

**ENFORCEMENT ACTION AGAINST GULFPORT OIL & GAS, INC. (OPERATOR NO. 338635) FOR VIOLATIONS OF STATEWIDE RULES ON THE Z.K. TALIAFERRO (04711) LEASE, WELL NO. 1, PONE (BASIL PETTIT) FIELD, RUSK COUNTY, TEXAS, AND ON THE M.L. TURNER (12009) LEASE, WELL NO. 1, PONE (PAGE) FIELD, RUSK COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Susan German, Staff Attorney, Enforcement Section of the Railroad Commission of Texas

**FOR RESPONDENT:**

J.R. Hood, Gulfport Oil & Gas

**PROCEDURAL HISTORY**

<b>Date of Request for Action:</b>	August 22, 2000
<b>Hearing Held:</b>	January 10, 2002
<b>Record Closed:</b>	February 13, 2002
<b>Heard By:</b>	Scott Petry, Hearings Examiner
<b>PFD Circulation Date:</b>	May 28, 2002
<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 Gulfport Oil & Gas, Inc. (“Gulfport” or “respondent”) violated Statewide Rule 3 [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.3] and/or Statewide Rule 8 [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.8] and/or Statewide Rule 14 [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14] on the Z.K. Taliaferro (04711) Lease, Well No. 1, Pone (Basil Pettit) Field, Rusk County, Texas, and/or on the M.L. Turner (12009) Lease, Well No. 1, Pone (Page) Field, Rusk County, Texas;
2. Whether the respondent 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 such leases and wells; and
4. Whether any violations of Statewide Rule 3 and/or Statewide Rule 8 and/or Statewide 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 (Vernon 2001).

The respondent requested, and was given, the opportunity to represent its interests via a telephonic hearing. Mr. J.R. Hood, a field superintendent for the respondent, represented Gulfport in this matter. Enforcement Staff Attorney Susan German appeared representing the Railroad Commission of Texas. Enforcement submitted the hearing file for this docket into the record. The Enforcement division recommends that the respondent be ordered to place the subject wells into compliance and to pay an administrative penalty of \$6,500, consisting of two Rule 14(b)(2) violations at \$2,000 each, one Rule 8(d)(1) violation at \$2,000, and two Rule 3(a) violations at \$250 each. The examiner endorses the Enforcement attorney’s recommendation.

**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.

Rule 8 provides that persons disposing of oil and gas wastes by any method must have a permit to do so unless authorized by subsections (d)(3) or (e) of Rule 8, or under Rules 9, 46, or 98. These wastes are defined to include materials to be disposed of or reclaimed, which have been generated in connection with activities associated with the exploration, development, and production of oil or gas.

Rule 3 provides that signs must be posted at each well site and that they must show the name of the property, operator, and other pertinent information. Signs as outlined by Rule 3 provide contact information and speed the containment and remediation of any potential violations or emergencies.

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, pursuant to Tex. Nat. Res. Code Ann. § 81.0531.

### **DISCUSSION OF THE EVIDENCE**

Gulfport designated itself as operator of the Z.K. Taliaferro (04711) Lease, Well No. 1, Pone (Basil Pettit) Field, in Rusk County, Texas, by means of a Form P-4, effective February 1, 1999 and approved May 13, 1999. Gulfport also designated itself as operator of the M.L. Turner (12009) Lease, Well No. 1, Pone (Page) Field, Rusk County, Texas, by means of a Form P-4, effective February 1, 1999 and approved April 20, 1999. Production from the Taliaferro Well No. 1 ceased on or before October 31, 1997. Production from the M.L. Turner Well No. 1 ceased on or before February 28, 1999.

#### **I. Enforcement's Position & Evidence**

In Enforcement's case in chief, the Staff Attorney admitted into evidence the hearing file and copies of related records. In regards to the asserted Rule 3(a) violations on the Taliaferro Lease, Enforcement submitted inspection reports dated July 26, 1999, October 4, 1999, October 26, 1999, February 7, 2000, May 5, 2000, June 1, 2000, July 14, 2000, August 16, 2000, February 2, 2001, and February 27, 2001 that showed the information required by Rule 3(a)(1) was incorrect. Additionally, inspection reports dated April 21, 1999, September 13, 1999, November 4, 1999, February 7, 2000, February 18, 2000, March 10, 2000, May 17, 2000, July 14, 2000, July 24, 2000, and February 2, 2001 were introduced to show that Rule 3(a) was also violated on the M.L. Turner Lease. These reports showed that the required signs at the M.L. Turner Lease also displayed incorrect information. Rule 3(a)(1)

specifically delineates the identification that is to be placed at the principle entrance of the property and requires that the signs show the name of the property, the name of the operator, and the number of acres in the property.

In regards to the asserted violations of Statewide Rule 8(d)(1), Enforcement submitted inspection reports which indicate that an unauthorized discharge of oil measuring 10' x 10' had occurred on the M.L. Turner lease on or before February 7, 2000. Inspection reports for March 10, 2000, July 24, 2000, and February 2, 2001 also showed that no remediation of the discharge had occurred. Enforcement stated that the violation is serious and a hazard to the public, as the discharge may contaminate the surface and surface or subsurface waters and may affect the health of humans and animals.

In regards to the alleged violations of Statewide Rule 14(b)(2), Enforcement submitted Commission inspection reports dated May 5, 2000, June 1, 2000, July 14, 2000, August 16, 2000, February 2, 2001, and February 27, 2001, and production reports with either zero reported production or no production reported at all after October 31, 1997, to show that the Z.K. Taliaferro Well No. 1 had been inactive for greater than one year. Enforcement also asserted that Gulfport become responsible for the Rule 14(b)(2) violation on February 1, 1999, the effective date of its Form P-4. Respondent filed a W-1X plugging extension for this well, but the extension expired April 14, 2000.

On the M.L. Turner lease, Enforcement submitted inspection reports dated February 7, 2000, February 18, 2000, March 10, 2000, July 24, 2000, and February 2, 2001, and production reports with either zero reported production or no production reported at all after February 28, 1999, to show that Well No. 1 had been inactive for more than one year. Enforcement argued that the respondent became responsible for the M.L. Turner lease on February 1, 1999, the effective date of its Form P-4.

Additionally, Enforcement stated that no workovers, re-entries, or subsequent operations have taken place on any of the subject wells within the twelve months prior to the mailing of the complaint. Commission records were admitted into the record to show that the total estimated cost to plug both subject wells is \$19,000.00.

## **II. Respondent's Position & Evidence**

In Gulfport's case in chief, the respondent argued that disputes with disgruntled landowners precipitated many of the problems in this docket and prevented the respondent from correcting many of the violations.

In terms of the alleged Rule 3(a) violations, the respondent stated that signs had been made and placed at the subject leases, but that they had been repeatedly taken by unknown parties. The

respondent also testified that the correspondence from the District Office did not say what information was incorrect on the signs. When the Enforcement attorney informed the respondent that the signs did not display the current operator, the respondent indicated that the signs *had* the correct operator, but that they were “peeled” off in such a way that the previous operator’s name was the one shown. Respondent stated that the signs were designed to “stick” on to the prior sign and that they were of such construction that the signs would have to be intentionally taken off. Respondent also testified that the landowners on both leases were “disgruntled” and that Gulfport could not gain access to the properties.

In terms of the alleged Rule 8(d)(1) violation on the M.L. Turner lease, the respondent stated that Gulfport had inherited the spill from the prior operator. Respondent stated that it had assumed responsibility for the spill, but that the notification from the District Office had been received within the last 60 days and Gulfport did not have enough time to correct the violation. Gulfport stated that the M.L. Turner lease was located in a wet and difficult area to access and that the respondent was willing to correct the violation if the weather and the terrain permitted. Additionally, the respondent stated that it had attempted to remediate this spill on a prior occasion but that it was forced off of the property by the landowner.

The respondent further asserted that problems with disgruntled landowners and a change in Gulfport’s management were also partially to blame for the Rule 14(b)(2) violations. On the Taliaferro lease, the respondent argued that it was unable to plug the subject well because the landowner had changed the lock and had taken other measures to prevent access to the property, including cutting down a tree to block the main road and calling out the deputy sheriff to make respondent’s employees leave the property.

The situation on the Taliaferro lease was further complicated by the departure of a former vice-president for Gulfport, Jack Durland. When problems arose concerning the plugging of the subject well, the landowner purportedly told Gulfport to talk to his attorney from that point forward. Any progress that had been made between the landowner’s attorney and Mr. Durland over this issue was apparently lost when Mr. Durland left the company. Finally, the respondent stated that the landowner had laid claim to the well equipment and that tubing had been stolen from the lease.

As previously mentioned, the respondent stated the well on the M.L. Turner lease was in a wet and difficult area to reach. The respondent stated that attempts were made to plug the well in May 2001, but that the road was impassable. According to the response given with regard to the Rule 3(a) violation, the landowner for the M.L. Turner lease also refused admittance, but the respondent stated that it could correct the Rule 14(b)(2) violation on the M.L. Turner lease if it was given sufficient time and the weather allowed for the area to dry out.

The respondent requested that the record be kept open for approximately six months to allow for it to properly plug the wells. The record was kept open by the examiner for 30 days from the date

of the hearing so that the respondent could provide additional evidence and so that the respondent could advise the examiner of any progress it had made towards achieving compliance. The respondent was further advised that if it had made substantial progress that the examiner would take it under advisement and would consider extending the time that the record was kept open. Despite the assertions from the respondent that it would submit additional evidence and would make attempts to rectify the situation, nothing was forwarded to the examiner within the 30 day period or any time after the record was closed.

### EXAMINER'S OPINION

The respondent, Gulfport, put forth various reasons for lack of compliance with Commission rules on the subject leases, including disgruntled landowners, theft, and a change in management. While these factors may have made it more difficult for the respondent to fulfil its legal duties, they do not absolve Gulfport of its responsibility to do so.

As noted in Enforcement's First Amended Complaint, Statewide Rule 14(c)(1) clearly states:

The entity designated as the operator of a well specifically identified on the most recent commission-approved operator designation form filed on or after September 1, 1997, is responsible for *properly plugging the well in accordance with this section and all other applicable commission rules and regulations concerning plugging of wells* (emphasis added).

Gulfport has had responsibility for the subject wells since the effective date of its Forms P-4, February 1, 1999. The respondent signed the Forms P-4 and acknowledged that it was responsible for the subject wells, but has failed to follow through on its obligations.

In regard to the Rule 14(b)(2) violations, the respondent stated that both physical obstructions and disgruntled landowners prevented it from fulfilling its obligations and that, with respect to the Taliaferro lease, a sheriff's officer had told it to get off of the property. The landowner, however, is not responsible for the plugging of the subject wells. The respondent is. As the Texas Natural Resources Code points out, ownership is not a prerequisite for plugging. Section 89.044 of the Texas Natural Resources Code 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 that person does not have an ownership interest in it. The respondent's proper course of action would have been to apply the law and follow through with its obligations to plug the Taliaferro well when its W-1X plugging extension expired on April 14, 2000. This should have been done with the help of law enforcement if necessary.

Plugging the well pursuant to §89.044 of the Texas Natural Resources Code, with the help of law

enforcement if necessary, is applicable to the M.L. Turner lease as well. In addition to the disgruntled landowner issue, the respondent argued that it could not plug the subject well on the M.L. Turner lease because of unfavorable weather conditions. This argument also lacks merit. With regard to both the Rule 14(b)(2) violation and the Rule 8(d)(1) violation, the respondent has had more than ample time to bring the M.L. Turner lease into compliance. The M.L. Turner lease has been out of compliance with Rule 14(b)(2) since at least February 28, 2000 and out of compliance with Rule 8(d)(1) since at least February 1, 1999.<sup>1</sup>

Additionally, the file submitted by the Enforcement section included at least ten distinct inspection reports for each of the subject wells for the Rule 3 violations alone. These reports ranged in dates from July 1999 to February 2001. It is the respondent's responsibility to maintain the wells in compliance and, while a theft of signs might explain why signs are incorrect on one occasion, theft does not explain the lack of signs over such a long period of time and does not excuse the respondent's lack of vigilance.

The respondent's inaction since becoming responsible for the subject wells and its refusal to plug the wells as mandated by the Texas Natural Resources Code §89.011 created a situation where pollution could occur. The respondent was afforded many opportunities to bring both the Z.K. Taliaferro and M.L. Turner leases into compliance, but failed to act. The respondent signed the P-4, is the operator of record with the Commission, and is responsible for complying with all applicable Commission rules and regulations. Therefore, for the reasons enumerated above, it is my recommendation that the respondent be ordered to place the subject well into compliance and to pay an administrative penalty of \$6,500.00, consisting of two Rule 14(b)(2) violations at \$2,000 each, one Rule 8(d)(1) violation at \$2,000, and two Rule 3(a) violations at \$250 each.

#### **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. Gulfport Oil & Gas, Inc. ("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. Respondent participated in the scheduled hearing through a telephonic connection.

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<sup>1</sup> Respondent testified that the spill was "inherited" from the previous operator but that it had "assumed responsibility" for the spill. The statement by the respondent was admitted under oath and was made part of the record. February 7, 2000, however, is the date the spill was first noted in an inspection report by Railroad Commission personnel.

2. At the time of the hearing, respondent had an active P-5 Organization Report on file with the Commission; however, when the Proposal for Decision was issued, Commission records indicated that the respondent's P-5 Organization Report had changed to "delinquent" status.
3. Respondent designated itself as operator of both the Z.K. Taliaferro (04711) Lease, Well No. 1, in Rusk County, Texas, and the M.L. Turner (12009) Lease, Well No. 1 in Rusk County, Texas ("subject wells"), by means of two Form P-4's, each with an effective date of February 1, 1999 and an approval date of May 13, 1999.
4. Well No. 1 on the Z.K. Taliaferro (04711) lease has been inactive for a period in excess of one year. The well ceased production on or before October 31, 1997 and the most recent W-1X extension expired on April 14, 2000.
5. Well No. 1 on the M.L. Turner (12009) lease has been inactive for a period in excess of one year. The well ceased production on or before February 28, 1999.
6. There are no Rule 14(b)(2) extensions currently in effect for the subject wells.
7. The signs identifying the M.L. Turner (12009) lease and the Z.K. Taliaferro (04711) lease contained incorrect information. The signs on both leases failed to indicate Gulfport as the current operator.
8. An unauthorized discharge of oil measuring approximately 10' x 10' occurred on the M.L. Turner lease on or before February 1, 1999.
9. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
10. An unauthorized discharge or disposal of oil, saltwater, basic sediment or other oil and gas waste is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.
11. 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 probability of pollution.
12. Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance after being notified of the violations by the district office on August 6, 1999, October 11, 1999, May 15, 2000, June 13, 2000, and August 22, 2000.
13. The estimated cost to the State of plugging the subject wells is \$19,000.
14. The record does not reflect any previous violations by the respondent of Commission rules.



**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. Gulfport Oil & Gas, Inc. is the operator of the subject wells, as defined by Commission Statewide Rule 14 (16 TEX. ADMIN. CODE §3.14) and §89.002 of the Texas Natural Resources Code.
4. As operator, the respondent may enter the subject leases for the purpose of plugging the subject well pursuant to Commission rules and §89.044 of the Texas Natural Resources Code.
5. The respondent has the primary responsibility for complying with Rule 3 (16 TEX. ADMIN. CODE §3.3), Rule 8 (16 TEX. ADMIN. CODE §3.8), Rule 14 (16 TEX. ADMIN. CODE §3.14), and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject wells.
6. The subject wells are not properly plugged or otherwise in compliance with Commission Statewide Rule 14 (16 TEX. ADMIN. CODE §3.14) or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The subject well on the Z.K. Taliaferro (04711) lease has been out of compliance since its W-1X extension expired on April 14, 2000 and the subject well on the M.L. Turner (12009) lease has been out of compliance since at least February 28, 2000.
7. The subject leases are not in compliance with Commission Statewide Rule 3 (16 TEX. ADMIN. CODE §3.3). The Z.K. Taliaferro (04711) lease has been out of compliance with this rule since at least July 26, 1999 and the M.L. Turner (12009) lease has been out of compliance since at least April 21, 1999.
8. The M.L. Turner (12009) lease is not in compliance with Commission Statewide Rule 8 (16 TEX. ADMIN. CODE §3.8). The M.L. Turner (12009) lease has been out of compliance with this rule since at least at least February 1, 1999.
9. The documented violations committed by Gulfport Oil & Gas, Inc. are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c) (Vernon 2001).

**RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order be approved, requiring the operator, Gulfport Oil & Gas, Inc., within 30 days from the date this order becomes final, to plug the subject wells in accordance with the requirements of Statewide Rule 14 and to remediate the spill on the M.L. Turner lease in compliance with Statewide Rule 8. It is my further recommendation that the operator, Gulfport Oil & Gas, Inc., be ordered to pay an administrative penalty of \$6,500.00, consisting of two Rule 14(b)(2) violations at \$2,000 each, one Rule 8(d)(1) violation at \$2,000, and two Rule 3(a) violations at \$250 each.

Respectfully submitted,

Scott Petry  
Hearings Examiner