

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

IN THE MATTER OF 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 AN ORDER DETERMINING THE RESPONSIBLE
PARTY OR PARTIES AND ORDERING THE RESPONSIBLE
PARTY OR PARTIES TO CONDUCT DIVISION-APPROVED
CORRECTIVE ACTION WITH REQUEST TO A HYDROCARBON
RELEASE; LEA COUNTY, NEW MEXICO

RECEIVED
OIL CONSERVATION DIVISION
JAN 23 11 31 AM '04

CASE NO. 13004

MOTION FOR CONTINUANCE

SHELL EXPLORATION AND PRODUCTION COMPANY, (“Shell”), through its counsel, hereby moves that the Division enter its order continuing the hearing in this matter from the February 6, 2003 Examiner hearing docket to the March 6, 2003 hearing docket, or a later date as the Examiner may determine. As grounds for this motion, Shell states:

1. In its Application, the Division seeks the entry of an order *inter alia*, determining that three parties are “responsible persons” for a claimed hydrocarbon release and further orders each or all of them to submit a corrective action plan.
2. The Application and the relief requested therein present matters of first impression before this agency. As a consequence, the Application implicates novel issues that may obligate the parties to test the jurisdictional and procedural premises of the proceeding by way of dispositive motions.
3. In addition to giving rise to the questions of law discussed above, a number of fact issues are also apparent on the face of the Application that will require Shell, and

likely others, to undertake further investigation and discovery. There is insufficient time before the scheduled February 6th hearing date to conduct the investigations and discovery. In this regard, Shell is requesting the Division Director to issue a subpoena duces tecum for the production of materials related to a number of the assertions stated in the Application. The subpoena calls for the production of such materials on February 10, 2003. Until the Division's Application was filed, none of the parties had the ability to request the issuance of subpoenas under the Division's rules.

4. As this may become a precedent-setting case with wide-ranging implications, Shell and, it is believed, all the other parties wish to prepare for and schedule the proceeding so that each party is afforded a full and fair hearing. Accordingly, Shell has requested the Examiner to convene a pre-hearing conference to discuss the issues, scheduling and the presentation of the case as is often done in proceedings that are perceived to be important.
5. There is insufficient time before the February 6, 2003 Examiner hearing docket to accomplish all of the foregoing matters.
6. Counsel for Occidental Permian Ltd. has been contacted and concurs with this motion. The possibility of a continuance has been discussed with counsel for the Division, but neither concurrence nor opposition has been indicated. To our knowledge, no counsel has entered an appearance on behalf of Samedan Oil Corporation or any other party.

WHEREFORE, Shell Exploration and Production Company requests the Division enter its order continuing the February 6, 2003 hearing in this matter to the March 6, 2003 Examiner hearing docket, or to a subsequent date as the Examiner may direct.

