

ENFORCEMENT ACTION AGAINST CACTUS GAS & OIL, INC. (OPERATOR NO. 122135) FOR VIOLATIONS OF STATEWIDE RULES ON THE WRIGHT, C. C. (02396) LEASE, WELL NO. 1A, RIVERSIDE, EAST (5000 SD.) FIELD, NUECES COUNTY, TEXAS; AND WRIGHT, C. C. (00033) LEASE, WELL NOS. 2A, 3A AND 4A, AGUA DULCE FIELD, NUECES COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Lowell E. Williams
Staff Attorney

MOVANT:

Legal Enforcement Section
of the Railroad Commission

FOR RESPONDENT:

John J. Spencer
Field Operations Manager

RESPONDENT:

Cactus Gas & Oil, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:

July 10, 2001

DATE CASE HEARD:

November 8, 2001

HEARD BY:

James M. Doherty, Hearings
Examiner

RECORD CLOSED:

December 27, 2001

PFD CIRCULATION DATE:

January 24, 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, Cactus Gas & Oil, Inc. (“Cactus”) 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 Wright, C. C. (02396) Lease, Well No. 1A, Riverside, East (5000 SD.) Field, Nueces County, Texas, and the Wright, C. C. (00033) Lease, Well Nos. 2A, 3A and 4A, Agua Dulce Field, Nueces County, Texas;
2. 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 Wright, C. C. (00033) Lease, Agua Dulce Field, Nueces County, Texas and should be required to place the lease in compliance with Statewide Rule 8.
3. 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 and by failing to maintain the Wright, C. C. (00033) Lease in compliance with Statewide Rule 8.
4. 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;
5. Whether any violations of Rule 14(b)(2) and Rule 8(d)(1) 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).

Respondent appeared through its representative John J. Spencer, Field Operations Manager, who presented testimony at the hearing. Lowell E. Williams, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section’s hearing file for this docket was admitted into evidence. With the agreement of the parties, the record was held open until December 27, 2001, to permit staff to submit evidence of Commission disposition of certain form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) filings by respondent and to permit respondent to submit further evidence of remediation of pollution on the Wright, C. C. (00033) Lease. Staff submitted a late-filed exhibit, which was admitted into evidence, demonstrating the disposition of the form W-1X filings, but respondent did not tender further evidence of remediation by December 27, 2001. The staff recommends that a \$22,000.00 penalty be assessed against respondent. The examiner agrees with the staff’s penalty recommendation and recommends that respondent be ordered to place the subject leases and wells 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.

Rule 14(c)(2) provides that as to any well for which the most recent Commission-approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well. The presumption of responsibility may only be rebutted at a hearing called for the purpose of determining plugging responsibility.

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 respondent is a corporation and that Cactus Gas & Oil, Inc., is an assumed name under which CGO Corporation does business. Records of the Texas Secretary of State and Commission form P-5 records submitted by Enforcement show that L. K. Hanselka Spencer is President, Secretary and a Director of CGO. Hanselka Spencer was shown to be the former wife of John J. Spencer, Field Operations Manager and only employee of respondent.

Cactus was shown to have been designated operator of the Wright, C. C. (02396) and Wright, C. C. (00033) Leases ("subject leases") by filing of forms P-4 which were effective January 1, 1992, and which were approved January 28, 1992. Commission records, including District Office inspection reports, submitted by Enforcement showed that Well No. 1A exists on the Wright, C. C. (02396) Lease and that Well Nos. 2A, 3A and 4A (an injection well) exist on the Wright, C. C. (00033) Lease ("subject wells").

Rule 14(b)(2)

Through Commission production records, Enforcement proved that production on the subject leases ceased in May 2000, and that, thereafter, the subject wells became inactive. Cactus last reported production on the subject leases in May 2000. Zero production was reported for June 2000, through January 2001, and no production reports were filed for February through September 2001. Injection well activity reports showed that fluid was last injected into Well No. 4A in February 1999. District Office inspection reports dated February 7, February 23, March 14, July 27 and October 2, 2001, showed that Well No. 1A on the Wright, C. C. (02396) Lease was inactive and that the road to the well no longer existed. District Office inspection reports dated February 7, February 12, February 23, March 14, July 27 and October 2, 2001, showed that the Wright, C. C. (00033) Well Nos. 2A, 3A and 4A also were inactive, the Well No. 3A pumping unit was missing the primary mover, valves were shut-in at Well No. 2A and valves at Well No. 4A were inoperable.

Rule 8(d)(1)

Enforcement submitted District Office inspection reports dated February 7, February 12, February 21, February 23, March 14, July 27 and October 2, 2001, and various photographs taken by District Office staff, relating to the alleged Rule 8(d)(1) violations on the Wright, C. C. (00033) Lease.

An inspection report for February 7, 2001, showed that a 6-foot diameter by 2-inch deep area of dried-up oil existed around the Well No. 3A wellbore. At the injection pump for Well No. 4A there existed an 8-foot diameter by 2-inch deep area of lube oil saturation. At the tank battery, the entire area inside the firewall was saturated with oil to a depth of 12 inches, and the firewalled area contained water with oil floating on top. Oil was found to have left the firewalled area. At a gate valve on a section of 3-inch pipe installed through the firewall, crude oil was pooled-up, saturating an area outside the firewall 70 feet long by a maximum of 20 feet wide and to a depth of 3 inches.

An inspection report for February 12, 2001, showed that an area of caked-up oil 8 feet in diameter and 1 inch deep existed around the wellbore of Well No. 2A and that there also existed an area of lube oil saturation 12 feet in diameter and 2 inches deep at the primary mover area.

An inspection report for February 21, 2001, showed that no action had been taken to abate the ongoing pollution problem on the lease. This same report showed that in response to a report of oil running out of a collection site, the inspector found that a 20-foot section of 1-inch pipe had been installed through a 15-foot section of 3-inch pipe extending through the firewall at the tank battery to a gate valve outside the firewall. To prevent further discharge to a grassy area north of the firewall, the inspector removed the 1-inch pipe and closed the gate valve. The inspector also observed that there was a 5-foot by 6-foot by 2-foot deep earthen sump inside the firewall, from which the 3-inch and 1-inch sections of pipe extended, and that the sump was standing full of water with 100% oil coverage.

Inspection reports for February 23, March 14, July 27 and October 2, 2001, showed that the

same pollution continued to exist on the lease, with the following exceptions:

(1) As of March 14, 2001, dirt had been pushed into an area inside the firewall at the tank battery, but the remainder of the firewalled area continued to be saturated with heavy oil to a depth of 12 inches and the sump continued to contain oil-covered water. Outside the firewall, an area 70 feet long by 20 feet wide had been dug-up with oil saturation mixed into the ground. The gate valve was dripping water and a small amount of oil, which was pooling on and saturating the freshly dug-up and mixed soil adjacent to the gate valve.

(2) As of July 27, 2001, a 10-foot gap had been knocked-out of the firewall at the tank battery and dirt had been pushed inside the firewall and mixed into the ground. The inspector dug a hole 15 inches deep in this area and detected a strong oily odor in the soil. An area 20 feet wide by 50 feet long inside the firewall continued to be oil saturated to a depth of 12 inches. The sump no longer contained water and partially had been backfilled.

Notice of Violations

Enforcement submitted copies of District Office correspondence to Cactus regarding the alleged violations of Rule 14(b)(2) and Rule 8(d)(1). On November 1, 2000, the District Office corresponded with Cactus advising of alleged violations of Rule 14(b)(2) on the subject leases and requesting submission within 15 days of Cactus' plans for bringing the leases into compliance. On February 13, 2001, the District Office forwarded to Cactus a Notice of Intent to Cancel P-4 Certificate of Compliance and to Sever Pipeline or Other Carrier Connection, requesting resolution of the alleged Rule 14(b)(2) and Rule 8(d)(1) violations within 10 days. Also on February 13, 2001, the District Office sent a memorandum to the Deputy Director of Field Operations in Austin, with a copy to Cactus, noting that there had been no response to the November 1, 2000, correspondence and advising that the District Office planned to prepare data for submission to Legal Enforcement for penalty action.

On February 26, 2001, the District Office forwarded correspondence to the Deputy Director of Field Operations in Austin, with a copy to Cactus, enclosing a plug hearing data sheet and advising Cactus of a last opportunity to bring the subject leases into compliance. In the plug hearing data sheet, the District Office stated an estimated plugging cost for Well No. 1A on the Wright, C. C. (02396) Lease of \$9,200.00 and an estimated plugging cost for Well Nos. 2A, 3A and 4A on the Wright, C. C. (00033) Lease of \$27,600.00. On March 21, 2001, the District Office forwarded a further memorandum to the Deputy Director of Field Operations in Austin, with a copy to Cactus, confirming that as of a March 14, 2001, inspection, the alleged violations of Rule 14(b)(2) and Rule 8(d)(1) on the subject leases were continuing.

Affidavits and Certification

Enforcement submitted as evidence the affidavit of Tom Harbuck, 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 water zones or to flow to the surface; (c) uncased wells allow direct communication between zones and provide unimpeded access to the surface; and (d) 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.

Enforcement also submitted certifications from the Commission's Secretary as follows: (a) no plugging record (form W-3) or Cementing Affidavit (form W-15) have been filed or approved and no form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) are in effect for any of the subject wells; (b) respondent failed to file production reports for, or zero production has been reported on, the subject leases since May 2000; and (c) no permit was issued to respondent to discharge oil and/or gas wastes from or onto the Wright, C. C. (02396) lease.

Respondent's W-1X Filings

To address certain testimony by John J. Spencer that respondent filed forms W-1X and paid the applicable fees in order to obtain Rule 14(b)(2) extensions for the subject wells at the time of renewal of respondent's form P-5 Organization Report in May 2001, Enforcement submitted as a late-filed exhibit Commission records showing the disposition of these filings. These records showed that respondent filed forms W-1X, entered into Commission records on May 1, 2001, for the Wright, C. C. (00033) Lease, Well Nos. 2A, 3A and 4A, which were not approved as a result of respondent's failure to file form H-15 (Test on An Inactive Well More Than 25 Years Old). The records also showed that respondent did not file form W-1X for the Wright, C. C. (02396) Lease, Well No. 1A.

Enforcement's Recommendation

Enforcement recommended that an administrative penalty in the amount of \$22,000.00 be assessed against respondent, consisting of four Rule 14(b)(2) violations at \$2,000.00 each, five Rule 8(d)(1) violations at \$1,000.00 each, and an enhanced penalty of \$9,000.00 for one Rule 8(d)(1) violation involving intentional conduct.

Respondent's Position and Evidence

John J. Spencer, respondent's Field Operations Manager, testified that the subject leases are components of a single mineral lease which began to experience equipment breakdowns 15-18 months ago. He believes that the subject leases and wells are capable of being put back into production, and stated that Cactus is now in the process of cleaning up the leases. Spencer attributed an unidentified portion of the pollution to previous operators.

Spencer did not dispute that the subject wells have been inactive for more than 12 months or that the pollution alleged by Enforcement exists. He stated that Cactus filed forms W-1X for the subject wells, seeking Rule 14(b)(2) extensions, at the time of renewal of Cactus' form P-5 Organization Report in May 2001, and was under the impression that they had been approved "temporarily," pending submission of form H-15. He testified further that the required H-15 tests had been completed, but could not say whether form H-15 had been filed with the Commission.

Spencer further testified that pollution within and outside the firewall at the tank battery on the Wright, C. C. (00033) Lease was the result of a bullet hole in the gun barrel, not the result of "dumping." He denied responsibility for installing the 1-inch pipe through the 3-inch pipe which extended through the firewall and gate valve so as to permit the discharge of oil and gas waste outside the firewall.

Spencer stated that Cactus was about eighty percent through with its effort to remediate pollution on the Wright, C. C. (00033) Lease. He submitted a work journal covering various dates between March 5, 2001, and October 5, 2001, when consultation was had regarding clean-up or when actual repair or clean-up activity was had. He also submitted two invoices for backhoe services on the lease. These invoices were dated August 12 and August 26, 2001, and were in the amounts of \$873.00 and \$572.00, respectively.

Spencer testified that Cactus intends to bring the subject wells into compliance, and requested additional time for Cactus to complete remediation of pollution.

EXAMINER'S OPINION

Rule 14(b)(2) Violations

Cactus became the designated operator of the subject leases and wells as a result of the filing of forms P-4 effective November 1, 1992. Pursuant to Statewide Rule 14(c)(2), Cactus is presumed to be responsible for the physical operation and control of the subject wells and to be responsible for properly plugging them. This presumption of responsibility may be rebutted at a hearing called for the purpose of determining plugging responsibility, but in this case, responsibility for plugging the subject wells, or otherwise placing them in compliance with Commission rules, is not disputed by Cactus.

Enforcement proved that the Wright, C. C. (02396) Lease Well No. 1A and the Wright, C. C. (00033) Lease Well Nos. 2A and 3A have been inactive since at least May 31, 2000. Enforcement also proved that the Wright, C. C. (00033) Lease Well No. 4A has been inactive since at least February 28, 1999. Cactus' Field Operations Manager confirmed that the subject wells have been inactive for a period of more than 12 months.

The opinion of Cactus' Field Operations Manager that the subject wells are capable of being

returned to production does not rebut Enforcement's showing of Rule 14(b)(2) violations, and although Cactus' Field Operations Manager testified that he was under the impression that Rule 14 (b)(2) extensions "temporarily" had been approved, pending submission of form H-15, the more probative evidence shows that form W-1X applications submitted by Cactus in May 2001, were denied for lack of filing form H-15 and no Rule 14(b)(2) extensions currently are in effect.

Cactus did not commence plugging of the subject wells within a period of one year after operations ceased, did not reactivate the wells and did not obtain currently effective plugging extensions. Accordingly, Cactus violated Statewide Rule 14(b)(2).

Rule 8(d)(1) Violations

Statewide Rule 8(d)(1), with exceptions not relevant here, prohibits disposal of oil and gas wastes by any method without obtaining a permit from the Commission to dispose of such wastes. Disposal is defined in Rule 8(a) to include the engaging in any act of disposal subject to regulation by the Commission including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.

Enforcement proved that Cactus caused or allowed the draining, discharging, releasing, depositing, burying and seepage of oil or gas waste on the Wright, C. C. (00033) Lease. The examiner has officially noticed from Commission records that no permit was issued to Cactus for this disposal.

Although Cactus' Field Operations Manager asserted that some of the pollution on the lease was the fault of a previous operator, this was not proved by a preponderance of the evidence. Cactus assumed responsibility for the regulatory compliance of the lease in 1992, and it is evident that a significant portion of the unpermitted discharges, particularly the discharges within and adjacent to the firewall at the tank battery, occurred during Cactus' tenure as operator.

Cactus took the position that discharge within the firewalled area at the tank battery, and on an adjacent area outside the firewall, was the result of a bullet hole in the gun barrel, and submitted a photograph of the bullet hole as evidence. Cactus did not prove, however, that this was the sole cause of the discharge, and even if the bullet hole was a contributing factor, Cactus' failure to monitor the lease and minimize the discharge leads inevitably to the conclusion that Cactus was complicit in allowing the discharge.

Moreover, the bullet hole theory does not explain the pollution on the area outside the firewall at the tank battery, which Enforcement proved to be the result of discharge from a gate valve on pipes installed through the firewall. Enforcement took the position that this was an intentional discharge, since it was proved that a 1-inch pipe had been installed through a 3-inch pipe extending through the firewall, blocking the gate valve and permitting the discharge. A District

Office inspector was able to stop the discharge by removing the 1-inch pipe and closing the gate valve.

Cactus' Field Operations Manager denied responsibility for installing the 1-inch pipe which blocked the gate valve and permitted the discharge outside the firewall, but was unable to make any plausible explanation as to how the 1-inch pipe could have been installed other than by Cactus. The discharge from the gate valve was first observed by the District Office inspector on the occasion of inspections in February 2001, responding to a report of "oil running out of a collection site." The discharge thus appears to have been of recent origin, and Cactus' Field Operations Manager conceded that this discharge occurred on Cactus' watch. In speculating as to who, other than Cactus, might be responsible for installation of the 1-inch pipe which blocked the gate valve, Cactus' Field Operations Manager referred to another operator on the lease and to the landowner. However, Cactus' Field Operations Manager also testified that the other operator on the lease held only the "gas rights," and there is no credible evidence that this operator had any reason to cause or allow discharge of oil from the firewalled area around the tank battery. The landowner had even less reason to cause or allow this discharge. Cactus' denial of responsibility for this discharge is not credible. There is sufficient circumstantial evidence that Cactus was responsible for the discharge and that the discharge was intentional.

Cactus' effort to remediate pollution on the Wright, C. C. (00033) Lease was too little and too late. Pollution on the lease, including that within and outside the firewall at the tank battery, was observed by a District Office inspector as of February 7, 2001. The alleged Rule 8(d)(1) violation was called to the attention of Cactus by District Office correspondence dated February 13, 2001. District Office inspections on February 21 and February 23, 2001, disclosed that no action had been taken to cure the violation. By the date of a further inspection on March 14, 2001, dirt had been pushed inside the firewall at the tank battery and an area outside the firewall had been dug up and oil saturation mixed into the ground. However, an area inside the firewall continued to be saturated with heavy oil to a depth of 12 inches, and an earthen sump inside the firewall was full of water with 100% oil coverage.

By the date of a further District Office inspection on July 27, 2001, the inspector observed that pollution conditions on the lease were unchanged, except that the inspector noted dirt pushed inside the firewall and mixed into the ground and that the earthen sump no longer contained water and partially had been backfilled. The inspector dug a hole 15 inches deep inside the firewall and detected a strong oily odor in the soil. The soil in the sump and in the area outside the firewall continued to be oil saturated to a depth of 12 inches. As of an additional inspection on October 2, 2001, pollution conditions on the lease were essentially unchanged from those observed on July 27, 2001.

Cactus' responsibility for the Rule 8(d)(1) violations on the Wright, C. C. (00033) Lease is not ameliorated by its relatively minimal effort to cure the violations.

Recommendation

On the basis of the factors which the Commission must consider pursuant to TEX. NAT. RES. CODE ANN. §81.0531, the examiner finds to be reasonable and appropriate a penalty of \$22,000.00, calculated on the basis of four Rule 14(b)(2) violations at \$2,000.00 each, five Rule 8(d)(1) violations at \$1,000.00 each, and one intentional Rule 8(d)(1) violation at \$9,000.00. There is no evidence that Cactus has a history of previous violations, and Enforcement's Complaint alleges that there have been none. However, Cactus cannot be said to have demonstrated good faith in view of its failure to plug the subject wells, or otherwise to bring the subject wells and leases into compliance, in response to multiple requests and warnings from the District Office prior to initiation of this enforcement action. The intentional violation of Rule 8(d)(1) found to exist in this case also weighs against a finding of good faith. Inactive wells that are unplugged are potential conduits for flow from oil or saltwater zones to zones of usable quality water or to the surface. Any unauthorized discharge or disposal of oil, saltwater or other oil and gas wastes is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off. Cactus' violations of Statewide Rule 14(b)(2) and Statewide Rule 8(d)(1) are serious and create hazards for the health and safety of the public.

Accordingly, the examiner recommends that a penalty of \$22,000.00 be assessed against respondent, that respondent be ordered to plug or otherwise place in compliance with Statewide Rule 14(b)(2) the Wright, C. C. (02396) Lease Well No. 1A and the Wright, C. C. (00033) Lease Well Nos. 2A, 3A and 4A, and that respondent be ordered to place the Wright, C. C. (00033) Lease in compliance with Statewide Rules 8 and 91.

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. Cactus Gas & Oil, Inc. ("Cactus") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent form P-5 (Organization Report) address.
2. Cactus Gas & Oil, Inc., is an assumed name under which CGO Corporation does business. L. K. Hanselka Spencer is President and a Director of CGO Corporation.
3. Cactus designated itself to the Commission as the operator of the Wright, C. C. (02396) Lease Well No. 1A by filing a form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective January 1, 1992.
4. Cactus designated itself to the Commission as the operator of the Wright, C. C. (00033) Lease, and of Well Nos. 2A, 3A and 4A on the said Lease, by filing a form P-4 (Producer's

Transportation Authority and Certificate of Compliance) with the Commission, effective January 1, 1992.

5. Cactus has not conducted any operations on the Wright, C. C. (02396) Well No. 1A or the Wright, C. C. (00033) Lease Well Nos. 2A and 3A since May 2000, and these wells have been inactive for a period in excess of one year.
6. Cactus has not conducted any operations on the Wright, C. C. (00033) Lease Well No. 4A, an injection well, since February 1999, and this well has been inactive for a period in excess of one year.
7. The Wright, C. C. (02396) Lease Well No. 1A and the Wright, C. C. (00033) Lease Well Nos. 2A, 3A and 4A have not been properly plugged.
8. No Statewide Rule 14(b)(2) extensions are in effect for the subject wells.
9. The estimated cost to the State of plugging the subject wells is \$9,200.00 each, for a total estimated cost of \$36,800.00.
10. 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 probability of pollution.
11. Since on or before February 7, 2001, Cactus caused or allowed the draining, discharging, releasing, depositing, and/or seepage of oil and gas wastes on the Wright, C. C. (00033) Lease as follows:
 - (a) a 6-foot diameter by 2-inch deep area of dried-up oil around the Well No. 3A wellbore;
 - (b) an 8-foot diameter by 2-inch deep area of lube oil saturation at the injection pump for Well No. 4A;
 - (c) oil saturated soil and water with oil floating on top inside the firewall at the tank battery;
 - (d) an earthen sump inside the firewall at the tank battery standing full of water with oil coverage;
 - (e) an area 70 feet long by a maximum of 20 feet wide of oil saturation outside the firewall at the tank battery; and
 - (f) an area 8 feet in diameter and 1 inch deep of caked-up oil around the wellbore of Well

No. 2A.

12. Cactus caused and allowed the discharge of oil to the area outside and adjacent to the firewall at the tank battery by blocking a gate valve with a 1-inch pipe installed inside a 3-inch pipe extending through the firewall. This discharge was intentional.
13. No permit was issued to Cactus by the Commission permitting the discharge of oil and/or gas wastes from or onto the Wright, C. C. (00033) Lease.
14. Cactus did not properly or timely remediate pollution on the Wright, C. C. (00033) Lease.
15. 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.
16. Cactus has no history of previous violations.
17. Cactus has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance after being notified of the Statewide Rule 14(b)(2) violations.
18. Cactus has not demonstrated good faith since it failed to cure the Statewide Rule 8(d)(1) violations after being notified of their existence.

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. Cactus Gas & Oil, Inc., is the operator of the Wright, C. C. (02396) Lease Well No. 1A and the Wright, C. C. (00033) Lease, and Well Nos. 2A, 3A and 4A existing on the said Lease, 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, Cactus Gas & Oil, Inc., has the primary responsibility for complying with Statewide Rules 8, 14 and 91 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.8, 3.14 and 3.91), 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 Wright, C. C. (02396) Lease Well No. 1A and the Wright, C. C. (00033) Lease Well Nos. 2A and 3A have been out of compliance since at least May 31, 2001, and the Wright, C. C. (00033) Lease Well No. 4A has been out of compliance since at least February 28, 2000.
6. By causing or allowing the unpermitted discharge or disposal of oil and/or gas wastes on the Wright, C. C. (00033) Lease, Cactus Gas & Oil, Inc., violated Statewide Rule 8(d)(1) (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(d)(1)) and Chapter 91 of the Texas Natural Resources Code. Cactus Gas & Oil, Inc., has been out of compliance with Statewide Rule 8 since on or before February 7, 2001.
7. The documented violations committed by Cactus Gas & Oil, 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 Cactus Gas & Oil, Inc., to:

1. Plug or otherwise place in compliance the Wright, C. C. (02396) Lease Well No. 1A, Riverside, East (5000 SD.) Field, Nueces County, Texas, and the Wright, C. C. (00033) Lease Well Nos. 2A, 3A and 4A, Agua Dulce Field, Nueces County, Texas;
2. Cleanup and place in compliance with Statewide Rules 8 and 91 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8 and 3.91) the Wright, C. C. (00033) Lease, Agua Dulce Field, Nueces County, Texas;
3. Pay an administrative penalty in the amount of TWENTY-TWO THOUSAND DOLLARS (\$22,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner

