

CASE 4944: MOTION OF THE OCC TO
AMEND RULE 202 OF THE COMMISSION
RULES AND REGULATIONS.

CASE No.

4944

Application,

Transcripts,

Small Exhibits

ETC.

dearnley, meier & mc cormick

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BEFORE THE
NEW MEXICO OIL CONSERVATION COMMISSION
MORGAN HALL, STATE LAND OFFICE BUILDING
SANTA FE, NEW MEXICO

April 18, 1973

OIL CONSERVATION COMMISSION HEARING

IN THE MATTER OF:

The hearing called by the Oil Conservation
Commission on its own motion to consider
the amendment of Rule 102 of the
Commission Rules and Regulations to require
that drilling permits for wells to be
drilled within the corporate limits of
a city, town or village would not be
approved unless such wells were to be
drilled in accordance with applicable
ordinances and had first been approved
by the governing body of such city, town,
or village.

) Case 4944

BEFORE: State Geologist, A. L. Porter, Jr.,
Secretary-Director

Land Commissioner, Alex Armijo,
Member.

TRANSCRIPT OF HEARING

NEW MEXICO OIL CONSERVATION COMMISSION

REGULAR HEARING

SANTA FE, NEW MEXICO

Hearing Date APRIL 18, 1973TIME: 9 A.M.

NAME	REPRESENTING	LOCATION
E. A. Schmidt	By Planning Commission	Santa Fe
J. H. Boucher	Albany Richfield Co.	Dallas, TX.
Lee G. Nering	Bechtel Petroleum Corp.	Houston, TX
Sam H. Miller	Gulf Oil Co. - US	Midland, TX.
C. R. Kneuz	MOBIL OIL CORP.	MIDLAND, TEX.
Jerry Pickerill	American Hess	Tulsa, Okla
R. L. Hocker	American Hess	Tulsa
T. Ed. Duffin	Getty Oil Co.	Houston
John A. Elliott	S.O.S. Pipeline Dist.	Santa Fe
Kirkham & Morris	Montgomery, Zisman & Co.	Santa Fe
M. H. Brainer	Continental Oil Co.	Houston
Ruth C. Griffin	Skelly Oil Co.	Eunice
P. T. M. Grath	U. S. G. S.	Farmington
Bob Large	Southern Union Gas	Farmington
John Seely	Mobile	Midland
R. T. Maxwell	Texaco	Midland
J. F. Crum	Depco, Inc.	AZTEC

NEW MEXICO OIL CONSERVATION COMMISSION

REGULAR HEARING

SANTA FE, NEW MEXICO

Hearing Date APRIL 18, 1973 TIME: 9 A.M.

NAME	REPRESENTING	LOCATION
<i>Thamagen</i>	<i>NMOCB</i>	<i>Santa Fe</i>
<i>J. L. Schneider</i>	<i>Three Pipeline Corp.</i>	<i>Houston</i>
<i>C. C. Gurnea</i>	<i>OCC</i>	<i>Alte</i>
<i>Will Gussard</i>	<i>OCC</i>	<i>Artesia</i>
<i>Jasper W. Kellogg</i>	<i>Kellogg & Son</i>	<i>Santa Fe</i>
<i>H. C. Spadgore</i>	<i>Phillips Petr.</i>	<i>Odessa, Tex.</i>
<i>Hina L. DUNHAME</i>	<i>ATOM, INC.</i>	<i>Santa Fe</i>
<i>Don J. Allen</i>	<i>NMOCB</i>	<i>Santa Fe</i>

1 MR. PORTER: The hearing will come to order, please.
2 We have two cases on the docket this morning, Cases 4944 and
3 4945. The first case on the docket is Case 4944.

4 MR. CARR: Case 4944: In the matter of the hearing
5 called by the Oil Conservation Commission on its own motion
6 to consider the amendment of Rule 102 of the Commission Rules
7 and Regulations to require that drilling permits for wells
8 to be drilled within the corporate limits of a city, town,
9 or village would not be approved unless such wells were to
10 be drilled in accordance with applicable ordinances and had
11 first been approved by the governing body of such city,
12 town, or village.

13 MR. PORTER: Before we begin taking testimony, I
14 would like to ask for appearances in this case.

15 MR. HANAGAN: Mr. Peter Hanagan, appearing on
16 behalf of the New Mexico Oil and Gas Association.

17 MR. KELLAHIN: Jason Kellahin, of Kellahin and Fox,
18 Santa Fe, appearing on behalf of Cities Service Oil Company.

19 MR. SCHIELD: E. A. Schield, appearing on behalf of
20 the City of Carlsbad.

21 MR. PORTER: This is an application by the Commission,
22 and the Commission staff is appearing in the case. Mr. Bill
23 Carr, the attorney for the Commission, has one witness.

24 MR. CARR: That's correct.

25 MR. PORTER: The one witness is Mr. Dan Nutter.

1 So, Mr. Carr, you may proceed at this time with your witness.

2 MR. CARR: Mr. Nutter needs to be sworn.

3 DANIEL NUTTER,

4 was called as a witness, and after being duly sworn according
5 to law, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. CARR:

8 Q Will you state your name and position?

9 A Dan Nutter, Chief Engineer with the Oil Conservation
10 Commission.

11 Q Are you familiar with the proposed change in Rule 102
12 of the Commission Rules and Regulations?

13 A Yes, I am.

14 Q What is proposed by this change?

15 A Very briefly, we propose the amendment of Rule 102 of
16 the Commission Rules and Regulations to provide that
17 the Oil Conservation Commission would not approve a
18 drilling permit for a well which would be located within
19 the corporate limits of a municipality within the State
20 of New Mexico unless the governing body first approved
21 the drilling of the well and the proposed method of
22 drilling and operation of same.

23 Q What is the authority for the Commission's action?

24 A New Mexico Statute Section 65:3-11 states in part:
25 "From any authority expressed or implied elsewhere

1 given to or existing in the Commission by virtue of
2 this act or by statute of this State, the Commission
3 is hereby authorized to make rules and regulations and
4 orders for the purpose and with respect to the subject
5 matter stated here."

6 Then it cites seventeen areas of jurisdiction of
7 the Commission and authority to make these rules,
8 regulations, and orders.

9 Authority Number 7 reads as follows: "To require
10 wells to be drilled, operated, and produced in such a
11 manner as to prevent injury to neighboring leases or
12 properties.", and we feel this is in the interest of
13 protecting properties.

14 Q Is your proposed change in the form of an exhibit?

15 A Yes, it is. It has been identified as O.C.C. Staff
16 Exhibit A in Case 4944.

17 Q And is the exhibit the same as the text that was mailed
18 out with the docket?

19 A Yes, it is.

20 Q Would you explain in some detail what the proposed
21 change will accomplish?

22 A Yes, sir. The rule as proposed would read as follows:
23 "Rule: 102: Notice of intention to drill. (a) Prior to
24 the commencement of operations, notice shall be
25 delivered to the Commission of intention to drill any

1 well for oil or gas or for injection purposes and
2 approval obtained on Form C-101."

3 This paragraph is identical to Rule 102, with the
4 exception that we have added the words "or for injection
5 purposes". It is required that wells used for injection
6 have to have drilling permits.

7 "No permit shall be approved for the drilling of
8 any well within the corporate limits of any city, town,
9 or village of this state unless the location of the
10 well and the proposed method of drilling and operating
11 same are in accordance with any applicable duly enacted
12 ordinances, and the duly constituted governing body of
13 such city, town, or village, or its authorized agent,
14 has approved such location and the proposed method of
15 drilling and operation, and satisfactory evidence of
16 such approval accompanies the notice of intention to
17 drill, and provided further that said well shall be
18 spaced and located in compliance with the rules and
19 regulations of the Commission, or proper exception
20 thereto has been approved by the Commission."

21 Now, in this, it is not intended that this would
22 prohibit the drilling of any well, it is only intended
23 that this would require that the well would be drilled,
24 if it's in a town, that it would be drilled in accordance
25 with reasonable rules and regulations or ordinances

1 that are promulgated by the governing body of that town.

2 I think that, probably to clarify that, this would
3 not be prohibitive, and there should be additional
4 provisions made in the rule for appeal to the Commission,
5 wherein after a hearing, a permit could be issued for
6 the drilling of a well if it is found that the permit
7 denied by the municipality was either through failure
8 to act or the imposition of unreasonable restrictions.

9 I think that if we look at it in that light, it
10 is simply an effort by the State to cooperate with the
11 municipalities and see that wells are drilled in
12 accordance with the requirements of any municipality.

13 We will see that it is not prohibitive, but an
14 effort to engage in reasonable cooperation with these
15 municipalities.

16 None of us would like to have a well drilled in
17 our back yard as to constitute a hazard to the safety
18 of our health and property.

19 I think that certainly, the municipality has the
20 right to enact certain ordinances regarding drilling,
21 and this is simply an effort on the part of the State
22 to cooperate with the municipality.

23 Q In your opinion, would the proposed change deny anyone
24 the right to use their property?

25 A No, I don't think it will. It might require the

1 imposition of reasonable controls, but that would be it.

2 Q Do you believe the proposed change would hurt correlative
3 rights?

4 A No, I do not.

5 Q Do you have anything further?

6 A I would only like to say this. There has been drilling
7 conducted in municipalities all over the country, and
8 there have been some places where the towns have grown
9 up and have not felt the necessity of any regulations
10 whatsoever. They have well blowouts in towns, and
11 Kilgore, Texas, is a good example. They have seen
12 wells blow up in back yards, in school yards, and
13 every place else.

14 But there are other places, like Beverly Hills,
15 California, which at one time prohibited the drilling
16 of wells, and they finally enacted an ordinance
17 permitting the drilling of wells, but they do have rules
18 and regulations that must be complied with. The owners
19 of mineral rights are not deprived of their rights,
20 they are simply required to comply with the ordinance.

21 Q Would the proposed change-- would the adoption of the
22 proposed change prevent waste?

23 A If we are talking about reservoir waste, I don't think
24 it is going to cause reservoir waste, and it certainly
25 wouldn't prevent reservoir waste. It may prevent

1 waste of property on the surface.

2 Q Did you prepare O.C.C. Exhibit A?

3 A Yes, sir.

4 MR. CARR: I offer at this time O.C.C. Exhibit A.

5 MR. PORTER: Without objection, Commission Exhibit

6 A will be admitted.

7 (Whereupon Oil Conservation Commission Staff Exhibit

8 A was admitted in evidence.)

9 MR. CARR: I have nothing further at this time.

10 MR. PORTER: Does anyone have any questions of

11 Mr. Nutter?

12 MR. ARMIJO: Yes.

13 * * * *

14 CROSS EXAMINATION

15 BY MR. ARMIJO:

16 Q Mr. Nutter, are you saying that right now we have no
17 regulations insofar as cooperating with municipalities
18 in drilling are concerned?

19 A No, we have no provisions for the coordination of efforts
20 with the towns.

21 Q Is this rule actually being set up here for the benefit
22 of one city?

23 A No, it would be applicable to all of them.

24 Q I know it would be applicable to all of them, but is
25 it being set up by the request of one city?

1 A Let's put it this way. There is one city that has a
2 problem at this present time, and it was called to our
3 attention. The lack of provision for coordination of
4 efforts with the municipalities was called to our attention
5 by the City of Carlsbad.

6 Q I was just wondering if this was brought about through
7 the announcement of the opening of Section 36 for
8 drilling by the State Land Office.

9 A I didn't know Section 36 was even open.

10 Q Yes, we had an announcement that we might be opening
11 it, and I was just wondering if that was the reason for
12 the rule. If that is the reason for the rule, it is
13 not necessary as far as I am concerned.

14 A I notice that Section 36 is at the far end of the town.
15 Now, there is drilling on the back yard of Carlsbad to
16 the south side and to the east side, and there is a
17 well being drilled immediately west of the town, and
18 there is production to the north now in that well.

19 Carlsbad has a gas field under it if the well to
20 the west comes in as a producer.

21 MR. ARMIJO: Okay.

22 * * * *

23 CROSS EXAMINATION

24 BY MR. PORTER:

25 Q Mr. Nutter, under ordinary development, this is 320-acre

1 spacing in the South Carlsbad Pool. Under the ordinary
2 pattern of development, would there be a number of
3 locations within the City of Carlsbad?

4 A Yes, I believe there is something like twelve square
5 miles within the City.

6 Q Which may or may not be state land?

7 A I have no idea of the ownership of the land, except that
8 I do know that Section 36 is state land.

9 Q So maybe other land other than state land is involved?

10 A Yes. I know there is a lot of fee land involved.

11 MR. PORTER: Does anyone have any further questions
12 of Mr. Nutter?

13 MR. HANAGAN: Yes.

14 * * * *

15 CROSS EXAMINATION

16 BY MR. HANAGAN:

17 Q Mr. Nutter, do you know whether or not the City of
18 Carlsbad now has an ordinance with respect to drilling
19 permits, or whether they contemplate any such ordinance?

20 A It is my understanding they do contemplate the enactment
21 of ordinances.

22 Q They do not now have them?

23 A Not to my knowledge.

24 MR. PORTER: We have a representative from the
25 City of Carlsbad, Mr. Hanagan, and you might direct that

1 question to him later.

2 Does anyone else have any questions?

3 (No response)

4 MR. PORTER: Mr. Nutter may be excused.

5 (Witness excused.)

6 MR. PORTER: Does anyone desire to present any
7 testimony in this case?

8 MR. HANAGAN: Yes.

9 * * * *

10 PETER HANAGAN,

11 appeared as a witness, and after being duly sworn according
12 to law, testified as follows:

13 MR. PORTER: You may proceed with your testimony,
14 Mr. Hanagan.

15 MR. HANAGAN: Thank you. My name is Peter Hanagan,
16 and I offer this testimony on behalf of the New Mexico Oil
17 and Gas Association.

18 The addition of a new subsection (b) to Rule 102
19 appears to be unnecessary and unwise. The proposed language
20 does not grant to the Commission or to a city, town or village
21 any additional authority not now possessed by those three
22 bodies. Cities, towns and villages already have concurrent
23 jurisdiction with the Commission in matters of permitting
24 drilling operations within corporate limits. We therefore
25 urge that proposed Rule 102 (b) be stricken in its entirety.

1 In the event additional language to Rule 102 is
2 deemed necessary, we submit the following in lieu of that
3 proposed:

4 102 (b) would read: No permit shall be approved for
5 the drilling of any well within the corporate limits of any
6 city, town or village of this state unless notice of intention
7 to drill such well has been given to the duly constituted
8 governing body of such city, town or village or its authorized
9 agent and evidence of such notification shall accompany the
10 application to the Commission for such permit.

11 Our proposed language would sufficiently affect
12 the city, town or village with notice of intention to drill.
13 Whether or not the proposed drilling is in compliance with
14 applicable duly enacted ordinances would be a matter to be
15 determined between the operator and the city, town or village.
16 The Commission would thus be relieved of the delicate and
17 onerous task of determining compliance with applicable
18 ordinances, and the separate jurisdiction of the Commission
19 and the city would be more clearly recognized and maintained.

20 Our proposed language would also eliminate the
21 "pocket veto" inherent in the Commission's proposal by which
22 the city, town or village could by inaction permanently delay
23 a drilling permit application.

24 That is the substance of my testimony.

25 MR. PORTER: Are there any questions of Mr. Hanagan?

CROSS EXAMINATION

BY MR. NUTTER:

Q Would it be your proposal, then, to give a copy of the notice of intention to drill to the city, but there would be no waiting period, the Commission would immediately approve the application if all other requirements were met?

A Yes. I think the Commission could do that if it so chose, because again, before an operator could validly drill anywhere, he must get the consent of the Commission.

Q There would be no room for the city to object to the drilling of a well?

A The city could go to the Commission and ask for a hearing, or what-have-you, but the city, in effect, could object because it could turn down an application as not being in conformance with their existing ordinances. So the operator still could not drill because he has not gotten a permit from one of the controlling jurisdictions.

MR. NUTTER: That's all.

MR. PORTER: Anyone else?

MR. SCHIELD: Yes.

* * * *

CROSS EXAMINATION

BY MR. SCHIELD:

Q Wouldn't this impose a very severe load on the city in

1 carrying out that operation? It seems to me that it
2 would be difficult.

3 A Not any more than throwing the entire load to the Oil
4 Conservation Commission to determine whether the
5 application is in conformance with city ordinances. The
6 city is in the best position to determine whether or
7 not an applicant is complying with its own ordinances.

8 Q It seems to me that the city would notify the Commission,
9 and it seems to me that the Commission is the group
10 that has the expertise in this area, and the city
11 generally has not. I think this is quite a load to
12 put on the city engineer.

13 A The Oil Conservation Commission is the expert in their
14 area of expertise, and their area of expertise does not
15 extend to the interpretation of compliance to city
16 ordinances. But that's what the proposed change does,
17 it puts the burden on the O.C.C., not only to understand
18 every ordinance, but to make a determination whether
19 the applicant is in compliance with a city ordinance.

20 MR. SCHIELD: That's all.

21 * * * *

22 CROSS EXAMINATION

23 BY MR. CARR:

24 Q Mr. Hanagan, if the action of the city, town or village
25 could be appealed to the Oil Conservation Commission,

1 do you still believe the city would in fact have a
2 pocket veto on drilling?

3 A No. I think Mr. Nutter's testimony suggesting additional
4 language would probably take care of that point. My
5 statement related to the proposal in its present form.

6 MR. ARMIJO: It would appear here that the rule
7 is out of order. We work with the Soil Conservation set-up
8 in the State Land Office, and what we did there, we're not
9 approving any transfer of water rights or what-have-you until
10 we have received a report from the Soil Conservation, but
11 that doesn't mean we are not going to approve it or disapprove
12 it.

13 Actually all we are doing is getting information
14 from them to just guide ourselves accordingly. But I don't
15 think we should set up a rule to tell the Commission whether
16 we can issue a permit or not, this is not right.

17 * * * *

18 CROSS EXAMINATION

19 BY MR. STAMETS:

20 Q Mr. Hanagan, what recourse would a city have if a location
21 were filed with the Commission and approved by the
22 Commission which did not fit the city ordinance, say in
23 the manner of the construction of the well or the
24 location of the well?

25 A I don't know the exact recourse, but it would be the

1 same kind of recourse that a city has to any violator
2 of city ordinances. That is a matter within the
3 jurisdiction of the city, and it seems to us that it
4 is not a matter that falls upon the Oil Conservation
5 Commission. So whatever recourse a city has for violation
6 of any kind of ordinance, it would still have with
7 respect to that operator, because again, I say that the
8 operator could not validly begin drilling operations
9 until he obtains a permit from the Oil Conservation
10 Commission and a permit from the city, and until he is
11 in compliance with both jurisdictions.

12 Q You say he would have to have a permit from the city?

13 A If that's what the city ordinance requires. Whatever
14 the city ordinance requires, he would have to comply
15 with.

16 MR. PORTER: Does anyone else have any questions of
17 Mr. Hanagan?

18 (No response)

19 MR. PORTER: He may be excused.

20 (Witness excused.)

21 MR. PORTER: Does anyone else want to present
22 testimony?

23 MR. SCHIELD: Yes.

24 * * * *

25

1 E. A. SCHIELD,

2 appeared as a witness, and after being duly sworn according
3 to law, testified as follows:

4 MR. PORTER: Mr. Shield, would you proceed and tell
5 the Commission what the position of the City of Carlsbad is
6 in this case?

7 MR. SCHIELD: Yes, sir. I would like to express
8 my appreciation to the Commission for coming down to Carlsbad
9 and having a meeting there. I will not be able to present
10 all the material given at that time, but I will make a short
11 presentation.

12 The immediate problem, of course, is the fact that
13 gas discovery has been made in and around Carlsbad. There
14 are now two wells within the City limits, but those are in
15 isolated areas, and from that point of view, are not damaging
16 the area.

17 However, there could be permits, under present
18 regulations, for from twelve to sixteen wells in the city.
19 This would vary depending upon the interpretation of the
20 city articles to have the gas capability of the area developed.

21 So we want to work with the Commission, and we want
22 to cooperate and see that the gas is secured in a reasonable
23 manner, in as safe a manner as possible.

24 Our primary concern is the health, safety and
25 welfare of the citizens of the City of Carlsbad.

1 We are aware that the companies doing the drilling
2 take precautions while the wells are being drilled, but we
3 are also aware of the fire that occurred in the Indian Basin
4 Well in which many acres were totally seared.

5 We are also aware of transmission failures,
6 transmission pipe failures, and these have occurred.

7 Now, petroleum lines are generally not of as high
8 pressure as gas lines, and gas lines often have extremely
9 high pressure, and from that point of view, constitute a
10 hazard that most petroleum lines do not.

11 One of the community problems I would like to point
12 out is that the value of surface property is many times
13 greater than that of the gas underneath. In 1964, Section
14 36 had a real estate improvement evaluation of twelve and a
15 half million dollars. It's estimated value now has been
16 doubled. There is a great deal of building in the area,
17 and it is our belief that the value now would be over
18 twenty-five million dollars, but we have no figures for that
19 today.

20 In private areas in the city where oil rights
21 are being purchased, it is fifty dollars per lot for a small
22 lot, and this will give you a comparison of the size of
23 the lot with the improvements on it. Considerable open
24 areas are required for drilling in the city, and we have
25 the city rather solidly developed, so there are very few

1 open areas. Areas that appeared open on earlier maps have
2 now been fairly well filled in. So there isn't much open
3 area.

4 There are certain areas in the southwestern part
5 of the city, and that is about the only location where there
6 are open areas that would be adequate for a drilling operation.

7 The protection of surface rights would be
8 important here, and we feel that where evaluation runs as
9 high as it does, and the possibility of danger would require
10 insurance to be very expensive, and would represent a very
11 large responsibility.

12 We have other problems as well. One is the location
13 of the transmission lines, and there are several companies
14 who have the rights within the city. If each of them set
15 up a transmission line, it would represent a very serious
16 problem in having the city criss-crossed with transmission
17 lines of high pressure. This is one of the things we
18 certainly want to work out.

19 There is the effect on community growth, which we
20 feel is very important, and is a chief concern now. I tried
21 to get some figures, some specific figures on the number of
22 families who have moved into the Carlsbad area within the
23 last few years. A figure that I remember is 400 retirement
24 families have moved in for retirement in a relatively recent
25 time.

1 There is a good deal of building going on, and a
2 lot of this is in Section 36. There are two rather large
3 building complexes, one a condominium, and one an apartment
4 complex, which are in this area. We are hoping that these
5 units will be filled with new retirement families, and we
6 feel that we must be extremely careful in the development,
7 in the location, and in the operation of any wells.

8 Now, in regard to regulations. We have appointed
9 a committee which includes representatives from several
10 petroleum companies who operate within the area, and they
11 are interested in working with us to develop regulations.

12 The immediate problem, of course, is that we do
13 not have regulations as yet, and although we are working on
14 regulations, as Chairman of the Planning Commission, I find
15 that it will take us a long time to develop adequate
16 regulations, and we have agreed to come up with some type of
17 regulations within a relatively short period of time, even
18 though it is going to be extremely difficult.

