

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:)
)
APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION FOR A COMPLIANCE)
ORDER AGAINST YESO ENERGY, INC.)
)

CASE NO. 13,921

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Technical Examiner
DAVID K. BROOKS, Jr., Legal Examiner

July 12th, date, 2007
Santa Fe, New Mexico

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This matter came on for hearing before the New Mexico Oil Conservation Division, RICHARD EZEANYIM, Technical Examiner, DAVID K. BROOKS, Jr., Legal Examiner, on Thursday, July 12th, 2007, 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.

* * *

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July 12th, 2007
Examiner Hearing
CASE NO. 13,921

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

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FOR THE APPLICANT:

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

* * *

1 WHEREUPON, the following proceedings were had at
2 8:24 a.m.:

3 EXAMINER EZEANYIM: On page 1 we call Case Number
4 13,921. This is the Application of the New Mexico Oil
5 Conservation Division for a compliance order against Yeso
6 Energy, Inc.

7 Call for appearances.

8 MS. MacQUESTEN: Mr. Examiner, my name is Gail
9 MacQuesten. I'll be appearing for the Oil Conservation
10 Division.

11 EXAMINER EZEANYIM: Any other appearances?
12 Do you have any witness?

13 MS. MacQUESTEN: I have one witness.

14 EXAMINER EZEANYIM: May the witness stand to be
15 sworn, please?

16 (Thereupon, the witness was sworn.)

17 MS. MacQUESTEN: Mr. Examiner, we are asking for
18 an order pursuant to the Oil and Gas Act, Section
19 70-2-14.B, requiring the operator to bring six inactive
20 wells into compliance with Rule 201 by a date certain and
21 authorizing the Division to plug the wells and forfeit the
22 applicable financial assurance if the operator fails to
23 meet that deadline.

24 Because we believe the violation of Rule 201 was
25 knowing and willful, we are also asking for penalties.

1 To show that the failure was knowing and willful,
2 we will be reviewing OCD's efforts to work with the
3 operator to bring the wells into compliance. We will be
4 discussing three compliance actions that we took with this
5 company.

6 The first involves the use of Rule 40 with a well
7 transfer. The operator at that time was notified of his
8 problem with inactive wells and was asked to bring them
9 into compliance.

10 The second activity was the entry of an agreed
11 compliance order for inactive wells, which the operator
12 failed to complete.

13 And the third is cancellation of authority to
14 transport and inject, due to the operator's failure to file
15 production reports.

16 There's an evidence packet in front of you.

17 The first exhibit is an affidavit of notice
18 showing notice to the available addresses for Yeso Energy,
19 Inc., and the surety on the surety bonds. We did not send
20 a notice to the bank holding the letter of credit, because
21 that's not a surety situation.

22 You'll see that we got green cards back on two
23 addresses for Yeso. We did not receive a green card back
24 on the surety, U.S. Specialty Insurance Company. We do
25 have a printout from the Post Office showing delivery of

1 the certified-mail letter.

2 When we mailed notice to U.S. Specialty Insurance
3 Company we used the address from the bonds, and we verified
4 that address by calling the surety company.

5 We also published notice in three newspapers,
6 because the wells are located in three different counties.

7 Exhibit 2 is an affidavit from Dorothy Phillips
8 showing the financial assurance information. This operator
9 has a \$50,000 cash bond and three single-well financial
10 assurances.

11 And with that, Mr. Examiner, I would call Daniel
12 Sanchez.

13 EXAMINER EZEANYIM: You may.

14 DANIEL SANCHEZ,
15 the witness herein, after having been first duly sworn upon
16 his oath, was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MS. MacQUESTEN:

19 Q. Would you please state your name for the record?

20 A. Daniel Sanchez.

21 Q. And where are you employed?

22 A. With the Oil Conservation Division.

23 Q. What is your title?

24 A. Compliance and enforcement manager.

25 Q. Do your duties as compliance and enforcement

1 manager include supervising the district offices?

2 A. Yes, they do.

3 Q. Are you familiar with the compliance history of
4 Yeso Energy, Inc.?

5 A. Yes.

6 Q. Are you familiar with the six wells identified in
7 the Application?

8 A. Yes.

9 Q. Would you turn to what has been marked as Exhibit
10 Number 3? Is this the general well list for Yeso Energy,
11 Inc.?

12 A. Yes, it is.

13 Q. Is this a record kept by the OCD, available to
14 the general public on our website?

15 A. Yes.

16 Q. What is the total number of wells operated by
17 Yeso Energy, Inc., in New Mexico?

18 A. 37.

19 Q. On this list of the 37 wells, there are six wells
20 that are highlighted. What is the significance of the
21 highlighting?

22 A. Those are the six wells that are in question in
23 this hearing today.

24 Q. If you look on the right-hand side of this
25 document, there's a column entitled Last

1 Production/Injection. What does that column show?

2 A. That is the last time those wells were either
3 produced or injected into by the operator.

4 Q. I'd like you go to through the six wells that are
5 at issue in this case and tell us what the last days of
6 production or injection was for these wells?

7 A. The Connie C State Number 3, last production was
8 in July of 1988. Connie C State Number 4, January of 1989.
9 The Cortland Myers Number 4, September of 2004. The Knight
10 Number 5, April of 2003. Las Cruces B Number 1, September
11 of 1998. And the Tracy 29 Federal Number 1, October of
12 2001.

13 Q. Have you reviewed the well files for these six
14 wells?

15 A. Yes, I have.

16 Q. Are any of these wells plugged and abandoned?

17 A. No.

18 Q. Are any of these wells on approved temporary
19 abandonment status?

20 A. No.

21 Q. Now I notice, looking at the column for last
22 production and injection for all of Yeso's wells, the last
23 reported production or injection for any well is August,
24 2006?

25 A. That's correct.

1 Q. Is Yeso filing production reports now?

2 A. No, they're not.

3 Q. When was the last report of production/injection
4 filed? For what time period was that filed?

5 A. I believe it was in April of 2006.

6 Q. Uh-huh.

7 A. Some of the other dates for as late as August,
8 2006, were wells that were transferred after that time.

9 Q. So the August, 2006, production reports weren't
10 filed by Yeso but by the previous operator?

11 A. That's right.

12 Q. The last reports filed by Yeso --

13 A. -- were April of 2006.

14 Q. Have our district inspectors checked the six
15 wells at issue to determine if they are truly inactive or
16 whether Yeso is simply failing to file production reports
17 on those wells?

18 A. They have done inspections on those.

19 Q. Are Exhibits 4 through 9 the well inspection
20 histories for those wells?

21 A. Yes, they are.

22 Q. Would you summarize for us whether these well
23 inspection histories show whether the wells are inactive or
24 active but not filing production reports?

25 A. Sure. The Connie State Number 3, the last

1 inspection was in '05. It was an idle well, it was not
2 active, and the last production date on that one was 1998.

3 The Connie State Number 4, after a routine
4 inspection in '05, once again the well was idle, not
5 producing. The last production date was 1989.

6 Cortland Myers Number 4, there was notice of
7 intent to plug the well. That was approved in February of
8 '05, but no action has been taken on that intent.

9 The Knight Number 5 is the most recently
10 inspected. There was a problem with one of the inspections
11 where there was a known CSG leak. There were a number of
12 leaks at this site. The District asked that it be plugged
13 as soon as possible, and nothing has been done to this
14 date. And the note in that inspection report shows that
15 this well is a possible threat to groundwater contamination
16 and immediate action should be required, where they'll
17 submit the proper paperwork for a hearing. And there were
18 four follow-ups after that to see if anything had been
19 done, and there has been nothing done as late as November
20 of 2006 on this well.

21 Q. Now Mr. Sanchez, I'm looking at an entry on this
22 well inspection history dated 2-9 of 2006. It says
23 plugging witnessed. What can you tell us about any
24 attempts to plug this well?

25 A. There has been a notice of intent to plug it, but

1 to date nothing has been done at all to try to plug that
2 well.

3 Q. Well, it says plugging witnessed, attempt to
4 circulate -- various information --

5 A. Yeah, there was an attempt, I believe, twice to
6 go in and plug the well, and they were not able to properly
7 plug either of those times, and they held off on it until
8 they could come up with a way to actually go into that well
9 and plug it, but they've been unsuccessful to this point in
10 doing so.

11 Q. So to date this well is still unplugged?

12 A. Yes.

13 Q. Do you know whether it's capable of being
14 plugged? What is the situation?

15 A. It is capable of being plugged, it's just at a
16 very high expense, and we believe that's why they've held
17 back on it.

18 EXAMINER EZEANYIM: Now excuse me. Now let me
19 understand. When you say a plugging witnessed, does it
20 mean they went out there, plugged -- What happened? When
21 you say --

22 THE WITNESS: At the time they went out to try to
23 plug, there was -- one of our inspectors was out on site to
24 witness the plugging itself.

25 EXAMINER EZEANYIM: But it didn't happen?

1 THE WITNESS: It didn't happen. They were not
2 able to get the proper plugging going. They were losing
3 sacks of cement going down the hole.

4 EXAMINER EZEANYIM: They were losing cement?

5 THE WITNESS: Uh-huh.

6 EXAMINER EZEANYIM: And then they abandoned it?

7 THE WITNESS: Yes.

8 EXAMINER EZEANYIM: Okay, go ahead.

9 Q. (By Ms. MacQuesten) Will you turn to the next
10 well?

11 A. That was the Las Cruces B Number 1. Last
12 production date was in 1998. There was a notice of intent
13 to plug in 2001 submitted, but there's been no action taken
14 since then. And finally the Tracy 29 Federal Number 1, and
15 the last production was in '01. It's still an idle well
16 and it hasn't been producing.

17 Q. All right, thank you, Mr. Sanchez. I'd like to
18 go through Yeso's recent compliance history. Would you
19 turn to what's been marked as Exhibit Number 10, please?

20 A. Yes. Okay.

21 Q. Can you tell us what this document is?

22 A. This was a letter sent to Yeso, actually covering
23 a couple -- or a number of issues. There was a request by
24 Mr. Lee, who is also the president of Yeso, to become an
25 operator. And the letter is basically telling him that --

1 or requesting information from him, showing that he has not
2 been affiliated with Yeso, of course, over a certain period
3 of time, which would affect his ability to be given status
4 as an operator under one of our rules.

5 Q. Why would that be important?

6 A. If that individual or entity was part of an
7 operator who was out of compliance with Rule 40, this would
8 take away his ability to become an operator again at that
9 point.

10 Q. Was he so out of compliance with Rule 40 at the
11 time this letter was written?

12 A. Yes.

13 Q. And does the letter notify both Mr. Lee and Yeso
14 that Yeso is out of compliance with Rule 40?

15 A. Yes, it does.

16 Q. What was the basis for the failure to comply with
17 Rule 40? What issue was involved?

18 A. They had more wells out of compliance or on the
19 inactive list than they were allowed.

20 Q. Would you turn to what's been marked as Exhibit
21 Number 11, please?

22 A. Okay.

23 Q. Can you tell us what this document is?

24 A. This was a letter to Yeso, to try to work with
25 them in establishing an agreed compliance order on their

1 inactive wells.

2 Q. And what is the date of this letter?

3 A. July 7th, 2006.

4 Q. Could you turn to what's been marked as Exhibit
5 Number 12, please?

6 A. Okay.

7 Q. What is this letter?

8 A. This --

9 Q. What is this document?

10 A. This is a copy of the agreed compliance order
11 that we're working with Yeso on.

12 Q. And this is the order that was actually entered
13 into by Yeso?

14 A. Yes, it is.

15 Q. What is the date of this agreed compliance order?

16 A. This was dated in July of 2006.

17 Q. Did it give Yeso a deadline for bringing wells
18 into compliance?

19 A. Yeah, December 31st of 2006.

20 Q. Was there a penalty if Yeso failed to meet that
21 deadline?

22 A. Yes, there was. It was \$1000 per well.

23 Q. How many wells are covered by this agreed
24 compliance order?

25 A. There are four.

1 Q. Of those four wells, are any of those wells at
2 issue in the Application today?

3 A. Three of the wells are.

4 Q. Which ones?

5 A. The Connie C States Number 3 and 4 and the Tracy
6 29 Federal Number 1.

7 Q. So this Application deals with three wells that
8 were subject to an agreed compliance order and three wells
9 that were not subject to this agreed compliance order; is
10 that right?

11 A. That's correct.

12 Q. Why did we include wells not subject to the
13 agreed compliance order?

14 A. These wells became part of the inactive well list
15 after the agreed compliance order had been entered into.

16 Q. Were they acquired by Yeso after the agreed
17 compliance order was entered into?

18 A. Yes, they were.

19 Q. Could you turn to what's been marked as Exhibit
20 Number 13, please?

21 A. Okay.

22 Q. Is that a change-of-operator form showing the
23 wells that were acquired by Yeso after the entry of the
24 agreed compliance order?

25 A. Yes, it is.

1 Q. Including the three wells that were inactive and
2 are now subject to this Application?

3 A. That's correct.

4 Q. Could you turn to what's been marked as Exhibit
5 Number 14, please?

6 A. Okay.

7 Q. Can you tell us what this document is?

8 A. This is a cancellation of authority to transport
9 from or inject into wells operated by Yeso.

10 Q. What's the date of this letter?

11 A. November 20th, 2006.

12 Q. Why was it issued?

13 A. Yeso failed to report any of its production from
14 April of 2006 forward, and have yet to report production.

15 Q. So they still haven't filed the missing
16 production reports?

17 A. No, they haven't.

18 Q. Is this cancellation of authority to transport
19 and inject still in effect?

20 A. Yes, it is.

21 Q. Would you turn to what has been marked as Exhibit
22 15, please?

23 A. Yes.

24 Q. Can you tell us what this document is?

25 A. This was a letter from Yeso to myself asking for

1 an extension on their agreed compliance order, a 45-day
2 extension beyond the deadline, stating that they had sold
3 the Yates State Number 1 and were planning to sell, or a
4 sale was in process for the Connie C State Number 3 and 4
5 and that they were attempting to get the Tracy 29 Federal
6 plugged.

7 Q. Now the Connie C State 3 and 4 have not to date
8 been transferred, have they?

9 A. No, they haven't.

10 Q. And the Tracy 29 Federal has not been restored to
11 compliance?

12 A. No, it hasn't.

13 Q. What was the OCD's response to the request for an
14 extension?

15 A. We denied the request.

16 Q. Is Exhibit Number 16 the letter denying that
17 request?

18 A. Yes, it is.

19 Q. Can you turn to what's been marked Exhibit 17,
20 please?

21 A. Okay.

22 Q. What is this document?

23 A. This is another letter to Mr. Lee telling him
24 that we've received their \$3000 penalty check from the ACO,
25 and that we would not be extending the ACO any farther.

1 Q. So Mr. Lee -- or I should say Yeso -- did pay a
2 penalty for failing to comply with the agreed compliance
3 order?

4 A. Yes, they did.

5 Q. Has the OCD been contacted by Yeso since the
6 filing of the Application for hearing in this case?

7 A. Yes, they have.

8 Q. Is Exhibit 18 a collection of the e-mails that
9 have been exchanged with Yeso Energy, Inc., after the
10 filing of the Application?

11 A. Yes, it is.

12 Q. Yeso had spoken about transferring the wells. To
13 date have any documents been filed to transfer the wells to
14 another operator?

15 A. No.

16 Q. Have you received any contact from Yeso yourself
17 since the filing of the Application?

18 A. No.

19 Q. Indirectly have you received any messages?

20 A. No.

21 Q. So to summarize from the activity you've
22 testified to, the operator has been aware of the need to
23 address inactive wells since at least the letter of March
24 8, 2006?

25 A. That's correct.

1 Q. And the OCD entered into an agreed compliance
2 order to give him time to bring the wells into compliance?

3 A. That's correct.

4 Q. And that compliance order also allowed him the
5 opportunity to transfer and acquire additional wells --

6 A. Yes, it did.

7 Q. -- despite the lack of compliance?

8 A. Yes.

9 Q. And at the end of that order he requested an
10 additional 45 days to return the wells to compliance?

11 A. Yes.

12 Q. And that was granted, but no activity was
13 reported?

14 A. That was true.

15 Q. And now he's saying that he's planning to sell
16 the wells?

17 A. Yes, he's planning -- you know, he's been
18 planning to sell the wells for some time, but he's never
19 taken any action on his...

20 Q. If he's planning on selling the wells, why should
21 we go forward with this hearing?

22 A. If he does actually go through and transfer the
23 wells, we would want an order in place so that whoever ends
24 up purchasing those wells would still have to bring those
25 wells into compliance.

1 Q. So we could approach the new operator and require
2 that he enter into an order before approving the transfer?

3 A. Yes.

4 Q. What deadline would you ask the Examiner to put
5 in the compliance order?

6 A. I'd be looking at August 30th of this year, 2007.

7 Q. Why that date?

8 A. We've given Yeso a considerable amount of time to
9 take care of these issues, including any transfers that
10 they may be trying to do, and we feel this is more than
11 enough time to finish that up.

12 Q. What penalty are you asking the Examiner to put
13 in the order?

14 A. We're asking that Yeso still be penalized \$1000
15 on each of the six wells that are in question in this
16 filing for their past misconduct, their lack of compliance,
17 plus \$1000 per well per month until compliance is met on
18 the transfer or this order is approved.

19 Q. Mr. Sanchez, if Yeso were able to transfer the
20 wells tomorrow would you still be asking for a \$6000
21 penalty for the past --

22 A. Yes.

23 Q. -- lack of compliance?

24 MS. MacQUESTEN: I would move to admit Exhibits 1
25 through 18.

1 EXAMINER EZEANYIM: Exhibits 1 through 18 will be
2 admitted.

3 Do you have any questions? Do you have any
4 questions?

5 EXAMINER BROOKS: Yeah, I had a question for the
6 witness here.

7 EXAMINATION

8 BY EXAMINER BROOKS:

9 Q. I'm sorry -- Yes, this is Exhibit Number 7. It's
10 the one where they attempted to plug the well. I know some
11 of the jargon in these reports and I don't know others of
12 it. It would appear that -- fish at 170 feet, that they
13 lost something in the hole, and then they say lost spear in
14 the hole, and I assume that's some -- I would have assumed
15 that's some equipment that they were attempting to remove
16 what was previously in the hole with.

17 Can you translate that entry for me? What it
18 says below "Plugging Witnessed"? It looks like NIRU -- no,
19 that's not an N, that's probably an M --

20 A. M.

21 Q. -- there appears -- appears to be a backwards N.
22 And then NU --

23 A. -- BOP --

24 Q. -- BOP --

25 A. -- TBG --

1 Q. -- which normally means blowout preventer. TBG I
2 assume is tubing.

3 A. Fish.

4 Q. Fish means that something was lost in the hole, I
5 guess --

6 A. Uh-huh --

7 Q. -- the tubing --

8 A. -- at 170 feet.

9 Q. -- at 170 feet. What does NIRU mean, do you
10 know?

11 A. I do not know that.

12 Q. Or NU, do you know that?

13 A. No.

14 Q. Neither do I. Do you know what the spear -- what
15 spear means? I'm inclined to assume it's some kind of
16 equipment that they were using to remove, to attempt to
17 fish the tubing --

18 A. That's what I understood from the inspector, it
19 was a tool, a fishing tool.

20 Q. That was what I was assuming, that it calls to
21 mind pictures of someone digging a hole in the ice and
22 attempting to spear a fish that's swimming by. Anyway,
23 thank you.

24 MS. MacQUESTEN: Mr. Brooks, on that point I
25 don't know the answer to those questions either, but I

1 believe there's a sundry notice in the file that may give
2 more detail on what happened on that.

3 EXAMINER BROOKS: In the well file?

4 MS. MacQUESTEN: In the well file --

5 EXAMINER BROOKS: Okay --

6 MS. MacQUESTEN: -- if you'd care to --

7 EXAMINER BROOKS: -- very good --

8 MS. MacQUESTEN: -- take administrative --

9 EXAMINER BROOKS: -- thank you.

10 MS. MacQUESTEN: -- notice of it.

11 EXAMINER BROOKS: I had another question for
12 counsel, Ms. MacQuesten.

13 We have been dealing with this issue of how to
14 structure penalty assessments in compliance cases, and my
15 view has been, and the advice I've given the Bureau in
16 cases that have come up before has been that, assuming we
17 have the authority to assess penalties, which we do assume
18 even though that issue is in litigation until we get a
19 ruling, that it would require -- under normal due process,
20 that it would require a notice and hearing after the
21 conduct which is being penalized.

22 So that if we put a provision for assessment of
23 orders for failure to comply after the order is entered,
24 that that would simply be an admonition, and it would still
25 require that we send notice and hearing -- notice and give

1 another hearing after that conduct had occurred. Do you
2 agree with that?

3 MS. MacQUESTEN: I do. When an order is issued
4 saying that a penalty will be assessed if the operator
5 fails to comply with the order, really all it does is put
6 the operator on notice of the intention of the Hearing
7 Examiner, how the Hearing Examiner would treat that issue
8 were we to come back and say the operator failed to comply.

9 But we would still have to come back in and show
10 that -- what time period had elapsed, and that the action
11 had not been taken and so forth.

12 EXAMINER BROOKS: Yeah, there would have to be a
13 subsequent hearing at which the specific conduct was shown.
14 That's what I thought.

15 MS. MacQUESTEN: That's right, we wouldn't take
16 the order that was issued and then try to collect the
17 penalty without coming back and getting an order
18 establishing a definite amount.

19 EXAMINER BROOKS: Thank you, that's all I have.

20 EXAMINER EZEANYIM: Now I don't understand this
21 legal argument you are making now. Are you saying that if
22 a penalty is imposed and they pay the penalty, you still
23 come to hearing to collect penalty, or they didn't pay the
24 penalty -- You know, if they don't pay the penalty, you --
25 you can come back to hearing, that's what I understand.

1 But --

2 MS. MacQUESTEN: No, it's --

3 EXAMINER EZEANYIM: I don't --

4 MS. MacQUESTEN: -- it's --

5 EXAMINER EZEANYIM: -- I don't understand what
6 you are saying here. Even though the statutes didn't make
7 distinction who is going to pay penalty. Correct me if I'm
8 wrong. Talk about administrative penalties and civil
9 penalties. They're two different things, and we'll be
10 using this administrative hearing that we're conducting
11 here to, you know, impose penalties quickest, I mean
12 compared with what you ask in civil penalties and district
13 court.

14 So it's my belief that most of these operators,
15 prudent operators, would like to listen to OCD, pay the --
16 you know, the pennies we penalized them, instead of going
17 to district court with all the court costs, attorney fees
18 and everything. And our understanding, can prove that they
19 have, you know, contaminated all the waters of New Mexico
20 and collect a big fine. And that's civil penalty.

21 So although we are not giving that penalty and
22 you attorneys -- you say, Well, legally we are not supposed
23 to collect any penalty. But I wish the -- between civil
24 and administrative penalties.

25 What we are collecting here, you collect \$3000.

1 But these wells -- these wells have been inactive since
2 1988. That's my point. And you're only collecting \$3000
3 and there you will have to go to hearing again with
4 everybody's time to collect \$3000 for violating this rule
5 since 1988.

6 MS. MacQUESTEN: Mr. Examiner, if I may, there
7 are several questions wrapped up in that statement, and
8 there are several different issues.

9 What Mr. Brooks was asking was, how do we go
10 about dealing with penalties for future misconduct? What
11 we're asking for in this case are two different types of
12 penalties. We're asking for a penalty for his past
13 misconduct that from the time of the agreed compliance
14 order and his failure to comply with that until today,
15 we're asking for \$1000 per well or \$6000. If you issue an
16 order saying that he must pay \$6000 for his past
17 misconduct, he would need to pay that or challenge it.

18 EXAMINER EZEANYIM: Okay.

19 MS. MacQUESTEN: That would be an order that we
20 could then take forward.

21 What Mr. Brooks was saying is, how can we issue
22 an order that would impose a penalty for future misconduct,
23 misconduct that hasn't happened yet?

24 EXAMINER EZEANYIM: Oh, okay.

25 MS. MacQUESTEN: And our discussion was that you

1 could put in the order an admonition that if the operator
2 fails to comply with your order, additional penalties will
3 be assessed, but we would need to come back to you and
4 prove that the operator had not completed the corrective
5 action by the deadline, show you which wells were not in
6 compliance and so forth, for you to actually assess a
7 definite amount for that additional noncompliance.

8 Now all of this is a separate issue from whether
9 we have the authority to assess penalties at all. That's
10 not something for this --

11 EXAMINER EZEANYIM: Yeah.

12 MS. MacQUESTEN: -- tribunal to decide. I'd be
13 happy to make the argument to you as to why I believe we
14 can, but that's not really the issue that needs to be
15 decided today.

16 EXAMINER EZEANYIM: I understand that, yeah.

17 MS. MacQUESTEN: Now you understand that any
18 order that you issue, if the operator fails to pay we have
19 to go to district court to collect that money. We have to
20 translate your order into an enforceable order that we can
21 take to a sheriff and get the collection. But again,
22 that's a separate issue that comes after this proceeding.

23 EXAMINER EZEANYIM: Okay, good.

24 Do you have any more?

25 EXAMINER BROOKS: Nothing further.

1 EXAMINER EZEANYIM: Okay. What are you asking
2 now, \$6000? He has paid \$3000 already. Are you asking
3 \$6000 above and beyond this \$3000 --

4 MS. MacQUESTEN: Yes, we are. Yes, we are, for
5 his failure to comply after the agreed compliance order.

6 EXAMINER EZEANYIM: And that's what you are -- to
7 be knowing and willful?

8 MS. MacQUESTEN: Yes.

9 EXAMINER EZEANYIM: And that's where you are
10 getting the \$6000 from.

11 EXAMINATION

12 BY EXAMINER EZEANYIM:

13 Q. Okay. You say you wanted to have them -- plug
14 the well, abandon the well? What do you want them to do by
15 August 30th? You mentioned something August 30th?

16 A. To come into compliance by either temporarily
17 abandoning and plugging them or transferring those wells to
18 another entity.

19 Q. Okay. And if by August 30 they didn't do that,
20 what happens?

21 A. Then those penalties would be applied.

22 MS. MacQUESTEN: Mr. Examiner, at that point we
23 would ask that the OCD be given the authority to plug the
24 wells --

25 EXAMINER EZEANYIM: Yeah.

1 MS. MacQUESTEN: -- and forfeit the applicable
2 financial assurance to pay for it.

3 EXAMINER EZEANYIM: Okay. Applicable assurance
4 is about \$50,000, \$5000, \$5000 -- Is that the whole \$60,000
5 or all of them? Is that --

6 MS. MacQUESTEN: Well, it depends on which
7 well --

8 EXAMINER EZEANYIM: -- is --

9 MS. MacQUESTEN: -- we need to --

10 EXAMINER EZEANYIM: Okay, okay.

11 MS. MacQUESTEN: -- to apply the financial
12 assurance to. The \$50,000 is a blanket financial assurance
13 that would be applicable to any of the wells, but the
14 single-well financial assurances could only be used to plug
15 the well to which that assurance applies.

16 Q. (By Examiner Ezeanyim) Did anybody from Yeso --
17 I know you did all this to -- public notice to verify --
18 Did you talk to anybody, maybe call them and say we are
19 going to hearing, or just through this mailing -- mailings?
20 Did you talk to anybody?

21 A. I haven't talked to anybody.

22 MS. MacQUESTEN: Mr. Examiner, the e-mail
23 exchange, which is the final exhibit --

24 EXAMINER EZEANYIM: Yeah.

25 MS. MacQUESTEN: -- there's an exchange between

1 myself and Mr. Gene Lee of Yeso after the Application was
2 filed. He was aware of the hearing and in fact asked for a
3 continuance. That's why we're here today and not on the
4 original hearing date. So they are definitely aware of the
5 hearing.

6 EXAMINER EZEANYIM: Okay. Could you summarize
7 again what you are asking for in this case?

8 MS. MacQUESTEN: We're asking for an order
9 requiring Yeso to return the six wells at issue to
10 compliance with Rule 201 by the end of August, 2007. They
11 can return the wells to compliance by returning them to
12 production, by placing them on approved temporary
13 abandonment status, or by plugging and abandoning them.
14 They can also transfer the wells to another operator, at
15 which point the other operator would be responsible for the
16 wells.

17 We are also asking for a \$6000 penalty because of
18 Yeso's failure to comply to date. We are asking that the
19 order contain an admonition that if Yeso fails to meet the
20 deadline, that additional penalties will be imposed at a
21 rate of \$1000 per well per month that Yeso fails to return
22 them to compliance after the deadline in the order.

23 We are also asking for authority for the OCD to
24 plug the wells if Yeso fails to plug them by the deadline,
25 and for the OCD to be able to forfeit the applicable

1 financial assurance.

2 Q. (By Examiner Ezeanyim) When you consider the
3 ability to transport, Form C-104, when you consider that
4 form, are they still transporting? And I mean contrary to
5 what you are -- ?

6 A. They shouldn't be transporting right now.

7 Q. What are they doing? Did they --

8 A. Whether they are or not, we're not sure at this
9 point.

10 Q. But -- operator in New Mexico?

11 A. Yes.

12 Q. So it means that they shouldn't be transporting
13 anything --

14 A. That's correct.

15 Q. -- because they're in violation of Rule 40, apart
16 from other violations.

17 A. That's right.

18 EXAMINER EZEANYIM: I have no further questions.

19 EXAMINER BROOKS: Have the transporters that have
20 been -- that are noted on the existing C-104s been notified
21 that he no longer has the authority to transport?

22 MS. MacQUESTEN: Mr. Brooks, I'm not sure we were
23 able to do that. We have a number of operators that are
24 under these cancellations of authority. On some of them
25 it's easy to determine -- or relatively easy to determine

1 who the transporter is. On others it's not. I don't
2 believe that we were able to notify the transporters of
3 Yeso Energy, but I can't be certain.

4 EXAMINER BROOKS: Very good. Thank you.

5 MS. MacQUESTEN: Unfortunately there are some
6 where we've tried to notify the transporters, but there are
7 over 20 possible transporters. We don't do a good job of
8 tracking who the current transporter is, so that hasn't
9 been the solution we hoped it would be.

10 EXAMINER BROOKS: Very good. Thank you.

11 EXAMINER EZEANYIM: Anything further?

12 MS. MacQUESTEN: No, thank you.

13 EXAMINER EZEANYIM: At this point Case Number
14 13,921 will be taken under advisement.

15 (Thereupon, these proceedings were concluded at
16 8:58 a.m.)

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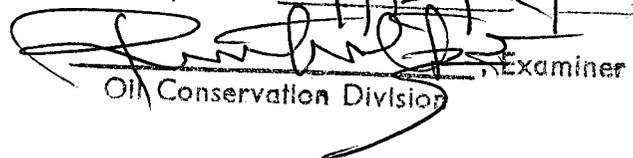
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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 1392
heard by me on 7/12/07


Examiner
Oil Conservation Division

