

ENFORCEMENT ACTION AGAINST ROBERT V. RATTI, INCORPORATED (OPERATOR NO. 694755) AND/OR BILBO WIRE LINE SERVICE, INC. (OPERATOR NO. 070788) FOR VIOLATION OF A STATEWIDE RULE ON THE STEWART (25251) LEASE, WELL NO. 1, SAXON-GUION (MORRIS) FIELD, TAYLOR COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Lowell E. Williams
Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENTS:

Robert Ratti
President

Robert V. Ratti, Incorporated

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:	July 22, 2003
DATE OF NOTICE OF HEARING:	October 31, 2003
DATE OF HEARING:	December 11, 2003
HEARD BY:	James M. Doherty, Hearings Examiner
DATE PFD CIRCULATED:	January 22, 2004

STATEMENT OF THE CASE

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

1. Whether the respondents Robert V. Ratti, Incorporated (“Ratti”) and/or Bilbo Wire Line Service, Inc. (“Bilbo”) 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 Statewide Rule 14(d)(12) by failing, within 120 days after plugging was completed, to remove from the Stewart (25251) Lease (“subject lease”) all tanks, vessels, related surface piping, all subsurface piping less than three feet beneath the ground surface, loose junk and trash as required by Statewide Rule 14(d)(12).

2. Whether Ratts and/or Bilbo should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject lease.
3. Whether any violation of Statewide Rule 14(d)(12) by Ratts and/or Bilbo should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

A hearing was held on December 11, 2003. Lowell E. Williams, staff attorney, appeared to represent the Enforcement Section (“Enforcement”). Robert Ratts, President, appeared to represent respondent Robert V. Ratts, Incorporated, and presented evidence. Bilbo did not appear. The certified enforcement case file was admitted into evidence without objection.

Enforcement recommends that Bilbo be found to be the responsible operator for the alleged violation of Statewide Rule 14(d)(12) and a penalty in the amount of \$1,000.00 be assessed against Bilbo. The examiner agrees with Enforcement’s recommendation, and recommends that Bilbo be ordered to place the subject lease in compliance with Statewide Rule 14(d)(12) and pay an administrative penalty of \$1,000.

BACKGROUND

Statewide Rule 14(d)(12) provides as follows:

“The operator shall fill the rathole, mouse hole, and cellar, and shall empty all tanks, vessels, related piping and flowlines that will not be actively used in the continuing operation of the lease within 120 days after plugging work is completed. Within the same 120 day period, the operator shall remove all such tanks, vessels, and related piping, remove all loose junk and trash from the location, and contour the location to discourage pooling of surface water at or around the facility site. The operator shall close all pits in accordance with the provisions of §3.8 of this title (relating to Water Protection (Statewide Rule 8)). The district director or the director’s delegate may grant a reasonable extension of time of not more than an additional 120 days for the removal of tanks, vessels and related piping.”

POSITIONS OF THE PARTIES

Enforcement's Position

Enforcement asserts that since the Stewart (25251) Lease, Well No. 1 was plugged on March 27, 2000, and all tanks, vessels, and related piping and flowlines not actively used in continuing operations of the lease were not removed within 120 days, Statewide Rule 14(d)(12) was violated. Notwithstanding the fact that Ratts is the designated Form P-4 operator of the lease, Enforcement believes that Ratts has rebutted the presumption that it was the operator responsible for plugging the well and complying with Statewide Rule 14(d)(12). Enforcement argues that by purchasing the lease and lease equipment from Ratts, signing a two signature Form P-4 (Producer's Transportation Authority and Certificate of Compliance) requesting a change of operator from Ratts to Bilbo, plugging the Stewart (25251) Lease, Well No.1, and removing and selling downhole and surface equipment, Bilbo assumed the responsibility for regulatory compliance on the lease. Enforcement recommends that the Form P-4 requesting a change of operator from Ratts to Bilbo be approved and that Bilbo be assessed a penalty of \$1,000.00 for noncompliance with Statewide Rule 14(d)(12).

Ratts' Position

Ratts argues that it sold the subject lease to Bilbo pursuant to an agreement that provided that Bilbo would become the Form P-4 operator of the lease with responsibility for regulatory compliance. A two signature Form P-4 to accomplish this purpose was filed by Ratts, but because Bilbo did not live up to its agreement to file the Form P-4, the Form P-4 did not reach the Commission until after Bilbo had plugged the well, and the Proration Unit advised Ratts that the Form P-4 could not be approved. Ratts requests that the Commission approve the Form P-4 and determine that Ratts is not responsible for noncompliance with Statewide Rule 14(d)(12).

DISCUSSION OF THE EVIDENCE

Enforcement's Evidence

Ratts was designated operator of the subject lease by filing Form P-4, effective January 1, 1986. On April 4, 2000, Bilbo filed a Form W-3 (Plugging Record) for Well No. 1 on the subject lease. This Form W-3 showed that the well was plugged on March 27, 2000, and that Bilbo was the cementing company. The Form W-3 was signed by Benny Kilpatrick as agent. Benny Kilpatrick was listed as President of Bilbo on the last Form P-5 filed by Bilbo on June 6, 2001.

District Office inspections of the subject lease on July 1, 2002, August 19, 2002, October 19, 2002, November 19, 2002, January 27, 2003, and July 26, 2003, showed that two 500 barrel tanks, one

210 barrel tank, a 25' x 4' heater treater, and flowlines were left on the subject lease after Well No. 1 was plugged.

On July 16, 2002, a two signature Form P-4 was filed with the Commission's Abilene District Office requesting a change of operator for the subject lease from Ratts to Bilbo. The Form P-4 was proposed to be effective February 1, 2000, was signed on behalf of Ratts by Robert V. Ratts on February 14, 2000, and was signed on behalf of Bilbo by Bill Kilpatrick, CEO, on March 7, 2000.

This same Form P-4 was filed with the Commission's Austin office on August 29, 2002. The last Form P-5 filed by Bilbo on June 6, 2001, listed Bill Kilpatrick as Chairman of the Board and Vice President of Bilbo. Enforcement's counsel stated that the Form P-4 was not approved by the Commission's Proration Unit because by the time of filing, Well No.1 on the subject lease had been plugged and the subject lease had been removed from the proration schedule.

Enforcement presented the affidavit of Mark England, Engineering Specialist, Field Operations, showing that loose junk and trash left on a lease after the lease has been abandoned can constitute a fire hazard and a safety hazard.

Ratts' Evidence

Robert V. Ratts, Incorporated was dissolved as a corporation on November 18, 2002. It last filed a Form P-5 with the Commission on July 12, 2001, and is now shown by Commission P-5 records as inactive. According to the last Form P-5 filed by Ratts, Robert V. Ratts was President, Vice President, Secretary, and Treasurer.

In January 2000, after some 50 years in the oil and gas business, Robert V. Ratts, who was then 75 years of age, decided to sell his remaining leases. On January 5, 2000, he sent letters to three well pluggers inviting bids for the sale of the leases for salvage. These letters specified that it would be necessary that the successful bidder sign a Form P-4 to take over the leases.

Bilbo Wire Line Service, Inc., submitted a bid to Ratts, agreeing to pay \$8,500.00 for five leases, including the subject lease. On February 14, 2000, Robert V. Ratts signed multiple copies of Forms P-4 for the purpose of changing the operator of the leases sold to Bilbo from Robert V. Ratts, Incorporated to Bilbo Wire Line Service, Inc., and sent the Forms P-4 to Bilbo for signatures and filing with the Commission. Bilbo signed the Forms P-4 and returned a completely signed copy, bearing the original signatures, to Ratts.

Thereafter, Bilbo plugged the wells on the leases acquired from Ratts, removed certain downhole and surface equipment, and sold the equipment to others. Ratts did not learn that Bilbo had not filed the Forms P-4 with the Commission until he received a letter from the Commission in July 2002, regarding needed compliance on the subject lease. Ratts then proceeded to file the original copies of the two

signature Forms P-4 that previously had been signed by Bilbo and returned to Ratts.

In October 2002, Robert V. Ratts called Bill Kilpatrick with Bilbo regarding the need to comply with Statewide Rule 14(d)(12) on the subject lease. Kilpatrick advised Ratts that he had sold some of the equipment from the subject lease, but the purchasers did not want all of the equipment. Kilpatrick also told Ratts that Bilbo was out of business and no longer had the equipment necessary to remove the remaining surface equipment from the subject lease.

Ratts believes that Bilbo should be the party responsible for compliance with Statewide Rule 14(d)(12) on the subject lease, and requests that the Commission approve the Form P-4 changing the operator of the lease from Ratts to Bilbo.

EXAMINER'S OPINION

Pursuant to Statewide Rule 14(c)(2), because it became the operator of the subject lease by Form P-4 transfer prior to September 1, 1997, Ratts was entitled to an opportunity to rebut the presumption that it had the responsibility for plugging Well No. 1 and for other regulatory compliance on the subject lease. The Commission has determined that the presumption may be rebutted by a showing that some other entity assumed responsibility for the physical operation and control of the well. *See* preamble to 1998 amendments to Statewide Rule 14 [23 *TexReg* 9300].

The evidence shows that Bilbo plugged Well No. 1 on the subject lease on March 27, 2000, and filed the Form W-3 (Plugging Record) for the well on April 4, 2000. Prior to that time, Bilbo had agreed to acquire the subject lease and its equipment from Ratts and to sign a Form P-4 changing the operator of the lease from Ratts to Bilbo. Prior to the plugging of the well, both Ratts and Bilbo signed a Form P-4 for this purpose. By signing the Form P-4, Bilbo specifically acknowledged the responsibility for regulatory compliance on the subject lease, including the responsibility for plugging Well No. 1. It is apparent that it was the intent of the parties that Bilbo would assume the responsibility for the physical operation and control of the lease and well. When Bilbo plugged Well No. 1, it did so in its own right, not as an agent for Ratts. When the Commission approved the Form W-3, operator responsibility for plugging Well No. 1 ended. Thereafter, Bilbo possessed, controlled, removed, and sold to others certain of the downhole and surface equipment from the subject lease, but left on the lease unused tanks, a heater treater, and flowlines which could not be sold. The equipment that could not be sold was abandoned on the lease by Bilbo, and not by Ratts.

An operator does not avoid the responsibility for compliance with Statewide Rule 14(d)(12) by the simple expedient of selling surface equipment to another. Neither does an operator necessarily avoid responsibility for compliance with Statewide Rule 14(d)(12) by contracting with a well plugger to plug a well for salvage as agent for the operator. However, in the peculiar circumstances of this case, the examiner concludes that Bilbo assumed the responsibility for the lease, including responsibility for

compliance with Statewide Rule 14(d)(12), by purchasing the lease for salvage, occupying and possessing the lease in its own right, plugging Well No. 1 in its own right and not as an agent for Ratts, and by signing a Form P-4 acknowledging Bilbo's responsibility for regulatory compliance on the lease.

If Bilbo had fulfilled its agreement with Ratts to file the Form P-4 changing the operator of the subject lease promptly after it was signed by Ratts and Bilbo, the Form P-4 doubtless would have received the approval of the Proration Unit since the subject lease was not removed from the proration schedule until August 31, 2000. At that time, Bilbo was an active operator qualified to receive a Form P-4 transfer of the subject lease. Bilbo was not a bonded operator, but at the time Texas Natural Resources Code §91.107 did not require that the transferee of a well be a bonded operator. The examiner concludes that the Form P-4 changing the operator of the subject lease to Bilbo should be approved by the Commission effective February 1, 2000, for the limited purpose of properly assigning responsibility for regulatory compliance on the subject lease. This approval is not at this time barred by TEX. NAT. RES. CODE ANN. §91.107. TEX. NAT. RES. CODE §91.107 requires that a transferee of *an active or inactive well* be a bonded operator. In this case, the only well on the subject lease has been plugged and the Form W-3 Plugging Record has been approved by the Commission. TEX. NAT. RES. CODE ANN. §91.107 does not apply because no *active or inactive well* is being transferred to Bilbo by the recommended Form P-4 approval. The Commission may approve the Form P-4 for the limited purpose of properly assigning responsibility for regulatory compliance on the subject lease, even though Bilbo does not currently have an active organization report and financial assurance, because an active organization report is not required to remedy a violation of Commission rules under TEX. NAT. RES. CODE ANN. §91.142(f)(1), and an operator with no wells or other Commission regulated activity is not required to file financial assurance.

The examiner concludes that in the particular factual circumstances of this case, Ratts has made a satisfactory showing to rebut the presumption that Ratts is the operator responsible for compliance with Statewide Rule 14(d)(12). Enforcement concedes that Ratts has made this showing. The examiner concludes further that Bilbo assumed this responsibility.

The examiner therefore recommends that the Commission approve, effective February 1, 2000, the Form P-4 filed by Ratts to change the operator of the subject lease from Ratts to Bilbo for the limited purpose of properly assigning responsibility for regulatory compliance on the lease. The examiner recommends further that Bilbo be ordered to place the subject lease in compliance with Statewide Rule 14(d)(12) and be assessed an administrative penalty in the amount of \$1,000.00. The recommended penalty is appropriate in that: (1) the violation of Statewide Rule 14(d)(12) was serious and created a safety hazard; and (2) Bilbo did not show good faith because it failed to remove unused tanks, a heater treater, and flowlines from the subject lease as required by Statewide Rule 14(d)(12) and did not appear at the hearing to explain its inaction. As to Ratts, the examiner recommends that the complaint be dismissed with prejudice.

Based on the record in this case, the examiner recommends that the Commission adopt the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Robert V. Ratts, Incorporated (“Ratts”) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Ratts appeared at the hearing and presented evidence.
2. Bilbo Wire Line Service, Inc. (“Bilbo”) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. The receipt for certified mail (green card) was signed and returned to the Commission. Bilbo failed to appear at the hearing.
3. Ratts was a corporation, and was dissolved on November 18, 2002. Robert V. Ratts was listed as President, Vice President, Secretary, and Treasurer on the most recent Form P-5 filed by Ratts on July 12, 2001. Ratts’ Form P-5 is now inactive. Ratts last filed financial assurance in the form of an annual nonrefundable fee of \$100.00.
4. Bilbo is a corporation, and last filed a Form P-5 on June 6, 2001. Bilbo’s Form P-5 is now inactive. On the last Form P-5 filed by Bilbo, Bill Kilpatrick was listed as Chairman of the Board and Vice President, and Benny Kilpatrick was listed as President. Bilbo last filed financial assurance in the form of an annual nonrefundable fee of \$100.00.
5. Ratts designated itself to the Commission as operator of the Stewart (25251) Lease (“subject lease”) by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) with the Commission, effective January 1, 1986, and approved January 24, 1986. The lease was consolidated pursuant to Form P-4 filed by Ratts, effective January 1, 1989, and approved February 14, 1989.
6. On January 5, 2000, Ratts sent a letter to three plugging contractors placing five leases, including the subject lease, “up for sale to be plugged”. The letter stated that the leases were being sold for salvage and that bids would be accepted until February 10, 2000. The letter stated also that the successful bidder would be required to sign a Form P-4 and accept responsibility for plugging the wells on the leases in accordance with Commission rules.
7. Bilbo Wire Line Service, Inc. (“Bilbo”) bid the sum of \$8,500.00 to be paid by Bilbo to Ratts for

the leases, and was the successful bidder. Ratts signed multiple copies of Forms P-4 to change the operator of the leases from Ratts to Bilbo and sent them to Bilbo. Bilbo also signed these Forms P-4, including a Form P-4 for the subject lease, and returned a copy bearing the original signatures to Ratts. Ratts and Bilbo had an understanding that Bilbo would file the Forms P-4 with the Commission.

8. Bilbo plugged Well No. 1 on the subject lease on March 27, 2000, and on April 4, 2000, Bilbo filed a Form W-3 (Plugging Record) for the well. The Form W-3 identified Ratts as the operator and Bilbo as the cementing company. The Form W-3 was signed by Benny Kilpatrick as “agent”.
9. Bilbo removed downhole and surface equipment from the subject lease and sold it to others. The purchasers were not interested in acquiring all of the surface equipment, and some of the equipment was left on the lease.
10. Bilbo did not file with the Commission the Forms P-4 relating to the leases acquired from Ratts. Ratts did not discover this until July 2002. On July 16, 2002, Ratts filed the Form P-4 relating to the subject lease, bearing original signatures for Ratts and Bilbo, with the Commission’s Abilene District Office. This Form P-4 was filed with the Commission’s Austin office on August 29, 2002. The Form P-4 requesting a change of operator from Ratts to Bilbo was proposed to be effective February 1, 2000.
11. The Commission’s Proration Unit did not approve the Form P-4 relating to the subject lease which was filed by Ratts. By the time the Form P-4 was filed, the subject lease had been removed from the proration schedule. Had Bilbo filed the Form P-4 prior to March 27, 2000, when Well No. 1 on the subject lease was plugged, the Form P-4 would have been subject to approval by the Proration Unit because, at the time, Bilbo was an operator with an active Form P-5 Organization Report and approved financial assurance.
12. According to the terms of the Form P-4, by the signature of its CEO and Vice President, Bilbo acknowledged its responsibility for regulatory compliance on the subject lease.
13. As of the dates of District Office inspections of the subject lease on July 1, 2002, August 19, 2002, October 9, 2002, November 19, 2002, January 1, 2003, and June 26, 2003, two 500 barrel tanks, one 210 barrel tank, a 25' x 4' heater treater, and flowlines were left on the lease and not being used in any continuing operation of the lease.
14. Tanks, vessels, flowlines, loose junk and trash left on a lease after all wells have been plugged can constitute a fire and safety hazard.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Robert V. Ratts, Incorporated (“Ratts”) rebutted the presumption of Statewide Rule 14(c)(2) [16 TEX. ADMIN. CODE §3.14(c)(2)] that as the designated Form P-4 operator of the Stewart (25251) Lease (“subject lease”), it was the entity responsible for the physical operation and control of the lease and the entity responsible for plugging Well No. 1 and other regulatory compliance on the lease.
4. Ratts was not the entity responsible for plugging Well No. 1 or for compliance with Statewide Rule 14(d)(12) [16 TEX. ADMIN. CODE §3.14(d)(12)] on the subject lease.
5. Bilbo Wire Line Service, Inc. (“Bilbo”) assumed the responsibility for the physical operation and control of the subject lease, was the entity responsible for plugging Well No.1 on the lease, and is the entity responsible for compliance with Statewide Rule 14(d)(12) on the lease.
6. Bilbo violated Statewide Rule 14(d)(12) on the subject lease. The subject lease has been out of compliance with Statewide Rule 14(d)(2) since July 25, 2000.
7. The documented violations committed by Bilbo 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).

RECOMMENDATION

The examiner recommends that the Commission enter the attached final order: (1) approving the Form P-4 changing the operator of the subject lease from Robert V. Ratts, Incorporated to Bilbo Wire Line Service, Inc., effective February 1, 2000, for the limited purpose of properly assigning responsibility for regulatory compliance on the lease; (2) ordering Bilbo Wire Line Service, Inc. to place the subject lease into compliance with Statewide Rule 14(d)(12); (3) assessing an administrative penalty against Bilbo Wire Line Service, Inc. in the amount of \$1,000.00; and (4) as to Robert V. Ratts, Incorporated, dismissing the complaint with prejudice.

Respectfully submitted,

James M. Doherty
Hearings Examiner