19 I have forgotten, but it seems to me it was six
20 weeks that was mentioned, but in any event, it is very
21 difficult.

22 We believe that Rule 102 (b) is correct, and the
23 only approach now available really, and we might say that
24 it is somewhat of an interim approach, because until we can
25 work out regulations, and I feel that the first draft that

1 we work out on the regulations will probably need to be
2 revised to come up with the needs of the petroleum companies
3 and our city.

4 So I think that we have some time here, and we need
5 this rule as it is. I think, however, that an appeal to the
6 O.C.C. in case of unreasonable rules is entirely in order,
7 and I assume that would occur under the regulations as given.

8 I am not a lawyer, so I'm not sure of that.

9 The regulations that we are working on would deal
10 with both the drilling and the transmission lines.

11 I believe that covers rather briefly the material
12 that we discussed and that we feel important in establishing
13 this rule.

14 MR. PORTER: Mr. Schield, did you state that you
15 are the head of the Planning Commission?

16 THE WITNESS: Yes, I am Chairman of the City Planning
17 Commission.

18 MR. ARMIJO: I am speaking as Commissioner now,
19 not as a member of the Oil Conservation Commission, and you
20 can give this message to your city officials over there.

21 As long as I will be Commissioner, there won't
22 be any drilling in Section 36, because we will not be putting
23 it up for sale.

24 I may add that I was talked into this probably
25 by people that thought that this was for the good of the

1 order, and we investigated it, and we found out that a big
2 development was right in the middle of it, so consequently,
3 we changed our minds.

4 We actually contemplated putting it up for sale,
5 but so long as I am Commissioner, the people in the City of
6 Carlsbad can be assured it won't go through.

7 In the meantime, we probably should do something
8 so that we can protect it for the future.

9 THE WITNESS: Thank you very much, I will pass
10 that on.

11 MR. ARMIJO: I am only talking about state land now.

12 THE WITNESS: Yes, and our problem, of course,
13 covers private ownership as well.

14 MR. PORTER: Am I to understand that the city is
15 working on ordinances that will include regulations for
16 drilling within the city limits?

17 THE WITNESS: Yes, we are.

18 MR. PORTER: Have you looked at the regulations of
19 other cities and towns in similar circumstances?

20 THE WITNESS: We have checked into the regulations
21 of, I think, about three other cities.

22 MR. PORTER: We were down there some time ago
23 talking with various city officials, and it was my understanding
24 that one of the fellows indicated that under present city
25 laws, that no well could be drilled. Would that be correct?

1 THE WITNESS: Yes, it is. However, the regulation
2 is such that it is not very clear. Our zoning ordinance
3 prohibits explosives or fireworks manufacturing or the storage
4 of butane or propane storage. Those are all prohibited within
5 the city limits.

6 We also have a section dealing with petroleum
7 refining, or the wholesale storage of petroleum, and its
8 production is barred from commercial areas, and is barred
9 from all areas in the city.

10 But these are so general that we don't feel they
11 are adequate.

12 MR. PORTER: It doesn't refer to drilling specifically?

13 THE WITNESS: No, sir, it does not refer to drilling
14 specifically.

15 MR. PORTER: Does anyone else have any questions of
16 Mr. Schield?

17 (No response)

18 MR. PORTER: You may be excused.

19 (Witness excused.)

20 MR. PORTER: Does anyone else want to present
21 testimony in this case?

22 (No response)

23 MR. PORTER: Does anyone have a statement to make?

24 MR. KELLAHIN: I do.

25 MR. PORTER: Proceed.

1 MR. KELLAHIN: My name is Jason Kellahin, of
2 Kellahin and Fox, Santa Fe. I am appearing on behalf of
3 Cities Service Oil Company. Cities Service is generally in
4 agreement with the position stated on behalf of the New Mexico
5 Oil and Gas Association by Mr. Hanagan, including his
6 responses on cross examination.

7 I think the problem here lies in the fact that the
8 proposed rule overlooks the situation of concurrent
9 jurisdiction. The Oil Conservation Commission has jurisdiction
10 over the drilling of wells, and the municipalities of the
11 State can adopt ordinances, and through injunction or such
12 other legal remedies enforce those ordinances.

13 Now, for the Oil Conservation Commission to serve
14 as an appellate body to the city council, well, it's not a
15 legal possibility under the laws of the State of New Mexico.

16 Municipalities in this state exercise the values
17 vested in them by the Constitution and by statutes adopted
18 by the Legislature, and they exercise no other powers than
19 those authorized in that manner.

20 The Oil Conservation Commission, by the same token,
21 exercises those powers vested in it by the State Legislature,
22 and the O.C.C. has no control over the cities, and could not
23 direct a city to grant or deny a drilling permit.

24 By the same token, the municipality, let's say in
25 this case the City of Carlsbad, has no authority to direct

1 the Oil Conservation Commission to take any affirmative
2 action one way or the other.

3 Mr. Schield indicated that, as I gather, this would
4 serve as an excellent interim remedy for the City of Carlsbad,
5 and we can sympathize with his position. However, I would
6 point out that the City of Carlsbad has the same right as
7 any other party to protest the application for a drilling
8 permit before the Oil Conservation Commission, and have their
9 reasons weighed by the Commission within the scope of its
10 jurisdiction.

11 The Commission has such jurisdiction, and it can
12 listen to the problems of the City of Carlsbad, but it cannot
13 take an appeal from the city.

14 Cities Service does feel, particularly in the case
15 of the City of Carlsbad, that appropriate ordinances are
16 necessary, and should be adopted by the city, and we are
17 most willing to cooperate in any way possible.

18 The Oil Conservation Commission, I feel, could give
19 excellent advice to the city in the adoption of such ordinances,
20 and I'm sure that the City of Carlsbad could state its
21 problems which could be considered by the Oil Conservation
22 Commission within the scope of its authority.

23 But to adopt a rule such as this, particularly with
24 the theory that there could be an appellate procedure between
25 the city and the O.C.C., is erroneous.

1 Thank you.

2 MR. PORTER: Mr. Kellahin, let's say an operator
3 did file an application to drill a well within the city limits
4 of Carlsbad or any other municipality. How could the city
5 stop the drilling of that well, or our approval of that
6 location?

7 MR. KELLAHIN: It would be necessary for them to
8 file an objection to the well location, just as any other
9 party would, say an offset operator. They would have the
10 same privilege, and they would be a party to the proceeding.

11 MR. PORTER: If an operator were to comply with
12 all of the Commission regulations with regard to construction
13 of the well and the well location, there would be an
14 injunctive action then on the part of the city.

15 MR. KELLAHIN: By whom?

16 MR. PORTER: By the City of Carlsbad.

17 MR. KELLAHIN: If they have any authority from the
18 ordinances, yes. They would enforce their ordinance by
19 injunction.

20 MR. PORTER: What if they did not have the authority
21 within their ordinance?

22 MR. KELLAHIN: I think your situation then would
23 be from a safety factor primarily. The O.C.C. certainly can
24 prohibit the drilling of a well in a schoolyard right next
25 door to a playground. I think the safety measure would be

1 raised, and presented to the Commission by the City of Carlsbad.

2 MR. PORTER: Thank you. Would anyone else like to
3 make a statement?

4 MR. SCHIELD: I would like to raise a point. In
5 the case of an application to drill a well that would involve
6 the City, the City would have to be notified in order to
7 present an objection to the Commission, and this is not required
8 at the present time.

9 MR. PORTER: Mr. Schield, on the Carlsbad Airport,
10 we were in contact with city officials, and notified the
11 city officials of all those proposed locations as a matter of
12 courtesy to the City.

13 MR. SCHIELD: I realize that it was a matter of
14 courtesy, and we appreciate it very much.

15 MR. PORTER: Anyone else?

16 MR. CARR: The Supreme Court in the Continental
17 Oil versus the Oil Conservation Commission Case pointed out
18 that the Commission's power is limited by the laws of the
19 State. Section 65:5-11 empowers the Commission to act to
20 prevent injury to property, and based on this, we are
21 convinced that we have the authority to adopt a rule like
22 the rule proposed here today. We believe the rule proposed
23 merely requires that wells operated within the corporate
24 limits of a city, town or village be operated in a prudent
25 and reasonable fashion, and that the rule would not prevent

1 drilling or deny any individual their right to exercise
2 their property rights.

3 So we propose the rule based on three things. One,
4 that we have the authority. Two, that it would require only
5 that the drilling be conducted in a prudent fashion. And
6 three, because we do not believe it will prevent drilling
7 or deny property rights.

8 MR. PORTER: Are there any further statements?

9 (No response)

10 MR. PORTER: If that's all, the Commission will take
11 this case under advisement, and move on to the next case.

12 (Whereupon the hearing on Case 4944 was concluded.)

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1 STATE OF NEW MEXICO)
2) ss
3 COUNTY OF BERNALILLO)

4 I, RICHARD E. MCCORMICK, a Certified Shorthand
5 Reporter, in and for the County of Bernalillo, State of New
6 Mexico, do hereby certify that the foregoing and attached
7 Transcript of Hearing before the New Mexico Oil Conservation
8 Commission was reported by me; and that the same is a true
9 and correct record of the said proceedings to the best of
10 my knowledge, skill and ability.

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13 CERTIFIED SHORTHAND REPORTER
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I N D E X

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E X H I B I T S

	<u>EXHIBIT</u>	<u>ADMITTED</u>	<u>OFFERED</u>
21	O.C.C. Staff Exhibit A Proposed change	9	5

1 AN ORDINANCE RELATING TO ZONING; PROVIDING
2 LIMITATIONS ON THE DISTANCE OIL AND GAS WELLS MAY BE
3 DRILLED FROM INHABITED DWELLING HOUSES AND PROVIDING
A PENALTY.

4 BE IT ENACTED BY THE COUNTY COMMISSIONERS OF
5 EDDY COUNTY:

6 Section 1. Purpose. This ordinance is intended to compli-
7 ment the Rules and Regulations of the New Mexico
8 Oil Conservation Commission, the Rules and Regu-
9 lations of the United States Geological Survey,
and the Rules and Regulations of the New Mexico
State Corporation Commission and shall be liberally
interpreted to effectuate that purpose.

10 Section 2. Definitions - As used in this ordinance:

11 A. "Person" means any individual, estate, trust,
12 receivership, association, corporation, club,
13 company, firm, partnership, guardian, joint
venture or syndicate.

14 B. "Residence" means any dwelling house which
15 is inhabited at the time an application to
16 drill is filed with the United States
Geological Survey or the New Mexico Oil
Conservation Commission.

17 Section 3. Drilling Location. No person shall drill or
18 deepen an oil or gas well within 300 feet of
19 a residence located outside an incorporated
20 municipality in Eddy County without the written
consent of the owner of the residence.

21 Section 4. Penalties. Violation of this ordinance shall
22 be a misdemeanor.
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STATE LAND OFFICE

MEMORANDUM

FROM: WILLIAM O. JORDAN, Legal Division

April 16, 1973

TO: COMMISSIONER ARMIJO

SUBJECT: O. C. C. Docket, April 18, 1973 - Cause No. 4944

The above case contains a proposal to amend Rule 102 to provide as follows:

"RULE 102. NOTICE OF INTENTION TO DRILL

(a) Prior to the commencement of operations, notice shall be delivered to the Commission of intention to drill any well for oil or gas or for injection purposes and approval obtained on Form C-101.

(b) No permit shall be approved for the drilling of any well within the corporate limits of any city, town, or village of this state unless the location of the well and the proposed method of drilling and operating same are in accordance with any applicable duly enacted ordinances, and the duly constituted governing body of such city, town, or village, or its authorized agent, has approved such location and the proposed method of drilling and operation, and satisfactory evidence of such approval accompanies the notice of intention to drill, and provided further that said well shall be spaced and located in compliance with the rules and regulations of the Commission, or proper exception thereto has been approved by the Commission."

Because of the adverse effect that this rule will have upon the trust lands in that area to the extent that if followed would permit the State lands to be drained by wells on adjoining lands, some of which adjoining lands belong to the City of Carlsbad and others to private owners, I have looked into this proposed rule amendment and it is my opinion that the Oil Conservation Commission does not have authority to enact such a ruling. The duties of the Commission are as follows:

"65-3-5. Commission's powers and duties. The commission shall have, and is hereby given, jurisdiction and authority over all matters relating to the conservation of oil and gas and the

prevention of waste of potash as a result of oil or gas operations in this state. It shall have jurisdiction, authority and control of and 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 and the prevention of waste of potash as a result of oil or gas operations."

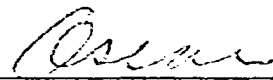
The Supreme Court in Continental Oil vs. O. C. C. 70 N.M. 310, 373 P2d 809, points out that the Commission is a creature of statute expressly defined, limited, and empowered by the laws created, and no where do I find a law that permits the O. C. C. to zone for any consideration other than prevention of waste and, in doing that, it must protect correlative rights of other oil and gas land owners. 65-3-11

This amendment is apparently an attempt to assist a city and county to zone for their purpose whereas, under present statutes, the Oil Commission does not have authority to zone for city purposes. Further, by permitting owners of lands adjoining the city to produce their wells and by this method prohibiting them on land within the city from producing theirs, will permit drainage and thereby will not protect correlative rights as the Commission is required to do under 65-3-5.

Assuming, however, that the O. C. C. is given statutory authority to make rules of this nature, there still will be a very serious question as to whether this would violate the Fourteenth Amendment of the U. S. Constitution and Article II, Section 18, of the New Mexico Constitution. Those provisions prohibit taking of property without just compensation.

If you wish, I will be glad to make a further search into this question.

WOJ:brm
cc Gallegos
Lucero
Graham



WILLIAM O. JORDAN
General Counsel



OIL CONSERVATION COMMISSION

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

GOVERNOR
BRUCE KING
CHAIRMAN

LAND COMMISSIONER
ALEX J. ARMIJO
MEMBER

STATE GEOLOGIST
A. L. PORTER, JR.
SECRETARY - DIRECTOR

May 23, 1973

Re: Case No. 4944
Order No. R-4532
Applicant: OCC

Mr. Peter Hanagan
New Mexico Oil & Gas Association
Post Office Box 1864
Santa Fe, New Mexico

Dear Sir:

Enclosed herewith are two copies of the above-referenced Commission order recently entered in the subject case.

Very truly yours,

A. L. PORTER, Jr.
Secretary-Director

ALP/ir

Copy of order also sent to:

Hobbs OCC x
Artesia OCC x
Aztec OCC x

Other Jason Kellahin, E. A. Schoeld, R. M. Williams, J. C. Burton,
J. C. White, Larry Caudill

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY THE OIL CONSERVATION COMMISSION ON ITS OWN MOTION TO CONSIDER THE AMENDMENT OF RULE 102 OF THE COMMISSION RULES AND REGULATIONS TO REQUIRE THAT DRILLING PERMITS FOR WELLS TO BE DRILLED WITHIN THE CORPORATE LIMITS OF A CITY, TOWN, OR VILLAGE WOULD NOT BE APPROVED UNLESS SUCH WELLS WERE TO BE DRILLED IN ACCORDANCE WITH APPLICABLE ORDINANCES AND HAD FIRST BEEN APPROVED BY THE GOVERNING BODY OF SUCH CITY, TOWN, OR VILLAGE.

CASE NO. 4944
Order No. R-4532

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on April 18, 1973, at Santa Fe, New Mexico, before the Oil Conservation Commission of New Mexico, hereinafter referred to as the "Commission".

NOW, on this 22nd day of May, 1973, the Commission, a quorum being present, having considered the testimony presented and the exhibits received at said hearing, and being fully advised in the premises,

FINDS:

- (1) That due public notice having been given as required by law, the Commission has jurisdiction of this cause and the subject matter thereof.
- (2) That the Commission may require that wells be drilled in such a manner as to prevent injury to neighboring leases or properties.
- (3) That there is need for the amendment of Rule 102 of the Commission Rules and Regulations to assist cities, townships, and villages assure the drilling of oil and gas wells in such a manner as would not endanger life and property within their respective corporate limits.
- (4) That cities, townships, and villages in this state presently have power to impose reasonable regulations on the drilling of oil and gas wells within their respective corporate limits by exercising their zoning powers.
- (5) That efficient exercise of the zoning powers of cities, townships, and villages would be facilitated by requiring that cities, townships, and villages be notified of any intention to drill within their respective corporate limits.

-2-

Case No. 4944
Order No. R-4532

(6) That Rule 102 of the Commission Rules and Regulations should be amended to require that notice of intention to drill within the corporate limits of any community should be given to the duly constituted governing body of such city, township, or village or its authorized agent, and that evidence of such notification should accompany the application to the Commission for a drilling permit.

(7) That the adoption of such an amendment to Rule 102 is in the public interest, will prevent waste, and will not impair correlative rights.

IT IS THEREFORE ORDERED:

(1) That Rule 102 of the Commission Rules and Regulations is hereby amended to read in its entirety as follows:

RULE 102. NOTICE OF INTENTION TO DRILL

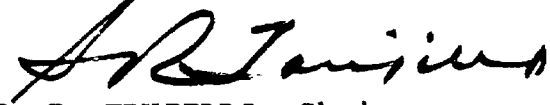
(a) Prior to the commencement of operations, notice shall be delivered to the Commission of intention to drill any well for oil or gas or for injection purposes and approval obtained on Form C-101.

(b) No permit shall be approved for the drilling of any well within the corporate limits of any city, town, or village of this state unless notice of intention to drill such well has been given to the duly constituted governing body of such city, town or village or its duly authorized agent. Evidence of such notification shall accompany the application for a permit to drill (Form C-101).

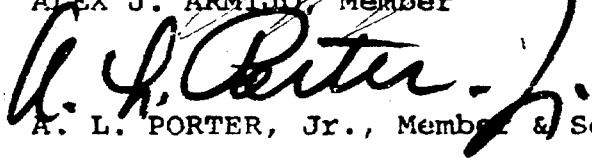
(2) That jurisdiction of this cause is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION


I. R. TRUJILLO, Chairman


ALEX J. ARMIJO, Member


A. L. PORTER, Jr., Member & Secretary


S E A L

dr/

Telegram

western union

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western union

IPMFEKA SANA

1-020913A107 04/17/73

TWX AMOCO PROD HOU

001 HOUSTON, TEXAS APRIL 17, 1973

PMS NEW MEXICO OIL CONSERVATION COMMISSION

STATE LAND OFFICE BUILDING

SANTA FE, NEW MEXICO

ATTENTION: MR. A. L. PORTER, JR.

RE: HEARING DOCKETED FOR APRIL 18, 1973, CASE 4944 RE REVISION OF
RULE 102

AMOCO PRODUCTION COMPANY RECOMMENDS THAT PARAGRAPH "B" OF THE PROPOSED
REVISION BE AMENDED TO CLARIFY THAT THIS REVISION IS ONLY APPLICABLE
WHERE LOCAL DRILLING ORDINANCES EXIST. THE RECOMMENDED REVISION IS AS
FOLLOWS:

NO PERMIT SHALL BE APPROVED FOR THE DRILLING OF ANY WELL WITHIN THE
CORPORATE LIMITS OF ANY CITY, TOWN OR VILLAGE OF THIS STATE WHICH
HAS DULY ENACTED ORDINANCE GOVERNING THE DRILLING OR OPERATING OF WELLS
UNLESS THE LOCATION OF THE WELL AND THE PROPOSED METHOD OF DRILLING
AND OPERATING SAME ARE IN ACCORDANCE WITH SUCH ORDINANCES AND THE DULY
CONSTITUTED GOVERNING BODY... ETC.

J C BURTON

AMOCO PRODUCTION COMPANY

1247 EST

IPMFEKA SANA



APR 17 AM 10:56

Jan

Morris R. Antweil
OIL OPERATOR
P. O. Box 2010
HOBBS, NEW MEXICO 88240

April 16, 1973

OIL CONSERVATION COMM
SANTA FE

New Mexico Oil Conservation Commission
P. O. Box 2088
Santa Fe, New Mexico 87501

ATTENTION: Mr. A. L. Porter, Jr., Secretary-Director

REFERENCE: Case 4944 - 18 April 1973
Amendment Rule 102

Gentlemen:

Morris R. Antweil, Oil Operator, respectfully submits the following statement in regard to the proposed amendment of Rule 102 - Notice of Intention to Drill - by adopting the proposed paragraph (b) providing for the approval of the governing body of any city, town or village within which a well may be located:

- a.) ordinances and approval of location and proposed method of drilling and operation should be restricted to public safety considerations.
- b.) a provision for appeal to the Oil Conservation Commission and issuance of a permit to drill as the result of such appeal should be included in the ruling to prohibit an unreasonable restriction of drilling by any city, town or village.

We would appreciate these recommendations being made part of the record of the hearing of this case.

Respectfully,

MORRIS R. ANTWEIL



R. M. Williams

RMW/lm

BEFORE THE
OIL CONSERVATION COMMISSION

NEW MEXICO OIL CONSERVATION COMMISSION

P. O. Box 2088

Santa Fe, New Mexico

Case No. 4444 A

Filed by O.C.C.

Hearing Date 11/18/73

PROPOSED REVISIONS OF RULES 102 AND 116 OF THE
COMMISSION RULES AND REGULATIONS

RULE 102. NOTICE OF INTENTION TO DRILL

(a) Prior to the commencement of operations, notice shall be delivered to the Commission of intention to drill any well for oil or gas or for injection purposes and approval obtained on Form C-101.

(b) No permit shall be approved for the drilling of any well within the corporate limits of any city, town, or village of this state unless the location of the well and the proposed method of drilling and operating same are in accordance with any applicable duly enacted ordinances, and the duly constituted governing body of such city, town, or village, or its authorized agent, has approved such location and the proposed method of drilling and operation, and satisfactory evidence of such approval accompanies the notice of intention to drill, and provided further that said well shall be spaced and located in compliance with the rules and regulations of the Commission, or proper exception thereto has been approved by the Commission.

RULE 116. NOTIFICATION OF FIRE, BREAKS, LEAKS, SPILLS AND BLOWOUTS

All persons operating or controlling any oil or gas well, or any drilling well, or any pipe line through which crude oil, condensate, or casinghead or natural gas is gathered, piped, or transported (including field flow-lines and lead-lines but not including natural gas distribution systems), or any receiving tank, holding tank, or storage tank, or receiving and storage receptacle into which crude oil, condensate, or casinghead or natural gas is produced, received, or stored, shall notify the Commission of any fire, break, leak, spill, or blowout in accordance with the provisions set forth below:

1. Well Blowouts Notification of well blowouts and/or fires shall be "immediate notification" described below.

2. "Major" Pipe Line Breaks Notification of pipe line breaks in which 25 or more barrels of crude oil or condensate is spilled none of which reaches a watercourse or enters a stream or lake, pipe line breaks in which one or more barrels of crude oil or condensate does reach a watercourse or enters a stream or lake, and pipe line breaks with spills of any magnitude which may with reasonable probability endanger human health, or property, shall be "immediate notification" described below.

3. "Minor" Pipe Line Breaks Notification of pipe line breaks in which less than 25 barrels of crude oil or condensate is spilled none of which reaches a watercourse or enters a stream or lake shall be "subsequent notification" described below.

4. Gas Line Breaks Notification of gas pipe line breaks in which 1000 or more MCF of natural or casinghead gas has escaped or in which gas is escaping at

the rate of 25 or more MCF per day and gas pipe line breaks with a loss of any magnitude which may with reasonable probability endanger human health, or property, shall be "immediate notification" described below. Notification of any gas pipe line break not falling into one of the above categories shall be "subsequent notification" described below.

5. Gas Leaks If any gas well or gas pipe line or gas storage facility not a part of a gas distribution system has leaked or is leaking natural or casinghead gas to the atmosphere at the rate of 25 MCF or more per day or at any lesser rate which may with reasonable probability endanger human health, or property, notification shall be "immediate notification" described below. Notification of gas leaks not falling into one of the above categories shall be "subsequent notification" described below.

6. Tank Fires Notification of fires in tanks or other receptacles caused by lightning or any other cause, if the loss is, or it appears that the loss will be, 25 or more barrels of crude oil or condensate, or fires which may with reasonable probability endanger human health, or property, shall be "immediate notification" as described below. If the loss is, or it appears that the loss will be, less than 25 barrels, notification shall be "subsequent notification" described below.

7. Overflows, Leaks, or Spills If any tank or other receptacle runs over, or leaks, or if any pipe line leaks, or if any other spill of crude oil or condensate occurs from any other source, and the spill is 25 barrels or more, none of which reaches a watercourse or enters a stream or lake, or if one or more barrels does reach a watercourse or enters a stream or a lake, or if the spill is of any magnitude which may with reasonable probability endanger human health, or property, notification shall be "immediate notification" described below. If the spill is five barrels or more but less than 25 barrels none of which reaches a watercourse or enters a stream or lake, notification shall be "subsequent notification" described below.

IMMEDIATE NOTIFICATION "Immediate notification" shall be either in person or by telephone to the district office of the Commission district in which the incident occurs, or if the incident occurs after normal business hours, to the District Supervisor, the Oil and Gas Inspector, or the Deputy Oil and Gas Inspector. A complete written report of the incident shall be submitted to the District Office and the Santa Fe office of the Commission within 48 hours after the incident.

SUBSEQUENT NOTIFICATION "Subsequent notification" shall be a written report of the incident and shall be submitted to the district office of the Commission district in which the incident occurred and to the Santa Fe office of the Commission within five days after the incident.

CONTENT OF NOTIFICATION All reports of fires, breaks, leaks, spills, or blowouts, whether verbal or written, shall identify the location of the incident by quarter-quarter section, township, and range, and by distance and direction from the nearest town or prominent landmark so that the exact site of the incident can be readily located on the ground. The report shall specify the nature and quantity of the loss and also the general conditions prevailing in the area, including precipitation, temperature, and soil conditions. The report shall also detail the measures that have been taken and are being taken to remedy the situation reported.

WATERCOURSE, for the purpose of this rule, is defined as any depression, gully, draw, stream bed, wash, arroyo, or natural or man-made channel through which water flows or has flowed.

STATEMENT OF PETER HANAGAN IN BEHALF OF NEW MEXICO OIL AND GAS ASSOCIATION
N. M. OIL CONSERVATION COMMISSION HEARING, MORGAN HALL, STATE LAND OFFICE,
SANTA FE, NEW MEXICO, APRIL 18, 1973.

CASE 4944: PROPOSED AMENDMENT OF RULE 102
NOTICE OF INTENTION TO DRILL

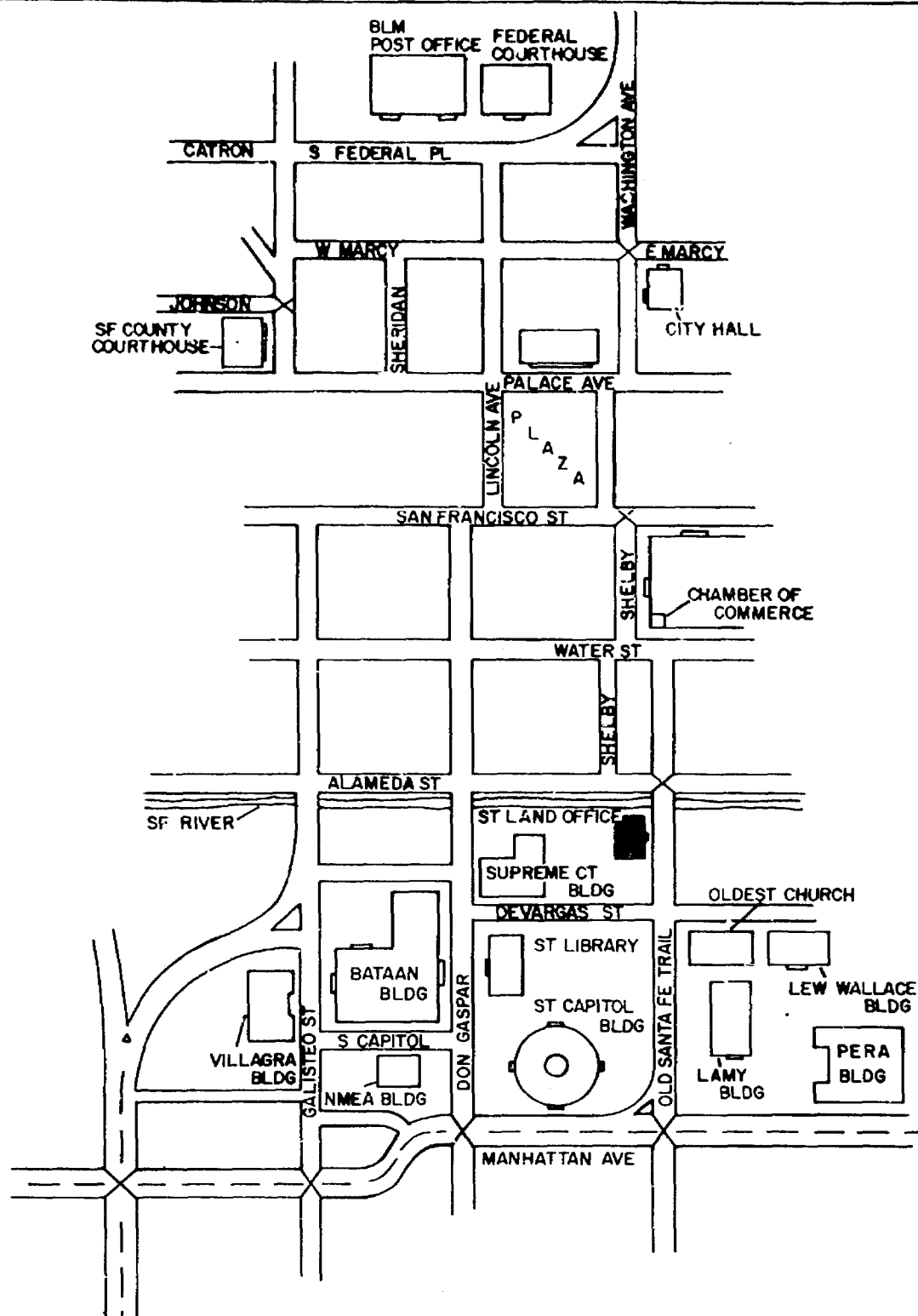
THE ADDITION OF A NEW SUBSECTION (B) TO RULE 102 APPEARS TO BE UNNECESSARY AND UNWISE. THE PROPOSED LANGUAGE DOES NOT GRANT TO THE COMMISSION OR TO A CITY, TOWN OR VILLAGE ANY ADDITIONAL AUTHORITY NOT NOW POSSESSED. CITIES, TOWNS AND VILLAGES ALREADY HAVE CONCURRENT JURISDICTION WITH THE COMMISSION IN MATTERS OF PERMITTING DRILLING WITHIN CORPORATE LIMITS. WE THEREFORE URGE THAT PROPOSED RULE 102 (B) BE STRICKEN IN ITS ENTIRETY.

IN THE EVENT ADDITIONAL LANGUAGE TO RULE 102 IS DEEMED NECESSARY, WE SUBMIT THE FOLLOWING IN LIEU OF THAT PROPOSED:

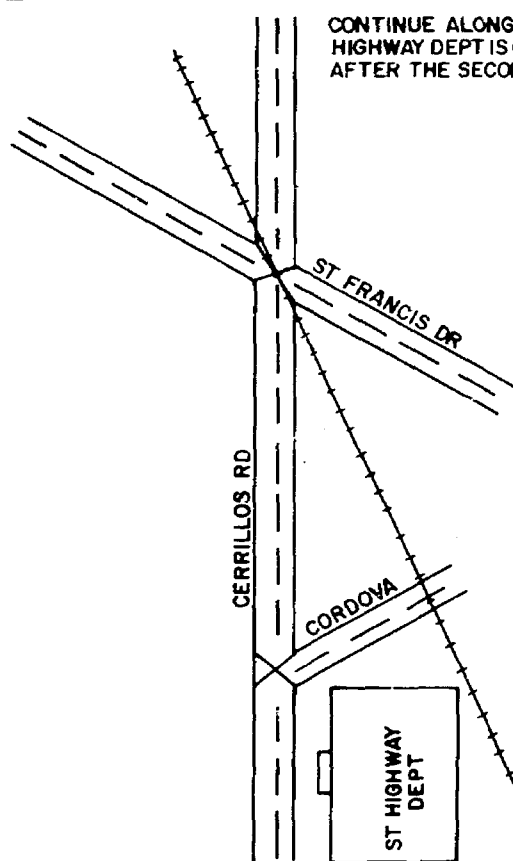
(B) NO PERMIT SHALL BE APPROVED FOR THE DRILLING OF ANY WELL WITHIN THE CORPORATE LIMITS OF ANY CITY, TOWN OR VILLAGE OF THIS STATE UNLESS NOTICE OF INTENTION TO DRILL SUCH WELL HAS BEEN GIVEN TO THE DULY CONSTITUTED GOVERNING BODY OF SUCH CITY, TOWN OR VILLAGE OR ITS AUTHORIZED AGENT AND EVIDENCE OF SUCH NOTIFICATION SHALL ACCOMPANY THE APPLICATION TO THE COMMISSION FOR SUCH PERMIT.

OUR PROPOSED LANGUAGE WOULD SUFFICIENTLY AFFECT THE CITY, TOWN OR VILLAGE WITH NOTICE OF INTENTION TO DRILL. WHETHER OR NOT THE PROPOSED DRILLING IS IN COMPLIANCE WITH APPLICABLE DULY ENACTED ORDINANCES WOULD BE A MATTER TO BE DETERMINED BETWEEN THE OPERATOR AND THE CITY, TOWN OR VILLAGE. THE COMMISSION WOULD THUS BE RELIEVED OF THE DELICATE AND ONEROUS TASK OF DETERMINING COMPLIANCE WITH APPLICABLE ORDINANCES, AND THE SEPARATE JURISDICTION OF THE COMMISSION AND THE CITY WOULD BE MORE CLEARLY RECOGNIZED AND MAINTAINED.

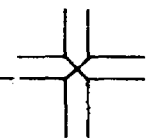
OUR PROPOSED LANGUAGE WOULD ALSO ELIMINATE THE "POCKET VETO" INHERENT IN THE COMMISSION'S PROPOSAL BY WHICH THE CITY, TOWN OR VILLAGE COULD BY INACTION PERMANENTLY DELAY A DRILLING PERMIT APPLICATION.



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AFTER THE SECOND STOPLIGHT.



INTERSECTION WITH
STOPLIGHT



PRINCIPAL GOVERNMENT OFFICES IN SANTA FE

COURTESY OF
NEW MEXICO STATE LAND OFFICE
FEB 1973

DRAFT

WFC/dr

BEFORE THE OIL CONSERVATION COMMISSION
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE HEARING CALLED BY THE OIL
CONSERVATION COMMISSION ON ITS OWN MOTION TO
CONSIDER THE AMENDMENT OF RULE 102 OF THE
COMMISSION RULES AND REGULATIONS TO REQUIRE THAT
DRILLING PERMITS FOR WELLS TO BE DRILLED WITHIN
THE CORPORATE LIMITS OF A CITY, TOWN, OR VILLAGE
WOULD NOT BE APPROVED UNLESS SUCH WELLS WERE TO BE
DRILLED IN ACCORDANCE WITH APPLICABLE ORDINANCES
AND HAD FIRST BEEN APPROVED BY THE GOVERNING BODY
OF SUCH CITY, TOWN, OR VILLAGE.

CASE NO. 4944

Order No. R- 4532

ORDER OF THE COMMISSION

BY THE COMMISSION:

This cause came on for hearing at 9 a.m. on April 18, 1973,
at Santa Fe, New Mexico, before the Oil Conservation Commission
of New Mexico, hereinafter referred to as the "Commission".

NOW, on this _____ day of May, 1973, the Commission, a
quorum being present, having considered the testimony presented
and the exhibits received at said hearing, and being fully
advised in the premises,

FINDS:

(1) That due public notice having been given as required
by law, the Commission has jurisdiction of this cause and the
subject matter thereof.

(2) That the Commission ~~is~~ ^{MAY} ~~imposed to~~ require that wells
be drilled in such a manner as to prevent injury to neighboring
leases or properties.

(3) That there is need for the amendment of Rule 102 of
the Commission Rules and Regulations to assist cities, townships,
and villages ^{ASSURE} ~~in assuring~~ ^{not} ~~against~~ the drilling of oil and gas wells
in such a manner as would ^{not} endanger life and property ^{within}
^{RESPECTIVE} ~~their~~ ^{their} ~~corporate~~ ^{corporate} ~~limits.~~ ^{LIMITS.}

(4) That cities, townships, and villages in this state presently have ~~the~~ power to impose reasonable regulations on the drilling of oil and gas wells within their respective corporate limits by exercising their zoning powers.

(5) That efficient exercise of the zoning powers of cities, townships, and villages would be facilitated by requiring that cities, townships, and villages be notified of any intention to drill within their respective corporate limits.

(6) That Rule 102 of the Commission Rules and Regulations should be amended to require that notice of intention to drill in ~~the~~ ^{LIMITS} corporate of any community should be given to the duly constituted governing body of such city, township, or village or its authorized agent, and that evidence of such notification ^{SHOULD} ~~shall~~ accompany the application to the Commission for a drilling permit.

(7) That the adoption of such an amendment to Rule 102 is in the public interest, will prevent waste, and will not impair correlative rights.

IT IS THEREFORE ORDERED:

(1) That Rule 102 of the Commission Rules and Regulations is hereby amended to read in its entirety as follows:

RULE 102. NOTICE OF INTENTION TO DRILL

(a) Prior to the commencement of operations, notice shall be delivered to the Commission of intention to drill any well for oil or gas or for injection purposes and approval obtained on Form C-101.

(b) No permit shall be approved for the drilling of any well within the corporate limits of any city, town, or village of this state unless notice of intention to drill such well has been given to the duly constituted governing body of such city, town or village or its duly authorized agent. Evidence of such notification shall accompany ~~Form C-101~~ the application for a permit to drill (Form C-101).