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ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

OIL CONSERVATION DIVISION

ORIGINAL

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

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST KIMLAR OIL COMPANY

CASE NO. 14054

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: DAVID K. BROOKS, Jr., Legal Examiner
WILLIAM V. JONES, Jr., Technical Examiner

April 3, 2008

Santa Fe, New Mexico

This matter came on for hearing before the New Mexico
Oil Conservation Division, DAVID K. BROOKS, Jr., Legal
Examiner, and WILLIAM V. JONES, Jr., Technical Examiner, on
Thursday, April 3, 2008, at the New Mexico Energy, Minerals and
Natural Resources Department, 1220 South St. Francis Drive,
Room 102, Santa Fe, New Mexico.

REPORTED BY: JOYCE D. CALVERT, P-03
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FOR THE DIVISION:

SONNY SWAZO
Deputy General Counsel
Energy, Minerals and Natural Resources Department
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FOR THE APPLICANT:

BECKY HILL, Kimlar Oil Company
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STEVE WILLIAMSON, Kojo Energy
P.O. Box 1606
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1 EXAMINER JONES: We will call Case No. 14054, which
2 is an Application of the Oil Conservation Division for a
3 Compliance Order Against Kimlar Oil Company.

4 Call for appearances.

5 MR. SWAZO: Sonny Swazo on behalf of the OCD.

6 EXAMINER JONES: Any other appearances? We had a
7 letter, I think -- or did we not have a letter in the file
8 about another appearance by the operator of record? Let me
9 see. Before we go on, let's look for this. Nope. No letter.

10 MR. SWAZO: Before I begin, Mr. Hearing Examiner, I
11 received a call from Becky Hill, Kimlar Oil Company. A couple
12 of weeks ago she was trying to set her airline reservations and
13 had asked if this hearing could be held later on in the day.

14 I told her that it was 8:15 and that she had to be
15 here. I told her I had no control over that and that she would
16 have to contact the hearing examiners. My understanding, in
17 talking to Florene, is that -- I think she did pass a note onto
18 you. And Becky Hill said that she would like to have this case
19 set to 10 o'clock. And it's after 10 o'clock right now. I
20 would just prefer to go ahead and proceed at this point.

21 EXAMINER JONES: Okay. Let's go ahead.

22 MR. SWAZO: Okay. Mr. Hearing Examiner, I'm
23 presenting two witnesses. The first is Daniel Sanchez. The
24 second one is Mike Bratcher with the district office in
25 Artesia. And I was going to have him testify telephonically.

1 Would you mind if we call him right now and get him on the
2 phone?

3 EXAMINER JONES: Let's take a recess, and let's get
4 him on the phone.

5 [Discussion off the record.]

6 EXAMINER JONES: Is there another appearance in this
7 case? This is Case No. 14054, Application of the New Mexico
8 Oil Conservation Division for a compliance Order Against Kimlar
9 Oil Company.

10 We called for appearances earlier. We'll call one
11 more time. Do we have an appearance?

12 MS. HILL: Yes.

13 MR. WILLIAMSON: Yes.

14 MR. ~~SWAZO~~ ^{BROOKS}: Could you please state your names for the
15 record?

16 MS. HILL: I am Becky Hill, Kimlar Oil Company.

17 MR. WILLIAMSON: Steve Williamson with Kojo Energy.

18 EXAMINER JONES: Neither one of you guys are
19 attorneys? You're representing yourself?

20 MS. HILL: Yes.

21 MR. WILLIAMSON: Yes.

22 MR. BROOKS: And are you going to testify?

23 MS. HILL: Yes.

24 MR. BROOKS: Okay. We need those people that are to
25 testify to be sworn.

1 EXAMINER JONES: First of all, is there any objection
2 to --

3 MR. SWAZO: No objection, no.

4 EXAMINER JONES: Okay. Anybody that needs to be
5 sworn in this case, will you please stand to be sworn? And
6 state your name first.

7 MS. HILL: Becky Hill.

8 MR. WILLIAMSON: Steve Williamson.

9 EXAMINER JONES: Mr. Bratcher, would you please stand
10 to be sworn?

11 MR. BRATCHER: Mike Bratcher.

12 [Witnesses sworn.]

13 MR. SWAZO: Mr. Hearing Examiner, in the application,
14 we originally -- in the application for this case, we
15 originally sought Kimlar's compliance with Rule 116 and 703.
16 Since this case was filed, Kimlar has come into compliance with
17 Rule 703; therefore, we are only pursuing the Rule 116
18 violation. We are dismissing the Rule 703 violation.

19 The OCD has tried for a long time to get Kimlar to
20 remediate the release of the Gourley Federal No. 003. The well
21 is in a water-sensitive area. The well is less than 50 feet to
22 groundwater. In February of 2007, the OCD brought a case that
23 was eventually dismissed due to OCD and Kimlar entering into an
24 Agreed Compliance Order for this issue and for other unrelated
25 issues.

1 The OCD required Kimlar to file a remediation plan
2 for the Gourley Federal No. 003 well by April 20th, 2007, and
3 complete remediation within six months after that, which would
4 have been October 20th, 2007.

5 Kimlar did not do anything with regard to the ACO on
6 that issue, even though OCD did speak with Kimlar a couple of
7 times about the ACO and the deadlines. Kimlar has filed a
8 C-141 release notification and corrective action form. They
9 filed that in January of 2008. It's my understanding that the
10 site was recently sampled and excavated.

11 What we are requesting in this case is an order
12 requiring Kimlar to remediate the release in accord with OCD
13 rules and OCD guidelines by a date certain. At this point, the
14 OCD is not seeking penalties. In the ACO, Kimlar did pay
15 penalties for a violation of an earlier violation of Rule 116;
16 however, the OCD is asking that penalties of \$1,000 per day be
17 imposed if Kimlar fails to remediate the site by the date set
18 in this order.

19 And right now we think that a 30-day period from
20 today's date would be sufficient time for Kimlar to remediate
21 the oil -- remediate the Gourley Federal No. 003.

