

OIL & GAS DOCKET NO. 02-0240902

ENFORCEMENT ACTION AGAINST NUECES PETROLEUM CORPORATION (OPERATOR NO. 616055) FOR VIOLATIONS OF STATEWIDE RULES ON THE LAVACA RIVER TR. #2 (01641) LEASE, WELL NO. 4, WEST RANCH (GLASSCOCK) FIELD, L RANCH (01649) LEASE, WELL NOS. 3 AND 5, WEST RANCH (GLASSCOCK) FIELD, AND LAVACA RIVER BED (06647) LEASE, WELL NO. 3, WEST RANCH (GRETA) FIELD, JACKSON COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German
Bill Drury

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Ken Howard

RESPONDENT:

Nueces Petroleum Corporation

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF ORIGINAL COMPLAINT:	November 1, 2005
DATE OF NOTICE OF HEARING:	March 24, 2006
DATE OF HEARING:	June 22, 2006
HEARD BY:	James M. Doherty, Hearings Examiner
DATE RECORD CLOSED:	June 29, 2006
DATE PFD CIRCULATED:	July 24, 2006

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 Nueces Petroleum Corporation (“Nueces”) 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 Lavaca River Tr. #2 (01641) Lease, Well No. 4, West Ranch (Glasscock) Field, the L Ranch (01649) Lease, Well Nos. 3 and 5, West Ranch (Glasscock) Field, and the Lavaca River Bed (06647) Lease, Well No. 3, West Ranch (Greta) Field, Jackson County, Texas (“subject wells”);

2. Whether Nueces 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 wells or otherwise place the subject wells in compliance with Statewide Rule 14(b)(2);
3. Whether, pursuant to Texas Natural Resources Code §81.0531, Nueces should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells; and
4. Whether any violations of Statewide Rule 14(b)(2) by Nueces 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 22, 2006. Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Ken Howard, consultant, appeared to represent Nueces and presented evidence. Enforcement’s certified hearing file was admitted into evidence. The record was held open until June 29, 2006, to receive information as to whether a bankruptcy trustee had been appointed in a pending Chapter 11 bankruptcy proceeding wherein Nueces is the debtor and the effect of the pending bankruptcy proceeding on this docket.

APPLICABLE LAW

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension has been obtained.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The examiner has officially noticed Commission organization report and financial assurance databases showing that Nueces has an active Form P-5 organization report and financial assurance in the amount of \$50,000 in the form of a letter of credit.

Enforcement

The most recent Form P-5 organization report shows that Nueces is a corporation. Nueces’ officers listed on this Form P-5 are Lee Lance, President, and Jamie Lloyd, Vice President,

Operations. Nueces designated itself operator of the subject leases and wells by filing Forms P-4 (Certificate of Compliance and Transportation Authority), which were approved May 21, 2001, effective March 1, 2001.

Four District Office inspections of the Lavaca River Tr. #2 (01641) Lease made between October 27, 2003, and December 7, 2005, disclosed that Well No. 4 was inactive. Attempted inspections of this well on May 25 and June 15, 2006, failed due to heavy rains and flooding, causing the well to be submerged. Production from the subject lease was last reported to the Commission prior to January 1993. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the Lavaca River Tr. #2 (01641) Lease, Well No. 4, and no plugging extension for the well is in effect. This well is 50 years old, and Commission records show that the last H-15 test for the well was performed by a previous operator in February 1996. A plugging extension for this well was canceled on January 12, 2005, based on failure of Nueces to perform a required H-15 test.

Six District Office inspections of the L Ranch (01649) Lease made between October 27, 2003, and May 25, 2006, disclosed that Well Nos. 3 and 5 were inactive. Production from this lease was last reported to the Commission prior to January 1993. The most recent Forms H-15 for Well Nos. 3 and 5 were dated May 10, 2004, and these Forms H-15 were not approved. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the L Ranch (01649) Lease, Well Nos. 3 and 5, and no plugging extensions are in effect for these wells. Plugging extensions for Well Nos. 3 and 5 were canceled on January 12, 2005, based on failed H-15 tests.

Six District Office inspections of the Lavaca River Bed (06647) Lease made between October 27, 2003, and December 7, 2005, disclosed that Well No. 3 was inactive. Attempted inspections of this well on May 25 and June 15, 2006, failed due to heavy rains and flooding, causing the well to be submerged. Production from this lease was last reported to the Commission prior to January 1993. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the Lavaca River Bed (06647) Lease, Well No. 3, and no plugging extension for the well is in effect. This well is 50 years old and had its last H-15 test in February 1996. A plugging extension for Well No. 3 was canceled on January 12, 2005, based on failure of Nueces to perform a required H-15 test.

