PROPOSAL FOR DECISION

OIL & GAS DOCKET NO. 03-0224423

ENFORCEMENT ACTION AGAINST WESTPARK PETROLEUM, INC. (OPERATOR NO. 912934) AND/OR CG OPERATING, INC. (OPERATOR NO. 142198) FOR VIOLATIONS OF STATEWIDE RULES ON THE BENTON UNIT (23694) LEASE, WELL NO. 1, WILDCAT FIELD, AUSTIN COUNTY, TEXAS

APPEARANCES

FOR MOVANT: MOVANT:
Scott Holter, Staff Attorney Railroad Commission of Texas - Enforcement Section

FOR RESPONDENT: RESPONDENT:
Robert L. Parker, President Westpark Petroleum, Inc.
Donald Williams “
Kevin Curtis, President CG Operating, Inc.
Lisa Gourley, Vice-President “

PROCEDURAL HISTORY

First Amended Complaint Served: August 18, 2000
Hearing Held: October 5, 2000
Record Closed: February 1, 2002
Heard By: Mark H. Tittel, Hearings Examiner
PFD Circulation Date: February 20, 2002
Current Status: Protested
STATEMENT OF THE

This was a Commission-called hearing to determine the following: 1. Whether the respondent(s) should be required to submit a plan to the Commission to prevent or control the release of any hazardous substances into the environment in accordance with Statewide Rule 14(b)(2) [Tex. R.R. Com. Bd. R. 14(b)(2)]. 2. Whether the respondent(s) violated provisions of Title 3 of the Texas Natural Resources Code, Chapter 27 of the Texas Energy, Oil, and Gas Code, and Statewide Rules 14(b)(2) and 8(d)(4)]. 3. Whether the respondent(s) should be assessed administrative penalties of $10,000.00 per day for each offense committed regarding such lease and permits. 4. Whether any violations of Statewide Rules by the respondent(s) should be referred to the Office of the Attorney General for further civil action pursuant to Tex. Nat. Res. Code § 81.053. Ronald L. Parker and Donald Williams appeared at the hearing on behalf of Westpark Petroleum, Inc. and presented evidence. Kevin Curtis and Lisa Gourley appeared at the hearing on behalf of CG Operating, Inc. and presented evidence. Scott Holter, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Enforcement requests that Westpark be ordered to pay an administrative penalty in the amount of $5,000.00. The examiner agrees with Enforcement's recommendation.

BACKGROUND

The operator of a well must plug the well when required and in accordance with Statewide Rule 14(b)(2) and all other applicable Commission rules and regulations concerning plugging of wells. For wells that are not in use, the operator is required to plug or install a production control device as shown by the most recent Commission- approved operator designation form. When a violation of Title 3 of the Texas Natural Resources Code relating to safety and/or the prevention or control of pollution is established, the Commission may assess a penalty of up to $10,000.00 per day for each violation. The seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the respondent are factors considered in determining the penalty amount.
Oil & Gas Dock
Proposal for Decision respondent. TEX. NAT. RE
Statewide Rule 8(d)(4)(G)(i)(I)
circulation pit in conjunction with pit within one year of the cessation of
Each property that produces oil, gas, or geothermal resource well and tank shall at
accordance with Statewide Rule 3.

DISCUSSION OF THE EVIDENCE

Enforcement's hearing file for this docket was admitted into ev
Inc. (hereinafter referred to as "Westpark") filed its most rece
on July 11, 2000, listing Robert L. Park er as its sole officer.
referred to as "CG Operating") filed its most recent Form P-5 on June 1as its president and Lisa Gourley as its vice-president.
Westpark filed a drilling permit application (Commission Form W-1) on April
drill the Benton Unit (23694) Lease, Well No. 1, Wildcat Field, Austin County, T
referred to as the "subject well" or "subject lease"). Westpark filed amended F
September 8, 1997 and February 12, 1998. After the subject well was drill...d W-2 (Completion Report) on June 3, 1999, which stated that the well had been re-completed 4, 1998.
No production has been reported from the subject well since its re-completion on June 4, 1998. Commission District inspection reports made between October 12, 1999 and May 12, 2000 indicate that the subject...
Estimated cost to the State for plugging the subject well is $17,539.50.

Commission District inspection reports made between December 1, 1999 and September 8, 2000 show that the signs required by Statewide Rule 3 to be posted at the lease entrance, well site, and tank battery are missing.
The record reflects that Westpark argued that it was relieved of all plugging liability because CG Operating agreed to take over the well, signed a Form P-4 for the subject lease, and was elected by the working interest owners to do so. However, in determining plugging liability, the Commission is not bound by any private agreements. The determination as to who is the responsible operator of the subject well must be based on the appropriate statutes or rules.

Pursuant to TEX. NAT. RES. CODE ANN. § 89.002(a)(2) and Statewide Rule 14(c)(1), the entity designated as the operator of a well specifically identified on the most recent Statewide Rule 14(c) form is the operator responsible for properly plugging the subject well.

EXAMINER'S OPINION
In its complaint, Enforcement requested a penalty in the amount of $2,500.00. However, after the reserve pits were finally brought into compliance, Enforcement made a trial amendment requesting the penalty amount be reduced to $2,000.00.

With respect to the alleged violations of Statewide Rule 3, Enforcement only requested that the sign violations be remedied and did not request any administrative penalties.

As the subject well has had ongoing plugging operations on an inactive well, and in light of the fact that there is another operator who has expressed an interest in taking over operation of the subject well and that operator has a current lease from the mineral owner, the examiner recommends that Westpark be allowed to place the subject well in compliance with Commission rules by means other than plugging.

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

FINDINGS OF FACT
12.  11.  10.  9.  8.  7.  6.  5.  4.  3.  2.

The subject well has been inactive for longer than one year. No production has been reported from the subject well since its re-completion on June 4, 1998.

8.  The subject well has not been plugged and there is no Form W-1X (Application for Future Re-entry of Inactive Well Bore and 14(b)(2) Extension Permit) in effect for the well.

9.  Usable quality groundwater in the area is likely to be contaminated by migrations or discharges of saltwater and other pollutants. The subject lease is located within 1/2 mile of a saltwater injection well and the boundary of a saltwater disposal aquifer. This situation could constitute a cognizable threat to the public health and safety because of the probability of pollution.

10.  The estimated cost to the State for plugging the subject well is $17,539.50.

11.  Commission District 4 inspections were conducted between October 12, 1999 and May 12, 2000. At the time of the inspections, the subject well was shut in and plugged. The summary of the results of the inspections, including the status of the subject well, was conducted on September 8, 2000. At that time, the pits had been backfilled in compliance with Commission Rules.

12.  At the time of Commission District inspections between December 1, 1999 and September 8, 2000, the signs required by Statewide Rule 3 to be posted at the lease entrance, at the wellsite, and at the tank battery were missing.
The record does not...

Westpark has not demon...

Lone Oak Energy, Inc. (hereinafter...

CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the persons legally entitled to notice.

2. All things necessary to the Commission attaining jurisdiction in this hearing have been performed or have occurred.

3. Westpark is the operator of the subject well, as defined by Commission Statewide Rule 14 [Tex. R.R. Comm'n, 16 T EX. ADMIN. CODE § 3.14] and Section 89.002 of the Texas Natural Resources Code and is a person as defined by Commission Statewide Rule 14 [Tex. R.R. Comm'n, 16 T EX. ADMIN. CODE § 3.69] and Chapters 85 and 89 of the Texas Natural Resources Code.

4. CG Operating is not the operator of the subject well, as defined by Commission Statewide Rule 14 [Tex. R.R. Comm'n, 16 T EX. ADMIN. CODE § 3.14] and Section 89.002 of the Texas Natural Resources Code.

5. As operator, Westpark has the primary responsibility for complying with Rules 14(b)(2),8(d)(4)(G)(i)(I), and 3 [Tex. R.R. Comm'n, 16 T EX. ADMIN. CODE § 3.3] of the Texas Natural Resources Code as well as other applicable statutes and Commission rules relating to the subject well.

6. The subject well is not properly plugged or otherwise in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 T EX. ADMIN. CODE § 3.14(b)(2)], or Chapters 85, 89 and 91 of the Texas Natural Resources Code.

7. The subject well was not in compliance with Statewide Rule 8(d)(4)(G)(i)(I) [Tex. R.R. Comm'n, 16 T EX. ADMIN. CODE § 3.8(d)(4)(G)(i)(I)] between June 4, 1999 and at least May 12, 2000.

8. The subject lease is not in compliance with Statewide Rule 3 [Tex. R.R. Comm'n, 16 T EX. ADMIN. CODE § 3.3].

9. The documented violations constitute acts deemed serious, a hazard to the public health, and demonstrate a lack of good faith pursuant to TEX. NAT. RES. CODE ANN. § 81.0531(c).
RECOMMENDATION

The examiner recommends that the above attached be order approved, dismissing the Westpark Petroleum, Inc., within 30 days from becomes final, to:

1. Plug or place in compliance with Statewide Rule 14 No. 1, Wildcat Field, Austin County, Texas;
2. Place in compliance with Statewide Rule 3 the Benton Unit (Wildcat Field, Austin County, Texas);
3. Pay an administrative penalty in the amount of FIVE THOUS ($5,000.00).

Respectfully submitted,
Mark H. Tittel
Hearings Examiner