

July 7, 2004

OIL AND GAS DOCKET NO. 7B-0235956

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ENFORCEMENT ACTION AGAINST LOCH ENERGY, INC FOR VIOLATIONS OF STATEWIDE RULES ON ITS SNYDER 117 A LEASE, WELL NO. 2, (PERMIT NO. 0516163) AND SNYDER 117 B LEASE, WELL NO. 3, (PERMIT NO. 0517116) LEASES, CALLAHAN COUNTY, TEXAS.

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**APPEARANCES:**

**FOR MOVANT RAILROAD COMMISSION OF TEXAS:**

Elaine Moore, Staff Attorney

**FOR RESPONDENT LOCH ENERGY, INC.**

Stephen Brents, Consultant

**WITNESSES:**

Joe Seabourn  
Paul Dillow

**OBSERVERS:**

James Snyder  
Jim Snyder  
Byron Snyder

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>NOTICE OF HEARING:</b>	January 16, 2004
<b>DATES CASE HEARD:</b>	April 8, 2004 and May 20, 2004
<b>PFD PREPARED BY:</b>	Mark Helmueller, Hearings Examiner
<b>PFD CIRCULATION DATE:</b>	July 7, 2004
<b>CURRENT STATUS:</b>	Protested

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 Loch Energy, Inc. should be required to plug or otherwise place in compliance with Statewide Rules 3, 8, and 14, the Snyder 117 A Lease, Well No. 2 (Permit No. 0516163) and Snyder 117 B Lease, Well No. 3 (Permit No. 0517116) Callahan County, Texas;
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 comply with said statutes and Statewide Rules 3, 8, and 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said leases and wells;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. § 81.0534.

Elaine Moore, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”). Loch Energy, Inc. (“Loch” and/or “respondent” ) also appeared and presented evidence at the first hearing on April 8, 2004, but did not appear for the second hearing date on May 18, 2004. The mineral interest owners, James Snyder, Jim Snyder, and Byron Snyder also appeared as observers. Two witnesses, Joe Seabourn and Paul Dillow, testified at the hearings. The Enforcement Section's hearing file was admitted into evidence.

Enforcement recommended that Loch be ordered to bring the lease into compliance with Commission rules, properly plug the wells, and pay a total administrative penalty of \$6,000. The administrative penalty is broken down as follows: \$2,000 each for two violations of Statewide Rule 14(b)(2); \$250 each for four violations of Statewide Rule 3(a); and \$1,000 for a single violation of Statewide Rule 8(d)(4)(G)(i)(I). Loch claimed that no administrative penalty should be assessed because it is not the proper operator of Snyder 117 A Lease, Well No. 2 (Permit No. 0516163) and Snyder 117 B Lease, Well No. 3,(Permit No. 0517116) (hereinafter “Snyder 117 Leases” and “subject wells”. The examiner recommends that Loch be confirmed as the proper operator of the subject wells, that Loch be ordered to plug the subject wells and that Loch be ordered to pay an administrative penalty of \$6,000.

## DISCUSSION OF THE EVIDENCE

### Loch Organization Records

Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Loch was filed on April 7, 2004, the day before the first day of the hearing in this docket. Peter Wang is listed as the Resident Agent, and CEO. Gemme Grooms is identified as the Vice President - Administration. Loch has posted a \$50,000 cash deposit with the Commission as its financial assurance. Loch is currently identified as the operator of 42 wells, all of which are listed as inactive.

Loch's Organization Report filed on March 17, 2003 identifies Kenneth D. Howard as Resident Agent and President. Gemme Grooms is identified as the Vice President - Administration, and Stephen Brents is identified as Vice President - Operations. An amended Organization Report filed on April 16, 2003 identifies Douglas Ashworth as Loch's CEO. Commission Records show that a second amended Organization Report filed by Loch on May 22, 2003 identifies Kenneth D. Howard as Resident Agent and Vice President - Corporate Affairs. Patrick Ashworth is identified as the President and CEO. Gemme Grooms is identified as the Vice President - Administration.

Loch's Organization Report filed on April 30, 2002 identifies Richard Pomrenke as Senior Vice President - Field Operations. Paul Dillow is identified as Executive Vice President and Stephen Brents is identified as Vice President - Field Operations. Commission Records show that an amended Organization Report filed by Loch on June 21, 2002 which identifies Vincent Giammalvo as President and Paul Dillow as Vice President - Operations.

With respect to Loch's 2001 renewal, the Organization Report filed on December 12, 2001 identifies Glenn Loch as President. Paul Dillow is identified as Vice President - Operations and Lisa Henderson is listed as Vice President - Human Resources.

### Permit and Completion Records

On December 14, 2001, a Commission Form W-1 (Application for Permit to Drill, Deepen, Plug Back, or Re-Enter) was filed for the Snyder 117 A Lease, Well No. 2 identifying Loch as the operator. The W-1 was signed by Joe Seabourn as Loch's agent. The permit was granted by the Commission on December 14, 2001 and assigned permit number 516163.

On August 7, 2002, a Commission Form G-1 (Gas Well Back Pressure Test, Completion or Recompletion Report, and Log) was filed with the Commission's District Office in Abilene for Well No. 2. The G-1 indicates that the well was drilled as a wildcat to a total depth of 4216 feet, but no completion date was indicated. The well reportedly tested at a flow rate of 38 mcf per day on a 1/2" choke on April 24, 2002. The G-1 was signed by Joe Seabourn on behalf of Loch.

On January 25, 2002, a W-1 was filed for the Snyder 117 B Lease, Well No. 3 identifying Loch as the operator. The W-1 was again signed by Joe Seabourn as Loch's agent. The permit was granted on January 25, 2002 and assigned permit number 517116.

On August 7, 2002, a G-1 was filed with the Commission's District Office in Abilene for Well No. 3. The G-1 indicates that the well was drilled as a wildcat to a total depth of 4265 feet and was completed on April 30, 2002. The well reportedly tested at a flow rate of 40 mcf per day on a 1/2" choke. The G-1 was signed by Joe Seabourn on behalf of Loch.

### **Commission Inspections**

Commission inspections of the Snyder 117 Leases and the subject wells were conducted on February 18, 2003, March 5, 2003, March 31, 2003, May 12, 2003, October 21, 2003 and February 17, 2004. The inspections reported no signs at the entrance to either lease or at the wells. An open reserve pit was observed at Well No. 2 measuring 100' by 100' by 4' deep. The most recent inspection report indicates that the wells were not equipped for production. No production records have ever been filed for either of the subject wells.

### **Witness Testimony**

At the hearing on April 8, 2004, Joe Seabourn was called as a witness by Enforcement. Mr. Seabourn testified that he was employed by Loch as a consultant in September and October 2001. He identified Douglas Ashworth as the head of the company. He was advised by Ashworth in October 2001, that Loch could not pay him for his services, and was asked to accept company stock in lieu of payment. Mr. Seabourn declined this offer, but suggested that he would forego the funds owed to him if Loch would agree to allow him to drill two wells under its P-5. Ashworth agreed to the deal. On November 6, 2001, Seabourn signed a letter agreeing to indemnify Loch for "any and all legal responsibility of the drilling and completion on the Snyder Ranch and or on the X - Ranch in Section 117 Callahan County Texas."

Seabourn testified that he drilled the wells, but that they proved to be noncommercial. He has no funds to plug the wells, and in any event asserts that the wells are Loch's responsibility under the original agreement. Subsequent to the hearing, Seabourn submitted a copy of his drilling log book, which contained several entries confirming the agreement with Loch.

At the further hearing on May 20, 2004, Paul Dillow was called as a witness by Enforcement. Mr. Dillow testified that he was employed in several positions at Loch between June 2001 and September 2002. He said he was hired by Douglas Ashworth at Loch to put 55 wells on line, but that he was never given the funding to accomplish this task.

Dillow was advised in October 2001 that Ashworth and Seabourn had agreed to allow Seabourn

to drill wells under Loch's name. Dillow advised Ashworth that the agreement should be rescinded because it created a potential liability problem. Ashworth stated that the deal would look good to potential investors and keep current investors happy.

Dillow discussed the progress of the prospect with Seabourn every 2 to 3 weeks. Dillow kept Ashworth advised on the status of the prospect. Dillow indicated that Ashworth resigned as CEO in August 2002, and that he immediately advised Ashworth's successor to prepare correspondence to Seabourn rescinding the original agreement.

#### **ENFORCEMENT'S POSITION**

Enforcement contends that Loch is the proper operator of the subject wells as evidenced by Commission records seeking permission to drill the well under its name, and completion records also filed under its name. Enforcement contends that the subject wells were out of compliance with Statewide Rule 3 due to the lack of any signs at the lease entrance and well sites. Enforcement further contends that the wells were out of compliance with Statewide Rule 14(b)(2) because they were not properly plugged and abandoned within one year after completion. Finally, Enforcement contends that the Snyder 117 A Lease was out of compliance with Statewide Rule 8 (d)(4)(G)(i)(I) because the reserve pit for Well No. 2 was not dewatered, backfilled and compacted within one year after operations ceased.

Enforcement urges that Loch be ordered to bring the Snyder 117 Leases into compliance with Commission rules, plug the two subject wells, and pay an administrative penalty of \$6,000. The administrative penalty is broken down as follows: \$2,000 each for two violations of Statewide Rule 14(b)(2); \$250 each for four violations of Statewide Rule 3(a); and \$1,000 for a single violation of Statewide Rule 8(d)(4)(G)(i)(I).

#### **LOCH'S POSITION**

Loch argues that it is not the operator of the subject wells, and that Seabourn never had permission to permit the wells in Loch's name. Loch requests that the complaint therefore be dismissed, as it is not responsible for the Snyder 117 Leases or the subject wells.

#### **APPLICABLE AUTHORITY**

Statewide Rule 3(a)(1) requires the posting of signs at each lease entrance for each property producing oil, gas or geothermal resources which show the name of the property, the name of the operator, and the number of acres.

Statewide Rule 3(a)(2) requires the posting of signs at each well site for each property producing oil, gas or geothermal resources which show the name of the property, the name of the operator, and the well number.

Statewide Rule 8(d)(4)(G)(i)(I) requires a person who maintains or uses a reserve or mud circulation pit in conjunction with drilling a well to dewater, backfill and compact the pit within one year of the cessation of drilling operations.

Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission Rules within one year after operations cease, unless an extension is granted.

#### **EXAMINER'S OPINION**

Loch admits that the Snyder 117 Leases and the subject wells are in violation of Statewide Rules 8 and 14. The question in this case is whether Loch is the responsible operator. Commission records show that the wells were permitted in Loch's name, but Loch contends it never gave permission to Mr. Seabourn for that action.

The examiner finds that the overwhelming weight of the evidence in this case supports the contention that Douglas Ashworth entered into an agreement on Loch's behalf which gave Seabourn permission to permit the wells in Loch's name. The testimony of both Seabourn and Dillow, a former executive with Loch confirmed the terms of the agreement. While Loch may possess legal recourse against both Seabourn and Ashworth, such determinations are outside of the jurisdiction of the Commission. Accordingly, Loch's claims that Seabourn drilled the wells without permission, and is responsible for plugging the wells, do not change Loch's status as the operator of the subject wells for regulatory purposes.

As previously noted, both of the subject wells were completed on or before April 30, 2002. Accordingly, Statewide Rule 14(b)(2) required that the wells be plugged on or before April 30, 2003. Additionally, the reserve pit associated with Well No. 2 was required to be closed on or before April 30, 2003 under the provisions of Statewide Rule 8(d)(4). Additionally, the sign requirements under Statewide Rule 3 would have also attached on or before April 30, 2003. The last Commission inspection report indicates that all of these violations remain unresolved. Accordingly, the total recommended administrative penalty is \$6,000, broken down as follows: \$1,000 for four violations of Statewide Rule 3(a) at \$250 for each violation; \$4,000 for two violations of Statewide Rule 14(b)(2) at \$2,000 per violation; and, \$1,000 for the single violation of Statewide Rule 8(d)(4)(G)(i)(I).

The examiner further recommends pursuant to Texas Natural Resources Code §91.114 that all individuals identified as officers in Loch's Organization Reports from April 30, 2003 to the present, be identified as individuals in a position of ownership or control of respondent during the time Loch violated Commission rules related to safety and the control of pollution. Both the individual officers and any organization in which any of them may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the terms of the order are satisfied. The following individuals were identified as officers of the company between April 30, 2003 and the present: Peter Wang, Gemme Grooms, Kenneth D. Howard, Stephen Brents, Douglas Ashworth, and Patrick Ashworth. Accordingly, they are subject to the provisions of Texas Natural Resources Code Section 91.114(a)(2).

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. Respondent Loch Energy, Inc. (“Loch” and/or “respondent” ) was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. Loch appeared and presented evidence at the first hearing on April 8, 2004.
2. Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Loch was filed on April 7, 2004, the day before the first hearing date in this docket. Peter Wang is listed as the Resident Agent, and CEO. Gemme Grooms is identified as the Vice President - Administration. Loch has posted a \$50,000 cash deposit with the Commission as its financial assurance.
3. Loch’s Organization Report filed on March 17, 2003 identifies Kenneth D. Howard as Resident Agent and President. Gemme Grooms is identified as the Vice President - Administration, and Stephen Brents is identified as Vice President - Operations. An amended Organization Report filed on April 16, 2003 identifies Douglas Ashworth as Loch’s CEO. Commission Records show that a second amended Organization Report filed by Loch on May 22, 2003 identifies Kenneth D. Howard as Resident Agent and Vice President - Corporate Affairs. Patrick Ashworth is identified as the President and CEO. Gemme Grooms is identified as the Vice President - Administration.
4. Loch is the operator of the Snyder 117 A Lease, Well No. 2 (Permit No. 516163).
  - A. On December 14, 2001, a Commission Form W-1 (Application for Permit to Drill, Deepen, Plug Back, or Re-Enter) was filed for the Snyder 117 A Lease, Well No. 2 identifying Loch as the operator. The W-1 was signed by Joe Seabourn as Loch’s agent. The permit was granted by the Commission on December 14, 2001 and assigned permit number 516163.
  - B. On August 7, 2002, a Commission Form G-1 (Gas Well Back Pressure Test, Completion or Recompletion Report, and Log) was filed with the Commission’s District Office in Abilene for Well No. 2. The G-1 indicates that the well was drilled as a wildcat to a total depth of 4216 feet, but no completion date was indicated. The well reportedly tested at a flow rate of 38 mcf per day on a 1/2" choke on April 24, 2002. The G-1 was signed by Joe Seabourn on behalf of Loch.
  - C. Joe Seabourn was authorized by Loch to execute the necessary forms to permit, drill

and complete the Snyder 117 A Lease, Well No. 2 (Permit No. 516163) in Loch's name.

6. Loch is the operator of the Snyder 117 B Lease, Well No. 3 (Permit No. 517116).
  - A. On January 25, 2002, a W-1 was filed for the Snyder 117 B Lease, Well No. 3 identifying Loch as the operator. The W-1 was signed by Joe Seabourn as Loch's agent. The permit was granted on January 25, 2002 and assigned permit number 517116.
  - B. On August 7, 2002, a G-1 was filed with the Commission's District Office in Abilene for Well No. 3. The G-1 indicates that the well was drilled as a wildcat to a total depth of 4265 feet and was completed on April 30, 2002. The well reportedly tested at a flow rate of 40 mcf per day on a 1/2" choke. The G-1 was signed by Joe Seabourn on behalf of Loch.
  - C. Joe Seabourn was authorized by Loch to execute the necessary forms to permit, drill and complete the Snyder 117 B Lease, Well No. 3 (Permit No. 517116) in Loch's name.
7. Commission inspections of the Snyder 117 A and B Leases and the subject wells were conducted on February 18, 2003, March 5, 2003, March 31, 2003, May 12, 2003, October 21, 2003 and February 17, 2004, observed the following conditions.
  - A. No signs were posted at the lease entrance or the well site for either of the subject wells.
  - B. An open reserve pit was observed at Well No. 2 on the Snyder 117 A Lease, measuring 100' by 100' by 4' deep.
  - C. The subject wells were not equipped for production.
8. 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.
9. 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 well bores constitute

a cognizable threat to the public health and safety because of the probability of pollution.

10. The failure to properly close the reserve pit within one year after drilling operations ceased poses a threat of unpermitted discharges which could result in the contamination of surface or subsurface waters.
11. Loch has not demonstrated good faith since it failed to plug or otherwise place the Snyder 117 Leases and the subject wells in compliance after being notified of the violations by the district office.
12. The estimated cost to plug the subject wells is \$17,800.
13. Loch has no previous history of violations.

#### 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. Loch is the operator of the Snyder 117 A Lease, Well No. 2, (Permit No. 516163) as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Loch is the operator of the Snyder 117 B Lease, Well No. 3, (Permit No. 517116) as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
5. Loch has the primary responsibility for complying with Rules 3, 8, and 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Snyder 117 A Lease, Well No. 2 (Permit No. 516163).
6. Loch has the primary responsibility for complying with Rules 3 and 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Snyder 117 B Lease, Well No. 3 (Permit No. 517116).
7. The Snyder 117 A Lease, Well No. 2 (Permit No. 516163), is not in compliance with Commission Statewide Rule 3(a) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
8. The Snyder 117 A Lease, Well No. 2 (Permit No. 516163), has been out of compliance with Commission Statewide Rule 3(a) from on or before April 30, 2003 to the present.
9. The Snyder 117 B Lease, Well No. 3 (Permit No. 517116), is not in compliance with Commission Statewide Rule 3(a) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.

10. The Snyder 117 B Lease, Well No. 3 (Permit No. 517116), has been out of compliance with Commission Statewide Rule 3(a) from on or before April 30, 2003 to the present.
11. Well No. 2 on the Snyder 117 A Lease (Permit No. 516163) is not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
12. Well No. 2 on the Snyder 117 A Lease (Permit No. 516163) has been out of compliance with Rule 14 from on or before April 30, 2003 to the present.
13. Well No. 3 on the Snyder 117 B Lease (Permit No. 517116) is not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
14. Well No. 3 on the Snyder 117 B Lease (Permit No. 517116) has been out of compliance with Rule 14 from on or before April 30, 2003 to the present.
15. The Snyder 117 A Lease, Well No. 2 (Permit No. 516163) was out of compliance with Statewide Rule 8 from on or before April 30, 2003 to the present due to the presence of an open reserve pit.
16. The reserve pit on the Snyder 117 A Lease, Well No. 2 (Permit No. 516163) is not properly dewatered, backfilled, or compacted or otherwise in compliance with Statewide Rule 8 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
17. Peter Wang, Gemme Grooms, Kenneth D. Howard, Stephen Brents, Douglas Ashworth, and Patrick Ashworth were officers in positions of ownership or control of respondent, as defined by Texas Natural Resources Code §91.114, during the time period of the violations of Commission rules committed by respondent.
18. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
19. As officers in positions of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Peter Wang, Gemme Grooms, Kenneth D. Howard, Stephen Brents, Douglas Ashworth, and Patrick Ashworth and any other organization in which any of them may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code §91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the

Commission and the organization have agreed.

20. The documented violations committed by Loch are a hazard to the public health and demonstrate a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).

### **RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Loch Energy, Inc., within 90 days of the entry of a Final Order in this matter:

- 1) to plug Well No. 2 on the Snyder 117 A Lease (Permit No. 516163);
- 2) to plug Well No. 3 on the Snyder 117 B Lease (Permit No. 517116);
- 3) to bring the reserve pit area associated with drilling operations for Well No. 2 on the Snyder 117 A Lease into compliance with Commission Rules; and
- 4) to pay an administrative penalty of \$6,000.

The examiner further recommends that the Final Order identify the officers of Loch Energy, Inc. designated in its Organization Report filings with the Commission effective from April 30, 2003 to the present to fulfill the requirements of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

Mark Helmueller  
Hearings Examiner