



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 7B-0294231

ENFORCEMENT ACTION AGAINST REDWOOD OPERATING, INC. (OPERATOR NO. 697137) FOR VIOLATIONS OF STATEWIDE RULES ON THE REEVES LEASE (LEASE NO. 26551), WELL NOS. 1 AND 2, PURVIS (FRY) FIELD AND ON THE REEVES "A" LEASE, WELL NO. 1, BROWN COUNTY REGULAR FIELD, BROWN COUNTY, TEXAS

PROPOSAL FOR DECISION

HEARD BY:

Jennifer Cook – Administrative Law Judge

PROCEDURAL HISTORY:

Notice of Hearing Date:

February 1, 2017

Hearing Date:

March 16, 2017

Proposal for Decision Issued:

May 24, 2017

APPEARANCES:

For Commission Staff –

Kristi Reeve, Attorney

Bill Drury, Legal Assistant

Olin Macnamara, Oil & Gas Division, Field Operations

For Redwood Operating, Inc. –

Richard Millard, President

Roland R. Baker, Consultant

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I. Statement of the Case

This is an enforcement case alleging violations of Commission rules by Redwood Operating, Inc. ("Redwood" or "Respondent"), Operator No. 697137, on the Reeves Lease (Lease No. 26551), Well Nos. 1 and 2 ("Wells 1 and 2"), and on the Reeves "A" Lease, Well No. 1 ("Well 1A") all in the Brown County Regular Field in Brown County.

Railroad Commission ("Commission" or "RRC's") staff ("Staff") initiated this case claiming Redwood is in violation of Statewide Rule 14(b)(2) because Well Nos 1 and 2 and Well 1A are out of compliance inactive wells. Staff asserts the wells are inactive, do not have plugging extensions and are required to be plugged. After the case was initiated, the leases were transferred to another operator and the wells are now in compliance. Staff seeks a penalty of \$25,500.00 against Redwood for the time that Redwood was in violation.

Redwood does not dispute the violations. Redwood asserts that the violations were resolved after Redwood became aware of the violations. Redwood asserts that it assisted in finding a new operator and getting the leases into compliance.

The Administrative Law Judge ("ALJ") respectfully submits this Proposal for Decision ("PFD") and recommends the Commission find that the violations have occurred as alleged and assess a penalty of \$25,500.00 against Redwood for the violations.

II. Jurisdiction and Notice¹

Sections 81.051 and 81.052 of the Texas Natural Resources Code provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission. The Commission has authority to enforce statutes, rules and orders within its jurisdiction.² The Commission expressly has jurisdiction over inactive wells.³

In a Commission enforcement case, Commission rules state that notice of an enforcement hearing with the complaint for the case included is sufficient notice.⁴ The Administrative Procedures Act requires reasonable notice of not less than ten days and that the contents of the notice must include:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

¹ The audio file for the hearing in this case is referred to as "Tr. Vol. [volume no.] at [hours:minutes]." Staff's exhibits admitted during its direct case are referred to as "Staff Ex. [exhibit no.]." Redwood had no exhibits.

² See, e.g., TEX. NAT. RES. CODE §§ 85.041-.042; see also TEX. NAT. RES. CODE ch. 91.

³ See, e.g., TEX. NAT. RES. CODE §§ 89.041-.042.

⁴ 16 TEX. ADMIN. CODE § 1.49(c).

- (3) a reference to the particular sections of the statutes and rules involved;
and
- (4) a short, plain statement of the factual matters asserted.⁵

On February 1, 2017, Staff sent Redwood the Second Amended Original Complaint (“Complaint”) for this case and a Notice of Hearing (“Notice”) setting the hearing for March 16, 2017.⁶ The Notice with the Complaint provided the time, place, and nature of the hearing; statements regarding the legal authority and jurisdiction under which the hearing was to be held; references to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. Both Staff and Redwood appeared at the hearing.

III. Applicable Legal Authority

Statewide Rule 14(b)(2) requires the commencement of plugging operations on each inactive well within one year after drilling or operations cease unless the operator obtains an extension of the plugging deadline.⁷

The operator of a well identified on the most recent Commission approved operator designation form (“Form P-4”) is responsible for properly plugging that well in compliance with Commission rules and regulations.⁸

An inactive well is defined as:

An unplugged well that has been spudded or has been equipped with cemented casing and that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.⁹

In sum, Commission rules and statutes require an operator of a well to plug that well if it has been inactive for twelve months, unless the operator obtains a plugging extension from the Commission.

IV. Discussion of Evidence

Staff presented testimony from one witness and 9 exhibits.¹⁰ Redwood provided testimony from two witnesses and no exhibits.

⁵ Tex. Gov’t Code §§ 2001.051(1) and 2001.052(a).

⁶ See Notice of Hearing dated February 1, 2017.

⁷ 16 TEX. ADMIN. CODE § 3.14(b)(2).

⁸ 16 TEX. ADMIN. CODE §§ 3.14(c)(1) and 3.58(a)(2); *see also* TEX. NAT. RES. CODE §§ 89.011(a) and 89.022.

⁹ 16 TEX. ADMIN. CODE § 3.15(a)(6); *see also* TEX. NAT. RES. CODE § 89.002(a)(12).

¹⁰ This case was heard at the same time as two other enforcement cases (O&G Docket Nos. 7B-0298247 and 09-0295358) against Redwood for efficiency. Each exhibit was given a unique exhibit number. Staff’s exhibits pertaining to this case were Exhibits 1-8 and Exhibit A.

A. Summary of Staff's Evidence and Argument

Staff's only witness was Olin Macnamara, a geoscientist with the Commission.¹¹ He has been employed at the Commission since 2001 and works with Commission district offices on technical issues; one of his responsibilities is to review inspection reports.

Redwood's most recent Commission Form P-5 (Organization Report) ("Form P-5") was received on July 28, 2013.¹² The only officer listed is Richard Scott Millard as President and Secretary. Ms. Elisabeth Pardon is listed as a Texas Resident Agent. The Notice and Complaint were sent to Mr. Millard and Ms. Pardon at the addresses provided on the Form P-5.¹³

The current Form P-5 status of Respondent is delinquent. The last date a Form P-5 was filed is June 28, 2013.¹⁴ Mr. Macnamara testified that the Form P-5 expired on or about May 31, 2014. He further testified that because Respondent does not have an active Form P-5, it is not allowed to operate a well in Texas.¹⁵ Respondent is also non-compliant with "SB639" according to Commission records.¹⁶ Mr. Macnamara testified and Commission records reflect that the non-compliant status is for other inactive well violations in a final order in Oil & Gas Docket No. 20-0285006 which became final on or about December 9, 2013.¹⁷

1. Staff's evidence regarding Wells 1 and 2 on the Reeves Lease

Wells 1 and 2 are located on the Reeves Lease. The current record operator of the Reeves Lease is Sapphire Energy ("Sapphire"), effective on April 1, 2016.¹⁸ Redwood was the operator from August 25, 2009 until Sapphire became the operator in April 2016.¹⁹ The last reported production from the Reeves Lease was in April 2014.²⁰

Mr. Macnamara provided Commission inspection reports dated August 4, 2014, August 14, 2014, September 9, 2014 and October 21, 2014.²¹ Wells 1 and 2 were inactive at the original August 4 inspection; at the August 14 inspection, the wells were active and pumping during the inspection despite zero production being reported for that month and even though Respondent had a delinquent Form P-5 and thus no authority to operate a well in Texas. At both the September 9 and October 21, 2014 inspections, Wells 1 and 2 were inactive; a seal was placed on the wells on September 9 that was still in place October 21.

¹¹ Tr. Vol. 1 at 00:13:00-00:35 (Wells 1 and 2); 00:36-00:60 (Well 1A).

