

July 1, 2004

OIL AND GAS DOCKET NO. 7B-0236046

ENFORCEMENT ACTION AGAINST NORTH CUTT PRODUCTION FOR VIOLATIONS OF STATEWIDE RULES ON THE MCCLATCHEY (RRC GAS ID NO. 110695) LEASE, WELL NO. 2C, RICHMOND (CANYON) FIELD, BROWN COUNTY, TEXAS.

OIL AND GAS DOCKET NO. 7B-0236047

ENFORCEMENT ACTION AGAINST NORTH CUTT PRODUCTION FOR VIOLATIONS OF STATEWIDE RULES ON THE MCCLATCHEY (21038) LEASE, WELL NOS. 1, 2, 3, 4, AND 7, MEDC (CADDO) FIELD, BROWN COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Lowell Williams, Staff Attorney

FOR RESPONDENT:

Dwight Northcutt

MOVANT:

Railroad Commission of Texas

PARTY:

Northcutt Production

CONSOLIDATED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINTS FILED:

August 22, 2003

NOTICES OF HEARING:

March 1, 2004

DATE CASES HEARD:

March 25, 2004

RECORD CLOSED:

June 18, 2004

PFD PREPARED BY:

Mark Helmueller, Hearings Examiner

PFD CIRCULATION DATE:

June 30, 2004

CURRENT STATUS:

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 should be required to plug or otherwise place in compliance with Statewide Rule 14, the McClatchey (RRC Gas ID No. 110695) Lease, Well No. 2C, Richmond (Canyon) Field, and the McClatchey (21038) Lease, Well Nos. 1, 2, 3, 4, and 7, MEDC (Caddo) Field, Brown 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 Rule 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 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.

Lowell Williams, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Dwight Northcutt appeared on behalf of respondent, Northcutt Production (hereinafter "Northcutt" or "respondent"). The Enforcement Section's hearing files were admitted into evidence. The dockets were consolidated by the examiner for the purpose of the hearing and preparation of a proposal for decision.

Northcutt requested additional time to either transfer the leases or plug the wells. The examiner agreed to leave the record open for 30 days to allow Northcutt the opportunity to late file exhibits verifying the sale and transfer of the wells or that the wells were properly plugged. On May 3, 2004, Northcutt submitted a letter agreement which it represented was a plugging contract. Based on this document, the parties entered into a further agreement for the record to remain open an additional 30 days. As of June 18, 2004, none of the wells were plugged. The examiner advised the parties that the record was closed on June 18, 2004.

The staff recommended that Northcutt be ordered to properly plug the wells and to pay an administrative penalty of \$12,000 for 6 violations of Statewide Rule 14(b)(2) in the two dockets, plus an

additional \$1,000 for respondent's previous violation of Commission rules in Oil & Gas Docket No. 7B-0230361 in which a Final Order was entered on November 13, 2002. The total recommended administrative penalty in the two dockets is \$13,000. The examiner agrees with the recommendation.

DISCUSSION OF THE EVIDENCE

Commission records show that the most recent approved P-5 for respondent was filed on March 27, 2001. Respondent paid a fee of \$100 as financial assurance at the time of its last renewal. Dwight Northcutt and Odell Northcutt are listed as partners. Respondent's Organization Report is currently delinquent.

Northcutt was recognized as the operator of the McClatchey (RRC Gas ID No. 110695) Lease, Well No. 2C, upon the Commission's approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) submitted on July 24, 1987. The Commission recognized Northcutt as the operator of the lease on July 29, 1987.

Northcutt was recognized as the operator of the McClatchey (21038) Lease, Well Nos. 1, 2, 3, 4, and 7, upon the Commission's approval of the Commission Form P-4 submitted on February 18, 1987. The Commission recognized Northcutt as the operator of the lease on April 16, 1987.¹

Commission inspection reports made on June 6, 2000, July 11, 2000, November 1, 2000, December 12, 2000, March 21, 2001, June 21, 2001, August 8, 2003 and October 3, 2003 show that Well No. 2C on the McClatchey (RRC Gas ID No. 110695) Lease was shut-in. Commission records report no production from the well after December 31, 2001. Accordingly, Enforcement contends that the well is inactive and has been in violation of Statewide Rule 14(b)(2) since December 31, 2002. The estimated cost to plug the well is \$3,800.

Commission inspection reports made on June 6, 2000, July 11, 2000, November 1, 2000, December 12, 2000, March 21, 2001, June 21, 2001, August 8, 2003 and October 3, 2003 show that the Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease were shut-in. Commission records report no production from the wells after October 31, 2001. Accordingly, Enforcement contends that the wells are inactive and have been in violation of Statewide Rule 14(b)(2) since October 31, 2002. The estimated cost to plug the wells is \$15,200.

Commission records also show that a Final Order was entered against Northcutt on November 13, 2002, in Oil & Gas Docket No. 7B-0236047: *Enforcement Action Against Northcutt Production for Violations of Statewide Rules on the McClatchey Lease, Well No. 5 (RRC No. 110893), Mac (Fry)*

¹ Commission records show that Well No. 2C (RRC Gas ID No. 110695) and Well No. 2 on the McClatchey (21038) Lease are dual completions in the same wellbore.

Field, Brown County, Texas. The Final Order in that action required Northcutt to pay an administrative penalty of \$2,000 for a single violation of Statewide Rule 14(b)(2).

Enforcement contends that the lengthy history of inactivity for the wells in the two dockets, coupled with the prior violation and Final Order warrants a total administrative penalty of \$13,000: \$2,000 each for the 6 violations of Statewide Rule 14(b)(2); and, an enhancement of \$1,000 for the prior violation.

Northcutt acknowledges that it was the operator of the wells in both dockets and further acknowledged that the wells had not produced since 2001. Northcutt claims that it was in the process of transferring the wells to a new operator, DNI Production, (“DNI”) and that the transfers were contingent upon approval of DNI’s Organization Report and securing a new mineral lease. Northcutt further indicates that if it was unable to obtain a new mineral lease, that it would proceed to plug all of the wells. After the hearing, Northcutt submitted a letter agreement dated April 27, 2004 which indicated that the dual completion well would be plugged by 2-W Petroleum within 30 days of the date of the letter. No further information has been provided to show that any of the wells were plugged, that a new lease was obtained, or that the wells were transferred to DNI.

APPLICABLE AUTHORITY

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. For Form P-4s filed prior to September 1, 1997, the operator, for purposes of plugging liability, is presumed to be the person who assumed responsibility for the physical operation and control of a well as shown on the approved Form P-4 designating that person as operator.

EXAMINER’S OPINION

It is uncontested that the wells are currently in violation of Rule 14. Northcutt also admits its responsibility for the wells, but failed to follow-up on its claim that it would promptly remedy the violations after the hearing.

Despite several representations that the wells would either be plugged or sold, no additional evidence was submitted showing that any action was taken to pursue either alternative other than a putative plugging agreement. Further, there is no evidence that Northcutt obtained a new mineral lease. Accordingly, the examiner recommends that Northcutt be ordered to plug the wells and pay a total administrative penalty of \$13,000.

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, Northcutt Production (“Northcutt” 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. Northcutt appeared at the hearing and presented evidence.
2. The most recent approved P-5 for Northcutt was filed on March 27, 2001. Northcutt paid a fee of \$100 as financial assurance at the time of its last renewal. Dwight Northcutt and Odell Northcutt are listed as partners. Northcutt’s Organization Report is currently delinquent.
3. Northcutt was recognized as the operator of the McClatchey (RRC Gas ID No. 110695) Lease, Well No. 2C, upon the Commission’s approval of the Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) submitted on July 24, 1987. The Commission recognized Northcutt as the operator of the lease on July 29, 1987.
4. Northcutt was recognized as the operator of the McClatchey (21038) Lease, Well Nos. 1, 2, 3, 4, and 7, upon the Commission’s approval of the Commission Form P-4 submitted on February 18, 1987. The Commission recognized Northcutt as the operator of the lease on April 16, 1987.
5. Well No 2C on the McClatchey (RRC Gas Id. No. 110695) Lease is currently inactive and has been inactive for more than 12 months.
 - a. Commission inspection reports made on June 6, 2000, July 11, 2000, November 1, 2000, December 12, 2000, March 21, 2001, June 21, 2001, August 8, 2003 and October 3, 2003 show that Well No. 2C on the McClatchey (RRC Gas ID No. 110695) Lease was shut-in.
 - b. Commission records report no production from the well after December 31, 2001.
6. Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease are currently inactive and have been inactive for more than 12 months.

- a. Commission inspection reports made on June 6, 2000, July 11, 2000, November 1, 2000, December 12, 2000, March 21, 2001, June 21, 2001, August 8, 2003 and October 3, 2003 show that Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease were shut-in.
 - b. Commission records report no production from the wells after October 31, 2001.
7. By its own admission, Northcutt does not possess a valid mineral lease for Well No. 2C on the McClatchey (RRC Gas ID No. 110695) Lease or Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease.
 8. 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.
 9. Northcutt has not demonstrated good faith since it failed to plug or otherwise place the subject wells in compliance after being notified of the violations by the district office.
 10. The estimated cost to plug the subject wells is \$19,000.
 11. A Final Order was entered against Northcutt on November 13, 2002, in Oil & Gas Docket No. 7B-0236047: *Enforcement Action Against Northcutt Production for Violations of Statewide Rules on the McClatchey Lease, Well No. 5 (RRC No. 110893), Mac (Fry) Field, Brown County, Texas*. The Final Order in that action ordered Northcutt to pay an administrative penalty of \$2,000 for a single violation of Statewide Rule 14(b)(2).

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. Northcutt is the operator of the McClatchey (RRC Gas ID No. 110695) Lease, Well No. 2C, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Northcutt is the operator of the McClatchey (21038) Lease, Well Nos. 1, 2, 3, 4, and 7, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
5. Northcutt has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the

McClatchey (RRC Gas ID No. 110695) Lease, Well No. 2C.

6. Northcutt has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the McClatchey (21038) Lease, Well Nos. 1, 2, 3, 4, and 7.
7. Well No. 2C on the McClatchey (RRC Gas ID No. 110695) Lease is not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
8. Well No. 2C on the McClatchey (RRC Gas ID No. 110695) Lease has been out of compliance with Rule 14 from December 31, 2002 to the present.
9. Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease are not properly plugged or otherwise in compliance with Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
10. Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease have been out of compliance with Rule 14 from October 31, 2002 to the present.
11. Dwight Northcutt and Odell Northcutt were partners in positions of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violations of Commission rules committed by respondent.
12. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
13. As a partner in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, both Dwight Northcutt and Odell Northcutt and any other organization in which they may hold a position of ownership or control, shall be 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 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.

11. Northcutt does not possess a good faith claim of a continuing right to operate Well No. 2C on the McClatchey (RRC Gas ID No. 110695) Lease.
12. Northcutt does not possess a good faith claim of a continuing right to operate Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease.
13. The documented violations committed by Northcutt are a hazard to the public health and demonstrate a lack of good faith pursuant to 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 Northcutt Production:

- 1) to plug Well No. 2C on the McClatchey (RRC Gas ID No. 110695) Lease;
- 2) to plug Well Nos. 1, 2, 3, 4, and 7 on the McClatchey (21038) Lease; and
- 3) to pay an administrative penalty of \$13,000.

Respectfully submitted,

Mark Helmueller
Hearings Examiner