

May 22, 2002

OIL AND GAS DOCKET NO. 03-0230362

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**ENFORCEMENT ACTION AGAINST OPMI OPERATING COMPANY (OPERATOR NO. 625050) FOR VIOLATIONS OF STATEWIDE RULES ON THE S/L M-95048 LEASE, WELL NO. 1, (GAS ID# 120918), BRAZOS BLOCK 403-L (MIOCENE 5370) FIELD; AND S/L M-95047 LEASE, WELL NO. 1, (GAS ID# 138164), BRAZOS BLOCK 403-L (MIOCENE 5370) FIELD, BRAZOS-LB, OFFSHORE MATAGORDA COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT:**

Lowell Williams, Attorney

**MOVANT:**

Enforcement Section of the Railroad Commission

**NO APPEARANCE BY RESPONDENT OPMI OPERATING COMPANY**

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

|                                    |                                    |
|------------------------------------|------------------------------------|
| <b>DATE OF REQUEST FOR ACTION:</b> | March 27, 2002                     |
| <b>DATE CASE HEARD:</b>            | May 6, 2002                        |
| <b>HEARD BY:</b>                   | Mark Helmueller, Hearings Examiner |
| <b>PFD ISSUED:</b>                 | May 22, 2002                       |
| <b>CURRENT STATUS:</b>             | Default                            |

## **STATEMENT OF THE CASE**

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

1. Whether the respondent, OPMI Operating Company, should be required to place in compliance with Statewide Rule 14 (16 T.A.C. §3.14) the S/L M-95048 Lease, Well No. 1, (Gas ID# 120918), Brazos Block 403-L (Miocene 5370) Field; and S/L M-95047 Lease, Well No. 1, (Gas ID# 138164), Brazos Block 403-L (Miocene 5370) Field, Brazos-LB, Offshore Matagorda 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 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 lease;
4. Whether any violations of Rule 14 should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.
5. Whether other orders should be entered as permitted by law.

## **PROCEDURAL SUMMARY**

Following service by certified mail of the Notice of Opportunity of Hearing and Complaint on March 27, 2002, the Commission convened a default hearing on May 6, 2002 to address the violations. Lowell Williams, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section.

The Enforcement Section's hearing file for this docket was admitted into evidence. The staff recommended a \$100,000.00 penalty at the hearing for two violations of Statewide Rule 14(b)(2); \$50,000.00 for each offshore well. The examiner believes a total administrative penalty of \$272,000.00 is warranted where: 1) OPMI acknowledged receipt of the complaint by certified mail but did not appear or respond; 2) the wells were never produced and have been out of compliance for 38 months; and 3) the wells are in a marine environment near the sensitive coastal area of Matagorda Island which poses an enhanced impact of any potential pollution on both wildlife and the public.

## **SUMMARY OF EVIDENCE**

Enforcement presented evidence that respondent designated itself operator of the S/L M-

95048 Lease, Well No. 1, (Gas ID# 120918), and S/L M-95047 Lease, Well No. 1, (Gas ID# 138164), by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), approved by the Commission on March 26, 1997 as effective on December 1, 1996.

OPMI first filed an organization report with the Commission in October 1996. In the three years it engaged in active operations, OPMI acquired 5 offshore wells. It never produced any of the wells, transferring three of the wells to other operators. The two wells which are the subject of this docket were never produced by OPMI. The most recent Form P-5 (Organization Report) for OPMI was filed with the Commission on November 18, 1998 and identified Clinton Todd Harwell, as the only officer of the company.

The last reported production for the subject wells was in February 1993. Commission records indicate that the last plugging extensions for the wells expired on March 25, 1999. Enforcement therefore argued that both wells have been out of compliance with Statewide Rule 14(b)(2) plugging requirements for 38 months.

Enforcement submitted maps showing that the S/L M-95048 Lease, Well No. 1, (Gas ID# 120918) and S/L M-95047 Lease, Well No. 1, (Gas ID# 138164) are located approximately 5 to 6 miles offshore of Matagorda Island. Enforcement also noted the proximity of sensitive marine and coastal wildlife habitat in the area. Enforcement believes that a higher administrative penalty than that pled in the complaint is appropriate based on the time period that the wells were out of compliance and the sensitive nature of the marine and coastal ecosystems in the area.

### **EXAMINER'S OPINION**

The operator of a well must plug a well when required and in accordance with Commission rules. For Form P-4s filed prior to September 1, 1997, the operator, for purposes of plugging liability, is presumed to be the person who assumed responsibility for the physical operation and control of a well as shown on the approved Form P-4 designating that person as operator.

The evidence presented by the Enforcement Staff clearly establishes respondent's violations of Statewide Rule 14 (b)(2). These two offshore wells were never produced by OPMI and have remained out of compliance with Commission plugging requirements for more than 3 years.

Even more disturbing is the fact that these two wells reported no production after February 1993, over three years before the wells were transferred to OPMI. No steps whatsoever have been taken to bring the wells into compliance with Commission rules. Due to the marine environment and the proximity to sensitive coastal areas there would be an enhanced impact of any potential pollution from these two wells.

Current Commission penalty guidelines recommend a penalty of \$50,000.00 for any offshore well in violation of Statewide Rule 14(b)(2). This was the recommendation made in the complaint. However, Commission penalty guidelines also provide for enhanced penalties of up to \$2,000.00 per month for each month a well is not in compliance with Statewide Rules. Additionally, Commission penalty guidelines also provide that enhanced penalties between \$5,000.00 and \$25,000.00 per violation may be applicable for violations which occur in a marine environment due to the potential pollution impact

Under the facts presented in this case, these two wells were out of compliance with Statewide Rule 14(b)(2) from March 25, 1999 to the present. The examiner recommends enhanced penalty for these violations based on the 38 months the wells have been out of compliance multiplied by \$2,000.00 per month. This enhanced penalty adds an additional \$76,000.00 to the recommended \$50,000.00 penalty for each well. Additionally, the examiner recommends an additional enhancement of \$10,000.00 per well because of the potential impact on sensitive wildlife and the marine and coastal habitat. Accordingly, the examiner recommends an administrative penalty of \$136,000.00 be assessed for each well and that the total administrative penalty against OPMI be assessed at \$272,000.00.

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. OPMI Operating Company ("respondent") was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address, the receipt for which was signed and returned to the Commission. OPMI did not answer the complaint.
2. OPMI first filed an organization report with the Commission in October 1996. In the three years it engaged in active operations, OPMI acquired 5 offshore wells. It never produced any of the wells, transferring three of the wells to other operators. The most recent Form P-5 (Organization Report) for OPMI was filed with the Commission on November 18, 1998 and identified Clinton Todd Harwell, as the only officer of the company.
3. Respondent designated itself to the Commission as the operator of the S/L M-95048 Lease, Well No. 1, (Gas ID# 120918), and S/L M-95047 Lease, Well No. 1, (Gas ID# 138164) ("subject wells"), by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), approved by the Commission on March 26, 1997 as effective on December 1, 1996.
4. The subject wells have been inactive for a period in excess of one year. The last reported production for the subject wells was in February 1993. Both wells have been out of compliance with Statewide Rule 14(b)(2) plugging requirements since March 25, 1999.
5. The subject wells have not been properly plugged.
6. The marine environment in the area of these offshore wells and the sensitive coastal ecosystem may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
7. The 38 months the subjects wells have been out of compliance with Statewide Rule 14(b)(2) plugging requirements and the potential impact on sensitive wildlife and the marine and coastal habitat warrants an enhanced administrative penalty for these violations pursuant to

Texas Natural Resources Code §81.0531(c).

8. The record does not reflect any previous violations by respondent of Commission rules.
9. 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 opportunity for hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Respondent is the operator of the subject wells, as defined by Statewide Rule 14 and Section 89.002 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 79 and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, respondent has the primary responsibility for complying with Rule 14 and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject wells.
5. The subject wells are not properly plugged or otherwise in compliance with Commission Statewide Rule 14, or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The wells have been out of compliance since on or before March 25, 1999.
6. The documented violations committed by respondent constitute acts deemed serious, a hazard 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 approved, requiring OPMI Operating Company to plug the wells in compliance with Statewide Rule 14 and assessing an administrative penalty in the amount of TWO HUNDRED SEVENTY TWO THOUSAND DOLLARS (\$272,000.00).

Respectfully submitted,

Mark J. Helmueller  
Hearings Examiner

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