
ENFORCEMENT ACTION FOR VIOLATIONS ALLEGEDLY COMMITTED BY PRAIRIE CRUDE, INC. (OPERATOR # 675755) AS TO THE COWDEN "Q" (32351) LEASE, WELL NO. 1, VEM (GRAYBURG) FIELD, ECTOR COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Scott Holter, Staff Attorney, Enforcement Section of the Railroad Commission of Texas

FOR RESPONDENT:

Steve Becker, President of Prairie Crude, Inc.

PROCEDURAL HISTORY

Date of Initial Request for Action:	August 28, 2000
Default Judgment:	August 21, 2001
Motion for Rehearing Granted:	October 23, 2001
Re-Hearing Held:	January 10, 2002
Heard By:	Scott Petry
Record Closed:	February 13, 2002
PFD Circulation Date:	March 28, 2002

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

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rule 14 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14 (West Jan. 1, 1997)] the Cowden "Q" (32351) Lease, Well No. 1 ["subject lease / subject well"], Vem (Grayburg) Field, Ector County, Texas;
2. Whether the respondent should be required to place in compliance with Statewide Rule 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8(d)(1) (West Jan. 1, 1997)] Cowden "Q" (32351) Lease, Well No. 1, Vem (Grayburg) Field, Ector 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 comply with said statutes and Statewide Rules 14 and 46;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such leases and wells;
4. Whether any violations of Rules 8 and/or 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 1993).

The respondent, Prairie Crude, Inc. ("Prairie Crude"), appeared at the re-hearing by and through its President, Steve Becker, and offered evidence. Scott Holter, Staff Attorney, appeared representing the Railroad Commission of Texas, Enforcement Section. The Enforcement Section's hearing file for this docket was admitted into evidence. The Enforcement Section recommends that respondent be ordered to place the subject wells in compliance with Commission Rules and recommends that the respondent be ordered to pay an administrative penalty of \$4,000.00, consisting of \$1,000.00 for two corrected 8(d)(1) violations and \$3,000.00 for one continuing violation of Statewide Rule 14(b)(2). The examiner endorses the Enforcement attorney's recommendation.

Unplugged and unmonitored well bores constitute a potential danger to public health and safety

and must be plugged when mandated by Commission rules. As applicable here, the operator of a well, for purposes of plugging liability, is the person who is responsible for the physical operation and control of that well at the time it ceases operation.

Rule 14 provides that the operator designated on the most recent Commission-approved Form P-4 (Producer's Transportation Authority and Certificate of Compliance), filed before September 1, 1997, is presumed to be the person responsible for the physical operation and control of the well at the time the well was abandoned or ceased operation. It further provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted.

Rule 8(d)(1) prohibits persons from disposing of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes.

DISCUSSION OF THE EVIDENCE

The respondent, Prairie Crude, is operated by Mr. Steven Becker. The respondent designated itself as operator of Well No. 1, an injection well, on the Cowden "Q" (32351) Lease through a Form P-4 with an approval date of October 31, 1991 and an effective date of September 1, 1991. The respondent's Form P-5 Organization Report is currently delinquent. The date of its last P-5 filing was October 14, 1998.

I. Enforcement

In Enforcement's case in chief, the Staff Attorney admitted into evidence the hearing file and copies of related Commission records. In regards to the asserted Rule 8(d)(1) violations, Enforcement submitted an inspection report dated October 13, 1999 which showed two Rule 8(d)(1) violations. The first violation concerned one of the catch basins that had overflowed with produced water. The second violation concerned three valves that were connected to a 750 barrel tank and that were leaking produced water and oil. The violation affected an area measuring approximately 3'x8'.

Enforcement submitted additional inspection reports dated December 27, 1999, January 31, 2000, July 20, 2000, August 18, 2000, October 3, 2000, December 12, 2000, and March 12, 2001 that showed the affected area for the first violation had been covered but that the spill had not been properly remediated. The reports also showed that the three valves in the second violation continued to leak and that the

affected area had also been covered but not properly remediated. Additionally, Enforcement submitted into the record correspondence from the Midland Commission District Office that was dated December 9, 1999, January 12, 2000, August 28, 2000, October 18, 2000, January 2, 2001, and March 27, 2001. This correspondence consisted of letters to Mr. Becker from the Midland office indicating that compliance with Commission rules was necessary.

In another inspection report, dated June 14, 2001, it was noted that both Rule 8 violations had been cleaned and remediated. Approximately 19 months transpired between the first report, which indicated the violations, and the last report, which indicated the violations had been corrected.

In regards to the asserted violations of Statewide Rule 14(b)(2), Enforcement submitted into the record Commission inspection reports from October 13, 1999, November 8, 1999, December 27, 1999, January 31, 2000, July 20, 2000, August 18, 2000, October 3, 2000, December 12, 2000, March 12, 2001, and June 14, 2001. These reports, along with records indicating zero reported injection activity since at least October 31, 1995, were submitted to prove that Well No. 1 on the Cowden "Q" (32351) Lease was inactive for a period greater than one year.

Enforcement also asserted in its pleadings and file that no workovers, re-entries, or subsequent operations had taken place on the subject well within the 12 months preceding the mailing of the Second Amended Complaint. The most current plugging extension for the subject well expired in October 1999. Finally, Enforcement submitted evidence that the estimated cost to the State for plugging the subject well amounted to \$10,500.00.

II. Prairie Crude

The respondent's case in chief centered on his opinion that the situation was a result of problems with Commission paperwork, but that the well was a "good well" and should be allowed to be brought back into service for injection purposes. It was the testimony of Mr. Becker that his problems were primarily administrative in nature, and that there were no structural problems with the well itself.

To support his claims, the respondent submitted two exhibits. The first exhibit purported to show pictures of the tank battery and disposal site. The pictures of the tank battery showed the three valves that were connected to the tank and that were the subject of the asserted Rule 8(d)(1) violations. The pictures showed no current spills in the area. The second exhibit put forth by the respondent was a Form W-2 with accompanying schematics for the subject well.

It was the testimony of the respondent that the Commission should exercise mercy in this docket, as he had already been punished enough by his loss of other lease(s) due to his "paperwork" problems. According to Mr. Becker, he could not obtain a performance bond from his bank due to his loss of certain other leases (unrelated to this docket) and an inactive status on his P-5 Organization Report. It was his further testimony that, approximately a week before the hearing of this matter, he "gave up" and began attempts to transfer the well to another operator. He was unable, however, to find another operator in this short period of time. The record was kept open for 30 days to allow for the submission of proof of compliance with Commission rules and procedures.

EXAMINER'S OPINION

The respondent, Prairie Crude, Inc., has acted in bad faith in failing to comply with Commission rules and regulations. The respondent requested leniency from the Commission and requested extra time to comply with the Commission's rules. This leniency was given, in terms of granting continuances to fit the respondent's work schedule and in terms of keeping the record open in excess of 30 days to allow for any evidence of compliance. However, the respondent has failed to provide any additional evidence.

This case was initially heard as a default on July 9, 2001 and a master default order was entered by the Commission. Shortly thereafter, on October 23, 2001, the Commission, citing procedural concerns, granted a rehearing in this matter. The docket was re-scheduled and the respondent, citing a lack of vacation time with his full-time job, requested a continuance for the hearing scheduled for December 5, 2001. Enforcement did not object, the continuance was granted, and the hearing was rescheduled to January 10, 2001. Additionally, the respondent was allowed 30 days from the date of the hearing to submit evidence of compliance, but has failed to notify the examiner of any appropriate action or plugging activity. The subject well has been inactive since at least 1995. Therefore, Prairie Crude's argument that it lacked adequate time to bring the well into compliance with the Commission's rules and regulations is without merit.

Prairie Crude claimed to be in the process of bringing the well into compliance, but the well has not had any injection activity in over six years. Over twenty-seven months have passed between the date of the first notification of violations by District Commission personnel and the date the record was closed, but Prairie Crude has failed to offer any evidence indicating that it has performed its duties with regard to Rule 14(b)(2). This failure to carry out its obligation has caused a potentially hazardous situation, and, despite this long period of time in which it could have brought the wells into compliance,

Prairie Crude did nothing.

Furthermore, the respondent's delayed response in properly remediating the pollution violations indicates a disregard of Commission rules and procedures. While the respondent was notified of the spills by at least December 9, 1999, it was not until some time after March 12, 2001 that the respondent actually chose to act and properly remediate the pollution violations. This lengthy period of inaction amounts to a disregard of Commission rules. It is my opinion that the respondent has acted in bad faith.

Therefore, based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Prairie Crude, Inc. (675755), ("respondent") and its president, Steve Becker, were given at least 10 days notice of this proceeding by certified, first-class mail, addressed to their most recent Form P-5 (Organization Report) addresses. Respondent appeared at the scheduled time and place for the hearing by and through its authorized representative.
2. Prairie Crude designated itself to the Commission as operator of Well No. 1 ("subject well"), an injection well, on the Cowden "Q" (32351) Lease through a Form P-4 with an approval date of October 31, 1991 and an effective date of September 1, 1991.
3. The respondent's Form P-5 Organization Report is currently delinquent. The date of its last P-5 filing was October 14, 1998.
4. The subject well has been inactive for a period in excess of one year. Well No. 1 on the Cowden "Q" (32351) Lease has not injected since on or before October 31, 1995.
5. The Midland Commission District Office notified the respondent of violations of Statewide Rules on the subject lease through correspondence dated December 9, 1999, January 12, 2000, August 28, 2000, October 18, 2000, January 2, 2001, and March 27, 2001.
6. An October 13, 1999 inspection report indicated two Rule 8(d)(1) violations on the subject lease.
 - a. The first violation consisted of a catch basin that overflowed with produced water; and,
 - b. The second violation consisted of three valves leaking produced water and oil onto an area measuring approximately 3'x8'.

7. The two violations of Statewide Rule 8(d)(1) were remediated according to Commission standards on or before June 14, 2001. The lease was out of compliance with Statewide Rule 8(d)(1) from at least October 13, 1999 to at least March 12, 2001.
8. The Commission has not granted an extension to Statewide Rule 14(b)(2) that is currently in effect for the subject well. The most recent extension granted for the subject well expired in October 1999.
9. The subject well has not been properly plugged in accordance with, and is not otherwise in compliance with, Statewide Rule 14.
10. The estimated cost to the State of plugging the subject well is \$10,500.00.
11. The record does not reflect any previous violations by Prairie Crude of Commission rules.
12. Despite repeated notices of violations from the District Office, the granting of a motion for rehearing, and the record being kept open for an additional 30 days to submit evidence of compliance, the respondent has failed to bring the subject well into compliance with Commission rules and procedures in a timely manner.
13. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil or gas wastes from the subject wells. Unplugged well bores constitute a cognizable threat to the public health and safety because of the probability of pollution.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Prairie Crude is the operator of the subject well, as defined by Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.14(b)(2)] and Section 89.002 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 79 [Tex. R.R. Comm'n, 16 Tex. Admin. Code § 3.69] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Prairie Crude has the primary responsibility for complying with Statewide Rules 8 and 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8 & § 3.14, respectively) and with Chapter

89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject wells.

5. The subject well is not properly plugged or otherwise in compliance with Statewide Rule 14 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.14), or Chapters 85, 89 and 91 of the Texas Natural Resources Code. The subject well has been out of compliance since at least October 1999.
6. The subject lease was not maintained in compliance with Statewide Rule 8 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8), or Chapters 85, 89 and 91 of the Texas Natural Resources Code from at least October 13, 1999 to at least March 12, 2001.
7. The documented violations committed by Prairie Crude constitute acts deemed serious, hazardous to the public health and safety, and lacking in good faith, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531(c) (Version 2001).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring the operator, Prairie Crude, within 30 days from the day immediately following the date this order becomes final, to:

1. Plug the Cowden "Q" (32351) Lease, Well No. 1, Vem (Grayburg) Field, Ector County, Texas, in compliance with all applicable Commission rules and regulations; and
2. Pay an administrative penalty in the amount of FOUR THOUSAND DOLLARS (\$4,000.00), consisting of \$3,000.00 for one continuing violation of Statewide Rule 14(b)(2) and \$1,000.00 for two corrected violations of Statewide Rule 8(d)(1).

Respectfully submitted,

Scott C. Petry
Hearings Examiner