

ENFORCEMENT ACTION AGAINST LANA FAYE JOHNSTON D/B/A JOHNSON & JOHNSTON (OPERATOR NO. 437160) FOR VIOLATIONS OF STATEWIDE RULES ON THE JOHNSON, H. ET AL. (07881) LEASE, WELL NOS. 8, 9 AND 10, EAST TEXAS FIELD, RUSK COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Barbara Epstein
Senior Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Lana Faye Johnston

RESPONDENT:

Lana Faye Johnston
D/B/A Johnson & Johnston

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF ORIGINAL COMPLAINT:	October 15, 2003
DATE OF NOTICE OF HEARING:	January 20, 2004
DATE OF HEARING:	February 10, 2004
HEARD BY:	James M. Doherty, Hearings Examiner
RECORD CLOSED:	April 12, 2004
PFD CIRCULATION DATE:	April 20, 2004

STATEMENT OF THE CASE

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

1. Whether the respondent Lana Faye Johnston D/B/A Johnson & Johnston (“Johnston”) should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R. R. Comm’n, 16 TEX. ADMIN. CODE §3.14(b)(2)] the Johnson, H. Et Al. (07881) Lease (“subject lease”), Well Nos. 8, 9 and 10 (“subject wells”), East Texas Field, Rusk County, Texas;

2. Whether Johnston 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 the subject wells or otherwise place the subject wells in compliance with Statewide Rule 14(b)(2).
3. Whether Johnston should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject wells; and
4. Whether any violations of Statewide Rule 14(b)(2) by Johnston should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

The hearing was held on February 10, 2004. Pursuant to her request, and with the consent of the Enforcement Section (“Enforcement”), Johnston participated by telephone and presented evidence. Barbara Epstein, Senior Staff Attorney, appeared representing Enforcement. Enforcement’s hearing file was admitted into evidence without objection by Johnston. At the hearing, Johnston requested an additional 90 days to place the subject wells into compliance with Commission rules. The record was held open until April 12, 2004, to afford Johnston this opportunity.

Enforcement staff recommends that an administrative penalty of \$6,000.00 be imposed against Johnston and that Johnston be ordered to plug the subject wells or otherwise place the wells into compliance with Commission rules. The examiner agrees with this recommendation.

APPLICABLE LAW

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)(1) provides that the entity designated as the operator of a well specifically identified on the most recent Commission-approved operator designation form filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

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 Evidence and Position

The last Form P-5 Organization Report for Johnston which received Commission approval was filed with the Commission on February 11, 2000. Johnston's P-5 has been delinquent since February 1, 2001. The examiner has officially noticed that at the time of the February 11, 2000, P-5 filing, Johnston filed financial assurance in the form of a nonrefundable fee of \$750.00. Johnston is a sole proprietor doing business under the assumed name Johnson & Johnston.

Johnston designated herself as operator of the subject lease and wells by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), which was effective January 14, 2000, and approved February 25, 2000. The subject wells are the only wells operated by Johnston.

On the occasions of seven inspections during the period July 26, 2000, through December 29, 2003, District Office inspectors found the subject wells to be inactive. Well No. 8 had rods and tubing hung inside the casing head, no pumping unit, and no power. Well Nos. 9 and 10, although inactive, were equipped to produce.

Production for the subject lease and wells was last reported to the Commission in May 2000. During the year 2000, the only reported production for the lease and wells was 35 BO in April and 30 BO in May. During 1999, prior to acquisition of the lease and wells by Johnston, total reported production was 743 BO.

On three occasions during the period April 17, 2003, through July 11, 2003, the District Office sent Johnston correspondence, notices, or copies of memoranda to the Commission's Assistant Director-Compliance regarding violations of Statewide Rule 14(b)(2) on the subject lease. The District Office estimated that the cost to plug the subject wells is \$33,900.00.

An affidavit of Ramon Fernandez, Jr., P.E., Field Operations, stated that: (1) 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; (2) holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface; and (3) uncased wells allow direct communication between zones and provide unimpeded access to the surface.

A certification of the Commission's Secretary stated that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) have been filed or approved, and no 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.

Enforcement stated that Johnston has no prior history of Commission final orders entered against her for violations of Commission rules.

Respondent's Evidence and Position

Johnston is the owner of the surface estate and a majority of the mineral interest in the subject property. She acquired the subject wells as a result of a lawsuit against a former operator. Well No. 8 has been inactive for at least 10 years and was not equipped to produce when it was acquired by Johnston. After becoming operator of the subject wells effective in January 2000, Johnston attempted to produce Well Nos. 9 and 10, but this proved uneconomical due to the high cost of disposing of produced water.

Johnston requested an additional 90 days to allow her an opportunity to place the subject wells into compliance with Commission rules and that a penalty be imposed only in the event she is unable to achieve compliance within that time. Johnston hopes to be able to convert one of the wells to a saltwater disposal well and to produce the other wells. A saltwater disposal well would permit more economical disposal of water from the producing wells. Johnston estimates that the two wells which she plans to produce are each capable of producing 10 BOPD. An alternative plan is to transfer the subject wells to another operator.

EXAMINER'S OPINION

The subject wells have been inactive for more than one year, have not been plugged, and are in violation of Statewide Rule 14(b)(2). This is not disputed by Johnston.

The record was held open until April 12, 2004, to receive any report that Johnston had brought the subject wells into compliance and/or reached a settlement agreement with Enforcement. No such report has been received by the examiner. The granting of an additional grace period for compliance is unwarranted. As of the date the record closed, all of the subject wells had been inactive for nearly four years. Although Johnston stated that she obtained a plugging extension for the wells, any such plugging extension would not have survived delinquency of Johnston's P-5 as of February 1, 2001. Thus, the subject wells have been in violation of Statewide Rule 14(b)(2) for more than three years.

Johnston has been given more than a fair opportunity to achieve compliance. At least as of April 17, 2003, the District Office gave Johnston written notification of the Statewide Rule 14(b)(2) violations and the need for compliance. Copies to Johnston in May and July 2003 of District Office memoranda to the Commission's Assistant Director-Compliance regarding the violations had no effect. The hearing is this docket originally was scheduled for December 15, 2003, but Johnston filed a motion for continuance. The continuance was granted, and the hearing was not rescheduled until February 10, 2004. Holding the record open for an additional 60 days following the hearing did not result in Johnston's compliance either.

The examiner recommends that Johnston be ordered to pay an administrative penalty of \$6,000.00,

calculated on the basis of three violations of Statewide Rule 14(b)(2) at \$2,000.00 each. This is the standard penalty in the recommended standard penalty schedule for enforcement cases. Johnston's violations are serious and present a hazard to the health and safety of the public because of the risk of pollution of usable quality water. Although Johnston has no history of prior final orders entered against her for violations of Commission rules, she cannot be said to have acted in good faith in view of her failure to achieve compliance in response to multiple notices of the violations from the Commission's District Office.

The examiner recommends further that Johnston be ordered to plug the subject wells or otherwise place the wells into compliance with Commission rules. The option of placing the wells into compliance by means other than plugging is recommended because: (1) there appears to be no question about Johnston's good faith claim of a current right to operate the lease and wells in view of the fact that she is a majority mineral interest owner in the subject property; and (2) during 1999, when the subject wells were last produced on a regular basis, they produced up to 330 BOPM. Well No. 8 has been inactive for a longer period of time and is not equipped to produce, but the evidence raises at least the possibility that this well could be converted to a saltwater disposal well to facilitate economical production from the other wells on the lease.

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. Lana Faye Johnston D/B/A Johnson & Johnston ("Johnston") was given at least 10 days notice of this proceeding by certified mail, addressed to her most recent Form P-5 Organization Report address. Johnston appeared at the hearing and presented evidence.
2. Johnston is a sole proprietor. She last filed an approved Form P-5 on February 11, 2000. Johnston's Form P-5 has been delinquent since February 1, 2001. At the time of filing her last approved Form P-5, Johnston filed financial assurance in the amount of \$750.00.
3. Johnston has no history of prior Commission orders entered against her for violations of Commission rules.
4. Johnston designated herself to the Commission as the operator of the Johnson, H. Et Al. (07881) Lease ("subject lease"), Well Nos. 8, 9 and 10 ("subject wells"), by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective January 14, 2000, and approved February 25, 2000. The subject wells are the only wells of which Johnston is the operator.

5. Johnston is the owner of the surface estate and a majority of the mineral interest in the property on which the subject wells are located.
6. The subject wells have been inactive for more than 12 months, have not been plugged, and no Rule 14(b)(2) plugging extensions are in effect.
 - a. Seven inspections of the subject lease during the period July 26, 2000, through December 29, 2003, disclosed that the subject wells were inactive and not plugged. Rods and tubing were hung inside the casing head on Well No. 8, and the well had no pumping unit or power. Well Nos. 9 and 10 were inactive, but equipped to produce.
 - b. No production has been reported to the Commission for the subject lease and wells since May 2000.
 - c. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) have been filed with or approved by the Commission for the subject wells.
 - d. No 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.
7. On three occasions during the period April 17, 2003, through July 11, 2003, the District Office sent Johnston correspondence, notices, or copies of memoranda to the Commission's Assistant Director-Compliance regarding violations of Statewide Rule 14(b)(2) on the subject lease. Johnston did not respond by achieving compliance.
8. The estimated cost to plug the subject wells is \$33,900.00.
9. 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 risk of pollution.
10. Johnston has not demonstrated good faith in that she failed to timely plug the subject wells or otherwise place the wells into compliance with Commission rules after being notified of Statewide Rule 14(b)(2) violations by the District Office.

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. Lana Faye Johnston D/B/A Johnson & Johnston (“Johnston”) is the operator of the Johnson, H. Et Al. (07881) Lease, Well Nos. 8, 9 and 10, East Texas Field, Rusk 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 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Johnston has the primary responsibility for complying with Statewide Rule 14 [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject wells.
5. 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 February 1, 2001.
6. The documented violations committed by Johnston 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).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring the operator Lana Faye Johnston D/B/A Johnson & Johnston to:

1. Plug, or otherwise place in compliance with Commission Statewide Rules, the Johnson, H. Et Al. (07881) Lease, Well Nos. 8, 9 and 10, East Texas Field, Rusk County, Texas; and
2. Pay an administrative penalty in the amount of SIX THOUSAND DOLLARS (\$6,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner

