

**ENFORCEMENT ACTION AGAINST WINCO OIL INC. (OPERATOR NO. 931332) FOR VIOLATIONS OF STATEWIDE RULES ON THE NORTH SAYLES UNIT (09470) LEASE, WELL TANK BATTERY, SAYLES FIELD, JONES COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT:**

Reese Copeland, Staff Attorney

Tom Harbuck, Engineering Specialist

Sam Birdwell, Field Inspector

**MOVANT:**

Railroad Commission of Texas

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**FOR RESPONDENT:**

Don Rhodes, Consulting Agent

Jay Hester, President

Steve White, Pumper

**RESPONDENT:**

Winco Oil Inc.

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**PROCEDURAL HISTORY**

**Original Complaint Filed:**

August 29, 2000

**Hearing Held:**

November 27, 2000

**Record Closed:**

September 11, 2002

**PFD Issued By:**

Mark H. Tittel, Hearings Examiner

**PFD Circulation Date:**

December 16, 2002

**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 the respondent is the operator responsible for alleged violations of Statewide Rule 8 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8] on the North Sayles Unit (09470) Lease, Jones County, Texas (hereinafter referred to as “the subject lease” or “the subject wells”);
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 8;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such lease and well; and
4. Whether any penalties for violations of Rule 8 by the respondent should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534 & §91.113.

Winco Oil Inc. (hereinafter referred to as “Respondent” or “Winco”) was represented at the hearing by Don Rhodes, Consulting Agent, and offered testimony from Jay Hester, President, and Steve White, a pumper. The Railroad Commission’s Enforcement Section was represented by Reese Copeland, Staff Attorney, and offered testimony from Tom Harbuck, Engineering Specialist, and Sam Birdwell, Field Inspector. The Railroad Commission’s Enforcement Section requested that Winco be ordered to pay an administrative penalty in the amount of \$15,000. The examiner recommends that the respondent be ordered to pay an administrative penalty in the amount of \$7,500.

### **BACKGROUND**

Rule 8(d)(1) prohibits a person from disposing of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes.

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000 per day for each violation.

### **DISCUSSION OF THE EVIDENCE**

#### **Enforcement’s Position**

The Enforcement staff's file in this docket was admitted into evidence without objection. Winco designated itself to the Commission as operator of the North Sayles Unit (09470) Lease by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) effective August 1, 1998.

A Commission District inspection report made on June 7-8, 2000 indicated that there had been a spill of oil and saltwater from a tank battery on the subject lease. Oil and saltwater had affected an area 75' by 35' with one inch of standing fluid, saturated to a depth of six inches. Oil and saltwater had overflowed the firewall on the east side of the facility and had affected an area approximately 90' by 80' with a small amount of standing oil and saltwater. Oil and saltwater pollution had entered a dry draw that feeds into Mulberry Creek, extending approximately 1200' down the draw. The pollution stopped approximately 800' short of Mulberry Creek. A 2" pipe that extended from the firewall was emitting saltwater at a rate of a gallon per hour. Saltwater had accumulated in an area approximately 80' by 15'. Commission District personnel also discovered a transfer pump and hose which it believed had been used to pump water from inside the retaining wall of the dike into the draw.

A Commission District inspection report made on June 10, 2000 indicated that Winco had begun remediation of the subject lease. Commission District personnel visited the subject lease periodically during the course of the remediation. A Commission District inspection report made on September 25, 2000 indicated that the pollution had been remediated by the operator. After the lease was remediated, Winco transferred the lease to the Wilcox Oil Company by a Form P-4 effective October 1, 2000.

### **Respondent's Position**

Winco did not dispute that the spill occurred on its lease, but argued that Enforcement's penalty recommendation is excessive. Winco disagreed with Enforcement's allegation that it had intentionally caused any discharge of oil and gas wastes. Winco's pumper testified that the transfer pump and hose had been used to remove fresh rainwater from inside the firewall several months before the spill and that it was never used after the spill occurred. Winco's pumper admitted that he had not tested the chloride content of the water which was pumped out of the firewall. With respect to the 2" pipe in the firewall, Winco's pumper testified that it had been there before Winco took over the subject lease. He admitted that he had been aware of its existence for at least several months before the leak occurred, but had not considered it significant at the time.

Winco further argued that it acted in good faith by doing everything it was instructed to do by the Commission in order to remediate the lease, spending over \$20,000 in the process. Winco asserted that it had commenced remediation as soon as it was informed about the spill and presented a receipt dated June 8, 2000 from H & T Disposal, Inc. for removal of standing water from the subject lease. Winco argued that it had cooperated with Commission District personnel and did everything that it was told to do. Winco was never given a deadline to complete the remediation, nor was it ever advised that the Commission District Office felt that remediation was proceeding too

slowly.

### **EXAMINERS' OPINION**

Winco designated itself as the operator of the subject lease by filing a Form P-4 for the lease in August 1998. Winco thereby assumed the responsibilities and liabilities which were part and parcel with the right to operate the lease. Accordingly, Winco should be held accountable for violations of Statewide Rules occurring on the lease.

The factors to be considered in determining the amount of administrative penalties include the respondent's previous history of violations, the seriousness of the violations, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. TEX. NAT. RES. CODE ANN. § 81.0531(c). Winco has no history of prior orders for violations of Commission rules. While the discharge of saltwater is a serious violation and poses a potentially significant hazard to the public health and safety, it must be viewed in light of the particular circumstances surrounding the case, including the good faith of the respondent. The evidence in the record indicates that the spill which occurred on the subject lease was an accident. While the evidence concerning the transfer pump and the 2" pipe is insufficient to establish that Winco intentionally caused the discharge of oil and gas wastes, it is sufficient to establish negligence on Winco's part. Winco's negligence, the size of the spill, and its occurrence in a potentially sensitive area warrant imposition of an administrative penalty in this case.

Shortly after the spill occurred, but before the subject lease was remediated, Enforcement filed its Original Complaint recommending that Winco be assessed administrative penalties in the amount of \$15,000.00. Although the subject lease had been completely remediated at the time of the hearing, Enforcement contended that Winco should not be entitled to any penalty reduction because its remediation could have been achieved more quickly. However, the evidence in the record indicates that the operator commenced remediation almost immediately after the spill and that, although Commission District personnel visited the site on a number of occasions during the remediation, Winco was never advised that it was proceeding too slowly. Under these circumstances, the examiner disagrees with Enforcement's position that Winco is not entitled to any reduction for having successfully remediated the spill on the subject lease.

Based on the foregoing, the examiner recommends that the recommended administrative penalty be reduced from \$15,000 to \$7,500 and that the following Findings of Fact and Conclusions of Law be adopted:

### **FINDINGS OF FACT**

1. Winco Oil Inc. (hereinafter referred to as "Respondent" or "Winco") was given at least 10 days notice of this proceeding by first-class, certified mail, addressed to its most recent Form P-5 (Organization Report) address.

2. Winco designated itself to the Commission as operator of the North Sayles Unit (09470) Lease by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) effective August 1, 1998.
3. On or before June 7, 2000, oil and saltwater spilled from a tank battery on the subject lease and affected an area 75' by 35' with one inch of standing fluid, saturated to a depth of six inches. Oil and saltwater had overflowed the firewall on the east side of the facility, affecting an area approximately 90' by 80' with a small amount of standing oil and saltwater. Oil and saltwater pollution had entered a dry draw that feeds into Mulberry Creek, extending approximately 1200' down the draw. The pollution stopped approximately 800' short of Mulberry Creek.
4. A 2" pipe that extended from the firewall was found to be emitting saltwater at a rate of a gallon an hour. Saltwater had accumulated in an area approximately 80' by 15'. Commission District personnel also discovered a transfer pump and hose which it believed had been used to pump water from inside the retaining wall of the dike into the draw.
5. Winco commenced remediation of the subject lease on or around June 8, 2000. Commission District personnel visited the subject lease periodically during the course of the remediation. A Commission District inspection report made on September 25, 2000 indicated that the pollution had been remediated by the operator.
6. Winco transferred the lease to Wilcox Oil Company by a Form P-4 effective October 1, 2000.
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 lease.
8. Winco has no history of prior orders for violations of Commission rules.

#### **CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued by the Railroad Commission to all appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Winco was the operator of the subject lease, as defined by Commission Statewide Rule 14, 58, and 79 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§ 3.14, 3.58, and 3.69) and Section 89.02 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 79 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.69) and Chapters 85 and

89 of the Texas Natural Resources Code.

4. As operator, Winco had the primary responsibility for complying with Statewide Rules 8 (R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8) and with Chapter 89 of the Texas Natural Resources Code, as well as other applicable statutes and Commission rules relating to the subject lease.
5. Winco violated Statewide Rule 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8 (d)(1)] by discharging oil and gas wastes onto the subject lease without a permit for such discharges.
6. The documented violations committed by Winco constitute acts deemed serious, 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 the operator, Winco Oil Inc., within 30 days from the day immediately following the date this order becomes final, to pay an administrative penalty in the amount of **SEVEN THOUSAND FIVE HUNDRED DOLLARS** (\$7,500.00).

Respectfully submitted,

Mark Tittel  
Hearings Examiner