

OIL & GAS DOCKET NO. 08-0222195

ENFORCEMENT ACTION AGAINST DEECYE CLAYTON BEDELL DBA D. B. OIL COMPANY (OPERATOR NO. 196118) FOR VIOLATIONS OF STATEWIDE RULES ON THE L. DAUGHERTY (05334) LEASE, WELL NOS. 3W, 5W, 7W, 66W, 71, 74, 76, 80, 82, 83, 86, 88, 93, AND 94, SCARBOROUGH FIELD, WINKLER COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German
Staff Attorney

MOVANT:

Legal Enforcement Section
of the Railroad Commission

FOR RESPONDENT:

D. C. Bedell

RESPONDENT:

Deecye Clayton Bedell dba
D. B. Oil Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:	September 17, 2001
DATE CASE HEARD:	January 17, 2002
HEARD BY:	James M. Doherty, Hearings Examiner
RECORD CLOSED:	February 8, 2002
PFD CIRCULATION DATE:	February 19, 2002
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

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

1. Whether the respondent, Deecye Clayton Bedell dba D. B. Oil Company (“Bedell”), should be required to plug or otherwise place in compliance with Statewide Rule 14 [16 TEX. ADMIN. CODE (“T.A.C.”) §3.14] the L. Daugherty (05334) Lease, Well Nos. 3W, 5W, 7W, 66W, 71, 74, 76, 80, 82, 83, 86, 88, 93, and 94, Scarborough Field, Winkler County, Texas;
2. Whether 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 plug or otherwise place the subject wells in compliance with Statewide Rule 14;
3. Whether respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such wells;
4. Whether any violations of Rule 14(b)(2) by 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).

Respondent Bedell appeared by telephone and presented testimony 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 record was held open until February 8, 2002, to permit Bedell the opportunity to submit a schedule for plugging the subject wells, but no schedule was submitted by the due date. On February 15, 2002, Bedell filed a letter with Enforcement’s Staff Attorney requesting that he be allowed until April 15, 2002, to start plugging operations, but this letter did not propose a schedule for completion of plugging operations. The staff recommends that a \$28,000.00 penalty be assessed against Bedell. The examiner agrees with the staff’s penalty recommendation and recommends that Bedell be ordered to plug the subject wells in compliance with Commission Statewide Rules.

BACKGROUND

The operator of a well must properly plug the well when required and in accordance with the Commission’s rules. *See* TEX. NAT. RES. CODE ANN. §89.011(a). The Commission’s Statewide Rule 14(b)(2) provides that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed.

Rule 14(c)(2) provides that as to any well for which the most recent Commission-approved operator designation form was filed prior to September 1, 1997, the entity designated as operator on that form is presumed to be the entity responsible for the physical operation and control of the well and to be the entity responsible for properly plugging the well. The presumption of responsibility may only be rebutted at a hearing called for the purpose of determining plugging

responsibility.

If a person violates provisions of Title 3 of the Texas Natural Resources Code or a Commission rule pertaining to safety or the prevention or control of pollution, the person may be assessed a civil penalty by the Commission not to exceed \$10,000.00 a day for each violation. In determining the amount of the penalty, the Commission must consider the respondent's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. *See* TEX. NAT. RES. CODE ANN. §81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement's Position and Evidence

Enforcement submitted evidence that respondent Bedell is a sole proprietorship. A form P-4 submitted by Enforcement shows that Bedell was designated operator of the L. Daugherty (05334) Lease ("subject lease"), Well Nos. 3W, 5W, 7W, 66W, 71, 74, 76, 80, 82, 83, 86, 88, 93, and 94 ("subject wells"), effective April 1, 1992 (approved May 6, 1992).

District Office inspection reports and correspondence submitted by Enforcement disclosed that Well Nos. 3W, 5W, 7W and 66W are injection wells and the remainder of the subject wells are oil wells. Through the certification of the Commission's Secretary, Enforcement proved that no injection activity has been reported on the subject lease since January 1997. Production records submitted by Enforcement showed no production for the subject oil wells since December 1996. Zero production was reported for the period January 1997, through March 1998, and no production reports were filed thereafter.

Enforcement also submitted District Office inspection reports for August 17, October 19, December 14 and December 15, 1998, March 2, May 7, May 27, July 15, July 27, September 8, September 29, December 8 and December 28, 1999, February 24, May 8, and July 25, 2000, and May 31, October 8 and November 14, 2001, showing that the subject wells were inactive, unequipped for production and abandoned. According to the inspection reports and District Office correspondence, Well Nos. 3W, 7W, 66W, 76, 80, 82, 86, 88, and 93 were found to be open to the atmosphere, and H-5 tests were delinquent on Well Nos. 3W, 5W, 7W and 66W. Lease severances were issued on February 6, 1998 (field rule violation), October 9, 1998 (delinquent H-5), March 19, 1999 (delinquent H-5) and January 13, 2000 (delinquent production report), and remain unresolved.

Through the certification of the Commission's Secretary, Enforcement showed that no Plugging Record (form W-3) or Cementing Affidavit (form W-15) has been filed or approved, and no Commission Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) is in effect, for any of the subject wells. Form W-1X records submitted by Enforcement showed that respondent's most recent form W-1X extensions for the subject wells

terminated on April 30, 1997, and June 30, 2000.

Enforcement submitted copies of District Office correspondence to Bedell pertaining to the alleged violations of Rule 14(b)(2) on the subject lease. Between September 15, 1998, and December 6, 2001, the District Office, on 16 separate occasions, corresponded directly with Bedell, or sent him copies of correspondence to the Commission's Assistant Director of Compliance, notifying Bedell of continuing Rule 14(b)(2) violations on the subject lease and/or requesting compliance with the Commission's Statewide Rules.

A District Office inspection report dated May 27, 1999, indicated that Bedell would commence plugging wells on the subject lease "in 2 weeks." Inspection reports for September 29, 1999, and February 24, 2000, indicated that four wells on the lease had been, or were being, plugged, but the subject wells remained abandoned and unplugged. A May 8, 2000, inspection report indicated that Bedell had ceased plugging activity on the lease. Additional inspection reports through November 14, 2001, indicated no further plugging activity on the lease. District Office correspondence dated February 2, 1999, indicated that Bedell had notified the District Office that the landowner had obtained a court order preventing him from going on the lease, but that the Winkler County Sheriff stated he was unaware of any such order. Further District Office correspondence dated April 16, 1999, indicated that Bedell had sent the District Office a copy of a letter from the landowner's attorney stating that Bedell no longer had a valid lease and that to gain access to the lease to plug wells, Bedell would be required to notify the landowner 30 days in advance and provide a copy of the relevant forms W-3A.

A Plug Hearing Data sheet furnished by the District Office to the Commission's Assistant Director of Compliance estimated that the cost to the State of plugging the subject wells would be \$9,000.00 per well.

Enforcement also submitted the affidavit of Paul Whitehead, Engineering Specialist, Field Operations to show that: any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface; holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface; and uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Enforcement took the position that it had proved that the subject wells are in violation of Statewide Rule 14(b)(2), and that Bedell, as the designated operator, is responsible for plugging the wells in compliance with the Commission's Statewide Rules. Enforcement requested that Bedell be ordered to place the wells in compliance and to pay an administrative penalty of \$28,000.00, calculated on the basis of 14 Rule 14(b)(2) violations at \$2,000.00 each.

Respondent's Position and Evidence

D. C. Bedell gave testimony for respondent. He testified that after the lease was purchased, Bedell attempted to produce the wells, but could not make any money. He stated that Bedell made a decision to plug the wells on the lease, and did plug several wells.

Mr. Bedell also testified that at some point, the Winkler County Sheriff told him to leave the lease as a result of a civil dispute with the landowner. However, Mr. Bedell acknowledged that he had a statutory right to enter upon the lease for the purpose of plugging the subject wells, and stated that the landowner would permit access to the lease for this purpose upon 30 days advance notice to the landowner.

Mr. Bedell further acknowledged that the subject wells needed to be plugged, and he stated a willingness to fulfill his plugging obligation "as he can afford to." According to Mr. Bedell, while H-5 tests on Well Nos. 3W, 5W, 7W and 66W have not been performed, H-15 tests showed that the fluid level in the wells is low and that the wells are not affecting fresh water zones.

EXAMINER'S OPINION

Bedell became the designated operator of the subject leases and wells as a result of the filing of a form P-4 effective April 1, 1992. Pursuant to Statewide Rule 14(c)(2), Bedell is presumed to be responsible for the physical operation and control of the subject wells and to be responsible for properly plugging them. This presumption of responsibility may be rebutted at a hearing called for the purpose of determining plugging responsibility, but in this case, responsibility for plugging the subject wells, or otherwise placing them in compliance with Commission rules, is not disputed by Bedell.

