

November 15, 2010

OIL AND GAS DOCKET NO. 6E-0258475

ENFORCEMENT ACTION AGAINST B & B OIL, INC. (OPERATOR NO. 039791) FOR VIOLATIONS OF STATEWIDE RULES ON THE W.H. SILER R/A -C- (07611) LEASE, WELL NO. 165, EAST TEXAS FIELD, RUSK COUNTY; W.H. SILER R/A -A1- (08749) LEASE, WELL NOS. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS AND 171, EAST TEXAS FIELD, RUSH COUNTY; AND W.H. SILER R/A -A2- (08750) LEASE, WELL NOS. 140, 173 AND 174, EAST TEXAS FIELD, RUSK COUNTY, TEXAS.

APPEARANCES:

FOR RESPONDENT:

Joseph F. Wallen, CEO
Fred P. Churchman, Field Supervisor

B & B Oil, Inc.
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FOR THE RAILROAD COMMISSION OF TEXAS:

Christopher Hotchkiss
Keith Barton, Engineer

Enforcement Section, RRC
Field Operations

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	August 7, 2008
NOTICE OF HEARING:	July 20, 2009
DATE CASE HEARD:	September 17, 2009
HEARING CLOSED:	September 17, 2009
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
CURRENT STATUS:	Contested
PFD CIRCULATION DATE:	November 15, 2010

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 B & B Oil, Inc. (“B & B”) should be required to place in compliance with Statewide Rule 9(12) [Tex. R.R. Comm’n., 16 TEX. ADMIN. CODE §3.9(12)] the

W.H. Siler R/A -A1- (08749) Lease, Well Nos. 11, 146, 149 and 171 (permitted as brackish water disposal wells), East Texas Field, Rusk County;

2. Whether B & B Oil, Inc. should be required to place in compliance with Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] the W.H. Siler R/A -A1- (08749) Lease, East Texas Field, Rusk County;
3. Whether B & B Oil, Inc. 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 W.H. Siler R/A -C- (07611) Lease, Well No. 165; the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171; and the W.H. Siler R/A -A2- (08750) Well Nos. 140, 173 and 174, East Texas Field, Rusk County, Texas;
4. Whether B & B Oil, Inc. should be required to place in compliance with Statewide Rule 14(b)(3) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(3)] the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 15, 16, 30, 65, 83, 84, 85, 94, 118, 119, 120, 134, 148, 149, 169WS and 170WS, East Texas Field, Rusk County, Texas;
5. Whether B & B Oil, Inc. should be required to place in compliance with Statewide Rule 46(j) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.46(j)] the W.H. Siler R/A -C- (07611) Lease, Well No. 165, East Texas Field, Rusk County;
6. Whether B & B Oil, Inc. violated provisions of Title 3, Oil and Gas, Subtitles A, B and C, Texas Natural Resources Code, Chapter 27 of the Water Code and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject wells and/or otherwise failing to place the subject wells and lease into compliance with Statewide Rules 9(12); 13(b)(1)(B); 14(b)(2); 14(b)(3); and 46(j);
7. Whether, pursuant to Texas Natural Resources Code §81.0531, B & B Oil, Inc. should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells; and
8. Whether any violations of Statewide Rules 9(12); 13(b)(1)(B); 14(b)(2); 14(b)(3); and 46(j) made by B & B Oil, Inc. should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A Notice of Hearing was issued in this case on July 20, 2009 for the hearing date of September 17, 2009. B & B Oil, Inc. President/Secretary/Treasurer Joseph F. Wallen and B & B Field Supervisor Fred Churchman appeared at the hearing on behalf of B & B Oil, Inc. and offered evidence. Christopher Hotchkiss, Staff Attorney, appeared to represent Enforcement. Enforcement's certified hearing file was entered into evidence.

MATTERS OFFICIALLY NOTICED

The examiner has taken Official Notice of Commission Mainframe records of B & B Oil, Inc., including the P-5 screen, Officer screen, P-5 Financial Assurance, and “On-Schedule Leases, Wells and Wellbore by Operator” as of September 28, 2010. These show that B & B is an active operator with financial assurance in the form of \$250,000 Letter of Credit. B&B operates 52 leases and approximately 355 wells, of which 330 are inactive under Statewide Rule 14(b)(2).

AUTHORITY

Statewide Rule 9(12) [16 TEX. ADMIN. CODE §3.9(12)] requires that each disposal well completed with surface casing set and cemented through the entire interval of protected usable quality water shall be tested for mechanical integrity at least once every five years.

Statewide Rule 13(b)(1)(B) [16 TEX. ADMIN. CODE §3.13(b)(1)(B)] provides that wellhead assemblies shall be used on wells to maintain surface control of the well. Maintenance of surface control is necessary not only to prevent fluids from being discharged from the wellbore onto the ground surface, but also to prevent any oil and gas wastes present in the wellbore from being displaced to the surface by influxes of surface water into the open wellbore.

Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

Statewide Rule 14(b)(3) [16 TEX. ADMIN. CODE §3.14(b)(3)] requires the operator of any well more than 25 years old that becomes inactive and subject to the provisions of this subsection to plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

Statewide Rule 46(j) [16 TEX. ADMIN. CODE §3.46(j)] provides that each injection well shall be pressure tested at least once every five years to determine if there are leaks in the casing, tubing or packer.

DISCUSSION OF THE EVIDENCE

Enforcement

B & B Oil, Inc. (“B & B”) has reported itself to the Commission as a Corporation performing activities in the State of Texas regulated by the Commission. Joseph F. Wallen is the sole officer of B & B and was listed as President, Secretary and Treasurer during the time of the pled violations.

B & B designated itself the operator of the W.H. Siler R/A -C- (07611) Lease, Well No. 165, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority),

effective July 1, 2004, approved July 7, 2004. B & B designated itself the operator of the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective June 1, 2007, approved February 26, 2008 [this was a lease subdivision]. B & B designated itself the operator of the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective June 1, 2007, approved February 26, 2008 [this was a lease subdivision].

Statewide Rule 9(12)

The W.H. Siler R/A -A1- (08749) Lease, Well Nos. 11, 146, 149 and 171 were permitted as brackish water disposal wells on February 1, 1984 (Permit No. 02930). The wells are required to be pressure tested annually and the Form H-5s (Disposal/Injection Well Pressure Test Report) submitted to the Commission. The wells were most recently tested on April 4, 2005 for Well No. 11, most recently on July 6, 2007 for Well No. 146, most recently on May 26, 2006 for Well No. 149 and most recently on January 31, 2004 for Well No. 171. No tests have been submitted since those dates.

Commission District office inspection reports made on May 15, 2008 for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 11, 146, 147 and 171 indicate the wells are inactive and have not passed the required H-5 tests. The lease was severed by Commission personnel on May 16, 2008 for the delinquent H-5 violations.

By failing to demonstrate the mechanical integrity of the subject wells in accordance with the provisions of the corresponding disposal permits and the Commission Statewide Rule 9(12), B & B violated Statewide Rule 9(12) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.9(12)].

B & B's violations of Statewide Rule 9(12) are serious and threaten the public health. Mark England, Engineering Specialist in the RRC Field Operations Section stated in an affidavit "A disposal well that has not been tested for mechanical integrity, as required by its permit and by Commission Rule 9(12)(c)(i), is a potential source of pollution in that if the subject well is leaking, waste may not be confined to the permitted injection interval so that usable quality water zones are properly isolated from possible contamination."

Statewide Rule 13(b)(1)(B)

Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] provides that wellhead assemblies shall be used on wells to maintain surface control of the well. Maintenance of surface control is necessary not only to prevent fluids from being discharged from the wellbore onto the ground surface, but also to prevent any oil and gas wastes present in the wellbore from being displaced to the surface by influxes of surface water into the open wellbore.

Commission District office inspection reports made on May 14, 2008 and May 15, 2008 for the W.H. Siler R/A -A1- (08749) Lease showed that Well Nos. 9, 29, 97 and 121 had casing open to atmosphere. By leaving the wells open to atmosphere, B & B violated Statewide Rule 13(b)(1)(B).

A more recent District Office inspection, made on September 15, 2009, indicates that on the W.H. Siler R/A (08749) Lease, Well No. 9 remains open to atmosphere. Well Nos. 29 and 97 are capped. Well No. 121 is capped but is leaking pressure at the casing head. The inspection also revealed that Well Nos. 83, 94 and 118 are open to atmosphere. However, these two additional violations were not pled in Enforcement's Complaint.

B & B's violation of Statewide Rule 13(b)(1)(B) is serious and a hazard to the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals. These discharges may eventually make their way to surface or subsurface waters, causing pollution.

Mark England, Engineering Specialist in the RRC Field Operations Section, stated in an affidavit "Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore."

Statewide Rule 14(b)(2)

Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

A Commission District Office inspection report made on May 15, 2008, and reports filed by B & B with the Commission (reflecting zero injection) since June 30, 2007, showed that the W.H. Siler R/A -C- (07611) Lease, Well No. 165 has been inactive for a period greater than one year. Injection in the subject well ceased on or before April 1, 1995. A follow-up District Office inspection report made on September 15, 2009 showed that Well No. 165 was still inactive.

Commission District office inspection reports made on May 14, 2008 and May 15, 2008 and reports filed by B & B with the Commission (reflecting zero production and/or injection) since June 30, 2007, showed that the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171 have been inactive for a period greater than one year. Production and/or injection for the subject wells ceased on or before February 28, 2005. A follow-up District Office inspection report made on September 15, 2009 showed that Well Nos. 9, 11, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171 were still inactive. The follow-up inspection did not note the status of Well No. 15.

A Commission District Office inspection report made on May 14, 2008, and reports filed by B & B with the Commission (reflecting zero production) since June 30, 2007, showed that the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174 have been inactive for a period greater than one year. A follow-up District Office inspection report made on September 15, 2009 showed that Well Nos. 140, 173 and 174 remained inactive. Production from the subject wells ceased on or before June 1, 2007.

No workovers, re-entries or subsequent operations have taken place on any of the leases and subject wells in this complaint. None of the subject wells have been plugged and the plugging extensions for all of the subject wells as allowed by Statewide Rule 14 were cancelled August 29, 2007 based on:

- a. Respondent's failure to submit to the Commission a Form H-5 (Injection/Disposal Well Pressure Test Report) for the the W.H. Siler R/A -C- (07611) Lease, Well No. 165 and the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 11, 146, 149 and 171;
- b. Respondent's failure to submit to the Commission a Form H-15 (Test on Inactive Well More Than 25 years Old) for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 15, 16, 30, 65, 83, 84, 85, 94, 118, 119, 120, 134, 148, 169WS and 170WS;
- c. Respondent's failure to submit to the Commission a Form H-15 (Test on Inactive Well More Than 25 years Old) for the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174; and
- d. Respondent's rules violations on the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 29, 97 and 121.

By failing to timely plug the subject wells or to obtain an extension of the plugging deadline, B & B has violated Statewide Rule 14(b)(2). B&B's violations of Statewide Rule 14(b)(2) are serious and threaten the public health and safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water, as defined in Statewide Rule 8(a)(28) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(a)(28)] by serving as a conduit for the migration of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

Mark England, Engineering Specialist in the RRC Field Operations Section, stated in an affidavit "A well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in accordance with the technical requirements of Statewide Rule 14 in order to prevent pollution of usable quality surface or subsurface waters. 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."

Pursuant to calculations by District office personnel, the total estimated cost to the State for plugging the W.H. Siler R/A -C- (07611) Lease, Well No. 165 is \$27,000; the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171 is \$621,000 (23 wells at \$27,000 each); and the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174 is \$81,000 (3 wells at \$27,000 each).

Statewide Rule 14(b)(3)

Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] requires the operator of any well more than 25 years old that becomes inactive and subject to the provisions of this subsection to plug the well or successfully conduct a fluid level or hydraulic pressure test

establishing that the well does not pose a potential threat of harm to natural resources, including surface or subsurface water, oil and gas.

Commission records indicate no Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 15, 16, 30, 65, 83, 84, 85, 94, 118, 119, 120, 134, 148, 169WS and 170WS. Commission records further show that:

- a. Well No. 15 was completed prior to 1980, an H-15 test was due in May, 2005, that a test was done on January 27, 2006, was submitted to the Commission, was ruled "Not Approved" on February 6, 2006, and that the well was again ruled "Delinquent" on April 15, 2008;
- b. Well No. 16 was completed on August 7, 1980, an H-15 test was due in May, 2006, that a test was done on December 14, 2007, was submitted to the Commission, was ruled "Not Approved" on January 15, 2008, and the well was again ruled "Delinquent" on April 15, 2008;
- c. Well No. 30 was completed March 7, 1977, an H-15 test was due in May, 2005, that a test was done on August 4, 2005, was submitted to the Commission, was ruled "Not Approved" on August 16, 2005, and again the well was ruled "Delinquent" on April 16, 2008;
- d. Well No. 65 was completed prior to 1977, an H-15 test was due in May, 2005, that a test was done on December 14, 2005, was submitted to the Commission, was ruled "Not Approved" on December 20, 2005, and the well was again rule "Delinquent" on April 15, 2008;
- e. Well No. 83 was completed November 20, 1948, an H-15 test was due in May, 2005, that a test was done on December 14, 2005, was submitted to the Commission, was ruled "Not Approved" on December 22, 2005, and that the well was again ruled "Delinquent" on April 16, 2008;
- f. Well No. 84 was completed prior to 1980, an H-15 test was due in May, 2005, that a test was done on August 4, 2005, was submitted to the Commission, was ruled "Not Approved" on August 8, 2005, and that the well was again ruled "Delinquent" on April 15, 2008;
- g. Well No. 85 was completed on August 23, 1975, an H-15 test was due in May, 2005, that a test was done on August 4, 2005, was submitted to the Commission, ruled "Nor Approved" on August 8, 2005, and that the well was again ruled "Delinquent" on April 15, 2008;
- h. Well No. 94 was completed September 13, 1973, an H-15 test was due in May, 2005, that a test was done on November 15, 2005, submitted to the Commission, ruled "Not Approved" on December 15, 2005, and the well was again ruled "Delinquent" April 15, 2008;

- i. Well No. 118 was completed on February 28, 1976, an H-15 test was due in May, 2006, a test was done on December 21, 2007, was submitted to the Commission, was ruled “Not Approved” on January 15, 2008, and the well was again ruled “Delinquent” on April 16, 2008;
- j. Well No. 119 was completed prior to 1980, an H-15 test was due in May, 2005, a test was done on October 4, 2005, was submitted to the Commission, was ruled “Not Approved” on October 10, 2005, and the well was again ruled “Delinquent” on April 15, 2008;
- k. Well No. 120 was completed October 8, 1975, an H-15 test was due in May, 2005, a test was done on October 4, 2005, submitted to the Commission and ruled “Not Approved” on October 10, 2005, and the well was again ruled “Delinquent” on April 15, 2005;
- l. Well No. 134 was completed prior to 1980, an H-15 test was due in May, 2006, a test was done on September 2, 2005, was submitted to the Commission, was ruled “Not Approved” on September 12, 2005, and the well was again ruled “Delinquent” on April 15, 2008;
- m. Well No. 148 was completed November 12, 1973, an H-15 test was due in May, 2005, a test was done on January 27, 2006, was submitted to the Commission, was ruled “Not Approved” on February 6, 2006, and the well was again ruled “Delinquent” on April 15, 2008;
- n. Well No. 169WS was completed May 27, 1976, an H-15 test was due in May, 2006, a test was done on March 2, 2006, was submitted to the Commission, and ruled “Not Approved” on April 3, 2006, and the well was again ruled “Delinquent” on April 16, 2008;
- o. Well No. 170WS was completed July 16, 1974, an H-15 test was due in May, 2005, no test was done, and the well was ruled “Delinquent” on April 15, 2008; and
- p. None of the above wells have been plugged.

Commission records indicate no Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174. Commission records further show that:

- a. Well No. 140 was completed May 27, 1976, an H-15 test was due in May, 2006, that a test was done on March 2, 2006, was submitted to the Commission, was ruled “Not Approved” on April 3, 2006, and the well was again ruled “Delinquent” on March 19, 2009;
- b. Well No. 173 was completed January 7, 1978, an H-15 test was due in May, 2005, that a test was done on September 2, 2005, was submitted to the Commission and

ruled “Not Approved” on September 12, 2005;

- c. Well No. 174 was completed July 7, 1979, an H-15 test was due in May, 2005, that a test was done on October 4, 2005, was submitted to the Commission and ruled “Not Approved” on October 10, 2005, and the well was again ruled “Delinquent” on April 15, 2008; and
- d. None of the above wells have been plugged.

By failing to timely test and file the required successful H-15 test results with the Commission, or plug the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 15, 16, 30, 65, 83, 84, 85, 94, 118, 119, 120, 134, 148, 169WS, and 170WS, or the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174, B&B violated Statewide Rule 14(b)(3) [Tex. R.R. Comm’n, 16 TEX. ADMIN. Code §3.14(b)(3)].

B & B’s violations of Statewide Rule 14(b)(3) are serious and are hazardous to the public health and safety because wells over twenty-five years old may develop holes or leaks in the casing, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface.

Mark England, Engineering Specialist in the RRC Field Operations Section, stated in an affidavit “Any inactive well that is greater than 25 years of age must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the required test and supporting documentation (Commission Form H-15), the Commission cannot determine if the well poses a threat to natural resources.

Statewide Rule 46(j)

Statewide Rule 46(j) [Tex. R.R. Comm’n, 16 TEX. ADMIN. Code §3.46(j)] provides that each injection well shall be pressure-tested at least once every five years to determine if there are leaks in the casing, tubing or packer.

A Commission District Office inspection report made on May 15, 2008 for the W.H. Siler R/A -C- (07611) Lease indicated Well No. 165 was delinquent for the submission of a Form H-5. The most recent test for the subject well, dated October 31, 2003, was ruled “Inconclusive” and no subsequent tests have been submitted.

By failing to timely test the subject well, B & B violated Statewide Rule 46(j) [Tex. R.R. Comm’n, 16 TEX. ADMIN. Code §3.46(j)] and the terms and conditions set forth in the injection permit dated April 14, 1975.

B & B’s violation of Statewide Rule 46(j) is serious and threatens the public health and safety. The required test is designed to determine the integrity of the well’s casing and that leakage is not occurring. Untested disposal/injection wells, if leaking, may cause pollution of usable quality ground water and surface water by serving as a conduit for the passage of oil, gas saltwater and other

substances to the surface, or from one stratum or formation to another.

Mark England, Engineering Specialist in the RRC Field Operations Section, stated in an affidavit “Any injection or disposal of fluid down a wellbore could be a potential source of pollution. Under Statewide Rule 46(j)(1)-(4), operators must pressure test each injection well at least once in every five years to show that the well is not leaking and that waste is being confined to the permitted injection interval and that usable quality water zones are properly isolated from possible contamination.”

Enforcement believes B & B has acted in bad faith because it failed to correct Commission rule violations on the subject leases and failed to adequately explain its inaction to the Commission.

Enforcement’s Recommended Penalty

Commission staff requests that an order be entered assessing B & B an administrative penalty of \$104,000.00. The penalty consists of four Rule 9(12) violations at \$2,000 each, four Rule 13(b)(1)(B) violations at \$1,000 each, twenty seven Rule 14(b)(2) violations at \$2,000 each, eighteen Rule 14(b)(3) violations at \$2,000 each and one Rule 46(j) violation at \$2,000. Staff also requests that the order direct B & B to plug or place the subject leases and wells in compliance with all Commission Statewide Rules.

B & B Oil, Inc.

B & B states that it is caught in the middle in this situation. B & B is acting as contract operator for Eagle Environmental, a publicly traded company which is the owner of the working interest in the lease. B & B acquired responsibility for the leases by Form P-4 transfer in January, 2007 and has spent its own money trying to bring the leases into compliance since that date. However, it has had no reimbursement from Eagle Environmental.

All Commission correspondence related to the subject leases goes to B & B as the operator. Eagle Environmental has complained to B & B that it does not get notice of possible problems in a timely manner as a result.

Fred Churchman of F&D Churchman Enterprises was employed by B & B to service the leases. Mr. Churchman stated at hearing that he is owed \$164,000 for work done on the leases, but has not been paid. He states that the work will be done as money is sent to pay for it.

B & B has tried to transfer the Form P-4 responsibility for the subject wells to Eagle Environmental, but the P-4s cannot transfer due to the fact that the lessor of the Siler leases has filed suit alleging the leases under which Eagle Environmental claims the right to operate have terminated. Consequently, the P-4s will not transfer until the courts rule on the title issue.

B & B states that H-5s and H-15s will be filed for the subject wells. B & B has acquired an echometer and Mr. Churchman took possession of the echometer on September 10, 2009. B & B also stated that Eagle Environmental is sending checks in the amount of \$15,000, \$25,000 and \$200,000 to pay for further work.

B & B's offered one exhibit in this hearing, which consisted of three two-signature P-4s which attempt to transfer all wells on the Siler, W.H. R/A A-1 (08749) Lease, all wells on the Siler, W.H. R/A A-2 (08750) Lease and the Siler, W.H. R/A -C- (07611) Lease to Hohle Energy Services, Inc. (Operator No. 391458). The exhibit also included a two-signature P-4 for the Siler, W.H. R/A A (07609) Lease.

EXAMINER'S OPINION

B & B did not object to the entry of Enforcement's file or exhibits in this docket. B & B's primary defense is that it placed the subject leases and wells under its bond as a contract operator for Eagle Environmental, but has not been reimbursed for its work. While this may place B & B in a difficult position, it does not change the fact that B & B is the operator responsible for the leases and wells in this docket. Enforcement proved all the alleged violations. B & B had no effective rebuttal.

Conditions on the subject leases appear to be deteriorating. For example, District Office inspections made on May 14, 2008 and May 15, 2008, show that Well Nos. 9, 29, 97 and 121 on the Siler, W.H. R/A -A1- (08749) Lease were in violation of Statewide Rule 13(b)(1)(B). A District Office inspection over a year later, made on September 15, 2009, indicates that the Statewide Rule 13(b)(1)(B) violations on the lease have been only partially remediated and, in total, are actually worse. The W.H. Siler R/A -A1- (08749) Lease, Well No. 9 remains open to atmosphere. Well Nos. 29 and 97 are capped. However, Well No. 121 is capped but is leaking pressure at the casing head. The inspection also revealed that Well Nos. 83, 94 and 118 are open to atmosphere. These additional violations were not included in the notice of this hearing and were not pled in Enforcement's Complaint. On balance, four wells were in violation of Statewide Rule 13(b)(1)(B) in May of 2008, and five wells were in violation of the rule in September of 2009.

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. B & B Oil, Inc. ("B & B") (Operator No. 039791) was given at least 10 days notice of this proceeding. B & B appeared through its CEO, Joseph F. Wallen and presented evidence at the hearing.
2. B & B Oil, Inc. is a corporation, and its President/Secretary/Treasurer is Joseph F. Wallen. Wallen was in a position of ownership or control of Respondent at the time the subject violations were committed.
3. The P-5 Organization Report of B & B Oil, Inc. was delinquent at the time of the hearing but has since been re-activated, and remains active. B & B is the designated operator of 355 wells, of which 330 are inactive. B & B has approved financial assurance on file in the form of a Letter of Credit in the amount of \$250,000.
4. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.

5. B & B designated itself the operator of the W.H. Siler R/A -C- (07611) Lease, Well No. 165, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective July 1, 2004, approved July 7, 2004.
6. B & B designated itself the operator of the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective June 1, 2007, approved February 26, 2008.
7. B & B designated itself the operator of the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective June 1, 2007, approved February 26, 2008.
8. Commission District office inspection reports made on May 15, 2008 for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 11, 146, 147 and 171 (which are permitted as brackish water disposal wells) showed the wells are inactive and have not passed the H-5 tests required by Statewide Rule 9(12).
9. B & B's violations of Statewide Rule 9(12) are serious and threaten the public health because a disposal well that has not been tested for mechanical integrity, as required by its permit and by Commission Rule 9(12)(c)(i), is a potential source of pollution in that if the subject well is leaking, waste may not be confined to the permitted injection interval so that usable quality water zones are properly isolated from possible contamination.
10. Commission District office inspection reports made on May 14, 2008 and May 15, 2008 for the W.H. Siler R/A -A1- (08749) lease showed that Well Nos. 9, 29, 97 and 121 had casing open to atmosphere. A District Office inspection report, made on September 15, 2009, showed that on the W.H. Siler R/A (08749) Lease, Well No. 9 remained open to atmosphere. Well Nos. 29 and 97 were capped. Well No. 121 was capped but was leaking pressure at the casing head. The inspection also revealed that Well Nos. 83, 94 and 118 were open to atmosphere.
11. B & B's violation of Statewide Rule 13(b)(1)(B) is serious and a hazard to the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.
12. A Commission District Office inspection report made on May 15, 2008, and reports filed by B & B with the Commission (reflecting zero injection) since June 30, 2007, showed that the W.H. Siler R/A -C- (07611) Lease, Well No. 165 has been inactive for a period greater than one year. Injection in the subject well ceased on or before April 1, 1995. A follow-up District Office inspection report made on September 15, 2009 shows that Well No. 165 is still inactive.
13. Commission District office inspection reports made on May 14, 2008 and May 15, 2008 and

reports filed by B & B with the Commission (reflecting zero production and/or injection) since June 30, 2007, showed that the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171 have been inactive for a period greater than one year. Production and/or injection from the subject wells ceased on or before February 28, 2005. A follow-up District Office inspection report made on September 15, 2009 shows that Well Nos. 9, 11, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171 still inactive. The follow-up inspection did not note the status of Well No. 15.

14. A Commission District Office inspection report made on May 14, 2008, and reports filed by B & B with the Commission (reflecting zero production) since June 30, 2007, showed that the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174 were inactive. A follow-up District Office inspection report made on September 15, 2009 showed that Well Nos. 140, 173 and 174 remained inactive. Production from the subject wells ceased on or before June 1, 2007.
15. No workovers, re-entries or subsequent operations have taken place on any of the leases and subject wells in this complaint; none of the subject wells have been plugged; the plugging extensions for all of the subject wells as allowed by Statewide Rule 14 were cancelled August 29, 2007 based on:
 - a. Respondent's failure to submit to the Commission a Form H-5 (Injection/Disposal Well Pressure Test Report) for the the W.H. Siler R/A -C- (07611) Lease, Well No. 165 and the W.H. Siler R/A -A1- (08749) lease, Well Nos. 11, 146, 149 and 171;
 - b. Respondent's failure to submit to the Commission a Form H-15 (Test on Inactive Well More Than 25 years Old) for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 15, 16, 30, 65, 83, 84, 85, 94, 118, 119, 120, 134, 148, 169WS and 170WS;
 - c. Respondent's failure to submit to the Commission a Form H-15 (Test on Inactive Well More Than 25 years Old) for the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174; and
 - d. Respondent's rules violations on the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 29, 97 and 121.
16. Pursuant to calculations by District Office personnel, the total estimated cost to the State for plugging the W.H. Siler R/A -C- (07611) Lease, Well No. 165 is \$27,000; the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171 is \$621,000 (23 wells at \$27,000 each); and the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174 is \$81,000 (3 wells at \$27,000 each).
17. B & B's violations of Statewide Rule 14(b)(2) are serious and threaten the public health and safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water, as defined in Statewide Rule 8(a)(28) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(a)(28)] by serving as a conduit for the migration of oil, gas, saltwater and other

substances from one stratum or formation to another or to the surface or from the surface downward.

18. No Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 15, 16, 30, 65, 83, 84, 85, 94, 118, 119, 120, 134, 148, 169WS and 170WS. Commission records further show that:
 - a. Well No. 15 was completed prior to 1980, an H-15 test was due in May, 2005, that a test was done on January 27, 2006, was submitted to the Commission, was ruled "Not Approved" on February 6, 2006, and that the well was again ruled "Delinquent" on April 15, 2008;
 - b. Well No. 16 was completed on August 7, 1980, an H-15 test was due in May, 2006, that a test was done on December 14, 2007, was submitted to the Commission, was ruled "Not Approved" on January 15, 2008, and the well was again ruled "Delinquent" on April 15, 2008;
 - c. Well No. 30 was completed March 7, 1977, an H-15 test was due in May, 2005, that a test was done on August 4, 2005, was submitted to the Commission, was ruled "Not Approved" on August 16, 2005, and again the well was ruled "Delinquent" on April 16, 2008;
 - d. Well No. 65 was completed prior to 1977, an H-15 test was due in May, 2005, that a test was done on December 14, 2005, was submitted to the Commission, was ruled "Not Approved" on December 20, 2005, and the well was again rule "Delinquent" on April 15, 2008;
 - e. Well No. 83 was completed November 20, 1948, an H-15 test was due in May, 2005, that a test was done on December 14, 2005, was submitted to the Commission, was ruled "Not Approved" on December 22, 2005, and that the well was again ruled "Delinquent" on April 16, 2008;
 - f. Well No. 84 was completed prior to 1980, an H-15 test was due in May, 2005, that a test was done on August 4, 2005, was submitted to the Commission, was ruled "Not Approved" on August 8, 2005, and that the well was again ruled "Delinquent" on April 15, 2008;
 - g. Well No. 85 was completed on August 23, 1975, an H-15 test was due in May, 2005, that a test was done on August 4, 2005, was submitted to the Commission, ruled "Nor Approved" on August 8, 2005, and that the well was again ruled "Delinquent" on April 15, 2008;
 - h. Well No. 94 was completed September 13, 1973, an H-15 test was due in May, 2005, that a test was done on November 15, 2005, submitted to the Commission, ruled "Not Approved" on December 15, 2005, and the well was again ruled "Delinquent" April 15, 2008;

- i. Well No. 118 was completed on February 28, 1976, an H-15 test was due in May, 2006, a test was done on December 21, 2007, was submitted to the Commission, was ruled “Not Approved” on January 15, 2008, and the well was again ruled “Delinquent” on April 16, 2008;
 - j. Well No. 119 was completed prior to 1980, an H-15 test was due in May, 2005, a test was done on October 4, 2005, was submitted to the Commission, was ruled “Not Approved” on October 10, 2005, and the well was again ruled “Delinquent” on April 15, 2008;
 - k. Well No. 120 was completed October 8, 1975, an H-15 test was due in May, 2005, a test was done on October 4, 2005, submitted to the Commission and ruled “Not Approved” on October 10, 2005, and the well was again ruled “Delinquent” on April 15, 2005;
 - l. Well No. 134 was completed prior to 1980, an H-15 test was due in May, 2006, a test was done on September 2, 2005, was submitted to the Commission, was ruled “Not Approved” on September 12, 2005, and the well was again ruled “Delinquent” on April 15, 2008;
 - m. Well No. 148 was completed November 12, 1973, an H-15 test was due in May, 2005, a test was done on January 27, 2006, was submitted to the Commission, was ruled “Not Approved” on February 6, 2006, and the well was again ruled “Delinquent” on April 15, 2008;
 - n. Well No. 169WS was completed May 27, 1976, an H-15 test was due in May, 2006, a test was done on March 2, 2006, was submitted to the Commission, and ruled “Not Approved” on April 3, 2006, and the well was again ruled “Delinquent” on April 16, 2008;
 - o. Well No. 170WS was completed July 16, 1974, an H-15 test was due in May, 2005, no test was done, and the well was ruled “Delinquent” on April 15, 2008; and
 - p. None of the above wells have been plugged.
19. Commission records indicate no Form H-15 (Test On An Inactive Well More Than 25 Years Old) has been filed and approved for the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174. Commission records further show that:
- a. Well No. 140 was completed May 27, 1976, an H-15 test was due in May, 2006, that a test was done on March 2, 2006, was submitted to the Commission, was ruled “Not Approved” on April 3, 2006, and the well was again ruled “Delinquent” on March 19, 2009;
 - b. Well No. 173 was completed January 7, 1978, an H-15 test was due in May, 2005,

that a test was done on September 2, 2005, was submitted to the Commission and ruled “Not Approved” on September 12, 2005;

- c. Well No. 174 was completed July 7, 1979, an H-15 test was due in May, 2005, that a test was done on October 4, 2005, was submitted to the Commission and ruled “Not Approved” on October 10, 2005, and the well was again ruled “Delinquent” on April 15, 2008; and
 - d. None of the above wells have been plugged.
- 20. B & B’s violations of Statewide Rule 14(b)(3) are serious and are hazardous to the public health and safety because wells over twenty-five years old may develop holes or leaks in the casing, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface.
 - 21. A Commission District Office inspection report made on May 15, 2008 for the W.H. Siler R/A -C- (07611) Lease showed Well No. 165 was delinquent for the submission of a Form H-5. The most recent test for the subject well, dated October 31, 2003, was ruled “Inconclusive” and no subsequent tests have been submitted.
 - 22. B & B’s violation of Statewide Rule 46(j) is serious and threatens the public health and safety. The required test is designed to determine the integrity of the well’s casing and that leakage is not occurring. Untested disposal/injection wells, if leaking, may cause pollution of usable quality ground water and surface water by serving as a conduit for the passage of oil, gas saltwater and other substances to the surface, or from one stratum or formation to another.
 - 23. B & B has acted in bad faith because it failed to correct Commission rule violations on the subject leases and failed to adequately explain its inaction to the Commission.

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. B & B Oil, Inc. was the operator of the W.H. Siler R/A -C- (07611) Lease, Well No. 165, East Texas Field , Rusk County, as defined by 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 from at least July 1, 2004 through at least the date of the hearing on September 17, 2009.
- 4. B & B Oil, Inc. was the operator of the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171., East Texas Field , Rusk County, as defined by 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 from at least June 1, 2007 through at least the date

of the hearing on September 17, 2009.

5. B & B Oil, Inc. was the operator of the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174, East Texas Field , Rusk County, as defined by 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 from at least June 1, 2007 through at least the date of the hearing on September 17, 2009.
6. As Operator of the subject leases, B & B Oil, Inc. had the primary responsibility for complying with Statewide Rules 9(12), 13(b)(1)(B), 14(b)(2), 14(b)(3) and 46(j) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.9(12); §3.13(b)(1)(B); §3.14(b)(2); §3.14(b)(3) and §3.46(j)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject leases and wells.
7. B & B Oil, Inc. violated Statewide Rule 9(12) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.9(12)] by failing to provide the Commission H-5 tests for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 11, 146, 147 and 171.
8. B & B Oil, Inc. violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.13(b)(1)(B)] by failing to maintain wellhead control on the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 29, 97 and 121.
9. B & B Oil, Inc. violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.14(b)(2)] by allowing the W.H. Siler R/A -C- (07611) Lease, Well No. 165 to remain inactive for a period over one year. The wells ceased production/injection on or before February 28, 2005. The well was in violation of Statewide Rule 14(b)(2) from at least the date of the cancellation of its Statewide Rule 14(b)(2) extension on August 29, 2007, through at least the date of the last District Office inspection made on September 15, 2009, a period of two years.
10. B & B Oil, Inc. violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.14(b)(2)] by allowing the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 9, 11, 15, 16, 29, 30, 65, 83, 84, 85, 94, 97, 118, 119, 120, 121, 134, 146, 148, 149, 169WS, 170WS and 171 to remain inactive for a period over one year. The wells ceased production/injection on or before February 28, 2005. The wells were in violation of Statewide Rule 14(b)(2) from at least the date of the cancellation of their Statewide Rule 14(b)(2) extensions on August 29, 2007, through at least the date of the last District Office inspection made on September 15, 2009, a period of two years.
11. B & B Oil, Inc. violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.14(b)(2)] by allowing the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174 to remain inactive for a period over one year. Production from the subject wells ceased on or before June 1, 2007. The wells were in violation of Statewide Rule 14(b)(2) from at least the date of the cancellation of their Statewide Rule 14(b)(2) extensions on August 29, 2007, through at least the date of the last District Office inspection made on September 15, 2009, a period of two years.

12. B & B Oil, Inc. violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.14(b)(3)] by failing to file successful H-15 tests for the W.H. Siler R/A -A1- (08749) Lease, Well Nos. 15, 16, 30, 65, 83, 84, 85, 94, 118, 119, 120, 134, 148, 169WS and 170WS.
13. B & B Oil, Inc. violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.14(b)(3)] by failing to file successful H-15 tests for the W.H. Siler R/A -A2- (08750) Lease, Well Nos. 140, 173 and 174.
14. B & B Oil, Inc. violated Statewide Rule 46(j) [Tex. R.R. Comm'n, 16 Tex. Admin. Code §3.46(j)] by failing to file a successful Form H-5 pressure test for the W.H. Siler R/A -C- (07611) Lease, Well No. 165.
15. The documented violations committed by B & B Oil, Inc. constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
16. B & B Oil, Inc. has not demonstrated good faith within the meaning of Texas Natural Resources Code §81.0531.
17. As the sole officer of B & B Oil, Inc. at the time B & B violated Commission rules related to safety and the prevention or control of pollution, Joseph F. Wallen, and any organization subject to the Commission's jurisdiction in which he may hold a position of ownership or control, is subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that B & B Oil, Inc. be required to pay an administrative penalty of \$104,000.00 (four Statewide Rule 9(12) violations at \$2,000 each; four Statewide Rule 13(b)(1)(B) violations at \$1,000 each; twenty-seven Statewide Rule 14(b)(2) violations at \$2,000 each; eighteen Statewide Rule 14(b)(3) violations at \$2,000 each and one Statewide Rule 46(j) violation at \$2,000) and place the W.H. Siler R/A -C- (07611) Lease, the W.H. Siler R/A -A1- (08749) Lease and the W.H. Siler R/A -A2- (08750) Lease in compliance with all Commission rules and regulations.

Respectfully submitted,

Marshall Enquist
Hearings Examiner