

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. 13,026

APPLICATION OF THE NEW MEXICO OIL)
CONSERVATION DIVISION THROUGH THE)
ENVIRONMENTAL BUREAU CHIEF TO REVOKE)
THE PERMIT OF AM-BETT OIL COMPANY, INC.,)
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

May 22nd, 2003

JUN . 5 2003

Santa Fe, New Mexico

Oil Conservation Division

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. 13,026

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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 1:26 p.m.:

3
4 EXAMINER CATANACH: Okay, at this time we'll call
5 Case 13,026, the Application of the New Mexico Oil
6 Conservation Division through the Environmental Bureau
7 Chief to revoke the permit of Am-Bett Oil Company, Inc., to
8 operate an oil-treating plant, Lea County, New Mexico.

9 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, Assistant General Counsel, appearing
13 for the New Mexico Oil Conservation Division.

14 EXAMINER CATANACH: Call for additional
15 appearances?

16 Let the record show there are no additional
17 appearances in this case.

18 MR. BROOKS: I have two witnesses. These are the
19 same witnesses who testified in Case Number 13,025
20 immediately preceding.

21 EXAMINER CATANACH: Okay, may I remind the
22 witnesses, you're still sworn and under oath?

23 And you may proceed.

24 MR. BROOKS: Call Martyne Kieling.

25 MS. KIELING: Yes.

1 MARTYNE KIELING,

2 the witness herein, having been previously duly sworn upon
3 her oath, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. BROOKS:

6 Q. And Ms. Kieling, your credentials were made a
7 matter of record and accepted in the immediately preceding
8 case, Number 13,025, correct?

9 A. That's correct.

10 Q. Does the Am-Bett Oil Company treating plant come
11 within the scope of your responsibilities for oil-treating
12 plants?

13 A. Yes, it does. It is another oil reclamation
14 facility, oil-treating plant.

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

17 A. Exhibit Number 1 is the original case and order
18 authorizing Am-Bett Oil Company, Incorporated, to operate a
19 treating plant. It was issued April 12th, 1977.

20 Q. And what is that order number, for the record?

21 A. Order Number R-5411.

22 Q. In Case Number -- ?

23 A. -- Case Number 5883.

24 Q. What is the legal description contained in that
25 order for the location of the Am-Bett Oil Treatment Plant?

1 A. The legal description is Lot 6 of Section 3,
2 Township 21 South, Range 37 East --

3 Q. Now, have you --

4 A. -- Lea County, New Mexico.

5 Q. Okay. Well, first of all, where is that in
6 reference to Hobbs or Lovington?

7 A. It's actually approximately five miles north of
8 Eunice, New Mexico.

9 Q. Okay. Have you attempted to locate this treating
10 plant on the ground?

11 A. Yes, I have.

12 Q. Have you been able to do so?

13 A. To the best of my ability.

14 Q. I'll call your attention to what has been marked
15 as OCD Exhibit Number 5. Let me make sure I'm pursuing the
16 correct line of examination. Is this the treating plant
17 that is not located where it is permitted to be located?

18 A. In all accounts, it looks to be that way. The
19 legal description on the original case, 5883, is for Lot 6.
20 That location corresponds to Unit Letter F. Case Exhibit
21 Number -- Excuse me, Exhibit Number 5 here has a legal
22 location next to the treating plant tanks circled as Unit
23 Letter F and the correct section, quarter quarters,
24 township and range.

25 However, on this ground this location and its

1 proximity to the carbon plant that's sketched here places
2 it more accurately, I believe, in Unit Letter N, and not F,
3 from what we found on the ground.

4 Q. Now, the Division has not had a surveyor attempt
5 to locate this place on the ground out there?

6 A. No, in 1997 we attempted to find something in
7 Unit Letter F and/or Lot 6, and there was nothing in that
8 area. But we did find evidence of some pits and material
9 in Unit Letter N.

10 Q. Now is -- Exhibit Number 5, wa that prepared by
11 you?

12 A. No, I'm not sure who the author of this is. It
13 was prepared -- the date on it has October 6th, 1978. It
14 was -- Well, and it was posted here on January 31st of
15 1997.

16 EXAMINER CATANACH: 1979.

17 THE WITNESS: 1979, excuse me.

18 Q. (By Mr. Brooks) That's right, you weren't around
19 at that time?

20 A. I was not around at that time. I have seen other
21 sketches in the file, the date -- similar time frame,
22 probably from a district -- Hobbs District inspector.
23 Again, there's no signature, so I don't know exactly who
24 prepared this.

25 Q. But you have been out there on the ground to

1 these installations that are depicted on here?

2 A. Yes.

3 Q. And are they -- In fact, when you were there,
4 were those things that are depicted on here on the ground
5 in Unit N?

