

May 11, 2006

OIL & GAS DOCKET NO. 01-0244752

APPLICATION OF DONOCO OIL COMPANY CONTESTING PROPOSED CANCELLATION OF THE P-4 CERTIFICATE OF COMPLIANCE FOR THE DITTMAR, ANNIE T. (05361) LEASE, WILSON 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 Dittmar, Annie T. (05631) Lease should have been 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 Dittmar, Annie T. (05631) 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 (“subject well”). The February 9, 2005 letter provided that Donoco could contest the proposed cancellation at a hearing.

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. Staff was also advised of the process that would be required to enter an appearance and reopen the hearing. Commission records indicate that the cancellation was not rescinded for the subject lease.

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 22 leases and 80 wells with a total depth of 65,125 feet. Donoco has on file a blanket letter of credit as financial security in the amount of \$50,000.00.

Lease and Well Records

The examiners have officially noticed Oil and Gas W-2/G-1 Record Commission computer records for the subject well showing that it was completed in the Gloriana (Poth -A-) Field on March 3, 1978. The well is perforated in the interval between 1538 and 1542 feet. 4 ½" casing is set to a depth of 1700 feet. 2 3/8" tubing is set to a depth of 1400 feet. The total depth is 1710 feet.

The examiners have officially noticed Commission Form P-4 records which establish that Donoco was recognized as the operator after the Commission Form P-4 (Certificate of Compliance and Transportation Authority) submitted for the subject lease was approved by the Commission on April 25, 2003. The examiners have also officially noticed Production Data Query database records showing no reported production from the subject lease from at least January 1993 to present.

The examiners have also officially noticed P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show the certificate of compliance for the subject lease was canceled on October 5, 1992 for the failure to timely file production reports. The records note that no reconnect fee was paid for this violation, however, the same records show an amount paid of \$100. Additionally, the printout from the mainframe records related to this cancellation specifically notes that a new certificate of compliance was issued on April 25, 2003, changing the operator to Donoco.

The examiners have also officially noticed P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records that show the certificate of compliance for the subject lease was canceled November 8, 2004 because an H-15 test for Well No. 1 submitted on August 3, 2004 was not approved. The reported fluid level in the well was at 421 feet, only 21 feet below the level of the deepest usable quality water. A reconnect fee of \$300 was assessed.

Donoco submitted a retest of the fluid level on January 30, 2005. Commission staff rejected the fluid level retest due to the prior failed test. On February 9, 2005, the Commission sent Donoco the previously discussed notice of intent to cancel the certificate of compliance for the subject lease.

H-15 Testing Guidelines

The examiners have also officially noticed two memoranda concerning staff review and processing of H-15 tests. The first memoranda is noted as effective April 2004. With respect to the evaluation of fluid level tests, the guideline advises, "If a well fails a fluid level test, then a MIT must be performed." With respect to testing requirements for Mechanical Integrity Tests, the guideline notes one special consideration, "In lieu of a traditional MIT, operators may request approval to perform an ADA Pressure Test."

The second memoranda lists an effective date of February 2005. The February 2005 guideline retains the same requirement for wells that fail fluid level tests. However, an additional special consideration is included as follows: "Where the testing requirements in SWR 14(b)(3) for mechanical integrity cannot be met, alternatives will be considered on a case-by-case basis."

POSITIONS OF PARTIES

Donoco admits that the certificate of compliance was properly canceled for the subject lease on November 8, 2004. Doege claims that he was diagnosed with leukemia in 2003 and let all of his oil business operations, including 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 restore the subject well to production.

Donoco claims that the retest of the well in January 2005 should have been accepted. Donoco believes that the well can be restored to production at marginal levels. When the original fluid level test was rejected, the fluid level was pumped down to run a new test. The retest was rejected, and Donoco was advised that a pressure test to confirm the mechanical integrity of the casing was required. Donoco believes that where there is evidence that a well can be restored to production, retests should be allowed to meet the well test requirements. Donoco advises that due to the cost of performing a mechanical integrity test, it would be cheaper to plug the well than to engage in any further attempts to restore it to production.

Staff contends that the certificate of compliance for the subject lease was first canceled on October 5, 1992, and has been subject to two additional cancellations since that time for the failure to submit approved H-15 tests. The 3 cancellations, and the reconnect fees staff contends should be assessed are summarized in the table below:

10/05/92	Delinquent Production Reports	\$300
11/8/04	Failed H-15 test	\$300
3/11/05	Failed H-15 test	\$300

Staff asserts that Donoco should be required to either perform a pressure test to ensure the mechanical integrity of the casing or plug the well. Staff further asserts that Donoco should be required to pay \$900 in reconnect fees for the 3 cancellations of the certificate of compliance, less \$100 in credit for prior payments, regardless of when the cancellations occurred. Staff did not directly address the impact of the issuance of the new certificate of compliance to recognize Donoco as the operator in April 2003 on the October 1992 cancellation that resulted from the failure of the prior operator to timely file production reports.

Staff asserts that 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.

