

January 4, 2007

OIL AND GAS DOCKET NO. 06-0249045

ENFORCEMENT ACTION AGAINST BONI OIL, INCORPORATED (OPERATOR NO. 082447), FOR VIOLATIONS OF STATEWIDE RULE 14(B)(2) ON THE M & W INVESTMENTS (11376) LEASE, WELLS NOS. 1A-5A, 6-51 AND 56-75, NACOGDOCHES FIELD, NACOGDOCHES COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Christopher Hotchkiss, Staff Attorney

MOVANT:

Railroad Commission of Texas

NO APPEARANCE FOR RESPONDENT BONI OIL, INCORPORATED

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	September 19, 2006
NOTICE OF HEARING:	September 19, 2006
DATE CASE HEARD:	November 16, 2006
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	January 4, 2007
CURRENT STATUS:	Default

STATEMENT OF THE CASE

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

1. Whether the respondent Boni Oil, Incorporated, (“Boni”) should be required to plug Wells Nos. 1A-5A, 6-51 and 56-75 on the M & W Investments (11376) Lease, Nacogdoches Field, Nacogdoches County, Texas, for violations of Statewide Rule 14(b)(2);
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(b)(2);
3. 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;
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.

Christopher Hotchkiss, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. No appearance was made by Respondent. The Enforcement Section's hearing files were admitted into evidence.

Enforcement recommends respondent be assessed an administrative penalty of \$150,000.00 for 75 violations of Statewide Rule 14(b)(2). The examiner recommends the administrative penalty be increased to \$195,000.00 to reflect the estimated cost for plugging operations. Additionally, the examiner recommends the Commission enter Findings of Fact and Conclusions of Law establishing the relationship between the principals of Boni with Arencia Oil Co., Inc. (“Arencia”). Finally, the examiner recommends the Final Order contain a “plug only” requirement.

PROCEDURAL SUMMARY

On September 19, 2006, Enforcement filed the Complaint in this action and sent the Complaint and Notice of Opportunity for Hearing by certified mail to Boni's last reported organization address at RR 2, Box 3147, Nacogdoches, Texas. The certified mail to this address was returned to the Commission “Attempted - Not Known”, and regular mail to the same address was noted as “not deliverable as addressed.”

Service of the Complaint and Notice of Opportunity for Hearing was also sent on September 19, 2006 to the President of Boni identified on its last Organization Report, Johnnie L. Gardner, at RR 2, Box 3146-A, Nacogdoches, Texas. The certified mail to this address was returned to the Commission "Attempted - Not Known", and regular mail to the same address was noted as "not deliverable as addressed."

Service of the Complaint and Notice of Opportunity for Hearing was also sent on September 19, 2006 to the Secretary of Boni identified on its last Organization Report, Gloria J. Lowery, at RR 2, Box 3143-A, Nacogdoches, Texas. The certified mail to this address was returned to the Commission "Attempted - Not Known", and regular mail to the same address was noted as "not deliverable as addressed."

MATTERS OFFICIALLY NOTICED

The examiner officially noticed the mainframe computer records for Arencia Oil Co., Inc. ("Arencia"). Arencia filed its most recent Commission Form P-5 (Organization Report) on October 17, 2001. Gloria J. Lowery is identified as the President. Johnnie Lewis Gardner, Jr. is listed as the Secretary/Treasurer. The identification information provided by Ms. Lowery and Mr. Gardner to the Commission with the Organization Report for both Boni and Arencia is identical.

Arencia's organization address is listed as 5027 CR 420, Nacogdoches, Texas 75961. The location address listed is 12010 Oil Springs Road, Woden, Texas 75978. Arencia's Organization Report is currently delinquent. At the time of the last filing of its Organization Report, Arencia paid a \$100 "good guy" fee in lieu of posting financial security for its operations. Commission records further show that Arencia is currently listed as the operator of 42 wells on two Commission leases. All of the wells are completed in the Nacogdoches Field.

DISCUSSION OF THE EVIDENCE

Boni's most recent approved P-5 was filed on March 21, 2001. Boni paid a fee of \$100 as financial assurance at the time of its last renewal. Johnnie L. Gardner is identified as Boni's President. Gloria J. Lowery is identified as Boni's Secretary. Boni's P-5 is currently delinquent.

Boni was recognized as the operator of the 75 wells on the M & W Investments (11376) Lease ("subject lease" and/or "subject wells"), upon approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on June 30, 1992. All of the wells are completed in the Nacogdoches Field between 300 and 500 feet subsurface. The total depth of the wells is 26,610 feet.

A Commission inspection on April 28, 2005 of Wells 1-10, 33, 34, 35, 37, 38, 40, 41, and 42 found none of the inspected wells on the subject lease producing. Wells 2-8, 10 and 42 were equipped with pumping units. Wells 1 and 9 did not have pumping units. Wells 33, 34, 35, 37, 38, 40, and 41 were equipped for air-jetting. Additionally, Well 9 had fluid at the surface.

A Commission inspection on May 6, 2005 of Wells 11-16, 18-20, 22, 25, 27-32, 36, 39, 43, 44, 49, 50, and 59 found none of the inspected wells on the subject lease producing. Only two wells, Wells 16 and 27, were equipped with pumping units. Wells 22, 25, 28, 29, 31, 32, 36, 39, and 44, were equipped for air-jetting. Wells 18, 19, 20, 22, 25, 43, 49, 50, and 59 were not equipped for production. Additionally, the fluid level in Wells 19, 30, 43, 50 and 59 was observed to be at or within 5 feet of the surface.

A Commission inspection on May 11, 2005 of Wells 17, 45, 48, 52, 56, 58, 63, 65, and 66 found none of the inspected wells on the subject lease producing. Wells 56, 63 and 66 were equipped for air-jetting, but none of the other wells were equipped for production. Additionally, the fluid level in Wells 45, 48, 52, 56 and 65 was observed to be at or within 3 feet of the surface.

A Commission inspection on June 9, 2005 of the 11 wells with fluid levels at or near the surface confirmed the presence of fluid in the wellbores at or near the same level identified in the prior inspections. A follow-up inspection on November 4, 2005 reported no activity on the lease or change in the condition of the wells inspected.

The most recent Commission inspection on April 27, 2006 found the subject wells remained in the same condition as previously observed. The inspector noted that road repairs would be required to access well locations. Additionally, the inspector observed that a backhoe would be needed to excavate areas as the inspections could not locate all of the wells.

Commission records report no oil production from the subject lease after February 2002, when Boni reported 8 barrels of production.¹ No production reports have been submitted after June 2003. Accordingly, Enforcement contends that the 75 wells on the subject lease are inactive and have been in violation of Statewide Rule 14(b)(2) since at least March 1, 2003. The estimated cost to plug the wells is \$195,000.00.

APPLICABLE AUTHORITY

In determining the amount of an administrative penalty under Texas Natural Resources Code §81.0531, 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.

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-4s 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.

¹ The Production Reports from March 2002 through June 2003 all report production of a single mcf of casinghead gas.

EXAMINER'S OPINION

It is uncontested that the 75 wells on the M & W Investments (11376) Lease are currently in violation of Rule 14. This proposal for decision addresses the following three issues: 1) the amount of the administrative penalty; 2) the relationship between Boni and Arencia; and, 3) whether the Commission should limit compliance in its Final Order to the plugging of the subject wells.

Amount of Administrative Penalty

In determining the amount of an administrative penalty under Texas Natural Resources Code §81.0531, 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. In this instance, 75 wells were abandoned by Boni. Commission inspections indicate the wells are currently in such a state of disrepair that the estimated cost of plugging the wells per foot is \$7.33. Under the provisions of Texas Natural Resources Code §81.0531, the deterioration of the lease, associated equipment and the condition of the wells observed in the Commission inspections support an administrative penalty exceeding the standard guideline of \$2,000 per well for violations of Statewide Rule 14(b)(2).

Additionally, the examiner notes Boni abandoned the wells contemporaneous with the changes required by the Legislature and implemented by the Commission for the transition to universal bonding for all operators. The \$100.00 good guy fee was no longer available to operators at the time Boni's Organization Report became delinquent.² Boni never had any financial security in place which the Commission could call on to at least partially defray the estimated plugging costs for the wells. These facts may be considered with respect to the "demonstrated good faith of the respondent" in determining the amount of an administrative penalty.

Based on these considerations, the examiner recommends the administrative penalty assessed against Boni be increased to \$195,000.00 to reflect the estimated amount of the plugging costs for the 75 wells. While the Commission can still separately pursue a reimbursement action if it expends funds to plug the wells, increasing the administrative penalty to the estimated cost of plugging the wells would allow the Attorney General's office to pursue an award which would cover the complete estimated plugging costs prior to any actual expenditure.

Relationship between Boni and Arencia

²Commission records indicate Boni would have been eligible to pay a \$1000 good guy fee.

Commission Organization Report records for Boni and Arencia show several commonalities between the two entities. The entities share common officers, although there are minor spelling differences. Additionally, both entities are located in Nacogdoches. The operations for both companies are limited to wells in the Nacogdoches Field. Finally, both entities abandoned operations in 2002 leaving a large number of wells to be plugged with State Funds.

Due to differences in spelling, the Commission's computer system would not automatically connect Johnnie Gardner, Boni's President with Johnnie Gardner, Jr., Arencia's Secretary/Treasurer even though the identification provided by Mr. Gardner for both entities is identical. A Commission Final Order following the issuance of the Proposal for Decision will facilitate a manual connection for the purposes of applying the officer taint required under Texas Natural Resources Code Section 91.114. Additionally, mailing the Proposal for Decision to the addresses listed for both organizations will circumvent any potential notice issues. See *Morris v. State* 894 SW2d 22, 24 (Tex.App. – Austin 1994, writ dismissed w.o.j.). Finally, ensuring that Arencia is subject to the provisions of Texas Natural Resources Code Section 91.114 based on the violations of Boni will obviate pursuit of a separate Enforcement action to taint its officers for Arencia's violations.

Propriety of Plug Only Compliance Requirements

Final Orders in Commission Enforcement Proceedings which result from the operator's failure to appear at the hearing typically require an operator to plug a well for a violation of Statewide Rule 14(b)(2) if there is no reported production from the well (or injection for injection and disposal wells) in the past 48 months. In protested cases, a "plug only" recommendation is based on findings of fact and conclusions of law that the operator no longer possesses a right to operate the well. These "plug only" orders reflect a policy adopted to avoid multiple Enforcement actions for wells which have not reported any production or injection activity for a lengthy period of time. The "plug only" requirement also prevents the perpetual deferment of plugging obligations for wells which have reached the end of their useful lives.

The "plug only" compliance requirements also change the showing another operator must make in order to take over the wells. If an operator seeks to take over any well subject to a "plug only" provision in a Commission Final Order, the operator must seek a superceding order to lift the "plug only" restriction. Superceding orders have been granted where the new operator establishes: 1) it has a current good faith claim of a right to operate the well; 2) it meets the minimum financial security requirements; 3) the prior operator has no remaining interest in the well or in the new company taking over the well; and 4) the well can be restored to any beneficial use.³ If the Final Order provides for plugging "or other regulatory compliance", the new operator is only required to meet the minimum financial security requirements upon the filing of a two signature Commission Form P-4. If a two signature P-4 is filed, there is no required evaluation of the new operator's right

³ The factors evaluated in considering whether a superceding order should be granted are consistent with the requirements Orphan Well Reduction Program established in Texas Natural Resources Code Section 89.047.

to operate.⁴ Additionally, there is no inquiry into any connection between the new operator and the operator the Commission found violated Commission rules. Finally, the new operator is not required to show the well has a potential beneficial use, regardless of the number of years of inactivity and the condition of the well.

In this case, the 75 subject wells have not reported any production since February 2002. Additionally, several wells have elevated fluid levels, including fluid reported within 5 feet of the surface in 11 of the wells inspected. Finally, the operator is delinquent, having abandoned any responsibility for the wells several years ago. Under these circumstances, the adoption of a “plug only” compliance requirement in the Final Order is consistent with the Commission’s proactive practice of addressing wells which pose actual or potentially chronic compliance issues. It will also ensure any new operator seeking to take over the wells possesses a recognized legal claim of a right to operate the wells, is not connected to the prior operator in a subterfuge to avoid a Final Order finding violations of Commission rules, and that the wells will be restored to a beneficial use.

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. Respondent, Boni Oil, Incorporated (“Boni”) and the officers listed on the most recent Form P-5 (Organization Report) were given at least 10 days notice of this proceeding by certified mail.
 - A. On September 19, 2006, Enforcement filed the Complaint in this action and sent the Complaint and Notice of Opportunity for Hearing by certified mail to Boni’s last reported organization address at RR 2, Box 3147, Nacogdoches, Texas. The certified mail to this address was returned to the Commission “Attempted - Not Known”, and regular mail to the same address was noted as “not deliverable as addressed.”
 - B. Service of the Complaint and Notice of Opportunity for Hearing was also sent on September 19, 2006 to the President of Boni identified on its last Organization Report, Johnnie L. Gardner, at RR 2, Box 3146-A, Nacogdoches, Texas. The certified mail to this address was returned to the Commission “Attempted - Not Known”, and regular mail to the same address was noted as “not deliverable as addressed.”

⁴ While evaluation of an operator’s good faith claim of a continuing right to operation is not a necessary element in approving a two signature P-4, the Commission retains discretion to require an operator to provide evidence establishing its right to operate.

- C. Service of the Complaint and Notice of Opportunity for Hearing was also sent on September 19, 2006 to the Secretary of Boni identified on its last Organization Report, Gloria J. Lowery, at RR 2, Box 3143-A, Nacogdoches, Texas. The certified mail to this address was returned to the Commission “Attempted - Not Known”, and regular mail to the same address was noted as “not deliverable as addressed.”
2. Boni’s last P-5 was filed on March 21, 2001. Boni paid a fee of \$100 as financial assurance at the time of its last renewal. Johnnie L. Gardner is identified as Boni’s President. Gloria J. Lowery is identified as Boni’s Secretary. Boni’s P-5 is currently delinquent.
3. Arencia Oil Co., Inc. (“Arencia”) filed its last P-5 on October 17, 2001. Gloria J. Lowery is identified as the President. Johnnie Lewis Gardner, Jr. is listed as the Secretary/Treasurer. Arencia’s organization address is listed as 5027 CR 420, Nacogdoches, Texas 75961. The location address listed is 12010 Oil Springs Road, Woden, Texas 75978. Arencia’s P-5 is currently delinquent. At the time of the last filing of its most recent P-5, Arencia paid a \$100 “good guy” fee in lieu of posting financial security for its operations. Commission records further show that Arencia is currently listed as the operator of 42 wells on two Commission leases. All of the wells are completed in the Nacogdoches Field.
4. The identification information provided by Ms. Lowery and Mr. Gardner to the Commission with the Organization Reports for both Boni and Arencia is identical.
5. Boni was recognized as the operator of the 75 wells on the M & W Investments (11376) Lease (“subject lease” and/or “subject wells”), upon approval of the Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) on June 30, 1992. All of the wells are completed in the Nacogdoches Field between 300 and 500 feet subsurface. The total depth of the wells is 26,610 feet.
6. The subject wells are currently inactive and have been inactive for more than 12 months.
 - A. A Commission inspection on April 28, 2005 of Wells 1-10, 33, 34, 35, 37, 38, 40, 41, and 42 found none of the inspected wells on the subject lease producing. Wells 2-8, 10 and 42 were equipped with pumping units. Wells 1 and 9 did not have pumping units. Wells 33, 34, 35, 37, 38, 40, and 41 were equipped for air-jetting. Additionally, Well 9 had fluid at the surface.
 - B. A Commission inspection on May 6, 2005 of Wells 11-16, 18-20, 22, 25, 27-32, 36, 39, 43, 44, 49, 50, and 59 found none of the inspected wells on the subject lease producing. Only two wells, Wells 16 and 27, were equipped with pumping units. Wells 22, 25, 28, 29, 31, 32, 36, 39, and 44, were equipped for air-jetting. Wells 18, 19, 20, 22, 25, 43, 49, 50, and 59 were not equipped for production. Additionally, the fluid level in Wells 19, 30, 43, 50 and 59 was observed to be at or within 5 feet of the surface.

- C. A Commission inspection on May 11, 2005 of Wells 17, 45, 48, 52, 56, 58, 63, 65, and 66 found none of the inspected wells on the subject lease producing. Wells 56, 63 and 66 were equipped for air-jetting, but none of the other wells were equipped for production. Additionally, the fluid level in Wells 45, 48, 52, 56 and 65 was observed to be at or within 3 feet of the surface.
 - D. A Commission inspection on June 9, 2005 of the 11 wells with fluid levels at or near the surface confirmed the presence of fluid in the wellbores at or near the same level identified in the prior inspections. A follow-up inspection on November 4, 2005 reported no activity on the lease or change in the condition of the wells inspected.
 - E. The most recent Commission inspection on April 27, 2006 found the subject wells remained in the same condition as previously observed. The inspector noted that road repairs would be required to access well locations. Additionally, the inspector observed that a backhoe would be needed to excavate areas as the inspections could not locate all of the wells.
 - F. Commission records report no oil production from the subject lease after February 2002, when Boni reported 8 barrels of production.
 - G. No production reports have been submitted after June 2003.
- 8. 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 wells constitute a cognizable threat to the public health and safety because of the probability of pollution.
 - 9. Boni 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.
 - 10. The estimated cost to plug the subject wells is \$7.33 per foot for a total cost of \$195,000.

CONCLUSIONS OF LAW

- 1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
- 2. All things necessary to the Commission attaining jurisdiction have occurred.
- 3. Boni is the operator of the 75 wells on the M & W Investments (11376) Lease, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
- 4. Boni 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 75 wells on the M & W Investments (11376) Lease.

5. The 75 wells on the M & W Investments (11376) Lease are not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. The 75 wells on the M & W Investments (11376) Lease have been out of compliance with Rule 14 from March 1, 2003 to the present.
7. Johnnie L. Gardner and Gloria J. Lowery were officers in positions of ownership or control of Boni, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
8. The violations of Commission rules committed by Boni are related to safety and the control of pollution.
9. As officers in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, both Johnnie L. Gardner and Gloria J. Lowery and any other organization in which they may hold a position of ownership or control, including, but not limited to Arencia Oil Co., Inc., shall be subject to the restrictions of Texas Natural Resources Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.
10. The documented violations committed by Boni 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 approved, requiring Boni Oil, Incorporated:

- 1) to plug the 75 wells on the M & W Investments (11376) Lease; and
- 2) to pay an administrative penalty of \$195,000.00.

Respectfully submitted,

Mark Helmueller
Hearings Examiner