

September 16, 2004

OIL & GAS DOCKET NO. 06-0239253

COMMISSION CALLED HEARING TO SHOW CAUSE WHY WENDELL A. REEDER SHOULD NOT BE FINED FOR NONCOMPLIANCE WITH THE COMMISSION'S FINAL ORDER ENTERED IN OIL & GAS DOCKET NO. 06-0233608 ON OCTOBER 21, 2003.

Respondent:
Hattie Scherback

REPRESENTING:
Wendell A. Reeder

Intervenor:
Phil Patman
Bobby Noble
John Cantrell

Noble & Cantrell Exploration Company, Inc.
“ ”
“ ”

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

Notice of Hearing:	June 25, 2004
Hearing Held:	July 29, 2004
Record Closed:	August 6, 2004
PFD Prepared By:	Mark Helmueller, Hearings Examiner Thomas H. Richter, P.E., Technical Examiner
PFD Circulated:	September 16, 2004
Status:	Protested

STATEMENT OF THE CASE

This Commission Called hearing was held to determine whether Wendell Reeder (“Reeder”) should be ordered to pay an administrative penalty for failing to comply with the provisions of the it’s Final Order in Oil & Gas Docket No. 06-0233608 requiring the plugging of Well No. 116 on the Forest Hill (Harris Sand) Unit (04478) Lease (“subject well”) in Wood County, Texas. Reeder attended the hearing and presented evidence. Intervenor Noble & Cantrell Exploration Company, Inc. (“Noble”) also appeared and presented evidence. It is the examiners’ recommendation that Reeder be ordered to pay an administrative penalty of \$1,000.00

PROCEDURAL BACKGROUND

On January 2, 2003, Noble filed a complaint requesting that the Commission determine whether Reeder should be ordered to plug illegal perforations in the subject well in the Forest Hill (Sub-Clarksville) Field. A hearing was held in Oil & Gas Docket No. 06-0233608 to consider the complaint on March 27, 2003. The examiners reopened the hearing on July 2, 2003 to obtain further information on potential crossflow in the subject well between the Sub-Clarksville formation and the Harris Sand formation. No new evidence was submitted.

On September 9, 2003 a proposal for decision was issued in Oil & Gas Docket No. 06-0233608 recommending that the well be plugged because commingling of the Forest Hill (Harris Sand) Field and the Forest Hill (Sub-Clarksville) Field was occurring in violation of Statewide Rule 10. On October 21, 2003, the Commission entered a Final Order requiring Reeder to plug the subject well within 30 days after the Commission order became final. The Commission order became final on November 14, 2003 after Reeder failed to file a motion for rehearing. Under the terms of the October 21, 2003 Final Order, Reeder was required to plug the subject well no later than December 14, 2003.

On January 13, 2004, the Commission's Office of General Counsel forwarded correspondence to Reeder requesting an update with respect to compliance with the plugging requirement in the Final Order. Reeder responded on January 22, 2004 that he was attempting to work with Noble to allow the well to be used for production in the Forest Hill (Sub-Clarksville) Field. Reeder requested authority to set a bridge plug to prevent any further commingling. Correspondence on February 3, 2004 advised Reeder that he was required to plug the subject well unless he requested a new hearing to supercede the plug only requirement in the Commission's October 21, 2003 Final Order.

On May 7, 2004, Noble advised the Commission's Office of General Counsel that Reeder had not plugged the well. In response to this letter, the Office of General Counsel sent a certified letter to Reeder on May 28, 2004 advising that the failure to comply with the Commission's Final Order of October 21, 2003 in Oil & Gas Docket No. 06-0233608 could result in a further hearing to impose an administrative penalty, the revocation of Reeder's Organization Report, and collection on any financial assurance posted by Reeder. Reeder was further advised that if he did not commence plugging operations within 10 days of the receipt of the letter that the matter would be set for hearing to consider further Commission action. The return receipt for the certified mailing indicates that the correspondence was received on June 1, 2004.

On June 4, 2004, Reeder filed a Commission Form W-3A (Notice of Intent to Plug) with the Commission's District Office in Kilgore. On June 9, 2004, Reeder commenced plugging operations which were witnessed by Commission personnel. All downhole plugging operations were completed on June 10, 2004. The surface plug was set on July 7, 2004. However, Reeder did not submit any documentation of

its plugging activities to the Office of General Counsel. Reeder submitted a Commission Form W-3 (Plugging Record) to the District Office on July 13, 2004. The District Office approved the plugging record on July 24, 2004.

REEDER'S EVIDENCE AND POSITION

Reeder claims that after the Commission entered its Final Order, he engaged in negotiations with Noble to jointly operate the well. Noble confirms that there were negotiations between it and Reeder early in 2004. Reeder contends that he advised the Commission's Office of General Counsel of the negotiations and understood that if the negotiations were successful, further action could be taken with the Commission which would not require that the well be plugged.

Reeder argues that he continued to pursue alternatives to plugging the well until June 1, 2004, when he received the May 28, 2004 letter. Upon receipt of that correspondence, Reeder immediately commenced actions to plug the well by filing a Notice of Intent to Plug, hiring a plugging contractor, and commencing and completing all downhole plugging operation by June 10, 2004. Because Reeder took actions to plug the well immediately after receiving the letter, he believes that this hearing should never have been scheduled. Reeder therefore urges that the matter be dismissed.

