

OIL & GAS DOCKET NO. 01-0242235

ENFORCEMENT ACTION AGAINST KELLY H. BAXTER, SOLE PROPRIETOR, BAXTER, KELLY H. OIL AND GAS CO. (OPERATOR NO. 056536) FOR VIOLATIONS OF STATEWIDE RULES ON THE WEST COAST FARMS (05013) LEASE, WELL NO. A 2, PEARSALL (AUSTIN CHALK) FIELD, FRIO COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Reese B. Copeland
Keith Barton

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Jamie Nielson

RESPONDENT:

Kelly H. Baxter Oil and Gas Co.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF ORIGINAL COMPLAINT:

August 3, 2005

DATE OF HEARING:

October 13, 2005

HEARD BY:

James M. Doherty, Hearings Examiner

DATE PFD CIRCULATED:

October 19, 2005

STATEMENT OF THE CASE

This proceeding was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent Kelly H. Baxter, Sole Proprietor, Kelly H. Baxter Oil and Gas Co. ("Baxter") should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the West Coast Farms (05013) Lease, Well No. A 2, Pearsall (Austin Chalk) Field, Frio County, Texas;
2. Whether Baxter 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 plug the subject well or otherwise place the well in compliance with Statewide Rule 14(b)(2);

3. Whether Baxter should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject well; and
4. Whether any violations of Statewide Rule 14(b)(2) by Baxter should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

A hearing was held on October 13, 2005. Reese B. Copeland, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Jamie Nielson, attorney, appeared to represent Baxter. Enforcement’s certified hearing file was admitted into evidence.

APPLICABLE LAW

The operator of a well must properly plug the well when required and in accordance with the Commission’s rules. *See* TEX. NAT. RES. CODE ANN. §89.011(a). The Commission’s Statewide Rule 14(b)(2) provides that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed.

Statewide Rule 14(c)(2) provides that as to any well for which the most recent Commission-approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning the plugging of wells. The presumption of responsibility may be rebutted only at a hearing called for the purpose of determining plugging responsibility.

DISCUSSION OF THE EVIDENCE

Baxter is a sole proprietorship, and Kelly H. Baxter is owner. Baxter’s Form P-5 organization report is currently active. The examiner has officially noticed the Commission’s P-5 Financial Assurance Inquiry database reflecting that Baxter has filed a \$50,000 letter of credit as its financial assurance.

Baxter was designated operator of the West Coast Farms (05013) Lease (“subject lease”), Well No. A 2 (“subject well”) by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance), which was approved September 19, 1995, effective September 1, 1995. Seventeen District Office inspections of the subject lease made between March 17, 1998, and June 29, 2005, disclosed that the subject well was inactive and not equipped to produce. No production for the subject well has been reported to the Commission since July 31, 1997. On nine separate occasions between June 25, 1998, and July 17, 2003, the District Office corresponded directly with Baxter, or sent Baxter copies of correspondence to Field Operations in Austin, notifying Baxter that the subject well was not in compliance with Statewide Rule 14(b)(2) and requesting compliance. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) for the subject well has been filed or approved, and no Statewide Rule 14(b)(2) plugging extension is in effect for the well.

Enforcement’s certified hearing file contains a letter dated July 10, 2003, from an attorney representing Baxter which stated that Baxter had been unable to obtain a new oil and gas lease covering the subject property. A plugging extension for the subject well was canceled on March 19, 2003, based on Baxter’s failure to provide evidence that it had a good faith claim of right to operate the well. The examiner has officially noticed Commission 14(b)(2) Well History Inquiry and H-15 Data Inquiry databases reflecting

that a plugging extension for the subject well has been denied based on Baxter's failure to demonstrate a good faith claim and a failed H-15 test of the subject well on July 20, 2002, which showed the top of fluid in the wellbore to be at 3,150 feet as compared to the deepest usable quality water strata at 3,650 feet. The subject lease was severed on November 13, 2002, based on the failed H-15 test, and this severance has not been resolved.

On February 6, 1999, Baxter sent the District Office correspondence stating that the subject well would be placed into compliance before April 30, 1999. On July 30, 2001, Baxter sent the District Office correspondence stating that the subject well would be plugged in the near future. On August 6, 2001, Baxter filed a Form W-3A (Notice of Intention to Plug and Abandon) for the subject well, indicating that the anticipated plugging date was August 30, 2001. On June 27, 2003, Baxter filed another Form W-3A for the subject well indicating that the anticipated plugging date was July 15, 2003. On October 28, 2003, an attorney representing Baxter sent correspondence to Field Operations stating that Baxter would plug the subject well in January 2004. On April 30, 2004, Baxter sent correspondence to Field Operations stating that plugging of the subject well would begin on or before May 28, 2004. It appears from Enforcement's certified hearing file and from statements of counsel at the hearing that Baxter made an attempt to plug the subject well during June 2004, but encountered downhole obstructions and abandoned the plugging attempt. Baxter plugged three other wells on the subject lease in November and December 2003, but has not plugged Well No. A 2.

An affidavit of Keith Barton, P.E., Field Operations, included in Enforcement's certified hearing file stated that: (1) any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface; (2) holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface; and (3) uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Baxter did not present any evidence. His attorney stated at the hearing that; (1) Baxter did not dispute that he is the operator of the subject well; (2) Baxter has already invested money in attempting to plug the well; (3) financial constraints have prevented Baxter from completing the plugging of the well; and (4) the well does not pose a threat of pollution.

