

April 27, 2006

OIL AND GAS DOCKET NO. 09-0239999

ENFORCEMENT ACTION AGAINST CHRIS KEILBERG D/B/A WOLVERINE OPERATING (OPERATOR NO. 936278) FOR VIOLATIONS OF STATEWIDE RULES ON THE WAGGONER, W.T. EST. -L- (06569) LEASE, WELL NOS. 1, 4 AND 5, WILBARGER COUNTY REGULAR FIELD, WILBARGER COUNTY; WAGGONER, W.T. ESTATE (06820) LEASE, WELL NO. 10, GRAYBACK, EAST (MILHAM) FIELD, WILBARGER COUNTY; AND WAGGONER, W.T., EST. "AC" (25894) LEASE, WELL NO. 1, WILBARGER COUNTY REGULAR FIELD, WILBARGER COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT RAILROAD COMMISSION OF TEXAS:

Lowell Williams, Enforcement, RRC

FOR RESPONDENT

Chris Keilberg, d/b/a Wolverine Operating

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	July 26, 2004
NOTICE OF HEARING:	January 31, 2005
DATE CASE HEARD:	June 2, 2005
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	April 27, 2006
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

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

1. Whether the Respondent should be required to place in compliance with Statewide Rule 3;
 - a. The Waggoner, W.T., Est. -L- (06569) Lease which does not have the sign or proper identification required by Statewide Rule 3(2) posted at Well Nos. 1 and 5; and the Waggoner, W.T. Estate (06820) Lease which does not have the sign or proper identification required by Statewide Rule 3(2) posted at Well No. 10; and

- b. The Waggoner, W.T. Est. -L- (06569) Lease which does not have the sign or proper identification required by Statewide Rule 3(3) posted at the tank battery.
2. Whether the Respondent should be required to plug or place in compliance with Statewide Rule 14;
 - a. The Waggoner, Est. -L- (06569) Lease Well Nos. 1, 4 and 5.
 - b. The Waggoner, W.T. Estate (06820) Lease Well No. 10.
 - c. The Waggoner, W.T., Est. "AC" (25894) Lease Well No. 1.
3. Whether the Respondent should be required to place in compliance with Statewide Rule 8;
 - a. The Waggoner, W.T. Est. "AC" (25894) Lease, which has two pits.
4. Whether the Respondent should be required to place in compliance with Statewide Rule 13:
 - a. The Waggoner, W.T. Est. -L- (06569) Lease, Well Nos. 1 and 4.
 - b. The Waggoner, W.T., Est. "AC" (25894) Lease, Well No. 1.
5. Whether the Respondent violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C. Texas Natural Resources Code, Chapter 27 of the 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, 13, and 14; and
6. 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;
7. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code §81.0534.

Lowell Williams appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section ("Enforcement"). Chris Keilberg d/b/a Wolverine Operating ("Keilberg" or "Wolverine") appeared telephonically representing himself. Enforcement's hearing file was admitted into evidence.

Enforcement offered a trial amendment, which was granted, requesting that penalties be assessed against Wolverine for the Waggoner (06820) Lease, but that compliance not be required, noting that the lease has been transferred to a bonded operator, Tommy Swanson Oil Company, Inc. effective June 1, 2004 and is therefore in compliance. Enforcement recommended that the Respondent be directed to place the other subject leases and wells into compliance with all Commission Statewide Rules, and that the Respondent be assessed an administrative penalty of

\$15,750.00. The examiner agrees with Enforcement's recommendations.

ENFORCEMENT'S CASE

Organization and Permit Records

Commission records show that Chris Keilberg d/b/a Wolverine Operating (Operator No. 936278) has reported itself as a sole proprietorship performing activities in the State of Texas regulated by the Commission. Wolverine filed its initial Commission Form P-5 (Organization Report) with the Commission on March 14, 2000. The most recent Organization Report for Wolverine was filed on June 13, 2001. Wolverine is a delinquent operator that last filed \$1500 in Financial assurance under Option 4 [Tex. Nat. Res. Code §91.104(b)(4)]. On the P-5 Organization Report, Chris Keilberg is listed as the Owner of the company. Commission records show that as of December 2, 2005, Wolverine was recognized as the operator of 25 wells with a total depth of 50,223 feet. Wolverine has no financial assurance in place.

Respondent designated itself as operator of the Waggoner, W.T. Est -L- (06569)) Lease, Well Nos. 1, 4 and 5 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective February 1, 2000, approved May 17, 2000. Respondent designated itself as the operator of the Waggoner, W.T. Estate (06820) Lease, Well No. 10 by filing a Commission Form P-4 effective February 1, 2000, approved May 17, 2000. Respondent designated itself as the operator of the Waggoner, W.T., Est. "AC" (25894) Lease, Well No. 1 by filing a Commission Form P-4 effective February 1, 2000, approved May 17, 2000.

Enforcement made the following allegations with regard to the asserted Statewide Rule violations:

Statewide Rule 3

Statewide Rule 3 [16 Tex. Admin. Code §3.3] 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.

1. Statewide Rule 3(2) requires the posting of a sign at each well site, which must show the name of the property, the name of the operator and the well number.
 - A. A Commission District inspection report made on March 31, 2004 for the Waggoner, W.T. Est -L- (06569) Lease showed that the sign required by Statewide Rule 3(2) to be posted at Well Nos. 1 and 5 displayed incorrect operator information. Commission District inspection reports made on April 22, 2004 and July 5, 2004 showed that the signs required to be posted at Well Nos. 1, 4 and 5 did not show the correct operator.
 - B. Commission District inspection reports made on April 23, 2004 and July 5, 2004

for the Waggoner, W.T. Estate (06820) Lease, showed that the sign or identification required by Statewide Rule 3(2) to be posted at Well No. 10 was missing.

2. Statewide Rule 3(3) requires the posting of a sign or painted identification at each tank battery, satellite tank or approved crude oil measuring facility where tanks are not utilized, which must show the name of the property as carried on the records of the Commission, the name of the operator, the number of acres in the property, the Commission lease number for the formation from which the oil or gas is produced and, if applicable, the number of the Commission permit authorizing commingling of oil.

A. Commission District inspection reports made on April 22, 2004 and July 5, 2004 for the Waggoner, W.T. Est -L- (06569) Lease, showed that the sign or identification required by Statewide Rule 3(3) to be posted at the tank battery was missing.

3. By failing to maintain legible signs or identification as required, Respondent has violated Statewide Rule 3.
4. Respondent's violations of Statewide Rule 3 are serious and threaten the public health and safety. In the event of a pollution or safety violation or other emergency, the lack of legible signs and identification displaying correct information may cause confusion as to the responsible operator to be contacted and the actual location of the violation or emergency. Such confusion will cause delays in containing and remediating the violation or emergency.

Statewide Rule 14

Statewide Rule 14(b)(2) [16 Tex. Admin. Code §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2). Under Statewide Rule 14(c)(1), the entity designated as the operator of a well specifically identified on the most recent Commission approved operator designation form filed on or after September 1, 1997 is responsible for plugging the well in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

1. Commission District inspection reports made on March 31, 2004, April 22, 2004 and July 5, 2004 and zero production reported by Respondent from January 1, 1993 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner, W.T. Est -L- (06569) Lease, Well Nos. 4 and 5 have been inactive for a period greater than one year. Production from the wells ceased on or before December 31, 1992. Well No. 1 was an injection well permitted July 28, 1976. The last reported injection activity was in October, 1993 and the permit was cancelled December 29, 1994.
2. Commission District inspection reports made on March 30, 2004, April 23, 2004,

and July 5, 2004 and the absence of production reports filed since January 1, 2003 showed that the Waggoner, W.T. Estate (06820) Lease, Well No. 10 has been inactive for a period greater than one year. Production from the subject well ceased on or before December 31, 1992.

3. Commission District inspection reports made on March 21, 2004, April 23, 2004, July 5, 2004 and September 29, 2004 and zero production reported by Respondent from January 1, 1993 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner, W.T., Est. "AC" (25894) Lease, Well No. 1 has been inactive for a period greater than one year. Production from the well ceased on or before December 31, 1992.
4. By failing to timely plug the subject wells or to obtain an extension of the plugging deadline, Respondent has violated Statewide Rule 14(b)(2).
5. Respondent's violations of Statewide Rule 14(b)(2) are serious and threaten the public health and safety. Unplugged 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.
6. Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the Waggoner, W.T. Est -L- (06569) Lease, Well Nos. 1, 4 and 5 is \$5,100.00, and for the Waggoner, W.T., Est. "AC" (25894) Lease, Well No. 1 is \$2,300.00.

Statewide Rule 8

Statewide Rule 8(d)(4)(G)(i)(III) [16 Tex. Admin. Code §3.8] requires a person who maintains or uses a completion or workover pit to dewater the pit within 30 days and backfill and compact the pit within 120 days of the completion of the well.

1. Commission District inspection reports made on March 21, 2004, April 23, 2004, July 5, 2004 and September 29, 2004 for the Waggoner, W.T. Est "AC" (25894) Lease, indicated that Respondent maintained two pits near Well No. 1. The first pit is a round pit measuring 40' in diameter varying from 1' to 3' deep. The second pit consists of two rectangular pits measuring 45' x 8' x 3' joined at the top making one pit containing two cells.
2. By using or maintaining dry pits and failing to backfill and compact the pits within 120 days of completion of the well, Respondent violated Statewide Rule 8(d)(4)(G)(i)(III).
3. Respondent's violations of Statewide Rule 8(d)(4)(G)(i)(III) are serious and hazardous to the public health and safety because the continued maintenance of pits

required to be backfilled may result in unpermitted discharges which may contaminate surface or subsurface waters, causing pollution.

Statewide Rule 13

Statewide Rule 13(b)(1)(B) [Tex. Admin. Code §3.13] provides that wellhead assemblies shall be used on wells to maintain surface control of the well. Maintenance of surface control is necessary not only to prevent fluids from being discharged from the wellbore onto the ground surface, but also to prevent any oil and gas wastes present in the wellbore from being displaced to the surface by influxes of surface water into the open wellbore.

1. Commission District inspection reports made on April 22, 2004 and July 5, 2004 for the Waggoner, W.T. Est -L- (06569) Lease, showed that Well Nos. 1 and 4 had tubing open to atmosphere. A Commission District inspection report made on March 31, 2004 showed that Well No. 1 had tubing open to atmosphere and Well No. 4 had casing and tubing open to atmosphere.
2. Commission District inspection reports made on March 21, 2004 and April 23, 2004 for the Waggoner, W.T., Est. "AC" (25894) Lease showed that Well No. 1 had the valve on the casing open to atmosphere.
3. By leaving wells open to atmosphere, Respondent violated Statewide Rule 13(b)(1)(B).
4. Respondent's violations of Statewide Rule 13(b)(1)(B) are serious and hazardous to the public health and safety because wells left uncontrolled or open to atmosphere may discharge oil and gas waste onto the land surface and affect the health of humans and animals; these discharges may eventually make their way to surface or subsurface waters, causing pollution.

Previous Violations by Respondent

The Respondent has no prior history of violations of Commission rules.

Enforcement's Request for Relief and Penalties

Enforcement requests that Respondent be required to place the subject leases and wells, except the Waggoner, W.T. Estate (06820) Lease (which was transferred to Tommy Swanson Oil Company effective June 1, 2004), into compliance with all Commission Statewide Rules. Enforcement further requests that Respondent be assessed an administrative penalty of \$15,750: the penalty amount consists of \$1,250.00 for five Rule 3 violations, \$3,000.00 for three Rule 13(b)(1)(B) violations, \$2,000 for two Rule 8(d)(4)(G)(i)(I) violations, \$10,000 for five Rule 14(b)(2) violations.

Wolverine's Case

Wolverine stated that it took the P-4s on the subject leases as a part of a package deal with the Waggoner Estate. In the deal, Wolverine obtained some good wells and the Waggoner Estate gave Wolverine leases for those wells in order to establish its good faith claim to operate. However, for the wells that are the subject of this docket, Wolverine was never able to obtain new leases from the Waggoner Estate. The Waggoner Estate presumably intended that these wells be plugged. Wolverine admits that it is responsible for the wells. However, Wolverine notes that it has never conducted operations on the subject leases and that the pit violations noted are due to subsidence of previously filled pits, which was done by another operator as long ago as the 1970s. Wolverine argues that it is being made responsible for the violations committed by a past operator as far as the violations of Statewide Rule 3, 8 and 13 are concerned. Keilberg indicated his willingness to cooperate with Enforcement in correcting the violations on the leases.

EXAMINER'S OPINION

Wolverine does not dispute the evidence presented by Enforcement and admits that it is the party responsible for the subject leases, having taken the P-4s on the leases effective February 1, 2000. Having acquired the P-4s for the subject leases after September 1, 1997, Wolverine may not rebut the presumption that it is the operator responsible for the wells and leases pursuant to Tex. Nat. Res. Code §89.002(a)(2)(A)-(D). Additionally, Wolverine certified on each P-4 transfer application, in Item 16, that it acknowledged responsibility for the regulatory compliance of the subject lease.

It is certainly possible that there were pre-existing Statewide Rule violations on the leases which were unknown to the Commission at the time of the P-4 transfer to Wolverine, but these were ongoing violations that 1.) Wolverine assumed responsibility for, and 2.) could have been resolved by Wolverine prior to the complaint by the Waggoner Estate that led to the present Enforcement docket. Whether or not some of the violations of Statewide Rules 3, 8 and 13 were pre-existing, the District Office inspection reports demonstrate that they were continuing violations for which Wolverine was responsible after the Commission recognized its request to be designated the operator.

Statewide Rule 8(d)(4)(G)(i)(III) states:

- (i) A person who maintains or uses a reserve pit, mud circulation pit, fresh makeup water pit, fresh mining water pit, completion/workover pit, basic sediment pit, flare pit or water condensate pit shall dewater, backfill, and compact the pit according to the following schedule:

.....(III) All completion/workover pits used when completing a well shall be dewatered within 30 days and backfilled within 120 days of well completion. All completion/workover pits used when working over a well shall be dewatered within 30 days and backfilled and compacted within 120 days of completion of workover operations. (emphasis added)

There is an argument that this part of Statewide Rule 8 applies only to the operator who drilled and completed the subject well. Certainly, the timetable in (III) provides some support for that position. However, subsection (i) clearly refers to a person who “maintains” a pit, which in the absence of the initial operator carrying out his duties, could equally apply to all subsequent operators who allow the pit to remain open (failing to dewater, backfill and compact) on the lease during their

term of P-4 responsibility for that lease. An open pit remaining on a lease past its useful life is as glaring a violation of Commission rules as a well open to atmosphere. The intent of the rule is to prevent pollution and/or the contamination of usable quality water. This is best accomplished by requiring the filling of the pit by the operator responsible for the lease the pit is on at the time the Commission becomes aware of the violation. The District Office inspection reports indicate the existence of dry, open pits on the Waggoner, W.T. Est. "AC" (25894) Lease. There is no credible evidence in the record, other than Wolverine's unsupported assertion, that the pits were previously backfilled and compacted and that their present appearance is due to slumping or subsidence.

Commission records show that Wolverine Operating reported production averaging approximately 150 BO/month from February, 2000 through January, 2001, indicating that Wolverine was able to obtain production on at least some of the Waggoner wells that it acquired in its package deal. Wolverine, having received a benefit from one portion of its package deal with the Waggoner Estate, now wishes to avoid the downside from the remainder of the deal by suggesting the Commission should proceed against prior operators. For the reasons described above, the Commission should proceed with this docket.

Wolverine expressed a willingness to work with Enforcement to correct the lease violations and plug the wells. However, Wolverine admitted that it no longer owns the equipment necessary to achieve compliance.

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 Keilberg d/b/a Wolverine Operating (Op. # 936278) was given at least 10 days notice of this hearing by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Chris Keilberg appeared at the hearing telephonically.
2. Chris Keilberg d/b/a Wolverine Operating (Op. # 936278) filed his most recent Form P-5 (Organization Report) on June 13, 2001 and has no financial assurance in place. Keilberg is a delinquent operator. As of December 2, 2005, Commission records showed that Keilberg was the operator of 25 wells, with a total depth of 50,223 feet.
3. Respondent Chris Keilberg d/b/a Wolverine Operating, requested to be designated operator of the Waggoner, W.T. Est -L- (06569) Lease, the Waggoner, W.T. Estate (06820) Lease and the Waggoner, W.T., Est. "AC" (25894) Lease by filing a Commission Form P-4 with an effective date of February 1, 2000, approved May 17, 2000.
4. Commission District inspections on March 31, 2004 for the Waggoner, W.T. Est -L- (06569) Lease showed that the sign required by Statewide Rule 3(2) to be posted at Well Nos. 1 and 5 displayed incorrect operator information. Commission District inspection reports made on April 22, 2004 and July 5, 2004 showed that the signs required by Statewide Rule 3(2) to be posted at Well Nos. 1, 4 and 5 did not show the correct operator.

5. Commission District inspections on April 23, 2004 and July 5, 2004 for the Waggoner, W.T. Estate (06820) Lease, showed that the sign or identification required by Statewide Rule 3(2) to be posted at Well No. 10 was missing.
6. Commission District inspections on April 22, 2004 and July 5, 2004 for the Waggoner, W.T. Est -L- (06569) Lease, showed that the sign or identification required by Statewide Rule 3(3) to be posted at the tank battery was missing.
7. Commission District inspections on March 31, 2004, April 22, 2004 and July 5, 2004 and zero production reported by Respondent from January 1, 1993 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner, W.T. Est -L- (06569) Lease, Well Nos. 4 and 5 have been inactive for a period greater than one year. Production from the wells ceased on or before December 31, 1992. Well No. 1 was an injection well permitted July 28, 1976. The last reported injection activity was in October, 1993 and the permit was cancelled December 29, 1994.
8. Commission District inspections on March 30, 2004, April 23, 2004, and July 5, 2004 and the absence of production reports filed since January 1, 2003 showed that the Waggoner, W.T. Estate (06820) Lease, Well No. 10 was inactive for a period greater than one year. Production from the subject well ceased on or before December 31, 1992.
9. Commission District inspections on March 21, 2004, April 23, 2004, July 5, 2004 and September 29, 2004 and zero production reported by Respondent from January 1, 1993 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner, W.T., Est. "AC" (25894) Lease, Well No. 1 has been inactive for a period greater than one year. Production from the well ceased on or before December 31, 1992.
10. Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the Waggoner, W.T. Est -L- (06569) Lease, Well Nos. 1, 4 and 5 is \$5,100.00, and for the Waggoner, W.T., Est. "AC" (25894) Lease, Well No. 1 is \$2,300.00.
11. Commission District inspections on March 21, 2004, April 23, 2004, July 5, 2004 and September 29, 2004 for the Waggoner, W.T. Est "AC" (25894) Lease, indicated that Respondent maintained two pits near Well No. 1. The first pit is a round pit measuring 40' in diameter varying from 1' to 3' deep. The second pit consists of two rectangular pits measuring 45' x 8' x 3' joined at the top making one pit containing two cells.
12. Commission District inspections on April 22, 2004 and July 5, 2004 for the Waggoner, W.T. Est -L- (06569) Lease, showed that Well Nos. 1 and 4 had tubing open to atmosphere. A Commission District inspection report made on March 31, 2004 showed that Well No. 1 had tubing open to atmosphere and Well No. 4 had casing and tubing open to atmosphere.

13. Commission District inspections on March 21, 2004 and April 23, 2004 for the Waggoner, W.T., Est. "AC" (25894) Lease showed that Well No. 1 had the valve on the casing open to atmosphere.
14. The Waggoner, W.T. Estate (06820) Lease has been transferred to another operator, Tommy Swanson Oil Company, Inc. effective June 1, 2004, and is currently in compliance with Commission Statewide Rules.
15. Respondent has no prior history of violations of Commission rules.

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. Respondent was the operator of the Waggoner, W.T. Est. -L- (06569) Lease, the Waggoner, W.T. Estate (06820) Lease and the Waggoner, W.T., Est "AC" (25894) Lease at the time of the documented violations of Commission rules.
4. Respondent is in violation of Statewide Rule 3 on the Waggoner, W.T. Est. -L- (06569) Lease and was in violation of Statewide Rule 3 on the the Waggoner, W.T. Estate (06820) Lease prior to its transfer to Tommy Swanson Oil Company, Inc.
5. Respondent is in violation of Statewide Rule 14 on the Waggoner, W.T. Est. -L- (06569) Lease, Well Nos. 1, 4 and 5.
6. Respondent was in violation of Statewide Rule 14 on the Waggoner, W.T. Estate (06820) Lease, Well No. 10 prior to its transfer to Tommy Swanson Oil Company, Inc. effective June 1, 2004.
7. Respondent is in violation of Statewide Rule 14 on the Waggoner, W.T., Est. "AC" (25894) Lease, Well No. 1.
8. Respondent is in violation of Statewide Rule 8 on the Waggoner, W.T. Est. "AC" (25894) Lease at Well No. 1.
9. Respondent is in violation of Statewide Rule 13 on the Waggoner, W.T. Est. -L- (06569) Lease at Well Nos. 1 and 4.
10. Respondent is in violation of Statewide Rule 13 on the Waggoner, W.T., Est. "AC" (25894) Lease at Well No. 1.
11. 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 Keilberg d/b/a Wolverine Operating to plug Well Nos. 1, 4 and 5 on the Waggoner, W.T. Est. -L- (06569) Lease and plug Well No. 1 on the Waggoner, W.T., Est., "AC" (25894) Lease; place the Waggoner, W.T. Est. -L- (06569) Lease and Waggoner, W.T. Est. -L- (06569) Lease in compliance with Statewide Rules; and pay an administrative penalty of \$15,750.

Respectfully submitted,

Marshall Enquist
Hearings Examiner