

June 30, 2006

OIL AND GAS DOCKET NO. 01-0243770

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**ENFORCEMENT ACTION AGAINST HILL PRODUCTION COMPANY NO. 2 (OPERATOR NO. 386969) FOR VIOLATIONS OF TEXAS NATURAL RESOURCES CODE §91.143 ON THE C. PENA (05004) LEASE, WELL NO. 2 AND TANK BATTERY, 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>	July 28, 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 the provisions of Texas Natural Resources Code §91.143 by filing false reports (specifically, Forms P-1, Producer's Monthly Report of Wells) on the C. Pena (05004) Lease, Well No. 2 and tank battery, Pearsall (Austin Chalk) Field, LaSalle County, Texas; and

2. 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 statute; and
3. 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
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.

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 by filing corrected Form P-1 Production Reports, and pay a total administrative penalty of \$3,000.00, which is for six violations of Tex. Nat. Res. Code §91.143(a)(1) at \$500 each. The examiner agrees with Enforcement’s recommendation.

### 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 Form P-5 address, and on Steven Christopher Hill, President; Margaret Martin, Registered Agent for Hill, Ed Raney, Vice President, and Robert D. Luna, Vice-President.

Hill was recognized as the operator of the C. Pena (05004) Lease, Well No. 2, (“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 July 6, 2004, July 23, 2004 and August

17, 2004 found a saltwater leak affecting an area approximately 4' by 4', with 1/4 barrel of saltwater on the ground. By letter dated July 9, 2004, the District Office notified Hill of the SWR 8 violation concerning the saltwater spill and directed Hill to clean up the spill. After the second inspection revealed the problem had not been fixed, the District Office, by letter dated July 29, 2004, notified Hill that the lease would be severed if the problem was not resolved.

Commission inspections of the subject lease made on July 6, 2004, July 23, 2004, and August 17, 2004 showed that the wires had been disconnected from the pump motor. The well was incapable of producing and inactive. A followup inspection on October 14, 2004 showed that the motor had been removed. At that time, because prior District Office notifications of the saltwater spill violation had been ignored, Commission Seal No. 17324 was placed on the power box and Commission Seal No. 17275 was placed on the load line from the tank battery. Commission inspections on October 27, 2004, December 27, 2004 and February 26, 2005 showed that the seals were still in place and the well was inactive. A followup inspection on April 14, 2005 showed that the pumping unit had been removed and the Commission seals remained intact. A District inspection on September 22, 2005, found that Well No. 2 was still inactive.

Hill filed Form P-1 Production Reports with the Commission reporting 8 BO produced in October, 2004, 6 BO produced in November, 2004, 3 BO produced in December, 2004, 5 BO produced in January, 2005, 8 Bo produced in February, 2005 and 24 BO produced in March, 2005.

The August 17, 2004 inspection also found that the sign at the lease entrance gave incomplete information, a violation of Statewide Rule 3. An October 27, 2004 inspection found no sign at the entrance and an incomplete sign at the well. An inspection on December 27, 2004 found that there was no longer any sign on the lease, either at the lease entrance or the well.<sup>1</sup>

### **ENFORCEMENT'S POSITION**

Texas Natural Resources Code §91.143(a)(1) provides that a person may not make any report to the Commission, knowing that the report is false or untrue in a material fact. Enforcement argues that Hill filed six false P-1 Production Reports for the C. Pena (05004) Lease, Well No. 2 from October 1, 2004 through March 31, 2004. During this period, Commission District inspection reports indicate the subject well was either incapable of production or sealed in such a way that the well could not be produced without destruction of the seal.

Commission Statewide Rule 58(b) requires that for each calendar month, an operator who is a producer of crude oil shall file with the Commission the required form (Form P-1, Producer's Monthly Report of Wells). The instructions on the back of the form clearly state that the Form P-1 must be filed on a monthly basis for "all crude oil and casinghead gas produced". The instructions further state that "Column 5 is only for actual oil produced."

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<sup>1</sup> The SWR 8 saltwater spill violation and the SWR 3 sign violation listed under *Commission Inspections* were not pled.

