
ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY S&T SALVAGE (OPERATOR NO. 741625), ON THE HARALSON STATE (11359) LEASE, WELL NOS. 1 & 2, CHARAMOUSCA, WEST (3350) FIELD, DUVAL COUNTY, TEXAS, AND ON THE HARALSON STATE "A" (11418) LEASE, WELL NO. 1, CHARAMOUSCA, WEST (3350) FIELD IN DUVAL COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Scott Holter, Staff Attorney for the Enforcement Section of the Railroad Commission of Texas

FOR RESPONDENT:

No Appearance by the Respondent, S&T Salvage

PROCEDURAL HISTORY

Date of Request for Action:	May 30, 2002
Hearing Held:	December 16, 2002
Record Closed:	December 16, 2002
Heard By:	Scott Petry, Hearings Examiner
Current Status:	Default
PFD Issued:	January 3, 2003

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether S&T Salvage (hereinafter "S&T" or "respondent") should be required to place in compliance with Statewide Rules 3 and 13, the Haralson State (11359) Lease and the Haralson State "A" (11418) Lease, in Duval County, Texas;
2. Whether S&T should be required to plug or otherwise place in compliance with Statewide Rule 14, Well Nos. 1 & 2 on the Haralson State (11359) Lease, and Well No. 1 on the Haralson State "A" (11418) Lease, in Duval County, Texas;
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 comply with said statutes and Statewide Rules 3, 13, and 14;
4. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said leases and wells;
5. 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.

Following service by certified mail of the Original Complaint on October 17, 2002, the Commission convened a hearing on December 16, 2002 to address the violations. The respondent failed to file an answer to the Original Complaint and failed to appear at the hearing. Enforcement Staff Attorney Scott Holter and legal assistant Dianne DeBois appeared representing the Railroad Commission of Texas.

Enforcement submitted the certified hearing file and it was admitted into the record. The Enforcement Section recommends that the respondent be ordered: 1) to place the subject leases and wells into compliance with all Commission rules, and 2) to pay an administrative penalty of \$8,750.00 [consisting of \$750.00 for three violations of Statewide Rule 3, \$2,000.00 for two violations of Statewide Rule 13, and \$6,000.00 for three violations of Statewide Rule 14]. The Enforcement Section has also requested that Respondent be assessed an enhancement of \$100.00 per month for each of the Statewide Rule 13 and Statewide Rule 14 violations. Enforcement has requested that the monthly enhancement start from the date of the District Office's referral of the case to Enforcement for prosecution, which was May 30, 2002.

The examiner agrees with the Enforcement attorney's recommendation regarding culpability, but disagrees with the recommended penalty amount. More specifically, the examiner believes that the requested penalty enhancement does not adequately reflect current Commission guidelines or adequately reflect the time that the wells were actually out of compliance.

BACKGROUND

Unplugged and unused well bores constitute a potential danger to the public's health and safety and must be plugged when mandated by the Commission's rules. Statewide Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with applicable Commission rules and regulations.

Statewide Rule 13 requires that wellhead assemblies be used to maintain surface control of the well. Wellhead assemblies are necessary to prevent fluids from being discharged from the wellbore onto the ground surface and to prevent any oil and gas waste in the wellbore from being displaced to the surface by potential influxes of water into the open wellbore.

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

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000.00 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement presented evidence that the respondent designated itself operator of the

Haralson State (11359) Lease, Well Nos. 1 & 2, and of the Haralson State "A" (11418) Lease, Well No. 1, by filing Commission Forms P-4 (Producer's Transportation Authority and Certificate of Compliance), which were approved by the Commission on July 14, 1999, and which were made effective on June 21, 1999. The respondent is currently delinquent on its Form P-5 Organization Report and last filed a Form P-5 on October 27, 1999. At the time of its Form P-5 filing, the respondent paid \$750 under Option 4 as its financial assurance. The respondent's Form P-5 lists Charitie Nicholas as trustee for the organization and Dennis Chambers as the resident agent.

Enforcement's Case-in-chief

Commission inspection reports made on April 19, 2002, May 14, 2002, and November 12, 2002 show that the signs required to be posted at Well Nos. 1 and 2 on the Haralson State Lease and Well No. 1 on the Haralson State "A" Lease were missing. It was Enforcement's contention that lack of signs at the subject wells may cause confusion as to the responsible operator in the event of a violation or emergency. Enforcement further asserted that this confusion could delay the containment and remediation of a violation or emergency.

The April 19, 2002, May 14, 2002, and November 12, 2002 Commission inspection reports show that Well No. 1 on the Haralson State "A" Lease and Well No. 2 on the Haralson State Lease had casing open to the atmosphere. Enforcement argued that the lack of wellhead assemblies is serious and threatens the public health and safety, as wells left uncontrolled may discharge wastes onto the surface, may cause pollution, and may affect the health of humans and animals.

Finally, the April 19, 2002, May 14, 2002, and November 12, 2002 Commission inspection reports, and either zero reported production or no production reports filed after October 31, 1998, indicate that Well Nos. 1 and 2 on the Haralson State Lease have been inactive for a period greater than one year. Production from Well Nos. 1 and 2 on the Haralson State Lease ceased on or before October 31, 1998. Additionally, the April 19, 2002, May 14, 2002, and November 12, 2002 Commission inspection reports, and either zero reported production or no production reports filed after January 31, 1994, indicate that Well No. 1 on the Haralson State "A" Lease has been inactive for a period greater than one year. Enforcement asserted that the most recent Form W-1X plugging extension for Well No. 1 on the Haralson State "A" Lease expired on April 4, 1999.

Accordingly, Enforcement contends that the Well Nos. 1 and 2 on the Haralson State Lease are inactive and have been in violation of Statewide Rule 14(b)(2) since October 31, 1999. Enforcement further contends that the Well No. 1 on the Haralson State "A" Lease is inactive and that it has been in violation of Statewide Rule 14(b)(2) since its W-1X plugging extension expired on April

4, 1999. The estimated cost to plug Well Nos. 1 and 2 on the Haralson State Lease is \$12,000.00 and the estimated cost to plug Well No. 1 on the Haralson State "A" Lease is \$6,000.00.

Respondent's Case-in-chief

Despite a signed "green card" indicating receipt of certified mailing and notice of the pending docket, the respondent did not file an answer to the allegations or request a hearing, and did not appear at the hearing.

EXAMINER'S OPINION

The evidence presented by the Enforcement Staff clearly establishes respondent's culpability for the violations of Statewide Rules 3, 13, and 14, and clearly establishes the respondent's refusal to assume its responsibility. The case presented by Enforcement, however, does not clearly establish a basis for the requested enhancement or establish how that requested enhancement is tied to the actual time out of compliance.

In Enforcement's prayer, it requests that the Commission enter an order:

... assessing Respondent an enhancement administrative penalty for time out of compliance of \$100.00 per month for each of the five Rule 3.13(b)(1)(B) and Rule 3.14(b)(2) violations, beginning as of the May 30, 2002 Corpus Christi District Office referral date...

The Prayer in Enforcement's pleading also requests the Commission to enter an order that assesses "any other relief to which, under the pleadings and the evidence, the Enforcement Section may show itself entitled."

I. Basis for Enhancement

The administrative penalty guidelines put forth by the Commission suggest that an additional penalty of \$100 to \$2,000.00 per month may be added to reflect the severity of the actual violation. The guidelines tie any potential enhancement for time out of compliance to the severity of the violation(s) at issue. Pursuant to the respondent's violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution, however, it is within the Commission's discretion to assess an administrative penalty of up to \$10,000.00 per day per violation.

For time out of compliance enhancements, Enforcement is required to show that the enhancement is tied to both the actual time out of compliance and to the severity of the violation. In determining the amount of the penalty, however, the Commission must also consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. TEX. NAT. RES. CODE ANN. § 81.0531. In this docket, it is the examiner's opinion that Enforcement has not supplied sufficient evidence regarding the relationship of the severity of the violation to time out of compliance. Indeed, Enforcement fails to offer *any* explanation as to how the aforementioned factors are connected to the requested enhancement and fails to offer any explanation as to how this docket's violations are any more severe than a regular Statewide Rule 14(b)(2) or 13(b)(1)(B) violation.

The penalty guidelines call for a standard penalty amount of \$2,000.00 and allow for enhancements when the facts of the case show either threatened or actual pollution, threatened or actual safety hazards to persons and property, or severity of the violation. Enhancements are allowed under Commission guidelines, but evidence of the aforementioned aspects must be proven by the Enforcement section in its case-in-chief and it is insufficient for Enforcement to merely request enhancements without supporting evidence. The case put forth by Enforcement does not assert any particularly egregious or extraordinary behavior. Rather, it only cites the time out of compliance since the District Office referred the complaint to Enforcement and Enforcement's case fails to meet its burden of proof.

II. Time out of compliance

Further, even if Enforcement had provided appropriate evidence indicating the severity of the violation, the standard which Enforcement uses in its request is flawed. Time out of compliance, if requested, *must attach to the time that the violation was actually out of compliance*. The referral date from the District Office is *not* the amount of time that the violation was out of compliance and does not relate to the severity of the violation.

In this docket, the amount of time that the violations were out of compliance is: 1) since at least April 19, 2002 for the two Rule 13 violations, 2) since at least April 4, 1999 for the Rule 14 violation for Well No. 1 on the Haralson State "A" Lease, and 3) since at least October 31, 1999 for the Rule 14 violations for Well Nos. 1 and 2 on the Haralson State Lease. The May 30, 2002 referral date is an arbitrary one that does not reflect either the severity of the violation or the actual time that the wells were out of compliance. In sum, an enhancement attaches to the violation itself and not to the Commission's timeframe/handling of the violation, which has little to do with the actual severity of the violation.

III. Prior Commission Orders

Finally, a review of recent Proposals for Decision indicate that enhancements were recommended by the examiners only in situations where there was increased threatened or actual pollution, where there was an excessive safety hazard, or where the severity of the violation was extraordinary. The enhancements in these dockets were within the Recommended Guideline for Enhancement of Penalties. For instance, in Oil & Gas Docket No. 03-0230362, *An Enforcement Action Against OPMI Operating Company*, the examiner found that the "marine environment and the proximity to sensitive coastal areas" and the lengthy amount of time that the wells were out of compliance showed that there "would be an enhanced impact of any potential pollution from these two wells." In Oil & Gas Docket No. 6E-0227682, *Enforcement Action Against Linda Ball Reese, d.b.a. 5R Oil Company*, the examiner found that the pollution violation, which included the splattering of tombstones in a public cemetery with oil and other drilling wastes, was both egregious and dangerous enough to warrant enhancements.

In these recent dockets, the recommended enhancements were made only when evidence of an increased threat or actual pollution was submitted, when there was an excessive safety hazard to the general public, or when there was an extraordinary severity to the violation. Additionally, with regard to enhancements for time out of compliance, the enhancements in the prior dockets were all tied to the *actual amount of time that the subject leases/subject wells were out of compliance* with the Commission's rules and regulations. In this docket, however, Enforcement has not shown by a preponderance of the evidence that an enhancement is warranted and, even if it had, it improperly interpreted the enhancement guidelines when it tied the time out of compliance to the referral date by the District Office.

EXAMINER'S RECOMMENDATION

Therefore, it is recommended that requested enhancements be denied, but that the standard penalty amounts requested for the violations of Statewide Rules 3, 13, and 14, be approved. Further, 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. S&T Salvage ("S&T" or "respondent") was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address, the receipt for which was signed and returned to the Commission. The respondent did not answer the complaint and did not appear at the hearing.
2. The respondent designated itself operator of the Haralson State (11359) Lease, Well Nos. 1 & 2, in Duval County, Texas, and of the Haralson State "A" (11418) Lease, Well No. 1, in Duval County, Texas by filing Commission Forms P-4 (Producer's Transportation Authority and

- Certificate of Compliance), approved by the Commission on July 14, 1999 and made effective on June 14, 1999.
3. The respondent is currently delinquent on its Form P-5 Organization Report. The most recent Form P-5 (Organization Report) for S&T was filed with the Commission on October 27, 1999 and the respondent paid \$750 under Option 4 as its financial assurance.
 4. Identification signs required to be posted at Well Nos. 1 and 2 on the Haralson State (11359) Lease and at Well No. 1 on the Haralson State "A" (11418) Lease have been missing since at least April 19, 2002.
 5. Well No. 1 on the Haralson State "A" (11418) Lease and Well No. 2 on the Haralson State (11359) Lease have had casing open to the atmosphere since at least April 19, 2002.
 6. Well No. 1 on the Haralson State "A" (11418) Lease and Well Nos. 1 and 2 on the Haralson State (11359) Lease are not properly plugged.
 7. Well Nos. 1 and 2 on the Haralson State (11359) Lease are currently inactive and have been inactive for more than 12 months.
 - a. Well Nos. 1 and 2 have been shut in and not equipped to produce since at least April 19, 2002.
 - b. Well Nos. 1 and 2 have not produced since on or before October 31, 1998.
 - c. No plugging extensions have been applied for, or granted for, Well Nos. 1 and 2 on the Haralson State (11359) Lease.
 8. Well No. 1 on the Haralson State "A" (11418) Lease is currently inactive and has been inactive for more than 12 months.
 - a. Well No. 1 has been shut in and not equipped to produce since at least April 19, 2002.
 - b. Well No. 1 has not produced since on or before January 31, 1994.
 - c. The last plugging extension S&T obtained for Well No. 1 on the Haralson State "A" (11418) Lease expired on April 4, 1999.
 9. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
 10. Failure to maintain proper well head controls as required by Rule 13 is serious and a hazard to the public health and safety, as wells left uncontrolled or open to the atmosphere may discharge oil and gas waste onto the surface or surface or subsurface waters, and may cause pollution.

11. Usable quality groundwater in the area may be contaminated by migrations or discharges 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.
12. S&T has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance after being notified of the violations by the district office.
13. The estimated cost to plug Well Nos. 1 and 2 on the Haralson State (11359) Lease is \$12,000.00 and the estimated cost to plug Well No. 1 on the Haralson State "A" (11418) Lease is \$6,000.00.
14. The record does not reflect any previous violations by the respondent of Commission rules.
15. The record does not reflect evidence warranting an enhanced administrative penalty for these violations pursuant to Texas Natural Resources Code §81.0531(c).

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the this hearing have been performed or have occurred.
3. Respondent is the operator of the subject wells as defined by §89.002 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 79 and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, respondent has the primary responsibility for complying with Statewide Rules 3, 13, and 14, and with Chapter 89 of the Texas Natural Resources Code as well as all other applicable statutes and Commission rules relating to the subject wells.
5. Well No. 1 on the Haralson State "A" (11418) Lease has been out of compliance with Statewide Rule 14(b)(2) since its W-1X Plugging Extension expired on April 4, 1999.
6. Well Nos. 1 and 2 on the Haralson State (11359) Lease have been out of compliance with Statewide Rule 14(b)(2) since at least October 31, 1999.
7. Well No. 1 on the Haralson State "A" (11418) Lease and Well No. 2 on the Haralson State (11359) Lease have been out of compliance with Statewide Rule 13(b)(1)(B) since at least April 19, 2002.
8. Respondent's failure to timely plug the subject wells on the Haralson State and Haralson State "A" leases when required is a violation of Title 3 of the 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.

9. The documented violations committed by S&T are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c), but do not warrant an enhanced administrative penalty.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order be approved, requiring the operator, S&T Salvage, within 30 days from the date this order becomes final, to plug the subject wells and to place the subject leases in compliance with Commission rules. It is further recommended that the respondent be ordered to pay an administrative penalty of EIGHT THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$8,750.00).

Respectfully submitted,

Scott Petry
Hearings Examiner