



RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

OIL & GAS DOCKET NO. 03-0257291

ENFORCEMENT ACTION AGAINST TEX-ATIC RESOURCES, INC. (OPERATOR NO. 848438) FOR VIOLATIONS OF STATEWIDE RULES ON THE WRIGHT-BEST LEASE, WELL NO. 3B (RRC NO. 175554), ORANGE HILL, S. (WILCOX 11000) FIELD, AUSTIN COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Elaine Moore

MOVANT:

Enforcement Section
Office of General Counsel

FOR INTERVENOR:

Mark Foster

INTERVENOR:

Lewis Johnson

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE COMPLAINT FILED:	May 6, 2009
DATE OF NOTICE OF HEARING:	January 11, 2010
DATE OF HEARING:	February 25, 2010
HEARD BY:	James M. Doherty, Hearings Examiner
DATE RECORD CLOSED:	March 11, 2010
DATE PFD CIRCULATED:	May 13, 2010

STATEMENT OF THE CASE

This proceeding was called by the Commission on the recommendation of the District Office to determine the following:

1. Whether the respondent Tex-Atic Resources, Inc. ("Tex-Atic") should be required to plug or otherwise place into compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)] the Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas;

2. Whether Tex-Atic violated Statewide Rule 14(b)(3) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(3)] by failing to perform timely a required Form H-15 test on the Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas;
3. Whether Tex-Atic 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 plug the subject well and/or otherwise failing to place the subject well into compliance with Statewide Rules 14(b)(2), and 14(b)(3);
4. Whether, pursuant to Texas Natural Resources Code §81.0531, Tex-Atic should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject leases and wells;
5. Whether any violations of Statewide Rules 14(b)(2), and 14(b)(3) by Tex-Atic should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534; and
6. Whether Lewis Johnson was a person in a position of ownership or control of Tex-Atic at the time the subject violations were committed and should be made subject to the restrictions of §91.114 of the Texas Natural Resources Code.

The Notice of Hearing issued on January 11, 2010, was directed to Tex-Atic at its address shown on the most recent Form P-5 organization report filed for Tex-Atic and to Lewis Johnson, Resident Agent/President/Secretary. Among other things, this notice cautioned that "Under Texas Natural Resources Code Section 91.114, as amended September 1, 1997, your failure to pay penalties or reimbursement assessed in a Commission final order, or to comply with the remedial directives in the order, shall require the Commission to refuse permit applications and Forms P-4 tendered by you, and shall also result in revocation of your right to engage in the oil & gas business in the State of Texas."

A hearing was held on February 25, 2010. Elaine Moore, Staff Attorney, appeared to represent the Enforcement Section of the Office of General Counsel ("Enforcement"). Mark Foster, attorney, appeared to represent the intervenor Lewis Johnson. Tex-Atic did not appear. Enforcement's certified hearing file was admitted into evidence. Mr. Foster made a statement of counsel on behalf of Lewis Johnson and presented copies of certain official records of the Texas Secretary of State. The examiner was requested to officially notice these records, which, in the absence of any objection from Enforcement, the examiner has done. The record was held open for a period of two weeks in order that Enforcement might submit copies of Form P-5 organization reports filed by Tex-Atic during 2000-2006. By letter dated March 8, 2010, Enforcement advised the examiner that it had "no objection to the removal of Lewis Johnson as an officer of Tex-Atic."

DISCUSSION OF THE EVIDENCE

Enforcement

Tex-Atic is a corporation according to its most recent Form P-5 organization report filed on January 3, 2006. This most recent Form P-5 was signed by Robert Huckaby, Attorney, and listed Lewis Johnson as Resident Agent, President, and Secretary for Tex-Atic. The examiner has officially noticed Forms P-5 filed by Tex-Atic for its 2000 through 2005 renewal years. Lewis Johnson was first listed as President and Secretary on the 2002 Form P-5 signed by Robert Huckaby, Attorney, and Johnson was listed as both Resident Agent and President/Secretary on Forms P-5 filed for the subsequent renewal years through 2005, all such Forms P-5 having been signed by Huckaby. The organization report of Tex-Atic has been delinquent since January 1, 2007.

Tex-Atic designated itself the operator of the Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved on February 4, 2000, effective May 29, 1999. District Office inspections of the Wright-Best Lease, Well No. 3B were made on March 11 and April 11, 2008, March 2, 2009, and January 12, 2010. These inspections disclosed that the well was inactive. Production was last reported to the Commission for the subject lease and well in May 2004. A Statewide Rule 14(b)(2) plugging extension for the well was denied on July 24, 2006, based on delinquency of a required H-15 test. According to a certification of the Commission's Secretary dated February 23, 2010, no Form W-3 (Plugging Record) or Form W-15 (Cementing Affidavit) have been filed for the subject well. Field Operations estimates that the cost to the State to plug the subject well would be \$94,134.

An Affidavit of Ramon Fernandez, Jr., P.E., Field Operations, in the Enforcement's certified hearing file states that a well that is violation of Statewide Rule 14 must be plugged in order to prevent pollution of usable quality surface or subsurface waters. Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.

The Wright-Best Lease, Well No. 3B (RRC No. 175554) was completed in January 1977, and is more than 25 years old. As such, it is subject to the testing requirements of Statewide Rule 14(b)(3). This well was due for a required fluid level or hydraulic pressure test in May 2006, but Tex-Atic did not perform this test or file an approved Form H-15 (Test On An Inactive Well More Than 25 Years Old).

The Fernandez Affidavit in Enforcement's certified hearing file states that any inactive well that is greater than 25 years of age must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the required test and supporting documentation (Form H-15), the Commission cannot determine if the well poses a threat to natural resources.

The District Office corresponded with Tex-Atic on three occasions between March 19, 2008, and April 4, 2008, seeking Tex-Atic's voluntary compliance regarding the subject violations. Tex-Atic did not voluntarily comply or appear at the hearing to explain its actions.

Lewis Johnson

Lewis Johnson appeared at the hearing through his attorney to contest the allegation in Enforcement's complaint that he served as an officer of Tex-Atic. According to correspondence from Johnson in Enforcement's certified hearing file, he has never had any ownership interest in Tex-Atic and never agreed to be named as an officer of the company on the Form P-5 organization report. According to the Johnson correspondence, he agreed in 2003 or 2004 to serve only as resident agent for service of process for Tex-Atic, but never received a salary from the company and is unaware of any corporate records or filings showing him to be an officer.

The examiner has officially noticed copies of certain official records of the Secretary of State submitted at the hearing by Mr. Johnson's attorney. These records show that the charter of Tex-Atic was forfeited on February 8, 2008. Texas Franchise Tax Public Information Reports signed by Robert Huckaby, Attorney, covering the years 2002 through 2004 list Lewis Johnson as President and Secretary. However, the 2005 and 2006 Texas Franchise Tax Public Information Reports, also signed by Robert Huckaby, list Huckaby as President and Secretary and do not list Lewis Johnson as an officer. A Change of Registered Agent/Registered Office form filed with the Secretary of State on May 15, 2005, changed the registered agent for Tex-Atic from ZOR Corp. to Robert Huckaby.

EXAMINER'S OPINION

Enforcement proved violations by Tex-Atic of Statewide Rule 14(b)(2) and Statewide Rule 14(b)(3), and Tex-Atic did not appear at the hearing to contest these violations. Enforcement requests that a penalty in the amount of \$4,000 be assessed against Tex-Atic, calculated on the basis of \$2,000 for one violation of Statewide Rule 14(b)(2) and \$2,000 for one violation of Statewide Rule 14(b)(3). The examiner agrees with Enforcement's penalty recommendation. This penalty conforms to the standard penalty guidelines for enforcement cases. In determining the amount of recommended penalty, the examiner has considered the penalty standards in Texas Natural Resources Code §81.0531. It has not been shown that Tex-Atic has a history of prior violations of Commission rules. However, the involved violations are serious, and presented a hazard to the health and safety of the public, because of the threat of pollution of usable quality water presented by the inactive, untested, and unplugged wellbores. Tex-Atic cannot be considered to have acted in good faith because it did not correct the involved violations in response to multiple written requests from the District Office for such compliance and did not appear at the hearing to explain its actions.

The examiner also recommends that Tex-Atic be required to plug the subject well. The well is 33 years old, and has been inactive for almost six years. No recent fluid level or hydraulic pressure test has been performed on the well, and there is no evidence that Tex-Atic retains a good faith claim to a right to operate the well or that the well is capable of being restored to active status. Furthermore, the Form P-5 organization report of Tex-Atic has been delinquent since January 1, 2007, and its corporate charter has been forfeited by the Secretary of State. In the more than three years the well has been an orphan well, no other operator has come forward to express any interest in the well.

The examiner further recommends that the Commission find that Lewis Johnson was not a person in a position of ownership or control of Tex-Atic at the time the subject violations were committed. Because Mr. Johnson did not make a personal appearance at the hearing to offer testimony, there is insufficient evidence to support a finding that Mr. Johnson never served as an officer of Tex-Atic, but the evidence is sufficient to establish that he was not an officer, or otherwise in a position of ownership or control, at the time the subject violations were committed. The inception of the Statewide Rule 14(b)(2) violation was on July 24, 2006, when a plugging extension for the well was denied. The inception of the Statewide Rule 14(b)(3) violation was in May 2006 when a H-15 test was due but not performed. The records of the Secretary of State submitted at the hearing by Mr. Johnson's attorney show that by these dates Robert Huckaby had been named President and Secretary of Tex-Atic and Mr. Johnson was not an officer. As a consequence, Mr. Johnson should not be found to be subject to the restrictions of Section 91.114 of the Texas Natural Resources Code on account of the violations found to have been committed by Tex-Atic in this docket.

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

FINDINGS OF FACT

1. Tex-Atic Resources, Inc. ("Tex-Atic") was given at least ten (10) days notice of this hearing by certified mail sent to its most recent Form P-5 organization report address. Tex-Atic did not appear at the hearing.
2. At last ten (10) days notice of this hearing was also provided to Robert Huckaby, Attorney for Tex-Atic and to Lewis Johnson who was listed as Agent/President/Secretary of Tex-Atic on the most recent Form P-5 organization report filed for Tex-Atic on January 3, 2006, signed by Robert Huckaby. Lewis Johnson appeared at the hearing through his attorney, Mark Foster.

3. Tex-Atic is listed on its most recent Form P-5 organization report as a corporation. Texas Franchise Tax Public Information Reports from the Texas Secretary of State show that Lewis Johnson was not an officer of Tex-Atic after May 16, 2005, when Robert Huckaby signed a Public Information Report showing himself as President and Secretary of Tex-Atic.
4. Lewis Johnson was not a person in a position of ownership or control of Tex-Atic at the time the violations in this docket were committed.
5. Tex-Atic's Form P-5 organization report has been delinquent since January 1, 2007.
6. Tex-Atic designated itself the operator of the Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), which was approved on February 4, 2000, effective May 29, 1999.
7. The Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas, has been inactive for more than 12 consecutive months, does not have a Statewide Rule 14(b)(2) plugging extension, and has not been plugged.
 - a. District Office inspections of the Wright-Best Lease, Well No. 3B were made on March 11 and April 11, 2008, March 2, 2009, and January 12, 2010. These inspections disclosed that the well was inactive.
 - b. Production was last reported to the Commission for the subject lease and well in May 2004.
 - c. A Statewide Rule 14(b)(2) plugging extension for the well was denied on July 24, 2006, based on delinquency of a required H-15 test.
 - d. No Form W-3 (Plugging Record) or Form W-15 (Cementing Affidavit) has been filed for the subject well.
8. The Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas, has not been fluid level tested or hydraulic pressure tested in conformity with the requirements of Statewide Rule 14(b)(3).
 - a. The Wright-Best Lease, Well No. 3B (RRC No. 175554) was completed in January 1977, and is more than 25 years old.
 - b. This well was due for a required fluid level or hydraulic pressure test in May 2006, but Tex-Atic did not perform this test or file an approved Form H-15 (Test On An Inactive Well More Than 25 Years Old).

