

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:)

CASE NO. 13,025

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION THROUGH THE)
ENVIRONMENTAL BUREAU CHIEF TO REVOKE)
THE PERMIT OF CRAWFORD TREATING COMPANY)
TO OPERATE AN OIL-TREATING PLANT, LEA)
COUNTY, NEW MEXICO)

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID R. CATANACH, Hearing Examiner

RECEIVED

JUN . 5 2003

May 22nd, 2003

Oil Conservation Division

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico Oil Conservation Division, DAVID R. CATANACH, Hearing Examiner, on Thursday, May 22nd, 2003, at the New Mexico Energy, Minerals and Natural Resources Department, 1220 South Saint Francis Drive, Room 102, Santa Fe, New Mexico, Steven T. Brenner, Certified Court Reporter No. 7 for the State of New Mexico.

* * *

STEVEN T. BRENNER, CCR
(505) 989-9317

I N D E X

May 22nd, 2003
Examiner Hearing
CASE NO. 13,025

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* * *

A P P E A R A N C E S

FOR THE DIVISION:

DAVID K. BROOKS, JR.
Attorney at Law
Energy, Minerals and Natural Resources Department
Assistant General Counsel
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

* * *

1 WHEREUPON, the following proceedings were had at
2 1:00 p.m.:

3 EXAMINER CATANACH: Okay, call the hearing back
4 to order, and at this time I will call Case 13,025, which
5 is the Application of the New Mexico Oil Conservation
6 Division through the Environmental Bureau Chief to revoke
7 the permit of Crawford Treating Company to operate an oil-
8 treating plant, Lea County, New Mexico.

9 I will call for appearances in this case.

10 MR. BROOKS: Mr. Examiner, I'm David Brooks,
11 Energy, Minerals and Natural Resources Department of the
12 State of New Mexico, for the New Mexico Oil Conservation
13 Division.

14 EXAMINER CATANACH: Call for additional
15 appearances? Let the record show that there's no
16 additional appearances at this time. And --

17 MR. BROOKS: I have two witnesses.

18 EXAMINER CATANACH: Okay, let the record show
19 that one of the witnesses is testifying from the Hobbs
20 District Office of the Division via conference phone today,
21 Mr. Larry Johnson, and the other witness is present here in
22 Santa Fe.

23 Would you please both stand to be sworn in at
24 this time?

25 (Thereupon, the witnesses were sworn.)

1 MR. BROOKS: Okay, ready to proceed?

2 EXAMINER CATANACH: Yes, sir.

3 MR. BROOKS: Call Martyne Kieling.

4 Good afternoon.

5 MS. KIELING: Good afternoon.

6 MARTYNE KIELING,

7 the witness herein, after having been first duly sworn upon
8 her oath, was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BROOKS:

11 Q. Would you state your name for the record?

12 A. Martyne Kieling.

13 Q. And --

14 A. Would you like me to spell that?

15 Q. I think the reporter's already got it. Thank
16 you.

17 By whom are you employed?

18 A. The New Mexico Oil Conservation Division --

19 Q. At what --

20 A. -- the Environmental Bureau.

21 Q. At what location?

22 A. Here in Santa Fe.

23 Q. And in what capacity?

24 A. With the Environmental Bureau as an environmental
25 geologist.

1 Q. And would you generally describe the nature of
2 your duties as relates to oil-treating plants?

3 A. I permit oil-treating plants and other surface
4 waste management facilities, and I'm also currently in
5 charge of handling the closure of abandoned facilities or
6 closing facilities and cleaning up sites.

7 Q. Have you testified before the Division Examiners
8 before?

9 A. No, I have not.

10 Q. Could you briefly summarize your education and
11 work experience as an environmental geologist?

12 A. My education experience, or education, is -- my
13 bachelor's degree was from Central Washington University in
14 the State of Washington. I got my bachelor's in geology
15 there, bachelor's of science. My master's degree I
16 obtained from New Mexico State University in Las Cruces,
17 New Mexico, and that was in 19- -- Do you need dates?

18 Q. I think not.

19 A. Trying to remember dates.

20 EXAMINER CATANACH: Sure, why not. What date was
21 that, Ms. Kieling?

22 THE WITNESS: That was 1994. I received my
23 bachelor's degree in 1991 and my master's degree in 1994,
24 both in geology.

25 Then I came to work for the New Mexico

1 Environment Department, Hazardous Waste Bureau, and that
2 was in 1985. I worked for them from 1995 to 1997, when I
3 became employed with the New Mexico Oil Conservation
4 Division, with the Environmental Bureau.

5 Q. (By Mr. Brooks) Okay, does the oil-treating
6 plant that is the subject of this permit-revocation
7 proceeding come within the scope of your duties at the New
8 Mexico Oil Conservation Division?

9 A. Yes, it does.

10 MR. BROOKS: Tender the witness as an expert
11 environmentalist.

12 EXAMINER CATANACH: Ms. Kieling is so qualified.

13 Q. (By Mr. Brooks) I'll call your attention, Ms.
14 Kieling, to what has been -- Well, first of all, are you
15 familiar with the Crawford Treating Company treating plant
16 in Lea County, New Mexico?

17 A. Yes, I'm familiar with it, yes.

18 Q. Call your attention to what has been marked as
19 OCD Exhibit Number 1 and ask you to identify it.

20 A. This is the case and order authorizing Dwight
21 Crawford, doing business as Crawford Treating Company, to
22 do business, to have a treating plant, and it was issued in
23 May, on May 9th of 1986.

24 Q. And what is the order number?

25 A. Order Number R-8219.

1 Q. And it was entered in what case number?

2 A. 8880.

3 Q. Do your responsibilities in dealing with oil
4 treating plants also include maintaining files on the
5 security, bonding security for closure of the plants that
6 is furnished by the operators?

7 A. Yes, it does.

8 Q. I call your attention to what has been marked as
9 Exhibit Number 2 and ask you to identify it.

10 A. This is a card from the card file that Dorothy
11 Phillips maintains in the Oil Conservation Division
12 regarding the financial assurance for the Crawford Treating
13 Plant. This is all we have on file and all that I could
14 find. It mentions the Crawford Treating Company and the
15 surety, that they had a \$10,000 treating plant bond that
16 was approved May 19th, 1986, and was subsequently canceled
17 July 5th, 1988.

18 Q. And have you attempted to make a search in the
19 files and records of the New Mexico Oil Conservation
20 Division to see if that bond could be found?

21 A. Yes, I have, and I have not been able to find the
22 bond, or any copies.

23 Q. Okay. The location of the Crawford Treating
24 Plant is stated in Exhibit 1 to be in the northwest quarter
25 of the southwest quarter of Section 12, Township 20 South,

1 Range 38 East. Can you tell us in terms of the towns in
2 Lea County, where is that located?

3 A. It is south of Hobbs and approximately seven
4 miles to the east. It is only about a mile off of the
5 Texas state line.

6 Q. And are you familiar with that location on the
7 ground?

8 A. Yes, I am.

9 Q. And can you tell us what the -- Well, did you
10 last examiner or inspect this Crawford Treating Plant?

11 A. I inspected that facility in April of 1997.

12 Q. And what was the status of that facility at that
13 time?

14 A. At that time it appeared to be abandoned, but it
15 was five -- I believe five tanks in various states of
16 condition, and there was a tractor-trailer tank at the site
17 and evidence of leaks and spills around the tanks in the
18 soil.

19 Q. Call your attention to what's been marked as OCD
20 Exhibit Number 4, and I believe we'll have that identified
21 by another witness, but is that basically the way that site
22 looked in 1997?

23 A. Basically, yes. It hasn't changed.

24 Q. Okay. Call your attention to what has been
25 marked as OCD Exhibit Number 3 and ask you to identify it.

1 A. Exhibit 3 is a letter dated April 8th, 2003. It
2 was addressed to Dwight Crawford, doing business as
3 Crawford Treating Company, and also to the surety that had
4 issued the bond, and that was American Manufacturers Mutual
5 Insurance Company.

6 Q. Okay. Now, did we get a return receipt on that
7 letter?

8 A. From the surety we got a return receipt card that
9 they did receive it, and from the company, Crawford, we
10 received the returned envelope. That address could not
11 find, could not deliver.

12 Q. Yes, I believe the case file will reflect that
13 the notice of this hearing was sent to Mr. Crawford at this
14 address and also at another address and that both were
15 returned undeliverable.

16 Is this letter a letter to tell Mr. Crawford,
17 pursuant to Rule 711, that he needs to either do something
18 with that site or close it down?

19 A. Basically, yes, we were giving notification that
20 it needed to be cleaned up and closed pursuant to our
21 rules, Rule 711 in particular, and if not they would be
22 forfeiting, I believe, the bond, which we don't seem to
23 have, and the OCD would be closing the facility for them.

24 Q. And given the fact that Mr. Crawford apparently
25 does not receive mail at this address any further and did

1 not receive this, I think it's probably safe to assume that
2 he did not respond to this letter; is that correct?

3 A. We received no response from, I believe, the
4 insurance company, or from Dwight Crawford.

5 Q. And in your opinion as an environmentalist, Ms.
6 Kieling, does this site need to be properly closed in order
7 to protect the public health, safety and the environment
8 and the freshwater resources of the State of New Mexico?

9 A. Yes, it does. There's evidence over the years of
10 the tanks leaking or the valves being opened and the
11 material actually pouring out onto the ground. Older file
12 photos had shown fresher material on the surface of the
13 ground in 1995. Groundwater depth at this location is
14 probably in the neighborhood of 20 feet, if not less.

15 MR. BROOKS: Okay. As I said, I'm going to have
16 Exhibit 4 identified by another witness, so at this time
17 I'll tender Exhibits 1 through 3.

18 EXAMINER CATANACH: Exhibits 1 through 3 will be
19 admitted.

20 MR. BROOKS: Pass the witness.

21 EXAMINATION

22 BY EXAMINER CATANACH:

23 Q. Ms. Kieling, this was originally permitted as an
24 oil recovery site; is that correct?

25 A. That's correct, a reclamation facility.

1 Q. To your knowledge, do you know if there's a well
2 associated with this site, a disposal well?

3 A. Not to my knowledge. I do not recall a disposal
4 well at this location.

5 Q. Okay. And you inspected this site back in April
6 of 1997, correct?

7 A. That's correct.

8 Q. At the time that you inspected in 1997, what was
9 the condition? Was it abandoned at that time?

10 A. It was abandoned at that time. It looked very
11 similar to what it does here, except for I believe -- I
12 don't recall the one tank being on its side. I think it
13 was vertical at that time.

14 Q. So the conditions were similar as to the -- as
15 you recall, as to the leaks and such on this site?

16 A. That's correct. I do notice one thing, however,
17 from these photos. There is a fence, at least fenceposts,
18 I can't quite see if there's fencing between them. It
19 looks like someone has tried to fence off the facility,
20 maybe to protect cattle from getting into the mess. And
21 when I was there in 1997 there was no fence, and evidence
22 of numerous cattle tracks through the oily soil.

23 Q. Ms. Kieling, in the absence of a bond from this
24 operator and in the absence of us being able to contact him
25 and have him perform the work to clean up this site, will

1 the Oil Conservation Division utilize its own funds to
2 clean this site up?

3 A. That is usually what we do, we use the
4 reclamation fund to clean these sites up, and then try to
5 follow some recompense at a later date.

6 Q. Do you have any estimates on what this might cost
7 to clean up?

8 A. Hm. At the present rate things have been going,
9 probably -- It's very hard to tell just from the surface.
10 I usually phase these projects in. Surface removal of the
11 tanks and some of the surface material might run on the
12 order of \$80,000. But if we find this contamination has
13 migrated vertically we would have to dig deeper, which
14 would include more volume of waste material or installing
15 monitor wells, which at this case I would advise installing
16 monitor wells, and that would increase our costs. So maybe
17 \$200,000 to \$300,000 total. That's a wild guess.

18 Q. At this point you don't know if there's been any
19 water contamination at this site?

20 A. I do not know. There's no wells at this time.

21 Q. If there indeed has been water contamination, do
22 you also attempt to remediate that?

23 A. Yes, we try to either remediate or monitor how
24 the plume has moved and determine if there's any need to
25 either remediate or just watch and see where it goes and

1 who the closest receptors are.

2 Q. Okay. Just curious. If this was discovered in
3 1997, why does it generally take the Division so long to
4 get this to where we are today? Do you know?

5 A. I believe the answer would be as far as
6 priorities. We had many current sites when I came on board
7 in 1997, current and active facilities that required re-
8 permitting and increasing their financial assurance to
9 protect the State with the current facilities that we had
10 operating.

11 Further down on the list was to start attacking
12 the abandoned sites and begin remediation of those, or
13 finding responsible parties to aid in the cleanup.

14 EXAMINER CATANACH: Okay, I have nothing further
15 of this witness, Mr. Brooks.

16 MR. BROOKS: Very good. We'll call Mr. Larry
17 Johnson.

18 MR. JOHNSON: Yes.

19 LARRY JOHNSON (Present by telephone),
20 the witness herein, after having been first duly sworn upon
21 his oath, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q. Mr. Johnson, do you have in front of you the
25 photographs that are marked OCD Exhibit Number 4?

1 A. Yes, sir, I do.

2 Q. And these photographs bear a date, 5-20 of '03 on
3 them, correct?

4 A. That is correct.

5 Q. Did you take these photographs?

6 A. Yes, sir, I did.

7 Q. And did you take them on or about the 20th day of
8 May, 2003?

9 A. I took them on that date, yes, sir.

10 Q. And was that at a location in the northwest
11 quarter of the southwest quarter of Section 12, Township 20
12 South, Range 38 East --

13 A. Yes, sir, that is correct.

14 Q. -- Lea County, New Mexico?

15 A. That is correct.

16 Q. Now Mr. Johnson -- I'm sorry, I left out the
17 preliminaries. State your name, please, for the record.

18 A. My name is Larry Johnson. I'm with District 1,
19 Energy Minerals and Natural Resources Department.

20 Q. Oil Conservation Division, correct?

21 A. Oil Conservation Commission, yes, sir.

22 Q. And in what capacity are you employed?

23 A. As an environmental engineering specialist.

24 Q. And have you ever testified before a Division
25 Examiner previously?

1 A. No, sir, I have not.

2 Q. Would you very briefly state your education and
3 work experience?

4 A. I spent 25 years with Texaco, engineering, and
5 I've spent a couple years with the Department of Energy at
6 the WIPP site, and not quite two years ago I came to work
7 for the Oil Conservation Division.

8 MR. BROOKS: We'll tender Mr. Johnson as an
9 expert environmentalist.

10 EXAMINER CATANACH: Mr. Johnson is so qualified.

11 Q. (By Examiner Brooks) Looking at OCD Exhibit
12 Number 4, do these photographs fairly and accurately
13 reflect the condition of the Crawford Treating Company
14 plant on May the 20th of 2003?

15 A. Yes, sir, they do.

16 Q. And do you concur with Ms. Kieling's opinion in
17 reference to the need for this site to be remediated?

18 A. Yes, sir, I certainly do.

19 MR. BROOKS: Tender Exhibit 4.

20 EXAMINER CATANACH: Exhibit 4 will be admitted.

21 MR. BROOKS: No further questions.

22 EXAMINATION

23 BY EXAMINER CATANACH:

24 Q. Mr. Johnson, did you examine the tanks? Are they
25 full, or do you have any idea?

1 A. No, sir, I did not. As Ms. Kieling pointed out,
2 the area was fenced, and it has just a very small fencing
3 area around it, but I did not disturb that or did not go
4 inside the fenced area.

5 Q. Okay. On Exhibit Number 4, the bottom
6 photograph, you can tell from that photograph that there
7 may be some standing fluid on that location. Do you know
8 what that is?

9 A. That standing fluid is rainwater. We actually
10 had a little moisture on the morning of the 20th.

11 Q. Unusual for that time of year?

12 A. Yes, sir, it is.

13 EXAMINER CATANACH: Okay, so that's rainwater. I
14 believe that's all I have of Mr. Johnson.

15 MR. BROOKS: Nothing further from this witness.

16 EXAMINER CATANACH: Okay. Anything further in
17 this case, Mr. Brooks?

18 MR. BROOKS: Well, just by way of summation, Mr.
19 Catanach, because this is not a well-plugging case that
20 you're so familiar with, I'm sure, as I understand Rule 711
21 -- and I'm sure you can study it for yourself, but as I
22 understand Rule 711, the analog to Rule 201 for treating
23 plants, the requirement is that if the plant has been
24 abandoned for a period of six months, then we are required
25 to give them a 30-day notice to properly close it, and if

1 they do not do so, then their bond is forfeited and we're
2 authorized to proceed to close it. And that's what we're
3 asking to do in this case. We, I think, have shown six
4 years here. It's a little bit more than six months.

5 EXAMINER CATANACH: Okay. But from the data
6 you've examined, there is not a bond currently in effect
7 for this site; is that correct?

8 MR. BROOKS: Well, I haven't examined any data.
9 That should be addressed to Ms. Kieling.

10 EXAMINER CATANACH: Okay. Ms. Kieling, is that
11 your understanding, that there is no bond?

12 MS. KIELING: There is no bond.

13 EXAMINER CATANACH: All right. Mr. Brooks, since
14 this is the first case of this nature that I've seen, would
15 you please be so kind as to attempt to draft an order in
16 this case?

17 MR. BROOKS: I will be happy to do so for the
18 accommodation of the Division Examiner.

19 EXAMINER CATANACH: Thank you, sir. There being
20 nothing further in this case, Case 13,025 will be taken
21 under advisement.

22 MS. MCGRAW: There's a discrepancy between the
23 locations listed on the docket.

24 EXAMINER CATANACH: In which case?

25 MS. MCGRAW: The one you just heard.

1 EXAMINER CATANACH: There is? What's the
2 discrepancy?

3 MS. MCGRAW: On this it says it's in the
4 southwest of the northwest, and on the docket it says it's
5 in the northwest.

6 MR. BROOKS: Is that on the previous case?

7 EXAMINER CATANACH: Yeah.

8 MS. KIELING: Yeah. It should be as in the old
9 order.

10 MR. BROOKS: Northwest of the southwest?

11 MS. KIELING: Yes.

12 EXAMINER CATANACH: Yeah, the ad says northwest
13 northwest.

14 MR. BROOKS: Is there a discrepancy between the
15 advertisement and the testimony?

16 EXAMINER CATANACH: Northwest of the southwest.
17 Yeah, well there's a discrepancy between the original order
18 and the ad.

19 MR. BROOKS: Okay, that doubtless is my error,
20 Mr. Examiner. I would request permission to reopen and
21 readvertise and have the testimony that was presented today
22 incorporated by reference.

23 EXAMINER CATANACH: Okay, do we need to reopen at
24 this point? I guess we do.

25 MR. BROOKS: I suppose we do, because we need to

1 resubmit it on the new advertisement. I believe the record
2 will reflect that OCD Exhibit Number 3, which was the
3 letter that was attempted to be sent to Mr. Crawford,
4 contains the correct description. So we only need to re-do
5 the published notice.

6 EXAMINER CATANACH: Okay, so let's reopen this
7 and readvertise it for the next available docket, which I
8 don't know which one that would be at this point.

9 MR. BROOKS: I guess that would be July the 10th.

10 EXAMINER CATANACH: Okay. Thank you, Kate.

11 MR. BROOKS: Thank you.

12 (Thereupon, these proceedings were concluded at

13 1:25 p.m.)

14 * * *

15
16 I do hereby certify that the foregoing is
17 a complete record of the proceedings in
18 the Examiner hearing of Case No. 13025,
19 heard by me on May 22 192003.
20 David R. Catnach, Examiner
21 Oil Conservation Division
22
23
24

CERTIFICATE OF REPORTER

STATE OF NEW MEXICO)
) ss.
COUNTY OF SANTA FE)

I, Steven T. Brenner, Certified Court Reporter and Notary Public, HEREBY CERTIFY that the foregoing transcript of proceedings before the Oil Conservation Division was reported by me; that I transcribed my notes; and that the foregoing is a true and accurate record of the proceedings.

I FURTHER CERTIFY that I am not a relative or employee of any of the parties or attorneys involved in this matter and that I have no personal interest in the final disposition of this matter.

WITNESS MY HAND AND SEAL May 26th, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006