

July 15, 2009

OIL AND GAS DOCKET NO. 01-0255898

ENFORCEMENT ACTION AGAINST CLIFTON SCITERN DBA S.B.G. OIL CO. FOR VIOLATIONS OF STATEWIDE RULES ON THE ERIC J. HABY, ET UX LEASE, WELL NO. 1 (DRILLING PERMIT NO. 103878), TAYLOR-INA (ANACACHO) FIELD, MEDINA COUNTY, TEXAS.

APPEARANCES:

FOR RESPONDENT:

Clifton Scitern, Sole Proprietor

S.B.G. Oil Co.

FOR THE RAILROAD COMMISSION OF TEXAS:

Susan German, Attorney

Enforcement Section, RRC

Kelli Tieken, Attorney

Enforcement Section, RRC

Keith Barton, Engineering Specialist

Field Operations, RRC

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	March 4, 2008
NOTICE OF HEARING:	July 8, 2008
DATE CASE HEARD:	July 24, 2008
HEARING CLOSED:	July 24, 2008
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
CURRENT STATUS:	Contested
PFD CIRCULATION DATE:	July 15, 2009

STATEMENT OF THE CASE

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

1. Whether the Respondent, Clifton Scitern (“Scitern”) DBA S.B.G. Oil Co., violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm’n., 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] by leaving

Well No. 1 (Drilling Permit No. 103878) on the Eric J. Haby et ux Lease open to atmosphere;

2. Whether Clifton Scitern (“Scitern”) DBA S.B.G. Oil Co. should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm’n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the Eric J. Haby et ux Lease, Well No. 1 (Drilling Permit No. 103878) in the Taylor-Ina (Anacacho) Field, Medina County;
3. Whether the Respondent, Clifton Scitern (“Scitern”) DBA S.B.G. Oil Co., violated Statewide Rule 16(b) [Tex. R.R. Comm’n., 16 TEX. ADMIN. CODE §3.16(b)] by failing to file with the Commission the appropriate completion report for Well No. 1 on the Eric J. Haby et ux Lease within 30 days of completion of the well or within 90 days after the date on which the drilling operation was completed, whichever is earlier;
4. Whether the Respondent, Clifton Scitern (“Scitern”) DBA S.B.G. Oil Co. violated provisions of Title 3, Oil and Gas, Subtitles A, B and C, Texas Natural Resources Code, Chapter 27 of the Water Code and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject wells and/or otherwise failing to place the subject wells and lease into compliance with Statewide Rule 14(b)(2);
5. Whether, pursuant to Texas Natural Resources Code §81.0531, Scitern should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject lease and well; and
6. Whether any violations of Statewide Rules 3, 14(b)(2) and 14(b)(3) by Scitern should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A Notice of Opportunity for Hearing was issued in this case on July 8, 2008. The hearing was held July 24, 2008. Clifton Scitern appeared at the hearing telephonically and offered testimony. Susan German, Staff Attorney, appeared to represent Enforcement. Enforcement’s certified hearing file was entered into evidence.

AUTHORITY

Statewide Rule 13(b)(1)(B) [16 TEX. ADMIN. CODE §3.13(b)(1)(B)] provides that wellhead assemblies shall be used on wells to maintain surface control of the well.

Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

Statewide Rule 16(b) [16 TEX. ADMIN. CODE §3.16(b)] requires the operator of a well to

file with the Commission the appropriate completion report within 30 days of the completion of the well or within 90 days after the date on which the drilling operation was completed, whichever is earlier.

DISCUSSION OF THE EVIDENCE

Enforcement

Clifton Scitern (“Scitern”) DBA S.B.G. Oil Co. is a sole proprietor. Scitern filed his most recent Form P-5 Organization Report for S.B.G. Oil Co. on April 18, 1994 and is currently inactive. Scitern designated himself the operator of the Eric J. Haby et ux Lease, Well No. 1 (Drilling Permit No. 103878) by filing a Commission Form W-1 (Application for Permit to Drill, Deepen, Plug Back or Re-enter) dated December 19, 1980 and approved December 31, 1980.

Commission District office inspection reports made on January 9, 2008 and April 2, 2008 showed Well No. 1 on the Eric J. Haby et ux Lease was inactive. Commission records show the well was drilled January, 1981 and the long string was set January 18, 1981. No production has ever been reported. The estimated cost to the State to plug the subject well is \$2600.

Commission District Office inspection reports made on January 9, 2008 and April 2, 2008 and no production reported to the Commission from the Eric J, Haby et ux Lease, Well No. 1 (Drilling Permit No. 103878) since the well was drilled in 1981 demonstrates that the well has been inactive for a period greater than one year.

Commission District office inspection reports made on January 9, 2008 and April 2, 2008 indicated the subject well had casing open to atmosphere. By failing to maintain surface control of the well, Scitern violated Statewide Rule 13(b)(1)(B). A photo accompanying the January 9, 2008 District Office inspection report shows an open piece of 4" pipe sticking out of the ground, with no wellhead controls.

Statewide Rule 16(b) requires the operator of a well to file with the Commission the appropriate completion report within 30 days after completion of a well or within 90 days after the date on which the drilling operation is completed, whichever is earlier. A District Office assignment sheet dated June 20, 1990 states the long string was set on January 8, 1981. However, no completion report was ever filed. Respondent’s Drilling Permit No. 103878 expired December, 1982.

Respondent Scitern has acted in bad faith because he failed to timely correct Commission rule violations on the subject lease and failed to adequately explain his inaction to the Commission.

Respondent’s violations of Statewide Rules 14(b)(2), 13(b)(1)(B) and 16(b) are serious and a threat to the public health and safety. An affidavit by Keith Barton, P.E., Field Operations Section, RRC, states, as to Statewide Rule 14(b)(2) “Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to communicate with usable quality water zones or to

flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.” As to Statewide Rule 13(b)(1)(B), the affidavit states “Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore.” As to Statewide Rule 16(b), the affidavit states “Without an appropriate completion report (W-2or G-1), the Commission does not have sufficient information to determine if a wellbore has been properly cased and cemented to protect usable waters from pollution, and does not have adequate information in order to re-enter the well, if required.”

Enforcement recommends that Respondent Scitern be required to place the subject well and lease into compliance with all Commission Statewide Rules and pay an administrative penalty of \$3,500.00, consisting of one Statewide Rule 13(b)(1)(B) violation at \$1,000; one Statewide Rule 14(b)(2) violation at \$2,000; and one Statewide Rule 16(b) violation at \$500.

Clifton Scitern

Scitern states that he does not know how the subject well ever got in the name of S.B.G. Oil Co., his sole proprietorship. He argues that he never met Eric Haby, the mineral owner, and does not know him. Scitern acknowledges that he bought a new drilling rig prior to the time the subject well was drilled and took the rig to Devine, Texas. He recalls loaning the rig to a friend named Richard whose last name he can not recall. His friend took the rig to drill a well on the Haby Lease. Scitern states that drilling problems occurred and that the rig twisted off the drill pipe after two days. Scitern went to the lease, retrieved the drilling rig and returned it to his shop.

When informed by Enforcement that his signature is on the Form W-1 drilling application for the subject well, Scitern stated that it must be somebody else’s signature. Scitern argues that an unknown party falsely used his name.

EXAMINER’S OPINION

Clifton Scitern’s argument comes down to his allegation that he never signed the Form W-1 drilling application for the subject lease and well. The Form W-1, with the signature Clifton Scitern, is in the hearing file and is appended here as Attachment I. The examiner hereby takes Official Notice of two Commission records: a May 27, 1981 letter from S.B.G. Oil Co. to Commission employee Sandra K. Joseph, signed by Clifton Scitern, and a Form P-4 signed by Clifton Scitern in 1996. The Form P-4s are appended as Attachments II, and III. The signatures on Attachments II and III indicate the signature on the Form W-1 for Well No. 1 on the Eric J. Haby Lease is that of Clifton Scitern.

On the one hand, Scitern disclaims any personal involvement regarding the subject lease and well. On the other hand, Scitern remembers that a friend (whose last name he cannot remember) borrowed his drilling rig, took it to the Haby Lease and drilled a well. The drillpipe twisted off in the hole. Scitern then states that he went to the Haby Lease, retrieved his drilling rig and parked it at his place of business. The examiner does not find Clifton Scitern’s disclaimer of responsibility for Well No. 1 (Drilling Permit No. 103878) on the Eric J. Haby Lease to be supported by any

credible evidence.

The examiner agrees with Enforcement and recommends that Clifton Scitern be ordered to pay an administrative penalty of \$3,500.00. Due to the fact that the subject well is over 25 years old, the examiner recommends that it be plugged.

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. Clifton Scitern DBA S.B.G. Oil Co. (Operator No. 740201) was given at least 10 days notice of this proceeding. Clifton Scitern appeared telephonically and presented testimony.
2. The Form P-5 Organization Report of Clifton Scitern DBA S.B.G. Oil Co. is inactive.
3. Clifton Scitern (“Scitern”) DBA S.B.G. Oil Co. is a sole proprietorship.
4. Scitern designated himself the operator of the Eric J. Haby et ux Lease by filing a Commission Form W-1 (Application for Permit to Drill, Deepen, Plug Back or Re-enter) for the lease, dated December 19, 1980 and approved December 31, 1980 with Drilling Permit No. 103878.
5. Commission records show the well was drilled January, 1981 and the long string was set January 8, 1981.
6. A Commission District Office inspection report made on January 9, 2008, and no production reported to the Commission from the Eric J, Haby et ux Lease, Well No. 1 (Drilling Permit No. 103878) since the well was drilled in 1981 demonstrates that the well has been inactive for a period greater than one year. The well has been inactive since 1981, a period of time over 25 years.
7. A Commission District Office inspection report made on January 9, 2008 indicated the subject well had casing open to atmosphere. The well consists of open 4" pipe sticking out of the ground with no wellhead controls.
8. A District Office inspection report made on January 9, 2008 showed that Well No. 1 (Drilling Permit No. 103878) on the Eric J. Haby Lease was inactive with open casing. A Commission District Office assignment sheet dated June 20, 1990 indicated the long string was set on January 8, 1981, but no completion report was ever filed.
9. Respondent’s violations of Statewide Rules 14(b)(2), 13(b)(1)(B) and 16(b) are serious and a threat to the public health and safety. An affidavit by Keith Barton, P.E., Field Operations Section, RRC, states, as to Statewide Rule 14(b)(2) “Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to communicate with usable quality

water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.” As to Statewide Rule 13(b)(1)(B), the affidavit states “Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore.” As to Statewide Rule 16(b), the affidavit states “Without an appropriate completion report (W-2 or G-1), the Commission does not have sufficient information to determine if a wellbore has been properly cased and cemented to protect usable waters from pollution, and does not have adequate information in order to re-enter the well, if required.”

10. Respondent Scitern acted in bad faith by failing to timely correct the violations on the subject lease.

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. Clifton Scitern DBA S.G.B. Oil Co. was the operator of the Eric J. Haby et ux Lease, Well No. 1, Taylor-Ina (Anacacho) Field, Medina 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 from at least January, 1981 through at least the hearing date, July 24, 2008.
4. As operator of the subject lease and well, Clifton Scitern DBA S.G.B. Oil Co. had the primary responsibility for complying with Statewide Rules 13(b)(1)(B), 14(b)(2) and 16(b) [Tex. R.R. Comm’n, 16 Tex. Admin. Code §3.13(b)(1)(B), §3.14(b)(2) and §3.16(b)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject lease and well.
5. Clifton Scitern DBA S.G.B. Oil Co. violated Statewide Rule 13(B)(1)(B) [Tex. R.R. Comm’n, 16 Tex. Admin. Code §3.33(b)(1)(B)] by failing to maintain proper wellhead control on the Eric J. Haby et ux Lease, Well No. 1.
6. Clifton Scitern DBA S.G.B. Oil Co. 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 Eric J. Haby et ux Lease, Well No. 1.
7. Clifton Scitern DBA S.G.B. Oil Co. violated Statewide Rule 16(b) [Tex. R.R. Comm’n, 16 Tex. Admin. Code §3.16(b)] by failing to file the appropriate completion report for the Eric J. Haby et ux Lease, Well No. 1.
8. The documented violations committed by Clifton Scitern DBA S.G.B. Oil Co. constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas

Natural Resources Code §81.0531.

9. Clifton Scitern DBA S.G.B. Oil Co. has not demonstrated good faith within the meaning of Texas Natural Resources Code §81.0531.
10. As sole proprietor of Clifton Scitern DBA S.G.B. Oil Co. at the time Scitern violated Commission rules related to safety and the prevention or control of pollution, Clifton Scitern, and any organization subject to the Commission's jurisdiction in which he may hold a position of ownership or control, is subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that Clifton Scitern DBA S.G.B. Oil Co. be required to plug Well No. 1 on the Eric J. Haby et ux Lease, Taylor-Ina (Anacacho) Field, Medina County, Texas and pay an administrative penalty of \$3,500.00.

Respectfully submitted,

Marshall Enquist
Hearings Examiner