EXAMINER'S OPINION

Enforcement established that the subject well has been inactive for more than one year, has not been plugged, and does not have a plugging extension. Enforcement also established that Baxter is the operator with the responsibility to plug the subject well. These facts have not been disputed by Baxter. The examiner thus concludes that Baxter violated Statewide Rule 14(b)(2).

The examiner recommends that Baxter be ordered to plug the subject well and pay an administrative penalty of \$2,000. The recommendation that the well be ordered to be plugged is based on the fact that the well has been inactive for more than eight years, Baxter does not have a currently effective oil and gas lease covering the subject property, and the well cannot qualify for a plugging extension.

In recommending an administrative penalty in the amount of \$2,000, the examiner has considered whether Baxter has a history of previous violations, the seriousness of the violation, any hazard to the health

or safety of the public, and whether Baxter has demonstrated good faith, all as required by §81.0531 of the Texas Natural Resources Code. Baxter cannot be said to have demonstrated good faith, because he failed to respond to multiple requests from the District Office to plug the well. The violation committed by Baxter is serious and presented a hazard to the health and safety of the public because of the threat of pollution of usable quality water presented by unplugged wells. The recommended penalty conforms to the standard penalties in the recommended standard penalty schedule for enforcement cases.

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. Kelly H. Baxter, Sole Proprietor, Baxter, Kelly H. Oil and Gas Co. (“Baxter”) was given at least ten (10) days notice of this proceeding by certified mail, addressed to Baxter’s most recent Form P-5 Organization Report address. Baxter appeared at the hearing through his attorney.
2. Baxter is a sole proprietor. As of the date of the hearing, Baxter’s organization report was active, and Baxter had on file financial security in the form of a \$50,000 letter of credit.
3. Enforcement does not allege that Baxter has a history of prior Commission orders entered against him for violations of Commission rules.
4. Kelly H. Baxter is sole proprietor and owner of Baxter and was a person in a position of ownership or control of Baxter at the time the violation involved in this docket occurred.
5. The violation committed by Baxter is a violation of a Commission rule related to safety and the prevention or control of pollution.
6. Baxter designated himself to the Commission as the operator of the West Coast Farms (05013) Lease, Well No. A 2 (“subject well”), Pearsall (Austin Chalk) Field, Frio County, Texas, by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) which was approved September 19, 1995, effective September 1, 1995.
7. The subject well has been inactive for more than one year and has not been plugged.
 - (a) The well was inactive and unplugged as of District Office inspections on seventeen separate dates between March 17, 1998, and June 29, 2005.
 - (b) No production has been reported to the Commission for the well since July 31, 1997.
 - (c) No Form W-3 (Plugging Record) or Form W-15 (Cementing Affidavit) for the well has been filed with the Commission.
8. No Statewide Rule 14(b)(2) plugging extension is in effect for the subject well. On March 19, 2003, a plugging extension for the well was canceled based on Baxter’s inability to demonstrate a good faith claim of a right to operate the well. The well does not qualify for a plugging extension because

Baxter does not have an effective oil and gas lease covering the subject property, and because of a failed H-15 test on July 20, 2002.

9. Between June 25, 1998, and July 17, 2003, the District Office corresponded with Baxter on at least nine separate occasions requesting compliance with Statewide Rule 14(b)(2) with respect to the subject well. These communications with Baxter did not result in compliance.
10. The subject well failed an H-15 test on July 20, 2002. This H-15 test showed that the top of fluid in the well was at 3,150 feet. The deepest usable quality water strata in the well is at 3,650 feet. This H-15 problem has not been resolved. Holes or leaks may develop in cased wells, and the subject well presents a threat of pollution of usable quality water due to the possibility of migration of saltwater or other oil and gas waste from the wellbore into usable quality water strata.
11. Usable quality groundwater in the area was likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well during the period of the well's noncompliance with Statewide Rule 14(b)(2). Unplugged wellbores constitute a cognizable threat to the public health and safety because of the risk of pollution.

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. Kelly H. Baxter, Sole Proprietor, Baxter, Kelly H. Oil and Gas Co. ("Baxter") is the operator of the West Coast Farms (05013) Lease, Well No. A 2 ("subject well"), Pearsall (Austin Chalk) Field, Frio County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Baxter has the primary responsibility for complying with Statewide Rule 14 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject well.
5. Baxter violated Statewide Rule 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] by failing to timely plug the subject well or otherwise comply with Statewide Rule 14(b)(2). The subject well has been out of compliance with Statewide Rule 14(b)(2) since at least March 19, 2003.
6. The documented violation by Baxter constitutes an act deemed serious and a hazard to the public health, and demonstrates a lack of good faith within the meaning of §81.0531(c) of the Texas Natural Resources Code.
7. As Sole Proprietor and owner of Baxter at the time Baxter violated a Commission rule related to safety and the prevention or control of pollution, Kelly H. Baxter, and any organization in which he may hold a position of ownership or control, is subject to the restrictions of §91.114(a)(2) of the

Texas Natural Resources Code.

RECOMMENDATION

The examiner recommends that the Commission adopt the attached final order requiring that Kelly H. Baxter, Sole Proprietor, Baxter, Kelly H. Oil and Gas Co.:

1. Plug, in compliance with Commission rules, the West Coast Farms (05013) Lease, Well No. A 2, Pearsall (Austin Chalk) Field, Frio County, Texas; and
2. Pay an administrative penalty in the amount of TWO THOUSAND DOLLARS (\$2,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner