

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

Case No. 14312

EXHIBIT

3

**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 ORBIT PETROLEUM, INC. FINDING THAT THE OPERATOR IS IN VIOLATION OF 19.15.7.24 NMAC, 19.15.8.9 NMAC AND 19.15.25.8 NMAC, REQUIRING OPERATOR TO PROPERLY PLUG AND ABANDON ALL ITS WELLS BY A DATE CERTAIN, AND IN THE EVENT OF NON-COMPLIANCE AUTHORIZING THE DIVISION TO PLUG AND ABANDON THE WELLS AND FORFEIT THE APPLICABLE FINANCIAL ASSURANCE, ROOSEVELT AND LEA COUNTIES, NEW MEXICO.

CASE NO. 14312

TESTIMONY OF DANIEL SANCHEZ

My name is Daniel Sanchez.

Since November 22, 2004, I have been the Compliance and Enforcement Manager of the Oil Conservation Division (OCD) of the Energy, Minerals and Natural Resources Department.

My duties as Compliance and Enforcement Manager include supervising the four district offices of the OCD and the Environmental Bureau of the OCD, and overseeing the enforcement and compliance actions of the OCD.

I have researched the compliance history of Orbit Petroleum, Inc. (Orbit), and the allegations made in the application in Case 14312.

OCD Exhibit 4 is a printout of the Well List for Orbit taken from the OCD’s website. The Well List contains all wells that have not been plugged and released, and compiles information about the wells from the regulatory filings of the operators. OCD personnel routinely rely on the Well List in conducting their normal business operations, and the Well List is also routinely used and relied upon by operators and members of the public. A search of the Well List for wells operated by “Orbit Petroleum, Inc.” shows that Orbit is the operator of record for the following wells under OGRID 227083:

Archer #001, 30-041-20787, K-17-07S-34E
Archer #002, 30-042-20798, L-17-07S-34E
Brown 51 #001, 30-025-07061, D-19-09S-38E
Brown 51 #002, 30-025-21703, F-19-09S-38E
Line State #001, 30-041-20451, 2-16-08S-38E
Sieber #001, 30-041-20791, C-17-07S-34E
State BA #001, 30-041-10003, A-34-07S-35E
State BA #002, 30-041-20048, H-34-07S-35E

NMSA 1978, Section 70-2-14(B) provides, in relevant part, "If any of the requirements of the Oil and Gas Act [70-2-1 NMSA 1978] or the rules promulgated pursuant to that act have not been complied with, the oil conservation division, after notice and hearing, may order any well plugged and abandoned by the operator or surety or both in accordance with division rules."

In Case 14312, the OCD is asking for an order requiring Orbit to plug and abandon all its wells, or transfer all its wells to another operator, by a date certain. This request is made pursuant to NMSA 1978, Section 70-2-14(B), based on Orbit's history of non-compliance with OCD rules. The OCD also asks that the order authorize the OCD to plug and abandon Orbit's wells and forfeit the applicable financial assurances (if permitted by the bankruptcy court) if Orbit fails to transfer or plug the wells by the deadline set in the order.

Violation of 19.15.7.24 NMAC (production reporting requirements):

Rule 19.15.7.24 NMAC requires operators to file a monthly production report for each non-plugged well completion for which the division has approved a form C-104.

OCD Exhibit 5 is a printout of summary screens for the last 24 monthly production reports filed by Orbit. These summary screens are taken from OCD's website and are used by the OCD, operators and the general public to check monthly filings by operators. Exhibit 5 shows that Orbit last filed reports in 2007. I have reviewed the well files for the wells operated by Orbit, and can confirm that Orbit has operated wells with approved C-104's from 2007 to the

present. **OCD Exhibit 6** is an example: a C-104 for the Brown 51 #1 well, which has been in effect since 1998.

Violation of 19.15.8.9 NMAC (financial assurance requirements):

Rule 19.15.8.9 NMAC requires operators to post financial assurances for wells on privately owned or state owned lands in New Mexico that have not been plugged and released, conditioned that the well will be plugged and abandoned and the location restored and remediated in compliance with OCD rules.

Effective January 1, 2008, the operator of a state or fee well that has been inactive for a period of more than two years must post a one-well financial assurance for the well, even if the well is also covered by a blanket financial assurance. See Rule 19.15.8.9.C NMAC.

Also effective January 1, 2008, the amounts required under Rule 19.15.8.9.D NMAC for single well financial assurances increased. The current amount required for a well in Roosevelt and Lea Counties, where Orbit's wells are located, is \$5,000 plus \$1 per foot of measured depth. See 19.15.8.9.D(2) NMAC.

The financial assurances posted by Orbit for the wells it operates are identified in the affidavit of Dorothy Phillips, and copies of the financial assurances are attached as exhibits to Ms. Phillips' affidavit.

Orbit has posted two cash blanket bonds: one for \$50,000 and one for \$40,000. Orbit has not posted any single well financial assurances for its state and fee wells that have been inactive for more than two years. Because Orbit is in Chapter 11 bankruptcy, it is unclear whether the OCD will be able to forfeit the two cash bonds. **OCD Exhibit 7** is a copy of the Notice of Chapter 11 Bankruptcy Case.

OCD Exhibit 8 is a copy of the Inactive Well Additional Financial Assurance Report for Orbit, taken from the OCD's website. The OCD posts the Inactive Well Additional Financial Assurance Report to help operators check their compliance with the new single well financial assurance requirements. The report lists each well for which the operator is the operator of record, and provides information from the OCD's databases about that well that will help the operator determine if additional financial assurances are due.

The column marked "Last Prod/Inj" gives the date of the last reported production or injection for the well. The column marked "Inactive Additional Bond Due" will tell the operator which wells are subject to the single well financial assurance requirements. If there is a date in that column, it means that the well is a state or fee well that has reported production at some time. (If a state or fee well is listed that has never reported production, the computer does not assume that the well requires a single well financial assurance. It is possible that the listing indicates that a permit to drill was issued at some point in the past, but the well was not drilled.) The date in the column is simply a date two years from the last reported date of production or injection – the date a single well financial assurance will be required if the well does not report any additional production or injection. In Orbit's case, six wells have dates in the "Inactive Additional Bond Due" column, and all have been inactive for more than two years. The "Measured Depth" column lists the measured depth of the well, as reported by the operator, which is used to calculate the amount of the single well financial assurance required. The "Required Bond Amount" column shows the amount of the single well financial assurance required, based on the depth and location of the well. A "Y" in the "Bond Required Now" column means that the well should be covered by a single well financial assurance now. If a financial assurance in the correct amount has been posted by the operator, that amount will

appear in the "Bond in Place" column. If the operator has not posted a single well financial assurance for the well, or if the operator has posted a single well financial assurance that is less than the required amount, a "0" will appear. Finally, a "Y" in the "In Violation" column indicates that the operator is in violation of the single well financial assurance requirements as to that well.

According to OCD Exhibit 8, Orbit has six wells that currently require a single well financial assurance, and Orbit is in violation of the single well financial assurance requirements on all six of the wells. All six of the wells are located in either Roosevelt or Lea County, so each requires a single well financial assurance in the amount of \$5,000 plus \$1 per foot of measured depth.

Violation of 19.15.25 NMAC (inactive well requirements):

Rule 19.15.25.8 NMAC requires an operator to plug and abandon or temporarily abandon a well in accordance with Division rules within 90 days after a period of one year of continuous inactivity.

Rule 19.15.25.10.D NMAC provides that, as soon as practical, but not later than one year after the completion of plugging operations, the operator shall level the location, remove deadmen and other junk, and take other measures necessary or required by the OCD to restore the location to a safe and clean condition. In addition, the operator is required to close all pits and below-grade tanks. See 19.15.25.10.E NMAC.

Rule 19.15.25.11 NMAC provides that within 30 days after completing all restoration work the operator shall file with the OCD a record of the work done. The OCD shall not approve the record of plugging or release a bond until the operator has filed the necessary reports and the OCD has inspected and approved the location.

OCD Exhibit 8, the Inactive Well Additional Financial Assurance Report, also identifies the last reported production or injection for Orbit's wells.

All of the wells operated by Orbit have been inactive for a continuous period in excess of one year plus 90 days, and are neither plugged and abandoned in accord with 19.15.25.10 NMAC nor on approved temporary abandonment status in accord with 19.15.25.13 NMAC.

Rule 19.15.8.13 NMAC authorizes the Director to order the operator to plug and abandon any well not in compliance with 19.15.25.8 NMAC and restore and remediate the location by a date certain.

NMSA 1978, Section 70-2-12(B)(18) and NMSA 1978, Section 70-2-38 authorize the OCD to plug and abandon wells, and restore and remediate the location of abandoned wells.

History of compliance actions by the OCD against Orbit:

Case 13373, Order R-12250

On December 16, 2004, the OCD issued Order R-12250 in Case No. 13373 requiring Orbit to return 5 wells to compliance with the inactive well rule. A copy of the order is attached as **OCD Exhibit 9**. Two of the wells covered by the order were the State BA #001 and #002. Orbit did not return those wells to compliance, and the State of New Mexico has plugged the wellbores of those wells. **OCD Exhibit 10** is a copy of the invoice, showing the cost to the state of \$61,238.52.

ACOI 81

In August 2005, the OCD entered into an inactive well agreed compliance order with Orbit. A copy of the order with its amendments is attached as **OCD Exhibit 11**. The wells covered by the order include six of the wells at issue in this case (the two other wells at issue in

150 this case were already subject to plugging order R-12250). The order required Orbit to return the
151 wells to compliance at a rate of 3 wells per month.

152 Orbit was not able to keep up with the agreed schedule, and additional wells fell out of
153 compliance with the inactive well rule. In addition, Orbit fell behind in its reporting. When
154 ACOI 81 expired, Orbit requested a new agreed compliance order for its inactive wells. The
155 OCD met with Orbit, and told Orbit that it would not enter into a new order until Orbit became
156 current in its reporting. Orbit filed its delinquent reports. At that time, the OCD offered to enter
157 into a new order, and drafted a new agreed compliance order to replace ACOI 81. Orbit did not
158 respond to the OCD's offer, and after several months the OCD withdrew its offer.

159 Rule 40 (now 19.15.5.9 NMAC)

160 In 2008, Orbit applied to become the operator of record for wells formerly operated by
161 Tipton Oil & Gas Acquisitions, Inc. At that time, Orbit operated 92 wells, and 51 of those wells
162 appeared on the inactive well list, indicating a presumption that those wells were in violation of
163 the inactive well rule. In addition, Orbit was out of compliance with the single well financial
164 assurance requirements on six wells. Orbit was therefore out of compliance with Rule 40 (now
165 renumbered at 19.15.5.9 NMAC).

166 If an operator is out of compliance with Rule 40, the OCD may deny transfers of wells to
167 that operator under Rule 100.E(3) (now renumbered at 19.15.9.9.C NMAC). The OCD denied
168 the transfer by letter dated February 5, 2008. **OCD Exhibit 12** is a copy of that letter. The letter
169 also describes the history of the OCD's efforts to obtain compliance from Orbit.

170 Bankruptcy Case

171 Orbit filed for Chapter 11 bankruptcy.

172 In May 2008, Orbit transferred operation of most of its wells to Ridgeway Arizona Oil
173 Corp., leaving only the 8 wells identified in this case under Orbit. **OCD Exhibit 13** is a copy of
174 the change of operator documentation.


175 A new company, Vista Resources, Inc., has expressed interest in acquiring wells formerly
176 operated by Orbit or Orbit-related entities. Vista does not, however, intend to acquire the 8 wells
177 at issue in this case. **OCD Exhibit 14** is a copy of an e-mail from Vista, in which it takes the
178 position that the 8 wells are not included in Orbit's bankruptcy assets.

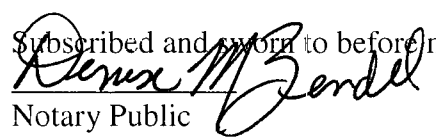
179 **Requested Relief:**

180 The OCD requests an order finding Orbit in violation of the OCD's rules requiring
181 monthly production reports, inactive wells, and financial assurances, requiring Orbit to plug and
182 abandon all the wells it operates by a date certain, and authorizing the OCD to plug and abandon
183 the wells and forfeit the applicable financial assurances if Orbit fails to meet the deadline set in
184 the order.

185 Such an order would require Orbit to plug and abandon its wells or transfer them to
186 another operator. The goal of this proceeding is to prevent Orbit from operating wells in New
187 Mexico. This relief is sought because of Orbit's history of non-compliance, and because all of
188 the OCD's other efforts to obtain compliance from Orbit have failed.

189 I, Daniel Sanchez, swear that the foregoing is true and correct.

190 
191 Daniel Sanchez
192 Compliance and Enforcement Manager
193 Oil Conservation Division

194
195 Subscribed and sworn to before me this 4th day of May 2009 by Daniel Sanchez.
196 
197 Notary Public

198
199 My commission expires:

200 01-09-2012