

July 13, 2009

OIL AND GAS DOCKET NO. 6E-0254392

ENFORCEMENT ACTION AGAINST BENNY JOE ADKINSON DBA RED HOSS OIL COMPANY FOR VIOLATIONS OF STATEWIDE RULES ON THE BROWN, CALVIN (06804) LEASE, WELL NOS. 32, 33, 39 AND 52, EAST TEXAS FIELD, GREGG COUNTY, TEXAS.

APPEARANCES:

For Railroad Commission of Texas:

Christopher Hotchkiss, Staff Attorney, Enforcement Section, Office of General Counsel

For Respondent Red Hoss Oil Company

Joe Adkinson, Owner

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	April 2, 2008
NOTICE OF HEARING:	January 27, 2009
DATE CASE HEARD:	March 26, 2009
INTERIM RULING ENTERED:	March 30, 2009
MOTION TO FILE LATE FILED EXHIBITS:	May 12, 2009
RECORD CLOSED:	May 22, 2009
PFD PREPARED BY:	Mark Helmueller Hearings Examiner
PFD CIRCULATION DATE:	July 13, 2009
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

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

1. Whether respondent should be required to plug or otherwise place in compliance with Statewide Rule 14, the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52, East Texas Field, Gregg County, Texas;
2. Whether the respondent 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 for the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52, East Texas Field, Gregg County, Texas;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said 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, Office of General Counsel, Enforcement Section (“Enforcement”). Joe Adkinson, Owner, appeared on behalf of Red Hoss Oil Co. (“Red Hoss”) and presented evidence at the hearing. Enforcement's hearing file was admitted into evidence.

After the hearing, an Interim Ruling was entered requesting Red Hoss provide evidence to support its claim that its continuing right to operate the Brown, Calvin (06804) Lease was held by production from other wells. Red Hoss admitted in its response to the Interim Ruling that it did not have a right to operate the wells and requested that the wells be removed from its bond because the prior two operators were not legitimate assignors of the wells.

Additionally, on May 12, 2009, Enforcement submitted a motion to late file exhibits reflecting a Commission inspection of the Brown, Calvin (06804) Lease and Well Nos. 32,33, 39 and 52 conducted on April 29, 2009. Enforcement noted that equipment had been removed from the wells despite Red Hoss’ claim that it was barred from entering the property by the surface owner. No objection was filed to Enforcement’s motion. The inspection was entered into evidence and the record closed on May 22, 2009.

Enforcement recommended Red Hoss be ordered to properly plug the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52, East Texas Field, Gregg County, Texas, (hereinafter “subject lease/wells”) and pay a total administrative penalty of \$8,000.00 broken down to \$2,000.00 each for four violations of Statewide Rule 14(b)(2). The examiner agrees with the recommended penalty and recommends Red Hoss be ordered to plug the wells.

DISCUSSION OF THE EVIDENCE

Organization and Permit Records

Commission records show that at the time of the hearing, respondent had an active Commission Form P-5 (Organization Report) which was filed with the Commission on September 22, 2008. The Organization Report lists Benny Joe Adkinson as Red Hoss’s Owner. Commission records show that Red Hoss is recognized as the operator of 18 wells with a total depth of 65,454 feet. Red Hoss submitted a \$50,000 letter of credit as its financial assurance with the most recent Organization Report filing.

Red Hoss was recognized as the operator of the subject lease after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on October 18, 2005.

Commission Inspections

Commission inspections of the subject lease were conducted on December 12, 2007 and April 18, 2008. The inspector observed that Well Nos. 32, 33 and 52 were not equipped for production. These inspection reports observed that Well No. 39 was inactive, but equipped for production. Commission records further document that the wells were not in compliance with Statewide Rule 14(b)(2) after the plugging extension for the wells were cancelled effective August 16, 2006 for the failure to file fluid level tests. The last reported production for the wells was in September 1998.

A Commission inspection of the subject lease was also conducted subsequent to the hearing on April 29, 2009 and included in the evidentiary record as a late-filed exhibit. This inspection observed that the equipment on Well No. 39 had been removed.

An affidavit from Mark England states that the alleged violations pose a threat of pollution and safety. Unplugged wells in violation of Statewide Rule 14(b)(2) are a potential conduit for flows of oil or saltwater 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.

Enforcement's Position

Enforcement argues that the subject wells are out of compliance with Statewide Rule 14(b)(2) due to lack of production and the cancellation of the plugging extensions. Enforcement contends, based on the late-filed inspection report, that Red Hoss was not barred from entering the lease, as the equipment on Well No. 39 had been removed. Enforcement urges that Red Hoss be ordered to plug the wells and pay an administrative penalty of \$8,000.00 for the violations.

Red Hoss' Position

Red Hoss acknowledges responsibility for the wells and the violations of Commission Rule 14(b)(2). Red Hoss claims it was prevented by the landowner from accessing the wells to perform fluid level tests, that it did not have a lease, and that it had no claim to any equipment. Red Hoss also believes it was unable to challenge the landowner over these issues because the landowner is an inspector in the Commission District Office in Kilgore.

At the hearing, Red Hoss claimed the original lease remained in force and effect because at least two other nearby wells were still producing from the East Texas Field. Red Hoss provided no identification information or documentation to support this claim. After receipt of an Interim Ruling advising that Commission records showed the nearby producing wells involved a different base lease, Red Hoss admitted that it did not possess a current right to operate. Red Hoss requested that the wells be taken off of its bond because prior operators were not legitimate assignors of the wells.

APPLICABLE AUTHORITY

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 wells transferred after September 1, 1997, the operator of a well for purposes of plugging liability is shown by an approved Form P-4 designating that person as operator.

EXAMINER'S OPINION

Red Hoss' responsibility for the violations is not contested. The statements that Red Hoss was barred from entering the property appear to be either inaccurate, or any issues regarding access have now been resolved, as shown by the removal of equipment from Well No. 39. Accordingly, it is recommended that the administrative penalty of \$8,000.00 requested by Enforcement be ordered against Red Hoss and that Red Hoss be further ordered to bring the violations into compliance.

The examiner further recommends that Red Hoss be required to plug the wells as its only method of obtaining compliance with Commission rules. No production from the wells has been reported for over 10 years. Additionally, Commission inspections show the wells are no longer equipped for production, and Red Hoss admits it has no right to produce the wells.

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 Benny Joe Adkinson dba Red Hoss Oil Company (“Red Hoss”) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recently provided address.
2. Red Hoss has an active Commission Form P-5 (Organization Report) which was filed with the Commission on September 22, 2008. The Organization Report lists Benny Joe Adkinson as Red Hoss’s Owner. Commission records show that Red Hoss is recognized as the operator of 18 wells with a total depth of 65,454 feet. Red Hoss submitted a \$50,000 letter of credit as its financial assurance with the most recent Organization Report filing.
3. Red Hoss was recognized as the operator of the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52, East Texas Field, Gregg County, Texas after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on October 18, 2005.
4. The Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52 is currently inactive, has been inactive for more than 12 months, and has not been properly plugged.
 - a. Commission inspection reports dated December 12, 2007 and April 18, 2008 observed that Well Nos. 32, 33 and 52 were not equipped for production. Well No. 39 was inactive, but equipped for production.
 - b. A Commission inspection on April 29, 2009 observed that the equipment on Well No. 39 had been removed.
 - c. Commission records report no production from the wells since September 1998.
5. No plugging extensions were in effect for the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52 at the time of issuance of the proposal for decision. The plugging extensions were cancelled effective August 16, 2006 for the failure to file fluid level tests.
6. Red Hoss admitted it does not possess a good faith claim of a continuing right to operate the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52.
7. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged well bores constitute a cognizable threat to the public health and safety because of the probability of pollution.

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. Red Hoss is the operator of the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Red Hoss 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 Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52.
5. The Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52 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. Red Hoss does not possess a good faith claim of a continuing right to operate the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52.
7. Billy Joe Adkinson, as the owner of Red Hoss, was in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violation of Commission Rules committed by respondent.
7. The violations of Commission Rule 14 committed by respondent are related to safety and the control of pollution.
8. As an individual in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Billy Joe Adkinson and any other organization in which he may hold a position of ownership or control, 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.
9. The documented violations committed by Red Hoss are a hazard to the public health.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Red Hoss Oil Co., within 30 days of the entry of a Final Order in this matter to:

- 1) plug the Brown, Calvin (06804) Lease, Well Nos. 32, 33, 39 and 52 in compliance with Statewide Rule 14; and,
- 2) pay an administrative penalty of \$8,000.00.

Respectfully submitted,

Mark Helmueller
Hearings Examiner