

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

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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 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
DE NOVO
RE-OPENED

**OIL CONSERVATION DIVISION'S RESPONSE IN OPPOSITION TO C&D
MANAGEMENT COMPANY D/B/A FREEDOM VENTURES COMPANY'S MOTION
FOR CONTINUANCE AND, IN THE ALTERNATIVE, FOR AN EXTENSION OF TIME
WITHIN WHICH TO FILE REQUESTED FINDING OF FACT AND CONCLUSION OF
LAW**

Oil Conservation Division ("OCD") submits this Response in Opposition to C&D Management Company d/b/a Freedom Ventures Company's ("C&D's") Motion for Continuance And, In The Alternative, For An Extension Of Time Within Which To File Requested Finding Of Fact And Conclusion Of Law. In support of this Response In Opposition the OCD states the following:

1) C&D states in its Motion that it "requires additional discovery from the OCD's plugging contractor, including a possible deposition, as to the exact nature of the costs," and that

the expert witness it “retained within the last two weeks requires the additional information to render an opinion as to the propriety of the well expenses contained in the invoices.”

2) The OCD opposes C&D’s Motion because it is based on a misinterpretation of the purpose of a Rule 5.9 [19.15.5.5.9 NMAC] Order hearing.

3) The purpose of a Rule 5.9 Order hearing is to determine if an operator is in violation of an order requiring corrective action.

4) In this case, the purpose of the Rule 5.9 Order hearing is for the Commission to determine if C&D is in violation of the Commission’s Order.

5) In Order No. R-12913-A, the Commission ordered C&D to plug and abandon 5 specified inactive wells or otherwise bring them into compliance with Rule 19.15.4.201 NMAC by September 14, 2008.

6) Order No. R-12913-A authorized the OCD to plug and abandon the 5 wells and forfeit any applicable financial assurance in the event of Operator’s non-compliance with the Order.

7) Order No. R-12913-A provided that the Commission retained jurisdiction of the case for the entry of such further orders as the Commission may deem necessary.

8) The OCD plugged the 5 wells after C&D failed to bring any of them into compliance as required by Order No. R-12913-A.

9) Since C&D failed to take the corrective action specified in Order No. R-12913-A, C&D is in violation of an order requiring corrective action.

10) As a result, the OCD is asking the Commission to find C&D to be in violation of Order No. R-12913-A and issue an Order to that effect.

11) Because the purpose of the Rule 5.9 Order hearing is for the Commission to determine if C&D is in violation of the Commission's Order, requiring discovery, including depositions, and an extensive hearing on matters that have no bearing on whether C&D is in violation of the Commission's Order is both unnecessary and would result in a waste of time, especially since C&D has indicated that it is not sure that it would even reimburse the State of New Mexico for the State's expense in plugging the wells.

12) As an example of what a Rule 5.9 [formerly numbered 19.15.1.40] Order hearing encompasses Undersigned Counsel has attached the Rule 5.9 Order that that the Commission issued in Case No. 13163. The Order is attached as Attachment "A".

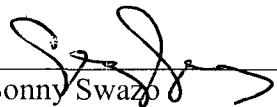
**EXTENSION OF TIME TO SUBMIT REQUESTED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

1) The OCD takes no position on C&D's request for an extension of time to submit requested findings of fact and conclusions of law.

WHEREFORE, based on the foregoing reasons, the OCD respectfully requests that the Commission deny C&D's Motion for Continuance.

Respectfully submitted

this 6th day of October 2009 by



Sonny Swazo

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following parties on October 6, 2009:

Ernest L. Padilla
Attorney for C&D Management Company d/b/a Freedom Ventures Company
P.O. Box 2523
Santa Fe, NM 87504-2523
Email: epadillaplff@qwestoffice.net
padillalaw@qwestoffice.net

South Central Bank of Barren Co., Inc.
P.O. Box 667
Glasgow, KY 42142-0667
Re: Letter of Credit 180

The First National Bank
303 West Main
Artesia, NM 88210
Re: Letter of Credit 203556-71



Sonny Swazo

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

CASE NO. 13163
ORDER NO. R-12132-B

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION,
THROUGH THE SUPERVISOR OF DISTRICT I, FOR AN ORDER REQUIRING
SABA ENERGY OF TEXAS, INC. TO BRING SIX WELLS INTO COMPLIANCE
WITH 19.15.4.201 NMAC, ASSESSING APPROPRIATE CIVIL PENALTIES,
AND AUTHORIZING THE DIVISION TO PLUG SAID WELLS AND FORFEIT
THE APPLICABLE SECURITY IN DEFAULT OF COMPLIANCE BY THE
OPERATOR; LEA COUNTY, NEW MEXICO.

ORDER OF THE OIL CONSERVATION COMMISSION

BY THE COMMISSION:

THIS MATTER came before the Oil Conservation Commission (the Commission) for hearing on June 15, 2006 at Santa Fe, New Mexico on the motion of the Oil Conservation Division (the Division) to re-open Case No. 13163 for entry of an order finding Saba Energy of Texas, Inc. (Saba) to be in violation of an order requiring corrective action, and the Commission, having heard the evidence and arguments of counsel and carefully considered the same, now, on this 15th day of June, 2006

FINDS,

1. Notice has been given of the motion and the hearing of this matter, and the Commission has jurisdiction of the parties and the subject matter,
2. In Order No. R-12132-A, issued by the Commission in Case No. 13163 on August 12, 2004, Saba was directed to take the following corrective actions:
 - A. plug and abandon the following wells within thirty days after issuance of the order:
 - San Simon 5 State #1, API #30-025-27564, Unit Letter E, Section 5, Township 22 South, Range 35 East
 - San Simon 5 State #2, API #30-025-28480, Unit Letter G, Section 5, Township 22 South, Range 35 East
 - B. return each of the following wells to compliance with Division rules within thirty days after issuance of the order, by either plugging the well, restoring it to production, or placing the well on approved temporary abandonment status:

ATTACHMENT "A"

- Morris #1, API #30-025-29247, Unit Letter D, Section 8, Township 13 South, Range 36 East
- Saba State #1, API #30-025-33726, Unit Letter I, Section 7, Township 13 South, Range 36 East
- C. return each of the following wells to compliance with OCD rules no later than December 31, 2004, by either plugging the well, restoring it to production, or placing the well on approved temporary abandonment status:
 - Harton State #1, API #30-025-28540, Unit Letter H, Section 7, Township 13 South, Range 36 East.
 - Fern Guye #1, API #30-025-34488, Unit Letter M, Section 5, Township 13 South, Range 36 East.

3. Order No. R-12132-A further provided that the Commission retained jurisdiction for the entry of such further orders as it may deem necessary.

4. The Division presented the testimony of Daniel Sanchez, the Division's Enforcement and Compliance Manager. Mr. Sanchez testified that

- A. to date, Saba has not performed the corrective action required by Order No. R-12132-A, and the wells subject to Order No. R-12132-A remain out of compliance;
- B. the Division is proceeding to plug the wells subject to Order No. R-12132-A; and
- C. the estimated cost of plugging the wells subject to Order No. R-12132-A exceeds the \$50,000 surety bond posted by Saba.

5. Saba did not appear. Mr. Kevin Sexton of Sturges, Houston & Sexton, P.C., appeared on behalf of Capital Insurance Company, as successor in interest to Redlands Insurance Company.

6. OCD Rule 40.A [19.15.1.40.A NMAC] provides, in relevant part, that an operator is out of compliance with its provisions if an order is issued after notice and hearing finding the operator to be in violation of an order requiring corrective action.

IT IS THEREFORE ORDERED THAT:

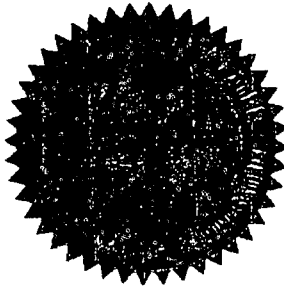
1. The Commission has determined that Saba is out of compliance with OCD Rule 40.A [19.15.1.40.A NMAC] because it has failed to take required corrective action pursuant to Order No. R-12132-A.

2. Saba may comply with the requirements of Rule 40 by reimbursing the Division for the Division's actual costs of completing those actions on Saba's behalf, as required by Order No. R-12132-A, minus any amounts recovered by the Division on Saba's surety bond.

3. When Saba reimburses the Division for the Division's actual costs of completing those actions required by Order No. R-12132-A and pays the civil penalties of Order No. R-12132-A it may file a motion with the Commission to declare Order No. R-12132-A satisfied.

4. Jurisdiction is hereby retained for the entry of such further order as the Commission may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

Mark E. Fesmire
MARK E. FESMIRE, P.E., CHAIR

Jami Bailey
JAMI BAILEY, CPG, MEMBER

William Olson
WILLIAM OLSON, MEMBER

SEAL