

ENFORCEMENT ACTION AGAINST WESPAC TECHNOLOGIES CORP. (OPERATOR NO. 908691) AND/OR RICHMAN PETROLEUM CORP. (OPERATOR NO. 709740) FOR VIOLATIONS OF STATEWIDE RULES ON THE MCWHORTER (27348) LEASE, WELL NO. 1, WILDCAT FIELD, CALLAHAN COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Scott Holter
Staff Attorney

MOVANT:

Enforcement Section
of the Railroad Commission

FOR RESPONDENT:

Dyke Ferrell

RESPONDENT:

Richman Petroleum Corp.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:

May 1, 2002

DATE CASE HEARD:

June 10, 2002

HEARD BY:

James M. Doherty, Hearings
Examiner

RECORD CLOSED:

June 10, 2002

PFD CIRCULATION DATE:

August 1, 2002

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 respondents, WesPac Technologies Corp. ("WesPac") and/or Richman Petroleum Corp. ("Richman") should be required to plug or otherwise place in compliance with Statewide Rule 14 [16 TEX. ADMIN. CODE §3.14] the McWhorter (27348) Lease, Well No. 1, Wildcat Field, Callahan County, Texas;
2. Whether respondents have 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 respondents have violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, and Statewide Rule 3(a) [16 TEX. ADMIN. CODE §3.3(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 McWhorter (27348) Lease, Well No. 1;
4. Whether respondents have violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, and Statewide Rule 13(b)(1)(B) [16 TEX. ADMIN. CODE §3.13(b)(1)(B)] by failing to use a wellhead assembly to maintain surface control on the McWhorter (27348) Lease, Well No. 1;
5. Whether respondents 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
6. Whether any violations of Rules 3(a), 13(b)(1)(B), and 14(b)(2) by respondents 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 Richman appeared through its President Dyke Ferrell, who presented testimony. Respondent WesPac did not appear, but on the morning of the hearing filed a letter with the Commission acknowledging that it had notice of the hearing and would not appear. Scott Holter, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section (“Enforcement”). Enforcement’s hearing file for this docket was admitted into evidence. Enforcement requests a finding that WesPac is the operator responsible for compliance with Commission Statewide Rules on the subject lease, and recommends that a \$3,500.00 penalty be assessed against WesPac. The examiner agrees with Enforcement’s recommendation, and recommends that WesPac be ordered to plug the subject well and pay an administrative penalty in the amount of \$3,500.00. The examiner recommends further that the complaint be dismissed as to Richman.

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)(1) provides that the entity designated as the operator of a well specifically identified on the most recent Commission-approved operator designation form filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

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.

Statewide Rule 13(b)(1)(B) provides that wellhead assemblies shall be used on wells to maintain surface control of the well.

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 WesPac's most recently filed Form P-5 Organization Report and records of the Texas Secretary of State and Texas Comptroller of Public Accounts establishing that: (1) WesPac is a Minnesota corporation; (2) WesPac's certificate of authority to transact business in Texas as a foreign corporation was forfeited on March 22, 2002; (3) WesPac is not in good standing with the Texas Comptroller by reason of failure to satisfy all state tax requirements; and (4) WesPac's officers are Leon A. Romero, President; Robert Teague, Vice President; and Terrence A. Tecco, Vice President and Secretary. Form P-5 records submitted by Enforcement showed that WesPac last filed an Organization Report with the Commission on March 1, 2000, and that WesPac's Organization Report is now delinquent.

Form P-4 records presented by Enforcement showed that WesPac was designated operator of the McWhorter (27348) Lease, Well No. 1, Wildcat Field, Callahan County, Texas ("subject lease"), effective January 1, 2000. These same records showed that the previous operator was Richman. Enforcement elicited the testimony of Dyke Ferrell, Richman's President, to the effect that the subject lease was transferred from Richman to WesPac along with six other leases transferred at the same time. Mr. Ferrell testified that the Form P-4 changing the operator of the subject lease from Richman to WesPac was duly executed on behalf of Richman and that he knew of no irregularities surrounding the execution of the Form P-4.

Commission records submitted by Enforcement showed that the subject well was permitted as a secondary recovery injection well on May 29, 1997. Injection activity records presented by Enforcement showed that there had been no reported injection activity for the subject well since the date of issuance of the UIC permit, and production records disclosed no oil production since at least May 2000. District Office inspection reports dated September 6, October 23, and December 5, 2001,

and April 25, 2002, showed that the subject well was inactive and unplugged.

The District Office inspection reports presented by Enforcement covering the period September 6, 2001, through April 25, 2002, also showed that the subject well had casing open to the atmosphere and that there were no identification signs posted at the lease entrance or at the site of Well No. 1.

Enforcement presented copies of District Office correspondence forwarded to WesPac giving notice of alleged violations of Statewide Rules 3(a), 13(b)(1)(B), and 14(b)(2), and requesting that the subject lease be placed into compliance. The District Office corresponded with WesPac in this regard on four occasions between September 18, 2001, and December 13, 2001. A Plug Hearing Data sheet forwarded by the District Office to the Deputy Director of Field Operations, with a copy to WesPac, estimated that the cost to plug the subject well would be \$8,600.00.

Enforcement also submitted the affidavit of Mark England, Compliance 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: (1) open wellbores are pollution/safety hazards due to the possibility of surface runoff entering the wellbore and the possibility of well fluids flowing out of the wellbore; (2) 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; (3) 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 (4) uncased wells allow direct communication between zones and provide unimpeded access to the surface.

An affidavit of the Commission's Acting Secretary showed that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed, and no plugging extension is in effect, for the subject well. Form W-1X records presented by Enforcement showed that the last plugging extension obtained by WesPac for the subject well expired in April 2001.

Enforcement takes the position that WesPac is the operator responsible for compliance with Commission rules on the subject lease. Richman was joined in the complaint as a respondent based on a prehearing assertion by WesPac of irregularities associated with the Form P-4 change of operator from Richman to WesPac. However, in view of WesPac's failure to appear and substantiate its claim, Enforcement does not assert that Richman has any responsibility for the subject lease.

Respondents' Position and Evidence

WesPac did not appear or present any evidence. Richman appeared through its President, Dyke Ferrell, who gave testimony in response to questions from Enforcement's counsel as a part of Enforcement's direct case. In view of Enforcement's position that Richman is not the responsible operator, Richman presented no further evidence.

EXAMINER'S OPINION

In view of WesPac's failure to appear and present evidence, Enforcement's proof is uncontradicted. WesPac was designated operator of the subject lease by the filing of Form P-4, approved May 3, 2000, and effective January 1, 2000. Under Statewide Rule 58, the designated operator of an oil lease is the person responsible for regulatory compliance on the lease, and filing of Form P-4 binds the designated operator until the lease is transferred on the records of the Commission to another operator. WesPac certified that it assumed regulatory responsibility for the subject lease when it executed and filed Form P-4 for the purpose of changing the operator from Richman to WesPac.

Pursuant to Statewide Rule 14(c)(1), WesPac is the entity designated as operator of the subject lease on the most recent Commission-approved operator designation form, and is responsible for properly plugging the subject well. There is no evidence that Richman has any continuing responsibility for regulatory compliance on the subject lease, and Enforcement concedes that Richman does not.

The evidence proves that WesPac committed two violations of Statewide Rule 3(a) by failing, at all times, to post an identification sign at the entrance of the subject lease, showing the name of the lease, the name of the operator, and the number of acres in the lease, and by failing, at all times, to post an identification sign at Well No. 1 on the subject lease showing the name of the lease, the name of the operator, and the well number.

The evidence proves that WesPac committed one violation of Statewide Rule 13(b)(1)(B) by failing to use a wellhead assembly on Well No. 1 on the subject lease to maintain surface control of the well. District Office inspection reports proved that Well No. 1 had casing open to the atmosphere on the occasion of four separate inspections made during the period September 6, 2001, through April 25, 2002.

The evidence proves that WesPac committed one violation of Statewide Rule 14(b)(2) by failing to commence plugging operations on the subject well within a period of one year after operations ceased. Well No. 1 on the subject lease was shown to have been inactive for a period of more than five years. The well has not been plugged, and no Rule 14(b)(2) plugging extension currently is in effect, the last such extension having expired in April 2001.

The violations committed by WesPac present a hazard to the public health and safety. Although there is no evidence of previous orders issued by the Commission against WesPac for violations of Commission rules, WesPac cannot be said to have demonstrated good faith. WesPac

took no steps to cure the violations on the subject lease in response to multiple requests from the District Office, and did not appear at the hearing to explain its inaction.

The examiner recommends that WesPac be assessed an administrative penalty in the total amount of \$3,500.00, based on two violations of Statewide Rule 3(a) at \$250.00 each, one violation of Statewide Rule 13(b)(1)(B) at \$1,000.00, and one violation of Statewide Rule 14(b)(2) at \$2,000.00. These penalties conform to Enforcement's recommendation and to standard penalties set forth in the recommended standard penalty schedule for enforcement cases.

The examiner further recommends that WesPac be ordered to plug the subject well. The well has been inactive for more than five years. WesPac has forfeited its right to transact business in Texas, and there is no evidence that WesPac holds a current right to operate the well pursuant to an effective mineral lease.

The examiner recommends that the complaint be dismissed as to Richman.

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. WesPac Technologies Corp. ("WesPac") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. No representative of WesPac appeared at the hearing, but on the morning of the hearing WesPac filed a letter with the Commission acknowledging that it had notice of the hearing and stating that it would not appear.
2. WesPac is a Minnesota corporation, whose officers are Leon A. Romero, President; Robert Teague, Vice President; and Terrence A. Tecco, Vice President-Secretary. WesPac's certificate of authority to transact business in Texas as a foreign corporation was forfeited by the Texas Secretary of State on March 22, 2002, for failure to satisfy state tax requirements.
3. WesPac last filed a Form P-5 Organization Report with the Commission on March 1, 2000, and its Organization Report is currently delinquent.
4. WesPac designated itself to the Commission as the operator of the McWhorter (27348) Lease, Wildcat Field, Callahan County, Texas ("subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective January 1, 2000.
5. Richman Petroleum Corporation ceased to be the designated operator of the subject lease upon the Commission's approval of the Form P-4 changing the operator of the lease to

WesPac.

6. On the occasion of inspections of the subject lease by District Office inspectors on September 6, October 23, and December 5, 2001, and April 25, 2002, WesPac failed to have posted at the lease entrance an identification sign showing the name of the lease, the name of the operator, and the number of acres in the lease, and failed to have posted at the site of Well No. 1 on the subject lease an identification sign showing the name of the lease, the name of the operator, and the well number.
7. On the occasion of inspections of the subject lease by District Office inspectors on September 6, October 23, and December 5, 2001, and April 25, 2002, WesPac failed to use a wellhead assembly on Well No. 1 on the subject lease to maintain surface control. On the dates of these inspections, the casing of Well No. 1 was open to the atmosphere.
8. Operations ceased on Well No. 1 on the subject lease on or before May 29, 1997. This well has been inactive for more than one year.
9. Well No. 1 on the subject lease has not been properly plugged, and no plugging extension currently is in effect. The last plugging extension obtained by WesPac for Well No. 1 expired in April 2001.
10. The estimated cost of plugging Well No. 1 on the subject lease is \$8,600.00.
11. Failure to properly identify the subject lease and Well No. 1 on the lease 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.
12. Failure to use a wellhead assembly on Well No. 1 on the subject lease to maintain surface control creates a pollution and safety hazard due to the possibility that surface runoff will enter the wellbore or that well fluids will flow out of the wellbore.
13. Usable quality groundwater in the area is likely to be contaminated by migrations or discharge of saltwater and other oil and gas wastes from Well No. 1 on the subject lease. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
14. WesPac has no history of previous Commission orders issued against it for violations of Commission rules.
15. WesPac has not demonstrated good faith since it failed to place the subject lease into compliance with Commission rules in response to multiple requests from District Office personnel and did not appear at the hearing to explain its inaction.

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. WesPac Technologies Corp. is the operator of the McWhorter (27348) Lease, and Well No. 1 on the said lease, Wildcat Field, Callahan 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. Richman Petroleum Corporation is not the operator of the McWhorter (27348) Lease, and Well No. 1 on the said lease, Wildcat Field, Callahan 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.
5. As operator, WesPac Technologies Corp. has the primary responsibility for complying with Statewide Rules 3, 13 and 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.3, 3.13, and 3.14], Chapter 89 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject lease and well.
6. 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, WesPac Technologies Corp. violated Statewide Rule 3(a) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.3(a)]. WesPac was out of compliance with Statewide Rule 3(a) as of at least September 6, October 23, and December 5, 2001, and April 25, 2002.
7. By failing to use a wellhead assembly on Well No. 1 on the subject lease to maintain surface control, WesPac Technologies Corp. violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)]. WesPac was out of compliance with Statewide Rule 13(b)(1)(B) as of at least September 6, October 23, and December 5, 2001, and April 25, 2002.
8. Well No. 1 on the subject lease 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 April 2001, when the last plugging extension expired.
9. The documented violations committed by WesPac Technologies Corp. 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

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, dismissing the complaint as to Richman Petroleum Corp. and requiring the operator WesPac Technologies Corp. to:

1. Plug the McWhorter (27348) Lease Well No. 1, Wildcat Field, Callahan County, Texas; and
2. Pay an administrative penalty in the amount of THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner