

June 29, 2005

OIL AND GAS DOCKET NO. 7B-0241297

ENFORCEMENT ACTION AGAINST PRO-SYSTEMS FAB, INC. (OPERATOR NO. 679283) FOR VIOLATIONS OF STATEWIDE RULES ON THE BLACK LEASE, WELL NO. 1 (RRC NO. 057122), STEPHENS COUNTY REGULAR FIELD, STEPHENS COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT RAILROAD COMMISSION OF TEXAS:

Susan German, Staff Attorney

FOR RESPONDENT PRO-SYSTEMS FAB, INC.

Lynn E. Shugarman, President
David Jakobot, Registered Agent

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	January 13, 2005
NOTICE OF HEARING:	February 17, 2005
DATE CASE HEARD:	March 17, 2005
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	June 29, 2005
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 respondent, Pro-Systems Fab, Inc. (“Pro-Systems”) should be required to plug or otherwise place in compliance with Statewide Rule 14, the Black Lease, Well No. 1 (RRC No. 057122), Stephens County Regular Field, Stephens County, Texas;
2. Whether the respondent 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 \$10,000.00 per day for each offense committed regarding said lease 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.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”). Lynn E. Shugarman (“Shugarman”) and David Jakobot (“Jakobot”) also appeared by telephone and presented testimony. Enforcement's hearing file was admitted into evidence.

Enforcement recommended that Pro-Systems be ordered to bring the subject lease and well into compliance with Commission rules, and pay a total administrative penalty of \$2,000.00, which is for one violation of Statewide Rule 14(b)(2). The examiner agrees with Enforcement's recommendations.

DISCUSSION OF THE EVIDENCE

Organization and Permit Records

Commission records show that Pro-Systems filed its initial Commission Form P-5 (Organization Report) with the Commission on September 6, 2001. The most recent Organization Report for Pro-Systems was filed on August 26, 2004. Lynn E. Shugarman is identified as the President of the company and Trina Jackson is identified as the Secretary/Treasurer of the company. Commission records show that as of May 7, 2004 Pro-Systems was recognized as the operator of 76 wells with a total depth of 122,348 feet. Pro-Systems submitted a \$50,000 bond as its financial assurance with its May 7, 2004 Organization Report filing and is an active operator.

Pro-Systems was recognized as the operator of the Black Lease, Well No. 1 (RRC No.

057122), Stephens County Regular Field, (“subject lease” and/or “subject well”) after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective October 7, 2001, which was approved by the Commission on October 26, 2001.

Commission Inspections

Commission inspections of the subject lease made on May 26, 2004, September 2, 2004, and October 26, 2004, and no production reported to the Commission since December 31, 2000, with zero production reported to the Commission from January 1, 2001 through December 31, 2003, and no production reports filed thereafter with the Commission, showed that the Black Lease, Well No 1 (RRC No. 057122) has been inactive for a period greater than one year. Production from the subject well ceased on or before December 31, 2000.

No workovers, re-entries or subsequent operations have taken place on the subject well within the last twelve months. The subject well has not been plugged and no Commission Form W-1X (Application for Future Re-Entry of Inactive Well Bore and 14(b)(2) Extension Permit) is in effect for the subject well as allowed by Statewide Rule 14. The last application for a SWR 14(b)(2) extension was denied because of an H-15 violation.

ENFORCEMENT’S POSITION

Enforcement argues that subject well is out of compliance with Rule 14(b)(2) because it was not properly plugged or restored to production after the plugging extension was canceled. The well was shut-in January, 2001, and has been denied a SWR 14(B)(2) extension due to an H-15 violation. Enforcement urges that Pro-Systems be ordered to bring the lease into compliance with Commission rules, and pay an administrative penalty of \$2,00.00.

PRO-SYSTEMS’ POSITION

Pro-Systems argues that it has attempted to resolve the issue of the H-15 test failure, but has been rebuffed by the District Office. Pro-Systems admits that after it was ordered by the RRC to perform an H-15 test on the subject well, it looked for the cheapest service provider, ultimately hiring a gentleman named Henry Hollis, who was just beginning in the testing business.

Mr. Hollis performed the test, filled out the Form H-15 and sent it to the District Office. However, as soon as Pro-Systems saw a copy of the submitted Form H-15, they realized it had been filled out incorrectly and told the District Office to disregard the report. Under Block 14 of the H-15, which indicates the top of fluid in the wellbore, Hollis had entered 300 feet. The Commission requires that the top of fluid be no closer than 250 feet to the base of usable quality water, which was at 200 feet in this case, meaning the top of fluid would have to be 450 feet or more below surface level for the well to pass. Consequently, the well failed its H-15 test.

Pro-Systems argued that Mr. Hollis was not familiar with the Form H-15 and entered 300 feet as the top of fluid, as measured from the bottom of the 2,000 foot wellbore. The proper

measurement is from the top of the wellbore to the top of the fluid. If Mr. Hollis had subtracted 300 feet from the 2,000 foot depth of the well, he would have filled in Block 14 with the depth 1700 feet.

Pro-Systems hired another company, Shamrock Testers, to perform a new H-15 test, which showed top of fluid at 1457 feet. Believing the new test would resolve the situation, Pro-Systems presented the new test results to the District Office, only to be told that it was RRC policy that after failure of an H-15 test, another H-15 test will not be accepted. Instead, Pro-Systems was instructed to either perform an MIT test (Mechanical Integrity Test) or plug the well.

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 wells transferred after September 1, 1997, the operator of a well for purposes of plugging liability is the person who assumed responsibility for the physical operation and control of a well as shown by an approved Form P-4 designating that person as operator.

Pursuant to Statewide Rule 14(b)(2)(A)(v)(I), if a well is over 25 years old and has been inactive for one year or longer, then a Commission Form H-15 Fluid Level test is required. The test is used to verify adequate separation between the top of fluid in the wellbore and the deepest usable quality groundwater. The separation distance must be 250 feet or greater. As an alternative to an annual H-15 test, the operator may perform a Mechanical Integrity test, which is only required every five years.

EXAMINER'S OPINION

On January 29, 2003, the Commission notified Pro-Systems by mail that a fluid level test must be performed on its Well No. 1 on the Black (057122) Lease. The fluid level test result was due by June 1, 2003. Pro-systems did not file the test results on time and the well was noted as "Delinquent" on Commission records on July 7, 2003. On August 28, 2003, Pro-Systems requested a three-month extension of time in which to perform the required test. The extension was granted, but expired on December 1, 2003 without the necessary test having been performed. Eleven months later, on October 20, 2004, Pro-Systems (through Hollis) finally performed the fluid level test. The results were received by the Commission in Austin on November 1, 2004 and were apparently sent back to the District Office for final evaluation on November 18. The well was determined to have failed the test.

Pro-Systems hired another contractor to perform a fluid level test, this time showing the top of fluid at 1457 feet. The results were submitted to the Commission on February 14, 2005 and were refused in accordance with Commission policy. Pro-Systems was instructed to either perform a Mechanical Integrity Test on the well or plug it. The SWR 14(b)(2) extension on the well expired June 1, 2003, which is the date the fluid level test was first due.

Pro-Systems failed to timely perform an H-15 test on the subject well by the June 1, 2003 due date, failed to perform the test within the extension period granted by the Commission, and then

took a further eleven months to finally conduct a test, missing the June 1, 2003 deadline by one year and five months. Even then, the test results submitted indicated the well failed its test. Pro-Systems apparently failed to work with the District Office to determine its next step, and, roughly three months later, attempted to file the results of a second H-15 test. This test was refused in accordance with Commission policy and Pro-Systems was told to either perform a Mechanical Integrity Test on the well or plug it.

Compliance Requirements

Wells older than 25 years that are not active are required to submit fluid level tests to the Commission annually. Fluid level tests are due on June 1 of the year in which they are requested. If the test is not timely submitted, the well loses its SWR 14(b)(2) extension. If a test is submitted which shows that the fluid level is within 250 feet of usable quality water, the well fails its test and the Commission then requires that a Mechanical Integrity Test be performed. However, the Commission is aware that fluid level tests are often incorrectly filled out on the report form and allows the forms to be amended. If Pro-Systems had presented proof of the error, such as the tape of a sonic depth test corroborating the true depth to top of fluid, it could have filed an amended H-15 test report.

Amount of Administrative Penalty

Texas Natural Resources Code §81.0531(c) requires the Commission to consider four factors in determining the amount of an administrative penalty for a violation of Commission rules: 1) the permittee's history of previous violations; 2) the seriousness of the violation; 3) any hazard to the health or safety of the public; and 4) the demonstrated good faith of the person charged. In most Enforcement cases, a standard penalty guideline has already evaluated these factors in determining the amount of the administrative penalty sought in the complaint. Enhanced penalties for violations may be sought for several criteria, including: time out of compliance; actual or threatened environmental impact; threatened or actual hazard to the public; and, reckless or intentional conduct.

Pro-Systems is the subject of two prior Final Orders, Oil & Gas Docket Nos. 7B-0238705 and 7B-0238402. In Docket No. 7B-0238705, Pro-Systems was ordered to plug Well No. 47, Henry Sales, Jr. (10175) Lease, Jones County Regular Field, Jones County, to plug or place in compliance Well Nos. 11, 12, 16, 21, 32, 37, 38, 40, 41, 43, 52, 53, 54, 58 and 67, Henry Sales, Jr. (10175) Lease, Jones County Regular Field, Jones County, and pay an administrative penalty of \$40,250.00. In Docket No. 7B-0238402, Pro-Systems was ordered to plug or place in compliance Well Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, Texas B (21380) Lease, Nimrod (Crosscut) Field, Eastland County and pay an administrative penalty of \$33,100.

Failure to timely perform an H-15 test is a serious violation in that during the period of non-compliance, usable quality groundwater may be contaminated, causing a hazard to the health and safety of the public. By delaying the performance of an H-15 test until one year and five months after the due date, Pro-Systems failed to act in good faith.

Enforcement's recommended administrative penalty of \$2,000 for the SWR 14(b)(2)

violation is consistent with existing Commission standard penalty guidelines. In light of the above facts, the examiner does not recommend a departure from the standard penalty recommendation made by Enforcement.

Additional Recommendations

The examiner further recommends pursuant to Texas Natural Resources Code §91.114 that Lynn Shugarman and Trina Jackson be identified as individuals in a position of ownership or control during the time Pro-Systems violated Commission rules related to safety and the control of pollution. Accordingly, they would 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 terms of the order are satisfied.

CONCLUSION

With respect to the violation of Rule 14(b)(2), in consideration of the time period the well has been inactive, and the length of time that Pro-Systems delayed filing even a failed H-15 test, the violation justifies the imposition of the administrative penalty recommended by Enforcement in the amount of \$2,000.00.

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 Pro-Systems Fab, Inc. (“Pro-Systems”) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Pro-Systems appeared and through its President, Lynn Shugarman, and its Registered Agent, David Jakobot, and presented evidence at the hearing.
2. Commission records show that Pro-Systems filed its initial Commission Form P-5 (Organization Report) with the Commission on September 6, 2001. The most recent Organization Report renewal for Pro-Systems was approved on August 6, 2004. Lynn E. Shugarman is identified as the President of the company and Trina Jackson is identified as the Secretary/Treasurer. Commission records show that as of May 7, 2004, Pro-Systems was recognized as the operator of 76 wells with a total depth of 122,348 feet. Pro-Systems submitted a \$50,000 bond as its financial assurance with its 2004 Organization Report filing.
3. Pro-Systems was recognized as the operator of the Black Lease, Well No. 1 (RRC No. 057122), Stephens County Regular Field, (“subject lease” and/or “subject well”) after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on October 26, 2001.
4. Well No.1 on the subject lease is currently unplugged and inactive and has been inactive for more than 12 months. Commission inspections on May 26, 2004, September 2, 2004, and

October 26, 2004, and no production reported to the Commission since December 31, 2000, with zero production reported to the Commission from January 1, 2001 through December 31, 2003, and no production reports filed thereafter with the Commission, showed that the Black Lease, Well No. 1 (RRC No. 057122), has been inactive for a period greater than one year. Production from the subject well ceased on or before December 31, 2000.

5. On January 29, 2003, Pro-Systems was notified by the Commission that an H-15 fluid level test was required for the subject well. The test was due on June 1, 2003 but was not filed. As a result, on June 1, 2003, the subject well lost its SWR 14(b)(2) extension and has been in violation of Statewide Rule 14 to the present time.
6. The Commission requires H-15 fluid level tests in order to ensure that the top of fluid in inactive wells over 25 years old is at least 250 feet below the base of usable quality water. This requirement is in place to prevent the contamination of usable quality water, which would cause a hazard to the health and safety of the public.
7. The subject well was ordered sealed on July 7, 2003 due to a delinquent Fluid Level H-15 test. On August 28, 2003, the Commission granted Pro-Systems a 3-month extension in which to file the H-15 test. The extension ended December 1, 2003 without Pro-Systems filing the test.
8. On October 20, 2004 Pro-Systems filed its Fluid Level H-15 test results for the subject well. By November 18, 2003, the Commission determined that the H-15 results demonstrated that the subject well failed the H-15 test.
9. Pro-Systems submitted a second H-15 test, signed by David Jakobot, Pro-System's Registered Agent, on February 14, 2005. This test was rejected by the Commission due to its policy that a well that has failed an H-15 test must either submit a Mechanical Integrity Test to disprove the possibility of groundwater contamination or be plugged.
10. The estimated cost to plug the subject well is \$4,300.00.

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. Pro-Systems Fab, Inc. is the operator of the Black Lease, Well No. 1 (RRC No. 057122), Stephens County Regulat Field, Stephens County, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Pro-Systems Fab, Inc. has the primary responsibility for complying with Statewide Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Black Lease, Well No. 1.

5. Well No. 1 on the Black Lease is not in compliance with Commission Statewide Rule 14(b)(2) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. Well No. 1 on the Black Lease has been out of compliance with Commission Statewide Rule 14(b)(2) from on or before June 1, 2003 to the present.
7. Lynn E. Shugarman and Trina Jackson are identified in Commission filings as holding positions as officers of Pro-Systems Fab, Inc., as defined by Texas Natural Resources Code § 91.114, during the time period of the violations of Commission rules committed by respondent.
8. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
9. As officers at the time of the violations Commission rules related to safety and the control of pollution, Lynn E. Shugarman and Trina Jackson and any other organization in which one or both 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.
10. The documented violations committed by respondent 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 Pro-Systems Fab, Inc., within 30 days of the entry of a Final Order in this matter; 1) to plug or place in compliance Well No. 1 on the Black Lease, Stephens County Regular Field; and 2) to pay an administrative penalty of \$2,000.00.

Respectfully submitted,

Marshall Enquist
Hearings Examiner