

February 18, 2003

OIL AND GAS DOCKET NO. 7C-0231675

ENFORCEMENT ACTION AGAINST EUGENE C. WEAVER DBA SAFARI PRODUCTION CO. FOR VIOLATIONS OF STATEWIDE RULES ON THE PADGITT, JAMES T. (RRC GAS ID. NO. 111080) LEASE, WELL NO. 2L, PADGITT (CONNELL) FIELD, CROCKETT COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Scott Holter

FOR RESPONDENT:

Lloyd Muennink
Mike Weaver

MOVANT:

Railroad Commission of Texas

PARTY:

Safari Production Co.
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PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	August 13, 2002
NOTICE OF HEARING:	November 5, 2002
DATE CASE HEARD:	December 9, 2002
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	February 18, 2003
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the respondent should be required to plug or otherwise place in compliance with

Statewide Rule 14, the Padgitt, James T. (RRC Gas Id. No. 111080) Lease, Well No. 2L, Padgitt (Connell) Field, Crockett County, Texas;

2. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rule 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said lease and well;
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.

Scott Holter, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Lloyd Muennink appeared on behalf of respondent, Eugene C. Weafer doing business as Safari Production Co. (hereinafter "Safari"). Mike Weaver, a former employee of Safari who now owns a separate company, Safari Production Co., Inc., testified on behalf of Safari. The Enforcement Section's hearing file was admitted into evidence. The staff attorney recommended that Safari be ordered to properly plug the well and be ordered to pay an administrative penalty of \$2,000 for a single violation of Statewide Rule 14(b)(2). The staff attorney further recommended that an additional \$1,000 be added to the administrative penalty assessed based on the Agreed Final Order entered against Safari in Oil & Gas Docket 03-0230782 adopted on June 25, 2002. The examiner agrees with the recommendation.

DISCUSSION OF THE EVIDENCE

Enforcement presented Commission records showing that the most recent approved P-5 (Organization Report) for Safari was filed March 30, 2000. Safari paid a fee of \$750 as financial assurance at the time of its last renewal. Eugene C. Weafer is listed as the President. Safari's Organization Report is currently delinquent.

The Commission recognized Safari as the operator of the Padgitt, James T. (RRC Gas Id. No. 111080) Lease, Well No. 2L, Padgitt (Connell) Field, Crockett County, Texas (hereinafter "subject lease" and/or "subject well") upon approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) submitted by Safari on February 19, 1999. The Commission recognized Safari as the operator of the lease on March 1, 1999.

Enforcement also submitted inspection reports made on September 19, 2001, January 26, 2002, March 18, 2002, and December 2, 2002, which show that the subject well is shut in and not equipped to produce. Additional Commission records indicate that no production was reported from the well after January 1, 1993. The last plugging extension for the subject well expired on February 28, 2000. Enforcement therefore contends that the well is inactive and has been in violation of Statewide Rule 14(b)(2) for 22 months at the time of the hearing. The estimated cost to plug the

subject well is \$15,000.

Enforcement also included documentation that an Agreed Final Order was entered against Safari in Oil & Gas Docket 03-0230782 and approved by the Commission on June 25, 2002. The docket asserted two violations of Statewide Rule 14(b)(2) for which Safari was assessed an administrative penalty of \$3,500 in the Agreed Final Order. Enforcement argues that the Agreed Final Order involving Safari warrants an increase to the administrative penalty of \$1,000.

Safari's representative, Mr. Weaver acknowledged Safari's responsibility for the subject well and the violation of Statewide Rule 14(b)(2). Weaver claimed that Safari obtained the well and spent over \$200,000 on a workover, but that due to intimidation by the landowner, Safari was unable to enter the property. Weaver also acknowledged that Safari's lease has lapsed. Weaver claims that no one can obtain a new lease because the landowner wants to operate the well himself. Safari believes that no penalty should be assessed because it cannot enter the property and because it cannot secure the assistance of local officials in meeting its regulatory compliance requirements.

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.

Texas Natural Resources Code §89.044 provides that an operator, on proper identification, may enter the land of another for the purpose of plugging a well that has not been properly plugged.

EXAMINER'S OPINION

It is uncontested in this docket that the subject well is in violation of Statewide Rule 14. Safari claims that the landowner prevented it from fulfilling its regulatory responsibility. Safari also contends that it should not be required to pay any administrative penalty.

The evidence indicates that: 1) Safari's organization report is delinquent; 2) it has no continuing right to operate the well; and 3) the well has not reported production since at least January 1993. Safari also does not contest that well is in violation. Essentially, Safari pleads for leniency in the imposition of an administrative penalty due to the purported interference by the landowner.

The examiner believes that Safari should pay the full recommended administrative penalty. Safari has been the designated operator of the subject lease since March 1, 1999; Safari has not placed the lease in compliance; and Safari did not take any steps to invoke its right to enter the property for the purpose of producing or plugging the well. Absent such evidence, it is inappropriate to excuse Safari from the imposition of an administrative penalty for the time period that the well

has been out of compliance with Rule 14(b)(2). Additionally, the fact that Safari agreed to a Final Order including paying an administrative penalty of \$3,500 for prior violations of Rule 14(b)(2), warrants an enhancement of \$1,000 to the standard administrative penalty.

Accordingly, the examiner recommends that Safari be ordered to plug the subject well. The examiner further recommends that Safari be required to pay an administrative penalty of \$3,000.

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

FINDINGS OF FACT

1. Respondent, Eugene C. Weafer doing business as Safari Production Co. (“Safari”) was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. Safari appeared at the hearing through its attorney and its designated representative and offered evidence.
2. The most recent approved Form P-5 for Safari was filed March 30, 2000. Safari paid a fee of \$750 as financial assurance at the time of its last renewal. Eugene C. Weafer is listed as the Owner. Safari’s Organization Report is currently delinquent.
3. Safari was recognized as the operator of the Padgitt, James T. (RRC Gas Id. No. 111080) Lease, Well No. 2L, Padgitt (Connell) Field, Crockett County, Texas (“subject well”) upon the approval of the Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) submitted by Safari on February 19, 1999. The Commission recognized Safari as the operator of the lease on March 1, 1999.
4. The subject well is currently inactive and has been inactive for more that 12 months.
 - A. Commission inspection reports made on September 19, 2001, January 26, 2002, March 18, 2002, and December 2, 2002 show that the well is shut in and not equipped to produce.
 - B. Commission records report no production from the subject well from on or before January 1, 1993.
5. The last plugging extension Safari obtained for the well expired on February 28, 2000.
6. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
7. Safari has not demonstrated good faith since it failed to plug or otherwise place the subject well in compliance after being notified of the violations by the district office.

8. The estimated cost to plug the subject well is \$15,000.
9. The record reflects previous violations by the respondent of Statewide Rule 14(b)(2) in Oil & Gas Docket No. 03-0230782.
 - (a) Safari entered into an Agreed Final Order in that docket which was approved by the Commission on June 25, 2002.
 - (b) An administrative penalty of \$3,500 was assessed against Safari in the Agreed Final Order.

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. Safari is the operator of the Padgitt, James T. (RRC Gas Id. No. 111080) Lease, Well No. 2L, Padgitt (Connell) Field, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Safari 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 Padgitt, James T. (RRC Gas Id. No. 111080) Lease, Well No. 2L, Padgitt (Connell) Field.
5. Well No. 2L on the Padgitt, James T. (RRC Gas Id. No. 111080) 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. Well No. 2L on the Padgitt, James T. (RRC Gas Id. No. 111080) Lease has been out of compliance from February 28, 2000 to the present.
7. The documented violations committed by Safari are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Eugene C. Weafer doing business as Safari Production Co. to plug the subject well and to pay an administrative penalty of THREE THOUSAND DOLLARS, (\$3,000).

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner