

ENFORCEMENT ACTION AGAINST TRISTAR EXPLORATION, INC. (OPERATOR NO. 871101) FOR VIOLATIONS OF STATEWIDE RULES ON THE RUDY, MANUEL LEASE, WELL NO. 1 (RRC ID NO. 173578), ROWAN, SOUTH (10,500) FIELD, BRAZORIA COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Reese B. Copeland
Staff Attorney

MOVANT:

Enforcement Section
Railroad Commission of Texas

FOR RESPONDENT:

Andrew A. Alff
President

RESPONDENT:

Tristar Exploration, Inc.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF ORIGINAL COMPLAINT:

March 9, 2004

DATE OF HEARING:

June 23, 2005

HEARD BY:

James M. Doherty, Hearings Examiner

DATE PFD CIRCULATED:

July 22, 2005

STATEMENT OF THE CASE

This proceeding was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent Tristar Exploration, Inc. ("Tristar"), should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the Rudy, Manuel Lease, Well No. 1 (RRC ID No. 173578) ("subject well"), Rowan, South (10,500) Field, Brazoria County, Texas;
2. Whether Tristar has 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 plug the subject well or otherwise place the well in compliance with Statewide Rule 14(b)(2);

3. Whether Tristar should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject well; and
4. Whether any violations of Statewide Rule 14(b)(2) by Tristar should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. §81.0534.

A hearing was held on June 23, 2005. Reese B. Copeland, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Andrew A. Alff, President and Treasurer of Tristar, appeared to represent Tristar and presented evidence. Enforcement’s certified hearing file was admitted into evidence.

APPLICABLE LAW

The operator of a well must properly plug the well when required and in accordance with the Commission’s rules. *See* TEX. NAT. RES. CODE ANN. §89.011(a). The Commission’s Statewide Rule 14(b)(2) provides that plugging operations on each dry or inactive well shall be commenced within a period of one year after drilling or operations cease and shall proceed with due diligence until completed.

Statewide Rule 14(c)(1) provides that the entity designated as the operator of a well specifically identified on the most recent Commission-approved operator designation form filed on or after September 1, 1997, is responsible for properly plugging the well in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

DISCUSSION OF THE EVIDENCE

Official Notice

The examiner has officially noticed organization report records of the Commission showing that, as of the date of the hearing, Tristar: (1) had an active Form P-5 organization report; and (2) had financial security on file in the form of a bond in the amount of \$50,000. The examiner has also officially noticed plugging extension records of the Commission showing that, as of the date of the hearing, the subject well did not have a Statewide Rule 14(b)(2) plugging extension and had not had such an extension since at least July 25, 2003, when a plugging extension was denied based on Tristar’s inability to establish that it had a good faith claim of right to operate the well.

Enforcement

Tristar was designated operator of the subject lease and well by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance), which was approved July 5, 2000, effective July 1, 2000. Five District Office inspections between September 12, 2001, and April 14, 2005, disclosed that the subject well was inactive. No production for the subject well has been reported to

the Commission since January 31, 2000. Between September 14, 2001, and October 31, 2001, the District Office corresponded with Tristar on at least three occasions requesting that Tristar bring the well into compliance with Statewide Rule 14(b)(2), apparently without result. As of the date of the hearing, no Form W-3 (Plugging Record) or Form W-15 (Cementing Affidavit) had been filed or approved for the subject well. Enforcement estimates that the cost to the State of plugging the subject well would be \$25,000.

The affidavit of a staff engineer presented by Enforcement stated that: (1) any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface; (2) 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; and (3) uncased wells allow direct communication between zones and provide unimpeded access to the surface.

Enforcement contends that Tristar violated Statewide Rule 14(b)(2) by failing to commence plugging of the subject well within one year after operations ceased. Enforcement recommends that Tristar be ordered to place the well into compliance with Commission rules and pay an administrative penalty in the amount of \$2,000.

Tristar

Tristar states that it was placed between a rock and a hard place when investors in the subject well declined to put up the money to plug the well, and Tristar did not have the money either. Tristar concedes that it does not have a currently effective oil and gas lease covering the subject property.

Tristar asserts that it has an agreement with RockOil Energy of Texas, Inc., that RockOil will pay to plug the well in return for the salvage value of equipment associated with the well. On April 6, 2005, Tristar filed a Form P-4 to change the operator of the well from Tristar to RockOil, but the Form P-4 was not approved by the Commission for reasons that are not disclosed in the record.¹ Nonetheless, Tristar filed a Form W-3A (Notice of Intention to Plug and Abandon) for the subject well, which stated an anticipated plugging date of June 17, 2005. Tristar recently was advised by RockOil that plugging contractors had been contacted, and the well would be plugged as soon as possible.

EXAMINER'S OPINION

Enforcement established that the subject well has been inactive for more than one year, has not been plugged, and does not have a plugging extension. Enforcement also established that Tristar is the operator with the responsibility to plug the subject well. None of these facts is disputed by Tristar. The examiner thus concludes that Tristar violated Statewide Rule 14(b)(2).

