

**ENFORCEMENT ACTION AGAINST DON B. WILLIAMSON (OPERATOR NO. 925910)
FOR VIOLATIONS OF STATEWIDE RULES ON THE MEADOR, R. C. (13641) LEASE,
WELL NOS. 1 AND 2, CAYUGA (WOODBINE) FIELD, ANDERSON COUNTY, TEXAS**

APPEARANCES:

FOR MOVANT:

Scott Holter
Staff Attorney

MOVANT:

Legal Enforcement Section
of the Railroad Commission

FOR RESPONDENT:

Don B. Williamson

RESPONDENT:

Don B. Williamson

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:

September 14, 2001

DATE CASE HEARD:

February 11 and 25, 2002

HEARD BY:

James M. Doherty, Hearings
Examiner

RECORD CLOSED:

February 25, 2002

PFD CIRCULATION DATE:

March 11, 2002

CURRENT STATUS:

Protested

STATEMENT OF THE CASE

This hearing was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent, Don B. Williamson should be required to plug or otherwise place in compliance with Statewide Rule 14 [16 TEX. ADMIN. CODE ("T.A.C.") §3.14] the Meador, R. C. (13641) Lease, Well Nos. 1 and 2, Cayuga (Woodbine) Field, Anderson County, Texas;
2. Whether 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 plug or otherwise place the subject wells in compliance with Statewide Rule 14;

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3. Whether respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, and Statewide Rule 3(a)(2), by failing to post, at all times, an identification sign at the well site of the Meador, R. C. (13641) Lease, Well No. 1, showing the name of the property, the name of the operator, and the well number;
 4. Whether respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such wells;
 5. Whether any violations of Rules 3(a)(2) and 14(b)(2) by 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).

Respondent Don B. Williamson (“Williamson”) appeared representing himself, in person at the initial hearing and by telephone at the continued hearing. Williamson presented his own testimony and the telephonic testimony of George Barnes, President of Rockbottom Oil, G. P., L.L.C. 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. The staff recommends that a \$4,218.75 penalty be assessed against Williamson. The examiner recommends that a \$4,200.00 penalty be assessed and that Williamson be ordered to plug or otherwise place the subject wells in compliance with Commission Statewide Rules.

BACKGROUND

The operator of a well must properly plug the well when required and in accordance with the Commission’s rules. *See* TEX. NAT. RES. CODE ANN. §89.011(a). The Commission’s Statewide Rule 14(b)(2) provides that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed.

Rule 14(c)(2) provides that as to any well for which the most recent Commission-approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well. The presumption of responsibility may only be rebutted at a hearing called for the purpose of determining plugging responsibility.

Statewide Rule 3(a)(2) requires that each oil, gas, or geothermal resource well be clearly identified, at all times, by the posting at the well site of a sign showing the name of the property, the name of the operator, and the well number.

If a person violates provisions of Title 3 of the Texas Natural Resources Code or a Commission rule pertaining to safety or the prevention or control of pollution, the person may be

assessed a civil penalty by the Commission not to exceed \$10,000.00 a day for each violation. In determining the amount of the penalty, the Commission must consider the respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. *See* TEX. NAT. RES. CODE ANN. §81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement's Position and Evidence

Enforcement submitted evidence that respondent Williamson is a sole proprietor. Williamson's form P-5 Organization Report is delinquent, Williamson having last filed a form P-5 on August 15, 2000. A form P-4 submitted by Enforcement shows that Williamson was designated operator of the Meador, R. C. (13641) Lease ("subject lease"), Well Nos. 1 and 2 ("subject wells"), effective on November 5, 1996.

Through production records and a certification by the Commission's Secretary, Enforcement proved that oil production on the subject lease ceased on or before March 1, 1998. Enforcement also showed that Well No. 1 was completed on September 20, 1995, and permitted as a saltwater injection well on June 30, 1998. Commission records of injection activity showed no report of injection into Well No. 1 following the issuance of the permit. Well No. 2 was completed on October 2, 1996.

Enforcement also submitted District Office inspection reports for the subject lease dated June 21, 1999, July 26, August 21, October 5, October 23, December 6, and December 29, 2000, and February 14, October 26, and December 6, 2001. For the period from June 21, 1999, through February 14, 2001, these inspection reports showed that Well No. 1 was missing the identification sign required by Statewide Rule 3(a)(2). The inspection report dated October 26, 2001, showed that the required sign had been posted. These inspection reports also showed that throughout the period from June 21, 1999, to the date of the last inspection report on December 6, 2001, the subject wells were inactive and unplugged. Lease severances were shown to have issued on December 29, 2000 (delinquent P-5), and March 9, 2001 (field rule violation), and remain unresolved.

Through the certification of the Commission's Secretary, Enforcement showed that no Plugging Record (form W-3) or Cementing Affidavit (form W-15) has been filed or approved, and no Commission Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) is in effect, for the subject wells. Form W-1X records submitted by Enforcement showed that respondent's most recent form W-1X extensions for the subject wells were canceled for violation of Statewide Rule 3 on October 5, 2000.

Enforcement submitted copies of District Office correspondence pertaining to violations of Statewide Rules on the subject lease. Between September 14, 2000, and March 9, 2001, the District Office, on 5 separate occasions, corresponded directly with Williamson, or sent him copies of

correspondence to the Commission's Assistant Director of Compliance and Manager of the P-5 Department, notifying Williamson of continuing violations of Statewide Rules 3 and 14(b)(2) on the subject lease and/or requesting compliance. A Plug Hearing Data sheet furnished by the District Office to the Commission's Assistant Director of Compliance estimated that the cost to the State of plugging the subject wells would be \$23,800.00.

Enforcement also submitted the affidavit of Ramon Fernandez, P. E., Field Operations. This affidavit showed that compliance with Statewide Rule 3(a) is required to allow correct identification of the responsible operator and a correct determination of the actual location of a well; in the event of pollution or safety violations, or other emergency, the lack of legible signs and identification may cause confusion as to the responsible operator to be contacted and the actual location of a violation or emergency; and such confusion may cause delays in containing and remediating a violation or emergency, which is serious and may threaten the public health and safety.

The Fernandez affidavit also showed that any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface; holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface; and uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Enforcement took the position that it had proved that the missing identification sign on Well No. 1 violated Statewide Rule 3(a) and that the subject wells are in violation of Statewide Rule 14(b)(2). Enforcement argued also that Williamson, as the designated operator, is responsible for the alleged Rule 3(a) and Rule 14(b)(2) violations and for plugging the subject wells or placing them in compliance with Commission Statewide Rules. Enforcement requested that Williamson be ordered to place the subject wells in compliance and pay an administrative penalty of \$4,218.75, calculated on the basis of one corrected Rule 3(a) violation at \$218.75 (\$250.00 guideline penalty discounted by 12.5%) and two continuing violations of Rule 14(b)(2) at \$2,000.00 each.

Respondent's Position and Evidence

Williamson testified that he operated the subject lease and produced the subject wells. Production from the wells was terminated because it was too costly to transport saltwater produced by the wells. Williamson conceded that he designated himself as operator of the subject lease by filing form P-4, effective November 5, 1996. Williamson considers that he is no longer operator because, on September 28, 2001, Williamson entered into an agreement with Rockbottom Oil, L.P., transferring and conveying to Rockbottom 25% of Williamson's interest in the subject lease and other leases and oil properties owned by Williamson. A copy of the agreement admitted into evidence shows that Rockbottom may earn an additional 50% of Williamson's interest in the properties covered by the agreement by drilling and completing to the tanks a Woodbine well on any of the leases conveyed. Williamson testified that, pursuant to the agreement, Rockbottom will become operator of the subject lease.

Williamson did not dispute that the identification sign on Well No. 1, required by Statewide Rule 3(a)(2), was missing for a period of time. However, he testified that he posted a sign on Well No. 1 when the well was completed, and the sign subsequently was stolen. Williamson stated that he replaced the sign on October 5, 2000, and presented a copy of a canceled check payable to Ponder Sign Company, which, according to Williamson, was payment for the sign replacement.

Williamson also testified that the subject wells were not in compliance with Commission Statewide Rules at the time of the conveyance to Rockbottom. He stated his understanding that Rockbottom was preparing to file a P-5 Organization Report and financial security, but that Rockbottom had not yet obtained an approved P-5 or filed form P-4 to change the operator of the subject lease. According to Williamson, Rockbottom has not conducted any activity on the subject lease, but when Rockbottom obtains P-5 approval, it intends to drill a new well on a nearby lease and perform a workover of the subject wells in order to put the wells back into production. For this reason, Williamson does not want to be ordered to plug the wells. Williamson does not contend, however, that the September 28, 2001, agreement with Rockbottom relieved him of the plugging responsibility.

At the continued hearing, Williamson presented the testimony of George Barnes (“Barnes”), who is President of Rockbottom Oil G.P., L.L.C. Barnes confirmed the making of the agreement of September 28, 2001, between Williamson and Rockbottom Oil, L. P., of which Rockbottom Oil G. P., L.L.C., is a general partner.

Barnes testified that on February 21, 2002, Rockbottom Oil G.P., L.L.C., had forwarded to the Commission a form P-5 filing, accompanied by financial security in the form of a \$25,000.00 letter of credit. According to Barnes, when P-5 approval is obtained, a form P-4 will be filed to change the operator of the subject lease from Williamson to Rockbottom.

Barnes stated that Rockbottom intends to drill a new well “to the south of the lease”. Rockbottom plans to reenter the subject wells and to produce them. This will necessitate a saltwater injection well. If the new well is unsuccessful, it may be used as an injector; alternatively there are other plugged wells on the lease which could be reentered for this purpose. According to Barnes, the timing of the reentry of the subject wells is indefinite, and Barnes makes the assumption that it will be necessary to obtain Rule 14(b)(2) extensions until the reentry can be accomplished. Barnes believes that, after workover, the subject wells may make as much as 20-25 BOPD.

Barnes conceded that as of the date of the agreement with Williamson, the subject wells were unplugged and had no effective plugging extensions. Also, Rockbottom has not assumed responsibility for the physical operation and control of the subject wells as shown by a form (form P-4) filed with and approved by the Commission; and at the time of the agreement with Williamson, Rockbottom had no Commission approved P-5 Organization Report.

EXAMINER’S OPINION

Statewide Rule 3(a)

Statewide Rule 3(a)(2), as pertinent here, requires each oil producing property to clearly be identified, at all times, with a sign posted at each well site showing the name of the property and operator and the well number.

In this case, there is no dispute that the required well sign was missing at the Meador, R. C. (13641) Lease Well No. 1 for some period of time. The parties agree that this deficiency was corrected, although there is conflicting evidence as to when. The evidence establishes that the sign was missing from at least June 21, 1999, to at least October 5, 2000. Williamson testified that he posted a sign when the well was completed, and subsequently the sign was stolen. Assuming this to be true, as the designated operator, Williamson nonetheless had the responsibility to monitor the lease and maintain continuous compliance with Statewide Rule 3(a)(2). In failing to do this, Williamson committed the violation of Statewide Rule 3(a)(2) alleged by Enforcement.

Statewide Rule 14(b)(2)

Williamson became the designated operator of the subject lease and wells as a result of the filing of a form P-4 effective November 5, 1996. Pursuant to Statewide Rule 14(c)(2), Williamson is presumed to be responsible for the physical operation and control of the subject wells and to be responsible for properly plugging them. This presumption of responsibility may be rebutted at a hearing called for the purpose of determining plugging responsibility, but in this case, responsibility for plugging the subject wells, or otherwise placing them in compliance with Commission rules, is not disputed by Williamson. Williamson plainly exercised physical operation and control of the wells by producing them for a period of time before they became inactive.

That the subject wells are in violation of Statewide Rule 14(b)(2) is similarly undisputed. Enforcement proved that production on the subject lease ceased on or before March 1, 1998. Although Well No. 1 was permitted as a saltwater injection well on June 30, 1998, Williamson testified that the well was never converted to an injection well, and Enforcement proved that there had been no reports to the Commission of injection activity. The last Rule 14(b)(2) extensions obtained by Williamson for the subject wells were canceled on October 5, 2000. The evidence establishes that the subject wells have been inactive for more than twelve months, are unplugged, and no plugging extensions are in effect.

The September 28, 2001, sale by Williamson to Rockbottom of a portion of his interest in the subject lease and wells did not serve to absolve Williamson of his plugging responsibility, and Williamson does not contend that it did. Pursuant to §§89.002(a)(2) and 89.011 of the Texas Natural Resources Code, the sale to Rockbottom could have constituted Rockbottom as operator and relieved Williamson of plugging responsibility only if: (1) Rockbottom had specifically identified the subject wells as wells for which it assumed plugging responsibility on a form (form P-4) required and approved by the Commission; (2) Rockbottom had a Commission approved organization report

(form P-5); (3) Rockbottom had a Commission approved bond or other form of financial security covering the subject wells; and (4) the subject wells were in compliance with Commission rules relating to safety or the prevention or control of pollution at the time of the sale and were placed in compliance by Rockbottom. None of these requirements had been met as of the date of the hearing, and Rockbottom had performed no activities on the subject lease which would evidence an assumption of physical operation and control.

Penalty

On the basis of the factors which the Commission must consider pursuant to TEX. NAT. RES. CODE ANN. §81.0531, a penalty of \$4,200.00, consisting of \$200.00 for one corrected violation of Statewide Rule 3(a) and \$2,000.00 each for two continuing violations of Statewide Rule 14(b)(2), is appropriate. There is no evidence that Williamson has a history of previous violations, and the Rule 3(a) violation was corrected. A penalty of \$200.00 for the corrected Rule 3(a) violation (\$250.00 guideline penalty discounted by 20%) is reasonable in view of evidence showing that the violation was corrected prior to the filing of Enforcement's complaint. However, Williamson cannot be said to have demonstrated good faith in view of his failure to plug the subject wells, or otherwise place them in compliance, in response to multiple requests and warnings from the District Office prior to initiation of this enforcement action. Violation of the identification sign requirements of Rule 3(a) has the potential for causing confusion as to the responsible operator and delaying an appropriate response to a violation or emergency, posing a threat to the public health and safety. Inactive wells that are unplugged are potential conduits for flow from oil or saltwater zones to zones of usable quality water or to the surface, and also create hazards for the health and safety of the public.

As of the date of the hearings in this case, the subject wells had been inactive for almost four years and out of compliance with Statewide Rule 14(b)(2) for about 16 months. However, in view of evidence that the subject wells may be capable of being restored to production, and the stated intent of Rockbottom to become an approved P-5 operator and to seek approval for a change of operator of the wells to Rockbottom in order that it may perform a workover of the wells, the examiner will recommend that Williamson be afforded the option of plugging the wells or placing them in compliance with the Commission's Statewide Rules.

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. Don B. Williamson ("Williamson") was given at least 10 days notice of this proceeding by certified mail, addressed to his most recent form P-5 (Organization Report) address, the return receipt for which was signed and returned to the Commission.

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2. Williamson designated himself to the Commission as the operator of the Meador, R. C. (13641) Lease (“subject lease”), Well Nos. 1 and 2 (“subject wells”), Cayuga (Woodbine) Field, Anderson County, Texas, by filing a form P-4 (Producer’s Transportation Authority and Certificate of Compliance) with the Commission, effective November 5, 1996.
 3. Williamson’s form P-5 Organization Report and financial security are in delinquent status, Williamson having last filed a form P-5 on August 15, 2000.
 4. Williamson produced the subject wells for a period of time after being designated operator.
 5. Williamson has not conducted any operations on the Meador, R. C. (13641) Lease, Well Nos. 1 and 2, since February 28, 1998.
 6. The subject wells have been inactive for more than one year.
 7. The subject wells have not been properly plugged.
 8. No Statewide Rule 14(b)(2) extensions are in effect for the subject wells, and the last such extensions obtained by Williamson for the wells were canceled on October 5, 2000.
 9. From at least June 21, 1999, to at least October 5, 2000, the Meador, R. C. (13641) Lease, Well No. 1 was not identified with a sign posted at the well site showing the name of the property, the name of the operator, and the well number.
 10. Williamson posted the identification sign required by Statewide Rule 3(a)(2) at the well site of the Meador, R. C. (13641) Lease, Well No. 1, prior to the hearings in this docket.
 11. On September 28, 2001, Williamson sold a portion of his interest in the subject lease and wells to Rockbottom Oil, L.P.
 12. Rockbottom Oil G.P., L.L.C., a general partner of Rockbottom Oil, L.P., has filed a form P-5 Organization Report and financial security with the Commission, and when these filings are approved, intends to file a form P-4 (Producer’s Transportation Authority and Certificate of Compliance) seeking the approval of the Commission for a change of operator of the subject lease and wells from Williamson to Rockbottom Oil G.P., L.L.C.
 13. If the Commission approves a change of operator of the subject lease and wells from Williamson to Rockbottom, Rockbottom intends to perform a workover of the subject wells in order to restore the wells to production.
 13. The estimated cost to the State of plugging the subject wells is \$23,800.00.

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14. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3(a)(2) has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
 15. Usable quality groundwater in the area is likely to be contaminated by migrations or discharge 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.
 16. Williamson has no history of previous violations.
 17. Williamson has not demonstrated good faith since he failed to plug the subject wells, or otherwise place the wells in compliance, after being notified of the Statewide Rule 14(b)(2) violations.

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. Don B. Williamson is the operator of the Meador, R. C. (13641) Lease, Well Nos. 1 and 2, Cayuga (Woodbine) Field, Anderson County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§ 3.14, 3.58, and 3.69) and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Don B. Williamson has the primary responsibility for complying with Statewide Rules 3 and 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§ 3.3 and 3.14), Chapter 89 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject wells.
5. By failing to post, at all times, an identification sign at the well site of the Meador, R. C. (13641) Lease, Well No. 1, showing the name of the property, the name of the operator, and the well number, Don B. Williamson violated Statewide Rule 3(a)(2) (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.3(a)(2)).
6. The subject wells are not properly plugged or otherwise in compliance with Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14), or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The subject wells have been out of compliance since at least October 5, 2000, when the last plugging extensions were canceled.

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7. The documented violations committed by Don B. Williamson constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith as provided by 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 approved, requiring the operator Don B. Williamson to:

1. Plug, or place in compliance with Commission Statewide Rules, the Meador, R. C. (13641) Lease, Well Nos. 1 and 2, Cayuga (Woodbine) Field, Anderson County, Texas; and
2. Pay an administrative penalty in the amount of FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner