

OIL AND GAS DOCKET NO. 09-0253880

THE APPLICATION OF CHESAPEAKE OIL AND GAS OPERATING, INC. TO AMEND THE FIELD RULES FOR THE NEWARK, EAST (BARNETT SHALE) FIELD, BOSQUE, COOKE, ELLIS, ERATH, DENTON, JOHNSON, HILL, HOOD, JACK, MONTAGUE, PALO PINTO, PARKER, SOMERVELL, TARRANT, YOUNG AND WISE COUNTIES, TEXAS

Heard by: Donna K. Chandler, Technical Examiner
Mark J. Helmueller, Hearings Examiner

Procedural history:

Application Received:	July 3, 2007
Notice of Hearing:	July 11, 2007
Hearing held:	January 9, 2008
Transcript date:	January 30, 2008
Proposal for Decision:	April 9, 2008

Appearances:

Representing:

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Chesapeake Operating, Inc.

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EXAMINERS' REPORT AND PROPOSAL FOR DECISION

INTRODUCTION

Chesapeake Operating, Inc. proposes that the field rules for the Newark, East (Barnett Shale) Field be amended to include a provision allowing the penetration point to be legally located off-lease, with notice requirements for the off lease mineral interest owner. Chesapeake did not identify the number of wells which currently fall within this category in its application.

Additionally, Chesapeake proposes, for the purpose of additional acreage assignments in this field, the length of drainhole be based on the distance between penetration point and terminus for wells with an on-lease penetration point. For wells with an off-lease penetration point, Chesapeake proposes that the length of drainhole be the distance from uppermost to lowermost perforation.

Devon proposes a slightly different rule than Chesapeake with respect to additional acreage assignments. Devon proposes that, for the purpose of assigning additional acreage to horizontal wells in the field, the length be measured from the lease line to the terminus in wells which have a penetration point off-lease. For wells which have the penetration point on the lease, the length would be measured from penetration point to terminus. Chesapeake did not have any objection to the adoption of Devon's proposal. Devon also supports Chesapeake's proposal regarding off-lease penetration point and related notice.

STATEMENT OF THE CASE

Field rules for the Newark, East (Barnett Shale) Field include a provision for determination of lease line spacing for horizontal wells. This provision is set out in Rule 2 of the field rules and is set out below:

Horizontal well provision:

1. where the horizontal portion of the well is cased and cemented back above the top of the Barnett Shale Formation, the distance to any property line, lease line or subdivision line will be calculated based on the distance to the nearest perforations in the well, and not based on the penetration point or terminus;
2. where an external casing packer is placed in the well and cement is pumped above the external casing packer to a depth above the top of the Barnett Shale formation, the distance to any property line, lease line or subdivision line will be calculated based on the top of the external casing packer or the closest open hole section in the Barnett Shale.

Since the adoption of Special Field Rule 2, two issues have arisen with respect to the point where a wellbore first penetrates the Barnett Shale formation. In at least 28 wells as identified by the examiners in the attachment to this proposal for decision, the penetration point is not within the unit identified on the as-drilled plat filed with the Commission by the operator. Additionally in many instances, this does not become evident until the directional survey is submitted to the Commission for review. Because Statewide Rule 86(d)(4) requires that all points on the horizontal drainhole be within the proration and drilling unit, if the penetration point for a well is off-lease, the well is in violation of Commission rules.

The second issue arises because the special field rules for the Newark, East (Barnett Shale) Field are silent with regard to assignment of additional allowable based on horizontal drainhole displacement, and therefore Rule 86(d)(1) governs. Rule 86(d)(1) specifies that additional acreage may be assigned to horizontal wells based on horizontal drainhole displacement, which is defined as the distance between penetration point and terminus. In those cases where the penetration point is off-lease, there is uncertainty as to how much additional acreage can be assigned to a horizontal wellbore.

MATTERS OFFICIALLY NOTICED

In order to quantify the extent of the potential issue of off lease penetration points, as noted in the attachment to this proposal for decision, the examiners have taken official notice of 28 completion packages for the Newark, East (Barnett Shale) Field which cannot be validated by the Oil and Gas Division due to off lease penetration points. Only some of the wells were permitted with a notation of an off lease penetration point, or some indication on the plat submitted with the drilling permit application. Additionally, these applications indicate that different approaches have been taken by operators in permitting these wells, ranging from identification of the off lease penetration point and the uppermost or first perforation, to only identifying the uppermost or first perforation. Finally, the applications show that in several instances, Commission staff was not aware that the well penetrated the Newark, East (Barnett Shale) Field outside of the unit boundary until it reviewed the directional survey.

These completion packages also show that five of the wells were drilled from surface locations within the unit boundary, and then directionally deviated off the unit before deviating back onto the unit for the completion interval. This appears to be consistent with the stated objective of operators to maximize the length of the lateral. Two operators have requested hearings seeking exceptions to Statewide Rule 86 for a total of 5 wells out of the 28 officially noticed.

DISCUSSION OF THE EVIDENCE

Chesapeake

Chesapeake proposes that Rule 2 of the field rules for the Newark, East (Barnett Shale) Field be amended with the following additional language to allow an off-lease penetration point:

For any well permitted in this field configured as the above described wells, the penetration point need not be located on the same lease, pooled unit, unitized tract or production sharing agreement tract on which the well is permitted and may be located on an Offsite Tract. When the penetration point is located on such Offsite Tract, the applicant for such a drilling permit must give 21 days notice to the mineral owners of the Offsite Tract. For the purposes of this rule, the mineral owners of the Offsite Tract are (1) the designated operator; (2) all lessees of record for the Offsite Tract where there is no designated operator; and (3) all owners of unleased mineral interests where there is no designated operator or lessee. In providing such notice, applicant must provide the mineral owners of the Offsite Tract with a plat clearly depicting the projected path of the entire wellbore. In the event the applicant is unable, after due diligence, to locate the whereabouts of any person to whom notice is required by this rule, the applicant must publish notice of this application pursuant to the Commission's Rules of Practice and Procedure. If the mineral owners of the Offsite Tract object to the location of the penetration point, the applicant may request a hearing to demonstrate the necessity of the location of the penetration point of the well to prevent waste or to protect correlative rights.

Field rules for the subject field require that no point on the drainhole be closer than 330 feet to any property line, lease line or subdivision line. Generally, in this field, the first perforation is placed in the wellbore after the 90 degree turn has been accomplished. Completion of this 90 degree turn typically requires a distance of about 480 feet from the point the well is kicked off from vertical. This distance is required because the maximum inclination angle is limited to 12% to place and set production casing for the well. If the penetration point is required to be on-lease as specified by Rule 86, there is no mechanical way to have first perforation any closer than 480 feet to the lease line if the turn is commenced after the Newark, East (Barnett Shale) formation is penetrated.

If off-lease penetration points are allowed, a "turn" within the Newark, East (Barnett Shale) Field designated interval could potentially be accomplished off-lease depending on where the well is located. This could potentially allow the first perforation to be closer than 330 feet to lease lines, assuming a Rule 37 exception is granted. For example, if an off-lease penetration point is allowed such that the 90 degree turn can be accomplished at a point 50 feet onto the lease, then there are approximately 280 feet of useable productive wellbore in the Barnett Shale which can be perforated, assuming a Rule 37 exception is granted. (See excerpt attached Chesapeake exhibit No. 7). Chesapeake estimates that the additional reserves which can be recovered from the 280 foot section are 280 MMCF.

Chesapeake believes notice of an off-lease penetration point is appropriate because the presence of a wellbore could influence the ability of the mineral interest owner to develop the mineral estate. Chesapeake argues that the issue of its right to penetrate the formation is a matter to be determined by the civil courts. Chesapeake further urges that the Commission use the same standards as those used to establish the basis for an exception to Statewide Rule 37 when evaluating a protest by the offset mineral interest owner to a well with a penetration point in the Newark, East (Barnett Shale) on or through the offset mineral interest owner's property.

Regarding assignment of additional acreage for horizontal drainhole wells, Chesapeake proposes that the following language be added to Rule 3 of the field rules for the Newark, East (Barnett Shale) Field:

For wells with the penetration point located on the lease, pooled unit, or unitized tract, the provisions of Statewide Rule 86(d), 16. TEX. ADMIN. CODE §3.86(d), pertaining to assignment of acreage for horizontal wells, will apply. For wells with the penetration point outside the lease, pooled unit, or unitized tract, only the distance from the uppermost perforation point to the lowermost perforation point shall be the horizontal drainhole displacement to calculate the additional acreage that may be assigned to the well.

Chesapeake believes its proposed rule will impact only a small number of wells. Chesapeake's average horizontal drainhole length is 2,750 feet. Under the density rule for the field in conjunction with Rule 86, such a well would be allowed to assign up to 480 acres. There are almost 6,400 wells listed on the current proration schedule. Only 53 wells have acreage assignments in excess of 352 acres. Very few wells are assigning maximum additional acreage as already allowed.

Devon

Devon supports Chesapeake's proposed amendment to Rule 2 regarding notice when an off-lease penetration point is sought. However, Devon suggests the following language to amend Rule 3 regarding additional acreage determination:

For all wells except those with the penetration point located on an Offsite Tract, acreage will be assigned to each horizontal drainhole based upon 16. TEX. ADMIN. CODE §3.86(d) with Horizontal Drainhole Displacement equal to the calculated displacement of the horizontal drainhole from the penetration point to the terminus. For wells with the penetration point on an Offsite Tract, only that portion of the Horizontal Drainhole Displacement that underlies the Applicant's Tract shall be included in any proration unit under the provisions hereof, and shall be allocable for the purpose of assigning additional acreage under said Statewide Rule 86(d).

Under this rule, an operator with an off-lease penetration point would be able to assign additional acreage based on the length of the drainhole, measured from the lease line to the terminus. Chesapeake did not object to Devon's proposal.

Devon typically completes Barnett Shale wells by casing and cementing the entire horizontal lateral portion of the wellbore. Wells are perforated in four foot intervals about every 500 feet. Each perforated interval is separately fracture stimulated. Devon believes this technique results in effective stimulation of the Barnett Shale about 250 feet on each side of the perforated interval. Devon's proposed rule would allow operators to select optimum locations for the perforations, instead of placing perforations at locations just to maximize horizontal displacement distances.

Devon also submitted as exhibits the Commission determinations in *Oil & Gas Docket Nos. 09-0254255 and 09-0254256: Applications of Encana Oil & Gas (USA) Inc. for Exceptions to Rule 86(d)(4) For the O.P. Leonard Investments Unit 2, Well No. 2H and Joe Wright Unit Well No. 1H, Newark, East (Barnett Shale) Field, Parker County, Texas.* (hereinafter referred to as the "Encana Dockets") In those two dockets, applicant Encana requested exceptions to Statewide Rule 86(d)(4) for two horizontal wells with off-lease penetration points. Both applications were granted.

In these dockets, Encana established that it was the operator of the offsetting lease where the wellbore penetrated the formation. Encana also was the lessee of a surface lease from the surface owner of the tract on which the surface location for the well is located. Additionally, Encana was the lessee of oil and gas leases covering all mineral interests in the tracts from the well's penetration point off-lease to the terminus and all the tracts within 330 feet of the subject well from its penetration point off-lease. Additionally, per these dockets, the horizontal displacement for the wells for purposes of additional acreage assignment was limited to the distance between the two perforations.

EXAMINERS' OPINION

The examiners recommend that the field rules be amended for the Newark, East (Barnett Shale) Field, but not in the manner requested by Chesapeake or Devon. The examiners agree that the special field rules require clarification with respect to off-lease penetration points, the assignment of additional allowables, and other issues. However, the examiners recommend that the amendments to the special field rules: 1) remain consistent with current Commission rules and precedents with respect to the Newark, East (Barnett Shale) Field; 2) recognize legal requirements related to the Commission's issuance of drilling permits; and, 3) avoid deviation from the technical aspects associated with production from horizontal wells.

