

**ENFORCEMENT ACTION AGAINST VIKING RESOURCES, INC. (OPERATOR NO. 885784), FOR VIOLATIONS OF STATEWIDE RULES ON THE MACO STEWART (16294) LEASE, WELL NO. 33, HITCHCOCK (5130) FIELD, GALVESTON COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Susan German  
Staff Attorney

**MOVANT:**

Enforcement Section  
of the Railroad Commission

**FOR INTERESTED PARTY:**

Martin Lakocinski

**INTERESTED PARTY:**

Martin Lakocinski

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

**DATE OF REQUEST FOR ACTION:**

December 3, 2001

**DATE CASE HEARD:**

May 13, 2002

**HEARD BY:**

James M. Doherty, Hearings  
Examiner

**RECORD CLOSED:**

May 13, 2002

**PFD CIRCULATION DATE:**

June 17, 2002

**CURRENT STATUS:**

Protested

**STATEMENT OF THE CASE**

This hearing was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent Viking Resources, Inc. ("Viking") 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 ("T.A.C.") §3.14] the Maco Stewart (16294) Lease ("subject lease"), Well No. 33 ("subject well"), Hitchcock (5130) Field, Galveston County, Texas;
2. Whether the respondent has violated provisions of Statewide Rule 8(d)(1) [Tex. R. R. Comm'n, 16 T.A.C. §3.8(d)(1)] and Statewide Rule 91 [Tex. R. R. Comm'n, 16 T.A.C. §3.91] on the Maco Stewart (16294) Lease, Galveston County, Texas, and should be required to place the lease in compliance with Statewide Rules 8 and 91;

3. Whether the respondent 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 or otherwise place the subject well in compliance with Statewide Rule 14 and by failing to maintain the Maco Stewart (16294) Lease in compliance with Statewide Rules 8 and 91;
4. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject well and lease; and
5. Whether any violations of Statewide Rules 8, 14 and 91 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).

This case originally was scheduled for hearing on April 4, 2002, but at Viking's request the hearing was continued to May 13, 2002. At the hearing on May 13, 2002, no representative of Viking appeared. Susan German, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. In addition, Martin Lakocinski appeared by telephone, representing himself as an interested party, and presented evidence. The Enforcement Section's hearing file for this docket was admitted into evidence. The staff recommends that a \$3,000.00 penalty, consisting of \$2,000.00 for one Rule 14(b)(2) violation and \$1,000.00 for one Rule 8(d)(1) violation, be assessed against Viking. The examiner agrees with the staff's penalty recommendation and recommends that Viking be ordered to plug the subject well and place the subject lease into compliance with Commission Statewide Rules.

### **BACKGROUND**

The operator of a well must properly plug the well when required and in accordance with the Commission's rules. *See* TEX. NAT. RES. CODE ANN. §89.011(a). The Commission's Statewide Rule 14(b)(2) provides that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed.

Rule 14(c)(2) provides that as to any well for which the most recent Commission-approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well. The presumption of responsibility may only be rebutted at a hearing called for the purpose of determining plugging responsibility.

With certain exceptions not relevant here, Rule 8(d)(1) prohibits any person from disposing of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. Rule 91(c) and (d) require cleanup of soil contaminated by a crude oil spill.

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If a person violates provisions of Title 3 of the Texas Natural Resources Code or a Commission rule pertaining to safety or the prevention or control of pollution, the person may be assessed a civil penalty by the Commission not to exceed \$10,000.00 a day for each violation. In determining the amount of the penalty, the Commission must consider the respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. *See* TEX. NAT. RES. CODE ANN. §81.0531.

### **DISCUSSION OF THE EVIDENCE**

#### **Enforcement's Position and Evidence**

Enforcement proved that Viking is a corporation, of which Roger W. Chambers is President. Form P-5 records showed that Viking's Organization Report is delinquent and that Viking last filed a Form P-5 on May 31, 2000.

Viking was shown to have been designated operator of the subject lease by filing Form P-4 (Producer's Transportation Authority and Certificate of Compliance), which was effective October 1, 1995, and approved November 22, 1995. Through Commission production records, Enforcement proved that no production has been reported for the subject lease since at least January 1, 1993. District Office inspection reports dated July 2, July 24, October 2, November 12, and December 31, 2001, and January 31 and March 20, 2002, confirmed that the subject well was inactive and unequipped for production.

Through the certification of the Commission's Secretary, Enforcement showed that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved, and no Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) is in effect for the subject well. Form W-1X records presented by Enforcement showed that the last Rule 14(b)(2) plugging extension obtained for the subject well expired in June 2001.

Enforcement also submitted evidence that on eight occasions between June 14, 2001, and April 1, 2002, the District Office corresponded with Viking giving notification of a Rule 14(b)(2) violation on the subject well and requesting compliance. A Plug Hearing Data sheet prepared by the District Office estimated the cost to plug the subject well at \$10,122.00.

Enforcement submitted the affidavit of Mark England, Staff Engineer, showing that: (a) 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; (b) holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface; and (c) uncased wells allow direct communication between zones and provide unimpeded access to the surface.

A District Office inspection report dated April 23, 2001, reported an area of dead vegetation

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resulting from a produced water spill and an 8' x 6' area of oil stained soil resulting from oil dripping from a pulling unit at Well No. 33 on the subject lease. This report also stated that a 3' diameter hole had been dug at the end of a flow line and was standing full of produced water. An inspection report dated June 5, 2001, stated that the hole at the end of the flow line had been backfilled, but the other areas of pollution had not been remediated. Six additional inspection reports for dates between July 2, 2001, and January 31, 2002, stated that the same conditions persisted on the subject lease. An inspection report dated March 2, 2002, stated that vegetation was starting to grow in the produced water spill area, showing natural remediation.

On 11 occasions between April 27, 2001, and April 1, 2002, the District Office corresponded with Viking, giving notification of the alleged Rule 8(d)(1) violation on the subject lease and requesting compliance.

Enforcement submitted a certification from the Commission's Secretary that a search of Commission records disclosed that no permit was issued to Viking to discharge oil and gas wastes from or onto the subject lease. The Mark England affidavit presented by Enforcement stated that any 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.

### **Interested Party's Position and Evidence**

Martin Lakocinski appeared, representing himself, in response to receipt of a copy of the notice of hearing naming him as a Vice President of Viking. The purpose of Mr. Lakocinski's appearance and testimony was to disavow any current affiliation or official position with Viking.

The last P-5 Organization Report filed by Viking on May 31, 2000, which was signed by Roger W. Chambers, named Mr. Lakocinski as a Vice President of the company. Mr. Lakocinski testified that this was in error in that he had severed all affiliation with Viking earlier in May 2000. Mr. Lakocinski testified that he agreed with Roger W. Chambers to be listed as an officer on Viking's earlier P-5 filing in 1999 in order that Mr. Lakocinski could assist Viking in making filings with the Commission to bring certain properties of Viking into compliance. However, Mr. Lakocinski also testified that he was never duly elected as an officer by Viking's directors or shareholders and had no financial interest in Viking.

Mr. Lakocinski testified that he severed all relationship with Viking in May 2000, and the Enforcement hearing file contains a letter directed to the Commission on April 1, 2002, by Roger W. Chambers, Viking's President, stating that Mr. Lakocinski had not been employed by Viking, or active in its affairs, since April 2000. Counsel representing Enforcement at the hearing conceded that Mr. Lakocinski was not an officer of Viking.

### **EXAMINER'S OPINION**

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Viking did not appear to contest any of Enforcement's allegations. As a result of the filing of a Form P-4 effective October 1, 1995, naming Viking as operator of the subject lease, Viking is presumed, under Rule 14(c)(2), to be responsible for the physical operation and control of the subject well and to be responsible for properly plugging the well.

The evidence shows that the subject well has been inactive for more than one year, has not been plugged, and no Rule 14(b)(2) plugging extension currently is in effect. Accordingly, Viking violated Rule 14(b)(2) as alleged by Enforcement.

The evidence also proves that Viking caused or allowed the discharge of oil and gas wastes onto the subject lease and did not have a permit authorizing the discharge. In addition, Viking did not take steps to properly or timely remediate the discharge after notifications from the District Office. Viking thus violated Rule 8(d)(1) as alleged by Enforcement.

On the basis of the factors which the Commission must consider pursuant to TEX. NAT. RES. CODE ANN. §81.0531, a penalty of \$3,000.00, consisting of \$2,000.00 for one Rule 14(b)(2) violation and \$1,000.00 for one Rule 8(d)(1) violation, as requested by Enforcement, is appropriate. There is no evidence that Viking has a history of previous orders issued against it for violations of Commission rules. However, Viking cannot be said to have demonstrated good faith in view of its failure to plug the subject well, or place the well in compliance, or remediate the Rule 8(d)(1) violation, in response to multiple requests and warnings from the District Office prior to initiation of this enforcement action. In addition, Viking did not appear at the hearing to explain its inaction. The evidence shows that the Rule 14(b)(2) and Rule 8(d)(1) violations committed by Viking pose a threat to the public health and safety.

Because it appears that the subject well has been inactive since on or before January 1, 1993, and is not equipped for production, the Commission should order that the well be plugged.

As to the only remaining issue, the evidence shows that Martin Lakocinski is not an officer of Viking, and has had no connection with the company since at least May 2000.

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. Viking Resources, Inc. ("Viking") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address, the return receipt for which was signed and returned to the Commission. Viking did not appear at the hearing in response to the notice.
2. Viking is a corporation, whose President is Roger W. Chambers. Martin Lakocinski is not

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- an officer of Viking, and severed all relationship with Viking as of no later than May 2000.
3. Viking's P-5 Organization Report is delinquent. Viking last filed Form P-5 on May 31, 2000.
  4. Viking designated itself to the Commission as the operator of the Maco Stewart (16294) Lease ("subject lease"), and Well No. 33 ("subject well") on the said Lease, by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective October 1, 1995.
  5. No production reports have been filed with the Commission for the subject lease since on or before January 1, 1993.
  6. The subject well was inactive and unequipped for production on the occasion of District Office inspections made on July 2, July 24, October 2, November 12, and December 31, 2001, and January 31 and March 20, 2002.
  7. The subject well has been inactive for more than one year, has not been plugged, and no Rule 14(b)(2) plugging extension currently is in effect.
  8. The estimated cost to plug the subject well is \$10,122.00.
  9. Usable quality groundwater in the area is likely to be contaminated by migrations or discharge 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 possibility of pollution.
  10. Commencing on or before April 23, 2001, Viking caused or allowed the discharge of oil or gas wastes on the subject lease, and no permit was issued by the Commission permitting the discharge.
  11. Any 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.
  12. Viking has no history of previous Commission orders issued against it for violations of Commission rules.
  13. Viking has not demonstrated good faith since it failed to plug or otherwise place the subject well in compliance after being notified of the Rule 14(b)(2) violation and did not remediate

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the unauthorized discharge of oil and gas wastes on the subject lease after being notified of the Rule 8(d)(1) violation.

**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. Viking Resources, Inc., is the operator of the Maco Stewart (16294) Lease, and Well No. 33 existing on the said Lease, as defined by Commission Statewide Rules 14, 58 and 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.69] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Viking Resources, Inc., has the primary responsibility for complying with Statewide Rules 8, 14 and 91 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.8, 3.14, and 3.91], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject lease and well.
5. The subject well is not properly plugged or otherwise in compliance with Statewide Rule 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14], or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The subject well has been out of compliance since at least June 12, 2001, when the last plugging extension expired.
6. By causing or allowing the unpermitted discharge or disposal of oil and gas wastes on the Maco Stewart (16294) Lease, Viking Resources, Inc., violated Statewide Rule 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(d)(1)]. Viking Resources, Inc., has been out of compliance with Statewide Rule 8 since at least April 23, 2001.
7. The documented violations committed by Viking Resources, Inc., constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith as provided by 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 approved, requiring the operator Viking Resources, Inc., to:

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1. Plug the Maco Stewart (16294) Lease, Well No. 33, Hitchcock (5130) Field, Galveston County, Texas;
  2. Clean-up and place in compliance with Statewide Rules 8 and 91 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.8 and 3.91] the Maco Stewart (16294) Lease, Hitchcock (5130) Field, Galveston County, Texas; and
  3. Pay an administrative penalty in the amount of THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00).

Respectfully submitted,

James M. Doherty  
Hearings Examiner