

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 MARKS AND GARNER PRODUCTION LTD. CO., (1) FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.4.201 NMAC AS TO TWENTY THREE WELLS, OR ALTERNATIVELY IS IN VIOLATION OF 19.15.13.1115; (2) REQUIRING THE OPERATOR TO BRING SAID WELLS INTO COMPLIANCE WITH 19.15.4.201 NMAC AND/OR 19.15.13.1115 NMAC BY A DATE CERTAIN AND (3) REQUIRING THAT THE OPERATOR PAY PENALTIES, AND IN THE EVENT OF NON-COMPLIANCE, DECLARING THE WELLS ABANDONED AND AUTHORIZING THE DIVISION TO PLUG THE WELLS -- LEA AND SAN JUAN COUNTIES, NEW MEXICO.

De Novo CASE NO. 14041

ENTRY OF APPEARANCE AND
PRE-HEARING STATEMENT

The Oil Conservation Division submits this entry of appearance and pre-hearing statement pursuant to OCD Rule 1211 [19.15.14.1211 NMAC].

APPEARANCES

APPLICANT

OIL CONSERVATION DIVISION

APPLICANT'S ATTORNEY

Mikal Altomare
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3480
FAX: 476-3462
Mikal.altomare@state.nm.us

RESPONDENT

MARKS & GARNER PRODUCTION LTD. CO.

RESPONDENT'S ATTORNEY

Ernest L. Padilla
PADILLA LAW FIRM, P.A.
P.O. Box 2523
Santa Fe, New Mexico 87504-2523
T: 505-988-7577
F: 505-988-7592
E: epadillapl@qwest.net

STATEMENT OF THE CASE

The Oil Conservation Division (OCD) seeks a compliance order against Marks and Garner Production Ltd., Co. (Marks & Garner) finding that Marks & Garner knowingly and willfully violated 19.15.4.201 NMAC and/or 19.15.13.1115 NMAC as to the **twenty-three wells** identified in the Application, imposing penalties for that knowing and willful violation, requiring Marks & Garner to plug or otherwise return the wells to compliance by a date certain, and if Marks & Garner fails to comply, authorizing the OCD to plug the wells and forfeit the applicable financial assurances. Marks & Garner has posted a \$50,000 cash bond.

The OCD originally filed this Application on November 19, 2007, seeking the above-described relief, and specifically advising Marks & Garner of the numerous violations involving the subject wells. Prior to filing the Application, however, numerous attempts were made by the OCD to obtain compliance from Marks & Garner, issuing a total of five Letters of Violation to Marks & Garner between April of 2005 and August of 2007. The Letters of Violation were each issued to Marks & Garner via an address provided by the current management/principals of Marks & Garner to the OCD. It was clearly stated in the fifth and final letter, issued by OCD counsel, that should Marks & Garner fail to respond, the OCD would be filing an Application for Hearing with the Division.

Despite the OCD's efforts to obtain compliance without a formal hearing, however, Marks & Garner did not respond to any of the letters, and did not bring its wells into compliance with OCD Rules by either bringing production records up to date (in the case of a Rule 1115 violation) or by addressing the well inactivity issue (in the case of a Rule 201 violation). The OCD therefore filed the present Application.

The present management of Marks & Garner acquired the company in 2004, at which time they were well aware that the company had not maintained consistent and clear records, and that numerous Marks & Garner wells had compliance issues that required attention. Despite having taken over the company with full knowledge of these compliance issues, over the course of the last four years Marks & Garner has failed and refused to bring its wells into compliance with OCD Rules. Moreover, at the original hearing in this matter on January 10, 2008, it was revealed that production had been reported by Marks & Garner for at least two of its wells when no such production had actually occurred. Marks & Garner assured the OCD at that time that it would take steps to ensure that the production record was corrected. In the eight months since the original hearing in this matter, Marks & Garner has taken no action to correct these false production records. Likewise, while a portion of the wells identified in the original Application as inactive have since begun reporting production, Marks & Garner has submitted no sundry reports or other documentation for any of these now-"producing" wells to document work that has been done, repairs made and/or that the well is now back online, with gaps in well records stretching as far back as 1994 in some instances.

At present, 13 of the originally identified 23 wells still appear on the inactive well compliance list (*See* OCD Exhibit 3), and one additional well that was not originally included in this action has also fallen out of compliance with Rule 201 (Gulf Hanagan Federal #001). In addition, as noted by the Hearing Examiner in Order No. R-12963,

Marks & Garner has been and continues to be in violation of financial assurance requirements as to a number of these wells. Despite having been advised of these additional violations at the underlying hearing, again, Marks & Garner has taken no steps in the last eight months to come into compliance with Rule 101. Marks & Garner currently owes single-well financial assurances for 10 of its wells. (See OCD Exhibit 12),

Marks & Garner's conduct since acquiring this company in terms of its unwillingness to bring its wells into compliance with OCD Rules indicates that Marks & Garner has an apparent, utter disregard for the OCD Rules and the duties and obligations imposed by those Rules. Marks & Garner's ongoing violations of 19.15.4.201 NMAC and/or 19.15.13.1115 NMAC were and are, in fact, knowing and willful in nature and justify the imposition of monetary sanctions pursuant to NMSA 1978, Section 70-2-31(A), as well as an Order requiring that it bring all noncompliant wells into compliance by a date certain. The OCD feels that a monetary penalty of \$23,000, representing \$1,000 for each of the 23 inactive, noncompliant wells identified in the Application, is appropriate in this case.

APPLICANT'S PROPOSED EVIDENCE

WITNESSES

ESTIMATED TIME:

Daniel Sanchez, Enforcement & Compliance Manager	30 minutes
Jane Prouty, Automation & Records Bureau Chief	30 minutes
Dorothy Phillips, Financial Assurance Administrator	by Affidavit

PROCEDURAL MATTERS

None.

EXHIBITS

1. Affidavit of Dorothy Phillips, Financial Assurance Administrator
2. OCD Inactive Well List for Marks & Garner, printed December 6, 2007
3. OCD Inactive Well List for Marks & Garner, printed August 7, 2008
4. OCD Change of Operator Form signed November 29, 2004
5. OCD Operator Administrator Registration Form signed February 1, 2005
6. April 7, 2005 Notice of Violation to Marks & Garner from District Office
7. November 21, 2005 Notice of Violation to Marks & Garner from District Office
8. December 7, 2005, Letter of Violation to Marks & Garner from District Office
9. June 19, 2006 Notice of Violation to Marks & Garner from District Office

10. August 30, 2007 Letter of Violation from OCD counsel
11. Excerpts (*Testimony of Q. Welborn*) from transcript of January 10, 2008 hearing in underlying case at Division level (Case No. 14,041)
12. OCD Inactive Well Additional Financial Assurance Report for Marks & Garner, printed August 7, 2008

Respectfully submitted
this 7th day of August, 2008 by

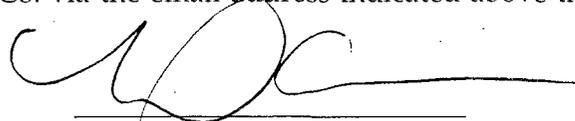


Mikal Altomare
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3480

Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon counsel for Marks & Garner Production Ltd., Co. via the email address indicated above this 7th day of August, 2008.



Mikal Altomare