¹² Staff Ex. 1 at 1-3.

¹³ See Notice of Hearing dated February 1, 2017.

¹⁴ Staff Ex. 1 at 4.

¹⁵ See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

¹⁶ Staff Ex. 1 at 4.

¹⁷ Staff Ex. 1 at 6.

¹⁸ Staff Ex. 2 at 1.

¹⁹ Staff Exs. 2 at 2, 3, 3a.

²⁰ Staff Exs. 3, 3a.

²¹ Staff Ex. 4.

Since Sapphire is the current operator for Wells 1 and 2, Staff only requests a penalty for violation of Statewide Rule 14(b)(2) during the time that Redwood was the operator of the wells and was not in compliance. Mr. Macnamara testified the requested penalty was calculated using the guidelines in Statewide Rule 107.

2. Staff's evidence regarding Well 1A on the Reeves "A" Lease

Well 1A is located on the Reeves "A" Lease. The current record operator of the Reeves "A" Lease is Sapphire, effective on April 1, 2016.²² Redwood was the operator from November 15, 2009 until Sapphire became the operator in April 2016.²³ Well 1A is an injection well.²⁴ The last reported injection for the Reeves "A" Lease was in March 2010; there has been no production either.²⁵

Mr. Macnamara provided Commission inspection reports dated August 4, 2014, August 14, 2014, September 9, 2014 and October 21, 2014.²⁶ Well 1A was inactive at the original August 4 inspection; at the August 14 inspection, Well 1A was active and there was disposal during the inspection despite zero injection being reported for that month and even though Respondent had a delinquent Form P-5 and thus no authority to operate a well in Texas. At both the September 9 and October 21, 2014 inspections, Well 1A was inactive.

Since Sapphire is the current operator for Well 1A, Staff only requests a penalty for violation of Statewide Rule 14(b)(2) during the time that Redwood was the operator of the wells and was not in compliance. Mr. Macnamara testified the requested penalty was calculated using the guidelines in Statewide Rule 107.

On cross examination, Mr. Macnamara discussed the enforcement process and the process for notifying operators of violations. Typically, the first time an inspector documents a violation, he notes it in the inspection report and a letter is sent to the operator notifying the operator of the violation and allowing time for the operator to remedy the violation without further enforcement. The second time the same violation is observed, a certified letter is sent to the operator notifying the operator of the violation and allowing time for the operator to achieve compliance without further enforcement. If the violation is documented a third time after the two letters, the matter is referred to the Commission Enforcement Section and an enforcement case is pursued including the assessment of penalties. All correspondence to the operator is sent to the operator's Form P-5 address on file with the Commission.²⁷

²² Staff Ex. 5 at 1.

²³ Staff Exs. 5 at 2, 7, 7a.

²⁴ Staff Ex. 6 at 1.

²⁵ Staff Exs. 6, 7, 7a.

²⁶ Staff Ex. 8.

²⁷ See, e.g., Tr. Vol. 1 at 01:42-01:45. There are some violation that are referred directly to the Enforcement Section when they are initially observed but there are no violations meeting that criteria in this case.

B. Summary of Redwood's Evidence and Argument

Redwood's witnesses were Mr. Richard Millard, President of Redwood, and consultant Roland Baker.²⁸

Redwood did not deny the violations or provide any evidence controverting Staff's evidence. Redwood maintains it is merely a "contracting" operator for other operators that are ineligible for a current Form P-5. For example, if an operator cannot obtain a Form P-5 due to unresolved violations, Redwood agrees to be the operator of record at the Commission and the ineligible operator still operates the well. Redwood was the operator for Dwight Northcutt in this case, who was the operator of the Reeves and Reeves "A" Lease before Redwood.²⁹

Mr. Millard claims Redwood assisted in getting the new operator, Sapphire, and now the wells are in compliance. He thought he and Mr. Northcutt had resolved this matter with Staff.

