

September 23, 2002

OIL AND GAS DOCKET NO. 03-0229921

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**ENFORCEMENT ACTION AGAINST STERLING REDFERN CORPORATION FOR VIOLATIONS OF STATEWIDE RULES ON THE STERLING REDFERN FEE (08940) LEASE, WELL NOS. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, AND 12, HUMBLE FIELD, HARRIS COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT:**

Susan German, Staff Attorney

**FOR RESPONDENT:**

Douglas Ashworth, President

**FOR OBSERVER:**

Vincent F. Giammalvo, President  
Paul Dillow, Executive Vice President  
Robert W. Johnson, Board Member

**MOVANT:**

Railroad Commission, Enforcement Section

**RESPONDENT:**

Sterling Redfern Corporation

**OBSERVER:**

Loch Energy, Inc.  
Loch Energy, Inc.  
Loch Energy, Inc.

**AMENDED PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>COMPLAINT FILED:</b>	January 7, 2002
<b>NOTICE OF HEARING:</b>	February 27, 2002
<b>HEARING HELD:</b>	April 25, 2002
<b>HEARD BY:</b>	Mark Helmueller, Hearings Examiner
<b>RECORD CLOSED:</b>	July 10, 2002
<b>PROPOSAL FOR DECISION CIRCULATED:</b>	July 16, 2002
<b>AMENDED PROPOSAL FOR DECISION CIRCULATED:</b>	September 23, 2002
<b>CURRENT STATUS:</b>	Protested

## Statement of the Case

This is a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the respondent, should be required to plug or otherwise place in compliance with Statewide Rules 13 and 14, the Sterling Redfern Fee (08940) Lease, Well Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12, Humble Field, Harris County, Texas;
2. 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 comply with said statutes and Statewide Rules 13 and 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said lease and wells;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. § 81.0534.

## Introduction

Sterling Redfern Corporation (“respondent”) appeared at the hearing through its President, Douglas Ashworth and offered evidence. Susan German, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement hearing file was admitted into evidence. The record was left open for 30 days to allow respondent to submit additional evidence to substantiate the testimony provided at the hearing. No documentation was submitted.

Enforcement recommends an administrative penalty of \$23,000.00. This penalty breaks down as follows: \$22,000.00 for 11 violations of Rule 14(b)(2) at \$2,000.00 per violation; and \$1,000.00 for a single violation of Rule 13(b)(1)(B). Respondent argued that no administrative penalty should be imposed for any of the violations because they were caused by the deliberate criminal destruction of its equipment by a third party in June 2001, and attempts to locate and repair all the damage have been delayed by other criminal action in the area.

A proposal for decision was circulated on July 16, 2002. In exceptions, respondent asserted that the Commission had approved a transfer of operator from Sterling Redfern Corporation to IPACT.<sup>1</sup> Review of Commission records confirm that the Sterling Redfern Fee (08940) Lease was transferred on July 23, 2002. This amended proposal for decision was prepared to address this issue.

The examiner agrees with the recommended administrative penalty as the wells were not in compliance with Statewide Rule 14(b)(2). The examiner also agrees with the recommended penalty

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<sup>1</sup>Official notice was taken of Commission Records regarding IPACT’s financial assurance filing, the number of wells operated, and the total depth of the wells.

for the violation of Statewide Rule 13(b)(1)(B). Finally, the examiner concludes that, under the facts presented, respondent should be ordered to plug the wells in order to comply with its plugging obligations under Texas Natural Resources Code §§89.002 and 89.011 and Commission rules.

### **Summary of Evidence and Positions of Parties**

Enforcement submitted Commission records to show that respondent last filed an organization report on May 31, 2000. Respondent's Organization Report is currently delinquent. The only officer listed is Douglas Ashworth, who is identified as the President and Secretary.

Enforcement contends that Sterling Redfern designated itself operator of the Sterling Redfern Fee (08940) Lease ("subject lease"), by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with an effective date of August 1, 1993. The Commission approved the P-4 on December 22, 1994. Commission records also show that there has been no reported production on the subject lease since January 1, 1993.

To establish that wells were not in compliance with Rule 14(b)(2), Enforcement submitted inspection reports from April 13, 2000, June 22, 2000, July 25, 2000, June 6, 2001, July 23, 2001, July 31, 2001, August 28, 2001, November 8, 2001, January 22, 2002 and March 11, 2002 which showed that the wells were inactive and not equipped for production. Enforcement further argued based on Commission records reporting no production after January 1, 1993, that the wells are out of compliance. Finally, Commission records indicate that the last plugging extensions for the wells were canceled on August 7, 2000 for respondent's failure to file required fluid level tests. Based on this evidence, Enforcement argues that the wells have been out of compliance with Rule 14(b)(2) beginning on August 7, 2000. The estimated cost to plug the wells is \$50,600.

Enforcement also argued that the above referenced inspection reports show that Well No. 1 had casing open to the atmosphere in violation of Rule 13(b)(1)(B) beginning in June 2001. A District Office inspection on July 25, 2000 observed that Well No. 1 was equipped with a valve and in compliance with Rule 13(b)(1)(B). In the next District Office inspection on June 6, 2001, the Commission's inspector found that heavy equipment was used to push over Well No. 1 breaking off the casing 2 feet below the surface. Additionally, all signs were removed, the flow line leading from the lease was destroyed and every well on the lease was damaged. The inspector concluded that the equipment was used in an attempt to clear the lease by DDS Gravel Mining Company.

An inspection report on July 23, 2001 found that the area around the casing of Well No. 1 had been excavated and a Styrofoam plug was placed in the well. A further inspection on July 31, 2001 observed an unsuccessful attempt to repair the casing. Inspections on August 28, 2001, November 8, 2001, January 22, 2002 and March 11, 2002 found no additional attempts to repair the well.

Respondent contends that the wells were not out of compliance for the time period argued by Enforcement. Respondent claims that it produced all of the wells on the lease on three occasions in 2000 by swabbing, that the swabbing was witnessed by Commission personnel, and that proper

production reports were filed but never processed by the Commission.<sup>2</sup>

Respondent also argues that it should not be held liable for any violations in light of the deliberate act of sabotage in June 2001. Respondent claims that the act was in retribution for helping another operator whose facilities had also been attacked. Respondent also claims that its attempts to bring the subject lease into compliance were impeded by crime in the area and provided testimony that it spent over \$90,000 in an attempt to secure its facilities.

Respondent also claimed that it had attempted to bring the wells into compliance by transferring them to a bonded operator. Respondent presented evidence that it conveyed its interests in the subject lease to Loch Energy, Inc.<sup>3</sup> A P-4 was filed in December 2001 to transfer operator status to Loch, but the P-4 was not approved because Loch did not have the required financial security in place. On April 24, 2002, a P-4 was filed seeking to transfer the lease to Patriot Operating, an operator with financial security in place, but not in a sufficient amount required to accept the transfer of the subject lease. Respondent also submitted an agreement between Loch and IPACT concerning the designation of IPACT as operator of the lease.

Finally, respondent claimed that the Commission, through the District Office and unnamed individuals in the Austin office, instructed field personnel that small independent operators, and specifically, Sterling Redfern, should be “knocked out” of business. Respondent claims that this is confirmed by delays in processing proper applications and reports, the falsification of data so that every potential violation was written to put respondent out of business by ignoring the circumstances causing the violation and finally, interviews with Commission field personnel. No evidence substantiating supporting these allegations was submitted.

### **Applicable Authority**

Texas Natural Resources Code §89.002(a)(2) provides:

“Operator” means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. The Commission may not require a person to assume responsibility for a well as a condition to being permitted to assume responsibility for another well. In the event of the sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention or control of pollution at the time of sale or conveyance and once the person who acquires the well or right to operate the well:

(A) specifically identifies the well as a well for which the person assumes

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<sup>2</sup>The examiner requested that copies of the unprocessed documents be provided. However, respondent did not provide any documents.

<sup>3</sup>The contract between Loch and IPACT indicates that Douglas Ashworth is the President and 100% owner of Loch as he is of Sterling Redfern.

plugging responsibility on forms required and approved by the commission;

(B) has a commission-approved organization report as required by Section 91.142;

(C) has a commission-approved bond or other form of financial security under Sections 91.103-91.107 covering the well; and

(D) places the well in compliance with commission rules.

Texas Natural Resources Code §89.011 provides:

(a) The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of plugging.

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(e) The duty of a person to plug an unplugged well that has ceased operation ends only if the person's interest in the well is sold or conveyed while the well is in compliance with rules of the commission relating to safety or the prevention or control of pollution and the provisions of Sections 89.002(a)(2)(A)-(D) have been met. The person acquiring the seller's interest through such sale or conveyance succeeds the seller as the operator of the well for the purpose of plugging responsibility once the provisions of Sections 89.002(a)(2)(A)-(D) have been met.

Rule 13(b)(1)(B) requires that wellhead assemblies be used to maintain surface control of the well. Wellhead assemblies are necessary to prevent fluids from being discharged from the wellbore onto the ground surface and to prevent any oil and gas waste in the wellbore from being displaced to the surface by potential influxes of water into the open wellbore.

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(b)(2)(E) requires the operator of any well that is more than 25 years old, and that is inactive and subject to plugging provisions, to either plug or test the well to determine if it poses a potential threat of harm to natural resources.

### **Examiner's Opinion**

#### *Plugging Responsibility for the Sterling Redfern Fee (08940) Lease*

The examiner's initial proposal for decision observed: "Respondent is the current operator of the subject lease. This contention is not challenged by respondent." However, as noted in respondent's exceptions, respondent now contends that Commission recognition of IPACT as the operator of the subject lease affects the prior recommendation that respondent be ordered to plug the wells, and should lead to the dismissal of this docket with no administrative penalties. Due to this contention, the agreement between Loch Energy and IPACT is now an issue and must be

addressed because the agreement is the basis for administrative approval recognizing IPACT as the most recently designated operator of the subject lease and wells.<sup>4</sup>

After review of the applicable statutes and the agreement between Loch Energy and IPACT, the examiner concludes that the approval of the transfer of the Sterling Redfern Fee (08940) Lease to IPACT does not release Sterling Redfern from its duty to plug its inactive wells. The transfer, while sufficient to recognize IPACT as the most recent operator, failed to meet all of the conditions of Texas Natural Resources Code §§89.002 and 89.011 for the release of Sterling Redfern's plugging liability because there was no sale or conveyance of either the wells or the right to operate the wells to IPACT. In other words, the Commission's recognition of IPACT as the designated operator under these facts, does not affect respondent's continuing statutory duty to plug the subject wells.

Texas Natural Resources Code §§89.002 and 89.011 address the issues associated with the transfer of existing wells and the designation of operator. Texas Natural Resources Code §89.002 defines an operator as "a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves." Texas Natural Resources Code §§89.002 and 89.011 also defines when the prior operator's duties are released. Texas Natural Resources Code §89.002 recognizes that a well may be transferred if the new operator: 1) specifically identifies the well on the required Commission form; 2) the new operator has a Commission approved organization report; 3) the new operator has the required financial assurance on file; and 4) the well is placed in compliance with Commission rules.

In this case, IPACT satisfied the requirements under the statute to be recognized as the operator of the well. IPACT filed a P-4 requesting that it be designated as operator of the subject lease. By filing this form IPACT also acknowledged plugging responsibility on the subject lease. IPACT's organization report is current and IPACT has a \$250,000 blanket letter of credit on file with the Commission. IPACT's financial security also allows it to obtain a plugging extension without filing Commission Form W-1X (Application for Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit), assuming that all other requirements for a plugging extension are met. The Commission appropriately approved the transfer to IPACT.

However, the designation of IPACT as operator does not automatically release Sterling Redfern from its obligation regarding the lease in this case. Review of the agreement between Loch and IPACT shows that there is no sale or conveyance of either the inactive wells or the right to operate the wells to IPACT. Under the agreement, the duties associated with actually operating the wells are vested in Loch. IPACT's only responsibility under the agreement is to file production reports based on information received from Loch. Because IPACT simply forwards information provided by Loch, while Loch continues with all actual operations of the wells, IPACT is the "operator" of the wells in name only. The final element of this end run attempt to avoid posting the required financial assurance is seen in the identification of Loch as Sterling Redfern's proxy as the agreement was signed by Douglas Ashworth, as the president and 100% owner of Loch.

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<sup>4</sup>The examiner further notes that in addition to Mr. Ashworth's status as 100% owner and President of Loch Energy, three other representatives from Loch appeared at the hearing in this matter as observers.

This partial transfer to IPACT seeks to circumvent financial responsibility requirements set by Texas Natural Resources Code §91.107, as neither Sterling Redfern nor Loch has not posted a bond, letter of credit or cash deposit in the minimum amount required by statute. Under the statute, the Commission is precluded from approving a transfer of operator to Loch for the subject lease.

