

**EIB 21-27**

# Day 5 Hearing Summary

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**In the Matter of Proposed New Regulation,  
20.2.50 NMAC - Oil and Gas Sector –  
Ozone Precursor Pollutants**

## Day 5 Highlights

- Section 7/Definitions: WildEarth Guardians (WEG) and other parties testified regarding the definition of potential to emit (PTE), and WEG's proposal that the definition include construction- and drilling-related emissions in PTE. The NMED and industry witnesses opposed the requested change.
- Section 112/General Provisions: Multiple industry witnesses presented testimony supporting the removal of the Equipment Monitoring Tag (EMT) provisions of the proposed rule (which the NMED did in the September 16 draft of the rule), requested additional time to comply with the rule's compliance record database requirement, and sought clarification of the proposed annual compliance certification requirement.
- GCA witness Mark Copeland testified in support of removing the EMT requirement, and in opposition to the semi-annual deviation reporting requirement suggested by WEG. NMED witnesses and other industry witnesses also presented testimony opposing WEG's request.
- The WEG witness presented testimony in support of a ban on issuing permits to new oil and gas sources that would contribute to ozone concentrations in excess of 95% of the federal ozone standard, in addition to the aforementioned semi-annual deviation reporting requirement. Under withering cross-examination from GCA attorney Christina Sheehan and other counsel, the EDF witness conceded that deviations that result in excess emissions are already reportable under other parts of the New Mexico rules, and that minor source deviation reporting is not common in other jurisdictions.
- The hearing did not reach the Section 113/Engines section.

## Looking Ahead to Day 6

- Expected topics: the regulation of engines under Section 113.
- The GCA will have four witnesses present testimony relating to Section 113.

## Other Important Notes

- We expect the hearing to address the topics of pneumatic controllers (Section 122) on Tuesday and fugitive emissions monitoring (Section 116) on Wednesday.
- In an attempt to streamline the hearing and identify disputed issues, the parties on Friday discussed circulating lists that identified the areas where the parties sought further changes to the NMED's September 16 draft of the proposed rule. A copy of the GCA's list is attached. The GCA's list is short, because the NMED's September 16 draft of the rule largely addressed the GCA's concerns, with the exception of the pneumatic controller replacement program under Section 122. (The GCA is deferring to NMOGA, which is pursuing a different approach to relief under the pneumatic controller program, and has informed the parties that it is no longer seeking its original requested changes to the pneumatics program.)
- **The legal team thanks the hard work and persuasive testimony of the GCA's team of technical witnesses, which helped secure relief from the NMED on the GCA's key concerns with the proposed rule, including engine NOx emission standards and maintenance requirements.**