

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

APPEARANCES & 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

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RESPONDENT

MARKS & GARNER PRODUCTION LTD. CO.

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STATEMENT OF THE CASE

The Oil Conservation Division (OCD) seeks a compliance order against Marks and Garner Production Ltd., Co. (Marks & Garner) finding that as to the specifically identified eleven (11) wells, Marks & Garner has violated OCD Rules 19.15.2.8 (*wastefully utilizing oil or gas or allowing either to leak or escape from a natural reservoir or from wells, tanks, containers, pipe or other storage, conduit or operating equipment*), 19.15.29.6 (*required to report the unauthorized release of oil, gases, produced water, condensate or oil field waste....*), 19.15.29.9, 19.15.29.10 NMAC (*required to submit form C-141 within 15 days*), and remains in violation of OCD Rules 19.15.29.11 and 19.15.30.9(A) (*required to address contamination through an approved remediation plan and abate vadose zone*); and further finding that as to four (4) of those eleven (11) wells, Marks & Garner is additionally in violation of OCD Rules 19.15.29.9 and 19.15.29.10 NMAC.

Inspections conducted at each of the 11 sites by OCD field personnel revealed multiple violations, including evidence of fresh and existing hydrocarbon and chloride releases and contamination. Letters of Violation were prepared regarding the violations at all 11 sites. However, it is now believed that notification regarding 4 of the 11 sites (*Diamond State #002, Red Twelve State #001, Red State #001 and Mosley Spring 32 State Com #002*) was inadvertently not issued initially. Issuance of Letters of Violation to Marks and Garner for the remaining 7 wells on or about 4/16/09 has been confirmed, in response to which Marks and Garner submitted forms C-141, and was then instructed to submit a corrective action work plan proposal no later than 6/15/09. This deadline was later extended at the operator's request to 6/18/09. To date, nearly 5 months later, and despite having provided specific instructions regarding what the work plan proposal was required to include, the OCD has yet to receive a complete and sufficient work plan proposal from Marks and Garner for these 7 wells as required.

With regard to the remaining 4 sites for which the initial LOVs were inadvertently not issued, Marks and Garner was put on notice in a letter sent out on August 5, 2009 by OCD counsel that environmental violations had been discovered at these sites that required submission of forms C-141 and remediation. At that time, OCD counsel issued a "Notice of Violation and Intent to Proceed to Hearing" to Marks and Garner (Mr. Welborn), advising of persisting issues of noncompliance, requesting that Marks and Garner take steps to come into compliance and advising that if it failed to do so, the OCD would be taking further enforcement action including proceeding to hearing. No response was received to this Notice of Violation, and an Application for Hearing in the present matter was therefore filed on September 17, 2009. The filing of the Application, which specifically articulated the environmental and contamination issues at all 11 sites, served as a second notification to the operator of the violations at these 4 sites. Despite having been notified in both early August and again in September with the filing of the Application, to date Marks and Garner has neither submitted forms C-141, nor pursued obtaining approval of a remediation plan to address the gross contamination at any of these 4 sites.

Relief Sought: The OCD seeks an Order requiring that Marks & Garner **1.** 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;** **2.** 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;** **3.** further 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, **4.** finally, 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).

APPLICANT'S PROPOSED EVIDENCE

WITNESSES

ESTIMATED TIME:

Daniel Sanchez, Enforcement & Compliance Manager

30 minutes

Ronald Harvey, Compliance Officer, District 2

20 minutes

TELEPHONIC

Mike Bratcher, District 2 Environmental Specialist

60 minutes

TELEPHONIC

PROCEDURAL MATTERS

It has come to the attention of the OCD that Respondent is attempting to sell and assign all mineral interest/rights relating to eight (8) of the eleven (11) sites specifically at issue in this compliance matter, and to transfer operatorship of these wells. The entity attempting to make this acquisition is not a current registered operator in the state of New Mexico and is not a party to this action. The Oil Conservation Division would ask that any Order issued in this matter be issued on an expedited basis, and that it include language prohibiting Respondent from transferring any of the eleven (11) wells/facilities until the compliance issues of each has been resolved.

Respectfully submitted
this 5th day of November, 2009 by

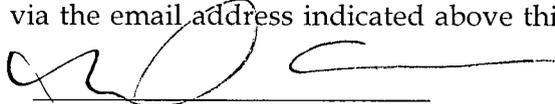


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Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon counsel for Marks & Garner Production Ltd., Co. via the email address indicated above this 5th day of November, 2009.

A handwritten signature in black ink, appearing to read 'Mikal Altomare', written over a horizontal line.

Mikal Altomare