In other words, Sterling Redfern seeks to transfer its plugging liability to IPACT, while retaining the right to operate in its proxy, Loch without posting required financial assurance. The intent of this “Enronesque” transaction, is to allow an operator to shift plugging liability for inactive wells to another entity, while retaining the right to operate the wells.

However, this transaction fails to meet the requirements under Texas Natural Resources Code §§89.002 and 89.011 for the release of Sterling Redfern’s plugging responsibility for the inactive wells because there was no “sale or conveyance” of either the inactive wells or the right to operate the wells. The statutes specifically provide: “a person **ceases** being operator for the purpose of Section 89.011”; and “The **duty** of a person to plug an unplugged well that has ceased operation **ends only if the person’s interest in the well is sold or conveyed.**” Under this provision, the duty to plug an inactive well is extinguished where the operator divests itself from the well, either through a sale or conveyance of the well or the right to operate the well.

The examiner recognizes that the application of the statutes to the facts presented effectively places plugging responsibility on two parties, IPACT and Sterling Redfern. However, there is no prohibition in the statutes, or Commission rules which limits plugging responsibility to one operator. In cases where an agreement is specifically designed to designate a nominal operator on Commission records who has no ownership interest in the wells or lease and leaves all operations with the prior “designated operator” or its proxy, it is the examiner’s conclusion that the letter and the intent of Texas Natural Resources Code §§89.002 and 89.011 place a statutory obligation to plug the inactive wells on both operators.

While the application of Texas Natural Resources Code §§89.002 and 89.011 under these facts places the responsibility for plugging inactive wells on both respondent and IPACT, respondent’s contention that IPACT’s posting of a \$250,000 letter of credit to satisfy IPACT’s financial assurance requirements satisfies the statutory plugging obligations of both parties must also be considered. It is the examiner’s conclusion that both the statutory language and the facts in this case limit IPACT’s posting of financial assurance to satisfying only IPACT’s plugging obligation.

If an operator posts the required financial assurance for its operations, a plugging extension for an inactive well may be granted without an application, subject to the new operator satisfying any other requirements under Commission Rules, including, but not limited to, providing evidence of a continued good faith claim of a right to operate the well. IPACT’s financial assurance and its satisfaction of all other applicable requirements for obtaining a plugging extension fulfill IPACT’s regulatory responsibility for the inactive wells on the Sterling Redfern Fee Lease. The question is whether IPACT’s compliance satisfies the plugging obligations for Sterling Redfern which remained after the partial transfer of the regulatory duties and responsibilities.

In considering this issue, one first looks to the form of financial assurance provided by IPACT. IPACT has provided blanket financial assurance of \$250,000 for all of its operations in lieu of filing an individual performance bond based on the total depth of all the wells for which IPACT is listed as the operator of record. An individual performance bond would be directly tied to the actual depth of the subject wells, as their total depth would be included in the calculation of the required amount of the individual performance bond.<sup>5</sup> However, a blanket bond is not directly tied to the subject wells. Additionally, IPACT's financial assurance obligation is independent and covers only its operations. This weighs against respondent's argument that IPACT's financial assurance satisfies both parties statutory obligations to plug the subject wells.

Additionally, as noted above, the language in Texas Natural Resources Code §§89.002 and 89.011 provide a guide in how to treat respondent's position. Sterling Redfern urges that while its proxy, Loch, is vested with the ownership and operating interest in the wells, but under the limited transfer to IPACT, Loch is not required to file financial assurance and Sterling Redfern is therefore excused from bringing them into compliance with Commission rules.

There is no question that these wells have ceased production as there has been no reported production for 9 ½ years. Additionally, respondent does not have an active organization report. As previously highlighted above, both statutes speak in the terms of when the prior operator's duty "ceases" or "ends" with respect to "wells which have ceased production." That duty is discharged only where the prior operator sells or conveys the wells or the duty to operate. In this case, there is no sale or transaction. As distinguished from an operator who sells away its interest in the inactive well to a willing buyer, here there has been no transfer of actual operations to IPACT. It follows that operators should not be allowed to evade their responsibility to plug inactive wells through such sham transactions. Both the actual provisions and the underlying intent of the statutes would be subverted by countenancing such action, particularly in a case where the Commission is prosecuting the prior operator for violations of Commission rules.

In other words, Texas Natural Resources Code §§89.002 and 89.011 establish a non-delegable duty of an operator to plug its inactive wells unless the operator actually transfers the right to operate to someone who will either plug or produce the well. Even where that statutory duty is held by more than one party, it cannot be delegated. Accordingly, it necessarily follows that it cannot be satisfied by only one party posting blanket financial security.

Under the facts presented, the only realistic option is an order requiring Sterling Redfern to plug its inactive wells. There has been no reported production for the wells since January 1993, the wells are not currently equipped for production, and Sterling Redfern's organization report is delinquent. Based on these facts, it is recommended that an order requiring respondent to plug the subject wells be entered by the Commission.

Accordingly, based on the review of the agreement and the language in the applicable statutes, the examiner finds that respondent has a continuing duty to plug the subject wells and this

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<sup>5</sup>According to Commission records as of September 18, 2002, IPACT is recognized as the operator of 346 wells with a total depth of 658,463 feet. Under Texas Natural Resources Code §91.1041 and Statewide Rule 78(d)(1), the required amount of financial assurance necessary to plug these wells based on their total depth is \$1,316,926.

duty is not excused by IPACT's posting of blanket financial assurance. The examiner therefore further recommends that the respondent be ordered to plug the subject wells.

### *Sterling Redfern's Responsibility to Bring the Lease Into Compliance*

Respondent contends that it should not be held responsible for criminal acts which caused the violations alleged in the complaint. Respondent also claims that the Commission deliberately prevented it from bringing the violations into compliance by failing to process production reports.

With respect to the plugging violations and the processing of production reports, the examiner finds that respondent's allegations are unsupported by the evidence. Respondent provided no support for its claims despite the specific request for documentation at the hearing. Absent any documentary support such as proof of sales, or copies of the Commission forms respondent claims it filed, the examiner cannot accept respondent's unsubstantiated allegation that it produced all the wells on the subject lease in 2000, after more than seven years of inactivity.

With respect to the third party damage to the wells, the examiner finds that while this is substantiated by the Commission's inspection reports, the wells were not in compliance with Statewide Rule 14(b)(2) for at least 10 months prior to this incident. The evidence indicates that respondent failed to provide required fluid level tests for its wells, leading to the cancellation of its plugging extensions in August 2000. None of the evidence presented by respondent either addresses this failure or provides a basis for excusing it from its regulatory responsibility to plug the wells.

With respect to the single violation of Rule 13(b)(1)(B), respondent was asked repeatedly to bring the well into compliance after the incident occurred. The complaint in this docket was not filed until 6 months after the incident. By that time 3 additional inspections indicated that respondent had not successfully repaired the well and was purportedly maintaining wellhead control through a Styrofoam plug in the wellbore. The last reported inspection in March 2002 still finds the well in the same condition as observed in July 2001. The examiner believes that the evidence therefore supports the conclusion that respondent was provided more than sufficient time to correct the violation. Accordingly, it would appear that an administrative penalty is appropriate as requested by the Enforcement Section.

The examiner further notes that the damage done to the wells by a third party also does not affect respondent's responsibility to maintain the lease in compliance with Commission rules. An operator's responsibility to comply with Commission rules is not dependent on the operator's negligence or other fault. The responsibility is a statutory duty imposed by Chapter 89 of the Texas Natural Resources Code.<sup>6</sup>

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

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<sup>6</sup>That is not to say that respondent has no remedy. An action may be appropriate in a court of competent jurisdiction.

## **FINDINGS OF FACT**

1. Respondent Sterling Redfern Corporation. (“respondent”) was given at least 10 days notice of the proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. Respondent appeared at the hearings through its President, Douglas Ashworth and presented evidence.
2. Respondent last filed an organization report on May 31, 2000. Respondent’s Organization Report is currently delinquent. Respondent provided financial assurance for the most recent renewal in the form of the \$100 “good guy” fee. The only officer listed on the most recent Organization Report is Douglas Ashworth, who is identified as the President and Secretary.
3. Respondent designated itself operator of the Sterling Redfern Fee (08940) Lease (“subject lease”), Well Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12 (“subject wells”), Humble Field, by filing a Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) with an effective date of August 1, 1993. The Commission approved the P-4 on December 22, 1994.
4. There has been no reported production from the wells on the subject lease since January 1, 1993.
5. Inspection reports from April 13, 2000, June 22, 2000, July 25, 2000, June 6, 2001, July 23, 2001, July 31, 2001, August 28, 2001, November 8, 2001, January 22, 2002 and March 11, 2002 indicate that the wells were inactive and not equipped for production.
6. The most recent plugging extensions for the wells were canceled on August 7, 2000 for the failure to file required fluid level tests for the wells.
7. Well No. 1 had casing open to the atmosphere in violation of Rule 13(b)(1)(B) beginning in June 2001.
  - A. A District Office inspection on July 25, 2000 observed that Well No. 1 was equipped with a valve and in compliance with Rule 13(b)(1)(B).
  - B. In a District Office inspection on June 6, 2001, the Commission’s inspector found that heavy equipment was used to push over Well No. 1, breaking off the casing 2’ below the surface. Additionally, all signs were removed, the flow line leading from the lease was destroyed and every well on the lease was damaged by the heavy equipment. The inspector concluded that the equipment was used in an attempt to clear the lease by DDS Gravel Mining Company.
  - C. An inspection report on July 23, 2001 found that the area around the casing of Well No. 1 was dug out and a styrofoam plug was placed in the well.

- D. A further inspection on July 31, 2001 indicated that respondent unsuccessfully attempted to repair the casing.
  - E. Inspections on August 28, 2001, November 8, 2001, January 22, 2002 and March 11, 2002 found no additional attempts to repair the well.
8. Respondent attempted to convey its interests in the subject lease to Loch Energy, Inc. by filing a P-4 in December 2001. The P-4 was not approved because Loch did not have the required financial security in place.
  9. On April 24, 2002, a P-4 was filed seeking to transfer the lease to Patriot Operating, an operator with financial security in place, but not in a sufficient amount required to accept the transfer of the subject lease.
  10. Loch and IPACT entered into an agreement which would change the Commission designated operator of the subject lease to IPACT's operating company.
    - A. IPACT's only duty under the agreement is to file production reports based on production reported by Loch.
    - B. Under the agreement, Loch retains the right to actually operate the wells on the subject lease and the exclusive duty to maintain the lease in compliance with Commission rules.
    - C. The agreement is signed on behalf of Loch, by Douglas Ashworth, who is further identified as the President and 100% owner.
    - D. The agreement between Loch and IPACT does not provide for the sale or conveyance of either the unplugged wells or the right to operate the wells on the subject lease.
  11. The Commission approved the transfer of the Sterling Redfern Fee (08940) Lease to IPACT on July 23, 2002. IPACT is not a party in this docket.
  12. The estimated cost to plug the wells on the subject lease is \$50,600.
  13. Usable quality groundwater may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged and open to atmosphere wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
  14. Respondent has no previous history of violations.
  15. Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance after being notified of the violations by the district office.

## **CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Respondent was the operator of the subject lease as defined by Statewide Rule 14 and Section 89.002 of the Texas Natural Resources Code and is a person as defined by Statewide Rule 79 and Chapters 85 and 89 of the Texas Natural Resources Code.
4. During the time period it was the Commission recognized operator of the subject lease, respondent possessed the primary responsibility for complying with Rules 13 and 14 and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules.
5. IPACT has met the requirements under Texas Natural Resources Code Section 89.002 to be designated on Commission records as the operator of the subject lease and wells, and the Commission appropriately approved the change in designation of operator of the subject lease as requested by the parties.
6. IPACT has voluntarily assumed joint plugging responsibility for the subject lease pursuant to Texas Natural Resources Code Section 89.002.
7. The Commission's recognition of the designation of IPACT as the operator does not release respondent from its obligation to plug the inactive wells on the subject lease under Texas Natural Resources Code Sections 89.002 and 89.011 because:
  - A. Under the terms of the agreement between Loch Energy and IPACT there was no sale or conveyance of the unplugged well to IPACT; and
  - B. The right to operate the lease was retained by Loch Energy.
7. Sterling Redfern has failed to keep the subject lease in compliance with Statewide Rule 14 from August 7, 2000 through the present time.
8. Sterling Redfern has failed to keep the subject lease in compliance with Statewide Rule 13 from June 6, 2001 through the present time.

## **RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring that Sterling Redfern Corporation, within 30 days from the day immediately following the date this order becomes final, to:

1. Plug Well Nos. 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12 on the Sterling Redfern Fee (08940) Lease;
2. Pay an administrative penalty in the amount of TWENTY THREE THOUSAND DOLLARS (\$23,000.00);

Respectfully submitted,

Mark Helmueller  
Hearings Examiner