V. ALJ's Analysis

The ALJ recommends that the Commission find the violations occurred as alleged and assess Staff's recommended penalty of \$25,500.00 against Redwood for the violations.

The only rule alleged to be violated is 16 TEX. ADMIN. CODE § 3.14(b)(2), otherwise known as Statewide Rule 14(b)(2). Staff alleges that three wells—two on the Reeves Lease and one on the Reeves "A" Lease—are inactive, ineligible for plugging extensions and have not been plugged as required by Statewide Rule 14(b)(2).

According to Commission records, Redwood does not have an active approved Form P-5 and has not had one since May 2014. As such, Redwood has been prohibited from engaging in oil and gas exploration and production activities in Texas, including operating oil or gas wells.³⁰ Additionally, Redwood is identified in Commission records as non-compliant with "SB639." "SB639" refers to Senate Bill 639 that was passed in 1995 and amended TEX. NAT. RES. CODE § 91.114 to prohibit approval of organization reports (i.e. Form P-5s) from persons or entities that have been found to be in violation of certain Commission regulations, mainly violations relating to safety or the prevention or control of pollution.³¹ Consequently, because Redwood is non-compliant with "SB639" according to Commission records, it is currently ineligible to obtain approval of a P-5.³²

²⁸ Tr. Vol. 1 at 00:08-00:11.

²⁹ See Staff Exs. 3, 7.

³⁰ See 16 TEX. ADMIN. CODE § 3.1(a)(1).

³¹ Act of 1995, 74th Leg., R.S., ch. 617 (S.B. 639), § 1, eff. Sept. 1, 1995 (codified at Tex. Nat. Res. Code § 91.114

³² A person can regain eligible status for a Form P-5 approval by correcting the violations and paying all applicable penalties, clean up and plugging costs. See TEX. NAT. RES. CODE § 91.114(d).

In addition to being prohibited from operating a well, because Redwood does not have an active Form P-5, it is ineligible for extensions of plugging deadlines for inactive wells.³³

A. The Reeves Lease

Redwood was the operator of record for Wells 1 and 2 on the Reeves Lease from August 25, 2009 until April 2016. There was no reported production for Wells 1 and 2 between April 2014 and April 2016. Additionally, according to Commission inspection reports dated September 9 and October 21, 2014 the wells were unplugged, inactive and sealed. Because these wells were unplugged and there was no reported activity for over twelve months, they qualify as inactive wells per Commission rules.³⁴

Statewide Rule 14(b)(2) requires operators to commence plugging an inactive well within a year after operations cease. According to the evidence, operations of Wells 1 and 2 ceased no later than September 9, 2014; they became inactive wells and plugging operations were required to commence no later than September 9, 2015. There is no dispute that the wells were not plugged while Redwood was the operator, until April 2016. As such, Redwood was in violation of Statewide Rule 14(b)(2) for Wells 1 and 2 from at least September 9, 2015 until April 2016. There is evidence that Redwood was in violation from April 2015 (twelve months after reported production ceased) until April 2016. Moreover, Redwood was not authorized to operate wells in Texas after May 2014.

B. The Reeves "A" Lease

Redwood was the operator of record for Well 1A on the Reeves "A" Lease from November 15, 2009 until April 2016. Well 1 is an injection well and there is no reported injection for Well 1A since March 2010; as expected, there was also no reported production from this injection well. Additionally, according to Commission inspection reports dated September 9 and October 21, 2014, Well 1A was unplugged and inactive. Because Well 1A was unplugged and there was no reported activity for over twelve months, it qualifies as an inactive well per Commission rules.³⁵

Statewide Rule 14(b)(2) requires operators to commence plugging an inactive well within a year after operations cease. According to the evidence, operations of Well 1A ceased no later than September 9, 2014; it became an inactive well and plugging operations were required to commence no later than September 9, 2015. There is no dispute that Well 1A was not plugged while Redwood was the operator, until April 2016. As such, Redwood was in violation of Statewide Rule 14(b)(2) for Well 1A from at least September 9, 2015 until April 2016. There is evidence that Redwood was in violation from March 2011 (twelve months after reported injection ceased) until April 2016. Moreover, Redwood was not authorized to operate wells in Texas after May 2014.

³³ See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

³⁴ See 16 TEX. ADMIN. CODE § 3.15(a)(6).

³⁵ See 16 TEX. ADMIN. CODE § 3.15(a)(6).

C. The Penalty

Staff recommends a penalty of \$25,500.00 for the Statewide Rule 14(b)(2) violations for the three wells based on the penalty guidelines in Statewide Rule 107.

The Commission may assess administrative penalties against Respondent up to \$10,000 per day for each violation, with each day such violation continues constituting a separate violation.³⁶ Commission Statewide Rule 107 provides guidelines to be utilized when assessing enforcement penalties.³⁷ Statewide Rule 107 provides factors that are to be considered. Specifically, Statewide Rule 107(d) states:

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

- (1) the person's history of previous violations;
- (2) the seriousness of the violation;
- (3) any hazard to the health or safety of the public; and
- (4) the demonstrated good faith of the person charged.³⁸

Rule 107 provides guideline minimum penalties for typical violations.³⁹ The guideline minimum penalty for failure to plug an onshore well is \$2,000 plus \$1 per foot of total depth of the well.⁴⁰

The violations at issue occurred over an extended period. The ALJ finds the evidence supports assessment of the \$25,500.00 penalty recommended by Staff.

VI. Recommendation, Proposed Findings of Fact and Proposed Conclusions of Law

Based on the record in this case and evidence presented, the ALJ recommends that the Commission find that the alleged violations occurred; assess the penalty recommended by Staff; adopt the following findings of fact and conclusions of law; and issue the recommended following proposed ordering provisions.

Findings of Fact

1. On February 1, 2017, Redwood Operating, Inc. ("Respondent"), Operator No. 697137, was sent the Second Amended Original Complaint ("Complaint") for this case and a Notice of Hearing ("Notice"), for March 16, 2017, by certified and first

³⁶ TEX. NAT. RES. CODE § 81.0531.

³⁷ See 16 TEX. ADMIN. CODE § 3.107(b).

³⁸ 16 TEX. ADMIN. CODE § 3.107(d).

³⁹ 16 TEX. ADMIN. CODE § 3.107(e)(1) and (j).

⁴⁰ 16 TEX. ADMIN. CODE § 3.107(e)(1)(Table 1) and (j)(Table 5).

- class mail, addressed to the most recent Commission Form P-5 (Organization Report) ("Form P-5") address. Respondent's officers and agents as identified on the Form P-5 were each sent the Complaint and Notice by certified and first class mail, addressed to their last known address.
2. The Notice with the Complaint provided the time, place, and nature of the hearing; statements regarding the legal authority and jurisdiction under which the hearing was to be held; references to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted.
 3. Both Staff and Redwood appeared at the hearing on March 16, 2017.
 4. Respondent was given more than 30 days' notice of the Complaint and Notice.
 5. On or about June 28, 2013, Respondent filed its most recent Form P-5 with the Commission reporting that its officers consist of the following individual: Richard Scott Millard, President and Secretary.
 6. Richard Scott Millard was in a position of ownership or control of Respondent, as defined in section 91.114 of the Texas Natural Resources Code, during the time period of the violations of Commission rules committed by Respondent.
 7. The violations of Commission rules committed by Respondent are related to safety and the control of pollution.
 8. Respondent designated itself to the Commission as the operator of the Reeves Lease (Lease No. 26551), Well Nos. 1 and 2 ("Wells 1 and 2"), by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective August 25, 2009. Respondent remained the operator of record for Wells 1 and 2 until the subsequent operator of record, Sapphire Energy ("Sapphire"), was approved, effective April 1, 2016.
 9. Respondent designated itself to the Commission as the operator of the Reeves "A" Lease (Lease No.26644), Well No. 1 ("Well 1A"), by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective November 15, 2009. Respondent remained the operator of record for Well 1A until the subsequent operator of record, Sapphire, was approved, effective April 1, 2016.
 10. There has been no reported production for Wells 1 and 2 since April 2014.
 11. Well 1A is an injection well and there has been no reported injection since March 2010.
 12. Respondent's Form P-5 has been delinquent since approximately May 2014. There have been no, and Respondent was not eligible for, plugging deadline extensions for Wells 1 and 2 or Well 1A.

13. Commission inspection reports made on September 9 and October 21, 2014, and no production reported to the Commission since April 2014, show Wells 1 and 2 were inactive for a period greater than one year while Redwood was the operator of record.
14. Commission inspection reports made on September 9 and October 21, 2014, and no injection reported to the Commission since March 2010, show Well 1A was inactive for a period greater than one year while Redwood was the operator of record.
15. None of the subject wells were properly plugged in accordance with Statewide Rule 14, 16 TEX. ADMIN. CODE § 3.14, while Redwood was the record operator; and no plugging extensions were in effect for any of the subject wells as allowed by Statewide Rule 14. The subject wells are not otherwise in compliance with Statewide Rule 14.
16. Usable quality groundwater in the area can become contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject wells. Unplugged wellbores, in violation of Statewide Rule 14(b)(2), constitute a cognizable threat to the public health and safety because of the potential of pollution.

Conclusions of Law

1. Proper notice was issued by the Commission to Respondent and all other appropriate persons legally entitled to notice. *See, e.g.*, TEX. GOV'T CODE § 2001.051-.052; 16 TEX. ADMIN. CODE § 1.49.
2. The Commission has jurisdiction in this case. *See, e.g.*, TEX. NAT. RES. CODE §§ 81.051, 81.0512, 85.041-.042; *see also* TEX. NAT. RES. CODE ch. 91.
3. While Respondent was record operator for Wells 1 and 2 and Well 1A, Respondent was in violation of Statewide Rule 14(b)(2). 16 TEX. ADMIN. CODE § 3.14(b)(2).
4. The documented violations committed by Respondent constitute acts deemed serious, and a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE § 81.0531(c).
5. While Respondent was the Commission record operator for Wells 1 and 2 and Well 1A, Respondent was responsible for maintaining the subject wells in compliance with Statewide Rule 14(b)(2), which requires 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, unless the operator is eligible for and obtains an extension of the plugging deadline.

6. Pursuant to TEX. NAT. RES. CODE § 81.0531, the Commission may assess administrative penalties against Respondent for the subject violations of up to \$10,000 per day for each violation, with each day such violations continued constituting a separate violation.
7. An assessed administrative penalty in the amount of TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$25,500.00) is justified considering the facts and violations at issue.
8. As a person in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Richard Scott Millard, and any other organization in which this individual may hold a position of ownership or control, are subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code.

Ordering Provision Recommendations

The ALJ recommends the Commission enter an order with the following ordering provisions:

IT IS ORDERED THAT within 30 days from the day immediately following the date this order becomes final:

Redwood Operating, Inc. shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **TWENTY-FIVE THOUSAND FIVE HUNDRED DOLLARS (\$25,500.00)**.

It is further **ORDERED** that as a person in a position of ownership or control of Respondent at the time Respondent violated Commission rules related to safety and the control of pollution, Richard Scott Millard and any other organization in which he may hold a position of ownership or control, shall be subject to the restriction in section 91.114(a)(2) of the Texas Natural Resources Code for a period of no more than seven years from the date the order entered in this matter becomes final, or until the conditions that constituted the violations herein are corrected or are being corrected in accordance with a schedule to which the Commission and the organization have agreed, and all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the State relating to those conditions are paid or are being paid in accordance with a schedule to which the Commission and the organization have agreed.

Respectfully,



Jennifer Cook
Administrative Law Judge