

**ENFORCEMENT ACTION AGAINST TOMMY YOCHAM, D.B.A. PACE PRODUCTION COMPANY  
AND/OR BRIAN R. STEPHENS ON THE COLLIER, ET AL (06315) LEASE, WELL NO. 2, I.A.B.  
SOUTH (CANYON) FIELD, COKE COUNTY, TEXAS.**

---

---

**APPEARANCES:**

**FOR MOVANT:**

Lowell Williams, Staff Attorney

**MOVANT:**

Enforcement Section

**FOR RESPONDENT:**

Did not appear  
Brian R. Stephens

**RESPONDENT:**

Tommy Yocham, d.b.a. Pace Production Co.  
Brian R. Stephens

**PROPOSAL FOR DECISION**  
**PROCEDURAL HISTORY**

<b>DATE OF REQUEST FOR ACTION:</b>	February 13, 2001
<b>DATE CASE HEARD:</b>	January 10, 2002
<b>DATE RECORD CLOSED:</b>	April 23, 2002
<b>PFD PREPARED BY:</b>	Scott Petry, Hearings Examiner
<b>PFD CIRCULATED:</b>	October 28, 2002
<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 respondents, Tommy Yocham, d.b.a. Pace Production Company, and/or Brian R. Stephens, a sole proprietor, should be required to place in compliance with Statewide Rule 8, the Collier, et al (06315) Lease ("subject lease"), in Coke County, Texas;
2. Whether the respondent Tommy Yocham, d.b.a. Pace Production Company, should be required to plug or otherwise place in compliance with Statewide Rule 14, the Collier, et al (06315) Lease, Well No. 2 ("subject well"), I.A.B. South (Canyon) Field, in Coke County, Texas;
3. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural 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 8 and 14;
4. 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;
5. 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; and,
6. Whether other orders should be entered as permitted by law.

Brian R. Stephens ("Stephens") appeared at the hearing and offered evidence. Tommy Yocham, d.b.a. Pace Production Company ("Pace") failed to appear at the hearing after being notified through certified and first class mailings. In pre-hearing correspondence with Enforcement, however, Pace was represented by its attorney, Lloyd Muennink. Lowell Williams, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section's hearing file was admitted into evidence.

In its First Amended Complaint, Enforcement requested that Stephens and/or Pace be

assessed an administrative penalty of \$2,500.00 for violations of Statewide Rules 8(d)(1) and 8(d)(4)(G)(i)(III), and that Pace be assessed an administrative penalty of \$2,000.00 for violation of Statewide Rule 14(b)(2). Enforcement further requested that an assessment be made as to the culpability of each party in the violations of Statewide Rules 8(d)(1) and 8(d)(4)(G)(i)(III). The recommended penalty for all three violations totals \$4,500.00.

The examiner concurs in the penalty amount recommended by Enforcement and finds that Pace is the sole party responsible for all three violations asserted in Enforcement's complaint.

### **BACKGROUND**

Unplugged and unused well bores constitute a potential danger to the public's health and safety and must be plugged when mandated by the Commission's rules. 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-4's 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. For Form P-4's filed *on or after* September 1, 1997, however, the operator designated on the most recent Commission approved operator designation form is responsible for properly plugging the well in accordance with all applicable Commission rules and regulations.

With regard to pollution violations, Statewide Rule 8(d)(1) provides that persons are prohibited from disposing any oil and gas wastes by any method without first obtaining a permit to dispose of such wastes. Regulations further provide, in Statewide Rule 8(d)(4)(G)(i)(III), that a person who maintains or uses a completion or workover pit in conjunction with completing or working over a well shall backfill and compact the pit within 120 days of completion of the well.

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000.00 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531.

**DISCUSSION OF THE EVIDENCE**

Commission records were introduced to show that the most recent approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance) for the subject lease lists Tommy Yocham, d.b.a. Pace Production Co., as operator of the Collier, et al (06315) Lease, Well No. 2. The Form P-4 has an effective date of October 1, 1999, and an approval date of November 15, 1999. Prior to Pace's assumption of P-4 responsibilities, however, Commission records indicate that Brian R. Stephens had designated himself as operator of the subject lease by filing a Commission Form P-4 with an effective date of June 1, 1995, and an approval date of June 19, 1995. Stephens was the operator responsible for the subject lease and well immediately prior to the transfer of the subject lease and well to Pace.

With regard to the parties' Form P-5 (Organization Report) status, the examiner took Official Notice of Commission Records related to both of the respondents. These records indicate that Pace is currently delinquent and that it is not a bonded operator. Pace last filed a Form P-5 on April 14, 2000, and paid a \$100 "good guy" fee in addition to \$700 for W-1X Plugging Extensions. Commission records for 2002 indicate that Tommy Yocham, d.b.a. Pace Production, currently has 56 wells, all of which are listed as inactive. Mr. Stephens, on the other hand, has an active P-5 Organization report on file with the Commission and has filed a \$25,000.00 letter of credit for his financial assurance. Commission records for 2002 indicate that Stephens currently has 10 wells, all of which are listed as active.

***Violation of Statewide Rule 14(b)(2)***

In Enforcement's case in chief, the Staff Attorney admitted into evidence the hearing file and copies of related records. With regard to the asserted Statewide Rule 14(b)(2) violation, Enforcement submitted inspection reports dated September 28, 2000, February 7, 2001, and August 28, 2001 that showed the subject well shut in and not equipped to produce. More specifically, the inspection report of December 18, 2001, indicated that the well was not equipped for production, that the "horsehead" on the pump jack unit was off, and that there were three feet of tubing sticking out of the ground. Commission production records also indicate that the subject well last produced in May 1999, and Pace either reported "zero" production or filed no production reports at all for the subject well from June 1999 to the present. Enforcement further asserted that no workovers, re-entries, or subsequent operations had taken place in the 12 months prior to the mailing of the First Amended Complaint. Accordingly, Enforcement contends that the well is inactive and that it has been in violation of Statewide Rule 14(b)(2) since at least May 31, 2000. The estimated cost to plug the well

is \$11,000.00.

In its pleadings, Enforcement also asserts that Pace is the party presumed to be the operator of the subject well. Accordingly, Enforcement requested that assessment of penalties for the Rule 14(b)(2) violation be levied only against Pace. Pace, which was represented by counsel in prior correspondence<sup>1</sup> with Enforcement, failed to make an appearance and failed to provide evidence contesting the assertion that Pace was the party responsible for the subject well.

### **Violation of Statewide Rule 8(d)(1)**

In its case in chief, Enforcement also asserts that Stephens and/or Pace were responsible for a violation of Statewide Rule 8(d)(1), in which an unpermitted discharge measuring approximately 3' x 8' occurred on the subject lease. An inspection report dated February 7, 2001 indicated that there was a 2" open ended line at the former location of a heater treater on the subject lease and that this line was actively leaking saltwater onto the ground. Subsequent testing showed that this saltwater contained 103,300 ppm chlorides. An inspection report dated August 28, 2001 indicated that this 2" line had been plugged and that the discharge had been remediated.

In correspondence between Pace's counsel and Enforcement dated November 19, 2001, Pace asserted that the spill in question was actually caused by the prior operator's removal of a heater treater. Pace also requested that Enforcement include Stephens in the proceeding so that culpability for the spill could be determined. In correspondence dated November 20, 2001, Pace also submitted an assignment and bill of sale giving the prior operator, Stephens, the right to remove the heater treater on the subject lease. Enforcement subsequently issued the First Amended Pleading and included Mr. Stephens as a party in this matter.

As previously mentioned, however, Pace did not appear at the hearing and did not present any additional evidence supporting its argument that someone other than Pace was responsible for the unpermitted discharge. Stephens, on the other hand, appeared at the hearing and presented evidence and testimony indicating that he was not the party responsible for the spill. Stephens asserted that his personnel did remove the separator from the lease in March 2000, but that a vacuum truck was used to insure that no spillage occurred in the removal. It was Stephens' testimony that the 2" line in question was inactive at the time of the removal and that there was no fluid going into the line or any residual fluids in the line at the time of the removal. Stephens submitted into the

---

<sup>1</sup>The correspondence, which was admitted as part of the record, reads in part, "Tommy Yocham is a well plugger, and obtained the wellbore only by signing the P-4" and requested that Enforcement include Brian Stephens as a respondent.

record a receipt for the vacuum truck for the services used in the removal of the heater treater.

Stephens further stated that his personnel had overseen the removal, that the removal was done properly and professionally, and that the material in the separator had been extracted "...with no spillage whatsoever." Stephens also asserted that the job "...went smooth with no problems whatsoever." Respondent Stephens denied any responsibility for the unpermitted discharge.

### **Violation of Statewide Rule 8(d)(4)(G)(i)(III)**

The final violation asserted by Enforcement in its case in chief is for the failure of the operator to properly dewater and backfill a completion or workover pit, pursuant to Statewide Rule 8(d)(4)(G)(i)(III). Inspection reports dated September 28, 2000, February 7, 2001, and August 28, 2001, indicate that the subject lease had a dry workover pit measuring approximately 8' x 30' x 4'. Enforcement asserts that the violation is serious and hazardous to the public health and safety because the failure to maintain such pits in accordance with Commission rules may result in unpermitted discharges that may contaminate surface or subsurface waters. Enforcement further asserts that this pit was to have been backfilled and compacted within 120 days of completion or reworking of the subject well.

In the inspection report dated September 28, 2000, it is noted that the pit was open and contained basic sediment and also contained "...trash and junk." Enforcement asserted that there was a question as to which of the respondents was actually the last party to use the pit. While Pace did not appear at the hearing, Stephens testified that he did not dig the pit and that he had "...never seen or used it." Stephens contended that Pace was the last operator to use the pit and that the responsibility belonged to Pace to properly backfill and compact it.

Enforcement also points out that, in Pace's correspondence of November 19, 2001, Pace's counsel asserts that "...Tommy Yocham cleaned everything..." with regard to the remediation of the aforementioned violation of Statewide Rule 8(d)(1). Enforcement noted that the basic sediment found in the pit is consistent with the type of soil that was removed in the remediation of the violation of Statewide Rule 8(d)(1).

### **EXAMINER'S OPINION**

As the philosopher Confucius once said, "A man who has committed a mistake and doesn't correct it is committing another mistake." Pace, who has neglected its regulatory responsibilities, has compounded the problems by refusing to correct the violations even after being notified of the

violations by the Commission. Pace has “played possum”, stirring from its slumber only long enough to lay blame for the violations on the prior operator, Stephens.

It is the examiner’s determination that respondent Tommy Yocham, d.b.a. Pace Production Co., is the party responsible for all three violations and should be penalized accordingly. It is further recommended that respondent Brian R. Stephens be dismissed from this docket. With regard to the party responsible for the subject lease and well, Statewide Rule 14(c)(1) clearly states:

The entity designated as the operator of a well specifically identified on the most recent commission-approved operator designation form filed on or after September 1, 1997, is responsible for properly *plugging the well* in accordance with this section and *all other applicable commission rules and regulations* concerning plugging of wells. (emphasis added)

When Pace filled out its Form P-4 on October 1, 1999, there was the following statement directly above Mr. Yocham’s signature:

By signing this certificate as the CURRENT OPERATOR, I acknowledge responsibility for the regulatory compliance of the subject lease, INCLUDING PLUGGING OF WELLS if required under Statewide Rule 14. I also acknowledge that I will remain designated as the Current Operator until a new certificate designating a new Current Operator is approved by the Commission.

This statement is particularly noticeable as it is highlighted in red on a form where everything else is printed in green. Mr. Yocham signed the Form P-4 directly below this statement. Enforcement’s assertion that respondent Pace is the proper operator of the subject well is undisputed. Statewide Rule 14(c)(1) is unambiguous and clearly states that the current operator is responsible for the proper plugging of the subject well and for maintaining the subject lease in accordance with Commission rules.

While its P-4 acknowledgment of regulatory obligations is enough to place the responsibility for the violations squarely with Pace, the examiner notes that the evidence placed into the record also points to Pace being the sole responsible party. Stephens’ undisputed evidence and testimony indicate that he and his personnel proceeded in a professional manner in the removal of the heater treater. Further, the undisputed assertion of Stephens that it did not create, use, or even have knowledge of the workover pit in question indicates that it was not the party that dumped basic sediment and junk into the pit. Indeed, nothing has been submitted in this docket that would dispute either assertion or place the responsibility with anyone other than the designated operator, Pace.

Therefore, it is the examiner’s opinion that Pace is the party responsible for the violations of

Statewide Rules 8 and 14. Pace's inaction since becoming the designated operator for the subject well and its refusal to plug the well as mandated by the Texas Natural Resources Code § 89.011 created the situation where the subject well remain unplugged and contributed to incidents of pollution. The respondent's actions, and lack of action, caused this situation and Mr. Yocham cannot escape his regulatory responsibilities simply by ignoring the problem for over two years and trying to place the blame on a prior operator.

### **EXAMINER'S RECOMMENDATION**

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 Brian R. Stephens , Inc. ("Stephens") was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) addresses. Stephens appeared at the scheduled time and place for the hearing and presented evidence.
2. Respondent Tommy Yocham, d.b.a. Pace Production Co. ("Pace"), was given at least 10 days notice of this proceeding by certified, first-class mail, addressed to its most recent Form P-5 (Organization Report) address. Pace did not appear at the scheduled time and place for the hearing.
3. Stephens designated himself operator of the Collier, et al (06315) Lease, Well No. 2, I.A.B. South (Canyon) Field, in Coke County, Texas, by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), with an effective date of June 1, 1995 and an approval date of June 19, 1995. Stephens was the operator responsible for the subject lease and well immediately prior to the transfer of the subject lease and well to Pace.
4. Pace designated itself operator of the Collier, et al (06315) Lease, Well No. 2, I.A.B. South (Canyon) Field, in Coke County, Texas, by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), with an effective date of October 1, 1999 and an approval date of November 15, 1999.
5. The most recent approved P-5 for Pace was filed on April 14, 2000. Pace paid a fee of \$100 (in addition to \$700 for W-1X Plugging Extensions) as financial assurance at the time of its last renewal. Pace's Organization Report is currently delinquent and all of Pace's 56 wells are inactive.



6. The most recent approved P-5 for Stephens was filed on August 2, 2002. Stephens filed a \$25,000.00 letter of credit as financial assurance at the time of his last renewal. Stephens' Organization Report is currently active and all of his 10 wells are active.
7. The subject well is currently inactive and has been inactive for more than 12 months.
  - a. Commission inspection reports made on September 28, 2000, February 7, 2001, and August 28, 2001 show that the well was shut in and not equipped to produce.
  - b. Commission records report no production from the subject well after May 31, 1999.
8. An unpermitted discharge of saltwater measuring approximately 3' x 8' occurred on the subject lease on or before September 28, 2000. The unpermitted discharge contained approximately 103,300 ppm chlorides.
9. The unpermitted discharge of saltwater was properly remediated by Pace on or before August 28, 2001.
10. Respondent Stephens removed a heater treater from the subject lease in March 2000 and used a vacuum truck service in the removal process.
11. A workover or completion pit measuring 8' x 30' x 4' was found on the subject lease on September 28, 2000. The pit has not been properly backfilled or compacted.
12. Failure to backfill and compact workover or completion pits in compliance with Commission rules may result in unpermitted discharges which may contaminate surface or subsurface waters. Noncompliant pits constitute a potential hazard to the public health and safety because they become convenient sites for illegal dumping of wastes and because they become containers for surface run-off that increases the potential for seepage to subsurface waters.
13. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
14. The record shows no previous violations of Commission rules by either Stephens or Pace.
15. Pace has not demonstrated good faith since it failed to maintain the lease in compliance with Commission rules and failed to plug the subject well in compliance with Statewide Rule 14 after being notified of the hearing by the Commission.
16. The estimated cost to plug the subject well is \$11,000.00.

**CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Tommy Yocham, d.b.a. Pace Production Co., is the operator of the Collier, et al (06315) Lease, Well No. 2, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Pace 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 Collier, et al (06315) Lease, Well No. 2.
5. Well No. 2 on the Collier, et al (06315) Lease is not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. The completion or workover pit on the Collier, et al (06315) Lease is not in compliance with Commission Rule 8(d)(4)(G)(i)(III). The lease has been out of compliance with Rule 8(d)(4)(G)(i)(III) from at least September 28, 2000, to the present.
7. The Collier, et al (06315) Lease was out of compliance with Statewide Rule 8(d)(1) from at least September 28, 2000 to some time on or before August 28, 2001. The unpermitted discharge has been properly remediated.
8. The documented violations committed by Pace are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).
9. Pace's failure to timely plug the subject well when required and to maintain the lease in compliance with Statewide Rule 8 are violations of Title 3 of the Texas Natural Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution.

**RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached

order be approved. It is recommended that the complaint against respondent Brian R. Stephens be dismissed and that respondent Tommy Yocham, d.b.a. Pace Production Co., be ordered to plug the subject well and place the lease in compliance with Statewide Rule 8. It is further recommended that the respondent Tommy Yocham, d.b.a. Pace Production Co., be ordered to pay an administrative penalty in the amount of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00).

Respectfully submitted,

Scott Petry  
Hearings Examiner  
Office of General Counsel