

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

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

ORIGINAL

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR A COMPLIANCE ORDER AGAINST YESO ENERGY, INC. CASE NO. 14294

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

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BEFORE: WILLIAM B. JONES, Hearing Examiner
DAVID K. BROOKS, Legal Examiner
TERRY G. WARNELL, Technical Examiner

March 31, 2009

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, WILLIAM B. JONES, Hearing Examiner, DAVID K. BROOKS, Legal Examiner, and TERRY G. WARNELL, Technical Examiner, on Tuesday, March 31, 2009, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
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A P P E A R A N C E S

FOR THE OIL CONSERVATION DIVISION:

Gail MacQuesten, Esq.
1220 S. St. Francis Drive
Santa Fe, New Mexico 87505

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REPORTER'S CERTIFICATE 22

1 MR. JONES: Let's call the first case of
2 the day, Case Number 14294, application of the New Mexico
3 Oil Conversation Division for a compliance order against
4 Yeso Energy, Incorporated. Call for appearances.

5 MS. MACQUESTEN: Gail MacQuesten on behalf
6 of the Oil Conversation Division.

7 MR. JONES: Any other appearances? You've
8 got one witness?

9 MS. MACQUESTEN: I have one witness that I
10 will definitely call, Mr. Sanchez. I also have Jane
11 Prouty available as a witness if she's needed.

12 MR. JONES: Will the witness please stand
13 and be sworn? State your name.

14 MR. SANCHEZ: Daniel Sanchez.

15 (The witness was sworn.)

16 MS. MACQUESTEN: Mr. Examiner, in this
17 case the OCD seeks a compliance order against Yeso
18 Energy, Inc. The application seeks an order giving Yeso
19 a deadline to either plug its wells or transfer them to
20 another operator and giving the OCD authority to plug
21 those wells itself if Yeso fails to do so. The authority
22 for such an order is 70-2-14(B), which provides that if
23 any of the requirements of the Oil & Gas Act or the
24 OCD's rules are not met, the OCD may, after notice and
25 hearing, order any well plugged and forfeit the financial

1 assurance.

2 The OCD will show that Yeso has violated three
3 rules: It has failed to file timely production reports;
4 it has not posted the required financial assurances; and
5 it has not complied with the inactive well rule. In the
6 application the OCD sought a plugging order under
7 70-2-14(B) because all other attempts to obtain
8 compliance have failed.

9 We will show a history going back to 2006. In
10 the past three years we have tried an inactive well
11 Agreed Compliance Order. Yeso did not live up to its
12 agreement. We tried cancelling Yeso's authority to
13 transport and inject. It continued to inject. We went
14 to hearing and obtained an order requiring Yeso to plug
15 some of its inactive wells. It failed to do so. We went
16 to hearing again to get an order on its failure to file
17 reports and its continued transportation and injection
18 after cancellation. We still did not receive the
19 reports.

20 In the last couple of days Yeso has made some
21 effort to come into compliance. It has attempted to file
22 reports, and it posted its financial assurances at 7:30
23 this morning. Because Yeso has made some effort to come
24 into compliance, we would not be opposed to a less severe
25 remedy than the remedy we asked for in the application.

1 We would like to see deadlines for filing the reports and
2 deadlines for bringing the inactive wells into
3 compliance.

4 We would ask that the Examiner set a hearing
5 date after each deadline and require Yeso to appear and
6 provide evidence of its compliance with the order. If it
7 fails to meet the deadlines, the OCD will, at that
8 hearing, request that all of Yeso's wells be plugged and
9 authority for us to plug them if Yeso doesn't plug or
10 transfer the wells. In other words, this hearing is a
11 last chance. If Yeso fails to comply with the deadlines
12 this time, the only remedy is to require them to plug
13 their wells or transfer them to another operator.

14 You have an Exhibit packet in front of you.
15 The first exhibit is the Affidavit of Notice. It shows
16 notice to Yeso and its surety and publication in the
17 appropriate newspapers. At the time this affidavit was
18 prepared yesterday morning, we hadn't received the
19 Affidavit of Publication from the Roswell newspaper. We
20 received it late yesterday afternoon, and I provided you
21 with a copy of that as a separate document.

22 The second exhibit is an affidavit of our
23 financial assurance administrator with copies of the
24 financial assurances the OCD had on file for Yeso before
25 7:30 this morning. You'll see we have a \$50,000 blanket

1 bond and several single well financial assurances.

2 Exhibit 3 is the pre-filed written testimony
3 of Daniel Sanchez. We are trying a slightly different
4 approach in the presentation of this case today. We are
5 going to be asking you to admit Mr. Sanchez's pre-filed
6 written testimony which will give evidence of Yeso's rule
7 violations and the history of our compliance actions.
8 The hope is that this will speed up the presentation of
9 these compliance cases.

10 The testimony and exhibits Mr. Sanchez will be
11 introducing were provided to Yeso and its surety prior to
12 the hearing. Mr. Sanchez is present. He will be
13 available to answer any questions that you have. If the
14 other side had appeared, he would be available for
15 cross-examination.

16 Exhibit 15 at the back of your packet is the
17 affidavit of Jane Prouty, our automation and records
18 bureau chief. Her affidavit indicates that Yeso has not
19 filed production reports for May, June, July or August of
20 2006, and stopped filing altogether after May of 2007.

21 At this time, I would move for admission of
22 Exhibits 1, 2 and 15. That's the Affidavit of Notice,
23 the Affidavit of Financial Assurance and the Affidavit of
24 Reporting.

25 MR. JONES: Exhibits 1, 2 and 15 will be

1 admitted.

2 MS. MACQUESTEN: I would call Daniel
3 Sanchez.

4 I'm sorry. Ms. Prouty points out that her
5 exhibit is labeled 16.

6 MR. BROOKS: That's correct.

7 MS. MACQUESTEN: Let's ask for admission
8 of 1, 2 and 16.

9 MR. JONES: Let's retract the previous
10 admission and admit Exhibits 1, 2 and 16.

11 (Exhibits 1, 2 and 16 were admitted.)

12 MS. MACQUESTEN: I will call Daniel
13 Sanchez.

14 J. DANIEL SANCHEZ

15 Having been first duly sworn, testified as follows:

16 EXAMINATION

17 BY MS. MACQUESTEN:

18 Q. Would you please state your name for the
19 record?

20 A. Daniel Sanchez.

21 Q. And what is your title?

22 A. Compliance and enforcement manager.

23 Q. Do your duties include supervising the OCD's
24 enforcement and compliance actions and supervising the
25 district offices?

1 A. They do.

2 Q. Have you researched the violations alleged in
3 the compliance action against Yeso?

4 A. Yes.

5 Q. Could you please summarize the issues for us?

6 A. The issues are, basically, failure to file
7 production reports, failure to post adequate single well
8 financial assurance, and a large number of inactive
9 wells.

10 Q. Have you researched what the OCD has done to
11 try to obtain compliance from Yeso on these issues?

12 A. Yes, I have.

13 Q. Could you summarize the OCD's compliance
14 actions?

15 A. The OCD entered into an Agreed Compliance
16 Order for the inactive wells with Yeso, an agreement that
17 was never fulfilled by Yeso. We cancelled the authority
18 to transport and inject in Yeso. We had a plugging case,
19 and we've also had a compliance case on the
20 transportation and injection without authority and the
21 failure to file reports.

22 Q. Since the OCD filed the application in this
23 case, has Yeso taken any action to come into compliance

24 A. Yes, they have.

25 Q. What have they done?

1 A. They attempted to file their late reports,
2 injection reports, but they've done that incorrectly. So
3 we're working with them right now to try to get them to
4 file correctly.

5 Q. When did they try to file?

6 A. Late yesterday.

7 Q. And what was wrong with the filing?

8 A. They're supposed to be filed electronically.
9 They were done through email, and those email copies were
10 incorrect.

11 Q. So have their attempted filings been
12 processed?

13 A. No.

14 Q. They are still out of compliance on the filing
15 requirements?

16 A. Yes, they are.

17 Q. Did they take any other actions to come into
18 the compliance?

19 A. Yes. At 7:30 this morning they brought in
20 their additional financial assurance. They were
21 submitted to Dorothy Phillips, our bonding administrator,
22 and she approved them and accepted them and put them into
23 the system.

24 Q. So are they now in compliance as far as their
25 financial assurance requirements?

1 A. Yes.

2 Q. Has anything been done on the inactive wells?

3 A. Nothing to my knowledge.

4 Q. The application in this case sought an order
5 requiring Yeso to plug its wells or transfer its wells.
6 We did not request any option that would allow them to
7 come into compliance. Given Yeso's efforts to come into
8 compliance, is that the remedy you're asking for today?

9 A. No. We're actually asking to give them a
10 little bit more time and see if they will come into
11 compliance this time.

12 Q. What conditions would you want to see in an
13 order?

14 A. We would like to see a short deadline to get
15 those inactive wells back in compliance, whether it's
16 through plugging, transfer or production. We would like
17 to see an order showing or requesting that Yeso continue
18 to file its C115s, not just in groups whenever we let
19 them know that they're behind, but to file on a regular
20 basis.

21 At the future hearing, at some point after
22 that time frame has ended, we would request that the
23 hearing order have Yeso come back in at the next
24 available hearing and explain to the hearing examiners
25 exactly what they've done to get back into compliance.

1 If they have failed to come into compliance at that
2 point, we would request that we be given the authority to
3 plug those wells.

4 Q. What sort of deadline would be appropriate?

5 A. We feel three months after the issuance of an
6 order.

7 Q. What would they have to do in that three-month
8 time?

9 A. Make sure that their reporting is up to date
10 on a regular basis and start working on their inactive
11 well problem. And that would be entirely up to the
12 company, what they want to do, whether they want to plug
13 wells or bring them back on to production.

14 Q. Would you want to see a plan provided by Yeso
15 to the examiners?

16 A. I would like to see a plan, not at the end of
17 that three-month period, but within, say, two weeks of
18 the issuance of an order, so that we would have something
19 to come back with at that three months.

20 Q. And the plan would --

21 A. -- would detail what they're going to do with
22 their wells.

23 Q. You talked about a subsequent hearing. When
24 would you want that hearing to be held?

25 A. The first available hearing date after that

1 deadline has passed.

2 Q. To see if they met what they were required to
3 do in that time period?

4 A. Yes.

5 Q. And if they didn't meet it, what would you
6 want?

7 A. I think at that time the OCD would request
8 that those wells -- we go back to the original request in
9 this case, which would be to go ahead and plug those
10 wells.

11 Q. Plug all the wells Yeso is operator of record
12 for?

13 A. Yes.

14 Q. Does your pre-filed written testimony review
15 the allegations and compliance history in more detail?

16 A. Yes.

17 Q. Have you reviewed the pre-filed written
18 testimony carefully?

19 A. Yes.

20 Q. Do you agree with everything in that written
21 testimony?

22 A. Yes, I do.

23 Q. Do you adopt it today under oath?

24 A. Yes, I do.

25 Q. Let's review the exhibits that you reference

1 in that testimony. If you could turn to Exhibit 4. Can
2 you tell us what this exhibit is?

3 A. This is Yeso Energy's well list. These are
4 all the wells they're -- that are under their name.

5 Q. Where is this well list taken from?

6 A. OCD online.

7 Q. Is it used routinely by operators and the OCD
8 in the normal course of business?

9 A. Yes, it is.

10 Q. Turn to Exhibit 5, please. What is this?

11 A. Exhibit 5 is a copy of the Inactive Well
12 Additional Financial Assurance Report, also for Yeso, and
13 this one was also on OCD online.

14 Q. And this would show those wells that required
15 the additional financial assurances?

16 A. Yes.

17 Q. And they've now posted those additional
18 financial assurances?

19 A. Yes, they have.

20 Q. If you could turn to Exhibits 6, 7, 8 and 9.
21 Are these documents taken from the well files of Yeso
22 wells that never reported production?

23 A. Yes, they are.

24 Q. Were these intended to show that the wells
25 were drilled?

1 A. Yes, they were.

2 Q. Turn to Exhibit 10. What is this document?

3 A. Exhibit 10 is the Agreed Compliance Order for
4 inactive wells that we entered into with Yeso.

5 Q. What is Exhibit 11?

6 A. Exhibit 11 is a letter to Yeso. The letter is
7 explaining that they were out of compliance again with
8 that inactive -- or the Agreed Compliance Order on the
9 inactive wells.

10 Q. And Exhibit 12?

11 A. Is a letter of cancellation of authority to
12 transport from or inject into the wells operated by Yeso.

13 Q. Exhibit 13?

14 A. This is the order in Case Number 13921 against
15 Yeso. I believe this is the plugging case.

16 Q. And Exhibit 14?

17 A. This is another order of the Division in Case
18 Number 14008, and this is against -- it's a compliance
19 order against Yeso Energy.

20 Q. Exhibit 15?

21 A. Exhibit 15 is a letter to Yeso's attorney, and
22 this is letting the attorney know that they're still out
23 of compliance and that there was a penalty due from --
24 out of Order 14008 -- Case Number 14008 -- and it was a
25 reminder that that penalty still needed to be paid.

1 Q. We're not seeking that penalty anymore, are
2 we?

3 A. No, we are not.

4 Q. It does put Yeso on notice of the various
5 violations that we are dealing with today, the financial
6 assurance and inactive wells --

7 A. Yes.

8 Q. -- and the failure to file reports?

9 A. Yes.

10 MS. MACQUESTEN: At this time I would move
11 for admission of Exhibit 3, Mr. Sanchez's pre-filed
12 written testimony, and also for admission of Exhibits 4
13 through 15, and those are the exhibits introduced through
14 Mr. Sanchez's testimony.

15 MR. JONES: Exhibit Number 3 and Exhibits
16 Number 4 through 15 will be admitted.

17 (Exhibits 3 through 15 were admitted.)

18 MS. MACQUESTEN: I have no more questions
19 of this witness.

20 MR. JONES: Okay. So what changed? Who
21 are these people and what changed in their -- where are
22 they located? Where's their headquarters? Tell me a
23 little more about Yeso.

24 THE WITNESS: I'm not sure where they're
25 headquartered out of. Right off the top of my head, I

1 couldn't tell you that. But we've had a fairly long
2 history of trying to get them into compliance, filing
3 their C115s, trying to get them to work on their inactive
4 wells. Like I said before, we've entered into agreements
5 with them to try to get them to work these things out.
6 Every time we've done this, it's been, "Yes, we will.
7 We'll get them done. Don't worry about it. We're
8 working on it."

9 It seems like the only time that they actually
10 get anything done is when they're threatened with a
11 hearing, and usually it will be a few days before the
12 hearing that they start sending in reports or whatever is
13 required of them. They have yet to meet any of the
14 agreements that we have entered into. The wells that
15 were out of compliance back in 2006 are still out of
16 compliance today.

17 Filing reports at the last minute just shows,
18 you know, their disregard for the rules here. I would
19 suspect if we were accepting these reports, that within
20 three or four months from now, they would be behind
21 again. That's just their mode of operation.

22 MR. JONES: They haven't hired anybody new
23 in their office to file reports, production reports?

24 THE WITNESS: Not that I'm aware of.

25 MR. JONES: Who's their attorney?

1 THE WITNESS: In the previous cases that
2 we've had, it's been Ernie Padilla.

3 MR. JONES: So there's two other hearing
4 orders already outstanding?

5 THE WITNESS: Yes.

6 MR. JONES: But they came through with
7 some money this morning just for those wells that were
8 needing more bonding, and those were all -- just happen
9 to be state land office wells or State of New Mexico
10 wells.

11 THE WITNESS: Yes.

12 MR. JONES: It looks like you've got state
13 wells, federal wells and some fee wells involved here.
14 Has the State -- I'm sure you haven't heard from the
15 state land office, but what about the federal -- have
16 they talked to you any about their inactive federal wells
17 for Yeso?

18 THE WITNESS: I have had several
19 discussions with the BLM, various operators that we're
20 both interested in, and we didn't discuss it in detail,
21 but Yeso's name did come up as one of the problem
22 companies for them, as well.

23 MR. JONES: Is it a Carlsbad office?

24 THE WITNESS: Yes.

25 MR. JONES: Are those inactive wells -- do

1 any of them pose immediate threats to the environment?

2 THE WITNESS: Not that I'm aware of.

3 MR. JONES: Well, a three-month order --
4 order for them to appear -- do you know why they didn't
5 appear today through any kind of representative?

6 THE WITNESS: No.

7 MR. JONES: Is there any hint why they
8 didn't?

9 THE WITNESS: They never called myself
10 or Ms. MacQuesten.

11 MR. WARNELL: I heard someone up there
12 this morning talking with Dorothy.

13 THE WITNESS: That wasn't a
14 representative. He was just a gentleman delivering the
15 bonds.

16 MR. JONES: If we do a three-month order
17 date, that would mean that the issue would be brought in
18 three months. But are you asking for them to -- us to
19 require them to have somebody present in three months?

20 THE WITNESS: Yes.

21 MR. JONES: Actually have a representative
22 here?

23 THE WITNESS: Yes.

24 MR. JONES: That would be a good idea.

25 MR. BROOKS: What they're contemplating

1 is -- my understanding is something in the nature of a
2 show cause order. We've used that term rather loosely at
3 OCD in the past, but that would be an order that required
4 the applicant to appear and make proof of certain things.

5 MR. JONES: They would need some --
6 obviously, the 30 days to get ready for that
7 three-month -- well, they would have three months to get
8 ready for it.

9 MR. BROOKS: I think it would have to be
10 20 days after the compliance date, arguably.

11 MR. JONES: Okay.

12 MS. MACQUESTEN: Why? Mr. Examiner, as a
13 practical matter, if you choose the option of having them
14 reappear and explain what they've done to come into
15 compliance, you can announce that setting at this
16 hearing. If you do it that way, you will not have to go
17 through the process of readvertising the hearing. If you
18 don't announce it at today's hearing, we will have to go
19 through the process of advertising the hearing and it
20 would be an additional cost to the State.

21 MR. JONES: You're asking for an order
22 right now -- at least a statement from us here --

23 MS. MACQUESTEN: Right. Setting a date
24 for them to come back.

25 MR. JONES: -- setting the date. It would

1 be on the record. And, hopefully, Ernie would get a copy
2 of this transcript.

3 MR. BROOKS: The date would also have to
4 be specified in the order.

5 MR. JONES: Yeah.

6 MR. BROOKS: Of course Mr. Padilla
7 wouldn't get a copy of the order unless the Examiner
8 instructs that he be sent a copy, because he hasn't
9 appeared at the hearing. So Florene wouldn't do it in
10 the ordinary course, but we could instruct that it be
11 done.

12 MS. MACQUESTEN: I don't know if Mr.
13 Padilla is representing them in this action. I haven't
14 heard from either Mr. Padilla or anyone from Yeso, and
15 there was no pre-hearing statement filed.

16 MR. BROOKS: He didn't represent them at
17 some of the negotiations previously? Is that what I
18 understood?

19 MS. MACQUESTEN: He represented them at
20 one of the hearings that we had. He may have represented
21 them in other matters. That's the one I can remember at
22 this time.

23 MR. BROOKS: They fit the profile of his
24 clients.

25 MR. JONES: Well, I think I'll pass the

1 witness. I appreciate you doing this written pre-filed
 2 testimony. I think that -- I like that idea and how
 3 thorough you guys were on this. It's pretty nice. And I
 4 better pass the witness.

5 MR. BROOKS: I have nothing further.

6 MR. JONES: Okay. I don't think we need
 7 to call Ms. Prouty this morning. With that -- thank you
 8 Ms. MacQuesten and Mr. Sanchez -- we will take Case 14294
 9 under advisement.

10 Since they left, this case, 14294, before we
 11 take it under advisement --

12 MR. BROOKS: We should say that the case
 13 will be taken under advisement for the purpose of
 14 entering an interim order, but it will be reset for
 15 further proceedings on -- let's see.

16 MR. JONES: In early August.

17 MR. BROOKS: Yeah. I know that there is a
 18 hearing on July the 23rd, because I won't be here that
 19 day. So we can reset it on August the 13th, which would
 20 be the next one after that.

21 MR. JONES: It will be reset on August the
 22 13th.

23 MR. BROOKS: Okay.

24 MR. JONES: ~~I do hereby certify that the foregoing is~~
 25 record for Case 14294. ~~a complete record of the proceedings in~~
~~the Examiner hearing of Case No. _____~~
~~heard by me on _____~~

REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on March 31, 2009, proceedings in the
above captioned case were taken before me and that I did
report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 13th day of April, 2009.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009