

April 26, 2006

OIL AND GAS DOCKET NO. 01-0244431

COMMISSION CALLED HEARING TO SHOW CAUSE WHY THE ORGANIZATION REPORT (COMMISSION FORM P-5) ISSUED TO SEELYE, WILLIAM L. (OPERATOR NO. 763205) SHOULD NOT BE REVOKED IN ACCORDANCE WITH TEX. NAT. RES. CODE. ANN. §91.114(h).

APPEARANCES:

FOR MOVANT RAILROAD COMMISSION OF TEXAS:

Elaine Moore, Staff Attorney

FOR RESPONDENT WILLIAM L. SEELYE, OPERATOR NO. 763205

No Appearance

FOR INTERVENOR RICKY PERRITT, RECEIVER

Lloyd Muennink, Attorney

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	September 21, 2005
NOTICE OF HEARING:	September 27, 2005
DATE CASE HEARD:	November 3, 2005
INTERIM ORDER ISSUED:	February 8, 2006
HEARING CLOSED:	March 29, 2006
PFD PREPARED BY:	Marshall Enquist, Hearings Examiner
PFD CIRCULATION DATE:	April 26, 2006
CURRENT STATUS:	Unprotested

STATEMENT OF THE CASE

This was a Commission-called hearing on the recommendation of the District Office to determine the following:

1. Whether the Commission Form P-5 Organization Report of Respondent, William L. Seelye

("Seelye"), Operator No. 763205 should be revoked in accordance with Tex. Nat. Res. Code Ann. §91.114(h) for failure to comply with final and unappealable orders issued by the Commission in Docket Nos. 09-0241935 and 09-0241936; and

2. Whether the leases operated by William L. Seelye should be severed and the P-4 Certificates of Compliance for all leases operated by William L. Seelye should be cancelled.

Elaine Moore, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Office of General Counsel, Enforcement Section ("Enforcement"). Lloyd Muennink, attorney, representing Receiver Ricky Perritt also appeared at the hearing and requested Intervenor status. Enforcement objected to Mr. Muennink's appearance and challenged his standing. The examiner took the challenge under advisement, allowing Mr. Muennink to appear in the hearing subject to a final ruling on his standing in this PFD. Lowell Williams, Director of Enforcement attended the hearing and offered supplemental commentary to assertions made by Mr. Muennink. Enforcement's hearing file was admitted into evidence.

Enforcement recommended that the Form P-5 Organization Report of William L. Seelye be revoked immediately and that all his leases be severed and all P-4 Certificates of Compliance for Leases operated by William L. Seelye be cancelled. The examiner agrees with Enforcement's recommendations.

DISCUSSION OF THE EVIDENCE

Organization and Permit Records

Commission records show that William L. Seelye filed his initial Commission Form P-5 (Organization Report) with the Commission on May 10, 2001. The most recent Organization Report for Seelye was filed on May 10, 2005. William L. Seelye (Operator No. 763205) is an active operator. On the P-5 Organization Report, William Lester Seelye is listed as the Sole Proprietor of the company and Wanda Hacker is listed as his Resident Texas Agent. Commission records show that as of February 4, 2005, Seelye was recognized as the operator of 368 wells (245 in SWR 14(b)(2) status) with a total depth of 881,625 feet. As of November 10, 2005, Seelye was shown as the operator of 300 wells with a total depth of 705,240 feet, indicating the transfer of 84 wells between February and November of 2005. Seelye has financial assurance in place in the form of a bond in the amount of \$250,000 with an expiration date of September 30, 2006.

In Oil & Gas Docket No. 09-0241936, Seelye was recognized as the operator of the Green, Mary (00287) Lease, Well Nos. 1, 31 and 33 and the Taylor -C- (14225) Lease, Well Nos. 2 and 9 by filing Forms P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective December 1, 2001 for the Green, Mary (00287) Lease and June 1, 2003 for the Taylor -C- (14225) Lease, Archer County Regular Field, Archer County. The Final Order in the docket required Seelye to perform an H-15 Test (Test on an Inactive Well More Than 25 Years Old) on Well No. 9 on the Taylor -C- Lease, H-5 Mechanical Integrity Tests on Well Nos. 1, 31 and 33 on the Mary Green lease and an H-5 Mechanical Integrity Test on Well No. 2 on the Taylor -C-

Lease. In addition, Seelye was ordered to pay an administrative penalty of \$10,000.

In Oil & Gas Docket No. 09-0241935, Seelye was recognized as the operator of the Jennings, G.A. -AA- (11675) Lease, Well Nos. 3 and 10, and the Jennings, G.A. -BB- (17097) Lease, Well No. 4 by filling a Form P-4 (Producer's Transportation Authority and Certificate of Compliance) with the Commission effective June 1, 2003 for both of the subject leases and included wells. The Final Order in the docket required Seelye to perform H-5 Mechanical Integrity Tests on Well Nos. 3 and 10 on the G.A. Jennings -AA- Lease and perform an H-5 Mechanical Integrity Test on Well No. 4 on the G.A. Jennings -BB- Lease. In addition, Sellye was ordered to pay an administrative penalty of \$6,000.

Final Orders in Oil & Gas Docket Nos. 09-0241936 and 09-0241935

Final Orders in Oil & Gas Docket Nos. 09-0241936 and 09-0241935 were issued by the Commission on May 25, 2005. The cover letter for the orders indicated the orders would become final and unappealable 23 days after issuance if no Motion for Rehearing was filed. No Motion for Rehearing was received from William L. Seelye during that time period and the Final Orders became final and unappealable on June 20, 2005.

UIC Monitor/Pressure Test Record screens printed from the Commission mainframe on November 1, 2005 demonstrate that the tests required by the Final Orders in the subject dockets have not been performed. The penalty amounts in the two dockets, \$6,000 in Oil & Gas Docket No. 09-0241935 and \$10,000 in Oil & Gas Docket No. 09-0241936, have not been paid.

ENFORCEMENT'S POSITION

Enforcement argues that Seelye's failure to comply with the terms of final and unappealable Orders subjects him to revocation of his Form P-5 Organization Report pursuant to the provisions of Tex. Nat. Res. Code Ann. §91.114(h). Enforcement also requests that all lease operated by Seelye be severed and all P-4 Certificates of Compliance for leases operated by Seelye be cancelled.

ATTEMPTED INTERVENTION BY RICKY PERRITT

At the hearing, Ricky Perritt, Receiver, represented by Attorney Lloyd Muennink, sought Intervenor status. Mr. Muennink filed an appearance slip and stated, over Enforcement's objection, that he should be allowed to appear in the hearing and present evidence. The examiner took Enforcement's objection under advisement and stated that a ruling on the issue would be forthcoming in this PFD, and allowed Mr. Muennink to participate in the hearing subject to the forthcoming ruling.

APPLICABLE AUTHORITY

Tex. Nat. Res. Code Ann. §91.114(h) states:

- (h) If the commission is prohibited by Subsection (a) from accepting an organization's organization report or application or approving the organizations' certificate or would be prohibited from doing so by that subsection if the organization submitted a report, application, or certificate, the commission, after notice and opportunity for a hearing, by order may revoke:
 - (1) the organization's organization report filed under Section 91.142;
 - (2) a permit issued to the organization under this chapter, Chapter 85, or Chapter 26, 27, or 29, Water Code; or
 - (3) any certificate of compliance approved under Section 85.161.

Tex. Nat. Res. Code Ann. §91.114(a), cited in §91.114(h) above, states in relevant part:

- (a) Except as provided by Subsection (d), the commission may not accept an organization report required under Section 91.142 or an application for a permit under this chapter, Chapter 85, or Chapter 26, 27 or 29, Water Code, or approve a certificate of compliance under Section 85.161 if:
 - (1) the organization that submitted the report, application or certificate violated a statute or commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

Tex. Nat Res. Code Ann. §91.114(i) states:

- (i) An order under subsection (h) shall provide the organization a reasonable period of time to comply with the judgment or order finding the violation before the revocation takes place.

Tex. Nat. Res. Code Ann. §91.114 (l) states:

- (l) In determining whether or not to revoke an organization's organization report, permit, or certificate of compliance under Subsection (h), the commission shall consider the organization's history of previous violations, the seriousness of previous violations, any hazard to the health and safety of the public, and the demonstrated good faith of the organization.

The Commission's Rules of Practice and Procedure §1.64 (Intervention) provide that:

- (a) Except for Transportation cases, any person or agency who has a justiciable or administratively cognizable interest and who is not an applicant, petitioner, complainant, respondent or protestant and who desires to be designated as a party in any contested case before the Commission may file a petition for leave to intervene no later than five days prior to the hearing date.
- (b) The examiner, the Legal Division director, or the Commission shall act on all petitions for leave to intervene. All interventions shall be subject to a motion to strike for having been improperly admitted.

EXAMINER'S OPINION

Texas Natural Resources Code §91.114(h) allows revocation of an organization's P-5 Organization Report and its P-4 Certificates of Compliance if that organization would be prohibited under TNRC §91.114(a) from renewing its P-5 Organization Report or P-4 Certificates of Compliance. In this case, William L. Seelye has clearly failed to comply with the terms of final and

unappealable orders issued by the Commission in Oil & Gas Docket Nos. 09-0241935 and 09-0241936 on May 25, 2005. Those orders address Seelye's need to conduct mechanical integrity tests on several wells, such tests being necessary for the prevention and control of pollution by detecting the possible presence of casing leaks that might lead to contamination of usable quality groundwater.

Seelye has an active P-5 Organization Report and received notice of this hearing at the address shown on his P-5, as well as two other addresses which are presumably alternate addresses provided to Enforcement. Seelye did not appear to contest the hearing. Seelye has no prior history of violations of Commission Rules, but does have a third docket, Docket No. 09-0241941 against him which became final and unappealable on November 1, 2005. Seelye's violations in the two dockets described in the present hearing are serious violations that may lead to the contamination of usable quality groundwater, presenting a hazard to the health and safety of the public. The fact that Seelye has not acted to correct these violations or pay the assessed administrative penalties demonstrates a lack of good faith.

Ricky Perritt, court-appointed Receiver for Seel-Mac Oil & Gas, LLC, attempted to intervene in this case and was allowed to participate in the hearing (through attorney Lloyd Muennink) over Enforcement's objection that he lacked standing. Perritt's attempt to intervene occurred a few minutes before the hearing was called, not five days prior to the hearing as required by Commission Rules of Practice and Procedure §1.64. In the course of the hearing, it became evident that Perritt's main concern was a request for a 45 day delay in the revocation of Seelye's P-5 Organization Report and P-4 Certificates of Compliance. This concern was doubtless prompted due to the call of the hearing indicating that Seelye's P-5 and P-4s could be revoked immediately if he failed to appear at the hearing. At one point, Perritt even indicated that a 35 day delay would be sufficient, since that would allow time for a scheduled meeting with Commission staff and transfer of wells in early December. Enforcement indicated in hearing that it would not seek immediate revocation of Seelye's P-5 and P-4s, and instead would await the examiner's Proposal for Decision.

Perritt's attempt to obtain a short delay in Commission action may have potentially served his interest in securing the P-4 transfer of wells from Seelye, but has nothing to do with the call of the hearing. His attempt at intervention does not meet the requirement that Perritt have a "justiciable or administratively cognizable interest" as required by Commission Rules of Practice and Procedure §1.64(a). Additionally, because Perritt failed to file a Motion to Intervene five days before the hearing as required by Commission Rules of Practice and Procedure §1.64, the examiner recommends that the attempt to intervene be denied.

Interim Order

Tex. Nat. Res. Code §91.114(i) requires that the organization subject to revocation be given a reasonable amount of time to comply with the order finding the violation before revocation takes place. Pursuant to the requirements of Tex. Nat. Res. Code §91.114(i), an Interim Order was signed by the Commission on February 7, 2006, and issued on February 8, 2006, giving Seelye 15 days to comply with the terms of the Final Orders issued in Oil & Gas Docket Nos. 09-0241935 and 09-0241936 on May 24, 2005. An Enforcement exhibit, late-filed on March 14, 2006, demonstrates that Seelye, William L. failed to comply with the terms of the Interim Order issued February 8,

2006. After circulation to the parties for objection, the late-filed exhibit was admitted into the record on March 29, 2006. Seelye has failed to pay the administrative penalty of \$6,000 assessed in Oil & Gas Docket No. 09-0241935 and has failed to pay the administrative penalty of \$10,000 assessed in Oil & Gas Docket No. 09-0241936, thus failing to comply with the Interim Order.

The examiner recommends that the P-5 Organization Report of William L. Seelye (Operator # 763205) be revoked pursuant to TNRC §91.114(h)(1). The examiner also recommends that the P-4 Certificates of Compliance of all of William L. Seelye's leases be cancelled.

Based on the record in this docket, the examiner recommends adoption of the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondent Seelye, William L. (Operator #763205) was given at least 10 days notice of this hearing by certified mail, addressed to its most recent Form P-5 (Organization Report) address. William L. Seelye did not appear at the hearing.
2. Seelye, William L. (Operator #763205) filed his most recent Form P-5 (Organization Report) on May 10, 2005 and has financial assurance in place in the form of a bond that expires September 30, 2006. Seelye is an active operator. As of November 10, 2005, Commission records showed that Seelye was the operator of 300 wells, with a total depth of 705,240 feet.
3. Final Orders in Oil & Gas Docket Nos. 09-0241935 and 09-0241936 were issued against Seelye, William L. (Operator #763205) on May 24, 2005. The cover letters accompanying the Final Orders stated that the Orders would become final and unappealable 23 days after issuance if no Motion for Rehearing was filed. No such motion was filed and the Orders in both dockets became final and unappealable on June 20, 2005.
4. In Oil & Gas Docket No. 09-0241936, Seelye was ordered to perform an H-15 test (Test on an Inactive Well More Than 25 years Old) on Well No. 9, Taylor -C- (14225) Lease, and an H-5 test (Mechanical Integrity Test) on Well Nos. 1, 31 and 33, Green, Mary (00287) Lease, Archer County Regular Field, Archer County, Texas, and pay an administrative penalty of \$10,000.
5. In Oil & Gas Docket No. 09-0241935, Seelye was ordered to perform H-5 tests (Mechanical Integrity Test) on Well Nos. 3 and 10 on the G.A. Jennings -AA- (11675) Lease and Well No. 4 on the G.A. Jennings -BB- (17097) Lease, Archer County Regular Field, Archer County, Texas and pay an administrative penalty of \$6,000.
6. The Commission requires H-15 fluid level tests in order to ensure that the top of fluid in inactive wells over 25 years old is at least 250 feet below the base of usable quality water. This requirement is in place to prevent the contamination of usable quality water, which would be a hazard to the health and safety of the public.
7. The Commission requires H-5 mechanical integrity tests in order to ensure that the surface

- casing, long string casing and tubing in a well are intact and not communicating well fluids to surrounding strata. This requirement is in place to prevent the contamination of usable quality water, which would be a hazard to the health and safety of the public.
8. UIC Monitor/Pressure Test Record screens printed from the Commission mainframe on November 1, 2005, indicate that the tests required by the Final Orders in Docket Nos. 09-0241935 and 09-0241936 have not been performed.
 9. The administrative penalties assessed against Seelye, William L., (operator # 763205) in Oil & Gas Docket Nos. 09-0241935 and 09-0241936 have not been paid.
 10. The final and unappealable orders in Docket Nos. 09-0241935 and 09-0241936 required Seelye to perform H-15 and H-5 tests, which relate to safety and the prevention or control of pollution. The tests were not performed, thus, pursuant to Tex. Nat. Res. Code §91.114(a)(1), the Commission may not accept an organization report or an application for a certificate of compliance from Seelye.
 11. Pursuant to Tex. Nat. Res. Code §91.114(h), the Commission may revoke an organization's organization report and any certificate of compliance if the Commission is prohibited from accepting an organization report or application for a certificate of compliance from an organization pursuant to Tex. Nat. Res. Code §91.114(a)(1) cited above.
 12. Ricky Perritt, Receiver for Seel-Mac Oil & Gas, LLC, attempted to intervene in this hearing minutes before the hearing began rather than the five days prior to the hearing required by Commission Rules of Practice and Procedure §1.64(a). Additionally, Perritt failed to demonstrate that he has a "justiciable or administratively cognizable interest" in the hearing as required by Commission Rules of Practice and Procedure §1.64(a).
 13. Pursuant to Tex. Nat. Res. Code §91.114(i), an order under Tex. Nat. Res. Code §91.114(h) shall provide the organization with a reasonable amount of time to comply with the judgment or order finding the violation before the revocation takes place.
 14. On February 7, 2006, an Interim Order was signed by the Commission, and issued on February 8, 2006, giving Seelye, William L., fifteen (15) days to comply with the terms of the Final Orders issued May 14, 2005 in Oil & Gas Docket Nos. 09-0241935 and 09-0241936.
 15. Seelye, William L. has not acted under the terms of the Interim Order issued February 8, 2006 in Docket No. 01-0244431 and has failed to pay the administrative penalty of \$6,000 assessed in Oil & Gas Docket No. 09-0241935 and has failed to pay the administrative penalty of \$10,000 assessed in Oil & Gas Docket No. 09-0241936.

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. Ricky Perritt does not have standing to appear in this hearing.
4. The documented violations committed by respondent are a hazard to the public health and demonstrate a lack of good faith pursuant to Texas Natural Resources Code §81.0531(c).
5. Under Tex. Nat. Res. Code §91.114(i), 15 days is a reasonable amount of time to comply with the order or orders finding violation before revocation takes place.
6. The P-5 Organization Report of Seelye, William L. (Operator #763205) should be revoked.
7. All P-4 Certificates of Compliance held by Seelye, William L. (Operator #763205) should be revoked.

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, revoking the P-5 Organization Report of, and all P-4 Certificates of Compliance held by, Seelye, William L. (Operator #763205).

Respectfully submitted,

Marshall Enquist
Hearings Examiner