

December 12, 2002

OIL & GAS DOCKET NO. 05-0230514

ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY GULFTEX OPERATING, INC. (OPERATOR NO. 338748) AS TO THE HEDRICK, J. L. (00965) LEASE, WELL NO. 1B, MITCHELL CREEK FIELD, HOPKINS COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Scott Holter, Staff Attorney

FOR RESPONDENT:

Lloyd Muennink, Attorney
Tim Borroughs
David York

MOVANT:

Enforcement Section of the Railroad Commission

RESPONDENT:

Gulftex Operating, Inc.
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AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Complaint Filed:	June 12, 2002
Hearing Held:	August 29, 2002
Heard By:	Mark Helmueller, Hearings Examiner Thomas Richter, Technical Examiner
PFD Circulated:	September 23, 2002
Hearing Reopened:	October 14, 2002
Amended PFD Circulated:	December 12, 2002
Record Closed:	November 11, 2002
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 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 46 on the Hedrick, J. L. (00965) Lease, Well No. 1B, Mitchell Creek Field, Hopkins County, Texas;
2. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding such lease and well;
3. Whether any violations of Rule 46 by the respondent should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534.

PROCEDURAL SUMMARY

The respondent, Gulftek Operating, Inc., hereinafter "Gulftek", appeared at the original hearing and offered evidence. Scott Holter, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section's hearing file for this docket was admitted into evidence. At the original hearing, staff recommended that respondent Gulftek be ordered to pay an administrative penalty of \$9,500 broken down as follows: \$3,000 for one corrected violation of Rule 46(a); \$2,000 for one corrected violation of Rule 46(g)(1); \$2,000 for one corrected violation of Rule 46(j)(2); and \$2,500 in enhancements based on Commission Final Orders in Oil & Gas Docket Nos. 06-0219028 and 06-0220477 which together required Gulftek to pay \$16,000 in administrative penalties for violations of Rule 14(b)(2). The examiners agreed with the recommended administrative penalty in a Proposal for Decision issued and circulated to the parties on September 23, 2002.

The Commission at conference on October 21, 2002, directed the examiners to reopen the hearing in this matter to further consider the issue of the amount of the recommended administrative penalty. Additionally, the examiners issued a notice of hearing in *Oil & Gas Docket No. 05-0232814: Commission Called Hearing To Show Cause Why Gulftek Operating, Inc.'s Injection Permit Should Not Be Canceled and the J. L. Hedrick Lease Well No. 1B, Be Shut-in, Mitchell Creek Field, Hopkins County, Texas.*

On November 4, 2002, a hearing was held in both dockets. Enforcement entered a limited appearance at the hearing to address only those matters at issue in the Enforcement Docket. In the Commission called hearing, Gulftek submitted evidence in support of its position that its injection permit should not be canceled which also was relevant to the issue of whether Gulftek had violated Rule 46(a). The examiners' advised the parties that the evidence would be considered in both dockets upon proper authentication by Gulftek and after providing Enforcement with the opportunity

to respond to the new evidence.

With respect to the administrative penalties, Gulftek argued that based on the new evidence submitted, that the administrative penalties in this docket should be reduced to a total of \$1,000. Enforcement maintained its original administrative penalty recommendation, but noted that an additional enhancement of \$7,000 for a total administrative penalty of \$16,500 would be appropriate if the examiners determined that Gulftek's conduct was reckless.

The examiners find that the additional evidence presented by Gulftek shows that there was no violation of Rule 46(a) and recommend dismissal of that violation. The examiners also find that Gulftek violated Rule 46(g)(1) and recommend an administrative penalty of \$2,000 for that violation. The examiners further find that Gulftek violated Rule 46(j)(2) and recommend an administrative penalty of \$2,000 for that violation. Enforcement presented no evidence to support a conclusion that Gulftek acted recklessly with respect to these two violations of Rule 46 and therefore the examiners do not recommend any enhanced penalty for reckless conduct. Finally, the examiners recommend an additional \$2,500 in enhancements to the recommended administrative penalties based on Commission Final Orders in Oil & Gas Docket Nos. 06-0219028 and 06-0220477. The total recommended administrative penalty is \$6,500.

FACTUAL SUMMARY

Gulftek became the operator of the Hedrick, J. L. (00965) Lease, Well No. 1B, (hereinafter "subject lease" and "subject well") by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on February 10, 1999 which was approved by the Commission as of March 30, 1999.

On March 5, 2001, Gulftek filed Commission Forms H-1 (Application to Inject Fluid into a Reservoir Productive of Oil and Gas) and H-1A (Injection Well Data) in which Gulftek sought to convert the subject well to an injection well for the disposal of produced salt water in the interval between -4517 feet and -4522 feet. Gulftek originally requested maximum injection pressure of 1800 psig and a maximum daily injection volume of 500 barrels. The application states that 2,928 feet of tubing remained in the well and that the packer would be set at -2,923 feet. The application was signed by Matthew Davis, Agent on February 23, 2001.

On March 28, 2001, the Commission notified Gulftek that the proposed packer setting depth was too high and needed to be revised to within 100 feet of the injection interval. On April 9, 2001, Gulftek filed an amended Form H-1A revising the depth for setting the packer to -4,420 feet, but still noting that only 2,928 feet of tubing remained in the well. A handwritten note on the Form H-1 filed by Gulftek, apparently entered by the well analyst from the Commission's Environmental Services Section, indicated that as of April 11, 2001, David York should be contacted for any questions. A handwritten note also crossed out the requested maximum injection pressure of 1,800 psig and wrote in 1,000 psig.

On April 19, 2001, the Commission issued Permit No. F15874 to inject fluid into a reservoir

productive of oil and gas for the J.L. Hedrick Well No. 1B subject to special conditions: 1) limiting the maximum daily volume of injected fluids to 500 barrels; 2) limiting the maximum pressure to 1,000 psig; and 3) limiting injection to the interval between -4,517 feet and -4,522 feet. Standard conditions of the permit included but were not limited to the requirements: 1) that injection be through tubing set on a packer; 2) that the District Office be notified before running tubing and setting the packer; 3) that the District Office be notified before beginning any workover or remedial operations; 4) that the District Office be notified before conducting any required pressure tests or surveys; and 5) that the well pass an annulus pressure test before being used for injection.

APPLICABLE AUTHORITY

Statewide Rule 46(a) provides: “Any person who engages in fluid injection operations in reservoirs productive of oil, gas, or geothermal resources must obtain a permit from the commission. Permits may be issued when the injection will not endanger oil, gas, or geothermal resources or cause the pollution of freshwater strata unproductive of oil, gas, or geothermal resources. Permits from the commission issued before the effective date of this section shall continue in effect until revoked, modified, or suspended by the commission.”

Statewide Rule 46(g)(1) provides: “Wells drilled or converted for injection shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 200 feet below the known top of cement behind the long string casing but in no case higher than 150 feet below the base of usable quality water. For purposes of this section, the term "tubing" refers to a string of pipe through which injection may occur and which is neither wholly nor partially cemented in place. A string of pipe that is wholly or partially cemented in place is considered casing for purposes of this section.”

Statewide Rule 46(j)(2) provides: “Mechanical integrity of each injection well shall be demonstrated in accordance with provisions of paragraphs (4) and (5) of this subsection prior to initial use. In addition, mechanical integrity shall be tested periodically thereafter as described in paragraph (3) of this subsection.”

Enforcement’s Position

Enforcement contends that Gulftex violated three separate provisions of Rule 46 on November 14, 2001. A Commission Inspection on November 14, 2001, found the well injecting with a wellhead pressure gauge reading of 1440 psig. The operator scheduled a mechanical integrity test for November 19, 2001. The Commission’s inspector went to the lease to witness the test, but was advised that the well was to be disconnected from the injection line.

A subsequent Commission inspection on November 27, 2001 found that the packer had been set at approximately -2900 feet. Gulftex obtained additional tubing for the well and reset the packer at the depth specified in its permit of -4420 feet subsurface on November 29, 2001. Gulftex submitted a mechanical integrity test for the well which it claimed to have conducted on November 29, 2001. The test was rejected because Gulftex failed to contact the District Office 48 hours prior

to the test and because Gulftex did not submit the required pressure information.

A District Office inspection of the inactive well on February 7, 2002, found that there was pressure on both the casing and the tubing, leading the inspector to conclude that there was downhole communication in the well. Gulftex was informed of this problem by correspondence on February 15, 2002 which required Gulftex to fix the downhole communication problem. A successful mechanical integrity test was also required. This test was witnessed by the Commission on March 8, 2002. The well passed and was cleared to commence injection operations.

Enforcement argues that Gulftex violated Rule 46(a) by injecting at a pressure above the permitted rate. A photograph taken by the inspector on November 14, 2001, shows that the pressure gauge on the wellhead had a reading of 1440 psig. Enforcement argues that the permit specifies the maximum injection pressure of 1,000 psig, and that injecting at a higher pressure constitutes injection without the required permit.

Enforcement further alleges that Gulftex violated Rule 46(g)(1) because it used the well for injection on November 14, 2001 with the packer set at an improper depth. Enforcement contends that it was determined by the inspection on November 27, 2001 that the packer was set too high. Enforcement notes that this violation was subsequently corrected by the operator after the packer was set to the proper depth.

Finally, Enforcement contends that Gulftex violated Rule 46(j)(2) because it used the well for injection on November 14, 2001, without conducting the required annulus pressure test. Enforcement notes that a test validated by the Commission was not performed on the well until March 8, 2002.

At the reopened hearing on November 4, 2002, Enforcement presented no new evidence. In closing argument, Enforcement did not change its recommendation for the penalties for the violations of Rule 46 and enhancements for prior dockets. However, Enforcement did argue that if the examiners determined that Gulftex acted recklessly, that an enhancement of an additional \$7,000 would be appropriate. With such an enhancement, the total recommended administrative penalty would be \$16,500.

Respondent's Position

Gulftex claims that it worked with the District Office to resolve all of the alleged violations and that it was advised by correspondence from the District Office dated February 15, 2002, that "Your compliance within 60 days of this letter will eliminate any further action." Gulftex claims that the clean bill of health it obtained in March 2002 should have precluded the current action from going forward. Enforcement's response notes that the letter referred only to separate violations of Rule 46 observed by the District Office in the inspection on February 7, 2002, and did not address the prior violations in November 2001.

With respect to the violation of Rule 46(a), Gulftex claims that the gauge on the well was

broken. GulfTex argues that it immediately replaced the gauge and the new gauge showed that the actual injection pressure was between 700 and 900 psig. GulfTex further claims that if the injection on November 14, 2001 was over 1000 psig that the lines would have “blown out” because they were not rated for injection under a higher pressure.

At the hearing on November 4, 2002, GulfTex brought the broken pressure gauge to the hearing and provided it to the examiners for inspection. The gauge displayed a pressure reading of 1100 psig in the hearing room. GulfTex asserts that the gauge was clearly broken, and that it did not violate Rule 46(a) because subsequent pressure readings with an accurate gauge showed that the actual injection pressure was between 700 and 900 psig. GulfTex also submitted an affidavit from its pumper, Jerry Savage, who confirmed that the gauge presented at the hearing was the same gauge he removed from the well on November 14, 2001.

As to the violation of Rule 46(g)(1), GulfTex contends that it was unaware that the packer was set improperly until November 27, 2001 when it was pulling the well in preparation for a mechanical integrity test. GulfTex claims that equipping the well for disposal was handled by Ralph Gillespie, an independent consultant that GulfTex later determined was dishonest and terminated his services. GulfTex submitted a copy of the original Form W-2 (Completion Report) for the well which showed the well was equipped with 4492 feet of tubing. GulfTex originally argued that it did not reenter the well prior to equipping it for injection and never removed any of the original tubing. GulfTex now believes that Gillespie sold 1500 feet of tubing which was supposed to be installed in the subject well and pocketed the proceeds.

Finally, with respect to the violation of Rule 46(j)(2), GulfTex presented documentation that it performed a mechanical integrity test on the well on November 29, 2001 and phone records which it contended showed that it contacted the Commission 48 hours prior to the November 29, 2001 test. GulfTex claims that its actions on November 14, 2001 were a test to determine whether the well would accept fluids and that it was not engaged in active injection at that time. GulfTex also urges that Commission policy allows an operator to test injectivity before it incurs the expense of performing a mechanical integrity test.

EXAMINERS’ OPINION

GulfTex has offered several excuses for its conduct, one of which seeks to avoid any responsibility for the alleged violations. Essentially, GulfTex believes that its compliance with the terms of the only District Office letter it received on February 15, 2002, should absolve it of any responsibility for the violations observed on November 14, 2001.

The examiners reject this argument. The letter of February 15th clearly refers only to the inspection of February 7, 2002 and not to the prior violations observed in November 2001. Further, providing an operator written notification of the opportunity to bring violations into compliance is not a prerequisite to the pursuit of an action seeking administrative penalties.

GulfTex also attempted to justify its conduct for each of the alleged violations. While GulfTex

does establish by a preponderance of evidence that it did not violate Rule 46(a), close examination shows that GulfTex' excuses do not provide a basis for dismissing the violations of Rule 46(g)(1) and 46(j)(2) or reducing the requested administrative penalty for these two violations.

With respect to the violation for injecting at pressures above the permitted amount, GulfTex claims that the gauge measuring the pressure was broken and that a properly operating gauge shows that the pressure was not at the high level observed on November 14, 2001. In the original hearing, GulfTex provided no evidence to support its testimony that the gauge was broken. The examiners concluded in the prior proposal for decision that GulfTex testimony did not rebut the physical evidence obtained by the Commission inspector on November 14, 2001, including the photograph showing a 1440 psig pressure on the gauge. The examiners further noted that the testimony of a busted gauge provided a possible explanation, but that the preponderance of the evidence established that GulfTex injected fluids at pressures above the limits set in the permit in violation of Rule 46(a).

Inspection of the gauge shows that it inaccurately reports 1100 psig even when it is not under pressure. This additional evidence substantiates the previously unsupported testimony raised by GulfTex. Based on this additional new evidence, it is the examiners conclusion that the preponderance of evidence now shows that GulfTex did not inject fluids at pressures above the limits set in the permit in violation of Rule 46(a). The examiners therefore recommend that this violation be dismissed.

GulfTex asserts with respect to the violation of Rule 46(g)(1) concerning the improper setting of the packer, that it was unaware that the packer was set improperly due to the nefarious conduct of its former field operations manager and the incompetence of its regulatory consultant. The examiners reject this excuse. GulfTex admitted that it hired both consultants and that they were working on its behalf. GulfTex cannot evade responsibility for the violation based on the fact that it did not properly monitor its contractors. Accordingly, the examiners' find that GulfTex remains responsible for the violation of Rule 46(g)(1) as the packer was not set at the required depth on November 14, 2001 when the well was first found to be injecting fluids.

Finally, with respect to the violation of Rule 46(j)(2), GulfTex admits that no mechanical integrity test was performed before November 14, 2001, but claims that it was conducting a test to determine whether the well would accept fluids. GulfTex further claims that such injectivity tests are routinely performed without obtaining permission from the Commission. GulfTex further argues that such testing is appropriate in order to avoid the unnecessary expense of performing a mechanical integrity test on a well.

GulfTex provides no authority which permits such testing without first obtaining Commission approval, and the examiners question whether in fact a routine test was being performed on November 14, 2001. However, regardless of whether GulfTex was actually testing the well, it is clear GulfTex did not contact the Commission to advise it was testing the well and did not request authorization from Commission staff to perform the test. No condition in the permit allows for such testing. At the very least, absent any authority under existing Commission rules, or in the permit, GulfTex should have requested and obtained authorization to perform the alleged test. Absent such

authorization, the examiners conclude that Gulftek was in violation of Rule 46(j)(2) as it was admittedly injecting fluids in the well on November 14, 2001 without performing the required mechanical integrity test.

Accordingly, the examiners recommend that respondent Gulftek be ordered to pay an administrative penalty of \$6,500 broken down as follows: \$2,000 for one corrected violation of Rule 46(g)(1); \$2,000 for one corrected violation of Rule 46(j)(2); and \$2,500 in enhancements based on Commission Final Orders in Oil & Gas Docket Nos. 06-0219028 and 06-0220477.

Based on the record in this docket, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent Gulftek Operating, Inc., (“Gulftek”) was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. Respondent appeared at the scheduled time and place for the hearing by and through its attorneys and presented evidence.
2. Gulftek became the operator of the Hedrick, J. L. (00965) Lease, Well No. 1B, (hereinafter “subject lease” and “subject well”) by filing a Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) on February 10, 1999 which was approved by the Commission as of March 30, 1999.
3. On March 5, 2001, Gulftek filed Commission Forms H-1 (Application to Inject Fluid into a Reservoir Productive of Oil and Gas) and H-1A (Injection Well Data) in which Gulftek sought to convert the subject well to an injection well for the disposal of produced salt water in the interval between -4517 feet and -4522 feet. Gulftek originally requested maximum injection pressure of 1800 psig and a maximum daily injection volume of 500 barrels. The application states that 2,928 feet of tubing remained in the well and that the packer would be set at -2,923 feet. The application was signed by Matthew Davis on February 23, 2001.
4. On March 28, 2001, the Commission notified Gulftek that the proposed packer setting depth was too high and needed to be revised to within 100 feet of the injection interval.
5. On April 9, 2001, Gulftek filed an amended form H-1A revising the depth for setting the packer to -4,420 feet, but still noting that only 2,928 feet of tubing remained in the well. A handwritten note on the Form H-1, indicated that as of April 11, 2001, David York should be contacted for any questions. A handwritten note also crossed out the requested maximum injection pressure of 1,800 psig and wrote in 1,000 psig.
6. On April 19, 2001, the Commission issued Permit No. F15874 to inject fluid into a reservoir productive of oil and gas for the J. L. Hedrick Well No. 1B subject to special conditions: 1)

limiting the maximum daily volume of injected fluids to 500 barrels; 2) limiting the maximum pressure to 1,000 psig; and 3) limiting injection to the interval between -4,517 feet and -4,522 feet.

7. Standard conditions of the permit included, but were not limited to, the requirements: 1) that injection be through tubing set on a packer; 2) that District Office be notified before running tubing and setting the packer; 3) that District Office be notified before beginning any workover or remedial operations; 4) that District Office be notified before conducting any required pressure tests or surveys; and 5) the well pass an annulus pressure test before being used for injection.
8. Gulftex did not conduct a mechanical integrity test on the subject well prior to November 14, 2001.
9. A Commission Inspection on November 14, 2001, found the well injecting salt water.
10. The injection observed on November 14, 2001 did not exceed the permitted level of 1000 psig. While a photograph taken by the inspector shows that the pressure gauge had a reading of 1440 psig, additional evidence shows that the 1440 psig reading was not an accurate indication of the actual injection pressure.
 - a. A gauge installed on the well after November 14, 2001 had pressure readings below the permitted level.
 - b. The original gauge inaccurately reports 1100 psig even when it is not under pressure.
11. A subsequent Commission inspection on November 27, 2001 found that the packer had been set at approximately -2900 feet. Gulftex obtained additional tubing for the well and reset the packer at the depth specified in its permit of -4420 feet on November 29, 2001.
12. Any injection or disposal of fluid down a wellbore in a manner inconsistent with the terms of a permit could be a potential source of pollution.
13. Commission Final Orders in Oil & Gas Docket Nos. 06-0219028 and 06-0220477 together required Gulftex to pay a \$16,000 in penalties for violations of Rule 14(b)(2).

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Gulftek is the operator of the subject lease, as defined by Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14) and Section 89.002 of the Texas Natural Resources Code and is a person as defined by 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. As operator, Gulftek has the primary responsibility for complying with Rule 46 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.46) 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. On November 14, 2001, Gulftek engaged in unpermitted disposal activities in violation of Statewide Rule 46(g)(1) and 46(j)(2) by injecting fluids in the well without complying with the conditions of Permit No. F15874.
6. A preponderance of the evidence does not show that Gulftek engaged in unpermitted disposal activities in violation of Statewide Rule 46(a).
7. The violation of Statewide Rule 46(a) should be dismissed.
8. The documented violations committed by Gulftek constitute acts deemed serious and a hazard to the public health pursuant to TEX. NAT. RES. CODE ANN. § 81.0531(c).

RECOMMENDATION

The examiners recommend that the above findings and conclusions be adopted and the attached order approved, dismissing the violation of Statewide Rule 46(a) and further requiring that Gulftek Operating, Inc., within 30 days from the day immediately following the date this order becomes final, pay an administrative penalty in the amount of SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00).

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Thomas Richter
Technical Examiner