

**CONSOLIDATED PROPOSAL FOR DECISION**

**OIL & GAS DOCKET NO. 03-0238281**

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**ENFORCEMENT ACTION AGAINST COMET OIL & GAS FOR VIOLATIONS OF STATEWIDE RULES ON THE MACHEMEHL, L.A. & A.C. LEASE, WELL NO. 1 (DRILL PERMIT NO. 418270) AND WELL NO. 2 (DRILL PERMIT NO. 394141), WILDCAT/RACCOON BEND (SPARTA) FIELD, AUSTIN COUNTY, TEXAS**

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**OIL & GAS DOCKET NO. 03-0238471**

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**ENFORCEMENT ACTION AGAINST COMET OIL & GAS FOR VIOLATIONS OF STATEWIDE RULES ON THE MACHEMEHL, L.A. & A.C. LEASE, WELL NO. 3 (DRILL PERMIT NO. 418267), WILDCAT/RACCOON BEND (SPARTA) FIELD, AUSTIN COUNTY, TEXAS**

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**FOR MOVANT:**

Lowell Williams, Staff Attorney

**MOVANT:**

Enforcement Section

**FOR RESPONDENT:**

Kaye Moore  
L.C. Smith, Vice-President  
Doris Smith, President

**RESPONDENT:**

Comet Oil & Gas  
Comet Oil & Gas  
Comet Oil & Gas

**PROCEDURAL HISTORY**

**Date of Request for Action:**

February 6, 2004 - Docket 03-0238281

**Hearings Held:**

March 22, 2004 - Docket 03-0238471

**Records Closed:**

June 24, 2004

**Heard By:**

July 23, 2004

**PFD Prepared By:**

Scott Petry, Hearings Examiner

Scott Petry, Hearings Examiner

James M. Doherty, Hearings Examiner

**PFD Circulation Date:**

October 8, 2004

**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 respondent should be required to plug or otherwise place in compliance with Statewide Rules 3, 14, and 16, the Machemehl, L.A. & A.C. Lease, Well Nos. Well Nos. 1, 2, and 3, which are located in Austin 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 3, 14, and 16;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said leases and wells; and,
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.

Lowell Williams, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Kaye Moore appeared at the hearing and represented Comet Oil & Gas (hereinafter “Comet” or “respondent”). The Enforcement Section's hearing files were admitted into evidence. At the hearing, the parties were informed that the dockets would be consolidated for the purpose of issuing this proposal for decision.

At the hearing, Comet requested extra time to submit additional evidence. The examiner agreed to leave the record open to July 23, 2004 to allow Comet the opportunity to submit late filed exhibits verifying that the respondent had transferred the wells in question or otherwise brought them into compliance with Commission rules and had achieved a settlement with Enforcement. No late filed exhibits were submitted by Comet. On September 15, 2004, Enforcement advised the Hearings Section that Enforcement did not believe the case could be resolved through settlement.

During the pendency of this case following the hearing, Examiner Scott Petry left the employment of the Commission, and on September 27, 2004, pursuant to §1.121 (c) of the Commission’s General

Rules of Practice and Procedure, the case was reassigned to Examiner James M. Doherty for the issuance of a proposal for decision.

The Enforcement Section recommends that Comet be ordered to place the subject leases and wells in compliance with Commission rules, and to pay an administrative penalty totaling \$8,000.00, based on four violations of Statewide Rule 3(a) at \$250 each, three violations of Statewide Rule 14(b)(2) violations at \$2,000 each, and two violations of Statewide Rule 16(a) at \$500 each. The examiner agrees with the recommendation of the Enforcement Section.

**BACKGROUND**

Unplugged and unused well bores constitute a potential danger to the public's health and safety and must be plugged when mandated by the Commission's rules. Statewide 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. For Forms P-4 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 W-1 drilling permit or Form P-4 designating that person as operator.

Statewide Rule 3 provides that signs must be posted at each well site, tank battery, and lease entrance. Statewide Rule 3 also provides that the signs must show the name of the property, the operator, and other pertinent information. Signs as outlined by Rule 3 provide contact information and speed the containment and remediation of any potential violations or emergencies.

Statewide Rule 16 provides that wells which are re-entered or completed must have a completion report filed with the Commission within thirty days of completion. Completed wells that are not reported to the Commission are a safety hazard, as they are unknown to the Commission, and therefore may not be inspected for compliance with Statewide Rules.

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531.

**DISCUSSION OF THE EVIDENCE**

Enforcement presented Commission records showing that the respondent's Form P-5 Organization Report is currently delinquent, and that the respondent last filed a Form P-5 on May 19, 1998. Kaye Moore is listed as the "resident agent", Doris Smith is listed as the president, and L.C. Smith is listed as the vice-president for Comet on its Organization Report. The respondent designated itself as the operator of the L.A. & A.C. Machemehl Lease, Well Nos. 1 and 2 by filing Form W-1 drilling permits with the Railroad Commission on November 15, 1993, and designated itself as the operator of the L.A. & A.C. Machemehl Lease, Well No. 3, by filing a Form W-1 drilling permit and subsequent completion report on November 15, 1993.

**I. Enforcement's Position & Evidence**

In Enforcement's case in chief, the Staff Attorney offered into evidence the hearing files and copies of related records. With regard to the asserted Rule 3(a) violations in Docket 03-0238281, Enforcement submitted inspection reports dated September 5, 2000, October 27, 2003, and May 4, 2004, which show that the sign and information required by Rule 3(a)(1) to be posted at the lease entrance was missing. Further, Commission district inspection reports made on September 5, 2000, October 27, 2003, December 8, 2003, January 26, 2004, and May 4, 2004 for Well Nos. 1 and 2 on L.A. & A.C. Machemehl Lease showed that the signs required by Statewide Rule 3(a)(2) to be posted at the wells were missing.

In Docket 03-0238471, Enforcement submitted inspection reports dated September 5, 2000, October 27, 2003, December 8, 2003, January 26, 2004, March 10, 2004, and May 4, 2004. These inspection reports show that the sign and identification required by Statewide Rule 3(a)(2) to be posted at Well No. 3 on the L.A. & A.C. Machemehl Lease was also missing. Enforcement asserts that Comet's failure to maintain legible signs or identification as required has violated Statewide Rule 3(a).

With regard to the asserted violations of Statewide Rule 14 in Docket No. 03-0238281, Commission District inspection reports made on September 5, 2000, October 27, 2003, December 8, 2003, and January 26, 2004, and the complete absence of production reports, showed that Well Nos. 1 and 2 on the L.A. & A.C. Machemehl Lease have been inactive for a period greater than one year. According to Commission records, these wells have never produced.

In Docket 03-0238471, Enforcement submitted inspection reports dated September 5, 2000, October 27, 2003, December 8, 2003, January 26, 2004, March 10, 2004, and May 4, 2004. Along with an absence of production reports, these inspection reports show that Well No. 3 on the L.A. & A.C. Machemehl Lease has been inactive for a period greater than one year. According to Commission records, Well No. 3 has never produced.

Enforcement asserts that no workovers, re-entries, or subsequent operations have occurred on any of the subject wells within the twelve months prior to the notice of hearing. In addition to noting that none of the subject wells had been plugged, Enforcement stated that there were no W-1X plugging extensions in effect for any of the subject wells. The estimated combined cost to the State of Texas for plugging Well Nos. 1 and 2 is \$32,404.00, whereas the estimated cost to the State of Texas for plugging Well No. 3 is \$16,256.00.

With regard to the violations of Statewide Rule 16, Enforcement submitted an inspection report dated October 27, 2003, which showed that Well No. 1 was inactive and equipped with rods, a pumping unit with gas engine, and a flow line connected to a tank. Commission well records show that Comet reentered Well No. 1 on January 26, 1994 and that reentry operations were completed by February 1, 1994. A subsequent inspection report made on December 8, 2003 showed that the well remained completed and inactive. Commission records do not reflect, however, that the respondent ever filed the required completion report for Well No. 1.

With regard to the asserted violation of Statewide Rule 16 at Well No. 3, Enforcement submitted an inspection report dated March 10, 2004, which showed that Well No. 3 had been completed. Commission records do not reflect that the respondent ever filed the required completion report for Well No. 3. Enforcement argued that Statewide Rule 16(a) requires that completion reports be filed within thirty days of the completion or recompletion of a well. Enforcement maintains that this has not happened for either Well No. 1 or 3 and that the respondent is out of compliance with Statewide Rule 16.

In response to Comet's assertions that it attempted to file a completion report on Well No. 1 and that it may not have re-entered Well Nos. 2 or 3, Enforcement indicated that it would consider withdrawing the asserted Statewide Rules 3 and 16 violations if the respondent brought the wells into compliance. Enforcement further suggested that it would be supportive of a reduction in the recommended Statewide Rule 14 penalties from \$2,000 per well to \$1,000 per well if the wells were brought into compliance via successful transfers to a bonded operator.

## **II. Respondent's Position & Evidence**

At the hearing, Comet acknowledged that it was the designated operator of the subject wells and further acknowledged that the wells had been inactive for quite some time, but asserted that there were extenuating circumstances that warranted a reduced penalty or no penalty at all. Kaye Moore, on behalf of the respondent, claimed that Comet had been consolidated in 1998 with other operating companies into one company, L.C. Smith Production Company. Comet claims that it was unsure that these wells even belonged to it and requested more time to achieve compliance either through plugging or transferring the wells into the name of L.C. Smith Production Company.

Respondent also claims that it never re-entered Well Nos. 1 or 2 despite obtaining a re-entry permit for both. When Enforcement inquired as to who re-entered the wells, Comet asserted that the re-entry took place prior to 1993 when the wells were transferred to Comet. Respondent asserted that it believed operations on Well Nos. 2 and 3 were taken over by another operating company, KZI, but that it was not absolutely sure about this. Under questioning from Enforcement and the examiner, respondent admitted that it had filed the re-entry permits on the two wells, even though it asserted that the wells were not under Comet's control.

With regard to Well No. 1, Comet maintains that it re-entered Well No. 1 in 1997 but had filed a Form W-2 at that time. Comet states that it was under the impression that the well was in compliance with Statewide Rules until it received a letter from the Commission advising otherwise on November 6, 2003. At that point, it states that it requested and received extra time to update the Form P-5 Organization Report for Comet.

Concerning the Statewide Rule 3 offenses, respondent asserts that it remedied the sign violations. Comet claims that there were signs up on the leases “the other day, when [Kaye Moore] went out there,” and that it placed the signs after the receipt of the November 6, 2003 letter from the Commission. Respondent asserts that it did “everything possible to remedy the situation,” and it does not believe that a fine should be levied. Comet maintains that it has “taken on a huge responsibility,” “going *beyond* the call of duty for the State of Texas on taking over responsibilities,” and that it is not “all [their] doing and all [their] fault.” The respondent stated that it had dedicated significant amounts of time trying to get the wells into compliance and that this should warrant no penalty.

Finally, the respondent asserted at hearing that it would get the subject wells into compliance by immediately transferring them to L.C. Smith Production Company, but that it would need extra time to do so. In response to these assertions, the Enforcement Section indicated that it was amenable to a reduction in the requested penalty if the respondent followed through on its assertions and brought the wells into compliance. The examiner left the record open until July 23, 2004 so that Comet could submit late-filed exhibits regarding compliance. The respondent did not submit any late-filed exhibits.

#### **EXAMINER’S OPINION**

Comet asserted that these violations were a result of confusion regarding the status of these wells and asked for additional time to resolve the violations. The additional time was given, and it was indicated to the respondent that a lesser penalty might be recommended if compliance were achieved as promised. Despite the respondent’s assertions, however, these wells continue to remain out of compliance.

It is undisputed that the wells have been, or are currently in, violation of Statewide Rules 3, 14, and 16. It is also undisputed that the subject wells have been inactive for more than a decade. While any potential confusion regarding transfers may account for a portion of the time that the wells were out of compliance, it does not excuse Comet from its regulatory responsibility for plugging the wells as required by Commission rules. Commission records indicate that Comet is the operator responsible for the wells, and it is undisputed that Comet is non-compliant with the Commission’s financial assurance requirements.

Accordingly, the examiner recommends that the respondent be ordered to plug the subject wells on the L.A. & A.C. Machemehl Lease. Further, the examiner recommends that the respondent be ordered to pay a penalty of \$5,000.00 in Docket 03-0238281, and a penalty of \$3,000.00 in Docket 03-0238471, for a total administrative penalty in both dockets of \$8,000.00. Based on the records in these dockets, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Respondent, Comet Oil & Gas, Inc. (“Comet” or “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. Kaye Moore appeared at the hearing and represented Comet.
2. Comet last filed a Form P-5 on May 19, 1998, and its Organization Report is currently delinquent. The respondent paid a \$2,000 cash deposit as its financial assurance at the time of its last renewal. Kaye Moore is listed as the “resident agent”, Doris Smith is listed as the president, and L.C. Smith is listed as the vice-president for Comet on its Organization Report. Doris Smith and L.C. Smith were persons in a position of ownership or control of Comet at the time the violations involved in these dockets occurred.
3. The violations committed by Comet are violations of Commission rules related to safety and the prevention or control of pollution.
4. Respondent designated itself as the operator of the L.A. & A.C. Machemehl Lease, Well Nos. 1 and 2 by filing Form W-1 drilling permits with the Commission on November 15, 1993.
5. Respondent designated itself as the operator of the L.A. & A.C. Machemehl Lease, Well No. 3, by filing a Form W-1 drilling permit on November 15, 1993.
6. The sign required at the lease entrance to identify the L.A. & A.C. Machemehl Lease has been missing since at least September 5, 2000.
7. The signs identifying Well Nos. 1, 2, and 3 on the subject lease have been missing since at least September 5, 2000.
8. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.

9. Well Nos. 1 and 2 on the L.A. & A.C. Machemehl Lease are currently inactive and have been inactive for more than 12 months.
  - a. On the occasion of Commission inspections of the L.A. & A.C. Machemehl Lease conducted on September 5, 2000, October 27, 2003, December 8, 2003, and January 26, 2004, the subject wells were inactive.
  - b. No production by the subject wells has been reported to the Commission.
  
10. Well No. 3 on the L.A. & A.C. Machemehl Lease is currently inactive and has been inactive for more than 12 months.
  - a. On the occasion of Commission inspections of the L.A. & A.C. Machemehl Lease conducted on September 5, 2000, October 27, 2003, December 8, 2003, January 26, 2004, March 10, 2004, and May 4, 2004, Well No. 3 was inactive.
  - b. No production by Well No. 3 has been reported to the Commission.
  
11. There are no plugging extensions currently in effect for any of the subject wells on the L.A. & A.C. Machemehl Lease.
  
12. 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 probability of pollution.
  
13. Well No. 1 was reentered on January 26, 1994, and reentry operations were completed by February 1, 1994. A completion report was not filed within 30 days after completion of the well.
  
14. Well No. 1 was inactive and equipped with rods, a pumping unit with gas engine, and a flow line connected to a tank on October 27, 2003. A subsequent inspection report made on December 8, 2003 showed that the well was completed and inactive.
  
15. Well No. 3 was reentered and completed on or before March 10, 2004. A completion report was not filed within 30 days after completion of the well.
  
16. The respondent has not demonstrated good faith since it failed to plug or otherwise place the subject wells and leases in compliance after being notified of the violations by the district office.

17. The estimated cost to plug Well Nos. 1 and 2 on the L.A. & A.C. Machemehl Lease is \$32,404.00, and the estimated cost to plug the Well No. 3 is \$16,256.00.
18. The record does not reflect any previous violations by the respondent of Commission rules.

**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. Comet Oil & Gas is the operator of the L.A. & A.C. Machemehl Lease, Well Nos. 1, 2, and 3, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Comet has the primary responsibility for complying with Statewide Rules 3, 14, and 16, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject wells.
5. Well Nos. 1, 2, and 3 on the L.A. & A.C. Machemehl Lease are not properly plugged or otherwise in compliance with Statewide Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code. Well Nos. 1, 2, and 3 have been out of compliance with Statewide Rule 14(b)(2) since at least September 5, 2001.
6. The L.A. & A.C. Machemehl Lease was out of compliance with Statewide Rule 3(a)(1) on September 5, 2000, October 27, 2003, and May 4, 2004.
7. Well Nos. 1, 2, and 3 on the L.A. & A.C. Machemehl Lease were out of compliance with Statewide Rule 3(a)(2) on September 5, 2000, October 27, 2003, December 8, 2003, January 26, 2004, and May 4, 2004.
8. Well No. 1 on the L.A. & A.C. Machemehl Lease has been out of compliance with Statewide Rule 16(a) since at least March 3, 1994.
9. Well No. 3 on the L.A. & A.C. Machemehl Lease has been out of compliance with Statewide Rule 16(a) since at least April 9, 2004
10. The documented violations committed by Comet are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

11. As officers in a position of ownership or control of Comet at the time Comet violated Commission rules related to safety and the prevention or control of pollution, Doris Smith and L.C. Smith, and any organization in which they, or either of them, hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

**RECOMMENDATION**

The examiner recommends that the above Findings of Fact and Conclusions of Law be adopted and that the attached orders be approved, requiring the operator, Comet Oil & Gas, within 30 days from the date this order becomes final, to plug the subject wells in compliance with all Commission rules. The examiner further recommends that the respondent be ordered to pay an administrative penalty of \$5,000.00 in Docket 03-0238281, and a penalty of \$3,000.00 in Docket 03-0238471, for a total administrative penalty in both dockets of \$8,000.00.

Respectfully submitted,

James M. Doherty  
Hearings Examiner