

ENFORCEMENT ACTION AGAINST NORTHCUTT PRODUCTION (OPERATOR NO. 613774) FOR VIOLATIONS OF STATEWIDE RULES ON THE McCLATCHY LEASE, WELL NO. 5 (RRC NO. 110893), MAC (FRY) FIELD, BROWN COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Lowell E. Williams
Staff Attorney

MOVANT:

Enforcement Section
of the Railroad Commission

FOR RESPONDENT:

Dwight Northcutt
Sole Proprietor

RESPONDENT:

Northcutt Production

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:

May 15, 2002

DATE CASE HEARD:

July 11, 2002

HEARD BY:

James M. Doherty, Hearings Examiner

RECORD CLOSED:

July 11, 2002

PFD CIRCULATION DATE:

October 3, 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 Northcutt Production ("Northcutt") should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE ("T.A.C.") §3.14(b)(2)] the McClatchy Lease, Well No. 5 (RRC No. 110893), Mac (Fry) Field, Brown County, Texas ("subject well");

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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 plug or otherwise place the subject well in compliance with 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 the subject well; and
4. Whether any violations of Statewide Rule 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).

Northcutt appeared at the hearing through its representative Dwight Northcutt, who presented evidence. Lowell E. Williams, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section (“Enforcement”). Enforcement’s hearing file for this docket was admitted into evidence. Enforcement recommends that a \$2,000.00 penalty be assessed against respondent. The examiner agrees with Enforcement’s penalty recommendation and recommends that Northcutt be ordered to plug the subject well or otherwise place the well in compliance with Commission Statewide Rules.

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.

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.

Proposal for Decision**DISCUSSION OF THE EVIDENCE****Enforcement's Position and Evidence**

Enforcement presented a copy of the most recent Form P-5 Organization Report filed by Northcutt on March 27, 2001, which showed that Northcutt reported itself to the Commission as a partnership of Odell and Dwight Northcutt. The examiner has officially noticed from Commission P-5 records that at the time of filing of its last Form P-5 on March 27, 2001, Northcutt filed financial assurance in the form of a \$100.00 fee. Northcutt's Form P-5 currently is delinquent.

Northcutt was shown to have been designated operator of the McClatchy Lease, Well No. 5 (RRC No. 110893) by the filing of Form P-4 (Producer's Transportation Authority and Certificate of Compliance) effective January 1, 1987.

Production records presented by Enforcement showed that except for reports of production of one Mcf of gas during each of January and February 2000, Northcutt reported zero production for the subject well between February 1998 and June 2001. Northcutt reported the following gas production for the subject well during July-December 2001: July - 43 Mcf; August - 26 Mcf; September - 58 Mcf; October - 113 Mcf; November - 123 Mcf; and December - 47 Mcf. Zero production was reported for the well during January-May 2002.

District Office inspection reports dated August 22, September 22, November 1, and December 12, 2000, and February 7 and March 21, 2001, reported that the subject well was inactive, although equipped for production. District Office inspection reports dated June 21 and August 10, 2001, reported that the subject well was producing. Further District Office inspection reports dated February 26 and April 26, 2002, reported that the well was again inactive.

Enforcement showed that Northcutt filed a Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) for the subject well in August 2001, which was denied. Enforcement represented that the denial was based on Northcutt's inability to establish a good faith claim of right to operate the well, although apparently the good faith claim issue was decided in the Commission's P-5 Department without referral to the Office of General Counsel.

Between November 8, 2000, and May 3, 2002, the District Office corresponded with Northcutt on ten separate occasions regarding the inactive status of the subject well and the need to bring the well into compliance with Commission rules. A Plug Hearing Data sheet prepared by the District Office estimated that the cost to plug the subject well would be \$2,100.00.

Enforcement showed that the subject well was severed for violations of Commission rules on August 17 and November 19, 2001, and that these severances remain unresolved.

Enforcement presented the affidavit of Mark England, Compliance Engineer, Field Operations, stating 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

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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.

Enforcement also presented the certification of the Commission's Secretary that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved, and no plugging extension is in effect, for the subject well.

Enforcement takes the position that the subject well has been inactive for more than 12 months and is unplugged, in violation of Statewide Rule 14(b)(2). Enforcement notes that the minimal production reported for the well by Northcutt during July-December 2001 did not serve to restore the well to "active" status, since under Statewide Rule 14(a)(1)(A), a gas well that has been inactive for 12 consecutive months or longer remains inactive, regardless of any minimal activity, until the well has reported production of at least 100 Mcf of gas each month for at least three consecutive months.

Respondent's Position and Evidence

Dwight Northcutt presented evidence for respondent. Mr. Northcutt stated that although the most recent Form P-5 filed for Northcutt indicated Northcutt is a partnership and that Dwight Northcutt and his father, Odell Northcutt, are partners, the partnership has been dissolved, and Dwight Northcutt is sole proprietor.

Mr. Northcutt testified that he would like to produce the subject well, which is equipped to produce. He stated that previous inactivity of the well was occasioned by the lack of any pipeline to transport gas from the lease. Mr. Northcutt further testified that he started producing the well in July 2001 but was "shut down" by the P-5 Department. Mr. Northcutt confirmed that he attempted to obtain a plugging extension for the well at some point during 2001 by filing Form W-1X, but was denied, apparently due to dissatisfaction of the P-5 Department with Northcutt's effort to show that he held an effective mineral lease.

The record contains a copy of a 1980 Oil & Gas Lease, of which Mr. Northcutt represents he is an assignee. This Lease recites that it has a three year primary term and continues in force for as long thereafter as operations are conducted with no cessation for more than ninety consecutive days. The Lease also contains an unusual provision for a minimum royalty of \$1,200.00 per year to keep the Lease in effect as to the full 287 acres. The Lease provides that if the minimum royalty is not paid, the Lease shall terminate except as to 40 acres for each producing well.

The enforcement case file contains a January 29, 2001, letter from the landowner stating that there had been no production on the lease in approximately two years, wells were not being operated, and equipment was falling into disrepair. A September 20, 2001, letter from the landowner stated that the last royalty payment by Northcutt was in 1999 for the sale of three barrels of oil. This letter stated that five of six wells on the lease were not producing and had been idle for several years. The landowner stated that he would like to have the lease declared null and void. Mr. Northcutt believes the lease is held by production.

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Although Northcutt's Form P-5 Organization Report has been delinquent since March 2002, Mr. Northcutt testified that IPACT will "bond" the subject well. Northcutt has filed a two signature Form P-4 proposing a change of operator for the well from Northcutt to IPACT. As of the date of the hearing, the Form P-4 had not been approved. Under the arrangement with IPACT, Northcutt would continue to operate the well and would pay a 5 % commission to IPACT for filing production reports and covering the well with IPACT's financial assurance. Northcutt would indemnify IPACT from any liability associated with the well.

Northcutt takes the position that he is not deserving of an administrative penalty and should be permitted to take steps to place the subject well in compliance with Commission rules.

EXAMINER'S OPINION

By the filing of Form P-4 effective January 1, 1987, Northcutt designated itself as operator of the subject well. Pursuant to Statewide Rule 14(c)(2), Northcutt is presumed to be the entity responsible for the physical operation and control of the well and for properly plugging the well. This presumption may be rebutted at a hearing called for the purpose of determining plugging responsibility, but in this case Northcutt does not deny responsibility for regulatory compliance of the well.

The evidence proves that the subject well was not being produced from February 1998 through December 1999 (23 months). In January and February of 2000, Northcutt reported production of one Mcf of gas, although the well was shown on Commission records to have been temporarily abandoned. Thereafter, the well was not produced from March 2000 through June 2001 (16 months). From July through December 2001, Northcutt reported minimal production from the well, notwithstanding the fact that the well was severed on August 17, 2001, and the severance has never been resolved. During this period, Northcutt did not report production of at least 100 Mcf of gas per month for three consecutive months, and, accordingly, the production was not sufficient to restore the well to "active" status under Statewide Rule 14(a)(1)(A). The evidence proves that Northcutt reported zero production for the well during January-May 2002.

Mr. Northcutt attributed the well's inactivity to the unavailability of a pipeline to transport gas. This testimony is uncorroborated, however, and Mr. Northcutt could not be specific about the period of pipeline unavailability. In any event, Statewide Rule 14(b)(2) requires that plugging operations be commenced within a period of one year after drilling or operations cease, regardless of the reason for the cessation, unless a plugging extension is obtained.

Between November 8, 2000, and May 17, 2001, when the subject well was not producing, the District Office corresponded with Northcutt on five separate occasions regarding the well's noncompliance with Statewide Rule 14(b)(2), apparently without response from Northcutt. In July 2001, Northcutt began producing the well, but, as noted, was not able to produce at least 100 Mcf of gas for three consecutive months in order to restore the well to "active status". In August 2001, Northcutt attempted to obtain a plugging extension for the well by filing Form W-1X, but because the P-5 Department could not be convinced that Northcutt had a good faith claim of right to operate the

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well, the plugging extension was denied. On the basis of the evidence presented here, the examiner cannot say that the P-5 Department was incorrect in its good faith claim determination, but even if a plugging extension had been granted in August 2001, it would have come long after twelve months of well inactivity.

Because the subject well has been inactive for more than twelve months, is not plugged, and no plugging extension is in effect, Northcutt violated Statewide Rule 14(b)(2) as alleged by Enforcement.

There remains the issue of whether an administrative penalty should be imposed, and, if so, in what amount. There is no evidence of previous orders entered against respondent for violations of Commission rules. However, respondent cannot be said to have demonstrated good faith in view of his failure to plug the subject well, or otherwise place the well in compliance with Commission rules, in response to numerous requests from the District Office for compliance. The evidence shows that the Statewide Rule 14(b)(2) violation committed by respondent poses a threat to the public health and safety. On the basis of the factors which the Commission must consider pursuant to §81.0531 of the Texas Natural Resources Code, the examiner concludes that an administrative penalty in the amount of \$2,000.00 is reasonable and appropriate to the circumstances of this case. This conforms to Enforcement's recommendation, and is the standard penalty for one violation of Statewide Rule 14(b)(2) provided by the recommended standard penalty schedule for enforcement cases.

The examiner concludes further that respondent should be ordered to plug the subject well, or otherwise place the well in compliance with Commission rules. The determination that respondent should be given the option of placing the well in compliance by means other than plugging the well is based on the evidence showing that the well is capable of production and is equipped to produce. This too conforms to Enforcement's recommendation. The issue of whether the well can be placed in compliance by a means requiring the showing of a good faith claim of a current right to operate the well is reserved for another day.

FINDINGS OF FACT

1. Northcutt Production ("Northcutt") was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Dwight Northcutt, Owner, appeared and participated at the hearing.
2. Northcutt's Form P-5 Organization Report is delinquent. Northcutt last filed a Form P-5 on March 27, 2001. At that time, Northcutt filed as financial assurance a \$100.00 fee.
3. Northcutt designated itself to the Commission as the operator of the McClatchy Lease, Well No. 5 (RRC No. 110893) ("subject well"), Mac (Fry) Field, Brown County, Texas, by filing Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective January 1, 1987.
4. Northcutt reported to the Commission zero production for the subject well between February

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1998 and December 1999. For January and February 2000, Northcutt reported production for the subject well of one Mcf of gas for each month. Northcutt reported zero production for the subject well between March 2000 and June 2001. For July-December 2001, Northcutt reported the following production for the subject well: July-43 Mcf; August-26 Mcf; September-58 Mcf; October-113 Mcf; November-123 Mcf; and December-47 Mcf. For the period January-May 2002, Northcutt reported zero production for the subject well.

5. On the occasions of District Office inspections on August 22, September 22, November 1, and December 12, 2000, and February 7 and March 21, 2001, the subject well was inactive, although equipped for production. On the occasions of District Office inspections on June 21 and August 10, 2001, the subject well was producing. On the occasions of District Office inspections on February 26 and April 26, 2002, the subject well was again inactive.
6. The subject well has been inactive for a period in excess of one year.
7. The subject well has not been properly plugged, and no Statewide Rule 14(b)(2) plugging extension is in effect.
8. The estimated cost to the State of plugging the subject well is \$2,100.00.
9. 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 possibility of pollution.
10. Northcutt has no prior history of enforcement orders issued against it for violations of Commission rules.
11. Northcutt has not demonstrated good faith since it failed to plug the subject well or otherwise place the well in compliance with Commission rules in response to multiple requests from District Office staff.

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. Northcutt Production is the operator of the McClatchy Lease, Well No. 5 (RRC No. 110893), Mac (Fry) Field, Brown 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

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89 of the Texas Natural Resources Code.

4. As operator, Northcutt Production has the primary responsibility for complying with Statewide Rule 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject well.
5. 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 March 1, 2000.
6. The documented violation committed by Northcutt Production constitutes an act deemed serious and a hazard to the public health, and demonstrates a lack of good faith as provided by 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 Northcutt Production to:

1. Plug, or otherwise place in compliance with Commission Statewide Rules, the McClatchy Lease, Well No. 5 (RRC No. 110893), Mac (Fry) Field, Brown County, Texas; and
2. Pay an administrative penalty in the amount of TWO THOUSAND DOLLARS (\$2,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner