



RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

PROPOSAL FOR DECISION

OIL AND GAS DOCKET NO. 09-0302856

ENFORCEMENT ACTION AGAINST ATKINSON, JIM (OPERATOR NO. 036080) FOR VIOLATIONS OF STATEWIDE RULES ON THE FEE (05287) LEASE, WELL NOS. 1, 2, 3, 5, AND 6, WICHITA COUNTY REGULAR FIELD, WICHITA COUNTY, TEXAS

APPEARANCES

FOR THE RAILROAD COMMISSION OF TEXAS:

Jessica H. Mendoza, Staff Attorney, Enforcement Section
David F. Randle, Engineering Specialist V, Oil and Gas Division

FOR ATKINSON, JIM:

Jim Atkinson, Operator

PROCEDURAL HISTORY:

Notice of Hearing:	May 3, 2017
Hearing on the merits:	June 15, 2017
Record closed:	June 15, 2017
Proposal for Decision issued:	June 30, 2017
Heard by:	Ryan M. Lammert, Administrative Law Judge

SUMMARY

The Railroad Commission of Texas (“Staff”) alleges that Atkinson, Jim (Operator No. 036080), (“Atkinson”), is in violation of Statewide Rules 8(b), 8(d)(1), and 20(a)(1) on the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas. Staff seeks an administrative penalty in the amount of \$22,500 and, additionally, reimbursement in the amount of \$76,862.10 for costs incurred by the Commission for remediation of oil and gas wastes discharged on or from the subject lease.

Atkinson appeared at hearing, but failed to present evidence sufficient to demonstrate that it is not in violation of Commission rules, as alleged by Staff. The record evidence supports all alleged violations. The Administrative Law Judge (the “ALJ”) recommends the Commission enter an order assessing Atkinson an administrative penalty in the amount of \$22,500 and ordering reimbursement in the amount of \$76,862.10 for remediation costs.

APPLICABLE AUTHORITY

SWR 8(b), titled *No pollution*:

No person conducting activities subject to regulation by the [C]ommission may cause or allow pollution of surface or subsurface water in the state.¹

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.²

¹ 16 TEX. ADMIN. CODE § 3.8(b).

² *Id.* at 8(d)(1).

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.³

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.⁴

³ *Id.* at 20(a)(1).

⁴ *Id.* at 91(e).

TEX. NAT. RES. CODE ANN. §§ 91.113(a), (b), and (f), titled *Investigation, Assessment, or Cleanup by Commission*:

(a) If oil and gas wastes or other substances or materials regulated by the [C]ommission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the [C]ommission, through its employees or agents, may use money in the oil and gas regulation and cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.⁵

(b) For purposes of this section, “responsible person” means any operator or other person required by law, rules adopted by the [C]ommission, or a valid order of the [C]ommission to control or clean up the oil and gas wastes or other substances or materials.⁶

(f) If the [C]ommission conducts a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials under this section, the [C]ommission may recover all costs incurred by the [C]ommission from any person which was required by law, rules adopted by the [C]ommission, or a valid order of the [C]ommission to control or clean up the oil and gas wastes or other substances or materials. The [C]ommission by order may require the person to reimburse the [C]ommission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the [C]ommission, the attorney general may file suit to enforce an order issued by the [C]ommission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the oil and gas regulation and cleanup fund.⁷

⁵ TEX. NAT. RES. CODE ANN. § 91.113(a).

⁶ *Id.* at (b).

⁷ *Id.* at (f).

SWR 58(a)(1), titled *Certificate of Compliance and Transportation Authority*, in part:

(1) . . . The Commission [F]orm P-4 establishes the operator of an oil lease, gas well, or other well; certifies responsibility for regulatory compliance . . .⁸

EVIDENCE PRESENTED

STAFF

Staff offered into evidence six exhibits and the testimony of Mr. David Randle—a Railroad Commission of Texas Engineering Specialist. Staff presented as its first exhibit the current Form P-4 *Certificate of Compliance and Transportation Authority* dated effective April 1, 2006 for the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas, which identifies Atkinson as the operator responsible for regulatory compliance.⁹

Next, Staff presented an “I.C.E. System” notification form (formally, the Inspection, Compliance, and Enforcement System).¹⁰ The exhibit demonstrates that on November 3, 2016 the Wichita County Sheriff’s Office notified appropriate District Office personnel of “oil in the Wichita River.”¹¹ Accordingly, Commission inspectors were dispatched to identify the source of the spill.¹² Commission inspectors approximate “130-140” barrels of oil were lost as a result of the spill.¹³ On that same date, the Commission notified Atkinson of the spill.¹⁴ Staff asserts Atkinson failed to *immediately* notify the Commission of the spill.¹⁵

Staff also proffered a Commission *Spill Report* dated November 3, 2016 prepared by a Commission employee.¹⁶ The report indicates the spill originated “from a 210 production tank with a hole 1 1/4” at the bottom of the tank” caused by “external corrosion.”¹⁷ The report indicates nearly 16.2 miles of the Wichita River (as well as other tributaries and “land-sensitive” areas) was affected.^{18, 19} A Commission *Inspection Report* dated November 3, 2016 confirms details of the incident, as described in the *Spill Report*.²⁰

⁸ 16 TEX. ADMIN. CODE § 3.58(a)(1).

⁹ Staff Exh. 1.

¹⁰ Staff Exh. 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tr. at 14:42.

¹⁶ Staff Exh. 3.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Photographic evidence of pollution is attached to Commission *Inspection Reports* dated November 4 and 21, 2016 which are included in the certified Commission file. The certified Commission file was admitted into evidence during the hearing on the merits.

²⁰ Staff Exh. 4.

Staff also offered a Commission letter dated November 7, 2016 notifying Atkinson of the alleged violations (with specific instructions on how to achieve compliance).²¹ The letter cautioned Atkinson that failure to remedy the alleged violations would result in referral of the matter to legal enforcement.²² A Commission *Site Remediation Summary Sheet* indicates the Commission expended \$76,862.10 of oil and gas regulation and cleanup funds to complete remediation of the spill—an amount Atkinson indicated it did not have available.²³

Both the surface of the land and affected water bodies have been remediated to the satisfaction of the Commission.

Staff asserts that Atkinson is in violation Statewide Rules 8(b), 8(d)(1), and 20(a)(1) on the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas, and seeks an administrative penalty in the amount of \$22,500 and reimbursement in the amount of \$76,862.10.

ATKINSON

Atkinson elected to offer *only* oral testimony in support of its case. Atkinson admitted an oil spill occurred from the subject lease as a result of a hole in an Atkinson tank battery, but maintained only 113 barrels of oil (not 130 – 140 barrels, as alleged) were lost.²⁴ Atkinson stated it conducted its own remediation of the soil at the direction of the Commission and the Environmental Protection Agency.²⁵ Atkinson also stated soil samples were collected after remediation, and that those samples were free of contaminants.²⁶ Atkinson admitted, however, that it did not remediate affected tributaries and other water bodies.²⁷

Atkinson acknowledged it first became aware of the spill when its “pumper called . . .”²⁸ Atkinson testified that it knew of the spill *independent* of communication from the Commission, but did not immediately notify the Commission of the situation—in fact, the Commission initiated contact with Atkinson.²⁹ However, it is unclear from the record the amount of time that passed between the moment the pumper notified Atkinson and when the Commission contacted the operator.

²¹ Staff Exh. 6.

²² *Id.*

²³ Staff Exh. 5.

²⁴ Tr. at 16:32 – 17:20.

²⁵ Tr. at 16:49 – 18:00.

²⁶ Tr. at 18:08 – 18:30.

²⁷ Tr. at 18:32 – 18:41.

²⁸ Tr. at 21:35 – 21:52.

²⁹ Tr. at 21:56 – 22:02.

ADMINISTRATIVE LAW JUDGE'S OPINION

Atkinson offered no evidence to contradict proof that it is responsible for violations of Statewide Rule 8(b), 8(d)(1), and 20(a)(1). Without evidence to the contrary, the record in this case consists of undisputed evidence that Atkinson committed the violations as alleged by Staff. Atkinson has no history of violations of Commission rules and regulations.

The Administrative Law Judge recommends that the Commission assess Atkinson an administrative penalty in the amount of \$22,500, order Atkinson to reimburse the Commission in the amount of \$76,862.10, and order Atkinson to bring the subject lease into compliance with all Commission rules and regulations.

Statewide Rule 107 provides a penalty guideline table and a penalty enhancement table to aid the Commission in determining appropriate administrative penalties and penalty enhancements, to wit:³⁰

16 TAC § 3.8(b)—pollution of surface or subsurface water—\$1,000 minimum;

16 TAC § 3.8(d)(1)—improper disposal of oil and gas waste; enhance for actual or threatened pollution: dry pit area—\$500 base penalty plus \$0.30/sq. ft.;

16 TAC § 3.20(a)(1)—failure to notify of incident—\$2,500 to \$5,000; and

Penalty enhancement of \$5,000 to \$25,000 for actual pollution of a major freshwater source.

CONCLUSION

The Administrative Law Judge concludes that Atkinson violated Statewide Rule 8(b), 8(d)(1), and 20(a)(1), and makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Atkinson, Jim was given at least ten days' notice of this hearing by certified mail sent to its most recent Form P-5 *Organization Report* address: P.O. Box 611 Nocona, TX 76255.
2. Atkinson, Jim appeared at the hearing on the merits through Jim Atkinson.
3. Atkinson, Jim holds Operator No. 036080.

³⁰ See 16 TEX. ADMIN. CODE §§ 3.107(e)(1) and (f).

4. As established by Atkinson, Jim's most recent Form P-5 *Organization Report*, Atkinson, Jim is a sole proprietorship with Jim Atkinson as its sole officer.
5. The violations in this docket are violations of the Railroad Commission of Texas' rules related to safety and the prevention or control of pollution.
6. On or about November 3, 2016, Atkinson, Jim caused an oil spill to occur on the Fee (05287) Lease, Wichita County Regular Field, Wichita County, Texas.
7. On or about November 3, 2016, approximately 135 barrels of oil leaked from an improperly maintained tank battery located on the Fee (05287) Lease, Wichita County Regular Field, Wichita County, Texas, and caused pollution of the Wichita River and its associated tributaries.
8. On or about November 3, 2016, Atkinson, Jim caused pollution of surface water in the state of Texas.
9. Atkinson, Jim is a person conducting activities subject to regulation by the Railroad Commission of Texas.
10. Atkinson, Jim is the current Form P-4 *Certificate of Compliance and Transportation Authority* operator of record for the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas.
11. On or about June 5, 2006, Atkinson, Jim certified responsibility for regulatory compliance on the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas, by filing with the Railroad Commission of Texas a Form P-4 *Certificate of Compliance and Transportation Authority* dated effective April 1, 2005.
12. On or about November 3, 2016, Atkinson, Jim disposed of oil and gas wastes without obtaining a permit to dispose of such wastes.
13. On or about November 3, 2016, at approximately 10:32 a.m., law enforcement officials contacted District Office 9 personnel to report the oil spill on the Wichita River.
14. On or about November 3, 2016, District Office 9 personnel contacted Atkinson, Jim to report the oil spill.
15. On or about November 3, 2016, a lease pumper for the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas, contacted Atkinson, Jim to report the oil spill, but Atkinson, Jim failed to give to the Railroad Commission of Texas immediate notice of the oil spill.

16. Atkinson, Jim had the opportunity to immediately report the oil spill to the Railroad Commission of Texas, but failed to immediately report the oil spill.
17. Atkinson, Jim did not remediate pollution of the Wichita River caused by the oil spill on the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas, because Atkinson, Jim did not have the financial resources to conduct such remediation.
18. The Railroad Commission of Texas expended \$76,862.10 from the oil and gas regulation and cleanup fund to conduct remediation of pollution of the Wichita River and its related tributaries caused by the oil spill from Atkinson, Jim's Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas.
19. On or about November 3, 2016, Atkinson, Jim communicated to the Railroad Commission of Texas that it did not have the financial resources to conduct remediation of pollution of the Wichita River and its related tributaries caused by the oil spill from Atkinson, Jim's Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas.
20. Atkinson, Jim's violation of 16 TEX. ADMIN. CODE § 3.8(d)(1) is serious and a hazard to the public health and safety.
21. Atkinson, Jim's violation of 16 TEX. ADMIN. CODE § 3.8(b) is serious and a hazard to the public health and safety.
22. Atkinson, Jim's violation of 16 TEX. ADMIN. CODE § 3.20(a)(1) is serious and a hazard to the public health and safety.
23. Atkinson, Jim has no prior history of violations of Commission rules.
24. For purposes of TEX. NAT. RES. CODE § 91.114, at all times relevant hereto Jim Atkinson was a person who held a position of ownership or control in Atkinson, Jim.

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 without a permit on and from the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas, Atkinson, Jim violated 16 TEX. ADMIN. CODE § 3.8(d)(1).
4. By causing pollution of surface water in the state of Texas, Atkinson, Jim violated 16 TEX. ADMIN. CODE § 3.8(b).
5. By failing to give immediate notice of the oil spill on and from the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas, Atkinson, Jim violated 16 TEX. ADMIN. CODE § 3.20(a)(1).
6. The Railroad Commission of Texas may recover from Atkinson, Jim all costs it incurred to remediate pollution of the Wichita River and its related tributaries, pursuant to TEX. NAT. RES. CODE ANN. §§ 91.113(f).

RECOMMENDATIONS


The Administrative Law Judge recommends that the above Findings of Fact and Conclusions of Law be adopted and that Atkinson, Jim be assessed an administrative penalty in the amount of \$22,500 (one violation of Statewide Rule 8(b) at \$10,000, one violation of Statewide Rule 8(d)(1) at \$10,000, and one violation of Statewide Rule 20(a)(1) at \$2,500).

The Administrative Law Judge recommends that Atkinson, Jim be ordered to reimburse the Commission in the amount of \$76,862.10 for remediation costs.

The Administrative Law Judge also recommends that Atkinson, Jim be directed to within 30 days of the date this order becomes final, place the Fee (05287) Lease, Well Nos. 1, 2, 3, 5, and 6, Wichita County Regular Field, Wichita County, Texas fully into compliance with all Commission rules and regulations.

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

RESPECTFULLY SUBMITTED,


RYAN M. LAMMERT
Administrative Law Judge