



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 04-0299463

ENFORCEMENT ACTION AGAINST CHESTNUT EXPLORATION AND PRODUCTION, INC. (OPERATOR NO. 147847) FOR VIOLATIONS OF STATEWIDE RULES ON THE SAUZ MULATOS PASTURE LEASE (03366), WELL NOS. 12, 24, 35, 155 and 156, WILLAMAR FIELD, WILLACY COUNTY, TEXAS

APPEARANCES

FOR THE RAILROAD COMMISSION OF TEXAS:

David Bell, Staff Attorney, Enforcement Section
Olin Macnamara, RRC Geoscientist IV

FOR CHESTNUT PETROLEUM, INC.

Raul Garza, Consultant

PROCEDURAL HISTORY:

Notice of Hearing:	January 17, 2017
Hearing on the merits:	February 16, 2017
Record closed:	February 16, 2017
Proposal for Decision issued:	March 8, 2017
Heard by:	Clayton J. Hoover, Administrative Law Judge

SUMMARY

In Docket No. 04-0299463, the Railroad Commission of Texas (“Staff”) alleges that Chestnut Exploration and Production, Inc. (Operator No. 147847), (“Chestnut”), is in violation of Statewide Rule 8(d)(1), Statewide Rule 73(i) and the Texas Natural Resources Code § 91.706 at Chestnut’s Sauz Mulatos Pasture Lease (03366), located in Willacy County, Texas.

Chestnut’s consultant, Raul Garza, appeared at hearing, but failed to present evidence sufficient to demonstrate that Chestnut is not in violation of Commission Rules and the Texas Natural Resources Code, as alleged by Staff.

The record evidence supports all violations as alleged by Staff. Staff seeks an administrative penalty of \$8,462.50 and requests that the Lease be brought into compliance with all Commission Statewide Rules.

APPLICABLE AUTHORITY

SWR 8(d)(1), titled *Pollution control*:

Prohibited disposal methods. Except for those disposal methods authorized for certain wastes by paragraph (3) of this subsection, or §3.98 of this title (relating to Standards for Management of Hazardous Oil and Gas Waste), or disposal methods required to be permitted pursuant to §3.9 of this title (relating to Disposal Wells) (Rule 9) or §3.46 of this title (relating to Fluid Injection into Productive Reservoirs) (Rule 46), *no person may dispose of any oil and gas wastes by any method without obtaining a permit to dispose of such wastes.* The disposal methods prohibited by this paragraph include, but are not limited to, the unpermitted discharge of oil field brines, geothermal resource waters, or other mineralized waters, or drilling fluids into any watercourse or drainageway, including any drainage ditch, dry creek, flowing creek, river, or any other body of surface water.

SWR 73(i), addressing *Cancellation of certificate of compliance*:

Pursuant to Texas Natural Resources Code, §91.706(a), upon notice from the Commission that a certificate of compliance as to any well has been canceled as provided in this section, the operator of such well shall not use that well for production, injection, or disposal until a new certificate of compliance with respect to the well has been issued by the Commission as provided in this section. Pursuant to Texas Natural Resources Code, §85.3855, failure to comply with this subsection may subject a person to a penalty of up to \$10,000 per violation.

EVIDENCE PRESENTED

STAFF'S CASE

Staff offered into evidence four exhibits and the testimony of Mr. Olin Macnamara—a Railroad Commission of Texas Geoscientist. Staff presented exhibits showing Chestnut's expired P-5 and information on the Sauz Mulatos Pasture Lease (03366), including a series of District Office inspection reports (accompanied by photographic evidence) of the Lease—each prepared on various dates by the Commission's Oil and Gas Division, District 4.¹ Each District Office inspection report summarily describes conditions found at the Lease on the date that the inspection took place.²

Staff states that the above-described Inspection Reports (accompanied by photographic evidence) demonstrate violations of Statewide Rule 8(d)(1) and that the Lease has not been brought into compliance.

As its third exhibit, Staff presented a proration schedule showing that the lease was severed in August, 2014, and that production continued until October, 2016 in violation of Commission Statewide Rule 73(i) and the Texas Natural Resources Code 91.706.

Staff maintains that the Sauz Mulatos Pasture Lease (03366) is in violation of Statewide Rule 8(d)(1) for the unpermitted disposal of oil and gas wastes and Statewide Rule 73(i) and the Texas Natural Resources Code 91.706 for producing the well after cancellation of the certificate of compliance. Staff requests that Chestnut be assessed administrative penalties in the amount of \$8,462.50 and ordered to place the Lease into compliance with all Commission rules and regulations.

CHESTNUT'S CASE

Chestnut's consultant, Raul Garza, appeared at hearing, but failed to provide evidence, or otherwise articulate a legal basis, to contradict proof that it is responsible for violations of Statewide Rule 8(d)(1).

ADMINISTRATIVE LAW JUDGE OPINION

Chestnut offered no evidence to contradict proof that it is responsible for violations of Statewide Rules 8(d)(1) and 73(i). Without evidence to the contrary, the record in this case consists of undisputed evidence that Chestnut committed the violations as alleged by Staff. Chestnut has no history of violations of Commission rules and regulations.

¹ Staff Exh. 4

² Staff Exh. 4

The Administrative Law Judge recommends that the Commission assess Chestnut an administrative penalty in the amount of \$8,462.50, and to order Chestnut to bring the Lease into compliance with all Commission rules and regulations. The maximum penalty available under Tex. Admin. Code §83.051(b)(1) would be \$10,000 per violation per day with each day constituting a separate violation under §83.051(b-1). The violations continued for over 240 days, and staff found no evidence of good faith. Staff used the Penalty Guidelines of Rule 107 to arrive at the recommended penalty contained herein of \$8,462.50.

CONCLUSION

The Administrative Law Judge agrees with Staff that Chestnut has violated Statewide Rules 8(d)(1) and 73(i) and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Chestnut Exploration and Production, Inc. (Operator Number 147847) was given at least ten (10) days notice of this hearing by certified mail sent to its most recent Form P-5 address.
2. Chestnut Exploration and Production, Inc. appeared at the hearing through Raul Garza, Consultant.
3. As established by Chestnut Exploration and Production, Inc.'s most recent Form P-5 *Organization Report*, Chestnut Exploration and Production, Inc. is a corporation with Mark A. Plummer as President.
4. Chestnut Exploration and Production, Inc. designated itself as the operator of the Sauz Mulatos Pasture Lease (03366), Well Nos. 12, 24, 35, 155, and 156 by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective August 2, 2014, approved October 23, 2014.
5. The violation in this docket is a violation of Commission rules related to safety and the prevention or control of pollution.
6. Chestnut Exploration and Production, Inc. disposed of oil and gas wastes at the Sauz Mulatos Pasture Lease (03366) without a permit to dispose of such wastes.
7. District Office field inspections conducted from June 18, 2015 to February 10, 2017 revealed that Chestnut Exploration and Production, Inc.'s Sauz Mulatos Pasture Lease (03366) is in violation of Statewide Rule 8(d)(1) and 91(c)(4)(C)

8. Chestnut Exploration and Production, Inc.'s violation of 16 TEX. ADMIN. CODE § 3.8(d)(1) is serious and a hazard to the public health and safety, in that unpermitted discharges of oil and gas wastes can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.
9. Chestnut Petroleum, Inc. has no prior history of violations of Commission rules.
10. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto Mark A. Plummer, as President, was a person who held a position of ownership or control in Chestnut Exploration and Production, Inc.
11. Chestnut Exploration and Production, Inc. acted in bad faith because it failed to correct a Commission rule violation on the subject lease and failed adequately to explain its inaction to the Commission.

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. By disposing of oil and gas wastes at the Sauz Mulatos Pasture Lease (03366) without a permit, Chestnut Exploration and Production, Inc. violated 16 Tex. Admin. Code § 3.8(d)(1) and § 3.91(c)(4)(C)
4. The documented violations committed by Chestnut Exploration and Production, Inc. constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code § 81.0531.
5. Chestnut Exploration and Production, Inc. did not demonstrate good faith within the meaning of Texas Natural Resources Code § 81.0531.

RECOMMENDATIONS

The Administrative Law Judge recommends that the above Findings of Fact and Conclusions of Law be adopted and that Chestnut Exploration and Production, Inc. be assessed an administrative penalty of \$8,462.50, as discussed above.

The Administrative Law Judge also recommends that Chestnut Exploration and Production, Inc. be directed to place the Sauz Mulatos Pasture Lease (03366) fully into compliance with all Commission rules and regulations within 30 days of the date this order becomes final

The Administrative Law Judge also recommends that Chestnut Exploration and Production, Inc. and Mark A. Plummer be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114.

RESPECTFULLY SUBMITTED,

CLAYTON J. HOOVER
Administrative Law Judge