

ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY VERNON DANIELS D.B.A. CMV PRODUCTION AND/OR PETRO VEST, INC. ON THE LIDDELL, F. EST. (07917) LEASE, WELL NO. 3D, TAYLOR LAKE (7800) FIELD, HARRIS COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Scott Holter, Staff Attorney

FOR RESPONDENT:

D. L. McClure
Mike T. McClure

No appearance

MOVANT:

Enforcement Section

RESPONDENT:

President, Petro Vest, Inc.
Operations Manager, Petro Vest, Inc.

Vernon Daniels, d.b.a. CMV Production

PROPOSAL FOR DECISION
PROCEDURAL HISTORY

ORIGINAL COMPLAINT SERVED:	October 24, 2001
DATE CASE HEARD:	March 18, 2002
PFD PREPARED BY:	Scott Petry, Hearings Examiner
PFD CIRCULATED:	January 23, 2003
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 respondents, Vernon Daniels d.b.a. CMV Production and/or Petro Vest, Inc., should be required to plug or place in compliance with Statewide Rule 9 (16 TEX. ADMIN. CODE § 3.9) and Statewide Rule 14 (16 TEX. ADMIN. CODE § 3.14) the Liddell, F. Est. (07917) Lease ("subject lease"), Well No. 3D ("subject well"), Taylor Lake (7800) Field, Harris 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 9 and 14;
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 leases and wells;
4. Whether any violations of Statewide Rules 9 and 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 (Vernon 2001).
5. Whether other orders should be entered as permitted by law.

Petro Vest Inc., hereinafter "Petro Vest", appeared at the hearing by and through its President and General Counsel, Mr. D.L. McClure, and its Operations Manager, Mr. Mike McClure, and offered evidence. Vernon Daniels, d.b.a. CMV Production, hereinafter "Daniels", failed to appear at the hearing after being notified through certified and first class mailings. Scott Holter, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section's hearing file was admitted into evidence.

Enforcement originally recommended that Petro Vest and/or Daniels be ordered to pay a total administrative penalty of \$4,000.00 [which consists of 2,000.00 for one violation of Statewide Rule 9 (12)(C) and \$2,000.00 for one violation of Statewide Rule 14(b)(2)], and that an assessment be made as to the party responsible for the violations asserted in Enforcement's complaint. Enforcement submitted a trial amendment, however, that asked that alternative penalty assessments be made to take into account the plugging of the subject well by Petro Vest.

Enforcement requested that a determination be made as to which party is the proper operator and that, if the responsible party were Vernon Daniels, he be assessed the original penalty of \$4,000.00.

In the alternative, Enforcement requested that, if the responsible party were found to be Petro Vest, it be assessed a penalty of \$3,500.00. The reduced penalty request for Petro Vest was intended to reflect the correction of the Rule 9(12)(C) violation and Rule 14(b)(2) violation by the plugging of the well.

The examiner finds that the evidence supports the conclusion that Petro Vest was acting as the agent of Daniels and that control of the subject well remained with Daniels, the designated Form P-4 operator. Accordingly, the examiner recommends Vernon Daniels, d.b.a. CMV Production, be ordered to pay an administrative penalty in the amount of \$4,000.00.

BACKGROUND

Unplugged and unmonitored well bores constitute a potential danger to public health and safety and must be plugged when mandated by Commission rules. The operator of a well, for purposes of plugging liability, is the person who is responsible for the physical operation and control of that well at the time it ceases operation.

Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted.

Rule 14(c)(2) 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 operator responsible for the physical operation and control of the well and to be the entity responsible for proper plugging of the well. The presumption may be rebutted at a hearing to determine plugging responsibility.

Rule 9(12)(C) provides that each disposal well must be pressure-tested at least once every five years to determine if there are leaks in the casing, tubing, or packer.

SUMMARY OF EVIDENCE

A. Enforcement's Position and Evidence

The Enforcement attorney presented evidence that Daniels designated himself operator of the subject well by filing a Form P-4 with an effective date of November 15, 1985, and an approval date of December 8, 1986. The P-5 Organization Report for Vernon Daniels, d.b.a. CMV Production, is currently inactive and was last updated on February 14, 2000. Petro Vest, Inc., on the other hand, has an active

P-5 Organization Report on file with the Commission.

Enforcement asserted that Daniels was the operator presumed responsible for the subject lease pursuant to the Form P-4. This presumption was called into question, however, by discrepancies in paperwork and purported control over the subject well. Enforcement argued that Petro Vest may be the responsible operator for the subject well because a Commission District inspection report made June 14, 1999, indicated that the subject well, which is a disposal well, was being used by Petro Vest for its Well No. 4 on the Liddell, F. Est. (07917) Lease. Petro Vest's Well No. 4 is approximately 150 feet away from the subject well. Enforcement also noted that Petro Vest designated itself as operator of the subject well on a Form W-3A (Notice of Intention to Plug and Abandon) filed on April 5, 2001, and on a Form W-1X plugging extension request filed on July 3, 2001.

With regard to the violation of Statewide Rule 9(12)(C), Enforcement stated that the subject well was severed for a delinquent H-5 pressure test on December 6, 2000. Enforcement submitted Commission computer records to show that the H-5 pressure test was due on July 30, 2000, but that the test was not performed and the paperwork was not filed.

With regard to the violation of Statewide Rule 14(b)(2), inspection reports and Commission records for disposal activity were submitted as evidence of Daniels' and/or Petro Vest's failure to comply with Rule 14(b)(2) for the Liddell, F. Est. (07917) Lease, Well No. 3D. The reports show that the subject well ceased disposal activity on or before the period ending September 30, 1998. However, the June 14, 1999 inspection report indicated that the well was being used for disposal purposes. Therefore, the subject well actually ceased disposal activity when the well was sealed by the Commission on June 14, 1999.

Enforcement also pled that no "workovers, re-entries, or subsequent operations" had taken place on the subject leases within the last twelve months. Commission records indicate that Daniels did not apply for a plugging extension of the subject well, but that Petro Vest, on July 3, 2001, applied for a W-1X plugging extension for the subject well. This extension application, which was denied by the Commission's P-5 Department on July 19, 2001, was filed after correspondence was sent from Petro Vest to the District Office on April 4, 2001. The April 4, 2001 correspondence stated that Petro Vest did not believe it was the party responsible for plugging the well, but that it would assume the duty to plug it anyway.

B. Daniels' Position and Evidence

Despite the fact that Vernon Daniels was named and properly served with notice in this docket, he did not appear at the hearing. A signed green card from the certified mailing indicates that Daniels actually received the complaint. Additionally, according to testimony put forth by Petro Vest at the hearing, Petro Vest had been in contact with Daniels regarding this situation and Daniels possessed actual notice of the hearing. It was further asserted by Petro Vest that Daniels initially received notice of the violations and that Daniels was the party that informed Petro Vest of the pending Commission action.

C. Petro Vest's Position and Evidence

Petro Vest asserted that it did not maintain control of the subject well and that the evidence rebutted any presumption that it may be liable for plugging the subject well. More specifically, Petro Vest stated that any and all work that Petro Vest, or its affiliates, performed was done as an agent for Daniels. Petro Vest asserted that it plugged the subject well because it valued its record of compliance and wanted to avoid any adverse relations with the Railroad Commission, but at all times it felt that the plugging responsibility fully belonged to Daniels. Petro Vest filed for plugging extensions and plugging reports in their name to adequately reflect that they were willing to assume the plugging responsibility and because the District Director informed them that they "...would be doing everyone a favor if [we] just plugged it...."

Petro Vest was represented by its President and General Counsel, Mr. D.L. McClure, and its Operations Manager, Mr. Mike McClure. Mike McClure also owns and operates Selective Tools, Inc., a service company that performed workover duties on the subject well. It was the testimony of the McClures' that much of the confusion in this docket comes from Vernon Daniels' bankruptcy proceedings, both individually/personally and for the Daniels Corporation, and the relationship that ensued between Petro Vest, Daniels, and the trustee/successor-in-interest of the Daniels interests. The bankruptcy for Daniels personally, however, is particularly pertinent here because this well was operated by Daniels under a "d.b.a." and not under the Daniels Corporation.

Mr. D. L. McClure testified that Petro Vest acquired operatorship of Well No. 4, a well offsetting the subject well, on the Liddell, F. Est (07916) lease from Daniels' trustee. Well No. 3D, the subject well in this docket, is approximately 150 feet away from Well No. 4. On April 13, 1999, Vernon Daniels entered into a personal Chapter 7 bankruptcy, which was closed on September 1, 1999. With the approval of the bankruptcy judge, Range Resources took over as trustee/agent for Daniels.

According to Petro Vest, Vernon Daniels had a working interest¹ in Well No. 4 and this working interest was controlled by the trustee, Range. The lease upon which the No. 4 well was located was due to expire and the trustee instructed Petro Vest to re-work the well before the lease lapsed. The actual reworking of the well was done by Selective Tools, Inc., which is a company run by Mr. Mike McClure. During the reworking of this well, Petro Vest asserted that approximately 500 barrels of saltwater were produced. Petro Vest stated that when the subject well was used in the reworking of Well No. 4, it was done at the behest of Vernon Daniels and the trustee.

Petro Vest stated that it had originally not wanted to use the subject well, Well No. 3D, for disposal purposes, but that it was instructed to do so by Daniels' trustee. The trustee authorized Petro Vest to take the saltwater from Well No. 4 and place it in Well No. 3D and also authorized and paid for the repairs necessary to use Well No. 3D. Therefore, it was the testimony of Petro Vest that the disposal of saltwater into the subject well, Well No. 3D, was done as an agent of, and for the benefit of, Vernon Daniels and the trustee. Petro Vest asserted that both Mike McClure and D.L. McClure were given verbal authorization to inject into the subject well in April 1999. Petro Vest asserted that Vernon Daniels benefitted from the reworking of Well No. 4 (and the savings incurred from injection into the subject well rather than drilling a new disposal well) because, without these actions, the lease for Well No. 4 would have lapsed and Vernon Daniels' interest in it would have lapsed with it.

EXAMINER'S OPINION

In the Enforcement's case-in-chief, the Enforcement staff attorney asserted that Daniels was the operator presumed responsible for the subject lease pursuant to the Form P-4. This presumption has not been sufficiently rebutted by any of the information presented in this docket and the responsibility for this well therefore remains with Vernon Daniels.

Vernon Daniels, d.b.a. CMV Production, was responsible for plugging the subject well because, according to a preponderance of the evidence, he was the operator responsible for the physical operation and control of the well at the time the well was supposed to be plugged. The fact that another party eventually stepped in and plugged the well for Daniels does not absolve him of the culpability for failing to timely plug the well.

¹It is unclear from the record if the interest held by Mr. Daniels was in his individual capacity or whether the interest belonged to the Daniels Corporation. In any case, it was the assertion of Petro Vest that the trustee had the authority to represent Mr. Daniels in the matter.

I. Petro Vest's Culpability

The evidence suggests that Daniels, or his representative, directed Petro Vest to use the subject well and, as Vernon Daniels failed to show at the hearing, there was no party to rebut this assertion. The uncontested evidence points to an agency relationship in which Daniels, the P-4 operator of the subject well, paid Petro Vest or its affiliate to rework the subject well, Well No. 3D, and authorized Petro Vest to use the subject well in the reworking of Well No. 4. While Petro Vest and the other working interest owners of the offsetting Well No. 4 may have all benefitted from the use of the disposal well, the uncontested testimony was that Daniels authorized Petro Vest to use it. Therefore, Petro Vest used the well as an agent of Daniels and Daniels should not be allowed to escape his regulatory responsibilities.

The subject well has been plugged and the evidence indicates that Petro Vest carried out this plugging despite its continued assertion that it was not the party responsible for the plugging of the well. At the hearing, Petro Vest's officers testified that they valued their record of compliance with the Commission and that they "...didn't think [sic] owed it, but did not want adverse relations with the RRC." Indeed, correspondence from Petro Vest to the District Office on April 4, 2001 asserted that, "[a]lthough Petro Vest, Inc. sincerely believes that it has no obligation or duty to do so, PVI hereby assumes that duty and will plug and abandon the SWD well..." This letter was sent to the District Office before the well was actually plugged on November 13, 2001. In other words, Petro Vest asserted that they chose to plug the subject well rather than risk an enforcement action against it from the Commission.

Petro Vest has acted in good faith in this docket and should not be penalized for an act that may have prevented the migration or discharge of saltwater and other oil and gas wastes from the subject well. Therefore, the examiner recommends that the alleged violations against Petro Vest be dismissed.

II. Vernon Daniels' Culpability

Vernon Daniels was, and still is, responsible for regulatory compliance of the subject lease. Given the bankruptcy proceedings of Mr. Daniels, it is necessary to examine how these proceedings affect the assessment of penalties.

The bankruptcy records, as reported by the Pacer Service Center system, indicate that Vernon Daniels, individually, filed for Chapter 7 bankruptcy on April 13, 1999, and the bankruptcy case was

closed on September 1, 1999. When an operator has a pending petition in bankruptcy, the Commission may generally order compliance with its rules concerning environmental protection and public safety (even if compliance requires the expenditure of money) and may assess a penalty for past violations. The Commission may not, however, order a respondent with a pending bankruptcy to pay a fine for past violations or attempt to collect an administrative penalty for past violations (other than by filing appropriate claims in the bankruptcy proceeding).

The respondent's bankruptcy is *not* currently pending, however, and the respondent is not being penalized for "past" violations. Rather, the bankruptcy proceeding was discharged on September 1, 1999, and the violations at issue in this docket did not occur until after the bankruptcy case was closed. Indeed, an examination of the pertinent dates indicates that the disposal activity for the subject well did not cease until approximately June 14, 1999,² and the H-5 pressure test was not due until July 30, 2000. Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules *within one year after operations cease*, unless an extension is granted. Therefore, the Rule 14(b)(2) violation did not actually attach until June 14, 2000, and the Rule 9(12)(C) violation did not occur until July 31, 2000. Each of these violations occurred well after Daniels' individual bankruptcy case was closed and it is the opinion of the examiner that the bankruptcy does not preclude the Commission from ordering the respondent to pay an administrative penalty.

The ordering of compliance for the subject well is a moot issue here because the well has already been plugged by Petro Vest. The payment of administrative penalties, however, is applicable in this situation. It is my recommendation that respondent Vernon Daniels be ordered to pay an administrative penalty of \$4,000.00, consisting of \$2,000.00 for one violation of Statewide Rule 9(12)(C) and \$2,000.00 for one violation of Statewide Rule 14(b)(2). Therefore, 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. Respondent Vernon Daniels d.b.a. CMV Production ("Daniels") 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. Daniels failed to appear at the scheduled time and place for the hearing.

²Official disposal records indicate the last date of disposal activity as being September 30, 1998, but the inspection report dated June 14, 1999 indicated that the well was being used. Therefore, the last date that the well was being used is actually June 14, 1999.

