

December 28, 2007

OIL AND GAS DOCKET NO. 09-0251219

ENFORCEMENT ACTION AGAINST VORTT EXPLORATION COMPANY, INC. (OPERATOR NO. 887500) FOR VIOLATIONS OF STATEWIDE RULES ON THE McREYNOLDS BROTHERS LEASE, WELL NO. 1 (RRC ID# 095020), NE MURRAY (600 SD) FIELD, YOUNG COUNTY, TEXAS.

OIL AND GAS DOCKET NO. 09-0251296

ENFORCEMENT ACTION AGAINST VORTT EXPLORATION COMPANY, INC. (OPERATOR NO. 887500) FOR VIOLATIONS OF STATEWIDE RULES ON THE McREYNOLDS BROTHERS LEASE, WELL NO. 2 (PERMIT NO. 351753), NE MURRAY (600 SD) FIELD, YOUNG COUNTY, TEXAS.

APPEARANCES:

FOR THE RRC:

Chris Hotchkiss

Attorney, Enforcement Section

FOR RESPONDENT:

Georgia Vandervoort, President
Carl Vandervoort, Vice-President

Vortt Exploration Company, Inc.

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PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED (09-0251219):	March 28, 2007
(09-0251296):	April 2, 2007
NOTICE OF HEARING:	June 5, 2007
DATE CASE HEARD:	July 26, 2007
HEARING CLOSED:	December 27, 2007
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	December 28, 2007
CURRENT STATUS:	Contested

STATEMENT OF THE CASE

These consolidated dockets are Enforcement actions against Vortt Exploration Company, Inc. for violations of Statewide Rules on the McReynolds Brothers Lease, Well No. 1 (RRC ID# 095020) and Well No. 2 (Permit No. 351753), NE Murray (600 SD) Field, Young County.

A hearing in these dockets was held July 26, 2007. The Original Complaint was sent to the address designated for respondent's most recent Form P-5 Organization Report. A signed green card was returned in each docket. Georgia Vandervoort, President, and Carl Vandervoort, Vice President of Vortt Exploration Company, Inc. (hereinafter "Vortt") appeared at the hearing and represented Respondent. Chris Hotchkiss, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section ("Enforcement").

Vortt's Lessor, Joe McReynolds, had planned to attend the hearing and give evidence, but was prevented from doing so due to an illness in the family. On the record, the examiner stated he would accept a late-filed exhibit from McReynolds and circulate it to all parties for objections. The McReynolds exhibit was received and circulated. No objections were received. The McReynolds exhibit was admitted into the record.

AUTHORITY

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. Statewide Rule 3(1) requires the posting of such 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.

Statewide Rule 8(d)(4)(G)(i)(1) [16 Tex. Admin. Code §3.8] requires a person who maintains or uses a reserve or mud circulation pit in conjunction with drilling a well to dewater the pit and backfill and compact the pit within one year of the cessation of drilling operations.

Statewide Rule 14(b)(2) [16 Tex. Admin. Code §3.14] 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).

Statewide Rule 14(b)(3) [16 Tex. Admin. Code §3.14] requires the operator of any well more than 25 years old that becomes inactive and subject to the provisions of this subsection or the operator of any well for which a plugging extension is sought under the terms of subparagraph (A) of paragraph (2) of this subsection to 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 or subsurface water, oil and gas.

ENFORCEMENT'S EVIDENCE

I. Docket No. 09-0251219

Vortt designated itself the operator of the McReynolds Brothers Lease, Well No. 1 (RRC ID# 095020) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective June 1, 1985, approved July 1, 1985.

A. Statewide Rule 3

Commission District Office inspections made on January 28, 2007 and February 6, 2007 on the McReynolds Brothers Lease show that the sign or identification required to be posted at the lease entrance was missing. By failing to maintain legible signs as required, Vortt violated Statewide Rule 3. This violation is serious and threatens the public health and safety. In the event of a pollution event, 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 would cause delays in containing or remediating the violation or emergency.

B. Statewide Rule 14(b)(2)

Commission District Office inspections made on January 8, 2007 and February 6, 2007 and reports filed with the Commission by Respondent showing zero production since October 31, 2005, showed that the McReynolds Brothers Lease, Well No. 1 (RRC ID# 095020) has been inactive for a period greater than one year. Production from the subject well ceased on or before September 30, 2005.

No workovers, re-entries, or subsequent operations have taken place on the subject well within the last 12 months. The subject well has not been plugged, The plugging extension for the subject well allowed by Statewide Rule 14 was cancelled July 24, 2006 based on Respondent's failure to submit a successful H-15 test for the well.

By failing to timely plug the subject well or obtain an extension to the plugging deadline, Respondent violated Statewide Rule 14(b)(2). This violation of Statewide Rule 14(b)(2) is serious and threatens 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. Pursuant to calculations made by District Office personnel, the total estimated cost to the State for plugging the McReynolds Brothers Lease, Well No. 1 (RRC ID# 095020) is \$7,500.0.

C. Statewide Rule 14(b)(3)

Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 Years Old) has been filed and approved for the McReynolds Brothers lease, Well No. 1. Commission records further show that the subject well was completed on March 7, 1981. An H-15 test was due in May, 2006. As stated above, the plugging extension for the subject well was cancelled on July 24, 2006 based on Vortt's failure to submit a successful H-15 test.

D. Prayer

Enforcement requests that Respondent be assessed an administrative penalty of \$4,250. The penalty consists of one Rule 3 violation at \$250; One Rule 14(b)(2) violation at \$2,000; and one Rule 14(b)(3) violation at \$2,000. Enforcement also requests that Respondent place the subject lease and well in compliance with all Commission rules and regulations.

II. Docket No. 09-0251296

Vortt designated itself the operator of the McReynolds Brothers Lease, Well No. 2 (Permit No. 351753) by filing an application for a drilling permit (Commission Form W-1) which was granted on October 3, 1988.

A. Statewide Rule 8(d)(4)(G)(i)(I)

Commission District Office inspection reports made on January 8, 2007 and February 6, 2007 for the McReynolds Brothers Lease showed that Respondent had failed to close and backfill a drilling pit for Well No. 2 (Drilling Permit No. 351753) and had left the pit open. The pit measures approximately 20 feet by 30 feet by 3 feet deep. The permitted well was plugged and abandoned on October 21, 1988, thus the pit has been left open for over eighteen years.

By using and maintaining a reserve pit and failing to dewater and backfill and compact the pit within one year of the cessation of drilling operations, Respondent violated Statewide Rule 8(d)(4)(G)(i)(I). The violation is serious and a hazard to the public health and safety because the continued maintenance of pits required to be emptied and backfilled may result in unpermitted discharges which may contaminate surface or subsurface waters, causing pollution.

B. Prayer

Enforcement requests that Respondent be assessed an administrative penalty of \$1,000 and be required to dewater, backfill and compact the subject pit, placing the subject lease in compliance with Statewide Rule 8.

VORTT'S EVIDENCE

I. Docket No. 09-0251219

According to Vortt's evidence, its relationship with its lessor, McReynolds, has been strained since at least May 2001. Due to various disagreements involving access points to the lease and continued lease viability, Vortt asserts that it has been locked out of the subject lease and has been unable to secure the assistance of the County Sheriff in obtaining access¹. Vortt also states that its workers, the gatherer, employees of a service company and the Sheriff's Office are all too intimidated by the lessor to attempt accessing the property.

Vortt testified that, if not for the access issues, the subject well would still be producing and Vortt would conduct the required H-15 testing on the well. The lack of access also prevents Vortt from correcting the Statewide Rule 3 sign violation. Vortt asserts that it buys signs to identify the lease, and posts them, only to have them removed by other parties.

The subject well is still capable of production. However, the well makes salt water which is produced into a 300-bbl storage tank which must be periodically pumped out. In the summer of 2004, Vortt's salt water hauler was denied access to the subject lease, so the tank reached its full capacity. In order to prevent an overflow, Vortt shut in its well, reporting production for July, 2004 but none for a year thereafter. Vortt resumed production in July, 2005, coincident with obtaining a Temporary Restraining Order, but ceased production in September, 2005 after the TRO terminated. Again, Vortt attributes the halt in production to access and lease viability issues.

The lease has been the subject of litigation regarding access to the McReynolds property through adjacent parcels of land, here designated the Singleton Tract (to the west) and the Phillips Tract (to the north). The historical access point, through the Singleton Tract, was cut off at the expiration of the mineral lease on the Singleton Tract. The owner of the Singleton Tract asserted that, in the absence of a valid lease on the Singleton Tract, Vortt no longer had the right to cross his land to access the McReynolds lease. On July 26, 2005, the District Court of Young County issued a Temporary Restraining Order preventing Singleton and McReynolds from locking Vortt out until August 26, 2005. In ruling on Vortt's request for a Temporary Injunction, the Court found in October, 2005 that Vortt did not have the right to cross the Singleton Tract and denied the request by Order signed November 16, 2005. On April 10, 2006, the Court found that grounds existed for granting Vortt a Temporary Injunction allowing it to access the McReynolds Tract through the Phillips Tract to the north, upon the condition that Vortt post a \$10,000 bond in favor of the Phillips family and secure a final Injunctive Order.

¹ In addition to the access issue, there is a dispute over the viability of the McReynolds Lease. Vortt provided a copy of the original lease, taken in 1980 from the McReynolds Bothers. The lease is heavily redacted and has an Addendum containing the provision that any attempt to continue the lease by means of shut-in royalty payments shall be limited to one year after the primary term expires. The primary term of the lease is one year.

II Docket No. 09-0251296

Although Vortt asserts that the subject pit in this docket was left open as an accommodation to the landowner as a water source for livestock, Vortt admits that it has no written evidence that this is the case. Vortt would like to get on the lease and fill in the pit, but maintains its continued lock-out by the Lessor prevents it from doing so.

McREYNOLD'S EVIDENCE

The late-filed McReynolds evidence indicates that Vortt has not followed up on the favorable ruling it obtained allowing it injunctive relief in accessing the McReynolds Tract through the Phillips Tract. McReynolds asserts that Vortt has never obtained a Final Injunctive Order and has not posted the required \$10,000 bond. However, McReynolds does affirm that there is pending litigation in the District Court of Young County in Cause No. 29579A, styled as *Vortt Exploration Company, Inc., Plaintiff vs. Joe Leslie McReynolds, Defendant*, regarding the lease access and lease termination issues.

McReynolds also presented his affidavit, dated July 26, 2007, that he has never agreed with Vortt to allow the pit in Docket No. 09-0251296 to remain on his property as a water source. He also presented a letter he sent to Vortt on November 2, 2004, demanding that Vortt cover the open drilling pit, thereby eliminating what he termed "a surface hazard of sixteen years duration."

EXAMINERS' OPINION

The core problem in this case is a dispute between Lessor Vortt and Lessees Singleton and McReynolds over the validity of leases and consequent access issues. The Commission has no authority to conclusively determine the validity of contracts and title issues, such as oil and gas leases (see *Railroad Commission of Texas v. Lamb*, 81 S.W.2d 161, 162 (Tex. Civ. App. - Austin, 1935, rehearing granted in part, March, 1935)). These matters are currently and properly before the District Court in Young County.

However, the Commission does have an obligation to enforce its Statewide Rules, particularly as they relate to prevention of pollution and contamination of the waters of the State. The record indicates that, on April 10, 2006, Vortt obtained a favorable ruling in its request for an injunction allowing it to access the McReynolds Lease from the Phillips Tract to the north. This is not surprising because Vortt's own evidence includes a letter from McReynolds dated April 27, 2004 reminding Vortt that when it initially obtained its lease on the McReynolds property, it accessed it from the existing north-south road (through the Phillips tract).

Had Vortt posted the required \$10,000 bond and obtained the Final Injunctive Order, it could have corrected the violations Enforcement complains of in Docket No. 09-0251219 by posting the required signage, conducting the required H-15 test and re-establishing production from the subject

well. Vortt did not obtain the Final Injunctive Order and, consequently, did not correct the pled violations.

Failure to obtain the Final Injunctive Order also resulted in the failure of Vortt to correct the pit violation alleged in Docket No. 09-0251296. Vortt testified that covering and compacting the complained-of pit would be the work of two hours with a bulldozer.

The examiner recommends that Vortt be required, in Docket No. 09-0251219, to place the McReynolds Brothers Lease, Well No. 1 (RRC ID# 095020) in compliance with Commission Statewide Rules 3, 14(b)(2) and 14(b)(3), and pay an administrative penalty of \$4,250. The examiner also recommends that Vortt be required, in Docket No. 09-0251296, to place the McReynolds Brothers Lease (Permit No. 351753) in compliance with Statewide Rule 8(d)(4)(G)(i)(I) and pay an administrative penalty of \$1,000.

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. Vortt Exploration Company, Inc. (“Vortt” or “Respondent”) (Operator No. 887500) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. Vortt appeared at the hearing through Georgia Vandervoort, President and Carl Vandervoort, Vice-President.
2. Vortt designated itself the operator of the McReynolds Brothers Lease (RRC ID# 095020) by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority) effective June 1, 1985, approved July 1, 1985.
3. Vortt designated itself the operator of the McReynolds Brothers lease (Permit No. 351753) by filing an application for a drilling permit (Commission Form W-1) which was granted October 3, 1988.
4. Commission District Office inspections made on January 28, 2007 and February 6, 2007 on the McReynolds Brothers Lease show that the sign or identification required to be posted at the lease entrance was missing.
5. Commission District Office inspections made on January 8, 2007 and February 6, 2007 and reports filed with the Commission by Respondent showing zero production since October 31, 2005, showed that the McReynolds Brothers Lease, Well No. 1 (RRC ID# 095020) has been inactive for a period greater than one year. Production from the subject well ceased on or before September 30, 2005.
6. No workovers, re-entries, or subsequent operations have taken place on the subject well within the last 12 months. The subject well has not been plugged, The plugging extension for the subject well allowed by Statewide Rule 14 was cancelled July 24, 2006 based on

Respondent's failure to submit a successful H-15 test for the well.

7. Commission records indicate no Form H-15 (Test on an Inactive Well More Than 25 Years Old) has been filed and approved for the McReynolds Brothers lease, Well No. 1. Commission records show that the subject well was completed on March 7, 1981. An H-15 test was due in May, 2006, but was not submitted. The well has not been plugged.
8. Commission District Office inspection reports made on January 8, 2007 and February 6, 2007 for the McReynolds Brothers Lease showed that Respondent had failed to close and backfill a drilling pit for Well No. 2 (Drilling Permit No. 351753) and had left the pit open. The pit measures approximately 20 feet by 30 feet by 3 feet deep. The permitted well was plugged and abandoned on October 21, 1988, thus the pit has been open for over eighteen years.
9. On April 10, 2006, the District Court of Young County found that grounds existed for granting Vortt a Temporary Injunction to access the McReynolds Tract from the Phillips Tract to the north, on the condition that Vortt post a \$10,000 bond with the Phillips family and obtain a Final Injunctive Order. Vortt did not pursue this option.
10. Georgia H. Vandervoort, President; Henry Carl Vandervoort, III, Vice President; and Fawn Danielle Vandervoort, Vice President, were officers in a position of ownership or control of Vortt Exploration Company, Inc. at the time the violations of Commission Statewide Rules 3, 8 and 14 were committed.
11. Vortt's violations of Commission Statewide Rules 3, 8 and 14 and are serious and relate to the public health and safety. These violations also relate to the prevention and control of pollution.

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. Vortt Exploration Company, Inc. ("Vortt") (Operator No. 887500) was the operator of the McReynolds Brothers (095020) Lease, Well No. 1, NE Murray (600 SD) Field, Young County, Texas and had the primary responsibility for complying with Commission rules.
4. Vortt Exploration Company, Inc. ("Vortt") violated Commission Statewide Rule 3 on the McReynolds Brothers (095020) Lease, Well No. 1, NE Murray (600 SD) Field, Young County, Texas from at least January 27, 2007 to at least July 26, 2007.
5. Vortt Exploration Company, Inc. ("Vortt") violated Commission Statewide Rule 14(b)(2) on the McReynolds Brothers (095020) Lease, Well No. 1, NE Murray (600 SD) Field, Young County, Texas from at least July 24, 2006 to at least July 26, 2007.

6. Vortt Exploration Company, Inc. (“Vortt”) violated Commission Statewide Rule 8(d)(4)(G)(i)(I) on the McReynolds Brothers Lease, Well No. 2 (Permit No. 351753), NE Murray (600 SD) Field, Young County, Texas from at least October 21, 1988 to at least July 26, 2007.
7. The documented violations committed by Respondent were a hazard to the public health and demonstrated a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).
8. As officers in a position of ownership or control of Vortt Exploration Company, Inc. at the time the violations were committed, Georgia H. Vandervoort, Henry Carl Vandervoort and Fawn Danielle Vandervoort, and any organization in which one or any 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 organization have agreed..

RECOMMENDATION

The examiner recommends that the above findings of fact and conclusions of law be adopted by the Commission. The examiner recommends that Vortt Exploration Company, Inc., in Oil & Gas Docket No. 09-0251219, be ordered to place the McReynolds Brothers (095020) Lease, Well No. 1, NE Murray (600 SD) Field, Young County, Texas in compliance with Commission Statewide Rules 3, 14(b)(2) and 14(b)(3), and be ordered to pay an administrative penalty of \$4,250.

The examiner also recommends that Vortt Exploration Company, Inc., in Oil & Gas Docket No. 09-0251296, be ordered to place the McReynolds Brothers Lease, Well No. 2, NE Murray (600 SD) Field, Young County, Texas in compliance with Statewide Rule 8(d)(4)(G)(i)(I) and be ordered to pay an additional administrative penalty of \$1,000.

Respectfully submitted,

Marshall Enquist
Hearings Examiner