

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

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

COPY

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A COMPLIANCE
ORDER AGAINST MARKS & GARNER PRODUCTION
LIMITED COMPANY

CASE NO. 14393

REPORTER'S TRANSCRIPT OF PROCEEDINGS
EXAMINER HEARING

BEFORE: RICHARD EZEANYIM, Presiding Examiner
DAVID K. BROOKS, Legal Examiner

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November 12, 2009

Santa Fe, New Mexico

This matter came on for hearing before the
New Mexico Oil Conservation Division, RICHARD EZEANYIM,
Presiding Examiner, and DAVID K. BROOKS, Legal Examiner,
on Thursday, November 12, 2009, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South St.
Francis Drive, Room 102, Santa Fe, New Mexico.

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A P P E A R A N C E S

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1 MR. EZEANYIM: We are going to go to Case
2 Number 14393. Are we set up to go on 14393? Do we need
3 to set up some telephone conference?

4 MR. SANCHEZ: That's Mikal's case. She
5 went up to contact the district.

6 MR. PADILLA: Mr. Examiner, we're ready to
7 go.

8 MR. EZEANYIM: I know you are ready to go.

9 MR. PADILLA: This arrangement should
10 already be made. We move for a continuance then.

11 MR. EZEANYIM: We are going to take about
12 a 5 to 10-minute break to get things set up so we can
13 continue with this case. So we'll take a 10-minute
14 break.

15 (A recess was taken.)

16 MR. EZEANYIM: Let's go back into the
17 record and call Case Number 14393. This is the
18 application of the New Mexico Oil Conservation Division
19 for a compliance order against Marks & Garner Production
20 Limited Company. Call for appearances.

21 MS. ALTOMARE: Mikal Altomare on behalf of
22 the Oil Conservation Division. I have one witness to
23 present live testimony and two witnesses on the line to
24 present telephonic testimony.

25 MR. EZEANYIM: Any other appearances?

1 MR. PADILLA: Earnest Padilla for Marks &
2 Garner, and I object to the two witnesses appearing
3 telephonically since I did not receive notice or asked my
4 consent for witnesses appearing telephonically. They
5 were listed on the pre-hearing statement, but they were
6 not listed -- I did not have a request to approve
7 telephonic appearance.

8 MS. ALTOMARE: They were identified as
9 telephonically appearing witnesses on the pre-hearing
10 statement. Mr. Padilla did not assert any objection at
11 that time. Due to budgetary constraints that the
12 Examiners are well aware of, we are not able to bring
13 them in to provide live testimony.

14 MR. BROOKS: We should have a pre-hearing
15 statement in the file.

16 MR. EZEANYIM: I see here they are all
17 listed. Counsel, did you get this pre-hearing statement?

18 MR. PADILLA: I did get that.

19 MR. EZEANYIM: Do you see the telephonic
20 for Ron Harvey and Mike Bratcher? Did you have that?

21 MR. PADILLA: I had that.

22 MR. EZEANYIM: Why are you objecting to
23 that?

24 MR. PADILLA: They're not here so I can
25 test their credibility.

1 MR. EZEANYIM: Okay. You are objecting to
2 them being on the telephone?

3 MR. PADILLA: Yes.

4 MR. BROOKS: I'm going to recommend we
5 overrule that objection. It has been customary for the
6 Division to present witnesses by telephone in enforcement
7 hearings, and I think people are on notice of that.

8 MR. EZEANYIM: Objection overruled. I
9 think, Counsel, you can cross-examine over the telephone,
10 too, I think.

11 MR. PADILLA: I've also been handed -- as
12 a preliminary matter, I've been handed a packet of
13 exhibits that were not identified in the pre-hearing
14 statement. This is the first time I've seen them. They
15 were not part of the email that was forwarded to me with
16 the pre-hearing statement.

17 MR. EZEANYIM: Which documents are you
18 talking about?

19 MR. PADILLA: The packet of Exhibits 1
20 through 6.

21 MS. ALTOMARE: Exhibits for Oil
22 Conservation Division Examiner Hearings are not required
23 to be provided prior to the actual hearings, unlike the
24 Oil Conservation Commission hearings.

25 MR. BROOKS: That is correct, I believe.

1 I'm trying to remember if there's a requirement that the
2 exhibits be identified. I know they do not have to be
3 produced like they do for the Commission hearings. "The
4 names of the parties and their attorneys, a concise
5 statement of the case, the names of the witnesses the
6 party will call to testify. In the case of expert
7 witnesses, the fields of their expertise, the approximate
8 time the party will need to present and identification of
9 procedural matters." As far as I can see it does not
10 require even a description of exhibits, so I recommend
11 the Examiner overrule the objection.

12 MS. ALTOMARE: At this time, however, I
13 will be objecting to the presentation of Mr. Hicks as a
14 witness on the basis that opposing counsel's pre-hearing
15 statement was untimely. I did advise him of this at the
16 time that I received his pre-hearing statement upon my
17 return to the office on Tuesday. I was out of the office
18 on Friday and Monday.

19 We have deadlines for a reason. Pre-hearing
20 statements were due on Thursday. I waited in the office
21 until 5:30 or 6:00 on Thursday evening. They are due by
22 5:00 the Thursday preceding a hearing such as this. The
23 time stamp on the submission of a pre-hearing statement
24 for respondent's pre-hearing statement was dated November
25 6, 2009, 3:26 p.m., which was Friday, at which time he

1 did identify Mr. Hicks as a witness.

2 In this circumstance, given the holiday this
3 week and the fact that I did happen to be out of the
4 office both Friday and Monday, it did deny counsel and my
5 witnesses the ability to properly prepare for the
6 examination of Mr. Hicks. I would therefore object to
7 the presentation of Mr. Hicks in this case as a witness.

8 As the Examiners are aware, Mr. Padilla has a
9 pattern and practice of submitting these pre-hearing
10 statements in a tardy nature. He is well aware of the
11 deadlines and repercussions for submitting these in a
12 tardy fashion. I don't think that it is any surprise to
13 him that the repercussion would be that he would be
14 denied the opportunity to present this witness.

15 MR. EZEANYIM: Could we take it one by one? For
16 one? We are dealing with this first. I don't know who
17 Mr. Hicks is.

18 MS. ALTOMARE: I believe Mr. Brooks
19 already addressed --

20 MR. BROOKS: I made a recommendation to
21 the Examiner. The Examiner has not yet made his ruling.

22 MS. ALTOMARE: I apologize.

23 MR. EZEANYIM: What I'm going to do is to
24 overrule the objection and admit these exhibits. Now, I
25 will call for -- you have three witnesses. How many

1 witnesses do you have?

2 MR. PADILLA: Two witnesses. Mr. Hicks
3 and the principal from --

4 MR. EZEANYIM: Okay. And you are
5 objecting to one of the witnesses --

6 MS. ALTOMARE: That is correct.

7 MR. EZEANYIM: -- based on the fact that
8 they submitted their name too late?

9 MS. ALTOMARE: That is correct. He
10 previously submitted some form of pre-hearing statement
11 on behalf of Marks & Garner under another case number
12 that had disclosed the principal, Mr. Welborn. It did
13 not identify Mr. Hicks as a witness. So I was on some
14 notice that he did intend to call Mr. Welborn, and it is
15 reasonable that he would be calling Mr. Welborn. He did
16 not identify Mr. Hicks until he submitted his pre-hearing
17 statement, which I did not receive until Tuesday because
18 he did not submit it until Friday afternoon.

19 MR. BROOKS: Do you want to respond?

20 MR. PADILLA: Yes, I do. Mr. Hicks has
21 been dealing with the Oil Conservation Division district
22 office. Even in conversations that I've had with Ms.
23 Altomare, she asked me whether I was going to call Mr.
24 Hicks as a witness because one of the exhibits that I
25 submitted in preparation for the Commission hearing that

1 was continued, and that is Mr. Hicks' submittal to the
2 Oil Conservation Division on September 10th, 2009. So
3 the OCD is well aware that Mr. Hicks has been the
4 principal consultant for Marks & Garner. I don't think
5 it's any surprise.

6 And certainly if Ms. Altomare was out of the
7 office on Friday and Monday, I don't have any -- you
8 know, I don't know whether that's a good enough excuse,
9 but certainly in terms of notice and in terms of knowing
10 that Mr. Hicks has been the consultant, I just don't
11 understand what the surprise is or why there is a lack of
12 preparation.

13 As a matter of fact, the exhibits that we are
14 submitting today is the September 10th report that Mr.
15 Hicks submitted.

16 MS. ALTOMARE: Indeed, I did ask for a
17 confirmation about whether or not he would be calling Mr.
18 Hicks, in which I received no response from Mr. Padilla.
19 I did prepare my case well in advance because I would be
20 out of the office based on the information that I
21 received from Mr. Padilla up to that point in time.

22 Again, we do have rules and deadlines for a
23 reason. I waited to the deadline and prepared my case
24 based on the information I had received according to the
25 deadlines that are in place, and I think that I am

1 reasonable in relying on those deadlines that are in
2 place for that very reason.

3 MR. BROOKS: Well, the rule is a little
4 bit complicated, but the holiday actually doesn't make
5 any difference because the rule, for some strange reason
6 that I don't remember how it ever got that way, says that
7 you have to file a pre-hearing statement four business
8 days before hearing but not later than the Thursday
9 before the hearing, which is normally five business days
10 before the hearing, but in this case it was four business
11 days before the hearing.

12 MS. ALTOMARE: In any event, it did deny
13 us one additional day to prepare because of the holiday.

14 MR. BROOKS: Exactly. And I believe that
15 Mr. Padilla has not tendered any showing of hardship why
16 it's necessary to have the testimony despite not having
17 been identified in a timely-filed pre-hearing statement,
18 so I would recommend that the Examiner sustain the
19 objection.

20 MR. EZEANYIM: Objection sustained. Okay.
21 Let me go ahead. You have three witnesses, right,
22 confirmed three witnesses?

23 MS. ALTOMARE: Correct.

24 MR. EZEANYIM: Mr. Padilla, you have one
25 witness? I have sustained the objection.

1 MR. PADILLA: Right.

2 MR. EZEANYIM: Any opening statements, or
3 do you want to -- do you have any opening statement, the
4 attorneys?

5 MS. ALTOMARE: Just briefly.

6 MR. EZEANYIM: Okay. Go ahead.

7 MS. ALTOMARE: I think the Division's case
8 is basically summarized in the pre-hearing statement that
9 we submitted, and that is that we have had a
10 long-standing history of problems with this entity, Marks
11 & Garner, even since prior to the Marks & Garner as we
12 now know it today and since it has been taken over by Mr.
13 Welborn.

14 In this instance, our staff in the field did
15 discover at 11 sites some significant contamination, evidence of
16 evidence of existing contamination and layered upon that,
17 new releases of hydrocarbons and chlorides. We will be
18 showing pictures that clearly show that anybody driving
19 by the sites would see that these were grossly neglected
20 sites.

21 Out of those 11 sites, we are certain that
22 Letters of Violation have been issued in seven of them.
23 We've now come to be aware that it's possible that four
24 of the Letters of Violation that were prepared didn't get
25 issued.

1 However, that being said, we did issue notice
2 of violation in early August that put them on notice that
3 there were a total of 11 sites, not just the seven sites
4 that they were originally notified of, for which they
5 still owed C-141s reporting the releases and that they
6 needed to submit remediation plans to address the
7 contamination and these releases.

8 They did not respond adequately to the notice
9 of violation. The work that has been done has all been
10 done in a hypothetical fashion, has not been done up to
11 the parameters that were specifically set out in the
12 instructions that were originally sent out in, I believe
13 it was, May and June of last year.

14 In short, they have basically been cutting
15 corners and neglecting these sites. At this point in time, the
16 time, the additional four sites that they were put on
17 notice, at least in our notice of violation, sent out
18 early in August and again in the filing of our
19 application in September, we have not even received
20 C-141s, let alone any kind of remediation plan proposal
21 that includes those sites.

22 The additional seven sites they have been
23 submitting remediation plan proposals that we've
24 repeatedly been telling them do not rise to the level of
25 the standards of the OCD, and our staff in the field have

1 been repeatedly giving them very specific instructions of
2 what it is that they need to do to make them comply, and
3 they just have not done it. We're now several months
4 out, and these sites are just sitting out there and the
5 contamination is persisting.

6 We've now become aware that Marks & Garner is
7 attempting to sell a number of these sites, transfer
8 operatorship. We would ask that any order that's issued
9 in this case be done in an expedited manner, and that
10 they be precluded from transferring operatorship of any of
11 these wells until the environmental issues have been
12 fully addressed and the compliance issues have been fully
13 addressed.

14 This is an operator that has a pending
15 compliance action before the Commission, as well, for some
16 some of these well sites, and there's just been ongoing
17 compliance issues with this operator. And we feel like
18 we've worked with them, and at this point in time, we
19 really need an order giving them very specific deadlines
20 with very specific actions to be completed by those
21 deadlines.

22 And Mr. Sanchez will give you a better
23 description of exactly what it is that we're asking for
24 and why throughout his testimony, and the technical
25 witnesses from the district will be able to give you a

1 breakdown of exactly what the timeline is and a history
2 of the specific 11 well sites. I think by the end of the
3 hearing you'll have an idea why the OCD has become
4 frustrated with Marks & Garner.

5 MR. EZEANYIM: Okay.

6 MR. PADILLA: Very briefly, Mr. Examiner.
7 The evidence will show that Marks & Garner has met all
8 deadlines. It is not late. It's not Marks & Garner's
9 fault that four wells or however many wells were left out
10 of whatever mandate the OCD issued. And now they're
11 trying to, essentially without notice or in a very short
12 time period, say, "Get these wells corrected."

13 Now, the call of this case is interesting, is
14 that one of the options for Marks & Garner is to transfer
15 all the wells it currently operates in New Mexico by a
16 date certain. And I have provided transfer documents
17 from Marks & Garner brought into a purchaser, so Ms.
18 Altomare and the OCD are aware of Marks & Garner's
19 efforts to transfer these properties.

20 And now I guess the OCD invokes some kind of
21 equitable argument to enjoin the transfer of these wells
22 until something is done. So I don't know where the OCD
23 is coming from, but I think it is abundantly clear that
24 Marks & Garner is proceeding and has met all requirements
25 and will continue to do so, and will continue testing for

1 contamination.

2 It's interesting that one of the issues here
3 brought up by Ms. Altomare in her opening argument or
4 statement is that she mentions chlorides, but in none of
5 the correspondence has there ever been any kind of
6 mention of chlorides, neither has there been any evidence
7 or any notion that there has been contamination of fresh
8 water. I just don't understand where this word
9 contamination that is loosely used in the opening
10 statement is -- what it pertains to, in other words.
11 That's our case, basically, and we'll try to be brief on
12 it.

13 MR. EZEANYIM: Okay. Ms. Altomare, call
14 your first witness.

15 MS. ALTOMARE: Thank you, Mr. Examiner. The
16 Division calls Mr. Daniel Sanchez.

17 MR. EZEANYIM: May all the witnesses stand
18 up, state your name and be sworn, please.

19 MR. SANCHEZ: Daniel Sanchez.

20 MR. EZEANYIM: All the witnesses, anybody
21 who is going to testify.

22 MR. PADILLA: Quinton Welborn.

23 MR. EZEANYIM: Okay. Stand up.

24 MS. ALTOMARE: If the two witnesses that
25 are on the phone line could raise their right hand, as

1 well, please.

2 MR. EZEANYIM: Okay. State your name over
3 there.

4 MR. HARVEY: Ron Harvey.

5 MR. BRATCHER: Mike Bratcher.

6 MR. SANCHEZ: Daniel Sanchez.

7 MR. WELBORN: Quinton Welborn.

8 (The witnesses were sworn.)

9 MR. EZEANYIM: You may proceed.

10 J. DANIEL SANCHEZ

11 Having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MS. ALTOMARE:

14 Q. Can you state your name for the record,
15 please.

16 A. Daniel Sanchez.

17 Q. What is your current job position?

18 A. I'm the compliance enforcement manager for the
19 OCD.

20 Q. And are you familiar with -- in your job
21 capacity are you familiar with the respondent operator
22 Marks & Garner?

23 A. Yes.

24 Q. In your dealings with the operator in your
25 role as the enforcement and compliance manager, what is

1 your general impression of Marks & Garner and of its
2 principal, Mr. Welborn?

3 MR. PADILLA: Objection, speculation. He
4 can testify as to any violations, but he's being asked
5 for some kind of opinion as to what kind of a person Mr.
6 Welborn is.

7 MS. ALTOMARE: He's being asked as to what
8 his general impression is as to what kind of an operator
9 Marks & Garner and Mr. Welborn, as the principal of that
10 operator, what kind of an operator he is.

11 MR. BROOKS: In the context of an
12 administrative proceeding, I'm going to overrule the
13 objection. Its relevance may be somewhat marginal, but
14 we can take that into consideration.

15 MR. EZEANYIM: Objection overruled. M. P. 17

16 A. My general impression is that although Marks &
17 Garner does tend to make promises as to getting into
18 compliance, we've seen some effort but not complete
19 effort in trying to reach that compliance.

20 Q. (By Ms. Altomare) And do you have an
21 understanding regarding the specific details regarding
22 the violations involved in this case forming the basis
23 for the application in this matter?

24 A. Yes, I do.

25 Q. I basically want to just get some general

1 information regarding the history of Marks & Garner's
2 operations and compliance issues with the Oil
3 Conservation Division, understanding that the technical
4 field personnel are going to provide the more specific
5 details --

6 A. Okay.

7 Q. -- just to kind of give some background
8 information for the Hearing Examiners. I'd like to
9 direct your attention to Exhibit Number 1 in the packet
10 of materials. Can you identify this document for the
11 record, please?

12 MR. EZEANYIM: Before we continue, I want
13 to establish the fact that is this a fact witness or
14 expert witness?

15 MS. ALTOMARE: He's simply testifying as a
16 fact witness in his capacity as the compliance
17 enforcement manager.

18 MR. EZEANYIM: I wanted to make sure we
19 had that in the record, that he is.

20 MS. ALTOMARE: Right.

21 Mr. Bratcher and Mr. Harvey, are you able to
22 hear okay?

23 UNIDENTIFIED MALE SPEAKER: Yes.

24 MS. ALTOMARE: If at anytime you're not,
25 if you could speak up and let us know.

1 UNIDENTIFIED MALE SPEAKER: Yes.

2 MR. PADILLA: Mr. Examiner, I'm going to
3 invoke the rule to exclude, sequester, the witnesses, and
4 they can testify separately.

5 MR. BROOKS: There's no precedent for
6 doing that at Oil Conservation Division hearings, and the
7 Rules of Civil Procedure do not apply as such. They can
8 be applied by analogy, but we're not required to, so I
9 recommend to overrule that objection.

10 MR. EZEANYIM: Objection overruled. What
11 are you asking? Let me understand what you're asking.

12 MR. PADILLA: That the witnesses don't be
13 coached by Mr. Sanchez effectively. I want them to
14 separately comply with or testify as to what their
15 knowledge is, not what they've heard from Mr. Sanchez.

16 MR. EZEANYIM: I don't think that has been
17 the case, so --

18 MR. BROOKS: The rule that Mr. Padilla
19 relies upon is one that's always followed in courts but
20 never has been in any OCD proceeding I've participated in
21 that requires that the witnesses not be allowed to hear
22 the testimony of any other witness. But because the OCD
23 has a precedent that's been uniform for at least the last
24 nine years of not following that, I will recommend again
25 that the request be denied.

1 MR. EZEANYIM: Since this is an
2 administrative proceeding, the objection is overruled.
3 You may proceed.

4 Q. (By Ms. Altomare) Do you recognize the
5 document that's in front of you?

6 A. Yes, I do. Exhibit Number 1 is the Notice of
7 Violation and Intent to Proceed to Hearing that was
8 issued to Marks & Garner on August 5th, 2009.

9 Q. And the original date on the document was
10 actually July 27th; is that right?

11 A. That's correct.

12 Q. And initially we had issued it, and there was
13 an error made with regard to the -- there was some
14 confusion with the addressing; is that right?

15 A. Yes.

16 Q. So it was reissued to both counsel and Mr.
17 Welborn on August 5th to the correct addresses?

18 A. Yes. That's correct.

19 Q. So the second set of certified mail numbers
20 and the non-redacted address are the correct -- is the
21 correct information reflected?

22 A. Yes.

23 Q. The notice addresses two separate issues; is
24 that right?

25 A. Yes.

1 Q. One of the issues addressed was a previous
2 case actually still ongoing, Case Number 14041; is that
3 correct?

4 A. That's correct.

5 Q. That was compliance matter brought regarding
6 inactive wells and failure to comply with financial
7 assurance requirements?

8 A. Yes.

9 Q. And what is your understanding of the current
10 status of that case?

11 A. That will be going back before the Commission,
12 I believe, next week.

13 Q. And that's because they have failed to comply
14 with the Commission's order?

15 A. That's correct.

16 Q. And the second issue addressed is what we're
17 now here for today, the 11 wells?

18 A. Yes.

19 Q. And the notice specifically identifies the 11
20 wells that are identified in the application for this
21 case?

22 A. Yes, it does. On page 3 of the notice,
23 Section II, the 11 wells are listed. The Levers Federal
24 Number 7, Levers Federal Number 3Y, Red Twelve Federal 1,
25 Cave State Number 4, Red Twelve State Number 2, Red

1 Twelve State Number 3, Red Twelve State Number 4, Diamond
2 State Number 2, Red Twelve State Number 1, and the Mosely
3 Springs 32 State Com 2.

4 Q. And the notice further specified that it had
5 not received C-141s for four of those 11 wells; is that
6 correct?

7 A. Yes.

8 Q. And I think you heard me mention in the
9 opening that we had recently found out that we weren't
10 really clear as to whether or not the Letters of
11 Violation for those four wells had been issued by our
12 district office; is that right?

13 A. Yes.

14 Q. But this notice of violation clearly includes
15 those four wells?

16 A. Yes, it does.

17 Q. To your knowledge, have we received any C-141s
18 for those four wells since the issuance of this notice of
19 violation from Marks & Garner?

20 A. No. I checked the well file this morning
21 before the hearing, and I still haven't seen any
22 additional information in the well file.

23 Q. What else does this notice of violation ask
24 regarding all 11 wells?

25 A. That new C-141s be submitted that are

1 acceptable to the district office and that they work with
2 the district office in order to get that remediation done
3 on those sites.

4 Q. Actually, just the C-141s for the four wells;
5 right?

6 A. Yes.

7 Q. And then the remediation plan be submitted to
8 the district office for all 11 wells?

9 A. Yes.

10 Q. Does the letter set a deadline?

11 A. It gave a deadline of August 17, 2009.

12 Q. And, again, that deadline was updated once the
13 reissuance was done on August 5th?

14 A. And an additional seven days were added to
15 that.

16 Q. Because it was originally August 10th?

17 A. August 10th was the original day, yes.

18 Q. I'd like to direct your attention to the page
19 following page 5 of the letter. It's the page after the
20 signature page of the letter. Just for confirmation,
21 this letter was done under your signature; is that right?

22 A. Yes.

23 Q. The page after page 5, can you identify what
24 this reflects?

25 A. This shows the confirmation cards, the green

1 cards, that were received back from Mr. Welborn and Mr.
2 Padilla's offices.

3 Q. What do these two green cards reflect?

4 A. That the correct address was actually used and
5 they did receive the notice of violation.

6 Q. And what does the card for Mr. Welborn reflect
7 as far as date of receipt?

8 A. August 10th, 2009.

9 Q. And who signed for the card?

10 A. It looks like Mr. Welborn's signature.

11 Q. Does that number match the number on the front
12 of the letter?

13 A. Yes, it does.

14 Q. And the card for Mr. Padilla, what date does
15 it appear Mr. Padilla's office received the letter?

16 A. It looks like August 6th, 2009.

17 Q. And the remainder of this exhibit are the
18 attachments to the letter; is that right?

19 A. Yes.

20 Q. I'd like to direct your attention to Exhibit
21 2.

22 A. Okay.

23 Q. What does Exhibit 2 include?

24 A. Exhibit 2 is a copy of the inactive well list
25 and of the inactive well additional financial assurance

1 report, and these were printed out on November 4th, 2009.

2 Q. What do these two reports reflect regarding
3 Marks & Garner?

4 A. They show that Marks & Garner has a total well
5 count of 65 and currently has 18 inactive wells. And
6 under financial assurance, that they are -- they have
7 five wells that still require additional financial
8 assurance. I believe that's a little over \$50,000.

9 Q. Five or six?

10 A. Oh, I'm sorry. It is six wells. And the
11 total amount due for those six wells is \$55,416.

12 Q. That doesn't include one well for which a bond
13 can't be calculated yet because we don't know the depth;
14 is that correct?

15 A. Yes, that's correct. 115 A. Yes, that's cor

16 Q. Are these reports kept in the regular course
17 of business with the Oil Conservation Division?

18 A. Yes, they are.

19 Q. Are they publicly available on the OCD online
20 system?

21 A. Yes.

22 Q. What is the basis for compiling the data for
23 these reports?

24 A. The information comes directly from the
25 operators themselves and allows us to -- not just the

1 OCD, but the operators themselves, to track their own
2 compliance.

3 Q. And it's based on production as reported from
4 the operator's themselves; correct?

5 A. Yes.

6 Q. I'd like to direct your attention to Exhibit
7 Number 3.

8 A. Okay.

9 Q. Do you recognize this document?

10 A. Yes. This is the notice of hearing that was
11 issued on September 17th, 2009, to Marks & Garner.

12 Q. And this was issued by certified mail to Marks
13 & Garner Production Limited?

14 A. Yes, it was.

15 Q. And included as an attachment to this was the ...
16 full application for hearing filed in this case; correct?

17 A. That's correct.

18 Q. And on the last page of this exhibit, which
19 actually is -- if you flip it over -- what does this
20 reflect?

21 A. This shows copies of the green cards that were
22 signed showing acceptance of the letter.

23 Q. And is there a date of receipt for the receipt
24 of the application for hearing by Mr. Welborn?

25 A. Yes. September 21st, 2009.

1 Q. And does the certified mail number on that
2 card match the certified mail number reflected on the
3 notice of hearing letter?

4 A. Yes, it does.

5 Q. Within this application for hearing, again,
6 all 11 wells were fully described in terms of what the
7 compliance issues were with the environmental concerns of
8 the Oil Conservation Division?

9 A. Yes.

10 Q. And in the application for hearing, was it
11 again specified that we had not yet received C-141s for
12 those four additional wells?

13 A. Yes.

14 Q. So once again, Marks & Garner was put on
15 specific notice that we were missing C-141s for the four
16 wells?

17 A. That's correct.

18 Q. As well as that we had not yet received an
19 adequate remediation plan for all 11 wells?

20 A. That's correct.

21 Q. To date has Marks & Garner, to your knowledge,
22 submitted a remediation plan that meets the OCD
23 requirements for the 11 sites?

24 A. Not that I'm aware of, no.

25 Q. What are we seeking in this case, Mr. Sanchez?

1 A. We're seeking an order requiring that Marks &
2 Garner bring all 11 wells into compliance by a date
3 certain. We're asking that the order -- ordering that if
4 Marks & Garner fails to meet the deadline or the Hearing
5 Examiner's order, that they shall be required to plug and
6 abandon or transfer all of their wells operated by them
7 in the State of New Mexico by a date certain. We're
8 asking that if they fail to meet the deadline, that they
9 would be in violation of Rule 5.9. And finally, ordering
10 that if Marks & Garner is ordered to plug and abandon or
11 transfer all the wells by a date certain and they fail to
12 do so, the wells shall be deemed abandoned and the
13 Division shall be authorized to plug the wells and they
14 forfeit the applicable financial assurance that has been
15 posted.

16 And, finally, it has come to our attention
17 that Marks & Garner is working on a deal to sell some of
18 these wells, and the Oil Conservation Division would ask
19 that the order issued in this matter be issued on an
20 expedited basis and that it include language prohibiting
21 the respondent from transferring any of those 11 wells or
22 facilities until they've actually met the compliance with
23 the previous orders by the Commission.

24 Q. We're preliminarily asking for a specific
25 order asking -- ordering Marks & Garner to complete

1 certain environmental actions remedying the situation at
2 these 11 sites, and only if they do not meet that
3 deadline, to plug or transfer all of their wells in the
4 State of New Mexico. We're not asking that they plug and
5 abandon or transfer at the outset?

6 A. That's right.

7 Q. We're only asking for the remedy of plugging
8 and abandoning or transferring all wells in the situation
9 if they fail to comply with the initial order requiring
10 that they complete remediation at these sites?

11 A. That's correct.

12 Q. And with regard to the attempts to sell or
13 transfer, are you familiar with the entity to which Marks
14 & Garner is attempting to transfer operatorship?

15 A. I believe that entity is Robinhood, but from what
16 what I've seen, they are not a registered operator within
17 the State of New Mexico, at least not with the OCD at
18 this point.

19 Q. So Robinhood is the entity that supposedly has
20 the authority to transfer the wells, rather than Marks &
21 Garner itself?

22 A. That was my understanding.

23 Q. And the operator that contacted you -- were
24 you contacted by an operator recently about possibly
25 becoming the operator of record for some of these wells?

1 A. Yes, I was. The operator Doral Energy
2 contacted me late last week and again earlier this week
3 and had some concerns about whether or not they'd be able
4 to take over.

5 Q. Was it your impression that they had been
6 fully apprised of the fact that there were existing
7 environmental compliance issues with any of these sites?

8 A. According to Doral, they were not given that
9 information, and they were surprised that that was the
10 case.

11 Q. Were they aware that there were pending
12 compliance actions involving Marks & Garner for any of
13 the well sites currently operated by Marks & Garner?

14 A. They were surprised that was going on, yes.

15 MS. ALTOMARE: I have no further questions.
16 for this witness.

17 CROSS-EXAMINATION

18 BY MR. PADILLA:

19 Q. Mr. Sanchez, let me understand your testimony
20 on the four wells. How did you miss the four wells
21 initially?

22 A. I don't believe that they were necessarily
23 missed. What we were looking at was in terms of a notice
24 by Letter of Violation. We were not able to determine
25 that those letters had actually gone out, so when the

1 notice of violation went out back in August, we included
2 the four wells again, just to make sure that they were on
3 notice -- that Marks & Garner was on notice that we were
4 concerned about those four wells.

5 Q. What materials did you review to decide that
6 you were confused about the four wells?

7 A. That might be better answered by one of our
8 field people. I wasn't involved in that part of it where
9 it was actually determined that the letters may not have
10 gone out.

11 Q. Did you yourself check into that?

12 A. I did not have time to look into that part of
13 it, no.

14 Q. What materials did you review in preparation
15 for your testimony here today? I saw the various letters to

16 A. I've gone through the various well files, the
17 previous case history, to some degree.

18 Q. Did you review the September 10th, 2009
19 submittal made by Hicks Consultants for Marks & Garner?

20 A. No. Those submittals go to the district office
21 and they are reviewed and a determination is made at the
22 district office whether or not they're acceptable or not.

23 Q. Did you consult with the district office prior
24 to your testimony here today regarding that September
25 10th submittal?

1 A. Just that it wasn't adequate at the time. I
2 didn't get into any details. I figured that would be
3 best left for the witnesses in Artesia.

4 Q. Do you know whether the OCD district office
5 has responded to that September 10th, 2009 submittal?

6 A. It is my understanding that they did respond
7 to it, yes.

8 Q. Is that in the form of an exhibit here today?

9 A. No. Just through conversations with the field
10 people.

11 Q. And how did they communicate the insufficiency
12 of the submittal to Marks & Garner?

13 A. That I'm not quite sure. That would be a
14 question asked better of Mike Bratcher.

15 Q. Do you know whether it was in writing or
16 verbally or --

17 MS. ALTOMARE: I'm going to object. He's
18 already answered that. That is a question for Mr.
19 Bratcher to answer. It wasn't directed to Mr. Sanchez.
20 It was Mr. Bratcher's duty to respond to that and he has
21 the answers to those questions.

22 MR. BROOKS: The question was addressed,
23 does the witness know, and I don't see why he shouldn't
24 say whether he knows or not, so I recommend that the
25 Examiner overrule the objection.

1 MR. EZEANYIM: Objection overruled.

2 A. No, sir, I'm not aware of that.

3 Q. (By Mr. Padilla) Did you review any other
4 submittals by R.T. Hicks Consultants?

5 A. Not personally. No.

6 Q. As I understand your testimony, you only
7 looked at the well files this morning to see whether or
8 not the C-141s have been filed or not.

9 A. Usually before a hearing I'll look at the well
10 file again on cases that I'm working on, just to verify
11 if maybe something might have come in late. In this
12 case, nothing has come in.

13 Q. Did you have communications with Mr. Bratcher
14 and Mr. Harvey regarding your testimony here this
15 morning?

16 A. No. We did meet as a team on Tuesday. What
17 testimony would be submitted by me was not part of that
18 discussion.

19 Q. What is the purpose of this hearing today? I
20 mean, what is the OCD trying to do here today?

21 A. We're trying to get Marks & Garner to come
22 into compliance with previous orders or notices of
23 violation that they've been issued.

24 Q. What is it that they haven't done to your
25 knowledge that they're not moving forward with

1 compliance?

2 A. To my knowledge they have not addressed the
3 four wells in question. The other seven wells where
4 plans have been submitted, it is my understanding that
5 the district office did not see those plans as being
6 sufficient and asked that they be refiled. The cleanup
7 of the sites, which will be brought into evidence by one
8 of the other two witnesses or both of the witnesses will
9 explain that part of it a little bit more clearly.

10 Q. What is your knowledge about what Marks &
11 Garner needs to do by way of cleanup on these sites?

12 A. Given the information that I've seen and
13 what's been discussed with the field office, there's
14 still a considerable amount of cleanup that needs to be
15 done on these sites. done on these sites.

16 Q. Specifically, do you know what that is?

17 A. Not specifically. That's a question better
18 left for either Mike Bratcher or Ron Harvey.

19 Q. Generally do you know whether there's any
20 chloride contamination?

21 A. Personally, no, I do not know that. That's,
22 once again, a question better asked of Mike Bratcher.

23 Q. What are the contaminants that need to be
24 cleaned up; do you know?

25 A. No, not personally. Like I said, those issues

1 are brought through the district offices and dealt with
2 by the environmental engineer in the district office.

3 Q. Let's separate the seven wells that apparently
4 notice was given to Marks & Garner. Can you generally
5 tell me what has been done with regard to remediation as
6 to those seven wells?

7 A. I have not seen those plans so I would not
8 know whether any remediation was actually done or whether
9 there was just a proposal to perform remediation on those
10 sites. Once again, that kind of information goes
11 directly to the district in Artesia. The engineer, the
12 environmental engineer assigned to that case reviews
13 those and works with the company to either ask for
14 additional information or let them know what's required
15 or if it's going to be acceptable and then follows up to be sure
16 with it.

17 Q. Who requested this hearing today? The
18 district office, or was that done from here in Santa Fe?

19 A. It was done through Santa Fe.

20 Q. Do you know whether there's going to be a
21 response by the field office or by Santa Fe as to the
22 September 10th, 2009 submittal by R.T. Hicks Consultants?

23 A. I believe that response will come from the
24 district office.

25 Q. But there's been no response yet; right?

1 MS. ALTOMARE: Asked and answered.

2 A. Not that I'm aware of. I'm not aware of any
3 response or lack of response.

4 MR. PADILLA: I don't have any further
5 questions.

6 MS. ALTOMARE: I'd like to redirect and
7 clarify something.

8 MR. EZEANYIM: Okay. Go ahead.

9 REDIRECT EXAMINATION

10 BY MS. ALTOMARE:

11 Q. Mr. Sanchez, our application for hearing was
12 filed on September 17th; is that correct?

13 A. Yes.

14 Q. So our application for hearing was our
15 response to the R.T. Hicks submission; is that correct?

16 A. Yes, that's correct.

17 MS. ALTOMARE: Thank you.

18 MR. EZEANYIM: Cross?

19 MR. PADILLA: I have no questions.

20 EXAMINATION

21 BY MR. BROOKS:

22 Q. I'm a little unclear on just what you're
23 asking for in regard to transfer of wells, because
24 there's been talk about asking for a requirement that
25 they either plug or transfer all their wells, and there's

1 also been talk about a requirement that they not be
2 allowed to transfer wells, which I'm not sure exactly
3 what you're asking for in that regard, because I'm not
4 aware of any rule that authorizes that action. So could
5 you be a little clearer about it?

6 A. Yes. What we're asking for is that they be
7 given a date certain to either bring those wells into
8 compliance or to go ahead and plug the wells -- whatever
9 it takes to get them into compliance -- but give them an
10 option to also transfer those wells, but prior to any
11 transfer, if that is the method that they choose to go in
12 order to get into compliance, that the environmental
13 issues that we're here for today are still addressed by
14 Marks & Garner prior to a transfer of those wells.

15 MR. BROOKS: I think that's all I have.

16 MR. EZEANYIM: I have no questions. But I
17 want to understand how many wells are involved. Is it
18 four wells or 11 wells? I want to understand how many
19 wells are involved in this case?

20 MR. SANCHEZ: There's a total of 11 wells.
21 Where the separation between the seven and four came in
22 was whether or not there was a question of the other four
23 wells being noticed previously, which we took care of in
24 the August notice of violation. All 11 wells are of
25 concern at this point.

1 MR. EZEANYIM: Okay. I have no further
2 questions.

3 MS. ALTOMARE: Perhaps I can clarify even
4 further.

5 FURTHER REDIRECT EXAMINATION

6 BY MS. ALTOMARE:

7 Q. We are certain that notice of seven of the 11
8 wells was provided to Marks & Garner in -- I believe it
9 was -- was it April or May?

10 A. I think it was April.

11 Q. And the additional four wells were -- Marks &
12 Garner was provided notice of in August; is that correct?

13 A. Yes.

14 Q. So by August of 2009, Marks & Garner had
15 notice that a total of 11 wells had environmental
16 compliance issues?

17 A. That's correct.

18 MS. ALTOMARE: Okay.

19 MR. EZEANYIM: Okay. Call your next
20 witness.

21 MS. ALTOMARE: At this point we would call
22 Ron Harvey. Can you hear me okay, Ron?

23 MR. HARVEY: Yes.

24 RONALD HARVEY

25 Having been first duly sworn, testified as follows:

DIRECT EXAMINATION

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BY MS. ALTOMARE:

Q. Ron, can you state your full name for the record, please.

A. Ronald E. Harvey.

Q. What is your position with the Oil Conservation Division?

A. I am a District 2 compliance officer.

MS. ALTOMARE: And just for clarification for the Hearing Examiners, we are calling Mr. Harvey just as a fact witness within his role as an employee of the Oil Conservation Division.

MR. EZEANYIM: Okay.

Q. (By Ms. Altomare) Mr. Harvey, are you familiar with the respondent operator, Marks & Garner?

A. Yes.

Q. And did you have an opportunity to conduct inspections at several of the Marks & Garner well sites beginning in April of 2009?

A. Yes.

Q. At this time, I'd like to direct your attention to Exhibit Number 4, which you guys had been provided an electronic copy of. Do you have that available to you?

A. We're bringing it up now.

1 Q. Okay. Let me know when you have it in front
2 of you.

3 MS. ALTOMARE: I apologize. I'd like to
4 move for the admission of Exhibits 1 through 3.

5 MR. EZEANYIM: Exhibits 1, 2 and 3 will be
6 admitted.

7 (Exhibits 1, 2 and 3 were admitted.)

8 MS. ALTOMARE: Thank you.

9 A. Okay.

10 Q. (By Ms. Altomare) Great. Mr. Harvey, do you
11 recognize the photographs that are included in Exhibit
12 Number 4?

13 A. Yes.

14 Q. And did you take these photographs?

15 A. Yes, I did.

16 Q. Okay. And do they accurately represent the
17 sites as they are labeled as you took them on the dates
18 that are indicated?

19 A. Yes.

20 Q. Okay. We're going to go through this at the
21 same time as we go through Exhibit Number 5. I'd like to
22 direct your attention to Exhibit 5, as well. Do you have
23 that up, as well?

24 A. Not yet.

25 Q. Okay.

1 A. Okay. It's up.

2 Q. Great. The first well that's listed --
3 actually, first of all, could you identify what Exhibit
4 Number 5 is?

5 A. It looks like production inspections.

6 Q. Basically, it's off of the Oil Conservation
7 Division website, data off of our OCD online system; is
8 that right?

9 A. Yes.

10 Q. The first well listed is the Cave State Number
11 4, API 30-015-24742; is that right?

12 A. Yes.

13 Q. That's also the first well included on the
14 packet of photographs of Exhibit 4; correct?

15 A. Yes.

16 Q. I just want to make sure we're all on the same
17 page since you're on the phone. Tell us a little bit
18 about what you discovered at the Cave State Number 4 at
19 your April 9th, 2009 inspection?

20 A. Okay. I observed contaminated soil built up
21 around the wellhead and fresh hydrocarbon contamination
22 on the wellhead and the built up soil.

23 Q. And that is noted on page 2 of Exhibit 5?

24 A. Yes.

25 Q. Under date of violation on the right-hand

1 side, are those your notes with the initials right before
2 Mike Bratcher's initials for the C-141?

3 A. Yes.

4 Q. Okay. So, "Date of violation, 4/9/2009, fresh
5 release and built up contaminated soils." The pictures
6 on Exhibit Number 4, the very first picture on the
7 left-hand side, is that depicting what you just
8 described?

9 A. Yes.

10 Q. Okay. And for this well you did prepare a
11 Letter of Violation dated 4/16/2009 that you sent to
12 Marks & Garner?

13 A. Yes, requiring the operator to submit a C-141
14 to the OCD District 2 office no later than April 24th of
15 2009.

16 Q. Okay.

17 A. I also conducted a compliance verification
18 inspection on July 6th of 2009, and at that time there
19 had been no action taken to bring the well into
20 compliance.

21 Q. So the well site looked the same as depicted
22 in the picture on page 1 of Exhibit 4?

23 A. Correct.

24 Q. All right. The next well is the Diamond State
25 Number 2, API 30-015-24760, and that is the next well in

1 the picture sequence, as well. The well sign picture is
2 on page 1 with the actual site pictures on page 2 of
3 Exhibit 4. What did you observe at your inspection on
4 April 7th, 2009?

5 A. I observed fresh hydrocarbon release at the
6 tank battery and around the heater/treater area. Also
7 observed that the well sign was not in compliance. I
8 observed that the horsehead was removed from the pump
9 jack walking beam and that there were no rods hanging in
10 the hole, and I also observed miscellaneous junk
11 throughout the location that needed to be removed.

12 I then took photos of the location and
13 associated equipment and issued a Letter of Violation
14 requiring the operator to submit a C-141 to the OCD.
15 District 2 office no later than April 22nd of 2009. no later

16 Q. Okay. This is one of the Letters of
17 Violations that you prepared, but we can't find
18 confirmation that it was actually issued?

19 A. Yes. And I do have my original copy of the
20 Letter of Violation.

21 Q. Okay. So it was prepared, but we're not sure
22 if it was issued, but we do know that the notice of
23 violation issued August 5th did contain notification;
24 correct?

25 A. Yes. I also conducted a subsequent compliance

1 verification inspection on this well on July 6th of 2009,
2 and as of that date no action had been taken to bring the
3 well into the compliance.

4 Q. Okay. And at that point did the site look the
5 same as depicted in the pictures on page 2 and 3 of
6 Exhibit 4?

7 A. Yes.

8 Q. These pictures, again, reflect -- they're
9 representative of what you observed at the time?

10 A. Yes.

11 Q. Okay. The next site is the Levers Number 3Y,
12 API 30-015-02787. The photos for that begin on page 3, I
13 believe. I guess we only have one picture?

14 A. Yes.

15 Q. We have two photos.

16 A. We have two photos. One of the pump jack and
17 then one of the wellhead.

18 Q. Tell us a little bit about your inspection of
19 that well site on April 16th, 2009.

20 A. Okay. I observed hydrocarbon contamination
21 build up around the wellhead. I could not find a well
22 sign on or near the location. I had to identify the well
23 using the GIS system and RBDMS. I obtained photos of the
24 location and associated equipment and issued a Letter of
25 Violation requiring the operator to submit a C-141 to the

1 OCD District 2 office no later than May 16th of 2009.

2 Q. Okay. Let's move on to the next site, the Red
3 Twelve Federal Number 1. API is 30-015-25058, and photos
4 begin on page 4. Tell us a little bit about what you
5 discovered at your inspection on April 16th, 2009, at
6 that site?

7 A. I observed a fresh hydrocarbon release in the
8 tank battery area and several hoof prints from cattle
9 that had been walking through that area, observed
10 miscellaneous junk on the location that needed to be
11 removed. I obtained photos of the location and
12 associated equipment, and I issued a Letter of Violation
13 requiring the officer to submit a C-141 to the OCD
14 District 2 office no later than May 1st of 2009.

15 I conducted a subsequent compliance verification
16 inspection on July 6th of 2009, and as of
17 that date, no action had been taken to bring the well
18 into compliance.

19 Q. Okay. And again, these pictures are
20 representative of what you observed when you visited the
21 sites?

22 A. Yes.

23 Q. Okay. And the next site is the Red Twelve
24 State Number 1. API is 30-015-24962. Photos begin on
25 page 5. Tell us about your first inspection on April 7,

1 2009.

2 A. Okay. Observed fresh hydrocarbon
3 contaminations or release in the tank battery area. I
4 noticed that the well sign was not in compliance with
5 directives. I also observed miscellaneous junk
6 throughout the location that needed to be removed. Also
7 observed in the well master of RBDMS that the well is
8 listed as an active oil producer, however, no oil had
9 been reported since May 1st of 2004.

10 I then obtained photos of the location and
11 associated equipment, issued a Letter of Violation
12 requiring the operator to submit a C-141 to the OCD
13 district office no later than April 23rd, and this is
14 another one in question. I do have my original copy of
15 the Letter of Violation for that one. I conducted a
16 subsequent compliance verification inspection on July 6th
17 of 2009, and as of that date, no action had been taken to
18 bring the well back into compliance.

19 Q. While we're not certain that the original
20 Letter of Violation went out, they at least got notice
21 with the August 5th, 2009 notice of violation?

22 A. Correct.

23 Q. And the site looked like it does in these
24 pictures at both the April 7, 2009 and July 6, 2009
25 visits?

1 A. Yes.

2 Q. The next well is the Red Twelve State Number
3 2. API is 30-015-24966. Photos begin on page 6 of
4 Exhibit Number 4. Tell us about your inspection on April
5 9, 2009.

6 A. Observed fresh hydrocarbon release in the tank
7 battery area, observed that the well was idle, no
8 production since September 1st of 2007. There was no
9 well sign on or near the location to identify the well.
10 It had to be identified through the GIS portion of the
11 RBDMS. Also observed miscellaneous junk on the location
12 that needed to be removed. I then obtained photos of the
13 location and associated equipment and issued a Letter of
14 Violation requiring the operator to submit a C-141 to the
15 OCD District 2 office no later than May 9th, of 2009, and
16 to also return the well to beneficial use, TA it or
17 submit a PA procedure no later than the same day.

18 Q. Okay. These pictures are representative of
19 what you observed on-site at your inspection?

20 A. Yes.

21 Q. Okay. The next well is the Red Twelve State
22 Number 3. API is 30-015-24989. Photographs begin on
23 page 7 of Exhibit 4. Tell us about your inspection on
24 April 9, 2009.

25 A. Okay. I observed a fresh hydrocarbon release

1 in the tank battery area, and as you can see from the
2 photos, it's run throughout the location. The well sign
3 was not in compliance with directives. The pump jack was
4 operating. I obtained photos of the location and
5 associated equipment and issued a Letter of Violation
6 requiring the operator to submit a C-141 to the OCD
7 District 2 office no later than April 24th of 2009. I
8 subsequently conducted a compliance verification
9 inspection on July 6th of 2009, and as of that date, no
10 action had been taken to bring the well into compliance.

11 Q. And, again, the photographs are representative
12 of what you observed on-site that day?

13 A. Yes.

14 Q. Okay. The next site up is the Red Twelve
15 State Number 4. API is 30-015-24991, and photographs
16 begin on page 9 of Exhibit 4. Tell us about your site
17 visit on April 15th, 2009.

18 A. Yes. I observed heavy hydrocarbon and
19 chloride contamination throughout the tank battery area
20 located just east of the location, obtained photos of
21 location and associated equipment.

22 I also talked to Mr. Welborn and Mr. Reynolds,
23 who was the pumper at that location and on that date. At
24 that time, Mr. Welborn assured me that he would have work
25 crews out the next week to start the clean up on all the

1 locations. I also advised him that I would be issuing a
2 Letter of Violation requiring him or the operator to
3 submit a C-141 to the OCD District 2 office no later than
4 April 30th of 2009.

5 I conducted a subsequent inspection for
6 compliance verification on July 5th of 2009, and as of
7 that date, no action had been taken to bring the well
8 into compliance.

9 Q. Again, the photographs are representative of
10 what you observed on both dates of your visit to this
11 site?

12 A. Yes.

13 Q. And in this instance, you prepared an LOV but
14 were not certain that it got issued initially; is that
15 right?

16 A. Correct. I do have my original copy of the
17 Letter of Violation.

18 Q. In this case, you actually did speak with Mr.
19 Welborn and his pumper on-site on April 7th?

20 A. Yes. And, also, one of the BLM petroleum
21 engineering technicians, Cheryl DeMontigny, was also
22 present during the conversation.

23 Q. Okay. So while you might not have sent out
24 the LOV on this well site, or somehow it got misdirected,
25 you actually did give him personal notice on-site that

1 day?

2 A. Yes.

3 Q. Okay. Moving on to the next well, the Mosley
4 Spring 32 State Com Number 2, API 30-015-23341,
5 photographs begin on page 11; is that right of Exhibit 4.
6 Tell us about your site visit on April 22nd, 2009.

7 A. I observed chloride contamination in the
8 wellhead area. I also observed that the contamination
9 had run off the location in a southward direction. I
10 also observed that the netting had been removed from the
11 open-top tank. I also observed that the well sign was in
12 compliance with directives. The pump jack was operating,
13 however, no oil production had been reported since
14 November 1st of 2007.

15 I obtained photos of the location, associated
16 equipment and issued a Letter of Violation requiring
17 operator to submit C-141 to the OCD District 2 office no
18 later than May 7th of 2009. This, again, I have my
19 original copy of this Letter of Violation.

20 Q. Okay. And the photographs in Exhibit 4 are
21 representative of what you observed on the date of your
22 site visit?

23 A. Yes.

24 Q. And the last site is the Levers Federal Number
25 7. The API is 30-015-25091. Photos are on page -- this

1 one we don't have photos for; is that right?

2 A. Correct.

3 Q. Tell us about your inspection on April 13th,
4 2009, at this site.

5 A. I observed fresh hydrocarbon release in the
6 tank battery area, could not find a well sign on or near
7 the location, so I had to identify the well using the GIS
8 and the RBDMS, issued a Letter of Violation after
9 obtaining photos, and I do not know at this point where
10 the photos are at, but the Letter of Violation required
11 the operator to submit a C-141 to the OCD District 2
12 office no later than April 28th of 2009.

13 I conducted a subsequent compliance
14 verification inspection on July 6th of 2009, and as of
15 that date, no action had been taken to bring the well into
16 into compliance.

17 Q. Even though we don't have photos, do the
18 photos generally look similar to the other photos that
19 are depicted in Exhibit 4 in terms of the degree and kind
20 of contamination that is depicted in those photos?

21 A. Yes.

22 Q. Okay. Upon completing your inspection of
23 these 11 sites and discovering the contamination and the
24 releases at this sites and issuing the LOVs, you referred
25 the matter to the district environmental specialist; is

1 that correct?

2 A. I didn't personally refer. What happens is
3 when the C-141s come in they go to the environmental
4 specialists.

5 Q. Okay.

6 A. Then I'm basically out of it, unless they want
7 me to do some type of follow-up inspection.

8 Q. So in terms of your role in it, it ends with
9 the initial issuance of the LOV and doing follow-ups at
10 the request of the environmental specialist?

11 A. Correct.

12 Q. Did you do any additional work at the sites in
13 this matter beyond what we've already spoken about today?

14 A. I did. During this point in time, I was
15 assigned as the OCD liaison to the BLM Carlsbad field office, li
16 office, and I assisted the Carlsbad BLM field office in
17 inspecting all facilities, whether they be federal, state
18 or private, as far as Marks & Garner in that area, and I
19 did assist the lead PET in that area as far as ensuring
20 they were not commingling with federal and state sites
21 without authorization.

22 Q. But nothing specific with regard to the these
23 particular sites in this case?

24 A. No.

25 Q. Okay. You've had a chance to review Exhibit 5

1 and the summary -- the well data summaries for the 11
2 sites contained within that document?

3 A. Yes.

4 Q. And does it accurately reflect your notes and
5 the data collected by our agency?

6 A. Yes.

7 Q. Okay. This is, again, an OCD online document?

8 A. Yes.

9 MS. ALTOMARE: At this time I'd move for
10 the admission of Exhibits 4 and 5.

11 MR. EZEANYIM: Any objection?

12 MR. PADILLA: No.

13 MR. EZEANYIM: Exhibits 4 and 5 will be
14 admitted.

15 (Exhibits 4 and 5 were admitted.) (P. 54)

16 MS. ALTOMARE: I have no further questions
17 for this witness.

18 MR. EZEANYIM: Mr. Padilla?

19 MR. PADILLA: Yes, I have some questions.

20 CROSS-EXAMINATION

21 BY MR. PADILLA:

22 Q. Mr. Harvey, can you hear me?

23 A. Yes.

24 Q. What do you do as a compliance officer?

25 A. I do general inspections, checking for

1 environmental issues, production issues, things of that
2 nature. Also, I do mechanical inspection tests --
3 integrity tests. I'm sorry. I observe plugging
4 procedures. I do follow-up field work for the
5 environmental specialists and, basically, anything I'm
6 asked to do.

7 Q. With regard to any of these wells you've
8 testified to, has the environmental specialists sent you
9 to do follow-up work?

