

CONSOLIDATED PROPOSAL FOR DECISION

OIL & GAS DOCKET NO. 06-0228395

ENFORCEMENT ACTION AGAINST SPEAR PRODUCTION CORPORATION FOR VIOLATIONS OF STATEWIDE RULES ON THE TOLLESON NO. 1 SWD (13055) LEASE, WELL NO. 1, HAYNES (MITCHELL) FIELD, CASS COUNTY, TEXAS.

OIL & GAS DOCKET NO. 06-0229161

ENFORCEMENT ACTION AGAINST SPEAR PRODUCTION CORPORATION FOR VIOLATIONS OF STATEWIDE RULES ON THE McDONALD, G.H. -A- (12491) LEASE, WELL NO. 1, HAYNES (MITCHELL) FIELD, CASS COUNTY, TEXAS.

FOR MOVANT:

Lowell Williams, Staff Attorney

MOVANT:

Enforcement Section

FOR RESPONDENT:

James Latham, President

RESPONDENT:

Spear Production Corporation

PROCEDURAL HISTORY

Date of Request for Action:	June 11, 2001 - Docket 06-0229161 August 24, 2000 - Docket 06-0228395
Notice of Hearings:	June 20, 2002
Hearings Held:	August 22, 2002
Records Closed:	September 21, 2002
Heard By:	Scott Petry, Hearings Examiner
PFD Circulation Date:	January 9, 2003
Current Status:	Protested

STATEMENT OF THE CASE

These dockets were Commission-called hearings, on the recommendation of the District Office, to determine the following:

P.F.D. for Consolidated Oil & Gas Dockets 06-0228395 & 06-0229161

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rule 14, the McDonald G.H. -A- (12491) Lease, Well No. 1 ("McDonald well"), Haynes (Mitchell) Field, Cass County, Texas;
2. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rule 14, the Tolleson No. 1 SWD (13055) Lease, Well No. 1 ("Tolleson well"), Haynes (Mitchell) Field, Cass County, Texas;
3. 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;
4. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said leases and wells;
5. 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; and,
6. Whether other orders should be entered as permitted by law.

This hearing consolidated two enforcement actions against Spear Production Corporation for alleged violations in Cass County, Texas. Lowell Williams, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. James Latham appeared on behalf of respondent, Spear Production Corporation (hereinafter "Spear" or "respondent"). The Enforcement Section's hearing file was admitted into evidence.

Spear requested extra time to submit additional evidence. The examiner agreed to leave the record open for 30 days to September 21, 2002 to allow Spear the opportunity to submit late filed exhibits verifying that the respondent had renewed its Commission Form P-5 (Organization Report) or that the respondent had otherwise placed the wells in compliance with Commission rules. No late filed exhibits were submitted by Spear.

Enforcement recommended that Spear be ordered to properly plug the wells and to pay an administrative penalty of \$4,000.00, consisting of \$2,000.00 for each violation of Statewide Rule

14(b)(2). The examiner agrees with the 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 Commission rules. Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted. For Form P-4's 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.

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.

DISCUSSION OF THE EVIDENCE

Enforcement presented Commission records showing that the most recent approved Commission Form P-5 (Organization Report) for Spear was filed on April 10, 2000, and listed James Latham as its president. Spear paid a fee of \$1,600.00 as financial assurance at the time of its last renewal and Spear's Organization Report is currently delinquent.

Spear was recognized as the operator of the McDonald G.H. -A- (12491) Lease, Well No. 1, by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective April 1, 1997, and approved April 16, 1997. Spear was also recognized as the operator of the Tolleson No. 1 SWD (13055) Lease, Well No. 1, by a Form P-4 effective April 4, 1997, and approved April 28, 1997.

I. Enforcement's Position & Evidence

With regard to the McDonald G.H. -A- (12491) Lease, Commission inspection reports made

on December 28, 2000, February 16, 2001, March 19, 2001, April 12, 2001, and May 31, 2001 show that the McDonald well was shut in and not equipped to produce. Commission records report no production from the well after December 31, 1993. The McDonald well has had four W-1X plugging extension applications, and the last approved W-1X extension expired on November 24, 2000. Accordingly, Enforcement contends that the well is inactive and that it has been in violation of Statewide Rule 14(b)(2) for over 21 months. The estimated cost to plug the McDonald well is \$9,000.00.

