

**ENFORCEMENT ACTION AGAINST J. BASSETT SMITH (OPERATOR NO. 792503) FOR VIOLATIONS OF STATEWIDE RULES ON THE B. W. ASHLEY (17000) LEASE, WELL NO. 1, NOODLE (STRAWN, MIDDLE) FIELD, JONES COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Susan German  
Staff Attorney

**MOVANT:**

Enforcement Section  
of the Railroad Commission

**FOR RESPONDENT:**

J. Bassett Smith  
Sole Proprietor

**RESPONDENT:**

J. Bassett Smith

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

**DATE OF REQUEST FOR ACTION:**

December 7, 2001

**DATE CASE HEARD:**

April 8, 2002

**HEARD BY:**

James M. Doherty, Hearings  
Examiner

**RECORD CLOSED:**

May 8, 2002

**PFD CIRCULATION DATE:**

May 22, 2002

**CURRENT STATUS:**

Protested

**STATEMENT OF THE CASE**

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

1. Whether the respondent, J. Bassett Smith should be required to plug or otherwise place in compliance with Statewide Rule 14 [16 TEX. ADMIN. CODE (“T.A.C.”) §3.14] the B. W. Ashley (17000) Lease (“subject lease”), Well No. 1 (“subject well”), Noodle (Strawn, Middle) Field, Jones County, Texas;

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2. Whether 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 plug or otherwise place the subject well in compliance with Statewide Rule 14;
  3. Whether respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, and Statewide Rule 3(a) by failing to post, at all times, an identification sign at the principal entrance of the subject lease and at the well site of the B. W. Ashley (17000) Lease, Well No. 1;
  4. Whether respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject lease and well; and
  5. Whether any violations of Rules 3(a) and 14(b)(2) by respondent should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534 (Vernon 2001).

Respondent J. Bassett Smith (“Respondent”) appeared representing himself and presented testimony. Susan German, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section (“Enforcement”). Enforcement’s hearing file for this docket was admitted into evidence. At the request of Enforcement, the record was held open for 30 days to receive Enforcement’s report as to whether Respondent had submitted a plugging schedule and penalty settlement proposal acceptable to Enforcement. No favorable report was received from Enforcement within this 30-day period. Enforcement recommends that a \$2,500.00 penalty be assessed against Respondent and that Respondent be ordered to place the subject lease and well in compliance. The examiner agrees with Enforcement’s penalty recommendation and recommends that Respondent be ordered to plug the subject well.

### **BACKGROUND**

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)(2) provides that as to any well for which the most recent Commission-approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well. The presumption of responsibility may only be rebutted at a hearing called for the purpose of determining plugging responsibility.

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Statewide Rule 3(a)(1) requires the posting of an identification sign at the principal entrance of the property showing the name of the property as carried on the records of the Commission, the name of the operator, and the number of acres in the property. Statewide Rule 3(a)(2) requires the posting of an identification sign at each well site, showing the name of the property, the name of the operator, and the well number.

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 Position and Evidence**

Enforcement submitted evidence that Respondent Smith is a sole proprietor. The examiner has officially noticed that Respondent's P-5 Organization Report is active, and Respondent is an unbonded operator, having paid as financial assurance a nonrefundable annual fee of \$100.00.

Form P-4 records submitted by Enforcement show that Respondent was designated operator of the B. W. Ashley (17000) Lease, and of Well No. 1 on the said Lease, effective July 1, 1992. Through production records, the certification of the Commission's Secretary, and District Office inspection reports, Enforcement proved that the subject well has been inactive since at least January 1, 1993, and remains unplugged. The District Office inspection reports showed also that on and after October 16, 2000, the identification signs required by Statewide Rule 3(a) at the lease entrance and at the well site of Well No.1 were missing.

Through the certification of the Commission's Secretary, Enforcement showed that no Plugging Record (form W-3) or Cementing Affidavit (form W-15) has been filed or approved, and no Commission form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) is in effect, for the subject well. Respondent's last Rule 14(b)(2) extension for the subject well expired in July 1999.

Enforcement submitted copies of District Office correspondence pertaining to violations of Statewide Rules 3(a) and 14(b)(2) on the subject lease. Between October 24, 2000, and February 28, 2001, the District Office on four occasions, corresponded directly with Respondent, or sent him copies of correspondence to the Commission's Deputy Director of Field Operations, notifying Respondent of the continuing violations and/or requesting compliance. A Plug Hearing Data sheet furnished by the District Office estimated that the cost to plug the subject well would be \$5,900.00.

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Enforcement also submitted the affidavit of Mark England, Staff Engineer. This affidavit showed that compliance with Statewide Rule 3(a) is required to allow correct identification of the responsible operator and a correct determination of the actual location of a well; in the event of pollution or safety violations, or other emergency, the lack of legible signs and identification may cause confusion as to the responsible operator to be contacted and the actual location of a violation or emergency; and such confusion may cause delays in containing and remediating a violation or emergency, which is serious and may threaten the public health and safety.

The England affidavit also showed that 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; 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; and uncased wells allow direct communication between zones and provide unimpeded access to the surface.

### **Respondent's Position and Evidence**

Respondent acknowledged responsibility for plugging the subject well. He stated that he took over the subject lease with the thought of recompleting the well to a shallower zone. When Respondent discovered that the previous operator had removed a pump jack and tank battery from the lease, he put the recompletion project on the "back burner" where it has remained for more than nine years.

Respondent stated his intent to plug the subject well. He obtained a bid of \$6,165.00 for plugging the well from Berry Service Company in December, 2001, but apparently the bid was never accepted.

Respondent stated that the posting of the required identification signs at the lease entrance and at Well No. 1 was "overlooked". He asserted that signs were prepared and were in his shop, but posting them "never crossed . . . [his] mind".

### **EXAMINER'S OPINION**

#### **Statewide Rule 3(a)**

Statewide Rule 3(a)(1) requires the posting of an identification sign at the principal entrance of a lease, showing the name of the lease, the name of the operator, and the number of acres in the lease. Statewide Rule 3(a)(2) requires the posting of an identification sign at each well site, showing the name of the lease, the name of the operator, and the well number.

Respondent does not dispute the fact that the required identification signs at the principal entrance to the subject lease and at the well site of Well No. 1 were not posted. The evidence shows that Respondent violated Statewide Rules 3(a)(1) and 3(a)(2).

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**Statewide Rule 14(b)(2)**

Respondent became the designated operator of the subject lease and well as a result of the filing of a form P-4 effective July 1, 1992. Pursuant to Statewide Rule 14(c)(2), Respondent is presumed to be responsible for the physical operation and control of the subject well and to be responsible for properly plugging the well. This presumption of responsibility may be rebutted at a hearing called for the purpose of determining plugging responsibility, but in this case, Respondent concedes that he has the plugging responsibility.

The subject well plainly is in violation of Statewide Rule 14(b)(2). The well has been inactive since on or before January 1, 1993, is not plugged, and no plugging extension is in effect. Although Respondent stated an intent to plug the well, he failed to submit a plugging contract or definitive plugging schedule satisfactory to Enforcement during the 30-day period allowed for this purpose following the hearing.

**Penalty**

On the basis of the factors which the Commission must consider pursuant to TEX. NAT. RES. CODE ANN. §81.0531, a penalty of \$2,500.00, consisting of \$250.00 each for two continuing violations of Statewide Rule 3(a) and \$2,000.00 for one continuing violation of Statewide Rule 14(b)(2), as requested by Enforcement, is reasonable and appropriate. There is no evidence that Respondent has a history of previous violations. However, Respondent cannot be said to have demonstrated good faith in view of his failure to post the identification signs required by Statewide Rule 3(a) and to plug the subject well or otherwise place the well in compliance following repeated notifications from the District Office of the alleged violations.

Violation of the identification sign requirements of Statewide Rule 3(a) has the potential for causing confusion as to the responsible operator and delaying an appropriate response to a violation or emergency, posing a threat to the public health and safety. Inactive wells that are unplugged are potential conduits for flow from oil or saltwater zones to zones of usable quality water or to the surface, and also create hazards for the health and safety of the public.

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. J. Bassett Smith (“Respondent”) was given at least 10 days notice of this proceeding by certified mail, addressed to his most recent form P-5 (Organization Report) address, and Respondent appeared at the hearing.

2. Respondent designated himself to the Commission as the operator of the B. W. Ashley (17000) Lease (“subject lease”), and Well No. 1 on the said Lease (“subject well”), Noodle (Strawn, Middle) Field, Jones County, Texas, by filing a form P-4 (Producer’s Transportation Authority and Certificate of Compliance) with the Commission, effective July 1, 1992.
3. Respondent’s form P-5 Organization Report is in active status, Respondent having last filed a form P-5 on August 3, 2001. Respondent’s financial assurance consists of a \$100.00 nonrefundable annual fee.
4. Respondent has not conducted any operations on the subject lease or well since on or before January 1, 1993. The subject well has been inactive for more than nine years.
5. The subject well has not been plugged.
6. No Statewide Rule 14(b)(2) extension is in effect for the subject well, and the last such extension obtained by Respondent for the well expired in July 1999.
7. The estimated cost of plugging the subject well is \$5,900.00.
8. On and after at least October 16, 2000, Respondent failed to post at the principal entrance to the subject lease an identification sign showing the name of the lease, the name of the operator, and the number of acres in the lease.
9. On and after at least October 16, 2000, Respondent failed to post at the well site of the subject well an identification sign showing the name of the lease, the name of the operator, and the well number.
10. Failure to properly identify the subject lease and well by the posting of identification signs required by Statewide Rule 3(a) has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
11. 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 well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
12. Respondent has no history of prior violations.

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13. Respondent has not demonstrated good faith since he failed to post the identification signs required by Statewide Rule 3(a) and failed to plug the subject well, or otherwise place the well in compliance, after being notified of the Statewide Rule 3(a) and Statewide Rule 14(b)(2) violations on at least four occasions between October 24, 2000, and February 28, 2001.

**CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued by the Railroad Commission to 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. J. Bassett Smith is the operator of the B. W. Ashley (17000) Lease, and Well No. 1 on the said Lease, Noodle (Strawn, Middle) Field, Jones 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 3.69) and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, J. Bassett Smith has the primary responsibility for complying with Statewide Rules 3 and 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.3 and 3.14), Chapter 89 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject lease and well.
5. By failing to post, at all times, an identification sign at the principal entrance of the subject lease, showing the name of the lease, name of the operator, and number of acres in the lease, and by failing to post, at all times, an identification sign at the well site of the subject well, showing the name of the lease, name of the operator, and the well number, J. Bassett Smith violated Statewide Rule 3(a) (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(a)).
6. The subject well is 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 well has been out of compliance since at least July 1999, when the last plugging extension expired.
7. The documented violations committed by J. Bassett Smith 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) (Vernon 2001).

**RECOMMENDATION**

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The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring the operator J. Bassett Smith to:

1. Plug the B. W. Ashley (17000) Lease, Well No. 1, Noodle Strawn, Middle) Field, Jones County, Texas; and
2. Pay an administrative penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).

Respectfully submitted,

James M. Doherty  
Hearings Examiner