

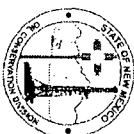
New Mexico Energy, Minerals and Natural Resources Department



Bill Richardson
Governor

Joanna Prusko
Cabinet Secretary

Mark Fennite
Division Director
Oil Conservation Division



July 27 (reissued) August 5, 2009

QUINTON WELBORN
Marks and Garner Production Ltd. Co.
P.O. Box 70 P.O. Box 1089
Farmington, NM 88560 Hobbs, NM 88241

ERNEST L. PADILLA
P.O. Box 2523
Santa Fe, NM 87504

Certified Mail No. (Wellborn): 7001-1940-0004-7923-5344 7002 0510 0003 5125 1952
Certified Mail No. (Padilla): 7001-1940-0004-7923-5464 7008 1830 0002 8736 0126

NOTICE OF VIOLATION
AND INTENT TO PROCEED TO HEARING

Case No. 14393 -
OCD v. Marks & Garner

OCD Exhibit 1

RE MARKS AND GARNER PRODUCTION LTD. CO. OGRID14070

I. Case No. 14041 de novo, Order No. R12963-A

II. Unauthorized Releases and Remediation Relating to sites:

- o Levee's Federal 007 30-015-25091
- o Levee's 003V 30-015-02787
- o Red Twelve Federal 001 30-015-25058
- o Cave State 004 30-015-24742
- o Red Twelve State 002 30-015-24966
- o Red Twelve State 003 30-015-24989
- o Red Twelve State 004 30-015-24991
- o Diamond State 002 30-015-24760
- o Red Twelve State 001 30-015-24962
- o Red State 001 30-015-24952
- o Mosley Spring 32 State Com 002 30-015-23341

BLANKET BOND: OCD-782, \$50,000, Cash Bond - Western Commerce Bank, 1515
Calle Sur, P.O. Box 700, Hobbs, NM 88240

SINGLE WELL BONDS: 6 total - Letters of Credit (through Western Commerce Bank)
o 30-015-02967 - LOC7033755 (\$7,450) o 30-015-25055 LOC7033852 (\$8,600)
o 30-015-02915 - LOC7033950 (\$7,450) o 30-015-02888 LOC7033887 (\$7,436)
o 30-025-26484 LOC7033925 (\$15,864) o 30-015-24732 LOC7033828 (\$7,550)

Dear Operator:

We are writing at this time to notify you of a number of violations, which can be generally categorized into the two above-referenced categories, and to advise you that if immediate action to remedy these violations is not taken, the OCD will be proceeding to hearing to obtain compliance and/or sanctions.



ii.

As you will recall, on September 11, 2009, subsequent to a hearing before the New Mexico Oil Conservation Commission (Commission) conducted on August 14, 2008, the Commission issued Order No. R-12963-A (Attachment A). The Order imposed a number of specific obligations and deadlines on Marks and Garner. Included among that list were the following:

- Post single-well bonds for 10 specifically identified wells no later than September 25, 2008 (*Ordering Paragraph 5*);
- File subsequent report C-103 sundries for 8 specifically identified wells no later than October 10, 2008 (*Ordering Paragraph 2*);
- Plug and abandon, or otherwise bring into compliance by either producing or obtaining approval for temporary abandonment for 13 specifically identified wells no later than December 10, 2008 (*Ordering Paragraph 1*).

The Order specified that if Marks and Garner failed to comply as ordered, the Division could request that the Commission cancel or suspend Marks and Garner's authority to transport pursuant to OCD Rule 19.15.4.14.1227 NMAC (now re-identified as Rule 19.15.5.10 NMAC).

Marks and Garner failed to comply with the Commission's Order.

- Marks and Garner did not post the required bonding by the September 25, 2008 deadline (instead filing a Motion requesting an extension on that date, which was denied). At present, at least one of the specified wells, the Northeast Maljamar Unit #001, 30-025-21291, remains out of compliance with OCD financial assurance requirements, with an outstanding bond owed of \$15,900 (*Ordering Paragraph 5*). Additionally, a bond is outstanding for Marks and Garner's Cities Service well in the amount of \$14,901.
- As of the date of this letter, of the 8 wells for which accurate sundry notices on Form C-103s were to be filed by October 10, 2008 (documenting remedial work performed), such sundries have been filed for only 3 wells. Therefore, 5 wells remain for which accurate sundry notices are still outstanding. (*Ordering Paragraph 2*).

- Out of the 13 wells that Marks and Garner was specifically ordered to plug and abandon or otherwise bring into compliance by December 10, 2008, 6 remain inactive (in violation of Rule 19.15.5.9 NMAC) as of the date of this letter, more than eight months after the deadline set by the Commission in its Order. (*Ordering Paragraph 1*).

If Marks and Garner does not (1) complete the remainder of the tasks ordered by the Commission in *Ordering Paragraphs 1, 2 and 5 of the Order* (as described above), *as well as* (2) post the outstanding bonding owed for the Cities Service well by Monday August 17, 2009, the OCD intends to take the following action against Marks and Garner:

- Request that Case No. 14041 be reopened to address the noncompliance pursuant to *Ordering Paragraph 10* of Order No. R-12963, asking that the Commission cancel or suspend Marks and Garner's authority to transport pursuant to 19.15.4.14.1227/19.15.5.10 NMAC, pursuant to *Paragraph 10* of the Order;
- Request that the Commission further consider cancelling or suspending Marks and Garner's allowable until Marks and Garner comes into compliance with all applicable statutes and rules.
- Request an order finding Marks and Garner in violation of an order requiring corrective action, placing it in violation of 19.15.5.9 NMAC until it comes into compliance. While Marks and Garner is in violation of 19.15.5.9 NMAC the OCD may deny its applications for permits to drill, deepen or plug back (19.15.14.10(A) NMAC), may deny its applications to become operator of record for additional wells (19.15.9.9(C) NMAC), and must deny its applications for allowables and authorizations to transport (19.15.16.19 NMAC) and permits to inject (19.15.26.8(A) NMAC).

iii.

Marks and Garner is the operator of record of the following wells:

- o Levers Federal 007, 30-015-25091
- o Levers 003Y, 30-015- 02787
- o Red Twelve Federal 001, 30-015-25058
- o Cave State 004, 30-015-24742
- o Red Twelve State 002, 30-015-24966
- o Red Twelve State 003, 30-015-24989
- o Red Twelve State 004, 30-015-24991
- o Diamond State 002, 30-015-24760
- o Red Twelve State 001, 30-015-24962
- o Red State 001, 30-015-24952
- o Mosley, Spring 32, State Conn 002, 30-015-23341

By letters of violations issued following inspections conducted on April 7, 9, 13, 15, 16 and 22, 2009, the Oil Conservation Division (OCD) notified Marks and Garner that the above-listed 11 wells/sites had releases (some new and some existing/built-up) in violation of NMAC 19.15.2.8, and required Marks and Garner to submit a C-141 for each by a specified date, noting that after which time a remediation plan may also be required. In some cases, other violations were also noted and additional corrective measures were required. For a number of the wells, it was noted that while the wells appeared to be producing/productible, no production had been reported to the OCD for a number of years.

Marks and Garner submitted C-141s for the first 7 (non-italicized) of the 11 above-listed wells; however, no C-141s were submitted for the remaining 4 (italicized) wells listed above.

By letter dated May 14, 2009, in response to the receipt of the seven Form C-141s, the OCD notified Marks and Garner that it was required to submit a corrective action work plan proposal no later than June 15, 2009 (Attachment B). At Marks and Garner's request, the OCD extended the deadline for submission of a remediation work plan for the 7 referenced wells to June 19, 2009 (Attachment C). On June 18, 2009, R.T. Hicks Consultants, Ltd. (Hicks) submitted a letter on behalf of Marks and Garner setting out a preliminary plan and description for conducting field measurements at the 7 sites.

(Attachment D). The field testing was scheduled to begin on June 22, 2009 (note that the start date for the field testing was subsequent to the extended deadline for submission of the full remediation work plan), after which time Hicks stated that he anticipated submitting recommendations to the OCD for additional corrective action to address the fluid releases at the sites.

To date, no complete remediation work plan or any other "further recommendations" have been received from Hicks or any other contractor acting on Marks and Garner's behalf, nor from Marks and Garner directly. Likewise, to date, to the knowledge of the OCD, no further action has been taken by Marks and Garner whatsoever in terms of either reporting or remediation with regard to the final four (italicized) wells in the above-referenced list.

If by Monday August 10, 2009 Marks and Garner does not (1) Submit the outstanding C-141s for the final 4 wells in the list provided above, AND (2) Submit an acceptable remediation plan for all 11 sites, as well as act diligently to complete remediation under an approved plan for all 11 wells/sites, the OCD intends to take some or all of the following actions against Marks and Garner:

- File request for hearing with the Oil Conservation Division for violation of the Oil and Gas Act and OCD Rules,
- File a request for hearing with the Water Quality Control Commission (WQCC) for violations of the Water Quality Act (WQA) and WQCC Rules, and/or
- File an Administrative Compliance Order based upon violations of the WQA and WQCC Rules.

By filing the above, the OCD will seek an order finding Marks and Garner out of compliance and requiring immediate corrective action and, if the OCD chooses to pursue an action against Marks and Garner under the WQA/WQCC Rules, will also seek the imposition of monetary penalties. Moreover, if Marks and Garner fails to promptly come into compliance, the OCD may also pursue an action seeking an Order requiring Marks and Garner to plug its wells pursuant to NMSA Section 70-2-14(B), and providing that if Marks and Garner fails to do so as ordered, the Division may proceed to plug the wells and may forfeit applicable financial assurance posted by Marks and Garner.

Please note that although specific corrective action regarding reporting of production was not addressed in the May 14, 2009 letter, as an operator in New Mexico, Marks and Garner is required to comply with all OCD Rules, which includes the requirements for accurate and timely reporting of production. Marks and Garner is responsible for ensuring that all production records for its wells are up to date and accurate, and if not, to take steps to submit amended production reports to the OCD.

Please further note that if Marks and Garner displays a continued pattern of non-compliance with OCD Rules, the OCD may seek additional sanctions.

Sincerely,

Daniel Sanchez
Compliance and Enforcement Manager

Encl:

- A - Order No. R-12963-A, entered 9/11/08 (Case No. 14041 de novo)
- B - Letter dated May 14, 2009
- C - Email dated June 12, 2009
- D - Letter from R. T. Hicks

EC: Mitsal Allomare, OCD Attorney
Gail MacQuesten, OCD Attorney
Mike Braucher, OCD Enforcement Officer, Artesia District Office
Ron Harvey, OCD Enforcement Officer, Artesia District Office

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Ernest L. Padilla
 P.O. Box 2523
 Santa Fe, NM 87504

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☒ Agent
 B. Received By (Printed Name) ☐ Addressee
 C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No



3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from service label)

7008 1630 0002 8736 0126

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

SENDER, COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
 ■ Print your name and address on the reverse so that we can return the card to you.
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Quinton Wellborn
 Marks and Garner
 P.O. Box 1089
 Hobbs, NM 88241

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☒ Agent
 B. Received by (Printed Name) ☐ Addressee

C. Date of Delivery
 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

Quinton Wellborn Ltd. Co.

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number

(Transfer from service label)

7002 0510 0003 5125 1952

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1035

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

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

APPLICATION OF THE NEW MEXICO
 OIL CONSERVATION DIVISION, THROUGH
 THE ENFORCEMENT AND COMPLIANCE
 MANAGER, FOR A COMPLIANCE ORDER
 AGAINST MARKS AND GARNER PRODUCTION
 LTD. COMPANY; (1) FINDING THAT OPERATOR
 VIOLATED 19.15.4.201 NMAC AS TO TWENTY-
 THREE WELLS OR ALTERNATIVELY IS IN
 VIOLATION OF 19.15.13.1115 NMAC; (2) REQUIRING
 OPERATOR TO BRING SAID WELLS INTO
 COMPLIANCE WITH 19.15.14.201 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 SAID WELLS AND
 FORFEIT THE APPLICABLE FINANCIAL ASSURANCE, LEA
 COUNTY, NEW MEXICO.

ORDER OF THE COMMISSION

THIS MATTER, having come before the New Mexico Oil Conservation Commission (Commission) on August 14, 2008 at Santa Fe, New Mexico, on the application of the New Mexico Oil Conservation Division (Division), through its enforcement and compliance manager, for a compliance order against Marks and Garner Production Ltd. Company (Marks and Garner) finding that the operator knowingly and willfully violated 19.15.4.201 NMAC as to 23 wells or alternatively is in violation of 19.15.13.1115 NMAC, assessing penalties, requiring the operator to bring its wells into compliance with 19.15.13.1115 NMAC or 19.15.4.201 NMAC by a date certain; and in the event of non-compliance, declaring the wells abandoned and authorizing the Division to plug the wells and forfeit the applicable financial assurance, and the Commission, having carefully considered the evidence and other materials the parties submitted, now, on this 11th day of September 2008,

ENDS THAT:

1. Due public notice has been given, and the Commission has jurisdiction of this case and its subject matter.

2. The Division filed an application on November 13, 2007 seeking an order directing Marks and Garner to bring 23 wells into compliance with 19.15.4.201 NMAC or 19.15.13.1115 NMAC within a date certain by either plugging and abandoning the wells in accordance with 19.15.4.202 NMAC, or securing approved temporary abandonment status in accordance with 19.15.4.203 NMAC, or returning the wells to Division approved beneficial use by a date certain. The Division further seeks assessment of civil penalties in the amount of \$23,000 by reason of Marks and Garner's failure to bring 23 of its wells into compliance with 19.15.4.201 NMAC. This is \$1,000 for each of the 23 wells that were on the inactive list on November 13, 2007 when the Division filed its Application for Compliance Order. In event of Marks and Garner's failure to bring its wells into compliance, the Division seeks authorization to plug the wells and forfeit Marks and Garner's applicable financial assurance.

3. The Division also seeks an order requiring Marks and Garner to post additional plugging bonds in accordance with Subsection B of 19.15.3.101 NMAC within a date certain for the following wells because they have been inactive for two years or more:

Name	API No.
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Julia Culp #001	30-025-24979
Lea/USA State #001	30-025-28484
Northeast Majamar Unit #001	30-025-21291
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Theos State #001	30-015-24732
Wm Snyder #001	30-025-02703

4. Marks and Garner is a corporation operating wells in New Mexico under OGRID 14070.

5. Paragraph (3) of Subsection B of 19.15.4.201 NMAC requires that the operator of a well that has been continuously inactive for a period of one year and 90 days to plug and abandon the well or place the well in Division-approved temporary abandonment status.

6. On April 7, 2005, Buddy Hill, a compliance officer with the Division's Hobbs District Office, notified Marks and Garner that the Coquina State #001, API No.

30-025-27992, was not in compliance with 19.15.4.201 NMAC and that corrective action was required by May 18, 2005.

7. On November 21, 2005, Buddy Hill again notified Marks and Garner that the Coquina State #001, API No. 30-025-27992, was not in compliance with 19.15.4.201 NMAC and that corrective action was required by February 18, 2006.

8. On December 7, 2005, Chris Beadle of the Division's Artesia District Office notified Marks and Garner that seven wells including the Red Twelve Levers Federal #012, API No. 30-015-25152; Red Twelve Levers Federal #008Q, API No. 30-015-25099; Red Twelve State #006, API No. 30-015-25055; Theos State #001, API No. 30-015-24732; and State #001, API No. 30-015-02888, were not in compliance with 19.15.4.201 NMAC and that corrective action was required by March 11, 2006. The five wells named are still not in compliance with 19.5.4.201 NMAC.

9. On June 19, 2006, Buddy Hill sent a third notice to Marks and Garner, notifying it that the Coquina State #001, API No. 30-025-27992, was not in compliance with 19.15.4.201 NMAC and that corrective action was required by July 6, 2006. This well is still not in compliance with 19.15.4.201 NMAC.

10. On August 30, 2007, Gail MacQueen, Counsel for the Division, sent a letter to Marks and Garner notifying it that it had 24 wells that were not in compliance with 19.15.4.201 NMAC and that the Division intended to file an application for a compliance order and encouraging Marks and Garner to bring the wells into compliance in order to avoid the enforcement action. The 24 wells included the 23 wells listed below in paragraph 11.

11. On November 13, 2007 when the Division filed its Application for Compliance Order, according to the records that Marks and Garner had submitted to the Division the following 23 wells, which Marks and Garner operates, had been inactive for a continuous period exceeding one year plus 90 days and were not plugged and abandoned in accordance with 19.15.4.202 NMAC or on approved temporary abandonment status in accordance with 19.15.4.203 NMAC and therefore were not in compliance with Subsection B of 19.15.4.201 NMAC:

Name	API No.
Bradley Federal #001	30-025-08154
Bradley Federal #003	30-025-08156
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Cities Service State #001	30-025-23551
Coquina State #001	30-025-27992
Ernest Federal #001	30-025-08163
Graham Federal #003	30-025-28655
Jennings Federal #002	30-025-08149
Julia Culp #001	30-025-24979

Wm Snyder #001 30-025-02703
Theos State #001 30-015-24732
Kennitz 17 State #001 30-025-28767
Lea/UA/State #001 30-025-28484
Levers #003Y 30-015-02787
Northeast Malljamar Unit #001 30-025-21291
Red Twelve Federal #002 30-015-25059
Red Twelve Levers Federal #008Q 30-015-25090
Red Twelve Levers Federal #012 30-015-25152
Red Twelve State #003 30-015-24989
Red Twelve State #006 30-015-25055
State #001 30-015-02888
State #002 30-015-20889

12. A hearing on the Division's application was held before a Division hearing examiner on January 10, 2008.

13. The Division Director issued an order on June 19, 2008, ordering Marks and Garner to plug and abandon the 19 wells listed below, place them in approved temporary abandonment status, or return them to Division approved beneficial use by August 30, 2008. The Division Director also ordered Marks and Garner to post additional single well plugging bonds on the wells on or before July 30, 2008 and to pay \$19,000 in penalties on or before July 30, 2008.

Name	API No.
Bradley Federal #003	30-025-08156
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Ernest Federal #001	30-025-08163
Graham Federal #003	30-025-28655
Jennings Federal #002	30-025-08149
Julia Culp #001	30-025-24979
Wm Snyder #001	30-025-02703
Theos State #001	30-015-24732
Lea/UA/State #001	30-025-28484
Levers #003Y	30-015-02787
Red Twelve Federal #002	30-015-25059
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #003	30-015-24989
Red Twelve State #006	30-015-25055
State #001	30-015-02888
State #002	30-015-20889

14. On July 17, 2008, Marks and Garner filed a request for de novo hearing before the Commission.

15. At the hearing before the Commission on August 14, 2008, witnesses for both the Division and Marks and Garner testified that the following wells have been inactive for a continuous period exceeding one year plus 90 days and are not plugged and abandoned in accordance with 19.15.4.202 NMAC or on approved temporary abandonment status in accordance with 19.15.4.203 NMAC.

Name	API No.
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coquina State #001	30-025-27992
Northeast Malljamar Unit #001	30-025-21291
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Theos State #001	30-015-24732
Wm Snyder #001	30-025-02703

16. At the August 14, 2008 hearing, the witness for Marks and Garner, Quinton Welborn, testified that while the wells had been plugged and abandoned as of January 10, 2008 the required surface restoration of the well sites for the Bradley Federal #001, API No. 30-025-08154, and the Bradley Federal #003, API No. 30-025-08156, had not been completed. Surface restoration is required by 19.15.4.202 NMAC. Marks and Garner's witness testified that the surface restoration is now complete and that the required documents have been filed with the United States Department of the Interior, Bureau of Land Management.

17. Daniel Sanchez, the Division's Compliance and Enforcement Manager, testified the Division had not received copies of these documents from the United States Department of the Interior, Bureau of Land Management showing that the well sites for the Bradley Federal #001, API No. 30-025-08154, and the Bradley Federal #003, API No. 30-025-08156, have been restored and that the Bureau of Land Management has released the wells.

18. At the August 14, 2008 hearing, the witness for Marks and Garner testified that the Ernest Federal #001, API No. 30-025-08163, had not been plugged and abandoned and the surface restored as of November 13, 2007 when the Division filed its application. Marks and Garner's witness testified that the well has now been plugged and abandoned and that the surface restoration is complete and that the required documents have been filed with the United States Department of the Interior, Bureau of Land Management.

19. Daniel Sanchez testified that the Division had not received copies of the documents from the United States Department of the Interior, Bureau of Land Management showing that the well site for Ernest Federal #001, API No. 30-025-08163, has been restored and that the Bureau of Land Management has released the well.

20. Daniel Sanchez testified that as of August 11, 2008 the surface restoration of the Julia Culp #001, API No. 30-025-24979, had not been completed.

21. NMSA 1978, Section 70-2-12 gives the Division the authority to collect data, and to provide for the keeping of records and the making of reports and for the checking of the accuracy of the records and reports.

22. Subsection B of 19.15.13.1103 NMAC requires an operator to file a sundry notice, Form C-103, as a subsequent report when it performs remedial work on a well.

23. Daniel Sanchez testified that as of August 14, 2008, the wells listed below are reporting production, but that Marks and Garner has not complied with Subsection B of 19.15.13.1103 NMAC and submitted the required Form C-103s showing the remedial work that Marks and Garner performed to bring the wells back into production. Marks and Garner's witness also testified that the wells are currently producing.

Name	API No.
Cities Service State #001	30-025-23551
Graham Federal #003	30-025-28655
Levers #003Y	30-015-02787
Jennings Federal #002	30-025-08149
Kennitz 17 State #001	30-025-28767
Red Twelve Federal #002	30-015-25059
Red Twelve State #003	30-015-24989

24. Marks and Garner's witness testified that Marks and Garner filed the sundry notices for the Graham Federal #003, API No. 30-025-28655, and the Jennings Federal #002, API No. 30-025-08149, with the United States Department of the Interior, Bureau of Land Management. Daniel Sanchez testified that the Division had not received copies of these sundries.

25. Marks and Garner's witness testified that the Gulf Hanagan Federal #001, API No. 30-025-08144, has been plugged and abandoned, but according to Division records it is still listed as inactive and not in compliance with 19.15.4.201 NMAC.

26. Marks and Garner's witness testified that pursuant to a settlement agreement with one of Marks and Garner's prior owners, Buddy Garner, that Buddy Garner was to receive control of the Kennitz 17 State #001, API No. 30-025-28767, the Cities Service State #001, API No. 30-025-23551, and the Northeast Majumdar Unit #001, API No. 30-025-21291. Marks and Garner has not received the Division's

approval for change of operator for these wells to Buddy Garner, so Marks and Garner remains responsible for them.

27. The Kennitz 17 State #001, API No. 30-025-28767, is located on state trust land, which has not been under lease since March 2007. Therefore, there should be no production since March 2007. The Division's witnesses testified that Marks and Garner has reported production since March 2007.

28. NMSA 1978, Section 70-2-14, as amended, provides that if any of the requirements of the Oil and Gas Act or the rules promulgated pursuant to the act have not been complied with, the Division Director may order that the operator plug and abandon the well in accordance with Division rules, and if the operator fails to comply with the order, authorize the Division to plug the well and decree forfeiture of applicable financial assurance.

29. NMSA 1978, Section 70-2-12(B)(8) and NMSA 1978, Section 70-2-38 authorize the Division to plug and abandon wells, and restore and remediate the location of abandoned wells.

30. Subsection H of 19.15.3.101 NMAC authorizes the Division Director to order the operator of wells that are not in compliance with 19.15.4.201 NMAC to plug and abandon the wells and to restore the locations. It also authorizes the Division Director to forfeit the operator's financial assurance upon the operator's failure to comply.

31. Marks and Garner has posted a \$50,000 blanket cash plugging bond, number OCD-782, 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, New Mexico 88240.

32. NMSA 1978, Section 70-2-6(B) provides that the Commission shall have concurrent jurisdiction or authority with the Division to the extent necessary for the Commission to perform its duties.

33. Because of Marks and Garner's failure to bring the following wells into compliance with 19.15.4.201 NMAC, Marks and Garner should be ordered to properly plug and abandon the wells in accordance with 19.15.4.202 NMAC and with a plugging procedure approved by the Division's Artesia District Office, or otherwise bring them into compliance with 19.15.4.201 NMAC by placing them in approved temporary abandonment status, 19.15.4.203 NMAC, or returning them to production.

Name	API No.
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Cochina State #001	30-025-27992
Julia Culp #001	30-025-24979

Win Snyler #001	30-025-02703
Theos State #001	30-015-24732
Lea/U/State #001	30-025-28484
Northeast Majanur Unit #001	30-025-21291
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Gulf Hamgan Federal #001	30-025-08144

34. Because of Marks and Garner's failure to file the sundry notices required by 19.15.13.1103 NMAG, Marks and Garner should be ordered to file Form C-102s or ensure that the Division receives copies of the sundry notices that Marks and Garner filed with the United States Department of the Interior, Bureau of Indian Affairs for the remedial work it performed on the following wells:

Name	API No.
Cities Service State #001	30-025-23551
Graham Federal #003	30-025-28655
Levers #003Y	30-015-02787
Jennings Federal #002	30-025-08149
Kennitz 17 State #001	30-025-28767
Red Twelve Federal #002	30-015-25059
Red Twelve State #003	30-015-24989

35. Subsection B of 19.15.3.101 NMAG requires that "[a]ny well that has been in temporary abandonment for more than two years must be covered by a one-well financial assurance."

36. The wells listed in paragraph 3 have not been active for more than two years and therefore must be covered by a one-well financial assurance.

37. Subsections A and C of 19.15.3.100 NMAG, which became effective on December 15, 2005, require that operators inform the Division through its Financial Assurance Administrator of their address of record, which is to be used for notice.

38. The Division's witness, Jane Proulx, testified that prior to the adoption of 19.15.3.100 NMAG, the Division relied on the address provided on the Operator Administrator Registration Form as the operator's address of record.

39. On or about November 29, 2004, Mickey Welborn, Manager, submitted a Change of Operator to the Division that listed Marks and Garner's address as P.O. Box 70, Lovington, New Mexico 88260.

40. On or about March 1, 2005, Quinton Welborn, Controller, submitted an Operator Administrator Registration Form to the Division that listed Marks and Garner's mailing address as P.O. Box 70, Lovington, NM 88560.

41. Marks and Garner's witness testified that he sent a letter to the Division's Hobbs and Artesia District Offices in approximately April or May 2005 that his address had changed to P.O. Box 1089, Hobbs, New Mexico 88241. According to Division records he did not update the Operator Administrator Registration Form.

42. Despite the requirements of 19.15.3.100 NMAG, Marks and Garner did not advise the Division's Financial Assurance Administrator until July 8, 2008 that its address of record was P.O. Box 1089, Hobbs, New Mexico 88241.

43. Therefore, the Division continued to treat P.O. Box 70, Lovington, NM 88560 as Marks and Garner's address of record.

44. Marks and Garner's witness testified that he received notice of the Division's application for an enforcement order filed on November 13, 2007 and Marks and Garner appeared at the January 10, 2008 hearing before the Division hearing examiner.

45. Therefore, since at least January 10, 2008, Marks and Garner has had notice that 23 of its wells were not in compliance with 19.15.4.201 NMAG.

46. NMSA 1978, Section 70-2-31(A) provides that any person who knowingly and willfully violates any provision of the Oil and Gas Act or any provision of any rule or order issued pursuant to that act shall be subject to a civil penalty of not more than one thousand dollars for each violation, and that, in the case of a continuing violation, each day of violation shall constitute a separate violation.

47. The evidence in this case demonstrates that Marks and Garner's failure to bring the wells listed in paragraph 11 into compliance with 19.15.4.201 NMAG and failure to timely file sundry notices in compliance with 19.15.13.1103 NMAG were knowing and willful violations of the applicable Division rules. Therefore, civil penalties should be assessed against Marks and Garner.

IT IS THEREFORE ORDERED THAT:

1. Marks and Garner shall properly plug and abandon the wells listed below in accordance with 19.15.4.202 NMAG and with a plugging procedure approved by the Division's Artesia or Hobbs District Office, as applicable, or shall otherwise bring each such well into compliance with 19.15.4.201 NMAG by placing them in approved temporary abandonment status pursuant to 19.15.4.203 NMAG or returning them to production, on or before December 10, 2008.

Name _____ API No. _____

Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coguna State #001	30-025-27992
Julia Culp #001	30-025-24979
Wm Snyder #001	30-025-02703
Theos State #001	30-015-24732
Lead/A/State #001	30-025-28484
Northeast Maljamar Unit #001	30-025-21291
Red Twelve Levers Federal #008Q	30-015-25090
Red Twelve Levers Federal #012	30-015-25152
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Gulf Hangan Federal #001	30-025-08144

If the Gulf Hangan Federal #001, API No. 30-205-08144, has previously been plugged and abandoned as Marks and Garner's witness testified, Marks and Garner shall ensure that the Division receives copies of the documents filed with the United States Department of the Interior, Bureau of Land Management that show that the Bureau of Land Management has approved the plugging and abandonment and the surface restoration and has released the well on or before October 10, 2008.

2. Marks and Garner shall comply with Subsection B of 19.15.13.1103 NMAC and file with the Division true and accurate sundry notices on Form C-103 for the remedial work performed or ensure that the Division receives copies of the sundry notices filed with the United States Department of the Interior, Bureau of Land Management on the following wells by October 10, 2008:

Name	API No.
Cities Service State #001	30-025-23551
Graham Federal #003	30-025-28655
Levers #003Y	30-015-02787
Jennings Federal #002	30-025-08149
Kennitz 17 State #001	30-025-28767
Red Twelve Federal #002	30-015-25059
Red Twelve State #003	30-015-24989
State #002	30-015-20889

Given that there has been no lease since March 2007 for the state trust lands on which the Kennitz 17 State #001, API No. 30-025-28767, is located no production should be occurring from that well.

3. Marks and Garner shall ensure that copies of the documents filed with the United States Department of the Interior, Bureau of Land Management showing that the Bradley Federal #001, API No. 30-025-08154; the Bradley Federal #003, API No. 30-025-08156; and the Ernest Federal #001, API No. 30-025-08163, have been properly

plugged and abandoned and the surface restored are provided to the Division by October 10, 2008.

4. Marks and Garner shall file on or by October 10, 2008 amended Form C-115s showing that the Red Twelve Levers Federal #008Q, API No. 30-015-25090; the Red Twelve Levers Federal #012, API No. 30-015-25152; and the Theos State #001, API No. 30-015-24732, have not produced oil, gas, or water.

5. Marks and Garner shall post additional single well plugging bonds on or before September 25, 2008 for the following wells:

Name	API No.
Cave Pool Unit #027	30-015-02897
Cave Pool Unit #036	30-015-02915
Coguna State #001	30-025-27992
Julia Culp #001	30-025-24979
Lead/A/State #001	30-025-28484
Northeast Maljamar Unit #001	30-025-21291
Red Twelve State #006	30-015-25055
State #001	30-015-02888
Theos State #001	30-015-24732
Wm Snyder #001	30-025-02703

6. In the event that Marks and Garner fails to comply with Ordering Paragraphs 1 through 5 within the times provided, the Division may proceed to plug and abandon any or all of Marks and Garner's wells, and to restore the well sites, and any applicable financial assurance shall be forfeited to the Division. If the Division incurs costs in plugging the wells or restoring the well sites exceeding the amount recoverable from applicable financial assurance, the Division may bring suit to recover the excess costs incurred from Marks and Garner.

7. A civil penalty is assessed against Marks and Garner in the amount of \$23,000 because of its knowing and willful failure to comply with 19.15.4.201 NMAC and 19.15.13.1103 NMAC. Marks and Garner shall pay the \$23,000 civil penalty on or before 5:00 p.m. on September 25, 2008. Should Marks and Garner fail to pay this penalty on or before September 25, 2008, additional penalties of \$1,000 per day shall be assessed until Marks and Garner pays the penalties in full.

8. Marks and Garner shall pay the penalties provided in Ordering Paragraph 7 by delivery of certified check or cashier's check to the Division's Santa Fe Office.

9. At the Commission's December 11, 2008 hearing, Marks and Garner shall report to the Commission regarding the status of its compliance with Ordering Paragraphs 1 through 5, 7, and 8.

10. If Marks and Garner fails to comply with this order, the Division may request that the Commission cancel or suspend Marks and Garner's authority to transport pursuant to 19.15.4.14.1227 NMAC.

11. Jurisdiction of this case is retained for the entry of such further orders as the Commission may deem necessary.

DONE at Santa Fe, New Mexico on the 11th of September 2008.



STATE OF NEW MEXICO
OIL CONSERVATION COMMISSION

JAMIE BAILEY, CPG, Member

WILLIAM OLSON, Member

MARK E. FESMIRE, PE, Chair

S.F.A.L.

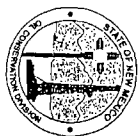
New Mexico Energy, Minerals and Natural Resources Department

Attachment B

Bill Richardson
Governor

Joanna Pinkop
Cabinet Secretary
Reese Fullerton
Deputy Cabinet Secretary

Mark Fesmire
Division Director
Oil Conservation Division



Marks and Garner Production LTD Co.

PO Box 1089

Hobbs NM 88241

ATTN: Quinton Welborn

May 14, 2009

Dear Mr. Welborn,

The New Mexico Oil Conservation Division District 2 Office (OCD) is in receipt of an Initial Report Form C-141 reporting produced fluid releases at each of the well sites listed below:

Lever's Federal 007	30-015-25091	J-33-16s-29e	OCD Reference: 2RP-304
Lever's 003Y	30-015-02787	N-33-16s-29e	OCD Reference: 2RP-305
Red 12 Federal 001	30-015-25058	O-33-16s-29e	OCD Reference: 2RP-306
Cave State 004	30-015-24742	F-04-17s-29e	OCD Reference: 2RP-307
Red 12 State 002	30-015-24966	H-04-17s-29e	OCD Reference: 2RP-308
Red 12 State 003	30-015-24989	J-05-17s-29e	OCD Reference: 2RP-309
Red 12 State 004	30-015-24991	O-05-17s-29e	OCD Reference: 2RP-310

The Form C-141's were submitted by Marks and Garner Production LTD Co (Marks and Garner) as a response to Letters of Violation (LOV) that were issued by OCD District 2 Office.

OCD is requesting that a corrective action work plan proposal (work plan) be submitted to the OCD District 2 Office for each of the sites, not later than June 15, 2009.

The work plans are to outline steps proposed to clean up, remediate, and/or haul off contaminated materials that may be present at these sites. The work plans are to be formulated based on vertical and horizontal delineation of contaminants, site ranking, and OCD Rules and Guidelines. Work plan approvals may be subject to like approval by Bureau of Land Management (BLM) in some instances.

A publication is available on the OCD website to aid in the remediation process, and site ranking. It may be located as follows:

www.emrmd.state.nm.us/oecd

Click on each of the items as they appear:

(1) Publications; (2) Environmental Handbook; (3) Miscellaneous Guidelines; (4) Remediation of Leaks, Spills and Releases



May 15, 2009
Page 2

Please include in the work plans any remedial work that may have already been performed at these sites.

Notify OCD 48 hours prior to obtaining samples where analyses of samples obtained are to be submitted to OCD.

If I can be of assistance, please contact me.

Sincerely,

Mike Bratcher
NMOCD District 2
1301 W. Grand Ave
Artesia, NM 88210
575-748-1283 Ext.108
mike.bratcher@state.nm.us

Bratcher, Mike, EMNRD

From: Bratcher, Mike, EMNRD
Sent: Friday, June 12, 2009 10:13 AM
To: "Owelborn@valmet.com"
Cc: Harvey, Ronald; EMNRD; Bonham, Sherry; EMNRD
Subject: Marks and Garner remediation work plan proposals

Mr. Welborn,

As per our phone conversation this morning, your request for an extension to submit remediation work plans for clean up at the sites listed below is approved to June 19, 2009. It is my understanding that you have employed an environmental contractor and they are in the process of evaluating the sites for formulation of the required work plan proposals.

Lavers Fed 007 30-015-25091
Lavers 003Y 30-015-02787
Red 12 Fed 001 30-015-25058
Cave St 004 30-015-24742
Red 12 St 002 30-015-24966
Red 12 St 003 30-015-24989
Red 12 St 004 30-015-24991

If you have any questions or comments, please contact me.

Sincerely,

Mike Bratcher
NMOCD District 2
1301 W. Grand Ave.
Artesia, NM 88210
575-748-1283 Ext.108
mike.bratcher@state.nm.us

Attachment C

3 RD. 3/0

Bratcher, Mike, EMNRD

Attachment D

From: Dale Littlejohn [dale@rthicksconsult.com]
Sent: Thursday, June 18, 2009 2:15 PM
To: Bratcher, Mike, EMNRD
Cc: qwelborn@wyaloma.com; Randy Hicks
Subject: Mark and Garner Loco Hills Sites OCD ZRP-304-310
Attachments: M & G Loco Hills 6-18-09 Workplan.pdf

Mike,

Please find the attached work plan as we discussed on the phone. I will also send you a hard copy. I plan to be at the site(s) on Monday morning by 9:00 AM. Please call me if I can meet you at one of them or if you need any additional information.

Thanks,

Dale T Littlejohn, PG
R T Hicks Consultants Ltd
(432) 528-3878 (office)
(432) 589-4578 (fax)

This inbound email has been scanned by the MessageLabs Email Security System.

R. T. HICKS CONSULTANTS, LTD.
PO Box 7624 ▲ Midland, TX 79708 ▲ 432-528-3878 ▲ Fax: 432-689-4578

June 18, 2009

Mr. Mike Bratcher
New Mexico Oil and Conservation Division
District II - Artesia Field Office
1301 West Grand Avenue
Artesia, NM 88210
505-748-1283

VIA EMAIL AND USPS

RE: Seven Produced Fluid Releases at sites operated by Marts and Garner Production Ltd, Company in Eddy County, NM as follows:

Site Name (Type)	Location (T-R-Sec-Unit)	OCD Reference No.
Livers Fed No. 7 (well)	T-16-S, R-29-E, Sec 33 (J)	ZRP-304
Livers No. 3Y (well)	T-16-S, R-29-E, Sec 33 (N)	ZRP-305
Red 12 Fed No. 1 (battery)	T-16-S, R-29-E, Sec 33 (O)	ZRP-306
Cave State No. 4 (well)	T-17-S, R-29-E, Sec 4 (F)	ZRP-307
Red 12 State No. 2 (battery)	T-17-S, R-29-E, Sec 4 (H)	ZRP-308
Red 12 State No. 3 (battery)	T-17-S, R-29-E, Sec 5 (J)	ZRP-309
Red 12 State No. 4 (battery)	T-17-S, R-29-E, Sec 5 (O)	ZRP-310

Dear Mr. Bratcher:

R. T. Hicks Consultants is pleased to submit this investigation plan on the behalf of Marts and Garner Production Ltd. This investigation plan includes the initial description and characterization of the each facility relative to the release areas. The purpose of these investigations is to determine which sites may require corrective action under Part 29 of the NMOCED Rules (formally Rule 116).


Field measurements will be made for the preparation of detailed site maps which depict the spill areas and soil samples locations. Samples will be recovered using a hand auger, shovel, or push-probe sampler in order to delineation the vertical and horizontal extent of chloride- and/or hydrocarbon-impacted soil. Field screening of the soil samples will be performed using a phototonic detector (PID) for hydrocarbons and silver nitrate titration for chlorides. Selected samples will be submitted to a laboratory for verification of regulated petroleum hydrocarbons, and chloride.

These activities are scheduled to begin Monday, June 22, 2009 at 9:00 AM (MT) and are expected to require two to three days. Following the completion of the site field investigation and laboratory analysis, recommendations will be presented to the OCD for additional corrective action or site closure.

R.T. Hicks Consultants, Ltd.
6/18/2009

Please contact me if you have any questions, comments or would like to coordinate with me to meet at one or more of the sites during the field investigation.

Sincerely,
R. T. Hicks Consultants, Ltd.


Dale T. Littlejohn
Project Manager
(432) 528-3878

Copy: Quinton Welborn, Marks and Garner Production Ltd, Co.