10 A. Not at this time.

11 Q. At any time after all of your April
12 inspections, did you get sent out there by the
13 environmental office?

14 A. No, I have not. The inspections I conducted
15 in July were my own follow-up inspections.

16 Q. Since July have you done any follow-up work on
17 any of these 11 wells we're talking about at this
18 hearing?

19 A. No.

20 Q. So you don't know whether the pictures as
21 shown on Exhibit Number 4, I believe, whether those are
22 actually the condition of the wells today?

23 A. No, I cannot. I can tell you that was the
24 condition of my original inspection and my follow-up
25 inspection.

1 Q. When was it that you had a conversation with
2 Mr. Welborn?

3 A. I believe it was around April 15th. It was
4 Mr. Welborn and his pumper, Mr. Reynolds, and petroleum
5 engineering technician, Ms. Cheryl DeMontigny from the
6 BLM field office.

7 Q. Have you had any communications with anyone
8 from R.T. Hicks Consultants?

9 A. I have not.

10 Q. Have you seen any submittals that have been
11 submitted by R.T. Hicks Consultants?

12 A. I have not. I usually would not -- normally
13 would not see any of those submittals. Those go to the
14 environmentalists.

15 Q. When you talk about contamination, you don't
16 know -- do you have -- do you render an opinion as to the
17 extent of contamination in any of your reports?

18 A. No.

19 Q. As I understand your reports, you only report
20 what you see on the ground; right?

21 A. Correct.

22 Q. You don't do any digging around to determine
23 whether the contamination has seeped down two, three feet
24 or something like that?

25 A. No, I do not.

1 Q. Do you differentiate between historical type
2 of contamination -- and by that I mean the contamination
3 that has existed over a long period of time versus recent
4 pooling of oil around a well site?

5 A. We will typically note historical
6 contamination, but we will not issue a Letter of
7 Violation.

8 Q. Let me direct your attention to Exhibit Number
9 4 on the first well there on page 1.

10 A. Yes.

11 Q. That's the Cave State Number 4; right?

12 A. Correct.

13 Q. At the lower left hand, showing the well site
14 or the rod going into the ground there, would that be
15 historical contamination?

16 A. Part of it is, the lighter color. But if
17 you'll also notice, on the wellhead itself you'll see it
18 is dark and it's also shimmering, which means it's wet,
19 which means it's recent.

20 Q. What would be wrong there?

21 A. What would be wrong there? You have
22 hydrocarbon contamination on the ground and it needs to
23 be removed.

24 Q. Mechanically, what's wrong there?

25 A. Mechanically, probably a stuffing box leak,

1 and that's speculative. It was not leaking at the time I
2 was there.

3 Q. Are these leaks greater than five barrels?

4 A. That's unknown.

5 Q. Do you know whether the environmental officer
6 decides -- let me ask this: Do you know whether he went
7 out and made the inspection himself?

8 A. Can you repeat that, please?

9 Q. Do you know whether your environmental officer
10 went out and made inspections of the wells?

11 A. I have no idea.

12 Q. Who is that? Is that Mr. Bratcher?

13 A. Yes.

14 Q. Mr. Harvey, I asked whether your environmental
15 officer is Mr. Bratcher.

16 A. I thought you heard me, yes.

17 Q. I'm sorry. My question is, do you know
18 whether Mr. Bratcher has been out to the well sites?

19 A. I have no idea if he has or not. Like I said,
20 I would not deal any more with it unless he asked me to
21 do any follow-up.

22 Q. Now, on Exhibit 4 are you dealing only with
23 the four new wells that notice was given in August?

24 A. Can you repeat that, please?

25 Q. Does Exhibit 4, the pictures, do those

1 pictures deal with only the four wells that were admitted
2 or there's some confusion about whether notices of
3 violations were actually given?

4 A. Exhibit 4 has photos of 10 of the wells.

5 Q. Which of those wells are the four for which
6 there was no notification given earlier?

7 A. That would be Mosley Springs 32 State Com 2.

8 Q. That's the last well; right?

9 A. Yes. Diamond State Number 2.

10 Q. That's the second well, right, on page two?

11 A. On page 2? Yes. The Red State Number 1.

12 Q. Is it Red Twelve State Number 1?

13 A. No. Red State Number 1.

14 Q. All right. Let me find it.

15 MS. ALTOMARE: Both of them.

16 Q. Red State Number 1 is, I believe, on pages 9
17 and 10; right?

18 A. I believe so.

19 Q. I'm sorry. That would be pages 10 and 11;
20 right?

21 A. Hang on. We don't have a mouse on our
22 computer so -- okay. We're there.

23 Q. What was the problem on this well?

24 A. It was fresh contamination and chloride.

25 Q. Was the contamination in your opinion greater

1 than five barrels?

2 A. Unknown.

3 Q. Unknown for what reason?

4 A. I can't estimate the amount. Looking at this,
5 I don't know if it's seeped in or not.

6 Q. What's the fourth well?

7 A. The fourth well?

8 Q. Yes.

9 A. Is Red Twelve State 1.

10 Q. What was the matter with that well?

11 A. There was fresh hydrocarbon releases around
12 the tank battery area, miscellaneous junk throughout the
13 location.

14 Q. Was that greater than five barrels?

15 A. Unknown.

16 Q. If you don't know, how do you know there was a
17 violation of the rule?

18 A. Okay. When I see contamination, I just write
19 it up. It's up to the operator to tell the
20 environmentalist if it was greater than or less than.

21 Q. But you're telling us that you issued Letters
22 of Violation, and I'm asking you, isn't there some
23 standard for issuance of a Letter of Violation?

24 A. The rule says that the operator is to report
25 any release and to clean it up.

1 Q. What rule are you looking at?

2 A. NMAC 19.5.2.8.

3 Q. And that's what the rule says? Is that what
4 the rule says, Mr. Harvey?

5 A. That rule just outlines the reporting
6 requirements. However, OCD can require that any release
7 be reported or remediated. I'm sorry.

8 Q. But in order to have a requirement of
9 remediation, don't you have to have some standard, first
10 of all, upon which to weigh whether remediation is
11 necessary?

12 A. That's up to the environmental specialist.

13 Q. What's the difference between remediation and
14 a cleanup?

15 A. It's the same thing. A. It's the same thing.

16 Q. You're sure?

17 A. I assume so. I'm not the environmentalist. I
18 don't make that judgment call.

19 MS. ALTOMARE: I'm going to object at this
20 point. He's asking him to differentiate between legal
21 nuances and technical nuances beyond the scope of his
22 employment and his expertise. He's not being brought as
23 an expert witness. He's only a fact witness. There will
24 be an expert witness presented next in environmental
25 engineering who can testify about these things.

1 MR. PADILLA: Mr. Harvey has testified
2 that he has issued Letters of Violation. I'm simply
3 asking what standard he uses. I think it's a fair
4 question. It's not beyond his realm of expertise.

5 MS. ALTOMARE: On that basis, I'd like to
6 read Rule 19.15.2.8 into the record, and from there I
7 think my witness can proceed.

8 MR. BROOKS: Well, I don't think the
9 witness should be asked to give opinions about legal
10 questions. If he's just asking on what basis he issued
11 the notice of violation, I think that's an acceptable
12 question.

13 Would you like to restate your question?

14 MS. ALTOMARE: I would simply ask that the
15 two rules upon which our application was based and upon
16 which he's operating, which is 29.6 and 2.8 be read into
17 the record prior to him answering this question, because
18 I think that he's got him a little bit flustered and I
19 think that he has --

20 MR. PADILLA: The rules are the rules. I
21 don't think that we need to read the rule into the
22 record. I'm simply asking Mr. Harvey if he knows. If he
23 doesn't know -- he said, "I assume," so I'll accept that.

24 MS. ALTOMARE: Then I would ask for a
25 recess to be able to confirm with my witness, since I'm

1 at a bit of a disadvantage because he's appearing
2 telephonically, and I think he's a little bit flustered.

3 MR. BROOKS: I'm going to recommend that
4 the objection be overruled and that the witness -- and
5 that Mr. Padilla be requested to restate his question so
6 the witness can be clear exactly what he's asking the
7 witness.

8 MR. EZEANYIM: Objection overruled. You
9 may restate. And maybe we take a minute break.

10 MR. BROOKS: That's fine. We'll take a
11 break.

12 MR. EZEANYIM: When we return from break,
13 you can restate your question.

14 MR. PADILLA: All right.

15 (A recess was taken.)

16 MR. EZEANYIM: We'll go back on the record
17 and continue the case. Counselor, I remind you that the
18 witness is a fact witness, not a technical witness, so
19 rephrase your questions -- your last question to the fact
20 witness.

21 MR. PADILLA: Mr. Examiner, during the
22 break I understand that Mr. Harvey, perhaps, is not aware
23 of the rules, and my questions -- I think he's answered
24 my questions with regard to volumes and that he didn't
25 know what the volumes were, and so I don't have any

1 further questions.

2 MR. EZEANYIM: No further questions?

3 Okay. Redirect?

4 REDIRECT EXAMINATION

5 BY MS. ALTOMARE:

6 Q. I just want to clarify, I guess, that, Mr.
7 Harvey, when you're out in the field and looking at
8 sites, you're not looking specifically for certain
9 volumes of contamination or releases; is that right?

10 A. No, I'm not. And I cannot, you know,
11 guesstimate, especially when there's historical
12 contamination and fresh contamination. There's no way to
13 predict how much was released or how deep it went.
14 That's got to be up to the environmentalist in doing
15 delineation and that type of stuff.

16 Q. One of the duties of the Oil Conservation
17 Division is to protect human health and the environment;
18 is that correct?

19 A. Yes. Especially, in a few of these pictures,
20 you can see where the livestock has actually walked
21 through the fresh release.

22 Q. Under Rule 2.8, any amount of gas or oil being
23 allowed to escape a natural reservoir or other holding
24 tanker container is a violation?

25 A. Yes.

1 MS. ALTOMARE: That's all I have.

2 MR. EZEANYIM: Mr. Padilla?

3 RECROSS EXAMINATION

4 BY MR. PADILLA:

5 Q. Let me ask, in light of that question, Mr.
6 Harvey, did you have a chance to review the rule during
7 the break?

8 A. Yes.

9 Q. And what does the rule require in terms of --
10 for requiring a submittal of a C-141?

11 A. The submittal of a C-141 is anything over five
12 barrels.

13 Q. And it's your testimony that you don't know
14 whether five barrels was actually discharged on any of
15 these wells; correct?

16 A. That's correct.

17 MR. PADILLA: No further questions.

18 MR. EZEANYIM: Ms. Altomare?

19 MS. ALTOMARE: Just one last question.

20 FURTHER REDIRECT EXAMINATION

21 BY MS. ALTOMARE:

22 Q. A C-141 also includes reporting of major
23 releases which includes anything that would be considered
24 significant damage to property or potential significant
25 harm to human health; is that right?

1 A. Correct.

2 Q. And those, likewise, need to be reported on a
3 C-141?

4 A. Yes.

5 MS. ALTOMARE: Thank you.

6 MR. EZEANYIM: Any further questions?

7 FURTHER RECROSS EXAMINATION

8 BY MR. PADILLA:

9 Q. Mr. Harvey, are there any fresh water sources
10 in that area in any of the area of the wells?

11 A. I do not know.

12 MR. PADILLA: No further questions.

13 MR. EZEANYIM: Okay.

14 MR. BROOKS: I have no questions. MR. BROOKS:

15 MR. EZEANYIM: No questions. You may call
16 your next witness.

17 MS. ALTOMARE: Did I already move for the
18 admission -- yeah, I did. At this time, I'd call Mike
19 Bratcher.

20 MICHAEL BRATCHER

21 Having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. ALTOMARE:

24 Q. Mr. Bratcher, can you state your full name for
25 the record, please.

1 A. Michael L. Bratcher.

2 Q. And what is your position with the Oil
3 Conservation Division?

4 A. I'm an environmental specialist, operational.

5 Q. Have you previously been qualified as an
6 expert witness in a proceeding with the Oil Conservation
7 Division or Commission?

8 A. Yes.

9 MS. ALTOMARE: I'd like to present Mr.
10 Bratcher as an expert in the area of environmental
11 engineering in his role as an environmental specialist
12 with the Oil Conservation Division.

13 MR. EZEANYIM: Mr. Bratcher is so
14 qualified.

15 Q. (By Ms. Altomare) Mr. Bratcher, at what point
16 did you become involved in the matter involving the 11
17 sites at issue in this case?

18 A. It would have been when I received the C-141s
19 from the seven sites.

20 Q. That was on May 1st, 2009; is that right?

21 A. Yes.

22 Q. And you received C-141s for the Red Twelve
23 State Number 2, API 30-015-24966; the Levers Federal 007,
24 API 30-015-25091; The Levers 3Y, API 30-015-02787; the
25 Red Twelve Federal 001, API 30-015-25058; the Cave State

1 Number 4, API 30-015-24966; the Red Twelve State Number
2 3, API 30-015-24989; and the Red Twelve State Number 4,
3 30-015-24991; is that right?

4 A. Yes.

5 Q. Okay. And those are the wells that we are
6 certain a Letter of Violation did, in fact, get issued;
7 is that correct?

8 A. Yes.

9 Q. We're certain of this in part because Marks &
10 Garner did, in fact, submit the C-141s in response?

11 A. Correct.

12 Q. What did you do in response to receiving the
13 C-141s?

14 A. On a letter dated 5/14, I sent a letter
15 requesting a corrective action workplan proposal to be
16 submitted to the OCD not later than 6/15/09.

17 Q. I'd like to direct your attention to Exhibit
18 Number 6, and the first document included in this packet,
19 is this the document -- the letter dated May 14th, 2009,
20 that you're referring to?

21 A. Let me bring that up right quick.

22 Q. Let us know when you have it.

23 A. Okay. Yes, that's the letter.

24 Q. Okay. And at the top of the letter are the
25 seven wells that I just read into the record?

1 A. Correct.

2 Q. And to the right of each is a 2RP number. Can
3 you describe for the record what that number represents?

4 A. It's an administrative permit order number
5 that OCD assigns to each remediation plan.

6 Q. So each individual well was assigned a
7 separate remediation plan number for further
8 administrative processing?

9 A. Correct.

10 Q. Okay. And what did you indicate in this
11 letter to Mr. Welborn on May 14th, 2009?

12 A. The letter states that we received the C-141s.
13 We requested a work plan, a corrective action work plan,
14 be submitted to the OCD no later than June 15th. The
15 letter goes on to outline some of the requirements that
16 OCD requires on these work plans and gives directives on
17 how to access a publication on OCD's Website that spells
18 out what the OCD looks for in these remediation work
19 plans, et cetera.

20 Q. So this letter basically gave Marks & Garner
21 the specific instructions for what was required for the
22 remediation work plans for each of these wells?

23 A. Yes.

24 Q. If you would read into the record the
25 instructional paragraph beginning, "The work plans are,"

1 at the middle of the page.

2 A. Okay. "The work plans are to outline steps
3 proposed to clean up, remediate and/or haul off
4 contaminated materials that may be present at these
5 sites. The work plans are to be formulated based on
6 vertical and horizontal delineation of contaminants, site
7 ranking and OCD rules and guidelines. Work plan
8 approvals may be subject to like approval by Bureau of
9 Land Management (BLM) in some instances."

10 Q. Okay. And below that you provided several
11 different links it appears. Did you provide this to Mr.
12 Welborn electronically, this letter?

13 A. Yes, I believe so.

14 Q. So you provided him with a link to the
15 Website, and then it looks like you provided him with
16 links to the "Environmental Handbook," "Guidelines," and
17 then a "Remediation of Leaks, Spills and Releases"
18 publication?

19 A. Yes.

20 Q. At any point did Mr. Welborn contact you with
21 questions regarding the instructions contained in this
22 document?

23 A. No.

24 Q. What was the next contact that you received
25 from Marks & Garner or Mr. Welborn?

1 A. On June 12th, '09 I got a phone call from Mr.
2 Welborn requesting the extension to June 19th to submit
3 the corrective action work plan.

4 Q. How did you respond?

5 A. I sent an email approving that extension
6 request.

7 Q. Okay. If you'll turn to -- I believe it's the
8 third page of the exhibit. There's an email dated
9 Friday, June 12th, 2009. Is this the email confirming
10 the extension that you're referring to?

11 A. Yes.

12 Q. This confirms that an extension is approved to
13 June 19, 2009, and you listed again the seven wells?

14 A. Correct.

15 Q. I did skip over one portion of the exhibit.
16 What is the page before that? If you could identify what
17 that is for the record.

18 A. That would be the C-141 submitted for the Red
19 Twelve State Number 4.

20 Q. Is this representative of what the C-141s
21 looked like for the other six wells, as well?

22 A. Yes.

23 Q. What was the next contact that you received
24 from Marks & Garner or anyone on behalf of Marks &
25 Garner?

1 A. 6/18/09, I received an email from Dale
2 Littlejohn, who's a representative of R.T. Hicks
3 Consultants, and he indicated that preliminary
4 investigation of Marks & Garner sites would commence on
5 Monday, June 22nd, 2009.

6 Q. The next item in the packet, which is directly
7 next to the email we just referenced, is an email dated
8 June 18th from Dale Littlejohn. Is this the email you're
9 referring to in Exhibit 6? Do you see where I'm
10 referring to?

11 A. Well, I don't actually see that email in here.

12 Q. It's actually on the same page as the email
13 from you to Mr. Welborn, I think, or it might be the next
14 page on your screen, depending on how you're bringing it
15 up.

16 A. Well, I see the -- the order I have it in is
17 the extension approval, and the next one is an email from
18 Dale Littlejohn.

19 Q. That's what I'm referring to.

20 A. This one says, "Please find the attached work
21 plan as we discussed on the phone."

22 Q. Okay. I apologize. You're right. I didn't
23 include that.

24 A. There was an email from Mr. Littlejohn on 6/18
25 indicating that their investigation would commence on

1 Monday, June 22nd, '09.

2 Q. You're right. That's my mistake. Okay. So
3 the preliminary investigation was due to start on June
4 22nd, 2009, so that will be three days after the June
5 19th deadline for the actual submission of a completed
6 plan. At any point was another extension request
7 submitted to your office?

8 A. No.

9 Q. Okay. Do you recall working with the legal
10 division regarding the issuance of the Notice of
11 Violation and Intent to Proceed to Hearing that was
12 issued August 5th, 2009?

13 A. Yes.

14 Q. So you were aware that that was being issued
15 putting Marks & Garner and Mr. Welborn on notice that all
16 11 sites were in violation and that to date we had not
17 received a sufficient and complete corrective action work
18 plan?

19 A. Yes.

20 Q. And that document actually did fully address
21 all 11 well sites -- to the best of your knowledge, it
22 satisfactorily addressed all the compliance issues up to
23 that point in time?

24 A. Yes.

25 Q. To your knowledge were any additional C-141s

1 received from Marks & Garner in response to that notice
2 of violation for those additional four well sites?

3 A. There were not.

4 Q. At that time of the issuance of that August
5 5th notice of violation, had anything been received from
6 Marks & Garner or R.T. Hicks Consultants that met with
7 OCD's requirements for the remediation work plan?

8 A. No.

9 Q. What did you receive from R.T. Hicks on behalf
10 of Marks & Garner on August 12th, 2009?

11 A. That document contained some of the results of
12 the preliminary investigation. It gave a proposal
13 basically to excavate the materials, blend them, use them
14 for berms and stockpile the remaining contaminated
15 materials on-site for future use.

16 Q. Did this document meet the criteria that was
17 set out in the initial instructions in the May 14th, 2009
18 letter issued to Marks & Garner?

19 A. No.

20 Q. Why not?

21 A. We had asked for -- specifically in the letter
22 we asked for the vertical/horizontal delineation of
23 contaminants, which wasn't provided, and the site ranking
24 wasn't provided, so just lacking some of the specifics
25 that we use to make a determination on what would be

1 required on cleanup.

2 Q. What did you do in response to the August
3 12th, 2009 submission from Mr. Hicks on behalf of Marks &
4 Garner?

5 A. On August 20th, '09, I sent out a letter
6 denying that proposal and listing some of the reasons
7 that that proposal was denied.

8 Q. Is that the last document included in Exhibit
9 Number 6?

10 A. Yes.

11 Q. So this document sets out the denial and basis
12 for your denial of that proposal?

13 A. Correct.

14 Q. And if you could review this document,
15 summarizing for the Examiners the critical reasons why
16 that proposal was denied. I think you spoke a little bit
17 about the delineation issue.

18 A. Right. They had done some additional
19 sampling. The samples weren't really delineation
20 samples. They just confirmed that there is some
21 contamination out there. It didn't provide a site
22 ranking. The burden is on the operator to provide us
23 with groundwater data, specifics on distance to any wells
24 that may be in the area, any surface water bodies or
25 draws or things like that. It just didn't give enough

1 information that we'd like to see on our remediation work
2 plan.

3 Q. What new deadline was set for submission of a
4 revised work plan?

5 A. I believe until September 10th of '09.

6 Q. Did you receive any feedback regarding the
7 August 19th or 20th letter to Mr. Welborn denying that
8 proposal prior to receiving an additional follow-up
9 submission from Mr. Hicks?

10 A. I believe the only thing was an email from Mr.
11 Hicks on September 4th, which, you know, basically he
12 acknowledged receipt of the denial of that proposal.

13 Q. And in that email to Mr. Sanchez, you were
14 copied in that email?

15 A. Correct. Right.

16 Q. So he acknowledged the receipt of the denial,
17 and he also noted that it was well researched and
18 helpful; is that right?

19 A. Timely, well researched and helpful. Correct.

20 Q. Did you receive another submission from R.T.
21 Hicks Consultants?

22 A. Yes, on September 10th.

23 Q. Was that submission adequate?

24 A. No. It once again fell short of the
25 requirements of the delineation contaminants at the

1 sites. They did provide in this document some pretty
2 detailed groundwater data for that area. There's a site
3 that's called Loco Hills Gas Storage Facility which is in
4 close proximity to the wells in question here. There has
5 been confirmed groundwater impact at that site, so there
6 is quite a bit of documentation on the groundwater in
7 that area. Some of that was provided. But once again,
8 there was no delineation vertical and horizontal of the
9 contaminants on the sites in question.

10 Q. In fact, they were proposing further testing
11 and delineation and putting it off until at least late
12 October; is that right?

13 A. Correct. Yeah. They talked about not having
14 the equipment available to do delineation until late
15 October, and then projected that they would have a
16 remediation plan by the end of 2009.

17 Q. So in summary, they were not planning on
18 having a remediation plan until the end of 2009, when
19 initially they were supposed to have one back in June?

20 A. Correct.

21 Q. So the end result is that they generally
22 failed to provide a proposal for remediation of
23 contaminants at the sites as had been the Oil
24 Conservation Division's original request?

25 A. Yes

1 Q. Despite the fact that we had given them a very
2 helpful and well researched updated instruction in
3 August, in your letter denying the most recent proposal?

4 A. Correct.

5 Q. In response to the September 10th, 2009
6 submission that was again not sufficient, we went ahead
7 and filed an application for hearing; is that right?

8 A. Yes.

9 Q. Which is what we indicated we would be doing
10 in the Notice of Violation and Intent to Proceed to
11 Hearing that we sent out to Marks & Garner back in
12 August?

13 A. Yes.

14 Q. That application for hearing, again, set out
15 all of the compliance issues that were ongoing with
16 regard to Marks & Garner?

17 A. Yes.

18 Q. As to all 11 sites, including the four
19 additional sites that we still have not received the
20 C-141s for?

21 A. Yes.

22 Q. To date, to your knowledge, have we received
23 any additional C-141s for those four sites?

24 A. We have not.

25 Q. Have we received any additional submissions

1 for proposed remediation plans for the 11 sites?

2 A. We have not.

3 Q. You received an October 19th, 2009 email from
4 Mr. Hicks; is that correct?

5 A. Yes.

6 Q. What was the purpose of that email?

7 A. Mr. Hicks indicated that Mr. Welborn had been
8 out-of-pocket and in the hospital, and he requested a
9 30-day extension to conduct additional investigations as
10 proposed in their previous communications.

11 Q. However, there were no deadlines at that time
12 to extend that hadn't already been violated by Marks &
13 Garner; is that right?

14 A. That's correct.

15 Q. So at that point in time, the matter had
16 already been referred to administrative process and legal
17 division; correct?

18 A. Yes.

19 MS. ALTOMARE: I don't think I have any
20 more questions for this witness. At this time I move for
21 the admission of Exhibit 6.

22 MR. PADILLA: No objection.

23 MR. EZEANYIM: Exhibit 6 will be admitted.

24 Mr. Padilla, go ahead.

25 (Exhibit 6 was admitted.)

CROSS-EXAMINATION

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BY MR. PADILLA:

Q. Mr. Bratcher, can you hear me?

A. Yes, sir.

Q. Mr. Bratcher, what has been your working relationship with R.T. Hicks Consultants?

A. I've had a good relationship. I haven't had a whole lot of dealings with Mr. Hicks, but what I've had in the past has been okay.

Q. Did you recommend that this case be brought to hearing?

A. No, I don't think I recommended it. That's up to legal whether they take it up to hearing or not.

Q. But you never sent a memo or something else saying, you know, "These guys are not complying," or, "I'm not satisfied with what they're doing out there, so let's take it to hearing"?

A. There would have been some correspondence between myself and legal, but I don't think that I initiated it. I don't recall, to tell you the truth, who initiated it. We typically -- we set deadlines for what we want here, and if the deadline isn't met then it goes to the legal department, and then they make the determination if they want to pursue it or what they want to do.

1 Q. As I understand your testimony, you were
2 working all right with R.T. Hicks and Mr. Welborn to try
3 and resolve this problem; right?

4 A. So far, all I've gone off of, is what's been
5 submitted. There was never really any correspondence,
6 other than what we've discussed here. And the plans that
7 have been submitted is the only contact I've had with
8 Hicks Consultants.

9 Q. Did you respond in writing or in any other
10 manner to the September 10th submittal by R.T. Hicks?

11 A. No, I have not.

12 Q. Why is that?

13 A. Because the matter had been turned over to
14 legal, and we're where we're at right now.

15 Q. But you didn't turn it over to legal; right?

16 A. You're kind of getting into semantics here.
17 Like I said, once they miss a deadline then it goes to
18 legal and legal decides whether they want to pursue it or
19 not.

20 Q. Let me talk about deadlines then. They met
21 the September 10th deadline that you made; right?

22 A. They submitted a proposal to the September
23 10th deadline, but, I mean, it's kind of moot because
24 they already missed the first deadline.

25 Q. Didn't you give them prior extensions of time?

1 A. Yes.

2 Q. You granted the extension to June 19th; right?

3 A. Yes.

4 Q. And that deadline was met; right?

5 A. A submittal was received by that deadline, but
6 it wasn't what we were asking for.

7 Q. You came back and you communicated to them
8 what you wanted and you essentially said you wanted more
9 specificity; right?

10 A. Correct.

11 Q. And September 10th, you got more specificity;
12 right?

13 A. Correct.

14 Q. And you have not told Mr. Welborn or R.T.
15 Hicks Consultants what the problem was with the September
16 10th submittal; right?

17 A. Correct.

18 Q. Since you received the September 10th, 2009
19 submittal, have you had a chance to review the submittal
20 and outline any specific requirements that you may have
21 from an environmental basis?

22 A. I have reviewed it. Yes, I have.

23 Q. And have you noted that in the form of writing
24 or anything to the Santa Fe office of the OCD?

25 A. No. I don't think there's been anything

1 submitted in writing. The question was posed to me, did
2 it meet the requirements, and my answer was no, because
3 it doesn't.

4 Q. Let's talk about your requirements. What do
5 you really want in terms of the requirements that you're
6 talking about?

7 A. Okay. That goes back to my original request
8 letter dated May 14th. We need a vertical and horizontal
9 delineation. In other words, tell me the extent of the
10 contamination, how far does it go lateral, how far does
11 it go vertical. We need to assign ranking, which
12 includes depth of groundwater, distance to the nearest
13 surface water body and distance to the nearest water
14 source.

15 Q. In this area are you familiar with a geological
16 geological feature called the red beds?

17 A. Somewhat. I'm not a geologist, though.

18 Q. I understand you're not a geologist, but
19 you're familiar with what the red beds are; right?

20 A. Somewhat.

21 Q. And what do you know about the red beds?

22 MS. ALTOMARE: Objection. That's kind of
23 an open-ended question.

24 A. The red beds is a clay-type material.

25 MS. ALTOMARE: Objection. Can you ask a

1 more specific question?

2 Q. You just said they were a clay-type material;
3 right?

4 A. That's my perception. Once again, you're kind
5 of getting out of my realm here. I'm not a geologist.

6 Q. Have you conducted a study as to whether there
7 are any fresh water sources out there?

8 A. Just to the extent that would be applicable to
9 the submittal. It was on September 10th. The ground
10 water is not the only thing we look at, though, when we
11 look at these sources.

12 Q. Do you know whether any fresh waters have been
13 contaminated by contaminants from any of the wells under
14 consideration here today?

15 A. No, sir. We don't know that because there
16 hasn't been a delineation performed. That's one of the
17 reasons for performing a delineation, to determine
18 whether or not groundwater has been a factor.

19 Q. In any of your correspondence to Marks &
20 Garner or R.T. Hicks Consultants, have you ever required
21 any information on chlorides?

22 A. I don't think I've specifically asked for
23 anything on chloride contamination, other than just to
24 delineate and identify any contaminants that may be out
25 there.

1 Q. Is the submittal or the requirement for
2 additional investigation as proposed by R.T. Hicks
3 Consultants in their September 10th submittal, is that
4 reasonable?

5 A. Could you repeat that, please?

6 Q. Their plan, their plan to investigate further,
7 is that reasonable, on the September 10th proposal?

8 A. Well, it's reasonable in that that's what we
9 asked for in the first place.

10 Q. Now, today, the purpose of this hearing is to
11 ask for a date certain and to comply, what is your
12 opinion as to what a date certain should be in view of
13 that proposal?

14 A. Okay. Would you ask that again, please?

15 Q. Well, as I understand the call of this case is
16 to ask for a date certain to complete the analysis as to
17 whether or not there's contamination. You've been
18 talking about the vertical and horizontal extent of any
19 contamination, and so I'm asking you whether the proposal
20 is reasonable. And, secondly -- and I think you've
21 answered that, that it's a reasonable plan, but the
22 second objective of this hearing -- or the objective of
23 this hearing is for a date certain, and I'm asking you
24 what your opinion should be in view of the plan submitted
25 by R.T. Hicks Consultants, what that date certain should

1 be.

2 A. Well, sometimes it's really hard to say, you
3 know, especially when there's this many sites involved.
4 Say, for instance, when this all first came to light, if
5 Marks & Garner had moved a rig out there to do the
6 delineation or whatever it takes to do the delineation,
7 typically as long as an operator is moving forward with
8 actually doing what we requested, we'll work with them on
9 it. For a date certain, you know, it's hard to pinpoint
10 it with 11 different sites that's involved here.

11 Q. Right now the request in this hearing is for a
12 date certain, and I'm asking you, are the proposals
13 submitted by R.T. Hicks reasonable in light of timing
14 now? I mean, we're not talking about the past. We're
15 here at a hearing and I'm asking you ~~if there was some~~
16 testimony here about going into January of next year, and
17 in view of what we're arguing about here, is that
18 reasonable?

19 A. To allow them to have a work plan by January?
20 Is that the question?

21 Q. No. To complete their investigation and give
22 you the -- you're saying they have to move a rig in and
23 do some further investigation as to the vertical and
24 horizontal extent. I'm asking you, is December and
25 January unreasonable, given the number of well sites that

1 have to be investigated?

2 A. Well, if you're asking for a date from here
3 forward, you know, my question would be, when are they
4 going to start?

5 Q. Let's just say they have a contractor, which I
6 understand they have a contractor that can start the
7 first week of December and drill on all these locations
8 to determine what the vertical and horizontal extent of
9 any contamination may be. So I'm asking you, is the
10 proposal as outlined in the September submittal
11 reasonable?

12 A. Okay. I would think that 30 to 60 days would
13 be a reasonable amount of time to do an active
14 delineation on 11 sites.

15 Q. That assumes that things are under contract
16 and ready to go; right? Everybody can --

17 A. Correct. I'm saying 30 to 60 days from the
18 date of the actual start.

19 Q. Should it be -- isn't that what R.T. Hicks
20 asked for in September?

21 A. In the September 10th submittal?

22 Q. Yes.

23 A. I believe so. But we're kind of dealing with
24 after the fact on this September 10th. The original
25 deadline was June 15th. It was granted June 19th.

1 Q. Mr. Bratcher, I'm not trying to argue with
2 you. I'm talking about -- we're here today. One of the
3 things OCD wants is a date certain. Your testimony has
4 been that you worked with these guys fairly well. You
5 didn't ask for this hearing, and so you're the guy at the
6 wheel down there in the district, as far as I can tell,
7 and I want your opinion as to whether or not their
8 proposal is reasonable or not. And from your testimony,
9 I think you're saying it's reasonable. Am I right or
10 wrong?

11 A. The proposal to provide the delineation may be
12 reasonable, but the fact still remains that the original
13 deadlines were missed. It's possible that if they may
14 have requested an extension after that, we may have
15 looked at that, but the fact is there was no request. So the
16 the June 19th deadline was the drop-dead deadline for
17 submittal of a remediation work plan.

18 Q. But as I understand, you may have a difference
19 of opinion as to whether or not a plan is adequate or
20 not, but those plans were submitted in accordance with
21 all the deadlines; right?

22 A. The original one was, yes. Well, yeah, they
23 were both submitted. That's correct. Yes.

24 Q. The September 10th was submitted on time;
25 right?

1 A. Correct. But it wasn't what we were asking
2 for.

3 Q. If 30 to 60 days is reasonable, going back to
4 the June deadlines, that deadline was unreasonable;
5 right? How much time did you give them back then?

6 A. The date of my letter was May 14th. I give 30
7 days from the date of the letter.

8 Q. Was that for a plan or was that to complete
9 the remediation and everything?

10 A. That was -- I was requesting a corrective
11 action work plan proposal.

12 Q. What is it now that you think is wrong with
13 the September 10th plan?

14 A. There's no delineation of contaminants.

15 Q. I understand that, but that has to be drilled
16 and determined; right?

17 A. Correct.

18 Q. What we're talking about is the work that
19 needs to be done out in the field to determine the
20 delineation; correct?

21 A. Yes. And that work should have actually
22 started when they got the letter.

23 Q. But you wanted the plan, and then you rejected
24 the first plan, and then you extended the time for the
25 plan to September 10th at some point; right?

1 A. Correct.

2 Q. Mr. Bratcher, have you yourself been out there
3 at the well sites?

4 A. I have not.

5 Q. So you don't know today whether or not the
6 wells on Exhibit 4 have been cleaned up or remediated;
7 correct?

8 A. If they have, it hasn't been per OCD rules and
9 guidelines.

10 Q. Mr. Harvey testified he hadn't been out there
11 since -- the last time was in June, July on some of the
12 wells, not all of the wells, as I understood his
13 testimony, and you haven't been out there to determine
14 whether or not there was any cleanup; is that right?

15 A. That's correct.

16 MR. PADILLA: I have nothing further.

17 MR. EZEANYIM: Thank you, Mr. Padilla.

18 Ms. Altomare?

19 MS. ALTOMARE: Thank you.

20 REDIRECT EXAMINATION

21 BY MS. ALTOMARE:

22 Q. Mr. Bratcher, the original plan was due June
23 19th, after we gave them the one and only extension that
24 they actually requested; is that right?

25 A. Correct.

1 Q. So we're now looking at five months late since
2 the original deadline?

3 A. Yes.

4 Q. In five months, have they done anything
5 substantive that they submitted documentation to you in
6 terms of actually delineating the extent of this
7 contamination?

8 A. No, they have not.

9 Q. Mr. Padilla asked you about what was wrong
10 with the 9/10 submission. The August 20th letter that
11 you wrote, you specifically referred back to the May
12 letter that you had given specific instructions for what
13 those plans were to include; is that right?

14 A. Yes.

15 Q. And despite that, that September 10th submission
16 submission didn't include everything that was set out in
17 the August 20th letter or the May letter; is that right?

18 A. That's correct.

19 Q. So even though the submission was made on time
20 on September 10th, it wasn't what we asked for and it
21 wasn't complete?

22 A. Correct. Just as an addition, if there has
23 been some work done out on the sites, that's good. But
24 19.15.29.11 dictates that the responsible person shall
25 complete a Division-approved corrective action. So if

1 there has been remediation work done out there, it hasn't
2 been by a Division-approved work plan.

3 Q. And the only reason there hasn't been a
4 Division-approved work plan has been because they've drug
5 their feet in working with the Division to get one
6 approved because they haven't submitted something that
7 complies with those original instructions set out in the
8 May letter; is that right?

9 A. Right. We haven't received and approved a
10 work plan.

11 Q. There's been several references to whether or
12 not there's fresh water out there or whether we can
13 determine whether or not there's been contamination of
14 fresh water. Is contamination of fresh water the only
15 concern of the OCD?

16 A. No.

17 Q. Are we concerned with contamination of other
18 types of things out there?

19 A. Yes. We're concerned with just any
20 contamination on the surface.

21 Q. Is it a concern to you that some of those
22 pictures depict livestock footprints through contaminated
23 soils?

24 A. Yes.

25 Q. And once again, the September 10th submission

1 that we received, the response of the Oil Conservation
2 Division putting Marks & Garner on notice that we did not
3 find it to be adequate was the submission of the
4 application for hearing seven days later; is that
5 correct?

6 A. Yes.

7 Q. And the notice of violation that was issued on
8 August 5th to Mr. Welborn specifically stated that if
9 they continued to be in noncompliance with regard to
10 these 11 wells, that the OCD would be filing for
11 proceeding to hearing on this matter; is that right?

12 A. Correct.

13 Q. Do you think that Marks & Garner could have
14 completed the delineation of the vertical and horizontal
15 limits of all or some of these 11 sites in the past five
16 months?

17 A. Yes.

18 MS. ALTOMARE: That's all the questions I
19 have.

20 MR. PADILLA: We've beat this horse to
21 death. I don't have any further questions.

22 MR. EZEANYIM: Okay. Thank you very much.
23 At this point we're going to take a lunch break, and be
24 here around 1:15. And in case we may ask questions after
25 he presents his witness, do you want to call them back?

1 I request that they be present again.

2 MS. ALTOMARE: I'd like for them to be on
3 the line anyway for the remainder of the case.

4 MR. EZEANYIM: Yes. So we are going to be
5 opening by 1:15.

6 MS. ALTOMARE: Okay. Thank you very much.

7 (A lunch recess was taken.)

8 MR. EZEANYIM: We can go back into the
9 record now and continue with Case Number 14393.

10 MS. ALTOMARE: We need to call our
11 witnesses.

12 UNIDENTIFIED MALE SPEAKER: We're here.

13 MS. ALTOMARE: Okay.

14 MR. EZEANYIM: Okay. Counsel, call your
15 next witness.

16 MR. PADILLA: We'll call Quinton Welborn.

17 MR. EZEANYIM: Mr. Welborn, you have been
18 previously sworn, so you are still under oath.

19 MR. WELBORN: Okay.

20 QUINTON WELBORN

21 Having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PADILLA:

24 Q. Please state your name.

25 A. Quinton Welborn.

1 Q. What is your connection with Marks & Garner?

2 A. I'm manager and part owner.

3 Q. What do you do for Marks & Garner?

4 A. I run the company.

5 Q. What has been your involvement with the issues
6 that are involved in this hearing?

7 A. Well, I've -- when we first got the letter on
8 the seven wells, we have since then, to get the
9 remediation, I've retained R.T. Hicks Consulting to do
10 the -- draw out the plans and do the analysis work and
11 everything for these wells.

12 Q. This morning there was testimony that you
13 asked for an extension of time some time in June?

14 A. Yes, sir.

15 Q. And why did you ask for that extension?

16 A. I needed some more time, and that was about
17 the time that I had retained Mr. Hicks.

18 Q. Did R.T. Hicks Consultants file something on
19 your behalf with the OCD by the deadline?

20 A. Yes.

21 Q. And what happened after that in terms of
22 meeting deadlines?

23 A. I think everything was met. They gave us a
24 deadline that they met on June 19th and submitted a
25 report or plan that was, you know, later denied. And

1 then we submitted the September 10th report, and then
2 never did get a response, other than the time to go to
3 hearing.

4 MR. EZEANYIM: Excuse me. Before you go
5 further, this is an administrative hearing. Even though
6 that is the case, I need to know whether or not the
7 witness is an expert witness, fact witness, for the
8 record. Because we want to confirm what type of witness.
9 Let me understand, are you an expert witness or a fact
10 witness?

11 MR. PADILLA: We're not tendering him as
12 an expert witness. We're tendering him as the principal
13 of Marks & Garner, and so he would be a fact witness.

14 MR. EZEANYIM: I just wanted to make sure
15 that is in the record. It's a fact witness; right? a fact. It

16 MR. PADILLA: Yes.

17 MR. EZEANYIM: Okay.

18 Q. (By Mr. Padilla) Let me ask you, with regard
19 to the requirements imposed by the deadlines, what was
20 your understanding that you had to submit?

21 A. A work plan and -- of these wells, the seven
22 wells, not the other four.

23 Q. So we're talking about a plan; is that right?

24 A. Yes.

25 Q. The first one was rejected by the OCD; right?

1 A. Correct.

2 Q. And you've just testified that the second one,
3 which you submitted on September 10th -- what happened to
4 that?

5 A. We submitted that, never did hear anything,
6 other than the notice of hearing.

7 Q. Do you understand what the purpose of this
8 hearing is now?

9 A. To set a date certain from what I understand
10 to have the plans in place to have these seven -- or 11
11 wells -- excuse me -- for the 11 wells to be finalized
12 or, you know, get everything -- work plans approved and
13 everything.

14 Q. There's been testimony that you did not submit
15 the C-141s as required by some correspondence from the
16 OCD to you; is that's right?

17 A. Yes.

18 Q. As to the first seven wells, did you submit
19 C-141s?

20 A. Yes, we did.

21 Q. And did you meet that requirement, the
22 deadline?

23 A. Yes.

24 Q. In terms of the last four C-141s that you had
25 to submit, do you know why you did not submit those?

1 A. Quite frankly, a lot of it had to do with some
2 confusion of what we were asked for. You know, of course
3 we never did get the first letters like we did on the
4 first seven. We didn't get four letters on that. And
5 then -- and just -- that's basically it, other than just
6 some confusion there on what they were asking.

7 Q. Are you prepared to file C-141s now?

8 A. Sure. That won't be a problem.

9 Q. Now, with regard to the wells themselves, have
10 you transferred the wells?

11 A. Yes. We have sold these wells to -- actually,
12 it was sold to Blugrass and Doral West, I believe. I
13 don't know if it's Doral or Doral West, will be the new
14 operator.

15 Q. Is that process going through at this point?

16 A. Yes, sir.

17 Q. In terms of bonding, what's your deal with
18 Doral or who the purchaser is?

19 A. I know that they've operated some wells there,
20 so I'm sure they have their own plugging bonds in place.

21 Q. Have you discussed with Doral specifically
22 about bonding requirements?

23 A. No, I have not.

24 Q. How about remediation work on the wells?
25 What's the deal on the remediation?

1 A. Basically, I'm told now that we'll finish out
2 this project on these 11 -- actually, they're not buying
3 the Mosley Springs. But for the other 10, I've retained
4 Mr. Hicks and we'll resolve these wells.

5 Q. Now, what cleanup have you done to these
6 wells?

7 A. Well, basically, had a crew of mine go out.
8 They have -- we have done the surface excavation around
9 the wellheads and cleaned all that up around all the tank
10 batteries. We've done that. We've also -- there was a
11 lot of -- we removed a lot of debris and junk. There's a
12 lot of old poly-line that we have taken out and removed
13 and done that work.

14 Q. Let me hand you what is OCD's Exhibit 4.

15 MR. PADILLA: May I approach the witness?

16 MR. EZEANYIM: You may.

17 Q. (By Mr. Padilla) Mr. Welborn, did you -- has
18 the condition on these wells changed since April when the
19 inspections were made?

20 A. Yes, they have.

21 Q. Has the OCD called you to inform you in some
22 manner to say that the condition of the wells is the same
23 as it was back in April?

24 A. No.

25 Q. Now, I think Mr. Harvey testified that he had

1 been to some of the wells in July. When did you have the
2 work done on the wells?

3 A. I don't know exact dates on when each one of
4 these were done, but we've been working out there
5 continuously. But I think most of the excavation was
6 probably done in late July.

7 Q. But to your knowledge, no one has been out
8 there to tell you that you're deficient in the cleanup?

9 A. Correct.

10 Q. Now, some of those wells have what looks like
11 fresh oil on those. Has that been removed?

12 A. Yes, it has.

13 Q. Let's go now to the plan in terms of the
14 requirements of the OCD and the district office. Let me
15 ask you first, what has been your working relationship at has been
16 with Mr. Harvey or Mr. Bratcher?

17 A. I've met with Mr. Harvey on one particular
18 instance, and I think I've only spoken to Mr. Bratcher on
19 the phone. But all my correspondence with the plan and
20 everything has been through Hicks Consulting on my
21 behalf.

22 Q. To your knowledge do you know that there's
23 been any disagreement between -- or failure to coordinate
24 some aspects of the requirements of the OCD as imposed
25 back in April?

1 A. No.

2 Q. Has anyone called you from the district office
3 to tell you that the work is substandard or something?

4 A. No.

5 Q. Now, let's talk about the September 10th
6 submittal that R.T. Hicks submitted. You're familiar
7 with that; right?

8 A. Yes.

9 Q. And you ordered the work on that?

10 A. Yes. We have contracted a little drilling rig
11 or auto-rig, so to speak, to do the delineation. It was
12 supposed to start in the first week of December.

13 Q. You're getting a little ahead of me here. In
14 terms of what your understanding is of the September 10th
15 submittal by R.T. Hicks Consultants, do you know or have
16 any idea how it may be deficient as testified by Mr.
17 Bratcher this morning?

18 A. No, I don't.

19 Q. You don't?

20 A. As far as the only thing I was -- that we need
21 to do the delineation. But, I mean, as far as it being
22 substandard or something, I wouldn't know.

23 Q. Mr. Bratcher testified about some of his
24 correspondence with R.T. Hicks indicating that you were
25 out-of-pocket in August and September and October.

1 A. Yes, sir.

2 Q. And I take it that you were sick; is that
3 right?

4 A. Yes. I was in and out of the hospital for
5 part of August, September, trying to figure out what was
6 wrong. Then I had to go back in October.

7 Q. Have you been able to coordinate with either
8 the OCD or Mr. Hicks to your level of satisfaction to be
9 able to say that you've got -- that you had control of
10 what was going on during that time period?

11 A. No, I did not. I mean, I was out-of-pocket.
12 It was very hard for me to talk to anybody or anything.

13 Q. Are you sufficiently recovered now --

14 A. Yes, sir.

15 Q. -- to be able to continue with your plan?

16 A. Yes, sir.

17 Q. And generally tell us about what you think
18 your plan -- what you would like the OCD to allow you to
19 do.

20 A. Through discussions with Hicks Consulting on
21 these wells here, our plan is we have contracted a
22 drilling rig for the first week of December to go out and
23 do the delineation work, and we figured that will take
24 the first week of December. And the second week of
25 December, we need to submit the drilling, and then we're

1 going to do an investigation on the Dark Canyon site,
2 which is the Mosley Springs, which is separate from the
3 10 wells there in Loco Hills.

4 Q. How far away is that from the other 10 wells?

5 A. I'd say approximately 50, 60 miles.

6 Q. That's a different deal compared to the ones
7 that --

8 A. Correct.

9 Q. You've sold -- except for the Mosley, you've
10 sold the 10 wells to the same company?

11 A. Correct.

12 Q. And going back again to your deal, what's your
13 understanding of what you contracted with in terms of
14 completing any type of environmental work on the wells?

15 A. Basically, just what we're -- these are the 10
16 wells here. We need to go ahead and get them -- get this
17 project done, is what our plan is.

18 Q. There's been some implication in the
19 pre-hearing report or the pre-hearing statement made by
20 the OCD that you may be wanting to divert or not perform
21 the work by selling the wells. Can you enlighten us on
22 what the deal is as far as your having to perform the
23 cleanup?

24 A. Yeah. We have a stipulation in there that
25 any -- the existing environmental issues are to be taken

1 care of by me.

2 Q. So you have the OCD telling you to do
3 something, and you want to do that?

4 A. Yes, I want -- yes.

5 Q. You also have to comply with the contractual
6 obligation that you have with Doral?

7 A. Correct.

8 Q. In terms of general time frames, what would
9 you like to do in terms of, say, take the first seven
10 wells that were the subject of the -- well, the original
11 seven wells that were the subject of this proceeding?

12 A. We would propose to get the delineation done,
13 start it in the first week of December. And then before
14 12/31, submit to the OCD the results of the delineation
15 for the seven -- the 10 wells at Loco Hills and remedial
16 options and propose our remedies.

17 Q. The remedies would come later in terms of
18 cleanup --

19 A. Yeah.

20 Q. -- if there's any to be done?

21 A. Right. I mean, it would be after the
22 investigation of the delineation and then we can more
23 interpret --

24 Q. Contractually, you're obligated to finish that
25 work with the purchaser; right?

1 A. Yes.

2 Q. I take it that your purchaser is not going to
3 give you all of the money, purchase price, until you
4 finish that work.

5 A. Correct, yeah. It's a pay-out schedule.

6 Q. All right. Now, in order for you to get your
7 money, you're going to have to do this work; right?

8 A. Yes.

9 Q. Between now and the 31st of December, do you
10 have any confidence that your consultant is going to get
11 that work done so you can comply with the OCD's
12 requirements?

13 A. Yes. I have extreme confidence in Hicks
14 Consulting on this.

15 Q. You've already contracted to -- You've already

16 A. Right. We've already got the drilling rig
17 contracted out for the first week of December.

18 Q. Essentially, you've got to get -- what you're
19 saying is you've got to get the seven wells done by the
20 end of December; right?

21 A. Yes.

22 Q. And some report filed.

23 A. Yes.

24 Q. Now, what happens to the other -- let's talk
25 about the next three wells that are included in the four

1 wells that are new. Let's call those new wells.

2 A. Right. That might take us a little bit more
3 time, but we're supposed to have all of them investigated
4 and proposed by, you know, January, towards the end of
5 January.

6 Q. Now, this morning Mr. Bratcher said that a
7 reasonable amount of time, as I understood his testimony,
8 would be from 30 to 60 days.

9 A. Correct.

10 Q. First of all, give us your thoughts about 30
11 days to do all 11 wells.

12 A. I don't know if we can do all of them. I
13 don't think we can get them all done, but we are
14 definitely going to have -- the first seven is what we
15 could have. I don't want to promise something that I can't want
16 because that's a lot of work. But, I mean, we do have
17 everything in place to keep going forward, and that's --
18 the plan that I got here -- and this is what we were
19 wanting to do -- in Loco Hills, we're going to go ahead
20 and -- the first -- the Loco Hills site, the first week
21 of December, we're going to get the seven wells plus the
22 three, horizontal/vertical per plan from the 9/10 --
23 we're definitely going to finish the report from 9/10,
24 doing the delineation for the seven wells and try to get
25 the three others -- or a plan to the three others -- a

1 plan to the NM OCD for the three others.

2 Q. Let's talk about the Mosley well. Is that a
3 different kind of well that you're talking about?

4 A. Yes, it is. It is a Morrow well in Dark
5 Canyon. It's a gas well.

6 Q. That's a deep well?

7 A. Yes.

8 Q. That one, you're talking about salt water --

9 A. Correct.

10 Q. -- issues?

11 A. Yes.

12 Q. So there may be chloride issues there that you
13 don't know what they are?

14 A. Correct. Yes, sir.

15 Q. As I understand, you're proposing something
16 that would be realistic, rather than just having too
17 little of time?

18 A. Correct.

19 Q. With respect to the Mosley well, because it's
20 a different well, are you requesting any kind of latitude
21 in case you run into problems because it's a deep well?

22 A. Yes, sir. We were thinking that mid February,
23 around February 15th, submit a remediation plan for the
24 Dark Canyon well.

25 Q. Tell us how you wound up with the Mosley well

1 anyway, since it's not in the same location or the
2 general vicinity of the other wells.

3 A. It was part of when we bought all 70 wells at
4 the time. It was one of them that we bought. It was
5 just a one-lease well out there. It was from the -- we
6 think from the old Marks & Garner. It was one of their
7 wells.

8 Q. Is that producing gas at this time?

9 A. Yes, it's producing gas.

10 Q. What else does it produce?

11 A. A trace of distillate, maybe.

12 Q. How about water?

13 A. Water. It produces a lot of water.

14 Q. In terms of the price of natural gas, how does
15 that --

16 A. Right now it's not producing enough to, you
17 know, haul the water off, because -- sometimes it's --
18 you know, when the price goes up, it's a good well. But
19 whenever it dropped down 2 or \$3, it wasn't very cost
20 efficient.

21 MR. PADILLA: That's all I have.

22 MR. EZEANYIM: Okay. Thank you. Ms.
23 Altomare?

24 MS. ALTOMARE: Thank you, Mr. Examiner.

25

CROSS-EXAMINATION

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BY MS. ALTOMARE:

Q. Let's start by backing up. You said that you sold 10 of these 11 wells?

A. Yes.

Q. In point of fact, actually, the entity that is --

MS. ALTOMARE: I'm sorry. Mr. Padilla, were you going to move any exhibits?

MR. PADILLA: No.

Q. (By Ms. Altomare) In point of fact, though, the entity that is on the assignment and bill of sale and the purchase and sale agreement between -- conveying or attempting to convey these wells to Blugrass Energy, Incorporated, is entity known as Robinhood, LLC; right?

A. No, ma'am. Robinhood, LLC, used to be a contract company that I had with a roustabout in the pooling unit. Robinhood, LLC, is not -- that was me, but we've liquidated our equipment. That has nothing to do with Blugrass or Doral entity.

Q. So the documents that were executed by you that were provided to me by counsel and indicated that they were going to be used as exhibits in this case, even though they haven't been proffered as such, they were executed by you on October 12th, 2009, and by your

1 father, as co-owners of Robinhood, LLC, those are not the
2 assignments and bill of sale?

3 A. Yeah, that's it. But like I said, we never
4 did -- we started Robinhood, LLC, but we never did change
5 the Marks & Garner bonding and stuff. Yeah,
6 it's -- that's where the money is going -- it's going to
7 come to us still under Robinhood, but we're selling the
8 Marks & Garner wells.

9 Q. Who conveyed the wells to Blugrass?

10 A. That was me and Mickey.

11 Q. Under the Robinhood, LLC?

12 A. Uh-huh.

13 Q. So the assignment and bill of sale that was
14 previously provided to me by your counsel and the
15 purchase and sale agreement are the documents that were
16 conveyed those wells?

17 A. Yes.

18 Q. So Robinhood, LLC, is the entity used to
19 convey those wells to Blugrass?

20 A. Yes, so to speak.

21 Q. Okay. Who is Robinhood, LLC?

22 A. That is me and Mickey. Me and my father.

23 Q. Would it surprise you to know that Robinhood,
24 LLC, is not a registered company in the State of New
25 Mexico in good standing and registered to do business in

1 the State of New Mexico?

2 A. Yes, it would.

3 MS. ALTOMARE: Okay. May I approach the
4 witness?

5 MR. EZEANYIM: You may.

6 Q. (By Ms. Altomare) I'm showing you what has
7 been marked as OCD Exhibit 7. This is a printout from
8 the Public Regulation Commission Website documenting
9 Robinhood, LLC. If you turn the document over, I believe
10 there is an organizer listed as Ernest L. Marks.

11 A. What we did -- what we have done was we had
12 changed the name of Marks & Garner to Robinhood, LLC. We
13 never did get all of our wells from Marks & Garner. We
14 didn't get those transferred over.

15 Q. So did you ever follow up with the Public
16 Regulation Commission to properly update their records
17 and fully register Robinhood, LLC, with you and Mr.
18 Mickey Welborn as the principals of that entity?

19 A. Yes. I had Maddox & Holloman do the change
20 for me. And, you know, I just retained them to do that
21 part. They do our contractual work on corporations and
22 stuff like that, yes.

23 Q. Would it surprise you to know that, likewise,
24 in speaking to a Doral representative yesterday, they
25 were not able to ascertain who Robinhood, LLC, was in

1 relation to Marks & Garner?

2 MR. PADILLA: Objection, hearsay.

3 MS. ALTOMARE: I'm asking if he has any
4 knowledge of that.

5 MR. PADILLA: You're asking about
6 conversations that he had with somebody. That would be
7 hearsay.

8 MS. ALTOMARE: I'm asking if it would
9 surprise him to know that.

10 MR. BROOKS: That's a typical lawyer's
11 tactic, but in this hearing I would suggest that we
12 overrule the objection.

13 MR. EZEANYIM: Objection overruled.

14 A. They called and asked me what the deal was on
15 that and I told them. I'm sure you're probably talking
16 to probably Mr. Bloodworth.

17 Q. (By Ms. Altomare) Okay. And what did you
18 tell Mr. Bloodworth?

19 A. I told them that, basically, when we bought
20 Marks & Garner, we used their old name because of, you
21 know, switching everything over and all that stuff and
22 got our plugging bonds, and then we changed the name of
23 Robinhood, LLC, and we never did get the wells
24 transferred over because we had our plugging bonds and
25 all that stuff in Marks & Garner.

1 Q. So what entity actually has title and the
2 right to transfer ownership and rights of those wells?

3 A. Marks & Garner, like I said, we changed the
4 name to Robinhood, LLC, so that's --

5 Q. Okay. So do you have documentation to reflect
6 that you are Robinhood, LLC?

7 A. Yes.

8 Q. Okay.

9 A. I mean, we're not selling something that's not
10 ours, I mean.

11 Q. You recall, though, executing the assignment
12 and bill of sale and the purchase and sale agreement?

13 A. Yes.

14 Q. And you recall making certain representations
15 in the course of executing that document to Blugrass [unclear]
16 regarding the conveyance of those wells?

17 A. Yes.

18 Q. And amongst those representations, one of the
19 representations that you made under Section 7.7 is that
20 there were no claims, demands, filing, cause of action,
21 administrative proceeding, lawsuits or other litigation
22 pending to the best of your knowledge or threatened that
23 could now or later adversely affect the ownership or
24 operation of any of the properties, other than
25 proceedings relating to the industry generally and to

1 which the seller was not a named party. Specifically,
2 that there was no written or oral notice from any
3 governmental agency or any other person that you had
4 received notice of claiming any violation or repudiation
5 of all or any part of the properties or any violation of
6 any law or environmental, conservation or other ordinance
7 code, rule or regulation, or require or calling attention
8 to the need for any work, repairs, construction,
9 alterations or installations on or in connection with the
10 properties.

11 Do you recall signing off on a document saying
12 that there was no pending claims, litigation or the need
13 for any of that kind of remediation to any of the
14 properties when you executed that document?

15 A. Well, I remember executing the document and
16 telling them that -- you know, stipulation that any
17 environmental issues that are going on --

18 Q. But we're not talking about that clause. I'm
19 talking about a different one saying there were no
20 pending claims and no environmental violations or
21 noncompliance.

22 A. I guess I did.

23 Q. Yet 10 of those wells in the conveyance are
24 involved in this pending action involving environmental
25 noncompliance; is that right?

1 A. Yes.

2 Q. And under Section 7.9, you signed off
3 saying -- and your initials are on the bottom of each
4 page -- saying that, "The properties have been operated
5 in compliance with the provision and requirements of the
6 applicable oil and gas leases, all laws, orders,
7 regulations, rules and ordinances issued or promulgated
8 by all governmental authorities having jurisdiction with
9 respect to the properties." And further down, that, "The
10 properties have been obtained and no violations exist or
11 have been recorded in respect of such licenses, permits
12 or authorizations," and you signed off on that, as well?

13 A. Yes.

14 Q. Out of those 10 wells, three of them are also
15 on the inactive well list, meaning that they're in violation
16 of an additional OCD rule; is that right?

17 A. Yes.

18 Q. And one of those 10 wells actually requires
19 additional bonding before it can be conveyed; correct?

20 A. I was not aware of that.

21 Q. Two of the 10 wells are actually subject to a
22 Commission order that is now pending, actually, for
23 re-hearing before the Oil Conservation Commission under
24 Case 14041?

25 A. I don't know which wells you're referring to.

1 Q. I'm referring to API Number 30-015-002787,
2 which is the Levers 3Y; API Number 30-015-24989, which is
3 the Red Twelve State Number 3; and the Red Twelve Federal
4 Number 2, which 30-015-25059. All three of those wells
5 were addressed and included amongst the wells addressed
6 by the Commission order in Case Number 14041, and we are
7 pending a re-hearing in that matter; is that right?

8 A. Correct.

9 Q. Okay. Do you have a current contract directly
10 with Doral, or is that something that Blugrass is
11 negotiating?

12 A. Blugrass is negotiating.

13 Q. You don't have something separate that you
14 negotiated with Doral. That's Blugrass' deal?

15 A. Yes.

16 Q. To your knowledge, is Blugrass an operator
17 established in New Mexico?

18 A. I would not know.

19 Q. You indicated that you at some point had
20 bought all 70 wells from Marks & Garner. In point of
21 fact, you actually had acquired the company; is that
22 right?

23 A. Um-hum.

24 Q. Backing up to when these initial inspections
25 were done back in April, you did say that you had met

1 with Mr. Harvey on-site at one point? You do recall
2 that?

3 A. Yes.

4 Q. There was a BLM person also there?

5 A. Okay. Um-hum.

6 Q. And that was actually at the Red State Number
7 1, during his inspection of that site?

8 A. Yes.

9 Q. That was one of the wells, actually, that
10 inadvertently the LOV didn't get sent to you?

11 A. I'm not sure.

12 Q. But you do recall speaking with him, and him
13 advising you that there were environmental violations at
14 that time?

15 A. Yes.

16 Q. And that he told you that he would be issuing
17 Letters of Violation for that well and other wells that
18 you were going to have to respond to?

19 A. Yes.

20 Q. How often do you generally have a pumper or
21 somebody on your behalf check the sites for Marks &
22 Garner, just to check up on them, read meters, look and
23 make sure that things are looking okay on-site, not
24 leaking?

25 A. Usually have them there quite often, usually

1 every day or every other day anyway.

2 Q. Okay. And did that person or persons ever
3 report back to you and tell you that there were leaks or
4 evidence of releases, livestock tracks through
5 contaminated soils, anything of that nature?

6 A. No.

7 Q. Okay. When you were at the Red State Number 1
8 and you saw the contamination for yourself, did you
9 question the fact that your pumper or person that was
10 on-site regularly hadn't reported those things to you?

11 A. I'm sure we've had a discussion. I can't
12 recall what.

13 Q. Do you recall receiving the Letters of
14 Violation for those seven initial wells?

15 A. (Witness nods head.) (Witness nods head.)

16 Q. And at that point you did submit the C-141s?

17 A. Correct.

18 Q. And at some point you retained Mr. Hicks and
19 his company?

20 A. Yes.

21 Q. Why did you wait until June, until almost the
22 deadline, to retain Hicks consulting?

23 A. Well, that's when we had -- was recommended by
24 somebody to use Mr. Hicks, trying to figure out what to
25 do, and that's when I got him, so --

1 Q. Okay. And so at that point, you asked for an
2 extension and Mr. Bratcher did respond and grant you the
3 extension?

4 A. Correct.

5 Q. So you were aware that there was a mechanism
6 for asking for an extension and that Mr. Bratcher was
7 amenable to responding to those kinds of requests when
8 the operator showed an interest?

9 A. Correct.

10 Q. I'd like to direct your attention to what has
11 previously been admitted as OCD Exhibit 1.

12 MS. ALTOMARE: May I approach the witness,
13 please?

14 MR. EZEANYIM: Yes.

15 Q. (By Ms. Altomare) Do you recall receiving...
16 this document?

17 A. Yes.

18 Q. And this was the know the advertise of
19 violation that was sent out in early August. This
20 document set out the violations as to all 11 wells; isn't
21 that right?

22 A. Correct.

23 Q. So it included not only those first seven, but
24 also the four additional wells that we were still missing
25 the C-141s?

1 A. Um-hum.

2 Q. When you realized there were additional wells
3 included in that letter that weren't originally included
4 in the LOVs you had received prior, did you make any
5 efforts to contact either Mr. Sanchez, who had signed the
6 letter, or the district office to make inquiries?

7 A. No, I did not. Like I said, I was confused on
8 what we were asking. But, no, I did not.

9 Q. Despite being confused, you didn't ask any
10 questions?

11 A. No.

12 Q. Just to confirm, that is your signature on the
13 green card?

14 A. Yes.

15 Q. You did not submit any C-141s in response to receiving the notice of violation; is that right?

16 A. That's correct.

17 Q. You were aware that that document did state
18 that the Oil Conservation Division was going to proceed
19 with further enforcement action up to and including
20 proceeding to hearing if Marks & Garner did not get into
21 compliance as to both matters addressed by the letter?

22 A. Yeah, I guess so. Like I said, I was
23 confused. I thought this was the one that said that we
24 were already going to hearing, but I guess I was wrong
25

1 about that.

2 Q. Okay. But you do recall receiving it and
3 having an opportunity to review it at the time?

4 A. Yes.

5 Q. Did you contact your attorney after receiving
6 it?

7 A. Yes, I believe I -- or Ernie contacted me
8 because I know it went to him, too.

9 Q. Without telling me what was discussed, you did
10 have an opportunity to consult with counsel after
11 receiving this document?

12 A. Other than the time I was in the hospital.

13 Q. While you were sick -- I understand that you
14 were unavailable -- were you able to delegate your duties
15 or your responsibilities with the company to anybody to
16 facilitate taking care of business while you were not
17 able to do so yourself?

18 A. To a point.

19 Q. Okay. To whom did you delegate those
20 responsibilities?

21 A. I had Jimmy Reynolds look after the wells for
22 me. That's about it.

23 Q. Did he report back to you on a regular basis
24 during that time?

25 A. He just -- no. Not until I got back.

1 Q. Do you recall receiving the notice of hearing
2 that was discussed earlier that included the application
3 for hearing?

4 A. Which one was that?

5 Q. It was marked as Exhibit 3.

6 MS. ALTOMARE: May I approach the witness?

7 MR. EZEANYIM: Sure.

8 Q. (By Ms. Altomare) I'm showing you what has
9 been previously admitted as OCD Exhibit 3. Do you
10 recognize that?

11 A. Yes.

12 Q. If you would turn it over and verify that that
13 is your signature on the card.

14 A. Correct.

15 Q. And do you recall receiving a copy of the
16 application for hearing with that document?

17 A. I'm not sure. I remember this letter.

18 Q. And the letter does indicate that it enclosed
19 a copy of the application for hearing?

20 A. Yeah.

21 Q. Again, the application filed in this case
22 addresses all 11 wells; is that right?

23 A. Yes, I'm sure.

24 Q. When you received the initial letter from --
25 in May, I think it was May 14th, that was issued by Mr.

1 Bratcher in response to the C-141s, did you have an
2 opportunity to review that letter?

3 A. Yes.

4 Q. Do you feel like you understood the
5 instructions, what it was asking you to do?

6 A. That's why I retained Hicks Consulting,
7 because I'm not -- you know, I have no expertise or
8 anything on --

9 Q. But you understood who you would need to
10 contact within the agency if you had any questions
11 regarding the contents of that letter?

12 A. Yes.

13 Q. You understood that that letter contained
14 instructions for a submission of a remediation plan
15 proposal?

16 A. Yes.

17 Q. And it contained a deadline for the submission
18 of that proposal?

19 A. Correct.

20 Q. You noted that you've done some surface
21 excavation and cleanup already at the sites. This wasn't
22 done pursuant to an approved remediation plan as required
23 by the rules, though; isn't that right?

24 A. I guess.

25 Q. There's no approved remediation plan in place?

1 A. Right.

2 Q. So you're moving forward, trying to do some
3 remediation, but there isn't a plan yet in place that's
4 been approved by the district office that you're working
5 according to?

6 A. Correct.

7 Q. Had you informed anyone at the district that
8 you were going ahead and trying to do some of the
9 remediation and that you had completed some of this?

10 A. It was in the Hicks report on September 10.

11 Q. Okay. Had you asked anyone at the district to
12 come back out and check your work to see if it complied
13 with what the Oil Conservation Division would be
14 requiring in spite of the fact that there was no plan in
15 effect yet?

16 A. No.

17 Q. Had you filed any subsequent reports of any
18 nature, any sundries or anything of that kind, for any of
19 the sites reflecting the work that's been done?

20 A. No, we haven't.

21 Q. Have you spoken to a representative -- Mr.
22 Bloodworth or anybody else from Doral in the last couple
23 of days?

24 A. Yes, I have.

25 Q. What is your understanding of their position

1 with regard to the 10 wells involved in this case that
2 they are, under your understanding, expected to be
3 operating for Blugrass?

4 A. I just told them we'd get it taken care of.

5 Q. Do you have any understanding that there's
6 going to be a formal agreement of any kind?

7 A. Not at this time. That's something we can
8 definitely do.

9 Q. Have you been asked to provide any
10 documentation supporting the change of title for mineral
11 rights from Robinhood to Marks & Garner to Blugrass?

12 A. Yes, I have.

13 Q. Have you been able to provide that to --

14 A. That was done by Holloman. They called me I
15 think Monday asking for that. Mrs. Holloman had been out. I
16 I got a message into him where he can -- but the paper
17 trail is there.

18 MS. ALTOMARE: I think that's all the
19 questions I have for this witness.

20 MR. EZEANYIM: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. PADILLA:

23 Q. Mr. Welborn, you understand you have to submit
24 the plan; right?

25 A. Yes.

1 Q. And any work you did out there is merely work
2 to -- not pursuant to a plan; right?

3 A. Correct. Yeah. It was work that -- I mean,
4 no matter what kind of plan we got, that part of it has
5 got to be done.

6 Q. You were just trying to mitigate any damage
7 out there or conditions?

8 A. Right.

9 Q. Is that fair to say?

10 A. Yes, that's fair to say.

11 MR. PADILLA: I have nothing further.

12 MR. EZEANYIM: Do you want this to be
13 admitted into evidence?

14 MS. ALTOMARE: Yes. At this time I'd move
15 for the admission of Exhibit 7, please to the Court of Record.

16 MR. EZEANYIM: Any objection?

17 MR. PADILLA: No, I don't have any. May I
18 ask a question on that?

19 MR. EZEANYIM: On this?

20 MR. PADILLA: On that.

21 MR. EZEANYIM: Okay.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. PADILLA:

24 Q. You were asked about the authority of
25 Robinhood, LLC, to conduct business in the State of New

1 Mexico by Ms. Altomare; right?

2 A. Correct.

3 Q. To your knowledge, are you up to date with
4 regard to any of the Corporation Commission filings?

5 A. Yes.

6 Q. Do you know whether an LLC itself is required
7 to file annual reports?

8 A. I do not know.

9 Q. And you delegate that to your lawyers in
10 Hobbs?

11 A. Correct.

12 Q. And they were also a registered agent in
13 Exhibit 7?

14 A. Yes.

15 Q. As far as operation of these wells is
16 concerned, they're still under Robinhood, LLC, or Marks &
17 Garner?

18 A. There's -- you know, recognized by the State
19 as Marks & Garner.

20 Q. And ownership of the leases is in another
21 entity, I take it?

22 A. Correct.

23 Q. That's Robinhood?

24 A. Right.

25 Q. So you have an operating company, which is

1 Marks & Garner, and you have another company that -- or
2 entity that owns the oil and gas leases and the well
3 equipment?

4 A. Yes.

5 MR. PADILLA: Okay. That's all I have.

6 MR. EZEANYIM: At this point, OCD Exhibit
7 7 will be admitted into the record.

8 (Exhibit 7 was admitted.)

9 MR. BROOKS: Okay. Mr. Padilla has
10 verified part of what I was concerned about, so that will
11 probably shorten my questions, but I want to be clear
12 about this.

13 EXAMINATION

14 BY MR. BROOKS:

15 Q. The wells that we are talking about in this case
16 case belong to Robinhood, LLC, or they have title to
17 these wells?

18 A. Yes.

19 Q. And Robinhood, LLC, is the owner of the wells?

20 A. Yes.

21 Q. And Robinhood, LLC, is not affiliated with
22 Marks & Garner, other than by its common shareholders; is
23 that correct?

24 A. As far as I know.

25 Q. The Robinhood, LLC, you said was owned by you

1 and your father?

2 A. Yes.

3 Q. That's directly or through some other entity?

4 A. No. It's directly.

5 Q. Who owns Marks & Garner Production Limited
6 Company?

7 A. We were trying to change Marks & Garner
8 Limited Company into Robinhood, LLC, but we never did get
9 the wells changed over through the State of New Mexico.

10 Q. Well, I need to be a little bit more precise
11 about this, because I'm trying to figure it out. You
12 conveyed title to the wells from Marks & Garner Limited
13 Company to Robinhood, LLC; is that correct?

14 A. It was more of a, I think, trying to change
15 the name type of thing.

16 Q. I'd like to know which. It's one or the
17 other. Either you conveyed the properties or you changed
18 the name.

19 A. I'm not real clear. I would have to get that
20 documentation from the lawyers.

21 Q. Okay. Well, I'm going to ask your attorney to
22 supplement the record, but I'll go through the rest to be
23 sure that I understand what I'm going to be asking for.

24 Does Marks & Garner Production, LLC -- not
25 Marks & Garner Production -- Ltd. Company, which is the

1 entity that's the operator of record of these wells, does
2 that entity still exist or has its name been changed to
3 something else?

4 A. I think it's a name change to Robinhood.

5 Q. I'm very concerned about whether that is true
6 or whether the wells have been conveyed from one company
7 to another, so I'm going to ask the attorney to
8 supplement the record with the appropriate documentation
9 on that, because I think we need to know it.

10 Who is Blugrass?

11 A. Blugrass is a company, I believe, out of
12 Canada that has bought the wells. And the way I
13 understand it, Doral Energy was going to operate it for
14 them.

15 Q. You say they bought the wells. Well, first of
16 all, do you know the correct legal name of that company?

17 A. As far as Blugrass, whatever was on the
18 contract.

19 Q. Okay. So you furnished that information to
20 Ms. Altomare?

21 A. Correct.

22 Q. Do you know in what jurisdiction that company
23 is organized?

24 A. No, sir.

25 Q. Do you know who owns it?

1 A. Yes. Ken Berscht or something like that.

2 Q. Is he any relation to you and your father?

3 A. No, he's not.

4 Q. You have a contract of sale from Robinhood,
5 LLC, to Blugrass, whatever their real name is.

6 A. Right.

7 Q. That contract has not been closed; is that
8 correct?

9 A. We've signed off on it and moved forward.

10 Q. Ms. Altomare was reading some provisions which
11 sounded to me like -- from a document that you furnished
12 to her -- which sounded a lot like the kind of provisions
13 you find in a contract of a sale of oil and gas
14 properties. Has that sale been closed?

15 A. Well, they have made a payment and it's on a
16 payment schedule.

17 Q. Well, what kind of documents have been
18 executed?

19 A. There was assignment of the wells and a bill
20 of sale.

21 Q. So those documents -- those properties have
22 actually been transferred to Blugrass?

23 A. Correct.

24 Q. You said it was on a payment schedule. Was
25 there a mortgage retained to secure that payment? How

1 was it secured?

2 A. Yes, sir.

3 Q. By who? By Robinhood?

4 A. Yes, I believe so.

5 MR. BROOKS: I would like to ask Mr.
6 Padilla to supplement the record furnishing us with
7 copies of the appropriate legal documents that would show
8 passage of title of this property.

9 MR. PADILLA: I'll get them to you.

10 MR. BROOKS: I appreciate it. Thank you.

11 Q. (By Mr. Brooks) Now, Marks & Garner
12 Production Limited Company had a blanket plugging bond,
13 blanket well plugging bond posted with the Oil
14 Conservation Division; correct?

15 A. Correct.

16 Q. That bond has been forfeited; correct?

17 A. Yes, sir.

18 Q. It has been collected by the Oil Conservation
19 Division because the company did not pay to plug some
20 wells that were plugged?

21 A. Correct.

22 Q. Nobody has tendered or filed a new bond to
23 cover these wells; is that correct?

24 A. Correct.

25 MR. BROOKS: Thank you. That's all I

1 have.

2 MR. EZEANYIM: You asked questions that I
3 wanted to ask but I'm still confused, so I'm going to
4 have to ask a different question.

5 EXAMINATION

6 BY MR. EZEANYIM:

7 Q. We mentioned here Marks & Garner, Robinhood,
8 Blugrass. Could you walk me through who owns Marks &
9 Garner?

10 A. Marks & Garner, we bought it, I believe, in --
11 I think, '05. We kept the name of Marks & Garner with
12 new ownership, moved forward, and we was changing the
13 name to Robinhood, LLC.

14 Q. Marks & Garner is being changed to Robinhood?

15 A. Yes.

16 Q. Since when?

17 A. I'm not real sure. Anyway, Blugrass is the
18 entity buying the wells that we are talking about here.

19 Q. Okay. It's coming together. So you're saying
20 that Blugrass out of Canada is coming to buy -- are they
21 operators in New Mexico?

22 A. I don't think they're going to operate it, but
23 I don't know for sure. The way I understand it, Doral
24 West will be an operator, and they are operators in New
25 Mexico to my knowledge.

1 Q. Who is Doral West again?

2 A. Doral -- the guys' names are Will Gray, Marty
3 Bloodworth, out of Midland. But I do know that they do
4 own some wells around Loco Hills.

5 Q. They are connected with Blugrass?

6 A. I don't know if those wells are through
7 Blugrass as such as these or not.

8 Q. Who did you sell your wells to?

9 A. To Blugrass.

10 Q. How many of them? Eleven of them? All of
11 them?

12 A. No. That whole -- 30-some wells that are in
13 the Cave Pool Unit there where these 11 wells exist, or
14 10 of them exist.

15 Q. Do you know whether they were actually transferred to
16 Blugrass?

17 A. Yes.

18 Q. Transferred by the OCD?

19 A. No. We have not done a change of operator.

20 Q. It's just sold?

21 A. Correct.

22 Q. Have you gotten your money yet?

23 A. Some of it.

24 Q. And then the rest will be paid to you when?

25 A. I get a monthly deal for a time period.

1 Q. It's your testimony that you are going to do
2 all the remediation work before the wells are
3 transferred? Is that what I heard you testify?

4 A. Yes, sir.

5 Q. Okay. And you said that you could do all this
6 job by December 31?

7 A. We would have the delineation part and have a
8 plan for the first seven, and probably 10, by -- I got
9 here, "Submit to NM OCD results of delineation for the 10
10 wells in Loco Hills, plus seven evaluation and remedial
11 and proposed remedies by the 31st."

12 Q. From July of this year to today, did you do
13 any work on any of those wells?

14 A. Yes, we have.

15 Q. Did you get approval from the district, . . .
16 getting approval of the work?

17 A. No.

18 Q. You cannot do work until it's approved by the
19 districts. Otherwise, when you submit a sundry it's not
20 going to be approved.

21 A. Yeah. But we did some work as far as we did
22 some surface work to these wells. We have not done
23 anything as far as -- you know, we fixed some of the
24 stuff, all the stuff that was leaking and removed a lot
25 of debris and stuff like that and did some surface work,

1 but we have not --

2 Q. Not the remediation. Okay.

3 A. Right.

4 Q. So when you are going to do remediation, you
5 are going to get approval?

6 A. Yeah. We need to find the remedy, yes, sir.

7 MR. EZEANYIM: Okay. That's all I have.
8 Any other questions?

9 MS. ALTOMARE: Yes, if I may, I actually
10 found the copies of the Purchase and Sale Agreement and
11 Assignment and Bill of Sale. If I can verify them with
12 the witness, I'd like to enter them into evidence.

13 MR. BROOKS: That would be good.

14 MS. ALTOMARE: If I may approach?

15 MR. EZEANYIM: You may.

MR. EZEANYIM

16 RE CROSS EXAMINATION

17 BY MS. ALTOMARE:

18 Q. Mr. Welborn, do you recognize these two
19 documents that I've now marked as OCD Exhibits 8 and 9?

20 A. Yes.

21 Q. Can you identify Exhibit 8 for the record,
22 please?

23 A. Yes. This one is --

24 Q. It should say at the bottom. I've just
25 handwritten it in.

1 A. Yes. This is the Purchase and Sale Agreement.

2 Q. And do you recognize that as the Purchase and
3 Sale Agreement that you executed on behalf of Robinhood,
4 LLC, conveying wells to Blugrass?

5 A. Correct.

6 Q. And can you identify Exhibit 9 for the record,
7 please?

8 A. Assignment and Bill of Sale.

9 Q. Again, that is between Robinhood, LLC, and
10 Blugrass --

11 A. Correct.

12 Q. -- for the same wells?

13 A. Correct.

14 MS. ALTOMARE: Given that Mr. Welborn has
15 identified these documents, I would move for the admission of these two documents
16 admission of these two documents into the record.

17 MR. EZEANYIM: What are the numbers?

18 MS. ALTOMARE: OCD Exhibits 8 and 9.

19 MR. EZEANYIM: Any objection?

20 MR. PADILLA: No objection.

21 MR. EZEANYIM: Exhibits 8 and 9 will be
22 admitted.

23 (Exhibits 8 and 9 were admitted.)

24

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FURTHER EXAMINATION

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BY MR. BROOKS:

Q. I noticed, and probably Ms. Altomare pointed this out, but I failed to observe it until now. But this Robinhood, LLC, the document, OCD Exhibit Number 7, which is a printout from the Public Regulation Commission identifies that as having been organized November 18th, 1994.

A. No. That was when Marks & Garner was -- the first Marks & Garner done that.

Q. So that dates back to the original organization of the Marks & Garner Production Limited Company?

A. Yes, sir.

MR. BROOKS: Okay. Thank you.

MR. BROOKS:

Can you get us a copy of the certificate of change of name?

MR. PADILLA: I will.

MR. BROOKS: Thank you.

MR. EZEANYIM: One more comment.

FURTHER EXAMINATION

BY MR. EZEANYIM:

Q. Robinhood -- you just wanted to change it from Marks & Garner to Robinhood?

A. Yes.

1 Q. Is there any reason why you want to do that?

2 A. Yeah. One reason, just to get away from -- we
3 should have done it when we first bought the company.

4 Q. Is Robinhood now authorized to operate in New
5 Mexico?

6 A. We have not done a change of operator or
7 nothing like that, no, sir.

8 Q. So everything is still under Marks & Garner?

9 A. Yes, sir.

10 Q. But this is the proposed name that they are
11 going to change Marks & Garner into? They are going to
12 change Marks & Garner into Robinhood?

13 A. Yes.

14 Q. I'm trying to understand.

15 A. Yes, sir. That's correct. A. Yes, sir. That's correct.

16 MR. EZEANYIM: Okay. No further
17 questions. Anything further? Any closing comments?

18 MS. ALTOMARE: I'd like to do a brief
19 closing just to clarify what it is that the Oil
20 Conservation Division is requesting.

21 MR. EZEANYIM: Okay. Go ahead.

22 MS. ALTOMARE: Given the confusion over
23 the transfer of these wells, the information that's come
24 to light, at least to us regarding the failure to
25 disclose some of the ongoing issues pending

1 administrative actions against Marks & Garner, we would
2 ask that an expedited order be issued in this matter
3 requiring that Marks & Garner complete these
4 environmental remediations at all 11 sites by a date
5 certain and that any transfer of the wells to a new
6 operator not be effectuated until the environmental
7 compliance has been completed.

8 This has been an ongoing issue. They've had
9 five months to begin just even the preliminary
10 delineation, and they haven't even gotten much done. The
11 district office has been more than patient in giving them
12 deadline extension after deadline extension. They were
13 aware that they could ask for extensions and they didn't
14 take advantage and make good-faith efforts to move things
15 forward.

16 At this point in time, we would ask for a
17 pretty quick turnaround and a date certain requiring that
18 they comply with any and all requirements set by the
19 district office to bring these wells into full
20 compliance, to delineate the contamination and to
21 remediate it quickly, and if they don't meet those
22 deadlines, that they do be required to plug and abandon
23 all of their wells or transfer them, but do so with the
24 full knowledge of any operator that they are transferring
25 to. I think that sums up what we're asking for at this

1 point. Thank you.

2 MR. EZEANYIM: Okay.

3 MR. EZEANYIM: Do you have anything?

4 MR. PADILLA: We would like a date
5 certain, also. I think the date certain that Mr. Welborn
6 has specified and that he has requested is reasonable.
7 It's not out of line with what Mr. Bratcher said this
8 morning. The testimony has been that they need to get
9 this thing completed contractually with Blugrass or
10 whoever the buyer is.

11 And in terms of prohibiting a transfer, I
12 don't think the OCD has that power. They may require
13 that remediation be made by Robinhood or Marks & Garner
14 as the respondent here, but I think that requirement is
15 still there because the wells are still out there. But to
16 to prohibit a transfer, I think that may have already
17 happened. And the only way that I know of is -- to
18 enjoin is by injunction. To prohibit a transfer of
19 properties, I don't know that, under the OCD rules that
20 there's any rule that says you can't transfer a property.
21 But that's already happened.

22 But the most important thing here is that
23 Marks & Garner is willing to do that. They have to do
24 that in order for them to get all of their money, the
25 contract price. We don't have an argument with that.

1 And I want to point out that we're talking about a plan
2 here, and they want to get this remediation done so that
3 we can put an end to this hearing process.

4 I think this hearing process could have been
5 worked out with the district office very easily in terms
6 of -- rather than have this Exhibit 3 dated September 17,
7 2009, where you don't even respond to the plan, other
8 than through Mr. Bratcher's testimony this morning, but
9 an operator has got to know that the plan is inadequate.
10 You just don't file a notice of hearing and don't even
11 say that it's inadequate.

12 In terms of transfer, the application itself
13 says either transfer the wells or we're going to plug
14 them at some point or they'll be deemed abandoned. So
15 even on a transfer, I don't understand what the issue is
16 here about prohibiting the transfer and that kind of
17 thing. Just give us an order saying -- giving us
18 reasonable deadlines to submit a workable plan and
19 remediation after that.

20 MS. ALTOMARE: Just for clarification, we
21 weren't talking about transfer of mineral rights or
22 transfer of property. We were talking about operator
23 transfer. And the OCD does have the authority to
24 prohibit designation of operator of record and transfer
25 thereof, and that's what we were referencing.

1 MR. EZEANYIM: Anything further? At this
2 point, I would like everybody to vacate the room. I need
3 to consult with my attorney here because of what you just
4 said now.

5 (A recess was taken.)

6 MR. BROOKS: Mr. Padilla, we're going to
7 want to recall your witness for a couple of questions.

8 MR. EZEANYIM: We'll go back on the record
9 and recall Mr. Welborn.

10 FURTHER EXAMINATION

11 BY MR. BROOKS:

12 Q. Mr. Welborn, just very briefly, because the
13 Examiner and I weren't totally clear on what you had
14 said, what do you expect to have done by December 31st?

15 A. By December 31st we would have the results of
16 the delineation for the wells in Loco Hills.

17 Q. Is that seven wells?

18 A. Seven plus three wells, all the wells,
19 excluding the Mosley Springs.

20 Q. So you would have delineation done for 10
21 wells?

22 A. Correct.

23 Q. Go ahead.

24 A. And evaluation of remedial options and
25 proposed remedy.

1 Q. That's what I thought you said. I thought you
2 said only seven wells. But anyway --

3 A. No, no. Seven.

4 Q. You said seven? I thought you said seven on
5 the stand, and you just now told me 10.

6 A. It's written down here wrong. We'll
7 definitely have the results for the seven -- I've got it
8 right here. We'd have -- for the seven wells we'd have
9 the evaluation and remedial options proposed for the
10 remedy.

11 Q. For seven out of the 11 wells --

12 A. Yes, sir.

13 Q. -- by December 31?

14 A. Yes, sir.

15 Q. How long would it take you to get all the
16 evaluation done and complete the work?

17 A. For all 11 wells?

18 Q. Yeah.

19 A. Okay.

20 Q. Wait a minute. I suppose I better break this
21 down. How long would it take you to get the evaluation
22 done for the other four wells?

23 A. For the other four wells, by January 15th, we
24 would have investigated the Dark Canyon Well, Mosley
25 Springs. By January 22nd, submit remediation plan for

1 the other three wells in Loco Hills.

2 Q. Is that by January the --

3 A. Around January 22nd.

4 Q. Okay. How long would it take you to get the
5 work done? Do you have an idea of how long it's going to
6 take to get the work completed?

7 A. Just from what we got here, meet in Artesia to
8 finalize all the well remedies and present results of
9 investigation of the Dark Canyon well by the end of
10 January. And then by February 15th, submit remediation
11 plan for the Mosley Springs.

12 Q. Okay. So you don't have any idea how long
13 it's going to take to get the remediation done after
14 you've done investigations?

15 A. Not until we find out exactly what it entails.

16 MR. BROOKS: Thank you. That's all we
17 have.

18 MR. EZEANYIM: Thank you very much. Any
19 other comments or questions? Okay. At this point, Case
20 Number 14393 will be taken under advisement.

21 * * *

22 I do hereby certify that the foregoing is
23 a complete record of the proceedings in
24 the Examiner hearing of Case No. 14393
25 heard by me on 1/22/84
Oil Conservation Division Examiner

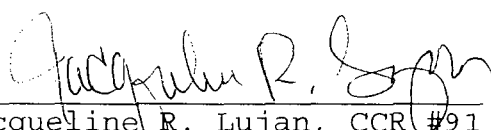
REPORTER'S CERTIFICATE

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I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on November 12, 2009, proceedings in
the above captioned case were taken before me and that I
did report in stenographic shorthand the proceedings set
forth herein, and the foregoing pages are a true and
correct transcription to the best of my ability.

I FURTHER CERTIFY that I am neither employed by
nor related to nor contracted with any of the parties or
attorneys in this case and that I have no interest
whatsoever in the final disposition of this case in any
court.

WITNESS MY HAND this 24th day of November, 2009.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2009