With regard to the Tolleson No. 1 SWD (13055) Lease, Commission inspection reports made on May 5, 1999, October 12, 1999, February 16, 2000, April 28, 2000, June 8, 2000, July 11, 2000, and August 21, 2000 show that the Tolleson well was shut in and not used for injection purposes. Commission records report no injection activity for the well after March 31, 1987. The Tolleson well has had six W-1X plugging extension applications, and the last approved W-1X extension expired on March 16, 2001. Accordingly, Enforcement contends that the well is inactive and that it has been in violation of Statewide Rule 14(b)(2) for over 17 months. The estimated cost to plug the Tolleson well is \$18,400.00.

Enforcement also asserted that the operator was delinquent on its P-5 Organization Report and that, at the time of the hearing, the respondent had forfeited its charter on March 23, 2001, for failure to pay franchise taxes. The respondent, which is a foreign corporation based in Shreveport, Louisiana, applied to have its right to conduct business in the State of Texas reinstated on July 23, 2001. Secretary of State records, which were undisputed by the respondent and incorporated into the record, stated that Spear was eligible for reinstatement up until May 15, 2002. At the hearing on August 22, 2002, however, respondent had not availed itself of this eligibility and its charter had not been reinstated. The Secretary of State records showed that the respondent was "not in good standing" with the State of Texas at the time of the hearing.

II. Respondent's Position & Evidence

In the hearing, Spear acknowledged that it was the operator of the wells and further acknowledged that the wells had been inactive for quite some time. Respondent claimed, however, that problems with financial security had caused the violations in this docket and that Spear was actively working to correct its financial problems, to place the "project" back into production, and to place the wells in compliance with Commission rules.

Spear asserted that the two wells in this consolidated docket are part of a bigger project involving 800 acres that the respondent operates. The respondent stated that this field had been the

subject of a water flood project that was improperly conducted on a larger 6,000 acres and then prematurely abandoned due to a prior operator's bankruptcy. Spear operates eleven wells in the subject field and stated that it would need each of these wells to make the project profitable. Therefore, respondent stated that it did not want to plug any of the wells.

Additionally, the respondent stated that the Tolleson well was inactive for an extended period of time because it was intended as a backup saltwater disposal well. Spear stated that it had a commercial disposal well nearby, but that it wanted to keep the Tolleson well as "a standby disposal well" in case its commercial well experienced technical problems. Additionally, the respondent stated that the Tolleson well might be used in the future as part of a small waterflood in the field. Respondent also stated that, even though the Tolleson well had been permitted as an injection well, it was not currently equipped for disposal.

Finally, Spear claimed that the delay in moving the project forward was also due to a recent illness and his failure to meet the Commission's bonding requirements. Spear reiterated that it was trying to secure financial assurance and that it would be bringing in "an outside partner" to finance the project. The respondent requested an additional ninety days to provide evidence of compliance and "to get things up to date". The examiner found ninety days to be excessive and instead kept the record open for thirty days, with the caveat that additional time might be considered if the respondent were to supply the examiner with evidence of a good faith attempt to follow through on its assertions. The respondent failed to supply the examiner with *any* information in the thirty day time period.

EXAMINER'S OPINION

There is a Turkish proverb that states, "no matter how far you have gone on a wrong road, turn back". This is a case, however, where Spear has refused to correct its mistake and refused to change its course. It is undisputed that the wells are in violation of Statewide Rule 14 and have been inactive for more than eight years. It is undisputed that Spear is the operator responsible for the wells. It is undisputed that Spear is non-compliant with the Commission's financial assurance requirements. Nevertheless, the respondent refuses to fulfill its regulatory duties.

While Mr. Latham's illness and financial problems may account for a portion of the time that the wells were out of compliance, it does not excuse Spear from its regulatory responsibility for plugging the wells as required by Commission rules. The respondent's purported problems with franchise taxes may also be indicative of its ability to conduct business in the State of Texas, but failure to pay franchise taxes is not relevant in determining the culpability for the violations in this

docket. Both the Tolleson well and the McDonald well have been physically inactive for an extended period of time and it is the operator's responsibility to keep the wells in compliance with Commission rules. Respondent's financial problems and hopes that the project will be resurrected through additional capital do nothing to alleviate the potential pollution hazards that the wells impose.

Both the Tolleson well and the McDonald well have been inactive for more than eight years. While the wells have been technically non-compliant for less than two years, the McDonald well has not produced since at least December 1993 and the Tolleson well has not had any injection activity since at least March 1987. When coupled with the respondent's failure to maintain proper Commission financial assurance, this long period of inactivity warrants that the wells be ordered plugged without the possibility of bringing them into compliance through other means.

Finally, despite several representations made at the hearing that the respondent would meet its financial assurance requirements and bring these wells into compliance with Commission rules, no additional evidence was submitted showing that any action was taken by Mr. Latham or Spear to pursue compliance. Therefore, there does not seem to be much likelihood that the respondent will follow through with its plugging duty absent a Commission order directing it to do so.

Accordingly, the examiner recommends that Spear be ordered to plug the Tolleson and McDonald wells and further recommends that Spear be required to pay an administrative penalty of \$4,000.00. Based on the record in this docket, the examiner also recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent, Spear Production Corporation ("Spear" or "respondent"), was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. James Latham participated in the scheduled hearing and presented evidence on behalf of the respondent.
2. The most recent approved P-5 for Spear was filed April 10, 2000. Spear paid a fee of \$1,600.00 as financial assurance at the time of its last renewal and listed James Latham as its president. Spear's Organization Report is currently delinquent.
3. Spear designated itself as the operator of the McDonald G.H. -A- (12491) Lease, Well No. 1 ("McDonald well"), by means of a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective April 1, 1997 and approved April 16, 1997.

4. Spear designated itself as the operator of the Tolleson No. 1 SWD (13055) Lease, Well No. 1 ("Tolleson well"), by means of a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective April 4, 1997 and approved April 28, 1997.
5. The McDonald well is currently inactive and has been inactive for more than 12 months.
 - a. Commission inspection reports made on December 28, 2000, February 16, 2001, March 19, 2001, April 12, 2001, and May 31, 2001 show that the McDonald well was shut in and not equipped to produce.
 - b. Commission records report no production from the McDonald well since December 1993.
6. The Tolleson well is currently inactive and has been inactive for more than 12 months.
 - a. Commission inspection reports made on May 5, 1999, October 12, 1999, February 16, 2000, April 28, 2000, June 8, 2000, July 11, 2000, and August 21, 2000, show that the Tolleson well was shut in and not equipped for injection purposes.
 - b. Commission records report no injection into the Tolleson well since March 1987.
7. The McDonald well has had four W-1X plugging extension applications. The last plugging extension that was granted to Spear for the McDonald well expired on November 24, 2000.
8. The Tolleson well has had six W-1X plugging extension applications. The last plugging extension that was granted to Spear for the Tolleson well expired on March 16, 2001.
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 wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
10. Spear has not demonstrated good faith since it failed to plug or otherwise place the Tolleson well and McDonald well in compliance with Commission rules after being notified of the violations by the district office.
11. The estimated cost to plug the McDonald well is \$9,000.00 and the estimated cost to plug the Tolleson well is \$18,400.00.
12. 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. Spear Production Corporation is the operator of the McDonald G.H. -A- (12491) Lease, Well No. 1, and the Tolleson No. 1 SWD (13055) Lease, Well No. 1, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Spear has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the McDonald G.H. -A- (12491) Lease, Well No. 1, and the Tolleson No. 1 SWD (13055) Lease, Well No. 1.
5. Well No. 1 on the McDonald G.H. -A- (12491) Lease is not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. Well No. 1 on the Tolleson No. 1 SWD (13055) Lease is not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
7. Well No. 1 on the McDonald G.H. -A- (12491) Lease has been out of compliance from November 24, 2000, to the present.
8. Well No. 1 on the Tolleson No. 1 SWD (13055) Lease has been out of compliance from March 16, 2001, to the present.
9. The documented violations committed by Spear are 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 be approved, requiring the operator, Spear Production Corporation, within 30 days from the date this order becomes final, to plug the McDonald and Tolleson wells in accordance with the requirements of Statewide Rule 14. It is my further recommendation that the operator, Spear Production Corporation, be ordered to pay an administrative penalty of \$4,000.00, consisting of \$2,000.00 for each violation of Statewide Rule 14(b)(2).

Respectfully submitted,

Scott Petry
Hearings Examiner