

July 23, 2002

OIL AND GAS DOCKET NO. 01-0229773

ENFORCEMENT ACTION AGAINST ARPEL, INC. FOR VIOLATIONS OF STATEWIDE RULES ON THE DUBOSE, JOHN STEEN (06958) LEASE, WELL NO. 1, PILGRIM (AUSTIN CHALK) FIELD, GONZALES COUNTY; AND ON THE GONZALES ET AL UNIT LEASE, WELL NO. 1H, RRC GAS ID NO. 161542, PEARSALL (AUSTIN CHALK) FIELD, FRIO COUNTY, TEXAS.

APPEARANCES:

FOR MOVANT:

Scott Holter, Staff Attorney

MOVANT:

Railroad Commission of Texas

FOR INTERESTED PARTY:

Robert Lammerts

PARTY:

Self

NO APPEARANCE ON OF BEHALF RESPONDENT, ARPEL, INC.

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED:	January 17, 2002
AMENDED COMPLAINT FILED:	March 21, 2002
DATE CASE HEARD:	May 6, 2002
PFD PREPARED BY:	Mark Helmueller, Hearings Examiner
PFD CIRCULATION DATE:	July 23, 2002
CURRENT STATUS:	Default

STATEMENT OF THE CASE

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

1. Whether the respondent should be required to plug or otherwise place in compliance with Statewide Rules 3 and 14, the Dubose, John Steen (06958) Lease, Well No. 1, Pilgrim (Austin Chalk) Field, Gonzales County; and on the Gonzales Et Al Unit Lease, Well No. 1H, RRC Gas Id No. 161542, Pearsall (Austin Chalk) Field, Frio County, Texas;
2. Whether the respondent has violated provisions of Title 3, Oil and Gas, Subtitles A, B, and C, Texas Natural Resources Code, Chapter 27 of the Texas Water Code, and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to comply with said statutes and Statewide Rules 3 and 14;
3. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding said leases and wells;
4. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code Ann. § 81.0534.

Scott Holter, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. No appearance was made on behalf of respondent, Arpel, Inc. However, Arpel's President, Robert Lammerts appeared and presented evidence on his own behalf at the hearing. The Enforcement Section's hearing file was admitted into evidence. The staff recommended that Arpel be ordered to properly plug the wells and to be assessed an administrative penalty of \$5,000 broken down as follows: \$1,000 for four violations of Statewide Rule 3 at \$250 per violation, and \$4,000 for the two violations of Statewide Rule 14(b)(2) at \$2,000 per violation. The examiner agrees with the recommended penalty.

DISCUSSION OF THE EVIDENCE

Enforcement presented Commission records showing that the most recent approved P-5 for Arpel was filed November 15, 1999. Robert Lammerts is identified as the President. On November 20, 2001, Arpel advised the Commission that Lyle R. Nelson had been appointed by the Bankruptcy Court as the trustee for the organization.

Arpel was recognized as the operator of the Dubose, John Steen (06958) Lease, Well No. 1, upon the Commission's approval of the Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance) for the lease on May 22, 1992.

Enforcement asserts that Arpel is the operator of the Gonzales Et Al Unit Lease, Well No. 1H, RRC Gas Id No. 161542, based upon Arpel's filing of Commission Form G-1 (Initial Potential - Deepening Report) on August 5, 1996. The G-1 shows the well was completed on July 14, 1994.

Enforcement submitted Commission inspection reports for June 27, 2001, February 15, 2002 and April 4, 2002 to show that the sign required to be posted at Well No. 1 on the Dubose Lease was missing in violation of Statewide Rule 3. Enforcement also submitted Commission inspection reports for January 17, 1997, December 22, 1999, January 17, 2001, June 27, 2001, January 31, 2002, and April 10, 2002 to show that the signs required to be posted at the lease entrance, tank battery and at Well No. 1H on the Gonzales Lease were missing in violation of Statewide Rule 3.

Enforcement also submitted Commission production records which indicate that Arpel last reported production from Well No. 1 on the Dubose Lease in February 1996. The last plugging extension Arpel obtained for this well expired on November 12, 2000. Enforcement submits that inspection reports made on June 27, 2001, February 15, 2002, and April 4, 2002 show that the well was shut in and not equipped to produce. Accordingly, Enforcement contends that the well is inactive and in violation of Statewide Rule 14(b)(2). The estimated cost to plug this well is \$12,750.

Enforcement also contends that Well No. 1H on the Gonzales Lease is inactive and in violation of Statewide Rule 14(b)(2). Commission production records submitted by Enforcement indicate that Arpel reported no production from this well after it was completed on July 14, 1994. The last plugging extension Arpel obtained for this well expired on November 12, 2000. Enforcement submits that Commission inspection reports for January 17, 1997, December 22, 1999, January 17, 2001, June 27, 2001, January 31, 2002 and April 10, 2002 show that the well is shut in and not equipped to produce. The estimated cost to plug this well is \$12,600.

Lammert argues that both leases were in compliance with all applicable Commission rules when he exerted control over Arpel as its President. Arpel filed for Chapter 7 bankruptcy on February 28, 2000. At the time Arpel filed the bankruptcy proceedings, Lammerts alleges that both leases were in compliance with all applicable Commission rules.

EXAMINER'S OPINION

It is uncontested in this docket that the two leases are in violation of Statewide Rules 3 and 14. The testimony and evidence submitted by Lammerts is relevant only to the issue of whether the violations occurred when the Bankruptcy Trustee was in control of the operations of Arpel. Lammerts did not dispute that he was identified as Arpel's President in the last Organization Report filed by Arpel in November 1999. Lammerts presented no evidence that an amended Organization Report in which he was no longer identified as Arpel's President was ever filed. While Lammerts contends that the violations occurred after control of the company was ceded to the Bankruptcy Trustee, he took no affirmative action to remove himself as the President. Additionally, the filing of bankruptcy proceedings to dissolve the company is to be distinguished from situations where the company remains an ongoing business with the appointment of new operators.

Further, Lammerts disavowals of responsibility with respect to the violations of Statewide Rule 3 on the Gonzales Lease are inaccurate. Commission inspection reports confirm that the Gonzales Lease was out of compliance with the sign requirements of Statewide Rule 3 as early as January 17, 1997. Additionally, both wells ceased producing and became inactive prior to March 1996. By his own admission, Lammerts exercised control over Arpel until at least February 28, 2000. Therefore Lammerts contention that all violations of Commission Rules occurred after the

Bankruptcy Trustee took control of Arpel are disingenuous. Accordingly, the examiner believes there is no basis for a Finding of Fact or Conclusion of Law finding that Lammerts did not exercise a position of ownership or control in Arpel when the violations of Commission rules occurred.

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, Arpel, Inc. (“Arpel”) was given at least 10 days notice of this proceeding by certified mail, addressed to the most recent Form P-5 (Organization Report) address. Notice was also served on respondent’s President, Robert Lammerts. Additionally, notice was also provided to the Bankruptcy Trustee and Bankruptcy Attorney for respondent. Lammerts appeared and presented evidence at the hearing.
2. Arpel last filed an organization report on November 15, 1999. Robert Lammerts is identified as the President on the report.
3. Arpel was recognized as the operator of the Dubose, John Steen (06958) Lease, Well No. 1, upon the Commission’s approval of the Commission Form P-4 (Producer’s Transportation Authority and Certificate of Compliance) for the lease on May 22, 1992.
4. Arpel is the operator of the Gonzales Et Al Unit Lease, Well No. 1H, RRC Gas Id No. 161542, based upon Arpel’s filing of Commission Form G-1 (Initial Potential - Deepening Report) on August 5, 1996. The G-1 Form indicates that Arpel completed the well on July 14, 1994.
5. Commission inspection reports for June 27, 2001 and February 15, 2002 show that the sign required to be posted at Well No. 1 on the Dubose Lease was missing in violation of Statewide Rule 3.
6. Commission inspection reports for January 17, 1997, December 22, 1999, January 17, 2001, June 27, 2001 and January 31, 2002 show that the signs required to be posted at the lease entrance, tank battery and at Well No. 1H on the Gonzales Lease were missing in violation of Statewide Rule 3.
5. Commission production records indicate that Arpel last reported production from Well No. 1 on the Dubose Lease in February 1996. The last plugging extension Arpel obtained for this well expired on November 12, 2000. District Office inspection reports dated June 27, 2001 and February 15, 2002 show that the well was shut in and not equipped to produce.
6. Commission production records indicate that Arpel reported no production from Well No. 1H on the Gonzales Lease after it was completed on July 14, 1994. The last plugging extension Arpel obtained for this well expired on November 12, 2000. Commission inspection reports for January 17, 1997, December 22, 1999, January 17, 2001, June 27,

2001 and January 31, 2002 show that the well is shut in and not equipped to produce.

7. Failure to properly identify a well by the posting of the sign required by Statewide Rule 3 has the potential for causing confusion and delay in remedying a violation or emergency and poses a threat to the public health and safety.
8. Usable quality groundwater in the area may be contaminated by migrations or discharges of saltwater and other oil and gas wastes from the subject well. Unplugged wellbores constitute a cognizable threat to the public health and safety because of the probability of pollution.
9. Respondent has not demonstrated good faith since it failed to plug or otherwise place the subject well in compliance after being notified of the violations by the district office.
10. The estimated cost to plug Well No. 1 on the Dubose Lease is \$12,750.
11. The estimated cost to plug Well No. 1H on the Gonzales Lease is \$12,600.
12. The record does not reflect any previous violations by the respondent of Commission rules.

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. Arpel, Inc. is the operator of the Dubose, John Steen (06958) Lease, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. The respondent has the primary responsibility for complying with Rules 3 and 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Dubose, John Steen (06958) Lease.
5. Well No. 1 on the Dubose, John Steen (06958) Lease is not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code. Well No. 1 on the Dubose, John Steen (06958) Lease has been out of compliance from at least November 12, 2000 to the present.
6. The Dubose, John Steen (06958) Lease is not in compliance with Commission Rule 3. The Dubose, John Steen (06958) Lease has been out of compliance with this rule from at least June 27, 2001 to the present.
7. Arpel, Inc. is the operator of the Gonzales Et Al Unit Lease, RRC Gas Id No. 161542, as defined by Commission Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.

8. The respondent has the primary responsibility for complying with Rules 3 and 14, and Chapter 89 of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the Gonzales Et Al Unit Lease, RRC Gas Id No. 161542.
9. Well No. 1H on the Gonzales Et Al Unit Lease, Well No. 1H, RRC Gas Id No. 161542 is not properly plugged or otherwise in compliance with Commission Rule 14 or Chapters 85, 89 and 91 of the Texas Natural Resources Code. Well No. 1H on the Gonzales Et Al Unit Lease, RRC Gas Id No. 161542 has been out of compliance from at least November 12, 2000 to the present.
10. The Gonzales Et Al Unit Lease, RRC Gas Id No. 161542 is not in compliance with Commission Rule 3. The Gonzales Et Al Unit Lease, RRC Gas Id No. 161542 has been out of compliance with this rule from at least January 17, 1997 to the present.
11. The documented violations committed by Arpel are a hazard to the public health and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. §81.0531(c).

RECOMMENDATION

The examiner recommends that the above findings and conclusions be adopted and the attached order approved, requiring Arpel to plug the subject wells and be assessed an administrative penalty of \$5,000.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner