

OIL & GAS DOCKET NO. 09-0250655

ENFORCEMENT ACTION AGAINST SANCO OPERATING COMPANY (OPERATOR NO. 747022) FOR VIOLATIONS OF STATEWIDE RULES ON THE L. A. FERGUSON LEASE, WELL NO. 1351 (RRC NO. 086220), S. BARTON'S CHAPEL (CONGL. 4850) FIELD, JACK COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Susan German

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Christopher C. Sanders
Keiko E. Sanders

RESPONDENT:

Sanco Operating Company

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:	March 26, 2007
DATE OF NOTICE OF HEARING:	May 1, 2007
DATE OF HEARING:	June 21, 2007
HEARD BY:	James M. Doherty, Hearings Examiner
DATE RECORD CLOSED:	July 9, 2007
DATE PFD CIRCULATED:	August 28, 2007

STATEMENT OF THE CASE

This proceeding was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent Sanco Operating Company ("Sanco") violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to conduct an approved H-15 test (Test on an Inactive Well More than 25 Years Old) on the L. A. Ferguson Lease, Well No. 1351 (RRC No. 086220), S. Barton's Chapel (Congl. 4850) Field, Jack County, Texas ("subject well");

2. Whether Sanco 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 conduct an approved H-15 test of the subject well;
3. Whether, pursuant to Texas Natural Resources Code §81.0531, Sanco should be assessed an administrative penalty of not more than \$10,000 per day for each offense committed regarding the subject well;
4. Whether Sanco should be ordered to place the subject well into compliance with Commission rules, including Statewide Rule 14(b)(3);
5. Whether, based on the evidence, the Enforcement Section has shown entitlement to any other nature of relief against Sanco; and
6. Whether any violations of Statewide Rule 14(b)(3) should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing was held on June 21, 2007. Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Christopher C. Sanders and Keiko E. Sanders appeared to represent Sanco, and presented evidence. Enforcement’s certified hearing file was admitted into evidence.

APPLICABLE LAW

Pursuant to Statewide Rule 14(b)(3), the operator of any well more than 25 years old that becomes inactive and subject to the provisions of Rule 14(b) must plug the well or successfully conduct a fluid level or hydraulic pressure test establishing that the well does not pose a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. As provided by definitions in Rule 14(a)(1)(A) and Rule 14(a)(1)(C), a well is considered to be inactive and subject to the provisions of Rule 14(b) if the well has been inactive for a period of 12 consecutive months or more.

In general, a fluid level test is a sufficient test for the purposes of Rule 14(b)(3), although the District Office may require alternate methods of testing, including a mechanical integrity test, if necessary to ensure the well does not pose a potential threat of harm to natural resources. *See* Rule 14(b)(3)(A). Generally, the Commission considers that a fluid level test may be approved as demonstrating that the well does not pose a potential threat of harm to natural resources if the test demonstrates that the fluid level in the well is at least 250 feet below the base of the deepest usable quality water stratum.

Pursuant to §91.101 of the Texas Natural Resources Code, the Commission may adopt any order relating to the production of oil and gas and the operation, abandonment, and proper plugging of any well subject to the Commission's jurisdiction as necessary to prevent pollution of surface or subsurface water.

DISCUSSION OF THE EVIDENCE

Enforcement

Sanco has an active Form P-5 organization report and approved financial assurance in the form of a \$50,000 bond. It is a corporation, of which Keiko E. Sanders is President and Treasurer, and Chris C. Sanders is Vice President and Secretary. Sanco designated itself the operator of the L. A. Ferguson Lease, Well No. 1351 (RRC No. 086220), S. Barton's Chapel (Congl. 4850) Field, Jack County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority) effective April 1, 2000, and approved April 13, 2000.

The subject well was completed on November 12, 1979. According to the Commission's H-15 Data Inquiry database, a H-15 test (Test on an Inactive Well More than 25 Years Old) was due to be performed on the subject well in May 2006. This same database shows that Sanco performed a fluid level test on the well on August 10, 2006, which demonstrated that the fluid level in the well was at 279'. The base of the deepest usable quality water stratum in the area of the well is at 100'. Because the Form H-15 filed by Sanco showed that the fluid level was less than 250' below the base of the deepest usable quality water stratum, it was referred to the District Office for review and not approved. On December 8, 2006, the District Office sent correspondence to Sanco directing that a mandatory mechanical integrity test be performed on the well or that the well be plugged. This same correspondence notified Sanco that seal orders had been issued against the subject well on August 10, 2006, and November 8, 2006, the violations that caused the seal orders had not been resolved, and reconnect fees had not been paid. Sanco was notified that under these circumstances it was unlawful to produce the well, and the well should be shut-in until the certificate of compliance was reissued. The H-15 Data Inquiry database shows that the subject well has not been re-tested since the August 10, 2006, test that was not approved.

The P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry database shows that the subject lease and well were severed on August 10, 2006, based on a delinquent H-15 test, and on November 8, 2006, based on a failed H-15 test. The November 8, 2006, severance has not been resolved, and no reconnect fees have been paid with respect to either severance.

A District Office inspection of the subject well on January 17, 2007, showed that the subject well was equipped to flow but not active on the day of the inspection. A further District Office inspection on June 8, 2007, showed that the well was equipped to flow but shut-in with all valves closed and pressure on tubing.

The Gas Ledger Inquiry and Historical Gas Ledger Inquiry databases show, as here relevant, that production for the subject well was reported to the Commission as follows: January through July 2004 - seven consecutive months of production; August 2004 through May 2005 - ten consecutive months of zero production; June through September 2005 - four consecutive months of production; October through December 2005 - three consecutive months of zero production; January 2006 through February 2007 - fourteen consecutive months of production; March through April 2007 - two consecutive months of zero production; and May 2007 - one month of production.¹

An affidavit of Ramon Fernandez, P.E., Field Operations, in the certified enforcement case file states that any inactive well that is greater than 25 years of age must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the required test and supporting documentation (Commission Form H-15), the Commission cannot determine if the well poses a threat to natural resources.

Enforcement recommended that an administrative penalty of \$2,000 be imposed against Sanco for one violation of Statewide Rule 14(b)(3) and that Sanco be ordered to place the subject well into compliance with Commission rules. The prayer for relief in the complaint also requested that the Commission order any other relief to which the Enforcement Section is entitled based on the evidence.

Sanco

Chris Sanders presented evidence for Sanco. He questioned why a H-15 test was required for the subject well. He further professed personal unfamiliarity with the H-15 test performed on the well by Sanco on August 10, 2006, but if such a test was performed it was at the direction of the District Office. Sanders believed that the subject well had been inactive for some time, and Sanco's oil and gas lease covering the property where the well is located has terminated. According to Sanders, another operator has taken a lease on this property. Sanders stated that Sanco appeared for the purpose of determining what the Commission wanted it to do with respect to the subject well, and Sanco will do everything it can to comply with Commission rules.

EXAMINER'S OPINION

The examiner is unable to recommend a penalty for violation by Sanco of Statewide Rule 14(b)(3) because Enforcement did not prove that the subject well is subject to this rule. The L. A. Ferguson Lease, Well No. 1351 was completed on November 12, 1979, and became 25 years old in November 2004. However, the testing requirements of Statewide Rule 14(b)(3) attach to a well

¹ Reported production has been minimal. From January 2004 through May 2007, total reported production has been 591 mcf of gas. Production after August 2006, appears to have been production against severance.

more than 25 years old only when the well has had twelve consecutive months or more of inactivity. The production data for the well presented by Enforcement and similar data officially noticed by the examiner from the Commission's Gas Ledger Inquiry and Historical Gas Ledger Inquiry databases show that as of the date the well became 25 years old the well had only three consecutive months of no reported production and after that date there were only seven more consecutive months of no reported production before additional production began to be reported. Although reported production has been minimal, there has never been a period of twelve consecutive months of no reported production since the date on which the subject well became 25 years old, and, accordingly, the testing requirements of Statewide Rule 14(b)(3) have not yet attached to the well.

Production is not due to be reported to the Commission until 30 days after the month in which the production occurs. As of May 2005, the subject well was more than 25 years old and no production had been reported for ten consecutive months. Reporting of production for June 2005 was not due until July 31, 2005, and, in fact, was not filed with the Commission until August 14, 2005. Due to a quirk in the Commission's system, the well had already been set to Rule 14(b)(2) and Rule 14(b)(3) status before the June 2005 production went into the system. This was in error because the well has never had twelve consecutive months of no reported production.

Nonetheless, Sanco was directed to perform a H-15 test on the subject well, and on August 10, 2006, the test was performed and not approved by the District Office because the test showed that the fluid level in the well was less than 250' below the base of the deepest usable quality water stratum. On December 8, 2006, the District Office sent correspondence to Sanco directing that a mandatory mechanical integrity test be performed on the well or that the well be plugged, and Sanco has not complied. The well was inspected on January 17, 2007, and was found to be shut-in with all valves closed and pressure on tubing. According to Mr. Sanders, Sanco has lost its lease on the property where the well is located. In these circumstances, the Commission is not powerless to enter an order that will ensure the subject well does not pose a potential threat of harm to natural resources, including surface and subsurface water, simply because a Statewide Rule 14(b)(3) violation warranting an administrative penalty has not been proved by Enforcement. Section 91.101 of the Texas Natural Resources Code authorizes the Commission to adopt any order relating to the production of oil and gas and the operation, abandonment, and proper plugging of any well subject to the Commission's jurisdiction as necessary to prevent pollution of surface or subsurface water.

Accordingly, the examiner recommends that the Commission enter an order requiring Sanco to perform an approved mechanical integrity test on the L. A. Ferguson Lease, Well No. 1351 demonstrating that the well does not pose a potential threat of harm to natural resources, or plug the well.

Based on the record in this case, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Sanco Operating Company (“Sanco”) was given at least ten (10) days notice of this hearing by certified mail addressed to Sanco’s most recent Form P-5 organization report address. Sanco appeared at the hearing and presented evidence.
2. Sanco is a corporation. Its officers are Keiko E. Sanders, President and Treasurer, and Chris C. Sanders, Vice President and Secretary.
3. Sanco’s Form P-5 organization report is active, and Sanco has approved financial assurance on file in the form of a \$50,000 bond.
4. Sanco designated itself the operator of the L. A. Ferguson Lease, Well No. 1351 (RRC No. 086220), S. Barton’s Chapel (Congl. 4850) Field, Jack County, Texas (“subject well”), by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved on April 13, 2000, effective April 1, 2000.
5. The subject well was completed on November 12, 1979, and became 25 years old in November 2004.
6. For the period January 1, 2004, through May 31, 2007, production was reported to the Commission for the subject well as follows: January through July 2004 - seven consecutive months of production; August 2004 through May 2005 - ten consecutive months of zero production; June through September 2005 - four consecutive months of production; October through December 2005 - three consecutive months of zero production; January 2006 through February 2007 - fourteen consecutive months of production; March through April 2007 - two consecutive months of zero production; and May 2007 - one month of production.
7. Reported production for the subject well has been minimal. For the period January 1, 2004, through May 31, 2007, total production reported for the well was 591 mcf of gas.
8. There has been no twelve consecutive month period of no reported production for the subject well since the well became 25 years old.
9. On August 10, 2006, Sanco performed a H-15 fluid level test on the subject well. This test showed that the fluid level in the well was at 279'. The base of the deepest usable quality water stratum in the area of the well is at 100'.
10. The Commission considers that a fluid level test may be approved as demonstrating that the well does not pose a potential threat of harm to natural resources if the test demonstrates that the fluid level in the well is at least 250' below the base of the deepest usable quality water stratum.

11. The August 10, 2006, H-15 fluid level test performed by Sanco on the subject well was not approved by the Commission's District Office.
12. On December 8, 2006, the District Office sent correspondence to Sanco directing that a mandatory mechanical integrity test be performed on the subject well or that the well be plugged. Sanco has not complied with this directive.
13. A District Office inspection of the subject well on January 17, 2007, showed that the subject well was equipped to flow but not active on the day of the inspection. A further District Office inspection on June 8, 2007, showed that the well was equipped to flow but shut-in with all valves closed and pressure on tubing.
14. Sanco's oil and gas lease covering the property where the subject well is located has terminated.
15. Without an approved mechanical integrity test to demonstrate casing integrity, the subject well poses a threat of pollution of usable quality water because of the possibility of casing leaks and the proximity of the fluid level in the well to the base of the deepest usable quality water stratum.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.
3. Sanco Operating Company ("Sanco") was and is the operator of the L. A. Ferguson Lease, Well No. 1351 (RRC No. 086220), S. Barton's Chapel (Congl. 4850) Field, Jack County, Texas ("subject well"), as defined by Statewide Rules 14, 58, and 79 [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Sanco has the primary responsibility for complying with the Commission's rules and orders, Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes respecting the subject well.
5. The Enforcement Section did not prove that Sanco committed a violation of Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] warranting the imposition of an administrative penalty.

6. Section 91.101 of the Texas Natural Resources Code authorizes the Commission to adopt any order relating to the production of oil and gas and the operation, abandonment, and proper plugging of any well subject to the Commission's jurisdiction as necessary to prevent pollution of surface or subsurface water.
7. Pursuant to §91.101 of the Texas Natural Resources Code, for the purpose of preventing pollution of surface or subsurface water, an order should issue requiring Sanco to perform an approved mechanical integrity test on the L. A. Ferguson Lease, Well No. 1351 demonstrating that the well does not pose a potential threat of harm to natural resources, or plug the well.

RECOMMENDATION

The examiner recommends that the attached Final Order be issued requiring Sanco Operating Company, within 30 days after the order becomes administratively final, to perform an approved mechanical integrity test of the L. A. Ferguson Lease, Well No. 1351 (RRC No. 086220), S. Barton's Chapel (Congl. 4850) Field, Jack County, Texas, conforming to the requirements of Statewide Rule 14(b)(3) and demonstrating that the well does not pose a potential threat of harm to natural resources, or plug the well in conformity with Statewide Rule 14(d) through (j), as applicable.

Respectfully submitted,

James M. Doherty
Hearings Examiner