's what takes you away from it.

1 CHAIRPERSON SUINA: Right.

2 BOARD MEMBER GARCIA: That's where I was trying
3 to figure out where was that at.

4 CHAIRPERSON SUINA: I guess I'm -- any -- any
5 suggestions on how we wade through this, given that we
6 have these different references, and how do we go through
7 NMOGA's? That's why I was saying -- do we leave those few
8 out when we're checking the acceptance, or do we go as a
9 whole for this section, because we're having these
10 reference issues?

11 VICE-CHAIR TRUJILLO-DAVIS: I think I'm still on
12 the side of going through as a whole.

13 CHAIRPERSON SUINA: Okay.

14 VICE-CHAIR TRUJILLO-DAVIS: Because I fear we'll
15 adopt something and then struggle with a conflict in the
16 next section because it references back and forth to each
17 other.

18 CHAIRPERSON SUINA: Okay. That's fair.

19 VICE-CHAIR TRUJILLO-DAVIS: I don't think either
20 one will save us time, just to be clear.

21 CHAIRPERSON SUINA: Okay. So do we still want
22 to -- so, Ms. Soloria, any suggestion before we start it,
23 looking at NMOGA's, even though CEP comments on NMED's?

24 HEARING OFFICER ORTH: I think you have to look
25 at all three.

1 CHAIRPERSON SUINA: Go ahead, Ms. Soloria.

2 MS. SOLORIA: My suggestion might be off a
3 little, but I think -- I don't think it's any more -- it
4 wouldn't take any more time than to just go through the
5 merits of CEP's suggestion down the line, so there's
6 discussion what you understand it to mean, and then go
7 from there and compare back from there.

8 CHAIRPERSON SUINA: Okay.

9 MS. SOLORIA: I mean I think that's what you were
10 doing anyway, I'm not sure.

11 BOARD MEMBER GARCIA: Yeah, we were trying to
12 find an easier way, and we're just not, so we're going to
13 need to do what we're doing.

14 CHAIRPERSON SUINA: Right. Okay.

15 VICE-CHAIR TRUJILLO-DAVIS: Okay. I need a
16 clarifying question here. So CEP's version gets down to
17 C, Monitoring requirements.

18 HEARING OFFICER ORTH: No, please stop there,
19 after -- well, before that.

20 VICE-CHAIR TRUJILLO-DAVIS: Thank goodness.
21 Thank you.

22 HEARING OFFICER ORTH: We're going to take up C
23 soon enough.

24 VICE-CHAIR TRUJILLO-DAVIS: Well, I wasn't seeing
25 C on the other two pages, so. All right. So, in that

1 case, we can just do until C.

2 HEARING OFFICER ORTH: Correct. We're just
3 talking about Section (4).

4 MS. SOLORIA: Maybe it would be helpful --

5 BOARD MEMBER BITZER: It's (4), also known as
6 (5). Or (4) who identifies as (5).

7 CHAIRPERSON SUINA: Yes, Ms. Soloria.

8 MS. SOLORIA: Just if you-all want to start
9 examining the merits, and then I can assist with figuring
10 out the cross-references as you go, that might be helpful.

11 CHAIRPERSON SUINA: Yes.

12 MS. SOLORIA: I'm not saying I will succeed, but
13 that might be a way to go about it.

14 CHAIRPERSON SUINA: Yes. Okay. So, going
15 through CEP's merits, because I think right now we've got
16 one leg out, which was the IPANM. And now we're looking
17 at NMOGA/NMED, that's evolved to NMOGA's, and then CEP's.
18 And we got there about an hour ago.

19 BOARD MEMBER BITZER: So we're going to focus on
20 CEP, and then Counsel is going to chime in with
21 cross-references to both of the others.

22 MS. SOLORIA: To the extent I am able, I will
23 attempt that.

24 BOARD MEMBER BITZER: With two brains and five
25 eyes.

1 CHAIRPERSON SUINA: Okay.

2 VICE-CHAIR TRUJILLO-DAVIS: I think I'm ready to
3 make a suggestion.

4 CHAIRPERSON SUINA: Yes, Vice-Chair.

5 VICE-CHAIR TRUJILLO-DAVIS: Okay. So, looking at
6 CEP's proposed language, what pops out to me is that it
7 does go back to their having access to electric power,
8 which I think we've already kind of discussed at length.
9 And for consistency purposes, I would not adopt their B or
10 C in the way that they have it written, but would adopt
11 what NMOGA and NMED have agreed to.

12 And then their change at (i), you know, it's an
13 exemption and it's written as an exemption for safety
14 purposes, and I don't have any particular heartburn with
15 the way that CEP addressed the issue. And because it's an
16 exemption, I just don't know -- I could have dropped it or
17 let it go either way. It doesn't seem like it would make
18 a significant difference in the rule as a whole for this
19 particular section for that matter.

20 And then looking at (i) -- oh, I'm sorry, their
21 (5) and (6).

22 CHAIRPERSON SUINA: Their (5) and (6). Are you
23 talking little (i)? I mean (v)?

24 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

25 CHAIRPERSON SUINA: Okay.

1 VICE-CHAIR TRUJILLO-DAVIS: I apologize. I
2 should have said that directly. I'm uncomfortable
3 rejecting that language completely because it is included
4 in NMED's proposal. It doesn't appear that -- or at least
5 at this point I'm not seeing evidence in their submittal
6 that supports why we would remove that language in its
7 entirety.

8 HEARING OFFICER ORTH: Madam Vice-Chair, I
9 believe it relates to their proposals in the table.

10 VICE-CHAIR TRUJILLO-DAVIS: Okay. So --

11 BOARD MEMBER GARCIA: Since we rejected the
12 tables.

13 VICE-CHAIR TRUJILLO-DAVIS: Okay.

14 CHAIRPERSON SUINA: And just one more point of
15 clarification. So, the language in C before the (i),
16 you're not saying not to -- I mean, that should be in
17 there because that's in NMOGA's/NMED's?

18 VICE-CHAIR TRUJILLO-DAVIS: I'm saying that I'm
19 not sure that their -- that their change would make a
20 significant impact either way.

21 CHAIRPERSON SUINA: Okay.

22 VICE-CHAIR TRUJILLO-DAVIS: I don't have much
23 opinion on that.

24 CHAIRPERSON SUINA: Then, would be the change
25 with the inclusion of that sentence, without access to

1 commercial line electric power?

2 VICE-CHAIR TRUJILLO-DAVIS: No, it would be in
3 (i).

4 CHAIRPERSON SUINA: So I was going back up, I
5 just wanted to clarify.

6 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry.

7 CHAIRPERSON SUINA: So, in paragraph (4/5) (c),
8 right? So, we have (a), (b), (c).

9 VICE-CHAIR TRUJILLO-DAVIS: Oh, this one.

10 CHAIRPERSON SUINA: Yes.

11 VICE-CHAIR TRUJILLO-DAVIS: I was saying that in
12 (b) and (c), in order to remain consistent with the table
13 that we said we addressed previously, that we wouldn't
14 adopt -- I wouldn't suggest that we adopt that language
15 because it would contradict what we did previously.

16 CHAIRPERSON SUINA: In just (b)?

17 VICE-CHAIR TRUJILLO-DAVIS: And just have (b) as
18 it was written by NMED and NMOGA.

19 CHAIRPERSON SUINA: Okay. So, then, it would be
20 then renumbered on the NMOGA (b), then little (i), (ii)?

21 HEARING OFFICER ORTH: It would not be a new
22 letter.

23 CHAIRPERSON SUINA: Right. Oh, yes. So, we
24 would keep the language that actually NMOGA suggested,
25 where they added owners and operators of existing

1 pneumatic controllers shall meet the required percentage?

2 HEARING OFFICER ORTH: Correct.

3 CHAIRPERSON SUINA: Okay.

4 BOARD MEMBER GARCIA: The only -- the only other
5 difference that I see in the CEP proposal is they're
6 increasing the universe because, rather, than just keeping
7 it at -- I'm talking about the (d), where they -- where
8 they reference subparagraph (d) of (5), they're increasing
9 the universe because where, before, it said a bleed rate
10 of 6 cubic feet, they're saying a bleed rate greater than
11 zero, so that does increase it.

12 VICE-CHAIR TRUJILLO-DAVIS: It does, but it's an
13 exemption, too. So it shouldn't be -- affect a lot of --
14 well, that's not fair to say. I guess I would look at
15 exemptions as outliers.

16 BOARD MEMBER GARCIA: Uh-huh. Do we want to just
17 stick with NMED's proposal?

18 HEARING OFFICER ORTH: Well --

19 BOARD MEMBER GARCIA: Or I should say, NMED/NMOGA
20 proposal?

21 CHAIRPERSON SUINA: And with that said, is there
22 anything in CEP's that -- maybe that's another way to look
23 at it, that we might need to keep or address is just so
24 that we're clear about why we're leaning toward the
25 NMOGA/NMED proposed language.

1 Just one last check, before we open a can of
2 worms.

3 VICE-CHAIR TRUJILLO-DAVIS: No, I think that's a
4 fair question. And I -- I would say that the only section
5 that doesn't seem to be in conflict with our previous
6 decision on the electric power is that (i) change and the
7 (d) reference.

8 CHAIRPERSON SUINA: We've got references, right?

9 MS. SOLORIA: Can you repeat what you were
10 saying?

11 VICE-CHAIR TRUJILLO-DAVIS: I'd say that the only
12 place in (4/5) that doesn't seem to be in conflict with
13 our previous decision is as they -- as CEP has identified
14 it as (c) little (i).

15 MS. SOLORIA: Correct. That is my understanding.
16 Yes.

17 VICE-CHAIR TRUJILLO-DAVIS: Okay. And then that
18 reference --

19 MS. SOLORIA: Is to the next section, D.

20 VICE-CHAIR TRUJILLO-DAVIS: -- is to D?

21 CHAIRPERSON SUINA: Is there any discussion on
22 the last summary Vice-Chair provided?

23 MS. SOLORIA: So, for comparison sake, on page
24 75, that is NMOGA's (4) (b) (i).

25 BOARD MEMBER GARCIA: Okay.

1 BOARD MEMBER BITZER: Yep, (4) (b).

2 BOARD MEMBER GARCIA: Do you want to try a
3 motion?

4 VICE-CHAIR TRUJILLO-DAVIS: I'll give it a go
5 here. Okay. So I make a motion to adopt NMED and NMOGA's
6 Section (4) A and B, and reject CEP's proposed language
7 for (4) A and B, because it's inconsistent with the
8 previous Section (3) and would create a conflict, and also
9 adopt NMOGA and NMED's Section -- no, I do this better --
10 adopt the remaining section of (4), which is (i), (ii) --

11 HEARING-OFFICER ORTH: I would just say
12 "subpart."

13 VICE-CHAIR TRUJILLO-DAVIS: Subpart (i)
14 through -- through (c) and reject CEP's --

15 HEARING OFFICER ORTH: There's also (d).

16 BOARD MEMBER GARCIA: I thought (d) --

17 HEARING OFFICER ORTH: No, we're at 276, it's at
18 the bottom.

19 VICE-CHAIR TRUJILLO-DAVIS: Okay. I apologize.

20 MS. SOLORIA: I think -- I think just the length
21 of the motion, and also I got lost, which is fine, but if
22 you could just say what you want to accept, and then we
23 can go from there.

24 BOARD MEMBER GARCIA: And then reject after.

25 VICE-CHAIR TRUJILLO-DAVIS: Okay. Well --

1 CHAIRPERSON SUINA: One point of clarification,
2 Ms. Soloria. Would it be accepting NMOGA's proposed
3 language with NMED's support, instead of NMED's proposed
4 language?

5 MS. SOLORIA: So you would accept NMED's proposed
6 language based on the -- and proposed -- NMED's language,
7 as amended by NMOGA, for the reasons offered by those two
8 parties. And we can do that --

9 CHAIRPERSON SUINA: Okay.

10 MS. SOLORIA: -- as a motion if we want. It may
11 just be easier to have that as an initial motion. And
12 then with regard to CEP, I'm not sure it has to be a
13 split, but as long as -- I wasn't sure where you were
14 going because I think we can group them as separate things
15 is what I'm saying.

16 VICE-CHAIR TRUJILLO-DAVIS: Okay. I was trying
17 to figure out what we were saying.

18 CHAIRPERSON SUINA: Can she just take it in
19 sections?

20 MS. SOLORIA: Yeah, that's the point that I was
21 getting at, wholesale rejecting, I think CEP's proposals
22 on page 279, through (4), before section C on 280, then we
23 can just reject that.

24 VICE-CHAIR TRUJILLO-DAVIS: Okay. I plan to make
25 it in the motion of reasons.

1 MS. SOLORIA: And I don't think we have to go
2 back to say that it was inconsistent on your part, with a
3 previous section. You would just say you're rejecting
4 CEP's suggestions, as they don't relate to the evidence or
5 whatever rationale the Board wants to point out.

6 VICE-CHAIR TRUJILLO-DAVIS: Okay. Let me try
7 this again. Then I'm going to need someone to go over it.
8 So I make a motion for the Board to accept Section (4) as
9 suggested by NMOGA and accepted by NMED.

10 CHAIRPERSON SUINA: I suggest that it's proposed
11 by NMED, amended by NMOGA.

12 MS. SOLORIA: Correct.

13 VICE-CHAIR TRUJILLO-DAVIS: Wait. Say that
14 again.

15 CHAIRPERSON SUINA: Proposed by NMED and amended
16 by NMOGA.

17 VICE-CHAIR TRUJILLO-DAVIS: Okay. Great. So I
18 make a motion for the Board to accept Section (4) as
19 proposed by NMED.

20 MS. SOLORIA: Can I assist you?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes, please assist
22 me.

23 MS. SOLORIA: So I would suggest a motion as to
24 Section -- Subsection B, section -- now let me start.

25 I suggest a motion with regard to Subsection B

1 (4) and (5), to accept NMED -- NMED's language as amended
2 by NMOGA.

3 BOARD MEMBER GARCIA: You probably have to speak
4 up.

5 MS. SOLORIA: As amended by NMOGA, for the
6 reasons offered by NMED and NMOGA. Just adopt that.

7 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I'd like to
8 adopt your language.

9 MS. SOLORIA: Adopt that as your motion?

10 VICE-CHAIR TRUJILLO-DAVIS: Adopt that as our
11 motion.

12 BOARD MEMBER BITZER: I'll second that.

13 CHAIRPERSON SUINA: Thank you, Vice-Chair
14 Trujillo-Davis for your motion and a second by Member
15 Bitzer. If there's no further discussion -- yes, Member
16 Honker?

17 BOARD MEMBER HONKER: So we're considering 122 B
18 (4) and (5) with this -- with this motion?

19 HEARING OFFICER ORTH: You -- I wasn't going to
20 bring it up because we were already complicated, but (5)
21 does not have changes by either NMOGA or CEP.

22 BOARD MEMBER BITZER: So, yes.

23 BOARD MEMBER HONKER: Great. Oh, okay. Thank
24 you.

25 CHAIRPERSON SUINA: Thank you for the point of

1 clarification, Member Honker.

2 So we have a motion by Vice-Chair Trujillo-Davis
3 and a second by Member Bitzer. And if there's no further
4 discussion, Ms. Corral, would you mind doing a roll-call
5 vote?

6 ADMINISTRATOR CORRAL: Member Bitzer, how do you
7 vote?

8 BOARD MEMBER BITZER: I vote yes.

9 ADMINISTRATOR CORRAL: Member Duval?

10 HEARING OFFICER ORTH: He's gone.

11 ADMINISTRATOR CORRAL: He's gone for the day.
12 Member Garcia?

13 BOARD MEMBER GARCIA: Yes.

14 ADMINISTRATOR CORRAL: Member Honker?

15 BOARD MEMBER HONKER: Yes.

16 ADMINISTRATOR CORRAL: Chair Suina?

17 CHAIRPERSON SUINA: Yes.

18 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Yes.

20 ADMINISTRATOR CORRAL: The motion passes.

21 CHAIRPERSON SUINA: Thank you. Good job, Board.

22 All right.

23 MS. SOLORIA: And it sounded like you wanted to
24 make, with your previous motion, to address CEP proposal,
25 and that can be with regard to subsection D (4) and (5),

1 respectfully reject CEP's language because it's against
2 the weight of the evidence.

3 CHAIRPERSON SUINA: Yes. So, what we're
4 discussing is the additional motion -- or a motion, I
5 should say, to address CEP's proposals on this section,
6 just so that we have it clarified in the record.

7 I look to the Board. Would anybody like to
8 propose a motion?

9 BOARD MEMBER GARCIA: Yeah, I'm confused.

10 CHAIRPERSON SUINA: We haven't addressed CEP's
11 proposals on these sections.

12 BOARD MEMBER GARCIA: Oh, okay. We just
13 adopted --

14 CHAIRPERSON SUINA: This is a proffer.

15 BOARD MEMBER BITZER: We're being very thorough.

16 VICE-CHAIR TRUJILLO-DAVIS: All right. I'm with
17 you now. Okay. I'll do this motion since I --

18 BOARD MEMBER BITZER: Appreciate you doing that.

19 CHAIRPERSON SUINA: Thank you, Vice-Chair.

20 VICE-CHAIR TRUJILLO-DAVIS: Okay. So I make a
21 motion to reject CEP's proposed language as it is -- gosh.

22 MS. SOLORIA: Against the weight of the evidence.

23 VICE-CHAIR TRUJILLO-DAVIS: Against the weight of
24 the evidence. Okay. I was going to say inconsistent, but
25 against the weight of the evidence. So that's the motion.

1 BOARD MEMBER BITZER: I'll second that.

2 CHAIRPERSON SUINA: Thank you, Member
3 Trujillo-Davis and Member Bitzer, for your second.

4 And I just want to double-check one more time
5 with Ms. Soloria. Is that -- is that okay?

6 MS. SOLORIA: That's fine.

7 CHAIRPERSON SUINA: Okay. If there's no other
8 discussion, I look to Ms. Corral. If you could do another
9 roll-call vote on Member Vice-Chair Trujillo-Davis's
10 motion.

11 ADMINISTRATOR CORRAL: Member Bitzer, how do you
12 vote?

13 BOARD MEMBER BITZER: I vote yes.

14 ADMINISTRATOR CORRAL: Member Garcia?

15 BOARD MEMBER GARCIA: Yes.

16 ADMINISTRATOR CORRAL: Member Honker?

17 BOARD MEMBER HONKER: Yes.

18 ADMINISTRATOR CORRAL: Chair Suina?

19 CHAIRPERSON SUINA: Yes.

20 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes.

22 ADMINISTRATOR CORRAL: The motion passes.

23 CHAIRPERSON SUINA: Thank you. Doing good.

24 MS. SOLORIA: I think we've been going for more
25 than two hours, I think we have to give her a break every

1 two hours.

2 CHAIRPERSON SUINA: Madam Court Reporter, would
3 you like a break?

4 COURT REPORTER: I won't turn that down.

5 BOARD MEMBER BITZER: Yes.

6 BOARD MEMBER GARCIA: Just where we're going next
7 is to cover C; is that correct?

8 MS. SOLORIA: It's C.

9 CHAIRPERSON SUINA: Great. Thank you.

10 HEARING OFFICER ORTH: We'll, unfortunately, have
11 to orient you.

12 CHAIRPERSON SUINA: Okay. So it's a good time
13 for a break.

14 BOARD MEMBER BITZER: How much time?

15 CHAIRPERSON SUINA: Ten minutes. So we will be
16 back here at 3:44.

17 (Recess taken from 3:34 p.m. to 3:47 p.m.)

18 HEARING OFFICER ORTH: As to C, again, with the
19 pages. NMED's proposal is on 282; CEP's proposed change
20 to NMED language is on page 280; and, effectively, what
21 they're doing there is related to the Table 2, and
22 changing paragraph (3) to paragraph (4). Okay? That's
23 what they are proposing in C (2).

24 BOARD MEMBER GARCIA: Right.

25 HEARING OFFICER ORTH: Okay. So, then, there are

1 a couple of more things. C (6) --

2 BOARD MEMBER GARCIA: Okay. C (6).

3 HEARING OFFICER ORTH: C (6), which is on page
4 282, so you have to keep referring back to 282.

5 CHAIRPERSON SUINA: Okay.

6 HEARING OFFICER ORTH: So that drew a proposal
7 from Oxy, which is on page 283. And then -- and again,
8 I'm really sorry about all of this -- NMOGA's changes to C
9 (2), C (4), C (5) and C (6) are all on 284 and 285.

10 BOARD MEMBER GARCIA: And those are agreed upon
11 by NMED?

12 HEARING OFFICER ORTH: Correct.

13 CHAIRPERSON SUINA: Okay. Okay. So NMOGA's,
14 even in this section, are agreed upon by NMED, but NMED
15 did not have time to incorporate those changes.

16 HEARING OFFICER ORTH: That's correct.

17 CHAIRPERSON SUINA: Okay.

18 HEARING OFFICER ORTH: So the two full disputed
19 changes here, one is CEP, but I think it's a fairly simple
20 thing to dispose of it, because it relates to their table
21 proposal that's on 280 in C (2).

22 And the Oxy proposal for C (6) is on 283.

23 BOARD MEMBER GARCIA: I guess one thing that is
24 confusing is, on 280 there's C (2) and then suddenly, it's
25 D (4).

1 HEARING OFFICER ORTH: Okay. Ignore D for right
2 now.

3 BOARD MEMBER GARCIA: Oh, okay. All right. Got
4 it.

5 VICE-CHAIR TRUJILLO-DAVIS: Okay. So where -- so
6 what page is C on for NMOGA and NMED?

7 HEARING OFFICER ORTH: Okay. NMED is 282.
8 NMOGA's changes to paragraphs (2), (4), (5) and (6) are on
9 page 284 and 285.

10 CHAIRPERSON SUINA: Okay. Thank you.

11 BOARD MEMBER HONKER: Another question.

12 CHAIRPERSON SUINA: Yes.

13 BOARD MEMBER HONKER: So I'm looking at the
14 bottom of 282, which was NMED's version.

15 HEARING OFFICER ORTH: Yes, Member Honker.

16 BOARD MEMBER HONKER: And it goes through
17 Subsection (7) and then at the top of 283 there's a
18 subsection (6). Is that a typo or -- I seem to be missing
19 something there.

20 HEARING OFFICER ORTH: Oh, thank you for that.
21 Member Honker, I suspect that that (6) should be an (8).

22 BOARD MEMBER HONKER: I suspected that might be
23 the case.

24 CHAIRPERSON SUINA: And that is under NMED's
25 proposed language.

1 HEARING OFFICER ORTH: Yes. And in fact, it
2 would be consistent with the way NMED typically set out
3 its sections, which is the final paragraph of each section
4 refers to monitoring requirements, for example, in 112.

5 CHAIRPERSON SUINA: Okay.

6 VICE-CHAIR TRUJILLO-DAVIS: Okay. I understand.

7 CHAIRPERSON SUINA: Okay.

8 HEARING OFFICER ORTH: Great catch, Member
9 Honker.

10 MS. SOLORIA: I do not see it. I'm sorry.

11 HEARING OFFICER ORTH: So this is what he's
12 talking about.

13 MS. SOLORIA: Okay. Thank you.

14 BOARD MEMBER BITZER: It's supposed to be an
15 (8).

16 CHAIRPERSON SUINA: And then I see on NMOGA's
17 284 -- page 284, it looks like it's only (4) (5) and (6).

18 HEARING OFFICER ORTH: (2), (4) (5) and (6).

19 CHAIRPERSON SUINA: Oh, sorry. (2), (4) (5) and
20 (6). And then everything else would be based on NMOGA's?

21 HEARING OFFICER ORTH: Correct.

22 VICE-CHAIR TRUJILLO-DAVIS: So CEP has section C
23 on page 280 and has no -- or it has bullet (2)?

24 HEARING OFFICER ORTH: Correct.

25 VICE-CHAIR TRUJILLO-DAVIS: So, then, we assume

1 that the other bullets were accepted?

2 HEARING OFFICER ORTH: That's the only one they
3 had a proposal for.

4 CHAIRPERSON SUINA: Okay. And that's on --

5 HEARING OFFICER ORTH: 280.

6 BOARD MEMBER GARCIA: Because it refers to the
7 tables, it's not something we could entertain.

8 BOARD MEMBER BITZER: Do we want to clean that up
9 as a separate motion?

10 CHAIRPERSON SUINA: We've got multiple ways. So
11 we might have to do the same thing that we did on the last
12 section.

13 BOARD MEMBER BITZER: Sounds like there's
14 consensus that we're going to reject CEP's proposals on
15 page 280 under D.

16 HEARING OFFICER ORTH: C (2).

17 BOARD MEMBER BITZER: Oh, I'm sorry. Under C,
18 which was the numeralizing, so are we going to do that as
19 a solo -- as a solo deal, then?

20 CHAIRPERSON SUINA: We can if that's the pleasure
21 of the Board. What do you guys think?

22 BOARD MEMBER BITZER: Just to keep the next
23 motion simpler, unless I'll get it.

24 CHAIRPERSON SUINA: Okay.

25 BOARD MEMBER BITZER: So I'll move rejection of

1 CEP's proposed changes to Paragraph C, on the basis of
2 previous decisions relevant to the tables.

3 CHAIRPERSON SUINA: Does that suffice,
4 Ms. Soloria?

5 MS. SOLORIA: I think that's fine, consistent.

6 BOARD MEMBER HONKER: I'll second it.

7 CHAIRPERSON SUINA: All right. Is that all
8 right?

9 MS. SOLORIA: Yes.

10 CHAIRPERSON SUINA: Okay. Is there any
11 discussion on that?

12 BOARD MEMBER GARCIA: We don't have to identify C
13 (2), it's just okay to say C?

14 MS. SOLORIA: Yes, because that's the only part
15 of this one.

16 BOARD MEMBER GARCIA: Okay. Great.

17 CHAIRPERSON SUINA: With that, Ms. Corral, would
18 you mind doing a roll-call vote?

19 ADMINISTRATOR CORRAL: Member Bitzer, how do you
20 vote?

21 BOARD MEMBER BITZER: I vote yes.

22 ADMINISTRATOR CORRAL: Member Garcia?

23 BOARD MEMBER GARCIA: Yes.

24 ADMINISTRATOR CORRAL: Member Honker?

25 BOARD MEMBER HONKER: Yes.

1 ADMINISTRATOR CORRAL: Chair Suina?

2 CHAIRPERSON SUINA: Yes.

3 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 ADMINISTRATOR CORRAL: The motion passes.

6 CHAIRPERSON SUINA: Thank you.

7 BOARD MEMBER BITZER: Now we can focus on D.

8 HEARING OFFICER ORTH: No, Member Bitzer, if you
9 will move to page 283, Oxy proposes a new sentence at the
10 end of C (6). That's the only freestanding contested
11 issue for C.

12 VICE-CHAIR TRUJILLO-DAVIS: I apologize. I know
13 you said this previously, but NMOGA submitted language and
14 NMED accepted it?

15 HEARING OFFICER ORTH: Correct.

16 CHAIRPERSON SUINA: And could I just have a quick
17 clarification on that? So because we see testimony
18 referenced in the report and in the closing arguments,
19 even though there wasn't time for NMED to accept it, it
20 was discussed during the hearing?

21 HEARING OFFICER ORTH: It was and there's
22 evidentiary support for the amendments because they are
23 based on the testimony of the Department's own staff,
24 largely.

25 CHAIRPERSON SUINA: Thank you. I just wanted

1 that point of clarification because we did, you know, have
2 some decisions based upon timing of proposals. So I just
3 wanted to clarify.

4 HEARING OFFICER ORTH: Okay. So if you do what
5 I'm doing, hold page 282 in front of you, and 283 right
6 behind it, and just move the top page up about 4 inches,
7 you can see NMED's C (6) and you can see Oxy's proposed
8 addition at the end of C (6). You actually have to flip
9 the page to get their support and NMED's opposition.

10 BOARD MEMBER GARCIA: Oh, okay. So it's not in
11 the record?

12 HEARING OFFICER ORTH: That's NMED's opposition.

13 BOARD MEMBER GARCIA: Okay.

14 BOARD MEMBER HONKER: So, I believe in the past
15 when the record didn't support some language that was
16 proposed in the final, we did not support that language.
17 Am I remembering correctly?

18 HEARING OFFICER ORTH: Yes, Member Honker. I
19 would note, though, just in fairness, that at the top of
20 page 284, Oxy is telling you the support they believe is
21 in the record for this change, even though it was proposed
22 late in the process, they believe it has support.

23 NMED doesn't agree, but they believe it has
24 support, which is at the top of 284.

25 BOARD MEMBER HONKER: Okay. Got it. Thanks.

1 CHAIRPERSON SUINA: And, yeah, you see the
2 reference to the hearing transcript on page 284.

3 BOARD MEMBER BITZER: The first paragraph.

4 BOARD MEMBER GARCIA: So are we looking at that
5 language right now?

6 CHAIRPERSON SUINA: Yes.

7 BOARD MEMBER GARCIA: Okay.

8 CHAIRPERSON SUINA: Yes, Member Garcia.

9 BOARD MEMBER GARCIA: Yeah, I have a problem with
10 that proposed language, aside from whether or not it was
11 in the record, it's telling them how they're -- how to
12 enforce or not. And that's just not -- you just don't do
13 that in a rule. It's -- it's -- the Department will use
14 their enforcement discretion in enforcing that provision.
15 And this language is just not practicable for the
16 Department at all. It's -- it's not done in regulation,
17 typically.

18 CHAIRPERSON SUINA: Thank you for that, Member
19 Garcia.

20 Yeah, Member Honker?

21 BOARD MEMBER HONKER: I would concur with that.
22 Regulations set out the requirements, not the enforcement
23 policy.

24 CHAIRPERSON SUINA: Thank you, Member Honker.

25 BOARD MEMBER BITZER: I would also concur with

1 Member Garcia's point.

2 CHAIRPERSON SUINA: Thank you, Member Bitzer.

3 VICE-CHAIR TRUJILLO-DAVIS: I would as well.

4 CHAIRPERSON SUINA: Thank you, Vice-Chair.

5 It looks like we have consensus on this point.

6 If there's no further discussion, I don't know if our

7 Board would like to propose a motion for this.

8 BOARD MEMBER GARCIA: So in this -- let's see.

9 There is no other changes to C; is that right?

10 HEARING OFFICER ORTH: Other than NMOGA's.

11 BOARD MEMBER GARCIA: Right, okay.

12 CHAIRPERSON SUINA: So I don't know if we want to

13 do the leg on this one, and then just look at in depth of

14 NMOGA's? It sounds like we have consensus, but just maybe

15 for -- for clarity, we need to just move through that and

16 make sure that we don't see any -- and discuss and just

17 double-check.

18 Is there any discussion or questions on NMOGA's

19 or changes through NMED's? It seems pretty -- I'm just

20 wanting to take one more look, and it seems pretty clear.

21 I recall discussion about the data system versus database

22 on C (4), and I don't see that many changes. It sounds

23 like NMED does agree.

24 Yes, Member Garcia.

25 BOARD MEMBER GARCIA: You know, the mistake of

1 having (6) after (7) is also in the January 20th version.

2 HEARING OFFICER ORTH: Is it?

3 BOARD MEMBER GARCIA: Yes, it is. They go from
4 (6), (7) to (6), so it's a mistake in this draft.

5 HEARING OFFICER ORTH: I didn't catch it or I
6 would have said something.

7 BOARD MEMBER GARCIA: Yeah. Just noticed that.

8 CHAIRPERSON SUINA: Oh, thank you. Thank you for
9 that. Just in most cases, for a point of clarity, that
10 would just be a formatting issue error?

11 HEARING OFFICER ORTH: Yes.

12 BOARD MEMBER GARCIA: Are we ready for a motion?

13 BOARD MEMBER BITZER: Yep.

14 CHAIRPERSON SUINA: Member Honker, do you have
15 any comments or anything on C?

16 BOARD MEMBER HONKER: No. I'm good with -- with
17 NMED's version as amended by NMOGA.

18 HEARING OFFICER ORTH: That sounds like a motion.

19 CHAIRPERSON SUINA: Yeah.

20 MS. SOLORIA: I have a practice run, Madam Chair,
21 if you desire it.

22 BOARD MEMBER GARCIA: Sure.

23 MS. SOLORIA: So the motion would be to -- as to
24 Subsection C, to adopt -- to adopt language -- as to
25 Subsection C, to adopt language as proposed by NMED and

1 amended by NMOGA, for the reasons offered by NMED and
2 NMOGA, and rejecting Oxy's proposed language as
3 unnecessary, which I extrapolated from your discussion,
4 but that part can be amended.

5 HEARING OFFICER ORTH: She said "impracticable."

6 MS. SOLORIA: "Impracticable," even better.

7 BOARD MEMBER BITZER: I'll adopt that as a
8 motion.

9 CHAIRPERSON SUINA: Okay. Member Bitzer moves.

10 BOARD MEMBER HONKER: I'll second.

11 CHAIRPERSON SUINA: Member Honker seconds.

12 BOARD MEMBER HONKER: A question.

13 CHAIRPERSON SUINA: Yes.

14 BOARD MEMBER HONKER: Should we correct the (6)
15 to an (8) through a motion, or is that just an
16 administrative thing that they can correct in the final
17 version?

18 MS. SOLORIA: Yes, Member Honker, since that is
19 just a numerical change, that will be corrected upon the
20 final version.

21 BOARD MEMBER HONKER: Okay. Thanks.

22 CHAIRPERSON SUINA: And just for point of
23 clarity, I think we had talked about in the beginning of
24 this, or somewhere, that we would make a motion on those
25 formatting issues just to have that recorded as a whole.

1 Any formatting issues we'll consider a motion probably
2 toward the end of our deliberations.

3 So, with that, Member Honker and Board, are we
4 good for a roll-call vote? Ms. Corral?

5 ADMINISTRATOR CORRAL: Yes. Member Bitzer, how
6 do you vote?

7 BOARD MEMBER BITZER: I vote yes.

8 ADMINISTRATOR CORRAL: Member Garcia?

9 BOARD MEMBER GARCIA: Yes.

10 ADMINISTRATOR CORRAL: Member Honker?

11 BOARD MEMBER HONKER: Yes.

12 ADMINISTRATOR CORRAL: Chair Suina?

13 CHAIRPERSON SUINA: Yes.

14 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

15 VICE-CHAIR TRUJILLO-DAVIS: Yes.

16 ADMINISTRATOR CORRAL: The motion passes.

17 CHAIRPERSON SUINA: Thank you, Ms. Corral.

18 Appreciate it.

19 HEARING OFFICER ORTH: So, Madam Chair, we have a
20 very similar situation in Section D-as-in-dog. The CEP
21 proposed amendments are on page 280. And NMOGA proposed
22 amendments to D (2), (4) and (6), again, agreed upon. So
23 the only contested amendment you have to consider in
24 section D are by CEP on page 280.

25 The Department's proposal starts at the very

1 bottom of page 285, and NMOGA's changes follow that.

2 BOARD MEMBER GARCIA: Okay. So (4) right off the
3 bat references the tables once again.

4 CHAIRPERSON SUINA: Yes. And it looks like
5 that's the only change there for (4).

6 BOARD MEMBER GARCIA: Yes.

7 BOARD MEMBER BITZER: Right.

8 CHAIRPERSON SUINA: And then we have the zero
9 from 6, to what we looked at in -- in (4/5) D.

10 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. What page
11 is the Department's D (4) on?

12 HEARING OFFICER ORTH: It's 286.

13 VICE-CHAIR TRUJILLO-DAVIS: Thank you.

14 BOARD MEMBER GARCIA: It starts on 285.

15 HEARING OFFICER ORTH: Yes.

16 CHAIRPERSON SUINA: Yes, Member Garcia.

17 BOARD MEMBER GARCIA: So when CEP references
18 Table 1, crosses out Table 2, they're talking about NMED's
19 table or their table?

20 CHAIRPERSON SUINA: In their table.

21 BOARD MEMBER GARCIA: Their table?

22 CHAIRPERSON SUINA: Yeah, it goes back to their
23 proposal.

24 BOARD MEMBER GARCIA: Okay.

25 CHAIRPERSON SUINA: For (3) under Section (3).

1 Yes, Member Honker.

2 BOARD MEMBER HONKER: Well, it seems like all of
3 this language, if we considered it, or if we -- if we
4 approved any of these sections as reworded, it would
5 conflict with decisions we had already made on prior
6 sections. That's -- that's the way I'm reading it. I
7 just want to see if somebody sees another angle on this.

8 CHAIRPERSON SUINA: So Board members, if you have
9 any -- yes, Vice-Chair.

10 VICE-CHAIR TRUJILLO-DAVIS: I agree with Member
11 Honker. The changes I'm seeing in (6) would -- D (6)
12 would conflict with previous change -- decisions we made
13 in section (4) (b).

14 CHAIRPERSON SUINA: Yes, Member Garcia.

15 BOARD MEMBER GARCIA: Yeah, I think it's the
16 bleed rate change that would conflict, and the same with
17 item 9, it's the same problem. So, for those, (6) and
18 (9), that would be a conflict. And then (4), the table,
19 we have already decided on, so...

20 CHAIRPERSON SUINA: Yes.

21 BOARD MEMBER HONKER: And the same thing for (2),
22 the table issue.

23 CHAIRPERSON SUINA: We did (2) already. We did
24 Table 2. Sorry. Is that what you meant, Member Honker?

25 BOARD MEMBER HONKER: I meant Section C (2),

1 reference -- scratching Table 2.

2 CHAIRPERSON SUINA: Right. And we --

3 HEARING OFFICER ORTH: Yes.

4 CHAIRPERSON SUINA: Yes. And Member Honker, I
5 think that's why we -- we made the motion under Section C
6 to address CEP's changes, on that basis.

7 BOARD MEMBER HONKER: My mistake. I was looking
8 back at C, which we have already dealt with.

9 BOARD MEMBER GARCIA: All right.

10 BOARD MEMBER HONKER: Please excuse my comment.

11 CHAIRPERSON SUINA: No problem. I thought you
12 wanted to open that can of worms again.

13 So with that, members, ready for a motion?

14 BOARD MEMBER GARCIA: Uh-huh.

15 BOARD MEMBER BITZER: So we're moving all of D as
16 submitted by the Department, with the changes from NMOGA.
17 All right.

18 MS. SOLORIA: And rejecting --

19 BOARD MEMBER BITZER: Do you want me to do both
20 in the same motion?

21 MS. SOLORIA: You can.

22 CHAIRPERSON SUINA: Yes.

23 BOARD MEMBER BITZER: So I'll move adoption of
24 section D, as proposed by the Department, with amendments
25 by NMOGA; and rejection of CEP's proposed changes, for

1 reasons of conflict and -- is that it?

2 CHAIRPERSON SUINA: Ms. Soloria, do you have
3 anything to add?

4 MS. SOLORIA: I do. I'm trying to clean it up.

5 HEARING OFFICER ORTH: It I might, Member Bitzer?
6 Section E, which is immediately following D, is
7 uncontested.

8 CHAIRPERSON SUINA: Thank you for pointing that
9 out.

10 BOARD MEMBER BITZER: Well, let me start all over
11 while she's looking it up.

12 CHAIRPERSON SUINA: Great.

13 BOARD MEMBER BITZER: I'll move adoption of
14 section D, as proposed by the Department, with amendments
15 by NMOGA and --

16 MS. SOLORIA: Member Bitzer, I think you want to
17 include E.

18 BOARD MEMBER GARCIA: D and E.

19 BOARD MEMBER BITZER: Well, let me try that
20 again.

21 CHAIRPERSON SUINA: Yeah.

22 BOARD MEMBER BITZER: I move the adoption of
23 Sections D and E, as proposed by the Department, with
24 amendments by NMOGA, and rejection of amendments proposed
25 by CEP, for reasons of conflict and NOS.

1 CHAIRPERSON SUINA: Ms. Soloria, do you have some
2 suggestions?

3 MS. SOLORIA: Yes.

4 BOARD MEMBER BITZER: And "NOS" being "not
5 otherwise specified."

6 CHAIRPERSON SUINA: Thank you for that
7 clarification.

8 BOARD MEMBER BITZER: It's a psychiatric test
9 psychiatric.

10 MS. SOLORIA: I'm trying to fix the language, how
11 to address this.

12 BOARD MEMBER GARCIA: Because we have to say why
13 we support NMED and NMOGA, too.

14 BOARD MEMBER BITZER: I said for the reasons --
15 for the reason is because it conflicts with that.

16 MS. SOLORIA: Well, we could -- I could -- would
17 could do -- adopt the language as proposed by NMED, and
18 amended by NMOGA, for reasons offered by NMED and NMOGA,
19 and reject amendments by CEP, as against the weight of the
20 evidence, and consistent with prior decisions as to -- and
21 consistent with 122.

22 BOARD MEMBER BITZER: I adopt that as my -- as my
23 motion.

24 CHAIRPERSON SUINA: Thank you, Member Bitzer.

25 Madam Court Reporter, did you get that?

1 COURT REPORTER: (Thumbs up.)

2 CHAIRPERSON SUINA: Thank you.

3 BOARD MEMBER HONKER: I'll second.

4 CHAIRPERSON SUINA: Thank you, Member Honker, for
5 your second. And if there's no further discussion,
6 Ms. Corral, would you mind please doing a roll-call vote?

7 ADMINISTRATOR CORRAL: Member Bitzer, how do you
8 vote?

9 BOARD MEMBER BITZER: I vote yes.

10 ADMINISTRATOR CORRAL: Member Garcia?

11 BOARD MEMBER GARCIA: Yes.

12 ADMINISTRATOR CORRAL: Member Honker?

13 BOARD MEMBER HONKER: Yes.

14 ADMINISTRATOR CORRAL: Chair Suina?

15 CHAIRPERSON SUINA: Yes.

16 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 ADMINISTRATOR CORRAL: The motion passes.

19 CHAIRPERSON SUINA: Thank you, Ms. Corral, for
20 that. And thank you, Member Bitzer, for reading into that
21 motion.

22 BOARD MEMBER BITZER: Sorry.

23 BOARD MEMBER GARCIA: No, you did good.

24 BOARD MEMBER BITZER: I'm sorry to say I took so
25 many swings at the ball.

1 BOARD MEMBER GARCIA: So we finished 122?

2 CHAIRPERSON SUINA: Okay.

3 Thank you, everyone, for your patience as we
4 discussed at length 122. Yep, we are at --

5 HEARING OFFICER ORTH: Number 123, Storage
6 Vessels. And before I forget, we are going to have to go
7 back to Section 7 at the front of the rule, to pick up a
8 number of definitions that you-all tabled until we got to
9 this section.

10 CHAIRPERSON SUINA: Right.

11 HEARING OFFICER ORTH: And I can flag them now
12 for you.

13 BOARD MEMBER GARCIA: And LLL.

14 HEARING OFFICER ORTH: Let's see here. "Vessel
15 measurement system," which is on page 49. "Hydraulic
16 fractures" and "hydraulic refracturing" is -- let's see.
17 That's 123 and 127. On page 16, "Drilling" or "drilled,"
18 "Drill-out, Flowback, Flowback Vessel." That might be all
19 of them. And what I'll do while you're talking is I'll
20 make notes to repeat that again.

21 But looking at the rule, "Storage vessels" would
22 have the NMED proposal. And then in A, there are changes
23 proposed by CDG. CDG's proposal, this is all on page 304.
24 You will see all proposed changes on 304: one from CDG,
25 which they offer as a clarification; one from CEP and one

1 from NMOGA.

2 BOARD MEMBER BITZER: At least they're all on the
3 same page.

4 HEARING OFFICER ORTH: They are. Now, the
5 explanations -- the explanation from NMOGA goes on for
6 about four pages. And NMED's opposition, for example, to
7 the proposal is at the bottom of page 302. This is the 6
8 versus 10 of your threshold discussion.

9 So I think A is going to be plenty to bite off
10 for right now.

11 CHAIRPERSON SUINA: For right now. Okay.

12 VICE-CHAIR TRUJILLO-DAVIS: Okay. So CDG and
13 CEP, their justification is on what page?

14 CHAIRPERSON SUINA: Wait, what page?

15 HEARING OFFICER ORTH: So if I don't have
16 something there, a lot of times the proposals for
17 clarification didn't come with justification, because
18 they're just offering it as a clarifying change.

19 BOARD MEMBER BITZER: It's supposed to be
20 self-evident on its face.

21 HEARING OFFICER ORTH: There you go.

22 CHAIRPERSON SUINA: And these were -- so would we
23 also have an issue or not an -- an instance where the
24 parties proposed language in just their final submittals?

25 HEARING OFFICER ORTH: Typically, when no

1 testimony or exhibits are reflected in the justification
2 immediately below the change, there were no citations to
3 the record supporting those.

4 Again, I don't think that's necessarily a problem
5 for clarification. And as to CEP, it's entirely possible
6 that this is relating to something else they were
7 proposing.

8 So, for example, in the CDG proposal, all they've
9 done is moved words around because I think they think the
10 sentence flows better.

11 BOARD MEMBER GARCIA: I see.

12 CHAIRPERSON SUINA: Would you mind just scrolling
13 to -- I guess it would be 301, NMED's?

14 HEARING OFFICER ORTH: Sorry. And I forgot about
15 IPANM.

16 CHAIRPERSON SUINA: Yes.

17 HEARING OFFICER ORTH: I don't want to make
18 anyone dizzy here. I'm sorry. This is 122, and I need to
19 pull up -- it's a different document.

20 CHAIRPERSON SUINA: Okay.

21 BOARD MEMBER BITZER: It's smaller this time.

22 HEARING OFFICER ORTH: Let me get to the right
23 page.

24 CHAIRPERSON SUINA: Thank you. All right. We're
25 all on the same page. Would that be for CDG, CEP, there's

1 no citations because no citations are needed because it's
2 just clarification language?

3 HEARING OFFICER ORTH: Right. So I'm not sure, I
4 think the CDG is quite clear. They simply think the
5 sentence reads better with the words in a different order.

6 With CEP, I did not see citations to the record
7 underlying this proposed change. And, by the way, now
8 that we are out of Section 122, you should not assume that
9 NMED agrees with NMOGA's proposed changes anymore.

10 BOARD MEMBER GARCIA: It's good that you pointed
11 that out. Thank you.

12 BOARD MEMBER BITZER: The honeymoon's over.

13 CHAIRPERSON SUINA: Thank you for that point of
14 clarification.

15 BOARD MEMBER BITZER: NMOGA forgot to take out
16 the trash perhaps.

17 CHAIRPERSON SUINA: So we're just talking A at
18 this point?

19 HEARING OFFICER ORTH: Right.

20 BOARD MEMBER GARCIA: Right, there's a lot of
21 discussion on A.

22 VICE-CHAIR TRUJILLO-DAVIS: Just for my -- do we
23 need to discuss the definitions?

24 HEARING OFFICER ORTH: How would you like to do
25 that?

1 CHAIRPERSON SUINA: Yes. So can you please
2 reiterate which definitions for that? Sorry.

3 HEARING OFFICER ORTH: No. I flagged them as we
4 were going through them.

5 So the definitions I will pull out relate not
6 just to 123, but also to 127.

7 CHAIRPERSON SUINA: Okay.

8 HEARING OFFICER ORTH: And so on page 18, we have
9 "hydraulic fracturing" and "hydraulic refracturing."

10 BOARD MEMBER GARCIA: Could you say the -- could
11 you say the letter please, if you have it?

12 HEARING OFFICER ORTH: Sure. W and X.

13 BOARD MEMBER GARCIA: Thank you.

14 HEARING OFFICER ORTH: However, they're a little
15 out of order.

16 BOARD MEMBER GARCIA: Oh, okay.

17 HEARING OFFICER ORTH: That's why I was giving
18 the page number instead, page 18.

19 CHAIRPERSON SUINA: Oh, okay.

20 HEARING OFFICER ORTH: And then on page 16,
21 again, this is both 123 around 127: N, O, R and S,
22 "drilling" or "drilled," "drill-out, flowback, flowback
23 vessel." I think that's it.

24 So I would say CEP was not in the habit of
25 offering -- they didn't support it.

1 CHAIRPERSON SUINA: You mean support in the
2 hearing record?

3 HEARING OFFICER ORTH: Right. They were not in
4 the habit of offering unsupported things. So what I'm
5 trying to do now is figure out and see whether CEP's
6 proposal on 304 is perhaps supported in some companion
7 section, and if I can point to that.

8 CHAIRPERSON SUINA: Okay.

9 HEARING OFFICER ORTH: So I'll look for that now.

10 CHAIRPERSON SUINA: And CEP is related to Clean
11 Air Advocates?

12 HEARING OFFICER ORTH: Yes.

13 CHAIRPERSON SUINA: Okay. So did they provide a
14 joint proposal?

15 HEARING OFFICER ORTH: That's correct; CEP
16 includes CAA, EDF, and a number of other environmental
17 organizations.

18 CHAIRPERSON SUINA: Okay.

19 HEARING OFFICER ORTH: And I believe NAVA as
20 well. So it was the community and environmental parties.

21 CHAIRPERSON SUINA: Okay. Thank you.

22 VICE-CHAIR TRUJILLO-DAVIS: Again, a clarifying
23 question here. These definitions that you mentioned
24 weren't previously submitted? These are in addition?

25 HEARING OFFICER ORTH: No, they were previously

1 submitted, but as the Board was walking through Section 7,
2 in a couple of places, including the ones I just
3 mentioned, the Board decided to table their adoption of
4 those definition until they got to the relevant section.

5 VICE-CHAIR TRUJILLO-DAVIS: I apologize, I worded
6 my question wrong. I meant to ask, of these CEP and Oxy's
7 proposals here, these are additional definitions that NMED
8 hadn't included in the first draft? I'm not saying that
9 it was included in the hearing, it just wasn't included in
10 the first draft?

11 HEARING OFFICER ORTH: Correct. However, I don't
12 believe NMED objects to definitions of words that you
13 would actually use.

14 CHAIRPERSON SUINA: So we're looking -- you're
15 looking for the reference for CEP?

16 HEARING OFFICER ORTH: Right.

17 CHAIRPERSON SUINA: So CEP's reference could have
18 come from one of the environmental parties; is that what
19 you're also saying, the proposed language?

20 HEARING OFFICER ORTH: Right. Again, I'm just --
21 I'm mystified here as to why there isn't a justification
22 beneath it. And, again, because I don't think CEP was in
23 the habit of offering unsupported changes. I'm wondering
24 if perhaps their support is expressed somewhere else, you
25 know, in a companion piece.

1 CHAIRPERSON SUINA: Yes.

2 BOARD MEMBER GARCIA: Well, I guess I can
3 understand a party wanting to add a definition so that --
4 I mean, I can kind of see that, without justification, I
5 can see if you're referring to it in the rule, "hydraulic
6 fracturing," or whatever, that there be a definition. I
7 thought there was a definition for LDAR, and there's not.
8 And that's fine.

9 I'm just saying I can understand parties wanting
10 to add a definition when a term is used in the rule, and
11 perhaps not everyone would agree what that term means. So
12 I appreciate adding definitions. I wish there were more.

13 CHAIRPERSON SUINA: Thank you for that comment,
14 Member Garcia.

15 BOARD MEMBER BITZER: The problem in the
16 definition of "hydraulic fracturing," I'm guessing may be
17 that, basically, sand or grit makes the proppant to be the
18 fractures that occur with fractures that are created under
19 pressure or with chemicals, so it's, basically, small
20 particles, basically, that prop open the cracks once
21 they've been created?

22 VICE-CHAIR TRUJILLO-DAVIS: Yeah, generally, it's
23 sand; it's mostly porcelain or there's a couple of
24 different materials they use, but, generally, they're all
25 within the ring size of sand.

1 BOARD MEMBER GARCIA: And just for a reminder, a
2 proppant is a solid material, typically sand, treated sand
3 or manmade ceramic materials, designed to keep an induced
4 hydraulic fracture open.

5 BOARD MEMBER BITZER: It props it open once it's
6 been opened by pressure.

7 BOARD MEMBER GARCIA: That's a good new word.

8 VICE-CHAIR TRUJILLO-DAVIS: Depending on the
9 depth that they are fracking at, they have to use
10 different types of material to be able to withstand
11 pressure at the base.

12 BOARD MEMBER BITZER: Or the weight of it --

13 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I mean --

14 BOARD MEMBER BITZER: -- the deeper you go, the
15 tougher your bit needs to be.

16 VICE-CHAIR TRUJILLO-DAVIS: -- for context, you
17 know, some of these wells are being hydraulically fracked
18 at 17,000 feet.

19 BOARD MEMBER BITZER: Wow.

20 VICE-CHAIR TRUJILLO-DAVIS: That's a significant
21 amount of real estate above that.

22 BOARD MEMBER BITZER: I would imagine that
23 proppant doesn't need to be any sturdier than what it's
24 being injected into, because what's being injected would
25 just crush it out, but, yeah, it's all pretty compressed.

1 VICE-CHAIR TRUJILLO-DAVIS: I think the sturdier
2 the proppant, the more expensive it is, so...

3 BOARD MEMBER BITZER: You bet. So you want one
4 that's strong enough to hold the hole open, keep it from
5 expansion, but to keep it open while they're injecting
6 into it.

7 BOARD MEMBER GARCIA: So if I may ask a question?
8 In A, are there any references to one of these definitions
9 or do we need to -- or can we --

10 CHAIRPERSON SUINA: Oh, good point.

11 BOARD MEMBER GARCIA: -- discuss A without --

12 CHAIRPERSON SUINA: Let's see.

13 BOARD MEMBER BITZER: Was storage vessels one?

14 VICE-CHAIR TRUJILLO-DAVIS: I'm not seeing the
15 definitions that we reviewed in Section A.

16 CHAIRPERSON SUINA: That's correct, I don't see
17 any. Okay.

18 BOARD MEMBER GARCIA: So we could discuss A while
19 she's looking.

20 CHAIRPERSON SUINA: Yes. Okay.

21 HEARING OFFICER ORTH: So it wasn't proposed in
22 the original redline and it wasn't proposed in their
23 rebuttal redline that I -- that I saw.

24 CHAIRPERSON SUINA: And I do note on the
25 presentation or the -- yeah, the presentation provided by

1 the Department there, we have significant changes on what
2 was discussed by the Department through this final
3 language proposed in the closing argument.

4 HEARING OFFICER ORTH: Oh, right. So as I'm
5 prompted by that, and the other thing -- and this was, if
6 you will, the controlling document for me as I was
7 preparing the attachment to the Hearing Officer report,
8 looking at their final proposed redline, it was attached,
9 so on page 33 is the redline that I show.

10 CHAIRPERSON SUINA: Uh-huh.

11 HEARING OFFICER ORTH: Page 34 is where they set
12 out their supporting comments, and the supporting comments
13 do not refer to the change in A. The supporting comments
14 only talk about their proposed change in C.

15 BOARD MEMBER GARCIA: Okay. And you're talking
16 NMED?

17 HEARING OFFICER ORTH: No, CEP.

18 CHAIRPERSON SUINA: Sorry.

19 VICE-CHAIR TRUJILLO-DAVIS: Are we still on A?

20 HEARING OFFICER ORTH: Yes.

21 VICE-CHAIR TRUJILLO-DAVIS: I wanted to make
22 sure.

23 So CEP's proposed language excludes -- but it's
24 not struck out -- the last sentence of NMED's proposed
25 language which says, "Storage vessels associated with

1 produced water management units are required to comply
2 with this section," so on. And that whole sentence isn't
3 included in CEP's proposed language, so I'm curious if
4 that was intentionally left out or if that was supposed to
5 be struck out.

6 BOARD MEMBER GARCIA: Oh.

7 CHAIRPERSON SUINA: Thank you for that,
8 Vice-Chair.

9 VICE-CHAIR TRUJILLO-DAVIS: I believe it's
10 missing from EDG's proposed language as well.

11 HEARING OFFICER ORTH: So here is the redline and
12 it was -- let me just read the exact from their final
13 redline. "New storage vessels with a PTE equal to or
14 greater than 2 tpy of VOC," they insert "and existing
15 storage vessels." They delete "in multitank batteries."

16 CHAIRPERSON SUINA: Yes.

17 HEARING OFFICER ORTH: "With a PTE equal to or
18 greater than 3 tpy VOC," and then they delete "and
19 existing storage vessels in single tank batteries."

20 CHAIRPERSON SUINA: Yes, okay. So that was as it
21 was in the Hearing Report?

22 HEARING OFFICER ORTH: Yes. Yeah, right, because
23 they inserted "and the existing storage vessels" is struck
24 out.

25 CHAIRPERSON SUINA: Okay. And that's Exhibit 1

1 of CEP's?

2 HEARING OFFICER ORTH: Correct. Exhibit 1, page
3 33 of CEP's final redline proposal.

4 BOARD MEMBER GARCIA: Okay. So it's the same.

5 HEARING OFFICER ORTH: Yes.

6 MS. SOLORIA: So to Member Trujillo-Davis's point
7 about the last sentence of NMED's, it starts -- that last
8 sentence starts with "Storage" and ends with "NMAC," and
9 that sentence is not there, so there's no -- there's no --
10 I think you -- and it's in CDG's as well.

11 BOARD MEMBER GARCIA: The same, yeah, it's left
12 out.

13 HEARING OFFICER ORTH: I'm sorry, it's not.

14 VICE-CHAIR TRUJILLO-DAVIS: So this language
15 right here, storage vessels.

16 MS. SOLORIA: That's not in CEP's, there's no
17 strike through.

18 CHAIRPERSON SUINA: So, for the court reporter,
19 what we're pointing out is in section -- in NMED's
20 proposed section A, the last sentence that starts out
21 "Storage vessels associated with produced water," and ends
22 with "126 NMAC," is not referenced in the exhibit provided
23 by CEP in the proposed language -- proposed changes to
24 Section A.

25 BOARD MEMBER GARCIA: Nor CDG's.

1 CHAIRPERSON SUINA: Nor CDG's.

2 So would it then be, that without deletion, do
3 we -- how do we address that, I guess is my question.

4 MS. SOLORIA: Yeah, I would have to -- I don't
5 know what their practice of redlining was in that exhibit.
6 I would have to look at it to see if that absence means it
7 was stricken versus...

8 CHAIRPERSON SUINA: So, in that exhibit that you
9 just showed us, was that text even in the exhibit?

10 HEARING OFFICER ORTH: No.

11 CHAIRPERSON SUINA: No.

12 BOARD MEMBER GARCIA: That's why it didn't wind
13 up in here.

14 VICE-CHAIR TRUJILLO-DAVIS: Can we take a quick
15 break?

16 CHAIRPERSON SUINA: Sure. How long?

17 VICE-CHAIR TRUJILLO-DAVIS: I just need a few
18 minutes.

19 CHAIRPERSON SUINA: We're going to take -- how
20 about a seven-minute break, to 4:50. Thank you.

21 (Recess taken from 4:43 p.m. to 4:56 p.m.)

22 CHAIRPERSON SUINA: Thank you, everybody.
23 Welcome back from our break. And just to ground us again,
24 where we're at, we're on 123 Section A. And we were
25 talking about the various proposals and we're trying to

1 also look at the support for some of these proposals and
2 the timing of the proposed language.

3 So, with that, Madam Hearing Officer, I'm going
4 to turn it over to you for a few minutes.

5 HEARING OFFICER ORTH: Yes, thank you. So, on
6 the break we were able to establish a few things by poking
7 around in the records. As to the support for CEP's
8 proposed changes, we looked at Exhibit 23, and that was
9 Clean Air Advocates' Exhibit 23 on pages 25 and 26, which
10 are about storage vessels.

11 And in there, Madam Chair, I don't know if you
12 want to summarize what we found there.

13 CHAIRPERSON SUINA: Absolutely. Give me one
14 second. I just want to make sure. Let me pull this back
15 up. Give me a minute.

16 BOARD MEMBER GARCIA: Could you let us know where
17 you found that CAA, what date it was?

18 CHAIRPERSON SUINA: Okay. So the exhibit when
19 I -- when I downloaded it, it was labeled "RS 21341_2021".

20 BOARD MEMBER GARCIA: What?

21 CHAIRPERSON SUINA: Yeah, that's how it
22 downloaded.

23 BOARD MEMBER GARCIA: It doesn't say "CAA"?

24 CHAIRPERSON SUINA: It does. It says "CAA
25 Rebuttal," and it was -- let me look at it again.

1 BOARD MEMBER GARCIA: It doesn't have a date?

2 CHAIRPERSON SUINA: It does. Give me one second.

3 So it was September 7th, 2021.

4 BOARD MEMBER GARCIA: Thank you.

5 CHAIRPERSON SUINA: And it was labeled Clean Air
6 Advocates Notice of Intent to present rebuttal testimony.

7 And under -- in that -- in that file it refers to an
8 Exhibit 23, which is --

9 BOARD MEMBER GARCIA: I found it. I think I
10 found it.

11 BOARD MEMBER BITZER: It's about 20 percent of
12 the way down.

13 VICE-CHAIR TRUJILLO-DAVIS: And you said it has a
14 date of 9/27?

15 CHAIRPERSON SUINA: It's 9/7 and it is rebuttal
16 testimony of David McCabe, Ph.D. Go down in that.

17 BOARD MEMBER GARCIA: And then page 26, you said?

18 HEARING OFFICER ORTH: It's 25 and 26.

19 CHAIRPERSON SUINA: Yes. So in this exhibit,
20 it's labeled on page 25, line -- starting on line 12,
21 "Storage Vessels." It's up there.

22 HEARING OFFICER ORTH: Sure.

23 VICE-CHAIR TRUJILLO-DAVIS: On 25?

24 CHAIRPERSON SUINA: On page 25 of Exhibit 23.

25 BOARD MEMBER GARCIA: Oh, shoot, I'm in Exhibit

1 22.

2 CHAIRPERSON SUINA: If you're on your PDF, I
3 found it on 66 of page 105.

4 BOARD MEMBER BITZER: So, about two-third's of
5 the way down.

6 CHAIRPERSON SUINA: Do you see it, Member Bitzer?

7 BOARD MEMBER BITZER: Storage Vessels.

8 CHAIRPERSON SUINA: Yes.

9 BOARD MEMBER BITZER: Letter Q.

10 CHAIRPERSON SUINA: Yes.

11 BOARD MEMBER BITZER: Yes, page 25.

12 CHAIRPERSON SUINA: If it helps, I can put it up
13 on the screen.

14 VICE-CHAIR TRUJILLO-DAVIS: Actually, I think
15 that might be okay.

16 HEARING OFFICER ORTH: Okay. Let me stop sharing
17 this.

18 CHAIRPERSON SUINA: Okay. One moment.

19 BOARD MEMBER BITZER: That's where they brought
20 up Colorado and Pennsylvania maybe.

21 HEARING OFFICER ORTH: So I can give you the
22 ability to share.

23 CHAIRPERSON SUINA: Yeah, or do you want to check
24 it?

25 HEARING OFFICER ORTH: It's easier if I --

1 CHAIRPERSON SUINA: Okay.

2 HEARING OFFICER ORTH: -- if I share or assign
3 privileges. Presenter, it says you have presenter
4 privileges.

5 CHAIRPERSON SUINA: Okay. Wonderful. Let me get
6 there, because I've got to switch over to this computer,
7 but that's okay. Let me open it up first. Okay. There
8 we go. All right. One second; I'll make it bigger. All
9 right.

10 BOARD MEMBER BITZER: What a cute graph.

11 CHAIRPERSON SUINA: Let's see. All right. There
12 we are. There we go.

13 BOARD MEMBER GARCIA: So page 25 doesn't really
14 address the issue of CEP's change.

15 CHAIRPERSON SUINA: The proposed language by CEP.

16 BOARD MEMBER GARCIA: Right, that I can see.

17 CHAIRPERSON SUINA: Yes. It mostly addresses why
18 they opposed the changes proposed by NMOGA. At least on
19 25 -- starting at 25 -- on page 25, line 13 of Exhibit 23.
20 And then it goes into further discussion about commenting
21 on CEP's proposal to create an exemption, and why does --
22 why do Clean Air Advocates oppose that proposal.

23 So I'm still scrolling through to see if there
24 is -- and I don't see text -- if other members see
25 anything else, I don't. That's the end of Mr. McCabe's

1 testimony and ends on page 30.

2 HEARING OFFICER ORTH: Okay.

3 CHAIRPERSON SUINA: So I'll turn it back over.
4 I'll stop sharing and turn it back over to you.

5 BOARD MEMBER BITZER: I'll leave it up on my
6 screen so we can reference it later.

7 CHAIRPERSON SUINA: And so, I think back to the
8 various proposals -- Madam Hearing Officer, I don't know
9 if there's another reference, I couldn't find one.

10 HEARING OFFICER ORTH: I couldn't either. Other
11 than, obviously, the discussion of the thresholds,
12 because, again, NMOGA was proposing 6, and they wanted to
13 keep it there at 3.

14 The other thing, though, that I wanted to offer
15 was that the last sentence that we see in both NMOGA and
16 NMED, but not in the others, were apparently offered as
17 clarifications because they were not offered -- you know,
18 they were offered after the earlier redlines in order to
19 clarify the relationship between what's happening in this
20 rule and what's happening in 126. So it is a
21 clarification.

22 And, although, I had originally read it to mean
23 the opposite thing, they're essentially making the same
24 point. It's just that NMOGA uses the word "exempt" and
25 NMED does not use the word "exempt," but the basic point

1 is the same, if you're regulated under 126, you're not
2 regulated.

3 CHAIRPERSON SUINA: So you're just suggesting
4 it's -- okay. You're describing the proposed language by
5 NMOGA and NMED, and the last sentence, starting "storage
6 vessels?"

7 HEARING OFFICER ORTH: Correct.

8 CHAIRPERSON SUINA: Ending with "NMAC."

9 HEARING OFFICER ORTH: Correct.

10 CHAIRPERSON SUINA: As clarification language,
11 but saying the same thing, but framed using different
12 verbiage?

13 HEARING OFFICER ORTH: Correct.

14 VICE-CHAIR TRUJILLO-DAVIS: So, then, that brings
15 us to CDG's and CEP's proposals. Since that language is
16 missing entirely, did they mean for it to be missing
17 entirely?

18 HEARING OFFICER ORTH: So their proposals were
19 based on an earlier redline.

20 BOARD MEMBER GARCIA: Oh.

21 HEARING OFFICER ORTH: That's right. Having said
22 that, the Environment Department, you probably remember
23 this, did not sort of add language willy-nilly, without
24 circulating it to everybody before they added it.

25 VICE-CHAIR TRUJILLO-DAVIS: Okay.

1 CHAIRPERSON SUINA: Except -- except for this
2 language because then wouldn't CE -- CEP and CDG have
3 commented on the final redline?

4 HEARING OFFICER ORTH: So the circulation
5 sometimes was in emails, it just...

6 CHAIRPERSON SUINA: Okay.

7 HEARING OFFICER ORTH: The final redline in the
8 post-hearing submittal had additional stuff from the
9 sub -- well, what's the word I'm looking for --
10 penultimate redline.

11 CHAIRPERSON SUINA: Okay.

12 BOARD MEMBER BITZER: There's a fancy word,
13 "penultimate."

14 CHAIRPERSON SUINA: Yes, Vice-Chair.

15 VICE-CHAIR TRUJILLO-DAVIS: So I'm comfortable
16 with the addition that NMED made with that language about
17 "Storage vessels associated with produced water management
18 units," and end with "NMAC." I believe that that provides
19 a clarification because we do have a whole section
20 dedicated to produced water storage vessels in 126. So
21 I'm -- as far as that point goes, I'm comfortable with
22 that point.

23 CHAIRPERSON SUINA: So, I guess, Ms. Soloria,
24 just, you know, we've had consistency in terms of what
25 proposed language we consider, you know, post-hearing.

1 And does this fall into a category of clarification
2 versus --

3 BOARD MEMBER GARCIA: Whole new language.

4 CHAIRPERSON SUINA: Whole new -- yes.

5 I don't know if there is those categories
6 post-hearing, or if they're just one and the same in terms
7 of verbiage.

8 MS. SOLORIA: So I guess I'll throw the question
9 back to you. Because the -- if -- if -- they said if we
10 weren't able to find like an explanation for the reasons
11 they made these changes, if you determine that they are
12 merely clarification in the Board's judgment, then you
13 adopt them for purposes of clarification.

14 But you also have the option to decide these
15 aren't really in the realm of clarification, or we can't
16 tell whether or not it's clarification or not, or if it's
17 substantive, and we just don't have the evidence to say
18 whether or not we can justify to adopt it on that basis,
19 for lack of support in the -- in the evidence.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

21 So, yes, Member Garcia.

22 BOARD MEMBER GARCIA: I'm comfortable with it
23 just being clarification. I mean, I read both versions
24 and I get what they're trying to do and it seems safe.

25 BOARD MEMBER BITZER: I'll second that.

1 MS. SOLORIA: I'll just note that -- I don't know
2 if there's any substance to this, but the CDG heading
3 proposes this for clarification of storage vessel, I think
4 doesn't -- (inaudible.)

5 BOARD MEMBER GARCIA: Yeah, because it's not.

6 COURT REPORTER: I'm sorry. Ms. Soloria, you
7 faded off at the end. I'm sorry.

8 MS. SOLORIA: I was just noting that for the
9 heading of those two sections, that CDG notes that the
10 changes are for clarification, and CEP doesn't have that
11 qualifier.

12 CHAIRPERSON SUINA: Yes. Thank you, Ms. Soloria.
13 And Member Honker, did you have a comment.

14 BOARD MEMBER HONKER: Well, I was going to agree
15 with my fellow Board members, that I was comfortable with
16 the last sentence as NMED added it, regarding the
17 requirement to comply with this section to the extent
18 specified in Subsection B of Section 126. I think the
19 NMOGA language says the same thing, only it says it's
20 except as provided.

21 I would go with the NMED language since it's
22 probably consistent with what they -- how they phrase such
23 things in other rules.

24 CHAIRPERSON SUINA: Vice-Chair Trujillo-Davis,
25 did you have a comment? Sorry if I put you on hold.

1 VICE-CHAIR TRUJILLO-DAVIS: I have two comments.
2 One, from Member Honker's point, I think that NMED
3 language is a little bit cleaner, so I like that language.
4 And I think it is also consistent, so I agree with that.

5 And then I was going to say that looking at CDG's
6 proposed language, it does look like it's a rewording,
7 making a clarification so that the sentence flows a little
8 smoother.

9 And CEP's is kind of a complete rewrite of many
10 of those stipulations, so I think that's why it doesn't
11 have that proposed language -- or proposed changes for
12 clarification on CEP's.

13 CHAIRPERSON SUINA: Thank you, Vice-Chair
14 Trujillo-Davis.

15 Yes, Member Garcia.

16 BOARD MEMBER GARCIA: So if we want to tackle
17 this in terms of first deciding if we want to make the
18 changes CDG made, and then look at CEP's suggested
19 changes, I don't know.

20 VICE-CHAIR TRUJILLO-DAVIS: Okay. So if we were
21 to adopt CDG's, would we lose that sentence -- the last
22 sentence that NMED added because it's not in their
23 version?

24 HEARING OFFICER ORTH: No.

25 CHAIRPERSON SUINA: No?

1 MS. SOLORIA: You wouldn't -- I mean, you would
2 have to be specific about it.

3 HEARING OFFICER ORTH: Yeah, you'd have to say.

4 CHAIRPERSON SUINA: So, just for a point of
5 making sure that we cover all of the discussion items on
6 adding that additional language that was in the
7 post-hearing submittals, does it need to be clarified?

8 BOARD MEMBER GARCIA: Do you mean --

9 CHAIRPERSON SUINA: Do we need that additional
10 language, "Storage vessels" to "NMAC" in that last
11 sentence?

12 BOARD MEMBER GARCIA: Yeah, didn't we decide
13 that?

14 CHAIRPERSON SUINA: Yeah, I'm just wondering. Is
15 that -- is that -- is that -- do we feel like there needs
16 to be that clarification, I guess, or is it already
17 clarified, clearing it up?

18 BOARD MEMBER GARCIA: Oh, I understand your
19 point, yeah.

20 CHAIRPERSON SUINA: Yeah, because it's not
21 substantive, then is it already, you know, clarified?

22 BOARD MEMBER GARCIA: Well, because --

23 CHAIRPERSON SUINA: Or am I confusing myself?

24 MS. SOLORIA: I think you're talking about two
25 different things. You were referring to that, kind of,

1 that one sentence that's in one place and not the other?

2 CHAIRPERSON SUINA: Yes.

3 MS. SOLORIA: That's in NMED's final proposal.

4 And then, I think we were talking about CDG's
5 clarification, those -- those two bolded phrases just in
6 their proposal. And to kind of piggyback on what you
7 said, then the question should be asked there, is if that
8 is necessarily -- if it's something that you feel warrants
9 clarification.

10 CHAIRPERSON SUINA: Right, right.

11 But I guess what I'm pointing at is the last
12 sentence. I guess, you know, in previous discussions and
13 decisions we've made on the post-hearing, if it wasn't
14 submitted during the hearing, we didn't include it. So,
15 if -- and that's why I was saying earlier, if it was a
16 clarification, does that provide us a new category of
17 post-hearing additions or of language?

18 MS. SOLORIA: I understand your question, Madam
19 Chair, now. And are we -- are we certain that it wasn't
20 covered -- okay, we are certain that there's nothing.

21 CHAIRPERSON SUINA: I think it was in the
22 final -- as Madam Hearing Officer mentioned, it was in the
23 final circulation after post-hearing.

24 MS. SOLORIA: Right. And there is nothing
25 included in their submissions in support of it?

1 HEARING OFFICER ORTH: So, I'm sorry, it was
2 circulated to the other parties before the post-hearing
3 submittals, but only included in the redline in the
4 post-hearing submittal, not the redline that was before
5 that.

6 CHAIRPERSON SUINA: So we didn't necessarily
7 cover it by testimony.

8 HEARING OFFICER ORTH: Because it's a
9 clarification of the relationship between this section and
10 Section 126.

11 CHAIRPERSON SUINA: Okay.

12 HEARING OFFICER ORTH: And my understanding of a
13 lot of your earlier decisions wasn't just that it was
14 offered toward or at the end of the process, but that
15 because it was offered so late, it didn't have support in
16 the record.

17 But this is a -- how do you say -- almost like a
18 legal -- a legalistic thing here.

19 MS. SOLORIA: Right. I would -- I would say that
20 based on what's in the record, it's a reasonable inference
21 to include this, versus the other, what we've started
22 calling "late breaking" --

23 CHAIRPERSON SUINA: Yes.

24 MS. SOLORIA: -- phrases, where there wasn't
25 something we could point to in the record to make that

1 inferential jump, if that -- if that makes sense.

2 CHAIRPERSON SUINA: And that makes sense. I just
3 want it clear for our discussion, and our referred.

4 MS. SOLORIA: Yes. Thank you.

5 CHAIRPERSON SUINA: Okay.

6 BOARD MEMBER GARCIA: Okay.

7 CHAIRPERSON SUINA: Yes, Member Honker.

8 BOARD MEMBER HONKER: Yeah, and I like that
9 approach to how we -- how we do that. That added last
10 sentence, I think it does clarify the applicability of the
11 regulation between two parts of it, so I think it's good
12 to have it in there. Obviously, NMOGA also wanted it to
13 clarify that point in their -- in their comments.

14 And with respect to CDG's language changes, I
15 read through them a half a dozen times. And, initially, I
16 thought it was clarified, but the fact that the -- that
17 it's followed by a sentence that addresses storage vessel
18 in multitank batteries and calculating an individual
19 vessel's PTE, I think -- I don't -- I don't think CDG's
20 wording is any better than NMED's after having read it
21 several times.

22 So, for simplicity, I would say I would recommend
23 sticking with NMED's wording, which then allows the
24 inclusion of the last sentence as well.

25 CHAIRPERSON SUINA: Thank you, Member Honker.

1 BOARD MEMBER BITZER: Agreed.

2 CHAIRPERSON SUINA: We have some comments.

3 Yes, Member Garcia.

4 BOARD MEMBER GARCIA: Yes, I agree with that. I
5 think that would make it easier, then, for us to just
6 focus on CEP. Since we don't see that the CDG proposal
7 helps, then any -- all we have to do is focus on the CEP
8 proposal.

9 CHAIRPERSON SUINA: Thank you, Member Garcia.

10 BOARD MEMBER HONKER: And the NMOGA proposal
11 because they have two different numbers.

12 CHAIRPERSON SUINA: Correct.

13 BOARD MEMBER BITZER: Yeah, that's a substantive,
14 that's not --

15 BOARD MEMBER GARCIA: Right, right.

16 BOARD MEMBER BITZER: -- that's not
17 clarification. They want us to move back to 6. And I've
18 been reading over the material on that, it just gets more
19 expensive when you get down to 2, which is why the state
20 compromised already, and they gave a number like, I think
21 that was that 9,000 something or other. But -- but
22 that's -- that represents a reasonable compromise. And
23 it's neither where Colorado is, at, what, 2.7.

24 So I think the state's position is much more --
25 is more reasonable than NMOGA's on that, on the 2

1 versus -- on the 6 versus 4 question.

2 CHAIRPERSON SUINA: Thank you, Member Bitzer.

3 Other Board members? Yes, Member Honker.

4 BOARD MEMBER HONKER: And I read CEP's proposal
5 as moving the 4 to 3, so that would be -- I guess, maybe
6 that's consistent with an earlier draft of NMED's version,
7 but it does seem like NMED's proposal is the middle ground
8 between -- between CEP's and NMOGA's.

9 CHAIRPERSON SUINA: And I think we have a point
10 of clarification, Member Honker, Madam Hearing Officer.

11 HEARING OFFICER ORTH: Member Honker, I think
12 you're right, that some of this confusion is a result of
13 changing proposals. NMED's A goes to 3 tpy. That's on
14 page 301.

15 BOARD MEMBER GARCIA: Oh, they went back to
16 3?

17 HEARING OFFICER ORTH: That's what's in A on page
18 301.

19 BOARD MEMBER BITZER: That's why it's not lined
20 out in CEP's.

21 HEARING OFFICER ORTH: In CEP.

22 BOARD MEMBER GARCIA: Oh, but later it is.

23 BOARD MEMBER HONKER: There's a 4 in there.

24 BOARD MEMBER GARCIA: There's 4, yeah, that's at
25 line 3. Yeah, yeah, that's okay.

1 CHAIRPERSON SUINA: No worries.

2 Thank you, Member Honker.

3 BOARD MEMBER HONKER: So CEP has done away with
4 the 4 applying to those types of facilities.

5 CHAIRPERSON SUINA: Right.

6 And Vice-Chair.

7 VICE-CHAIR TRUJILLO-DAVIS: Well, I think that
8 the -- it goes a little beyond that, because NMED's
9 version, it breaks out the facilities by type. Right? So
10 existing with PTE greater -- equal to or greater than 3 in
11 multitank batteries and existing storage facilities with
12 PTE equal or greater than 4 tons per year VOC in single
13 batteries, are subject.

14 And CEP removed the breakouts, so it removes the
15 multitank facilities and removes the reference to existing
16 vessels and storage tanks. And so, the universe -- that
17 makes it an universal application for batteries and
18 doesn't break it out as far.

19 BOARD MEMBER GARCIA: Everything is at 3.

20 VICE-CHAIR TRUJILLO-DAVIS: Everything is at 3,
21 yeah.

22 CHAIRPERSON SUINA: Thank you for that
23 clarification, Vice-Chair.

24 Yes, Member Garcia.

25 BOARD MEMBER GARCIA: I guess I appreciate the

1 compromise NMED made to bring it to 4, when NMOGA wanted
2 6, so it's being more reasonable with 4. I'm not sure how
3 much more costly it is between 6 and 4, but I think 4 is a
4 reasonable compromise, so I appreciate their approach.
5 And breaking it out by type is helpful for the industry as
6 well.

7 CHAIRPERSON SUINA: Thanks. Thank you, Member
8 Garcia.

9 And I just want to note, back to Clean Air
10 Advocates' rebuttal, just to read their, you know, where
11 NMED proposed required emissions controls at any existing
12 storage vessel with a PTE -- yeah, at least 2 tons per
13 year of VOC, NMOGA proposed 6. Again, this was back
14 during the hearing, when, like, Clean Air Advocates
15 proposed a change, and they go on to further discussion
16 about Colorado, with a threshold of 2 tons per year for
17 new and existing tanks. And Pennsylvania has a
18 requirement of above 2.7 tons.

19 And then they go on to say, "Finally, since 2012,
20 the U.S. EPA has required that any existing tank required
21 to control emissions, must retain that control to
22 emissions dropped below 4 tons per year." So, I think
23 they had proposed B, but to everybody's point, NMED did
24 compromise, I think, also with the environmental groups'
25 proposal to have it to 3, but industry to 6.

1 So, as Member Bitzer said, it's kind of down the
2 middle here, to 4. So it looks like a proposed -- a
3 proposal by NMED to try to address everybody's comments
4 from all sides.

5 BOARD MEMBER BITZER: So if you want to see
6 references to dollars versus tons, at the bottom of page
7 302, it's those last couple of paragraphs, starting about
8 three-quarter's of the way down, that was pointed out.
9 It's in the record there.

10 BOARD MEMBER GARCIA: Right, that's NMOGA's
11 estimate.

12 So, does NMED have an estimate? They don't, do
13 they? Or CEP?

14 BOARD MEMBER BITZER: We'll, we're in -- this is
15 in NMED's testimony, or they're supporting -- or that's
16 NMED's statement.

17 BOARD MEMBER GARCIA: Oh.

18 BOARD MEMBER BITZER: On page 301. It says,
19 NMED. So just flip it back to 301 and you'll see that
20 this is what NMED -- NMED is saying. That's their --
21 that's their fiscal analysis.

22 CHAIRPERSON SUINA: What page is that again?

23 BOARD MEMBER BITZER: Pages 301 and 302. At the
24 end of 301 is where we see this is in NMED's supporting
25 statement. And then two-third's of the way down, you get

1 to the dollars on page 302.

2 NMOGA, you know it's 6 -- 6 tons of NMOGA's --
3 NMOGA's proposal would be \$4,558 a ton. With the 3 tpy,
4 the effectiveness is estimated at \$9,176 a ton. So it
5 gets more expensive, but you're getting more pollution
6 reduction.

7 CHAIRPERSON SUINA: Thank you, Member Bitzer.

8 BOARD MEMBER BITZER: I knew I had seen it
9 somewhere, but where was that.

10 CHAIRPERSON SUINA: Just, again, to point out, on
11 the top of 303, it's just NMED talking about striking a
12 reasonable balance between the cost to industry and the
13 emissions reductions necessary.

14 BOARD MEMBER BITZER: Which is the same as Member
15 Garcia's point about the balance.

16 CHAIRPERSON SUINA: Yes.

17 Yes, Vice-Chair.

18 VICE-CHAIR TRUJILLO-DAVIS: If I'm reading the
19 room correctly, it sounds like we are moving toward
20 agreement on adopting NMED's languages as proposed?

21 BOARD MEMBER BITZER: That would be my
22 suggestion.

23 CHAIRPERSON SUINA: And there's --

24 HEARING OFFICER ORTH: Might I note before you
25 make that motion, that Section B is uncontested.

1 CHAIRPERSON SUINA: Oh, good.

2 BOARD MEMBER GARCIA: That's something we have to
3 take advantage. To section B, right.

4 VICE-CHAIR TRUJILLO-DAVIS: I can still make my
5 fitness program tonight.

6 CHAIRPERSON SUINA: Thank you for that.

7 Yes, Member Garcia.

8 BOARD MEMBER GARCIA: If we're ready for a
9 motion, I would move that we adopt 123 A and B as proposed
10 by NMED and for the evidence in support proffered by NMED,
11 and reject the proposals by CDG and CEP and NMOGA as
12 well -- or not -- and NMOGA, due to lack of adequate
13 supporting evidence.

14 BOARD MEMBER BITZER: I'll second that.

15 CHAIRPERSON SUINA: Thank you, Member Garcia and
16 Member Bitzer.

17 And just looking to Ms. Soloria, to make sure
18 we're covered.

19 MS. SOLORIA: That's great.

20 CHAIRPERSON SUINA: Good job.

21 HEARING OFFICER ORTH: On that note, Madam Chair,
22 we've got about a half an hour. The next section is
23 C-as-in-cat. There are CEP edits, which you will find
24 support in the narrative of the edits. And NMOGA edits,
25 which you will find support sections D, E and F, which

1 completes Section 123 of no alternative proposals. So if
2 we can just get through Section C, we will have finished
3 Section 123.

4 CHAIRPERSON SUINA: Okay. And so, to do that, we
5 have to vote on just one motion.

6 MS. SOLORIA: That's right.

7 CHAIRPERSON SUINA: I don't know. Madam Hearing
8 Officer, I know. We're taking turns. So, yes, we're
9 getting very excited on this end.

10 So, Ms. Corral, would you mind taking a roll-call
11 vote on Member Garcia's motion a few minutes ago?

12 ADMINISTRATOR CORRAL: Member Bitzer, how do you
13 vote?

14 BOARD MEMBER BITZER: I vote yes.

15 ADMINISTRATOR CORRAL: Member Garcia?

16 BOARD MEMBER GARCIA: Yes.

17 ADMINISTRATOR CORRAL: Member Honker?

18 BOARD MEMBER HONKER: Yes.

19 ADMINISTRATOR CORRAL: Chair Suina?

20 CHAIRPERSON SUINA: Yes.

21 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes.

23 ADMINISTRATOR CORRAL: The motion passes.

24 CHAIRPERSON SUINA: Thank you so much,
25 Ms. Corral.

1 And now we'll turn it back to you.

2 BOARD MEMBER HONKER: And just a reminder; don't
3 we still have to deal with the definitions at some point?

4 HEARING OFFICER ORTH: Yes. And I would need a
5 few minutes, because I was reading the definitions that
6 were applicable both to 123 and 126, and so maybe the
7 better course of action is to hold off until after 126.

8 BOARD MEMBER HONKER: Sounds good.

9 HEARING OFFICER ORTH: Thank you.

10 So, Section C starts at the bottom of page 311.
11 CEP's edits are on page 313 and their explanation runs for
12 about three pages following that.

13 NMOGA's edits are on page 317, and their
14 explanation is right below their edits.

15 CHAIRPERSON SUINA: Thank you, Madam Hearing
16 Officer.

17 Members of the Board? Okay, great.

18 BOARD MEMBER BITZER: Well, Oxy is involved in
19 this one too.

20 CHAIRPERSON SUINA: All right. Members?

21 MS. SOLORIA: What page is Oxy?

22 HEARING OFFICER ORTH: So the Department's
23 proposal is based on a proposal put forth by the
24 environmental parties and Oxy. CEP continues to pursue
25 some things that were proposed but not adopted by the

1 Department. And on page 314, you get a basic, succinct
2 summary of what they still want to pursue that the
3 Department didn't adopt.

4 BOARD MEMBER GARCIA: I would note that NMED did
5 take into account suggestions by the environmental
6 community and Oxy and CCA, in terms of wanting to check
7 quantity as well as -- quantity as well as quality, and
8 did agree to requiring the LACT, L-A-C-T units. So they
9 did take -- they did agree with some of CCA's suggestions.

10 Now, in this -- in this explanation, it's talking
11 about CAA and then that's -- and then we have the CEP
12 proposals. Is that the same?

13 HEARING OFFICER ORTH: Clean Air Advocates are
14 part of CEP.

15 BOARD MEMBER GARCIA: So while NMED agreed to
16 some of the environmental community changes, the
17 environmental community is wanting more, it looks like.
18 Okay. And I think you said that earlier. Okay.

19 HEARING OFFICER ORTH: And at the top of page
20 313, you shall see that NMED -- excuse me -- was trying to
21 balance what they were hearing from CEP and Oxy, against
22 what they were hearing from Mr. Smitherman.

23 BOARD MEMBER GARCIA: Okay.

24 CHAIRPERSON SUINA: And thank you for that
25 clarification, Madam Hearing Officer and Member Garcia.

1 And just for my clarity, I note that it's getting
2 toward the end of the day; so it's just CEP that has or
3 NMOGA also?

4 HEARING OFFICER ORTH: NMOGA has edits and
5 they're on page 317.

6 BOARD MEMBER GARCIA: I see one. Okay, but
7 not -- oh, okay.

8 CHAIRPERSON SUINA: I apologize. It's getting
9 toward the end of the day, so we're just on Section C.

10 HEARING OFFICER ORTH: C.

11 CHAIRPERSON SUINA: Okay.

12 BOARD MEMBER GARCIA: Is there a place where NMED
13 says why they wouldn't agree with CEP's proposal? I don't
14 see that. (Inaudible.)

15 COURT REPORTER: I'm sorry. I didn't hear the
16 response to Board Member Garcia. I don't know who spoke.

17 VICE-CHAIR TRUJILLO-DAVIS: I apologize. It was
18 me, Trujillo-Davis. I was saying I was looking for the
19 similar citation.

20 COURT REPORTER: Thank you.

21 CHAIRPERSON SUINA: Say that again. Why they
22 didn't accept -- NMED didn't fully accept all of CEP's?

23 HEARING OFFICER ORTH: All we have is what it
24 says there at the bottom of 312 and going onto 313, so,
25 yeah.

1 CHAIRPERSON SUINA: Yes. So, in that discussion,
2 you can see the evolution of the environmental groups'
3 discussion on the topic, CAA. And then Ms. Bisbey-Kuehn
4 stating -- generally supporting it, but then we also have
5 Mr. Smitherman testifying that there are no real options
6 for measuring quality, except through use of a LACT unit.

7 The Department, therefore, proposed to revise a
8 provision to -- it sounds like to balance the testimony
9 from CAA's witness as well as Mr. Smitherman.

10 VICE-CHAIR TRUJILLO-DAVIS: Just to add to that.

11 CHAIRPERSON SUINA: Vice-Chair.

12 VICE-CHAIR TRUJILLO-DAVIS: In CEP's
13 justification, I don't see anything specifically -- if I'm
14 missing it, somebody point me to it -- anything
15 specifically addressing the language that they inserted
16 into C, for construction on or after, and the language
17 following that. So I'm missing it in NMED's response and
18 I'm not seeing it in CEP's response.

19 CHAIRPERSON SUINA: Your -- your question -- or
20 you're asking about the support for that language?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes. And I believe
22 that's what Member Garcia was also looking for.

23 BOARD MEMBER GARCIA: Uh-huh.

24 CHAIRPERSON SUINA: So would it be -- and I'm
25 just, again, throwing this out there. Would it be in that

1 reference right there under CEP, Exhibit 1, at 28, on page
2 314? And it's just -- CEP's proposing it's adding
3 subsections, not the language. Apologize.

4 Yes, Member Garcia.

5 BOARD MEMBER GARCIA: Yes. I'm wondering if I
6 may ask Vice-Chair Trujillo-Davis if you can shed some
7 light on why you would check quality as well as quantity.

8 VICE-CHAIR TRUJILLO-DAVIS: That is a great
9 question. And I would say that, well, quality is
10 difficult to define. And I think the rule doesn't
11 actually define it anywhere, there's no measurement of
12 quality.

13 And I think that there's a couple of people --
14 NMOGA and NMED that speaks about that, but quality is
15 relative. And so I really can't say what the intent of
16 CEP was when they asked for quality, because it is
17 ambiguous.

18 BOARD MEMBER GARCIA: Okay. Thank you.

19 HEARING OFFICER ORTH: Madam Vice-Chair, I
20 believe CEP was tracking very closely with Colorado, and
21 Colorado tests quality.

22 BOARD MEMBER GARCIA: Right. I wish I understood
23 why, but I can see where defining quality would be
24 difficult, so I understand your comment completely.

25 VICE-CHAIR TRUJILLO-DAVIS: And I would want to

1 know what -- how Colorado defines "quality." Is it VOC
2 content? Is it speciation? Is it how much water could
3 potentially be in the transfer? I think there's just so
4 many additional questions that come as a follow-up to
5 that.

6 CHAIRPERSON SUINA: Thank you for that,
7 Vice-Chair Trujillo-Davis. I want to look at CEP's
8 submittal on this.

9 Madam Hearing Officer, so in CEP's Exhibit 1 at
10 28.

11 HEARING OFFICER ORTH: Yes.

12 CHAIRPERSON SUINA: So CEP, as we have talked
13 through, they're grouping the environmental stakeholders
14 or entities?

15 HEARING OFFICER ORTH: Yes.

16 CHAIRPERSON SUINA: So would Exhibit 1 be
17 specific to one of these entities?

18 HEARING OFFICER ORTH: I'm guessing CAA.

19 CHAIRPERSON SUINA: CAA, okay.

20 HEARING OFFICER ORTH: And the other exhibit you
21 might want to look at is CAA Exhibit 3 on page 27.

22 CHAIRPERSON SUINA: Okay.

23 HEARING OFFICER ORTH: A lot of what they're
24 saying here on page 314 is drawing from that particular
25 page.

1 CHAIRPERSON SUINA: Okay. So I'll be looking
2 for Clean Air Advocates exhibits; is that correct?

3 HEARING OFFICER ORTH: Yes.

4 CHAIRPERSON SUINA: Okay.
5 Yes, Member Garcia.

6 BOARD MEMBER GARCIA: Well, I'm -- somebody can
7 correct me or help me understand this, perhaps. On the
8 suggested changes that CEP is proposing in C, they're
9 talking about constructed on or after the effective date
10 of this part. Isn't that already implied?

11 VICE-CHAIR TRUJILLO-DAVIS: I thought so, too.

12 CHAIRPERSON SUINA: Yes, Madam Hearing Officer.

13 HEARING OFFICER ORTH: I'm sorry. Madam Chair,
14 so they struck the word "new" in the first line there,
15 which is subtle, but that's --

16 VICE-CHAIR TRUJILLO-DAVIS: Oh, got it.

17 HEARING OFFICER ORTH: And then effectively
18 replaced it with the, "constructed on or after the
19 effective date of this part," but then added the business
20 about "modified on or after this date."

21 BOARD MEMBER GARCIA: Okay. Uh-huh.

22 VICE-CHAIR TRUJILLO-DAVIS: So it would appear
23 that they're trying to mirror the language found in
24 Colorado, which many of these facilities is not subject
25 to.

1 BOARD MEMBER GARCIA: Where are you seeing that?

2 VICE-CHAIR TRUJILLO-DAVIS: My knowledge.

3 BOARD MEMBER GARCIA: Oh, okay. You just know
4 that. Okay.

5 VICE-CHAIR TRUJILLO-DAVIS: I mean, we've
6 addressed Colorado several times throughout this, but I
7 think that that language is very unique to that regulation
8 itself.

9 BOARD MEMBER GARCIA: Okay. And you think that
10 it not only includes on or after -- it's "modified" on or
11 after, and then also, "such that any additional controlled
12 storage vessel is constructed to receive an anticipated
13 increase in throughput of hydrocarbon liquid or produced
14 water."

15 Do you think that's part of 0000?

16 VICE-CHAIR TRUJILLO-DAVIS: I think the aspect
17 here is the "modified"; the reference to it being
18 modified, so if you come in and you have a facility that
19 isn't being pulled in under this, that if you go and make
20 any changes to it, now it becomes subject to it.

21 BOARD MEMBER GARCIA: There were a fair amount of
22 discussions about that particular issue on several
23 provisions in this rule, about what is "new," and if you
24 consider something new when they modify it. I mean, that
25 was discussed quite a bit, so I think that NMED probably

1 intentionally used the word "new." And they could have
2 used the words "and modified," and they didn't.

3 And I know that was discussed quite a bit in
4 several other places in the rule. So they're actually
5 also cutting the industry a break, to just say "any" and
6 not "modify."

7 CHAIRPERSON SUINA: And that was the NMED?

8 BOARD MEMBER GARCIA: Yes.

9 HEARING OFFICER ORTH: I'm sorry. Madam Chair,
10 if I might? On page 21 of the report in Section 7 CC,
11 "new" is defined as "constructed or reconstructed on or
12 after the effective date."

13 BOARD MEMBER GARCIA: Or reconstructed, gee.

14 CHAIRPERSON SUINA: Can you repeat that?

15 HEARING OFFICER ORTH: I'm sorry. At page 21 in
16 the definitions section, CC: "New means constructed or
17 reconstructed." So, then, when you go to page 13,
18 "Construction means fabrication, erection, or
19 installation," and then, "but does not include relocations
20 or like-kind replacements." I'm not sure if that's
21 helpful or not.

22 BOARD MEMBER GARCIA: Yes. Thank you. Thank
23 you. So they did.

24 CHAIRPERSON SUINA: And that was -- that was
25 NMED's proposed language?

1 HEARING OFFICER ORTH: Yes, which you've already
2 adopted.

3 BOARD MEMBER HONKER: Well, and just --

4 CHAIRPERSON SUINA: Oh, sorry, Member Honker.

5 BOARD MEMBER HONKER: And just a point on that,
6 reading NMED's rationale for the definition of "new" on
7 page 21, it says "no parties commented on this proposal."
8 So the definition of "new," which I believe we approved as
9 we were going through that section, was not commented on.

10 And in a way, CEP's proposed language is to
11 subdefine "new" for the purposes of this section, when the
12 term "new" has already been established in the
13 definitions. So I guess I'm kind of viewing it that way.

14 HEARING OFFICER ORTH: So, Member Honker, I have
15 one more thing to add to what I said earlier, which is on
16 page 30 -- and this is QQ-as-in-queen; "reconstruction,"
17 which, again, you've already adopted -- "means a
18 modification that results in the replacement of the
19 components or addition of integrally related equipment on
20 an existing source."

21 So -- and you've already adopted that, and that
22 was not controversial. So I think when you put together
23 "new," meaning "construction or reconstruction," and then
24 you look at construction and then reconstruction, it
25 includes modifications.

1 BOARD MEMBER GARCIA: Yeah. So, okay, that's
2 helpful. Thank you very much, Madam Hearing Officer.

3 And then, so CEP is also using the word
4 "modified" which would be the same as "new." It's just a
5 matter of the "on or after the effective date of this
6 part," which -- which is implied. And then, so, the
7 difference then comes down to the -- "to receive an
8 anticipated increase in throughput of hydrocarbon liquids
9 or produced water," which is rather confusing to me, a bit
10 convoluted.

11 VICE-CHAIR TRUJILLO-DAVIS: Yes, I think that CEP
12 is actually expanding the definition, because we're
13 talking about storage tanks -- storage vessels. Right?
14 So, storage -- so NMED's original language here is talking
15 about new storage vessels. And CEP expands the definition
16 by saying "at any facilities that are modified," it's not
17 specifying modified storage vessels. So, it's saying
18 facilities. So it's expanding the definition to any kind
19 of modifications at a facility

20 BOARD MEMBER GARCIA: That's a good point. Thank
21 you.

22 CHAIRPERSON SUINA: Even though it's under the
23 header of storage vessel unit -- or measurement
24 requirements.

25 I just want to do a time check. We're at 5:59

1 and we're still having fun. Yes, Ms. Soloria.

2 MS. SOLORIA: I was just going to check in on the
3 time issue. So the notice that we published for these
4 deliberations was just starting on the first day at 9 and
5 continuing until concluded, but this is one of those
6 situations where technology doesn't necessarily align with
7 the Department-posted calendar items, from 9 to 6.

8 I'm of the mind you could keep going because of
9 our notice, and we would just announce here that we are
10 continuing to go, but I'm not saying we should. I'm just
11 explaining that as a possibility.

12 CHAIRPERSON SUINA: So may I ask? So we're on
13 page around 312.

14 BOARD MEMBER BITZER: I've got to be on the road
15 in a few minutes because I've got to work tonight.

16 HEARING OFFICER ORTH: All right. So I'll just
17 do this really quickly. In 123, all we have left is this
18 section right here.

19 CHAIRPERSON SUINA: Okay.

20 HEARING OFFICER ORTH: In 124, well workovers,
21 there are no alternate proposals in A, B, C or D. There
22 is a fair amount of action in E.

23 In 125, no alternate proposals except in Section
24 G; however, that was pretty contentious because we've got
25 small business facilities. And so, on that, the

1 discussion only goes on for five pages of that whole
2 section.

3 126, Produced Water Management Units, the
4 discussion is limited to eight pages and the only
5 contested part was a proposed clarification.

6 And then you have two 127s. Okay. Obviously, if
7 you adopt the second 127, that would become 128 -- or one
8 of them would. One is a stipulation with no alternate
9 proposals, so that will take about a minute.

10 CHAIRPERSON SUINA: Okay.

11 HEARING OFFICER ORTH: The other one is about
12 "flowback vessels" and it was proposed jointly by Oxy and
13 the environmental groups, and the Department did not take
14 a position.

15 CHAIRPERSON SUINA: Right. I recall that.

16 HEARING OFFICER ORTH: So I think the rest of the
17 sections are actually going to go pretty speedily.

18 CHAIRPERSON SUINA: Okay.

19 VICE-CHAIR TRUJILLO-DAVIS: So are you thinking
20 we should end at 6?

21 CHAIRPERSON SUINA: Yes, I think that's what I
22 hear. Member Bitzer needs to get on the road.

23 BOARD MEMBER BITZER: I've got to go, but you
24 still have a quorum if you want to keep going.

25 CHAIRPERSON SUINA: Yeah, and I have to pick

1 someone up.

2 BOARD MEMBER GARCIA: And I'm okay with stopping
3 here.

4 MS. SOLORIA: I guess you did mention that.

5 CHAIRPERSON SUINA: Member Honker, so we're
6 thinking of ending today, just on our second day of
7 deliberations here, it's just after 6.

8 And, knock on wood, that we will be able to
9 finish, based upon a quick summary from Madam Hearing
10 Officer about it. So, with that, it looks like we see
11 thumbs up, nodding heads. All right.

12 Well, thank you, everybody. Thank you, Madam
13 Court Reporter. I know we're still trying our best and
14 keeping our voices raised. Thank you, all. It's a long
15 day, but a good day. Appreciate it. See everybody
16 tomorrow morning.

17 (Deliberations adjourned on April 12, 2022, at
18 6:03 p.m.)

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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

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on April 12, 2022, the Deliberations Hearing
of the New Mexico Environmental Improvement Board, was
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by the
rules) any of the parties or attorneys in this matter, and
that I have no interest whatsoever in the final
disposition of this matter.



THERESA E. DUBOIS, RPR
New Mexico CCR #29
License Expires: 12/31/2022

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STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

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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 13th day of April, 2022,
this matter came on for Deliberations and Decision on the
virtual WebEx platform, before PHOEBE SUINA, Chairperson
for the Environmental Improvement Board, commencing at the
hour of 9:18 a.m.

REPORTED BY:

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A P P E A R A N C E S

For the Environmental Improvement Board:

- PHOEBE SUINA, Chairperson
- AMANDA TRUJILLO-DAVIS, Vice-Chairperson
- BARRY BITZER, Board Member
- BENJAMIN DUVAL, Board Member
- KAREN GARCIA, Board Member
- WILLIAM HONKER, Board Member

Hearing Officer:

FELICIA ORTH, ESQ.

Counsel For the EIB:

- KARLA SOLARIA, Commission Counsel
Office of the Attorney General
- PAMELA JONES, Commission Administrator
- MADAI CORRAL, Commission Administrator

REPORTER'S CERTIFICATE

236

1 CHAIRPERSON SUINA: Good morning, everybody. I
2 just wanted to inform you, it looks like we're going to
3 have to move rooms. The internet in this room is not
4 working, so we're going to move upstairs. So, just want
5 to let everybody know to give us a few minutes and I will
6 also put that in the Chat. Okay.

7 And just to give a target time for everybody,
8 let's see if -- let's check in at 9:45. It's going to
9 take us some time to go upstairs. And to all of our
10 members on the line, we will start around 9:45.

11 (Recess taken from 9:19 a.m. to 9:56 a.m.)

12 CHAIRPERSON SUINA: Well, thank you so much,
13 everybody. Apologize. I know it took us an extra 57
14 minutes to get back online here, but we're here. And so,
15 we're delving back into our deliberations.

16 And I want to look at Hearing Officer -- Madam
17 Hearing Officer, and Ms. Soloria, it's open if we need any
18 announcements this morning or to ground us where we're at.

19 HEARING OFFICER ORTH: Madam Chair, when we broke
20 last night, we were in Section 123, C. You were
21 considering edits by CEP, and NMOGA also proposed edits to
22 NMED's language. That's my memory of where we were last
23 night.

24 BOARD MEMBER GARCIA: Yes. And this is "Storage
25 vessel measurement requirements."

1 HEARING OFFICER ORTH: Yes, page 301, and
2 continuing in the hard copy if you're following along in
3 the hard copy.

4 CHAIRPERSON SUINA: Thank you, Madam Hearing
5 Officer. And members of the Board, I guess we're at -- as
6 Hearing Officer stated, I apologize I'm getting grounded,
7 here, too. Would you mind putting that up on the screen
8 as well?

9 HEARING OFFICER ORTH: Oh, yes.

10 MS. SOLORIA: I'm sorry, Madam Chair.

11 CHAIRPERSON SUINA: Yes.

12 MS. SOLORIA: Could we get a roll call today?

13 CHAIRPERSON SUINA: Oh, yes. I apologize. We're
14 a little off, going through everything this morning.

15 So, yes, Ms. Jones, would you mind doing a
16 roll-call to start our meeting?

17 ADMINISTRATOR JONES: Yes, of course. Good
18 morning. Member Bitzer, are you present?

19 BOARD MEMBER BITZER: I am indeed.

20 ADMINISTRATOR JONES: Member Cates, are you
21 present?

22 Member Duval, are you present?

23 Member Garcia?

24 BOARD MEMBER GARCIA: Yes.

25 ADMINISTRATOR JONES: Member Honker?

1 BOARD MEMBER HONKER: I am here.

2 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

3 VICE-CHAIR TRUJILLO-DAVIS: Yes.

4 ADMINISTRATOR JONES: Chair Suina?

5 CHAIRPERSON SUINA: Yes.

6 ADMINISTRATOR JONES: We have a quorum, Madam
7 Chair.

8 CHAIRPERSON SUINA: Thank you, Ms. Jones, and
9 thank you, Ms. Soloria, about reminding us of the
10 roll-call. And please chime in if there's something else
11 we missed in the transition up here. But welcome -- I
12 also want to welcome our guests online and apologize again
13 for the delay, but we're being resilient and going forward
14 here.

15 So, Madam Hearing Officer has put up on the
16 screen the section that we are at. And it's C, the
17 "Storage vessel measurement requirements."

18 So, Board members, let's get all of your
19 references and paperwork so that we're at this spot and we
20 can begin discussions on this on the deliberations.

21 HEARING OFFICER ORTH: Madam Chair, the
22 Department's proposal is on page 311. CEP's proposed
23 edits are on page 313, and NMOGA's proposed edits are on
24 317.

25 CHAIRPERSON SUINA: Thank you, Madam Hearing

1 Officer. Thank you.

2 All right. So, Madam Hearing Officer, would you
3 just remind us -- I know we were talking about this last
4 night, but -- so, for 123 C, "Storage vessel measurement
5 requirements," we have the proposal by NMED and then we
6 have CEP's proposed edits and we also have industry,
7 right -- NMOGA?

8 HEARING OFFICER ORTH: That's correct.

9 CHAIRPERSON SUINA: Okay. And is that all, just
10 CEP and NMOGA?

11 HEARING OFFICER ORTH: Correct.

12 CHAIRPERSON SUINA: Okay. Okay. And if I may?
13 It looks like for CEP, there were the proposed additions
14 in C, and then deletions in C (1), just going through some
15 of the summary here. And then NMOGA has three edits in C
16 (1), which were additions and one deletion.

17 HEARING OFFICER ORTH: That's right.

18 CHAIRPERSON SUINA: Yes, Member Garcia.

19 BOARD MEMBER GARCIA: Perhaps just to help us
20 kind of get our minds back into where we left off
21 yesterday, I think that we established that where CEP
22 crossed out the word "new," and then later they talked
23 about "modified on or after effective date," we -- I think
24 we all agreed that the definition of "new" included
25 modifications because it includes constructed or

1 reconstructed, or reconstructed includes modifications.
2 So, crossing out the word "new," and then putting in
3 "modified" doesn't seem to get us any further. I think we
4 had talked about that at the end of the day and we
5 didn't -- I think maybe we agreed, just to get our heads
6 back into it.

7 CHAIRPERSON SUINA: Thank you, Member Garcia.
8 Yes, Member Honker.

9 BOARD MEMBER HONKER: Yeah, I was just going to
10 make the same point. And, in fact, you know, since we
11 have "new" defined in the definitions, including CEP's
12 language here, could kind of muddy the definition. And,
13 so, yeah, I thought we were all kind of on the same
14 wavelength to reject that part of it.

15 And the quality, their definition of quality --
16 to the quantity and the quality of liquids in paragraph C,
17 seemed to be for consistency with Colorado. I didn't see
18 a whole lot of other support for including quality. So
19 that's just my impression reading through the rationale.

20 CHAIRPERSON SUINA: Thank you, Member Honker.
21 Vice-Chair Trujillo-Davis.

22 VICE-CHAIR TRUJILLO-DAVIS: In addition to Member
23 Honker's comments, I was inclined to reject "quality"
24 because it lacked definition anywhere else in the rule.
25 So, without anchoring again into some sort of baseline for

1 what "quality" meant, I have trouble including it.

2 CHAIRPERSON SUINA: Thank you, Vice-Chair
3 Trujillo-Davis.

4 Any other members have any -- yes, Member Bitzer.

5 BOARD MEMBER BITZER: I just want to concur with
6 what my fellow Board members have said so far. I think
7 we're all on the same page.

8 CHAIRPERSON SUINA: Thank you, Member Bitzer.

9 Are there any comments on NMOGA's edits in
10 section C (1)? The conversation, I think we've covered
11 the comments for CEP's edits except -- oh, I apologize.
12 Except for -- except "as necessary for custody transfer."
13 Sorry for going too fast here.

14 Yes, Member Honker.

15 BOARD MEMBER HONKER: Yes, it seems like we have
16 three different versions of how the thief hatch issue is
17 addressed, between NMED, CEP and NMOGA. So we've got to
18 discuss that and land on which one we think is best.

19 CHAIRPERSON SUINA: Yes. Thank you, Member
20 Honker.

21 Yes, Member Garcia.

22 BOARD MEMBER GARCIA: Well, just a thought about
23 NMOGA's suggested language to add "equipped with a storage
24 vessel measurement system," well, the whole idea is they
25 have to do the measurement. So they have to be equipped

1 with it at some point, so that seems to be a little odd,
2 to say the least.

3 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. Say that
4 again.

5 BOARD MEMBER GARCIA: I'm saying on NMOGA's
6 suggested addition on page 317, where they added -- in
7 (1), they added "equipped with a storage vessel
8 measurement system."

9 And since the whole idea is to do storage vessel
10 measurement, it seems odd to qualify it with, if it's
11 equipped with a storage vessel measurement system. Well,
12 it needs to be. It has to be measured.

13 CHAIRPERSON SUINA: A question?

14 VICE-CHAIR TRUJILLO-DAVIS: I mean, there's other
15 ways of measuring -- measuring it. And I'm just adding
16 that for context, but I'm not really sure how it fits in
17 here.

18 So NMOGA didn't -- let me make sure I'm reading
19 this right. NMOGA didn't have any edits to C, right?

20 CHAIRPERSON SUINA: Correct.

21 VICE-CHAIR TRUJILLO-DAVIS: Just C (1)?

22 BOARD MEMBER GARCIA: C (1).

23 VICE-CHAIR TRUJILLO-DAVIS: Okay.

24 CHAIRPERSON SUINA: I have all of my notes.

25 HEARING OFFICER ORTH: Do you want to borrow my

1 hard copy?

2 CHAIRPERSON SUINA: No, I have all of my other
3 documents up.

4 Apologize, Court Reporter, I'm just having
5 computer issues. I think I just have too many screens
6 open over there.

7 Is Mercury in retrograde?

8 MS. SOLORIA: I believe it now.

9 VICE-CHAIR TRUJILLO-DAVIS: I'm just curious.

10 CHAIRPERSON SUINA: Yes, Vice-Chair Davis.

11 VICE-CHAIR TRUJILLO-DAVIS: And I seem to be lost
12 in the text here. But C -- is this C only for new storage
13 vessels or is it for all storage vessels?

14 CHAIRPERSON SUINA: It's all -- well, the title
15 is "Storage vessel measurement requirements."

16 VICE-CHAIR TRUJILLO-DAVIS: Uh-huh.

17 CHAIRPERSON SUINA: And then it goes into further
18 explanation of what it applies to.

19 BOARD MEMBER GARCIA: Although, NMED's version
20 did keep the word "new" in there. So I think they are
21 talking about new storage vessels.

22 VICE-CHAIR TRUJILLO-DAVIS: Well, I remember
23 this, so, you-all just make sure if I'm getting off path
24 here, but I'm reading it saying, here are your
25 requirements for a new storage vessel that you have to add

1 a LACT -- that it has to be outfitted with a LACT, and I
2 see that as being required for new.

3 But I'm struggling to see where existing storage
4 vessels falls in, and I may just be looking in the wrong
5 place.

6 CHAIRPERSON SUINA: Thank you, Vice-Chair.

7 HEARING OFFICER ORTH: So, Vice-Chair, there are
8 references to new or existing storage vessels, for
9 example, in paragraph (5) of B on page 310. I can scan
10 the rule for other references to "new" and "existing" if
11 that would be helpful.

12 VICE-CHAIR TRUJILLO-DAVIS: No, that's okay. Let
13 me look back at B real quick because I know those were all
14 uncontested and we reviewed them yesterday, but just let
15 me look back at B real quick.

16 CHAIRPERSON SUINA: Thank you, Vice-Chair.

17 And, again, just to reiterate, I know we had this
18 discussion last night. You know, CEP suggested adding the
19 proposed section, NMED did adopt it, and I'm just
20 summarizing the text of Madam Hearing Officer's report,
21 but CEP, remember, still wanted to push for additional
22 language that NMED did not fully adopt in their adoption
23 of Section 122 C.

24 HEARING OFFICER ORTH: And Madam Chair, it was
25 CEP and Oxy.

1 CHAIRPERSON SUINA: Thank you for that.

2 VICE-CHAIR TRUJILLO-DAVIS: Okay. So this is how
3 I'm reading this section, and I need help answering the
4 questions Member Garcia had on this. And I think we had
5 more questions, but, okay. So when you pull a load off of
6 a tank, if it doesn't have -- if it's not equipped with a
7 measurement system -- I'm on the wrong page. Just a sec.

8 If it's not equipped with a measurement system,
9 you have to open the thief hatch to, you know, like when
10 you're drinking out of a water jug, right, you've got to
11 have a little room there to be able to pull suction. And
12 so, I understand what NMOGA's additional language was to
13 put through the storage vessel measurement system.

14 If it's not, which would mean it's an existing
15 facility, because a new facility has to be equipped with
16 one, then that would be how you would need to open the
17 thief hatch. But where I'm struggling at is where we're
18 talking about storage -- storage vessel measurement
19 requirements for existing sites.

20 CHAIRPERSON SUINA: So, Vice-Chair, can you look
21 at B (5) and see if that addresses existing?

22 VICE-CHAIR TRUJILLO-DAVIS: So I went back to B
23 (5) and B (5) is for emissions standards.

24 CHAIRPERSON SUINA: Right.

25 VICE-CHAIR TRUJILLO-DAVIS: Yeah, so.

1 BOARD MEMBER GARCIA: Yeah, I wouldn't think
2 it's -- it's not talking about measuring in B (5), right?

3 VICE-CHAIR TRUJILLO-DAVIS: Right.

4 CHAIRPERSON SUINA: These are measurement
5 requirements.

6 VICE-CHAIR TRUJILLO-DAVIS: And B (5) does
7 suggest that -- or does require that if you have to open
8 the thief hatch, that it is -- the pressure -- let me make
9 sure I read this correctly. I believe it meant to have
10 something that closes the thief hatch, but let me go back
11 to (5).

12 BOARD MEMBER GARCIA: The only other place that I
13 see a reference to nonexisting is the last sentence in
14 (1), where they do mention "existing" in the last sentence
15 of (1). I'm sorry. Yes, NMED C (1).

16 VICE-CHAIR TRUJILLO-DAVIS: Yes.

17 HEARING OFFICER ORTH: I don't remember a
18 measurement system for existing storage vessels.

19 VICE-CHAIR TRUJILLO-DAVIS: I think that language
20 in (1) that NMED put in does satisfy that. I'm going to
21 go back to CEP, if I can find CEP. There it is.

22 CHAIRPERSON SUINA: So, Member Garcia, thank you
23 for that reference. So since it has that language in
24 NMED's where opening a thief hatch is necessary, and then
25 it includes the new and existing, would that be, I guess,

1 contradictory if we don't -- if we have only "new" in the
2 upper level?

3 HEARING OFFICER ORTH: Excuse me. B (5) went to
4 overpressurization, right? Avoiding overpressurization
5 for new and existing. C (1) goes to minimizing the time
6 the thief hatch is open. C, the measurement system --
7 right, just C is about measurement for new and not
8 existing. So we're just talking about three different
9 functions here.

10 CHAIRPERSON SUINA: Okay.

11 BOARD MEMBER GARCIA: So, to Vice-Chair
12 Trujillo-Davis's question, there's -- they don't have a
13 separate section just in existing for measurements,
14 apparently?

15 VICE-CHAIR TRUJILLO-DAVIS: Right, but I do think
16 they address it.

17 BOARD MEMBER GARCIA: Right, in that last
18 sentence.

19 VICE-CHAIR TRUJILLO-DAVIS: Yes. Thank you.

20 CHAIRPERSON SUINA: So they address it in the
21 last sentence, but I guess that's where my question is.
22 So C (1) addresses "new" and "existing"?

23 BOARD MEMBER GARCIA: Just for minimizing it when
24 you open, not for measuring.

25 CHAIRPERSON SUINA: Exactly. And I think that's

1 why CEP is saying they want to take out "new" in C.

2 BOARD MEMBER GARCIA: So that it does cover
3 existing?

4 CHAIRPERSON SUINA: So it does cover existing.

5 VICE-CHAIR TRUJILLO-DAVIS: But unless I'm
6 reading this incorrectly, but I think by taking out
7 "new" -- well, they add the additional language to replace
8 "new." That's the way I looked at it the first time,
9 maybe it's different than that.

10 CHAIRPERSON SUINA: You're right.

11 VICE-CHAIR TRUJILLO-DAVIS: You see what I'm
12 saying?

13 BOARD MEMBER GARCIA: Yeah, constructed or
14 modified after the state, so that's "new" in NMED's
15 definition; that's "new." So it's not adding to what
16 NMED's concept already was, I think.

17 CHAIRPERSON SUINA: Yes.

18 BOARD MEMBER GARCIA: Except that they do add,
19 "if anticipated to receive throughput of hydrocarbons or
20 produced water," which is, I think, anticipated in
21 creating a phraseology that may be difficult to enforce.

22 So I guess I would be ready to at least throw it
23 out there, that C, if we just look at C only, I'm not
24 comfortable with the changes that CEP has proposed. I
25 don't think that it -- that it helps. I'm not sure what

1 their intention is, except for the very last part of the
2 phrase.

3 I'm -- I'm not clear on what the intention is for
4 this language and I think it could be confusing to try to
5 enforce this language; "storage vessel is constructed to
6 receive an anticipated increase in throughput," I think
7 could be a little difficult to enforce. So, generally
8 speaking, I'm comfortable with NMED's language -- original
9 language.

10 CHAIRPERSON SUINA: Thank you, Member Garcia.

11 Yes Vice-Chair.

12 VICE-CHAIR TRUJILLO-DAVIS: I concur with Member
13 Garcia and if the Board is ready to move on to (1).

14 CHAIRPERSON SUINA: Okay. I see a thumbs up and
15 a head nod from our Board members online.

16 VICE-CHAIR TRUJILLO-DAVIS: So I'm going to start
17 with NMOGA on this one. I understand what they're putting
18 forth in their language, but I think it only muddies the
19 water while trying to make it clear. So I think that the
20 language that is proposed by NMED is sufficient.

21 And NMOGA makes the argument that they would need
22 to open a thief hatch to test the quality and the quantity
23 of the oil, and I believe that the language as put into
24 the original -- or to the NMED's text, where opening a
25 thief hatch is necessary, owners and operators of new and

1 existing storage facility -- or storage vessel shall
2 minimize the time the thief hatch is open.

3 I feel like that covers there, what they need to
4 do. So, for that one, I suggest rejecting that, NMOGA's
5 proposal on that.

6 CHAIRPERSON SUINA: Thank you, Vice-Chair, for
7 your comments.

8 BOARD MEMBER GARCIA: I think Member Bitzer.

9 CHAIRPERSON SUINA: Yeah, Member Bitzer, do you
10 have a comment?

11 BOARD MEMBER BITZER: I was just going to second
12 that motion.

13 CHAIRPERSON SUINA: Thank you.

14 Yes, Member Honker.

15 BOARD MEMBER HONKER: And I'm in agreement as
16 well on that. And then, looking at CEP's proposed
17 striking of "except as necessary for custody transfer,"
18 that seems like it would rule out an option that both NMED
19 and NMOGA see as necessary. That may apply to the
20 existing storage vessels that don't have the LACT system
21 or another monitoring system.

22 But I'm -- I'm -- I think it may be problematic
23 from an operational standpoint to strike, "except as
24 necessary for custody and transfer," as CEP proposes.

25 CHAIRPERSON SUINA: Thank you, Member Honker.

1 Yes, Member Garcia.

2 BOARD MEMBER GARCIA: I have to say I agree with
3 Member Honker on that point. I am looking at CEP and I
4 suppose Oxy's -- I'm not sure if they're on this point or
5 not -- but, anyway, CEP's defense of taking out that
6 phrase. And they're saying that it's ambiguous and could
7 be used as reason to open a thief hatch, even though it's
8 not technically necessary.

9 And correct me if I'm wrong, but I'm not sure why
10 they would be wanting to do that unless they needed to
11 anyway for -- maybe you can correct me, Vice-Chair. So
12 I'm not sure that there's -- there's -- in the field,
13 folks are going to be wanting to open the thief hatch
14 unless they really need to for custody transfer anyway.
15 And so, that just clarifies that's the only reason they
16 should do it.

17 So I'm not -- I guess -- I guess what I'm saying
18 is, I think CEP is seeing a problem where I don't see a
19 problem with that phrase.

20 CHAIRPERSON SUINA: Thank you, Member Garcia.

21 Not to put you on the spot, Vice-Chair, do you
22 see that happening in operations?

23 VICE-CHAIR TRUJILLO-DAVIS: Well, not necessarily
24 due to -- thief hatches are an issue. I mean, that's not
25 a secret at all. It's part of the reason we're putting

1 together a rule; thief hatches are an issue, but it's not
2 generally something that people open willy-nilly, just
3 because. A thief hatch is located at the top of a tank,
4 so you generally have to climb a catwalk and -- a ladder
5 and a catwalk and open the tank.

6 And with increased safety concerns, a lot of
7 times people have to actually go under air, if it is a
8 sour facility, and that takes, you know, additional steps.
9 So, mostly, in my experience, companies try to minimize
10 the amount of time and reasons for people to open a thief
11 hatch unless there's measurements or testing or something
12 like that going on.

13 CHAIRPERSON SUINA: Okay. So, this -- to your
14 point, Member Garcia, as you shared with us, it's more --
15 you don't -- the way the concern was framed in CEP's
16 language justification and support for this deletion seems
17 to not really be an issue. And even from an operational
18 standpoint, from what member or Vice-Chair Trujillo-Davis
19 stated, is the operators don't really want to do it anyway
20 for a number of other reasons.

21 VICE-CHAIR TRUJILLO-DAVIS: Yeah, there's a lot
22 of reasons for not doing it.

23 CHAIRPERSON SUINA: Okay. I just want to make
24 sure I'm clear. Okay. And thank you, Vice-Chair, for
25 sharing your insight on that. I have not been to or seen

1 a thief hatch, so that's helpful.

2 VICE-CHAIR TRUJILLO-DAVIS: They're pretty
3 interesting little gadgets. Okay. So then we are on --
4 do we need to make a motion for C and C (1)?

5 CHAIRPERSON SUINA: Uh-huh. Uh-huh.

6 HEARING OFFICER ORTH: Vice-Chair, and B and E
7 are also uncontested.

8 VICE-CHAIR TRUJILLO-DAVIS: Do C (2),
9 (3) or (4) have any edits to them?

10 HEARING OFFICER ORTH: The only edits are the
11 ones set out there.

12 MS. SOLORIA: And I'll just note for the Board,
13 there was a typo, which the Hearing Officer's report
14 notes, on 317 at C (5) (c), that the paragraph should be
15 (1).

16 And I wanted to ask the Hearing Officer, if that
17 should also include C (5) (d) because there's also a
18 reference to paragraph C (3).

19 HEARING OFFICER ORTH: Oh.

20 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

21 HEARING OFFICER ORTH: And, hopefully, they would
22 have tracked that down.

23 MS. SOLORIA: I just -- I just -- I'll represent
24 that I'm just seeing that in NMED's final redline. And my
25 reading is that, if it should be fixed in C, it should

1 also be fixed in D.

2 HEARING OFFICER ORTH: Okay. Now we have a
3 marker on the transcript for that.

4 MS. SOLORIA: Yes.

5 HEARING OFFICER ORTH: Okay. Thank you.

6 MS. SOLORIA: Yes, but I wanted to throw that to
7 the Board, to make sure my substantive understanding of
8 that is correct.

9 CHAIRPERSON SUINA: Thank you.

10 BOARD MEMBER GARCIA: But we don't have to
11 include it in the motion?

12 MS. SOLORIA: No, no, no. But, again, I'm
13 just double-checking the substantive understanding of that
14 that -- of that typo.

15 CHAIRPERSON SUINA: Okay. So that was C (5) (c)
16 as noted in Madam Hearing Officer's report. And what was
17 the other reference?

18 MS. SOLORIA: So, C (5) (c) and C (5) (d) in
19 NMED's final redline has a reference to paragraph (3) and
20 it looks like NMOGA caught that that should be a reference
21 to paragraph (1). And I'm just noting that I think that
22 also holds true for (d) as well, that that should be
23 corrected to paragraph (1).

24 Do you want to look at mine?

25 CHAIRPERSON SUINA: Yeah. Thank you.

1 Okay. All right. Thank you for that. All
2 right. Thank you, Ms. Soloria, for that. So we just need
3 to note it on the record?

4 MS. SOLORIA: Right, yeah.

5 CHAIRPERSON SUINA: And then --

6 HEARING OFFICER ORTH: The Department will
7 correct. So I'll check, and then the Department, when
8 preparing rules, will fix all cross-references.

9 CHAIRPERSON SUINA: Okay. And we'll just sort of
10 make a motion at the end about formatting.

11 MS. SOLORIA: Yes.

12 CHAIRPERSON SUINA: Okay.

13 BOARD MEMBER GARCIA: Ready for a motion?

14 CHAIRPERSON SUINA: Yes.

15 BOARD MEMBER GARCIA: I would like to move that
16 we adopt 123 C and D, E and F as proposed by NMED, for
17 reasons proffered by NMED, and reject the proposal by CEP
18 and Oxy for lack of sufficient justification to make those
19 changes. And also reject the proposed changes to NMED's
20 proposal by NMOGA, for lack of justification to make those
21 changes.

22 CHAIRPERSON SUINA: Thank you, Member Garcia and
23 Ms. Soloria, for this motion -- first big motion of the
24 day. Is that -- is that clear?

25 MS. SOLORIA: Yes. I would just -- I

1 extrapolated from the conversation that with regard to CEP
2 and Oxy's proposal, that we had relied on inconsistency
3 with previously-accepted definitions, so if I may amend
4 your motion or suggest an amendment, to accept NMED's
5 proposed language by ED, for the reasons offered by NMED,
6 rejecting CEP and Oxy's proposed language as inconsistent
7 with previously-accepted definitions, and for lack of
8 justification in the record, and rejecting NMOGA's
9 proposed language for lack of justification in the record.

10 BOARD MEMBER GARCIA: Thank you.

11 CHAIRPERSON SUINA: Thank you, Ms. Soloria. Is
12 that -- is that okay with you --

13 BOARD MEMBER GARCIA: Yes.

14 CHAIRPERSON SUINA: -- Member Garcia?

15 BOARD MEMBER GARCIA: Absolutely.

16 BOARD MEMBER HONKER: I'll second that.

17 CHAIRPERSON SUINA: Member Honker provides a
18 second. I'm looking to our Board, if there's no
19 questions; I see head nods. So, with that, Ms. Jones,
20 would you mind doing a roll-call vote?

21 ADMINISTRATOR JONES: Member Bitzer, how do you
22 vote?

23 BOARD MEMBER BITZER: I vote yes.

24 ADMINISTRATOR JONES: Madam Chair, is Member
25 Cates going to join us?

1 CHAIRPERSON SUINA: No, no. He's on travel, so
2 he won't be joining us.

3 ADMINISTRATOR JONES: Okay. I don't want to keep
4 calling his name.

5 Member Duval?

6 CHAIRPERSON SUINA: He's not on right now.

7 ADMINISTRATOR JONES: Okay. Member Garcia?

8 BOARD MEMBER GARCIA: Yes.

9 ADMINISTRATOR JONES: Member Honker?

10 BOARD MEMBER HONKER: Yes.

11 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

12 VICE-CHAIR TRUJILLO-DAVIS: Yes.

13 ADMINISTRATOR JONES: Chair Suina?

14 CHAIRPERSON SUINA: Yes.

15 ADMINISTRATOR JONES: The motion passes.

16 HEARING OFFICER: Thank you, Ms. Jones.

17 Appreciate that. Thank you, members.

18 And, yes, Member Honker.

19 BOARD MEMBER HONKER: Just a note for the Chair
20 and the members in the room there, Member Duval was on
21 earlier, and I believe he said he might be back on around
22 11:00, if I recall -- if I recall correctly. Member
23 Bitzer and I were on, so he mentioned that to us.

24 CHAIRPERSON SUINA: Thank you, Member Honker.

25 Yes, so Ms. Jones, around 11:00, we'll check and

1 see if he's on.

2 ADMINISTRATOR JONES: Okay. Yes, ma'am.

3 CHAIRPERSON SUINA: Thank you. And so that took
4 us all the way through F, Madam Hearing Officer. And I
5 apologize; I've got to restart my computer so I'm going to
6 turn it over to you to take us through the 124.

7 HEARING OFFICER ORTH: Yes. Section 124, this is
8 "Well Workovers." It's a fairly short section in your
9 hard copies, pages 320 to 327. In sections A, B, C and D,
10 there are no alternative proposals to NMED's language.

11 In section E, we have a proposal by Oxy, to add a
12 paragraph regarding manufactured homes and we have a
13 proposal by IPANM to delete sections -- Subsection E (2)
14 and E (3) in their entirety. E is the section on
15 reporting in this larger section.

16 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. What page
17 is that on?

18 HEARING OFFICER ORTH: So E is NMED's E, starts
19 on page 323. IPANM's proposed deletions and their
20 explanation for that is on page 325, and Oxy's proposal to
21 add a provision regarding modular homes is on page 327.

22 And one more thing: NMOGA supports IPANM's
23 proposed deletion.

24 VICE-CHAIR TRUJILLO-DAVIS: Okay.

25 CHAIRPERSON SUINA: So NMOGA supports all of

1 IPANM's deletions?

2 HEARING OFFICER ORTH: Right, in E (2) and (3).

3 CHAIRPERSON SUINA: From E (2) and (3).

4 HEARING OFFICER ORTH: Right.

5 CHAIRPERSON SUINA: Thank you, Madam Hearing
6 Officer. Appreciate that. Other than the support for
7 IPANM's deletions, did NMOGA provide any other?

8 HEARING OFFICER ORTH: Yes, NMOGA addressed their
9 support briefly at the bottom of page 326 and the top of
10 page 327. NMOGA notes that the workover proposal has no
11 federal counterpart, and they state that the record
12 contains no evidence on the amount of VOCs reduced or
13 whether such reductions would have an impact on ozone.

14 CHAIRPERSON SUINA: Okay.

15 HEARING OFFICER ORTH: IPANM sets out about two
16 pages of support for the proposed deletions. That's on
17 pages 325 and 326.

18 CHAIRPERSON SUINA: And, Ms. Soloria, I note on
19 327, NMOGA, in its agreement of IPANM, they also make the
20 justification to that the workovers has no federal
21 counterpart and thus is subject to substantial evidence.
22 So do we have to address that as well?

23 MS. SOLORIA: Yes. I would, again, for the sake
24 of completeness that it is addressed, we can go ahead and
25 make that finding.

1 CHAIRPERSON SUINA: Okay.

2 HEARING OFFICER ORTH: One more thing, Madam
3 Chair.

4 CHAIRPERSON SUINA: Yes.

5 HEARING OFFICER ORTH: In the middle of page 324,
6 you find NMED's response to IPANM.

7 CHAIRPERSON SUINA: Thank you, Madam Hearing
8 Officer.

9 So, just looking at this, we do have, it looks
10 like County agreement on A, B and C and D.

11 HEARING OFFICER ORTH: Correct.

12 CHAIRPERSON SUINA: Okay. So I don't know if --
13 let's see. So the workovers -- hold on one second. Let
14 me check one thing. So even though we have no
15 counterproposals for the workovers for A, B, C and D, does
16 the -- does the -- does the statement by NMED -- or by
17 NMOGA mean that even if we were to pass those, we would
18 still need to have a motion because of the heightened
19 substantial evidence for the workover proposal as a whole?

20 MS. SOLORIA: That is a good question, Madam
21 Chair. Let me review NMOGA's section for a second.

22 CHAIRPERSON SUINA: Okay.

23 HEARING OFFICER ORTH: Madam Chair --

24 CHAIRPERSON SUINA: Yes.

25 HEARING OFFICER ORTH: -- on page 321, the

1 Department notes that the proposed requirements are based
2 on Colorado and Wyoming.

3 CHAIRPERSON SUINA: Thank you, Madam Hearing
4 Officer.

5 MS. SOLORIA: I am not clear on an answer to your
6 question, Madam Chair. What I read on pages 326 and 327,
7 for the workover proposal, because this is under this
8 section with regard to E, I'm understanding that they're
9 referring to this specific sections IPANM objected to.
10 Therefore, when we -- when the Board addresses Subparts A,
11 B, C and D, we don't have to address that argument.
12 That's how I'm reading that.

13 CHAIRPERSON SUINA: So, I just want to check with
14 Madam Hearing Officer. Is that in the report? Is that --
15 is that accurate, that NMOGA's objection is only to those
16 that IPANM deleted, and not the whole workover proposal?

17 HEARING OFFICER ORTH: So I would have noted it
18 differently in the report if it -- if it were otherwise,
19 but I will double-check if you give me just one moment.

20 CHAIRPERSON SUINA: Sure.

21 So, Board members, I don't know if I -- if that
22 was clear. Okay. Great.

23 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry.

24 CHAIRPERSON SUINA: Yes, Vice-Chair.

25 VICE-CHAIR TRUJILLO-DAVIS: Ms. Soloria, did you

1 say that NMED's justification for Section E was rooted in
2 the laws of Colorado and Wyoming? Oh, I'm sorry.

3 HEARING OFFICER ORTH: I'm sorry, that was --
4 that was me, Madam Vice-Chair. The Department noted that
5 the requirements were based on requirements in Colorado
6 and Wyoming.

7 And in answer to your question, Madam Chair, I,
8 obviously, was remiss in indicating that, in fact, NMOGA
9 argued that the entirety of Section 124 should be deleted.
10 It wasn't just section E.

11 CHAIRPERSON SUINA: Okay. So NMOGA said the
12 entirety of 124?

13 HEARING OFFICER ORTH: Correct.

14 CHAIRPERSON SUINA: But IPANM just selected (2)
15 and (3).

16 HEARING OFFICER ORTH: Correct, E (2) and (3).

17 CHAIRPERSON SUINA: E (2) and (3).

18 Okay. Thank you for that. In their -- NMOGA's
19 argument was on --

20 HEARING OFFICER ORTH: There is no federal
21 counterpart and the VOC reductions are not sufficiently
22 established.

23 MS. SOLORIA: So we're back to that two-step
24 analysis for the Board to consider. And I'll just note as
25 I did at the top of yesterday's deliberations, that I

1 think the Board has been doing this in its thought
2 process, but that the Board has the discretion to consider
3 the rule as a whole, in the context of that analysis and
4 the aims of the rule as a whole.

5 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

6 Yes, Vice-Chair Davis.

7 VICE-CHAIR TRUJILLO-DAVIS: Do I understand
8 correctly that NMED also said in their statement of
9 reason, that emission estimates for workover operations
10 are not currently available in modeling emissions
11 inventory or found in NMED's equipment data?

12 CHAIRPERSON SUINA: Could you --

13 VICE-CHAIR TRUJILLO-DAVIS: I'm on page 324.

14 CHAIRPERSON SUINA: 324.

15 HEARING OFFICER ORTH: I'm sorry. What was the
16 question, Madam Vice-Chair?

17 VICE-CHAIR TRUJILLO-DAVIS: I guess I'm making
18 sure I'm understanding correctly; that NMED is also saying
19 that they did not have estimates for emissions data for
20 this Section E, and that the evidence is at this time in
21 accord with the laws of Wyoming and Colorado. Was any
22 more evidence provided?

23 HEARING OFFICER ORTH: So we have -- it's NMED
24 Exhibit 32 at page 152. They state that costs
25 associated -- that A, these are best management

1 practices -- B, the costs are expected to be minimal.

2 So, in their mind, their estimate, I guess, is
3 that it would be minimal; they would exhort the Board to
4 adopt it.

5 CHAIRPERSON SUINA: And Madam Hearing Officer,
6 did any of the environmental groups weigh in on this
7 section? I don't see any comments from them.

8 HEARING OFFICER ORTH: Right. So, unless they
9 expressly made a comment in their post-hearing submittals,
10 we agree with this or we oppose it, I didn't reflect
11 anything that they didn't expressly address.

12 CHAIRPERSON SUINA: Okay. Thank you, so much.

13 Yes, I don't see -- even back to the hearing --
14 that they -- any of the environmental groups provided
15 testimony on this section either. It was just NMED, NMOGA
16 and IPANM.

17 HEARING OFFICER ORTH: So if it's easy for you to
18 pull up NMED Exhibit 32 at page 152.

19 CHAIRPERSON SUINA: Okay. 151 and 152.

20 VICE-CHAIR TRUJILLO-DAVIS: Well, 152 starts with
21 produced water management units. Is that it?

22 HEARING OFFICER ORTH: No, this is well
23 workovers. You're in Exhibit 32?

24 VICE-CHAIR TRUJILLO-DAVIS: Yes, ma'am.

25 CHAIRPERSON SUINA: And what page?

1 VICE-CHAIR TRUJILLO-DAVIS: 152.

2 HEARING OFFICER ORTH: They cited 152.

3 CHAIRPERSON SUINA: Okay.

4 BOARD MEMBER GARCIA: Can you tell me what date
5 that exhibit is?

6 CHAIRPERSON SUINA: Yes, I can. Just give me a
7 second.

8 BOARD MEMBER GARCIA: It's so hard to find these.

9 CHAIRPERSON SUINA: Okay. Yeah, the date -- oh,
10 it doesn't have a date.

11 BOARD MEMBER GARCIA: Oh, okay. All right.
12 Well, that helps, because then I need to not look at the
13 ones with dates.

14 CHAIRPERSON SUINA: So it was in Ms. Bisbey-Kuehn
15 and Palmer's testimony in NMED Exhibit 32.

16 BOARD MEMBER GARCIA: Okay.

17 CHAIRPERSON SUINA: If that helps.

18 BOARD MEMBER GARCIA: Well, I see one with a date
19 of 7/28, NMED Exhibits 32 through 50?

20 CHAIRPERSON SUINA: Yes.

21 BOARD MEMBER GARCIA: Okay. All right. Thank
22 you.

23 HEARING OFFICER ORTH: They also mention NMED
24 Rebuttal Exhibit 1 at page 97.

25 CHAIRPERSON SUINA: Okay. So Madam Vice-Chair,

1 what was your question again about -- about support?

2 VICE-CHAIR TRUJILLO-DAVIS: Yes. I was looking
3 for additional evidence because the two things that I
4 found so far are that they're using Colorado and Wyoming's
5 guidance as a basis, but in their own statement, they said
6 that they don't have any emissions data or modeling for
7 the practice.

8 So I was looking, trying to find the extent of
9 all of their evidence that they put out. Because if I
10 understand correctly, we're trying to establish, since
11 this is not a federal requirement, if there is enough
12 evidence to include it.

13 HEARING OFFICER ORTH: Yeah, you're on the right
14 path, Madam Vice-Chair. And if you are able to pull up
15 also NMED Rebuttal Exhibit 1 at page 97.

16 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. Did you
17 say Rebuttal Exhibit 1?

18 HEARING OFFICER ORTH: Yes.

19 BOARD MEMBER GARCIA: Page 97; is that right?

20 HEARING OFFICER ORTH: Yes.

21 BOARD MEMBER GARCIA: So it looks like NMED made
22 a lot of changes that IPANM proposed.

23 CHAIRPERSON SUINA: Oh, do you have it on?

24 HEARING OFFICER ORTH: I'm sorry, I don't. I
25 can't share both screens.

1 CHAIRPERSON SUINA: Oh, no problem. No problem.
2 Okay. Let's see.

3 Did you find Rebuttal Exhibit 1?

4 VICE-CHAIR TRUJILLO-DAVIS: Yes.

5 CHAIRPERSON SUINA: Okay.

6 VICE-CHAIR TRUJILLO-DAVIS: So it's short, yeah.

7 CHAIRPERSON SUINA: Is it like two pages?

8 VICE-CHAIR TRUJILLO-DAVIS: No, I believe it's
9 just half a page.

10 CHAIRPERSON SUINA: Oh, okay, so I did have it.
11 Because it said 97.

12 VICE-CHAIR TRUJILLO-DAVIS: Yeah, it's just the
13 bottom part of 97 that speaks to this Section E that we're
14 discussing.

15 CHAIRPERSON SUINA: Oh, okay. I think I did see
16 it.

17 Well, with that exhibit, Madam Vice-Chair, what
18 are your thoughts since you had it pulled up? I haven't
19 pulled it up yet.

20 VICE-CHAIR TRUJILLO-DAVIS: So my initial
21 thoughts are that NMED's evidence for this so far is that
22 Colorado and Wyoming have instituted it, and when you look
23 at their justification from Colorado and Wyoming, it's
24 that they have it is for best management practices during
25 a workover event. And that is -- I mean, that's

1 consistent through the industry.

2 However, in their Exhibit 32, there is a -- let
3 me pull it up here -- I believe it's Ms. Bisbey-Kuehn who
4 testified that EPA did not include it. Let me make sure
5 it's Ms. Bisbey-Kuehn.

6 BOARD MEMBER GARCIA: Could you tell me the page
7 you're looking at, please?

8 VICE-CHAIR TRUJILLO-DAVIS: Yes, it's '97.

9 BOARD MEMBER GARCIA: Oh, okay.

10 VICE-CHAIR TRUJILLO-DAVIS: On that Exhibit 32.

11 BOARD MEMBER GARCIA: Okay. Got it.

12 VICE-CHAIR TRUJILLO-DAVIS: It's Line 9. It
13 says, "EPA did not regulate emissions from well workovers
14 or blowdown operations in NSPS Subpart 0000 or 0000a. The
15 EPA CTG did not address emissions in these operations."

16 So, that, coupled with NMED's statement that they
17 have no emission estimates for -- or modeling emissions
18 inventory, I feel like they have not -- they don't have
19 enough evidence to support this request, given that it is
20 not a federal standard and the federal government did look
21 at it, and chose to leave it out.

22 BOARD MEMBER GARCIA: Does it say when that was?

23 VICE-CHAIR TRUJILLO-DAVIS: When 0000 and 0000a
24 were promulgated?

25 BOARD MEMBER GARCIA: Yeah.

1 VICE-CHAIR TRUJILLO-DAVIS: I believe --

2 BOARD MEMBER GARCIA: Go ahead.

3 VICE-CHAIR TRUJILLO-DAVIS: We can look up real
4 quick when they were promulgated.

5 BOARD MEMBER GARCIA: That's okay. That's okay.
6 It's not needed.

7 VICE-CHAIR TRUJILLO-DAVIS: It's a rule that came
8 into effect within the last maybe six years.

9 BOARD MEMBER GARCIA: Okay. Thank you. I just
10 wanted to see which administration.

11 CHAIRPERSON SUINA: Yes, Mr. Honker. Member
12 Honker.

13 BOARD MEMBER HONKER: Just a few of my thoughts
14 on this. I do think that this well workover section would
15 result in reduced emissions. It is kind of best
16 management practices, whether it meets our threshold for
17 justifying it is another question, but I think inherently
18 it should reduce emissions, but it's correct to say they
19 haven't been quantified.

20 I also think the expense the operator would go to
21 meet these requirements would be pretty de minimis in the
22 overall scheme of things under this rule. And I do think
23 the two specific sections, E (2) and (3) that IPANM wants
24 to strike, it's harder to make an argument that those
25 would result in any emissions reduction.

1 I mean, they're basically notification
2 requirements for neighbors. So I can see their point
3 there. Just a few thoughts I wanted to throw out there.

4 CHAIRPERSON SUINA: Thank you, Member Honker.

5 Can you read the rebuttal on page 97; what does
6 that say? You said it was short.

7 BOARD MEMBER GARCIA: Yes.

8 VICE-CHAIR TRUJILLO-DAVIS: Okay. So the
9 beginning of that, it just talks about the other proposals
10 that IPANM made and that NMED accepted. And then we get
11 to Section E, and it says, "NMED agrees with all of the
12 proposed revisions, with the exception of IPANM's proposal
13 to remove the requirement for Subsection E, paragraph (2),
14 to notify residents by certified mail within 3 calendar
15 days of a planned workover event. However, NMED is
16 proposing to modify their requirement to allow for other
17 notification options besides certified mail, as long as
18 they can be documented. NMED recognizes that there are
19 other effective means to notify the public of these
20 activities, and certified mail is not the only option to
21 provide notification. Possible alternatives include
22 notices via email or text -- or via text or email.

23 CHAIRPERSON SUINA: Thank you, Vice-Chair
24 Trujillo-Davis. That's helpful.

25 And, Ms. Soloria, I think as we started this

1 conversation about NMOGA's statement about there being no
2 federal counterpart, to Member Honker's point, there's
3 really not a threshold, but there's a -- that, you know,
4 like we're talking about on one of the other discussions
5 about a number of tons-per-year reduction, or anything
6 like that, but just in terms of overall addressing public
7 health and to the environment.

8 MS. SOLORIA: Right. I would say that Member
9 Honker's comment goes to the first step of the analysis
10 here, which is, this is a rule that is in pursuit of
11 attainment and maintenance of the NAAQS. And I think
12 that's what he was pointing to, is what you consider for
13 that threshold question with any part of this rule, and
14 the rule overall as a whole with regard to, you know, the
15 purposes it's trying to achieve.

16 Once you have found that there is substantial
17 evidence that this rule -- or that the record supports
18 that this provision does do that, and, therefore, is
19 within the purview of the Air Quality Control Act, then
20 prior to adopting this provision, because there is no
21 federal counterpart, then you have to make that additional
22 finding that there is substantive evidence that the rule
23 is more protective of public health.

24 So, again, the same thing where I know we
25 conflate the consideration of the evidence, but it is

1 helpful to think of it sort of as separate questions.

2 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

3 Yes, Member Garcia.

4 BOARD MEMBER GARCIA: Thank you, Madam Chair. I
5 think what occurs to me is that NMED is looking at using
6 best management practices which are minimal costs, and
7 that what we're talking about is during a workover, before
8 they open up the line, they have to, for safety purposes,
9 vent to the atmosphere. So that's going to vent VOCs and
10 NOx, so if you use -- and if you use best management
11 practices to minimize that, then we -- then we meet the
12 first requirement of reducing VOC and NOx.

13 And then, in terms of the second requirement to
14 show that it's -- oops, what's the second requirement --
15 to show that it is based on substantial evidence. And
16 after notice and public hearing, that the proposed rule
17 will be more protective of public health and the
18 environment, I understand that we don't have to have a
19 number, like tons per year, necessarily. It's just if --
20 if we feel that it's substantial enough to show that it
21 would be protective of the public health, and I think that
22 because we're talking about venting to the atmosphere
23 these VOCs and NOx, and other -- other toxic materials,
24 that to minimize that in any way would be protective of
25 public health. So I think, to me, we -- we meet that

1 second threshold as well.

2 HEARING OFFICER: Thank you, Member Garcia.

3 Vice-Chair.

4 VICE-CHAIR TRUJILLO-DAVIS: I just have a
5 clarifying question. So when we're discussing a threshold
6 of whether they have enough evidence, we're discussing the
7 entirety of 124, correct?

8 MS. SOLORIA: That's -- well, yes. And I would
9 broaden it to say that as I had mentioned before, there's
10 nothing prohibiting the Board from considering this
11 subsection, or this section in the context of the whole
12 part as in this whole rule. So I didn't want to restrict
13 it that way.

14 But, yeah, we're talking about, because NMOGA has
15 raised an objection to this subpart in its entirety, but,
16 yeah, that's what we're talking about.

17 VICE-CHAIR TRUJILLO-DAVIS: Okay. I was focused
18 on E, but then I realized as the conversation went on,
19 that threshold question was for the entire 124.

20 CHAIRPERSON SUINA: Thank you, Madam Vice-Chair.

21 Seeing if there's any further discussion,
22 especially from those on the WebEx: Member Honker or
23 Member Bitzer, do you have any comments?

24 No, okay. And just to add some comments, I
25 looked back at Ms. Bisbey-Kuehn's presentation during the

1 hearing. And, again, as Member Honker mentioned it, you
2 know it is reliant on Colorado's Reg 7, but she does
3 cover, you know, the best management practices that Member
4 Garcia had mentioned earlier, as well as -- as, you know,
5 addressing emissions. So, I mean, that's where we're at
6 in terms of -- I think in general terms, I hear what
7 Member Garcia was saying, in that, we have best management
8 practices to address emissions.

9 And so, by essence, we're addressing the
10 emissions where reducing -- reducing emissions through
11 best management practices. So I guess what I'm saying is,
12 I'm in alignment with what Member -- how Member Garcia has
13 framed it.

14 Yes, Member Honker.

15 BOARD MEMBER HONKER: Yeah, and I like -- I like
16 what Member Garcia said as well. I would like to see this
17 Section 124 included.

18 If it's not, I can envision what will be
19 happening in some situations; there would be well
20 workovers, NMED will be getting emails and phone calls
21 that there was massive venting of VOCs during a well
22 workover at this location, and NMED may not -- I don't
23 know if there's another part of the overall rule that
24 would enable them to take some sort of an action in
25 response to a complaint like that.

1 But I did like Member Garcia's approach to the
2 rationale.

3 CHAIRPERSON SUINA: Yeah, Vice-Chair
4 Trujillo-Davis.

5 VICE-CHAIR TRUJILLO-DAVIS: I would have really
6 liked to see NMED put forth evidence that was New
7 Mexico-specific and quantitative, and I feel that they
8 failed to do that. And I would have liked to see them do
9 that, coupled with the support of Wyoming and Colorado's
10 rules, to help -- to help support that. But I -- I do
11 feel that they failed to provide enough evidence in this
12 section.

13 CHAIRPERSON SUINA: Thank you, Vice-Chair
14 Trujillo-Davis.

15 VICE-CHAIR TRUJILLO-DAVIS: I think we're...

16 CHAIRPERSON SUINA: I don't know if we want more
17 discussion.

18 BOARD MEMBER GARCIA: Did we hear from Member
19 Bitzer?

20 CHAIRPERSON SUINA: Member Bitzer, do you have
21 any comments? Putting you on the spot, Member Bitzer.

22 BOARD MEMBER BITZER: Yeah. I'd agree with
23 Member Trujillo-Davis, that it's not good on the data and
24 evidence. I'll probably vote for it anyway, just because
25 I also like the argument that we're meeting those

1 threshold -- or that we have the ability to decide that
2 we're meeting those thresholds, those higher standards.

3 Yeah, I mean, if somebody, you know, especially
4 on the health and safety front, people get the heads-up,
5 then they can -- they can exploretate, [sic] as the
6 word -- as they say, get out of -- get out of the area if
7 they're concerned about their air quality. So that's --
8 that's all I have on this one.

9 CHAIRPERSON SUINA: Thank you, Member Bitzer. I
10 apologize, putting you on the spot on that. If you
11 were -- but I appreciate your comments and the additional
12 discussion. And I don't know if -- yes, Member Garcia.

13 BOARD MEMBER GARCIA: I guess I would just add,
14 you know, I wish they had data on every action that is
15 taken out in the well field, but they just don't have
16 exact data on workovers, and what -- you know, nobody was
17 out there measuring on this particular issue. So I don't
18 know about -- yeah, they just don't have enough data on
19 this one.

20 For me, it doesn't mean that it's not going to be
21 safer for the public if it were there. To me, it would
22 still be safer for the public, just -- just a logical
23 approach, I suppose, but I understand their point, that it
24 would be a lot better if it had data, they just don't have
25 it for workovers, apparently. And so...

1 VICE-CHAIR TRUJILLO-DAVIS: Respectfully, Member
2 Garcia, I think the question is, do they have enough
3 evidence to support the decision, not are we being
4 protective or not. It's do we have enough evidence to
5 meet the threshold, and so I think those are two different
6 questions.

7 CHAIRPERSON SUINA: Yes, Madam Hearing Officer.

8 HEARING OFFICER ORTH: Yes, and Member Garcia, I
9 think I remember some testimony, although I couldn't cite
10 to it, but, where they requested responses in some cases
11 from industry, and industry didn't give them that
12 information. Right? I mean, they have some information
13 from industry, but some of the information that might be
14 relevant to some of these sections would have to be
15 voluntarily reported.

16 CHAIRPERSON SUINA: Yes, Ms. Soloria, did you
17 have a comment?

18 MS. SOLORIA: No, Madam Chair.

19 CHAIRPERSON SUINA: Okay. Thank you. Just
20 wanted to make sure.

21 So, back to the threshold of how you were saying
22 it, and maybe -- sorry to put you on the spot,
23 Ms. Soloria; I think we had talked -- and, again, we're
24 going -- circling around here, trying to be comprehensive
25 in our discussions. There's really not a threshold, is

1 there?

2 MS. SOLORIA: You're throwing --

3 CHAIRPERSON SUINA: I'm throwing out the term
4 "threshold."

5 MS. SOLORIA: What are you referring to?

6 CHAIRPERSON SUINA: Threshold, in terms of, I
7 guess, back to my previous question or statement about
8 tons per year reduction.

9 MS. SOLORIA: Right.

10 CHAIRPERSON SUINA: You know, if it's -- I think
11 in yesterday's conversation one of the members said that
12 it could be 40 tons per year or 1 ton per year. And
13 there's no threshold that we need to meet. But to
14 Vice-Chair's point is -- and what Hearing Officer
15 mentioned just -- Madam Hearing Officer mentioned a minute
16 ago is, there's really almost no data, but is it -- is
17 it -- even if we had data, there wouldn't be a threshold,
18 in terms of number of tons per year reduction?

19 VICE-CHAIR TRUJILLO-DAVIS: Can I clarify?

20 CHAIRPERSON SUINA: Yes.

21 VICE-CHAIR TRUJILLO-DAVIS: My question on that,
22 I meant a legal threshold.

23 CHAIRPERSON SUINA: Oh, okay.

24 VICE-CHAIR TRUJILLO-DAVIS: Of saying that there
25 was substantial evidence to make the decision whether it

1 was included or not, not necessarily a quantifiable
2 threshold of tonnage, to say we're being protective or not
3 being protective.

4 CHAIRPERSON SUINA: Okay. Thank you for that
5 clarification.

6 So I would withdraw my question and putting you
7 on the spot, Ms. Soloria, but thanks for that
8 clarification. So you're talking about a legal threshold,
9 of whether there's data or information?

10 VICE-CHAIR TRUJILLO-DAVIS: Yes, whether the NMED
11 provided us with enough evidence -- substantial evidence
12 to include this section or not. And that's the way I was
13 evaluating it.

14 The question of, you know, if we did decide to
15 include it because we felt that there was enough evidence
16 of a level of protection, I feel is a different discussion
17 that we would have next.

18 CHAIRPERSON SUINA: Right. Thank you.

19 MS. SOLORIA: Would it be helpful -- I know that
20 this has been implicit all along, if I just -- I'll
21 restate the Air Quality Control Act provision: "The
22 Environmental Improvement Board or the local Board shall
23 adopt a plan, including rules, to control emissions of
24 oxides of nitrogen and volatile organic compounds, to
25 provide for attainment and maintenance of the standard."

1 And that is the purpose of the rule overall, so I
2 will just ground us in that again.

3 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
4 Yes, Member Garcia.

5 BOARD MEMBER GARCIA: One of the items I just
6 want to point out in E, I was kind of looking at E for
7 reporting requirements, and it's really reporting to
8 homeowners within a quarter mile, but it also refers to
9 meeting reporting requirements of 112.

10 So I went back to 112, and I see that they do
11 have to gather information, so maybe this would help --
12 maybe this would help inform, in the future anyway, about
13 the amount of tons per year, et cetera. There would be
14 information gathered regarding this, they'd have to meet
15 that, so that's part of the reporting requirements here.

16 And it would be good for them to do that. I
17 mean, I think it's necessary for them to meet those
18 reporting requirements. It would help gather data for
19 everyone to understand.

20 CHAIRPERSON SUINA: So thank you for that, Member
21 Garcia, and I think I understand or hear what you're
22 saying, too. Part of the challenge in terms of
23 information available is the Department doesn't have any
24 data, because producers -- or because industry doesn't
25 have to provide this information at this point. There's

1 none regarding well workovers.

2 MS. SOLORIA: And I'll just make one other point
3 to the extent, again, I believe that the Board has proven
4 itself well-sophisticated enough to make this implicit
5 consideration, but just as with facts, proponents of
6 applying a particular standard or focus on a particular
7 finding that needs to the met, or standard, should be
8 taken within the context of who's offering that, who's
9 bringing that before the Board's eyes.

10 And we can see that clearly in this section,
11 where NMED and other parties' discussion of there being no
12 federal counterpart or it being potentially outside the
13 authority of the statute, you know, you have to weigh that
14 against who is bringing that standard to the Board's
15 attention.

16 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
17 Appreciate that.

18 What are you -- Member Garcia.

19 BOARD MEMBER GARCIA: Well, I'm just wondering,
20 since this is such an important point, do we need to vote
21 on this issue first, before we talk about the details of
22 the rule, vote on whether or not we have the authority
23 to -- we have the jurisdiction to cover this?

24 MS. SOLORIA: I think that's a sound approach,
25 given, again the -- as you framed it, how -- how it's been

1 framed by the parties and the importance of this section,
2 and also for the sake of consistency, how we've handled
3 this type of analysis in other parts of the rule.

4 CHAIRPERSON SUINA: Thank you.

5 Yes, Member Garcia.

6 BOARD MEMBER GARCIA. I just want to throw out in
7 consideration of your last statement is, I can't help
8 thinking that when NMOGA doesn't have anything else to
9 offer, they throw that one out. Why not? So that's just
10 what occurs to me.

11 CHAIRPERSON SUINA: Thank you, Member Garcia.

12 Yes, Member Honker.

13 BOARD MEMBER HONKER: Just a question. I did not
14 see it, but I was curious whether anybody else had seen
15 any estimates from NMOGA on how much this would cost to
16 implement Section 124. I don't recall seeing anything
17 detailed on that. I just wanted to see if anybody else
18 had run across some sort of data.

19 CHAIRPERSON SUINA: Thank you, Member Honker.

20 Vice-Chair Trujillo-Davis?

21 VICE-CHAIR TRUJILLO-DAVIS: I don't believe I saw
22 anywhere that NMOGA submitted data on it, but I saw that
23 NMED did discuss the cost of it, and I don't think NMED
24 was too far off on their estimates. Essentially, they're
25 asking to reduce the pressure on the well through other

1 means, whether it's routing or sending it to a sales line
2 prior to the workover, so they reduce the blowdown
3 emissions.

4 And then, I think that any additional costs would
5 be a notification to, that are identified in Section E.
6 So I think that the cost of it is probably minimal. I
7 don't know that it would have been worth NMOGA submitting
8 comments on it.

9 CHAIRPERSON SUINA: Yes, Member Bitzer.

10 BOARD MEMBER-BITZER: My recollection was from --
11 I think this was from NMOGA, that the extra costs,
12 although they didn't quantify them, would be in the form
13 of, time is money. And if it takes three days, then
14 you've got equipment and manpower tied up.

15 Having done project management-type of situations
16 and so forth, when you have those extra points in the
17 Gantt chart, they don't always fit in a smooth flow, so
18 you end up with idle equipment and/or idle time of
19 personnel. So that was -- again, it's not quantified, but
20 it's not unsubstantial, I would think.

21 CHAIRPERSON SUINA: Thank you, Member Bitzer.

22 Yes, Vice-Chair Trujillo-Davis.

23 VICE-CHAIR TRUJILLO-DAVIS: I would agree with
24 that. That's a fair point. If you need to do a workover
25 in the next three days to get a big well back on, that

1 could be -- that could be challenging. I can see their
2 point on that.

3 CHAIRPERSON SUINA: Thank you, Vice-Chair
4 Trujillo-Davis.

5 Madam Hearing Officer, to address Member Honker's
6 question, do you recall any?

7 HEARING OFFICER ORTH: Madam Chair, on the bottom
8 of page 324, what we have is costs associated with well
9 workover, best management practices are expected to be
10 minimal, as personnel will already be on site
11 conducting -- right -- the workover, and any additional
12 training may be incorporated into existing personnel
13 training programs.

14 CHAIRPERSON SUINA: And that was from NMED?

15 HEARING OFFICER ORTH: Correct.

16 CHAIRPERSON SUINA: Okay. How about from
17 industry, do you recall any other comments, other than
18 what Member Bitzer shared?

19 HEARING OFFICER ORTH: No.

20 CHAIRPERSON SUINA: Okay. So, industry -- well,
21 NMOGA's main comment was just that there's no federal
22 counterpart for this section. There's no cost or saying,
23 hey, you're not going to reduce emissions?

24 HEARING OFFICER ORTH: Right. But it's that
25 emission reductions are not sufficient to support this

1 because you're not -- it was in their -- it was in their
2 final brief.

3 CHAIRPERSON SUINA: Yeah.

4 BOARD MEMBER GARCIA: Right, and their comments
5 on page 327, starts on 326 is, "Therefore, we do not have
6 an estimate of emission reductions from well workovers."
7 So what NMOGA is saying, since there's no emission
8 reductions -- an estimate of emissions reductions and
9 there's no federal counterpart, so those two, it seems to
10 be.

11 CHAIRPERSON SUINA: Okay. Thank you.

12 Yes, Member Honker.

13 BOARD MEMBER HONKER: Well, it seems to be the
14 tradeoff here is we don't have good quantification of
15 expected emission reductions. On the other hand, it
16 sounds like the cost is fairly minimal. I understand the
17 point about it may add some time to well workovers, but if
18 it's a consistent requirement for well workovers in the
19 counties that are -- that are impacted, it seems like it
20 would become part of the routine workover process, which
21 would lessen the specific case impacts, I would think.

22 So, I do know that in the past when we've had
23 discussions of thresholds, it's what's the reduction and
24 what's kind of the benefit-to-cost analysis. And it seems
25 like the quantification is not well-defined, but then the

1 cost seems to be fairly minimal on the other hand. So I
2 don't know how we handle that, but that's where I see we
3 are.

4 CHAIRPERSON SUINA: Thank you, Member Honker.
5 Yes, Member Bitzer.

6 BOARD MEMBER BITZER: To Mr. Honker's point, I
7 understand where he's coming from, and probably most of
8 that added cost, he's right, would be -- would be
9 ameliorated because it becomes part of the routine, so the
10 extra cost might be minimal.

11 But, cumulatively, I think, also, the minimal
12 cost here, minimal cost there, like we used to say in
13 Washington: a billion here and a billion there, and
14 pretty soon you're talking about real money. So I guess
15 these days it's a trillion here and a trillion there. But
16 anyway, the minimal cost is one, by itself, is minimal;
17 but we've got a whole lot of things coming down in -- in
18 what we're -- in just what we're considering through this
19 whole document.

20 So I would argue that, ultimately, these costs
21 are less minimal, if not substantial. Just a thought.

22 CHAIRPERSON SUINA: Thank you, Member Bitzer.

23 BOARD MEMBER GARCIA: Oh, my.

24 CHAIRPERSON SUINA: Yes, Member Honker.

25 BOARD MEMBER HONKER: Well, I'm just thinking

1 back to the discussion we had yesterday or the day -- I
2 guess it was the day before, actually, on -- on -- on the
3 pigging issue, that, now, overnight, we became aware of --
4 well, I think Member Garcia had found some additional
5 support in the record which we hadn't identified. I
6 don't -- I don't know that that's going to happen in this
7 case.

8 But there's always the option of, we don't adopt
9 this, and in future revisions, NMED could come back
10 with -- with more solid rationale, if that's what we
11 decide. It just seems like there is an option there, if
12 we -- if we can't get over this threshold issue.

13 CHAIRPERSON SUINA: Thank you, Member Honker.

14 So looking at everything here while everybody is
15 discussing this issue, I recall -- I don't remember who
16 exactly during the hearing mentioned this -- just in
17 general, working with NMED and other regulatory agencies.
18 And on the ground, I think, as was mentioned before, if we
19 don't have a way -- or the Department or regulators don't
20 have a way of capturing data, it's like, you know, we
21 don't know what we don't know. And so, my hesitation for
22 not -- not including this is, I think Member Garcia
23 mentioned this earlier, is by including it, the Department
24 would begin to have a mechanism for capturing some
25 information.

1 And it's -- so that's where my hesitation is to
2 just say no. And as Member Honker said earlier is, there
3 is some, just by essence of an additional requirement for
4 well workovers, and best management practices, I go back
5 to that, would be as noted in NMED's comments for this
6 section: best management practices are the best means of
7 reducing emissions during well workovers. So, we do
8 reduce emissions, so we meet that overall of reducing VOCs
9 and NOx.

10 I do feel like, as well to Vice-Chair
11 Trujillo-Davis's point, is, I wish we had more data. I
12 wish we had more, and it would be clear, like the pigging
13 issue, where -- Member Garcia, thank you for your homework
14 on that, where we were able to pull that into place. So
15 I'm kind of torn here still. It's -- you know, it would
16 have -- I think if the Department and folks would have
17 made it easier for us, we wouldn't be circling this issue
18 if we had, like we had in the pigging issue, that
19 reference to additional information. So, that's where I'm
20 at right now.

21 And so, again, I -- I see the reason and how it
22 could support NMED and our ongoing -- and I think that
23 that's our discussion, right, if we were -- like Colorado,
24 and how we were talking about, you know, Colorado being
25 ahead in terms of that particular issue, and that we

1 talked about timing, getting regulations in the mix. So
2 I'm thinking about that as well. If we don't move toward
3 that, then it is harder to catch up. So I'm thinking
4 about that, too. Those are my thoughts for right now.
5 And, again, I don't know what -- yes, Member Garcia.

6 BOARD MEMBER GARCIA: Thank you, Madam Chair.
7 And another thought occurred to me. I know we're going
8 back and forth between the merits of the section and our
9 authority, to whether we have jurisdiction to cover this.
10 And one of the things that concerns me if we were to say
11 we didn't have authority, if we didn't find that we have
12 the authority or jurisdiction to cover this, because we
13 don't have data, that's a bad precedent to set. I
14 wouldn't want to go there.

15 I'm thinking that -- I mean, I think that would
16 hurt us in the future. And I think that I'm looking at
17 the overall intention of the rule, to reduce emissions.
18 This would reduce emissions. We don't know exactly how
19 much. It's a best management practice. If it's under the
20 term "best management practice," everybody agrees with
21 that.

22 I went back to my notes on this topic and
23 everybody is talking about best management practices.
24 Then why not use the best management practice? And --
25 but -- but to the point of, you know, if we were to decide

1 we didn't have jurisdiction because we don't have data,
2 that's a dangerous place to go. I wouldn't want to go
3 there.

4 So I think we have jurisdiction because this
5 whole topic is about reducing VOC and NOx, and this is
6 reducing VOCs and NOx, so, therefore, we have
7 jurisdiction. That's my -- that's the way I look at it.
8 Thank you.

9 CHAIRPERSON SUINA: Thank you, Member Garcia.
10 Members? Board members? I don't know if that -- that
11 ignited other thoughts, comments?

12 Yes, Ms. Soloria.

13 MS. SOLORIA: I'll just piggyback and extend, I
14 think, part of the legal point that Member Garcia was
15 implicitly making, or I will extrapolate as making.

16 To the -- to the point of having authority and to
17 this extent you make a specific decision on that with
18 regard to this specific subsection, the notion of being
19 consistent across the Board for this whole rule is --
20 is -- is important more than -- more than just for the
21 sake of consistency.

22 In terms of, on appeal, you know, the rule if
23 it's appealed, will be comparing your decisions on parts
24 against each other. So, consistency helps -- to borrow a
25 phrase from Member Bitzer, you know, it keeps the camel's

1 nose from coming in, in terms of, you know, if one section
2 falls, another section may fall based on that reasoning.

3 And the same thing goes for that: if one section
4 stands, another section may stand on that same type of
5 reasoning. So I just -- we're coming in to the end of the
6 marathon and I wanted to make that point.

7 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

8 And I saw your hand raised, Vice-Chair.

9 VICE-CHAIR TRUJILLO-DAVIS: Yes. And I'd say,
10 you know, it's more than just the lack of data. It's that
11 EPA also looked at the issue and chose to leave it out of
12 their federal regulation. And I think any time that we --
13 this Board has the question before them, of how to or
14 whether to adopt a standard that is not a federal
15 standard, we should give it proper consideration.

16 And whether it be for this rule or an emission
17 standard in another rule, or any other rule that comes
18 before us, if there's no federal counterpart, we should
19 definitely give it consideration and have this type of
20 healthy debate over these -- these issues.

21 And I find it troubling, personally, that the
22 means of collecting data is through rule. There are many
23 mechanisms for the NMED or the EPA to collect data for any
24 practice in any industry. So I find it troubling that
25 they choose to put it in the regulation, because what if

1 they find that their data does not support it, and then
2 it's still in the regulation?

3 CHAIRPERSON SUINA: Yes, Ms. Soloria.

4 MS. SOLORIA: I have -- I have a thought. And
5 you-all can, you know, pull on my leash if I'm going too
6 far afield or, you know, outstepping my role.

7 But the federal standards would be -- are
8 applicable already to this state. The state has to
9 comply. So this is -- please stay with me on this
10 journey, but -- so to the extent a party is proposing
11 something more stringent or that is something above the
12 federal standard, if we're already inching toward
13 nonattainment, doesn't it flow that we should be doing
14 something more stringent than federal standards? Because
15 we're already -- federal standards aren't keeping us in
16 attainment. And I would think that's a fair reading of
17 what the Air Quality Control Act is trying to do here,
18 so...

19 VICE-CHAIR TRUJILLO-DAVIS: I would not disagree
20 with that. I would just say that when we look at
21 attainment of any area, that we look at a lot of pieces
22 that go into attainment. So I would -- I would think we
23 definitely have to be more protective in a lot of sense,
24 but we have to be conscientious of all of the other pieces
25 that are going to be coming in to making that area

1 maintain its status of nonattainment.

2 So I know we're going to be looking at some other
3 rules that are going to be affecting that as well. So,
4 obviously, it's a complex situation that we need to stay
5 focused on this particular aspect. And because it is more
6 complex, and we've seen that in many testimonies, that
7 there are other things contributing to attainment and
8 nonattainment.

9 CHAIRPERSON SUINA: Yes, Member Garcia.

10 BOARD MEMBER GARCIA: I was just going back
11 through my notes and remembering one of the things that
12 really stood out for me was Tom Alexander's testimony.
13 And I think you asked him a lot of questions as well.

14 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

15 BOARD MEMBER GARCIA: I think we all did. He was
16 a great witness and we all really picked his brain on a
17 lot of topics. And one of the things he said that really
18 stuck with me was the idea of the culture in the oilfield.
19 And he talked a lot about the culture, and I guess I'm
20 thinking that in terms of best management practices -- in
21 the use of best management practices. And he said,
22 sometimes when operators don't do something because they
23 never have, that's not -- and I'm not saying that's the
24 reason here. But I'm just thinking about his -- his
25 thoughts about once they start doing something, a best

1 management practice, that sometimes it turns out to be a
2 good idea, is kind of the way he put it, was that, you
3 know, at least with the company that he was with, they --
4 he suggested that, you know, they all agreed that we
5 should have been doing this all along, we just didn't
6 because we hadn't before. So I'm thinking about his
7 testimony and how compelling it was to me about -- about
8 culture and best management practices and things like
9 that.

10 So, I guess that helps me think about using best
11 management practices, while it's required by the rule,
12 rather than just do it for the sake of doing it.
13 Sometimes that's what it takes to get them to do it. So,
14 just another -- another thought, remembering the testimony
15 and the hearing, just another thought that popped in my
16 head.

17 VICE-CHAIR TRUJILLO-DAVIS: Like wearing a helmet
18 when you're skiing.

19 CHAIRPERSON SUINA: Yes. Thank you for that.
20 Appreciate it.

21 I don't know if you had any follow-up.

22 VICE-CHAIR TRUJILLO-DAVIS: I was going to say, I
23 think we're bouncing between the two issues here. You
24 know, I think that the way that NMED drafted it is
25 perfectly fine, like as far as protection levels. The way

1 that I addressed the first question is different than the
2 way I'm addressing the second question. So, just to be
3 clear on the record, that's the way I'm looking at it.

4 CHAIRPERSON SUINA: Thank you, Vice-Chair.

5 I just want a point of clarity. If I think about
6 Vice-Chair, when you were mentioning you had some qualms
7 about that this rule or this portion would be, you know, a
8 way of getting more data and that we would embed it in
9 this regulation, it wouldn't be the only way, is what you
10 said. That, I think, is how I see it. And like you said,
11 there would be other ways EPA or NMED could gather this
12 data.

13 VICE-CHAIR TRUJILLO-DAVIS: Right.

14 CHAIRPERSON SUINA: And I think I wanted to just
15 clarify that I think there is also -- there are other
16 ways, but I think it wouldn't be bad, that it could just
17 end up being one of those ways.

18 VICE-CHAIR TRUJILLO-DAVIS: I guess my
19 question -- and Member Garcia gave a really good example,
20 I don't remember how many sections back, that it's the
21 absence of. So if you were to say, okay, great, we've
22 collected all of this data, and it turns out that our data
23 doesn't support what we thought, and now you have this
24 rule that's promulgated; whereas, if you go through
25 another mechanism of collecting the data, you can collect

1 it, you can evaluate it, you can -- and look at its
2 application, and then choose how you're going to implement
3 it.

4 But you lose that ability once you put it into
5 regulation once it's promulgated and it becomes very
6 difficult to -- to change or remove the goal of what your
7 data told you.

8 CHAIRPERSON SUINA: And I think the goal in this
9 case is -- right, is reduction. And so, I think even, you
10 know, best management practices, it would reduce, right?
11 I mean, we wouldn't -- industry wouldn't be -- to
12 Mr. Alexander's point, wouldn't be doing best management
13 if they didn't have to, if it wasn't helping. Right?

14 And so, I guess, for me, you know, again, we're
15 talking about the details of the proposed language and
16 all, but I guess we have to talk about that in order to
17 talk about that, for the decision we need to make.

18 VICE-CHAIR TRUJILLO-DAVIS: So, for me, when we
19 talked about the pigging portion of it, you know, we spent
20 a lot of time discussing, well, how much impact is it?
21 And thankfully for the -- for Member Garcia pulling up
22 some additional information, it helped make -- it helped
23 guide us in that decision. And I just don't really find
24 that in this particular decision.

25 And, you know, any time you make a hypothesis

1 when you assume you know the answer, that's a dangerous --
2 a dangerous step for any science-driven person. So,
3 that's where I struggle. I don't -- I don't have anything
4 to say other than, it will reduce, but then if we go back
5 to that pigging argument, how much will it reduce? So
6 that's where I struggle.

7 CHAIRPERSON SUINA: Thank you, Vice-Chair.

8 Yes, Member Garcia.

9 BOARD MEMBER GARCIA: And I think when we had
10 that discussion about the pigging argument, and I started
11 talking about how much and gosh, is that enough? And,
12 thankfully, Counsel pointed out, that's not what you need
13 to worry about, because it's substantial, that doesn't
14 mean data necessarily. Right?

15 CHAIRPERSON SUINA: Number of tons per year.

16 BOARD MEMBER GARCIA: Right, number of tons per
17 year, because that's not where I was going in that
18 pigging, and somebody kind of brought me back and said,
19 wait a minute, "substantial" doesn't translate to a large
20 number, so that was helpful whenever they -- they talked
21 about that.

22 VICE-CHAIR TRUJILLO-DAVIS: And I think it was
23 really valuable that, you know, that was data collected by
24 EPA.

25 And I mean, in this discussion, I believe what

1 we're going back to is collecting -- is using a rule to
2 collect data. So, you know, it was -- it was great that
3 EPA put that together, NMED submitted it as part of their
4 evidence. It gave us something to consider.

5 We don't have that here. We don't -- EPA did
6 look at including workovers in OOOO and OOOOa. And I'm
7 sure that there must have been something generated from
8 that review on EPA's part, but we didn't see it submitted
9 in NMED's argument. And that makes it very difficult to
10 go back to and say, well, what are we looking at, really?
11 Where are we rooted? And are we using this rule to then
12 collect our own data for it?

13 CHAIRPERSON SUINA: I have to apologize. I
14 didn't mean to totally frame my support or anything, I
15 just, you know, that it would allow NMED to collect this
16 additional data; I was just saying it's one of those
17 additional benefits. It's not the prime reason that I
18 would support the rule.

19 VICE-CHAIR TRUJILLO-DAVIS: I understand. And I
20 think it's a healthy point for us to argue or discuss --
21 maybe not argue, but discuss further.

22 CHAIRPERSON SUINA: Yes, Member Honker.

23 BOARD MEMBER HONKER: A question for the Hearing
24 Officer. I haven't found, but I was wondering if you knew
25 of anything in the record regarding Colorado and Wyoming's

1 requirements and whether there was any data or discussion
2 on reductions that they saw as a result of this sort of a
3 requirement?

4 HEARING OFFICER ORTH: Member Honker, that's a
5 great question. If we were to find that, I think it would
6 be in the Department's testimony in one of the two
7 exhibits that we were looking at earlier: either NMED
8 Rebuttal Exhibit 1 around page 97, or Exhibit 32, pages
9 151 to 152. To the extent, you know, NMED was providing
10 support for this rule, it would be in one of those two
11 places.

12 BOARD MEMBER HONKER: Okay. I was just curious
13 as to whether there was a third location somewhere, but if
14 there's not, there's not.

15 CHAIRPERSON SUINA: Yeah, and in NMED -- if I
16 may? In NMED's Exhibit 32, there's another reference to
17 NMED's Exhibit 34, which is the U.S. EPA, regarding
18 control techniques guidelines for oil and natural gas
19 industry. And so, there is that additional reference.
20 Let me get there.

21 BOARD MEMBER GARCIA: Okay. NMED Exhibit 34,
22 you're saying?

23 CHAIRPERSON SUINA: Yes. Yes, and it's -- give
24 me one second to make sure I get the reference right. So
25 it's in Ms. Bisbey-Kuehn's testimony or, you know, the

1 Kuehn/Palmer testimony on page 151 says, "EPA did not
2 regulate emissions from work well workovers or blowdown
3 operations in NSPS Subparts O000 or O000a. The EPA CTG
4 did not address emissions from these operations. See NMED
5 Exhibit 34."

6 So, I'm going to Exhibit 34 to see if there's any
7 notation about the EPA CTG.

8 VICE-CHAIR TRUJILLO-DAVIS: It's around page 169,
9 if you want to just type it in for yourself.

10 CHAIRPERSON SUINA: Okay. It, unfortunately,
11 doesn't give us a page number.

12 BOARD MEMBER GARCIA: Typing it in isn't working
13 for me for some reason.

14 VICE-CHAIR TRUJILLO-DAVIS: On the top of your --

15 BOARD MEMBER GARCIA: Yeah, I did that, I put in
16 169, and it has for every other exhibit I do that, and for
17 some reason it's not going there on this one. I don't
18 understand.

19 CHAIRPERSON SUINA: Mercury in retrograde. I had
20 to restart my whole computer earlier.

21 VICE-CHAIR TRUJILLO-DAVIS: So it has an appendix
22 in it and I'm not seeing workovers specifically.

23 CHAIRPERSON SUINA: Okay. So there's no mention
24 of workovers in this exhibit?

25 VICE-CHAIR TRUJILLO-DAVIS: I'm not seeing one in

1 this exhibit. Let me do another search for it. What is
2 the context that it's used in?

3 CHAIRPERSON SUINA: Well, I think -- let me find
4 my page numbers here. Let me re-read that section. So,
5 I'm just looking because in the testimony -- in the
6 written record, it says, EPA did not regulate emissions.
7 So, to your point, Vice-Chair, I was just trying to see if
8 EPA provided a reason. If there was some documentation of
9 why they did not regulate well workovers.

10 VICE-CHAIR TRUJILLO-DAVIS: Actually, they do
11 have some information in here about it. I'm trying to
12 narrow down what I'm looking at here.

13 CHAIRPERSON SUINA: Okay.

14 VICE-CHAIR TRUJILLO-DAVIS: Oh, wait. I'm sorry,
15 that's Brian Palmer's resume. That's what happens when
16 you just search through things. Let's see.

17 CHAIRPERSON SUINA: Yes.

18 BOARD MEMBER GARCIA: Just one other thought.
19 Having worked in state government and dealt with the EPA a
20 lot -- in fact, Member Honker could probably speak to this
21 better than I -- EPA is often subject to political
22 considerations when they decide whether they're going to
23 cover a rule or not. So is the state, of course, but EPA
24 is even more of a political animal I think sometimes than
25 the state. So, you know, Member Honker can probably speak

1 to that.

2 So, the reason they didn't cover it could be a
3 political reason, versus a scientific reason.

4 CHAIRPERSON SUINA: Thank you, Member Garcia.
5 And I know we're looking at some of the details here. I
6 was wondering, I know we've been going a while, and I want
7 to respect our Madam Court Reporter. I apologize, I know
8 we've been going more than a couple of hours for you.
9 Would you like a break, Madam Court Reporter?

10 COURT REPORTER: (Thumbs up)

11 CHAIRPERSON SUINA: Okay. So we're right near
12 noon. Do you want to just take a lunch break? Okay. So
13 we'll do come back at 1:00. Would that work?

14 HEARING OFFICER ORTH: Sure. That's plenty of
15 time.

16 CHAIRPERSON SUINA: Okay. Great.

17 BOARD MEMBER BITZER: I may be joining you by
18 phone, so we'll see how that works.

19 CHAIRPERSON SUINA: Thanks, Member Bitzer.
20 Appreciate that.

21 (Recess taken from 11:54 a.m. to 1:07 p.m.)

22 CHAIRPERSON SUINA: Hello, everybody. Good
23 afternoon. And I see -- we won't go through a roll-call,
24 but I see Member Bitzer, Member Duval and Member Honker on
25 the line. And then we have Member Garcia, Vice-Chair

1 Trujillo-Davis and myself, along with Hearing Officer Orth
2 and Ms. Soloria and Ms. Jones. So we're back on record.

3 Have we started recording?

4 HEARING OFFICER ORTH: I will do that right now.
5 I'm sorry.

6 CHAIRPERSON SUINA: No, no. That's okay.

7 HEARING OFFICER ORTH: I've hit "record."

8 CHAIRPERSON SUINA: I see that. So we're
9 starting, looking for a reference. And our Member Honker
10 had alerted us -- to bring us up to speed on the record,
11 of a document that we're seeing if it is in the record --
12 in the record for this rulemaking process.

13 Member Honker, would you like to just bring us up
14 to speed of what you were asking, so we put it on record?

15 BOARD MEMBER HONKER: Yeah. I found a document,
16 it's an EPA technical support document. Let me find it
17 here. It's a background technical support document on
18 greenhouse gas emissions reporting from the petroleum and
19 natural gas industry. And I couldn't remember if it was
20 mentioned or in the record. It sounded familiar, but --
21 so I sent a note to the Hearing Officer to see if indeed
22 it's on the record, because it does discuss emissions from
23 well workovers, so...

24 CHAIRPERSON SUINA: Yes, Madam Hearing Officer?

25 BOARD MEMBER HONKER: It might be helpful if it's

1 online.

2 HEARING OFFICER ORTH: So, Member Honker, that
3 particular technical supporting document from EPA is not
4 on the record. We do have some information about well
5 workovers in two Clean Air Act -- Clean Air Advocates
6 exhibits, Exhibits 13 and 14. And we have their witness,
7 Don Schreiber, talking about well workovers. So if you'd
8 like to take a minute to look at CAA Exhibits 13 and 14,
9 and if that's a challenge for you to find, I can find a
10 way to display it or email it, whatever you'd like.

11 CHAIRPERSON SUINA: Yeah. Would you mind
12 displaying that, Madam Hearing Officer?

13 HEARING OFFICER ORTH: Sure. Give me a second
14 here.

15 BOARD MEMBER GARCIA: So, I see CAA in Part 2,
16 Schreiber testimony and exhibits? Is that it?

17 HEARING OFFICER ORTH: Yes. And in particular,
18 I'll display his testimony here. And 13 and 14 are the
19 exhibits you want. So, here, let me hit "share." I think
20 I'm sharing the right thing. Okay.

21 CHAIRPERSON SUINA: Is there any way you can blow
22 it up a little bit?

23 HEARING OFFICER ORTH: Oh, absolutely. How do I
24 do this.

25 CHAIRPERSON SUINA: There you go.

1 HEARING OFFICER ORTH: Okay. Do you want me to
2 try to scroll?

3 CHAIRPERSON SUINA: Yeah.

4 HEARING OFFICER ORTH: Okay.

5 CHAIRPERSON SUINA: I just couldn't see the name.
6 Oh, wait, can you go back up really quick?

7 HEARING OFFICER ORTH: It's Don Schreiber.

8 VICE-CHAIR TRUJILLO-DAVIS: So 13 is about
9 completions, it's not about workovers.

10 HEARING OFFICER ORTH: Then maybe 14. I might
11 have misspoken.

12 CHAIRPERSON SUINA: Okay. All right. So you're
13 talking pages? Or no, exhibits?

14 BOARD MEMBER GARCIA: Exhibits.

15 HEARING OFFICER ORTH: Okay. I'm going to scroll
16 here a little bit.

17 I remember it now. Workovers.

18 VICE-CHAIR TRUJILLO-DAVIS: Did you find
19 workovers?

20 CHAIRPERSON SUINA: Yeah. I see it on Clean Air
21 Advocates' Exhibit 14 on page two; an estimated 44.5 bcf
22 of natural gas lost annually due to well completions and
23 workovers. And we're looking at -- about 48 mm cf in
24 losses from workovers.

25 VICE-CHAIR TRUJILLO-DAVIS: Are you seeing a

1 citation for that?

2 CHAIRPERSON SUINA: Yes, on -- on the bullet
3 point, an estimated 44.5 bcf of natural gas lost annually
4 due to well completion and workovers is -- there's a
5 footnote: Percentage that is flared and vented unknown,
6 but then it has further sub-bullet points. So if you
7 can -- yeah.

8 HEARING OFFICER ORTH: Okay. I can go there, but
9 I also wanted to point out.

10 CHAIRPERSON SUINA: Yes.

11 HEARING OFFICER ORTH: That, in fact, workovers
12 are mentioned in Exhibit 13. I have it up on the screen.

13 BOARD MEMBER GARCIA: And can you say the page?

14 HEARING OFFICER ORTH: This is the second page.

15 BOARD MEMBER GARCIA: Oh, this is the second page
16 of Exhibit 13. Okay.

17 HEARING OFFICER ORTH: Of Exhibit 13.

18 CHAIRPERSON SUINA: Yeah, and then actually it
19 goes further: "This amounts to over 40 -- 455 million
20 lost due to well completions and workovers." And then
21 there's a footnote on that: "Value of natural gas at \$10
22 per mcf. Value of condensate at \$22 dollars per bbl."

23 VICE-CHAIR TRUJILLO-DAVIS: See, I see their
24 citation. They just list a percentage, then it says the
25 percentage that is flared is unknown. Where is that

1 document? That's what I was looking for.

2 CHAIRPERSON SUINA: Oh, okay.

3 VICE-CHAIR TRUJILLO-DAVIS: Like, where did they
4 pull those numbers from? I see it has EPA, so I'm
5 wondering, did they pull it from EPA information.

6 And I have a procedural question, Ms. Soloria.

7 MS. SOLORIA: Yes.

8 VICE-CHAIR TRUJILLO-DAVIS: So I just want to
9 make sure I've got this straight in my head. When we're
10 looking at the question of whether EPA presented -- I'm
11 sorry, too many acronyms in my head -- whether NMED
12 presented enough evidence for this, do we or can we weigh
13 evidence from other parties?

14 MS. SOLORIA: Yes. That's part of the record,
15 yes.

16 VICE-CHAIR TRUJILLO-DAVIS: That's part of the
17 record, all right.

18 CHAIRPERSON SUINA: And just to respond to your
19 question, this is an EPA document.

20 HEARING OFFICER ORTH: That's right.

21 VICE-CHAIR TRUJILLO-DAVIS: Okay.

22 CHAIRPERSON SUINA: Yeah, so this comes from the
23 EPA. This -- sorry, Exhibit 14.

24 MS. SOLORIA: So we're looking at an exhibit in
25 the record?

1 CHAIRPERSON SUINA: Yes. Exhibit 14 is in the
2 record under CAA exhibits, and the record itself is from
3 EPA entitled, "Reduced Emissions Completions and Smart
4 Automation. Lessens Learned from Natural Gas STAR." And
5 it's the EPA's Natural Gas STAR program.

6 BOARD MEMBER GARCIA: Thank you, Member Honker,
7 for bringing this to our attention.

8 CHAIRPERSON SUINA: Yes, thank you, Member
9 Honker. This has been really helpful.

10 And Member Honker, are you able to see the
11 references we are pulling up and discussing? So this is
12 Exhibits 13 and 14.

13 BOARD MEMBER HONKER: Yeah. Yeah, I'm looking at
14 them.

15 CHAIRPERSON SUINA: Thank you.

16 Okay. I think it's good right there, just so
17 that we know where we're at and what exhibits we're
18 looking at.

19 And I just want to see if our members have any --
20 I know we're all looking at this exhibit for workovers.
21 Just wanting to see if anybody has any comments as we look
22 over these exhibits.

23 I apologize to everybody. We're just looking
24 through exhibits as well, that Member Honker was able to
25 point out to us.

1 VICE-CHAIR TRUJILLO-DAVIS: Member Duval sent us
2 a message.

3 CHAIRPERSON SUINA: Oh, he did. Okay. Let's
4 see. I'm in the Chat. Thank you, Member Duval. Just let
5 us know when you come back online.

6 Is there any thoughts on this information and
7 where we're at in terms of our discussion regarding this
8 Section 124, well workovers?

9 Yes, Member Honker, did you want to share
10 anything?

11 BOARD MEMBER HONKER: No. I forgot to mute my
12 thing and I was just talking to myself.

13 BOARD MEMBER GARCIA: Well, he got it now.

14 CHAIRPERSON SUINA: Okay. Thank you, Member
15 Honker.

16 Yes, Vice-Chair Trujillo-Davis.

17 VICE-CHAIR TRUJILLO-DAVIS: I think these two
18 exhibits are super helpful. And I think it's the only
19 thing propping up NMED's argument.

20 CHAIRPERSON SUINA: Thank you, Vice-Chair
21 Trujillo-Davis.

22 BOARD MEMBER GARCIA: Are we ready for a motion?

23 CHAIRPERSON SUINA: Yes, Member Garcia.

24 BOARD MEMBER GARCIA: I'll strike before -- oh,
25 well, let me just ask you, I was -- what I was going to do

1 was make a motion about the statute -- C and G of the
2 statute.

3 MS. SOLORIA: Sure.

4 BOARD MEMBER GARCIA: And that's all I was going
5 to do. Is that okay?

6 MS. SOLORIA: That's fine. I had a thought on
7 this, that we haven't decided which language -- I thought
8 we had kind of gone to the point which language this
9 motion is going to -- the language which is going to be
10 the subject of this motion because you-all haven't
11 declined -- you haven't clarified which language you're
12 putting up that you will ultimately be voting on. You
13 have to do that first.

14 CHAIRPERSON SUINA: No, we have.

15 VICE-CHAIR TRUJILLO-DAVIS: No, we have. The
16 motion has to be whether we accept that they've met the
17 threshold to be able to --

18 BOARD MEMBER GARCIA: Exactly.

19 VICE-CHAIR TRUJILLO-DAVIS: So I think it's A and
20 B.

21 BOARD MEMBER GARCIA: No, no, no. I'm not saying
22 A and B. I don't think I said A and B, no.

23 MS. SOLORIA: No.

24 BOARD MEMBER HONKER: Well, Madam Chair.

25 CHAIRPERSON SUINA: Yes, Member Honker.

1 BOARD MEMBER HONKER: Don't we need to make a
2 decision that all of Section 124 is adequately supported
3 in terms of emissions reductions?

4 VICE-CHAIR TRUJILLO-DAVIS: That's what we're
5 talking about.

6 MS. SOLORIA: That is the threshold decision you
7 should make, but I'm saying, if you haven't decided what
8 language you're considering is -- similar to what we did
9 before, we decided which -- which parties' provisions
10 you're accepting or rejecting first, before we went
11 through this. Otherwise, the subject of these preliminary
12 findings isn't clear what you're talking about.

13 BOARD MEMBER GARCIA: Oh.

14 VICE-CHAIR TRUJILLO-DAVIS: I think if I'm
15 understanding you correctly, the motion has to be for the
16 entirety of Section 124.

17 MS. SOLORIA: If you're going to accept the
18 entirety of 124, but you haven't decided that, because
19 there are party comments on that. Are you following what
20 I'm saying?

21 VICE-CHAIR TRUJILLO-DAVIS: Apparently not.

22 MS. SOLORIA: So, in the past, when we had to
23 do -- when we -- because of the way the parties have
24 raised objections, we've gone through this analysis.
25 Before we actually make those motions, we've decided which

1 language is actually going to the subject of the motions.
2 And here, there were revisions: for example, IPANM's
3 NMOGA's, there's an Oxy revision. So if you're -- if
4 you're considering -- if you're going to say, we find that
5 the language of Section 124 is more protective of public
6 health, that type of motion, you're presuming in that
7 motion that you're talking about one set of -- one set of
8 regulations, and there are competing versions still.

9 BOARD MEMBER GARCIA: I understand.

10 VICE-CHAIR TRUJILLO-DAVIS: So then does the
11 motion need to be, we have --

12 MS. SOLORIA: We don't need to have a motion
13 right now. We need a discussion about what language will
14 be the subject of this motion.

15 BOARD MEMBER GARCIA: So that's a lot of -- okay.

16 MS. SOLORIA: Yeah, okay. It's lot a of backward
17 thinking, but, yeah, that's where we are.

18 BOARD MEMBER GARCIA: Sorry, court reporter, for
19 talking on top of each other.

20 So I understand that now we have to go into the
21 merits of the --

22 MS. SOLORIA: Yes. Yes.

23 BOARD MEMBER GARCIA: -- of the points that
24 they're raising.

25 MS. SOLORIA: Right.

1 BOARD MEMBER GARCIA: And once we settle that,
2 then we go back to that question.

3 MS. SOLORIA: Correct.

4 BOARD MEMBER GARCIA: Okay. Got it.

5 CHAIRPERSON SUINA: And I just wanted -- to our
6 members, just reiterate that for 124 A, B, C and D, that
7 there's no alternative proposals for them, except for the
8 overall. So if we did entertain those sections, would we
9 then -- could we use that to propose a motion?

10 MS. SOLORIA: Well, this is critical because we
11 had concluded that NMOGA objected to the section in its
12 entirety.

13 BOARD MEMBER GARCIA: Uh-huh.

14 MS. SOLORIA: So I would suggest we just go
15 through all of the sections.

16 CHAIRPERSON SUINA: Okay.

17 MS. SOLORIA: And I've been working on the side,
18 to kind of get our motions ready once you-all decide which
19 language you actually propose.

20 CHAIRPERSON SUINA: Yes.

21 HEARING OFFICER ORTH: Would you like me to share
22 something other than what's on the screen?

23 CHAIRPERSON SUINA: Oh, yes. I think we're good
24 with that. And thank you for pulling that up, Madam
25 Hearing Officer.

1 So, yes, why don't we go to the language of
2 Section 124. And I think we're at E.

3 BOARD MEMBER GARCIA: Back to the motion.

4 HEARING OFFICER ORTH: Hold on.

5 CHAIRPERSON SUINA: Yes, Member Honker.

6 BOARD MEMBER HONKER: Well, looking at all of
7 this, it seems like the issue is E (2) and (3), which
8 IPANM proposes to delete those two subsections, and Oxy's
9 addition, they're proposing to add a paragraph (4), which
10 discusses paragraphs (2) and (3). So I think the first
11 thing we need to decide is whether we want to include (2)
12 and (3) in the section. Section E (2) and (3), that is.

13 CHAIRPERSON SUINA: Thank you, Member Honker, for
14 helping us focus on what we need to.

15 BOARD MEMBER HONKER: Can you hear me? Sorry, I
16 accidentally muted myself when I didn't mean to, that
17 time. If I can go on for a minute: I do think Sections E
18 (2) and (3) are notices to landowners and -- and -- and
19 people in the vicinity. And the way I read IPANM's
20 argument is that those sections don't reduce emissions;
21 those are just -- I think they are good things to do. I
22 think it would be good for folks to be notified if there
23 was going to be a workover, but I'm questioning whether we
24 can tie any emission reductions to those requirements. So
25 I think that's a valid question.

1 CHAIRPERSON SUINA: And maybe to Ms. Soloria, do
2 we have to tie reductions to the --

3 Yes, Member Garcia?

4 BOARD MEMBER GARCIA: I guess I would venture
5 while you're thinking about it, Ms. Soloria, I would
6 venture to says reporting requirements doesn't reduce
7 emissions. So this is -- this is under -- do you see what
8 I'm saying? I mean, every single piece of the rule
9 doesn't have to reduce emissions. It's -- so I would
10 argue that those Sections E (2) and (3), by themselves,
11 don't have to show that they reduce emissions.

12 MS. SOLORIA: I think that that -- I think that
13 logic is sound and is defensible, that you can rely on how
14 the specifics of provisions relate to the -- the subject
15 of the rule.

16 CHAIRPERSON SUINA: Thank you for that clarity
17 and clarification. And for the question, Member Honker,
18 thank you, for that, and Member Garcia, for your comment.

19 BOARD MEMBER HONKER: If I can just add, now that
20 I -- now that I've re-read this as reporting requirements,
21 yes, I see -- I see that's true with any reporting
22 requirements, so I agree with -- with Member Garcia.

23 CHAIRPERSON SUINA: Thank you, Member Honker.

24 Yes, Member Garcia.

25 BOARD MEMBER GARCIA: I would just mention that

1 there -- I'm familiar with some other regulations; this is
2 not uncommon to see a regulation to -- a requirement to
3 notify landowners within a particular distance. I've seen
4 it in the Mining Act. I've seen it in NMAC and many other
5 regulations, so it's not unusual to see this kind of
6 requirement. And, you know, many times it's in there
7 because landowners demand it, landowners ask for it.

8 And I know that there was discussion during the
9 hearing -- and also I can, see that NMED made a lot of
10 concessions that IPANM wanted, but they didn't make all of
11 the concessions that they wanted. So, there is some
12 flexibility built in, but it just didn't go as far as
13 IPANM wanted, but I think it's a reasonable requirement.

14 CHAIRPERSON SUINA: Thank you, Member Garcia.

15 Madam Hearing Officer, I got lost in my papers
16 here. Where is the comment or revision by Oxy? What
17 section?

18 HEARING OFFICER ORTH: It's on page 327 of the
19 report.

20 CHAIRPERSON SUINA: Oh.

21 HEARING OFFICER ORTH: I can -- well, I have to
22 stop sharing if you want me to put it on the screen, but I
23 can do it. Hold on. For some reason, it won't let me
24 scroll while I'm sharing. That's just one of those things
25 today. And if I may, Madam Chair?

1 CHAIRPERSON SUINA: Yes.

2 HEARING OFFICER ORTH: Let me just anticipate
3 your question.

4 CHAIRPERSON SUINA: Yes.

5 HEARING OFFICER ORTH: You see Oxy below this
6 proposal, providing its justification, effectively, as a
7 clarification. And you might note that you're not looking
8 at, for example, citations to exhibits or testimony.

9 CHAIRPERSON SUINA: Yes.

10 HEARING OFFICER ORTH: They didn't include
11 citations to that in their final submittal. I think the
12 Board had a discussion with Ms. Soloria yesterday that if,
13 in fact, you agree this is a clarification, that it could
14 be considered. And I think specifically in their mind,
15 it's a clarification that aligns it with the proximity
16 proposal in 116, for the occupied areas.

17 So, what they're clarifying is, we don't just
18 mean residences generally; we also mean modular, mobile
19 homes, all of those that are being used.

20 VICE-CHAIR TRUJILLO-DAVIS: So, I read this to
21 say that if somebody goes and parks a fifth wheel within a
22 half mile, that is temporary, they don't need to notify
23 that person in that fifth wheel. Right?

24 HEARING OFFICER ORTH: What they mean by
25 temporary occupancy, is that what you're referring to?

1 VICE-CHAIR TRUJILLO-DAVIS: Yes, because it says
2 except for any manufactured mobile and modular home
3 intended for temporary occupancy. So, to me, that's what
4 I'm reading. To me, if it just happens to show up and
5 they don't have a record of a residence there that is --
6 that they don't have to notify that person.

7 CHAIRPERSON SUINA: So, it could mean
8 clarification, but there might be substantive details in
9 the clarification that might be more --

10 HEARING OFFICER ORTH: So, Ms. Soloria could say
11 whether this is too long of a clarification.

12 MS. SOLORIA: I need to be reoriented.

13 HEARING OFFICER ORTH: Page 327.

14 MS. SOLORIA: Okay.

15 CHAIRPERSON SUINA: Sorry, Ms. Soloria.

16 MS. SOLORIA: And we're looking at Oxy.

17 CHAIRPERSON SUINA: Oxy, yes. So, as Vice-Chair
18 pointed out, if including this as "clarification," it
19 would actually -- or, you know, except -- provide an
20 exception in the clarification, that such manufactured,
21 mobile or modular homes intended to be temporary occupancy
22 or for business purpose, should be excluded.

23 And then, Madam Hearing Officer -- I mean, just
24 in terms of timeline of when this was?

25 MS. SOLORIA: So is your question whether or not

1 there is support -- is the question whether or not the
2 Board could consider this as an addition because --
3 whether or not there's support in the record for that?

4 HEARING OFFICER ORTH: I think that is
5 effectively what you're asking.

6 CHAIRPERSON SUINA: Yes, but if it's categorized
7 as a submittal after the hearing, that is a clarification
8 submittal, but it's not really clarifying, it's having --

9 MS. SOLORIA: I think the bottom line is if
10 there's something in the record that the Board can't point
11 and rely on for adoption of that language, then you're
12 fine. That you can consider that amendment that is
13 proposed as a clarification and there are things in the
14 record or evidence you can point to. So you have to be
15 specific.

16 CHAIRPERSON SUINA: Yes.

17 HEARING OFFICER ORTH: The support effectively is
18 the fact that it would align with Section 124 with Section
19 116, or lacks the support.

20 MS. SOLORIA: Okay. Which I think we did
21 something similar to this yesterday,

22 VICE-CHAIR TRUJILLO-DAVIS: With a different
23 argument?

24 MS. SOLORIA: Yeah, I think I had offered the
25 notion that, you know, making that along the lines of

1 consistency is valid support in your decision-making,
2 so...

3 CHAIRPERSON SUINA: Okay. Great.

4 MS. SOLORIA: That's the answer.

5 CHAIRPERSON SUINA: Thank you for that.

6 BOARD MEMBER HONKER: I -- I don't think NMED
7 meant to align it with the proximity. Their language
8 says -- all residents located within the quarter mile.

9 It seems like Oxy is broadening that definition
10 because they're talking about schools, outdoor venues,
11 recreation areas, and that -- it seems the way I'm reading
12 NMED's language, they were talking about residents, not
13 schools and these other categories of -- of properties.

14 CHAIRPERSON SUINA: Thank you, Member Honker.
15 Yes, great point, Member Honker.

16 BOARD MEMBER HONKER: So I'm reluctant to propose
17 to broaden the requirements, because if we're talking
18 about -- it could be a lot more notices and it seems like
19 NMED meant to get the notices to residents.

20 CHAIRPERSON SUINA: Yes, Vice-Chair
21 Trujillo-Davis.

22 VICE-CHAIR TRUJILLO-DAVIS: It seems like it also
23 creates a conflict within their -- within their proposed
24 language, because if it is except -- if it has an
25 exception in it for places used for temporary occupancy or

1 business purposes should be excluded, well, schools,
2 temporary occupancy, outdoor use and recreational areas,
3 or temporary occupancy. And so that -- even commercial
4 buildings that are there for a certain amount of time.
5 So, it seems like it might create a conflict and,
6 actually, maybe muddy the clarity of the rule.

7 CHAIRPERSON SUINA: So just so I'm clear, Madam
8 Hearing Officer, this came in post-hearing and was -- so,
9 no other entity provided comments on this?

10 HEARING OFFICER ORTH: That's correct.

11 CHAIRPERSON SUINA: Okay.

12 BOARD MEMBER GARCIA: And if we're deciding that
13 it's beyond just clarifying, then it may not be
14 appropriate to consider it. So, it looks like it's a
15 little beyond clarifying, to me.

16 Not -- I mean, I wouldn't agree with it anyway
17 for a variety of reasons, but for a technical reason, it
18 may be excluded because it looks like it's beyond just
19 clarifying -- at least to be consistent with our past
20 rulings.

21 CHAIRPERSON SUINA: Madam Hearing Officer, do you
22 have comments?

23 HEARING OFFICER ORTH: No.

24 BOARD MEMBER HONKER: Yeah, I agree on that
25 point. And I just checked, there's no definition of

1 "residents" in the rule, so I think from -- from a
2 regulatory standpoint it would be up to the operator to
3 make notification to what they considered "residents."
4 And I would -- I would imagine as long as NMED felt they
5 made a good faith effort to notify residents within a
6 quarter mile, that would -- that would meet the
7 requirement.

8 CHAIRPERSON SUINA: Thank you, Member Honker.

9 Yes, Vice-Chair Trujillo-Davis.

10 VICE-CHAIR TRUJILLO-DAVIS: So, in reading off
11 these justifications, it also appears to me that they --
12 you're right, Member Honker, there is not a definition for
13 "residents" and they were actually proposing that that
14 term be changed to "occupied areas," to be consistent with
15 other portions of the rule. And so, perhaps that's why
16 their language -- that their proposed language reflects
17 that term for occupied areas.

18 And, additionally, what kind of sticks out to me
19 in this, it appears that the spirit of what they're trying
20 to capture is if you park a food truck on, you know,
21 County Road 1 and 128, that that food truck doesn't need
22 to be notified that there's going to be a well workover
23 within a half mile of it. And I gather that that's the
24 spirit of what they're trying to capture in it.

25 BOARD MEMBER HONKER: And I agree with that, but

1 I do think it expands -- it expands the potential universe
2 of people who might need to be notified or the numbers of
3 decisions an operator would have to make on do we notify
4 this entity, do we notify that entity; whereas, the NMED
5 language seems to be pretty straightforward.

6 So it seems to me it would be less burdensome on
7 the -- on the operators to go with the NMED language.

8 CHAIRPERSON SUINA: Yes, Vice-Chair.

9 VICE-CHAIR TRUJILLO-DAVIS: And I don't believe
10 we can split the language, can we? We can't -- it has to
11 be one or the other, right?

12 MS. SOLORIA: Yes.

13 VICE-CHAIR TRUJILLO-DAVIS: So in that, I see
14 there's the spirit of the language. I don't think -- I
15 think it still muddies it for what NMED was trying to
16 capture, so I think we should reject that language for
17 that reason.

18 CHAIRPERSON SUINA: Thank you, Vice-Chair and
19 Member Honker.

20 Yeah, I'm going back to the definition of
21 "occupied area," as that word -- that it's in the
22 definition session, so I can see where Oxy is trying to
23 draw in some of that language here.

24 And to your point, Member Honker, to expand -- I
25 mean, it seems like Oxy's proposal would expand beyond

1 just maintenance. Where the -- I'm sorry, and NMED's
2 proposed language is specific to residents. And I don't
3 see residents and schools or businesses, outdoor spaces.

4 Yes, Member Garcia.

5 BOARD MEMBER GARCIA: It sounds like we're pretty
6 much in agreement on the problems with this language. I
7 don't know if we have heard from Member Bitzer on this, if
8 he's weighed in on this.

9 BOARD MEMBER BITZER: I've been listening. I
10 just didn't have anything extraordinary to contribute.

11 CHAIRPERSON SUINA: Thank you, Member Bitzer.

12 And I think that -- oh, sorry, Vice-Chair.

13 VICE-CHAIR TRUJILLO-DAVIS: I didn't say
14 anything.

15 CHAIRPERSON SUINA: Oh, sorry.

16 I was just going to say I think Oxy is clear that
17 was their intent, to expand it, in addition to
18 notification to residents, should cover anyone.

19 BOARD MEMBER HONKER: So it sounds -- it sounds
20 like we're all kind of aligned with NMED's language here
21 without any changes.

22 CHAIRPERSON SUINA: It sounds like that.

23 Yes, members. So, Vice-Chair.

24 VICE-CHAIR TRUJILLO-DAVIS: I think we're aligned
25 because we -- we can't split it. Because I do see that,

1 you know, that they do want to tell residents, but why not
2 the businesses as well? So I don't think we have much of
3 a choice but to go with NMED's side of things -- NMED's
4 proposed language.

5 CHAIRPERSON SUINA: And to your point,
6 Vice-Chair, I think for me, the fact that it came in
7 afterward, if we had it during the hearing, we would have
8 perhaps had the other entities chime in and clarify that,
9 especially with the Department, and because there's some
10 issues with the way it's phrased right now. And as we
11 mentioned, we can't parse it.

12 VICE-CHAIR TRUJILLO-DAVIS: Yes.

13 CHAIRPERSON SUINA: So, for me, that's --
14 that's -- that's the challenge on this, with this language
15 as it's written by Oxy -- or proposed by Oxy.

16 Yes, Member Garcia.

17 BOARD MEMBER GARCIA: Okay. I'm losing track.
18 Have we already dealt with IPANM's (2) and (3), and now
19 we've dealt with Oxy's proposal, so now we're -- are we
20 ready for a motion?

21 CHAIRPERSON SUINA: Yep, I see thumbs up from
22 Member Honker.

23 BOARD MEMBER GARCIA: I don't want to rush
24 things, but I just want us to move along.

25 CHAIRPERSON SUINA: And I know we've got a -- if

1 you want to take a stab at it, Member Garcia, we'd welcome
2 that.

3 BOARD MEMBER GARCIA: Okay. Give me a sec. Let
4 me think about this. Okay.

5 All I had to do was look at you and I got it.
6 Okay. So I don't need to talk about the statute, I just
7 need to talk about this. Right?

8 Okay. Okay. I would move that we adopt --

9 CHAIRPERSON SUINA: Oh, no, sorry.

10 MS. SOLORIA: We just do go in order for the sake
11 of making a finding, we have to reorder the motion. So I
12 would suggest preliminarily, that the Board find that the
13 language in Section 124, as proposed by NMED, to the
14 extent it imposes a rule more stringent than federal law
15 is more protective of public health and the environment,
16 based on substantial evidence.

17 BOARD MEMBER GARCIA: So that one's first. Okay.

18 Okay. I would move that we find the language in
19 20.2.50.124 proposed by NMED, to be more -- have adequate
20 evidence to be more protective of public health.

21 MS. SOLORIA: And the environment.

22 BOARD MEMBER GARCIA: And the environment.

23 BOARD MEMBER HONKER: I'll second.

24 CHAIRPERSON SUINA: All right. So we have Member
25 Garcia making a motion and then Member Honker, second.

1 With that, I'm looking around. I don't see any further
2 discussion.

3 So, Ms. Jones, would you mind doing a roll-call
4 vote?

5 ADMINISTRATOR JONES: Member Bitzer, how do you
6 vote?

7 BOARD MEMBER BITZER: I vote yes.

8 ADMINISTRATOR JONES: Member Duval? Has he
9 joined us?

10 CHAIRPERSON SUINA: No.

11 ADMINISTRATOR JONES: Okay. Member Garcia?

12 BOARD MEMBER GARCIA: Yes.

13 ADMINISTRATOR JONES: Member Honker?

14 BOARD MEMBER HONKER: Yes.

15 ADMINISTRATOR JONES: Member -- Vice-Chair

16 Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 ADMINISTRATOR JONES: Chair Suina?

19 CHAIRPERSON SUINA: Yes.

20 ADMINISTRATOR JONES: The motion passes.

21 CHAIRPERSON SUINA: Thank you, Ms. Jones and

22 Board. So I think we're at the next motion.

23 MS. SOLORIA: Correct.

24 CHAIRPERSON SUINA: Okay. Who wants to make the
25 motion?

1 VICE-CHAIR TRUJILLO-DAVIS: I don't know what the
2 motion is. I've lost track of something in there.

3 MS. SOLORIA: So we will -- now you will be
4 voting to adopt language as proposed by NMED. And we just
5 have to work in which party's rationale you're rejecting.
6 I think we had --

7 BOARD MEMBER GARCIA: Oxy and IPNM.

8 CHAIRPERSON SUINA: IPANM.

9 MS. SOLORIA: And NMOGA's because NMOGA supported
10 IPANM.

11 BOARD MEMBER GARCIA: Oh, right. Yes.

12 MS. SOLORIA: And you'll have to offer what that
13 rationale was. So we have used, unsupported in the
14 record, against the weight of evidence.

15 VICE-CHAIR TRUJILLO-DAVIS: If that worked.

16 HEARING OFFICER ORTH: Lack of evidence was used.

17 MS. SOLORIA: I think we have used lack of
18 evidentiary support.

19 CHAIRPERSON SUINA: Did that help, Board -- Board
20 members, to frame a motion?

21 MS. SOLORIA: Oh, there was -- yeah, if you
22 wanted to make clear we had referenced, we spent all of
23 that time finding that exhibit, that is not in the party's
24 rationale, you know, a party's rationale and support, if
25 I'm correct. That was the conclusion of our search.

1 CHAIRPERSON SUINA: Correct.

2 MS. SOLORIA: So if you want -- this is all for
3 purposes of the statement of reasons. So if you want to
4 cite specifically to that, I think it was CAA's Exhibit
5 14.

6 VICE-CHAIR TRUJILLO-DAVIS: Yes, I think 13 and
7 14.

8 MS. SOLORIA: 13 and 14.

9 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

10 I think -- so, whoever, which Board member wants
11 to jump in and do -- frame the motion, just keep in mind
12 what Ms. Soloria just shared with us.

13 BOARD MEMBER GARCIA: Nobody is making eye
14 contact.

15 MS. SOLORIA: I can make a suggestion.

16 BOARD MEMBER GARCIA: Oh, wonderful. That would
17 help. We're starting to get to that time of day when you
18 can't form sentences anymore.

19 MS. SOLORIA: So as a suggestion, a motion to
20 accept NMED's language as proposed by NMED, for the
21 reasons offered by NMED, as well as CAA Exhibits 13 and
22 14, and to reject IPANM, NMOGA's and Oxy's proposed
23 language which is not supported by the evidence.

24 BOARD MEMBER BITZER: I would adopt that as my --
25 my motion.

1 CHAIRPERSON SUINA: Thank you, Member Bitzer.

2 BOARD MEMBER HONKER: I will second.

3 CHAIRPERSON SUINA: Thank you, Member Honker.

4 And I'm looking around. No further discussion.

5 So, Ms. Jones, would you do a roll-call for us?

6 ADMINISTRATOR JONES: Yes, I want to be clear.

7 That was Member Bitzer that made the motion and Member

8 Honker that seconded?

9 CHAIRPERSON SUINA: Yes, ma'am.

10 ADMINISTRATOR JONES: Member Bitzer, how do you

11 vote?

12 BOARD MEMBER BITZER: I vote yes.

13 ADMINISTRATOR JONES: And that's moving down

14 here. Member Garcia?

15 BOARD MEMBER GARCIA: Yes.

16 ADMINISTRATOR JONES: Member Honker?

17 BOARD MEMBER HONKER: Yes.

18 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Yes.

20 ADMINISTRATOR JONES: Chair Suina?

21 CHAIRPERSON SUINA: Yes.

22 ADMINISTRATOR JONES: Okay. The motion passes.

23 CHAIRPERSON SUINA: Thank you, Ms. Jones. Good

24 job, Board.

25 All right. So, where does that take us, to our

1 next item, small business facilities?

2 HEARING OFFICER ORTH: Yes, Section 125. And in
3 Section 125, which I just put up on the screen. In your
4 hard copies it's just five pages long -- six pages long,
5 page 327 to 332. You have 125 A, B, C, D, E and F, no
6 alternate proposals.

7 125 G, IPANM proposes to delete it, and that
8 proposed deletion is supported by NMOGA. And you will
9 want to look at the definition of "small business
10 facility" as you are doing this. Let's see if I can find
11 the page number for small business facility.

12 VICE-CHAIR TRUJILLO-DAVIS: It's 44 if you're on
13 the -- on the PDF. It's 32 if you are in the report.

14 HEARING OFFICER ORTH: Thank you.

15 VICE-CHAIR TRUJILLO-DAVIS: It's UU.

16 HEARING OFFICER ORTH: And IPANM's proposed
17 changes to UU are on page 37 of the hard copy.

18 CHAIRPERSON SUINA: Just making sure I'm on the
19 same page as everybody is, we have not passed or made a
20 decision on the definition, right?

21 HEARING OFFICER ORTH: That's right.

22 CHAIRPERSON SUINA: Okay.

23 HEARING OFFICER ORTH: Because you were going to
24 be discussing the details when we got to 125, and so that
25 was set aside.

1 BOARD MEMBER GARCIA: Sounds good.

2 HEARING OFFICER ORTH: There is an awful lot of
3 material in connection with the definition.

4 CHAIRPERSON SUINA: Thank you -- with that -- or
5 for that. Do you want to walk us through some of that
6 material with the definitions so we have the Department's
7 and then we have IPANM's?

8 HEARING OFFICER ORTH: Proposed edits.

9 CHAIRPERSON SUINA: Okay.

10 HEARING OFFICER ORTH: That's right.

11 CHAIRPERSON SUINA: Okay. Is there any other
12 group?

13 HEARING OFFICER ORTH: No. Well, again, NMOGA
14 supports IPANM.

15 CHAIRPERSON SUINA: Thank you. On this
16 definition, did any environmental groups -- I'm trying to
17 look -- did they propose -- did they chime in on this?

18 HEARING OFFICER ORTH: Well, so, it was not in
19 their final submittal in the definitions. CEP opposed
20 IPANM. And you see in the definition section, starting
21 with page 43, continuing to page 46, CEP addressed it at
22 length.

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

25 So, turning to members, it seems to me we can

1 discuss (1) through (5) in general, but we will also have
2 to tackle the definitions at some point, so I hope you...

3 Yes, Vice-Chair.

4 VICE-CHAIR TRUJILLO-DAVIS: Should we just as
5 a -- as maybe how to get through this, should we tackle
6 the definition first in this, and then if we come to
7 agreement on that, then move forward in our discussion on
8 that section?

9 CHAIRPERSON SUINA: Yeah.

10 MS. SOLORIA: So I have some thoughts.

11 CHAIRPERSON SUINA: Yes.

12 VICE-CHAIR TRUJILLO-DAVIS: Thoughts are good.

13 MS. SOLORIA: I think that it would behoove
14 you-all to look at the rule and essentially talk a little
15 bit about what the rule does, and then turn to the
16 definition so that -- to see how the definition operates
17 within the rule.

18 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

19 So, I guess we'll go back to the rule. Section
20 125, just so I'm getting clear as to my notes, we have the
21 Department's proposed language and then IPANM just for
22 Section 125, G-as-in-girl.

23 HEARING OFFICER ORTH: That's correct.

24 CHAIRPERSON SUINA: Okay.

25 HEARING OFFICER ORTH: They propose to delete it

1 entirely.

2 CHAIRPERSON SUINA: Okay. And then NMOGA's
3 support of IPANM's suggestion.

4 HEARING OFFICER ORTH: That's right. And the --
5 the primary dispute over G is about enforcement authority.

6 MS. SOLORIA: When the Board is ready to
7 entertain it, I can elucidate -- I jinxed myself there a
8 bit -- on the full legal arguments raised with regard to
9 enforcement authority.

10 VICE-CHAIR TRUJILLO-DAVIS: So, a quick question.
11 The -- so G is the contested portion, but so is the entire
12 section? Or is it just, they just propose to delete the
13 entire section of G?

14 HEARING OFFICER ORTH: G, yes, ma'am.

15 VICE-CHAIR TRUJILLO-DAVIS: Got it.

16 BOARD MEMBER GARCIA: But this section brings in
17 127 as well. I'm just trying to understand how that
18 works, the applicability.

19 HEARING OFFICER ORTH: That's right.

20 BOARD MEMBER GARCIA: So if we agree with this,
21 it automatically applies to 127.

22 HEARING OFFICER ORTH: Correct. And Ms. Soloria
23 may be able to address that.

24 MS. SOLORIA: Can you repeat it?

25 BOARD MEMBER GARCIA: I'm looking at the

1 "Applicability" under A. "Small business facilities" as
2 defined in this part are subject to Sections 125 and 127.

3 HEARING OFFICER ORTH: So 127 is stipulated,
4 that's the prohibited activity.

5 BOARD MEMBER GARCIA: That means agreed upon?

6 HEARING OFFICER ORTH: Right.

7 BOARD MEMBER GARCIA: Okay.

8 CHAIRPERSON, SUINA: For now. This language.

9 BOARD MEMBER GARCIA: I'm sorry. So then -- so
10 then it's not as big of an issue as I thought it might be.
11 Okay. So we'll move on with just 125. Thank you.

12 CHAIRPERSON SUINA: Yeah, Member Honker, did you
13 have something to share?

14 BOARD MEMBER HONKER: Well, the way I read
15 Section G, it's kind of where if you don't -- if you're a
16 noncomplier, the Secretary has the option to make you
17 comply with other sections of the rule that a small
18 business would not have to comply with.

19 And IPANM is saying we don't -- that exceeds our
20 legal authority and I would -- I would greatly value
21 Counsel's insights on -- on how that -- how that is
22 structured. It also looks like the IPANM has got -- they
23 wanted it 50 employees instead of 10, so that gets back to
24 the definitional issue. But it seems like the issue here
25 we have to decide on is -- is number one, do we have the

1 legal authority to approve wording such as this.

2 CHAIRPERSON SUINA: Thank you, Member Honker.

3 And I think we're at the point, Ms. Soloria, I
4 think as the Hearing Officer mentioned earlier we may be
5 looking to you about Member Honker's question.

6 MS. SOLORIA: Sure. I'll address the larger
7 issue, which is larger, but I think since they're about
8 the idea is lack-of-record support, I think that's similar
9 to the analysis you've been doing for all decisions of the
10 rule, whether or not there's sufficient evidence in the
11 record for you to pass the rule.

12 But this somewhat discrete legal issue that's
13 discussed on page 331 about enforcement authority, so this
14 is something unique we see in the context of this rule,
15 where if you read the text so that the -- this rule would
16 empower the Secretary, based on credible evidence, that a
17 source presents an imminent and substantial endangerment
18 to the public health or welfare or the environment, or is
19 not being operated or maintained in a manner that
20 minimizes the emissions of air contaminants; or has
21 violated any of the requirements, so that the Department
22 can then require that emitter to comply with other
23 sections of the rule.

24 So, the argument raised here is that -- that the
25 Department's enforcement authority is regulated by statute

1 and the Board can't pass a rule that delineates the
2 Department's regulatory authority. I will say that it is
3 this kind of provision -- well, I don't want to go -- I
4 don't want to go outside the context of this rule.

5 But I will say, having reviewed the legal
6 authority presented within this argument, for example,
7 there's a case cited there -- you can probably infer from
8 the title of that case that it was in a very different
9 context. That case discussed emergency rules being passed
10 under the ULA, the Uniform Licensing Act. The Supreme
11 Court found that the Board had not found an emergency
12 existed; and, therefore, could not pass those rules. So I
13 would say that that citation to the legal authority there
14 isn't really on all fours with the proposition here, that
15 the Board lacks authority to pass a rule regarding the
16 Department's enforcement authority.

17 I will say my observation is that it is unique to
18 this rule, and I would venture to say unique to other
19 rules, but I would not represent that I've made a -- you
20 know, a complete survey of all the rules.

21 BOARD MEMBER GARCIA: So you're saying -- if I
22 may clarify?

23 MS. SOLORIA: Yes.

24 BOARD MEMBER GARCIA: You're saying that this
25 rule gives the Secretary unique authority that's unique,

1 express authority as unique? Is that the part you're
2 saying?

3 MS. SOLORIA: Well, it's unique in that, for
4 example, if you have a look at 74-2-12, which is also
5 cited by -- who is this party -- IPANM -- for -- for the
6 regulations generally that the Department is charged with
7 enforcing, civil enforcement authority is delegated to the
8 Secretary. If there's a violation, the Secretary may
9 issue a compliance order or commence a civil action to
10 determine a violation.

11 This is sort of giving the Secretary, as I read
12 it, it is giving the Secretary additional authority within
13 the context of Part 50, to enforce other provisions of the
14 rule against the small business, should the Secretary
15 determine they are presenting a risk. So, yeah, I -- I
16 jinxed myself earlier.

17 The issue here is that -- the argument is that
18 the Board would be empowering the Secretary to have
19 enforcement authority, where that enforcement authority is
20 already covered by Section 74-2-12, and that is the
21 statute that already confers the Secretary -- upon the
22 Secretary, enforcement power. And, again, this is an
23 argument proffered by IPANM, I believe, was the only party
24 that touched on that issue.

25 VICE-CHAIR TRUJILLO-DAVIS: And NMOGA.

1 HEARING OFFICER ORTH: And NMOGA supported it.

2 CHAIRPERSON SUINA: NMOGA supported, yeah.

3 VICE-CHAIR TRUJILLO-DAVIS: So what I'm
4 struggling to understand is I'm not -- I don't understand
5 why G was necessary if that was covered in 127. Because
6 127 is just essentially where it sends you into
7 enforcement actions.

8 CHAIRPERSON SUINA: And would have -- yes.

9 HEARING OFFICER ORTH: And the evidence that can
10 be used in an enforcement.

11 CHAIRPERSON SUINA: Right.

12 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. Say that
13 again.

14 HEARING OFFICER ORTH: About the evidence that
15 can be used.

16 BOARD MEMBER GARCIA: In 127.

17 HEARING OFFICER ORTH: Yes.

18 BOARD MEMBER GARCIA: So this says, based on
19 credible evidence, and then 127 says, what is that
20 credible evidence in 127.

21 MS. SOLORIA: Well, in addition, this Section G
22 is incorporated -- it allows the Secretary to consider
23 credible evidence, and that has impacts on small
24 businesses; whereas, 127 applies across the board to this
25 Part 50. It's -- it's meant to generally address how

1 violations -- enforcement with respect to violations.

2 VICE-CHAIR TRUJILLO-DAVIS: Okay. More follow-up
3 questions. I'm really trying to understand this issue.
4 So if you are in the definition of a small business and
5 you have violations that would trigger G, could -- did --
6 how do I phrase this? Could those violations be used --
7 the evidence from those violations in G, it has two paths
8 from there, if I'm understanding G correctly. You could
9 either go to the Secretary so they can determine that you
10 have that other rule -- areas of the rule apply to you, or
11 you go to Section 127, where the enforcement action is
12 under 74-2-12.

13 MS. SOLORIA: Correct. And then the Department
14 is proffering that if you go on this track, then they
15 would be empowered to enforce those other provisions of
16 the rule on you. If it -- if it applies in the context of
17 a small business violation, that is a violation by a small
18 business.

19 VICE-CHAIR TRUJILLO-DAVIS: Okay.

20 CHAIRPERSON SUINA: So, yeah, I think if I may, I
21 might muddy the waters more, Vice-Chair. But because in
22 the context of identifying certain -- let's see -- parts
23 for small business facilities are not subject to any other
24 requirements of this part. That then brings it back to
25 then creates a path for the Department to say, okay, there

1 will be a way to make small businesses, or small business
2 facilities to adhere.

3 VICE-CHAIR TRUJILLO-DAVIS: Okay. I think I
4 understand what you're saying there, but then it kind of
5 raises the question for me: if you can't -- if you can't
6 comply as a small business, then why bring you into these
7 other things? Shouldn't you just be sent to enforcement
8 actions.

9 CHAIRPERSON SUINA: And Member Honker has a
10 comment as well. Member Honker.

11 BOARD MEMBER HONKER: I think -- I think that's a
12 good point. I guess I'm seeing a little awkwardness in
13 the setup of this small business thing. At least the way
14 I'm reading it, if you qualify as a small business, you're
15 automatically in. I didn't see a procedure -- and maybe I
16 missed something, but I didn't see a procedure where NMED
17 has to review the situation and say, yes, you're a small
18 business and you're subject to these two sections, but not
19 the rest.

20 And in a way, if it had been an exception
21 process, where a small business went through some process
22 to get excepted from the other portions of the rules, and
23 then if they're bad actors, then they could lose their
24 exception or whatever, and there would be a process for
25 that. But this -- this seems to be trying to do the same

1 thing, only with a -- with section G, that would --
2 would -- would take the small business out of this
3 category if they were bad actors.

4 But I'm seeing it a little awkward because there
5 wasn't a process to get them in there, other than their
6 own determination that they're a small business. So, if
7 anybody sees some -- some error in the way I'm seeing
8 this, please let me know.

9 CHAIRPERSON SUINA: Thank you, Member Honker.

10 And I think Vice-Chair, do you have a comment?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes. Member Honker,
12 I don't necessarily see any error in the way you're
13 thinking about things, but I will just point out that in
14 Sections E and F, they do -- they are required to maintain
15 a certification that the -- that it meets the definition
16 of -- the small business meets the definition. And in
17 Section F, they are required to submit to the Department a
18 small business certification.

19 CHAIRPERSON SUINA: Thanks, Vice-Chair
20 Trujillo-Davis and Member Honker.

21 Yes, Member Honker.

22 BOARD MEMBER HONKER: Well, but I'm not reading
23 that -- it seems like that's something they do themselves.
24 I don't see a step where -- where NMED approves that
25 certification. It seems like this is just kind of

1 self-actuating and there's not a decision point by NMED.

2 As long as they meet these requirements, they're in.

3 CHAIRPERSON SUINA: And thank you, Member Honker.

4 And if I may? I don't know if I can reframe this
5 in my mind, so I'm kind of thinking out loud. So, one of
6 the other aspects of G is that you could be categorized or
7 identified as a small business under F, every year, as
8 certifications -- not discussing what Member Honker just
9 mentioned about, you know, the identified process by NMED,
10 or lack thereof. Again, that's another question.

11 But I think with G is you would be a small
12 business, but still subject to credible evidence that that
13 (1) (2) or (3) in G, where then making small -- a small
14 business facility needs to comply with the other sections.

15 So you could still be a small business, and then
16 because of this section, need to comply with the other
17 sections if -- if there was credible -- based upon
18 credible evidence. Because there's a case where -- I
19 could think about an instance where, yeah, you can be
20 still a small business, and if you graduate from being a
21 small business and no longer meet those certification
22 criteria, then, yes, you would not be a small business,
23 and it would be all of the other parts of Part 50 would be
24 applicable.

25 But this clause, in my mind -- and again, I'm

1 thinking out loud -- allows a small business to be a small
2 business facility and be applicable -- or -- or have to
3 adhere to the rest of 50.

4 VICE-CHAIR TRUJILLO-DAVIS: So I see what you're
5 getting at there, that makes sense. I'm wondering, in
6 those instances, where you have seen that type of setup,
7 is there a -- is there a mechanism that allows, like, in
8 this particular instance, it says if the Secretary finds,
9 and I'm curious; is that a review process or is that a
10 hearing process? Like, what -- because it uses the phrase
11 "credible evidence."

12 So I'm wondering what kind of process does that
13 entail for the Secretary to make that decision?

14 CHAIRPERSON SUINA: Thank you, Vice-Chair.

15 And that's -- Member Honker, I don't know if you
16 have a comment on that.

17 BOARD MEMBER HONKER: No, I -- that's a very good
18 point and I had the same question when I read it.

19 CHAIRPERSON SUINA: Yes, Member Garcia.

20 BOARD MEMBER GARCIA: Yes, I can see Member
21 Honker's point about, they don't lay out very clearly
22 about how an operator gets to be certified. But I think
23 that there are other provisions in air quality rules for
24 certification, and I think it's clear that if the
25 Department provides a document that they have to fill out,

1 the Department is going to determine whether they can fall
2 into a small business category or not. So I think the --
3 I know there was a great deal of discussion over -- about
4 this during the hearing about small business.

5 And I think from remembering the discussion, that
6 there also was a lot of debate, before we even came into
7 the picture, during the negotiations, during the
8 stakeholder meetings -- they went around and around and
9 around about it. So they spent a lot of time on it and
10 then also spent time on it during the hearing, about small
11 business.

12 So, I know the Department did make some
13 concessions, as far as number of employees and things like
14 that. So I'm not too worried about that the Department
15 isn't laying out how you certify. I think that probably
16 both parties understand that process.

17 As far as the process for the Secretary
18 finding -- I think it's a great question whether it's a
19 hearing or what it is. There are -- I've seen language
20 where in other rules, where they talk about the Secretary
21 finds something or other, and it's -- you know, of course
22 it's a person -- an inspector who finds it and then they
23 provide the evidence to the Secretary, and the Secretary
24 signs off on it, is the way that works, but -- usually.

25 I don't -- since this doesn't require a hearing,

1 I don't think there is a hearing; however, if a party
2 decides that they were wrongly put into this category,
3 they have an option for a hearing. I think there almost
4 always is an avenue for appeal after a final agency
5 action, and this is a pretty big final agency action, so I
6 would imagine there's an opportunity to go before the
7 Secretary and say, hey, we're not endangering whatever it
8 is. We don't present an imminent substantial
9 endangerment, so that's already built in.

10 CHAIRPERSON SUINA: Yes, Vice-Chair
11 Trujillo-Davis.

12 VICE-CHAIR TRUJILLO-DAVIS: I think Member Garcia
13 makes some really good points there. What I'm wondering
14 about, though, in following on your thoughts there, is,
15 you know, we do see in other agency actions, whether
16 somebody files for a permit, they maybe disagree with the
17 way that the permit comes out, and then they go through
18 the process of filing for a hearing and move through the
19 process that way.

20 And looking at this section as a whole, you know,
21 I do see they have to meet certain requirements. And it
22 looks like it's through the permitting process on portions
23 of that. But what I'm kind of struggling to find here is
24 that that process is laid out, that says, we're not going
25 to let you start operating and then determine that you're

1 not in compliance, or that you're presenting either, (1),
2 you know, presenting imminent or substantial danger, or
3 (2) or (3) of those on that list.

4 I would like to see that laid out in the
5 beginning of the process, to say, okay, you're putting
6 this facility in, we think you qualify for (1), (2) or
7 (3), we need to move each to these. And here's the appeal
8 process if you need to go through that. And I think G is
9 a little bit unclear on that.

10 CHAIRPERSON SUINA: Thank you, Vice-Chair
11 Trujillo. And I'd like to thank Member Garcia for your
12 input as well.

13 Yes, Member Garcia.

14 BOARD MEMBER GARCIA: Just to understand IPANM
15 is -- their argument is just saying, this is out of line
16 with the authority; that's their issue. So nobody has
17 brought up the question of -- they don't lay out the
18 process? Has anybody brought that up? I mean in their --

19 HEARING OFFICER ORTH: Member Garcia, one reason
20 might be -- and I'm just speculating.

21 BOARD MEMBER GARCIA: Sure.

22 HEARING OFFICER ORTH: The definition -- and I
23 know we're not there yet, but when I look at the
24 definition, these are -- how can I put this -- gray area,
25 at least the way it's set out: Are you independently

1 owned or operated? Do you employ no more than ten
2 employees? And is your gross revenue more or less than
3 \$250,000, meaning -- those seem, to me, pretty
4 straightforward, which might be why, although there was
5 drama, you know, around that, ultimately, the expression
6 of the criteria are numerical, primarily.

7 I mean, there's ownership structure and then 2
8 numbers you have to do. And Vice-Chair already mentioned
9 the annual certification.

10 BOARD MEMBER GARCIA: Right. So, I don't think
11 there is a question about -- I mean, they don't seem to be
12 raising that that's gray, they just don't like the
13 threshold.

14 HEARING OFFICER ORTH: Exactly.

15 BOARD MEMBER GARCIA: So what I'm asking though,
16 is, nobody seems to be raising the question that Member
17 Trujillo-Davis and Member Honker are raising, or that
18 there's not clarity in the process?

19 VICE-CHAIR TRUJILLO-DAVIS: Well, I think we got
20 there -- we got to that point based on the Secretary's
21 authority to carry out G. So, how does the Secretary
22 arrive at that decision? And what mechanism do the
23 applicants or the operators use to go through that process
24 with the Secretary?

25 BOARD MEMBER GARCIA: Exactly. And what I'm

1 saying is, you're raising it, and it's a good point, it's
2 valid. It's just that I'm not seeing that the parties are
3 raising it. Is that -- that's what I'm pointing out.

4 VICE-CHAIR TRUJILLO-DAVIS: Uh-huh, yes.

5 BOARD MEMBER GARCIA: Okay. That's my point.

6 CHAIRPERSON SUINA: And I guess we're just
7 looking to verify that with Madam Hearing Officer, that no
8 other parties raised any additional arguments about it?

9 HEARING OFFICER ORTH: No. I've got this
10 complete set here.

11 CHAIRPERSON SUINA: Okay.

12 HEARING OFFICER ORTH: Of arguments. Now, they
13 do go on for a very long time. I guess -- and this would
14 be a question for Ms. Soloria.

15 Usually in Department regulations, especially
16 enforcement, the language is you file a notice of hearing,
17 right?

18 MS. SOLORIA: Right.

19 HEARING OFFICER ORTH: Is that something that
20 could be added as a clarification, because I -- just my
21 impression is, just having the Hearing Officer here for 15
22 years, I was even asked to do notice of a hearing to
23 people who weren't even entitled to a hearing, just
24 because the Cabinet Secretary wanted clarity on a final
25 agency action.

1 MS. SOLORIA: Right.

2 So, two things: First, because you handed me the
3 mic, I just wanted to make a clarifying point about my
4 earlier comments. I just wanted to kind of distract --
5 retract my comment about this being unique. To the extent
6 I made any comment about any rules outside of Part 50, it
7 was not my place to do so. And so strike that for the
8 sake of the record.

9 To the point about process, I would be hesitant
10 only because that has clear administrative implications on
11 the Department. And I wouldn't think that there's any
12 evidence specific to this provision presented on that, in
13 terms of having a hearing. I totally agree that if it
14 comes down to it, I think there are questions of due
15 process that a person -- to the extent you pass this rule,
16 even there could be areas in the determination of a small
17 business that there should be a route of appeal within the
18 Department. But I just wouldn't see that the Board could
19 rely on, absent any evidence regarding that administrative
20 implication.

21 BOARD MEMBER GARCIA: And I wish I could remember
22 a particular rule; I think this is not unique. I just
23 can't -- I keep thinking about whether OSHA has a
24 provision. I'm thinking about rules that have a small
25 business exemption, and there are, but I can't recall

1 whether they lay out this.

2 MS. SOLORIA: I think -- and, again, I don't want
3 to speak to other rules, but my comment about -- I was
4 trying to make it that any comment as to uniqueness was
5 instigated by the way, I think, they framed their legal
6 argument here. Like, I don't think that -- I think -- I
7 agree with you; small business provisions are replete
8 throughout many areas.

9 But maybe to clarify what the legal argument is,
10 is they're saying there's already a statute out there that
11 says the Secretary can enforce violations of the Air
12 Quality Control Act, and he can do -- she or he can do
13 that by issuing a compliance order or commencing a civil
14 action. And the order for that statute, the order may
15 include a suspension or a revocation of the permit.

16 And so, what this -- this is not my argument,
17 this is IPANM's argument, is saying, because that statute
18 exists, that is the limit of the Secretary's enforcement
19 authority, and that this provision represents a
20 different -- a different power of enforcement. And that
21 the different powers to make that small business comply
22 with other parts of this rule. So that's the way they've
23 framed it.

24 I will -- I will represent that in terms of their
25 legal argument, the authority they presented is not -- is

1 not -- is not authority directly on point, saying that the
2 Board can't pass the rule. I did not find that authority
3 to strongly suggest or support the notion that the Board
4 is without authority to pass this provision. That's --
5 that's my assessment of the authority presented.

6 And, again, that's -- I think you should evaluate
7 the argument as it's presented. I don't think -- as I've
8 said before, I think if you were to pass this rule
9 notwithstanding this position, that's a defensible
10 position. I don't think -- the argument isn't frivolous,
11 but I also think that proceeding with adoption is also --
12 there's a basis for that.

13 CHAIRPERSON SUINA: Madam Hearing Officer.

14 HEARING OFFICER ORTH: Madam Chair, if I could.
15 Because we are talking about a determination, what they
16 call a finding, that the Secretary finds, we're talking
17 about a determination that would be made, it seems, as
18 part of an enforcement action. Well, any enforcement
19 action taken by the Air Quality Bureau would be appealed
20 under 20.1.5 NMAC, which gives a notice of hearing. So I
21 think it might be built in, even though it's not expressly
22 provided.

23 CHAIRPERSON SUINA: Thank you, Vice-Chair.

24 VICE-CHAIR TRUJILLO-DAVIS: I'm curious: would
25 this argument be different if, instead of saying

1 "Secretary," it said "Department"? I'm not proposing the
2 change or anything. I'm just asking if context-wise,
3 would that make a difference, because it would not throw
4 that statute in? I mean, we're relying on that statute,
5 right?

6 MS. SOLORIA: Right. But I would say that I
7 don't think you could really make that distinction. I
8 don't -- I don't think that -- I don't think by changing
9 that word it would get around the statute because the
10 Department acts at the direction of the Secretary.

11 VICE-CHAIR TRUJILLO-DAVIS: Okay.

12 MS. SOLORIA: Yeah, that's it.

13 HEARING OFFICER ORTH: It's a part of the
14 Environmental Department.

15 MS. SOLORIA: Yeah.

16 VICE-CHAIR TRUJILLO-DAVIS: And thank you for
17 that mental exercise.

18 BOARD MEMBER GARCIA: Thanks for coming along
19 with it.

20 CHAIRPERSON SUINA: Yeah. Well, thanks for the
21 discussion. So, I don't know what that brings us back to.

22 BOARD MEMBER GARCIA: I guess kind of going back
23 to basics, if we try and understand, okay, where is their
24 concern, really? If they're concerned that an entity
25 would be classified as a small business correctly, and

1 then somehow the Department would then come along and say,
2 oh, we think you presented an imminent danger, and then
3 bring them in and then make them comply with the other
4 parts; is the fear that the Department would do that too
5 much, or would -- you know, they shouldn't have the
6 ability to do that? They just shouldn't -- I mean, aside
7 from the legal stuff, I'm just trying to understand what
8 is their fear here? What is the fear here that would
9 happen? On the flip side, if an entity is classified as a
10 small business and they are exempt from many provisions of
11 this rule, and then the Department -- and we don't have
12 this language, we don't have G, and then the Department
13 finds that the small business is egregiously violating
14 emissions standards, would they be able to do anything
15 about it, because this entity has already got a small
16 business exemption?

17 So I'm looking at both sides of this, and how
18 this might be necessary, and why the Department put it in
19 there. So what's the fear of the Department? What's the
20 fear of the industry side?

21 CHAIRPERSON SUINA: Yes. Thank you for that
22 comment. Yes, Vice-Chair.

23 VICE-CHAIR TRUJILLO-DAVIS: So I thought Member
24 Garcia framed it very well, in saying you could have a
25 small business -- classify as a small business that may

1 have some type of operation that would qualify it for (1),
2 (2) and (3), that may be outside of its normal scope of
3 activity. And who knows, for whatever reason, it may
4 qualify for (1) (2) or (3). And so, I understand that
5 portion of it.

6 And I think that's a good way to look at it,
7 where -- and to your point, Member Garcia, about, you
8 know, if somebody is egregiously violating something, to
9 me, they would be just shuffled right over to Section 127,
10 where they go into enforcement actions on that -- on that
11 side of things.

12 So my -- my kind of issue with this particular
13 one -- and maybe the Hearing Officer kind of helped us
14 out -- Madam Hearing Officer kind of helped us out there,
15 saying there's due process for the evidence that it's --
16 or determining that they qualified for (1) (2) or (3),
17 which, you know, speaks to what you were saying is, you
18 are doing something you're not supposed to be doing, where
19 do you land?

20 CHAIRPERSON SUINA: Yes.

21 So -- oh, yes, Member Honker.

22 BOARD MEMBER HONKER: Well, I just -- a new take
23 on this just occurred to me. And that is under G (3), has
24 violated any other requirement of Section 125. What if --
25 what if a facility submits a sham certification that

1 they're a small business, and they're not? They have too
2 many employees, the revenues are too great.

3 It seems like this is the only section that
4 allows NMED to basically get them out of a small business
5 classification. I don't see another avenue, other than --
6 other than general enforcement or something. But it seems
7 like this is part of the structure, that NMED has to have
8 some -- they have to have some avenue to deal with not
9 only imminent hazardous situations, but somebody who's
10 falsifying a certification and incorrectly classifying
11 themselves.

12 CHAIRPERSON SUINA: Thank you, Member Honker.

13 And I want to give Madam Hearing Officer a time
14 to speak.

15 HEARING OFFICER ORTH: So I really am just
16 referring back to what I said a little bit ago. When the
17 Bureau/Secretary takes action for violations of its rules,
18 that action is taken under 20.1.5. So that's the
19 enforcement. You know, that's where all of the process is
20 set out.

21 If the Department is making a finding against
22 you, that you have violated a rule, and takes an action as
23 a result, which might be a notice of violation or an
24 administrative order, whatever it is, there's a process
25 set out.

1 CHAIRPERSON SUINA: Yeah, Vice-Chair
2 Trujillo-Davis.

3 VICE-CHAIR TRUJILLO-DAVIS: I would think that
4 would be very difficult -- very difficult for us to pull
5 off, just because you have to certify your document,
6 saying that you are indeed a small business, and then, I
7 mean, these operators, their oil grade numbers are tied to
8 the Tax Department, which are -- you know, so it just
9 seems like it would be -- between all of the agencies, it
10 would be very difficult -- difficult for us to pull off.

11 CHAIRPERSON SUINA: Yes.

12 BOARD MEMBER GARCIA: Exactly. I mean, to Member
13 Honker's concern under F, they have to, within 60 days of
14 the effective date of this part, is when they supply
15 information to be certified under small business. And
16 so -- so I think, I mean, no doubt, there could be some
17 businesses that try to slip under the radar, but once they
18 get on the radar, they're going to be in violation.

19 One of the things I would point to as well,
20 having been a regulator in the past, is -- and I can see a
21 little bit why the Department wants to have this caveat
22 here, is that, unfortunately, what happens is, it's the
23 small operators, whether it's oil and gas, mining,
24 whatever it is, those are the ones that cut corners
25 because they don't have the money. The big operators,

1 they'll comply; they don't necessarily want to, but they
2 do. They have the money to comply.

3 It's the smaller operators that are the ones that
4 some, you know, because they don't have a lot of
5 resources, sometimes they might cut corners a bit. And
6 so, those are the ones that you have to really watch.
7 Unfortunately, that tends to be the case in the field as
8 an -- as an inspector, that's what you find. So I can see
9 where the Department wants to cover entities that
10 sometimes tend to be the violators, the problem -- the
11 problem ones. So that's all.

12 CHAIRPERSON SUINA: Thank you, Member Garcia.
13 And Vice-Chair Trujillo-Davis.

14 VICE-CHAIR TRUJILLO-DAVIS: My question is for
15 Ms. Soloria. The -- the case that IPANM references,
16 Wilcox versus New Mexico Board of Acupuncture and Oriental
17 Medicine, was the finding in that case related to due
18 process or do you know?

19 MS. SOLORIA: No, but I can find out for you.

20 VICE-CHAIR TRUJILLO-DAVIS: Since it was used as
21 a citation for this argument.

22 MS. SOLORIA: I did review it, but I don't want
23 to speak offhand about that particular case.

24 CHAIRPERSON SUINA: And while we're at that
25 point, I want to look to Madam Court Reporter. Do you

1 need a break?

2 COURT REPORTER: Whenever is fine.

3 CHAIRPERSON SUINA: So you're still good for a
4 little bit. What do you think?

5 MS. SOLORIA: I was just going to answer. I
6 didn't -- I didn't realize that I had discussed Wilcox
7 earlier, so what was your question, Madam Trujillo-Davis.

8 VICE-CHAIR TRUJILLO-DAVIS: I was curious what
9 the finding in that was for the --

10 MS. SOLORIA: Well, the general crux of that
11 case, again, it was in the content of the Uniform
12 Licensing Act; it had to do with a professional licensing
13 board. In that case it was Acupuncture and Oriental
14 Medicine. And the Board had passed a number of rules, but
15 the Court went -- after those rules were appealed, the
16 Court found that this circumstance -- so you can only --
17 the Board can only -- under the ULA the Board can only
18 pass emergency rules under certain circumstances, if
19 there's a threat to life, health, whatnot. And in that
20 case, the Supreme Court found that the Board -- the
21 circumstances for an emergency didn't exist, so the Board
22 didn't have authority under those circumstances to pass
23 "emergency" rules.

24 So, they cited it for the general -- really, the
25 takeaway there is they cited it for the general

1 proposition that an agency can't create a rule that's not
2 within its statute authority. It's the facts of that case
3 that are not really on point here.

4 VICE-CHAIR TRUJILLO-DAVIS: Okay. Yes, I see
5 that.

6 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

7 BOARD MEMBER GARCIA: So I take it, this was not
8 a post-hearing change?

9 HEARING OFFICER ORTH: No.

10 CHAIRPERSON SUINA: I think I'd go back to --
11 just if I can -- if I may add? In NMED's --

12 MS. SOLORIA: Can I?

13 CHAIRPERSON SUINA: Yes.

14 MS. SOLORIA: Sorry. This is maybe too much, but
15 I have said the Supreme Court for that case, but it was
16 the Court of Appeals.

17 CHAIRPERSON SUINA: Okay. Thank you.

18 VICE-CHAIR TRUJILLO-DAVIS: I assumed it was the
19 New Mexico Court of Appeals. Got it.

20 CHAIRPERSON SUINA: On page 330, I think, for me,
21 it seems to be the middle of NMED's justification or
22 support. This provision incentivizes owner and operators
23 of small business facilities to fully comply with this
24 Section 125, providing for an applicability on-ramp for
25 other sections of Part 50 if they fail to do so.

1 And I think we've been talking about how, you
2 know, there's the whole, whether the certification of a
3 small business, if they need that, but then there's also
4 the part of, if they fail to meet other sections, based
5 upon credible evidence, some of the (1) (2) or (3).

6 And to me, I don't see another on-ramp to ensure
7 that small businesses -- will continue to not maybe
8 provide shortcuts. And that's where I'm -- and that's
9 either/or, right? Because there's no other language
10 proposed, it was just deletion or Section G.

11 BOARD MEMBER GARCIA: Uh-huh.

12 VICE-CHAIR TRUJILLO-DAVIS: Just from my
13 understanding, I keep going back to 127. Don't you end up
14 in 127? What am I not understanding?

15 BOARD MEMBER GARCIA: Well, I think that -- if I
16 may? The way I see it is, if you've gotten a small
17 business exemption --

18 VICE-CHAIR TRUJILLO-DAVIS: Uh-huh.

19 BOARD MEMBER GARCIA: -- then you don't -- then
20 you may not be needing to do all of these other things. I
21 think what the Department is concerned about is, somebody
22 saying, hey, you can't -- you can't hit me with 127
23 because I'm a small business. I don't have to comply with
24 all of this stuff because I'm a small business, I'm
25 already exempt. Right? Is that the way they're --

1 CHAIRPERSON SUINA: That's what I think.

2 MS. SOLORIA: I think the question -- the
3 distinction is one of egregiousness, and then what penalty
4 is tied to the egregiousness. Because, here, the way that
5 G is drafted -- I mean, that's what we're talking about
6 here. So there's those three -- the last three provisions
7 are somewhat -- you know, they're a level of egregiousness
8 that's happening. And if that -- you could go -- you
9 could go -- I read it that you could go to 127 for any of
10 the violations in B (1) through (4). Right? Which are
11 general requirements among small business.

12 And here, the Department, I think, is concerned
13 with those three circumstances they've enumerated. And if
14 those three things exist, then in addition to going to --
15 the option of going to 127 for these (1) through (4), if
16 those circumstances exist, they can impose other parts of
17 the rule.

18 CHAIRPERSON SUINA: Yeah, that's what I saw.

19 BOARD MEMBER GARCIA: So, that's a little bit
20 beyond 127?

21 CHAIRPERSON SUINA: Yes, that's what I thought.

22 BOARD MEMBER GARCIA: Okay.

23 HEARING OFFICER ORTH: The other thing -- I'm
24 sorry.

25 CHAIRPERSON SUINA: Yes.

1 HEARING OFFICER ORTH: The other thing you might
2 think about, is if this is a provision for a sort of
3 relief from the whole rule, if not abused, right, from the
4 whole rule, they didn't need to write that. Right? They
5 didn't need to include a small business provision. They
6 could -- small businesses could have just had the whole
7 rule apply to them from the beginning, but they wrote that
8 relief. But then if that relief was abused, then....

9 CHAIRPERSON SUINA: Well, just in terms of being
10 comprehensive, and these references, Ms. Soloria, they
11 also reference New Mexico Taxation and Revenue Department
12 on that, in terms of limited to the exercising of
13 authority granted by statute.

14 MS. SOLORIA: Right. And, again, I will take a
15 quick look to back my statement up, but I believe that
16 citation, again, was just a general citation to the notion
17 that rulemaking bodies such as yourselves can only pass
18 rules within its statute authority.

19 BOARD MEMBER GARCIA: Right. Exactly what's
20 within the parens.

21 CHAIRPERSON SUINA: Okay. Thank you.

22 Is there any other discussion on this? Are we at
23 a point where we want to propose a motion?

24 Madam -- I don't mean to rush us, I'm just...

25 BOARD MEMBER GARCIA: Yeah, I think we've beat

1 this one, I believe.

2 CHAIRPERSON SUINA: Okay. Yes, Member Garcia.

3 BOARD MEMBER GARCIA: I will go ahead and propose
4 a motion that the Board adopt 20.2.50.125 A, B, C, D and E
5 and F and G, for the reasons as proposed by NMED, for the
6 reasons proffered by NMED, and to reject the -- reject the
7 argument made by IPANM that we -- that it is outside the
8 authority of the Department and the Board -- that G is
9 outside the authority of the Department and the Board.

10 Or you can take a shot.

11 MS. SOLORIA: We could move to adopt Part 125 as
12 proposed by NMED, for the reasons offered by NMED, and
13 reject the revisions proposed by IPANM and supported by
14 NMOGA, as against the weight of the evidence.

15 BOARD MEMBER GARCIA: Okay. I adopt that motion.

16 CHAIRPERSON SUINA: Thank you, Member Garcia.

17 BOARD MEMBER BITZER: I'll second that motion.

18 BOARD MEMBER GARCIA: That was Member Bitzer.

19 CHAIRPERSON SUINA: Was that you, Member Bitzer?

20 BOARD MEMBER BITZER: Yes. Is that okay?

21 CHAIRPERSON SUINA: Yes. Okay. We have Member
22 Bitzer's second.

23 And with that, is there any further discussion?
24 If not, Ms. Jones, would you please do a roll-call vote
25 for us?

1 ADMINISTRATOR JONES: Member Bitzer, how do you
2 vote?

3 BOARD MEMBER BITZER: I vote yes.

4 ADMINISTRATOR JONES: Has Member Duval joined us?
5 Member Duval? I guess not.

6 Okay. Member Garcia?

7 BOARD MEMBER GARCIA: Yes.

8 ADMINISTRATOR JONES: Member Honker?

9 BOARD MEMBER HONKER: Yes.

10 ADMINISTRATOR CORRAL: Vice-Chair Trujillo-Davis?

11 VICE-CHAIR TRUJILLO-DAVIS: Yes.

12 ADMINISTRATOR JONES: Chair Suina?

13 CHAIRPERSON SUINA: Yes.

14 And I just want to check one more time. Member
15 Duval?

16 HEARING OFFICER ORTH: He says, "I vote yes."

17 CHAIRPERSON SUINA: Thank you. So Member Duval
18 votes yes.

19 ADMINISTRATOR JONES: Thank you.

20 And the motion passes, Madam Chair.

21 CHAIRPERSON SUINA: Thank you. And just for the
22 record, Member Duval had written that in the Chat, his
23 vote. Great question.

24 VICE-CHAIR TRUJILLO-DAVIS: Quick time check, to
25 make sure we're going to -- are we going to make the 6:00?

1 HEARING OFFICER ORTH: I think we are.

2 VICE-CHAIR TRUJILLO-DAVIS: Okay. Good.

3 SUINA CHAIRPERSON: No worries. If we keep
4 going.

5 HEARING OFFICER ORTH: Yes, I don't know if you
6 want to break when you get to the definition on page 132
7 of the hard copy.

8 BOARD MEMBER GARCIA: Oh, right.

9 CHAIRPERSON SUINA: We still have the definitions
10 of small business. And I look to the Board and Madam
11 Court Reporter, if this is a good time to take a quick
12 break. So let's do a ten-minute break to 3:20.

13 (Recess taken from 3:10 p.m. to 3:26 p.m.)

14 CHAIRPERSON SUINA: All right. We're back on the
15 record. I think we're getting ready to address the
16 definitions of small business -- small business facility.
17 Would you mind -- oh, yeah, you're already there, you're
18 already ahead of us. Thank you, Ms. Orth.

19 HEARING OFFICER ORTH: Oh, I need to go back to
20 definitions.

21 CHAIRPERSON SUINA: Oh, I'm sorry. I'm looking
22 at my small screen.

23 VICE-CHAIR TRUJILLO-DAVIS: I think I need to
24 reconnect to the internet here.

25 HEARING OFFICER ORTH: Did you get bumped off?

1 VICE-CHAIR TRUJILLO-DAVIS: This is the first
2 time it did it to me, but I think it did it to Member
3 Garcia.

4 HEARING OFFICER ORTH: Come on. Hang on until we
5 get there.

6 CHAIRPERSON SUINA: All right. Member Bitzer,
7 are you with us again?

8 BOARD MEMBER BITZER: (Thumbs up.)

9 CHAIRPERSON SUINA: Awesome. We're on UU, small
10 business facility. That's on page 32 of Hearing Officer's
11 report. Madam Hearing Officer is going to be putting that
12 on the screen.

13 And Madam Hearing Officer, can you just reground
14 us on the comments that you've made on this definition?

15 HEARING OFFICER ORTH: All right. So, as you
16 know, the term is used in Section 125, intended to provide
17 regulatory relief. I mentioned before the break, the
18 three criterion, which go to ownership structure; namely,
19 not being a subsidiary of another business; the number of
20 employees and then the gross annual revenue.

21 The Department presented testimony following its
22 presentation with ERG, to create the data set that they
23 used to rely on to come up with these criterion.

24 IPANM noted that gross annual net revenues are
25 not a measure of a company's profitability. They've

1 challenged a number of these criteria. They also changed
2 the number of employees, so NMED landed on 10. IPANM
3 proposed a 50-employee threshold. Let's see here. NMOGA
4 and IPANM had argued that the small business provisions
5 should be rejected altogether, just to have an exemption
6 for low-producing wells.

7 Let's see here. So IPANM's proposed edits are on
8 page 37 in the hard copy. And its edits are limited to
9 the arguments that you discussed before the break, around,
10 deleting Section 125 altogether. They would have it
11 read -- they would line out "facility," so it would be
12 "small business" means, for the purposes of this part, a
13 company that is not a subsidiary and employs more than 50
14 employees, and then they line out the gross annual revenue
15 requirements.

16 So, the Department goes on with its opposition to
17 IPANM. We also have opposition from CEP, to IPANM. I'm
18 sorry, I'm going backward now on my pages. But,
19 essentially, between pages 32 and 46 are the -- are the
20 arguments. CEP's testimony, there was quite a bit of
21 testimony about this at the hearing. IPANM's position was
22 based on testimony by Mr. Davis and Mr. Ryan.

23 And from the environmental parties from CEP, we
24 had testimony from Ms. Hull and Mr. Alexander. Oh, and
25 Mr. Smitherman's testimony for NMOGA, which supports

1 IPANM.

2 CHAIRPERSON SUINA: Thank you, Madam Hearing
3 Officer, for that summary. So we can begin our
4 discussions. That is very helpful. Thank you.

5 Okay. I hope that's helpful to our Board
6 members. So it looks like we really just have two
7 proposals: one, by NMED and then IPANM's proposed
8 language, with NMOGA supporting IPANM, and CEP supporting
9 NMED -- or opposing IPANM's. That's what I should say,
10 CEP opposes IPANM's language.

11 BOARD MEMBER HONKER: Well, I'd lead off.

12 CHAIRPERSON SUINA: Thank you, Member Honker.

13 BOARD MEMBER HONKER: Okay. I like the
14 Department's definition. Their criteria, according to
15 their analysis, would have 82 companies and 4,638 wells
16 qualify, which would be 15 percent of the companies and 9
17 percent of the total number of wells.

18 The IPANM definition, according to NMED, the
19 50-employee threshold would exempt at least 85 percent of
20 the companies operating in New Mexico, and approximately
21 40 percent of the wells. It seems like the IPANM-proposed
22 definition would definitely be less protective than
23 NMED's. And so, I'm supportive of the definition as -- as
24 drafted by NMED.

25 CHAIRPERSON SUINA: Thank you, Member Honker.

1 Thank you for jumping in.

2 Yes, Member Garcia.

3 BOARD MEMBER GARCIA: Yes. Thank you, Member
4 Honker. Those -- those are the stats that drew my
5 attention as well, is the number of companies that are
6 affected by this exemption and the number of actual wells
7 on the ground, almost -- not, well 9 percent, almost 10
8 percent, is a lot.

9 And then to jump to 85 percent of the companies
10 to have the exemption doesn't seem right to me. That's
11 too much, but we don't have the option of, you know,
12 coming up with another number. It's either -- it's either
13 the 50 employee cutoff -- or what is it -- the 10 employee
14 cutoff. So we can't make it, you know, 25 or something.

15 So I think the 50 employee cutoff would -- would
16 exempt too many companies, if it's 85 percent of the
17 companies out there; that's just too much, in my mind.

18 CHAIRPERSON SUINA: Thank you, Member Garcia.

19 Vice-Chair Trujillo-Davis.

20 VICE-CHAIR TRUJILLO-DAVIS: So if I'm
21 understanding this correctly, you have to meet the
22 stipulations of 10 employees, be owned and operated -- or
23 independently owned and operated, have less than -- no
24 more than 10 employees, and in a calendar year, have gross
25 annual revenue less than 250,000, so you have to meet all

1 three of those things to be considered.

2 So the thing that sticks out to me in that, is,
3 you know, say there's a war in Ukraine and the price of
4 oil jumps up to \$200 a barrel, and your revenue increases
5 significantly, and it breaks that 250 annual revenue.

6 Like, it seems like a very -- suddenly, you lose that
7 exemption completely, but you don't get any more
8 employees, you're still independently owned and operated.

9 And that sticks out to me, and I'm trying to look
10 back at IPANM's proposal. And I apologize, I got lost in
11 there, to see how theirs fits into that, but those are my
12 initial thoughts on it.

13 CHAIRPERSON SUINA: So just to respond to you,
14 Vice-Chair, so IPANM's just deletes annual revenue.

15 VICE-CHAIR TRUJILLO-DAVIS: And I can see that.
16 I mean, you know, we see a lot of our changes in our
17 economy, and I mean, just since we've started deliberating
18 the rule itself.

19 You know, and Member Chair Suina, I'll ask you
20 because you have a ton of experience with small
21 businesses. You know, what -- kind of, what are your
22 thoughts about having that kind of a stipulation for any
23 small business, that it's tied to your revenue?

24 CHAIRPERSON SUINA: Thank you for that, Madam
25 Vice-Chair. And I can just say from my experience with

1 small businesses, even classifications, whether they're
2 SBA, as small businesses, are tied to revenue thresholds.

3 VICE-CHAIR TRUJILLO-DAVIS: Okay.

4 CHAIRPERSON SUINA: As well as other definitions,
5 in different contexts or programs are also tied to revenue
6 thresholds, as identified as a small business.

7 So, for example -- and I'm just throwing out
8 there, you know, if you're a small business with nine
9 employees, but you have a bunch of revenue, under a
10 certain threshold with SBA, the Small Business
11 Administration, you will not qualify as a small business.

12 So, but that's a whole another area.

13 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

14 CHAIRPERSON SUINA: But, again, that's normally
15 what I've seen is one way of helping develop a criteria
16 for what is a small business.

17 VICE-CHAIR TRUJILLO-DAVIS: Thank you for
18 bringing that into the context, too.

19 CHAIRPERSON SUINA: Yes.

20 Before -- Member Bitzer, I think you had a
21 comment. I apologize.

22 BOARD MEMBER BITZER: I'm going to echo what both
23 the previous Board members have said: one on the employee
24 side; clearly, you're a small business if you've got 10,
25 and not so much if you've got 50, and there's a huge gap

1 in there with how many wells are accounted for.

2 But then, I also concur that gross revenue is
3 problematic. I mean, you can have \$250,000 in gross
4 revenue and have your profit be a buck, you know. Or you
5 could be in the red even, not forever, obviously, but in
6 the near term. So I'm not sure why we need to --
7 especially with inflation coming down the road, or
8 actually it's already here. And so, if we set this in
9 stone -- and I would imagine, Counsel, correct me if I'm
10 wrong, but we could accept the labor -- or the number of
11 employees and reject the physical portion perhaps? That's
12 my question.

13 CHAIRPERSON SUINA: Thank you, Member Bitzer.
14 Ms. Soloria.

15 MS. SOLORIA: I think you could do that if you
16 point to the specific rationale for keeping one for each
17 piece. You'd have to -- you'd have to pick it out, pick
18 out the rationale.

19 CHAIRPERSON SUINA: Thank you, Ms. Soloria.
20 Yes, Member Garcia.

21 BOARD MEMBER GARCIA: Yes, it is an interesting
22 point. And I think Vice-Chair Trujillo-Davis makes an
23 interesting point about the 250,000 as well. And I was
24 thinking, well, if the price of a barrel of oil is so
25 high, and you make a whole lot, then, boom, you're out of

1 the small, and then what happens when this drops? Because
2 this is what happens in the oil industry.

3 So on a practical level, then we think about
4 where does it come in? Well, it comes in in 125, and so
5 you have to certify each other. So one year you might be
6 over, the next -- you know, you might be over for a couple
7 of years, and then the price of oil tanks, and then
8 suddenly you can qualify as a small business then,
9 depending on your revenue. And I'm sure that would happen
10 for a lot of companies because of the price of oil.
11 That's what it depends on, so that's kind of an
12 interesting thought.

13 VICE-CHAIR TRUJILLO-DAVIS: Yes, I'm going to
14 take that a little further. I mean, I think that's a
15 great point. It does put you in that section, I think --
16 is it 5 or F. Sorry, I lost track of my numbers -- F in
17 it.

18 But from an operational standpoint, here you are
19 operating under these ones, and you have exemptions from
20 that. And the next year, you have to pivot your
21 operations completely, to pull in the other sides of the
22 rule that now apply to you. So, I think, you know, you're
23 presenting yourself a challenge because each year that you
24 certify, you're certifying a fiscal year -- right? And
25 usually they're -- well, at least in the oil and gas

1 industry, it's usually January 1st to December 31st. So
2 you could have reporting gaps. I think it would be
3 challenging for the operational, I guess is what I'm
4 getting at. I think you'd have some challenges. It would
5 be -- if you are consistent, and whether you're a small
6 business or not, it would be better from an operational
7 standpoint.

8 CHAIRPERSON SUINA: Yes, Member Garcia.

9 BOARD MEMBER GARCIA: And conversely, thinking
10 through this, I'm thinking, okay, well, this brings in 15
11 percent -- is that what we said, 15 percent of businesses?

12 CHAIRPERSON SUINA: Yes.

13 BOARD MEMBER HONKER: So they are exempted from a
14 huge part of the rule, and only have to meet minimal
15 requirements. But one of the -- one of the points made by
16 the environmental groups and NMED is, you can't
17 necessarily tie production to emissions. That, you know,
18 a small facility may be a big emitter, so if we're talking
19 about, ultimately, reducing emissions, I can see where the
20 Department doesn't want to have too many exemptions
21 here -- I think I lost my train of thought. It's too late
22 in the day and the coffee didn't help.

23 VICE-CHAIR TRUJILLO-DAVIS: I think that might
24 speak to G, because if you -- if you're in that category,
25 then G, which we just debated on, that would -- that would

1 pull you in under there.

2 CHAIRPERSON SUINA: But wouldn't it be under F,
3 the annual certification?

4 BOARD MEMBER GARCIA: No, you're talking about
5 egregious situations.

6 VICE-CHAIR TRUJILLO-DAVIS: Yeah. If you're -- I
7 can't really spit it out. If your facility is emitting
8 more and you have that small business exemption, that you
9 know, you fall under (1) (2) or (3) and G. And then it
10 would pull you into those additional regulations there.

11 BOARD MEMBER GARCIA: I'm sure part of the notion
12 here is that, you know, if they make a million one year
13 because the price of oil is so good, then they should be
14 buying this other equipment to comply with the rest of it.

15 It wouldn't be -- it wouldn't be fair to other
16 companies that wouldn't ever meet the exemption, I mean.

17 VICE-CHAIR TRUJILLO-DAVIS: So, I don't know if
18 that plays into it or not, because if they made a million,
19 but so did everybody else. And just because they make a
20 million, and as Member Bitzer pointed out, you can make
21 250,000 gross, but you may not have made profit.

22 And there's one other thing I want to point out
23 here. I just think it's an interesting point that IPANM
24 made, and I don't really have a position on this; I just
25 noticed that it's an interesting point. We have all

1 discussed the 10 or 50 employees. In NMED's proposed
2 language, they do not include contract employees. It's
3 limited to part-time, temporary or limited -- limited
4 workers.

5 Whereas, IPANM does include contract employees.
6 And so you could easily operate on 8 employees, and then
7 all of your support is contract. So I think that's an
8 interesting point, because you -- it's a way to kind of --

9 BOARD MEMBER GARCIA: Still be considered a small
10 business when you're still -- you have maybe 50 employees.

11 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

12 CHAIRPERSON SUINA: And so, I would then take
13 that a little further, and that's why the revenue
14 component is important.

15 BOARD MEMBER GARCIA: Uh-huh.

16 CHAIRPERSON SUINA: Because if you have multiple
17 contract employees, you have to pay them, and that's
18 where, then, it brings in that revenue.

19 VICE-CHAIR TRUJILLO-DAVIS: That is a fair point.
20 I think because of the nature of the oil and gas industry,
21 that it's commodity-based, that the more important -- to
22 me, the important point is the revenue portion of that and
23 not the employee portion of that.

24 Chair Suina?

25 CHAIRPERSON SUINA: Yes.

1 VICE-CHAIR TRUJILLO-DAVIS: A quick question. I
2 know under the SBA revenue, what's their -- what's their
3 threshold for revenue?

4 CHAIRPERSON SUINA: It's in the millions. Off
5 the top of my head, I can't remember.

6 VICE-CHAIR TRUJILLO-DAVIS: Oh, okay.

7 CHAIRPERSON SUINA: But it's depending on your
8 NAAQS, too. So if you're a service versus a construction
9 firm. It can be different, so there's different
10 thresholds, but it's in the -- it's in the millions for --
11 for either one.

12 VICE-CHAIR TRUJILLO-DAVIS: Okay.

13 CHAIRPERSON SUINA: Yes, Member Honker.

14 BOARD MEMBER HONKER: Yeah, I think the trickiest
15 part of this is the gross annual revenue number, because I
16 do think 250,000, especially in today's -- with today's
17 price of oil, is a very low number. And if you've got ten
18 employees, you're paying them less than \$25,000 apiece,
19 and probably way less. But it looks like we don't have a
20 choice of a different number. We either include the 250
21 or we strike it, as IPANM suggested. So, that's tough.

22 CHAIRPERSON SUINA: Thank you for that, Member
23 Honker.

24 Member Bitzer.

25 BOARD MEMBER BITZER: Sorry. My mouse went south

1 on me and I couldn't get on the screen. Thanks for
2 waiting for me. The way I read IPANM's proposed
3 substitute is that they've really offered a carrot there,
4 if you will, in exchange for dropping the fiscal portion,
5 which I think there's a lot of heartburn with.

6 They include contract, which strengthens the
7 ability of the labor count to accurately count the size of
8 the enterprise. They've pointed out that somebody could
9 run an operation with a lot of contract -- nine employees
10 and then 900 contractors, theoretically, and get around
11 that count -- that limitation, otherwise.

12 But if you include contract and limited-service
13 employees, then you make it more airtight, if you will.
14 And anyway, that's the direction I would suggest we go.

15 I think that's defensible; as Counsel pointed
16 out, we have to have rationales for it. And the rationale
17 is pretty straightforward; given the extra incentive or
18 extra accountability in the employment and the variability
19 in the income, that this is a better means of defining
20 small business. That's my point.

21 CHAIRPERSON SUINA: Thank you, Member Bitzer.

22 I want to turn to Madam Hearing Officer. I think
23 she had a comment to point out.

24 HEARING OFFICER ORTH: And I'm sorry to be
25 offering this so late in the -- in the discussion. It

1 took me a little bit to backtrack.

2 IPANM offered these particular edits only
3 post-hearing. So, yes, they did give testimony that they
4 objected to -- or that -- sorry, that profitability isn't
5 a function of a particular, you know, threshold of
6 dollars. They did give that testimony, but they did not
7 earlier propose these edits.

8 And if -- it's possible that if they had, the
9 Department could have looked at it for the -- you know,
10 the data that they collected to come up with different
11 numbers and say, well, okay, if we set it here or here,
12 maybe we won't exempt too many -- too many businesses.

13 But the number -- obviously, the numbers the
14 Department proposed, based on this balance of what we
15 want, not to be too onerous on the small businesses, but
16 at the same time we don't want to exempt 85 percent of the
17 industry we're trying to regulate.

18 CHAIRPERSON SUINA: Thank you, Madam Hearing
19 Officer.

20 Ms. Soloria, did you have something?

21 MS. SOLORIA: I had -- I had a point that I was
22 waiting to see if I had to make at all. But I just wanted
23 to backtrack slightly, what I had advised about splitting
24 the baby, so to speak; only because the proposals -- and
25 this is sort of backed up by what the Hearing Officer just

1 stated: the proposals put on the table, the evidence that
2 came out through the hearing was tied to those two
3 components working in tandem.

4 And so, I think you could still do it, just the
5 rationale, that there would be a lot of nitpicking there,
6 to figure out how you'd find the evidence to take part of
7 one party's proposal and part of the other's. So that's
8 just what I wanted to advise.

9 CHAIRPERSON SUINA: Thank you for that,
10 Ms. Soloria.

11 Were you --

12 VICE-CHAIR TRUJILLO-DAVIS: I just want to make
13 sure I understood correctly, Madam Hearing Officer. It
14 was the language itself was submitted post-hearing, but
15 the arguments were made during the hearing?

16 HEARING OFFICER ORTH: So the statement that
17 gross annual revenue is not the same thing as
18 profitability, that statement was made during the hearing.

19 But the proposed edit to just line out, you know,
20 gross annual revenues was not made until the post-hearing.

21 BOARD MEMBER GARCIA: And to include contract and
22 temporary and all.

23 HEARING OFFICER ORTH: Right. Their edits were
24 proposed after the hearing.

25 VICE-CHAIR TRUJILLO-DAVIS: So to be consistent

1 with where we've going so far, we have rejected every one
2 that was submitted post-hearing, right?

3 HEARING OFFICER ORTH: Unless it was a mere
4 clarification.

5 VICE-CHAIR TRUJILLO-DAVIS: Okay.

6 BOARD MEMBER GARCIA: Well, that makes it easier,
7 doesn't it?

8 HEARING OFFICER ORTH: Again, I'm sorry it took
9 that me long to figure it out.

10 BOARD MEMBER GARCIA: Thank you.

11 CHAIRPERSON SUINA: Thank you, Madam Hearing
12 Officer.

13 So, members online, I don't know if you caught
14 that discussion. Yes. Okay.

15 VICE-CHAIR TRUJILLO-DAVIS: So one more question.

16 CHAIRPERSON SUINA: Yes.

17 VICE-CHAIR TRUJILLO-DAVIS: So when I was reading
18 through CEP's response, I believe --

19 CHAIRPERSON SUINA: Yes.

20 VICE-CHAIR TRUJILLO-DAVIS: It sounded -- it
21 sounded like they had -- they were arguing against the
22 proposed language, but they weren't aware of what the
23 proposed language was?

24 HEARING OFFICER ORTH: Right. And, in fact,
25 during Davis's testimony, he said we're not proposing a

1 change to the definition.

2 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for
3 getting that all clarified for me and out there for us.

4 HEARING OFFICER ORTH: Yes.

5 CHAIRPERSON SUINA: I don't know what you think.
6 Vice-Chair?

7 VICE-CHAIR TRUJILLO-DAVIS: It makes it very
8 difficult. I think that we were having a very lively and
9 valuable discussion on the changes, but I think for
10 consistency purposes, it kind of locks us -- locks us into
11 a corner.

12 CHAIRPERSON SUINA: And I just wanted to add one
13 more thing again. Owning a small business, just as
14 revenue fluctuates, so can also employees. They're both
15 very much, you know, moving targets. And -- and if COVID
16 hasn't taught us anything, by having done that, and so
17 just wanted to share that point as well.

18 So, you know, components -- to your point,
19 Vice-Chair is, these moving targets are -- both on the
20 numbers of employees, contract workers is very -- it
21 always is in flux as well.

22 But if there's an annual, just like I check in
23 annually with SBA, as to where the business is, is it a
24 small business still? It looks like in Section 125, they
25 are still saying it is.

1 VICE-CHAIR TRUJILLO-DAVIS: Thank you for that
2 context.

3 CHAIRPERSON SUINA: Uh-huh.

4 VICE-CHAIR TRUJILLO-DAVIS: Appreciate it.

5 CHAIRPERSON SUINA: So, members? Yes, Member
6 Bitzer.

7 BOARD MEMBER BITZER: Well, I think that gross
8 revenue is such a bad indicator that I think it stands
9 alone as sufficient rationale, and that we haven't
10 necessarily cornered ourselves with bad precedent if we
11 have this sufficient rationale in the record, which I
12 think we do. All it takes is that one statement, in my
13 mind. But I'm willing to go along with the herd, so --
14 but that's my -- my -- my position.

15 CHAIRPERSON SUINA: Yes, Vice-Chair.

16 VICE-CHAIR TRUJILLO-DAVIS: Well, I agree with
17 Member Bitzer. If he doesn't think it's dead in the
18 water, then I'm willing to go down that road with you,
19 Member Bitzer.

20 CHAIRPERSON SUINA: So, may I ask, Ms. Soloria,
21 we don't have -- back to consistency language, that it
22 would allow us -- I mean, is there language that allows us
23 to propose to look at changing that at this point?

24 MS. SOLORIA: Well, my -- my thought is, is that
25 the instances where we -- where the Board elected to not

1 adopt a proposal that was submitted after the fact was
2 because it was unsupported by the record.

3 And there has been some discussion here, with
4 reference to things in the record, so I'm not quite sure
5 we're in the same boat as we were with those prior
6 exclusions. I think there is, you know, what Member
7 Bitzer mentioned -- does hold some water, and that there
8 does appear to be rationale and there was evidence or
9 testimony pointed to, regarding IPANM's position regarding
10 revenue.

11 It's just that, is there enough rationale to
12 support them having made the actual suggestion of the
13 language at this point.

14 CHAIRPERSON SUINA: Thank you.

15 Member Garcia.

16 BOARD MEMBER GARCIA: Thank you, I appreciate
17 that. I guess what -- what concerns me is that we don't
18 know the number. We don't know how this would impact the
19 number that would be covered by this. It changes
20 everything -- could change a lot. And without knowing
21 that number, I definitely wouldn't make any changes to it.

22 CHAIRPERSON SUINA: Thank you.

23 BOARD MEMBER GARCIA: I'd want to know how many
24 companies are covered if we throw it out, or if we -- I
25 mean, we know how many are covered right now.

1 But if we have to throw it out, I'd want to know,
2 you know, how many companies this impacts.

3 CHAIRPERSON SUINA: Vice-Chair.

4 VICE-CHAIR TRUJILLO-DAVIS: I agree with Member
5 Garcia. And to that, I would say, we don't ever know,
6 because the numbers that were given to us this year were
7 based on revenue from oil prices in 2020 maybe. So,
8 today, that number is going to be different, too. Even if
9 we didn't change it, that number is going to continually
10 fluctuate about what's affected and what's not affected.

11 I'd say the only thing that we do know is that
12 less businesses may be included. And maybe -- I'm sorry,
13 maybe that goes to their whole statement, which I believe
14 Member Bitzer pointed out, like the rate out there,
15 including 50 employees, and then it brings in another
16 more -- possibly more businesses that would be falling
17 into that category.

18 HEARING OFFICER: Thank you, Vice-Chair.

19 And Madam Hearing Officer.

20 HEARING OFFICER ORTH: I was just going to note
21 that, although, a lot of this discussion has been about
22 the businesses, it might also help to think about the
23 number of wells, because that was really where the
24 Department's data was focused, was how many wells would be
25 exempt.

1 BOARD MEMBER GARCIA: So it was 9 percent, so,
2 yeah, 9 percent at the time of this rule. And, yeah,
3 okay.

4 CHAIRPERSON SUINA: And I think, if I may, again,
5 put my small business hat on? I agree with Member Bitzer
6 and Vice-Chair Trujillo-Davis on the fact that revenue, in
7 general terms, is a very -- does not necessarily -- to the
8 comment or the point of reference that Madam Hearing
9 Officer said earlier -- to profitability.

10 And with that said, though, is, again, I point
11 back to just in general, small businesses aren't
12 categorized based on profitability. They are categorized
13 based -- in general terms in the federal -- federal
14 criteria, based on revenue. And it's something that I
15 know small businesses have always had a comment on or a
16 criticism of, is that revenue does not reflect
17 profitability.

18 But that continues to be used. And I mean,
19 again, I just want to throw that out. But that said, one
20 other question I have for Ms. Soloria is, back to, I think
21 something you said a few minutes ago, is how -- how could
22 we break up the acceptance of a proposal with, you know,
23 supporting -- meaning that the justification was a
24 combined -- right -- justification.

25 MS. SOLORIA: Well, the answer would be, I think

1 it would be difficult -- not impossible, but difficult.
2 And I will again reiterate that having had the chance to
3 look back at the Hearing Officer's section and from the
4 discussion, that I think this issue is a little bit unique
5 from other incidents where, for example, NMOGA proposed a
6 redline, and didn't offer justification in their proffers,
7 so there was nothing supporting in the record.

8 I think -- and correct me if I'm wrong, but I
9 think one of the parties raised that there was no proposal
10 raised at the hearing -- counterproposal raised at the
11 hearing itself; and, therefore, there was not the
12 opportunity at the hearing itself to evaluate the effects
13 of that proposal. So I'll just offer that as well.

14 CHAIRPERSON SUINA: Thank you, Ms. Soloria.

15 And Madam Hearing Officer, I saw you shaking your
16 head. Do you recall that as well?

17 HEARING OFFICER ORTH: Yes.

18 CHAIRPERSON SUINA: Okay.

19 HEARING OFFICER ORTH: And again, Mr. Davis, on
20 behalf of IPANM, said, we're not offering edits to the
21 definition.

22 VICE-CHAIR TRUJILLO-DAVIS: Just curious; what
23 was Mr. Davis's -- did he -- did he express any concerns
24 with the 250?

25 HEARING OFFICER ORTH: Yes, and the statement he

1 made -- and it's on one of the pages here -- was that
2 gross annual revenue is not a reflection of profitability.

3 CHAIRPERSON SUINA: Oh, right. On page 42 in the
4 middle, the Department did not agree to remove Section 125
5 in response to IPANM's concern that gross annual revenues
6 are not a measure of profitability.

7 HEARING OFFICER ORTH: Correct. And they got
8 that out of Kuehn and Palmer's testimony.

9 CHAIRPERSON SUINA: And again, further, the
10 Department stated that EPA's guidance suggests that
11 impacts on small businesses are generally assessed by
12 direct compliance costs to revenues.

13 HEARING OFFICER ORTH: And then somewhere else in
14 here, I believe the number was \$4,000 for compliance with
15 the rule, per well.

16 VICE-CHAIR TRUJILLO-DAVIS: If I'm not mistaken,
17 that compliance cost was tied to that 1996 data. Correct?

18 HEARING OFFICER ORTH: I'm not sure if it was
19 tied to the 1996 data or the -- I thought it was the ERG
20 data. Let's see here.

21 VICE-CHAIR TRUJILLO-DAVIS: Yes, I believe the
22 ERG used that 1996 data.

23 HEARING OFFICER ORTH: Right. I'm sorry, Madam
24 Vice-Chair. It was the estimated annual average cost of
25 compliance. I'm looking on page 39, was nearly \$38,000.

1 And I think that might have been based on the older data,
2 but then there was an additional statement, I thought,
3 that was 4,000. Why do I remember that?

4 VICE-CHAIR TRUJILLO-DAVIS: It's okay. I'm
5 not -- I'm not even sure where we're at right now.

6 HEARING OFFICER ORTH: I'm sorry.

7 VICE-CHAIR TRUJILLO-DAVIS: I'm not sure where
8 it's landing us at, basically, is what I'm getting at. So
9 I appreciate you looking for it.

10 CHAIRPERSON SUINA: Yes, Member Honker. Sorry.

11 BOARD MEMBER HONKER: Well, I'm seeing that we
12 have three choices: we approve the Department's
13 definition as is. I would assume that due to the
14 increased price of oil, you'd have smaller -- less than 15
15 percent of the operators that would qualify for it, but
16 there is -- there is that opportunity there. We've
17 already approved the rules for that classification of
18 operator.

19 Option B is to take off the 250,000, but as
20 Member Garcia said, then we don't know what the universe
21 is that would be -- that would qualify. Then it -- then
22 it comes down to a small with company less than 10 -- with
23 less than 10 employees.

24 Option C would be, we don't prove the definition.
25 And then we might as well withdraw Section 127 as well,

1 because nobody would qualify for it. So I kind of think
2 those are the options we have.

3 CHAIRPERSON SUINA: Thank you, Member Honker.
4 Yes, Madam Hearing Officer?

5 HEARING OFFICER ORTH: Madam Chair, I found the
6 reference I was thinking of. It's at the top of page 35.

7 CHAIRPERSON SUINA: Oh, okay. I see it now.

8 HEARING OFFICER ORTH: "The Department then
9 determined the average annual cost of compliance for a
10 facility meeting the small business definition at \$4,385."
11 And this was based on "a conservative quarterly LDAR
12 monitoring requirement."

13 And according to the ERG report, few companies
14 have a revenue of less than \$4,385 per well.

15 CHAIRPERSON SUINA: Thank you, Madam Hearing
16 Officer. And thank you, Member Honker, for your summary
17 of where we are on our options.

18 I don't know if there's additional discussion.
19 Yes, Member Bitzer.

20 BOARD MEMBER BITZER: I hope this passes
21 Counsel's muster. This is longhand, I'm going to take a
22 stab at a motion for further discussion. We'll focus in
23 on one of these three options. And I'll put it forth and
24 we'll see if we can make it work ostensibly, legally.

25 Also, Counsel, my question would be if we were to

1 combine the -- basically, go with the Department's
2 definition minus the 250-K, but plus the verbiage from OO
3 about contract workers, who would have standing to
4 challenge that? I mean, it wouldn't be -- there is no
5 financial -- adverse financial impact, I don't think,
6 demonstrable in that -- in that avenue.

7 But would there be -- would the environmental --
8 the environmental groups still have a case, if we didn't
9 offer sufficient supporting rationale?

10 MS. SOLORIA: Member Bitzer, any -- any party who
11 participated would have a right of appeal with regard to
12 this provision, or the rule entirely. I don't -- I think
13 your -- your suggestion of having to have an adverse
14 economic impact isn't -- it's not the determining factor
15 for a right of appeal.

16 BOARD MEMBER BITZER: Yeah. I'm thinking of old
17 school, ancient, medieval English business.

18 Okay. Let me take a stab at this. I move that
19 we accept the Department's definition of "small business
20 facility," minus the gross annual revenue amount of
21 \$250,000, but with the addition of contract workers, as
22 proposed by IPANM in section OO, because it offers a truer
23 and more stable assessment of what really constitutes a
24 small business.

25 CHAIRPERSON SUINA: Is that a question?

1 BOARD MEMBER GARCIA: Yeah. I'm wondering, is
2 that in the record? Does that have to be --

3 MS. SOLORIA: The -- to adopt that motion, there
4 would have to be evidence in the record to support the
5 motion.

6 If you think that the record does not support
7 that -- an affirmative vote on that motion, then you can
8 vote against, or we can see where the motion goes.

9 BOARD MEMBER BITZER: Well, support in the
10 record -- support in the record would be that the \$250,000
11 doesn't suggest any actual profit. They described it as a
12 poor way of -- a poor way of determining what a small
13 business is, and nobody argued against that.

14 CHAIRPERSON SUINA: Thank you, Member Bitzer.
15 Madam Vice-Chair, did you have a comment?

16 VICE-CHAIR TRUJILLO-DAVIS: I was going to say,
17 now that we have a formation of a motion on the floor, if
18 we could just take a moment to make sure or look at our
19 notes here, to see if indeed it does support or not, so...

20 CHAIRPERSON SUINA: Thank you, Vice-Chair.

21 So, with that, just, again, a point of
22 clarification in my mind; IPANM's proposal to have the
23 word "contract," well, you know, the "contract workers"
24 was post-hearing.

25 HEARING OFFICER ORTH: Correct.

1 CHAIRPERSON SUINA: Was there any testimony,
2 Madam Hearing Officer, that you recall specifically on
3 contract?

4 HEARING OFFICER ORTH: I do not recall.

5 CHAIRPERSON SUINA: Okay.

6 MS. SOLORIA: Could I offer a point of
7 parliamentary procedure? Is there a second for that
8 motion?

9 CHAIRPERSON SUINA: Thank you. Thank you,
10 Ms. Soloria.

11 VICE-CHAIR TRUJILLO-DAVIS: I'll second the
12 motion so we can consider it.

13 CHAIRPERSON SUINA: Okay. Thank you, Madam
14 Vice-Chair.

15 So we have a motion by Member Bitzer and a second
16 by Vice-Chair Trujillo-Davis. And further discussion of
17 that motion?

18 I guess, back to my question, Ms. Soloria, is
19 there -- it seems that this language as proposed in the
20 motion, of contract workers, that was in IPANM's proposed
21 language post-hearing.

22 I think in everything we're looking at, I haven't
23 seen specific documentation of that discussion. Is that
24 correct?

25 HEARING OFFICER ORTH: That's correct, Madam

1 Chair. There's no evidence around what it would mean to
2 add contract workers.

3 CHAIRPERSON SUINA: So, I guess, my follow-up
4 question to that, Ms. Soloria, is because the record
5 doesn't support that particular revision, could we
6 consider it? Without record support?

7 MS. SOLORIA: I think, consistent with your prior
8 decisions then, that would weigh -- the lack of evidence
9 and support would weigh against adopting that provision.

10 CHAIRPERSON SUINA: Thank you for that
11 clarification.

12 I don't know if there's other comments from our
13 Board members. Member Honker.

14 BOARD MEMBER HONKER: Yeah, much as I'd like
15 to -- the contract, I think, would be a good addition, but
16 to be consistent with what we have done before, it sounds
17 like we -- if we're going to be consistent, we can't
18 include that.

19 It sounds like the concept of dropping the gross
20 revenue was discussed in the record. I'm troubled that we
21 don't know the impact of that. We could be making the
22 rule less effective and -- and having less reductions,
23 because that would allow a lot more wells to just comply
24 with the small business sections. And it's hard, without
25 any -- any data to -- for me to justify that.

1 Now, of course, NMED could come back and amend
2 the rule at some future date, as they could if we left it
3 in there, they could -- they could amend it and make it --
4 make it more reasonable down the road, too. But I have a
5 little hard time with doing away with the 250, without
6 knowing what that does to the universe that would have the
7 requirements lessened that they'd have to comply with.

8 CHAIRPERSON SUINA: Thank you, Member Honker.
9 Vice-Chair Trujillo-Davis.

10 VICE-CHAIR TRUJILLO-DAVIS: I'm seeing -- and
11 maybe this doesn't answer your question, but I'm seeing in
12 IPANM's rebuttal toward the very end on page -- so it's on
13 pages 42 and 43. They talk about contract workers in
14 their testimony. Is that -- does that go to answer your
15 question there?

16 CHAIRPERSON SUINA: Thank you, Vice-Chair
17 Trujillo-Davis. We're going to check it out.

18 HEARING OFFICER ORTH: Right. I think it might
19 have been a suggestion without data, but I will look.
20 Okay.

21 CHAIRPERSON SUINA: In Mr. Davis's rebuttal.

22 HEARING OFFICER ORTH: Were you able to quickly
23 pull up that?

24 CHAIRPERSON SUINA: I'm looking here. Were you
25 able to get it? That was an IPANM. Let's see here.

1 Yes, Member Garcia.

2 BOARD MEMBER GARCIA: I'm looking in the
3 transcript and it references page 901, Line 3 through 6.
4 And I see where Mr. Davis is saying, "In my rebuttal
5 testimony, I referenced the Small Business Regulatory
6 Relief Act, which Mr. Hiser brought up earlier, defines a
7 small business as an entity that employs 50 or fewer
8 employees." That's what it says.

9 I don't see anything about --

10 VICE-CHAIR TRUJILLO-DAVIS: In the --

11 BOARD MEMBER GARCIA: The "contract."

12 VICE-CHAIR TRUJILLO-DAVIS: In the -- I
13 apologize, I lost my word.

14 CHAIRPERSON SUINA: Yes.

15 VICE-CHAIR TRUJILLO-DAVIS: In the Hearing
16 Officer's report, it continues on and says, also to
17 include contract workers.

18 BOARD MEMBER GARCIA: Right. And so I'm looking
19 at the transcript to verify that.

20 VICE-CHAIR TRUJILLO-DAVIS: Uh-huh. It's not
21 mentioned?

22 BOARD MEMBER GARCIA: I'm not seeing it there.

23 So, just as when I found that mistake before,
24 when somebody said it was there, it's not always there.
25 Not on purpose, it's just a lot of material to -- to get

1 in there.

2 CHAIRPERSON SUINA: Thank you, Member Garcia.

3 We're double-checking the reference to IPANM's
4 Exhibit 10, the rebuttal.

5 HEARING OFFICER ORTH: The other thing is in the
6 middle of page 44, while you're looking.

7 CHAIRPERSON SUINA: Okay.

8 HEARING OFFICER ORTH: This is the -- I think
9 CEP's statement: "IPANM Witness Ryan Davis opposed" --
10 see, this comports with my memory -- opposed the
11 Department's small business facility exemptions,
12 recommended it not be adopted, urged an alternative
13 approach.

14 However, although the Board's rules require
15 parties to propose their rule language in their NOI, they
16 didn't, either in the direct or rebuttal NOI.

17 And IPANM instead said, "we're not proposing
18 specific language at this time."

19 CHAIRPERSON SUINA: Thank you for that reference.

20 BOARD MEMBER GARCIA: Yes. So anybody can look
21 at the transcript and tell me if I'm missing something,
22 because I could very well be not looking in the right
23 place.

24 VICE-CHAIR TRUJILLO-DAVIS: I'm pulling it up
25 right now.

1 CHAIRPERSON SUINA: And I'm searching for IPANM's
2 rebuttal.

3 HEARING OFFICER ORTH: First, I had 9, and then I
4 have Appendix A.

5 CHAIRPERSON SUINA: Yes.

6 VICE-CHAIR TRUJILLO-DAVIS: Oh, man, it's not
7 loading fast enough.

8 CHAIRPERSON SUINA: That's right. I'm searching.

9 HEARING OFFICER ORTH: It says, notice of
10 transcript filed in 16.

11 BOARD MEMBER GARCIA: Did you find it? I mean,
12 the volume.

13 VICE-CHAIR TRUJILLO-DAVIS: I think I have the
14 volume.

15 BOARD MEMBER GARCIA: Okay. Here it is.

16 VICE-CHAIR TRUJILLO-DAVIS: What page are you on?

17 BOARD MEMBER GARCIA: 901, and it doesn't work to
18 put it in at the top of the page; I already tried that.
19 You have to scroll way down.

20 CHAIRPERSON SUINA: Were you able to find it,
21 Madam Hearing Officer?

22 HEARING OFFICER ORTH: Yes.

23 CHAIRPERSON SUINA: Okay.

24 HEARING OFFICER ORTH: And I can read it to you.

25 CHAIRPERSON SUINA: Could you also put it on the

1 screen since you're not sharing?

2 HEARING OFFICER ORTH: Oh, absolutely.

3 CHAIRPERSON SUINA: Thanks.

4 HEARING OFFICER ORTH: Thank you. Share. Am I
5 sharing windows?

6 CHAIRPERSON SUINA: Oh, there we go.

7 HEARING OFFICER ORTH: No, that's not right.
8 Okay. So stop sharing. I'm sorry. It's hard for me --
9 let me -- I might have to download.

10 CHAIRPERSON SUINA: So while Madam Hearing Officer
11 is doing that, Member Garcia, is there any other language
12 that you see in the testimony?

13 BOARD MEMBER GARCIA: I went ahead and read the
14 whole page and the next page, and I'm not seeing anything
15 referring to contract employees.

16 CHAIRPERSON SUINA: Okay. Thank you.

17 HEARING OFFICER ORTH: Okay. And this -- I found
18 the same thing Vice-Chair Davis read, from the top of page
19 43, that IPANM Exhibit 10, page 6, lines 7 through 12.

20 CHAIRPERSON SUINA: Can you blow it up just a
21 little bit?

22 HEARING OFFICER ORTH: Oh, sure.

23 CHAIRPERSON SUINA: At the top, right there.

24 HEARING OFFICER ORTH: So lines 7 through 12.

25 "Regarding the definition of a small business

1 facility, IPANM expressed concerns with the current
2 proposal \$250,000 gross revenue and less than 10
3 employees. They recommend that the Board consider the
4 Small Business Regulatory Relief Act definition in the New
5 Mexico statute, which focuses on 50 or fewer full-time
6 employees." Nowhere in there do I see the word --

7 CHAIRPERSON SUINA: Contractor.

8 HEARING OFFICER ORTH: -- "contractor."

9 CHAIRPERSON SUINA: Yeah, thank you, Madam
10 Hearing Officer. Appreciate that reference. And we're
11 double-checking everything here as we continue to discuss
12 the motion on the floor.

13 And I don't know if our Board members have any
14 comments now that we've kind of went down that rabbit
15 hole. Yes, Member Bitzer.

16 HEARING OFFICER ORTH: I'm going to stop sharing
17 now.

18 BOARD MEMBER BITZER: I understand we're
19 operating within the directive of the state -- of the
20 state statute, right? The state statute recognizes the
21 need for small business to have some level of protection
22 in order to perhaps level the playing field against the
23 larger, multistate, multinational companies. Is that
24 correct? Or are we revising existing regulations, as
25 opposed to statute here?

1 BOARD MEMBER GARCIA: What statute are you
2 talking about?

3 BOARD MEMBER BITZER: Well, we're operating under
4 an overall statute that -- if I'm not mistaken, I mean,
5 this is more of a question to Counsel: Did the
6 legislature intend for us to consider -- or for the
7 Department and us to consider small business in a special
8 light?

9 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
10 that question. And -- and Ms. Soloria.

11 MS. SOLORIA: Sorry, Member Bitzer, can you --
12 can you restate your question?

13 BOARD MEMBER BITZER: I know that there is
14 federal law and there's federal regulations, there's state
15 law and there's state regulations. We're creating state
16 regulations here at this point, if I'm not mistaken. And
17 then there's, you know, case law to flesh it all out.

18 But was it not the intention of the legislature
19 expressed in statutes under which we're operating, to have
20 special consideration for small business?

21 CHAIRPERSON SUINA: Thank you, Member Bitzer, for
22 that.

23 MS. SOLORIA: Sorry, my answer was up there.

24 CHAIRPERSON SUINA: Oh, no. Are you ready?

25 MS. SOLORIA: No, I need a moment to think on the

1 question.

2 CHAIRPERSON SUINA: Thank you. So we're going to
3 give Ms. Soloria a few minutes to...

4 BOARD MEMBER BITZER: That's okay. I can --
5 while she's considering that, I can just fast-forward to
6 my point is that -- is that, given the evolving
7 circumstances since these regulations were proposed, if we
8 don't do something about the 250-K threshold, no one is
9 going to qualify. I mean, we were talking about how many
10 employees in the field; 250-K divided by 10 would be 25-K,
11 but you're -- and probably your largest expense is labor.
12 But I mean, we're kidding ourselves if we don't think that
13 you've got to pay somebody 60-, \$70,000 a year to deploy
14 them into an oilfield. And that's probably just salaries,
15 but if you're talking about the overhead costs of an
16 employee, the state, as I recall, adds about 30 percent
17 for that, for PS and EB, as we used to call it -- personal
18 services and employee benefits. The benefits are probably
19 as generous in the private sector, but there's still
20 overhead costs associated with that.

21 So we're, basically, talking about watching the
22 small business protections that were intended, evaporate
23 as -- as the circumstances evolve. Labor costs have gone
24 way up. Supply chain costs have gone up, so we're just at
25 a point where if we don't do something about that -- or

1 perhaps just encourage them to come back and re-present
2 this to us posthaste, there isn't going to be any real
3 reason to have this section, which I think Mr. Honker also
4 alluded to.

5 MS. SOLORIA: And so --

6 BOARD MEMBER BITZER: Sorry. Go ahead.

7 CHAIRPERSON SUINA: Thank you, Member Bitzer.

8 And Ms. Soloria.

9 MS. SOLORIA: Just to answer your question,
10 Member Bitzer, I hesitated to answer because I didn't want
11 to -- I didn't have a statutory cite available for you,
12 but perhaps the question's answer is that no party -- no
13 party raised an objection to a small business provision in
14 the general sense. So I don't think whether it -- that
15 the Board is here to consider a small -- some sort of
16 protection for small businesses isn't really in dispute.

17 And to your point, those all go to the factors
18 that the Board is considering generally, like the economic
19 reasonableness and if the rule is accomplishing what it's
20 stated intent is.

21 CHAIRPERSON SUINA: Thank you. And before Madam
22 Vice-Chair goes, I want to give Madam Hearing Officer,
23 too, some time to speak.

24 HEARING OFFICER ORTH: Okay. Thank you. And I'm
25 sorry, I have to drive us back to the contractor issue.

1 So, again, Member Garcia and I tracked down
2 IPANM's own references in its closing argument, neither of
3 which referred to contractors. That was Exhibit 10 or
4 page 901 of the transcript. But page 888 of Volume III
5 includes a brief cross-examination of Ms. Bisbey-Kuehn by
6 IPANM and -- let's see, by Mr. Hiser. And it says -- I'm
7 just going to read it to you, if that's okay.

8 CHAIRPERSON SUINA: That would be great.

9 HEARING OFFICER ORTH: "Would the definition as
10 to the number of employees, would that include
11 contracts -- contractor employees"?

12 Ms. Bisbey-Kuehn said: "It would not include
13 contract employees. I don't believe that was the intent
14 to include contract employees."

15 Mr. Hiser then asked: "If a company were to
16 decide that a function could be performed by an employee,
17 but decided to contract that responsibility to a
18 third-party contractor, would they count toward the number
19 of employees"?

20 And Ms. Bisbey-Kuehn said: "I don't have an
21 answer for that right now. I'll have to think about that,
22 and return to the question."

23 That's what we have on page 888.

24 CHAIRPERSON SUINA: Okay.

25 HEARING OFFICER ORTH: Which comes before 901.

1 CHAIRPERSON SUINA: So there was no follow up by
2 the Department?

3 HEARING OFFICER ORTH: I'm not seeing that.

4 CHAIRPERSON SUINA: Okay.

5 HEARING OFFICER ORTH: I'm not seeing that.

6 CHAIRPERSON SUINA: And then there was no further
7 follow up to contract workers, from IPANM?

8 HEARING OFFICER ORTH: We have tracked down the
9 cite -- IPANM's own citations in support of their
10 proposal, and those citations don't refer to contractors.

11 VICE-CHAIR TRUJILLO-DAVIS: But NMOGA's -- or not
12 NMOGA's testimony, but NMOGA's conversation with NMED,
13 that's where that came from?

14 HEARING OFFICER ORTH: That's what I just read to
15 you.

16 VICE-CHAIR TRUJILLO-DAVIS: Right.

17 HEARING OFFICER ORTH: It was cross-examination.

18 MS. SOLORIA: That was -- I believe it was by --
19 it was cross-examination by IPANM.

20 HEARING OFFICER ORTH: No, by Mr. Hiser, who
21 represented NMOGA.

22 MS. SOLORIA: What you just read?

23 HEARING OFFICER ORTH: Yes.

24 MS. SOLORIA: On 888?

25 HEARING OFFICER ORTH: Yes, on 888.

1 MS. SOLORIA: I thought it was by Mr. Rose.

2 HEARING OFFICER ORTH: Okay. I'm sorry.

3 CHAIRPERSON SUINA: Yeah, Mr. Rose.

4 MS. SOLORIA: It's by Mr. Rose on the very last
5 line on 887.

6 HEARING OFFICER ORTH: I'm sorry. The -- you're
7 right. I had scrolled down too far. That was Mr. Rose's
8 cross-examination of Ms. Bisbey-Kuehn.

9 CHAIRPERSON SUINA: Yes, Madam Vice-Chair.

10 VICE-CHAIR TRUJILLO-DAVIS: All right. So kind
11 of following up on Member Bitzer's line of thinking there,
12 in the EIB statute, it says that "In making its rules, the
13 Environmental Improvement Board shall give weight it deems
14 appropriate to all facts and circumstances, including" --
15 and I'll skip A or skip 1 and go to 2: "The public
16 interest, including the social and economic value of the
17 sources and subjects of air contaminants." And that's
18 what I was looking at.

19 So I'm wondering if we can ask NMED and the
20 parties to maybe come back and see if they can have a
21 reasonable -- I'm wondering, is that possible; to ask them
22 to come back and see if they can come to an agreement on
23 the definition that is -- they can support. I know it's a
24 big ask, but we're really going around on this.

25 MS. SOLORIA: Not without -- sorry, Madam Court

1 reporter. Not without reopening the record, renoticing
2 that, and going through that whole process.

3 VICE-CHAIR TRUJILLO-DAVIS: Yeah, I realize it
4 was a big ask.

5 CHAIRPERSON SUINA: Member Garcia.

6 BOARD MEMBER GARCIA: Yeah, I guess to move
7 things along, if Member Bitzer would want to -- he may or
8 may not want to -- but one option would be for Member
9 Bitzer to amend his motion, since there's not a whole lot
10 of support in the record on the contract issue, but you
11 still seem to want to take out the \$250,000 threshold;
12 that you amend your motion to just do that and not the
13 contract part. But before anything, Ms. Soloria had a...

14 MS. SOLORIA: It was -- it was a comment on the
15 procedure. And in the view of moving things along, we
16 could call for a vote on the motion as it stands, but
17 you-all have the option to amend. That option doesn't
18 foreclose what you suggested either.

19 BOARD MEMBER GARCIA: Okay. Got you.

20 BOARD MEMBER BITZER: In order to move things
21 along, I should probably just withdraw my motion and then
22 let someone else take a shot at it, if they think they've
23 got a tighter version of it. I'll withdraw -- I'll
24 withdraw the motion.

25 CHAIRPERSON SUINA: Okay. Thank you, Member

1 Bitzer.

2 Just a point of order there. Is that okay,

3 Ms. Soloria --

4 MS. SOLORIA: Yes.

5 CHAIRPERSON SUINA: If he withdraws his motion?

6 And so we're back to further discussion. And I
7 move to Vice-Chair Trujillo-Davis.

8 VICE-CHAIR TRUJILLO-DAVIS: Okay. So in thinking
9 about Member Bitzer's motion, I'm going -- I'm going to
10 take a shot at another one here as soon as I can find my
11 way into these papers here on my way back to it.

12 BOARD MEMBER GARCIA: Page 32.

13 VICE-CHAIR TRUJILLO-DAVIS: Okay. So I see
14 contract as a -- as a compromise, so since we do have a
15 lot in evidence on the 50 employees versus the 10
16 employees, I'm going to make a motion that we -- let me
17 see if I can get this right. Do I have to get rid of NMED
18 first or --

19 CHAIRPERSON SUINA: Before you go, I drank a lot
20 of coffee. Could we take a bio break?

21 VICE-CHAIR TRUJILLO-DAVIS: Yes. And I will
22 write down what I think the motion should look like.

23 CHAIRPERSON SUINA: Okay. Thank you. We're
24 going to take a quick break. Ten minutes, to 4:55.

25 (Recess taken from 4:44 p.m. to 4:56 p.m.)

1 CHAIRPERSON SUINA: Okay. We're back on record
2 and we'll have Madam Hearing Officer start recording.

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

5 CHAIRPERSON SUINA: All right. Thank you, all.
6 And I hope that helped our court reporter get a quick
7 break in as well. All right. So we're back on the record
8 and it looks like everybody is back. I don't know if
9 Member Honker is back. Yes, he is. Thank you.

10 All right. So we're still discussing the
11 definition for small business facilities as initially
12 proposed by NMED. And, again, we're -- we're looking at
13 NMED's proposed language and IPANM's proposed language.
14 And so we don't have a motion on the floor right now. I
15 don't know if we want to jump into another motion or
16 further discussion with the Board members.

17 MS. SOLORIA: When we broke, I believe Member
18 Trujillo-Davis was working on a motion. I don't know if
19 that still holds true.

20 VICE-CHAIR TRUJILLO-DAVIS: I was working on a
21 motion and trying to fill in some blanks here. I
22 apologize, I feel like I'm taking a test I didn't study
23 for in just this moment right here. So we can move onto
24 something else.

25 BOARD MEMBER GARCIA: Or talk amongst yourselves.

1 CHAIRPERSON SUINA: Thank you. Keep -- keep
2 thinking about it or if there's other discussion or other
3 members.

4 MS. SOLORIA: Or alternative motions.

5 CHAIRPERSON SUINA: Yes, or alternative motions.
6 Looking at the Board. Member Honker.

7 BOARD MEMBER HONKER: I'll make a motion that we
8 adopt the definition of "small business" as proposed by
9 NMED, for the reasons supported by NMED, and reject
10 IPANM's changes as not supported by the record.

11 CHAIRPERSON SUINA: Thank you, Member Honker.
12 And I look to Ms. Soloria to see if there's any
13 other maybe suggestions for the motion.

14 MS. SOLORIA: Yes. I would amend the motion
15 slightly to state, adopt the language as propose by NMED,
16 for the reasons offered by NMED and CEP in support. I
17 think accurate. And rejecting the revisions proposed by
18 IPANM, and supported by NMOGA, as not supported by the
19 record.

20 BOARD MEMBER HONKER: Okay. That sounds good.

21 BOARD MEMBER BITZER: I second that. Unless
22 there's any discussion.

23 CHAIRPERSON SUINA: All right -- yeah, we have a
24 motion on the floor by Member Honker and a second by
25 Member Bitzer. Yes, Member Honker.

1 BOARD MEMBER HONKER: And -- and just my thinking
2 is the 250,000 is not a good number probably in -- in this
3 at this point in time. We do have data -- at some point
4 in time previously, from NMED's analysis, that their
5 conditions would allow about 15 percent of the operators
6 and 9 percent of the wells, so I would assume the universe
7 would be less than that since the price of oil has gone up
8 so far.

9 The alternative of taking the 250,000 out, we
10 don't have any idea what the universe would be there. It
11 would undoubtedly allow more companies to qualify for it,
12 but whether that would up it from 15 percent to 50
13 percent, I have no idea. It just -- it's kind of an
14 open-ended thing that we don't know the impact of that.
15 So that's my thinking.

16 CHAIRPERSON SUINA: Thank you, Member Honker.

17 BOARD MEMBER HONKER: I'd rather get the
18 definition that NMED proposed on the books. They can
19 amend it at a later date. It would allow some number of
20 companies, I would guess, to qualify, and at least there
21 would be something in there. So that's what I'm thinking.

22 CHAIRPERSON SUINA: Thank you, Member Honker.
23 And I think Vice-Chair Trujillo-Davis, you have a comment.

24 VICE-CHAIR TRUJILLO-DAVIS: Yes, I would just
25 like to say so it's on the record, that I agree with

1 Member Honker completely on this. I think that there are
2 many more questions with the 250,000 limit, and I think
3 that there are -- there could potentially be a better
4 definition proposed that would be more beneficial to small
5 businesses in New Mexico, but I just don't think that the
6 record supports it at this point.

7 And so, given the absence of evidence in the
8 record, I think that going with the NMED's definition is
9 the most logical step.

10 CHAIRPERSON SUINA: Thank you, Vice-Chair
11 Trujillo-Davis. And if there's no further discussion, I'd
12 look to Ms. Jones for a roll-call vote.

13 ADMINISTRATOR JONES: Member Bitzer, how do you
14 vote?

15 BOARD MEMBER BITZER: I vote yes.

16 ADMINISTRATOR JONES: Member Duval is not here.
17 Member Garcia?

18 BOARD MEMBER GARCIA: Yes.

19 ADMINISTRATOR JONES: Member Honker?

20 BOARD MEMBER HONKER: Yes.

21 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes.

23 ADMINISTRATOR JONES: Chair Suina?

24 CHAIRPERSON SUINA: Yes.

25 ADMINISTRATOR JONES: The motion passes.

1 VICE-CHAIR TRUJILLO-DAVIS: Please tell me that's
2 the end of the rule.

3 CHAIRPERSON SUINA: Thank you, all, for that
4 step. And I believe that takes us, Madam Hearing Officer,
5 back to where we were, before jumping back to definitions.

6 HEARING OFFICER ORTH: That's right. So we would
7 move next to Section 126.

8 CHAIRPERSON SUINA: And I just want to say to our
9 members, we're almost there. And I do appreciate the
10 robust discussion especially for the record.

11 HEARING OFFICER ORTH: I also need to pull up --
12 actually, so, Madam Chair, I guess I have a question.

13 CHAIRPERSON SUINA: Yes.

14 HEARING OFFICER ORTH: Section 126 is the next
15 section; however, there's another definitional bit of
16 controversy. And in particular, NMOGA challenges the
17 notion that the "Produced Water Management Units" would
18 include recycling facilities. So I'm wondering if I
19 should go to -- since you need to adopt or not adopt a
20 definition of recycling facilities, if perhaps you want to
21 do that first. But I'll pull up whatever you'd like.

22 CHAIRPERSON SUINA: Okay. Yes, Vice-Chair.

23 VICE-CHAIR TRUJILLO-DAVIS: I was just curious.
24 Are you saying that the issue is that we need to determine
25 recycling facilities before we go into the rule?

1 HEARING OFFICER ORTH: So I'm sorry. The section
2 is about "Produced Water Management Units." Let me share
3 "Produced Water Management Units," and in that definition
4 NMOGA proposes to delete recycling facility. And I think
5 that that was set aside for discussion with Section 126;
6 that's what my yellow sticky note says. So I'm going to
7 pull this up.

8 CHAIRPERSON SUINA: Thank you.

9 BOARD MEMBER GARCIA: And the definition of
10 recycling facility is on page 31.

11 VICE-CHAIR TRUJILLO-DAVIS: Thank you very much.

12 HEARING OFFICER ORTH: So if you'd like to look
13 at the definition of produced water management unit, I
14 have it on the screen. And immediately below that is
15 NMOGA's proposed deletion of recycling facility. You have
16 NMED's opposition to NMOGA's proposal. They intended to
17 include recycling facilities.

18 NMOGA's support here is that industry
19 stakeholders urge the Board to further protect the
20 industry's recycling activities. They don't want to
21 resort to fresh water.

22 CHAIRPERSON SUINA: So, looking to the Board,
23 what's your -- do you want to jump to the definition
24 first, or look at the rule and then the definition like we
25 did for small business facilities?

1 VICE-CHAIR TRUJILLO-DAVIS: I think that's a
2 really good way to approach it because then we have
3 context for the definition.

4 HEARING OFFICER ORTH: Do you want me to go to
5 126?

6 CHAIRPERSON SUINA: Yes, 126, please.

7 HEARING OFFICER ORTH: All right.

8 CHAIRPERSON SUINA: Thank you. So, would you
9 like -- and I might have missed it. You already
10 summarized this Section 126.

11 HEARING OFFICER ORTH: Now I don't even remember.
12 I'm sorry. I probably did not. So there's the larger
13 controversy here is definitely about whether produced
14 water management units include recycling facilities.

15 The only other proposal in this section was a
16 very small edit from CDG in section C, to insert the word
17 "sample" in front of the words "chain of custody" in C
18 (1). So, again, we have really just one -- one large
19 controversy here. You see NMED's proposals:
20 Applicability in A. Emissions standards in B. Support
21 from CDG here, which went on at length.

22 And NMOGA supports, but only if -- and this is on
23 page 337, only if recycling facilities are not excluded
24 from the produced water unit definition. So I think
25 probably the best place to look is probably page 337.

1 CHAIRPERSON SUINA: All right.

2 VICE-CHAIR TRUJILLO-DAVIS: So, then, we do have
3 to look at the definition first.

4 BOARD MEMBER GARCIA: Well, I like your -- I like
5 the idea of understanding why the definition is here, so
6 I'm kind of getting there now, reading through this.

7 I remember a lot of testimony on this. Let me
8 see if my notes -- if I put anything down.

9 CHAIRPERSON SUINA: With that, I know we're
10 looking through this. I just want to throw out there to
11 our members, just raise your hand or jump in if you have
12 any comments or want to start the discussion.

13 VICE-CHAIR TRUJILLO-DAVIS: I have a question.

14 CHAIRPERSON SUINA: Yes, Vice-Chair.

15 VICE-CHAIR TRUJILLO-DAVIS: I'm not seeing in the
16 text about recycling facilities in 126. Was it the
17 intention to include recycling facilities? Is that the
18 disagreement?

19 HEARING OFFICER ORTH: Because it goes back to
20 the definition of produced water management unit.

21 VICE-CHAIR TRUJILLO-DAVIS: Okay. Let me flip
22 back 200 pages.

23 BOARD MEMBER GARCIA: Yeah, and I'm looking at
24 Exhibit 1, page 10. "NMED does not agree what NMOGA's
25 proposal to delete this definition. NMED intended to

1 include recycling facilities within the definition of
2 produced water management units. And this definition is
3 necessary to make clear the intended meaning of a
4 recycling facility as used in Part 50."

5 VICE-CHAIR TRUJILLO-DAVIS: One more clarifying
6 question.

7 CHAIRPERSON SUINA: Yes.

8 VICE-CHAIR TRUJILLO-DAVIS: Did -- did NMED -- or
9 did NMOGA propose the language in the definition, for
10 recycling facility?

11 HEARING OFFICER ORTH: Correct. NMOGA proposed a
12 line-out. Did I misunderstand the question?

13 MS. SOLORIA: You corrected yourself just then.

14 HEARING OFFICER ORTH: The deletion.

15 MS. SOLORIA: So you're looking at pages 28 and
16 29 in comparison?

17 VICE-CHAIR TRUJILLO-DAVIS: I'm on 31.

18 MS. SOLORIA: No. The language proposed by the
19 Department is on page 28. We're looking at "produced
20 water management," correct?

21 VICE-CHAIR TRUJILLO-DAVIS: No. I was looking at
22 the proposed definition for "recycling facility."

23 MS. SOLORIA: Oh, sorry.

24 VICE-CHAIR TRUJILLO-DAVIS: And then I was
25 curious who proposed that language.

1 HEARING OFFICER ORTH: I'm sorry. Yes, so NMED
2 would have proposed that, but...

3 MS. SOLORIA: Okay. So I think we should look at
4 the definition of "produced water management unit,"
5 because the issue there is that NMOGA has requested on
6 page 29 -- suggested to delete a recycling facility from
7 that definition.

8 And then the definition of a "recycling facility"
9 was offered by NMED; that's what's on page 31.

10 VICE-CHAIR TRUJILLO-DAVIS: But on page 31 it
11 also says NMOGA proposed to delete recycling facility
12 entirely from the definition.

13 HEARING OFFICER ORTH: Oh, sure. If you're going
14 to take it out of the definition of produced water
15 management unit, then you don't need it.

16 VICE-CHAIR TRUJILLO-DAVIS: Okay. Yeah, so I was
17 just trying to figure out who proposed what here.

18 HEARING OFFICER ORTH: I'm sorry.

19 VICE-CHAIR TRUJILLO-DAVIS: Okay. No worries.
20 We're good.

21 CHAIRPERSON SUINA: Does that help, Vice-Chair?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes, thank you.

23 CHAIRPERSON SUINA: Okay. Let me just backtrack
24 a little bit. So, Ms. Soloria, you're recommending we
25 look at "produced water management unit"?

1 MS. SOLORIA: Correct. And you would look at
2 that, kind of in tandem with looking at recycling
3 facility, which is just over two pages from that.

4 CHAIRPERSON SUINA: Okay.

5 So, fellow Board members, I guess we're not --
6 are you suggesting, Ms. Soloria, we look at these first
7 and make a decision on it, or just review it in context
8 with 126?

9 MS. SOLORIA: I would say the latter, and then --

10 CHAIRPERSON SUINA: Okay.

11 MS. SOLORIA: -- once you do that, it should
12 become clearer in that, on what you would vote first.

13 CHAIRPERSON SUINA: Madam Hearing Officer, did
14 you have any thoughts on this?

15 HEARING OFFICER ORTH: No.

16 BOARD MEMBER GARCIA: One of the --

17 CHAIRPERSON SUINA: Yes.

18 BOARD MEMBER GARCIA: One of the things I
19 remember about that discussion is this whole issue
20 overlaps with OCD -- Oil Conservation Division, and
21 especially when you're talking about produced water,
22 that's totally OCD's area. And so, one of the things I
23 remember in the discussion was NMED was making very sure
24 that they worked with OCD to make sure this definition was
25 consistent with the Oil Conservation Division definition

1 of "produced water management unit."

2 CHAIRPERSON SUINA: Thank you, Member Garcia.

3 Vice-Chair Trujillo-Davis, did you have a
4 comment?

5 VICE-CHAIR TRUJILLO-DAVIS: Yes, I can add
6 context to that. I agree that that's what they were
7 working toward, and the two definitions do indeed match,
8 but I think our issue here is more in the application of
9 each party's regulation to a produced management unit.

10 CHAIRPERSON SUINA: So if I may go further,
11 Vice-Chair Trujillo-Davis, on the application? I'm just
12 throwing this out there, so if the definitions are
13 consistent with OCD --

14 VICE-CHAIR TRUJILLO-DAVIS: Where's the issue?

15 CHAIRPERSON SUINA: Yeah.

16 VICE-CHAIR TRUJILLO-DAVIS: So I think that the
17 issue lies -- and I'm still confirming my thoughts here,
18 but I think the issue lies in that a produced water
19 management unit can be a giant earthen pit, basically.
20 Right?

21 And so, in OCD's terms, you can encourage the use
22 of recycling water in that term, and I think when it came
23 to NMED's portion of it, there is questions about control
24 on emissions of that type of design. So I believe that's
25 where we were at, and I want to confirm my...

1 HEARING OFFICER ORTH: So I'd like to offer two
2 things, Madam Chair.

3 CHAIRPERSON SUINA: Yes.

4 HEARING OFFICER ORTH: One, NMED's discussion of
5 the adjacency of NMED and OCD regulations are right there
6 on page 334 -- the top half of page 334.

7 CHAIRPERSON SUINA: Uh-huh.

8 HEARING OFFICER ORTH: And that's, you know, the
9 applicability section. The other thing is, I believe,
10 Vice-Chair, just to offer useful information there; the
11 other thing that the Department had said was that
12 recycling facilities got relief, I think, through the
13 potential-to-emit thresholds, and so didn't mean it to be
14 excluded.

15 So I think when you combine what she said with
16 that, I think that's largely the Department's opposition
17 to NMOGA.

18 VICE-CHAIR TRUJILLO-DAVIS: Thank you for the
19 context.

20 CHAIRPERSON SUINA: To NMOGA's proposed deletion?

21 HEARING OFFICER ORTH: Deletion.

22 CHAIRPERSON SUINA: Yes. So I'll wait a few
23 minutes to let the Board continue to look at the language.

24 Okay. Board members?

25 VICE-CHAIR TRUJILLO-DAVIS: Madam Chair, can you

1 point out where they discuss the PTE.

2 HEARING OFFICER ORTH: Back in the testimony, let
3 me think here. I'm going to have to search for that and I
4 have to stop sharing in order to search.

5 CHAIRPERSON SUINA: Yes, of course.

6 That would be PTE in response to the definitions.

7 HEARING OFFICER ORTH: The threshold?

8 CHAIRPERSON SUINA: The threshold.

9 HEARING OFFICER ORTH: Right, right, right.

10 CHAIRPERSON SUINA: Okay. And that would be for
11 recycling facilities.

12 HEARING OFFICER ORTH: Well, storage vessels, I
13 think, right?

14 CHAIRPERSON SUINA: That helps move it along.

15 HEARING OFFICER ORTH: 123, you can see it would
16 be easier to find it in the hard copy at this point.

17 BOARD MEMBER HONKER: So a question.

18 CHAIRPERSON SUINA: Yes, Member Honker.

19 BOARD MEMBER HONKER: I don't see that CDG
20 opposed the inclusion of recycling facilities in the
21 definition. It looks like it's just NMOGA; is that -- is
22 that correct?

23 HEARING OFFICER ORTH: That's my understanding,
24 Member Honker.

25 BOARD MEMBER HONKER: Okay.

1 HEARING OFFICER ORTH: So does this help if you
2 look at A?

3 VICE-CHAIR TRUJILLO-DAVIS: I think I -- oh, you
4 found it?

5 HEARING OFFICER ORTH: No, no.

6 VICE-CHAIR TRUJILLO-DAVIS: I was going to
7 respond to Member Honker. I believe that's because CDG is
8 Commercial Disposal Group, and water treatment facilities
9 aren't necessarily owned and operated by commercial
10 disposal companies.

11 BOARD MEMBER HONKER: Understood, yeah.

12 CHAIRPERSON SUINA: Member Honker, Member Bitzer,
13 please just jump in here as well. I don't see the video
14 on my screen. I do see it at the end of the table, but if
15 I don't call on you, it's because for whatever reason --
16 oh, there we go. You're back on my video on this side.
17 Everybody comes back. Okay. Never mind. I'm back.

18 Let's see. I don't know if we want to start the
19 discussion on A, and then keep going down to move us along
20 on the discussion; 126 A or B.

21 HEARING OFFICER ORTH: I'm sorry. Vice-Chair,
22 did you get an answer on the PTE?

23 VICE-CHAIR TRUJILLO-DAVIS: I did not.

24 HEARING OFFICER ORTH: You did not, okay.

25 So recycling facilities are going to have storage

1 vessels with a low PTE, so they will either be exempt or
2 they'll apply under the Section 123 B.

3 VICE-CHAIR TRUJILLO-DAVIS: Okay. Thank you for
4 finding that clarification.

5 CHAIRPERSON SUINA: Yes, Member Garcia.

6 BOARD MEMBER GARCIA: Yes, I'm just kind of going
7 through the actual requirements for produced water units,
8 and it looks like NMED is offering some concessions for
9 the industry, in that, this is a two-year effective date
10 and their -- the goal, of course, is to reduce VOC
11 emissions.

12 And so, the Department says they have to do a
13 plan -- have a plan for reducing emissions and if they can
14 prove that the -- that through this -- let's see --
15 demonstrating that controlling VOC emissions from storage
16 vessels associated with produced water management units in
17 accordance with 123 is technically infeasible, without
18 supplemental fuel. So they're -- they're offering -- it
19 looks like the Department is being very reasonable in
20 their approach -- in their approach to reducing VOCs from
21 produced water management units.

22 And I do recall in the discussion, there was a
23 lot of discussion where NMOGA brought up, well, you don't
24 want to discourage recycling. And the Department shot
25 that down pretty quick by saying, of course, we don't want

1 to discourage recycling. And we've talked about OCD quite
2 a lot, about that, so their position is they're not
3 discouraging recycling.

4 And I even had that in my notes: This rule still
5 allows operations to recycle produced water, is what I
6 have in my notes from the hearing. So I -- I guess I
7 don't -- I guess I don't buy that argument from NMOGA,
8 that piece of it. And I do see that the Department's -- I
9 mean, their intention is just to reduce VOCs, and they're
10 offering various ways to do that, so it doesn't -- it
11 doesn't appear to be that onerous to me.

12 CHAIRPERSON SUINA: Thank you, Member Garcia.
13 Vice-Chair.

14 VICE-CHAIR TRUJILLO-DAVIS: I'm just wanting to
15 make sure I'm reading this correctly. But it seems that
16 NMOGA's -- most of NMOGA's argument has to do with
17 supplemental fuel. And at least in the last paragraph,
18 that's what I'm reading; the industry stakeholders
19 provided extensive testimony that supplemental fuel may be
20 needed, and then it continues on, on the next page, to say
21 that -- that -- I'm sorry, I lost my place in reading
22 here.

23 CHAIRPERSON SUINA: What page are you on, just so
24 that I can follow along?

25 VICE-CHAIR TRUJILLO-DAVIS: I'm on 338. It says

1 that the "PWMU in accordance with requirements of Section
2 20.2.50.123 NMAC is technically infeasible without
3 supplemental fuel." So I'm reading that the crux of their
4 concern has to do with supplemental fuel, which CDG's
5 argument was also on supplemental fuel, and the provision
6 was made in the rule on B -- yeah, I'm sorry, I'm looking
7 for my place here.

8 BOARD MEMBER GARCIA: In B.

9 VICE-CHAIR TRUJILLO-DAVIS: Thank you. In B.

10 BOARD MEMBER HONKER: B (3) (b).

11 VICE-CHAIR TRUJILLO-DAVIS: Thank you, Member
12 Honker, B (3) (b). So it provides some relief there for
13 areas where it isn't -- it isn't feasible without
14 supplemental fuel. So I'm not sure that NMOGA has -- like
15 if that was the whole crux of their argument.

16 HEARING OFFICER ORTH: It was CDG focused on
17 that. That's why when you look at CDG's fairly lengthy
18 supporting comments, they make it clear that that was the
19 critical -- that was the reason now they were willing to
20 support.

21 NMOGA, though, continues to press for deleting
22 recycling.

23 VICE-CHAIR TRUJILLO-DAVIS: Okay. So they had
24 two -- two points in their argument there?

25 HEARING OFFICER ORTH: NMOGA does.

1 VICE-CHAIR TRUJILLO-DAVIS: NMOGA does.

2 HEARING OFFICER ORTH: Yes. CDG wasn't opposing
3 the supplemental fuel.

4 VICE-CHAIR TRUJILLO-DAVIS: Okay. I just want to
5 make sure I was understanding everybody's arguments
6 correctly.

7 HEARING OFFICER ORTH: Well, I'm sorry.

8 CDG -- I'm reminded on page 337, that Campsie and
9 Cooper provided testimony urging the Board to exclude
10 recycling facilities, but I had not understood -- and it's
11 entirely possibly I'm wrong -- that CDG was also pressing
12 for the exclusion of recycling facilities post-hearing,
13 but I thought they were supportive after the supplemental
14 fuel business.

15 It's 335. So their comment starts on 335 and
16 continues onto 336 and 337. I just don't see that they
17 continue to press any kind of exclusion for recycling
18 facility in that comment.

19 CHAIRPERSON SUINA: Yes, Member Honker.

20 BOARD MEMBER HONKER: I agree with Member Garcia
21 and the statements from the Vice-Chair. It looks like
22 there's flexibility in here in Section B (3) for VOC
23 minimization requirements, best management practices, so
24 I'm -- I'm supportive of NMED's language.

25 CHAIRPERSON SUINA: Thank you, Member Honker.

1 And -- and just for clarification, you're talking
2 about the entire Section 126?

3 BOARD MEMBER HONKER: Yes. The only other
4 comment was CDG wanted to insert the word "sample" in
5 Section C.

6 HEARING OFFICER ORTH: Page 339.

7 BOARD MEMBER HONKER: And I don't see that that
8 adds anything.

9 CHAIRPERSON SUINA: Thank you. I just wanted
10 that clarification, just to move the discussion along.
11 Appreciate that, Member Honker.

12 BOARD MEMBER GARCIA: I'm not finding chain of
13 custody in C (1) on the January 20th version.

14 HEARING OFFICER ORTH: Yeah, it's in the last
15 line of C (1).

16 BOARD MEMBER GARCIA: The last?

17 CHAIRPERSON SUINA: Like the last words.

18 BOARD MEMBER GARCIA: Oh, there it is. Okay.
19 Got it.

20 CHAIRPERSON SUINA: Yes.

21 VICE-CHAIR TRUJILLO-DAVIS: So I'll throw you
22 some points here. So, I believe, reading through NMOGA's
23 argument again, they're -- they're not talking about pits
24 or ponds. Really, they're talking in -- Campsie talks
25 about it on Line 17 of 337: "It is particularly important

1 to clearly exclude recycling facilities that are not frac
2 ponds or pits, often called recycle-on-the-fly units, a
3 collection of temporary tanks that move around to
4 accommodate frac schedules. These facilities do not have
5 pits or ponds. The water is held in these tanks that have
6 already been through separation, and imposing Section
7 20.2.50.126 NMAC -- which requires separation -- on these
8 units would not meaningfully reduce emissions."

9 So, if I take that statement and I apply the
10 definition of recycling facility, it talks about -- those
11 recycle-on-the-fly units would qualify as a portable
12 facility; and, therefore, fall under the recycling
13 facility?

14 HEARING OFFICER ORTH: Except you need to
15 remember the PTE will be exempt as a result of the
16 emission counts.

17 VICE-CHAIR TRUJILLO-DAVIS: That's where I was
18 going. So I was going there with it. So if that -- if
19 that was -- if that's their argument then, that these
20 things fall in there, then there -- and he says it in
21 there, that they've already been pretreated, they fall
22 under the exemption, or they fall under the PTE. Then, I
23 believe -- and this is my point of discussion here -- that
24 they would also fall under the infeasibility statement?

25 HEARING OFFICER ORTH: Under the supplemental

1 fuel.

2 VICE-CHAIR TRUJILLO-DAVIS: Under the
3 supplemental fuel.

4 BOARD MEMBER GARCIA: Uh-huh. B (3) (b).

5 HEARING OFFICER ORTH: Thank you.

6 CHAIRPERSON SUINA: B (3) (b) under --

7 BOARD MEMBER GARCIA: On page 334.

8 VICE-CHAIR TRUJILLO-DAVIS: So, for those
9 reasons, I have a hard time supporting NMOGA's exclusion
10 of recycling facility.

11 CHAIRPERSON SUINA: Thank you, Madam Vice-Chair,
12 for your comment.

13 I'm looking at Madam Court Reporter stretching.

14 So, with that, Madam Vice-Chair, did you have any
15 follow-up?

16 VICE-CHAIR TRUJILLO-DAVIS: I was throwing out
17 discussions to get us rolling here.

18 CHAIRPERSON SUINA: Thank you. Appreciate it.

19 BOARD MEMBER GARCIA: I appreciate that
20 information to follow that chain of reasoning, to cover
21 all of those dots. That was very helpful. Appreciate
22 that. It furthers my support for NMED's proposed
23 language.

24 And I also don't see that the change to add
25 "sample," I'm not sure how that -- how that helps

1 anything. I'm not sure why they want to do that. And I'm
2 talking about CDG.

3 HEARING OFFICER ORTH: They offered it as a
4 clarification.

5 CHAIRPERSON SUINA: Okay.

6 BOARD MEMBER GARCIA: Oh, okay.

7 Might that have been post-hearing?

8 HEARING OFFICER ORTH: If it's a clarification,
9 it's still okay.

10 BOARD MEMBER GARCIA: Oh, yeah, yeah.

11 So I guess I'm ready to propose -- should we deal
12 with the definition before I propose a motion?

13 CHAIRPERSON SUINA: Ms. Soloria?

14 HEARING OFFICER ORTH: We didn't do that for the
15 other one.

16 MS. SOLORIA: Okay. We can go with the -- with
17 the rule language first, that's fine.

18 CHAIRPERSON SUINA: Yes, Vice-Chair
19 Trujillo-Davis.

20 VICE-CHAIR TRUJILLO-DAVIS: Are we -- are we
21 looking to do B and C, or just are we still looking at C?

22 CHAIRPERSON SUINA: We're still looking at C.

23 MS. SOLORIA: Let me look here.

24 VICE-CHAIR TRUJILLO-DAVIS: I was just clarifying
25 here.

1 CHAIRPERSON SUINA: I don't mean to sprint ahead.

2 And so, just for clarification, there's no opposing
3 comments on C?

4 HEARING OFFICER ORTH: Right.

5 CHAIRPERSON SUINA: Or E?

6 HEARING OFFICER ORTH: That's right.

7 CHAIRPERSON SUINA: And we're just looking at C
8 and it's really CDG's.

9 BOARD MEMBER GARCIA: So it's not really an
10 opposition, it's just -- they're not in opposition of it,
11 it's just want to add "sample."

12 CHAIRPERSON SUINA: Yes.

13 So has that helped, Vice-Chair?

14 VICE-CHAIR TRUJILLO-DAVIS: Yes. I think it's a
15 good add. They put it to clarify what chain of custody
16 they're talking about. So, I don't know, it's -- I could
17 split it either way.

18 CHAIRPERSON SUINA: Thank you. So it sounds
19 like we've got -- moving toward consensus here and getting
20 toward a motion.

21 BOARD MEMBER GARCIA: What are you looking at me
22 for?

23 CHAIRPERSON SUINA: You're just in the line of
24 sight. I'll look at Member Honker and Member Bitzer.

25 VICE-CHAIR TRUJILLO-DAVIS: I suggest putting in

1 "sample." Yeah, I'm good.

2 CHAIRPERSON SUINA: Okay.

3 BOARD MEMBER GARCIA: Okay. I'll take a stab at
4 it.

5
6 CHAIRPERSON SUINA: Thank you, Member Garcia.

7 BOARD MEMBER GARCIA: And I'm fine with that word
8 as well. Okay. I would propose that we adopt Section 126
9 with the language NMED proposed -- as NMED proposed, with
10 the support proffered by NMED and other parties; namely,
11 CDG.

12 MS. SOLORIA: With NMOGA's support.

13 BOARD MEMBER GARCIA: With NMOGA's support.

14 Let's see. Now I'm losing my place.

15 And with the change proffered by CDG, to insert
16 the word "sample" in front of "chain of custody" on C (1),
17 in front of the phrase, "chain of custody," put the word
18 "sample" on C (1) for clarification purposes, we agree it
19 helps clarify that phrase.

20 MS. SOLORIA: As supported by NMOGA.

21 BOARD MEMBER GARCIA: And supported by NMOGA.

22 And reject the proposal by NMOGA to exclude
23 recycling facilities for lack of adequate justification.

24 MS. SOLORIA: Excellent.

25 BOARD MEMBER BITZER: I'll second that.

1 CHAIRPERSON SUINA: Who was that?

2 MS. SOLORIA: Member Bitzer.

3 CHAIRPERSON SUINA: Okay. So we have a motion by
4 Member Garcia and a second by Member Bitzer. And I'm just
5 doing one last check. No further discussion? Ms. Jones,
6 would you please do a roll-call vote?

7 ADMINISTRATOR JONES: I will. Member Bitzer, how
8 do you vote?

9 BOARD MEMBER BITZER: I vote yes.

10 ADMINISTRATOR JONES: And let's see -- Member
11 Duval.

12 Member Garcia?

13 BOARD MEMBER GARCIA: Yes.

14 ADMINISTRATOR JONES: Excuse me. Member Honker?

15 BOARD MEMBER HONKER: I vote yes.

16 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

17 VICE-CHAIR TRUJILLO-DAVIS: Yes.

18 ADMINISTRATOR JONES: Chair Suina?

19 CHAIRPERSON SUINA: Yes.

20 ADMINISTRATOR JONES: The motion passes.

21 CHAIRPERSON SUINA: Thank you, Ms. Jones.

22 And now I think we're going to head to the
23 definitions. And so, again, just, Madam Hearing Officer,
24 go ahead.

25 HEARING OFFICER ORTH: I'm pulling it up on the

1 screen. I believe a lot of your discussion, Madam Chair,
2 will be applicable here. I have the definition of
3 "produced water management unit," which includes a
4 recycling facility or pit or pond, topographical
5 depression, et cetera, up on the screen. And below it,
6 you can see NMOGA's proposed deletion.

7 CHAIRPERSON SUINA: Thank you, Madam Hearing
8 Officer. And so, members of the Board, we're at the
9 definition on the screen for "produced water management
10 unit." And we have had some discussion already on these
11 definitions a few minutes ago. Yes, Ms. Soloria.

12 MS. SOLORIA: And I believe the prior motion
13 included a rejection of exclusion of recycling facility,
14 so I think it's pretty straightforward for the motion on
15 produced water management unit and recycling facility.

16 BOARD MEMBER GARCIA: Exactly. We've already
17 included it.

18 MS. SOLORIA: So I would suggest a motion to
19 adopt the languages as proposed by NMED, for reasons
20 offered by NMED, and consistent with prior decision on the
21 language of Section 126.

22 BOARD MEMBER BITZER: I'll adopt that as my
23 motion.

24 CHAIRPERSON SUINA: Thank you, Member Bitzer.

25 BOARD MEMBER HONKER: I'll second.

1 CHAIRPERSON SUINA: And Member Honker seconds.

2 I'm just looking around, making sure everybody is
3 on the same page. It looks like it. So, yes, Member
4 Honker.

5 BOARD MEMBER HONKER: Are we doing both the
6 definition of "produced water management unit" and
7 "recycling facility"?

8 CHAIRPERSON SUINA: Yes.

9 BOARD MEMBER HONKER: Okay. Excellent.

10 CHAIRPERSON SUINA: And that was in the motion as
11 motioned by Member Bitzer and your second. Thank you for
12 that clarification for the record, Member Honker.

13 If there's no further discussion, I'm looking to
14 Ms. Jones for a roll-call vote on that.

15 ADMINISTRATOR JONES: All right. Member Bitzer?

16 BOARD MEMBER BITZER: I vote yes.

17 ADMINISTRATOR JONES: Member Garcia?

18 BOARD MEMBER GARCIA: Yes.

19 ADMINISTRATOR JONES: Member Honker?

20 BOARD MEMBER HONKER: I vote yes.

21 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes.

23 ADMINISTRATOR JONES: Chair Suina?

24 CHAIRPERSON SUINA: Yes.

25 ADMINISTRATOR JONES: The motion passes, Madam

1 Chair.

2 CHAIRPERSON SUINA: Thank you, Ms. Jones.

3 Appreciate that. And thank you, members, for all of that
4 discussion on produced units.

5 I'm losing my thoughts here. We'll continue now
6 to Section 127.

7 BOARD MEMBER GARCIA: We have recycling facility
8 definition.

9 CHAIRPERSON SUINA: We just did that.

10 BOARD MEMBER GARCIA: Oh, geez.

11 CHAIRPERSON SUINA: That was in Member Bitzer's
12 motion.

13 Yes, Ms. Soloria.

14 MS. SOLORIA: Sorry. No.

15 CHAIRPERSON SUINA: Is that correct, Ms. Soloria,
16 as you have noted?

17 MS. SOLORIA: What were you suggesting we move
18 onto?

19 CHAIRPERSON SUINA: The next section, the final
20 section. Wait.

21 HEARING OFFICER ORTH: Two final sections, Madam
22 Chair. You have the original 127, as proposed by the
23 Department, which is a stipulation. The Department worked
24 with NMOGA, Oxy, Clean Air Advocates, Environmental
25 Defense Fund, and all parties stipulated to the language.

1 It goes to credible evidence and prohibited activity, and
2 I have it on the screen. I believe this will just take
3 you a moment.

4 Then there's another Section 127, and why don't I
5 wait to tee that one up.

6 CHAIRPERSON SUINA: Thank you so much. And
7 Ms. Soloria, do you have something?

8 MS. SOLORIA: I'm seeing some outstanding
9 definitions we have to address.

10 HEARING OFFICER ORTH: It's in the next 127.

11 MS. SOLORIA: Oh, I'm sorry. I thought it was in
12 this one. Okay. Sorry.

13 CHAIRPERSON SUINA: So it's in the proposed 127
14 by the environmental groups.

15 MS. SOLORIA: Yes, I apologize.

16 CHAIRPERSON SUINA: We're good. We're good.
17 We're right on track. We're good. So why don't we
18 address the 127 that is stipulated?

19 HEARING OFFICER ORTH: It's on the screen, Madam
20 Chair.

21 CHAIRPERSON SUINA: Thank you.

22 Member Honker.

23 BOARD MEMBER HONKER: It appears to be
24 universally supported, so I will move we adopt the
25 language of Section 127, "prohibited activity" and

1 "credible evidence" as offered by NMED, for the rationale
2 offered by NMED, and supported by NMOGA.

3 BOARD MEMBER BITZER: I would second that motion.

4 CHAIRPERSON SUINA: Thank you, Member Honker and
5 Member Bitzer.

6 Vice-Chair, did you have a comment?

7 VICE-CHAIR TRUJILLO-DAVIS: Well, I just had a
8 question of clarity here. Sorry, I shouldn't have eaten
9 that orange slice there before I asked the question.
10 Madam Hearing Officer, did you say that NMOGA supported
11 this stipulation?

12 HEARING OFFICER ORTH: Yes.

13 CHAIRPERSON SUINA: It's at the bottom of page
14 341.

15 HEARING OFFICER ORTH: All parties support the
16 stipulation and NMOGA went ahead and added express
17 language of their support in their post-hearing submittal,
18 so I included it here on bottom of page 341.

19 VICE-CHAIR TRUJILLO-DAVIS: Okay. All right. I
20 see, I'm reading it again there. So thank you very much.

21 CHAIRPERSON SUINA: With that, I look to
22 Ms. Jones for a roll-call vote on the motion on the floor
23 for 127, "prohibited activities" and "credible evidence."

24 ADMINISTRATOR JONES: Member Bitzer, how do you
25 vote?

1 BOARD MEMBER BITZER: I vote yes.

2 ADMINISTRATOR JONES: Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR JONES: Member Honker?

5 BOARD MEMBER HONKER: Yes.

6 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: Yes.

8 ADMINISTRATOR JONES: Chair Suina?

9 CHAIRPERSON SUINA: Yes.

10 ADMINISTRATOR JONES: The motion passes.

11 CHAIRPERSON SUINA: Thank you, Ms. Jones.

12 HEARING OFFICER ORTH: Okay. We're on our last
13 section, Madam Chair.

14 CHAIRPERSON SUINA: Thank you.

15 HEARING OFFICER ORTH: And --

16 CHAIRPERSON SUINA: All right. We're going to
17 our last section.

18 BOARD MEMBER GARCIA: So this was proposed by the
19 CEP on that, and NMED did not take a position.

20 HEARING OFFICER ORTH: That's correct. So I just
21 moved it, it's on the screen now. The environmental
22 community parties submitted -- with Oxy, submitted a joint
23 proposal to move the 127 you just adopted to 128, and that
24 this would now be 127.

25 It includes new substantive requirements for

1 flowback vessels and preproduction operations. And you
2 can see there as well, the definitions that we need to go
3 back to, for "drilling, drill, flowback, flowblack vessel,
4 hydraulic fracturing, hydraulic refracturing, and
5 preproduction operations."

6 The Department did not take a position on the
7 proposal. I should note that NMOGA actually provided
8 testimony during the hearing, which the CEP, very
9 helpfully summarized here for you on pages 344 and 345.
10 The testimony came from Mr. Smitherman.

11 Having said that, I made it very clear to the
12 parties that their final proposal needed to include
13 whatever it is they had to say about whatever sections of
14 rule they had an opinion on. And NMOGA's post-hearing
15 submittal, not their closing argument, not their proposed
16 statement of reasons and not their redline, none of it
17 addresses this. So I'm not sure what to do with that.

18 CHAIRPERSON SUINA: So NMOGA only addresses it
19 during the hearing?

20 HEARING OFFICER ORTH: Correct.

21 And Mr. Smitherman was strenuously cross-examined
22 on all of that. And maybe they had a chance to reflect
23 and chose not to take a position, ultimately, because
24 their post-hearing submittal includes no position on this
25 section.

1 CHAIRPERSON SUINA: So just for my clarification,
2 we have a proposal by CEP/Oxy.

3 HEARING OFFICER ORTH: A CEP and Oxy joint
4 proposal.

5 CHAIRPERSON SUINA: Okay. Joint, and on final
6 submittals and closing arguments, nobody -- no
7 stakeholders submitted comments regarding CEP and Oxy's
8 proposal.

9 HEARING OFFICER ORTH: Exactly.

10 CHAIRPERSON SUINA: Thank you. I just want to
11 make sure I'm clear. I know I read your summary here. I
12 just want to make sure; long day, last section. And I'm
13 sorry to put you on the spot, Madam Hearing Officer. So,
14 from the hearing, to where we are today, there was no
15 other back -- like responses, other than public and verbal
16 testimony?

17 HEARING OFFICER ORTH: Right. So -- so, again,
18 Madam Chair, the -- we have the joint proposal. We have
19 the Department's, you know, statement that they weren't
20 taking a position on it. The proposal, obviously, is
21 meant to reduce emissions during completions,
22 recompletions, initial flowback.

23 We had NMOGA opposing it during the hearing, but
24 then not following up on that testimony in their
25 post-hearing submittal.

1 CHAIRPERSON SUINA: And -- and it was clear that
2 CEP and Oxy submitted this language during, prior and/or
3 during the hearing.

4 HEARING OFFICER ORTH: Yes. Definitely.

5 CHAIRPERSON SUINA: So all parties -- I'm sorry.

6 HEARING OFFICER ORTH: I'm sorry. CEP and Oxy
7 provided testimony, which is summarized or cited to
8 starting on page 343, and going through 347 -- no, 348.
9 So it's about four-and-a-half, five pages here, of their
10 support for this proposal. They referred to the testimony
11 given by Mr. Alexander and --

12 BOARD MEMBER GARCIA: And Don Schreiber.

13 HEARING OFFICER ORTH: Yes, and Don Schreiber.
14 And Mr. Holderman from Oxy.

15 CHAIRPERSON SUINA: Thank you, Madam Hearing
16 Officer. And I see Member Bitzer has a question.

17 BOARD MEMBER BITZER: One of these witnesses, if
18 I recall, was the guy who was getting black snow on his
19 property a mile and a quarter away.

20 BOARD MEMBER GARCIA: Don Schreiber.

21 BOARD MEMBER BITZER: Mr. Schreiber, I remember
22 that. So if this was all submitted in time for people to
23 weigh in opposition to it, and NMOGA's opposition was
24 self-abated, then I would move adoption of the
25 newly-proposed Section 127 as submitted, for the reasons

1 proffered by the advocating parties.

2 CHAIRPERSON SUINA: Thank you, Member Bitzer.

3 BOARD MEMBER GARCIA: I would second.

4 CHAIRPERSON SUINA: Thank you, Member Garcia.

5 VICE-CHAIR TRUJILLO-DAVIS: I just have a
6 question. Is there anything in the record about why NMED
7 didn't take a position on it?

8 HEARING OFFICER ORTH: I don't remember that
9 they -- I think there was just so much work involved with
10 all of the other negotiated sections that they were
11 handling, that it may have been a human resource issue at
12 that point. I don't remember that they offered a reason.

13 They certainly didn't oppose it. And I will say
14 also, the thing about NMOGA -- NMOGA's objection was, they
15 had understood that the proposal meant that flowback
16 vessels had to be vapor tight, which is what's required in
17 Colorado. And the CEP and Oxy proposal specifically
18 stepped away from "vapor tight."

19 VICE-CHAIR TRUJILLO-DAVIS: So I see in the
20 record here that NMED -- NMED -- excuse me. The
21 Department took no position on the completion,
22 recompletion proposal because the Department lacked
23 sufficient expertise in the area.

24 And I'm wondering, given the way it's drafted,
25 with reporting and, obviously, subject to enforcement

1 action, if -- what kind of impact that would have on the
2 Department, considering that they are saying they lack
3 expertise in enforce -- or in -- sorry -- what word did
4 they use?

5 HEARING OFFICER ORTH: Sufficient expertise.

6 VICE-CHAIR TRUJILLO-DAVIS: Sufficient expertise.

7 HEARING OFFICER ORTH: Thank you, Vice-Chair.

8 Now I'm looking at that, that is on page 347.

9 I have been in EIB hearings where nonDepartment
10 petitioner's were proposing rules that the Department
11 would then have had to implement and enforce, and the
12 Department didn't have the resources to do that and didn't
13 see a way to, you know, get the resources to do that, and
14 actually opposed the petitions before the Board for that
15 reason very explicitly.

16 So I think if, in fact, the Department didn't
17 feel like they could implement or enforce this, they would
18 have said so.

19 VICE-CHAIR TRUJILLO-DAVIS: Okay. That's
20 helpful, to put that in context.

21 CHAIRPERSON SUINA: With that, Vice-Chair -- yes,
22 Member Honker.

23 BOARD MEMBER HONKER: Again, just a
24 clarification: if we adopt this section, then that would
25 move our previously adopted Section 127 to 128?

1 HEARING OFFICER ORTH: Correct.

2 BOARD MEMBER HONKER: Okay. And I assume that's
3 an administrative thing that NMED can do in the final
4 version?

5 HEARING OFFICER ORTH: Correct.

6 BOARD MEMBER HONKER: Okay. Thanks.

7 CHAIRPERSON SUINA: Thank you, Member Honker.

8 So looking to the Board, if there's no further
9 discussion, Ms. Jones, would you mind doing a roll-call
10 vote on the motion on the floor?

11 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
12 you vote?

13 BOARD MEMBER BITZER: I vote yes.

14 ADMINISTRATOR JONES: Member Garcia?

15 BOARD MEMBER GARCIA: Yes.

16 ADMINISTRATOR JONES: Member Honker?

17 BOARD MEMBER HONKER: Yes.

18 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

19 VICE-CHAIR TRUJILLO-DAVIS: Yes.

20 ADMINISTRATOR JONES: Chair Suina?

21 CHAIRPERSON SUINA: Yes.

22 ADMINISTRATOR JONES: The motion passes.

23 HEARING OFFICER ORTH: Wow. It's five of 6.

24 CHAIRPERSON SUINA: Remember, we had a number of
25 delays, but we still have a few definitions.

1 HEARING OFFICER ORTH: Oh, that's right.

2 I'm sorry. Yes, you do. I got all excited there
3 for a minute. We have some definitions.

4 MS. SOLORIA: Once we're done with those, I have
5 some hanging random definitions that I need to make sure
6 I'm not the only one who noted them.

7 CHAIRPERSON SUINA: Okay.

8 VICE-CHAIR TRUJILLO-DAVIS: Do we have to do an
9 overall vote?

10 MS. SOLORIA: Yes. Like a summary vote,
11 approving the rule entirely, as discussed.

12 BOARD MEMBER GARCIA: So at the end.

13 CHAIRPERSON SUINA: And we'll have some
14 logistical, like, formatting, some overall logistical
15 motions that we'll need to do for the record, to make sure
16 that we all have it.

17 VICE-CHAIR TRUJILLO-DAVIS: Just so I'm clear,
18 we're doing that tonight? We're wrapping it and putting a
19 bow on this baby?

20 BOARD MEMBER GARCIA: Uh-huh.

21 MS. SOLORIA: Yes, a big bow.

22 CHAIRPERSON SUINA: And again, just for the
23 record, the way that the notice has been published, we're
24 okay to go over a few minutes?

25 MS. SOLORIA: Correct.

1 CHAIRPERSON SUINA: Knock on wood.

2 HEARING OFFICER ORTH: On page 342, Madam Chair,
3 the definitions that were proposed in connection with this
4 particular Oxy and CEP proposal were "drilling or drilled,
5 drill-out, flowback, flowback vessel, hydraulic fracturing
6 hydraulic refracturing and preproduction operations." And
7 I know I did try to group some of those together in (7).

8 CHAIRPERSON SUINA: Okay.

9 HEARING OFFICER ORTH: I may be able to pull that
10 up.

11 CHAIRPERSON SUINA: Yes. So can you point us to
12 the page again?

13 HEARING OFFICER ORTH: That was 342 is just the
14 list of --

15 CHAIRPERSON SUINA: Right.

16 HEARING OFFICER ORTH: -- of definitions.

17 Now I'll try to -- okay, here is the first set
18 that I'll share.

19 VICE-CHAIR TRUJILLO-DAVIS: It's page 16.

20 BOARD MEMBER HONKER: Page 16, yeah.

21 HEARING OFFICER ORTH: Okay. It's on the screen.

22 CHAIRPERSON SUINA: Thank you, Madam Hearing
23 Officer. And so, yes, Member Honker.

24 BOARD MEMBER HONKER: I don't see any comments or
25 current proposals on drilling, drill-out flowback or

1 flowback vessel. Is that the case?

2 HEARING OFFICER ORTH: That's correct, Member
3 Honker.

4 BOARD MEMBER GARCIA: And the rest?

5 HEARING OFFICER ORTH: The same statement.

6 BOARD MEMBER GARCIA: Okay. So we could do it in
7 one motion, we could?

8 HEARING OFFICER ORTH: Okay. So for drilling and
9 for drill-out and flowback vessel. Now I'll scroll down
10 to hydraulic fracturing and hydraulic refracturing. It's
11 on the screen.

12 CHAIRPERSON SUINA: Thank you. And then just for
13 point of clarification, no other definitions?

14 HEARING OFFICER ORTH: Correct.

15 CHAIRPERSON SUINA: So, with that, members --

16 HEARING OFFICER ORTH: There's one more.

17 CHAIRPERSON SUINA: Okay. One more?

18 HEARING OFFICER ORTH: There's preproduction
19 operations.

20 BOARD MEMBER GARCIA: What page is that on?

21 HEARING OFFICER ORTH: Sorry, I'm scrolling here.
22 Here it is, it's right above "produced water."

23 BOARD MEMBER GARCIA: Do you have a list of that?

24 MS. SOLORIA: Of the definitions? Yes, it's --

25 BOARD MEMBER GARCIA: No, that's okay. I'm just

1 wondering if you do, since --

2 MS. SOLORIA: Yes, I have drilling or drilled.

3 BOARD MEMBER GARCIA: No, but to consider the
4 motion.

5 MS. SOLORIA: Okay. Yes, but I want to fact
6 check that.

7 BOARD MEMBER GARCIA: Okay. Well, all of our
8 brains will work together. (Inaudible due to multiple
9 speakers.)

10 BOARD MEMBER HONKER: So preproduction operations
11 is on page 28.

12 CHAIRPERSON SUINA: Thank you.

13 And Madam Court Reporter, we apologize.

14 COURT REPORTER: One at a time, please.

15 CHAIRPERSON SUINA: Will do.

16 COURT REPORTER: Thank you.

17 CHAIRPERSON SUINA: So I just want a point of
18 clarification for our Board. Madam Hearing Officer,
19 there's no other proposals on "preproduction operations"
20 either?

21 HEARING OFFICER ORTH: That's correct.

22 CHAIRPERSON SUINA: Thank you.

23 So, looking to the Board. Yes, Member Honker.

24 BOARD MEMBER HONKER: Are we ready for a motion?

25 CHAIRPERSON SUINA: I believe so.

1 BOARD MEMBER HONKER: Okay. I will move that we
2 adopt the definitions for N, drilling or drilled,
3 drill-out; R, flowback, S, flowback vessel, V -- or no,
4 excuse me -- W, hydraulic fracturing; X, hydraulic
5 refracturing; and SS, preproduction operations; as
6 proposed by CEP and Oxy, with the supporting rationale
7 from CEP and Oxy.

8 CHAIRPERSON SUINA: Thank you, Member Honker.
9 Ms. Soloria, does that seem comprehensive enough?

10 MS. SOLORIA: That reflected my list and was well
11 stated.

12 CHAIRPERSON SUINA: Thank you. And I see, I'm
13 looking around.

14 BOARD MEMBER GARCIA: I will second.

15 CHAIRPERSON SUINA: Thank you.

16 BOARD MEMBER GARCIA: We can barely second now.

17 BOARD MEMBER HONKER: And once again, I assume we
18 don't have to talk about renumbering because that will --
19 that will be an administrative thing.

20 CHAIRPERSON SUINA: Yes, Member Honker.

21 BOARD MEMBER HONKER: Okay. Thanks.

22 CHAIRPERSON SUINA: So, with that, I look to
23 Ms. Jones for a roll-call vote.

24 ADMINISTRATOR JONES: You got it.

25 Member Bitzer, how do you vote?

1 BOARD MEMBER BITZER: I vote yes.

2 ADMINISTRATOR JONES: Member Garcia?

3 BOARD MEMBER GARCIA: Yes.

4 ADMINISTRATOR JONES: Member Honker?

5 BOARD MEMBER HONKER: Yes.

6 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

7 VICE-CHAIR TRUJILLO-DAVIS: Yes.

8 ADMINISTRATOR JONES: Chair Suina?

9 CHAIRPERSON SUINA: Yes.

10 ADMINISTRATOR JONES: The motion passes.

11 CHAIRPERSON SUINA: Thank you, all. And just
12 double-checking; if there's no other definitions, I think
13 that was it.

14 MS. SOLORIA: I have two in my notes, and I don't
15 know if that's accurate.

16 HEARING OFFICER ORTH: Is it "commencement of
17 operation"?

18 MS. SOLORIA: One of them is, yes.

19 HEARING OFFICER ORTH: And "vessel measurement
20 system."

21 MS. SOLORIA: I don't have that one.

22 Wellhead only facility.

23 HEARING OFFICER ORTH: Which is immediately below
24 that.

25 MS. SOLORIA: Yes. Those are -- those are

1 exactly the two that I have.

2 HEARING OFFICER ORTH: Then, I'm sorry, I think
3 we have to go back to them.

4 CHAIRPERSON SUINA: Yes. So, fellow Board
5 members, we're going to go back to "commencement of
6 operation."

7 HEARING OFFICER ORTH: It's page 12.

8 CHAIRPERSON SUINA: On page 12.

9 BOARD MEMBER GARCIA: Would it be possible for
10 Member Honker to add those? Or we have already -- never
11 mind. Never mind.

12 HEARING OFFICER ORTH: NMOGA, though, proposed
13 moves to strike "but no later than the end of well
14 completion." I think that's why we tabled it.

15 VICE-CHAIR TRUJILLO-DAVIS: I'm sorry. What page
16 are we on, 12?

17 HEARING OFFICER ORTH: Page 12.

18 VICE-CHAIR TRUJILLO-DAVIS: There it is. Thanks.

19 HEARING OFFICER ORTH: And this is based on --
20 NMOGA's proposal is based on Mr. Smitherman's testimony,
21 so it's not that there's any lack of support for it.

22 CHAIRPERSON SUINA: So, again, just to move the
23 conversation forward on NMED's proposals and -- and did
24 not agree with the revision because Department's proposed
25 definition is consistent with Colorado Reg 7 and is

1 consistent with the terms used in Part 50.

2 BOARD MEMBER GARCIA: So, does that mean this
3 term is used in other places in Part 50?

4 CHAIRPERSON SUINA: Yes.

5 HEARING OFFICER ORTH: The whole rule is Part 50.

6 BOARD MEMBER GARCIA: Well, I know, but that
7 phrase, I guess, is what I'm talking about.

8 HEARING OFFICER ORTH: Yes.

9 BOARD MEMBER GARCIA: So it's been used
10 elsewhere?

11 HEARING OFFICER ORTH: Yes.

12 CHAIRPERSON SUINA: Madam Vice-Chair?

13 VICE-CHAIR TRUJILLO-DAVIS: I think we might
14 cause ourselves a little bit of a heartburn here, since we
15 just approved the pre -- oh, please help me.

16 HEARING OFFICER ORTH: Preproduction.

17 VICE-CHAIR TRUJILLO-DAVIS: The preproduction
18 definition. So, since we approved the preproduction
19 definition, the "commencement of operation" would not fit
20 the way that NMED drafted it.

21 CHAIRPERSON SUINA: And why is that? Can you
22 explain?

23 VICE-CHAIR TRUJILLO-DAVIS: Yes. So, I'm -- if
24 I'm thinking clearly here, so let me go back to
25 "preproduction" definition. I'm just saying for

1 consistency purposes here.

2 BOARD MEMBER GARCIA: What page is that on?

3 VICE-CHAIR TRUJILLO-DAVIS: It's 28. Okay. So
4 "Preproduction operations means the drilling through the
5 hydrocarbon bearing zones, hydraulic fracturing or
6 refracturing, drill-out, and flowback of an oil and/or
7 natural gas wells." And so, completions.

8 And then this one -- well, so it says, "but no
9 later than the end of completion." Do you guys see where
10 my mind's at there, where we're matching up, one's ending
11 and one's beginning?

12 CHAIRPERSON SUINA: I'm sorry. Vice-Chair, can
13 you help?

14 VICE-CHAIR TRUJILLO-DAVIS: Yeah.

15 CHAIRPERSON SUINA: Try that -- try to keep
16 talking.

17 And Madam Hearing Officer, do you have any
18 others?

19 HEARING OFFICER ORTH: No, I just -- there's
20 "preproduction operations" and then "commencement," which
21 is no later than the end of well completion, but perhaps
22 it's earlier. I'm sorry, I'm struggling with -- how --
23 with the inconsistency.

24 VICE-CHAIR TRUJILLO-DAVIS: Okay. So, let's see
25 how I can reframe this. So "preproduction operations"

1 includes completions, because that's what you're doing
2 when you're having flowback. And so "commencement of
3 operation" would be following completions. And so, I just
4 want to make sure that we're consistent in saying this
5 one's before, preproduction, or preoperations, and this
6 one's after.

7 CHAIRPERSON SUINA: Okay.

8 VICE-CHAIR TRUJILLO-DAVIS: And I believe that
9 NMED's language and NMOGA's language would both propose in
10 the absence the definition of "preproduction operations."

11 HEARING OFFICER ORTH: I'm sorry, Madam
12 Vice-Chair. Isn't, though, the point of the NMOGA
13 proposal, and I'm asking this -- their distinction is not
14 between preproduction operations and the completion.

15 Their distinction is between when it's completed
16 and then when it actually begins production in order to
17 make sales. So I think they're talking about much later.

18 VICE-CHAIR TRUJILLO-DAVIS: Oh, okay.

19 BOARD MEMBER GARCIA: Oh, so a well completion
20 can happen and then this.

21 VICE-CHAIR TRUJILLO-DAVIS: Uh-huh, so you can
22 complete your well, shut it in, and then you don't
23 actually commence operations until much later?

24 CHAIRPERSON SUINA: Yes.

25 BOARD MEMBER GARCIA: Yes.

1 VICE-CHAIR TRUJILLO-DAVIS: Sorry, I was
2 misreading that.

3 CHAIRPERSON SUINA: And thank you for indulging
4 us to try to think this through.

5 That said, is there any other comments from our
6 Board on the NMED proposal and then the NMOGA proposal, to
7 strike?

8 Yes, Member Garcia.

9 BOARD MEMBER GARCIA: Well, I just -- I think
10 it's necessary to have the language, "but no later than
11 the end of well completion operation."

12 CHAIRPERSON SUINA: Thank you, Member Garcia.
13 And just in essence of conversation, to move it along, I
14 agree with Member Garcia on that. I do recall the
15 discussion on this item and the time I -- and also in
16 re-reading it, I think it needs to be in there.

17 HEARING OFFICER ORTH: Member Honker.

18 CHAIRPERSON SUINA: Member Honker?

19 BOARD MEMBER HONKER: Yeah, and it seems to be
20 the way Colorado defined it in their Reg 7, so there's a
21 consistency argument there. Plus, I don't really see any
22 argument from NMOGA on what adverse impacts there would be
23 to -- to the -- the inclusion of "but no later than the
24 end of well completion operation."

25 It just seems like their argument is they --

1 they -- I guess, the accuracy of the definition. So I'm
2 fine with NMED's proposal.

3 CHAIRPERSON SUINA: Thank you, Member Honker.

4 BOARD MEMBER GARCIA: And what was the other
5 definition?

6 HEARING OFFICER ORTH: "Wellhead only facility,"
7 page 49.

8 CHAIRPERSON SUINA: If we want to take a look at
9 that, Board members, on 49?

10 BOARD MEMBER GARCIA: And there's no opposition
11 to that?

12 HEARING OFFICER ORTH: Right. It's a proposed
13 new definition that related to the proposal by CEP, Oxy
14 and EDF.

15 BOARD MEMBER GARCIA: And it fits with what we
16 just read.

17 CHAIRPERSON SUINA: One more question on this
18 one. So it says the CEP -- (inaudible.) I apologize, we
19 had a break in the internet connection for a minute.
20 We're crossing our fingers on our side with the internet.

21 So I will restate what I was talking about. And
22 I just want a clarification from Madam Hearing Officer on
23 which proposal this was related to, because CEP and Oxy,
24 the section we had that was the 127, that we thought it
25 might have been associated with, but if the instance of

1 CEP and EDF, I just wanted to double-check if it was that
2 section or another section.

3 BOARD MEMBER GARCIA: I have in my notes Section
4 123 and 127.

5 HEARING OFFICER ORTH: Yeah.

6 CHAIRPERSON SUINA: Okay.

7 HEARING OFFICER ORTH: I'm sorry. I remember the
8 discussion about the "artificial lift" and I think I got
9 confused.

10 CHAIRPERSON SUINA: Yes, that's why I just wanted
11 to verify that discussion we had about artificial lift.
12 So it's 123 and 127?

13 HEARING OFFICER ORTH: And 127, yeah.

14 Let's see. On page 192.

15 CHAIRPERSON SUINA: Of the hearing report, 192?

16 HEARING OFFICER ORTH: Yes. Sorry, it's hard for
17 me to see what section that is.

18 BOARD MEMBER GARCIA: It's 116.

19 HEARING OFFICER ORTH: Okay, that's 116.

20 And then, I see it again, and this is what I was
21 struggling to remember was, was Oxy adding something about
22 artificial lift controllers in 122, but I don't believe
23 that was accepted. That's why I was confused. But ED
24 uses it -- (inaudible)

25 COURT REPORTER: I'm sorry. "ED," what?

1 HEARING OFFICER ORTH: I'm sorry. Uses the term
2 on page 192, for existing, which you said that was 116 --
3 Section 116, subparagraph F, for existing wellhead only
4 facilities, annual inspections are completed on certain
5 schedules.

6 And the Department notes that the language was
7 included based on a proposal by Oxy, in lieu of a previous
8 proposal that would have exempted them from LDAR. NMED
9 didn't express opposition to this definition.

10 CHAIRPERSON SUINA: Okay. Thank you for that. I
11 just wanted to make sure we, one, needed it. So it sounds
12 like, Madam Hearing Officer, just a clarification; we do
13 need it because its used?

14 HEARING OFFICER ORTH: It's used.

15 BOARD MEMBER GARCIA: Tell me again the second
16 one; commencement of operation, and what page?

17 HEARING OFFICER ORTH: Sorry.

18 BOARD MEMBER GARCIA: I know we were just talking
19 about it.

20 HEARING OFFICER ORTH: This one?

21 BOARD MEMBER GARCIA: Yes, I lost my page.

22 HEARING OFFICER ORTH: Page 12.

23 BOARD MEMBER GARCIA: That's "commencement of
24 operation," but the other one that we're considering.

25 HEARING OFFICER ORTH: It's page 49.

1 BOARD MEMBER GARCIA: Oh, yes.

2 CHAIRPERSON SUINA: Wellhead only, and then --

3 BOARD MEMBER GARCIA: Okay. So that's LLL.

4 HEARING OFFICER ORTH: It's not 48.

5 BOARD MEMBER GARCIA: No, it's 49.

6 HEARING OFFICER ORTH: Oh, yes.

7 BOARD MEMBER GARCIA: We're ready for a motion?

8 CHAIRPERSON SUINA: Yes.

9 BOARD MEMBER GARCIA: Okay. I move that we adopt
10 the definition F, "commencement of operation" as proposed
11 by NMED, for the reasons proffered by NMED, and the
12 definition of "wellhead only facility" as prepared by CEP,
13 Oxy and EDF, for the reasons proffered by CEP, Oxy and
14 EDF, and reject the proposal by NMOGA to strike the last
15 phrase of the definition of commencement, for lack of
16 adequate justification to strike that last phrase.

17 Is that all right?

18 MS. SOLORIA: Yes.

19 CHAIRPERSON SUINA: Thank you.

20 BOARD MEMBER HONKER: I second.

21 CHAIRPERSON SUINA: We have a motion by Member
22 Garcia and a second by Member Bitzer.

23 MS. SOLORIA: I vote yes.

24 CHAIRPERSON SUINA: Hang on.

25 ADMINISTRATOR JONES: I think that was Member

1 Honker that seconded it.

2 BOARD MEMBER HONKER: It wasn't either of the
3 Member Bitzers that's on right now.

4 CHAIRPERSON SUINA: Sorry, I apologize, Member
5 Honker. I was looking at Member Bitzer's name.

6 So, Ms. Jones, would you mind doing a roll-call
7 vote on that?

8 ADMINISTRATOR JONES: Sure. Member Bitzer, how
9 do you vote?

10 BOARD MEMBER BITZER: Mr. Bitzer votes --
11 (inaudible.)

12 CHAIRPERSON SUINA: Can you repeat?

13 BOARD MEMBER BITZER: I vote yes. And I vote yes
14 for my second presence on the screen there.

15 ADMINISTRATOR JONES: And Member Garcia?

16 BOARD MEMBER GARCIA: Yes.

17 ADMINISTRATOR JONES: Member Honker?

18 BOARD MEMBER BITZER: I vote yes, again, for my
19 second presence on the screen.

20 BOARD MEMBER HONKER: This is Member Honker, I
21 vote yes.

22 ADMINISTRATOR JONES: Thank you, Member Honker.
23 Vice-Chair Trujillo-Davis?

24 VICE-CHAIR TRUJILLO-DAVIS: Yes.

25 ADMINISTRATOR JONES: Chair Suina?

1 CHAIRPERSON SUINA: Yes.

2 ADMINISTRATOR JONES: The motion passes.

3 CHAIRPERSON SUINA: Thank you, Ms. Jones.

4 And so it looks like that wraps up our
5 definitions. And I'm looking to Ms. Soloria for any --

6 BOARD MEMBER GARCIA: One more motion.

7 MS. SOLORIA: Yes. I'm trying to craft an
8 appropriate motion for full adoption, and this is new
9 ground for me, so I want to make sure that it just needs
10 to be a wholesale adoption of the rule, as discussed, and
11 while doing that, let me just --

12 HEARING OFFICER ORTH: And the motion authorizes
13 the Department.

14 MS. SOLORIA: Why don't we make that motion
15 first. So I propose that the Board authorize the
16 Department to make any minor spelling, grammar and format
17 to the rules, as adopted.

18 BOARD MEMBER GARCIA: I make that my motion.

19 CHAIRPERSON SUINA: Thank you, Member Garcia.

20 VICE-CHAIR TRUJILLO-DAVIS: I second that.

21 CHAIRPERSON SUINA: And Member Vice-Chair
22 Trujillo-Davis beat you to the punch, Member Honker. So
23 she's the second on that.

24 And Ms. Jones, would you do a roll-call vote on
25 that?

1 ADMINISTRATOR JONES: Yes. Member Bitzer, how do
2 you vote?

3 BOARD MEMBER BITZER: Can you hear me?

4 ADMINISTRATOR JONES: Yes. And your vote is?

5 BOARD MEMBER BITZER: I vote yes.

6 ADMINISTRATOR JONES: Thank you.

7 Member Garcia?

8 BOARD MEMBER GARCIA: Yes.

9 ADMINISTRATOR JONES: Member Honker?

10 BOARD MEMBER HONKER: Yes.

11 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

12 VICE-CHAIR TRUJILLO-DAVIS: Yes.

13 ADMINISTRATOR JONES: Chair Suina?

14 CHAIRPERSON SUINA: Yes.

15 ADMINISTRATOR JONES: The motion passes.

16 MS. SOLORIA: Okay. I'm offering one long motion
17 that may not need to be this long. But I move that the
18 Board, having given weight to all facts and circumstances,
19 including the character and degree of injury to the
20 interference with health, welfare and visibility and
21 property, in the public interest, including the social and
22 economic value of the sources and subject of air
23 contaminants --

24 HEARING OFFICER ORTH: Slow down.

25 MS. SOLORIA: -- and economic -- and practical

1 and economic reasonableness of limiting air contaminants
2 from the sources involved, and previous experience with
3 equipment and methods available, controlled -- to control
4 the air contaminants involved, find that these factors
5 weigh in favor of the adoption of the rule, as discussed,
6 and as voted upon.

7 VICE-CHAIR TRUJILLO-DAVIS: Sure, I make that my
8 motion. Do you want me to read it?

9 BOARD MEMBER GARCIA: I second it.

10 CHAIRPERSON SUINA: Okay. We have a motion by
11 Vice-Chair Trujillo-Davis and a second by Member Garcia.
12 And I'm going to look to Ms. Jones for a roll-call vote on
13 that comprehensive motion.

14 ADMINISTRATOR JONES: Member Bitzer, how do you
15 vote?

16 BOARD MEMBER BITZER: I vote yes. Thank you.

17 ADMINISTRATOR JONES: And Member Garcia?

18 BOARD MEMBER GARCIA: Yes.

19 ADMINISTRATOR JONES: Member Honker?

20 BOARD MEMBER HONKER: Yes.

21 ADMINISTRATOR JONES: Vice-Chair Trujillo-Davis?

22 VICE-CHAIR TRUJILLO-DAVIS: Yes.

23 ADMINISTRATOR JONES: Chair Suina?

24 CHAIRPERSON SUINA: Yes.

25 ADMINISTRATOR JONES: The motion passes.

1 VICE-CHAIR TRUJILLO-DAVIS: Who-hoo.

2 BOARD MEMBER GARCIA: There should be...

3 MS. SOLORIA: Does there have to be a
4 discussion -- there may need to be discussion on how the
5 statement of reasons is prepared. I'm not sure if that
6 needs to be on the record. I say we can release --
7 Member Bitzer.

8 CHAIRPERSON SUINA: Member Bitzer.

9 BOARD MEMBER BITZER: I move we cancel the 22nd
10 meeting -- April 22nd.

11 CHAIRPERSON SUINA: Thank you, Member Bitzer. We
12 have already done that. We had to notice yesterday, so
13 Ms. Jones is on top of it. Thank goodness. Ms. Jones, so
14 we have public noticing on that already.

15 ADMINISTRATOR JONES: And I'll follow up and send
16 everyone an email, all of our Board members and then the
17 distributions list as well.

18 CHAIRPERSON SUINA: Thank you, Ms. Jones.

19 HEARING OFFICER ORTH: Can we excuse the court
20 reporter?

21 CHAIRPERSON SUINA: Madam Court Reporter, just
22 thank you so much for your resilience on whenever we were
23 talking over each other. And, please, have some rest
24 tonight. Thank you.

25 COURT REPORTER: You-all do the same. Thank you

1 very much.

2 (Deliberations concluded on April 13, 2022, at

3 6:37 p.m.)

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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

REPORTER'S CERTIFICATE

I, THERESA E. DUBOIS, RPR, CSR #29, DO HEREBY
CERTIFY that on April 13, 2022, the Deliberations Hearing
of the New Mexico Environmental Improvement Board, was
taken before me, that I did report in stenographic
shorthand the Proceedings set forth herein, and the
foregoing pages are a true and correct transcription to
the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with (unless excepted by the
rules) any of the parties or attorneys in this matter, and
that I have no interest whatsoever in the final
disposition of this matter.



THERESA E. DUBOIS, RPR
New Mexico CCR #29
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