22 EXAMINER JONES: Let me get this straight. You're
23 asking for 30 days from the hearing date or from the date of
24 the order? And are you asking for them to begin remediation or
25 to complete it?

1 MR. SWAZO: To complete it. My understanding is that
2 it's already began with the sampling and the excavation. We'll
3 get more information from Mr. Bratcher as far as the current
4 status of the remediation and what he thinks would be a
5 reasonable time period for remediation to be completed.

6 We are asking for 30 days from today's date.

7 EXAMINER JONES: And the penalties you're asking for
8 if that doesn't happen?

9 MR. SWAZO: \$1,000 per day.

10 DANIEL SANCHEZ

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

13 DIRECT EXAMINATION

14 BY MR. SWAZO:

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

16 A. Daniel Sanchez.

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

18 A. The New Mexico Oil Conservation Division.

19 Q. And what is your title?

20 A. Compliance and Enforcement Manager.

21 Q. And as part of your duties -- could you explain
22 your duties?

23 A. I supervise the four district offices and the
24 environmental bureau and the enforcement and compliance areas
25 of the Division.

1 Q. And are you familiar with the Gourley
2 Federal No. 003 well?

3 A. Yes, I am.

4 Q. And as part of your duties, have you reviewed the
5 OCD records and the OCD well file for the Gourley
6 Federal No. 003 well?

7 A. Yes, I have.

8 Q. And are these records kept by the OCD in the
9 normal course of business?

10 A. Yes, they were.

11 Q. Are the records available to the public?

12 A. Yes.

13 Q. Would you please identify Exhibit No. 3?

14 A. Exhibit No. 3 is the well list for Kimlar Oil
15 Company showing these four wells that they operate in the state
16 of New Mexico.

17 Q. And does the Gourley Federal No. 003 well appear
18 on that list?

19 A. Yes, it does.

20 Q. Would you please identify Exhibit No. 2?

21 A. Exhibit No. 2 is a copy of OCD Rule 116, release
22 notification and corrective action.

23 Q. Could you please briefly summarize what this rule
24 requires?

25 A. The Rule 116 requires an operator to report to

1 the OCD when there has been a release. And it also discusses
2 the remediation, approved remediation efforts and the
3 responsibility of the operator to meet those.

4 Q. Have OCD inspectors inspected the well?

5 A. Yes, they have.

6 Q. Are such inspections documented?

7 A. Yes, they are.

8 Q. And does OCD keep records of the inspections?

9 A. Yes.

10 Q. Are the records made in the normal course of
11 business?

12 A. Yes, they are.

13 Q. Was a record of OCD's inspection of this well
14 made?

15 A. Yes.

16 Q. And is Exhibit No. 4 the well inspection for the
17 Gourley Federal No. 003 well?

18 A. Yes, it is.

19 Q. Now, the allegations in this case is that there
20 is a release at the Gourley Federal No. 003 well and that the
21 release has not been remediated. In looking at the well
22 inspection history, can you tell me when inspectors -- can you
23 tell me the first entry which indicates a release?

24 A. On February 15th of 2007, there was an entry
25 where the well was pumping at the time of inspection; the

1 cellar has oil and water standing; there appears to be a large
2 hydrocarbon-type staining surrounding the pumping unit and
3 running south from the wellhead towards the power pole.

4 Q. And there's been subsequent inspections since
5 February 15th, 2007?

6 A. Yes, there have. There have been a number of
7 them.

8 Q. And do all of these inspections indicate
9 contamination?

10 A. Yes, pretty much.

11 Q. Would you please identify Exhibit No. 5?

12 A. Exhibit No. 5 is an Agreed Compliance Order with
13 Kimlar and the OCD.

14 Q. What's the purpose of an Agreed Compliance Order?

15 A. When a violation is identified, an Agreed
16 Compliance Order is entered into between the operator and the
17 OCD in order to correct that violation.

18 Q. Was this Agreed Compliance Order -- was the
19 Gourley Federal No. 003 well included in this? Was it covered
20 by this Agreed Compliance Order?

21 A. Yes, it was.

22 Q. And what did the Agreed Compliance Order require
23 in terms of compliance for the Gourley Federal No. 003 well?

24 A. It required that remediation efforts take place
25 on the Gourley No. 003 and the reporting and final verification

1 from the office -- from the district office -- on completion of
2 the remediation.

3 Q. And that requirement was an ordering Paragraph
4 No. 2?

5 A. Yes. Ordering Paragraph No. 2 had indicated that
6 there was going to be a \$1,000 fine, conditionally waived,
7 providing that Kimlar submit the remediation plan on the
8 release at the Gourley Federal No. 003 no later than April 20th
9 of 2007.

10 Q. Now, did Kimlar submit the remediation plan by
11 the April 20th, 2007, deadline?

12 A. No, they didn't.

13 Q. Did they complete remediation of the Gourley
14 Federal No. 003 by the six-month period after the -- well, by
15 October 20th, 2007?

16 A. No.

17 Q. Did they file -- did they file a -- well, let
18 me -- well, let me go ahead and rephrase that.

19 So you had stated that \$1,000 was conditionally
20 waived if they met those requirements. And you testified that
21 they did not meet those requirements. Did they pay a \$1,000
22 civil penalty?

23 A. Yes, they did.

24 Q. Now, who signed this ACO?

25 A. I signed off on it, and Becky Hill signed for the

1 company.

2 Q. And what date did you sign off on this?

3 A. April 23rd, 2007.

4 Q. And how about Ms. Hill?

5 A. April 10th, 2007.

6 Q. Now, does the Agreed Compliance Order give a
7 factual background for this case?

8 A. Yes, it does.

9 Q. And does it also explain Rule 116?

10 A. Yes, it does.

11 Q. Does the Agreed Compliance Order also allow for
12 extensions in case the operator encounters -- in case the
13 operator needs additional time to complete compliance matters?

14 A. Yes, it does.

15 Q. And that would be ordering Paragraph No. 3?

16 A. Yes, it is.

17 Q. And was an extension requested in this case?

18 A. No.

19 Q. Does the OCD -- has the OCD had any other
20 communication with Kimlar Oil Company regarding remediation at
21 the Gourley Federal No. 003 well?

22 A. Yes, we have. Exhibit No. 6 is a letter sent on
23 July 31st, 2007, to Kimlar Oil Company concerning the Gourley
24 Federal No. 003.

25 Q. And what does it specifically state with regard

1 to the Gourley Federal No. 003?

2 A. Please submit your remediation plan for the
3 Gourley Federal No. 003 immediately. You have until
4 October 20th of 2007 -- which is six months from April 20th --
5 to remediate the Gourley Federal No. 003. If you do not
6 complete an OCD-approved remediation by October 20th, 2007,
7 then we will pursue enforcement of the agreements, including
8 the payment of the \$1,000 fine that was waived on condition
9 that the remediation occur within six months of submission of
10 the remediation plan. We may also pursue additional
11 enforcement action.

12 Q. And you were copied on this letter?

13 A. Yes.

14 Q. Has the OCD had any verbal communications with
15 Kimlar Oil Company regarding the remediation at the Gourley
16 Federal No. 003 well?

17 A. I believe we have. I can't name the dates
18 specifically, but, yes, we have talked to them before.

19 Q. And what was the -- what was that communication?

20 A. Just to let Kimlar know that they needed to get
21 this work done. We did ask why they weren't able to get the
22 plan in on time.

23 Q. And was that -- do you know if that communication
24 was before the Agreed Compliance Order had expired?

25 A. I believe it was.

1 Q. In this case, what are you asking for?

2 A. We're asking that Kimlar complete the remediation
3 of the Gourley Federal No. 003 within 30 days of today's
4 hearing date. And if they're unable to meet that, that the
5 Hearing Examiner impose a penalty of \$1,000 per day from that
6 date until it is completed.

7 MR. SWAZO: I have no further questions at this time,
8 Mr. Hearing Examiner.

9 EXAMINER JONES: Okay. Mr. Brooks, would you like to
10 ask any questions?

11 MR. BROOKS: I guess I don't have any questions at
12 this time.

13 EXAMINER JONES: Do you guys want to ask him
14 questions, Mr. Daniel Sanchez?

15 MR. WILLIAMSON: No, sir. I think we're clear.

16 EXAMINER JONES: Is the notice 20 days or 30 days on
17 your Exhibit No. 1? I thought we had to have a 30-day notice
18 to the -- to the --

19 MR. SWAZO: It's 20 days. But this case was
20 originally set back on January 10th.

21 EXAMINER JONES: I realize that. And when they
22 signed that Agreed Compliance Order, they signed it April 10th,
23 but then it became effective March the 25th or -- is that
24 right?

25 MR. SWAZO: Well, if you look at the --

1 EXAMINER JONES: Yeah. April 25th.

2 MR. SWAZO: It may be the way that it's copied. It
3 was actually crossed out, April 23rd.

4 EXAMINER JONES: April 23rd. So she signed it April
5 the 10th. Did she know exactly what she was signing at that
6 time?

7 MR. SWAZO: Well, I can't answer that question. The
8 way that it usually works is that we will send the operators
9 the compliance order for their review and signature. If
10 they're satisfied with it, they will then sign it and mail it
11 back to us. And at that point, that's when Mark or Daniel will
12 sign off on the Agreed Compliance Order.

13 EXAMINER JONES: Okay. That sounds logical.

14 Terry, do you have any questions.

15 MR. WARNELL: No, I don't.

16 EXAMINER JONES: We have no more questions.

17 MR. SWAZO: At this time, I'd like to call Mike
18 Bratcher. Hello, Mike? Are you there?

19 MIKE BRATCHER

20 after having been first duly sworn under oath,

21 was questioned and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. SWAZO:

24 Q. Okay. And I apologize. At this time, we're
25 going to show some pictures. Mike, can you please state your

1 name for the record?

2 A. Mike Bratcher.

3 Q. And with whom are you employed?

4 A. New Mexico Oil Conservation Division in Artesia,
5 New Mexico.

6 Q. And what is your current title?

7 A. Field Supervisor.

8 Q. And what are your duties?

9 A. My duties include supervision of the field
10 personnel, the environmental specialists and compliance
11 officers in District II.

12 Q. As part of your duties, have you inspected the
13 Gourley Federal No. 003 well?

14 A. Yes.

15 Q. Had the Gourley Federal No. 003 well been
16 inspected by other OCD inspectors?

17 A. Yes.

18 Q. And are inspections normally documented?

19 A. Yes.

20 Q. And were the inspections in this case documented?

21 A. Yes.

22 Q. And real briefly, Mike, if you would turn to
23 Exhibit No. 4, is that -- would you explain what that exhibit
24 is?

25 A. Okay. Exhibit 4 is the well inspection history

1 for the Kimlar Oil Company, Gourley Federal No. 003.

2 Q. And Mike, were any pictures taken during any of
3 the inspections?

4 A. Yes.

5 Q. Do you know the exact dates?

6 A. Yes.

7 Q. What dates were pictures taken?

8 A. Okay. We have photos from February 15th, 2007.

9 Q. Is that Exhibit No. 7?

10 A. Yes.

11 Q. Okay. And what other dates do we have?

12 A. Okay. We have photos from June 12th, 2007.

13 Q. And are those photos Exhibit No. 8?

14 A. Yes.

15 Q. And the next date?

16 A. The next date would be, I believe,
17 November 16th, 2007.

18 Q. And would those pictures be Exhibit No. 9?

19 A. Yes.

20 Q. And the next date?

21 A. Next date would be December 19th, 2007.

22 Q. And would that be Exhibit No. 10?

23 A. Yes.

24 Q. And the next date?

25 A. Next date would be January 16th, 2008.

1 Q. And would those be Exhibit No. 11?

2 A. Yes.

3 Q. Now, the allegation in this case, Mike, is that
4 Kimlar has a release that they have not remediated. In looking
5 at the well inspection history, when is the first mention of a
6 release?

7 A. February 15th, 2007.

8 Q. And who was the inspector?

9 A. I was.

10 Q. Now, Mike, are you familiar with Rule 116?

11 A. Yes.

12 Q. What does Rule 116 require?

13 A. Rule 116 spells out the reporting requirements
14 for release, and it requires that releases be remediated by a
15 Division-approved remediation plan.

16 Q. Now, in terms of notice or reporting, what does
17 Rule 116 require? Who must give notice?

18 A. What was the question?

19 Q. In terms of Rule 116's reporting requirements,
20 who must give notice?

21 A. The operator of record of the well.

22 Q. And how must a release be reported?

23 A. Releases are required to be reported on a form
24 C-141. If the volume is sufficient, then it's required to --
25 the operator is required to give immediate verbal notification,

1 also.

2 Q. And what's the -- is there a time limit for the
3 filing of the C-141?

4 A. Yes. It's within 15 days of the discovery of the
5 release.

6 Q. So with a major release, the operator is required
7 to give immediate verbal notice and then written notice within
8 15 days?

9 A. Yes.

10 Q. And if it's a minor release, all that's required
11 is that the operator is to give written notice within 15 days?

12 A. Yes, yes.

13 Q. Do you happen to know, in this case, whether the
14 release was a major or a minor release?

15 A. This would have been considered a major release
16 due to the fact that it's in a water-sensitive area.

17 Q. And what made it a water-sensitive area?

18 A. Our groundwater data indicates that groundwater
19 may be encountered less than 50 feet from the ground surface.

20 Q. So because it was a major release, did Kimlar Oil
21 Company give immediate verbal notice in accordance with
22 Rule 116?

23 A. No.

24 Q. Did they file the C-141?

25 A. Not within the allotted time period, no.

1 Q. But they have filed one?

2 A. Yes.

3 Q. When did they file that? Well, let me ask you
4 this, Mike: Can you please turn to Exhibit No. 12 and identify
5 that?

6 A. Okay. I believe Exhibit 12 is a C-141; is that
7 correct?

8 Q. Is that the C-141 that Kimlar Oil Company filed
9 in this case?

10 A. Yes.

11 Q. And what date was it filed?

12 A. January 19th, 2008.

13 Q. And this was nearly a year after your
14 February 15th, 2007, inspection in which you -- in which you
15 saw contamination at the Gourley Federal No. 003 well?

16 A. Yes.

17 Q. Now, Mike, I want to go through these pictures
18 real quick, and I want you to name what we're seeing.

19 A. Okay.

20 Q. Right now we're looking at Exhibit No. 7A. Could
21 you explain what we're seeing in this picture?

22 A. 7A shows the area of contamination around the
23 pumping unit and the area of contamination that leads back
24 south, which is the direction this photo was taken, off to the
25 edge of the location.

1 Q. And what about 7B?

2 A. Okay. 7B shows the contamination at the dugout
3 cellar around the wellhead area.

4 Q. And 8A?

5 A. 8A shows the hydrocarbon-impacted area that would
6 be on the north side of the pumping unit, and also in the
7 left-hand side of the picture around the little fence, it shows
8 another staining area which would be on the west side of the
9 pumping unit.

10 Q. And 8B?

11 A. 8B shows the fluids and oil standing in the
12 cellar at the wellhead on the Gourley Federal No. 003.

13 Q. And 8C?

14 A. 8C is a photo that was taken around the pumping
15 unit. The camera would have been facing northwest, and it
16 shows the impacted staining areas around the pumping unit.

17 Q. 8D?

18 A. 8D is on the north side of the pumping unit. The
19 camera would be facing northwest -- southwest. Excuse me. And
20 this shows the visibly hydrocarbon impact and staining around
21 the pumping unit.

22 Q. Okay. And what about 9A?

23 A. 9A shows where we believe some material may have
24 been scraped up around the Gourley Federal No. 003.

25 Q. But that wouldn't have been in compliance with

1 OCD rules regarding remediation?

2 A. Correct.

3 Q. And what about 9B?

4 A. 9B is on the west side of the pumping unit facing
5 east. And once again, it shows that there may have been some
6 material scraped up around the Gourley Federal No. 003. It
7 also still shows that there's obvious hydrocarbon impact still
8 remaining in the area.

9 Q. 9C?

10 A. 9C would be on the south side of the pumping
11 unit. And once again, it shows that there may have been some
12 material scraped up, but there still remains hydrocarbon
13 staining in this area.

14 Q. 9D?

15 A. 9D or 9E?

16 Q. 9D.

17 A. 9D, that's on the west side of the pumping unit.
18 The photo was shot facing east, and it again shows hydrocarbon
19 staining around the pumping unit.

20 Q. 9E?

21 A. 9E is again another picture taken in the cellar
22 area around the wellhead. You're looking at a valve. The
23 casing is actually in the right-hand side of the picture, and
24 you can see the fluids that are standing in the cellar.

25 Q. And in 9F, is that the same picture but at a

1 distance?

2 A. Yes.

3 Q. And what about picture number 10 -- or
4 Exhibit No. 10?

5 A. No. 10 is a photo shot facing west, and once
6 again you can see there's still hydrocarbon staining in the
7 area.

8 Q. And 11A?

9 A. 11A shows once again where there's probably been
10 some material scraped and removed around the well site.

11 Q. And 11B?

12 A. 11B is a picture facing west of the wellhead
13 area.

14 Q. And 11C?

15 A. 11C is facing north, and it shows basically how
16 far out the staining area goes away from the well site to the
17 south.

18 MR. BROOKS: If I may interrupt, were all of these
19 pictures at the Gourley No. 003?

20 Q. (By Mr. Swazo): Mike, were all these pictures at
21 the Gourley Federal No. 003 well?

22 A. Yes.

23 Q. And they were taken on different dates?

24 A. Yes.

25 Q. And the dates were specified in earlier

1 testimony?

2 A. Yes.

3 Q. What's the current status of the remediation?

4 A. Okay. Currently, the last sampling event was on
5 March 18th. We received the analyticals from that sampling
6 event on March 15th. That sampling event showed hydrocarbon
7 contamination to still be above remediation action levels for
8 that site, and more excavation will be required.

9 Q. Okay. So where do we currently stand? What does
10 Kimlar Oil Company need to do in order to properly remediate
11 this site?

12 A. The impacted material that remains on the site
13 needs to be excavated until the recommended remediation action
14 level for contaminants is achieved at this site.

15 Q. And what type of time frame do you think would be
16 a reasonable time frame for remediation to be completed?

17 A. 30 days.

18 Q. How about 30 days from today's date?

19 A. Yes, that would be sufficient.

20 Q. Is there anything else that you would like to add
21 about this case, Mike?

22 A. I don't think so. It's just been a long time.
23 We've had several sampling events that were scheduled and
24 cancelled for one reason or another. I've had inspectors out
25 there several times with no results, so it's been a long

1 drawn-out affair getting this cleaned up, and we're still not
2 where we need to be on it.

3 Q. Thank you, Mike.

4 MR. SWAZO: I have no other questions.

5 EXAMINER JONES: Hey, Mike, these oil samplings that
6 you do, if they get this completed in 30 days and you take a
7 sample in 30 days from today's date, which would be about May
8 the 3rd, how would you know that it's got hydrocarbons in the
9 samples?

10 THE WITNESS: Okay. I'm just hearing a portion of
11 that. I didn't understand the question.

12 EXAMINER JONES: Just the sampling time period, when
13 you take a sample, how long does it take you to get the results
14 back and get feedback to the operator itself?

15 THE WITNESS: It's possible to get the analyticals
16 turned around in 24 hours. And they are either going to the
17 labs in Hobbs -- and Cardinal will e-mail me directly the
18 results. So it's possible for me to get the results in
19 24 hours after collecting samples.

20 EXAMINER JONES: Okay. I was just -- I'm clear on it
21 now, thanks.

22 So right now, you guys have only been talking about
23 the well No. 003, and you haven't talked about well No. 004,
24 right.

25 MR. SWAZO: Right. And as I explained earlier, that

1 was in the original application -- in the application we
2 originally had been pursuing, 703 compliance for that
3 particular well, and we have dismissed that since that well is
4 now in compliance.

5 EXAMINER JONES: I heard the dismissal. I didn't
6 equate it with No. 004, so thank you.

7 Terry, do you have questions for Mr. Bratcher?

8 EXAMINATION

9 BY MR. WARNELL:

10 Q. Mike, I have got a question here on the well
11 inspection history, Exhibit No. 4. The first entry there I see
12 is February 5th, 2007; is that correct?

13 A. February 15th, 2007?

14 Q. February 5th, the very bottom line there. Is
15 that the first time we've ever been out at this well?

16 A. Well, the record I have shows the first
17 inspection on February 15th, 2007.

18 MR. SWAZO: If I may interrupt, to try to help answer
19 the Hearing Examiner's question: Mike, can you explain what
20 that little line for February 5th, 2007 means?

21 A. Okay. There it is, February 5th, 2007. Okay.
22 You're looking at Exhibit 4; is that correct?

23 Q. (By Mr. Warnell): Yes. Right above where it
24 says in bold font, "Total inspections performed, 11." Do you
25 see that?

1 A. Okay. Yeah. February 5th, 2007, the type of
2 inspection was routine periodic, normal routine activity, and
3 the identifier is ICP 00703651.

4 Q. That's it. Who was the inspector on that?

5 A. To be quite honest, I don't recognize the
6 initials. The CPO would be the initials of the inspector, and
7 I do not recognize those initials.

8 Q. Okay. Was this the first time that we ever
9 inspected this well or location? Or are there other pages to
10 the well history?

11 A. Well, based on this well inspection history, it
12 shows 2/5/07 being the first time this well was inspected on
13 our records. I'm a little concerned about this particular
14 inspection record because there's no real data with it, and I
15 don't recognize those initials.

16 MR. WARNELL: Okay. I don't have any other
17 questions.

18 EXAMINER JONES: Mike?

19 THE WITNESS: Yes.

20 EXAMINER JONES: Could that have been a computer
21 generated date there that --

22 THE WITNESS: Well, I'm not sure where that came
23 from. I just pulled an inspection history up on that well this
24 morning, and the first inspection I show is 2/15/2007. So
25 where this 2007 comes in, I can't answer that. I don't know

1 why that's on Exhibit No. 4.

2 EXAMINATION

3 BY MR. BROOKS:

4 Q. Thank you. Mr. Bratcher --

5 A. Yes.

6 Q. -- I've got a couple of -- just a few questions
7 for you.

8 A. Okay.

9 Q. Probably more than two, so I thought I better
10 revise the couple. The inspection on February 15th, that was
11 you, was it not?

12 A. Yes.

13 O. MLB?

14 A. Right, yes.

15 Q. And then it looks like you, again, inspected on
16 1/11/08?

17 A. Yes.

18 Q. And who are the people -- who are the other
19 people that conducted these inspections? It was GEG?

20 A. Yes. That would have been done on 6/12/2007.

21 That would have been Gerry Guye.

22 Q. And REI?

23 A. That would be Richard Inge.

24 Q. And then there's an SEB that did some
25 inspections.

1 A. That would be Sherrie Bonham.

2 Q. But the two that you did were the February 15 and
3 the 1/11/08?

4 A. Yes.

5 Q. Okay. I don't remember if you've testified to it
6 this morning, but I know you have in previous proceedings.
7 Were you at one time the environmental compliance officer for
8 District II?

