

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

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

ORIGINAL

CASE 15432
(cont'd from
1/21/16)

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION COMPLIANCE AND
ENFORCEMENT BUREAU FOR A COMPLIANCE
ORDER AGAINST DC ENERGY, LLC, FOR WELLS
OPERATED IN LEA COUNTY, NEW MEXICO.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

February 4, 2016

Santa Fe, New Mexico

BEFORE: MICHAEL McMILLAN, CHIEF EXAMINER
WILLIAM V. JONES, EXAMINER
SCOTT DAWSON, EXAMINER
DAVID BROOKS, LEGAL COUNSEL

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This matter came on for hearing before the
New Mexico Oil Conservation Division, MICHAEL MCMILLAN,
Chief Examiner, William V. Jones, Examiner, SCOTT
DAWSON, Examiner, and DAVID BROOKS, Legal Counsel, on
February 4, 2016, at the New Mexico Energy, Minerals,
and Natural Resources Department, Wendell Chino
Building, 1220 South St. Francis Drive, Porter Hall,
Room 102, Santa Fe, New Mexico.

REPORTED BY: ELLEN H. ALLANIC
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1 (Time noted 8:17 a.m.)

2 EXAMINER McMILLAN: Case 15432, Application
3 of the New Mexico Oil Conservation Division Compliance
4 and Enforcement Bureau For a Compliance Order Against
5 DC Energy, LLC, for Wells Operated in Lea County, New
6 Mexico.

7 Call for appearances.

8 MR. HERRMANN: Keith Herrmann representing
9 the OCD Compliance and Enforcement Bureau.

10 MR. JACOBSEN: James C. Jacobsen, New Mexico
11 Attorney General's Office on behalf of the Oil
12 Conservation Division.

13 EXAMINER McMILLAN: Are there any other
14 appearances?

15 MS. SCHAEFFER: Stephanie Schaeffer for
16 Clarke C. Coll, the Chapter 7 Trustee in the DC Energy
17 Bankruptcy Case.

18 MR. ROBERT FEUILLE: James Feuille and
19 Robert Feuille for Dan and Colleen Johnson.

20 EXAMINER McMILLAN: If the New Mexico Oil
21 Conservation Division would proceed.

22 MR. HERRMANN: Mr. Examiner, this case was
23 continued from January 21st, the last hearing docket,
24 after the OCD presented evidence that the subject wells
25 in this compliance order that we are seeking had

1 evidence of a failed MIT with no corrective action,
2 numerous releases that have yet to be reported and
3 inactive wells in exceedance of the allowable under OCD
4 Rule 5.9.

5 We were asked to present affidavits to
6 authenticate some of the photographs used in OCD
7 Exhibits 4 and 5.

8 If I may present some affidavits from Mark
9 Whitaker, Maxey Brown, and Jamie Keyes, all OCD District
10 1 staff, in what I have marked as OCD Exhibit 8.

11 If there are no objections at this time, I
12 would move to admit OCD Exhibits 4, 5 and 8.

13 EXAMINER McMILLAN: Are there any objections
14 to this?

15 MR. ROBERT FEUILLE: This is Robert Feuille.
16 Mr. Examiner, we don't have any objection. We reviewed
17 the affidavits. They are fine. Thank you.

18 EXAMINER McMILLAN: Exhibits 4, 5 and 8 may
19 now be accepted as part of the record.

20 (New Mexico OCD Compliance and Enforcement
21 Bureau Exhibits 4 and 5 were offered at the 1/21/16
22 hearing and admitted on 2/4/16.)

23 (New Mexico OCD Compliance and Enforcement
24 Bureau Exhibit 8 was offered and admitted.)

25 MR. HERRMANN: The OCD Compliance and

1 Enforcement Bureau has nothing additional to submit at
2 this time.

3 EXAMINER McMILLAN: Okay. The question I
4 got is did the attorney for Dan and Colleen Johnson get
5 a photograph copy of the exhibits?

6 MR. ROBERT FEUILLE: Robert Feuille.
7 Mr. Examiner, we did get color photos from Mr. Herrmann
8 of the snow photos of Exhibit 5. So I believe we have a
9 complete set of color photos. And I believe that now
10 our Exhibit 5 matches what I was told you all were
11 looking at in the hearing room.

12 (Pause.)

13 MR. ROBERT FEUILLE: Robert Feuille again.
14 At an appropriate time, I would like to make a comment.
15 But right now, I think the question you asked is whether
16 I have the photos.

17 EXAMINER McMILLAN: Then please make your
18 comment for the record, Mr. Feuille.

19 MR. ROBERT FEUILLE: Thank you. Robert
20 Feuille again.

21 Mr. Examiner, I would point out that in
22 looking at the color photos, I certainly do see a
23 reflection on the water, but the witness testified about
24 a sheen on the water and there is no sheen on the water
25 other than the simple reflected light that you would

1 normally see on a pond of water. I think that's pretty
2 obvious.

3 And I would like to make some wrap-up
4 comments at some point in time. And I don't know
5 whether this is the appropriate time or not.

6 So that's my comment on the photos.

7 EXAMINER McMILLAN: At this time, I would
8 like to give the Oil Conservation Division the
9 opportunity for rebuttal for...

10 MR. HERRMANN: I don't think the OCD has to
11 respond to that. That is testimony from an attorney,
12 not any expert witness, and neither of the Johnsons have
13 offered to submit it at either this hearing or the last
14 hearing.

15 MR. JACOBSEN: Mr. Examiner, the Oil
16 Conservation Division will also point out that there was
17 testimony from people who were present and did observe
18 it and what Mr. Feuille is commenting, his impression of
19 a photograph versus presenting testimony from persons
20 with firsthand knowledge regarding the spill, the
21 discharge and the extent of the discharge, it's opinion
22 from an attorney and should be disregarded.

23 MR. ROBERT FEUILLE: Mr. Examiner, Robert
24 Feuille. Just to point out that there actually was no
25 testimony from any person who took the photos about any

1 sheen on the water. That testimony came from the expert
2 who simply observed the photos in his office
3 and Dr. Oberding.

4 And my comments are not testimony. They are
5 simply observations of the photos that anyone could make
6 including yourself. Thank you.

7 EXAMINER McMILLAN: At this point, let's
8 have closing statements.

9 CLOSING STATEMENTS

10 MR. HERRMANN: Mr. Examiner, the Compliance
11 and Enforcement Bureau has presented evidence of active
12 releases going on at all these sites. None have been
13 reported in violation of OCD rules.

14 So for that, we are requesting that the
15 operator or record, which we have also presented
16 evidence as DC Energy, LLC, report these releases and
17 provide all the documentation that our Environmental
18 Bureau will require to address the hazards they pose.

19 We've also presented evidence that this
20 operator has a number of inactive wells that they need
21 to address to come into compliance with OCD rule 5.9.

22 And we presented evidence that they have a
23 failed mechanical integrity test on one of their
24 saltwater injection wells. This is highly concerning
25 because it can pose a risk to groundwater and other oil

1 pools and oil-bearing strata that could impact other
2 operators correlative rights.

3 We believe the relief we've requested is in
4 accordance with OCD rules and request an order declaring
5 compliance.

6 MR. JACOBSEN: Mr. Examiner, Mr. Jacobsen
7 for the Oil Conservation Division. I would echo the
8 comments of the enforcement bureau. We have three wells
9 which testimony was have been inactive for -- in excess
10 of one year. We have a saltwater disposal well for
11 which a compliance order was entered in December of 2014
12 where no action has been taken to remediate the problems
13 with the integrity of that operation.

14 We have expert testimony from OCD's
15 witnesses regarding spills. We have photographic
16 evidence of spills and releases of contaminants on the
17 surface of the property.

18 We have a dispute between the lay
19 observations of the attorney and the expert testimony of
20 OCD's personnel. We have people who were on the site,
21 took the pictures, observed what is going on, and
22 observed that the wells are being operated by somebody.

23 Ms. Schaeffer is on the line. She is the
24 attorney for the Chapter 7 trustee, Clark C. Coll. And
25 as we have pointed out, Mr. Coll is not operating these

1 wells. DC Energy as a Chapter 7 debtor in Bankruptcy is
2 not operating these wells.

3 We had testimony two weeks ago and evidence
4 that DC Energy was served in its capacity as the
5 operator itself at its address in California. It is not
6 here. Ms. Schaeffer can correct me, but the trustee is
7 not operating these wells and at this point is taking no
8 action to remediate these wells.

9 We will have to deal with the situation in
10 the Bankruptcy Court. But what we have is evidence,
11 which I believe is clear despite a difference of opinion
12 among the attorneys, that there are significant
13 problems, major releases at these sites, which need to
14 be remediated, and action needs to be taken.

15 We have the Johnsons appearing in this case;
16 but as the testimony was earlier from Ms. Pruett of the
17 State Land Office, they're not the lessees on this
18 property. DC Energy is the lessee of this property.

19 So, basically, we have strangers, as we
20 pointed out from the outset of this, we have strangers
21 who are claiming an interest in this property, possibly
22 operating these wells. That still needs to be
23 determined.

24 But the testimony is clear, that there
25 are -- the conditions necessary for the issuance of the

1 compliance order as requested in the application have
2 been demonstrated and the compliance order should
3 issue. Thank you.

4 EXAMINER McMILLAN: Mr. Feuille.

5 MR. ROBERT FEUILLE: Thank you. Robert
6 Feuille speaking.

7 My focus right now is the Mexico U wells,
8 Mr. Examiner. And it's pretty clear from Dr. Oberding's
9 testimony that he was not testifying about the volume of
10 any release. He, in fact, said so. So there is no
11 evidence of a reportable release at the Mexico U wells
12 that needs any reporting or any action or is out of
13 compliance in any way.

14 The release, as you know, would have to be
15 at least five barrels. And Dr. Oberding specifically
16 said he was not here to testify about the volume of any
17 release and didn't know about the volume of any release.
18 And so I think that much -- that much is very clear.

19 Dr. Oberding testified about indications in
20 the photographs that there had been a release and his
21 indications boiled down really to a sheen on the water
22 that you could observe in the photographs. And, as I
23 said, if his testimony was that there was a sheen that
24 could be observed in the photographs, then it should be
25 observable by anybody, not just an expert. And you and

1 I -- at least I could not see the sheen.

2 The second thing he boiled down to was a
3 snow melt, a differential pattern of snow melt near the
4 two tanks, the two -- yes, the two storage tanks on the
5 Mexico U lease.

6 And it's obvious that there was no -- there
7 was no background information sufficient to determine
8 why there would be a differential snow melt in one part
9 as compared to another. There are many factors,
10 obviously, that could affect snow melt, including the
11 depth of the snow, how much snow had blown away from one
12 time to another, reflected heat from tanks.

13 You can see in the photographs themselves
14 that there is a differential snow melt around a sign, a
15 fact that Dr. Oberding didn't mention as an issue at
16 all.

17 So, you know, those two -- his testimony on
18 those two points is, frankly, not supported and not
19 really credible. So as to the Mexico U wells, I don't
20 think there's any compliance that's necessary. I think
21 the court is -- I mean the Hearing Examiner has already
22 found that the Johnsons have standing.

23 And so we would ask that as to the Mexico U
24 wells, that the relief requested be denied. As to the
25 other wells, we don't have any comment.

1 But we would like for the -- whatever orders
2 are produced from this hearing, that they would be
3 specific as to which wells -- what the findings are with
4 respect to each particular well. That's all I have at
5 this moment.

6 EXAMINER McMILLAN: Okay. Ms. Schaeffer, do
7 you want to make a comment at this time?

8 MS. SCHAEFFER: No, Your Honor. Thank you.

9 EXAMINER McMILLAN: With that in mind, case
10 15432 shall be taken under advisement. Thank you.

11 MR. ROBERT FEUILLE: This is Robert Feuille.
12 Are we excused, Mr. Examiner?

13 EXAMINER McMILLAN: Yes.

14 MR. ROBERT FEUILLE: Thank you very much.
15 We appreciate it. Thank you for letting us attend by
16 phone.

17 EXAMINER McMILLAN: Thank you.

18

19

20 (Time noted 8:35 a.m.)


21

22

23

24

25

I do hereby certify that the foregoing is
a complete record of the proceedings in
the examiner hearing of Case No. 15024
heard by me on February 4, 2016.
 , Examiner
Oil Conservation Division

1 STATE OF NEW MEXICO)
2) ss.
3 COUNTY OF BERNALILLO)
4
5
6

7 REPORTER'S CERTIFICATE

8
9 I, ELLEN H. ALLANIC, New Mexico Reporter CCR
10 No. 100, DO HEREBY CERTIFY that on Thursday, February 4,
11 2016, the proceedings in the above-captioned matter were
12 taken before me, that I did report in stenographic
13 shorthand the proceedings set forth herein, and the
14 foregoing pages are a true and correct transcription to
15 the best of my ability and control.

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

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23
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