

May 11, 2006

OIL & GAS DOCKET NO. 01-0244751

APPLICATION OF DONOCO OIL COMPANY CONTESTING PROPOSED CANCELLATION OF THE P-4 CERTIFICATE OF COMPLIANCE FOR THE AHRENS, STANLEY A. (05851) LEASE, GUADALUPE COUNTY, TEXAS.

APPEARANCES:

FOR RAILROAD COMMISSION OF TEXAS:

David Cooney
Tim Poe
Keith Barton

FOR OPERATOR DONOCO OIL COMPANY:

Donald Doege

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

NOTICE OF HEARING:	March 11, 2005
DATE CASE HEARD:	March 28, 2005
HEARING REOPENED:	April 28, 2005
REOPENED HEARING HELD:	May 16, 2005
RECORD CLOSED:	May 31, 2005
HEARD BY:	Mark Helmueller, Hearings Examiner Margaret Allen, Technical Examiner
PFD CIRCULATION DATE:	May 11, 2006
CURRENT STATUS:	Protested

STATEMENT OF THE CASE

This was a Commission-called hearing on the request of Donoco Oil Company, to determine the following:

1. Whether the certificate of compliance for the Ahrens, Stanley A. (05851) Lease should be canceled; and
2. The amount of any reconnect fees that should be required to be paid related to any cancellations of the certificate of compliance.

PROCEDURAL HISTORY

On February 9, 2005, Donoco Oil Company (hereinafter “Donoco”) was issued computer generated correspondence from the Commission advising that the certificate of compliance for the Ahrens, Stanley A. (05851) Lease (“subject lease”) would be canceled for the failure to file an approved Commission Form H-15 (Test on an Inactive Well More Than 25 Years Old) for Well No. 1. The February 9, 2005 letter provided that Donoco could request a hearing to contest the cancellation.

Donoco timely requested a hearing on March 2, 2005. At the original hearing on March 28, 2005, Donald Doege appeared and presented evidence on behalf of Donoco. No appearance was made by Commission Staff. The Commission’s computer mainframe indicated that despite the timely request for hearing, the certificate of compliance had been canceled on March 11, 2005 and a reconnect fee assessed. The examiners requested that staff provide further information to address why the certificate of compliance had been administratively canceled when there was a pending request for hearing. The examiner then requested staff rescind the cancellation and assessment of reconnect fees pending the outcome of this hearing. The cancellation was rescinded. Staff was also advised of the process that would be required to enter an appearance and reopen the hearing.

Staff’s request to appear and reopen the hearing was granted on April 28, 2005. David Cooney, Staff Attorney, appeared at the reopened hearing representing the Commission and presented witnesses and documentary evidence. Doege also appeared at the reopened hearing.

MATTERS OFFICIALLY NOTICED

Current Organization Records

Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Donoco was filed on December 1, 2005. The P-5 identifies Donald Doege as the Operator/Partner and Ronald Doege as a Partner. Donoco is currently identified as the operator of 80 wells, with a total depth of 65,125 feet. Donoco operates 22 leases including the Ahrens, Stanley A. (05851) Lease. Donoco has on file a blanket letter of credit as financial security in the amount of \$50,000.00.

Lease Records

The examiners have officially noticed Commission records which establish that Donoco was recognized as the operator of the subject lease when the Commission Form P-4 (Certificate of Compliance and Transportation Authority) was approved on November 5, 1992. The examiners have also officially noticed P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show the subject lease had its certificate of compliance canceled November 3, 2004 because the H-15 test for Well No. 1 submitted in August 2004 was not approved as the reported fluid level in the well was higher than the deepest usable quality water present in the area. A reconnect fee of \$300 was assessed. Donoco submitted a retest of the fluid level for Well No. 1 on January 30, 2005. The retest was rejected based on the prior failed test.

SUMMARY OF FACTS AND POSITIONS OF PARTIES

Donoco admits that the certificate of compliance was properly canceled for the subject lease. Doege claims that he was diagnosed with leukemia in 2003 and let all of his regulatory obligations lapse while he dealt with his health issues. He is in remission after treatment, and is trying “to do the right thing” with respect to his responsibility for the subject lease. In 2004, he renewed Donoco’s organization report and posted financial security in the amount of \$50,000. He intends to produce the remaining seven wells on the subject lease.

In November 2004, Donoco was advised that Well No. 1 had not passed the fluid level test which was submitted in August 2004. This failure led to the cancellation of the certificate of compliance and requirement that a reconnect fee of \$300.00 be paid before the certificate of compliance was reissued. Donoco attempted to resolve the violation by submitting a retest of the fluid level in January 2005. This test was rejected by Commission staff due to the prior failed test. The second rejection led to the February 2005 notice of intent to again cancel the certificate of compliance. Donoco timely requested a hearing, at which it had the opportunity to argue that the retest should have been accepted. The issue of the acceptability of a retest was rendered moot before the evidentiary record was closed because Donoco plugged the well.

Donoco claims that after the retest of the well in January 2005 was rejected, it decided to plug Well No. 1. Donoco submitted late-field exhibits that were accepted into the record which include an invoice from a plugging contractor and a copy of a Commission Form W-3 (Plugging Report) verifying that the well was plugged on May 18, 2005. It is not contested that the well is now properly plugged.

Staff asserts that a second cancellation of the certificate of compliance for the subject lease is appropriate because the lease was not in compliance with Statewide Rule 14 in February 2005 when the 30 day intent to cancel letter was sent to Donoco. Staff further argues that a reconnect fee of \$300.00 should be assessed in association with that cancellation. Additionally, Staff has not recommended that the \$300 reconnect fee for the cancellation of the certificate of compliance on November 3, 2004, be waived. Accordingly, staff urges that before Donoco is reissued a certificate

of compliance for the subject lease, it should be required to submit reconnect fees totaling \$600.00 despite the fact that the violation which resulted in the cancellation of the certificate of compliance in November 2004 and the additional proposed cancellation in February 2005 was corrected by plugging the well.

AUTHORITY

Texas Natural Resources Code §85.164 provides:

The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Section 2001.054, Government Code.

Texas Natural Resources Code §85.167(a) provides:

If a certificate of compliance for an oil lease or gas well has been canceled for violations of one or more commission rules, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of \$300 for each severance or seal order issued for the lease or well.

EXAMINERS' OPINION

The issues presented by this case are: 1) whether an additional cancellation of the certificate of compliance should occur based on the failure of Donoco to submit an approved H-15 test in February 2005 for Well No. 1 on the subject lease; 2) whether a reconnect fee of \$300.00 should be assessed for a cancellation based on the February 2005 violation, regardless of Donoco's plugging of the well while a hearing was pending; and 3) whether Donoco is required to pay any reconnect fee before the reissuance of the certificate of compliance for a multiple well oil lease where the violations that led to cancellation of the certificate of compliance were resolved by plugging the well in question.

With respect to the assertion that a second cancellation should issue based on the February 2005 violation, the examiners recommend that no further cancellation or reconnect fee should follow from the February 2005 notice of intent to cancel. The record shows that the second proposed cancellation is for the same violation that resulted in cancellation of the certificate of compliance in November 2004, the failure of Well No. 1 to pass a fluid level test. The second proposed cancellation is based on the rejection of a retest of the same well. The rejection of the second test was based on the original failed test

In November 2004, Donoco was advised that Well No. 1 had not passed the fluid level test which was submitted in August 2004. This failure led to the cancellation of the certificate of compliance and requirement that a reconnect fee of \$300.00 be paid before the certificate of compliance was reissued. Donoco attempted to resolve the violation by submitting a retest of the fluid level in January 2005. This test was rejected by Commission staff due to the prior failed test. The second rejection led to the February 2005 notice of intent to again cancel the certificate of compliance. Donoco timely requested a hearing, at which it had the opportunity to argue that the retest should have been accepted. The issue of the acceptability of a retest was rendered moot before the evidentiary record was closed because Donoco plugged the well.

Because the rejection of the January 2005 retest of Well No. 1 was directly due to the first failed test, it is the examiners' recommendation not to cancel the certificate of compliance based on the February 2005 retest. Additionally, the examiners observe that the Commission has an available remedy to compel compliance through pursuit of an enforcement requiring an operator to plug the well and further assessing an administrative penalty. Successive cancellations for the same violation should not be used as a substitute for pursuing an enforcement action to compel compliance. The examiners therefore recommend that no second cancellation of the certificate of compliance for the subject lease be issued and no further reconnect fee be assessed.

It is uncontested that proper notice was issued and that Donoco did not request a hearing with respect to the cancellation of the certificate of compliance in November 2004. Staff has not recommended that the \$300 reconnect fee be waived for the November 2004 cancellation even though Donoco ultimately plugged the well. Texas Natural Resources Code §85.167 uses permissive language with respect to the assessment of a reconnect fee after a certificate of compliance has been canceled. There is no evidence or other indication of a Commission policy to waive the reconnect fee for a multiple well oil lease where a violation resulting in cancellation of the certificate of compliance is corrected by plugging the offending well. It is the examiners' recommendation that as long as it remains the consistent policy not to waive reconnect fees under these circumstances, an operator may be required under the provisions of Texas Natural Resources Code §85.167 to pay the reconnect fees to reinstate the certificate of compliance in order to produce the remaining wells on a multiple well oil lease.

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

FINDINGS OF FACT

1. On February 9, 2005, Donoco Oil Company (hereinafter "Donoco") was issued computer generated correspondence from the Commission advising that the certificate of compliance for the Ahrens, Stanley A. (05851) Lease ("subject lease") would be canceled for the failure to file approved Commission Form H-15 (Test on an Inactive Well More Than 25 Years Old) for Well No. 1.
2. Donoco timely requested a hearing on March 2, 2005.

3. At the original hearing on March 28, 2005, Donoco appeared and presented evidence. No appearance was made by Commission Staff.
4. The Commission's computer mainframe records for the subject lease indicated that despite the timely request for hearing, the certificate of compliance had been canceled on March 11, 2005 and a reconnect fee assessed.
5. The cancellation of the certificate of compliance and assessment of reconnect fees were rescinded pending the outcome of this hearing.
6. Staff's request to appear and reopen the hearing was granted on April 28, 2005. David Cooney, Staff Attorney, appeared at the reopened hearing representing the Commission. Donoco also appeared at the reopened hearing.
7. Commission records show that the most recent approved Commission Form P-5 (Organization Report) for Donoco was filed on December 1, 2005. The P-5 identifies Donald Doege as the Operator/Partner and Ronald Doege as a Partner. Donoco is currently identified as the operator of 80 wells, with a total depth of 65,125 feet. Donoco operates 22 leases including the Ahrens, Stanley A. (05851) Lease. Donoco has on file a blanket letter of credit as financial security in the amount of \$50,000.00.
8. Donoco was recognized as the operator of the subject lease when the Commission Form P-4 (Certificate of Compliance and Transportation Authority) was approved on November 5, 1992.
9. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show that the subject lease had its certificate of compliance canceled November 3, 2004 because the August 2004 H-15 test submitted for Well No. 1 was not approved as the reported fluid level in the well was higher than the deepest usable quality water present in the area. A reconnect fee of \$300 was assessed based on this cancellation.
10. Donoco submitted a retest of the fluid level for Well No. 1 on January 30, 2005. The retest was rejected based on the prior failed test.
11. Well No. 1 on the subject lease was plugged on May 18, 2005.
12. The certificate of compliance for the subject lease should not be canceled for the failed retest submitted on January 30, 2005.
 - A. The certificate of compliance was previously canceled on November 3, 2004 based on the failed fluid level test submitted in August 2004 for Well No. 1.
 - B. Donoco submitted a timely request for hearing after receiving the February 2005 notice from the Commission advising of the intent to cancel the certificate of compliance again for the rejected retest.

- C. Well No. 1 on the subject lease was plugged prior to the close of the evidentiary record in this proceeding.

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to appropriate persons legally entitled to notice.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties to this hearing have been performed or have occurred.
3. Donoco is the operator of the wells on the Ahrens, Stanley A. (05851) Lease as defined by Statewide Rule 14 and §89.002 of the Texas Natural Resources Code.
4. Donoco is responsible for maintaining the wells on the Ahrens, Stanley A. (05851) Lease in compliance with all applicable statutes and Commission rules, including Statewide Rule 14(b)(3).
5. The cancellation of the certificate of compliance in November 2004 was proper.
 - A. Proper notice of the intent to cancel the certificate of compliance was issued to Donoco.
 - B. Donoco did not request a hearing with respect to the cancellation.
6. Well No. 1 on the Ahrens, Stanley A. (05851) Lease was brought into compliance with all applicable statutes and Commission rules, including Statewide Rule 14(b)(3) when the well was plugged.
7. Rejection of a retest submitted by an operator to correct a violation that resulted in a cancellation of the certificate of compliance is not a separate violation which justifies an additional cancellation of the certificate of compliance.

RECOMMENDATION

The examiners recommend that the attached Final Order be entered requiring that Donoco pay a reconnect fee of \$300.00 prior to reissuance of the certificate of compliance for the Ahrens, Stanley A. (05851) Lease.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Margaret Allen
Technical Examiner