

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

IN THE MATTER OF THE HEARING
CALLED BY THE OIL CONSERVATION
DIVISION FOR THE PURPOSE OF
CONSIDERING:

CASE NO. 14393 (Re-opened)
ORDER NO. R- 13197-A

APPLICATION OF THE NEW MEXICO OIL
CONSERVATION DIVISION FOR A
COMPLIANCE ORDER AGAINST MARKS
AND GARNER PRODUCTION LTD
COMPANY, EDDY COUNTY, NEW MEXICO.

ORDER OF THE DIVISION

BY THE DIVISION:

This case came on for hearing at 8:15 a.m. on July 22, 2010, at Santa Fe, New Mexico, before Examiner William V. Jones.

NOW, on this 25th day of January, 2011, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

FINDS THAT:

- (1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.
- (2) This application was originally filed by the Division seeking to enforce compliance by Marks and Garner Production Ltd Co. (Operator) with Division rules requiring that Operator report and remediate hydrocarbon and produced water releases that caused soil contamination the Division discovered at certain of Operator's well sites.
- (3) The application was heard before a Division examiner on November 12, 2009, and on December 8, 2009, pursuant to the examiner's recommendation, the Director issued Order No. R-13197.
- (4) The findings of the Division set forth in Finding Paragraphs (1) through (12) of Order No. R-13197 are hereby incorporated herein by reference as predicate findings for this Order, together with the findings set forth herein.

(5) Order No. R-13197 directed Operator to accomplish the following:

(a) to submit to the Division a complete delineation and site ranking report and remediation work plan for each of seven contaminated sites on or before January 4, 2010;

(b) to submit to the Division a complete delineation and site ranking report and remediation work plan for each of four additional contaminated sites on or before February 1, 2010;

(c) to install well signs that comply with Division Rule 16.8 at each well site where the then existing signs were absent or defective, on or before December 31, 2009.

(d) to perform each remediation work plan submitted pursuant to Order No. R-13197 within 60 days after notification of Division approval of the work plan; and to perform any changes or additions required by the Division to any work plan within 60 days of notification thereof, unless, within 20 days following such notification, Operator has filed an application for a hearing concerning the appropriateness of such changes or additions.

(6) Order No. R-13197 further set a hearing in this case for March 4, 2010 to determine the status of Operator's compliance with that Order. The hearing set for March 4, 2010 was continued to July 22, 2010.

(7) At the hearing on July 22, 2010, the Division and Operator both appeared through counsel and presented evidence. The evidence presented established the following facts without dispute:

(a) Operator submitted all of the work plans required by Order No. R-13197. The work plans were not submitted within the time provided in the Order. However, the Division's Compliance and Enforcement Manager agreed to extend the time for submission, and the plans were filed within the extension period.

(b) The Division approved the work plans by letter emailed to operator on May 12, 2010, and received by Operator on that date.

(c) More than 60 days elapsed from the date when Operator received approval of the work plans until the date of the hearing. However, Operator had completed the work plan for only one of the eleven wells for which work plans were required, and even for that one well, Operator had not filed Form C-141 reporting completion of remediation as required by the Division's letter approving the work plans.

(d) Operator has not filed any application (as authorized by Ordering Paragraph 4 of Order No. R-13197) for review by the Director of any of the terms and conditions set forth in the Division's approval of the work plans.

(e) Operator, as of the date of the hearing, had not repaired or replaced well signs, as it was required to do no later than December 31, 2009.

(8) Operator's manager and part owner, Quinton Welborn, testified at the July 22, 2010 hearing, that it could complete the work plans within four months from the date of the hearing.

(9) Order No. R-13197 directed the Division to file a notice with the Division Clerk marked for placement in this case file indicating when Operator completed all corrective action required by that Order. More than four months have elapsed since the last hearing in this case, and the Division has not filed any notice indicating that Operator has fully complied.

The Division Director accordingly concludes that:

(10) Operator has failed to comply with a written order of the Division, to wit, Order No. R-13197.

(11) Operator has failed to comply with a rule of the Division issued pursuant to the New Mexico Oil and Gas Act, to wit, Rule 29.11 [19.15.29.11 NMAC], which requires that, "[t]he responsible party shall complete division-approved corrective action for releases that endanger public health or the environment."

(12) The New Mexico Oil and Gas Act, NMSA 1978 Section 70-2-14.B provides, in pertinent part:

If any requirement of the Oil and Gas Act . . . 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 [emphasis added]

(13) Because of the continuing need to remediate the contamination proved in the original hearing of this case, Operator should now be ordered to plug and abandon all of the remaining wells that it operates in the State of New Mexico unless Operator fully complies with all of the terms and provisions of Order No. R-13197, and of all work plans submitted and all conditions of approval of such work plans, on or before February 28, 2011.

IT IS THEREFORE ORDERED THAT:

(1) Operator has failed to comply with a written order of the Division [Order No. R-13197, Ordering Paragraphs (3) and (4)], and is accordingly out of compliance with Division Rule 5.9.A(2).

(2) Unless Operator fully complies with Order No. R-13197 and this Order, and the Division's counsel files with the Division Clerk a notice as described in Ordering Paragraph (6) of said Order, on or before February 28, 2011, Operator shall be deemed to have abandoned all of the wells that it operates. In that event, Operator shall permanently plug and abandon all of the wells it operates in the State of New Mexico, in accordance with Division rules, not later than April 30, 2011, unless on or before that date, Operator transfers all of said wells to a compliant Operator who agrees in writing to assume responsibility for compliance with all of the requirements of Order No. R-13197 and work plans approved pursuant to that Order, within a time set forth in said written assumption.

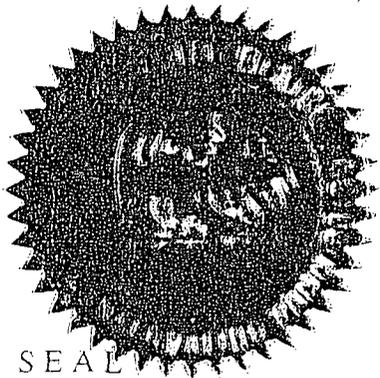
(3) No further hearing will be required in this matter unless Operator files an application to re-open this case, in which it asserts that it has fully complied with all provisions of Order No. R-13197 and all work plans approved pursuant to that Order, including the filing of all required forms and reports.

(4) If Operator fails to plug all of its wells as required by Ordering Paragraph (2), the Division is authorized to plug such wells, all applicable financial assurance held by the Division shall be deemed forfeit, and the Division may pursue legal action against Operator for any costs that it incurs in plugging said wells and remediating the well sites, beyond the amount recovered pursuant to such financial assurance.

(5) If, having plugged any or all of its wells pursuant to this Order, Operator fails to remediate the sites thereof in accordance with, and within the time provided in, applicable Division rules, then all applicable financial assurance held by the Division shall be deemed forfeit, and the Division may pursue legal action against Operator for any costs that it incurs in remediating the well sites, beyond the amount recovered pursuant to such financial assurance.

(6) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

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



STATE OF NEW MEXICO
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Dan Sanchez", with a long, sweeping horizontal line extending to the right.

DANIEL SANCHEZ
Acting Director