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ENFORCEMENT ACTION AGAINST JORAN COMPANY (OPERATOR NO. 445465), AS A PARTNERSHIP, AND JOSEPH SAM FADDUOL AND RANDY HOLIFIELD INDIVIDUALLY FOR VIOLATIONS OF STATEWIDE RULES ON THE ECKHARDT (02862) LEASE, WELL NOS. 3, 4, AND 5; AND THE JOHNSON, R.J. (03186) LEASE, WELL NO. 1, RICHLAND FIELD, NAVARRO COUNTY, TEXAS

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**APPEARANCES**

**FOR MOVANT:**

Reese Copeland, Staff Attorney

**MOVANT:**

Railroad Commission of Texas -  
Enforcement Section

**FOR RESPONDENT:**

Randy Holifield

Joseph Sam Fadduol

**RESPONDENT:**

Joran Company

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**PROCEDURAL HISTORY**

**Original Complaint Served:**

December 20, 1999

**Hearing Held:**

March 14, 2002

**Heard By:**

Mark H. Tittel, Hearings Examiner

**Record Closed:**

April 30, 2002

**PFD Circulation Date:**

May 16, 2002

**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(s) 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 Eckhardt (02862) Lease, Well Nos. 3, 4, and 5, and the Johnson, R.J. (03186) Lease, Well No. 1, Richland Field, Navarro County, Texas;
2. Whether the respondent(s) 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 14;
3. Whether the respondent(s) should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such leases and wells; and
4. Whether any violations of Rule 14 by the respondent(s) should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534.

Randy Holifield and Joseph Sam Fadduol appeared at the hearing on behalf of the Joran Company and presented evidence. Reese Copeland, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Enforcement requests that the respondent be ordered to plug or place the subject wells in compliance with Commission Rules and be ordered to pay an administrative penalty in the amount of \$8,000.<sup>1</sup> The examiner recommends that the respondent be ordered to pay an administrative penalty in the amount of \$6,000.

**BACKGROUND**

The operator of a well must plug the well when required and in accordance with Statewide Rule 14(b)(2) and all other applicable Commission rules and regulations concerning plugging of wells. For wells transferred before September 1, 1997, the operator designated on the most recent Commission-approved Form P-4 is presumed to be the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation, although this presumption may be rebutted at a hearing called for the purpose of determining plugging responsibility.

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<sup>1</sup>Enforcement's Original Complaint contained a request for a penalty in the amount of \$10,500. However, at the hearing, Enforcement dropped its request for a \$2,500 penalty for an alleged Rule 8(d)(4)(G)(i) (III) violation which was subsequently corrected.

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. TEX. NAT. RES. CODE ANN. § 81.0531.

### **DISCUSSION OF THE EVIDENCE**

Enforcement's hearing file for this docket was admitted into evidence. The Joran Company (hereinafter "Joran") filed its most recent Form P-5 (Organization Report) on November 25, 1997, listing Randy Holifield and Joseph Sam Fadduol as partners. Joran filed P-4 Forms (Producer's Transportation Authority and Certificate of Compliance) effective May 1, 1996, designating itself as the operator of the Eckhardt (02862) Lease, Well Nos. 3, 4, and 5, and the Johnson, R.J. (03186) Lease, Well No 1, Richland Field, Navarro County, Texas (collectively referred to as the "subject wells" or "subject leases").

Commission District inspections reports on the subject leases made from January 5, 1998 through February 12, 2002 indicate that the wells are inactive. Commission records reflect zero reported production from the subject leases from January 1, 1997 through the present. Well No. 3 on the Eckhardt (02862) Lease is a permitted disposal well. The last reported disposal into Well No. 3 occurred on or before November 30, 1996. The subject wells have not been plugged, nor is there any Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) in effect. The estimated plugging cost to the State is \$23,400 for the Eckhardt (02862) Lease, Well Nos. 3, 4, and 5, and \$7,800 for the Johnson, R.J. (03186) Lease, Well No 1.

Joran did not dispute that the subject leases were in violation of Commission rules, nor did it offer any explanation for its failure to maintain the leases in compliance with such rules. Joran testified that it has been negotiating with another operator, SHWJ Oil & Gas Co., to take over the subject leases.<sup>2</sup> The record was left open after the hearing in order to allow Joran to provide evidence that the subject lease had been brought into compliance. On April 25, 2002, the Commission received Form P-4s for the subject leases signed by a representative of SHWJ Oil & Gas Co. The Form P-4s transferring the subject leases from Joran to SHWJ Oil & Gas Co. were approved by the Commission on April 30, 2002, effective February 1, 2002.

### **EXAMINER'S OPINION**

This enforcement proceeding was properly brought against the Joran Company, as a

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<sup>2</sup> Commission records reflect that SHWJ Oil & Gas Co. has an active Form P-5 and has filed financial security with the Commission in the form of a \$50,000 letter of credit.

partnership, as well as against Randy Holifield and Joseph Sam Fadduol individually, as they are listed as partners on the company's most recent Form P-5. By filing a Form P-5 and other paperwork, such as Form P-4s and Form P-1s, Randy Holifield and Joseph Sam Fadduol voluntarily placed themselves under the jurisdiction of the Railroad Commission and knew, or should have known, that they would be responsible for complying with all applicable rules and statutes.

As the subject wells have been inactive since at least January 1, 1997 and did not have plugging extensions in effect, Joran has violated Rule 14(b)(2), which provides that plugging operations on an inactive well shall be commenced within a period of one year after drilling or operations cease. Joran did not dispute that the subject wells were in violation of Statewide Rules or that it was the operator responsible for the subject wells until they were transferred to SHWJ Oil & Gas Co.

In assessing penalties, the Commission is required by statute to consider the respondent's previous history of violations, the seriousness of the violations, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. Joran has no history of previous violations. While there is no evidence in the record of pollution having occurred on the subject leases, abandoned and unplugged wellbores constitute a threat to usable quality groundwater due to the possibility of migrations or discharges of saltwater and other oil and gas wastes.

With respect to the issue of good faith on the part of the operator, although Joran was notified that the wells were not in compliance with Statewide Rules, the subject wells were not brought into compliance in a timely manner. Under the circumstances, the examiner believes that it is appropriate that Joran be assessed an administrative penalty. Enforcement staff recommends that Joran be assessed an administrative penalty in the amount of \$8,000, which consists of four Rule 14(b)(2) violations at \$2,000 per well. However, because the subject leases were ultimately brought into compliance after the hearing, the examiner believes that Joran is entitled to a modest reduction in the penalty amount and, consequently, recommends imposing an administrative penalty in the amount of \$6,000, which consists of four Rule 14(b)(2) violations at \$1,500 per well.

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. The Joran Company (hereinafter "Joran") was given at least 10 days notice of this proceeding by certified, first-class mail, at the address reported to the Commission on its most recent Form P-5 (Organization Report). Randy Holifield and Joseph Sam Fadduol appeared at the hearing on behalf of the Joran Company and presented evidence. Reese Copeland, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section.
2. Joran filed its most recent Form P-5 (Organization Report) on November 25, 1997, listing Randy Holifield and Joseph Sam Fadduol as partners.
3. Joran filed P-4 Forms (Producer's Transportation Authority and Certificate of Compliance) effective May 1, 1996, designating itself as the operator of the Eckhardt (02862) Lease, Well

- Nos. 3, 4, and 5, and the Johnson, R.J. (03186) Lease, Well No 1, Richland Field, Navarro County, Texas (collectively referred to as the “subject wells” or “subject leases”).
4. Commission District inspections reports on the subject leases made from January 5, 1998 through February 12, 2002 indicate that the wells are inactive. Commission records reflect zero reported production from the subject leases from January 1, 1997 through the present. Well No. 3 on the Eckhardt (02862) Lease is a permitted disposal well. The last reported disposal into Well No. 3 occurred on or before November 30, 1996.
  5. The subject wells have not been plugged, and there are no Form W-1Xs (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) in effect.
  6. The estimated plugging cost to the State is \$23,400 for the Eckhardt (02862) Lease, Well Nos. 3, 4, and 5, and \$7,800 for the Johnson, R.J. (03186) Lease, Well No 1.
  7. On April 25, 2002, the Commission received Form P-4s for the subject leases signed by a representative of SHWJ Oil & Gas Co. The Form P-4s transferring the subject leases from Joran to SHWJ Oil & Gas Co. were approved by the Commission on April 30, 2002, effective February 1, 2002.
  8. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
  9. The record does not reflect any previous violations by Joran of Commission rules.
  10. Joran has not demonstrated good faith since it failed to plug or otherwise place the subject leases into compliance in a timely manner after being notified of violations of Rule 14(b)(2) by the Commission’s District Office in Kilgore.

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Until February 1, 2002, the Joran Company, as a partnership, as well as partners Joseph Sam Fadduol and Randy Holifield individually, were the operators of the subject wells, as defined by Commission Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14(b)(2)] and Section 89.002 of the Texas Natural Resources Code. The Joran Company, as a partnership, as well as partners Joseph Sam Fadduol and Randy Holifield individually, are persons as defined by Commission Statewide Rule 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.69] and Chapters 85 and 89 of the Texas Natural Resources Code.

4. Until February 1, 2002, the Joran Company, as a partnership, and Joseph Sam Fadduol and Randy Holifield individually, had the primary responsibility for complying with Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14(b)(2)] and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject wells.
5. The subject wells were not in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14(b)(2)], or Chapters 85, 89 and 91 of the Texas Natural Resources Code from approximately January 1, 1998 to February 1, 2002.
6. The documented violations constitute acts deemed serious, 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 that the attached be order approved, requiring the Joran Company, as a partnership, as well as partners Joseph Sam Fadduol and Randy Holifield individually, within 30 days from the day immediately following the date this order becomes final, to pay an administrative penalty in the amount of **SIX THOUSAND DOLLARS (\$6,000)**.

Respectfully submitted,

Mark H. Tittel  
Hearings Examiner