

**OIL GAS DOCKET NO. 05-0254094**

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**COMMISSION CALLED HEARING ON THE REQUEST OF ITALIAN AMERICAN OIL CO., INC., TO CONTEST THE CANCELLATION OF THE PLUGGING EXTENSION FOR THE EVA HARCROW (01866) LEASE, WELL NO. 1, RED OAK (SUB-CLARKSVILLE) FIELD, LEON COUNTY, TEXAS**

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**APPEARANCES:**

**FOR MOVANT:**

Charles B. Marino

**MOVANT:**

Italian American Oil Co., Inc.

**FOR INTERVENOR:**

Wilfred A. Wehman

**INTERVENOR:**

Wilfred A. Wehman

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

<b>DATE HEARING REQUEST FILED:</b>	October 18, 2007
<b>DATE OF NOTICE OF HEARING:</b>	October 25, 2007
<b>DATE OF HEARING:</b>	November 21, 2007
<b>HEARD BY:</b>	James M. Doherty, Hearings Examiner
<b>DATE RECORD CLOSED:</b>	December 17, 2007
<b>DATE PFD CIRCULATED:</b>	January 8, 2008

**STATEMENT OF THE CASE**

This is a Commission called hearing to afford Italian American Oil Co., Inc. ("Italian American") an opportunity to contest cancellation of the Statewide Rule 14(b)(2) plugging extension for the Eva Harcrow (01866) Lease ("subject lease"), Well No. 1 ("subject well"), Red Oak (Sub-Clarksville) Field, Leon County, Texas.

On August 22, 2007, Wilfred A. Wehman, owner of the premises where the subject well is located, filed a letter with the Office of General Counsel requesting the Commission's assistance in requiring that the subject well be plugged and all associated equipment be removed from the well site. The landowner complaint was assigned Complaint File No. 2007-086, and on August 28, 2007, Examiner Mark Helmueller corresponded with Italian American forwarding a copy of the complaint

and requiring that Italian American submit, within 20 days, evidence of its right to operate the subject well. This letter advised Italian American that failure to comply would result in cancellation of the Statewide Rule 14(b)(2) plugging extension for the subject well.

Italian American did not respond to the August 22, 2007, correspondence, and on October 8, 2007, Examiner Helmueller issued a further letter canceling the plugging extension for the subject well. Thereafter, on October 18, 2007, Italian American requested this hearing.

Hearing was held on November 21, 2007. Charles B. Marino appeared to represent Italian American, and Wilfred A. Wehman appeared representing himself as an intervenor. Both parties presented evidence. The record of the hearing was held open until December 17, 2007, to allow Italian American to file copies of the oil and gas lease and assignment on which it relies for its claim of right to operate the subject well.

### **APPLICABLE LAW**

Statewide Rule 14(b)(2) requires that a well be plugged after 12 months of inactivity, unless a plugging extension is obtained. To be entitled to a plugging extension for a well, the operator must have on file a current Form P-5 organization report and the required amount of financial assurance, the well and its associated facilities must be in compliance with all laws and Commission rules, and, upon request, the operator must demonstrate that it has a good faith claim of a continuing right to operate the well. Statewide Rule 14(b)(2)(C) authorizes revocation of a plugging extension upon the failure of an operator, upon request, to provide evidence of a good faith claim. Upon any such revocation, the operator is required, within 30 days, to plug the well or request a hearing on the matter.

### **DISCUSSION OF THE EVIDENCE**

#### **Matters Officially Noticed**

The examiner has officially noticed the P-5 Master Inquiry and P-5 Financial Assurance Inquiry databases which show that Italian American has an active Form P-5 organization report and approved financial assurance in the form of a letter of credit in the amount of \$50,000.

The examiner has also officially noticed the P-4 Inquiry, Oil Proration Schedule, and P-4 Certificate of Compliance Certified Letter/Cancellation/Reissue Inquiry databases for the subject lease which show that: (1) Well No. 1 (API #289 30006) is the only well on the subject lease; and (2) the certificate of compliance for the subject lease currently is canceled because on August 1, 2007, the lease was severed for delinquency of a H-15 test (Test on an Inactive Well More than 25 Years Old) on Well No. 1 and although this violation was resolved on August 12, 2007, a \$300 reconnect fee remains unpaid. The H-15 Data Inquiry database, also officially noticed, shows that an approved H-15 test was performed on Well No. 1 on August 6, 2007.

The examiner has further officially noticed: (1) the Oil Lease Ledger Status Inquiry and Historical Oil Ledger databases which show that no production has been reported to the Commission for the subject lease and well since May 2004; and (2) the 14(b)(2) Inquiry By Lease and 14(b)(2) Well Inquiry Violations databases which show that a Statewide Rule 14(b)(2) plugging extension for the subject well currently stands denied based on failure of the operator to establish that it has a good faith claim of right to operate the well.

**Italian American**

The subject well was drilled by Italian American's predecessor Charles B. Marino in 1969, and Italian American estimates that the well has produced about 100,000 barrels of oil. Shortly after the well ceased to produce in May 2004, a contractor engaged by Italian American to clean out paraffin from the well stuck a fishing tool or swab in the hole. Two subsequent efforts to fish the tools out of the hole were unsuccessful. Italian American does not want to abandon the well, believing it to be capable of further production, and has recently engaged an engineering firm to make recommendations as how the junk in the hole might be retrieved and the well restored to production. A letter submitted by Italian American on December 17, 2007, stated that Italian American has decided to make a workover expenditure of about \$10,000 in one more attempt to put the well back on production, failing in which it will plug the well within 90 days of the attempted workover.

Italian American believes that it continues to hold an assignment of an oil and gas lease covering the acreage on which the subject well is located, and this oil and gas lease is held by production. In this regard, Italian American relies on an Oil, Gas and Mineral Lease dated May 20, 1959, between Eva Harcrow, Lessor, and Sam Burroughs, Lessee, covering 726.5 acres in Leon County ("base lease"), and a June 9, 1970, Assignment of Oil, Gas and Mineral Lease from Lone Star Producing Company to Charles B. Marino, assigning to Marino the aforementioned base lease, insofar as it covers 80 acres around the subject well and limited to formations lying between the surface and a depth of 5,825 feet.<sup>1</sup>

The May 20, 1959, base lease had a primary term of ten years and as long thereafter as oil, gas or other mineral is produced from the leased premises or land with which the leased premises are pooled. Although production on the 80 acres farmed out to Marino ceased in 2004, Italian American believes that the lease covering these 80 acres is held by production of wells operated by Roberts & Hammack, Inc., on the remaining acreage covered by the May 20, 1959, base lease, in particular the Harcrow (01848) Lease, Well No. 1, the Peterson, G. C. Lease, Well No. 1 (RRC ID No. 033616), and the Peterson Gas Unit # 1, Well No. 2 (RRC ID No. 062617).<sup>2</sup>

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<sup>1</sup> Commission records show that the lowest perforation in the subject well is at a depth of 5,727 feet.

<sup>2</sup> The examiner has officially noticed the Oil Ledger Inquiry and Gas Ledger Inquiry databases for these wells which show that continuous production has been reported to the Commission for each well.

Wehman

Wilfred A. Wehman (“Wehman”) is an owner of the land where the subject well is located. He is concerned that the well has not produced since May 2004, and has not been worked over by Italian American so that the well can be restored to production. Wehman is dissatisfied with the condition of the well site tract in that flow lines are not buried beneath the ground surface, oil storage tanks are said to be in poor condition, and there is debris around the well site.<sup>3</sup> In the past, the District Office required Italian American to address an oil leak at the tank battery and repair a firewall around the tank battery.

If the subject well is not going to be produced, Wehman would like the well to be plugged and the property restored to its original state in order that Wehman can make a better use of the property. Wehman agrees that the base lease has been held by production of the three producing wells operated by Roberts & Hammack, Inc., but it is his position that the lease has terminated as to the 80 acres farmed out to Marino, now Italian American, because all production on the 80 acres has ceased.

**EXAMINER’S OPINION**

While the landowner’s concerns about the condition of the Eva Harcrow Lease may be legitimate, and any violation of Commission rules on the lease may be addressed by the landowner to the District Office, the only issue before the examiner in this docket is whether the subject well is entitled to a Statewide Rule 14(b)(2) plugging extension.

A plugging extension for the Eva Harcrow (01866) Lease, Well No. 1 was last canceled based on the failure of Italian American to establish that it has a good faith claim of a continuing right to operate this well. The Commission has no jurisdiction ultimately to decide questions of title, but it may determine whether Italian American has at least a good faith claim of title. *Magnolia Petroleum Co. v. Railroad Commission*, 170 S.W.2d 189 (Tex. 1943). Statewide Rule 14(a)(1)(E) defines “good faith claim” as a factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

The parties agree that the base lease dated May 20, 1959, between Eva Harcrow, Lessor, and Sam Burroughs, Lessee, covering 726.5 acres in Leon County is held in effect by production of the Harcrow (01848) Lease, Well No. 1, the Peterson, G. C. Lease, Well No. 1 (RRC ID No. 033616), and the Peterson Gas Unit # 1, Well No. 2 (RRC ID No. 062617) operated by Roberts & Hammack, Inc., and Commission records confirm that continuous production has been reported for these wells.

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<sup>3</sup> In a letter filed on December 17, 2007, Italian American stated that it had agreed with Wehman to send in a crew after the holidays to paint the oil storage tank and clean up the Eva Harcrow Lease. Italian American also stated that it had agreed to keep Wehman informed as to the result of its planned workover of the subject well.

This provides Italian American with a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate of the 80 acres farmed out to Marino, now Italian American, even though production on the 80 acres has ceased. *Smith & Weaver, Texas Law of Oil & Gas*, Vol. 3, Chapter 16, §16.3[D][1] at pages 16-16 through 16-16.1 (Matthew Bender 2007); *Ridge Oil Co., Inc. v. Guinn Investments*, 148 S.W.3d 143, 149-150 (Tex. 2004); *Rogers v. Ricane Enterprises, Inc.*, 772 S.W.2d 76 (Tex. 1989); *Rogers v. Ricane Enterprises, Inc.*, 884 S.W.2d 763, 767 (Tex. 1994); *Sabre Oil & Gas Corp. v. Gibson*, 72 S.W.3d 812, 818-819 (Tex. App. - Eastland 2002, pet. denied); *Dacamaro v. Binney*, 140 S.W.2d 440, 441 (Tex.Civ.App. - San Antonio 1940, writ dism'd judgm't cor.).

Accordingly, the examiner concludes that Italian American has a good faith claim to a continuing right to operate the Eva Harcrow (01848) Lease, Well No. 1, and is entitled to a Statewide Rule 14(b)(2) plugging extension for this well at such time as all reconnect fees have been paid and the well is determined to be in compliance with all laws and Commission rules.

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. Italian American Oil Co., Inc. ("Italian American") and Wilfred A. Wehman ("Wehman") were given at least ten (10) days notice of this hearing. Italian American and Wehman appeared at the hearing and presented evidence.
2. This hearing was called by the Commission on the request of Italian American to contest cancellation of the Statewide Rule 14(b)(2) plugging extension for the Eva Harcrow (01848) Lease, Well No. 1 ("subject well"), Red Oak (Sub-Clarksville) Field, Leon County, Texas.
3. Italian American Oil Co., Inc., has an active Form P-5 organization report and approved financial assurance in the form of a letter of credit in the amount of \$50,000.
4. Italian American Oil Co., Inc., designated itself the operator of the subject well by filing a Form P-4 (Certificate of Compliance and Transportation Authority) approved on October 3, 1996, effective October 1, 1996.
5. The subject well has been inactive for more than one year and has not been plugged. Production was last reported to the Commission for the subject well in May 2004.
6. As of the date of the hearing, the certificate of compliance for the Eva Harcrow (01848) Lease remained canceled because a \$300 reconnect fee related to a previous resolved severance had not been paid.

7. On October 8, 2007, Hearings Examiner Mark Helmueller issued a letter canceling the Statewide Rule 14(b)(2) plugging extension for the subject well because of the failure of Italian American to submit evidence of its good faith claim to a continuing right to operate the well.
8. On June 9, 1970, Lone Star Producing Company assigned to Charles B. Marino, now an agent of Italian American, an Oil, Gas and Mineral Lease dated May 20, 1959, between Eva Harcrow, Lessor, and Sam Burroughs, Lessee, covering 726.5 acres in Leon County (“base lease”), insofar as it covered 80 acres around the subject well and limited to formations lying between the surface and a depth of 5,825 feet. Italian American relies on this assignment as evidence of its good faith claim of right to operate the subject well.
9. The May 20, 1959, base lease had a primary term of ten years and as long thereafter as oil, gas or other mineral is produced from the leased premises or land with which the leased premises are pooled.
10. The May 20, 1959, base lease is held in effect by production of the Harcrow (01848) Lease, Well No. 1, the Peterson, G. C. Lease, Well No. 1 (RRC ID No. 033616), and the Peterson Gas Unit # 1, Well No. 2 (RRC ID No. 062617) operated by Roberts & Hammack, Inc.

#### 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. Pursuant to Statewide Rule 14(b)(2) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14(b)(2)], plugging operations on each dry or inactive well must be commenced within a period of one year after drilling operations cease, unless a plugging extension is approved for the well pursuant to Statewide Rule 14(b)(2)(B).
4. Pursuant to Statewide Rule 14(b)(2)(B) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14(b)(2)(B)], an operator with approved financial assurance may be granted a plugging extension for a well that has been inactive for 12 months or more if the well and associated facilities are in compliance with all laws and Commission rules, and the operator has, and upon request provides evidence of, a good faith claim to a continuing right to operate the well.
5. Pursuant to Statewide Rule 14(a)(1)(E) [Tex. R.R. Comm’n, 16 TEX. ADMIN. CODE §3.14(a)(1)(E)], a good faith claim is a factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

6. Production of the Harcrow (01848) Lease, Well No. 1, the Peterson, G. C. Lease, Well No. 1 (RRC ID No. 033616), and the Peterson Gas Unit # 1, Well No. 2 (RRC ID No. 062617) on the base lease dated May 20, 1959, between Eva Harcrow, Lessor, and Sam Burroughs, Lessee, covering 726.5 acres in Leon County, Texas, provides Italian American Oil Co., Inc., with a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate of the 80 acres around the subject well farmed out to Charles B. Marino, now Italian American, by Lone Star Producing Company.
7. Italian American Oil Co., Inc., has a good faith claim to a continuing right to operate the Eva Harcrow (01848) Lease, Well No. 1, Red Oak (Sub-Clarksville) Field, Leon County, Texas.
8. A Statewide Rule 14(b)(2) plugging extension for the Eva Harcrow (01848) Lease, Well No. 1, Red Oak (Sub-Clarksville) Field, Leon County, Texas, may be approved at such time as Commission records establish that the well is in compliance with all laws and Commission rules.

**RECOMMENDATION**

The examiner recommends that the attached final order be adopted ordering that a Statewide Rule 14(b)(2) plugging extension for the Eva Harcrow (01848) Lease, Well No. 1, Red Oak (Sub-Clarksville) Field, Leon County, Texas, shall be approved, provided that all reconnect fees have been paid and the well is otherwise in compliance with all laws and Commission rules.

Respectfully submitted,

James M. Doherty  
Hearings Examiner