
ENFORCEMENT ACTION AGAINST G.M. SWOBODA (OPERATOR NO. 833600) FOR VIOLATIONS OF STATEWIDE RULES ON THE VORPAHL, WELDON (07994) LEASE, WELL NOS. 1X,2X,3X, 4X, 5X, 6X, 7X AND 8X, LAVERNIA FIELD, GUADALUPE COUNTY, TEXAS

APPEARANCES

FOR MOVANT:

Scott Holter, Staff Attorney

MOVANT:

Railroad Commission of Texas -
Enforcement Section

FOR RESPONDENT:

Gordon Swoboda

RESPONDENT:

G.M. Swoboda

PROCEDURAL HISTORY

First Amended Complaint Served:

December 28, 2001

Hearing Held:

April 29, 2002

Heard By:

Mark H. Tittel, Hearings Examiner

Record Closed:

July 31, 2002

PFD Circulation Date:

September 27, 2002

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 the respondent(s) 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 Vorpahl, Weldon (07994) Lease, Well Nos. 1X,2X,3X, 4X, 5X, 6X, 7X and 8X, Lavernia Field, Guadalupe County, Texas;

2. Whether the respondent(s) 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 comply with said statutes and Statewide Rules 14(b)(2) and 8(d)(4)(G)(i)(IV);
3. Whether the respondent(s) should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such lease and wells; and
4. Whether any violations of Rule 14 by the respondent(s) should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534.

Gordon Swoboda appeared at the hearing and presented evidence. Scott Holter, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Enforcement requests that the respondent be ordered to plug or place the subject wells in compliance with Commission Rules and be ordered to pay an administrative penalty in the amount of \$16,500. The examiner recommends that the respondent be ordered to pay an administrative penalty in the amount of \$12,500.

BACKGROUND

The operator of a well must plug the well when required and in accordance with Statewide Rule 14(b)(2) and all other applicable Commission rules and regulations concerning plugging of wells. For wells transferred before September 1, 1997, the operator designated on the most recent Commission-approved Form P-4 is presumed to be the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation, although this presumption may be rebutted at a hearing called for the purpose of determining plugging responsibility.

Statewide Rule 8(d)(4)(G)(i)(IV) requires a person who maintains or uses a basic sediment pit, flare pit, fresh mining water pit, and water condensate pit to dewater, backfill and compact the pit within 120 days of final cessation of the use of the pit.

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. TEX. NAT. RES. CODE ANN. § 81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement's hearing file for this docket was admitted into evidence. G.M. Swoboda filed

his most recent Form P-5 (Organization Report) on July 18, 2002. Prior to that, his most recent Form P-5 was filed on April 2, 1991.

Swoboda filed a P-4 Form (Producer's Transportation Authority and Certificate of Compliance) effective May 10, 1982, designating himself as the operator of the Vorpahl, Weldon (07994) Lease, Well Nos. 1X,2X,3X, 4X, 5X, 6X, 7X and 8X, Lavernia Field, Guadalupe County, Texas (collectively referred to as the "subject wells" or "subject lease").

Commission District inspections reports on the subject lease made from April 30, 1998 through October 23, 2001 indicate that the wells are inactive. Commission records reflect zero reported production from the subject lease since at least January 1, 1993 through the present. The subject wells have not been plugged, nor was there any Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) in effect until July 18, 2002, when Swoboda posted a blanket performance bond.

Commission District inspections reports on the subject lease made from April 30, 1998 through October 23, 2001 indicate that there is an pit behind the tank battery on the subject lease measuring 35' by 35' by 4'. The pit has not been dewatered, backfilled, and compacted in accordance with Statewide Rule 8(d)(4)(G)(i)(IV).

Swoboda did not dispute that the subject lease is in violation of Commission rules. Swoboda claimed that he had hired somebody to plug the wells in the early 1990s, but the work was never performed. He also claimed that persons had stolen equipment from the subject lease. Swoboda claimed that he was prepared at this time to place the subject wells back into production. Swoboda produced financial statements to show that he has sufficient funds to put up 100 % collateral for a blanket bond or letter of credit in the amount of \$25,000 to renew his Form P-5. He also contended that he still has a good faith claim to operate the subject lease. Although the subject wells have been inactive since at least January 1, 1993, Swoboda claimed the lease is being held by production from wells which were carved out of the original Vorpahl Lease¹. The Enforcement Staff attorney stated at the hearing that he did not dispute that Swoboda has a good faith claim to operate the subject lease.

The record was left open after the hearing and on July 18, 2002, Swoboda filed with the Commission a \$25,000 blanket performance bond issued by Farmington Casualty Company.

EXAMINER'S OPINION

By filing a Form P-5 and other paperwork, such as Form P-4s and Form P-1s, Swoboda placed himself under the jurisdiction of the Railroad Commission and knew, or should have known, that he would be responsible for complying with all applicable rules and statutes. Although Swoboda claimed that unauthorized persons entered onto the subject lease and stole equipment, he admits that he is the operator responsible for maintaining the lease in compliance with Commission rules. Although Swoboda claims that he had hired somebody to plug the wells in the early 1990s,

¹ Commission records confirm that the Vorpahl B (09512) Lease operated by Maria Investments, Inc. is still producing.

it was his own responsibility to ensure that the work was performed.

As the subject wells have been inactive since at least January 1, 1993 and did not have plugging extensions in effect until July 18, 2002, when Swoboda posted a blanket performance bond, Swoboda has violated Rule 14(b)(2), which provides that plugging operations on an inactive well shall be commenced within a period of one year after drilling or operations cease. Furthermore, by using and maintaining a pit and failing to dewater, backfill and compact the pit within 120 days of final cessation of the use of the pit, Swoboda violated Statewide Rule 8(d)(4)(G)(i)(IV).

Swoboda did not dispute that the subject lease and wells were in violation of Statewide Rules, but requested additional time to place the subject wells back into compliance. Because Swoboda appeared to have a good faith claim to title, the record was kept open after the hearing to allow him to provide evidence that the subject wells had been brought into compliance. The subject wells were brought into compliance with Statewide Rule 14(b)(2) when Swoboda filed a \$25,000 blanket performance bond with the Commission.

In assessing penalties, the Commission is required by statute to consider the respondent's previous history of violations, the seriousness of the violations, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. Swoboda has no history of previous violations. While there is no evidence in the record of pollution having occurred on the subject leases, abandoned and unplugged wellbores constitute a threat to usable quality groundwater due to the possibility of migrations or discharges of saltwater and other oil and gas wastes.

With respect to the issue of good faith on the part of the operator, although Swoboda was notified that the wells were not in compliance with Statewide Rules, the subject wells were not brought into compliance in a timely manner. Furthermore, because Swoboda did not maintain an active P-5, did not file financial assurance and did not obtain plugging extensions for an approximately 10 year period, he managed to avoid significant expenses while the subject wells were out of compliance. Under these circumstances, the examiner believes that it is appropriate that Swoboda be assessed an administrative penalty. Enforcement staff recommends that Swoboda be assessed an administrative penalty in the amount of \$16,500.00, which consists of eight Rule 14(b)(2) violations at \$2,000 per well and \$500 for one Rule 8(d)(4)(G)(i)(IV) violation. However, because the subject lease was ultimately brought into compliance with Statewide Rule 14(b)(2) after the hearing, the examiner believes that Swoboda is entitled to a modest reduction in the penalty amount for the violations. Consequently, the Examiner recommends imposing an administrative penalty in the amount of \$12,500, which consists of eight Rule 14(b)(2) violations at \$1,500 per well and \$500 for one Rule 8(d)(4)(G)(i)(IV) violation.

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. G.M. Swoboda was given at least 10 days notice of this proceeding by certified, first-class mail, at the address reported to the Commission on his most recent Form P-5 (Organization Report). Gordon Swoboda appeared at the hearing and presented evidence. Scott Holter,

Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section.

2. G.M. Swoboda filed his most recent Form P-5 (Organization Report) on July 18, 2002. Prior to that, his most recent Form P-5 was filed on April 2, 1991.
3. Swoboda filed a P-4 Form (Producer's Transportation Authority and Certificate of Compliance) effective May 10, 1982, designating himself as the operator of the Vorpahl, Weldon (07994) Lease, Well Nos. 1X,2X,3X, 4X, 5X, 6X, 7X and 8X, Lavernia Field, Guadalupe County, Texas (collectively referred to as the "subject wells" or "subject lease").
4. The subject wells are inactive. Commission records reflect zero reported production from the subject lease since at least January 1, 1993 through the present.
5. The subject wells have not been plugged, and there were no Form W-1Xs (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) in effect until July 18, 2002, when Swoboda posted a \$25,000 blanket performance bond issued by Farmington Casualty Company.
6. Although the subject wells have been inactive since at least January 1, 1993, Swoboda's lease is being held by production from wells which were carved out of the original Vorpahl Lease.
7. Commission District inspections reports on the subject lease made from April 30, 1998 through October 23, 2001 indicate that there is an pit behind the tank battery on the subject lease measuring 35' by 35' by 4'. The pit has not been dewatered, backfilled, and compacted.
8. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
9. The record does not reflect any previous violations by Swoboda of Commission rules.
10. Swoboda has not demonstrated good faith since he failed to plug or otherwise place the subject leases into compliance in a timely manner.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Swoboda is the operator of the subject wells, as defined by Commission Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14(b)(2)] and Section 89.002 of the

Texas Natural Resources Code, and is a person as defined by Commission Statewide Rule 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.69] and Chapters 85 and 89 of the Texas Natural Resources Code.

4. As operator, Swoboda has the primary responsibility for complying with Rules 14(b)(2) and 8(d)(4)(G)(i)(IV) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14(b)(2) and § 3.8(d)(4)(G)(i)(IV)] and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject well.
5. The subject wells were not in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14(b)(2)], or Chapters 85, 89 and 91 of the Texas Natural Resources Code from at least January 1, 1994 to July 18, 2002.
6. Swoboda has a good faith claim to a continuing right to operate the subject lease.
7. The subject lease is not in compliance with Statewide Rule 8(d)(4)(G)(i)(IV) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8(d)(4)(G)(i)(IV)].
8. The documented violations constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. § 81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and that the attached be order approved, requiring G.M. Swoboda, within 30 days from the day immediately following the date this order becomes final, to place the subject lease in compliance with Statewide Rule 8(d)(4)(G)(i)(IV) and pay an administrative penalty in the amount of **TWELVE THOUSAND FIVE HUNDRED DOLLARS (\$12,500)**.

Respectfully submitted,

Mark H. Tittel
Hearings Examiner