

August 23, 2004

OIL AND GAS DOCKET NO. 09-0236216

ENFORCEMENT ACTION AGAINST 4-N OPERATING, LLC, AND/OR CHRIS CRESWELL, SOLE PROPRIETOR, FOR VIOLATIONS OF STATEWIDE RULES ON THE BURRELL MILL -B- (01449) LEASE, WELL NOS. 4, 5, 6, 8, 9, 10, 13W, AND 14, Y-B (UPPER GUNSIGHT) FIELD, BAYLOR COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT RAILROAD COMMISSION OF TEXAS:

Susan German, Staff Attorney

FOR RESPONDENT CHRIS CRESWELL

Chris Creswell

NO APPEARANCE BY RESPONDENT 4-N OPERATING, LLC

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	November 12, 2003
ANSWER FILED:	December 17, 2003
AMENDED COMPLAINT FILED:	February 9, 2004
NOTICE OF HEARING:	April 2, 2004
DATE CASE HEARD:	May 20, 2004
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	August 23, 2004
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 either of the respondents, 4-N Operating, LLC and/or Chris Creswell, should be required to plug or otherwise place in compliance with Statewide Rules 3, 8, 13, and 14, the Burrell Mill -B- (01449) Lease, Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14, Y-B (Upper Gunsight) Field, Baylor County, Texas;
2. Whether the respondent(s) 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, 13, and 14;
3. Whether the respondent(s) should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed regarding said lease 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.

On November 12, 2003, the complaint in this docket was filed, naming only 4-N Operating, LLC (“4-N”) as a respondent. 4-N filed an answer through its counsel on December 17, 2003. In response to the answer, an amended complaint was filed on February 9, 2004 naming both 4-N and Chris Creswell (“Creswell”) as respondents. A Notice of Hearing setting a hearing date of May 20, 2004 was sent to counsel for 4-N, and was also sent to the most recent reported addresses reported in the parties’ Commission Form P-5s (Organization Report).

Susan German, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”). Creswell also appeared and presented evidence at the hearing. No representative of 4-N appeared at the hearing. The Enforcement Section's hearing file was admitted into evidence.

Enforcement recommended that 4-N be ordered to bring the lease into compliance with Commission rules, properly plug the wells, and pay a total administrative penalty of \$21,100.00. The administrative penalty is broken down as follows: \$2,000.00 each for eight violations of Statewide Rule 14(b)(2); \$250.00 each for eight violations of Statewide Rule 3(a); \$1,000.00 each for two violations of Statewide Rule 13(b)(1)(B); \$600.00 for a single violation of Statewide Rule 8(d)(1); and \$500.00 for a single violation of Statewide Rule 8(d)(4)(G)(i)(III). Enforcement also requested that 4-N be ordered to reimburse the Commission in the amount of \$654.50 for emergency funds expended to clean up

unauthorized discharges on the lease. Enforcement also recommended that the action against Creswell be dismissed.

The examiner agrees with Enforcement's recommendations with the exception of the violation of Rule 8(d)(1). For that violation, the examiner recommends an enhanced administrative penalty of \$16,500.00. Accordingly, the total recommended penalty is \$37,000.00.

DISCUSSION OF THE EVIDENCE

Organization and Permit Records

Commission records show that 4-N filed its initial Commission Form P-5 (Organization Report) with the Commission on November 18, 1997. The last and most recent approved Organization Report for 4-N was filed on November 30, 1998. Joe Paul Nichols, Jr. is listed as Manager. Shauna R. Nichols is identified as a member. 4-N paid a nonrefundable fee of \$750.00 as its financial assurance with its last Organization Report filing.

Creswell's last Organization Report was filed on August 15, 2000 and identifies Chris Creswell as the sole proprietor. Creswell paid the \$100.00 nonrefundable "good-guy" fee in lieu of posting financial assurance at the time of the last renewal.

4-N was recognized as the operator of the Burrell Mill -B- (01449) Lease, Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14, ("subject lease", "Burrell Mill Lease", and/or "subject wells") after filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on January 27, 1998.

4-N filed a Commission Form W-1X (Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit) on November 30, 1998 for all eight wells on the subject lease. The plugging extensions expired on November 1, 1999. The last production was reported in November 1997, prior to the recognition of 4-N as the operator. The last injection activity for Well No. 13W was reported in February 1997.

On December 9, 1999, a two-signature P-4 for the subject lease was filed with the Commission which sought to recognize Creswell as the operator. Commission records show that the P-4 was not processed due to a hold which was placed by the Commission's Oil & Gas Division, Field Operations Section. Commission records show that the certificate of compliance for the subject lease was canceled on November 29, 1999 for the failure by 4-N to renew its Organization Report. Commission records also show that beginning in October 1999 there were discrepancies in Commission Form P-1s (Producer's Monthly Report of Oil Wells) which were not resolved until April 23, 2001.

Commission Inspections

Commission inspections of the subject lease were conducted on September 23, 2002, November 14, 2002, December 18, 2002, January 16, 2003, February 13, 2003, April 8, 2003, May 2, 2003, July 7, 2003 and March 9, 2004. The inspection reports document several violations of Commission rules including: 1) signs required to be posted at the well site for each of the eight wells were either missing or displayed incorrect information in violation of Statewide Rule 3(a); 2) an open, dry workover pit at Well No. 14 in violation of Statewide Rule 8(d)(4)(G)(i)(III);¹ and 3) tubing open to atmosphere on Well Nos. 8 and 13W in violation of Statewide Rule 13(b)(1)(B). The inspection reports also note that the wells were not equipped for production or injection activities and were out of compliance with Statewide Rule 14(b)(2).

The inspections also document an active ongoing oil discharge and Commission emergency clean-up efforts. The initial inspection of the subject lease on September 23, 2002 found an oil spill from an active leak beginning approximately 2' from Well No. 9, which extended approximately 12' into an unlined 9' by 12' by 3' deep pit. The pit had overflowed due to a storm, and the spill continued downhill from the pit to affect an area measuring 9' by 12'. A follow up inspection on November 14, 2002 found that the spill had expanded beyond the pit to an area 9' by 21' with puddles of free oil observed throughout the affected area. On December 12, 2002, in a written response to Commission correspondence advising 4-N of the violations, Mr. Nichols disavowed any responsibility, claiming that 4-N sold the lease to Creswell in October 1999, with the understanding that Creswell would operate the property.

A further follow-up inspection on December 18, 2002 found the leak at Well No. 9 still active, with no evidence of remediation. After further inspections on January 16, 2003 and January 21, 2003, emergency funds were spent on January 22, 2003 to remove the oil from the pit near Well No. 9 and backfill the pit. Commission records show that emergency clean up funds totaling \$654.50 were expended to eliminate the threat that the active spill would expand to nearby Cockerrell Creek.

Further inspections on February 13, 2002, April 24, 2003, May 2, 2003 and July 7, 2003 show that the oil leak remained active and that the affected area near Well No. 9 continued to expand until it encompassed an area 16' by 16'. A copy of a photograph of the spill as of July 7, 2003 is attached for reference as Exhibit A to this Proposal for Decision. The most recent inspection on March 9, 2004 found a 20' by 25' affected area, with free fluids observed in a 6' by 8' area.

ENFORCEMENT'S POSITION

Enforcement asserts that 4-N is the operator of the Burrell Mills Lease pursuant to the P-4

¹ Inspections on September 23, 2002, November 14, 2002, December 18, 2002, and January 16, 2003 also observed open pits in apparent violation of Statewide Rule 8(d)(4) at Well No. 4 and Well No. 9. These pits were backfilled by the Commission on January 22, 2003. However, violations related to these observations are not included in the complaint.

approved by the Commission on January 27, 1998. Enforcement contends that the subject lease is out of compliance with Rule 3(a) due to the lack of any signs at the well sites or the presence of signs with inaccurate information. Enforcement also argues that subject lease is out of compliance with Rule 8(d)(1) due to the active discharge of oil at Well No. 9. Enforcement contends that the subject lease is out of compliance with Rule 8 (d)(4)(G)(i)(III) because the workover pit for Well No. 14 was not closed within one year after operations ceased. Enforcement asserts that the subject lease is also in violation of Rule 13(b)(1)(B) because Well Nos. 8 and 13W have tubing open to the atmosphere. Finally, Enforcement argues that the wells are out of compliance with Rule 14(b)(2) because they were not properly plugged or restored to production before the plugging extensions expired.

Enforcement urges that 4-N be ordered to bring the lease into compliance with Commission rules, plug the eight wells, and pay an administrative penalty of \$21,100.00. Enforcement also requests that 4-N be ordered to reimburse the Commission in the amount of \$654.50 for the emergency funds expended on January 22, 2003.

CRESWELL'S POSITION

Creswell argues that she is not responsible for the alleged violations because the Commission did not approve the P-4 which was filed to recognize her as the operator. Creswell admits that she installed signs at some of the wells, but claims that she was told to stop any activities by the District Office. Creswell also acknowledges that she reentered one of the wells and pulled the tubing, but contends that she never took any action to restore production. Creswell asserts that the District Office told her she was not authorized to engage in operations on the subject lease because she was not recognized as the operator and therefore, she cannot now be held responsible for the violations.

APPLICABLE AUTHORITY

Statewide Rule 3(a)(2) requires the posting of signs at each well site for each property producing oil, gas or geothermal resources which show the name of the property, the name of the operator, and the well number.

With certain exceptions not relevant here, Statewide Rule 8(d)(1) prohibits the discharge of oil and gas wastes by any method without obtaining a permit to dispose of such wastes.

Statewide Rule 8(d)(4)(G)(i)(III) requires a person who maintains or uses a reserve or mud circulation pit in conjunction with workover operations for a well to dewater, backfill and compact the pit within one year of the cessation of operations.

Statewide Rule 13(b)(1)(B) requires that wellhead assemblies be used to maintain surface control of the well. Wellhead assemblies are necessary to prevent fluids from being discharged from the wellbore onto the ground surface and to prevent any oil and gas waste in the wellbore from being displaced to the surface by potential influxes of water into the open wellbore.

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 wells transferred after September 1, 1997, the operator of a well for purposes of plugging liability is the person who assumed responsibility for the physical operation and control of a well as shown by an approved Form P-4 designating that person as operator.

The primary controlling legal authority for determination of the amount of any administrative penalty is Texas Natural Resources Code §81.0531 which provides, in pertinent part:

(a) If a person violates provisions of this title which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed \$10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) 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.

Texas Natural Resources Code §89.002 defines an "operator" as follows:

(2) "Operator" means a 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. The commission may not require a person to assume responsibility for a well as a condition to being permitted to assume responsibility for another well. *In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention or control of pollution at the time of sale or conveyance and once the person who acquires the well or right to operate the well:*

(A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission. (emphasis added)

EXAMINER'S OPINION

The violations of Statewide Rules 3, 8, 13, and 14 are uncontested. The issues presented in this docket are determining whether either 4-N or Creswell is responsible for the violations, and analyzing whether the amount of the administrative penalty requested is consistent with Texas Natural Resources Code §81.0531. It is the examiner's conclusion that despite Creswell's admitted activity, 4-N is the operator responsible for regulatory compliance. Additionally, while the examiner agrees with recommended penalty amount for the violations of Rule 3, 8(d)(4), 13, and 14, it is the examiner's conclusion that the \$600.00 penalty for the violation of Rule 8(d)(1) is too lenient when weighing the evidence under the Commission's penalty guidelines for standard penalties and enhancements.

4-N is Properly Recognized as the Operator of the Burrell Mill Lease

With respect to its designation as the operator of the Burrell Mill Lease, 4-N did not appear at the hearing to contest its status as the operator pursuant to the last approved Commission Form P-4, despite raising the issue in correspondence and in response to the complaint filed against it. This issue is complicated by Creswell's admissions that she posted signs at some of the wells and reentered one well to remove the equipment.

Prior to the amendment of Texas Natural Resources Code §89.002, effective September 1, 1997, an operator could contest the presumption of regulatory responsibility for a lease and wells, even though Commission records recognized it as the operator. Typically, these arguments asserted that another individual had engaged in operations or had otherwise exercised control over the lease and wells. The Commission was then required to make a determination of whether the operator recognized by the Commission was the proper operator for regulatory purposes.²

The amendments adopted in 1997 eliminated the need for the Commission to make a determination in its hearings concerning regulatory responsibility. This change was at least partially motivated by the very facts involved in this case, i.e., an operator's refusal to resolve violations based on a dispute over contractual obligations and property rights. The statute now requires that the last operator recognized by the Commission remedy any violations **regardless** of any dispute regarding the underlying contractual and property rights. If the operator believes the recognized regulatory responsibility is inconsistent with the legal rights between the parties, it may seek redress under any purported contractual obligation or other property right in the appropriate court.

It is undisputed that 4-N was recognized as the operator of the Burrell Mills Lease on January 27, 1998. None of the Commission records regarding the violations observed in this docket suggest that the

²The Commission still makes this determination in cases where a Commission Form P-4 was filed by the last approved operator prior to September 1, 1997.

Commission recognized Creswell as the operator, or that Creswell's actions excused 4-N from regulatory compliance. To the contrary, the Commission repeatedly forwarded all correspondence concerning the violations to 4-N and requested that 4-N take the appropriate action to remedy the violations. While Creswell admits to posting some signs and reentering a well, because 4-N was recognized as the operator after September 1, 1997, the provisions of Texas Natural Resources Code §89.002 preclude any shift in the regulatory responsibility from 4-N to Creswell. Additionally, Creswell was told to discontinue any activity on the subject lease because she was not recognized as the operator. Under both the facts presented and the applicable law, the examiner concludes that 4-N is responsible for the violations alleged in this docket. Accordingly, Creswell should be dismissed from the instant action.

Amount of Administrative Penalty

Texas Natural Resources Code §81.0531(c) requires the Commission to consider four factors in determining the amount of an administrative penalty for a violation of Commission rules: 1) the permittee's history of previous violations³; 2) the seriousness of the violation; 3) any hazard to the health or safety of the public; and 4) the demonstrated good faith of the person charged. In most Enforcement cases, a standard penalty guideline has already evaluated these factors in determining the amount of the administrative penalty sought in the complaint. The standard penalty guidelines also allow for enhanced penalties for violations based on several criteria, including the time out of compliance, the location and/or actual or threatened environmental impact, the threatened or actual hazard to the public, and finally, the reckless or intentional conduct of the operator.

Standard Penalty Amount

Violations of Rule 8(d)(1) have a recommended range from \$500.00 to \$6,000.00 under the guideline for standard penalties. This range appears to reflect both the nature of the substance discharged, and the affected area, as neither of those factors are identified elsewhere in the guideline as a basis for an enhanced administrative penalty. The penalty recommended by Enforcement in this case for the violation of Rule 8(d)(1) is at the low end of the guideline for standard penalties. However, the evidence in this case suggests the affected area due to the spill should be in the middle of the \$500.00 to \$6,000.00 range.

The inspection of November 14, 2002 observed three areas affected by the spill: 1) the area between the wellhead and the workover pit; 2) the workover pit itself; and 3) an area downhill from the

³Enforcement's complaint states that 4-N has no history of previous violations, and there is no evidence of previous orders issued against 4-N for violations of Commission rules. However, the weight that can be afforded to this factor is affected by the fact that 4-N only had a two year history as an operator, filing its first Organization Report on November 18, 1997, and its last Organization Report on November 30, 1998.

pit which was affected by the pit overflow. Together the three affected areas total at least 400 square feet. Additionally, in the most recent inspection on March 9, 2004, the affected area is described as 20' by 25' or 500 square feet. The affected area of the spill is not small, i.e., less than 100 square feet. Further, the affected area is not large, i.e., greater than 1000 square feet. It would therefore be appropriate to categorize the spill as falling somewhere between a small spill and a large spill. Accordingly, it is the examiner's conclusion that the standard penalty for this violation should not be treated as a small spill with a minimal standard penalty of \$600.00, but instead should fall in the middle of the range for recommended penalties. It is therefore recommended that the standard administrative penalty be increased from \$600.00 to \$3,000.00.

Enhanced Penalty Amount

As noted above, the administrative penalty guidelines provide for enhancements to the standard penalty assessed against an operator based on evidence regarding, the time out of compliance, the location and/or actual or threatened environmental impact, the threatened or actual hazard to the public, and finally, the reckless or intentional conduct of the operator if a violation results in threatened or actual pollution of surface or subsurface water. In this case, the evidence supports two enhancements to the standard penalty: 1) an enhancement due to the pollution threat to a major source of fresh water; and 2) the length of time the violation has continued.

Threatened Pollution to a Major Freshwater Source

With respect to the first enhancement issue, the penalty guideline recommends significant additional penalties for any violations which either threaten or actually pollute a major freshwater source. The guideline defines a major fresh water source as major aquifers, creeks, rivers, lakes or reservoirs. The enhanced administrative penalties range begins at \$5,000.00 for threatened pollution to a major freshwater source and has an upper limit of \$25,000.00 for actual pollution or contamination as a result of the violation.

The evidence shows an active oil spill for over 17 months that continues to pose an environmental threat to surface water due to the proximity of Cockerrell Creek as seen by maps included in Enforcement's hearing file which depict the location of the creek in relation to Well No. 9. The initial pollution threat is best illustrated by the District Office's classification of the spill in January 2003 as an emergency situation due to the proximity of the creek. The imminent pollution threat led to a request for emergency funds to mitigate the potential threat. After procuring the funds, the Commission retained a contractor to backfill two pits and clean up the area of the spill.

The minimum amount for an enhancement due the threatened pollution of a major freshwater source such as a creek, is \$5,000.00. The evidence presented indicates that timely Commission action and the expenditure of emergency funds prevented any actual pollution and limited the future threat. Accordingly, it is the examiner's recommendation that the penalty for the violation of Rule 8(d)(1) be enhanced in the amount of \$5,000.00 consistent with the guideline recommendation for due to the threat of pollution of a

major freshwater source. This brings the total recommended penalty amount for the violation of Rule 8(d)(1) without considering enhancements for the time out of compliance to \$8,000.00.

Time Out of Compliance

The penalty guidelines also allow for time out of compliance enhancements in a range between \$100.00 to \$2,000.00 per month. This time out of compliance enhancement reflects the severity of the violation, which typically increases the longer the time period that violation continues or is not corrected. The Commission has previously assessed an operator the maximum enhanced penalty of \$2,000.00 per month for an oil spill in violation of Rule 8(d)(1). See *Oil & Gas Docket No. 6E-0227682: Enforcement Action For Violations Allegedly Committed by Linda Ball Reese, d.b.a. 5R Oil Company, on the Post Oak Church (06695) Lease, Well No. 1, East Texas (District 6E) Field, Gregg County, Texas.*

In this case, the Rule 8(d)(1) oil spill was first observed on September 23, 2002 and was still present and active at the last inspection on March 9, 2004, a total of 533 days, or over 17 months. While corrective action was initially required, the actual emergency funds of \$654.50 to limit the pollution threat is relatively low. Additionally, the inspections document that this active violation continues to expand, albeit slowly. Finally, the violation is not benign, as continued expansion will ultimately again require the Commission to take remedial action to limit any threat of pollution of the creek. Accordingly, the evidence in this case would not support either the minimum recommendation of \$100.00 per month or the maximum enhancement of \$2,000 per month.

The actual oil discharged each month appears to be a small volume, and the primary problem appears to be the cumulative effect of the continuing leak. Under these circumstances, one can easily justify treating the continuing active spill as 17 separate small spills occurring at one month intervals. If one accepts the logic of this approach, it would be consistent to have a standard penalty which reflects the cumulative impact, and an enhancement based on time out of compliance which reflects the active nature of the spill. Since the spill on a month to month basis appears to be small, it is the examiner's conclusion that \$500.00 for each month, an amount which would reflect the minimum standard penalty if the continuing active violation was treated as 17 separate violations, is an appropriate enhancement for the time out of compliance associated with this active spill. Under this approach, the enhancement for time out of compliance would be \$8,500.00, or as broken down, 17 months multiplied by \$500.00 per month. When added to the examiner's recommendation for a higher standard penalty of \$3,000.00 and the recommended enhancement for the pollution threat to a major freshwater source, of \$5,000.00 the total recommended administrative penalty for the Rule 8(d)(1) violation, without considering the conduct of the operator, is \$16,500.00.

It should be further noted that the total administrative penalty including enhancements of \$16,500.00 still falls well short of the statutory maximum for this violation. Under Texas Natural Resources Code §81.0531(b), the maximum possible administrative penalty for a pollution violation is obtained through multiplying the \$10,000.00 statutory limit by either the number of days that an active spill occurs and is not remediated, or for a single occurrence spill, the number of days that the operator does not

completely remediate the affected area of the spill. The violation of Rule 8(d)(1) was initially observed on September 23, 2002 and was still present and active at the last inspection on March 9, 2004, a total of at least 533 days. Pursuant to Texas Natural Resources Code §81.0531(b), the maximum possible penalty under the statute for the violation of Rule 8(d)(1) would be \$5,330,000.00.

The examiner further recommends pursuant to Texas Natural Resources Code §91.114 that all individuals identified as officers in 4-N's Organization Report, be identified as individuals in a position of ownership or control of respondent during the time 4-N violated Commission rules related to safety and the control of pollution. Both the individual officers and any organization in which any of them may hold a position of ownership or control, are 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 terms of the order are satisfied. Both Joe Paul Nichols, Jr. and Shauna R. Nichols were identified in the Organization Report as officers of the company. Accordingly, they are subject to the provisions of Texas Natural Resources Code §91.114(a)(2).

Finally, pursuant to the provisions of Texas Natural Resources Code §91.113, 4-N should also be ordered to reimburse the Commission in the amount of \$654.50 for the emergency funds expended to mitigate the pollution threat.

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 4-N Operating, LLC ("4-N") and Chris Creswell. ("Creswell") were given at least 10 days notice of this proceeding by certified mail, addressed to their most recent Form P-5 (Organization Report) address. 4-N's attorney was also provided a copy of the notice of hearing. Creswell appeared and presented evidence at the hearing. No appearance was made by 4-N or any representative on its behalf.
2. Commission records show that 4-N filed its initial Commission Form P-5 (Organization Report) with the Commission on November 18, 1997. The last and most recent approved Organization Report for 4-N was filed on November 30, 1998. Joe Paul Nichols, Jr. is listed as Manager. Shauna R. Nichols is identified as a member. 4-N paid a nonrefundable fee of \$750.00 as its financial assurance with its last Organization Report filing.
3. Creswell's last Organization Report was filed on August 15, 2000 and identifies Chris Creswell as the sole proprietor. Creswell paid the \$100.00 nonrefundable "good-guy" fee in lieu of posting financial assurance at the time of the last renewal.
4. 4-N was recognized as the operator of the Burrell Mill -B- (01449) Lease, Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14, ("subject lease", "Burrell Mill Lease", and/or "subject wells") after filing a

Commission Form P-4 (Certificate of Compliance and Transportation Authority) which was approved by the Commission on January 27, 1998.

5. On December 9, 1999, a two-signature P-4 for the Burrell Mill Lease was filed with the Commission which designated Creswell as the operator. Commission records show that the P-4 was never processed due to a hold which was placed by the Commission's Oil & Gas Division, Field Operations Section.
6. 4-N filed a Commission Form W-1X (Application for Future Re-Entry of Inactive Wellbore and 14(b)(2) Extension Permit) on November 30, 1998 for all eight wells on the subject lease. The plugging extensions expired on November 1, 1999.
7. Commission inspections on September 23, 2002, November 14, 2002, December 18, 2002, January 16, 2003, February 13, 2003, April 8, 2003, May 2, 2003, July 7, 2003 and March 9, 2004, found that the signs required to be posted at each of the eight wells were either missing or did not have accurate information.
8. 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.
9. Commission inspections on September 23, 2002, November 14, 2002, December 18, 2002, January 16, 2003, February 13, 2003, April 8, 2003, May 2, 2003, July 7, 2003 and March 9, 2004, found an open, dry workover pit at Well No. 14.
10. The failure to properly close the workover pit within one year after operations cease poses a threat of unpermitted discharges which could contaminate surface or subsurface waters.
11. Commission inspections on September 23, 2002, November 14, 2002, December 18, 2002, January 16, 2003, February 13, 2003, April 8, 2003, May 2, 2003, July 7, 2003 and March 9, 2004, found tubing open to atmosphere at Well Nos. 8 and 13W.
12. The failure to properly maintain wellhead control poses a threat of unpermitted discharges of oil, natural gas and oil and gas wastes, which could result in injury to persons or property and/or result in the contamination of surface or subsurface waters
13. Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14 on the Burrell Mills Lease are currently inactive and have been inactive for more than 12 months.
 - a. Commission inspections on September 23, 2002, November 14, 2002, December 18, 2002, January 16, 2003, February 13, 2003, April 8, 2003, May 2, 2003, July 7, 2003

- and March 9, 2004, show that the wells are shut-in and not equipped for production.
- b. Commission records report no production from Well Nos. 4, 5, 6, 8, 9, 10, and 14 after November 1997.
 - c. Commission records show the last injection activity for Well No. 13W was reported in February 1997.
14. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from unplugged wellbores. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
15. An active unpermitted discharge of oil is continuing to occur on the Burrell Mills Lease which poses a threat to contamination of usable quality surface water.
- a. An inspection on September 23, 2002 found an oil spill from an active leak beginning approximately 2' from Well No. 9, which extended into an unlined 9' by 12' by 3' deep pit. The pit had overflowed, and the spill continued downhill to affect an area measuring 9' by 12'.
 - b. A follow up inspection on November 14, 2002 found that the spill had expanded beyond the pit to an area 9' by 21' with puddles of free oil observed throughout the affected area.
 - c. A further follow-up inspection on December 18, 2002 found the leak at Well No. 9 still active, with no evidence of remediation.
 - d. Further inspections on January 16, 2003 and January 21, 2003 found no attempts to repair the leak or clean up the affected area. Commission personnel reported that the spill threatened to extend downhill to Cockerrell Creek.
 - e. Inspections on February 13, 2002, April 24, 2003, May 2, 2003 and July 7, 2003 show that the oil leak remained active and that the affected area near Well No. 9 continued to expand until it encompassed an area 16' by 16'.
 - f. The most recent inspection on March 9, 2004 found a 20' by 25' affected area, with free fluids observed in a 6' by 8' area.
16. Commission records show that emergency clean up funds totaling \$654.50 were expended to mitigate the threat that the active spill would expand to nearby Cockerrell Creek on January 22, 2003. Remedial measures including removing the oil from the pit near Well No. 9, backfilling

the pit and another pit at Well No. 4, and cleaning up all oil affected areas.

17. 4-N has not demonstrated good faith since it failed to plug the subject wells and/or otherwise place the Burrell Mill Lease in compliance after being notified of the violations by the District Office.
18. The severity of the violation reflected in the number of days that an active leak has continued on the subject lease, and the threat of pollution of surface water, together warrant an enhanced administrative penalty for the violation of Commission Statewide Rule 8(d)(1) pursuant to Texas Natural Resources Code §81.0531(c).
19. The estimated cost to plug the subject wells is \$13,900.00.
20. 4-N has no previous history of violations.

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. 4-N is the operator of the Burrell Mill -B- (01449) Lease, Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14 as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. 4-N has the primary responsibility for complying with Rules 3, 8, 13, and 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Burrell Mill -B- (01449) Lease, Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14.
5. The Burrell Mill -B- (01449) Lease is not in compliance with Commission Statewide Rule 3(a) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. The Burrell Mill -B- (01449) Lease has been out of compliance with Commission Statewide Rule 3(a) from on or before September 23, 2002 to the present.
7. The Burrell Mill -B- (01449) Lease is not in compliance with Commission Statewide Rule 8(d)(4) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
8. The Burrell Mill -B- (01449) Lease has been out of compliance with Commission Statewide Rule 8(d)(4) from on or before September 23, 2002 to the present.
9. The Burrell Mill -B- (01449) Lease is not in compliance with Commission Statewide Rule 8(d)(1)

- or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
10. The Burrell Mill -B- (01449) Lease has been out of compliance with Commission Statewide Rule 8(d)(1) from on or before September 23, 2002 to the present.
 11. The Burrell Mill -B- (01449) Lease is not in compliance with Commission Statewide Rule 13(b)(1)(B) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
 12. The Burrell Mill -B- (01449) Lease has been out of compliance with Commission Statewide Rule 13(b)(1)(B) from on or before September 23, 2002 to the present.
 13. Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14 on the Burrell Mill -B- (01449) Lease are not in compliance with Commission Statewide Rule 14(b)(2) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
 14. Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14 on the Burrell Mill -B- (01449) Lease have been out of compliance with Commission Statewide Rule 14(b)(2) from on or before November 30, 1999 to the present.
 15. Pursuant to Texas Natural Resources Code §91.113, the Commission is entitled to reimbursement of any funds expended to investigate, assess, and control pollution caused by the unlawful discharge of oil.
 16. Joe Paul Nichols, Jr. and Shauna R. Nichols are identified in Commission filings as officers in positions of ownership or control of respondent, as defined by Texas Natural Resources Code § 91.114, during the time period of the violations of Commission rules committed by respondent.
 17. The violations of Commission rules committed by respondent are related to safety and the control of pollution.
 18. As officers in positions of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Joe Paul Nichols, Jr. and Shauna R. Nichols and any other organization in which either of them may hold a position of 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 violations 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.

19. The documented violations committed by 4-N are a hazard to the public health and demonstrate a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).
20. The complaint against Chris Creswell should be dismissed.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, dismissing this action against Chris Creswell, and further requiring 4-N Operating, LLC, within 30 days of the entry of a Final Order in this matter; 1) to plug Well Nos. 4, 5, 6, 8, 9, 10, 13W, and 14 on the Burrell Mill -B- (01449) Lease; 2) to bring the Burrell Mill -B- (01449) Lease into compliance with Commission Rules; 3) to reimburse funds which were expended by the Commission to remove the oil from the pit near Well No. 9, backfill two pits, and cleaning up all of the oil affected area on the Burrell Mill -B- (01449) Lease totaling of \$654.50; and 4) to pay an administrative penalty of \$37,000.00.

Respectfully submitted,

Mark Helmueller
Hearings Examiner