AUTHORITY

Texas Natural Resources Code §85.161 provides:

The owner or operator of any well subject to the jurisdiction of the commission shall secure from the commission a certificate showing compliance with the oil or gas conservation laws of the state and conservation rules and orders of the commission.

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 the cancellation of the certificate of compliance on March 11, 2005 was proper and whether a reconnect fee of \$300 should be assessed for that cancellation; 2) whether the fluid level retest of January 31, 2005 can be submitted in lieu of a pressure test to establish the mechanical integrity of the casing before the subject well is restored to production; and, 3) whether Donoco is required to pay any reconnect fee for the cancellation of the certificate of compliance on October 5, 1992 when a different entity was operating the well.

March 2005 Cancellation of Certificate of Compliance

The initial issue requires a determination of whether cancellation of the certificate of compliance on March 11, 2005, after Donoco requested a hearing was proper. Texas Natural Resources Code §85.164 mandates that the Commission provide the opportunity for a hearing under Texas Government Code §2001.054 before a certificate of compliance is canceled. The examiners recommend that March 11, 2005 cancellation be rescinded and no reconnect fee should attach.

On October 8, 2004, Donoco was advised by the computer generated notice of intent to cancel letter that Well No. 1 had not passed the fluid level test which was submitted in August 2004. It is uncontested that the notice was issued. Donoco did not request a hearing as provided for by that correspondence. The failure to request a hearing or otherwise correct the violation led to the cancellation of the certificate of compliance. The cancellation requires that the \$300 reconnect fee be paid before a new certificate of compliance is issued.

There is no dispute that the November 8, 2004 cancellation was proper. However, there is an issue as to whether the March 2005 cancellation was proper. Donoco attempted to resolve the violation that led to the November 8, 2004 cancellation 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. This time Donoco timely requested a hearing, at which it had the opportunity to argue that the retest should have been accepted because it planned to restore the well to production. Despite this timely request, and the explicit provisions of Texas Natural Resources Code §85.164, the certificate of compliance was canceled. That cancellation effectively deprived Donoco of its recognized statutory right to present evidence and contest the proposed action.

Additionally, because the rejection of the January 2005 retest of Well No. 1 was a direct attempt by Donoco to respond to the November 8, 2004 cancellation, it is the examiners' determination that the March 11, 2005 cancellation of the certificate was not proper as it would act to cancel the certificate of compliance a second time for the same violation. It is uncontested that the January 30, 2005 retest was rejected as a result of the original failed test. The submission of a retest to address the prior cancellation is not a separate violation which would justify an additional cancellation of the certificate of compliance. The examiners therefore recommend that the March 11, 2005 cancellation of the certificate of compliance for the subject lease be rescinded and no further reconnect fee be assessed.

Fluid Level Retest

Donoco asserts that because it intends to restore production for the subject well it should not be required to conduct a pressure test to establish the mechanical integrity of the casing. The results of the August 2004 fluid level test indicate that the observed fluid level was below the deepest usable quality water in the area, but not enough to obtain an administrative exception to the plugging requirements of Statewide Rule 14.¹

The internal memoranda reflecting the guidelines used for retesting a well indicate that in 2004, the only acceptable method for bringing a well into compliance after it failed a fluid level test was to perform a pressure test to establish the mechanical integrity of the casing. There appears to be more room for other options in the guidelines used in 2005, as they note that alternatives may be considered on a case-by-case basis where the well cannot meet the testing requirements.

¹Administrative exceptions to the well plugging requirements may be granted where the fluid level is more than 250 feet below the deepest usable quality water. If a well becomes subject to the mechanical integrity requirements under Statewide Rule 14, it may not be restored to active production until a successful test is submitted.

There is no evidence presented by staff to contradict Donoco's claim that it is more cost effective to plug the well rather than perform the pressure test. Additionally, there is undisputed evidence in the record that the subject well is equipped for pumping production through a tubing string. There is also no evidence in the record that the subject well is actually causing pollution.

However, other than the general testimony at the hearing, there is no evidence that the subject well can be restored to production at marginal levels. From at least January 1993 through the present, there has been no reported production from this well. In light of the limited supporting evidence, and the Commission production records indicating that there has not been any reported production from this well for at least 13 years, the examiners do not believe that it would be appropriate in this case to accept a fluid level retest to confirm the mechanical integrity of the well. Accordingly, the examiners do not recommend waiver of the pressure test requirement that affirmatively establishes the mechanical integrity of the casing prior to restoring production in the subject well.

Reconnect Fees for Past Violations

The remaining issue to be determined in this matter is whether Donoco is required to pay a reconnect fee related to the cancellation of the certificate of compliance on October 5, 1992 when the well was operated by a different entity. Staff asserts that a \$300 reconnect fee for each cancellation is appropriate, regardless of when the cancellation occurred and who was responsible for the cancellation. The examiners disagree. The October 5, 1992 cancellation occurred when a different entity was the recognized operator of the well. Further, the mainframe records indicate that the Commission acknowledged the prior violation when it issued the certificate of compliance to Donoco on April 25, 2003.

When the Commission issues a new certificate of compliance, the provisions of Texas Natural Resources Code §85.161 mandate a finding of "compliance with the oil or gas conservation laws of the state and conservation rules and orders." The issuance of a new certificate of compliance to Donoco in April 2003 under circumstances reflecting specific awareness of the old violation at the time the new certificate was issued absolves Donoco of responsibility to remedy the prior violation committed by the prior operator.

CONCLUSION

The cancellation of the certificate of compliance in March 2005 should be rescinded and no reconnect fee assessed. Additionally, Donoco is not required to pay a reconnect fee for the cancellation of the certificate of compliance in October 1992. Finally, Donoco should not be relieved from the requirement of performing a pressure test to establish the mechanical integrity of the casing before the well is restored to production. If the well passes a pressure test, any reconnect fee for the subject lease is limited to \$300 for the cancellation on November 8, 2004. As Commission records indicate prior payment of \$100 in reconnect fees, the remaining reconnect fee would be \$200.

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 Dittmar, Annie T. (05631) 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.
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. Despite the timely request for hearing, the certificate of compliance was canceled on March 11, 2005 and a reconnect fee assessed.
5. 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.
6. 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 22 leases and 80 wells with a total depth of 65,125 feet. Donoco has on file a blanket letter of credit as financial security in the amount of \$50,000.00.
7. Oil and Gas W-2/G-1 Record Commission computer mainframe records for the subject well show that on March 3, 1978, the well was completed in the Gloriana (Poth -A-) Field in the interval between 1538 feet and 1542 feet. 4 ½” casing is set to a depth of 1700 feet. 2 3/8” tubing is set to a depth of 1400 feet. The total depth of the well is 1710 feet.
8. Donoco was recognized as the operator after the Commission Form P-4 (Certificate of Compliance and Transportation Authority) submitted for the subject lease was approved by the Commission on April 25, 2003.
9. Production Data Query computer database records reflect no reported production from the subject lease from at least January 1993 to present.
10. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records show the certificate of compliance for the subject lease was canceled on October 5, 1992 for the failure to timely file production reports. The computer records note that no reconnect fee was ever paid for this violation, however, the same records show an amount paid of \$100. Additionally, the printout from the mainframe records related to this cancellation specifically notes that a new certificate of compliance was issued on April 25, 2003, changing the operator to Donoco.

11. P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry computer records show that the certificate of compliance for the subject lease was canceled November 8, 2004 because the H-15 test submitted for Well No. 1 on August 3, 2004 was not approved. The reported fluid level in the well was at 421 feet, only 21 feet below the level of the deepest usable quality water. A reconnect fee of \$300 was assessed for this cancellation.
12. Donoco submitted a retest of the fluid level for Well No. 1 conducted on January 30, 2005.
13. The January 30, 2005 retest was rejected due to the prior failed test.
14. The cancellation of the certificate of compliance for the subject lease on March 11, 2005 should be rescinded.
 - A. The certificate of compliance was canceled on November 8, 2004 based on the failed fluid level test submitted on August 3, 2004 for Well No. 1.
 - B. In response to the November 8, 2004 cancellation of the certificate of compliance, Donoco submitted a retest of the fluid level conducted on January 30, 2005.
 - C. The January 30, 2005 retest was rejected based on the prior failed test.
 - D. 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.

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 Dittmar, Annie T. (05631) 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 Dittmar, Annie T. (05631) Lease (“subject lease”) in compliance with all applicable statutes and Commission rules, including Statewide Rule 14(b)(3).
5. The cancellation of the certificate of compliance on November 8, 2004 was proper.
 - A. 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. The cancellation of the certificate of compliance in March 11, 2005 was not proper.
 - A. Proper notice of the intent to cancel the certificate of compliance was issued to Donoco.
 - B. Donoco timely requested a hearing with respect to the proposed cancellation.
 - C. Canceling the certificate of compliance after a hearing was requested violates the requirements of Texas Natural Resources Code §85.164.
 - D. 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.
7. Pursuant to Texas Natural Resources Code §85.161, the issuance by the Commission of a new certificate of compliance, mandate an affirmative determination that the lease is in compliance with the oil or gas conservation laws of the state and conservation rules and orders.
8. The issuance of a new certificate of compliance to Donoco on April 25, 2003 for the Dittmar, Annie T. (05631) Lease absolves Donoco of any responsibility for any prior cancellation of the certificate of the compliance and payment of reconnect fees resulting from violations of Commission rules by any prior operators.

RECOMMENDATION

The examiners recommend that the attached Final Order be entered:

- 1) rescinding cancellation of the certificate of compliance in March 2005;
- 2) requiring Donoco to submit a pressure test to confirm the mechanical integrity of Well No. 1 on the Dittmar, Annie T. (05631) Lease before a new certificate of compliance is issued; and
- 3) requiring Donoco to pay a total reconnect fee of \$200 before a new certificate of compliance is issued.

Respectfully submitted,

Mark J. Helmueller
Hearings Examiner

Margaret Allen
Technical Examiner