

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

IN THE MATTER OF THE HEARING CALLED BY )  
THE OIL CONSERVATION COMMISSION FOR THE )  
PURPOSE OF CONSIDERING: )  
APPLICATION OF THE NEW MEXICO OIL )  
CONSERVATION DIVISION FOR REPEAL OF RULE )  
402 (METHOD AND TIME OF SHUT-IN PRESSURE )  
TEST) )  
\_\_\_\_\_ )

CASE NO. 12,934

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: LORI WROTENBERY, CHAIRMAN  
JAMI BAILEY, COMMISSIONER  
ROBERT LEE, COMMISSIONER

10/25/02 10:11 AM

October 25th, 2002

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, LORI WROTENBERY, Chairman, on Friday, October 25th, 2002, 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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October 25th, 2002  
 Commission Hearing  
 CASE NO. 12,934

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<u>RICHARD E. FOPPIANO</u> (Regulatory Affairs Advisor, OXY USA WTP Limited Partnership)	
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## A P P E A R A N C E S

## FOR THE COMMISSION:

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## FOR THE APPLICANT:

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\* \* \*

## ALSO PRESENT:

ROGER C. ANDERSON  
Environmental Bureau Chief, NMOCD

BRUCE A. GANTNER  
Burlington Resources

BOB MANTHEI  
BP America

THOMAS J. NANCE  
Executive Director, IPANM

DEBORAH D. SELIGMAN  
NMOGA

\* \* \*

1           WHEREUPON, the following proceedings were had at  
2 9:02 a.m.:

3           CHAIRMAN WROTENBERY: We'll go on the record,  
4 then. You're ready, Steve? We've been meeting so often  
5 lately I forget what this is, but this is the Commission's  
6 regularly scheduled October meeting.

7           It's October 25th, 2002. We're here in Porter  
8 Hall in Santa Fe, New Mexico, shortly after 9:00 a.m. All  
9 three Commissioners are present. And I think, looking  
10 around the room, everybody knows everybody, so we'll forego  
11 the introductions here this morning.

12           We do have a couple of business matters. We've  
13 got the minutes of both the September 20th and the  
14 September 27th Commission meetings. Commissioners, have  
15 you had a chance to look at those?

16           COMMISSIONER BAILEY: Yes, I have, and I move  
17 that we adopt them.

18           COMMISSIONER LEE: Second.

19           CHAIRMAN WROTENBERY: All in favor say "aye".

20           COMMISSIONER BAILEY: Aye.

21           COMMISSIONER LEE: Aye.

22           CHAIRMAN WROTENBERY: Aye. And I'll sign those  
23 on behalf of the Commission. Okay.

24                           \* \* \*

25



1 time of shut-in pressure tests.

2 And we'll call for appearances.

3 MR. BROOKS: Madame Chairman, honorable  
4 Commissioners, I'm David Brooks, Energy, Minerals and  
5 Natural Resources Department of the State of New Mexico,  
6 appearing for the New Mexico Oil Conservation Division.

7 I have one witness.

8 CHAIRMAN WROTENBERY: Okay, anybody else?

9 MR. FOPPIANO: Rick Foppiano, Houston, Texas,  
10 representing NMOGA and OXY.

11 CHAIRMAN WROTENBERY: Do you plan to testify?

12 MR. FOPPIANO: I do plan to make a statement.

13 CHAIRMAN WROTENBERY: Okay. Anybody else in this  
14 matter?

15 Okay, if both witnesses will stand and be sworn,  
16 please.

17 (Thereupon, the witnesses were sworn.)

18 CHAIRMAN WROTENBERY: Mr. Brooks?

19 MR. BROOKS: Call Rick Foppiano -- I'm sorry.

20 (Laughter)

21 MR. BROOKS: I'll let Rick call himself. I'll  
22 call Richard Ezeanyim. I was going to start by calling the  
23 adverse witness. It's an old trial lawyers' tactic.

24 Good morning, Richard.

25 MR. EZEANYIM: Good morning.

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RICHARD EZEANYIM,

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

DIRECT EXAMINATION

BY MR. BROOKS:

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

A. My name is Richard Ezeanyim, E-z-e-a-n-y-i-m.

Q. And Mr. Ezeanyim, by whom are you employed?

A. By the Oil Conservation Division, Energy, Minerals and Natural Resources Department.

Q. And in what capacity?

A. As the Chief Engineer.

Q. And what is the nature of your responsibilities as Chief Engineer?

A. I oversee the everyday operation of the Engineering Bureau in the OCD.

Q. And have you been asked also to take responsibility for coordinating the designing of amendments to the Rules with regard to production of oil and gas?

A. Yes, I have done that. I even met with the operators and got their opinions on the nature of the Rule.

Q. And can you tell us about Rule 402 that is the subject of this Application? What does that Rule require?

A. The Rule requires that operators between July,

1 August and September conduct shut-in pressure tests and  
2 report to us in mid-October.

3 Q. And that is between July and August of each year,  
4 right?

5 A. Of each -- yeah, every year.

6 Q. On each well?

7 A. On each well.

8 Q. And this is for gas wells?

9 A. For gas wells, all gas wells, no exemptions.

10 Q. Now, there are some standing orders that provide  
11 exceptions to this Rule, are there not?

12 A. Yes, there are. Order R-333 and RA-8170 provide  
13 some exceptions for the northwest of New Mexico, so the  
14 northwest doesn't have to conduct those tests.

15 Q. And that's a substantial part of the gas  
16 production in --

17 A. Oh, yes, very --

18 Q. -- New Mexico, very substantial?

19 A. Very substantial.

20 Q. Now, has the Division solicited input from  
21 operators as to -- concerning whether or not this Rule  
22 should be retained or should be repealed?

23 A. Yes, we sent out a letter to all the operators  
24 and then scheduled a meeting to be held on July 8th, where  
25 we discussed the Rule. And we decided that the Rule has no

1 effect on our regulatory purposes.

2 Q. I have handed you a group of documents which have  
3 been marked as Exhibits Numbers 1 through 5, and would you  
4 identify those exhibits?

5 A. Yes, Exhibit 1 is the one from Exxon. They wrote  
6 to me to say that the Rule should be repealed because they  
7 don't make use of those data that we collect.

8 Exhibit 2 -- Most of them sent them by e-mail, so  
9 -- I have to find that. This is from Wacker, Conoco.  
10 Conoco also agrees that we need to repeal the Rule, and...

11 Well, most of them, they didn't have them on  
12 their letterhead, they just sent an e-mail. Some of them  
13 called me, you know. Some of them told me about what  
14 amount could -- I don't have the record, but a lot of them,  
15 you know, are in favor of repealing the Rule.

16 And some of them wrote to the Director asking  
17 that the Rule be repealed. You can see Exhibit 3 and 4.

18 Exhibit 5 is from Marbob. They are all in favor  
19 of repealing this Rule.

20 MR. BROOKS: Okay. Just for the benefit of the  
21 Commission, since I know it's difficult to read while you  
22 -- something that's handed to you while you're listening, I  
23 will read excerpts from some of these exhibits.

24 Exhibit Number 1 begins, "Exxon Mobil Corporation  
25 supports repeal of the current Rule 402 requirement to

1 obtain annual shut-in pressures for gas wells in New  
2 Mexico" and goes on from there.

3 Exhibit Number 2 reads, "Conoco, Inc., supports  
4 the recommendation to delete Rule 402..."

5 Exhibit Number 3 reads -- Let's see, where's the  
6 meat of it? At the last sentence, "Based upon these  
7 concerns, Samson Resources...would urge the Energy,  
8 Minerals and Natural Resources Department to repeal  
9 Division Rule..." It says 302, but you can see from the  
10 sense of the entire letter that that is obviously a typo,  
11 they're not talking about Rule 302.

12 The Merrion -- Exhibit Number 5 [sic], the letter  
13 from Merrion is somewhat different in tone, and in the  
14 interest of full disclosure we'll read the relevant  
15 portions.

16 The first sentence says, "In reply to your  
17 memorandum dated May 22nd...Merrion Oil & Gas believes  
18 publicly available gas well shut-in pressure data is  
19 invaluable..." But then they go on, "...but the  
20 requirement to schedule a shut-in each year on gas wells is  
21 unnecessary. Operators already shut in gas wells during  
22 the year for a variety..." of normal purposes. "Instead of  
23 requiring the scheduled shut-in, ask operators to report  
24 shut-in pressure when their wells are shut in..." normally  
25 for periods longer than 24 hours. "Such reporting might be

1 included as part of the production reporting system..."

2 Then Marbob Energy, Exhibit Number 5, "Marbob  
3 Energy strongly recommends that Rule 402 be repealed in its  
4 entirety."

5 Q. (By Mr. Brooks) Mr. Ezeanyim, did you -- I'm  
6 sorry, I didn't go through this preliminary qualification.

7 Have you testified as an expert witness before  
8 the Oil Conservation Commission previously?

9 A. No, I haven't.

10 Q. Would you briefly summarize your history -- your  
11 education and work history as a petroleum engineer?

12 A. Yes, I have a BS degree in chemical engineering  
13 in 1979, and another BS degree in natural gas engineering,  
14 also in 1979. Then I have a master's degree in petroleum  
15 engineering in 1982, and a master of business  
16 administration.

17 I have cumulatively 20 years' experience in the  
18 engineering, management and environmental profession, and  
19 I'm a registered professional engineer in New Mexico and  
20 Colorado.

21 Q. And you have served as an engineer, have you not,  
22 for the Environmental Department of --

23 A. Yes, I have --

24 Q. -- the State of New Mexico --

25 A. -- for about ten years.

1 Q. -- and Energy, Minerals and Natural Resources --

2 A. Yes.

3 Q. -- Department?

4 A. Yes.

5 Q. And as Chief Engineer of the Oil Conservation  
6 Division, are you intimately familiar with the Oil  
7 Conservation Division's regulatory --

8 A. Yes, I do.

9 Q. -- function?

10 A. Yes, I do.

11 MR. BROOKS: Madame Chairman, we submit Mr.  
12 Ezeanyim as an expert petroleum engineering witness.

13 CHAIRMAN WROTENBERY: We find him so qualified.

14 MR. BROOKS: Thank you.

15 Q. (By Mr. Brooks) In your professional opinion,  
16 Mr. Ezeanyim, is Rule 402 necessary for the OCD's  
17 regulatory function?

18 A. Yeah, that's a good question. It's not necessary  
19 as we see it. Every year we collect the data, but we don't  
20 use it for any regulatory purposes, and -- we just collect  
21 them and file them and don't make use of it.

22 And when I listen to the operators too, they  
23 don't make use of it, because I wanted to find out if they  
24 would like to make use of it so we can continue to collect  
25 this data. But as you have read, they don't want to have

1 the -- they don't need it for their purposes too.

2 So that's one of the reasons why we think Rule  
3 402 has to be repealed.

4 The other reasons --

5 Q. Well, I'll get into that in just a second. I  
6 just want to say, after consulting with the operators and  
7 the OCD staff and other interested parties, have you come  
8 to a conclusion that Rule 402 should be repealed?

9 A. Yes, I've come to that conclusion.

10 Q. Okay. Could you summarize for the Commission  
11 your reasons for recommending the repeal of Rule 402?

12 A. Yes, one of them I just mentioned: We don't use  
13 this for regulatory purposes. The operators don't use it  
14 for any purpose that they told me during the meeting or  
15 during our conversations.

16 The second reason why we want Rule 402 to be  
17 repealed is, you know, costs. I'm going to mention about  
18 three of them.

19 One is cost of conducting the tests. You know,  
20 if we don't make use of the data then it's really not  
21 necessary, you know, the costs that we spent in conducting  
22 this pressure data.

23 The second cost is the cost of lost production  
24 when you shut in those wells, you know. I know you could  
25 do flush production the second day, but obviously it

1 increases the economic limit and the net present value is  
2 decreased. So there's a cost, unfortunately, there with  
3 the lost production by shutting in the well.

4 And the cost that is really the cost associated  
5 with this repeal is -- as you know, Rule 402 does not  
6 exempt any gas wells, whether it's 10 MCF a day or 100 MCF  
7 a day or 3000 MCF a day. There's no exception.

8 So if you look at the wells that have 200 MCF a  
9 day and you shut them in, that well may die after you  
10 conduct the test and you want to bring them up on line, the  
11 well may die unless you have to do extensive swabbing. So  
12 there is a cost associated with shutting in those low-  
13 producing wells and not having to bring them on line again.

14 And again, the third reason is, in northwest New  
15 Mexico some orders have exempted them for several years now  
16 from conducting these tests. It's only in the southeast  
17 and the northeast that these tests are required.

18 So with that I feel strongly that the Rule -- I  
19 mean, it's better to repeal statewide because it's already  
20 exempt in the northwest where you have a lot of gas wells,  
21 very rich gas wells, that are exempt by our order that's  
22 issued by our Department. So...

23 And then the southeast and the northwest -- I  
24 mean, the northeast, they are still conducting these tests.

25 Q. Now, if an operator is interested in or has a

1 requirement to obtain a ruling from us, either an amendment  
2 to our Rules or an exception to our Rules for their  
3 purposes and they need to prove their reserves in order to  
4 do that, there's nothing in the repeal of this Rule that  
5 will keep them from doing the necessary tests themselves,  
6 is there?

7 A. Yeah, that's right. There's nothing in the  
8 repeal of this Rule that would keep them from doing that,  
9 because the party, you see, and the operator who wants to  
10 present, either to the Commission or to the Division to  
11 prove their case, have to conduct the tests as they see fit  
12 to be able to prove their case. The repeal of this Rule  
13 doesn't mean they don't have to prove their case before the  
14 Commission or before the Division.

15 Q. Now, you recognize, do you not, that there would  
16 be some advantages to the industry in having this data  
17 that...

18 A. Yeah, I do recognize.

19 Q. But you believe on balance, taking into  
20 consideration the cost to the industry, the relatively  
21 little need for the data for our regulatory purposes and  
22 the factors you've mentioned about potential harm to the  
23 wells, you believe on balance that this Rule should be  
24 repealed?

25 A. Yeah, those are the real reasons why we want to

1 repeal the Rule.

2 Q. Are Exhibits 1 through 5 documents that you have  
3 received or that have been brought to your attention in the  
4 ordinary course of your business in the OCD?

5 A. Yes, I collected those.

6 Q. And are those -- are the originals of those  
7 documents part of the Division's files and records?

8 A. They are.

9 MR. BROOKS: Tender Exhibits 1 through 5.

10 CHAIRMAN WROTENBERY: Any objection, Mr.  
11 Foppiano?

12 (Laughter)

13 Okay, Exhibits Number 1 through 5 are admitted  
14 into evidence.

15 MR. BROOKS: Pass the witness, madame Chairman.

16 EXAMINATION

17 BY COMMISSIONER BAILEY:

18 Q. Could you give me some clarification, please?  
19 Does Rule 402 apply to producing wells and shut-in gas  
20 wells, or only producing wells there?

21 A. Any gas well.

22 Q. Any gas well. So --

23 A. Any gas well --

24 Q. -- if a well is currently shut-in --

25 A. And if you're going to shut it in, then those are

1 the -- those are the operator, maybe the -- has a reason to  
2 shut it in where...

3 But I think I see your point. This means for  
4 every gas well, you are required to do these tests every  
5 year, unless you shut in the well for other reasons, which  
6 is not known to us, you know. But then -- it's all -- to  
7 every well, like I mentioned, it doesn't matter, any well  
8 has to do it. That's what the Rule says.

9 Q. What do you see was the original purpose behind  
10 enactment of that Rule?

11 A. That's why I -- when I was talking with the  
12 operators, I said I hoped we could find the transcript, to  
13 see why they put it in there. We didn't have the trans- --  
14 But I thought they put it in there because they wanted to  
15 have the pressure data.

16 But like I said, we don't make use of those data,  
17 and the operators say they don't make use of the data. And  
18 now I just present them, I think it's better that we repeal  
19 the Rule.

20 Q. But you could find no reference as to why it was  
21 originally passed?

22 A. No, I couldn't find that. I think most of these  
23 Rules were written in the 1930s, and I don't know where you  
24 could find the -- like how to -- to see what they were  
25 thinking at the time. You see, that's really how you look

1 at the Rules. What do I think I have to come up with, what  
2 the Rules -- and that's why we are taking some action in  
3 looking at most of these Rules and revising them to the  
4 present times, to suit our present times.

5 Q. Occasionally operators will pay shut-in royalty  
6 to the Land Office --

7 A. Yeah.

8 Q. -- when their well is shut in due to lack of  
9 market or lack of a pipeline connection. Do you see any  
10 reason why there would -- the repeal of this Rule would  
11 create a problem for us asking for shut-in pressure data on  
12 a well that we question is still economic?

13 A. No, I don't see anything that will prevent the  
14 State Land Office to ask the operator to give you whatever  
15 you want. If you are the royalty interest owner, you could  
16 ask the operator to do anything, whether the well is shut  
17 in or producing.

18 So the repeal of this Rule would not impact --  
19 would not impact you on -- the State Land Office in  
20 carrying out your business.

21 Q. Right, I just wanted that on record for everyone  
22 to know.

23 A. Okay.

24 COMMISSIONER BAILEY: Thank you very much.

25 CHAIRMAN WROTENBERY: Dr. Lee?

1 COMMISSIONER LEE: No questions.

2 CHAIRMAN WROTENBERY: Okay, I don't have any  
3 questions. Did anybody else have any questions for  
4 Richard?

5 MR. FOPPIANO: I didn't have any questions, I was  
6 just going to make a statement.

7 CHAIRMAN WROTENBERY: Okay --

8 MR. BROOKS: Very good --

9 CHAIRMAN WROTENBERY: -- thank you.

10 MR. BROOKS: -- that will conclude the Division's  
11 presentation.

12 CHAIRMAN WROTENBERY: Thank you, Mr. Ezeanyim,  
13 for --

14 THE WITNESS: Thank you.

15 CHAIRMAN WROTENBERY: -- your testimony.  
16 Mr. Foppiano?

17 MR. FOPPIANO: Yes, I'll move up to the table  
18 here.

19 RICHARD E. FOPPIANO,

20 the witness herein, after having been first duly sworn upon  
21 his oath, was examined and testified as follows:

22 DIRECT TESTIMONY

23 BY THE WITNESS:

24 My name is Rick Foppiano, and I'm currently  
25 employed by OXY in Houston, Texas. I'm here today

1 representing OXY and also representing New Mexico Oil and  
2 Gas Association. I chair the New Mexico Oil and Gas  
3 Association's Regulatory Practices Committee, and we have  
4 discussed the repeal of Rule 402 extensively in the past  
5 year, and I can recall no instance of an operator on the  
6 Committee raising a problem with the repeal of the Rule  
7 402. I think it's unanimously supported by my committee  
8 and the operators on my committee.

9           And I think, as Richard mentioned, it's a cost  
10 issue, it's -- We shut in production, that's production we  
11 don't get that day. We do get a little bit more gas, flush  
12 production, the next day, but it is production that is  
13 deferred towards the end of the life of the well, and with  
14 current gas prices and things where they are, we feel like  
15 that's an economic hardship that does not weigh -- or is  
16 not in balance with the value of the data that's generated  
17 by a shut-in.

18           And in fact, I think New Mexico has unique  
19 experience in that area because, as Richard mentioned, the  
20 San Juan Basin is exempt and has been for a number of years  
21 from such testing. And southeast New Mexico, there is an  
22 exception process that is on a well-by-well basis, which I  
23 think, in all honesty, is not really fair because some  
24 operators know about it, others don't. And so repealing  
25 the Rule will kind of level the playing field for all

1 operators and eliminate the need for operators to go  
2 through an exception process.

3 I'd also like to mention and think this  
4 Commission and the Division for their leadership on this  
5 issue, particularly Richard calling the operators meeting  
6 and the issuance of the moratorium this year while the  
7 issue was being studied.

8 At the operators' meeting in July, there were  
9 some operators that showed up in person to discuss their  
10 support for the repeal that did not send letters. And if  
11 memory serves, Ocean Energy was one company that even  
12 brought their production foremen to talk about how the  
13 tests were done and so forth.

14 And I was there representing OXY and I didn't  
15 submit a written letter, but we were there to testify in  
16 support of the repeal. And I'll let Tom Nance talk, if he  
17 wants to, but IPANM was also there supporting the repeal.  
18 So it seems like it's something that enjoys widespread  
19 support.

20 And based on the fact that there have been areas  
21 exempted or wells exempted over the past many years, and  
22 yet there hasn't been much complaint about that data not  
23 being available, I think that's probably the best evidence  
24 that there doesn't seem to be much use for continuing to  
25 require the pressure data. So we would urge the Commission

1 to go ahead and permanently repeal the Rule.

2 Thank you, and I'd be happy to answer any  
3 questions.

4 CHAIRMAN WROTENBERY: Any questions of Mr.  
5 Foppiano?

6 CHAIRMAN WROTENBERY: No.

7 COMMISSIONER LEE: No.

8 CHAIRMAN WROTENBERY: Thank you.

9 THE WITNESS: Thank you.

10 CHAIRMAN WROTENBERY: Okay, is there anything  
11 else, then, on this matter?

12 MR. BROOKS: No, ma'am, thank you. We will close  
13 our presentation.

14 CHAIRMAN WROTENBERY: Thank you, Mr. Brooks.

15 Dr. Lee, did you want to make any comment on this  
16 particular issue? As the engineer on the Commission, we  
17 were particularly interested in what you might have to say.

18 COMMISSIONER LEE: I think I agree with Richard.  
19 But my problem is, whenever we teach in a classroom, it's  
20 not going to apply to many, many of the New Mexico fields  
21 anymore, because -- what we taught the students, four-point  
22 tests and -- but I understand it, really, in the modern  
23 time.

24 I think another thing that's important is the  
25 pressure on the wellhead, because the pressure on the

1 wellhead -- you can use that to calculate your corrosion  
2 and other things. So I have no problem with this. But I  
3 have to re-write my textbook.

4 (Laughter)

5 CHAIRMAN WROTENBERY: Okay. Thank you, Dr. Lee.  
6 Anything else on this particular matter?

7 In that case, we will take this case under  
8 advisement.

9 And it sounds to me like, Steve, you would be  
10 safe in putting together an order repealing Rule 402 and  
11 make that available to the Commission for action at its  
12 next meeting, which will be November -- next regularly  
13 scheduled meeting, which will be November 22nd. Do you  
14 need any more information from us?

15 MR. ROSS: I don't think so.

16 CHAIRMAN WROTENBERY: Okay. Thanks, everybody,  
17 on that particular matter.

18 (Thereupon, these proceedings were concluded at  
19 9:28 a.m.)

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## 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 Commission 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 November 13th, 2002.



STEVEN T. BRENNER  
 CCR No. 7

My commission expires: October 16th, 2006