

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

IN THE MATTER OF THE HEARING CALLED BY)
THE OIL CONSERVATION DIVISION FOR THE)
PURPOSE OF CONSIDERING:)

CASE NO. 13,479

APPLICATION OF DOMINION EXPLORATION &)
PRODUCTION, INC., FOR AN EXEMPTION TO)
THE PROVISIONS OF DIVISION RULE 310.A,)
CHAVES, EDDY AND LEA COUNTIES,)
NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, JR., Hearing Examiner

May 19th, 2005

Santa Fe, New Mexico

2005 JUN 2 PM 2 51

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM V. JONES, JR., Hearing Examiner, on Thursday, May 19th, 2005, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

I N D E X

May 19th, 2005
 Examiner Hearing
 CASE NO. 13,479

	PAGE
APPEARANCES	3
APPLICANT'S WITNESSES:	
<u>WILLIAM E. SIMER</u> (Practical Oilman)	
Direct Examination by Mr. Carr	4
Examination by Examiner Jones	18
REPORTER'S CERTIFICATE	23

* * *

E X H I B I T S

Applicant's	Identified	Admitted
Exhibit 1	7	18
Exhibit 2	9	18
Exhibit 3	9	18
Exhibit 4	12	18
Exhibit 5	14	18
Exhibit 6	14	18
Exhibit 7	16	18
Exhibit 8	16	18
Exhibit 9	16	18
Exhibit 10	17	18

* * *

A P P E A R A N C E S

FOR THE DIVISION:

GAIL MacQUESTEN
Deputy General Counsel
Energy, Minerals and Natural Resources Department
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

FOR THE APPLICANT:

HOLLAND & HART, L.L.P., and CAMPBELL & CARR
110 N. Guadalupe, Suite 1
P.O. Box 2208
Santa Fe, New Mexico 87504-2208
By: WILLIAM F. CARR

* * *

1 WHEREUPON, the following proceedings were had at
2 8:22 a.m.:

3 EXAMINER JONES: And let's call Case 13,479,
4 amended Application of Dominion Exploration & Production,
5 Inc., for an exemption to the provisions of Division Rule
6 310.A, Chaves, Eddy and Lea Counties, New Mexico.

7 Call for appearances.

8 MR. CARR: May it please the Examiner, my name is
9 William F. Carr with the Santa Fe office of Holland and
10 Hart, L.L.P. We represent Dominion in this matter, and I
11 have one witness.

12 EXAMINER JONES: Any other appearances?
13 Will the witness please stand to be sworn?

14 (Thereupon, the witness was sworn.)

15 WILLIAM E. SIMER,
16 the witness herein, after having been first duly sworn upon
17 his oath, was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CARR:

20 Q. Would you state your full name for the record,
21 please?

22 A. William E. Simer.

23 Q. Mr. Simer, where do you reside?

24 A. Carlsbad, New Mexico.

25 Q. By whom are you employed?

1 A. Dominion Exploration & Production.

2 Q. And what is your current positions with Dominion?

3 A. District operations manager.

4 Q. Have you previously testified before the New
5 Mexico Oil Conservation Division?

6 A. No, sir.

7 Q. Would you review your work experience for the
8 Examiner, please?

9 A. I started my oilfield career in 1967 with a
10 company called De Kalb Energy. I worked in various roles
11 from roustabout to foreman. 1992, a company by the name of
12 Louis Dreyfus bought De Kalb. I worked for them as a
13 foreman and manager until three years ago when Dominion
14 bought out Louis Dreyfus. I've been with the same company
15 with three different owners for 38 years.

16 Q. And you are familiar with the Application
17 filed --

18 A. Yes, sir.

19 Q. -- in this case?

20 A. Yes, sir.

21 Q. You're also familiar with the status of the lands
22 in the area that are the subject of this Application?

23 A. Yes, I've worked all the areas.

24 Q. And you're familiar with the individual
25 facilities that are the subject of today's hearing?

1 A. Yes, sir.

2 MR. CARR: We tender Mr. Simer as practical
3 oilman.

4 EXAMINER JONES: Mr. Simer is qualified as a
5 practical oilman.

6 I remember when Dreyfus bought out De Kalb, and
7 the guys in the office in Denver saw them about a week
8 before they got bought out.

9 MR. CARR: One of those crises.

10 EXAMINER JONES: Yeah, they were happy before
11 they got bought out.

12 Q. (By Mr. Carr) Mr. Simer, would you review for
13 the Examiner what it is that Dominion seeks with this
14 Application?

15 A. We have several wells in -- throughout New Mexico
16 that our pit size was built to EPA standard sizes, and in
17 doing so we found out at a later date that rather than the
18 State requiring the 100-percent capacity that EPA did, the
19 State of New Mexico was requiring 130 percent, which left
20 some of our pit sizes -- or not pit sizes, but our
21 firewalls too small to hold 130 percent of the capacity of
22 the largest vessel in that battery. So we -- at that time
23 we needed to address it.

24 Q. At this time we have 45 facilities in the
25 southeastern part of New Mexico for which we seek an

1 exemption; is that correct?

2 A. Yes, sir.

3 Q. Dominion operates numerous facilities in this
4 state; is that correct?

5 A. Yes, sir.

6 Q. When did you discover that you actually had a
7 problem with these firewalls?

8 A. In an internal audit in 2002, at the end of 2002.

9 Q. And because of that, what did you do? Did you
10 contact the Oil Conservation Division?

11 A. Yes.

12 Q. And in fact, you self-reported this problem --

13 A. Yes.

14 Q. -- to the Division?

15 A. Yes, sir.

16 Q. Would you identify for the Examiner what we have
17 marked as our Exhibit Number 1?

18 A. I'm not sure which one is Number 1.

19 Q. You have a set there marked down at the bottom.
20 Also, there's another set beside you there too. That's
21 correct.

22 A. Okay. Exhibit Number 1 is the tanks, oil tanks
23 and firewalls and tank identifications.

24 Q. And that's a copy of Rule 310?

25 A. Yes, sir.

1 Q. That's the Rule we're seeking an exception to?

2 A. Yes.

3 Q. This Rule provides that firewalls are not
4 required except in certain circumstances, one of them being
5 within the corporate limits of an city. Do any of our
6 facilities meet that -- fall in that requirement?

7 A. No, sir.

8 Q. It also provides that these firewalls shall be
9 maintained if the tank battery is, in fact, closer than 150
10 feet to a producing well; is that the reason these --

11 A. Yes.

12 Q. -- firewalls were constructed?

13 A. Yes, most of our tank batteries are on the same
14 location as the wells.

15 Q. And our concern is that the OCD requires a
16 capacity one-third larger than the total capacity of all
17 tanks?

18 A. Yes, sir.

19 Q. And what we have done, in fact, is comply with
20 EPA requirements that provide that they will contain the
21 maximum volume that can be stored in the largest tank; is
22 that right?

23 A. Yes.

24 Q. Plus displacement for other tanks and extra
25 provision --

1 A. And rainwater.

2 Q. -- for rainwater?

3 A. Yes.

4 Q. Okay. Is Exhibit Number 2 a copy of the federal
5 regulation that Dominion has complied with in constructing
6 these facilities?

7 A. Yes, sir.

8 Q. Let's go to what has been marked Dominion Exhibit
9 Number 3.

10 A. Okay.

11 Q. It's marked in the upper corner. Do you have
12 that before you?

13 A. I see a Number 4.

14 Q. Number 3.

15 A. I must have got them all mixed up. Okay.

16 Q. Is Exhibit Number 3 a list of all of the
17 facilities in New Mexico around which Dominion has
18 constructed a firewall?

19 A. Yes, sir.

20 Q. If we look at this list, there are a total of 84
21 facilities; is that right?

22 A. Yes, sir.

23 Q. The first column gives the name of the facility.

24 A. Yes.

25 Q. The next is the county?

1 A. Yes, sir.

2 Q. After that, we have what is the "SPCC Plan Dike
3 Size". What does that mean?

4 A. SPCC Plan is our spill prevention and counter-
5 control measures.

6 Q. Now, the next column talks about dike capacity.
7 What are the numbers set forth in those columns?

8 A. The first number is the capacity of the tanks,
9 and then the second one is the EPA requirements to withhold
10 that amount.

11 Q. So in the first column we have the capacity of
12 the area that's surrounded by the firewalls?

13 A. Right.

14 Q. It's broken into two sub-parts, that column under
15 the word "Effective". The first have asterisks after the
16 numbers. What do those asterisk indicate?

17 A. I'm not really sure.

18 Q. Go to the bottom of the second page, Mr. Simer.
19 Are those the facilities that comply with --

20 A. Yes.

21 Q. -- this Rule?

22 A. Yes, that's right. It fits New Mexico's --
23 that's the few that we had that actually were big enough
24 for New Mexico.

25 Q. So each of those facilities is not included in

1 this Application; is that right?

2 A. Right, yes.

3 Q. If we go over a couple of columns, there's one at
4 the top that says near water or property?

5 A. Yes, sir.

6 Q. Those that indicate they are near water or
7 property, those are not included in the Application either;
8 is that right?

9 A. No, they have already been reconstructed to --
10 large enough for the State's requirement of 130 percent.

11 Q. If we go to the bottom of page 2, we have a
12 number of facilities located in Rio Arriba County. Has
13 Dominion brought all of those facilities into compliance
14 with Rule 310?

15 A. Yes, we did, and the reason we did that was
16 because these were all located in or near a wash up there
17 called Largo Canyon Wash.

18 Q. And -- but all of those are now in compliance?

19 A. Yes.

20 Q. If we go to the first page, item number 31 is the
21 facility at the Malaga State 1 Tank Battery. Do you see
22 that one?

23 A. Yes, sir.

24 Q. That one has not been included in this case, but
25 if you look at this exhibit it doesn't indicate that it is

1 in compliance with the New Mexico Rule. Has Dominion
2 worked on that facility?

3 A. Yes, sir, we expanded the firewall on it to fit
4 the State Rule.

5 Q. So what we're really looking at now is 45
6 facilities where the dike capacity exceeds EPA requirements
7 but is less than the State requirement?

8 A. Yes, sir.

9 Q. When this was discovered, did Dominion contact
10 Roger Anderson here at the OCD?

11 A. Yes, sir.

12 Q. And what did Mr. Anderson do?

13 A. He informed us that he personally couldn't make
14 an exception for it, but if we could -- if we wanted to go
15 to court or to a hearing, we might be able to convince the
16 State Oil Commission to let us keep the sizes that we have
17 now.

18 Q. Okay. And so that was the reason this
19 Application --

20 A. Yes.

21 Q. -- was filed?

22 Is the next exhibit, Exhibit Number 4, a list of
23 the 45 facilities that are the subject of today's hearing?

24 A. Yes, sir.

25 Q. And it shows the location of each of those by

1 unit letter, section, township and range --

2 A. Yes.

3 Q. -- does it not?

4 A. -- yes.

5 Q. Could you explain to the Examiner what is
6 required if you go out and were to attempt to bring each of
7 these facilities into compliance?

8 A. What we have to do is go out and first of all
9 take the fence down. Most of these wells have chain-link
10 fence around them. We'd have to take the fence down, pull
11 the posts up. Of course in doing so, they're cemented in,
12 we usually lose those posts. But we have to buy additional
13 fence and -- to cover whatever -- to however we're going to
14 make it. And it takes more land, which the landowners
15 don't like, but...

16 And then move the dikes, re-gravel them and rake
17 them in, rebuild the fence. And it's usually a two-day
18 process with a roustabout gang and a backhoe, and expense
19 will usually -- you know, anywhere from around \$2000 apiece
20 to do that.

21 Q. When you construct these facilities and fence
22 them, you're actually doing more than is required by the
23 OCD by putting up the fence and graveling the dike and --

24 A. Yes, sir.

25 Q. -- that you do?

1 A. Yes, sir.

2 Q. Is Exhibit Number 5 a number of schematic
3 drawings that show the configuration of each of the
4 facilities that are the subject of today's hearing?

5 A. Yes, sir.

6 Q. And it shows the tank capacity at each of these
7 sites?

8 A. Yes.

9 Q. The heights and dimension of the dikes are also
10 indicated --

11 A. Yes, sir.

12 Q. -- are they not?

13 And the effective capacity on each of these dikes
14 would be shown on Exhibit 3 for each of these facilities;
15 is that correct?

16 A. Yes, sir.

17 Q. Is Exhibit Number 6 a series of topographic maps
18 that show actually the terrain for each of the facilities?

19 A. Yes, sir.

20 Q. So the Examiner could take this -- and the first
21 ones, for example, are the first ones on our list on
22 Exhibit 4, the State -- or, I'm sorry, the R&S State Number
23 1 tank battery and the R&S Federal tank battery?

24 A. Yes, sir.

25 Q. And it shows you generally the nature of the

1 terrain in the area of each of these facilities; is that
2 right?

3 A. Yes.

4 Q. The only facilities for which Dominion is seeking
5 an exception to 310 are facilities in remote areas that are
6 not in proximity to any of the structures covered by Rule
7 310 or in proximity to any watercourse; is that correct?

8 A. Yes, sir.

9 Q. Would continuing operations as you are now
10 conducting them pose a threat to any freshwater supplies?

11 A. No, sir.

12 Q. Are they located in proximity to any source of
13 groundwater or any groundwater?

14 A. No. No, anything that's anywhere remotely close
15 to groundwater or a stream or even a wash where -- you
16 know, where floodwaters might go through, we've already
17 made those bigger, you know, to state requirements.

18 Q. How often do you monitor each of these
19 facilities?

20 A. Every day.

21 Q. And so if anything started to leak, within 24
22 hours you would know about it?

23 A. Oh, yes.

24 Q. And you're prepared to undertake any kind of
25 remedial work that would --

1 A. Oh, yes --

2 Q. -- be required?

3 A. -- yes.

4 Q. Now, notice of this Application has been
5 provided, has it not?

6 A. Yes, sir.

7 MR. CARR: Mr. Examiner, there's nothing in
8 Division Rules that provides what sort of notice has to be
9 provided for an application of this nature. We contacted
10 the Division and requested guidance on what we should do,
11 and enclosed as our Exhibit Number 7 is a letter from the
12 Division directing us to provide notice to the surface
13 owner at each of the facilities.

14 Q. (By Mr. Carr) And Mr. Simer, is our Exhibit
15 Number 8 a table that identifies the surface owners for
16 each of these facilities?

17 A. Yes.

18 Q. There is one on the second page of this exhibit
19 that's just a dark block, it doesn't show the surface
20 owner. Have we determined who the surface owner is at that
21 particular --

22 A. Yes, it's Bureau of Land Management.

23 Q. And they were notified of today's hearing?

24 A. Yes, sir.

25 Q. Is our Exhibit Number 9 an affidavit confirming

1 that this notice has been provided as directed by the OCD?

2 A. Yes, sir.

3 Q. And Exhibit Number 10 consists of a number of
4 affidavits of publications in newspapers in Lea, Chaves and
5 Eddy Counties providing notice of the hearing --

6 A. Yes, sir.

7 Q. -- is that right?

8 Have you been contacted by any landowner --

9 A. I have one landowner from Lea County, Ms. Faye
10 Klein, called me, and she didn't have a problem with any of
11 it.

12 Q. That's the only contact you've received?

13 A. Yes, sir.

14 Q. In our opinion, will continuing these operations
15 as they are currently being conducted, pose any threat or
16 pose any danger to any property or any source of
17 groundwater?

18 A. No, sir.

19 Q. In your opinion, will approval of this
20 Application result in continued efficient operations of
21 these facilities?

22 A. Yes, sir.

23 Q. Approval of the Application would also otherwise
24 be in the best interest of conservation, the prevention of
25 waste and the protection of correlative rights?

1 A. Yes, sir.

2 Q. Were Exhibits 1 through 10 either prepared by
3 you, or have you reviewed them and can you testify to their
4 accuracy?

5 A. Yes, sir, I can.

6 MR. CARR: Mr. Examiner, at this time we'd move
7 the admission into evidence of Dominion Exhibits 1 through
8 10.

9 EXAMINER JONES: Exhibits 1 through 10 will be
10 admitted into evidence.

11 MR. CARR: And that concludes my direct
12 examination of Mr. Simer.

13 EXAMINATION

14 BY EXAMINER JONES:

15 Q. Okay, Mr. Simer, thanks very much for coming
16 forward with this, and also with going to all the effort to
17 raise the dikes, at least the ones that pose a threat to
18 groundwater.

19 Now, when you said a threat to water, you meant
20 groundwater and surface water?

21 A. Yes, sir.

22 EXAMINER JONES: Okay. And also, Mr. Carr,
23 thanks for bringing an operations manager up here, because
24 he's -- I know from experience he's the one responsible for
25 all this.

1 MR. CARR: Mr. Simer is the one responsible.

2 EXAMINER JONES: Yeah, you brought the right
3 person.

4 Before I forget, can someone give us an
5 electronic version of all of these?

6 MR. CARR: Yes, we can.

7 EXAMINER JONES: That way we don't have to type
8 it in again.

9 Q. (By Examiner Jones) Mr. Simer, how often do you
10 get spills that even -- out of your batteries or --

11 A. Not very often, maybe one or two a year. And
12 spills, I'm including small leaks, whether a valve is
13 leaking at the front of a tank or -- Our biggest problem at
14 -- is lightning, especially in southeast New Mexico. But
15 it usually doesn't hit oil tanks, it usually hits water
16 tanks because they're fiberglass. But we haven't had to
17 get outside of our firewalls.

18 Q. How old is your tanks?

19 A. Oh, most of them in southeast New Mexico are
20 pretty new, 10, 15 years.

21 Q. You don't have some of the older tanks that --

22 A. No.

23 Q. -- people had to keep patching on them?

24 A. No, no. If we have a tank that has to be
25 patched, we usually replace it.

1 Q. Oh. And --

2 A. At the price of crude, it doesn't take -- you
3 don't have to lose much crude to justify replacing a tank.

4 Q. Okay. Did -- I really wanted to ask you how you
5 think your operations compare to other operators out there.

6 A. We are -- I'm glad you asked that. I think as a
7 rule we are better than 90 percent of them. There's no one
8 that operates any better than we do, not in New Mexico.

9 MR. CARR: In that regard, Mr. Simer, you have an
10 internal audit group, do you not?

11 THE WITNESS: Yes, sir, we have a very stringent
12 internal audit group out of Virginia that -- when they show
13 up, we all -- we're all in trouble just from showing up.
14 And so -- And when they get through, we have months of work
15 and lots of times paperwork to do that -- They are very
16 good at what they do.

17 Q. (By Examiner Jones) And what are they looking
18 for, audit group?

19 A. Any -- Well, they're looking for the usual things
20 that are required by state and federal law, plus their own
21 rules are a little stiffer than -- and they go through our
22 records

23 Not only do they do field inspections, then they
24 go back and start pulling well files and making sure we
25 have everything up to snuff, and so lots of times we spend

1 a good amount of time after they leave trying to get in
 2 compliance with what they've found, and it's usually some
 3 little paperwork form that we haven't filed or this or
 4 that, and some of the things they -- well, they're just
 5 tough, they really are.

6 Q. What about cost conferences? Do you have people
 7 above you that come out twice a year or once a year and go
 8 over all your leases and how much you're spending on all
 9 your leases and hold you responsible for that?

10 A. We do that on a monthly basis --

11 Q. Okay.

12 A. -- and our cost is run daily at any given day of
 13 the month, my supervisor, which is the general manager in
 14 Oklahoma City, knows exactly what we spent to that date for
 15 that month.

16 Q. Did he tell you anything about spending money on
 17 these berms?

18 A. No. No, when it comes to safety and
 19 environmental questions, cost is not an object of concern,
 20 as far as we're concerned. And when we approached them to
 21 do this, we convinced them that, you know, what we had was
 22 good and that we really didn't feel like we needed to make
 23 the bigger dikes.

24 But there's been no discussion on the money we
 25 have spent to -- and we've spent a lot of money going from

STEVEN T. BRENNER, CCR
 (505) 989-9317

20
 21
 22
 23
 24
 25

I hereby certify that the foregoing is
 a complete record of the proceedings in
 the Examiner hearing of Case No. _____
 heard by me on _____

_____, Examiner
 Oil Conservation Division

STEVEN T. BRENNER, CCR
 (505) 989-9317

1 the EPA standards to New Mexico standards on the dikes that
2 we have re-done.

3 Q. Does API have any standards on this, or is it
4 just EPA?

5 A. No, I don't think API has a standard on it.

6 EXAMINER JONES: Okay. Gail, do you have any
7 questions?

8 MS. MacQUESTEN: No questions, thank you.

9 EXAMINER JONES: Okay, thanks very much --

10 THE WITNESS: Thank you.

11 MR. CARR: That concludes our presentation in
12 this case.

13 EXAMINER JONES: -- Mr. Carr, Mr. Simer.

14 With that, we'll take Case 13,479 under
15 advisement.

16 (Thereupon, these proceedings were concluded at
17 8:45 a.m.)

18 * * *

19
20 I hereby certify that the foregoing is
21 a complete record of the proceedings in
22 the Examiner hearing of Case No. _____
23 heard by me on _____

24 _____ Examiner
25 Oil Conservation Division

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) SS.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL May 19th, 2005.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006