

November 7, 2008

OIL AND GAS DOCKET NO. 04-0257477

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**ENFORCEMENT ACTION AGAINST JPW ENERGY, L.L.C. (OPERATOR NO. 427871) FOR VIOLATIONS OF STATEWIDE RULES ON THE CAMPOS, Z. (12629) LEASE, WELL NO. 41, SEVEN SISTERS FIELD, AND CAMPOS, Z. LEASE (GAS ID. NO. 162035), WELL NO. 1, SEVEN SISTERS, E. (9400) FIELD, DUVAL COUNTY, TEXAS.**

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**APPEARANCES:**

**For Railroad Commission of Texas:**

Susan German, Staff Attorney, Enforcement Section, Office of General Counsel  
Kelly Tieken, Staff Attorney, Enforcement Section, Office of General Counsel

**For Respondent JPW Energy, L.L.C.**

Phil Watkins, Attorney, President

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>COMPLAINT FILED:</b>	June 20, 2008
<b>DATE CASE HEARD:</b>	August 21, 2008
<b>PFD PREPARED BY:</b>	Mark Helmueller, Hearings Examiner
<b>RECORD CLOSED:</b>	October 28, 2008
<b>PFD CIRCULATION DATE:</b>	November 7, 2008
<b>CURRENT STATUS:</b>	Protested

**STATEMENT OF THE CASE**

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

1. Whether respondent should be required to plug or otherwise place in compliance with Statewide Rule 14, the Campos, Z. (12629) Lease, Well No. 41, Seven Sisters Field, and Campos, Z. Lease (Gas ID. No. 162035), Well No. 1, Seven Sisters, E. (9400) Field, Duval County, Texas;

2. Whether the respondent 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 Rule 14 for the Campos, Z. (12629) Lease, Well No. 41, Seven Sisters Field, and Campos, Z. Lease (Gas ID. No. 162035), Well No. 1, Seven Sisters, E. (9400) Field, Duval County, Texas;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said wells;
4. 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.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”). Phil Watkins, President, appeared on behalf of JPW Energy, L.L.C. (“JPW”) and presented evidence at the hearing. Enforcement's hearing file was admitted into evidence.

Enforcement recommended JPW be ordered to properly plug the Campos, Z. (12629) Lease, Well No. 41, Seven Sisters Field, and Campos, Z. Lease (Gas ID. No. 162035), Well No. 1, Seven Sisters, E. (9400) Field, (hereinafter “Z. Campos Leases/Wells”) and pay a total administrative penalty of \$8,000.00. The administrative penalty is broken down as follows: \$2,000.00 each for two violations of Statewide Rule 14(b)(2), \$2,000.00 for one violation of Statewide Rule 14(b)(3), and an enhancement penalty of \$2,000.00 based on Final Orders entered against JPW in *Oil and Gas Docket No. 01-0252082: Enforcement Action Against JPW Energy, L.L.C. (Operator No. 427871) for Violations of Statewide Rules on the E.J. Pruitt -E- (01404) Lease, Well No. 18, Pruitt Field, and E.J. Pruitt E5 (13965) Lease, Well Nos. 28, 29, 30, 32 and 49, SE Pruitt (Olmos) Field, Atascosa County, Texas; and Oil and Gas Docket No. 01-0248501: Enforcement Action Against JPW Energy, L.L.C. (Operator No. 427871) for Violations of Statewide Rules on the Sarah E. Ferry Unit-Block 13 (13992) Lease, Well No. 3, Pleasanton (Edwards Lime 8100) Field, Atascosa County, Texas.*

JPW requested that the record be left open for 60 days to facilitate bringing the violations into compliance. No documentation was submitted to show that the violations had been resolved within that time, and the record was closed on October 28, 2008.

The examiner agrees with the recommended penalty and recommends JPW be ordered to bring the violations into compliance with Commission rules.

## DISCUSSION OF THE EVIDENCE

### *Organization and Permit Records*

Commission records show that at the time of the hearing, respondent had an active Commission Form P-5 (Organization Report) which was filed with the Commission on September 26, 2008. The Organization Report lists Phil Watkins as JPW's President, Mark Stephen Cichowski as its Vice President, and Brenda M. Wilson as its Treasurer. Commission records show that JPW is recognized as the operator of 19 wells with a total depth of 96,473 feet. JPW submitted a \$50,000 letter of credit as its financial assurance with the most recent Organization Report filing.

JPW was recognized as the operator of the Z. Campos Leases after filing Commission Form P-4s (Certificate of Compliance and Transportation Authority) which were approved by the Commission on May 9, 2001.

### *Commission Inspections*

Commission inspections of the Campos, Z. (12629) Lease, Well No. 41 were conducted on January 31, 2008, and August 11, 2008. These inspection reports observed that Well No. 41 was inactive, but equipped for production. Commission records further document that the well was not in compliance with Statewide Rule 14(b)(2) after the plugging extension for the well was cancelled effective September 2006 for the failure to file a fluid level test. The last reported production for the well was in August 1996.

Commission inspections of the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 were conducted on February 1, 2008, and August 11, 2008. These inspections observed that Well No. 1, was equipped for production but inactive. Commission records further document that the well was not in compliance with Statewide Rule 14(b)(2) and 14(b)(3) after the plugging extension for the well was cancelled effective September 2006 for the failure to file a fluid level test. Commission records indicate the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 was completed on November 29, 1952 at a depth of 9,612 feet. The last reported production for the well was in August 1996.

An affidavit from Mark England states that the alleged violations pose a threat of pollution and safety. Unplugged wells in violation of Statewide Rule 14(b)(2) are a potential conduit for flows of oil or saltwater 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 water zones or to flow to the surface. Inactive wells greater than 25 years of age must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks or fluids levels above the base of usable quality water indicate a possible pollution hazard.

*Enforcement's Position*

Enforcement argues that the Z. Campos wells are out of compliance with Statewide Rule 14(b)(2) and 14(b)(3) due to lack of production and the cancellation of the plugging extensions. Enforcement urges that JPW be ordered to bring the wells into compliance with Commission rules, and pay an administrative penalty of \$8,000.00 for the violations, including an enhancement of \$2,000.00 for prior violations.

*JPW's Position*

JPW acknowledges responsibility for the wells and the violations of Commission Rule 14(b)(2) and 14(b)(3). JPW lacked funds to perform the required tests, but has reestablished production in other wells, giving it a revenue stream to address the compliance issues. JPW requested the Commission provide it with additional time to achieve compliance and a waiver of any administrative penalties.

**APPLICABLE AUTHORITY**

Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted. For wells transferred after September 1, 1997, the operator of a well for purposes of plugging liability is shown by an approved Form P-4 designating that person as operator.

Statewide Rule 14(b)(3) requires an operator of an inactive well over 25 years old, to conduct an annual test of the well to establish whether it poses a threat to pollute usable quality water as a condition of obtaining a plugging extension.

In determining the amount of an administrative penalty under Texas Natural Resources Code §81.0531, 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.

**EXAMINER'S OPINION**

JPW's responsibility for the violations is not contested. JPW requested leniency in allowing it time to bring the violations in compliance. Unfortunately, JPW did not provide any evidence that it was successful in its efforts despite the record being left open for 60 days after the hearing concluded. Additionally, JPW has a history of Final Orders entered against it which warrant an enhanced penalty consistent with the provisions of Texas Natural Resources Code §81.0531. Accordingly, it is recommended that the administrative penalty of \$8,000.00 requested by Enforcement be ordered against JPW and that JPW be further ordered to bring the violations into compliance.

The examiner does not recommend that JPW be required to plug the Z. Campos wells as its only method of obtaining compliance with Commission rules. Commission inspections show the wells appear to be equipped for production, and may be able to be restored to a beneficial use even though they have not produced in over 12 years.

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. Respondent JPW Energy L.L.C., (“JPW”) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recently provided address.
2. JPW has an active Commission Form P-5 (Organization Report) which was filed with the Commission September 26, 2008. The Organization Report lists Phil Watkins as JPW’s President, Mark Stephen Cichowski as its Vice President, and Brenda M. Wilson as its Treasurer. Commission records show that JPW is recognized as the operator of 19 wells with a total depth of 96,473 feet. JPW submitted a \$50,000 letter of credit as its financial assurance with the most recent Organization Report filing.
3. JPW was recognized as the operator of the Campos, Z. (12629) Lease, Well No. 41 after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on May 9, 2001.
4. JPW was recognized as the operator of the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1, after filing a Commission Form P-4 which was approved by the Commission on May 9, 2001.
5. The Campos, Z. (12629) Lease, Well No. 41 is currently inactive, has been inactive for more than 12 months, and has not been properly plugged.
  - a. Commission inspection reports dated on January 31, 2008, and August 11, 2008 found the well inactive and equipped for production.
  - b. Commission records report no production from the well since August 1996.
5. The Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 is currently inactive, has been inactive for more than 12 months, and has not been properly plugged.
  - a. Commission inspection reports dated on February 1, 2008, and August 11, 2008 found the well inactive and equipped for production.
  - b. Commission records report no production from the wells since August 1996.
7. No plugging extension was in effect for the Campos, Z. (12629) Lease, Well No. 41 at the

- time of issuance of the proposal for decision. The plugging extension was cancelled effective September 2006 for the failure to file a fluid level test.
8. No plugging extension was in effect for the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 at the time of issuance of the proposal for decision. The plugging extension was cancelled effective September 2006 for the failure to file a fluid level test.
  9. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged well bores constitute a cognizable threat to the public health and safety because of the probability of pollution.
  10. Well No. 1 on the Campos, Z. Lease (Gas ID. No. 162035) has not had a required fluid level test performed and approved by the Commission.
    - a. Commission records indicate the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 was completed on November 29, 1952 at a depth of 9,612 feet.
    - B. JPW has not filed an H-15 test for the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 since January 2006.
  11. Inactive wells over 25 years old require annual testing of their fluid level in order to determine whether the wells pose a possible threat to pollute usable quality water and oil and gas resources. Without testing and supporting documentation, the Commission cannot determine if a well poses a threat to natural resources.
  12. Final Orders were entered against JPW for violations of Commission rules in *Oil and Gas Docket No. 01-0252082: Enforcement Action Against JPW Energy, L.L.C. (Operator No. 427871) for Violations of Statewide Rules on the E.J. Pruitt -E- (01404) Lease, Well No. 18, Pruitt Field, and E.J. Pruitt E5 (13965) Lease, Well Nos. 28, 29, 30, 32 and 49, SE Pruitt (Olmos) Field, Atascosa County, Texas;* and *Oil and Gas Docket No. 01-0248501: Enforcement Action Against JPW Energy, L.L.C. (Operator No. 427871) for Violations of Statewide Rules on the Sarah E. Ferry Unit-Block 13 (13992) Lease, Well No. 3, Pleasanton (Edwards Lime 8100) Field, Atascosa County, Texas.*

#### 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. JPW is the operator of the Campos, Z. (12629) Lease, Well No. 41, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. JPW has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas

- Natural Resources Code as well as other applicable statutes and Commission rules relating to the Campos, Z. (12629) Lease, Well No. 41.
5. The Campos, Z. (12629) Lease, Well No. 41 Lease is not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
  6. The Campos, Z. (12629) Lease, Well No. 41 has been out of compliance with Rule 14 from September 2006 to the present.
  7. JPW is the operator of the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
  8. JPW has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1.
  9. The Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 is not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
  10. The Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 Lease has been out of compliance with Rule 14 from September 2006 to the present.
  11. Phil Watkins, as JPW's President, was in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violation of Commission Rules committed by respondent.
  12. Mark Stephen Cichowski, as JPW's Vice-President, was in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violation of Commission Rules committed by respondent.
  13. The violations of Commission Rule 14 committed by respondent are related to safety and the control of pollution.
  14. As officers in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Phil Watkins, and Mark Stephen Cichowski and any other organization in which they may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.

15. The documented violations committed by JPW are a hazard to the public health.

#### **RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring JPW Energy, L.L.C., within 60 days of the entry of a Final Order in this matter to:

- 1) plug or otherwise bring the Campos, Z. (12629) Lease, Well No. 41 into compliance with Statewide Rule 14;
- 2) plug or otherwise bring the Campos, Z. Lease (Gas ID. No. 162035), Well No. 1 into compliance with Statewide Rule 14 and
- 3) pay an administrative penalty of \$8,000.00.

Respectfully submitted,

Mark Helmueller  
Hearings Examiner