

OIL & GAS DOCKET NO. 01-0235660

ENFORCEMENT ACTION AGAINST AMINEX USA, INC. FOR ALLEGED VIOLATIONS OF STATEWIDE RULES ON THE HAIDEE GERHARDT (03365) LEASE, WELL NOS. 1, 2A, 3, 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, AND 18, SOMERSET FIELD, BEXAR COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Lowell Williams, Staff Attorney
Sheila Weigand

MOVANT:

Railroad Commission of Texas
“ ”

FOR RESPONDENT:

Rex H. White, Jr., Attorney
John Hays, Senior Vice President

RESPONDENT:

Aminex USA, Inc.
“ ”

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

ORIGINAL COMPLAINT FILED:	August 4, 2003
DATE OF NOTICE OF HEARING:	November 12, 2003
DATE HEARD:	December 18, 2003
RECORD CLOSED:	January 23, 2004
HEARD BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	February 6, 2004

STATEMENT OF THE CASE

This is an action brought by the Enforcement Section of the Office of General Counsel (“Enforcement”) against Aminex USA, Inc. (“Aminex”), for a single violation of Statewide Rule 73(g) and Texas Natural Resources Code §85.166. Enforcement alleges that Aminex illegally produced 1238 barrels of oil from the Haidee Gerhardt (03365) Lease, Well Nos. 1, 2A, 3, 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, and 18 (hereinafter “subject lease” and/or “subject wells”), from June 1, 2002, through May 31, 2003, despite the fact that the certificate of compliance for the subject lease was canceled by the Commission on May 29, 2002. The cancellation remained in effect through July 11, 2003 because Aminex failed to pay the \$100.00 required reconnect fee.

A hearing was held on December 18, 2003. Enforcement and Aminex appeared and presented evidence. The record was reopened on January 14, 2004 to obtain copies of District Office Inspection Reports related to the violation of Statewide Rule 91 which resulted in the cancellation of the certificate of compliance. The evidentiary record was closed on January 23, 2004.

Enforcement recommended that an administrative penalty be assessed in the amount of \$10,000. Aminex argued that no penalty should be assessed because it inadvertently failed to pay the fee and because it acted diligently to correct the violation after the certificate of compliance was canceled. Aminex alternatively argued that any penalty should be limited to the recommended standard penalty schedule for violations of Texas Natural Resources Code §85.166. The examiner recommends that Aminex be ordered to pay an administrative penalty of \$1,000.00.

EVIDENCE AND POSITIONS OF THE PARTIES

Enforcement's Evidence and Position

Enforcement contended that Aminex violated Texas Natural Resources Code §85.166 and Statewide Rule 73 by the continued production of crude oil from the subject lease from June 1, 2002 to May 31, 2003 when Aminex did not possess a valid certificate of compliance for the lease. Enforcement urged that the production of 1,283 barrels over this twelve month period is a serious violation and that an administrative penalty of \$10,000 is appropriate.

Aminex filed its most recent Commission Form P-5 (Organization Report) on March 6, 2003. Aminex has posted financial assurance with the Commission in the form of a \$250,000 bond. Aminex currently operates 688 wells on 107 leases. Aminex requested to be recognized as the operator of the Haidee Gerhardt (03365) Lease, Well Nos. 1, 2A, 3, 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, and 18 by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), on February 15, 1995, approved February 16, 1995.

With respect to the events leading to the cancellation of the certificate of compliance for the subject lease, an inspection on January 18, 2002 observed an unauthorized discharge of oil and produced fluids inside the firewall of the tank battery in violation of Statewide Rule 91. This initial inspection report indicated: 1) that the discharge of oil and fluids in the firewall had occurred some time previous to the inspection; 2) that Aminex attempted to remediate the spill by covering the fluid with clean dirt; and 3) that the oil and fluids had seeped through the cover layer. Aminex was provided with a copy of the inspection report and advised to bring the violation into compliance by properly remediating the area within the firewall of the tank battery. Follow-up inspections on March 11th and March 29th found that the violation had not been corrected.

After the follow-up inspection on March 29, 2002, a notice of intent to cancel the certificate of compliance for the subject lease was sent to Aminex by certified mail on April 15, 2002. This notice advised that Aminex had 30 days to bring the violation into compliance or the certificate of compliance would be canceled. The notice was sent by certified mail from both the District Office and Field Operations in Austin. Aminex acknowledged receipt of the April 15, 2002 letter.

Aminex did not remedy the violation within 30 days, and a notice was mailed on May 29, 2002, canceling the certificate of compliance and severing the pipeline or other carrier connection. Aminex acknowledged receipt of the May 29, 2002 notice.

Enforcement acknowledged that Aminex resolved the Rule 91 violation which was the underlying basis for the cancellation of the certificate of compliance on or before June 25, 2002. However, Enforcement urged that Aminex failed to pay the \$100.00 fee required prior to the issuance of a new certificate of compliance. Accordingly, the cancellation of the certificate of compliance of the subject lease precluded both production and transport of any oil until July 11, 2003 when Aminex paid the \$100.00 fee.

Finally, Enforcement argued that Aminex' continued production of oil from the subject lease was a serious violation. Commission records show that 1,238 barrels were produced between June 1, 2002 and May 31, 2003 when Aminex did not have a valid certificate of compliance. Enforcement argued that this is a clear violation of Statewide Rule 73(g) and Texas Natural Resources Code §85.166, that warrants the maximum statutory penalty of \$10,000.

Respondent's Evidence and Position

Aminex does not dispute that it continued to produce oil from the subject lease after the May 29, 2002 cancellation of the certificate of compliance. Aminex argued, however, that assessment of any administrative penalty is inappropriate because Aminex acted quickly to resolve the underlying violation after the certificate of compliance was canceled. Aminex also claimed that its failure to pay the \$100.00 fee until July 2003 was inadvertent and that it was unaware that the certificate of compliance remained canceled after it cleaned-up the Statewide Rule 91 violation. Aminex alternatively argued that the penalty should be limited to the amount recommended in the standard penalty schedule.

Aminex admitted that the violation of Statewide Rule 91 occurred, that it received notice of both the intent to cancel the certificate of compliance and the actual cancellation letter, and that it failed to pay the required fee for the issuance of a new certificate of compliance. Aminex testified that it began clean-up efforts immediately after the certificate of compliance was canceled and that they were successfully completed by June 2, 2002. However, due to an internal office mistake, the reissuance fee was not sent to the Commission contemporaneous with the resolution of the underlying violation. Aminex further claimed that it was unaware that the lease did not have a valid certificate of compliance after June 2, 2002. Aminex also contended that when it was advised by the Commission of the delinquent fee in July 2003, it immediately paid it.

In support of its claim that it was not aware that the certificate of compliance remained canceled, Aminex noted that it renewed its Organization Report without indication of a compliance problem. It further noted that it regularly filed reports accounting for production on the subject lease which were accepted by the Commission and that the Commission assigned allowables for the wells.

APPLICABLE AUTHORITY

The pertinent provisions of Statewide Rule 73 effective relative to this proceeding¹ held:

(d) The Commission may shut in and seal any well, and cancel any certificate of compliance if it appears that the operator of a well has violated or is violating, in connection with the operation of the well, any statutes, rules in this title, permits, or orders of the Commission. Upon receipt of information that indicates operations are being conducted in violation of statutes, rules in this title, or a Commission permit or order, the Commission shall send a notice letter to the operator directing the operator to correct the violation. The letter shall state the facts or conduct alleged to warrant the shut-in and sealing of the well, and cancellation of the certificate of compliance. The letter shall give the operator an opportunity to show compliance with the statutes, rules in this title, or Commission permits or orders. The letter shall be sent by registered or certified mail, and shall indicate the time within which compliance shall be demonstrated or achieved. The time period allowed for the operator to achieve compliance shall not be less than 10 days from the date the notice letter is sent.

(e) Within the time period set out in the notice letter, the operator shall either demonstrate compliance or correct the violation, and notify the Commission of its action.

(f) If the violation is not corrected within the time period set out in the notice letter, the Commission may shut in and seal the well, and cancel the certificate of compliance.

