

ENFORCEMENT ACTION AGAINST JOHN CRAVEY D/B/A JRC PETROLEUM (OPERATOR NO. 447978) FOR VIOLATIONS OF STATEWIDE RULES ON THE REEVES -43- (25973) LEASE, WELL NO. 1, REEVES-BLOCK 4 (DELAWARE 4430) FIELD, REEVES COUNTY, TEXAS; AND AGNES (28264) LEASE, WELL NOS. 1, 2 AND 3, JESS BURNER (DELAWARE 3800) FIELD, REEVES COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Barbara Epstein
Senior Staff Attorney

MOVANT:

Enforcement Section
of the Railroad Commission

FOR RESPONDENT:

Rex H. White, Jr., Attorney
John Cravey, Owner
Kathy Cravey, Owner

RESPONDENT:

JRC Petroleum

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION:

May 29, 2002

DATE CASE HEARD:

August 26, 2002

HEARD BY:

James M. Doherty, Hearings
Examiner

RECORD CLOSED:

September 25, 2002

PFD CIRCULATION DATE:

October 22, 2002

CURRENT STATUS:

Protested

STATEMENT OF THE CASE

1. Whether the respondent John Cravey d/b/a JRC Petroleum (“JRC”) 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 (“T.A.C.”) §3.14] the Reeves -43- (25973) Lease, Well No. 1, Reeves-Block 4 (Delaware 4430) Field, Reeves County, Texas (“Reeves Lease”); and the Agnes (28264) Lease, Well Nos. 1, 2 and 3, Jess Burner (Delaware 3800) Field, Reeves County, Texas (“Agnes Lease”);
2. Whether the respondent has violated provisions of Statewide Rule 8(d)(1) [Tex. R. R. Comm’n, 16 T.A.C. §3.8(d)(1)] on the Reeves -43- (25973) Lease, Reeves-Block 4 (Delaware 4430) Field, Reeves County, Texas;
3. 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 plug or otherwise place the subject wells in compliance with Statewide Rule 14 and by failing to maintain the Reeves -43- (25973) Lease in compliance with Statewide Rule 8;
4. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding the subject wells and leases; and
5. Whether any violations of Statewide Rules 8 and 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).

At the hearing on August 26, 2002, JRC appeared through its attorney, Rex H. White, Jr., and its owners, John and Kathy Cravey. John Cravey presented testimony. Barbara Epstein, Senior Staff Attorney, appeared representing the Enforcement Section of the Railroad Commission of Texas. The Enforcement Section’s hearing file was admitted into evidence. During the hearing, the parties agreed on the filing of certain late-filed exhibits. Within the time allowed, JRC filed copies of four work tickets pertaining to work performed on the Agnes (28364) Lease. Enforcement filed a District Office inspection report for the Agnes Lease dated August 27, 2002, and Forms P-1 (Producer’s Monthly Report of Oil Wells) filed with the Commission by JRC for the period January-December, 1998. These late-filed exhibits were admitted into evidence by the examiner’s letter dated September 25, 2002. The parties also filed written closing argument.

Enforcement staff recommends that a \$9,000.00 penalty be assessed against JRC, and that JRC be required to place the Agnes Lease, Wells 1, 2 and 3 into compliance with Commission rules. The recommended penalty is comprised of \$2,000.00 for each of four violations of Statewide Rule 14(b)(2) and one violation of Statewide Rule 8(d)(1). The examiner agrees with Enforcement staff’s recommendation.

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(a)(1) provides that in the case of a well that has been inactive for 12 consecutive months or longer, the well remains inactive for the purposes of Rule 14, regardless of any minimal activity, until the well has reported production of at least 10 barrels of oil for oil wells or 100 mcf of gas for gas wells each month for at least three consecutive months.

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.

With certain exceptions not relevant here, Rule 8(d)(1) prohibits any person from disposing of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes. Rule 91(c) and (d) require cleanup of soil contaminated by a crude oil spill.

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 Evidence and Position

P-5 (Organization Report) records presented by Enforcement show that JRC is a sole proprietorship and that John Cravey is owner. Although JRC's P-5 Organization Report was active at the time of the hearing, the examiner has officially noticed from Commission P-5 records that this Organization Report became delinquent as of September 1, 2002, and that on July 17, 2002, JRC filed financial assurance in the form of an annual fee in the amount of \$6,250.00.

Form P-4 (Producer's Transportation Authority and Certificate of Compliance) records presented by Enforcement showed that JRC was designated operator of the Reeves and Agnes Leases effective March 1, 1996. Effective July 15, 2002, the Commission approved a Form P-4 changing the operator of the Reeves Lease from JRC to Twin Oaks Operating Co., L.L.C.

Rule 14(b)(2)

Enforcement presented Commission production records showing that for the Reeves Lease, Well No. 1, production was last reported to the Commission in August 1995. Zero production was reported for the period from September 1995, to March 1998, and no production reports were filed thereafter. Enforcement proved that the last plugging extension obtained for the Reeves Lease, Well No. 1, expired on September 27, 2001.

For the Agnes Lease, Well Nos. 1, 2 and 3, production was last reported to the Commission in February 1998. Zero production was reported for the period from March 1998, to March 2002, and as of the date of the hearing, no production reports had been filed for April-May, 2002.

Forms P-1 (Producer's Monthly Report of Oil Wells) presented by Enforcement showed that for the periods March-December 1998, and January 2000, through March 2002, JRC reported zero production for the Agnes Lease, with the notation "recovering oil". The monthly Forms P-1 for this entire period reported 511 barrels of oil on hand at the beginning of the month, 511 barrels of oil on hand at the end of the month, and zero disposition volume. Enforcement showed that the Commission has no record of any plugging extensions having been obtained for the Agnes Lease wells.

Enforcement presented District Office inspection reports dated October 24 and November 26, 2001, and January 7, March 5, March 25, April 22, June 4, and July 22, 2002, for the Reeves Lease, stating that Well No. 1 was abandoned and inactive. Well No. 1 was reported not to have a pumping unit, flowline or rods in the well, and power was reported to be off at the pole.

Enforcement also presented District Office inspection reports dated October 10 and November 19, 2001, and January 3, March 5, March 26, April 22, June 4, July 22, August 21, and August 27, 2002, for the Agnes Lease. As of the inspection on October 10, 2001, Well Nos. 1, 2 and 3 were reported to be abandoned and inactive. Well No. 1 had no pumping unit, rods were hanging on the pumping tee, the power and switch box were removed, and a 2 inch valve on the casing was closed. Well No. 2 was equipped to pump, but power was off at the switch box. Well No. 3 was equipped to pump, but power was off at the switch box and the polish rod was glazed over.

Subsequent inspection reports for the Agnes Lease, dated November 19, 2001, and January 3 and March 5, 2002, reported essentially the same conditions for Well Nos. 1, 2 and 3. The March 5, 2002, inspection report stated that tubing and casing valves were closed on Well Nos. 2 and 3. As of the March 26, 2002, inspection report, the condition of Well Nos. 1 and 2 remained the same, but Well No. 3 was reported to be pumping. As of the inspection reports dated April 22, June 4, and July 22, Well No. 1 remained inactive, but Well Nos. 2 and 3 were reported to be active. These inspection reports stated that a pumping unit had been moved in for Well No. 1, but was not hooked up to run. As of the inspection report dated August 21, 2002, it was reported that all three wells were pumping, and two tanks on the Agnes Lease were overflowing oil and produced water, affecting an area 60' x 30' x 4'.

A District Office inspection report dated August 27, 2002, the day after the hearing, filed by Enforcement as a late-filed exhibit, stated that the two tanks on the Agnes Lease had been gauged and found to contain a total of 20.66 barrels of oil.

Rule 8(d)(1)

Enforcement presented a District Office inspection report dated January 7, 2002, for the Reeves Lease which stated that a 2 inch valve on the casing of Well No. 1 had an active oil leak. An area 8' x 5' x 1' was reported to be very saturated with oil. An inspection report dated March 5, 2002, reported that the operator had closed the 2 inch valve on the wellhead, but threads on the wellhead were continuing to leak oil. These same conditions were reported in subsequent inspection reports dated March 25 and April 22, 2002. As of an inspection report dated June 4, 2002, it was reported that the 8' x 5' x 1' oil saturated area affected by the leak had been remediated with fresh dirt, and the conditions were reported as "O.K."