9. A well that is violation of Statewide Rule 14 must be plugged in order to prevent pollution of usable quality surface or subsurface waters. Any wellbore, cased or otherwise, is a potential conduit for flow from oil or saltwater zones to zones of usable quality water or to the surface. Holes or leaks may develop in cased wells, allowing oil or saltwater to communicate with usable quality water zones or to flow to the surface. Uncased wells allow direct communication between zones and provide unimpeded access to the surface.
10. Any inactive well that is greater than 25 years of age must be plugged or tested to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas. Casing leaks and/or fluid levels above the base of usable quality water indicate a possible pollution hazard. Without the required test and supporting documentation (Form H-15), the Commission cannot determine if the well poses a threat to natural resources.
11. The District Office corresponded with Tex-Atic on three occasions between March 19, 2008, and April 4, 2008, seeking Tex-Atic's voluntary compliance regarding the subject violations. Tex-Atic did not voluntarily comply or appear at the hearing to explain its actions.
12. An order requiring Tex-Atic to plug the Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas, is necessary and appropriate to achieve compliance with Commission rules.
 - a. The well is 33 years old, and has been inactive for almost six years.
 - b. No recent fluid level or hydraulic pressure test has been performed on the well.
 - c. There is no evidence that Tex-Atic retains a good faith claim to a right to operate the well or that the well is capable of being restored to active status.
 - d. The Form P-5 organization report of Tex-Atic has been delinquent since January 1, 2007, and its corporate charter has been forfeited by the Secretary of State.
 - e. In the more than three years the well has been an orphan well, no other operator has come forward to evidence any interest in the well.

CONCLUSIONS OF LAW

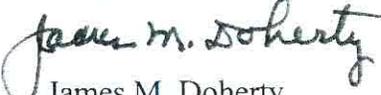
1. Proper notice of hearing was timely issued to appropriate persons entitled to notice.
2. All things necessary to the Commission attaining jurisdiction have occurred.

3. Tex-Atic Resources, Inc., is the operator of the Wright-Best Lease, Well No. 3B (RRC No. 175554), Orange Hill, S. (Wilcox 11000) Field, Austin County, Texas, as defined by Statewide Rules 14, 58, and 79 [Tex. R.R. Comm'n. 16 TEX. ADMIN. CODE §§3.14, 3.58, and 3.79] and Chapters 85 and 89 of the Texas Natural Resources Code.
4. As operator, Tex-Atic Resources, Inc., has the primary responsibility for complying with Statewide Rules 14(b)(2) and 14(b)(3) [Tex. R.R. Comm'n. 16 TEX. ADMIN. CODE §§3.14(b)(2) and 3.14(b)(3)], Chapters 89 and 91 of the Texas Natural Resources Code, and other applicable statutes and Commission rules respecting the subject lease and well.
5. Tex-Atic Resources, Inc., violated Statewide Rule 14(b)(2) by failing to plug the subject well within 12 months after operations ceased. The subject well has been out of compliance with Statewide Rule 14(b)(2) since at least July 24, 2006, when a plugging extension for the well was denied.
6. Tex-Atic Resources, Inc., violated Statewide Rule 14(b)(3) by failing to perform a timely fluid level or hydraulic pressure test on the subject well. The well has been out of compliance with Statewide Rule 14(b)(3) since May 2006.
7. The documented violations committed by Tex-Atic Resources, Inc., constituted acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
8. Tex-Atic Resources, Inc., did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
9. Lewis Johnson was not a person in a position of ownership or control of Tex-Atic Resources, Inc., at the time the violations in this docket were committed.

RECOMMENDATION

The examiner recommends that Tex-Atic Resources, Inc., be required to plug the subject well and pay a penalty in the amount of \$4,000.

Respectfully submitted,



James M. Doherty
Hearings Examiner