

May 11, 2006

OIL & GAS DOCKET NO. 01-0244744

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APPLICATION OF DONALD DOEGE CONTESTING PROPOSED CANCELLATION OF THE P-4 CERTIFICATE OF COMPLIANCE FOR THE H.W. WARD (03226) LEASE, GUADALUPE COUNTY, TEXAS.

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**APPEARANCES:**

**FOR RAILROAD COMMISSION OF TEXAS:**

David Cooney  
Tim Poe  
Keith Barton

**FOR OPERATOR DONALD DOEGE:**

Donald Doege

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>NOTICE OF HEARING:</b>	March 11, 2005
<b>DATE CASE HEARD:</b>	March 28, 2005
<b>HEARING REOPENED:</b>	April 28, 2005
<b>REOPENED HEARING HELD:</b>	May 16, 2005
<b>RECORD CLOSED:</b>	May 31, 2005
<b>HEARD BY:</b>	Mark Helmueller, Hearings Examiner Margaret Allen, Technical Examiner
<b>PFD CIRCULATION DATE:</b>	May 11, 2006
<b>CURRENT STATUS:</b>	Protested

**STATEMENT OF THE CASE**

This was a Commission-called hearing on the request of Donald Doege, to determine the following:

1. Whether the certificate of compliance for the H.W. Ward (03226) Lease should be canceled; and
2. The amount of any reconnect fees that should be required to be paid related to any cancellations of the certificate of compliance.

**PROCEDURAL HISTORY**

On February 9, 2005, Donald Doege (hereinafter “Doege”) was issued computer generated correspondence from the Commission advising that the certificate of compliance for the H.W. Ward (03226) Lease (“subject lease”) would be canceled for the failure to file approved Commission Form H-15 (Test on an Inactive Well More than 25 Years Old) tests for Well Nos. 1 & 2. The February 9, 2005 letter provided that Doege could request a hearing to contest the cancellation.

Doege timely requested a hearing on March 2, 2005. At the original hearing on March 28, 2005, Doege appeared and presented evidence. No appearance was made by Commission Staff. The Commission’s computer mainframe indicated that despite the timely request for hearing, the certificate of compliance had been canceled on March 11, 2005 and a reconnect fee assessed. The examiners requested that staff provide further information to address why the certificate of compliance had been administratively canceled when there was a pending request for hearing. The examiner then requested staff rescind the cancellation and assessment of reconnect fees pending the outcome of this hearing. Staff was also advised of the process that would be required to enter an appearance and reopen the hearing. The cancellation was rescinded pending the outcome of this hearing.

Staff’s request to appear and reopen the hearing was granted on April 28, 2005. David Cooney, Staff Attorney, appeared at the reopened hearing representing the Commission and presented witnesses and documentary evidence. Doege also appeared at the reopened hearing.

**MATTERS OFFICIALLY NOTICED**

**Current Organization Records**

Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Doege was filed on January 5, 2005. Doege is currently identified as the operator of 96 wells, with a total depth of 92,588 feet. Doege operates 21 leases including the H.W. Ward (03226) Lease. Doege has on file a blanket letter of credit as financial security in the amount of \$50,000.00.

### **Lease Records**

The examiners have officially noticed Commission records which establish that Doege was recognized as the operator of the 8 wells on the subject lease when the Commission Form P-4 (Certificate of Compliance and Transportation Authority) was approved on March 8, 1990. The examiners have also officially noticed P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show that the subject lease had its certificate of compliance canceled on February 19, 2002 for violations of Statewide Rules 3, 8, 13, 16, and 91. Commission records do not indicate that any enforcement action was ever filed for these violations, and they currently remain listed as unresolved. A reconnect fee of \$100 was assessed. This fee is listed as not paid on Commission mainframe computer records, however, the same records show an amount paid of \$100.

P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show that the subject lease had its certificate of compliance canceled again on August 6, 2003 for the failure to file H-15 tests. The violation is listed as resolved on September 2, 2003. A reconnect fee of \$300 was assessed but has not been paid.

P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show that the H.W. Ward (03226) Lease had its certificate of compliance canceled again on April 1, 2004 for the failure to file H-15 tests. The violation is listed as resolved on April 22, 2004. A reconnect fee of \$300 was assessed but has not been paid.

The failure to file H-15 tests in 2004, triggered another intent to cancel letter on July 7, 2004. The computer records show this failure as resolved by the filing of H-15 tests on August 3, 2004. However, the certificate of compliance was canceled again on November 3, 2004 because the tests filed by Doege for Well Nos. 1 and 2 were not approved as the reported fluid level in each well was higher than the deepest usable quality water present in the area. A reconnect fee of \$300 was assessed.

Doege submitted retests of the fluid levels for Well Nos. 1 and 2 on January 30, 2005. The retests were rejected because of the prior tests showing that the reported fluid level was higher than the deepest usable quality water present in the area. Correspondence noting the intent to cancel the certificate of compliance for the rejected retests was sent on February 9, 2005.

### **H-15 Testing Guidelines**

The examiners have also officially noticed two memoranda concerning staff review and processing of H-15 tests. The first memoranda is noted as effective April 2004. With respect to the evaluation of fluid level tests, the guideline advises, "If a well fails a fluid level test, then a MIT must be performed." With respect to testing requirements for Mechanical Integrity Tests, the guideline notes one special consideration, "In lieu of a traditional MIT, operators may request approval to perform an ADA Pressure Test."

The second memoranda lists an effective date of February 2005. The February 2005 guideline retains the same requirement for wells that fail fluid level tests. However, an additional special consideration is included as follows: "Where the testing requirements in SWR 14(b)(3) for mechanical integrity cannot be met, alternatives will be considered on a case-by-case basis." No discussion on the factors or considerations is provided in the guideline.

### **DOEGE'S POSITION**

Doege admits that the certificate of compliance was canceled for the subject lease. He claims that he was diagnosed with leukemia in 2003 and let all of his regulatory obligations lapse while he dealt with his health issues. He is in remission after treatment, and is trying "to do the right thing" with respect to his responsibility for these wells. In 2004, he renewed his organization report, posted financial security in the amount of \$50,000 and conducted fluid level tests for the wells.

Doege advises that the 8 wells on the subject lease are all shallow 2 7/8" slim hole completions that are produced on pump through 1" tubing. He believes that all of the wells on the lease are capable of production at marginal levels. When he tested the fluid levels in the wells, the observed level in Well No. 1 and Well No. 2 was higher than the base of usable quality water in the area. Because he sought to restore the wells back to production, he pumped off the fluid and ran new fluid level tests. He was advised that the retests were not acceptable, and that he would be required to perform a pressure test on each well to confirm the mechanical integrity of the 2 7/8" casing.

Doege claims the cost of conducting a pressure test on a slim hole well exceeds the average cost of plugging the wells and makes it uneconomic to restore the wells to production. He asserts that it is difficult if not impossible to conduct a pressure test on a slim hole well due to the limited diameter of the casing. He argues that where there is evidence that the wells can be restored to production he should be allowed to submit the retests to meet the well test requirements. He also claims that there is no continued violation of the H-15 testing requirements as the well tests now meet the required standard.

### **STAFF POSITION**

Staff believes the only issue before the examiners is whether the lease was in compliance with Commission rules at the time the notice of intent to cancel was sent. Staff asserts that if it is determined that the lease is not in compliance, then cancellation of the certificate of compliance is appropriate and the operator should be responsible for reconnect fees.

Staff contends that the certificate of compliance for the subject lease has been canceled since February 19, 2002, and has been subject to three additional cancellations since that time for the failure to submit approved H-15 tests for all 8 wells. The 4 cancellations, and the reconnect fees assessed are summarized in the table below:

2/19/02	Field Rule Violations	\$300
8/6/03	Delinquent H-15	\$300
4/1/04	Delinquent H-15	\$300
11/3/04	Failed H-15	\$300

Staff asserts that Doege should be required to either perform a pressure test to ensure the mechanical integrity of the casing on Well Nos. 1 & 2 or plug the wells. Staff further asserts that Doege should be required to pay \$1500 in reconnect fees for the four prior cancellations and the additional cancellation for the fluid level retests, less \$100 in credit for prior payments.

#### AUTHORITY

Texas Natural Resources Code §85.164 provides:

The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Section 2001.054, Government Code.

Texas Natural Resources Code §85.167(a) currently provides:

If a certificate of compliance for an oil lease or gas well has been canceled for violations of one or more commission rules, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of \$300 for each severance or seal order issued for the lease or well.

#### EXAMINERS' OPINION

Three determinations must be made with respect to this matter. First, should Doege be allowed to satisfy the requirements of Statewide Rule 14(b)(3) through the submission of fluid level retests where the claimed alternative is to plug the well? Second, can the certificate of compliance for the H. W. Ward (03226) Lease be canceled again for the filing of fluid level retests in January 2005 for Well Nos. 1 & 2? Third, what amount of reconnect fees should be paid by Doege before the certificate of compliance for the subject lease is restated?

**Fluid Level Retests**

The primary issue presented in this case is whether the fluid level retests submitted in January 2005 are an acceptable alternative to a pressure test on the casing. In essence, Doege claims that the retests he performed after pumping off fluid on Well Nos. 1 & 2 should be accepted because he intends to restore the two wells to production. He claims that this is his only option to plugging the wells, because the slim hole casing makes it both difficult and costly to perform a pressure test to confirm the mechanical integrity of the casing. Doege asserts that the costs of performing pressure tests would exceed the cost of plugging the wells.

With respect to the need to perform a pressure test on the casing before the wells can be restored to production, there is a dispute between staff and Doege as to whether a pressure test can be performed. The examiners believe that the testimony of the staff engineer setting forth the manner in which such a test could be performed is sufficient to show that such tests are possible for slim hole casing wells. The examiners therefore recommend that the pressure tests for the two wells be required before Doege is allowed to restore the wells to production.

**Multiple Cancellations of the Certificate of Compliance.**

The examiners need not consider whether the cancellations of the certificate of compliance in February 2002, August 2003, April 2004 and November 2004 were proper, as it is uncontested that proper notice was issued to Doege, and Doege did not request a hearing with respect to the four prior cancellations. Accordingly, only the proposed cancellation raised by the February 9, 2005 correspondence is at issue.

The significant issue presented by multiple cancellations is not the actual cancellation itself, but the required reconnect fee as the authority to produce and transport production is terminated by the original cancellation. Doege attempted to resolve the violation that led to the April 2004 cancellation by submitting fluid level tests in August 2004 and retests of the fluid level in January 2005 when the August 2004 tests were rejected. In November 2004, the original tests were properly rejected because they did not meet the required standard. The retests were also properly rejected by Commission staff due to the prior failed tests.

The rejected tests submitted in January 2005 were a direct attempt to respond to the November 2004 cancellation. Accordingly, it is the examiners' determination that cancellation of the certificate is not proper for the rejected retests in January 2005 as the cancellation of the certificate of compliance would be for the same violation which resulted in the November 2004 cancellation. The examiners therefore recommend that no further cancellation of the certificate of compliance be issued related to the rejection of the retests submitted in January 2005.

**Amount of Reconnect Fees**

The remaining issue to be determined in this matter is what amount of reconnect fees should be paid by Doege. Staff asserts that a \$300 reconnect fee for each proper cancellation is appropriate, regardless of when the cancellation occurred. The examiners agree.

Accordingly, a \$300 reconnect fee applies to each of the four prior cancellations for a total of \$1200. As Commission records indicate prior payment of \$100 in reconnect fees, the total reconnect fee as this time is \$1100.

Based on the record in this docket, the examiners recommend adoption of the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. On February 9, 2005, Donald Doege (hereinafter "Doege") was issued computer generated correspondence from the Commission advising that the certificate of compliance for the H.W. Ward (03226) Lease ("subject lease") would be canceled for the failure to file approved Commission Form H-15 tests for Well Nos. 1 & 2.
2. Doege timely requested a hearing on March 2, 2005.
3. At the original hearing on March 28, 2005, Doege appeared and presented evidence. No appearance was made by Commission Staff.
4. The Commission's computer mainframe records for the subject lease indicated that despite the timely request for hearing, the certificate of compliance had been canceled on March 11, 2005 and a reconnect fee assessed.
5. The cancellation of the certificate of compliance and assessment of reconnect fees were rescinded pending the outcome of this hearing.
6. Staff's request to appear and reopen the hearing was granted on April 28, 2005. David Cooney, Staff Attorney, appeared at the reopened hearing representing the Commission. Doege also appeared at the reopened hearing.
7. Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Doege was filed on January 5, 2005. Doege is currently identified as the operator of 96 wells, with a total depth of 92,588 feet. Doege operates 21 leases including the subject lease. Doege has on file a blanket letter of credit as financial security in the amount of \$50,000.00.
8. Doege was recognized as the operator of the 8 wells on the subject lease when the Commission Form P-4 (Certificate of Compliance and Transportation Authority) was approved on March 8, 1990
9. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show that the subject lease had its certificate of compliance canceled on February 19, 2002 for violations of Statewide Rules 3, 8, 13, 16, and 91. Commission records do not indicate that any enforcement action was ever filed for these violations, and

they currently remain listed as unresolved. A reconnect fee of \$100 was assessed. This fee is listed as not paid on Commission mainframe computer records related to the specific violation, however, the same records show an amount paid of \$100.

10. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show that the subject lease had its certificate of compliance canceled again on August 6, 2003 for the failure to file tests on Commission Form H-15 (Test on an Inactive Well More Than 25 Years Old). The violation is listed as resolved on September 2, 2003. A reconnect fee of \$300 was assessed but has not been paid.
11. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show that the subject lease had its certificate of compliance canceled again on April 1, 2004 for the failure to file H-15 tests. The violation is listed as resolved on April 22, 2004. A reconnect fee of \$300 was assessed but has not been paid.
12. The failure to file H-15 tests in 2004, triggered another intent to cancel letter on July 7, 2004. The computer records show this failure as resolved by the filing of H-15 tests on August 3, 2004. The certificate of compliance was canceled again on November 3, 2004 because two the tests filed by Doege for Well Nos. 1 and 2 were not approved as the reported fluid level in each well was higher than the deepest usable quality water present in the area. A reconnect fee of \$300 was assessed.
13. Doege submitted retests of the fluid levels for Well Nos. 1 and 2 on January 30, 2005. The retests were rejected because the August 2004 tests showed that the reported fluid level in the wells was higher than the deepest usable quality water present in the area.
15. Under Statewide Rule 14(b)(3), Well Nos. 1 & 2 on the subject lease were required to successfully pass a fluid level test as a condition of continued deferral of the plugging requirement.
  - A. Each well was drilled more than 25 years prior to the date that an H-15 test was due.
  - B. Each well had been inactive for more than 12 months prior to the date that an H-15 test was due.
16. Well Nos. 1 & 2 on the subject lease failed fluid level tests submitted by Doege on August 3, 2004 because the reported top of fluid was above the lowest reported depth of usable quality water in the vicinity of the wells.
17. Retests of the fluid levels for Well Nos. 1 & 2 on the subject lease submitted by Doege on January 30, 2005 do not satisfy the requirements of Statewide Rule 14(b)(3) in this instance.



### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties to this hearing have been performed or have occurred.
3. Doege is the operator of the 8 wells on the H.W. Ward (03226) Lease as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Doege is responsible for maintaining the 8 wells on the H.W. Ward (03226) Lease in compliance with all applicable statutes and Commission rules, including Statewide Rule 14(b)(3).
5. The Commission's cancellations of the certificate of compliance in February 2002, August 2003, April 2004 and November 2004 were proper.
  - A. Proper notice of the intent to cancel the certificate of compliance was issued to Doege.
  - B. Doege did not request a hearing with respect to the four cancellations
6. Rejection of retests submitted by an operator to correct a violation that resulted in a cancellation of the certificate of compliance is not a separate violation which justifies an additional cancellation of the certificate of compliance.
7. Effective September 1, 2003, Texas Natural Resources Code §85.157 provided for a reconnect fee of \$300 for each severance or seal order issued by the Commission for a lease or well.

### RECOMMENDATION

The examiners recommend that the attached Final Order be entered requiring:

- 1) pressure tests be performed on Well Nos. 1 & 2 on the H. W. Ward (03226) Lease prior to reissuance of the certificate of compliance or the wells be plugged;
- 2) the certificate of compliance for the H. W. Ward (03226) Lease not be canceled based on the submission of the retests, and no reconnect fee imposed with respect to the submission of the retests; and,

- 3) Doege pay total reconnect fees of \$1200, less \$100 previously paid, prior to reissuance of the certificate of compliance for the H. W. Ward (03226) Lease.

Respectfully submitted,

Mark J. Helmueller  
Hearings Examiner

Margaret Allen  
Technical Examiner