

**May 11, 2006**

**OIL & GAS DOCKET No. 01-0244748**

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**APPLICATION OF DONOCO OIL COMPANY CONTESTING PROPOSED CANCELLATION OF THE P-4  
CERTIFICATE OF COMPLIANCE FOR THE LENZ (02915) LEASE, GUADALUPE COUNTY, TEXAS.**

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**APPEARANCES:**

**FOR RAILROAD COMMISSION OF TEXAS:**

David Cooney  
Tim Poe  
Keith Barton

**FOR OPERATOR DONOCO OIL COMPANY:**

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 Donoco Oil Company, to determine the following:

1. Whether the certificate of compliance for the Lenz (02915) 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, Donoco Oil Company (hereinafter “Donoco”) was issued computer generated correspondence from the Commission advising that the certificate of compliance for the Lenz (02915) Lease (“subject lease”) would be canceled for the failure to file an approved Commission Form H-15 (Test on an Inactive Well More Than 25 Years Old) for Well No. 1. The February 9, 2005 letter provided that Donoco could request a hearing to contest the cancellation.

Donoco timely requested a hearing on March 2, 2005. At the original hearing on March 28, 2005, Donald Doege appeared and presented evidence on behalf of Donoco. 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. The cancellation was rescinded. Staff was also advised of the process that would be required to enter an appearance and reopen the 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 Donoco was filed on December 1, 2005. The P-5 identifies Donald Doege as the Operator/Partner and Ronald Doege as a Partner. Donoco is currently identified as the operator of 80 wells, with a total depth of 65,125 feet. Donoco operates 22 leases including the Lenz (02915) Lease. Donoco has on file a blanket letter of credit as financial security in the amount of \$50,000.00.

### **Enforcement Docket**

On May 16, 2005, the same date the reopened hearing was held in this matter, the legal examiner also heard Oil & Gas Docket No. 01-0233443: *Enforcement Action Against Donoco Oil Company for Alleged Violations of Commission Rules on the Lenz (02915) Lease, Guadalupe County, Texas*. In that docket, Enforcement alleged Donoco had violated Statewide Rule 14(b)(2) on the subject lease by failing to properly plug six wells. The complaint was amended to assert only a single violation of Statewide Rule 14(b)(2) for the failure to plug Well No. 1. Subsequent to the hearing, Donoco and Enforcement resolved the case after: 1) Donoco plugged Well No. 1; and, 2) Donoco paid a \$1,000.00 administrative penalty. An Agreed Order was entered on October 4, 2005.

### **Lease Records**

The examiners have officially noticed Commission records which establish that Donoco was recognized as the operator of the subject lease when the Commission Form P-4 (Certificate of Compliance and Transportation Authority) was approved on December 13, 1985.

The examiners have also officially noticed P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show the subject lease had its certificate of compliance canceled July 30, 1998 for the failure to file an H-15 test for Well No. 1. 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. The violation is listed as resolved on January 10, 2005, but no reconnect fee was paid.

The examiners have also officially noticed P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show the subject lease had its certificate of compliance canceled by Field Operations on January 18, 2002 for an unspecified violation of Statewide Rule 14. The violation is listed as resolved on August 4, 2005, due to the filing of a P-5 Organization Report. No reconnect fee has been paid for that cancellation.

The examiners have also officially noticed P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show the subject lease had its certificate of compliance canceled November 8, 2004 because the H-15 test for Well No. 1 submitted in August 2004 was not approved as the reported fluid level was at 480 feet, only 80 feet below the deepest usable quality water present in the area.<sup>1</sup> A reconnect fee of \$300 was assessed. Donoco submitted a retest of the fluid level for Well No. 1 on January 30, 2005. The retest was rejected based on the prior failed test.

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<sup>1</sup> Administrative extension to the well plugging requirements may be granted where the fluid level is more than 250 feet below the deepest usable quality water. If a well becomes subject to the mechanical integrity requirements under Statewide Rule 14, it may not be restored to active production until a successful test is submitted.

### **DONOCO'S POSITION**

Donoco admits that the certificate of compliance was properly canceled for the subject lease. Mr. Doege claims that he was diagnosed with leukemia in 2003 and let all of his oil business operations, including 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 the subject lease. In 2004, he renewed Donoco's organization report and posted financial security in the amount of \$50,000. He intends to produce the remaining five wells on the subject lease.

Donoco claims that after the retest of the well in January 2005 was rejected, it decided to plug Well No. 1. Donoco submitted late-filed exhibits that were accepted into the record which include an invoice from a plugging contractor and a copy of a Commission Form W-3 (Plugging Report) verifying that the well was plugged on May 20, 2005. It is not contested that the well is now properly plugged. In light of the fact that the well is now plugged, as well as the separate penalty paid in the Enforcement Docket, Donoco has requested that any additional reconnect fees be waived.

### **STAFF'S POSITION**

Staff contends that the certificate of compliance for the subject lease has been canceled since July 30, 1998, and has been subject to additional cancellations since that time for the failure to submit an approved H-15 test and the other unspecified violation of Statewide Rule 14. The cancellations, and the reconnect fees assessed are summarized in the table below:

7/30/98	Delinquent H-15	\$300
1/18/02	Field Rule Violation	\$300
11/8/04	Failed H-15	\$300

Staff asserts Donoco should be required to pay \$900 in reconnect fees for the 3 cancellations of the certificate of compliance listed above, less \$100 in credit for prior payments, regardless of when the cancellations occurred. Additionally, Staff has not recommended that the \$300 reconnect fee for the cancellation of the certificate of compliance on November 8, 2004, and the prior cancellations of the certificate of compliance on January 18, 2002 and July 30, 1998 be waived. Accordingly, staff urges that before Donoco is reissued a certificate of compliance for the subject lease, it should be required to pay the reconnect fees even though the violations which resulted in cancellation of the certificate of compliance were ultimately corrected by plugging the well.

Finally, Staff asserts that an additional cancellation of the certificate of compliance for the subject lease is appropriate because the lease was not in compliance with Statewide Rule 14 in February 2005 when the 30 day intent to cancel letter was sent to Donoco. Staff further argues that another reconnect fee of \$300 should be assessed.

### **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) 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**

The issues presented by this case are: 1) whether the certificate of compliance should be canceled again after Donoco submitted the fluid level retest of Well No. 1; and, 2) whether Donoco is required to pay any reconnect fee before the reissuance of the certificate of compliance for a multiple well oil lease where the violations that led to cancellation of the certificate of compliance were resolved by plugging the well.

### **Cancellation of Certificate of Compliance for Fluid Level Retest**

With respect to cancellation based on the submission of the fluid level retest, the examiners recommend that no further cancellation or reconnect fee should follow from the February 2005 notice of intent to cancel. The record shows that the proposed cancellation is for the same violation that resulted in cancellation of the certificate of compliance on November 8, 2004, the failure of Well No. 1 to pass a fluid level test. The proposed cancellation is based on the rejection of a retest of the same well. The rejection of the second test was based on the original failed test.

On November 8, 2004, Donoco was advised that Well No. 1 had not passed the fluid level test which was submitted in August 2004. This failure led to the cancellation of the certificate of compliance and requirement that a reconnect fee of \$300 be paid before the certificate of compliance was reissued.

Donoco initially attempted to resolve the violation by submitting a retest of the fluid level in January 2005. This test was rejected by Commission staff due to the prior failed test. The second rejection led to the February 2005 notice of intent to again cancel the certificate of compliance. Donoco timely requested a hearing, at which it had the opportunity to argue that the retest should have been accepted. The issue of the acceptability of a retest was rendered moot before the evidentiary record was closed because Donoco plugged the well. Because the rejection of the January 2005 retest of Well No. 1 was based on the first failed test, it is the examiners' recommendation not to cancel the certificate of compliance a second time as the January 2005 retest is not a separate violation of Commission rules.

### **Waiver of Reconnect Fees**

It is uncontested that proper notice was issued and that Donoco did not request a hearing with respect to the cancellation of the certificate of compliance on July 30, 1998, January 18, 2002, and November 8, 2004. Staff has not recommended that any prior reconnect fees be waived even though Donoco ultimately plugged the well and paid an administrative penalty in the Enforcement docket. The examiners agree with the legality of Staff's position as Donoco was the operator of record in each instance where the certificate of compliance was canceled.

Texas Natural Resources Code §85.167 uses permissive language with respect to the assessment of a reconnect fee after a certificate of compliance has been canceled. There is no evidence or other indication of a Commission policy to waive the reconnect fee for a multiple well oil lease where a violation resulting in cancellation of the certificate of compliance is corrected by plugging the offending well. Additionally, there is no evidence or other indication of a Commission policy to waive the reconnect fee for a multiple well oil lease when an operator resolves a separate Enforcement action for the same violation by plugging the well that was in violation of Commission rules and paying an administrative penalty. Accordingly, it is the examiners' recommendation that as long as it remains the consistent policy not to waive reconnect fees under these circumstances, an operator may be required under the provisions of Texas Natural Resources Code §85.167 to pay the reconnect fees to reinstate the certificate of compliance in order to produce the remaining wells on a multiple well oil lease.

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, Donoco Oil Company (hereinafter "Donoco") was issued computer generated correspondence from the Commission advising that the certificate of compliance for the Lenz (02915) Lease ("subject lease") would be canceled for the failure to file an approved Commission Form H-15 (Test on an Inactive Well More Than 25 Years Old) for Well No. 1.
2. Donoco timely requested a hearing on March 2, 2005.

3. At the original hearing on March 28, 2005, Donoco 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. Donoco also appeared at the reopened hearing.
7. Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Donoco was filed on December 1, 2005. The P-5 identifies Donald Doege as the Operator/Partner and Ronald Doege as a Partner. Donoco is currently identified as the operator of 80 wells, with a total depth of 65,125 feet. Donoco operates 22 leases including the Lenz (02915) Lease. Donoco has on file a blanket letter of credit as financial security in the amount of \$50,000.00.
8. Donoco was recognized as the operator of the subject lease when the Commission Form P-4 (Certificate of Compliance and Transportation Authority) was approved on December 13, 1985.
9. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records show the subject lease had its certificate of compliance canceled July 30, 1998 for the failure to file an H-15 test for Well No. 1. 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. The violation is listed as resolved on January 10, 2005, but no reconnect fee was paid.
10. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records show the subject lease had its certificate of compliance canceled by Field Operations on January 18, 2002 for an unspecified violation of Statewide Rule 14. The violation is listed as resolved on August 4, 2005, due to the filing of a P-5 Organization Report. No reconnect fee has been paid for that cancellation.
11. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records show the subject lease had its certificate of compliance canceled November 8, 2004 because the H-15 test for Well No. 1 submitted in August 2004 was not approved as the reported fluid level was at 480 feet, only 80 feet below the deepest usable quality water present in the area. A reconnect fee of \$300 was assessed.

12. Donoco submitted a retest of the fluid level for Well No. 1 on January 30, 2005. The retest was rejected based on the prior failed test.
13. Well No. 1 on the subject lease was plugged on May 20, 2005.
14. The certificate of compliance for the subject lease should not be canceled for the failed retest submitted on January 30, 2005.
  - A. The certificate of compliance was previously canceled on November 8, 2004 based on the failed fluid level test submitted in August 2004 for Well No. 1.
  - B. Donoco submitted a timely request for hearing after receiving the February 2005 notice from the Commission advising of the intent to cancel the certificate of compliance again for the rejected retest.
  - C. Well No. 1 on the subject lease was plugged prior to the close of the evidentiary record in this proceeding.

#### 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. Donoco is the operator of the wells on the Lenz (02915) Lease as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Donoco is responsible for maintaining the wells on the Lenz (02915) Lease in compliance with all applicable statutes and Commission rules, including Statewide Rule 14(b)(3).
5. Well No. 1 on the Lenz (02915) Lease was brought into compliance with all applicable statutes and Commission rules, including Statewide Rule 14(b)(3) when the well was plugged.
6. The Commission's cancellations of the certificate of compliance on July 30, 1998, and January 18, 2002 and November 8, 2004 were proper.
  - A. Proper notice of the intent to cancel the certificate of compliance was issued to Donoco.
  - B. Donoco did not request a hearing with respect to the three cancellations.



7. Rejection of a retest 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.
8. Proposed Commission action to cancel a certificate of compliance impacts a vested property right reflected in the permit to operate the lease at issue.
9. 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.
10. As of the date of the hearing, the certificate of compliance for the Lenz (02915) Lease had been canceled three times, with only \$100.00 in reconnect fees paid.

#### **RECOMMENDATION**

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

- 1) the certificate of compliance for the Lenz (02915) Lease not be canceled based on the submission of the retest, and no reconnect fee imposed with respect to the submission of the retest; and,
- 2) Donoco pay total reconnect fees of \$900, less \$100 previously paid, prior to reissuance of the Certificate of Compliance for the Lenz (02915) Lease for the violations leading to the cancellation of the certificate of compliance at the time of the hearing.

Respectfully submitted,

Mark J. Helmueller  
Hearings Examiner

Margaret Allen  
Technical Examiner