

December 30, 2002

PROPOSAL FOR DECISION

OIL & GAS DOCKET NO. 01-0226266

ENFORCEMENT ACTION AGAINST J. K. HEICHEL, SOLE PROPRIETOR, MORE TEXAS OIL (OPERATOR NO. 584487) FOR VIOLATIONS OF STATEWIDE RULES ON THE AMY KIRBY (06692) LEASE, WELL NO. 1, CHICON LAKE FIELD, MEDINA COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Lowell Williams (Attorney)
Kim Donoho-Bowen (Eng. Tech V)

MOVANT:

Legal Enforcement Section of the Railroad
Commission

FOR RESPONDENT:

J. K. Heichel, Owner
Kenneth McMahan, Field Foreman

RESPONDENTS:

More Texas Oil

PROCEDURAL HISTORY

Referral from District Office:	No record in file
Original Complaint Mailed:	October 6, 2000
Hearing Held:	January 4, 2001
Hearing Re-opened:	April 9, 2002
Hearing Closed:	April 19, 2002
Heard By:	Colin K. Lineberry, Hearings Examiner
PFD Circulation Date:	December 30, 2002

STATEMENT OF THE CASE

This was a Commission-called hearing to determine the following:

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rule 14 (b)(2) Well No. 1 on the Amy Kirby (06692) Lease, Chicon Lake Field,

Medina County, Texas;

2. Whether the respondent violated Texas Natural Resources Code §91.143(a)(1) by filing reports or documents concerning the Amy Kirby (06692) Lease, Well No. 1 in the Chicon Lake Field, Medina County, Texas that were false or untrue in a material fact;
3. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rule 14;
4. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each violation of Statewide Rule 14 and/or not more than \$1000 for each violation of §91.143 of the Texas Natural Resources Code regarding such lease and well;
5. Whether any violations of Rule 14 or of §91.143 of the Texas Natural Resources Code by the respondent should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534 (Vernon 1993).

Respondent J.K. Heichel dba More Texas Oil appeared at the hearing and offered evidence. Lowell Williams, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section's hearing file for this docket was admitted into evidence. The staff recommends that respondent More Texas Oil be ordered to place the subject well in compliance with Commission Rules and recommends that More Texas Oil be ordered to pay an administrative penalty of \$4,500.¹

For the reasons set out below, the examiner recommends that this docket be dismissed with prejudice.

BACKGROUND

The operator of a well must plug the well when required and in accordance with the Commission's rules. The operator of a well for purposes of plugging liability is the person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation.

¹Enforcement, through its Original Complaint, initially sought a penalty of \$5,500, including \$1000 for an alleged violation of Statewide Rule 8(d)(4)(G)(i)(III). However, by trial amendment at the hearing, Enforcement withdrew its allegations regarding this alleged violation and reduced its penalty recommendation to \$4,500.

Section 91.143(a) of the Texas Natural Resources Code (“TNRC”) provides, in pertinent part, “A person may not make or subscribe any application, report, or other document required or permitted to be filed with the [Railroad Commission] ... knowing that the application, report, or other document is false or untrue in a material fact ...” Subsection (e) of §91.143 authorizes the Commission to impose an administrative penalty of up to \$1,000 for each violation of §91.143.

Official notice was taken of the Commission’s records regarding the P-5 status of the respondent, including the date and manner of its most recent renewal.

DISCUSSION OF THE EVIDENCE

Many of the material facts in this case are undisputed. J.K. Heichel is a sole proprietor who does business as More Texas Oil. J.K. Heichel d/b/a More Texas Oil (“MTO”), effective August 1, 1997, became the designated operator of Well No. 1, the only well on the Amy Kirby Lease (06692) in the Chicon Lake Field, Medina County (“subject well” and “subject lease”). MTO remained the operator at all relevant times. MTO placed the subject well on pump and made minimal production during 2001 and MTO plugged the subject well in April 2002. J.K. Heichel filed production reports (P-1's) with the Commission reporting various volumes of production from June 1998 through December 2000. The production for the subject well reported by MTO varied between 0 and 16 barrels. In most months reported production was between 4 and 7 barrels and there were never more than two consecutive months without any reported production. MTO does not have any prior orders against it for violations of Commission Rules

It is the veracity of MTO’s production reporting on which this case turns. The Enforcement Staff contends that MTO knowingly reported non-existent production for the subject lease during the period from June 1998 through December 2000² when, in fact, the subject well, the only well on the lease, was inactive throughout this period. If, as asserted by the Enforcement Staff, the subject well was actually inactive throughout this period, and J.K. Heichel d/b/a More Texas Oil knowingly filed false production reports as contended, then the well was inactive for more than one year in violation of Statewide Rule 14(b)(2) and J.K. Heichel violated TNRC §91.143. MTO asserts that it accurately reported actual production throughout the period and that, therefore it did not violate either Statewide Rule 14 or TNRC §91.143.

Enforcement's Evidence and Position

In support of its case, Enforcement Staff admitted its file into evidence and presented the testimony of Commission inspector Kim Donoho-Bowen. Commission inspections of the subject

² The Original Complaint is not entirely clear on this point as the only P-1's specified in the false filing allegation are for the months of August 1999 through March 2000. However, this period alone would not establish one year of inactivity as required for a violation of 14(b)(2) and elsewhere in the Complaint it is alleged that the subject well has been inactive since June 1998. The complaint also contains the general allegation that Respondent violated §91.143 by “repeatedly submitting Commission P-1 Forms, knowing that the forms contained information which was false or untrue in a material fact ...”

lease were conducted on September 10, 1998, July 24, 1998, November 30, 1999, January 3, 2000, February 23, 2000, September 20, 2000, November 7, 2000, and January 3, 2001. Ms. Donoho-Bowen testified that she conducted each of the inspections and that conditions on the lease were essentially the same at the time of each inspection - there were no visible means of production on site and no evidence of activity on the lease. Specifically, Ms. Donoho-Bowen noted that at the time of each inspection the site was overgrown without a road to the well, there were no flowlines from the well, that the pumpjack at the wellsite was not hooked to the well and was partially disassembled, and that there was no electricity at the site (electric pole and box on the ground with all lines disconnected).

In further support of its allegations, the Enforcement Staff also presented evidence that MTO had reported moveable balances of oil produced on the subject lease of between 135 and 164 barrels but that the lone tank on the lease would hold only approximately 50 barrels and was not filled to capacity. In addition, Enforcement offered into evidence the T-1 Reports filed by each of the gatherers used by MTO for the month of August 2000 and noted that although MTO had reported the sale of 90 barrels of oil that month, none of the gatherers had reported the purchase of any oil from the subject lease to the Commission.

Respondent J.K. Heichel d/b/a More Texas Oil's Evidence and Position

Ms. J.K. Heichel asserted vehemently that she had accurately reported production for the subject lease and that MTO could have established this fact to the satisfaction of the District Office but that it was never given the opportunity. Ms Heichel testified that the first notice she received that the Commission questioned her production reports and considered the subject well to be inactive was the Original Complaint which was served on her shortly before the hearing. Ms. Heichel testified unequivocally that she was not sent any of the seven inspection reports for the subject lease done between June 10, 1998 and November 7, 2000 and did not receive any other indication from the District office that it considered the subject well to be inactive prior to the filing of the Original Complaint. Ms. Heichel testified that the reason the well site appeared to be inactive was that the well has always been produced by air lift and not by conventional methods.

MTO's field foreman, Kenneth McMahon, testified that he personally had produced the subject well since about January of 2000 and that prior to that time the well was produced for MTO by a pumper named Tom Lemmons. Mr. McMahon took over pumping duties for the well when Lemmons moved to Oklahoma. Mr. McMahon testified that MTO produced many wells in the area by airlift and that it owned about 30 on-site compressors and another 5 portable compressors. He stated that MTO had converted a number of wells from air-lift to pump and that MTO planned to do so with the subject well and that was the reason it had moved in the dormant pumpjack and electric pole referred to in the inspection reports. He testified that as an interim means of production, typically once or twice a month, he would carry a portable compressor to the well site from his truck parked on the County road approximately 100 feet from the well and run a one-inch flow line from the well back to a trailer - mounted tank at his truck. Using a picture of the wellhead from one of the inspection reports, Mr. McMahon described in great deal how the connections were made and how the well was configured.

Mr. McMahon testified that he allowed the 3 h.p. compressor to run through a full tank of fuel which typically took 2 ½ hours and produced 4 to 6 barrels of oil. Mr. McMahon noted that the “low-lying creek-area” of the well site would make it difficult to get a truck back to the well even if a lease road existed. Mr. McMahon stated that, in the past, he had taken the production in the portable tank to a 235-barrel tank approximately 1 ½ miles away for storage in a more secure site. Mr. McMahon acknowledged that he now understood that it was improper to move oil from the lease to an off-lease storage site and testified that he had now installed a larger tank on the lease. Installation of the larger tank, the soggy nature of the site and the proximity of the roadway were confirmed by Ms. Donoho-Bowen. Following the recess of the evidentiary hearing, J.K. Heichel submitted, without objection, a series of photographs purporting to show the subject well being “jetted”, or air-lifted in the manner described by Mr. McMahon. The well head and pumpjack in the photos appear to be the same as those shown in the Commission inspection photos. Copies of the photographs are attached as Exhibit A.

Ms. Heichel testified that the production she had reported sold in August 2000 was sold to Approved Oil Services, LC and that she assumed that Approved would be filing a corrected T-1 in the near future so that the P-1 she had filed and the T-1 Approved filed would “balance.” She further stated that she had a “run ticket” reflecting the sale and would submit it after the hearing. Following the recess of the evidentiary hearing, J.K. Heichel d/b/a More Texas Oil submitted a run ticket from Approved dated August 10, 2000 and purporting to show the collection of 90 barrels of “slop oil” from the “Kirby Lease 06692.” At the same time, J.K. Heichel d/b/a More Texas Oil provided a letter on the letterhead of Approved Oil Services, LLC addressed “To whom it may concern” and stating, “Product picked up from More Texas Oil in August, 2000 was off spec oil. This qualifies as slop and is not reported on the T-1 report.” The letter is signed by Mike McAlister as vice-president of Approved Oil Services, LLC.

Enforcement's Rebuttal Case

The Enforcement Staff attorney, Mr. Williams, confirmed that there was not any evidence that J.K. Heichel d/b/a More Texas Oil had been given any notice of the alleged violations prior to the service of the original complaint. Ms. Donoho-Bowen stated that the explanation of the air-jetting procedure by Mr. McMahon had not “totally changed her mind.” Ms. Donoho-Bowen testified that she had seen many other air-lift wells and did not see any evidence of air lifting during her inspections. She stated that she would typically expect to see flow lines to a tank on the lease and a compressor on site with lines hooked up to the well. In addition, she stated that she would expect to see fresh oil at and around the connection points on the well and that in this case, all she saw was dried oil on the threads of the connections and some sediment in the elbow of the 1" connection pipe on the well.

Subsequent Filings

Following the evidentiary hearing, in April 2002 the record was reopened to allow both parties to file additional information. Both the Enforcement Staff and MTO submitted filings indicating that MTO had placed the subject well on pump, made some minimal production and,

subsequently, plugged the well on April 16, 2002.

EXAMINERS' OPINION

The Enforcement Staff, as the movant in this case, has the burden of proof. It was not established, by a preponderance of the evidence, that J.K. Heichel d/b/a More Texas Oil falsely reported production from Well No. 1 on the Amy Kirby (06692) Lease. Enforcement relied almost exclusively on the inspections done on 8 discrete days during the more than two year period at issue. While the inspector undoubtedly found little, if any, evidence of conventional production or activity on the lease at the time of the inspections, MTO proffered a credible explanation for these circumstances. The portable compressor and offsite tank used only one or two days a month largely explain the lack of visible activity on the lease. J.K. Heichel d/b/a More Texas Oil's use of an offsite tank is hardly laudable but it is not alleged as a violation in the complaint and MTO corrected this apparent violation soon after it was notified of it.

The reported actual sale of produced oil to a third party prior to the filing of the complaint and the run ticket and letter from the gatherer confirming this sale are further evidence that the subject lease was really being produced during the time period at issue. The fact that J.K. Heichel d/b/a More Texas Oil eventually placed the well on pump, as it claimed it had planned to do from the beginning lends further credence to its position and demonstrates that the well was capable of (nominal) production. Although the lack of any fresh oil residue may suggest that the well was not being produced as claimed, it is equally credible, given the sporadic nature of both the inspections and the production that it had been many days or weeks since the last production at the time of the inspection and that any oil residue had weathered in the interim.

It seems probable that if MTO had been notified prior to the filing of a complaint of the allegation that the subject well was inactive and that its production reports were being questioned it might well have been able to explain its production method to the satisfaction of the District Office. In any event, this particular well will not be an issue again as it has been plugged by the operator. In addition, recent rule revisions to Statewide Rule 21 requiring any operator engaging in air-jetting operations to first obtain a permit from the Commission should assure that the issue of whether or not "stealth" production by portable air-jetting is occurring will not arise again.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. J.K. Heichel d/b/a More Texas Oil ("MTO" or respondent") was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to her most recent Form P-5 (Organization Report) addresses. Respondent appeared at the scheduled time and place for the hearing and offered evidence and argument.
2. J.K. Heichel is the owner and sole proprietor of "More Texas Oil." MTO's P-5 organization

report is currently delinquent. A renewal P-5 for MTO was most recently approved on May 25, 2001. At that time, MTO was the operator of 99 wells and filed \$100 as its organizational financial assurance.

3. J.K. Heichel d/b/a More Texas Oil designated herself to the Commission as the operator of Well No. 1 ("subject well") on the Ann Kirby (06692) Lease ("subject lease"), Chicon Lake Field, Medina County, Texas by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective August 1, 1997. During the period from June 1998 through December 2000, the subject well was the only well on the Ann Kirby (06692) Lease.
4. J.K. Heichel d/b/a More Texas Oil filed production reports (P-1's) with the Commission reporting various volumes of production from June 1998 through December 2000. The production for the subject well reported by J.K. Heichel d/b/a More Texas Oil varied between 0 and 16 barrels. In most months reported production was between 4 and 7 barrels and there were never more than two consecutive months without any reported production.
5. The first notice MTO received that the production reports it had filed for the subject lease were being questioned and that the Commission asserted the subject well was inactive was when it was served with the original complaint in this matter. MTO was not sent copies of Commission inspections of the lease or sent other notices concerning the alleged violations prior to the filing of the complaint.
6. Commission inspections of the subject lease were conducted on September 10, 1998, July 24, 1998, November 30, 1999, January 3, 2000, February 23, 2000, September 20, 2000, November 7, 2000, and January 3, 2001. At the time of each of the inspections, there were no visible means of production on site and no evidence of activity on the lease. The site was overgrown without a road to the well, there were no flowlines from the well, the pumpjack at the wellsite was not hooked to the well and was partially disassembled, and that there was no electricity at the site (electric pole and box on the ground with all lines disconnected).
7. The conditions that existed on the subject lease at the time of each of the Commission inspections were not inconsistent with the sporadic production of the well for 2-3 hours, 10-12 times a year, with a portable compressor and a 1" flow line producing into a trailer mounted tank parked approximately 100 feet from the well.
8. MTO had sufficient storage capacity for the production from the well in a 235-barrel tank located approximately 1 ½ miles from the well.
9. MTO sold 90 barrels of "off-spec" oil produced by the subject well to Approved Oil Services, LLC in August 2000.
10. The subject well was capable of producing a small volume of oil. In 2001, MTO placed the well on pump and produced 33 barrels of oil by that method.

11. It was not established by a preponderance of the evidence that the production reports (Form P-1) filed by J.K. Heichel d/b/a More Texas Oil for the subject lease for the period from June 1998 through December 2000 were false.
12. It was not established by a preponderance of the evidence that the subject well was dry or inactive for a period in excess of one year during the period from June 1998 through December 2000.
13. The subject well was plugged by the operator on or about April 16, 2002.
14. The record does not reflect any previous violations by J.K. Heichel d/b/a More Texas Oil of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. J.K. Heichel d/b/a More Texas Oil was the operator of the subject well, as defined by Commission Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14) and Section 89.02 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 79 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.69) and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, J.K. Heichel d/b/a More Texas Oil has the primary responsibility for complying with Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14) and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject well.
5. The evidence in the record does not demonstrate that J.K. Heichel d/b/a More Texas Oil failed to comply with Rule 14(b)(2) with regard to the subject well.
6. The evidence in the record does not establish that J.K. Heichel d/b/a More Texas Oil violated Texas Natural Resources Code §91.143.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the

attached order approved, dismissing this docket with prejudice.

Respectfully submitted,

Colin K. Lineberry
Legal Examiner