(g) If a certificate of compliance has been canceled, the Commission may not issue a new certificate of compliance until:

(1) the property covered by the certificate is brought into compliance with the statutes, rules in this title, and Commission permits and orders; or

(2) the Commission determines that there are just and equitable grounds for reissuing the certificate.

Texas Natural Resources Code §85.166 provides:

On notice from the commission that a certificate of compliance for an oil or gas well has been cancelled, it shall be unlawful for the owner or operator of the well to produce oil or

¹Statewide Rule 73 was recently amended in September 2003. The amendments included changes in the paragraph designations.

gas from the well until a new certificate of compliance covering the well has been issued by the commission.

The provisions of Texas Natural Resources Code §85.167(a) effective relevant to this proceeding² held:

If a certificate of compliance has been canceled, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of \$100.

Texas Natural Resources Code §85.3855 provides in pertinent part:

- (a) The commission may impose an administrative penalty on a person who:
- (1) violates Section 85.165 or 85.166 or a rule or order adopted under Section 85.165 or 85.166; or
 - (2) knowingly destroys, breaks, removes, or otherwise tampers with, or attempts to destroy, break, remove, or otherwise tamper with, a cap, seal, or other device placed by the commission on an oil well, gas well, oil and gas well, or other associated oil or gas gathering equipment.
- (b) The amount of the penalty may not exceed \$10,000 for each violation. The amount shall be based on:
- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
 - (2) the economic harm to property or the environment caused by the violation;
 - (3) the history of previous violations;
 - (4) efforts to correct the violation; and
 - (5) any other matter that justice may require.

EXAMINER'S OPINION

There is no controversy about the fact that the Commission canceled the certificate of compliance for the subject lease and severed the pipeline or other carrier connection on May 29, 2002. It is also undisputed that Aminex received the notice of the intent to cancel the certificate of compliance and the subsequent notice of cancellation. Finally, Aminex admits that it continued to produce and sell oil from the wells on the lease when the certificate of compliance was canceled. Based on the facts presented in this docket, it is the examiner's recommendation that Aminex should be ordered to pay an administrative

²Texas Natural Resources Code was amended effective September 2003. The amendments included changes in the amount of the reconnect fee and that the fee would apply to each violation.

penalty of \$1,000.00.

Aminex' Neglect in Failing to Pay the Reconnect Fee Does Not Excuse the Violation

Aminex's primary defense was that the violation of Texas Natural Resources Code §85.166 was inadvertent. Aminex contended that it quickly cleaned-up the Statewide Rule 91 violation when the certificate of compliance was canceled, but that it mistakenly failed to pay the required reconnect fee. Aminex further claimed that it did not become aware of this fact until July 2003 noting: 1) that it filed production reports for the subject lease which were accepted by the Commission even though the certificate of compliance was canceled; 2) that the Commission assigned allowables for the wells even though there was no valid certificate of compliance; and 3) that the Commission accepted the renewal of Aminex' Organization Report. Finally, Aminex pointed to its prompt action in resolving the violations, and the trivial nature of its failure to pay a minimal fee, to support its argument that it should not be required to pay any administrative penalty for the admitted violation.

Aminex' argument can be distilled to the following premise; Aminex should not be held liable for an admitted violation of Texas Natural Resources Code §85.166 because the Commission did not advise Aminex after it corrected the underlying violation that a new certificate of compliance for the subject lease had not been issued due to Aminex' failure to pay the fee required under Texas Natural Resources Code §85.167. Even assuming that Aminex' failure to pay the required fee was inadvertent, it is the examiner's opinion that Aminex' neglect is not a basis for the waiver of any administrative penalty.

The request for a complete waiver of any administrative penalty in this case is untenable because it shifts the burden for violating Texas law and Commission rules away from the respondent where only partial compliance was obtained. Aminex' argument would create a separate notice obligation which would require the Commission, even after providing proper notice of both the intent to cancel a certificate of compliance and the actual cancellation of the certificate of compliance to a respondent, to provide further notice upon partial fulfillment of the requirements to issue a new certificate of compliance. There is no statutory or legal support for this premise.

Both the Texas Natural Resources Code and Commission rules concerning the cancellation of a certificate of compliance require an operator to satisfy two requirements prior to the issuance of a new certificate of compliance. First, the operator must rectify the violation which led to the cancellation of the certificate of compliance. Second, the operator must pay the reissuance fee required by Texas Natural Resources Code §85.167 and Statewide Rule 73. Both requirements are highlighted in the notice letters the Commission sends to the operators.

While Aminex' failure to satisfy the second requirement may have been inadvertent, it is not plausible to suggest that the statutes and rules place an affirmative responsibility on the Commission to provide further notice where Aminex only partially discharged its duties. Under both Commission rules and the statutes, the affirmative responsibility remains on Aminex to fully and completely resolve all requirements associated with violations leading to the cancellation of a certificate of compliance. Accordingly, the examiner recommends that Aminex pay an administrative penalty for the violation. The recommended penalty amount is discussed below.

Amount of Administrative Penalty

Under Texas Natural Resources Code §85.3855, the Commission is authorized to assess a penalty not to exceed \$10,000 per violation of Texas Natural Resources Code §85.166 or a rule or order adopted under §85.166. The amount of the penalty must be based on (1) the seriousness of the violation; (2) the economic harm to property or the environment; (3) the history of previous violations; (4) efforts to correct the violation; and (5) any other matters that justice may require.

It is undisputed that from at least June 1, 2002, through May 31, 2003, Aminex produced 1,238 barrels of oil from wells on a lease which did not have a valid certificate of compliance as required under the Texas Natural Resources Code and Commission rules. Both the amount of oil produced and the 12 month period during which there was no valid certificate of compliance are serious and warrant the imposition of an administrative penalty consistent with existing Commission guidelines. However, while production on a lease that does not have a valid certificate of compliance may pose a threat of harm to property or the environment, there is no evidence that Aminex's continued production without having a valid certificate of compliance resulted in harm to property or the environment in this case. Additionally, Aminex has no history of prior violations of Commission rules and did act promptly to clean-up the spill after the certificate of compliance was canceled. However, with respect to the underlying violation that caused the cancellation, Commission records show that Aminex did not act promptly to remedy the violation after it was first observed by an inspector in the District Office. The examiner believes that Aminex' six month delay in remedying the violation of Statewide Rule 91, is part of the analysis of the seriousness of the violation when considering the amount of the recommended administrative penalty.

The standard penalty schedule for enforcement cases recommends a penalty amount of \$1,000 for violations under Texas Natural Resources Code §85.3855. Enforcement made no explanation of why its recommendation in this case was for the maximum amount authorized under the statute and ten times the standard recommended penalty.

The standard penalty schedule for enforcement cases is a guideline for recommended administrative penalties. An examiner's recommendation as to the amount of any proposed penalty is determined on an individual case-by-case basis. Further, the amount of any administrative penalty assessed is a decision for the Commissioners.

The recommended standard penalty is not binding on the examiner or on the Commissioners, however, it is useful in that it promotes consistent penalty amounts for violations of Commission rules involving similar facts. Additionally, in those cases where the recommended penalty exceeds the standard guideline, facts to support the imposition of a higher penalty amount should be asserted in both the complaint and in the administrative hearing. Commission orders in cases setting a higher penalty amount typically adopt specific findings to support the enhanced penalty. A similar process occurs where a respondent seeks to have an administrative penalty reduced below the standard guideline. Evidence is offered to support the imposition of a lesser amount and, if approved by the Commission, findings may be adopted which support the reduced administrative penalty.

In this case, Enforcement did not assert any atypical facts which would warrant a departure from the recommended penalty guideline. Accordingly, the examiner declines to recommend that the Commission assess the \$10,000 administrative penalty sought by Enforcement.

As previously noted, Aminex' arguments concerning its conduct were directed to two issues, the waiver of any administrative penalty, or the limitation of the penalty to \$1,000, consistent with the recommended penalty guideline. Aminex did not offer evidence to support the imposition of a lesser administrative penalty other than the inference that any penalty should be reduced because its failure to pay the required fee was inadvertent.

As noted above, a complete waiver of any administrative penalty is not recommended due to the inappropriate precedent it would set in cases where an operator partially met the requirements to rectify a violation. Further, Aminex admits that it neglected to meet all of the requirements under the statutes and rules for the issuance of a new certificate of compliance. While the failure to pay the required fee necessary for the issuance of a valid certificate of compliance may have been inadvertent, it was Aminex' affirmative responsibility to meet all of the requirements. Further, it is also Aminex' responsibility to ensure that it possesses a valid certificate of compliance for any lease before it produces oil or gas from the wells. Aminex cannot shift its affirmative duties on the basis of its admitted neglect. It must accept the consequence of failing to meet the requirements under the Texas Natural Resources Code and Commission rules. Finally, the fact that Aminex delayed over six months in remedying the underlying violation weighs against any reduction of the standard penalty. Accordingly, it is the examiner's opinion that an administrative penalty in the amount of \$1,000 is appropriate under these facts.

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

FINDINGS OF FACT

1. Aminex USA, Inc. ("Aminex") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Aminex appeared at the hearing and presented evidence.

2. Aminex filed its most recent Organization Report on March 6, 2003. Aminex has posted financial assurance with the Commission in the form of a \$250,000 bond. Aminex currently operates 688 wells on 107 leases.
3. Aminex requested to be recognized as the operator of the Haidee Gerhardt (03365) Lease, Well Nos. 1, 2A, 3, 5, 7, 8, 10, 11, 12, 13, 15, 16, 17, and 18 (hereinafter "subject lease" and/or "subject wells") by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), on February 15, 1995, approved February 16, 1995.
4. A notice of intent to cancel the certificate of compliance and to sever the subject lease was sent to Aminex by certified mail on April 15, 2002, giving Aminex 30 days to remedy a violation of Statewide Rule 91. The notice was sent by certified mail from the District Office and the Oil and Gas Division's Field Operations Section in Austin. Aminex acknowledged that it received the notice.
5. On May 29, 2002, a notice was mailed canceling the certificate of compliance for the subject lease and severing the pipeline or other carrier connection because Aminex did not timely remedy the violation of Statewide Rule 91. Aminex acknowledged that it received the notice canceling the certificate of compliance and severing the lease.
6. Aminex corrected the violation which resulted in cancellation of the certificate of compliance on June 2, 2002, but failed to submit the fee required under Texas Natural Resources Code §85.167 and Statewide Rule 73 until July 11, 2003.
7. From June 1, 2002, through May 31, 2003, Aminex produced 1,238 barrels of oil from the subject lease. During this period, the certificate of compliance for the subject lease was canceled, and the pipeline or other carrier connection for the lease was severed.
8. Production of the wells on the subject lease without a valid certificate of compliance did not result in harm to property or the environment.
9. Aminex has no history of prior violations of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Aminex has been the operator responsible for compliance with Statewide Rule 73 and Texas

Natural Resources Code §85.166 on the subject lease since February 16, 1995.

4. On April 15, 2002, the Commission gave proper notice to Aminex of the Commission's intent to cancel the certificate of compliance and sever the pipeline or other carrier connection for the subject lease, and gave Aminex a proper opportunity to either correct the violation or request a hearing to contest the violation as required by Statewide Rule 73 and Texas Natural Resources Code §85.164.
5. On May 29, 2002, the Commission properly canceled the certificate of compliance and severed the pipeline or other carrier connection for the subject lease, and gave Aminex proper notice thereof, pursuant to Statewide Rule 73 and Texas Natural Resources Code §85.164.
6. From June 1, 2002, through May 31, 2003, Aminex violated Statewide Rule 73 and Texas Natural Resources Code §85.166 by producing 1,238 barrels of oil from the subject lease without having a valid certificate of compliance.
7. Pursuant to Texas Natural Resources Code §85.3855, the Commission may impose an administrative penalty against Aminex in an amount not to exceed \$10,000 per violation of Texas Natural Resources Code §85.166.
8. Aminex' violation of Statewide Rule 73 and Texas Natural Resources Code §85.166 constitutes an act deemed serious within the meaning of Texas Natural Resources Code §85.3855.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, imposing an administrative penalty against Aminex USA, Inc., in the amount of \$1,000.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner