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RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET No. 03-0302351

ENFORCEMENT ACTION AGAINST DENVER ENERGY EXPLORATION, LLC FOR VIOLATIONS OF STATEWIDE RULES ON THE DENVER KARBER (26185) LEASE, WELL NO. 2, BROOKSHIRE FIELD, WALLER COUNTY, TEXAS

APPEARANCES

FOR THE RAILROAD COMMISSION OF TEXAS:

David Bell, Staff Attorney, Enforcement Section
David Randle, Engineering Specialist V, Field Operations

FOR DENVER ENERGY EXPLORATION, LLC:

Michael Christopher, Manager

PROCEDURAL HISTORY:

Notice of Hearing:	May 5, 2017
Hearing on the merits:	June 15, 2017
Record closed:	June 15, 2017
Proposal for Decision issued:	July 12, 2017
Heard by:	Ryan M. Lammert, Administrative Law Judge

SUMMARY

The Railroad Commission of Texas (“Staff”) alleges that Denver Energy Exploration, LLC (Operator No. 216456), (“Denver”), is in violation of Statewide Rule 8(d)(1)¹ and Statewide Rule 20(a)(1)² on the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas (the “Well”).

Both Staff and Denver appeared at hearing, but Denver failed to present evidence sufficient to demonstrate that it is not in violation of Commission Rules as alleged. The record evidence supports all violations as alleged by Staff. Staff seeks an administrative penalty of \$4,700 and requests that the subject wells 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.³

SWR 20(a)(1), titled *General requirements*:

Operators shall give immediate notice of a fire, leak, spill, or break to the appropriate [C]ommission district office by telephone or telegraph. Such notice shall be followed by a letter giving the full description of the event, and it shall include the volume of crude oil, gas, geothermal resources, other well liquids, or associated products lost.⁴

¹ 16 TEX. ADMIN. CODE § 3.8(d)(1).

² *Id.* at 20(a)(1).

³ *Id.* at 8(d)(1).

⁴ *Id.* at 20(a)(1).

SWR 91(e), titled *Reporting requirements*:

(1) Crude oil spills over five barrels. For each spill exceeding five barrels of crude oil, the responsible operator must comply with the notification and requirements of § 3.20 of this title (relating to Notification of Fire Breaks, Leaks, or Blow-outs) and submit a report on a Form H-8 to the appropriate district office. The following information must be included:

(A) area (square feet), maximum depth (feet), and volume (cubic yards) of soil contaminated with greater than 1.0% by weight total petroleum hydrocarbons;

(B) a signed statement that all soil containing over 1.0% by weight petroleum hydrocarbons was brought to the surface for remediation or disposal;

(C) a signed statement that all soil containing over 5.0% by weight total petroleum hydrocarbons has been mixed in place to 5.0% by weight or less total petroleum hydrocarbons or has been removed to an approved disposal site or to a secure interim storage location;

(D) a detailed description of the disposal or remediation method used or planned to be used for cleanup of the site;

(E) the estimated date of completion of site cleanup.

(2) Crude oil spills over 25 barrels. For each spill exceeding 25 barrels of crude oil, in addition to the report required in paragraph (1) of this subsection, the operator must submit to the appropriate district office a final report upon completion of the cleanup of the site. Analyses of samples representative of the spill must be submitted to verify that the final cleanup concentration has been achieved.⁵

EVIDENCE PRESENTED

STAFF

As its first exhibit, Staff offered into evidence a printout copy of Denver's most recent Form P-5 *Organization Report* on file with the Commission.⁶ The Form P-5 demonstrates that Denver is assigned Operator No. 216456, and lists Michael Christopher as its sole officer.⁷ Staff also

⁵ *Id.* at 91(c).

⁶ Staff Exh. 1.

⁷ *Id.*

proffered a printout copy of a Commission database *P-4 Inquiry*.⁸ The *P-4 Inquiry* (dated effective July 30, 2011) shows that Denver is the current Commission-designated operator of record for the Well.⁹

Staff also presented copies of four Commission *Inspection Reports* dated November 25, 2015; December 29, 2015; March 15, 2016; and October 21, 2016.¹⁰ The *Inspection Report* dated November 25, 2015 demonstrates that Commission personnel observed “oil leaking out of a tank due to a 4” nipple in tank breached.”¹¹ Commission personnel also noted that “oil was in dike but dike had a breach and oil is outside of dike area” and affected a 40’ x 60’ area adjacent to the tank.¹² The *Inspection Report* evidences that, as of November 25, 2015, Denver had failed to submit to the Commission a Form H-8 *Crude Oil, Gas Well Liquids, or Associated Products Loss Report*, as required by rule.¹³

The *Inspection Report* dated October 21, 2016 shows that the site has been remediated to the satisfaction of the Commission—Denver had yet to file a Form H-8, though. Staff asserts that an operator is required by rule to file with the Commission a Form H-8 “within thirty days.”¹⁴ It should be noted however that Staff does not cite to rule or statute to support that argument.

DENVER

Denver does not dispute that an oil spill occurred, but it maintains that the spill was “not intentional.”¹⁵

Denver offered as its first exhibit an undated photograph showing the spill adjacent to the well/tank battery.¹⁶ However, it is not entirely evident from the picture the size and scope of the oil spill and affected area.¹⁷ Denver also entered into evidence a *Legal Enforcement Referral* letter dated February 10, 2016 from Audrey Kuklenz, Engineering Specialist II, to Santos Gonzales, Jr., Assistant Director, Field Operations.¹⁸ The letter shows that, as of February 10, 2016, outstanding violations persisted at the Well, to wit:

⁸ Staff Exh. 2.

⁹ *Id.*

¹⁰ Staff Exh. 3.

¹¹ *Id.* at 1.

¹² *Id.*

¹³ *Id.* at 6.

¹⁴ *See* Original Complaint.

¹⁵ Tr. at 22:05, *see* 16 TEX. ADMIN. CODE § 3.8(d)(1) (intent not an element of the rule).

¹⁶ Denver Exh. A.

¹⁷ *Id.*

¹⁸ Denver Exh. B (Both Ms. Kuklenz and Mr. Gonzales are Commission employees).

Violations:

SWR-08 (Water Protection): Remediation of the lease and affected area after a release of produced fluids is not complete.

SWR-91 (Remediation of Soil): Due to the extent and size of a release of produced fluids the Houston district office requires the vertical and horizontal delineation of the affected area. No such laboratory results have been received at the district office.

SWR-20 (Notification): No notification from the operator was received at the Houston district office regarding the release of produced fluids at the subject lease. As of this letters (sic) date no H8 or spill report has been received at the district office.¹⁹

Denver maintains a Form H-8 was mailed to the Commission on March 24, 2016, as evidenced by a handwritten note at the top righthand corner of the *Legal Enforcement Referral* letter.²⁰ Denver also states laboratory results of the remediated area were sent to the appropriate district office on or about April 26, 2016.²¹ To substantiate those claims, Denver included a Form H-8 dated March 23, 2016 signed by Mr. Christopher.²²

Also included, Denver offered documentation from Pollution Control Services—an environmental laboratory specializing in chemical testing. Denver concludes that the spill has been fully remediated, as evidenced by the testing reports. Denver however did not offer to explain how the reports showed complete remediation of the spill.²³

Denver provided a chronological summary of the events culminating in this docket (as shown in Staff's *Legal Enforcement Summary* sheet):

November 24, 2015: The Houston District Office was notified of a spill at the Denver Karber lease by a neighboring operator of Denver Energy Exploration, LLC (Denver).

November 25, 2015: Railroad Commission field inspector, Ronald Holubec was dispatched to the lease. Upon inspection Mr. Holubec observed violations of SWR 8 and 21.

November 26, 2015: [Inspection conducted; all alleged violations present].

November 30, 2015: [Inspection conducted; all alleged violations present].

December 4, 2015: [Inspection conducted; all alleged violations present].

December 8, 2015: Mr. Holubec inspected the lease; the firewall had been repaired however violations of SWR 8, 91, and 20 remain.

¹⁹ *Id.* at 2.

²⁰ *Id.* at 1(see top righthand corner).

²¹ *Id.* at 2.

²² *Id.* at 3.

²³ Please note that failure to remediate is not at issue in this docket.

...
December 22, 2015: Mr. Holubec inspected the lease; violations still present. Mr. Holubec contacted [surface owner] and informed her of the District actions taken to ensure that the operator complies with cleanup requirements.
January 6, 2016: [Inspection conducted; all alleged violations present].
January 20, 2016: [Inspection conducted; all alleged violations present].

...
February 8, 2016: [Inspection conducted; all alleged violations present].
February 9, 2016: [Lease sealed for failure to correct alleged violations].²⁴

ADMINISTRATIVE LAW JUDGE'S OPINION

The Administrative Law Judge (the “ALJ”) concludes Denver violated Statewide Rules 8(d)(1) and 20(a)(1), and recommends that the Commission assess Denver an administrative penalty in the amount of \$4,700. It is *undisputed* that an oil spill occurred at the Well on or about November 24, 2015—in fact, Denver provided photographic evidence. Further, Denver did not contend or otherwise present evidence that it had a permit to dispose of wastes at the Well. Denver therefore discharged oil, gas, and its associated wastes at the Well without a permit, in violation of Statewide Rule 8(d)(1).

Statewide Rule 20(a)(1) requires an operator to provide “immediate notice” of a spill to the appropriate district office by telephone or telegraph, and further mandates that an operator follow-up with a “letter giving the full description of the event . . .”²⁵ The record is absent of evidence showing that Denver provided immediate notice of the spill to the Commission, but, more importantly, the record is void of any indication that Denver provided “a letter giving the full description of the event . . . includ[ing] the volume of crude oil, gas, the geothermal resources, other well liquids, or associated products lost.”²⁶

Without such letter, the Commission is left to *estimate* the volume of oil lost based on an operator’s reported production as compared to the amount left in a tank after a spill has occurred. That is to say the operator is in the best position to *know*—not estimate—the exact amount of oil lost. To ensure complete cleanup and remediation, the Commission must be satisfied that all relevant facts related to a spill are made available, lest it risk that pollution remains. Because Denver did not (or, could not) provide proof that it had submitted a letter to the Commission documenting the spill, it failed to rebut the allegation and is therefore in violation of Statewide Rule 20.

