

1
2
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STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
OIL CONSERVATION DIVISION

ORIGINAL

IN THE MATTER OF THE HEARING CALLED
BY THE OIL CONSERVATION DIVISION FOR
THE PURPOSE OF CONSIDERING:

CASE NO. 14186

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION, THROUGH THE
ENFORCEMENT AND COMPLIANCE MANAGER, FOR
AN ORDER AGAINST McELVAIN OIL AND GAS
PROPERTIES, INC. [OGRID 22044]

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Legal Examiner
RICHARD EZEANYIM, Technical Examiner
TERRY G. WARNELL, Technical Examiner

October 16, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico
Oil Conservation Division, DAVID K. BROOKS, Legal Examiner,
RICHARD EZEANYIM, Technical Examiner, and TERRY G. WARNELL,
Technical Examiner, on Thursday, October 16, 2008, at the
New Mexico Energy, Minerals and Natural Resources Department,
1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03
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INDEX

Examiner Hearing
CASE NO. 14186

PAGE

APPEARANCES

4

APPLICANT'S WITNESSES:

KELLY ROBERTS

DIRECT EXAMINATION BY MS. ALTOMARE 12

CROSS-EXAMINATION BY MR. FELDEWERT 25

EXAMINATION BY MR. EZEANYIM 32

REDIRECT EXAMINATION BY MS. ALTOMARE 35

BRANDON POWELL

DIRECT EXAMINATION BY MS. ALTOMARE 36

CROSS-EXAMINATION BY MR. FELDEWERT 48

EXAMINATION BY MR. EZEANYIM 57

EXAMINATION BY MR. BROOKS 59

REDIRECT EXAMINATION BY MS. ALTOMARE 59

RECROSS-EXAMINATION BY MR. FELDEWERT 60

FURTHER EXAMINATION BY MR. EZEANYIM 62

CHARLIE PERRIN

DIRECT EXAMINATION BY MS. ALTOMARE 63

CROSS-EXAMINATION BY MR. FELDEWERT 75

REDIRECT EXAMINATION BY MS. ALTOMARE 109

RECROSS-EXAMINATION BY MR. FELDEWERT 114

APPLICANT'S EXHIBITS A through K 117

INDEX (CONTINUED)

RESPONDENT'S WITNESSES:

MICHAEL BRATCHER

DIRECT EXAMINATION BY MR. FELDEWERT	118
CROSS-EXAMINATION BY MS. ALTOMARE	140

JOHN STEUBLE

DIRECT EXAMINATION BY MR. FELDEWERT	145
CROSS-EXAMINATION BY MS. ALTOMARE	157
EXAMINATION BY MR. EZEANYIM	170

ART MERRICK

DIRECT EXAMINATION BY MR. FELDEWERT	174
CROSS-EXAMINATION BY MS. ALTOMARE	180
EXAMINATION BY MR. EZEANYIM	183

RESPONDENT'S EXHIBITS 1 through 22	187
------------------------------------	-----

REPORTER'S CERTIFICATE	188
------------------------	-----

A P P E A R A N C E S

FOR THE APPLICANT:

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FOR THE RESPONDENT:

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ALSO PRESENT:

Kip Joda, Esq.
General Counsel
McELVAIN OIL & GAS PROPERTIES, INC.
1050 17th Street, Suite 1800
Denver, Colorado 80265

1 MR. BROOKS: Back on the record. At this time, we
2 call Case No. 14186, Application of the New Mexico Oil
3 Conservation Division for an Order against McElvain Oil and Gas
4 Properties, Inc., San Juan County, New Mexico.

5 Call for appearances.

6 MS. ALTOMARE: Mikal Altomare on behalf of the Oil
7 Conservation Division.

8 MR. FELDEWERT: Michael Feldewert with the Santa Fe
9 office of Holland and Hart on behalf of the respondent,
10 McElvain Oil and Gas Properties, Inc., and with me is Mr. Kip
11 Joda, who is general counsel for the company.

12 MR. BROOKS: How many witnesses?

13 MS. ALTOMARE: I anticipate calling three of the four
14 listed on my pre-hearing statement, possibly calling the
15 fourth. I will be calling Kelly Roberts, Brandon Powell and
16 Charlie Perrin and possibly calling Daniel Sanchez.

17 MR. FELDEWERT: And I have three witnesses,
18 Mr. Examiner.

19 MR. BROOKS: How long do you anticipate your cases
20 will take?

21 MS. ALTOMARE: I honestly don't know. It's going to
22 depend a large part on cross-examination. I would anticipate
23 that probably about an hour to an hour-and-a-half for direct
24 presentation.

25 MR. BROOKS: Mr. Feldewert?

1 MR. FELDEWERT: I think we are similar. If I was a
2 betting man, I would guess it's going to take three or four
3 hours.

4 MR. BROOKS: For your presentation only or for both?

5 MR. FELDEWERT: For both. I'm sorry, for total.

6 MR. BROOKS: Okay. If we took four hours, we'd be
7 6:15 and probably even a little later. Because of the timing,
8 I don't think we can really afford to devote more time to it.
9 So I think we're going to have to limit everybody to not more
10 than two hours for your presentation, and that would include
11 both your direct and your cross.

12 MR. FELDEWERT: This is starting to sound familiar.

13 MR. EZEANYIM: If I may -- if I may. If you guys
14 don't want to have this case today, we might send it off docket
15 so that you can have all the time in the world, if you want to
16 do that. Because I see this case going after 7:00, the way you
17 guys -- and I'm not a proponent of not giving you due process,
18 you know. It will be until 7 o'clock, I think, 7 o'clock,
19 trust me.

20 So if I may suggest we might move this to off docket
21 and we would be willing to do that.

22 MS. ALTOMARE: I would strenuously object to that,
23 with all due respect. We have worked very hard to make this
24 case ready to go today. We've pulled four individuals out of
25 the field office and brought individuals out of town, and I

1 think in some cases even from further than that.

2 And I would really object to postponing this any
3 further. I think we should at least give it a go.

4 MR. EZEANYIM: In that case, we will limit your time.
5 Let's get it going.

6 MR. BROOKS: Okay. Very good. I will keep track of
7 the time limits here. Starting at 2:20, Ms. Altomare, do you
8 want to use any of your time on an opening statement?

9 MS. ALTOMARE: Just very briefly. I think the
10 pre-hearing statement and the application largely speak for
11 themselves.

12 I would like to direct the Hearing Examiner's
13 attention to the fact that, although there may appear at first
14 blush to be several issues involved in this case, what this
15 case is not about is -- it is not about what the new Pit Rule
16 is about versus what the old Pit Rule is about. It is not
17 about what our Division has made available to operators at
18 large in the State with regard to interpretation of Rule 50 as
19 it was applied.

20 What it is about is, specifically, that McElvain Oil
21 and Gas Properties had specific, very well articulated and
22 repeated notice of what Rule 50 was and what the Division's
23 policy was for calculating the timeline for pit closure, and
24 about what their options were for requesting an extension for
25 that time period. And despite having that very specific

1 notice, chose to disregard it and knowing and willfully and in
2 violation of Rule 50, and proceeded to allow those wells to
3 remain open in excess of that six-month period of time.

4 I would ask that, as we proceed with the presentation
5 of evidence, that the Hearing Examiners keep that in mind
6 despite what might be presented here today. A lot of the
7 evidence is likely to be not directly related to that core
8 issue, which is the issue of whether or not they knowingly and
9 willfully violated Rule 50 by leaving these particular two pits
10 open beyond the six-month date.

11 The rest of it, I think, will speak for itself.

12 MR. BROOKS: Okay. Mr. Feldewert?

13 MR. FELDEWERT: Mr. Examiner, I invite you to take
14 the notebook, please, and turn to Exhibit No. 4, which is a
15 time line associated with the Wiedemer wells. So in the white
16 notebook, I have an Exhibit 4.

17 And we're talking about pits at two wells here, and I
18 don't believe there's going to be any dispute about this time
19 line. And what it shows is that we have -- there were lined
20 pits at two of these wells, and these pits were utilized during
21 the completion process. And it's undisputed, Mr. Examiners,
22 that these pits were closed within six months and when
23 McElvain's use of these pits ceased. There's no dispute about
24 that.

25 They were completed on April 6. They were closed by

1 September 25th, 2007. What is at issue here is their
2 interpretation of Rule 50. If you keep your thumb on this and
3 turn to Exhibit 1, I have Rule 50 which is the Pit Rule that
4 was in existence at the time of this Notice of Violation was
5 issued and the one in which they specifically rely upon.

6 And it says, "A pit or below-grade tank shall be
7 properly closed within six months of cessation of use. Two
8 points here: It says "a pit." It doesn't differentiate
9 between types of pits; it says "a pit."

10 The second thing it says in this published rule is
11 that they are to be closed within six months of cessation of
12 use. McElvain did exactly that. They closed these pits within
13 six months of the time that they ceased using this pit.

14 There are guidelines that were issued in connection
15 with this Pit Rule. If you look at the guidelines, the
16 guidelines say one thing with respect to the time: That the
17 pit shall be closed within six months of cessation of use.
18 McElvain did that.

19 What we have here, as far as I can tell, is a
20 circumstance where the Division is suggesting that there is
21 some special rule for McElvain and that McElvain had an
22 obligation to close this pit within six months, not of
23 cessation of use, but when a casing string is set and cemented.

24 Now, I invite you to find any published definition of
25 cessation of use, any published guideline, or any published

1 rule that says that a drilling pit is to be closed within six
2 months of when a casing string is set and cemented. And the
3 reason that's important here -- and I guess that's why we're
4 here -- if you go back to this time line, that's the only
5 reason they generated a fine, because the production casing
6 string on each of these wells was set and cemented, in one case
7 on February 5th, 2007, and on the other case on January 27,
8 2007. These pits were closed by September 25th, 2007.

9 So if they can go back and use when the casing string
10 was set and cemented, they say, "Well, you're one month too
11 late. Therefore we're going to issue a Notice of Violation
12 saying it's knowing and willful, and we're going to issue --
13 and seeking here a \$5,000 fine." That's what this case is all
14 about.

15 MR. BROOKS: It seems like it would be two months if
16 you go from January 27th to September 25th.

17 MR. FELDEWERT: When the pits were closed, yes. We
18 got the Notice of Violation -- I'd have to -- January 8th --
19 okay, two months. So that's why we're here. They are relying
20 upon an unpublished, undisclosed, internal interpretation of
21 cessation of use, and there is not a single publication by the
22 Division that was provided to operators that supports that
23 definition.

24 So the first question is: Has there been a violation
25 of Rule 50 as written? I submit to you there has not.

1 Second question -- more importantly for purposes of a
2 fine: Has there been a knowing and willful violation of Rule
3 50? And that requires, as you look here on Exhibit 1 -- and
4 I'll use their own definition that they have in their
5 regulations -- that requires a showing by the Division. It
6 uses words like criminal intent, criminal or evil intent, to
7 violate the rule, specific indifference or reckless disregard
8 for that six-month period under the rule.

9 But you have an honest mistake or mere inadvertence.
10 You don't have a knowing and willful violation, and you don't
11 have grounds for a penalty. So as you listen to the evidence
12 here today, I want you to glean, as I'm going to try to glean,
13 whether there's been any publication of this unique definition
14 of cessation of use, whether it makes any sense when you look
15 at the language of this rule. And then, in addition, was
16 McElvain in this case subject to a determination that they had
17 some criminal or evil intent to violate Rule 50?

18 It doesn't exist. That's why we're here. That's why
19 we have fought this all the way to this hearing.

20 MR. BROOKS: Okay. Very good. Ms. Altomare, you
21 have 1 hour, 58 minutes left. You may continue.

22 MS. ALTOMARE: At this time, I'd like to call my
23 first witness, Kelly Roberts.

24 We need to have our witnesses sworn, Mr. Hearing
25 Examiner.

1 MR. BROOKS: Okay. Would all the witnesses please
2 stand and be sworn? Please state your names.

3 [Witness sworn.]

4 MR. PERRIN: Charlie Perrin.

5 MR. POWELL: Brandon Powell.

6 MR. ROBERTS: Kelly Roberts.

7 MR. STEUBLE: John Steuble.

8 MR. MERRICK: Art Merrick.

9 MR. BRATCHER: Mike Bratcher.

10 MS. ALTOMARE: Thank you, Mr. Hearing Examiner.

11 KELLY ROBERTS

12 after having been first duly sworn under oath,

13 was questioned and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. ALTOMARE:

16 Q. Can you please state your name and title for the
17 record, please?

18 A. My name is Kelly Roberts, and I'm a Staff
19 Manager II for the Aztec office of the OCD.

20 Q. Okay. And that is Division III; is that right?

21 A. Yes.

22 Q. And at the time that this initial inspection of
23 these wells was conducted, what was your position?

24 A. I was a field compliance officer.

25 Q. As a compliance officer, what were your general

1 duties?

2 A. My general duties were well inspections.

3 Q. Okay. And in the course of conducting a normal
4 day of well inspections, how did you go about conducting
5 inspections on any given day?

6 A. If I didn't have a specific assignment from my
7 supervisor, then I would choose a general geographic area and
8 go out and conduct inspections on wells in that area.

9 Q. Are you familiar with the operator known as
10 McElvain Oil and Gas Properties?

11 A. Yes, ma'am.

12 Q. And specifically, are you familiar with the wells
13 involved in this matter, the Wiedemer #7 and #6?

14 A. Yes, ma'am.

15 Q. Did you on a particular day conduct a routine
16 inspection of the Wiedemer #6 and #7?

17 A. Yes, ma'am.

18 Q. And can you describe for the Hearing Examiners
19 your inspection -- how you came to inspect those wells at that
20 time?

21 A. On September 11th, I was in the Angel Peak area
22 doing well inspections and came across the McElvain
23 Wiedemer #6. I found on that location an open drilling pit.
24 The liner was intact, the fencing was intact, and everything
25 seemed to be okay with that pit. I continued to conduct my

1 inspections that day and came across the Wiedemer #7 and noted
2 on that location an open drilling pit with several rips and
3 tears in the liner.

4 MR. BROOKS: What day is this?

5 THE WITNESS: This is September 11th, 2007.

6 MR. FELDEWERT: I think it's on the time line,
7 Exhibit 4.

8 THE WITNESS: At the #7, after I noted the tears and
9 rips in the liner, I took several photos of that pit, and I
10 contacted Karen Sharp, who is the compliance officer in our
11 office and asked her about the closure deadline for those pits.
12 And she indicated that both the Wiedemer #7 and #6 were beyond
13 their closure date. I then returned to the #6 and took photos
14 of that pit as well.

15 Q. (By Ms. Altomare): Upon returning to the office,
16 what did you do with the information you had obtained on the
17 Weidemer #6 and #7?

18 A. I presented my photos and the information on the
19 wells to Brandon Powell, our field environmental specialist.

20 Q. And is that the typical procedure in the
21 District III office for handling suspected violations?

22 A. Yes, it is.

23 Q. Are you familiar with OCD Rule 50 as it was
24 previously designated regarding pit closures?

25 A. Yes, I am.

1 Q. And what are the requirements for pit closures,
2 according to Rule 50?

3 A. That pits be closed within six months of
4 cessation of use.

5 Q. And how were you trained to calculate the
6 six-month period after cessation of use, for purposes of
7 Rule 50?

8 A. In my three years with OCD, we have always used
9 the date that they set and cemented their casing.

10 Q. Have you ever known anyone else in the Division
11 to use any other method for calculating that six-month time
12 period?

13 MR. EZEANYIM: Let me understand: "The day you set
14 the cement." Could you say that again?

15 THE WITNESS: The date that they set and cemented the
16 last casing string in the well.

17 MR. EZEANYIM: That's the date that they're making
18 use of that well?

19 THE WITNESS: We begin at that date, and six months
20 after that is the deadline for closure of the pit.

21 MR. EZEANYIM: Let me understand. You drill a well,
22 set cement, trying to produce: That's where when you start
23 counting. Is that what you are saying?

24 THE WITNESS: That was -- in our district office,
25 that's the determination for cessation of use on a drilling

1 pit.

2 MR. EZEANYIM: Okay.

3 Q. (By Ms. Altomare): Just for clarification, it's
4 actually a Division-wide policy, right?

5 A. Yes, ma'am.

6 Q. And rationale for that is that that's when the
7 drilling process has stopped; is that right?

8 A. Yes, ma'am.

9 Q. Do you recall being involved in a previous
10 compliance enforcement action with McElvain on their Amacker #1
11 site?

12 A. Yes, ma'am.

13 Q. Can you explain what involvement you had in that
14 particular matter?

15 A. On April 20th, 2007, I conducted an inspection at
16 the Amacker #1 well site. I noticed an open pit that had
17 fluids that were overtopping the liner in the pit. I again
18 took several photos of the location and the pit and brought
19 those photos back to the office for review by our environmental
20 specialist, Brandon Powell.

21 MR. BROOKS: How do you spell the name of that well?

22 THE WITNESS: A-m-a-c-k-e-r.

23 MR. BROOKS: Okay.

24 Q. (By Ms. Altomare): At this time, I'd like to
25 direct your attention to Exhibit B in your packet in front of

1 you. Can you identify this document for the record, please?

2 A. This is the Notice of Violation for the
3 Amacker #1 well.

4 Q. Okay. And this Notice of Violation was issued on
5 May 11, 2007; is that right?

6 A. Yes, ma'am.

7 Q. Okay. Following the issuance of this Notice of
8 Violation regarding the Amacker #1 well, was an administrative
9 conference held?

10 A. Yes, ma'am.

11 Q. And were you in attendance at that conference?

12 A. Yes, ma'am, I was.

13 Q. When was that conference conducted?

14 A. That conference was conducted May 30th, 2007.

15 Q. Okay. I'd like to point you to Exhibit C, if you
16 would. Can you identify that document for the record, please?

17 A. This is the sign-in sheet for the McElvain
18 administrative conference.

19 Q. The conference that was held on May 30, 2007,
20 regarding the Amacker site?

21 A. Yes, ma'am.

22 Q. Okay. According to the exhibit in front of you,
23 the sign-in sheet, who all attended that particular conference?

24 A. Charlie Perrin, myself, Art Merrick with
25 McElvain, and John Steuble with McElvain.

1 Q. Looking to Exhibit D in your packet, do you
2 recognize this document?

3 A. Yes, ma'am.

4 Q. And can you identify that for the record?

5 A. These are my notes from the NOV administrative
6 conference for the Amacker #1 dated 5/30/07.

7 Q. Okay. Based on your notes and your recollection
8 from that conference, what was discussed at that conference
9 with McElvain regarding their obligations under Rule 50?

10 A. The discussion that we had concerning overtopping
11 of the liner was the extraordinary amount of snowfall that we
12 had that year in January and February and the fact that
13 McElvain had problems in February getting trucks to the
14 location. Also discussed were the fact that McElvain had
15 forgotten to submit a request for extension on the pit, and
16 they had planned to re-complete it as a Mesaverde well.

17 Q. What did the fact that they mentioned to you that
18 they had forgotten to submit an extension for the time period
19 to close the pit -- what does that indicate to you?

20 A. To me, that indicates that they were aware of the
21 requirements of Rule 50 for closure of the pit.

22 Q. For both the deadline and the option to request
23 an extension?

24 A. Yes, ma'am.

25 Q. Were other pits that were in violation or nearing

1 violation of Rule 50 for closure discussed at that particular
2 conference?

3 A. Yes, ma'am. McElvain stated that they had done
4 an internal review of their paperwork and would be submitting
5 closure extensions for other pits that were -- for several
6 other pits.

7 Q. Okay.

8 A. And in my notes, I show that five to six
9 extensions would be filed soon.

10 Q. I'd like to direct you to Exhibit F. Can you
11 identify what this -- this is a two-page exhibit -- identify
12 what these two documents are, please.

13 A. This is an e-mail that was sent by John Steuble
14 with McElvain, to myself, and to Charlie Perrin.

15 Q. And the date of that e-mail is?

16 A. Friday, June 8th, 2007.

17 Q. And what was the purpose of that particular
18 e-mail?

19 A. The e-mail was providing us with a list of the
20 pits that McElvain had open and were working on either filing
21 extensions for closure or were going to close.

22 Q. And that is -- that particular list of pits is
23 located on the second page of that document?

24 A. Yes, ma'am.

25 Q. Can you summarize what you see on that chart on

1 page 2 of Exhibit F, please?

2 A. I see a list of well names and then a table that
3 shows whether or not the pit is open, whether or not the pit
4 has plans to be closed, whether or not they have plans to file
5 for an extension on the well or if the pit is already closed,
6 as well as remarks.

7 Q. Okay. And what kind of remarks are noted on this
8 particular chart?

9 A. The four remarks I see are all stating that the
10 pit would be closed after completion.

11 Q. For four of the listed wells?

12 A. Yes, ma'am.

13 Q. Are any of those four listed wells that are to be
14 closed after completion either of the two Weidemer wells that
15 are at issue in this case?

16 A. No, ma'am.

17 Q. Are the two Weidemer wells in this case listed
18 included on this list on Exhibit F?

19 A. Yes, ma'am, they are.

20 Q. What are the notations indicated on the list for
21 the two wells?

22 A. That the pit was opened, and they had plans to
23 close it.

24 Q. Is there any indication that an extension is
25 planned to be sought for either of the two wells?

1 A. No, ma'am.

2 Q. The Amacker enforcement action ultimately
3 resulted in the application of an Agreed Compliance Order; is
4 that right?

5 A. Yes, ma'am.

6 Q. I'd like to direct your attention to Exhibit G.
7 Can you identify this document for the record?

8 A. This is the Agreed Compliance Order entered into
9 with McElvain, ACO #196, and this is for the Amacker well.

10 Q. And that was to resolve the issues having to do
11 with both the torn liner and the failure to timely close?

12 A. No, ma'am. On the Amacker it was for overtopping
13 the liner and for failure to close.

14 Q. My mistake. Thank you. What enforcement action
15 did you, your supervisor, and Mr. Powell decide to ultimately
16 take with regard to the two Weidemer wells?

17 A. It was ultimately decided to issue an NOV, Notice
18 of Violation.

19 Q. Okay. And that Notice of Violation was issued on
20 January 25th, 2008?

21 A. Yes, ma'am.

22 Q. And what were the violations -- what was the
23 violation that was noted in that?

24 A. The violation noted in that Notice of Violation
25 was for tears in the liner and for failure to close within six

1 months after cessation of use and failure to submit a request
2 for an extension.

3 Q. Okay. I think, actually, the decision was made,
4 wasn't it, not to include the tears in the liner because there
5 was no fluid left in them?

6 A. Yes, ma'am, that is correct.

7 Q. Wasn't an administrative conference ultimately
8 held to attempt to resolve the violations cited in this Notice
9 of Violation?

10 A. Yes, ma'am.

11 Q. And were you in attendance at that?

12 A. Yes, ma'am.

13 Q. When was that administrative conference
14 conducted?

15 A. I believe it was February 27, 2008.

16 Q. I'd like to direct your attention to Exhibit H.
17 Can you identify this document for the record?

18 A. This is the sign-in sheet for the McElvain Oil
19 and Gas administrative conference conducted February 27, 2008.

20 Q. And according to this document, who was in
21 attendance at that particular conference?

22 A. Charlie Perrin, Brandon Powell, myself, and Art
23 Merrick with McElvain and John Steuble with McElvain.

24 Q. Looking further to Exhibit I, can you identify
25 this document for the record?

1 A. These are my notes taken at the McElvain
2 administrative conference conducted February 27, 2008.

3 Q. And based on your notes and your recollection
4 from that particular conference, what was discussed at that
5 conference regarding Rule 50 and McElvain's violation of
6 Rule 50 with regard to the Wiedemer pits?

7 A. It was stated that the operator felt that they
8 had not left the pit open beyond the six months' cessation of
9 use due to their interpretation of six months.

10 Q. What was their interpretation of six months?

11 A. Their interpretation was that cessation of use
12 was after they had completed the well.

13 Q. And based on your interaction and your knowledge
14 of McElvain's practices, does their interpretation of cessation
15 of use as being six months beyond the completion of the well,
16 does that seem to go along with their general practice for
17 timing of pit closures?

18 A. Yes, ma'am.

19 Q. It does? For the --

20 A. I'm sorry.

21 Q. Do they tend to comply with their own purported
22 standard that they are to close their pits within six months of
23 completing wells? Do they always close their pits within that
24 time period?

25 A. No, ma'am.

1 Q. Was it discussed at that second administrative
2 conference in February that, at the previous administrative
3 conference, you had advised them of the Division's policy for
4 defining the six-month period of time?

5 A. Yes. I have a specific note in there that says,
6 "Cessation of use was discussed at the administrative
7 conference for the NOV on the Amacker #1 well."

8 Q. Did they provide any explanation for why they did
9 not close these wells within that six-month period of time?
10 These pits, rather.

11 A. They did make a statement that they were busy
12 closing pits in another area.

13 Q. Okay. And did they alternatively give you any
14 explanation why they didn't seek an extension for these two
15 particular wells since they were expending resources on other
16 sites?

17 A. No, ma'am, not that I have in my notes.

18 Q. To your knowledge, did they seek any kind of an
19 extension for the closure of the Wiedemer pits?

20 A. No, ma'am.

21 Q. What conclusions have you drawn with regard to
22 McElvain's conduct in the failure to close the two Wiedemer
23 pits between the six-month period of time allotted by Rule 50?

24 A. My conclusion is that McElvain had specific
25 knowledge of Rule 50 due to the fact that we had discussed it

1 with them in a previous Notice of Violation, and they had
2 specific knowledge of our interpretation of cessation of use.

3 Q. And based on that, would you say that their
4 violation of Rule 50 with regard to these two wells was knowing
5 and willful?

6 A. Yes, ma'am.

7 MS. ALTOMARE: Okay. I'll pass the witness.

8 MR. BROOKS: Mr. Feldewert, you have 1 hour and 56
9 minutes.

10 CROSS-EXAMINATION

11 BY MR. FELDEWERT:

12 Q. Mr. Roberts, I'd like you to take a look at
13 what's been marked as McElvain Exhibit No. 5.

14 A. No. 5.

15 Q. In the white notebook.

16 A. Yes, sir.

17 Q. Are these the photos that you took on your
18 inspection on September 11th?

19 A. Yes, sir.

20 Q. Okay. The first one is Wiedemer #6 -- or the
21 Wiedemer #7; is that right?

22 A. Yes, sir.

23 Q. And the second one is Wiedemer #6?

24 A. The second photo, or the second well site?

25 Q. Second photo.

1 A. The second photo --

2 Q. I'm sorry. Second well site.

3 A. Yes.

4 Q. And these pits were the ones that were closed --
5 and I'm looking now on Exhibit No. 4 -- these are the pits that
6 were closed September 25th, 2007?

7 A. Exhibit No. 4?

8 Q. Yes.

9 A. According to this, yes, sir.

10 Q. Okay. And they were closed without any
11 remediation required; correct?

12 A. Yes, sir, I believe so.

13 Q. They posed no threat to the environment?

14 A. Yes, sir.

15 Q. All right. Now, you have suggested here that
16 McElvain had specific knowledge of Rule 50, correct?

17 A. Yes, sir.

18 Q. All right. Now, they don't dispute they had
19 specific knowledge of Rule 50. I think what's at issue here is
20 specific knowledge of the district's interpretation of
21 cessation of use.

22 A. I would agree.

23 Q. Okay. Would you point to me what gave McElvain
24 specific knowledge of the district's interpretation of
25 cessation of use as being when a casing string is set and

1 cemented?

2 A. That was information that was discussed in the
3 administrative conference for the Amacker #1.

4 Q. For the administrative conference for the
5 Amacker #1?

6 A. Yes, sir.

7 Q. Okay. So let's go to your notes for that,
8 please. While you're going there, is there anything else that
9 you contend gave them specific notice of the district's
10 interpretation that cessation of use means when a casing string
11 is set and cemented?

12 A. Like I said, it was just part of our discussion
13 in the Notice of Violation for the Amacker #1.

14 Q. So you can't point me to any other event or
15 document that gave them specific, well-articulated notice of
16 the district's interpretation of cessation of use?

17 A. None that I had personal knowledge of.

18 Q. All right. If I go to your notes here -- well,
19 let me ask you something: You were at a conference, right?

20 A. Yes, sir.

21 Q. What's your general role at these conferences?

22 A. My general role?

23 Q. Uh-huh.

24 A. Is to -- most of the times I will read the Notice
25 of Violation to the operator and help with my district

1 supervisor and anyone else attending in giving them
2 understanding of my perspective while I was in the field.

3 Q. Is part of your role also to be the note-taker?

4 A. No, sir. I take notes on my own volition.

5 Q. I've looked at the notes that the Division has
6 produced, and I compliment you. I think you take the most
7 detailed notes of anyone else there; would you agree?

8 A. I feel I did a good job.

9 Q. Okay. Now, when you take your notes, are you
10 being very careful to note exactly what was said by either
11 party?

12 A. I make every attempt.

13 Q. And if I'm understanding how you do it, you do a
14 good job of putting bullet points wherever you think there's an
15 important disclosure; do you not?

16 A. I do.

17 Q. Okay. And so if there's something that's
18 important in that discussion, you make sure to write it down,
19 and you put a bullet point by it?

20 A. Yes, sir.

21 Q. Now, I've gone through your notes here -- that's
22 on Exhibit D.

23 A. Yes, sir.

24 Q. Can you point to me a specific note or a bullet
25 point that indicates that there was a specific,

1 well-articulated discussion of how the district interprets
2 cessation of use?

3 A. I cannot.

4 Q. Is there anything in here to indicate to you on
5 these notes that this six-month period in Rule 50 was even
6 discussed or was an issue at this conference?

7 A. Just my own personal reminder in the bullet where
8 I state, "Forgot to submit request for extension on pit." That
9 was part of our conversation that suggested to me that McElvain
10 did know the requirements for filing for an extension --

11 Q. Okay.

12 A. -- and failed to do so.

13 Q. Now, would it be fair to say that that would
14 indicate to you that they were aware that there was a six-month
15 period?

16 A. No, sir. That indicates to me that they were
17 aware of the requirements for filing for an extension.

18 Q. Okay. All right. Would it indicate to you that
19 they were aware that there was a six-month period that
20 commenced to start whenever the casing string was set and
21 cemented?

22 A. Not with that note, no.

23 Q. Okay. In fact, by the time you had this
24 administrative conference, indeed, when you issued your Notice
25 of Violation for the Amacker well, that well site had been long

1 abandoned by Frontier.

2 A. Yes, sir.

3 Q. We were -- at the time you issued your Notice of
4 Violation, if my time line is correct, we were beyond seven or
5 eight -- at least seven or eight months beyond when any
6 activity took place at that abandoned well site?

7 A. I cannot speak to that.

8 Q. Do you recall what was specifically said at this
9 conference about cessation of use?

10 A. In the bullet where it says, "Charlie suggests
11 waiving the penalty for 50C(1), overtopping, but cannot suggest
12 that we waive the penalty for closure," at that time, there was
13 discussion between Charlie and John and Art that concerned
14 mainly the cessation of use and our interpretation of how the
15 six-month policy is.

16 Q. Now, can you tell me exactly what was said?

17 A. I can't tell you exactly what was said, no, sir.
18 This was a "year and a half" ago.

19 Q. Okay. And you will agree with me that at the
20 time you had this conference, you were six months beyond when
21 the well was completed for Frontier?

22 A. Yes, sir.

23 Q. Correct?

24 A. Yes.

25 Q. Now, if you had specifically and intentionally

1 used this conference to inform McElvain that that six-month
2 period didn't commence when you ceased using the pit, but
3 instead when you set the casing string and cemented it, why
4 wouldn't you have noted that in your notes?

5 A. At the time, I didn't know to note that in my
6 notes.

7 Q. And you have nothing else that you can point to
8 me, Mr. Roberts, that would indicate that McElvain, in your
9 mind, was clearly and unambiguously aware that there was an
10 interpretation of cessation of use by the district office?

11 A. Not prior to the Wiedemer #6 and #7.

12 Q. Okay.

13 A. Not to my knowledge.

14 Q. You mentioned that there was some kind of
15 Division-wide policy. That was your term on the use of or
16 interpretation of cessation of use?

17 A. To my knowledge, that is correct.

18 Q. Where does that knowledge come from?

19 A. That knowledge comes from the way I was trained.
20 That's been the policy as I've known it from the day I started
21 with the OCD.

22 Q. And a Division-wide policy or district policy?

23 A. Division-wide policy.

24 Q. Okay. Do you have any -- when you say it was a
25 Division-wide policy, how was that communicated to you?

1 that is on this exhibit, and as a Division, once you have the
2 production casing set and cemented, you start counting. Okay.
3 One question is, once that is done, do they still have any use
4 for that pit? Is that why we come up with the fact that once
5 they cement the production casing, we start counting the time?

6 So because after they do that, is that all they do
7 for the operations and cement the pit? I don't see they should
8 have closed it before they do some other operation to their
9 well. So I want to understand this, you know.

10 A. I agree with you. All I can say is that the way
11 that I was trained for drilling operations, cessation of use
12 was the date that they set and cemented their last casing
13 string.

14 Q. Okay. For your understanding, did they -- let's
15 say I cement my production casing today, and then, you know,
16 close my pit tomorrow. And I'm trying to do an operation down
17 here and I need a pit. Do I have to go back and reopen that
18 pit before that is done?

19 I'm trying to get to the core of the issue of here of
20 the cessation of use; why we have been doing it. Of course, I
21 said we can do that, but there must be a reason why we do that,
22 which is fair. So if they can use the pit after they have
23 cemented the production casing, does it make sense to close
24 that pit and then dig it up to finish the job?

25 MS. ALTOMARE: Mr. Examiner, I think our witnesses

1 are probably better qualified to answer that question.

2 MR. EZEANYIM: Okay. Very good. That would be one
3 question I would like an answer to. Okay.

4 Q. (By Mr. Ezeanyim): Another thing I wanted to
5 ask, to bring up something here, is McElvain is a good
6 operator. They have been operating in that area. This is not
7 the only pit that you have dealt with them. And, you know, to
8 answer the question whether they knew whether you put your
9 production casing and cement it, that's when it starts.

10 Have they closed any pit at all where they used the
11 time line you gave of once you set your production casing and
12 cement it, then your six months begins? And if they have
13 closed a pit using the time line in your district or any other
14 district, then that would indicate at least that they know our
15 policy.

16 A. I don't have personal knowledge of that
17 information. The pit closures go through our environmental
18 specialist, Brandon Powell. He would be able to answer that
19 question.

20 Q. Is that what we are really going to decide here,
21 that they know, that McElvain has closed a pit using that, you
22 know, what you just said? Is there anybody who is going to
23 answer that question? Is there somebody who could answer that?

24 MR. POWELL: I'm the one that reviews it. I'm one of
25 the witnesses.

1 MR. EZEANYIM: Okay. Are you going to be a witness?

2 MR. POWELL: Yes.

3 MR. EZEANYIM: So you're going to answer that
4 question when you come up here?

5 MR. POWELL: I'll do my best.

6 MR. EZEANYIM: Okay.

7 MR. FELDEWERT: Mr. Steuble is here, Mr. Examiner.

8 MR. STEUBLE: I would like to answer that question
9 also.

10 MR. EZEANYIM: What is your name?

11 MR. STEUBLE: John Steuble. I'm with McElvain Oil
12 and Gas.

13 MR. EZEANYIM: Okay. Good. Okay. So we leave it,
14 but please remember because I think it's important that we
15 understand it.

16 THE WITNESS: I personally don't have the knowledge
17 to answer your question.

18 MR. EZEANYIM: Okay. It's okay if you don't, but I
19 think somebody can answer it.

20 MR. BROOKS: Okay. Mr. Warnell?

21 MS. ALTOMARE: I have one follow-up.

22 MR. BROOKS: Proceed.

23 REDIRECT EXAMINATION

24 BY MS. ALTOMARE:

25 Q. Just for clarification purposes, Mr. Feldewert

1 had asked you some questions about you noting important points
2 in the course of the administrative conference.

3 When you have a conference that involves a Rule 50
4 violation for pit closure, is it a standard conversation that
5 you have with an operator about cessation of use and time line
6 for closure?

7 A. Typically in my experience, yes.

8 Q. And when you have a standard conversation of that
9 nature, would you necessarily document it in every single case?

10 A. Not for my own notes, no.

11 MS. ALTOMARE: Thank you.

12 MR. BROOKS: Very good. The witness may stand down.
13 You may call your next witness, Ms. Altomare.

14 MS. ALTOMARE: The OCD would like to call Brandon
15 Powell.

16 BRANDON POWELL

17 after having been first duly sworn under oath,
18 was questioned and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. ALTOMARE:

21 Q. Would you state your name and position for the
22 record, please.

23 A. Brandon Powell. I'm the environmental specialist
24 for the Aztec District III office.

25 Q. What is the standard process once a compliance

1 officer has discovered what he or she feels might be a
2 violation of OCD rules?

3 A. They bring the information to me. I review the
4 well files, and I make sure that it is or isn't a violation of
5 the rules. At that point, I go to my supervisor and with the
6 inspector that found it, and we review it to see if it needs to
7 go to the NOV process.

8 Q. Are you familiar and McElvain Oil and Gas
9 Properties?

10 A. Yes.

11 Q. And are you familiar, specifically, with the two
12 Wiedemer wells involved in this case?

13 A. Yes.

14 Q. What information did Mr. Roberts provide you with
15 regarding those two wells after his September 11th inspection?

16 A. He brought me photos of both sites and informed
17 me that both of them were over their closure time line and that
18 the liner was ripped on the #7.

19 Q. Okay. And what did you do at that point?

20 A. I reviewed the photos from the #7. It appeared
21 that there was no fluid in the pit, and the liner wasn't torn
22 below the fluid level. I also reviewed the well file to make
23 sure that both pits were over the closure time line.

24 Q. What addition information, if any, did you
25 discover in your review of the well files and of McElvain's

1 practices?

2 A. Between the Amacker and the Wiedemer wells, I had
3 discovered a pit that was open on the Badger 14 #1-A. It also
4 had tears in the pit liner. That inspection was approximately
5 8/6/07.

6 Q. And that occurred while negotiations were ongoing
7 to resolve the Amacker #1 site?

8 A. That is correct.

9 Q. So at that point in time, was a subsequent
10 compliance action pursued with regard to the Badger well?

11 A. We had called McElvain on 8/13/07 and discussed
12 that the pit was over the time limit, and also discussed that
13 rips in the liner went below the fluid level and that they
14 needed to test that fluid.

15 Q. And when you say "we," who was involved in that
16 phone call?

17 A. Me and District Supervisor Charlie Perrin.

18 Q. And with whom did you speak to on behalf of
19 McElvain?

20 A. I believe it was Art Merrick.

21 Q. And what was McElvain's response? Did they agree
22 to do what you had asked?

23 A. They did.

24 Q. And was any formal compliance or enforcement
25 action taken with regard to the Badger 14 #1-A?

1 A. No. It was just a verbal warning.

2 Q. After you finished your review of the well files
3 and review of McElvain operations, what did you do next with
4 regard to the Wiedemer files?

5 A. I got with Charlie and Kelly and discussed the
6 Wiedemer, and we sent it into the NOV process.

7 Q. Are you familiar with OCD Rule 50 as it was
8 previously designated regarding pit closures?

9 A. I am.

10 Q. And you've heard testimony regarding how
11 Mr. Roberts characterized what the requirements were under
12 Rule 50? Do you agree with his summary of that?

13 A. Yes.

14 Q. And how were you trained to calculate the
15 six-month period of time under Rule 50?

16 A. Six months past the time the last casing string
17 was cemented.

18 Q. Have you ever known in the Division to calculate
19 that time period in any other way?

20 A. No, ma'am.

21 Q. Okay. Who trained you to do those calculations?

22 A. The environmental person that retired that I took
23 his position. I was able to work with him for over a month.
24 He was there for 16 years. He trained me and also my District
25 Supervisor, Charlie Perrin.

1 Q. So the gentleman that was there before you would
2 have been there when this rule came into effect?

3 A. Correct.

4 Q. Okay. Are you familiar with the prior
5 enforcement action that Mr. Roberts was speaking of regarding
6 the Amacker #1 site?

7 A. Yes.

8 Q. With what information do you have regarding that?

9 A. It's my understanding that the NOV was written
10 because of the fluid over the top in the liner and for it being
11 over the six-month closure date.

12 Q. And what role, if any, did you have in that
13 particular enforcement action?

14 A. On the initial NOV review, I was involved in
15 that.

16 Q. And were you able to attend the administrative
17 conference in that?

18 A. I was not.

19 Q. And that particular action resulted in the
20 issuance of an ACO?

21 A. Yes, it did.

22 Q. You indicated that after you completed your
23 review on the Wiedemer files, you met with Mr. Perrin and
24 Mr. Roberts to determine whether or not to provide with a
25 Notice of Violation. Obviously, you've heard testimony that

1 you all did proceed with an issuance of a Notice of Violation
2 on January 25th, 2008. What is your understanding of the basis
3 for that?

4 A. The basis was they were informed of the Rule 50
5 and the interpretation on the Amacker. They were informed
6 again on the interpretation of Rule 50 on the Badger 14 1-A,
7 and we still found pits that were open then, and that's when we
8 pursued the NOV.

9 Q. When you had the conversation regarding the
10 Badger 14 #1-a, did you reiterate the standard of the six
11 months beyond the cessation of use and how the Division
12 calculates that time period --

13 A. Yes.

14 Q. -- for the McElvain operators?

15 A. Yes.

16 Q. So they were once again informed of the
17 Division's interpretation of Rule 50 at that time?

18 A. Correct.

19 Q. Given the sundry information for the casing
20 string setting dates of January 27th and February 5th for these
21 two particular wells, the Wiedemer wells, what were the
22 deadlines for closure based on Division policy and Rule 50?

23 A. For the #7 the deadline would have been 7/27/07,
24 and for the #6, it would have been 8/5/07.

25 Q. So as of September 11th, 2007, they were clearly

1 beyond their closure deadlines?

2 A. Correct.

3 Q. To your knowledge, was any extension ever
4 requested by McElvain for any reason for these pits?

5 A. No.

6 Q. What is your understanding of the process for
7 requesting an extension for pit closures and how those requests
8 are processed and evaluated within the Division?

9 A. The operator would submit a C-103 with the
10 extension request on it with reasonable cause. I would review
11 that and insure it met our requirements. If it did, I would
12 then get with an inspector and have them go out and inspect the
13 pits to make sure it conforms with the rules and can be
14 continually used or left open. At that time, if the inspector
15 comes back and says it's fine, then we would grant the
16 extension.

17 Q. Would the fact that a particular operator is
18 using resources on another location, for instance -- in this
19 case, using resources in the Lindrith area -- would that
20 typically be one scenario where an operator might file a
21 request for an extension?

22 A. Yes.

23 Q. How about if the operator decided that they
24 wanted to try and use the pit for another use if they wanted to
25 re-complete the well or continue using the pit for another

1 purpose? Would that be one reason that an operator might
2 submit a request for an extension beyond the six-month period?

3 A. Yes. That's usually the process. If they want
4 to keep using it past the six months, they file an extension
5 for that.

6 Q. So there is a provision within the rule to permit
7 operators to continue using the pits beyond the running of the
8 casing string if there are other things they want to use the
9 pit for or if they're not able to close it within that time
10 period?

11 A. Correct.

12 Q. Just to back up for one moment, we had discussed
13 a little bit about how the Badger resulted in only a warning,
14 but it was moved forward with a full NOV on the Wiedemer wells.
15 Why was the decision made to go forward with a more formal
16 compliance action in Wiedemer versus a warning like what was
17 done with the Badger?

18 A. The Badger gave them a warning. We were trying
19 to let them wrap up their pit work as part of the Amacker, and
20 by the time the Wiedemer's came up, they had already had a
21 warning, and they were still out there. That's why we
22 proceeded with the NOV.

23 Q. Did you attend the administrative conference that
24 was held in an attempt to resolve the Notice of Violation for
25 the Wiedemer wells in this case?

1 A. Yes.

2 Q. I want to direct you to Exhibit J. Do you
3 recognize this document -- when you get there?

4 A. Yes, it's my notes from the administrative
5 conference.

6 Q. Based on these notes and your recollection from
7 conference, what was your recollection of what was discussed
8 with regard to McElvain's violation of Rule 50 with regard to
9 the Wiedemer wells?

10 A. They did not agree with our interpretation of
11 cessation of use.

12 Q. Even though it had already been disclosed to them
13 on previous occasions that their interpretation was not the
14 controlling interpretation?

15 A. Correct.

16 Q. I think you have a notation in there that the
17 pits were drilling pits as opposed to work-over pits. What is
18 the significance of this notation?

19 A. The pits were permitted as drilling pits,
20 specifically. There wasn't any additional comments if they
21 were going to use it for work-over completions or completions
22 when they filed the permit.

23 Q. Okay. And again, a work-over might be something
24 that somebody might file an extension for?

25 A. Yes.

1 Q. You heard the testimony provided by Mr. Roberts
2 when he reviewed Exhibit F -- if I could get you to turn back
3 to Exhibit F -- the list of wells that had been provided by
4 Mr. Steuble back in June. Does this document look familiar to
5 you?

6 A. Yes.

7 Q. Do you recognize the handwriting on the document?

8 A. Yes.

9 Q. Is this your handwriting?

10 A. Yes, it is.

11 Q. And when did you make these notations?

12 A. I made these notations during the administrative
13 conference for the Wiedemer wells.

14 Q. And what was --

15 MR. FELDEWERT: Sorry to interrupt. Which document
16 are you on?

17 MS. ALTOMARE: Second page of Exhibit F. It's
18 entitled "Pit Closures."

19 MR. FELDEWERT: Got it. Okay.

20 Q. (By Ms. Altomare): What is the meaning of the
21 notations on this particular list?

22 A. During the administrative conference, I was
23 reviewing the wells that were on the list that McElvain
24 provided to see if they had provided closure for each well on
25 the list.

1 Q. Okay. And what do your notations indicate that
2 you concluded during this review process?

3 A. They had filed closure paperwork on all the wells
4 except for the Cougar Com 33 1-B, the Cougar Com 33 1-M and the
5 Cougar Com 4 #2-A.

6 Q. So as of February 27th, 2008, upon reviewing the
7 list that was provided in June of 2007, they still had three
8 wells that they had not yet closed?

9 A. Correct.

10 MR. BROOKS: This was at what administrative
11 conference that you did this review?

12 THE WITNESS: The Wiedemer #6 and #7.

13 MR. BROOKS: That was the one in January of '08 --
14 February of 08?

15 THE WITNESS: Yes.

16 MR. BROOKS: Okay. Go ahead.

17 Q. (By Ms. Altomare): To your knowledge, was any
18 formal administrative action taken with regard to any of the
19 three Cougar Com wells that are listed on the list as having
20 not been closed?

21 A. No.

22 Q. And at this point in time, were these three
23 Cougar Com wells beyond the closure date according to Division
24 policy for interpreting Rule 50?

25 A. Yes.

1 Q. Were these three wells -- were the pits beyond
2 the closure date according to McElvain's interpretation of
3 Rule 50?

4 A. Yes.

5 Q. And what is that interpretation?

6 A. Their interpretation is --

7 MR. FELDEWERT: Object to the form of the question.
8 I don't know how this witness --

9 MS. ALTOMARE: I'll rephrase it.

10 Q. (By Ms. Altomare): At that particular
11 conference, did McElvain express to you how they interpreted
12 Rule 50 and the six-month calculation for the closure of pits?

13 A. They did. They referenced that their six-month
14 calculation was from the date the completion was done on the
15 well.

16 Q. And are these three wells, the Cougar Com wells,
17 that are noted on this pit closure list as of February
18 27, 2008, were they beyond that six-month mark according to how
19 McElvain expressed that they interpreted the rule?

20 A. They were.

21 Q. At the February 27, 2008, conference, was any
22 explanation given to you as to why they had failed to close the
23 Weidemer wells within the six-month period of time?

24 A. They said they were working on pits in the
25 Lindrith area.

1 Q. Did they give you any explanation as to why they
2 didn't seek an extension for either of these wells?

3 A. No.

4 Q. Okay. What conclusions have you drawn with
5 regard to McElvain's conduct in the violation of Rule 50 with
6 their handling of the Wiedemer pits?

7 A. They had previous knowledge of Rule 50 and our
8 interpretation of cessation of use, and these were still open
9 beyond that time.

10 Q. Okay. And do you have specific knowledge of
11 having provided them with the definition of cessation of use
12 according to OCD policy prior to the deadline for closure of
13 the Wiedemer pits?

14 A. Verbally, yes.

15 Q. Based on this, would you say that their violation
16 of Rule 50 with regard to these two pits was knowing and
17 willful?

18 A. Yes.

19 MS. ALTOMARE: I will pass the witness.

20 MR. BROOKS: Very good. Mr. Feldewert?

21 CROSS-EXAMINATION

22 BY MR. FELDEWERT:

23 Q. Mr. Powell, at the Wiedemer conference, now,
24 which occurs after the Notice of Violation was issued for the
25 Wiedemer wells, when you discussed your district's

1 interpretation of cessation of use, did McElvain express
2 surprise at your interpretation?

3 A. They did.

4 Q. They did? Okay. And it's your testimony that
5 you recall providing McElvain with specific, well-articulated
6 notice as how your district interpreted cessation of use at
7 some point in time before the Wiedemer conference?

8 A. Yes.

9 MS. ALTOMARE: I'm going to object because it
10 mischaracterizes his testimony. It's how the Division
11 interprets.

12 Q. (By Mr. Feldewert): You said yes?

13 MR. BROOKS: Overruled.

14 THE WITNESS: Yes.

15 Q. (By Mr. Feldewert): Okay. Now, when did that
16 occur?

17 A. That occurred on 8/13/2007.

18 Q. 8/13/2007. And that was in connection with what?

19 A. The Badger 14 #1-A.

20 Q. And who did you disclose --

21 A. I inspected the well and found it, yes.

22 Q. Okay. And then who -- you said somebody provided
23 McElvain with, I think, you said verbal announcement of the
24 district office's interpretation of cessation of use. Who did
25 that verbal announcement?

1 A. I did along with Charlie Perrin.

2 Q. All right. Charlie Perrin and yourself. And who
3 did you give that verbal notice to?

4 A. Art Merrick, over the phone.

5 Q. Did you take any notes?

6 A. No, I did not.

7 MR. BROOKS: That was on what date?

8 THE WITNESS: Huh?

9 MR. BROOKS: This was on what date?

10 THE WITNESS: 8/13/2007.

11 MR. BROOKS: Continue.

12 Q. (By Mr. Feldewert): And what specifically -- did
13 you say anything to Mr. Merrick?

14 A. Yes, I did.

15 Q. What did you say to him?

16 A. I told him that his pit was over the closure
17 date, explained what the deadline was and why it was that
18 deadline.

19 Q. What did you explain? That's what I'm trying to
20 find out.

21 A. I explained -- I don't remember what the exact
22 deadline is at this point -- but I explained to him what the
23 deadline was and how I calculated it. I also explained to him
24 that there was --

25 Q. Let me stop you there.

1 A. Okay.

2 Q. You explained to him what the deadline was to
3 close the pit?

4 A. Yes.

5 Q. You said you explained to him how you calculated
6 it?

7 A. Yes.

8 Q. What did you tell him?

9 A. I told him that, based on six months after the
10 cementing of the last casing string, the deadline date is this,
11 and it's over that.

12 Q. Did you say anything else?

13 A. I also told him there were rips in the liner
14 below the fluid level, and I required him to perform testing on
15 that location to make sure there was no contamination and to
16 close the pit.

17 Q. Okay. Anything else?

18 A. No.

19 Q. Did Mr. Perrin say anything to him?

20 A. I don't recall what Mr. Perrin said to him.

21 Q. Okay. Do you know whether there was any use of
22 that pit by McElvain after the casing string had been set and
23 cemented?

24 A. Yes. On that pit -- I've got notes here.

25 Q. What notes are you looking at?

1 A. Just some internal documentation that I pulled
2 out of the well file so I could have it.

3 MR. BROOKS: What well are you inquiring about?

4 THE WITNESS: The Badger 14 #1-A.

5 Q. (By Mr. Feldewert): I haven't seen that file, so
6 I apologize.

7 A. I am showing here that the well was -- the last
8 casing string was cemented January 16, 2006.

9 Q. All right. 1/16/06. That's the cementing?

10 A. Yes.

11 Q. Okay.

12 A. They completed the well on 10/2/1006.

13 Q. 10/3/2006. Okay.

14 A. And they closed the pit 9/3/2007, after I
15 contacted them. They closed the pit approximately seven months
16 past completion and 20 months past the cementing of the last
17 casing string.

18 Q. All right. So when you had this conversation, no
19 matter what definition anyone used, they were beyond the
20 six-month period?

21 A. Correct.

22 Q. Okay. All right. Now, you had this conversation
23 you said 8/13/2007?

24 A. Yes.

25 Q. How do you know that?

1 A. I talked to Charlie Perrin, and he had documented
2 that that was the date that we talked to McElvain.

3 Q. What documents did you look at?

4 A. His notes to find out which day we talked to him.

5 Q. Do you have those here today?

6 A. No, I don't.

7 Q. Mr. Perrin brought them with him today?

8 A. Not that I'm aware of.

9 Q. Is there a reason you didn't?

10 A. It was no specific notes. It was just that we
11 had talked to him about that well. That was the resource.

12 Q. Okay. But you didn't have any notes about what
13 was said?

14 A. No.

15 Q. So you're basing this entirely on your
16 recollection of events that took place on August 13, 2007.

17 A. I'm basing it off my normal process when I call
18 an operator that the well is out of compliance due to the
19 closure date.

20 Q. Okay. Now, 8/13/2007 would have been -- would
21 you turn to Exhibit 4 for me, please?

22 A. Yours?

23 Q. Yes.

24 A. I got it.

25 Q. It's the Wiedemer time line?

1 A. I've got Wiedemer well #6 tab, a Wiedemer well #7
2 tab.

3 Q. I'm sorry. If you look at Tab 4 and then there's
4 a time line right behind Tab 4.

5 A. I'm sorry.

6 Q. That's okay.

7 A. Okay.

8 Q. All right. Now, you don't dispute any of the
9 events on this time line, do you?

10 A. I haven't reviewed it, but I would assume they're
11 correct.

12 Q. We've got supporting well records. I'm going to
13 represent to you that the well records support the time line
14 here.

15 A. Okay.

16 Q. Okay. So your conference with Mr. Merrick here
17 would have taken place on August 13th, 2007?

18 A. Yes.

19 Q. Which would have been, for the purposes of the
20 Wiedemer wells, more than six months after the date that they
21 were completed?

22 A. The Wiedemer wells?

23 Q. I'm sorry -- when the casing string was set and
24 cemented. When I look at February 5, 2007, as the date the
25 casing string was set and cemented for the Wiedemer #6, your

1 conference with him on 8/13/07 would have been beyond the six
2 months?

3 A. Yes.

4 Q. Okay. And if I look at when a production casing
5 string is set and cemented so January 27th '07, your discussion
6 with them would have been, again, beyond the six-month
7 period --

8 A. Yes.

9 Q. -- for these wells?

10 A. Yes.

11 Q. Okay. So whatever notice you provided to them at
12 that time, it would have been beyond -- the time line for this
13 well would have been beyond when the six-month period had
14 expired already for the Wiedemer wells, under your
15 interpretation?

16 A. Yes.

17 Q. Okay. And then when, as this time line shows,
18 Mr. Roberts inspected these wells and asked McElvain to close
19 them, okay, based on your interpretation --

20 A. Uh-huh.

21 Q. -- they did it within three days, correct?

22 A. Correct.

23 Q. All right.

24 A. That's what was reported.

25 Q. All right. And based on this information, do you

1 believe, Mr. Roberts, that -- I'm sorry, Mr. Powell -- do you
2 believe that there was some kind of criminal or evil intent on
3 the part of McElvain to violate the six-month period under
4 Rule 50?

5 A. Do I believe they knew the rule and violated it?
6 Yes.

7 Q. Okay. Can you point me to any other disclosure
8 of the district's interpretation of cessation of use other than
9 what you recall occurring in a conversation on August 13, 2007?

10 A. I wasn't here when that disclosure would have
11 occurred, so, no, I do not know of any other.

12 Q. Okay. Can you point me to any disclosure by your
13 district to operators in general, okay, where you're sending
14 out notice to the operators that your district considers
15 cessation of use to be when -- begin to run that six-month
16 period --

17 A. I wasn't with the OCD when that would have taken
18 place.

19 Q. I'm not asking you --

20 A. Well, when the rule came out, the disclosure
21 would have went out shortly after the rule came out. I wasn't
22 with the OCD at that period, so I wouldn't have any knowledge
23 of anything --

24 Q. But you've had training?

25 A. Yes.

1 Q. All right. Can you point me to any document
2 where the district office notified operators that they were
3 going to interpret cessation of use to be when the casing
4 string is set and cemented?

5 A. No.

6 MR. FELDEWERT: That's all the questions I have.

7 MR. BROOKS: Very good. I have no questions.

8 Mr. Ezeanyim?

9 EXAMINATION

10 BY MR. EZEANYIM:

11 Q. Okay. Maybe you can answer my question now.
12 First of all, how do we communicate to the operators when the
13 time line has started and the circumstances? How do we let
14 them know that the time line started to run immediately after
15 you set your production casing and cement it? And then the
16 corporation that comes behind that -- this is the question you
17 might try to answer -- McElvain has closed the pit. Have they
18 used that time line from production casing set and cement
19 production casing to close some of the pits without getting a
20 Notice of Violation.

21 A. Can you repeat the first question?

22 Q. What I'm saying is that the only pit that
23 McElvain had closed under this provision or in District III?
24 Is this the only pit that they have closed?

25 A. They have closed several other pits. I don't

1 know which time line they followed. I know the time line that
2 they presented that they said they followed. We have
3 documentation that they didn't follow that, either.

4 Q. So he didn't follow it?

5 A. We've got some pits that were closed years
6 afterwards, so I don't know which time line they were
7 following. I believe they did close some pits within the six
8 months, but I don't have specifics.

9 Q. Yeah, because you know where I'm going. If they
10 know that you close a pit after you set your production casing,
11 six months after that, and they have closed pits, that might
12 say, okay, they know the procedure. That's why I asked the
13 question how do we communicate to them. And then, has this
14 happened with McElvain that they know that that's when the time
15 line starts to run and close a pit?

16 A. I don't know if before the Amacker and the Badger
17 if they had any specific knowledge, or how they were closing
18 the pits. I would have to do a well file review to determine
19 that.

20 MR. BROOKS: Is that all, Mr. Ezeanyim?

21 MR. WARNELL: I have one question. Does OCD, to your
22 knowledge, differentiate a drilling pit from a work-over pit,
23 or is a pit a pit?

24 THE WITNESS: They differentiate. Usually the
25 operator will put it on the application whether it's a drilling

1 or work-over pit.

2 MR. WARNELL: Thank you.

3 MR. BROOKS: I do have a question after all.

4 EXAMINATION

5 BY MR. BROOKS:

6 Q. You said something about completion on a certain
7 day. What do you mean when you use the word "completion"?

8 A. They either frac the well or do some kind of
9 completion work. It's after they move the drilling rig off and
10 come back to complete the well.

11 Q. Okay. That being -- you said frac treatment?

12 A. Right. Getting it ready for production.

13 Q. Anything else?

14 A. I don't know that much about production of a
15 well.

16 Q. Okay. But when you're talking about a well being
17 completed on a certain date, you're talking about when they did
18 the frac job?

19 A. The frac job, yes. That would be one of them.

20 Q. Okay.

21 MR. BROOKS: That's all. Ms. Altomare?

22 REDIRECT EXAMINATION

23 BY MS. ALTOMARE:

24 Q. Just for clarification. When you're calculating
25 from day of completion, you're using the sundries that are

1 submitted by the operator.

2 A. Yes.

3 Q. From the date of completion that's reported by
4 the operator.

5 A. Correct, the C-105.

6 MR. FELDEWERT: I do have one question I forgot to
7 ask.

8 MR. BROOKS: Go ahead.

9 RE-CROSS-EXAMINATION

10 BY MR. FELDEWERT:

11 Q. If an operator is intending to close the pit
12 within six months of cessation of use, there's no reason to
13 file for an extension of the pit registration form, is there?

14 A. Cessation of use based on our interpretation,
15 correct.

16 Q. Based on your interpretation?

17 A. The Division's interpretation.

18 Q. As opposed to when they cease using the pit?

19 A. Right. If they need to do completion work after
20 that six months, we have them file an extension to accommodate
21 that, if they cannot close it -- do the work and still close
22 it.

23 Q. Okay. If I am an operator here, like McElvain,
24 or any other operator coming into this State, okay?

25 A. Okay.

1 Q. And they drill a well, and they set their casing
2 string and cement.

3 A. Uh-huh.

4 Q. And then they, within a month, do the completion
5 operations, and during those completion operations, they use
6 the pit, okay?

7 A. Okay.

8 Q. And they go to Rule 50 to ascertain when they are
9 required to close the pit. The only thing they have to go on,
10 looking at Rule 50, is they have to close it within six months
11 of cessation of use, correct?

12 A. That's the way Rule 50 reads.

13 Q. And you go to the pit guidelines, and you look at
14 the pit guidelines. What do they say?

15 A. The same.

16 Q. Same language?

17 A. Yes.

18 Q. They don't say anything about setting of the
19 casing string is commencement of the period?

20 A. No.

21 Q. Okay.

22 MR. FELDEWERT: That's all I have.

23 MR. BROOKS: Okay. Ms. Altomare?

24 MS. ALTOMARE: One more thing. To take it one step
25 further, if that operator is McElvain and that scenario is

1 happening after the Amacker administrative conference, knowing
2 what you know about what was conveyed to them about the
3 specific information for calculating that six-month period of
4 time, how would you expect McElvain to calculate the pit
5 closure time line?

6 THE WITNESS: After six months past the last casing
7 string has been set and cemented.

8 FURTHER EXAMINATION

9 BY MR. EZEANYIM:

10 Q. When you -- at what point do you expect to get a
11 variance. In other words, you say they can get an extension,
12 right --

13 A. Correct.

14 Q. -- within the six months. So you're at the point
15 where it's pushing six months or a month of the time where it's
16 pushing six months and one month after the six months -- when
17 did they give you the extension?

18 A. They should get it before they pass the six
19 months past the cementing the casings.

20 Q. So if they pass the six months, you wouldn't have
21 approved it, would you?

22 A. We would review it to see circumstances, but
23 there's a possibility we would grant the extension afterwards.

24 Q. Even if they were past the six months?

25 A. Correct.

1 Q. Okay.

2 MR. BROOKS: Did you have something else,
3 Mr. Feldewert?

4 MR. FELDEWERT: Mr. Powell, I think there was some
5 confusion here. Were you at the Amacker administrative
6 conference?

7 THE WITNESS: No.

8 MR. FELDEWERT: Okay. So you don't know what was
9 said at that conference?

10 THE WITNESS: No, I do not.

11 MR. FELDEWERT: All right. Thank you.

12 MR. BROOKS: Okay. Anything further, Ms. Altomare?

13 MS. ALTOMARE: No.

14 MR. BROOKS: The witness may stand down. You may
15 call your next witness. You have 1 hour and 27 minutes
16 remaining.

17 MS. ALTOMARE: At this time, we call Charlie Perrin.

18 CHARLIE PERRIN

19 after having been first duly sworn under oath,

20 was questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. ALTOMARE:

23 Q. Could you state your name and title for the
24 record, please?

25 A. Charlie Perrin. I'm the Aztec district

1 supervisor.

2 Q. And how long have you been a district supervisor?

3 A. Since March of '05.

4 Q. Prior to that, what was your position?

5 A. I supervised the inspection enforcement staff.

6 Q. Okay. You've heard the testimony today of
7 Mr. Roberts and Mr. Powell regarding the usual procedures for
8 inspecting wells and conducting further investigation and
9 determining when it's appropriate to bring a compliance action.
10 Do you agree with the testimony that's been provided so far?

11 A. Yes, ma'am, I do.

12 Q. Do you have anything to add regarding the
13 procedural aspects that they've discussed at this point?

14 A. No, ma'am, I don't.

15 Q. Are you familiar with McElvain Operating?

16 A. Yes, I am.

17 Q. Are you familiar with the Wiedemer #7 and #6
18 wells?

19 A. Yes, ma'am.

20 Q. When did you become involved or informed of the
21 issues involved in these two wells?

22 A. After Kelly Roberts conducted his inspection and
23 Brandon Powell did a well file review, they came to see me
24 about what action to take.

25 Q. Okay. And, of course, you're familiar with OCD

1 Rule 50 as it was previously designated requiring six months --
2 closure within six months of cessation of use for pits?

3 A. Yes, ma'am.

4 Q. I'd like to direct your attention at this point
5 to Exhibit A, our OCD Exhibit A. Do you recognize this
6 document?

7 A. Yes, ma'am, I do.

8 Q. Can you identify it for the record, please?

9 A. Yes, ma'am. This was a notice sent out to all
10 the district supervisors in November of 2004 when Frank Chaves
11 was the district supervisor.

12 Q. And again, at that point in time, what was your
13 position?

14 A. I was the staff manager. I supervised the
15 inspection and enforcement team.

16 Q. Okay. And looking at Exhibit A on page 2, can
17 you read question 3 and the first sentence of the answer to
18 question 3?

19 A. Yes, ma'am. The question is: "When does the
20 time frame for closing drilling pits constructed after April
21 15, 2004, start?"

22 The response is: "The six-month time frame for
23 closing drilling pits constructed after April 15, 2004, will
24 start on that date that the last casing string is set or the
25 well is properly plugged and abandoned if the well is a dry

1 hole."

2 Q. Okay. And this was a memorandum issued by the
3 Director of the Oil Conservation Division to all district
4 supervisors?

5 A. That's my understanding. Yes, ma'am.

6 Q. And it is dated November 12, 2004?

7 A. Yes, ma'am.

8 Q. Is this the Division policy, as you understand
9 it, for calculating the six-month period under Rule 50?

10 A. Yes, ma'am, it is.

11 Q. And have you ever known anyone within the
12 Division to calculate in any other fashion?

13 A. No, ma'am.

14 Q. What, if any, action have you or anyone else in
15 your office taken to inform area operators of the department --
16 or Division -- policy regarding calculation of six months for
17 cessation of use?

18 A. Denny Fouts made an announcement at the San Juan
19 Basin Working Committee of our interpretation. Later, after I
20 became district supervisor, I also made the verbal
21 announcement.

22 Q. And what is the San Juan Basin Working Committee
23 Meeting?

24 A. It's the NMOGA-based meeting where the operators
25 come together -- many of the operators come together -- and the

1 Bureau of Land Management, Forest Service, and OCD give
2 quarterly updates to them.

3 Q. So it's a forum for disseminating information to
4 the operatorship in the area?

5 A. Yes, ma'am, it is.

6 Q. And who was Denny Fouts?

7 A. Denny Fouts was Brandon Powell's predecessor.
8 Denny was our environmental engineer before Mr. Powell came.

9 Q. And both of these announcements occurred
10 sometimes in 2005, did you say?

11 A. To the best of my memory, yes, ma'am.

12 Q. Do you have a specific recollection of having
13 made the announcement, though?

14 A. Yes, ma'am.

15 Q. Do you recall the compliance and enforcement
16 action that was taken against McElvain regarding the Amacker #1
17 site that you've heard discussed here today?

18 A. Yes, ma'am.

19 Q. As discussed by Mr. Powell and Mr. Roberts, an
20 NOV was issued on May 11th, 2007, to McElvain. What is your
21 understanding regarding the basis for that Notice of Violation?

22 A. On Amacker?

23 Q. On the Amacker #1.

24 A. Kelly was in the field doing an inspection. He
25 found a pit that was overtopping, and he came in and talked to

1 Brandon. Brandon did a well file research, and it was
2 determined that it was past its closure date as well.

3 Q. And did you participate in the administrative
4 conference for that particular Notice of Violation?

5 A. Yes, ma'am, I did.

6 Q. And if I could direct your attention to
7 Exhibit E. Do you recognize this document?

8 A. Yes, ma'am.

9 Q. Are these your notes from the May 30th, 2007,
10 Amacker #1 Notice of Violation administrative conference?

11 A. Yes, ma'am, it is.

12 Q. According to your notes and your recollection
13 from this administrative conference, what do you recall was
14 discussed regarding McElvain's violations and obligations under
15 Rule 50?

16 A. McElvain brought in information indicating that
17 the reason it was overtop was because of the snow fall, the
18 amount of snow fall. They also indicated that they had just
19 taken over the well and that they hadn't had an opportunity to
20 do a due diligence, a good due diligence on it.

21 And we talked to them about our interpretation of the
22 cessation of use rule and how the whole -- let me see: Six
23 months after the casing string is cemented into the hole, the
24 pit is to be closed or an extension is to be requested. We do
25 that at each administrative conference regarding Rule 50. We

1 did it then.

2 Q. So that's a standard practice or was at the time
3 that this pit rule was in place?

4 A. Yes, ma'am.

5 Q. I think your notes also indicate that they did
6 not remember to file for a pit extension?

7 A. Yes. When an administrative conference starts,
8 we explain to the operator that what we're going to do is ask.
9 We're going to go through the Notice of Violation and tell them
10 what we found and ask for any mitigating or extenuating
11 circumstances.

12 And one of the things we ask for is a reason, and we
13 were told that they had forgotten to file the extension.

14 Q. And what did that comment indicate to you?

15 A. That they were aware of the rule and that they
16 missed that step.

17 Q. Do you recall discussing a number of other pits
18 that were in violation of Rule 50 for closure deadlines at that
19 particular conference?

20 A. Yes, ma'am, I do.

21 Q. If I could direct your attention to Exhibit F
22 that was previously discussed. It's that two-page exhibit, the
23 e-mail and the pit list?

24 A. Yes, ma'am.

25 Q. What is your impression of what's indicated on

1 that list regarding the wells that are indicated?

2 A. Mr. Steuble indicated he had several wells, that
3 he was kind of concerned about his pits, and that they were
4 doing an inventory. We asked him to send us a list and tell us
5 the status of them. This is the list he sent. The Wiedemer #6
6 and #7 are open; they're going to close them; they have no
7 intention of asking for an extension.

8 Q. Okay. And there are wells on there listed that
9 they are intending clearly to request an extension.

10 A. Yes.

11 Q. And are there wells there listed that they have
12 indicated that they plan to do additional completion work on?

13 A. Yes.

14 Q. And what is the notation there?

15 A. The remarks are: Close after completion, close
16 after completion.

17 Q. And again, neither of those two wells, the
18 Wiedemer #6 or #7, have a notation of that sort?

19 A. No, ma'am, they do not.

20 Q. And the Amacker enforcement action did ultimately
21 result in an ACO being issued?

22 A. Yes, ma'am.

23 Q. Do you recall the communication with McElvain
24 regarding the Badger site that Mr. Powell spoke about?

25 A. Yes, ma'am, I do.

1 Q. Okay. What was the basis for initiating contact
2 with McElvain regarding the Badger site?

3 A. It was over its closure time, and it had a torn
4 liner with fluid above the liner.

5 Q. Who all participated in that discussion?

6 A. Brandon Powell and myself via telephone to
7 Mr. Merrick.

8 Q. And what was discussed during the course of that
9 phone call?

10 A. We went over again that it was past closure. The
11 definition of closure was the cessation of use, and Mr. Powell
12 indicated that they needed to close it and do some testing.

13 Q. Okay.

14 MR. BROOKS: What date was this?

15 THE WITNESS: 8/13.

16 MR. BROOKS: Of '07?

17 THE WITNESS: Of '07.

18 MR. BROOKS: Go ahead.

19 Q. (By Ms. Altomare): Why was the decision made
20 with regard to the Badger site not to seek formal enforcement
21 action?

22 A. We thought it was an oversight on McElvain's
23 part, and we were trying to work with them. We were already
24 working with McElvain, they were sending stuff in, getting
25 their arms around the issue. So we opted to not issue a

1 notice, just a verbal phone call and have them bring that in.

2 Q. Okay. What enforcement action do you recall
3 officially deciding to do with regard to the Wiedemer wells
4 after Mr. Powell had completed his review?

5 A. We determined that because of the knowledge that
6 they had -- and we had talked to them in May, and we had talked
7 to them in September -- I mean, August -- we determined that it
8 wasn't working and we needed to do something to move them
9 along, so we issued a Notice of Violation.

10 Q. And that was issued January 25th, 2008?

11 A. Yes, ma'am, that's when it went out.

12 Q. Okay. To your knowledge, was any extension ever
13 filed -- extension request -- ever filed for either of these
14 two sites?

15 A. No, ma'am.

16 Q. Did you attend the administrative conference held
17 to resolve the Wiedemer wells #6 and #7 held on February
18 27, 2008?

19 A. Yes, ma'am, I did.

20 Q. If we could look at Exhibit K. Do you recognize
21 this document?

22 A. Yes, ma'am.

23 Q. And are these your notes from that administrative
24 conference?

25 A. Yes, ma'am, they are.

1 Q. Based on your notes and your recollection from
2 that event, what was discussed at that conference regarding
3 Rule 50 and McElvain's violation of Rule 50?

4 A. We discussed again cessation of use, and John was
5 very frustrated. We went over our definition of cessation of
6 use again, and then he talked about the work that they were
7 doing.

8 Q. Okay. And the work that they were doing in terms
9 of what?

10 A. Closing pits in another area.

11 Q. Okay. And by the "other area," you're referring
12 to the Lindrith area that Mr. Powell was speaking of?

13 A. Yes.

14 Q. And that was the explanation that was given to
15 you as to why they hadn't yet closed to the two Wiedemer pits?

16 A. Yes.

17 Q. Was the fact that you had previously discussed
18 the Division's policy for interpreting the cessation of use and
19 calculating the six-month time period at the Amacker
20 conference, was that raised at the subsequent conference on the
21 Wiedemer sites?

22 A. I'm not sure I --

23 Q. Did you reiterate -- did you discuss with them
24 again at the Wiedemer conference the fact that you had already
25 put them on notice at the previous conference of what our

1 policy is for interrupting the rule?

2 A. Yes, ma'am. Yes, ma'am.

3 Q. Did they give you any explanation as to why no
4 extension had been sought for either of these wells?

5 A. No, ma'am, they did not.

6 Q. What conclusions have you drawn with regard to
7 McElvain's conduct with regard to these wells?

8 A. McElvain had specific knowledge of both Rule 50
9 and the Division's specific policy for enforcement of that from
10 the May 30th, also from the phone call to Mr. Merrick and then
11 again for the Wiedemer. I think that it was knowing and
12 willful.

13 Q. Okay. Do you have any additional comments to
14 add?

15 A. Yes, I do. I would like to address
16 Mr. Examiner's question from earlier.

17 Right after the rule came out, there was tremendous
18 complications regarding how to interpret the rule. The
19 northwest operators would drill a well and complete one
20 formation and wait six months or a year or two years to
21 complete the other.

22 We had to have some way to get ahold of that. So not
23 only us, but I think the folks in the southeast were having
24 issues of the same. They came in. They tried to find
25 something to make something work. That's when it was

1 determined by the Division that it would be six months after
2 cessation of the drilling.

3 The drilling pit is used normally during the drilling
4 process, and when you set and cement your last casing string in
5 the well, basically your drilling process is complete. So then
6 you usually move off the drilling rig and move in the
7 completion unit. If you complete from the drilling rig or move
8 one in immediately, many operators are capable of doing this in
9 their six-month time limit.

10 MS. ALTOMARE: I'll pass the witness.

11 MR. BROOKS: Okay. Mr. Feldewert?

12 CROSS-EXAMINATION

13 BY MR. FELDEWERT:

14 Q. Mr. Perrin, you have a list of operators,
15 correct? You have access to a list of operators in your
16 district office?

17 A. Yes.

18 Q. All right. If you were having this concern and
19 you wanted to communicate an interpretation of cessation of use
20 that you could apply across the board, why didn't you send out
21 written notice to your list of operators how you were going to
22 interpret it?

23 A. I wasn't the district supervisor at the time that
24 memo was issued.

25 Q. Why haven't you done it since?

1 A. We made a couple of verbal attempts at it.

2 Q. Okay. Now, you said McElvain had -- I think your
3 quote was "specific knowledge of your interpretation of
4 cessation of use."

5 A. Yes.

6 Q. What can you point me to?

7 A. Our verbal conversations.

8 Q. You're talking then -- when were those?

9 A. Excuse me?

10 Q. When were those verbal conversations?

11 A. At the administrative conference for the Amacker.

12 Q. And that was in May of 2007?

13 A. Yes.

14 Q. Okay. And what's the other one?

15 A. When Brandon Powell and myself called
16 Mr. Merrick.

17 Q. And that was in August of 2007?

18 A. I believe so.

19 Q. Okay. Now, I'm looking at your notes from the
20 Amacker conference which took place almost a year-and-a-half
21 ago, and I don't see any indication in there that you talked
22 about your definition of cessation of use?

23 A. Well, you'll notice in my notes that because I do
24 a lot of talking, I do some really poor writing, and it's not
25 necessarily complete. That's the reason I ask the others to

1 take good notes.

2 Q. Well, and you noted the fact that -- let's go
3 through this.

4 You noted the fact that Amacker well -- now, we're
5 talking about the Amacker well, right?

6 A. Okay.

7 Q. You noted that fact that the operator had left
8 the basin, right?

9 MR. BROOKS: Which exhibit are you looking at?

10 MR. FELDEWERT: I'm sorry. I'm looking at --

11 THE WITNESS: Exhibit E, OCD.

12 MR. FELDEWERT: You know, I can make it easy and have
13 them look at our Exhibit 16, or you can look at the Division's
14 Exhibit E?

15 THE WITNESS: E.

16 MR. BROOKS: Division's Exhibit E doesn't seem to be
17 the same as your -- well, you've got a bunch of things
18 under 16.

19 MR. FELDEWERT: It would be the second page of our
20 Exhibit 16 -- or third page.

21 MR. BROOKS: Third page, yeah. The third page is the
22 same. Go ahead.

23 Q. (By Mr. Feldewert): So you are making a note
24 here that the previous operator left the basin, right?

25 A. Yes.

1 Q. And left the basin, as I recall when I look at
2 the records, some time in what, September of 2007?

3 A. I'm not certain, sir.

4 Q. I'm sorry, September of 2006. Okay. We'll get
5 to that. But they left the basin, and McElvain took over
6 operations you note here, specifically, January 1st, 2007.

7 A. This was information provided to me by John.

8 Q. Okay. And they took over the well?

9 A. Yes.

10 Q. All right. And that there was snow totals of 35
11 inches for January and February; you made a specific note of
12 that?

13 A. Yes.

14 Q. Okay. That they had tried to send a truck, heavy
15 equipment, up there but couldn't do it, right?

16 A. Correct.

17 Q. Okay. That they had actually removed 320 barrels
18 of oil from that pit -- I'm sorry -- barrels of water -- thank
19 you -- 320 barrels of water from that pit before your inspector
20 had even been able to get up there?

21 A. That's what they reported, yes, sir.

22 Q. And that was runoff, was it not?

23 A. I'm not sure.

24 Q. Okay. And that they had applied to the Division
25 to re-complete the well?

1 A. That was an NSL application.

2 Q. Okay. What's the rest of these notes say?

3 A. Let me see: The top part of the note is what I
4 take when he's talking about communicating extenuating
5 circumstances. They started evaluating the well in October.

6 Q. Okay.

7 A. The photos were taken in January when they took
8 it over. They did not remember to file for the pit extension.
9 They will file for the pit extension. I can't make out the
10 first one. We talked about an Agreed Compliance Order.
11 Knowing and willful was a problem. They said they didn't feel
12 it was knowing and willful.

13 Q. Okay. So there's nothing in here that you can
14 look to to indicate that you had actually had a specific
15 discussion with them how about your interpret cessation of use?

16 A. No, sir. These are my notes of what they told
17 me.

18 Q. Now, you said this other conversation was in
19 August of 2007, which was over a year ago. Do you have notes
20 of that conversation?

21 A. I'm sorry?

22 Q. Do you have any notes of that conversation?

23 A. Which one?

24 Q. The one for the Badger 14 A in August of 2007?

25 A. I have yellow tablets like yours, and every time

1 I take a phone call or every time I do something, I scribble
2 it out.

3 Q. Okay.

4 A. And when Mr. Powell was looking it up, he asked,
5 and we went back and flipped through all my notebooks, and
6 there on 8/13, phone call to Art Merrick.

7 Q. And that's all you have?

8 A. That's all I have in my notes, sir.

9 Q. Okay. And it's your -- you recall having a
10 discussion about cessation of use?

11 A. Yes.

12 Q. And it's your testimony that you informed them
13 specifically that cessation of use -- what it meant?

14 A. As defined by the rule, yes.

15 Q. As defined by the rule?

16 A. As defined by our policy, the Division policy.

17 Q. Okay. Now, did you draft the Wiedemer NOV,
18 Notice of Violation?

19 A. No, sir I didn't.

20 Q. Why don't we turn to that, please. Let's go to
21 Exhibit 3 in our notebook. This is the Notice of Violation for
22 the Wiedemer pits which are at issue here today, correct?

23 A. Yes, sir, I believe it is.

24 Q. It's got your signature on it?

25 A. Yes, sir.

1 Q. But someone else drafted it?
2 A. Yes.
3 Q. Who drafted it?
4 A. I believe it was Brandon Powell.
5 Q. I'm sorry?
6 A. I believe it was Brandon Powell.
7 Q. Okay. Did you -- was this reviewed by yourself
8 before it was sent out?
9 A. Yes.
10 Q. Okay. And did anybody else review it before it
11 went out?
12 A. Yes.
13 Q. Who?
14 A. Legal.
15 Q. Who in legal?
16 A. The legal staff. We sent it up to the legal
17 staff.
18 Q. Here in Santa Fe?
19 A. Yes.
20 Q. Before it went out?
21 A. Yes.
22 Q. And were the people that you copied here, are
23 they the ones that would have reviewed it before it went out?
24 A. I'm sorry?
25 Q. I see you copied Mr. Sanchez, Ms. MacQuesten and

1 Ms. Altomare on this Notice of Violation?

2 A. When we draft a Notice of Violation in the
3 district, we send it up to the legal staff in this format, and
4 they review it and send it back, and they make any changes or
5 recommendations and send it back to us. It goes out from our
6 office.

7 Q. Okay. Why is there a copy to the Bureau of Land
8 Management?

9 A. Because it's a federal well.

10 Q. This is on federal land?

11 A. That would be the reason we copied them. That
12 would be the reason that we sent a copy to the Bureau of Land
13 Management.

14 Q. Are these wells on federal lands?

15 A. I'd have to look at a sundry detail. I don't
16 know right off the top of my head.

17 Q. Did anyone check the dates on this Notice of
18 Violation before it went out?

19 A. Check the dates for what?

20 Q. The various dates that you list here starting
21 with paragraph 1?

22 A. Yes. We check it as we draft it.

23 Q. Okay. Do you see here in paragraph 1 it says
24 that the pit permits for the Wiedemer #7 and #6 were approved
25 on January 12, 2006?

1 A. Yes, sir.

2 Q. That's not correct, is it?

3 A. Okay. I don't have any way of knowing. I'll
4 take your word for it.

5 Q. Were they approved on January 12, 2007?

6 A. For the Wiedemer?

7 Q. Uh-huh.

8 A. I don't have that.

9 Q. Why don't you go to Exhibit No. 4?

10 A. Exhibit No. 4.

11 Q. Which is the time line?

12 MS. ALTOMARE: I'm going to object to reliance on
13 Exhibit 4 as anything other than a summary by counsel. There's
14 no foundation for it.

15 MR. FELDEWERT: Let me finish.

16 Q. (By Mr. Feldewert): Behind the time line there
17 is a tab for --

18 MR. BROOKS: Sustained.

19 Q. (By Mr. Feldewert): -- the Wiedemer well #6.

20 A. Yes.

21 Q. And do you see behind that tab there is a pit
22 registration and closure form.

23 A. Yes.

24 Q. And that's dated -- approved January 12, 2007.

25 A. Yes. I also noticed that under Mr. Fielder's

1 name, it was submitted 11/6/06.

2 Q. Right.

3 A. Okay.

4 Q. So in your Notice of Violation here that you sent
5 out to the BLM and copied the staff, it says that at permits
6 were approved January 12, 2006. That's a typo? It should have
7 been '07?

8 A. It could be.

9 Q. I just want to make sure the record is clear. So
10 it's not like these pits have been sitting out there and
11 approved since 2006. They weren't approved until 2007.

12 All right. Secondly, paragraph 2; do you see that?

13 A. No.

14 Q. Of your Notice of Violation, second page?

15 A. Let me get back to it.

16 Q. It says for the Wiedemer #7, the OCD received a
17 sundry report reporting that the production casing string was
18 set and cemented indicating that the driller process had been
19 completed on January 27, 2006, and that's not a correct date,
20 is it? It should be 2007?

21 A. Now, you're asking about which casing string?
22 Yes. The well was spud in 2007, according to the sundry.

23 Q. Okay. So it was not January -- the casing string
24 was not set and cemented January 27, 2006, it was 2007.

25 A. Correct, yes, sir.

1 Q. Now, what you omit from your time line here or
2 the sundry reports that were submitted by McElvain indicating
3 when the completion operations took place; do you not?

4 A. Well, as we used cessation of use as defined by
5 the Division as the casing cementing, yes, we don't indicate
6 anything about completion.

7 Q. Okay. So if I'm just the BLM looking at your
8 time line here, you get the impression, do you not, that the
9 use of the pits ceased when the casing string was set and
10 cemented because you mention nothing about the use of the pits
11 during the completion process. You don't even reference the
12 sundry notice of completion process.

13 A. No. We reference the date the casing was set and
14 we see that as an error date.

15 Q. And you don't even note in your time line here
16 that you sent out to the BLM that these pits were closed by
17 September 25th, 2007?

18 A. I'm not sure we knew that when we issued the
19 Notice of Violation.

20 Q. This Notice of Violation was sent out January
21 25, 2008. You had already approved closure of these pits on
22 September 25th, 2007, right?

23 A. I'm not the one that approves the closures.

24 Q. All right. But your time line omits the closure
25 date of these pits?

1 A. Yes, it does.

2 Q. All right. Why wouldn't you put the fact -- why
3 wouldn't you note the closure date of these pits on the time
4 line?

5 A. I would have to look back and see when we drafted
6 the NOV and when we sent it to be reviewed.

7 Q. Okay. And if I go then to McElvain
8 Exhibit No. 4 -- are you there?

9 A. You're talking about your time line?

10 Q. Yeah.

11 A. Okay.

12 Q. Okay. The time line for the Notice of Violation,
13 do you see that at the bottom?

14 A. Yes.

15 Q. Mr. Roberts inspects the wells on September 11th;
16 do you see that?

17 A. Yes.

18 Q. Okay. And he then waits ten days before he even
19 calls McElvain about his inspection?

20 A. Okay.

21 Q. Do you know why? Why would you wait ten days?

22 A. Well, I would -- what we try to do is get
23 together and talk about what it is and the direction we're
24 going with it. I can't speak to why we waited that period
25 other than we were waiting on communication.

1 Q. And then once you finally contacted McElvain,
2 they then closed these pits, these wells, within three days;
3 did they not?

4 A. Yes, sir, they did.

5 Q. And then you actually approved the closure of
6 those pits on October 16th of 2007?

7 A. I believe they were approved, yes.

8 Q. They were approved -- closure without any
9 remediation required?

10 A. Correct.

11 Q. All right. So they were closed on
12 September 25th, and you approved them on October 16th, 2008,
13 and you don't issue a Notice of Violation until January 25th,
14 2008?

15 A. Yes, sir.

16 Q. Why did you wait so long if this was such a
17 serious knowing and willful violation?

18 A. It has to be run through the process. It has to
19 be reviewed by legal.

20 Q. If I go back to your Notice of Violation,
21 Mr. Perrin, Exhibit No. 3.

22 A. Yes.

23 Q. And I'm going to page 2. I'm at the last
24 paragraph. You say because the rule violations at issue are
25 serious and occurred over a period of time, the OCD Aztec

1 District Office believes that this time a \$2,000 civil penalty
2 and a definite commitment to future corrective action are
3 essential. Do you see that?

4 A. Yes, I do.

5 Q. Okay. Now, we've already pointed out you waited
6 until almost two-and-a-half months before you issued what you
7 consider to be a Notice of Violation for a serious violation of
8 Rule 50.

9 What definite commitment to future corrective action
10 are essential here? What corrective action are you talking
11 about?

12 A. Well, not to do it in the future.

13 Q. Because these pits had already been closed,
14 right?

15 A. Yes.

16 Q. And you're saying the corrective action that's
17 necessary is that they need to make sure they close their pits
18 within six months of the casing string is set and cemented?
19 You don't say that here, that's why I'm trying to figure out
20 how they're supposed to know what corrective action is
21 essential here.

22 A. We talk about the corrective action. It's not on
23 the paper; you're right. We talk about it at the
24 administrative conference.

25 Q. Well, the problem I have with your Notice of

1 Violation is that somebody reading this sees: A, you don't
2 tell them that the pits were closed in this Notice of
3 Violation; you don't tell them that this pit was utilized
4 during the completion process; and, you give the impression in
5 this Notice of Violation that this pit is not yet closed and
6 that corrective action is essential here. Do you see where I'm
7 coming from?

8 A. I hear what you're saying, yes, sir.

9 Q. All right. Now, when you issued this Notice of
10 Violation for this, what you call a serious violation of
11 Rule 50, you said at that time that a \$2,000 civil penalty was
12 appropriate, correct?

13 A. Yes, sir, I did.

14 Q. And that's after review by legal and after review
15 by your staff?

16 A. Yes, it is.

17 Q. Now the Division is coming before this body here
18 and saying, well, we want a \$5,000 fine. Can you explain to me
19 why this, what you consider to be a \$2,000 fine back in January
20 of 2008 has now ballooned up to a \$5,000 fine?

21 A. Yes, sir, I can.

22 Q. Why is that?

23 A. Through the administrative -- the Agreed
24 Compliance Order, we were going to address several other wells.
25 If you look at the draft, you'll see that had talked about

1 several of the wells. If those haven't been done, we'll have
2 to determine what, if any, actions can be taken on that. We
3 have the expenses of all our people standing here to testify to
4 be away from our normal jobs.

5 Q. So because McElvain didn't concede that this was
6 a knowing and willful violation in their Agreed Compliance
7 Order, you've now upped the fine to \$5,000?

8 Now, you've already testified when you consider
9 cessation of use to have occurred here. Have other operators
10 expressed to you, Mr. Perrin, the lack of awareness about your
11 interpretation of cessation of use?

12 A. I can't specifically recall.

13 Q. What about the Patina? Do you remember a fine
14 for Patina?

15 A. Not right offhand.

16 Q. The Agreed Compliance Order for Patina?

17 MR. FELDEWERT: May I approach?

18 MR. BROOKS: You may.

19 Q. (By Mr. Feldewert): I'm going to hand you what
20 I'm going to mark as Exhibit 21, if I may.

21 MS. ALTOMARE: Exhibit what?

22 MR. FELDEWERT: Exhibit 21.

23 MS. ALTOMARE: There's already a 21.

24 MR. FELDEWERT: I'm sorry. Exhibit 22, please.

25 Thank you.

1 Q. (By Mr. Feldewert): If you look at this Agreed
2 Compliance Order, it was entered into December 31st, 2007,
3 correct?

4 A. Yes.

5 Q. And this is -- well, it's just shortly before you
6 issued your Notice of Violation to McElvain.

7 A. Pardon?

8 Q. This is shortly before you issued your Notice of
9 Violation to McElvain. And your Notice of Violation to
10 McElvain is dated January 25th, 2008, okay?

11 A. Okay.

12 Q. Does that put it in perspective? If I go to
13 paragraph 16 through 19 on page 3 of 5, you note in there --
14 the division notes in here Agreed Compliance Order that,
15 "Patina interpreted the cessation of use of the pit as when the
16 well was completed not as when the drilling process was
17 completed." Do you see that?

18 A. Yes, I do.

19 Q. Okay. They go on to say, "Patina believes the
20 use of the phrase 'cessation of use' in the rule is ambiguous
21 and open for interpretation."

22 A. Yes, sir.

23 Q. And do you recall now that they expressed to you
24 that they were unaware of your interpretation of cessation of
25 use?

1 A. Yes, sir.

2 Q. When this operator was telling you in 2007 that
3 they were unaware of your interpretation, did you undertake any
4 efforts to insure that operators in your district were aware of
5 your interpretation of cessation of use?

6 A. No, sir. Only on a case-by-case basis.

7 Q. So it's your policy, then -- you're informing
8 operators in the basin of your interpretation on a case-by-case
9 basis.

10 A. Mr. Denny Fouts informs the San Juan Basin
11 Working Committee as well as I did on separate occasions.

12 Q. And in this particular order, Mr. Perrin, didn't
13 you and the Division agree to take out the language that this
14 was a knowing and willful violation in the conclusions of the
15 Oil Conservation Division?

16 A. My legal staff is the one that makes those
17 determinations.

18 Q. If I look at paragraphs 20, 21 and 22, they don't
19 state in here that that was a knowing and willful violation.

20 Now, I want you to take a look at McElvain Exhibit 6,
21 please. This is a Notice of Violation that was sent out by you
22 in February of 2007; is that right?

23 A. Yes, sir.

24 Q. Do you recall this?

25 A. Yes.

1 Q. All right. This involved where you found an open
2 drilling pit, right, where the well had been plugged?

3 A. Yes.

4 Q. Okay. And in paragraph 1 there, you reference
5 the sundry notice that was received from the BLM and it shows
6 that the plugging of the well was completed on April 11, 2006;
7 do you see that?

8 A. Yes, sir.

9 Q. And in paragraph 2 you point out that the pit has
10 been open for more than nine months after drilling and plugging
11 operations on this location have ceased; do you see that?

12 A. Yes.

13 Q. Okay. And so you're not referencing in this
14 Notice of Violation when the casing string is set or cemented,
15 are you?

16 A. No.

17 Q. You're noting when operations on the well site
18 had ceased as a point for determining when cessation of use had
19 occurred.

20 A. The well as plugged and abandoned.

21 Q. Okay. Does that make a difference?

22 A. Well, it's -- well was drilled, and if I recall,
23 it was plugged under a drilling rig.

24 Q. All right. But you didn't reference when the
25 casing -- you didn't start cessation of use when the casing

1 string was cemented, because it was a dry hole. They wouldn't
2 have set casing string. Is that what you're saying?

3 A. I would have to look and see.

4 Q. We don't know. But what you set out here is that
5 you said we are looking at nine months after the drilling and
6 plugging operations on this location had ceased, correct?

7 A. Correct.

8 Q. You didn't say anything about when a casing
9 string was set and cemented?

10 A. Correct.

11 Q. All right.

12 A. The memorandum specifically states to plug it
13 within six months after plugging and abandoning.

14 Q. And if I go over to paragraph 5 on page 2 of them
15 Notice of Violation, what you say here is that this operator
16 violated OCD Rule 50.F(1) by failing to properly close a
17 drilling pit within six months after cessation of use.

18 A. Correct.

19 Q. You don't say anything about casing string being
20 set and cemented?

21 A. No, sir.

22 Q. And you go on here to say on this page -- if I go
23 to the second full paragraph -- you say, "Because the rule
24 violations at issue are serious" -- do you see that paragraph?

25 A. Yes, I do.

1 Q. It's the same language you placed in the McElvain
2 Notice of Violation.

3 A. Yes.

4 Q. Okay. And because you're imposing a \$1,000 fine.

5 A. Correct.

6 Q. So rather than a \$2,000 for McElvain in January
7 of '08, and the \$5,000 that you're seeing now for this
8 operator, you said a \$1,000 fine was appropriate where they had
9 failed to close a pit nine months after any operations at the
10 well site had ceased?

11 A. It also says this penalty is based on one
12 violation of OCD Rule 50 on one well. It's for one well. The
13 Wiedemer #6 and #7 is two wells. And that was where the \$2,000
14 came from originally.

15 Q. I see. Okay. And then if I go over to the
16 Agreed Compliance Order here for this -- continue on this
17 exhibit -- there's a March 19th, 2007, Agreed Compliance Order.

18 A. Okay.

19 Q. If I go to paragraph 4, it has the same language
20 we just went through, right? You're referencing when
21 operations on the site had ceased. It doesn't say anything
22 about when the casing string is set and cemented.

23 A. Okay.

24 Q. All right. And if I go to page 2 of this Agreed
25 Compliance Order -- I'm looking at paragraph 3 at the bottom.

1 Do you see that?

2 A. Yes.

3 Q. This pit hasn't even been closed yet, has it?

4 A. No, it hadn't as of the time of the Notice of
5 Violation.

6 Q. Okay. So you were dealing here with a pit that
7 had been opened in March here when this was sent out, despite
8 the fact that you had sent a Notice of Violation in February?

9 A. Excuse me?

10 Q. I mean, you were dealing here in this Agreed
11 Compliance Order with a pit that remained open despite your
12 Notice of Violation that you had sent out a month earlier,
13 right?

14 A. Correct.

15 Q. And which had been open for almost a year, by
16 this time, after operations of the well had ceased?

17 A. We have our administrative conference and then we
18 draft up the Agreed Compliance Order and send it to Santa Fe
19 for legal to review, so anything that happens during that
20 period of time after that, it's hard to get it in the ACO.

21 Q. Okay. I'm just trying to figure out why this
22 operator gets a \$1,000 fine when they are beyond any use of
23 the -- the pit is still open beyond any use or any activity of
24 the well site and they get a \$1,000 fine, and when it comes to
25 McElvain, who closed the pit three days after you contacted

1 them, and within six months when cessation of use had occurred
2 at that well site, you're asking for a \$5,000 fine.

3 Now, when this Notice of Violation went out to
4 McElvain, do you recall their attorney contacting you by e-mail
5 about your interpretation of cessation of use?

6 A. When you say "their attorney," you're talking
7 about Mr. Joda, yes.

8 Q. Would you look at McElvain Exhibit 7?

9 A. Yes.

10 Q. Go to the last page of that because we have to go
11 backwards on this.

12 A. Okay.

13 Q. He's sending you an e-mail, and he says,
14 "Charlie, I've searched the website and can't find the
15 captioned guidance document you referred me to. As a reminder,
16 I'm trying to find the connection to NMOCD's position that
17 cessation of use under Rule 50.F is the same as setting and
18 cementing the production casing." Do you see that?

19 A. Yes.

20 Q. Okay. And in response, you direct him to the pit
21 guidelines; do you not? I'm sorry. You direct him to Rule 50
22 first.

23 A. Pit rules and guidelines.

24 Q. All right. You direct him to the language of
25 Rule 50, and then you direct him to the language of the

1 guidelines.

2 A. Correct.

3 Q. You don't direct him to anything else.

4 A. No.

5 Q. All right. We've looked at Rule 50, and we know
6 that your interpretation is not within Rule 50, correct?

7 A. Correct.

8 Q. And if I go to the guidelines, the next page,
9 McElvain Exhibit No. 8?

10 A. Okay.

11 Q. Now, these are the guidelines that operators are
12 supposed to be relying upon when they're dealing with pits in
13 New Mexico, correct?

14 A. Yes.

15 Q. All right? You're sending this out to give them
16 notice what you intend them to do and what you expect them to
17 do?

18 A. Is there one more e-mail that should be with
19 this?

20 Q. I don't know. Is there? I haven't seen any. It
21 didn't come in the file that you all send to me. Are we
22 missing something out of the file that you sent to me?

23 A. Well, I thought my response to him indicated what
24 we did use. Maybe I'm missing something.

25 MS. ALTOMARE: It's on the next page. Your e-mail is

1 split in half, I think. It's on page 2 at the very top.

2 Q. (By Mr. Feldewert): I'm sorry. Yeah, you tell
3 him in this e-mail after this Wiedemer NOV had been issued
4 already --

5 A. Correct.

6 Q. -- that we use when the casing string is set and
7 cemented.

8 A. Correct.

9 Q. And he says to you, where do you get that from?
10 And you send him to Rule 50, and you sent him to the pit
11 guidelines. You don't send him anywhere else?

12 A. No, I didn't.

13 Q. Okay. If I go to the pit guidelines, Exhibit 8,
14 and I look at page 4, and I look at the bottom, it says, "A pit
15 or below-grade tank will be closed within six months after
16 cessation of use."

17 A. Yes.

18 Q. It doesn't say anything about setting the casing
19 string or cementing the casing string or anything like that?

20 A. No.

21 Q. All right. What I find interesting about these
22 pit guidelines is look at your Exhibit A, your internal
23 memorandum from Mr. Fesmire that went to the Division
24 directors.

25 A. Yes.

1 Q. What's the date on that?

2 A. November 12th, 2004.

3 Q. Okay. These pit guidelines are sent out to the
4 operators within just -- a little less -- almost two weeks
5 prior to this memorandum going out.

6 A. Okay.

7 Q. Can you explain to me why the detailed
8 information that Mr. Fesmire sends out to you all by virtue of
9 this internal memorandum clearly defining when to use -- how
10 you want to interpret cessation of use -- can you explain why
11 that is not in the pit and below-grade guidelines?

12 A. No, sir, I can't.

13 Q. Why didn't you provide this memorandum to
14 Mr. Joda?

15 A. Because I didn't have a copy of that memorandum.

16 Q. You didn't?

17 A. No, I didn't.

18 Q. Where was it?

19 A. It went to the supervisors. I don't know.

20 Q. Had you seen this memorandum before?

21 A. No.

22 Q. So prior to this case, you, a district
23 supervisor, had never seen this memorandum?

24 A. Not that I recall, no.

25 Q. Okay.

1 A. What I did have is the district supervisor at the
2 time, who was my supervisor, tell me how we were going to
3 enforce the rules.

4 Q. He told you?

5 A. Yes.

6 Q. He didn't show you this?

7 A. No, not that I recall.

8 Q. All right. So you're not relying upon this to
9 substantiate your interpretation, because you never saw this.

10 A. I'm doing what I was instructed to do.

11 Q. Okay. Can you explain to me, Mr. Perrin, why the
12 definition of cessation of use that is in this memorandum that
13 you never saw, why it's not at least on the glossary of terms
14 on the Division's website?

15 A. No, sir, I can't.

16 Q. Because I got Exhibit 9 here, McElvain Exhibit 9.
17 This is your glossary of terms on the Division's website; is it
18 not?

19 A. I believe it is.

20 Q. Okay. Unless I'm missing something, there's no
21 definition of cessation of use in these glossary of terms
22 that's consistent with what you have proffered here today.

23 A. That would be correct.

24 Q. Let me ask you something, Mr. Perrin: Take a
25 look at Exhibit No. 1 for me, please. Exhibit No. 1 is the

1 definition of the Rule 50.F that was in existence at the time
2 you issued the Wiedemer NOV.

3 A. Yes.

4 Q. We've been through this. It says, "a pit" -- it
5 doesn't differentiate between pits -- "shall be closed within
6 six months of cessation of use."

7 That's what operators had to go on, correct --

8 A. Yes, sir.

9 Q. -- plus the guidelines. But now that we have a
10 new rule here in Exhibit 2, we have a new Pit Rule.

11 A. Yes.

12 Q. Okay. And if I'm reading this correctly -- and
13 you can correct me if I'm wrong -- under the new Pit Rule --
14 and I'm looking at subparagraph 7 of the closure
15 requirements --

16 A. Yes.

17 Q. -- it says -- I'm sorry -- number 6, subparagraph
18 6, "An operator shall close any other permitted temporary pit
19 within six months from the date that the operator releases the
20 drilling or work-over rig." Do you see that?

21 A. Yes, I do.

22 Q. Okay. Now, here -- this rule at least gives
23 operators a definite time frame, does it not? I mean, you're
24 not using cessation of use any longer.

25 A. Correct.

1 Q. Do you know why they chose not to use cessation
2 of use language?

3 A. I wasn't involved in that.

4 Q. Okay. It also says when the operator releases
5 the drilling or work-over rig. Do you see that?

6 A. Yes.

7 Q. Okay. Is there any difference between a
8 work-over rig and a completion rig in terms of their functions?

9 A. No.

10 Q. Okay. So just so we don't have any confusion in
11 the future, if I'm an operator out there in the San Juan Basin,
12 and I go drill a well, and I bring in a drilling rig, okay, and
13 I release that drilling rig and then I bring in a completion
14 rig, and it does its work, and I release that completion rig,
15 now which date commences the cessation of use? Is it when I
16 release the completion rig, which is like a work-over rig, or a
17 drilling rig?

18 A. I understand it to be a drilling rig.

19 Q. Drilling rig.

20 A. The drilling process is complete. The drilling
21 pit is finished, and that's why many operators mark in there,
22 "will use for completion work."

23 What that does is it allows everybody to know what's
24 going on and when Mr. Powell approves it, he understands what's
25 going on.

1 Q. All right. So you think, as we go forward now,
2 at least, operators should know that when they release that
3 drilling rig, that's when the six-month period commences?

4 A. That's my understanding.

5 Q. Even if they bring in a completion rig to
6 complete the well. Is that how we're interpreting it now,
7 gentlemen?

8 MR. POWELL: Yes. Unless you file information or an
9 extension.

10 Q. (By Mr. Feldewert): And when I look at the pit
11 form here -- let's look at Exhibit No. 4, which is our time
12 line. You can go to the first page under the Wiedemer
13 well #6 tab. I'm sorry. Let's go to the second to the page --
14 I'm sorry -- first page. I'm sorry -- first page under the
15 Wiedemer #6 tab. I check either drilling box for pit, right?

16 A. Yes.

17 Q. Production box, disposal box, work-over box or
18 emergency box, okay?

19 A. Yes.

20 Q. All right. So there's nothing to check if I got
21 a pit that you're using for completion operations?

22 A. Correct.

23 Q. All right.

24 A. I don't know if this is the form.

25 MR. POWELL: That's the old form that was used.

1 Q. (By Mr. Feldewert): I think I'm just about
2 finished, Mr. Perrin. Hold on one second. Okay.

3 Then the only -- I just want to make sure that we're
4 clear here and I'm not missing anything, because I'm hoping you
5 know because you're a district director -- can you identify for
6 me any Division publication that provides actual notice to
7 operators that the Division considers cessation of use under
8 the old Rule 50 to be when the casing string is set and
9 cemented?

10 A. No, sir, I cannot.

11 MR. FELDEWERT: That's all I have. Thank you.

12 MR. BROOKS: Before we go to the Examiner's
13 questions, let's take a ten-minute recess.

14 [Recess taken from 4:25 p.m. to 4:38 p.m., and
15 testimony continued as follows:]

16 MR. BROOKS: We're ready to resume. Mr. Ezeanyim, do
17 you have questions for the witness?

18 MR. EZEANYIM: Well, I do have one comment here.
19 Mr. Perrin, thank you for answering my question. That was --
20 but I have a comment rather than a question here.

21 Like I said before, when I didn't understand. Now, I
22 understood the context of this hearing today. I stated that
23 the Division has the authority to develop any policies or
24 procedures to carry out their duties, you know. Like I said,
25 not knowing that we have this already. I didn't even know it

1 was in my file until you mentioned it.

2 So it came from the director, and to be able to
3 determine the definition of cessation of operation, whatever
4 the definition is. But my concern here is the way it was
5 handled. I mean, this was given to all the district
6 supervisors, so I think we did a poor job of communicating to
7 the operators so that they know what that decision is.

8 Because it was confusing to me when I read it, and
9 then when I looked at the other order and exhibits, then I
10 begin to wonder without knowing this. We could do this. I
11 want you to understand that. You understand that, yes?

12 But this is our duty to communicate that information
13 to the operator so they know what we mean. So I think -- so I
14 agree with what you said, but you know now we can do that. So
15 we can even say that, you know, how was that defined? That
16 might be once you spud in, that's cessation of operation so
17 they can say that, but we need to communicate that to you.

18 MR. FELDEWERT: I agree. And that's why we are here.

19 MR. EZEANYIM: That's why I was asking you,
20 Mr. Perrin, if you can answer that question. Maybe somebody
21 else can answer it. Using the definition that was developed
22 and given to all of the district supervisors, what has McElvain
23 done in the past? Have they used that definition of once you
24 set the production casing and cement it, six months from that
25 date, you have to close the pit? Have they closed the pit

1 within that six months? So tell me that at least they know
2 that's what it is, judging from what I just said about
3 communicating the information to the operators.

4 THE WITNESS: The only way I can answer that is to
5 tell you that we don't review for date each closure.

6 MR. EZEANYIM: You don't?

7 THE WITNESS: Here's what I'm saying. The only time
8 this gets a full review other than Brandon's review for
9 approval is when the inspector goes to the field. We don't --
10 I haven't assigned my inspectors to go to field to check pits.
11 I haven't assigned my inspectors to go down to the field and
12 check operators.

13 We're a very small staff. And what we have to do is,
14 if we have a test out somewhere, we send somebody out to the
15 test and inspect the area. When we find something wrong,
16 something that's in violation, we follow it up with a review to
17 find out what's going on.

18 I think what you're asking -- what I understand you
19 to be asking -- is can we tell you the status of any other of
20 McElvain pits, not only theirs, but other operators? No, I
21 can't.

22 MR. EZEANYIM: Okay. So how do we then determine
23 that it's now more than six months so that this pit has to be
24 closed. How do you know that? You can tell that from the
25 sundry?

1 THE WITNESS: The operator puts it on the sundry that
2 we set our last casing string and cemented it on so-and-so
3 date. That's something -- the way it was developed is that is
4 something operators have to report. It's required by the rule.
5 Every operator does it, so it's a steadfast way for us to go.

6 MR. EZEANYIM: So where do you get that? Are you
7 watching six months after that? You go back to that particular
8 well, and if it's not -- if you don't have any other sundry
9 saying this pit for this particular well has been closed, then
10 you know that they're out of compliance after you inspect it?

11 THE WITNESS: We go out and inspect wells. We
12 inspect hundreds of wells that don't have pits. So if they go
13 to an area -- in this case, he went out to Angel Peak -- he
14 inspected numerous wells on that day.

15 MR. EZEANYIM: I understand.

16 THE WITNESS: When he came up to one that had a pit,
17 he checked in his computer to see if there was a pit date, any
18 information. He didn't have it, so he called the office, had
19 the office pull it up on the imaging system and they said,
20 "Well, the casing was set on this date."

21 It was past six months past that date and in
22 violation.

23 MR. EZEANYIM: Okay. That's all I have.

24 MR. BROOKS: I don't have any questions.

25 MS. ALTOMARE: I have a couple of brief follow-up

1 questions.

2 REDIRECT EXAMINATION

3 BY MS. ALTOMARE:

4 Q. To follow up on Hearing Examiner Ezeanyim's
5 concern regarding whether or not operators have been informed
6 on the OCD policy, do you feel that McElvain specifically had
7 been fully informed of the policy regarding this rule and the
8 calculation of six-month time period?

9 A. Yes, ma'am, they had.

10 Q. And do you feel that they had been informed in
11 enough time to accomplish the closure of these two pits within
12 that time period or to request an extension?

13 A. Yes, ma'am, I do.

14 Q. Counsel had mentioned what he termed the omission
15 of certain information in the time line outlined in the NOV for
16 the Wiedemer pits, including reference to certain sundries
17 addressing the completion of the well and also reference to
18 when the pit was ultimately closed. Why would this information
19 not have been included in the NOV?

20 A. It wasn't relevant.

21 Q. And why wasn't it relevant?

22 A. It wasn't part of the action to do at the pit.

23 Q. Because it wasn't part of the assessment of
24 whether or not there was a violation of the pit closure?

25 A. Yes.

1 Q. He also referenced language in the Notice of
2 Violation regarding the corrective action that we had put in
3 the NOV stating that corrective action was essential. Would
4 you say that for an operator that has demonstrated repeated
5 disregard for Rule 50 that corrective action would be
6 essential?

7 A. Yes.

8 Q. And what kind of corrective action would you
9 expect in that situation?

10 A. For them not to continue doing the same thing,
11 creating the same violation.

12 Q. And as an example, using counsel's example of the
13 Patina file, I can't remember which particular -- I think it
14 was 22, the additional Exhibit 22 that he had handed out -- at
15 paragraph 17 of that exhibit, after having expressed their
16 discontent with the Division's interpretation of Rule 50, what
17 did they indicate at paragraph 17?

18 A. Patina's going to change their operating process
19 to operate in accordance with the rules.

20 Q. So despite the fact that they had interpreted
21 cessation of use differently, they have expressed an intention
22 that now they are apprised of the Division's interpretation to
23 change their policy?

24 A. Yes.

25 Q. And have -- to your knowledge, has Patina had any

1 additional issues with pit closures?

2 A. Not to my knowledge.

3 Q. Regarding the Right Angle case that was cited by
4 counsel -- I think it's Exhibit 6 in their packet -- the
5 references in that case measures the six-month period from
6 the -- I forget how it's phrased, exactly -- but that involved
7 a plugging of a well; isn't that right?

8 A. Yes, ma'am.

9 Q. And so the measure of the six-months time period,
10 according to Division policy, is different than would be for a
11 well that's being drilled for production; isn't that right?

12 A. Yes, ma'am.

13 Q. And if I could direct you back to Exhibit A at
14 question number 3, which is the memorandum from Director
15 Fesmire, what does that memorandum indicate with regard to
16 calculating the time period for plugged wells?

17 A. The six-month time frame for closing drilling
18 pits constructed after April 15, 2007, will start on the date
19 that the last casing string is set or the well is properly
20 plugged and abandoned if the well is a dry well.

21 Q. Okay. So in the case of the Right Angle well
22 where it was a plugged well, that six-month time period would
23 have been measured from the plugging and abandonment time
24 rather than the running of the casing string since it wasn't a
25 producing well?

1 A. Yes, ma'am.

2 Q. With regard to the memorandum itself, even though
3 you hadn't been the person to whom it was directed and didn't
4 actually personally review the memo, you were trained according
5 to the policy that is embodied by that memo; isn't that right?

6 A. Yes, ma'am.

7 Q. And you were aware that there was a Division-wide
8 policy and that was why you were trained in that fashion?

9 A. Yes, ma'am.

10 Q. And finally, there was some reference to some
11 perceived inconsistencies with the penalty amounts that were
12 being sought. Isn't it the case that typically the Division
13 will seek a lower penalty amount when they are pursuing a less
14 formal compliance action through the NOV process --

15 A. Yes, ma'am.

16 Q. -- than through the administrative hearing
17 process?

18 A. Yes, ma'am.

19 Q. And that's so that -- to facilitate a compromise
20 and work with the operators to move the case towards
21 resolution; is that right?

22 A. Yes, ma'am, it is.

23 MS. ALTOMARE: I think that's all I have.

24 MR. BROOKS: Do you have anything, Mr. Ezeanyim?

25 MR. EZEANYIM: Yes. Just one on cross-examination.

1 MR. BROOKS: Go ahead.

2 MR. EZEANYIM: Based on that, I want to clarify
3 certain things. Corrective action: How do I ask this
4 question? Because I haven't fully understood what corrective
5 action is. What is corrective action under these
6 circumstances?

7 THE WITNESS: Under these circumstances, what we do
8 is we call the operator in, we say, "Look, we found this
9 violation. Tell us why. Tell us how. Tell us what you're
10 going to do about it."

11 So we try to work with the operator in the district
12 allowing them to be able to make changes to their plans or
13 explain to us what happened or develop some kind of program to
14 prevent this from occurring again, again, again, again.

15 Q. Okay. Let's say you issued the NOV before the
16 pit is closed. What would be the corrective action?

17 A. Well, if the pit hasn't been closed and we issue
18 an NOV, that's one of the requirements that they come into
19 compliance with the rule. They either have to close it or ask
20 for an extension. An extension -- what we do with an extension
21 when we receive it -- because of the six-month time limit and
22 the exposure to the sun, we have an inspector actually go out
23 to the site and look and see if this pit is acceptable to be
24 left open.

25 There's areas where the liners are torn. We receive

1 requests for extensions, we don't grant them.

2 MR. EZEANYIM: Okay.

3 MR. BROOKS: Mr. Feldewert?

4 RECROSS-EXAMINATION

5 BY MR. FELDEWERT:

6 Q. This distinction or difference that counsel's
7 drawn between plugged wells and wells that are complete in
8 terms of the time frames for cessation of use, has that been
9 communicated in any fashion to operators, that you're aware of?

10 A. Communicated verbal or in writing?

11 Q. In writing.

12 A. No, I can't say it has.

13 Q. Okay. Now, this decision to increase the fine
14 from \$2,000 to \$5,000 when McElvain would concede to a knowing
15 and willful violation under an Agreed Compliance Order. Who
16 made that decision to increase the fine?

17 A. The Division.

18 Q. Okay. And when you had this administrative
19 conference for Wiedemer Notice of Violation, okay? Where you
20 were talking about what corrective action people could do, and
21 you went through your litany of what normally happens at these
22 conferences with respect to the Wiedemer well, by the time you
23 issued the Notice of Violation, they had already been closed,
24 right? These pits had already been closed?

25 A. Yes. The violation had still --

1 Q. It had already been determined that there had
2 been no threat to the public health or environment in those
3 pits, right?

4 A. There was no corrective action required for the
5 pit.

6 Q. And they communicated to you at this
7 administrative conference that they were unaware of your
8 interpretation of cessation of use?

9 A. Yes, I think Mr. Steuble expressed several things
10 at that conference, including his frustration about our
11 interpretation and their interpretation.

12 Q. Okay. And so the only issue at this
13 administrative conference that you had was whether McElvain was
14 going to agree that this was a knowing and willful violation.
15 That was really the only issue remaining, correct?

16 A. I understand that the Agreed Compliance Order
17 included a reference to the Amacker that the legal folks didn't
18 like. I understand that knowing and willful was an issue, no
19 matter how it was worded, and that was the reason they came
20 forward. You keep referencing the \$2,000. The \$2,000 penalty
21 is what is issued and what we use in the field, \$1,000 per
22 violation, to help resolve that and give the operator time to
23 do something else. It comes off the table when it goes past
24 that.

25 Q. I understand.

1 A. Okay.

2 Q. It can be a little punitive if you don't agree to
3 a knowing and willful violation.

4 MR. FELDEWERT: Okay. That's all I have.

5 MR. BROOKS: Okay. Anything further, Ms. Altomare?

6 MS. ALTOMARE: One moment. Yeah, one follow-up. The
7 corrective action of which we speak, you had also spoken about
8 the fact that there had been other -- even though they weren't
9 formally part of the original NOV -- that there had been other
10 pits that were in violation that needed to be addressed.

11 Would that corrective action have included asking the
12 operator to close the wells, like the Cougar Coms that were
13 partly open in violation of Rule 50.

14 THE WITNESS: Yes, ma'am.

15 MS. ALTOMARE: Okay.

16 MR. FELDEWERT: Those have all been closed, haven't
17 they, Mr. Perrin?

18 THE WITNESS: I believe so.

19 MR. BROOKS: Are you through?

20 MS. ALTOMARE: I am.

21 MR. BROOKS: Mr. Feldewert?

22 MR. FELDEWERT: I have no more questions.

23 MR. BROOKS: Okay. The witness may stand down.

24 MS. ALTOMARE: At this time, I would move OCD
25 Exhibits A through K into evidence.

1 MR. BROOKS: Any objection, Mr. Feldewert?

2 MR. FELDEWERT: No, Mr. Examiner, I do intend to
3 include the admission of our exhibit at the end.

4 MR. BROOKS: Okay. OCD's Exhibits A through K are
5 admitted.

6 [Applicant's Exhibits A through K admitted into
7 evidence.]

8 MR. BROOKS: Does that conclude your presentation in
9 chief?

10 MS. ALTOMARE: It does.

11 MR. BROOKS: Okay. Mr. Feldewert, you have
12 49 minutes remaining. You may begin.

13 MR. FELDEWERT: Mr. Examiner, would I be using my
14 time if I ask if you would entertain a motion to dismiss at
15 this point?

16 MR. BROOKS: You would be using your time if you want
17 to argue it, yes. Time is time.

18 MR. FELDEWERT: Would you entertain a motion to
19 dismiss?

20 MR. BROOKS: I'll let you use your time however you
21 feel.

22 MR. FELDEWERT: So your point is I get 49 minutes to
23 put on our witnesses?

24 MR. BROOKS: That's what I'm telling you.

25 MR. FELDEWERT: We will call Michael Bratcher.

1 MR. BROOKS: Mr. Bratcher? Were you sworn,
2 Mr. Bratcher?

3 MR. BRATCHER: Yes.

4 MR. BROOKS: Okay.

5 MICHAEL BRATCHER

6 after having been first duly sworn under oath,
7 was questioned and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FELDEWERT:

10 Q. Mr. Bratcher, you're the environmental and field
11 supervisor for District II in Artesia, are you not?

12 A. Yes.

13 Q. Mr. Gum is your supervisor?

14 A. Correct.

15 Q. Your job responsibilities include environmental
16 permitting, inspection, compliance, release, complaints, et
17 cetera?

18 A. Yes.

19 Q. All right. As a result, are you familiar with
20 the requirements of Division rules?

21 A. Yes.

22 Q. Are you familiar with how they have been enforced
23 and interpreted by the Division?

24 A. Yes.

25 Q. Do you occasionally work with the Hobbs office on

1 enforcement compliance matters down there in southeast New
2 Mexico?

3 A. Sometimes, yes.

4 Q. Isn't it your policy, or the policy down in the
5 southern part of the State, Mr. Bratcher, that if an inspection
6 reveals a potential violation, normally you issue first a
7 letter of violation to the operator identifying the problem you
8 perceive and providing the operator with a period of time in
9 which to correct the violation?

10 A. Typically, yes, that's how we handle it.

11 Q. And if the operator actually sees an actual
12 notice of a potential violation, undertakes those corrective
13 measures within the time frame set forth in your Letter of
14 Violation, there's usually not a Notice of Violation or
15 penalty, is there?

16 A. Usually, not.

17 MR. EZEANYIM: Counselor, let me interrupt. Could
18 you let us know who this person is? We don't know who he works
19 for. I don't know what's going on. We haven't -- for the
20 record, we want to put it in the record.

21 MR. FELDEWERT: Okay.

22 Q. (By Mr. Feldewert): Mr. Bratcher, you work at
23 the Oil Conservation Division, right?

24 A. Correct.

25 Q. Okay. And you are a field supervisor in

1 District II?

2 A. Yes.

3 Q. You work under Tim Gum?

4 A. Yes.

5 Q. All right. I'm concerned about my time.

6 MR. EZEANYIM: Okay. I'm sorry.

7 Q. (By Mr. Feldewert): Okay. So at least in the
8 southern part of the State, if you feel that there has been a
9 violation of Rule 50, what you all do first is you send out a
10 Letter of Violation to the operator giving them actual notice
11 of how you're interpreting the rule and that you consider it to
12 be a violation.

13 A. Typically. We'll send out a notification.
14 Sometimes it can be a phone call; sometimes it can be a visit
15 in the field. Generally, it's going to be a Letter of
16 Violation.

17 Q. So something in writing?

18 A. Yes.

19 Q. And then you gave them maybe a month to comply
20 with your interpretation of the rule, right?

21 A. Time frame will vary; it depends on the
22 circumstances.

23 Q. For pits it's usually a month, isn't it?

24 A. It depends on circumstances, it really does.

25 Q. All right. And if they meet your requirements

1 within that period of time, it ends there? There's no
2 allegation of a knowing and willful violation and no fine,
3 generally?

4 A. Generally, correct.

5 Q. Okay. Would you turn to McElvain Exhibit No. 17?

6 A. Is that what I'm looking at here?

7 Q. Yes, in the notebook. I'm sorry. Okay.

8 McElvain Exhibit No. 17 on the first page contains a Letter of
9 Violation and LOV?

10 A. Yes.

11 Q. Okay. And this is typically a form that goes out
12 from your office; is it not?

13 A. Correct.

14 Q. And it lists the comments on the inspection at
15 the bottom. In this case, there was an unauthorized pit in the
16 location, correct?

17 A. Right?

18 Q. And this occurred -- this is actually in March of
19 2008?

20 A. Right.

21 Q. And you gave them until April 13th, 2008, to get
22 this pit closed?

23 A. Correct.

24 Q. All right. Now, within this exhibit, it follows
25 up with, in this case, because they didn't take any action in

1 response to your Letter of Violation, the Division office here
2 in Santa Fe issued a Notice of Violation on May 15, 2008; is
3 that right?

4 A. Right.

5 Q. Okay. And this is from Mr. Sanchez here in
6 Santa Fe, right?

7 A. Correct.

8 Q. I'm trying to go through this quickly. I
9 apologize. If I look at page 2 here, the first full paragraph
10 notes that your office had sent a Letter of Violation to this
11 operator, the one we have just seen?

12 A. Correct.

13 Q. You gave them a due date for corrective action.

14 A. Uh-huh.

15 Q. But unfortunately this operator didn't comply
16 with that due date for corrective action, correct?

17 A. Correct.

18 Q. And as of the day of this Notice of Violation,
19 that pit remained open?

20 A. I believe so, yes.

21 Q. And if I look at the third paragraph, it says,
22 "Tipton knowingly and willfully violated Rule 50.F(1) by not
23 closing the pit and submitting a C-144 closure plan even after
24 OCD informed Tipton that it had to do so by April 13, 2008."
25 Do you see that?

1 A. Uh-huh.

2 Q. So we have a circumstance here where you found an
3 open pit, you told the operator it needed to be closed, you
4 gave them a period of time in which to do it, you gave them
5 written notice, and when they failed to do it, only then did
6 you issue a Notice of Violation.

7 A. Right.

8 Q. In this case, you imposed a \$1,000 civil penalty.

9 A. Correct.

10 Q. So they had actual notice of your interpretation
11 of the rule, their obligation, and when they failed to comply
12 with it, you then issued a penalty?

13 A. Right.

14 MR. EZEANYIM: Excuse me. I'm confused. I can't
15 take it anymore. I'm confused. What are we trying to do? I
16 thought the witness works for OCD.

17 MR. FELDEWERT: He does.

18 MR. EZEANYIM: Is he a hostile witness?

19 MR. FELDEWERT: He is -- no. I would not call him a
20 hostile witness.

21 MR. EZEANYIM: Is this appropriate? I don't know.
22 I'm not a legal person. But, you know, I just -- I'm
23 confused --

24 MR. FELDEWERT: Here's what I'm trying to do. Let me
25 put some context to it.

1 MR. EZEANYIM: Yeah. Please.

2 MR. FELDEWERT: I've been through this file.

3 MR. EZEANYIM: Okay.

4 MR. FELDEWERT: They were kind enough to produce
5 their files to me.

6 MR. EZEANYIM: Okay. Very good, because I don't
7 understand, because I'm not legal, so I wanted to know why he's
8 testifying.

9 MR. FELDEWERT: Okay. Here's what happened. I asked
10 them to produce all their files in which they have alleged that
11 an operator had committed a knowing and willful violation of
12 Rule 50 and in which they had imposed fines, okay?

13 Part of what they produced to me were files from the
14 southern part of the State, okay? As I go through these files,
15 Mr. Examiner -- and I'm going to do it as quickly as
16 possible -- what you will see is that, unlike what they did
17 with McElvain here in this case, they provide notice, actual
18 written notice, to the operator down there how they are
19 interpreting the rule, and they give them a period of time for
20 a specific well, specific pit, in which to meet that
21 obligation. And if they don't do it -- if that operator
22 doesn't do it after giving written actual notice of a problem,
23 then they issue a Notice of Violation for a knowing and willful
24 violation.

25 And I would submit to you properly so, because they

1 have put the operator on actual notice of how they are
2 interpreting the rule, actual notice of a problem. They gave
3 that operator time to comply, and the operator doesn't do it.
4 So then there is a knowing and willful violation. You have a
5 clear record of actual notice. That's how they do it in the
6 southern part of the State.

7 I think that's very important here because it didn't
8 happen to McElvain. These guys are over here relying upon what
9 they recollect about conversations that took place over a year
10 ago and who said what to whom, because they have nothing in
11 writing to indicate to McElvain -- or any other operator in
12 this State -- that they interpret cessation of use to be when a
13 casing string is set and cemented.

14 And despite that, they go out and issue it --
15 immediately, boom -- a Notice of Violation in which they said,
16 "Oh, you are a bad operator. You have committed a knowing and
17 willful violation of our rules. It's criminal intent, and
18 we're going to fine you \$5,000."

19 I don't understand that policy.

20 MR. BROOKS: Excuse me, Mr. Feldewert, I believe
21 you've responded. I took you off the clock because you were
22 responding to Co-Examiner's questions, but if you -- at this
23 point, I believe you've done so. So if you want to argue
24 further, I'm going to put you back on the clock.

25 MR. EZEANYIM: Yeah. Because did you have to

1 subpoena him?

2 MR. FELDEWERT: I did.

3 MR. EZEANYIM: You did have to subpoena him.

4 MR. FELDEWERT: Yeah. He had no choice.

5 MR. EZEANYIM: Is there a conflict of interest here?

6 MR. FELDEWERT: No, because he's under a subpoena.

7 I'm sorry.

8 MR. EZEANYIM: I tried. Okay.

9 MR. BROOKS: Go ahead. Back on the clock at 5:01.

10 Q. (By Mr. Feldewert): Okay. Then go to Exhibit
11 No. 18, Mr. Bratcher. This is another Letter of Violation that
12 was sent out by your office in April of 2008 to another
13 operator?

14 A. Correct.

15 Q. And it's for a violation of Rule 50, right? They
16 had failed to close the pit?

17 A. Correct.

18 Q. Okay. And you instructed them to close it within
19 30 days, right?

20 A. Right.

21 Q. All right. Then if we go to the next page, the
22 next document in this Exhibit 18, this is a Notice of Violation
23 now for this operator, about three months later, in July of
24 2008?

25 A. Okay.

1 Q. Issued by Mr. Sanchez in Santa Fe?

2 A. Right.

3 Q. And it points out in here on the second page, and
4 I'm in the -- one, two, three, four -- third paragraph down:
5 "Morexoco knowingly and willfully violated Rule 50 by not
6 closing the pit even after being informed by OCD to close that
7 pit," right?

8 A. Correct.

9 Q. And it remained open even at the time of this
10 Notice of Violation.

11 A. I believe so.

12 Q. Okay. And you imposed on them under this Notice
13 of Violation a \$1,000 fine, right?

14 A. Correct. One thing about these pits that you're
15 bringing up is none of these are drilling pits.

16 Q. What pit was involved here?

17 A. These were old production pits.

18 Q. They were in existence?

19 A. Right.

20 Q. Okay. And where do you draw that from?

21 A. My knowledge.

22 Q. Okay.

23 A. And you can also look at API numbers and see how
24 old the API numbers are.

25 Q. Let me ask you with these old production pits, if

1 either of these two operators had closed the pit after
2 receiving your Letter of Violation, would you have imposed the
3 \$1,000 fine?

4 A. Not likely on these two.

5 Q. Okay.

6 A. On the first one there was actually some concern
7 over who the actual operator was. I believe the Tipton pit --
8 the person we were dealing with was a Zack Zimmerman.

9 Q. Okay.

10 A. So there was some confusion over who even
11 belonged to that pit.

12 Q. All right. Well, let me have you go to
13 Exhibit 19. This is to Primero Operating in March of 2008,
14 right?

15 A. Correct.

16 Q. And this is three months after the Notice of
17 Violation was issued to McElvain here. And I'm looking at here
18 down at the bottom of this page, the fifth paragraph, it says,
19 "The job requiring the pit was completed in July of 2005.
20 Under OCD Rule 50.F(1), the pit should have been closed within
21 six month of July of 2005." Do you see that?

22 A. Yes.

23 MR. BROOKS: Where are you, Mr. Feldewert?

24 MR. FELDEWERT: I'm on Exhibit 19, second page,
25 second page at the bottom.

1 MR. BROOKS: Second page of the agreed order?

2 MR. FELDEWERT: No, the first page, the Notice of
3 Violation.

4 MR. BROOKS: Okay. Proceed.

5 Q. (By Mr. Feldewert): And this Notice of Violation
6 issued by Mr. Sanchez is saying here that the pit should have
7 been closed within six months of when the job requiring the pit
8 was completed. Is that how you read that?

9 A. Okay. Ask me that again.

10 Q. Down at the bottom it says, "Job requiring the
11 pit was completed in July of 2005." And Mr. Sanchez then says,
12 "Under Rule 50.F(1), the pit should have been closed within six
13 months of July 2005."

14 A. Okay.

15 Q. So am I correct he's using the date that the job
16 requiring the pit was completed as a commencement date for the
17 six-month period?

18 A. Yeah. In that sense, it doesn't really make any
19 sense to me. I'm not sure what he was talking about or why
20 that was phrased like that. I don't know why it was worded
21 that way.

22 Q. Okay. If I go to the next page, this is again a
23 circumstance where you had, according to the second, third, and
24 fourth paragraph, given a Letter of Violation to Primero
25 telling them to take and close this pit. As of the day of this

1 Notice of Violation, it had not been closed so you used that
2 actual written notice and their failure to close it for
3 justifying a knowing and willful violation?

4 A. Correct.

5 Q. Okay.

6 A. Right. I'm trying to rely on memory to remember
7 the exact circumstances of these. This particular pit, this
8 Primero Operating, had actually acquired this property from
9 somebody else. This was another -- not a normal circumstance.

10 Q. Okay.

11 A. As far as closing the drilling pit, he had some
12 partners that bailed out on him and left him holding the bag on
13 this one.

14 Q. I got you. It sounds a lot like the Amacker
15 well. Now, if I go further on in this exhibit, I get to an
16 Agreed Compliance Order.

17 A. Okay. Where are you going there?

18 Q. Page on through this exhibit.

19 A. After the pictures?

20 Q. Past the pictures.

21 A. Okay.

22 Q. And the Agreed Compliance Order, May 5th, 2008.
23 What I'm interested in, Mr. Bratcher, is paragraph 8. It says
24 "The job conducted by Collins requiring pit closure was
25 completed in July 2005. Under OCD Rule 50.F(1), the pit should

1 have been closed within six months of July 2005."

2 Do you see that?

3 A. Yes.

4 Q. All right. So they're using here, the Division
5 is, when a job requiring a pit was completed in order to
6 commence the six months cessation of use period of time?

7 A. Okay.

8 Q. Okay. Let's go to the next exhibit.

9 MR. FELDEWERT: How am I doing, Mr. Brooks?

10 MR. BROOKS: Let's see. You've got 32 minutes
11 remaining.

12 Q. (By Mr. Feldewert): Mr. Bratcher, look at
13 Exhibit 20 for me, please. Okay. Now, here I have a file
14 involving two drilling pits, do I not? The Red Lake 36-A State
15 No. 004 drilling pit and the Red Lake 36-C State No. 004
16 drilling pit?

17 A. Okay.

18 Q. I go up to the next page in this exhibit, and I
19 have a Letter of Violation from your office dated April
20 23, 2007, right?

21 A. Okay.

22 Q. And I'm reading the comments on inspections and
23 it says, "Drilling pit open, liner intact, well is in violation
24 of" -- and it cites the rule -- "in that completion reports
25 required by this rule have not been submitted."

1 You wanted to see the completion reports, right?

2 A. Right.

3 Q. Your office did?

4 A. Correct.

5 Q. All right. So you asked them to get those to you
6 in April of 2007. Are you with me so far?

7 A. Okay.

8 Q. Then we jump forward to September 20th, 2007, and
9 I'm going through your file.

10 A. Yeah.

11 Q. You apparently got your completion reports, but
12 now you have a new Letter of Violation of Rule 50; is that
13 right?

14 A. Right.

15 Q. Okay. Would you read for me -- well, I'll read
16 it for you, and I'll look at both comments on inspection. And
17 it says here -- and I'm looking at the first one -- comments on
18 inspection: "Drilling pit is open and full of solids, looks
19 like fluids have been drained off, C-144 approved for pit
20 closure on 4/23/07." Then it goes on to say, "Well completed
21 on 1/23/07." Do you see that?

22 A. Yeah.

23 Q. "Violation of Rule 50. Pits are to be closed
24 within six months after completion of well."

25 A. Right.

1 Q. It says the same thing about the other pit.

2 A. Right.

3 Q. These are drilling pits, right?

4 A. Yep.

5 Q. And what your office down there is communicating
6 to Edge Petroleum in 2007 is that under your interpretation of
7 Rule 50, these pits are to be closed within six months of when
8 completion operations have ceased?

9 A. Yeah. And that's how this inspector wrote that
10 violation up. We've always used the same interpretation. The
11 interpretation of cessation of use came about after Rule 50 was
12 formed. It came out just like it was said earlier. It was a
13 memorandum sent out by the Division director to be used by the
14 districts to determine cessation of use.

15 We set up a system. Mr. Harvey was the inspector on
16 this. He's been with us a little over a year now. We've got a
17 method set up --

18 Q. Let me stop you here, only because I'm short of
19 time. If you want to bring this out with Ms. Altomare, that's
20 fine, but I have to concentrate on my time.

21 What's important to me here -- and tell me if I'm not
22 reading this correctly -- but that Mr. Harvey here in September
23 of 2007, which is shortly before these guys issue a Notice of
24 Violation to McElvain, they're saying that under their
25 interpretation of Rule 50, the pits are to be closed within six

1 months of cessation of the completion operations, right, the
2 completion of the well?

3 A. And the reason it's written up like that is
4 because he does the pit inspections, and he does them off the
5 completion reports, and that's just how he had this wrote up.

6 Q. That's now --

7 A. He gets the completion reports, and that's when
8 we go out to look and see if they've been closed or not.

9 Q. I understand.

10 A. That shouldn't have been written up that way.

11 Q. All right. Let's go to the next exhibit,
12 Exhibit 21. Now, this is a file -- it's not from your
13 district, it's from Hobbs, correct?

14 A. Okay. Where are you at on 21?

15 Q. Exhibit 21, I'm looking at first, a Letter of
16 Violation, which always precedes a Notice of Violation.

17 A. Okay.

18 Q. And I'm looking on the second page of the Letter
19 of Violation, and you'll see at the top there, "Drill pits
20 open, needs well sign, and drill pits closed per NMOCD Rule 50,
21 first notice."

22 A. Okay.

23 Q. All right. Then if we page on through this
24 exhibit, we get to a Notice of Violation, okay?

25 A. Okay.

1 Q. All right. Now, this is not written by any field
2 supervisor. This is written by Mr. Sanchez here in Santa Fe,
3 right?

4 A. I don't know. It's signed by Mr. Sanchez, yeah.

5 Q. He's issuing this in November of 2007. Now, this
6 is just two months before these guys issue their NOV to
7 McElvain, okay? I want to walk through this.

8 This November 19th, 2007 Notice of Violation -- I'm
9 looking at paragraph 2. We're dealing with drilling pits,
10 correct?

11 A. Right.

12 Q. Okay. And he's dealing here in paragraphs 2
13 through 6. He's dealing with a series of drilling pits at
14 various wells?

15 A. Okay.

16 Q. Then in paragraph 7, and this is what's
17 important, he's referencing here when the wells were completed;
18 do you see that?

19 A. Right.

20 Q. Not when a casing string was set and cemented.
21 He's referencing when the wells were completed. Then in
22 paragraph 13, he notes that there was a Letter of Violation
23 sent out because the pits were not closed under Rule 50 within
24 six months of cessation of activity?

25 A. Okay.

1 Q. Nothing mentioned about casing string and
2 cementing. And then the very next paragraph begins, "Melrose
3 violated Rule 50.F" -- he says here, "Melrose violated Rule
4 50.F by failing to close the drilling pits within six months of
5 cessation of drilling operations based on Melrose's reported
6 completion dates for the wells."

7 A. The completion reports typically will have the
8 date that the production string was set. That's a block that
9 you fill out in the completion report.

10 Q. Uh-huh. He doesn't say anything about casing
11 string. He says when the wells were completed.

12 A. Well, when the well is completed is whenever you
13 set your last string of casing. Your production string
14 completes the drilling of that well.

15 Q. Your well is not completed when completion
16 operations --

17 A. Your drilling completions are finished when you
18 set that last string of production casing.

19 Q. All right. But I don't see anything in here.
20 Where are you getting that from? I'm sorry. I just have the
21 benefit of the files that they produced to me. I don't see
22 that in here.

23 A. Okay. It says, "Cessation of drilling
24 operations" in the photograph that you just quoted.

25 Q. Based on what? What he set forth in paragraph 7?

1 A. Based on Melrose's reported completion dates for
2 the wells.

3 Q. Okay. And he reports that in paragraph 7 on the
4 previous page, doesn't he?

5 A. Let's see. Yeah. But what he's talking about
6 here is the cessation of drilling operations.

7 Q. Yeah. And he's using the completion dates for
8 when the drilling operations have ceased.

9 A. I think he was probably using the completion
10 report.

11 Q. All right. Well, we don't know.

12 A. No.

13 Q. All we have is what we got in here?

14 A. Right.

15 Q. All right.

16 A. I think it depends on who writes this stuff up,
17 you know, just like what I referred to with my inspector. The
18 way he wrote that up, that's probably not how he should have
19 written it up, but because of the way he does the inspections,
20 that's what he wrote it on.

21 Q. Now, here's my problem: The files that I got
22 from the Division, which included your office --

23 A. Right.

24 Q. -- I didn't see any single Notice of Violation
25 that premised any finding of a knowing and willful violation on

1 the proposition that cessation of use means when a casing
2 string is set and cemented.

3 A. Okay. I can't say that we've written one.

4 Q. You're not aware of any, are you?

5 A. No.

6 Q. Okay. And can you point me to any -- do you know
7 of any Division publication that as far as operators in the
8 State of New Mexico, that cessation of use commences -- the
9 six-month period commences when the casing string is set and
10 cemented?

11 A. Like I say, that was out when the last set of
12 guidelines were put out after Rule 50 came into being.

13 Q. What was put out?

14 A. March of 2004.

15 Q. What was put out?

16 A. Rule 50 --

17 Q. Okay. Rule 50 was put out?

18 A. -- which was very controversial, to say the
19 least. I mean, OCD broke new ground with even promulgating a
20 Pit Rule. From March through November 1st, I think, when the
21 last set of guidelines, the guidelines that we have now, were
22 put out, there were three other sets of guidelines that were
23 put out during that time frame.

24 Q. Any of them using casing string?

25 A. Pardon me?

1 Q. Did any of them use casing string should be set
2 and cemented for the definition of cessation of use?

3 A. No. That was something that was put out after
4 that last set of guidelines -- and I'm going off of my memory
5 here --

6 Q. Hold on. Hold on. Hold on. My question is:
7 What document went out to the operators in the State of
8 New Mexico informing them that cessation of use occurred when
9 the drilling string is set and cemented?

10 A. To my knowledge, there's not a document that goes
11 out to the operator. But my knowledge of the oil field is that
12 the grapevine is a very effective method of communicating in
13 the oil field.

14 Q. Okay.

15 A. I've had several conversations with operators.
16 This was something that came up not only from the NMOGA, from
17 people not only in the industry but also in the OCD, too, is:
18 What is cessation of use? We need a definition of cessation of
19 use.

20 Now, should that have been put in the guidelines?
21 Should it have been put in the Rule? It probably should have.
22 If it would have been put in the rule, we would have had to
23 rewrite the rule. The new rule now has it spelled out.

24 Q. Agreed. I disagree with one thing: I don't
25 think you would have to rewrite the rule. I think Mr. Ezeanyim

1 is right. If they had issued some kind of a publication to the
2 operators in the State of New Mexico of how they were
3 interpreting the cessation of use, then I think they could have
4 built a case for knowing and willful violation.

5 But I'm having a hard time seeing it when there is
6 nothing in writing, and we're relying upon recollections of
7 people about events that occurred about a year ago.

8 That's all the questions I have.

9 MR. BROOKS: Very good. Ms. Altomare?

10 MS. ALTOMARE: I have a couple of questions.

11 CROSS-EXAMINATION

12 BY MS. ALTOMARE:

13 Q. Mr. Bratcher, there's been some inquiry about the
14 LOV process in the southern part of the State. Is it your
15 understanding that the LOV process for the first level of
16 notifying operators when there are suspected violations is
17 analogous to the less -- the informal telephone or direct
18 communication process that is used in the District III office?

19 A. Yes. And we use that sometimes in lieu of
20 an LOV.

21 Q. So is it your understanding that the Aztec office
22 also uses an informal first step of notifying operators
23 frequently of violations prior to issuing NOVs as well?

24 A. Well, I'd hate to say what Aztec uses because
25 I'm -- I've never worked in that district so I'm not real

1 familiar with their methods.

2 Q. Okay.

3 A. I can only speak to what we do in District II.

4 Q. Okay. Are there times where you have an operator
5 who is -- or the same operator repeatedly coming up with some
6 violation where you just go straight to an NOV or even straight
7 to a hearing process, and you just skip the LOV process
8 altogether?

9 A. Yes.

10 Q. Okay. So the district is not obligated to start
11 with an LOV in all situations?

12 A. Correct.

13 Q. Okay. In fact, the LOV, even the ones that he's
14 gone over, they're not really detailed. They're very
15 straightforward, bare bones descriptions of this is the
16 violation, this is your deadline, get it done.

17 A. Right.

18 Q. Okay. Are there times when it's easier to give
19 notice directly to an operator out in the field or by telephone
20 than by giving them a letter?

21 A. Yes, it is.

22 Q. If fact, there are some operators that aren't so
23 good about picking up their mail; is that right?

24 A. Yes. That's an excuse we hear a lot.

25 Q. Okay. With regard to the NOVs, although the

1 language is slightly different in the Notice of Violations
2 issued in the southern districts, even though they don't
3 specifically reference the casing string, they do reference the
4 failure to close within six months of cessation of use on these
5 kinds of violations; isn't that right?

6 A. Right.

7 Q. And what is your understanding of the policy
8 State-wide, including the southern districts, regarding
9 calculation of the six-month period of time for cessation of
10 use?

11 A. The date the production string is set.

12 Q. Okay.

13 A. And we had to come up with something like that
14 because we've got operators that would keep the pit open for
15 the lifetime of the well. They'd say, well, we're putting our
16 production water in there. We're using it for an evaporation
17 pit. So we're still using it. So we had to come up and
18 something that was a cessation of use.

19 Q. Do you often sit in on the administrative
20 conferences that occur in your district that arise from NOV's
21 that are issued?

22 A. I do now, just recently.

23 Q. Okay. And has this issue come up? Have pit
24 closure issues or Rule 50 issues come up at all?

25 A. Yes.

1 Q. And when you discuss those issues with operators,
2 do you explain to them what the Division policy -- or did you
3 prior to the changes to the Pit Rule -- what the Division
4 policy was for calculating that time period?

5 A. Yes. And I assumed that was common knowledge in
6 the industry, because that's what we've used since November
7 2004 when it came out.

8 Q. And what's your impression when you would discuss
9 that with operators during the course of the administrative
10 conferences? Did many of them seem aware of the Division
11 policy?

12 A. Yeah. Most of them were aware of it.

13 Q. Regarding the language in the Primero example
14 that was used -- I think it was Exhibit 19 -- where the
15 language that's used about this job requiring the pit to be
16 completed, is it possible that that language was used because
17 it was a pit that was being reworked?

18 And actually, if you would look at the sundry, the
19 C-103 that is four pages after the Agreed Compliance Order
20 under --

21 A. In 19?

22 Q. The Primero Tab 19.

23 A. Okay.

24 Q. The sundry information on there indicates that
25 they drilled out cement plugs. Does that indicate that they

1 were reworking that well?

2 A. I think this was probably a re-entry, I think.

3 Q. So that pit wasn't -- possibly wasn't an original
4 drilling pit, right?

5 A. Right.

6 Q. So possibly that's not analogous to situation in
7 this particular case?

8 A. Right.

9 Q. Okay.

10 A. Well, this was an 80-barrel pit, too, so I mean,
11 this is not typically a drilling pit. In southeast New Mexico,
12 it's 10,000 plus.

13 Q. Okay. So clearly this is a distinct situation.
14 It's not a typical drilling pit for this geographic area?

15 A. Right, right.

16 Q. I'd like to direct your attention to Exhibit G in
17 the OCD exhibits, the ACO we issued with regard to the Amacker.

18 Could you turn to page 2 of Exhibit G, at
19 paragraph -- it's actually subparagraph H of paragraph 4 --
20 that indicates that the production casing string was set and
21 cemented on June 20th, 2006, in this particular ACO, right?

22 A. Right.

23 Q. Would that have constituted written notice to the
24 operator that that's a significant date for calculating the
25 deadline in this case?

1 A. I would think so, since it was put in there.

2 Q. Particularly given the next line which indicates
3 McElvain violated OCD Rule 50.F(1) by failing to close the pit
4 within six months after cessation of use without being granted
5 an extension?

6 A. Yes.

7 MS. ALTOMARE: I think that's all I have for this
8 witness.

9 MR. BROOKS: Okay. Mr. Ezeanyim?

10 MR. EZEANYIM: I have no questions for this witness.

11 MR. BROOKS: Okay. I have no questions. Redirect,
12 Mr. Feldewert?

13 MR. FELDEWERT: No.

14 MR. BROOKS: Very good. You may stand down. You may
15 call your next witness, Mr. Feldewert. You have 20 minutes
16 remaining.

17 MR. FELDEWERT: I call John Steuble.

18 JOHN STEUBLE

19 after having been first duly sworn under oath,

20 was questioned and testified as follows:

21 DIRECT EXAMINATION

22 BY MR. FELDEWERT:

23 Q. Mr. Steuble, by whom are you employed and in what
24 capacity?

25 A. I'm vice president of engineering for McElvain

1 Oil and Gas Properties, Inc.

2 Q. What are your responsibilities?

3 A. I head up the drilling production and reservoir
4 departments for the company.

5 Q. How long have you been with McElvain Oil and Gas?

6 A. About ten-and-a-half years.

7 Q. How long have you testified as a witness for the
8 company in proceedings before the Division Examiners?

9 A. Approximately ten years.

10 Q. Mr. Steuble, how long has McElvain operated wells
11 in New Mexico?

12 A. We call him Grandpa McElvain. T. H. McElvain
13 Senior first started drilling wells in the San Juan Basin in
14 the 1950s.

15 Q. So you've been operating in the San Juan Basin
16 for almost 60 years?

17 A. Yes, sir.

18 Q. Wasn't McElvain a local Santa Fe company for most
19 of that period of time?

20 A. Yes. T. H. McElvain used to live at 220 Shelby
21 Street. Right now it's an art gallery and a Pink Coyote
22 business.

23 Q. Okay. As a long-time company up there in the San
24 Juan Basin, you got accused in May of 2007 of a knowing and
25 willful violation for a pit at this Amacker well site, correct?

1 A. That's correct.

2 Q. There's been a lot of discussion about that
3 today. It's a different well site from the one that's at issue
4 here, the Wiedemer wells?

5 A. Correct.

6 Q. But there's been a lot of reference to the
7 Amacker.

8 A. Yes.

9 Q. So I'd like you to take a look at McElvain
10 Exhibit 10, the time line for the Amacker wells; is that
11 correct, Mr. Steuble?

12 A. That's correct.

13 Q. And is this time line accurate?

14 A. I've reviewed it, and it appears to be accurate,
15 yes.

16 Q. And there are documents supporting the events on
17 the time line attached to it, correct?

18 A. That's correct.

19 Q. All right. Now, you were -- before we get to
20 that time line, just to put this in perspective, in May of
21 2007, McElvain was accused of a knowing and willful violation
22 for what?

23 A. We were accused of a knowing and willful
24 violation for allowing liquids to run over the top of the
25 liner, failure to change a well sign, and failing to close a

1 pit.

2 Q. Okay. Now, were you the primary contact between
3 McElvain and the Division over this issue?

4 A. Yes.

5 Q. How was this Amacker issue resolved?

6 A. We went to a meeting with Mr. Perrin and Mr. --
7 the other fellow -- I'm sorry, I'm trying to hurry for you --
8 in the Aztec office and came up with an Agreed Compliance
9 Order.

10 Q. All right. Did they agree to waive the knowing
11 and willful violation?

12 A. Yes, they did.

13 Q. Did they agree to waive the overtopping of the
14 liner that you were accused of knowing and willfully allowing
15 to happen?

16 A. Yes.

17 Q. Okay. But in order to put that case behind you,
18 you had to pay a \$1,000 fine?

19 A. That's correct.

20 Q. Okay. And that was for failure to close the
21 drilling pit within six months of cessation of use, right?

22 A. That's correct.

23 Q. And now the Division has sat here today and said
24 that these events involving the Amacker well provided you and
25 the company with actual notice, that their district office

1 considered cessation of use to be when a casing string is set
2 and cemented rather than when your use of the pit ceases. Were
3 you told this at any time during this conference or during
4 these events?

5 A. I don't believe so. And if I might be given a
6 little leeway here, can I explain something?

7 This was a well that was abandoned by Frontier
8 Drilling in September of '06, I believe. We were partners with
9 that company, and we saw potential to have Mesaverde reserves
10 in the well bore. So Frontier went away; there wasn't anybody
11 to plug the well; we took over operations.

12 Mistakenly, I signed a Change of Operator form
13 starting January 1st. I think I submitted that on
14 January 25th. We inspected the well on January 11th and there
15 was about this much snow on the -- I want to say two feet of
16 snow on the location. We couldn't get a pickup up there.

17 We went ahead and took over the operations thinking
18 we could make gas out of it. All of the operations that had
19 been done by Frontier were not reported. That was put on us to
20 do this. They had stopped operating since September of '06.
21 We got the Notice of Violation in May of '06. By the time we
22 got the violation, we had already emptied the pit, but we could
23 not close it because from the time we took it over to May of
24 '06, we had 35 inches of snow in January and February. We had
25 that much more -- I don't know how much more -- in March and

1 April and finally could get a truck up into the location.

2 MR. BROOKS: When you say May of '06, you mean May
3 of '07?

4 THE WITNESS: May of '07. I'm sorry. The whole
5 point being is you couldn't close the pit in that time frame if
6 you wanted to. You had too much snow. And what does snow do
7 when it melts? It creates mud.

8 So the issue of the pit not being used was not an
9 issue. We knew it wasn't used. So I don't recall ever having
10 discussions with any of the OCD people regarding what the
11 definition of cessation of use was. It was a non-issue. What
12 our concern was the breach of the pit that had filled up with
13 water, and we wanted to make sure that we didn't do anything
14 environmentally bad because we didn't know what was in the pit
15 when we took it over. And that was our focus.

16 Q. (By Mr. Feldewert): Okay.

17 A. I'm sorry if I took too long.

18 Q. Did you have an environmental site assessment
19 done?

20 A. Yes, we did.

21 Q. What did that reveal?

22 A. It revealed, I think, it was pretty much clean
23 and we could -- I think there have may have been one spot, but
24 it was -- basically, it was clean.

25 Q. Okay. So if I'm understanding you, what happened

1 was, an inspector went up there and saw the runoff in the pit,
2 and it had run over the top of the liner and that it had not
3 been closed. So they sent out a Notice of Violation saying it
4 was a knowing and willful violation, and you're subject to a
5 fine?

6 A. That's correct. And what's interesting, it took
7 them 30 days to do that from the time he inspected it to the
8 time we got the violation -- approximately 30 days.

9 Q. All right. And then the way you got this
10 resolved at the administrative conference was you accepted an
11 Agreed Compliance Order.

12 A. Yes, we did.

13 Q. Okay. And despite the fact that you hadn't --
14 you had just taken over the pit, and you couldn't even get up
15 there before May, correct?

16 A. That's correct.

17 Q. All right. Now, what at this conference that you
18 had about the Amacker well -- you mentioned that cessation of
19 use and the time frame for when that commenced, that wasn't
20 even an issue?

21 A. It was not an issue, and I don't recall ever
22 discussing it because from September of '06 to May of '07 was
23 well beyond anybody's comprehension of cessation of use would
24 mean. I mean, it was not being used.

25 Q. They did tell you to file a pit extension

1 request, though?

2 A. We filed a non-standard location in early May, I
3 think, May 2nd or 4th for re-completion. So we wanted to reuse
4 the pit and not have to cover it up and re-dig it and they told
5 us to file an extension, which we did.

6 Q. Okay. Did you file it the day after your
7 administrative conference?

8 A. Yes, we did.

9 Q. Then you get this Notice of Violation three
10 months later?

11 A. Pardon me?

12 Q. Then you get for this Amacker well a Notice of
13 Violation?

14 A. No.

15 Q. I'm sorry. The Agreed Compliance Order was then
16 done three months later?

17 A. Yes.

18 Q. Okay. Why did you accept this Agreed Compliance
19 Order even though you felt like you had not violated any of the
20 Division rules?

21 A. Well, it just wasn't worth the fight. The \$1,000
22 would allow us to pay the fine and move on. We got the knowing
23 and willful removed from it. One other thing that I would like
24 to add is we paid a fine for not closing a pit, but there was
25 never a pit permit issued on this well that is in the public

1 records. So we got fined for something that wasn't even in the
2 records. Anyway, that's a sideline. It wasn't worth the
3 fight.

4 Q. All right. Then let's move to the Wiedemer
5 Notice of Violation. And we've already seen the pictures of
6 that pit. They cite you for failure to close the pit within
7 six months of cessation of use.

8 A. That's correct.

9 Q. Now, if you go to the Wiedemer time line,
10 Mr. Steuble, which Exhibit 4 --

11 A. Yep.

12 Q. -- it shows the dates that the completion
13 operations had ceased at both of these wells, correct?

14 A. That's correct.

15 Q. Are those dates accurate?

16 A. Yes.

17 Q. Did McElvain use these pits during the completion
18 process?

19 A. Yes.

20 Q. Did they then close these pits within six months
21 of the time that the use of these pits had ceased?

22 A. Yes.

23 Q. I'm looking now at the time line of the Notice of
24 Violation down there. When did Mr. Roberts inform you of his
25 inspection?

1 A. I think he inspected it on September 11th, and he
2 called one of our employees on September 21st.

3 Q. So almost ten days later?

4 A. Ten days later.

5 Q. Okay. And what did he ask you to do at that
6 time?

7 A. He asked us to close the pits, and we found some
8 equipment, and they were closed over that weekend, and they
9 were both closed by September 25th.

10 Q. So they were closed within four days of being
11 contacted by the Division that they wanted you to immediately
12 close those pits?

13 A. Yes.

14 Q. Okay. Now, this inspection took place on
15 September 11, 2007, okay?

16 A. Yes.

17 Q. Were these pits scheduled by McElvain to be
18 closed before that inspection?

19 A. We had them scheduled to be closed -- that's in
20 August, July or August, and if -- Kelly may remember here --
21 but we had a very bad August, and we had a pit breach because
22 of flooding, and we took that contractor that was going to move
23 out to these Wiedemer pits to rebuild the breached pit that
24 flooded -- because it was along a drainage in a county road.

25 Unfortunately, that contractor had to go to work for

1 other people. We didn't have him for that whole period of
2 time. So we had wanted to get them closed prior to that, but
3 the rains that came in August circumvented that. And that's
4 why we didn't get them closed.

5 Q. Now, let me ask you this: You had these pits
6 scheduled to be closed in July or August?

7 A. Yes.

8 Q. Why did you pick July or August? What do you use
9 for the schedule for the closing of your pits?

10 A. A lot of it is the weather and how dry it is and
11 if we can get the equipment in there without tearing up more
12 land than we can save.

13 Q. Now, do you schedule to make sure that these pits
14 are closed within six months of cessation of use?

15 A. Yes.

16 Q. Okay. And what do you use as cessation of use?

17 A. We use the completion date.

18 Q. Okay.

19 A. Or did.

20 Q. Or did. Is that going to change?

21 A. Oh, that'll change.

22 Q. Now, you mentioned that these were scheduled to
23 be closed in August, which means that they would have been
24 closed before the inspector even got there on September 11th?

25 A. That's correct.

1 Q. And what prevented that was that you had a rain
2 storm in August?

3 A. We had a rainstorm in April. August was a rainy
4 month, and we had drilled the well along a creek, and it kind
5 of flash flooded and floated the liner out of the pit. We had
6 to address that problem.

7 Q. So you diverted your crew from the Wiedemer pits
8 down to this area where the pit had flooded because of rain?

9 A. That's correct.

10 Q. All right. Prior to receipt of the Wiedemer NOV,
11 Mr. Steuble, do you recall any time when the Division informed
12 you or anyone from McElvain that they considered cessation of
13 use to be when the casing string is set and cemented?

14 A. Not prior to the administrative conference with
15 the Wiedemer's. Now, after the Wiedemer's, we were very clear
16 on how they interpreted it.

17 Q. All right. And you closed these pits, then,
18 within three days of when they contacted you about it?

19 A. Yes.

20 Q. All right. Did McElvain, Mr. Steuble, who has
21 operated in this State for 60 years, did they go out there and
22 knowingly and willfully violate Rule 50.F(1)?

23 A. No.

24 MR. BROOKS: You have five minutes remaining.

25 Q. (By Mr. Feldewert): And were these pits closed,

1 Mr. Steuble, within six months of cessation of use of those
2 pits?

3 A. Yes, they were.

4 MR. FELDEWERT: That's all the questions I have.

5 MR. BROOKS: Very good. Ms. Altomare?

6 MS. ALTOMARE: Thank you, Mr. Hearing Examiner.

7 CROSS-EXAMINATION

8 BY MS. ALTOMARE:

9 Q. Mr. Steuble, you attended both the Amacker and
10 the Wiedemer administrative conferences, correct?

11 A. Yes.

12 Q. You did not, however, participate in the
13 telephone conference regarding the Badger well; is that right?

14 A. No.

15 Q. Were you aware that the Badger well was in
16 violation of Rule 50 for pit closure?

17 A. Yes.

18 Q. When did you become aware of that?

19 A. Well, I gave Mr. Perrin a list of our wells
20 during one of our conferences, and the Badger 14 1-A was on the
21 top of the list. So yes, they were.

22 Q. Okay. But, in fact, I think the conversation
23 took place prior to you giving that list? Oh, no. Maybe not.

24 A. No.

25 Q. You're right. That occurred in June, I think.

1 Could you turn to Exhibit F, actually, in our packet? That's
2 the e-mail where you made that list?

3 A. This one.

4 Q. Exhibit F is the two-page --

5 MR. FELDEWERT: The first time he said he conveyed
6 that list to them?

7 MS. ALTOMARE: Yeah. It was electronically
8 transmitted. The first one is the e-mail and the second is the
9 pit list.

10 Q. (By Ms. Altomare): Do you recognize these
11 documents?

12 A. Yes.

13 Q. And is this, in fact, the e-mail where you sent
14 the pits list to Mr. Roberts and Mr. Perrin?

15 A. I believe so.

16 Q. So what prompted you to send this list of wells?

17 A. We were at the -- was it the Amacker? I get them
18 confused.

19 Q. The May 30th administrative conference?

20 A. On May 30th, we had the breach of the Amacker, so
21 we went ahead and, you know -- we knew we were going to do
22 something. During that time, in an effort to work together
23 with the OCD, we discussed how we were going to, you know --
24 may I back up a minute, just quick, briefly?

25 Q. Well --

1 A. The year before this, we had a very active
2 drilling program. The problem was it was a very hard winter.
3 Most of these pits are down in the Lindrith area. These wells
4 are at 7,000 feet in elevation. They freeze and there's just a
5 very limited time that you can clean up the pits. So we had
6 all these pits open. We knew we had these pits open because we
7 could not get them cleaned.

8 Q. The point of sending this e-mail was to address
9 the fact that you know you had open pits that needed to be
10 closed?

11 A. Yes.

12 Q. And that you had planned--

13 A. And that we weren't trying to hide anything from
14 the OCD. We were trying to show them that we were willing to
15 go complete all of the pits that we had open.

16 Q. Okay. And at the time of the administrative
17 conference for the Amacker, you advised the OCD of the fact
18 that these pits existed and that you would be following up by
19 sending this list?

20 A. Yes.

21 Q. So you did, in fact, discuss closure issues and
22 the fact that you had other pits with issues of getting closed
23 within the six-month time frame?

24 A. Yes.

25 Q. So you did actually talk about closing within the

1 six-month time frame at that Amacker conference?

2 A. No. All of these -- most of these wells had
3 already been completed, so it didn't matter what date you used.
4 They were well over the six months from whatever date you used.

5 Q. Okay. So even using your standard of measuring
6 from date of completion --

7 A. Most of these were past that, so I can't sit here
8 and tell you which ones, exactly, but -- because we did file
9 some extensions.

10 Q. Okay. Now, looking at this list, the Wiedemer
11 wells are actually listed on here; is that right?

12 A. That's correct.

13 Q. And you have them listed both as being open and
14 scheduled for closure.

15 A. That's what I just testified to. We wanted to
16 close them that summer.

17 Q. Okay. But you hadn't indicated that you were
18 going to file an extension for either one?

19 A. We didn't think we needed to. We thought we had
20 enough time in June and July and early August to get them done.
21 Unfortunately it didn't work out that way.

22 Q. But you've also not made a notation regarding any
23 additional completion processes for either one of these wells
24 that you would be closing the pits after?

25 A. The wells had already been completed.

1 Q. The wells had already been completed?

2 A. I believe so.

3 Q. Okay.

4 A. They were completed in March and April.

5 Q. Okay. You may be right, but --

6 A. They were completed in March and April, so six
7 months past March we thought we could get them completed in
8 that time frame in that summer.

9 Q. Okay.

10 A. Which goes back to my other deal about the
11 contractor.

12 Q. Okay. And on this list, the three Cougar Com
13 wells that are listed on here --

14 A. Yes.

15 Q. -- this list was compiled originally in June of
16 2007?

17 A. Yes.

18 Q. And as of the February 2008 conference, those
19 three wells were still open; is that right?

20 A. No. Two wells were open. There was one that did
21 not get -- the 33 1-B was closed on 10/14/08. The 33 1-M was
22 closed on 5/4/08, and the Cougar Com 4 2-A was closed on
23 5/12/08.

24 MR. FELDEWERT: You mean '07?

25 THE WITNESS: Of '07, I'm sorry.

1 Q. (By Ms. Altomare): Of '07?

2 A. No. Of '08.

3 Q. So all three were indeed still open on
4 February 27th of 2008?

5 A. As of when?

6 Q. As of -- I'm sorry. As of the date of the
7 administrative conference on the Wiedemer wells?

8 A. I'd have to double check that, but I think so.

9 Q. Okay. Did your business partner discuss with you
10 the warning that had been issued in August of 2007 regarding
11 the Badger well after he had the conversation with the district
12 office?

13 A. Pardon me?

14 Q. Did your business partner discuss with you the
15 warning regarding the Badger well closure issue after the
16 telephone conference with Mr. Perrin?

17 A. I don't recall. I don't know.

18 Q. Okay. You have indicated that as part of the
19 agreement for the Agreed Compliance Order on the Amacker that,
20 quote, "The OCD agreed to waive the knowing and willful
21 violation," but actually, the actual language -- if you'll look
22 to Exhibit G at page 4, paragraph 9, could you read that for
23 us, please?

24 A. "McElvain disputes that any knowing and willful
25 violation of the Oil and Gas Act or OCD Rules occurred in this

1 matter, but agrees that a fact finder could determine otherwise
2 and subject McElvain to civil penalties under NMSA 1978,
3 Section" -- whatever -- "for failure to close pits within six
4 months of cessation of use, a violation of OCD Rule 50.F(1)."

5 Q. So, in fact, there was some concession made by
6 the OCD but there was a concession made also by McElvain that
7 had this gone to hearing, there was a possibility that McElvain
8 could have been found being in knowing and willful violation?

9 A. Okay.

10 Q. If you would turn to Exhibit B, which is the
11 Notice of Violation that was issued in the Amacker well, and
12 look to paragraph -- I'm sorry -- page 2 at paragraph 3. In
13 fact, in the Notice of Violation that was issued on
14 May 11, 2007, it specifically stated to you that the production
15 casing string was set and cemented on June 20, 2006. It's
16 indicated to your company that that is a significant date for
17 purposes of this Notice of Violation; is that right?

18 A. Say that again.

19 Q. At paragraph 3, it indicates the production
20 casing string was set and cemented on June 20th, 2006?

21 A. That's what it says.

22 Q. And then at paragraph 5 it goes on -- I'm
23 sorry -- it later goes on to calculate -- to conclude that --
24 at paragraph 8. I apologize -- that McElvain violated OCD
25 Rule 50.F(1) by failing to close the pit within six months

1 after cessation of use without being granted an extension.

2 A. There's nothing to link those two together. I
3 don't know what you're getting at.

4 Q. But you would agree that you've been notified at
5 least -- that that's a significant date outlined in the Notice
6 of Violation?

7 A. And I testified on the Amacker that cessation of
8 use was not an issue because no matter what date you use, we
9 got the violation long after any activity had been done because
10 the previous operator abandoned the well site.

11 Q. Right. But my point is that you were notified
12 the production casing string setting date was significant by
13 issuance of this Notice of Violation.

14 A. No. I'm notified that the production casing
15 string was set. That's all that -- it's a sentence.

16 Q. Okay.

17 A. I mean, it's no different than me saying
18 it's 5:55.

19 Q. Do you remember participating in the
20 administrative conference for Wiedemer?

21 A. Yes.

22 Q. Do you recall the OCD representatives reminding
23 you that you had previously been informed of the standard for
24 calculation of that six-month period of time? You don't
25 remember them reviewing that with you and asking if you

1 remember having discussed it at the prior administrative
2 conference?

3 A. No. I just testified that after the Wiedemer --
4 what are we calling it -- conference, it was very clear that
5 they used the setting, casing setting date, as the kick-off
6 point.

7 Q. Okay.

8 A. Prior to that, we didn't know that because it was
9 never an issue in the Amacker.

10 Q. You never requested any kind of extension for
11 either of the Wiedemer wells, correct?

12 A. No. Because I --

13 Q. Just a yes or no?

14 A. Okay.

15 Q. Are you a member of the San Juan Basin Working
16 Committee? Is McElvain is member of the San Juan Basin Working
17 Committee?

18 A. I don't believe so. I mean, I'm not. I don't
19 know.

20 Q. Okay. Have you ever attended a meeting there at
21 the San Juan Basin Working Committee?

22 A. Me, personally, no.

23 Q. Do you know if anybody in your organization has?

24 A. I don't know. Is that NMOGA?

25 MR. PERRIN: Yes, in the San Juan Basin.

1 Q. (By Ms. Altomare): Are you a member of NMOGA?

2 A. Our company is, yes.

3 Q. Are you familiar with the obligations of an
4 operator under Rule 12 to familiarize themselves with the rules
5 and comply with the rules?

6 A. I think Mr. Perrin showed me that, yes. I'm not
7 intimately familiar with it, but I know the general idea.

8 Q. All right. You've acknowledged that due to
9 various circumstances, there were a significant number of pits
10 that you had some issues with closing that fell beyond any kind
11 of a six-month calculation.

12 In fact, the OCD did not take enforcement action with
13 regard to any of the three Cougar Com wells, the Badger well,
14 or any of the other wells that were on that list as needing to
15 be closed and in being in violation of that six-month period;
16 isn't that right?

17 A. Yes, but that was our agreement.

18 Q. Where is that listed in any of the paperwork that
19 we've looked at today?

20 A. I don't think it is listed.

21 Q. Okay. What part of the agreement was that? When
22 was that negotiated?

23 A. It was negotiated at the May 30th.

24 Q. Okay. So in an effort to work with your company,
25 the OCD was negotiating and not bringing enforcement action for

1 every single violation?

2 A. In an effort for both the company and the OCD to
3 work together to resolve whatever issues that could be out
4 there, yes.

5 Q. So just to be clear, the OCD did not bring an
6 enforcement action formally against your company for every
7 violation that existed?

8 A. No.

9 Q. Okay.

10 A. But we also provided them with the list.

11 Q. Is Larry Van Ryan a McElvain employee?

12 A. Yes.

13 Q. Are you aware if he attends the NMOGA meetings or
14 the San Juan Basin?

15 A. I don't know if he does or not.

16 Q. Okay.

17 A. I know he attends the major NMOGA meeting, but I
18 don't if he attends the --

19 Q. What is his position with your company?

20 A. He's a senior vice president.

21 Q. Okay. So if he were to go to meetings and get
22 information, he'd be a pretty reliable resource to get that
23 information disseminated to your company?

24 A. Yes.

25 Q. You've indicated that that e-mail correspondence

1 basically constituted an agreement with the OCD to work with us
2 so that we didn't bring formal compliance action on those. Was
3 there some kind of agreement wherein McElvain would then be
4 allowed to keep some of those pits open for a year beyond that
5 date?

6 A. No.

7 Q. Is there a reason that the Cougar Com wells were
8 open almost that long?

9 A. Which Cougar Com wells?

10 Q. The three Cougar Com wells, Cougar Com 33 1-B,
11 Cougar Com 33 1-M and Cougar Com 4 2-A?

12 A. Just one second here. Which wells?

13 Q. The Cougar Com 33 1-B, Cougar Com 33 1-M and
14 Cougar Com 4 2-A.

15 A. Well, if you want to go through it, yes. I don't
16 know.

17 Q. What was your understanding after sending out
18 that list of the time frame for getting those pits closed?

19 A. That we were actively trying to clean up those
20 pits and that we did have some issues with some of them. At
21 our Wiedemer conference, we had a couple of them that had some
22 extenuating circumstances.

23 For example, one of the wells sits right by the Ojito
24 Road. Other operators, or other people, would drive by that
25 pit. Because it was close to the road, they would dump their

1 trash. By trash I mean oily substances in the pit. And we did
2 not want to clean the pit up without having conferences with
3 your helper there concerning -- we didn't want to contaminate
4 anything even though we didn't contaminate the pit.

5 It just happened to be there and water truck drivers
6 driving by with contaminated -- and I'm talking about oil field
7 contamination, crude oil, things like that, tank bottoms --
8 would dump them in this pit because it was close.

9 Now, we could have went and covered it up and nobody
10 would have known the difference. But trying to be prudent
11 operators, we went to the OCD and said, "We have this problem."

12 Another pit is owned by a private land owner who is
13 not totally stable --

14 Q. I understand there are issues.

15 A. Well, there's issues, but you keep asking, trying
16 to pinpoint --

17 Q. But my understanding from that list is that you
18 had written out a list of the ones that you anticipated being
19 able to close without an extension and indicated the ones you
20 thought you were going to need an extension for that you would
21 be asking for extensions.

22 A. Yes.

23 Q. Okay. The ones that you didn't anticipate having
24 to ask for an extension --

25 A. We anticipated getting them closed in time.

1 Q. Okay. Was it your understanding, then, if
2 circumstances were to change, that you would take whatever
3 additional action would be necessary to get an extension or to
4 work with the OCD to make sure that you remained in compliance
5 as much as possible?

6 A. As much as possible, but when you rely on
7 multiple people to do multiple things to send a piece of paper,
8 it doesn't always happen.

9 Q. Okay.

10 A. I'm sure in everybody's situation that happens.

11 Q. All right.

12 MS. ALTOMARE: I think that's all the questions I
13 have for this witness.

14 MR. BROOKS: Mr. Ezeanyim?

15 MR. EZEANYIM: Yes, I have some questions.

16 MR. BROOKS: Go ahead.

17 EXAMINATION

18 BY MR. EZEANYIM:

19 Q. Have you ever requested from the station to close
20 any pit? I mean, any pit, not just this one.

21 A. Sure.

22 Q. You have? What year did you do that?

23 A. I don't recall. But we --

24 Q. Was it a long time ago?

25 A. Well --

1 Q. Last year? Within the last year? Or 2004?

2 A. Yeah, '04, '05 probably, I mean --

3 Q. Okay. Very good. Then what is your definition
4 of cessation of use, the way you request the closure of a pit.
5 What is going through your mind when you know it's time for you
6 to go and ask for that extension. What time frame did you use?

7 Did you use the time frame that says after you set
8 your production string and cement it or after you complete the
9 well? What time frame did you use to determine that you are
10 now going to ask for an extension?

11 A. It depends on the situation. If we had a well
12 sitting there and we were waiting on a pipeline right-of-way,
13 our policy is not to complete a well until we can turn it down
14 the pipeline. We have had some situations where we have wells
15 and pits sitting there uncompleted waiting for a pipeline
16 right-of-way. When that happens, we look from the day we move
17 the drilling rig off and ask for an extension from that time.

18 Q. Okay. So your answer is that once you move out
19 the rig, you start counting?

20 A. If we haven't completed it.

21 Q. Okay.

22 A. If we have a pipeline there, and we can move on a
23 completion rig quickly, then we use the date from the day we
24 quit using the pit, which is the completion date.

25 Q. You see what I'm saying? That because now there

1 is some that starts the time that says, okay, it's time for me
2 to go get an extension.

3 A. Yeah.

4 Q. So I'm trying to see what calculation, what time,
5 did you use to calculate that time?

6 A. It depends on, you know -- it depends on what --
7 if the well is being completed or the well is sitting there
8 waiting on completion is what determines it.

9 Q. And that's what you've been using?

10 A. Yes. Because we know we need the pit to complete
11 the well and if it's just there, they're going to want us to
12 clean it up, you know, within six months.

13 Q. So you are saying that you only heard about this
14 policy during your administrative conference sometime last year
15 or something? Is that when you heard about it the first time?
16 Is that when you heard about that procedure that --

17 A. That they specifically use the casing setting,
18 yes. That was the Wiedemer one.

19 Q. Just last year? You just heard about this last
20 year?

21 A. Yeah.

22 Q. Okay.

23 MR. EZEANYIM: That's all I have.

24 MR. BROOKS: Mr. Feldewert, you have five minutes
25 remaining.

1 MR. FELDEWERT: One question you didn't get to finish
2 on that Cougar Com pit. Is that the one where the landowner
3 was using it to water his livestock, and he didn't want you to
4 close it?

5 THE WITNESS: Yes, that's true.

6 MR. FELDEWERT: That's all I have.

7 MR. BROOKS: Okay. Anything further, Ms. Altomare?

8 MS. ALTOMARE: I don't think so.

9 MR. BROOKS: The witness may stand down. Does that
10 conclude your case?

11 MR. FELDEWERT: I have one more quick witness in my
12 five minutes.

13 MR. BROOKS: Okay. Call your next witness.

14 MS. ALTOMARE: I would object. There is no other
15 witness listed on your list.

16 MR. FELDEWERT: I filed an amended pre-hearing
17 statement.

18 MS. ALTOMARE: I wasn't provided with it.

19 MR. FELDEWERT: I filed it last week.

20 MS. ALTOMARE: Was a copy provided to counsel?

21 MR. FELDEWERT: To my understanding.

22 MR. BROOKS: Who is your witness?

23 MR. FELDEWERT: Art Merrick.

24 MR. BROOKS: Okay. You can call him.

25 MS. ALTOMARE: I'm going to maintain my objection for

1 the record. I was not provided with the amended pre-hearing
2 statement.

3 MR. BROOKS: We'll overrule the objection and you can
4 continue.

5 ART MERRICK

6 after having been first duly sworn under oath,
7 was questioned and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FELDEWERT:

10 Q. Mr. Merrick, are you employed by McElvain Oil and
11 Gas?

12 A. Yes, sir.

13 Q. How long have you been with the company?

14 A. Since July 2006.

15 Q. What are your job responsibilities?

16 A. District engineer.

17 Q. All right. As district engineer, are you
18 familiar with the use of the pits during the completion
19 process?

20 A. Yes, I am.

21 Q. Just real quick, how are these pits used when you
22 are out there completing a well?

23 A. When we move the completion rig on, we rig up the
24 blowout preventer. We run lines to a flow-back tank. We run
25 another line from the flow-back tank back to the reserve pit or

1 drilling pit.

2 And then we -- in the event that during the
3 completion we take a kick or whatever, and that flow-back tank
4 fills up, then we will use the pit as a backup so that we don't
5 spill water in something other than a tank or a lined pit.

6 Q. So is it part of the safety measures on your
7 blowout preventer system?

8 A. Yes.

9 Q. Is it also used when you prime the pumps for
10 frac?

11 A. Yeah. As soon as the frac is over -- well,
12 before the frac -- they'll prime the pumps into the pit. As
13 soon as the frac is over, then they will take any excess that
14 is in their pumps and tanks and put it into the pit.

15 Q. Okay. Is it used --

16 A. By that I mean tanks on the truck.

17 Q. Is it used during the swabbing operations, the
18 pit?

19 A. Sometimes when we're swabbing and we get a large
20 amount of fluid, we will swab into the flow-back tank in an
21 effort to get accurate measurements of what our fluid is. If
22 we're having trouble getting water trucks in, then sometimes we
23 drain to that pit to, again, prevent spilling on the ground.

24 Q. Okay. And what about when you're finished
25 fracing, how is the pit used?

1 A. Just for the backup for the flow-back tank from
2 swabbing.

3 Q. Do they ever clean your equipment, fracing
4 equipment, using the pit?

5 A. Yes.

6 Q. Water flows in the pit?

7 A. It's the frac equipment -- cleans up their
8 equipment into the pit.

9 Q. All right. During the time that you were
10 completing these Wiedemer wells just the month after they were
11 drilled, was McElvain using these pits during the completion
12 process?

13 A. Yes. There was some. There was cleanup with the
14 frac equipment. Virtually all of the swabbing went right into
15 the flow-back tank. I don't remember draining the tank into
16 the pit.

17 Q. Was it part of your blowout preventer safety
18 system, these pits?

19 A. It's all an integral part, yes. It's just all
20 part of the system.

21 Q. So when did your use of these pits cease at these
22 Wiedemer wells?

23 A. As soon as we landed the tubing and removed the
24 blowout preventer.

25 Q. Okay. So when these wells were completed?

1 A. Right.

2 Q. All right. And did you and McElvain close these
3 within six months of cessation of that use during the
4 completion process?

5 A. Yes.

6 Q. Were you at the Amacker conference?

7 A. Yes, I was.

8 Q. All right. Was cessation of use or the trigger
9 date for the cessation of use within six-months? Was that an
10 issue at the Amacker conference?

11 A. No, it wasn't.

12 Q. Do you recall it being discussed?

13 A. No, I don't.

14 Q. The trigger date?

15 A. Not the trigger date.

16 Q. Okay. When was the first time that you heard
17 from the Division or the district that the six-month period
18 commenced not at the time when you ceased using the pits but
19 instead when the casing string is set and cemented?

20 A. At the Wiedemer conference.

21 Q. Okay. They mentioned a conference for this
22 Badger 14 A-1.

23 A. Right.

24 Q. A telephone call?

25 A. Right.

1 Q. Now, take a look at Exhibit, Division Exhibit F.

2 A. Is that this one?

3 Q. It's that list of wells.

4 MR. FELDEWERT: May I approach?

5 MR. BROOKS: You may.

6 Q. (By Mr. Feldewert): The Badger 14 1-A that they
7 called you about, that was on the list that McElvain had
8 voluntarily provided to the Division during the Amacker
9 conference, correct?

10 A. That's right.

11 Q. All right. And so you had already indicated to
12 them that this Badger 14 1-A was beyond the six-month period,
13 not what date you used?

14 A. That's right.

15 Q. You were thinking your date, cessation of use, as
16 you normally used?

17 A. That's right.

18 Q. Not the one they hadn't disclosed to you. So the
19 six-month period wasn't an issue for the 14 1-A?

20 A. No, it wasn't.

21 Q. So you had sent this list and talked to them
22 about this in June of 2007?

23 A. That's right.

24 Q. Okay. They claimed they called you in August of
25 2007 to talk about the Badger 14 1-A for the first time?

1 A. Right.

2 Q. Okay. Is that true? What was discussed during
3 that short conversation in August of 2007?

4 A. What was discussed, as I remember it, we talked
5 about the liner being breached, that there was fluid above
6 these tears in the liner, and that we needed to get an
7 environmental assessment of the area surrounding the pit.

8 After that, I immediately called our people and had
9 water trucks trying to move in there and pull it down below
10 that tear, and I contacted Envirotech, and we sampled the area
11 for contamination.

12 Q. Because they already had this list, and you
13 already had a discussion about the well in June. Was that a
14 short conversation or a long conversation on the telephone in
15 August?

16 A. Short.

17 MR. BROOKS: I'm sorry. Finish your answer.

18 THE WITNESS: They called on my cell phone as I was
19 driving down the street, so no, I wouldn't say it was.

20 MR. BROOKS: Okay. Your time is up, Mr. Feldewert.
21 In fact, it was a couple of minutes over but I wanted to allow
22 for the fact that he had trouble finding the exhibit there.

23 Do you have cross-examination of this witness, Ms.
24 Altomare?

25 MS. ALTOMARE: Just a couple of questions.

1 CROSS-EXAMINATION

2 BY MS. ALTOMARE:

3 Q. Mr. Merrick, you indicated that you were at that
4 Amacker and at the Wiedemer conferences.

5 A. That's right.

6 Q. Did you take notes at either one of those
7 conferences?

8 A. No, I didn't.

9 Q. So you're basing everything strictly on your
10 memory and your recollection?

11 A. That's right.

12 Q. The Badger telephone conference, you don't recall
13 being advised again about what the specific policy for
14 calculating closure was at that time?

15 A. No, I don't recall anything.

16 Q. Your focus was strictly on the liner breach, not
17 on the closure issue at that point?

18 A. Exactly.

19 Q. Okay. But, in fact, the closure deadline
20 violation was also an issue for the Badger well?21 A. We had all known that. It was established well
22 before that time.23 Q. Okay. Were you involved in the previous Notice
24 of Violation negotiation for the Amacker? When the Notice of
25 Violation was issued, did you review it?

1 A. No, I didn't.

2 Q. Okay. Are you familiar with the San Juan Basin
3 Working Committee?

4 A. Yes, I am familiar with it.

5 Q. Have you ever attended those meetings?

6 A. No, I haven't.

7 Q. Are you familiar with Larry Van Ryan?

8 A. Yes, I am.

9 Q. Are you aware of whether or not he attends
10 meetings?

11 A. I know he attends the major meetings of NMOGA.

12 Q. Would you consider the San Juan Basin Working
13 Committee a major meeting in the San Juan Basin area?

14 A. No. And Larry's not intimately involved in
15 operations, so I don't think he would.

16 Q. Okay. I'm trying not to reiterate things that
17 I've already gone over with Mr. Steuble.

18 Do you recall advising -- at the Amacker
19 conference -- advising the OCD representatives that McElvain
20 had forgotten to apply for an extension for that well?

21 A. Yeah, I think John established that.

22 Q. Okay. So McElvain was pretty familiar with
23 Rule 50 as far as the requirements and the options for applying
24 for extensions?

25 A. Yes, they were.

1 Q. And an extension was never applied for for the
2 Wiedemer despite the fact that you rerouted resources to
3 address the Lindrith area wells instead?

4 A. Say that again.

5 Q. You never applied for an extension for the
6 Wiedemer pits despite the fact that you had to delay closing
7 those pits beyond what you had planned?

8 A. No. They were on a schedule to be closed, and we
9 were trying to stick to that schedule. We did divert when the
10 Cassidy No. 1 was in the draw, and the rainstorm washed out
11 that pit. And I received a verbal approval to close that pit
12 from Brandon, and we closed it. And when we closed it, we had
13 to do additional work to prevent any other runoff or
14 catastrophe like that from washing out our location.

15 Q. Do you work pretty closely with the OCD Division
16 District III office in your operations in the San Juan Basin
17 area?

18 A. I guess I don't know what closely means, but --

19 Q. I mean, that's the district office that you work
20 through --

21 A. Yeah, sure.

22 Q. -- for the San Juan Basin area operations?

23 A. That's right.

24 Q. Have you ever had any problems if you have a
25 question regarding interpretation of rules or operations, have

1 you ever had any problem getting a response from the office,
2 going in and asking questions?

3 A. No.

4 MS. ALTOMARE: I think that's all the questions I
5 have.

6 MR. BROOKS: Mr. Ezeanyim?

7 EXAMINATION

8 BY MR. EZEANYIM:

9 Q. How long does it take to close a pit?

10 A. It all depends on the pit, of course. The
11 Wiedemer's, a very short period of time. They're very small
12 pits. These are very shallow wells, so the pits are pretty
13 small.

14 Q. Take, for example, a deeper well that has a very
15 big pit, how long would it take to close that pit? How long?

16 A. It could take up to two weeks -- two to three
17 weeks.

18 Q. Okay. Now, then, another question is after you
19 set your production casing and cement it, you drill the well,
20 set your production casing and cement it. How long does it
21 take you from there until you complete and are ready to
22 produce?

23 A. If, again, it depends on the length, but a
24 Mesaverde well could take anywhere up to 45 or even longer.

25 Q. 45 days?

1 A. 45 days.

2 Q. And it takes about two weeks to close a pit?

3 A. Yes.

4 Q. You see what I'm trying to get at here is that
5 because, you know, because of the misinterpretation of that
6 Rule 50, the old Rule 50, which nobody knows when cessation of
7 use occurs, then the policy was put in place in 2004 by the
8 Division director to say that once you set your production
9 casing and cement it, the time starts ticking. So that's why
10 I'm trying to explore this.

11 So it takes about 45 days to complete the well and
12 ready to produce, and it takes two weeks. That would seem to
13 be a good time frame. So it's not unreasonable to say, well,
14 you set the production casing and cemented it, it's not
15 counted. Because, you see they have enough time to do whatever
16 you want to do with that pit before you close it.

17 A. But we can't always move onto the well.

18 Q. What?

19 A. We can't always move onto the well right after
20 completion.

21 Q. Okay.

22 A. We have engineering to do. We have --

23 Q. I know.

24 A. And many times it's considerably longer.

25 Q. Okay. Is it going to be more than six months?

1 A. It could very well be that, yes.

2 Q. And then you can get an extension.

3 A. Yes.

4 Q. That's, you can get an extension. I mean, I'm
5 not saying you did something wrong. I'm trying to explore for
6 the purposes of my own consumption to see whether we are doing
7 something unreasonable. I don't think so, you know, because, I
8 think, in the district, that's why you see different districts
9 doing things differently. The Division directors give a policy
10 on how we're going to do it. So I'm trying to probe whether
11 that's unreasonable or not.

12 If it's not unreasonable, then everybody now will use
13 it. But you heard when I mentioned that we didn't communicate
14 it to the operators as it should be?

15 A. Yes.

16 Q. So if it's communicated and everybody -- you are
17 still in violation, then that's your own, you know, you know
18 you are violating something. But I think for all intents and
19 purposes, you could, you know, set the production casing and
20 cement it with all the engineering variable you have, you could
21 close that pit, you know, mostly 60, 70, 80 percent of the
22 time, close the pit within that six-month period.

23 And that's why it's put into the rule that if you
24 couldn't, then you ask for an extension, a six-month extension
25 or even a year, depending on what you are doing. In that case,

1 they would work with you?

2 It's just a comment. It's not a question. It's just
3 a comment because I'm trying to understand this so that we can
4 see how we approach it.

5 MR. BROOKS: Is that all?

6 MR. EZEANYIM: Yes.

7 MR. BROOKS: Okay. I think that will conclude the
8 examinations since Mr. Feldewert's time has been exhausted, and
9 I have no further questions.

10 Given the lateness of the hour, I would request the
11 parties submit closing statements in writing if you wish to
12 submit closing statements.

13 MS. ALTOMARE: The only additional thing I'd like to
14 address is I don't have any objection to any of the exhibits --

15 MR. BROOKS: Oh, that's right. Mr. Feldewert hasn't
16 tendered his exhibits. So do you wish to tender all of your
17 exhibits, Mr. Feldewert?

18 MR. FELDEWERT: I got cut off. Exhibits -- we would
19 tender Exhibits 1 through 22.

20 MS. ALTOMARE: The only exhibit that I would object
21 to is Exhibit 4 and 10 in that they are incomplete and not a
22 full foundation has been provided. They are simply summaries
23 provided by counsel.

24 MR. BROOKS: Okay. I will overrule the objection,
25 and we'll admit Exhibits 1 through 22.

1 [Respondent's Exhibits 1 through 22 admitted into
2 evidence.]

3 MR. BROOKS: We will take -- Case No. 14186 will be
4 taken under advisement.

5 * * *

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15
16 ~~CONFIDENTIAL~~

17 ~~DATE~~

18
19 I do hereby certify that the foregoing is
20 a complete report of the proceedings in
21 the Examination of Case No. 14186,
heard by me on 10-16-2008.

22 David R. Brooks Examiner
23 Oil Conservation Division
24
25

1

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3

4 I, JOYCE D. CALVERT, Provisional Court Reporter for
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10 I FURTHER CERTIFY that I am neither employed by nor
11 related to any of the parties or attorneys in this case and
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14 DATED this 16th of October, 2008.

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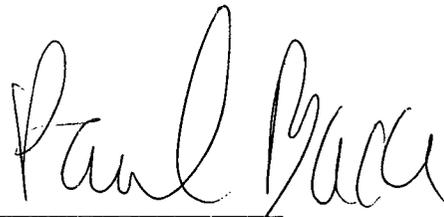
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11 Dated at Albuquerque, New Mexico, 16th day of
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