

OIL & GAS DOCKET NO. 01-0255398

ENFORCEMENT ACTION AGAINST THOMAS C. DOSS DBA TD & COMPANY (OPERATOR NO. 840392) FOR VIOLATIONS OF STATEWIDE RULES ON THE SCHNEEBELI LEASE, WELL NO. 1 (DRILLING PERMIT NO. 551840), WILDCAT FIELD, MILAM COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Joe Gonzales
Agent

RESPONDENT:

Thomas C. Doss DBA TD & Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:	February 8, 2008
DATE OF NOTICE OF HEARING:	May 6, 2008
DATE OF HEARING:	June 26, 2008
HEARD BY:	James M. Doherty, Hearings Examiner
DATE RECORD CLOSED:	July 28, 2008
DATE PFD CIRCULATED:	September 2, 2008

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 Thomas C. Doss DBA TD & Company ("TD") should be required to plug or otherwise place into compliance with Statewide Rule 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the Schneebeli Lease, Well No. 1 (Drilling Permit No. 551840), Wildcat Field, Milam County, Texas;
2. Whether TD violated Statewide Rule 16(b) by failing timely to file a proper Form W-2 (Oil Well Potential Test, Completion or Recompletion Report and Log) for the Schneebeli Lease, Well No. 1 (Drilling Permit No. 551840), Wildcat Field, Milam County, Texas;

3. Whether TD 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 and/or otherwise failing to place the subject well and lease into compliance with Statewide Rules 14(b)(2) and 16(b);
4. Whether, pursuant to Texas Natural Resources Code §81.0531, TD should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject lease and well; and
5. Whether any violations of Statewide Rules 14(b)(2) and 16(b) by TD should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing was held on June 26, 2008. Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Joe Gonzales, Agent, appeared representing TD and presented evidence. Enforcement’s certified hearing file was admitted into evidence. The record was held open until July 28, 2008, to determine if compliance and settlement could be achieved. No report of compliance or settlement has been made to the examiner.

APPLICABLE LAW

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension is obtained. Statewide Rule 16(b), as pertinent, requires an operator of a well to file an appropriate completion report within 30 days after the completion of a well or within 90 days after the date on which the drilling operation is completed, whichever is earlier.

DISCUSSION OF THE EVIDENCE

Enforcement

TD is a sole proprietorship, and Thomas C. Doss is owner. As of March 30, 2007, TD’s Form P-5 organization report was set to inactive status because at the time TD purportedly did not operate any wells or perform other operations subject to the Commission’s jurisdiction.¹ The examiner has officially noticed that TD has no financial assurance on file with the Commission.

TD designated itself the operator of the Schneebeli Lease, Well No. 1 (API #331 33569) (“subject well”) by filing a Form W-1 (Application to Drill, Deepen, Plug Back, or Reenter), which was filed and approved on October 4, 2004 (Permit No. 551840). The Drilling Permit Master Data Inquiry database discloses that the subject well had a spud date of October 10, 2004, and surface casing was set on the same day. Drilling Permit No. 551840 expired in October 2006.

¹ TD’s Form P-5 actually is delinquent rather than inactive. The Form P-5 was set to inactive status because TD had no wells that were on the proration schedule. The Schneebeli Lease, Well No. 1 was not on the proration schedule because no proper Form W-2 completion report had been filed for this well, and the lease and well had not been assigned an identification number. TD’s agent testified at the hearing that TD intended to restore its Form P-5 to active status. However, the examiner has officially noticed the Commission’s Master Inquiry database which shows that as of September 2, 2008, TD’s Form P-5 remains “inactive.”

District Office inspections of the subject lease and well on May 14, 2007, and May 5, 2008, disclosed that the well was inactive. No production has been reported to the Commission for this well. The well does not have a Statewide Rule 14(b)(2) plugging extension, and cannot obtain one for at least three reasons: (1) TD's Form P-5 is inactive; (2) the well is not on the proration schedule; and (3) the well is in violation of Commission rules. A certification by the Commission's Secretary in the certified hearing file stated that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the subject well.

Correspondence from TD filed with the Commission on February 19, 2008, stated that the subject well was never completed "due to incorrect logging." This correspondence stated that paperwork had been filed with the "Texas waterboard" to plug the well, and the well would be plugged "as soon as we can finish all our paperwork."

The District Office inspection reports for the May 14, 2007, and May 5, 2008, inspections of the subject lease and well stated that no completion report for the well had been filed. The certification by the Commission's Secretary dated June 25, 2008, stated that TD had not filed the "required" completion report. On September 10, 2007, December 18, 2007, and January 10, 2008, the District Office sent correspondence to TD concerning delinquency of a proper completion report.

An affidavit of Keith Barton, P.E., Field Operations, stated that a well that is in violation of Statewide Rule 14 must be plugged in order to prevent pollution of usable quality surface and subsurface waters. 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. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

The Barton affidavit stated further that without an appropriate completion report, the Commission does not have sufficient information to determine if a wellbore has been properly cased and cemented to protect usable quality water from pollution or adequate information to re-enter the well if required.

Enforcement recommends that TD be assessed an administrative penalty in the amount of \$2,500 for one violation of Statewide Rule 14(b)(2) at \$2,000 and one violation of Statewide Rule 16(b) at \$500. Enforcement further recommends that TD be required to place the subject lease and well into compliance with Commission rules.

TD & Company

TD filed a Form W-2 completion report for the subject well with the District Office on August 25, 2005. This completion report shows that the well was drilled to a depth of 2,400 feet on October 11, 2004, and "not completed." The attached Form W-15 Cementing Report shows a cementing date of October 23,

2004. According to TD's agent, this completion report could not be approved by the Commission because of deficiencies in the attached Form W-12 Inclination Record.²

According to TD's agent, TD agrees that the subject well is non-productive. TD filed a Form W-3A (Notice of Intention to Plug and Abandon) for the well on March 3, 2008, that did not include an anticipated plugging date. This Form W-3A was approved by the District Office on March 3, 2008, and carried an approval expiration date of September 3, 2008. According to TD's agent, TD intended to plug the well but thought that it had until the September 3, 2008, Form W-3A expiration date to do so. TD contacted three well pluggers about plugging the well and received a bid from one of these well pluggers to plug the well prior to September 3, 2008, for the sum of \$9,700. However, the landowner where the well is located has notified TD that he wants the subject well to be converted into a fresh water well.

EXAMINER'S OPINION

The evidence shows that the subject well has been inactive for more than twelve months and does not have a plugging extension. A violation of Statewide Rule 14(b)(2) has thus been established. The September 3, 2008, expiration date on the District Office's approval of the Form W-3A filed by TD on March 3, 2008, is irrelevant to the duty that TD had to comply timely with Statewide Rule 14(b)(2). September 3, 2008, is nothing more than the date on which the District Office's approval of the Form W-3A is no longer valid. The evidence shows that operations on the subject well ceased on or about October 23, 2004, the latest date of any activity reported in any of the completion papers filed by TD. TD was required by Statewide Rule 14(b)(2) to plug the well within twelve months after operations ceased, and the evidence shows the well has been out of compliance with this rule for almost 3 years.³

The examiner is not satisfied that a Statewide Rule 16(b) violation has been established or that the \$500 penalty recommended by Enforcement for this violation should be assessed. A Form W-2 completion report was filed with the District Office on August 25, 2005, and there is no showing that this Form W-2, in and of itself, was not complete in the case of a dry hole. This completion report contained information to show that 4 ½" casing was set to a depth of 2,350' and cemented to the surface, which is the same information which the Barton affidavit claims is needed to determine that usable quality water will be protected. The completion report apparently could not be approved because of a deficiency in the related Form W-12 Inclination Record. However, the filing of a proper Form W-12 Inclination Record is a requirement of Statewide Rule 11, not Statewide Rule 16(b). Enforcement has not pled a violation of Statewide Rule 11.

In determining the amount of the penalty to be imposed against TD, the Commission is required by Texas Natural Resources Code §81.0531 to consider the operator's previous violations, the seriousness of

² Enforcement apparently was unaware of this completion report filed with the District Office on August 25, 2005. In a post-hearing submission, Enforcement stated that when the completion report was filed with the District Office, it was handled by a former employee and not timely transferred to the Commission's Austin office. The completion report package was ultimately forwarded to Austin on June 12, 2008, but was incomplete in that the Form W-12 Inclination Record showed only one shot, whereas three shots were required.

³ Although the record of the hearing was held open for 30 days to allow TD more time to achieve compliance and a settlement with Enforcement, no report has been filed with the examiner to indicate that the well has been placed into compliance or that there has been any movement in the direction of converting the well to a fresh water well for the landowner's use.

the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. The examiner recommends that a penalty be assessed against TD in the amount of \$2,000 for one violation of Statewide Rule 14(b)(2). This is the standard penalty provided by the penalty schedule for Rule 14(b)(2) violations. TD apparently has no history of previous violations, but non-compliance with Rule 14(b)(2) for a period of almost 3 years is serious, and presented a hazard to the health and safety of the public, because the violation posed at least a threat of pollution of usable quality water. TD cannot be said to have acted in good faith in view of the long period of non-compliance with Rule 14(b)(2) and its unfulfilled promises to bring the well into compliance.

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. Thomas C. Doss DBA TD & Company (“TD”) was given at least ten (10) days notice of this hearing by certified mail. TD appeared at the hearing and presented evidence.
2. TD is a sole proprietorship, and Thomas C. Doss is owner.
3. At the time of the hearing, the Form P-5 organization report of TD was inactive, and TD had no financial assurance on file with the Commission.
4. As owner of TD, Thomas C. Doss was a person in a position of ownership or control of TD at the time the violation in this docket was committed.
5. The violation involved in this docket was a violation of a Commission rule related to safety and the prevention or control of pollution.
6. TD designated itself the operator of the Schneebeli Lease, Well No. 1 (API #331 33569) (“subject well”) by filing a Form W-1 (Application to Drill, Deepen, Plug Back, or Reenter), which was filed and approved on October 4, 2004 (Permit No. 551840).
7. The subject well has been inactive for more than one year, does not have a Statewide Rule 14(b)(2) plugging extension, and has not been plugged.
 - a. On the occasion of District Office inspections on May 14, 2007, and May 5, 2008, the subject well was inactive.
 - b. The subject well had a spud date of October 10, 2004, and surface casing was set on the same date.
 - c. A Form W-2 (Oil Well Potential Test, Completion or Recompletion Report and Log) filed by TD with the District Office on August 25, 2005, stated that the subject well was drilled on October 11, 2004, and a related Form W-15 Cementing Report shows a cementing date of October 23, 2004.

- d. The subject well was non-productive, and no production for the well has been reported to the Commission.
 - e. A Statewide Rule 14(b)(2) plugging extension for the well cannot be obtained because, TD's Form P-5 organization report is inactive, the well is not on the proration schedule, and the well is non-compliant with Commission rules.
 - f. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the subject well.
8. The estimated cost to plug the subject well is \$9,700.
 9. A well that is in violation of Statewide Rule 14 must be plugged in order to prevent pollution of usable quality surface and subsurface waters. 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. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.
 10. The landowner of the property where the subject well is located has made a request to TD that the subject well be converted to a fresh water well.
 11. TD filed a Form W-2 (Oil Well Potential Test, Completion or Recompletion Report and Log) with the District Office on August 25, 2005. This Form W-2 was not approved by Commission staff because of deficiencies in a related Form W-12 Inclination Record. The Form W-2 filed by TD did, however, report how the well was cased and cemented.
 12. No prior final enforcement orders have been entered against TD for 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. Thomas C. Doss DBA TD & Company is the operator of the Schneebeli Lease, Well No. 1 (Drilling Permit No. 551840), Wildcat Field, Milam County, Texas, as defined by 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, Thomas C. Doss DBA TD & Company has the primary responsibility for complying with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject lease and well.
5. Thomas C. Doss DBA TD & Company violated Statewide Rule 14(b)(2) by failing to plug the subject well within one year after operations ceased. The subject well has been out of compliance with Statewide Rule 14(b)(2) since at least October 2005.

6. The documented violation committed by Thomas C. Doss DBA TD & Company constitutes an act deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
7. Thomas C. Doss DBA TD & Company has not demonstrated good faith within the meaning of Texas Natural Resources Code §81.0531.
8. The Enforcement Section did not prove that Thomas C. Doss DBA TD & Company violated Statewide Rule 16(b) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.16(b)].
10. As owner of Thomas C. Doss DBA TD & Company at the time Thomas C. Doss DBA TD & Company violated a Commission rule related to safety and the prevention or control of pollution, Thomas C. Doss and any organization subject to the Commission's jurisdiction in which he may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that Thomas C. Doss DBA TD & Company be required to plug the subject well or otherwise place the well into compliance with Commission rules and pay a penalty in the amount of \$2,000.

Respectfully submitted,

James M. Doherty
Hearings Examiner