

**ENFORCEMENT ACTION AGAINST SOUTHERN WORKOVER, INC., (OPERATOR NO. 805524) FOR VIOLATIONS OF STATEWIDE RULES ON THE STATE TRACT 61 LEASE, WELL NO. 1 (RRC ID NO. 098360), CRANE ISLAND, S. (I-4 9230) FIELD, NUECES COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Reese B. Copeland  
Staff Attorney

**MOVANT:**

Enforcement Section  
Railroad Commission of Texas

**FOR RESPONDENT:**

Carl Shanklin  
Superintendent

**RESPONDENT:**

Southern Workover, Inc.

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF ORIGINAL COMPLAINT:</b>	May 30, 2003
<b>DATE OF NOTICE OF HEARING:</b>	April 1, 2004
<b>DATE OF HEARING:</b>	June 3, 2004
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner
<b>RECORD CLOSED:</b>	August 2, 2004
<b>PFD CIRCULATION DATE:</b>	August 24, 2004

**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 Southern Workover, Inc. ("Southern"), 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 State Tract 61 Lease, Well No. 1 (RRC ID No. 098360), Crane

Island, S. (I-4 9230) Field, Nueces County, Texas (“subject well”);

2. Whether Southern 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 subject well in compliance with Statewide Rule 14(b)(2);
3. Whether Southern should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject well; and
4. Whether any violations of Statewide Rule 14(b)(2) by Southern 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 3, 2004. Reese B. Copeland, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Carl Shanklin, Superintendent, appeared representing Southern and gave testimony. Enforcement’s certified hearing file was admitted into evidence. The record was held open until August 2, 2004, to afford Southern a further opportunity to bring the subject well into compliance and reach a settlement with Enforcement. The well was not brought into compliance, and the case did not settle, on or before August 2, 2004.

Enforcement recommends that an administrative penalty of \$9,000.00 be imposed against Southern and that Southern be ordered to plug the subject well. The examiner agrees with Enforcement’s recommendation.

#### **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.

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.

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 Evidence**

The last Form P-5 Organization Report for Southern which received Commission approval was filed with the Commission on May 22, 2001. Southern's P-5 became delinquent on July 1, 2002. Southern last filed financial security in the form of a nonrefundable annual fee in the amount of \$100.00. Southern is a corporation, and its only officer listed on its last P-5 is Mary Jane Shanklin, President, Vice President, and Secretary.

Southern designated itself as operator of the subject well by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), which was approved March 25, 1994, and effective January 1, 1994. The subject well is the only well operated by Southern, and is a bay well.

On the occasion of District Office inspections on March 12 and June 9, 2003, and May 10, 2004, inspectors found the subject well inactive and the flowline disconnected. No production has been reported to the Commission for the subject well since on or before January 1, 1993. An electronic message from the Texas General Land Office in Enforcement's certified hearing file states that the State's oil and gas lease covering State Tract 61 terminated on April 1, 1992, and a new lease was awarded to Lamar Oil & Gas, Inc., on January 20, 2004.

On February 7, March 20 and April 15, 2003, the District Office corresponded directly with Southern, or sent it copies of District Office memoranda to the Commission's Deputy Director-Field Operations, stating that the subject well was in violation of Statewide Rule 14(b)(2) and requesting compliance.

No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved, and no Form W-3A (Notice of Intention to Plug and Abandon) or Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) is in effect. Commission records disclose that the subject well last had a Rule 14(b)(2) plugging extension in September 2001.

An Affidavit of Ramon Fernandez, Jr., P.E., in Enforcement's certified hearing file states 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.

**Respondent's Evidence**

Southern does not contest that: (1) the subject well has been inactive for more than 12 months; (2) no Rule 14(b)(2) plugging extension is currently in effect for the well; and (3) the subject well has not been plugged. Neither does Southern dispute the amount of the penalty recommended by Enforcement.

Southern was approached in 1993 about taking over the subject well, and it did so in 1994, allegedly without realizing the liability it was assuming. On January 28, 1994, Southern filed with the City of Corpus Christi, Texas, a \$50,000.00 plugging bond written by Underwriter's Indemnity, Inc., to satisfy the city's bonding requirements. Southern originally intended to recomplete the well when it was financially able. However, contemporaneously with taking over the well, Southern suffered a severe financial reversal as a result of the loss of a rig in a tornado, and plans to recomplete the well were deferred.

Southern conceded that it does not have a currently effective oil and gas lease covering State Tract 61 and stated that, in fact, the oil and gas lease had terminated before Southern became operator. Southern understands that a new lease recently has been awarded to Lamar Oil & Gas, Inc. Southern has had discussions with Lamar about transferring the subject well to Lamar, and Lamar has suggested that it might be interested in transferring its oil and gas lease to Southern.

**EXAMINER'S OPINION**

The subject well has been inactive since prior to January 1, 1993. The well does not have a Rule 14(b)(2) plugging extension, has not been plugged, and is in violation of Rule 14(b)(2).

The record was held open until August 2, 2004 (a period of 60 days), to afford Southern an opportunity to bring the well into compliance and reach a settlement with Enforcement. The well was not brought into compliance, and the case did not settle, on or before August 2, 2004.<sup>1</sup>

The granting of an additional grace period for compliance and settlement is unwarranted. The subject well has been inactive since at least January 1, 1993. The District Office commenced efforts to gain Southern's compliance with Rule 14(b)(2) at least as early as February 7, 2003. The complaint in this docket has been on file since May 30, 2003. Southern's P-5 has been delinquent since July 1, 2002, and

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<sup>1</sup> On August 2, 2004, the examiner received a letter from Southern stating that although its "insurance man" was "pretty slow," the only thing holding up Southern's P-5 renewal was bonding. The letter stated further that it had "a verbal from Lamar to take the lease as soon as P-5 in order."

Southern has never held an effective oil and gas lease on State Tract 61.<sup>2</sup>

The standard penalty in the recommended standard penalty schedule for enforcement cases for a Rule 14(b)(2) violation with regard to a bay well is \$10,000.00. Southern has already paid the sum of \$1,000.00, apparently as a result of an earlier attempt to settle this case. The examiner concludes that a penalty of \$9,000.00 for one violation of Rule 14(b)(2) is appropriate. Southern's violation of Rule 14(b)(2) is serious and presents a hazard to the health and safety of the public because of the risk of pollution of usable quality water. Although Southern has no history of prior final orders entered against it for violations of Commission rules, Southern cannot be said to have acted in good faith in view of its failure to achieve compliance in response to multiple notices of the violation from the District Office.

The examiner recommends further that Southern be ordered to plug the subject well. The well has been inactive for more than ten years, Southern has no effective mineral lease entitling Southern to operate the well, and Southern's P-5 has been delinquent since July 1, 2002.

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. Southern Workover, Inc. ("Southern"), was given at least ten (10) days notice of this proceeding by certified mail, addressed to Southern's most recent Form P-5 Organization Report address. Carl Shanklin, Superintendent, appeared at the hearing to represent Southern's interest.
2. Southern is a corporation. It last filed an approved Form P-5 on May 22, 2001. Southern's Form P-5 has been delinquent since July 1, 2002. Southern last filed financial security in the form of a nonrefundable annual fee in the amount of \$100.00.
3. Southern has no history of prior Commission orders entered against it for violations of Commission

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<sup>2</sup> Although Southern's August 2, 2004, letter appears to indicate that Southern is attempting to obtain a bond with which to renew its P-5, so that the subject well can be transferred to Lamar Oil & Gas, Inc., it is not clear why P-5 renewal by Southern would be a necessary prerequisite to a Form P-4 transfer to Lamar. The record contains nothing from Lamar regarding its willingness to accept the well, and, apparently, Lamar has held an oil and gas lease on State Tract 61 since January 20, 2004. Enforcement's certified hearing file contains correspondence from Southern indicating that Southern has been attempting to transfer the subject well to another operator since at least May 29, 2003.

rules.

4. The only officer of Southern, as listed on Southern's most recently approved Form P-5, is Mary Jane Shanklin, President, Vice President, and Secretary. Mary Jane Shanklin was a person in a position of ownership or control of Southern at the time the violation involved in this docket occurred.
5. The violation committed by Southern is a violation of Commission rules related to safety and the prevention or control of pollution.
6. Southern designated itself to the Commission as the operator of the State Tract 61 Lease, Well No. 1 (RRC ID No. 098360) ("subject well") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, approved on March 25, 1994, and effective January 1, 1994. The subject well is a bay well.
7. Southern does not have a currently effective oil and gas lease giving Southern the right to operate the subject well.
8. The subject well has been inactive for more than twelve (12) months, has not been plugged, and no Rule 14(b)(2) plugging extension is in effect.
  - (a) District Office inspections on March 12 and June 9, 2003, and May 10, 2004, disclosed that the subject well was inactive and the flowline for the well was disconnected.
  - (b) No production has been reported to the Commission for the subject well since on or before January 1, 1993.
  - (c) No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed with or approved by the Commission for the subject well.
  - (d) No Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) is in effect for the subject well. The well last had a Rule 14(b)(2) plugging extension in September 2001.
9. On three occasions during the period February 7, 2003, through April 15, 2003, the District Office sent Southern correspondence, notices, or copies of memoranda regarding the subject well's violation of Rule 14(b)(2). Southern did not respond by achieving compliance.
10. The estimated cost to plug the subject well is \$75,000.00.

11. Usable quality groundwater in the area is likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the risk of pollution.
12. Southern has not demonstrated good faith in that it failed to timely plug the subject well or otherwise place the well into compliance with Commission rules after being notified of the Rule 14(b)(2) violation by the District Office.

**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. Southern Workover, Inc. (“Southern”) is the operator of the State Tract 61 Lease, Well No. 1 (RRC ID No. 098360), Crane Island, S. (I-49230) Field, Nueces 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, Southern 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. The subject well is 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 subject well has been out of compliance since at least October 1, 2001.
6. The documented violations committed by Southern 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).
7. As an officer in a position of ownership or control of Southern at the time Southern violated a Commission rule related to safety and the prevention or control of pollution, Mary Jane Shanklin, and any organization in which she 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 the above findings and conclusions be adopted and the attached order approved, requiring the operator Southern Workover, Inc., to:

1. Plug, in compliance with Commission rules, the State Tract 61 Lease, Well No. 1 (RRC ID No. 098360), Crane Island, S. (I-4 9230) Field, Nueces County, Texas; and
2. Pay an administrative penalty in the amount of NINE THOUSAND DOLLARS (\$9,000.00).

Respectfully submitted,

James M. Doherty  
Hearings Examiner