

May 26, 2009

OIL AND GAS DOCKET NO. 04-0246870

ENFORCEMENT ACTION AGAINST E.G. SAENZ (OPERATOR NO. 743100) FOR VIOLATIONS OF STATEWIDE RULES ON THE R. PEREZ AND E. TOVAR (11872) LEASE, WELL NO. 1, WILDCAT FIELD, JIM WELLS COUNTY, TEXAS.

APPEARANCES:

FOR RESPONDENT:

Norberto Guerra
Dan Polk

E.G. Saenz
“

FOR THE RAILROAD COMMISSION OF TEXAS:

Christopher Hotchkiss

Enforcement Section, RRC

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	March 28, 2006
NOTICE OF HEARING:	March 11, 2008
DATE CASE HEARD:	May 15, 2008
HEARING CLOSED:	June 16, 2008
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
CURRENT STATUS:	Contested
PFD CIRCULATION DATE:	May 26, 2009

STATEMENT OF THE CASE

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

1. Whether the respondent E.G. Saenz (“Saenz”) 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 R. Perez and E. Tovar (11872) Lease, Well No. 1, Wildcat Field, Jim Wells County, and;
2. Whether E.G. Saenz (“Saenz”) violated provisions of Title 3, Oil and Gas, Subtitles A, B and C, Texas Natural Resources Code, Chapter 27 of the 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 lease into compliance with Statewide Rule 14(b)(2);
3. Whether, pursuant to Texas Natural Resources Code §81.0531, Saenz should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject lease and well; and
4. Whether any violations of Statewide Rules 14(b)(2) by Saenz should be referred to the Office of the Attorney General for further civil action pursuant to Texas natural Resources Code §81.0534.

A Notice of Opportunity for Hearing was issued in this case on March 11, 2008 for the hearing date of May 15, 2008. Norberto Guerra and Dan Polk appeared at the hearing on behalf of Saenz and offered testimony and evidence. Christopher Hotchkiss, Staff Attorney, appeared to represent Enforcement. Enforcement’s certified hearing file was entered into evidence.

MATTERS OFFICIALLY NOTICED

The examiner has taken official notice of the mainframe P-4 screens regarding the R. Perez and E. Tovar (11872) Lease.

AUTHORITY

Statewide Rule 14(b)(2) [16 Tex. Admin. Code §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

Statewide Rule 14(c)(2) [16 Tex. Admin. Code §3.14(c)(2)] states “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 in accordance with this section and all other applicable Commission rules and regulations concerning plugging of wells. The presumption of responsibility may be rebutted only at a hearing called for the purpose of determining plugging responsibility.”

DISCUSSION OF THE EVIDENCE

Enforcement

E.G. Saenz (“Saenz”) is a sole proprietor. Saenz last filed a Form P-5 Organization Report on December 12, 1994 and is currently delinquent. Saenz designated himself the operator of the R. Perez and E. Tovar (11872) Lease by filing a Commission Form P-4 (Certificate of Compliance and Producer’s Transportation Authority) on December 17, 1990, approved on January 17, 1991. The subject well is the only well for which Saenz is listed as the operator.

Commission District Office inspection reports made on June 5, 2002; August 12, 2003 and April 11, 2006 and the lack of production reports filed by Respondent since January, 1993, show that the R. Perez and E. Tovar (11872) Lease has been inactive for a period greater than one year. No workovers, re-entries, or subsequent operations have taken place on the subject well in this complaint within the last twelve months. The subject well has not been plugged and no plugging extensions are in effect for the well as allowed by Statewide Rule 14.

An affidavit by Mark England, Engineering Specialist, Field Operations Section, states “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 zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.”

The District Office estimates the cost to the State of plugging the subject well is \$16,100.00.

By letter dated October 13, 2005, the Commission notified Saenz that the subject well appeared to be abandoned and directed that the well be plugged. By letter dated November 11, 2005, Saenz answered and stated that he was not responsible for the well and requested a hearing. Saenz stated that, in 1989, Bahia Exploration had taken a lease and re-entered the subject well. In Saenz’s view, this meant that Saenz was no longer responsible for the well.

The Original Complaint in this matter was issued September 20, 2006, with a hearing date of December 14, 2006. Before the hearing, Norberto Guerra (acting on behalf of his brother, E.G. Saenz) requested a postponement, offering to work with Enforcement to settle the docket. On December 18, 2006, Enforcement mailed Norberto Guerra (“Guerra”) a Settlement Agreement

waiving administrative penalties conditional upon the well being timely plugged. Guerra signed the Settlement Agreement and returned it to Enforcement. For the next two years, Enforcement repeatedly requested a plugging contract letter from Guerra, but one was never received. Consequently, Enforcement set a date for the present hearing.

The R. Perez and E. Tovar (11872) Lease, Well No. 1, was drilled in 1954 by W. Earl Rowe and was completed in the North Alice Field at an approximate depth of 5300 feet with a calculated Initial Production of 121 BOD. Saenz later obtained a lease on the property and, on December 1, 1976, obtained a Rule 37 exception permit from the Commission to re-enter the subject well and re-complete in the Wildcat (above 3120) Field (see Attachment I). Although the re-entry and re-completion occurred in 1976, apparently no completion papers were filed in that year.

In the November 11, 2005 letter in which Saenz requested a hearing, he stated “E.G. Saenz obtained the services of J. Brooks Peden, an attorney representing E.G. Saenz, an inactive operator, to conform with all the RRC rules until the 1990s.” On December 19, 1990, the agent for E.G. Saenz, Attorney Brooks Peden, filed a Form P-4 (Certificate of Compliance and Producer’s Transportation Authority), W-2 (Completion Report) and W-1X (Plugging Extension) for the subject well. The Form W-2 indicated the well was re-completed November 1, 1976, but the re-completion was unsuccessful. The Form P-4 was dated December 12, 1990, was received at the Commission on December 17, 1990 and was approved January 17, 1991.

Enforcement recommends that Saenz be required to plug the subject well and be assessed an administrative penalty of \$2,000.00, for one violation of Statewide Rule 14(b)(2).

Saenz

Norberto Guerra, appearing on behalf of E.G. Saenz, stated that the Settlement Agreement had not been complied with because the cost of plugging the subject well was too high. On September 25, 2007, Guerra obtained a plugging bid from Pat’s P&A, Inc. citing a figure of \$18,141.00. However, since then, Guerra has obtained a second bid, from Pegasus Cementers, Inc. citing a figure of \$6,870.00.

Saenz argues that under the Commission rules in effect at the time, 1989 through 2003, an operator’s responsibility for a well transferred if another operator conducted any work on that well. Saenz states that a Form P-4 was given to Bahia Exploration (“Bahia”) in 1989, and that Bahia subsequently re-entered the well and attempted a re-completion. However, the recompletion was unsuccessful and Bahia never filed the P-4 with the Commission. Saenz notes that the owner of Bahia Exploration, Mike Saenz, has the same last name but is no relation.

As proof of its claim, Guerra presented three written statements, from three different individuals, who remembered that Bahia had re-entered the subject well in 1989. In the first short statement, Doug White of Petroleum Perforators stated that he had a discussion with Norberto Guerra and remembered discussing the subject well with James of Red Hole Drilling (apparently meaning Rathole Drilling) in the late 1980’s. In the second statement, James McClellan of Rathole

Drilling stated that he remembered working over the subject well for Bahia. The well produced nothing but water. The third statement is also by James McClellen of Rathole Drilling, stating that Bahia had milled through the old perforations in the subject well and then re-perfed the well in 1989. None of the statements were notarized. Witnesses to the statements signed their names, but often in an indecipherable scrawl with no typewritten name below.

The examiner granted Saenz an additional 30 days to late-file formal affidavits and any other documents supporting his case. On June 12, 2008, Dan Polk, on behalf of Saenz, late-filed the affidavits of Doug White, Armando Perez, Jr. and Norberto Guerra. All supported the claim that Bahia Exploration entered and re-completed the subject well in 1989. Polk also filed a document titled "Release of Oil, Gas and Hydrocarbons Lease", dated June 26, 1978, releasing the lease on 214 acres of land to Rosa Perez and Elena Tovar and a certified copy of a lease made on June 20, 1989 conveying the minerals in 268 acres from Rosa Perez to Bahia Exploration.

Saenz, in his November 11, 2005 letter requesting a hearing, indicated that he had his attorney make sure he was in compliance with all Commission rules and regulations up to 1990. Guerra stated that the 1990 filing of a P-4 for the subject lease and well was a mistake and that Saenz should not be held accountable for plugging the subject well.

EXAMINER'S OPINION

The evidence presented by Saenz to show that another operator (Bahia) entered the subject well and should be responsible for plugging it is inconclusive. The 1978 "Release of Lease" is some evidence that Saenz no longer conducted operations on the subject well after that date, but it does not relieve Saenz of the responsibility to plug the well. The lease from Rosa Perez to Bahia Exploration is the best evidence Saenz has to offer, but even this does not prove that Bahia actually entered the subject well.

Even if all the evidence offered by Saenz, including the affidavits, is viewed in the light most favorable to Saenz, it does not relieve him of the responsibility to plug the well. The rebuttable presumption that Saenz offers as a defense applies only when a second operator enters a well subsequent to the first operator taking over the P-4 plugging liability for the well. The fact remains that Saenz, through his attorney, filed Forms P-4, W-2 and W1-X for the subject well in 1990, after the alleged entry of the well by Bahia. Even if Bahia did enter the well in 1989, Saenz officially filed his P-4 for the well in 1990, which was approved January 17, 1991. Saenz makes no claim that Bahia conducted any operations on the well after 1990.

The examiner recommends that E.G. Saenz plug the subject well and pay an administrative penalty of \$2,000.

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. E.G. Saenz (“Saenz”) (Operator No. 743100) was given at least 10 days notice of this proceeding. Saenz appeared through his representatives Norberto Guerra and Dan Polk and presented evidence at the hearing.
2. E.G. Saenz is a Sole Proprietorship. His last Form P-5 Organization Report was filed with the Commission on December 12, 1994.
3. The Form P-5 Organization Report of E.G. Saenz is inactive and Saenz has no financial assurance on file with the Commission. Saenz is the operator of one well, which is the subject of this hearing.
4. The violation involved in this docket is a violation of a Commission rule related to safety and the prevention or control of pollution.
5. E.G. Saenz designated himself the operator of the R. Perez and E. Tovar (11872) Lease, Well No. 1, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) for the lease, approved January 17, 1991 and effective on that date.
6. Commission District Office inspection reports made on June 5, 2002; August 12, 2003 and April 11, 2006 and the lack of production reports filed by Respondent since January, 1993, show that the R. Perez and E. Tovar (11872) Lease has been inactive for a period greater than one year. No workovers, re-entries, or subsequent operations have taken place on the subject well in this complaint within the last twelve months. The subject well has not been plugged and no plugging extensions are in effect for the well as allowed by Statewide Rule 14.
7. Well No. 1 on the R. Perez and E. Tovar (11872) Lease was out of compliance with Statewide Rule 14(b)(2) from at least January, 1993 to the hearing date on May 15, 2008. The subject well has been out of compliance for at least 15 years.

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. E.G. Saenz was the operator of the R. Perez and E. Tovar (11872) Lease, Well No. 1, Wildcat Field, Jim Wells 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 from at least January 17, 1991 through at least May 15, 2008.

4. As operator of the subject lease and well, E.G. Saenz had the primary responsibility for complying with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.14(b)(2)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject lease and well.
5. E.G. Saenz violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.14(b)(2)] by failing to plug the R. Perez and E. Tovar (11872) Lease, Well No. 1.
6. The documented violation committed by E.G. Saenz constitutes an act deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
7. E.G. Saenz has not demonstrated good faith within the meaning of Texas Natural Resources Code §81.0531.
8. As Sole Proprietor of E.G. Saenz at the time Saenz violated Commission rules related to safety and the prevention or control of pollution, E.G. Saenz, and any organization subject to the Commission's jurisdiction in which he may hold a position of ownership or control, is subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that E.G. Saenz be required to plug the subject well and pay an administrative penalty of \$2,000.

Respectfully submitted,

Marshall Enquist
Hearings Examiner