

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 C & D MANAGEMENT COMPANY D/B/A FREEDOM VENTURES COMPANY, FINDING THAT THE OPERATOR KNOWINGLY AND WILLFULLY VIOLATED 19.15.13.1115 NMAC AND 19.15.4.201 NMAC; ASSESSING PENALTIES; REQUIRING OPERATOR TO BRING SAID WELLS INTO COMPLIANCE WITH 19.15.13.1115 NMAC AND 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, EDDY COUNTY, NEW MEXICO

CASE NO. 14055  
DE NOVO  
RE-OPENED  
Order No. R-12913-E

**ORDER**

THIS MATTER having come before the New Mexico Oil Conservation Commission (“Commission”) on July 16, 2009, August 13, 2009, and November 4, 2009, at Santa Fe, New Mexico, (collectively, the “Hearing”) and the Commission, having carefully considered the evidence and other materials submitted by the parties, now,

**FINDS THAT:**

**Background of this Proceeding**

1. C & D Management Company d/b/a Freedom Ventures Company (“C & D”) is the operator of the following oil or gas wells in Eddy County, New Mexico:

<u>Name</u>	<u>Location</u>	<u>API No.</u>
Amoco #001	L-13-17S-27E	30-015-24738
Hastie #016	4-18-17S-28E	30-015-22371
Hastie #017	3-18-17S-28E	30-015-22852
Hastie #018	N-18-17S-28E	30-015-22848
Hastie #019	2-18-17S-28E	30-015-23186
Hastie #020	1-18-17S-28E	30-015-23516
Hastie #021	C-18-17S-28E	30-015-23821

Michael State #001	H-25-17S-27E	30-015-24877
Muncy Federal #001	F-13-17S-27E	30-015-23083
Muncy Federal #002	E-13-17S-27E	30-015-25012
Saunders #012	O-13-17S-27E	30-015-22348
Schneider #001	J-24-17S-27E	30-015-22907
Scott Federal #001	P-12-17S-27E	30-015-25437
Shearn Becky Federal #001	B-14-17S-27E	30-015-34440
Shearn Freedom Federal #002	A-14-17S-27E	30-015-34454
Shearn Samantha Federal #001	G-14-17S-27E	30-015-31059
Shearn Shilo Federal #001	B-14-17S-27E	30-015-31061

2. After a hearing in July 2008 (“July 2008 Hearing”), on August 14, 2008, the Commission issued Order No. R-12913-A (“2008 Order”). C & D did not appeal the 2008 Order, and it became final.

3. The 2008 Order required C & D to bring the Muncy Federal No. 001, Muncy Federal #002, Saunders #012, Schneider #001, and Scott Federal #001 wells (“R-12913-A Wells”) into compliance with 19.15.4.201 NMAC (now 19.15.25.8 NMAC) by either returning them to production, placing them on temporary abandonment status approved by the New Mexico Oil Conservation Division (“Division”), or plugging and abandoning them by September 14, 2008. C & D did not comply with that requirement of the 2008 Order.

4. The 2008 Order also required C & D to comply with 19.15.13.1115 NMAC (now 19.15.7.24 NMAC) and file true and accurate reports electronically on form C-115 for all of its wells, for all months from January 2008 through and including May 2008, by no later than September 14, 2008. C & D did not comply with that requirement of the 2008 Order.

5. The 2008 Order authorized the Division to plug the R-12913-A Wells if C & D did not meet the deadlines provided therein, and to bring suit against C & D to recover any plugging costs exceeding the amount recoverable from the financial assurance.

6. Pursuant to the 2008 Order, the Division plugged the R-12913-A Wells.

7. On February 20, 2009, the Division filed a motion to re-open this case seeking two forms of relief: (i) a plugging order pursuant to NMSA 1978, Section 70-2-14(B) regarding the remainder of wells operated by C & D, and (ii) an order finding an assessed \$5,000.00 civil penalty due and owing.

8. The Division subsequently dismissed the request for a civil penalty, pursuant to Marbob Energy Corp. v. N.M. Oil Conservation Comm’n, 2009-NMSC-013, 146 N.M. 24, 206 P.3d 135.

9. On July 9, 2009, the Division filed an amended pre-hearing statement seeking an order, pursuant to 19.15.5.9 NMAC (“Part 5.9”), that finds C & D to be in violation of the 2008 Order.

10. In the Division’s opening statement at the July 16, 2009 portion of the Hearing, the Division asked the Commission for an order finding C & D to be in violation of the 2008 Order.

11. C & D presented its case in chief at the August 13, 2009 hearing, and challenged the legitimacy of the 2008 Order and the Division’s plugging costs.

12. C & D testified that its intent was to seek permits to drill new wells, and that it was not sure that the Division would be reimbursed for its costs in plugging the wells under the 2008 Order.

#### **C & D’s Failure to Plug and Abandon as Ordered in the 2008 Order**

13. At the Hearing, the Division presented the testimony of Daniel Sanchez, the Division’s Enforcement and Compliance Manager. Mr. Sanchez testified that:

- a. C & D failed to take the corrective action required by the 2008 Order to return the R-12913-A Wells to production, place them on Division-approved temporary abandonment status, or plug and abandon them by September 14, 2008.
- b. The Division subsequently plugged the R-12913-A Wells.
- c. The estimated cost of plugging the R-12913-A Wells exceeds the \$10,000 financial assurances posted by C & D.
- d. Because the R-12913-A Wells now are plugged, they do not appear on the inactive well list kept under Part 5.9, creating the false impression that C & D brought them into compliance.

#### **C & D’s Failure to File Form C-115s as Ordered in the 2008 Order**

14. At the July 2008 Hearing C & D testified that it had all the information necessary to file the delinquent C-115s, that it had given the information to its professional reporting service for filing and that it had paid the service in advance for the filing. C & D committed to filing the delinquent C-115s as soon as staff from C & D’s professional reporting service returned from vacation.

15. On August 4, 2008, C & D filed a C-115 for January 2008.

16. Except for the January 2008 C-115, C&D failed to file the delinquent C-115s by the September 14, 2008, deadline in the 2008 Order.

17. C & D did not attempt to file the C-115s until March 2009 (Testimony of Thomas Kizer, August 13, 2009) and it was not until March 26, 2009, that the late C-115s began to register on the Division's system. (Testimony of Thomas Kizer, August 13, 2009; Testimony of Jane Prouty, July 16, 2009).

18. At the August 13, 2009 portion of the Hearing, C & D testified that it could not meet the September 14, 2008 deadline because it did not have the information to file C-115s. (Testimony of Thomas Kizer, August 13, 2009).

**Inaccuracy of the C-115s, Which Were Filed in March 2009**

19. Shortly after C & D's late March 2009 C-115 filings, C & D informed the Division that the C-115s that it had filed were not accurate, though C & D did not identify the inaccurate C-115s or the ways in which they were inaccurate. (Testimony of Jane Prouty, July 16, 2009; Testimony of Thomas Kizer, August 13, 2009).

20. C & D testified that the C-115s that it had filed did not provide complete information and data, and that they were inaccurate for all reporting periods. (Testimony of Thomas Kizer, August 13, 2009)

21. Reporting errors on the C-115s filed by C & D include:

- a. C & D reported zero production on a productive well. (Testimony of Thomas Kizer, August 13, 2009; Testimony of Jane Prouty, August 13, 2009)
- b. C & D testified it would run afoul of the federal government if it reported production, so it decided to report erroneous data. (Testimony of Thomas Kizer, August 13, 2009)
- c. C & D testified that the Bureau of Land Management ("BLM") wanted C & D to report production on productive wells. (Testimony of Thomas Kizer, August 13, 2009).
- d. C & D testified that its report of no production on one productive well in May 2009, did not matter because the well had just been plugged and C & D amended the production report to zero. (Testimony of Thomas Kizer, August 13, 2009)
- e. C & D is not reporting production on another productive well because C & D believes that such reporting is not required unless C & D has an approved C-104. (Testimony of Thomas Kizer, August 13, 2009)
- f. C & D was reporting water production, but then stopped, with no explanation. (Testimony of Jane Prouty, July 16, 2009).

- g. For numerous C & D wells, there was a significant difference in the amount of production that was first reported and that which was reported through later amendments. (Testimony of Jane Prouty, July 16, 2009)
  - h. Despite C & D's certification that original production amounts were accurate, amendments filed by C & D show abrupt production for wells that had not produced for a very long time. (Testimony of Jane Prouty, July 16, 2009)
  - i. C & D certified that data that it reported was correct, and then significantly amended that data. (Testimony of Jane Prouty, July 16, 2009)
  - j. Jane Prouty testified that it appeared that C & D had taken production numbers from producing wells, upon which C & D already had reported, and applied the same number to wells that C & D had reported as nonproducing. (Testimony of Jane Prouty, July 16, 2009).
  - k. The amounts picked up by C & D's transporter are not consistently reported in C & D's initial and amended filings. (Testimony of Jane Prouty, July 16, 2009)
  - l. C & D entered an invalid transporter number, reported a transporter that no longer existed, failed to check the accuracy of its transport information and, in fact, never reported the correct transporter. (Testimony of Jane Prouty, July 16, 2009; Testimony of Thomas Kizer, August 13, 2009)
  - m. C & D inconsistently reported the amount of production in tanks. (Testimony of Jane Prouty, August 13, 2009)
  - n. C & D did not report oil and water that was in tanks. (Testimony of Thomas Kizer, August 13, 2009)
  - o. The April 2009 C-115 had balancing errors. (Testimony of Jane Prouty, July 16, 2009)
22. C & D made no effort to correct the C-115s after the July 16, 2009 hearing. (Testimony of Thomas Kizer, August 13, 2009)
23. Some C-115s were rejected due to the errors in C & D's reporting. (Testimony of Jane Prouty, July 16, 2009)

24. Thomas Kizer testified that C & D had made a lot of reporting errors, including reporting the wrong API number and the wrong well, and failing to correctly add figures. (Testimony of Thomas Kizer, July 16, 2009; August 13, 2009)

25. Given the amount of time that it took C & D to file the C-115s, the information contained in them should have been more accurate, making significant amendment unnecessary. It is unusual for reporting to be so inaccurate so long after the reporting period. (Testimony of Jane Prouty, July 16, 2009)

26. C & D did not contact the Division's Automation and Records Bureau about C & D's failure to timely file the C-115s. (Testimony of Jane Prouty, July 16, 2009)

27. C & D knew that C-115s were required to be filed with the Division by September 14, 2008. Instead of so filing the C-115s, in August 2008, C & D filed a sundry notice with the BLM, promising to report production in August 2008, which C & D did not do. (Testimony of Thomas Kizer, August 13, 2009)

28. The Saunders #012 is equipped with a graph chart that accurately records production data. C & D's pumper knows how to read that chart. C & D also receives monthly production statements from DCP Mainstream Gas and Electrical Service ("DCP"), which show the production for the Saunders #012. (Testimony of Thomas Kizer, August 13, 2009; Testimony of George Shipley, August 13, 2009)

29. C & D testified that it is not difficult to transfer the production data from the DCP statements to the C-115s. (Testimony of Thomas Kizer, August 13, 2009)

30. Despite having the data needed to report production for all reporting periods, C & D still has not corrected the C-115s, or asked the Division to withdraw the inaccurate C-115s. (Testimony of Jane Prouty, July 16, 2009; Testimony of Thomas Kizer, August 13, 2009)

31. C & D was not current in its reporting obligations during the Hearing of this case. (Testimony of Jane Prouty, July 16, 2009)

**The Division's Efforts to Obtain C & D's Compliance with C & D's Reporting Obligations**

32. Since March 2006, the Division has taken the following actions in an effort to obtain C & D's compliance with the requirement to file C-115s:

- a. The Division contacted C & D by telephone and participated in telephone conferences with C & D. (Testimony of Jane Prouty, July 16, 2009)

- b. The Division sent to C & D (i) written notices of intent to revoke C & D's authority to transport and inject, (ii) numerous letters to regarding C & D's failure to report and (iii) several letters of violation for non-reporting and inactivity. (Testimony of Jane Prouty, July 16, 2009)
  - c. The Division revoked C & D's authority to transport and inject into its wells. (Exhibit 26)
  - d. The Division conducted numerous administrative compliance conferences with C & D. (Testimony of Daniel Sanchez, July 30, 2008; Testimony of Jane Prouty, July 2009)
  - e. The Division tried to help C & D file its C-115s by creating a C-115 for C & D, which the Division normally does not do. (Testimony of Jane Prouty, July 16, 2009)
  - f. The Division filed an application for a compliance order against C & D in March 2007. (Testimony of Thomas Kizer, July 30, 2008)
  - g. The Division entered into an agreed compliance order with C & D in March 2007. (Testimony of Thomas Kizer, July 30, 2008; Testimony of Daniel Sanchez, July 30, 2008)
  - h. The Division filed an application for a compliance order in December 2007 because of C & D's continued failure to file C-115s.
  - i. The Division re-opened the case in February 2009 when C & D continued in its failure to file C-115s.
  - j. The Division hearing examiner and the Commission issued orders directing C & D to file true and accurate C-115s, and to file them timely.
33. The Division has devoted an extraordinary amount of time and resources in its effort to gain C & D's reporting compliance. (Testimony of Jane Prouty, July 16, 2009)
34. The Division offers the following materials on its website to help operators file C-115s.
- a. Detailed C-115 instructions. (Testimony of Jane Prouty, July 16, 2009)
  - b. A manual on how to create a C-115. (Testimony of Jane Prouty, August 13, 2009)

- c. A manual on how to file a C-115. (Testimony of Jane Prouty, August 13, 2009)
- d. A Frequently Asked Questions sheet. (Testimony of Jane Prouty, July 16, 2009)
- e. A sample C-115, with instructions. (Testimony of Jane Prouty, July 16, 2009)
- f. A list of all error codes, a description of what to do for each error code, and the identity of a contact person for the code. (Testimony of Jane Prouty, July 16, 2009)
- g. A flow-chart. (Testimony of Jane Prouty, August 13, 2009)
- h. All the print screens involved. (Testimony of Jane Prouty, July 16, 2009)
- i. A quick sheet. (Testimony of Jane Prouty, July 16, 2009)
- j. A macro download and steps on how to download it. (Testimony of Jane Prouty, July 16, 2009)

THE COMMISSION CONCLUDES:

A. C & D had sufficient notice that the Division was seeking, pursuant to Part 5.9, an order finding C & D to be in violation of the order requiring corrective action.

