
ENFORCEMENT ACTION AGAINST BALTIC ROYALTY CORPORATION FOR VIOLATIONS OF STATEWIDE RULES ON THE FERGUSON III, S. M. TRUST (22624) LEASE, WELL NO. 1, SEARCYS (CONGLOMERATE) FIELD, HARDEMAN COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

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

FOR RESPONDENT:

Searcy Ferguson, Jr., President, Baltic Royalty Corporation

PROCEDURAL HISTORY

Date of Request for Action:	June 13, 2001
Notice of Hearing:	July 15, 2001
Hearing Held:	August 22, 2002
Record Closed:	October 7, 2002
Heard By:	Scott Petry, Hearings Examiner
PFD Circulation Date:	October 25, 2002
Current Status:	Protested

STATEMENT OF THE CASE

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, the Ferguson III, S. M. Trust (22624) Lease, Well No. 1, Searcys (Conglomerate) Field, Hardeman County, Texas;
2. 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 Rule 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said lease and wells;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534.

Scott Holter, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Searcy Ferguson, Jr. appeared on behalf of respondent, Baltic Royalty Corporation (hereinafter "Baltic" or "respondent"). The Enforcement Section's hearing file was admitted into evidence.

Baltic requested additional time to either transfer the well or plug it. The examiner agreed to leave the record open for 45 days to October 7, 2002 to allow Baltic the opportunity to submit late filed exhibits verifying either that the sale and transfer of the well had occurred or that the well was properly plugged. No late-filed exhibits were submitted by Baltic.

The staff recommended that Baltic be ordered to properly plug the well and to pay an administrative penalty of \$2,000 for the violation of Statewide Rule 14(b)(2). The examiner agrees with the recommendation.

BACKGROUND

Unplugged and unused well bores constitute a potential danger to the public's health and

safety and must be plugged when mandated by the Commission's rules. Statewide Rule 14(b)(2) 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. For Form P-4s filed prior to September 1, 1997, the operator, for purposes of plugging liability, is presumed to be the person who assumed responsibility for the physical operation and control of a well as shown on the approved Form P-4 designating that person as operator.

When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to \$10,000 per day for each violation. In determining the amount of the penalty, the Commission is required to consider the respondent's previous history of violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent, pursuant to TEX. NAT. RES. CODE ANN. § 81.0531.

DISCUSSION OF THE EVIDENCE

Enforcement presented Commission records showing that the most recent approved P-5 Organization Report for Baltic was filed on February 23, 1998, and listed Searcy Ferguson, Jr., as the President. Baltic paid a fee of \$100 as financial assurance at the time of its last renewal, but its P-5 Organization Report is currently delinquent. Mr. Ferguson is also listed as the President, Vice-President and Secretary of another organization, S.M. Ferguson, Jr., Inc., which is a corporation that first filed an organization report in 1981 and last filed an Organization Report on May 25, 2001.

Baltic was recognized as the operator of the Ferguson III, S. M. Trust (22624) Lease, Well No. 1, upon the Commission's approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) submitted by Baltic on June 13, 1990. The Commission recognized Baltic as the operator of the lease on June 25, 1990. The prior operator for this well was S.M. Ferguson, Jr., Inc.

Commission inspection reports made on December 18, 2000, April 11, 2001, September 14, 2001, and June 21, 2002 show that the well was shut in and not equipped to produce. Commission records report no production from the well after November 1997. The last plugging extension expired on April 16, 1998. Accordingly, Enforcement contends that the well is inactive and that it has been in violation of Statewide Rule 14(b)(2) for over 4 years. The estimated cost to plug the well is \$11,800.00.

In the hearing, Baltic acknowledged that it was the operator of the well and further acknowledged that the well had not produced since 1997. Baltic claimed that it reentered the well in 1995 to put in a new downhole pump, but that it was unable to pull the tubing due to a downhole

problem at approximately 2,900 feet. Respondent stated that oil prices at that time made it uneconomic to repair the well. Baltic also stated that the well's remote location and the absence of fresh water in the area minimized any potential pollution threat.

The respondent further indicated that it had sold three nearby wells on the same lease to Bettis, Boyle & Stovall for production from the same formation. While Baltic admitted that there was no deal pending, it believed that there would be interest in the well in light of its production history and the other nearby production. Baltic claimed that it had not pursued the options of recompleting or selling the well because Mr. Ferguson had been diagnosed with cancer and his treatment and illness prevented him from following up on those alternatives.

Finally, Baltic claimed that it delayed plugging the well because half of the working interest in the well had been given to Ferguson's ex-wife in a divorce settlement. Ferguson indicated that he was waiting for his ex-wife's consent to share in the estimated plugging costs before commencing plugging operations. Ferguson stated that, prior to the hearing, his wife had agreed to share in the plugging costs and that the well would either be plugged or sold. A copy of Mr. Ferguson's correspondence requesting that his ex-wife share in the estimated plugging costs was submitted into the record.

The examiner took Official Notice of Commission Records related to Organization Reports submitted for S. M. Ferguson, Jr. Inc., RRC Operator No. 266339. S. M. Ferguson, Jr., Inc. first filed an Organization Report in 1981. The most recent organization report was filed on May 25, 2001 and lists Mr. Ferguson as the President, Vice-President, and Secretary.

EXAMINER'S OPINION

It is uncontested in this docket that the well is in violation of Statewide Rule 14 and has been out of compliance for over four years. Baltic also admits its responsibility for the well, but claims that it did not want to plug a well which it could possibly sell. Further, the respondent did not want to pay the entirety of any plugging expenses because his ex-wife was a working interest owner in the well.

While Mr. Ferguson's illness and treatment may account for a portion of the time period that the well was out of compliance, it does not excuse Baltic from its regulatory responsibility for plugging the well as required by Commission rules. Further, the mere fact that a working interest owner may have been responsible for payment of a portion of the plugging costs is not a basis for failing to comply with the respondent's regulatory responsibilities and failing to plug its well in a timely fashion.

The examiner also notes that Mr. Ferguson's claim that he was debilitated from operating his business is contradicted by Commission records for S. M. Ferguson, Jr., Inc. (RRC Operator No.

266339), a separate organization which lists Mr. Ferguson as its President, Vice-President and Secretary. The fact that Mr. Ferguson maintained a separate active organization with the Commission undermines the credibility of his claim that during the same time period that he was unable to keep Baltic in compliance with Commission rules.

Finally, despite several representations made at the hearing that the well would either be plugged or sold, no additional evidence was submitted showing that any action was taken by Mr. Ferguson to pursue either alternative. Accordingly, the examiner recommends that Baltic be ordered to plug the subject well and further recommends that Baltic be required to pay an administrative penalty of \$2,000.00.

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. Respondent, Baltic Royalty Corporation (“Baltic” or “respondent”) was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address.
2. The most recent approved P-5 for Baltic was filed February 23, 1998. Baltic paid a fee of \$100 as financial assurance at the time of its last renewal. Searcy Ferguson, Jr. is listed as the President. Baltic’s Organization Report is currently delinquent.
3. Mr. Ferguson is also listed as the President, Vice-President and Secretary of S. M. Ferguson, Jr., Inc., a corporation which first filed an organization report in 1981 and last filed an Organization Report on May 25, 2001.
4. Baltic designated itself as the operator of the Ferguson III, S. M. Trust (22624) Lease, Well No. 1,, by means of a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance), effective June 1, 1990 and approved June 25, 1990.
5. The subject well is currently inactive and has been inactive for more than 12 months.
 - a. Commission inspection reports made on December 18, 2000, April 11, 2001, September 14, 2001, and June 21, 2002 show that the well was shut in and not equipped to produce.
 - b. Commission records report no production from the subject well after November 1997.
6. The last plugging extension Baltic obtained for the subject well expired on April 16, 1998.
7. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.

8. Baltic has not demonstrated good faith since it failed to plug or otherwise place the subject well in compliance after being notified of the violation by the district office.
9. The estimated cost to plug the subject wells is \$11,800.
10. The record does not reflect any previous violations by the respondent of Commission rules.

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. Baltic Royalty Corporation is the operator of the Ferguson III, S. M. Trust (22624) Lease, Well No. 1, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Baltic has the primary responsibility for complying with Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Ferguson III, S. M. Trust (22624) Lease, Well No. 1.
5. Well No. 1 on the Ferguson III, S. M. Trust (22624) Lease is not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. Well No. 1 on the Ferguson III, S. M. Trust (22624) Lease has been out of compliance from April 16, 1998 to the present.
7. The documented violations committed by Baltic are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order be approved, requiring the operator, Baltic Royalty Corporation, within 30 days from the date this order becomes final, to plug the subject well in accordance with the requirements of Statewide Rule 14. It is my further recommendation that the operator, Baltic Royalty Corporation, be ordered to pay an administrative penalty of \$2,000.00.

Respectfully submitted,

Scott Petry
Hearings Examiner