

**OIL & GAS DOCKET NO. 08-0248259**

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**ENFORCEMENT ACTION AGAINST PLATINUM EXPLORATION, INC. (OPERATOR NO. 667939) FOR VIOLATIONS OF STATEWIDE RULES ON THE CHINA LAKE "205" LEASE, WELL NO. 2 (RRC NO. 185261), BURKHOLDER (FUSSELMAN) FIELD, WARD COUNTY, TEXAS, AND THE G. P. PIONEER STATE GAS UNIT LEASE, WELL NO. 1 (RRC NO. 068772), QUITO (ATOKA) FIELD, WARD COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Susan German

**MOVANT:**

Enforcement Section  
Railroad Commission of Texas

**FOR RESPONDENT:**

Jason Turner  
Robert McKenzie  
Greg Rasmussen

**RESPONDENT:**

Platinum Exploration, Inc.

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE COMPLAINT FILED:</b>	July 26, 2006
<b>DATE OF NOTICE OF HEARING:</b>	January 29, 2007
<b>DATE OF HEARING:</b>	April 12, 2007
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner
<b>DATE PFD CIRCULATED:</b>	May 11, 2007

**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 Platinum Exploration, Inc. (“Platinum”), 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 China Lake “205” Lease, Well No. 2 (RRC No. 185261), Burkholder (Fusselman) Field, Ward County, Texas, and the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas;
2. Whether Platinum violated Statewide Rule 13(b)(1)(B) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.13(b)(1)(B)] by failing to use a wellhead assembly to maintain surface control of the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas;
3. Whether Platinum violated Statewide Rule 14(b)(3) by failing to perform a required H-15 test (Test on an Inactive Well More than 25 Years Old) on the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas;
4. Whether Platinum 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 wells or otherwise place the wells into compliance with Statewide Rules 13(b)(1)(B), 14(b)(2), and 14(b)(3);
4. Whether, pursuant to Texas Natural Resources Code §81.0531, Platinum should be assessed administrative penalties of not more than \$10,000 per day for each offense committed regarding the subject wells; and
5. Whether any violations of Statewide Rules 13(b)(1)(B), 14(b)(2), and 14(b)(3) by Platinum should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A hearing was held on April 12, 2007.<sup>1</sup> Susan German, Staff Attorney, appeared representing the Enforcement Section of the Office of General Counsel (“Enforcement”). Jason Turner, attorney, appeared representing Platinum and presented evidence. Enforcement’s certified hearing file was admitted into evidence.

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<sup>1</sup> This docket was heard jointly with Oil & Gas Docket Nos. 02-0248250, 08-0248249, 8A-0249475, and 8A-0249476 involving the same respondent. Separate proposals for decision are being issued in each docket.

### **APPLICABLE LAW**

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension has been obtained. A plugging extension will be approved for a well only if the well is in compliance with all Commission rules and the operator has a good faith claim of right to operate the well.

Statewide Rule 13(b)(1)(B) provides that wellhead assemblies shall be used on wells to maintain surface control of the well. Statewide Rule 14(b)(3) provides that the operator of any well more than 25 years old that becomes inactive shall plug or test such well to determine whether the well poses a potential threat of harm to natural resources, including surface and subsurface water, oil and gas.

### **DISCUSSION OF THE EVIDENCE**

#### **Matters Officially Noticed**

The examiner has officially noticed the Commission's Master Inquiry, Officer/Agent Inquiry Selection, and P-5 Financial Assurance Inquiry databases for Platinum, which show that Platinum is a corporation, and its officers are Harold James Rasmussen, President, Michael Paul Jobe, Vice President, and Gregory James Rasmussen, Vice President. The Form P-5 organization report of Platinum is active, and Platinum has approved financial assurance on file with the Commission in the amount of \$250,000.

The examiner has also officially noticed the Commission's On-Schedule Lease, Wells, Wellbores By Operator and Wells Subject to Rule 14(b)(2)-Operator Summary Data databases which show that as of April 26, 2007, Platinum was the record operator of 116 wells, 69 of which are subject to Statewide Rule 14(b)(2). Forty-seven of the 69 wells subject to Statewide Rule 14(b)(2) have been inactive for more than 36 months. Of the 69 wells subject to Statewide Rule 14(b)(2), plugging extensions have been approved for 43 wells and denied for 26 wells. The examiner has also officially noticed the Commission's Production Data Query database which shows that for 2006, Platinum reported total production of 165,585 barrels of oil, 46,292 MCF of casinghead gas, 47,417 MCF of gas well gas, and 3 barrels of condensate.

#### **Enforcement**

Platinum designated itself operator of the China Lake "205" Lease, Well No. 2 (RRC No. 185261) by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved November 6, 2001, effective February 15, 2001. Platinum designated itself operator of the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772) by filing a Form P-4 approved April 16, 1998, effective March 1, 1998. District Office photographs of the subject wells are attached to this proposal for decision as Appendix 1.

District Office inspections of the China Lake "205" Lease on March 16, July 13, and November 7, 2006, and January 4 and March 19, 2007, disclosed that Well No. 2 was inactive and unplugged. On the occasion of these inspections, the production casing of Well No. 2 was found to be leaking gas to the atmosphere, and the well is in a hydrogen sulfide area. No production has been reported to the Commission for this lease and well since January 31, 2003. A Statewide Rule 14(b)(2) plugging extension for Well No. 2 was canceled on December 6, 2004, because of the operator's inability to establish that the operator had a good faith claim of right to operate the well.

District Office inspections of the G. P. Pioneer State Gas Unit Lease on March 16, May 3, July 13 and October 6, 2006, and January 4, 2007, disclosed that Well No. 1 was inactive and unplugged. No production has been reported to the Commission for this lease and well since September 30, 1997. A plugging extension for Well No. 1 was canceled on December 6, 2004, because a required H-15 test (Test on an Inactive Well More than 25 Years Old) was delinquent.

The estimated cost to the State to plug the China Lake "205" Lease, Well No. 2 and the G. P. Pioneer State Gas Unit Lease, Well No. 1 is \$56,000 per well.

District Office inspections of the G. P. Pioneer State Gas Unit Lease on March 16, May 3, and July 13, 2006, disclosed that the production casing top flange of Well No. 1 was open to the atmosphere and standing full of fluid with gas bubbles escaping. Follow-up inspections on October 6, 2006, and January 4, 2007, disclosed that the operator had placed a top hole plug in the production casing, but gas bubbles were continuing to escape around the surface plug.

The G. P. Pioneer State Gas Unit Lease, Well No. 1 was completed on September 8, 1976. As the well is more than 25 years old, it is subject to the H-15 testing requirements of Statewide Rule 14(b)(3). A required H-15 test was due in May 2002, but the well has never been tested.

On at least five separate occasions between February 23, 2006, and November 17, 2006, the District Office sent Platinum correspondence, notices, or copies of memoranda requesting voluntary compliance on the subject leases and wells. On August 23, 2006, Platinum filed Forms W-3A (Notice of Intention to Plug and Abandon) with the District Office for the China Lake "205" Lease, Well No. 2 and the G. P. Pioneer State Gas Unit Lease, Well No. 1, which stated an anticipated plugging date for both wells of October 30, 2006. The wells have not been plugged.

A certification of the Commission's Secretary dated April 9, 2007, states that no Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved, and no plugging extensions are in effect, for the subject wells.

An affidavit of Keith Barton, P.E., Field Operations, states that a well that is in violation of Statewide Rule 14, by having been inactive for one year, 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 Barton affidavit states further that open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution and safety hazards because of the possibility of surface run-off entering the wellbore and the possibility of fluids flowing out of the wellbore. The affidavit also states that any well that is greater than 25 years old 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 H-15 test required by Statewide Rule 14(b)(3), the Commission cannot determine if the well poses a threat to natural resources.

Enforcement recommends that Platinum be ordered to pay an administrative penalty of \$7,000, less \$5,250 already paid. The \$7,000 penalty recommended by Enforcement is calculated on the basis of one Rule 13(b)(1)(B) violation at \$1,000, two Rule 14(b)(2) violations at \$2,000 each, and one Rule 14(b)(3) violation at \$2,000. Enforcement also recommends that Platinum be ordered to bring the subject wells into compliance with Commission rules.

### **Platinum**

Platinum did not dispute the fact that the subject violations occurred or that Platinum is the operator responsible for the violations. On the other hand, Platinum requested more time to bring to fruition a plan to transfer the subject wells to another operator and thus to bring the wells into compliance.

Platinum has experienced financial difficulty during the past year or more. It has been negotiating with investors to form a new entity which would acquire a loan to pay off Platinum's obligations and to achieve compliance with Commission rules. The details are murky, but apparently, the new entity would acquire some or all of Platinum's properties, and Platinum's wells would be transferred to Saber Resources, LLC, or if Saber is not interested in certain wells, then to Prime Operating or Finley Resources. A schedule for compliance introduced into evidence by Platinum indicates a plan to transfer the two wells that are the subject of this docket to Saber Resources, LLC by October 2007 in the case of the China Lake "205" Lease, Well No. 2 and by November 2007 in the case of the G. P. Pioneer State Gas Unit Lease, Well No. 1. Platinum conceded that its mineral lease(s) covering the properties on which the subject wells are located have terminated, and Saber will need to attempt to obtain a new mineral lease. Because of its financial distress, Platinum is hopeful that any administrative penalties assessed in this docket will be reduced as much as possible.

**EXAMINER'S OPINION**

Enforcement proved that the alleged violations of Statewide Rules 13(b)(1)(B), 14(b)(2) and 14(b)(3) were committed, and Platinum is the responsible operator. The remaining issues are: (1) the amount of administrative penalties that should be imposed; and (2) the nature of compliance that should be ordered.

In determining the amount of the penalty to be imposed against Platinum, the Commission is required by Texas Natural Resources Code §81.0531 to consider the operator's previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. According to Enforcement's complaint in this docket, Platinum has no history of prior final enforcement orders entered against it for violations of Commission rules. On the other hand, the involved violations are serious, and present a hazard to the health and safety of the public, because of the threat of pollution of usable quality water presented by inactive and unplugged wellbores and the threat to public safety presented by gas leaks in a hydrogen sulfide area.

Platinum cannot be said to have acted in good faith, because it did not respond to numerous requests of the District Office for voluntary compliance. The penalties recommended by Enforcement are the standard penalties provided by the recommended standard penalty schedule for enforcement cases, and the examiner believes that they should be adopted. Accordingly, the examiner recommends that Platinum be ordered to pay a penalty of \$7,000, less the \$5,250 already paid.

The examiner further recommends that Platinum be ordered to plug the subject wells. A "plug only" order is recommended because the subject wells have been inactive for more than four years in the case of the China Lake "205" Lease, Well No. 2 and for almost ten years in the case of the G. P. Pioneer State Gas Unit Lease, Well No. 1. These wells are a pollution threat and a threat to the public health and safety. District Office inspections have disclosed that both wells are leaking gas to the atmosphere in a hydrogen sulfide area. The G. P. Pioneer State Gas Unit Lease, Well No. 1 is more than 30 years old and has never been fluid level tested or pressure tested. Platinum appears to have agreed that the wells are in need of plugging because in August 2006 it filed Forms W-3A (Notice of Intention to Plug and Abandon) for both wells. Platinum's oil and gas leases covering the properties where the wells are located have terminated, meaning that Platinum no longer has a good faith claim of right to operate the wells and no eligibility for plugging extensions.

There is no apparent reason why Saber Resources, LLC or any other operator would be interested in taking a transfer of the subject wells, and Platinum's speculation that the wells could be transferred to Saber by October or November 2007 is without any support. There is no proof that Saber is willing to become the operator of the wells and, as far as the examiner can determine, no pending Forms P-4 pursuant to which such a transfer is proposed. Neither is there any proof that Saber has, or can obtain, an oil and gas lease giving Saber a good faith claim of right to operate the wells. The examiner has officially noticed the Commission's On-Schedule Lease, Wells,

Wellbores by Operator and P-4 Inquiry databases for Saber and its leases which show that currently, Saber is the operator of a total of 12 wells, only one of which was transferred from Platinum.

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. Platinum Exploration, Inc. ("Platinum") was given at least ten (10) days notice of this hearing by certified mail addressed to Platinum's most recent Form P-5 organization report address. Platinum appeared at the hearing and presented evidence.
2. Platinum is a corporation. Its officers are Harold James Rasmussen, President, Michael Paul Jobe, Vice President, and Gregory James Rasmussen, Vice President. These officers were persons in a position of ownership or control of Platinum at the time the violations involved in this docket were committed.
3. The violations involved in this docket were violations of Commission rules related to safety and the prevention or control of pollution.
4. Platinum's Form P-5 organization report is active, and Platinum has approved financial assurance on file with the Commission in the amount of \$250,000.
5. Platinum designated itself operator of the China Lake "205" Lease, Well No. 2 (RRC No. 185261), Burkholder (Fusselman) Field, Ward County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved November 6, 2001, effective February 15, 2001. Platinum designated itself operator of the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas, by filing a Form P-4 approved April 16, 1998, effective March 1, 1998.
6. The China Lake "205" Lease, Well No. 2 has been inactive for more than twelve months, does not have a Statewide Rule 14(b)(2) plugging extension, and has not been plugged.
  - a. District Office inspections on March 16, July 13, and November 7, 2006, and January 4 and March 19, 2007, disclosed that Well No. 2 was inactive and unplugged.
  - b. On the occasion of the District Office inspections, the production casing of Well No. 2 was found to be leaking gas to the atmosphere, and the well is in a hydrogen sulfide area.
  - c. No production has been reported to the Commission for this lease and well since January 31, 2003.

- d. A Statewide Rule 14(b)(2) plugging extension for Well No. 2 was canceled on December 6, 2004, because of the operator's inability to establish that the operator had a good faith claim of right to operate the well.
  - e. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for Well No. 2.
7. The G. P. Pioneer State Gas Unit Lease, Well No. 1 has been inactive for more than twelve months, does not have a Statewide Rule 14(b)(2) plugging extension, and has not been plugged.
  - a. District office inspections on March 16, May 3, July 13, and October 6, 2006, and January 4, 2007, disclosed that Well No. 1 was inactive and unplugged.
  - b. No production has been reported to the Commission for this lease and well since September 30, 1997.
  - c. A Statewide Rule 14(b)(2) plugging extension for Well No. 1 was canceled on December 6, 2004, because a required H-15 test (Test on an Inactive Well More than 25 Years Old) was delinquent.
  - d. No Plugging Record (Form W-3) or Cementing Affidavit (Form W-15) has been filed or approved for Well No. 1.
8. The estimated cost to the State to plug the China Lake "205" Lease, Well No. 2 and the G. P. Pioneer State Gas Unit Lease, Well No. 1 is \$56,000 per well.
9. On the occasion of District Office inspections on March 16, May 3, and July 13, 2006, the production casing top flange of Well No. 1 on the G. P. Pioneer State Gas Unit Lease was open to the atmosphere and standing full of fluid with gas bubbles escaping. On the occasion of follow-up inspections on October 6, 2006, and January 4, 2007, it was found that the operator had placed a top hole plug in the production casing of Well No. 1, but gas bubbles were continuing to escape around the surface plug.
10. The G. P. Pioneer State Gas Unit Lease, Well No. 1 was completed on September 8, 1976. As the well is more than 25 years old, it is subject to the H-15 testing requirements of Statewide Rule 14(b)(3). A required H-15 test was due in May 2002, but the well has never been tested.
11. Platinum's oil and gas leases covering the properties on which the subject wells are located have terminated, and Platinum no longer possesses a good faith claim of right to operate the wells.

12. On at least five separate occasions between February 23, 2006, and November 17, 2006, the District Office sent Platinum correspondence, notices, or memoranda requesting voluntary compliance with Commission rules on the subject leases and wells.
13. On August 23, 2006, Platinum filed Forms W-3A (Notice of Intention to Plug and Abandon) with the District Office for the China Lake "205" Lease, Well No. 2 and the G. P. Pioneer State Gas Unit Lease, Well No. 1, which stated an anticipated plugging date for both wells of October 30, 2006. The wells have not been plugged.
14. A well that is in violation of Statewide Rule 14, by having been inactive for one year, 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.
15. Open wellbores prohibited by Statewide Rule 13(b)(1)(B) are pollution and safety hazards because of the threat that surface run-off may enter the wellbore and/or fluids may flow out of the wellbore.
16. Any well that is greater than 25 years old 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 H-15 test required by Statewide Rule 14(b)(3), the Commission cannot determine if the well poses a threat to natural resources.
17. No prior final enforcement orders have been entered against Platinum for violations of Commission rules.
18. Platinum has not demonstrated good faith because it did not achieve voluntary compliance with Statewide Rules 13(b)(1)(B), 14(b)(2) and 14(b)(3) in response to multiple requests of the District Office for such compliance.

**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. Platinum Exploration, Inc. (“Platinum”) was and is the operator of the China Lake “205” Lease, Well No. 2 (RRC No. 185261), Burkholder (Fusselman) Field, Ward County, Texas, and the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward 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, Platinum had the primary responsibility for complying with Statewide Rules 13(b)(1)(B), 14(b)(2) and 14(b)(3) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §§3.13(b)(1)(B), 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 China Lake “205” Lease, Well No. 2 (RRC No. 185261), Burkholder (Fusselman) Field, Ward County, Texas, and the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas;
5. Platinum violated Statewide Rule 14(b)(2) by failing to plug the subject wells within one year after operations ceased and by failing otherwise to bring the wells into compliance with Statewide Rule 14(b)(2). The subject wells have been out of compliance with Statewide Rule 14(b)(2) since at least December 6, 2004.
6. Platinum violated Statewide Rule 13(b)(1)(B) with respect to the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas, by failing to use a wellhead assembly to maintain surface control of the well. The well has been out of compliance with Statewide Rule 13(b)(1)(B) since at least March 16, 2006.
7. Platinum violated Statewide Rule 14(b)(3) with respect to the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas, by failing to conduct a required H-15 test (Test on an Inactive Well More than 25 Years Old) on the well. The well has been out of compliance with Statewide Rule 14(b)(3) since at least May 2002.
8. The documented violations committed by Platinum constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas Natural Resources Code §81.0531.
9. Platinum did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.
10. As officers of Platinum at the time Platinum violated Commission rules related to safety and the prevention or control of pollution, Harold James Rasmussen, Michael Paul Jobe, and Gregory James Rasmussen, and any organization subject to the Commission’s jurisdiction in which they, or any of them, may hold a position of ownership or control, are subject to the restrictions of Texas Natural Resources Code §91.114(a)(2).

**RECOMMENDATION**

The examiner recommends that Platinum be ordered to pay an administrative penalty in the amount of \$7,000, less \$5,250 already paid. The examiner recommends further that Platinum be ordered to plug the China Lake "205" Lease, Well No. 2 (RRC No. 185261), Burkholder (Fusselman) Field, Ward County, Texas, and the G. P. Pioneer State Gas Unit Lease, Well No. 1 (RRC No. 068772), Quito (Atoka) Field, Ward County, Texas.

Respectfully submitted,

James M. Doherty  
Hearings Examiner