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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

OIL & GAS DOCKET NO. 7B-0302496

**ENFORCEMENT ACTION AGAINST BENGAL PETROLEUM USA, LLC
(OPERATOR NO.064275) FOR VIOLATIONS OF STATEWIDE RULES ON THE
FORT GRIFFIN 3-D LEASE, WELL NO. 1 (LEASE NO. 29357), SHACKELFORD
COUNTY REGULAR FIELD, SHACKELFORD COUNTY, TEXAS**

PROPOSAL FOR DECISION

HEARD BY: Jennifer Cook – Administrative Law Judge

PROCEDURAL HISTORY:

Notice of Hearing Date: March 14, 2017
Hearing Date: April 20, 2017
Proposal for Decision Issued: June 5, 2017

APPEARANCES:

For Commission Staff –

David Bell, Staff Attorney, Office of General Counsel – Enforcement
Petar Buva, Commission Engineering Specialist

For Bengal Operating, Inc. –

Roland R. Baker, Consultant

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I. Statement of the Case

This is an enforcement case alleging a violation of Commission rules by Bengal Petroleum USA, LLC (“Bengal” or “Respondent”), Operator No. 064275, on the Fort Griffin 3-D Lease (Lease No. 29357) (the “Lease”), Well No. 1, (the “Well”) in the Shackelford County Regular Field in Shackelford County.

Railroad Commission (“Commission” or “RRC’s”) staff (“Staff”) initiated this case claiming Bengal is responsible for a violation of Statewide Rule 14(b)(2) because Respondent failed to comply with inactive well requirements. Staff requests that the Commission assess a penalty in the amount of \$6,600.00 and order Respondent to place the Lease and Well in compliance with Commission rules.

Bengal does not dispute the violations. Bengal provided no exhibits and acknowledged the violation.

The Administrative Law Judge (“ALJ”) respectfully submits this Proposal for Decision (“PFD”) and recommends the Commission find that the violation of Statewide Rule 14(b)(2) has occurred as alleged, assess a penalty of \$6,600.00 against Bengal for the violations and order Bengal to place the Lease and Well in compliance with Commission rules and statutes.

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 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 There are two audio files for Commission enforcement cases on April 20, 2017. This case is on the first file named Enf 4-20-17 Part 1. The audio file for the hearing in this case is referred to in this PFD as “Tr. Vol. 1 at [hours:minutes].” Staff’s exhibits admitted during its direct case are referred to as “Staff Ex. [exhibit no.]” Bengal presented no exhibits in this case.

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 March 14, 2017, Staff sent Bengal the Original Complaint (“Complaint”) for this case and a Second Amended Notice of Hearing (“Notice”) setting the hearing for April 20, 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 Bengal appeared at the hearing.

III. Applicable Legal Authority

Staff alleges a violation of Statewide Rule 14(b)(2), claiming the Well has been inactive over twelve months, is not plugged and there are no plugging deadline extensions for the Well.

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

Commission rules and statutes require an operator of a well to plug the 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 the testimony of one witness and five exhibits. Bengal provided testimony of one witness and no exhibits.

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

⁶ See Notice of Hearing dated March 14, 2017.

⁷ 16 TEX. ADMIN. CODE § 3.14(b)(2).

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

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

A. Summary of Staff's Evidence and Argument

Staff's only witness was Petar Buva, a Commission Engineering Specialist. One of his duties is to process legal referrals.¹⁰

Bengal's most recent Commission Form P-5 (Organization Report) ("Form P-5") was received on July 19, 2013.¹¹ The only officer listed is Golam Ahia as Manager. Roland Baker is listed as a Texas Resident Agent. The Notice and Complaint were sent to the addresses provided on the Form P-5.¹²

The current Form P-5 status of Respondent is delinquent.¹³ Mr. Buva testified that because Respondent does not have an active Form P-5, it is not allowed to perform oil and gas activities, including operating a well, in Texas.¹⁴

Bengal is the current Commission operator of record for the Lease, and has been since July 1, 2010.¹⁵ The last reported production for the Lease was in September 2013.¹⁶

Mr. Buva provided Commission inspection reports dated September 13, 2016 and October 25, 2016 that document the Well was not operational at the time of the investigations.¹⁷

Mr. Buva testified that the requested penalty is based on the guidelines in Statewide Rule 107.

B. Summary of Bengal's Evidence and Argument

Bengal's witness was consultant Roland Baker.¹⁸ Bengal did not deny the violations or provide any evidence controverting Staff's evidence. Bengal has no disagreement with the violation and Mr. Baker agrees the Well should be plugged. Mr. Baker testified that Bengal has no access to funds and would like to use the financial assurance on file with the Commission to plug the Well.

V. ALJ's Analysis

The ALJ finds that Staff provided sufficient evidence as to the violations alleged. Bengal did not dispute the violations. The ALJ recommends that the Commission find the violations occurred as alleged, assess Staff's recommended penalty of \$6,600.00 against

¹⁰ See Tr. Vol. 1 at 00:03-00:10.

¹¹ Staff Ex. 1 at 1-2.

¹² See Notice of Hearing dated March 14, 2017.

¹³ Staff Ex. 1 at 3.

¹⁴ See 16 TEX. ADMIN. CODE § 3.1(a)(1); *see also* 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows plugging extensions only for an operator who has a current Form P-5 report).

¹⁵ See Staff Ex. 3.

¹⁶ Staff Ex. 14.

¹⁷ Staff Ex. 4.

¹⁸ Tr. Vol. 1 at 00:10-00:15.

Bengal for the violations and order Bengal to place the Lease and Well in compliance with Commission rules and statutes.

Staff alleges violations of Statewide Rule 14(b)(2).¹⁹ Staff alleges that the Well is inactive, ineligible for plugging extensions and has not been plugged as required.

According to Commission records, Bengal does not have an active approved Form P-5. As such, Bengal is prohibited from engaging in oil and gas exploration and production activities in Texas, including operating oil or gas wells.²⁰ In addition to being prohibited from operating a well, because Bengal does not have an active Form P-5, it is ineligible for extensions of plugging deadlines for inactive wells.²¹

Bengal has been the operator of record for the Well from July 1, 2010 to present. There has been no reported production for the Well since September 2013. Commission inspection reports made on September 13, 2016 and October 25, 2016 confirm the Well is not operational. Because the Well is unplugged and there has been no reported activity for over twelve months, the Well qualifies as an inactive well per Commission rules.²²

Statewide Rule 14(b)(2) requires operators to commence plugging an inactive well within a year after operations cease. According to the evidence, operations on the Well ceased by September 2013. The Well became an inactive well and plugging operations were required to commence no later than September 2014. There is no dispute that the Well has not been plugged. Based on the evidence, the ALJ finds that Bengal violated Statewide Rule 14(b)(2).

Staff recommends a penalty of \$6,600.00 for the violations based on the penalty guidelines in Statewide Rule 107. Per the Natural Resources Code, 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.²³ Commission Statewide Rule 107 provides guidelines to be utilized when assessing enforcement penalties.²⁴ 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

¹⁹ 16 TEX. ADMIN. CODE § 3.14(b)(2).

²⁰ See 16 TEX. ADMIN. CODE § 3.1(a)(1).

²¹ See 16 TEX. ADMIN. CODE § 3.15(e)(2) (allows extensions only for an operator who has a current Form P-5 report).

²² See 16 TEX. ADMIN. CODE § 3.15(a)(6).

²³ TEX. NAT. RES. CODE § 81.0531.

²⁴ See 16 TEX. ADMIN. CODE § 3.107(b).

(4) the demonstrated good faith of the person charged.²⁵

Rule 107 provides guideline minimum penalties for typical violations.²⁶ The guideline minimum penalty for failure to plug an onshore well is \$2,000 plus \$1 per foot of total depth of the well.²⁷ According to the Complaint, Staff's requested penalty is based on one instance of \$2,000 plus a total well depth of 4,600 feet at \$1 per foot. Staff's recommended penalty is supported by the guidelines in Statewide Rule 107. The ALJ finds the evidence supports assessment of the \$6,600.00 penalty recommended by Staff.

All parties acknowledge the Well is still in violation. The ALJ finds that Staff's request for corrective actions requiring compliance with the rules and statute at issue in this case is appropriate.

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 March 14, 2017, Bengal Petroleum USA, LLC ("Respondent"), Operator No. 064275, was sent the Original Complaint ("Complaint") for this case and a Second Amended Notice of Hearing ("Notice"), for April 20, 2017, by certified and first class mail, addressed to the most recent Commission Form P-5 (Organization Report) ("Form P-5") address. Respondent and 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 the addresses provided in the Form P-5.
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 Bengal appeared at the hearing on April 20, 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: Ahia, Sk. Golam, Manager.

²⁵ 16 TEX. ADMIN. CODE § 3.107(d).

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

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

6. Ahia, Sk. Golam 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 Fort Griffin 3-D (Lease No. 29357) (the "Lease"), Well No. 1 ("Well 1"), by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective July 1, 2010. Respondent remains the operator of record for the Lease.
9. Respondent's Form P-5 is delinquent. Respondent is not eligible for plugging deadline extensions for the Well.
10. There has been no reported production for the Well since September 2013.
11. Commission inspection reports made on September 13, 2016 and October 25, 2016, and no production reported to the Commission since September 2013, show that the Well has been inactive for a period greater than one year.
12. No work-overs, re-entries, or subsequent operations have taken place on the Well within the last twelve months; the Well has not been properly plugged in accordance with Statewide Rule 14, 16 TEX. ADMIN. CODE § 3.14; and no plugging extension is in effect for the Well as allowed by Statewide Rule 14. The Well is not otherwise in compliance with Statewide Rule 14.
13. Usable quality groundwater in the area can become contaminated by migrations or discharges of saltwater and other oil and gas wastes from the Well. 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. Respondent is responsible for maintaining the Lease in compliance with all applicable Commission rules and chapters 89 and 91 of the Texas Natural Resources Code.

4. Respondent is in violation of Statewide Rules 14(b)(2). 16 TEX. ADMIN. CODE § 3.14(b)(2).
5. The documented violation 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).
6. Respondent is responsible for maintaining the Lease 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.
7. 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.
8. An assessed administrative penalty in the amount of SIX THOUSAND SIX HUNDRED DOLLARS (\$6,600.00) is justified considering the facts and violations at issue.
9. 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, Ahia, Sk. Golam, 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:

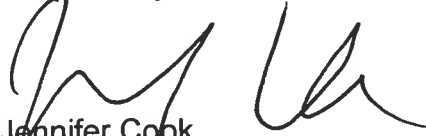
IT IS ORDERED THAT within 30 days from the day immediately following the date this order becomes final:

1. Bengal Petroleum USA, LLC shall place the Lease and the Well in compliance with Statewide Rule 14(b)(2) and any other applicable Commission rules and statutes.
2. Bengal Petroleum USA, LLC shall pay to the Railroad Commission of Texas, for disposition as provided by law, an administrative penalty in the amount of **SIX THOUSAND SIX HUNDRED DOLLARS (\$6,600.00)**.

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, Ahia, Sk. Golam 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,

A handwritten signature in black ink, appearing to read 'Jennifer Cook', written in a cursive style.

Jennifer Cook
Administrative Law Judge