

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20724

<p>In the Matter of</p> <p>PETROLIA ENERGY CORPORATION,</p> <p>Respondent.</p>

DIVISION OF ENFORCEMENT'S BRIEF IN RESPONSE TO
PETROLIA ENERGY CORPORATION'S SUBMISSION

The Division of Enforcement ("Division"), by undersigned counsel, pursuant to the Commission's Order requesting additional briefing, submits its brief pursuant to the Commission's April 18, 2023 Order.

FACTS

The Commission issued an Order Instituting Proceedings ("OIP") against Petrolia Energy Corporation ("BBLS") on January 28, 2022, when investors had been left without required information for over a year. On April 11, 2022, the Division filed a Motion for Summary Disposition seeking revocation of the registration of BBLS's securities. BBLS filed a response in which it promised, among other things, that it would acquiesce to the revocation of its registration if it failed to comply with a proposed filing schedule set forth in its response (the "April 28, 2022 Response"). When BBLS failed to comply with the schedule, the Commission issued an order requesting additional briefing. *See Petrolia Energy Corp.*, Release No. 97320, 2022 WL 3002495 (April 18, 2023). In a May 15, 2023 Submission (the "May 15, 2023 Submission"), BBLS makes clear that it does not intend to follow through on its commitment to acquiesce to revocation. For

the reasons stated in its Motion for Summary Disposition, and the reasons stated below, the Commission should revoke the registration of BBLs's securities.

I. BBLs Has A Long History of Delinquent Filings and Broken Promises to Become Current.

A. BBLs Failed To Comply With Its First Self-Imposed Filing Schedule.

From April 17, 2017 to December 31, 2021, BBLs made its required filings, but they were consistently late. Indeed, BBLs's filings over that four-year period were made fifteen to six hundred and fifty-two days late or were not filed at all. Harris Decl. at Ex. 10 (April 7, 2022).¹ On July 8, 2021, the Division of Corporation Finance ("Corporation Finance") sent a delinquency letter to BBLs pointing out that several of its periodic filings were overdue. Harris Decl. at Ex.'s 9 and 10. BBLs told Corporation Finance that it would cure the delinquencies by December 31, 2021. Answer at p. 3. BBLs did not cure the delinquencies by its own self-imposed deadline and continued to miss yet more filing deadlines. Harris Decl. at Ex.'s 9 and 10.

B. BBLs Failed To Comply With Its Second Self-Imposed Filing Schedule.

When these proceedings were instituted, BBLs had failed to file one Form 10-K and three Forms 10-Q. Answer at 4; Harris Decl. at Ex.'s 9 and 10. In its Answer, BBLs attributed its delinquencies to the September 1, 2021 resignations of its CEO and controller, a lack of financial resources, and unexpected delays associated with compiling certain reserve reports and other financial information. Answer at 4. BBLs promised to have all delinquent reports filed by May 31, 2022. *Id.* at 5. BBLs failed to meet that deadline. *See* Harris Decl. at Ex.'s 9 and 10

C. BBLs Failed To Comply With Its Third Self-Imposed Filing Schedule.

In response to the Division's Motion for Summary Disposition, BBLs proposed yet a third

¹ The April 7, 2022 Harris Declaration and attached Exhibits 1-10 were submitted with the Division's Motion for Summary Disposition.

schedule for becoming current and made several additional promises to the Commission. First, BBLs represented that it had remedied the cause of its delinquencies. BBLs’s “failure to timely file reports with the Commission was due to internal matters that have been addressed and corrected.” *See* April 28, 2022 Response at 15. Those internal matters included the previously-identified 2021 resignation of its controller and economic harm caused by fraud and self-dealing of its former CEO, who BBLs was then suing. *Id.* at 7. BBLs then promised the Commission that it would file all of its delinquent reports by October 11, 2022 and “will thereafter stay current on its filings.” *Id.* at 13. Finally, BBLs promised “[i]f these forms are not filed as per the above chart, then BBLs will immediately acquiesce to the revoking [of the] registration of BBLs’s securities[.]” *Id.* BBLs missed the last three deadlines on its third proposed schedule. Moreover, BBLs did not stay current on subsequent filings; the third quarter report and the annual report that fell due after BBLs filed its Response were 126 and 42 days late, respectively. *See* Ex. 11 (Updated Delinquency Chart) and EDGAR Search Results for CIK 0001368637.² Contrary to its promise, BBLs did not acquiesce in the revocation of its resignation. *See* May 15, 2023 Submission at 8.

II. BBLs’s “Curative” Filings Are Late and Materially Deficient.

Not only did BBLs fail to comply with its third filing schedule and continue to miss new deadlines, it also filed three quarterly reports with material deficiencies. More particularly, Corporation Finance has concluded that all three quarterly reports for 2022 are materially deficient for one or more of the following reasons: (1) failing to include management’s conclusions regarding the effectiveness of BBLs’s disclosure controls and procedures in violation of Item 307

² BBLs also failed to file a Form 12b-25 for the late third quarter report. *See* Ex. 11.

of Regulation S-K;³ failing to include analysis of changes in each caption of stockholder's equity and noncontrolling interests presented in the balance sheet in violation of Rule 8-03(a)(5) of Regulation S-X; and (3) failing to discuss material changes in the results of BBL's operations in violation of Item 303(c)(2)(ii) of Regulation S-K. *See* Ex. 12, Declaration of Rebekah Lindsey at ¶¶3-5. Because of these material deficiencies, as of the date of this filing, BBL still has three quarterly reports outstanding.

ARGUMENT

BBL is a chronically delinquent filer that has not cured its delinquent filings, or returned to timely filing, notwithstanding a delinquency notice from Corporation Finance, the institution of these proceedings, and a pending Motion for Summary Disposition. As the Division pointed out in its Motion, the *Gateway* factors mandate revocation. Events occurring in the year since the Motion was fully briefed provide additional evidence that revocation is required.

A. The Gateway Factors Give Rise To The Presumption That Revocation Is Required.

Section 12(j) of the Exchange Act of 1933 empowers the Commission, where “necessary and appropriate for the protection of investors” to either suspend or revoke a security's registration for failing to comply with reporting requirements. In assessing whether a sanction is required, the Commission considers: (1) the seriousness of the issuer's violations; (2) the isolated or recurrent nature of the violations; (3) the degree of culpability involved; (4) the extent of the issuer's efforts to remedy its past violations and ensure future compliance; and (5) the credibility of the issuer's assurances, if any, against future violations. *Gateway International Holdings, Inc.*, Exchange Act Rel. No. 53907, 2006 SEC LEXIS 1288, at *19-20 (May 31, 2006). Where the issuer's violations

³ *See also Tara Gold*, 2011 WL 2783483 at *5 (Issuers failure to include required information regarding the effectiveness of disclosure controls was a material deficiency).

are serious and recurrent, the Commission applies “a strong presumption in favor of revocation” that can only be rebutted by “a strongly compelling showing with respect to the other factors.” *Absolute Potential, Inc. (f/k/a Absolute Waste Services, Inc.)*, Exchange Act Rel. No. 71866, 2014 SEC LEXIS 1193, at *24 (April 4, 2014) (quotation omitted).

All violations of Section 13(a)’s reporting requirements are serious because timely and accurate reporting is required and the reporting requirements are one of the primary statutory tools for protecting the integrity of the securities marketplace. *China-Biotics, Inc.*, Exchange Act Release 70800, 2013 WL 5883342, at *11 (Nov. 4, 2013).

BBL’s delinquencies are recurrent. At the time the OIP was filed, BBL had failed to file four periodic reports and missed several deadlines in the first self-imposed schedule it proposed to Corporation Finance. After the OIP was filed, BBL missed the second self-imposed schedule proposed in its Answer. BBL then missed the third self-imposed schedule it proposed in its April 28, 2022 Response. Three of BBL’s quarterly reports are materially deficient and, therefore, remain outstanding. BBL’s serious and recurrent violations give rise to the presumption that revocation is required.

B. BBL Has Not Rebutted The Presumption Of Revocation.

BBL has wholly failed to rebut the presumption of revocation with a strongly compelling showing on the remaining *Gateway* factors. BBL knew of its reporting obligations but still failed to meet them, which is evidence of a high degree of culpability. *See China-Biotics, Inc.*, 2013 WL 5883342 at *n.60. BBL has still not remedied its past violations; all three 2022 quarterly reports are materially deficient.

As for concrete remedial measures, in its recent briefing, BBL attributes its continued delinquencies to three causes – the 2021 resignation of its controller, the fraud and financial

mismanagement committed by its former CEO, and delays caused by its auditor failing to prioritize BBLs. *See* May 15, 2023 Submission at 7. BBLs claims that these causes have now been remedied. *Id.* at 8.

Over a year ago, BBLs told the Commission that the 2021 resignation of its controller had caused its delinquencies, but that the hiring of a new controller would prevent the delinquencies from recurring. *See* April 28, 2022 Response at 7-9. Notwithstanding the hiring of a new controller, the delinquencies continued.

Over a year ago, BBLs told the Commission that the fraud and financial mismanagement of its former CEO had also contributed to the delinquencies. BBLs also claimed this issue had been corrected, although it did not identify the corrections made. *See* April 28, 2022 Response at 7-9. BBLs now claims that the CEO's refusal to sign audit confirmation letters for fiscal year 2022 continued to cause delinquencies. *See* May 15, 2023 Submission at 5-6.

Over a year ago, BBLs told the Commission that auditor M&K was making "a concerted effort to get all the filings current on an ongoing basis," was "actively engaged" in its work for BBLs, and that its engagement was "a concrete and effective measure to cure BBLs's filing issues[.]" *See* April 28, 2022 Response at 4, 9. BBLs now claims that M&K actually contributed to the continuing delinquencies by "placing BBLs's draft filings at the bottom of their queues." *See* May 15, 2023 Submission at 7 and 9.

The remedial measures to prevent continuing delinquencies that BBLs proposed last year have failed. This establishes that BBLs either failed to correctly identify the cause of the delinquencies or failed to institute effective remedial measures. In the face of this evidence, BBLs has not reconsidered its causation analysis or identified any new remedial measures that would produce a different result.

BBLs's assurances against future violations have no credibility. An issuer's failure to meet self-imposed deadlines for curing past delinquencies undermines the credibility of its assurances of future compliance. *See Tara Gold*, 2011 WL 2783483 at *5 (assurances of future compliance were not credible were issuer "failed to adhere to the schedules that the company itself set"); *Calais Resources, Inc.*, 2012 LEXIS 2023, at *6 (same). Since July 8, 2021, when Corporation Finance issued its delinquency notice, BBLs has failed to comply with three self-imposed filing schedules. In addition, as discussed above, BBLs has not provided the Commission with any information that would support the conclusion that the cause of its delinquencies has been remediated. Finally, BBLs has failed to make good on its promise to acquiesce to revocation.

Because BBLs has not made a compelling showing on the last three *Gateway* factors, the presumption that revocation is required to protect investors is unrebutted.

C. Revocation Is Required To Protect Investors.

Revocation is required to protect investors where an issuer's lengthy delinquencies are only cured after institution of a revocation proceeding. Thus, in *Natures Sunshine Prod., Inc.*, the Commission explained:

Dismissal [of the revocation proceeding] also would reward those issuers who fail to file required periodic reports when due over an extended period of time, become the subject of Exchange Act Section 12(j) revocation proceedings, and then, on the eve of hearings before the law judge or, in this case, oral argument on appeal, make last-minute filings in an effort to bring themselves current with their reporting obligations, while prolonging indefinitely the period during which public investors would be without accurate, complete, and timely reports (that comply with the requirements of the Exchange Act and its rules and regulations) to make informed investment decisions."

2009 WL 137145 at *8. The Commission reiterated its point in four subsequent cases. *See China-Biotics, Inc.*, 2013 WL 5883342 at *13 (Nov. 4, 2013) (filings made pending revocation proceeding do not "obviate the public interest in revocation"); *Calais Res. Inc.*, Release No. 67312, 2012 WL

2499349 at *7 (June 29, 2012) (extended delinquencies that are only cured by filings made after the institution of a revocation proceeding “must be addressed with meaningful sanctions.”); *Tara Gold*, 2011 WL 2783483 at *7 (allowing an issuer who engages in extended delinquencies to avoid sanction by curing delinquencies pending a revocation proceeding “significantly detracts from the Exchange Act's reporting requirements.”); *Cobalis Corp.*, 2011 WL 2644158 at *5 (declining to sanction an issuer who cures extended delinquencies during a revocation proceeding “would undermine the reporting requirements”).

In *Absolute Potential, Inc.*, 2014 WL 1338256, the Commission revoked the issuer’s registration even though it filed all of the delinquent reports once the proceeding was instituted:

As we have recognized, revocation may be warranted in these circumstances to address not only the harm to current and prospective investors in the non-compliant issuer but also to address the broader systemic harm that follows from registrants who “game the system” by complying with their unambiguous reporting obligations only when they are confronted by imminent revocation.

Id. at *7. Since *Absolute Potential* was decided, the Commission has issued four more opinions emphasizing the same point. See *LegacyXChange, Inc.*, 2022 WL 17345980, at *4 (filing “reports that were delinquent at the time of the OIP . . . does not provide a defense to the OIP's allegations of reporting violations or preclude revoking the registration of” an issuer’s securities); *Talon Real Est. Holding Corp.*, Release No. 87614, WL 6324601 at *5 (Nov. 25, 2019) (a “sanction other than revocation would fail to protect the public from an issuer like Talon whose delinquencies cover an extended period of time and who makes last minute filings only after becoming the subject of Exchange Act Section 12(j) proceedings”) (internal punctuation omitted); *Advanced Life Sciences*, 2017 WL 3214455 at *5 (“Revocation is necessary to deter issuers from disregarding their obligations to present accurate and timely information to the investing public until spurred by the institution of proceedings.”); *Accredited Bus. Consolidators Corp.*, Release No. 75840,

2015 WL 5172970 at n.18 (Sept. 4, 2015) (“Deterrence is meaningful only if a lengthy delinquency, in the absence of strongly compelling circumstances regarding the other Gateway factors, results in revocation.”).

Even if BBLS were to become compliant pending this proceeding, an event that has yet to occur, because its delinquencies occurred over a long time and any curative filings would be made at the last minute, any “sanction other than revocation would fail to protect the public.” *Talon Real Est. Holding Corp.*, 2017 WL 3214455 at *5.

CONCLUSION

For the reasons set forward above the Division requests that its Motion for Summary Disposition be granted and that the Commission revoke the registrations of each class of BBLS’s Exchange Act Section 12 registered securities.

Dated: June 28, 2022

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COUNSEL FOR
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CERTIFICATE OF SERVICE

I hereby certify that I caused true copies of the forgoing paper and supporting Exhibits, to be served on the following on this 28 day of June, 2023, in the manner indicated below:

By Email Service
PETROLIA ENERGY CORPORATION
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Counsel for Respondent

/s/ Sandhya C. Harris
Sandhya C. Harris

EXHIBIT 11

PERIODIC FILING CHART

June 28, 2023

Company: Petrolia Energy Corp

Cmpy Status: Active

CIK: [0001368637](#)

Form Type	Fiscal Period	Due Date	Filing Date	Days Late	12b-25 Filed?
10-Q	3/31/2023	5/15/2023	5/15/2023	0	N/A
10-K	12/31/2022	3/31/2023	5/12/2023	42	3/31/2023
10-Q	9/30/2022	11/14/2022	3/20/2023	126	Not Filed
10-Q	6/30/2022	8/15/2021	3/2/2023	564	Not Filed
10-Q	3/31/2022	5/16/2022	2/17/2023	277	Not Filed
10-K	12/31/2021	3/31/2022	12/9/2022	253	Not Filed
10-Q	9/30/2021	11/15/2021	7/29/2022*	256	Not filed
10-Q	6/30/2021	8/16/2021	7/13/2022*	331	Not filed
10-Q	3/31/2021	5/17/2021	6/15/2022*	394	Not filed
10-K	12/31/2020	3/31/2021	5/13/2022	408	Not filed
10-Q	9/30/2020	11/16/2020	12/13/2021	392	Not filed
10-Q	6/30/2020	8/14/2020	9/24/2021	406	Not filed
10-Q	3/31/2020	5/15/2020	8/3/2021	445	Not filed
10-K	12/31/2019	3/30/2020	5/27/2021	423	Not filed
10-Q	9/30/2019	11/14/2019	5/27/2021	560	Not filed
10-Q	6/30/2019	8/14/2019	5/27/2021	652	Not filed
10-Q	3/31/2019	5/15/2019	1/2/2020	232	Not filed
10-K	12/31/2018	4/1/2019	10/16/2019	198	4/1/2019
10-Q	9/30/2018	11/14/2018	5/10/2019	177	11/14/2018
10-Q	6/30/2018	8/14/2018	9/26/2018	43	8/13/2018
10-Q	3/31/2018	5/15/2018	6/28/2018	44	5/11/2018
10-K	12/31/2017	4/2/2018	4/17/2018	15	Not filed

- Late totals with an asterisk represent materially deficient filings as of June 28, 2023

OS Received 06/28/2023

EXHIBIT 12

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-20724

In the Matter of

Petrolia Energy Corporation, *et al.*,

Respondents.

DECLARATION OF REBEKAH LINDSEY
IN SUPPORT OF
DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION

I, Rebekah Lindsey, pursuant to 28 U.S.C. § 1746, declare:

1. I am a Senior Staff Accountant in the Office of Enforcement Liaison in the Division of Corporation Finance at the Securities and Exchange Commission. I have held that position since April of 2022. I previously worked as a staff accountant in the Division of Corporation Finance's Disclosure Review Program from November 2008 in the Finance and Technology Industry Groups. In these operations groups, I examined company filings, including annual reports, quarterly reports, current reports, proxy statements and registration statements filed by reporting companies under the Securities Exchange Act of 1934 (the "Exchange Act") and the Securities Act of 1933. I am submitting this Declaration in support of the Division of Enforcement's Motion for Summary Disposition.
2. I have reviewed the following filings filed with the Commission by the registrant, Petrolia Energy Corporation:

Form 10-K for the fiscal year ended December 31, 2021, filed on December 9, 2022
Form 10-Q for the quarter ended March 31, 2022, filed on February 17, 2023.
Form 10-Q for the quarter ended June 30, 2022, filed on March 2, 2023.
Form 10-Q for the quarter ended September 30, 2022, filed on March 20, 2023.
Form 10-K for the fiscal year ended December 31, 2022, filed on May 12, 2023
Form 10-Q for the quarter ended March 31, 2023, filed on May 15, 2023.

As a result of my review, it is my opinion that the Forms 10-Q for the quarter ended March 31, 2022, June 30, 2022 and September 30, 2022 are materially deficient for the reasons listed below.

3. Item 307 of Regulation S-K requires disclosure of the conclusions of the registrant's principal executive and principal financial officers, or persons performing similar functions, regarding the effectiveness of the registrant's disclosure controls and procedures (as defined in Rule 13a-15(e) or Rule 15d-15(e) of the Exchange Act) as of the end of the period covered by the report, based on the evaluation of these controls and procedures required by paragraph (b) of Rule 13a-15 or 15d-15 of the Exchange Act. Contrary to the requirements of Item 307 of Regulation S-K, Petrolia failed to provide these conclusions in the Forms 10-Q for the periods ended March 31, 2022 and June 30, 2022.

4. Rule 8-03(a)(5) of Regulation S-X, applicable to Smaller Reporting Companies, requires an analysis of the changes in each caption of stockholders' equity and noncontrolling interests presented in the balance sheets, which shall be given in a note or separate statement. Where this requirement is applicable to a Form 10-Q and the interim period is more than one quarter, the analysis of the changes in each caption of stockholders' equity and noncontrolling interests must be provided for each period for which a statement of comprehensive income is required to be filed. Petrolia failed to

provide this disclosure for the most recent interim quarter as well as the comparable quarter of the preceding fiscal year in the Forms 10-Q for the periods ended June 30, 2022 and September 30, 2022.

5. Item 303(c)(2)(ii) of Regulation S-K requires a discussion of any material changes in the registrant's results of operations with respect to either the most recent quarter for which a statement of comprehensive income is provided and the corresponding quarter for the preceding fiscal year or, in the alternative, the most recent quarter for which a statement of comprehensive income is provided and the immediately preceding sequential quarter. Petrolia failed to provide this disclosure in the Forms 10-Q for the periods ended June 30, 2022 and September 30, 2022.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 9, 2023.

A large black rectangular redaction box covering the signature of the declarant.

Rebekah Lindsey