Horizontal Displacement Determination

First, it is recommended that, for purposes of determining the horizontal displacement and assigning additional allowable acreage, the length of the drainhole be based on the distance between the first perforation and the last perforation. This is consistent with the special field rule notice requirements related to lease line spacing in the field. Additionally, it is consistent with the recommendation and orders entered in the Encana Dockets. Finally, it recognizes that the productive acreage assigned to a well will be in the vicinity of the perforated intervals of the horizontal drainhole.

The proposals by both Devon and Chesapeake have different standards, depending on whether the penetration point of a horizontal wellbore is off-lease or on-lease. The provisions of Statewide Rule 86 are consistent with regard to spacing and acreage assignment. Under Rule 86, lease line distances are measured to penetration point and terminus, and additional acreage assignments are based on horizontal drainhole displacement between penetration point and terminus. The examiners believe that the field rules for this field should be similarly consistent. The examiners further note that because the wells are not perforated at the penetration point and terminus, the acreage associated with those areas cannot be deemed as productive for the purpose of additional acreage assignments due to the known tight nature of the formation.¹

Off Lease Penetration Points

The examiners recommend that the special field rules also be amended to allow for off lease penetration points where the operator can establish it has the consent of the off lease mineral interest owner or otherwise can show it has the legal right to penetrate a productive mineral formation. Additionally, the examiners recommend clarification of the special field rules for all drilling permit applications for horizontal wells in the Newark, East (Barnett Shale) Field. This clarification will require the operator to identify both the penetration point and the uppermost or first perforation point in the wellbore on its drilling permit application and plat.²

The issue of consent or other legal right related to off lease penetration points was first addressed in the Encana dockets. Encana represented that in both cases, it was the lessee of the offsetting mineral estate and therefore possessed a legal right to penetrate the productive interval, even though that portion of the wellbore would not be perforated and contribute to the overall production from the well. A Finding of Fact concerning the legal right with respect to the off lease penetration point and a Conclusion of Law addressed this issue in both dockets.

Wells permitted under the amended field rules recommended by the examiners would note an off lease penetration point in the remarks section of the Commission Form W-1. A further notation affirming the consent of all off-lease mineral interest owners or otherwise establishing the applicant's legal right to penetrate the productive mineral formation through

¹The examiners note that if an operator chose to perforate and stimulate the "heel" of the wellbore, it could conceivably produce natural gas from that section. One need only look at the numerous successful vertical wells in the Newark, East (Barnett Shale) Field to validate this possibility.

²The use of the uppermost or first perforation point for the purpose of calculating Rule 37 notice may increase the danger that a well was not properly permitted. Several Commission cases have found drilling permits to be *void ab initio* for the lack of proper notice. In those cases mistakes were made during the permit application process which affected the issuance of notice prior to the administrative approval of the permit. Where the perforations are located at the minimum prescribed spacing distance, any inaccuracy in perforating the well or the location of property boundaries could result in a complaint that the original permit is void. While not at issue in this proceeding, the examiners believe it may be appropriate to require an operator to identify **all** perforations in a drilling application. Additionally, if a well is re-perforated, a new drilling permit application may be required in order for the Commission to evaluate whether the notice requirements of the special field rules have been met.

which the well bore passes would also be necessary on the permit application. As discussed further below, inclusion of this information on the permit application is legally required for the Commission's valid exercise of its authority in approving drilling permits.

For wells with off-lease penetration points under current permits, the examiners believe the optimal resolution of this small subset of wells can be addressed through a request for an exception to Statewide Rule 86(d)(4). Additionally, at least two other operators from the group of wells with off lease penetration points officially noticed by the examiners have filed for exceptions to Rule 86 for their wells. A hearing will allow the Commission to verify the operator's legal rights and confirm that there was no intent to circumvent Commission rules related to spacing and assignment of acreage.

The examiners do not recommend adoption of Chesapeake's proposed rule establishing notice requirements and a potential hearing which would validate an off-lease penetration point even over the objection of an off-lease mineral interest owner. The examiners do not question Chesapeake's evidence concerning the maximum inclination angle in turning a well from vertical to horizontal, or the distance calculated to make that 90 degree turn. However, there is no explanation why the turn cannot be started at a depth sufficiently above where the well encounters the Barnett Shale formation so that the penetration point of the formation would be within the unit.

The forms used by the Commission for drilling permit applications recognize that an operator must have the legal right to develop the mineral estate in order obtain a valid drilling permit. Specifically, Commission Form W-1 (Application for Permit to Drill, Recomplete, or Re-Enter) requires an operator to identify whether it has the right to develop the minerals under any right-of-way that crosses or is contiguous to the unit.

In addition to the requirement in the Commission Form W-1 regarding an applicant's legal right to develop minerals under a right of way, Statewide Rule 11 recognizes the importance of limiting drilling activities to the lease or unit where the well is located. Statewide Rule 11(a) specifically provides:

All wells shall be drilled as nearly vertical as possible by normal, prudent, practical drilling operations. **Nothing in this section shall be construed to permit the drilling of any well in such a manner that the wellbore crosses lease and/or property lines (or unit lines in cases of pooling) without special permission.** (Emphasis added)

Commission practice with respect to inquiry into an operator's legal right to develop mineral interests as part of issuing a drilling permit, and the above cited portion of Statewide Rule 11 are consistent with Texas law. In *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943) the Texas Supreme Court recognized the Commission authority to evaluate an applicant's claimed interest in the mineral estate when issuing a permit:

"... the Railroad Commission should not do the useless thing of granting a permit to one who does not claim the property in good faith. The Commission should deny the permit if it does not reasonably appear to it that the applicant has a good-faith claim in the property." *Magnolia* at p. 191.

Under *Magnolia*, if a proposed wellbore will penetrate the mineral formation on property where the operator has not secured a lease, the permit for the well cannot be granted without a showing that the operator has obtained, at the very least, consent from the mineral estate owner. This standard has been applied by the Commission both in its inquiries on the drilling permit application and under Statewide Rule 11. However, the proposed field rule offered by Chesapeake is contrary to both the *Magnolia* case, and the Commission's application of that legal principle to its drilling permit approval process.

The proposed field rule offered by Chesapeake attempts to correct a potential legal deficiency in several permit applications for horizontal wells drilled in the Newark, E. (Barnett Shale) Field. As previously noted, the examiners have officially noticed the completion paperwork for Newark, E. (Barnett Shale) horizontal wells on file with the Commission which cannot be validated due to off lease penetration points and/or terminuses. Chesapeake is the applicant for about ½ of the pending applications with off-lease penetration points.³

Several applications officially noticed identify the "penetration point" on the Commission Form W-1 which is not the penetration point identified by the directional survey submitted with the completion paperwork. However, the penetration point identified in the drilling permit application for the wells appears to match up closely with the actual first perforation in the wellbore.

In support of its proposed field rule regarding notice of an off lease penetration point, Chesapeake asserted that it is a reasonable interpretation of the Newark, E. (Barnett Shale) Field rules regarding notice for the purpose of Statewide Rule 37, to consider the penetration point as equivalent to the first perforations in the well. The examiners recognize that the distinction between the location of the penetration point and the first perforations may be a non-issue where both the penetration point and first perforations are on the unit. However, the distinction between the penetration point and the first perforations can potentially raise a significant legal issue of mineral trespass where the penetration point is not located on unit. Additionally, as noted by the parties at the hearing, the mere presence of a wellbore can influence the ability of the mineral interest owner to develop the mineral estate.

In essence, Chesapeake's proposed field rule would allow an operator to penetrate a productive mineral formation without establishing a legal right in the mineral estate or consent from the mineral estate owner. Because the proposed rule would allow an operator to obtain a drilling permit which would penetrate a productive mineral formation even over the protest of the mineral interest owner, the Commission would endorse a potential mineral trespass when it issued a drilling permit. The examiners do not recommend that a special field rule be adopted for this purpose as it would be inconsistent with prior Commission practice regarding the issuance of drilling permits, inconsistent with Statewide Rule 11, and contrary to well established precedent under Texas law. The examiners therefore recommend against adoption of Chesapeake's proposed amendment to the special field

³ The evidence presented at the hearing indicated that wells with surface locations on the unit, but off lease penetration points are deliberately deviated off lease in order to provide for the maximum length lateral. Because the wells are deliberately deviated to a point outside of the unit without first having obtained permission from the Commission, the "substantial compliance" doctrine under Statewide Rule 11 is not applicable. (See Rule 11(a))

rules.

Finally, though not raised in the hearing, the examiners also recommend that Provision 2 of Rule No. 2 be amended for clarification purposes. The current language for Provision 2 of Rule No. 2 is as follows:

Where an external casing packer is placed in the well and cement is pumped above the external casing packer to a depth above the top of the Barnett Shale formation, the distance to any property line, lease line or subdivision line will be calculated based on the top of the external casing packer or the closest open hole section in the Barnett Shale.

The following language is recommended:

Where external casing packers are placed in the well and cement is pumped above the external casing packer to a depth above the top of the correlative interval for the field, the distance to any property line, lease line or subdivision line will be calculated based on the location of the first and last external casing packers within the correlative interval for the field. No well with external casing packers shall be perforated between the deepest external casing packer and the terminus of the wellbore.

FINDINGS OF FACT

1. Notice of this hearing was given to all persons entitled to notice at least ten (10) days prior to the hearing.
2. Special Field Rule 2 for the Newark, East (Barnett Shale) Field applies to horizontal wells.
 - a. The Special Field rule provides that where the horizontal portion of the well is cased and cemented back above the top of the Barnett Shale Formation, the distance to any property line, lease line or subdivision line will be calculated based on the distance to the nearest perforations in the well, and not based on the penetration point or terminus.
 - b. The Special Field rule provides that where an external casing packer is placed in the well and cement is pumped above the external casing packer to a depth above the top of the Barnett Shale formation, the distance to any property line, lease line or subdivision line will be calculated based on the top of the external casing packer or the closest open hole section in the Barnett Shale.
3. Generally, in Newark, East (Barnett Shale) Field, the first perforation is placed in a horizontal wellbore after the 90 degree turn has been accomplished. Completion of this 90 degree turn typically requires a distance of about 480 feet.
4. Statewide Rule 86(d)(4) requires that all points on the horizontal drainhole be

within the proration and drilling unit for the well. For determination of additional acreage assignable under Rule 86, the distance between penetration point and terminus of the horizontal drainhole is used.

5. At least 28 horizontal wells completed in the Newark, East (Barnett Shale) Field have completion papers filed which establish that the well has a penetration point of the Newark, East (Barnett Shale) Field located outside the boundary of the acreage assigned to the well in the drilling permit application.
 - a. These applications also show that several of the wells were drilled from surface locations within the unit boundary, then directionally deviated off the unit, then deviated back onto the unit for completion. This appears to be consistent with the stated objective of operators to maximize the length of the lateral.
 - b. Two operators have requested hearings seeking exceptions to Statewide Rule 86 for a total of 5 wells out of the 28 identified.
6. In Oil and Gas Docket Nos. 09-0254255 and 09-0254256, Encana Oil & Gas (USA) Inc. obtained exceptions to Statewide Rule 86(d)(4) for two wells which have off-lease penetration points of the Barnett Shale formation.
 - a. Encana established that it was the operator of the offsetting lease where the wellbore penetrated the formation and the lessee of a surface lease from the surface owner of the tract on which the surface location for the well is located.
 - b. Encana established that it was the lessee of oil and gas leases covering all mineral interests in the tracts from the well's penetration point off-lease to the terminus and in the tracts within 330 feet of the subject well from its penetration point off-lease.
7. Amendment of the special field rules to allow off lease penetration points is appropriate where the operator can establish it has the consent of the off lease mineral interest owner or otherwise can show it has the legal right to penetrate a productive mineral formation.
8. Identification of the penetration point and the uppermost or first perforation point in a wellbore on all drilling permit applications for horizontal wells in the Newark, East (Barnett Shale) Field is necessary to evaluate the applicability of notice requirements under Special Field Rule 2.
9. If a wellbore will penetrate the mineral formation on property where the operator has not secured a lease, the permit for the well cannot be granted without a showing that the operator has at least obtained consent from the mineral estate owner.
10. Barnett Shale wells are typically completed by casing and cementing the entire horizontal lateral portion of the wellbore. Wells are perforated in four

foot intervals about every 500 feet. Each perforated interval is separately fracture stimulated. This technique results in effective stimulation of the Barnett Shale about 250 feet on each side of the perforated interval.

11. Because of the tight nature of the Barnett Shale and the fact that only perforated intervals contribute to production, assignment of additional acreage to horizontal drainholes in the Newark, East (Barnett Shale) Field is more accurately described as the distance between the first and last perforations than the distance between penetration point and terminus.

CONCLUSIONS OF LAW

1. Proper notice was given to all parties entitled to notice as required by all applicable rules and applicable statutory and regulatory provisions.
2. All things necessary to give the Commission jurisdiction to decide this matter have been performed or have occurred.
3. Pursuant to the decision of the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943) the Commission has the authority to evaluate an applicant's claimed interest in the mineral estate when issuing a permit.
4. An operator must possess the legal right to develop the mineral estate in order obtain a valid drilling permit.
5. Statewide Rule 11(a) limits drilling activities to the lease or unit where the well is located, absent special permission.
6. Pursuant to the decision of the Texas Supreme Court in *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189, 191 (Tex. 1943) if a proposed wellbore will penetrate the mineral formation on property where the operator has not secured a lease, the permit for the well cannot be granted without a showing that the operator has obtained, at the very least, consent from the mineral estate owner.
7. Amending the field rules for the Newark, East (Barnett Shale) Field is necessary to prevent waste and protect correlative rights.

EXAMINERS' RECOMMENDATION

Based on the above findings and conclusions, the examiners recommend that the field rules for the Newark, East (Barnett Shale) Field be amended as reflected in the attached Final Order.

Respectfully submitted,

Donna K. Chandler
Technical Examiner

Mark J. Helmueller
Hearings Examiner

WELLS WITH PENETRATION POINT OFF LEASE

Carrizo Oil & Gas, Inc. Teegarden Unit "B" No. 2H API 439-32267	API 251-31494
Chesapeake Operating Inc. Poly E No. 1H API 439-32286	Chesapeake Operating Inc. Brentwood A No. 4H API 439-31926
Chesapeake Energy Corporation Gainer No. 2H API 251-31493	Chesapeake Operating Inc. Falvel No. 10H API 251-31796
Chesapeake Operating Inc. S. Mann No. 11H API 251-31673	Chesapeake Operating Inc. Poly D No. 3H API 439-32117
Chesapeake Operating Inc. Brentwood A No. 3H API 439-31437	Chief Oil & Gas LLC Alliance-Hugg Unit No. 1H API 121-33056
Chesapeake Operating Inc. Gainer No. 1H API 251 31453	Encana Oil & Gas (USA), Inc. Pyramid Acres Unit No. 4 No. 101H API 439-31712
Chesapeake Operating Inc. Cherry Ridge No. 2H API 251 32083	Endeavor Energy Resources, L.P. Denton State School No. 1H API 121-32313
Chesapeake Operating Inc. S. Mann No. 8H API 251-31672	EOG Resources, Inc. Zora Mae No. 1H API 251-31853
Chesapeake Operating Inc. Rock Creek No E No.7H API 439-31727	EOG Resources, Inc. Little Creek A No. 3H API 237-39060
Chesapeake Operating Inc. Olai No. 1H API 251-31597	**Harding Company DRS No. 4H API 367-34226
Chesapeake Energy Corporation Gainer No. 3H	Range Production Company Tucker-Campbell Unit No. 3H API 121-33072

Range Production Company
Tucker-Campbell No. 2H
API 121-33071

**Range Production Company
Green Bay Unit No. 1H
API 439-31907

**Range Production Company
Green Bay Unit No. 2H
API 439-31924

**Range Production Company
Carter-Alcon Unit No. 1H
API 439-32121

**Range Production Company
Carter-Alcon Unit No. 3H
API 439-32128

XTO Energy Inc.
Maple Tree No. 3H
API 42-439-31644

XTO Energy Inc.
TRWD H W Unit No. 4H
API 439-32155

**Hearing has been requested for
exception to Rule 86