

July 28, 2006

OIL AND GAS DOCKET NO. 09-0235864

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**ENFORCEMENT ACTION AGAINST CHRIS CRESWELL, SOLE PROPRIETOR (OPERATOR NO. 189952) FOR VIOLATIONS OF STATEWIDE RULES ON THE BUTLER (26867) LEASE, WELL NO. 1, YAZOO (MISSISSIPPI) FIELD, YOUNG COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR MOVANT RAILROAD COMMISSION OF TEXAS:**

Susan German, Staff Attorney

**FOR RESPONDENT CHRIS CRESWELL:**

Chris Creswell, Sole Proprietor

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>COMPLAINT FILED:</b>	August 1, 2003
<b>NOTICE OF HEARING:</b>	December 7, 2004
<b>DATE CASE HEARD:</b>	March 17, 2005
<b>DATE HEARING CLOSED:</b>	July 26, 2006
<b>PFD PREPARED BY:</b>	Marshall Enquist, Hearings Examiner
<b>PFD CIRCULATION DATE:</b>	July 28, 2006
<b>CURRENT STATUS:</b>	Protested

**STATEMENT OF THE CASE**

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

1. Whether respondent, Chris Creswell (Operator No. 189952) (hereinafter "Creswell") violated Statewide Rule 3(1) on the Butler (26867) Lease, Well No. 1, Yazoo (Mississippi) Field, Young County, Texas;
2. Whether respondent, Creswell, violated Statewide Rule 14(b)(2) on the Butler (26867) Lease, Well No. 1, Yazoo (Mississippi) Field, Young County, Texas;

3. Whether the respondent 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 3 and 14;
4. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said lease and wells; and
5. 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.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”). Chris Creswell, representing herself, appeared and presented evidence. Enforcement's hearing file was admitted into evidence.

Enforcement recommended that Creswell be ordered to bring the subject lease and well into compliance with Commission rules, and pay a total administrative penalty of \$2,000.00, which is for one violation of Statewide Rule 14(b)(2), less \$1,375.00 already paid for a total administrative penalty of \$625. The examiner agrees with Enforcement's recommendations.

#### **DISCUSSION OF THE EVIDENCE**

##### *Organization and Permit Records*

Commission records show that Creswell filed her initial Commission Form P-5 (Organization Report) with the Commission in 1985. The most recent Organization Report for Creswell was filed on October 4, 2000. Creswell then became delinquent on July 31, 2001 and remains so today. Chris Creswell is identified as the sole proprietor. Notice of this hearing was served on Creswell at her most recently reported P-5 address.

Creswell was recognized as the operator of the Butler (26867) Lease, Well No. 1, (“subject lease” and “subject well”) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective February 12, 1996, which was approved by the Commission on February 16, 1996.

##### *Commission Inspections*

Ten Commission inspections of the subject lease made between October 2, 2002 and May 13, 2003 showed the signs and identification required by Statewide Rule 3(1) and 3(2) to be posted at the lease entrance and well site to be missing.

Commission District Office inspections made on November 26, 2002, March 3, 2003, March 24, 2003, May 6, 2003 and May 13, 2003 and no production reported to the Commission since October 31, 2001, showed that the Butler (26867) Lease, Well No. 1 has been inactive for a period greater than one year. Production ceased from the well on or before October 31, 2001.

Commission District Office inspections on September 2, 2005 and February 11, 2005 show that the subject well was plugged, but that the casing had not been cut off three feet below ground level and that fluid in the casing revealed bubbles escaping from the well. A District office inspection performed August 22, 2005 did not find fluid in the casing, preventing determination of whether or not the well continued to leak. The inspection found all other conditions on the lease unchanged from the previous two inspections.

By failing to properly plug the subject well, Respondent has violated Statewide Rule 14(b)(2). Respondent's violation of Statewide 14(b)(2) is serious and threatens the public health and safety. Improperly plugged wellbores are likely to cause pollution of usable quality groundwater and surface water, as defined in Statewide Rule 8(a)(28), by serving as a conduit for the passage of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

#### **ENFORCEMENT'S POSITION**

Enforcement notes that the subject lease was out of compliance with Statewide Rule 3 due to a lack of proper signage on the lease as shown by a series of District Office inspections made from October 2, 2002 through May 13, 2003. However, the Statewide Rule 3 violations have been corrected and are no longer at issue in this hearing.

Enforcement also notes the subject well is out of compliance with Statewide Rule 14(b)(2) because production ceased on or before October 31, 2001 and no SWR 14(b)(2) extension is in effect for the subject well as allowed by Statewide Rule 14(b)(2)(A). Enforcement worked with Creswell to achieve the plugging of the well, and, in February of 2004, Creswell set a bridge plug. On April 23, 2004, Creswell set the first cement plug and by August 12, 2004, reported that the plugging was completed. Creswell paid an administrative penalty and Enforcement was ready to conclude settlement of the docket, but received a report from the District Office in September, 2004 that the plugged well was leaking.

Notified of the leak, Creswell requested instructions from the District Office as to the proper procedure to fix the leak. On October 22, 2004, the District Office sent Creswell a letter detailing the requirements to drill out the plugs and re-set. Creswell has not responded to the request to properly re-plug the well, therefore Enforcement requested at hearing that Creswell be required to properly plug the well, place the lease in compliance with Commission rules and pay an administrative penalty of \$2,000.00, less \$1,375.00 already paid, for a total administrative penalty of \$625.00.

The original estimated cost to plug the subject well was \$3,700.00, but Enforcement does

not know the cost presently as the failed plugging attempt leaves the well with at least two plugs that must be drilled out before a second attempt at proper plugging can be initiated.

#### **CRESWELL'S POSITION**

Creswell had difficulty killing the well, which was done by loading with saltwater, prior to the plugging attempt. A local company, Graham Acidizing, conducted the actual plugging. Creswell admits that the well leaked after the plugging, with bubbles of gas escaping to the surface. However, Creswell believes that the well may have now sealed itself and had conversations with the District Office requesting that it conduct another inspection of the well to verify that it is sealed. The District Office declined to re-inspect.

Creswell notes that drilling out the existing plugs and using a reverse circulator to re-plug will be an expensive operation, probably costing as much as \$4,000. However, after being questioned by the Enforcement attorney, Creswell agreed to drill out the existing plugs and re-plug the well.

#### **APPLICABLE AUTHORITY**

Statewide Rule 3(1) requires the posting of signs and identification in English, which display clearly legible and correct information, with letters and numbers at least one inch in height. Statewide Rule 3(1) requires the posting of such a sign at the principal entrance of the property, which must show the name of the property as carried on the records of the Commission, the name of the operator, and the number of acres in the property. Statewide Rule 3(2) requires the posting of such a sign at each well site, which must show the name of the property, the name of the operator and the well number.

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.

#### **EXAMINER'S OPINION**

This docket is one of two that were heard against Creswell on March 17, 2005. The first of the two, Docket No. 09-0238274, was resolved by an Agreed Order signed at Conference on July 11, 2005. The present docket was partially resolved prior to hearing insofar as the Statewide Rule 3 violations were concerned. At the request of the parties, this docket was left open for settlement negotiations, but by letter dated September 9, 2005, Enforcement indicated those negotiations had failed. Enforcement also offered a late-filed exhibit, a District Office inspection report dated August 22, 2005 indicating that no subsequent remedial or re-plugging operations had been conducted on the subject lease and well.

On August 12, 2004, Creswell advised the Enforcement attorney that the subject well had been plugged. However, a District Office inspection report dated September 2, 2004 found that the well casing was not cut off three feet below ground level and that bubbles were escaping from the casing. A second District Office inspection report dated February 11, 2005, found the situation

unchanged, with bubbles still escaping to the surface. Creswell asked the District Office for instructions for the re-plugging of the well and was advised to drill out the top plug and the water protection plug, and then recirculate mud in the hole from the intermediate plug. If the mud did not remain static, Creswell was advised to drill out the intermediate plug and recirculate mud from the bridge plug, and re-set the intermediate plug, water protection plug and top plug.

Creswell offered an opinion, unsupported by any evidence, that the well may have spontaneously stopped leaking, but the length of time that the well was observed by the District Office to leak, from September, 2004 through at least February, 2005, strongly indicates there is an ongoing problem with the integrity of the plugs. The August 22, 2005 inspection report states that the well location is now mostly dry, although extremely muddy around the casing, and that there is now no fluid in the casing, which precludes determination of whether gas continues to escape.

The examiner recommends that Creswell be ordered to re-plug the subject well and bring it into compliance with Statewide Rule 14(b)(2), as well as pay the remaining administrative penalty of \$625.00.

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 Chris Creswell (Operator No. 189952) (“Creswell”) was given at least 10 days notice of this proceeding by certified mail, addressed to her most recent Form P-5 (Organization Report) address. Creswell appeared at the hearing.
2. Commission records show that Creswell filed her initial Commission Form P-5 (Organization Report) with the Commission in 1985. The most recent Organization Report renewal for Creswell was filed on October 4, 2000. Creswell became delinquent on July 31, 2001. Chris Creswell was reported as the sole proprietor of the company.
3. Creswell was recognized as the operator of the Butler (26867) Lease, Well No. 1, Yazoo (Mississippi) Field, Young County (“subject lease” and/or “subject well”) after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was effective February 12, 1996 and approved by the Commission on February 16, 1996.
4. The Statewide Rule 3 violations pled in the Original Complaint were resolved prior to hearing and no administrative penalty for those violations is sought in this proceeding.
5. Commission records indicate the Butler (26867) Lease ceased producing on or before October 31, 2001.
6. On August 12, 2004, Creswell reported to the Enforcement Section that the subject well had been plugged by a contractor, Graham Acidizing.

7. A Commission District office inspection report dated September 2, 2004 found that the subject well did not have the casing cut off three feet below ground level and that fluid in the casing showed bubbles escaping from the well.
8. A Commission District Office inspection report dated February 11, 2005 found that there was fluid in the casing and that bubbles continued to escape from the well.
9. A Commission District Office Inspection report dated August 22, 2005 found no changes on the lease and no evidence that the well had been re-plugged. There was no fluid in the casing, precluding a determination of whether the well was still leaking.
10. The well was observed to leak from September 2, 2004 through at least February 11, 2005.
11. The estimated cost to plug the subject well was originally \$3,700.00, but the necessity of drilling out the old plugs and re-plugging will increase the expense of plugging the well.
12. The well has not been properly plugged and does not have a plugging extension.
13. Inactive wellbores must be properly plugged in order to prevent pollution of usable quality surface and 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. An improperly plugged well may allow oil or saltwater to communicate with usable quality water zones or to flow to the surface.
14. Creswell has not demonstrated good faith in that she failed to respond to requests from the District Office to resolve the violation that is the subject of this docket.
15. The violation of Statewide Rule 14 is serious and relates to safety and the prevention of pollution.
16. Chris Creswell, as sole proprietor, was in a position of ownership and control of Chris Creswell (Operator No, 189952) at the time of Creswell's violation of Statewide Rule 14.

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Chris Creswell (Operator No. 189952) ("Creswell") is the operator of the Butler (26867) Lease, Well No. 1, Yazoo (Mississippi) Field, Young County, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Creswell has the primary responsibility for complying with Statewide Rule 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission

- rules relating to the Butler (26867) Lease, Well No. 1.
5. Creswell violated Commission Statewide Rule 14(b)(2) on the Butler (26867) Lease, Well No. 1.
  6. The violation of Commission Statewide Rule 14 committed by respondent is related to safety and the control of pollution.
  7. As Sole Proprietor of Chris Creswell (Operator No, 189952) at the time of the violation of a Commission rule related to safety and the control of pollution, Chris Creswell and any other organization in which she may hold a position or ownership or control, shall be subject to the restrictions of Texas Natural Resources Code §91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violation herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.
  8. The documented violations committed by respondent are a hazard to the public health and demonstrate a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).

**RECOMMENDATION**

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Chris Creswell (Operator No. 189952) to 1.) re-plug and place in compliance with Commission Statewide Rule 14 the Butler (26867) Lease, Well No. 1, and 2.) pay an administrative penalty of \$625.00.

The examiner also recommends that Chris Creswell be made subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

Respectfully submitted,

Marshall Enquist  
Hearings Examiner