

**ENFORCEMENT ACTION AGAINST THE NEWTON CORP. (OPERATOR NO. 608609)
FOR VIOLATIONS OF STATEWIDE RULES ON THE UNIVERSITY -V- (16836) LEASE,
WELL NO. 3, THE UNIVERSITY -W- (16837) LEASE, WELL NOS. 1, 2, AND 3, AND THE
UNIVERSITY -V- SWD (22353) LEASE, WELL NO. 1D, COWDEN, NORTH FIELD,
ANDREWS COUNTY, TEXAS**

APPEARANCES:

FOR MOVANT:

Elaine Moore
Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Kathleen Savant
Agent

RESPONDENT:

The Newton Corp.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:

October 19, 2004

DATE OF NOTICE OF HEARING:

January 26, 2005

DATE OF HEARING:

February 24, 2005

HEARD BY:

James M. Doherty, Hearings Examiner

DATE PFD CIRCULATED:

March 21, 2005

STATEMENT OF THE CASE

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

1. Whether the respondent The Newton Corp. ("Newton") 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 §3.14(b)(2)] the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 1, 2 and 3, and the University -V- SWD (22353) Lease, Well No.

- 1D, Cowden, North Field, Andrews County, Texas¹;
2. Whether Newton violated Statewide Rule 8(d)(1) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.8(d)(1)] by causing or allowing the discharge of oil and gas wastes on the University -V- (16836) Lease and the University -W- (16837) Lease, Cowden, North Field, Andrews County, Texas, without having a permit for such discharges;
 3. Whether Newton 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 the subject wells or otherwise place the subject leases and wells in compliance with Statewide Rule 8(d)(1) and Statewide Rule 14(b)(2)²;
 4. Whether Newton should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells; and
 5. Whether any violations of Statewide Rule 8(d)(1) and Statewide Rule 14(b)(2) by Newton should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

A hearing was held on February 24, 2005. Elaine Moore, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel ("Enforcement"). Kathleen Savant, Agent, appeared to represent Newton, and presented evidence. Enforcement's certified hearing file was admitted into evidence.

Enforcement recommends that an administrative penalty of \$14,650.00 be imposed against Newton and that Newton be ordered to place the subject leases and wells in compliance with Commission rules. The examiner agrees with Enforcement's recommendation.

APPLICABLE LAW

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.

¹ After the filing of the complaint, but prior to the hearing, the University -V- (16837) Lease, Well No. 1 was plugged with State funds. The issue of reimbursement of these State funds has been referred to the Attorney General and is not an issue here.

² Although Enforcement's complaint also alleged three violations of Statewide Rule 3(a), Enforcement stated at the hearing that these violations had been corrected in July 2004, and Enforcement is no longer seeking an administrative penalty for these violations.

Statewide Rule 14(c)(1) provides that 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 Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

With limited exceptions not relevant here, Statewide Rule 8(d)(1) prohibits the disposal of oil and gas wastes by any method without obtaining a permit authorizing the disposal. "Disposal" includes, among other things, causing or allowing a discharge or release of oil and gas wastes.

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

Newton's most recent Form P-5 Organization Report was approved on June 9, 2004. Newton did not timely renew its Form P-5 on February 1, 2005, and has been in delinquent status since that date. At the time of its last Form P-5 renewal, Newton filed financial security in the form of a letter of credit in the amount of \$50,000.00. On October 12, 2004, the Commission's P-5/Financial Assurance Unit made a demand on this letter of credit because, at the time, Newton was responsible for 20 wells that were not being maintained in compliance with Commission rules pertaining to plugging or the prevention or control of pollution. The examiner has officially noticed Commission records showing that as of March 1, 2005, Newton was the designated operator of 59 wellbores with total depth of 397,295'. Also as of March 1, 2005, 42 of Newton's wells were subject to Statewide Rule 14(b)(2), and 28 of Newton's wells had been inactive for 36 months or more.

Newton was designated operator of all three of the subject leases by Forms P-4 (Purchaser's Transportation Authority and Certificate of Compliance) approved by the Commission on August 7, 2002, and effective June 1, 2002.

Nine District Office inspections between September 4, 2003, and December 31, 2004, disclosed that the University -V- (16836) Lease, Well No. 3 was inactive and unplugged. No production for this well has been reported to the Commission since April 30, 2003.

Thirteen District Office inspections between September 4, 2003, and December 31, 2004, disclosed that the University -W- (16837) Lease, Well Nos. 2 and 3 were inactive and unplugged. These same inspections disclosed that Well No. 1 on the same lease was inactive and unplugged between September 4, 2003, and November 1, 2004, when Well No. 1 was plugged with State funds.

The cost to the Oil Field Clean Up Fund of plugging Well No. 1 was \$21,000.00, and the issue of reimbursement of these State funds has been referred to the Attorney General. No production for Well Nos. 1, 2, and 3 on the University -W- (16837) Lease has been reported to the Commission since February 28, 2003.

The University -V- SWD (22353) Lease, Well No. 1D is a permitted saltwater disposal well. Seven District Office inspections between December 19, 2003, and December 31, 2004, disclosed that this well was inactive and unplugged. No injection activity for this well has been reported to the Commission since November 30, 2001.

No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) have been filed or approved for the subject wells (except with respect to the University -V- (16837) Lease, Well No. 1 which was plugged with State funds), and no Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) currently is in effect for any of the subject wells. The examiner has officially noticed that a plugging extension for the University -V- (16836) Lease, Well No. 3 was denied on June 9, 2004, based on pollution existing on the lease. Plugging extensions for the University -W- (16837) Lease, Well Nos. 1, 2, and 3 were canceled March 1, 2004, based on Newton's failure to establish that it possessed a good faith claim of right to operate the wells. A plugging extension could not be granted for the University -V- SWD (22353) Lease, Well No. 1D after December 11, 2002, when the well failed a mechanical integrity test.

An affidavit of Keith Barton, P.E., Field Operations stated that a well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in accordance with the technical requirements of Statewide Rule 14 in order to prevent pollution of usable quality surface or subsurface waters. 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. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

The estimated cost to the State of plugging the University -V- (16836) Lease, Well No. 3 is \$10,800.00. The estimated cost to the State of plugging the University -W- (16837) Lease, Well Nos. 2 and 3 is \$21,600.00. The estimated cost to the State of plugging the University -V- SWD (22353) Lease, Well No. 1D is \$11,300.00.

A District Office inspection of the University -V- (16836) Lease on September 4, 2003, disclosed an oil contaminated area 30' x 25' at the wellhead of Well No. 3. A further District Office inspection of the same lease on May 24, 2004, disclosed a leak at the wellhead of Well No. 3 affecting a new 3' x 3' area. The pollution on this lease had not been remediated as of the date of a further District Office inspection on December 31, 2004.

A District Office inspection of the University -W- (16837) Lease on September 4, 2003, disclosed that a valve on Well No. 1 was actively leaking oil and contaminating a 10' x 30' x 10" deep area. In addition, a heater treater at the tank battery had leaked oil affecting a 60' x 60' area, with 10-15 barrels of free standing oil. A further inspection of the same lease on October 29, 2003, disclosed that dirt had been thrown over the 10' x 30' x 10" deep area "for cosmetic purposes," but otherwise, the pollution observed on September 4, 2003, remained. The heater treater was continuing to leak

onto the 60' x 60' area, and the pollution had increased to 18" in depth. On December 5, 2003, State funds were used to stop the leak at the heater treater and clean the affected area around the heater treater. As of a further District Office inspection on January 13, 2004, the 10' x 30' x 10" deep area of contamination at Well No. 1 remained. On the occasion of a further inspection on July 19, 2004, a new leak was observed at the wellhead of Well No. 1, with a 6' x 6' x 2" deep cellar full of oil. On November 1, 2004, State funds were used to plug Well No. 1 and clean up the pollution associated with this well.

A certification of the Commission's Secretary dated February 24, 2005, stated that a diligent search of Commission records revealed that no permit was issued to Newton to discharge oil and/or gas wastes from or onto the University -V- (16836) Lease or the University -W- (16837) Lease.

An affidavit of Keith Barton, P.E., Field Operations, stated that 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.

Between September 19, 2003, and September 7, 2004, the District Office corresponded with Newton on at least ten separate occasions to notify Newton of the Statewide Rule 8 and/or Statewide Rule 14 violations on the subject leases and to request compliance with Commission rules.

The certified enforcement case file includes correspondence from the University Lands Section of the University of Texas System notifying Newton that Newton's oil and gas lease covering the University -W- Lease terminated as of October 13, 2003, and Newton's oil and gas lease covering the University -V- Lease terminated as of October 15, 2003.

In Oil & Gas Docket No. 06-0229850, a prior Commission Final Order was served on April 12, 2002, finding violations by Newton of Statewide Rule 14(b)(2) on the Grice Unit (05772) Lease, Well No. 1, Wood County, Texas. The \$2,000 penalty imposed against Newton in this prior docket was paid, and effective February 1, 2003, the well that was the subject of this prior docket was transferred to another operator.³

Enforcement's recommended penalty of \$14,650.00 is comprised of five violations of Statewide Rule 14(b)(2) at \$2,000.00 each, one Rule 8(d)(1) violation on the University -V- (16836) Lease at \$650.00, one Rule 8(d)(1) violation on the University -W- (16837) Lease at \$3,000.00, and a penalty enhancement of \$1,000.00 based on one prior Final Order in an enforcement docket against Newton.

Newton's Evidence

Newton does not deny that the violations alleged by Enforcement were committed or that

³ At the hearing, Enforcement stated that Newton had also been the subject of another more recent Commission Final Order in an enforcement docket, but that no penalty enhancement is being sought by Enforcement based on this order because the order did not become final until after this complaint proceeding was instituted. The examiner has officially noticed that on January 26, 2005, the Commission served a Final Order in Oil & Gas Docket No. 06-0236924, finding that Newton had violated Statewide Rules 3(a), 9(12), and 14(b)(2) on the Caver (12258) Lease, Well No. 1 in Bowie County and imposing a penalty of \$5,250.00., less \$3,397.50 already paid by Newton.

Newton is the operator responsible for the violations. It claims to have at least partially cleaned up the alleged pollution, but admits that its effort at remediation did not cure the pollution problems. Newton asserts that problems like this arise in the oil business, and sometimes such problems are priorities and at other times they must be placed on the “back burner.”

Newton makes no claim that the penalty recommended by Enforcement is not reasonable, but requests that the Commission consider that Newton reimbursed the Commission for State funds expended on pollution cleanup, the Commission sold oil off the University -W- (16837) Lease at the time Well No. 1 was plugged with State funds and the Commission has collected on Newton’s financial assurance in the amount of \$50,000.00. Newton states further that it is willing to plug the subject wells and remediate the remaining pollution.

EXAMINER’S OPINION

It is established, without real dispute, that the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 2 and 3, and the University -V- (22353) SWD Lease, Well No. 1D have been inactive for more than one year, have not been plugged, and currently do not have plugging extensions. The University -W- (16837) Lease, Well No. 1 was plugged with State funds on November 1, 2004, but the well had been inactive since February 28, 2003, and the last plugging extension for this well was canceled on March 1, 2004. The evidence shows that Newton was and is the operator responsible for plugging the subject wells, and by failing to plug them, violated Statewide Rule 14(b)(2).

It is also established, again without material dispute, that Newton caused or allowed oil and gas wastes to be discharged on the University -V- (16836) Lease and the University -W- (16837) Lease and did not have a permit authorizing such discharges. Newton thus committed at least two violations of Statewide Rule 8(d)(1). Newton was the operator responsible for these violations and did not take adequate or timely steps to remediate the pollution caused by the discharges.

An administrative penalty in the total amount of \$14,650.00 is appropriate. This recommended penalty is based on five violations of Statewide Rule 14(b)(2) at \$2,000.00 each, one violation of Statewide Rule 8(d)(1) on the University -V- (16836) Lease at \$650.00, one violation of Statewide Rule 8(d)(1) on the University -W- (16837) Lease at \$3,000.00, and a penalty enhancement of \$1,000.00 for one prior Final Order in an enforcement docket against Newton. The recommended penalty conforms to the standard penalties in the recommended standard penalty schedule for enforcement cases.

In recommending the total penalty of \$14,650.00, the examiner has considered Newton’s history of previous violations, the seriousness of the violations, hazards to the health and safety of the public, and whether Newton demonstrated good faith, all as required by §81.0531 of the Texas Natural Resources Code. Newton has two prior Final Orders against it in enforcement dockets involving violations of Commission rules related to safety and the prevention or control of pollution. The violations committed in this docket are deemed serious because of the demonstrated risk of pollution of usable quality surface and subsurface water. The violations presented a hazard to the health and safety of the public for the same reason. Newton cannot be said to have demonstrated good faith because it failed adequately to respond to numerous requests from the District Office to place the subject leases and wells into compliance with Commission rules.

An operator's liability for reimbursement of State funds used to clean up pollution or plug wells for which the operator is responsible is a separate issue from the operator's liability for administrative penalties for past and continuing violations of Commission rules. The fact that Newton may have reimbursed the Commission for the expenditure of State funds to clean up pollution on the University -W- (16837) Lease deserves no special consideration on the administrative penalty issue. Furthermore, Newton has not reimbursed the Commission for State funds used to plug the University -W- (16837) Lease, Well No. 1, and this issue has been referred to the Attorney General. Newton asserts that the Commission sold oil found in tanks, apparently on the University -W- (16837) Lease at the time the Commission undertook to plug Well No. 1 on this lease with State funds. The exercise of this right to defray the expense of plugging the well pursuant to authority granted in §89.085 of the Texas Natural Resources Code has no special bearing on the amount of administrative penalties imposed for past and continuing violations of Commission rules. Neither does the fact that the Commission called on Newton's letter of credit impact the administrative penalty issue. The certified enforcement case file establishes that the Commission called on the letter of credit on October 12, 2004, because at that time Newton was responsible for 20 wells which were not being maintained in compliance with Commission rules pertaining to plugging or control of pollution. The estimated cost to plug the 20 wells was \$325,077.50 and the amount of Newton's letter of credit was \$50,000.00.

The examiner also recommends that the Commission order that Newton plug the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 2 and 3, and the University -V- SWD (22353) Lease, Well No. 1D, and clean up and place the University -V- (16836) Lease into compliance with Commission rules.⁴ Providing Newton the option of placing the subject wells into compliance by a means other than proper plugging does not appear appropriate in this case. Newton stated a willingness to plug these wells, which is at least a tacit admission that the wells need to be plugged. Well No. 1 on the University -W- (16837) Lease already has been plugged with State funds. The University -V- (16836) Lease was severed on August 6, 2004, when Well No. 3 failed an annular fluid level test. The University -V- SWD (22353) Lease, Well No. 1D failed a mechanical integrity test on December 11, 2002. The certified enforcement case file includes landowner correspondence asserting that Newton's oil and gas leases covering the University -V- Lease and the University -W- Lease have terminated, and there is no evidence that Newton continues to possess a good faith claim of a right to operate the subject wells. Inability of Newton to establish a good faith claim would preclude the granting of plugging extensions for the subject wells, even if the existing pollution violations were corrected. Newton's P-5 Organization Report is delinquent, and there is no evidence that any other operator has an interest in taking over the subject wells. The landowner, University Lands Section of the University of Texas System has complained about the status of the wells and associated pollution and has advised the Commission of its position that the wells need to be plugged.

Based on the record in this case, the examiner recommends that the Commission enter a final order adopting the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

⁴ The last District Office inspection report in the certified enforcement case file for the University -W- (16837) Lease, dated December 31, 2004, stated that there was no pollution on the lease and reported that the lease was compliant with Statewide Rule 8, presumably as the result of the Commission's clean up with State funds.

1. The Newton Corp. (“Newton”) was given at least ten (10) days notice of this proceeding by certified mail, addressed to Newton’s most recent Form P-5 Organization Report address. Newton appeared at the hearing and presented evidence.
2. Newton is shown by its most recent Form P-5 to be a corporation. As of the date of the hearing, Newton’s most recently filed Form P-5 had been approved on June 9, 2004. At the time of its last Form P-5 renewal, Newton filed financial security in the form of a letter of credit in the amount of \$50,000.00. Newton did not timely renew its Form P-5 on February 1, 2005, and, as of the date of the hearing, its Form P-5 had been in delinquent status since that date.
3. On October 12, 2004, the Commission’s P-5/Financial Assurance Unit made a demand on Newton’s letter of credit because Newton was responsible for 20 wells that were not being maintained in compliance with Commission rules pertaining to plugging or the prevention or control of pollution. At that time, the estimated cost to plug the 20 wells was \$325,077.50.
4. Newton’s officer, as reported to the Commission on Newton’s most recent Form P-5, is Pete Spiros, President and Vice-President. As an officer of Newton, Pete Spiros was a person in a position of ownership or control of Newton at the time the violations involved in this docket occurred.
5. The violations committed by Newton are violations of Commission rules related to safety and the prevention or control of pollution.
6. Newton designated itself to the Commission as the operator of the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 1, 2, and 3, and the University -V- SWD (22353) Lease, Well No. 1D, Cowden, North Field, Andrews County, Texas, by filing Forms P-4 (Producer’s Transportation Authority and Certificate of Compliance) which were approved by the Commission on August 7, 2002, and effective June 1, 2002.
7. As of the date of the hearing, The University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 2 and 3, and the University -V- SWD (22353) Lease, Well No. 1D had been inactive for more than one year, had not been plugged, and did not have Statewide Rule 14(b)(2) plugging extensions. The University -W- (16837) Lease, Well No. 1 was inactive and unplugged from September 4, 2003, until November 1, 2004, when the well was plugged by the Commission with State funds.
 - a. Nine District Office inspections between September 4, 2003, and December 31, 2004, disclosed that the University -V- (16836) Lease, Well No. 3 was inactive and unplugged. No production for this well has been reported to the Commission since April 30, 2003.
 - b. Thirteen District Office inspections between September 4, 2003, and December 31, 2004, disclosed that the University -W- (16837) Lease, Well Nos. 2 and 3 were inactive and unplugged. These same inspections disclosed that Well No. 1 on the same lease was inactive and unplugged between September 4, 2003, and November 1, 2004, when Well No. 1 was plugged with State funds because the well was leaking. The cost to the State of plugging Well No. 1 was \$21,000.00. No production for the

- University -W- (16837) Lease has been reported to the Commission since February 28, 2003.
- c. The University -V- SWD (22353) Lease, Well No. 1D is a permitted saltwater disposal well. Seven District Office inspections between December 19, 2003, and December 31, 2004, disclosed that this well was inactive and unplugged. No injection activity for this well has been reported to the Commission since November 30, 2001.
 - d. As of the date of the hearing, no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) had been filed or approved, and no Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) was in effect for the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 2 and 3, or the University -V- SWD (22353) Lease, Well No. 1D.
 - e. A plugging extension for the University -V- (16836) Lease, Well No. 3 was denied on June 9, 2004, based on pollution on the lease. Plugging extensions for the University -W- (16837) Lease, Well Nos. 1, 2, and 3 were canceled March 1, 2004, based on Newton's failure to establish that it possessed a good faith claim of a continuing right to operate the wells. A plugging extension could not be granted for the University -V- SWD (22353) Lease, Well No. 1D after December 11, 2002, when the well failed a mechanical integrity test.
8. A well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged in accordance with the technical requirements of Statewide Rule 14 in order to prevent pollution of usable quality surface or subsurface waters. 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. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.
 9. The estimated cost to the State of plugging the University -V- (16836) Lease, Well No. 3 is \$10,800.00. The estimated cost to the State of plugging the University -W- (16837) Lease, Well Nos. 2 and 3 is \$21,600.00. The estimated cost to the State of plugging the University -V- SWD (22353) Lease, Well No. 1D is \$11,300.00.
 10. On or prior to September 4, 2003, and thereafter, Newton caused or allowed oil and gas wastes to be discharged on the University -V- (16836) Lease and the University -W- (16837) Lease. Newton did not have a permit authorizing these discharges.
 - a. A District Office inspection of the University -V- (16836) Lease on September 4, 2003, disclosed an oil contaminated area 30' x 25' at the wellhead of Well No. 3. A further District Office inspection of the same lease on May 24, 2004, disclosed a leak at the wellhead of Well No. 3 affecting a new 3' x 3' area. The pollution on this lease had not been remediated as of the date of a further District Office inspection on December 31, 2004.
 - b. A District Office inspection of the University -W- (16837) Lease on September 4, 2003, disclosed that a valve on Well No. 1 was actively leaking oil and contaminating a 10' x 30' x 10" deep area. In addition, a heater treater at the tank battery had leaked

oil affecting a 60' x 60' area, with 10-15 barrels of free standing oil. A further inspection of the same lease on October 29, 2003, disclosed that dirt had been thrown over the 10' x 30' x 10" deep area with cosmetic effect, but otherwise, the pollution remained. The heater treater was continuing to leak onto the 60' x 60' area, and the pollution had increased to 18" in depth. On December 5, 2003, State funds were used to stop the leak at the heater treater and for clean up of the affected area around the heater treater. As of a further District Office inspection on January 13, 2004, the 10' x 30' x 10" deep area of contamination at Well No. 1 remained. On the occasion of a further inspection on July 19, 2004, a new leak was observed at the wellhead of Well No. 1, with a 6' x 6' x 2" deep cellar full of oil. On November 1, 2004, State funds were used to plug Well No. 1 and clean up the associated pollution.

- c. A diligent search of Commission records revealed that no permit was issued to Newton to discharge oil and gas wastes from or onto the University -V- (16836) Lease or the University -W- (16837) Lease.
11. 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.
12. Between September 19, 2003, and September 7, 2004, the District Office corresponded with Newton on at least ten separate occasions to notify Newton of the Statewide Rule 8 and/or Statewide Rule 14 violations on the subject leases and to request compliance with Commission rules. Newton did not correct the violations in response to this correspondence.
13. In Oil & Gas Docket No. 06-0229850, a prior Commission Final Order was served on April 12, 2002, finding violations by Newton of Statewide Rule 14(b)(2) on the Grice Unit (05772) Lease, Well No. 1, Wood County, Texas.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. The Newton Corp. was and is the operator of the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 1, 2, and 3, and the University -V- SWD (22353) Lease, Well No. 1D, Cowden, North Field, Andrews 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 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, The Newton Corp. 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. The Newton Corp. violated Statewide Rule 8(d)(1) [Tex. R. R. Comm'n, 16 TEX. ADMIN.

CODE §3.8(d)(1)] by causing or allowing the discharge of oil and gas wastes on the University -V- (16836) Lease and the University -W- (16837) Lease without obtaining a permit authorizing such discharges. The University -V- (16836) Lease was out of compliance with Statewide Rule 8(d)(1) from at least September 4, 2003, until at least December 31, 2004. The University -W- (16837) Lease was out of compliance with Statewide Rule 8(d)(1) from at least September 4, 2003, until at least November 1, 2004, when State funds were used to clean up the lease.

6. The Newton Corp. violated Statewide Rule 14(b)(2) [Tex. R. R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] by failing to timely plug the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 1, 2, and 3, and the University -V- SWD (22353) Lease, Well No. 1D. As of the date of the hearing, The University -V- (16836) Lease, Well No. 3 had been out of compliance with Statewide Rule 14(b)(2) since at least April 30, 2004. The University -W- (16837) Lease, Well No. 1 had been out of compliance with Statewide Rule 14(b)(2) from March 1, 2004, until November 1, 2004, when the well was plugged with State funds. The University -W- (16837) Lease, Well Nos. 2 and 3 had been out of compliance with Statewide Rule 14(b)(2) since March 1, 2004. The University -V- SWD (22353) Lease, Well No. 1D had been out of compliance with Statewide Rule 14(d)(2) since November 30, 2002.
7. The documented violations committed by The Newton Corp. constitute acts deemed serious and a hazard to the public health, and demonstrate a lack of good faith within the meaning of §81.0531 of the Texas Natural Resources Code.
8. As an officer of The Newton Corp. at the time The Newton Corp. violated Commission rules related to safety and the prevention or control of pollution, Pete Spiros, and any organization in which he may hold a position of ownership or control, are subject to the restrictions of §91.114(a)(2) of the Texas Natural Resources Code.

RECOMMENDATION

The examiner recommends that the Commission adopt the attached final order requiring that The Newton Corp.:

1. Plug, in compliance with Commission rules, the University -V- (16836) Lease, Well No. 3, the University -W- (16837) Lease, Well Nos. 2 and 3, and the University -V- SWD (22353) Lease, Well No. 1D, Cowden, North Field, Andrews County, Texas;
2. Clean up and place the University -V- (16836) Lease in compliance with Commission rules; and
3. Pay an administrative penalty in the amount of FOURTEEN THOUSAND SIX HUNDRED AND FIFTY DOLLARS (\$14,650.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner