

PROPOSAL FOR DECISION

OIL & GAS DOCKET NO. 09-0233189

ENFORCEMENT ACTION AGAINST ROBERT E. RANKIN, D.B.A. KINTEX PETROLEUM COMPANY (OPERATOR NO. 467779) FOR VIOLATIONS OF STATEWIDE RULES ON THE E. L. HORTON (18125) LEASE, WELL NOS. B1, B2, B3, B4, B5, B7, AND B8, J.R.K. (TANNEHILL) FIELD, KNOX COUNTY, TEXAS, AND ON THE W. L. ORSAK (17552) LEASE, WELL NOS. 1 AND 3, NW GOREE (TANNEHILL) FIELD, KNOX COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German, Staff Attorney, Enforcement Section of the Railroad Commission of Texas

FOR RESPONDENT:

Robert Rankin, d.b.a. Kintex Petroleum Company

PROCEDURAL HISTORY

Date of Request for Action:	September 20, 2002
Notice of Hearing:	February 19, 2003
Hearing Held:	March 20, 2003
Record Closed:	March 20, 2003
Heard By:	Scott Petry, Hearings Examiner
PFD Circulation Date:	May 15, 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 should be required to plug or otherwise place in compliance with Statewide Rules 3, 8, and 14, the E. L. Horton (18125) Lease, Well Nos. B1, B2, B3, B4, B5, B7, and B8, and the W. L. Orsak (17552) Lease, Well Nos. 1 and 3, all of which are located in Knox 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 Rules 3, 8, and 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said leases 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.

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Robert E. Rankin, d.b.a. Kintex Petroleum Company (hereinafter "Rankin" or "respondent"), represented himself in a telephonic proceeding. The Enforcement Section's hearing file was admitted into evidence. Mr. Rankin did not submit any documentary evidence into the record.

The staff recommends that the respondent be ordered to properly plug or place the subject wells in compliance with Commission rules, and to pay an administrative penalty of \$20,250.00 for the violations of Statewide Rules 3(a), 8(d)(4)(G)(i)(III), and 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.

Statewide Rule 3 provides that signs must be posted at each well site, tank battery, and lease entrance. Statewide Rule 3 also provides that the signs must show the name of the property, operator, and other pertinent information. Signs as outlined by Rule 3 provide contact information and speed the containment and remediation of any potential violations or emergencies.

Statewide Rule 8 provides that a person who maintains or uses a completion or workover pit in conjunction with completing or working over a well must dewater the pit within 30 days and must also backfill and compact the pit within 120 days of completion of the well. Failure to properly empty and backfill pits within the designated time period may result in unpermitted discharges and may contaminate surface or subsurface waters.

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 Robert E. Rankin, d.b.a. Kintex Petroleum Company, was filed with the Commission on February 10, 2000. The respondent paid a "good guy" fee of \$100 as financial assurance at the time of his last renewal. Robert E. Rankin is listed as the sole owner, and the respondent's Organization Report is currently delinquent.

The respondent was recognized as the operator of the E. L. Horton (18125) Lease, Well Nos. B1, B2, B3, B4, B5, B7, and B8 ("Horton wells"), by means of a Form P-4 (Producer's Transportation Authority and Certificate of Compliance), with an effective date of February 1, 1994 and an approval date of February 24, 1994. Respondent designated himself as the operator of the W. L. Orsak (17552) Lease, Well Nos. 1 and 3 ("Orsak wells"), by means of a Form P-4 (Producer's Transportation

Authority and Certificate of Compliance), with an effective date of November 1, 1987 and an approval date of December 23, 1987.

I. Enforcement's Position & Evidence

In Enforcement's case in chief, the Staff Attorney submitted into evidence the hearing file and copies of related records. In regards to the asserted Rule 3(a) violations, Enforcement submitted inspection reports dated July 23, 2002, September 12, 2002, September 24, 2002, and January 30, 2003, that showed the sign and information required by Rule 3(a)(1) to be posted on the E. L. Horton (18125) Lease was missing. Statewide Rule 3(a)(1) specifically delineates the identification that is to be placed at the principle entrance of the lease property and requires that the signs show the name of the property, the name of the operator, and the number of acres in the property. This information was not posted at the entrance to the Horton Lease.

Statewide Rule 3 also requires information to be posted at the individual well sites, and inspection reports show that the sign and information required by Rule 3(a)(2) was missing at Well Nos. B1 and B7 on the Horton Lease. Statewide Rule 3(a)(2) specifically delineates the identification that is to be placed at each well site and requires that the signs show the name of the property, the name of the operator, and the well number. This information was not posted at Well Nos. B1 and B7.

With regards to the asserted violations of Statewide Rule 8, inspection reports show that an open pit measuring approximately 15' x 6' x 3' exists near the Horton Lease Well No. B3. Enforcement argues that the pit has remained open since at least July 23, 2002, and that the inspections made on September 12, 2002, and September 24, 2002, show the pit had approximately two inches of standing fluid in it. These same inspection reports also indicated a second open pit, measuring approximately 15' x 9' x 2', near the Horton Lease Well No. B1. Enforcement argues that the second pit has also remained open since at least July 23, 2002, but that the inspections made on September 12, 2002, and September 24, 2002, showed the pit, which had fluid in it on July 23, 2002, had dried out.

Finally, Enforcement submitted Commission inspection reports which indicate that the subject wells on the Horton and Orsak Leases have been inactive for a period greater than twelve months. On the Horton Lease, an inspection made on July 23, 2002, found that Well Nos. B1, B2, and B5 were inactive. Subsequent inspections on September 12, 2002, and September 24, 2002, showed that Well Nos. B1, B2, B3, B4, B5, B7, and B8 were all inactive and unequipped to either produce or inject. Further, Commission production records show that Well Nos. B1, B2, B5 and B7 have not had

any production activity since on or before September 30, 2001. Commission records pertaining to injection activity also show that Well Nos. B3 and B4 have not had any injection activity since on or before May 31, 1999, and that Well No. 8 has not had any injection activity since on or before January 9, 2001.

Inspection reports and Commission records also indicate that the subject wells on the Orsak Lease are currently inactive and have been inactive for more than 12 months. Inspections on the Orsak Lease were conducted on January 14, 2002, May 20, 2002, and July 26, 2002 and found that Well Nos. 1 and 3 were inactive. Commission records indicate that no production has been reported from Well No. 1 since on or before June 30, 1993, and that no injection activity has been reported for Well No. 3 since on or before October 31, 1993.

Enforcement also argued that there are no plugging extensions in effect for any of the subject wells on the Horton or Orsak Leases. The estimated cost to plug the subject wells on the Horton Lease is \$12,600, whereas the estimated cost to plug the subject wells on the Orsak Lease is \$3,600. Enforcement did note, however, that the record does not reflect any previous violations by the respondent of Commission rules.

II. Respondent's Position & Evidence

The respondent in this matter appeared telephonically, but did not submit any documentary evidence into the record, and did not contest the allegations. Rather, the respondent asserted that he had been incapacitated for a year and a half, and that he was financially unable to meet his regulatory obligations.

EXAMINER'S OPINION

It is uncontested in this docket that the wells and leases are in violation of Statewide Rules 3(a), 8(d)(4)(G)(i)(III), and 14(b)(2). The respondent admits that he is responsible for the subject wells, but claims financial problems and a lengthy illness prevented him from carrying out his regulatory responsibilities.

While the respondent's financial and personal difficulties may account for a portion of the time period that these wells were out of compliance, it does not excuse him from his regulatory responsibilities for plugging the wells as required by Commission rules. Further, the examiner notes that the respondent assumed responsibility for the seven wells on the Horton Lease in February 1994 and assumed responsibility for the two wells on the Orsak Lease in December 1987. When asked why he did not prepare during this time period for the eventuality of plugging the subject wells, the

respondent was unable to produce a satisfactory answer.

Accordingly, the examiner recommends that the respondent be ordered to plug or place in compliance the subject wells on the Horton Lease, and that, given the long period of inactivity, the respondent be ordered to plug the subject wells on the Orsak Lease. The examiner further recommends that the respondent be required to pay an administrative penalty of \$20,250.00, consisting of \$750 for three violations of Statewide Rule 3(a), \$1,500 for two violations of Statewide Rule 8(d)(4)(G)(i)(III), and \$18,000.00 for nine violations of Statewide Rule 14(b)(2). 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, Robert E. Rankin, d.b.a. Kintex Petroleum Company ("Rankin" 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 respondent's Form P-5 Organization Report is currently delinquent. The respondent paid a "good guy" fee of \$100 as financial assurance at the time of his last renewal on February 10, 2000. Robert E. Rankin is listed as the sole owner.
3. Respondent designated himself as the operator of the E. L. Horton (18125) Lease, Well Nos. B1, B2, B3, B4, B5, B7, and B8 ("Horton wells"), by means of Forms P-4 (Producer's Transportation Authority and Certificate of Compliance), effective February 1, 1994 and approved February 24, 1994.
4. Respondent designated himself as the operator of the W. L. Orsak (17552) Lease, Well Nos. 1 and 3 ("Orsak wells"), by means of Forms P-4 (Producer's Transportation Authority and Certificate of Compliance), effective November 1, 1987 and approved December 23, 1987.
5. The sign required to identify the E. L. Horton (18125) Lease, the name of the operator, and the number of acres in the property, has been missing from the principle entrance of the Horton Lease since at least July 23, 2002.
6. The signs required at each well site to identify the E. L. Horton (18125) Lease, the name of the operator, and the well number, have been missing from Well Nos. B1 and B7 since at least September 12, 2002.
7. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.

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8. An open pit measuring approximately 15' x 6' x 3' has remained open near the Horton Lease, Well No. B3, since at least July 23, 2002. Inspections made on September 12, 2002, and September 24, 2002, indicate that the open pit at Well No. 3 had approximately two inches of fluid in it.
 9. An open pit measuring approximately 15' x 9' x 2' has remained open near the Horton Lease, Well No. B1, since at least July 23, 2002. Inspections made on September 12, 2002, and September 24, 2002, indicate that the open pit at Well No. 3 was dry.
 10. Failure to properly empty and backfill workover pits within 120 days of completion or workover of the well(s) is serious and a hazard to the public health and safety because failure to do so may result in unpermitted discharges which may contaminate surface or subsurface waters and may cause pollution.
 11. The wells on the E. L. Horton (18125) Lease are currently inactive and have been inactive for more than 12 months.
 - a. A Commission inspection of the E. L. Horton Lease was conducted on July 23, 2002, and found that Well Nos. B1, B2, and B5 were inactive. Subsequent inspections on September 12, 2002 and September 24, 2002 showed that Well Nos. B1, B2, B3, B4, B5, B7, and B8 were all inactive and were not equipped to either produce or inject.
 - b. No production has been reported from Well Nos. B1, B2, B5 and B7 since on or before September 30, 2001. Further, no injection activity has been reported for Well Nos. B3 and B4 since on or before May 31, 1999, and no injection activity has been reported for Well No. 8 since on or before January 9, 2001.
 12. The wells on the W. L. Orsak (17552) Lease are currently inactive and have been inactive for more than 12 months.
 - a. Commission inspections of the W. L. Orsak Lease were conducted on January 14, 2002, May 20, 2002, and July 26, 2002 and found that Well Nos. 1 and 3 were inactive.
 - b. No production has been reported from Well No. 1 since on or before June 30, 1993. Further, no injection activity has been reported for Well No. 3 since on or before October 31, 1993.
 13. There are no plugging extensions in effect for any of the subject wells.
 14. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of

pollution.

15. The respondent has not demonstrated good faith since he failed to plug or otherwise place the subject wells in compliance after being notified of the violations by the district office.
16. The estimated cost to plug the subject wells on the Horton Lease is \$12,600, and the estimated cost to plug the subject wells on the Orsak Lease is \$3,600.
17. 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. Robert E. Rankin, d.b.a. Kintex Petroleum Company, is the operator of the E. L. Horton (18125) Lease, Well Nos. B1, B2, B3, B4, B5, B7, and B8, and the W. L. Orsak (17552) Lease, Well Nos. 1 and 3, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Robert E. Rankin, d.b.a. Kintex Petroleum Company, 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 E. L. Horton (18125) Lease, Well Nos. B1, B2, B3, B4, B5, B7, and B8, and the W. L. Orsak (17552) Lease, Well Nos. 1 and 3.
5. Well Nos. B1, B2, B3, B4, B5, B7, and B8 on the E. L. Horton (18125) Lease, and Well Nos. 1 and 3 on the W. L. Orsak (17552) Lease, are not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. On the Horton Lease, Well Nos. B1, B2, B5 and B7 have been out of compliance with Statewide Rule 14 since at least September 30, 2002. Well Nos. B3 and B4 have been out of compliance with Statewide Rule 14 since at least May 31, 2000, and Well No. 8 has been out of compliance with Statewide Rule 14 since at least January 9, 2002.
7. On the Orsak Lease, Well No. 1 has been out of compliance with Statewide Rule 14 since at least June 30, 1994, and Well No. 3 has been out of compliance with Statewide Rule 14 since at least October 31, 1994.

8. The open pit in proximity to Well No. B3 on the Horton Lease has been in violation of Statewide Rule 8 since at least July 23, 2002.
9. The open pit in proximity to Well No. B1 on the Horton Lease has been in violation of Statewide Rule 8 since at least July 23, 2002.
10. The Horton Lease has been in violation of Statewide Rule 3 since at least July 23, 2002.
11. The documented violations committed by the respondent 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 approved, requiring the operator, Robert E. Rankin, d.b.a. Kintex Petroleum Company, within 30 days from the date this order becomes final, to plug the subject wells on the Orsak Lease, to plug or place in compliance with Commission rules the subject wells on the Horton Lease, and to place both leases in compliance with Commission rules. It is my further recommendation that the respondent be ordered to pay an administrative penalty of \$20,250.00.

Respectfully submitted,

Scott Petry
Hearings Examiner