

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 MARKS AND GARNER PRODUCTION LTD. CO., FINDING THAT AS TO ELEVEN WELLS THE OPERATOR (1) HAS VIOLATED OCD RULES 19.15.2.8, 19.15.29.6 , 19.15.29.9, 19.15.29.10 NMAC AND (2) IS CURRENTLY IN VIOLATION OF OCD RULES 19.15.29.11 AND 19.15.30.9(A); FINDING THAT AS TO FOUR OF THOSE ELEVEN WELLS, (3) OPERATOR IS CURRENTLY ADDITIONALLY IN VIOLATION OF OCD RULES 19.15.29.9 AND 19.15.29.10 NMAC; (4) REQUIRING THE OPERATOR TO BRING ALL ELEVEN WELLS INTO COMPLIANCE WITH OCD RULES 19.15.29.9, 19.15.29.10 AND 19.15.29.11 NMAC BY A DATE CERTAIN AND (5) ORDERING THAT IN THE EVENT IT FAILS TO DO SO, THE OPERATOR SHALL EITHER PLUG AND ABANDON OR TRANSFER ALL WELLS IT CURRENTLY OPERATES IN NEW MEXICO BY A DATE CERTAIN, OR THE WELLS SHALL BE DEEMED ABANDONED AND THE DIVISION AUTHORIZED TO PLUG THE WELLS - EDDY COUNTY, NEW MEXICO.

CASE NO. 14393 [reopened]

RESUBMISSION OF
APPEARANCES & PRE-HEARING STATEMENT

The Oil Conservation Division submits this entry of appearance and pre-hearing statement pursuant to OCD Rule 1211 [19.15.14.1211 NMAC].

APPEARANCES

APPLICANT

OIL CONSERVATION DIVISION

APPLICANT'S ATTORNEY

MIKAL ALTOMARE
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
T: (505) 476-3480
F: 476-3462
E: Mikal.altomare@state.nm.us

RESPONDENT

MARKS & GARNER PRODUCTION LTD. CO.

RESPONDENT'S ATTORNEY

ERNEST L. PADILLA
PADILLA LAW FIRM, P.A.
P.O. Box 2523
Santa Fe, New Mexico 87504-2523
T: 505-988-7577
F: 505-988-7592
E: epadillapl@qwest.net

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STATEMENT OF THE CASE

Pursuant to the provisions of Division Order No. R-13197, Case 14393 is being reopened to determine the status of Marks & Garner's compliance with the terms of said order. Division examiners have ordered the status hearing to receive evidence regarding the status of Marks and Garner's compliance with the terms and deadlines set by Order No. R-13197. At this time, because Marks and Garner has significantly failed to comply with the Order No. R-13197, the OCD requests that an Order be entered confirming a finding that Marks and Garner is an operator in violation of an order for corrective action.

CURRENT STATUS OF COMPLIANCE WITH ORDER NO. R-13197:

Order No. R-13197 addressed the following specific Marks & Garner wells:

- | | |
|--|--------------|
| 1. Levers Federal Well No. 7 | 30-015-25091 |
| 2. Levers Well No. 3Y | 30-015-02787 |
| 3. Red Twelve Federal Well No. 1 | 30-015-25058 |
| 4. Cave State Well No. 4 | 30-015-24742 |
| 5. Red Twelve State Well No. 2 | 30-015-24966 |
| 6. Red Twelve State Well No. 3 | 30-015-24989 |
| 7. Red Twelve State Well No. 4 | 30-015-24991 |
| 8. Red State Well No. 1 | 30-015-24855 |
| 9. Diamond State Well No. 2 | 30-015-24760 |
| 10. Red Twelve State Well No. 1 | 30-015-24962 |
| 11. Mosley Spring 32 State Com. Well No. 2 | 30-015-23341 |

Under the terms of the Order, Marks & Garner was required to submit a complete delineation and site ranking report and remediation plan for each of the above listed wells by certain dates - no later than January 4, 2010 for Nos. 1-7 and February 1, 2010 for Nos. 8-11. Marks & Garner was then required to complete each remediation plan approved or approved with additional conditions by the OCD within 60 days of approval.

Because Marks & Garner transitioned from one environmental contractor to another following the issuance of the Order, it requested, and the OCD agreed to an extension of time to submit the delineation and site ranking report and remediation plans for the eleven sites. The OCD agreed to an extension to April 15, 2010 for submissions for all sites. Plans were timely submitted by Ocotillo Environmental on behalf of Marks & Garner and were promptly and thoroughly reviewed by OCD staff.

On May 12, 2010, the OCD issued a notice of approval with additional conditions, addressing all eleven wells. Ordering Paragraph No. 4 of Order No. 13197 provides:

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....

Marks & Garner was therefore required to complete the work on the eleven sites no later than July 12, 2010.

As of the date of this submission (July 15, 2010), work has been completed on only one of the eleven sites, the *Cave State Well No. 004, API No. 30-015-24742*. Moreover, although the work appears to be complete on this site, no closure report has yet been submitted for this site as required by the division approved remediation plan. (The approval with conditions issued on May 12, 2010 specifically noted that a condition applicable to all sites was that "[a] form C-141 marked final report along with a closure report outlining work performed at each site is to be submitted to OCD upon satisfactory completion of this project...[and] [t]he closure report must clearly identify areas where liners have been installed." p.2).

Marks & Garner, having completed the work on only one out of eleven sites, and having not even fully completed the reporting for that one site for which the work was completed, has fallen far short of complying with Order No. 13197.

REQUEST FOR RELIEF:

Marks & Garner's failure to comply with Order No. R-13197 renders it an operator in violation of an order for corrective action. The OCD therefore requests that an Order be issued specifically documenting this finding with the following or similar language:

FINDINGS:

1. Following a hearing on November 12, 2009, on December 8, 2009, Order No. R-13197 was issued directing Operator Marks & Garner Production, Ltd. ("Marks & Garner" or "Operator") to submit complete a delineation and site ranking report and remediation plan to the OCD by January 4, 2010 for the wells identified as:
 - (1) *Levers Federal Well No. 7, 30-015-25091*; (2) *Levers Well No. 3Y, 30-015-02787*, (3) *Red Twelve Federal Well No. 1, 30-015-25058* (4) *Cave State Well No. 4, 30-015-24742* (5) *Red Twelve State Well No. 2, 30-015-24966* (6) *Red Twelve State Well No. 3, 30-015-24989*, and (7) *Red Twelve State Well No. 4, 30-015-24991*.
2. Order No. R-13197 further directed Operator to submit complete a delineation and site ranking report and

remediation plan to the OCD by February 1, 2010 for the wells identified as:

- (8) *Red State Well No. 1*, 30-015-24855; (9) *Diamond State Well No. 2*, 30-015-24760; (10) *Red Twelve State Well No. 1*, 30-015-24962; and (11) *Mosley Spring 32 State Com. Well No. 2*, 30-015-23341
3. Operator requested and the OCD agreed to an extension to April 15, 2010 for the submission of delineations and site ranking reports and remediation plans for all eleven well sites.
 4. Operator timely submitted eleven "Remediation Workplans" for the eleven referenced sites for review by the OCD.
 5. Upon review by the OCD, on May 12, 2010, by way of a single, seven-page letter addressing all eleven sites, the OCD approved the Remediation Workplans with the addition of conditions. ("Approval with Conditions"). The Approval with Conditions was provided to Operator by certified mail and by email, and to Operator's counsel and Operator's environmental consultant by email.
 6. Order No. R-13197 further required Operator to perform any work plans submitted regarding the subject eleven well sites pursuant to Order No. R-13197 and approved by the OCD or approved by the OCD with changes or additions within 60 days after receipt of notice of approval.
 7. Based on the receipt of the Approval with Conditions (via email) by both the Operator and his counsel on May 12, 2010, the deadline for completion of performance of the plans was July 11, 2010. That day was a Sunday, and the next business day was Monday, July 12, 2010.
 8. Additionally, United States Postal Service Certified Mail return receipt reflects that Operator received the hard copy written notice of the Approval with Conditions on July 20, 2010. Thus, the latest deadline conceivable under Order R-13197 would have been July 19, 2010.
 9. With a single exception, Operator has failed to perform the on-site work required by the Approval with Conditions within the sixty (60) day period established by Order R-13197.
 10. The one well out of the specified eleven for which Operator has performed the required on-site work set out in the Approval with Conditions is the *Cave State Well No. 4*; however, Operator has not completed the required paperwork filing (the closure report) for this site, which was a

specific condition set out by the OCD in the Approval with Conditions for all of the subject sites.

11. Operator has not performed the required work for the *Lever's Federal Well No. 7* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
12. Operator has not performed the required work for the *Lever's Well No. 3Y* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
13. Operator has not performed the required work for the *Red Twelve Federal Well No. 1* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
14. Operator has not performed the required work for the *Red Twelve State Well No. 2* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
15. Operator has not performed the required work for the *Red Twelve State Well No. 3* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
16. Operator has not performed the required work for the *Red Twelve State Well No. 4* under the Approval with Conditions and has therefore not complied with Order R013197 as to this well.
17. Operator has not performed the required work for the *Red State Well No. 1* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
18. Operator has not performed the required work for the *Diamond State Well No. 2* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
19. Operator has not performed the required work for the *Red Twelve State Well No. 1* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
20. Operator has not performed the required work for the *Mosley Spring 32 State Com. Well No. 2* under the Approval with Conditions and has therefore not complied with Order R-13197 as to this well.
21. At Paragraph 28 of the OCD's Application Filed September 17, 2009, the OCD specifically requested that in the event that

Operator fail to comply with an order requiring corrective action issued by the Division, that the Division issue an order finding the Operator to be in violation of an order requiring corrective action pursuant to OCD Rule 19.15.5.9, Subsection A.

CONCLUSIONS:

1. Order R-13197 was an "order requiring corrective action" for purposes of Subsection A of OCD Rule 19.15.5.9 NMAC. Operators found after notice and hearing to be in violation of an order requiring corrective action are, pursuant to Paragraph 2 of Subsection A of OCD Rule 19.15.5.9 NMAC, out of compliance with Subsection A of OCD Rule 19.15.5.9.
2. Operator has failed to comply with and continues to be in violation of Order R-13197 because it has not to date completed the workplans with additional conditions for all eleven (11) subject sites as set out in the Approval with Conditions issued on May 12, 2010.
3. Operator Marks & Garner Production, Ltd. is therefore an Operator in Violation of an Order for Corrective Action.
4. Marks & Gamer is therefore out of compliance with Paragraph 2 of Subsection A of 19.15.5.9 NMAC because it has failed to take required corrective action pursuant to Order No. R-13197.

IT IS THEREFORE ORDERED THAT:

1. The Division grants the OCD's request to enter an order finding Marks & Gamer to be in violation of an order requiring corrective action.
2. When Marks & Gamer completes the actions required by Order No. R-13197 or otherwise complies with the requirements in Order No. R-13197 to the OCD's satisfaction, it may file a motion with the Division to declare Order No. R-13197 satisfied.
3. Jurisdiction is hereby retained for entry of such further orders as the Commission may deem necessary.

APPLICANT'S PROPOSED EVIDENCE

WITNESSES

Daniel Sanchez, Enforcement & Compliance Manager

Mike Bratcher, Environmental Specialist, District II

ESTIMATED TIME:

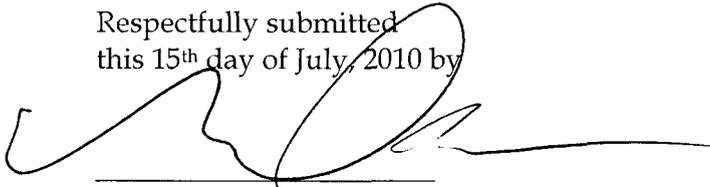
Tentative/
available as
needed by
examiners

Telephonic/
Tentative

PROCEDURAL MATTERS

None.

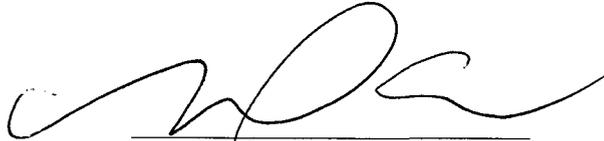
Respectfully submitted
this 15th day of July, 2010 by



Mikal Altomare
Oil Conservation Division
Energy, Minerals and Natural
Resources Department
1220 S. St. Francis Drive
Santa Fe, NM 87505
(505) 476-3480
Attorney for the Oil Conservation Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served upon counsel for Marks & Garner Production Ltd., Co. via the email address indicated above this 15th day of July, 2010.



Mikal Altomare