²⁴ Denver Exh. B at 2.

²⁵ *See* 16 TEX. ADMIN. CODE § 3.20.

²⁶ *See* 16 TEX. ADMIN. CODE § 3.8.

Statewide Rule 107 provides a penalty guideline for oil and gas violations.²⁷ Staff requested the following penalty amounts:

1. One (1) Statewide Rule 8(d)(1) violation - \$1,700 (penalty guideline range is \$500 base penalty plus \$0.30 sq./ft. of affected area); and
2. One (1) Statewide Rule 20(a)(1) violation - \$3,000 (penalty guideline range is \$2,500 - \$5,000).²⁸

The ALJ recommends that the Commission assess Denver an administrative penalty in the amount of \$4,700, and recommends that the Commission order Denver to bring the Well and subject lease into compliance with all Commission rules and regulations. However, the Commission is within its discretion to assess Denver an administrative penalty in the amount of \$6,700—exceeding the amount requested by Staff.

CONCLUSION

The Administrative Law Judge concludes that Denver is in violation of Statewide Rules 8(d)(1) and 20(a)(1) and recommends the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Denver Energy Exploration, LLC was given at least ten (10) days' notice of the hearing by certified mail sent to its most recent Form P-5 address.
2. Denver Energy Exploration, LLC appeared at the hearing through Michael Christopher, Manager.
3. As established by Denver Energy Exploration, LLC's most recent Form P-5 *Organization Report*, Denver Energy Exploration, LLC holds Operator No. 216456.
4. As established by Denver Energy Exploration, LLC's most recent Form P-5 *Organization Report*, Michael Christopher is the sole officer of Denver Energy Exploration, LLC.
5. The violations in this docket are violations of Commission rules related to safety and the prevention or control of pollution.
6. Denver Energy Exploration, LLC is the operator of record responsible for ensuring compliance with all Commission rules and regulations for the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas.

²⁷ See 16 TEX. ADMIN. CODE § 3.107.

²⁸ *Id.*

7. On or about November 24, 2015, Denver Energy Exploration, LLC disposed of oil, gas, and associated wastes on and from the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, without a permit.
8. On or about November 24, 2015, Denver Energy Exploration, LLC disposed of oil, gas, and associated wastes on and from the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, which affected approximately 4,000 sq. ft. of the land surface of the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas.
9. Denver Energy Exploration, LLC failed to give to the Commission immediate notice, by telephone or telegraph, of the leak and spill on and from the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas.
10. Denver Energy Exploration, LLC failed to give to the Commission a letter giving the full description of the leak and spill on and from the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, including the volume of crude oil, gas, geothermal resources, other well liquids, or associated products lost.
11. Denver Energy Exploration, LLC's violations of 16 TEX. ADMIN. CODE § 3.8(d)(1), and 16 TEX. ADMIN. CODE § 3.20(a)(1) are serious and a hazard to the public health and safety.
12. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto Michael Christopher, as Manager, was a person who held a position of ownership or control in Denver Energy Exploration, LLC.
13. Denver Energy Exploration, LLC acted in bad faith because it failed to correct a Commission rule violation on the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, and failed to adequately 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 failing to give to the Commission immediate notice, by telephone or telegraph, of the leak and spill on and from the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, Denver Energy Exploration, LLC violated 16 TEX. ADMIN. CODE § 3.20(a)(1).

4. By failing to give to the Commission a letter giving the full description of the leak and spill on and from the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, including the volume of crude oil, gas, geothermal resources, other well liquids, or associated products lost, Denver Energy Exploration, LLC violated 16 TEX. ADMIN. CODE § 3.20(a)(1).
5. By disposing of oil, gas, and associated wastes on and from the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, without a permit, Denver Energy Exploration, LLC violated 16 TEX. ADMIN. CODE § 3.8(d)(1).
11. The documented violations committed by Denver Energy Exploration, LLC constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
12. Denver Energy Exploration, LLC 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 Denver Energy Exploration, LLC be assessed an administrative penalty of \$4,700.

The Administrative Law Judge also recommends that Denver Energy Exploration, LLC be directed to within 30 days of the date this order becomes final, place the Denver Karber (26185) Lease, Well No. 2, Brookshire Field, Waller County, Texas, fully into compliance with all Commission rules and regulations.

The Administrative Law Judge also recommends that Michael Christopher be made subject to the restrictions of TEX. NAT. RES. CODE § 91.114.

RESPECTFULLY SUBMITTED,



RYAN M. LAMMERT
Administrative Law Judge