NOBLE'S EVIDENCE AND POSITION

Noble appeared at the hearing as an intervenor to testify to the damage caused by Reeder's failure to promptly comply with the Commission's Final Order of October 21, 2003. Noble operates a waterflood unit in the Forest Hill (Sub-Clarksville) Field which is found at a shallower depth than the Forest Hill (Harris Sand) Field. Noble asserts that because the subject well was perforated in both intervals, that oil responding to the waterflood in the Sub-Clarksville was migrating downhole in the subject well and being lost to the Harris Sand formation due to the pressure differential. Noble believes that several thousand barrels of oil were permanently lost as a result of the illegal perforations in the subject well, but no evidence showing that any crossflow occurred between zones or that there was any decline in production from the Noble's waterflood unit due to the illegally perforated well was presented to support the allegations of waste.

EXAMINERS' OPINION

The facts in this docket are undisputed. On October 21, 2003 the Commission ordered Reeder to plug the subject well due to the underground commingling in the wellbore between the Forest Hill (Sub-Clarksville) and (Harris Sand) Fields in violation of Statewide Rule 10. The terms of the Final Order required that the well be plugged within 30 days after the order became final. The order became final on November 14, 2003, which established the last possible day for Reeder to plug the well as December 14, 2003.

Despite the explicit language of the Commission's Final Order, Reeder did not commence plugging

operations in November and December 2003. Instead, Reeder sought to negotiate a resolution of Noble's complaint which would include sharing in the joint operation of the well. There is at least some evidence in the record confirming: 1) that there were negotiations between the parties; 2) that the Commission's Office of General Counsel was advised of the negotiations; and, 3) that the Commission's Office of General Counsel advised Reeder what steps would be required to set aside the plug only provision of the October 21, 2003 Final Order.

In Oil & Gas Docket No. 06-0233608, the Commission determined that commingling was occurring between the two fields in violation of Statewide Rule 10 in Reeder's well. The well was ordered to be plugged in order to prevent that commingling. Improper commingling between fields is an important area of concern for the Commission as such commingling has the potential of causing irreparable waste of natural resources and/or injury to the correlative rights of mineral interest owners. The Final Order did not provide for any other means for Reeder to bring the well into compliance. The examiners therefore believe that Reeder's failure to promptly comply with the express terms of the Commission's Final Order should not be excused, and that an administrative penalty is appropriate.

With respect to the amount of the administrative penalty, the Commission recently imposed an administrative penalty of \$10,000¹ on an operator who failed to comply with a Commission Interim Order required the plugging of six wells. In *Oil & Gas Docket No. 09-0228310: Enforcement Action Against Mobile Petrovac, Inc. doing business as Mobil Petro Vac., Inc. and/or Richard Reynolds for Violations of Statewide Rules on the Novak, Barbara (09139) Lease, Well Nos. 2A, 3, 3A, 4, 4A, and 7, Baylor County Regular Field, Baylor County, Texas*, the operator was given 90 days to commence plugging operations for six abandoned wells and was specifically advised that the failure to comply with the Interim Order could result in the imposition of further administrative penalties. The operator failed to take any action in the 90 day period and then failed to appear at a hearing called to address the failure to comply. The Commission determined in that case that \$10,000 of the total administrative penalty assessed on the operator was due to the failure to comply with the Interim Order.

The facts in this matter are not as egregious as the *Mobile Petrovac* docket. First, Reeder properly plugged the well. Second, all parties agree that an alternative to plugging the well was being explored, that the Commission's Office of General Counsel was advised of the negotiations, and that a mechanism existed to supercede the plug only requirement if the parties arrived at a resolution. Third, Reeder did act promptly in response to the "this is your final warning", May 28, 2004 correspondence from the Office of General Counsel. The examiners specifically note that Reeder filed the appropriate documentation, contacted the Commission's District Office, retained a qualified plugging contractor, and completed all downhole plugging requirements within 10 days of the receipt of the letter. Based on these facts, the examiners' therefore believe a lesser penalty than the one imposed in the *Mobile Petrovac* case

¹The total administrative penalty in the *Mobile Petrovac* case was \$22,000. \$12,000 of the penalty was for 6 violations of Statewide Rule 14(b)(2) at \$2,000 per violation. The remaining \$10,000 was specifically applied for the failure to comply with the Interim Order.

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is appropriate.

Additionally, despite Noble's unsubstantiated claim that physical waste was occurring due to the failure to plug the well, neither the October 21, 2003 Final Order nor any evidence in this docket shows that waste actually occurred. While the potential for waste to occur was certainly present, it is not possible to determine the accuracy of Noble's claim that several thousand barrels of oil have been lost due to the illegal perforations in the subject well because no evidence was presented showing that crossflow occurred between the two zones or that there was any production decline in Noble's waterflood unit. Much as the Commission differentiates between potential and actual pollution in determining the amount of an administrative penalty for violations of Commission rules in Enforcement cases, the examiners believe that the difference between potential and actual waste should be considered in determining the amount of any administrative penalty in this matter.

Taking into account all of the above issues, the examiners' believe that the appropriate amount of the recommended administrative penalty in this instance should be \$1,000. Other than the administrative penalty, no additional action is required as the subject well is plugged.

FINDINGS OF FACT

1. Notice of this hearing was given to all persons required to be given notice. Wendell Reeder ("Reeder") appeared at the hearing and presented evidence. Intervenor Noble & Cantrell Exploration Company, Inc. ("Noble") also appeared and presented evidence.
2. On January 2, 2003, Noble filed a complaint requesting the Commission determine whether Reeder should be ordered to plug illegal perforations in Well No. 116 on the Forest Hill (Harris Sand) Unit (04478) Lease ("subject well") in Wood County, Texas. Noble asserted that the well was improperly perforated in the Forest Hill (Sub-Clarksville) Field and illegally commingling in violation of Statewide Rule 10.
3. A hearing was held in Oil & Gas Docket No. 06-0233608 to consider Noble's complaint on March 27, 2003. The examiners reopened the hearing on July 2, 2003 to obtain further information on potential crossflow between the formations. No new evidence was submitted.
4. On September 9, 2003 a proposal for decision was issued in Oil & Gas Docket No. 06-0233608 recommending that Reeder be ordered to plug the subject well because commingling of the Forest Hill (Harris Sand) and the Forest Hill (Sub-Clarksville) Field was occurring in the wellbore in violation of Statewide Rule 10.
5. On October 21, 2003, the Commission entered a Final Order in Oil & Gas Docket No. 06-0233608 requiring Reeder to plug the well within 30 days after the order became final.

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6. The Commission Order in Oil & Gas Docket No. 06-0233608 became final on November, 14, 2003. Under the terms of the Final Order, Reeder was required to plug the subject well no later than December 14, 2003.
7. On January 13, 2004, the Commission's Office of General Counsel forwarded correspondence to Reeder requesting an update with respect to compliance with the plugging requirement in the Final Order. Reeder responded on January 22, 2004 that the wells was not plugged because he was attempting to work with Noble to allow the well to be used for production in the Forest Hill (Sub-Clarksville) Field. At that time Reeder also requested authority to set a bridge plug to address the commingling violation of Statewide Rule 10.
8. Correspondence from the Commission's Office of General Counsel on February 3, 2004 denied Reeder's request to set a bridge plug and further advised Reeder that he was required to plug the subject well unless he requested a hearing to supercede the plug only requirement in the Commission's October 21, 2003 Final Order in Oil & Gas Docket No. 06-0233608.
9. On May 28, 2004, the Office of General Counsel sent a certified letter to Reeder advising that the failure to comply with the Commission's Final Order of October 21, 2003 could result in a further hearing to impose an administrative penalty, revocation of Reeder's Organization Report, and collection on any financial assurance posted by Reeder. Reeder was further advised that if it did not commence plugging operations within 10 days of the receipt of the letter that the matter would be set for hearing to consider further Commission action. The return receipt for the certified mailing indicates that the correspondence was received by Reeder on June 1, 2004.
10. On June 4, 2004, Reeder filed a Commission Form W-3A (Notice of Intent to Plug) with the Commission's District Office in Kilgore. On June 9, 2004, Reeder commenced plugging operations which were witnessed by Commission personnel. All downhole plugging operations were completed on June 10, 2004. The surface plug was set on July 7, 2004.
11. Reeder submitted a Commission Form W-3 (Plugging Record) to the District Office on July 13, 2004. The District Office approved the plugging record on July 24, 2004.
12. Improper commingling between fields has the potential of causing irreparable waste of natural resources and/or injury to the correlative rights of mineral interest owners.
13. No evidence in this case or Oil & Gas Docket No. 06-0233608 established that irreparable physical waste of natural resources occurred due to the failure to comply with the October 21, 2003 Final Order in Oil & Gas Docket No. 06-0233608.

CONCLUSIONS OF LAW

Proposal for Decision

1. Proper notice was timely given to all parties entitled to notice.
2. All things have occurred to give the Commission jurisdiction in this case.
3. On October 21, 2003, the Commission entered a valid Final Order in Oil & Gas Docket No. 06-0233608 requiring Reeder to plug the subject well within 30 days after the effective date of the order.
4. The October 21, 2003 order in Oil & Gas Docket No. 06-0233608 became final on November 14, 2003.
5. Under the provisions of the October 21, 2003 order in Oil & Gas Docket No. 06-0233608, Reeder was required to plug the subject well no later than December 14, 2003.
6. From December 15, 2003 to July 7, 2004, the subject well was out of compliance with Statewide Rule 10, and the Final Order in Oil & Gas Docket No. 06-0233608.

RECOMMENDATION

Based on the above findings and conclusions, the examiners recommend that the Commission require Wendell A. Reeder, within 30 days, to pay an administrative penalty of \$1,000.

Respectfully submitted,

Thomas H. Richter, P.E.
Technical Hearings Examiner
Office of General Counsel

Mark Helmueller
Hearings Examiner
Office of General Counsel