

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

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

Notice of Violation issued to Case 21842
Dwight A. Tipton and Zimmerman
Oil and Gas Exploration, Inc

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING
WEDNESDAY, JUNE 2, 2021

This matter came on for hearing before
the New Mexico Oil Conservation Division,
William Brancard, Hearing Examiner, on Wednesday,
June 2, 2021 via Webex videoconferencing platform

Reported by: Mary Therese Macfarlane
New Mexico CCR No. 122
PAUL BACA COURT REPORTERS
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A P P E A R A N C E S

FOR THE OCD: Eric Ames, Esq.
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1 (Time noted 10:14 a.m.)

2 HEARING EXAMINER BRANCARD: I call now Item 2,
3 Case 21842, Notice of Violation issued to Dwight A.
4 Tipton and Zimmerman Oil and Gas Exploration, Inc.

5 For the Division?

6 MR. AMES: Mr. Hearing Examiner, Eric Ames with
7 the Office of the General Counsel.

8 HEARING EXAMINER BRANCARD: Thank you.

9 Is there anybody here on behalf of the
10 Respondents?

11 MR. ZIMMERMAN: Yes. Zac Zimmerman.

12 HEARING EXAMINER BRANCARD: Okay.

13 Mr. Zimmerman, I did not see in the record any Answer or
14 Entry of Appearance. Could you please state what your
15 position is with the Respondent and what you would like to
16 do today.

17 MR. ZIMMERMAN: We would like for you guys to
18 hold off on issuing, you know, any kind of a decision so
19 that we have further time to discuss with OCD.

20 HEARING EXAMINER BRANCARD: And what is your
21 position with the Respondent?

22 MR. ZIMMERMAN: Sorry. I'm the president of
23 Zimmerman Oil and Gas Exploration.

24 HEARING EXAMINER BRANCARD: Thank you. But
25 if we go forward with the case today do you have any

1 statement to make or otherwise?

2 MR. ZIMMERMAN: No. Just to hold off on the
3 decision.

4 HEARING EXAMINER BRANCARD: Thank you.

5 Mr. Ames, I could treat this as a request
6 for a continuance. I would like to hear your response.

7 MR. AMES: Thank you, Mr. Hearing Examiner.

8 This is an interesting situation. There
9 are two Respondents here, Mr. Dwight A. Tipton and
10 Zimmerman Oil and Gas Exploration. Mr. Tipton is the
11 registered operator for the wells but Mr. Tipton passed
12 away a few years ago. Zimmerman Oil is operated by a
13 relative of Mr. Tipton and has been, in reality, operating
14 the wells essentially on Mr. Tipton's behalf for a number
15 of years. And that's why there are two Respondents here.
16 There is apparently no representative of the Estate making
17 an appearance today.

18 But I will say that OCD has discussed this
19 matter with Mr. Zimmerman and Mrs. Zimmerman. We would
20 like to proceed with this case and present our testimony,
21 and then at the conclusion of the case request a period of
22 time before an Order is entered so that we can discuss
23 with Mr. Zimmerman, Mr. And Mrs. Zimmerman, a path forward
24 to resolution prior to Order.

25 So while we endorse Mr. Zimmerman's request

1 to hold off on issuing an Order, we would like to proceed
2 with the case itself, and I do not understand
3 Mr. Zimmerman to be asking for a continuance.

4 HEARING EXAMINER BRANCARD: Mr. Zimmerman, is
5 that okay if we go forward?

6 MR. ZIMMERMAN: Yes, that's fine.

7 HEARING EXAMINER BRANCARD: Okay. Thank you.

8 With that I will have the Division move
9 ahead with its case in chief.

10 MR. AMES: Thank you, Mr. Brancard. OCD would
11 like to proceed in essentially the same manner as we just
12 did for Flare Oil, and given that Mr. Zimmerman doesn't
13 intend to -- has not filed an Answer and doesn't intend to
14 present any testimony, we think that would be appropriate.
15 If Mr. Zimmerman would like to ask questions of the
16 witness regarding the testimony that's in the Prehearing
17 Statement, with which Mr. Zimmerman has been served, we
18 obviously have no objection to that, but in lieu of
19 reciting all the testimony into the record we would like
20 to proceed with a truncated form in the manner we just did
21 with Flare Oil.

22 HEARING EXAMINER BRANCARD: Thank you. Please
23 go ahead, and you can sort of preempt my questions by
24 providing the outline of violations and sanctions as we
25 discussed in the first case.

1 MR. AMES: Great. Thank you.

2 OCD calls Daniel Sanchez.

3 JOSE DANIEL SANCHEZ,

4 having been duly sworn testified as follows:

5 EXAMINATION

6 BY MR. AMES:

7 Q. Daniel, please state your full name for the
8 record.

9 A. Jose Daniel Sanchez.

10 Q. And Daniel, where do you work?

11 A. I work for the Oil Conservation Division, a
12 division of the Energy, Minerals and Natural Resources
13 Department.

14 Q. How long have you worked there?

15 A. Over 16 years.

16 Q. What is your job there?

17 A. I am the Administration and Compliance Bureau
18 Chief.

19 Q. Did you prepare written testimony in this case?

20 A. Yes, I did.

21 Q. Was that testimony submitted with the Division's
22 Prehearing Statement in this case?

23 A. Yes, it was.

24 Q. Is that testimony accurately reflected in
25 Section 2 of the Prehearing Statement under the tab Direct

1 **Testimony?**

2 A. Yes, it is.

3 **Q. Let's briefly review your testimony. What is**
4 **the first alleged violation in the NOV?**

5 A. The first violation is a violation of
6 19.15.9.9(B). That's failing to transfer Tipton's wells.
7 Mr. Tipton passed away on March 24th of 2020, and
8 Zimmerman told the OCD that it was operating the wells
9 before his death and continued to operate Tipton's wells
10 after his death without OCD's approval for change of
11 operator.

12 **Q. What sanction does OCD propose for this**
13 **violation?**

14 A. It's requesting an Order terminating Zimmerman's
15 authority to transport from Tipton's wells, and also
16 imposes a civil penalty of \$60,000.

17 **Q. What is the second violation that's alleged in**
18 **the NOV? And in terms of reciting these violations,**
19 **Daniel, I think we just need to give the citation and a**
20 **very brief description of the violation itself as listed**
21 **in the first or second sentence of the NOV. We don't need**
22 **to recite all the testimony as part of the alleged**
23 **violation.**

24 A. The second violation is 19.15.5.9(A)(4)(a), and
25 that's in excess of inactive wells as required by the

1 rule.

2 Q. What sanction does OCD propose for this
3 violation?

4 A. We are requesting that -- I'm sorry.

5 Q. Look on page 3. It's the first full paragraph.
6 For this violation. Do you see that?

7 A. Yes. Yes. OCD is requesting that David
8 Zimmerman plug and abandon two of the inactive wells
9 identified in the testimony, and we are also requesting a
10 civil penalty of \$1,000.

11 Q. Thank you. What is the third violation alleged
12 in the NOV?

13 A. This is a violation of Rule 19.15.8.9(C), and
14 it's insufficient financial assurance.

15 Q. What sanction is proposed here?

16 A. We are requesting that Zimmerman -- Tipton and
17 Zimmerman increase their current financial insurance from
18 \$50,000 to \$125,000, and we are also requesting a civil
19 penalty of \$10,500.

20 Q. And what is the final violation alleged in the
21 NOV?

22 A. This is also insufficient financial assurance
23 for wells that have exceeded the two-year inactivity rule.
24 That is under 19.15.8.9(D). And what we are requesting
25 here is that financial assurance for the two wells on page

1 29, No. 4 and No. 6, be submitted, or in lieu of
2 single-well bonds, a T.A. blanket bond in the amount of
3 \$150,000. And we are also requesting a civil penalty of
4 \$15,000.

5 **Q. Thank you. Let's move on to the exhibits which**
6 **is Section 3 of the not of high violation at the top of**
7 **page 5?**

8 **I see 15 exhibits listed here. Could you**
9 **briefly identify each exhibit for the record.**

10 A. Exhibit 1 is my curriculum vitae.

11 Exhibit 2 is the Notice of Violation that
12 was issued.

13 Exhibit 3 is a well list for Tipton wells.

14 Exhibit 4 is the obituary of Mr. Dwight A.
15 Tipton.

16 Exhibit 5 is a civil penalty calculation
17 used for that particular violation.

18 Exhibit 5 are the C-145 reports.

19 Exhibit 7 is an OCD email to Zimmerman on
20 March 3, 2021.

21 Exhibit 8 is an email to the OCD in
22 response to that email.

23 Exhibit 9 is an OCD email back to Zimmerman
24 on March 9.

25 Exhibits 10, 11 and 12 are the civil

1 penalty calculations for the final three violations.

2 Exhibit 13 is the certified mail for the
3 NOVs that were sent out.

4 Exhibit 14 is the UPS tracking page for the
5 delivery to Tipton.

6 Exhibit 15 is the UPS tracking page for the
7 delivery to Zimmerman.

8 MR. AMES: Thank you, Daniel.

9 OCD now offers these exhibits for the
10 record.

11 HEARING EXAMINER BRANCARD: Thank you.

12 Any objection, Mr. Zimmerman?

13 MR. ZIMMERMAN: No.

14 HEARING EXAMINER BRANCARD: So these exhibits
15 are admitted.

16 Is there anything further from your
17 witness, Mr. Ames?

18 MR. AMES: No, Mr. Hearing Examiner.

19 HEARING EXAMINER BRANCARD: Mr. Zimmerman, do
20 you have any questions for this witness?

21 MR. ZIMMERMAN: No questions.

22 HEARING EXAMINER BRANCARD: Thank you.

23 And so finally, Mr. Ames, Any further
24 evidence today in this case?

25 MR. AMES: No, Mr. Hearing Examiner.

1 HEARING EXAMINER BRANCARD: Thank you.

2 Mr. Zimmerman, any statement at this point?

3 MR. ZIMMERMAN: None.

4 HEARING EXAMINER BRANCARD: Thank you.

5 Okay. The proposal on the table, then, is
6 that the Division and Mr. Zimmerman be given a time frame
7 to continue discussions before the Division submits its
8 proposed Findings and Conclusions to the hearing examiner.

9 What time frame are you thinking of,
10 Mr. Ames?

11 MR. AMES: Yes, Mr. Hearing Examiner. That's a
12 good question.

13 First may I ask what time frame do you
14 anticipate or would you impose for the Flare Oil on which
15 there's no delay requested?

16 HEARING EXAMINER BRANCARD: Good question,
17 because I forgot to bring that up.

18 I would love two weeks but I don't know if
19 that works with your schedule.

20 MR. AMES: I will endeavor to do two weeks. If
21 I require additional time I will request it from the
22 hearing examiner.

23 HEARING EXAMINER BRANCARD: Okay.

24 MR. AMES: With respect -- I'm sorry. Go ahead.

25 HEARING EXAMINER BRANCARD: Go ahead.

1 MR. AMES: Okay. Thank you.

2 With respect to the current case, the
3 pending case now, I would request, uhm, 30 days to submit
4 Findings of Fact and Conclusions of Law if we can't reach
5 resolution of the matter informally.

6 HEARING EXAMINER BRANCARD: Mr. Zimmerman, is
7 that a fair enough time frame to work on this?

8 MR. ZIMMERMAN: I think so.

9 HEARING EXAMINER BRANCARD: And of course you
10 can always request an extension if you are in the middle
11 of productive negotiations.

12 MR. ZIMMERMAN: Thank you.

13 HEARING EXAMINER BRANCARD: All right. With
14 that the exhibits are admitted in this case, and we are
15 requesting Finding and Conclusions from the Division to be
16 submitted 30 days from now during which time the Division
17 and Mr. Zimmerman may conduct additional discussions and
18 perhaps resolve this matter.

19 Anything else on this matter, Mr. Ames,
20 Mr. Zimmerman?

21 MR. AMES: No, sir.

22 MR. ZIMMERMAN: No, sir.

23 HEARING EXAMINER BRANCARD: Thank you,
24 appreciate it.

25 MR. AMES: Mr. Zimmerman, I will call later

1 today and we can pick up where we left off.

2 MR. ZIMMERMAN: Good. Thank you.

3 HEARING EXAMINER Brancard: Thank you.

4 (Note: Time noted 10:37 a.m.)

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1 STATE OF NEW MEXICO)
2 : SS
3 COUNTY OF TAOS)

5 REPORTER'S CERTIFICATE

6 I, MARY THERESE MACFARLANE, New Mexico Reporter
7 CCR No. 122, DO HEREBY CERTIFY that on Wednesday, June 2,
8 2021, the proceedings in the above-captioned matter were
9 taken before me; that I did report in stenographic
10 shorthand the proceedings set forth herein, and the
11 foregoing pages are a true and correct transcription to
12 the best of my ability and control.

13 I FURTHER CERTIFY that I am neither employed by
14 nor related to nor contracted with (unless excepted by the
15 rules) any of the parties or attorneys in this case, and
16 that I have no interest whatsoever in the final
17 disposition of this case in any court.

18 /s/ Mary Macfarlane
19 _____

20 Mary Therese Macfarlane, CCR
21 NM Certified Court Reporter No. 122
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