

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

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

**CASE NO. 14393  
ORDER NO. R-13197**

**APPLICATION OF THE NEW MEXICO OIL  
CONSERVATION DIVISION FOR A  
COMPLIANCE ORDER AGAINST MARKS &  
GARNER PRODUCTION LIMITED  
COMPANY, EDDY COUNTY, NEW MEXICO.**

**ORDER OF THE DIVISION**

**BY THE DIVISION:**

This case came on for hearing at 8:15 a.m. on November 12, 2009, at Santa Fe, New Mexico, before Examiner Richard Ezeanyim.

NOW, on this 8<sup>th</sup> day of December, 2009, the Division Director, having considered the testimony, the record and the recommendations of the Examiner,

**FINDS THAT:**

(1) Due notice has been given, and the Division has jurisdiction of the subject matter of this case.

(2) Marks & Garner Production Limited Company [OGRID 14070] ("Marks & Garner") is the operator of the following wells ("the subject wells") in Eddy County, New Mexico:

<u>Well Name</u>	<u>API No.</u>
Levers Federal Well No. 7	30-015-25091
Levers Well No. 3Y	30-015-02787
Red Twelve Federal Well No. 1	30-015-25058
Cave State Well No. 4	30-015-24742
Red Twelve State Well No. 2	30-015-24966



<u>Well Name</u>	<u>API No.</u>
Red State Well No. 1	30-015-24855
Red Twelve State Well No. 3	30-015-24989
Red Twelve State Well No. 4	30-015-24991
Diamond State Well No. 2	30-015-24760
Red Twelve State Well No. 1	30-015-24962
Mosley Spring 32 State Com. Well No. 2	30-015-23341

(3) The Oil Conservation Division, through its Compliance and Enforcement Manager, ("the Division") initiated this compliance case to obtain an order requiring Marks & Garner to perform corrective action and, if necessary, abatement, to remediate the effects of unauthorized releases of hydrocarbons and/or produced water that occurred at the subject wells.

(4) The Division and Marks & Garner both appeared at the hearing through counsel and presented evidence.

(5) The Division's witnesses testified to the following:

(a) During routine inspections of the subject wells in April, 2009, Division inspector Ron Harvey discovered evidence of unauthorized leaks or spills of crude oil and/or produced water at the well sites of each of the subject wells. Marks & Garner had not reported any releases at these sites to the Division.

(b) In addition Inspector Harvey discovered that there were no well signs at the locations of the Levers Well No. 3Y, the Red 12 State Well No. 2 and the Levers Federal Well No. 7.

(c) The Division sent letters of violation to Marks & Garner concerning the unauthorized releases occurring at the following wells ("the seven wells"):

<u>Well Name</u>	<u>API No.</u>
Levers Federal Well No. 7	30-015-25091
Levers Well No. 3Y	30-015-02787
Red Twelve Federal Well No. 1	30-015-25058
Cave State Well No. 4	30-015-24742
Red Twelve State Well No. 2	30-015-24966
Red Twelve State Well No. 3	30-015-24989
Red Twelve State Well No. 4	30-015-24991

Marks & Garner thereafter filed spill reports (Forms C-141) for the seven wells, but not for the other four subject wells.



(d) By letter dated May 14, 2009, the Division notified Marks & Garner that a work plan would be required for delineation and remediation of the releases at the seven wells, and that the work plan should be filed on or before June 15, 2009. The Division subsequently extended the date for filing the work plan to June 19, 2009.

(e) Division Inspector Harvey inspected the sites of the subject wells again in July, 2009 and found their condition unchanged from the inspection in April.

(f) Although Marks & Garner did submit a work plan, Division environmental officer, Mike Bratcher, testified that it was not satisfactory. By letter dated August 20, 2009, the Division notified Marks & Garner of the defects in previously submitted plans and required that revised work plans be submitted not later than September 10, 2009. Another submission was filed on September 10. However, Mr. Bratcher testified that this submission also did not satisfactorily delineate the extent of contamination resulting from the spills or comply with the Division's guidelines for spill remediation work plans.

(g) On August 5, 2009, the Division sent to Marks & Garner a Notice of Violation, notifying Marks & Garner that it was in violation of OCD rules by reason of the unauthorized releases at all of the subject wells.

(6) Marks & Garner presented the testimony of Quinton Welborn. Mr. Welborn did not contradict any of the material testimony presented by the Division. He testified that Marks & Garner planned to begin delineation of contamination at the seven wells during the first week of December and would be ready to submit a corrective action work plan for the seven wells by December 31, 2009. Delineation at the remaining wells would be conducted in January, 2010.

The Division Director concludes that:

(7) Marks & Garner allowed oil to leak or escape from its wells, tanks, containers, pipes or other storage, conduits or operating equipment at the sites of each of the subject wells in violation of Division Rule 2.8.B.

(8) The evidence does not establish that any of the releases at the sites of the subject wells exceeded five barrels, nor does the evidence establish that any of the criteria set forth in Division Rule 29.7.A(2) through (4) as defining a "major spill" without regard to quantity is met. Since the Division did not establish that any of the releases at the subject wells was either a "major release" as defined in Division Rule 29.7.A, or a "minor release" as defined in Division Rule 29.7.B, the Division did not establish a violation of Division Rules 29.9 or 29.10.

(9) Division Rule 29.11 requires an operator to complete Division-approved corrective action for any release that endangers public health or the environment. This



requirement is not limited to releases that meet the definitions of “major releases” or “minor releases” in Rule 29.7.

(10) The evidence indicates that the spills at the sites of each of the subject wells are harmful at least to soil quality, and therefore endanger the environment. Accordingly, Marks & Garner is in continuing violation of Division Rule 29.11 by reason of its failure to complete Division-approved corrective action at each of those sites.

(11) Marks & Garner should be ordered to complete the delineation of each of these sites and to propose a work plan, in accordance with Division guidelines, and should complete the work plan for each of the sites if and when the plan for that site is approved by the Division.

(12) Marks & Garner should be ordered to replace all missing or defective well signs.

**IT IS THEREFORE ORDERED THAT:**

(1) Marks & Garner is hereby ordered to submit a complete delineation and site ranking report and remediation work plan for each of the following sites on or before January 4, 2010:

<u>Well Name</u>	<u>API No.</u>
Levers Federal Well No. 7	30-015-25091
Levers Well No. 3Y	30-015-02787
Red Twelve Federal Well No. 1	30-015-25058
Cave State Well No. 4	30-015-24742
Red Twelve State Well No. 2	30-015-24966
Red Twelve State Well No. 3	30-015-24989
Red Twelve State Well No. 4	30-015-24991

The reports and proposed work plans submitted pursuant to this paragraph shall comply with Division Guidelines for Remediation of Leaks, Spills and Releases posted on the Division’s website, and the requirements set forth in Mr. Bratcher’s letter of August 19, 2009, which is included in Division Exhibit 6 admitted in evidence at the hearing of this case. The reports and proposed work plans required by this Paragraph shall be delivered to the Division’s Artesia District Office, to the attention of Mike Bratcher, no later than 5:00 p.m., Mountain Standard Time, on January 4, 2010.

(2) Marks & Garner is hereby ordered to submit a complete delineation and site ranking report and remediation work plan for each of the following sites on or before February 1, 2010:



<u>Well Name</u>	<u>API No.</u>
Red State Well No. 1	30-015-24855
Diamond State Well No. 2	30-015-24760
Red Twelve State Well No. 1	30-015-24962
Mosley Spring 32 State Com. Well No. 2	30-015-23341

The reports and proposed work plans submitted pursuant to this paragraph shall comply with Division Guidelines for Remediation of Leaks, Spills and Releases posted on the Division's website, and the requirements set forth in Mr. Bratcher's letter of August 19, 2009, which is included in Division Exhibit 6 admitted in evidence at the hearing of this case. The reports and proposed work plans required by this Paragraph shall be delivered to the Division's Artesia District Office, to the attention of Mike Bratcher, no later than 5:00 p.m. on February 1, 2010.

(3) Marks & Garner is ordered to install well signs that comply with Division Rule 16.8 at the site of each well identified in Ordering Paragraph (1) or (2) where such a sign is now absent or defective, on or before December 31, 2009.

(4) If any work plan submitted pursuant to Ordering Paragraph (1) or (2) of this order is approved, Marks & Garner shall perform the same within 60 days after receipt of notice of the Division's approval thereof. If the Division notifies Marks & Garner in writing that it will require any changes in, or additions to, any work plan submitted pursuant to Ordering Paragraph (1) or (2) of this order, Marks & Garner shall perform the work plan, including such changes or additions, within 60 days after receipt of such written notification, unless Marks & Garner has, within 20 days after receipt of such written notification, filed with the Division clerk in the Division's Santa Fe Office, in this Case No.14393, a request for a hearing regarding the appropriateness of such changes or additions.

(5) No other operator shall be approved to assume operation of any well or wells now operated by Marks & Garner unless such operator agrees in writing to assume responsibility for performing all corrective action required by this Order.

(6) When all corrective action required by this Order has been fully performed, the Division shall file a notice with the Division clerk in the Santa Fe Office, in this Case No. 14393, certifying that this order has been complied with.

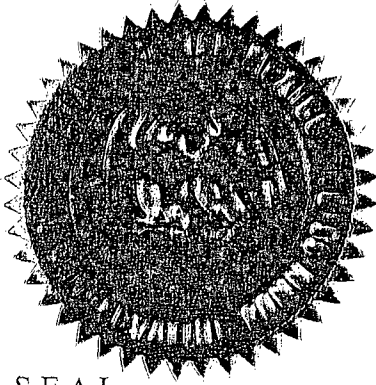
(7) A further hearing is hereby set in this case at 8:15 a.m. on March 4, 2010, to determine the status of Marks & Garner's compliance with the terms of this Order. If at such hearing, or any continuance thereof, it is determined that Marks & Garner has not complied with any provision of this Order the time for compliance with which has expired, an order may be entered (a) directing Marks & Garner to permanently plug and abandon any or all wells for which it is operator of record in the State of New Mexico, and/or (b) deeming Marks & Garner in default of compliance with an order issued after notice and hearing, as provided in Division Rule 5.9. The hearing set as provided in the



paragraph shall be held in Porter Hall at 1220 South St. Francis Drive in Santa Fe, New Mexico. Service of this order pursuant to Division Rule 4.24 on a party or its attorney of record shall constitute notice to such party of the hearing set by this paragraph. The hearing may be continued by announcement at the time and place herein provided.

(8) Jurisdiction of this case is retained for the entry of such further orders as the Division may deem necessary.

DONE at Santa Fe, New Mexico, on the day and year hereinabove designated.



SEAL

STATE OF NEW MEXICO  
OIL CONSERVATION DIVISION

A handwritten signature in black ink, appearing to read "Mark E. Fesmire", written over a horizontal line.

MARK E. FESMIRE, P.E.  
Director