

May 31, 2005

OIL AND GAS DOCKET NO. 03-0238286

ENFORCEMENT ACTION AGAINST LOCH ENERGY, INC. (OPERATOR NO. 504669) FOR VIOLATIONS OF STATEWIDE RULES ON THE COE, M. FEE (05476) LEASE, WELL NOS. 1, 2, 2A, 3, 4, 5, 6, 11, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35, AND G36, HUMBLE FIELD, HARRIS COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT RAILROAD COMMISSION OF TEXAS:

Elaine Moore, Staff Attorney

FOR RESPONDENT LOCH ENERGY, INC.

Stephen Brents, former V.P. of Operations

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	March 29, 2004
NOTICE OF HEARING:	February 3, 2005
DATE CASE HEARD:	March 31, 2005
RECORD CLOSED:	May 5, 2005
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	May 31, 2005
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 respondent, Loch Energy, Inc. (“Loch Energy” or “Loch”) should be required to plug or otherwise place in compliance with Statewide Rule 14, the Coe, M. Fee (05476) Lease, Well Nos. 1, 2, 2A, 3, 4, 5, 6, 11, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35, and G36 , Humble Field, Harris County, Texas;
2. Whether the respondent, Loch Energy, Inc. should be required to place in compliance with Statewide Rule 8, the Coe, M. Fee (05476) Lease, Well Nos. E34, D33, A30 and 11, Humble Field, Harris County, Texas;
3. Whether the respondent, Loch Energy, Inc. should be required to place in compliance with Statewide Rule 13, the Coe, M. Fee (05476) Lease, Well Nos. 5 and 11, Humble Field, Harris County, Texas;
4. Whether the respondent 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 14, 8 and 13;
5. 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;
6. 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.

Elaine Moore, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”). Stephen Brents, past Vice President of Operations for Loch appeared representing Loch. Enforcement's hearing file was admitted into evidence.

DISCUSSION OF THE EVIDENCE

Organization and Permit Records

Commission records show that Loch Energy filed its initial Commission Form P-5 (Organization Report) with the Commission on February 5, 1999. The most recent Organization Report for Loch Energy was approved on June 15, 2004. Peter Wang is currently identified as the CEO of the company and Gemme G. Grooms is identified as the Vice President of Administration. Commission records show that as of December 3, 2004, Loch Energy was recognized as the operator of 42 wells with a total depth of 88,637 feet. Loch Energy submitted a \$50,000 cash deposit as its financial assurance and is currently an inactive operator.

Loch Energy was recognized as the operator of the Coe, M. Fee (05476) Lease, Well Nos. 1, 2, 2A, 3, 4, 5, 6, 11, 12, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35, and G36, Humble Field, ("subject lease" and/or "subject wells") after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective March 23, 2003, which was approved by the Commission on June 2, 2003.

The estimated cost to the state of plugging the subject wells is \$30,889.00.

Commission Inspections

Commission inspections of the subject lease made on July 18, 2003, August 19, 2003, February 10, 2004, August 24, 2004, November 11, 2004 and March 23, 2005 and either reports filed by Respondent with the Commission reflecting zero production, or the absence of production reports filed by Respondent with the Commission since June 2003 show that the Coe, M. Fee (05476) Lease, Well Nos. 1, 2, 2A, 3, 4, 5, 6, 11, 12, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35 and G36 have been inactive for a period greater than one year. Production from the subject wells ceased on or before May 31, 2003.

No workovers, re-entries or subsequent operations have taken place on the subject wells within the last twelve months: none of the subject wells has been plugged and no Commission Form W-1Xs (Application for Future Re-Entry of Inactive Well Bore and 14(b)(2) Extension Permit) are in effect for the subject wells as allowed by Statewide Rule 14.

A Commission inspection on February 10, 2004, found that Well Nos. 5 and 11 were not equipped with wellhead assemblies and had flowlines open to atmosphere. However, at the hearing, Enforcement indicated that these violations had been corrected and that no penalties for those violations would be requested.

The February 10, 2004 Commission inspection also found the valve on Well No. E34 had been left open and leaked approximately 10 gallons of oil; oil-stained soil was found at Well No. D33 covering a 6' by 10' area; oil-stained soil was found at Well No. A30 covering a 4' by 10' area and approximately 1/2 gallon of oil was found floating in the cellar of Well No. 11. By discharging oil and gas wastes without a permit, Loch violated Statewide Rule 8(d)(1). Subsequent inspections found other violations of SWR 8 on the subject lease, but Enforcement did not plead those violations and they are not considered here.

ENFORCEMENT'S POSITION

Enforcement argues that the subject wells are out of compliance with Rule 14(b)(2) because the wells have not produced for a period over one year (from at least May 31, 2003 to date) and they were not timely plugged nor was an extension of the plugging deadline obtained. Enforcement requested that Loch Energy be ordered to place the wells in compliance with Commission rules and pay an administrative penalty of \$40,000, which is \$2,000 apiece for twenty wells. Through a clerical error, Enforcement's prayer in the original complaint referred to only 19 wells. Enforcement

offered a trial amendment correcting the number to 20 wells, which was accepted with no objection from Loch Energy. Enforcement also argued that Well Nos. E34, D33, A30 and 11 were out of compliance with Rule 8(d)(1). Enforcement urged that Loch be ordered to bring these wells into compliance with Commission rules, and pay an administrative penalty of \$1,000.00, which is a violation on one lease at \$1,000 per lease. Enforcement requested a total administrative penalty of \$41,000.

The hearing was left open for 14 days to allow Enforcement to late-file copies of the P-5s that would show the officers of Loch Energy during the time of the violations. Enforcement timely filed the requested information on April 7, 2005.

LOCH'S POSITION

Loch Energy did not dispute the contents of the inspection reports or the contents of Enforcement's certified file. However, Mr. Brents, a former officer in Loch Energy, presented a document which purports to be the affidavit of Wann Sheng (Peter) Wang and his wife Thuy describing events that took place on November 19, 2003, but which was not signed and notarized until October 8, 2004. The gist of the affidavit is that on November 19, 2003, Mr. Wang discovered that the contents of the office of Loch Energy were being removed by Neo Media Technologies, Gen Oil LLC, and two individuals; Bill Fritz and Tony Dyches. Mr. Dyches represented to Mr. Wang that he had been hired to do so by Neo Media, Gen Oil and Mr. Fritz. Additionally, Mr. Dyches represented that he himself had purchased some of the assets of Loch Energy from its previous management. Mr. Wang was refused entry to the office property, access to the records of Loch Energy, and entry onto any of Loch Energy's oil and gas properties. He was told that the property and mineral interests of Loch Energy were now owned by Bill Fritz and his companies.

Although not explicitly so stated, Loch Energy apparently intends the introduction of the affidavit to show that Loch was not responsible for the subject wells after November 19, 2003.

Mr. Brents stated that Mr. Wang is now deceased, as of November 7, 2004. The hearing was left open for 14 days to allow Mr. Brents to late-file a copy of Mr. Wang's death certificate. The certificate was not timely filed but did arrive at the RRC on May 5, 2005, at which time the hearing was closed.

APPLICABLE AUTHORITY

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 wells transferred after September 1, 1997, the operator of a well for purposes of plugging liability is the person who assumed responsibility for the physical operation and control of a well as shown by an approved Form P-4 designating that person as operator.

Statewide Rule 8(d)(1) prohibits the disposal of oil and gas wastes by any method unless a permit has been granted by the Commission.

EXAMINER'S OPINION

Loch does not dispute any of the evidence offered by the Enforcement attorney, but instead offered an affidavit from Peter Wang, signed and notarized October 8, 2004, indicating that he and the other officers had lost control of Loch Energy as of November 19, 2003. At that time, Mr. Wang indicated he was a Director of Loch Energy. Unfortunately, the affidavit does not provide any further explanation of how the loss of control came about, other than vaguely indicating that a sale of assets may have taken place prior to the time Mr. Wang became associated with Loch. The affidavit's claim that Mr. Wang lost control of Loch Energy on November 19, 2003, is inconsistent with the fact that Loch Energy filed a P-5 renewal (with Peter Wang as its CEO/President) with the Commission on June 14, 2004. The affidavit is also inconsistent with the fact that none of the officers in Loch Energy attempted to have themselves removed from the Loch Energy P-5 immediately after November 19, 2003, which might be expected if the company essentially ceased to exist after that date. The subject wells were not transferred to another operator and are still carried on Commission records in the name of Loch Energy.

Loch also supplied a purported death certificate for Peter Wang. The affidavit and death certificate indicate that Peter Wang's true name is Wann Sheng Wang, and has perhaps been "Americanized" to Wann Sheng "Peter" Wang. The validity of the death certificate is in question as the copy received by the Commission is not an original copy of the death certificate and has been altered. Under the heading "Certification of Vital Record" on the death certificate, in the ornate engraved border, can be found, upside down and reversed out, the oil and gas industry related words "Shot Blasting, Diamond Grinding,.....". Elsewhere on the document are other areas in which portions of a letterhead and a footer with a toll-free number are found, also upside down and reversed out. The base document may be genuine, and the alterations may be due to nothing more than incompetence in its transmission. However, the alterations do raise questions as to the authenticity of the document.

Peter Wang was one of the officers subject to the findings of a Final Order in Docket No. 7B-0235956, in which he was identified as an officer in a position of ownership and control of Loch Energy and was subjected to the tainting provisions of Texas Natural Resources Code §91.114.

Loch did not otherwise contest Enforcement's allegations. The examiner finds that the alleged violations did take place and agrees with Enforcement's penalty recommendations.

Amount of Administrative Penalty

Texas Natural Resources Code §81.0531(c) requires the Commission to consider four factors in determining the amount of an administrative penalty for a violation of Commission rules: 1) the permittee's history of previous violations; 2) the seriousness of the violation; 3) any hazard to the health or safety of the public; and 4) the demonstrated good faith of the person charged. In most Enforcement cases, a standard penalty guideline has already evaluated these factors in determining the amount of the administrative penalty sought in the complaint. Enhanced penalties for violations may be sought for several criteria, including: time out of compliance; actual or threatened

environmental impact; threatened or actual hazard to the public; and, reckless or intentional conduct.

Enforcement's recommended administrative penalty of \$2,000 for each SWR 14(b)(2) violation, of which there are twenty, is consistent with existing Commission standard penalty guidelines. The examiner does not recommend a departure from the standard penalty recommendation made by Enforcement.

Enforcement's recommended administrative penalty of \$1,000 for the violations of SWR 8(d)(1) on this lease on February 10, 2004 is also consistent with existing Commission standard penalty guidelines. The examiner does not recommend a departure from the standard penalty recommendation made by Enforcement.

Additional Recommendations

The wells on the subject lease ceased production on or before May 31, 2003. After one year without production, workover attempts or a SWR 14(b)(2) extension, the wells were in violation of the rule as of June 1, 2004. As shown by a P-5 received by the Commission on May 21, 2003, the officers of Loch at that time were Patrick Ashworth, President and CEO; Kenneth D. Howard, V.P. of Corporate Affairs; and Gemme G. Grooms, V.P. of Administration, supplemented by the addition of Stephen Brents as V.P. of Field Operations by a P-5 Supplemental Officer listing received by the Commission on May 22, 2003. These officers remained on the Loch P-5 Organization report on June 1, 2004 and after, that is, into the period of time the subject wells were in violation of SWR 14(b)(2).

