

PROPOSAL FOR DECISION

OIL & GAS DOCKET NO. 06-0233684

ENFORCEMENT ACTION AGAINST CHAPARRAL OPERATING, INC. FOR VIOLATIONS OF STATEWIDE RULES ON THE CHEW, W.D. -A- (01488) LEASE, WELL NOS. 3, 4, AND 5, RODESSA (DEES YOUNG) FIELD, IN CASS COUNTY, TEXAS

FOR MOVANT:

Scott Holter, Staff Attorney
Reese Copeland, Staff Attorney

MOVANT:

Enforcement Section
Enforcement Section

FOR RESPONDENT:

Bruce Satterthwaite, President

RESPONDENT:

Chaparral Operating, Inc.

PROCEDURAL HISTORY

Date of Request for Action:	October 30, 2002
Notice of Hearing:	April 22, 2003
Hearing Held:	June 26, 2003
Record Closed:	December 9, 2003
Heard By:	Mark Tittel, Hearings Examiner
PFD Written By:	Scott Petry, Hearings Examiner
PFD Circulation Date:	June 8, 2004
Current Status:	Protested

STATEMENT OF THE CASE

This docket was a Commission-called hearing, on the recommendation of the District Office, to determine the following:

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rules 14 and 46, the Chew, W.D. -A- (01488) Lease ("subject lease"),

Well Nos. 3, 4, and 5 (“subject wells”), Rodessa (Dees Young) Field, in Cass 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 Rules 14 and 46;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said lease and wells;
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; and,
5. Whether other orders should be entered as permitted by law.

Scott Holter, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Bruce Satterthwaite appeared on behalf of Chaparral Operating, Inc., (hereinafter “Chaparral” or “respondent”). The Enforcement Section's hearing file was admitted into evidence. Subsequent to the hearing, Reese Copeland, Staff Attorney, assumed representation for the Enforcement Section of the Railroad Commission of Texas.

At the hearing, Examiner Tittel granted Chaparral additional time to submit late filed exhibits verifying that it had placed the subject wells in compliance with Commission rules. No late filed exhibits were submitted by Chaparral, and the record was closed on December 9, 2003.

Enforcement recommended that Chaparral be ordered to properly plug the subject wells and to pay an administrative penalty of \$12,000.00. This recommended penalty consists of \$6,000.00 for three violations of Statewide Rule 14(b)(2), \$4,000.00 for two violations of Statewide Rule 14(b)(2)(E), and \$2,000.00 for one violation of Statewide Rule 46(j). While the examiner agrees with the recommendation regarding culpability, official notice of Commission records indicates that the violations of Statewide Rule 14(b)(2) and 14(b)(2)(E) for Well Nos. 3 and 4 have been resolved.

Accordingly, the examiner recommends a reduced penalty to reflect the compliance attained

for these violations. It is recommended that the respondent, Chaparral, be ordered to plug Well No. 5 on the subject lease and to pay an administrative of \$10,000.00. This adjusted penalty amount reflects a reduction of \$500 per violation for the corrected violations of Statewide Rules 14(b)(2) and 14(b)(2)(E), as they pertain to Well Nos. 3 and 4.

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. The rule further 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 all applicable Commission rules and regulations. Further, Statewide Rule 14(b)(2)(E) provides that the operator of a well that is more than 25 years old and becomes inactive shall plug the well or successfully conduct a fluid level or hydraulic pressure test to establish that the well does not pose a potential threat of harm to the environment.

Statewide Rule 46 requires that any person who engages in fluid injection operations in reservoirs productive of oil, gas, or geothermal resources must first obtain a permit from the Commission. Specifically, Statewide Rule 46(j) requires that a mechanical integrity test of each injection well be performed once every five years to determine whether the well tubing, packer, and/or casing have sufficient mechanical integrity to meet the performance standards of the rule.

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

Official notice of Commission records indicates that the most recent approved Commission Form P-5 (Organization Report) for Chaparral was filed on January 30, 2004, and listed Bruce Satterthwaite as its president, Tyler Satterthwaite as its vice-president, and Abby Satterthwaite as its secretary/treasurer. At the time of the hearing, however, the respondent did not have an active, current P-5 Organization Report. During the hearing, the respondent argued that it was attempting to bring its P-5 status back to “active”, but that it had encountered some problems with nonpayment of its franchise taxes. Official notice of Commission records indicates that, after the hearing, the respondent brought its Form P-5 Organization Report back to “active” status on August 4, 2003 by filing a \$50,000.00 letter of credit as financial assurance.

Chaparral was recognized as the operator of the Chew, W.D. -A- (01488) Lease, Well Nos. 3, 4, and 5, by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance), effective February 1, 1998, and approved February 13, 1998.

I. Enforcement’s Position & Evidence

In Enforcement’s case in chief, the Staff Attorney offered into evidence the hearing file and copies of related records. With respect to the asserted violations of Statewide Rule 14(b)(2), Enforcement submitted Commission inspection reports dated May 4, 2001, August 9, 2002, September 5, 2002, and October 23, 2002, which show that the subject wells on the Chew, W.D. -A- Lease were shut in and inactive for a period greater than twelve months. Specifically, Well Nos. 3 and 4, which are oil wells, have not had any reported production activity since at least November 30, 1998. Additionally, inspection reports made on May 4, 2001, May 10, 2002, June 17, 2002, August 9, 2002, September 5, 2002, and October 23, 2002, indicate that Well No. 5, which is a saltwater injection well, has not reported any injection activity since at least February 29, 2000. Enforcement noted that the plugging extensions for Well Nos. 3, 4, and 5 were cancelled on November 25, 2002, and that the subject wells had been out of compliance with Statewide Rule 14(b)(2) since at least that date.

With regard to violations of Statewide Rule 14(b)(2)(E), Enforcement asserts that Well Nos. 3 and 4 on the subject lease are in excess of 25 years of age and that these wells have not been properly tested in accordance with Commission rules and regulations. Specifically, Enforcement notes that Well No. 3 was initially completed on September 26, 1936, and Well No. 4 was initially

completed on September 19, 1936. Commission records indicate that the appropriate Form H-15 (Test on an Inactive Well More than 25 Years Old) tests for Well Nos. 3 and 4 were due by May 31, 2002. Commission records indicate that the Form H-15 tests were not filed or approved for either well, and the tests were listed as delinquent on July 8, 2002. Enforcement argues that the violations of Statewide Rule 14(b)(2)(E) are serious and a hazard to the public health and safety because the wells' excessive age makes them more prone to develop holes or leaks in the casing, which could in turn allow oil or saltwater to communicate with usable quality water zones or flow to the surface. Enforcement argued that Well Nos. 3 and 4 have been out of compliance with Statewide Rule 14(b)(2)(E) since at least July 8, 2002.

Enforcement also asserted that the respondent violated Statewide Rule 46, which requires that any person who engages in fluid injection operations first obtain, and follow the requirements of, a permit from the Commission. Specifically, Statewide Rule 46(j) requires that a mechanical integrity test be performed on the subject injection well once every five years. Enforcement submitted Commission records which indicate that the most recent Form H-5 (Disposal/Injection Well Pressure Test Report) test for Well No. 5 was conducted on March 22, 1993, that the respondent did not timely perform or submit the H-5 for the subject well, and that the certificate of compliance was cancelled on February 24, 2000. Correspondence from the District Office dated May 27, 2002, July 9, 2002, August 19, 2002, and October 30, 2002, notified Chaparral of its delinquent H-5 test, but the respondent failed to carry out its duty to perform the test. Enforcement stated that this violation is serious and a hazard to the public health and safety because failure to test an injection well may lead to leaks of fluid and may cause pollution. Enforcement argued that Well No. 5 has been out of compliance with Statewide Rule 46(j) since the severance was issued on February 24, 2000.

Enforcement asserts that no workovers, re-entries, or subsequent operations have occurred on any of the subject wells within the twelve months prior to the notice of hearing, and none of the subject wells have been plugged. Even though the respondent is currently listed as an "active" organization, official notice of Commission records indicates that the subject lease remains severed for unresolved field rule violations. The estimated cost to the State of Texas for plugging the subject wells on the Chew, W.D. -A- Lease is \$62,400.00.

II. Respondent's Position & Evidence

At the hearing, Chaparral was represented by Bruce Satterthwaite, who acknowledged that there were problems on the lease, but requested time and a reduced penalty to bring the violations into compliance. Chaparral argued that the subject wells were capable of producing gas and that he did not wish to plug them.

Specifically, the respondent indicated that there are potentially productive gas zones “behind the pipe” in the three subject wells, and that he had another operator, Skinner Operating, that was willing to take over the wells. The respondent noted that it started out with over 88 wells but had already reduced its number of wells to 17 by either plugging or transferring operations. Chaparral stated, however, that it was having problems with its franchise taxes and that, while it was remedying these problems at the time of the hearing, it needed additional time to get its affairs in order. Respondent admitted that its P-5 Organization Report was delinquent at the time of the hearing, but that this was, in part, due to its tax problem, and that it would achieve “active status” if given additional time.

With regard to the violations of Statewide Rules 14 and 46, Chaparral admitted at the hearing that it had not filed the appropriate Form H-5 for its Well No. 5. The respondent admitted that the reason it had not tested Well No. 5 was that there was a hole in the casing and that it would not pass the test, but it argued that the casing leak was at 3,200 feet and that usable quality water was not endangered. Because Well No. 5 would not pass the H-5 and the lease as a whole was severed due to the casing leak, Chaparral stated that there was no incentive to test the subject wells. Respondent stated that it would either transfer the subject wells or fix the violations by plugging Well No. 5, if necessary.

While Chaparral noted that it did not want to plug Well No. 5 because of the potential gas zones, it stated that it would plug the well if it meant it could bring things into compliance. Once the lease was in compliance, it could then file the H-15 tests on Well Nos. 3 and 4, and transfer the wells to another operator. The respondent noted also that it had already obtained a bid for the plugging of Well No. 5 in the eventuality that Chaparral would have to plug it. Finally, Chaparral argued that it felt the \$12,000 penalty was excessive and asked for a reduced penalty so that the money could instead be used to plug its wells.

III. Official Notice of Commission Records

Official notice of Commission records reflects that, subsequent to the hearing, Chaparral brought its Form P-5 Organization Report back to "active" status on August 4, 2003 by filing a \$50,000.00 letter of credit as financial assurance. Accordingly, the severance issued on July 24, 2003, for a delinquent Form P-5 was resolved on August 4, 2003. Respondent's newly acquired financial assurance gave it the proper funding to achieve plugging extensions for Well Nos. 3, 4, and 5.

However, in order to have the Form P-4 reinstated, the attending field operations violations relating to the subject wells had to be resolved. The delinquent Forms H-15 (Test on an Inactive Well More than 25 Years Old) for Well Nos. 3 and 4, which were due by May 31, 2002, were filed with the Commission and the severance relating to the two Statewide Rule 14(b)(2)(E) violations was lifted on August 6, 2003. The delinquent Form H-5 (Disposal/Injection Well Pressure Test Report) test for Well No. 5, however, has still not been resolved. The severance issued on February 24, 2000 for the delinquent Form H-5 remains unresolved and Well No. 5 remains out of compliance with Statewide Rules 14(b)(2) and 46(j). Accordingly, the subject lease remains severed.

EXAMINER'S OPINION

The respondent failed to provide a valid defense to its violations of Statewide Rules 14 and 46. At the hearing, the respondent admitted that it signed the P-4, that it is the operator of record with the Commission, and that it is responsible for complying with all applicable Commission rules and regulations. Further, Chaparral fully admitted that it had not performed the tests required under Statewide Rules 14 and 46, and admitted that Well No. 5 had a casing leak. The evidence adduced at hearing indicated that the respondent failed to carry out its responsibilities regarding Form H-5's, failed to properly plug the subject wells when required, and failed to timely correct its inaction.

Nevertheless, an examination of official Commission records indicates that some action was taken *after* the initial hearing in this matter. Specifically, the respondent brought its P-5 back to "active status" and filed the proper H-15 tests for Well Nos. 3 and 4. This indicates that some efforts were taken to achieve compliance, and, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531, a reduced penalty is recommended for the correction of the violations of Statewide Rule 14(b)(2) and 14(b)(2)(E) as they pertain to Well Nos. 3 and 4.

It is noted, however, that the violations of Statewide Rule 14(b)(2) and 46(j) pertaining to Well No. 5 have not been resolved and that the full penalty amount is recommended for these violations. The violations relating to Well No. 5 are particularly serious where the respondent admitted that the subject well had a casing leak. Given Chaparral's refusal to fulfill its responsibilities with regard to Well No. 5, and the potential pollution hazards created by this inaction, there does not seem to be much likelihood that it will follow through with its plugging duties absent a Commission order directing it to do so.

Accordingly, the examiner recommends that Chaparral be ordered to plug Well No. 5 on the Chew, W.D. -A- (01488) Lease and further recommends that Chaparral be required to pay an administrative penalty of \$10,000.00. 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, Chaparral Operating, Inc. ("Chaparral" 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. Bruce Satterthwaite, president of Chaparral, participated in the scheduled hearing and presented evidence on behalf of the respondent.
2. The most recent approved P-5 for Chaparral was filed January 30, 2004. Chaparral posted a \$50,000 letter of credit as financial assurance at the time of its last renewal and listed Bruce Satterthwaite as its president, Tyler Satterthwaite as its vice-president, and Abby Satterthwaite as its secretary/treasurer. Chaparral's Organization Report is currently active.
3. Chaparral designated itself as the operator of the Chew, W.D. -A- (01488) Lease ("subject lease"), Well Nos. 3, 4, and 5, ("subject wells"), by means of a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective February 1, 1998, and approved February 13, 1998.
4. Commission inspection reports made on May 4, 2001, August 9, 2002, September 5, 2002, and October 23, 2002, indicated that Well Nos. 3 and 4 were shut in, inactive, and had not produced in the 12 months preceding the hearing.
5. Commission records indicate that Well Nos. 3 and 4 are oil wells, and have not produced since at least November 30, 1998.

6. Plugging extensions for Well Nos. 3 and 4 were cancelled on November 25, 2002, but new plugging extensions were granted for Well Nos. 3 and 4 on August 6, 2003.
7. The last plugging extension granted for Well No. 5 was cancelled on November 25, 2002.
8. Commission inspection reports made on May 4, 2001, May 10, 2002, June 17, 2002, August 9, 2002, September 5, 2002, and October 23, 2002, indicate that Well No. 5 was shut in, inactive, and had not injected in the 12 months preceding the hearing.
9. Commission records indicate that Well No. 5 is a saltwater injection well and that it has not injected since at least February 29, 2000.
10. 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.
11. The estimated cost to the State of Texas for plugging the subject wells on the Chew, W.D. -A- Lease is \$62,400.00.
12. Well Nos. 3 and 4 on the subject lease are in excess of 25 years of age.
 - A. Well No. 3 was initially completed on September 26, 1936, and was deepened on March 30, 1997.
 - B. Well No. 4 was initially completed on September 19, 1936, and was deepened on April 22, 1977.
13. Commission records indicate that the appropriate Form H-15 (Test on an Inactive Well More than 25 Years Old) tests were due for Well Nos. 3 and 4 by May 31, 2002, but that no tests were submitted by that date. The Form H-15 tests for Well Nos. 3 and 4 were listed as delinquent on July 8, 2002.
14. The appropriate Form H-15 tests for Well Nos. 3 and 4 were filed on August 6, 2003.

15. Failure to timely perform a proper Form H-15 test is serious and a hazard to the public health and safety because a well that is more than 25 years of age is prone to develop holes or leaks in the casing, which could in turn allow oil or saltwater to communicate with usable quality water zones or flow to the surface.
16. Chaparral has failed to perform and pass the required Form H-5 (Disposal/Injection Well Pressure Test Report) mechanical integrity test for Well No. 5 on the subject lease.
 - A. The most recent Form H-5 (Disposal/Injection Well Pressure Test Report) test for Well No. 5 was conducted on March 22, 1993.
 - B. The certificate of compliance for the Chew, W.D. -A- (01488) Lease was cancelled on February 24, 2000 for failure to file, and pass, a Form H-15 for Well No. 5. Well No. 5 is currently unable to pass the H-5 test as there is a hole in the casing of the well.
 - C. The District Office informed Chaparral of its delinquent Form H-15 test on May 27, 2002, July 9, 2002, August 19, 2002, and October 30, 2002.
17. Chaparral has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance with Commission rules after being notified of the violations by the District Office.
18. 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. Chaparral Operating, Inc. is the operator of the Chew, W.D. -A- (01488) Lease, Well Nos. 3, 4, and 5, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.

4. Chaparral has the primary responsibility for complying with Statewide Rules 14 and 46, and Chapter 89 of the Texas Natural Resources Code, as well as other applicable statutes and Commission rules relating to the subject wells on the Chew, W.D. -A- (01488) Lease.
5. Well Nos. 3 and 4 on the Chew, W.D. -A- (01488) Lease were out of compliance with Statewide Rule 14(b)(2) from November 25, 2002 to August 6, 2003.
6. Well Nos. 3 and 4 on the Chew, W.D. -A- (01488) were out of compliance with Statewide Rule 14(b)(2)(E) from May 31, 2002 to August 6, 2003.
7. Well No. 5 has been out of compliance with Statewide Rule 14(b)(2) since at least November 25, 2002.
8. Well No. 5 has been out of compliance with Statewide Rule 46(j) since at least February 24, 2000.
9. The documented violations committed by Chaparral, including the casing leak in Well No. 5, 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, Chaparral Operating, Inc., within 30 days from the date this order becomes final, to plug Well No. 5 on the Chew, W.D. -A- (01488) Lease in accordance with the requirements of Statewide Rule 14. It is my further recommendation that the operator, Chaparral Operating, Inc., be ordered to pay an administrative penalty of \$10,000.00, which consists of \$2,000.00 for one uncorrected violation of Statewide Rule 14(b)(2), \$3,000.00 for two corrected violations of Statewide Rule 14(b)(2), \$3,000.00 for two corrected violations of Statewide Rule 14(b)(2)(E), and \$2,000.00 for one uncorrected violation of Statewide Rule 46(j).

Respectfully submitted,

Scott Petry
Hearings Examiner