

February 15, 2011

OIL AND GAS DOCKET NO. 04-0257166

ENFORCEMENT ACTION AGAINST VORTT EXPLORATION COMPANY, INC. (OPERATOR NO. 887500) FOR VIOLATIONS OF STATEWIDE RULES ON THE CARL VANDERVOORT LEASE, WELL NO. 1A (DRILLING PERMIT NO. 627755), FARMER LIFE FIELD, DUVAL COUNTY, TEXAS.

APPEARANCES:

FOR THE RAILROAD COMMISSION OF TEXAS:

Christopher Hotchkiss Attorney, Enforcement Section

FOR RESPONDENT:

Georgia Vandervoort, President Vortt Exploration Company, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	May 22, 2008
NOTICE OF HEARING:	June 3, 2009
DATE CASE HEARD:	July 16, 2009
HEARING CLOSED:	July 16, 2009
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	February 15, 2011
CURRENT STATUS:	Contested

STATEMENT OF THE CASE

This is an Enforcement action against Vortt Exploration Company, Inc. for the violation of Statewide Rule 8(d)(1) on the Carl Vandervoort Lease, Well No. 1A (Drilling Permit No. 627755), Farmer Life Field, Duval County.

A hearing in this docket was held July 16, 2009. Notice of Hearing was sent to respondent by first class and certified mail at the most recent organization address reported to the Commission on Commission Form P-5 (Organization Report). Notice was also served on the registered agent for Respondent, by first class and certified mail, at Georgia Vandervoort, Vortt Exploration Company, Inc., 301 Commerce Street, Suite 3030, Fort Worth, Texas 76102. Georgia Vandervoort, President and agent of Vortt Exploration Company appeared and presented evidence. Chris Hotchkiss, Staff

Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section (“Enforcement”).

AUTHORITY

Statewide Rule 8(d)(1) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.8] requires persons disposing of oil and gas wastes by any method to have a permit to do so unless authorized under subsection (d)(3) or (e) of Statewide Rule 8, or under Statewide Rule 9, 46 or 98. Oil and gas wastes are defined in Statewide Rule 8(a)(26) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.8(a)(26)] to include materials to be disposed of or reclaimed, which have been generated in connection with activities associated with the exploration, development and production of oil or gas. These materials include but are not limited to “saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids and other liquid, semi-liquid, or solid waste material.” “To dispose” is defined in Statewide Rule 8(a)(24) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.8(a)(24)] to include “conducting, draining, discharging, emitting, throwing, releasing, depositing, burying, landfarming, or allowing to seep, or to cause or allow any such acts of disposal.”

ENFORCEMENT’S EVIDENCE

Vortt Exploration Company, Inc. (hereinafter “Vortt” or “Respondent”) designated itself the operator of the Carl Vandervoort Lease, Well No. 1A (Drilling Permit No. 627755) by filing a Commission Form W-1, received October 18, 2006 and approved February 8, 2007. Enforcement notes that Well No. 1A was plugged by Vortt on May 19, 2009.

A Commission District Office inspection report made on October 4, 2007 for the Carl Vandervoort Lease (see Attachment I) indicated that a berm for a pit was cut and the contents of the pit, mainly drilling mud, were spread out over an area approximately 321 feet long by 168 feet wide. The depth of the mud ranged from 6 inches deep to 14 inches deep. Subsequent District office inspection reports made on October 30, 2007, January 22, 2008, August 29, 2008 and May 28, 2009 showed no changes. The drilling mud had not been removed.

Respondent Vortt did not have a permit for said discharges, nor were they authorized under Statewide Rules 9, 46 or 98. By discharging drilling mud and associated oil and gas wastes without a permit, Respondent Vortt violated Statewide Rule 8(d)(1) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.8(d)(1)].

Vortt’s violation of Statewide Rule 8(d)(1) is serious and a hazard to the public health and safety, in that unpermitted discharges of oil and gas waste can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution. Vortt has a history of violations of Commission rules. Final Orders in Dockets 09-0251296 and 09-0251219 were signed by the Commissioners and closed as Final Orders on March 11, 2008.

Respondent Vortt has acted in bad faith because it failed to correct the violation of Commission Statewide Rule 8 on the subject lease and failed to adequately explain its inaction to the Commission.

Enforcement requests that Vortt be assessed an administrative penalty of \$7,000, consisting of one Statewide Rule 8(d)(1) violation at \$5,000 and a \$2,000 enhancement for the two prior dockets; and that Vortt be required to place the subject lease in compliance with all Commission Statewide Rules. Enforcement notes that Vortt had previously entered into an Agreed Order on this docket and paid \$2,500 in settlement, but did not achieve compliance. Therefore, Enforcement requests the \$7,000 penalty be reduced by the previously collected settlement amount of \$2,500.

VORTT'S EVIDENCE

Vortt has no access to the land involved in this lease and, in fact, had to obtain a restraining order against the surface owner in order to drill the subject well. The surface owner has refused to allow Vortt back on the land, preventing Vortt from taking a soil sample to determine if drilling mud was discharged.

Vortt presented as evidence several invoices from Straight Line Construction, Inc. and Basic Energy Services which it believes show that Vortt acted as a good faith operator at all times and removed drilling mud from the subject pit and had it hauled to the Basic Energy disposal pit. Vortt also presented a July 15, 2009 letter signed by Raymond Martinez of Newman Operating Company, the well plugger, stating that Mr. Martinez saw no drilling mud spilled on the ground at the Choctaw Ranch where the #1A Carl Vandervoort well was located.

It is Vortt's belief that the District Office inspector was mistaken in his belief that a berm had been breached and drilling mud discharged. Vortt asserts that a large area was cleared to enable the drilling of the subject well, and that the District office inspector mistook this cleared area for a discharge of drilling mud.

EXAMINERS' OPINION

As Enforcement stated, the initial District Office inspection report, dated October 4, 2007, indicates Vortt had leveled a reserve pit and spread water-based mud over an area 321 feet by 168 feet. The photo accompanying the report shows that a large area was bulldozed, as indicated by Vortt, but it also shows drilling mud covering a large area. The District Office inspection was prompted by a complaint from the surface owner that Vortt had spread drilling mud on the surface of the land without the landowner's permission.

The landowner's complaint was based on Statewide Rule 8(d)(3)(C), which states, in part, "A person may, without a permit, dispose of the following oil and gas wastes by landfarming, provided the wastes are disposed of on the same lease where they are generated, and provided the person has the written permission of the surface owner of the tract where landfarming will occur: water base drilling fluids with a chloride concentration of 3,000 milligrams per liter (mg/liter) or less.....". By letter dated October 5, 2007, the District Office acted on the landowner's complaint and

requested that Vorrtr provide documentation showing the landowner's agreement. No such proof of agreement was ever provided by Vorrtr.

No actual landfarming occurred in this instance. When authorized, landfarming is accomplished by spreading drilling mud over the ground surface and then discing it in. No discing-in took place on the Vandervoort Lease. In any case, no chloride test was ever run on the drilling mud, so Enforcement's complaint is not based on a violation of Statewide Rule 8(d)(3)(C). Instead, Enforcement bases its complaint on a violation of Statewide Rule 8(d)(1), which requires any person disposing of oil and gas waste to have a permit to do so.

The invoices supplied by Vorrtr from Straight Line Construction, Inc. and Basic Energy Services do not support its assertion that Vorrtr had the drilling mud hauled offsite. A Straight Line Construction invoice dated September 8, 2007, states "Clean, clear, dress up location level", but that does not indicate the removal of any drilling mud. The September 14, 2007 invoice from Basic Energy Services states "Empty out open top with dirty oil and sand and hauled it to Basic Disp. (Wash out included)", which indicates an open top tank was cleaned out and its contents hauled away, not that a reserve pit was emptied and its drilling mud was hauled away.

At the back of the Certified File in this docket is an invoice from Straight Line Construction, Inc. describing work done by a bulldozer operator on October 2, 2007, two days before the District Office made its initial inspection at the request of the surface owner. The invoice states "Took mud out from reserve pit & back filled pit & level field then spread mud 'finish job'" (see Attachment II). This invoice clearly describes the removal of drilling mud from a reserve pit and the subsequent dispersal of the mud over the surface of the land. This documents the unpermitted discharge of drilling mud, which is a violation of Statewide Rule 8(d)(1).

The invoices supplied by Vorrtr from Straight Line Construction and Basic Energy Services were accompanied by letters composed by Georgia Vandervoort for signature by representatives of the respective companies. The prepared letters both asserted that all fluids had been removed from the subject wellsite and hauled to a disposal facility and that there had been no improper discharge of fluids on the lease. The prepared letters were unsigned, indicating that the owners of Straight Line and Basic Energy were unwilling to support Vorrtr's disavowal of unpermitted discharges.

Vorrtr introduced a letter into the record, dated July 15, 2009, stating that the plugger (Newman Operating Company) had seen no area on the Carl Vandervoort Lease that appeared to have drilling mud placed on it. On the record, Georgia Vandervoort admitted to the Enforcement attorney that she had composed that letter and sent it to Newman for signature. The letter was subsequently signed by Raymond Martinez of Newman Operating Company. Enforcement noted that even if Mr. Martinez had been on site in July, 2009, this would have been almost two years after the discharge of the drilling mud, which would by then have partially remediated naturally.

The examiner concludes that Vorrtr's evidence does not support its assertions of innocence, and that Enforcement's evidence does support its complaint. The examiner recommends that Vorrtr be required to place the Carl Vandervoort Lease, Well No. 1A (Drilling Permit No. 627755) in compliance with Commission Statewide Rule 8, and pay an administrative penalty of \$7,000 less

\$2,500 already paid, for a total of \$4,500.

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 registered agent.
2. Vortt designated itself the operator of the Carl Vandervoort Lease, Well No. 1A (Drilling permit No. 627755) by filing a Commission Form W-1, received by the Commission on October 18, 2006 and approved February 8, 2007.
3. Commission District Office inspections made on October 4, 2007, October 30, 2007, January 22, 2008, August 29, 2008 and May 28, 2009 showed that a reserve pit was leveled and drilling mud spread over an area 321 feet long and 168 feet wide.
4. The drilling mud was spread over the surface of the land without the landowner’s permission.
5. Vortt did not have a permit from the Commission to discharge drilling mud onto the surface of the land.
6. Vortt did not remediate the discharged drilling mud.
7. Vortt’s evidence that drilling mud from the lease was hauled away to a disposal facility is not credible.
8. An invoice in the Certified File from Straight Line Construction dated October 2, 2007, describes the work conducted by a bulldozer operator on the Carl Vandervoort Lease in Duval County thusly: “Took mud out from reserve pit & back filled pit & level field then spread mud ‘finish job’”. This invoice supports the finding in the District office inspection report made on October 4, 2007 that a reserve pit was leveled and drilling mud spread over an area 321 feet long and 168 feet wide.
9. Vortt’s violation of Commission Statewide Rule 8 is serious and relates to the public health and safety. This violation also relates to the prevention and control of pollution.
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 violation of Commission Statewide Rule 8 was committed.

11. Vortt previously entered into an Agreed Order in this docket and paid \$2,500 in settlement, but did not achieve compliance, voiding the Agreed Order.
12. Vortt has a history of violations of Commission rules. Final Orders in Oil & Gas Docket Nos. 09-0251296 and 09-0251219 were signed by the Commissioners on March 11, 2008.

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 Carl Vandervoort Lease, Well No. 1A (Drilling Permit No. 627755), Farmer Life Field, Duval County, Texas and had the primary responsibility for complying with Commission rules.
4. Vortt Exploration Company, Inc. ("Vortt") violated Commission Statewide Rule 8(d)(1) on the Carl Vandervoort Lease, Well No. 1A (Drilling Permit No. 627755), Farmer Life Field, Duval County, Texas from at least October 30, 2007 to at least May 28, 2009.
5. The documented violation committed by Respondent was a hazard to the public health and demonstrated a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).
6. 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. be ordered to place the Carl Vandervoort Lease, Well No. 1A (Drilling Permit No. 627755), Farmer Life Field,

Duval County, Texas in compliance with Commission Statewide Rule 8, and be ordered to pay an administrative penalty of \$7,000, which consists of one violation of Statewide Rule 8(d)(1) at \$5,000 and a \$2,000 enhancement at \$1,000 each for the two prior dockets, less \$2,500 already paid, for a total administrative penalty of \$4,500.

Respectfully submitted,

Marshall Enquist
Hearings Examiner