

STATE OF NEW MEXICO

ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION COMMISSION

IN THE MATTER OF THE HEARING CALLED BY )  
 THE OIL CONSERVATION COMMISSION FOR THE )  
 PURPOSE OF CONSIDERING: )  
 )  
 APPLICATION OF THE OIL CONSERVATION )  
 DIVISION UPON ITS OWN MOTION TO AMEND )  
 RULE 1104 OF THE GENERAL RULES AND )  
 REGULATIONS TO ELIMINATE THE REQUIREMENT )  
 OF FILING FORM C-104 FOR CHANGE OF )  
 TRANSPORTER )  
 )

CASE NO. 11,793

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

COMMISSION HEARING

BEFORE: WILLIAM J. LEMAY, CHAIRMAN  
 WILLIAM WEISS, COMMISSIONER  
 JAMI BAILEY, COMMISSIONER

June 5th, 1997

Santa Fe, New Mexico

This matter came on for hearing before the Oil Conservation Commission, WILLIAM J. LEMAY, Chairman, on Thursday, June 5th, 1997, at the New Mexico Energy, Minerals and Natural Resources Department, Porter Hall, 2040 South Pacheco, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

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## I N D E X

June 5th, 1997  
Commission Hearing  
CASE NO. 11,793

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## A P P E A R A N C E S

FOR THE OIL CONSERVATION DIVISION:

RAND L. CARROLL  
Attorney at Law  
Legal Counsel to the Division  
2040 South Pacheco  
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\* \* \*

1           WHEREUPON, the following proceedings were had at  
2   9:11 p.m.:

3           CHAIRMAN LEMAY: And we shall now call Case  
4   Number 11,793, which is the Application of the Oil  
5   Conservation Division on its own motion to amend Rule 104  
6   of the General Rules and Regulations to eliminate the  
7   requirement for filing C-104 forms for the change of  
8   transporter.

9           I'd like to call for appearances in that case?

10          MR. CARROLL: May it please the Commission, my  
11   name is Rand Carroll, appearing on behalf of the Oil  
12   Conservation Division.

13          CHAIRMAN LEMAY: Thank you, Mr. Carroll. Is  
14   there anyone else appearing in that case?

15          Okay, Mr. Carroll, if you want to take the stand.  
16   And since this is, I guess, a rule-making procedure, are  
17   you going to maybe just tell us a little about what the  
18   problem is and --

19          MR. CARROLL: Yes, I will, I'll give you a little  
20   bit of background.

21          Currently our Rule 1104 requires that a Form  
22   C-104 be filed for every change of transporter. In the  
23   Districts, these C-104s have been piling up, and it takes a  
24   lot of manpower to enter all these change of transporters  
25   in the well file. Due to the backlog, the changes aren't

1 being made for a period of six to eight weeks.

2 This has caused the Oil Conservation Division to  
3 re-examine -- or to examine for the first time -- why we  
4 require a change of transporter and whether it's needed.

5 Currently, our C-115s, which are report of  
6 production, list the transporter. So it is -- The  
7 transporter is listed on another form that's filed with the  
8 Division.

9 And I spoke to our District Offices and they have  
10 informed me that they don't believe the change of  
11 transporter is necessary. In fact, you could file a C-104  
12 for every transport- -- and list every transporter in the  
13 State and never have to file another C-104 again. So if  
14 you can list everybody, what's the purpose of then filing a  
15 C-104 for every change in transporter?

16 And it's just becoming a paperwork nightmare;  
17 it's taking a lot of the OCD's District personnel's time to  
18 file these. And since the information is listed on a  
19 separate form so it can be checked and verified through the  
20 ONGARD system, we really don't see the purpose for  
21 continuing to require a C-104 for a change of transporter.

22 So the proposal before you is to amend Rule 1104  
23 to delete the references to the requirement for filing the  
24 C-104 for -- only for change of transporter.

25 There's a number of other rules and orders,

1 including Order 8170-H regarding proration, that refer to  
2 the requirement to file a C-104 for change of transporter.

3 I guess rather than amending all those rules at  
4 this time, we'll just amend the main rule requiring the  
5 change of transporter and just not enforce or tell industry  
6 that the other rules and orders, we will not enforce and  
7 will not require that the change of transporter be filed.

8 As you are aware, Amoco filed a letter dated May  
9 27th. They had a number of questions regarding whether  
10 transporters still have to obtain authorization from the  
11 OCD prior to hauling oil from a lease for the first time.

12 Yes, that will still require authorization. They  
13 are required to get a supplement to the oil proration  
14 schedule, and a C-104 -- and the C-104 is the authorization  
15 to produce, and that includes the information that the  
16 transporter needs to file its C-111, which is its report of  
17 transported volumes.

18 So if the C-115 is filed by the operator, listing  
19 the transporter, and then the transporter's C-111, listing  
20 the transported volumes, we think we have covered the  
21 informational needs of industry without the change of  
22 transporter being filed also, because the information is  
23 there for other purposes.

24 Amoco also asked whether the OCD District Office  
25 will continue to distribute copies of C-104s for change of

1 operator and new wells to the current transporter. We will  
2 in the southeast and won't in the northwest, which is our  
3 current practice.

4 I think it's more of a problem down in the  
5 southeast, because they have a lot more oil that is  
6 transported, and in the northwest it's primarily gas. But  
7 Mr. Frank Chavez of our Aztec District Office does not  
8 believe that the District Office needs to supply that to  
9 the transporters and that the operator should be doing  
10 that.

11 Now, our Hobbs District Office tells me that it's  
12 really no additional time, and it's easy for them to do,  
13 and they'd like to continue to do it, just to help our  
14 informational system by supplying the transporter with the  
15 numbers they need to fill out their ONGARD forms.

16 So I guess I would ask that -- or inform you that  
17 it will be done differently in the southeast and northwest.

18 Third question Amoco asked is whether transporter  
19 is in any way responsible if oil is moved from a lease that  
20 has not been properly approved by the OCD.

21 Up to this point, the OCD has never held a  
22 transporter liable. It is the operator's responsibility  
23 if oil is produced in excess of allowable or without  
24 authorization to produce it.

25 I guess if there's a flagrant violation where the

1 transporter knows, in fact, that the oil is produced  
2 illegally, or the gas is, then we might hold the  
3 transporter liable. But normally we don't; we go to the  
4 primary responsible, which is the operator.

5 I guess it's like receiving stolen goods. I  
6 mean, the thief is primarily responsible for the theft, but  
7 if you know it's stolen goods and you receive them, then  
8 you're also guilty of a crime.

9 And we do have the authority to hold the  
10 transporter liable; we just haven't up to this point. And  
11 I would think only in a flagrant violation would we do  
12 that.

13 Four, is the transporter required to obtain  
14 copies of C-104s for any reason?

15 Currently we don't require them to maintain  
16 copies. I would think they would want to do that, just to  
17 document that the operator they're receiving oil or gas  
18 from has the authority to produce it and that they are the  
19 operator of that well. But we don't require, currently,  
20 the transporter to maintain any records of that.

21 I was hoping to have some industry comments here  
22 today. Apparently there is no real opposition to us  
23 changing the rule, or somebody would have showed up, or we  
24 would have gotten more letters.

25 I did receive one call from a woman from Texas-

1 New Mexico Pipeline Company, and she only left a fax  
2 number, rather than a phone number, and I faxed her a  
3 message saying we'd appreciate her calling us, but I  
4 haven't received anything from her either.

5 So at this time we'll require that the Rule 1104  
6 be amended to do away with filing a Change of Transporter  
7 form for every time there's a change of transporter.

8 And I'm available to attempt to answer any  
9 questions.

10 Mr. Ed Martin did inform me that the transporter  
11 information is easily obtainable through the ONGARD system.  
12 Currently, there's about a three-and-half-month lag time  
13 between when the product is transported till the  
14 information shows up on the screen, if it's manual. If  
15 it's filed electronically, it's less than two months.

16 There's a 45-day period they have to report that,  
17 and then electronically it takes another couple weeks for  
18 it to show up, so that's about two months. Manually, it  
19 takes about two months to enter that information into the  
20 system, so with the one and a half, that makes the three-  
21 and-a-half-month period lag time.

22 But as I mentioned earlier, with the stacks of  
23 C-104s currently in the District Offices, it's probably  
24 taken us at least that long to enter that information in  
25 the well files anyway. So you're not -- Industry is not

1 getting that information any quicker, currently.

2 CHAIRMAN LEMAY: It's my understanding, Mr.  
3 Carroll, that in the past where they used to have a  
4 Division order signed and they wouldn't change purchasers  
5 like they are now for 50 or 60 cents a barrel, that it  
6 wasn't a problem because you didn't have a lot of change of  
7 transporters.

8 And of course, with gas, where you're hooking up  
9 to a gatherer, hardly ever do you change transporters  
10 there, because it would take another line to come in and  
11 hook you up. So that wasn't the problem.

12 But in the last few years there's been rapid  
13 change of purchasers, which required, according to our  
14 rules, the filing of C-104 every time you change the  
15 purchaser or transporter. Usually it's sometimes --  
16 They're generally the same.

17 And so this backlog was stacking up. We had the  
18 form but it wasn't in the well file, so it truly wasn't  
19 available in a practical sense for industry or anyone else  
20 to access that information.

21 So the question was, with all this work required  
22 by both industry and OCD, was there really any value to  
23 continuing this type of a high-effort system? And I think  
24 most of the replies have been no, it doesn't really matter.  
25 It would be nice to have the information quicker. But if

1 it's not available quicker, like it is even now, why go  
2 through the -- kind of the charade of having all this work  
3 be done?

4 I guess there were some royalty interest owners  
5 who used the information in the well file to try and get  
6 payment, maybe, from the purchaser, rather than -- because  
7 their correspondence with the operator hasn't been very  
8 successful.

9 MR. CARROLL: But that information does show up.  
10 It's not immediate --

11 CHAIRMAN LEMAY: Right.

12 MR. CARROLL: -- and, you know, if a royalty  
13 owner is, you know, trying to get paid correctly, I don't  
14 know what, you know, the immediate need is for that  
15 information.

16 CHAIRMAN LEMAY: Right, I think that's a good  
17 point. The royalty owner can still acquire the information  
18 once they know how to access ONGARD, and our District  
19 Offices can certainly help with that.

20 MR. CARROLL: Correct.

21 CHAIRMAN LEMAY: Just clarification for my fellow  
22 Commissioners. Maybe they have some questions here that --  
23 Commissioner Weiss, do you have any?

24 COMMISSIONER WEISS: Well, I think you answered  
25 my question, was, What's the information used for? And it

1 sounded like it's just the royalty people who use it?

2 MR. CARROLL: Well, I guess -- I talked to the  
3 District Offices. They said transporters, a lot of times,  
4 call in or check to see who the transporter on a certain  
5 well is. It seems to me they're probably checking on their  
6 competition or --

7 COMMISSIONER WEISS: They're bidding against each  
8 other now.

9 MR. CARROLL: Yeah. So I've heard other  
10 transporters like to know who's transporting from a certain  
11 well, and they'd like to know that immediately. I don't  
12 know if they're trying to outbid them, or why.

13 COMMISSIONER BAILEY: Is the Tax and Rev  
14 Department interested in how this shows up on ONGARD? You  
15 mentioned that royalty owners were the primary users. How  
16 about the Tax and Rev Department as part of the ONGARD tri-  
17 agency?

18 MR. CARROLL: Hm, I don't know if we've had that  
19 much contact with Taxation and Revenue. The transporter  
20 does show up on the C-115, so the information is in the  
21 ONGARD system. I would think that's all TRD would need.

22 COMMISSIONER BAILEY: Do you know if Ed talked  
23 with the other agencies involved in --

24 MR. CARROLL: I can check with him. I said if we  
25 had any questions of Ed I'd go and get him. Maybe I should

1 check with Ed right now, if you'd like me to. I don't know  
2 whether he's talked to TRD.

3 COMMISSIONER BAILEY: Okay, because I can see how  
4 they may be interested in that information also, as well as  
5 royalty owners.

6 COMMISSIONER WEISS: Well, does transporter  
7 information -- does it reconcile with the production  
8 records, the State production records? Are they -- My  
9 experience is, there's this set of data and this set of  
10 data, and --

11 CHAIRMAN LEMAY: I think we're talking about two  
12 things. One, the change of transporter only identifies the  
13 transporter.

14 COMMISSIONER WEISS: Doesn't -- anything about  
15 volume?

16 CHAIRMAN LEMAY: No volumes. The C-111s and  
17 C-112s, which the transporter files, are the audit records  
18 that can and should be checked with the C-115s, which is  
19 the producer account of production, and those records that  
20 are filed with Taxation and Revenue, and I'm sure the State  
21 Land Office, which are also production records.

22 COMMISSIONER WEISS: But what is the source of  
23 data, though? My feeling is, maybe you don't need any  
24 notation who the transporter is.

25 MR. CARROLL: Well --

1 COMMISSIONER BAILEY: No, it's essential.

2 MR. CARROLL: Yeah, I think it is essential.

3 And there is that cross-check. The C-115 report  
4 of production lists the transporter, so you know those  
5 volumes are going to that transporter. The transporter  
6 also files a C-111, which is a report of the transported  
7 volume, so you could check those numbers against each other  
8 to see if they match up.

9 COMMISSIONER WEISS: Yeah, well, we've heard  
10 testimony up here before that they don't match up very  
11 often. There's a nightmare thing.

12 MR. CARROLL: Well, I guess I don't see how  
13 continuing to file Change of Transporter is going to help  
14 us reconcile those numbers.

15 COMMISSIONER WEISS: My point exactly.

16 MR. CARROLL: Yeah.

17 COMMISSIONER WEISS: Why do we need to know who  
18 the transporter is?

19 MR. CARROLL: Well, we need to know it. I don't  
20 know if we need to know about every change, because it  
21 shows up in the C-115. If there's a change in the volumes  
22 next month, they're going to a different transporter, on  
23 the C-115 they'll list the new transporter.

24 CHAIRMAN LEMAY: I think in the past -- I can  
25 just talk historically for the benefit of my fellow

1 Commissioners.

2           In the past, that C-104 has been an  
3 authorization. One -- The first time you file it is  
4 important, because that gives the producer an allowable.  
5 They're legal to sell the oil to that transporter. The  
6 transporter has it, they know that this is a legal  
7 transaction.

8           In the future, if there's a violation of that  
9 operator, that required the shutting-in of that operator's  
10 well, we would revoke the C-104. That was the way we would  
11 do business.

12           I think that could be done another way. We could  
13 cancel the allowable, sending a certified letter to the  
14 transporter, so it would be on record, knowing that this  
15 would be illegal oil if they bought it.

16           I mean, we haven't had that many cases of  
17 shutting in wells. It's the procedure we as a Division  
18 would use. Rather than revoke the C-104, we would just  
19 send out an order shutting in the well, and we'd send it to  
20 the transporter and the operator. Accomplish the same  
21 thing.

22           There are people concerned about the C-104 being  
23 involved in that process. It was just -- That's what it  
24 is, is a process. We can accomplish the same thing and  
25 probably call the attention more to the people by sending

1 an order certified.

2 COMMISSIONER WEISS: Yeah. Again, why do we need  
3 to know who the transporter is?

4 CHAIRMAN LEMAY: I assume that they did not file  
5 a C-111 or C-112. We wouldn't know who to go to, to get  
6 that verification of production. So we'd have to know who  
7 the transporter was to know who would be filing the form.

8 MR. CARROLL: And I believe they, hopefully, in  
9 the future will start reconciling those numbers, so that  
10 the reported production and the reported transportation  
11 volume --

12 CHAIRMAN LEMAY: I think the -- At least  
13 hopefully, the ONGARD strategy is to have those records put  
14 into the ONGARD system so that they are an audit trail. We  
15 haven't been able to do that to date. But it's on the  
16 agenda, it's some of the things that need to be done in the  
17 future.

18 COMMISSIONER BAILEY: I know our auditors are  
19 very concerned about this proposal, and I question whether  
20 or not TRD auditors are also very concerned.

21 MR. CARROLL: Let me grab Ed, bring him.

22 CHAIRMAN LEMAY: Why don't we take about a five-  
23 minute break, and then we'll come back and hear that?

24 (Thereupon, a recess was taken at 9:26 a.m.)

25 (The following proceedings had at 9:28 a.m.)

1           CHAIRMAN LEMAY:  Shall we continue?

2           Mr. Carroll?

3           MR. CARROLL:  Yes, Mr. Ed Martin is now here to  
4 answer Ms. Bailey's questions regarding contact with the  
5 Taxation and Revenue Department regarding our proposed  
6 elimination of the change-of-transporter notification.

7           So I'll let Mr. Martin tell the Commission what  
8 transpired between him and TRD when they were notified of  
9 this rule change.

10          MR. MARTIN:  We copied them on the proposed rule  
11 change and the memo that Bill sent out to the Districts,  
12 and I talked to the people in the Audit Compliance  
13 Division, and they were at first concerned that the C-115  
14 was not populating the tables correctly.

15          But once I assured them that they were, then they  
16 didn't have any problem -- further problems with it at that  
17 point.

18          I haven't talked with anybody else at TRD about  
19 that.  I don't -- And I haven't heard from them in a couple  
20 weeks about it.  So I assume that they are happy with it.

21          But we did -- I did run it by them.

22          COMMISSIONER BAILEY:  Okay, with the State Land  
23 Office auditors?

24          MR. MARTIN:  Ray Tellez.

25          COMMISSIONER BAILEY:  Did you talk with him?

1 MR. MARTIN: Uh-huh.

2 COMMISSIONER BAILEY: Did he have any comments --

3 MR. MARTIN: He did initially, as well, along  
4 with TRD, and I -- In fact, I talked to them all at the  
5 same time, and they informed them all that -- of the way  
6 the program works, and they were happy with it after that.

7 COMMISSIONER BAILEY: Okay. I just wanted to  
8 ensure that there was that coordination between the three  
9 agencies.

10 MR. MARTIN: Right, they were both informed.

11 COMMISSIONER BAILEY: Thank you.

12 MR. MARTIN: Okay.

13 CHAIRMAN LEMAY: Anything else? Commissioner  
14 Weiss?

15 COMMISSIONER WEISS: No, thank you. I have  
16 nothing.

17 CHAIRMAN LEMAY: I don't either.

18 MR. CARROLL: Thank you, Mr. Martin.

19 CHAIRMAN LEMAY: Thank you very much, Mr. Martin.  
20 Additional questions?

21 Commissioner Bailey?

22 COMMISSIONER BAILEY: No.

23 CHAIRMAN LEMAY: Commissioner Weiss?

24 COMMISSIONER WEISS: No.

25 CHAIRMAN LEMAY: Do you see any reason -- I think

1 I will leave the record open ten days for additional  
2 comment, just in case there is someone out there that  
3 hadn't been -- or that had been notified, that didn't get  
4 something in and -- you know, because there isn't any  
5 industry here to comment on it, I'm assuming that they  
6 know.

7 But if they -- any reason they didn't know,  
8 they'll have ten days to comment on it, and we'll take that  
9 part of the record under consideration.

10 MR. CARROLL: Yeah, I'd like to remind the  
11 Commission that you, of course, can change your mind. If  
12 we make this rule change and it is found out that it's  
13 needed for some purpose, we can reinstitute it at a later  
14 time.

15 CHAIRMAN LEMAY: That memo -- I think it's in the  
16 packet, but for the benefit of my fellow Commissioners,  
17 what I did is temporarily suspend the filing of the C-104  
18 because we were so backlogged, and that this rule was under  
19 consideration, that it would seem appropriate not to really  
20 enforce it until the Commission took action on it, because  
21 it would be a -- It takes a lot of work to go back there  
22 and file two or three C-104s, sometimes in the same well.  
23 We haven't even caught up to date on the last change of  
24 transporter, let alone the new one they're filing.

25 So as a practical matter, that rule has been

1 suspended, pending action by the Commission.

2 COMMISSIONER WEISS: That works.

3 CHAIRMAN LEMAY: Yeah. Is there anything  
4 additional in this case?

5 MR. CARROLL: No.

6 CHAIRMAN LEMAY: If not, the record will be left  
7 open ten days, and the case will be taken under advisement.

8 Thank you very much. Thank you, Mr. Carroll.

9 MR. CARROLL: Thank you.

10 (Thereupon, these proceedings were concluded at  
11 9:33 a.m.)

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