

ENFORCEMENT ACTION AGAINST PLATINUM EXPLORATION, INC. (OPERATOR NO. 667939) FOR VIOLATIONS OF STATEWIDE RULES ON THE ANNIE A. LONG LEASE, WELL NO. 4SD (RE-ENTRY PERMIT NO. 511663), GLASCO (DEVONIAN) FIELD, ANDREWS COUNTY, TEXAS, AND THE ANNIE A. LONG LEASE, WELL NO. 6 (RE-ENTRY PERMIT NO. 513566), GLASCO (DEVONIAN) FIELD, GAINES COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Jason Turner
Robert McKenzie
Greg Rasmussen

RESPONDENT:

Platinum Exploration, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:

July 26, 2006

DATE OF NOTICE OF HEARING:

January 29, 2007

DATE OF HEARING:

April 12, 2007

HEARD BY:

James M. Doherty, Hearings
Examiner

DATE PFD CIRCULATED:

May 11, 2007

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 Platinum Exploration, Inc. (“Platinum”), 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 Annie A. Long Lease, Well No. 4SD (Re-Entry Permit No. 511663), Glasco (Devonian) Field, Andrews County, Texas, and the Annie A. Long Lease, Well No. 6 (Re-Entry Permit No. 513566), Glasco (Devonian) Field, Gaines County, Texas;
2. Whether Platinum violated Statewide Rule 16(b) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.16(b)] by failing to file a completion report for the Annie A. Long Lease, Well No. 4SD (Re-Entry Permit No. 511663), Glasco (Devonian) Field, Andrews County, Texas, and the Annie A. Long Lease, Well No. 6 (Re-Entry Permit No. 513566), Glasco (Devonian) Field, Gaines County, Texas;
3. Whether Platinum 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 wells into compliance with Statewide Rules 14(b)(2) and 16(b);
4. Whether, pursuant to Texas Natural Resources Code §81.0531, Platinum should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject wells; and
5. Whether any violations of Statewide Rules 14(b)(2) and 16(b) by Platinum should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing was held on April 12, 2007.¹ Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Jason Turner, attorney, appeared representing Platinum and presented evidence. Enforcement’s certified hearing file was admitted into evidence.

APPLICABLE LAW

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension has been obtained. A plugging extension will be approved for a well only if the well is in compliance with all Commission rules and the operator has a good faith claim of right to operate the well.

¹ This docket was heard jointly with Oil & Gas Docket Nos. 02-0248250, 08-0248259, 8A-0249475, and 8A-0249476 involving the same respondent. Separate proposals for decision are being issued in each docket.

Statewide Rule 16(b) requires that the operator of a well file a completion report within 30 days after completion of the well or within 90 days after the date on which the drilling operation is completed, whichever is earlier.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The examiner has officially noticed the Commission's Master Inquiry, Officer/Agent Inquiry Selection, and P-5 Financial Assurance Inquiry databases for Platinum, which show that Platinum is a corporation, and its officers are Harold James Rasmussen, President, Michael Paul Jobe, Vice President, and Gregory James Rasmussen, Vice President. The Form P-5 organization report of Platinum is active, and Platinum has approved financial assurance on file with the Commission in the amount of \$250,000.

The examiner has also officially noticed the Commission's On-Schedule Lease, Wells, Wellbores By Operator and Wells Subject to Rule 14(b)(2)-Operator Summary Data databases which show that as of April 26, 2007, Platinum was the record operator of 116 wells, 69 of which are subject to Statewide Rule 14(b)(2). Forty-seven of the 69 wells subject to Statewide Rule 14(b)(2) have been inactive for more than 36 months. Of the 69 wells subject to Statewide Rule 14(b)(2), plugging extensions have been approved for 43 wells and denied for 26 wells. The examiner has also officially noticed the Commission's Production Data Query database which shows that for 2006, Platinum reported total production of 165,585 barrels of oil, 46,292 MCF of casinghead gas, 47,417 MCF of gas well gas, and 3 barrels of condensate.

Enforcement

Platinum designated itself operator of the Annie A. Long Lease, Well No. 4SD by filing a Form W-1 (Application to Drill, Deepen, Plug Back, or Reenter) on July 20, 2001, which led to the issuance on July 26, 2001, of Re-Entry Permit No. 511663. Platinum designated itself operator of the Annie A. Long Lease, Well No. 6 by filing a Form W-1 on September 13, 2001, which led to the issuance on September 17, 2001, of Re-Entry Permit No. 513566.²

District Office inspections of the subject wells on March 10, April 25, May 16, September 28, and November 10, 2005, January 10, February 23, May 4, May 24, and July 13, 2006, and March 27, 2007, disclosed that the wells were inactive and equipped with a casing wellhead flange and matching top flange. The March 10, 2005, inspection report stated that the wells had not been

² It appears from the certified hearing file that prior to approval of these re-entry permits, the subject wells had been plugged and abandoned in 1993.

tested, had unknown casing integrity, and presented a high potential threat to drinking water in the area. The September 28, 2005, inspection report stated that both wells had casing problems, with junk in the hole. The May 4 and May 24, 2006, inspection reports stated that both wells were pressured up with fluid at the surface. Although these wells were re-entered and completed prior to the March 10, 2005, inspection, no completion reports for the wells were filed, and no production was reported for either well. District Office photographs of the subject wells are attached to this proposal for decision as Appendix 1.

On at least seven separate occasions between January 31, 2005, and March 25, 2006, the District Office sent Platinum correspondence, notices, or copies of memoranda requesting voluntary compliance with respect to the subject wells. On March 7, 2005, Platinum filed a Form W-3A (Notice of Intention to Plug and Abandon) for the Annie A. Long Lease, Well No. 4SD, stating an anticipated plugging date of May 1, 2005. On April 22, 2005, Platinum sent correspondence to the District Office stating that both of the subject wells would be plugged in the immediate future. On April 26, 2005, Platinum sent more correspondence to the District Office stating that both wells would be plugged as soon as possible, noting that the Annie A. Long Lease, Well No. 6 still had 60' of junk in the hole. On February 17, 2006, Platinum filed a Form W-3A for Well No. 6 stating an anticipated plugging date of June 12, 2006. On March 2, 2006, Platinum sent more correspondence to the District Office stating Platinum's intent to plug both wells. On August 23, 2006, Platinum filed new Forms W-3A for both wells stating an anticipated plugging date of October 30, 2006. The wells have not been plugged. The estimated cost to the State to plug the subject wells is \$19,400 for Well No. 4SD and \$26,100 for Well No. 6.

A certification of the Commission's Secretary dated March 9, 2007, states that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved, and no plugging extensions are in effect, for the subject wells. This certification states also that a diligent search of Commission records reveals that Platinum failed to file completion reports for the subject wells.

An affidavit of Keith Barton, P.E., Field Operations, states that a well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged 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 affidavit states also that without a completion report, as required by Statewide Rule 16(b), the Commission is without sufficient information to determine if a wellbore has been properly cased and cemented to protect usable quality water from oil and saltwater present in the wellbore.

Enforcement recommends that Platinum be ordered to pay an administrative penalty of \$5,000, less \$3,750 already paid. The \$5,000 penalty recommended by Enforcement is calculated on the basis of two Rule 14(b)(2) violations at \$2,000 each and two Rule 16(b) violations at \$500 each. Enforcement also recommends that Platinum be ordered to bring the subject wells into compliance with Commission rules.

Platinum

Platinum did not dispute the fact that the subject violations occurred or that Platinum is the operator responsible for the violations. On the other hand, Platinum requested more time to bring to fruition a plan to transfer the subject wells to another operator and thus to bring the wells into compliance.

Platinum has experienced financial difficulty during the past year or more. It has been negotiating with investors to form a new entity which would acquire a loan to pay off Platinum's obligations and to achieve compliance with Commission rules. The details are murky, but apparently, the new entity would acquire some or all of Platinum's properties, and Platinum's wells would be transferred to Saber Resources, LLC, or if Saber is not interested in certain wells, then to Prime Operating or Finley Resources. A schedule for compliance introduced into evidence by Platinum indicates a plan to transfer the two wells that are the subject of this docket to Saber Resources, LLC by July 2007, pending Commission approval. Platinum conceded that its mineral lease covering the property on which the subject wells are located has terminated, and Saber will need to attempt to obtain a new mineral lease. Because of its financial distress, Platinum is hopeful that any administrative penalties assessed in this docket will be reduced as much as possible.

EXAMINER'S OPINION

Enforcement proved that the alleged violations of Statewide Rules 14(b)(2) and 16(b) were committed, and Platinum is the responsible operator. The remaining issues are: (1) the amount of administrative penalties that should be imposed; and (2) the nature of compliance that should be ordered.

In determining the amount of the penalty to be imposed against Platinum, the Commission is required by Texas Natural Resources Code §81.0531 to consider the operator's previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. According to Enforcement's complaint in this docket, Platinum has no history of prior final enforcement orders entered against it for violations of Commission rules. On the other hand, the involved violations are serious, and present a hazard to the health and safety of the public, because of the threat of pollution of usable quality water presented by inactive and unplugged wellbores.

The "good faith" issue weighs heavily against Platinum, because Platinum did not respond to numerous requests of the District Office for voluntary compliance and did not live up to its repeated representations that the subject wells would be plugged. The penalties recommended by Enforcement are the standard penalties provided by the recommended standard penalty schedule for enforcement cases, and the examiner believes that they should be adopted. Accordingly, the examiner recommends that Platinum be ordered to pay a penalty of \$5,000, less the \$3,750 already paid.

The examiner further recommends that Platinum be ordered to plug the subject wells. A “plug only” order is recommended because the subject wells have been inactive since re-entry permits were granted to Platinum in 2001 and are a pollution threat. According to District Office inspection reports, the wells have casing problems and junk in the hole, are pressured up, and have fluid at the surface. These wells were plugged in 1993, and the 2001 re-entry was not successful. Platinum appears to have agreed that the wells are in need of plugging because in March 2005 and February and August 2006 it filed Forms W-3A (Notice of Intention to Plug and Abandon) for one or both of these wells. Platinum’s oil and gas lease covering the property where the wells are located has terminated, meaning that Platinum no longer has a good faith claim of right to operate the wells and no eligibility for a plugging extension.

There is no apparent reason why Saber Resources, LLC or any other operator would be interested in taking a transfer of the subject wells, and Platinum’s speculation that the wells could be transferred to Saber by July 2007 is without any support. There is no proof that Saber is willing to become the operator of the wells and, as far as the examiner can determine, no pending Form P-4 pursuant to which such a transfer is proposed. Neither is there any proof that Saber has, or can obtain, an oil and gas lease giving Saber a good faith claim of right to operate the wells. The examiner has officially noticed the Commission’s On- Schedule Lease, Wells, Wellbores by Operator and P-4 Inquiry databases for Saber and its leases which show that currently, Saber is the operator of a total of 12 wells, only one of which was transferred from Platinum.

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

FINDINGS OF FACT

1. Platinum Exploration, Inc. (“Platinum”) was given at least ten (10) days notice of this hearing by certified mail addressed to Platinum’s most recent Form P-5 organization report address. Platinum appeared at the hearing and presented evidence.
2. Platinum is a corporation. Its officers are Harold James Rasmussen, President, Michael Paul Jobe, Vice President, and Gregory James Rasmussen, Vice President. These officers were persons in a position of ownership or control of Platinum at the time the violations involved in this docket were committed.
3. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
4. Platinum’s Form P-5 organization report is active, and Platinum has approved financial assurance on file with the Commission in the amount of \$250,000.
5. Platinum designated itself operator of the Annie A. Long Lease, Well No. 4SD, Glasco (Devonian) Field, Andrews County, Texas, by filing a Form W-1 (Application to Drill, Deepen, Plug Back, or Reenter) on July 20, 2001, which led to the issuance on July 26, 2001, of Re-Entry Permit No. 511663. Platinum designated itself operator of the Annie A. Long Lease, Well No. 6, Glasco (Devonian) Field, Gaines County, Texas, by filing a Form W-1

- on September 13, 2001, which led to the issuance on September 17, 2001, of Re-Entry Permit No. 513566.
6. The Annie A. Long Lease, Well No. 4SD and the Annie A. Long Lease, Well No. 6 have been inactive for more than twelve months, do not have Statewide Rule 14(b)(2) plugging extensions, and have not been plugged.
 - a. District Office inspections of these wells on March 10, April 25, May 16, September 28, and November 10, 2005, January 10, February 23, May 4, May 24, and July 13, 2006, and March 27, 2007, disclosed that the wells were inactive and unplugged.
 - b. The March 10, 2005, inspection report reported that the wells had not been tested, had unknown casing integrity, and presented a high potential threat to drinking water in the area.
 - c. The September 28, 2005, inspection report reported that both wells had casing problems, with junk in the hole.
 - d. The May 4 and May 24, 2006, inspection reports reported that both wells were pressured up with fluid at the surface.
 - e. No production for these wells was reported to the Commission after approval of re-entry permits in 2001.
 - f. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for these wells.
 7. Although re-entry permits for the Annie A. Long Lease, Well No. 4SD and the Annie A. Long Lease, Well No. 6 were granted to Platinum in 2001, and a District Office inspection on March 10, 2005, disclosed that the re-entry or re-entry drilling operation had been completed prior to that date, Platinum has not filed a completion report for these wells as required by Statewide Rule 16(b).
 8. Platinum's oil and gas lease covering the property on which the subject wells are located has terminated, and Platinum no longer possesses a good faith claim of right to operate the wells.
 9. On at least seven separate occasions between January 31, 2005, and March 25, 2006, the District Office sent Platinum correspondence, notices, or copies of memoranda requesting voluntary compliance with respect to the subject wells.

10. On March 7, 2005, Platinum filed a Form W-3A (Notice of Intention to Plug and Abandon) for the Annie A. Long Lease, Well No. 4SD, stating an anticipated plugging date of May 1, 2005. On April 22, 2005, Platinum sent correspondence to the District Office stating that both of the subject wells would be plugged in the immediate future. On April 26, 2005, Platinum sent more correspondence to the District Office stating that both wells would be plugged as soon as possible, noting that the Annie A. Long Lease, Well No. 6 still had 60' of junk in the hole. On February 17, 2006, Platinum filed a Form W-3A for Well No. 6 stating an anticipated plugging date of June 12, 2006. On March 2, 2006, Platinum sent more correspondence to the District Office stating Platinum's intent to plug both wells. On August 23, 2006, Platinum filed new Forms W-3A for both wells stating an anticipated plugging date of October 30, 2006. The wells have not been plugged.
11. The estimated cost to the State to plug the subject wells is \$19,400 for Well No. 4SD and \$26,100 for Well No. 6.
12. A well that is in violation of Statewide Rule 14, by having been inactive for one year, must be plugged 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.
13. Without a completion report, as required by Statewide Rule 16(b), the Commission is without sufficient information to determine if a wellbore has been properly cased and cemented to protect usable quality water from oil and saltwater present in the wellbore.
14. No prior final enforcement orders have been entered against Platinum for violations of Commission rules.
15. Platinum has not demonstrated good faith because it did not achieve voluntary compliance with Statewide Rules 14(b)(2) and 16(b) in response to multiple requests of the District Office for such compliance.

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. Platinum Exploration, Inc. (“Platinum”) was and is the operator of the Annie A. Long Lease, Well No. 4SD (Re-Entry Permit No. 511663), Glasco (Devonian) Field, Andrews County, Texas, and the Annie A. Long Lease, Well No. 6 (Re-Entry Permit No. 513566), Glasco (Devonian) Field, Gaines County, Texas, as defined by 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, Platinum had the primary responsibility for complying with Statewide Rules 14(b)(2) and 16(b) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §§3.14(b)(2) and 3.16(b)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the Annie A. Long Lease, Well No. 4SD (Re-Entry Permit No. 511663), Glasco (Devonian) Field, Andrews County, Texas, and the Annie A. Long Lease, Well No. 6 (Re-Entry Permit No. 513566), Glasco (Devonian) Field, Gaines County, Texas.
5. Platinum violated Statewide Rule 14(b)(2) by failing to plug the subject wells within one year after operations ceased and by failing otherwise to bring the wells into compliance with Statewide Rule 14(b)(2). The subject wells have been out of compliance with Statewide Rule 14(b)(2) since at least March 10, 2006.
6. Platinum violated Statewide Rule 16(b) by failing to file a completion report for the subject wells within 30 days after completion of the wells or within 90 days after the date on which the drilling operation was completed, whichever was earlier. The subject wells have been out of compliance with Statewide Rule 16(b) since at least June 8, 2006.
7. The documented violations committed by Platinum constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
8. Platinum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
9. As officers of Platinum at the time Platinum violated Commission rules related to safety and the prevention or control of pollution, Harold James Rasmussen, Michael Paul Jobe, and Gregory James Rasmussen, and any organization subject to the Commission’s jurisdiction in which they, or any of them, may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

RECOMMENDATION

The examiner recommends that Platinum be ordered to pay an administrative penalty in the amount of \$5,000, less \$3,750 already paid. The examiner recommends further that Platinum be ordered to plug the Annie A. Long Lease, Well No. 4SD (Re-Entry Permit No. 511663), Glasco (Devonian) Field, Andrews County, Texas, and the Annie A. Long Lease, Well No. 6 (Re-Entry Permit No. 513566), Glasco (Devonian) Field, Gaines County, Texas.

Respectfully submitted,

James M. Doherty
Hearings Examiner