

September 25, 2002

OIL AND GAS DOCKET NO. 01-0227808

ENFORCEMENT ACTION AGAINST MA-STELL, INC. FOR VIOLATIONS OF STATEWIDE RULES ON THE MARTIN WATSON (09429) LEASE, WELL NO. 1, 2, 3, AND 4, LULING-BRANYON FIELD, CALDWELL COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Lowell Williams, Staff Attorney

FOR RESPONDENT:

Lloyd Muennink
Reverend Lee Otis Carter, President

MOVANT:

Railroad Commission of Texas

PARTY:

Ma-Stell, Inc.
“ ”

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	May 16, 2001
NOTICE OF HEARING:	July 2, 2002
DATE CASE HEARD:	August 29, 2002
RECORD CLOSED:	September 25, 2002
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	September 25, 2002
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rule 14, the Martin Watson (09429) Lease, Well Nos. 1, 2, 3, and 4, Luling-Branyon Field, Caldwell County, Texas;
2. 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;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said lease and wells;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. § 81.0534.

Lowell Williams, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Lloyd Muennink appeared on behalf of respondent, Ma-Stell, Inc. (hereinafter "Ma-Stell"). The Enforcement Section's hearing file was admitted into evidence. The staff recommended that Ma-Stell be ordered to properly plug the wells and be ordered to pay an administrative penalty of \$8,000 for four violations of Statewide Rule 14(b)(2) at \$2,000 per violation. The examiner agrees with the recommendation.

DISCUSSION OF THE EVIDENCE

Enforcement presented Commission records showing that the most recent approved P-5 for Ma-Stell was filed October 18, 2000. Ma-Stell paid a fee of \$750 as financial assurance at the time of its last renewal. Reverend Lee Otis Carter is listed as the President. Ma-Stell's Organization Report is currently delinquent.

Ma-Stell was recognized as the operator of the Martin Watson (09429) Lease, Well Nos. 1, 2, 3, and 4, upon the Commission's approval of the single signature Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) submitted by Ma-Stell. The Commission recognized Ma-Stell as the operator of the lease on February 29, 2000. Official notice was taken of Commission records concerning the Office of General Counsel's approval of the single signature P-4. These records show that Ma-Stell submitted an Oil and Gas Mineral Lease, executed on December 12, 1999 with a primary term of 5 years, as evidence that Ma-Stell possessed a good faith claim of a continuing right to operate the lease.

Commission inspection reports made on June 21, 2001, January 1, 2001, December 18, 2000, October 20, 2000, October 5, 2000, July 20, 2000, June 26, 2000 and April 28, 2000 show that the wells were shut in and not equipped to produce. Commission records report no production from the wells after November 1995. The last plugging extensions expired on March 3, 2001. Accordingly, Enforcement contends that the wells are inactive and have been in violation of Statewide Rule 14(b)(2) for 18 months. The estimated cost to plug these wells is \$6,500.

Ma-Stell argues that it should not have any plugging responsibility for these wells because it does not have a valid lease for the property. Ma-Stell claims that it trusted the representations that the lessors had valid mineral interest claims. It was not until Reverend Carter attempted to enter the lease and the landowners threatened to shoot him, that Ma-Stell became aware that ownership of the mineral interest was disputed. Ma-Stell subsequently obtained a title opinion which confirmed that the lease it obtained in December 12, 1999 was not valid.

Ma-Stell contends that it should not be liable for plugging the wells because it was unaware that it did not have a valid right to operate the subject lease when it requested to be recognized as the operator. Ma-Stell argues that it would be unfair to impose both plugging liability and administrative penalties under such circumstances.

APPLICABLE AUTHORITY

Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted. For wells transferred after September 1, 1997, the operator of a well for purposes of plugging liability is the person who assumed responsibility for the physical operation and control of a well as shown by an approved Form P-4 designating that person as operator.

Texas Natural Resources Code §89.044 provides that an operator, on proper identification, may enter the land of another for the purpose of plugging a well that has not been properly plugged.

EXAMINER'S OPINION

It is uncontested in this docket that the subject lease and subject wells are in violation of Statewide Rule 14. Ma-Stell also does not contend that the Commission erred in recognizing it as the operator. Ma-Stell simply claims that its innocent mistake should not put it in a position where it is required to plug wells which it never had the opportunity to produce. Ma-Stell also contends that it should not be required to pay any administrative penalty.

While Ma-Stell may have made an innocent mistake by trusting that the lessors possessed valid mineral interests in the property, it is not appropriate to excuse Ma-Stell from its plugging responsibility based on its failure to exercise due diligence. This is highlighted by Ma-Stell's own title opinion which concluded that it did not have a valid lease. It is unfortunate that this title opinion was not obtained until after Ma-Stell voluntarily requested that it be recognized as the operator of the lease and the Commission recognized Ma-Stell as the operator. However, the

attempt to use the title opinion to now limit Ma-Stell's plugging liability is a classic example of closing the barn door after the horse has escaped.

The examiner is also unpersuaded that Ma-Stell should not pay any administrative penalty. Ma-Stell has been the designated operator of the subject lease since February 2000 and has not placed the lease in compliance. There is no evidence that it has attempted to obtain a lease from the current mineral interest owners. Additionally, there is no evidence that Ma-Stell has filed Commission Form W-3A (Notice of Intention to Plug and Abandon), has contracted with a plugger, or has invoked its right to enter the property for the purpose of plugging the wells. Absent such evidence, it is inappropriate to excuse Ma-Stell from the imposition of administrative penalties during the 18 months that they have been out of compliance with Rule 14(b)(2). Ma-Stell's organization report is delinquent, it admittedly does not possess any right to operate the wells, and the wells have not reported production since November 1995.

Accordingly, the examiner recommends that Ma-Stell be ordered to plug the subject wells. The examiner further recommends that Ma-Stell be required to pay an administrative penalty of \$8,000.

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. Respondent, Ma-Stell, Inc. ("Ma-Stell") was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address.
2. The most recent approved P-5 for Ma-Stell was filed October 18, 2000. Ma-Stell paid a fee of \$750 as financial assurance at the time of its last renewal. Lee Otis Carter is listed as the President. Ma-Stell's Organization Report is currently delinquent.
3. Ma-Stell was recognized as the operator of the Martin Watson (09429) Lease, Well Nos. 1, 2, 3, and 4, ("subject lease" and "subject wells") upon the Commission's approval of the single-signature Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) submitted by Ma-Stell.
 - A. Ma-Stell submitted a Oil and Gas Mineral Lease, executed on December 12, 1999 with a primary term of 5 years, as evidence that Ma-Stell possessed a good faith claim of a right to operate the subject lease.
 - B. The Commission recognized Ma-Stell as the operator of the subject lease on February 29, 2000.
4. The subject wells are currently inactive and have been inactive for more than 12 months.

- A. Commission inspection reports made on June 21, 2001, January 1, 2001, December 18, 2000, October 20, 2000, October 5, 2000, July 20, 2000, June 26, 2000 and April 28, 2000 show that the subject wells are shut in and not equipped to produce.
 - B. Commission records report no production from the subject wells after November 1995.
5. The last plugging extensions Ma-Stell obtained for the wells expired on March 3, 2001.
 6. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
 7. Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance after being notified of the violations by the district office.
 8. The estimated cost to plug the subject wells is \$6,500.
 9. The record does not reflect any previous violations by the respondent of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Ma-Stell, Inc. is the operator of the Martin Watson (09429) Lease, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Ma-Stell, Inc. does not possess a good faith claim to a continuing right to operate the Martin Watson (09429) Lease.
5. Ma-Stell, Inc. has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Martin Watson (09429) Lease.
6. Well Nos. 1, 2, 3, and 4 on the Martin Watson (09429) Lease are not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
7. Well Nos. 1, 2, 3, and 4 on the Martin Watson (09429) Lease have been out of compliance from March 3, 2001 to the present.

8. The documented violations committed by Ma-Stell are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Ma-Stell to plug the subject wells and be assessed an administrative penalty of \$8,000.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner