

ENFORCEMENT ACTION AGAINST STATIA ENTERPRISES, INC. (OPERATOR NO. 816435) FOR VIOLATIONS OF STATEWIDE RULES ON THE C. H. GERDES (11582) LEASE, WELL NO. B 1, NORTH ARENA (FRIO 6020) FIELD, SAN PATRICIO COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Don Rhodes
Mark Dodson

RESPONDENT:

Statia Enterprises, Inc.

FOR INTERESTED PARTY:

Russell Cherry
Sally Cherry

INTERESTED PARTY:

Russell and Sally Cherry

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF ORIGINAL COMPLAINT:

November 20, 2007

DATE OF NOTICE OF HEARING:

May 6, 2008

DATE OF HEARING:

June 26, 2008

HEARD BY:

James M. Doherty, Hearings
Examiner

DATE RECORD CLOSED:

October 17, 2008

DATE PFD CIRCULATED:

October 23, 2008

STATEMENT OF THE CASE

1. Whether the respondent Statia Enterprises, Inc. (“Statia”) 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 C. H. Gerdes (11582) Lease, Well No. B 1, North Arena (Frio 6020) Field, San Patricio County, Texas (“subject lease”/”subject well”);
2. Whether Statia violated Statewide Rule 3 [Tex. R. R. Comm’n., 16 TEX. ADMIN. CODE §3.3] by failing to post and maintain required identification signs at the lease entrance, well site, and tank battery of the subject lease and well;
3. Whether Statia 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 and/or otherwise failing to place the subject well and lease into compliance with Statewide Rules 3 and 14(b)(2).
4. Whether, pursuant to Texas Natural Resources Code §81.0531, Statia should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject lease and well; and
5. Whether any violations of Statewide Rules 3 and 14(b)(2) by Statia 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 November 20, 2007. On December 17, 2007, Statia’s representative Don Rhodes sent a letter to the Enforcement Section (“Enforcement”) stating that a H-15 test had been scheduled to be performed on the subject well that week, and requesting an additional 30 days to bring the well into compliance and enter into an agreed order for a proper penalty. No Form H-15 was filed, and a Notice of Hearing was issued on February 6, 2008, scheduling a hearing for March 13, 2008.

Mr. Rhodes, acting for Statia, apparently appeared at the hearing on March 13, 2008, and provided Enforcement with a letter dated March 12, 2008, stating that the oil and gas lease covering the property where the subject well is located had expired, and Tyludadededa, LLC was then negotiating a new lease with the mineral owners and had expressed an interest in the subject well. This letter requested a further postponement of 30 days to see if Tyludadededa would take the well, failing in which Statia would “move forward” to plug the well. Tyludadededa did not take the well, and Statia did not move forward to plug the well.

A further Notice of Hearing was issued on May 6, 2008, scheduling a hearing for June 26, 2008. Mr. Rhodes and Mark Dodson appeared at the hearing to represent Statia and presented evidence. Susan German, Staff Attorney, appeared to represent Enforcement. Enforcement’s

certified hearing file was admitted into evidence. At the close of the hearing, Statia requested additional time to acquire a new oil and gas lease, place the subject well into compliance, and achieve a settlement with Enforcement. The record initially was held open until July 26, 2008, to see if this could be accomplished. On July 23, 2008, the examiner was advised by Enforcement that Statia was claiming that it had been delayed in achieving compliance by Hurricane Dolly and Enforcement was agreeable to leaving the record open for an additional period of time. As a result, the examiner advised the parties that the record would be held open until August 25, 2008.

On August 26, 2008, Enforcement advised the examiner that it had received a Form H-15 indicating that a H-15 test had been performed on the subject well on August 22, 2008. This removed one of the impediments to the granting of a plugging extension for the subject well, but did not solve the problem that Statia had no good faith claim of right to operate the well. Accordingly, at the request of Enforcement, the examiner agreed to hold the record open until October 1, 2008, to see if Statia could provide evidence of a good faith claim. Statia did not provide evidence of a good faith claim on or before October 1, 2008.

The plugging extension for the subject well had been denied on July 24, 2006, based on delinquency of a H-15 test that was due in May 2006. When the Form H-15 was filed reporting a successful H-15 test performed on August 22, 2008, the computerized 14(b)(2) System erroneously granted Statia a plugging extension for the subject well because the system was incapable of recognizing that Statia had admitted it had no good faith claim. On October 2, 2008, the examiner sent a letter to Statia stating that this plugging extension would be canceled unless on or before October 17, 2008, Statia provided evidence of a good faith claim. On October 15, 2008, Mr. Rhodes filed a letter on behalf of Statia stating that Statia had been unable to obtain an oil and gas lease covering the acreage where the subject well is located. This letter stated further that Statia had filed a Form W-3A (Notice of Intention to Plug and Abandon) for the well on September 28, 2008, was taking bids from plugging contractors, and would begin plugging the well "as soon as possible." The plugging extension for the well was canceled on October 18, 2008.

DISCUSSION OF THE EVIDENCE

Enforcement

Statia Enterprises, Inc., is a corporation, and Mark Dodson is President, Secretary, and Treasurer. The Form P-5 organization report of Statia is active, and Statia has approved financial assurance on file in the amount of \$50,000.

Statia designated itself the operator of the C. H. Gerdes (11582) Lease, Well No. B 1, North Arena (Frio 6020) Field, San Patricio County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved September 7, 2004, effective May 11, 2004.

On the occasion of six District Office inspections of the subject lease between September 20, 2005, and March 5, 2008, the identification sign required by Statewide Rule 3 to be posted at

the lease entrance displayed the wrong operator name and the identification signs required to be posted at the well site and tank battery were missing. Inspections of the subject lease on August 21 and December 21, 2007, and March 5, 2008, disclosed that Well No. B 1 was inactive and in violation of Statewide Rule 14(b)(2). No production has been reported to the Commission for the subject lease since December 2003. A plugging extension for the subject well was denied on July 24, 2006, based on delinquency of a H-15 test (Test on an Inactive Well More than 25 Years Old) that was due to be performed in May 2006.

On at least five occasions between October 5, 2005, and August 30, 2007, the District Office sent notices or correspondence to Statia regarding the violations of Statewide Rule 3 and/or Statewide Rule 14(b)(2) on the subject lease in an effort to achieve voluntary compliance. On March 12, 2008, a Statia representative sent Enforcement a letter stating that it would plug the subject well if another operator did not take a transfer of the well within the succeeding 30 days. However, voluntary compliance with Statewide Rules 3 and 14(b)(2) has not been achieved. A certification of the Commission's Secretary in the certified hearing file stated that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) have been filed or approved for the subject well. The estimated cost to the State to plug the subject well is \$17,800.

An affidavit of Mark England, Engineering Specialist, Field Operations Section, stated that identification signs required by Statewide Rule 3 must be posted to allow correct identification of the responsible operator and to allow correct determination of the actual location of leases, wells, and tank batteries. This affidavit stated further that in the event of a pollution or safety violation or other emergency, the lack of legible signs displaying correct information may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency, causing delays in containing or remediating the violation or emergency and threatening the public health and safety.

The England affidavit stated also that a well that is in violation of Statewide Rule 14 must be plugged in order to prevent pollution of usable quality surface and 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 zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Enforcement recommended that Statia be assessed a penalty of \$2,750 for three violations of Statewide Rule 3 at \$250 each and one violation of Statewide Rule 14(b)(2) at \$2,000. Enforcement recommended also that Statia be ordered to place the subject lease and well into compliance with Commission rules.

Statia

Statia has never held an effective oil and gas lease covering the property where the subject well is located. Mark Dodson, Statia's President, claimed that the well was transferred to Statia in 2004 as a result of a Form P-4 signed for Statia by an agent who had no authority. However, he admitted that Statia became aware of the transfer shortly after it was approved and did not at the time raise any question with the Commission about the propriety of the transfer. Two other leases and wells transferred at roughly the same time subsequently were transferred from Statia to Blue House Energy Group, Inc., but the subject lease remained with Statia.

The landowner has indicated to Statia that she does not want the subject well plugged. The landowner has given J. L. Allen an agreement for seismic exploration of the land where the well is located and an option to take an oil and gas lease on the property. Statia has discussed with Allen the possibility of releasing 40 acres around the subject well from this agreement so that Statia might attempt to lease the 40 acres from the landowner. If this could be accomplished, Statia would investigate the investment necessary to restore the well to production.¹ If securing a new lease and restoring the well to production is not feasible, Statia will take steps to plug the well.

Russell and Sally Cherry

Sally Cherry inherited the property where the subject well is located in 1980. At one time there were three wells on the entire property now owned by Mrs. Cherry, and although there has been no recent production, only one of the wells has been plugged. A considerable amount of old surface equipment and junk remains on the property.

When oil prices went up, Mrs. Cherry was contacted by a landman about leasing her property. She "hastily" signed a two year agreement with J. L. Allen granting Allen the right to conduct seismic exploration and an exclusive option to lease the property. Mrs. Cherry was paid a \$3,000 bonus for this agreement which covers 200 acres. The agreement does not expire until May 2009.

Mrs. Cherry has the hope that the subject well can be restored to production. For this reason, she does not want to see the well plugged at this time. If Statia were able to work something out with J. L. Allen so Statia could lease the property, she would prefer that Statia lease the whole 200 acres, rather than just 40 acres around the well.

¹ Mr. Rhodes' letter filed October 15, 2008, stated that Statia had been unable to persuade J. L. Allen to release acreage around the well so that such acreage could be leased by Statia.

EXAMINER'S OPINION

The subject lease, well, and tank battery have been out of compliance with Statewide Rule 3 pertaining to required identification signs since at least September 20, 2005, when the violations were first disclosed by a District Office inspection, and most likely ever since Statia was designated operator by Form P-4 approved on September 7, 2004. Notwithstanding the ease with which these violations could have been corrected, and multiple requests from the District Office for voluntary compliance, the required signs still had not been posted as of the date of the last District Office inspection of record on March 5, 2008, and Statia made no claim at the hearing on June 26, 2008, that signs had been posted subsequent to the last inspection.

The subject well last produced in December 2003, almost five years ago. The well required a plugging extension after December 2004. A H-15 test was required for the well as of May 2006, but Statia did not timely perform this test. As a consequence, a plugging extension was denied for the well on July 24, 2006, based on H-15 delinquency. Statia has never been entitled to a plugging extension for the well since becoming operator because Statia admits that it has never held an oil and gas lease covering the property where the well is located. Notwithstanding the plugging extension that was erroneously, and only temporarily, approved for the well by the 14(b)(2) System after a successful H-15 test was performed on the well on August 22, 2008, the well actually has been out of compliance with Statewide Rule 14(b)(2) since at least July 24, 2006.

There is no corroboration of Statia's belated claim that the subject well was transferred to Statia as the result of the filing of a Form P-4 in 2004 signed for Statia by an agent without authority. If Statia wished to assert that the subject lease and well wrongly were transferred to Statia, it had the obligation to raise that issue with the Commission when it first learned of the transfer, not four years later.

In determining the amount of the penalty to be imposed against Statia, the Commission is required by Texas Natural Resources Code §81.0531 to consider the operator's previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. The examiner recommends that a penalty be assessed against Statia in the amount of \$2,750 for three violations of Statewide Rule 3 at \$250 each and one violation of Statewide Rule 14(b)(2) at \$2,000. These are the standard penalties provided by the penalty schedule for these violations. Statia apparently has no history of previous violations, but non-compliance with Statewide Rule 3 for a period of three years and Statewide Rule 14(b)(2) for a period of more than 2 years is serious, and presented a potential hazard to the health and safety of the public. Statia cannot be said to have acted in good faith in view of its failure to respond to repeated requests of the District Office for voluntary compliance.

Based on the remote possibilities that the subject well is capable of further production and Statia can find a way to place the well into compliance with Statewide Rule 14(b)(2) other than by plugging, and based further on the facts that the landowner apparently does not want the well to be plugged at this time and the well has recently had a successful H-15 test, the examiner recommends

that Statia be given the options in the Commission's final order of plugging the well or otherwise placing the well into compliance with all Commission rules, including Statewide Rules 3 and 14(b)(2), provided that Statia must provide evidence to the Commission that it has a good faith claim to a continuing right to operate the well if it proposes to achieve compliance with Statewide Rule 14(b)(2) by obtaining a plugging extension or by producing the well.

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. Statia Enterprises, Inc. ("Statia") was given at least ten (10) days notice of this hearing by certified mail. Statia appeared at the hearing and presented evidence.
2. Statia is a corporation, and Mark Dodson is President, Secretary, and Treasurer. The Form P-5 organization report of Statia is active, and Statia has approved financial assurance on file in the amount of \$50,000.
3. As an officer, Mark Dodson was a person in a position of ownership or control of Statia at the time the violations in this docket were committed.
4. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
5. Statia designated itself the operator of the C. H. Gerdes (11582) Lease, Well No. B 1 ("subject well"), North Arena (Frio 6020) Field, San Patricio County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved September 7, 2004, effective May 11, 2004.
6. On the occasion of six District Office inspections of the subject lease between September 20, 2005, and March 5, 2008, the identification sign required by Statewide Rule 3 to be posted at the lease entrance displayed the wrong operator name and the identification signs required to be posted at the well site and tank battery were missing.
7. As of the date of the hearing in this docket, the subject well had been inactive for more than one year, did not have a Statewide Rule 14(b)(2) plugging extension, and had not been plugged.
 - a. On the occasion of District Office inspections on August 21 and December 21, 2007, and March 5, 2008, the subject well was inactive.
 - b. No production has been reported to the Commission for the subject well since December 2003.

- c. A plugging extension for the subject well was denied on July 24, 2006, based on delinquency of a H-15 test (Test on an Inactive Well More than 25 Years Old) that was due to be performed in May 2006.
 - d. Statia has never had entitlement to a plugging extension for the subject well because it has never held an effective oil and gas lease covering the property where the well is located.
 - e. Statia performed a successful H-15 test for the subject well on August 22, 2008. When Statia filed Form H-15 reporting this test, the Commission's computerized 14(b)(2) System erroneously granted Statia a plugging extension for the subject well because the system was incapable of recognizing that Statia had admitted it had no good faith claim. This plugging extension was canceled on October 18, 2008.
 - f. As of the date of the hearing in this docket, no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) had been filed or approved for the subject well.
8. The estimated cost to the State to plug the subject well is \$17,800.
 9. Identification signs required by Statewide Rule 3 must be posted to allow correct identification of the responsible operator and to allow correct determination of the actual location of leases, wells, and tank batteries. In the event of a pollution or safety violation or other emergency, the lack of legible signs displaying correct information may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency, causing delays in containing or remediating the violation or emergency and threatening the public health and safety.
 10. A well that is in violation of Statewide Rule 14 must be plugged in order to prevent pollution of usable quality surface and 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 zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.
 11. The landowner of the property where the subject well is located prefers that the subject well not be plugged at this time if the well is capable of being restored to production.
 12. No prior final enforcement orders have been entered against Statia for violation 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. Statia Enterprises, Inc., is the operator of the C. H. Gerdes (11582) Lease, Well No. B 1, North Arena (Frio 6020) Field, San Patricio 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. As operator, Statia Enterprises, Inc., has the primary responsibility for complying with Statewide Rules 3 and 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §§3.3 and 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. Statia Enterprises, Inc., violated Statewide Rule 3 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.3] by failing to post and maintain required identification signs at the lease entrance, site of Well No. B 1, and tank battery on the subject lease. The lease has been out of compliance with Statewide Rule 3 since at least September 20, 2005.
6. Statia Enterprises, 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 subject well within one year after operations ceased. The subject well has been out of compliance with Statewide Rule 14(b)(2) since July 24, 2006.
7. The documented violations committed by Statia Enterprises, Inc., constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
8. Statia Enterprises, Inc., had not demonstrated good faith within the meaning of Texas Natural Resources Code §81.0531.
9. As an officer of Statia Enterprises, Inc., at the time Statia violated Commission rules related to safety and the prevention or control of pollution, Mark Dodson, 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 Statia Enterprises, Inc., be required to plug the subject well or otherwise place the well into compliance with Commission rules, including Statewide Rules 3 and 14(b)(2), provided that compliance shall not be achieved by obtaining a Statewide Rule 14(b)(2) plugging extension or by producing the well unless Statia first provides the Commission with evidence that it has a good faith claim to a continuing right to operate the well. The examiner further recommends that Statia Enterprises, Inc., be ordered to pay an administrative penalty in the amount of \$2,750.

Respectfully submitted,

James M. Doherty
Hearings Examiner