On 11 occasions between October 30, 2003, and April 23, 2004, the District Office sent Nueces correspondence, notices, or copies of memoranda requesting voluntary compliance with Statewide Rule 14(b)(2) with respect to the subject wells. Nueces did not respond by placing the wells into compliance.

Inactive wellbores 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 water zones or to flow

to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Nueces

Nueces does not dispute any of Enforcement's allegations. However, Nueces currently is the debtor in possession in a Chapter 11 reorganization proceeding, styled Case No. 05-44617, *In Re: Nueces Petroleum Corporation, Debtor*, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.¹ According to its consultant, Nueces may be required to bring the subject wells into compliance under supervision of the Bankruptcy Court.

EXAMINER'S OPINION

The violations of Statewide 14(b)(2) alleged by Enforcement are not disputed by Nueces and are clearly proved by the evidence.

The pendency of Nueces' Chapter 11 bankruptcy proceeding does not prohibit the prosecution of this action to enforce Commission rules related to safety and the prevention or control of pollution. Such actions by a governmental unit are exempted from the automatic stay provisions of 11 U.S.C. §362(a). *See* 11 U.S.C. §362(b)(4). Where there is a pending bankruptcy proceeding, the Commission may order compliance with its safety and environmental regulations, and fix the amount of suitable penalties for violations of its rules related to safety and the prevention or control of pollution, but may not order payment of penalties. *In Re: Commonwealth Oil Ref. Co.*, 805 F.2d 1175 (5th Cir. 1986), cert. denied, 483 U.S. 1005 (1987).

Enforcement recommends that the penalty for Nueces' violations of Statewide Rule 14(b)(2) be fixed at \$8,000, consisting of four violations at \$2,000 each. The examiner agrees with this recommendation. This penalty conforms to standard penalties in the recommended standard penalty schedule for enforcement cases. Violations of Statewide Rule 14(b)(2) present a threat to public safety and a threat of pollution of usable quality water. Such violations are thus deemed serious. According to Enforcement's complaint, no prior final Commission orders have been entered against Nueces for violations of Commission rules. However, Nueces cannot be said to have acted in good

faith, because it failed to respond to multiple requests from the District Office for voluntary

¹ The examiner has officially noticed that Nueces' bankruptcy petition was filed on September 9, 2005. Nueces is a debtor in possession, and no bankruptcy trustee has been appointed. It does not appear that the Commission previously was notified of this bankruptcy proceeding. On June 26, 2006, Enforcement filed copies of Nueces' Plan of Reorganization and Disclosure Statement in the bankruptcy case, and these documents were admitted into evidence. The Disclosure Statement stated that Earnest Frank Hill, Jr. (aka E. Frank Hill, Jr.) was Nueces' "initial Director" and "directs the over all corporate strategy." The Disclosure Statement stated also that Earnest Frank Hill, Jr., makes all final decisions for Nueces. The Disclosure Statement stated also that Frank Hill is the owner of 1,000 shares of stock (voting rights only) of Nueces, and no other owners were named.

compliance.

The examiner also recommends that Nueces be ordered to plug the subject wells. The wells have been inactive for more than 13 years. Two of the subject wells have failed H-15 tests, and the other two have not had a fluid level test in more than ten years. There is no evidence that Nueces continues to possess a good faith claim of right to operate these wells.

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. Nueces Petroleum Corporation (“Nueces”) was given at least ten (10) days notice of this hearing by certified mail, addressed to Nueces’ most recent Form P-5 organization report address. Ken Howard, consultant for Nueces, appeared at the hearing representing Nueces and presented evidence.
2. Nueces is a corporation. Its officers, as listed on its most recent Form P-5 organization report approved April 7, 2006, are Lee Lance, President, and Jamie Lloyd, Vice President. Earnest Frank Hill, Jr. (aka E. Frank Hill, Jr.) was Nueces’ initial director and directs overall corporate strategy and makes all final decisions for the company.
3. As officers, Lee Lance and Jamie Lloyd were persons in a position of ownership or control of Nueces at the time the violations involved in this docket were committed. As a director and the person directing overall corporate strategy and making all final decisions, Earnest Frank Hill, Jr. (aka E. Frank Hill, Jr.) was a person in a position of ownership or control of Nueces at the time the violations involved in this docket were committed.
4. The violations involved in this docket were violations of a Commission rule related to safety and the prevention or control of pollution.
5. Nueces’ Form P-5 organization report is in active status, and Nueces has filed financial assurance in the amount of \$50,000 in the form of a letter of credit.
6. As the result of petition filed on September 9, 2005, Nueces was, at the time of the hearing in this docket, the debtor in possession in a pending Chapter 11 reorganization proceeding styled Case No. 05-44617, *In Re: Nueces Petroleum Corporation, Debtor*, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division.
7. Nueces designated itself to the Commission as the operator of the Lavaca River Tr. #2 (01641) Lease, Well No. 4, West Ranch (Glasscock) Field, the L Ranch (01649) Lease, Well

Nos. 3 and 5, West Ranch (Glasscock) Field, and the Lavaca River Bed (06647) Lease, Well No. 3, West Ranch (Greta) Field, Jackson County, Texas (“subject wells”) by filing Forms P-4, approved May 21, 2001, effective March 1, 2001.

8. The subject wells have been inactive for more than one year, have not been plugged, and do not have Statewide Rule 14(b)(2) plugging extensions.
 - a. Four District Office inspections of the Lavaca River Tr. #2 (01641) Lease made between October 27, 2003, and December 7, 2005, disclosed that Well No. 4 was inactive.
 - b. Six District Office inspections of the L Ranch (01649) Lease made between October 27, 2003, and May 25, 2006, disclosed that Well Nos. 3 and 5 were inactive.
 - c. Six District Office inspections of the Lavaca River Bed (06647) Lease made between October 27, 2003, and December 7, 2005, disclosed that Well No. 3 was inactive.
 - d. No production has been reported to the Commission for the subject wells since prior to January 1993.
 - e. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the subject wells.
 - f. Plugging extensions for the Lavaca River Tr. #2 (01641) Lease, Well No. 4 and the Lavaca River Bed (06647) Lease, Well No. 3 were canceled on January 12, 2005, based on failure of Nueces to perform required H-15 tests.
 - g. Plugging extensions for the L Ranch (01649) Lease, Well Nos. 3 and 5 were canceled on January 12, 2005, based on failed H-15 tests.
9. The estimated cost to the State to plug the Lavaca River Tr. #2 (01641) Lease, Well No. 4 is \$10,900.
10. The estimated cost to the State to plug the Lavaca River Bed (06647) Lease, Well No. 3 is \$10,500.
11. The estimated cost to the State to plug the L Ranch (01649) Lease, Well Nos. 3 and 5 is \$21,800.
12. On 11 occasions between October 30, 2003, and April 23, 2004, the District Office sent Nueces correspondence, notices, or copies of memoranda requesting voluntary compliance with Statewide Rule 14(b)(2) with respect to the subject wells. Nueces did not respond by placing the wells into compliance.
13. Inactive wellbores 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 water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

14. No evidence was presented that prior final enforcement orders have been entered against Nueces for violation of Commission rules.
15. Nueces has not demonstrated good faith in that it failed to respond to multiple requests from the District Office to resolve the violations that are the subject of this docket.

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. Nueces Petroleum Corporation (“Nueces”) was and is the operator of the Lavaca River Tr. #2 (01641) Lease, Well No. 4, West Ranch (Glasscock) Field, the L Ranch (01649) Lease, Well Nos. 3 and 5, West Ranch (Glasscock) Field, and the Lavaca River Bed (06647) Lease, Well No. 3, West Ranch (Greta) Field, Jackson County, Texas (“subject wells”), 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, Nueces had 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 leases and wells.
5. Nueces 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 wells. Nueces has been out of compliance with Statewide Rule 14(b)(2) since at least January 12, 2005.
6. The documented violations committed by Nueces constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith within the meaning of Texas Natural Resources Code §81.0531.
7. This is an enforcement action by a governmental unit to enforce its rules related to safety and the prevention or control of pollution, and, pursuant to 11 U.S.C. §362(b)(4) is exempted from the automatic stay provisions of 11 U.S.C. §362(a).
8. As officers of Nueces at the time Nueces violated Commission rules related to safety and the prevention or control of pollution, Lee Lance and Jamie Lloyd, and any organization in which they, or either of them, may hold a position of ownership or control, are subject to the

restrictions of Texas Natural Resources Code §91.114(a)(2).

9. As a director of Nueces and the person directing overall corporate strategy and making all final decisions for Nueces at the time Nueces violated Commission rules related to safety and the prevention or control of pollution, Earnest Frank Hill, Jr. (aka E. Frank Hill, Jr.), and any organization 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 the Commission adopt the attached final order providing: (1) that Nueces Petroleum Corporation shall plug in compliance with Commission rules the Lavaca River Tr. #2 (01641) Lease, Well No. 4, West Ranch (Glasscock) Field, the L Ranch (01649) Lease, Well Nos. 3 and 5, West Ranch (Glasscock) Field, and the Lavaca River Bed (06647) Lease, Well No. 3, West Ranch (Greta) Field, Jackson County, Texas and (2) that an administrative penalty in the amount of \$8,000 is assessed against Nueces Petroleum Corporation.

Respectfully submitted,

James M. Doherty
Hearings Examiner