

July 16, 2008

OIL & GAS DOCKET NO. 09-0251621

ENFORCEMENT ACTION AGAINST RASHER ENERGY, INC. (OPERATOR NO. 693688) FOR VIOLATIONS OF STATEWIDE RULES ON THE C.S. ARNOLD (00286) LEASE, WELL NOS. 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, AND 55, ARCHER COUNTY REGULAR FIELD, ARCHER COUNTY, TEXAS.

APPEARANCES:

For Railroad Commission of Texas:

Christopher Hotchkiss, Staff Attorney, Enforcement Section, Office of General Counsel

For Respondent Rasher Energy, Inc.

Lewis Jue, President

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	June 20, 2007
NOTICE OF HEARING ISSUED:	June 20, 2007
INITIAL HEARING DATE:	August 16, 2007
AMENDED COMPLAINT FILED:	August 21, 2007
HEARING RECONVENED:	January 10, 2008
HEARD BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	July 16, 2008

STATEMENT OF THE CASE

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

1. Whether Rasher Energy, Inc. should be required to plug or otherwise place in compliance with Statewide Rules, 3, 13, 14, and 46, the C.S. Arnold (00286) Lease, Wells 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, and 55, Archer County Regular Field, Archer County, Texas;

2. Whether the respondent violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rules, 3, 13, 14, and 46 on the C.S. Arnold (00286) Lease, Wells 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, and 55, Archer County Regular Field, Archer County, Texas;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000.00 per day for each offense committed;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. §81.0534.

This action was brought by the Enforcement Section of the Commission's Office of General Counsel ("Enforcement") against Rasher Energy, Inc. ("Rasher"). On August 16, 2007, the examiner convened the initial hearing. Christopher Hotchkiss appeared on behalf of the Commission's Enforcement Section. Lewis Jue appeared on behalf of Rasher Energy, Inc. The examiner took official notice of Mr. Jue's testimony in Oil and Gas Docket No. 09-0246989 *Enforcement Action Against Lewis Jue, Sole Proprietor (Operator No. 448114) for Violations of Statewide Rules on the Jennings, G. A. -AA- (11675) Lease, Archer County Regular Field, Archer County, Texas* (hereinafter the "Jennings Docket") which was heard on the same day. The parties then agreed to a continuance of the hearing which would be rescheduled after November 16, 2007 in order to facilitate compliance. On January 10, 2008, a reopened hearing was convened. No appearance was made at that hearing on behalf of Rasher.

The alleged violations include: 24 Rule 3 sign violations, 10 Rule 13(b)(1)(B) open wellbore violations, 1 Rule 14(b)(1) failure to file plugging report violation, 22 Rule 14(b)(2) inactive well violations, 18 Rule 14(b)(3) failure to file fluid level test violations, and 5 Rule 46(j) failure to file mechanical integrity test violations. The total administrative penalty sought for these 80 separate violations of Commission rules is \$107,000.00.

The examiner recommends dismissal of the violations of Rules 3, 14(b)(1) and 14(b)(3) related to Well No. 51, because Commission inspections could not confirm the existence of the well, even though it is shown on Commission maps and otherwise identified in Commission records. The examiner further recommends that Rasher pay an administrative penalty of \$103,750.00 unless Rasher transfers the wells to another operator prior to the Commission's entry of a Final Order in this docket.

ORGANIZATION RECORDS

Rasher filed its first Form P-5 (Organization Report) on October 20, 2005. Rasher's most recent Organization Report was filed December 11, 2006. Lewis Jue is identified as the President and Vice-President of the company. Rasher filed a \$50,000.00 bond as its financial assurance with its initial Organization Report. From October 20, 2005 through the filing of the complaint on June 20, 2007, Rasher maintained an active Organization Report with the required bond amount.

Rasher is listed on Commission records as the operator of 77 wells on six leases, all completed in the Archer County Regular Field. The total depth of Rasher's wells as listed on Commission records is 255,245 feet.¹

Lewis Jue has also filed an Organization Report as a sole proprietor. Jue's most recent Organization Report was filed on December 11, 2006. Jue also filed a \$50,000.00 bond as his financial assurance with his last Organization Report. Jue operated 69 wells at the time he filed his last Organization Report.

Jue is currently recognized as the operator of 49 wells on four leases in Archer County. All of the wells are completed in the Archer County Regular Field. The total depth of Jue's wells is listed on Commission records as 124,414 feet.

The 146 wells that were operated by Rasher and Jue were previously operated by William L. Seelye, a sole proprietorship. Final Orders have been entered against Seelye for violations of Commission rules in five Enforcement Dockets.² Seelye's Organization Report is currently listed as inactive.

LEASE RECORDS

Rasher was recognized as the operator of the Arnold, C.S. (00286) Lease ("Arnold Lease") after filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on March 7, 2006, which was approved March 22, 2006. The prior operator of the Arnold Lease was Jue, who was recognized as the operator on January 25, 2006. Jue obtained the Arnold Lease from Seelye, who was recognized as the operator on April 10, 2002.

¹Several of the wells operated by Rasher do not have completion reports on file with the Commission. For wells completed in County Regular Fields, wells for which specific information is unavailable may be assigned a total depth consistent with the County Regular Field. Several wells operated by Rasher are therefore listed with a TD of 4,946 feet even though other wells completed on the same oil lease have reported a TD of 1200 feet or less.

²Final Orders were entered against Seelye after default hearings in Oil & Gas Docket 09-0241935, (Final Order entered May 24, 2005; \$6,000.00 penalty assessed), Oil & Gas Docket 09-0241936, (Final Order entered May 24, 2005; \$10,000.00 penalty assessed), Oil & Gas Docket 09-0241941, (Final Order entered September 7, 2005; \$20,000.00 penalty assessed), Oil & Gas Docket 09-0242453, (Final Order entered October 4, 2005, \$4,000.00 penalty assessed) and Oil & Gas Docket 09-0242484, (Final Order entered January 11, 2006; \$29,600.00 penalty assessed).

Printouts from the Commission's Mainframe Computer System, Commission P-4 Certificate of Compliance Certified Letter/ Cancellation/Reissue Inquiry show that the certificate of compliance for the Arnold Lease was cancelled for violations of Statewide Rules 3, 13, 14 and 46 on November 5, 2003, when Seelye was the operator. The certificate of compliance was cancelled again on August 5, 2005 while Seelye was the operator for the failure to file required Commission Form H-15s (Test on an Inactive Well More than 25 Years Old).

PLUGGING EXTENSION HISTORY

Commission records indicate that plugging extensions for the wells on the Arnold Lease were originally denied between January 1998 and December 2002 for the failure to file the required H-15 tests for the producing wells and Commission Form H-5s (Disposal/Injection Well Pressure Test Report) for the injection wells. The plugging extension for Well 13 was denied in January 1998. The plugging extensions for Wells 7, 14, 45, 48 and 54 were denied in January 2001. The plugging extensions for Wells 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 51, 53 and 55 were denied in December 2002.

On March 22, 2006, Rasher was advised by the Commission that plugging extensions for all 23 wells could not be approved because the required H-15 and H-5 tests had not been performed. This correspondence was generated and sent on the same date the Commission approved the certificate of compliance for the Arnold Lease recognizing Rasher as the operator. There are no records that Rasher has ever filed H-15 and H-5 tests for Wells 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, and 55.

COMMISSION INSPECTIONS

Two Commission inspections reports were included in the certified file in this docket. Neither of the inspection reports located or identified Well 51.

Violations of Statewide Rule 3

On March 6, 2007, an inspection of the Arnold Lease found that the wells were inactive and not capable of production. Power lines were down in places and there was no evidence of any traffic on the lease. Signs were missing from the entrance to the lease and at the tank battery.

The inspection of Wells 7, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 53, 54, and 55 reported that the required signs were missing. The inspection of Wells 13, 50, and 52 reported signs were present at the wells, but listed inaccurate information. A follow up inspection on April 10, 2007 reported no change with respect to the signs present on the Arnold Lease.

An affidavit from Ramon Fernandez, Jr., a Petroleum Engineer in the Oil & Gas Division, asserts that the failure to post proper signs with information required concerning the operator and location, can lead to confusion and delayed response in the event of a pollution incident, safety violation or other emergency. Delays in containing and remediating an incident, violation or emergency are serious and may threaten public health and safety.

Violations of Statewide Rule 13(b)(1)(B)

On March 6, 2007, an inspection of the Arnold Lease, Wells 17, 22, 23, 24, 28, 43, 44, 46, and 53 observed that these 9 wells were open to atmosphere. Photographs of the wells taken that date confirmed the condition of the wells. A follow up inspection on April 10, 2007 reported no change with respect to 9 open wells.

The inspection of Well 7 on March 6, 2007 found the well equipped with a short piece of tubing and further noted the well was shut-in. A follow-up inspection on April 10, 2007 found casing only at Well 7, and further reported that the well was open to atmosphere.

An affidavit from Ramon Fernandez, Jr., a Petroleum Engineer in the Oil & Gas Division, asserts that open wellbores are a pollution and safety hazard due to the possibility of surface run-off entering the wellbore and the possibility of fluids flowing out of the wellbore.

Violation of Statewide Rule 14(b)(1)

Commission mapping records, well records and the Proration Schedule for the Arnold Lease identify Well 51, API No. 009-04623. Inspections of the Arnold Lease on March 6, 2007 and April 10, 2007 did not locate Well 51 or report that the well had been plugged.

Violation of Statewide Rule 14(b)(2), 14(b)(3), and 46(j).

Commission records for production activity on the Arnold Lease indicated that the last production occurred in November 2002 when 39 barrels of oil were reportedly produced. Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 51, 52, 53, and 55 are listed on the Oil Proration Schedule as oil wells. Commission records for injection activity on the Arnold Lease indicated that the last injection occurred on or before December 31, 2000. Wells 7, 14, 45, 48, and 54 are currently permitted for injection.

The March 6, 2007 inspection of the Arnold Lease found that all of the wells were inactive. Wells 45 and 48 were fully equipped for injection and connected to injection lines. Wells 50 and 53 were fully equipped with pumpjacks and connected to flowlines. The remaining wells were not equipped for production and were not connected to injection lines or flow lines. Power lines were down in places and there was no evidence of any traffic on the lease. A follow-up inspection reported some equipment removed from Wells 7, 14, 19, 46, 49, and 55.

As noted previously, Commission correspondence dated March 22, 2006 advised Rasher that the plugging extensions for Wells 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, and 55 on the Arnold Lease could not be approved. Rasher was advised that the extensions could not be approved because the prior operator had not submitted required H-15 tests for the 18 producing wells and H-5 tests for the five injection wells. Rasher did not submit any of the required tests prior to the filing of the complaint in this docket.

Commission records further indicated that Rasher failed to submit required H-5 and H-15 tests for the wells at issue in this docket in 2007. Rasher was notified by certified letter on July 2, 2007 that the certificate of compliance for the lease would be cancelled. H-5 and H-15 tests were not submitted and the certificate of compliance was canceled on August 1, 2007.

Finally, Commission records showed that Rasher failed to renew its Organization Report by the required annual renewal date of September 1, 2007. Because a current organization report is required to obtain a plugging extension for any inactive wells, Rasher's failure to renew its Organization Report is a further basis for establishing that the wells were out of compliance with Statewide Rule 14(b)(2) beginning September 1, 2007.

An affidavit from Ramon Fernandez, Jr., a Petroleum Engineer in the Oil & Gas Division, asserts the alleged violations of Statewide Rule 14(b)(2), 14(b)(3) and 46(j) pose a threat of pollution and safety. Unplugged wells in violation of Statewide Rule 14(b)(2) are a potential conduit for flows of oil or saltwater to zones of useable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with useable quality water zones or to flow to the surface. Inactive wells over 25 years old which are subject to the requirements of Statewide Rule 14(b)(3) require annual testing of their fluid level in order to determine whether the wells pose a possible threat to oil and gas resources and useable quality water. Without testing and supporting documentation, the Commission cannot determine if a well poses a threat to natural resources. Injection wells subject to the requirements of Statewide Rule 46(j) must pass a pressure test at least once every five years to show that the well is not leaking, that waste is being confined to the permitted injection interval, and that useable quality water zones are properly isolated. Any injection of fluid down a wellbore could be a potential source of pollution.

Enforcement's Position

Enforcement contends that the two inspections coupled with Commission records confirm Rasher's violation of Commission Rules by failing: 1) to post proper signs at the lease entrance, tank battery and all of its wells; 2) to properly maintain wellhead control for 10 wells which were left open to atmosphere; 3) to conduct and pass fluid level tests on inactive wells over 25 years old; and 4) to conduct and pass mechanical integrity tests for the five disposal wells on the lease.

With respect to Well 51, Enforcement contends the well was plugged and that Rasher failed to file a Commission Form W-3 (Plugging Report). Enforcement also contends that Rasher failed to post a sign for Well 51 and did not submit the required fluid level test for an inactive well.

Enforcement urges that the violations of Commission rules by Rasher are serious and threaten public health and safety. A total administrative penalty of \$107,000.00 is sought broken down as follows: 24 violations of Statewide Rule 3 at \$250.00 each; 10 violations of Statewide Rule 13(b)(1)(B) at \$1,000.00 each; 1 violation of Statewide Rule 14(b)(1) at \$1,000.00; 22 violations of Statewide Rule 14(b)(2) at \$2,000.00 each; 18 violations of Statewide Rule 14(b)(3) at \$2,000.00 each; and 5 violations of Statewide Rule 46(j) at \$2,000.00 each.

Rasher's Position

Rasher did not challenge the violations of Statewide Rules observed by the Commission during inspections of the Arnold Lease in March and April 2007 and did not claim it was not provided with sufficient time to correct the violations. However, Rasher's president, Lewis Jue, asserts that he was a victim of broken promises and fraud committed by Seelye and Ricky Perritt, a court appointed receiver who was seeking the release of a \$250,000.00 bond which was posted with the Commission as financial security by Seelye.

Jue claims that Rasher took over the Arnold Lease as part of an attempt to recoup over \$250,000.00 of investment losses Jue made with Seelye between September 2004 and May 2005. Jue did not initially intend to take over all of the wells because he could only obtain a \$25,000.00 bond as a new operator with no experience in the business. Additionally, Rasher had neither the financial security in place, or the legal rights to produce all of the wells. Ricky Perritt, the court appointed receiver in an action brought by another investor defrauded by Seelye, assisted Jue in setting up Rasher as a new entity and in obtaining financial security to take over wells. Perritt was apparently motivated to assist Rasher and Jue by a demand made on Seelye's bond by the Commission. An investor represented by Perritt had guaranteed the funds to secure the issuance of Seelye's bond.

Jue testified that Perritt obtained \$50,000.00 bonds for Rasher and Jue which were necessary in order to take over the remaining wells held in Seelye's name. Perritt further promised to assist Jue with securing the legal rights over the equipment and mineral interests. However, despite numerous requests, Perritt did not provide quit claims, or any assistance in obtaining ratifications or new leases after the wells were transferred to Rasher and Jue.

Jue also received assurances from Seelye that all violations of Commission rules had been corrected. Seelye told Jue that all the wells passed the required tests. The only remaining requirement was completing the paperwork to be submitted to the Commission. Seelye also promised to handle all of the operations for bringing the wells back into production. Jue would only be required to prepare and sign any required Commission forms. Jue did question whether Seelye would follow through on his agreements, but because they were in the same church ministry group,

Jue set aside his concerns because he believed he was helping Seelye. Unfortunately, the relationship between Seelye and Jue completely broke down after Seelye stole Jue's vehicle and fled to Florida in February 2005. Jue did not learn that the wells were not tested and had other regulatory violations until March 2005.

Jue had planned to restore production on the Arnold Lease starting with the wells which were equipped and capable of production and injection. He would then use the proceeds from that production to restore any other wells capable of production. Wells which were not capable of production would be plugged. Because serious questions had arisen over the legal right to operate the lease, Jue focused efforts on trying to secure a new lease or ratification of the existing lease.

Jue admitted he no longer has the funds and lacks the experience to continue operations or address any violations. He tried to get help from other individuals over the 18 months prior to the hearing, but was unable to find a reliable individual to assist him. He attempted to respond to compliance problems himself, but was unable to manage all of the wells under both Rasher and his sole proprietorship. He ultimately began marketing the wells to other operators, but learned that no one was interested if he could not document his rights in the equipment and could not demonstrate a valid lease or ratification.

Jue recently obtained quitclaim deeds from Perritt resolving the title issue regarding the ownership of any equipment on the Arnold Lease and its other leases and operations. This issue was one of the impediments to any attempts to transfer the Arnold Lease to another operator. Since obtaining quitclaim deeds, Jue has been able to transfer some of the wells held under the sole proprietorship to another bonded operator. Jue believes he may be able to transfer all of the wells operated under his name as well as those operated by Rasher.

APPLICABLE AUTHORITY

Statewide Rule 3(a) requires the posting of signs at the principal entrance of the property, the tank battery and at each well site which show: the number of acres in the property, the name of the property; the name of the operator; the well number; and the commission lease number.

Statewide Rule 13(b)(1)(B) requires wellhead assemblies to be used on wells to maintain surface control.

Statewide Rule 14(b)(1) requires an operator who plugs a well to submit a plugging report within 30 days after plugging operations are completed.

Statewide Rule 14(b)(2) provides that the operator of a well must plug the well in accordance with Commission rules within one year after operations cease, unless an extension is granted. For wells transferred on or after September 1, 1997, the operator of a well for purposes of plugging liability is the person who assumed responsibility for the physical operation and control of a well as shown by an approved Form P-4 designating that person as operator.

Statewide Rule 14(b)(2)(C)(ii) provides that if a plugging extension is denied or revoked that an operator shall either return the well to active operation, or within 30 days, plug the well or request a hearing.

Statewide Rule 14(b)(3) requires an operator of an inactive well over 25 years old, to conduct an annual test of the well to establish whether it poses a threat to pollute usable quality water as a condition of obtaining a plugging extension.

Statewide Rule 46(j) requires an operator of an injection well to submit a test of the well every five years to evaluate the mechanical integrity of the well.

EXAMINER'S OPINION

The violations in this docket all initially arose out of the conduct of the prior operator of the Arnold Lease, William Seelye. Rasher does not contest the violations, but essentially argues it was duped by Seelye and Perritt to take over wells: 1) which were out of compliance due to Seelye's conduct; 2) for which there was not valid lease; and 3) which Jue/Rasher lacked the experience to operate. Jue claims he was doing the best he could with limited funds and experience to correct the violations of Commission rules which dated back to Seelye's operation of the Arnold Lease. Jue believes that with the recent resolution of some of the legal issues, he may have the opportunity to bring the Arnold Lease into compliance through a transfer to another bonded operator.

In this case, Jue essentially argues he was another innocent victim of Seelye. He also claims that Perritt promised to help him, but was only trying to get a bond released which had been secured by Perritt's client. Jue admits that he learned of the violations on the Arnold Lease but has been unable to correct them even though he was given time to act before any prosecution was initiated against Rasher for the violation of Commission rules.

Jue's testimony that he was taken advantage of by Seelye and Perritt was not challenged by Enforcement. The examiner also finds Jue to be credible as his testimony is supported by the following facts: 1) Commission records indicate that Rasher and Jue collectively took over operations of 146 wells with literally hundreds of violations of Statewide Rules which arose during Seelye's operations of the wells; 2) Rasher and Jue did not possess the capital and resources to address all of the existing violations; 3) Jue was a neophyte operator, having no history of operating wells; 4) Jue did not have the legal right to operate the wells through valid leases; 5) Seelye's bond was released after Jue took over the remaining wells; and, 6) Jue had not obtained title in the equipment associated with the wells at the time he took over operations.

It is common for a prospective operator to seek recognition as the operator of wells which do not have plugging extensions in effect and for which the certificate of compliance has been cancelled due to the actions or failures of the operator of record. There is an important policy interest in facilitating recognition of a new operator in such cases as the prospective operator will address conditions of disrepair and noncompliance, including pre-existing violations of Commission rules which were not and most likely will not be addressed by the prior operator.

It is not the Commission's place to "hold an operator's hand" when acquiring wells which are not in compliance with Commission rules. Jue had over a year to bring the lease into compliance before this complaint was filed. Additionally, Jue has had over a year since the complaint was filed to try to transfer the wells to another operator. While Jue may be another victim of Seelye's fraud, the subsequent failed efforts to bring the Arnold Lease into compliance can no longer be ignored.

In recognition of the credibility of Jue's testimony and the supporting evidence regarding the fraud and misrepresentations that led to his acceptance of responsibility for the violations on the Arnold Lease, the examiner recommends that any administrative penalties against Rasher be waived, but only if Rasher is able to get a non-affiliated bonded operator to take over the Arnold Lease before the Commission's entry of a Final Order. While the examiner believes this is unlikely, there is a faint hope in light of recent transfers out of Jue's sole proprietorship, that the Arnold Lease could also end up in the hands of a non-affiliated bonded operator who will correct the violations and restore the wells to active status.

Dismissal of Well 51 Violations

The examiner recommends dismissal of the violations of Rules 3, 14(b)(1) and 14(b)(3) related to Well No. 51, because Commission inspections could not confirm the existence of the well, even though it is shown on Commission maps and otherwise identified in Commission records. Inspections of the Arnold Lease on March 6, 2007 and April 10, 2007 did not indicate that Well 51 was located or report that the well had been plugged. In the absence of any evidence confirming that Well 51 exists, it is not possible to support the allegations in the complaint that Rasher failed to file a plugging report for the well as required by Commission rules, or that the requirements to post signs and test the well were violated while Rasher was the operator. Dismissal of these three violations will reduce the administrative penalty by \$3,250.00 to \$103,750.00 if Rasher is unable to transfer the wells to another operator.

Time Out of Compliance

Finally, the examiner recommends that the findings of fact and conclusions of law related to the violations of Statewide Rules 14(b)(2), 14(b)(3) and 46(j) be dated from August 1, 2007 to the present. The complaint alleges March 22, 2006, the date Rasher was recognized as the operator, as the initial date that the wells were out of compliance. Use of this date raises concerns that Rasher is being penalized for the violations committed by Seelye.

Statewide Rule 73(g) allows a new certificate of compliance to be issued if a certificate of compliance has been canceled for noncompliance with Commission rules under two circumstances: 1) the lease and/or wells are brought into compliance; or, 2) a Commission determination of “just and equitable grounds.” With respect to issuance upon a determination of compliance, the Commission has the authority to “clean the slate” for a new operator. Alternatively, all of the violations can be corrected, such as where the noncompliance is based on the failure of the prior operator to file an organization report and maintain the required level of financial security.

Jue admits that he was provided with sufficient time to correct the violations after learning of their existence in March 2006. Additionally, the record shows the District Office did not conduct further inspections until March 6, 2007, almost a full year after Rasher was recognized as the operator. In contrast to this evidence, the Commission sent notification to Rasher the day it took over the lease that the plugging extensions for the wells were denied because the wells were not in compliance with Statewide Rules 14(b)(3) and 46(j). Further, Commission mainframe records show that the certificate of compliance for the Arnold Lease was cancelled for violations of the same Statewide Rules alleged in this docket on November 5, 2003, when Seelye was the operator. Finally, Commission mainframe records clearly show that the violations related to well testing requirements date back as far as 1998, when Seelye operated the Arnold Lease.

In order to avoid any implication that Rasher is being penalized for violations committed by Seelye, the examiner recommends that the findings of fact and conclusions of law related to the violations of Statewide Rules 14(b)(2), 14(b)(3) and 46(j) be dated from August 1, 2007 to the present. A certified letter was sent to Rasher on July 2, 2007 regarding the intent to cancel the certificate of compliance for the failure to submit the required H-5 and H-15 tests. No response was received from Rasher, and Jue admits the tests were not performed. Accordingly, there is no question that as of August 1, 2007 the wells were out of compliance with Statewide Rules 14(b)(2), 14(b)(3) and 46(j). Further, the recommended change will not impact the total amount of administrative penalty and will avoid any implication that the issuance of the certificate of compliance was contrary to the provisions of Statewide Rule 73.

Based on the record in this case, the examiner recommends the Commission adopt the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent Rasher Energy, Inc. (“Rasher”) was given at least 10 days notice of this proceeding by certified mail, addressed to its most recently provided address. On August 16, 2007, the examiner convened the initial hearing. Christopher Hotchkiss appeared on behalf of the Commission’s Enforcement Section. Lewis Jue appeared on behalf of Rasher Energy, Inc.

2. Official notice was taken of Mr. Jue's testimony in Oil and Gas Docket No. 09-0246989 *Enforcement Action Against Lewis Jue, Sole Proprietor (Operator No. 448114) for Violations of Statewide Rules on the Jennings, G. A. -AA- (11675) Lease, Archer County Regular Field, Archer County, Texas* (hereinafter the "Jennings Docket") which was heard on the same day.
3. The parties agreed to a continuance of the hearing in order to facilitate compliance. After providing notice to Rasher, on January 10, 2008, a reopened hearing was convened. No appearance was made at that hearing on behalf of Rasher.
4. Rasher filed its first Form P-5 (Organization Report) on October 20, 2005. Rasher's most recent Organization Report was filed December 11, 2006. Lewis Jue is identified as the President and Vice-President of the company. Rasher filed a \$50,000.00 bond as its financial assurance with its initial Organization Report. From October 20, 2005 through the filing of the complaint on June 20, 2007, Rasher maintained an active Organization Report with the required bond amount.
5. Rasher is listed on Commission records as the operator of 77 wells on six leases, all completed in the Archer County Regular Field. The total depth of Rasher's wells as listed on Commission records is 255,245 feet.
6. Lewis Jue has also filed an Organization Report as a sole proprietor. Jue's most recent Organization Report was filed on December 11, 2006. Jue also filed a \$50,000.00 bond as his financial assurance with his last Organization Report. Jue operated 69 wells at the time he filed his last Organization Report.
7. Jue is currently recognized as the operator of 49 wells on four leases in Archer County. All of the wells are completed in the Archer County Regular Field. The total depth of Jue's wells is listed on Commission records as 124,414 feet.
8. The 146 wells that were operated by Rasher and Jue were previously operated by William L. Seelye, a sole proprietorship. Final Orders have been entered against Seelye for violations of Commission rules in five Enforcement Dockets. Seelye's Organization Report is currently listed as inactive.
9. Rasher was recognized as the operator of the Arnold, C.S. (00286) Lease ("Arnold Lease") after filing a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) on March 7, 2006, which was approved March 22, 2006. The prior operator of the Arnold Lease was Jue, who was recognized as the operator on January 25, 2006. Jue obtained the Arnold Lease from Seelye, who was recognized as the operator on April 10, 2002.

10. Printouts from the Commission's Mainframe Computer System, Commission P-4 Certificate of Compliance Certified Letter/ Cancellation/Reissue Inquiry showed that the certificate of compliance for the Arnold Lease was cancelled for violations of Statewide Rules 3, 13, 14, and 46 on November 5, 2003, when Seelye was the operator. The certificate of compliance was cancelled again on August 5, 2005 while Seelye was the operator for the failure to file required Commission Form H-15s (Test on an Inactive Well More than 25 Years Old).
11. Commission records indicate that plugging extensions for the wells on the Arnold Lease were originally denied between January 1998 and December 2002 for the failure to file the required H-15 tests for the producing wells and Commission Form H-5s (Disposal/Injection Well Pressure Test Report) for the injection wells.
 - a. The plugging extension for Well 13 was denied in January 1998.
 - b. The plugging extensions for Wells 7, 14, 45, 48 and 54 were denied in January 2001.
 - c. The plugging extensions for Wells 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 51, 53 and 55 were denied in December 2002.
12. On March 22, 2006, Rasher was advised by the Commission that plugging extensions for all 23 wells could not be approved because the required H-15 and H-5 tests had not been performed. This correspondence was generated and sent on the same date the Commission approved the certificate of compliance for the Arnold Lease recognizing Rasher as the operator.
13. A March 6, 2007, inspection of the Arnold Lease found signs were missing from the entrance to the lease and at the tank battery. Additionally, required signs were missing at Wells 7, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 53, 54, and 55. Signs were present at Wells 13, 50, and 52, but listed inaccurate information. A follow up inspection on April 10, 2007 reported no change with respect to the signs present on the Arnold Lease.
14. The failure to post proper signs with information required concerning the operator and location, can lead to confusion and delayed response in the event of a pollution incident, safety violation or other emergency. Delays in containing and remediating an incident, violation or emergency are serious and may threaten public health and safety.
15. A March 6, 2007, inspection of Wells 17, 22, 23, 24, 28, 43, 44, 46, and 53 observed that these 9 wells were open to atmosphere. Photographs of the wells confirm the condition of the wells. A follow up inspection on April 10, 2007 reported no change with respect to 9 open wells.

16. An inspection of Well 7 on March 6, 2007 found the well equipped with a short piece of tubing and further noted the well was shut-in. A follow-up inspection on April 10, 2007 found casing only at Well 7, and further reported that the well was open to atmosphere.
17. Open wellbores are a pollution and safety hazard due to the possibility of surface run-off entering the wellbore and the possibility of fluids flowing out of the wellbore.
18. Wells 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, and 55 on the Arnold Lease are currently inactive, have been inactive for more than 12 months, and have not been properly plugged.
 - a. Commission records for production activity on the Arnold Lease indicated that the last production occurred in November 2002 when 39 barrels of oil were reportedly produced.
 - b. Commission records for injection activity on the Arnold Lease indicated that the last injection occurred on or before December 31, 2000.
 - c. A March 6, 2007 inspection of the Arnold Lease found that all of the wells were inactive. Wells 45 and 48 were fully equipped for injection and connected to injection lines. Wells 50 and 53 were fully equipped with pumpjacks and connected to flowlines. The remaining wells were not equipped for production and were not connected to injection lines or flow lines. Power lines were down in places and there was no evidence of any traffic on the lease. A follow-up inspection reported some equipment removed from Wells 7, 14, 19, 46, 49, and 55.
19. There are no plugging extensions currently in effect for Wells 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, and 55 on the Arnold Lease.
 - a. Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 51, 52, 53, and 55 are listed on the Oil Proration Schedule as oil wells.
 - b. Wells 7, 14, 45, 48, and 54 are currently permitted for injection.
 - c. Rasher failed to submit required H-5 and H-15 tests for the wells in 2007.
 - d. Rasher was notified by certified letter on July 2, 2007 that the certificate of compliance for the Arnold Lease would be cancelled due to the failure to submit required H-5 and H-15 tests. H-5 and H-15 tests were not submitted and the certificate of compliance was canceled on August 1, 2007.

- e. There are no records that Rasher has ever filed H-15 and H-5 tests for Wells 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, and 55.
 - f. Commission records show that Rasher failed to renew its Organization Report by the required annual renewal date of September 1, 2007.
20. Unplugged wells in violation of Statewide Rule 14(b)(2) are a potential conduit for flows of oil or saltwater to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface.
21. Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 52, 53, and 55 have not had required fluid level tests performed and approved by the Commission.
- a. Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 52, 53, and 55 are listed on the Oil Proration Schedule as oil wells.
 - b. Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 52, 53, and 55 were drilled and completed between 1934 and 1967 and are all over 25 years old.
 - c. There are no records that Rasher has ever filed H-15 tests for Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 52, 53, and 55.
 - d. Rasher was notified by certified letter on July 2, 2007 that the certificate of compliance for the Arnold Lease would be cancelled due to the failure to submit required H-15 tests.
 - e. H-15 tests were not submitted and the certificate of compliance was canceled on August 1, 2007.
22. Inactive wells over 25 years old require annual testing of their fluid level in order to determine whether the wells pose a possible threat to pollute usable quality water and oil and gas resources. Without testing and supporting documentation, the Commission cannot determine if a well poses a threat to natural resources.
23. Wells 7, 14, 45, 48, and 54 have not had required pressure tests performed and approved by the Commission.
- a. Wells 7, 14, 45, 48, and 54 are currently permitted for injection.
 - b. There are no records that Rasher has ever filed H-5 tests for Wells 7, 14, 45, 48, and 54.

- c. Rasher was notified by certified letter on July 2, 2007 that the certificate of compliance for the Arnold Lease would be cancelled due to the failure to submit required pressure tests.
 - d. Pressure tests were not submitted and the certificate of compliance was canceled on August 1, 2007.
24. Injection wells must pass a pressure test at least once every five years to show that the well is not leaking, that waste is being confined to the permitted injection interval, and that useable quality water zones are properly isolated. Any injection of fluid down a wellbore could be a potential source of pollution. Without testing and supporting documentation, the Commission cannot determine if a well poses a threat to natural resources.
25. Commission mapping records, well records and the Proration Schedule for the Arnold Lease identify Well 51, API No. 009-04623. Inspections of the Arnold Lease on March 6, 2007 and April 10, 2007 did not locate Well 51 or report that the well had been plugged.

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. Rasher is the operator of the Arnold, C. S. (00286) Lease, Well Nos. 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, and 55, as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Rasher has the primary responsibility for complying with Rules 3, 13, 14, 46 and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Arnold, C. S. (00286) Lease, Well Nos. 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, and 55.
5. The Arnold, C. S. (00286) Lease is not in compliance with Rule 3(a) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
6. The Arnold, C. S. (00286) Lease has been out of compliance with Rule 3(a) from on or before March 6, 2007 to the present.
7. Well Nos. 7, 17, 22, 23, 24, 28, 43, 44, 46, and 53 on the Arnold, C. S. (00286) Lease are not in compliance with Rule 13(b)(1)(b) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.

8. Well Nos. 7, 17, 22, 23, 24, 28, 43, 44, 46, and 53 on the Arnold, C. S. (00286) Lease have been out of compliance with Rule 13(b)(1)(b) from on or before April 10, 2007 to the present.
9. Well Nos. 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, and 55 on the Arnold, C. S. (00286) Lease are not properly plugged or otherwise in compliance with Rule 14(b)(2) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
10. Well Nos. 7, 13, 14, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 45, 46, 48, 49, 50, 52, 53, 54, and 55 on the Arnold, C. S. (00286) Lease have been out of compliance with Rule 14(b)(2) from August 1, 2007 to the present.
11. Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 52, 53, and 55 on the Arnold, C. S. (00286) Lease are not in compliance with Rule 14(b)(3) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
12. Wells 13, 17, 19, 22, 23, 24, 28, 34, 35, 43, 44, 46, 49, 50, 52, 53, and 55 on the Arnold, C. S. (00286) Lease have been out of compliance with Rule 14(b)(3) from at least August 1, 2007 to the present.
13. Wells 7, 14, 45, 48, and 54 on the Arnold, C. S. (00286) Lease are not in compliance with Rule 46(j) or Chapters 85, 89 and 91 of the Texas Natural Resources Code.
14. Wells 7, 14, 45, 48, and 54 on the Arnold, C. S. (00286) Lease have been out of compliance with Rule 46(j) from at least August 1, 2007 to the present.
15. Lewis Jue, as Rasher's President, was in a position of ownership or control of respondent, as defined by Texas Natural Resources Code Section 91.114, during the time period of the violation of Commission Rules committed by respondent.
16. The violations of Commission Rules 3, 13, 14, and 46 committed by respondent are related to safety and the control of pollution.
17. As an officer in a position of ownership or control of respondent at the time respondent violated Commission rules related to safety and the control of pollution, Lewis Jue and any other organization in which he may hold a position of ownership or control, shall be subject to the restrictions of Texas Natural Resources Code Section 91.114(a)(2) for a period of no more than seven years from the date the order entered in this matter becomes final, or sooner, if the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed; and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.

18. The documented violations committed by Rasher are a hazard to the public health.
19. The Commission did not submit sufficient evidence to show that Rasher violated Statewide Rules 3(a), 14(b)(1) and 14(b)(3) with respect to Well No. 51.
20. The violations of Statewide Rules 3(a), 14(b)(1) and 14(b)(3) with respect to Well No. 51 should be dismissed.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Rasher Energy, Inc., within 30 days of the entry of a Final Order in this matter to:

- 1) bring the violations on the Arnold Lease into compliance with Commission rules;
- 2) pay an administrative penalty of \$103,750.00, to be waived if Rasher transfers the wells to a non-affiliated bonded operator prior to the entry of the Final Order.

The examiner further recommends the Final Order dismiss the violations of Statewide Rules 3(a), 14(b)(1) and 14(b)(3) with respect to Well No. 51.

Respectfully submitted,

Mark Helmueller
Hearings Examiner