
ENFORCEMENT ACTION AGAINST ASHWORTH ENERGY, INC. (OPERATOR NO. 035311) FOR VIOLATIONS OF STATEWIDE RULES ON THE SANDHAWK-GULF HANNAH FEE (21296) LEASE, WELL NO. 1, HULL FIELD, IN LIBERTY COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Lowell Williams, Staff Attorney, Enforcement Section of the Railroad Commission of Texas

FOR RESPONDENT:

Douglas Ashworth, President of Ashworth Energy, Inc.

PROCEDURAL HISTORY

Date of Request for Action:	July 3, 2001
Hearing Held:	May 16, 2002
Record Closed:	June 10, 2002
Heard By:	Scott Petry, Hearings Examiner
PFD Circulation Date:	October 18, 2002
Amended PFD Circulation Date:	November 19, 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 Ashworth Energy, Inc. ("Ashworth" or "respondent") violated Statewide Rule 8 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8] and/or Statewide Rule 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14] on the Sandhawk-Gulf Hannah Fee (21296) Lease, Well No. 1 ("subject lease / subject well"), Hull Field, in Liberty County, Texas;
2. Whether the respondent 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 Rule 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such leases and wells; and
4. Whether any violations of Statewide Rule 8 and/or Statewide Rule 14 by the respondent should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534 (Vernon 2001).

Ashworth Energy, Inc., hereinafter "Ashworth" or "respondent", appeared at the hearing by and through its president, Douglas Ashworth, and offered evidence. Lowell Williams, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section's hearing file was admitted into evidence.

Enforcement recommends that Ashworth be ordered to pay a total administrative penalty of \$4,000.00, of which \$2,000.00 is for one violation of Statewide Rule 14(b)(2), \$1,000.00 is for one violation of Statewide Rule 8(d)(1), and \$1,000.00 is an enhancement for a prior violation. Respondent argued that he was the victim of a conspiracy by a disgruntled landowner and the Railroad Commission and that this conspiracy should result in either elimination or reduction of the administrative penalty. The record was kept open for 20 days to allow Ashworth time to submit additional evidence, but the only additional evidence submitted by the respondent was a document restating many of its previous arguments. The examiner concurs with the Enforcement attorney's assessment and recommends an administrative penalty of \$4,000.00 be assessed against the respondent.

BACKGROUND

Unplugged and unused well bores constitute a potential danger to the public's health and safety and must be plugged when mandated by the Commission's rules. Statewide Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with applicable Commission rules and regulations.

Statewide Rule 14 further provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed before September 1, 1997, 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.

Rule 8 provides that persons disposing of oil and gas wastes by any method must have a permit to do so unless authorized by subsections (d)(3) or (e) of Rule 8, or under Rules 9, 46, or 98. These wastes are defined to include materials to be disposed of or reclaimed, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas.

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, pursuant to Tex. Nat. Res. Code Ann. § 81.0531.

DISCUSSION OF THE EVIDENCE

Ashworth designated itself as operator of the Sandhawk-Gulf Hannah Fee (21296) Lease, Well No. 1, Hull Field, in Liberty County, Texas, by means of a Form P-4, effective June 1, 1992 and approved June 11, 1992. Production from the subject well ceased on or before February 1, 1993. Commission records indicate that respondent's Form P-5 Organization Report is currently delinquent and that the respondent last filed a Form P-5 on May 31, 2000. At the time of its last P-5 renewal, Ashworth submitted a \$100 "good guy" fee as its organizational financial assurance.

I. Enforcement's Position & Evidence

In Enforcement's case in chief, the Staff Attorney admitted into evidence the hearing file and copies of related records. In regards to the asserted violations of Statewide Rule 8(d)(1), Enforcement submitted inspection reports made on February 2, 2000, February 14, 2000, February 29, 2000, March 16, 2000, April 10, 2000, May 8, 2000, May 30, 2000, November 2, 2000, January 16, 2001, and February 12, 2001, which indicate that two 500 barrel tanks on the subject lease were leaking oil, water, drilling mud, and other basic sediment. Enforcement stated that the leaking wastes resulted in spills measuring 3' x 3' x 1' and 3' x 2' x 1". In its pleadings, however, Enforcement characterized the spills as one Statewide Rule 8(d)(1) violation and requested a penalty of \$1,000.00.

Inspection reports for March 14, 2001 and March 26, 2001 indicate that the leaking tanks were emptied, but that approximately 25 barrels of the sediment were improperly disposed of in a separate tank on a different lease. An inspection report dated April 25, 2001 indicated that the tanks were no longer "leaking or seeping fluid." Enforcement stated that the violation is serious and a hazard to the public, as the discharge may contaminate the surface and surface or subsurface waters and may affect the health of humans and animals.

In regards to the alleged violation of Statewide Rule 14(b)(2), Enforcement submitted Commission inspection reports dated February 29, 2000, March 16, 2000, April 10, 2000, May 8, 2000, May 30, 2000, November 2, 2000, January 16, 2001, February 12, 2001, March 26, 2001, April 25, 2001, and June 20, 2001, and production reports with either zero reported production or no production reports filed at all after February 28, 1993, to show that the subject well has been inactive for greater than one year. Additionally, the inspection reports and the pictures attached to the March 16, 2000 and April 10, 2000 inspection reports, as well as the respondent's assertion that he reportedly produced the well through swabbing, indicate that the well is not equipped for production.

Enforcement alleges that the respondent has acted in bad faith for its inaction and failure to correct the violations. Correspondence from the District Office to the respondent requesting compliance and action on the subject lease was submitted into the record for February 7, 2000, February 16, 2000, March 28, 2000, April 26, 2000, May 18, 2000, June 6, 2000, July 7, 2000, November 8, 2000, January 18, 2001, February 16, 2001, April 2, 2001, May 3, 2001, and July 3, 2001.

Additionally, Enforcement stated that no workovers, re-entries, or subsequent operations have taken place on the subject well within the twelve months prior to the mailing of the complaint. Enforcement stated in the hearing that the respondent was granted four Form W-1X extensions for the subject well, but that the most recent W-1X extension request was denied by the Commission on August 21, 2000. Commission records were admitted into the record to show that the total well depth for the subject well is 1,747' and the total estimated cost to plug the subject well is \$2,620.00.

II. Respondent's Position & Evidence

In Ashworth's case in chief, the respondent argued that disputes with disgruntled landowners and a "setup to knock his company out by the RRC" precipitated many of the problems in this docket and prevented the respondent from correcting many of the violations. The respondent stated that "...nine years later I cannot go on the property without having guns pulled on me."

In terms of the alleged Rule 8(d)(1) violation on the Sandhawk-Gulf Hannah Fee (21296) Lease, the respondent stated that it had attempted to remediate this spill on a prior occasion, but that its agents were "accosted by men in two pickup trucks" and forced off of the property. Ashworth stated that it had hired McCarty Parafin Melting Service to remove the wastes from the tanks. In an exhibit marked as "March 14, 2001 Report on Incidents at Sandhawk Lease", the respondent asserts:

... that even though Ashworth Energy does not own or operate the tanks (original storage tanks of Ashworth Energy were "stolen" and "sold" by land owner Mr. Benny Camp and associates), they were "forced" upon Ashworth Energy by Mr. Mereck of the Railroad commission, and all responsibility has been placed upon the company.

Despite the attempts to remediate the spill, it was also the contention of the respondent that the wastes in the tanks were pumped in from an adjoining lease by another party at the behest of the Commission. Respondent asserted that the wastes did not belong to it and that the respondent was, therefore, not liable for the spill. To support this assertion, the respondent introduced Paul Dillo with Patriot Security, which had been employed by the respondent for services on the Sandhawk-Gulf Hannah Fee (21296) Lease. The witness testified that the flow lines on the subject lease were not connected to the subject well, but that he "was not on location at the time all this was transpiring" and that his opinion was based on his reading of Patriot's in-house company reports. While Mr. Dillo stated that he had not discussed the situation with Mr. McParty, he stated that it did not look like the lines were connected to the subject well and that it was apparent to him that the lines were going to another well.

On cross-examination of the witness, however, Enforcement points to the March 26, 2001 inspection report where the inspector writes that he followed the flow line from the Ashworth Energy well to the tank battery that is the subject of this docket. It was also pointed out by Enforcement that the tank battery is approximately 100' from the subject well, whereas the tank battery for the closest wells from the adjoining lease was approximately one-quarter mile away from the tank battery and subject well.

The respondent further asserted that problems with disgruntled landowners and the Railroad Commission were also to blame for the Rule 14(b)(2) violations. The respondent argued that it was unable to produce the subject well because the landowner had physically threatened its employees

and that the local law enforcement “refuses to get involved”. Despite this argument, the respondent also contended that the well should be classified as a producer. In its exhibit, the respondent stated that the subject well has “...been ‘shut in’ since 1993, but was recently classified as a ‘producer’ by the Railroad commission for having passed a swab test that produced oil....” The respondent did not, however, submit a Form W-10 (Oil Well Status Report) indicating that swabbing, or any form of production, had indeed occurred.

EXAMINER’S OPINION

With regard to the respondent’s alleged failure to timely plug and place the subject lease in compliance with Commission rules, the examiner finds that Enforcement has met its burden of proof and that the respondent has failed to provide a defense that would alleviate, or mitigate, its regulatory duties. The respondent stated in its case-in-chief that both disgruntled landowners and a plot by the Railroad Commission “...to knock his company out” prevented it from fulfilling its obligations, but, outside of Ashworth’s conflicting testimony, the respondent has not supported its allegations with any evidence. The evidence in the record indicates that the tanks belong to Ashworth Energy and that flow lines connected the tanks to at least one Ashworth Energy well. In any event, the tanks were located on the subject lease and it is undisputed that the respondent is the operator of the subject lease. Therefore, the examiner cannot accept respondent’s assertion that Ashworth Energy is not responsible for the leaking tanks.

The assertions that respondent is the victim of disgruntled landowners and a conspiracy by the Commission are also unsupported by any credible evidence in the record. Further, these allegations do not address or excuse the respondent from its regulatory responsibility to plug the subject well. An operator’s responsibility to comply with Commission rules is a statutory duty imposed by Chapter 89 of the Texas Natural Resources Code. Credibility issues aside, the alleged “conspiracy” still would not have absolved respondent of its responsibilities. As the Texas Natural Resources Code points out, ownership is not a prerequisite for plugging and Section 89.044 of the Texas Natural Resources Code states that, “...the operator or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged.” It is well settled that a person may retain plugging responsibility for a well even though that person does not have an ownership interest in it. The respondent’s proper course of action would have been to obtain an order from the District Court to enter the property and plug the subject well when its W-1X plugging extension expired on January 15, 2001.

This should have been done with the help of law enforcement, if necessary. Instead of following through with its regulatory responsibility, however, the respondent maintained that, despite approximately nine years without production, the subject well was a “good well” capable of production and that he was going to “stick with it.” Despite this assertion, the respondent failed to

provide a Form W-10 supporting that the well was capable of production. It is the examiner's opinion that the respondent will not follow through with its regulatory responsibilities absent a Commission order directing it to do so.

With regard to the Statewide 8(d)(1) violation, the unsubstantiated assertion that respondent is the victim of theft is also not within the purview of this hearing and does not address or excuse the respondent from its regulatory responsibility to keep the subject lease in compliance with Commission rules.¹ The respondent's inaction since becoming responsible for the subject well and its refusal to plug the well as mandated by the Texas Natural Resources Code §89.011 created a situation where pollution could occur.

The respondent failed to bring the subject well and lease into compliance with Statewide Rule 8(d)(1) from at least some time on or before March 16, 2000 until some time between March 26, 2001 and April 25, 2001. The file submitted by the Enforcement section included at least thirteen notifications regarding compliance from the District Office and thirteen distinct inspection reports for the subject lease and well for the violations. These reports range from February 2000 to January 2002 and the examiner believes that the evidence establishes that respondent was provided more than ample time to correct the violation.

Enforcement's request for penalties, pursuant to the Commission's penalty guidelines, includes an enhancement of \$1,000 for a prior violation of Commission rules. The prior violation in question is Oil & Gas Docket No. 03-0210760, An Enforcement Action Ashworth Energy, Inc. for Violation of Statewide Rules on the Sandhawk-Gulf Hannah Fee (21296) Lease, Well No. 1, Hull Field, in Liberty County, Texas. According to Commission records admitted into the record, that docket was opened on November 30, 1995, the order was signed on March 23, 1999, and the docket was closed on June 2, 1999. The prior docket involved the same well as the current docket, but Ashworth was allowed to bring the subject well into compliance in the prior docket by filing a Form W-1X. The requested penalty enhancement with regard to the current docket is appropriate given the operator's prior actions and the lengthy amount of time that this well has remained out of compliance with Commission rules.

Based on the facts presented, the examiner recommends that the respondent be ordered to plug the subject well. The subject well has not reported any production in over nine years and the respondent has not submitted any credible evidence that the well is capable of production. The respondent signed the P-4, is the operator of record with the Commission, and is responsible for

¹ It should be noted that while respondent's allegations regarding theft are outside the jurisdiction of the Commission, the respondent is not without remedy for theft and may choose to pursue an appropriate action in a court of competent jurisdiction.

complying with all applicable Commission rules and regulations. Additionally, the respondent does not have an active P-5 Organization Report and the respondent's assertions that it will bring the well back into production are questionable at best. Accordingly, the examiner concurs with Enforcement's recommendation and recommends that the respondent be ordered to plug the subject well and to pay an administrative penalty of \$4,000.00 (consisting of one Rule 14(b)(2) violations at \$2,000, one Rule 8(d)(1) violation at \$1,000, and an enhancement penalty of \$1,000 for one prior violation).

EXAMINER'S RECOMMENDATION

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. Ashworth Energy, Inc. ("respondent") was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. Respondent's president, Douglas Ashworth, participated in the scheduled hearing and presented evidence.
2. Respondent's P-5 Organization Report on file with the Commission is "delinquent". The date of its last P-5 filing was May 31, 2000. At the time of its last renewal, Ashworth Energy, Inc. paid a \$100 "good guy" fee as its organizational financial assurance.
3. Respondent designated itself as operator of the Sandhawk-Gulf Hannah Fee (21296) Lease ("subject lease"), Well No. 1 ("subject well"), Hull Field, in Liberty County, Texas, by means of a Form P-4, effective June 1, 1992 and approved June 11, 1999.
4. Well No. 1 on the Sandhawk-Gulf Hannah Fee (21296) Lease has been inactive for a period in excess of one year. The well ceased production on or before February 1, 1993 and the most recent plugging extension expired on January 15, 2001.
5. There are no Rule 14(b)(2) plugging extensions currently in effect for the subject well.
6. Tanks on the subject lease, connected to the subject well, began leaking a mixture of oil, water, and basic sediment on or before March 16, 2000, resulting in a spill measuring approximately 3' x 3' x 1' and 3' x 2' x 1" on the Sandhawk-Gulf Hannah Fee (21296) Lease.
7. The leaking tanks were emptied on or before April 25, 2001.
8. An unauthorized discharge or disposal of oil, saltwater, basic sediment or other oil and gas waste is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.

9. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
10. Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject well and lease in compliance after being notified of the violations by the district office on February 7, 2000, February 16, 2000, March 28, 2000, April 26, 2000, May 18, 2000, June 6, 2000, July 7, 2000, November 8, 2000, January 18, 2001, February 16, 2001, April 2, 2001, May 3, 2001, and July 3, 2001.
11. The respondent has a prior violation of Commission rules in Oil & Gas Docket No. 03-0210760. Docket No. 03-0210760 regarded a violation of Statewide Rule 14(b)(2). The final order was entered on March 23, 1999, and directed the respondent to pay a \$2,000 penalty.
12. The estimated cost to the State of plugging the subject well is \$2,620.00.

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. Ashworth Energy, Inc. is the operator of the subject well, as defined by Commission Statewide Rule 14 (16 TEX. ADMIN. CODE §3.14) and §89.002 of the Texas Natural Resources Code.
4. As operator, the respondent may enter the subject lease for the purpose of plugging the subject well pursuant to Commission rules and §89.044 of the Texas Natural Resources Code.
5. The respondent has the primary responsibility for complying with Statewide Rule 8 (16 TEX. ADMIN. CODE §3.8), Statewide Rule 14 (16 TEX. ADMIN. CODE §3.14), and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject well.
6. The subject well is not properly plugged or otherwise in compliance with Commission Statewide Rule 14 (16 TEX. ADMIN. CODE §3.14) or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The subject well lease has been out of compliance since its W-1X extension expired on January 15, 2001.
7. The subject lease was not in compliance with Commission Statewide Rule 8 (16 TEX. ADMIN. CODE §3.8) from at least February 2, 2000 to at least March 26, 2001.

8. The documented violations committed by Ashworth Energy, Inc. are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c) (Vernon 2001).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order be approved, requiring the operator, Ashworth Energy, Inc., within 30 days from the date this order becomes final, to plug the subject well in accordance with the requirements of Statewide Rule 14. It is my further recommendation that the operator, Ashworth Energy, Inc., be ordered to pay an administrative penalty of \$4,000.00, consisting of one Rule 14(b)(2) violation at \$2,000.00, one Rule 8(d)(1) violation at \$1,000.00, and an enhancement for a prior order at \$1000.00.

Respectfully submitted,

Scott Petry
Hearings Examiner