

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

APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION, THROUGH THE ENFORCEMENT AND COMPLIANCE MANAGER, FOR A COMPLIANCE ORDER AGAINST MARKS AND GARNER PRODUCTION LTD. CO., FINDING THAT AS TO ELEVEN WELLS THE OPERATOR (1) HAS VIOLATED OCD RULES 19.15.2.8, 19.15.29.6 , 19.15.29.9, 19.15.29.10 NMAC AND (2) IS CURRENTLY IN VIOLATION OF OCD RULES 19.15.29.11 AND 19.15.30.9(A); FINDING THAT AS TO FOUR OF THOSE ELEVEN WELLS, (3) OPERATOR IS CURRENTLY ADDITIONALLY IN VIOLATION OF OCD RULES 19.15.29.9 AND 19.15.29.10 NMAC; (4) REQUIRING THE OPERATOR TO BRING ALL ELEVEN WELLS INTO COMPLIANCE WITH OCD RULES 19.15.29.9, 19.15.29.10 AND 19.15.29.11 NMAC BY A DATE CERTAIN AND (5) ORDERING THAT IN THE EVENT IT FAILS TO DO SO, THE OPERATOR SHALL EITHER PLUG AND ABANDON OR TRANSFER ALL WELLS IT CURRENTLY OPERATES IN NEW MEXICO BY A DATE CERTAIN, OR THE WELLS SHALL BE DEEMED ABANDONED AND THE DIVISION AUTHORIZED TO PLUG THE WELLS - EDDY COUNTY, NEW MEXICO.

CASE NO. 14393

APPLICATION FOR COMPLIANCE ORDER
AGAINST MARKS AND GARNER PRODUCTION LTD. CO.

I. SUMMARY OF RELIEF SOUGHT BY THE DIVISION

The Oil Conservation Division (OCD) brings this action against operator Marks and Garner Production Ltd. Co. to address unauthorized releases that occurred at eleven (11) of its sites. Marks & Garner did not properly and timely report any of the eleven (11) releases to the OCD as required by OCD Rules, and it was only through inspections conducted by the OCD that the releases were discovered in April of 2009.

Upon discovering the releases at the eleven (11) sites, the OCD promptly notified Marks & Garner via Letters of Violation (LOVs), and informed Marks & Garner that it was required to properly report the unauthorized releases on Form C-141s, after which time it may be required to submit a remediation plan for OCD approval. Deadlines were provided in the LOVs for submission of the Form C-141s. Marks and Garner submitted Form C-141s for only seven (7) of the eleven (11) wells, and to date has still not properly reported the unauthorized releases for the remaining four (4) sites. For those seven (7) wells for which Marks & Garner did submit Form C-141s, the OCD advised that it was required to submit a remediation work plan for OCD approval by a specified deadline, and was given specific instructions regarding what that work plan was to include. Marks

& Garner failed to meet the remediation plan deadline, and the submission eventually made on behalf of Marks & Garner for the subject seven (7) wells failed to include the components specified in the instructions provided to Marks & Garner by the OCD, and failed to comply with OCD standards. Marks & Garner was given a second opportunity to remedy the shortcomings of the first submission; however, the second submission still failed to meet the specified requirements and failed to comply with OCD standards. To date, Marks & Garner has not submitted a satisfactory remediation work plan.

For the reasons set forth herein, the OCD respectfully requests that a recommendation be made to the Director for entry of an Order of Compliance against Marks and Garner Production Ltd. Co. (Marks & Garner) issuing the following specific FINDINGS and ORDERS:

- i. FINDING that Marks & Garner is the operator of record of the following eleven (11) wells:
 - Levers Federal 007 30-015-25091 • Red Twelve State 003 30-015-24989
 - Levers 003y 30-015-02787 • Red Twelve State 004 30-015-24991
 - Red Twelve Federal 001 30-015-25058 • Diamond State 002 30-015-24760
 - Cave State 004 30-015-24742 • Red Twelve State 001 30-015-24962
 - Red Twelve State 002 30-015-24966 • Mosley Spring 32 State Com 002 30-015-23341
 - Red State 001 30-015-24855
- ii. FINDING that as to the above-referenced eleven (11) wells:
 - a. Marks & Garner has violated OCD Rules 19.15.2.8, 19.15.29.6, 19.15.29.9, 19.15.29.10 NMAC; and
 - b. Marks & Garner remains in violation of OCD Rules 19.15.29.11 and 19.15.30.9(A).
- iii. FINDING that as to the following four (4) of the previously referenced eleven (11) wells, Marks & Garner is additionally in violation of OCD Rules 19.15.29.9 and 19.15.29.10 NMAC:
 - a. Diamond State 002 30-015-24760 c. Red State 001 30-015-24855
 - b. Red Twelve State 001 30-015-24962 d. Mosley Spring 32 State Com 002 30-015-23341
- iv. ORDERING that Marks & Garner bring all eleven (11) specified wells into compliance with OCD Rules 19.15.29.9, 19.15.29.10 and 19.15.29.11 NMAC by a date certain;
- v. ORDERING that if Marks & Garner fails to meet the deadline set in the Order, Marks & Garner shall be required to plug & abandon or transfer all wells operated by Marks & Garner in the State of New Mexico by a date certain;

- vi. **ORDERING** that if Marks & Garner fails to meet the deadline(s) set by the Order, Marks & Garner will be in violation of an order requiring corrective action and will therefore be in violation of Rule 5.9; and
- vii. **ORDERING** that if Marks & Garner is ordered to plug & abandon or transfer all wells by a date certain and fails to do so, the wells shall be deemed abandoned, and the Division shall be authorized to plug said wells and forfeit any and all applicable financial assurance that has been posted, pursuant to NMSA 2008 §70-2-14(B).

II. OPERATOR/PARTY INFORMATION

1. Marks and Garner Production Ltd. Co. ("Operator" or "Marks & Garner") is a corporation operating wells in New Mexico under OGRID 14070.
2. Operator has posted a \$50,000 blanket **cash** plugging bond to secure its obligation to plug and abandon the wells. The bond has been deposited with the Western Commerce Bank (1515 Calle Sur, P.O. Box 700, Hobbs, NM 88240).
3. Operator has also posted six single-well bonds¹ pursuant to 19.15.8.9 NMAC, all in the form of Letters of Credit through Western Commerce Bank.

III. APPLICABLE LEGAL AUTHORITY

4. Division Rule 19.15.2.8 provides:

Operators, contractors, drillers, carriers, gas distributors, service companies, pipe pulling and salvaging contractors, treating plant operators or other persons shall conduct their operations in or related to the drilling, equipping, operating, producing, plugging and abandonment of oil, gas, injection, disposal and storage wells or other facilities in a manner that prevents waste of oil and gas, the contamination of fresh waters and **shall not** wastefully utilize oil or gas or **allow either to leak or escape from a natural reservoir or from**

¹ None of these six (6) single-well bonds relate to wells included among the eleven (11) wells specifically identified as the subject of this Application in Paragraph No. 8, below.

wells, tanks, containers, pipe or other storage, conduit or operating equipment.

Emphasis Added.

5. Division Rule 19.15.29.6 NMAC requires an operator to report:
the unauthorized release of oil, gases, produced water, condensate or oil field waste...or other oil field related chemicals, contaminants or mixtures of those chemicals or contaminants that occur during drilling, producing, storing, disposing, injecting, transporting, servicing or processing and to establish reporting procedures.
6. Division Rules 19.15.29.9 and 19.15.29.10 NMAC require that either the person controlling the release, or the person controlling the location of the release, provide notification of that release to the OCD by, at a minimum, submitting a Form C-141 to the appropriate OCD District office within fifteen days.
7. Division Rule 19.15.29.11 NMAC requires that "[t]he responsible person shall address releases in accordance with a remediation plan submitted to and approved by the division or with an abatement plan submitted in accordance with 19.15.30 NMAC," and 19.15.30.9(A) NMAC requires that "[t]he responsible person shall abate the vadose zone so that water contaminants in the vadose zone will not with reasonable probability contaminate ground water or surface water, in excess of the standards in Subsections B and C of 19.15.30.9 NMAC, through leaching, percolation or other transport mechanisms, or as the water table elevation fluctuates."

IV. FACTS SUPPORTING THE DIVISION'S REQUEST FOR AN ORDER OF COMPLIANCE

8. Marks & Garner is the operator of record of the following eleven wells in New Mexico:

- | | |
|-----------------------------------------------|---------------------------------------------|
| a. <u>Levers Federal 007</u> 30-015-25091 | g. <u>Red Twelve State 004</u> 30-015-24991 |
| b. <u>Levers 003y</u> 30-015-02787 | h. <u>Diamond State 002</u> 30-015-24760 |
| c. <u>Red Twelve Federal 001</u> 30-015-25058 | i. <u>Red Twelve State 001</u> 30-015-24962 |
| d. <u>Cave State 004</u> 30-015-24742 | j. <u>Red State 001</u> 30-015-24855 |
| e. <u>Red Twelve State 002</u> 30-015-24966 | k. <u>Mosley Spring 32 State Com 002</u> |
| f. <u>Red Twelve State 003</u> 30-015-24989 | 30-015-23341 |

9. The Oil Conservation Division (OCD) conducted inspections at the above-referenced sites April 7, 9, 13, 15, 16 and 22, 2009, at which time it was discovered that there had, at some point prior to the date of inspection, been an unauthorized release at each of the specified sites in violation of NMAC 19.15.2.8.

10. The OCD issued Letters of Violation (LOVs) to Marks & Garner following the inspections, advising it of the results of the inspections and informing Marks & Garner that it was required to submit a C-141 for each of the sites/releases by a specified date, noting that after which time a remediation plan may also be required by the OCD. In some cases, other violations were also noted in the LOVs, and additional corrective measures were required.

11. Marks & Garner submitted C-141s for the following seven (7) of the specified eleven (11) wells, all of which were approved by the OCD District 2 (Artesia) Office on May 14, 2009 upon the specific condition that "remediation per OCD Rules and Guidelines" was completed:

- | | |
|-----------------------------------------------|---------------------------------------------|
| a. <u>Livers Federal 007</u> 30-015-25091 | e. <u>Red Twelve State 002</u> 30-015-24966 |
| b. <u>Livers 003y</u> 30-015-02787 | f. <u>Red Twelve State 003</u> 30-015-24989 |
| c. <u>Red Twelve Federal 001</u> 30-015-25058 | g. <u>Red Twelve State 004</u> 30-015-24991 |
| d. <u>Cave State 004</u> 30-015-24742 | |

12. Marks & Garner did not, however, submit C-141s as instructed for the following four (4) of the specified eleven (11) wells:

- | | |
|---------------------------------------------|-------------------------------------------------------|
| a. <u>Diamond State 002</u> 30-015-24760 | c. <u>Red State 001</u> 30-015-24855 |
| b. <u>Red Twelve State 001</u> 30-015-24962 | d. <u>Mosley Spring 32 State Com 002</u> 30-015-23341 |

13. Upon approving the Form C-141s for the seven (7) sites identified in Paragraph No. 11, above, the OCD not only noted on the C-141 itself that the approval was conditioned on the completion of remediation, but also specifically notified Marks & Garner by letter dated May 14, 2009 that it was required to submit a corrective action work plan proposal to the OCD for each of the sites. The OCD provided Marks & Garner with a deadline of June 15, 2009 to submit the work plans to address the releases at the seven (7) sites, and provided specific instructions that work plans are "to outline steps proposed to clean up, remediate, and/or haul off contaminated materials that may be present at these sites ... [and] are to be based on vertical and horizontal delineation of contaminants, site ranking and OCD Rules and Guidelines."

14. At Marks & Garner's request, the OCD agreed to extend the deadline for submission of a remediation work plan for the seven (7) referenced sites to June 19, 2009. No further extension requests were received from Marks & Garner.

15. On June 18, 2009, R.T. Hicks Consultants, Ltd. (Hicks) submitted a letter on behalf of Marks & Garner setting out a *preliminary* plan and description for conducting field measurements at the seven (7) sites. Hicks stated that field testing was scheduled to begin on June 22, 2009 after which time he anticipated submitting recommendations to the OCD for additional corrective action to address the fluid releases at the sites (remediation).

16. The four (4) wells referenced in Paragraph No. 12, above, were not addressed by Hicks' preliminary plan, and as of June 18, 2009, Marks & Garner had still not submitted C-141s for those four (4) wells.

17. The OCD did finally receive a purported remediation work-plan from Hicks/on behalf of Marks & Garner ("Hicks plan"), relating to the seven (7) specified wells. OCD received the Hicks plan Hicks via email on August 12, 2009, and via United States Postal Service in hard-copy form on August 17, 2009. Like the preliminary plan, the Hicks plan did not address any of the four (4) wells referenced in Paragraph No. 12, above.

18. The August Hicks plan does not comply with the instructions the OCD specifically provided to Marks & Garner in its May 14, 2009 letter, and does not meet OCD requirements for a "remediation work-plan." The insufficiencies of the Hicks plan include but are not limited to failure to fully delineate contamination, failure to provide chloride contamination analysis, disregard of OCD standards and improper reliance on NMED standards, failure to provide

site ranking in the plan report and unacceptable proposal for means of site remediation. Simply stated, the Hicks plan fell far short of being plan for remediation.

19. On August 19, 2009, the OCD issued a letter to Marks & Garner formally denying the recently-submitted plan for the seven (7) sites, and articulating the bases for that denial. The OCD instructed Marks & Garner to remedy the numerous insufficiencies of the Hicks plan no later than September 10, 2009.

20. On September 10, 2009, Hicks submitted a revised plan to the OCD, Artesia District Office on behalf of Marks & Garner regarding the same seven (7) sites addressed by the previous August submission. As with the August Plan, the new submission fails to meet OCD requirements for a work plan proposal for remediation of the subject sites, and instead provides only preliminary information. In fact, the submission clearly states that Hicks/Marks & Garner anticipate that a substantive plan for remediation of the subject sites (due September 10, 2009) would not be ready for submission until the end of the year (2009).

21. To date Marks & Garner has still not submitted the C-141 reports regarding the unauthorized releases at the Diamond State 002 (30-015-24760), the Red Twelve State 001 (30-015-24962), the Red State 001 (30-015-24855) or the Mosley Spring 32 State Com 002 (30-015-23341) as required by OCD Rules, and

as instructed in the LOV issued in April, 2009. Neither were any of these wells addressed by the most recent, September 10, 2009 submission received from Hicks/Marks & Garner.

V. CONCLUSIONS

WHEREFORE, the Enforcement and Compliance Manager of the Division hereby applies to the Director to enter an Order determining and ordering the following:

22. FINDING that Operator Marks and Garner Production Ltd. Co. [OGRID 14070] is the operator of record for the following eleven (11) wells:

- | | |
|-----------------------------------------------|-------------------------------------------------------|
| a. <u>Levers Federal 007</u> 30-015-25091 | g. <u>Red Twelve State 004</u> 30-015-24991 |
| b. <u>Levers 003y</u> 30-015-02787 | h. <u>Diamond State 002</u> 30-015-24760 |
| c. <u>Red Twelve Federal 001</u> 30-015-25058 | i. <u>Red Twelve State 001</u> 30-015-24962 |
| d. <u>Cave State 004</u> 30-015-24742 | j. <u>Mosley Spring 32 State Com 002</u> 30-015-23341 |
| e. <u>Red Twelve State 002</u> 30-015-24966 | k. <u>Red State 001</u> 30-015-24855 |
| f. <u>Red Twelve State 003</u> 30-015-24989 | |

23. FINDING that as to all eleven (11) wells identified in Paragraph No. 22, above:

- i. Operator Marks & Garner violated OCD Rule 19.15.2.8 NMAC because it failed to conduct its operations in a manner that prevented waste of oil and gas, and allowed leakage or escape to occur from a natural reservoir, well, tank, container, pipe or other storage, conduit or operating equipment on each of the above-listed eleven (11) sites;
- ii. Operator Marks & Garner violated, and continues to be in violation of OCD Rules 19.15.29.11 and 19.15.29.9(A) because it has failed to properly and timely submit acceptable remediation plans to the OCD for these eleven (11) sites and has failed to abate the vadose zone at these locations as required by OCD Rules.

24. FINDING that Operator Marks & Garner violated OCD Rules 19.15.29.6, 19.15.29.9 and 19.15.29.10 NMAC by failing to properly and timely provide notification of the releases occurring at the following seven (7) of the specified eleven (11) locations as required by OCD Rules:

- | | |
|-----------------------------------------------|---------------------------------------------|
| a. <u>Levers Federal 007</u> 30-015-25091 | e. <u>Red Twelve State 002</u> 30-015-24966 |
| b. <u>Levers 003y</u> 30-015-02787 | f. <u>Red Twelve State 003</u> 30-015-24989 |
| c. <u>Red Twelve Federal 001</u> 30-015-25058 | g. <u>Red Twelve State 004</u> 30-015-24991 |
| d. <u>Cave State 004</u> 30-015-24742 | |

25. FINDING that Marks & Garner did violate and continues to be in violation of OCD Rules 19.15.29.9 and 19.15.29.10 NMAC by failing to properly and timely provide notification of the releases occurring at the following four (4) of the specified eleven (11) sites as required by OCD Rules and as specifically instructed in Letters of Violation issued following inspections conducted in April of 2009:

- | | |
|---------------------------------------------|-------------------------------------------------------|
| a. <u>Diamond State 002</u> 30-015-24760 | c. <u>Red State 001</u> 30-015-24855 |
| b. <u>Red Twelve State 001</u> 30-015-24962 | d. <u>Mosley Spring 32 State Com 002</u> 30-015-23341 |

26. ORDERING that Marks & Garner bring the four (4) wells referenced at Paragraph 12, above, into compliance with OCD Rules 19.15.29.9 and 19.15.29.10 NMAC by submitting properly and fully completed Form C-141s for each release/each location by a date certain:

27. ORDERING that Marks & Garner bring all eleven (11) specified wells into compliance with OCD Rules 19.15.29.11 and 19.15.29.9(A), requiring:

- a. that it submit to the OCD for these eleven (11) sites for the review and approval of the OCD by a date certain, remediation plans that comply with OCD Rules and Guidelines and that are consistent with the specific instructions provided in the May 14, 2009 letter from the OCD to Marks & Garner, referenced at Paragraph No. 13, above; and
- b. That Marks & Garner complete all remediation at these locations, or, if long-term remediation and/or monitoring is determined to be necessary by the OCD, to have entered into an agreement with the OCD for a long-term remediation plan by a date certain.

28. ORDERING that if Marks & Garner fails to meet the deadlines set by the preceding Paragraphs of this Order:

- a. Marks & Garner *shall be* deemed to be "in violation of an order requiring compliance" and therefore in violation of OCD Rule 19.15.5.9 NMAC;
- b. Marks and Garner *shall be* Ordered to plug & abandon or transfer all wells it operates in the State of New Mexico by a date certain; and
- c. that if Marks & Garner is required to plug & abandon or transfer all wells by a date certain and fails to do so, the wells *shall be* deemed abandoned, and the Division *shall be* authorized to plug said wells and forfeit any and all applicable financial assurance that has been posted, pursuant to NMSA 2008 §70-2-14(B).

29. ORDERING whatever further remedies are deemed just, necessary and warranted pursuant to New Mexico law and the OCD Rules.

RESPECTFULLY SUBMITTED,
this 17th day of September, 2009
by:

MIKAL ALTOMARE
Assistant General Counsel
Energy, Minerals and Natural
Resources Department of the
State of New Mexico
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3480

Attorney for The New Mexico Oil
Conservation Division

- Case No. _____. Application of the New Mexico Oil Conservation Division for a Compliance Order against **MARKS AND GARNER PRODUCTION LTD. CO.** The Applicant seeks an order finding as to 11 wells the operator (1) has violated OCD Rules 19.15.2.8, 19.15.29.6 , 19.15.29.9, 19.15.29.10 NMAC and (2) is currently in violation of OCD Rules 19.15.29.11 and 19.15.30.9(A); finding that as to 4 of those 11 wells, (3) operator is currently additionally in violation of OCD rules 19.15.29.9 and 19.15.29.10 NMAC; (4) requiring the operator to bring all 11 wells into compliance with OCD Rules 19.15.29.9, 19.15.29.10 and 19.15.29.11 NMAC by a date certain and (5) ordering that in the event it fails to do so, the operator shall either plug and abandon or transfer all wells it currently operates in New Mexico by a date certain, or the wells shall be deemed abandoned and the Division authorized to plug the wells. The 11 wells specifically addressed by the Application are all located in Eddy County and are as follows:

•Levers Federal 007; 30-015-25091 •Levers 003y; 30-015-02787 •Red Twelve Federal 001; 30-015-25058 •Cave State 004; 30-015-24742 •Red Twelve State 002; 30-015-24966 •Red Twelve State 003; 30-015-24989 •Red Twelve State 004; 30-015-24991 •Diamond State 002; 30-015-24760 •Red Twelve State 001; 30-015-24962 •Red State 001; 30-015-24855 •Mosley Spring 32 State Com 002; 30-015-23341

With the exception of the Mosley Spring 32 State Com)002, which is located approximately 14 miles SW of Carlsbad, NM, the wells are all located between approximately 16 and 19 miles E/ENE of Artesia, NM.