

June 30, 2006

OIL AND GAS DOCKET NO. 01-0240803

**ENFORCEMENT ACTION AGAINST HILL PRODUCTION COMPANY NO. 2 (OPERATOR NO. 386969)
FOR VIOLATIONS OF STATEWIDE RULES ON THE MIESCH-ST. KATRINA (13937) LEASE, WELL
NO. 1 AND TANK BATTERY, NINE YEAR (GEORGETOWN) FIELD, LASALLE COUNTY, TEXAS.**

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

COMPLAINT FILED:	November 10, 2004
NOTICE OF HEARING:	October 11, 2005
DATE CASE HEARD:	November 17, 2005
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	June 30, 2006
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 respondent, Hill Production Company No. 2 (hereinafter "Hill") violated Statewide Rule 3(2) on the Miesch-St.Katrina (13937) Lease, Well No. 1, Nine Year (Georgetown) Field, LaSalle County, Texas; and
2. Whether respondent, Hill, violated Statewide Rule 14(b)(2) on the Miesch-St.Katrina (13937) Lease, Well No. 1, Nine Year (Georgetown) Field, LaSalle County, Texas; and

3. Whether respondent, Hill, violated Statewide Rule 36(d) on the Miesch-St.Katrina (13937) Lease, Well No. 1, Nine Year (Georgetown) Field, LaSalle County, Texas, by failing to file, as the new operator of the well, a Commission Form H-9 certifying the well and failing to notify the Commission within 30 days of abandonment or cessation of operations in a certificated area; and
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, 14 and 36; and
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 \$3,250.00, which is \$250 for one violation of Statewide Rule 3(2), \$2,000 for one violation of Statewide Rule 14(b)(2), and \$1,000 for one violation of Statewide Rule 36(d). Hill has made a prepayment of \$1,650.00 which Enforcement has credited against the administrative penalty due, such that the penalty presently requested is \$1,600.00. 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, as Hill Production Company No. 2 (Operator No. 386969) was recognized as the operator of the Miesch-St. Katrina (13937) 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. Hill has a prior history on this lease. In a previous incarnation, Hill, as Hill Production Company (Operator No. 387985), designated itself operator of the Miesch-St. Katrina (13937) Lease, Well No. 1, by filing a Commission Form P-4, effective December 1, 2002, approved March 10, 2003.

Commission Inspections

Commission District Office inspections of the subject lease made on March 10, 2004, April 21, 2004, September 2, 2004, September 29, 2004, February 23, 2005, April 12, 2005, and September 7, 2005 showed the sign or identification required by Statewide Rule 3(2) to be posted at the well site to be missing.

Commission District Office inspections made on March 10, 2004, April 21, 2004, September 2, 2004, September 29, 2004, February 23, 2005, April 12, 2005, and September 7, 2005 and zero production reported to the Commission from July 1, 2002 through July 31, 2004, with no production reports filed thereafter, show that the Miesch-St. Katrina (13937) Lease, Well No. 1, has been inactive for a period greater than one year. Production from the well ceased on or before June 30, 2002. 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). The subject well has been denied a Statewide Rule 14(b)(2) extension because of violations of Commission rules.

A Commission District Office inspection of the Miesch-St. Katrina (13937) lease made on March 10, 2004, indicates that Well No. 1 is a sour gas well. District Office inspection reports made on April 21, 2004, September 2, 2004, September 29, 2004, February 23, 2005, April 12, 2005, and September 7, 2005 indicate the well is abandoned with no means of production. Commission records show that an H-9 was filed and approved by the Commission on July 20, 1995, by a prior operator (Miesch Exploration Corporation - Operator No. 566705) showing a maximum H₂S concentration of 34,850 ppm. No H-9 has been filed by the Respondent, Hill, and Hill has failed to notify the Commission of cessation or abandonment of operations in a certificated hydrogen sulfide area.

ENFORCEMENT’S POSITION

Enforcement argues that the subject lease is out of compliance with Statewide Rule 3(2) due to a lack of proper signage at the well site as shown by a series of District Office inspections made from March 10, 2004 through September 7, 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.

Enforcement also notes the subject well is out of compliance with Statewide Rule 14(b)(2) because production ceased on or before June 30, 2002 and no SWR 14(b)(2) extension is in effect for the subject well as allowed by Statewide Rule 14(b)(2)(A).

Statewide Rule 36(a) requires each operator who conducts operations to provide safeguards to protect the general public from the harmful effects of hydrogen sulfide. Statewide Rule 36(b)(10) defines potentially hazardous volumes of hydrogen sulfide as “a volume of hydrogen sulfide gas of such concentration that: (A) the 100 ppm radius of exposure is in excess of 50 feet and includes any part of a ‘public area’ except a public road; or (B) the 500 ppm radius of exposure is greater than 50 feet and includes any part of a public road; or (C) the 100 ppm radius of exposure is greater than 3,000 feet.” Statewide Rule 36(d) requires that a Commission Form H-9 (Hydrogen Sulfide Certificate of Compliance) be filed 30 days prior to commencement of a drilling or workover operation on wells where a certificate of compliance is required for the well, or if there is a modification of an existing operation or facility resulting in a change not described by the existing certificate. Certificates are non-transferable, and a new operator of a system or any acquired element of a system or operation shall be required to certificate that operation. The operator shall notify the Commission within 30 days following cessation or abandonment of operations in a certificated area. Hill did not file an H-9 with the Commission to certificate the operation when it took over the P-4 for the lease and its H₂S-producing well, nor did it notify the Commission of cessation or abandonment of operations on the subject lease.

In pre-hearing 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 and 36 on the Miesch-St. Katrina (13937) Lease, Well No. 1.

The estimated cost to plug the subject well is \$23,800.

HILL'S POSITION

Counsel for Hill argued, in unsworn statements, that Hill has been locked out of the subject lease and would plug the subject well if only it could gain access to the lease. Hill represents that it has contacted the Sheriff of the county about the problem, but that the Sheriff states budgetary constraints prevent him from intervening. Counsel for Hill introduced an exhibit indicating that Fesco, Ltd. had entered the lease and taken samples to determine the H₂S content of the well. The Fesco bill is dated September 21, 2005. Counsel for Hill indicated the Form H-9 required by the Commission would be filed soon. The examiner requested that Hill file a copy of the H-9 as a late-filed exhibit by November 28, 2005.

Counsel for Hill also offered the arguments raised in the three companion dockets (01-0242108, 01-0242112 and 01-0243770), stating 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. This distraction has resulted in some neglect of Hill's leases.

APPLICABLE AUTHORITY

Statewide Rule 3(2) requires the posting of a sign or identification at each well site, which must show the name of the property, the name of the operator and the well number.

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.

Statewide Rule 36(d) requires that a Commission Form H-9 (Hydrogen Sulfide Certificate of Compliance) be filed 30 days prior to commencement of a drilling or workover operation on wells where a certificate of compliance is required for the well, or if there is a modification of an existing operation or facility resulting in a change not described by the existing certificate. Certificates are non-transferable, and a new operator of a system or any acquired element of a system or operation is required to certificate that operation. The operator must notify the Commission within 30 days following cessation or abandonment of operations in a certificated area.

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, 01-0242108 and 01-0243770). In the present docket, Hill asked permission to submit a late-filed exhibit, a copy of a Form H-9 for the subject well and was given until November 28, 2005 to do so. 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, correcting a Statewide Rule 14(b)(2) violation on the Miesch-St. Katrina (13937) Lease, Well No. 1 and filing a Form H-9 for the subject well.

Although the late-filed exhibit was never sent to the examiner, Hill did file an H-9 for the subject lease and well with the Commission in Austin date-stamped November 21, 2005. The examiner hereby takes Official Notice of that H-9 and takes Official Notice of a Commission record, the "Certificate of Compliance Statewide Rule 36 H₂S (sic) Inquiry" screen on the Commission mainframe. This shows that a Form H-9 for the subject lease was approved by the Commission on December 8, 2005. The Form H-9 indicates 17,671 ppm of H₂S for the subject well. Hill had become the operator of the subject well by P-4 transfer effective March 1, 2004. As H₂S Certificates of Compliance are non-transferrable (see Statewide Rule 36(d)(1)(M)), Hill was obligated to certificate the subject well after acquiring it. Hill did not do so for more than a year and a half. Additionally, Hill was required, pursuant to Statewide Rule 36(d)(1)(J), to notify the Commission within 30 days of cessation or abandonment of operations in a certificated area. Hill did not do this. In view of the serious public safety implications of H₂S associated operations, the Commission's detailed regulatory requirements for H₂S associated operations and Hill's neglect in complying with Statewide Rule 36, the examiner agrees with Enforcement's request for a \$1,000 administrative penalty for Hill's violation of Statewide Rule 36. Hill's action in filing the Form H-9 over a year and a half after taking over the subject lease and well is too little, too late.

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 Miesch-St. Katrina (13937) Lease, Well No. 1. Hill asserts that a tank truck operator, David Thalman, of Thalman, David Vac Service, Inc. (Operator # 851060) is responsible for the sign violations on the subject lease. 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 was the Commission-recognized operator of the subject lease during the time of the violations pled by Enforcement and is the party responsible for the regulatory compliance of the lease during the time of these violations.

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 Miesch-St. Katrina (13937) Lease was denied on February 9, 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 February 9, 2005, or March 13, 2005.

The examiner hereby takes Official Notice of a Commission Record, the "P-4 Inquiry" screen on the Commission mainframe. This shows that the Miesch-St. Katrina (13937) Lease was taken over by David Thalman Vac Service (Operator No. 851060) by P-4 effective September 9, 2005 and approved by the Commission on March 29, 2006. Due to the subsequent P-4 transfer of the Miesch-St. Katrina (13937) Lease to another operator, Hill was technically out of compliance with Statewide Rule 14(b)(2) from March 13, 2005 only through September 9, 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, 14 and 36. Although Ed Raney represented to Enforcement that he was not an officer in Hill, Commission Form P-5s indicate otherwise. Mr. Raney, although served with notice of the hearing, 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 and 36. 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, 14 and 36.

The examiner agrees with Enforcement's recommended penalty of \$3,250 less the prepaid amount of \$1,650, for a total penalty in this docket of \$1,600.00 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 the President, Steven Christopher Hill, of Hill and on the Vice-President, Robert D. Luna, of Hill. 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 Miesch-St. Katrina (13937) Lease, Well No. 1 (a sour gas, or H₂S well), Nine Year (Georgetown) 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. The subject well is a sour gas well producing natural gas with an H₂S concentration of at least 17,671 ppm.
5. Commission inspections of the Miesch-St. Katrina (13937) Lease made on March 10, 2004, April 21, 2004, September 2, 2004, September 29, 2004, February 23, 2005, April 12, 2005 and September 7, 2005 showed the signs and identification required by Statewide Rule 3(2) to be posted at the well site to be missing.
6. The Miesch-St. Katrina (13937) Lease has been out of compliance with Commission Statewide Rule 3(2) from on or before March 10, 2004 to the present.
7. Commission District inspections made on March 10, 2004, April 21, 2004, September 2, 2004, September 29, 2004, February 23, 2005, April 12, 2005 and September 7, 2005, and either reports filed by Respondent with the Commission reflecting zero production from July 1, 2002 through July 31, 2004, and the absence of production reports filed by Respondent thereafter show that the Miesch-St. Katrina (13937) Lease, Well No. 1 is inactive and has been inactive for a period greater than one year. Production from the well ceased on or before June 30, 2002.
8. Well No. 1 on the Miesch-St. Katrina (13937) Lease does not have a plugging extension.

The plugging extension was denied on February 9, 2005.

9. Well No. 1 on the Miesch-St. Katrina (13937) Lease was out of compliance with Statewide Rule 14(b)(2) beginning on the date 30 days after its plugging extension was denied on February 9, 2005, or on and after March 13, 2005.
10. Hill did not file a Commission Form H-9 promptly after taking over the Miesch-St. Katrina (13937) Lease, Well No. 1 (effective March 1, 2004), did not certificate the well, and did not notify the Commission of the cessation or abandonment of operations on the lease.
11. Hill filed a Commission Form H-9 for the Miesch-St. Katrina (13937) Lease, Well No. 1 with the Commission on November 21, 2005, approved December 10, 2005.
12. Well No. 1 on the Miesch-St. Katrina (13937) Lease was transferred to David Thalman Vac Service (Operator No. 851060) by P-4 effective September 9, 2005, and approved by the Commission on March 29, 2006.
13. Hill was out of compliance with Statewide Rule 14(b)(2) on the Miesch-St. Katrina (13937) Lease, Well No. 1 from March 13, 2005 through September 9, 2005.
14. 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 Hill at the time of Hill's violations of Statewide Rules 3, 14 and 36.
15. 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 and 36.
16. Robert D. Luna, as Vice-President of Hill Production Company No. 2 (Operator No. 386969) from February 9, 2005 until it became delinquent, was an officer in a position of ownership and control of Hill at the time of its violation of Statewide Rules 3, 14 and 36.
17. The violations of Statewide Rules 3, 14 and 36 committed by Hill were serious and relate to safety and the prevention of pollution.
18. The estimated cost to plug the subject well is \$23,800.00.

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”) was the operator of the Miesch-St. Katrina (13937) Lease, Well No. 1, Nine Year (Georgetown) Field, LaSalle County, during the time of the violations alleged by Enforcement, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Hill had the primary responsibility for complying with Statewide Rules 3, 14 and 36, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Miesch-St. Katrina (13937) Lease, Well No. 1.
5. Hill violated Commission Statewide Rule 3(2) on the Miesch-St. Katrina (13937) Lease, Well No. 1.
6. Hill violated Commission Statewide Rule 14(b)(2) on the Miesch-St. Katrina (13937) Lease, Well No. 1.
7. Hill violated Commission Statewide Rule 36(d) on the Miesch-St. Katrina (13937) Lease, Well No. 1.
8. Steven Christopher Hill, Robert D. Luna and Ed Raney were persons in a position of ownership or 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 pay an administrative penalty of \$3,250.00, less \$1,650 already paid, for a total remaining penalty of \$1,600.00.

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