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

C. Challenges to the legitimacy of the 2008 Order should have been raised in an appeal of that order, which C & D did not do.

D. 19.15.7.24 NMAC requires an operator to file an acceptable monthly report, form C-115, for each non-plugged well completion for which the Division has approved a C-104 authorization to transport, and for each secondary or other enhanced recovery project or pressure maintenance project injection well or other injection well, setting forth complete information and data indicated on the form in the order, format and style the Director prescribes. C & D is in violation of this regulation.

E. 19.15.25.8 NMAC provides that an operator shall either properly plug and abandon a non-beneficial or inactive well or shall place such a well in Division-approved temporary abandonment status. C & D is in violation of this regulation.



F. 19.15.7.24 NMAC requires an operator to maintain financial assurance acceptable to the Division. C & D is in violation of this regulation.

G. The 2008 Order required C & D to return the R-12913 Wells to production, place them on temporary abandonment status approved by the Division, or plug and abandon them by September 14, 2008. C & D did not comply with the 2008 Order.

H. The 2008 Order required C & D to file true and accurate reports electronically on form C-115 for all of its wells, for all months from January 2008 through and including May 2008, by no later than September 14, 2008. C & D did not comply with the 2008 Order.

I. C & D is out of compliance with 19.15.5.9(A)(1) NMAC and is in violation of an order requiring corrective action.

J. Section 70-2-14(B) NMSA 1978 as amended, provides that if any of the requirements of the New Mexico Oil and Gas Act ("Act") or the rules promulgated pursuant to the Act have not been complied with, the Director may order any well plugged and abandoned by the operator in accordance with division rules, and if the operator fails to comply with such order, may authorize the Division to plug such well and decree forfeiture of applicable financial assurance.

K. 19.15.5.10 NMAC provides that the Commission may sanction an operator for failure to comply with the Act, a rule or an order, including without limitation by cancelling an operator's authority to transport.

L. 19.15.7.24 NMAC authorizes cancellation of an operator's authority to transport and inject for failure to properly file C-115s.

NOW THEREFORE IT IS ORDERED THAT:

I. Pursuant to 19.15.5.10 NMAC, C & D's authority to transport or inject for all wells that it now operates is hereby, as of the date of this Order, suspended. Such suspension shall continue until C & D is in full compliance with this Order.

II. Pursuant to 19.15.5.9 NMAC, C & D shall bring all wells that it operates into full compliance with (i) the reporting obligations under the 2008 Order and 19.15.7.24 NMAC and (ii) the financial assurance requirements in the rules promulgated pursuant to the Act. C & D shall be deemed to remain out of compliance with 19.15.5.9 NMAC until a motion is granted pursuant to 19.15.5.9(D)(3) NMAC, containing a finding that C & D has complied with this Paragraph II.

III. C & D shall, for each well that it operates, (i) bring the well into or back into production or, for gas wells, obtain from OCD certification that the well is

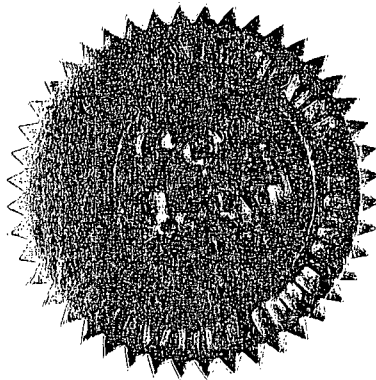
capable of production, and (ii) place it on temporary abandonment status approved by the Division pursuant to the rules. In the alternative, C & D shall plug and abandon the well pursuant to the rules.

IV. If, on or before January 16, 2010, C & D has not fully complied with Paragraphs II and III of this Order for each well that C & D now operates, the Division shall be and hereby is authorized to plug all wells now operated by C & D. If the Division plugs any or all wells pursuant to such authorization, such plugging shall have no effect on C & D's obligation to become compliant under 19.15.5.9 NMAC.


V. The Commission retains jurisdiction over this case for the entry of such further orders as the Commission may deem necessary.


DONE at Santa Fe, New Mexico on the 16<sup>th</sup> day of December 2009.

STATE OF NEW MEXICO  
OIL CONSERVATION COMMISSION



  
JAMI BAILEY, CPG, MEMBER

  
WILLIAM OLSON, MEMBER

  
MARK E. FESMIRE, P.E., CHAIR

SEAL