

February 26, 2004

OIL AND GAS DOCKET NO. 05-0228749

ENFORCEMENT ACTION AGAINST MAX D. ANDERSON DBA BLACK JACK OIL FOR VIOLATIONS OF STATEWIDE RULES ON THE POSEY (03756) LEASE, WELL NOS. P2 AND P5, (RRC PERMIT NOS. P489716 & P487644) HILL COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Susan German, Staff Attorney

MOVANT:

Railroad Commission of Texas

FOR RESPONDENT:

Max D. Anderson

PARTY:

Max D. Anderson dba Black Jack Oil

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	April 22, 2002
DEFAULT HEARING HELD:	November 6, 2003
HEARING REOPENED:	December 29, 2003
REOPENED HEARING HELD:	January 22, 2004
RECORD CLOSED:	February 19, 2004
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	February 26, 2004
CURRENT STATUS:	Protested

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 should be required to place in compliance with Statewide Rule 8, the

- Posey (03756) Lease, Well Nos. P2 and P5, (RRC Permit Nos. P489716 & P487644) Hill County, Texas;
2. 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 Rule 8;
 3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said lease and 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.

This matter was originally heard as a default proceeding on November 6, 2003. On December 8, 2003, respondent Max Anderson doing business as Black Jack Oil, (hereinafter “Anderson”) requested that the hearing be reopened to allow the submission of evidence concerning the current condition of the Posey (03756) Lease, Well Nos. P2 and P5, RRC Permit Nos. P489716 & P487644, (hereinafter “Posey Lease” and “subject wells”). A reopened hearing was held on January 22, 2004. Susan German, Staff Attorney, appeared at the reopened hearing representing the Railroad Commission of Texas, Enforcement Section. Mr. Anderson appeared and submitted evidence on behalf of Anderson. The Enforcement Section's hearing file was admitted into evidence. At the request of the parties, the record was left open to allow the submission of additional documentary evidence concerning the condition of the lease. Both parties submitted additional evidence, and the record was closed on February 19, 2004.

Enforcement recommended that Anderson be ordered to properly close two drilling pits on the Posey Lease, in compliance with Commission rules and be ordered to pay a total administrative penalty of \$2,000: \$1,000 each for the two violations of Statewide Rule 8(d)(4)(G)(i)(I). The examiner agrees with the recommended administrative penalty, but believes that the operator should be allowed 90 days to bring the violations into compliance to avoid interference with current farming.

DISCUSSION OF THE EVIDENCE

Enforcement presented Commission records showing that the last Commission Form P-5 for Anderson was filed May 1, 2003. The report identified Max Anderson as the sole proprietor and Jean Robinson as his resident Texas agent. Anderson submitted financial assurance in the form of a letter of credit at the time of his last renewal. Anderson's Organization Report is currently active.

Anderson designated himself as the operator of the Posey P5 well by filing a Commission Form W-1 (Application for Permit to Drill, Deepen, Plug-Back or Re-Enter) on September 16, 1999. Permit No. 487644 was issued for the well on October 7, 1999. Anderson also filed a Commission Form W-2 (Oil Well Potential Test, Completion, or Recompletion Report and Log) on December 15, 2000. The Posey P5 Well was permitted as an injection well on April 28, 2000. An amended permit was issued on

March 27, 2002.

Anderson designated himself as the operator of the Posey P2 well by filing a Commission Form W-1 on November 22, 1999. Permit No. 489716 was issued for the well on the same date. Anderson also filed a Commission Form W-2 on December 15, 2000. The Posey P2 Well was permitted as an injection well on April 28, 2000. An amended permit was issued on March 27, 2002.

Commission records show that the subject wells were drilled in January 2000 with production casing set on January 17th. Commission inspections on February 21, 2000, July 14, 2000, September 8, 2000, October 30, 2000, December 19, 2000, February 28, 2001, April 6, 2001, May 21, 2002 and November 6, 2002 observed open reserve pits for both wells. Commission inspections on March 13, 2003 and August 14, 2003 observed that both pits were located in plowed fields, and that dirt had sloughed into the pits. A District Office email communication on October 23, 2003 observed that rain and repeated plowing of the field had caused the pits to be “little more than depressions in the ground.” It was further observed that both areas remained capable of pooling water. A final District Office inspection report on February 4, 2004 found the pit near the Posey P2 well could still be easily seen and would pool water. The condition of the pit near the Posey P5 well was not discussed other than the statement that the pit was not dewatered and backfilled.

Enforcement contended that Anderson was required to properly close the reserve pits within one year after completing drilling operations. Enforcement argued that Commission inspections and photographs one year after drilling operations were completed show that Anderson failed to properly close the reserve pits as required by Commission Rule 8(d)(4)(G)(i)(I). Enforcement urged that the failure to properly close the pits within one year after drilling operations ended posed a threat of unpermitted discharges which could result in the contamination of surface or subsurface waters. Enforcement further urged that Anderson should be required to properly close both pit areas, even though the pits are now partially filled with soil through erosion and farming.

Anderson did not dispute that it is the designated operator of the subject lease and that he maintained and used both reserve pits in association with drilling operations for the two Posey wells. However, Anderson claimed that he hired a contractor who properly closed the pits shortly after drilling operations concluded. Anderson claimed that the “pits” observed by Commission personnel were actually natural washouts caused by erosion on the sloped area of the field. However, Anderson did not submit documents to support the assertion that the pits were properly closed.

On February 11, 2004 Anderson submitted correspondence and photographs which he claimed depicted the current condition of the pits on February 11, 2004. The photographs depicted crops growing in the area where the pits were located. Anderson’s correspondence requested that any filling and compacting operations be coordinated with the harvest of the existing crops.

APPLICABLE AUTHORITY

Statewide Rule 8(d)(4)(G)(i)(I) requires a person who maintains or uses a reserve or mud circulation pit in conjunction with drilling a well to dewater, backfill and compact the pit within one year of the cessation of drilling operations.

EXAMINER'S OPINION

Anderson acknowledged that he maintained and used two reserve pits in association with drilling the two Posey wells. However, he claimed that he timely closed the pits as required by Commission rules, and that natural erosion must have washed out the pits. Anderson was unable to produce any documentation to support this claim. Commission inspections from February 2000 through December 2000 contradict Anderson's claim, as the reports note open reserve pits near both wells. The first notation in Commission inspection reports that the condition of the pits had changed was in March 2003, when Commission inspectors observed that the erosion and farming between November 2002 and March 2003 had partially filled the pits.

It is the examiner's determination that the Commission inspection reports and accompanying photographs demonstrate Anderson's noncompliance with the provisions of Rule 8(d)(4)(G)(i)(I) from January 17, 2001 through at least November 6, 2002. Accordingly, regardless of the current condition of the pits, administrative penalties of \$1,000 each for the two violations are appropriate.

The most recent Commission inspections suggest that at least one pit can still hold fluids, while the second pit is now limited to a slight depression in the soil. The parties both agree that the area is currently being used for farming. Accordingly, to avoid unnecessary destruction of the existing crops, it is the examiner's recommendation that Anderson be ordered to bring the area into compliance with Rule 8(d)(4)(G)(i)(I) by properly closing the pits no later than 90 days after the entry of the Final Order.

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, Max D. Anderson dba Black Jack Oil, (hereinafter "Anderson"), was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. Anderson appeared at the hearing and offered evidence.
2. The last Commission Form P-5 for Anderson was filed May 1, 2003. The report identified Max Anderson as the sole proprietor and Jean Robinson as his resident Texas agent. Anderson submitted financial assurance in the form of a letter of credit at the time of his last r e n e w a l . Anderson's Organization Report is currently active.

3. Anderson designated himself as the operator of the Posey (03756) Lease, Well No. P5 by filing a Commission Form W-1 (Application for Permit to Drill, Deepen, Plug-Back or Re-Enter) on September 16, 1999. Permit No. 487644 was issued on October 7, 1999. Anderson also filed a Commission Form W-2 (Oil Well Potential Test, Completion, or Recompletion Report and Log) on December 15, 2000. The Posey P5 Well was permitted as an injection well, pursuant to a permit issued by the Commission on April 28, 2000. An amended permit was issued on March 27, 2002.
4. Anderson designated himself as the operator of the Posey (03756) Lease, Well No. P2 by filing a Commission Form W-1 on November 22, 1999. Permit No. 489716 was issued on the same date. Anderson also filed a Commission Form W-2 on December 15, 2000. The Posey P2 Well was permitted as an injection well, pursuant to a permit issued by the Commission on April 28, 2000. An amended permit was issued on March 27, 2002.
5. Anderson failed to dewater, backfill and compact reserve pits maintained and used in association with drilling operations within one year after cessation of drilling operations.
 - A. Commission records show that the Posey P2 and P5 wells were drilled in January 2000 with production casing set on January 17, 2000.
 - B. Commission inspections on February 21, 2000, July 14, 2000, September 8, 2000, October 30, 2000, December 19, 2000, February 28, 2001, April 6, 2001, May 21, 2002 and November 6, 2002 observed open reserve pits for both wells.
6. The failure to properly close the reserve pits within one year after drilling operations ceased poses a threat of unpermitted discharges which could result in the contamination of surface or subsurface waters.

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. Anderson was the operator of the Posey (03756) Lease, Well Nos. P2 and P5, (RRC Permit Nos. P489716 & P487644), as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code from the commencement of drilling operations in January 2000 through the present.
4. Anderson has the primary responsibility for complying with Rule 8, as well as other applicable statutes and Commission rules relating to the Posey (03756) Lease, Well Nos. P2 and P5, (RRC

Permit Nos. P489716 & P487644).

5. The Posey (03756) Lease, Well Nos. P2 and P5, (RRC Permit Nos. P489716 & P487644) was out of compliance with Statewide Rule 8 from at least January 17, 2001 to November 6, 2002.
6. The reserve pits on the Posey (03756) Lease for Well Nos. P2 and P5 are not properly dewatered, backfilled, or compacted or otherwise in compliance with Statewide Rule 8 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
7. The documented violations committed by Anderson are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Max Anderson dba Black Jack Oil:

- 1) to bring the two reserve pit areas associated with drilling operations for Well Nos. P2 and P5 on the Posey (03756) Lease into compliance with Commission Rules within 90 days of the entry of a Final Order in this matter;
- 2) to pay an administrative penalty of TWO THOUSAND DOLLARS (\$2,000.00).

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner