

PROPOSAL FOR DECISION

DOCKET No. 09-0232598

ENFORCEMENT ACTION AGAINST AMERICAN WEST RESOURCES, INC. FOR VIOLATIONS OF STATEWIDE RULES ON THE SLOPANSKY, DAISY (00142) LEASE, WELL NOS. 6, 8, 28, 34, 38, AND 48, ARCHER COUNTY REGULAR FIELD, ARCHER COUNTY, TEXAS.

APPEARANCES

FOR MOVANT:

Lowell Williams, Staff Attorney, Enforcement Section of the Railroad Commission of Texas

FOR RESPONDENT:

No appearance

IN INDIVIDUAL CAPACITY:

Craig M. Stricklin, representing himself

PROCEDURAL HISTORY

Date of Initial Default Order:	August 19, 2003
Motion for Rehearing Filed:	September 9, 2003
Motion Partially Granted at Conference:	October 21, 2003
Order Granting Limited Rehearing:	November 13, 2003
Notice of Rehearing:	December 15, 2003
Rehearing Held:	January 12, 2004

Record Closed: January 12, 2004
Rehearing heard by: Scott Petry, Hearings Examiner
PFD Circulation Date: February 27, 2004

STATEMENT OF THE CASE

This docket was called on the basis of a motion for rehearing in a default enforcement proceeding. At public conference on November 13, 2003, the Commission granted a limited motion for rehearing in this docket. Specifically, the order stated:

The Commission has considered on its merits the Motion for Rehearing filed by Craig Stricklin on September 9, 2003, and the Motion is hereby **GRANTED** for the limited purpose of amending Finding of Fact No. 3 contained in the August 19, 2003 Final Order. The Commission orders that the following amendment be adopted:

FOF # 3 On September 8, 2000, Respondent, a Corporation, filed with the Commission an Organization Report (Form P-5) reporting that its officers consisted of the following individuals: Alan Stricklin, President; Clovis H. Stricklin, Vice President; and Craig M. Stricklin, Vice President.

The Motion for Rehearing filed by Craig Stricklin is in all other respects DENIED.

Accordingly, a rehearing was held to determine whether Craig M. Stricklin is an officer of American West Resources, Inc., and whether his name should be removed from the Commission Form P-5 (Organization Report).

Lowell Williams, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Craig M. Stricklin ("Stricklin") appeared in his individual capacity. At the hearing, Stricklin requested that his name be removed from the Commission Form P-5.

BACKGROUND

16 T.A.C. § 3.1 states that no organization operating wholly or partially within this state for the purpose of performing operations within the jurisdiction of the commission shall perform such operations without having on file with the commission an approved organization report and financial

security as required by Texas Natural Resources Code §§91.103-91.1091.

This section goes on to state that each organization performing activities subject to the jurisdiction of the Commission shall maintain a current organization report with the Commission until all duties, obligations, and liabilities incurred pursuant to Commission rules, the Natural Resources Code, Titles 3 (Subtitles A, B, C, and Chapter 111 of Subtitle D) and 5, and the Water Code, Chapters 27 and 29, are fulfilled.

With respect to the information included on the Form P-5 Organization Report, 16 T.A.C. § 3.1 states that the report shall contain, for each officer, director, general partner, owner of more than 25% ownership interest, or trustee, the individual's full legal name, the name(s) under which such entity or individual conducts business in the State of Texas, and all assumed names. The rule states that the individual shall file with the Commission his or her social security number, or , at that person's option, either his or her valid driver's license or Texas State Identification number. Additionally, the rule states that organization reports shall not be approved unless the organization has complied with the state registration requirements of the Secretary of State and the taxation requirements of the Comptroller of Public Accounts.

DISCUSSION OF THE EVIDENCE

This rehearing was called to determine whether Craig M. Stricklin is an officer of American West Resources, Inc., and whether his name should be removed from the Form P-5. Mr. Stricklin stated that his affiliation with American West was essentially as a contract pumper, and that he never authorized, or had knowledge of, his name being placed on the P-5.

First, Mr. Stricklin stated that he was never an employee, much less a vice-president of the company. He stated that he never filled out a Form W-2 for tax purposes, that he never received any benefits from the company, and that he never received health insurance. Mr. Stricklin said that he was really just a pumper for the company and that he received compensation under Form 1099 direct pay as an independent contractor. Mr. Stricklin stated that he did not have decision-making authority, and that a true vice-president would not have had to make calls to authorize the purchase of such minor things as valves used to fix a wellhead.

Additionally, Mr. Stricklin noted that his “job” while at American West was essentially to do whatever Alan Stricklin, his father, directed him to do. While this usually meant pumper work, he stated that in 2000 his father asked him to solicit investors for a drilling venture. Mr. Stricklin testified that he refused to do so, because of his distrust regarding the ongoing venture’s solvency. He also testified that he had never even seen a balance sheet for American West.

Second, Mr. Stricklin stated that he has never authorized the placement of his name on the Form P-5. According to Mr. Stricklin, the only officer of American West was his father, Alan Stricklin, and that his father wrote in his name and driver’s license number on the Organization Report without his consent or knowledge. With regard to corporate structure, Craig Stricklin points out that his assertion that the only officer is Alan Stricklin is also supported by documentation from the Texas Secretary of State.

Secretary of State records list Alan Stricklin as the president and director of American West. The records do *not* reflect that Craig Stricklin held any office in the organization. Craig Stricklin points out that he has never owned any stock in the company or any other type of ownership, “...either actual or implied, in any way, shape, or form.”

The problem, according to Mr. Stricklin, is that he is trying to prove a negative. Mr. Stricklin argues that his father could have just as easily placed George W. Bush or Dick Cheney on the Organization Report. According to Mr. Stricklin, both the President and Vice President of the United States have oil and gas experience and both have spent time in Texas, and it was even conceivable that they, too, could “be waiting outside to go next to prove a negative.” Mr. Stricklin stated that it would make more sense for someone to have to personally sign the P-5 before being forced to take responsibility for an organization’s actions.

EXAMINER’S OPINION

This hearing was reopened for the limited purpose of determining whether Craig M. Stricklin was indeed an officer of American West Resources. The examiner finds that the evidence supports his contention that he was not an officer, and accordingly recommends that his name be removed from the Form P-5 Organization Report.

The testimony indicates that American West paid Craig Stricklin as an independent contractor according to the Form 1099 filed with the Internal Revenue Service. The evidence indicates that he did not receive benefits or health insurance while performing work for American West, and that he was not a "...W-2'ed employee." Finally, the Secretary of State records indicate that the true president, director, and sole officer is Alan Stricklin.

Accordingly, the examiner recommends that Finding of Fact No. 3 be amended to reflect the true officer(s) of American West. The administrative penalty, reimbursement, and other findings of fact and conclusions of law adopted on August 19, 2003 remain substantially the same.

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. American West Resources, Inc. ("respondent") was given notice of the original default hearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report, which was returned to the Commission marked "unclaimed."
2. The returned certified receipt containing the Original Complaint and the Notice of Hearing was returned to the Commission marked "unclaimed" on May 14, 2003. The receipt was on file with the Commission for 15 days, exclusive of the day of receipt and day of issuance.
3. A default order was entered against the respondent on August 19, 2003.
4. On September 9, 2003, Craig Stricklin filed a motion for rehearing.
5. On November 13, 2003, the Commission entered an order granting Craig Stricklin's motion for rehearing, but limited it in scope to issues regarding officers listed on the respondent's P-5 Organization Report.
6. American West Resources, Inc. and the parties listed on its Form P-5 Organization Report

were given notice of the rehearing by certified mail, addressed to the most recent P-5 address on the Form P-5 Organization Report. The rehearing was held on January 12, 2004.

7. Respondent's only officer is Alan Stricklin, its president.
8. Craig Stricklin is not an officer of American West Resources, Inc.
 - A. Craig Stricklin was paid for his services as an independent contractor by Form 1099 filed with the Internal Revenue Service.
 - B. Craig Stricklin did not receive benefits or health insurance while performing work for American West Resources.
 - C. Secretary of State records indicate that the only officer of American West Resources is Alan Stricklin.
9. Respondent designated itself to the Commission as the operator of Well Nos. 6, 28, 34, 38 and 48 on the Daisy Slopansky (00142) Lease ("subject wells" / "subject lease") by filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with an effective date of August 1, 2000.
10. According to Commission records, the respondent's Form P-5 (Organization Report) became delinquent on August 1, 2001. American West paid a fee of \$1,500.00 as its financial assurance at the time of its last Form P-5 renewal.
11. Commission district inspections were conducted January 2, 2002, February 13, 2002, March 11, 2002, and July 12, 2002 on the subject lease. At Well No. 28, the respondent had caused or allowed oil to leak from around the base of the wellhead and drain into a workover pit. This discharge was estimated to be approximately 15 to 20 gallons on January 1, 2002 and increased to approximately 1 barrel by February 13, 2002.
12. Commission district office inspections were conducted on February 13, 2002 on the subject lease. At Well No. 34, Respondent had caused or allowed oil to leak from the base of the wellhead affecting an area measuring approximately 2' x 9' x .25" of standing oil. A follow-up

inspection report made on March 11, 2002 found that oil continued to leak from the base of the wellhead, and had affected an area measuring approximately 21' x 21' and 1" to 3" in depth of oil and water (tested at 82,000 ppm chlorides). A follow-up inspection report made on July 12, 2002 indicated that there was standing oil and water around the wellhead affecting an area of ground measuring approximately 4' x 4' with approximately 1' to 2' of standing oil and water.

13. A Commission district office inspection was conducted on March 11, 2002. At that time, respondent had caused or allowed oil to leak from the wellhead of Well No. 48 and had caused or allowed it to affect an area measuring approximately 2' x 6'.
14. No permit has been issued to the respondent for the discharge of oil and gas wastes on or from the subject lease.
15. The unpermitted discharges on the subject lease constitute a hazard to public health and safety because leaks and spills of oil and produced waters onto soils can migrate into surface water bodies causing contamination, leaching into the ground, and percolation through soils into groundwater supplies.
16. A Commission district office inspection was conducted on July 12, 2002. The inspection indicated that respondent had caused or allowed a workover pit near Well No. 28 and measuring approximately 8' x 15' x 4', with 15 to 20 gallons of oil in it, to remain open. At Well No. 6, respondent had caused or allowed a dry workover pit measuring approximately 8' x 15' x 5' to remain open and, at Well No. 38, respondent had caused or allowed a dry workover pit measuring approximately 9' x 15' x 5' to remain open. Also, at Well No. 48, respondent had caused or allowed a workover pit measuring approximately 8' x 15' x 5' containing several inches of water to remain open.
17. Commission district office inspections conducted on February 13, 2002, March 11, 2002, and July 12, 2002 indicated that the workover pit at Well No. 28 remained open and contained approximately 1 barrel of oil. The inspection reports also indicated that the dry workover pits at Well Nos. 6 and 38 remained open. Further, the workover pit containing several inches of rainwater at Well No. 48 remained open.

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18. Unfilled pits constitute a hazard to public health and safety because of the potential for illegal dumping in the pits and the potential for surface run-off to collect in the pit and seep into subsurface waters.
 19. The Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject lease and the subject wells in compliance after being notified of the violations by the District Office and failed to appear at the hearing to explain its inaction.
 20. The Commission spent a total of \$1,344.50 in State Funds to abate the pollution caused by Respondent on the subject lease.

CONCLUSIONS OF LAW

1. Proper notice was issued by the Railroad Commission to respondent and to all other appropriate persons legally entitled to notice for both the original default hearing and the rehearing.
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. Pursuant to §91.114 of the Texas Natural Resources Code, Craig Stricklin is not an officer of American West Resources, Inc.
4. Respondent is in violation of Commission Statewide Rules 8(d)(1) and 8(d)(4)(G)(i)(III).
5. Respondent is responsible for maintaining the subject lease in compliance with Rule 8(d)(1), which prohibits the discharge of oil and gas wastes without a permit.
6. Respondent is responsible for maintaining the subject lease in compliance with Rule 8(d)(4)(G)(i)(III), which requires workover pits to be dewatered, filled and compacted within 120 days from completion of workover operations.

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7. Respondent is responsible for maintaining the subject lease in compliance with all applicable Commission rules and for properly plugging the subject wells according to Statewide Rules 14, 58, and 79 and Chapters 89 and 91 of the Texas Natural Resources Code.
 8. The documented violations committed by the respondent 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) (Vernon 2001).
 9. The Commission is entitled to recover from Respondent a total of \$1,344.50 in State Funds used to abate pollution on the subject lease pursuant to TEX. NAT. RES. CODE §91.113(f)

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order be approved, requiring American West Resources, Inc., within 30 days from the date this order becomes final, to place the subject lease and wells in compliance with all Commission rules, to reimburse the State in the amount of \$1,344.00, and to pay an administrative penalty of \$4,500.00. It is further recommended that Craig M. Stricklin be removed from the Form P-5 Organization Report for the respondent.

Respectfully submitted,

Scott Petry
Hearings Examiner