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**ENFORCEMENT ACTION AGAINST TEXEAST OPERATING CO., INC. FOR VIOLATIONS OF STATEWIDE RULES ON THE BROGDEN, J.B. (10879) LEASE, WELL NO. 1, B-J (SUB-CLARKSVILLE) FIELD, IN WOOD COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT:**

Elaine Moore, Staff Attorney

**MOVANT:**

Enforcement Section, Railroad Commission of Texas

**FOR RESPONDENT:**

Tim Burroughs, President

**RESPONDENT:**

Texeast Operating Co., Inc.

**PROCEDURAL HISTORY**

<b>Date of Request for Action:</b>	February 3, 2000
<b>Notice of Hearing:</b>	April 5, 2002
<b>Hearing Held:</b>	May 16, 2002
<b>Record Closed:</b>	July 15, 2002
<b>Heard By:</b>	Scott Petry, Hearings Examiner
<b>PFD Circulation Date:</b>	January 29, 2003
<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 Texeast Operating Co., Inc. should be required to plug or otherwise place in compliance with Statewide Rule 14, the Brogden, J.B. (10879) Lease, Well No. 1 ("subject lease"/"subject well"), B-J (Sub Clarksville) Field, in Wood 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; and,
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.

Elaine Moore, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Tim Burroughs appeared on behalf of respondent, Texeast Operating Co., Inc. (hereinafter "Txeast" or "respondent"). The Enforcement Section's hearing file was admitted into evidence.

In its Original Complaint for Docket No. 06-0224422, the staff recommended that Texeast be ordered to properly plug the well and to pay an administrative penalty of \$4,000.00, consisting of \$3,000.00 for one violation of Statewide Rule 14(b)(2) and an enhancement of \$1,000.00 for a prior violation of Commission rules. The examiner agrees with the recommendation regarding culpability and recommends that the respondent be ordered to plug the subject well. The administrative penalty for the Statewide Rule 14(b)(2) violation, however, should be reduced to \$2,000.00 to reflect current Commission penalty guidelines. Accordingly, the examiner recommends a total penalty of \$3,000.00.

### **BACKGROUND**

Unplugged and unused well bores constitute a potential danger to the public's health and safety and must be plugged when mandated by the Commission's rules. Statewide Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed on or after September 1, 1997, is

responsible for properly plugging the well in accordance with applicable Commission rules and regulations.

Statewide Rule 14 further provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed before September 1, 1997, 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.

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 \$10,000.00 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, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531.

### **EVIDENCE AND POSITIONS OF PARTIES**

Texeast designated itself operator of the subject well by filing a Railroad Commission Form P-4 with an effective date of June 1, 1996 and an approval date of March 25, 1996. Official notice was taken of Texeast's P-5 Organization Report, which is currently delinquent and reflects the assertion of Texeast's representative, Mr. Burroughs, that Texeast has closed its operations. Texeast last filed a Form P-5 on April 9, 1997.

In the hearing, Texeast asserted that another party, Greer Operating ("Greer"), had assumed responsibility for the subject well and that Greer is therefore responsible for the violation asserted in this docket. A Form P-4, signed by representatives of Texeast and Greer, was submitted on May 20, 1997, but the Form P-4 was rejected by the Commission on May 13, 1999 because Greer did not have an "active" organization status.

#### **A. Enforcement's Position and Evidence**

Enforcement argues that Texeast has acted in bad faith in failing to correct Commission rule violations and that an administrative penalty should be imposed. Enforcement contends that the Form P-4 was never transferred to Greer and that the responsibility therefore remained with Texeast. In support of the asserted Statewide Rule 14(b)(2) violation, Enforcement submitted Commission inspection reports made on December 21, 1998, January 21, 1999, March 16, 1999, April 7, 1999, May 19, 1999, September 10, 1999, October 28, 1999, December 7, 1999, January 21, 2000, and April 11, 2002,

which show that the subject well was shut in and not producing. Additionally, Commission records reflect either zero production activity, or an absence of production reports, since at least June 1995. Accordingly, Enforcement contends that the subject well has been inactive for over 7 years. The estimated cost to plug the subject well is \$8,500.00.

Enforcement also asserted that no workovers, re-entries, or subsequent operations had taken place on the subject well within the twelve months prior to the filing of the complaint and that no W-1X applications were in effect for the subject well.

### **B. Texeast's Position and Evidence**

Texeast asserted that the liability for the subject well should have been placed with another operator but that the Commission's delay in either approving or rejecting the Form P-4 for the subject well caused the violation at hand. More specifically, Texeast asserts that a Form P-4 was signed on April 28, 1997 that would have transferred the subject well to Greer. The Form P-4 from Texeast to Greer was signed by representatives of Texeast and Greer, but was rejected by the Commission on May 13, 1999. Separately, however, a different Form P-4 designating a new *gatherer* was *approved* by the Commission on June 16, 1997. This separate, second Form P-4 for the new gatherer listed Greer as the current operator even though Greer was not, in fact, the approved current operator.

Texeast further asserted that the Commission's delay in either approving or rejecting the P-4 transfer to Greer prevented it from rectifying the situation. According to Texeast's representative, Tim Burroughs, Greer was an active operator when the Form P-4 was filed, but that by the time the Commission acted on the P-4, Greer had gone out of business. By the time Texeast was "notified of the problem" in early 1999, it was too late to fix the problem with a Form P-4 transfer.

The respondent also submitted two affidavits as late-filed exhibits. Neither of the affidavits were objected to by Enforcement. In its first affidavit, Texeast submitted an affidavit from one of its subcontractors which states:

My name is Larry Stall. I am a sub-contractor in East Texas who works for various operators. In May 1997, I witnessed Delzon Ellenberg operate a swabbing truck on the Brogden 1-A well and Brogden 1-B well. Delzon Ellenberg swabbed the Brogden wells to initiate a pilot-swabbing program in East Texas.

Despite being titled "Affidavit", however, it should be noted that the above referenced letter was not dated or notarized. The affidavit submitted by Texeast's representative, Mr. Burroughs, however, was dated and notarized and states:

...On May 14<sup>th</sup> 1997, a signed P-4 by me of Texeast Operating Inc. and James Greer of

Greer Operating Inc. was submitted to the RRC at which time Greer Operating Inc. was an active approved P-5 Operator. During this time James Greer and Delzon Ellenberg became partners and all equipment removed and sold. They then later swabbed the Brogden 1-A and the 1-B wells to initiate a pilot-swabbing program in East Texas. In May of 1999, two years later, Texeast Operating Inc. was notified that the P-5 from James Greer and Greer Operating Inc. had been declared in active [sic].

Texeast asserted that the swabbing of these wells meant that Greer entered the wellbores and exercised control over the subject well. Texeast again reiterated that the Commission's failure to timely process the Form P-4 created the situation where the violations could occur.

Additionally, Texeast referenced correspondence that was included in Enforcement's file and that discussed prior attempts by Texeast to have the Form P-4 transferred to Greer. It was Texeast's testimony that it thought the transfer of the well had been processed and that it was unaware of the P-4 rejection until it was notified of the Rule 14(b)(2) violation in early January 1999.

### **C. Official Notice**

Finally, the examiner took official notice of Commission records in this case. These official records included W-10 Oil Well Status Reports for both Greer and Texeast. The W-10 reports filed by Greer for the period April to September 1997 show that it maintained five leases:

<b><u>Field Name &amp; Lease Name</u></b>	<b><u>Lease No.</u></b>	<b><u>Well No.</u></b>
B-J (Sub-Clarksville) Brogden, R.E.	10402	2
Manziel (Paluxy -A-) Pittman, E.N.	05851	5
Quitman Chrietzburg, J.C.	01338	3
Quitman, NW. (Paluxy) Chrietzburg, J.C.	03468	3
Winnsboro, SE. (Sub-Clarksville) Jacobs, J.L.	05762	1

The W-10 reports filed by Greer for April to September 1998 were substantially the same, but did not include the Pittman, E.N. (05851) or Chrietzburg, J.C. (01338) Leases.

The W-10 reports filed by Texeast, however, for the period April to September 1997 show that it maintained the following:

<u>Field Name &amp; Lease Name</u>	<u>Lease No.</u>	<u>Well Nos.</u>
B-J (Sub-Clarksville) Brogden, J.B..	10879	1
Earl Lee Earl Lee Unit	04396	11, 12, 21, 22, 23, 24, 32, 33, 41, 51, and 61
Forest Hills (Harris Sand) Pipkins, Lillian	10436	1
Manziel Hudson, MA et al Unit	00841	1
Manziel Hudson, MA Unit -A-	00842	1
Manziel Hudson, MA Unit -B-	04718	2

Of particular note on these Forms W-10 for this period was the notation under "Date Tested" following each well. The test date for the subject well was April 1, 1998, as noted under the heading, "Date Tested". On the Pipkins and Burks leases, however, the notation "sold" appeared under "Date Tested".

The Forms W-10 for Texeast for 2000 and 2001 listed only one well - the Brogden, J.B. (10879) Lease, Well No. 1. The Form W-10 for 2001, however, referred to the lease name as Brogden, R.E., but had the Lease No. as 10879, which is for the Brogden, J.B. Finally, the Form W-10 for 2002 listed the following:

<u>Field Name &amp; Lease Name</u>	<u>Lease No.</u>	<u>Well Nos.</u>
B-J (Sub-Clarksville) Brogden, J.B..	10879	1
Trice (Woodbine) Natural Gas & Oil	02118	1A & 1R
Collins	11318	1

### EXAMINER'S OPINION

Texeast's arguments seem to be primarily two-fold. The first argument is that the Railroad

Commission is to blame for the current situation because it took too long to reject the Form P-4 that would have transferred the well to Greer Operating. Had the Commission acted promptly, it was argued, the well would have been in Greer's name and the current violations would not have occurred. The second argument of Texeast is that, even though the Form P-4 was not approved, the evidence points to Greer and its partners exercising physical operation and control of the subject well. Texeast asserts that its affidavits and testimony show that Greer is the true operator of the subject well. Further, Texeast asserts that, because Greer purchased the lease from Texeast, Texeast does not have the right to operate the subject well.

These arguments, however, are not supported by appropriate evidence and Texeast remains the operator responsible for the proper plugging of the subject well. In addressing its argument that the Commission is at fault for the current situation, it is noted that the language of the Form P-4 which attempted to transfer the well from Texeast to Greer in 1997 is illustrative. When Mr. Burroughs, for Texeast, filled out the Form P-4 there was the following statement directly above his signature:

I understand, as Previous Operator, that designation of the above named operator as Current Operator is *not effective until this certificate is approved by the Commission* (emphasis added).

This Form P-4 was never approved by the Commission and, therefore, the regulatory responsibility remained with Texeast.

The evidence also suggests that Texeast was aware that it remained responsible for the subject well earlier than it suggested at hearing. Mr. Burroughs asserted that Texeast had no knowledge that the well remained in its name until the denial letter of May 13, 1999 was issued. This assertion, however, is contradicted by Texeast's own filings. The Form W-10 filed by Texeast for the period April to September of 1997 (that was dated October 26, 1998) indicates that Texeast or its agents had knowledge that it still carried this well on its Oil Well Status Report before May 1999. Under the heading "Date Tested", this Form W-10 lists "sold" for the Pipkins and Burks leases, but lists an April 1, 1998 test for the subject well. Therefore, it seems that Texeast had knowledge of its being the responsible operator at least as far back as April 1, 1998 and possibly earlier.

Additionally, the submission of the Form P-4 that was approved for *the gatherer only* does not impart the plugging responsibility upon Greer. While it is true that the Form P-4 should not have been processed with Greer's name as the current operator, this second Form P-4 explicitly states, under subheading "14. PURPOSE OF FILING", that the P-4 was for the purpose of changing the gatherer only. This second Form P-4 does not state that it is for a change of operator.

In any case, it is incumbent upon the operator to check with the Commission to insure that

Forms P-4 have, or have not, been approved. Texeast's failure to follow up and to make sure that the P-4 had indeed been approved has caused the problems in this docket, not the Commission's handling of the Form P-4.

Txeast's second argument is that the evidence points to Greer exercising physical operation and control of the subject well. This argument is also unconvincing. Texeast asserts that its affidavits and testimony show that Greer is the true operator of the subject well, but neither affidavit specifically refers to Greer exercising physical control over *this* well. The examiner would note that the affidavits<sup>1</sup> both reference the swabbing of the "Brogden 1-A and 1-B wells". Commission W-10 records, however, indicate that, while Greer maintained a Brogden lease, this lease was the *R.E. Brogden (10402) Lease*, and not the *J.B. Brogden (10879) Lease*. Further, Commission records only show one well on the J.B. Brogden (10879) Lease and this well is designated as Well No. 1 and is not designated as either Well No. 1-A or Well No. 1-B. Commission records reflect only one well on the subject lease, not two.

In other words, the evidence submitted by Texeast does *not* definitively point to the subject well. Assuming, for the sake of argument, however that the evidence really did point to the subject well, it is still not definitive enough to establish control. The attempted Form P-4 was submitted to the Commission on May 20, 1997, and the materials submitted do not elaborate on the purported swabbing that also took place in May 1997. It just states that the swabbing took place. The "evidence" of Greer's operating the well is susceptible to more than one interpretation. For instance, it is conceivable that the swabbing of the well, if it took place at all,<sup>2</sup> was attempted before the Form P-4 was signed, and the swabbing could have been a test to determine if Greer really wanted to take over the well. Without more specificity, however, the evidence submitted by Texeast does not establish control over the subject well by Greer.

Finally, Texeast's assertions that it did not have the legal right to keep the well in compliance are also without merit. Texeast asserts that it assigned its rights to Greer and that it could not maintain the lease. This assertion ignores the fact that regulatory compliance is independent of contractual obligations. The Texas Natural Resources Code, § 89.044 of the Texas Natural Resources Code, clearly states that, "...the operator or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged." It is well settled that a person may retain plugging responsibility for a well even though

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<sup>1</sup>The examiner notes that the "affidavit" by subcontract Stall was not notarized and, therefore, cannot adequately be referred to as an "affidavit". Nevertheless, it was not objected to by Enforcement and became part of the record.

<sup>2</sup>It should be noted that there is no record on file with the Commission of a swabbing test being done on the subject well.

that person may no longer have an ownership interest in it.

Texeast signed the P-4, is the operator of record with the Commission, and is, therefore, responsible for complying with all applicable Commission rules and regulations regarding the subject well. The evidence points to the conclusion that Texeast knew, or should have known, that the subject well remained its responsibility. The totality of the evidence fails to rebut the presumption of operatorship and fails to show that anyone other than Texeast is the proper operator for the subject well. Therefore, it should now be required to carry out its obligations and plug the subject well.

### **EXAMINER'S RECOMMENDATION**

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. Texeast Operating Co., Inc. ("Texeast" or "respondent") 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. Tim Burroughs, president of Texeast, appeared at the scheduled time and place for the hearing and presented evidence.
2. The most recent approved P-5 for Texeast was filed April 7, 1997. Texeast paid a fee of \$4,200.00 as financial assurance at the time of its last renewal. Timothy Paul Burroughs is listed as the President, Jack Burroughs is listed as the Vice-President, and Patrick Eskew is listed as the Treasurer. Texeast's Organization Report is currently listed as "delinquent".
3. Texeast designated itself operator of the Brogden, J.B. (10879) Lease, Well No. 1 ("subject lease/subject well"), B-J (Sub Clarksville) Field, in Wood County, Texas, by filing a Railroad Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective June 1, 1995, approved March 25, 1995.
4. The subject well is currently inactive and has been inactive for more than 12 months.
  - a. Commission inspections of the Brogden Lease were conducted on December 21, 1998, January 21, 1999, March 16, 1999, April 7, 1999, May 19, 1999, September 10, 1999, October 28, 1999, December 7, 1999, January 21, 2000, June 28, 2000, and April 11, 2002. At the time of each of the inspections, the Brogden well was shut in and not equipped to produce.
  - b. There has not been any reported production for the Brogden well since on or before May 31, 1995.

5. Greer Exploration Corp. ("Greer") and Texeast signed a two signature Form P-4 to transfer the Brogden, J.B. (10879) Lease on May 20, 1997.
6. On May 13, 1999, the Commission informed Greer Exploration Corp. and Texeast Operating Co., Inc. that the Form P-4 change of operator had not been processed and that it could not be processed until the subject well had been brought into compliance with Commission rules. The regulatory responsibility remained with Texeast.
7. A second Form P-4 designating a new gatherer was submitted and approved by the Commission on June 16, 1997. This Form P-4 improperly listed Greer as the operator and was approved for the change of gatherer only.
8. The estimated cost to the State for plugging the subject well is \$8,500.00.
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 wellbores constitute a cognizable threat to the public health and safety because of the potential for pollution.
10. There are no W-1X plugging extensions currently in effect for the subject well.
11. Texeast has not demonstrated good faith since it failed to plug or otherwise place the subject well in compliance after being notified of the violation by the district office.
12. The estimated cost to plug the subject wells is \$8,500.00.
13. The respondent has a prior violation of Commission rules in Oil & Gas Docket No. 06-0214908. Docket No. 06-0214908 concerned a violation of Statewide Rule 14(b)(2). The final order was entered on May 25, 1999, and directed the respondent to pay a \$3,000.00 penalty.

#### 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. Texeast is the operator of the Brogden, J.B. (10879) Lease, Well No. 1, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Texeast has the primary responsibility for complying with Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14) and with Chapter 89 of the Texas Natural Resources Code as well as

other applicable statutes and Commission rules relating to the subject well.

5. Well No. 1 on the Brogden, J.B. (10879) Lease is not properly plugged or otherwise in compliance with Commission Statewide Rule 14 (16 T.A.C. §3.14) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. Well No. 1 on the Brogden, J.B. (10879) Lease has been out of compliance from May 31, 1996 to the present.
7. Texeast's failure to timely plug the subject well when required is a violation of Title 3 of the 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(b)(2) relating to safety and/or the prevention or control of pollution.
8. The documented violation committed by Texeast is 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. It is recommended that respondent Texeast be ordered to pay an administrative penalty in the amount of THREE THOUSAND DOLLARS (\$3,000.00) [consisting of \$2,000.00 for one violation of Statewide Rule 14(b)(2) and a \$1,000.00 enhancement for a prior violation] and to plug the subject well.

Respectfully submitted,

Scott C. Petry  
Hearings Examiner  
Office of General Counsel