2. Respondent Petro Vest, Inc. ("Petro Vest") 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) address. Petro Vest appeared at the scheduled time and place for the hearing and presented evidence.
3. Respondent Daniels does not have an active P-5 Organization Report. Daniels last filed a \$110 cash fee under Option 4 as its financial assurance on December 3, 1999.
4. Respondent Petro Vest has an active P-5 Organization Report on file with the Commission. Petro Vest last filed a \$25,000 bond as its financial assurance on June 7, 2002.
5. Daniels, d.b.a. CMV Production, designated himself operator of the Liddell, F. Est. (07917) Lease, Well No. 3D ("subject lease/ subject well"), Taylor Lake (7800) Field, Harris County, Texas, by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with an effective date of November 15, 1985, and an approval date of December 8, 1986.
6. The subject well has been inactive for a period in excess of one year. Well No. 3D ceased disposal activity on or before June 14, 1999.
7. The pressure test for Well No. 3D on the Liddell, F. Est. (07917) Lease was due on or before on July 30, 2000. No exceptions to the pressure testing requirements of Statewide Rule 9 were granted for Well No. 3D. No pressure test was performed and the lease was severed on December 6, 2000.
8. Respondent Daniels filed for personal bankruptcy in the United States Bankruptcy Court on April 13, 1999. The bankruptcy case was closed on September 1, 1999.
9. The subject well was used for disposal purposes in the reworking of Well No. 4 on the Liddell, F. Est (07916) Lease by Petro Vest, acting as an agent for Vernon Daniels, on or before June 14, 1999.
10. 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 potential for pollution.
11. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil or gas wastes from the subject well. Failure to properly test a disposal well in accordance with Commission rules constitutes a cognizable threat to the public health and safety because of the potential for pollution that may occur due to leaks in the wellbore.
12. The record shows no previous violations of Commission rules by either Daniels or Petro Vest.
13. Respondent Daniels has not demonstrated good faith since it failed to plug or otherwise place the subject well in compliance after being notified of the violations by the Commission District

Office.

14. A Form W-3A (Notice of Intention to Plug and Abandon) was filed by Petro Vest, acting as agent for Daniels, on April 5, 2001.
15. A Form W-1X Plugging Extension was applied for by Petro Vest, acting as agent for Daniels, on June 26, 2001. This Form W-1X was denied by the Commission on July 19, 2001.
 - a. The Form W-1X was submitted by Petro Vest, but had the notation "CMV Production" above Petro Vest's name.
16. The subject well was plugged by Petro Vest, acting as agent for Vernon Daniels, on November 13, 2001.

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. Petro Vest's actions with regard to the subject well were only as an agent for Vernon Daniels, the designated operator of the subject well.
4. Vernon Daniels, d.b.a. CMV Production, is the operator of the Liddell, F. Est. (07917) Lease, Well No. 3D, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
5. Vernon Daniels, d.b.a. CMV Production, has the primary responsibility for complying with Rule 9 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.9), Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14), and with Chapter 89 of the Texas Natural Resources Code, as well as other applicable statutes and Commission rules relating to the subject well.
6. Daniels had the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject well.
7. Well No. 3D, a disposal well, was not in compliance with Commission Statewide Rule 9(12)(C) (Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.9(12)(C)), or Chapters 85, 89 and 91 of the Texas Natural Resources Code, from at least July 30, 2000 to when the well was properly plugged on November 13, 2001.
8. Well No. 3D was properly plugged in compliance with Commission Statewide Rule 14 (16

T.A.C. §3.14) and Chapters 85, 89 and 91 of the Texas Natural Resources Code on November 13, 2001. The subject well was out of compliance with Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14) from June 14, 2000 to November 13, 2001.

9. The violations of Commission Statewide Rules 9 and 14 occurred after Daniels' bankruptcy case was closed. Therefore, the Commission may order Daniels to pay an administrative penalty.
10. The documented violations committed by Vernon Daniels constitute acts deemed serious, hazardous 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 the attached order be approved. It is recommended that the violations alleged against respondent Petro Vest be dismissed and that respondent Vernon Daniels, d.b.a. CMV Production, be ordered to pay an administrative penalty in the amount of FOUR THOUSAND DOLLARS (\$4,000.00) [consisting of \$2,000.00 for one violation of Statewide Rule 14(b)(2) and \$2,000.00 for one violation of Statewide Rule 9(12)(C)].

Respectfully submitted,

Scott Petry
Hearings Examiner
Office of General Counsel