

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

**APPLICATION OF THE NEW MEXICO OIL CONSERVATION DIVISION
COMPLIANCE AND ENFORCEMENT BUREAU FOR A COMPLIANCE
ORDER AGAINST CANO PETRO OF NEW MEXICO, INC., FOR WELLS
OPERATED IN CHAVES AND ROOSEVELT COUNTIES, NEW MEXICO.**

CASE NO. 16040

CASE NO. 16359

**MEMORANDUM IN RESPONSE TO NOTICE OF BANKRUPTCY AND
AUTOMATIC STAY**

The Oil Conservation Division Compliance and Enforcement Bureau (“Bureau”), through its undersigned attorney, hereby submits this Memorandum to the Oil Conservation Commission (“OCC” or “Commission”) in response to U.S. Specialty Insurance Company’s Notice of Bankruptcy and Automatic Stay.

The Bureau is aware of this bankruptcy proceeding and the stay provision of 11 U.S.C. § 362(a) does not apply in this case. The issue presented by U.S. Specialty Insurance Company is whether the Bureau’s enforcement action against Cano Petro of New Mexico (“Cano”) for violations of 19.15.5.9(A)(4), 19.15.25.8, 19.15.8, 19.15.17, 19.15.29, and 19.15.36 NMAC is exempt from the automatic stay pursuant to Bankruptcy Code Section 362(b)(4)’s exception for exercise of “police and regulatory power.” The Bureau’s enforcement falls squarely within the scope of 11 U.S.C. § 362(b)(4). Pursuant to the limitations of this statutory exception, however, the Bureau may not—and does not seek to—enforce any financial judgment it receives outside the context of the Bankruptcy Court’s proceedings.

The Oil Conservation Division (“OCD”) and the OCC are “empowered, and it is its duty, to prevent waste prohibited by this act and to protect correlative rights. To that end, the division is empowered to make and enforce rules, regulations and orders, and to do whatever may be reasonably necessary to carry out the purpose of this act.” NMSA 1978 § 70-2-11. Among the other violations brought by the Bureau, the rules on plugging and abandonment codified in 19.15.25.8 NMAC, “will prevent migration of fluids, prevent waste, protect correlative rights and protect fresh waters.” OCC Order R-9210.

This case was brought before an OCD Examiner prior to the bankruptcy filing. After an order was issued in that case, Cano’s parent company filed for bankruptcy and Cano requested a *De Novo* hearing before the OCC. If Cano is permitted to affect an indefinite stay of the Bureau’s enforcement action simply by filing for bankruptcy, this will send a deeply problematic message to the regulated community: that they can defraud consumers and government agencies, then evade liability by shutting down and filing for bankruptcy once they are caught. The purpose of § 362(b)(4)’s exception to the automatic stay is to ensure that Bankruptcy Court does not become a “haven for wrongdoers.” *In re Halo Wireless*, 684 F.3d 581 (5th Cir. 2012) (quoting *In re Nortel Networks*, 669 F.3d 128, 137 (3d Cir. 2011) and others). The Bureau’s enforcement action fits squarely within this important purpose.

Should any questions arise at hearing regarding the pending bankruptcy of Cano’s parent organization, the Bureau is prepared to call Jim Jacobsen, the Assistant Attorney General who is representing the State of New Mexico in the pending bankruptcy case, for testimony related to issues created by the automatic stay and the bankruptcy proceeding.

RESPECTFULLY SUBMITTED,
this 9th day of August 2018 by



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was electronically mailed to the following parties on August 9, 2018:

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