

**STATE OF NEW MEXICO
ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION COMMISSION**

**APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION, THROUGH
THE ENVIRONMENTAL BUREAU CHIEF,
FOR AN ORDER REQUIRING MARALO, LLC
TO REMEDIATE HYDROCARBON CONTAMINATION
AT AN ABANDONED WELL AND BATTERY SITE;
(Jay Anthony Complaint) LEA COUNTY, NEW MEXICO**

**CASE 13142
DE NOVO**

**MARALO, LLC'S
PRE-HEARING STATEMENT
FOR THE COMMISSION**

Maralo, LLC as required by the New Mexico Oil Conservation Commission, submits this pre-hearing statement.

APPEARANCES OF THE PARTIES

APPLICANT

Oil Conservation Division

ATTORNEY

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NMOCD

OPPONENT

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OTHERS

Jay Anthony

ATTORNEY

David Sandoval, Esq.

STATEMENT OF THE CASE

(1) This case concerns an abandoned oil and gas production facility located at the former site of the Humble State Well No. 3 from which the equipment was removed, and the site remediated in the 1980s, but for which the Division's Environmental Bureau Chief ("EBC") contends was not remediated in accordance with current Division rules and guidelines. **See EBC's response to Maralo motion to dismiss.**

THE DIVISION'S POSITION

(2) The Division's Environmental Bureau Chief ("EBC"), as the applicant, seeking an order requiring Maralo, LLC ("Maralo") to remediate alleged soil contamination based upon its claim that Maralo is the current operator of a lease covering the NE/4NE/4 of Section 36, T25S, R36E, Lea County New Mexico and violated Division Rules 310 and 313 and therefore is the responsible person to remediate low risk level soil contamination at the tank battery facility at the former Humble State Well No. 3 site located within Unit A this section

MARALO'S POSITION

(3) Maralo claims that:

- a. Ralph Lowe drilled and operated these 3 wells and the subject tank battery until his death in 1965;
- b. After he died, four trustees managed his interest. After several years, Mary Ralph Lowe and her mother Erma filed suit against the trustees and eventually acquired control over the assets, which became Maralo, Inc.;

- c. Maralo, Inc. became the operator on June 7, 1973 and until April 1994 when it ceased being operator and assigned its interest to Hal J. Rasmussen who became operator;
- d. Hal J. Rasmussen was the operator until December 1995 when Southwest Royalties became operator;
- e. while Maralo, Inc. was the operator of the Humble State Well No. 3 it complied with Division Rules 310 and 313;
- f. Maralo, Inc. is not the current operator of this facility and does not have any working interest ownership in this lease, except for certain deep rights not relevant to this case, and
- g. Maralo, Inc. not a responsible person because it ceased all operations on the Humble State Well No. 3 site in 1988 and plugged the well and abandoned the site all in accordance with the Division rules applicable at the time.

JAY ANTHONY

- (4) Jay Anthony is the owner of the surface within Unit A of this section and appeared in support of the applicant. This case was filed by the EBC based upon a complaint filed on October 6, 1999 by Mr. Anthony.

ELEMENTS OF PROOF

- (5) This case is the first time such a case has come to hearing before the Commission and constitutes a "precedent" that requires the Commission to adopt "elements of Proof" necessary to support finding Maralo is the "responsible person." (See Transcript page 76 lines 9-13)
- (6) Before the Examiner, the EBC adopted the following "Elements of Proof" that:
 - a. there is soil contamination at the former tank battery facility for the abandoned Humble State Well No 3, located in Unit A of Section 36, T25S, R36E, Lea County, New Mexico; (See Transcript page 47, lines 5-9)
 - b. the levels of soil contamination are in excess of current applicable standards; (See Transcript page 28, lines 22-24)
 - c. the soil contamination was caused by placing "tank bottom" in the pits associated to the Humble State Well No. 3; (See Transcript page 36, lines 24-25 and page 37, lines 1-10)

- d. the soil contamination constitutes a violation of Division Rule 313; **(See Transcript page 50, lines 19-23)**
- e. Maralo is the current or most recent operator of the former tank battery associated with the Humble State Well No 3. in Unit A of this section; **(See Transcript page 40, lines 4-17)**
- f. Maralo is not the “responsible person” for the soil contamination and should be required to remediate the contamination. **(See Transcript page 66, lines 17-19)**

THE EBC EVIDENCE

(7) It is expected that the EBC will submitted evidence demonstrating that:

- a. there are the remains of 3 unlined surface pits and 2 tank battery pits (only one pit is associated with the Humble State Well No. 3) within Unit A; **(See located plat attached to EBC Exhibit 3)**
- b. the tank battery pit associated with the Humble State Well No. 3 appears to have been used for containment of emulsions, basic sediments and tank bottoms (collectively “tank bottoms”); **(See Transcript page 36, lines 24-25 and page 37, lines 1-10)**
- c. it is not now possible to determine the use of the 3 unlined surface pits or the volumes of produced water and associated hydrocarbons disposed into these pits; **(See Transcript page 38, lines 15-18; page 14, lines 17-19 and page 43, lines 14-21)**
- d. it is not now possible to determine when the 2 tank batteries were used; **(See Transcript page 38, lines 23-25 and page 43, lines 14-21)**
- e. Laboratory analyses of soil samples from the various pits contain up to 25,400 parts per million (ppm) of total petroleum hydrocarbons (TPH); up to 0.179 ppm of benzene; up to 0.432 ppm of ethylbenzene, and up to 0.921 ppm of xylene evidencing low risk level of shallow soil contamination; **(See EBC Exhibit 3 & 4 and Transcript page 21, lines 21-24; page 22, lines 19-21; page 62, lines 5-25 and page 63, lines 1-18)**
- f. There is no evidence that the abandoned water well located within Unit A has been contaminated by hydrocarbons; **(See EBC Exhibit 7 and Transcript page 13, lines 5-10)**

MARLO'S EVIDENCE

(8) Maralo will submit evidence by direct testimony and cross-examination demonstrating that:

- a. On July 23, 1945, Ralph Lowe drilled the Humble State Well No. 3 at a location 660 feet FNL and 660 feet FEL (Unit A) of Section 3. **(See EBC Exhibit 11)**
- b. Ralph Lowe installed 3 unlined surface pits that, in accordance with the custom and practice of the industry, were used for surface disposal of produced water and associated hydrocarbons; **(See Transcript page 92, lines 11-17 and page 102, lines 15-21)**
- c. Ralph Lowe installed 2 tank batteries associated with the Humble State Well No.3. Maralo acquired those when it became operator in 1974. Ralph Lowe and Maralo both properly disposed of tank bottoms associated with the Humble State Well No. 3 tank batteries. **(See Transcript page 93, lines 10-25; page 94, lines 1-25; page 95, lines 1-7 and page 104, lines 15-23)**
- d. It is not possible to produce oil without also producing associated water. **(See Transcript page 55, lines 1-20)**
- e. On May 1, 1968, Division issued Memorandum 2-68 advising all operators that no exceptions would be granted to Order R-3221 that prohibited any further disposal of produced water into unlined earthen pits after January 1, 1969. **(See Division Memorandum 2-68)**
- f. In 1968, in accordance with Division Order R-3336, dated November 9, 1968, Ralph Lowe converted the Humble State Well No 1, located 1980 feet FNL and 1980 feet FEL (Unit G) of Section 3 for the disposal of produced water from the Humble State Well No. 3 and the 3 unlined surface pits were no longer used; **(See Transcript page 93, lines 6-12)**
- g. Despite the fact that it is not possible to determine if the soil contamination was caused by tank overflow rather than improper tank bottom disposal, the EBC has assumed that the cause was improper tank bottom disposal. **(See Transcript page 65, lines 1-16)**
- h. On April 19, 1974, Maralo, Inc. became the operator of the Humble State Well No 3; **(See Transcript page 40, lines 16-17)**

- i. From 1974, Maralo continued to use one of the 2 tank batteries to temporarily store produced oil from the Humble State Well No. 3 until July 7, 1982 when no further fluids were placed in this tank; **(See Transcript page 91, lines 14-22; page 93, lines 22-25; page 94, lines 1-25; also see OCD well file)**
- j. On October 15, 1988, Maralo plugged the Humble State Well No. 3, and cleaned the site all of which was approved by the Division. **(See Transcript page 42, lines 1-5, EBC Exhibit 11)**
- k. On February 2, 1994, the tank battery was abandoned, the equipment removed and the sites disked all in accordance with the custom and practice of the industry at this time; **(See OCD well file)**
- l. On April 1, 1994, Hal J. Rasmussen became the Division designated operator replacing Maralo; **(See OCD well File)**
- m. It is not possible to produce oil and avoid the production of emulsions and basic sediments. **See Transcript page 53, lines 18-22; page 60, lines 10-13 and page 61, lines 1-25)**
- n. The EBC admits that there is no evidence that Maralo ever used these surface disposal pits. **(See Transcript page 66, lines 1-3; page 79, lines 10-13)**
- o. Despite evidence that the prior operator used these surface pits and the lack of evidence that Maralo did, it is the EBC's policy to "go after the current operator". **(See Transcript page 66, lines 4-25)**
- p. At all times during Maralo's operations of the tank battery associated with the Humble State Well No. 3, Maralo operated in such a manner as would reduce as much as practicable the formation of emulsion and basic sediments "Tank Bottoms" **(See Transcript page 93, lines 13-25 and page 94, lines 1-9)**
- q. At no time did Maralo store or retain oil in earthen reservoir and in open receptacles; **(See Transcript page 92, lines 13-17, page 95, lines 4-7)**

PROPOSED COMMISSION FINDINGS

(9) Maralo proposes that the Commission find that:

APPLICABLE RULES:

a. Division Rule 310 provided that:

“Oil shall not be stored or retained in earthen reservoirs, or in open receptacles.”

b. Division Rule 313 provided that:

“Wells producing oil shall be operated in such a manner as will reduce as much as practicable the formation of emulsions and basic sediments. These substances and tank bottoms shall not be allowed to pollute fresh waters or caused surface damage.” (See Transcript page 53, lines 2-17)

c. The EBC is attempting in this case to apply its “clean-up” guidelines adopted by the Division on 1993. (See Transcript page 23, line 5-6)

d. At all relevant times, the Division did not have rules or regulations concerned the registration, the installation or closer of tank batteries and their associated pits; (See Transcript page 39, lines 6-12)

BACKGROUND

e. It is no longer possible to determine when or how this material was placed in these pits; (See Transcript page 43, lines 8-13)

f. A review of Division files fails to disclose the exact location of pits and tank batteries; (See Transcript page 39, lines 13-24 and page 68, lines 14-16)

g. The EBC is no longer able to determine who caused this contamination. (See Transcript page 69, lines 1-3)

h. On October 28, 1988 the Division approved the plugging and abandoned of the Humble State Well No 3 and approval the site “clean-up”. (See Transcript page 42, lines 2-4)

i. Rule 310 only precludes oil from being stored or retained in earthen pits but does not preclude the occurrence of hydrocarbons in this pits. The EBC appears to have abandoned its claim that Rule 310 was violated. (See Transcript page 50, lines 19-23)

- j. Rule 313 only requires the operator of the facility to reduce as much as practicable the presence of "tank bottom". (See Transcript page 56 & 57)
- k. At all times relevant to this matter, Maralo operated this facility in accordance with Division's Rules 310 and 313 and its operations were consistent with industry practices accepted by the Division during this period and properly disposed of "tank bottoms" associated with the Humble State Well No. 3 tank batteries. (See Transcript page 54, lines 4-25)

CHLORIDES:

- (10) The EBC contends that the presence of hydrocarbons and the absence significant levels of chlorides in 3 unlined surface pits indicated that oil was stored in these pits rather than produced water. (See Transcript page 37, lines 8-9 and lines 18-22) but admitted that there is no evidence that Maralo ever placed any oil in any of these pits for any reason. (See Transcript page 79, lines 10-13)
- (11) Maralo contends that these pits were only used for disposal of produced water that by necessity contains some hydrocarbons. (See Transcript page 93 lines 13-25)
- (12) Maralo contends that produced water from the Humble State Well No. 3 had a lower amount of chlorides than usual produced water. (See Transcript page 92 lines 15-25 and Page 93, lines 1-5)
- (13) The Commission should find that EBC has failed to sustain its "burden of proof" by failing to introduce substantial evidence to prove that Maralo did not comply with Division Rule 310.

TANK BOTTOMS:

- (14) The EBC speculates that hydrocarbons levels tested in the 2 pits associated with the tank batteries are the result of the improper dismissal of tank bottoms in violation of Division Rule 313. (See Transcript page 15, lines 8-14 and page 47, lines 3-9) but cannot tell when this was done. (See Transcript page 38, lines 23-25, page 36, lines 24-25 and page 37, lines 1-10)

- (15) Maralo contends that the EBC failed to demonstrate that the levels of hydrocarbons tested in the 2 tank battery pits are in excess of the level that would result from the customary industry practices for the use of these tanks. **(See Transcript page 76-78)**
- (16) The Commission should find that EBC has failed to sustain its “burden of proof” by failing to introduce substantial evidence to prove that Maralo did not comply with Division Rule 313.

RESPONSIBLE PERSON:

- (17) The EBC contends that Maralo is the “responsible person” and should be ordered to remediate this soil contamination. **(See Transcript page 42, lines 15-18)**
- (18) Maralo contends that it operated the Humble State Well No. 3 in accordance with Division rule then applicable and therefore is not the operator of the facility responsible for remediation of any soil contamination.
- (19) The Commission vacate Division Order R-12152 and should find that:
- a. The EBC’s attempt to hold the “current operator of the lease” responsible for any and all alleged contamination that has occurred at anytime is unlawful.
 - b. Maralo ceased all operations on the Humble State Site No. 3, Unit A, Section 36, T25S, R36E, Lea County, New Mexico, in 1988, plugged the well and abandoned the site all in accordance with the Division’s rules. Prior to abandonment, Maralo operated the site, including all open receptacles, in accordance with all New Mexico laws and administrative regulations. The Division initiated this proceeding in 2003, fifteen years after Maralo abandoned the site, contending Maralo violated the **New Mexico Administrative Code Title 19 Section 15.5.310A (2000)** (“Rule 313”) and **Section 15.5.310A (2000)** (“Rule 310A”) based upon conduct that occurred as far back as the 40s.
 - c. the EBC is attempting to require Maralo to clean this alleged soil contamination in accordance with the Division’s surface impoundment closure guideline adopted by the Division after Maralo abandoned this site.

- d. The Commission should deny the EBC's application because it is an impermissible attempt to apply its rules retroactively because the Division is, in effect, attempting to punished Maralo for conduct that was legal and in accordance with all applicable Division rules and regulations at the time it was committed. This violates Maralo's constitutional rights to due process.
- e. Maralo is not a responsible person for the soil contamination at this facility and should not be required to remediate the soil within Unit A of this section.

POSSIBLE MARALO'S WITNESSES

EST. TIME

Boyd Chesser (current operations manager for Maralo)	30 minutes
Rob Elam (Environmental consultant)	30 minutes
William B. Hunt (retired operations manager for Maralo)	30 minutes
Joe Pulido (Land and business records)	15 minutes

PROCEDURAL MATTERS

None



W. Thomas Kellahin

CERTIFICATE OF SERVICE

I, W. Thomas Kellahin, hereby certified that on November 5, 2004, I served a true and correct copy of the foregoing pleading to all counsel of record by hand delivery.



W. Thomas Kellahin