The examiner recommends that Tristar be ordered to plug the subject well and pay an

¹ The Commission's records relating to the subject lease contain "remarks" indicating that when the Form P-4 was filed, a Legal hold existed preventing the transfer of the lease without the approval of the Enforcement Section. The change of operator may also have been precluded by the fact that as of the date the Form P-4 was filed, neither Tristar or RockOil appears to have held a currently effective oil and gas lease covering the subject property.

administrative penalty of \$2,000. The recommendation that the well be ordered to be plugged is based on the fact that the well has been inactive for more than five years, Tristar does not have a currently effective oil and gas lease covering the subject property, and the well cannot qualify for a plugging extension. The enforcement case file includes a letter from the mineral owners requesting that Tristar plug and abandon the subject well.

In recommending an administrative penalty in the amount of \$2,000, the examiner has considered whether Tristar has a history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and whether Tristar has demonstrated good faith, all as required by §81.0531 of the Texas Natural Resources Code. Tristar has no history of previous violations. However, Tristar cannot be said to have demonstrated good faith, because it failed to respond to multiple requests from the District Office to plug the well.² The violation committed by Tristar is serious and presented a hazard to the health and safety of the public because of the threat of pollution of usable quality water presented by unplugged wells. The recommended penalty conforms to the standard penalties in the recommended standard penalty schedule for enforcement cases.

Based on the record in this case, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Tristar Exploration, Inc. (“Tristar”) was given at least ten (10) days notice of this proceeding by certified mail, addressed to Tristar’s most recent Form P-5 Organization Report address. Tristar appeared at the hearing and presented evidence.
2. Tristar is a corporation. As of the date of the hearing, Tristar’s organization report was active, and Tristar had on file financial security in the form of a \$50,000 bond.
3. Tristar has no history of prior Commission orders entered against it for violations of Commission rules.
4. Andrew A. Alff is President and Treasurer of Tristar and was a person in a position of ownership or control of Tristar at the time the violation involved in this docket occurred.
5. The violation committed by Tristar is a violation of a Commission rule related to safety and the prevention or control of pollution.
6. Tristar designated itself to the Commission as the operator of the Rudy, Manuel Lease, Well No. 1 (RRC ID No. 173578) (“subject well”), Rowan, South (10,500) Field, Brazoria County, Texas, by filing a Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) which was approved July 5, 2000, effective July 1, 2000.
7. The subject well has been inactive for more than one year and has not been plugged.

² The earliest of these District Office requests is dated September 14, 2001.

- (a) The well was inactive and unplugged as of District Office inspections on five separate dates between September 12, 2001, and April 14, 2005.
 - (b) No production has been reported to the Commission for the well since January 31, 2000.
 - (c) No Form W-3 (Plugging Record) or Form W-15 (Cementing Affidavit) for the well has been filed with the Commission.
8. No Statewide Rule 14(b)(2) plugging extension is in effect for the subject well. The well has not had a plugging extension since at least July 25, 2003, when an extension was denied based on Tristar's inability to demonstrate a good faith claim of a right to operate the well.
9. At the time of the hearing, Tristar did not have an effective oil and gas lease covering the subject property.
10. Between September 14, 2001, and October 31, 2001, the District Office corresponded with Tristar on at least three separate occasions requesting compliance with Statewide Rule 14(b)(2) with respect to the subject well. These communications with Tristar did not result in compliance.
11. The estimated cost to the State to plug the subject well is \$25,000.
12. Usable quality groundwater in the area was likely to be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well during the period of the well's noncompliance with Statewide Rule 14(b)(2). Unplugged wellbores constitute a cognizable threat to the public health and safety because of the risk of pollution.

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. Tristar Exploration, Inc., is the operator of the Rudy, Manuel Lease, Well No. 1 (RRC ID No. 173578), Rowan, South (10,500) Field, Brazoria County, Texas, as defined by Commission Statewide Rules 14, 58, and 79 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
- 4. As operator, Tristar Exploration, Inc., has the primary responsibility for complying with Statewide Rule 14 [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject well.

5. Tristar Exploration, Inc., violated Statewide Rule 14(b)(2) [Tex. R. R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] by failing to timely plug the subject well or otherwise comply with Statewide Rule 14(b)(2). The subject well has been out of compliance with Statewide Rule 14(b)(2) since at least July 25, 2003.
6. The documented violation by Tristar Exploration, Inc., constitutes an act deemed serious and a hazard to the public health, and demonstrates a lack of good faith within the meaning of §81.0531(c) of the Texas Natural Resources Code.
7. As President and Treasurer of Tristar Exploration, Inc., at the time Tristar violated a Commission rule related to safety and the prevention or control of pollution, Andrew A. Alff, and any organization in which he may hold a position of ownership or control, is subject to the restrictions of §91.114(a)(2) of the Texas Natural Resources Code.

RECOMMENDATION

The examiner recommends that the Commission adopt the attached final order requiring that Tristar Exploration, Inc.:

1. Plug in compliance with Commission rules, the Rudy, Manuel Lease, Well No. 1 (RRC ID No. 173578), Rowan, South (10,500) Field, Brazoria County, Texas; and
2. Pay an administrative penalty in the amount of TWO THOUSAND DOLLARS (\$2,000.00).

Respectfully submitted,

James M. Doherty
Hearings Examiner