

June 30, 2006

OIL AND GAS DOCKET NO. 01-0242108

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**ENFORCEMENT ACTION AGAINST HILL PRODUCTION COMPANY NO. 2 (OPERATOR NO. 386969)  
FOR VIOLATIONS OF STATEWIDE RULES ON THE PENA NO.1 (12660) LEASE, WELL NO. 1,  
PEARSALL (AUSTIN CHALK) FIELD, LASALLE COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT RAILROAD COMMISSION OF TEXAS:**

Susan German, Staff Attorney

**FOR RESPONDENT HILL PRODUCTION COMPANY NO. 2:**

Lloyd Muennink, Attorney

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>COMPLAINT FILED:</b>	March 8, 2005
<b>NOTICE OF HEARING:</b>	October 11, 2005
<b>DATE CASE HEARD:</b>	November 17, 2005
<b>PFD PREPARED BY:</b>	Marshall Enquist, Hearings Examiner
<b>PFD CIRCULATION DATE:</b>	June 30, 2006
<b>CURRENT STATUS:</b>	Protested

**STATEMENT OF THE CASE**

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

1. Whether respondent, Hill Production Company No. 2 (hereinafter "Hill") violated Statewide Rule 3(1) on the Pena #1 (12660) Lease, Well No. 1, Pearsall (Austin Chalk) Field, LaSalle County, Texas;
2. Whether respondent, Hill, violated Statewide Rule 14(b)(2) on the Pena No.1 (12660) Lease, Well No. 1, Pearsall (Austin Chalk) Field, LaSalle County, Texas;

3. Whether respondent, Hill, violated Statewide Rule 8(d)(1) at the tank battery of the Pena No1 (12660) Lease, Well No. 1, Pearsall (Austin Chalk) Field, LaSalle County, Texas;
4. Whether the respondent 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 Rules 3 and 14;
5. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said lease and wells; and
6. 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.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”). Attorney Lloyd Muennink, representing Hill, appeared and presented evidence. Enforcement's hearing file was admitted into evidence.

Enforcement recommended that Hill be ordered to bring the subject lease and well into compliance with Commission rules, and pay a total administrative penalty of \$2,750.00, which is \$250 for one violation of Statewide Rule 3(1), \$500 for one violation of Statewide Rule 8(d)(1) and \$2,000 for one violation of Statewide Rule 14(b)(2). The examiner agrees with Enforcement's recommendations.

### **DISCUSSION OF THE EVIDENCE**

#### *Organization and Permit Records*

Commission records show that Hill filed its initial Commission Form P-5 (Organization Report) with the Commission on February 17, 2004, which was approved February 27, 2004. The most recent Organization Report for Hill was filed on January 25, 2005 and approved February 9, 2005. In its initial filing, Steven Christopher Hill and Ed Raney were identified as officers of Hill, being the President and Vice-President respectively. In the second filing approved February 9, 2005, Ed Raney was replaced as Vice-President by Robert D. Luna.

Notice of this hearing was served on Hill at its most recently reported P-5 address and on Steven Christopher Hill, President of Hill; Margaret Martin, Registered Agent for Hill, Ed Raney, Vice President of Hill, and Robert D. Luna, Vice-President of Hill.

Hill was recognized as the operator of the Pena #1 (12660) Lease, Well No. 1, (“subject lease” and “subject well”) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective March 1, 2004, which was approved by the Commission on

March 15, 2004.

*Commission Inspections*

Commission inspections of the subject lease made on March 10, 2004, April 21, 2004, May 28, 2004, July 6, 2004, July 23, 2004, September 13, 2004, October 18, 2004, May 18, 2005, September 6, 2005 and October 24, 2005 showed the signs and identification required by Statewide Rule 3(1) and (2) to be posted at the lease entrance and well site to be missing.

Commission District Office inspections of the subject lease made on March 24, 2004 showed that Hill had caused or allowed an unauthorized discharge of oil, affecting an area approximately 8' by 2' at the tank battery, with approximately one quarter barrel of free standing oil. Followup District inspections on April 24, 2004, May 28, 2004, July 6, 2004, July 23, 2004, September 13, 2004, October 18, 2004, May 18, 2005, and September 6, 2005 showed no change and no remediation. A Commission District inspection on October 24, 2005 showed that an attempt at remediation had been made at the tank battery, with fresh soil having been brought in to cover the old oil spills.

Commission District Office inspections made on April 21, 2004, May 28, 2004, July 6, 2004, July 23, 2004, September 6, 2005, and October 24, 2005, and either reports filed by respondent with the Commission reflecting zero production from April 1, 2003 through November 30, 2004, and the absence of production reports filed by respondent since December, 2004 show that the Pena #1 (12660) Lease, Well No. 1 has been inactive for a period greater than one year. Production from the well ceased on or before March 31, 2003. The last two inspection reports cited showed that the well had been stripped and the rods removed.

No workovers, re-entries or subsequent operations have taken place on the subject well within the last twelve months. The subject well has not been plugged and no SWR 14(b)(2) extension is in effect for the subject well as allowed by Statewide Rule 14(b)(2)(A).

**ENFORCEMENT'S POSITION**

Enforcement argues that subject lease is out of compliance with Statewide Rule 3(1) due to a lack of proper signage on the lease as shown by a series of District Office inspections made from March 10, 2004 through October 24, 2005. Enforcement contends this violation is serious and threatens the public health and safety in that in the event of a pollution or safety violation or other emergency, the lack of correct identifying information may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency.

District Office inspections made from April 24, 2004 through at least September 6, 2005 show that Hill caused or allowed an unauthorized discharge of oil affecting an area 8' by 2' at the tank battery of Well No. 1 on the Pena #1 (12660) Lease. A District Office inspection made on October 24, 2005 showed that an attempt had been made at remediation by covering the oil spill with fresh soil. Enforcement argues that merely covering an oil spill is not remediation, but that in

the event that the attempt is construed as remediation by the Commission, Hill should still be penalized for the time out of compliance, a period in excess of one year.

Enforcement also notes the subject well is out of compliance with Statewide Rule 14(b)(2) because production ceased on or before March 31, 2003 and no SWR 14(b)(2) extension is in effect for the subject well as allowed by Statewide Rule 14(b)(2)(A). The well was inactive for a period in excess of one year at least as early as April 1, 2004.

In communications with Enforcement, Raney argued that he was not an officer in Hill. However, the initial Commission Form P-5 filed by Hill shows Ed Raney as the Vice President of the company. He was not removed as Vice President until February 9, 2005, a time well after the commencement of the violations of Statewide Rules 3, 8 and 14 on the Pena No.1 (12660) Lease.

The estimated cost to plug the subject well is \$10,900.

#### **HILL'S POSITION**

Counsel for Hill argued, in unsworn statements, that the problems on this lease were caused by a tank truck operator on adjacent leases who interfered with the operation of the Pena #1 (12660) Lease. Hill argues that this operator, which it identified only as Thualman, had removed the signs Hill posted, caused the leak at the Tank Battery, and had stolen the pump and stripped the rods from Well No. 1. The President of Hill did not have sufficient time to deal with all of these problems due to the terminal illness of his father. Hill has made some attempt to correct the problems, and contracted with James Hearn, an equipment operator, to remediate the spill at the tank battery. Hill Exhibit #1, a copy of an invoice indicating the expenditure of \$200 to cover oil spills on the Pena #1 Lease, was admitted into evidence.

Counsel for Hill also pled that the elder Hill is a wealthy man with a large estate and that there has been a time-consuming battle between his wife and sons over the potential division of the estate. Hill argues that, despite its many distractions, it intends to produce Well No. 1 on the Pena #1 Lease and that it has obtained a one month extension of its lease in order to re-equip and produce the subject well. Hill offered to late file three exhibits: 1.) the extension to its lease, 2.) the bill for its signs (in the amount of \$42) which it alleges were destroyed by Thualman, and 3.) a theft report filed with the sheriff of the county concerning the theft of the pump and the rods from Well No. 1 on the Pena #1 Lease.

#### **APPLICABLE AUTHORITY**

Statewide Rule 3(1) requires the posting of signs and identification in English, which display clearly legible and correct information, with letters and numbers at least one inch in height. Statewide Rule 3(1) requires the posting of such a sign at the principal entrance of the property, which must show the name of the property as carried on the records of the Commission, the name of the operator, and the number of acres in the property. Statewide Rule 3(2) requires the posting of such a sign at each well site, which must show the name of the property, the name of the operator and the well number.

Statewide Rule 8(d)(1) prohibits the discharge of oil and gas wastes without a permit.

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.

#### EXAMINER'S OPINION

This docket is one of four that were heard against Hill Production Company No. 2 on November 17, 2005 (see also Docket Nos. 01-0242112, 01-0240803 and 01-0243770). In the present docket, Hill asked permission to submit three late-filed exhibits and was given until November 28, 2005 to do so. The late-filed exhibits were never received. The evidence shows that Hill did not respond, with one exception discussed in the following paragraph, to numerous warnings from the District Office regarding inspections of the lease and the necessity of posting signs, remediating an oil spill and correcting a Statewide Rule 14(b)(2) violation on the Pena #1 (12660) Lease, Well No. 1.

The record shows that Hill spent \$200 on September 21, 2005, to have a contractor bring in a back-hoe and cover the oil spill with fresh soil. Enforcement contended that merely covering up a spill is not remediation and that Hill should at least be fined for the time out of compliance, which would have occurred from at least March 24, 2004 through at least September 6, 2005, a period exceeding one year. The examiner agrees.

There is no evidence in the record that Hill has corrected the Statewide Rule 3 violation, nor any evidence that Hill has corrected the Statewide Rule 14(b)(2) violation on the Pena #1 (12660) Lease, Well No. 1. Hill asserts that a tank truck operator is the party responsible for the lease violations. A search on the Commission mainframe does not reveal any operator or officer named Thulman or even Thaulman. However, Hill seems to be referring to David Thalman, of Thalman, David Vac Service, Inc. (Operator # 851060), who was the successor operator to Hill on another lease that is the subject of a related docket against Hill [the C. Pena (05004) Lease in Oil & Gas Docket No. 01-0243770]. Any problems between Hill and Thalman affecting lease operations or compliance should have been taken to civil court or the local sheriff. The evidence in the record shows that Hill is the Commission-recognized operator of the subject lease and is the party responsible for the regulatory compliance of the lease during the time of the violations that Enforcement alleges.

The examiner hereby takes official notice of a Commission record, the "14(b)(2) Well History Inquiry" screen on the Commission mainframe. This shows that the Statewide Rule 14(b)(2) extension for Well No. 1 on the Pena #1 (12660) Lease was denied on April 12, 2005. Pursuant to Statewide Rule 14(b)(2)(C)(ii), Hill had 30 days to plug the subject well or request a hearing. Hill has done neither and has been in violation of Statewide Rule 14 since 30 days after April 12, 2005, or May 12, 2005.

Commission Form P-5 filings indicate that Steven Christopher Hill was the President of Hill throughout the period in which Hill violated Statewide Rules 3, 8 and 14. Although Ed Raney

represented to Enforcement that he was not an officer in Hill, Commission Form P-5s indicate otherwise. Mr. Raney did not appear at the hearing nor did counsel for Hill raise the issue of Raney's officer status. Enforcement recommends that Raney be recognized as an officer of Hill at the time of the violations. The examiner agrees. A Form P-5 filed with the Commission on February 13, 2004 shows Ed Raney as Vice-President of Hill. He was not removed as an officer of Hill until the next Form P-5 filing, received by the Commission on January 25, 2005 and approved February 9, 2005, at which time Robert D. Luna became Vice-President. Mr. Raney's tenure as an officer with Hill coincides in part with the period of Hill's violation of Statewide Rules 3, 8 and 14. The term as Vice-President of Robert D. Luna, beginning February 9, 2005, also coincides in part with the period of Hill's violation of Statewide Rules 3, 8 and 14.

The examiner agrees with Enforcement's recommended penalties of \$250 for the violation of Statewide Rule 3(1), \$500 for the period of noncompliance with Statewide Rule 8(d)(1) at the Tank Battery of the Pena #1 (12660) Lease, and \$2,000 for the Statewide Rule 14(b)(2) violation of Well No. 1 on the Pena #1 (12660) lease. The examiner also finds that Steven Christopher Hill, Ed Raney, and Robert D. Luna were officers in Hill at the time of the violations of Commission Statewide Rules. Hill's violations were serious and relate to safety and the prevention of pollution.

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 Hill Production Company No. 2 (Operator No. 386969) ("Hill") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Hill appeared through its counsel, Attorney Lloyd Muennink. Notice was also served on Hill's President, Steven Christopher Hill, and on the Vice-President, Robert D. Luna. Additionally, notice was served on Ed Raney, reported in a previous P-5 filing (dated February 27, 2004) to be the Vice-President of Hill.
2. Commission records show that Hill filed its initial Commission Form P-5 (Organization Report) with the Commission on February 17, 2004, approved February 27, 2004. The most recent Organization Report renewal for Hill was filed on January 25, 2005 and approved by the Commission on February 9, 2005. In its initial filing, Steven Christopher Hill was reported as the President of Hill and Ed Raney was reported as Vice-President. In the second Form P-5 filing, approved by the Commission on February 9, 2005, Ed Raney was replaced as Vice President of Hill by Robert D. Luna.
3. Hill was recognized as the operator of the Pena #1 (12660) Lease, Well No. 1, Pearsall (Austin Chalk) Field, ("subject lease" and/or "subject well") after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was effective March 1, 2004 and approved by the Commission on March 15, 2004.
4. Commission inspections of the Pena #1 (12660) Lease made on March 10, 2004, April 21, 2004, May 28, 2004, July 6, 2004, July 23, 2004, September 13, 2004, October 18, 2004,

May 18, 2005, September 6, 2005 and October 24, 2005 showed the signs and identification required by Statewide Rule 3(1) and (2) to be posted at the lease entrance and well site to be missing.

5. Commission records indicate the Pena #1 (12660) Lease has been out of compliance with Commission Statewide Rule 3(1) from on or before March 10, 2004 to the present.
6. Commission District inspections of the subject lease made on March 24, 2004 showed that Hill had caused or allowed an unauthorized discharge of oil, affecting an area approximately 8' by 2' at the tank battery, with approximately one quarter barrel of free standing oil. Followup District inspections on April 24, 2004, May 28, 2004, July 6, 2004, July 23, 2004, September 13, 2004, October 18, 2004, May 18, 2005, and September 6, 2005 showed no change and no remediation. A Commission District inspection on October 24, 2005 showed that an attempt at remediation had been made at the tank battery, with fresh soil having been brought in to cover the old oil spills.
7. Commission records indicate the Pena #1 (12660) Lease, Well No. 1, at the tank battery, was out of compliance with Statewide Rule 8(d)(1) from March 24, 2004 through at least September 6, 2005, a period greater than one year.
8. Commission District inspections made on April 21, 2004, May 28, 2004, July 6, 2004, July 23, 2004, September 6, 2005, and October 24, 2005, and reports filed by Respondent with the Commission reflecting zero production from April 1, 2003 through November 30, 2004, and the absence of production reports filed by Respondent since December, 2004 show that the Pena #1 (12660) Lease, Well No. 1 has been inactive for a period greater than one year. Production from the well ceased on or before March 31, 2003. The last two inspection reports cited showed that the well had been stripped and the rods removed.
9. The SWR 14(b)(2) extension for Well No. 1 on the Pena #1 (12660) Lease was denied on April 12, 2005. Well No. 1 has been out of compliance with SWR 14(b)(2) since 30 days after that date, or May 12, 2005.
10. Steven Christopher Hill, as President of Hill Production Company No. 2 (Operator No. 386969) was an officer in a position of ownership and control of at the time of Hill's violations of Statewide Rules 3, 8 and 14.
11. Ed Raney, as Vice-President of Hill Production Company No. 2 (Operator No. 386969) from at least February 27, 2004 through February 9, 2005, was an officer in a position of ownership and control of Hill at the time of its violations of Statewide Rules 3, 8 and 14.
12. Robert D. Luna, as Vice-President of Hill Production Company No. 2 (Operator No. 386969) after February 9, 2005, was an officer in a position of ownership and control of Hill at the time of its violation of Statewide Rules 3, 8 and 14.
13. The violations of Statewide Rules 3, 8 and 14 committed by Hill were serious and relate to safety and the prevention of pollution.

14. The estimated cost to plug the subject well is \$10,900.00.

**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. Hill Production Company No. 2 (Operator No. 386969) (“Hill”) is the operator of the Pena #1 (12660) Lease, Well No. 1, Pearsall (Austin Chalk) Field, LaSalle County, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Hill has the primary responsibility for complying with Statewide Rules 3, 8 and 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Pena #1 (12660) Lease, Well No. 1.
5. Hill violated Commission Statewide Rule 3(1) on the Pena #1 (12660) Lease, Well No. 1.
6. Hill violated Commission Statewide Rule 8(d)(1) on the Pena #1 (12660) Lease, Well No. 1.
7. Hill violated Commission Statewide Rule 14(b)(2) on the Pena #1 (12660) Lease, Well No. 1.
8. Steven Christopher Hill, Robert D. Luna and Ed Raney were persons in a position of ownership and control of Hill Production Company No. 2 (Operator No. 386969), as defined by Texas Natural Resources Code § 91.114, during the time period of the violations of Commission rules committed by the Respondent.
9. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
10. As officers at the time of the violations of Commission rules related to safety and the control of pollution, Steven Christopher Hill, Robert D. Luna and Ed Raney and any other organization in which any of them may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code §91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.
11. The documented violations committed by respondent are a hazard to the public health and

demonstrate a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).

**RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Hill Production Company No. 2 to 1.) plug or place in compliance with Commission Statewide Rules 3, 8 and 14 the Pena #1 (12660) Lease, Well No. 1, and 2.) pay an administrative penalty of \$2,750.

The examiner also recommends that Steven Christopher Hill, Robert D. Luna and Ed Raney be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

Marshall Enquist  
Hearings Examiner