

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST PRONGHORN MANAGEMENT CORP., 1) FINDING THAT THE OPERATOR KNOWINGLY AND WILLFULLY VIOLATED NMSA 1978, SECTION 70-2-31(B)(2), 19.15.13.1115.A NMAC, AND 19.15.4.201 NMAC AS TO ELEVEN WELLS; 2) ASSESSING PENALTIES FOR THE VIOLATIONS; 3) REQUIRING OPERATOR TO FILE CORRECTED PRODUCTION REPORTS BY A DATE CERTAIN; 4) REQUIRING OPERATOR TO BRING THE ELEVEN WELLS INTO COMPLIANCE WITH 19.15.4.201 NMAC BY A DATE CERTAIN AND AUTHORIZING THE DIVISION TO PLUG SAID WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE IN THE EVENT OF NON-COMPLIANCE; AND REQUIRING OPERATOR TO PROVIDE CONTACT INFORMATION FOR PRIVATE LESSORS AFFECTED BY THE VIOLATIONS; LEA COUNTY, NEW MEXICO.

CASE NO. 13859, *re-opened, de novo*

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST PRONGHORN MANAGEMENT CORP. PURSUANT TO NMSA 1978, SECTION 70-2-14(B) ORDERING PRONGHORN MANAGEMENT CORP. TO PLUG AND ABANDON ALL WELLS IT OPERATES IN NEW MEXICO BY A DATE CERTAIN AND AUTHORIZING THE DIVISION TO PLUG SAID WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE IN THE EVENT OF NON-COMPLIANCE; LEA AND EDDY COUNTIES, NEW MEXICO.

CASE NO. 14052, *de novo*

**ENTRY OF APPEARANCE AND
PRE-HEARING STATEMENT**

The Oil Conservation Division submits this entry of appearance and pre-hearing statement pursuant to OCD Rule 1211 [19.15.14.1211 NMAC].

APPEARANCES

APPLICANT

Oil Conservation Division

APPLICANT'S ATTORNEY

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STATEMENT OF THE CASE

The Oil Conservation Division (OCD) seeks compliance orders against Pronghorn Management Corp. (Pronghorn) in two cases. The OCD asks that the two cases be consolidated for purposes of hearing, because the evidence in the two cases will overlap.

Case 13859:

Case 13859 is before the Commission on the OCD's motion for an order to show cause.

Case 13859 was filed December 6, 2006. The application alleged that Pronghorn, over a period of six years, had filed false reports showing small amounts of production on 11 wells that were in fact inactive and incapable of producing. OCD Exhibit 11 summarizes the false reporting evidence.

The case was heard by a division examiner on March 1, 2007. On June 15, 2007, the OCD issued Order No. R-12768. The order found that Pronghorn knowingly and willfully violated NMSA 1978, Section 70-2-31(B)(2) and 19.15.13.1115-A NMAC by filing false production reports on the 11 wells and required Pronghorn to do the following:

1. Return the 11 wells to compliance by December 30, 2007 by plugging and abandoning the wells, placing them on temporary abandonment status, or returning them to an OCD-approved beneficial use.
2. Pay a penalty of \$72,000 (representing \$1,000 for each false production report, regardless of the number of wells falsely showing production in that report) by July 30, 2007.
3. File corrected production reports on the 11 wells by July 30, 2007.

4. Provide contact information for private lessors affected by the false production reports by July 30, 2007.

Order No. R-12768 specifically provided that if Pronghorn did not pay the penalty, the OCD should initiate further enforcement action, including the imposition of additional penalties.

Pronghorn filed an untimely request for de novo review of Case 13859; Pronghorn later withdrew its request. Order No. R-12768 became a final order.

On November 15, 2007, the OCD filed a motion with the Division Examiner seeking an order to show cause why an additional penalty should not be imposed and why an order should not be entered finding Pronghorn in violation of an order requiring corrective action. On June 23, 2008, the Division issued Order No. R-12768-C finding that Pronghorn had failed to pay the penalty and had failed to take any of the corrective actions required by Order No. R-12768. The Division did not impose an additional penalty, but did order that Pronghorn be held in non-compliance with Division Rule 40 until and unless Pronghorn re-opened the case and presented evidence showing that it is in full compliance with Order No. R-12768. Pronghorn requested de novo review, and the matter is now before the Commission.

After the entry of Order No. R-12768-C, Pronghorn filed corrected reports, returned two of the wells to compliance, and transferred three of the wells to another operator without returning them to compliance. As of today's date, Pronghorn

1. has not paid the \$72,000 penalty;
2. has not returned the remaining 6 wells to compliance; and
3. has not provided contact information for private lessors affected by the false reporting.

In this de novo hearing, the OCD seeks an order finding Pronghorn in violation of an order requiring corrective action, based on its failure to return the 6 remaining wells to compliance and its failure to provide contact information for private lessors. The issuance of such an order will put Pronghorn out of compliance with 19.15.1.40 NMAC until it takes the corrective action required under the order. The OCD no longer seeks an increase in the penalty amount; that issue was raised because Order No. 12768 required the OCD to seek the increased penalties. However, the OCD does not believe that penalties are an effective means of obtaining compliance in this case and instead filed Case 14052 seeking an order pursuant to NMSA 1978, Section 70-2-14(B). See discussion below.

Case 14052:

The OCD filed Case 14052 on November 15, 2007. Case 14052 seeks an order pursuant to NMSA 1978, Section 70-2-14(B). That statute provides:

If any of the requirements of the Oil and Gas Act [70-2-1 NMSA 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules. If the order is not complied with in the time period set out in the order, the financial assurance shall be forfeited.

As outlined below, Pronghorn's extensive history of non-compliance with the Oil and Gas Act and OCD rules warrants application of the extraordinary remedy provided in Section 70-2-14(B): an order requiring Pronghorn to plug and abandon all its wells. Alternatively, Pronghorn may transfer its wells to another, un-related operator. The OCD seeks authority to plug the wells and forfeit any available financial assurance if Pronghorn fails to plug or transfer the wells.

At the time OCD filed the application in Case 14052, Pronghorn operated 39 wells in New Mexico, and 38 of the wells were in violation of an OCD rule. The case was heard January 10, 2008, and Order No. R-12768-C was issued June 23, 2008. Order R-12768-C provided that Pronghorn must shut-in all its wells, removed its allowable and authority to transport on all wells, and directed Pronghorn to transfer each well to another operator not affiliated with Pronghorn within 6 months. The order further provided that Pronghorn plug and abandon each well not so transferred, no later than December 31, 2008. Pronghorn seeks de novo review from the Commission.

After the order was issued, Pronghorn transferred 17 of its wells to TriTex Resources, LLC (TriTex). Pronghorn remains operator of record of 21 wells. (After researching the well files, the OCD determined that one of the 39 wells on the original list for Pronghorn had been plugged and abandoned. The OCD corrected the coding of the well, and that well no longer appears on the well list.)

In this de novo action, the OCD seeks an order requiring Pronghorn to plug or transfer all 21 wells for which it remains operator of record. This request is based on Pronghorn's history of non-compliance.

OCD Exhibits 1 and 2 are the well lists for Pronghorn and TriTex. The well lists have been color-coded to indicate the applicable violations. Exhibits 4 through 7 are keys to the color coding.

The wells coded in blue are the wells discussed above in connection with the false reporting case. See Exhibit 4 for the key summarizing the violations and compliance actions associated with the blue wells. These wells were found to be in violation of NMSA 1978, Section 70-2-31(B)(2), 19.15.13.1115.A NMAC and 19.15.4.201 NMAC in Case No. 13859, Order No. R-12768. As found in the order, Pronghorn was knowingly and willfully filing false reports of production on the wells although the wells were inactive. The order required Pronghorn to do the following by July 30, 2007: pay a penalty of \$72,000, file corrected production reports, and provide contact information for private lessors affected by the false reports. Pronghorn filed corrected reports for the wells after the deadline set by Order R-12768; two of the wells are now producing; five of the wells (including the two producers) have been transferred to TriTex Resources, LLC (TriTex). To date, Pronghorn has not returned the remaining wells to compliance, has not provided private lessor contact information, and has not paid the \$72,000 penalty.

The wells coded in green (see Exhibit 5) are in violation of 19.15.4.201 NMAC (the inactive well rule) and were the subject of an inactive well agreed compliance order. Pronghorn has not paid any penalty due under that agreed compliance order. The OCD brought plugging case No. 13858; Pronghorn was found to be in knowing and willful violation of Rule 201 as to the 16 green wells in Order R-12767. The order required Pronghorn to return them to compliance by October 2, 2007. Pronghorn transferred nine of the wells to TriTex; four of those wells now show production. Pronghorn did not return the remaining seven wells to compliance. The OCD

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plugged the seven remaining wells at a cost of \$299,373.74. The state forfeited Pronghorn's \$50,000 blanket bond and sent a demand letter to Pronghorn for the remaining \$249,373.74. Pronghorn has not reimbursed the state for the costs of well plugging. The wells have not been released as remediation work may still need to be done on the well sites.

The wells coded in purple (see Exhibit 6) reported production or injection during a period in which the OCD had cancelled Pronghorn's authority to transport or inject. Transportation would be a violation of 19.15.13.1105 NMAC; injection would be a violation of 19.15.9.701 NMAC.

The wells coded in yellow (see Exhibit 7) were in violation of 19.15.4.201 NMAC (the inactive well rule) at the time the application was filed. One of the yellow wells was transferred to TriTex. Of the six yellow wells still operated by Pronghorn, one has reported production; the remaining five are still out of compliance. In addition, one of those five wells, the State M #001, also has an unpermitted, unlined pit on location, in violation of 19.15.2.50 NMAC.

Because of Pronghorn's history of violating the provisions of the oil and gas act and OCD rules, and its disregard for agreed compliance order and hearing orders issued to achieve compliance with the oil and gas act and OCD rules, the OCD asks for an order under Section 70-2-14(B) requiring Pronghorn to plug and abandon all its wells or transfer its wells to another, unrelated operator. The OCD seeks authority to plug the wells and forfeit any available financial assurance if Pronghorn fails to plug or transfer the wells.

APPLICANT'S PROPOSED EVIDENCE

The OCD is filing its exhibits with this pre-hearing statement.

WITNESS:

ESTIMATED TIME:

Daniel Sanchez, Enforcement and Compliance
Manager

2 hours

Jane Prouty, Automation and Records Bureau

20 minutes


Dorothy Phillips, Financial Assurance Administrator

by affidavit

PROCEDURAL MATTERS

The OCD asks that Case 14052 be consolidated with the show cause hearing in Case 13859 for the purposes of hearing testimony, because the testimony in the two cases will overlap.

Respectfully submitted
this 27th day of October 2008 by

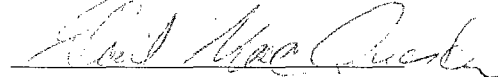


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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading and the OCD's exhibit packet was hand-delivered to Mr. Earnest Padilla this 24th day of October 2008.


Gail MacQuesten