

May 22, 2002

OIL AND GAS DOCKET NO. 7B-0227699

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**ENFORCEMENT ACTION AGAINST DANNY C. LANE DBA LANE OPERATING FOR VIOLATIONS OF STATEWIDE RULES ON THE FLEMING LEASE, WELL NO. 1, (RRC GAS ID NO. 073616), SANTA ANNA (CANYON) FIELD, COLEMAN COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT:**

Susan German, Staff Attorney

**FOR RESPONDENT:**

Danny Lane

**MOVANT:**

Railroad Commission of Texas

**RESPONDENT:**

Danny Lane dba Lane Operating

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE OF REQUEST FOR ACTION:</b>	July 11, 2001
<b>DATE CASE HEARD:</b>	April 25, 2002
<b>RECORD CLOSED:</b>	May 15, 2002
<b>PFD PREPARED BY:</b>	Mark Helmueller, Hearings Examiner
<b>PFD CIRCULATION DATE:</b>	May 22, 2002
<b>CURRENT STATUS:</b>	Protested

**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 should be required to plug or otherwise place in compliance with Statewide Rule 14, the Fleming Lease, Well No. 1, (RRC Gas ID No. 073616), Santa Anna (Canyon) Field, Coleman County, Texas;
2. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rule 14;
3. Whether the respondent should be assessed administrative penalties of not more than

\$10,000.00 per day for each offense committed regarding said lease and well;

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.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Danny Lane also appeared and presented evidence at the hearing. The Enforcement Section's hearing file was admitted into evidence. The staff recommended that Lane be ordered to properly plug the well and to pay an administrative penalty of \$2,000.00 for the violation of Statewide Rule 14(b)(2). The examiner recommends that the docket be dismissed as Lane is not the proper operator of the well.

#### DISCUSSION OF THE EVIDENCE

Enforcement presented Commission records showing that the most recent approved P-5 for Lane was filed April 23, 1997. Danny Lane is listed as the sole proprietor.

The last approved Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) for the Fleming Lease, Well No. 1, RRC Gas ID No. 073616, was filed by Lane on August 4, 1997 and approved on the same date.

To establish that Well 1 on the Fleming Lease was not in compliance with Rule 14(b)(2), Enforcement submitted reports from District Office inspections conducted on August 30, 2000, October 31, 2000, December 12, 2000, January 30, 2001, July 26, 2001, October 18, 2001, December 11, 2001, and April 17, 2002 to show that the well was equipped to produce but shut in on August 30, 2000. The well was sealed by the Commission on October 30, 2000.

The report for the inspection on August 30, 2000, advises that Northcutt Production was identified by the landowner as the operator of the well. No signs were found on the lease on that date. The October 31, 2000, and December 12, 2000 inspection reports both identify Northcutt Production as the operator based on signs at the lease entrance and the well identifying Northcutt Production as the operator of the well. Inspection reports from January 30, 2001, July 26, 2001, and October 18, 2001 identify Lane as the operator, but note that signs on the lease still show Northcutt Production as the operator. Inspection reports from December 11, 2001, and April 17, 2002 note that all signs were removed from the lease.

Commission production records show that no production was reported from the well from August 1997, when Lane became operator, until July 1999. Production is last reported in October 2000. The Commission ACTI Production Reports attribute all production to Lane, however, review of the actual Commission Form P-2s (Producer's Monthly Report of Gas Wells) indicated that all production between July 1999 and October 2000 was reported by Northcutt Production and certified by Dwight Northcutt. No reference to Lane appears on any of the P-2s filed by Northcutt.

Lane argues that he is not the operator of the well, and that operations were taken over by Northcutt. In addition to the Commission inspection reports and production records, Lane submitted

an Oil & Gas Lease it executed with Northcutt in June 1999. This lease specifically provides “Dwight Northcutt assumes all liabilities concerned with the drilling, producing, and maintaining the lease of the tract of land described above **including the plugging of any wells.**” Lane also noted that the lease gave him a 10% overriding royalty interest in any oil and gas produced by Northcutt. Lane provided additional documentation that Northcutt provided monthly accountings of the production from the well between July 1999 and October 2000. Lane received payments from Northcutt based on the reported production.

Finally, Lane submitted copies of a Commission Form P-4 signed by Lane and Northcutt transferring the well to Northcutt. This P-4 was submitted to the Commission on March 1, 2001, but was never approved.

### EXAMINER’S OPINION

The operator of a well must plug a well when required and in accordance with Commission rules. 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.

Prior to 1997, Texas Natural Resources Code §89.002 defined an operator as follows:

‘Operator’ means a person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation.

The evidence in this case clearly rebuts the statutory presumption that Lane is the operator responsible for plugging this well. In fact the only basis upon which Lane has any responsibility for the well is the last P-4 approved by the Commission. The testimonial and documentary evidence in this docket shows that Northcutt was responsible for the physical operation and control of the well as seen by: 1) identification of Northcutt as the operator by the landowner in Commission inspection reports; 2) District Office Inspection Reports which observed signs identifying Northcutt as the operator of the well; 3) Commission Form P-2s filed by Northcutt for production from the well; 4) the lease agreement between Northcutt and Lane which acknowledges Northcutt’s assumption of plugging liability; 5) accountings for production provided by Northcutt to Lane with payments for Lane’s overriding royalty interest; and 6) the two signature P-4 signed by Northcutt and Lane which was filed with the Commission on March 1, 2001. Together this evidence rebuts the presumption that Lane is the operator of this well. Accordingly, the examiner recommends that this docket be dismissed with prejudice as to Lane.

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, Danny Lane dba Lane Operating (“Lane”) was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization

Report) address. Lane appeared at the hearing and offered evidence.

2. Lane is a sole proprietor who last filed an organization report on April 23, 1997.
3. Lane filed a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) for the Fleming Lease, Well No. 1, RRC Gas ID No. 073616, ("subject well") on August 4, 1997, which was approved on the same date.
4. District Office inspections conducted on August 30, 2000, October 31, 2000, December 12, 2000, January 30, 2001, July 26, 2001, October 18, 2001, December 11, 2001, and April 17, 2002 show that the well was equipped to produce but shut in on August 30, 2000. The well was sealed by the Commission on October 30, 2000.
  - A. The report for the inspection on August 30, 2000, advises that Northcutt Production was identified by the landowner as the operator of the well. No signs were found on the lease on that date.
  - B. The October 31, 2000, and December 12, 2000 inspection reports both identify Northcutt Production as the operator based on signs at the lease entrance and the well showing Northcutt Production as the operator of the well.
  - C. Inspection reports from January 30, 2001, July 26, 2001, and October 18, 2001 identify Lane as the operator, but note that signs on the lease still depict Northcutt Production as the operator.
  - D. Inspection reports from December 11, 2001, and April 17, 2002 note that all signs were removed from the lease.
5. Commission production records show that no production was reported from the well from August 1997, when Lane became operator, until July 1999. Production is last reported in October 2000.
6. Commission Form P-2s (Producer's Monthly Report of Gas Wells) indicate that all production between July 1999 and October 2000 was reported by Northcutt Production and certified by Dwight Northcutt. No reference to Lane appears on any of the P-2s filed by Northcutt.
7. An Oil & Gas Lease between Northcutt and Lane was executed in June 1999. This lease specifically provides "Dwight Northcutt assumes all liabilities concerned with the drilling, producing, and maintaining the lease of the tract of land described above including the plugging of any wells." The lease also provides to Lane a 10% overriding royalty interest in any oil and gas produced by Northcutt from the subject well.
8. Northcutt provided to Lane monthly accountings of the production it reported from the well between July 1999 and October 2000. Lane received payments for its overriding royalty interest from Northcutt based on the reported production.

9. A two signature Commission Form P-4 signed by Lane and Northcutt was submitted to the Commission on March 1, 2001, but was never approved.

#### **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. The presumption under Statewide Rule 14(c)(2) that the operator designated on the most recent approved Commission P-4 was the person responsible for the physical operation and control of the well at the time it ceased operation was successfully rebutted. Lane was not the operator of the subject well at the time it ceased operation or was abandoned and is not required to plug it.
4. The action against Lane should be dismissed with prejudice.

#### **RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, dismissing this action with prejudice as to Danny Lane doing business as Lane Operating.

Respectfully submitted,

Mark J. Helmueller  
Hearings Examiner