The next P-5 filing on behalf of Loch was dated June 8, 2004 and received by the Commission on June 14, 2004. On that P-5, the officers listed were Peter Wang, CEO and President, and Gemme G. Grooms, V.P. of Administration. The subject wells continued to be in violation of SWR 14(b)(2) and remain so to this day. The examiner recommends, pursuant to Texas Natural Resources Code §91.114, that all the above-named officers be identified as individuals in a position of ownership or control during the time Loch Energy violated a Commission rule, SWR 14(b)(2), related to safety and the control of pollution. Accordingly, they would be subject to the restrictions of Texas Natural Resources Code §91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or less, if the terms of the order are satisfied.

Additionally, the examiner notes that at the time of the SWR 8(d)(1) violation on February 10, 2004, the officers of Loch Energy were, as stated above, Patrick Ashworth, Kenneth D. Howard, Gemme G. Grooms and Stephen Brents. The examiner recommends, pursuant to Texas Natural Resources Code §91.114, that these named officers be identified as individuals in a position of ownership or control during the time Loch Energy violated a Commission rule, SWR 8(d)(1), related to safety and the control of pollution.

EXAMINER'S RECOMMENDATION

With respect to the violations of SWR14(b)(2) and SWR 8(D)(1), the examiner agrees with Enforcement's recommended penalty of \$41,000, consisting of twenty violations of SWR 14(b)(2)

at \$2,000 per violation and one violation of SWR 8(d)(1) at \$1,000. Additionally, the examiner recommends that the officers listed on Loch Energy's P-5 filings at the time of the violations be subject to the restrictions of Texas Natural Resources Code §91.114.

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. Respondent Loch Energy, Inc. ("Loch Energy" or "Loch") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Loch Energy appeared through one of its past Vice Presidents, Stephen Boyd Brents and presented evidence at the hearing.
2. Commission records show that Loch Energy filed its initial Commission Form P-5 (Organization Report) with the Commission on February 5, 1999. The most recent Organization Report renewal for Loch Energy was approved on June 15, 2004. Peter Wang (Wann Sheng "Peter" Wang) is identified as the CEO/President of the corporation and Gemme G. Grooms is identified as the Vice-President of Administration. Commission records show that as of December 3, 2004, Loch Energy was recognized as the operator of 42 wells with a total depth of 88,637 feet. Loch Energy submitted a \$50,000 cash deposit as its financial assurance and is currently inactive.
3. Loch Energy was recognized as the operator of the Coe, M. Fee (05476) Lease, Well Nos. 1, 2, 2A, 3, 4, 5, 6, 11, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35, and G36, Humble Field, Harris County ("subject lease" and/or "subject wells") after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective March 23, 2003, which was approved by the Commission on June 2, 2003.
4. Well Nos. 1, 2, 2A, 3, 4, 5, 6, 11, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35 and G36 on the Coe, M. Fee (05476) Lease are currently inactive and have been inactive for more than 12 months.
 - a. Reports filed by Loch Energy with the Commission showing zero production or the absence of reports filed with the Commission by Loch Energy for the subject wells demonstrate that the wells have not produced since on or before May 31, 2003;
 - b. The subject wells have been inactive since at least May 31, 2003 and have been in violation of SWR 14(b)(2) since at least June 1, 2004.
5. On February 10, 2004, Well Nos. E34, D33, A30 and 11 on the Coe, M. Fee Lease were in violation of SWR 8(d)(1);
 - a. A valve on Well No. A34 had been left open and leaked approximately 10 gallons of oil;

- b. Oil-stained soil at Well No. D33 covered a 6' by 10' area;
 - c. Oil-stained soil at Well No. A30 covered a 4' by 10' area;
 - d. Approximately 1/2 gallon of oil was floating in the cellar of Well No. 11.
6. On February 10, 2004, Loch Energy had no permit authorizing the discharge of oil and gas wastes on the Coe, M. Fee (05476) Lease.
 7. Usable quality groundwater was likely to be contaminated by the unauthorized discharge of oil and gas waste on the Coe, M. Fee (05476) Lease.
 8. Loch Energy did not demonstrate good faith because it failed to bring the subject wells and lease into compliance with Statewide Rules 8 and 14.
 9. The officers of Loch Energy during the time the subject wells were in violation of SWR 14(b)(2) as shown by a P-5 filed May 21, 2003 were Patrick Ashworth, President and CEO; Kenneth D. Howard, V.P. of Corporate Affairs, and Gemme G. Grooms, V.P. of Administration, augmented by the addition of Stephen Brents as V.P. of Field Operations by a P-5 supplemental filing received on May 22, 2003. The next P-5 filing of Loch Energy, approved by the Commission on June 14, 2004, listed Peter Wang (Wann Sheng "Peter Wang), CEO/President and Gemme G. Grooms, V.P. of Administration as officers during the continuing period in which the subject wells were in violation of SWR 14(b)(2).
 10. The officers of Loch Energy during the time Well Nos. E34, D33, A30 and 11 on the subject lease were in violation of SWR 8(d)(1) as shown by a P-5 filed May 21, 2003 were Patrick Ashworth, Kenneth D. Howard, Gemme G. Grooms and Stephen Brents.
 11. The estimated cost to the state of plugging the subject wells is \$30,889.00.

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. Loch Energy, Inc. is the operator of the Coe, M. Fee (05476) Lease, Well Nos. 1, 2, 2A, 3, 4, 5, 6, 11, 12, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35, and G36, Humble Field, Harris County, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Loch Energy, Inc. has the primary responsibility for complying with Statewide Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Coe, M. Fee (05476) Lease, Well Nos. 1, 2, 2A, 3, 4, 5, 6,

- 11, 12, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35 and G36, Humble Field, Harris County.
5. Well Nos.1, 2, 2A, 3, 4, 5, 6, 11, 12, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35 and G36 on the Coe, M. Fee (05476) Lease are not in compliance with Commission Statewide Rule 14(b)(2) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
 6. Well Nos.1, 2, 2A, 3, 4, 5, 6, 11, 12, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35 and G36 on the Coe, M. Fee (05476) Lease have been out of compliance with Commission Statewide Rule 14(b)(2) from on or before June 1, 2004 to the present.
 7. Well Nos. E34, D33, A30 and 11 on the subject lease were in Violation of SWR 8(d)(1) as shown by a Commission Inspection report dated February 10, 2004.
 8. Patrick Ashworth, Kenneth D. Howard, Gemme G. Grooms, Stephen Brents, and Peter Wang (Wann Sheng “Peter” Wang) are identified in Commission filings as holding positions of ownership or control in Loch Energy, Inc., as defined by Texas Natural Resources Code §91.114, during the time period of the violations of Commission Statewide Rule 14 and 8 committed by Loch Energy.
 9. The violations of Commission rules committed by Loch Energy are related to safety and the control of pollution.
 10. As officers at the time of the violations of Commission rules related to safety and the control of pollution, Patrick Ashworth, Kenneth D. Howard, Gemme G. Grooms, Stephen Brents, and Wann Sheng “Peter” Wang and any other organization in which one or more may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code §91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or less, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.
 11. The documented violations committed by respondent are a hazard to the public health and demonstrate a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Loch Energy, Inc., within 30 days of the entry of a Final Order in this matter; 1) to plug or place in compliance Well Nos.1, 2, 2A, 3, 4, 5, 6, 11, 12, 14, 17, 18, 19, A30, B31, C32, D33, E34, F35 and G36 on the Coe, M. Fee (05476) Lease ; and 2) clean up and remediate the SWR 8 violations on the subject lease and 3) to pay an administrative penalty of

\$41,000.00.

The examiner further recommends that the officers of Loch Energy at the time the violations took place be made subject to the provisions of Texas Natural Resources Code §91.114.

Respectfully submitted,

Marshall Enquist
Hearings Examiner