

May 8, 2003

OIL & GAS DOCKET NO. 06-0218358

ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY DUCHARME, EUGENE (OPERATOR NO. 229679) ON THE TEXAS STATE UNIT (04223) LEASE, WELL NOS. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 43, 44, 45, 47, 48, 49, AND 50, LONGWOOD (GOODLAND LIME) FIELD, HARRISON COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Lowell Williams, Staff Attorney

FOR RESPONDENT:

Eugene DuCharme

MOVANT:

Enforcement Section of the Railroad Commission

RESPONDENTS:

Eugene DuCharme

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Date of Request for Action:	February 5, 1998
Original Hearing Held:	November 16, 2000
Interim Order Entered:	May 8, 2001
Motion to Enter Final Order Filed:	January 27, 2003
Request for Hearing Filed:	February 27, 2003
Hearing Held:	April 9, 2003
PFD Prepared By:	Mark Helmueller Hearings Examiner
PFD Circulated:	May 8, 2003
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 a Final Order should be entered requiring the respondent to plug or otherwise place in compliance with Statewide Rule 14 the Texas State Unit (04223) Lease, Well Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 43, 44, 45, 47, 48, 49, and 50, Longwood (Goodland Lime) Field, Harrison 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 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said lease and wells;
4. Whether any violations of Rule 14 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.

The respondent, Eugene DuCharme, (hereinafter “DuCharme” or “respondent”), appeared at the hearing by telephone, and offered evidence. Lowell Williams, 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 hearing, Enforcement contended that Respondent had failed to comply with the terms of an Interim Order entered by the Commission on May 8, 2001, under which respondent was required to plug 6 wells every six months until all the wells were plugged. Enforcement contended that respondent plugged 2 wells prior to the entry of the Interim Order, plugged any additional 6 wells by November 2001, but despite several extensions of time, failed to plug any of the remaining 32 wells. Enforcement recommended that respondent be ordered to immediately place the remaining 32 unplugged wells in compliance with Commission rules.

Respondent contended that equipment repairs and the need to drill new producing wells prevented him from plugging wells according to schedule. Respondent claimed that he would be able to return to the plugging schedule in approximately six months.

The examiner recommends that a Final Order be entered requiring respondent to plug the wells and further recommends that respondent be ordered to pay an administrative penalty of \$64,000.00

INTERIM ORDER

The Interim Order entered by the Commission on May 8, 2001, a copy of which is attached as Exhibit A, provided: 1) that DuCharme plug at least 6 wells every 6 months; 2) that the wells to be plugged in any 6 month period be identified by DuCharme and the Commission's District Office prior to the commencement of the six month period; 3) that all Commission rules and regulations applicable to the proper plugging of abandoned wells be complied with by DuCharme, including but not limited to, providing the Commission District Office with the required notice so that a Commission inspector may witness any plugging operations; 4) that the failure to plug the identified wells, and if the parties do not either agree that the failure should be excused, DuCharme fails to plug an equal number of substitute wells, or DuCharme's failure to pay a penalty in the amount of \$1000.00 for each unplugged well, would allow the entry of a Final Order assessing an administrative penalty in the amount of \$2000.00 multiplied by the total number of remaining unplugged wells; 5) that DuCharme could request that this docket be reopened and a hearing conducted to consider evidence on the issue of whether any failure to perform should be excused prior to the entry of the Final Order; 6) that economic hardship would not be considered as evidence excusing the failure to perform agreed plugging operations at any requested hearing; and 7) that if DuCharme properly plugged the remaining wells, the docket would be dismissed.

AUTHORITY

The operator of a well must plug a well when required and in accordance with Commission rules. For Form P-4s filed prior to September 1, 1997, the operator, for purposes of plugging liability, is presumed to be the person who assumed responsibility for the physical operation and control of a well as shown on the approved Form P-4 designating that person as operator.

DISCUSSION OF THE EVIDENCE

The alleged violations in this case involve the failure of DuCharme to plug the wells on the Texas State Unit (04223) Lease, Well Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 43, 44, 45, 47, 48, 49, and 50, Longwood (Goodland Lime) Field, Harrison County, Texas, in compliance with Statewide Rule 14. All of the wells are located within the waters of Caddo Lake on the Louisiana-Texas border.

DuCharme assumed responsibility for the physical operation and control of the subject wells on or before August 12, 1979, by filing a Form P-4 for the lease which was approved by the Commission on October 12, 1979.

Respondent does not have a current Commission Form P-5 (Organization Report) in Texas, and last filed an organization report on April 25, 1996. At the time of filing his last organization report, respondent filed financial assurance in the form of a \$100.00 annual fee. Respondent currently operates as Gemini Explorations, Inc. in the State of Louisiana. Gemini's operations include several wells located in the Louisiana area of Caddo Lake.

The subject wells have been inactive for a period in excess of one year. Commission records indicate that production from the subject wells ceased on or before April 30, 1994.