9 A. Yes.

10 Q. And you don't have -- actually occupy that
11 position now, right?

12 A. Correct.

13 Q. I suppose, though, that you haven't forgotten
14 everything that you learned when you were in environmental
15 compliance.

16 A. That would be true. I have not.

17 Q. So you have some expertise in looking at
18 environmental contamination?

19 A. Yes.

20 Q. Based on what you're looking at at this well
21 site -- and we're only talking about the Gourley Federal
22 No. 003, correct?

23 A. Yes.

24 Q. -- based on what you've seen at the Gourley
25 Federal No. 003 site and the pictures you've looked at, do you

1 have an estimate of how much fluid was released at that site?

2 A. In my estimation, there have been numerous
3 releases at this site. To say that there's been one release, I
4 don't believe that's the case. I believe there's been numerous
5 releases from the stuffing box. I believe there's been a
6 release on the flow line and maybe more than one from the flow
7 line. But in my estimation, there has been more than one
8 release at this site.

9 Q. Okay. And from looking at the amount of fluid
10 around and the amount of staining, can you make an estimate of
11 how much fluid has been released?

12 A. My estimation would be in excess of five barrels.

13 Q. Okay. And I suppose from -- possibly from -- it
14 looks like looking at Exhibit 7A there's quite a bit of fluid
15 on the ground; is that an accurate assessment?

16 A. Yes.

17 Q. And that would indicate -- would that indicate a
18 fairly recent release or possibly a continuing release?

19 A. Yes.

20 Q. And do you have an estimate of how much it looked
21 like had been spilled within the recent period before that
22 inspection on February 15 of '07?

23 A. I would estimate it would be in excess of five
24 barrels.

25 Q. Okay. Very good. Now, do you have an opinion as

1 to whether the -- let me get the document before me. I'm
2 looking at Exhibit No. 2, for the record, which is a copy of
3 the Division Rule 116, and it's easier to find in the exhibit
4 book than it is in my rule book.

5 Do you have an opinion -- based on what you've seen
6 on the site and on these pictures and your knowledge about
7 environment contamination in the oil field -- do you have an
8 opinion as to whether or not the releases at that Gourley
9 Federal No. 003 site endanger public health or the environment?

10 A. In my estimation, I would say yes, it does.

11 Q. And can you explain why you believe that?

12 A. With groundwater being possibly encountered in
13 less than 50 feet, there's a possibility of fresh groundwater
14 being contaminated. The releases pose a hazard for wildlife
15 and vegetation in the area, along with the possible groundwater
16 impact.

17 Q. Okay. Now, it's a danger to wildlife and
18 livestock, also, possibly, wouldn't it be?

19 A. Yes.

20 Q. And would that be considered a danger to the
21 environment?

22 A. Yes.

23 Q. And the danger to groundwater -- is hydrocarbon
24 contamination of groundwater, is that merely an aesthetic
25 danger, or is that a danger to public health?

1 A. That would be a danger to public health. I
2 believe you could see in one of the pictures there's actually a
3 residence that's not too far from this well site. And I
4 believe there's a water well at that residence.

5 Q. Yeah. That's what I was going to ask you if you
6 know if there's a water well at that residence.

7 A. Yes.

8 Q. Okay. Now, you said the groundwater was less
9 than 50 feet in this area?

10 A. Yes. And that's based on the New Mexico State
11 Engineer's website. And it lists five wells, water wells, in
12 Section 31. The average is 42 feet to groundwater.

13 Q. Well, I know that the people that do these things
14 use complicated mathematical models, and this is probably
15 outside your expertise, but do you have an opinion as to how
16 much fluid would be required at the site -- well, I'm not going
17 to ask you that.

18 There's too many complexities involved in that.
19 We'll just let the record stand for what it says as of now.

20 Now, go over again what the current status of this
21 remediation is for me. I know you've covered that, but I've
22 kind of forgotten.

23 A. Okay. On March 18th, we had a sampling event.
24 Samples were pulled in the impacted area. Analyticals were
25 received on March 25th. And we have three areas of concern:

1 The DRO -- which is Diesel Range Organics, which is hydrocarbon
2 impact -- in Section 2 was 10,900; section 3 was 15,600;
3 Section 4 was 3,450; Section 1 was 596.

4 The recommended remediation action levels for
5 hydrocarbons in this area is 100. And these are in the
6 milligrams per kilogram.

7 Q. Right. Have you approved the remediation plan
8 for this site?

9 A. Yes. I believe there is a plan in place.

10 Q. If they complied with the plan, you would
11 consider that to be an adequate remediation?

12 A. Yes. Right now our goal is to get the impact
13 down to the acceptable remediation action levels.

14 MR. BROOKS: Okay. I think that's all my questions.
15 Thank you.

16 EXAMINATION

17 BY EXAMINER JONES:

18 Q. Hey, Mike, just a couple of questions. The well
19 itself looks like a little pumping unit, and I see from the
20 records that it's pumping from the Delaware. Does that sound
21 right to you?

22 A. I believe so. I don't have that information
23 right in front of me, so I would hesitate to answer that
24 question.

25 Q. Do you have any idea what water cut the well

1 would be making?

2 A. The production? Is that the question?

3 Q. Yeah. Is it all oil or all water or partial? Do
4 you have any idea?

5 A. Yes. And I'm drawing this data from GoTech for
6 2007, and I can give you a month-by-month production report.
7 Is that what you want?

8 Q. Just one month. How much oil? How much gas?
9 How much water?

10 A. Okay. In December of 2007, which is the last
11 date I have in GoTech, they reported two barrels of oil; 310
12 barrels of water; 31 days of produced oil and gas.

13 Q. Okay. So mostly water?

14 A. Yes.

15 Q. And that pumping unit doesn't look like it could
16 pump that much water to me, but maybe it could, depending on
17 the depth. Is this location -- this is 22 south of 24 east or
18 so. Where is this located? Is this above the Capitan Reef or
19 close to it or what?

20 A. Could you repeat the question? I'm having a hard
21 time hearing.

22 Q. Where's the well located in relation to any
23 towns?

24 A. To any towns?

25 Q. Yeah. Is it close to Carlsbad?

1 A. It's just south of Carlsbad. I couldn't tell you
2 the exact mileage right off the top of my head.

3 Q. So it's down in the Delaware Basin.

4 A. I believe that would be correct.

5 Q. The -- what kind of water is this Delaware water?
6 Do you have any idea of the composition of it, the total
7 dissolved solids?

8 A. I'd have to look at that. I don't have that in
9 front of me.

10 EXAMINER JONES: Okay. That's all my questions.

11 MR. BROOKS: I just have -- in view of the Examiner's
12 questions, I just have one more question. You talked about
13 hydrocarbon concerns and, of course, the well making that much
14 water, do you have any -- are there any chloride issues at this
15 site?

16 THE WITNESS: Yes. The chloride levels on the last
17 sampling event ranged from 5280 to 1310, so we do have some
18 chloride issues there, also.

19 MR. BROOKS: Okay. Thank you.

20 EXAMINER JONES: I would advise you guys that you can
21 ask Mike some questions.

22 EXAMINATION

23 BY MR. WILLIAMSON:

24 Q. Hi, Mr. Bratcher. I'm Steve Williamson.

25 MR. BROOKS: You're probably going to need the

1 microphone to make sure your questions are heard.

2 A. I can't hear you at all. I didn't get your name.

3 Q. (By Mr. Williamson): Can you hear me now,
4 Mr. Bratcher?

5 A. Yeah.

6 Q. Hi. I'm Steve Williamson.

7 A. Okay.

8 Q. I was just wondering on the fluid in this picture
9 7A, what I was going to ask is, what type of fluid -- at the
10 time that picture was taken, do you know what the majority of
11 this fluid was?

12 A. I believe some of this fluid was from release,
13 and some of it could have possibly -- could have been a rain
14 event. I believe we had a rain earlier, maybe the day before.

15 Q. Yeah, we did. That's what I was getting at. I
16 knew they had had a pretty good rain the day before, and I just
17 wanted to clarify that all this was --

18 A. To elaborate on that, you can -- where the water
19 stands is going to be in the impacted area. You notice that
20 outside of the impacted area, there's no water standing.

21 Q. Yes, sir. Okay. All right. That's the only
22 question I had, sir.

23 EXAMINER JONES: Okay. I guess we're -- any other
24 redirects to Mike Bratcher?

25

1 REDIRECT EXAMINATION

2 BY MR. SWAZO:

3 Q. Mr. Bratcher, are you there?

4 A. Yes.

5 Q. I just wanted to clarify one thing. Do you know
6 if the well was inspected on February 5th, 2007?

7 A. No, I don't know, because I don't recognize that
8 inspection record as being anyone from this office. So I don't
9 know anything about that inspection record.

10 MR. SWAZO: That's the only question I have. And at
11 this time, I would move for the admission of all of my
12 exhibits.

13 EXAMINER JONES: Any objection?

14 MR. WILLIAMSON: No, sir.

15 EXAMINER JONES: Exhibits 1 through 12 of the
16 applicant's exhibits will be admitted.

17 Does that conclude your case?

18 MR. SWAZO: Yes, it does.

19 EXAMINER JONES: Okay. Would you guys like to make
20 a -- to have a witness? To ask questions? One of you ask
21 questions of the other one?

22 MR. WILLIAMSON: No, sir.

23 EXAMINER JONES: Okay. Do you want to make a
24 statement? Let's have some closing statements here.

25 MR. WILLIAMSON: The only statement we have is, we

1 did -- of course, the samples have been taken. We have
2 contracted with Badger out of Carlsbad to begin the remediation
3 work or do the remediation work. They did not submit a bid or
4 plan until last night about 8 o'clock. And we've asked them on
5 a couple of occasions to do that, and they're running behind
6 like everybody else.

7 And so we got our plan, and we got the cost of it
8 late last night. And we've asked them when they think they can
9 start. It's going to take a trackhoe, maybe a jackhammer, and
10 he said there's going to be some rock encountered. They seem
11 to think it's going to be fairly rocky, so we're going to have
12 to be dealing with a lot of rock.

13 My point is that they said they probably wouldn't be
14 able to get started for about seven to ten days. And then if
15 we've got that size of an area that we have to deal with, plus
16 if we have to go in and remediate rock and do a lot of trackhoe
17 work, I'm a little bit concerned about getting it done and
18 getting everything done. At that point, 30 minus 10 -- and if
19 they start in 10 to 20 days, maybe we can. But that's my only
20 concern there.

21 EXAMINER JONES: Okay. Can I ask him a question? Do
22 you want to go ahead and ask him a question?

23 MR. BROOKS: Because his statements were testimonial
24 in nature, I believe opposing counsel should have an
25 opportunity to cross-examine.

1 STEVE WILLIAMSON

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

4 CROSS EXAMINATION

5 BY MR. SWAZO:

6 Q. Well, I just have a few questions. Your name is
7 Mr. Williamson?

8 A. Yes, sir.

9 Q. And could you explain what your relationship is
10 in regards to Kimlar Oil Company?

11 A. Yes, sir. In latter January, the Hills contacted
12 me to become a consultant to try and help them out in both the
13 field end and also the administrative end. Becky, over the
14 last year, year and a half, has had many things going on in her
15 life, and she has been considerably overwhelmed. And at that
16 point, in the last year, she could not come to grips with that.
17 She needed to go outside and get someone to take this over.

18 They are a small company. Her husband does the
19 field; she does the office. She thought she could handle it,
20 but she couldn't, so she came to us to try to take this by the
21 horns and try to get these problems resolved, including the
22 operations, the JIB, JLIB billings, which we are going to do.

23 And also, from now on, any letters, anything that
24 comes in that needs action, that we take that over and start
25 doing that action for her.

3 Q. And you're not actually doing the remediation in
4 this case?

5 A. I'm not. I'm just seeing to it that it gets done
6 or hiring the people to get it done on their behalf.

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

8 MR. BROOKS: I just have one. Oh, go ahead.

9 EXAMINATION

10 BY EXAMINER JONES:

11 Q. How would you prevent this from happening in the
12 future? And how did it happen?

13 A. Sir, I believe the way it happened is lack of
14 communication. I think that "we," being Kimlar, didn't realize
15 the magnitude of the situation and understand completely what
16 should be done in a timely basis, how critical it is.

17 I believe that being undermanned, just being a
18 two-person gig over there that they really didn't understand
19 the full impact of what goes on and what has to be done. To
20 solve that problem in the future is to have somebody who does
21 have that knowledge.

22 And we do operate a lot of wells, and we do consult
23 for a lot of wells and a lot of companies. And we will take
24 that and make sure that from now on these leases stay in
25 compliance, that when these types of spills occur that we don't

1 wait and that we don't put things off, and we do things in a
2 timely basis, and we do it within the law and not let this
3 happen again.

4 Q. What's your company name?

5 A. Kojo, K-o-j-o, Energy.

6 Q. Incorporated?

7 A. Yes, sir. And I work for them. I'm not the
8 owner.

9 Q. So you would not become the operator of record.
10 You would just be an internal contractor for Kimlar.

11 A. That's correct. They will remain -- Kimlar will
12 remain the operator of record. However, all the other things
13 will be, and have already been, sent to our office. And we'll
14 do everything, including telling them what they need to do and
15 what services need to be provided.

16 And all the way down to the billing, we're going to
17 start doing for them, even to the point of writing the checks,
18 where all they have to do is sign those checks.

19 Q. You'll have pumpers that will check the wells?

20 A. Actually, her husband is going to continue to
21 pump the wells. And we'll stay in daily contact with him. And
22 together -- he'll remain as a pumper.

23 Q. Well, how did the spills happen? Was it a flow
24 line leak or stuffing box leaks?

25 A. You know, I believe the majority of them were

1 stuffing box leaks. I think a lot of this damage is something
2 that has reoccurred, of course, and is long term. I think
3 things years ago -- and it just keeps going, and it was never
4 remediated like it should have been. But to answer your
5 question, stuffing box right at the well and flow line leaks is
6 what I think happened here.

7 Q. And that's been repaired?

8 A. Yes, sir. It has.

9 EXAMINER JONES: Okay.

10 EXAMINATION

11 BY MR. BROOKS:

12 Q. Just one question. How long do you think you
13 reasonably need to complete the remediation?

14 A. Well, you know, if we could get the first 10 to
15 15 days of them starting, plus 30, I think -- if we could get
16 45 days, that would give us like 10 or 15 days for them to get
17 started and then 30 days to get that done and for us to get our
18 samples in. So I think we could get it done in 45 days.

19 Q. So 60 days should be a very adequate time?

20 A. Yes, sir. Yes, sir.

21 MR. BROOKS: Okay. Thank you.

22 EXAMINER JONES: Terry, do you have any questions?

23 MR. WARNELL: No questions.

24 EXAMINER JONES: Any more questions, Mr. Swazo?

25 MR. SWAZO: No. I don't have any questions.

1 EXAMINER JONES: Okay. Anything else in this case?
2 You guys want to make a closing statement?

3 MR. SWAZO: I'll just make a real brief one.

4 EXAMINER JONES: Okay.

5 MR. SWAZO: Kimlar Oil has been out of compliance
6 with the Gurley Federal No. 003 well for almost two years. And
7 in this case, we really had a difficult time trying to get them
8 to clean the site.

9 I just want to make sure that if you all give them
10 60 days, that they definitely have to meet that 60 days. I'm
11 concerned that, because for one matter or another, this, the
12 remediation has been delayed and still hasn't been done. So I
13 just want to make sure that the remediation is done within the
14 60-day period, if you give them that time frame.

15 And I would just, again, reiterate that if they don't
16 meet that time frame, then we would ask for penalties of \$1,000
17 per day.

18 MR. BROOKS: Well, you understand at least -- well,
19 Ms. MacQuesten agreed with me, so I'm assuming that you would,
20 also -- in order to get penalties of a breach of an order that
21 we issue now, you're going to have to give them new notice and
22 come back to hearing and make a factual demonstration that they
23 have breached.

24 MR. SWAZO: That's right, yes.

25 MR. BROOKS: We can say, yeah, we're going to assess

1 such penalties, but that doesn't constitute an assessment of
2 those penalties.

3 MR. SWAZO: You're right.

4 MR. BROOKS: I thought I would want to confirm that
5 you didn't have a different understanding of our powers here.
6 Okay.

7 EXAMINER JONES: Any last statements?

8 MR. WILLIAMSON: No, sir.

9 EXAMINER JONES: Okay. With that, we'll take
10 Case 14054 under advisement. Thank you for coming.

11 And that being the last case in this docket, this
12 docket is adjourned.

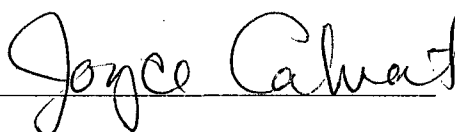
13 [Hearing concluded.]

14
15 I do hereby certify that the foregoing is
16 a complete record of the proceedings in
17 the Examiner hearing of Case No. _____,
18 heard by me on _____,
19 _____, Examiner
20 Oil Conservation Division
21
22
23
24
25

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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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New Mexico P-03
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1 STATE OF NEW MEXICO)
 2 COUNTY OF BERNALILLO)

3

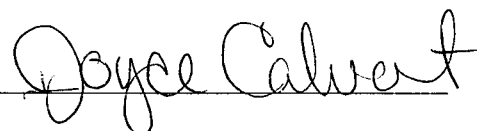
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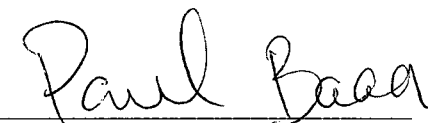
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