

**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. 13004
ORDER NO. R-11946**

**IN THE MATTER OF THE HEARING CALLED BY THE NEW MEXICO OIL
CONSERVATION DIVISION, THROUGH THE ENVIRONMENTAL BUREAU
CHIEF, FOR AN ORDER DETERMINING THE RESPONSIBLE PARTY OR
PARTIES AND ORDERING THE RESPONSIBLE PARTY OR PARTIES TO
CONDUCT DIVISION-APPROVED CORRECTIVE ACTION WITH RESPECT TO
A HYDROCARBON RELEASE; LEA COUNTY, NEW MEXICO.**

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on March 13 and April 10, 2003, at Santa Fe, New Mexico, before Examiner Michael E. Stogner.

NOW, on this 28th day of April, 2003, the Division Director, having considered the record and the recommendations of the Examiner,

FINDS THAT:

(1) Due public notice has been given, and the Division has jurisdiction of this case and of the subject matter.

(2) By this Application, the Division seeks an order determining the responsible party or parties for the release of hydrocarbons identified by the Division's Environmental Bureau Chief as a danger to public safety and the environment, located on the Moon State lease within the North Hobbs Unit, in the W/2 NE/4 of Section 28, Township 18 South, Range 38 East, NMPM, Lea County, New Mexico.

(3) The responding parties, Samedan Oil Corporation ("Samedan"), Occidental Permian Ltd. ("OXY"), and Shell Exploration and Production Company ("Shell"), all by and through legal counsel, along with the Division, submitted a "*Stipulated Conditional Dismissal*" prior to the April 10, 2003 hearing, which should be incorporated by reference into this Order.

(4) Paragraph 9 on page 3 of the Stipulated Conditional Dismissal could be read to restrict the Division's use of information obtained during the course of the site investigation to determine any party's responsibility for the release.

(5) Counsel for Samedan submitted a letter dated April 21, 2003 to the Division, which should also be incorporated by reference into this Order, that disavows such a reading; instead Samedan states that Paragraph 9 "...does not prevent [the Division] from using the data derived from Samedan's investigation plan, as defined in the Stipulated Conditional Dismissal, in any related proceeding."

(6) Neither counsel for Shell nor counsel for OXY have made similar statements to the Division.

(7) Samedan's concession that the Division may use the results of the investigation to determine any party's responsibility for the alleged contamination is very helpful as to Samedan. However, as the Division executed the Stipulated Conditional Dismissal, the effect of Samedan's statement concern remains whether Shell or OXY share this interpretation of the stipulation.

(8) If Paragraph 9 of the Stipulated Conditional Dismissal, or anything else in the proposed agreement, can be read as restricting the Division's use of information obtained during the course of the site investigation to determine any party's responsibility for the release, the proposed agreement should be rejected.

(9) As Shell and OXY were apprised of the difficulty inherent in Paragraph 9, the Division should treat Samedan's letter as representing the position of all parties, including Shell and OXY.

(10) To permit Shell and OXY to object to this reading of the circumstances, the parties should be permitted to object to the terms of this Order within ten (10) days of service. If an objection is received within ten (10) days of service of this Order, this Order should be dissolved and a subsequent Order should be issued finding that the Stipulated Conditional Dismissal is based on a material mistake of fact and void, and reopening this matter for Division hearing.

IT IS THEREFORE ORDERED THAT:

(1) The *Stipulated Conditional Dismissal*, herein incorporated by reference into this Order, of the parties shall be and is hereby accepted so long as Paragraph 9, or anything else in the agreement, is not read to restrict the Division's use of information obtained during

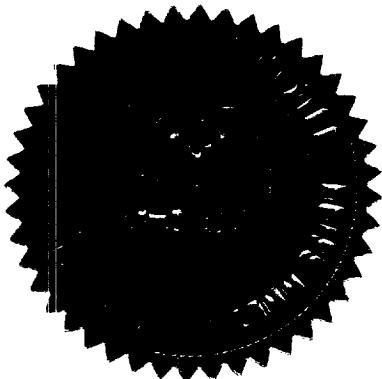
the course of the site investigation to determine any party's responsibility for the release of hydrocarbons identified by the Division's Environmental Bureau Chief located on the Moon State lease within the North Hobbs Unit in the W/2 NE/4 of Section 28, Township 18 South, Range 38 East, NMPM, Lea County, New Mexico, or to otherwise act consistent with the Division's Rules and Regulations, the New Mexico Oil and Gas Act, the Water Quality Act, or other applicable statutes and regulations.

(2) If, within ten (10) days of service of this order on any party, that person informs the Division that Paragraph 9, or anything else, in the Stipulated Conditional Dismissal is intended to restrict the Division's use of information obtained during the course of the site investigation to determine any party's responsibility for the release, then this Order shall become of no effect and a subsequent Order shall be issued finding that the Stipulated Conditional Dismissal is based on a material mistake of fact and void, and reopening this matter for Division Hearing.

(3) If within ten (10) days of service of this Order on any party, no objections to its terms are received as described in Ordering Paragraph No. (2) above, then Division Case No. 13004 shall be and hereby will be dismissed and the terms of the Stipulated Conditional Dismissal and the letter of Samedan's legal counsel, dated April 21, 2003, herein incorporated by reference into this Order, shall govern the conduct of the parties henceforth excepted as otherwise described in Ordering Paragraph No. (1), above.

(4) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

LORI WROTENBERY
Director

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