

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

Case No. 14312

EXHIBIT

1

**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

AFFIDAVIT OF NOTICE

In accordance with Oil Conservation Division (OCD) rule 19.15.4.12.C NMAC, I hereby certify

1. Case No. 14312 seeks an order requiring Orbit Petroleum, Inc. to plug its wells by a date certain, and authorizing the OCD to plug the wells and forfeit the applicable financial assurances if the operator fails to meet that deadline.

2. According to the corporate inquiry screen posted on the website for the Public Regulation Commission, Orbit Petroleum, Inc. is an active corporation with the following registered agent: Casa de Search, 9 Carlton Road, Santa Fe, NM 87505. A copy of the corporate inquiry screen is attached as Exhibit A.

3. According to NMSA 1978, Section 53-11-14, the registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required by law to be served upon the corporation may be served. A copy of NMSA 1978, Section 53-11-14 is attached as Exhibit B.

4. Orbit Petroleum, Inc. has posted financial assurances for its wells in the form of cash plugging bonds.

5. Notice of the original May 14, 2009 hearing setting in the above-captioned case was mailed on April 13, 2009 to "Casa de Search" by certified mail, return receipt requested, at least 20 days prior to the hearing date, with a copy of the application. A copy of the notice, with the attachments, is attached as Exhibit C.

6. The OCD received a signed return receipt card from Casa de Search. A copy of the card is attached as Exhibit D.

I, Gail MacQuesten, swear that the foregoing is true and correct.



Gail MacQuesten
Oil Conservation Division

Subscribed and sworn to before me this 12th day of May 2009 by Gail MacQuesten.



Notary Public

My commission expires:

1-9-2012

New Search

ORBIT PETROLEUM, INC.

SCC Number: 2615342
Tax & Revenue Number:
Incorporation Date: AUGUST 15, 2005, in NEW MEXICO
Corporation Type: DOMESTIC PROFIT
Corporation Status: ACTIVE
Good Standing: In GOOD STANDING through 9/15/2010
Purpose: OIL & GAS PRODUCTION AND EXPLORATION

CORPORATION DATES

Taxable Year End Date: 06/30/08
Filing Date: 08/29/08
Expiration Date:

SUPPLEMENTAL POST MARK DATE

Supplemental:

MAILING ADDRESS

720 W WILSHIRE, STEV115 OKLAHOMA CITY , OKLAHOMA 73116

PRINCIPAL ADDRESS

9 CARLTON RD SANTA FE NEW MEXICO 87505

PRINCIPAL ADDRESS (Outside New Mexico)

REGISTERED AGENT

CASA DE SEARCH

*Before the OCD
Cases 14312
Orbit Petroleum, Inc.
OCD Ex. No. 1-A*

9 CARLTON RD SANTA FE NEW MEXICO 87505

Agent Designated:

Agent Resigned:

COOP LICENSE INFORMATION

Number:

Type:

Expiration Year:

OFFICERS

President:

Vice President:

Secretary: **PHIL HERR**

Treasurer:

DIRECTORS

Date of Election of Directors:

FRASER , JIM

53-11-14. Service of process on corporation.

The registered agent appointed by a corporation shall be an agent of the corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served. Nothing in this section limits or affects the right to serve any process, notice or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

***Before the OCD
Cases 14312
Orbit Petroleum, Inc.
OCD Ex. No. 1-B***



New Mexico Energy, Minerals and Natural Resources Department

Bill Richardson

Governor

Joanna Prukop

Cabinet Secretary

Reese Fullerton

Deputy Cabinet Secretary

Mark Fesmire

Division Director

Oil Conservation Division



April 13, 2009

NOTICE OF HEARING

Casa de Search
Registered Agent for Orbit Petroleum, Inc.
9 Carlton Road
Santa Fe NM 87505

Certified Mail No. 7002 0510 0003 5125 2355

Jim Frazier
Orbit Petroleum, Inc.
1131 E. Britton Rd.
Oklahoma City, OK 73131

Certified Mail No. 7002 0510 0003 5125 2348

CASE 14132: 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.

Ladies and Gentlemen,

You are hereby notified that the New Mexico Oil Conservation Division (OCD) has filed the above-captioned case seeking a compliance order against Orbit Petroleum, Inc. (Orbit). A copy of the application is enclosed.

A hearing on this application will take place before an OCD hearing officer on **Thursday, May 14, 2009 at 8:15 a.m.**, in Porter Hall, First Floor, 1220 South St. Francis Drive in Santa Fe, New Mexico. At that hearing you will have an opportunity to oppose the entry of the order. **If you intend to present evidence at the hearing, you should file a pre-hearing statement at least four business days in advance of the hearing and serve copies on the other parties or their attorneys, as required by 19.15.4.13.B NMAC.** A copy of that rule is enclosed. I have also enclosed a copy of 19.15.4.14 NMAC, which addresses representation at administrative hearings before the OCD.

*Before the OCD
Cases 14312*

*Orbit Petroleum, Inc.
OCD Ex. No. 1-C*

Oil Conservation Division * 1220 South St. Francis Drive

* Santa Fe, New Mexico 87505

* Phone: (505) 476-3440 * Fax (505) 476-3462* <http://www.emnrd.state.nm.us>

If you have questions about the application, you may call me at (505) 476-3451. If you have questions about hearing procedures or scheduling, please call OCD Hearing Clerk Florene Davidson at (505) 476-3458.

Sincerely,



Gail MacQuesten
Assistant General Counsel
Gail.macquesten@state.nm.us

Encl: Application in Case No. 14312
Rule 19.15.4.13.B NMAC
Rule 19.15.4.14 NMAC

EC: Daniel Sanchez, Compliance and Enforcement Manager
Larry "Buddy" Hill, Supervisor, District 1

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

APPLICATION FOR COMPLIANCE ORDER
AGAINST ORBIT PETROLEUM INC.

1. Orbit Petroleum, Inc. ("Orbit") is a corporation operating the following wells in New Mexico 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

2. According to information posted on the website of the New Mexico Public Regulation Commission, Orbit is a domestic profit corporation in good standing, with the following registered agent: Casa de Search, 9 Carlton Road, Santa Fe, NM 87505. Its corporate officer is Phil Herr, and its director is Jim Fraser.

3. The records of the Oil Conservation Division ("OCD") identify the following financial assurances posted by Orbit to secure the plugging and abandonment of its wells:

Application for Compliance Order
Orbit Petroleum, Inc.
Page 1 of 5

\$50,000 Blanket Cash Plugging Bond , Account No. 2169568157

\$40,000 Blanket Cash Plugging Bond, Account No. 2169568116

4. Orbit Petroleum, Inc. is the debtor in Chapter 11 Bankruptcy Case 08-10408-11, filed 2/13/08.

5. 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."

Violation of 19.15.7.24 NMAC (failure to file production reports):

6. 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.

7. Orbit has not filed monthly production reports for reporting periods after September 2007.

8. During the relevant time periods, Orbit had wells with approved C-104s.

Violation of 19.15.8.9 NMAC (financial assurance requirements):

9. 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.

10. 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.

11. Orbit operates six state or fee wells that have been inactive for more than two years and require single-well financial assurances under 19.15.8.9 NMAC. Orbit has not posted single-well financial assurances for these wells:

Archer #001, 30-041-20787, K-17-07S-34E
Archer #002, 30-042-20798, L-17-07S-34E
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

Violation of 19.15.25 NMAC (inactive well requirements):

12. 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.

13. 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.

14. 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.

15. All 8 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. Two of the eight wells are already subject to a plugging order, R-12250, and the wellbores have been plugged by the State of New Mexico at a cost of \$61,238.52: State BA #001, 30-041-10003, and State BA #002, 30-041-20048.

16. 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.

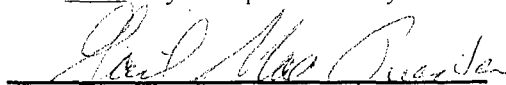
17. NMSA 1978, Section 70-2-12(B)(18) and NMSA 1978, Section 70-2-38 authorize the OCD to plug and abandon wells, and restore and remediate the location of abandoned wells.

WHEREFORE, the Enforcement and Compliance Manager of the Division hereby applies to the Director to enter an order:

- A. Determining that Orbit Petroleum, Inc. is in violation of 19.15.7.24 NMAC, 19.15.8.9 NMAC, and 19.15.25 NMAC;
- B. Requiring Orbit Petroleum, Inc. to properly plug and abandon all its wells by a date certain, pursuant to NMSA 1978, Section 70-2-14(B);
- C. Authorizing the OCD to properly plug and abandon all wells operated by Orbit Petroleum, Inc.;
- D. Authorizing the OCD, if permitted by the bankruptcy court, to forfeit the applicable financial assurances if Orbit Petroleum, Inc. fails to meet the deadline for compliance set in the order; and

E. For such other and further relief as the Director deems just and proper
under the circumstances.

RESPECTFULLY SUBMITTED,
this 12th day of April 2009 by



Gail MacQuesten
Assistant General Counsel
Energy, Minerals and Natural
Resources Department of the State of
New Mexico
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3451

Attorney for The New Mexico Oil
Conservation Division

Case No. _____. Application of the New Mexico Oil Conservation Division for a Compliance Order against Orbit Petroleum, Inc. The Applicant seeks an order finding that the operator is in violation of 19.15.7.24 NMAC, 19.15.8.9 NMAC, and 19.15.25 NMAC, requiring operator to properly plug and abandon all the wells it operates in New Mexico 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. The affected wells are: 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. The Archer #001 and #002 and the Sieber #001 wells are located approximately 5 miles northwest of Milnesand, in Roosevelt County. The Brown 51 #001 and #002 are located approximately 15 miles east of Crossroads in Lea County. The Line State #001 is located approximately 15 miles east of Milnesand in Roosevelt County. The State BA #001 and #002 are located approximately 5 miles northeast of Milnesand in Roosevelt County.

19.15.4.13 PLEADINGS, COPIES, PRE-HEARING STATEMENTS, EXHIBITS AND MOTIONS FOR CONTINUANCE:

A. Pleadings. Applicants shall file two sets of pleadings and correspondence in cases pending before a division examiner with the division clerk and six sets of pleadings and correspondence in cases pending before the commission with the commission clerk. For cases pending before the commission, the commission clerk shall disseminate copies of pleadings and correspondence to the commission members. The party filing the pleading or correspondence shall at the same time serve a copy of the pleading or correspondence upon each party who has entered an appearance in the case on or prior to the business day immediately preceding the date when the party files the pleading or correspondence with the division or the commission clerk, as applicable. Parties shall accomplish service by hand delivery or transmission by facsimile or electronic mail to a party who has entered an appearance or, if the party is represented, the party's attorney of record. Service upon a party who has not filed a pleading containing a facsimile number or e-mail address may be made by ordinary first class mail. Parties shall be deemed to have made an appearance when they have either sent a letter regarding the case to the division or commission clerk or made an in person appearance at a hearing before the commission or before a division examiner. A written appearance, however, shall not be complete until the appearing party has provided notice to other parties of record. An initial pleading or written entry of appearance a party other than the applicant files shall include the party's address or the address of the party's attorney and an e-mail and facsimile number if available.

B. Pre-hearing statements.

(1) A party to an adjudicatory proceeding who intends to present evidence at the hearing shall file a pre-hearing statement, and serve copies on other parties or, for parties that are represented, their attorneys in the manner Subsection A of 19.15.4.13 NMAC provides, at least four business days in advance of a scheduled hearing before the division or the commission, but in no event later than 5:00 p.m. mountain time, on the Thursday preceding the scheduled hearing date. The statement shall include:

- (a) the names of the party and the party's attorney;
- (b) a concise statement of the case;
- (c) the names of witnesses the party will call to testify at the hearing, and in the case of expert witnesses, their fields of expertise;
- (d) the approximate time the party will need to present its case; and
- (e) identification of any procedural matters that are to be resolved prior to the hearing.

(2) A party other than the applicant shall include in its pre-hearing statement a statement of the extent to which the party supports or opposes the issuance of the order the applicant seeks and the reasons for such support or opposition. In cases to be heard by the commission, each party shall include copies of exhibits that it proposes to offer in evidence at the hearing with the pre-hearing statement. The commission may exclude witnesses the party did not identify in the pre-hearing statement, or exhibits the party did not file and serve with the pre-hearing statement, unless the party offers such evidence solely for rebuttal or makes a satisfactory showing of good cause for failure to disclose the witness or exhibit.

(3) A pre-hearing statement filed by a corporation or other entity not represented by an attorney shall identify the person who will conduct the party's presentation at the hearing and include a sworn and notarized statement attesting that the corporation's or entity's governing body or chief executive officer authorizes the person to present the corporation or entity in the matter.

(4) For cases pending before the commission, the commission clerk shall disseminate copies of pre-hearing statements and exhibits to the commission members.

C. Motions for continuance. Parties shall file and serve motions for continuance no later than 48 hours prior to time the hearing is set to begin, unless the reasons for requesting a continuance arise after the deadline, in which case the party shall file the motion as expeditiously as possible after becoming aware of the need for a continuance.

[19.15.4.13 NMAC - Rp, 19.15.14.1211 NMAC, 12/1/08]

19.15.4.14 CONDUCT OF ADJUDICATORY HEARINGS:

A. Testimony. Hearings before the commission or a division examiner shall be conducted without rigid formality. The division or commission shall take or have someone take a transcript of testimony and preserve the transcript as a part of the division's permanent records. A person testifying shall do so under oath. The division examiner or commission shall designate whether or not an interested party's un-sworn comments and observations are relevant and, if relevant, include the comments and

observations in the record.

B. Pre-filed testimony. The director may order the parties to file prepared written testimony in advance of the hearing for cases pending before the commission. The witness shall be present at the hearing and shall adopt, under oath, the prepared written testimony, subject to cross-examination and motions to strike unless the witness' presence at hearing is waived upon notice to other parties and without their objection. The parties shall number pages of the prepared written testimony, which shall contain line numbers on the left-hand side.

C. Appearances pro se or through an attorney. Parties may appear and participate in hearings either pro se (on their own behalf) or through an attorney. Corporations, partnerships, governmental entities, political subdivisions, unincorporated associations and other collective entities may appear only through an attorney or through a duly authorized officer or member. Participation in adjudicatory hearings shall be limited to parties, as defined in 19.15.4.10 NMAC, except that a representative of a federal, state or tribal governmental agency or political subdivision may make a statement on the agency's or political subdivision's behalf. The commission or division examiner shall have the discretion to allow other persons present at the hearing to make a relevant statement, but not to present evidence or cross-examine witnesses. A person making a statement at an adjudicatory hearing shall be subject to cross-examination by the parties or their attorneys.

[19.15.4.14 NMAC - Rp, 19.15.14.1212 NMAC, 12/1/08]

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:

Casa de Search
Registered Agent for Orbit
9 Carlton Road
Santa Fe, NM 87505

2. Article Number
(Transfer from service label)
PS Form 3811, August 2001

COMPLETE THIS SECTION ON DELIVERY

(A. Signature)
[Signature]

B. Received by (Printed Name)
[Signature]

C. Date of Delivery
[Signature]

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

Petroleum
Inc. 16 2009

3. Service Type
☒ Certified Mail
☐ Registered
☐ Insured Mail
☐ Express Mail
☒ Return Receipt for Merchandise
☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☒ No

Domestic Return Receipt
7002 0510 0003 5125 2355

102595-02-M-1035

Before the OCD
Cases 14312
Orbit Petroleum, Inc.
OCD Ex. No. 1-D