

April 28, 2004

OIL & GAS DOCKET NO. 09-0228310

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ENFORCEMENT ACTION AGAINST MOBILE PETROVAC, INC. DOING BUSINESS AS MOBIL PETRO VAC., INC. AND/OR RICHARD REYNOLDS FOR VIOLATIONS OF STATEWIDE RULES ON THE NOVAK, BARBARA (09139) LEASE, WELL NOS. 2A, 3, 3A, 4, 4A, AND 7, BAYLOR COUNTY REGULAR FIELD, BAYLOR COUNTY, TEXAS.

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**APPEARANCES:**

**FOR MOVANT:**

Scott Holter, Staff Attorney  
Susan German, Staff Attorney

**MOVANT:**

Railroad Commission of Texas  
Railroad Commission of Texas

**FOR RESPONDENTS:**

Davin McGinnis  
Richard Reynolds  
Alfred Allen  
James Novak  
Christine Olds  
Kim Johnson

**RESPONDENT:**

Richard Reynolds  
Richard Reynolds  
Richard Reynolds  
Richard Reynolds  
Mobile Petrovac, Inc.  
Mobile Petrovac, Inc.

**NO APPEARANCE BY MOBILE PETROVAC, INC. AT REOPENED HEARING**

**REVISED PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

**INITIAL COMPLAINT FILED:** May 15, 2003  
**HEARING HELD:** June 30, 2003  
**HEARD BY:** Mark Helmueller, Hearings Examiner  
**TRANSCRIPT RECEIVED:** July 21, 2003  
**ORIGINAL PFD CIRCULATION DATE:** September 12, 2003  
**INTERIM ORDER ENTERED:** November 25, 2003  
**HEARING REOPENED:** March 23, 2004  
**REOPENED HEARING HELD:** April 15, 2004

**REVISED PFD CIRCULATION DATE:** April 28, 2004  
**CURRENT STATUS:** Default

**STATEMENT OF THE CASE**

This Commission-called hearing was reopened on the motion of the Commission's Office of General Counsel, Enforcement Section to determine the following:

1. Whether respondent, Mobile Petrovac, Inc. complied with the terms of the Interim Order entered in this matter on November 25, 2003 which required Mobile Petrovac, Inc. to plug Well Nos. 2A, 3, 3A, 4, 4A, and 7, on the Novak, Barbara (09139) Lease, Baylor County Regular Field, Baylor County, Texas;
2. Whether 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, Statewide Rule 14, and the Interim Order entered on November 23, 2003;
3. Whether respondent should be assessed administrative penalties of not more than \$10,000 per day for each violation of Statewide Rule 14 committed regarding said lease and wells;
4. Whether respondent should be assessed administrative penalties of not more than \$10,000 for failing to comply with the terms of the Commission's November 25, 2003 Interim Order pursuant to Tex. Nat. Res. Code Ann. §85.381;
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.

Scott Holter, Staff Attorney, appeared at the original hearing representing the Railroad Commission of Texas, Enforcement Section. Susan German, Staff Attorney represented the Commission after the hearing and at the reopened hearing. Respondents, Mobile Petrovac, Inc. doing business as Mobil Petro Vac., Inc. ("Mobile"), and Richard Reynolds ("Reynolds"), both appeared and presented evidence at the original hearing.

On November 25, 2003, the Commission entered an Interim Order recognizing Mobile as the operator of the Novak, Barbara (09139) Lease, Well Nos. 2A, 3, 3A, 4, 4A, and 7, Baylor County Regular Field, Baylor County, Texas. The Commission ordered that Mobile plug Well Nos. 2A, 3, 3A, 4, 4A, and 7 on the Novak, Barbara (09139) Lease in compliance with Statewide Rule 14. All of the wells were to be plugged within 90 days after the effective date of the Interim Order. Additionally the Interim Order provided that if Mobile failed to plug the wells within 90 days, a further hearing could be held for the purpose of entering a Final Order assessing an administrative penalty in the amount of \$12,000; and additional administrative penalties in an amount not to exceed \$10,000 per day for the failure to comply with the terms of the Interim Order. Respondent Reynolds was dismissed from this docket in the

Commission's Interim Order.

On April 15, 2004, the hearing in this docket was reopened to consider whether Mobile had complied with the Commission's Interim Order. Notice of the reopened hearing was provided to the representative of Mobil who attended the June 30, 2003 hearing. Enforcement appeared at the reopened hearing on behalf of the Commission. No appearance was made by Mobile. Enforcement submitted an inspection report prepared by the District Office that reported that no action had been taken to plug the wells on the Novak, Barbara (09139) Lease as of March 11, 2004. Review of Commission records reveals that Mobile has not filed a Commission Form W-3A (Notice of Intention to Plug and Abandon) for any of the wells as required under Statewide Rule 14(a)(2).

Enforcement recommended that Mobile be ordered to pay an administrative penalty consistent with the terms of the Interim Order.

The examiner recommends that a Final Order be entered ordering Mobil to pay an administrative penalty of \$22,000.00: \$12,000.00 for six violations of Statewide Rule 14(b)(2) at \$2,000.00 per violation; and \$10,000.00 for failing to comply with the Interim Order pursuant to Texas Natural Resources Code §85.381.

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

Mobil Petro Vac, Inc. first filed a Commission Form P-5 (Organization Report) in November 1996. Mobil Petro Vac, Inc. is currently listed as delinquent. In its last filing under that name, Joe Watson was identified as its President, and Christine Olds was identified as its Vice-President.

On October 30, 2002, Mobil Petro Vac, Inc. filed an Organization Report under a new name, Mobile Petrovac, Inc. Mobile Petrovac, Inc. is currently listed as active, and identifies Kim Johnson as its President and Christine Olds as its Vice-President. Mobile Petrovac, Inc. has submitted financial assurance in the form of a \$50,000 letter of credit.

Mobile admits that the two Commission-recognized operators are the same. It claims that a misspelling on the financial security instrument it filed in October 2002 led to the new organization filing. It further claims that the Commission agreed to the change as part of Mobil's attempt to resolve both its delinquent status and all past and pending violations of Commission rules. Mobil claims it intended for all of its obligations to be covered under the new operator designation.

Simultaneous with the new entity filing, Mobil Petro Vac, Inc. sought to transfer its leases and wells into Mobile Petrovac, Inc. Two leases were not transferred: the subject lease and its six wells; and, the Sloan "C" (28248) Lease and its two wells. Review of Commission records for these two leases indicates that both leases were severed prior to the filing of the Organization Report in October 2002.

Reynolds last filed an Organization Report as a sole proprietor with the Commission on August 17, 1995. Reynolds is currently listed as an inactive operator. At the time of the last filing, Reynolds paid a \$100 fee in lieu of posting financial assurance.

Mobil Petro Vac, Inc. was recognized as the operator of the subject lease by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on August 20, 1997. The Commission approved the Form P-4 on August 21, 1997.

Commission records show that there has been no production or injection activity on the subject lease since November 1993. Mobil Petro Vac, Inc. filed a Commission Form W-1X (Application for Future Re-Entry of Inactive Well Bore and 14(b)(2) Extension Permit) for each of the wells at the time the Commission approved the transfer of operator on August 21, 1997. Plugging extensions were approved for four of the wells on the lease through October 16, 2001. Plugging extensions were canceled for Well Nos. 2 and 7 for the failure to file proper fluid level tests in April 1998. Subsequent requests for plugging extensions for these two wells were denied on the same basis. Commission records also show that a Commission Form W-3A (Notice of Intention to Plug and Abandon) was filed for each well on July 11, 2000 by Mobil Petro Vac, Inc.

A Commission inspection on February 4, 2000 found that all of the wells were rigged for production or injection, but that the wells were inactive. A follow-up inspection on April 26, 2000 reported the same conditions. Neither of these two inspections report a violation of Statewide Rule 8, or otherwise note the existence of a pit.

An inspection on July 17, 2000 showed that the condition of the lease had changed significantly from the prior inspection. All six of the wells had been stripped of their equipment, and were shut in. The report also noted the presence of an open, unpermitted dry pit near Well No. 3A. Subsequent inspections on September 26, 2000, December 14, 2000, January 25, 2001, August 10, 2001, September 27, 2001, February 18, 2003, and May 7, 2003 report the wells in the same inactive and unequipped condition. The report on May 7, 2003 also observed that the pit had naturally remediated to a slight depression.

### **Positions of the Parties at the June 30, 2003 Hearing**

Enforcement contended that the Novak Lease was in violation of Statewide Rule 14(b)(2), but did not take a position on which respondent was the responsible operator. Enforcement argued that whichever party was held responsible should be required to plug the wells and to pay an administrative penalty of \$2,000.00 for each of the six violations of Statewide Rule 14(b)(2).

Mobile contended that Reynolds should have been held responsible for properly plugging the wells because it re-entered the wells and removed all of the surface and downhole equipment. Mobile argued that Reynolds' re-entry into the wells constitutes activity sufficient to rebut the presumption that Mobil was the proper operator because Reynolds exercised control over the wells.

Mobile admitted that it no longer possessed a good faith claim of a right to operate the Novak Lease. It claimed that it was negotiating with Novak between February and June 2000 to either obtain a new lease so it could restore the wells to active operations or to secure permission from Novak to enter the lease so that it could remove its equipment and plug the wells.

Mobil claimed that lease negotiations fell apart when it learned in June 2000 that Novak hired someone to strip the equipment from the wells. Mobil filed Commission Form W-3As for each of the wells after learning that the equipment was removed. A lawsuit was also filed for conversion against Novak.

Mobil alternatively contended that it brought any violations into compliance with Statewide Rule 14(b)(2) through the filing of a new organization report and letter of credit in October 2002. Mobil claimed that it did not intend to change its name, but that an error by the bank in executing the letter of credit, and the Commission's refusal to accept the letter of credit without the proper name led it to change its name so that it could return the company to active status. Mobil intended to transfer all of its leases and wells from its prior organization to the new organization, but it is not aware of why that transfer did not occur with respect to the subject lease.

### **Reynold's Position at Original Hearing**

Reynolds claimed no responsibility for the subject wells. Both Reynolds and Novak confirmed that they entered into an oral agreement for removal of both surface and downhole equipment in exchange for the salvage rights to that equipment. Reynolds contacted the Commission's District Office prior to removing any equipment on the subject lease. Reynolds further admitted that he re-entered the wells to remove rods and tubing. The salvaged equipment was only suitable for ranch or farm use. Reynolds estimated the total salvage value of all of the equipment at \$7,000 and that it cost him \$4,500 to remove it.

Reynolds and Novak did not execute a new lease for the property and said that there was no intent to restore production for any of the wells. Because he never obtained any interest in the wells and never executed a P-4, Reynolds argued that he cannot be identified as the proper operator of the wells or be ordered to plug the wells, even though he re-entered the wells to salvage the equipment.

### **Entry of Interim Order**

On October 27, 2003, the examiner issued a Proposal for Decision containing Findings of Fact and Conclusions of Law and recommending the Commission enter an Interim Order. Those Findings of Fact and Conclusions of Law were adopted in an Interim Order on November 25, 2003.

The November 25, 2003 Interim Order recognized Mobile Petrovac, Inc., as the operator of the Novak, Barbara (09139) Lease, Well Nos. 2A, 3, 3A, 4, 4A, and 7, Baylor County Regular Field, Baylor County, Texas. The Commission ordered Mobile to plug Well Nos. 2A, 3, 3A, 4, 4A, and 7 on the Novak, Barbara (09139) Lease in compliance with Statewide Rule 14. All of the wells were to be plugged within 90 days after the effective date of the Interim Order. Additionally the Interim Order provided that if Mobile failed to plug the wells within 90 days, a further hearing could be held for the purpose of entering a Final Order assessing an administrative penalty in the amount of \$12,000; and additional administrative

penalties in an amount not to exceed \$10,000 per day for the failure to comply with the terms of the Interim Order. The Interim Order also dismissed the complaint against Reynolds.

### **Reopened Hearing**

On March 18, 2004, the Commission's Enforcement Section requested that the hearing be reopened to allow the admission into evidence of an Inspection Report on March 11, 2004. A copy of the request was served on all parties. Mobile did not respond to the request to reopen the hearing. On March 23, 2004, the examiner entered a ruling reopening the hearing and scheduling the reopened hearing for April 15, 2004. The ruling was served on Mobile through its representative.

On April 15, 2004, the hearing was reopened to consider Mobile's failure to comply with the Commission's Interim Order. Enforcement appeared at the reopened hearing on behalf of the Commission. No appearance was made by Mobile. Enforcement submitted the inspection report prepared by the District Office that reported that no action had been taken to plug the wells on the Novak, Barbara (09139) Lease as of March 11, 2004. Review of Commission records reveals that Mobile had not filed a Commission Form W-3A (Notice of Intention to Plug and Abandon) for any of the wells as required under Statewide Rule 14(a)(2).

### **APPLICABLE AUTHORITY**

Statewide Rule 14(b)(2) provides that the operator of a well must plug the well when required and in accordance with Commission rules. Texas Natural Resources Code §89.002 defines the operator of the well as the person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the Commission and the Commission approves. 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.

Texas Natural Resources Code §85.381 provides:

(a) In addition to being subject to any forfeiture provided by law and to any penalty imposed by the commission for contempt for violation of its rules or orders, any person who violates the provisions of Sections 85.045 and 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission promulgated under those laws is subject to a penalty of not more than:

- (1) \$10,000 when the provision, rule, or order pertains to safety or the prevention or control of pollution; or
- (2) \$1,000 when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(b) The applicable maximum penalty may be assessed for each and every day of violation

and for each and every act of violation.

### EXAMINER'S OPINION

Review of Commission records and the District Office inspection on March 11, 2004 show that Mobile has failed to comply with the terms of the Commission's Interim Order. Because Mobile is the operator of the Novak Lease, it is responsible for plugging the wells which are not in compliance with Statewide Rule 14(b)(2). Accordingly, it is recommended that the standard Commission penalty of \$2,000.00 per violation be imposed for Mobile's six violations of Statewide Rule 14(b)(2), for a total of \$12,000.00.

Additionally, it appears by virtue of Mobile's failure to take any action to plug the wells, its failure to respond to the request to reopen the hearing, and its failure to appear at the reopened hearing, that it is ignoring the requirements of the Interim Order entered on November 25, 2003. Accordingly, it is the examiner's recommendation that an additional \$10,000.00 administrative penalty be assessed against Mobile pursuant to Texas Natural Resources Code §85.381.

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. Respondents were given at least 10 days notice of the June 30, 2003 proceeding by certified mail, addressed to their most recent Commission Form P-5 (Organization Report) addresses. Respondents all appeared at the hearing and offered evidence.
2. Mobil Petro Vac, Inc. first filed a Commission Form P-5 in November 1996. Mobil Petro Vac, Inc. is currently listed as delinquent. In its last filing under that name, Joe Watson was identified as its President, and Christine Olds was identified as its Vice-President.
3. On October 30, 2002, Mobile Petrovac, Inc. filed an Organization Report which was approved by the Commission. Mobile Petrovac, Inc. is currently listed as active, and identifies Kim Johnson as its President and Christine Olds as its Vice-President. Mobile Petrovac, Inc. has submitted financial assurance in the form of a \$50,000 letter of credit.
4. Richard Reynolds ("Reynolds") last filed an Organization Report as a sole proprietor with the Commission on August 17, 1995. Reynolds is currently listed as an inactive operator. At the time of the last filing, Reynolds paid a \$100 fee in lieu of posting financial assurance.
5. Mobil Petro Vac, Inc. was recognized as the operator of the Novak, Barbara (09139) Lease, ("subject lease") by filing a Commission Form P-4 (Producer's Transportation Authority and

- Certificate of Compliance) on August 20, 1997. The Commission approved the Form P-4 on August 21, 1997.
6. Commission records show that there has been no production or injection activity on the subject lease since November 1993.
  7. Neither Mobil Petro Vac, Inc. nor Mobile Petrovac, Inc. possesses the current right to operate the subject lease and wells.
  8. Well Nos. 2, 3A, 4, and 4A on the subject lease have been out of compliance with Commission Statewide Rule 14(b)(2) since October 17, 2001.
    - a. Mobil Petro Vac, Inc. filed a Commission Form W-1X (Application for Future Re-Entry of Inactive Well Bore and 14(b)(2) Extension Permit) for each of the wells at the time the Commission approved the transfer of operator on August 21, 1997.
    - b. Plugging extensions were approved for four of the wells on the lease through October 16, 2001.
    - c. A Commission Form W-3A (Notice of Intention to Plug and Abandon) was filed for each well on July 11, 2000.
  9. Well Nos. 3 and 7 on the subject lease have been out of compliance with Commission Statewide Rule 14(b)(2) since April 1998.
    - a. Mobil Petro Vac, Inc. filed a Commission Form W-1X (Application for Future Re-Entry of Inactive Well Bore and 14(b)(2) Extension Permit) for each of the wells at the time the Commission approved the transfer of operator on August 21, 1997.
    - b. Plugging extensions were canceled for Well Nos. 3 and 7 for the failure to pass fluid level tests in April 1998. Subsequent requests for plugging extensions for these two wells were denied on the same basis.
  10. The subject lease was out of compliance with Statewide Rule 8(d)(4)(G)(i)(III) from July 17, 2000 to May 7, 2003.
    - a. Commission inspections on February 4, 2000 and April 26, 2000 did not report a violation of Statewide Rule 8, or otherwise note the existence of a dry workover pit on the property.
    - b. A Commission inspection on July 17, 2000 noted the presence of a open, unpermitted dry pit near Well No. 3A.
    - c. Subsequent inspections on September 26, 2000, December 14, 2000, January 25,



2001, August 10, 2001, September 27, 2001, and February 18, 2003, confirmed the presence of the pit.

- d. An inspection report on May 7, 2003 observed that the pit had naturally remediated to a slight depression.
11. Reynolds, acting pursuant to an agreement with the mineral interest owner, removed the surface and downhole equipment from all of the wells on the subject lease sometime after April 26, 2000.
    - a. A Commission inspection on February 4, 2000 found that all of the wells were rigged for production or injection.
    - b. A follow-up inspection on April 26, 2000 reported the same conditions.
    - c. Reynolds contacted the Commission District Office prior to removing the equipment from the wells.
    - d. An inspection on July 17, 2000 showed that the all of the wells had been stripped of their equipment, and were shut-in.
  12. On October 27, 2003, the examiner issued a Proposal for Decision containing Findings of Fact and Conclusions of Law and recommending the Commission enter an Interim Order.
  13. On November 25, 2003, the Commission entered an Interim Order with the following provisions:
    - a. Mobile Petrovac, Inc., was recognized as the operator of the Novak, Barbara (09139) Lease, Well Nos. 2A, 3, 3A, 4, 4A, and 7, Baylor County Regular Field, Baylor County, Texas.
    - b. Mobile Petrovac, Inc. was ordered to plug Well Nos. 2A, 3, 3A, 4, 4A, and 7 on the Novak, Barbara (09139) Lease in compliance with Statewide Rule 14 within 90 days after the effective date of the Interim Order.
    - c. If Mobile Petrovac, Inc. failed to plug the wells within 90 days, a further hearing could be held for the purpose of entering a Final Order assessing an administrative penalty in the amount of \$12,000; and additional administrative penalties in an amount not to exceed \$10,000 per day for the failure to comply with the terms of the Interim Order.
    - d. That the complaint against Reynolds be dismissed.
  14. On March 18, 2004, the Commission's Enforcement Section requested that the hearing be

reopened to allow the admission into evidence of a Commission Inspection Report on March 11, 2004. A copy of the request was served on all parties. Mobile did not respond to the request to reopen the hearing.

15. On March 23, 2004, the examiner entered a ruling reopening the hearing and scheduling the reopened hearing for April 15, 2004. The ruling was served on Mobile through its representative.
16. On April 15, 2004, the hearing was reopened to consider Mobile's failure to comply with the Commission's Interim Order. Enforcement appeared at the reopened hearing on behalf of the Commission. No appearance was made by Mobile.
17. Mobile failed to plug the wells in compliance with the Commission's Interim Order of November 25, 2003.
  - a. An inspection report prepared by the District Office that reported that no action had been taken to plug the wells on the Novak, Barbara (09139) Lease as of March 11, 2004.
  - b. Review of Commission records reveals that Mobile has not filed a Commission Form W-3A (Notice of Intention to Plug and Abandon) for any of the wells as required under Statewide Rule 14(a)(2).

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to the appropriate persons entitled to notice.
2. Proper notice of the reopened hearing was timely issued to respondent Mobile Petrovac, Inc.
3. All things necessary to the Commission attaining jurisdiction have occurred.
4. Mobile Petrovac, Inc. is the current designated operator of the subject lease as defined by Statewide Rule 14 and Section 89.002 of the Texas Natural Resources Code and is a person as defined by Statewide Rule 79 and Chapters 85 and 89 of the Texas Natural Resources Code.
5. Mobile Petrovac, Inc. failed to comply with the requirements of the November 25, 2003 Interim Order entered by the Commission in this action
6. Well Nos. 2A, 3, 3A, 4, 4A, and 7 are not in compliance with Statewide Rule 14(b)(2).

**RECOMMENDATION**

The examiner recommends that Mobile Petrovac, Inc. be ordered to pay an administrative penalty in the amount of \$12,000 for six violations of Statewide Rule 14(b)(2) and an administrative penalty of \$10,000 for failing to comply with the provisions of the Commission's Interim Order of November 25, 2003. The total recommended administrative penalty is \$22,000.00.

Respectfully submitted,

Mark J. Helmueller  
Hearings Examiner