By submitting false production reports for the subject lease and a well incapable of production, Hill knowingly submitted forms to the Commission containing information which was false or untrue in material fact, thereby violating Tex. Nat. Res. Code §91.143(a)(1).

### **HILL'S POSITION**

Counsel for Hill disputes Enforcement's false filing assertion and suggests there are alternative explanations for Hill's production reports. First, counsel for Hill asks what the movable balance on hand was. Second, counsel for Hill suggests that there may be a second well on the lease and that the reported production may reflect lease production and not just production from Well No. 2. Third, counsel for Hill raises the possibility that the well may have flowed by itself, without the necessity of a pump or motor. Counsel for Hill requested an opportunity to look into the matter further and late-file a Statement on behalf of Hill explaining the apparent discrepancy between Enforcement's allegations that the well was incapable of production and Hill's production reports. Hill was granted permission to late-file its explanation by November 28, 2005.

Counsel for Hill made the preceding comments in unsworn statements, with no indication of any personal knowledge as to his speculation. No witness appeared on behalf of Hill to give testimony defending against Enforcement's allegations.

### **APPLICABLE AUTHORITY**

Texas Natural Resources Code §91.143(a)(1) provides that a person may not make or subscribe any application, report or other document required or permitted to be filed with the Commission, knowing that the application, report or other document is false or untrue in a material fact. Texas Natural Resources Code §91.143(e) provides that the Commission may impose an administrative penalty on a person who violates the statute, with the penalty amount not to exceed \$1,000 per violation.

### **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. 01-0242108, 01-0240803 and 01-0242112). In the present docket, Hill asked permission to submit a late-filed statement and was given until November 28, 2005 to do so. The late-filed statement was never received.

Hill's attorney suggested that the amount of the movable balance was relevant to the case at hand. Certainly, the movable balance increased with each production filing Hill made, but the veracity of that figure is the subject of this hearing. Enforcement's complaint goes to the truthfulness or falsity of the production reports filed by Hill. Enforcement has already noted that the load line from the tank battery was placed under Commission Seal No. 17275. The load line is the line the gatherer would use to load his truck, which would be prevented by the seal. With the load line sealed, the movable balance could only increase if Hill's production reports were accurate.

It is not possible that Hill's production reports for the C. Pena (05004) Lease represent lease

production from a well other than Well No. 2. Commission records show only two wells ever on the C. Pena (05004) Lease, which were Well No. 1 and Well No. 2. Well No. 1 was plugged on August 6, 2002.

Hill's attorney also raises the possibility that the well flowed naturally, accounting for the production reported. The possibility that the well flowed naturally, without the aid of a pump or pump motor is shown to be false by District Office inspection reports. On August 17, 2004, the District inspection report showed that the inspector gauged both oil tanks on the lease. Production Tank 113584 gauged 1' and 11" and Production Tank 113585 gauged 1' and 5". A later District inspection report, made on September 22, 2005, gauged the tanks again, and Production Tank 113584 still gauged 1' and 11" and Production Tank 113585 still gauged 1' and 5", indicating that no hydrocarbons had flowed into the tanks for over a year. That year includes the period of time, from October 1, 2004 through March 31, 2005, in which Hill filed the Form P-1 and Form PR Production Reports that Enforcement complains of. In September, 2004, Hill reported 199 barrels of oil on hand. Production reports filed from October, 2004 through March, 2005, if accurate, would have increased the movable balance by 54 barrels, to 253 barrels on hand, which would have changed the level of oil in the tanks. The level of oil in the tanks did not change and the Commission seal on the load line from the tanks remained intact, eliminating the possibility that oil placed in the tanks had been removed and trucked off.

As previously stated, the Movable Balance on hand in September, 2004 was reported as 199 BO. By Form P-1 and Form PR Production Reports filed with the Commission, Hill reported production of 8 BO in October, 2004, 6 BO in November, 2004, 3 BO in December, 2004, 5 BO in January, 2005, 8 BO in February, 2005 and 24 BO in March, 2005, for a total of 54 barrels of oil. The evidence clearly demonstrates that these were false reports.

Hill did not file production reports after August, 2005 and no disposition of oil was noted from March, 2004 through May, 2005. The subject lease was taken over by P-4 transfer by David Thalman Vac Service, Inc. (Operator No. 851060) effective October 30, 2005.

The examiner agrees with Enforcement's recommended penalty of \$3,000, being \$500 for each of the six false production reports filed by Hill on the C. Pena (05004) Lease, Well No. 2.

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 C. Pena (05004) Lease, Well No. 2, 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. District Office inspections of the subject lease made on July 6, 2004, July 23, 2004, and August 17, 2004 showed that the wires had been disconnected from the pump motor. The well was incapable of producing and inactive. A followup inspection on October 14, 2004 showed that the motor had been removed. At that time, because prior District Office notifications of a saltwater spill violation had been ignored, Commission Seal No. 17324 was placed on the power box and Commission Seal No. 17275 was placed on the load line from the tank battery. District Office inspections on October 27, 2004, December 27, 2004 and February 26, 2005 showed that the seals were still in place and the well was inactive. A followup inspection on April 14, 2005 showed that the pumping unit had been removed and the Commission seals remained intact.
5. Well No. 2 on the C. Pena (05004) Lease is the only remaining well of the two originally on the lease. Well No. 1 was plugged on August 6, 2002.
6. Hill Production Company No. 2 filed Form P-1 and Form PR Production Reports for the C. Pena (05004) Lease for October, 2004 through March, 2005. Each report showed production, varying from 3 to 24 barrels of oil. By Form P-1 and Form PR Production Reports filed with the Commission, Hill reported production of 8 BO in October, 2004, 6 BO in November, 2004, 3 BO in December, 2004, 5 BO in January, 2005, 8 BO in February, 2005 and 24 BO in March, 2005, for a total of 54 barrels of oil.
7. The Form P-1 and Form PR Production Reports filed by Hill for the C. Pena (05004) Lease from October, 2004 through March, 2005 do not show any disposition of the oil, indicating the oil was not removed from the lease.
8. As reported by Hill, the Movable Balance on hand on the C. Pena (05004) Lease, Well No. 2 was 199 BO in September, 2004. Six Form P-1 and Form PR production reports filed from October, 2004 through March, 2005 increased the Movable Balance to 253 BO on hand.
9. A District Office inspection report on August 17, 2004, showed that the inspector gauged both oil tanks on the lease. Production Tank 113584 gauged 1' and 11" and Production Tank 113585 gauged 1' and 5". A later District Office inspection report, made on September 22,

2005, found the Commission seal placed on the load line in October, 2004 remained intact. The tanks were gauged again, and Production Tank 113584 still gauged 1' and 11" and Production Tank 113585 still gauged 1' and 5", indicating that no hydrocarbons had flowed into the tanks for over a year.

10. Each of the production reports was signed by Steven Hill in his capacity as President of Hill Production Company No. 2 and in each he certified as to his authority to make the report and the accuracy of the reported production.
11. Production reports are reports required or permitted to be filed with the Commission pursuant to Tex. Nat. Res. Code Sections 85.059, 85.202(a)(7), 87.014, 88.011(a)(5) and Statewide Rule 58(b).
12. The only well on the C. Pena Lease was not producing and was not capable of producing during the period in which the production reports were filed. Hill Knew that the reports were false or untrue in material fact at the time he filed them.
13. The six Form P-1 and Form PR Production Reports filed by Hill for the C. Pena (05004) Lease from October, 2004 through March, 2005 were false filings.

#### **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. At the time of the violations of Tex. Nat. Res. Code §91.143, Hill Production Company No. 2 (Operator No. 386969) ("Hill") was the operator of the C. Pena (05004) Lease, Well No. 2, Pearsall (Austin Chalk) Field, LaSalle County, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Hill had the primary responsibility for complying with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes such as Texas Natural Resources Code §91.143 and Commission rules relating to the C. Pena (05004) Lease, Well No. 2, at the time of the alleged violations.
5. Hill violated Texas Natural Resources Code §91.143 on the C. Pena (05004) Lease, Well No. 2 by filing false production reports from October, 2004 through March, 2005.

#### **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 \$3,000.

Respectfully submitted,

Marshall Enquist  
Hearings Examiner