

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

vs.

No. CV-77-07268

AETNA CASUALTY AND SURETY
COMPANY,

Defendant.

ORDER OF DISMISSAL

THIS MATTER having come on for hearing on March 24, 1978 on Plaintiff's motion for judgment on the pleadings or alternatively motion for summary judgment, and the Court, without objection by the parties and on its own motion having treated Defendant's Second Defense as a motion to dismiss and having considered the same at said hearing, FINDS that this lawsuit is premature in that the Defendant, in accordance with its contractual obligation under the bond attached to the Complaint herein has no obligation to undertake the plugging of the wells itself, although it has the right to do so; FINDS that because the New Mexico Oil Conservation Commission has not shown that actual costs have been expended in plugging the bond and therefore the surety's obligation under the bond have not yet matured or become due; FINDS that §65-3-11.2 N.M.S.A., enacted in 1977 is not applicable to the bond in this case, said bond having been issued in 1973; and further FINDS that the surety's obligation with respect to the bond in this case is to pay the lesser

of the actual costs of plugging the wells for which the bond was issued or the penal sum of the bond;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Complaint herein be and hereby is dismissed, without prejudice.

DISTRICT JUDGE

APPROVED:

Attorney for Plaintiff

Attorney for Defendant

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

vs.

No. CV 77-07268

AETNA CASUALTY AND SURETY
COMPANY,

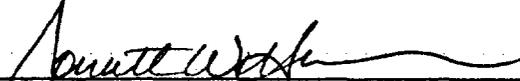
Defendant.

MOTION TO DISMISS

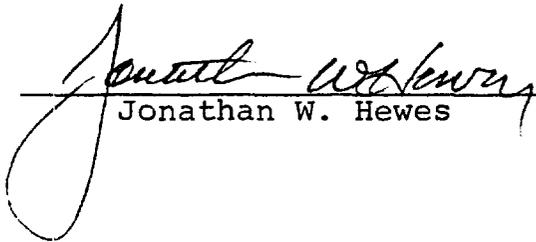
Defendant Aetna Casualty and Surety Company moves to dismiss the above styled cause by reason of Plaintiff's failure to join and indispensable party, to-wit: American Fuels Corporation or Mark B. McFeeley, its Trustee in Bankruptcy. In support of said motion Defendant attaches a Stipulation entered in Bernalillo County New Mexico District Court Cause No. CV-78-00952, another case arising from the same subject matter as the above styled and entitled cause.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By


Jonathan W. Hewes
Attorneys for Defendant Aetna
Casualty and Surety Company
Post Office Box 1888
Albuquerque, New Mexico 87103

I hereby certify that a true and correct copy of the above and foregoing pleading was mailed to opposing counsel of record on this 22nd day of March, 1978.


Jonathan W. Hewes

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

vs.

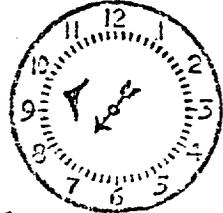
AETNA CASUALTY AND SURETY COMPANY,
AMERICAN FUELS CORPORATION, AND
MARK B. MCFEELEY, TRUSTEE IN
BANKRUPTCY,

Defendant.

No. CV-78-00952

FILED IN MY OFFICE THIS

MAR 15 78 AM



DEPUTY CLERK

Elaine E. Young

STIPULATION

Comes now the New Mexico Oil Conservation Commission (hereinafter, "the Commission"), by and through its attorney Lynn Teschendorf, and American Fuels Corporation, by and through its attorney Mark B. McFeeley, and stipulate to the following:

1. The Commission named Defendants American Fuels Corporation and Mark B. McFeeley, Trustee in Bankruptcy, as parties to this suit since, under the provisions of Rule 19, New Mexico Rules of Civil Procedure, they are parties to be joined if feasible.
2. The Commission understands that any claims asserted against these Defendants should have been filed in bankruptcy court.
3. The Commission agrees that these Defendants are relieved of any liabilities arising from this suit.

NEW MEXICO OIL CONSERVATION COMMISSION

By *Lynn Teschendorf*

LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

AMERICAN FUELS CORPORATION AND MARK B.
MCFEELEY, TRUSTEE IN BANKRUPTCY

By *Mark B. McFeeley*

MARK B. MCFEELEY
200 W. DeVargas, Suite 9
Santa Fe, New Mexico 87501

Anna

3-28-78

T/C Mike McCullough
Pennzoil

303-832-6060

Will let us know by
Friday if want to keep
well.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

March 22, 1978

Mr. Vincente B. Jasso
Deputy Superintendent of
Insurance
P.E.R.A. Building
Santa Fe, New Mexico 87501

Dear Mr. Jasso:

On October 19, 1977, you wrote to Mr. Warren G. Elliot, General Counsel for Aetna Casualty and Surety Co., concerning a complaint the Oil Conservation Commission has registered against his company. This complaint has resulted in a lawsuit, and Aetna continues to deny their liabilities under the terms of their bond, a copy of which has been previously forwarded to you.

We have had no cooperation from Aetna at all in this case, and feel that they are attempting to avoid their legal responsibilities. Therefore, I would like to request that you consider this matter under the Unfair Insurance Practices Act, and take any action you feel is necessary.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr

cc: Vern Sandager
Jonathan Hewes
Joe D. Ramey
Mr. Warren G. Elliot

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

March 17, 1978

Clerk of the District Court
for Bernalillo County
Bernalillo County Court House
Albuquerque, New Mexico

Re: New Mexico Oil Conservation
Commission vs. Aetna Casualty
and Surety Company
Cause No. CV-77-07268

Dear Madam:

I am submitting the enclosed Supplementary
Memorandum for filing in the above-captioned cause.

Thank you for your assistance.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr
enc.

cc: Jonathan W. Hewes
Attorney for Defendant
P. O. Box 1888
Albuquerque, New Mexico 87103

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STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

vs.

AETNA CASUALTY AND SURETY
COMPANY,

Defendant.

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)
) No. CV-77-07268
)
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SUPPLEMENTARY MEMORANDUM

The New Mexico Oil Conservation Commission does have standing to assert a claim against the bond which is the subject of this hearing. The test for standing has been redefined in the State of New Mexico to include an injury in fact, or an imminent threat of injury, economic or otherwise. De Vargas Savings & Loan Association of Santa Fe v. Campbell, 87 N.M. 469, 535 P.2d 1320 (1975). In this case there is no question as to either an injury in fact, or an imminent threat of injury. In its Order No. R-4898, attached to the Complaint as Exhibit B, the Commission found that the wells in question would have to be plugged in order to confine all oil, gas, and water to the strata in which they are found. The Commission has been statutorily mandated to prevent such waste and contamination. Sections 65-3-5, 10, 11, N.M.S.A. 1953 Comp. Thus it is in the position of preventing the injury threatened or already caused by the failure of Aetna to plug these wells. That position gives the Commission standing to assert this claim.

Additionally, the Commission has been given standing specifically by statute. Section 65-3-11.2, N.M.S.A. 1953 Comp.

That statute states that if a Commission Order is not complied with, the Surety bond shall be forfeited, and collected by the Attorney General without delay. The Attorney General represents the Commission in this action and thus has standing to sue.

Aetna claims that it has no duty to comply with the Commission's Order. However, the bond itself states that "the principal and surety or either of them or their successors or assigns, or any of them, shall plug all of said wells when dry or abandoned in accordance with the rules, regulations, and orders of the Oil Conservation Commission." The bond is attached to the Complaint as Exhibit A. Aetna has executed this very bond form and must comply with the obligations it entails.

Also, the Commission has jurisdiction over "all persons, matters or things necessary or proper to enforce effectively the provisions of this act or any other law of this state relating to the conservation of oil or gas." Section 65-3-5, N.M.S.A. 1953 Comp. It thus had the authority to order Aetna, as well as American Fuels, to plug the wells.

Aetna argues that it has no duty to forfeit the face amount of the bond for noncompliance with the Commission's Order, and that the Commission has no right to collect the forfeiture. That the duty of Aetna and the right of the Commission do exist is made clear upon a reading of Section 65-3-11.2, supra. However, this statute was passed by the 1977 Legislature, and there may be some question as to its retroactivity.

The general rule is that statutes are presumed to operate prospectively only and will not be given retrospective effect unless such intention on the part of the Legislature is clearly apparent. Southwest Distributing Co. v. Olympia Brewing Co.,

90 N.M. 502, 565 P.2d 1019 (1977); State v. Padilla, 78 N.M. 702, 437 P.2d 163 (1968); Davis v. Meadors-Cherry Company, 65 N.M.21, 331 P.2d 523 (1958).

I believe the intent of the Legislature is clear on the face of the questioned statute. Thousands of wells were drilled for oil and gas prior to 1977. Of these thousands, hundreds have been left to stand open as a threat to fresh waters and as a cause of waste of hydrocarbons by their operators and owners. The statute was designed as a solution to this problem. It created a fund comprised of bond forfeitures and tax money to be used by the Commission in hiring contractors to plug these wells. If this statute was intended to cover only those wells drilled and bonded after 1977, the fund might never be tapped at all, and all the old wells would remain as a dangerous threat to the natural resources of the State of New Mexico. It is obvious that this statute was intended by the Legislature to operate retroactively.

Attached to this Supplementary Memorandum as Exhibit A and by this reference incorporated is a sworn affidavit by the Director of the Oil Conservation Commission. He attended the committee hearings concerning this Statute and can testify as to the Legislature's intent.

Finally, this is a remedial statute. However, it creates no liabilities for Aetna that did not already exist under previous law. It merely establishes a new procedure for use by the Commission in plugging wells which are or may be a threat to the public health, safety and welfare. Aetna has always had the duty to plug the wells or forfeit the bond.

That has not been changed. So retroactive operation of the 1977 Statute does not alter anyone's obligations. No previously existing rights will be impaired. The statute must be given retroactive effect.

NEW MEXICO OIL CONSERVATION COMMISSION

By Lynn Teschendorf
LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

I hereby certify that on the
.. 7th .. day of .. March ..,
19 .. 78 .., a copy of the fore-
going reading was certified to
opposing counsel of record.
..... Lynn Teschendorf

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

March 6, 1978

Casualty & Surety Division
Aetna Life & Casualty
401 Texas Commerce Bank Bldg.
Lubbock, Texas 79401

Re: \$10,000 Blanket Plugging Bond
American Fuels Corporation,
Principal, Aetna Casualty
and Surety Company, Surety
Bond No. BCA 19S28264

Gentlemen:

Receipt of your request for cancellation of the above-captioned bond is hereby acknowledged.

The bond executed by your company is cancelled April 3, 1978, as to any property or wells acquired, started, or drilled after that date.

It should be noted, however, that the subject bond will remain in effect as to any property or wells acquired, started, or drilled prior to April 3, 1978.

Please note further that certain wells drilled under this bond are the subject of a lawsuit captioned New Mexico Oil Conservation Commission v. Aetna Casualty & Surety Co., Bernalillo County Cause No. CV-77-07268. This letter in no way affects Aetna's liabilities under the bond concerning those wells.

Very truly yours,

JOE D. RAMEY,
Secretary-Director

JDR/LT/dr

cc: Jonathan N. Hewes
P. O. Box 1888
Albuquerque, New Mexico 87103

Oil Conservation Commission
Hobbs, Artesia, Aztec

C
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Y

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

March 3, 1978

Mr. Jonathan W. Hewes
Attorney at Law
P. O. Box 1388
Albuquerque, New Mexico 87103

Re: New Mexico Oil Conservation
Commission vs. Aetna
Casualty and Surety
Company, Cause No.
CV-77-07268

Dear Mr. Hewes:

You are hereby notified that the enclosed Motion
for Judgment on the Pleadings will be heard before the
Honorable Judge Gerald R. Cole on March 24, 1978, at
8:00 a.m.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LR/dr

cc: Judge Gerald Cole
P. O. Box 488
Albuquerque, New Mexico 87103

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

March 3, 1978

Clerk of the District Court
for Bernalillo County
Bernalillo County Court House
Albuquerque, New Mexico 87102

Re: New Mexico Oil Conservation
Commission vs. Aetna Casualty
and Surety Company,
Cause No. CV-77-07268

Dear Madam:

Enclosed please find Motion for Judgment on the Pleadings and Memorandum in Support of Motion for Judgment on the Pleadings which is to be filed in the above-captioned cause.

Thank you for your assistance.

Very truly yours,

(Ms.) LYNN TESCHENDORF
Assistant Attorney General

LT/dr

enc.

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

vs.

AETNA CASUALTY AND SURETY
COMPANY,

Defendant.

No. CV-77-07268

MOTION FOR JUDGMENT ON THE PLEADINGS

Comes now the Plaintiff New Mexico Oil Conservation Commission, by and through its attorney Lynn Teschendorf, and moves the Court for Judgment on the Pleadings pursuant to Rule 12(c) of the New Mexico Rules of Civil Procedure, or, if matters outside the pleadings are considered, for Summary Judgment pursuant to Rule 56, and as grounds therefore states:

1. That there is no genuine issue as to any material fact.
2. That all material allegations of fact are admitted in the pleadings and only questions of law remain.
3. That these questions of law include the following:
 - a. whether the Oil Conservation Commission has standing to assert a claim against the bond,
 - b. whether Defendant has a duty to comply with the Order of the Oil Conservation Commission,
 - c. whether Defendant has a duty to forfeit the face amount of the bond upon failure to comply with the Commission's Order within the time period set out in the Order,
 - d. whether Plaintiff has the right to collect said forfeiture.

WHEREFORE, Plaintiff respectfully seeks the Judgment of this Court.

NEW MEXICO OIL CONSERVATION COMMISSION

By Lynn Teschendorf
LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

I hereby certify that on the
.. 3rd .. day of March ..
19 .. 78 .., a copy of the fore-
going pleading was mailed to
appearing counsel of record.
.. Lynn Teschendorf ..

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

vs.

AETNA CASUALTY AND SURETY
COMPANY,

Defendant.

No. CV-77-07268

MEMORANDUM IN SUPPORT OF
MOTION FOR JUDGMENT ON
THE PLEADINGS

Under the provisions of Rule 12(c), New Mexico Rules of Civil Procedure, this Court may render a Judgment on the Pleadings, or, if matters outside the pleadings are presented to and not excluded by the Court, a Summary Judgment as provided in Rule 56. Such a Motion is proper when "all material allegations of fact are admitted in the pleadings and only questions of law remain." Wright & Miller, Federal Practice & Procedure, Section 1367 at 685 (1969).

In its Answer and Response to Request for Admissions, Defendant has admitted all the material facts relevant to this case. The only questions remaining are of law, as specified in the attached Motion. Therefore, a Judgment on the Pleadings properly lies.

Should the Court consider matters beyond the pleadings, this Motion should be treated as one for Summary Judgment. Richardson Ford Sales v. Cummins, 74 N.M. 271, 393 P.2d 11 (1964); Gonzales v. Gackle Drilling Co., 70 N.M. 131, 371 P.2d 605 (1962).

NEW MEXICO OIL CONSERVATION COMMISSION

By Lynn Teschendorf

LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

WILLIAM A. SLOAN
JACKSON G. AKIN
JOHN D. ROBB
CHARLES B. LARRABEE
JAMES C. RITCHIE
JOHN P. EASTHAM
WILLIAM C. SCHAAB
WILLIAM C. BRIGGS
RAY H. RODEY
ROBERT D. TAICHERT
ROBERT M. ST JOHN
JOSEPH J. MULLINS
DUANE C. GILKEY
MARK K. ADAMS
ROBERT G. MCGORKLE
PETER G. PRINA
BRUCE HALL
JOHN P. SALAZAR
WILLIAM S. DIXON
JOHN P. BURTON

REX D. THROCKMORTON
JONATHAN W. HEWES
GENE C. WALTON
RICHARD C. MINZNER
W. ROBERT LASATER, JR.
KENNETH R. BRANDT
VICTOR R. MARSHALL
CARL H. ESBECK
RICHARD K. BARLOW
MARK C. MEIERING
PAUL D. BARBER
JOE L. MCSLAUGHERTY
JAMES S. STARZYNSKI
CATHERINE T. GOLDBERG
CHARLES L. SAUNDERS
KENNETH J. FERGUSON
STANLEY N. HATCH
STEVEN P. BAILEY
ERIC L. MERL

RODEY, DICKASON, SLOAN, AKIN & BB, P. A.
COUNSELLORS AND ATTORNEYS AT LAW
20 FIRST PLAZA, SUITE 700
P. O. BOX 1888
ALBUQUERQUE, NEW MEXICO 87103

OF COUNSEL
DON L. DICKASON
PEARCE C. RODEY
1889-1958

TELEPHONE 765-5900
AREA CODE 505

February 28, 1978

Ms. Lynn Teschendorf
General Counsel
Oil Conservation Commission
Post Office Box 2088
Santa Fe, New Mexico 87501

Re: New Mexico Oil Conservation Commission vs.
Aetna Casualty & Surety Company; No. 77-07268

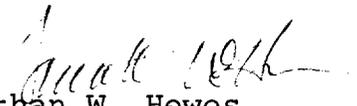
Dear Ms. Teschendorf:

Enclosed please find a copy of the Response to Request
for Admissions filed in the above referenced cause.

Very truly yours,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By


Jonathan W. Hewes

JWH:cr

Enclosure

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

vs.

No. CV-77-07268

AETNA CASUALTY AND SURETY
COMPANY,

Defendant.

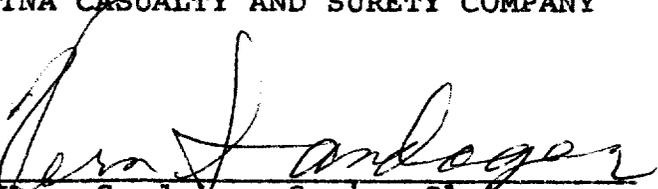
RESPONSE TO REQUEST FOR ADMISSIONS

Defendant Aetna Casualty and Surety Company, by and through Vern Sandager, a Senior Claims Representative, responds to Plaintiff's Request for Admissions of Facts and Genuineness of Documents as follows:

1. Request No. 1 is admitted.
2. Request No. 2 is admitted, but it is further stated that the Defendant had no duty to comply with the Order, compliance with the Order being the responsibility of American Fuels Corporation.
3. Request No. 3 is denied. It is this Defendant's position that liability of this Defendant, as limited by the penal sum of the bond, is not fixed until the wells are actually plugged and the full extent of the New Mexico Oil Conservation Commission's damage is known.
4. Request No. 4 is denied. To the best of this Defendant's information, the Attorney General's action is premature because the wells have not been plugged.

AETNA CASUALTY AND SURETY COMPANY

By


Vern Sandager, Senior Claims
Representative

SUBSCRIBED AND SWORN to before me by the said VERN SANDAGER,
as Senior Claims Representative of Aetna Casualty and Surety
Company, Defendant, on this 24th day of February, 1978.

Tom M. Macken
Notary Public

My commission expires:

March 25, 1980

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By _____
Jonathan W. Hewes
Attorneys for Defendant
Post Office Box 1888
Albuquerque, New Mexico 87103

We hereby certify that a true
and correct copy of the above
and foregoing Response to
Request for Admissions was mailed
to opposing counsel of record on
this _____ day of _____, 1978.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By _____
Jonathan W. Hewes

2-21-78

T/C from John Newes

Wants to 3rd party KT
Am. Fuels so they can
collect collateral
furnished for bond.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

February 20, 1978

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Clerk of the District Court
for Bernalillo County
Bernalillo County Court House
Albuquerque, New Mexico

Re: New Mexico Oil Conservation
Commission vs. Aetna Casualty
and Surety Company
Cause No. CV-77-07268

Dear Madam:

I am submitting the enclosed Request for Admission
of Facts and Genuineness of Documents for filing in
the above-captioned cause.

Thank you for your assistance.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/dr
enc.

cc: Jonathan W. Hewes
Attorney for Defendant
P. O. Box 1888
Albuquerque, New Mexico 87103

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION)	
COMMISSION,)	
)	
Plaintiff,)	
)	No. CV-77-07268
vs.)	
)	
AETNA CASUALTY AND SURETY COMPANY,)	
)	
Defendant.)	

REQUEST FOR ADMISSIONS OF FACTS AND GENUINENESS OF DOCUMENTS

Plaintiff, New Mexico Oil Conservation Commission, requests Defendant Aetna Casualty and Surety Company, within ten days after service of this request, to admit, pursuant to Rule 36 of the New Mexico Rules of Civil Procedure, the following:

1. That the Oil Conservation Commission has, after notice and hearing ordered the following wells in Colfax County, New Mexico, to be plugged and abandoned in accordance with Commission rules and regulations:

(a) NM-B Well No. 2, located in the SE/4 SE/4 of Section 16, Township 30 North, Range 18 East;

(b) NM-B Well No. 4, located in the SE/4 NE/4 of Section 18, Township 30 North, Range 18 East;

(c) NM-B Well No. 5, located in the SE/4 SE/4 of Section 30, Township 30 North, Range 19 East; and

(d) NM-B Well No. 10, located in the SE/4 SW/4 of Section 24, Township 31 North, Range 19 East.

2. That said Order has not been complied with by the Defendant in the time period set out in the Order.

3. That since said Order has not been complied with, surety

bond No. BCA 19S 28264 has been forfeited by law.

4. That the Attorney General has the right to collect the forfeiture.

NEW MEXICO OIL CONSERVATION COMMISSION

Lynn Teschendorf

By

LYNN TESCHENDORF
Assistant Attorney General
P. O. Box 2088
Santa Fe, New Mexico 87501

I hereby certify that on the
20th day of Feb.
1978, a copy of the fore-
going pleading was mailed to
opposing counsel of record.
Lynn Teschendorf
.....

OIL CONSERVATION COMMISSION

P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

January 10, 1978

Mr. Vern Sandager
Aetna Casualty and Surety Division
First National Bank Building East, Suite 1418
Albuquerque, New Mexico 87108

Re: Oil Conservation Commission
v. Aetna, Bernalillo County,
Cause No. CV-77-07268,
Your File No. A19SC260216RG

Dear Mr. Sandager:

Your letter of December 22, 1977, addressed to Mr. Toney Anaya, Attorney General, was forwarded to my office for reply. The Attorney General's office does not handle such matters for entities other than state agencies. Since you do have your own New Mexico counsel, I suggest you forward your question to him.

As a gesture of good faith, however, and to save you the time and expense, I will be glad to have another letter prepared for signature by all three Commissioners. This should quiet any doubts you may have as to authority to make this type of agreement. If this meets with Aetna's approval, I will go ahead in an attempt to settle this matter.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/fd

cc: Mr. Jonathan W. Hewes
Rodey, Dickason, Sloan, Akin & Robb, P.A.
P. O. Box 1888
Albuquerque, New Mexico 87103

*Rec
Dec 29, 1977*



STATE OF NEW MEXICO
Office of the Attorney General
DEPARTMENT OF JUSTICE

TONEY ANAYA
ATTORNEY GENERAL

P.O. Drawer 1508
Santa Fe, N. M. 87501
December 27, 1977

SHIRLEY SCARAFIOTTI
DIRECTOR OF ADMINISTRATION

Ms. Lynn Feschendorf
Oil Conservation Commission
State Land Office Bldg.
Santa Fe, New Mexico 87501

Dear Lynn:

Would you please respond to this request as you have the necessary information.

Thank you.

Sincerely,

Jill
JILL Z. COOPER
Assistant Attorney General

JZC/dj
Enclosure



Casualty & Surety Division
First National Bank Building, East, Suite 1418
Albuquerque, New Mexico 87108
265-5861

ATTORNEY GENERAL

77 DEC 27 AM 9:30

December 22, 1977

Mr. Tony Anaya, New Mexico Attorney General
The New Mexico State Attorney General's Office
Capitol Building
Santa Fe, New Mexico 87501

Re: A 19 SC 260216 RG
Obligee: State of New Mexico
Principal: American Fuels Corporation
Bond No.: 19 S 28264
Plugging Bond Oil Conservation Order No. 4898
New Mexico Oil Conservation Commission vs. Aetna Casualty & Surety Co.
Bernalillo County Cause No. CV-77-07268

Dear Mr. Anaya:

Enclosed you will find a copy of a letter dated December 5, from Secretary-Director Joe D. Ramey, of the Oil Conservation Commission. You will note that he has agreed to indemnify our company if an action were brought by the Principal or any other party alleging that our company improperly made this \$10,000 payment.

We do not doubt that Mr. Ramey has the authority to enter into this agreement, but we have been unable to find the section of the New Mexico Statute which gives him that authority. Would you kindly tell us which section applies?

I am sending a copy of this to Ms. Lynn Teschendorf, General Counsel of the Oil Conservation Commission, because she gave us an extension to respond to the lawsuit until approximately January 1. Hopefully, you would be in a position to give us the section number of the statute in ample time so that we can still comply with the January 1 date.

Sincerely,

Vern Sandager
Senior Claim Representative

VS/kv

cc: Ms. Lynn Teschendorf, General Counsel
Vincente B. Jasso, Deputy Superintendent of Insurance

Enclosure



OIL CONSERVATION COMMISSION

STATE OF NEW MEXICO
P. O. BOX 2088 - SANTA FE
87501

LAND COMMISSIONER
PHIL R. LUCERO



STATE GEOLOGIST
EMERY C. ARNOLD

DIRECTOR
JOE D. RAMEY

December 5, 1977

Mr. Vern Sandager
Aetna Casualty & Surety
Division
First National Bank Building East
Suite 1418
Albuquerque, New Mexico 87108

Re: New Mexico Oil Conservation
Commission vs. Aetna,
Bernalillo County Cause
No. CV-77-07268
Your File No. A19SC260216RG

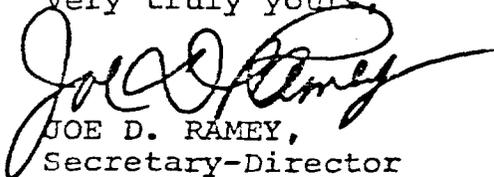
Dear Mr. Sandager:

In response to your telephone inquiry of December 2, 1977, the Oil Conservation Commission, as obligee, will agree to indemnify Aetna Casualty and Surety for any costs or expenses resulting from any claims or actions brought by the principal on your Bond No. BCA 19S 28264, or any other party, alleging that payment of the face amount of the bond was improper. Should any such suit be undertaken, the Commission would appreciate being notified immediately. However, we seriously doubt that that contingency will arise.

In return for this agreement to indemnify, please forward the face amount of the bond, being \$10,000, payable to the Oil Conservation Commission by January 1, 1978. Otherwise, we will be forced to press the suit.

Thank you for your prompt attention to this matter.

Very truly yours,


JOE D. RAMEY,
Secretary-Director

JDR/LT/dr

cc: Vincente Jasso
Michael McCullough
Carl Ulvog

STATE OF NEW MEXICO

COUNTY OF BERNALILLO

IN THE DISTRICT COURT

NEW MEXICO OIL CONSERVATION
COMMISSION,

Plaintiff,

NO. CV-77-07268

vs.

AETNA CASUALTY AND SURETY
COMPANY,

Defendant.

A N S W E R

Defendant, AETNA CASUALTY AND SURETY COMPANY, for its
answer to the Complaint states:

FIRST DEFENSE

I.

The allegations contained in Paragraphs I, II, III, IV, V,
VI, VII, and IX are admitted.

II.

The allegations of Paragraph VIII of the Complaint,
insofar as they vary the expressed terms of the bond in
question and the statutes in force at the time the bond was
executed are denied.

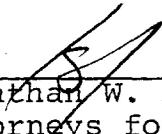
SECOND DEFENSE

The bond in question is an indemnification bond and
the indemnity, the New Mexico Oil Conservation Commission
(State of New Mexico) has incurred no obligations with respect
to the matter covered by the bond and therefore has no standing
to assert a claim and no claim to assert against the bond.

WHEREFORE, defendant prays that the Complaint of the plaintiff, and all claims and causes therein, be dismissed with prejudice, and that it recover its costs.

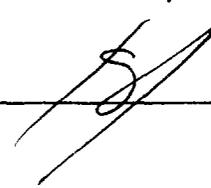
RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By


Jonathan W. Hewes
Attorneys for Defendant
P.O. Box 1888
Albuquerque, New Mexico 87103
765-5900

I hereby certify that a copy of the foregoing was mailed to all counsel of record this 29th day of December, 1977.

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.





LIFE & CASUALTY

Casualty & Surety Division
First National Bank Building, East, Suite 1418
Albuquerque, New Mexico 87108
265-5861

DEC 15 1977
OIL CONSERVATION COMMISSION

December 13, 1977

Ms. Lynn Teschendorf, General Counsel
Oil Conservation Commission
State of New Mexico
P.O. Box 2088
Santa Fe, N.M. 87501

Re: A 19 SC 260216 RG
Obligee: State of New Mexico
Principal: American Fuels Corporation
Bond No.: 19 S 28264 BCA

Dear Ms. Teschendorf:

We appreciate your courtesies that you have extended after the commencement of this lawsuit. You told me when I talked with you on December 2, and again on December 12, that you would give us some additional time to respond to the lawsuit. On December 12, you explained that the last paragraph in Mr. Ramey's letter of December 5 means that we have at least until January 1, to get this case closed. You also agreed that if something unforeseen turns up, you'll give us a little more time beyond January 1.

We also appreciate your promptly having Mr. Ramey write the letter of December 5. I told you that we are forwarding this to our home office and we understand that probably the home office will give us authority to pay the \$10,000.

Sincerely,

Vern Sandager
Senior Claim Representative

VS/kv

cc: Home Office

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

December 14, 1977

Clerk of the District Court
For Bernalillo County
Bernalillo County Court House
Albuquerque, New Mexico

Re: New Mexico Oil Conservation
Commission v. Aetna
Cause No. CV-77-07268

Dear Madam:

I am submitting the enclosed Summons for filing in the above-captioned cause.

Thank you for your assistance.

Very truly yours,

LYNN TESCHENDORF
General Counsel

LT/jr

Enc.

SHERIFF'S RECEIPT
FOR FEES EARNED

CK # 0-75
1-70 30699

Santa Fe, New Mexico Dec 6 1977

Received from Dept of Admin. & Finance \$ 8.36
Eight dollars + 36/100's DOLLARS

Type of Document Served Simons & Complaint

Case No. CV-77-07268 New Mexico Oil Cons. Comm.
vs - Aetna Casualty & Surety Co.

Date Received Nov 9, 1977 Date Served Nov 17, 1977

Served by Jerry Martinez Party To Whom Served Jolene Olona (Sec.)

Sheriff's Fees. Served and Return \$ 8.00 Mileage .36 Sales \$ 8.36

By Loretta L Branch Deputy Eduardo Escudero Sheriff

SUMMONS

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, IN AND FOR THE COUNTY OF BERNALILLO, STATE OF NEW MEXICO,

CV-77-07253

CASE NO.

NEW MEXICO OIL CONSERVATION COMMISSION, Plaintiff,

vs.

AETNA CASUALTY AND SURETY COMPANY, Defendant.

THE STATE OF NEW MEXICO

RECEIVED SAN JUAN COUNTY SHERIFF'S OFFICE

NOV 03 1977

AM 7:30 11:30 PM

TO:

Superintendent of Insurance on Behalf of Aetna Casualty and Surety Company P.E.R.A. Building Santa Fe, New Mexico

DEFENDANT.....

GREETING:

You are hereby directed to serve a pleading or motion in response to the complaint within 30 days after service of this summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the plaintiff will apply to the court for the relief demanded in the complaint.

Type of Action Insurance Claim

Attorney or Attorneys for Plaintiff:

LYNN TESCHENDORF

Address of attorneys for Plaintiff (or of plaintiff, if no attorney):

P. O. Box 2088 Santa Fe, New Mexico 87501

GERALD R. COLE

WITNESS, THE HONORABLE, District Judge of the Second Judicial District Court of the State of New Mexico, and the Seal of the District Court of Bernalillo County,

this NOV 7 1977 day of, A. D. 19

ELOISE E. YOUNG, CLERK

(SEAL)

BY Margaret Hall, Deputy

GERALD R. COLE

This case is assigned to Judge Division

(Sheriff's return when service is made personally on defendants)

STATE OF NEW MEXICO }
County of } ss.

I, Eduardo Escudero Sheriff of _____ County, State of New Mexico, do hereby certify that I served the within summons on the 17th day of _____ by delivering a copy thereof, with copy of complaint attached, in the county aforesaid, in person to _____

Dated: _____, Sheriff
Fees: _____ By _____, Deputy

(Sheriff's return when service is made on defendants by leaving copy at usual place of abode.)

STATE OF NEW MEXICO }
County of Santa Fe } ss.

I, Eduardo Escudero Sheriff of Santa Fe County, State of New Mexico, do hereby certify, that I served the within summons on the 17th day of November 1977 by delivering a copy thereof, with copy of complaint attached, in the county aforesaid, in person to _____ (Secretary)

a person over fifteen years of age, residing at the usual place of abode of defendant Aetna Casualty and Surety Company, who at the time of such service was absent therefrom. Eduardo Escudero

Dated: 11-17-77, Sheriff
Fees: \$8.36 By Jerry Martinez, Deputy

(Affidavit when service is made personally on defendants by other than Sheriff.)

STATE OF NEW MEXICO }
County of } ss.

_____ being duly sworn, upon his oath says, I am over the age of eighteen years, I served the within summons on the _____ day of _____ by delivering a copy thereof, with copy of complaint attached, in the county aforesaid to _____

Fees: _____
Subscribed and sworn to before me this _____ day of _____, 19_____

My commission expires _____, 19_____
NOTARY PUBLIC

(Affidavit when service is made on defendants by other than Sheriff by serving some one residing at usual place of abode of defendant who is then absent.)

STATE OF NEW MEXICO }
County of } ss.

_____ being duly sworn, upon his oath says, I am over the age of eighteen years, I served the within summons on the _____ day of _____ by delivering a copy thereof, with copy of complaint attached, in the county aforesaid to _____

_____ a person over fifteen years of age, residing at the usual place of abode of defendants _____, who at the time of service was absent therefrom.

Fees: _____
Subscribed and sworn to before me this _____ day of _____, 19_____

My commission expires _____, 19_____
NOTARY PUBLIC

71c from Vern Sandegger
12-12-77

Home office studying it. Now they
wonder if Joe has authority to agree to
indemnify.

↑
.

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

December 5, 1977

C
O
P
Y
Mr. Vern Sandager
Aetna Casualty & Surety
Division
First National Bank Building East
Suite 1418
Albuquerque, New Mexico 87108

Re: New Mexico Oil Conservation
Commission vs. Aetna,
Bernalillo County Cause
No. CV-77-07268
Your File No. A19SC260216RG

Dear Mr. Sandager:

In response to your telephone inquiry of December 2, 1977, the Oil Conservation Commission, as obligee, will agree to indemnify Aetna Casualty and Surety for any costs or expenses resulting from any claims or actions brought by the principal on your Bond No. BCA 19S 28264, or any other party, alleging that payment of the face amount of the bond was improper. Should any such suit be undertaken, the Commission would appreciate being notified immediately. However, we seriously doubt that that contingency will arise.

In return for this agreement to indemnify, please forward the face amount of the bond, being \$10,000, payable to the Oil Conservation Commission by January 1, 1978. Otherwise, we will be forced to press the suit.

Thank you for your prompt attention to this matter.

Very truly yours,

JOE D. RAMEY,
Secretary-Director

JDR/LT/dr

cc: Vincente Jasso
Michael McCullough
Carl Ulvog

Memo

From

LYNN
TESCHENDORF

To *File*

11-4-77

Vincenta Jasso
waived \$5 fee-
requirement.

858-5-8

LJ



Casualty & Surety Division
First National Bank Building, East, Suite 1418
Albuquerque, New Mexico 87108
265-5861

November 3, 1977

Lynn Teschendorf, General Counsel
Oil Conservation Commission
State of New Mexico
P.O. Box 2088
Santa Fe, N.M. 87501

Re: File No. - A 19 SC 260216 RG
Plugging Bond Oil Conservation Order: R-4898
Principal: American Fuels Corporation
Obligee: State of New Mexico
\$10,000 Indemnifying Plugging Bond

Dear Ms. Teschendorf:

Thank you for forwarding Chapter 237 in your letter of September 28, 1977. You undoubtedly have our letter of October 12.

We have studied Chapter 237, as provided by you. We fail to find that the Legislature incorporated language therein which would make this Bill retroactive. Therefore, we must continue to interpret our Bond to be one of Indemnity, rather than one of Forfeiture. As we have previously advised, we would indemnify the State of New Mexico up to the penal sum of the Bond upon completion of the necessary work. The only variation which we believe to be legally acceptable, would be for us to provide interim payments on a prorata basis up to the penal sum of the Bond, to the State of New Mexico, for payment of billings submitted by any contractor, the State of New Mexico may engage to accomplish their required work.

Sincerely,

Vern Sandager
Senior Claim Representative

VS/kv

cc: Vincent B. Jasso, Deputy Superintendent
Robert D. L. Crandall, Home Office Bond Claims
Denver Bond Department



Casualty & Surety Division
First National Bank Building, East, Suite 1418
Albuquerque, New Mexico 87108
265-5861

November 3, 1977

The American Fuels Corporation
2921 Carlisle N.E., Suite 200
Albuquerque, N.M. 87110

Re: File No. - A 19 SC 260216 RG
Plugging Bond Oil Conservation Order: R-4898
Principal: American Fuels Corporation
Obligee: State of New Mexico

Gentlemen:

The State of New Mexico has made demand upon the Aetna Casualty and Surety Company for \$10,000, the penal sum of the bond. In accordance with the indemnity agreement contained in the Application for Bond, as executed on May 15, 1973, the American Fuels Corporation is obligated to indemnify and hold harmless the Aetna Casualty and Surety Company. Therefore, we now make demand upon American Fuels Corporation to resolve this problem without reference to the bond or provide us with a listing of valid defenses in writing within 10 days. If the matter is not resolved by American Fuels Corporation, or this office is not provided with a listing of valid defenses within 10 days, this company will consider that the American Fuels Corporation does not have valid defenses and the Aetna Casualty and Surety Company will feel free to use its best judgment in resolving the claim by the State of New Mexico and will take appropriate legal action to protect itself from, or to recover any loss.

Sincerely,

Vern Sandager
Senior Claim Representative

VS/kv

cc: Mark B. McFeeley, Attorney at Law
319 Johnson Street, Santa Fe, N.M. 87501
Vincent B. Jasso, Deputy Superintendent
Lynn Teschendorf, General Counsel ←
The Southwest Insurance Agency
Robert D. L. Crandall, Home Office Bond Claims
Denver Bond Department

OIL CONSERVATION COMMISSION

P. O. BOX 2088

SANTA FE, NEW MEXICO 87501

November 4, 1977

C
The Honorable Toney Anaya
Attorney General for the
State of New Mexico
Supreme Court Building
Santa Fe, New Mexico

O
Re: New Mexico Oil Conservation
Commission vs. Aetna Casualty &
Surety Company

Dear Mr. Anaya:

P
Enclosed please find a copy of a Complaint I am
filing against Aetna Casualty and Surety Company on behalf
of the Oil Conservation Commission. This is a bond
forfeiture suit undertaken pursuant to a new 1977 law,
Section 65-3-11.2, N.M.S.A. 1953 Comp., and could present
some interesting legal issues.

Y
Should you wish further information, do not hesitate
to contact me.

Very truly yours,

LYNN TESCHENDORF
Assistant Attorney General

LT/dr
enc.

OIL CONSERVATION COMMISSION
P. O. BOX 2088
SANTA FE, NEW MEXICO 87501

November 4, 1977

C
Clerk of the District Court
for Bernalillo County
Bernalillo County Court House
Albuquerque, New Mexico

Re: New Mexico Oil Conservation
Commission vs. Aetna Casualty
& Surety Company

Dear Madam:

I am submitting the enclosed Complaint for filing
in the above-captioned cause. Since I am filing this
action on behalf of the State of New Mexico, no filing
fee is required. I would appreciate your forwarding a
copy of the Complaint and the completed Summonses to the
Santa Fe County Sheriff for service. 11-21-77

Thank you for your assistance.

Very truly yours, *Sheriff's Office
did receive it but
hasn't served it.*

LYNN TESCHENDORF
General Counsel

LT/dr

enc.

cc: Mr. Carl Ulvog
Mr. Vincent Jasso