

OIL & GAS DOCKET NO. 03-0262435

ENFORCEMENT ACTION AGAINST CAVERN CONSULTANTS, INC. (OPERATOR NO. 140542) FOR VIOLATIONS OF STATEWIDE RULES ON THE HUDNALL, ZINN & FOREMAN LEASE, WELL NO. 2 (RRC NO. 159110), CAPLEN (FB-2A, 2Z) FIELD, HUDNALL, ZINN & FOREMAN (16315) LEASE, WELL NO. 3, CAPLEN (FB-2A, 2Y) FIELD, AND SIMPTON (23209) LEASE, WELL NO. 6, CAPLEN (FB-3, 2-B4L) FIELD, GALVESTON COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Kelli Tieken
Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Alan L. Castetter

RESPONDENT:

Cavern Consultants, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:

September 22, 2009

DATE OF NOTICE OF HEARING:

January 20, 2010

DATE OF HEARING:

February 25, 2010

HEARD BY:

James M. Doherty, Hearings
Examiner

DATE RECORD CLOSED:

April 26, 2010

DATE PFD CIRCULATED:

June 16, 2010

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 Cavern Consultants, Inc. ("Cavern") should be required to plug or otherwise place into compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), Caplen (FB-2A, 2Z) Field, the Hudnall, Zinn & Foreman (16315) Lease, Well No.

- 3, Caplen (FB-2A, 2Y) Field, and the Simpton (23209) Lease, Well No. 6, Caplen (FB-3, 2-B4L) Field, Galveston County, Texas;
2. Whether Cavern violated Statewide Rule 3(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(2)] by failing to post and maintain an identification sign at Well No. 6 on the Simpton (23209) Lease, Caplen (FB-3, 2-B4L) Field, Galveston County, Texas;
 3. Whether Cavern violated Statewide Rule 9(12)(A) and (B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.9(12)(A) and (B)] by failing to perform required annual pressure tests on Well No. 3 on the Hudnall, Zinn & Foreman (16315) Lease, Caplen (FB-2A, 2Y) Field, Galveston County, Texas;
 4. Whether Cavern violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] by failing to use a wellhead assembly to maintain surface control on Well No. 3 on the Hudnall, Zinn & Foreman (16315) Lease, Caplen (FB-2A, 2Y) Field, Galveston County, Texas;
 5. Whether Cavern violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to perform required fluid level or pressure tests on the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), Caplen (FB-2A, 2Z) Field and the Simpton (23209) Lease, Well No. 6, Caplen (FB-3, 2-B4L) Field, Galveston County, Texas;
 6. Whether Cavern 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 wells and/or otherwise failing to place the subject wells and leases into compliance with Statewide Rules 3(2), 9(12)(A) and (B), 13(b)(1)(B), 14(b)(2), and 14(b)(3);
 7. Whether, pursuant to Texas Natural Resources Code §81.0531, Cavern should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells; and
 8. Whether any violations of Statewide Rules 3(2), 9(12)(A) and (B), 13(b)(1)(B), 14(b)(2), and 14(b)(3) by Cavern should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing was held on February 25, 2010. Kelli Tieken, Staff Attorney, appeared to represent the Enforcement Section ("Enforcement"). Alan L. Castetter, Agent, appeared to represent Cavern. Enforcement's certified hearing file was admitted into evidence, and evidence was also presented by Cavern. By agreement of the parties, the record was held open for a period of 60 days following the hearing for the purpose of allowing Cavern additional time to bring the subject leases and wells into compliance with Commission rules. Compliance has not been achieved, necessitating issuance of this proposal for decision.

APPLICABLE LAW

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

Statewide Rule 9(12)(A) requires that the mechanical integrity of a disposal well be evaluated by conducting pressure tests to determine whether the well tubing, packer, or casing have sufficient mechanical integrity to meet the performance standards of Statewide Rule 9, or by alternative testing methods under Statewide Rule 9(12)(E).

Statewide Rule 13(b)(1)(B) provides that wellhead assemblies shall be used on wells to maintain surface control of the well. Each component of the wellhead must have a pressure rating equal to or greater than the anticipated pressure to which that particular component might be exposed during the course of drilling, testing, or producing the well.

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, unless the well has an approved plugging extension pursuant to Statewide Rule 14(b)(2)(B).

Statewide Rule 14(b)(3) provides that the operator of any well more than 25 years old that becomes inactive and subject to the provisions of Statewide Rule 14(b)(2) shall plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The examiner has officially noticed the Commission's P-5 Master Inquiry and P-5 Financial Assurance Inquiry databases which show that Cavern currently is an active operator with approved financial assurance on file in the amount of \$50,000. According to Cavern's most recently filed Form P-5, Cavern is a corporation and James E. Browning, Sr. is President and Vice President.

Enforcement

Cavern designated itself the operator of the subject leases and wells by filing Forms P-4 (Certificate of Compliance and Transportation Authority) as follows: (1) Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) Form P-4 approved March 1, 2007, effective November 6, 2006; (2) Hudnall, Zinn & Foreman (16315) Lease, Well No. 3 Form P-4 approved March 5, 2007, effective November 6, 2006; and (3) Simpton (23209) Lease, Well No. 6 Form P-4 approved January 30, 2007, effective December 15, 2006.

On the occasion of District Office inspections of the Simpton (23209) Lease on March 25 and June 24, 2008, and May 18, June 16, June 23, June 30, and October 2, 2009, the identification sign required by Statewide Rule 3(2) to be posted at the site of Well No. 6 was missing.

The Hudnall, Zinn & Foreman (16315) Lease, Well No. 3 was permitted as a saltwater disposal well on September 23, 1991 (Permit No. 09213). Permit No. 09213 contains a condition requiring that Well No. 3 be pressure tested annually. The most recent pressure test performed on this well was performed on October 1, 2003. Pressure tests required for the years 2004-2009 were not performed as required by Permit No. 09213 and Statewide Rule 9(12).

A District Office inspection of the Hudnall, Zinn & Foreman (16315) Lease on June 23, 2009, disclosed that Well No. 3 did not have a wellhead assembly sufficient to maintain surface control as required by Statewide Rule 13(b)(1)(B) in that the assembly had no valves.

District Office inspections of the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) on May 27 and September 3, 2008, and June 30 and October 2, 2009, disclosed that Well No. 2 was inactive with no flow line connected to the well. Production was last reported to the Commission for this well in November 2006. A Statewide Rule 14(b)(2) plugging extension for this well was denied on October 10, 2007, based on failure of the operator to perform an approved H-15 test, and the well has not had a plugging extension since that date.

District Office inspections of the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3 on June 30 and October 2, 2009, disclosed that Well No. 3 was inactive and the well had no connected injection line. This well is an injection well, and no injection activity has been reported to the Commission for the well since October 2001. A Statewide Rule 14(b)(2) plugging extension for this well was denied on February 9, 2009, based on failure of the operator to perform a required H-5 test, and the well has not had a plugging extension since that date.

District Office inspections of the Simpton (23209) Lease, Well No. 6 on June 24 and September 3, 2008, and May 18, June 16, June 30, and October 2, 2009, disclosed that Well No. 6 was inactive. As of June 16, 2009, the tank battery had been removed from this lease, and the lease had no electricity. No production has been reported to the Commission for this lease since August 2008. A Statewide Rule 14(b)(2) plugging extension for this well was denied on July 24, 2006, based on failure of the operator to perform an approved H-15 test, and the well has not had a plugging extension since that date.

An Affidavit of the Commission's Secretary dated February 23, 2010, included in Enforcement's certified hearing file states that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for any of the subject wells. The estimated cost to the State to plug the subject wells is \$34,400 for the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), \$36,400 for the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3, and \$33,100 for the Simpton (23209) Lease, Well No. 6.

The Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) wellbore originally was completed on March 29, 1981. The well is inactive and more than 25 years old. The most recent H-15 test performed on this well was performed on August 28, 2007. The Form H-15 filed by the operator was not approved by the Commission because the test showed the top of fluid in the well was at 519' and the base of usable quality water is at 400'.¹ No more recent H-15 test has been performed on this well as required by Statewide Rule 14(b)(3).

The Simpton (23209) Lease, Well No. 6 wellbore originally was completed on March 2, 1981. The well is inactive and more than 25 years old. The most recent H-15 test performed on this well was performed on August 28, 2007. The Form H-15 filed by the operator was not approved by the Commission because the test showed the top of fluid in the well was at 525' and the base of usable quality water is at 400'. No more recent H-15 test has been performed on this well as required by Statewide Rule 14(b)(3).

Between April 2, 2008, and July 7, 2009, the District Office sent correspondence or notices to Cavern on 20 separate occasions regarding the violations of Commission rules on the subject leases, requesting that Cavern achieve voluntary compliance on the leases. Cavern did not respond by placing the leases into compliance.

An Affidavit of Ramon Fernandez, Jr., P.E., Field Operations, states that in the event of a pollution or safety violation or other emergency, the lack of legible identification signs as required by Statewide Rule 3 may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency. Such potential confusion can cause delay in containing and remediating the violation or emergency, which is serious and may threaten the public health and safety.

The Fernandez Affidavit further states that any injection or disposal of fluid down a wellbore could be a potential source of pollution. Under Statewide Rule 9(12)(A) and (B), the operator must pressure test each disposal well to show that the well is not leaking, that waste is being confined to the permitted injection interval, and that usable water zones are properly isolated from possible contamination. An annual pressure testing requirement may be imposed as a binding condition of an injection permit where the well poses a high risk of contamination of usable water strata.

The Fernandez Affidavit also states that open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore.

The Fernandez Affidavit states further that a well that is in violation of Statewide Rule 14 must be plugged in accordance with the technical requirements of the rule in order to prevent

¹ Under the Commission's H-15 Testing Guidelines, the District Office has discretion to evaluate and not approve a test that shows the fluid level in the well is less than 250' below the base of usable quality water.

pollution of usable quality surface or subsurface waters. 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. 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. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

The Fernandez Affidavit also states that any inactive well that is greater than 25 years old must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the required test and supporting documentation (Form H-15), the Commission cannot determine if the well poses a threat to natural resources.

Cavern

Cavern's agent made the claim at the hearing that Cavern's ability to bring the subject leases into compliance had been adversely affected by Hurricane Katrina and that the identification sign at Well No. 6 on the Simpton (23209) Lease had been blown away by Hurricane Ike. The claim was also made that Cavern had acquired the subject leases from a bankrupt entity without doing due diligence to discover pre-existing violations on the leases. According to Cavern's agent, Cavern experienced difficulty in locating a service company to perform the required well tests. However, Cavern also represented that it had recently made arrangements to test the wells and anticipated that the required tests would be performed March 15-25, 2010. It was also represented that signs had been ordered to correct any sign violations on the subject leases. Cavern requested that it be allowed 60 days following the hearing date to bring the subject leases and wells into compliance with Commission rules.²

EXAMINER'S OPINION

The evidence presented by Enforcement is sufficient to show that Cavern has violated Statewide Rules 3(2), 9(12), 13(b)(1)(B), 14(b)(2), and 14(b)(3). Enforcement recommends that an administrative penalty in the total amount of \$13,250 be assessed against Cavern for these violations, calculated on the basis of one Rule 3(2) violation at \$250, one Rule 9(12) violation at \$2,000, one Rule 13(b)(1)(B) violation at \$1,000, three Rule 14(b)(2) violations at \$2,000 each, and two Rule 14(b)(3) violations at \$2,000 each. The examiner agrees with Enforcement's penalty recommendation. These penalties conform to the standard penalty guidelines for enforcement cases.

In determining the amount of recommended penalty, the examiner has considered the penalty standards in Texas Natural Resources Code §81.0531. There is no evidence that Cavern has a

² The examiner has officially noticed the Commission's P-4 Inquiry, Oil Proration Schedule, Permit Numbers and Wells Within Wellbore, H-15 Data Inquiry, and UIC Monitor/Pressure Test Record databases regarding the subject wells, which show that the subject leases and wells are still non-compliant.

history of prior enforcement orders against it for violations of Commission rules. On the other hand, the involved violations are 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 inactive and unplugged wellbores that have not been properly tested. Cavern cannot be considered to have acted in good faith because it did not correct the involved violations timely in response to numerous written requests from the District Office for such compliance.

The examiner further recommends that Cavern be ordered to plug the subject wells or otherwise place the wells into compliance with Commission rules, including Statewide Rules 3(2), 9(12), 13(b)(1)(B), 14(b)(2), and 14(b)(3).

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. Cavern Consultants, Inc. (“Cavern”) was given at least ten (10) days notice of this hearing by certified mail sent to its most recent Form P-5 organization report address. Cavern appeared at the hearing and presented evidence.
2. Cavern is a corporation. Its most recent Form P-5 organization report lists James E. Browning, Sr. as President and Vice President.
3. As an officer, James E. Browning was a person in a position of ownership or control of Cavern, as defined by Section 91.114(c) of the Texas Natural Resources Code, at the time the violations involved in this docket were committed.
4. The violations involved in this docket are violations of Commission rules related to safety and the prevention or control of pollution.
5. Cavern’s Form P-5 organization report is active, and Cavern has approved financial assurance on file in the amount of \$50,000.
6. Cavern designated itself the operator of the subject leases and wells by filing Forms P-4 (Certificate of Compliance and Transportation Authority) as follows: (1) Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), Caplen (FB-2A, 2Z) Field, Galveston County, Texas - Form P-4 approved March 1, 2007, effective November 6, 2006; (2) Hudnall, Zinn & Foreman (16315) Lease, Well No. 3, Caplen (FB-2A, 2Y) Field, Galveston County, Texas - Form P-4 approved March 5, 2007, effective November 6, 2006; and (3) Simpton (23209) Lease, Well No. 6, Caplen (FB-3, 2-B4L) Field, Galveston County, Texas - Form P-4 approved January 30, 2007, effective December 15, 2006.

7. On the occasion of District Office inspections of the Simpton (23209) Lease on March 25 and June 24, 2008, and May 18, June 16, June 23, June 30, and October 2, 2009, the identification sign required by Statewide Rule 3(2) to be posted at the site of Well No. 6 was missing.
8. The Hudnall, Zinn & Foreman (16315) Lease, Well No. 3 was permitted as a saltwater disposal well on September 23, 1991 (Permit No. 09213). Permit No. 09213 contains a condition requiring that Well No. 3 be pressure tested annually. The most recent pressure test performed on this well was performed on October 1, 2003. Pressure tests required for the years 2004-2009 were not performed as required by Permit No. 09213 and Statewide Rule 9(12).
9. A District Office inspection of the Hudnall, Zinn & Foreman (16315) Lease on June 23, 2009, disclosed that Well No. 3 did not have a wellhead assembly sufficient to maintain surface control as required by Statewide Rule 13(b)(1)(B) in that the assembly had no valves.
10. District Office inspections of the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) on May 27 and September 3, 2008, and June 30 and October 2, 2009, disclosed that Well No. 2 was inactive with no flow line connected to the well. Production was last reported to the Commission for this well in November 2006. A Statewide Rule 14(b)(2) plugging extension for this well was denied on October 10, 2007, based on failure of the operator to perform an approved H-15 test, and the well has not had a plugging extension since that date.
11. District Office inspections of the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3 on June 30 and October 2, 2009, disclosed that Well No. 3 was inactive and the well had no connected injection line. This well is an injection well, and no injection activity has been reported to the Commission for the well since October 2001. A Statewide Rule 14(b)(2) plugging extension for this well was denied on February 9, 2009, based on failure of the operator to perform a required H-5 test, and the well has not had a plugging extension since that date.
12. District Office inspections of the Simpton (23209) Lease, Well No. 6 on June 24 and September 3, 2008, and May 18, June 16, June 30, and October 2, 2009, disclosed that Well No. 6 was inactive. As of June 16, 2009, the tank battery had been removed from this lease, and the lease had no electricity. No production has been reported to the Commission for this lease since August 2008. A Statewide Rule 14(b)(2) plugging extension for this well was denied on July 24, 2006, based on failure of the operator to perform an approved H-15 test, and the well has not had a plugging extension since that date.

13. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for any of the subject wells. The estimated cost to the State to plug the subject wells is \$34,400 for the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), \$36,400 for the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3, and \$33,100 for the Simpton (23209) Lease, Well No. 6.
14. The Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) wellbore originally was completed on March 29, 1981. The well is inactive and more than 25 years old. The most recent H-15 test performed on this well was performed on August 28, 2007. The Form H-15 filed by the operator was not approved by the Commission because the test showed the top of fluid in the well was at 519' and the base of usable quality water is at 400'. No more recent H-15 test has been performed on this well as required by Statewide Rule 14(b)(3).
15. The Simpton (23209) Lease, Well No. 6 wellbore originally was completed on March 2, 1981. The well is inactive and more than 25 years old. The most recent H-15 test performed on this well was performed on August 28, 2007. The Form H-15 filed by the operator was not approved by the Commission because the test showed the top of fluid in the well was at 525' and the base of usable quality water is at 400'. No more recent H-15 test has been performed on this well as required by Statewide Rule 14(b)(3).
16. Between April 2, 2008, and July 7, 2009, the District Office sent correspondence or notices to Cavern on 20 separate occasions regarding the violations of Commission rules on the subject leases, requesting that Cavern achieve voluntary compliance on the leases. Cavern did not respond by placing the leases into compliance.
17. In the event of a pollution or safety violation or other emergency, the lack of legible identification signs as required by Statewide Rule 3 may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency. Such potential confusion can cause delay in containing and remediating the violation or emergency, which is serious and may threaten the public health and safety.
18. Any injection or disposal of fluid down a wellbore could be a potential source of pollution. Under Statewide Rule 9(12)(A) and (B), the operator must pressure test each disposal well to show that the well is not leaking, that waste is being confined to the permitted injection interval, and that usable water zones are properly isolated from possible contamination. An annual pressure testing requirement may be imposed as a binding condition of an injection permit where the well poses a high risk of contamination of usable water strata.

19. Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore.
20. A well that is in violation of Statewide Rule 14 must be plugged in accordance with the technical requirements of the rule in order to prevent pollution of usable quality surface or subsurface waters. 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. 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. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.
21. Any inactive well that is greater than 25 years old must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the required test and supporting documentation (Form H-15), the Commission cannot determine if the well poses a threat to natural resources.
22. No evidence was presented to establish that Cavern has a history of prior enforcement orders against it for violations of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Cavern Consultants, Inc., is the operator of the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), Caplen (FB-2A, 2Z) Field, the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3, Caplen (FB-2A, 2Y) Field, and the Simpton (23209) Lease, Well No. 6, Caplen (FB-3, 2-B4L) Field, Galveston County, Texas, as defined by 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. Cavern Consultants, Inc., violated Statewide Rule 3(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(2)] by failing to post and maintain the required identification sign at the site of Well No. 6 on the Simpton (23209) Lease. This lease was out of compliance with Statewide Rule 3(2) from at least March 25, 2008, until at least October 2, 2009.

5. Cavern Consultants, Inc., violated Statewide Rule 9(12) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.9(12)] and the terms of Injection Permit No. 09213 by failing to perform annual pressure tests on the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3. This well has been out of compliance with Statewide Rule 9(12) and the terms of Injection Permit No. 09213 since October 1, 2004.
6. Cavern Consultants, Inc., violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] on the Hudnall, Zinn & Foreman (16315) Lease by failing to maintain a wellhead assembly on Well No. 3 sufficient to maintain surface control on at least June 23, 2009.
7. Cavern Consultants, Inc., violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] by failing to plug the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3, and the Simpton (23209) Lease, Well No. 6, Galveston County, Texas, within one year after drilling or operations ceased. The Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) has been out of compliance with Statewide Rule 14(b)(2) since October 10, 2007. The Hudnall, Zinn & Foreman (16315) Lease, Well No. 3 has been out of compliance with Statewide Rule 14(b)(2) since February 9, 2009. The Simpton (23209) Lease, Well No. 6 has been out of compliance with Statewide Rule 14(b)(2) since July 24, 2006.
8. Cavern Consultants, Inc., violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to perform required fluid level or hydraulic pressure tests on the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) and the Simpton (23209) Lease, Well No. 6. The Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110) and the Simpton (23209) Lease, Well No. 6 have been out of compliance with Statewide Rule 14(b)(3) since at least August 28, 2007.
9. The documented violations committed by Cavern Consultants, Inc., constituted acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
10. Cavern Consultants, Inc., did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
11. As an officer of Cavern Consultants, Inc., at the time Cavern violated Commission rules related to safety and the prevention or control of pollution, James E. Browning and any organization subject to the Commission's jurisdiction in which he may 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 Cavern Consultants, Inc., be required to plug, or otherwise place into compliance with Statewide Rules 3, 9(12), 13(b)(1)(B), 14(b)(2), and 14(b)(3), the Hudnall, Zinn & Foreman Lease, Well No. 2 (RRC No. 159110), Caplen (FB-2A, 2Z) Field, the Hudnall, Zinn & Foreman (16315) Lease, Well No. 3, Caplen (FB-2A, 2Y) Field, and the Simpton (23209) Lease, Well No. 6, Caplen (FB-3, 2-B4L) Field, Galveston County, Texas. The examiner recommends further that Cavern Consultants, Inc., be ordered to pay an administrative penalty in the amount of \$13,250.

Respectfully submitted,

James M. Doherty
Hearings Examiner