

ENFORCEMENT ACTION AGAINST VIKING RESOURCES, INC. (OPERATOR NO. 885784), FOR VIOLATIONS OF STATEWIDE RULES ON THE MACO STEWART ET AL. (11702) LEASE, WELL NOS. 35 AND 36, HITCHCOCK (5100) MIOCENE FIELD, GALVESTON COUNTY, TEXAS; MACO STEWART ET AL. LEASE, WELL NO. 31 (RRC NO. 150913), HITCHCOCK (4530) FIELD, GALVESTON COUNTY, TEXAS; AND MACO STEWART ET AL. (02176) LEASE, WELL NO. 31, HITCHCOCK (4530) FIELD, GALVESTON COUNTY, TEXAS

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:

May 7, 2002

DATE CASE HEARD:

June 20, 2002

HEARD BY:

James M. Doherty, Hearings
Examiner

RECORD CLOSED:

June 20, 2002

PFD CIRCULATION DATE:

September 18, 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 Et Al. (11702) Lease, Well Nos. 35 and 36, Hitchcock (5100) Miocene Field, Galveston County, Texas; Maco Stewart Et Al. Lease, Well No. 31 (RRC No. 150913), Hitchcock (4530) Field, Galveston County, Texas; and Maco Stewart Et Al. (02176) Lease, Well No. 31, Hitchcock (4530) Field, Galveston County, Texas;
2. Whether the respondent has violated provisions of Statewide Rule 3(a) [Tex. R. R. Comm’n, 16 T.A.C. §3.3(a)] on the Maco Stewart Et Al. (02176) Lease, Galveston County, Texas;
3. 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)] on the Maco Stewart Et Al. (11702) Lease, Galveston County, Texas;
4. 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 wells in compliance with Statewide Rule 14, by failing to maintain the Maco Stewart Et Al. (02176) Lease in compliance with Statewide Rule 3, and by failing to maintain the Maco Stewart (11702) Lease in compliance with Statewide Rule 8(d)(1);
5. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject wells and leases; and
6. Whether any violations of Statewide Rules 3, 8, and 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).

At the hearing on June 20, 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 \$7,250.00 penalty, consisting of \$2,000.00 for each of three Rule 14(b)(2) violations, \$250.00 for one Rule 3(a) 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 wells and place the subject leases 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.

Pursuant to Statewide Rule 14(c)(1), the entity designated as the operator of a well specifically identified on the most recent Commission-approved operator designation form filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with Commission rules.

Statewide Rule 3(a)(2) provides that a sign shall be posted at each well site which shall show the name of the property, the name of the operator, and the well number.

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.

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. The examiner has officially noticed from Commission P-5 records that at the time the last Form P-5 was filed, Viking filed financial assurance in the amount of \$505.00, representing a fee equal to 3% of the minimum required bond amount.

Viking was shown to have been designated operator of the Maco Stewart Et Al. (11702) Lease by filing Form P-4 (Producer's Transportation Authority and Certificate of Compliance),

which was effective November 1, 1999, and approved September 29, 2000. Viking was shown to have been designated operator of the Maco Stewart Et Al. Lease, Well No. 31 (RRC No. 150913) by filing Form P-4, which was effective June 1, 1999, and approved July 1, 1999. Viking was shown to have been designated operator of the Maco Stewart Et Al. (02176) Lease by filing Form P-4, which was effective November 1, 1999, and approved June 7, 2000.

Through Commission production records, Enforcement proved that no production has been reported for the Maco Stewart Et Al. (11702) Lease since July 31, 1998. District Office inspection reports dated October 19, November 7, and December 6, 2001, and January 2, January 28, and May 16, 2002, confirmed that the Well Nos. 35 and 36 were inactive and unplugged. Well No. 35 had no flowline connection and valves were closed. Well No. 36 had a flowline connection, but valves were closed.

Enforcement showed that Maco Stewart Et Al. Lease, Well No. 31 is a multiple completion in a single wellbore assigned two lease numbers: Maco Stewart Et Al. Lease (RRC No. 150913) and Maco Stewart Et Al. (02176) Lease, Well No. 31. Through Commission production records, Enforcement showed that no production has been reported for Well No. 31 since June 30, 1997. District Office inspection reports dated October 19 and December 6, 2001, and January 2, January 28 and May 16, 2002, confirmed that Well No. 31 was inactive and unplugged. As of May 16, 2002, Well No. 31 had no flowline connection and valves were closed.

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 wells. Form W-1X records presented by Enforcement showed that the last Rule 14(b)(2) plugging extension obtained for Maco Stewart Et Al. (11702) Lease, Well Nos. 35 or 36 expired in August 2001. The last plugging extension obtained for Maco Stewart Et Al. Lease (RRC No. 150913) or Maco Stewart Et Al. (02176) Lease, Well No. 31 expired November 21, 1997.

Enforcement also submitted a Plug Hearing Data sheet prepared by the District Office estimating the cost to plug the Maco Stewart Et Al. (11702) Lease, Well Nos. 35 and 36 as \$8,900.00 each. A similar plugging cost estimate for the Maco Stewart Et Al. Lease, Well No. 31 was \$8,300.00.

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.

District Office inspection reports dated October 19 and December 6, 2001, and January 2,

January 28, and May 16, 2002, stated that on the Maco Stewart Et Al. (02176) Lease, the identification sign required by Statewide Rule 3(a)(2) at the site of Well No. 31 was missing. The Mark England affidavit submitted by Enforcement stated that lack of legible signs and identification may cause confusion as to the responsible operator and actual location of a pollution or safety violation and may threaten the public health and safety.

A District Office inspection report dated October 19, 2001, for the Maco Stewart Et Al. (11702) Lease stated that a discharge of produced water had occurred at an old tank battery where two tanks were found to be leaking, affecting an area around each tank measuring 6" x 8". On October 24, November 14, and December 12, 2001, the District Office notified Viking of the leaks and requested that they be cured. District Office inspection reports dated November 7 and December 6, 2001, and January 2, January 28, and May 16, 2002, reported that no remediation had occurred. By January 28, 2002, the produced water that had leaked from the tanks had soaked into the ground. By May 16, 2002, the tanks were no longer leaking, but the soil still had not been remediated.

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 Maco Stewart Et Al. (11702) 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.

EXAMINER'S OPINION

Viking did not appear to contest any of Enforcement's allegations. As a result of the filing of a Forms P-4 effective in 1999 naming Viking as operator of the subject leases, Viking is responsible for properly plugging the subject wells in accordance with Commission rules, pursuant to Statewide Rule 14(c)(1).

The evidence shows that the subject wells have been inactive for more than one year, have not been plugged, and no Rule 14(b)(2) plugging extensions currently are in effect. Accordingly, Viking committed three violations of Rule 14(b)(2) as alleged by Enforcement.

The evidence further proves that Viking failed to post at the site of Maco Stewart Et Al. (02176) Lease, Well No. 31 an identification sign showing the name of the property, the name of the operator, and the well number. This constituted a violation of Statewide Rule 3(a)(2) as alleged by Enforcement.

The evidence also proves that Viking caused or allowed the discharge of oil and gas wastes onto the Maco Stewart Et Al. (11702) Lease and did not have a permit authorizing the discharge. The area affected by the leaks of produced water from two tanks was minimal. In this instance, however, the failure of Viking to cure the leaks assumes more importance than the extent of the discharge. The tanks were found to be leaking on the occasions of five separate District Office inspections between October 19, 2001, and January 28, 2002. On at least three separate occasions during this period, the District Office gave written notification of the leaks to Viking and requested that they be cured. Viking did not respond, and although by the date of the last inspection on May 16, 2002, the tanks had stopped leaking and the water had soaked into the ground, the small area of affected soil around the tanks had not been remediated. 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 \$7,250.00, consisting of \$2,000.00 for each of three Rule 14(b)(2) violations, \$250.00 for one Rule 3(a)(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 wells, or place the wells in compliance, or resolve the Rule 3(a)(2) and Rule 8(d)(1) violations, 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 violations committed by Viking pose a threat to the public health and safety.

Because it appears that the subject wells have been inactive for more than four years, Viking does not have an active Form P-5 Organization Report, and there is no evidence that Viking has a current right to operate the subject leases, the Commission should order that the subject wells be plugged. In addition, the Commission should order Viking to place the Maco Stewart Et Al. (11702) Lease into compliance with Statewide Rule 8.

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 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. At that time, Viking filed as financial assurance a cash fee in the amount of \$505.00, which was an amount equal to 3 % of the minimum required bond amount.
4. Viking designated itself to the Commission as the operator of the Maco Stewart Et Al. (11702) Lease, Well Nos. 35 and 36, by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) with the Commission, effective November 1, 1999. Viking designated itself to the Commission as the operator of the Maco Stewart Et Al. Lease, Well No. 31 (RRC No. 150913) by filing a Form P-4 with the Commission, effective June 1, 1999. Viking designated itself to the Commission as the operator of the Maco Stewart Et Al. (02176) Lease, Well No. 31, by filing a Form P-4 with the Commission, effective November 1, 1999.
5. No production has been reported to the Commission for the Maco Stewart Et Al. (11702) Lease, Well Nos. 35 and 36, since on or before July 31, 1998. No production has been reported to the Commission for the Maco Stewart Et Al. Lease, Well No. 31 (RRC No. 15093) or the Maco Stewart Et Al. (02176) Lease, Well No. 31, since on or before June 30, 1997.
6. The Maco Stewart Et Al. (11702) Lease, Well Nos. 35 and 36 were inactive on the occasion of District Office inspections made on October 19, November 7 and December 6, 2001, and January 2, January 28, and May 16, 2002. The Maco Stewart Et Al. Lease Well No. 31, a multiple completion assigned two lease numbers [Maco Stewart Et Al. Lease, Well No. 31 (RRC No. 15093) and Maco Stewart Et Al. (02176) Lease, Well No. 31], was inactive on the occasion of District Office inspections made on October 19 and December 6, 2001, and January 2, January 28, and May 16, 2002.

-
7. The subject wells have been inactive for more than one year, have not been plugged, and no Rule 14(b)(2) plugging extensions currently are in effect. The most recent plugging extension for the Maco Stewart Et Al. (11702) Lease, Well Nos. 35 or 36, expired August 31, 2001. The most recent plugging extension for Maco Stewart Et Al. Lease, Well No. 31, expired November 21, 1997.
 8. The estimated cost to plug the Maco Stewart Et Al. (11702) Lease, Well Nos. 35 and 36 is \$8,900.00 each. The estimated cost to plug the Maco Stewart Et Al. Lease, Well No. 31 is \$8,300.00.
 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 wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the possibility of pollution.
 10. On the occasions of District Office inspections on October 19 and December 6, 2001, and January 2, January 28, and May 16, 2002, Viking did not have posted at the site of Maco Stewart Et Al. (02176) Lease, Well No. 31, an identification sign showing the name of the property, name of the operator, and well number.
 11. Lack of legible identification signs has the potential to cause confusion as to the responsible operator and the actual location of a pollution or safety violation, causing delay in containment or remediation and threatening the public health and safety.
 12. Commencing on or before October 19, 2001, Viking caused or allowed the discharge of oil or gas wastes on the Maco Stewart Et Al. (11702) Lease, and no permit was issued by the Commission permitting the discharge. An area around two tanks at an old tank battery was affected by leaks of produced water, and these conditions were not remediated at least as of May 16, 2002.
 13. 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.
 14. Viking has no history of previous Commission orders issued against it for violations of Commission rules.
 15. Viking has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance, did not post the required identification sign at Well No. 31 on the Maco Stewart Et Al. (02176) Lease, or remediate the unauthorized discharge of oil and gas wastes on the Maco Stewart Et Al. (11702) Lease prior to initiation of this enforcement action. Viking did not appear at the hearing in this docket to explain its inaction.

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 Et Al. (11702) Lease, Well Nos. 35 and 36, the Maco Stewart Et Al. Lease, Well No. 31 (RRC No. 150913), and the Maco Stewart Et Al. (02176) Lease, Well No. 31, 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 3, 8, and 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.3, 3.8, and 3.14], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject leases and wells.
5. The subject wells are 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 Maco Stewart Et Al. (11702) Lease, Well Nos. 35 and 36 have been out of compliance since at least August 31, 2001, when the last plugging extension expired. The Maco Stewart Et Al. Lease, Well No. 31 has been out of compliance since at least November 21, 1997, when the last plugging extension expired.
6. By failing to post at the site of Well No. 31 on the Maco Stewart Et Al. (02176) Lease an identification sign showing the name of the property, name of the operator, and well number, Viking Resources, Inc., violated Statewide Rule 3(a)(2) [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE §3.3(a)(2)]. Viking was out of compliance with Statewide Rule 3(a)(2) on at least October 19 and December 6, 2001, and January 2, January 28, and May 16, 2002.
7. By causing or allowing the unpermitted discharge or disposal of oil and gas wastes on the Maco Stewart Et Al. (11702) 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., was out of compliance with Statewide Rule 8 at least between October 19, 2001, and May 16, 2002.
8. 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:

1. Plug the Maco Stewart Et Al. (11702) Lease, Well Nos. 35 and 36, Hitchcock (5100) Miocene Field, Galveston County, Texas;
2. Plug the Maco Stewart Et Al. Lease, Well No. 31 (RRC No. 150913) and the Maco Stewart Et Al. (02176) Lease, Well No. 31, Hitchcock (4530) Field, Galveston County, Texas;
3. Clean-up and place in compliance with Statewide Rule 8 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.8] the Maco Stewart Et Al. (11702) Lease, Hitchcock (5100) Miocene Field, Galveston County, Texas; and
4. Pay an administrative penalty in the amount of SEVEN THOUSAND TWO HUNDRED AND FIFTY DOLLARS (\$7,250.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner