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2009 OCT 21 P 3:34

October 21, 2009

HAND-DELIVERED

Mark Fesmire, Chairman
Oil Conservation Commission
1220 South St. Francis Drive
Santa Fe, New Mexico 87505

Re: Motion to Reopen Case - Oil Conservation Division

Case: 14055

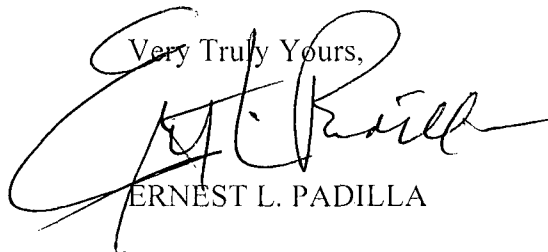
Order: R-12913-A

Dear Mr. Fesmire,

Enclosed for the Commission's consideration you will find:

1. C & D Management Company Proposed Findings of Fact & Conclusions of Law
2. Proposed Order Denying Request for A Rule 19.15.5.9 Order
3. Proposed Order Denying Motion for Continuance of C & D Management Company

Very Truly Yours,



ERNEST L. PADILLA

Enclosures as stated

cc: Sonny Suazo, Esq. with enclosures
C & D Management Company with enclosures

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

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2009 OCT 21 P 3: 34

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST C & D MANAGEMENT COMPANY D/B/A FREEDOM VENTURES COMPANY, FINDING THAT THE OPERATOR KNOWINGLY AND WILLFULLY VIOLATED 19.15.13.1115 NMAC AND KNOWINGLY AND WILLFULLY VIOLATED 19.15.4.201 NMAC; ASSESSING PENALTIES; REQUIRING OPERATOR TO BRING SAID WELLS INTO COMPLIANCE WITH 19.15.13.1115 NMAC AND 19.15.4.201 NMAC BY A DATE CERTAIN; AND IN THE EVENT OF NON-COMPLIANCE, DECLARING THE WELLS ABANDONED AND AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE, EDDY COUNTY, NEW MEXICO.

CASE NO. 14055
ORDER NO. R-12913-A

**C & D MANAGEMENT COMPANY D/B/A FREEDOM VENTURES
COMPANY'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

For its proposed findings of fact and conclusions of law, C & D Management Company d/b/a Freedom Ventures Company (C & D Management) states:

FINDINGS OF FACTS

1. On August 14, 2008, the Commission issued its Order No. R-12913-A ordering, among other things, the following:

a. C & D Management Company shall properly plug and abandon each of the dry holes listed below in accordance with 19.15.4.202 NMAC and with a plugging procedure approved by the Division's Artesia District Office, on or before September 14, 2008.

Shearn Becky Federal No. 1	B-14-17S-27E	30-015-34440
Shearn Freedom Federal No. 2	A-14-17S-27E	30-015-34454
Shearn Samantha Federal No. 2	G-14-17S-27-E	30-015-31059
Shearn Shilo Federal No. 1	B-14-17S-27E	30-015-31061

b. C & D Management Company shall properly plug and abandon the wells listed below in accordance with 19.15.4.202 NMAC and with a plugging procedure approved by the Division's Artesia District Office, or shall otherwise bring each such well into compliance with 19.15.4.201 NMAC by placing them in approved temporary abandonment status pursuant to 19.15.4.203 NMAC or returning them to production, on or before September 14, 2008. No well be deemed in compliance with 19.15.4.201 NMAC or this Order until C & D Management Company shall have filed true and accurate production reports, form C-115, with the Division with respect to such well for all months for which such reports are.

Muncy Federal No. 1	F-13-17S-27E	30-015-23803
Muncy Federal No. 2	E-13-17S-27E	30-015-25012
Saunders No. 12	O-13-17S-27E	30-015-22348
Schneider No. 1	J-24-17S-27E	30-015-22907
Scott Federal No. 1	P-12-17S-27E	30-015-25437

c. C & D Management Company shall comply with 19.15.13.1115 NMAC and file true and accurate reports electronically on form C-115 for all of its wells, for all months from January 2008 through and including May 2008. C & D Management Company shall file the reports no later than September 14, 2008.

d. In event that C & D Management Company fails to comply with Ordering Paragraphs 1 through 3 within the times provided, the Division may proceed to plug and abandon any or all of C & D Management Company's wells, and to restore the well sites, and any applicable financial assurance shall be forfeited to the Division. If the Division incurs costs in plugging the wells or restoring the well sites exceeding the amount recoverable from applicable assurance, the Division may bring suit to recover the excess costs incurred from C & D Management Company.

