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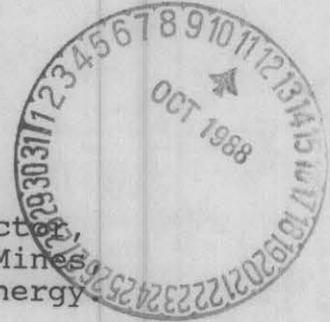
VIRGINIA:

DEPARTMENT OF MINES, MINERALS, AND ENERGY

WELL REVIEW BOARD HEARING

CHAIRMAN:

BENNY WAMPLER  
Assistant Director,  
Department of Mines,  
Minerals and Energy



The following hearing was taken on September 22, 1988 at  
10:00 a.m. in Keen Mountain, Virginia.

BOARD MEMBERS

MR. BILL KELLY

MR. KENNETH EVANS

MR. KEVIN McGLOTHLIN

LASER PROCESSING  
P.O. BOX 1028  
NORTON, VIRGINIA 24273  
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PRESENT:

**LUCIAN MATNEY**  
Property Owner

**TOM FULMER**  
State Oil and Gas Inspector

**MICHAEL LEPCHITA**  
Assistant Attorney General

**TOM O'NEILL**  
President of Berea Oil and Gas Corporation

**JAY HENDERSON**  
Inspector

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1 THE CHAIRMAN: The Well Review Board  
2 Hearing is called to order. My name is Benny Wampler, I'm  
3 Assistant Director of Mining for the Department of Mines,  
4 Minerals, and Energy. With me today and other members of  
5 the Board to my left is Kevin McGlothlin, to immediate left  
6 is Bill Kelly and sitting here on the end of the table is  
7 Kenneth Evans. We're the Well Review Board members that  
8 are present today. Mr. Michael Lepchitz who is Assistant  
9 Attorney General for the Department of Mines, Minerals and  
10 Energy and at the end of the table is Tom Fulmer, our Oil  
11 and Gas Inspector. The purpose of today's hearing is to  
12 listen to Berea Oil and Gas Corporation explain to the  
13 Board why it's permit should not be revoked in line with  
14 the show cause notice that was sent on permit number 918.  
15 This is a de novo hearing for the Board, there is no  
16 assumption that the Inspector's preliminary decision to  
17 ask you to show cause was a correct one. There is a  
18 presumption that the Inspector did follow the rules and  
19 regulations. We would like for you to come forward and  
20 sit, I guess, in these chairs, if we can work that out so,  
21 at your convenience and we want your witness to be sworn  
22 in and please pronounce your name clearly into the  
23 microphone. With that, we'll begin the hearing.

24 MR. O'NEILL: My name is Tom O'Neill.  
25 I'm the President of Berea Oil and Gas Corporation. I

1 founded Berea in 1976. It's a private company. I reside  
2 at 30 Wellington Lane, Orchard Park, New York. I came  
3 down here today specifically to address the Board and to  
4 convey, to attempt to convey first our concern as to why  
5 we have been cited in the manners that we have and to  
6 explain or attempt to explain again a couple of the  
7 factors, large factors behind what appears to be our lack  
8 of good corporate citizenship in the State of Virginia.  
9 Berea has drilled since 1976 approximately or in excess of  
10 1,000 wells in many states, mostly in the Appalachian  
11 basin. We have received several awards in the State of  
12 West Virginia and the State of New York for proper well  
13 restoration work and exemplary work. Berea has like many  
14 other oil and gas companies suffered a severe decline in  
15 it's oil and gas revenues and a severe decrease in the  
16 number of people that we have from our heighth of our  
17 employment back in about 1982. In keeping with balancing  
18 new expenditures with cash flow, I think the biggest  
19 factors in terms of what may appear to be by some a tardy  
20 addressing of the issues have to be brought to the Board's  
21 attention by me. I would like to bring to the Boards  
22 attention that and not coincidental with the hearing  
23 though it certainly looks so but we have, we are doing  
24 today and have been doing for the last few days to work  
25 some work on the Matney because we have a big problem

1 solved, namely the title guarantee, or a comfortableness  
2 on our part and our partners part which I will address in  
3 a minute. We have cleaned out the well. We have knocked  
4 the DV tool to bottom. We are knocking out a couple of  
5 burs with a star bit this morning. We'll log and  
6 perforate and fract that well either today or tomorrow to  
7 put it on line, to build, next will be to build the  
8 pipeline, we've already bought the right of way from  
9 Georgia Pacific and to put that well on line under the  
10 contract we have signed with Hope Gas. One of the reasons  
11 that perhaps our work looks a little tardy is, I must  
12 address the kind of circus results we have had in working  
13 with lawyers on the title on both the, on the Matney  
14 location. We hired a, Berea hired a firm in Grundy,  
15 Jordan, Farmer, and Johnson, had been so long I had  
16 forgotten who they were, that's what I had to check,  
17 Jordan, Farmer, and Johnson who did the initial work on  
18 the Matney Heirs property for us. They, in turn, farmed  
19 out toward Timothy Forbes, the work on the Jewel Property,  
20 we drilled both the Jewell Well and the Matney Well and  
21 have acreage and plants to other wells. We were, after we  
22 completed the Jewell 2, we found that we were served, a  
23 lawsuit was served upon us by Ashland Oil alleging or  
24 stating, alleging that the title work we had run was not  
25 correct and that in fact we had drilled a well, the Jewell

1 2 Well on acreage owned, mineral rights owned by Ashland  
2 Oil and not held by us. Well, we never, ever had been in  
3 a suit like that so, we retained to show how proper our  
4 title work, immediately we became very suspect in the  
5 title work done by the firm here in Grundy that we had  
6 retained, Jordan, Farmer, and Johnson. That matter is  
7 still not resolved yet. But, we retained another attorney  
8 down here in order to double check what our position was  
9 and his name was Carl McAfee. We spent several thousands  
10 of dollars on Mr. McAfee's report attempting to understand  
11 what had happened on the Jewell and what may be lurking in  
12 the Matney for us. After several months of calls and  
13 letters and my writing and talking with the woman in  
14 charge of the Bar Association down here, we found out that  
15 Mr. McAfee, when we kept, when his office kept telling us  
16 was in court was himself indicted and under federal  
17 complaints of some kind of money or drugs or whatever.  
18 Mr. McAfee was himself not the attorney but was a  
19 defendant. So, we lost several months in this, it's not  
20 over yet, it gets even funnier, if you would and very  
21 expensive. We lost a lot of time trying to determine are  
22 we the rightful owners of the Jewell and the Matney Heirs  
23 property. We had already spent a little over \$200,000.00  
24 on the Jewell. We had, our revenues had been suspended, I  
25 mean, they're crowing in, at the purchasers, in the

1 purchasers account, a very fine well and because this  
2 first firm that I mentioned along with Mr. Forbes that did  
3 the work also on the Matney, we were very, very concerned  
4 that we were going to go from a soup into the, from the  
5 fry pan into the fire. After, many many weeks had gone  
6 by, in fact several months had gone by with McAfee.  
7 Finally, the intercession of the Virginia Bar Association  
8 was needed and their help was instrumental in not  
9 returning our money. The money was gone that we had paid  
10 McAfee to review the work done by Jordan, Farmer, and  
11 Johnson and by Timothy Forbes, that money was gone but we  
12 finally had to go to court here and get McAfee, an order  
13 for McAfee to turn over our records. McAfee, Mr. Carl  
14 McAfee, he was in Norton, Virginia, or he is in Norton,  
15 Virginia. Mr. Carl McAfee turned the records over to  
16 another attorney that we have hired, Robert Copeland, I  
17 don't know Copeland's firms name, I don't know where he  
18 is. I don't handle this work. I'm just trying to give  
19 you a synopsis of whats happened. Robert Copeland, these  
20 facts we have written on previous occasions to the State  
21 of Virginia but, Robert Copeland is with Copeland,  
22 Molinary, and Bieger but, I don't know where they are  
23 located, some place in Virginia, I don't know where. But,  
24 I've talked to Copeland on several occasions personally on  
25 this thing, several being three or four times. This is

1 handled by my Land Department. But, Mr. Copeland has  
2 advised us along with a title report by a woman by the  
3 name of, I think, Elizabeth McEntire or McClendin, that,  
4 in fact, the Jewell title does look as if we have most of  
5 the interest but, as you may have some, but Copeland  
6 advised us further that the Matney problem, potential  
7 problem does not exist, that the Matney heir rights that  
8 we thought they had when we leased, Copeland believes that  
9 we do have. Therefore, the risk of spending money to put  
10 this well on line only to have that well leaned or that  
11 well, not leaned, that well subject to a lawsuit by  
12 Ashland again we think is very remote. It could happen  
13 but, we have decided, we being my partners and I, have  
14 decided to spend the money to finish the McAfee, the  
15 Matney well. That work is being done as we speak. I  
16 would also like to, so that, what I'm trying to address as  
17 that we had tried in our letters, to explain what appears  
18 to be, on the Inspectors part and on the Boards, Review  
19 Board's part, I guess, that's why the meeting is here  
20 today, the hearing is here today, a tardiness or a lack  
21 of good corporate citizenship has really been a quandary  
22 of not knowing do we have title on this location or not.  
23 And, if we finish this well, are we finishing it for a  
24 beneficiary other than ourselves. We retained competent  
25 counsel to do the title work. We retained competent

1 counsel to review the title work that was done and we,  
2 only to find that we hadn't retained competent counsel, we  
3 had to retain yet a third counsel to review everything  
4 that had been done. It cost a lot of money, it took a lot  
5 of time and was only, I guess like in the last month that  
6 I became aware of Copeland's report which is still not  
7 final telling us, it's not in writing yet, telling us that  
8 the Matney Heirs title chain held up on review and that we  
9 do in fact have title. Therefore, spend the money. The  
10 other reason that money has not been spent as quickly as,  
11 other than not ownng title, if that were not enough of a  
12 reason, the other reason that we have not rushed on  
13 completing that well is we've been very concerned about  
14 the Hope market and also Berea's own cash flow is being  
15 so far down that any dollar that we spend had better bring  
16 a well on line soon to get that cash back. It's not like  
17 it was two years ago or four years ago where you could  
18 afford to spend the money and not really think of when  
19 will that cash come back. So, that has also affected our  
20 willingness to spend money not knowing if we had the good  
21 title or not for sure and not knowing when that money  
22 would come back. I must say that from my Vice President  
23 of Engineering, Mark Schumacker who has been with me for  
24 ten years now, we, he will address some of the complaints  
25 and how we think, what we think of the individual

1 complaints on an item by item basis but, I wanted you to  
2 understand and that's why I wanted to come down and tell  
3 you myself, I wanted you to understand some of the  
4 complexities and the time delays and the title questions  
5 that we've been facing on this location that has affected  
6 our decision-making ability to spend more money and those  
7 concerns and those problems that we've tried to address in  
8 written form prior to today to the State of Virginia.  
9 Without success, obviously. If we had, then perhaps we  
10 wouldn't be here today. But, Berea has always been a good  
11 corporate citizen. Times are very tough but, we're here  
12 to tell you that we have more wells to drill, we want to  
13 be a good corporate citizen and we're hopeful that by  
14 listening to what the background is on our decision-making  
15 process as regards title, as regards the Matney location  
16 and specifically address the notices that we have received  
17 down here, that you'll look with favor upon us continuing  
18 operation in Virginia and in particular continuing to  
19 operate the Matney location. That's all I have to say  
20 right now.

o

21 THE CHAIRMAN: Thank you, Mr. O'Neill. I  
22 should have stopped you and got you sworn in at the  
23 beginning but, I'd like to ask the Court Reporter to have-

24 --

25 MR. O'NEILL: Oh, I'm sorry.

1 THE CHAIRMAN: Your testimony be sworn and  
2 that any questions he answers as well.

3 MR. O'NEILL: Okay, sure.

4 TOM O'NEILL

5 a witness, having been duly sworn was examined and  
6 testified as follows:

7 THE CHAIRMAN: Okay, does any member of  
8 the Board have questions of Mr. O'Neill?

9 MR. EVANS: Yes, I do. Mr. O'Neill,  
10 when you talk about the title to this Matney property, are  
11 you talking about the mineral rights or the surface?

12 MR. O'NEILL: The mineral rights.

13 MR. EVANS: Okay, thank you. Who owns  
14 the surface rights, does Matney still retain that, Matney  
15 Heirs still retain that?

16 MR. O'NEILL: I don't know. I did not  
17 handle, I, you know, the men and women that handled the  
18 title, in fact, I'd forgotten who the lawyers were and how  
19 the chain worked and I had to go refresh my memory on it.  
20 Who owns the title, I, I'm not sure, probably Mr.  
21 Schumacker knows but, I can't tell you that.

22 MR. EVANS: Thank you.

23 MR. O'NEILL: Okay, anything else.

24 THE CHAIRMAN: You are familiar with the  
25 letter that Mr. Fulmer sent you wherein he stipulated the

1 notices of violations that had not been corrected?

2 MR. O'NEILL: Yes, sir.

3 THE CHAIRMAN: And, is it correct---

4 MR. O'NEILL: Can you tell me what date  
5 that letter was?

6 THE CHAIRMAN: The August 9th letter---

7 MR. O'NEILL: Yes, yes.

8 THE CHAIRMAN: To you, yes, sir.

9 MR. O'NEILL: Yes, I am familiar with  
10 that letter.

11 THE CHAIRMAN: Okay, and in that letter he  
12 stipulated three specific notices of violation of the law  
13 and regulations and referenced sections in the general  
14 criteria of the erosion as set on the control handbook.  
15 Are you representing to the Board that the reason that  
16 those violations were not corrected was because of the,  
17 both financial status and the legal status of these  
18 permits?

19 MR. O'NEILL: No, I'm not. What I'm, I  
20 think what I'm attempting to convey is that we did have  
21 severe legal questions about the title, notwithstanding  
22 that, we sure have cash flow problems which are there but  
23 not notwithstanding that, that which Mr. Schumacker will  
24 address that we had attempted to and have done work on the  
25 location, I think, to the landowners satisfaction, to our

1 own satisfaction. We had never let, to the best of my  
2 knowledge, a call from Matney's go by unanswered or  
3 unaddressed or a letter or a complaint from the state, we  
4 had met with them, I believe, on a couple occasions in an  
5 attempt to do something to not be in violation of what  
6 should be done with the erosion and sedimentation laws in  
7 the State of Virginia. That even though we had these  
8 problems, have these problems in the cash flow sense,  
9 title sense had, that we did not take the attitude that  
10 since we may not own it, we will not do anything or we did  
11 not take the attitude that since we don't have the cash  
12 flow that we use to have, we can't afford to do anything,  
13 that we aren't going to do anything. That has not been  
14 our position and it is not our position today.

15 THE CHAIRMAN: Thank you, sir.

16 MR. O'NEILL: Okay, thank you.

17 **MARK SCHUMACKER**

18 a witness, having been duly sworn was examined and  
19 testified as follows:

20 THE CHAIRMAN: Would you state your name  
21 and your title?

22 MR. SCHUMACKER: My name is Mark Schumacker.  
23 I'm Vice President of Engineering and Operations for Berea  
24 Oil and Gas. I live at Number 1, Pheasant Ridge,  
25 Bridgeport, West Virginia.

1 THE CHAIRMAN: Go ahead.

2 MR. SCHUMACKER: I guess I'd like to follow  
3 up the comments of Mr. O'Neill but direct my comments more  
4 to the violations specifically and hopefully get across to  
5 the Review Board that the very thing that Mr. O'Neill  
6 mentioned, that our attitude is and has been throughout  
7 this whole ordeal to do what was right and to try and do  
8 it as effectively as possible. I was also faced with the  
9 test of trying to do it as economically as possible. That  
10 was certainly a factor and continues to be. But,  
11 specifically, I have received numerous letters from this  
12 Commonwealth of Virginia stating violations on this Matney  
13 Well location and I've had several phone calls from the  
14 State Inspector concerning these letters and on at least  
15 two and maybe three occasions, I met personally on the job  
16 site with Mr. Henderson, the State Inspector to discuss  
17 the nature of the violations and to try to get a better  
18 understanding of what we had to do to correct these  
19 violations. We have, as a company, on three separate  
20 occasions had contractors on this location to reclaim and  
21 correct these violations. The second, the final  
22 contractor that we had on location was Mr. Matney who I  
23 believe is one of the heirs and owners of the surface and  
24 the minerals on the property. And, I think Mr. Matney met  
25 with the State Inspector on one or more occasions to

1 discuss the work that he was doing for us on the well  
2 location. We have, in every single instance, responded to  
3 either a landowner's phone call or a State Oil and Gas  
4 Inspector's letter or phone call and we have attempted to  
5 satisfy any deficiencies that we were made aware of.  
6 Obviously, we haven't done this satisfactorily in the eyes  
7 of the inspectors but, there have been certain factors  
8 that have caused us to move more cautiously than we might  
9 have in the past and I think Mr. O'Neill has given those  
10 reasons. We continue to want to work with the Department  
11 of Mines and Minerals and Energy and we want to do the  
12 things that are right. And, now that we have this title  
13 work or this title cloud away from our heads on this well  
14 we're in there working on it. The location is a difficult  
15 location. It sits on the side of a steep hill and the  
16 road going into it, coming off of the state highway and  
17 going to the location is steep on both sides of the hollow  
18 there. There is no soil, it's rock. We had to shoot part  
19 of the location to build the thing. So, we're not working  
20 with a, we're not working with a place that's, that you  
21 can readily reclaim and seed and walk away from. I think  
22 that the road is probably going to cause us problems in  
23 the future. I think just by a hard rain and as steep as  
24 it is, I haven't seen a gravel road that doesn't wash and  
25 has to be re-worked. So, I think the nature of the beast

1 kind of lends to some of the problems that we've had here.  
2 I've worked on a lot of wells in the last 20 years, that's  
3 all I've been involved in and I've done a lot of wells in  
4 Southern West Virginia and a few in Southwestern Virginia  
5 and it's a tough area to work in. But, I guess the real  
6 point I want to make is that in every instance in the past  
7 and in every instance that we come up against in the  
8 future, we're going to be there to discuss it, and to try  
9 and correct it and even if we have a difference of  
10 opinion, I like to feel that we have the right to express  
11 that difference of opinion on the location with the State  
12 Inspector but, if we're overruled then, we'll do what we  
13 have to do to correct the problem. As far as re-seeding  
14 this location goes, I'd like to make this specific point  
15 that I did talk to the State Inspector this summer about  
16 re-seeding this location. As I said before, this is a  
17 side of a hill that we shot out and there's not a whole  
18 lot of soil there. But, the main point is that we didn't  
19 get any rain this summer, at all, anywhere. And, we  
20 talked over the telephone and I, it was generally agreed  
21 that it was a waste of money and time to put grass seed  
22 down that wasn't going to germinate. We intend to seed  
23 this thing down now but we're fracturing today or tomorrow  
24 and we'll done by mid next week and the grass will grow  
25 now, there's no doubt about it and we've got, we'll be

1 able to close everything up, have a final reclamation, and  
2 put the seed to it and as I see it, the project will done  
3 until the road washes out and then we'll be asked to come  
4 back and re-do it again. It's not, I don't think we can  
5 fix that road permanent, it's going to, year after year,  
6 we're going to have to do some grading on the road. I do  
7 feel that we left the location in all cases, in a form  
8 that caused no negative impact to the environment. I  
9 haven't gotten any complaints from the landowner that we  
10 haven't taken care of in my opinion and I think in their  
11 opinion because I haven't gotten any calls, in the  
12 landowner's opinion, because I haven't gotten any calls  
13 back on it. I had to hire the man that owns the property  
14 as a contractor to do the work to suit himself also and I  
15 feel that he is, I think he has a couple things that he'd  
16 like for us to do now that we're in there finishing the  
17 well and we're going to try to accommodate him but during  
18 this time period where we leading up to completing the  
19 well, I feel that we did a fair job of leaving it, the  
20 location in a shape that the environment wasn't harmed and  
21 I would think that's probably the issue, did we do any  
22 damage or did we leave it in a shape that it would do  
23 damage. I don't think that we did. So, specifically, I  
24 feel that, you know, we have shown that our hearts are in  
25 the right places. We want to work with the state and

1 continue to want to and hope that, you know, the result of  
2 this hearing is that we're allowed to continue to operate  
3 this well and hopefully some more that we drill in this  
4 state.

5 THE CHAIRMAN: Any questions?

6 MR. EVANS: I've got a couple that but,  
7 maybe it's just me. Since I don't have any pictures or  
8 anything else, I'm not, I've seen, obviously what's here  
9 and what's written and that's all, I've not been to the  
10 site, I don't know what it looks like. But I have some  
11 obvious technical questions that can't be answered by  
12 what's written here. Did you mulch, you know, I assume  
13 you have the road constructed and well pad laid out and  
14 shot out and you're just waiting to drill. Is that---

15 MR. SCHUMACKER: No, the well, we drilled  
16 the well.

17 MR. EVANS: Okay.

18 MR. SCHUMACKER: Part of the road, part of  
19 the access road, about half of it, this road, the state  
20 highway is going like this, the road drops off of it, down  
21 into a steep hollow, crosses a small stream and goes  
22 straight up the other side to the well. This part of the  
23 road going down was existing. It was already there.  
24 Now, that's not much of a road now nor was it ever much of  
25 a road. We put some stone on that road. We crossed a

1 creek in the bottom using a culvert, come up the other  
2 side, built the location and drilled the well and then on  
3 three occasions have attempted to reclaim it, to appoint  
4 where it was stabilized, realizing that we had to come  
5 back in and fract this well so that we knew we were going  
6 to tear the road back up again and probably have to use  
7 some sort of a pit which we have in fact decided not to  
8 use. Now, we're going to flow back into tanks to minimize  
9 any future problem we have on this site. But, that's a  
10 description of the location and how we left the thing.

11 MR. EVANS: Okay, so you didn't straw  
12 cover anything or---

13 MR. SCHUMACKER: We mulched---

14 MR. EVANS: Okay.

15 MR. SCHUMACKER: I've got an invoice in here  
16 from a contractor that shows he charged us for hay bails  
17 and for seed and we did get some grass to grow on the  
18 steep part of the bank and there's a couple areas down  
19 below where to old pit was that I think probably are going  
20 to have to be re-seeded now. But, my conversations this  
21 summer with the State Inspector were of the nature that,  
22 hey, it hasn't rained for a 100 days and there's no water  
23 anywhere and grass is not going to grow, it was dying in  
24 my own yard, it surely wasn't going to grow down on the  
25 side of a hillside and let's wait until we get rain and

1 the seed will germinate. And, that's exactly what we're  
2 doing right now. Next week it's going to be seeded and  
3 mulched and but, like I said, the nature of the thing,  
4 we're going to be back there, I know we are on some form  
5 of a violation because I don't think you can permanently  
6 stabilize a road that, it's going to wash.

7 MR. EVANS: What's the grade on that  
8 road, the part that you constructed? Do you have any  
9 idea?

10 MR. SCHUMACKER: Oh, I'd say it's 10  
11 percent. The part going down the other side, the original  
12 parts is, it's more of an angle than 10 percent. It's  
13 fairly steep.

14 THE CHAIRMAN: What size culvert did you  
15 use in that stream that you crossed?

16 MR. SCHUMACKER: I can't remember. I'm  
17 sorry but, I just don't remember what it is. To my nature  
18 or to my knowledge, we haven't had a rain that over washed  
19 it and washed around it or anything.

20 MR. FULMER: Mr. Chairman?

21 THE CHAIRMAN: Yes.

22 MR. FULMER: What would be the  
23 possibility of the Well Review Board reviewing the sites?

24 THE CHAIRMAN: How far away are we to the  
25 site?

1 MR. SCHUMACKER: What, about 20 miles.

2 MR. FULMER: Would it be possible?

3 THE CHAIRMAN: That's fine, I mean if you  
4 decide that you want to see the site, we'll be happy to do  
5 that. I think the gas and oil inspector is prepared to  
6 show some photographs of the site and to present the  
7 evidence leading to why he made this decision so, after  
8 that, if the Board decides to review the site, we can  
9 adjourn and go do that. Any other questions of this  
10 witness?

11 MR. KELLY: The question I had would  
12 probably be better answered by Tom or whoever is going to  
13 present the reason for the violation.

14 THE CHAIRMAN: Okay. All right Bill,  
15 thank you. Tom, I'm going to call and ask you to present  
16 the evidence to the Board that you have.

17 MR. FULMER: Thank you, Mr. Chairman and  
18 members of the Board.

19 THE CHAIRMAN: Swear him in.

20 **TOM FULMER**  
21 a witness, having been duly sworn was examined and  
22 testified as follows:

23 MR. FULMER: In Section 45.1-293.A it  
24 states that, "Excepting the powers and the duties of the  
25 Board and the Virginia Oil and Gas Conservation Board, the

1 Inspector shall be charged with the enforcement of the  
2 laws of the Commonwealth relating to the exploration for  
3 and the production and transportation of oil and gas." The  
4 case before you involve the enforcement by the Inspector  
5 of the laws of the Commonwealth and regulations  
6 promulgated thereunder. On August 9, 1988, I, as the  
7 Inspector, issued a show-cause letter order of revocation  
8 of permit number 918 of Berea Oil and Gas Corporation for  
9 non-compliance of violations issued by this office from  
10 May 5, 1985 to August 9, 1988. I wish to present to the  
11 Board the basis of my decision to issue such an order. I  
12 intend to show that a pattern of non-compliance has been  
13 demonstrated by Berea Oil and Gas from the time the well  
14 work permit was issued and particularly within in the past  
15 twelve months. On April 21, 1986, the Division of Gas and  
16 Oil received an application from Berea Oil and Gas  
17 Corporation for the drilling of Matney Heirs #1 well. On  
18 April 25, 1986, this office inspected the proposed site  
19 and reviewed the well work application. The application  
20 and site were approved and a well work permit was issued  
21 for the Matney #1 on May 5, 1986. On December 31, 1986,  
22 an inspection was made during the construction of the  
23 site. The Inspector, at that time, required corrections  
24 to be made at the site and required a revision to the  
25 operations plan be submitted to this office. As of this

1 date, no revision has been submitted. At that time, the  
2 company representative requested approval to move a rig on  
3 the site and begin drilling the well. On January 8, 1987,  
4 an inspection was made at the site. No company  
5 representative was present, however, the toolpusher of the  
6 drilling company was told that the pit had to be lined as  
7 well as told that gravel needed to be placed on the road  
8 and hay bales and silt fencing needed to be installed  
9 around the disturbed area. The toolpusher, at that time,  
10 was given a copy of the laws and regulations. On January  
11 12, 1987, the Division was contacted by the toolpusher  
12 stating that the pit was leaking. At that time he was  
13 informed to cease drilling and to construct another pit to  
14 act as a catch basin to prevent the escape of the pit  
15 fluids from the leaking pit. Upon inspection of the site,  
16 the pit had been improperly lined, no hay bales had been  
17 installed as requested on January 8, 1987, and no gravel  
18 had been laid down as requested on January 8, 1987. The  
19 inspector issued two violations for non-compliance.  
20 Violation of Section 45.1-311.E (GC-3 and GC-12) Failure  
21 to protect adjacent property, failure to establish a  
22 stabilized access road to prevent disturbances of adjacent  
23 properties. Violation of condition placed on issuance of  
24 Permit Number 918 by letter dated May 5, 1986, failure to  
25 contain all expected fluids within the pit. On March 25,

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1 1987, an inspection was made of the site. The site and  
2 road were eroding and the culvert at the site was plugged  
3 and was not performing its intended purpose. The  
4 inspector held a conversation with the landowner who  
5 expressed his concern about the site. On March 26, 1987,  
6 a violation was issued to Berea as follows: Violation of  
7 45.1-311.E (GC-3) Failure to protect adjacent property.  
8 Erosion was occurring within the site and the pits were  
9 overloaded and required to be drained to prevent pollution  
10 of the states waters. Violations issued on January 12,  
11 1987 have not been abated. On March 26, 1987, Mr. Mark  
12 Schumacker, the company representative of Berea Oil and  
13 Gas was informed of the violations and was given a  
14 deadline of April 2, to abate the violations. On May 1,  
15 1987 an inspection of the site revealed that no work had  
16 been done to abate the violations. On May 4, 1987, the  
17 Division contacted Mr. Schumacker to inform him that the  
18 violations were to be abated within fourteen days. On May  
19 27, 1987, the Division made a follow-up inspection of the  
20 site. No work had been performed to abate the outstanding  
21 violations. Additionally, mud had been tracked on to the  
22 highway. On May 29, 1987, Mr. Frank Huber, my  
23 predecessor, sent by certified mail a letter stating the  
24 position of the Division concerning the Matney #1 well.  
25 Mr. Huber further issued a violation citing the failure of

1 Berea Oil and Gas to meet the minimum requirements under  
2 Section 45.1-311-E concerning the Virginia Erosion and  
3 Sediment Control Handbook. On June 9, 1987, Mr. Huber and  
4 Mr. Stern, of this office, met with Mr. Schumacker at the  
5 site and discussed what work had to be done to abate the  
6 outstanding violations. On June 10, 1987, Mr. Huber sent  
7 a letter to Mr. Schumacker acknowledging the meetings and  
8 this Division's intent to cooperate with Berea Oil and Gas  
9 on this matter. On July 27, 1987, an inspection was made  
10 of the site. The lower pit which had been approved on  
11 January 12, 1987, to catch any leakage of fluids from the  
12 pit approved in the original application had been  
13 backfilled. The site had not been seeded nor had the  
14 culvert been repaired as had been mentioned by Mr.  
15 Schumacker by telephone conversation of July 27, 1987.  
16 Three violations were issued to Berea Oil and Gas as  
17 follows: Violation of Section 45.1-311.E (GC-1) Failure  
18 to stabilize denuded area. Violation of Section 45.1-  
19 311.E (GC-3) Failure to protect adjacent properties.  
20 Violation of Section 45.1-311.E (GC-10) Failure to  
21 maintain proper drainage on working or crossing within  
22 water courses. On August 11, 1987, the Inspector met with  
23 Mr. Schumacker and discussed what work was necessary to  
24 abate all outstanding violations. On August 22, 1987, an  
25 inspection was made of the site. The violations had not

1 been abated. On September 8, 1987, an inspection was made  
2 of the site. Work had been commenced on the site by the  
3 landowner. The work that had been done abated two  
4 violations which had been issued on July 27, 1987.  
5 Violations for GC-3 and GC-10 were canceled. Final  
6 stabilization had not been completed and was still  
7 outstanding. On October 7, 1987, an inspection was made  
8 of the site. After the culvert had been placed, the  
9 culvert had not been backfilled as required. On October  
10 13, 1987, I wrote a letter to Mr. Tom O'Neill, President  
11 of Berea Oil and Gas Corporation, expressing our concerns  
12 of non-compliance by Berea Oil and Gas Corporation on the  
13 outstanding violations. I further indicated that the  
14 office would be put in position to carry out its  
15 responsibilities under Section 45.1-356(4) of the Code  
16 which concerns enactment on the bond posted by Berea. An  
17 inspection was conducted on November 4, 1987, on the site.  
18 No work had been done to abate the outstanding violations.  
19 Two more inspections were conducted during the months of  
20 December and February which indicated no work had been  
21 performed to abate the outstanding violations. On April  
22 28, 1988, an inspection was conducted on the site. No  
23 work had been performed on the site. On April 29, 1988,  
24 five violations were sent the Mr. O'Neill as follows:  
25 Violation of 45.1-311.E (GC-2) Failure to stabilize

1 denuded areas. Violation of 45.1-311.E (GC-14) Failure to  
2 maintain temporary and permanent erosion and sediment  
3 controls. Violation of 45.1-311.E (GC-10) Failure to  
4 protect water courses. Violation of Regulation 4.06  
5 Failure to notify the Division of the company's position  
6 concerning this well. Violation of Regulation 4.07  
7 Failure to identify the well. On May 3, 1988, this office  
8 was in receipt of a letter from Mr. Mark Schumacker  
9 requesting an extension to the July 1, 1988, deadline to  
10 decide whether the well would be completed or declared a  
11 dry hole. On May 17, 1988, an inspection was conducted.  
12 Berea had complied with Regulation 4.07. A cancellation  
13 of the violation was sent on May 19, 1988 to Mr. O'Neill.  
14 On May 27, 1988, Berea was granted an extension to July 1,  
15 1988, prior to issuance of the extension I informed Mr.  
16 Schumacker by telephone that the erosion and sediment  
17 control violations must be abated and were not included in  
18 the extension. On June 22, 1988, Mr. Schumacker contacted  
19 this office requesting a further extension for compliance  
20 on July 1, 1988, in a telephone conversation with Mr.  
21 Schumacker that the violations of which were outstanding  
22 must be abated immediately and I would not grant another  
23 extension on the violations concerning erosion and  
24 sediment control. On approximately July 7, 1988, a  
25 representative of Berea Oil and Gas came to the office.

1 Mr. Henderson discussed with the representative what had  
2 to be done on the site to abate the outstanding  
3 violations. On July 25, 1988, an inspection was conducted  
4 on the site. No work had been performed on the site to  
5 abate the outstanding violations. On July 26, 1988, I  
6 requested that the inspector prepare a history of the  
7 actions taken by this Division during the issuance of  
8 permit number 918 for Berea Oil and Gas Corporation.  
9 Ironically, the same day Berea contacted the Division to  
10 inform the Division that they had not yet obtained a  
11 contractor to do the required work to come under  
12 compliance. After examination of the records of this  
13 Division, it was the decision of the Inspector to issue a  
14 show cause order for the suspension and revocation of  
15 permit number 918 of Berea Oil and Gas. It is my position  
16 that the Division had cooperated and assisted Berea Oil  
17 and Gas to its fullest extent possible. Within the  
18 Virginia Oil and Gas Act, Section 45.1-356 plainly grants  
19 the Division authority in the case of non-compliance with  
20 the laws of the Act. This is the last action which the  
21 Division would take on this matter. We sorely recommend  
22 to the Board that the determination of revocation of  
23 permit number 918 be confirmed. The Division further  
24 recommends that Berea post single well bonds for each of  
25 its remaining operations in Virginia in order to continue

1 operations. Currently, Berea has posted with the Division  
2 a surety bond in the amount of \$25,000.00 for its  
3 operations in Virginia. Since Berea had a blanket bond  
4 and the actions of the Division will require that this  
5 bond be forfeited for the plugging and stabilization of  
6 the Matney #1 well with the unused balance refunded to the  
7 surety company, we recommend that Berea not be allowed to  
8 post a blanket bond for any present or future operations.  
9 The Division feels that cooperation is a two sided affair.  
10 However, Berea has not demonstrated a willingness to  
11 cooperate in good faith in complying with the laws of the  
12 Commonwealth. Thank you Mr. Chairman and members of the  
13 Board.

14 THE CHAIRMAN: Did you have photographs of  
15 the site that you wish to present?

16 MR. FULMER: Yes, I do, Mr. Chairman. I  
17 would like, these pictures were taken on September the  
18 9th, of this year and in order to explain them, I would my  
19 inspector, Mr. Henderson, to come up and explain if there  
20 is any questions about them.

21 THE CHAIRMAN: Okay, Mr. Henderson.

22 JAY HENDERSON

23 a witness, having been duly sworn was examined and  
24 testified as follows:

25 THE CHAIRMAN: Mr. Henderson, if you will,

1 I ask that these photographs be numbered and make that  
2 available to the people here as well. Show the Board the  
3 photographs after they're numbered. Just let the Court  
4 Reporter number them.

5 MR. HENDERSON: Oh, okay.

6 OFF RECORD

7 THE CHAIRMAN: I'd like for you to tell us  
8 the number on the photo that you're about to describe and  
9 describe the photograph in detail, please.

10 MR. HENDERSON: Okay, photograph number 1  
11 is a photo looking from the actually the lowest part of  
12 the access road up toward the drill site. The site is on  
13 the left side of the photo. Let's see, I believe the  
14 outslope and part of the highwall here. Number 2 is just  
15 pretty much a close up of the other half. There is some  
16 road recurring on the, I don't know how early it was, it  
17 was September 9th when I was there. Photo number 3 is a  
18 outslope at the drill site, the bench that was  
19 constructed. Number 4 is the, where the access road  
20 enters the drill site. This is just on the up side of the  
21 access road.

22 MR. FULMER: Is this the access road  
23 here?

24 MR. HENDERSON: No, sir, the access road is  
25 just right off to the side here. This is a stream that

1 comes down off the hillside and along side the road as it  
2 continues down this direction and this is a ditch that was  
3 dug to bury a culvert. This is, essentially this is,  
4 photo number 5, looking slightly down hill. Again, this  
5 is the access, this is the ditch that was dug but not  
6 backfilled to cover the culvert. Photo number 6 is on the  
7 access road where the culvert crosses under it. The  
8 access road continues around to the right here, or left  
9 and on down the hill in this direction. As you see, that  
10 water has either come off the site or out of the ditch  
11 down to a point on the road in here and then eroded down  
12 into the stream. Photo number 7, again, this is the road,  
13 the access road, the sites off to the right and the gully  
14 that was in the last photo is, starts right here and heads  
15 down into this little draw, small water mark in this area.  
16 And, I believe there has been some erosion come off the  
17 hillside. Photos 8 and 9 are two shots of the culvert  
18 that was put in and originally when the site was built a  
19 metal culvert was installed during the well operations,  
20 the upper side of that culvert was buried and Berea came  
21 in, or contracted to have that extension put on the  
22 culvert and that hole, filled back in. This is the drill  
23 site. Again, the well is pretty much in the center of the  
24 picture. That was photo number 10. Photo number 11 is a  
25 picture of the, the pit was constructed for drilling the

1 main pit to hold the cuttings---

2 THE CHAIRMAN: This number 1, this is the  
3 first pit we're talking about?

4 MR. HENDERSON: Yes, this is the original  
5 pit. As you can see some barrels on the left side of the  
6 pit and then there are also the blue thread protectors  
7 scattered along the outslope. The pit was lined, it was  
8 lined with the relatively light weight plastic. Photo  
9 number 12 and 13 are photos of the outslope. There is,  
10 there are some tension cracks that have developed along  
11 here that are several inches wide and several, a couple  
12 inch displacement. Photo number 14 is the second pit area  
13 that was drilled, that was built to hold the fluid leaking  
14 out of the first pit. It has been backfilled and was  
15 seeded and it is, looks fairly small. Photo 15 is just  
16 another view of the main drilling pit again with the  
17 barrels, thread protectors and this is coming from the  
18 drilling. Photo 16 is of the bench and the well at this  
19 point right here. Photo 17 again, this is a shot of the  
20 bench. Photo 18 is where the access road comes up onto  
21 the bench. Again, this is the hole that hasn't been  
22 backfilled for the culvert and you can see, a little  
23 erosion on the road down to the water bar on the road and  
24 where the water came off down into the creek.

25 MR. FULMER: Is that water bar

1 constructed water bar?

2 MR. HENDERSON: Yes, sir.

3 MR. FULMER: Okay. It was meant to be  
4 there, in other words?

5 MR. HENDERSON: Yes, sir.

6 MR. FULMER: Okay.

7 THE CHAIRMAN: In your opinion, is that  
8 culvert properly placed and is it properly sized?

9 MR. HENDERSON: I believe so. Since the  
10 extension was put on the original culvert, it doesn't  
11 appear to be in any, it doesn't appear that that, or that  
12 creek has overflowed that culvert. And, this is 19, and  
13 this is again looking down the access road to the creek in  
14 the main valley and then the road going up the other side  
15 to the state highway.

16 THE CHAIRMAN: That culvert is across this  
17 creek?

18 MR. HENDERSON: There's a large, this is a  
19 larger creek down here and there's a larger culvert here.  
20 Would it be helpful if I drew it on the board or sketched  
21 it or, there's two culverts, one is in the main creek  
22 that's no problem.

23 MR. FULMER: And, one's a road crossing.

24 THE CHAIRMAN: Okay, thank you.

25 MR. MCGLOTHLIN: Mr. Chairman?

1 THE CHAIRMAN: Yes.

2 MR. McGLOTHLIN: I'd like to have Berea Oil  
3 confirm or deny that these are photos of the well site.

4 MR. SCHUMACKER: I have a few other  
5 comments, too. Should I do that now or---

6 THE CHAIRMAN: Do you confirm that that---

7 MR. SCHUMACKER: I confirm they are photos  
8 of the proven well site.

9 THE CHAIRMAN: Okay. Any other questions  
10 regarding the photographs? Okay, Mr. Schumacker, we'll  
11 hear from you now.

12 MR. SCHUMACKER: I'd just like to take the  
13 opportunity to respond to a few of the points that were  
14 made by the state inspectors. First of all, I have some  
15 invoices here that substantiate some of the work that we  
16 did on this location. Here's a gravel invoice that shows  
17 that on the 14th we hauled in about 16 tons of stone. We  
18 got the violation on the 12th.

19 THE CHAIRMAN: What year?

20 MR. SCHUMACKER: This is 1987.

21 THE CHAIRMAN: The 14th?

22 MR. SCHUMACKER: The 14th of 1987.

23 THE CHAIRMAN: What month?

24 MR. SCHUMACKER: Oh, I'm sorry, it's 1-14-

25 87.

1 THE CHAIRMAN: Okay.

2 MR. SCHUMACKER: Got a violation sometime on  
3 the 12th of January, 1987 and was asked to put some gravel  
4 on the road. We also, on the, 1-15-87 had another load of  
5 crusher-run stone brought in on this road and had it put  
6 down. The road, in my opinion was, before we put any  
7 stone down was of a rocky, small rocky type texture and  
8 appeared to be pretty stable. The gravel that we put down  
9 where we entered the main highway only complicated getting  
10 in and getting out of the location because it was so, it  
11 was like this when you got to the main highway and that  
12 caused you to spin out right up there. It wasn't so bad  
13 for a pick-up but, for a good size truck and then it meant  
14 getting a dozer to get them out of there and you couldn't  
15 pull them out because you're sitting right against the  
16 main highway and there's no where for the, anybody to get  
17 up here to pull one, you see, you've got to push them out.  
18 Well, that, with a float or something it would be a little  
19 bit better to pull them than it would be to push up a hill  
20 like that but, none the less we did put the stone down,  
21 that's the point I'm trying to make. We spent \$16,500.00  
22 to build this location, that's what it cost to have it  
23 built. The point I wanted to make from that is to show  
24 that the difficulty in building a location in this area, I  
25 think that's a fair, a fairly high priced location.

1 During the job, we spent about \$900.00 rebuilding the old  
2 pit and the catch basin to state inspection. This invoice  
3 shows the time the loader spent to comply with the  
4 deficiencies we had there. We spent, with one contractor,  
5 in July of 1987, \$4,200.00 to reclaim this location and  
6 that included seeds, straw, fertilizer from Clintwood Farm  
7 Supply. We went back again and hired Mr. Matney to  
8 reclaim it and I believe we spent a \$1,000.00 with him to  
9 correct the deficiencies. Big Justice Construction  
10 Company, I must have laid that down. I had an invoice,  
11 it's in there from Big Justice Construction where they  
12 hauled hay bales and seed and fertilizer for \$530.00 some  
13 odd dollars to correct some deficiencies that were there.  
14 We took a water test, had it sampled by Levisa Testing, it  
15 was the pit water, found it to be, I believe, to be within  
16 standards acceptable, in other words, that water was not  
17 of a pollutant type water.

18 THE CHAIRMAN: May I see that, please?

19 MR. SCHUMACKER: I called that information  
20 in, I believe to the State.

21 THE CHAIRMAN: These are the only test  
22 that were run, total iron, total maganese, suspended  
23 solids, pH?

24 MR. SCHUMACKER: That's all we were  
25 instructed to run to determine whether the water was

1 acceptable quality or not. I'd like to make one other  
2 point. Mr. Fulmer stated, I just happened to make a note  
3 of this phone conversation that Jay Henderson and I had,  
4 it was on the 21st of June of 1988, and it wasn't, I  
5 believe instead of the 22nd of 1988 and in this phone  
6 conversation, I told Mr. Henderson that the clouded title  
7 causes the partners not to be willing to fract yet. We  
8 are willing to reclaim now but, we are in the worse  
9 drought since the Great Depression. Our seeding efforts  
10 would therefore be of no avail. Mr. Henderson said he  
11 would talk to his boss and get back to us by week's end.  
12 And, I don't recollect that I had any response back from  
13 that. I understood Mr. Fulmer's comment to be that the  
14 final stabilization, delay of the final stabilization  
15 could not be authorized. I didn't gather that from this  
16 call. At least these are the notes that I took from that  
17 phone call. I just wanted to make that point. I was of  
18 the opinion that we were going to wait or that we would  
19 hear differently and I don't recollect hearing  
20 differently. That's all I've ever had.

21 MR. MCGLOTHLIN: Mr. Schumacker, you  
22 testified that you had hay delivered, was that what was  
23 used for your mulch was hay?

24 MR. SCHUMACKER: Yes.

25 MR. MCGLOTHLIN: Okay, thank you.

1 MR. SCHUMACKER: We also delivered hay  
2 earlier in the drilling operation to build a silt fence.  
3 I have recollection of that in my daily drilling report if  
4 you would like me to give you the day.

5 THE CHAIRMAN: Mr. Matney?

6 MR. MATNEY: My name is Lucian Matney,  
7 Route 2, Box 669, Grundy, Virginia.

8 THE CHAIRMAN: Mr. Matney, excuse me just  
9 a second. Let the Court Reporter swear you in, please.

10 LUCIAN MATNEY

11 a witness, having been duly sworn was examined and  
12 testified as follows:

13 MR. MATNEY: Lucian Matney, Route 2, Box  
14 669, Grundy, Virginia. I am one of the landowner's heirs  
15 of the Matney heirs. And, in reference to what Mr.  
16 Schumacker and all that's been concerned with, pictures,  
17 so forth and so on, I did do some of the construction work  
18 on re-instructing of the water situation. It was a water  
19 dam, had above a culvert and so me and Schumacker had a  
20 phone discussion on it and he wanted me to take a, get a  
21 back hoe and go in there and see if we couldn't open it up  
22 and I told him that, my statement was that I didn't think  
23 that I could open it with a back hoe but, I would do my  
24 best. Well, I got it opened up with that, the water was  
25 going through it at one time. I took a 12-inch flexible

1 pipe and you could see it in the pictures, 8 and 9 and the  
2 second time I went back with the back hoe, I got it opened  
3 up and got it in there before it fell in on me. The first  
4 time, I had, it was dark, and I didn't get it all the way  
5 down in there. The second time, I did get it in there to  
6 where it took care of the water situation and it took care  
7 of the water situation up to the present. And, that's  
8 about all that I know of. I, referring to picture 8 and  
9 9, why, it shows the verification of the work that I done.  
10 I put the flexible pipe in there to take care of the water  
11 from going over and down the road. They was, he was  
12 cooperative with me. I believe one more little thing I  
13 done was down next to the foot of the road, at the main  
14 branch. I dug out a pit and put 5 or 6 bales of hay  
15 around sludge pond there where it would catch erosion  
16 water as it come down off the mountain.

17 THE CHAIRMAN: All right, thank you, sir.

18 MR. O'NEILL: May I ask, the Chairman,  
19 ask you to submit me one question, sir?

20 THE CHAIRMAN: Well, go ahead and ask what  
21 you're going---

22 MR. O'NEILL: I'm just to ask Mr. Matney  
23 if, in the last year and half dealing with Berea and  
24 different personnel of Berea if he found us to be  
25 interested and responsive and cooperative, not that he got

1 everything he wanted all the time, instantly but if he  
2 found us to be reasonable, interested, and cooperative?

3 THE CHAIRMAN: You can answer that if you  
4 would like to, Mr. Matney.

5 MR. MATNEY: They were in reasonable,  
6 talking reasonable about the situation and on anything  
7 that was concerned. They referred with me and Mr.  
8 Schumacker talked to me on anything that I talked to him  
9 about and so forth.

10 THE CHAIRMAN: Thank you. Anything  
11 further from any of the people that are here today?  
12 Anything further besides business?

13 MR. MCGLOTHLIN: I would like to ask a  
14 couple questions of Mr. Schumacker. As far as the request  
15 for extensions on the violations for the site, is, I'm  
16 still not quite clear as far as the reasoning behind that  
17 and I assume partially because of the title problems or  
18 principally because of title problems and the hesistancy  
19 to spend money at that time or---

20 MR. SCHUMACKER: We, I can address that part  
21 of it right there. We have been delaying, had delayed  
22 this fract job on this well, that was in our opinion was  
23 going to be our major expenditure until such a time that  
24 we did, we owned the well a 100 percent and once we, we  
25 felt that once we fractured it, tested it, and knew how good

1 it was that maybe somebody else would also, that would be  
2 the time that they would make their move to say we own  
3 part of the well. So, we felt that was a good business  
4 decision to make and I would, the pit that you've seen in  
5 those pictures, we've had several discussions about that  
6 pit, we being myself and the state inspector and I was  
7 always of the opinion and always asked that we be allowed  
8 to just leave it sit there, it wasn't doing any harm until  
9 we fractured the well. And, I felt that we had an agreement  
10 and an understanding that that's what we would do.  
11 Otherwise, I had dozers in there many times and I  
12 certainly would have had it backfilled and I had no other  
13 reason to leave the thing opened other than that. So,  
14 that the delaying the fract job did in fact delay closing  
15 of that pit, but, that had been discussed and an  
16 understanding was there.

17 THE CHAIRMAN: Is the pit still there now?

18 MR. SCHUMACKER: No, it's closed in.

19 THE CHAIRMAN: It has been filled since  
20 these pictures were taken?

21 MR. SCHUMACKER: Yes, it has.

22 THE CHAIRMAN: Okay. The other factor  
23 appeared to be, I guess, a concern about weather and as  
24 far as the seeding in particular, this dry weather was a  
25 cause that you felt like that was justified to delay that.

1 MR. SCHUMACKER: I thought---

2 THE CHAIRMAN: And, you felt like you had  
3 the concurrence of the inspector on that?

4 MR. SCHUMACKER: Yes, I, this note was  
5 actually handwritten by myself the day that we talked and  
6 it may have, I dated it the 21st, I think it was that day  
7 but, I don't know for sure. But, anyhow, I specifically  
8 said that I didn't think now is a good time to put grass  
9 seed down and I would, I just think that that was a very  
10 practical statement to make and I also went further to say  
11 that we were fully prepared to seed the thing when the wet  
12 weather came. We all knew it was going to come in the  
13 fall and grass grew real good in the fall. But, I also  
14 said, in this letter and I read it but, I'll read it  
15 again. "We are willing to reclaim now." This was on 6-  
16 21-88. But, I wanted to hold off and in fact we have held  
17 off now and we are in fact going to be seeding and I think  
18 the pictures showed all kinds of grass growing. There  
19 were some spots where grass needed to be, where some grass  
20 could be growing but, like I said before, we shot this  
21 thing out side the hill and we put a lot of seed and mulch  
22 on it. I can take you right above the location on the  
23 state road highway and show you three or four miles of  
24 road where the side of the hill was, there's more  
25 sedimentation coming off of there than is coming down on

1 the road right there. I just think it was, it was a fair  
2 known step on our part and I grant that we still have work  
3 to do there. But, we put, I made reference to these  
4 invoices. We have put a lot of money into this thing to  
5 try and get this thing in shape that it's approved. And,  
6 we're putting more in it now. We haven't just walked away  
7 from it. We spent thousands of dollars in here to do this  
8 work.

9 THE CHAIRMAN: As far as the conditions  
10 that are shown in these pictures in addition to pit having  
11 been backfilled now, what, maybe I'm not, maybe Tom is the  
12 one that should answer this, I'm not sure but, just  
13 curious what the difference is now between the pictures  
14 and what the current state of the location is other than  
15 the pit being filled?

16 MR. MATNEY: Are you asking me, sir?

17 THE CHAIRMAN: Whoever can answer that  
18 question.

19 MR. SCHUMACKER: I guess you're asking if we  
20 actually seen the site now that they have done this work  
21 in the last couple days?

22 THE CHAIRMAN: Well, is it the last couple  
23 of days that the pit's been filled?

24 MR. SCHUMACKER: It's been in the last week,  
25 yes.

1 THE CHAIRMAN: Okay, okay.

2 MR. SCHUMACKER: My understanding is that  
3 when we're done fracturing, this ditch that we've dug at the  
4 back of the location needs to be fixed up a little bit  
5 better so that the run off from the hill is carried  
6 through the ditch and gets into that culvert system, and  
7 rather than going out in front of the location where these  
8 cracks are developing. When we get done fracturing the  
9 thing we're are going to seed the location down. I don't  
10 know if grass is going to grow very well on it or not.  
11 We're going to seed and fertilize it. I hope it grows.  
12 And, then we'll take, in some of these small places where  
13 run off has caused a little erosion, we'll back plate it  
14 and put more seed on it. But, I think that, as practical  
15 people, if you'd look at those pictures and you see the  
16 terrain, those things are going to continue to happen and  
17 in isolated cases, we're going to have to go back in and  
18 dress them up year after year. We have to do it  
19 everywhere else. We have a program everywhere else where  
20 we redress our roads every year. We got to travel that  
21 road, I mean, we built it to service a well and we've got  
22 to use it. If we use it, it certainly is not going to be  
23 grass covered. There's going to be, you know, there's  
24 going to be two places where the tires roll and there's  
25 not going to be any grass to grow there. I don't know.

1 We've put a lot of money into this thing, that's the fact  
2 and we've tried to, maybe we haven't done the work as  
3 quickly as we should have but, we certainly went in there  
4 and tried to do it.

5 MR. EVANS: Mr. Chairman, I have just  
6 one more question. Mr. Schumacker, when was construction  
7 first commenced on this site?

8 MR. SCHUMACKER: I'd like to tell you  
9 exactly if I can. We moved a rig in on the 29th of  
10 December---

11 MR. EVANS: What year?

12 MR. SCHUMACKER: That would have been on  
13 1986 and it had to have been done some time during that  
14 month is 1986, just before the rig came in but, I don't,  
15 the daily drilling report doesn't show the date that it  
16 started.

17 THE CHAIRMAN: Mr. Fulmer, what did the  
18 amendment that you were requesting for the operations plan  
19 require them to do? What were you asking for?

20 MR. FULMER: Mr. Chairman, I'll have to  
21 refer this to Mr. Henderson because during this time, I  
22 wasn't present. There was a synopsis on it that Mr.  
23 Henderson can probably relate to you at that time what the  
24 requirement was on that submittal.

25 THE CHAIRMAN: Mr. Henderson?

1 MR. HENDERSON: Basically to show what  
2 steps, well, since this was after the fract, what steps  
3 had been taken to control drainage and sedimentation on  
4 the site and the general area.

5 THE CHAIRMAN: Did it deal with the road  
6 as well? Did it deal with the road as well?

7 MR. HENDERSON: Yes.

8 THE CHAIRMAN: Do you have that amendment?  
9 To this date, has that ever been presented to you?

10 MR. HENDERSON: No, sir.

11 THE CHAIRMAN: Mr. Schumacker, is there  
12 any reason why you haven't complied with that order to  
13 amend your plan?

14 MR. SCHUMACKER: I wasn't made aware of it.  
15 I never, I can honestly say I never knew about it, that  
16 the amendment was required.

17 THE CHAIRMAN: Mr. Henderson, was that in  
18 the form of a notice of violation in writing?

19 MR. HENDERSON: No, sir. We met at the  
20 site on December 31st, 1986, I guess---

21 MR. SCHUMACKER: It would have had to 1986,  
22 yes, that's when it began.

23 MR. HENDERSON: And, the site, the original  
24 operations plan did not have complete drainage control and  
25 erosion and sedimentation structures on it and I asked for

1 a revised plan at that time.

2 THE CHAIRMAN: Verbally asked for it, you  
3 verbally asked for it?

4 MR. HENDERSON: Right and this was  
5 essentially a follow-up to a letter that went out, a memo  
6 that went out to all operators on or about November 14th  
7 that stated that any site that had not been built before  
8 then could not be built until a revised operation is  
9 planned showing what measures would be taken to control  
10 drainage and sedimentation. These sites could not be  
11 built until such a revised plan was submitted.

12 THE CHAIRMAN: That had been communicated  
13 to all oil and gas operators in Virginia?

14 MR. HENDERSON: Yes, sir.

15 THE CHAIRMAN: In writing?

16 MR. HENDERSON: Yes, sir.

17 THE CHAIRMAN: Has there ever been  
18 anything in writing following that memorandum on this site  
19 to require them to amend the operation's plan?

20 MR. HENDERSON: No, sir.

21 THE CHAIRMAN: Okay. So, you made the  
22 original request and when you never received it, it was  
23 never followed up on?

24 MR. HENDERSON: That's correct.

25 THE CHAIRMAN: No other requests were

1 made? Okay, thank you. Let me ask, I guess, while he's  
2 there, let me ask him this question. As far as the  
3 current violations, the three that are stated here in the  
4 letter of August 9th, those are the current violations  
5 that have not been corrected?

6 MR. HENDERSON: I believe so, yes.

7 THE CHAIRMAN: And, general criteria 1, 3,  
8 10, and 14, what does, what is 14?

9 MR. HENDERSON: Maintenance.

10 MR. SCHUMACKER: Maintenance.

11 THE CHAIRMAN: So, you're talking about  
12 the stabilization of site, the protection of the adjacent  
13 property, and drainage control?

14 MR. HENDERSON: And, seeding.

15 THE CHAIRMAN: And seeding. And, based on  
16 the pictures, at that time I suppose we're talking about  
17 backfilling the pit, correcting the drainage where the  
18 gulleys have formed, additional seeding and maintenance of  
19 the road?

20 MR. HENDERSON: Yes, sir.

21 MR. FULMER: I would like to emphasize  
22 and advise one thing there. The backfilling of the pit.  
23 We had no problem with the pit, of leaving the pit under  
24 the auspices they were going to complete the well. Our  
25 other problems lie in other areas of the location, not

1 directly at the pit itself.

2 MR. MCGLOTHLIN: Mr. Henderson, were any of  
3 the violations corrected, July 28th, 1987 you cited them  
4 for three violations, 1, 3, and 10, were they corrected in  
5 1987, or some attempt to correct them?

6 MR. HENDERSON: I never did see any  
7 evidence that and there wasn't anymore grass, you know,  
8 and the culvert never was, the construction on that  
9 culvert, the extension never was completed.

10 MR. MCGLOTHLIN: And, then in October 7th,  
11 1987, you cited them for a violation of number 10, general  
12 criteria 10, on October 7th, 1987? If these violations  
13 were not corrected from July 1987 to October 1987, why did  
14 you not cite them for 1 and 3 again?

15 MR. HENDERSON: I don't know.

16 MR. MCGLOTHLIN: And, then we've gone almost  
17 8 months here from October 1987 until April of 1988 until  
18 another violation, citing of violations 1 and 4, 1, 10,  
19 and 14, why was there such a long period of time there?

20 MR. HENDERSON: There were inspections made  
21 in the interim. It got to the point where, you know, once  
22 I had gone through and written the violations, I don't  
23 recall the specific date but, it was my understanding that  
24 Mr. Fulmer was handling that. I was going out seeing that  
25 no work had been done at the site and was informing him

1 of that.

2 MR. FULMER: Mr. Chairman, may I answer  
3 that question?

4 THE CHAIRMAN: If you can answer it.

5 MR. FULMER: Okay, the three violations  
6 cited in there shows a pattern of violation and they  
7 weren't abated and you'll notice that in all three of  
8 them, 10 shows up. It's of the same performance value,  
9 performance standard that has not been corrected. So,  
10 that, I mean, that doesn't show all the violations that  
11 were ever issued. That were ever abated but, those were  
12 the three that show a standard or performance standard on  
13 abating these violations. That's why they are in there.  
14 I hope that answers your question.

15 MR. MCGLOTHLIN: Let me ask you a question  
16 back, Mr. Fulmer.

17 MR. FULMER: Okay.

18 MR. MCGLOTHLIN: Of the, you state that  
19 there were other violations besides these?

20 MR. FULMER: Yes, sir.

21 MR. MCGLOTHLIN: Were they abated?

22 MR. FULMER: Some were and some weren't.  
23 They are outstanding violations. I will also call you to  
24 the fact that 45.1-356(4), Section 4 of the Law, it says,  
25 "After 20 days, if the violation is not abated, then the

1 State would move upon the bond." That is the last drastic  
2 measure that the State will take. What I'm trying to  
3 demonstrate here is our full cooperation in working with  
4 Berea Oil and Gas in this situation for them, to give them  
5 the opportunity to abate the violations. However, we felt  
6 at a point that these violations were not being abated and  
7 that we could not proceed any further. That's why the  
8 show cause letter was issued.

9 MR. KELLY: Were there extensions  
10 requested during this period for correction of these  
11 violations or is this just gone unanswered or---

12 MR. FULMER: The extensions that were  
13 requested were requested in May of 1988. In my testimony  
14 previously, I told you that I did grant an extension July  
15 the 1st but, I did not on the erosion and sediment control  
16 problems. The question that was pointed to me was the  
17 fact that they had a problem with title and that they  
18 didn't know when they was going to complete the well. I  
19 gave them the extension as far as reporting under 4.06  
20 which is to inform the state whether the well is going to  
21 be a dry hole and that erosion sediment control has to be  
22 done within one year. We have no records at the Division  
23 indicating any type of logs or anything after the drilling  
24 of this well. So, up to the point in May of 1988, we had  
25 no idea whether the hole was dry hole, whether it was

1 going to be completed or what. So, there was issued a  
2 violation of 4.06 to inform us of such. They informed of  
3 such that they had a problem and they wanted an extension,  
4 July 1. I granted them that extension but, I did not  
5 grant them an extension on the erosion and sediment  
6 control. I had a conversation on 7-01-88 as I testified  
7 prior to this with Mr. Schumacker involving an extension.  
8 I did not extend again the extension on the erosion and  
9 sedimentation control and I informed him that it would  
10 have to be done immediately. On July 7th, again we talked  
11 to Berea Oil and Gas. On July 25th, we conducted a site  
12 inspection and the violations had not been abated then.  
13 So, therefore, when in August of 9th, we issued the show  
14 cause letter. Does that answer your question, Mr. Kelly?

15 MR. KELLY: I think so.

16 THE CHAIRMAN: And, it's your opinion in  
17 accordance of the law that you could have forfeited the  
18 bond already and---

19 MR. FULMER: Yes, sir, Mr. Chairman.

20 THE CHAIRMAN: Any further questions?  
21 Does the Board wish to review the site or the photographs  
22 are acceptable?

23 MR. FULMER: I'd still like to view the  
24 site.

25 THE CHAIRMAN: Anything else to be

1 presented here? This will close the hearing. There will  
2 be a site review but, no further evidence entered into the  
3 record. This hearing is now closed.

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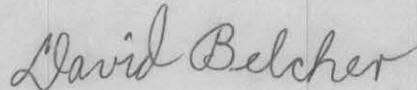
STATE OF VIRGINIA

AT LARGE, TO-WIT:

I, David Belcher, a Notary Public of and for the State of Virginia at Large, do hereby certify that the foregoing depositions were taken, subscribed and sworn to before me on the date and place aforesaid in caption; said depositions were transcribed by Laser Processing under my personal supervision.

Given under my hand this the fourth day of October, 1988.

My commission expires July 1, 1989.



David Belcher



Exhibit #1



Exhibit #2





Exhibit #3



*Exhibit #4*



*Exhibit #5*



*Exhibit #6*



*Exhibit #7*



Exhibit #8



*Exhibit #9*



*Exhibit #10*



Exhibit #11



*Exhibit #12*



*Exhibit #13*



*Exhibit #14*



Exhibit #15



*Exhibit #16*



*Exhibit # 17*



*Exhibit #18*



*Exhibit #19*