6 A. No, the tanks are not there, the -- You also
7 note, please note, the top of the map is south. It took
8 some figuring out, but the top of the map is south. So the
9 northern pit, I did not find evidence of that one.
10 However, I did not look in that general direction.

11 Q. Is that the 30-by-30 pit?

12 A. Well, they both say 30 by 30. It's the one that
13 says approximately four feet deep --

14 Q. Okay.

15 A. -- the one nearer the tanks. I did not see
16 evidence of that one, but I did not look that direction
17 from that pumping well. However, I did find a pit that was
18 in the area of the 30-by-30-foot pit that's three feet
19 deep, the southern one, that's closer to the carbon black
20 plant.

21 Q. Did you find any evidence of the tank battery?

22 A. No. And again, I did not look in that direction.
23 But there is a letter in the file that says that they had
24 removed those tanks at one point, that they had begun
25 remediation of the site, removed the tanks and were

1 planning to push the pits in. This is the Am-Bett Company,
2 had begun closure on the facility.

3 Q. Now, when were you out there?

4 A. I was out there in 1997 and again in 2001, July.

5 Q. And was there any difference in what you found on
6 the two occasions?

7 A. No.

8 Q. And the area in Unit Letter F where this plant
9 was supposed to be, you didn't find anything there,
10 correct?

11 A. I didn't find anything in that location.

12 Q. And so based on your examination of all the
13 material in the file and what is on the ground out there in
14 this section, do you believe that the things that you did
15 find, that you just described to us, were most probably the
16 remnants of the Am-Bett Oil, Inc., treating plant?

17 A. That's my gut feeling at this time.

18 Q. And if that be so, do you believe that there is
19 some remediation activity that needs to be done for the
20 protection of the environment?

21 A. At least in reference to the one 30-by-30 pit
22 that I did locate, that's right next to the road, there's
23 an outfall pipe, and the pit has been pushed in. You can
24 see from the lower photograph that there's track marks.

25 Q. And when you're talking about the lower

1 photograph, you're talking about on OCD Exhibit Number 4?

2 A. That's correct, Exhibit 4. There is evidence of
3 one, possibly two, pit areas that were pushed in at this
4 location. Not remediated, nothing was removed. Just
5 pushed in. This is on the edge of Monument Draw.
6 Groundwater at this location is probably on the order of 35
7 feet.

8 Q. And OCD Exhibit Number 4 -- again, I'll have it
9 identified by Mr. Johnson, but do the pictures in OCD
10 Exhibit Number 4 fairly reflect the way things looked when
11 you were out there in 1997?

12 A. Yes, the second photo on Exhibit 4 was taken by
13 myself on April 2nd, 1997.

14 Q. Okay. And the top photo, then, was taken by Mr.
15 Johnson?

16 A. Yes.

17 Q. Okay. Call your attention to what's been marked
18 as OCD Exhibit Number 3 and ask you to identify it.

19 A. Exhibit Number 3 is a letter that was sent out on
20 April 8th, 2003, to Am-Bett Oil Company, Incorporated, and
21 to Ohio Casualty Insurance Company, the surety that held
22 the bond for this facility.

23 Q. And that was returned unanswered?

24 A. Yes, the letter that went to Am-Bett Oil Company,
25 the entire letter came back return receipt, unable to

1 forward, bad address.

2 Q. I'm sorry, I meant to say it was returned
3 undeliverable?

4 A. Undeliverable, yes.

5 The Ohio Casualty Insurance Company did return
6 the card. They received the letter and returned the return
7 receipt card.

8 Q. And have you received any response with regard to
9 this letter?

10 A. I have not received any response from Am-Bett Oil
11 Treating Company. I believe we have received one, possibly
12 two letters from a representative of Ohio Casualty
13 Insurance Company.

14 Q. And do you recall the tenor of those letters,
15 what their position was?

16 A. They could not find a copy of the bond. I
17 forwarded them a photocopy of the bond and some other
18 information from the file -- the entire file, actually --
19 for their reference, and they said they were checking into
20 it on their part.

21 Q. Okay. But they didn't give you any means to
22 contact Am-Bett?

23 A. No.

24 MR. BROOKS: Very good. We'll tender OCD
25 Exhibits 1 through 3 and 5.

1 EXAMINER CATANACH: Exhibits 1 through 3 and 5
2 will be admitted.

3 MR. BROOKS: Pass the witness.

4 EXAMINATION

5 BY EXAMINER CATANACH:

6 Q. Ms. Kieling, as far as you know, the bond that
7 you've shown as Exhibit Number 2, is that still in effect,
8 as far as you know?

9 A. As far as OCD is concerned, I believe this bond
10 is still in effect, and we should be able to collect on --
11 I believe it's \$10,000. There's nothing in the file that
12 led me to believe that we had canceled.

13 Q. Now, you did make an inspection of where this
14 plant was supposed to be located; is that correct?

15 A. Yeah, in 1997.

16 Q. And you did not find any evidence that it had
17 been there at all?

18 A. No evidence.

19 Q. And what led you to this area? Was it just an
20 inspection of the general area that led you to find this
21 site?

22 A. If I remember right, it was myself, Wayne Price
23 and Roger Anderson in 1997, and we were driving around
24 trying to locate the site. Roger was going from memory,
25 because he had been there in the late 1980s, when there

1 were tanks to sample. And we just kind of followed his
2 instinct as to where he remembered.

3 I have also spoken with a previous OCD Hobbs
4 employee, Eddie Seay, who had the environmental position
5 that Larry Johnson now holds, and he recalls it being along
6 this bluff area, behind the carbon black plant, also, and
7 not up in Unit Letter F.

8 Q. Now, you did not find at the site anything that
9 would identify or would have Am-Bett's name on it at all,
10 did you?

11 A. No, I did not, and there is a pumping well -- On
12 the old map it shows it as the Shell Number 8, and our
13 other witness might be able to clarify who's operating that
14 well now. There is a possibility that that pit was part of
15 that well's operation. I don't really know for sure. It's
16 more investigation that needs to be done on OCD's part to
17 determine where the waste material, if there is anything
18 there -- the location.

19 Q. Do you know who operates that well?

20 A. Larry would know.

21 Q. Okay, I'll ask Larry later.

22 A. I don't recall.

23 Q. So how do I know that we're going to clean up the
24 right site? How do I know that we're not going to trespass
25 on somebody's property and start cleaning up something that

1 we may not have the right to do?

2 A. Well, we will do every effort. I believe Roger
3 has suggested that if -- one of the first steps might be to
4 contact the operator of this well and notify them of the
5 location of this pit next to the well and have them
6 determine if it's theirs or if it needs to be cleaned up by
7 them.

8 And we will also probably do some geophysical
9 work in Unit Letter F to see if there is anything out there
10 like buried pits or something.

11 Q. Is that basically all that we're talking about at
12 this point, is just the one pit that needs to be cleaned?

13 A. Right now the one pit. There are some
14 asphaltines at the top of that bluff where the pipe is
15 coming out, and that's all that I really noticed. Again, I
16 didn't walk to the north of that pumping well, to the
17 northeast, to see if I could locate tanks or the other pit.
18 Unfortunately, I didn't have this map in 1997 to go by. It
19 was found at a later date from the Hobbs file.

20 EXAMINER CATANACH: Hm. Okay, I believe that's
21 all I have for Ms. Kieling at this point.

22 You may proceed, Mr. Brooks.

23 FURTHER EXAMINATION

24 BY MR. BROOKS:

25 Q. Very good. Ms. Kieling, I have one other

1 question for you. OCD Exhibit Number 5, I believe you
2 stated this, but this is something that was a part of the
3 files and records of the New Mexico Oil Conservation
4 Division?

5 A. That's correct.

6 MR. BROOKS: Okay, nothing further of this
7 witness.

8 EXAMINER CATANACH: This witness may be excused.

9 MR. BROOKS: Call Larry Johnson.

10 MR. JOHNSON: Yes.

11 LARRY JOHNSON (Present by telephone),
12 the witness herein, having been previously duly sworn upon
13 his oath, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BROOKS:

16 Q. Mr. Johnson, you testified in the immediately
17 preceding case, Number 13,025, and your credentials were
18 made a matter of record and accepted at that time, correct?

19 A. That is correct.

20 Q. Are you familiar with the site that has been
21 discussed as being, presumably, the Am-Bett Oil Company
22 treating plant site?

23 A. Yes, sir, I am.

24 Q. And OCD Exhibit Number 4, does the top
25 photograph on that exhibit -- was that taken by you?

1 A. Yes, that's correct.

2 Q. Was it taken on or about the date reflected
3 thereon, which is May the 20th of 2003?

4 A. Yes, sir.

5 Q. Does it fairly and accurately represent the way
6 that site looks at this time?

7 A. Yes, it does.

8 Q. Did you examine the pit that Ms. Kieling talked
9 about?

10 A. Yes, I did.

11 Q. And do you concur with her testimony concerning
12 the need for remediation?

13 A. Yes, sir, I do.

14 Q. Now, some question has arisen about the pumping
15 well shown on OCD Exhibit Number 5 that's identified
16 thereon as the Shell Number 8. Can you identify that well
17 for Mr. Catanach?

18 A. Yes, it is a -- now Apache Oil has taken over
19 that entire area --

20 Q. And --

21 A. -- they've drilled several new wells in the area.

22 Q. -- do you know what the well number is on that
23 well?

24 A. No, sir, I did not identify Well Number 8. I
25 identified Well Number 6 to the due south, and so I don't

1 know. There are several plugged wells. What Apache has
2 done is, they have redrilled the existing wells, plugged
3 the old ones and redrilled. The Well Number 6 is an older
4 well that's still in progress.

5 Q. But that was not, in your opinion, at the
6 location where the Well Number 8 is identified here?

7 A. No, sir, it's not.

8 Q. And you were not able to locate either a well or
9 a plugged marker at that -- P-and-A marker at that
10 location?

11 A. No, sir. The only thing I could find was Well
12 Number 6, which would sort of fit this drawing.

13 Q. Okay. Well, let me clarify a little bit. When
14 you say "sort of fit this drawing", Well Number 6 is not --
15 There's not a Well Number 6 shown on this drawing, correct?

16 A. No, sir. This is Well Number 8 that is shown on
17 the drawing. To put it in perspective with how the drawing
18 is set up, I'm wondering if they mislabeled the Well Number
19 6.

20 Q. So you believe that Well Number 6 is actually --
21 Apache's Well Number 6 is actually located at the location
22 where the Shell Number 8 is shown on this map?

23 A. It would fit much better, yes.

24 Q. And do you have the actual name of that well?

25 A. I have -- The well sign was quite faded. I took

1 a photograph of it to try to make it out, and I don't know
2 -- I need to reinvestigate and find out for sure what that
3 well sign indicates. It's a very, very old sign.

4 MR. BROOKS: We tender OCD Exhibit Number 4.

5 EXAMINER CATANACH: Exhibit Number 4 will be
6 admitted.

7 MR. BROOKS: Pass the witness.

8 EXAMINATION

9 BY EXAMINER CATANACH:

10 Q. Mr. Johnson, you don't have any personal
11 historical knowledge about whether or not this is the
12 correct site, do you?

13 A. No, sir, I do not.

14 Q. Okay. Do you believe that this is the correct
15 site?

16 A. By the indication of the drawings and the
17 recollection of some of the individuals, this appears to be
18 the location.

19 Q. Okay. And I guess basically -- this site will
20 have to be -- the pit will have to be redug and tested for
21 contamination, I assume?

22 A. Yes, it would require delineation.

23 Q. Okay. That's the only thing on this site that
24 needs work, is just the one pit?

25 A. So far as I can tell.

1 Q. At this point?

2 A. At this point, yes. I was down there on the
3 evening of the 19th, and it was 103 degrees and blowing
4 rather badly, so I attempted the next morning after the
5 rain shower to -- that's the reason you have two different
6 sets of pictures or two different dates, because I was down
7 there twice.

8 Q. Okay.

9 A. And we were trying to establish and trying to
10 find individuals who have prior knowledge of this location.

11 EXAMINER CATANACH: I see. Okay, that's all I
12 have of this witness.

13 MR. BROOKS: Okay, the Division has nothing
14 further. Did you wish to examine Ms. Kieling further?

15 EXAMINER CATANACH: No, but I'm a little
16 uncomfortable with this case. I think what I'm going to
17 do, Mr. Brooks, is I'm going to continue this case and ask
18 Ms. Kieling and the Division to try and verify some -- or
19 try and gather some more information and try and come up
20 with some more definite conclusions on whether this site is
21 the correct site or not.

22 I don't know if there's -- You know, one
23 suggestion would be to contact Apache, which you said you
24 might do. They may be able to tell you if that's their pit
25 or not. Certainly if that's their pit, we don't want to go

1 clean it up for them. But I think it's probably advisable
2 to try and find out in a more definite manner whether or
3 not this is the right site.

4 So I would, you know, venture -- or I would
5 suggest that this case be continued for four weeks and see
6 if the Division can obtain some additional data.

7 MR. BROOKS: Very good. Then I understand this
8 case is continued until the June 19th --

9 EXAMINER CATANACH: June 19th.

10 MR. BROOKS: -- Examiner Hearing?

11 EXAMINER CATANACH: Correct, okay.

12 MR. BROOKS: Thank you.

13 (Thereupon, these proceedings were concluded at
14 1:46 p.m.)

15 * * *

16
17 I do hereby certify that the foregoing is
18 a complete record of the proceedings in
19 the Examiner hearing of Case No. 13026,
20 heard by me on May 22, 192003.
21 David L. Catnach, Examiner
22 Oil Conservation Division
23
24
25

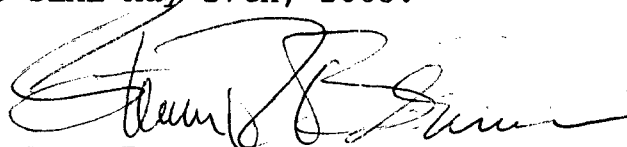
CERTIFICATE OF REPORTER

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 27th, 2003.



STEVEN T. BRENNER
CCR No. 7

My commission expires: October 16th, 2006