

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

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST JACKIE BREWER
D/b/a SANDLOT ENERGY

CASE NO. 14074

ORIGINAL

MARCH 20, 2008

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Santa Fe, New Mexico

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LEGAL ADVISOR: David Brooks
ALSO PRESENT: Terry Warnell

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WITNESSES: Tim Gum
Mike Bratcher
Daniel Sanchez
Jackie Brewer

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1 HEARING EXAMINER EZEANYIM: Now, on Page 1, we call
2 Case No. 14074. This is an application of the New Mexico Oil
3 Conservation Division for a compliance order against Jackie
4 Brewer, d.b.a. Sandlot Energy. Call for appearances.

5 MR. SWAZO: Sonny Swazo on behalf of the New Mexico
6 Oil Conservation Division.

7 MR. LARSON: Good morning, Mr. Hearing Examiner, Gary
8 Larson for Jackie Brewer, d.b.a. Sandlot Energy.

9 HEARING EXAMINER EZEANYIM: Do any of you have any
10 witnesses?

11 MR. SWAZO: Mr. Hearing Examiner, I have three
12 witnesses.

13 HEARING EXAMINER EZEANYIM: Do you have a witness?

14 MR. LARSON: I have one witness.

15 HEARING EXAMINER EZEANYIM: Any other appearances?

16 MR. SWAZO: Sorry.

17 HEARING EXAMINER EZEANYIM: Okay. May all the
18 witnesses stand up to be sworn, please?

19 MR. BROOKS: We will ask the witnesses to state their
20 names for the record, please.

21 HEARING EXAMINER EZEANYIM: Each stand, and
22 individually state your names, please.

23 THE WITNESS: Jackie Brewer. What was the question,
24 again?

25 MR. BROOKS: To state your name.

1 THE WITNESS: Tim Gum.

2 THE WITNESS: Daniel Sanchez.

3 THE WITNESS: Mike Bratcher.

4 MR. SWAZO: Mr. Hearing Examiner, as a preliminary
5 matter, I intended to -- I planned to present some slides of
6 pictures that were taken at the inspection, and I realize that
7 it kind of puts us in an awkward position as far as where
8 Respondent should sit, so I'm not sure exactly --

9 HEARING EXAMINER EZEANYIM: Let me do this -- first
10 of all, let me ask, do you have any opening statements?

11 MR. SWAZO: At this time, I would waive my opening
12 statement. I don't have an opening statement about the case,
13 but I'd like to talk about what we're requesting in this case.

14 HEARING EXAMINER EZEANYIM: Okay. You will have an
15 opportunity to do that. Do you have an opening statement?

16 MR. LARSON: I will have a short one after Mr. Swazo.

17 HEARING EXAMINER EZEANYIM: Okay. So you may
18 proceed.

19 MR. SWAZO: Okay. Well, in this case, the OCD has
20 had a long history with the operator and has tried for a long
21 time to get the operator to come into compliance with
22 remediation --

23 HEARING EXAMINER EZEANYIM: Who is the operator? You
24 need to make sure we know who the operator is. Who is the
25 operator, for the record?

1 MR. SWAZO: Jackie Brewer, d.b.a. Sandlot Energy.

2 HEARING EXAMINER EZEANYIM: Okay. So when you
3 mention "the operator," that is what you mean?

4 MR. SWAZO: Yes, sir. Yes, sir. In this case, what
5 we are asking -- we are asking for an order requiring the
6 operator to remediate the releases at the subject wells by a
7 date certain. And the date that we are asking for is 60 days,
8 which would be May 31st.

9 That would entail filing a C-141 Form for each
10 release at each subject well, filing a remediation plan, taking
11 samples, having the samples analyzed, and having the analyses
12 submitted to the Artesia OCD office. That would then determine
13 what type of remediation plan -- that would determine the
14 extent of remediation plan and what would be required. And,
15 ultimately, we are asking that the operator remediate the site
16 in accord with OCD rules, regulations, and requirements by the
17 set date.

18 We are also asking -- we are also asking that
19 operator be required to inspect all of its wells for releases.
20 And if releases are found, file the appropriate paperwork with
21 the OCD district office, and remediate the site. We are asking
22 that operator -- we are asking that a known and willful
23 violation -- that operator be found in violation.

24 Let me go ahead and rephrase this. We are asking for
25 you to determine that the operator has knowingly and willfully

1 violated Rule 116. We are asking you to assess civil penalties
2 for operator for its known and willful violations of Rule 116.
3 As I stated earlier, the OCD's history with operator goes back
4 a long time with regard to getting the operator to clean up the
5 releases. The OCD has sent letters to operator. The OCD has
6 spoken with operator. And the OCD has had an agreement with
7 operator to clean up the sites, but the sites still remain
8 polluted and in non-compliance with Rule 116 and OCD
9 remediation guidelines.

10 Now, all those OCD records show that OCD has advised
11 operator of pollution issues as far back as September 11, 2001.
12 We are seeking an amount that penalizes operator but does not
13 put him out of business. So we are asking that the -- we are
14 asking that you impose a civil penalty of \$48,000. And the
15 \$48,000 is \$1,000 each month since April 4, 2004, when a notice
16 of violation was sent to operator notifying him of
17 contamination issues.

18 We are also asking you to order that if operator
19 fails to remediate the releases by a set date, that operator
20 plug his wells -- plug the wells. And if operator fails to
21 plug the wells, then authorize the OCD to plug the wells, and
22 forfeit the applicable financial assurance.

23 HEARING EXAMINER EZEANYIM: Okay.

24 MR. LARSON: Mr. Hearing Examiner, there's no dispute
25 that Mr. Brewer has had some minimal releases at the sites that

1 are indicated in the application. We will establish that when
2 he discovered the releases, he did land-farming on site to the
3 extent that if this reclamation is not sufficient to the
4 Division's satisfaction, Mr. Brewer will certainly do further
5 remediation.

6 It is our contention that he reasonably relied on
7 representation of an inspector in the District II office
8 regarding notification and site remediation. And, therefore,
9 there's been no intention or willful violation of Rule 116.
10 And, consequently, we don't think penalties are warranted in
11 this situation. We certainly don't think ordering plugging
12 would be warranted. OK

13 HEARING EXAMINER EZEANYIM: Okay. Mr. Swazo?

14 MR. SWAZO: With that, I'd like to begin, but if the
15 parties are willing to proceed in the manner that we're
16 currently positioned at -- I'm not sure --

17 MR. LARSON: Are you going to have your witnesses up
18 there?

19 MR. SWAZO: Yes.

20 MR. LARSON: I'm fine.

21 MR. SWAZO: Okay. The first witness I'd like to call
22 is Tim Gum. Please bear with me. I have a cold, and if you
23 need me to speak up or repeat a word, let me know.

24 HEARING EXAMINER EZEANYIM: Take your time.

25 MR. SWAZO: I'll try not to cough too much.

1 TIM W. GUM
2 after having been first duly sworn under oath,
3 was questioned and testified as follows:

4 EXAMINATION

5 BY MR. SWAZO:

6 Q. Would you please state your name for the record.

7 A. Tim W. Gum.

8 Q. And Mr. Gum, with whom are you employed?

9 A. The State of New Mexico Oil Conservation
10 Division.

11 Q. And what is your current title?

12 A. District Supervisor.

13 Q. And how long have you held that position?

14 A. Approximately 14 years.

15 Q. And what are your duties?

16 A. Mainly my duties are to manage the District II
17 office in Artesia, to see that the oil and gas industry
18 operators comply with the rules, regulations, and statutes.

19 Q. Does Jackie Brewer -- does the operator in this
20 case, Jackie Brewer, d.b.a. Sandlot Energy, does he operate
21 wells within your district?

22 A. Yes, he does.

23 Q. And the wells which are the subject of this
24 compliance action, are those wells within your district?

25 A. Yes.

1 Q. Has your district had compliance-related issues
2 with the operator that involves leaks and spills?

3 A. That's correct.

4 Q. Does your district have current
5 compliance-related issues that involves leaks and spills?

6 A. That would be yes.

7 Q. And what has OCD done to obtain operator's
8 compliance?

9 A. We've had contact with Mr. Brewer, both verbally
10 and written, and, also I've had meetings with Jackie.

11 Q. Have you personally had discussions with
12 Mr. Brewer about the need for him to come into compliance? And
13 have you had conversations -- have you personally had
14 conversations with Mr. Brewer about his need to remediate the
15 pollution at his sites?

16 A. Yes, I have.

17 Q. Do you recall the exact dates of your
18 conversations?

19 A. As I recall, the last meeting that we had
20 together was on January 10th, of 2005.

21 Q. So you had conversations prior to January 10th,
22 2005?

23 A. Yes, but I do not recall the specific dates.

24 Q. Okay. And what was the purpose of the
25 January 10th, 2005, meetings?

1 A. Basically, it was to give Mr. Brewer notice that
2 the OCD had come to the conclusion that we felt that he had
3 been given ample opportunity to bring his compliance issues to
4 good statute. And we do not think that he had brought them to
5 that status at that point in time. But we wanted to put him on
6 notice that he was given one more opportunity to bring these
7 wells into compliance before we took steps to bring additional
8 enforcement action.

9 The OCD's opinion at that time was that we had worked
10 with Mr. Brewer more than we thought was prudent, gave him
11 ample opportunity in order to do this to bring his wells into
12 compliance. Now it was necessary to take additional steps.

13 Q. And who called the meeting?

14 A. I did.

15 Q. And who was present at the meeting?

16 A. Dan Martin and myself and Mr. Brewer.

17 Q. And where was the meeting at?

18 A. In the district office in the conference room.

19 Q. What exactly did -- what exactly did -- what
20 exactly was Mr. Brewer told about the compliance-related
21 issues?

22 A. Again, it was -- I wanted to impress upon him the
23 importance of bringing the wells into compliance, both inactive
24 wells and environmental issues at his operations. And also,
25 the fact was brought out to him that since we have tried to

1 work with him, and we have had no positive results up to that
2 point in time, that I wanted to make sure he understood that
3 this was a notice to him that the next type of compliance
4 action would be a higher level of enforcement. But I wanted
5 him to have time to think about what needed to be done, and I
6 was willing to work with him on the time -- his own time frame
7 in order to get the wells into compliance.

8 Q. Was the time frame arrived at at the meeting?

9 A. Not at the meeting. I gave Jackie additional
10 time to think about what amount of time he would need in order
11 to bring all of his wells that were in non-compliance into
12 compliance. And several days after our meeting, he brought the
13 letter back stating that he had a date so that he could achieve
14 all the work. And based on that, that was a form of that at
15 the conclusion of that meeting.

16 Q. So he picked the date?

17 A. Yes, he picked the date.

18 Q. And what date was that?

19 A. September 30th, 2005.

20 Q. And was anything further said to Jackie -- or
21 Mr. Brewer -- at the meeting?

22 A. No.

23 Q. And if you would please turn to Exhibit 16 in
24 your exhibit packet.

25 HEARING EXAMINER EZEANYIM: Which exhibit are we

1 looking for?

2 MR. SWAZO: Exhibit 16, one, six.

3 HEARING EXAMINER EZEANYIM: 16?

4 Q. (By Mr. Swazo): Mr. Gum, would you please
5 identify this exhibit?

6 A. Yes. This is the letter that I had prepared on
7 the day of the meeting so that I would have some documentation
8 of the meeting.

9 Q. And does the letter summarize what was discussed
10 at the meeting?

11 A. Yes. Because I used this as more or less the
12 agenda for the meeting.

13 Q. Okay. And what does it state?

14 A. Basically, the purpose of the meeting was that I
15 wanted to advise Jackie of the -- pardon me, Mr. Brewer -- of
16 the non-compliant wells and all of the environmental issues
17 resulting from leaks and spills, and that we needed to have
18 some type of an agreement as to when we could have these wells
19 brought into compliance. If they were not brought into
20 compliance within a set date, there would be additional
21 enforcement action taken. And some of the examples of what
22 could be taken was set a hearing, assess civil penalties,
23 request an order to shut in the wells or to plug the wells.

24 I just wanted to make sure that Jackie --
25 Mr. Brewer -- was aware that unless he did comply with the

1 rules and regulations, there was additional steps and
2 compliance issues that could be addressed here through the
3 hearing process.

4 And I did allow him time to go back and think about
5 this, what he had to do, what we thought his resources would
6 allow him to do that would bring the wells into compliance.
7 And this was his date, September 30th, 2005. He signed the
8 letters on the 19th of January, which was fine with me.

9 As I recall, he hand-carried the letter back to me.
10 On February 2nd, '05, is when I signed the letter. And that's,
11 basically, the last conversation or communication that I have
12 had with Jackie -- Mr. Brewer -- over these particular
13 compliance issues.

14 Q. And so -- I'm not sure if I heard you. You said
15 you gave him this at the meeting?

16 A. Yes, this was given to him at the meeting. And
17 the reason it was given to him at the meeting, he was not sure
18 as to what amount of time would be required in order for him to
19 bring the wells into compliance.

20 And so I said, "Well, that's fine. You go back, and
21 you think about it, and then come back, and give me a realistic
22 date that you think you can bring the wells into compliance."

23 And when he delivered it to me, based on the time
24 that he had to review the data and such, I thought that he had
25 really studied the issues and could meet this September 30th,

1 2005, date.

2 Q. Now, did operator come into compliance by
3 September 30th, 2005?

4 A. No, he did not.

5 Q. Has operator come into compliance at all?

6 A. No.

7 Q. Is there anything else that you would like to
8 add?

9 A. I would just like to say that the OCD District II
10 office likes to work with the operators as best as we can
11 within the OCD rulings and regulations. We don't want to
12 hammer anybody. We want to try to give them ample time, as
13 long as they are responding to us. But in this particular
14 case, I think that the reason we're here today is that Jackie
15 did not perform like he indicated that he would perform. And
16 so that's why we're here at this particular hearing.

17 MR. SWAZO: I pass the witness.

18 HEARING EXAMINER EZEANYIM: Mr. Larson?

19 EXAMINATION

20 BY MR. LARSON:

21 Q. Good morning, Mr. Gum. The Division's
22 application indicates several inspections by members of your
23 district office in July of 2007; are you aware of that?

24 A. Yes.

25 Q. Do you know if anybody from your office has

1 inspected any of Mr. Brewer's since July of 2007?

2 A. To my knowledge, no.

3 Q. Do you know if the alleged pollution at some of
4 these sites presents a threat to groundwater?

5 A. It is not necessary that it is a threat to the
6 groundwater, but a threat to the environment.

7 Q. Have you ever asked Mr. Brewer to take soil
8 samples at any of these sites?

9 A. There were several samples taken. I'm not for
10 sure -- I think that might be addressed later -- but to my
11 knowledge, I don't think he was specifically asked. The OCD
12 has taken samples.

13 Q. Would Mr. Bratcher's testimony --

14 A. Yes.

15 MR. LARSON: That's all I have. Thank you.

16 HEARING EXAMINER EZEANYIM: Do you have anything
17 else? All right.

18 FURTHER EXAMINATION

19 BY MR. SWAZO:

20 Q. Mr. Gum, I just had a few questions concerning
21 the chain of command. Do your inspectors normally handle
22 compliance-related issues at the field level?

23 A. Yes. Normally, the procedures is this: An
24 inspector on location, he notices a violation of some rule.
25 This information is filed into the RDBMS system. A letter of

1 violation is sent out to the operator given a date certain to
2 correct this violation. If the compliance issue is not
3 addressed at that time, it goes to the next step which is a
4 notice of violation. And that's another process which is a
5 step higher.

6 Q. Okay. But my question really is: Normally, the
7 inspectors work the cases? You don't work the cases?

8 A. That's correct. They're assigned to certain
9 areas to address certain issues, and they do the physical work.
10 I do not.

11 MR. SWAZO: I don't have any other questions.

12 HEARING EXAMINER EZEANYIM: Do you have any?

13 MR. BROOKS: No questions.

14 HEARING EXAMINER EZEANYIM: Do you have any
15 questions?

16 MR. WARNELL: No questions.

17 EXAMINATION

18 BY EXAMINER EZEANYIM:

19 Q. Okay. Let's go back to Exhibit 16, this piece of
20 paper that you have here. Who selected the dates of September
21 30th, 2005 for that?

22 A. Who selected that date?

23 Q. Yes, who selected that date?

24 A. Mr. Brewer did.

25 Q. You did it?

1 A. I didn't. See, Mr. Examiner, the reason I did
2 this was I wanted to allow Mr. Brewer to make sure he had
3 enough time to address all of the issues that he was aware of
4 in order to get them done and into compliance without putting
5 him in any big hardship, to give him ample -- if you'll note,
6 that's almost nine months of time, where normally these types
7 of issues are 60 days or something. But I wanted him to
8 have -- review his own situation, his own resources, and let
9 him choose the time.

10 Q. I understand that your testimony is that you gave
11 him this piece of paper and told him to go home and think about
12 it and bring it back the next day? Is that what you said?

13 A. That's correct. And the date that he brought it
14 back to me was the date that I signed it in February of '05.

15 HEARING EXAMINER EZEANYIM: Okay. You may be excused
16 now.

17 MR. SWAZO: Can I just ask one question just to
18 clarify the question that you asked, Mr. Hearing Examiner?

19 FURTHER EXAMINATION

20 BY MR. SWAZO:

21 Q. Mr. Gum, the hearing examiner just asked you the
22 question regarding this Exhibit No. 16. And he had stated he
23 had asked you whether or not he was -- whether or not
24 Mr. Brewer was given this document and was supposed to refresh
25 your memory of it the next day. When exactly was he required

1 to return it?

2 A. I wanted him to have time to think about it, and
3 I don't recall any dates specifically.

4 MR. SWAZO: Okay. That's the only question I had,
5 Mr. Hearing Examiner.

6 HEARING EXAMINER EZEANYIM: Okay. You may be
7 excused. You can call your next witness.

8 MR. SWAZO: My next witness is Mike Bratcher.

9 HEARING EXAMINER EZEANYIM: Mike, you have already
10 been sworn.

11 THE WITNESS: Yes, sir.

12 HEARING EXAMINER EZEANYIM: Go ahead, Mr. Swazo.

13 MIKE BRATCHER

14 after having been first duly sworn under oath,
15 was questioned and testified as follows:

16 EXAMINATION

17 BY MR. SWAZO:

18 Q. Would you please state your name for the record.

19 A. Mike Bratcher.

20 Q. And Mr. Bratcher, with whom are you employed?

21 A. The State of New Mexico Oil Conservation
22 Division.

23 Q. And would you please -- what is your current
24 title?

25 A. Field supervisor.

1 Q. And how long have you held that position?

2 A. Just under two years.

3 Q. And what are your duties with that position?

4 A. Basically, just supervise the day-to-day
5 operations of field inspectors in District II.

6 Q. And what was your position before that?

7 A. Environmental specialist.

8 Q. And how long did you hold that position?

9 A. About four years.

10 Q. And what were your job duties with that position?

11 A. To handle any pollution contamination issues that
12 came up in the district, review work plans, compliance to
13 reporting.

14 Q. And what was your position before that?

15 A. Field inspector.

16 Q. And how long did you hold that position?

17 A. A little over two years.

18 Q. And what were your duties with that position?

19 A. Just to perform general field inspections on a
20 day-to-day basis, routine field inspections.

21 Q. Have you inspected the wells in this case as part
22 of your duties?

23 A. Yes.

24 Q. And have the wells been inspected by other OCD
25 inspectors?

1 A. Yes.

2 Q. And are inspections normally documented?

3 A. Yes.

4 Q. I just wanted to follow up on that. There are
5 times when you've inspected wells -- when you have personally
6 inspected wells, but you haven't documented your inspections.

7 A. There's been times when they didn't get
8 documented in the RBDMS, which is our database.

9 HEARING EXAMINER EZEANYIM: When is that? When do
10 you do an inspection without documenting it? Or what would
11 make you do that? You do an inspection, and you wouldn't do
12 that? We have the RBDMS. I don't understand why you wouldn't
13 do that.

14 THE WITNESS: Sometimes there would be time
15 constraints. I think in this particular instance, we are just
16 trying to move from one well to another, maybe taking pictures,
17 and it's just time consuming to enter the data into the
18 database. Normally, our inspections should be documented, but
19 there are times when, for whatever reason, they didn't get
20 documented.

21 Q. (By Mr. Swazo): Mr. Bratcher, were most of your
22 inspections documented in this case?

23 A. Yes, I believe most of them were.

24 Q. And if you would turn to Exhibits 14 through
25 13 --

1 HEARING EXAMINER EZEANYIM: Which ones?

2 MR. SWAZO: I'm sorry. Exhibits 4 through 13.

3 HEARING EXAMINER EZEANYIM: 4 through 13.

4 Q. (By Mr. Swazo): And would you please identify
5 those exhibits?

6 A. Okay. These are the reports that are generated
7 in RBDMS, and they outline well inspection -- the history of
8 well inspections for a particular well.

9 Q. Are these the inspection histories for those
10 wells?

11 A. Yes.

12 Q. And -- I'm sorry. Where are these documents
13 located?

14 A. In RBDMS. It's the OCD's internal database.

15 Q. Now, if you would please turn to Exhibit No. 4.

16 A. Okay.

17 Q. What inspection history is that for? I mean, for
18 what well is that an inspection history?

19 A. Okay. That's for the Daugherty State -- you may
20 have to help me out here because it's just got the API number
21 on it.

22 Q. Well, if you look at the API number and the --
23 let me just --

24 A. Exhibit 4 is for the Daugherty State No. 001.

25 Q. Well, Mr. Bratcher, can you -- the allegations in

1 this case are that the operator has had pollution issues --
 2 continuing pollution issues for some time and that they haven't
 3 been addressed. Could you please review this well inspection
 4 history, and tell me where the pollution has been indicated?

5 A. Okay. The first entry would be on 1/26/2004.
 6 And it lists a stuffing box leak.

7 Q. And are you able to -- which inspector did the
 8 inspections?

9 A. Gerry Guye.

10 Q. And how are you able to determine that?

11 A. Each inspection record has a unique identifying
 12 number. It starts with a small letter indicating it's an
 13 inspection, followed by the inspector's initials, and then an
 14 identification number.

15 Q. And so the identification in this case indicates
 16 that it was Gerry Guye?

17 A. Correct.

18 Q. And I noticed along that row that there is a "Y."
 19 Could you please explain the significance of that Y?

20 A. Where the Y shows up means that if you look at
 21 the top, it indicates that a violation was identified and
 22 entered in the database.

23 Typically, whenever this is done, a letter is
 24 generated when the inspector gets back to the office. And that
 25 letter, typically, would be sent to the operator, but this

1 starts the compliance issues, the compliance procedures.

2 Q. And so who would enter that information?

3 A. The field inspector. In this case, it would have
4 been Gerry Guye.

5 Q. And what is the next entry for -- what is the
6 next entry that mentions contamination issues?

7 A. That would have been 2/4/2004. And once again,
8 that was Gerry Guye. The inspection type was a compliance
9 verification, and this indicates that an inspector has gone
10 back out. After he's identified a violation, he'll go back out
11 after a certain period of time to see if anything has been
12 done. This inspection indicates that the leak was stopped. It
13 also indicates that it needs work around the wellhead.

14 Q. And that inspection occurred within a few weeks
15 of the January 26, 20004 inspection?

16 A. Correct.

17 Q. And what is the next entry that mentions
18 contamination?

19 A. Okay. That would be 8/19/2004.

20 HEARING EXAMINER EZEANYIM: Excuse me. I'm sorry to
21 break you, but let's go back to 2/4/04. That's where the leak
22 stopped and then, "Needs work around the well."

23 What type of work was needed around the well, and is
24 that a violation.

25 THE WITNESS: Actually, the violation was opened on

1 1/26/04, and it was for a leak at the wellhead --

2 HEARING EXAMINER EZEANYIM: Okay.

3 THE WITNESS: -- which would allow produced fluid to
4 be on the ground. And the 2/4/04 inspection, Mr. Guye
5 indicated that they had stopped the leak, but that -- and the
6 way I would read this, "Needs work around the wellhead," means
7 it still needed remediation or cleanup from that release that
8 he discovered on 1/26/04.

9 HEARING EXAMINER EZEANYIM: Yeah. That should have
10 been, and I'm asking why it wasn't tagged.

11 THE WITNESS: No, because what he's doing here is
12 he's doing a followup on the violation that he opened on
13 1/26/04.

14 HEARING EXAMINER EZEANYIM: Okay.

15 THE WITNESS: That's where the violation was actually
16 identified. What he's saying here is that the operator had
17 stopped the ongoing leak, but he hadn't yet cleaned up what had
18 been leaked from the 1/26 incident.

19 HEARING EXAMINER EZEANYIM: I'm asking these
20 questions to understand how you do it, okay?

21 THE WITNESS: Yes, sir.

22 Q. (By Mr. Swazo): What is the next entry regarding
23 contamination?

24 A. Okay. That would be on 8/19/2004.

25 Q. And who was the inspector?

1 A. That would be Gerry Guye, again.

2 Q. And what is his entry?

3 A. "Wellhead leaking, well is pumping."

4 Q. And the next entry is for inspection -- for
5 compliance -- or for contamination?

6 A. That would be 8/30/2005.

7 Q. And who was the inspector on that date?

8 A. I was.

9 Q. And what was your entry?

10 A. "Well is pumping, stuffing box leaking, heavy
11 contamination of wellhead area extending out onto location,
12 some contamination at tank battery for this well."

13 HEARING EXAMINER EZEANYIM: So, Mr. Bratcher, what I
14 am saying is that once you find -- in the course of an
15 inspection, you find that there is a violation, does that
16 violation continue? You don't find it yet, because the other
17 one -- because when I look at it, it says here -- I would like
18 to see Y Y to say that the violation is continuing. But you're
19 saying that once you tag it the first time you visit, it
20 carries over.

21 THE WITNESS: Right, correct.

22 HEARING EXAMINER EZEANYIM: But now, when I read
23 this, I say, "This is not tagged. Maybe they are complying."

24 I mean, I just want to know how you do it. Because
25 if you look at this one, there is something leaking. That

1 should have been tagged and ask why has it continued to leak
2 because it's a different inspection.

3 THE WITNESS: The actual entry for this, instead of
4 being a normal routine activity, probably should have been a
5 compliance check. Because whenever I was doing these
6 inspections in 2005, we were actually out looking at the sites,
7 not so much to open violations up, but to see what kind of
8 condition these well sites were in. We had been talking about
9 the case going to hearing in 2005. So we weren't really out
10 looking to open new violations. We were more or less doing an
11 investigation at this time.

12 HEARING EXAMINER EZEANYIM: Okay. Go ahead.

13 Q. (By Mr. Swazo): Were the purposes of your
14 inspections also to determine whether or not the operator had
15 remedied the violations?

16 A. Yes.

17 Q. And, Mr. Bratcher, you said that you inspected
18 the well on August 30th, 2005. Did you take any pictures of
19 your inspection?

20 A. Yes, I would have.

21 Q. And I would have you look at Exhibit 17A
22 through C.

23 A. 17?

24 Q. 17A through C. Are these the pictures that you
25 took?

1 A. Yes, they are.

2 Q. Are they a fair and accurate representation of
3 what you observed that day?

4 A. Yes, they are.

5 Q. And if I can have you look at the screen, these
6 are Exhibits 17A through C. Can you describe what we're seeing
7 in this picture in terms of contamination?

8 A. Okay. What we're seeing here is the result of
9 the leaks from the wellhead. And you can see where it's run
10 out on the location, as I've indicated in the inspection
11 records.

12 Q. And how about this picture?

13 A. Okay. This would show some of the contamination
14 at the tank battery that I had indicated in my inspection
15 records.

16 HEARING EXAMINER EZEANYIM: Go ahead.

17 Q. (By Mr. Swazo): Okay. The next picture, please?
18 What about this picture?

19 A. Okay. This is the same tank battery. It's just
20 a close-up shot of some contamination that was present at this
21 tank battery at that time. I think this actually shows a
22 little bit of fluid standing there in that really dark area
23 there.

24 Q. And what is the next inspection in the well
25 inspection history -- or the next entry?

1 A. It would be 10/20/2005.

2 Q. And who was the inspector?

3 A. Chris Beadle made the entries in RBDMS. Him and
4 I were doing inspections together on this day, and we were
5 actually taking samples at various sites.

6 Q. So you were present during this -- on this date
7 at this well?

8 A. Yes, yes.

9 Q. Were any pictures taken to this date?

10 A. Yes.

11 Q. And if I can have you turn to Exhibits No. 17D
12 through O. And would you please identify those exhibits?

13 A. Okay. I believe these were some of the photos
14 that we took on 10/20/2005.

15 Q. Do those pictures fairly and accurately represent
16 what you observed out there that day?

17 A. Yes.

18 Q. And if you can -- if I can have you look at the
19 screen, because these will be the same pictures. Can you tell
20 me what we're looking at in terms of Exhibit No. 17D?

21 A. Okay. This is a picture of one of the tank
22 batteries.

23 Q. And what are we looking at in terms of this
24 picture?

25 A. This picture would show the general condition of

1 this particular battery on that day. It doesn't really show
2 any recent releases. It just shows some staining, maybe some
3 little new stuff around up closer to the vessels.

4 Q. And what are we looking at in this picture?

5 A. Okay. This would be just a close-up picture
6 showing what is probably a more recent release up towards one
7 of the tanks at this site.

8 Q. And this picture?

9 A. And it's the same thing. It just shows a
10 close-up of some of the contamination that's spread around some
11 of the vessels.

12 HEARING EXAMINER EZEANYIM: Is that leaking from that
13 tank?

14 THE WITNESS: It wasn't leaking the day we were out
15 there. It wasn't an active leak. With no fluids actually
16 standing, I'd say that this contamination is probably some
17 weeks, if not months, old. It's not what I would call a real
18 recent release.

19 And a lot of these sites have releases ranging from
20 what we consider historic, maybe years old. They run the gamut
21 up through maybe something that happened within days of us
22 making the inspection.

23 HEARING EXAMINER EZEANYIM: Before I lose my thoughts
24 here, because I have a lot to keep track of here, you took
25 samples on that day. What did you do with those samples?

1 THE WITNESS: They were sent to the laboratory for
2 analysis.

3 HEARING EXAMINER EZEANYIM: And you got the results
4 back?

5 THE WITNESS: Yes.

6 HEARING EXAMINER EZEANYIM: What did they show?

7 THE WITNESS: They showed that most of the areas
8 where we took samples were pretty high in chloride levels.

9 HEARING EXAMINER EZEANYIM: Okay. I just -- maybe
10 I'll comment on it, but I just wanted to make sure. Okay.

11 Q. (By Mr. Swazo): And what are we looking at here?

12 A. This is -- I believe this is a different well
13 here, but this just shows another leak at the wellhead where
14 it's run out across the location.

15 Q. And this is?

16 A. And this is that site from a different angle.

17 MR. WARNELL: How many wells are pumped into that
18 tank battery there?

19 THE WITNESS: I'm not sure. I couldn't tell you.

20 Q. (By Mr. Swazo): And this picture?

21 A. This is another picture that just shows more
22 contamination emanating from the wellhead area and running out
23 across the location.

24 Q. And what's this?

25 A. This picture actually shows -- if you notice in

1 the foreground -- I don't know if you can tell what that is,
2 but it's actually a baggie and a garden trowel. And that's
3 what we were using to pull samples at that time.

4 And this just shows where the samples were taken
5 from. When we took samples that day, we tried not to get -- we
6 tried to get to the fringes of the contamination. We didn't
7 want to get in the heavily contaminated areas, for a couple of
8 different reasons.

9 We felt like if we picked the dirtiest spot, you
10 know, it would look like we were trying to go after, you
11 know -- trying to make things as bad as possible. So we picked
12 spots that were kind of on the fringes of the heavy
13 contamination to pull our samples from.

14 Q. Now, where the little shovel is located and the
15 baggie, were samples actually taken from that spot?

16 A. Yes. And that's the document, and we also have
17 lat and long that we pulled from the sample.

18 Q. And what is the next entry from the well
19 inspection history for this well?

20 A. That would be 7/20/2007.

21 Q. And who was the inspector?

22 A. I was.

23 Q. And what did you observe when you inspected the
24 well on that day?

25 A. "Contamination of wellhead area, well was

1 pumping."

2 Pumping unit had actually came on while I was on
3 site, so it was set to a timer. Another thing we were looking
4 at was which wells we thought were producing and which ones
5 weren't. I mean, we were also not only looking for just
6 contamination issues, we were also looking for idle well
7 issues. That's why this was noted that the well was operating.

8 "Well is pumping, unit came on during inspection,
9 some contamination at tank battery situated north of well
10 site," which would be that tank battery we were looking at.

11 Q. If I understand you correctly, your inspections
12 were not focused on mainly contamination, but rather overall
13 compliance?

14 A. Not only on contamination, but overall
15 compliance, yes.

16 Q. Did you take pictures during your inspection?

17 A. In 2007, yes.

18 Q. And if you would turn to Exhibits No. 15P
19 through O -- I'm sorry, P through W. Would you please identify
20 these exhibits?

21 A. These were pictures taken on July 20th, 2007, at
22 the Daugherty State No. 001. Typically when I take pictures,
23 I'll try to get a picture of the well sign, if it's present.
24 If it's not, I'll make one up so that I can keep the pictures
25 in order when you download them. This first one is a picture

1 of the well site at Daugherty State No. 001.

2 Q. And what are we observing here?

3 A. And this is the wellhead area at Daugherty State
4 No. 001. You can see contamination of the leaks from the
5 wellhead, and they emanate out onto the well site.

6 This picture was actually -- well, this picture was
7 taken to show the polish rod. And that's what we're looking at
8 at the center of the photograph right there. And there's
9 another picture that just shows that this well is pumping. I
10 have a picture of the polish rod up and the polish rod down.
11 And it's just to document the well was producing.

12 This one -- sometimes we'll take pictures of the
13 electrical meter. That's another way to determine if the well
14 is producing or not. We can take a picture of it one day and
15 come back a month later and see if any electricity has been
16 used at this site. If it hasn't been, we'll assume that well
17 has not been producing.

18 Q. So these pictures were taken as part of your
19 attempt to determine whether overall compliance was being --

20 A. Right.

21 Q. And do we see anything here in terms of --

22 A. That's the followup picture of the polish rod
23 down. The pumping unit was actually working when these
24 pictures were taken. It's kind of out of sequence, but if you
25 go back to the picture prior to the electrical box, you'll see

1 the polish rod sticking up.

2 Q. And are there any contamination issues?

3 A. Around the wellhead, which it shows better in one
4 of the other pictures. But you can see some of it there in
5 that one.

6 Q. And this one?

7 A. And these are just more shots around the tank
8 battery.

9 Q. And what do we see here?

10 A. That would be a leak. And I believe it was from
11 that valve right there in that tank.

12 Q. Now, if you will turn to Exhibit No. 5. Would
13 you please identify this exhibit?

14 A. Okay. This would be -- Exhibit No. 5 is the well
15 inspection history for the Levers A State No. 002.

16 Q. And when is the first entry that indicates that
17 there is a contamination issue?

18 A. That would have been in 1/22/2003.

19 Q. And who made the entry?

20 A. I did.

21 Q. Did you inspect the wells on that date?

22 A. Yes.

23 Q. And what did you observe?

24 A. "Bridle line for pumpjack is disconnected. Large
25 area of contamination and standing oil at wellhead. Well sign

1 illegible, does not list operator, and is not mounted. Well
2 sign is in violation of Rule 103."

3 Q. And that's the entry for January 22nd?

4 A. Correct.

5 Q. Now, I see an entry for January 23rd, 2003.

6 A. Yes.

7 Q. Did you go back to the site and inspect it again
8 on the next day?

9 A. No. I believe the 1/23/03 inspection record was
10 probably entered on the next day or dated for the next day.

11 And the reason being, if you'll notice, there was a violation
12 open on both of those inspection records. The 1/22/03
13 violation was for the well sign Rule 103 violation. The
14 violation that was opened on 1/23/03 was for violation of
15 Rule 13 and Rule 116 for leaks and spills.

16 The way the database was set up back then, the only
17 way you can keep a well sign violation and a pollution and
18 contamination violation separate would be to open them up on
19 two different days. You couldn't open two violations on one
20 well on the same day. And that's how the database was set up.

21 So, you know, in order to track those two violations
22 separately, we would have to enter them on different days, and
23 that's why -- that's why the two different dates on these
24 inspections.

25 Q. And so there was only one well inspection?

1 A. Yeah. One physical inspection was made on the
2 22nd.

3 Q. And again, explain the significance of the Ys
4 that appear in the violation column.

5 A. Well, when a Y shows up over there, that means
6 that a violation of OCD rules was identified. A violation
7 was -- a compliance module was opened in RBDMS, and a violation
8 was issued. This, once again, should have generated a letter,
9 and then the letter would have been sent to the operator
10 notifying him of what was discovered at that well site.

11 Q. And what is your entry for January 23rd, 2003
12 state?

13 A. Production indicated in 7/02 -- 2002 -- and this
14 also, for me to have looked up the production records, I would
15 have had to have been in the office. We don't have access to
16 production records out in the field. So that entry there tells
17 me that it was probably an entry made in the office for reasons
18 I previously mentioned.

19 The inspection record states, "Production indicated
20 in 2002, leaks, spills have caused a large area of
21 contamination at wellhead area, violation of Rule 13 and
22 Rule 116."

23 Q. And what is the next entry?

24 A. It would be 2/24/2003.

25 Q. And what was entered?

1 A. "No action taken on previous violations."

2 Q. And who was the inspector?

3 A. Gerry Guye.

4 Q. And what is the next entry?

5 A. 4/16/2003.

6 Q. And who was the inspector?

7 A. I was.

8 Q. And what did you enter?

9 A. "No action taken on violations from 1/03."

10 Q. And what's the next entry?

11 A. 10/9/2003.

12 Q. And who was the inspector?

13 A. I was.

14 Q. And what did you enter?

15 A. "No action taken on pollution, contamination
16 violation, or on no well sign violation. Both violations open
17 in January of 2003."

18 Q. And what's the next entry?

19 A. It would be 4/8/2004.

20 Q. And who was the inspector?

21 A. I was.

22 Q. And what did you enter?

23 A. "No action taken to bring well into compliance.
24 No well sign. Area at wellhead is heavily contaminated.
25 Production reported was 7/2002. Well is now in violation of

1 Rule 201," which is an idle well violation.

2 Q. There's a Y in the violation section. Would a
3 letter have been sent to the operator?

4 A. Yes, it should have generated a letter.

5 Q. And what information would have been in the
6 letter? Would the information from your entry have been in the
7 letter?

8 A. Yes. The letters in RBDMS -- the body of the
9 letters is a canned letter, depending on whether they're an
10 idle well violation or a pollution contamination violation.
11 And then the bottom part of the letter, it actually pulls
12 whatever is entered in these inspection records and puts them
13 in that letter.

14 Q. Now, if I can have you turn to Exhibit No. 14.
15 Can you identify that exhibit?

16 A. Yeah. This is a canned violation letter. It's
17 generated in RBDMS when a violation is open.

18 Q. Would this have been the letter that you would
19 have sent out for this violation?

20 A. Yes.

21 Q. And where was it sent? To whom was it sent to?

22 A. The address is Sandlot Energy, parentheses,
23 Jackie Brewer d.b.a., end parentheses. Post Office Box 711,
24 Lovington, New Mexico, 88260.

25 Q. And the date of this letter?

1 A. Date of the letter is 8 April 2004.

2 Q. And who sent this?

3 A. This would have been sent out by me.

4 Q. And what exactly does it state in terms of the
5 comments on the inspection for the Levers A State No. 002?

6 A. Well, in the comments section -- once again, it
7 pulls directly from the inspection record. It says, "No action
8 taken to bring well into compliance. No well sign. Area of
9 wellhead is heavily contaminated. Last production reported was
10 7/2002. Well is now in violation of Rule 201."

11 Q. And now I want to go back to the well inspection
12 history. What's the next inspection? What's the next entry
13 after the April 8, 2004 entry?

14 A. It would be 8/19/2004.

15 Q. And who was the inspector?

16 A. Gerry Guye.

17 Q. And what did he indicate in terms of compliance?

18 A. "No action taken to bring well into compliance.
19 Electricity is off."

20 Q. And what is the next entry, inspection entry?

21 A. It would be 5/9/2005.

22 Q. And who was the inspector?

23 A. I was.

24 HEARING EXAMINER EZEANYIM: Are you still on
25 Exhibit No. 14?

1 MR. SWAZO: I'm on Exhibit 5, which is the well
2 inspection history.

3 HEARING EXAMINER EZEANYIM: I was still on 14. And
4 this is the letter of violation, right?

5 THE WITNESS: Yes.

6 HEARING EXAMINER EZEANYIM: Violation for the Humble
7 Thomas State No. 001? Is that part of the proceedings today?

8 THE WITNESS: Pardon?

9 HEARING EXAMINER EZEANYIM: Look at Exhibit No. 14.

10 THE WITNESS: Yeah, right.

11 HEARING EXAMINER EZEANYIM: Okay. Look at that well,
12 Humble Thomas State No. 001. There is a violation on that,
13 April 8?

14 THE WITNESS: Right.

15 HEARING EXAMINER EZEANYIM: Is this part of this
16 proceeding?

17 THE WITNESS: Yes. And the way these letters work,
18 if we open up more than one violation on the same operator on
19 the same day, it'll list all the violations for that operator.
20 If I opened up eight violations on this operator on this day,
21 all eight of those would be listed in one letter.

22 HEARING EXAMINER EZEANYIM: Okay. Why was that one
23 not included in the 10 that we're talking about today, even
24 though they had a notice of violation?

25 MR. SWAZO: Well, it's --

1 HEARING EXAMINER EZEANYIM: Are they in compliance
2 with what you're asking for. If you took it out of the
3 proceedings today? Because you could do that. If you have a
4 written notice of violation and they complied, then you don't
5 have to bring it to hearing. Is that the reason why it's not
6 in this?

7 MR. SWAZO: Well, I can answer that, Mr. Hearing
8 Examiner. The reason why it's not part of this compliance
9 proceeding -- and that was my decision -- but this particular
10 well, the violation is for an idle well. And you can
11 indicate -- I mean, you could read that -- I mean, you could
12 determine that from the comments on the --

13 HEARING EXAMINER EZEANYIM: Idle well?

14 MR. SWAZO: It's an idle well, yes. And this --

15 HEARING EXAMINER EZEANYIM: It's shut-in -- pardon
16 me. It's shut-in, right?

17 MR. SWAZO: I'm not sure. It's just an idle well at
18 this time.

19 HEARING EXAMINER EZEANYIM: Okay.

20 MR. SWAZO: But it's -- this compliance action is
21 based entirely on the remediation aspect.

22 HEARING EXAMINER EZEANYIM: Okay. So you do not want
23 to list an idle well.

24 MR. SWAZO: Yes. And at this time, I don't know if
25 the well is an idle well in violation of OCD rulings.

1 HEARING EXAMINER EZEANYIM: Okay.

2 Q. (By Mr. Swazo): Mr. Bratcher, let's see, what
3 was the -- I'm sorry. Do you remember where we left off? Were
4 we at the 5/9/2005 inspection?

5 A. Well, I think we were just fixing to get into
6 this --

7 HEARING EXAMINER EZEANYIM: You were on Exhibit 5,
8 you told me.

9 Q. (By Mr. Swazo): Yes. And we're going through
10 the different inspection entries, and I believe we concluded
11 with the August 19th, 2004. That was the last entry that we
12 talked about. And what inspection entry comes after that? And
13 that is Exhibit No. 5.

14 A. Okay. Exhibit No. 5, after the 5/9/2005?

15 Q. No. After the August 19th, 2004.

16 A. Okay. Then the next inspection record would be
17 5/9/2005.

18 Q. And who was the inspector?

19 A. I was.

20 Q. And what did you enter?

21 A. "Tank battery south of this well is heavily
22 contaminated. Collapsed tanks, overturned vessels at site.
23 Storage tank on west end has an active produced water release.
24 Notified the operator to fix leak. Chloride impacted soils are
25 to be properly remediated/hailed to disposal facility."

1 Q. Can you explain what you said that you had
2 indicated that you had notified operator to fix leak? How did
3 you notify the operator?

4 A. Typically, when I have this type of entry there
5 it would have been a phone call. And usually when we discover
6 an active leak, that will be the next thing we will want to do
7 is to try to get somebody out there to get that leak stopped
8 right then. And we'll try to make a phone call to get somebody
9 to get the leak stopped.

10 Q. And again, I see there's a Y in the violation
11 section. Does that mean that a letter was sent out to the
12 operator?

13 A. Yes, there should have been.

14 Q. And if I can have you look at Exhibit No. 15, one
15 five?

16 A. Okay.

17 Q. Would you please identify this exhibit?

18 A. Okay. This is another canned violation letter
19 that's generated in RBDMS. This one was generated for Levers A
20 State No. 002.

21 Q. And is this the letter that you sent to the
22 operator?

23 A. Yes.

24 Q. And what date is the letter?

25 A. 12 May of '05.

1 Q. And let's see. And what does it state in terms
2 of the violation?

3 A. Okay. Once again, it pulls straight from the
4 inspection record. And it's, "Tank battery south of this well
5 is heavily contaminated. Collapsed tanks, overturned vessels
6 at site. Storage tank on west end has an active produced water
7 leak. Notified operator to fix leak. Chloride-impacted soils
8 will be properly remediated/hailed to disposal facility."

9 Q. And did you give the -- does it indicate the
10 violation there?

11 A. It does not indicate the rule that was violated.
12 It just requires that the operator, one, stop the leak, and
13 then, two, perform a Division-approved remediation plan under
14 Rule 116.

15 Q. And does it give a date when the operator was
16 required to come into compliance?

17 A. Yes. Corrective action due date would have been
18 6/10/2005.

19 Q. Did the operator come into compliance by that
20 deadline?

21 A. No.

22 Q. Did you take pictures on this date?

23 MR. LARSON: Sonny, what date are you referring to?

24 Q. (By Mr. Swazo): I'm sorry. Did you take any
25 pictures on --

1 A. 5/9/05?

2 Q. Yes. May 9, 2005.

3 A. Yes.

4 Q. And if I can have you look at Exhibit 18A
5 through G. Can you please identify those exhibits?

6 A. Yeah. These are pictures that were taken at this
7 particular tank battery. I believe this picture here shows an
8 active leak that I discovered from this valve right here.

9 Q. So those pictures fairly and accurately represent
10 what you observed on that date?

11 A. Yes.

12 Q. And -- I'm sorry. You said with regard to
13 Exhibit 18, what are we looking at?

14 A. I believe that's probably the valve that was
15 actively leaking that I referred to.

16 Q. And what are we looking at here?

17 A. Okay. This is just a shot taken a little further
18 away that shows some of the extent of the contamination. The
19 contaminated area goes on out of the frame there. It just --
20 all the white areas there indicates it is saltwater/produced
21 water release.

22 Q. Okay.

23 A. And this is another shot, just a different angle,
24 and, once again, same thing. You can see the hydrocarbon
25 contamination around the tanks, along with the produced water

1 release in the background on the left side. That shows a tank
2 that is collapsed on this site, and it also shows some of the
3 hydrocarbon contamination in this area.

4 Q. Okay.

5 A. And this is the same shot, different angle. Same
6 site, different angle on the shot.

7 Q. Okay.

8 A. And this, once again, is that valve, just taken
9 at a different angle.

10 Q. And you said that that valve was the one with the
11 active leak?

12 A. I believe it was. Although it's kind of hard to
13 tell in the picture, I believe this was the active leak that I
14 referred to.

15 Q. Okay. And what are we looking at here?

16 HEARING EXAMINER EZEANYIM: At the time you were
17 taking this picture, was that valve still leaking, or had it
18 stopped?

19 THE WITNESS: The best I can recollect, it had a
20 small leak at it. It wasn't a gushing flow. It was a very,
21 very small leak at this valve, but it was an active ongoing
22 leak.

23 Q. (By Mr. Swazo): Okay.

24 A. Okay. And this is that same tank battery just
25 taken from a different angle and back a little further away.

1 It shows a little bit to how far out the produced water leak
2 that had occurred had gone. You can see the staining goes on
3 out of the frame of the picture. It goes all the way back up
4 around the tank battery.

5 HEARING EXAMINER EZEANYIM: Did you take samples of
6 this water?

7 THE WITNESS: No.

8 Q. (By Mr. Swazo): What's the next entry after
9 May 9th, 2005?

10 A. It would be 7/22/2005.

11 Q. And who was the inspector?

12 A. Chris Beadle.

13 Q. And what did he enter?

14 A. "No action taken to bring well into compliance.
15 Oil and produced liquids standing in pools around tank battery.
16 Oil and produced liquids have run down road approximately 100
17 yards towards wellhead. Heavy chloride staining on road west
18 of tank battery."

19 Q. And do you happen to know whether or not
20 Mr. Beadle took pictures during his inspection?

21 A. I believe he did.

22 Q. If you'll turn to Exhibit No. 18T through U and
23 SS through BBB. Are those the pictures that Mr. Beadle took?

24 A. 18SS?

25 Q. Yes, through 18BB.

1 HEARING EXAMINER EZEANYIM: Do you have a PowerPoint?
 2 Do you have this on PowerPoint? Why don't we go to the
 3 PowerPoint? I know there are a bunch of them there.

4 Q. (By Mr. Swazo): Are those the pictures that
 5 Chris Beadle took?

6 A. Yes. These were the 7/22 pictures.

7 Q. Now, you've been to this well site? That's what
 8 you've testified?

9 A. Yes.

10 Q. Do these pictures look like they are of that
 11 particular well site?

12 A. Yes.

13 Q. And what are we looking at in this picture?

14 A. Okay. This just shows the contamination that
 15 runs -- well, I thought I'd see which way it ran. That
 16 actually runs back north, I believe, from that tank battery,
 17 the dark staining that you see going up the road. And then you
 18 see the staining in a little -- what you can see left of the
 19 chloride impact from the leak that we were looking at earlier.

20 Q. And how would we be able to see that?

21 A. Well, you can still see a lot of the white
 22 intermingling in there which is indicative of chloride
 23 staining.

24 Q. And what are we looking at on the next picture?

25 A. Okay. This is the same tank battery, just a

1 little different angle.

2 Q. And the next picture?

3 A. This is the same tank battery. This is actually
4 taken up close to the tank that collapsed and had been cut.

5 Q. And the next picture?

6 A. And this is the north side of that tank battery.
7 This, once again, shows that large area we were looking at
8 earlier, chloride impact, and then you can see the flow path
9 from the hydrocarbon release. They're kind of in the middle of
10 the picture in the upper left side.

11 Q. And the next pictures?

12 A. And then this is just the contamination up around
13 the vessels that were left at this site.

14 Q. Okay.

15 A. Once again, same thing. Just -- a lot of the
16 deep holes you see down in the left corner there, I believe
17 those are actually cow tracks. You see a lot of cow tracks
18 around this particular site. Cattle are drawn to these
19 saltwater/produced water releases for the salt content, and
20 they're notorious for getting into them and ingesting the loose
21 fluids and hydrocarbons.

22 Q. Okay.

23 A. This is the same site, different angle. The
24 white you see there is indicative of chloride release.

25 And the same area here, this is between the tanks.

1 We're going back east along this tank battery.

2 And this was taken on the north side of the battery
3 looking back south. It shows the collapsed battery, shows a
4 couple overturned vessels in the far left-hand side of the tank
5 here. In front of the picture there, this shows a hydrocarbon
6 flow path coming back towards us.

7 And this is a picture of how far that oil release ran
8 down that road from that tank battery.

9 And that was what we referred to as a pooling area
10 for that release.

11 Q. Now I want you to look at Exhibit 18H through
12 18M. Would you please identify those pictures or who took
13 those pictures?

14 A. Okay. The ones 18H, I, J, K, L, M, were taken on
15 8/8/2005, and they were taken by me.

16 Q. And I don't see any entry in the well inspection
17 history for August 8th, 2005. Is this one of those situations
18 where you inspected the site but didn't enter your inspection?

19 A. Yes, it was.

20 Q. And what are we looking at here in terms of 18H?

21 A. This is, once again, just a picture of this same
22 well site. I believe on this day, Mr. Sanchez was actually
23 riding with me, and we went out to just to take a look at this.
24 And, usually, if I have the camera with me and we go out and
25 look at something, I'll go ahead and snap some pictures of it.

1 And I think probably the reason that this didn't get entered as
2 an inspection record is that it was an informal visit by
3 Mr. Sanchez and myself just to kind of bring Mr. Sanchez up to
4 speed on what some of these sites looked like.

5 Q. Okay.

6 A. Of course, this is the same area showing the
7 collapsed tank and the contamination that comes out towards us,
8 all the dark staining.

9 Q. Okay. And, well, there's an Exhibit 18J in your
10 packet. I'll just move on to the next picture.

11 HEARING EXAMINER EZEANYIM: Which well is this now?

12 MR. SWAZO: This is the same well, the Levers A State
13 No. 002, I think?

14 HEARING EXAMINER EZEANYIM: It is Exhibit No. 5?

15 MR. SWAZO: That is correct.

16 A. Yeah. This tank battery is actually situated
17 about a hundred yards south of the -- from the well itself. I
18 don't know if we have a -- well, that one picture that showed
19 how far it had ran down the road, we're probably within 20, 30
20 yards of the pumpjack. And I believe there are several
21 different wells that produce into this tank.

22 This is another picture showing that hydrocarbon
23 release from this battery. And that's another picture of the
24 flow path. And, like I say, this road leads to the well that
25 we're using as reference for this tank battery. In other

1 words, the well is not at the tank battery. It's about 100
2 yards away from it. I don't know if it makes any difference or
3 not, but just for informational purposes.

4 Q. (By Mr. Swazo): And do the pictures fairly and
5 accurately represent what you observed on that date?

6 A. Yes.

7 Q. What's the next entry after -- I believe that we
8 left off at the July 22, 2005 entry?

9 A. Correct.

10 Q. What's the entry that appears after that?

11 A. It would be 8/29/2005.

12 Q. And who was the inspector?

13 A. I was.

14 Q. And what did you observe?

15 A. "No well sign at well site. No indication
16 pumpjack has had recent operation. Contamination at wellhead
17 area. Tank battery south of this well has collapsed tanks that
18 have released produced fluids. No action taken by operator to
19 bring well or tank battery into compliance."

20 Q. And did you take any pictures on this date?

21 A. Yes.

22 Q. Would you look at Exhibits 18N through S. Can
23 you identify those exhibits?

24 A. Okay. That's actually the well that we've been
25 talking about. It's situated about 100 yards north of that

1 tank battery. It shows some contamination around the wellhead.
2 You can see the typical outline of the staining out on the
3 location.

4 Q. Okay. Next picture.

5 A. Now, this shows -- this is a good picture of
6 where the well is situated in reference to the battery. The
7 battery we're seeing in the background is the one that we had
8 just gone over and seen the picture of. But, like I said, I
9 believe there are more than one well that's producing into
10 those tank batteries -- or into that tank battery.

11 Q. Next picture?

12 A. And this is that infamous pooling area.

13 Q. Next picture?

14 A. This picture still shows that staining. But now,
15 if you go back to some of these pictures, you're not going to
16 see that fluid right there. And just to clarify, and in all
17 honesty, I believe that the fluid that you're seeing standing
18 right there is probably rainwater. We had a lot of rain in
19 2005. And, I believe, just to clarify and make this fair,
20 what -- the fluids you're seeing there is probably rainwater.
21 Of course, you still have the hydrocarbon contamination that
22 hasn't been released. But I just wanted to bring that up.

23 Q. But we are still looking at release in fact?

24 A. Right. We've still a release that should have
25 been remediated.

1 Q. Next pictures.

2 A. And I believe it's the same thing here. You can
3 still see the -- down in the lower left-hand corner, you can
4 still see white and staining from the produced water release.
5 You'll notice it's not as predominant as it was. Rain events
6 have a tendency of moving chloride contamination. It'll wash
7 it away. Sometimes it'll wash it back down. Sometimes it
8 wicks it back up. But in this case, it's probably going down.

9 Q. And what's the inspection that appears after
10 August 29th, 2005?

11 A. Okay. That would be 10/20/2005, and that would
12 be the day that Chris Beadle and myself pulled samples.

13 Q. And were pictures taken on this date?

14 A. Yes. And at this time, the tank that you see
15 collapsed there, it had been moved and was now actually laying
16 on the southeast side of the location. I've got southeast.
17 Actually, I think it was the southwest side of the location
18 between the roads to the well there.

19 Q. You said that the tank had collapsed?

20 A. Yes.

21 Q. Okay. And if you look at 18 --

22 HEARING EXAMINER EZEANYIM: Can you talk more
23 about -- is this tank broken into pieces? What are we looking
24 at?

25 THE WITNESS: This is that tank that's collapsed.

1 Once it collapsed, they came in and cut it so they could move
2 it out of there.

3 HEARING EXAMINER EZEANYIM: When it collapsed, did it
4 have any liquid in there?

5 THE WITNESS: I don't know the date that it
6 collapsed. I really don't know that. But I think we can go
7 back and say when we discovered it. We can go back to the
8 inspection records. But it was never reported to us.

9 HEARING EXAMINER EZEANYIM: Okay.

10 Q. (By Mr. Swazo): If you'll look at pictures 18V
11 through DD, and identify those pictures.

12 A. 18 -- which one?

13 Q. Pictures 18V through DD.

14 MR. SWAZO: And I apologize, we don't have slides for
15 those.

16 HEARING EXAMINER EZEANYIM: That's fine. That's
17 okay.

18 MR. SWAZO: But they are in your packet.

19 Q. (By Mr. Swazo): Okay. We looked at 18. Could
20 you identify those pictures?

21 A. 18V?

22 Q. V, as in Victor -- or violin. V through DD.

23 HEARING EXAMINER EZEANYIM: Mr. Swazo, I know we are
24 still on Levers A State No. 002; is that correct?

25 MR. SWAZO: That's correct.

1 HEARING EXAMINER EZEANYIM: Are we going to go
2 through all 10 with this process, or what is your intention? I
3 want to understand. We are on No. 002. We have done No. 001.
4 Are you going to do those other eight?

5 MR. SWAZO: Well --

6 HEARING EXAMINER EZEANYIM: Because one is -- we've
7 got a picture. We've got everything we need to know about it.
8 Unless you have something more catastrophic than this among
9 these eight wells. Otherwise, I suggest that we have -- we
10 know what's going on here. So do you intend to go through all
11 the many -- eight?

12 MR. SWAZO: I did plan on doing that. This is the
13 most lengthy of the records of the case. What I can do is I
14 can leave it all to -- I could try to just point out stuff in
15 the inspection histories and leave that all to you to review.

16 HEARING EXAMINER EZEANYIM: Yes.

17 MR. SWAZO: I would like to go over the pictures that
18 Mr. Bratcher took of his inspections. I can try to speed it
19 up.

20 HEARING EXAMINER EZEANYIM: What I suggest is, maybe
21 after this, if you know one of the most -- the one among these
22 eight, you can show that again. And then we still have got
23 a -- unless you have a point you want to make.

24 MR. SWAZO: Okay.

25 HEARING EXAMINER EZEANYIM: Continuing contamination

1 is what you're going to show in the exhibit, right? Is that
2 what you are going to show?

3 MR. SWAZO: Yes.

4 HEARING EXAMINER EZEANYIM: Okay. That's what you
5 intend to show all through?

6 MR. SWAZO: Yes.

7 HEARING EXAMINER EZEANYIM: Okay. So by -- you know,
8 by explaining one or two, we might say, well, that is something
9 in all the wells.

10 MR. SWAZO: Yes.

11 HEARING EXAMINER EZEANYIM: Okay.

12 MR. SWAZO: I'll try to cut it down, somewhat.

13 Q. (By Mr. Swazo): Pictures 18W through 18DD, those
14 pictures you took?

15 A. These would have been taken by Chris Beadle.

16 Q. But you were present on that date during that
17 inspection on October 20, 2005?

18 A. Yeah, I believe so. That's the day we took
19 samples out there. And 18CC actually shows one of the sample
20 points along with DD.

21 Q. And did you continue to observe contamination on
22 that day?

23 A. Yes.

24 Q. The next entry after the October 20, 2005, entry
25 is for July 20, 2005. Who was the inspector?

1 A. July 20th, 2007?

2 Q. I'm sorry. 2007, right.

3 A. I was.

4 Q. And what did you observe?

5 A. No well sign, contamination of the wellhead area,
6 power switches off, no indication of recent activity at well
7 site, tank battery situated approximately 100 yards south of
8 well site, has collapsed tank on location, no indication of any
9 cleanup having been done from releases that have occurred at
10 the battery site, fluids are being pumped into the west tank.
11 I can hear fluids moving through the poly flow line that was
12 plumbed into the west tank.

13 Q. So you continued to observe contamination?

14 A. Yes.

15 Q. And I'm going to show you some pictures on the
16 screen. Well, did you take pictures on that day?

17 A. Those were the pictures we took on that day, yes.

18 Q. Okay. And I'm just going to briefly show the
19 pictures. And that's what you observed on June 20, 2007?

20 A. Yes.

21 Q. What's the next entry that appears after July 20,
22 2007?

23 A. 10/3/2007.

24 Q. And who was the inspector?

25 A. I was.

1 Q. And what did you observe?

2 A. Inspected site with OCD reps, Daniel Sanchez and
3 Sonny Swazo, increased oil releases observed at the base of
4 separator, base of east tank and small ongoing produced water
5 leak on the west tank, well was pumping at time of inspection.
6 I don't believe any pictures were taken that day. I think we
7 attempted to get one with a camera phone.

8 Q. And can you identify Exhibit No. 6?

9 HEARING EXAMINER EZEANYIM: What is Exhibit No. 6?
10 Is that on that well?

11 MR. SWAZO: Exhibit No. 6 is a well inspection
12 history.

13 HEARING EXAMINER EZEANYIM: On that same well, right?

14 MR. SWAZO: Yes.

15 HEARING EXAMINER EZEANYIM: Okay. At this point,
16 let's break and have a 10-minute break.

17 MR. SWAZO: Okay.

18 [Recess taken from 10:04 a.m. to 10:18 a.m., and
19 testimony continued as follows:]

20 HEARING EXAMINER EZEANYIM: We will go back on the
21 record now and continue from where we stopped. Mr. Swazo?

22 MR. SWAZO: Thank you, Mr. Hearing Examiner.

23 Q. (By Mr. Swazo): Mr. Bratcher, I'm going to have
24 you -- you identified exhibits -- let's see. You've identified
25 the well inspection histories for these wells. I'm going to

1 have you look at Exhibit No. 6, the well inspection history for
2 the Levers State 7 well. And I'm going to have you review the
3 inspection history for that well.

4 A. Okay.

5 Q. Okay. Can you tell me, when does -- in looking
6 at this inspection history, can you tell me when this issue of
7 contamination first appears in this?

8 MR. LARSON: Mr. Hearing Examiner, can we clarify
9 what we're looking at here?

10 MR. SWAZO: Exhibit No. 6 is on the backside, Gary.
11 It looks like this.

12 MR. LARSON: Okay. Thank you.

13 A. Okay. This is actually an injection well.

14 Q. (By Mr. Swazo): When is the first mention of
15 contamination?

16 A. Okay. In this one, on 8/4/2000, it says,
17 "Location needs attention, equipment okay."

18 Q. Well, let me go ahead and clarify this because
19 the issue in this case is a continuing violation, which means
20 that contamination exists and has existed and hasn't been
21 remediated. When is the first time that uninterrupted
22 contamination appears in this inspection history?

23 A. Okay. That would be 8/30/2005.

24 Q. And --

25 MR. LARSON: Excuse me, Sonny. Point of

1 clarification. Are we on Exhibit 6 or 7?

2 MR. SWAZO: We're on Exhibit 6, the back page.

3 MR. LARSON: I don't have a back page. Are we
4 talking about the Levers A State?

5 MR. SWAZO: Yes.

6 MR. WARNELL: State 7 Levers?

7 MR. LARSON: Thank you.

8 Q. (By Mr. Swazo): And so you said -- you testified
9 that August 30th, 2005, was the first time that contamination
10 shows up, and that it has existed since then?

11 A. I would say yes.

12 HEARING EXAMINER EZEANYIM: Mr. Bratcher, what is the
13 current status of this injection well?

14 THE WITNESS: I believe the current status is it's
15 probably lost its injection authority, and it's an idle well.

16 HEARING EXAMINER EZEANYIM: Okay.

17 Q. (By Mr. Swazo): Now, I'm going to show you some
18 pictures on the screen.

19 A. Okay.

20 Q. I'm going to show you these pictures. First of
21 all, are these pictures of the Levers State No. 002?

22 A. Yes. It's at the tank battery just east of that
23 injection well, and then some of the pictures showed the
24 injection well. What we've just seen is chronological order
25 starting in 8/16/2004.

1 Q. I'm sorry. Let me clarify that. These pictures
2 are of the Levers State 7?

3 A. Yes. Lever State 7 in the tank battery.

4 Q. Were these pictures all taken on the same date?

5 A. No.

6 Q. Okay. And what are we looking at in this
7 picture?

8 A. This is looking at one of the vessels on that
9 side, and it has an active release going on from that valve
10 right there. You can see it leaking around the hatch on the
11 tank.

12 Q. Did you actually inspect the well on this date?

13 A. Yes.

14 Q. And did you observe the active leak?

15 A. Yes.

16 Q. Well, I wanted to clarify something for the
17 Examiners. Now, there are some pictures in here that were
18 taken by Phil Hawkins, correct?

19 A. Yes.

20 Q. And they are dated -- the date that appears on
21 those pictures is 2-7-2006. Did Phil Hawkins actually inspect
22 the site on February 7, 2006?

23 A. No, no.

24 Q. When did he inspect the site? And you can look
25 at the well inspection history.

1 A. Yes. The pictures on 2/7/06, that inspection
2 date would have been July 3rd, 2006. And the reason for the
3 date on the camera, it was set up to show the day, month, and
4 year, and his camera was actually one day off.

5 Q. And does that happen with some of the other
6 pictures that Phil took --

7 A. Yes.

8 Q. -- for other wells in this --

9 A. Yes.

10 MR. LARSON: Mr. Hearing Examiner, could you ask
11 Mr. Swazo to put it up on the screen? I don't have the ability
12 to spread out with all these copies of these photographs --
13 just so we could see them up on the screen.

14 HEARING EXAMINER EZEANYIM: Do we have it on
15 PowerPoint? Do we?

16 MR. SWAZO: We do have it on PowerPoint. Right now,
17 I think we are having difficulties, but my intention is to show
18 all the pictures on the PowerPoint. Right now, we are just
19 into pictures 19 -- Exhibit 19, which is for the Lever State 7.
20 And we were towards the end of those pictures for that
21 particular well.

22 Q. (By Mr. Swazo): Mr. Bratcher, I'll have you go
23 to Exhibit No. 7, which is the well inspection history for the
24 Resler Yates State No. 317.

25 HEARING EXAMINER EZEANYIM: Which one? Which exhibit

1 number?

2 MR. SWAZO: Exhibit No. 7.

3 HEARING EXAMINER EZEANYIM: Okay. And this is well
4 number --

5 MR. SWAZO: It is of the well Resler Yates State
6 No. 317.

7 HEARING EXAMINER EZEANYIM: Okay.

8 Q. (By Mr. Swazo): Mr. Bratcher, when is the first
9 time that contamination is mentioned at the well?

10 A. On 8/30/2005.

11 Q. And were there subsequent inspections?

12 A. Yes.

13 Q. Were there any changes in the contamination
14 issue?

15 A. No. Not significant. And the 8/30/2005
16 inspection record indicates well is pumping, heavy
17 contamination at wellhead area, oil pooled at wellhead.
18 7/25/2007 inspection indicates well is pumping, heavy
19 contamination at wellhead area.

20 Q. And what is the most -- well, never mind. Were
21 pictures also taken of this well?

22 A. Yes.

23 Q. What I can do at this point is I can go ahead and
24 go back to the pictures that were taken for the previous well
25 if -- okay.

1 HEARING EXAMINER EZEANYIM: Which well is this?

2 MR. SWAZO: This is the Lever State 7. We had
3 already seen most of these pictures before the PowerPoint went
4 out.

5 HEARING EXAMINER EZEANYIM: Okay.

6 MR. SWAZO: So we'll go up to the latest I recall is
7 where we were actually at a close up of a leak. And then we'll
8 just go on from there.

9 Q. (By Mr. Swazo): 2/7/2006 pictures, those are the
10 pictures that you're referring to as far as Phil Hawkins is
11 concerned?

12 A. Right. He had his camera set up to show the 2 is
13 actually the day, the 7 is the month, and then the year. He
14 was off a day on his camera date. This was actually taken on
15 July 3rd, 2006.

16 Q. Now, I believe we left off on this picture, so
17 we'll continue on from this point. We'll go ahead and go back
18 to the pictures in a little bit, but let me go ahead and have
19 you look at Exhibit No. 8. That is the well inspection history
20 for the Resler Yates No. 322. Please review that inspection
21 history, and tell me when the first time that contamination is
22 first observed.

23 A. 8/20/2004.

24 Q. And what's the date of the most recent
25 inspection?

1 A. 7/25/2007.

2 Q. Was contamination also mentioned on the
3 July 25th, 2007 entry?

4 A. Yes.

5 Q. Was there any change between that time period in
6 terms of the contamination issue?

7 A. Not based on the 2004, 2005, 2007 inspection
8 records.

9 Q. And were pictures taken of the inspection --
10 well, were pictures taken of this well?

11 A. Yes.

12 Q. Exhibit No. 9, which is the well inspection
13 history for the Resler Yates State No. 367, when is the first
14 time that contamination is indicated?

15 A. 8/20/2004.

16 Q. And what are the dates of the subsequent
17 inspections?

18 A. 8/30/2005, 7/5/2006, 7/16/2007.

19 Q. Did -- was contamination mentioned in those
20 inspections?

21 A. Yes. Each inspection notes contamination at this
22 site.

23 Q. And were pictures taken of the well?

24 A. Yes.

25 Q. Exhibit No. 10, which is the well inspection

1 history for the Resler Yates State No. 370. When is the first
2 mention of -- when is contamination first indicated?

3 A. 7/5/2006.

4 Q. And were there subsequent inspections?

5 A. Yes. 7/24/2007.

6 Q. Was contamination also mentioned on 7/24/2007?

7 A. Yes.

8 Q. If you look at Exhibit No. 11, which is the well
9 inspection history for the Resler Yates State No. 381, when is
10 contamination first mentioned?

11 A. 9/11/2001.

12 Q. And who was the inspector on that date?

13 A. Mike Stubblefield.

14 Q. And what did he enter?

15 A. "Unreported oil spill at tank battery. Violation
16 of Rule 116."

17 Q. And again, a Y appears in the violation section.
18 What does that mean?

19 A. That would indicate that Mr. Stubblefield opened
20 a violation on this well, and a letter should have been
21 generated and subsequently sent to the operator.

22 Q. On July -- I'm sorry. What's the date of the
23 most recent inspection?

24 A. 7/24/2007.

25 Q. And so there's been no change in the -- I mean,

1 contamination is mentioned in all the inspections that have
2 existed from July 11, 2001 to -- I'm sorry -- September 11,
3 2001 to July 24, 2007?

4 A. Yes.

5 Q. And I want to go to the entry for September 17,
6 2002. Who made the entry? Or who was the inspector?

7 A. On September 17, 2002? It would be Mike
8 Stubblefield.

9 Q. And what did he enter?

10 A. Inspected spill on injection line running north
11 of tank battery, letter sent to operator, request for C-141.

12 Q. And were pictures taken of this well site?

13 A. In 2002?

14 Q. Well, over the entire period?

15 A. Yes.

16 Q. Now, these were the pictures for -- I think they
17 were for the Lever State 7, and we're just going to go ahead
18 and scroll through these pictures.

19 Now, we're going to take a look at the pictures for
20 the Resler Yates State No. 317.

21 MR. WARNELL: That's Exhibit 7 on the well inspection
22 history?

23 MR. SWAZO: That's correct.

24 Q. (By Mr. Swazo): And these were pictures that
25 were taken over the years. Now, we're going to look at the

1 pictures for the -- and do you recognize that well site as
2 being the Resler Yates State No. 317?

3 A. Yes, I believe so. If you're asking me if I can
4 look at that picture and tell you --

5 Q. The pictures that we just went through.

6 A. Yeah, yes.

7 Q. Now, we're going to look at this picture of
8 Resler Yates State 322. And you've been to that site before,
9 right?

10 A. Yes.

11 Q. And that's the Resler Yates State No. 322?

12 A. Yes.

13 Q. Okay. And now we're going to the pictures for
14 the Resler Yates State No. 367. Now, when I was looking at the
15 inspection history, I did not see an entry for 4/7/2006. I
16 observed, that at one point, Phil Hawkins inspected the well.
17 And I believe it was on July 3rd or July 5th, 2006.

18 A. Yeah. And, once again, the date on his camera
19 shows the day first and then the month. So the date stamp is
20 actually for July 4th, 2006. Mr. Hawkins has an inspection
21 record for July 5th, 2006. The OCD doesn't work on July 4th,
22 so that would lead me to believe that the camera date stamp was
23 off a day.

24 Q. Okay.

25 HEARING EXAMINER EZEANYIM: What type of a camera is

1 that?

2 THE WITNESS: It's a Kodak.

3 HEARING EXAMINER EZEANYIM: A digital camera? And he
4 needs to turn the date around?

5 THE WITNESS: Yes, yes. And when you're taking
6 pictures on this particular camera, you can't see the date. I
7 mean, you have to go into the menu to reset the date. Unless
8 you do that, you don't really know that it's off.

9 HEARING EXAMINER EZEANYIM: Okay.

10 THE WITNESS: We try not to let it happen, but it
11 does happen.

12 HEARING EXAMINER EZEANYIM: Okay.

13 Q. (By Mr. Swazo): And the next set of pictures
14 we're going to talk about is for the Resler Yates State
15 No. 370. And you did recognize that as being the Resler Yates
16 State No. 367?

17 A. Yes.

18 Q. And do you recognize that as being Resler Yates
19 State No. 370?

20 A. Yes.

21 Q. And I want to go to the next set of pictures for
22 the Resler Yates State No. 381. And if there's at any point
23 where you want to talk about something, just let us know.

24 A. I think most of these pictures kind of speak for
25 themselves. Now, some of the standing fluids that you're going

1 to see at this tank battery, once again, I believe some of
2 those fluids are going to be some rain events. Of course, you
3 can see the contamination is the reason for the pooling of the
4 rain.

5 Q. And these pictures were taken at various times
6 over the years?

7 A. Yes.

8 Q. Now --

9 HEARING EXAMINER EZEANYIM: Mr. Swazo, is it possible
10 to go to Welch Duke State No. 018 and see that last well?
11 Because all of these are showing the same thing. Let's see the
12 last one and conclude that.

13 MR. SWAZO: Let me just go ahead and go through these
14 questions real quick.

15 Q. (By Mr. Swazo): If you'll look at Exhibit
16 No. 12, which is the well inspection history for the Thomas
17 State No. 001 --

18 A. Okay.

19 Q. -- what is the first time that contamination
20 appears?

21 A. 11/12/2002.

22 Q. Okay. Now, I'm talking about --

23 A. Well, actually it's 10/8/2002.

24 Q. Okay. I'm actually asking about -- and who was
25 the inspector on November 12, 2002?

1 A. I was.

2 Q. And again, there's a Y that is indicated in the
3 violation section. Does that mean that a letter would have
4 been generated and sent to the operator notifying the operator
5 of the contamination issue?

6 A. Yes. Now, that Y is actually on the 11/12/2002
7 inspection.

8 Q. But that would have happened nonetheless?

9 A. Pardon?

10 Q. That still would have happened? A letter would
11 have been generated and sent to the operator?

12 A. Correct.

13 Q. And what was the violation for November 12, 2002?

14 A. There was a violation of Rule 13 and Rule 116 for
15 release of produced fluids.

16 Q. Now, in looking at this inspection history,
17 there's been subsequent inspections over the years. Is
18 contamination present in all of those inspections?

19 A. Yes.

20 Q. And if we can just look at the pictures real
21 quick for this. And you do recognize this as the Thomas State
22 No. 001?

23 A. Yes.

24 Q. And some of those pictures aren't dated. Is that
25 the date that you were taking samples on October 20, 2005?

1 A. Yes. The pictures that don't have a date stamp
2 on them, those were taken with the camera that Chris Beadle was
3 using at that time. That was taken on 10/20/2005.

4 Q. Is that one an active leak?

5 A. Yeah. That tank had a leak -- it looked like --
6 in the bottom of it.

7 Q. Okay. And if you'll look at Exhibit No. 13,
8 which is the well inspection history for the Welch Duke State
9 No. 018, when does contamination first appear?

10 A. 8/20/2004.

11 Q. And there has been subsequent inspections since
12 then?

13 A. Yes.

14 Q. And does contamination appear in all those
15 subsequent inspections?

16 A. Yes.

17 Q. And the date of the most recent inspection?

18 A. 7/25/2007.

19 Q. And were pictures taken of this well during -- at
20 any time during -- over the years?

21 A. Yes.

22 Q. If you'll look at the pictures on the screen, are
23 these pictures for the Welch Duke State No. 018?

24 A. Yes.

25 Q. And again, there's that 2/7/2006.

1 A. Right.

2 Q. The picture wasn't taken on February 7, 2006. It
3 was taken on July 3rd, 2006?

4 A. Yes. July 3rd, 2006.

5 Q. Okay.

6 A. I think this one actually shows three pictures
7 taken over a three-year period, where basically the site looks
8 the same. We have pictures on '04, '05 -- '05, '06, and '07.

9 Q. So this is the picture that was taken in 2005?

10 A. Yes.

11 Q. And this picture was taken in 2006?

12 A. Yes.

13 Q. And this picture was taken in 2007?

14 A. Yes.

15 Q. Are those the pictures that you're talking about?

16 A. Yes.

17 Q. Now, over the years, have you spoken with
18 Mr. Brewer about the contamination issues at his well sites?

19 A. We've talked a few times, yes.

20 Q. And have you told him that he needed to remediate
21 the pollution?

22 A. Yes.

23 Q. Are you familiar with Rule 116?

24 A. Yes.

25 Q. What does Rule 116 require?

1 A. Rule 116 requires -- it lays out the groundwork
2 for reporting requirements. It requires that leaks and spills
3 be remediated by a division-approved work plan.

4 Q. And in terms of notice, what does it require?
5 Who's required to give notice?

6 A. The operator.

7 Q. And how must notice be given?

8 A. In dealing with liquid volumes, a liquid volume
9 release, over 25 barrels requires immediate verbal
10 notification. Definition of immediate verbal notification is
11 within 24 hours of discovery, which means the operator is
12 required to contact the OCD within 24 hours of discovery of
13 that release and let us know that he had a release.

14 It's also required to follow up by submitting a form
15 C-141 within 15 days of discovery of that release. Volumes of
16 five barrels to 25 barrels does not require immediate verbal
17 notification, but it does require submittal of the C-141 within
18 15 days of the discovery of the release.

19 Q. So in any case, whether the release is minor or
20 major, the C-141 notification form is required to be submitted
21 to OCD within 15 days of the release discovery?

22 A. Yes.

23 Q. And has that happened in this case?

24 A. The first line of C-141 actually says any release
25 will be reported.

1 Q. Has Mr. Brewer submitted any C-141s for the
2 releases in this case?

3 A. No.

4 Q. What does OCD generally require in terms of --
5 what is required when a site needs to be remediated? What are
6 the procedures from beginning to end?

7 A. We first require the notification. Then,
8 generally, we'll ask for a remediation work plan be submitted.
9 The plan should outline what the operator intends to do to
10 remediate the site. It should also include a site ranking.

11 We have a site ranking system set up in the Guideline
12 For Remediation, Leak, Spills, and Releases. And it's based on
13 depth to groundwater, distance to the nearest surface water
14 body, and distance to the nearest water source.

15 Each individual aspect is then given a point system
16 rating, and it gives you an overall site rating for that site.
17 That sets up the recommended remediation action levels for
18 contaminants that are present at that site.

19 Q. And has Sandlot Energy done any of this stuff
20 that we just discussed?

21 A. No.

22 Q. Can you tell the Hearing Examiner what you think
23 would be a reasonable time frame for these wells to be
24 remediated?

25 A. All the wells we're looking at, to do a proper

1 remediation, I'd say 90 days.

2 Q. Is there anything else that you would like to add
3 about this case?

4 A. I don't think so at this time. We -- you know,
5 other than the OCD, as Mr. Gum stated, we try to work with
6 operators as best we can to keep from getting to the point that
7 we're at now. We'd much rather see the sites cleaned up.
8 Money's utilized in cleaning up the sites rather than coming in
9 and levying fines. We'd much rather see that money go towards
10 cleaning up the sites. But, unfortunately, we're at this point
11 on this one.

12 MR. SWAZO: I have no further questions at this time.

13 HEARING EXAMINER EZEANYIM: Mr. Larson?

14 MR. LARSON: Thank you, Mr. Hearing Examiner.

15 EXAMINATION

16 BY MR. LARSON:

17 Q. Good morning, Mr. Bratcher.

18 A. Good morning.

19 Q. I would direct your attention to Division Exhibit
20 No. 4.

21 A. Okay. I have my exhibits scattered, if you will
22 bear with me for a moment.

23 Q. And if you look at the entry for October 20,
24 2005, I believe you testified that these represented soil
25 samples that you had taken?

1 A. Okay. Ask the question again.

2 Q. All right. I'm at the entry for October 20,
3 2005.

4 A. Okay.

5 Q. And it shows that you took soil samples on that
6 date?

7 A. Yes.

8 Q. Or somebody from the Division?

9 A. Yes.

10 Q. And I believe that was a photograph that showed a
11 bag with a little trowel.

12 A. Yes.

13 Q. Do you recall how far below the ground surface
14 you dug for those samples?

15 A. We didn't go very far. And the record indicates
16 three to six inches. We didn't go to any depth.

17 Q. And do you have any documentation for the lab
18 analysis of those soil samples?

19 A. Yes, we did.

20 Q. Do you have it with you today?

21 A. I think Sonny should have those.

22 MR. SWAZO: They were originally part of our packet.
23 I can include them. Those are the results, right?

24 THE WITNESS: They were already marked.

25 HEARING EXAMINER EZEANYIM: Before we go ahead, let's

1 see if we can admit some of those exhibits into evidence before
2 you continue. You are looking at this No. 4. I'm going to
3 admit them now so as we go through them. So we can put them on
4 there while we are going through that.

5 Would you like to make a motion, Mr. Swazo?

6 MR. SWAZO: Well, I'd make a motion to admit all the
7 exhibits. We've talked about all of the exhibits up to --
8 well, we haven't yet talked about Exhibit No. 3.

9 HEARING EXAMINER EZEANYIM: I see you have a bunch of
10 exhibits here.

11 MR. SWAZO: That's correct. The only exhibits that
12 we haven't talked about are Exhibits No. 3 and No. 27, and of
13 course, the exhibit that's just been presented to you, 29, I
14 think?

15 HEARING EXAMINER EZEANYIM: What is it?

16 MR. SWAZO: I don't know if it's 29 or 28.

17 HEARING EXAMINER EZEANYIM: 29.

18 MR. SWAZO: Everything else we've talked about. And
19 I'll make my motion to admit the exhibits at the appropriate
20 time.

21 HEARING EXAMINER EZEANYIM: Mr. Larson, do you have
22 any objection to these exhibits?

23 MR. LARSON: Two things, Mr. Hearing Examiner: One,
24 I'd like to have the chance to spread these out because some of
25 these I had never seen until this morning; secondly, I don't

1 recall any testimony about Exhibits 1 and 2.

2 MR. SWAZO: 1 and 2 are the affidavits, just --
3 Exhibit No. 1 is for the notification to show that we did
4 properly notify interested parties about this proceeding.
5 Exhibit No. 2 is the affidavit from Dorothy Phillips concerning
6 the financial assurance in this case, since we are asking that
7 if operator doesn't come into compliance by whatever date set,
8 that we have the authority to -- authorize the plugging of the
9 wells and to pull on the financial assurance that has been
10 posted.

11 HEARING EXAMINER EZEANYIM: Do you have any objection
12 to those exhibits?

13 MR. LARSON: Not to 1 and 2. I would like an
14 opportunity, though, to look through them quickly.

15 HEARING EXAMINER EZEANYIM: Okay, it is possible for
16 you to use this desk.

17 MR. LARSON: Sure.

18 HEARING EXAMINER EZEANYIM: I want you to look at
19 Exhibits 1 and 2 and see whether you want to -- before I admit
20 them. Or you can look at those Exhibits 1 and 2, and let me
21 know if you have any objection to that.

22 MR. BROOKS: As I understood, he said he had no
23 objection to 1 and 2, but he wanted to look at the others; is
24 that right?

25 MR. LARSON: I didn't, based on what Mr. Swazo had

1 said, but I'd certainly like the opportunity to look through
2 them.

3 MR. BROOKS: Okay.

4 MR. LARSON: I have no objection to Exhibits 1 or 2.

5 HEARING EXAMINER EZEANYIM: Okay. I want you to look
6 at the rest of the exhibits because I need to admit them now.

7 MR. LARSON: I understand.

8 HEARING EXAMINER EZEANYIM: This is what I'm going to
9 do. I need to admit Exhibits 1 through 29, except Exhibit No.
10 3 and 27 and 29 into evidence. Everything that has been
11 presented, except No. 27 and No. 29. Is that correct, Mr.
12 Swazo?

13 MR. SWAZO: That's correct, Mr. Hearing Examiner.

14 MR. LARSON: Mr. Swazo, are these color prints all
15 the things we've seen on the PowerPoint?

16 MR. SWAZO: Yes, they are, yes.

17 MR. LARSON: Then I have no objection to Exhibits 4
18 through 26.

19 HEARING EXAMINER EZEANYIM: Okay. At this point,
20 Exhibit 1 and 2, 4 through 26, with the exception of No. 3 and
21 27 and 29, will be admitted in this case.

22 Mr. Larson, you can continue with the witness.

23 MR. LARSON: Can I do it from here?

24 HEARING EXAMINER EZEANYIM: Sure.

25 Q. (By Mr. Larson): Mr. Bratcher, I believe when we

1 broke to look at the exhibits, we were directing your attention
2 to Exhibit No. 4.

3 A. Okay.

4 Q. And we were looking at the notation regarding the
5 soil sampling.

6 A. Okay.

7 Q. And then Mr. Swazo handed you Exhibit No. 29. Is
8 this the lab analysis for the soil sampling indicated in
9 Exhibit 4?

10 A. What we have in Exhibit 29 is the lab analysis
11 that was taken on 10/20/05 of all the sites that we took
12 samples at. This is -- in other words, if you'll look up at
13 the top right-hand corner just under the date, it has client
14 sample ID, and the first one is number one. That was how we
15 were numbering these.

16 Now, unfortunately, we had a notebook that we were
17 writing, "Client sample ID is relative to Daugherty
18 State No." -- whatever. And I don't have that notebook up
19 here. So I'm not going to be able the correlate this sample
20 No. 1. I'm not going to be able to tell you which site this
21 was taken at today.

22 Q. I understand.

23 A. Now, we do have lat logs. I'm sure that notebook
24 still exists somewhere, but to be able to correlate these
25 analyticals to exactly which site they were taken at, I'm not

1 going to be able to do that today. These were all taken at the
2 sites that were indicated that we took soil samples at on the
3 Sandlot properties.

4 Q. So in response to questioning by Mr. Swazo, we
5 looked at other well sites that had indicated that soil samples
6 had been taken?

7 A. Yes, sir.

8 Q. So would it be fair to assume that the
9 analyticals for all of those soil samples appear in Exhibit 29?

10 A. Yes, sir.

11 Q. And to your knowledge, were these analyticals
12 sent to Mr. Brewer?

13 A. No, sir, they weren't --

14 Q. And why is that?

15 A. -- to my knowledge. We were in the process of,
16 once again, just gathering information for an investigation
17 that we were performing internally in preparation to take this
18 case to hearing in 2005.

19 Q. Next, I would direct your attention to Division
20 Exhibit No. 15.

21 A. Okay.

22 Q. Actually, I misspoke, Mr. Bratcher. I'd like you
23 to refer to No. 14.

24 A. Yes.

25 Q. And at the bottom of the page there, you are

1 indicating a violation regarding Levers A State No. 002.

2 A. Yes, sir.

3 Q. And if you look over to the right there, there's
4 a notation and for, "Significant non-compliance?" the answer is
5 no. What does that signify to you?

6 A. A significant non-compliance requires reporting
7 to the EPA. Very rarely are we going to have what is
8 considered a significant non-compliance. Any time you bring
9 the EPA in on something, it's going to be a major
10 non-compliance issue. I've been with the OCD going on seven
11 years, and I've had one time have I encountered a significant
12 non-compliance. Usually a significant non-compliance would
13 have to do with an injection well program.

14 Q. As a threat to groundwater?

15 A. Well, the EPA is in charge of all underground
16 injection in the United States. Some states have more or less
17 contracted out under EPA to administrator the UIC underground
18 injection program for the EPA. New Mexico is one of them.

19 Once again, typically, if it's a significant
20 non-compliance issue, it's related to the underground injection
21 control program and is required to be reported to the EPA.

22 Q. Mr. Swazo asked you a question about a time frame
23 for conducting remediation.

24 A. Yes.

25 Q. I believe you said 90 days for a proper

1 remediation. Can you kind of break down for me what you mean
2 by "proper"?

3 A. Proper remediation would be for a C-141 to be
4 submitted on the releases that have occurred out there, a work
5 plan proposal be submitted to the district for review,
6 delineation samples should be taken at each site. To actually
7 formulate a work plan, you need to know what kind of
8 contamination you have out there, how deep is it, what are the
9 levels, what's the extent vertically or horizontally of the
10 contamination.

11 Then you put together a work plan saying we're going
12 to dig down to three feet. That soil will be hauled to an
13 OCD-approved facility. Confirmation samples would then be
14 obtained. And if they are within the recommended remediation
15 action level for that site, based on the site ratings, which
16 would also have to be included in the remediation work plan,
17 then you can make a determination of whether that had been
18 remediated to our standards or not.

19 Q. So you would have the expectation that somebody
20 on behalf of Mr. Brewer would do soil sampling at all 10 of
21 these sites?

22 A. In this case, I couldn't imagine that Mr. Brewer
23 would be able to perform all of this by himself. I would
24 assume he would want to bring in an outside contractor to help
25 out with it.

1 Q. Okay. Would you expect an analysis of those
2 samples prior to the work plan being submitted?

3 A. Actually, the work would be based on the
4 delineation samples. And we get into, you know, some arguments
5 with some operators there on whether the delineation samples
6 should be taken first, after, but in my mind, to formulate a
7 workable remediation plan, you first need to know what the
8 contamination issues are. And the only way you can do that is
9 to take delineation samples.

10 Q. Which would then need to be sent to the lab to be
11 analyzed?

12 A. Correct.

13 Q. Do you still think it's realistic to have samples
14 taken sent to a lab, analyzed, using that data as a basis for a
15 work plan, and have the work plan submitted to you and the work
16 done within 90 days?

17 A. Yes.

18 MR. LARSON: Okay. That's all I have. Thank you.

19 HEARING EXAMINER EZEANYIM: Would you like to
20 cross-examine?

21 MR. SWAZO: I did have some questions.

22 FURTHER EXAMINATION

23 BY MS. SWAZO:

24 Q. (By Mr. Swazo): Mr. Bratcher, you were asked
25 about the sampling that you had done for these wells. Did the

1 results indicate contamination?

2 A. Yes.

3 Q. In going back to Exhibit No. 14 where it states
4 significant non-compliance, does that mean that there's -- and
5 there's a "no" indicated -- does that mean that there is not a
6 compliance-related issue?

7 A. No. That means that there is not a significant
8 non-compliance. Now, this significant non-compliance appears
9 in our database as a little check box. If it is a significant
10 non-compliance, you enter a check in that box. If you don't
11 check that box, it prints it out as a no. We don't have a no
12 in there. We don't enter anything in that significant
13 non-compliance field unless we do consider it a significant
14 non-compliance. Then it would be a check box, and if that box
15 had been checked, there would a yes right there instead of a
16 no.

17 Q. Okay. And then one final question concerning the
18 sampling that you're recommending be done in this case: Does
19 OCD have to be involved in the sampling? Does OCD have to
20 witness the sampling? How does that work?

21 A. We would require 24-hour notification prior to
22 obtaining samples. And then we would -- that would afford us
23 the opportunity to witness the samples. With current activity
24 levels, current staffing levels, we're not always able to
25 witness all the sampling events, but we do require to be

1 afforded the opportunity to witness those events.

2 Q. So OCD does not do the sampling, it just needs to
3 witness the sampling?

4 A. Correct.

5 MR. SWAZO: I have no further questions.

6 HEARING EXAMINER EZEANYIM: Do you have any
7 questions?

8 MR. LARSON: Nothing further.

9 HEARING EXAMINER EZEANYIM: Okay. Do you have
10 anything?

11 MR. BROOKS: Yes.

12 EXAMINATION

13 BY MR. BROOKS:

14 Q. Mr. Bratcher, your testimony has been fairly
15 lengthy, and I'll have to concede that my mind has wandered a
16 few times during the course of the morning, so I may be asking
17 you about things you've already testified about.

18 But looking at Rule 116, Rule 116B distinguishes
19 between major and minor releases, and it defines both of them
20 in terms of qualities, which leaves some category of releases
21 that don't meet the minimum quantity requirements for even a
22 minor release, right?

23 A. Correct.

24 Q. I don't recall if you state with regard to the
25 various releases you're talking about in this proceeding which

1 ones of them were considered to be major and which ones were
2 considered to be minor, if you gave any testimony as to whether
3 that in your opinion that it appeared that there were more than
4 five barrels a day at these sites. So could you briefly go
5 over that, and tell us if we've got major releases here or if
6 we've got minor releases. Can you judge that from what
7 evidence you saw at the site?

8 A. I believe some of these sites we do have a couple
9 of releases that would probably qualify as a major release,
10 over 25 barrels.

11 Q. And which ones are those of the ones that we've
12 talked about this morning would be the ones that you would
13 consider to be major releases?

14 A. I would probably say the produced water release
15 at the collapsed tank. I'd say that was about 25 barrels.
16 Now, we get into this a lot with the operators. And it's
17 really hard to make a determination whenever you're dealing
18 with volumes of released fluids.

19 There's a lot of factors that go into us
20 determining -- if you're in a sandy area and you release
21 25 barrels, it's going to soak it up like a sponge, and it may
22 not look like five barrels. If you release five barrels on a
23 hard-packed caliche, it is going to spread over a large area,
24 and it may look like 25 barrels. So it's really hard to
25 determine volumes. We run into this problem a lot in

1 determining volumes.

2 Q. Okay. Well, understanding those equal
3 qualifications, now, which one -- you said one of them -- you
4 then said that you estimated it was over 25 barrels.

5 A. Yes. And I believe that would be the one at the
6 collapsed battery. I'm not sure which -- I believe it's the
7 Levers A State 002, I believe. Am I correct? Sorry.

8 Yeah. It would be the tank battery at the Levers A
9 State No. 002. Now, also, on most of these sites, these
10 releases are not a one-time event. You can go back and look at
11 the pictures, and you can see releases at these sites that date
12 back years.

13 So we've got release after release after release.
14 You may have a release of two barrels in January, and six
15 months later you may have a half a barrel release. So I think
16 in most of these cases we're not dealing with a one-time event.

17 Q. Okay.

18 A. I believe we're dealing with multiple releases.

19 Q. And I think you and I would probably agree that
20 Rule 116 is a little bit unsatisfactory in terms of determining
21 exactly what the -- precisely determining what the operators
22 reporting requirements are, where you have a continuing or
23 intermittent -- or particularly where you have an intermittent
24 release.

25 A. Right.

1 Q. But it is much more easier to apply to a
2 continuing release than an intermittent release.

3 A. Right.

4 Q. Again, with those qualifications, the other
5 releases other than the one that you identified as, in your
6 opinion, a major release, how many of them and which ones would
7 you say you would estimate are probably in excess of five
8 barrels and therefore qualifies as a minor release under Rule
9 116B-2?

10 A. Well, once again, we would have to go back to the
11 pictures. To just -- well, of course, I'm being honest up
12 here. I was fixing to say, "To be honest," but I've been
13 honest up here. Most of these releases were probably less than
14 five barrels, but they were multiple releases. That's in my
15 estimation.

16 Q. Let me clarify that. You say the total amount --
17 are you saying that the total amount released at the site was
18 probably less than five barrels, or are you saying there were
19 multiple releases that in sum amounted to more than five
20 barrels, although the individual specific releases may have
21 been less than five barrels?

22 A. B.

23 Q. Okay.

24 A. I believe there were multiple releases that in
25 sum would add up to greater than five barrels, but at the

1 actual time of the release probably was less than five barrels.

2 Q. Well, I'm glad the Legal Examiner is entitled to
3 ask leading questions.

4 Okay. Now, when we get to Rule 116D, Rule 116D is
5 about corrective action, and it doesn't say anything about
6 major or minor releases, right?

7 A. Correct.

8 Q. What it does say is that the responsible person
9 must complete Division-approved corrective actions for releases
10 which endanger public health or the environment.

11 A. Correct.

12 Q. Now, there hasn't been any talk about public
13 health. Are you contending that any of these releases
14 endangered public health?

15 A. I'm not sure if I can categorically say that they
16 endangered public health. I would go on to say that they do
17 endanger the environment.

18 Q. Now, you told us about possible hazards to
19 livestock, right? I remember that testimony.

20 A. Correct.

21 Q. And, of course, I think livestock are probably
22 part of the environment; is that a fair assessment?

23 A. I guess you can elaborate on that and say that,
24 you know, if you have livestock out there that are feeding on
25 this produced water and that particular stake winds up on your

1 dinner plate, that may be a hazard to the public health at that
2 point.

3 Q. Okay. Well, if you're a rancher, you think
4 killing livestock is a hazard to somebody, whether it be public
5 health or something else -- but anyway.

6 Based on your experience with addressing issues
7 involving produced water spills and hydrocarbon spills, could
8 you describe to us why you believe these spills that were
9 observed in this -- well, first of all, do you believe that all
10 of the spills that were observed in this case that were of such
11 significance that you would say they presented a danger to the
12 environment?

13 A. Yes.

14 Q. In other words, there aren't any of them that are
15 so trivial that you wouldn't say that they presented a danger
16 to the environment?

17 A. I don't think so. I think they are all, to some
18 degree, a threat to the environment.

19 Q. Then going back to what I was saying before,
20 based on your experience, could you describe for us what kind
21 of environmental hazard -- what kind of environmental issues
22 these spills presented and why you would categorize them as
23 endangering the environment?

24 A. Any time you have releases on top of releases,
25 your -- the contaminants that are present at this site, they're

1 going to migrate further and further into the ground. There's
2 protected species that are present in these areas. I don't
3 think any of this is prairie chicken habitat. A lot of this is
4 the sand dune lizard habitat. They're a protected species
5 under the BLM, and they protect this particular lizard. If one
6 of these lizards gets off in this, they're not going to make
7 it. It's instant death to these creatures.

8 Q. Now, as an environmental inspector, do you
9 consider hazards to wildlife even that are not endangered --
10 quote, endangered -- or protected, do you consider them hazards
11 to wildlife generally as being hazards to the environment?

12 A. Yes.

13 Q. Okay. Any other issues other than the wildlife
14 issues that might be involved here -- or livestock issues?

15 A. We haven't spoken about groundwater, and I
16 think -- and I'm sorry. I don't remember your name. But I
17 believe you brought up the --

18 Q. Mr. Larson.

19 A. Parson?

20 Q. His name is Mr. Larson.

21 A. Mr. Larson, okay. I'm sorry. I believe
22 Mr. Larson brought up the fact that there was no threat to
23 groundwater.

24 Q. Well, let me interrupt you at that point. I take
25 it you have not done any studies to determine whether there was

1 any possible impact to groundwater in any of these sites?

2 A. That's correct. Because none of the
3 contamination at any of these sites has been delineated.

4 Q. Okay. Go ahead and tell us about any other
5 dangers to the environment it might present, if there are any.

6 A. That would be one potential threat to
7 groundwater.

8 Q. Yeah.

9 A. That's always a potential for any release.

10 Q. Now, does hydrocarbon or produced water deposits
11 on the ground, does that prevent or have a tendency to prevent
12 the growth of plants in those areas?

13 A. Yes. Produced water will absolutely inhibit the
14 growth of plants.

15 Q. Okay. And if you don't have any plants, is there
16 a possibility of erosion?

17 A. Yes.

18 MR. BROOKS: Okay. I think that's all I have.

19 HEARING EXAMINER EZEANYIM: Good questions.

20 EXAMINATION

21 BY HEARING EXAMINER EZEANYIM:

22 Q. All right. Mr. Bratcher, could you, going back
23 to significant non-compliance, can you give us an example of
24 significant non-compliance and why these violations are not in
25 that category?

1 A. My understanding, like I say, you know, I've only
2 known of one significant non-compliance that was ever entered.
3 And I don't really remember the details on this, but usually
4 the significant non-compliance is going to be related to the
5 UIC program.

6 Q. Okay.

7 A. I just have never known a release to be entered
8 as a significant non-compliance.

9 Q. Okay. And on this Exhibit 29, is it your
10 testimony that you didn't put down the location where you
11 selected those samples? Because I think it's important to put
12 the location. Because we have about 10 wells here now. And I
13 know you collected them at random.

14 But one of the -- in collecting the samples, is to
15 put the time you collected them, the location where you
16 collected it, so that if there's any groundwater that we're
17 talking about, we know specifically where those samples were
18 taken?

19 A. And we did that on the -- we have a chain of
20 custody sheet, which is on the very back. And if you'll
21 notice, we've got the date they were taken, the time the soil
22 samples were taken, and we've identified them as number one,
23 two, three, four, five, six, and seven.

24 Now, unfortunately there's a notebook that goes with
25 this that tells us sample number one goes to this well, sample

1 number two goes to that well.

2 Q. Okay. So you --

3 A. We failed to get that document in here.

4 Q. Because I think it's important for you to have
5 that. That's good. So, like I say, if I want to go to Welch
6 Duke State for collected samples, I want to see what the sample
7 says --

8 A. Right.

9 Q. -- is there any groundwater, is there an
10 environmental issue, a public health, you know?

11 A. Right.

12 Q. Because if you don't have the specifics, where
13 you collected them --

14 A. Okay. And in hindsight, that should have been
15 entered on this chain of custody sheet. We should have had it
16 identified on this chain of custody sheet, but we failed to do
17 so.

18 Q. Okay.

19 A. But we do have it identified somewhere else, and
20 we need to go back. We can do that.

21 HEARING EXAMINER EZEANYIM: And then I think
22 Mr. Larson might have --

23 Mr. Larson, do you have anything?

24 MR. LARSON: Nothing further.

25 MR. WARNELL: I do have a question. We're talking

1 here about 10 wells in Exhibit 14. There was an 11th well
2 mentioned for a violation, and then I also noticed here on
3 Exhibit 3 there's a total of 41 wells for this operator.

4 THE WITNESS: Okay.

5 MR. WARNELL: I'm sitting here wondering what do the
6 rest of those wells look like.

7 THE WITNESS: Not all of Mr. Brewer's wells have
8 contamination issues. I think we picked the ones out that have
9 what we consider to have the worst issues on them. And that's
10 what we are presenting here. Part of our investigation in '05,
11 once again, not only were we looking at pollution and
12 contamination issues, we are also looking at idle well issues.
13 So that was part of our investigation.

14 And I believe what we picked out here as far as we
15 know, we're bringing this in front of the Commission, in front
16 of you guys, to look at pollution contamination issues. I
17 think we picked out -- instead of going through every well that
18 this operator has, we picked out the ones that do have what we
19 consider significant contamination issues.

20 MR. WARNELL: No, that's fine. This was the well
21 number 11 here. And this is the total list of all 41 wells.

22 HEARING EXAMINER EZEANYIM: Okay.

23 Q. (By Hearing Examiner Ezeanyim): Continuing my
24 examination here, when you detect a violation, send me through
25 how you -- when do you write this letter of violation? What do

1 you do? Do you write a letter of violation? Or do you, first
2 of all, contact the operator, you know, describing the
3 violation before you write the letter of violation?

4 And when you write a letter of violation, what are
5 you asking for? Are you asking them to come into compliance
6 within a date certain? I want to be able to read what you are
7 asking. Tell me what you are asking for in a letter of
8 violation.

9 A. Typically what we're asking for is whenever we
10 sent -- and we've refined this process some. We're doing it a
11 little bit different now than we were doing it back then. But
12 typically, if this letter would have went out, it would have
13 been a letter just to notify the operator that he does have
14 some violations out there, and that what we would expect from
15 this letter is for the operator to contact us and say, "Hey, I
16 got this letter. You've told me that I'm in violation of OCD
17 rules. What do I need to do to come into compliance?"

18 And like I say, we've refined the process. Now
19 whenever we send out a letter of violation -- it's referred to
20 as an LOV -- we get more specific in what we actually want down
21 in the body of the -- down in the inspection part of the
22 record. Where these are -- I'll admit they're somewhat vague
23 as to what we're looking for. But what we were wanting to do
24 is to bring this to the operator's attention, and then we
25 expect to have some communication with the operator and get

1 with them and get it corrected.

2 Q. Okay. It appears to me that a letter of
3 violation and no action -- then you send a notice of violation.
4 Is that it?

5 A. That's the way it works now, yes.

6 HEARING EXAMINER EZEANYIM: Okay. I have nothing
7 further.

8 MR. SWAZO: I have nothing further.

9 HEARING EXAMINER EZEANYIM: Okay. Call you next
10 witness.

11 MR. SWAZO: I'll call Daniel Sanchez, and I promise
12 it will be a quick examination.

13 DANIEL SANCHEZ

14 after having been first duly sworn under oath,
15 was questioned and testified as follows:

16 EXAMINATION

17 BY MR. SWAZO:

18 Q. Would you please state your name for the record.

19 A. Daniel Sanchez.

20 Q. And Mr. Sanchez, with whom are you employed?

21 A. The New Mexico Oil Conservation Division.

22 Q. And what is your title?

23 A. Compliance and Enforcement Manager.

24 Q. And as a compliance and enforcement manager, do
25 your duties include overseeing and enforcing the OCD rules

1 throughout the State of New Mexico?

2 A. Yes, they do.

3 Q. As part of your duties, have you reviewed the OCD
4 records and the OCD well file for the wells in this case?

5 A. Yes, I have.

6 Q. And if you will please turn to Exhibit No. 3.
7 Can you please identify that exhibit?

8 A. This is the well list for Sandlot Energy showing
9 a total of 41 wells that Sandlot operates in this state.

10 Q. Do the wells -- are the wells that are the
11 subject of this compliance hearing, do they appear on that
12 list?

13 A. Yes, they do.

14 Q. Have you ever -- now, there was testimony, I
15 believe, from Mr. Bratcher concerning at least one visit where
16 you were present -- one inspection -- well, one visit to the
17 wells when you were present. Is that true?

18 A. I was present on, I believe, three different
19 visits to Sandlot sites.

20 Q. And during your visit, did you ever come across
21 Mr. Brewer?

22 A. Yes. The second visit that we made out there we
23 ran into him at one of the sites.

24 Q. And do you recall the date of that visit?

25 A. That, I don't. It was my second visit out there,

1 so it was probably August of '05, somewhere in there.

2 Q. And was anything mentioned to Mr. Brewer about
3 the pollution issues at his wells?

4 A. Yes. Mr. Brewer asked us what we were doing on
5 the site. And I think he knew Mr. Bratcher already. And it
6 was myself and Cheryl O'Connor, the attorney at the time. And
7 we introduced ourselves. And I believe Cheryl explained what
8 we were doing there and what we were inspecting.

9 Q. Do you recall what she said?

10 A. Just that we had been looking at multiple sites,
11 and that we were looking to get compliance clean-up on those
12 sites.

13 Q. And what was Mr. Brewer's response?

14 A. I really don't recall at this point. Just
15 that -- well, at one part he did say he had been doing some
16 onsite land farming, but from that site, it was at best moving
17 dirt around and covering up stains.

18 Q. And if you'll look at Exhibit No. -- I can't
19 remember which one. Would you please identify Exhibit No. 27?

20 A. Yeah. No. 27 is a copy of Rule 116.

21 Q. Okay. And what are you requesting --

22 MR. LARSON: Sonny, I don't have that.

23 MR. SWAZO: It should be at the very end of the
24 pictures, but you can have that, Mr. Larson.

25 MR. LARSON: Thank you.

1 Q. (By Mr. Swazo): What are you requesting in this
2 case?

3 A. Right now we're requesting, as Mr. Bratcher had
4 indicated, that within 90 days or as of June 30th, 2008, that
5 Sandlot provide the OCD Artesia Office with the proper C-141s
6 on all the sites that were mentioned today, remediation plans
7 doing the sampling on the sites, and complete the remediation
8 on all those sites.

9 Q. So you're looking at complete remediation by
10 June 30th, 2008?

11 A. That's correct.

12 Q. And what else are you requesting in this case?

13 A. We're also requesting that the Hearing Examiner
14 impose a \$48,000 penalty on Sandlot Energy. That is being
15 based -- well, we could have gone back a considerable amount of
16 time on each of these sites and imposed a \$1,000 per day
17 penalty on this. And what we did -- well, what I did was I
18 went ahead and took one site in particular.

19 And this is the reason for Exhibit No. 14. It was
20 the NOV that was issued on April 8th of '04. At the bottom of
21 them they mention Levers A State No. 002. And this is where
22 the question on the significant non-compliance came in. It,
23 once again, mentioned that the area at the wellhead is heavily
24 contaminated and -- well, this thing doesn't state it. But it
25 should have shown that there was a history at this site, as

1 well, of continued contamination.

2 So instead of going after each site individually and
3 possibly imposing a penalty that was very excessive, I went
4 with this site and moved forward to today's date, and that was
5 48 months. And we're asking for a \$1,000 per month. And
6 mainly the reason is because there was absolutely no attempt to
7 communicate with the OCD after receiving the NOV or any of the
8 other letters or calls that were made to the company, to the
9 operator.

10 And I feel it's very important that the operators
11 that we're working with take the OCD seriously when we do come
12 up with an issue that involves contamination or any other
13 violations of the rules that we might come across. We're also
14 asking that if the deadline is not met -- and the reason I
15 believe this is important is because none of the deadlines that
16 have been imposed on Sandlot have ever been met -- that the OCD
17 be given the authority to plug these wells and to have the bond
18 for Sandlot taken away -- taken away, I guess, is not the
19 proper term -- but to be released to the OCD.

20 And one other recommendation, also with the June 30th
21 deadline, I'm requesting that a report be submitted to the OCD
22 by Sandlot on the other well sites. This is a question that
23 came up with one of the other hearing examiners: What about
24 the other 41 sites?

25 We have done cursory reviews on most of those sites,

1 and there is some contamination to some level at a number of
2 these sites. So we would like a report from Sandlot to include
3 what they found on that site, what they plan to do to clean up
4 any other sites that they have, and also to indicate whether or
5 not those wells are producing and are in a position where they
6 may want to be plugged or put on temporary abandonment status.

7 Q. Is there anything else that you would add in this
8 case?

9 A. That's about it.

10 MR. SWAZO: I don't have any more questions.

11 HEARING EXAMINER EZEANYIM: Mr. Larson?

12 EXAMINATION

13 BY MR. LARSON:

14 Q. Good morning, Mr. Sanchez.

15 A. Good morning.

16 Q. You mentioned a site visit where you were on
17 the -- was it the Levers 002 well site?

18 A. I believe it was the Levers 002. I'm not sure --

19 Q. Where Ms. O'Connor and Mr. Bratcher -- I'm sorry
20 to interrupt.

21 A. I believe it was the 002.

22 Q. And you were with Ms. O'Connor and Mr. Bratcher?

23 A. Yes.

24 Q. And you mentioned the word "land-farming." Does
25 the Environmental Bureau consider land-farming to be an

1 acceptable means of remediating soil contamination?

2 A. That is taken on a case-by-case basis by the
3 Environmental Bureau, and it would have to be -- the operator
4 would have to come in with an application to do that type of
5 land-farming. And I don't believe this operator ever did
6 submit an application to the Environmental Bureau to do that.

7 Q. Okay. So maybe we have a terminology issue here.
8 I don't mean land-farming in a larger sense. If there's a
9 small release on site, for instance -- and I'm speaking
10 hypothetically here -- a small release on site, the operator
11 digs up the dirt, aerates it to the point where the contaminant
12 levels have gone down, is that considered acceptable
13 remediation?

14 A. Once again, it's on a case-by-case basis. The
15 Environmental Bureau would be contacted. The district office
16 would usually make that contact after they've seen or been
17 confronted with a request for on-site land-farming. And I do
18 understand what you're talking about. They would still need to
19 contact the Environmental Bureau for the application, and they
20 would have to review it before they would allow it.

21 Q. Okay. And you mentioned in response to a
22 question by Mr. Swazo that you'd like a report on Mr. Brewer's
23 31 other wells?

24 A. Yes.

25 Q. Would the OCD be willing to share with him a list

1 of wells it believes has contamination at this point in time?

2 A. Yes, we can do that.

3 MR. LARSON: That's all I have. Thank you.

4 HEARING EXAMINER EZEANYIM: Okay. Do you have
5 anything further?

6 MR. SWAZO: Yeah. I just have one question -- maybe
7 two.

8 FURTHER EXAMINATION

9 BY MR. SWAZO:

10 Q. Who normally determines how a site should be
11 remediated?

12 A. It's usually at the district level, but once it
13 gets into -- if the district believes that there may be
14 groundwater issues, they'll contact the Santa Fe Environmental
15 Bureau.

16 MR. SWAZO: I don't have any further questions.

17 HEARING EXAMINER EZEANYIM: Okay. Anything further?

18 MR. LARSON: Nothing further.

19 MR. BROOKS: No, I think no. Thank you.

20 EXAMINATION

21 BY HEARING EXAMINER EZEANYIM:

22 Q. Could you tell me how you came up with the
23 \$48,000? Did you tell me -- you have 10 wells here and have
24 been out of compliance since 2005. How did you come up with
25 \$48,000?

1 A. We wanted to make a point, but we didn't want to
2 put an operator out of business financially. By taking one
3 site and going back to a violation, a documented violation,
4 over a long period of time, I felt it was appropriate to go on
5 a month-by-month basis on that one site.

6 We could have gone on each one of these sites going
7 back anywhere from 2001 forward and levied \$1,000 a month or
8 \$1,000 a day, for that matter. But it wouldn't have been
9 probably the best thing to do in this case. What we're looking
10 for here is to get these sites cleaned up. And I think it's
11 more appropriate that they get cleaned up than to -- right now,
12 at this point -- than impose a very heavy penalty.

13 Q. So you are saying that being collective, at this
14 point, it could be as much as \$480,000 because of the 10 of
15 them?

16 A. Yeah, it could be that much or more.

17 Q. Okay. Apart from that, what do you want done by
18 June 30th?

19 A. By June 30th we would like the report, which we
20 will work with the operator on, to determine any additional
21 sites that require remediation. By June 30th, we want the
22 remediation of the sites in question today to be complete,
23 including -- well, which would include the sampling and
24 remediation plan and the filing of the C-141s. And also that
25 the OCD be given the authority to plug the wells and revoke

1 those bonds if the deadline is not met.

2 Q. How much bond are we talking about here? How
3 much bond does he have, a blanket bond?

4 MR. SWAZO: Well, it's in Exhibit 2. It's a \$50,000
5 blanket bond.

6 Q. (By Hearing Examiner Ezeanyim): Okay. If you
7 are supposed to plug all these 10 wells, is \$50,000 enough to
8 plug them?

9 A. Of course not. We'd have to take legal action
10 against the operator in order go after the remaining amount.

11 Q. Are you asking for that in the order, too?

12 A. I haven't thought about that, but yes, it would
13 make sense.

14 HEARING EXAMINER EZEANYIM: Okay. No further
15 questions. Anything further for the witness?

16 MR. SWAZO: No.

17 HEARING EXAMINER EZEANYIM: Mr. Larson?

18 MR. LARSON: Do you mind if we take a break?

19 HEARING EXAMINER EZEANYIM: Does anybody object to
20 that and also to finishing before we go to lunch? So we'll
21 take about a five-minute break. Okay?

22 MR. LARSON: That's fine with me.

23 HEARING EXAMINER EZEANYIM: Okay. 10-minute break.

24 [Recess taken from 11:48 a.m. to 11:57 a.m., and
25 testimony continued as follows:]

1 HEARING EXAMINER EZEANYIM: Okay. We'll go back on
2 the record now and have Mr. Larson call his witness.

3 MR. LARSON: Mr. Hearing Examiner, I'd like to call
4 Jackie Brewer as my witness.

5 HEARING EXAMINER EZEANYIM: Okay. Mr. Brewer, you
6 have been sworn. You can go sit over there.

7 MR. LARSON: And I also have a set of exhibits I'd
8 like to distribute.

9 HEARING EXAMINER EZEANYIM: Yes, of course.

10 EXAMINATION

11 BY MR. LARSON:

12 Q. Mr. Brewer, could you please state your full
13 name.

14 A. Jackie Brewer.

15 Q. And where do you reside?

16 A. Lovington, New Mexico.

17 Q. And for the 10 wells that are addressed in the
18 Division's application and have been addressed by the
19 Division's witnesses, do you have a company that operates those
20 wells?

21 A. My own, Sandlot Energy.

22 Q. And is that a sole proprietorship?

23 A. It's a sole proprietor, yes, sir.

24 Q. And I believe it was Division Exhibit 3 that
25 shows a well list of 41 wells. Is that the number of wells you

1 operate in New Mexico?

2 A. Yes.

3 Q. And when did you become the operator of records
4 for those 41 wells?

5 A. I believe in 1996.

6 Q. 1996? And after you became the operator of
7 record for these wells, did you have a conversations with
8 Mr. Mike Stubblefield from the District II office about what
9 you should do in the event you experience a release from one of
10 those wells?

11 A. Yes, sir. I did.

12 Q. And what did Mr. Stubblefield tell you about
13 notifying District II about a release?

14 A. He said anything over five barrels I had to
15 report. Anything under, I was to take care of, remediate,
16 clean up. But anything over five barrels I had to report.

17 Q. And anything less than five barrels you did not
18 have to report?

19 A. That was my understanding.

20 Q. Did you also discuss with Mr. Stubblefield the
21 appropriate action you should take to address the release of
22 less than five barrels?

23 A. Mike Stubblefield told me that if I -- on those
24 releases, if I could till them up and air them out and blend
25 the soil in and till them up, and you know, eventually go back

1 over to them and till them up and, you know, maybe a few months
2 later that would be sufficient land-farming, the way he called
3 it.

4 Q. And when you took over the wells in 1996 -- and
5 I'm specifically referring to the 10 wells that are the subject
6 of this proceeding -- was there any visible contaminated soil
7 at any of those sites?

8 A. Yes. There was hard soil that was -- which was,
9 at one time, he told me was historic.

10 Q. Was that contamination that pre-dated your
11 operation of the wells?

12 A. Yes, yes.

13 Q. Did you discuss with Mr. Stubblefield whether you
14 needed to take any action in relation to this historical
15 contamination?

16 A. I was told a historical layer like that, that if
17 you broke into it, you were responsible for it. As long as you
18 left it, you didn't disturb it, you were not responsible. But
19 any time you broke into that layer, then you were responsible
20 for that contamination below it.

21 Q. And, again, after you took over operation of
22 these wells in 1996, did you have a conversation with
23 Mr. Bratcher about historical contamination?

24 A. Yes. He was on a site of mine, and we brought up
25 there about the hard crusty layer that if you broke into it,

1 you were breaking into a historical contamination. But if you
2 did not break into it, you wouldn't be responsible, the way I
3 understood it.

4 Q. Do you recall when that conversation occurred?

5 A. I don't recall. It's been quite a few years
6 back.

7 Q. Regarding your Daugherty State No. 001 well, have
8 you experienced any releases since you began operating that
9 well?

10 A. Yes, I have. I've had stuffing box leaks, you
11 know. When I catch them, I clean them, you know, rake around
12 and move the soil, rake around, kind of till it up. And I've
13 done that many times on that lease. I've had -- these leases
14 are old, and there's going to be problems that you're going to
15 see all the time.

16 Q. And have you addressed these mechanical problems
17 with the stuffing box?

18 A. Yes. I've tightened the stuffing box, repacked
19 them. I've replaced the polish rod liner on the Daugherty, as
20 a matter of fact, twice. I've replaced valves. I replaced on
21 the tank battery on the Daugherty probably six foot of flow
22 line going to the tank that I thought needed to be replaced
23 because it was leaking, and I was patching it. And then, you
24 know, I figure just replace it and be done with it.

25 Q. And these releases that you refer to, did you

1 report any of them to the District II office?

2 A. I saw no need to. They were less than five
3 barrels.

4 Q. And how do you know they were less than five
5 barrels?

6 A. Well, I've had spills before, and I've picked
7 them up -- excuse me -- with a 44 Coke cup and a five-gallon
8 bucket, You know, picked up the oil off the ground. And from
9 my estimate, I've never picked up, you know, five barrels of
10 oil.

11 Q. And how often are you out at the well site?

12 A. I'm usually out there -- I'm out there every day.
13 If not, I have a pumper take care of it on contract, who will
14 go by and look at them for me.

15 Q. So one of these, for instance, stuffing box
16 releases wouldn't go on for a period of time without you
17 observing the release?

18 A. No, they shouldn't.

19 Q. And what have you done when you observed one of
20 these releases?

21 A. Well, you correct the problem, for one. And if
22 it can't be corrected at that time, you shut the well down and
23 in. And then when you can get back to it to correct it and fix
24 the problem -- of course, on the soil, you air it out, till it
25 up, or rake it up or -- to air it out, and let the air get in

1 and to blend it in and, you know, break the carbons down,
2 whatever, with the oil.

3 Q. And in relation with these releases from the
4 Dougherty well, do you believe that the actions you took to
5 remediation were in accordance with your conversations with
6 Mr. Stubblefield?

7 A. Yes, I do.

8 Q. Moving on to the Levers A State No. 002 well.
9 Have you experienced any releases at that site?

10 A. Yes, I have.

11 Q. What caused those releases?

12 A. Bad equipment, just old equipment. It's tanks,
13 you know, tank bottoms. And I pulled -- the tank that was
14 leaking that made a lot of the mess, I pulled all the fluids
15 off of it, and there's -- I don't want to say that word because
16 people misunderstand it -- but there's tank bottoms.

17 And when the sun comes out, it'll heat those tank
18 bottoms up, and the oil will come out. And I've got -- my
19 intentions are to pull the bottoms off, go ahead and get the
20 bottoms off the tanks, and get them hauled away. That's caused
21 a lot of problems there.

22 But I've had separators that -- as Mr. Bratcher said,
23 cows come around. They break your poly pipes -- not poly --
24 PCV in your separators and cause oil spills. They knock valves
25 open and cause oil leaks. And there's just, you know, a lot of

1 hazards out there that we cannot foresee until we get there.

2 Q. Have you had any produced water releases at that
3 site?

4 A. Yes, I have.

5 Q. And what was the cause of these releases?

6 A. The valve on the back of the tank was leaking.
7 One time I tightened it, the top nuts and the valves. And I've
8 had that valve kicked over by cows. Then I know that valve
9 finally got -- wouldn't hold. It started leaking a little bit
10 at a time, and I replaced it, and I fixed it and solved the
11 leak.

12 Q. And any of these releases you have discussed,
13 were they reported to the District II office?

14 A. No.

15 Q. And why is that?

16 A. Because I believe it was less than five barrels.

17 Q. Now, how do you know the releases were less than
18 five barrels?

19 A. I've picked up oil with a 44-ounce cup and put it
20 in five-gallon buckets and hauled it to the tank, poured it
21 back in the tank. I've never picked up five gallon barrels.

22 Q. And when you discovered these oil and produced
23 water releases, did you take any action?

24 A. Yes. I would go out and rake the ground, and if
25 I could, I'd get my tiller out there and till up what I could.

1 I've addressed many of these sites that they've shown on here
2 quite a few times, which was never shown on the slides where I
3 have done it. I've had recurring leaks, recurring problems.
4 As I said earlier, these are old, old leases. You can't
5 foresee what's going to happen out there.

6 Q. Moving on to your Levers State A No. 7, is that
7 well currently producing?

8 A. It's an injection well. I've never been told I
9 couldn't inject into it. And, yes, it has been injected. Yes,
10 we have injected those. It's been reported.

11 Q. So you've never been notified by the OCD that
12 there was a problem with you injecting into that well?

13 A. No, I haven't.

14 Q. And what's the status of the tanks at that well
15 site, the Levers No. 7?

16 A. The tanks are -- well, I went in and cleaned all
17 these leases up and tilled the soil. I've dug under the tank,
18 and I've replaced -- well, I didn't replace the valve, but I
19 tightened the valve up where it quit leaking. And the tank has
20 been patched where it was leaking. I basically went in there
21 and cleaned up, tilled and aerated the soil and tilled it all
22 up.

23 Q. Are you currently using a separator at that site?

24 A. No. The separator -- at the time I was cleaning
25 it up, I disconnected it a long time ago, but it had -- the

1 links, it had came down, so I pulled it off the location, and I
2 intend to haul it off and have it removed.

3 Q. And have you had any releases from the tanks at
4 the Levers No. 7 site?

5 A. On the valve at the back.

6 Q. Does that produce water?

7 A. That produces water.

8 Q. And, again, did you notify the District II office
9 about that?

10 A. No.

11 Q. And what is that?

12 A. It was less than five barrels.

13 Q. Did you take any action to address the soil
14 around the tank?

15 A. Yes. I've raked it many times, and I've cleaned
16 it. And this last time I did it, I went in there and dug up
17 around the tank where the -- spread the soil, aerated it out.
18 I went in there, and I tilled it up. And, as I said, I've dug
19 under the tank.

20 Q. Have you had any releases at the Resler Yates
21 State No. 317 well?

22 A. Excuse me? What was that again?

23 Q. Have you had releases at the Resler Yates State
24 No. 317 well?

25 A. Oh, well, stuffing box leaks, minor leaks like

1 that. Just the well would get hot and burn the rubbers in the
2 stuffing box and it would start leaking once the whole, you
3 know -- once it would start and kick back up. And I've
4 addressed it. I've tightened the stuffing box. I've cleaned
5 the site.

6 Q. Again, were any of those releases, in your mind,
7 more than five barrels?

8 A. No, sir.

9 Q. And how often are you at that well site?

10 A. Me or someone is there at least every day.

11 Q. And what did you do to address the soil that had
12 been impacted by those releases?

13 A. I dug down by the wellhead at least three feet,
14 and I removed the soil and aerated it out, tilled it around,
15 and then I refilled the hole by the wellhead with fresh dirt,
16 you know, good clean dirt. And the old dirt that I took out of
17 there, I more or less remediated it by airing it out and
18 tilling it.

19 Q. And what's the current status of your Resler
20 Yates No. 322 well?

21 A. It's been -- I've done the same to it. I went
22 and cleaned it. It had heavy, heavy contaminants on it from
23 the previous operator, which I wasn't supposed to, but I went
24 ahead and cleaned that, too. As far as what I'm told, I
25 shouldn't break into that, but I was trying to, you know, make

1 everything right. And I went ahead and cleaned it all up and
2 cleaned it, and I dug at the wellhead three feet down around
3 there.

4 Q. And so the releases at the 322 were wellhead
5 releases?

6 A. Yes. And flow line -- that's a flow line leak at
7 one time.

8 Q. Have you replaced the flow line on it?

9 A. I haven't hooked that one back up on account of
10 I'm going to replace the flow line at least 10 feet or more
11 with poly.

12 Q. And was there a period of time when the 322 was
13 not producing?

14 A. Oh, yes. There was a time it didn't produce.

15 Q. And why wasn't it producing during those periods?

16 A. Just mechanical issues.

17 Q. And you got the mechanical issues resolved, and
18 you put it back into production?

19 A. Yes. It's going back into production, yes.

20 Q. And were any of the releases from the 322, in
21 your belief, more than five barrels?

22 A. No, sir.

23 Q. Moving on to the Resler Yates No. 367. Has it a
24 been a period of time since 1996 that that well was not
25 producing?

1 A. Excuse me. Which well?

2 Q. The 367.

3 A. No, sir. I've worked that well. I've pulled it,
4 and I put it back on production. And I've had -- off to the
5 back of it, I've had flow line leaks that have been recurrent.
6 And I've patched it, and I'll come back, and the flow line
7 behind it is very contaminant. So, I've shut that well down
8 along with two others to replace -- I've got the poly sitting
9 out there by it and in the process of replacing leak in the
10 flow line on that to prevent any other occurrences or leaks out
11 there. I've tilled up the soil real well around it many times.

12 Q. So you've addressed the soil near the flow line
13 you're going to replace?

14 A. Yes, sir. Yes, sir.

15 Q. And did you notify the District II office of any
16 flow line releases at that site?

17 A. No, sir.

18 Q. And why is that?

19 A. Less than five barrels.

20 Q. And what's the current status of Resler Yates
21 No. 370 well?

22 A. The 370, I went in there and done the same to it.
23 I've dug around the wellhead four feet. I've dug inside the
24 pumping unit where it had that real thick historic -- I guess
25 historic contaminant -- whatever they call it. Just a heavy,

1 thick layer. I've dug it all out. I've tilled it. I've
2 aerated the soil out, and like I said, dug down four feet by
3 the wellhead -- three to four foot -- and took the old soil,
4 aired it out, put fresh soil in it and -- well, basically done
5 the whole location, you know, drove the soil around it.

6 Q. Have you had any releases from the tank battery
7 at the 370 site?

8 A. Oh, the 370? I'm confusing the 370 with 381.

9 Q. We're still on the 370.

10 A. Well, 370 -- well, if it's okay, let me back up
11 here. 370, I didn't dig around the wellhead down there. I
12 just -- because it wasn't that bad. I just blended, you know,
13 raked and aerated the soil around it. If that's where the
14 battery -- I'm confusing my 381 with my 370, I think.

15 But the battery, yes, I have had leaks there. I've
16 got two old tanks I've got out there I haven't been able to
17 haul off yet. One of them will do the same as the Levers.
18 Once the sun comes out, that bottom -- the bottoms in these
19 tanks will start heating up and leaking out. I've addressed it
20 every time I come out there and catch it. You know, I'll pick
21 it up, and I'll blend the soil.

22 And previous, at one time, I had a tank not kick in,
23 and it was less than five barrels of water, so I just cleaned
24 it up. I've had oil leaks on the separator out there, which
25 I've picked up, and I've cleaned up. I've back-dragged

1 everything, aerated the soil, raked the soil, and just worked
2 it as best I could.

3 Q. And to the best of your knowledge, were any of
4 those releases more than five barrels?

5 A. No, sir.

6 Q. Is your Resler Yates No. 381 producing?

7 A. It's not at this time. We can't. I've got
8 problems. I've got the flow line disconnected on it to replace
9 a portion of it, also to prevent any other leaks to occur
10 because of the corrosion out there on the pipe as it goes to
11 the wellhead.

12 Q. Have you had any releases in the pumping unit on
13 that well?

14 A. From the -- yes, it is. The well is notorious
15 for gas locking and burning the rubbers. And I've had many,
16 many occasions I've came out there, and there's oil on the
17 ground because of the stuffing box rubbers burned, and it's
18 leaked out of the wellhead. And I've tightened, and I've
19 addressed it, cleaned it up.

20 And at this time, I've got a topper, which is a piece
21 of equipment that goes over the wellhead, and it traps the oil
22 in case it happens again. And I intend to do that with a lot
23 of the other leases. But that one I have.

24 Q. And when you discovered those releases from the
25 pumping unit, did you address the oil around the pumping units?

1 A. Yes, sir.

2 Q. What did you do?

3 A. The last time before I, you know, raked it and
4 air it out and everything. But this last occurrence, I went
5 out there, and just because of the order on this here, I went
6 up there and thoroughly cleaned it, dug down three to four feet
7 around the wellhead and the pumping unit and aerated the soil,
8 you know, with the -- blended it all in, and aired it and
9 tilled it up and raked it.

10 Q. I believe you heard Mr. Gum testify about an
11 agreement that you signed with him, I believe, in January of
12 2005?

13 A. Yes, sir.

14 Q. And it addressed inactive wells and, generally,
15 environmental issues. Do you recall that?

16 A. I recall vaguely, vaguely, real vaguely. I mean,
17 it's just -- I don't recall all of it, but yes.

18 Q. And did you address your inactive well issues?

19 A. Yes, I did. I had a company that is no longer in
20 business, Bulldog Well Service. They pulled the inactive wells
21 for me, and we put them back on. But I still -- I get -- I
22 thought I was in good standing with Mr. Gum, and I thought he
23 had done what he asked me to do. Evidently, there was more on
24 the list than I knew about.

25 Q. Did you address any soil contamination issues

1 before you signed the agreement?

2 A. I've farmed it, tilled it up. The Daugherty -- I
3 cleaned the Daugherty. I tilled it, cleaned it up. I think it
4 was in November of '07. I think I went in and thoroughly
5 cleaned it again and tilled it again.

6 Q. Did you do anything with the Daugherty in 2005?

7 A. Yes, I went in there. And at that time, I didn't
8 have the equipment that I needed to do it. I did rake and till
9 up what I could and back drag, rolled the soil -- not back
10 drag, but rolled the soil.

11 Q. Did you do any remediation at any of the other
12 nine wells after you signed this agreement with Mr. Gum?

13 A. On the Levers, I went and cleaned it up. And I
14 had another occurrence after that.

15 Q. In which Levers was that?

16 A. Levers A 002. And most of them I did address. I
17 went back and tried to clean up. And, like I say, a lot of
18 this is ongoing. It's -- you can't perceive. A lot of these
19 are old well with old equipment, and you do the best you can
20 with what you got.

21 Q. And what's the current status of your Thomas
22 State No. 001?

23 A. Right now, I need to put a pumping unit on it.
24 I've got a -- either rebuild a pumping unit or get another one
25 to replace it because it's the gear box is just wore out on

1 that.

2 Q. So as we sit here today, it's not producing?

3 A. It's not producing, no. Not at this time.

4 Q. And did you still have a separator on this lease?

5 A. I do not have a separator. It's dragged off the
6 location. I produce into the tank, and then I pull the water
7 off and take it to the disposal well and put it in that tank.

8 Q. And do you intend to remove the separator from
9 the lease?

10 A. Yes, I do.

11 Q. And have you experienced any releases at the tank
12 battery at the Thomas State No. 001?

13 A. Yes. We've got some valve leaks. At one time, I
14 was rolling the tank to get it to go, and I rolled it too much,
15 too heavy on it, and it went over the top. But, yeah, I've had
16 valve leaks, which I've tightened my valves, replaced some
17 valves. But mainly just tighten the caps on the top of them to
18 get them to seal. I had put plugs in some, but I would come
19 back and sometimes the plugs were missing and -- I don't know
20 where they went to.

21 Q. And were any of the releases you discovered at
22 the tank batteries more than five barrels?

23 A. No.

24 Q. What did you do to address the soil in the areas
25 where these releases occurred?

1 A. I have rolled it, rolled the soil, blended it,
2 raked it. And, now, the Thomas, I'm still working on it. I've
3 got to go back in. It's not in bad shape. There's no standing
4 oil, but I do need to go in there and air it out a little more.
5 I think I need to go back probably once a month at every one of
6 these that I've raked.

7 Q. And finally, what's the current status of your
8 Welch Duke State No. 018 well?

9 A. I went in and cleaned it. The well had a lot of
10 historical contamination on it. And I went in there and went
11 ahead and did what I shouldn't have did. I broke into it and
12 cleaned it, but I found no contamination. And I dug at least
13 three, four feet down by the wellhead. And I've aired it out
14 and tilled the soil and rolled the soil around on the location
15 there and cleaned it up.

16 Q. And have you had any releases at this well site?

17 A. I've had stuffing box leaks, flow line leaks, and
18 the same as your regular maintenance that goes along with it.

19 Q. And have you done anything to address these
20 mechanical issues?

21 A. Yes, I have. I've replaced valves and lines,
22 flow lines, well, all -- one thing is since I've had that well,
23 it would scale up and lock. It locked the pump up, and I've
24 lost a few polish rods on it because the head would fall off
25 the pump and would lock up. I've had to replace a few of

1 those. That caused a few leaks at one time, too. But it was
2 just something I couldn't perceive. I couldn't -- I didn't
3 have no idea that the pump was going to lock up, and the head
4 was going to come off. So I've replaced that and cleaned it
5 up, tilled it up and --

6 Q. And what were the volumes of the releases to that
7 you discovered at the Welch Duke State No. 018?

8 A. Less than five.

9 Q. And what did you do to address the soil that was
10 affected by these releases?

11 A. I've raked them. I've tilled them. I've aired
12 them out and blended the soil in with it to break it down and
13 air it out, and just basically farmed it, as I was told.

14 Q. Okay. Since you were served with the Division's
15 application in January of this year, have you done any
16 remediation at any of these 10 well sites?

17 A. Yes. That's what I've been saying. I went back
18 in, and I've tilled them up. I've dug under them. I've dug
19 under the wellheads. I've pulled the soil out, aired it out
20 and raked it around, tilled it around the best I could for what
21 I've had at the time, you know, the time I've had. I think
22 I've done a good job.

23 Q. At this point, I'm going to direct your attention
24 to those photographs that I handed to you.

25 A. Okay.

1 Q. And we've got 13 photographs which are marked as
2 Brewer Exhibits 1 through 13. Do you have all those in front
3 of you?

4 A. Yes, sir.

5 Q. And who took those photographs?

6 A. Either me or my wife would have.

7 Q. And when were they taken?

8 A. Probably Wednesday -- Tuesday.

9 Q. Tuesday of this week?

10 A. Yes, sir.

11 Q. And referring you to Exhibit No. 1, can you
12 describe to us what that picture depicts?

13 A. The Daugherty well, Daugherty No. 001 pumping
14 unit. And do you see where I've dug down on at that one and
15 blended the soil and aired out what was there and tilled around
16 with it? I blended that soil in and tilled it in with the
17 others and broke down any carbons in there.

18 Q. Okay. Moving on to Exhibit 2. What does that
19 picture depict?

20 A. That's the battery of the Daugherty. And if you
21 look, you can see the poly pipe I replaced. It was replaced
22 probably three or four years ago, I think. I couldn't say for
23 sure on that, but it never showed up on any photos they showed
24 because they didn't go that far up.

25 But I went around in there and tilled the soil and

1 dug around there and aerated it, tilled what I thought was in
2 jeopardy.

3 Q. And the tank in the forefront of the pictures
4 with the ladder, is that oil or produced water?

5 A. That's oil.

6 Q. And moving on to Exhibit No. 3, can you describe
7 what that depicts?

8 A. That's the Levers A No. 002 battery. I went in
9 there and cleaned it up. It was not -- it was about
10 three weeks, four weeks ago. I can't be sure of the date. And
11 I need to go in and -- I didn't get time to go back into this
12 and do more remediation and tilling it up.

13 Q. Did you do any excavations around the two tanks
14 there?

15 A. I chipped the old stuff off around it to check
16 and see what was, you know, if there was anything, you know,
17 very bad around it. And I've tilled it up, tilled around the
18 tanks. I took the back hatch off from the far right tank to
19 empty out the bottom -- filament on the bottom and removed the
20 tank.

21 Q. And now I'll direct your attention to Brewer
22 Exhibit No. 4. What does this photograph depict?

23 A. That's at that Levers A State No. 2 pumping unit.
24 I haven't been back out to it. This has probably been -- oh,
25 I'd say a few months before I've got to till it back up. I

1 have tilled it up and aerated the soil, but I haven't been back
2 to it for probably four weeks to till it up to work it over.

3 Q. But this is how it appeared when you took these
4 photographs on Tuesday?

5 A. Yes, sir.

6 Q. Brewer Exhibit No. 5, what does that photograph
7 depict?

8 A. That is Levers No. 7 battery. The tank on the
9 right, since I've been out there, it's never been in
10 commission. There's never been anything working in it. It
11 just sits there. And the one on the left is -- I've tightened
12 the valve. I went up there and patched the site of the tank,
13 and I dug up under it and tilled it up back and rolled all of
14 it and everything in the tank, aerated the soil out.

15 Q. Moving on to Brewer Exhibit 6, please describe
16 what that photograph depicts.

17 A. That's looking behind the Lever A 7 battery --
18 no. I'm sorry. We jumped up. This is No. 6, and that was
19 No. 5, okay. That's No. 5.

20 Q. We're on Exhibit No. 6.

21 A. Okay. I'm so sorry. I'm lost here. Okay. Yes,
22 okay. The No. 6 is the Levers A 002 well, which that's looking
23 from behind the battery looking out to where the pumping unit
24 is to see how the road was where they showed that big spill
25 for -- and that's where I've cleaned it up. And it has been

1 cleaned like that for a long time. I can't remember how many
2 years.

3 Q. And is that an access road that we see there
4 about in the middle of the photograph?

5 A. Yes, sir. That's where the -- that's from the
6 old leak that they showed.

7 Q. And how would you describe that road? Is it
8 loose dirt?

9 A. No, it's hard. Maybe very little is dirt on top,
10 but it's a hard road. It's dirt but it's hard road, yes.

11 Q. And would you agree with Mr. Bratcher's
12 assessment that a significant portion of the water that showed
13 in the Division's exhibits was storm water?

14 A. Oh, yes, definitely.

15 Q. Moving on to Exhibit No. 7, please describe what
16 that photograph depicts.

17 A. That's Resler Yates State No. 317. I went in
18 there and dug down and cleaned it up. I cleaned it up before,
19 but I went in there since I've been served with this order. I
20 dug down three feet around the wellhead and pulled the old soil
21 out, rolled it, tilled it, aired it out, and put fresh soil
22 back in the wellhead, around the wellhead there.

23 Q. Did I hear you correctly that you excavated down
24 three feet?

25 A. Yes, sir. At the wellhead.

1 Q. And after you had excavated three feet, what was
2 the condition of the soil at that level?

3 A. It seems like, if I remember right, it was
4 caliche. I'm thinking I hit rock caliche.

5 Q. When you were excavating?

6 A. Yes, sir.

7 Q. Moving on to Brewer's Exhibit No. 8, what does
8 this photograph depict?

9 A. That's 322, Resler Yates No. 322. I went in
10 there and did the same with it, dug down four feet. It's real
11 sandy soil around there, so when I got so far, I hit sand, and
12 I just rolled the dirt. I pulled off -- out of the wellhead --
13 I rolled it -- aired it out first, then rolled it and tilled
14 around it, and I brought some fresh dirt in, and I filled the
15 hole around the wellhead.

16 Q. Moving on to Brewer Exhibit No. 9, What does this
17 photograph depict?

18 A. That's the flow line pump 367 that was in
19 question that I've tilled up, and I've had -- if you look, you
20 can see the line clamps on that flow line. I've replaced --
21 I've patched it many times, and I've tilled it up and worked it
22 and tilled it up. And there have never been over five barrels,
23 not even quite five barrels, not even close to five barrels.
24 But the poly is laying there. I'm replacing that 50-foot
25 section there with that poly that you see laying out there by

1 it. I just haven't -- I've got the well shut-in to make sure
2 there's no more accidents out there until I get that poly
3 replaced.

4 Q. And are you intending to install the poly above
5 or below the ground?

6 A. It'll be above ground. That way you can inspect
7 it in case there's any leaks. But with poly, you shouldn't
8 have any corrosion at all. I'm doing this all on my own and by
9 myself, so it takes a little while to get to each and every one
10 of them to get them finished.

11 Q. Moving on to Brewer Exhibit No. 10, please
12 describe what that is.

13 A. That's the Resler Yates State 370. I've done the
14 same to it. I've dug down about three feet around the
15 wellhead. I've dug down in between, back behind the pumping
16 unit where the two beams are in between there, and I've aired
17 the soil out, rolled it, tilled it, and that's the one that was
18 having the gas locking problems.

19 And I put the topper -- if you can see the yellow
20 container, that's a topper. When the well gas locks and it
21 starts letting a little seep out, it'll flow into this topper,
22 which will hold and contain the oil.

23 There's also an additional 55-gallon container -- of
24 course, they didn't supply that -- that you can put also with
25 it, which a hose will run off of it and go to the 55-gallon

1 container. I don't see that much oil leaking from the stuffing
2 box.

3 Q. So this -- I'm sorry. I forget what you called
4 it.

5 A. Topper.

6 Q. This topper is intended to prevent stuffing box
7 leaks in the future?

8 A. It's spilled -- oil getting on the ground, in
9 case the box gets heated up and the rubbers burn.

10 Q. Did you excavate at the wellhead there?

11 A. Yes, I did.

12 Q. How far down did you go?

13 A. I went about three feet on that one.

14 Q. And what did you hit at three feet?

15 A. I'm thinking I hit caliche on that one, too, hard
16 caliche on that one.

17 Q. So you stopped at that point?

18 A. Yes, sir.

19 Q. Did you put fresh soil in there?

20 A. Yes, sir.

21 Q. And moving on to Brewer Exhibit No. 11.

22 A. That's the battery at the Resler Yates State
23 No. 381. I went in and dug around the tanks and rolled the
24 soil and tilled around it. And I blended it in and aerated it.
25 And I just keep working it. And I intend to discontinue those

1 tanks. They're not in service. The one behind it is, but
2 these two tanks in front are not. I'm taking them down and
3 find a proper place to dispose of them or have someone else
4 come up and sell the metal or whatever it takes to get rid of
5 them.

6 Q. And do you intend to take a hard look at the soil
7 under these two tanks?

8 A. Since I moved these tanks, I intend to go over
9 there and clean that all up around and underneath the tanks.
10 There shouldn't be any contaminant under the tanks, because the
11 tanks were rotten on the sides. That was the problem with
12 them.

13 Q. Okay.

14 A. And a lot of that was before I ever bought the
15 leases.

16 Q. And moving on to Brewer Exhibit 12, please
17 describe this exhibit for us.

18 A. This is Resler Yates State No. 381. It's at the
19 battery there. I went in there and tilled up around the
20 soil -- not tilled it -- well, I raked around that. I seen no
21 hard contaminant there. I back-dragged the whole area, though,
22 and rolled the whole location. Just in the last month, I had a
23 pullman out there. We pulled the well, replaced the pump, a
24 few joints of tubing. And I kicked the well on, pumped it for
25 a little bit, then I shut it down to take care of the rest of

1 the matters and address all these other matters that I had from
2 the OCD.

3 To get this well back going and have, you know --
4 when you put a well back online, sometimes you'll get trash in
5 the pump and then you'll burn your stuffing box, and you'll get
6 leaks again. So I shut it back down to address all these other
7 problems. And then I'll kick it back on when I make sure it's
8 in good standards.

9 Q. And last, but not least, Brewer Exhibit 13,
10 please describe what's in this photograph.

11 A. That's the Welch Duke State No. 018. If you all
12 seen the photos before, I know that it sets up on a mound. And
13 it had a lot of hard, hard historical oil layers on it. And
14 like I say before, I shouldn't go into it because I was told
15 not to, but I did anyway, and I cleaned it up. I dug down at
16 least four feet around that wellhead and moved the soil, tilled
17 it, aired it out, and rolled it around and replaced all the
18 bad -- well, not bad, but all the soil, I moved out and
19 replaced it with fresh soil.

20 Q. And where did you get the fresh soil?

21 A. On location.

22 Q. Okay. And what did you find when you hit four
23 feet below ground surface?

24 A. I think that was hard caliche, too. I know a few
25 of them I hit sand at, but I think that was hard caliche on

1 that. I'm pretty sure it was.

2 Q. Anything else you'd like to add about Exhibit 13?

3 A. Not that I know of.

4 MR. LARSON: Mr. Hearing Examiner, I move the
5 admission of Brewer Exhibits No. 1 through 13.

6 HEARING EXAMINER EZEANYIM: Any objection?

7 MR. SWAZO: No objection.

8 HEARING EXAMINER EZEANYIM: Exhibits 1 through 13
9 will be admitted into evidence.

10 MR. SWAZO: And these were all pictures that were
11 taken Tuesday, this Tuesday?

12 THE WITNESS: Yes, sir.

13 MR. LARSON: I just have a couple more questions for
14 Mr. Brewer.

15 Q. (By Mr. Larson): Looking back probably to 2001,
16 when we know that the District II office was looking at some
17 issues with those 10 wells, do you think it would have been
18 advisable for you to notify the District II office that you
19 were doing remediation out at these sites?

20 A. Yes, I think so.

21 Q. And do you intend to do so in the future when you
22 do remediation?

23 A. Yes, I do.

24 MR. LARSON: I'll pass the witness.

25 HEARING EXAMINER EZEANYIM: Mr. Swazo?

1 MR. SWAZO: Thank you.

2 EXAMINATION

3 BY MR. SWAZO:

4 Q. Mr. Brewer, you said that you had a conversation
5 with Mike Stubblefield concerning the reporting of releases,
6 correct?

7 A. I don't recall that part.

8 Q. Well, you testified that Mr. Stubblefield had
9 told you that anything more than five barrels had to be
10 reported, and if it was less, it did not have to be reported.

11 A. Yes, yes.

12 Q. Okay.

13 A. That was --

14 Q. And do you recall the exact date of that
15 conversation?

16 A. I sure don't. It was many -- it was quite a few
17 years back.

18 Q. Any idea as far as how many years back it was?

19 A. No.

20 Q. And how did you -- how did that topic come up?

21 A. He was out there inspecting a site.

22 Q. Were there contamination issues at that point?

23 A. Yes, I think there was.

24 Q. The OCD -- isn't it true that the OCD has had
25 several other conversations since that conversation with you

1 regarding your need to properly remediate these sites?

2 A. We've had conversations, yes. And I've tried to
3 stay up with them, yes.

4 Q. Okay. Are you familiar with Rule 116?

5 A. Not right offhand, I'm not. No, sir.

6 Q. Okay. I'm going to give you a copy of Rule 116,
7 which is Exhibit No. 27. And if you look at Subsection B
8 concerning the reporting requirements on --

9 A. Okay.

10 Q. -- Subsection 1, isn't it true that it states
11 that a major release shall be reported by giving immediate
12 verbal notice and timely written notice? And then it states
13 what is considered a major release.

14 And isn't it true that Subsection B states a major
15 release is considered an unauthorized release of any volume
16 which results in a fire -- will reach a water course, may, with
17 reasonable probability, endanger public health or result in
18 substantial property or the environment?

19 MR. LARSON: Objection. The rule states what it
20 states.

21 MR. SWAZO: Okay.

22 HEARING EXAMINER EZEANYIM: Overruled.

23 Q. (By Mr. Swazo): And you did hear Mr. Bratcher
24 say that these releases were a threat to the environment?

25 A. Yes, I heard him say that.

1 Q. Okay. Isn't it true that the OCD sent you
2 letters advising you of the contamination violations with these
3 wells?

4 A. I've had letters sent to me, and I've addressed
5 the problems.

6 Q. Did you follow up with the OCD office to see if
7 the compliance issue was properly taken care of?

8 A. No, I sure didn't, because five barrels, I just
9 figured -- I was told, you know, that it was not necessary.

10 Q. And you did testify that -- or I'm sorry. Isn't
11 it true that on September 12 -- or September 17th, 2002, that
12 OCD sent you a letter -- actually, Mike Stubblefield sent you a
13 letter asking for a C-141 for one of your releases?

14 A. Probably. If I have, I can't recall.

15 Q. And isn't it true that since as early as 2001,
16 the District has contacted you about the releases and has tried
17 to get you to remediate the sites?

18 A. Since 2001?

19 Q. Since as early as 2001.

20 A. I'm sure they have, and I'm sure I've addressed
21 the matter, too, since then.

22 Q. And you said the equipment at these sites, some
23 of the equipment is rotting and corroded?

24 A. Some of the equipment, yes, does occasionally rot
25 and corrode. You've got a lot of sulphur and, you know, H2S

1 gas. And it's not expected to last forever.

2 Q. And you also testified that either you or someone
3 you hired, a pumper, normally visits these sites on a daily
4 basis?

5 A. Yes.

6 Q. Okay. So you would have been aware of any
7 releases?

8 A. Yes, I should be, yes.

9 Q. I would just hand you Exhibit No. 16. Do you
10 recognize that?

11 A. Yes, I do.

12 Q. And that's the agreement that you entered into
13 with the District?

14 A. Yes, that's what it states, yeah. This is the
15 agreement we came to.

16 Q. And on that date, the District did tell you that
17 your wells were in non-compliance, and there were environmental
18 issues resulting from leaks and spills from your wells?

19 A. Yes, and I addressed the matters.

20 MR. BROOKS: Excuse me. What is that exhibit number?

21 MR. SWAZO: Exhibit 16.

22 MR. BROOKS: Thank you.

23 Q. (By Mr. Swazo): And isn't it also true in the
24 agreement that the agreement states that the OCD, on numerous
25 occasions, had notified Sandlot Energy both verbally and with

1 letters that the OCD's regulations were not being complied
2 with?

3 A. They notified me with letters. I thought I had
4 addressed the matters that were coming up. I thought I had
5 addressed them. And as far as I understood, I was in -- I
6 thought I was in good standing. I thought I was doing what was
7 I was supposed to be doing.

8 Q. But you never followed up with the District?

9 A. No. I never reported back to them. No, I
10 didn't.

11 Q. I'm going to show you what's been marked as
12 Exhibit No. 18M -- 18MM.

13 MR. BROOKS: You said 18MM?

14 MR. SWAZO: MM, yes.

15 Q. (By Mr. Swazo): Now, in looking at this picture,
16 it looks like there's a rag that's been stuffed in a hole?

17 A. Yes, there is.

18 Q. Is that what you did to stop the leak?

19 A. That is to keep -- when the sun comes out and
20 heats it up -- that's what I was talking about earlier. The
21 sun will heat the bottoms up, and it'll start coming out. Yes,
22 I pushed that in there to keep that -- the only thing that is
23 in that tank is the bottoms of -- it's called film.

24 That's what I said before, when it heats up, that
25 starts melting in there and seeps out. Yes, I stuffed that in

1 there to keep it from seeping out. It may not be the
2 appropriate way to do that, but it kept it off the soil, I
3 mean, until you can do a patch up job and patch it.

4 Q. Well, you had testified that over the course of
5 several years that the OCD has notified you of various -- or
6 notified you of -- or notified you of contamination issues
7 related to your wells. When you received subsequent
8 correspondence or subsequent communication from the OCD, didn't
9 that at least give you the idea that perhaps the remediation
10 that you thought was appropriate wasn't appropriate?

11 A. No, it didn't. Because I was still continuing to
12 till and roll the soil. As I stated before, a lot of these are
13 ongoing leaks, ongoing problems. One day you may come out
14 there, it may look beautiful. The next day you may come out
15 there, you have a cow kick a valve open. There's many things
16 that can happen out there. And, yes, I was continuing to till
17 these locations and working them.

18 Q. And isn't it true that some of the ongoing
19 problems as far as these leaks is also the result of rotting,
20 corroded equipment?

21 A. Some of it, yes.

22 Q. Are you aware that you cannot land-farm produced
23 water releases?

24 A. No, I'm not.

25 MR. SWAZO: Okay. I don't have any other questions.

1 HEARING EXAMINER EZEANYIM: Cross-examination,
2 Mr. Larson?

3 MR. LARSON: No more questions.

4 HEARING EXAMINER EZEANYIM: Do you have any
5 questions?

6 EXAMINATION

7 BY MR. BROOKS:

8 Q. Yeah. I think, basically, one just to clarify
9 the record on this. Mr. Swazo asked you to look at Rule 116.
10 And I wanted to call your attention to and ask you a question
11 about a different pervasion of Rule 116, this Rule 116D --
12 which is D as in David -- which talks about corrective action.

13 And it talks about releases which endanger the public
14 health and the environment. And then the next sentence says
15 releases will be addressed in accordance with a remediation
16 plan submitted to and approved by the Division or with an
17 abatement plan in accordance with Section 19. Did you ever
18 submit any kind of remediation plan --

19 A. No.

20 Q. -- to the Division?

21 A. Well, now, we did at one time on the central
22 battery, we did, Mike Stubblefield -- I submitted -- and that's
23 one of the reasons why I was tilling it and farming it. But
24 that was many, many -- that was a long, long time ago. I
25 submitted one, and I remember the ranking scale and everything.

1 And I remember doing all that, where the water was, where the
2 nearest fresh water area was and everything. But as far as any
3 others, no, I haven't.

4 Q. Okay. And did that one that you submitted a long
5 time ago, was that any of the releases that are at issue in
6 this case?

7 A. No, sir.

8 MR. BROOKS: Okay. That's all.

9 HEARING EXAMINER EZEANYIM: Do you have anything?

10 MR. WARNELL: I've got a couple of questions just to
11 clarify it for me.

12 EXAMINATION

13 BY MR. WARNELL:

14 Q. When did you buy the field or the wells?

15 A. In 1996.

16 Q. You said in 1996. And who did you buy them from?

17 A. It was Rainbow -- actually, it was Arrowhead
18 Corporation -- or Energy, I think.

19 Q. How old are these wells, do you think?

20 A. These wells, some of them are very old. Fina
21 used to own them in the 30s. Some were 50s. There's -- not
22 one well has a date that I go with.

23 Q. When you make a purchase like that or buy a field
24 or a group of wells, do you assume the liability of those
25 wells?

1 A. Evidently you do. When I bought these wells, I
2 knew hardly nothing about what was entailed to this. I just
3 kind of went into it blind and not knowing. I didn't even know
4 what a C-115 was when I bought these wells.

5 Q. Of the 10 wells that we're talking about here
6 this morning, how many were producers?

7 A. Of the 10 wells, I think all of them are.

8 Q. All of them are?

9 A. Of course, they brought up that one injection
10 well.

11 Q. One is an injection well.

12 A. That was brought up -- not in this.

13 Q. What would you say the total production is of
14 those 10 wells?

15 A. Of those 10 wells? I'd have to look real close.
16 I'd say at the most, 15 barrels a day at the most.

17 Q. Okay. And then my last question, which I found
18 kind of confusing, I heard the gentleman this morning talking
19 about the Levers State No. 7, which I believe is the injection
20 well. And I think if we look at Exhibit 6, there were
21 several -- there was at least one instance where they sent you
22 a letter, a notice of violation. You stated that you never
23 received a notice of violation.

24 A. No, I don't recall it. On the Levers 7? On the
25 injection well, on the battery?

1 Q. On the injection well.

2 A. I don't recall.

3 Q. So if we go back to Exhibit 6, I thought we had
4 indicated that one letter was sent out here in August of 2002
5 to you.

6 A. I don't know what the letter even was. What was
7 it about?

8 Q. Well, it states here it may have been the tank
9 battery. Contamination of the tank battery?

10 A. Yes, sir, that was the tank battery.

11 Q. Did you receive a notice of violation on that?

12 A. I probably did, but I can't recall. I know that
13 the violation I received -- I try to go and correct the
14 problems.

15 Q. Okay.

16 A. I'm not looking for pity. I'm just one man, you
17 know. I try to cover what grounds I can.

18 Q. And then I had one other question: How do other
19 operators generally keep livestock from kicking valves open?

20 A. Well, they'll build a rail around them.
21 Sometimes that don't work. They'll build fences around them.
22 And the main thing, which is hindsight, is take the valve off
23 of them, the valve handle.

24 MR. WARNELL: Thank you.

25 HEARING EXAMINER EZEANYIM: A couple of questions for

1 follow-up. Before I continue, let me ask Mr. Bratcher: What
2 do you consider to be an acceptable procedure to remediate a
3 release? Like he stated in that 116D, I think it was?

4 MR. BROOKS: Yes.

5 HEARING EXAMINER EZEANYIM: If an operator comes to
6 you and submits a procedure to remediate a release, what would
7 you accept -- what do you consider acceptable?

8 MR. BRATCHER: What we look for is a sample analysis.
9 The only way you can tell if the site has been remediated or
10 the remediation that's going to be required is to do a sample
11 analysis and identify the contamination that's present at that
12 site.

13 Whenever you're done, you take a sample analysis to
14 determine that you've removed all the contamination from that
15 site. In the situation of land-farm, if you are doing a
16 land-farm, you'd want to take samples when you believe that the
17 material has been remediated to positively identify that you
18 have cleaned that up.

19 Any time you have a produced water release, you can't
20 land-farm it. Land-farm requires microbial action to remediate
21 the hydrocarbons, and if you have a salt content in there, it
22 kills off the microbes.

23 HEARING EXAMINER EZEANYIM: Thank you for that
24 answer.

25

1 EXAMINATION

2 BY HEARING EXAMINER EZEANYIM:

3 Q. Now, I'll come back to you. Did you take
4 samples? Like he described now, that is a good procedure?
5 First of all, you want to know where the contamination are and
6 once you finish, you take samples again to determine if you've
7 done it right. Did you do any of those?

8 A. No, sir. I was never told to on any of the stuff
9 I was to farm. I was told to till it up, air it out, and to
10 just keep tilling it. And I was told one time if I had a
11 chance to get cow manure out there, to spread it out there.

12 Q. Who told you to till it up and mix it? Who told
13 you that?

14 A. Stubblefield, Mike Stubblefield.

15 Q. Stubblefield is no more on our staff, right? And
16 this was about 2001 or 1996, I don't know. Before the Rule 116
17 was --

18 A. I'm not sure.

19 Q. Okay. I just wanted to find out because you said
20 you excavated and -- where did you send the excavated oil?
21 Where do you send it?

22 A. The soil?

23 Q. Yeah, the soil.

24 A. When I did that sample?

25 Q. Well, you say you tilled them up, got new soil

1 and put it in there.

2 A. Where did I get the soil?

3 Q. Yeah.

4 A. Off the location, the sides of the location.

5 Q. The ones you excavated, where did you send them?

6 A. Where did I send them?

7 Q. Yeah. You mix it up there?

8 A. I till it right there on the location.

9 Q. But you don't take any sample to see if you
10 really remediated the site?

11 A. No.

12 Q. Okay. Do you ever hire any employees at all?

13 A. No.

14 Q. Okay. I don't know where to start here. On this
15 Exhibit 16, do you remember that Exhibit 16 that we're talking
16 about, the one that you signed on January 19, 2005?

17 A. I remember part of it.

18 Q. Now, it's my understanding that when you came to
19 that conference, you were given some days to think about it and
20 decide where you think you would do all this work. And you put
21 in there, September 30, 2005. You produced these exhibits
22 today. Is this September 30, 2005, that you finished the work?

23 A. I thought everything that Mr. Gum had for me to
24 do I thought I had it done. The main part of that, I thought I
25 was just putting wells back into production. And I pulled a

1 bunch of wells, and I did go in and work some -- remediate some
2 soil and clean up some well sites.

3 But I can't remember if we came to an agreement on
4 the 90 days, because I don't recall coming up with the
5 agreement myself. I may have, but I can't recall. This is
6 real vague to me on this, so who came up with the 90 days --

7 Q. You know, it's not 90 days. It's almost -- when
8 did you sign this letter? January 19th? It's like nine
9 months.

10 A. Oh.

11 Q. It's nine months that you went and talked about
12 it and said you were going to do this in nine months. Look at
13 that letter. It was January 10th you met -- on January 19th
14 you signed it after the meeting.

15 A. I see.

16 Q. And then you decided to remediate it by
17 September 30, 2005, and if you don't, then you have to go
18 through the hearing process. I mean, that's what I'm reading
19 here.

20 A. Yeah, I know what you're talking about now.

21 Q. So my question to you: Do you have these
22 pictures?

23 A. Yes.

24 Q. Did you do those before September 30, 2005?

25 A. No, but I did not have all these messes that's

1 being show here. That was before 2005. I went in and cleaned
2 these wells, yes, the ones that are in question. And, as I
3 said, I thought I had everything in compliance. And I should
4 have went to Mr. Gum and asked him, you know, if you want to
5 come look and see if what we've got going -- and explain to me
6 if I have any more, but I didn't.

7 And, you know, like I said, hindsight. I just didn't
8 walk up to him and ask him about it. I should have reported
9 back to him, which I didn't think was necessary. I thought I
10 had what was expected in compliance.

11 Q. Are you saying that between September 30, 2005,
12 up to today, you have no --

13 A. Not up to today, not up to today.

14 Q. But you had a conversation with the District
15 concerning these violations from that -- after the expiration
16 of this letter, September 30th, did you have any communication
17 with the District about these violations? Or nothing?

18 A. After '05?

19 Q. After this September 30, 2005?

20 A. I don't recall talking too much to them after
21 '05. I can't remember. I just can't remember what went wrong,
22 what went on, or what happened during that time. I just
23 remember doing this and doing the work and thinking I'm in
24 compliance. If any of them came out there during that time,
25 after that time, I can't remember.

1 Q. Okay. What did you learn about this case going
2 to hearing? When did you learn about the hearing?

3 A. When they sent me the letter, I think, it was
4 January.

5 Q. Of what year?

6 A. This year.

7 Q. Well --

8 A. Well, yeah, this year.

9 Q. So September 30th, 2005, to January this year,
10 you had no communication with the District. You didn't know
11 anything about it until you got the letter saying this case is
12 going to hearing. Is that what you are telling me?

13 A. That's exactly what I'm telling you. I can't
14 remember if I got any letters or anything. Because when I get
15 the letters or somebody notifies me, I try to go out and
16 address the problem and clean it up. And, as I said before, my
17 understanding was anything under five barrels was not required
18 to be reported. So I didn't file any forms or report anything.

19 HEARING EXAMINER EZEANYIM: Let me ask you this,
20 Mr. Bratcher: Was there any other contact with this operator
21 after September 30th, 2005? Did you have any contact with --
22 this is a space of two years, right? 2005, '06, '07 -- almost
23 two and a half years. Did you have any contact?

24 MR. BRATCHER: Yes, I believe there was some contact
25 during that period.

1 HEARING EXAMINER EZEANYIM: And the contact was in
2 what form? Was it just phone calls or letters to talk about
3 complying with the rules? Is that what the contact was?

4 MR. BRATCHER: I believe it was after 2005 when we
5 ran into each other out in the field. I don't think -- now,
6 I'm not looking at them, but I don't think there was any
7 written correspondence between that time frame.

8 Q. (By Hearing Examiner Ezeanyim): Okay. Let me go
9 back to this. We went through a whole lot of PowerPoints here.
10 Are you saying that what we saw in those PowerPoints are false?

11 A. What now?

12 Q. You know the PowerPoints we were looking at? You
13 know, the conditions your wells were in?

14 A. No. Are you asking me if I'm saying that the
15 photos were false?

16 Q. Yes.

17 A. No. The photos say what did happen, but I did
18 address the matters.

19 Q. Now, how do you determine your -- your lawyer
20 asked you this. How do you determine a release is less than
21 five barrels?

22 A. I've had releases before that I picked up with a
23 44 Coke cup. I don't know how many -- how many ounces, or
24 anything -- well, 44 ounces, I guess. I picked it up and put
25 it in a five-gallon bucket. I took that five-gallon bucket and

1 poured it back in the tank. On several leaks, when it's not a
2 big leak, I've done that. You know, like wellhead leaks and --

3 Q. So if I go back to those PowerPoints, all those
4 that were shown, you think that they are all less than five
5 barrels?

6 A. Yes, sir. I think they are all less than five
7 barrels.

8 Q. Because you say you've dumped them off from --

9 A. No. I've done that on leaks. On other leaks
10 that's not that big, I've picked up a 44-ounce cup, put some in
11 a five-gallon bucket. On bigger leaks, I picked it up with my
12 pump truck. But I could tell how much was out there, and I
13 didn't figure it was more than five barrels.

14 HEARING EXAMINER EZEANYIM: Well, anyway, the rule
15 doesn't say five barrels. It says any spill, right? It
16 doesn't say five barrels, anyway.

17 MR. SWAZO: Yes. There are various factors, and size
18 is one factor, but there's other factors.

19 Q. (By Hearing Examiner Ezeanyim): Where do we get
20 these five barrels?

21 A. I was told by Mike Stubblefield that anything
22 under five barrels, I did not have to report.

23 Q. Okay. When did you -- we saw those PowerPoint,
24 and then you are showing this. You say you took them two days
25 ago?

1 A. Tuesday, on Tuesday.

2 Q. When did you do the work?

3 A. A couple of weeks ago, actually, when I got the
4 letters that they were in violation, I went back out there and
5 started working on my own.

6 Q. But you were in violation since 2001 or 2005.

7 A. No, no, no. These were -- when I got my January
8 letter that I was in violation, they didn't look like what
9 you're seeing on the film back then -- I mean, when I went to
10 clean them up.

11 Q. Did you try to go to your district and say,
12 "Yeah, I'm going to take care of this. There is no need to go
13 to hearing."

14 Did you do that? Why didn't you do that?

15 A. Did I go to him and tell him --

16 Q. Yeah. Because what you are saying -- I'm not
17 sure -- you are saying it is limited to size. You think that's
18 in accordance with the District, who provides for approval.
19 You say you have done them. But if you know you are going to
20 do it, why didn't you prevent coming to this hearing by going
21 to the supervisor and saying, "I will do the work to your
22 satisfaction"?

23 There is no need for us to go to hearing when you
24 could go do that.

25 A. I can't understand what you're saying. I

1 contacted my lawyer, and he did ask them if we could sit down
2 and discuss this. And I was cleaning up the leases at the
3 time. And they said they wanted to take it to hearing.

4 Q. Yeah. Because you have been neglecting this
5 since 2001.

6 A. I don't think I've been neglecting it since 2001.
7 I've been cleaning spills up.

8 Q. Did you get them cleaned up by September, 2005?

9 A. I cleaned a bunch of them up, and those are
10 reoccurring leaks. What you see is not from that date all the
11 way down. It's been reoccurring. I've cleaned up soils. I've
12 tilled up stuff. I've -- when Mr. Sanchez was out there and
13 Mike was out there on the Levers, I was cleaning it up then.
14 And I know Mr. Sanchez says I was covering up. I was
15 back-dragging and rolling the soil.

16 And there's another lease that they had that I've
17 been cleaning up on, too. And that one had got cleaned up, and
18 I haven't had a problem out there. It's like I said, a lot of
19 this stuff is faulty equipment. I mean, I walked into a
20 hornet's nest, and I'm responsible for it.

21 Q. I'm just talking about -- I'm not trying to put
22 you on the spot, but what I'm saying is if you had made any
23 good faith effort to go to District II and say, "Look, I'm
24 working on this."

25 But what I heard you say is you are, "Yeah, I have to

1 go to hearing now."

2 If you went to hearing -- look at this room, now.
3 How many times do we have to sit here and go through this, when
4 this could have been taken care of by going to District office
5 and saying, "I'm going to take care of this problem. There's
6 no need for us to go to that hearing and waste the time of 20
7 people."

8 You have been working on this for months. We have
9 been working on this for months. The attorney, everybody's
10 working on this. But if you had gone -- and I'm looking at
11 this letter. If you had remediated by that -- even though you
12 say it's continuing. But you can go back to them. They don't
13 want to punish you. You can go back to them and say, "I've
14 been doing what you want me to do so we don't go to hearing."

15 That's what I'm saying. If you had made that effort,
16 that could have been, you know, stopped. And you didn't have
17 to come to hearing. You had to come over here to testify that
18 they tell you to do this. Do you see what I mean?

19 A. I see what you're saying. I see what you're
20 saying.

21 Q. Okay. Now, I ask you now: They say -- tell me
22 why you shouldn't be penalized \$480,000 or \$48,000. Tell me
23 why you shouldn't be penalized for that because you didn't meet
24 your deadline, which you chose yourself. Is there any reason
25 why we shouldn't penalize you?

1 Before you answer that question, we are not here to
2 collect money. We don't want your money. What we want is a
3 clean site in your operations. So don't think we are
4 boisterous, and we want to get your money. We don't want a
5 dime. If you do your work, that's all.

6 That's what these guys have been asking you to do.
7 Don't think we are just trying to -- we are just collecting a
8 little pittance to say, "Well, you need to do what you are
9 supposed to do." If they had gone through for 10 years or for
10 how many years now, then they'll collect \$480,000. But they
11 don't want to. They want to forgive that. Why shouldn't we
12 ask for \$480,000? Could you tell me why we shouldn't?

13 A. Why you shouldn't?

14 Q. Yeah.

15 A. Because I thought I was doing what I supposed to
16 be doing.

17 Q. What did you say?

18 A. I thought I was doing what I was supposed to be
19 doing, Cleaning up the leases, trying to take care of it. And
20 as far as the fine, I mean, that's pretty steep, I think,
21 for -- I can't tell them what they can do or can't do. All I
22 know is I've been trying to work diligently trying to get this
23 stuff taken care of. And that's all I can tell you.

24 Q. Are you injecting anything in that Levers State
25 No. 7? Are you injecting anything there?

1 A. No. 7, yes, sir. It's an injection well. I
2 haven't been told to shut-in.

3 Q. What are you injecting there?

4 A. Water, produced water.

5 Q. Do you have an order authorizing you to do that?

6 A. They never took my authorization away.

7 Q. Do you have that authorization?

8 A. Yes. When I bought the leases, I had it.

9 Q. When you bought these wells, did you know these
10 wells had these problems?

11 A. I had no idea I was going to have these problems.

12 Q. Until you bought them?

13 A. Right.

14 Q. When you were excavating and doing that
15 land-farming, who told you to do that? Who told you to do the
16 excavating?

17 A. Mike Stubblefield.

18 Q. Do you know you need to go to OCD and get an
19 approval for the procedure to do that?

20 A. Huh?

21 Q. You do know you have to go to the OCD District
22 office.

23 A. He didn't tell me. Mike met me in the field all
24 the time, and he would tell me what was going on and how he --
25 what to do. And that's what I did. I did what -- he was the

1 OCD representative out there, and he was telling me what to do,
2 and I was doing what he was telling me to do.

3 Q. So it is really about you cleaned it up because
4 of this hearing. You went and excavated this soil because you
5 are going to go to hearing; is that a fair statement?

6 A. Well, because I wanted to get it cleaned up
7 because a lot of these wells were not in -- as you saw in the
8 pictures, a lot of them was not that bad, Not what you saw up
9 there.

10 Q. Yeah, I understand. But I'm saying --

11 A. Yeah. Because the hearing, yes, because I wanted
12 to get this taken care of.

13 Q. That's not what I'm asking. You cleaned it up
14 because you wanted to come to hearing.

15 A. Well, I wanted to get it taken care of.

16 HEARING EXAMINER EZEANYIM: Do you have anything
17 further for the witness?

18 MR. LARSON: I don't.

19 MR. SWAZO: I do.

20 FURTHER EXAMINATION

21 BY MR. SWAZO:

22 Q. Mr. Brewer, when you say that you don't recall
23 receiving this letter, does that mean that you have no memory
24 of receiving this letter or that the memory --

25 A. Which letter are we addressing?

1 Q. I believe the Hearing Examiner was referring to
2 Exhibit 14, which was the April 2004 letter.

3 HEARING EXAMINER EZEANYIM: Well, I was referring to
4 Exhibit 16.

5 MR. SWAZO: I'm sorry, the letter that you were
6 referring to.

7 HEARING EXAMINER EZEANYIM: The letter of violation,
8 the LOV?

9 MR. SWAZO: Yes.

10 HEARING EXAMINER EZEANYIM: Okay.

11 MR. SWAZO: That one was for April 4, 2004?

12 MR. WARNELL: I thought that was it, yeah.

13 Q. (By Mr. Swazo): This is the letter.

14 A. I probably received it. I cannot address the
15 manner in which I received it, but let me see. Yeah -- no. I
16 can't recall receiving it, but I know if I did, I addressed the
17 matters.

18 Q. And you saw the pictures that we had out here
19 this morning.

20 A. Yes.

21 Q. And you said that every time a release happened,
22 you cleaned it up.

23 A. I would go in a matter of time. It may take a
24 couple days to get up there with a backhoe or whatever, but
25 yeah, I would go and clean it up, till it up, or rake it up,

1 roll the soil, whatever.

2 Q. Did you see the pictures from 2006, 2007, and
3 2005 where there was virtually no change?

4 A. There was change. I have cleaned those up. As I
5 said, I don't recall what year that Mr. Sanchez -- and it
6 wasn't Mike that was out there with Mr. Sanchez. I can't
7 remember the guy's name. He's no longer with OCD, but he was
8 out there. And I thought it was him, because I know they were
9 at Section 32 battery -- not Section 32 -- Central battery.
10 And from there I thought they went to Levers A.

11 I went there, and I back-dragged -- oh, excuse me.
12 The collapsed tank? Did you not know that it was moved from
13 its location to the side of the location? That's when I
14 cleaned it up then, also. Because I moved the tank out to
15 clean that area.

16 Q. And your conversation with Mike Stubblefield
17 regarding -- the conversation that you said you had with Mike
18 Stubblefield, that predated this meeting that you had on
19 January 10, 2005; isn't that correct?

20 A. What do you mean predated? It was before --

21 Q. It was before.

22 A. Yes, it was.

23 Q. Now --

24 A. What me and Mike had was just in the field. He
25 was out there, and I was out there, and that -- you're talking

1 about the historical stuff, right?

2 Q. Whatever conversation you had with Mike
3 Stubblefield concerning --

4 A. He said if you get into that, you're responsible
5 for it. But, yeah, that was in the field. That was before.

6 Q. Was his conversation based entirely on historical
7 contamination?

8 A. You know, I don't remember. I don't recall. It
9 was just talking about cleaning up, and if I remember
10 correctly, Mr. Bratcher said that somebody had -- was cleaning
11 up an area and had got into that, and they had to clean up the
12 whole area that was below that because they broke into it.

13 Q. Okay. You don't recall if the conversation dealt
14 with recent releases or historical releases?

15 A. No, I don't recall.

16 Q. Isn't it true that when you met with Mr. Gum and
17 Mr. Van Martin on January 10th, 2005, that they had told you
18 that you had long-standing contamination violations that had
19 not been properly addressed and that you needed to address
20 those properly?

21 A. I don't recall. But I know that the ones I have
22 had, I have addressed these leaks and spills. I have addressed
23 them.

24 Q. Isn't it true that they told you that this would
25 be OCD's final attempt to get you to properly remediate the

1 releases before further enforcement action was taken?

2 A. If I remember when the conversation was, it was
3 not about remediation. It was about cleaning up some of the
4 sites and mainly putting wells back into production.

5 Q. And doesn't the agreement state that the OCD on
6 numerous occasions has notified Sandlot both verbally and with
7 letters that the OCD rules and regulations were not being
8 complied with? That the OCD has made the best attempt to work
9 with Sandlot to come into compliance with the rules; however,
10 there has been no positive results as of this date?

11 A. They do not see positive results, evidently, but
12 like I've said, I've cleaned up messes. I went in there. I've
13 had reoccurring ones. I've went in there and done those. I
14 can't just keep repeating myself over this. I've said it, and
15 I've went in and cleaned up and cleaned up, and I've had
16 recurring leaks.

17 Q. But didn't it appear that OCD wasn't satisfied
18 with your attempts at remediation?

19 A. According to this letter here, it does appear
20 that they were not satisfied.

21 MR. SWAZO: I don't have any further questions.

22 FURTHER EXAMINATION

23 BY MR. LARSON:

24 Q. Early on in my direct testimony, I asked you
25 about a conversation with Mr. Stubblefield.

1 A. Yes.

2 Q. And I asked you what you discussed with him in
3 terms of notifying of a release of less than five barrels?

4 A. Yes.

5 Q. Didn't you also discuss with him what remediation
6 was to be done in relation to a release of less than five
7 barrels?

8 A. Yes, sir.

9 Q. About what did you discuss?

10 A. He told me to till it up, land-farm it, just --
11 just like land-farming. He told me all I had to do was air it
12 out, till it up, get the -- if there's black, get it up on top,
13 roll it around and blend some other soil with it. Let it air,
14 you know, let it break down, let the sun and nature break it
15 down. He said you could haul cow manure in and blend it in
16 with it and break it down. Because the cow manure would help
17 break it down, hydrocarbons. And, basically, that was all.

18 Q. I'll direct your attention to OCD Exhibit 16.
19 Mr. Swazo has asked you several questions about that. During
20 the meeting with Mr. Gum, did he specifically identify any
21 sites that he thought your remediation had been insufficient?

22 A. Not that I recall.

23 Q. Did he discuss with you any particular procedures
24 for doing remediation?

25 A. Not that I recall.

1 MR. LARSON: That's all I have.

2 MR. SWAZO: I don't have any other questions.

3 MR. BROOKS: I just have one follow up on that.

4 HEARING EXAMINER EZEANYIM: Let me ask one before.

5 FURTHER EXAMINATION

6 BY HEARING EXAMINER EZEANYIM:

7 Q. Okay. One thing that you said, I may forget,
8 okay. Discussions with Mike Stubblefield, he is no more with
9 us. There is five barrels or not five barrels, okay. If it's
10 under five barrels, he told you to till it up and air it out
11 and everything. Suppose it's more than five barrels? What did
12 he tell you to do?

13 A. He said you'd have to submit a form and an action
14 plan.

15 Q. Okay. And that's what your attorney was asking
16 you. What is the process where you take the action? But you
17 have to go back there and say, "What do I have to do?" If it's
18 more than five barrels, "What I need to do?" You have to ask
19 that question to remediate your site. Even then, you have to
20 go in there so he can tell you what -- you have to go and work
21 with them. And they tell you what to do.

22 What Mike had just described is how you have to
23 handle it if you need to really do the remediation when you
24 think it's more than five barrels. Because all you discussed
25 with Stubblefield is if it's maybe under five barrels, you till

1 it up. Maybe that's correct, but what if this is more than
2 five barrels?

3 A. Well --

4 Q. Of course, then, from the pictures we don't know
5 whether your conception -- if you think it is less than five
6 barrels all the time, right?

7 A. Right. I couldn't understand all that you were
8 speaking there. But I thought every release was less than five
9 barrels, if that's what your question was.

10 Q. Yeah. But I don't know from looking at those
11 picture they are all less than five barrels.

12 A. Do you know -- there's 42 gallons in a barrel,
13 right?

14 Q. Yes.

15 A. Okay. And Mr. Bratcher even said it. Five
16 barrels can look like a lot out there. And a lot of those
17 pictures you saw had rainwater in them. So you're telling me
18 that you think there were more than five barrels?

19 Q. I can't tell from the pictures.

20 A. From my knowledge and what I've seen and what
21 I've done, all of them was less than five barrels. If you
22 don't believe me, I'm sorry. But that's what I've come up with
23 with the time I've been in the oil field and working around it.
24 If it would have been more than five barrels, I would have
25 reported it to them, went to them and talked to them about it.

1 I would -- if it's -- when I picked it up, I kind of measured
2 it. You put it back in your tank, you know what's going on.

3 HEARING EXAMINER EZEANYIM: Mr. Bratcher, when you
4 went out there, what did you think? Did you think it was more
5 than five barrels?

6 MR. BRATCHER: I think there's been some releases
7 that were over five barrels, yes.

8 FURTHER EXAMINATION

9 BY MR. BROOKS:

10 Q. Exhibit 16, the letter that you signed that
11 Mr. Gum signed, you met with Mr. Gum in his office?

12 A. Yes, sir.

13 Q. That letter says that one of the things you'll
14 do -- the second line says the purpose of this meeting was to
15 discuss non-compliant wells and environmental issues resulting
16 from leaks and spills.

17 A. Yes, sir.

18 Q. So you knew it included both.

19 A. Right. I did. And, as I said before, I did go
20 in there and address some of the leaks and spills.

21 Q. Did you ever ask Mr. Gum in that conversation,
22 "Well, now, Mr. Gum, just exactly what is it you want me to
23 do?"

24 A. No, sir.

25 MR. BROOKS: Thank you. That's all I have.

1 HEARING EXAMINER EZEANYIM: Anything further?

2 MR. SWAZO: No.

3 HEARING EXAMINER EZEANYIM: Okay. You may be

4 excused. At this point, Case No. 14074 --

5 MR. SWAZO: I'm sorry, Mr. Hearing Examiner, I'm not
6 exactly sure if the respondent has rested their case. I mean,
7 I would like to call real briefly just a rebuttal witness, just
8 to clarify a few facts.

9 HEARING EXAMINER EZEANYIM: Okay. Case No. 14074 is
10 still open for testimony, Mr. Swazo.

11 MR. LARSON: To respond to Mr. Swazo's question,
12 Mr. Brewer was my only witness, but I reserve the right to
13 recall him --

14 HEARING EXAMINER EZEANYIM: Okay, fine.

15 MR. LARSON: -- as a rebuttal witness. And my blood
16 sugar is getting low.

17 MR. SWAZO: I'd like to call Mr. Bratcher to the
18 stand real briefly.

19 FURTHER EXAMINATION
20 OF MR. BRATCHER

21 BY MR. SWAZO:

22 Q. Mr. Bratcher, have you had an opportunity to
23 review Respondent's exhibits?

24 A. Yes, I have.

25 Q. In looking at these exhibits, does it appear that

1 contamination still exists?

2 A. Yes, at some of these sites.

3 Q. And before I forget, when did Mike Stubblefield
4 leave the OCD?

5 A. It was in July of 2004, I believe.

6 Q. And can produced water spills be remediated by
7 land-farming?

8 A. No.

9 Q. And why is that?

10 A. Land-farming relies on microbes to break down
11 hydrocarbons. And if you have a high salt content in the
12 material you're trying to land-farm, it kills off the microbes.
13 They can't exist in a high salt content environment.

14 Q. What about back-dragging? There's been testimony
15 that Mr. Brewer back-dragged some of the sites. Would that
16 remediate a produced water spill?

17 A. No.

18 Q. Now, there's been testimony that Mr. Brewer
19 believes, based on conversations with Mike Stubblefield, that
20 land-farming would be sufficient to remediate any release.
21 What would be the proper way of remediating a release?

22 A. Well, once again, you first would want to take
23 samples and see what you have, if you have a high chloride
24 content or if it's just hydrocarbons. You could make a
25 determination then if it was even eligible to be remediated on

1 site.

2 Q. And what about reporting?

3 A. As far as reporting requirements?

4 Q. Yes.

5 A. It's -- once again, under Rule 114, if it's less
6 than five barrels, we're not requiring --

7 Q. 114 or --

8 A. 116 -- we're not requiring it to be reported.

9 Q. But doesn't the rule state that regardless of
10 whether it's a major or minor release that it has to be
11 reported within 15 days on a C-141?

12 A. Yes.

13 Q. And you had also testified that a remediation
14 plan would be part of the remediation.

15 A. Correct.

16 MR. SWAZO: I don't have any other questions.

17 HEARING EXAMINER EZEANYIM: Mr. Larson?

18 MR. LARSON: I have no further questions.

19 HEARING EXAMINER EZEANYIM: Any closing statements
20 before I --

21 MR. SWAZO: Just real briefly.

22 Well, this has been a long-standing issue with
23 Sandlot Energy. We have only brought the compliance action
24 with these wells, but there are numerous other Sandlot Energy
25 wells that have equally as bad pollution issues. We want the

1 operator to properly remediate those sites. If not, we're
2 going to end up seeing him back here in a few months.

3 As part of the order, we would like to have you
4 require Sandlot Energy to inspect all of its wells, and if
5 remediation is required, to file the C-141, take samples, file
6 a remediation plan and make sure that the sites are remediated
7 in proper accord with -- or in accord with OCD rules, standards
8 and requirements and whatever stipulations the District
9 imposes.

10 Again, this hearing is focused only on the compliance
11 issues related to contamination. I'm not sure if there are
12 any. And I don't want to say that there are any. I don't
13 know. We're just focusing on the contamination issue, because
14 there was mention of Rule 201, idle well issues.

15 I want to direct your attention to Rule 116. There's
16 been some talk about what is required as far as reporting. I
17 would like to bring to your attention that a major release is
18 only -- under Rule 116, a major release and a minor release,
19 the distinction between those two releases is only relevant to
20 what type of reporting is supposed to be given to the OCD.

21 Rule 116 states that a major release could be
22 determined based on volume. It can also be based on any volume
23 which results in fire, will reach a water course, may, with
24 reasonable probability, endanger public health or result in
25 substantial damage to property or the environment.

1 And there's been testimony that the releases in this
2 case are environmental releases. Cows have -- I think
3 Mr. Brewer testified that cows come around, and they'll wander
4 the site and knock valves. And of course, we saw pictures of
5 prints in the oil. I'll let you folks base the determination
6 on the pictures. I mean, I think there's been no change over
7 the years in the pictures that we saw. Even though the
8 operator says that it's always been cleaned up, it seems like
9 we have the same releases year in, year out.

10 And what we're going to ask for in this case -- or
11 what we are asking for in this case, is we're asking that the
12 operator be required to remediate the releases within 90 days,
13 and we gave a date of June 30th, 2008. What that involves is
14 filing a C-141 for each release at each well, filing a
15 remediation plan, having samples taken and having that sampling
16 witnessed by OCD staff, having the samples analyzed, having
17 analyticals submitted to the Artesia OCD office to determine
18 the proper way to remediate these sites, and final remediation
19 by June 30th, 2008.

20 We are also asking for you to find that the operator
21 knowingly and willfully violated Rule 116. There's been
22 testimony that OCD has notified operator of this violation for
23 quite some time for many years. The operator even testified
24 that he or one of his agents or employees visits the sites on a
25 daily basis, so he would have been aware of the leaks, and he

1 was aware of the leaks. He's aware that the equipment is
2 corroding and rotting.

3 And so this is a knowing and willful violation, and
4 we are asking you to assess penalties in the amount of \$48,000.
5 Even though it could go higher, we think \$48,000 is a severe
6 enough penalty for the condition of this case, but at the same
7 time, we don't want it to be so excessive that we put the
8 operator out of business.

9 If the operator fails to remediate the releases by
10 whatever date you set, we are asking that the operator be
11 ordered to plug the wells. And if the operator fails to plug
12 the wells, then we are asking for authorization to plug the
13 wells and forfeit the applicable financial assurance.

14 I have nothing further.

15 HEARING EXAMINER EZEANYIM: Thank you, Mr. Swazo.

16 Mr. Larson?

17 MR. LARSON: I'd initially like to react to a
18 statement Mr. Swazo made about other sites beyond these 10
19 wells that are, in his words, "in equally bad condition."

20 There's absolutely no evidence in this record
21 regarding contamination in any other sites other than the 10
22 we've addressed today, so I don't think that should be taken
23 into consideration. I think the possibility of going out and
24 inspecting the other 31 well sites is reasonable, but I don't
25 want the record to reflect an assumption that there are

1 problems in any of those 31 sites.

2 I think the testimony by Mr. Brewer has established
3 that he reasonably relied on representations of
4 Mr. Stubblefield, that he has tried in good faith over the
5 years to address the releases that have occurred, based on his
6 understanding of his conversations with Mr. Stubblefield. And
7 in that sense, I wouldn't characterize this as a knowing and
8 willful violation. I think that he did act in good faith.

9 There may have been some misapprehension of what
10 Mr. Bratcher and Mr. Gum were looking for, some misapprehension
11 of what Rule 116 requires, but I do believe that Mr. Brewer has
12 established that he has acted in good faith throughout.

13 In terms of this 90-day requirement, we heard
14 conflicting testimony, I believe, from Mr. Bratcher and
15 Mr. Sanchez on what's going to happen in that 90 days. From my
16 experience as an environmental lawyer, to go out and take soil
17 samples at 10 sites, send them to the lab, get analyticals
18 back, use the analyticals as a basis to perform a work plan,
19 get the work plan submitted, get the work plan approved, and
20 get the work done in 90 days is just not realistic, and given
21 that 90-day time frame, asking for the draconian penalty of
22 requiring Mr. Brewer to plug his wells.

23 Now, there may be additional remediation that needs
24 to be done at some of these sites. If the Hearing Examiner is
25 going to require that, I'd ask that we look at it in a

1 realistic time frame. I think it would make sense for possibly
2 Mr. Bratcher and Mr. Brewer to go out to each of these sites
3 together, make a determination which sites need further
4 remediation, and narrow that universe. If it's 10, it's 10.
5 If it's five, it's five.

6 Then have a realistic time frame going forward to the
7 point of completing remediation. Because there are five or six
8 steps in there, which in the Murphy's Law approach to the
9 world, something comes up. The lab is busy, they have a
10 two-month turn around on the analyticals. These things happen
11 all the time.

12 Again, I don't believe that penalties are warranted
13 under these circumstances. I certainly don't think that a
14 requirement that the wells be plugged -- if I can quote the
15 warden in Cool Hand Luke, I think we have somewhat of a failure
16 to communicate here on Mr. Brewer's part in terms of staying in
17 touch with Mr. Bratcher and Mr. Gum.

18 But again, that lack of communication was based on
19 his good faith reliance with his conversations with
20 Mr. Stubblefield. So I think Mr. Brewer has indicated his
21 intent in the future to work closely with the District II
22 office. And I would ask that any actions that are ordered as a
23 result of this hearing be done in conjunction with the OCD so
24 we can decide exactly what is going on at these well sites.

25 Thank you.

1 HEARING EXAMINER EZEANYIM: Do you have anything?

2 MR. SWAZO: I have nothing.

3 HEARING EXAMINER EZEANYIM: Okay. Before I finalize,
4 I'd like to address some of the issues. I want to make two
5 points: One is that you are right. It is only the 10 that is
6 before us today. We will not look outside these 10 unless it
7 is again brought to us. I assure you we are going to be
8 looking at only the 10 wells that we are talking about here.

9 We are not asking Mr. Brewer to go and plug and
10 abandon those wells if they're still producing. All we're
11 asking is if he fails to, you know, meet the compliance
12 requirements of cleaning up those sites and everything, then if
13 you don't want to do it, the only option for us is to plug and
14 abandon the wells. Because we don't want them to be fouling
15 the environment.

16 So you are not being asked to go out and plug and
17 abandon them if they are still producing or discontinue using
18 the injection well. What we're asking is for you to come into
19 compliance with the rules. So we're not -- we might order that
20 if you don't want to come into compliance with the rules, then
21 you have to plug and abandon. The OCD will be authorized to
22 plug and abandon because of the continued violation of the
23 rules.

24 So it's not that we're going to, you know, tie your
25 hands and say, "Go out there and plug and abandon." You don't

1 have to plug and abandon as long as you comply with the rules.
2 But I think there are some of these legal issues you mentioned
3 that I don't understand. Maybe if you have anything to say --

4 MR. BROOKS: Well, Mr. Examiner, I think what I would
5 like to do is prepare a memorandum to you on the legal issues
6 in the case, because I think there are several legal issues. I
7 will try to do that this afternoon because otherwise I'll
8 forget things.

9 But if I were to comment from the bench, you know, I
10 might say there's no evidence that does say it in the record.
11 And then we get the transcript and read it, and we find that
12 there's some evidence that I overlooked.

13 So, yeah, I'll prepare a memorandum to you and get it
14 to you so you'll have it when you get the transcript, you can
15 take that into consideration.

16 HEARING EXAMINER EZEANYIM: Okay. Very good.
17 Anything by anybody?

18 Case No. 14074 will be taken under advisement. And
19 thank you for coming today. That concludes today.

20 [End of hearing.]

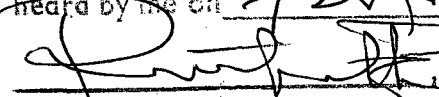
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I do hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. 14074
heard by me on 3/20/98
 Examiner
Oil Conservation Division

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I, JOYCE D. CALVERT, Provisional Court Reporter for the State of New Mexico, do hereby certify that I reported the foregoing proceedings in stenographic shorthand and that the foregoing pages are a true and correct transcript of those proceedings and was reduced to printed form under my direct supervision.

I FURTHER CERTIFY that I am neither employed by nor related to any of the parties or attorneys in this case and that I have no interest in the final disposition of this proceeding.



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3

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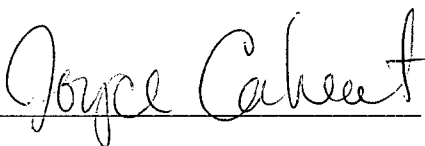
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