Notice of Violations

Enforcement presented copies of District Office correspondence sent to JRC regarding the alleged violations of Rules 14(b)(2) and 8(d)(1). On November 5, 2001, the District Office corresponded with JRC advising of the alleged Rule 14(b)(2) violation on the Reeves Lease, Well No. 1 and requesting that JRC inform the District Office within 15 days of JRC's plan to bring the well into compliance. On December 11, 2002, the District Office again corresponded directly with JRC, noting that JRC had not responded to the 15-day letter of November 5, 2002, and that the alleged violation was continuing. Between January 28, 2002, and June 14, 2002, on six separate occasions, the District Office sent JRC copies of memoranda directed to the Deputy Director of Field Operations or the Enforcement Section reporting on the status of the alleged violations of Rule 14(b)(2) and/or Rule 8(d)(1) on the Reeves Lease. The enforcement case file contains no response by JRC to any of the District Office correspondence or memoranda respecting the Reeves Lease.

On October 24, 2001, the District Office corresponded with JRC advising of the alleged Rule 14(b)(2) violations on the Agnes Lease, Well Nos. 1, 2 and 3 and requesting that JRC inform the District Office within 15 days of JRC's plan to bring the wells into compliance. On December 10, 2001, the District Office sent to JRC a copy of a memorandum directed to the Deputy Director of Field Operations which noted that the alleged violations were continuing and that JRC had not responded to the District Office's 15-day letter dated October 24, 2001. Between March 20, 2002, and August 7, 2002, on five separate occasions, the District Office sent JRC copies of memoranda directed to the Enforcement Section reporting on the status of the alleged violations on the Agnes Lease. A Plug Hearing Data sheet prepared by the District Office estimated that the plugging cost for the three Agnes Lease wells would be \$6,300.00 each, or a total of \$18,900.00. The enforcement case file contains no response by JRC to any of the District Office correspondence or memoranda respecting the Agnes Lease.

Affidavits

Enforcement presented the affidavit of Paul Whitehead, Engineering Specialist, Field Operations, showing that: (a) 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; (b) holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality zones or to flow to the surface; (c) uncased wells allow direct communication between zones and provide unimpeded access to the surface; and (d) any unauthorized discharge or disposal of oil, saltwater, basic sediment or other oil and gas waste is a potential source of pollution to surface and subsurface waters if not remediated to prevent seepage and run-off.

Enforcement also submitted the affidavit of the Commission's Secretary, Kim Williamson, showing that: (a) no permit was issued to respondent to discharge oil or gas wastes from or onto the Reeves Lease; (b) no plugging record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for the subject wells; (c) no plugging extensions currently are in effect for the subject wells; (d) respondent failed to file production reports, or reported zero production, for the Reeves Lease since September 1, 1995; and (e) respondent failed to file production reports, or reported zero production, for the Agnes Lease since March 1, 1998.

Enforcement's Position

Enforcement contends that the evidence proves one violation of Rule 14(b)(2) and one violation of Rule 8(d)(1) on the Reeves Lease and three violations of Rule 14(b)(2) on the Agnes Lease. Enforcement contends further that the Commission should assess a penalty of \$9,000.00, consisting of \$2,000.00 each for four violations of Rule 14(b)(2) and \$1,000.00 for one violation of Rule 8(d)(1).

Respondent's Evidence and Position

John Cravey, JRC's owner, testified that JRC had filed bankruptcy in Midland on February 15, 2002. JRC's counsel stated that this is a Chapter 13 bankruptcy. JRC is now under order of the bankruptcy court to make monthly payments, presumably for the benefit of creditors. Mr. Cravey testified that the bankruptcy plan will not support more payments.

Mr. Cravey testified that JRC remediated the pollution around the Reeves Lease, Well No. 1, and transferred the well to Twin Oaks. He stated that the Agnes Lease wells are now producing. According to Mr. Cravey, the Agnes Lease, Well No. 1 is now pumping water with a trace of oil and making about 5 mcf of gas per day. Well No. 2 is pumping "nearly all water," and is making "a small amount of gas". Well No. 3 is making "about 1 % oil". Together, the three Agnes Lease wells are making about 46 barrels of "total fluid" per day.

Mr. Cravey stated that he bought the Agnes Lease in 1996, and produced Well No. 3 for "a couple of years" without getting much out of it. He asserted that in 1998, he attempted to stimulate Well Nos. 2 and 3 by pumping 511 barrels of oil on hand, mixed with chemicals, down the wells,

but this “didn’t help at all”. Mr. Cravey testified that he inquired of Commission staff how to report production from the Agnes Lease wells on Form P-1 during the period when oil pumped down the wells was being recovered. According to Mr. Cravey, he was told to report zero production until all the oil pumped down the wells had been recovered, and to indicate on Form P-1 that JRC was recovering oil. He stated that this is what JRC did. He stated further that “this summer,” JRC moved in a pumping unit for the Agnes Lease, Well No. 1 and started producing the well at that time.

Mr. Cravey testified the JRC recovered about 206 barrels of oil from the Agnes Lease, Well Nos. 2 and 3, during a 6-8 month period in 1998-1999, and thereafter pumped the wells “on and off,” about one week per month. Mr. Cravey said that the 206 barrels of recovered oil were in tanks on the Agnes Lease. He stated further that until it started pumping recently, Well No. 1 had been idle since July 2001.

Mr. Cravey stated that he does not believe that the Agnes Lease, Well Nos. 2 and 3, will ever recover all of the 511 barrels of oil that JRC pumped down the wells in 1998. He regards the Agnes Lease wells as “good wells” because he believes the wells have good up hole potential.

During the hearing, Enforcement requested JRC to late-file JRC records evidencing the 1998 attempt to stimulate Agnes Lease, Well Nos. 2 and 3, records of the volume of oil pumped into the wells, records of recovered oil produced since the 1998 stimulation job, and records of water production by the Agnes Lease wells. JRC agreed to late-file any of these records it could find. The records which JRC late-filed consist of four “C.B.I.” work tickets referencing the Agnes Lease, Well Nos. 2 and 3. These four work tickets are dated October 15, 16, 20 and 21, 1998. The work tickets are not entirely legible, but two of them are subject to the interpretation that pulling of rods and tubing and squeezing of chemicals were performed. To the extent that they are legible, these documents do not evidence the pumping of oil down Well Nos. 2 and 3.

JRC contends that the alleged Rule 8(d)(1) violation on the Reeves Lease was remediated and because the lease has been transferred to a bonded operator, the alleged violations on this lease are not “vital”. JRC contends further that the Agnes Lease wells are now active. JRC says that there is no good cause to assess a penalty against JRC. It asserts that any such penalty likely will cause JRC to cease operations and lose its leases, and will leave the Commission with “over 20 wells to plug”.

EXAMINER’S OPINION

Rule 14(b)(2) Violations

JRC became the designated operator of the subject leases and wells by the filing of Forms P-4, effective March 1, 1996. Pursuant to Statewide Rule 14(c)(2), JRC 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 Agnes Lease wells, or placing them in compliance with Commission rules, is not disputed by JRC. Neither does JRC dispute that it had the responsibility for regulatory compliance of the Reeves Lease, Well No. 1 from March 1, 1996, until the lease was transferred to another operator effective July 15, 2002.

The evidence shows that the Reeves Lease, Well No. 1, ceased operation on or before August 31, 1995. Apparently, the well was not produced at any time after it was transferred to JRC in March 1996. The evidence shows that the last Rule 14(b)(2) plugging extension obtained for this well expired on September 27, 2001. The well was out of compliance with Rule 14(b)(2) after that date, until the well was transferred, with Commission approval, to Twin Oaks effective July 15, 2002. The transfer of the well to Twin Oaks obviates the need to order that the well be plugged or otherwise placed into compliance, but it does not change the fact the well was noncompliant with Rule 14(b)(2) while JRC was still operator.

The evidence also proves that JRC committed the violations of Rule 14(b)(2) alleged by Enforcement with respect to the Agnes Lease, Well Nos. 1, 2 and 3. JRC became the operator of these wells effective in March 1996. No production has been reported to the Commission for these wells since February 1998. JRC contends that what appears from production reports to be a period of inactivity for these wells, is, in fact, a period during which JRC was recovering oil, following the attempted stimulation of the wells in 1998. This theory does not logically apply to Agnes Lease, Well No. 1, since it does not appear from the evidence that it was one of the wells stimulation-treated, and the evidence as a whole does not support the theory even with respect to Well Nos. 2 and 3.

There is no credible showing that Agnes Lease, Well No. 1, was other than inactive between at least February 1998, when the last production for the lease was reported, and some date between July 22, 2002, the date of a District Office inspection report which reported the well was still inactive, and August 21, 2002, the date of a District Office inspection report which reported that the well was pumping. Eight District Office inspection reports with dates between October 10, 2001, and July 22, 2002, proved that Agnes Lease, Well No. 1, was not even equipped to produce during this period. The evidence also shows that no plugging extensions were ever obtained for Well No. 1.

Mr. Cravey testified that during a 6-8 month period in 1998-1999, following the stimulation treatment, Agnes Lease, Well Nos. 2 and 3, produced 206 barrels of recovered oil. He said that these 206 barrels were still in the tanks on the Agnes Lease. However, when the tanks were gauged by the District Office on August 27, 2002, only 20.66 barrels of oil were measured. Forms P-1 filed with the Commission by JRC show the same 511 barrels of oil on hand for the Agnes Lease for the

period from March 1998, through the date of the latest available P-1 in March 2002, and show no dispositions of oil off the Agnes Lease. Apparently, nothing other than recovered oil, and very little of that, was produced by Agnes Lease, Well Nos. 2 and 3, following the attempted stimulation of the wells in 1998.

The fact that only 20.66 barrels of oil were measured in the Agnes Lease tanks as of August 27, 2002, makes it unlikely that Well Nos. 2 and 3 were produced even intermittently during the period after 1999, particularly when it is considered that District Office inspection reports for dates between October 10, 2001, and March 5, 2002, show that Well Nos. 2 and 3 were abandoned and inactive during this period. The earliest District Office inspection report of resumed pumping of Well No. 3 is dated March 26, 2002. This was 13 days after the date of a letter to JRC from the Enforcement Section of the Office of General Counsel advising JRC of the referral of the Agnes Lease wells to the Enforcement Section for action as an administrative penalty case. The earliest report of resumed pumping of Well No. 2 is dated April 22, 2002. There is no evidence that anything other than recovered oil has been produced since these dates, and since resumption of pumping Well Nos. 2 and 3 clearly have not produced at least 10 barrels of oil per month for three consecutive months, as required by Rule 14(a)(1) in order to restore the wells to active status.

JRC's "recovering oil" theory for Agnes Lease, Well Nos. 2 and 3, is made even more curious by the late-filed exhibits which JRC filed. One class of records which JRC was requested by Enforcement to late-file consisted of records pertaining to the attempted stimulation of Well Nos. 2 and 3 in 1998. The four work tickets late-filed by JRC are dated in October 1998. Yet the Forms P-1 late-filed by Enforcement show that for the Agnes Lease, JRC has been reporting zero production and that it was "recovering oil" since *March 1998*. Apparently, JRC commenced the practice of claiming on production reports that it was recovering oil on the Agnes Lease even prior to the stimulation treatment of Well Nos. 2 and 3 in late 1998.

Enforcement proved that: (1) there has been no reported production for the Agnes Lease wells since February 1998; (2) District Office inspectors observed that the wells were inactive and abandoned from at least October 10, 2001, through at least March 5, 2002 (in the case of Well No. 1 through at least July 22, 2002); (3) no plugging extensions were ever obtained for the wells; and (4) the wells have not been restored to active status by the production of at least 10 barrels of oil per month for three consecutive months. This proved, *prima facie*, that each of the three wells are noncompliant with Rule 14(b)(2). JRC did not rebut this *prima facie* showing by Enforcement. A showing of limited production by JRC of recovered oil in an ill-defined period of time after February 1998, does not serve to rebut Enforcement's showing. Whatever oil may have been pumped down Agnes Lease, Well Nos. 2 and 3 in 1998, Mr. Cravey expressed the opinion that it will never be completely recovered. An operator may not grant himself a plugging extension in perpetuity for a noncompliant well, simply by pumping oil down the well and intermittently pumping the well to "recover" the same oil over an infinite period of time.

On the basis of the showing made here, the examiner concludes that Agnes Lease, Well Nos. 1, 2 and 3 have been noncompliant with Rule 14(b)(2) since at least February 1999.

Rule 8(d)(1) Violation

Statewide Rule 8(d)(1), with exceptions not relevant here, prohibits disposal of oil and gas wastes by any method without obtaining a permit from the Commission to dispose of such wastes. Disposal is defined in Rule 8(a) to include the engaging in any act of disposal subject to regulation by the Commission including, but not limited to, conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such act of disposal.

There is no dispute about the fact that on or before January 7, 2002, while JRC was the responsible operator, oil was discharged on the Reeves Lease, as a result of an active oil leak at a 2 inch valve on the casing of Well No. 1. The evidence shows that JRC had no permit for this discharge. The leak was first reported in a District Office inspection report dated January 7, 2002, and the resulting pollution was not remediated by JRC until some date between April 22, 2002, and June 4, 2002. JRC violated Statewide Rule 8(d)(1) as alleged by Enforcement.

Recommendation

The evidence shows that JRC is in Chapter 13 bankruptcy. The automatic stay provisions of 11 U.S.C. §362 do not apply to the commencement or continuation of a proceeding by a governmental unit to enforce such governmental unit's police and regulatory power. However, enforcement of judgments under the regulatory power exception is limited to non-money judgments. *See* 11 U.S.C. §362(b)(4) and (b)(5).

A regulatory agency may generally order compliance with its regulations relating to safety and environmental protection, but may not order payment of damages or a monetary penalty. *See In re Commonwealth Oil Ref. Co.*, 805 F.2d 1175 (5th Cir. 1986), *cert. denied* 483 U.S. 1005 (1987); *Penn Terra, Ltd. v. Department of Env'tl. Resources*, 733 F.2d 267 (3rd Cir. 1984). Although the stay precludes ordering payment of a penalty or collection activities, it does not preclude proceedings to set the amount of monetary liability for past violations of a governmental unit's regulations. Thus, where, as here, the respondent has filed a bankruptcy petition, the Commission may order compliance with its rules concerning environmental protection and public safety and may *assess*, but not order payment of, an administrative penalty for past violations.

On the basis of the factors which the Commission must consider pursuant to TEX. NAT. RES. CODE ANN. §81.0531, the Commission should assess a penalty of \$9,000.00, consisting of \$2,000.00 each for four violations of Statewide Rule 14(b)(2) and \$1,000.00 for one violation of Statewide Rule 8(d)(1). There is no evidence that respondent has a history of previous orders issued against it for violations of Commission rules. However, respondent cannot be said to have demonstrated good faith in view of its failure to plug the subject wells, or otherwise place them in compliance, or effectively to resolve the Rule 8(d)(1) violation, in response to multiple requests and warnings from

the District Office prior to initiation of this enforcement action. The evidence shows that the Rule 14(b)(2) and Rule 8(d)(1) violations committed by respondent posed a threat to the public health and safety.

The examiner concludes that JRC should be ordered to plug the Agnes Lease, Well Nos. 1, 2 and 3. These wells are shown to have been inactive within the definition provided by Statewide Rule 14(b)(2) since February 1998. Although JRC recently resumed pumping the wells, it appears that this was more of an attempt to avoid the consequences of this enforcement docket than a legitimate effort to restore the wells to active status. Attempted stimulation of the wells in 1998 was not successful. Since resumption of pumping, the wells have been producing a considerable amount of water and virtually no oil. Mr. Cravey testified that Well Nos. 1 and 2 are producing almost all water, and Well No. 3 is producing 99% water and 1% oil. Although Mr. Cravey testified that the wells have good up hole potential, this is not corroborated by any other evidence and is placed in considerable doubt by the fact that JRC has had about six years since it became operator to recomplete the wells to a shallower zone without having done so. Mr. Cravey testified that JRC does not have the financial resources to recomplete the wells, and the fact that JRC is in bankruptcy is further reason for doubt that recompletion of the wells by JRC is likely.

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. John Cravey d/b/a JRC Petroleum ("JRC") 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. JRC appeared and participated at the hearing through its attorney, Rex H. White, Jr., and its owners, John and Kathy Cravey.
2. JRC is designated on its most recently approved Form P-5 as a sole proprietorship, and John Cravey is designated as owner.
3. JRC's P-5 Organization Report has been delinquent since September 1, 2002. JRC last filed a Form P-5 on July 17, 2002, at which time it filed financial assurance in the amount of \$6,250.00. JRC filed Chapter 13 bankruptcy on February 15, 2002.
4. JRC designated itself to the Commission as the operator of the Reeves -43- (25973) Lease, Well No. 1, Reeves-Block 4 (Delaware 4430) Field, Reeves County, Texas ("Reeves Lease") and the Agnes (28264) Lease, Well Nos. 1, 2 and 3, Jess Burner (Delaware 3800) Field, Reeves County, Texas ("Agnes Lease"), by filing Forms P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission, effective March 1, 1996.
5. Effective July 15, 2002, the Commission approved a Form P-4 changing the operator of the Reeves Lease from JRC to Twin Oaks Operating Co., L.L.C.

6. JRC last reported production to the Commission on the Reeves Lease, Well No. 1, in August 1995. Zero production was reported for the period from September 1995, to March 1998, and no production reports were filed thereafter.
7. JRC last reported production to the Commission on the Agnes Lease, Well Nos. 1, 2 and 3, in February 1998. Zero production was reported for the period from March 1998, to March 2002, and as of the date of the hearing, no production reports had been filed for April-May, 2002.
8. On Forms P-1 (Producer's Monthly Report of Oil Wells) filed with the Commission for the periods March-December 1998, and January 2000 through March 2002, with respect to the Agnes Lease, Well Nos. 1, 2 and 3, JRC entered the notation "recovering oil". The monthly Forms P-1 for these periods reported for each month zero production, 511 barrels of oil on hand at the beginning of the month, 511 barrels of oil on hand at the end of the month, and zero disposition volume.
9. On the occasion of a District Office inspection on August 27, 2002, the two tanks on the Agnes Lease contained a total of 20.66 barrels of oil.
10. On the occasions of District Office inspections on October 10 and November 19, 2001, and January 3, March 5, March 26, April 22, June 4, and July 22, 2002, the Reeves Lease, Well No. 1, was found by the inspector to be abandoned and inactive. Well No. 1 had no pumping unit, flowline or rods in the well, and power was off at the pole.
11. On the occasion of a District Office inspection on October 10, 2001, the Agnes Lease, Well No. 1 was found by the inspector to be abandoned and inactive. Well No. 1 had no pumping unit, rods were hanging on the pumping tee, the power and switch box were removed, and a 2 inch valve on the casing was closed. On the occasion of subsequent inspections on November 19, 2001, and January 3, March 5, March 26, April 22, June 4, and July 22, 2002, the condition of Well No. 1 was unchanged, except that by April 22, 2002, a pumping unit had been moved in, but was not hooked-up to run. As of an inspection on August 21, 2002, Well No. 1 was found by the inspector to be pumping.
12. On the occasion of a District Office inspection on October 10, 2001, the Agnes Lease, Well No. 2 was found by the inspector to be abandoned and inactive. Well No. 2 was equipped to pump, but power was off at the switch box. On the occasion of subsequent inspections on November 19, 2001, January 3, March 5, and March 26, 2002, the condition of Well No. 2 was unchanged. On March 5 and March 26, 2002, tubing and casing valves were closed on Well No. 2. As of inspections on April 22, June 4, July 22, and August 21, 2002, Well No. 2 was found by the inspector to be pumping.
13. On the occasion of a District Office inspection on October 10, 2001, the Agnes Lease, Well

- No. 3 was found by the inspector to be abandoned and inactive. Well No. 3 was equipped to pump, but power was off at the switch box and the polish rod was glazed over. On the occasion of subsequent inspections on November 19, 2001, and January 3 and March 5, 2002, the condition of Well No. 3 was unchanged. As of March 5, 2002, tubing and casing valves at Well No. 3 were closed. As of inspections on March 26, April 22, June 4, July 22, and August 21, 2002, Well No. 3 was found by the inspector to be pumping.
14. Prior to resumption of pumping of Agnes Lease, Well Nos. 1, 2 and 3, the wells had been inactive for more than one year. Since resumption of pumping of these wells, none of the wells has produced 10 barrels of oil or more per month for three consecutive months.
 15. Prior to the change of operator for the Reeves Lease, Well No. 1, from JRC to Twin Oaks Operating Co., L.L.C., effective July 15, 2002, the well had been inactive for more than one year.
 16. The last Rule 14(b)(2) plugging extension for the Reeves Lease, Well No. 1, expired on September 27, 2001. No such plugging extensions were obtained by JRC for the Agnes Lease, Well Nos. 1, 2 and 3.
 17. On or before January 7, 2002, JRC caused or allowed the discharge of oil from an oil leak in a 2 inch valve on the casing of Reeves Lease, Well No. 1. This discharge affected an area 8' x 5' x 1', and caused this area to become saturated with oil. JRC did not have a permit from the Commission for this discharge. JRC had failed to remediate this discharge on the occasion of subsequent District Office inspections on March 5, March 25, and April 22, 2002. As of a further inspection on June 4, 2002, the discharge had been remediated.
 18. The Agnes Lease, Well Nos. 1, 2 and 3 have not been properly plugged, and no Statewide Rule 14(b)(2) plugging extensions are in effect for such wells.
 19. The estimated cost to the State for plugging the Agnes Lease, Well Nos. 1, 2 and 3, is \$6,300.00 each, or a total of \$18,900.00.
 20. 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 possibility of pollution.
 21. Any unauthorized discharge or disposal of oil, saltwater, basic sediment or other oil and gas wastes is a potential source of pollution to surface and subsurface waters is not remediated to prevent seepage and run-off.
 22. JRC has no history of previous Commission orders issued against it for violations of

Commission rules.

23. JRC has not demonstrated good faith since it failed to plug or otherwise place the subject wells and leases in compliance after being notified repeatedly by Commission staff of the Rule 14(b)(2) and Rule 8(d)(1) 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 occurred.
3. John Cravey d/b/a JRC Petroleum ("JRC") was the operator of the Reeves -43- (25973) Lease, Well No. 1, Reeves-Block 4 (Delaware 4430) Field, Reeves County, Texas ("Reeves Lease"), from March 1, 1996, through July 16, 2002, and is the operator of the Agnes (28264) Lease, Well Nos. 1, 2 and 3, Jess Burner (Delaware 3800) Field, Reeves County, Texas ("Agnes Lease"), 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, John Cravey d/b/a JRC Petroleum has the primary responsibility for complying with Statewide Rules 8 and 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.8 and 3.14], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules, respecting the subject leases and wells.
5. Prior to a change of operator effective July 15, 2002, the Reeves Lease, Well No. 1, was 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 Reeves Lease, Well No. 1, was out of compliance from September 27, 2001, through July 16, 2002.
6. The Agnes Lease, Well Nos. 1, 2 and 3, 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 Agnes Lease, Well Nos. 1, 2 and 3, have been out of compliance since February 1999.
7. By causing or allowing the unpermitted discharge or disposal of oil and/or gas wastes on the Reeves Lease, John Cravey d/b/a JRC Petroleum violated Statewide Rule 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.8(d)(1)] and Chapter 91 of the Texas Natural Resources Code. John Cravey d/b/a JRC Petroleum was out of compliance with Statewide Rule 8(d)(1) from at least January 7, 2002, through at least April 22, 2002.

8. The documented violations committed by John Cravey d/b/a JRC Petroleum 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 Commission approve the attached order:

1. Requiring the operator, John Cravey d/b/a JRC Petroleum to plug the Agnes (28264) Lease, Well Nos. 1, 2 and 3, Jess Burner (Delaware 3800) Field, Reeves County, Texas; and
2. Assessing an administrative penalty in the amount of NINE THOUSAND DOLLARS (\$9,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner