

April 13, 2006

OIL AND GAS DOCKET NO. 09-0239993

ENFORCEMENT ACTION AGAINST CHRIS KEILBERG D/B/A WOLVERINE OPERATING (OPERATOR NO. 936278) FOR VIOLATIONS OF STATEWIDE RULES ON THE WAGGONER -AB- (11265) LEASE, WELL NOS. 1 AND 4, WILBARGER COUNTY REGULAR FIELD, WILBARGER COUNTY; WAGGONER -M- (06706) LEASE, WELL NOS. 1, 7, 8 AND 9, WILBARGER COUNTY REGULAR FIELD, WILBARGER COUNTY; AND WAGGONER, W.T., EST. -F- (06566) LEASE, WELL NOS. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 AND 33, 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 13, 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 -AB- (11265) Lease which does not have the sign or proper identification required by Statewide Rule 3(1) posted at the entrance; and
 - b. The Waggoner -AB- (11265) Lease which does not have the sign or proper

identification required by Statewide Rule 3(2) posted at Well Nos. 1 and 4; the Waggoner -M- (06706) Lease which does not have the sign or proper identification required by Statewide Rule 3(2) posted at Well Nos. 1, 7, 8 and 9; and the Waggoner, W.T., Est. -F- (06566) Lease, which does not have the sign or proper identification required by Statewide Rule 3(2) posted at Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33; and

- c. The Waggoner -AB- (11265) Lease which does not have the sign or proper identification required by Statewide Rule 3(3) posted at the tank battery; the Waggoner -M- (06706) Lease, which does not have the sign or proper identification posted at the tank battery as required by Statewide Rule 3(3); and the Waggoner, W.T., Est. -F- (06566) Lease, which does not have the sign or proper identification required by Statewide Rule 3(3) posted at the tank battery; and
2. Whether the Respondent should be required to plug or place in compliance with Statewide Rule 14;
 - a. The Waggoner -AB- (11265) Lease Well Nos. 1 and 4 which have been inactive for a period greater than one year. Well No. 4 is an injection well.
 - b. The Waggoner -M- (06706) Lease Well Nos. 1, 7, 8 and 9, which have been inactive for a period greater than one year. Well No. 7 is an injection well.
 - c. The Waggoner, W.T., Est. -F- (06566) Lease Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33. Well Nos. 14, 19, 23 and 27 are injection wells.
 3. Whether the Respondent should be required to place in compliance with Statewide Rule 8;
 - a. The Waggoner -AB- (11265) Lease, which has a dry, open workover pit measuring 20' x 10' x 3' adjacent to Well No. 4; and
 - b. The Waggoner -M- (06706) Lease, which has a dry, open workover pit measuring 25' x 10' x 3' at the storage area.
 4. Whether the Respondent should be required to place in compliance with Statewide Rule 13:
 - a. The Waggoner -M- (06706) Lease, on which Well Nos. 1, 7, and 9 had casing open to atmosphere.
 - b. The Waggoner, W.T., Est. -F- (06566) Lease, on which Well Nos. 3, 25 and 32 had casing open to atmosphere.
 5. Whether the Respondent violated Tex. Nat. Res. Code §89.041 by improperly plugging Well No. 21 on the Waggoner, W.T., Est. -F- (06566) Lease by failing to cut the casing off 3'

below ground level.

6. 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
7. 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;
8. 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.

Boyd Johnson, Director of Enforcement, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, 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 recommended that the Respondent be directed to place the subject leases and wells into compliance with all Commission Statewide Rules and that the Respondent be assessed an administrative penalty of \$59,000.

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. 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 -AB- (11265) Lease, Well Nos. 1 and 4, by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective February 1, 2000, approved March 30, 2000. Respondent designated itself as the operator of the Waggoner -M- (06706) Lease, Well Nos. 1, 7, 8 and 9 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. -F- (06566) Lease, Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33 by filing a Commission Form P-4 effective February 1, 2000, approved November 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(1) requires the posting of such a sign at the principal entrance of the property, which must show the name of the property as carried on the records of the Commission, the name of the operator, and the number of acres in the property.
 - A. Commission District inspection reports made on March 30, 2004, April 22, 2004 and July 5, 2004 for the Waggoner -AB- (11265) Lease, show that the sign required by Statewide Rule 3(1) to be posted at the lease entrance was missing.
2. 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. Commission District inspection reports made on March 30, 2004, April 22, 2004, and July 5, 2004 for the Waggoner -AB- (11265) Lease show that the sign required by Statewide Rule 3(2) to be posted at Well Nos. 1 and 4 displayed incorrect operator information.
 - B. A Commission District inspection report made on April 27, 2004 for the Waggoner -M- (06706) Lease, showed that the sign or identification required by Statewide Rule 3(2) to be posted at Well Nos. 7 and 9 displayed incorrect operator information and Well No. 8 had no identification posted. A Commission District inspection report made on May 3, 2004 showed that Well No. 1 had "K1" identified as the operator. Commission District inspection reports made on June 15, 2004 and July 14, 2004 showed that Well Nos. 1, 7, 8 and 9 did not have proper identification posted.
 - C. Commission District inspection reports made on April 27, 2004, May 10, 2004 and July 12, 2004 for the Waggoner, W.T., Est -F- (06566) Lease show that Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33 were not properly identified as required by Statewide Rule 3(2).
3. 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 March 30, 2004, April 22, 2004 and July 5, 2004 for the Waggoner -AB- (11265) Lease, show that the sign or identification required by Statewide Rule 3(3) to be posted at the tank battery was missing.

B. A Commission District inspection report made on April 27, 2004 for the Waggoner -M- (06706) Lease, Well Nos. 1, 7, 8 and 9 showed that the tank battery did not have proper identification posted as required by Statewide Rule 3(3).

C. Commission District inspection reports made on April 27, 2004, May 10, 2004 and July 12, 2004 for the Waggoner, W.T., Est. (06566) Lease showed that the tank battery was not properly identified as required by Statewide Rule 3(3).

4. By failing to maintain legible signs or identification as required, Respondent has violated Statewide Rule 3.
5. 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 30, 2004, April 22, 2004 and July 5, 2004 and zero production reported by Respondent from September 1, 1999 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner -AB- (11265) Lease, Well No. 1 has been inactive for a period greater than one year. The last reported injection activity for Well No. 4 was for October 1999. Well No. 4 was permitted as a secondary recovery well by UIC Permit No. 08211 issued on July 28, 1988. The subject wells have been inactive for a period greater than one year.
2. Commission District inspection reports made on April 27, 2004, May 3, 2004 June 15, 2004 and July 14, 2004 and zero production reported from April 11, 1994 through August 31, 2003 (with no production reports filed thereafter with the

Commission) showed that the Waggoner -M- (06706) Lease, Well Nos. 1, 8 and 9 have been inactive for a period greater than one year. Production from the subject wells ceased on or before March 31, 1994. The last reported injection activity for Well No. 7 was in February, 1994. The secondary recovery permit issued to Well No. 7 was cancelled per the operator's request on December 29, 1994.

3. Commission District inspection reports made on April 27, 2004, May 10, 2004 and July 12, 2004 and zero production reported by Respondent from September 1, 1999 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner, W.T., Est. -F- (06566) Lease, Well Nos. 3, 5, 8, 15, 25, 26, 29, 30, 31, 32 and 33 have been inactive for a period greater than one year. Production from the subject wells ceased on or before August 31, 1999. Well Nos. 14, 19, 23 and 27 were permitted injection wells. Well Nos. 14 and 27 were issued Permit No. 07086 on May 12, 1984 as secondary recovery wells. Well No. 19 was permitted July 28, 1976 for disposal into a productive zone. Well No. 23 was permitted on July 28, 1976 as a secondary recovery well. The last reported injection activity for Well Nos. 14, 19, 23 and 27 was for March, 1999. All the subject wells have been inactive for a period greater than one year.
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 -AB- (11265) Lease, Well Nos. 1 and 4, is \$4,600.00; for the Waggoner -M- (06706) Lease, Well Nos. 1, 7, 8 and 9 is \$9,2000.00; and for the Waggoner, W.T., Est. -F- (06566) Lease, Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33 is \$26,900.00.

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 or workover of the well.

1. Commission District inspection reports made on March 30, 2004, April 22, 2004 and July 5, 2004 for the Waggoner -AB- (11265) Lease, indicated that Respondent maintained a dry, open workover pit measuring 20' x 10' x 3' adjacent to Well No. 4.
2. Commission District inspection reports made on April 27, 2004, June 15, 2004 and

July 14, 2004 for the Waggoner -M- (06706) Lease, indicated that Respondent maintained a dry open workover pit measuring 25' x 10' x 3' at the storage area.

3. By using and maintaining dry workover 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).
4. 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. A Commission District inspection report made on April 27, 2004 for the Waggoner -M- (06706) Lease, showed that Well Nos. 7 and 9 had casing open to atmosphere. A Commission District inspection report made on May 3, 2004 showed that Well No. 1 had casing open to atmosphere. A Commission District inspection report made on June 15, 2004 showed that Well Nos. 1, 7 and 9 had casing open to atmosphere.
2. Commission District inspection reports made on April 27, 2004, May 10, 2004 and July 12, 2004 for the Waggoner, W.T., Est. -F- (06566) Lease showed that Well Nos. 3, 25 and 32 had 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.

Texas Natural Resources Code §89.041

Texas Natural Resources Code §89.041 provides that if it comes to the attention of the Commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well,

the Commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of the Texas Natural Resources Code.

1. Commission District inspection reports made on April 27, 2004, May 10, 2004 and July 12, 2004 on the Waggoner, W.T., Est. -F- (06566) Lease showed that Well No. 21 had casing open to atmosphere and did not have casing cut off 3' below ground surface. During the inspection made on May 10, 2004, the inspector ran a line gauge into the well and tagged the top plug at 1' depth.
2. By improperly plugging the Waggoner, W.T., Est. (06566) Lease, Well No. 21, Respondent violated Texas Natural Resources Code §89.041.
3. Respondent's violation of Texas Natural Resources Code §89.041 is serious and hazardous to the public health and safety. Improperly plugged wells are likely to cause pollution of usable quality ground water 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.

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 into compliance with all Commission Statewide Rules. Enforcement further requests that Respondent be assessed an administrative penalty of \$59,000: the penalty amount consists of \$6,000 for twenty-four Rule 3 violations, \$1,000 for two Rule 8(d)(4)(G)(i)(III) violations, \$44,000 for twenty-two Rule 14(b)(2) violations and \$2,000 for one violation of Texas Natural Resources Code §89.041.

Wolverine's Case

Wolverine stated that it took the P-4s on the subject leases as 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 leases from the Waggoner Estate. Wolverine admits that it is responsible for the wells, having taken them by P-4 transfer in 2000. However, Wolverine states 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 1980s. Wolverine argues that it is being made responsible for the violations committed by past operators as far as the violations of Statewide Rules 3, 8 and 13 are concerned. Wolverine indicated its willingness to cooperate with Enforcement in correcting the violations on the leases.

Examiner's Opinion

Wolverine Operating does not dispute the evidence presented by Enforcement and admits that it is the party responsible for the subject leases, having taken 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 leases.

The certified file contains Commission Mainframe screens under "P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry" indicating that there had been a history of paperwork violations on the subject leases (delinquent P-5s, W-10s and H-10s), prior to the transfer to Wolverine, but also indicating that these were resolved by the prior operator or operators. 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 -AB- (11265) and the Waggoner -M- (06706) Leases.

There is no credible evidence in the record that the pits were previously backfilled and compacted and that their present appearance is due to slumping or subsidence as alleged by Wolverine.

Enforcement argues that Wolverine violated Tex. Nat. Res. Code §89.041 by not properly plugging Well No. 21 on the Waggoner, W.T., Est -F- (06566) Lease. The Wellbore Menu on the Commission Mainframe indicates this well was plugged and a W-3 was filed for the well on July 8, 1985. As a result, the well was removed from the Proration Schedule and Wolverine could not have taken the P-4 liability for the well on the effective date of February 1, 2000. The examiner recommends that this violation be dismissed and the \$2,000 penalty not be assessed against Wolverine.

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 leases 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, Wolverine, the current designated operator, is the party responsible for the violations.

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. Wolverine filed its most recent Form P-5 (Organization Report) on June 13, 2001 and has no financial assurance in place. Wolverine is an inactive operator. As of December 2, 2005, Commission records showed that Wolverine was the operator of 25 wells, with a total depth of 50,223 feet.
3. Respondent designated itself the operator of the Waggoner -AB- (11265) Lease, the Waggoner -M- (06706) Lease and the Waggoner, W.T. Est. -F- (06566) Lease by filing Commission Form P-4s (Certificate of Compliance and Transportation Authority) with an effective date of February 1, 2000.
4. Commission District inspections on March 30, 2004, April 22, 2004 and July 5, 2004 for the Waggoner -AB- (11265) Lease, show that the sign required by Statewide Rule 3(1) to be posted at the lease entrance was missing.

5. Commission District inspections on March 30, 2004, April 22, 2004, and July 5, 2004 for the Waggoner -AB- (11265) Lease show that the sign required by Statewide Rule 3(2) to be posted at Well Nos. 1 and 4 displayed incorrect operator information.
6. A Commission District inspection on April 27, 2004 for the Waggoner -M- (06706) Lease, showed that the sign or identification required by Statewide Rule 3(2) to be posted at Well Nos. 7 and 9 displayed incorrect operator information and Well No. 8 had no identification posted. A Commission District inspection report made on May 3, 2004 showed that Well No. 1 had "K1" identified as the operator. Commission District inspections on June 15, 2004 and July 14, 2004 showed that Well Nos. 1, 7, 8 and 9 did not have proper identification posted.
7. Commission District inspections on April 27, 2004, May 10, 2004 and July 12, 2004 for the Waggoner, W.T., Est -F- (06566) Lease show that Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31 and 33 were not properly identified as required by Statewide Rule 3(2).
8. Commission District inspections on March 30, 2004, April 22, 2004 and July 5, 2004 for the Waggoner -AB- (11265) Lease, show that the sign or identification required by Statewide Rule 3(3) to be posted at the tank battery was missing.
9. A Commission District inspection on April 27, 2004 for the Waggoner -M- (06706) Lease, Well Nos. 1, 7, 8 and 9 showed that the tank battery did not have proper identification posted as required by Statewide Rule 3(3).
10. Commission District inspections on April 27, 2004, May 10, 2004 and July 12, 2004 for the Waggoner, W.T., Est. (06566) Lease showed that the tank battery was not properly identified as required by Statewide Rule 3(3).
11. Commission District inspections on March 30, 2004, April 22, 2004 and July 5, 2004 and zero production reported by Respondent from September 1, 1999 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner -AB- (11265) Lease, Well No. 1 has been inactive for a period greater than one year. The last reported injection activity for Well No. 4 was for October 1999. Well No. 4 was permitted as a secondary recovery well by UIC Permit No. 08211 issued on July 28, 1988. The subject wells have been inactive for a period greater than one year.
12. Commission District inspections on April 27, 2004, May 3, 2004 June 15, 2004 and July 14, 2004 and zero production reported from April 11, 1994 through August 31, 2003 (with no production reports filed thereafter with the Commission) showed that the Waggoner -M- (06706) Lease, Well Nos. 1, 8 and 9 have been inactive for a period greater than one year. Production from the subject wells ceased on or before March 31, 1994. The last reported injection activity for Well No. 7 was in February, 1994. The secondary recovery permit issued to Well No. 7 was cancelled per the operator's request on December 29, 1994.

13. Commission District inspections on April 27, 2004, May 10, 2004 and July 12, 2004 and zero production reported by Respondent from September 1, 1999 through August 31, 2003 (with no production reports filed thereafter with the Commission), showed that the Waggoner, W.T., Est. -F- (06566) Lease, Well Nos. 3, 5, 8, 15, 25, 26, 29, 30, 31, 32 and 33 have been inactive for a period greater than one year. Production from the subject wells ceased on or before August 31, 1999. Well Nos. 14, 19, 23 and 27 were permitted injection wells. Well Nos. 14 and 27 were issued Permit No. 07086 on May 12, 1984 as secondary recovery wells. Well No. 19 was permitted July 28, 1976 for disposal into a productive zone. Well No. 23 was permitted on July 28, 1976 as a secondary recovery well. The last reported injection activity for Well Nos. 14, 19, 23 and 27 was for March, 1999. All the subject wells have been inactive for a period greater than one year.
14. Pursuant to calculations by Commission District Office personnel, the total estimated cost to the State for plugging the Waggoner -AB- (11265) Lease, Well Nos. 1 and 4, is \$4,600.00; for the Waggoner -M- (06706) Lease, Well Nos. 1, 7, 8 and 9 is \$9,200.00; and for the Waggoner, W.T., Est. -F- (06566) Lease, Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33 is \$26,900.00.
15. Commission District inspections on March 30, 2004, April 22, 2004 and July 5, 2004 for the Waggoner -AB- (11265) Lease, showed that Respondent maintained a dry, open workover pit measuring 20' x 10' x 3' adjacent to Well No. 4.
16. Commission District inspections on April 27, 2004, June 15, 2004 and July 14, 2004 for the Waggoner -M- (06706) Lease, showed that Respondent maintained a dry open workover pit measuring 25' x 10' x 3' at the storage area.
17. There is no credible evidence in the record that the pits on the Waggoner -AB- (11265) Lease and the Waggoner -M- (06706) Lease were ever dewatered, backfilled and compacted or that their present appearance is due to slumping or subsidence.
18. A Commission District inspection on April 27, 2004 for the Waggoner -M- (06706) Lease, showed that Well Nos. 7 and 9 had casing open to atmosphere. A Commission District inspection on May 3, 2004 showed that Well No. 1 had casing open to atmosphere. A Commission District inspection on June 15, 2004 showed that Well Nos. 1, 7 and 9 had casing open to atmosphere.
19. Commission District inspections on April 27, 2004, May 10, 2004 and July 12, 2004 for the Waggoner, W.T., Est. -F- (06566) Lease showed that Well Nos. 3, 25 and 32 had casing open to atmosphere.
20. Commission District inspections on April 27, 2004, May 10, 2004 and July 12, 2004 on the Waggoner, W.T., Est. -F- (06566) Lease showed that Well No. 21 had casing open to atmosphere and did not have casing cut off 3' below ground surface. During the inspection made on May 10, 2004, the inspector ran a line gauge into the well and tagged the top plug at 1' depth.

21. Commission records show that a W-3 plugging report was filed for Well No. 21 on the Waggoner, W.T., Est. -F- (06566) Lease on July 8, 1985. The well was removed from the Proration Schedule and Wolverine did not assume responsibility for Well No. 21 as a result of the P-4 transfer effective February 1, 2000.
22. 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 -AB- (11265) Lease, the Waggoner -M- (06706) Lease and the Waggoner, W.T. Est. -F- (06566) Lease at the time of the documented violations of Commission rules.
4. Respondent is in violation of Statewide Rule 3 on the Waggoner -AB- (11265) Lease, the Waggoner -M- (06706) Lease and the Waggoner, W.T. Est. -F- (06566) Lease.
5. Respondent is in violation of Statewide Rule 14 on the Waggoner -AB- (11265) Lease, Well No. 1 and Well No. 4.
6. Respondent is in violation of Statewide Rule 14 on the Waggoner -M- (06706) Lease, Well Nos. 1, 7, 8 and 9.
7. Respondent is in violation of Statewide Rule 14 on the Waggoner, W.T., Est. -F- (06566) Lease, Well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33.
8. Respondent is in violation of Statewide Rule 8 on the Waggoner -AB- (11265) Lease and the Waggoner -M- (06706) Lease.
9. Respondent is in violation of Statewide Rule 13 on the Waggoner -M- (06706) Lease, Well Nos. 1, 7 and 9.
10. Respondent is in violation of Statewide Rule 13 on the Waggoner, W.T., Est. -F- (06566) Lease, Well Nos. 3, 25 and 32.
11. Respondent is not in violation of Tex. Nat. Res. Code §89.041 on the Waggoner, W.T., Est. -F- (06566) Lease, Well No. 21.
12. 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 that Chris Keilberg d/b/a Wolverine Operating plug Well Nos. 1 and 4 on the Waggoner -AB- (11265) Lease; plug Well Nos. 1, 7, 8 and 9 on the Waggoner -M- (06706) Lease; plug well Nos. 3, 5, 8, 14, 15, 19, 23, 25, 26, 27, 29, 30, 31, 32 and 33 on the Waggoner, W.T. Est. -F- (06566) Lease; place the Waggoner -AB- (11265) Lease, the Waggoner -M- (06706) Lease and the Waggoner, W.T. Est. -F- (06566) Lease in compliance with Statewide Rules 3, 8 and 13; and pay an administrative penalty of \$57,000. The examiner further recommends that the alleged violation of Texas Natural Resources Code §89.041 on the Waggoner, W.T. Est., -F- (06566) Lease, Well No. 21, be dismissed.

Respectfully submitted,

Marshall Enquist
Hearings Examiner