

August 24, 2011

OIL AND GAS DOCKET NO. 7B-0258686

ENFORCEMENT ACTION AGAINST B & B OIL, INC. (OPERATOR NO. 039791) FOR VIOLATIONS OF STATEWIDE RULES ON THE JOHNSON (18794) LEASE, WELL NOS. 2A, 4A, 5A, 6A, 7A, 8A, 10A, 15A, 17A, S6, S8, S14 AND 9A, MIDKIFF (ADAMS BRANCH) FIELD, EASTLAND COUNTY, TEXAS.

APPEARANCES:

FOR RESPONDENT:

Joseph F. Wallen, CEO

B & B Oil, Inc.

FOR THE RAILROAD COMMISSION OF TEXAS:

Christopher Hotchkiss
Keith Barton, Engineer

Enforcement Section, RRC
Field Operations

SECOND AMENDED PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	August 21, 2008
NOTICE OF HEARING:	July 20, 2009
DATE CASE HEARD:	September 17, 2009
HEARING CLOSED:	September 17, 2009
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
CURRENT STATUS:	Contested
PFD CIRCULATION DATE:	November 15, 2010
AMENDED PFD CIRCULATION DATE:	January 5, 2011
RE-OPENED HEARING DATE:	July 7, 2011
SECOND AMENDED PFD CIRCULATION:	August 24, 2011

STATEMENT OF THE CASE

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

1. Whether B & B Oil, Inc. should be required to place in compliance with Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] the Johnson (18794) Lease, Midkiff (Adams Branch) Field, Eastland County;

2. Whether B & B Oil, Inc. 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 Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14, Midkiff (Adams Branch) Field, Eastland County;
3. Whether B & B Oil, Inc. should be required to place in compliance with Statewide Rule 46(j) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.46(j)] the Johnson (18794) Lease, Well Nos. 4A, 8A, 10A, 15A, S6 and S8, Midkiff (Adams Branch) Field, Eastland County;
4. Whether B & B Oil, Inc. has violated Texas Natural Resources Code §91.143 on the Johnson (18794) Lease, Well Nos. 2A, 5A, 6A, 7A, 9A and 17A, Midkiff (Adams Branch) Field, Eastland County;
5. Whether B & B Oil, Inc. violated provisions of Title 3, Oil and Gas, Subtitles A, B and C, Texas Natural Resources Code, Chapter 27 of the Water Code and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject wells and/or otherwise failing to place the subject wells and lease into compliance with Statewide Rule 14(b)(2);
6. Whether, pursuant to Texas Natural Resources Code §81.0531, B & B Oil, Inc. should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells; and
7. Whether any violations of Statewide Rules 13(b)(1)(B); 14(b)(2); 46(j) and Texas Natural Resources Code §91.143 by B & B Oil, Inc. should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A Notice of Opportunity for Hearing was issued in this case on July 20, 2009 for the hearing date of September 17, 2009. B & B Oil, Inc. President/Secretary/Treasurer Joseph F. Wallen appeared at the hearing on behalf of B & B Oil, Inc. and offered evidence. Christopher Hotchkiss, Staff Attorney, appeared to represent Enforcement. Enforcement's certified hearing file was entered into evidence.

The first Proposal for Decision was issued November 15, 2010. Upon Notification from Respondent that he had changed his P-5 address, an Amended Proposal for Decision was issued on January 5, 2011. At Conference on February 22, 2011, the Commissioners remanded the case to the examiner for the purpose of gathering further evidence regarding the false filing pleadings in the case, as well as any other evidence of false filings connected to the case.

On July 11, 2011, the hearing was re-opened for the "...Limited Purpose of Hearing Additional Evidence Regarding Allegations of False Filings, or Violations of Texas Natural Resources Code §91.143."

MATTERS OFFICIALLY NOTICED

The examiner has taken Official Notice of Commission Mainframe records of B & B Oil, Inc., including the P-5 screen, Officer screen, P-5 Financial Assurance, and “On-Schedule Leases, Wells and Wellbore by Operator” as of October 4, 2010. These show that B & B is an active operator with financial assurance in the form of \$250,000 Letter of Credit. B & B operates 52 leases and approximately 355 wells, of which 330 are inactive under Statewide Rule 14(b)(2).

The examiner has also taken Official Notice of the production history of the subject Johnson (18794) Lease in District 7B, as well as the “14(b)(2) Inquiry by Lease” screen, the “UIC Monitor/Pressure Test Record” screen and the “District W-3 Approval Date” screen for the lease and wells.

AUTHORITY

Statewide Rule 13(b)(1)(B) [16 TEX. ADMIN. CODE §3.13(b)(1)(B)] provides that wellhead assemblies shall be used on wells to maintain surface control of the well. Maintenance of surface control is necessary not only to prevent fluids from being discharged from the wellbore onto the ground surface, but also to prevent any oil and gas wastes present in the wellbore from being displaced to the surface by influxes of surface water into the open wellbore.

Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

Statewide Rule 46(j) [16 TEX. ADMIN. CODE §3.46(j)] provides that each injection well shall be pressure tested at least once every five years to determine if there are leaks in the casing, tubing or packer.

Texas Natural Resources Code §91.143(a)(1) provides that a person may not make or subscribe any application, report or other document required or permitted to be filed with the Commission, knowing that the application, report or other document is false or untrue in a material fact. Texas Natural Resources Code §91.143(e) provides that the Commission may impose an administrative penalty on a person that violates the statute, the penalty amount not to exceed \$1,000 per violation.

DISCUSSION OF THE EVIDENCE

Enforcement

B & B Oil, Inc. (“B & B”) has reported itself to the Commission as a Corporation performing activities in the State of Texas regulated by the Commission. Joseph F. Wallen is the sole officer of B & B and was listed as President, Secretary and Treasurer during the time of the pled violations.

B & B designated itself the operator of the Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective June 1, 2007, approved June 25, 2007.

Statewide Rule 13(b)(1)(B)

Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] provides that wellhead assemblies shall be used on wells to maintain surface control of the well. Maintenance of surface control is necessary not only to prevent fluids from being discharged from the wellbore onto the ground surface, but also to prevent any oil and gas wastes present in the wellbore from being displaced to the surface by influxes of surface water into the open wellbore.

Commission District office inspection reports made on January 30, 2008; February 4, 2008; April 2, 2008; April 30, 2008; May 6, 2008 and May 13, 2008 for the Johnson (18794) Lease showed that Well No. S14 had casing open to atmosphere.

A more recent District Office inspection, made June 11-15, 2009, did not mention whether Well No. S14 was capped or not. During the time the well was open to atmosphere, B & B violated Statewide Rule 13(b)(1)(B).

B & B's violation of Statewide Rule 13(b)(1)(B) is serious and a hazard to the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.

Mark England, Engineering Specialist in the RRC Field Operations Section, stated in an affidavit "Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution/safety hazards due to the possibility of surface run-off entering the wellbore and the possibility of well fluids flowing out of the wellbore."

Statewide Rule 14(b)(2)

Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

Commission District Office inspection reports made on January 30, 2008; February 4, 2008; April 2, 2008; April 30, 2008; May 6, 2008; May 13, 2008 and June 11-15, 2009 and zero production reported by Respondent from at least August 31, 2006 to the date of the hearing, and no production reports filed thereafter with the Commission, showed that the Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14 have been inactive for a period greater than one year. Production from the subject wells ceased on or before August 31, 2006.

According to the Commission Mainframe, production was reported from the Johnson (18794) Lease for January, February and March of 2009. However, because the lease was severed, that production was not legal production, therefore, that production cannot be used to change the wells'

status from inactive to active.

No workovers, re-entries or subsequent operations have taken place on any of the subject wells in this complaint. None of the subject wells have been plugged. The plugging extensions for all of the subject wells as allowed by Statewide Rule 14 were cancelled May 9, 2008 based on:

- a. Respondent's failure to submit to the Commission a Form H-5 (Injection/Disposal Well Pressure Test Report) for the Johnson (18794) Lease, Well Nos. 4A, 8A, 10A, 15A, S6 and S8;
- b. Respondent's failure to submit to the Commission a Form H-15 (Test on Inactive Well More Than 25 years Old) for the Johnson (18794) Lease, Well Nos. 2A, 5A, 6A, 7A, 9A and 17A;
- c. Respondent's failure to maintain adequate wellhead control and for leaving the well open to atmosphere on the Johnson (18794) Lease, Well No. S14.

Respondent did not request a hearing on the cancellation of the Statewide Rule 14(b)(2) extensions for the wells on the Johnson (18794) Lease. By failing to timely plug the subject wells or to obtain an extension of the plugging deadline, B & B has violated Statewide Rule 14(b)(2). The violations of Statewide Rule 14(b)(2) by B & B are serious and threaten the public health and safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water, as defined in Statewide Rule 8(a)(28) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(a)(28)] by serving as a conduit for the migration of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

Mark England, Engineering Specialist in the RRC Field Operations Section, stated in an affidavit "A well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in accordance with the technical requirements of Statewide Rule 14 in order to prevent pollution of usable quality surface or 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."

Pursuant to calculations by District office personnel, the total estimated cost to the State for plugging the Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14 is \$74,800.00 (13 wells at approximately \$5,753.00 each).

Statewide Rule 46(j)

Statewide Rule 46(j) [Tex, R.R. Comm'n, 16 TEX. ADMIN. CODE §3.46(j)] provides that each injection well shall be pressure-tested at least once every five years to determine if there are leaks in the casing, tubing or packer.

A Commission District Office inspection report made on the Johnson (18794) Lease on January 30, 2008 indicated that Well Nos. 4A, 8A, 10A, 15A, S6 and S8 were delinquent for the submission of Forms H-5 (Injection/Disposal Well Pressure Test Report). The tests were due to the

Commission as follows:

- a. the H-5 for Well No. 4A was due on or before October 30, 2006;
- b. the H-5s for Well Nos. 8A, 10A, 15A and S8 were due on or before January 30, 2006;
- c. the H-5 for Well No. S6 was due on or before July 30, 2006.

All of the wells were inactive at the time of the January 30, 2008 Commission District Office inspection and in all subsequent inspections, which were made on February 4, 2008; April 2, 2008; April 30, 2008; May 13, 2008 and June 11-15, 2009.

By failing to timely test the subject wells, B & B violated Statewide Rule 46(j) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.46(j)] and the terms and conditions set forth in the injection permit dated December 27, 1990.

B & B's violation of Statewide Rule 46(j) is serious and threatens the public health and safety. The required test is designed to determine the integrity of the well's casing and that leakage is not occurring. Untested disposal/injection wells, if leaking, may cause pollution of usable quality ground water and surface water by serving as a conduit for the passage of oil, gas saltwater and other substances to the surface, or from one stratum or formation to another.

Mark England, Engineering Specialist in the RRC Field Operations Section, stated in an affidavit "Any injection or disposal of fluid down a wellbore could be a potential source of pollution. Under Statewide Rule 46(j)(1)-(4), operators must pressure test each injection well at least once in every five years to show that the well is not leaking and that waste is being confined to the permitted injection interval and that usable quality water zones are properly isolated from possible contamination."

Texas Natural Resources Code §91.143

Texas Natural Resources Code §91.143(a)(1) provides that a person may not make or subscribe any application, report or other document required or permitted to be filed with the Commission, knowing that the application, report or other document is false or untrue in a material fact. Texas Natural Resources Code §91.143(e) provides that the Commission may impose an administrative penalty on a person that violates the statute, the penalty amount not to exceed \$1,000 per violation.

As further background, Statewide Rule 14(b)(3) [16 Tex. Admin. Code §3.14(b)(3)] requires the operator of any well more than 25 years old that becomes inactive and subject to this rule to plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources.

Pursuant to the requirements of Statewide Rule 14(b)(3), B & B, as operator of the Johnson (18794) Lease, filed with the Commission six (6) Forms H-15 for Well Nos. 2A, 5A, 6A, 7A, 9A and 17A for tests allegedly conducted on March 5, 2008 and submitted to the Commission on July 18, 2008. Each one was filled out by hand and signed by Joe F. Wallen as principal (Mr. Wallen is listed as the President, Secretary and Treasurer of B & B). Each of the forms had the method of determination checkmarked as "wireline". However, District Office inspection reports were performed before and after the alleged test date of March 5, 2008. Commission District Office inspection reports made on January 30, 2008 and April 2, 2008 indicate the subject wells (2A, 5A, 6A, 7A, 9A and 17A) all had rods and tubing in the wellbore, thereby making the administration of a wireline fluid level test physically impossible.

Keith Barton, an engineer in the Field Operations section of the Commission, testified that testing the subject wells by wireline was impossible, as all the wells had tubing and rods. Further, the wells showed no signs of any recent well work in March and April of 2008.

Enforcement contends that, by submitting documents which contained specious information that was impossible to achieve, namely a series of six (6) Commission Forms H-15 for the Johnson (18794) Lease, Well Nos. 2A, 5A, 6A, 7A, 9A and 17A, Respondent knowingly submitted forms to the Commission containing information which was false or untrue in material fact, thereby violating Texas Natural Resources Code §91.143(a)(1).

Enforcement's Evidence Regarding False Filings in the July 7, 2011 Re-Opened Hearing

In the original hearing, Respondent Joe Wallen stated that he had entrusted the performance of the H-15 testing of the subject wells to Mr. Rick Simpson. Enforcement attorney Reese Copeland located Mr. Simpson, who told him he had no direct knowledge of the testing as he had passed the job on to his son. Mr. Simpson also indicated he had no records relating to the testing of the wells. Enforcement noted that neither Mr. Simpson nor his son appear to be P-5 operators or officers in any P-5 organization within the Commission's jurisdiction.

Enforcement, by letters dated March 2, 2011, contacted the gatherers listed for the Johnson (18794) Lease and asked if they had picked up any oil from the Johnson Lease from June, 2007 through February, 2009. Both gatherers, BML, Inc. and Transoil Marketing, Inc. replied that they had not. Enforcement found the gatherer's responses precluded any false filing allegations with respect to unreported production.

Enforcement notes that Rick Simpson, alleged by B&B to be the party responsible for conducting the false H-15 tests, did not have a P-5 and was not subject to Commission jurisdiction. Enforcement did not find any evidence of additional false filings in this case. By letter to the examiner dated May 20, 2011, Enforcement reported that it would stand on its false filing pleadings against B & B as stated in the May 28, 2009 Original Complaint.

Regarding the allegations of false filings of H-15 tests for Well Nos. 2A, 5A, 6A, 7A, 9A and 17A on the Johnson (18794) Lease, Enforcement presented the testimony of Mark England, Engineering Specialist in the Field Operations Section of the Commission. Mr. England had not been available at the prior hearing.

Mr. England noted that the six disputed H-15 fluid level tests were all stated to have been run by wireline. The reported test dates were on March 5, 2008. District Office inspections were made on January 30, 2008 and April 2, 2008, dates before and after the report H-15 test dates. The photos accompanying the inspection reports show that all the subject wells (Well Nos. 2A, 5A, 6A, 7A, 9A and 17A) were equipped to produce, with wellhead control and rods and tubing in the wells. Mr. England stated that performance of wireline testing would have required removal of the wellheads and pulling the rods and tubing. Comparison of the photos taken during the District Office inspections performed before and after the alleged wireline testing did not reveal any indication of testing activity.

Mr. England further noted that since the wells were each approximately 1000 feet deep, with 40 rods per well, it would have taken an hour to rig up and rig down the pulling unit, an hour to run the rods and tubing out of and back into the hole, and about fifteen minutes to perform each test. Even excluding the time necessary to move the rig from well to well, performance of the H-15 tests on these wells would have taken at least two hours each at a minimum, for a total of twelve hours. On the filed H-15 test reports, testing on all six wells was reported as having been done on the same day, March 5, 2008. To anyone at all familiar with oilfield testing practices, including Respondent Joe Wallen, this should have been a red flag generating questions about the performance of the tests.

Last, Mr. England notes that on Box 14 of the H-15 Form, there is a place to note if anyone other than the operator performed the test. That portion of the form was left blank on each submitted H-15 test, indicating to the Commission that B & B had performed the tests.

Good Faith

The Respondent charged with the violations in this docket has acted in bad faith because it failed to correct Commission rule violations on the subject lease and failed to adequately explain its inaction to the Commission.

Enforcement's Recommended Penalty

Commission staff requests that an order be entered assessing B & B an administrative penalty of \$45,000.00. The penalty consists of one Rule 13(b)(1)(B) violation at \$1,000; thirteen Rule 14(b)(2) violations at \$2,000 each; six Rule 46(j) violations at \$2,000 each; and six violations of Texas Natural Resources Code §91.143 at \$1,000 each. Staff also requests that the order direct B & B to plug or place the subject leases and wells in compliance with all Commission Statewide Rules.

B & B Oil, Inc.

At hearing, Mr. Wallen stated that he was clearly the party responsible for submitting the Forms H-15 on the Johnson (18794) Lease and that he had done so. However, he argued that he had entrusted others to perform certain types of work and had relied on the information given to him over the phone in filling out the fraudulent Form H-15s. The fluid level information used for the H-15s was taken over the phone from an acquaintance named Rick Simpson. B & B did not have a wireline, and Rick Simpson did. In return for performing the tests, Mr. Wallen was going to give

Simpson a 50% share in the Johnson (18794) Lease. Although Simpson was not an operator, he had a pulling rig, so Mr. Wallen assumed that Simpson had pulled the rods and tubing and performed the tests.

B & B acquired a fluid level gun (echometer) two weeks before the present hearing and Mr. Patrick Gober has performed new tests on Well Nos. 5A, 6A, 7A, 9A and 17A. Those tests were conducted on September 11, 2009 and submitted into the record of the hearing. Mr. Wallen stated the new tests are true and accurate.

Mr. Wallen stated that Well No. 2A had a hole in the casing, and would be plugged. Mr. Wallen stated that a plugger was under contract.

B & B's Evidence Regarding False Filings in the July 7, 2011 Re-Opened Hearing

Respondent Joe Wallen did not appear at the re-opened hearing nor did any representative of B & B.

EXAMINER'S AMENDED OPINION

B & B did not object to the entry of Enforcement's file or exhibits in this docket. It also did not contest the Rule 13(b)(1)(B) violation, the Rule 14(b)(2) violations or the Rule 46(j) violations. The examiner agrees with Enforcement that District Office inspections conducted on January 30, 2008; February 4, 2008; April 2, 2008; April 30, 2008; May 6, 2008 and May 13, 2008 for the Johnson (18794) Lease showed that Well No. S14 had casing open to atmosphere. For a period of at least three and one half months, Well No. S14 was in violation of Statewide Rule 13(b)(1)(B).

The examiner has taken Official Notice of the production history of the Johnson (18794) lease and finds that it has not reported production from August 31, 2006 through December 8, 2008. Production was reported for January, February and March of 2009, but Enforcement pointed out that the lease was under severance at the time and production under severance is not legal production. Therefore, it cannot be used to restore a lease to "active" status. Further, the production history of the lease shows significant variation in production from month to month. The reported production for January, February and March of 2009 was 20 barrels of oil for each month, a consistency of production that is anomalous for that lease and an unlikely occurrence. From April, 2009, the lease reported zero production through April 2010, with no reports filed thereafter. The examiner agrees with Enforcement that the subject wells have been in continuous violation of Statewide Rule 14(b)(2) since at least May 9, 2008, that date that the Statewide Rule 14(b)(2) extensions for the wells were cancelled. The mainframe's "14(b)(2) Inquiry by Lease" screen shows that all the subject wells still have 14(b)(2) extension denials as of October 5, 2010.

B & B submitted new H-15 tests for Well Nos. 5A, 6A, 7A, 9A, and 17A at the hearing and asserted that they were true and accurate. The TCEQ "Depth of Usable-Quality Groundwater to be Protected" letter for the lease shows that the base of usable quality water is at 225 feet. Commission rules require that top of fluid in a wellbore more than 25 years old be 250 feet below the base of usable quality water, or 475 feet in this case. The H-15s that B & B submitted at hearing show the lowest depth of fluid for any of the wells at 240 feet, with two wells having fluid at the surface. When the depth of fluid is less than 250 feet below the base of usable quality water, approval or

disapproval of the test is within the discretion of the District Office. In this case, however, the lowest depth of fluid is only 15 feet below the base of usable quality water, which is clearly a failing test even on a discretionary standard. The H-15 tests submitted by B & B at hearing may have been true and accurate, but all are failing tests.

As previously stated, the Form H-5 for Well No. 4A was due on or before October 30, 2006; the Form H-5s for Well Nos. 8A, 10A, 15A and S8 were due on or before January 30, 2006; and the Form H-5 for Well No. S6 was due on or before July 30, 2006. The Form H-5s had not been submitted at the time of the hearing on September 17, 2009, therefore the wells were in violation of Statewide Rule 46(j) at least for those periods of time.

Despite Mr. Wallen's assurance that Well No. 2A, which had a hole in its casing, would be plugged, the "District W-3 Approval Date" screen of the RRC mainframe does not show that Well No. 2A has been plugged.

Examiner's Opinion Regarding False Filings Alleged in the July 7, 2011 Re-Opened Hearing

B & B admitted that it filed Forms H-15 with the Commission which contained fraudulent information. Enforcement's evidence shows that a District Office inspection was conducted on the subject lease on January 30, 2008, prior to the purported testing done on the six wells on March 5, 2008, and another District Office inspection was conducted on April 2, 2008. The District Office inspection conducted on April 2, 2008 found no signs that any mechanical work had been done on the six wells, which would have been necessary in order to pull rods and tubing to conduct the H-15 tests. Mark England, an Engineering Specialist in the Field Operations section of the Commission, testified that anyone familiar with standard testing procedures would know that it would have taken at least two hours to remove the wellhead, remove the rods and tubing, conduct the H-15 test, and then replace the rods, tubing and wellhead for each well. The two hours does not include the time needed to move the pulling rig from one well to another after testing. In Mr. England's opinion, it is highly unlikely that all six wells could have been tested in one day, which should have been a red flag to Mr. Wallen to question both the testing and the test results. The examiner believes Mr. Wallen had good reason to doubt the H-15 test results he reported to the Commission but filed the results anyway. Further, if Mr. Wallen contracted out the well tests as he asserted, that fact should have been reported on the H-15 but was not.

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. B & B Oil, Inc. ("B & B") (Operator No. 039791) was given at least 10 days notice of this proceeding. B & B appeared through its CEO, Joseph F. Wallen and presented evidence at the hearing.
2. B & B Oil, Inc. is a corporation, and its President/Secretary/Treasurer is Joseph F. Wallen. Wallen was in a position of ownership or control of Respondent at the time the subject violations were committed.

3. The P-5 Organization Report of B & B Oil, Inc. was delinquent at the time of the hearing, and is now active. B & B has approved financial assurance on file in the form of a Letter of Credit in the amount of \$250,000.
4. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
5. B & B designated itself the operator of the Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective June 1, 2007, approved June 25, 2007.
6. Commission District office inspection reports made on January 30, 2008; February 4, 2008; April 2, 2008; April 30, 2008; May 6, 2008 and May 13, 2008 for the Johnson (18794) Lease showed that Well No. S14 had casing open to atmosphere.
7. B & B's violation of Statewide Rule 13(b)(1)(B) is serious and a hazard to the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.
8. Commission District Office inspection reports made on January 30, 2008; February 4, 2008; April 2, 2008; April 30, 2008; May 6, 2008, May 13, 2008 and June 11-15, 2009 for the Johnson (18794) Lease and reports filed by B & B with the Commission (reflecting zero production/injection) from June 30, 2007 through April, 2010 with no reports filed thereafter, showed that Well Nos. Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14, have been inactive for a period greater than one year.
9. None of the subject wells have been plugged; the plugging extensions for all of the subject wells as allowed by Statewide Rule 14 were cancelled May 9, 2008 based on:
 - a. Respondent's failure to submit to the Commission a timely and successful Form H-15 (Test on Inactive Well More Than 25 years Old) for the Johnson (18794) Lease, Well Nos. 2A, 5A, 6A, 7A, 9A and 17A; and
 - b. Respondent's failure to submit to the Commission a timely and successful Form H-5 for the Johnson (18794) Lease, Well Nos. 4A, 8A, 10A, 15A, S6 and S8.
 - c. Respondent's failure to maintain adequate wellhead control and for leaving the well open to atmosphere on the Johnson (18794) Lease, Well No. S14.
10. Pursuant to calculations by District Office personnel, the total estimated cost to the State for plugging the Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14 is \$74,800.00 (13 wells at approximately \$5,753.00 each).
11. B & B's violations of Statewide Rule 14(b)(2) are serious and threaten the public health and

safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water, as defined in Statewide Rule 8(a)(28) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(a)(28)] by serving as a conduit for the migration of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

12. B & B failed to timely file Form H-5s for Well Nos. 4A, 8A, 10A, 15A, S6 and S8. A Commission District Office inspection report made on the Johnson (18794) Lease on January 30, 2008 indicated that Well Nos. 4A, 8A, 10A, 15A, S6 and S8 were delinquent for the submission of Forms H-5 (Injection/Disposal Well Pressure Test Report). The tests were due to the Commission as follows:
 - a. the H-5 for Well No. 4A was due on or before October 30, 2006;
 - b. the H-5s for Well Nos. 8A, 10A, 15A and S8 were due on or before January 30, 2006;
 - c. the H-5 for Well No. S6 was due on or before July 30, 2006.
13. Well Nos. 4A, 8A, 10A, 15A, S6 and S8 on the Johnson (18794) Lease were inactive at the time of the January 30, 2008 Commission District Office inspection and in all subsequent inspections, which were made on February 4, 2008; April 2, 2008; April 30, 2008; May 13, 2008 and June 11-15, 2009.
14. B & B's violation of Statewide Rule 46(j) is serious and threatens the public health and safety. The required test is designed to determine the integrity of the well's casing and that leakage is not occurring. Untested disposal/injection wells, if leaking, may cause pollution of usable quality ground water and surface water by serving as a conduit for the passage of oil, gas saltwater and other substances to the surface, or from one stratum or formation to another.
15. B & B submitted to the Commission a series of six Commission Forms H-15 (Test on Inactive Well More Than 25 years Old) for Well Nos. 2A, 5A, 6A, 7A, 9A and 17A for tests conducted on March 5, 2008 and submitted to the Commission on July 18, 2008. Each form was filled out by hand and signed by Joe F. Wallen as principal (President, Secretary and Treasurer) of B & B. Each of the forms had the method of determination marked as "wireline".
 - a. District Office inspection reports made before and after (January 30, 2008 and April 2, 2008) the alleged test date of March 5, 2008 indicate that Well Nos. 2A, 5A, 6A, 7A, 9A and 17A on the Johnson (18794) Lease had rods and tubing in the wellbore, making administration of a wireline test impossible without removing the wellhead, rods and tubing in each well.
 - b. Using a pulling rig, it would have taken at least two hours per well to remove the wellhead, pull the rods and tubing, conduct the H-15 tests, and then replace the rods,

tubing and wellhead. This is exclusive of the time it would have taken to move the pulling rig from well to well.

- c. The District Office inspection conducted on April 2, 2008 found no evidence that any work had been performed on the six subject wells.
 - d. The Forms H-15 contain no indication that anyone other than B & B conducted the tests.
16. Respondent B & B knowingly submitted forms to the Commission containing information which was false or untrue in material fact, in violation of Texas Natural Resources Code §91.143.
17. The Respondent charged with the violations in this docket has acted in bad faith because it failed to correct Commission rule violations on the subject lease and failed to adequately explain its inaction to the Commission.

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. B & B Oil, Inc. was the operator of the Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14, from June 1, 2007 through at least the date of the hearing on September 17, 2009.
4. As Operator of the subject lease, B & B Oil, Inc. had the primary responsibility for complying with Statewide Rules 13(b)(1)(B), 14(b)(2) and 46(j) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B); §3.14(b)(2) and §3.46(j)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject leases and wells.
5. B & B Oil, Inc. violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] by failing to maintain wellhead control on the Johnson (18794) Lease, Well No. S14.
6. B & B Oil, Inc. violated Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] by allowing the Johnson (18794) Lease, Well Nos. 2A, 4A, 5A, 6A, 7A, 8A, 9A, 10A, 15A, 17A, S6, S8 and S14 to remain inactive for a period over one year. The wells ceased production/injection on or before August 31, 2006. Their Statewide Rule 14(b)(2) plugging extensions were cancelled on May 9, 2008. The wells were in violation of Statewide Rule 14 from at least May 9, 2008 through the date of the hearing on September 17, 2009, a period of sixteen months.
7. B & B Oil, Inc. violated Statewide Rule 46(j) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE

§3.46(j)] by failing to timely file a successful Form H-5 pressure test for the Johnson (18794) Lease, Well Nos. 4A, 8A, 10A, 15A, S6 and S8.

8. B & B Oil, Inc. violated Texas Natural Resources Code §91.143 by filing six false H-15 tests, purportedly conducted on March 5, 2008, with the Commission.
9. The documented violations committed by B & B Oil, Inc. constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
10. B & B Oil, Inc. has not demonstrated good faith within the meaning of Texas Natural Resources Code §81.0531.
11. As the sole officer of B & B Oil, Inc. at the time B & B violated Commission rules related to safety and the prevention or control of pollution, Joseph F. Wallen, and any organization subject to the Commission's jurisdiction in which he may hold a position of ownership or control, is subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that B & B Oil, Inc. be ordered to pay an administrative penalty of \$45,000.00 (one Rule 13(b)(1)(B) violation at \$1,000; thirteen Rule 14(b)(2) violations at \$2,000 each; six Rule 46(j) violations at \$2,000 each and six Texas Natural Resources Code 91.143 violations at \$1,000 each) and place the Johnson (18794) Lease and wells in compliance with all Commission rules and regulations.

Respectfully submitted,

Marshall Enquist
Hearings Examiner