Enforcement submitted an affidavit showing that 8 wells identified in the original complaint are now plugged, Well Nos. 1, 2, 10, 11, 13, 14, 15, and 39. The last well was plugged on December 18, 2001. No wells have been plugged since that time.

Respondent admits that no wells have been plugged since December 2001, but claims that he had to rebuild several barges which were then used to drill additional wells in Louisiana. Respondent acknowledges that he obtained approximately \$1,000,000 in funding for his current drilling program, but that all of those funds were used to repair equipment and to finance the current drilling operations. He claims that his drilling program will be complete within 6 months, and that he will then be able to resume plugging the remaining 32 wells. He contends that if the Commission provides him with some additional time, he would fulfill his plugging obligations.

EXAMINER'S OPINION

Respondent does not contest his responsibility to plug the subject wells, and admits that he has not complied with the terms of the Interim Order. Under the terms of the Interim Order, the Commission may enter a Final Order requiring any unplugged wells to be plugged immediately and may further order the payment of an administrative penalty of \$2,000 per well for each unplugged well.

It is undisputed that respondent has failed to plug any wells in the last 17 months. Respondent's own testimony indicates that he is now devoting his energy to drilling new wells to the exclusion of his plugging obligations of the remaining 32 wells on the Texas State Unit Lease. Under these facts, the examiner sees no option but to recommend the entry of a Final Order immediately requiring the remaining wells to be plugged, and imposing an administrative penalty of \$64,000.00.

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 Eugene DuCharme (hereinafter "DuCharme" or "respondent") was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to his most recent Form P-5 (Organization Report) addresses. Respondent appeared at the scheduled time and place for the hearing by telephone and presented evidence at the hearing.
2. Respondent does not have a current Commission Form P-5 (Organization Report) in Texas, and last filed an organization report on April 25, 1996. At the time of filing his last organization report, respondent filed financial assurance in the form of a \$100.00 annual fee.

3. Respondent designated himself to the Commission as the operator of the Texas State Unit (04223) Lease, Well Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 43, 44, 45, 47, 48, 49, and 50, Longwood (Goodland Lime) Field, Harrison County, Texas, by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective August 1, 1979 and approved by the Commission October 12, 1979.
4. The subject wells have been inactive for a period in excess of one year. Commission records indicate that production from the subject wells ceased on or before April 30, 1994. Commission records further show that any plugging extensions for any of the wells expired on or before April 1, 1997.
5. An Interim Order in this docket was entered by the Commission on May 8, 2001. The Interim Order included the following provisions:
 - A. DuCharme plug at least 6 wells every 6 months;
 - B. The wells to be plugged in any 6 month period be identified by DuCharme and the Commission's District Office prior to the commencement of the six month period;
 - C. All Commission rules and regulations applicable to the proper plugging of abandoned wells be complied with by DuCharme, including but not limited to, providing the Commission District Office with the required notice so that a Commission inspector may witness any plugging operations;
 - D. Upon the failure to comply with the terms of the Interim Order a Final Order may be entered assessing an administrative penalty in the amount of \$2000.00 multiplied by the total number of remaining unplugged wells;
 - E. DuCharme could request that this docket be reopened and a hearing conducted to consider evidence on the issue of whether any failure to perform should be excused prior to the entry of the Final Order;
 - F. Economic hardship would not be considered as evidence excusing the failure to perform agreed plugging operations at any requested hearing; and
 - E. If DuCharme properly plugged the remaining wells, the docket would be dismissed.
6. Respondent has plugged Well Nos. 1, 2, 10, 11, 13, 14, 15, and 39. The last well was plugged on December 18, 2001. No wells have been plugged since that time. The remaining 32 wells on the Texas State Unit Lease have not been properly plugged.

7. 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.
8. The record does not reflect any previous violations by respondent of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice of hearing was issued to the appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Respondent is the operator of the Texas State Unit (04223) Lease, as defined by Commission Statewide Rule 14 and Section 89.002 of the Texas Natural Resources Code.
4. As operator, respondent has the primary responsibility for complying with Rule 14 and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Texas State Unit (04223) Lease.
5. Respondent failed to comply with the Interim Order entered by the Commission on May 8, 2001. For the failure to plug wells in compliance with its terms, the Interim Order provides for an administrative penalty of \$2,000.00 per well for each remaining unplugged well.
6. Well Nos. 3, 4, 5, 7, 8, 9, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 43, 44, 45, 47, 48, 49, and 50, on the Texas State Unit (04223) Lease are not properly plugged or otherwise in compliance with Commission Statewide Rule 14, or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The wells have been out of compliance since on or before April 1, 1997.
7. The documented violations committed by respondent 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 operator, Eugene DuCharme, be ordered to plug the following wells in compliance with Statewide Rule 14, on the Texas State Unit (04223) Lease, Well Nos. 3, 4, 5, 7, 8, 9, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 43, 44, 45, 47, 48, 49, and 50, Longwood (Goodland Lime) Field. The examiner further recommends that consistent with the terms of the Interim Order that Eugene DuCharme be ordered to pay an administrative penalty of \$64,000.00.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner