

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION FOR
AN ORDER DETERMINING THAT ORBIT ENERGY INC. KNOWINGLY AND
WILLFULLY VIOLATED 19.15.4.201 NMAC; REQUIRING ORBIT ENERGY
INC. TO BRING FIVE WELLS INTO COMPLIANCE WITH 19.15.4.201 NMAC;
ASSESSING APPROPRIATE CIVIL PENALTIES; AND IN THE EVENT OF
NON-COMPLIANCE, AUTHORIZING THE DIVISION TO PLUG SAID WELLS
AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCES; ROOSEVELT
COUNTY, NEW MEXICO.**

2008 AUG 10 PM 2 40
CASE NO. 13373

**MOTION TO RE-OPEN CASE NO. 13373 AND ENTER AN ORDER ASSESSING
CIVIL PENALTIES AND FINDING ORBIT PETROLEUM, INC. IN
VIOLATION OF AN ORDER REQUIRING CORRECTIVE ACTION**

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

This entry of appearance and pre-hearing statement is submitted by the Applicant, the Oil Conservation Division.

APPEARANCES

APPLICANT

Oil Conservation Division

APPLICANT'S ATTORNEY

Gail MacQuesten
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
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RESPONDENT

Orbit Petroleum Inc. (formerly Orbit Energy Inc.) Respondent has not yet entered an appearance.

STATEMENT OF THE CASE

The Oil Conservation Division (OCD) moves to re-enter case 13373 for an order: 1) finding Orbit Petroleum Inc. (Orbit) to be in violation of an order requiring corrective

action; and 2) assessing civil penalties for Orbit's knowing and willful failure to comply with the order.

On December 16, 2004, the OCD issued Order No. R-12250 in Case No. 13373 requiring Orbit to return 5 identified wells to compliance by January 30, 2005. The OCD and Orbit subsequently agreed that the OCD would plug two of the wells, and Orbit would reimburse the OCD for those costs. Those two wells are not at issue in this motion. At issue is Orbit's conduct on the three remaining wells. According to the records in OCD's well files, those three wells remain out of compliance, 18 months after the deadline for compliance set in the order. (Orbit did provide counsel with a faxed copy of an unapproved C-103 subsequent report indicating the plugging of the wellbore of one of the wells.)

OCD Rule 40.A [19.15.1.40.A NMAC] provides that an operator is out of compliance with its provisions if an operator is subject to a division or commission order, issued after notice and hearing, finding the operator to be in violation of an order requiring corrective action. The OCD seeks an order pursuant to this provision for Orbit's failure to bring three of the wells identified in Order No. R-12250 into compliance by the deadline set in that order.

NMSA 1978, Section 70-2-31(A) authorizes the assessment of a civil penalty of not more than \$1000 per day for the knowing and willful violation of an order issued pursuant to the Oil and Gas Act. OCD Rule 7.K [19.15.1.7.K NMAC] defines "knowingly and willfully" for purposes of assessing civil penalties, to include "the voluntary or conscious performance of an act or duty that is required," and states that the conduct's knowing and willful nature may be established by "plain indifference to or reckless disregard of the requirements of ...orders." The OCD seeks a penalty assessment against Orbit for its failure to comply with Order No. R-12250 as to three of the wells identified in that order.

APPLICANT'S PROPOSED EVIDENCE

WITNESS:
Daniel Sanchez, Enforcement and Compliance
Manager

ESTIMATED TIME:
45 min.

PROCEDURAL MATTERS

None.

Respectfully submitted
this 10th day of August 2006 by


Gail MacQuesten

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Energy, Minerals and Natural

Resources Department
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Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon the following by first class mail and electronic mail this 10th day of August 2006:

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Gail MacQuesten