
ENFORCEMENT ACTION AGAINST CARLORAN PRODUCTION CORPORATION (OPERATOR NO. 132339) FOR VIOLATIONS OF STATEWIDE RULES ON THE ABERCROMBIE, C.L. ESTATE - B - (08404) LEASE, ARCHER COUNTY, TEXAS

APPEARANCES

FOR MOVANT:

Scott Holter, Staff Attorney

FOR RESPONDENT:

Robert Mueller, President

MOVANT:

Railroad Commission of Texas

RESPONDENT:

Carloran Production Corporation

PROCEDURAL HISTORY

First Amended Complaint Filed:

December 30, 2002

Hearing Held:

February 10, 2003

PFD Issued By:

Mark H. Tittel, Hearings Examiner

PFD Circulation Date:

April 4, 2003

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 is the operator responsible for alleged violations of Statewide Rule 8 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8] on the Abercrombie, C.L. Estate - B - (08404) Lease, Archer County, Texas (hereinafter referred to as “the subject lease”);
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 8;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding such lease; and
4. Whether any penalties for violations of Rule 8 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 & §91.113.

Carloran Production Corporation (hereinafter referred to as “Respondent” or “Carloran”) appeared at the hearing by and through its president, Randy Mueller, and offered evidence. The Railroad Commission’s Enforcement Section was represented by Scott Holter, Staff Attorney. The Railroad Commission’s Enforcement Section requested that Respondent be ordered to reimburse the Commission for \$151.00 in clean up costs, to pay an administrative penalty in the amount of \$6,000, and to place the subject lease into compliance with Commission rules. The examiner recommends an administrative penalty in the amount of \$3,000.

BACKGROUND

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

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 shall consider the permittee'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 person charged. TEX. NAT. RES. CODE ANN. § 81.0531(c).

Tex. Nat. Res. Code Ann. §91.113 authorizes the Commission to use State funds to clean up leases and seek reimbursement for the expenditure of those funds.

DISCUSSION OF THE EVIDENCE

Enforcement's Position

The Enforcement staff's file in this docket was admitted into evidence without objection. Carloran filed its most recent Form P-5 (Organization Report) on August 25, 2000. Carloran paid a fee of \$7,900 as financial assurance at the time of its last renewal. Carloran's P-5 is currently delinquent.

Carloran designated itself to the Commission as operator of the subject lease by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) effective August 1, 1999.

A Commission District inspection report made on March 28, 2002 indicated that the salt water storage tank on the lease was full and overflowing saltwater. The spill affected an area approximately 10 to 20 feet wide by 180 feet long. Commission District Office personnel contacted Randy Mueller to direct him to initiate clean-up operations. Mr. Mueller responded that he did not have the resources to do so. Accordingly, the Commission sealed the wells and engaged Quality Oilfield Service, Inc. to haul approximately 100 barrels of saltwater from the storage tank. The Commission spent \$151.00 for the services provided by Quality Oilfield Service, Inc.

A Commission District inspection report made on January 3, 2003 indicated that there was a leak of produced water in the 2" poly line used for suction on the disposal pump, affecting an area approximately 2' by 2'. Enforcement did not recommend any additional penalty for this discharge, but requested that Carloran be ordered to remediate the leak.

EXAMINER'S OPINION

Carloran designated itself as the operator of the subject lease by filing a Form P-4 for the lease in August 1999. Carloran thereby assumed the responsibilities and liabilities which were part and parcel with the right to operate the lease. Accordingly, Carloran should be held accountable for violations of Statewide Rules occurring on the lease.

Carloran did not dispute its responsibility, but argued that the recommended penalty amount is excessive. The factors to be considered in determining the amount of administrative penalties include the respondent's previous history of violations, the seriousness of the violations, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent. TEX. NAT. RES. CODE ANN. § 81.0531(c). Carloran has no history of prior orders for violations of Commission rules. While the spill that occurred may have been unintentional, Carloran cannot be said to have acted in good faith. The evidence in the record indicates that Respondent took no action to remedy the spill when it was instructed by the Commission to do so. Furthermore, Respondent's failure to act necessitated the expenditure of state funds to clean up the subject lease. Accordingly, pursuant to Tex. Nat. Res. Code Ann. §91.113, the Commission is entitled to reimbursement of state funds in the amount of \$151.00.

However, in determining the appropriate administrative penalty, the Commission must also

consider the seriousness of the violation and any hazard to the health or safety of the public. Enforcement has requested an administrative penalty in the amount of \$6,000, which is at the very top of the range of suggested penalties for violation of Statewide Rule 8(d)(1) as contained in the Commission's Administrative Penalty Guidelines adopted May 2002. While the discharge of saltwater is potentially a serious violation and may pose a significant hazard to the public health and safety, nothing in the record indicates that the spill that occurred was so egregious as to warrant the very highest penalty under the guidelines. When asked for the basis of Enforcement's \$6,000 penalty recommendation, the Staff Attorney provided no other explanation than that this was the amount he was instructed to seek. Under these circumstances, an administrative penalty in the amount requested by Enforcement is not warranted in this case. The examiner recommends that the Commission impose a \$3,000 administrative penalty, an amount closer to the middle of the range of suggested penalties for violation of Statewide Rule 8(d)(1) as contained in the Commission's Administrative Penalty Guidelines.

Based on the foregoing, the examiner recommends that the following Findings of Fact and Conclusions of Law be adopted:

FINDINGS OF FACT

1. Carloran Production Corporation (hereinafter referred to as "Respondent" or "Carloran") was given at least 10 days notice of this proceeding by first-class, certified mail, addressed to its most recent Form P-5 (Organization Report) address. Carloran appeared at the hearing by and through its president, Randy Mueller, and offered evidence. The Railroad Commission's Enforcement Section was represented by Scott Holter, Staff Attorney.
2. Carloran filed its most recent Form P-5 (Organization Report) on August 25, 2000. Carloran paid a fee of \$7,900 as financial assurance at the time of its last renewal. Carloran's P-5 is currently delinquent.
3. Carloran designated itself to the Commission as operator of the Abercrombie, C.L. Estate - B - (08404) Lease, Archer County, Texas (hereinafter referred to as "the subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) effective August 1, 1999.
4. A Commission District inspection report made on March 28, 2002 indicated that the water storage tank was full and overflowing saltwater, affecting an area approximately 10 to 20 feet wide by 180 feet long.
5. Commission District Office personnel contacted Randy Mueller to direct him to initiate clean-up operations on the subject lease. As Carloran did not have the assets to do so, the Commission engaged Quality Oilfield Service, Inc. to haul approximately 100 barrels of saltwater from the storage tank. The Commission spent \$151.00 for the services provided by Quality Oilfield Service, Inc.

6. A Commission District inspection report made on January 3, 2003 indicated that there was a leak of produced water in the 2" poly line used for suction on the disposal pump, affecting an area approximately 2' by 2'.
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 lease.
8. Carloran has no history of prior orders for violations of Commission rules.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to all 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. Carloran was the operator of the subject lease, as defined by Commission Statewide Rule 14, 58, and 79 (Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§ 3.14, 3.58, and 3.69) and Section 89.02 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, Carloran had the primary responsibility for complying with Statewide Rules 8 (R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8) and with Chapter 89 of the Texas Natural Resources Code, as well as other applicable statutes and Commission rules relating to the subject lease.
5. Carloran violated Statewide Rule 8(d)(1) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE § 3.8 (d)(1)] by discharging oil and gas wastes onto the subject lease without a permit for such discharges.
6. The documented violations committed by Carloran constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. § 81.0531(c).
7. The Commission was authorized to clean up the subject lease and is entitled to reimbursement for State funds expended pursuant to Tex. Nat. Res. Code Ann. §91.113.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the

attached order approved, requiring Carloran within 30 days from the day immediately following the date this order becomes final, to reimburse the Commission for \$151.00 in clean up costs, to pay an administrative penalty in the amount of \$3,000, and to place the subject lease into compliance with Commission rules.

Respectfully submitted,

Mark Tittel
Hearings Examiner