

OIL & GAS DOCKET NO. 7B-0243715

ENFORCEMENT ACTION AGAINST MORTON VALLEY OIL & GAS, INC. (OPERATOR NO. 589961) FOR VIOLATIONS OF STATEWIDE RULES ON THE W. MEAZELL LEASE, WELL NO. 1 (RRC ID NO. 103938), LAKE LEON (DUFFER) FIELD, EASTLAND COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German
Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Roland R. Baker
Agent

RESPONDENT:

Morton Valley Oil & Gas, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE ORIGINAL COMPLAINT FILED:	October 31, 2005
DATE OF NOTICE OF HEARING:	March 16, 2006
DATE OF HEARING:	May 18, 2006
HEARD BY:	James M. Doherty, Hearings Examiner
DATE RECORD CLOSED:	May 25, 2006
DATE PFD CIRCULATED:	June 13, 2006

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 respondent Morton Valley Oil & Gas, Inc. ("Morton"), 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 §3.14(b)(2)] the W. Meazell Lease, Well No. 1 (RRC ID No. 103938) (“subject well”), Lake Leon (Duffer) Field, Eastland County, Texas;

2. Whether Morton 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 the subject well or otherwise place the well in compliance with Statewide Rule 14(b)(2);
3. Whether, pursuant to Texas Natural Resources Code §81.0531, Morton should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject lease and well; and
4. Whether any violation of Statewide Rule 14(b)(2) by Morton should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing was held on May 18, 2006. This docket was heard jointly with Oil & Gas Docket No. 7B-0244921 involving the same respondent.¹ Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Roland R. Baker, Agent, appeared to represent Morton and presented evidence. Enforcement’s certified hearing file was admitted into evidence. Morton was allowed seven days following completion of the hearing to file copies of any pending Form P-4 proposing a change of operator of the subject well, and the record closed on May 25, 2006.

APPLICABLE LAW

The operator of a well must properly plug the well when required and in accordance with the Commission’s rules. *See* Texas Natural Resources Code §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.

Statewide 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 in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells. The presumption of responsibility may be rebutted only at a hearing called for the purpose of determining plugging responsibility.

¹ A separate proposal for decision is being issued in Oil & Gas Docket No. 7B-0244921.

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* Texas Natural Resources Code §81.0531.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The examiner has officially noticed Commission organization report and financial assurance databases showing that Morton's Form P-5 organization report has been in delinquent status since July 1, 2003, and Morton last filed financial assurance in the amount of \$1,000. The examiner has also officially noticed the Commission's Form P-4 database showing that Morton remains the designated operator of the W. Meazell Lease, Well No. 1 (RRC ID No. 103938).

Enforcement

The last Form P-5 organization report filed by Morton was approved January 10, 2003. This organization report, signed by Melvin Ray Hassell on January 9, 2003, listed Morton's officers as: Melvin R. Hassell, President, Nelda Parham Hassell, Secretary, and Danny Ray Hassell as Vice President. Morton designated itself operator of the W. Meazell Lease, Well No. 1 (RRC ID No. 103938) by filing Form P-4, approved April 15, 1994, effective March 22, 1994.

Five District Office inspections of the W. Meazell Lease, Well No. 1 (RRC ID No. 103938) on dates between May 24, 2005, and April 21, 2006, disclosed that Well No. 1 was inactive and unplugged. No production has been reported to the Commission for this well since July 31, 2001.

No Statewide Rule 14(b)(2) plugging extension could be granted to Morton for the subject well after July 1, 2003, the date on which Morton's Form P-5 organization report became delinquent.

Inactive wellbores must be plugged in order to prevent pollution of usable quality surface and subsurface waters. 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 oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

The estimated cost to the State to plug the W. Meazell Lease, Well No. 1 (RRC ID No. 103938) is \$8,300.

On two separate occasions, March 9, 2005, and April 19, 2005, the District Office sent Morton correspondence, notices or copies of memoranda requesting that Morton resolve the violation of Statewide Rule 14(b)(2) on the subject lease and well. These communications did not result in compliance by Morton.

Morton

Morton's agent presented copies of documents relating to a May 10, 2005, Sheriff's Deed to BAM Operating, Inc. of various of Morton's leases, apparently including a lease involved in Oil & Gas Docket No. 7B-0244921 which was heard jointly with this docket. Also presented was an uncertified copy of a newspaper publication concerning a March 8, 2006, Sheriff's Sale to BAM Operating, Inc., of Morton's leasehold interest in two tracts of land in Eastland County. This appears to have been a sale to satisfy a judgment against Morton. Morton's agent stated his belief that these two Sheriff's Sales covered Morton's leasehold interest in the lease that is the subject of this docket. Morton's agent was under the impression that a Form P-4 had been filed with the Commission to transfer the subject lease from Morton to BAM. Morton's agent also presented a copy of an October 9, 1996, letter from Danny Hassell to Morton, purportedly resigning as Vice President "effective immediately."

EXAMINER'S OPINION

The alleged violation by Morton was not disputed at the hearing and is clearly proved by the evidence. The violation of Statewide Rule 14(b)(2) on the subject lease had its inception before the dates of the Sheriff's Sales to BAM Operating, Inc. Morton did not prove that the subject lease was covered by either of the Sheriff's Sales, but even if it was, under Statewide Rule 58, Morton remains the operator responsible for curing the Statewide Rule 14(b)(2) violation, because Morton is still the designated Form P-4 operator of the lease. No Form P-4 has been filed with the Commission to change the operator of the subject lease from Morton to BAM Operating, Inc.

Enforcement recommends that an administrative penalty in the total amount of \$2,000 be assessed against Morton for one violation of Statewide Rule 14(b)(2). The examiner agrees with this recommendation. This penalty is consistent with the standard penalty in the recommended standard penalty schedule for enforcement cases. The violation committed by Morton is serious in that it presented a threat of pollution of usable quality water and a hazard to the public health and safety. There is no proof that any prior enforcement orders have been entered against Morton for violations of Commission rules, but Morton cannot be said to have acted in good faith. Morton failed to take any effective steps to cure the violation on the subject lease in response to requests from the District Office for voluntary compliance.

The examiner declines to recommend a finding by the Commission that Danny Ray Hassell resigned as Vice President of Morton effective October 7, 1996. Mr. Hassell did not appear at the

hearing to give sworn testimony to this effect, and Morton's agent who presented a purported letter of resignation by Mr. Hassell dated October 7, 1996, did not claim to have any personal knowledge on the subject. The purported letter of resignation is hearsay in nature and conflicts with the most recent Form P-5 organization report filed by Morton, signed by Melvin Ray Hassell on January 9, 2003, which listed Danny Ray Hassell as Morton's Vice President.

Based on the record in this case, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Morton Valley Oil & Gas, Inc. ("Morton"), was given at least ten (10) days notice of this hearing by certified mail, addressed to Morton's most recent Form P-5 organization report address. Roland R. Baker, agent for Morton, appeared at the hearing representing Morton and presented evidence.
2. Morton is a corporation. Its officers, as listed on its most recent Form P-5 organization report approved January 10, 2003, are Melvin R. Hassell, President, Nelda Parham Hassell, Secretary, and Danny Ray Hassell, Vice President.
3. As officers, Melvin R. Hassell, Nelda Parham Hassell, and Danny Ray Hassell were persons in a position of ownership or control of Morton at the time the violation involved in this docket was committed.
4. The violation involved in this docket was a violation of a Commission rule related to safety and the prevention or control of pollution.
5. Morton's Form P-5 organization report has been in delinquent status since July 1, 2003. At the time its last Form P-5 was approved on January 10, 2003, Morton filed financial assurance in the amount of \$1,000.
6. Morton designated itself to the Commission as the operator of the W. Meazell Lease, Well No. 1 (RRC ID No. 103938) by filing Form P-4 (Producer's Transportation Authority and Certificate of Compliance), approved April 15, 1994, effective March 22, 1994.
7. The W. Meazell Lease, Well No. 1 (RRC ID No. 103938) has been inactive for more than one year, has not been plugged, and does not have a Statewide Rule 14(b)(2) plugging extension.
 - a. On the occasion of District Office inspections on March 3, April 13, May 17, and November 14, 2005, and April 21, 2006, Well No. 1 was inactive and unplugged.

- b. No production has been reported to the Commission for Well No. 1 since July 31, 2001.
 - c. A Statewide Rule 14(b)(2) plugging extension could not be approved for Well No. 1 after July 1, 2003, the date on which Morton's Form P-5 organization report became delinquent.
- 8. The estimated cost to the State to plug the W. Meazell Lease, Well No. 1 (RRC ID No. 103938) is \$8,300.
 - 9. On two separate occasions, March 9, 2005, and April 19, 2005, the District Office sent Morton correspondence, notices or copies of memoranda requesting that Morton resolve the violation of Statewide Rule 14(b)(2) on the W. Meazell Lease, Well No. 1 (RRC ID No. 103938). This did not result in Morton's compliance.
 - 10. Inactive wellbores must be plugged in order to prevent pollution of usable quality surface and subsurface water. 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 oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.
 - 11. No evidence was presented that prior final enforcement orders have been entered against Morton for violation of Commission rules.
 - 12. Morton has not demonstrated good faith in that it failed to respond to requests from the District Office to resolve the violation that is the subject of this docket.

CONCLUSIONS OF LAW

- 1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
- 2. All things necessary to the Commission attaining jurisdiction have occurred.
- 3. Morton Valley Oil & Gas, Inc. was and is the operator of the W. Meazell Lease, Well No. 1 (RRC ID No. 103938), Lake Leon (Duffer) Field, Eastland 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 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.

4. As operator, Morton Valley Oil & Gas, Inc., had the primary responsibility for complying with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject lease and well.
5. Morton Valley Oil & Gas, Inc., violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] by failing to timely plug the W. Meazell Lease, Well No. 1 (RRC ID No. 103938), Lake Leon (Duffer) Field, Eastland County, Texas. This well has been out of compliance with Statewide Rule 14(b)(2) since at least July 1, 2003.
6. The documented violation committed by Morton Valley Oil & Gas, Inc., constitutes an act deemed serious and a hazard to the public health, and demonstrates a lack of good faith within the meaning of Texas Natural Resources Code §81.0531.
7. As officers of Morton Valley Oil & Gas, Inc., at the time Morton Valley Oil & Gas, Inc. violated a Commission rule related to safety and the prevention or control of pollution, Melvin R. Hassell, Nelda Parham Hassell, and Danny Ray Hassell, and any organization in which they, or any of them, may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that the Commission adopt the attached final order requiring that Morton Valley Oil & Gas, Inc.:

1. Plug in compliance with Commission rules the W. Meazell Lease, Well No. 1 (RRC ID No. 103938), Lake Leon (Duffer) Field, Eastland County, Texas; and
2. Pay an administrative penalty in the amount of \$2,000.

Respectfully submitted,

James M. Doherty
Hearings Examiner