

**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. 13142

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION
DIVISION FOR AN ORDER REQUIRING MARALO, LLC TO
REMEDiate HYDROCARBON CONTAMINATION AT AN
ABANDONED WELL AND BATTERY SITE,
LEA COUNTY, NEW MEXICO**

PRE-HEARING STATEMENT

This pre-hearing statement was submitted by Maralo, LLC as required by the New Mexico Oil Conservation Division.

APPEARANCES OF THE PARTIES

APPLICANT

Oil Conservation Division

OPPONENT

Maralo, LLC
P. O. Box 832
Midland, Texas 79702

ATTORNEY

Gail MacQuesten, Esq.
NMOCD
1220 S. St. Francis Drive
Santa Fe, New Mexico 87505
(505) 476-4351

ATTORNEY

W. Thomas Kellahin, Esq.
Kellahin & Kellahin
P. O. Box 2265
Santa Fe, New Mexico 87504
Phone 505-982-4285 Fax 505-982-2046

Rick G. Strange, Esq.
Cotton, Bledsoe, Tighe & Dawson
P. O. Box 2776
Midland, Texas 79702
Phone 432-685-8574 Fax 432-684-3168

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STATEMENT OF THE CASE

OPPONENT:

The Oil Conservation District lacks authority to require Maralo, LLC to conduct the proposed remediation activities because it is impermissibly applying rules retroactively. For example, the Oil Conservation District is attempting to punish Maralo, LLC for conduct that was legal at the time it occurred, by using rules outlawing that conduct, which were adopted after the fact. This violates Maralo, LLC's constitutional due process rights, and violates the Constitution's Ex Post Facto provision. Maralo, LLC denies that the commission has jurisdiction or legislative authority to order Maralo, LLC to remediate property that was abandoned in 1988. Maralo, LLC also denies that it is otherwise liable for the charges filed against it.

PROPOSED EVIDENCE

OPPONENT

WITNESSES	EST. TIME	EST. EXHIBITS
Philip Smith	30 minutes	Well File Excerpts Correspondence with OCD
Bill Hunt	45 minutes	Well File Excerpts

PROCEDURAL MATTERS

Maralo's motion to dismiss to be filed.

Maralo's requests that the hearing of this case be continued to the October 9, 2003 docket because one of Maralo's witnesses is not available for the September 18, 2003 docket and Maralo's Texas attorney has a previously schedule hearing and is not available for the September 18, 1003 docket.



W. Thomas Kellahin