

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:

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

CASE NO. 14393

ORIGINAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXAMINER HEARING

BEFORE: WILLIAM V. JONES, Technical Examiner
MARK E. FESMIRE, Legal Examiner

July 22, 2010

Santa Fe, New Mexico

This matter came on for hearing before the
New Mexico Oil Conservation Division, WILLIAM V. JONES,
Technical Examiner, and MARK E. FESMIRE, Legal Examiner,
on Thursday, July 22, 2010, at the New Mexico Energy,
Minerals and Natural Resources Department, 1220 South St.
Francis Drive, Room 102, Santa Fe, New Mexico.

REPORTED BY: Jacqueline R. Lujan, CCR #91
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1 EXAMINER JONES: We'll call Case Number
2 14393, reopened, application of New Mexico Oil
3 Conservation Division for a compliance order against
4 Marks & Garner Production Limited Company, Eddy County,
5 New Mexico. Call for appearances.

6 MS. ALTOMARE: Mikal Altomare on behalf of
7 the Oil Conservation Division. I have one witness here
8 with me today, and one witness who will be appearing
9 telephonically, and I'm going to call him.

10 MR. PADILLA: Earnest L. Padilla for Marks
11 & Garner. I have one witness.

12 (Mr. Michael Bratcher appeared telephonically.)

13 MS. ALTOMARE: Hi, Mike. We're just going
14 to keep you on the line for the hearing until it's your
15 time to be called as a witness. So just let us know if
16 you're not able to hear what's going on. I guess we're
17 going to hold off and keep you as a tentative witness,
18 and if we call you to be a witness, then we'll address
19 you at that point.

20 MR. BRATCHER: Okay.

21 EXAMINER JONES: Okay. Will all the
22 witnesses please stand and be sworn?

23 Please state your names.

24 MR. WELBORN: Quinton Welborn.

25 MR. SANCHEZ: Daniel Sanchez.

1 MS. ALTOMARE: Mike, can you state your
2 full name for the record, please?

3 MR. BRATCHER: Mike Bratcher.

4 (Three witnesses were sworn.)

5 MS. ALTOMARE: Given that this is a status
6 hearing ordered by the Examiners -- or by the order for
7 the Respondent to come forward and, basically, establish
8 that he has complied with the order, it is our position
9 that it is the burden of the Respondent, and that they
10 should proceed first to present their evidence as to what
11 degree they have complied with the requirements of the
12 order, and that, therefore, they should proceed first.
13 But we would ask that we be permitted to present an
14 opening prior to the presentation of our evidence.

15 EXAMINER JONES: Mr. Padilla?

16 MR. PADILLA: I don't have any problem
17 going first.

18 EXAMINER JONES: Okay. In that case, I
19 guess Marks & Garner will go first.

20 MR. PADILLA: I'll just go ahead and call
21 Mr. Welborn. I don't have an opening statement. I think
22 the call of the case is pretty straightforward. And
23 we're just here to tell the Division where we are and
24 where we're going in terms of compliance with the order.

25 MR. JONES: Ms. Altomare, do you want to

1 make an opening?

2 EXAMINER FESMIRE: She wants to reserve
3 it.

4 EXAMINER JONES: Okay.

5 QUINTON WELBORN

6 Having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. PADILLA:

9 Q. Mr. Welborn, would you please state your full
10 name?

11 A. Quinton Welborn.

12 Q. Mr. Welborn, what is your relation with Marks
13 & Garner?

14 A. Part owner and manager.

15 Q. And in terms of being a manager, what do you
16 do?

17 A. I oversee everything, day-to-day operation.

18 Q. And you've been previously -- you've been the
19 person to testify in the prior hearings with regard to
20 the operations and the compliance issues that have been
21 raised by the Oil Conservation Division and the
22 Commission; is that right?

23 A. That's correct.

24 Q. Mr. Welborn, would you briefly tell us what
25 the status of the compliance is with regard to the

1 compliance issues that have been raised and which were
2 mandated by the Division's order?

3 A. Yeah. We have done the delineation on all the
4 wells, formulated a work plan. The work plan was sent to
5 Mike Bratcher, which he, then, approved the work plan.
6 We then proceeded to work on the work plan.

7 We have done the Cave State Number 4 according
8 to the work plan. We do have two crews working right now
9 at Loco Hills on Levers 3Y and Red Twelve State Number 1,
10 I believe. Anyway -- and we're working on that according
11 to the work plan.

12 Q. Now, let me have you go back. If I may
13 approach?

14 Let's go back, and tell us when you started
15 your efforts to comply with the Division's order.

16 A. When we started at the first of the year,
17 doing -- I believe it was done in February, when we done
18 all the drilling to do our delineation on each site,
19 and --

20 Q. What did you have to do?

21 A. We had to go to each site with, like, a -- to
22 me it's like a water well driller. And we went to
23 different depths on each range to find out the extent of
24 the contamination at different points on each well.

25 Then once we completed that -- and this work was

1 done by Ocotillo Environmental, Cindy Crain. She then
2 formulated a work plan based on her analysis of each
3 well, and then we waited for the --

4 Q. Let me have you identify the exhibits that
5 I've just handed to you. There are a number of Exhibits
6 in here. Are those what you submitted to Mr. Bratcher?

7 A. Yes. This is from Ocotillo.

8 Q. For each of the wells?

9 A. Yes, for each one.

10 Q. And how many wells are we talking about?

11 A. I believe, total, there was 11.

12 Q. And there's a letter here for every one of
13 these wells?

14 A. Correct.

15 Q. Starting out with Exhibit Number 1, that's a
16 March 29, 2010, letter. Is that from Ocotillo or
17 Ms. Crain?

18 A. Yes.

19 Q. Is this a true and correct copy of what was
20 actually submitted to Mr. Bratcher?

21 A. Yes.

22 Q. And were any revisions made by Mr. Bratcher in
23 terms of what you submitted?

24 A. Yes, there was.

25 Q. And when, more or less, did you get approval

1 from Mr. Bratcher to proceed?

2 A. I could be mistaken, but I believe it was in
3 the first part of May.

4 Q. And you previously testified you started out
5 with the Cave Dual Number 4 well?

6 A. Cave State Number 4.

7 Q. Cave State Number 4?

8 A. Yes.

9 Q. And has that been completed?

10 A. Yes.

11 Q. And where is the Cave State Number 4 in these
12 exhibits?

13 A. Next to --

14 EXAMINER FESMIRE: It's the ninth one
15 back.

16 A. Ninth one back.

17 Q. And has Mr. Bratcher approved the work on that
18 well?

19 A. As far as I know. I know that he'd been
20 staying in contact with Cindy Crain on that.

21 Q. Let me have you tell the Examiner how it is
22 that you delegate this work to Ms. Crain. And she works,
23 I take it, with Mr. Bratcher? Is that --

24 A. That's correct.

25 Q. And Mr. Bratcher would know whether or not

1 he's finalized or approved that the work has been done;
2 right?

3 A. Yes.

4 Q. But as far as you know, on the Cave State
5 Number 4, it's been completed and approved?

6 A. Correct.

7 Q. Where are you now?

8 A. We are on the Levers Number 3Y.

9 Q. Which exhibit is that?

10 A. That would be --

11 Q. Is that Exhibit Number 2?

12 A. Correct.

13 Q. Okay. Where are you with that well now?

14 A. We just have -- work has just started this
15 week.

16 Q. How much time has elapsed since you completed
17 the Cave State Number 4 and commenced the Levers 3Y?

18 A. I believe it's been about three or four weeks.

19 Q. Has there been any reason why you haven't been
20 continuous in your pursuit of the work?

21 A. Yes. We had a contract dispute with the wells
22 that we were selling between Blugrass and Dorelle Energy.
23 They were going to escrow some money for the work to be
24 done. It took us a while to get some money in. Now that
25 they have gotten it in so we could get this paid for --

1 we have got some funds in, and now they are proceeding on
2 the rest of the well.

3 Q. What is your anticipated -- well, which is the
4 other well that you're working on?

5 A. I believe it was one of the Red Twelves. I
6 think it was the Red Twelve State Number 3, which would
7 have been Exhibit 7.

8 Q. Would that be the Red Twelve State Number 2,
9 instead?

10 A. Oh, yes. I think you're right.

11 EXAMINER JONES: Are you guys going to go
12 through all the exhibits, 1 through a certain number? I
13 mean, are you going to present them all in order, or --

14 MR. PADILLA: Not necessarily.

15 EXAMINER JONES: Are you going to
16 eventually admit -- how many exhibits do you plan --

17 MR. PADILLA: Eleven.

18 EXAMINER JONES: Okay.

19 A. That would be Exhibit 11.

20 Q. (By Mr. Padilla) Okay. And what is the state
21 of work on those wells in terms of remediation?

22 A. Well, according to the work plan, we will --
23 the way I understand it is, we'll go in there with the
24 crews and a backhoe, excavate to a certain point that we
25 need to -- a certain point of chlorides -- and then we

1 will remediate according to the work plan, such as -- I
2 know that -- I believe we're putting in liners at a
3 certain depth. And when we get soils to a certain --
4 we're just, basically, excavating to a certain chloride
5 level and putting in liners and backfilling and
6 completing the work.

7 Q. Now, how much time is required to remediate
8 each of the wells, generally?

9 A. Generally, I would say -- as a general,
10 probably two weeks.

11 Q. For each well?

12 A. Yeah. Some could be more, some could be less.

13 Q. You had two crews going on at the same time?

14 A. Yeah. That was based on one crew. But, yes,
15 we have two crews.

16 Q. If you have 10 wells left, because you have
17 finished the first two wells -- or the second and third
18 well, I should say -- how much longer do you anticipate
19 you will need in order to finish this work?

20 A. Approximately four months.

21 Q. Based on what? How did you arrive at four
22 months?

23 A. Just, you know, figuring what it took to do
24 the Cave State Number 4, anticipating problems. Some of
25 them could go -- you know, some might take a lot longer,

1 some of them might take shorter.

2 Q. When you're saying shorter, is that a week or
3 two weeks?

4 A. Yeah, a week. I think it would be a week, at
5 least.

6 Q. If you anticipate problems, how much longer do
7 you go?

8 A. I would think it would be no more than a
9 three-week period.

10 Q. So would you say you would want to give
11 yourself two weeks per well? Is that basically it?

12 A. Yes.

13 Q. Are you adequately financed at this point to
14 continue the remediation process?

15 A. Yes. Dorelle is funding the rest of the
16 remediation.

17 Q. Has Dorelle communicated something to your
18 environmental contractor, that you know of --

19 A. Yes.

20 Q. -- that assures that?

21 A. Yes. Mr. Will Gray has spoke to Cindy Crain
22 and Steven Callway. Cindy is the one that does the field
23 work. Steven Callway is with Ocotillo Environmental.

24 Q. And that comes out of the contract that you
25 have for the sale of the properties; is that right?

1 A. Correct. Yes.

2 Q. Now, are Exhibits 1 through 9 something that
3 you had Ms. Crain prepare and submit to the OCD and it's
4 a matter of record with the OCD?

5 A. That's correct.

6 Q. To your knowledge, all of these plans have
7 been approved?

8 A. Yes. We have an approved work plan.

9 Q. What happens if there's some change that's
10 required that's different from here, based on some of the
11 digging that you're doing?

12 A. Well, you know, like some of the problems --
13 you know, we might have to go to different depths or do
14 more excavation.

15 Q. Is that an anticipated type of occurrence that
16 may happen?

17 A. Yes.

18 Q. And are the plans flexible enough to require
19 change orders?

20 A. As far as I know, yes.

21 MR. PADILLA: We offer Exhibits 1 through
22 11, and we pass the witness.

23 MS. ALTOMARE: There's actually 12
24 exhibits. I think 3 and 4 are identical, so I'm not sure
25 whether you want to admit 3 or 4. I think there's a

1 duplicate. It's actually Red Twelve State Number 1, the
2 submission on March 30th.

3 MR. PADILLA: That's right.

4 EXAMINER FESMIRE: Isn't the Red Twelve a
5 federal well?

6 MS. ALTOMARE: There's a couple of
7 different Red Twelves. There's a Red Twelve Federal and
8 a Red Twelve State.

9 MR. FESMIRE: There's a Red Twelve 1, 2, 3
10 and 4. 2, 3, and 4 are state wells.

11 MS. ALTOMARE: Right. But there's only 11
12 wells, and there's 12 exhibits. That's what flagged me
13 that there might be an extra exhibit. So I flipped
14 through and I found which one was a duplicate, and 3 and
15 4 appear to be identical.

16 MR. PADILLA: We can delete 3 or 4. We
17 move to delete Exhibit 3.

18 EXAMINER FESMIRE: That doesn't answer my
19 question. They're both labeled the Red Twelve State
20 Number 1, and in the other list, it's the Red Twelve
21 Federal Number 1.

22 MS. ALTOMARE: Right. There's another one
23 that reflects Red Twelve Federal. Exhibit Number 1 is
24 Red Twelve Federal Number 1. Exhibit Number 3 and 4 both
25 say Red Twelve State Number 1. Then there's a Red State

1 Number 1, which is Exhibit 5.

2 EXAMINER FESMIRE: What I'm saying is, in
3 the well list here in their prehearing statement, there's
4 a Red Twelve Federal Well Number 1, and there's a Red
5 Twelve State Number 2, State Number 3 and State Number 4.

6 Okay. Down here at Number 10 is the Red
7 Twelve State Number 1. Okay.

8 MS. ALTOMARE: Yeah. I didn't think we
9 needed two copies.

10 Just so the record is clear, these submissions
11 were made March 29th through April 7th. They weren't all
12 on the same date. But I wouldn't oppose the admission of
13 these exhibits.

14 EXAMINER FESMIRE: Less Exhibit 4?

15 MR. PADILLA: Three.

16 EXAMINER JONES: Exhibits 1 and 2, and
17 Exhibits 4 through 12 will be admitted.

18 (Exhibits 1, 2, and 4 through 12 were admitted.)

19 CROSS-EXAMINATION

20 BY MS. ALTOMARE:

21 Q. Mr. Welborn, you testified at the last
22 hearing?

23 A. Um-hum.

24 Q. You understand an order was issued after that
25 hearing requiring you to do certain things to remediate

1 these particular sites?

2 A. Yes.

3 Q. Initially those deadlines that were scheduled
4 by that order required you to conduct remediation on some
5 of the wells by January 4th and other wells -- actually,
6 to submit the remediation proposals for some of the wells
7 by January 4th, and for other wells by February 1st; is
8 that right?

9 A. It sounds correct.

10 Q. And then what happened was you actually
11 switched contractors; is that right?

12 A. That's correct. We asked for an extension.

13 Q. And then you came and talked to us, and
14 because you were switching contractors, we worked with
15 you and agreed to a new deadline for submission of all of
16 those proposals, and that new deadline was April 15th?

17 A. Yes. That's correct.

18 Q. And that's why we have a stack of papers here
19 all at the end of March, beginning of April, for each of
20 the 11 wells --

21 A. Right.

22 Q. -- that are basically the proposals made by
23 Ocotillo, which is your new contractor?

24 A. Right.

25 Q. Do you also recall that that order required

1 that once the OCD had an opportunity to review each of
2 those 11 submissions and issued either an approval or an
3 approval with additional conditions, once you received
4 that, you had 60 days from the date of receipt to
5 complete all of the work on those 11 wells?

6 A. Correct.

7 Q. According to our records, you were emailed a
8 copy of the approval with conditions on May 12th. Did
9 you receive that email?

10 A. Yes.

11 Q. According to my calculations, then, the
12 deadline for your completion of the work on all 11 sites
13 would have been July 12th?

14 A. Correct.

15 Q. How many wells did Marks & Garner complete the
16 remediation work on before July 12th?

17 A. We have completed one. And I believe on the
18 Mosley Springs well, that there was no further action
19 required, so there should be nine more to do.

20 Q. Okay. With regard to the Cave State Number 4,
21 was a final report and subsequent final C-141 ever
22 submitted on that well as required by the approval with
23 conditions that was sent to you by Mike Bratcher?

24 A. As far as I know, Cindy had sent in the stuff
25 that we had done on it. I'm not sure about the 141.

1 Q. Would it surprise you to know that that
2 closure report -- the final report that was required
3 documenting that that work had been done, was never filed
4 on that well?

5 A. I just know that the actual work was done.
6 That's what I was informed, so --

7 Q. Do you recall reading the May 12th approval
8 with conditions that specified that a closure report and
9 final summary documenting what work was done and what
10 kind of liners were installed, had to be submitted to the
11 OCD upon completion of the physical remediation work?

12 A. Yes.

13 Q. If that report hasn't been filed with the OCD,
14 is the work actually done, and is the Cave State Number 4
15 actually completed?

16 A. As far as -- if you all haven't received the
17 closure report, then I guess not. As far as the actual
18 excavation part, everything is.

19 Q. So, in fact, Cave State Number 4 is not done
20 yet?

21 A. Apparently not.

22 Q. The order that was issued by the Division also
23 required that you repair or replace defective well signs
24 on these 11 sites if any of them had problems. Have you
25 done that at this point?

1 A. I am trying to think on that. There might be
2 one or two well signs that need to be replaced.

3 Q. Have you brought any evidence to show the
4 Examiners today the sites that you have done that for?

5 A. No, I have not. I'm sure there still needs to
6 be some well signs.

7 Q. Is there a reason that you haven't completed
8 that?

9 A. Our main focus has been the remediation part
10 of it.

11 Q. You understand that you were under an order to
12 complete that, and that deadline was actually the end of
13 December 2009?

14 A. Yes, I understand.

15 Q. You've stated that you've started work on two
16 new sites this week. In fact, that started July 20th,
17 which would be six days -- or eight days after the
18 deadline for completion of the work on all the sites?

19 A. Correct.

20 Q. Is there a reason that Ms. Crain is not here
21 to testify today?

22 A. Yes, a prior engagement. She couldn't make
23 it.

24 Q. When did you contact her to try and arrange to
25 have her appear today?

1 A. Last week.

2 Q. How long have you known about this hearing and
3 the need for her to testify?

4 A. I wasn't sure of the dates. It would have
5 been two weeks ago.

6 Q. In fact, it's been scheduled for a couple of
7 months?

8 A. (Witness nods head.)

9 Q. Correct?

10 A. I guess so.

11 Q. You testified that you need four months to
12 complete the remaining remediation and that you're
13 adequately financed to do so at this point. Didn't you
14 provide testimony at the last hearing pretty much to that
15 same effect?

16 A. Yeah. We did have a contract dispute, but
17 it's -- we do have the funds in place now.

18 Q. But at the last hearing you stated the same
19 thing, and you ran out of funds and weren't able to
20 complete the remediation?

21 A. Correct.

22 Q. And the last hearing was in November of 2009?

23 A. Yes.

24 Q. Between November of 2009 and now, you have
25 completed the physical work on one site but have not done

1 the filing for the closure report?

2 A. Correct.

3 Q. On one of the 11 sites?

4 A. Yes. But as far as the funding goes, we have
5 done the delineation on all 11 sites, which is a pretty
6 expensive process.

7 Q. Okay. I'm going to go ahead -- because he's
8 probably the best witness present to do this with -- I'm
9 going to show you what's marked OCD Exhibit A. Do you
10 recognize this document?

11 A. Yes.

12 Q. Is this the May 12th, 2010, approval with
13 conditions that was issued by our office by Mike Bratcher
14 out of the Artesia District Office?

15 A. Correct.

16 Q. And is this the document that you received by
17 email on May 12th and then again, I believe, on May 20th
18 by certified mail?

19 A. Yes. Correct.

20 Q. And is this the approval with conditions off
21 of which Ms. Crain has been working to complete the
22 remediation at the 11 sites?

23 A. Correct.

24 MS. ALTOMARE: I'm going to move OCD
25 Exhibit A into evidence and pass the witness.

1 MR. PADILLA: No objection.

2 EXAMINER JONES: Exhibit A?

3 MS. ALTOMARE: Yes.

4 EXAMINER JONES: Division's Exhibit A will
5 be admitted.

6 (Exhibit A was admitted.)

7 EXAMINATION

8 BY EXAMINER JONES:

9 Q. The delineation process, can you explain to me
10 what you did on that?

11 A. To find the extent of what we needed to have
12 remediated, we have gone to -- we had to go to each 11
13 wells with a drill, a little drilling rig. And most of
14 them we had to dig to about 100 feet to get to the
15 extent -- you know, taking soil samples -- dig to 100
16 feet in several different spots on each well, and then
17 collect our samples and data from that.

18 Q. Did Ocotillo Environmental supervise that?

19 A. Yes, they did.

20 Q. So they subcontracted a drilling --

21 A. Correct.

22 Q. -- water well drilling company -- monitoring
23 well drilling company?

24 A. Yes.

25 Q. So then they went out and took the samples?

1 A. Correct.

2 Q. And they analyzed the samples?

3 A. (Witness nods head.)

4 Q. Then they got -- did they work with Mike
5 Bratcher to agree on an area around each well that was a
6 problem?

7 A. I believe so. I know that -- I know she tried
8 to get -- she went pretty wide on each one of the wells
9 to get it to -- to make sure we had everything covered.

10 Q. Okay. And then you have to excavate the
11 contaminated --

12 A. Right. After we done the delineation, that's
13 when we formulated the work plan.

14 Q. Okay.

15 A. Then when we got this back from Mike is when
16 we started the process of the excavation to the
17 requirements of the work plan -- of the approval.

18 Q. The two weeks per well, is that just for
19 the --

20 A. For the excavation and liners and stuff.

21 Q. Is that an estimate?

22 A. Yes.

23 Q. How much leeway plus or minus on that?

24 A. Given what we've done in the past, just with
25 what we did on the Cave State, just kind of -- if we

1 had -- you know, some of them might go quicker. Some of
2 them might -- if we had problems -- it took to do all the
3 excavation about a week. I could be off a day or two. I
4 know some of them will be worse so, you know, I am
5 thinking maybe two or three weeks.

6 Q. So --

7 A. Like I said, it just depends on what we get
8 there and find out with the soil samples on the depth.

9 Q. What other thing could delay you? Anything
10 you can think of?

11 A. Other than just normal, you know -- I mean,
12 surely something could stop us a day or two from weather
13 and stuff like that. I know it's pretty wet out there.
14 But if we get another big rain, that might delay us a day
15 or two moving equipment in and out. As far as any major
16 things coming up, other than just the amount of work that
17 needs to be done, I wouldn't really foresee anything.

18 Q. The contractors are lined up?

19 A. Yes. They're working right now. It's with
20 Ocotillo, the same contractor.

21 Q. They subcontract everything?

22 A. I believe that's their own equipment on the
23 dirt and the dump trucks.

24 Q. Cindy Crain is working with Mike Bratcher, or
25 are you working with him?

1 A. Yes. I've been, basically, letting Cindy do
2 most of the communication with Mike.

3 Q. So she's working on a schedule with Mike, but
4 this schedule was already set as of May 12th?

5 A. Right.

6 Q. At that time, did you know it was going to
7 take two weeks per every well?

8 A. I was just guessing from what we did on that
9 one.

10 Q. Okay. So you had done one before you worked
11 this out?

12 A. No, no, no.

13 Q. Okay.

14 A. We did not do nothing without the approval
15 from Mr. Bratcher.

16 Q. This contract dispute, that was, you said,
17 Blugrass and Dorelle Energy?

18 A. Yes. They have purchased these assets, but we
19 had a contract dispute with this remediation getting
20 done. And they were supposed to escrow some money for us
21 to do this, and that didn't happen for a long time. We
22 finally got some money. As far as I know, Dorelle -- the
23 first contract, Dorelle was going to be the operator.
24 Blugrass was going to own it. But I think now Dorelle is
25 buying out Blugrass, and Dorelle has been funding this.

1 Q. Dorelle has actually already funded this to
2 you guys, to Ocotillo; is that correct?

3 A. Well, the money I had from them, they gave me.
4 But now they're paying them directly.

5 Q. So everything is set that this will go, then?

6 A. Correct.

7 Q. It's just a question of whether you met the
8 deadline or whether it was done already?

9 A. Right.

10 Q. In your opinion, was the requirements in that
11 Order R-13197 met?

12 A. Oh, no. The work was not completed. No, sir.

13 Q. So you're not disputing that it wasn't met at
14 least by the deadlines set?

15 A. Correct. Yeah. We're still working.

16 EXAMINER JONES: Okay. I don't have any
17 more questions.

18 MR. PADILLA: I don't have any further
19 questions.

20 MS. ALTOMARE: Just one point of
21 clarification, because I'm not sure -- we alternated
22 Examiners. I'm not sure which Examiners were aware of
23 the Dorelle and Blugrass thing.

24

25

1 RE CROSS-EXAMINATION

2 BY MS. ALTOMARE:

3 Q. You're remediating these with the funds from
4 Dorelle with the intent that Dorelle is going to take
5 over operatorship once the remediation is complete?

6 A. Correct.

7 MS. ALTOMARE: Just so that's clear. But
8 the transfer isn't going to go through until --
9 obviously, they don't want to take it on until the
10 environmental issues have been resolved. I just wanted
11 to clarify that. I wasn't sure who was up there last
12 time and -- who's on first, type of thing.

13 MR. PADILLA: That's correct.

14 EXAMINER JONES: Thank you, Mr. Welborn.

15 MS. ALTOMARE: I'd like to do a little bit
16 of a summary opening to kind of pull together where we've
17 come from and how we ended up here before I bring Mr.
18 Sanchez up.

19 EXAMINER JONES: Mr. Padilla, are you done
20 with your case?

21 MR. PADILLA: I'm done.

22 MS. ALTOMARE: The OCD originally brought
23 this case because we were -- the Santa Fe Office was
24 advised that some inspections had been conducted on these
25 11 sites in April of 2009, revealing that there had been

1 a number of releases that occurred sometime prior that
2 had never been reported contrary to OCD rules.

3 All of these were promptly issued, and Marks &
4 Garner was given a time period to report them on C-141s.
5 Almost immediately they were only partially compliant.
6 They only submitted C-141s for 7 of the 11 sites, which
7 triggered, then, the remediation plan or demand for
8 corrective action plans on those seven sites.

9 We went back and forth, then, with submissions
10 from, at that point, his consultant, which was the Hicks
11 Group, on the seven sites. At no time were the other
12 four sites reported on the C-141s or were remediation
13 plans, corrective action plans, addressed.

14 The submissions from Hicks were never up to
15 par in meeting our guidelines, so eventually we did file
16 this application. And, finally, all 11 sites were
17 addressed through this hearing process. And, also, the
18 well sign issue came to light at that point in time.

19 That application was filed on September 17th,
20 2009. At that time we asked that if Marks & Garner --
21 that an order be entered requiring them to perform the
22 remediation by a date certain, and that if they did not,
23 that an order be entered finding them to be in violation
24 of an order requiring corrective action, and that an
25 order be entered requiring them to plug the wells or

1 transfer them. And then if they did not plug or transfer
2 them by a date certain, that the Division be authorized
3 to do so and that they be deemed abandoned wells.

4 Subsequent to the entry of the order, which
5 was issued on December 8th, 2009, Order Number R-13197,
6 we were informed by the operator that he had decided to
7 go with a new environmental consultant. We understood
8 the situation. Obviously, he needed to get the new
9 consultant up to speed. We worked with him on a new
10 deadline, since it no longer seemed feasible to have
11 those immediate deadlines for the remediation plan
12 submissions.

13 We did come up with the April 15th submission
14 deadline for all 11 sites, although the December 31st
15 deadline for the well signs did still stand, and you
16 heard him testify today he still has no evidence that
17 he's met that.

18 They did meet the deadline for the
19 delineations and the submissions for the 11 sites. As he
20 testified, it was, you know, quite a process to do the
21 delineations on the 11 sites, and they did manage to
22 accomplish it. However, they seemed to have run out of
23 steam after that.

24 Our office did a thorough review of those 11
25 submissions and issued an approval with conditions on May

1 12th, which Mr. Welborn has acknowledged that he did
2 receive by email on May 12th, and we have a confirmation
3 of certified mail that he received on May 20th, as well.

4 The only follow up that our office has
5 received from Ocotillo or from Marks & Garner has been
6 regarding working out the details of starting the work.
7 There's been no indication that there's been confusion as
8 to what's expected according to that approval with
9 conditions. The deadlines stand, and that 60-day from
10 the date of receipt as the deadline for the completion of
11 that work stands. That 60-day deadline ran on July 12th,
12 according to the date of receipt by email which he
13 acknowledged today in this hearing.

14 According to him today, only one well site had
15 physical work completed during that period of time, and
16 the completion report, final report summarizing the work
17 done, has not been submitted as required. The other 10
18 sites have not been completed.

19 At the last hearing, he gave almost identical
20 testimony, saying they were fully funded. Dorelle was on
21 board. They were working with them because they were
22 interested in making these transfers as quickly as
23 possible, et cetera, et cetera, that they had time
24 estimates for how long the remediation was going to take.

25 The time period that was given in the order

1 was based upon the testimony given by Mr. Welborn as to
2 how long he estimated the remediation was going to take.
3 Consideration was given to Mr. Welborn, according to the
4 testimony he provided, in the order and the time periods
5 that were provided. And yet he sits here today and gives
6 almost identical testimony, saying he needs another four
7 months and he's now completely adequately financed to do
8 the remediation.

9 At this point in time, he has failed to comply
10 with the remediation that he was required to do by a date
11 certain, and we are asking that he be -- that Marks &
12 Garner be found to be in violation of an order requiring
13 compliance pursuant to Subsection A of Rule 19.15.5.9,
14 and that Marks & Garner be ordered to plug and abandon or
15 transfer those wells by a date certain. If they fail to
16 to so, that the Division -- that they be deemed
17 abandoned, and that the Division be authorized to plug
18 the wells and that the bonds be forfeited on those wells.

19 In the alternative, if, for some reason, the
20 Examiners determine that it is appropriate to give
21 another time period to allow remediation to occur, we
22 still would ask that an order be entered finding the
23 Respondent to be in violation of an order requiring
24 corrective action. If and when Marks & Garner comes into
25 compliance with the order, he can petition that that

1 order be withdrawn.

2 At this time, I would ask that Mr. Sanchez
3 step forward to provide testimony.

4 J. DANIEL SANCHEZ

5 Having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. ALTOMARE:

8 Q. Can you state your name for the record,
9 please?

10 A. Daniel Sanchez.

11 Q. And what is your position with the Oil
12 Conservation Division?

13 A. I am the Compliance and Enforcement Manager.

14 Q. Did you provide testimony in the original
15 hearing?

16 A. Yes.

17 Q. Are you familiar with the compliance issues in
18 this case?

19 A. Yes.

20 Q. I'm going to -- do you have in front of you
21 the stack of exhibits?

22 A. Yes.

23 Q. Can you turn to what I've marked as OCD
24 Exhibit B?

25 A. (Witness complies.)

1 Q. Can you identify this document for the record?

2 A. This is the application for compliance order
3 against Marks & Garner, Case Number 14393.

4 Q. This is the application that we filed on
5 September 17, 2009?

6 A. Yes, it is.

7 Q. If you could turn to page 11 of 13, the
8 highlighted portion?

9 A. Um-hum.

10 Q. At paragraph 28 in the application, the
11 original application, we requested that in the event that
12 Marks & Garner didn't comply with whatever order was
13 generated requiring them to complete corrective action,
14 that an order be issued deeming them to be in violation
15 of an order requiring compliance and, therefore, in
16 violation of Rule 19.15.5.9; is that right?

17 A. That's correct.

18 Q. Did we further request that an order be
19 entered requiring them to plug and abandon their wells?

20 A. Yes, we did.

21 Q. And that if they failed to do so, that we be
22 permitted to plug and abandon the wells and forfeit
23 bonds?

24 A. Yes.

25 Q. And is that what we're asking for at this

1 point in time?

2 A. Yes, we are.

3 Q. Do you feel that Marks & Garner has complied
4 with Order Number R-13197, issued on December 8, 2009?

5 A. No, they have not.

6 Q. Were you involved in discussions of the
7 extension following the issuance of that order on
8 December 8th, 2009?

9 A. Yes. I granted the extension.

10 Q. What was the basis for the granting of that
11 extension?

12 A. Marks & Garner had changed environmental
13 consultants, and they needed extra time to get them in
14 place.

15 Q. Did you have any issues with granting that
16 extension?

17 A. No.

18 Q. Do you feel like the OCD has worked with Marks
19 & Garner to facilitate them being able to comply with the
20 Division's order and completing this remediation?

21 A. Yes, we have.

22 Q. Do you feel like the expectations of the of
23 the OCD were reasonable in this case?

24 A. Yes.

25 Q. Were you ever contacted by Marks & Garner

1 regarding any extraordinary circumstances, whether,
2 anything like that, that were prohibiting them from
3 completing remediation on the sites?

4 A. No. I got a call from Cindy, indicating she
5 was going to get to work on it. I got another call maybe
6 a month ago from Mr. Welborn asking for another
7 extension, which I denied. That was it.

8 Q. Was there any reason given by him at that time
9 for the request for the extension?

10 A. No, not really.

11 Q. To your knowledge, was any work completed
12 between the completion of the work in the middle to the
13 end of June on the Cave State Number 4 and the beginning
14 of the work on the two new sites this week?

15 A. Could you --

16 Q. To your knowledge, was any work done on any of
17 the 11 sites between the completion of the work on the
18 Cave State Number 4 and the start of the work on the two
19 new sites this week?

20 A. No, there was no work done.

21 Q. Do you have any additional information that
22 you would like to express regarding this case or the work
23 done by Marks & Garner on their sites?

24 A. No, not at this time. I think the next
25 witness, Mike Bratcher, probably has something to add to

1 that, though.

2 MS. ALTOMARE: Okay. At this time I will
3 move for the admission of OCD Exhibit B and pass the
4 witness.

5 EXAMINER JONES: Any objection?

6 MR. PADILLA: No objection.

7 EXAMINER JONES: Exhibit B will be
8 admitted.

9 (Exhibit B was admitted.)

10 CROSS-EXAMINATION

11 BY MR. PADILLA:

12 Q. Mr. Sanchez, do you have evidence that Marks &
13 Garner has been acting in bad faith in not complying with
14 the order?

15 A. Just the fact that they've not done any work
16 to meet the order.

17 Q. That's not my question. Do you have any
18 evidence of bad faith?

19 A. I think evidence is the fact that they have
20 not completed any of the work. I think that's plenty of
21 evidence.

22 Q. Do you know whether they've completed the work
23 on the Cave State Number 4?

24 A. I know they've done the physical work on it.
25 They haven't finished the paperwork that would complete

1 it.

2 Q. Do you disagree with Mr. Welborn's testimony
3 that that well took about two weeks to complete?

4 A. No.

5 Q. Do you think that's a realistic time frame for
6 completing the work on wells?

7 A. Yes, I do.

8 Q. If the 60-day requirement for completing all
9 of the wells as required by the order stands, then if we
10 multiply 11 by two weeks, you're going to have way more
11 time than 60 days; is that right?

12 A. Yeah, there would be a little bit more time.
13 But as Mr. Welborn testified to, it actually might take a
14 little less time than two weeks, as well, on some of the
15 sites.

16 Q. But we don't know that, do we?

17 A. And we don't know it's going to take any more
18 time, either.

19 Q. Has Mr. Bratcher told you that this well work
20 can be completed in less than a week?

21 A. No, he hasn't told me that.

22 Q. Have you conferred with Mr. Bratcher about a
23 realistic time frame for completing this work?

24 A. Not personally. I haven't gone through the
25 work plan to see if that's adequate time for each one of

1 those sites, no.

2 Q. Now, the advertisement for this hearing says
3 that the case was reopened to determine the status of
4 Marks & Garner's compliance with the terms of the order.
5 Today you're asking to plug and abandon the wells; is
6 that right?

7 A. No. We're asking for an order stating that
8 Marks & Garner is now in violation of 5.9 and asking for
9 a date certain for them to either plug the wells or
10 transfer those wells.

11 Q. Would you be opposed to a date certain that
12 would encompass a two-week period for each of the wells?

13 A. I think that would be a question better asked
14 of Mr. Bratcher, given that he knows the condition of
15 those sites and would better know how much time is
16 required for that.

17 Q. I understand that Mr. Bratcher may have a
18 better opinion. But you are the compliance manager, and
19 I'm asking you, to find out if you have an answer to
20 that, whether a date certain would allow them to have
21 adequate time, based on Mr. Welborn's testimony of two
22 weeks per well?

23 A. Then the answer is no, given the fact that
24 they have been provided way more than enough time from
25 the original hearing. We extended an extension to them,

1 and nothing has been done since then. So I'm not
2 confident that giving two weeks for the final nine wells,
3 that they're going to get that done in 18 weeks.

4 Q. What do you really want here today?

5 A. Like I said, an order from the Hearing
6 Examiner stating they are in violation of 5.9 and a date
7 certain. And that will be entirely up to the Hearing
8 Examiner as to when they should meet that requirement of
9 either plugging the wells or transferring the wells.

10 Q. But you're telling me you don't have a
11 recommendation one way or the other. So do you want to
12 give Marks & Garner additional time based on the
13 testimony of two weeks per well?

14 A. My recommendation, if you are requiring a
15 recommendation, would be 60 days.

16 Q. And that means that they would have less than
17 two weeks to complete each of the wells; is that right?

18 A. If you take into account the time that we've
19 given them since the original hearing and original order,
20 they had plenty of time. So we're offering another 60
21 days. Yes.

22 Q. I understand that you're also talking about
23 having to change environmental --

24 A. Yes, which took into account --

25 Q. -- contractors?

1 A. -- when we did that. As a matter of fact,
2 Mr. Welborn stated he had two crews working, so that
3 would actually cut that time down to nine weeks.

4 Q. That also requires an expenditure of money,
5 would you agree?

6 A. Which Mr. Welborn says they have right now.
7 So 60 days would be adequate if you're working two crews
8 and it did come out two weeks apiece.

9 Q. If you had a ton of money, you could hire five
10 crews at the same time; right?

11 A. If you had the money, yes.

12 MS. ALTOMARE: I'm going to object. This
13 goes way beyond the scope of direct. This whole issue is
14 the status and whether or not they have met the
15 obligations of the order.

16 MR. PADILLA: Pass the witness.

17 EXAMINER JONES: I think I'll overrule
18 that, because -- I think you can go ahead and ask that,
19 considering part of the option here was to -- was
20 possibly to grant more time. So you can go ahead and
21 ask. Are you passing the witness?

22 MR. PADILLA: That's enough. I won't
23 argue with Mr. Sanchez. He really doesn't have an
24 answer, so I guess I'll just ask Mr. Bratcher if he's put
25 on.

1 EXAMINER JONES: I don't have a question
2 on that, either.

3 EXAMINATION

4 BY EXAMINER JONES:

5 Q. The only question I've got is the cleanups --
6 as I understand it, the point is to find whether Marks &
7 Garner is in violation of R-13197, so as to invoke Rule
8 5.9?

9 A. (Witness nods head.)

10 Q. If 5.9 is invoked, what will be the
11 consequences on Marks & Garner?

12 A. Well, they would be in violation of 5.9, would
13 not be able to obtain new APDs, new injection wells.
14 They wouldn't be able to acquire new wells. There's a
15 couple of other things.

16 Q. Transferring wells?

17 A. Well, transferring wells, as long as it was to
18 a compliant operator, would not be a problem.

19 Q. Would the cleanup go on?

20 A. The cleanup would have to go on. Well, it
21 wouldn't have to go on. That would be up to Marks &
22 Garner. But Mr. Padilla said I didn't have an answer to
23 that. I did give an answer. I said 60 days. And based
24 on Mr. Welborn's testimony that he had two crews working
25 and had sufficient funding, 60 days would be adequate, in

1 my opinion.

2 EXAMINER JONES: Okay. I have no more
3 questions.

4 MS. ALTOMARE: Just a couple points of
5 clarification.

6 REDIRECT EXAMINATION

7 BY MS. ALTOMARE:

8 Q. Is there anything to say that they have to do
9 one well at a time?

10 A. No.

11 Q. In fact, they're working on two wells right
12 now at the same time?

13 A. That's correct.

14 MS. ALTOMARE: May I approach the witness?

15 EXAMINER JONES: Sure.

16 MS. ALTOMARE: I'm showing the witness
17 Order R-13197, at page 5.

18 Q. (By Ms. Altomare) Can you please read
19 paragraph 7 of the ordering paragraphs?

20 A. "Further hearing is hereby set in this case at
21 8:15 a.m. on March 4th, 2010, to determine the status of
22 Marks & Garner's compliance with the terms of this order.
23 If at such hearing, or any continuance thereof, it is
24 determined that Marks & Garner has not complied with any
25 provision of this order and the time for compliance has

1 expired, an order may be entered, A, directing Marks &
2 Garner to permanently plug and abandon any or all wells
3 for which it is operator of record in the State of New
4 Mexico; and/or B, deeming Marks & Garner in default of
5 compliance with the order issued after notice and hearing
6 as provided in Division Rule 5.9. The hearing set as
7 provided in the paragraph shall be held in Porter Hall,
8 1220 S. St. Francis Drive, in Santa Fe, New Mexico."

9 Q. With regard to Mr. Padilla's question
10 regarding the advertisement for this hearing, does that
11 clarify what the purpose of this particular status
12 hearing is?

13 A. Yes, it does.

14 MS. ALTOMARE: Thank you. I have no more
15 questions.

16 EXAMINER JONES: You want to redirect or
17 anything?

18 MR. PADILLA: No further questions.

19 EXAMINER JONES: Okay. Thank you, Mr.
20 Sanchez.

21 MS. ALTOMARE: At this point, I will call
22 Mr. Mike Bratcher.

23 Mike, can you hear me okay?

24 MR. BRATCHER: Yes. I'm having some
25 trouble hearing some of it. If you speak up, I believe

1 I'll be all right.

2 MS. ALTOMARE: Do you need a break to
3 speak with me to clarify anything, or are we okay?

4 MR. BRATCHER: I think we're okay.

5 MICHAEL BRATCHER

6 Having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. ALTOMARE:

9 Q. Okay. Can you state your full name for the
10 record?

11 A. Mike Bratcher.

12 Q. And what is your position with the OCD?

13 A. I'm the Environmental Specialist for District
14 2.

15 Q. Are you familiar with the compliance issues in
16 this case?

17 A. Yes.

18 Q. Are you the inspector that's been working with
19 Marks & Garner and their environmental consultant
20 regarding the remediation of the 11 sites in this case?

21 A. Yes.

22 Q. I know you haven't reviewed the 11 exhibits
23 because you're not physically present, but I'll represent
24 to you that they were the 11 submissions made between
25 March 30th -- or March 29th and April 7th regarding the

1 11 sites. They were the proposals. Do you recall
2 receiving those?

3 A. Yes.

4 Q. And you recall reviewing them?

5 A. Yes.

6 Q. And those were the submissions that you based
7 your approval with conditions that was issued on May
8 12th, 2010?

9 A. Yes.

10 Q. And that document, the approval with
11 conditions, that we marked as OCD Exhibit A, that was
12 prepared by you?

13 A. Yes.

14 Q. And I had provided a copy of that to you
15 yesterday for your review; is that right?

16 A. Yes.

17 Q. Is it your opinion that -- well, you're
18 familiar with the order in this case that was issued; is
19 that right?

20 A. Yes.

21 Q. Do you feel that Marks & Garner has met its
22 obligations under the order according to the approval
23 with conditions that you issued on May 12th, 2010?

24 A. No.

25 Q. What if any sites has Marks & Garner completed

1 the remediation for?

2 A. The physical work has been completed on the
3 Cave State Number 4, and that's the only site that's had
4 anything done to it.

5 Q. At what point in time did you become aware
6 that the physical work has been completed on the Cave
7 State Number 4?

8 A. June 17th.

9 Q. And how did you become aware of that?

10 A. By a field visit.

11 Q. You weren't notified by any issuance of a
12 final report or submission of a closure, final C-141, by
13 Marks & Garner or Ocotillo on behalf of Marks & Garner?

14 A. No.

15 Q. To date, have you received any such
16 submission?

17 A. No.

18 Q. That's required by the May 12th, 2010,
19 approval with conditions, is it not?

20 A. Yes.

21 Q. Did you contact Ocotillo following your
22 discovery that the physical remediation work had been
23 completed at that site?

24 A. Yes, I did.

25 Q. Can you tell us what you discovered when you

1 contacted Ocotillo?

2 A. They indicated to me that they'd been
3 instructed to break down from the sites and not do any
4 further work until they were advised by the operator.

5 Q. When is the next time you were advised by
6 Ocotillo that they were starting any additional work on
7 any other Marks & Garner sites?

8 A. That would have been by email on July 16th.

9 Q. That was for the work that was to start on
10 July 20th?

11 A. Correct.

12 Q. So between June 17th and July 20th, no work
13 was completed on any of the Marks & Garner sites, to your
14 knowledge?

15 A. Correct.

16 Q. Was any reason given to you by Ocotillo for
17 the instruction that had been given to them?

18 A. No, I don't believe so. Just that they have
19 been instructed not to do any further work.

20 Q. To your knowledge, has Marks & Garner
21 completed the work replacing or repairing the defective
22 well signs on these sites?

23 A. To my knowledge, they have not.

24 Q. Have you received any correspondence or
25 inquiries from either Mr. Welborn or anybody from

1 Ocotillo indicating they had any questions or concerns
2 regarding the approval with conditions indicating that
3 they might not understand what was required of them under
4 that approval with conditions?

5 A. No, I have not.

6 Q. How confident are you, if given additional
7 time, that Marks & Garner will actually complete the
8 remediation on these sites?

9 A. How confident am I? Well, I was fairly
10 confident that once they started on it, that they would
11 continue moving forward. It was unexpected by me that
12 they actually stopped the work. So I don't know that I
13 would have a great deal of confidence that it would be
14 completed, just based on that.

15 Q. So at this point in time, you're not very
16 confident that the work is going to be completed now that
17 it stopped?

18 A. I would have some reservations, yes.

19 Q. Is there any reason that they can't work on
20 more than one site at a time doing remediation?

21 A. No.

22 Q. I'm sorry I interrupted you. What was your
23 answer?

24 A. No. They can work on multiple sites at the
25 same time.

1 MS. ALTOMARE: I think I'll pass the
2 witness. I am sure the Examiner will have additional
3 technical questions for you.

4 EXAMINER JONES: Mr. Padilla?

5 CROSS-EXAMINATION

6 BY MR. PADILLA:

7 Q. Mr. Bratcher, can you hear me?

8 A. Yes, sir, if you could speak up just a little.

9 Q. Okay. How much work was entailed in doing the
10 preliminary investigation on the wells as evidenced by
11 the submittal of the work plans to you?

12 A. Okay. Your question -- just repeat the
13 question, please.

14 Q. Can you give the Examiner some idea as to how
15 much work was entailed in doing the preliminary
16 investigations for submitting the work plans?

17 A. Okay. What was performed there was, it came
18 down to a borehole delineation, where Marks & Garner or
19 Ocotillo moved in a rig and boreholes were advanced with
20 field samples being analyzed on-site. Selected samples
21 have been sent to the lab for analysis. And it was,
22 basically, a borehole delineation to determine the
23 vertical extent of contamination, and to some degree, the
24 lateral or horizontal extent.

25 Q. Okay. And so about how much time is required

1 to do that for each well? Do you have any idea?

2 A. It would vary from site to site. Some of the
3 sites are larger in area and would require more boreholes
4 to be advanced. So it would vary from site to site.

5 Q. Would you say it takes a week or so?

6 A. It wasn't that long. Some sites could have
7 been completed in a day. Some may have taken two to
8 three days.

9 Q. Would you agree with me that the remediation
10 work is going to require more than two or three days, as
11 opposed to the investigation work?

12 A. Once again, it will vary from site to site.

13 Q. You've heard Mr. Welborn's testimony here of
14 the assessments, and as I understand them, it's between a
15 week and maybe three weeks, depending on what you find on
16 each particular site; right?

17 A. Did I hear that testimony? Is that the
18 question?

19 Q. Yes. Did you hear that testimony?

20 A. Yes, I did.

21 Q. Is that a realistic assessment as to what each
22 well would take?

23 A. Well, it may be a little lengthy. Actually,
24 the time to complete each site is going to be dependent
25 upon the amount of personnel and equipment that's

1 dedicated to actually doing the work.

2 Q. Assuming they have adequate personnel and
3 equipment to do each well, is the range between one week
4 and three weeks a fair assessment?

5 A. I think on both sites, three weeks would be a
6 little iffy.

7 Q. Would it be fair to say that you might
8 encounter that situation in three or four of the wells?

9 A. It could be possible. There's one that
10 probably would fall in that category. One of the things
11 that will be done during the remediation is more defined
12 lateral extent of contamination. As the excavations are
13 done, sidewall samples will be taken and results of those
14 sidewall samples will determine exactly how big the
15 excavations will be.

16 Q. Do each of those samples have to be analyzed
17 by someone as you do the work? In other words, say I'm
18 doing the work out there and I am digging and I take a
19 sample. Does that sample have to be analyzed by a
20 laboratory or someone that would cause a delay?

21 A. No. Selected samples go to the lab. But when
22 they're doing the work in the field, they have field
23 titration that they can use right there on-site.

24 Q. But it's just not a matter of simply going out
25 there with equipment, digging it up and lining the pit

1 and filling it back in?

2 A. In some cases that would be what would happen,
3 but some of the sites would be a little more entailed.

4 Q. Have you been in contact with Cindy Crain in
5 the last two weeks?

6 A. In regards to this?

7 Q. To the remediation.

8 A. No.

9 Q. Has she communicated with you to tell you that
10 work is going to commence?

11 A. Just via the email I received on July 16th.

12 Q. And you haven't responded one way or the
13 other; right?

14 A. Correct.

15 Q. And you don't have to respond?

16 A. Right.

17 Q. Other than rigging down for reasons that were
18 unexplained to you, could you see any other delays that
19 were purposeful or something to that effect?

20 A. Could you repeat that?

21 Q. Other than rigging down for reasons that were
22 unexplained to you, did you see any delays on the part of
23 Marks & Garner that would indicate that they weren't
24 going to do the work?

25 A. Well, just the fact that they're rigged down

1 and didn't keep moving forward. That indicated to me
2 that they weren't going to do the work.

3 Q. Did you hear Mr. Welborn's testimony here
4 today that he had a contract dispute and didn't have the
5 money?

6 A. Yes, I heard that.

7 MR. PADILLA: Okay. I have no further
8 questions.

9 EXAMINATION

10 BY EXAMINER JONES:

11 Q. What caused these spills?

12 A. Various things. Some of the releases were
13 leaks from wellheads, stuff box leaks. A lot of them
14 were infrastructure problems, flowline leaks, tanks with
15 holes in them. Some of them were tank overflows. There
16 was likely various events that happened, and I don't
17 think on any one site that it was any one single release
18 event. I think this is just something that's been
19 ongoing for years on these well sites.

20 Q. It's mainly oil and salt water?

21 A. Yes.

22 Q. And salt water is the worst offender; is that
23 correct?

24 A. Predominantly, yes. That's basically what
25 we're dealing with now. Some hydrocarbons, also, but it

1 looks like the chlorides are -- and, typically, they will
2 give you the biggest problems on these cleanups.

3 Q. And are you aware of the condition of the
4 wells and the production facilities right now? Are they
5 still capable of causing trouble?

6 A. Yes. There are some vessels out there that I
7 would have some concerns with. And I believe some of my
8 conditions of approval required that some of those
9 vessels be removed to facilitate the cleanup.

10 Q. So your analysis is geared toward cleanup and
11 prevention in the future; is that correct?

12 A. Yes.

13 Q. And the well signs, are they -- you haven't
14 had direct evidence that they've been corrected? Is that
15 what I heard you say?

16 A. Correct. The last time I was through the area
17 was on June 17th, and none of the well signs at the sites
18 that I went by -- they were the same. Nothing was
19 corrected as far as the well signs on June 17th.

20 EXAMINER JONES: Okay. I have no further
21 questions.

22 MS. ALTOMARE: No redirect.

23 MR. PADILLA: I just have one question I
24 forgot to ask.

25

2 BY MR. PADILLA:

3 Q. Mr. Bratcher, how long did it take you to --
4 after the work plans were submitted to you, to approve
5 the work plans with your conditions?

6 A. The work plans were submitted -- I received
7 them April 15th, and my response was dated May 12th.

8 MR. PADILLA: Okay. That's all I have.

9 EXAMINER JONES: Okay. Thank you, Mike.

10 THE WITNESS: Okay.

11 EXAMINER JONES: Okay. No more witnesses
12 for either side? Would anyone like to have any closing
13 comments?

14 MR. PADILLA: Well, there's been no
15 evidence here of any kind of bad faith. Ms. Altomare
16 used the phrase that Marks & Garner "ran out of steam" at
17 some point. I'll tell you they ran out of money.

18 Mr. Welborn's testimony today has been that
19 they're now financed, and they can proceed and finish
20 this work. So we simply ask for relief that a date
21 certain be set that would give them adequate time. We
22 don't believe that 60 days is an adequate amount of time.
23 Even Mr. Bratcher's testimony seems to support that, that
24 it depends and varies from well to well as to how much
25 time is going to be required for each well.

1 And even if you use multiple crews out there,
2 it's still a matter of money. It's not something in
3 today's economy that everybody has a ton of money, and
4 that's really the crux of the problem. And in some of
5 these properties, the production from the properties is
6 insufficient to support environmental work. And, you
7 know, Marks & Garner is just trying to finish.

8 There's no -- the switch in environmental
9 contractors, I think, was very beneficial, both from the
10 standpoint of saving money and from the standpoint of
11 working with the Division. So I think that aspect, you
12 know, is clear.

13 So in short, we just simply ask for a
14 realistic time within which to complete the remediation
15 work on the wells. Marks & Garner would love to transfer
16 these wells, as testified by Mr. Sanchez, but they can't.
17 The Division will not allow transfer of the wells until
18 the remediation work is completed. You know, they could
19 transfer to Dorelle. Dorelle has the money to do this
20 and is funding this, but the Division is not going to
21 approve that transfer until the work is done.

22 And we simply ask for realistic time. And we
23 believe, to be realistic and to be -- and not have to
24 come back here and ask for further relief -- that two
25 weeks per well be granted to complete this work. And

1 that requires the approval process and all that sort of
2 stuff.

3 I mean, there's no question there are
4 deficiencies. We're not arguing that signs have not been
5 replaced. In my opinion, they should have been replaced,
6 and I would tell my client to go get the signs replaced.
7 That's a bad issue to come here with.

8 But in terms of doing the remediation work,
9 especailly when there's a deal on the table, we should be
10 able to complete that and assign these wells to somebody
11 with better financial resources than Marks & Garner.
12 Thank you.

13 EXAMINER JONES: Ms. Altomare?

14 MS. ALTOMARE: With all due respect, it
15 doesn't always come down to money. Marks & Garner has
16 repeatedly shown a disregard for our rules and our
17 statutes.

18 The four C-141s that were originally never
19 submitted back in April of 2009, they were notified that
20 those C-141s were missing in action as of the filing of
21 our September 2009 application. They waited until the
22 very last moment of the extended deadline of April of
23 2010.

24 April 15th is when they finally submitted
25 those C-141s, that doesn't cost money to submit. So

1 coming into compliance with this order, not every aspect
2 of it requires money. And Marks & Garner has just shown
3 a complete disregard and a disrespect for our Agency and
4 for the OCD rules and the statutes.

5 The submission of the final closure plan on
6 the Cave State Number 4, I mean, how hard is it to sit
7 down and write up a closure report and summary of what
8 work was done out there and file it with the District
9 Office?

10 I understand some of it does come down to
11 money. But the aspects of their compliance and their
12 failure to do things that don't cost money is indicative
13 of a pattern of behavior by this company that clearly
14 shows that they just don't have a respect for the rules
15 and regulations and for following the mandates of this
16 order. They have clearly disregarded -- grossly
17 disregarded the mandates of this order.

18 Their only defense is that they had some kind
19 of a contract dispute that caused an absence of money and
20 funding for this, but have they shown a shred of
21 evidence? Have they come in and provided anything to the
22 Examiner to support that there's a transaction in place,
23 that there was some kind of negotiations going on;
24 anything from Dorelle to show that there's now funding in
25 place, that money has been set aside, that there's some

1 kind of arrangement; that the dirt workers have been
2 hired?

3 Nothing has been submitted by Marks & Garner
4 today to give assurances to the Examiner, to the
5 Division, that they are adequately financed; that they
6 have enough personnel and equipment and contractors in
7 line, such that they should be granted an extension when
8 they are clearly in violation of an order of this
9 Division.

10 Given that they -- I mean, this is not the
11 first time that we've seen this company. This company is
12 already in violation of an order requiring corrective
13 action on another case. They are a frequent flyer with
14 this Agency. At this point in time, I just don't see
15 that they are -- given their actions in this case -- in a
16 place where they are in good standing to be asking for
17 any kind of an exception in this situation.

18 At this point, I would strongly request that
19 the original request that a plugging order be entered and
20 an order be entered finding them in violation of an order
21 requiring corrective action in violation of 5.9. Simply
22 stated, they have not even come close to complying with
23 any aspect of the order that was issued in December.

24 EXAMINER JONES: Okay. Thank you both.

25 Case 14393 reopened will be taken under

1 advisement.

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I hereby certify that the foregoing is
a complete record of the proceedings in
the Examiner hearing of Case No. _____
heard by me on _____


_____, Examiner
Oil Conservation Division

REPORTER'S CERTIFICATE

I, JACQUELINE R. LUJAN, New Mexico CCR #91, DO
HEREBY CERTIFY that on July 22, 2010, 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 4th day of August, 2010.


Jacqueline R. Lujan, CCR #91
Expires: 12/31/2010