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

CASE NO. 13142
De Novo

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENVIRONMENTAL BUREAU CHIEF, FOR AN ORDER REQUIRING MARALO, LLC TO REMEDIATE HYDROCARBON CONTAMINATION AT AN ABANDONED WELL AND BATTERY SITE; LEA COUNTY, NEW MEXICO.

Order No. R-12152-A

DECISION OF THE COMMISSION

This matter comes before the Oil Conservation Commission (OCC) on Application of the Environmental Bureau Chief of the Oil Conservation Division (Division or OCD) for an Order requiring Maralo, LLC to remediate hydrocarbon contamination at an abandoned well and battery site in Lea County, New Mexico. The Commission held a hearing on the Application in Santa Fe on November 10, 2004, at which both parties were represented by counsel and Jay Anthony, the surface owner of the site at issue, was also represented by counsel. The Commission having considered the pleadings and evidence of record, the testimony of witnesses before it, the applicable law and rules, the arguments of counsel, and being fully advised in the matter, finds that:

1. The Commission has jurisdiction of the matter pursuant to Section 70-2-13, NMSA 1978, on appeal to the Commission. The matter was heard de novo based on the issues raised in the following Amended Application:

AMENDED APPLICATION
FOR ORDER DIRECTING REMEDIATION

1. Maralo, LLC ("Maralo") is the current operator of record of the Humble State Well No. 3 (API No. 30-025-09831) and associated tank battery and pits, located in Unit A, Section 36, Township 25 South, Range 36 East, Lea County, New Mexico ("the site").

2. Ralph Lowe drilled the Humble State Well No. 3 in 1945 and operated the well and the associated tank battery and pits until his death.

3. Mr. Lowe's daughter, Mary Ralph Lowe, was one of the organizers of "Maralo, Inc.," which replaced Ralph Lowe as operator of record for the well in 1974. According to records filed with the Oil Conservation Division ("OCD"), "Maralo, Inc." plugged and abandoned the Humble State Well No. 3 in 1988.

4. In 1999, the OCD approved a request for an operator name change from "Maralo, Inc." to "Maralo, LLC." "Maralo, LLC" is registered to do business in New Mexico under SCC number 2017929. The Public Regulation Commission web site shows no listing for "Maralo, Inc."

5. The OCD's Environmental Bureau began an investigation of the Humble State Well No. 3 and associated tank battery and pits in response to the surface owner's complaint that water samples taken from a water well adjacent to the tank battery showed elevated levels of chlorides.

6. At the time of the Environmental Bureau's initial site inspection in 2001 the tank or tanks used at the battery site had been removed. OCD inspectors observed chunks of petroleum contaminated soil ranging from smaller pieces up to softball size or larger covering an area surrounding the former tank battery. It appeared to the inspectors that the material had been spread across or disked across the area.

7. OCD inspectors observed three unlined pits at the site. One pit, approximately 75' square, is located to the south of the former tank battery. Two pits, each approximately 150' square, are located to the west of the former tank battery. OCD inspectors observed a rim of hard oil-contaminated soils around each of the three pits. It appeared to the inspectors that the pits had been covered or buried, but that the oil had resurfaced around the rims.

8. Water samples taken by OCD inspectors from the water well at the site confirmed some chloride contamination of groundwater above the New Mexico Water Quality Control Commission standard, but did not show petroleum contamination of the water.

9. In 2001, OCD investigators collected one soil sample from the surface of the tank battery area, and five samples from the pits at depths ranging from zero to 8 feet. Laboratory analysis of the soil samples showed negligible levels of chlorides. However, the soil sample taken in 2001 at a level of zero to 12 inches in the area of the tank battery showed 35,700 mg/Kg of total petroleum hydrocarbons (TPH) and 0.685 mg/Kg of xylene; the soil sample taken from the surface of one of the pits contained 23,900 mg/Kg of TPH; and a soil sample taken from one of the pits at a depth of three to four feet contained 20,900 mg/Kg TPH.

10. In 2002, OCD investigators returned to take additional soil samples at depths ranging from 2 feet to 27 feet. Again, laboratory analysis of the soil samples showed negligible levels of chlorides. Laboratory analysis of soil samples taken from two locations at the site contained up to 25,400 mg/Kg of total petroleum hydrocarbons (TPH); up to 0.179 mg/Kg of benzene; up to 0.432 mg/Kg of ethylbenzene; and up to 0.921 mg/Kg of xylene.

11. According to testimony from a former Lowe/Maralo employee at the division hearing in this matter, Ralph Lowe used the pits to dispose of produced water until 1968, and the water, although low in chlorides,

contained oil in emulsion. The employee also testified that the oil tanks at the battery site had overflowed on occasion.

12. The Oil and Gas Act, Chapter 70, Article 2 NMSA 1978 ("the Act"), grants the Commission and the OCD broad enforcement powers, including "jurisdiction, authority and control of and over all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas...." Section 70-2-6, NMSA 1978. Similar language has described the powers of the Commission since its creation in 1935. See Laws, 1935, ch. 72, Section 4.

13. Rule 313 [19.15.5.313 NMAC] provides:

Wells producing oil shall be operated in such a manner as will reduce as much as practicable the formation of emulsion and basic sediments. These substances and tank bottoms shall not be allowed to pollute fresh waters or cause surface damage. (Emphasis added.)

This prohibition has been in effect since 1935. See Oil Conservation Commission of New Mexico Order No. 4, rule 16.

14. Rule 310.A [19.15.5.310.A NMAC] provides in relevant part as follows:

Oil shall not be stored or retained in earthen reservoirs, or in open receptacles.

This prohibition has been in effect since 1935. See Oil Conservation Commission of New Mexico Order No. 4, rule 15.

15. To enforce Rule 313's prohibition against allowing emulsions to cause surface damage or pollute fresh waters, and to enforce Rule 310.A's prohibition against retaining oil in earthen reservoirs or open receptacles, the Commission should exercise its enforcement powers under Section 70-2-6 by issuing an order requiring Maralo, the current operator of record, to remediate the ongoing hydrocarbon contamination at the site.

16. Alternatively, the Commission should order Maralo to remediate hydrocarbon contamination at the site under one or more of the following authorities:

a. Section 70-2-12(B), NMSA 1978 authorizes the OCD:

to make...orders for the purposes and with respect to the subject matter stated in this subsection:
...
(18) to ... do all acts necessary and proper to ... restore and remediate abandoned well sites and associated production facilities in accordance

with the provisions of the Oil and Gas Act, the rules and regulations adopted under that act ....

(21) to regulate the disposition of nondomestic wastes resulting from the exploration, development, production or storage of crude oil or natural gas to protect public health and the environment....

b. Rule 13.B [19.15.1.13.B NMAC] provides:

all operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall at all times conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal, and storage wells or other facilities in a manner that will prevent waste of oil and gas, the contamination of fresh waters and shall not wastefully utilize oil or gas, or allow either to leak or escape from a natural reservoir, or from wells, tanks, containers, pipe or other storage, conduit or operating equipment.

c. Rule 202.B(3) [19.15.4.202.B(3) NMAC] requires the operator, no later than one year after the completion of plugging operations, to take such measures as are necessary or required by the OCD "to restore the location to a safe and clean condition."

d. Rule 116.D [19.15.3.116.D NMAC] provides:

The responsible person must complete division approved corrective action for releases which endanger public health or the environment. Releases will be addressed in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with Section 19 of 19.15.1 NMAC.

17. Although the statutes and rules cited in paragraph 16, above, took effect after the date Maralo states it plugged and abandoned the well and discontinued use of the site, the Commission may apply these statutes and rules to remediate existing contamination.

WHEREFORE, the Environmental Bureau Chief of the Division hereby applies to the Commission to enter an order:

A. Directing Maralo to submit a work plan to remediate hydrocarbon contamination existing at the Humble State No. 3 site;

B. Upon approval of said work plan by the Environmental Bureau, to complete remediation of the site in accordance with the work plan; and

C. For such other and further relief as the Commission deems just and proper under the circumstances.

2. The application sets forth several alternative rule violations that could justify an order for remediation. The Commission needs only to find non-compliance with one rule to justify such an order.

3. The Environmental Bureau was present and represented by counsel who characterized the case as one of responsibility for contamination. Jay Anthony, the surface owner of the site, was present and represented by counsel who described the remaining problems for the rancher related to the contamination. Maralo was present and represented by counsel who characterized the case as the retroactive application of standards, a rewriting of the rules, no wrongdoing by Maralo, and the lease was assigned to another operator therefore Maralo was the wrong party.

REVIEW OF THE EVIDENCE

4. Wayne Price, a Senior Environmental Engineer of the Environmental Bureau of the OCD in Santa Fe, was accepted as an expert based on his education and experience.

5. Mr. Price and other OCD employees visited the site identified in Paragraph 1 of the Application, set out above, after Jay Anthony, the surface owner in the area of Humble State Well Number 3, made a complaint. Pits and tanks were associated with this well. Records of the OCD indicated the well and the facilities were owned and had been operated by Maralo or its predecessors in interest. Visual inspections indicated surface contamination of the soils by hydrocarbons.

6. Beginning in 2001 the OCD conducted tests at the site. Samples from the water well on the site showed some elevated chlorides above groundwater standards, but no significant hydrocarbons. Tests of soil samples at various places on the site including in the area of former pits and tank batteries indicated the presence of hydrocarbons.

7. Petroleum hydrocarbons at certain levels can be detrimental to plant and animal life. Crude oil contains benzene, which is a carcinogen. It also contains BTEX, an acronym for benzene, toluene, ethyl benzene and m-, p-and o-xylenes. OCD employees were concerned about the possibility of contaminants entering the pipeline or aqueduct supplying fresh water to the City of Jal, contaminants entering watercourses in the area, contaminates entering playa lake beds, and contaminants reaching groundwater in the area.

8. OCD guidelines for cleaning up contamination from leaks and spills apply different standards for the concentration of contaminants that may remain in the soil depending on the depth to groundwater from the bottom of the contamination. If the distance is less than 50 feet from the lowermost contaminants to groundwater then the clean up standard is 100 parts per million of total petroleum hydrocarbons (TPH) remaining in the soil. If the distance is 50 to 100 feet, the

standard is 1000 parts per million. If the distance is more than 100 feet then the standard is 5000 parts per million. The distance to a water well is also considered. If the distance from the contaminants to the water well is zero to 200 feet then the clean up standard is 100 parts per million. If the distance is 200 to 1000 feet then the clean up standard is 1000 parts per million. If the distance is greater than 1000 feet then the standard is 5000 parts per million.

9. These guidelines have been in place since 1993. Prior to that time OCD followed one standard allowing no more than 100 parts per million TPH.

10. Soil tests at the site varied and indicated levels of TPH up to 35,700 parts per million. Benzene was also found at levels exceeding state groundwater standards. At one point in an old pit area the soil was saturated with hydrocarbons. In a field test, squeezing the soil in a paper towel would result in a liquid stain. Some of the pit areas appeared to be covered with a sandy soil. Covering hydrocarbon contamination with soil will extend the life of the contamination that might otherwise dissipate naturally.

11. Boreholes at one pit on the site produced samples at the five-foot level with a TPH level of approximately 18,000 parts per million and at the 10-foot level increased to 25,000 parts per million. At 15 feet, 13,000 parts per million and at lower depths less contamination. Mr. Price testified the pit had obviously had oil in it.

12. Mr. Price also reviewed testing supplied by a consultant to the surface owner that indicated contamination down to 80 feet.

13. Mr. Price indicated the heaviest contamination found was in the upper area which probably explains why there is no vegetation growing in the area.

14. Mr. Price indicated invoices provided by Maralo show a contractor performed services for Maralo in 1994 to restore and clean up at the abandoned tank battery. The well, Humble Number 3, had been plugged in 1988. OCD files do not indicate that OCD approved the clean up of the tank battery site. Mr. Price testified the clean up was substandard and that it appeared all that was done was breaking of the dirt and then adding more dirt.

15. In order to remediate the site, Mr. Price testified that the total extent of the contamination must be delineated and then the leachability of the material must be determined to see if there will be an impact to groundwater. Some of the spots of highest contamination will probably have to be removed, but some could remain if the material is not leachable and the surface is restored so that it will not contaminate groundwater in the future. Then the area would grow grass and not be a threat to people using the surface area for work or recreation.

16. When questioned by counsel for the surface owner, Mr. Price testified the casing in a water well could serve as a conduit for contamination to groundwater. He also said the standard of care for a contaminated site is to clean up to a level that would support the growth of plants and that has not been done at this site. He also said he could not rule out the possibility of elevated chlorides in the water well resulting from the site until the site delineation is complete.

17. Mr. Price also testified that it was the practice of OCD to look to the current operator of the site to be responsible for the condition of the site.

18. On cross-examination Mr. Price testified that at this time OCD staff was not alleging groundwater had been contaminated by the site.

19. A comparison of aerial photographs used as exhibits indicated that certain surface disposal pits existing in 1968 were not in active use in 1977.

20. Mr. Price testified that his evidence of Maralo's activity at the site was based on the invoices from the contractor indicating contaminated dirt was treated and some was removed. He had no direct evidence that Maralo used a surface disposal pit to store oil or placed tank bottoms or bottom sediments in the pits.

21. Mr. Price testified that all produced water will have some amount of oil in it and that locations used as surface disposal pits would have some amount of hydrocarbons in the soil. When asked if all those sites would have to be cleaned up Mr. Price indicated they would if they were a threat to public health, the environment, or groundwater.

22. He stated that the threat to the water of the City of Jal was of low probability and was not an immediate threat.

23. Mr. Price agreed on cross-examination that operating a well for any length of time would result in some emulsion and basic sediments and that Rule 313 requires that the operator reduce as much as possible the formation of emulsion and basic sediments. He did not have sufficient information about Maralo's operations to criticize the way Maralo operated the wells.

24. Mr. Price understood the Maralo was the current operator at the site. In all material matters the testimony of Mr. Price was consistent with the OCD hydrologist appearing before the Division Hearing Examiner.

25. Responding to questions from the Commissioners Mr. Price said that the asphalt-type material on the surface was not very amenable to bioremediation. It would have to be broken up and nutrients applied to or it would be there forever. He also testified that clean up to the 5000 parts per million standard would support vegetation comparable to the area surrounding the site.

26. Mr. Price read into the record portions of several documents from the files of the State Land Office and the documents were admitted without objection. The documents were assignments of the oil and gas lease for the site from Humble Oil and Refining Company to Ralph Lowe, from Erma Lowe individually and as independent Executrix and Trustee of the Estate of Ralph Lowe to herself and to Maralo, Inc., and from the Estate of Erma Lowe and Maralo Merging Corporation to Lowe Partners, LP. In each document the assignee assumed and agreed to perform all obligations to the State of New Mexico insofar as the described land is affected and to do other acts as required by the original lease. Mr. Price then read from the base lease the section providing that the lessee will be liable and pay for all damages to the range, livestock, growing crops, or improvements caused by lessee's operations. The base lease was admitted without objection.

27. The "New Mexico State Land Office, Oil and Gas Miscellaneous Instrument Record Sheet," did not indicate any further assignments of the lease.

28. On further questioning from the Commission Mr. Price explained that historical contamination referenced in the initial complaint from OCD meant the contamination had not been addressed, but production operations had ceased.

29. Mr. Price indicated that the elevated chlorides in the water well at the site would be red flag indicating testing would be needed to determine if there might be a localized source for those chlorides and that would be included in delineation plan.

30. He further testified that the benzene levels in the soil would exceed groundwater standards and when that is seen there is a high probability that groundwater may be contaminated.

31. Mr. Price stated that it appeared the site was a centralized disposal facility for the wells on the lease and would not be cleaned up until all the wells had been plugged.

32. Mr. Price testified that it was approximately 200 feet from the surface to groundwater based on the water well at the edge of the southern pit area, the tank battery area. The soils there are sandy with high permeability and transmissivity.

33. Mr. Price said allowing an operator to plug the wells and leave the site without taking care of the contamination would open the door for massive contamination to remain there and contaminate our future groundwater supply. If the operator did not pay for the clean up then it would be paid for by the people of New Mexico.

34. Returning to the 1977 aerial photograph, Mr. Price stated that the area at the site without vegetation would indicate there was contamination at the area in 1977. This situation continued to the time of Mr. Price's first visit to the site years later.

Hydrocarbon contamination was visible at that time with dark soil, chunks of asphalty material, oil residue left on the hand when picking up the soil, and the smell of oil from the soil. If emulsions were placed into the pits the emulsions were still causing contamination of the surface of the site.

35. Dorothy Phillips, the OCD plugging bond administrator, provided OCD financial assurance records showing that Humble State Number 3 had not been transferred from Maralo to some other operator. The same was true of Shell State A Number 1. Additionally the financial assurance files showed that in 1999 Maralo requested a name change on its bond from Maralo, Inc. to Maralo, LLC. In 2000 Maralo, LLC added Lowe Partners, LP as an additional principal on the bond. OCD approved both of these actions. Ms. Phillips also checked with other state agencies regarding Lowe Partners and learned that Erma Lowe and Marolo, Inc. were its general partners.

36. Ralph Lowe individually was considered a different entity from Maralo by OCD records.

37. Roger C. Anderson, Environmental Bureau Chief for OCD, was accepted as an expert in oilfield contamination and remediation.

38. OCD's well files for the Humble State Number 3 included a Notice of Intention to Drill filed by Ralph Lowe as the operator in 1945. It also includes a Certification of Compliance and Authorization for Ralph Lowe as the operator in 1945. That document indicates that tanks were on the lease site. Documents in 1974 indicate a change of operator from Ralph Lowe to Maralo, Inc. In 1986 and 1987 Maralo, Inc. filed proposals to plug and abandon the well. A subsequent report was filed in 1988 on the plugging and abandonment of the Humble State Number 3. No documents in the file indicated approval by the OCD for any clean up of the tank battery and pits. Nothing in the well file indicated Hal J. Rasmussen Operating, Inc. had become the operator. Nor was Southwest Royalties mentioned in the file.

39. Mr. Anderson explained that normally OCD would look to the operator to clean up contamination at a site. In this case the current operator of record is Maralo, LLC. Prior to the name change, the operator was Maralo, Inc. Prior to Maralo, Inc., the operator was Ralph Lowe, now deceased. Lease records at the hearing indicate the leaseholder is Lowe Partners, LP, and its partners are Maralo and Erma Lowe.

40. Mr. Anderson testified contamination continues at a site until it is cleaned up and it remains a threat because the contaminants are available for migration to groundwater, or back to the surface, or to other waters, or to a water well. In his opinion the contamination described in this case at the Humble State Number 3 site is still a threat.

41. Mr. Anderson provided a definition of emulsion as a stable dispersion of one liquid in a second immiscible liquid, such as oil dispersed in water. He stated that when an oil well is produced, there is enough turbulence to mix oil and water to create an emulsion. Some of that emulsion would have been included in the produced water that was carried over into a disposal pit. When the pit was closed then any remaining oil needs to be treated to avoid surface damage.

42. Mr. Anderson explained that basic sediment is oil, water, and foreign matter that collects in the bottom of petroleum storage tanks, and is also known as bottoms, bottom settlings, sediment and water. A common industry practice is to mix this material with sand to stabilize areas around a tank battery. He also said oil accumulations from spills or otherwise cannot be sold and is sediment oil under Rule 313.

43. Mr. Anderson says that Maralo is in violation of Rule 313 today because the hydrocarbons are still causing contamination of the surface. It will continue to be in violation until the contamination is cleaned up. If it is not cleaned up the rule will continue to be violated.

44. The Commission took administrative notice of its rulemaking records showing that the language in Rule 313 dates from rules in place as far back as 1935.

45. OCD records for wells other than the Humble State Number 3 on the lease do contain references to Rasmussen and Southwest Royalties, but the facilities associated with Humble State Number 3 are where the contamination is found.

46. Mr. Anderson testified that once the contamination was identified then OCD located records in the well file for Humble State Number 3 that reference the tank battery on the lease. In correspondence Maralo never claimed it was not the operator of the tank battery facility and did state that it had worked on the site in the mid-1990s.

47. Jay Sean Anthony is the ranch owner who initiated the complaint regarding the Maralo site. He testified that he would like to use the well at the site for cattle. He said other wells in the area did not have high chloride levels.

48. He had hoped the work by Maralo in 1993-94 would allow grass to grow on the site, but after several years it did not.

49. Maralo offered an exhibit showing the assignment from Maralo to Rasmussen in 1994. It was not an OCD record. According to counsel it transferred all of the wells on the site and the shallow rights. Maralo retained the right to drill deep wells.

50. William P. Hunt was an employee of Ralph Lowe and Maralo who retired in 1996. He started out working on drilling rigs and was operations manager when

he retired. He was familiar with the site from 1958 until 1981. He testified before the Division Hearing Examiner and the record indicates the testimony was similar to that before the Commission.

51. Mr. Hunt identified the location of tanks, heater treaters, and the water well on the site. He said he stopped using surface disposal pits in 1968 and was told to close the pits. Produced water went down to Number 1 SWD, the saltwater disposal well.

52. Mr. Hunt worked for Ralph Lowe when he died in 1965. Maralo, Inc. included Mary Ralph Lowe, Ralph Lowe's daughter. The leases have been in the Lowe family since the early 1950s.

53. While Maralo, Inc. was the operator the tanks would run over. When that happened the employees would use a pump to pick up the oil, but it was not possible to pick up all of the oil. The saturated soil was never remediated.

54. Texas-New Mexico pipeline caused the tanks on the site to run over sometimes.

55. Some of the contamination happened while Maralo was on the site.

56. A trucking company or a tank cleaning company from Hobbs removed tank bottoms.

57. Mr. Hunt approved payment of the clean up efforts contracted for by Maralo in 1994 as shown in Maralo Exhibit 20.

58. Mr. Hunt testified that the site looks like it does because some residue oil not cleaned by the heater treater was there. There is some percentage of oil that could not be treated out of the water. It would build up in the pits to a point that it would be picked up and treated again.

59. Joe Pulido is the land manger for Maralo. He was responsible for compiling Exhibit 9 from Maralo's files. Maralo Exhibit 9B transferred certain rights to Rasmussen.

60. Mr. Pulido testified that the assignments included in Exhibit 9 were for undivided interests and did not qualify for record title change with the Land Office. They assigned only the working interest in certain properties. The State Land Office records reflect that Lowe Partners would be responsible for activities on the lease as record title owner and for the requirements in the lease.

61. Mr. Pulido explained Maralo, LLC is the operating entity of Lowe Partners. Lowe Partners is the record title owner of the lease. It has a contractual assignment into Hal Rasmussen for the fee interest down to 3500 feet that is not

filed with the state. Mary Ralph Lowe is the president of Maralo, LLC, the managing partner of Lowe Partners.

62. Maralo, Inc. no longer exists. Erma Lowe died in 1998 so the partners of record listed with the Secretary of State for Lowe Partners no longer exist.

63. Despite the assignment Maralo still appears as operator of record, as far as the OCD is concerned, for Humble 3, Shell State A 1, Humble 1 (converted to a saltwater disposal well) and Humble 2. No notice of the transfer was provided to OCD or the State Land Office.

64. The lease assignment to Rasmussen occurred less than 30 days after the clean up work on the site in 1994. Maralo may have agreed to indemnify Rasmussen for the inadequate cleanup.

FINDINGS AND CONCLUSIONS

1. The OCC has jurisdiction of this matter.

2. This matter concerns soil and perhaps water contamination at pits and tank batteries associated with Humble State Well Number 3 in Lea County.

3. Testing indicates soil contamination exists at the surface of the site and to some depth below the surface, perhaps as much as 80 feet. The contamination is likely to migrate until it is remediated. Vegetation will not grow on the site.

4. It has not yet been determined if the groundwater in the area has been contaminated, though the high chloride levels in a water well at the site indicate more testing is needed. Groundwater is 200 feet below the surface. Other bodies of fresh water may be at risk from the contamination.

5. While Maralo operated the site produced water with oil in it, an emulsion, was placed into the pits, the tanks overflowed, a pipeline link caused the tanks to overflow, and Maralo took inadequate measures to close the pits. The soil was not remediated and the contamination continued and may have been exacerbated by Maralo having it covered. However the contamination was created, emulsions and basic sediment were placed on the soils and resulted in surface damage and possible contamination of fresh water. Maralo was the operator during the time period at least part of the contamination was created and is still listed in OCD records as the operator.

6. Maralo, LLC is the operating entity of Lowe Partners, LP the record title owner of the lease. Mary Ralph Lowe, the daughter of Ralph Lowe, is the president of Maralo, LLC. Lowe Partners has assigned interests in the site, but did not change the record title with the State Land Office.

7. Maralo is shown as the operator of the site in OCD records since 1974. In 1999 Maralo requested a name change on its bond for financial assurance from Maralo, Inc. to Maralo, LLC. Later Lowe Partners, LP was named as an additional principal on the bond.

8. OCD records for the site do not refer to any other parties as operator of the site.

9. Exhibits indicate a portion of the interest in the lease has been assigned, but that this information was not provided to the state agencies nor has Maralo been released from the obligations related to this site.

10. Oily emulsions were released on the surface of the site. They have caused surface damage and may have polluted fresh water. The contamination continues so there is no retroactive application of clean up standards.

11. Maralo has not complied with Rule 313, which has existed in similar form since 1935.

12. The actions complained of in this matter took place after 1935.

IT IS THEREFORE ORDERED,

13. The Amended Application of the Environmental Bureau of the Oil Conservation Division is approved.

14. Maralo is ordered, within 45 days of this decision, to submit to the Environmental Bureau for approval or revision and approval a plan to delineate the extent of the contamination existing at the site of the Humble State Well Number 3 and its associated facilities including areas used for pits, tank batteries and the like.

15. Within six months of having the plan approved, Maralo is ordered to complete the activities necessary to delineate all the contamination of the site associated with the production of hydrocarbons including a determination of possible ground water contamination. The delineation report will be provided to the Environmental Bureau within the six-month time frame.

16. Maralo is further ordered to provide a plan for remediation of the contamination to the Environmental Bureau within 90 days of completing the delineation. The Environmental Bureau may approve the plan or revise it and approve it.

17. Maralo is further ordered to complete the physical tasks required in the remediation plan within six months of the approval of the plan, unless the plan specifies that certain activities may take place after that time. In that instance, Maralo shall meet the timeframes set forth in the plan.

18. Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the 9th day of December 2004.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMI BAILEY, CPG, MEMBER

FRANK T. CHAVEZ, MEMBER

MARK E. FESMIRE, P.E., CHAIR

SEAL