
ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY MARLIN GILCHREST (OPERATOR NO. 304481) ON THE ROY MITCHELL (15084) LEASE, WELL NO. 1 AND TANK BATTERY, RACHELS (MARBLE FALLS) FIELD, COMANCHE COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German (Staff Attorney), Enforcement Section of the Railroad Commission of Texas

FOR RESPONDENT:

Marlin Gilchrest, Sole Proprietor

PROCEDURAL HISTORY

Date of Request for Action:	July 13, 2001
Hearing Held:	January 10, 2002
Record Closed:	February 4, 2002
Heard By:	Scott Petry, Hearings Examiner
Current Status:	Protested
PFD Issued:	April 10, 2002

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 violated Statewide Rule 3 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3] and/or Statewide Rule 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14] on the Roy Mitchell (15084) Lease, Well No. 1 and tank battery, Rachels (Marble Falls) Field, Comanche 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;
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 violations of Rule 3 and/or 14 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 (Vernon 2001).

The respondent appeared at the hearing and represented himself. Enforcement Staff Attorney Susan German appeared representing the Railroad Commission of Texas. Enforcement submitted the hearing file for this docket into the record. The Enforcement Section recommends that the respondent be ordered to place the subject well into compliance and ordered to pay an administrative penalty of \$2,500.00, consisting of one Rule 14(b)(2) violation for \$2,000 and two Rule 3(a) violations at \$250 each. The examiner concurs with the Enforcement attorney's recommendation.

BACKGROUND

Unplugged and unused well bores constitute a potential danger to the public's health and safety and must be plugged when mandated by the Commission's rules. As applicable here, the operator of a well, for purposes of plugging liability, is the person who is responsible for the physical operation and control of that well at the time it ceases operation.

Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed before September 1, 1997,

is presumed to be the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation.

Rule 3 provides that signs must be posted at each well site and that they must show the name of the property, operator, and other pertinent information. Signs as outlined by Rule 3 provide contact information and speed the containment and remediation of any potential violations or emergencies.

DISCUSSION OF THE EVIDENCE

The respondent, Marlin Gilchrest, designated himself as operator of the Roy Mitchell (15084) Lease, Well No. 1 and Tank Battery, Rachels (Marble Falls) Field, Comanche County, Texas, by means of a Form P-4, effective September 1, 1990 and approved October 4, 1990. Production from the well ceased on or before January 1, 1993.

In Enforcement's case in chief, the Staff Attorney admitted into evidence the hearing file and copies of accompanying Commission records. In regards to the asserted Rule 3(a) violations, Enforcement submitted inspection reports dated April 5, 2001, May 15, 2001, and July 9, 2001 which showed that the well identification signs as outlined by Rule 3(a)(2) were missing. Rule 3(a)(2) specifically refers to identification that is to be placed at the site of the well. Additionally, the inspection reports dated April 5, 2001, May 15, 2001, and July 9, 2001 were introduced to show that the identification required for tank batteries under Rule 3(a)(3) were also missing.

In regards to the asserted violations of Statewide Rule 14(b)(2), Enforcement submitted Commission inspection reports from April 5, 2001, May 15, 2001, and July 9, 2001, showing zero reported production from January 1, 1993 to March 31, 1993, and a lack of production reports since March 31, 1993, to show that Well No. 1 and Tank Battery had been inactive for a period greater than one year. Enforcement also asserted that no workovers, re-entries, or subsequent operations had taken place within the twelve months prior to the mailing of the complaint.

In Mr. Gilchrest's case in chief, he testified that he had signed the P-4 and that he was "guilty" of Enforcement's allegations. Mr. Gilchrest did not deny the allegations, but stated that he had filed for bankruptcy a couple of years earlier. Mr. Gilchrest requested that the bankruptcy proceedings be taken into account in this proceeding, but he did not bring with him supporting documentation that the bankruptcy had indeed taken place. He also mentioned that he would correct the Rule 3 violations, but the respondent did not submit any additional evidence of compliance.

The record was kept open by the examiner for 14 days from the date of the hearing so that the

respondent could provide additional evidence. Within this period, the respondent furnished the Commission with a copy of a bankruptcy petition with the United States Bankruptcy Court for the Northern District of Texas, San Angelo Division. The date stamp on the filing was for May 30, 2000. Additionally, the examiner took official notice of bankruptcy records as reported by the PACER information system.

EXAMINER'S OPINION

The respondent, Marlin Gilchrest, is responsible for plugging the subject well because, according to a preponderance of the evidence, he was the last party to assume responsibility for the physical operation and control of the well. Indeed, the respondent did not contest that he was the designated operator of the subject lease and admitted that he was responsible for the violations. Additionally, it is the opinion of the examiner that the respondent should be ordered to pay the administrative penalty of \$2,500.00.

In examining this docket, it is apparent that the respondent's main argument centers on the bankruptcy proceeding and the premise that the bankruptcy may have absolved him of responsibility. This argument requires that several issues be examined.

First, it should be noted that, while the respondent may or may not have been divested of certain properties under the bankruptcy settlement, he is still responsible for regulatory compliance for the subject well and tank battery. Specifically, the plugging liability of Mr. Gilchrest for violations of Commission Rules does not arise as a result of his property interest in the lease. Rather, the responsibility arises as a result of his voluntary assumption of operatorship of Well No. 1. To draw a hypothetical analogy, Mr. Gilchrest would still be liable for the violations involved in this docket because of his *operatorship* of the well *even if* he was just a contract operator that did not own, and had never owned, any proprietary interest in the lease. Whether the lease is currently an asset of Mr. Gilchrest is irrelevant to the issue of liability for the violations at issue. Additionally, the Texas Legislature made its intent quite clear when it stated, in Section 89.044 of the Texas Natural Resources Code, that "[t]he Commission or its employees or agents, the operator, or nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged."

The second aspect that needs to be examined is the issue of administrative penalties and how they are affected by a bankruptcy proceeding. It should be noted that the filing of a bankruptcy petition

triggers an automatic stay of judicial and/or administrative proceedings against a debtor.¹ This stay precludes actions to recover on claims that were commenced, or could have been commenced, prior to the bankruptcy filing. There is an exception to the broad reach of the automatic stay for proceedings by governmental units to enforce police or regulatory powers, including regulations concerning environmental protection and public safety. Enforcement of judgments under this regulatory power exception is limited to non-monetary judgments.² Therefore, while a bankruptcy judgment may relieve the respondent of certain personal debt obligations, it does not relieve the respondent of its obligation under the statutes and rules of the Commission to plug the well in question.

The bankruptcy status dictates that a regulatory agency such as the Commission may order compliance with its safety and environmental regulations, but may not order payment of damages or a monetary penalty.³ Although the stay precludes ordering payment of a penalty or collection activities, it does not preclude proceedings to set the amount of monetary liability for past violations of a governmental unit's regulations. This is often referred to as the "fix but not collect" rule.

Thus, when an operator has a pending petition in bankruptcy, the Commission may generally order compliance with its rules concerning environmental protection and public safety (even if compliance requires the expenditure of money) and may assess a penalty for past violations. The Commission may not, however, order a respondent with a pending bankruptcy to pay a fine for past violations or attempt to collect an administrative penalty for past violations (other than by filing appropriate claims in the bankruptcy proceeding).

It is my opinion, however, that the respondent's bankruptcy is *not* currently pending and that the respondent is not being penalized for "past" violations. Rather, the bankruptcy proceeding has already been discharged and the violations at issue in this docket have been ongoing. To help clarify the situation, the examiner has taken official notice of the respondent's personal bankruptcy file, as reported by the Pacer Service Center system. According to the Pacer case summary records, the Chapter 7 bankruptcy⁴ was filed on May 30, 2000 and was discharged on October 10, 2000. The Railroad

¹ 11 U.S.C. § 362(a).

² See 11 U.S.C. § 362(b)(4) & (b)(5).

³ See generally, *In re Commonwealth Oil Ref. Co.*, 805 F.2d 1175 (5th Cir. 1986), cert. denied, 483 U.S. 1005 (1987); *Penn Terra, Ltd. v. Department of Env'tl. Resources*, 733 F.2d 267 (3rd Cir. 1984).

⁴ Docket 00-60262, *In re: Marlin Gilchrest and Connie Lavoyce Gilchrest*.

Commission was not listed as a party to these proceedings. Furthermore, Commission records indicate that the lease was out of compliance with Commission Rules 3(a) and 14(b)(2) as recently as July 9, 2001. The current lack of compliance with Statewide Rule 14(b)(2) is especially pertinent as the respondent's inaction with regard to an unplugged wellbore poses a cognizable threat to the public health and safety because of the probability of pollution.

Therefore, for the reasons enumerated above, it is my recommendation that the respondent be ordered to plug the subject well and to pay an administrative penalty of \$2,500.00, of which \$2000.00 is for one Rule 14(b)(2) violation and \$500 is for two Rule 3 violations at \$250 a piece.

EXAMINER'S RECOMMENDATION

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. Marlin Gilchrest ("respondent") was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. Respondent appeared at the scheduled time and place for the hearing.
2. Respondent does not have an active P-5 Organization Report. Commission P-5 records indicate that the subject lease has been severed and that the last P-5 Organization Report was filed on September 18, 1991.
3. Respondent designated himself as operator of the Roy Mitchell (15084) Lease, Well No. 1 and Tank Battery ("subject lease / subject well"), Rachels (Marble Falls) Field, Comanche County, Texas, by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission with an effective date of September 1, 1990 and an approval date of October 4, 1990.
4. The subject well has been inactive for a period in excess of one year. The subject well ceased production on or before January 1, 1993.
5. There are no Rule 14(b)(2) extensions currently in effect for the subject well.
6. From at least April 5, 2001 to at least July 9, 2001, the Roy Mitchell (15084) Lease, Well No. 1 and Tank Battery, was not identified with a sign posted at the well site or tank battery that showed the name of the property, operator, and well number.

7. The estimated cost to the State of plugging the subject well is \$4,200.
8. The record does not reflect any previous violations by the respondent of Commission rules.
9. Respondent filed for bankruptcy in the United States Bankruptcy Court for the Northern District of Texas, San Angelo Division, on May 30, 2000. The bankruptcy petition was granted discharge and the bankruptcy case was closed on October 10, 2000.
10. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 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 may be contaminated by migrations or discharges 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 not demonstrated good faith since it failed to plug or otherwise place the subject well in compliance after being notified of the violations by the district office on April 10, 2001, May 24, 2001, and July 13, 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. Marlin Gilchrest is the operator of the subject well, as defined by Commission Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14) and §89.002 of the Texas Natural Resources Code.
4. A bankruptcy petition does not divest the respondent of its duty to carry out its regulatory responsibilities concerning environmental protection and public safety.
5. The asserted violations of Statewide Rules 3 and 14 are ongoing violations that have been out of compliance since the bankruptcy discharge.
6. As operator, Marlin Gilchrest may enter the subject lease for the purpose of plugging the subject well pursuant to Commission rules and §89.044 of the Texas Natural Resources Code.
7. Marlin Gilchrest has the primary responsibility for complying with Rule 3 (Tex. R.R. Comm'n,

16 TEX. ADMIN. CODE §3.3), Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14) and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject well.

8. The subject well is not properly plugged or otherwise in compliance with Commission Statewide Rule 14 (16 T.A.C. §3.14) or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The well has been out of compliance since at least January 1, 1994.
9. The subject lease is not in compliance with Commission Statewide Rule 3 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3) or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The lease has been out of compliance with this rule since at least April 5, 2001.
10. The documented violations committed by Marlin Gilchrest are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c) (Vernon 2001).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order be approved, requiring the operator, Marlin Gilchrest, within 30 days from the date this order becomes final, to plug the subject well in accordance with the requirements of Statewide Rule 14. It is my further recommendation that the operator, Marlin Gilchrest, be ordered to pay an administrative penalty in the amount of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00).

Respectfully submitted,

Scott Petry
Hearings Examiner