

OIL & GAS DOCKET NO. 02-0248250

ENFORCEMENT ACTION AGAINST PLATINUM EXPLORATION, INC. (OPERATOR NO. 667939) FOR VIOLATIONS OF STATEWIDE RULES ON THE C. G. & R. H. WOOD LEASE, WELL NO. 4 (RRC NO. 051006), SOUTH WOODSBORO (4200) FIELD, REFUGIO COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Jason Turner
Robert McKenzie
Greg Rasmussen

RESPONDENT:

Platinum Exploration, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:

July 26, 2006

DATE OF NOTICE OF HEARING:

January 29, 2007

DATE OF HEARING:

April 12, 2007

HEARD BY:

James M. Doherty, Hearings
Examiner

DATE PFD CIRCULATED:

May 11, 2007

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 Platinum Exploration, Inc. (“Platinum”), 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 C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006), South Woodsboro (4200) Field, Refugio County, Texas;
2. Whether Platinum violated Statewide Rule 14(b)(3) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to perform a required H-15 test (Test on an Inactive Well More than 25 Years Old) on the C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006), South Woodsboro (4200) Field, Refugio County, Texas;
3. Whether Platinum 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 or otherwise place the well into compliance with Statewide Rules 14(b)(2) and 14(b)(3);
4. Whether, pursuant to Texas Natural Resources Code §81.0531, Platinum should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject well; and
5. Whether any violations of Statewide Rules 14(b)(2) and 14(b)(3) by Platinum 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 April 12, 2007.¹ Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Jason Turner, attorney, appeared representing Platinum and presented evidence. Enforcement’s certified hearing file was admitted into evidence.

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. A plugging extension will be approved for a well only if the well is in compliance with all Commission rules and the operator has a good faith claim of right to operate the well.

Statewide Rule 14(b)(3) provides that the operator of any well more than 25 years old that becomes inactive shall plug or test such well to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

¹ This docket was heard jointly with Oil & Gas Docket Nos. 08-0248259, 8A-0249475, 8A-0249475, and 8A-0249476 involving the same respondent. Separate proposals for decision are being issued in each docket.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The examiner has officially noticed the Commission's Master Inquiry, Officer/Agent Inquiry Selection, and P-5 Financial Assurance Inquiry databases for Platinum, which show that Platinum is a corporation, and its officers are Harold James Rasmussen, President, Michael Paul Jobe, Vice President, and Gregory James Rasmussen, Vice President. The Form P-5 organization report of Platinum is active, and Platinum has approved financial assurance on file with the Commission in the amount of \$250,000.

The examiner has also officially noticed the Commission's On-Schedule Lease, Wells, Wellbores By Operator and Wells Subject to Rule 14(b)(2)-Operator Summary Data databases which show that as of April 26, 2007, Platinum was the record operator of 116 wells, 69 of which are subject to Statewide Rule 14(b)(2). Forty-seven of the 69 wells subject to Statewide Rule 14(b)(2) have been inactive for more than 36 months. Of the 69 wells subject to Statewide Rule 14(b)(2), plugging extensions have been approved for 43 wells and denied for 26 wells. The examiner has also officially noticed the Commission's Production Data Query database which shows that for 2006, Platinum reported total production of 165,585 barrels of oil, 46,292 MCF of casinghead gas, 47,417 MCF of gas well gas, and 3 barrels of condensate.

Enforcement

Platinum designated itself operator of the C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006) by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved August 8, 2001, effective June 1, 2001.

District Office inspections of the C. G. & R. H. Wood Lease, Well No. 4 on March 2, March 24, April 20, and October 30, 2006, and March 19, 2007, disclosed that Well No. 4 was inactive and unplugged. The inspection reports stated that a pumping unit was present but not hooked up to the well. No production has been reported to the Commission for this well since prior to January 1, 1993. A plugging extension for Well No. 4 was canceled on December 6, 2004, because a required H-15 test (Test on an Inactive Well More than 25 Years Old) for the well was delinquent. The estimated cost to the State to plug the C. G. & R. H. Wood Lease, Well No. 4 is \$15,900.

The C. G. & R. H. Wood Lease, Well No. 4 was completed on August 13, 1971, and is a well more than 25 years old subject to the testing requirements of Statewide Rule 14(b)(3). A required H-15 test for the well was due in May 1993 and has not been performed since that date.

On four separate occasions between March 8, 2006, and May 24, 2006, the District Office sent Platinum correspondence, notices, or copies of memoranda requesting voluntary compliance with Commission rules on the C. G. & R. H. Wood Lease, Well No. 4. Platinum did not respond by placing this well into compliance. On August 24, 2006, Platinum filed a Form W-3A (Notice of Intention to Plug and Abandon) for the well, stating an anticipated plugging date of October 30, 2006, but the well has not been plugged.

A certification by the Commission's Secretary dated April 9, 2007, stated that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved, and no plugging extension is in effect, for the subject well

An affidavit of Keith Barton, P.E., Field Operations, stated that a well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in order to prevent pollution of usable quality surface or 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.

The Barton affidavit stated also that any inactive well that is greater than 25 years of age must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the test required by Statewide Rule 14(b)(3), the Commission cannot determine if the well poses a threat to natural resources.

Enforcement recommends that Platinum be ordered to pay an administrative penalty of \$4,000, less \$3,000 already paid. The penalty recommended by Enforcement is calculated on the basis of one Rule 14(b)(2) violation at \$2,000 and one Rule 14(b)(3) violation at \$2,000. Enforcement recommends also that Platinum be ordered to place the subject well into compliance with Commission rules.

Platinum

Platinum did not dispute the fact that the subject violations occurred or that Platinum is the operator responsible for the violations. On the other hand, Platinum requested more time to bring to fruition a plan to transfer the subject well to another operator and thus to bring the well into compliance.

Platinum has experienced financial difficulty during the past year or more. It has been negotiating with investors to form a new entity which would acquire a loan to pay off Platinum's obligations and to achieve compliance with Commission rules. The details are murky, but apparently, the new entity would acquire some or all of Platinum's properties, and Platinum's wells would be transferred to Saber Resources, LLC, or if Saber is not interested in certain wells, then to

Prime Operating or Finley Resources. A schedule for compliance introduced into evidence by Platinum indicates a plan to transfer the well that is the subject of this docket to Saber by October 2007. Platinum conceded that its mineral lease covering the property on which the subject well is located has terminated, and Saber will need to attempt to obtain a new mineral lease. Because of its financial distress, Platinum is hopeful that any administrative penalties assessed in this docket will be reduced as much as possible.

EXAMINER'S OPINION

Enforcement proved that the alleged violations of Statewide Rules 14(b)(2) and 14(b)(3) were committed, and Platinum is the responsible operator. The remaining issues are: (1) the amount of administrative penalties that should be imposed; and (2) the nature of compliance that should be ordered.

In determining the amount of the penalty to be imposed against Platinum, the Commission is required by Texas Natural Resources Code §81.0531 to consider the operator's previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. According to Enforcement's complaint in this docket, Platinum has no history of prior final enforcement orders entered against it for violations of Commission rules. On the other hand, the involved violations are serious, and present a hazard to the health and safety of the public, because of the threat of pollution of usable quality water presented by inactive and unplugged wellbores.

Platinum cannot be said to have acted in good faith, because it did not respond to numerous requests of the District Office for voluntary compliance. The penalties recommended by Enforcement are the standard penalties provided by the recommended standard penalty schedule for enforcement cases, and the examiner believes that they should be adopted. Accordingly, the examiner recommends that Platinum be ordered to pay a penalty of \$4,000, less the \$3,000 already paid.

The examiner further recommends that Platinum be ordered to plug the subject well. A "plug only" order is recommended because the subject well has been inactive for at least 14 years and is a pollution threat. This well is more than 35 years old and has never been fluid level tested or pressure tested. Platinum has been the operator of the well for almost 6 years and has never produced the well. Platinum appears to have agreed that the well is in need of plugging because in August 2006 it filed a Form W-3A (Notice of Intention to Plug and Abandon) for the well. Platinum's oil and gas lease covering the property where the well is located has terminated, meaning that Platinum no longer has a good faith claim of right to operate the well and no eligibility for a plugging extension.

There is no apparent reason why Saber Resources, LLC or any other operator would be interested in taking a transfer of the subject well, and Platinum's speculation that the well could be transferred to Saber by October 2007 is without any support. There is no proof that Saber is willing to become the operator of the well and, as far as the examiner can determine, no pending Form P-4 pursuant to which such a transfer is proposed. Neither is there any proof that Saber has, or can obtain, an oil and gas lease giving Saber a good faith claim of right to operate the well. The examiner has officially noticed the Commission's On-Schedule Lease, Wells, Wellbores by Operator and P-4 Inquiry databases for Saber and its leases which show that currently, Saber is the operator of a total of 12 wells, only one of which was transferred from Platinum.

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. Platinum Exploration, Inc. ("Platinum") was given at least ten (10) days notice of this hearing by certified mail addressed to Platinum's most recent Form P-5 organization report address. Platinum appeared at the hearing and presented evidence.
2. Platinum is a corporation. Its officers are Harold James Rasmussen, President, Michael Paul Jobe, Vice President, and Gregory James Rasmussen, Vice President. These officers were persons in a position of ownership or control of Platinum at the time the violations involved in this docket were committed.
3. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
4. Platinum's Form P-5 organization report is active, and Platinum has approved financial assurance on file with the Commission in the amount of \$250,000.
5. Platinum designated itself operator of the C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006), South Woodsboro (4200) Field, Refugio County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved August 8, 2001, effective June 1, 2001.
6. The C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006) has been inactive for more than twelve months, does not have a Statewide Rule 14(b)(2) plugging extension, and has not been plugged.
 - a. District Office inspections on March 2, March 24, April 20, and October 30, 2006, and March 19, 2007, disclosed that the well was inactive and unplugged.

- b. No production has been reported to the Commission for the well since prior to January 1, 1993.
 - c. A Statewide Rule 14(b)(2) plugging extension for the well was canceled on December 6, 2004, because a required H-15 test was delinquent.
 - d. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the well.
7. The estimated cost to the State to plug the C. G. & R. H. Wood Lease, Well No. 4 is \$15,900.
8. The C. G. & R. H. Wood Lease, Well No. 4 was completed on August 13, 1971, and is a well more than 25 years old subject to the testing requirements of Statewide Rule 14(b)(3). A required H-15 test for the well was due in May 1993 and has not been performed since that date.
9. On four separate occasions between March 8, 2006, and May 24, 2006, the District Office sent Platinum correspondence, notices, or copies of memoranda requesting voluntary compliance with Commission rules on the C. G. & R. H. Wood Lease, Well No. 4. Platinum did not respond by placing this well into compliance. On August 24, 2006, Platinum filed a Form W-3A (Notice of Intention to Plug and Abandon) for the well, stating an anticipated plugging date of October 30, 2006, but the well has not been plugged.
10. Platinum's oil and gas lease covering the property on which the subject well is located has terminated, and Platinum no longer possesses a good faith claim of right to operate the well.
11. A well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in order to prevent pollution of usable quality surface or 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.
12. Any well that is greater than 25 years old must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the H-15 test required by Statewide Rule 14(b)(3), the Commission cannot determine if the well poses a threat to natural resources.

13. No prior final enforcement orders have been entered against Platinum for violations of Commission rules.
14. Platinum has not demonstrated good faith because it did not achieve voluntary compliance with Statewide Rules 14(b)(2) and 14(b)(3) in response to multiple requests of the District Office for such compliance.

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. Platinum Exploration, Inc. (“Platinum”) was and is the operator of the C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006), South Woodsboro (4200) Field, Refugio 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, Platinum had the primary responsibility for complying with Statewide Rules 14(b)(2) and 14(b)(3) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §§3.14(b)(2) and 3.14(b)(3)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006), South Woodsboro (4200) Field, Refugio County, Texas;
5. Platinum violated Statewide Rule 14(b)(2) by failing to plug the subject well within one year after operations ceased and by failing otherwise to bring the well into compliance with Statewide Rule 14(b)(2). The subject well has been out of compliance with Statewide Rule 14(b)(2) since at least December 6, 2004.
6. Platinum violated Statewide Rule 14(b)(3) with respect to the C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006), South Woodsboro (4200) Field, Refugio County, Texas, by failing to conduct a required H-15 test (Test on an Inactive Well More than 25 Years Old) on the well. The well has been out of compliance with Statewide Rule 14(b)(3) since at least May 1993.
7. The documented violations committed by Platinum constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.

8. Platinum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
9. As officers of Platinum at the time Platinum violated Commission rules related to safety and the prevention or control of pollution, Harold James Rasmussen, Michael Paul Jobe, and Gregory James Rasmussen, and any organization subject to the Commission's jurisdiction in which they, or any of them, 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 Platinum be ordered to pay an administrative penalty in the amount of \$4,000, less \$3,000 already paid. The examiner recommends further that Platinum be ordered to plug the C. G. & R. H. Wood Lease, Well No. 4 (RRC No. 051006), South Woodsboro (4200) Field, Refugio County, Texas.

Respectfully submitted,

James M. Doherty
Hearings Examiner