Neither does Bedell dispute Enforcement's allegation that the subject wells are in violation of Statewide Rule 14(b)(2). Enforcement proved that operations ceased on the subject oil wells on or before December 31, 1996, and that operations ceased on the subject injection wells on or before January 31, 1997. The wells remain unplugged, and there are no plugging extensions currently in effect.

Although Bedell's mineral lease may have terminated, and Bedell may have been requested to leave the lease by the landowner, these are not factors bearing on the issue of whether Bedell violated Statewide Rule 14(b)(2). The evidence shows that the landowner is willing to permit Bedell access to the lease for the purpose of plugging the subject wells, and, regardless of any lease termination, an operator or nonoperator, on proper identification, may enter the land of another for the purpose of plugging a well that has not been plugged properly. *See* TEX. NAT. RES. CODE ANN. §89.044. Bedell's professed willingness to plug the subject wells "as he can afford to" is not a defense to the alleged Rule 14(b)(2) violations, nor any reason for forbearance from the issuance of an order requiring that the wells be plugged, particularly in view of more than 3 years of

unsuccessful effort by the District Office to obtain Bedell's compliance.

On the basis of the factors which the Commission must consider pursuant to TEX. NAT. RES. CODE ANN. §81.0531, a penalty of \$28,000.00, consisting of \$2,000.00 per violation, is appropriate. There is no evidence that Bedell has a history of previous violations. However, Bedell cannot be said to have demonstrated good faith in view of his failure to plug the subject wells, or otherwise to bring the lease into compliance, in response to multiple requests and warnings from the District Office prior to initiation of this enforcement action. Inactive wells that are unplugged are potential conduits for flow from oil or saltwater zones to zones of usable quality water or to the surface. Bedell's violations of Statewide Rule 14(b)(2) are, therefore, serious and create hazards for the health and safety of the public.

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. Deecye Clayton Bedell dba D. B. Oil Company ("Bedell") was given at least 10 days notice of this proceeding by certified mail, addressed to his most recent form P-5 (Organization Report) address, the return receipt for which was signed and returned to the Commission.
2. Bedell designated himself to the Commission as the operator of the L. Daugherty (05334) Lease ("subject lease"), Well Nos. 3W, 5W, 7W, 66W, 71, 74, 76, 80, 82, 83, 86, 88, 93, and 94, Scarborough Field, Winkler County, Texas, by filing a form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective April 1, 1992.
3. Bedell produced the subject oil wells and injected fluid into the subject injection wells for a period of time after being designated operator.
4. Bedell has not conducted any operations on the L. Daugherty (05334) Lease, Well Nos. 3W, 5W, 7W and 66W since January 31, 1997, or on Well Nos. 71, 74, 76, 80, 82, 83, 86, 88, 93, and 94 since December 31, 1996.
5. The subject wells have been inactive for more than one year.
6. The subject wells have not been properly plugged.
7. No Statewide Rule 14(b)(2) extensions are in effect for the subject wells.
8. The estimated cost to the State of plugging the subject wells is \$9,000.00 each, for a total estimated cost of \$126,000.00.

-
9. Usable quality groundwater in the area is likely to be contaminated by migrations or discharge 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.
 10. Bedell has no history of previous violations.
 11. Bedell has not demonstrated good faith since he failed to plug the subject wells, or otherwise place the wells in compliance, after being notified of the Statewide Rule 14(b)(2) violations.

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. Deecye Clayton Bedell dba D. B. Oil Company is the operator of the L. Daugherty (05334) Lease, Well Nos. 3W, 5W, 7W, 66W, 71, 74, 76, 80, 82, 83, 86, 88, 93, and 94, Scarborough Field, Winkler County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.69) and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Deecye Clayton Bedell dba D. B. Oil Company has the primary responsibility for complying with Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14), Chapter 89 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject wells.
5. The subject wells are 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 wells have been out of compliance since at least June 30, 2000, when the last plugging extension terminated.
6. The documented violations committed by Deecye Clayton Bedell dba D. B. Oil Company constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith as provided by 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 Deecye Clayton Bedell dba D. B. Oil Company to:

1. Plug the L. Daugherty (05334) Lease, Well Nos. 3W, 5W, 7W, 66W, 71, 74, 76, 80, 82, 83, 86, 88, 93, and 94, Scarborough Field, Winkler County, Texas; and
2. Pay an administrative penalty in the amount of TWENTY-EIGHT THOUSAND DOLLARS (\$28,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner