
ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY PILAR OIL CORPORATION (OPERATOR # 665452) AS TO THE JOHNSON RANCH LEASE, WELL NO. 1 (RRC # 097412), JOHNSON RANCH (ELLENBURGER) FIELD, TOM GREEN COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German, Staff Attorney, Enforcement Section of the Railroad Commission of Texas

FOR RESPONDENT:

John March, Pilar Oil Corporation

PROCEDURAL HISTORY

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| Date of Initial Request for Action: | December 18, 2001 |
| Date Hearing Held: | May 2, 2002 |
| Heard By: | Scott Petry |
| Record Closed: | June 3, 2002 |
| PFD Circulation Date: | July 15, 2002 |

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 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14 (West Jan. 1, 1997)] the Johnson Ranch Lease, Well No. 1 (RRC # 097412) ("subject well/subject lease"), Johnson Ranch (Ellenburger) Field, Tom Green 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 \$10,000.00 per day for each offense committed regarding such lease and well;
4. Whether any violations of Rule 14 by the respondent should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534 (Vernon 2001).

The respondent, Pilar Oil Corporation ("Pilar"), appeared via telephone by and through its President, John March, and offered evidence at the hearing. Susan German, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section's hearing file for this docket was admitted into evidence. The Enforcement Section recommends that respondent be ordered to place the subject well in compliance with Commission Rules and recommends that the respondent be ordered to pay an administrative penalty of \$2,000.00 for one violation of Statewide Rule 14(b)(2).

The examiner recommends that, given the time this well has been inactive and out of compliance and the respondent's lack of a good faith claim to continue operating the subject well, the well be ordered plugged instead of placed in compliance. Further, the examiner finds that the evidence presented and the time that this well was out of compliance indicate that enhancements should be applied in this docket. Therefore, the examiner recommends a penalty of \$3,600.00, consisting of one Statewide Rule 14(b)(2) violation at \$2,000.00 and an enhancement of \$1,600.00, consisting of \$100 per month that the well was out of compliance with Statewide Rule 14(b)(2).

BACKGROUND

Unplugged and unmonitored well bores constitute a potential danger to public health and safety and must be plugged when mandated by Commission rules. As applicable here, the operator of a well, for purposes of plugging liability, is the person who is responsible for the physical operation and control of that well at the time it ceases operation.

Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed before September 1, 1997, is presumed to be the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation. It further 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.

DISCUSSION OF THE EVIDENCE

The respondent, Pilar, is managed by Mr. John March. The respondent designated itself as operator of Well No. 1 on the Johnson Ranch Lease through a Form P-4 with an approval date of August 29, 1995 and an effective date of August 24, 1995. The respondent's Form P-5 Organization Report is not current and has a delinquency date of August 16, 2001.

I. Enforcement

In Enforcement's case in chief, the Staff Attorney admitted into evidence the hearing file and copies of related Commission records. In regards to the asserted Rule 14(b)(2) violation, Enforcement submitted inspection reports dated June 11, 2001, January 15, 2002, and March 5, 2002 which showed that the Johnson Ranch Lease Well No. 1 was shut in. Additionally, Enforcement submitted Commission records that indicated zero production was reported for the subject well from November 1, 1998 to August 31, 2001 and that no reports were filed for the subject well after August 2001.

Enforcement also submitted evidence of prior Form W-1X extensions. Evidence was submitted which indicated that the respondent filed a W-1X extension that expired in December 2000. The respondent further attempted to file another W-1X extension but this extension request was denied on November 30, 2001 due to the respondent's failure to provide an adequate H-15 test as required by

Commission rules. Enforcement asserted that this well became non-compliant with Statewide Rule 14(b)(2) when its last valid W-1X extension expired. The subject well has, therefore, been out of compliance since January 1, 2001.

Enforcement also asserted in its pleadings and file that no workovers, re-entries, or subsequent operations had taken place on the subject well within the 12 months preceding the January 15, 2002 mailing of the Original Complaint. Finally, Enforcement submitted evidence that the estimated cost to the State for plugging the subject well amounted to \$10,100.00.

II. Pilar Oil Corporation

The respondent's case in chief centered on his opinion that: 1) the well was not a pollution risk or a threat to the environment, 2) that the H-15 test he performed showed that the well would have been in compliance with Commission rules had the test been accepted, and 3) that it was his intention to bring the well back into compliance.

The respondent testified that the H-15 test he performed should have been admitted into the file for this hearing and that its failure to be included in the file prejudiced his position. According to the respondent, the H-15 test was relevant because if it had been admitted, he would have then qualified for another W-1X extension and the well would have remained in compliance. To support his claims, the respondent submitted before the hearing a handwritten exhibit purporting to be the results of an H-15 test. On cross examination by the Enforcement attorney, the respondent admitted that the H-15 test conducted was done so by using a wrist watch.

The respondent further testified that he was going to bring this well into compliance but had to first regain access to a pipeline that had been disconnected from the subject well. When questioned about his ability to bring the subject well into compliance, the respondent asserted that he needed more time. His request for additional time was to address two concerns. First, the respondent requested a telephonic hearing and was granted it, but in the hearing, the respondent stated that he needed access to the hearing file, which he had not previously requested. The examiner informed the respondent that he was welcome to review the file in the Austin office of the Commission, or, alternatively, the respondent could request a copy and one would be mailed to him. Second, the respondent requested additional time to submit a proper H-15 test, after the Enforcement attorney informed him that the test he submitted did not comply with Commission procedures.

The respondent was granted additional time and was given from May 2, 2002 to May 17, 2002, to review the file and to offer any late filed exhibits. Respondent stated that he would submit additional exhibits, would submit a proper H-15 test, and would submit a plan of action for bringing the well back into compliance. Additionally, to support the respondent's claim of bringing the well back into compliance, the examiner requested that the respondent submit a good faith claim to operate the subject well. The respondent did not submit a good faith claim and did not request the file or, as asserted in the hearing, travel to Austin to meet with "everyone" and to review the file. Instead, on May 17, 2002, the respondent submitted a "Requested Plan."

This plan stated: 1) that the well was not a pollution risk, 2) that his version of an H-15 should be admitted, 3) that the financial assurance requirements violated public policy, 4) that the operator would continue to try to put the well into compliance, 5) that the hearing in this matter violated his civil rights and due process, 6) that he was prevented from properly reviewing the record in this hearing and should be allowed more time to review the file, and 7) that he cannot meet the P-5 financial assurance requirements and will "contest this matter until the last court has ruled."

Despite the lack of a request, Enforcement then mailed respondent a copy of the file on May 17, 2002. To give the respondent every opportunity to fully and fairly have access to the file and subject matter, the examiner, sua sponte, granted an extension and kept the record open until June 3, 2002. The respondent, however, failed to submit any additional evidence and failed to avail himself of the opportunity to show that he could bring the subject well into compliance through means other than plugging.

EXAMINER'S OPINION

The respondent, Pilar Oil Corporation, has acted in bad faith in failing to comply with Commission rules and regulations. According to Texas Natural Resources Code, § 81.0534, several factors must be taken into account when assessing an administrative penalty. These factors are the party's history of previous violations, the "demonstrated good faith of the person charged", the seriousness of the violations, and the hazards that exist for the health or safety of the public.

Bad faith is at the heart of the penalties recommended against Pilar. The respondent was unable to show that it had made any real effort to bring this well into compliance. Furthermore, Pilar's actions, and lack of action, indicate that the respondent has acted in bad faith in failing to bring this well into compliance. The respondent has systematically avoided his responsibilities and has requested "more

time” to bring the well into compliance but has failed to comply with the Commission’s rules or to deliver on its promises. More time was given, but the respondent has failed to provide any additional evidence to show that he will follow through on his assertions.

Evidence of the respondent’s systematic avoidance of the hearing of this matter may be seen in the history of this docket. This case was initially granted a continuance of 50 days and the hearing was set for May 2, 2002, purportedly to bring the well into compliance and to secure proper financial assurance. Neither compliance or financial assurance was secured during this period. The respondent then requested additional motions for continuance on three separate occasions, all of which were denied. The respondent then requested a telephonic hearing, which was granted. At the hearing, the respondent stated that he was unable to properly respond because of his not being able to review the file and requested additional time to do so. He was given until May 17, 2002, to submit any information. After failing to avail himself of the extra time granted and the opportunity to review the file, the respondent then claimed that the Commission was violating his due process and civil rights through conditions he himself created. Finally, rather than bring the subject well into compliance with Commission rules and prevent pollution hazards, the respondent has stated that he will “contest this matter until the last court has ruled.” This systematic delay intentionally kept the well out of compliance and, thus, unnecessarily prolonged the exposure to potential pollution.

The seriousness of the violations should not be understated. By failing to perform its duties pursuant to Statewide Rule 14, Pilar allowed the subject well to remain unplugged. Production from the subject well ceased on or before October 31, 1998. At the time of Pilar’s P-4 signing, the wells had already had two W-1X extensions. A reasonably prudent operator would have realized that these wells were out of compliance for a substantial period of time and that the danger of pollution existed.

The actions, and inactions, of Pilar also constitute a hazard to the health or safety of the public. Unplugged wellbores may serve as a conduit for the passage of oil, gas, saltwater, or other hazardous materials from one formation to another or to the surface and may cause pollution of usable quality groundwater and surface water. By allowing the wells to remain unplugged for a period of time in excess of Commission guidelines, Pilar has created a situation that poses a hazard to the public health and safety.

Additionally, the respondent’s problems with financial assurance are outside the purview of this docket. This docket specifically charged a violation of Statewide Rule 14(b)(2) and the respondent has not presented anything to indicate that he is not responsible for the subject violation. Pilar stated that it was in the process of bringing the subject well into compliance, but the well has not had any

production activity in over three years. Over sixteen months have passed between the expiration of the respondent's last valid W-1X extension, but Pilar has failed to offer any evidence indicating that it has performed its duties with regard to Rule 14(b)(2). This failure to carry out its obligation has caused a potentially hazardous situation.

The respondent was requested to show that, given the long period of time in which the well did not produce, it had a continuing good faith claim to operate the subject well and that the respondent could, therefore, follow through on its promises. The respondent did not provide the examiner with evidence of a good faith claim. Additionally, while the subject well has technically been out of compliance for less than three years due to a W-1X extension, the examiner notes that the subject well ceased production more than three years ago and that the respondent has failed to maintain a current P-5 Organization Report. Therefore, the examiner recommends that respondent be ordered to plug the subject well without the opportunity to bring it into compliance by other means.

Finally, the Commission's penalty guidelines address cases such as this one where the violation is severe and the violation exists for an extended amount of time. The guidelines suggest an additional penalty based on time out of compliance of \$100 to \$2000 per month. It is my recommendation that the severity of the violation and lack of good faith merit an additional penalty of \$100 per month that the well was out of compliance. This penalty is in addition to the penalty of \$2,000.00 recommended by Enforcement and endorsed by the examiner.

Therefore, 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. Pilar Oil Corporation (665452), ("respondent" or "Pilar") and its president, John March, were given at least 10 days notice of this proceeding by certified, first-class mail, addressed to their most recent Form P-5 (Organization Report) addresses. Respondent participated in the hearing at the scheduled time and place via a telephonic appearance by John March.
2. Pilar designated itself to the Commission as operator of Well No. 1, RRC No. 097412, ("subject well"), through a Form P-4 with an approval date of August 29, 1995 and an effective date of August 24, 1995.
3. The respondent's Form P-5 Organization Report is currently delinquent. The respondent's P-5

has been delinquent since August 16, 2001.

4. The subject well has been inactive for a period in excess of one year. Well No. 1 on the Johnson Ranch Lease has not produced since on or before November 1, 1998.
5. The Commission's District Office notified the respondent of violations of Statewide Rules on the subject lease through correspondence dated June 13, 2001, August 10, 2001 and August 28, 2001.
6. The Commission has not granted an extension to Statewide Rule 14(b)(2) that is currently in effect for the subject well. The most recent extension granted for the subject well expired in December 2000.
7. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with, Statewide Rule 14.
8. The estimated cost to the State of plugging the subject well is \$10,100.00.
9. The record does not reflect any previous violations by Pilar of Commission rules.
10. Despite notices of violations from the District Office, the granting of a fifty day motion for continuance, and the record being kept open for an additional 30 days to submit evidence of compliance, the respondent has failed to bring the subject well into compliance with Commission rules and procedures in a timely manner.
11. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil or gas wastes from the subject wells. Unplugged well bores constitute a cognizable threat to the public health and safety because of the probability of pollution.

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. Pilar is the operator of the subject well, as defined by Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.14(b)(2)] and Section 89.002 of the Texas Natural Resources Code and

is a person as defined by Commission Statewide Rule 79 [Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.69] and Chapters 85 and 89 of the Texas Natural Resources Code.

4. As operator, Pilar has the primary responsibility for complying with Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14) and with Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject well.
5. The subject well is not properly plugged or otherwise in compliance with Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14), or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The subject well has been out of compliance since at least January 1, 2001.
6. The documented violation committed by Pilar constitutes an act deemed serious, hazardous to the public health and safety, and lacking in good faith, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531(c) (Vernon 2001).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring the operator, Pilar Oil Corporation, within 30 days from the day immediately following the date this order becomes final, to plug the subject well and to pay an administrative penalty in the amount of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00), consisting of \$2,000.00 for one continuing violation of Statewide Rule 14(b)(2) and \$1,600.00 in enhancements for the sixteen months the subject well was in violation of Commission rules.

Respectfully submitted,

Scott C. Petry
Hearings Examiner