2. C & D Management received a copy of Order R-12913-A on August 18, 2008, giving C & D Management an unreasonably short time within to comply with the order.

3. On or about February 20, 2009, the Oil Conservation Division filed with the Commission its Motion to Reopen Case in the above-captioned matter and requested that the Commission "re-open the case and issue an Order requiring Operator to plug and abandon the wells and forfeit the applicable financial assurance in the event of Operator's non-compliance, and a finding that an assessed \$5,000 civil penalty is due and owing".

4. Nowhere in its Motion to Reopen Case did the Division request an order pursuant to Rule 19.15.5.9 NMAC.

5. The dockets of the Commission, at all material times, did not cite or otherwise indicate that the hearing, pursuant to the Motion to Reopen Case, requested an Order pursuant to Rule 19.15.5.9 NMAC.

6. In accordance with Order R-12913-A, C & D Management plugged and abandoned the Shearn Becky Federal No. 1 well, Shearn Federal Freedom No. 2 well, Shearn Federal Samantha No. 2 well, and commenced plugging and abandoning procedures on the Shearn Federal Shilo No. 1 well, on or before September 14, 2008, the deadline imposed by the Order.

7. Upon commencing plugging operations the Shearn Federal Shilo No. 1 well, C & D Management encountered obstacles in the well and experienced delays as a result thereof.

8. Because of the obstacles encountered in the Shearn Federal Shilo No. 1 well, C & D Management was directed by a representative of the Bureau of Land

Management of the Department of the Interior (BLM) to plug another well, the Shearn Federal Saranda No. 1 well in the vicinity of the other Shearn Federal wells that it had already plugged.

9. As a result of plugging and abandoning of Shearn Federal Saranda Well No. 1 well, the BLM, having primary jurisdiction over federal oil and gas leases and oil and gas wells located thereon, granted C & D Management an extension of time to and including April 20, 2009, within which to complete the plugging and abandoning of the Shearn Federal Shilo No. 1 well.

10. Plugging and abandoning of the Shearn Federal Shilo No. 1 well was completed by April 19, 2009.

11. With respect to the other federal oil and gas wells listed in decretory Paragraph 2 of Order R-12913-A, C & D Management received an extension of time to and including April 30, 2009, within which to comply with compliance issues.

12. In March and April 2009, the OCD, through a plugging contractor, plugged and abandoned the five oil and gas wells listed in decretory Paragraph 2 of the Order R-12913-A.

13. The OCD did not inform C & D Management that it intended or was plugging the five oil and gas wells, nor did it consult with the Bureau of Land Management about plugging the wells.

14. The Saunders No. 12 and the Scott Federal No. 1 were producing oil and gas when the OCD plugged them.

15. The OCD did not seek separate bid requests for plugging and abandoning each of the five oil and gas wells.

16. At the hearing the OCD did not present any evidence of the costs and expenses that it incurred in plugging and abandoning the five oil and gas wells.

17. In plugging the five wells, the OCD did not inventory nor otherwise account for the salvage value, if any, of well equipment and oil in tanks located on the five wells.

18. At the hearing conclusion of the hearing on August 13, 2009, the Commission instructed the OCD to submit to C & D Management and its counsel copies of receipts and documents with respect to costs incurred by the OCD in plugging the five wells, and continued the hearing to the Commission's next hearing date for taking of additional evidence relating to those costs.

19. At the continuation of the hearing on October 7, 2009, the Commission reversed its August 13, 2009, directive as to the taking of additional evidence relating to costs of plugging the five wells and concluded the hearing without allowing further discovery as C & D Management had requested or allowing, at such hearing, evidence of reasonable well costs for plugging the five oil and gas wells.

20. With respect to compliance with filing C-115s as ordered by R-12913-A, C & D Management did not timely file such C-115s, but was diligent in its attempts to comply with the Order.

21. C & D Management's efforts in filing C-115s included numerous communications with OCD's staff are more accurately be characterized in the nature of a failure to understand the OCD's online filing procedures, and specialized reporting for one of its wells which rejected the entire filing.

22. C & D Management's failure to timely file its C-115 reports did not rise to a knowing and willful standard.

CONCLUSIONS OF LAW

1. Through its initial pleadings and Commission dockets, notice of a request for a Rule 19.15.5.9 NMAC Order was never given to C & D Management.

2. Plugging and abandoning the Saunders No. 12 and the Federal Scott No. 1 well by the OCD constituted waste and therefore in violation of the Oil and Gas Act.

3. Failure to account for the value of well equipment or of oil held in tanks at the five wells that the OCD plugged and abandoned amounts to a confiscation and taking of such equipment and oil without due process.

4. C & D Management's failure to timely file its C-115 reports were not knowingly and willfully made.

5. If the Commission issues a Rule 19.15.5.9 NMAC Order requiring C & D Management to pay reasonable well costs for plugging five oil and gas wells, then C & D Management has been denied due process of law, first, because the Commission impermissibly expanded the scope of the hearing, and secondly, because it was denied, at the hearing, an opportunity to challenge the well costs.

Based on the foregoing findings of fact and conclusions of law, the motion to reopen case is hereby denied.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

MARK FESMIRE, CHAIR

JAMI BAILEY, MEMBER

WILLIAM OLSON, MEMBER

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

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APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST C & D MANAGEMENT COMPANY D/B/A FREEDOM VENTURES COMPANY, FINDING THAT THE OPERATOR KNOWINGLY AND WILLFULLY VIOLATED 19.15.13.1115 NMAC AND KNOWINGLY AND WILLFULLY VIOLATED 19.15.4.201 NMAC; ASSESSING PENALTIES; REQUIRING OPERATOR TO BRING SAID WELLS INTO COMPLIANCE WITH 19.15.13.1115 NMAC AND 19.15.4.201 NMAC BY A DATE CERTAIN; AND IN THE EVENT OF NON-COMPLIANCE, DECLARING THE WELLS ABANDONED AND AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE, EDDY COUNTY, NEW MEXICO.

CASE NO. 14055
ORDER NO. R-12913-A

**PROPOSED ORDER DENYING MOTION FOR CONTINUANCE OF
C & D MANAGEMENT COMPANY D/B/A FREEDOM VENTURES
COMPANY**

THIS MATTER having come before the Commission on the Motion for Continuance and, in the Alternative, for an Extension of Time Within Which to File Requested Findings of Fact and Conclusion of Law, and the Commission have considered the Motion,

IT IS HEREBY ORDERED as follows:

1. The portion of the Motion requesting a continuance is hereby denied; and,
2. The portion of the Motion requesting an extension of time within which to file requested findings of fact and conclusions of law is hereby granted.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

MARK FESMIRE, CHAIR

JAMI BAILEY, MEMBER

WILLIAM OLSON, MEMBER

STATE OF NEW MEXICO
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
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APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST C & D MANAGEMENT COMPANY D/B/A FREEDOM VENTURES COMPANY, FINDING THAT THE OPERATOR KNOWINGLY AND WILLFULLY VIOLATED 19.15.13.1115 NMAC AND KNOWINGLY AND WILLFULLY VIOLATED 19.15.4.201 NMAC; ASSESSING PENALTIES; REQUIRING OPERATOR TO BRING SAID WELLS INTO COMPLIANCE WITH 19.15.13.1115 NMAC AND 19.15.4.201 NMAC BY A DATE CERTAIN; AND IN THE EVENT OF NON-COMPLIANCE, DECLARING THE WELLS ABANDONED AND AUTHORIZING THE DIVISION TO PLUG THE WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE, EDDY COUNTY, NEW MEXICO.

CASE NO. 14055
ORDER NO. R-12913-A

**PROPOSED ORDER DENYING REQUEST FOR A
RULE 19.15.5.9 ORDER**

THIS MATTER having come before the Commission pursuant to the Oil Conservation Division's request for a Rule 19.15.5.9 Order, and the Commission have considered the request, the Commission FINDS:

1. On or about February 20, 2009, the Oil Conservation Division filed with the Commission its Motion to Reopen Case in the above-captioned matter and requested that the Commission "re-open the case and issue an Order requiring Operator to plug and abandon the wells and forfeit the applicable financial assurance in the event of Operator's non-compliance, and a finding that an assessed \$5,000 civil penalty is due and owing".
2. Nowhere in its Motion to Reopen Case did the Division request an order pursuant to Rule 19.15.5.9 NMAC.

3. The dockets of the Commission, at all material times, did not cite or otherwise indicate that the hearing, pursuant to the Motion to Reopen Case, requested an Order pursuant to Rule 19.15.5.9 NMAC.

IT IS THEREFOR HEREBY ORDERED that the Oil Conservation Division's request for a Rule 19.15.5.9 NMAC is denied.

STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

MARK FESMIRE, CHAIR

JAMI BAILEY, MEMBER

WILLIAM OLSON, MEMBER