

**ENFORCEMENT ACTION AGAINST RONALD L. MOORE, DBA FRICKE PRODUCTION COMPANY (OPERATOR NO. 286496) FOR VIOLATIONS OF STATEWIDE RULES ON THE BAYNE (20646) LEASE, WELL NO. 1, CALDWELL (AUSTIN CHALK) FIELD, BRAZOS COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Lowell E. Williams  
Staff Attorney

**MOVANT:**

Enforcement Section  
Railroad Commission of Texas

**FOR RESPONDENT:**

Roland R. Baker  
Agent

**RESPONDENT:**

Ronald L. Moore DBA  
Fricke Production Company

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

**DATE OF ORIGINAL COMPLAINT:**

June 14, 2004

**DATE OF HEARING:**

June 23, 2005

**HEARD BY:**

James M. Doherty, Hearings Examiner

**DATE PFD CIRCULATED:**

July 22, 2005

**STATEMENT OF THE CASE**

This proceeding was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent Ronald L. Moore, DBA Fricke Production Company ("Fricke"), 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 §3.14(b)(2)] the Bayne (20646) Lease, Well No. 1 ("subject well"), Caldwell (Austin Chalk) Field, Brazos County, Texas;
2. Whether Fricke 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 the subject well or otherwise place the well in compliance with Statewide Rule 14(b)(2);

3. Whether Fricke should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject well; and
4. Whether any violations of Statewide Rule 14(b)(2) by Fricke should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

A hearing was held on June 23, 2005. Lowell E. Williams, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Roland R. Baker, agent for Fricke, appeared to represent Fricke and presented evidence. Enforcement’s certified hearing file was admitted into evidence.

#### **APPLICABLE LAW**

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.

Statewide Rule 14(c)(1) provides that 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 Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

#### **DISCUSSION OF THE EVIDENCE**

##### **Official Notice**

The examiner has officially noticed organization report records of the Commission showing that, as of the date of the hearing: (1) Fricke’s Form P-5 organization report had been delinquent since September 1, 2002; and (2) Fricke last filed financial security in the form of an annual fee in the amount of \$100. The examiner has also officially noticed plugging extension records of the Commission showing that, as of the date of the hearing, the subject well did not have a Statewide Rule 14(b)(2) plugging extension and has never had such an extension.

##### **Enforcement**

Fricke was designated operator of the subject lease and well by filing Form P-4 (Producer’s Transportation Authority and Certificate of Compliance), which was approved September 14, 2000, effective September 1, 2000. Three District Office inspections between March 11, 2004, and May 12, 2005, disclosed that the subject well was inactive. No production for the subject well has been reported

to the Commission since August 31, 2002. Between February 23, 2004, and May 18, 2005, the District Office corresponded with Fricke on at least three occasions requesting that Fricke bring the well into compliance with Statewide Rule 14(b)(2), apparently without result. On July 6, 2004, an agent for Fricke sent Enforcement a letter stating that if a new operator for the subject well could not be found to take over the well, a Form W-3A would be filed so that Wylie Well Service, also a Ronald L. Moore company, could plug the well. As of the date of the hearing, no Form W-3 (Plugging Record) or Form W-15 (Cementing Affidavit) had been filed or approved for the subject well. Enforcement estimates that the cost to the State of plugging the subject well would be \$18,708.

The affidavit of a staff engineer presented by Enforcement stated that: (1) 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; (2) holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface; and (3) uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Enforcement contends that Fricke violated Statewide Rule 14(b)(2) by failing to commence plugging of the subject well within one year after operations ceased. Enforcement recommends that Fricke be ordered to place the well into compliance with Commission rules and pay an administrative penalty in the amount of \$2,000.

**Fricke**

Fricke stated that it attempted to obtain a new oil and gas lease covering the subject property after the old oil and gas lease had lapsed and attempted to sell the subject lease to another operator. These attempts were unsuccessful, and Fricke now believes that it will need to file Form W-3A (Notice of Intention to Plug and Abandon) and plug the subject well. Fricke would like to have six months to accomplish the plugging of the well.

**EXAMINER'S OPINION**

Enforcement established that the subject well has been inactive for more than one year, has not been plugged, and does not have a plugging extension. Enforcement also established that Fricke is the operator with the responsibility to plug the subject well. None of these facts is disputed by Fricke. The examiner thus concludes that Fricke violated Statewide Rule 14(b)(2).

The examiner recommends that Fricke be ordered to plug the subject well and pay an administrative penalty of \$2,000. The recommendation that the well be ordered to be plugged is based on the fact that the well has been inactive for about three years, Fricke does not have a currently effective oil and gas lease covering the subject property, the well cannot qualify for a plugging extension, and Fricke's effort to find a new operator to whom the well might be transferred has been unsuccessful.

In recommending an administrative penalty in the amount of \$2,000, the examiner has considered whether Fricke has a history of previous violations, the seriousness of the violation, any

hazard to the health or safety of the public, and whether Fricke has demonstrated good faith, all as required by §81.0531 of the Texas Natural Resources Code. Fricke has no history of previous violations. However, Fricke cannot be said to have demonstrated good faith, because it failed to respond to multiple requests from the District Office to plug the well.<sup>1</sup> The violation committed by Fricke is serious and presented a hazard to the health and safety of the public because of the threat of pollution of usable quality water presented by unplugged wells. The recommended penalty conforms to the standard penalties in the recommended standard penalty schedule for enforcement cases.

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

**FINDINGS OF FACT**

1. Ronald L. Moore, DBA Fricke Production Company (“Fricke”) was given at least ten (10) days notice of this proceeding by certified mail, addressed to Fricke’s most recent Form P-5 Organization Report address. Fricke appeared at the hearing and presented evidence.
2. Fricke is a sole proprietorship, and Ronald L. Moore is its sole proprietor. As of the date of the hearing, Fricke’s organization report had been delinquent since September 1, 2002.
3. Fricke has no history of prior Commission orders entered against it for violations of Commission rules.
4. As sole proprietor, Ronald L. Moore was a person in a position of ownership or control of Fricke at the time the violation involved in this docket occurred.
5. The violation committed by Fricke is a violation of a Commission rule related to safety and the prevention or control of pollution.
6. Fricke designated itself to the Commission as the operator of the Bayne (20646) Lease, Well No. 1 (“subject well”), Caldwell (Austin Chalk) Field, Brazos County, Texas, by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) which was approved September 14, 2000, effective September 1, 2000.
7. The subject well has been inactive for more than one year and has not been plugged.
  - (a) The well was inactive and unplugged as of District Office inspections on three separate dates between March 11, 2004, and May 12, 2005.
  - (b) No production has been reported to the Commission for the well since August 31, 2002.
  - (c) No Form W-3 (Plugging Record) or Form W-15 (Cementing Affidavit) for the well has

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<sup>1</sup> The earliest of these District Office requests is dated February 23, 2004.

been filed with the Commission.

8. No Statewide Rule 14(b)(2) plugging extension is in effect for the subject well. The well has never had a plugging extension.
9. At the time of the hearing, Fricke did not have an effective oil and gas lease covering the subject property, and had been unsuccessful in obtaining a new lease or finding another operator to which the subject well could be transferred.
10. Between February 23, 2004, and May 18, 2005, the District Office corresponded with Fricke on at least three separate occasions requesting compliance with Statewide Rule 14(b)(2) with respect to the subject well. These communications with Fricke did not result in compliance.
11. The estimated cost to the State to plug the subject well is \$18,708.
12. Usable quality groundwater in the area was likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well during the period of the well's noncompliance with Statewide Rule 14(b)(2). Unplugged wellbores constitute a cognizable threat to the public health and safety because of the risk of pollution.

#### **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. Ronald L. Moore, DBA Fricke Production Company ("Fricke") is the operator of the Bayne (20646) Lease, Well No. 1, Caldwell (Austin Chalk) Field, Brazos County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Fricke has the primary responsibility for complying with Statewide Rule 14 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject well.
5. Fricke violated Statewide Rule 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] by failing to timely plug the subject well or otherwise comply with Statewide Rule 14(b)(2). The subject well has been out of compliance with Statewide Rule 14(b)(2) since at least October 1, 2003.
6. The documented violation by Fricke constitutes an act deemed serious and a hazard to the public health, and demonstrates a lack of good faith within the meaning of §81.0531(c) of the Texas Natural Resources Code.
7. As sole proprietor of Fricke at the time Fricke violated a Commission rule related to safety and

the prevention or control of pollution, Ronald L. Moore, and any organization in which he may hold a position of ownership or control, is subject to the restrictions of §91.114(a)(2) of the Texas Natural Resources Code.

**RECOMMENDATION**

The examiner recommends that the Commission adopt the attached final order requiring that Ronald L. Moore, DBA Fricke Production Company:

1. Plug in compliance with Commission rules, the Bayne (20646) Lease, Well No. 1, Caldwell (Austin Chalk) Field, Brazos County, Texas; and
2. Pay an administrative penalty in the amount of TWO THOUSAND DOLLARS (\$2,000.00).

Respectfully submitted,

James M. Doherty  
Hearings Examiner