RAILROAD COMMISSION OF TEXAS

HEARINGS DIVISION

June 11, 2015

OIL AND GAS DOCKET NO. 09-0286756

ENFORCEMENT ACTION AGAINST YELLOWSTONE PETROLEUMS INC. (OPERATOR NO. 946983)
FOR VIOLATIONS OF STATEWIDE RULES ON THE REEDER B (25558) LEASE, WELL NO. B1,
BUFFALO SPRINGS, SOUTH (ELLEN) FIELD, CLAY COUNTY, TEXAS.

HEARD BY: Marshall Enquist, Hearings Examiner

APPEARANCES:

FOR RESPONDENT:

Charles Brian Locke, President
Yellowstone Petroleum Inc.

FOR THE RAILROAD COMMISSION OF TEXAS:

Melissa Glaze, Attorney
Bill Drury, Legal Assistant
Enforcement Section, RRC
Enforcement Section, RRC

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

COMPLAINT FILED: January 16, 2014
NOTICE OF HEARING: July 2, 2014
DATE CASE HEARD: September 11, 2014
HEARING CLOSED: April 21, 2015
PFD PREPARED BY: Marshall Enquist, Hearings Examiner
CURRENT STATUS: Contested
PFD CIRCULATION DATE: June 11, 2015

STATEMENT OF THE CASE

This proceeding was called by the Commission on the recommendation of the District Office
1. Whether the Respondent Yellowstone Petrleums Inc. ("Yellowstone") should be required to plug or otherwise place in compliance with Statewide Rule 14(b)(2) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.14(b)(2)] the Reeder B (25558) Lease, Well No. B1, South (Ellen) Field, Clay County, Texas;

2. Whether the Respondent Yellowstone violated Statewide Rule 8(d)(1) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.8(d)(1)] on the Reeder B (25558) Lease, Well No. B1, Buffalo Springs, South (Ellen) Field, Clay County, Texas, by allowing unpermitted discharges of oil and gas waste from the wellhead and from a flowline;

3. Whether the Respondent Yellowstone violated Statewide Rule 17(a) [Tex. R.R. Comm'n., 16 TEX. ADMIN. CODE §3.17(a)] by failing to equip Well No. B1 with a bradenhead accessible from the surface, thereby making it impossible to verify the pressure on the well;

4. Whether Respondent Yellowstone violated provisions of Title 3, Oil and Gas, Subtitles A, B and C, Texas Natural Resources Code, Chapter 27 of the Water Code and Commission rules and laws pertaining to safety or prevention or control of pollution by failing to plug the subject well and/or otherwise failing to place the subject well and lease into compliance with Statewide Rules 14(b)(2), 8(d)(1) and 17(a);

5. Whether, pursuant to Texas Natural Resources Code §81.0531, Yellowstone should be assessed administrative penalties of not more than $10,000 per day for each offense committed regarding the subject leases and wells; and

6. Whether any violations of Statewide Rules 3(1) and 14(b)(2) made by Yellowstone should be referred to the Office of the Attorney General for further civil action pursuant to Texas Natural Resources Code §81.0534.

A Notice of Hearing was issued in this case on July 2, 2014 for the hearing date of September 11, 2014. Yellowstone’s President, Charles Brian Locke, appeared at the hearing on behalf of Yellowstone. Melissa Glaze, Enforcement Attorney, and Bill Drury, Legal Assistant, appeared representing the Enforcement Section. Enforcement’s certified hearing file was entered into evidence. Two separate District Office inspection reports were entered into evidence as late-filed exhibits. A District Office inspection report made on September 15, 2014 was offered into evidence, and admitted, without objection from Yellowstone, on February 12, 2015. A District Office inspection report made on February 9, 2015 was offered into evidence and admitted, without objection from Yellowstone, on April 2, 2015. A earlier District Office Inspection Report and Plugging Data Sheet, made on December 15, 2014 was offered into evidence and admitted without objection from Yellowstone on April 21, 2015. The record was closed April 21, 2015.
AUTHORITY

Statewide Rule 14(b)(2) [16 TEX. ADMIN. CODE §3.14(b)(2)] requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).

Statewide Rule 8(d)(1) [16 TEX. ADMIN. CODE §3.8(d)(1)] requires persons disposing of oil and gas wastes by any method to have a permit to do so, unless authorized under subsection (d)(3) or (e) of Statewide Rule 8, or under Statewide Rule 9, 46, or 98.

Statewide Rule 17(a) [16 TEX. ADMIN. CODE §3.17(a)] requires that all wells be equipped with a bradenhead in order to monitor pressure between any two strings of casing.

Texas Natural Resources Code §89.002(a)(2) defines “Operator” as “...a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves.”

Texas Natural Resources Code §89.011(a) requires that the “...operator of a well shall properly plug the well when required and in accordance with the commission’s rules that are in effect at the time of the plugging.”

DISCUSSION OF THE EVIDENCE

Enforcement

Yellowstone Petroleums Inc. (“Yellowstone”) has reported itself to the Commission as a company performing activities in the State of Texas regulated by the Commission. Charles Brian Locke (“Locke”) is the President of Yellowstone and was listed on the Yellowstone Form P-5 Organization Report as President during the time of the pled violations. Yellowstone’s Form P-5 is currently delinquent.

Yellowstone designated itself the operator of the Reeder B (25558) Lease, Well No. B1, Buffalo Springs, South (Ellen) Field, Clay County, Texas by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective April 1, 2006 approved August 9, 2006.

Statewide Rule 14(b)(2)

Statewide Rule 14(b)(2) requires the commencement of plugging operations on each dry or inactive well within one year after drilling or operations cease, unless the operator is eligible for and obtains an extension of the plugging deadline under Statewide Rule 14(b)(2).
Under Statewide Rule 14(c)(1), the entity designated as the operator of a well specifically identified on the most recent Commission-approved operator designation form filed on or after September 1, 1997 is responsible for properly plugging the well in accordance with Statewide Rule 14 and all other applicable Commission rules and regulations concerning plugging of wells.

Commission District Office inspection reports made on July 26, 2013; October 9, 2013 and October 29, 2013, and reports filed by the Respondent reflecting zero production or the absence of production reports filed by Respondent since August, 2010 for the Reeder B (25558) Lease, Well No. B1 show that the lease has been inactive for a period greater than one year. Production from the well ceased on or before July, 2010.

At the time of the hearing, no workovers, re-entries, or subsequent operations had taken place on the subject well within the last 12 months and the subject well had not been plugged. No plugging extension was in effect for the subject well as allowed by Statewide Rule 14, and Respondent has not requested a hearing on the matter. By failing to timely plug the subject well or to obtain an extension of the plugging deadline, Respondent violated Statewide Rule 14(b)(2).

Respondent’s violation of Statewide Rule 14(b)(2) is serious and threatens the public health and safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water, as defined in Statewide Rule 8(a)(28), by serving as a conduit for the passage of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.

Pursuant to calculations by Commission District office personnel, the total estimated cost to the State for plugging the Reeder B (25558) Lease, Well No. B1 is $35,000.00.

A District Office inspection report, made on February 9, 2015 noted that the well casing appeared to be cut off below ground and was no longer visible, which is a part of normal plugging procedure. At that time, Well No. B1 appeared to be plugged, but the District Office had not yet received a Form W-3 Plugging Report.

**Statewide Rule 8(d)(1)**

Statewide Rule 8(d)(1) requires persons disposing of oil and gas wastes by any method to have a permit to do so, unless authorized under subsections (d)(3) or (e) of Statewide Rule 8, or under Statewide Rules 9, 46, or 98.

Commission District Office inspection reports made on July 26, 2013; October 9, 2013 and October 29, 2013 for the Reeder B (25558) Lease indicated a 300 square foot area of oil-stained soil at the wellhead and 540 square foot area of oil-stained soil at a leak in the flowline.

Yellowstone did not have a permit for this discharge, nor was the discharge authorized under Statewide Rule 8(d)(3) or 8(e), or under Statewide Rules 9, 46 or 98. By discharging this fluid without a permit, Yellowstone violated Statewide Rule 8(d)(1).
Yellowstone’s violation of Statewide Rule 8(d)(1) is serious and a hazard to the public health and safety, in that unpermitted discharges of oil and gas waste can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.

Statewide Rule 17(a)

Statewide Rule 17(a) requires that all wells be equipped with a bradenhead in order to monitor pressure between any two strings of casing.

Commission District Office inspection reports made on July 26, 2013; October 9, 2013 and October 29, 2013, indicate that Well No. B1 was not equipped with a visible bradenhead, or at least not a bradenhead accessible from the surface. By failing to equip the well with a bradenhead, Yellowstone violated Statewide Rule 17(a).

Respondent’s violation of Statewide Rule 17(a) is serious and a hazard to the public health and safety because wells that have pressure on the bradenhead may result in a discharge of oil and gas waste into ground water and contamination of surface or subsurface waters, thereby resulting in pollution.

Previous Violations by Respondent

Yellowstone has no previous history of violations of Commission rules.

Good Faith

The respondent acted in bad faith because it failed to correct Commission rule violations on the subject lease and failed adequately to explain its inaction to the Commission.

Enforcement’s Recommended Penalty

Commission staff requests that Respondent be assessed an administrative penalty of $12,520.00, consisting of one Statewide Rule 14(b)(2) violation at $2,000.00 plus $1 per foot of well depth on a well 6,600 feet deep resulting in a penalty of $8,600.00; two violations of Statewide Rule 8(d)(1) at $500.00 each plus $0.50 per square foot for a total area of 840 square feet resulting in a penalty of $1,420.00; and one violation of Statewide Rule 17(a) at $2,500.00. Enforcement requests the Commission issue and order that Yellowstone be directed to place the subject lease and well into compliance with all Commission Statewide Rules. In addition, Enforcement requests that the Commission order any other relief to which, under the pleadings and evidence, the Enforcement Section may show itself entitled.

Yellowstone Petroleums Inc.

Yellowstone Petroleums Inc. did not object to admission into the record of Enforcement’s certified file and did not offer a defense to the violations of Commission Statewide rules. Mr. Locke
stated that he had contracted to have the well plugged, which he anticipated would take place in mid-November.

Enforcement Attorney Glaze then offered to withdraw the docket if all violations were corrected, and stated that a late-filed exhibit, an inspection report, would be filed with the examiner.

EXAMINER’S OPINION

By letter dated January 9, 2015, Enforcement offered Yellowstone an “Agreed Settlement” in light of the fact that Yellowstone had voluntarily paid the full penalty amount, $12,520.00, requested in this docket. The settlement offer was CC’d to the Hearings Examiner, who has taken Official Notice of the contents of the settlement offer. The settlement was contingent upon Yellowstone correcting the violations pled in the instant docket. Yellowstone did not enter into the settlement.

A late-filed Commission District Office Inspection Report and accompanying Plugging Data Sheet made on December 15, 2014, indicated that a District Office 9 Inspector witnessed the setting of the first plug on Well B1, with a calculated top of cement at 5871 feet. The contract pluggers was Smith Pipe.

Another late-filed District Office inspection report, made on February 9, 2015, indicated that Well No. B1 appeared to have been plugged. The Inspector noted that the well had no surface expression, and stated “...looks to have been plugged and cut off then covered.” Appearances notwithstanding, the Commission does not consider a well to be plugged until the plugging contractor, in this case Smith Pipe, files a Form W-3 with the Commission, verifying the depths at which plugs were set and verifying that the well casing has been cut off three feet below grade (below plow depth). The District Office has not received the required Form W-3 from Smith Pipe¹, therefore the Commission will not presume the well has been properly plugged. Yellowstone has paid the fines associated with both the Statewide Rule 14(b)(2) violation and the Statewide Rule 17(a) violation.

However, although Yellowstone paid the administrative penalty for the two initial Statewide Rule 8(d)(1) violations, the evidence indicates that the two original spills, 300 square feet at the wellhead and 540 square feet at the flow line, totaling 840 square feet, have not been remediated.

In addition, the February 9, 2015 District Office inspection report found 4 additional smaller areas of oil-soaked ground (see Attachment I), which may be related to plugging operations on the lease. The first additional area of oil-soaked soil is very small, 2 inches by 4 inches and 2 inches deep. The second area is 3 feet wide by 3 feet long and 2 inches deep. The third area is 6 feet wide by 14 feet long and 4 inches deep. The fourth area is 6 feet wide by 6 feet long and 4 inches deep.

¹ This situation often arises when an operator that contracted for the plugging of a well fails to pay the pluggers. The pluggers’ only leverage against the operator is to withhold the filing of the Form W-3 Plugging Report. The record is silent as to whether this occurred in this docket.
Disregarding the 2 by 4 inch spill as *de minimis*, the remaining three spills total 129 square feet. As Enforcement’s pleadings ask for “...any other relief to which, under the pleadings and the evidence, the Enforcement Section may show itself entitled”, this examiner recommends the newer spills be considered a single additional violation of Statewide Rule 8(d)(1) at $500.00, plus $0.50 per foot on a total area of 129 square feet for $64.50, yielding a total additional penalty of $564.50.

Although Yellowstone has paid the administrative penalty for the two initial Statewide Rule 8 violations pled by Enforcement, it has not paid any penalty for the new violations of Statewide Rule 8(d)(1) found by the District Office on February 9, 2015. The February 9, 2015 District Office Inspection Report also demonstrated that lease had not been cleaned up, as tubing, rods, rusted-out tanks and other trash was still lying around. The Examiner recommends that Yellowstone be assessed an additional penalty of $564.50 for the new violations of Statewide Rule 8(d)(1), ordered to remediate all un-permitted discharges, clean up trash on the lease, plug Well No. B1, and ordered to place the Reeder B (25558) Lease in compliance with all Commission rules.

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

**FINDINGS OF FACT**

1. Yellowstone Petroleums Inc. ("Yellowstone") was given at least ten (10) days notice of this hearing by certified mail sent to its most recent Form P-5 address. Yellowstone appeared at the hearing through its President, Charles Brian Locke.

2. Yellowstone’s most recent P-5 organization report lists Yellowstone as a corporation with Charles Brian Locke as President and Louise Elizabeth Locke as Secretary.

3. The violations in this docket are violations of Commission rules related to safety and the prevention or control of pollution.

4. Yellowstone’s Form P-5 Organization Report status is currently “Delinquent”.

5. Yellowstone designated itself the operator of the Reeder B (25558) Lease, Well No. B1, Buffalo Springs South (Ellen) Field, Clay County, Texas by filing a Commission Form P-4 (Certificate of Compliance and Transportation Authority), effective April 11, 2006, approved August 9, 2006. Yellowstone remains the designated operator. No subsequent operator has been approved by the Commission.

6. Commission District Office inspection reports made on July 26, 2013; October 9, 2013 and October 29, 2013 for the Reeder B (25558) Lease, Well No. B1, show that and reports filed by the Respondent reflecting zero production or the absence of production reports filed by Respondent since August, 2010 for the Reeder B (25558) Lease, Well No. B1 show that the lease has been inactive for a period greater than one year. Production from the well ceased on or before July, 2010.
7. The Reeder B (25558) Lease, Well No. B1 has been inactive from at least August, 2010, to at least the time of the hearing on September 11, 2014, a period of time of approximately four years, a period of time greater than one year.

8. Respondent’s violation of Statewide Rule 14(b)(2) is serious and threatens the public health and safety. Unplugged wellbores are likely to cause pollution of usable quality groundwater and surface water, as defined in Statewide Rule 8(a)(28), by serving as a conduit for the passage of oil, gas, saltwater and other substances from one stratum or formation to another or to the surface or from the surface downward.


10. Commission District office inspection reports made on July 26, 2013; October 9, 2013 and October 29, 2013 for the Reeder B (25558) Lease for the Reeder B (25558) Lease indicated a 300 square foot area of oil-stained soil at the wellhead and 540 square foot area of oil-stained soil at a leak in the flowline, for a total of 840 square feet. Yellowstone did not have a permit for this discharge, nor was the discharge authorized under Statewide Rule 8(d)(3) or 8(e), or under Statewide Rules 9, 46 or 98.

11. A District Office Inspection Report and accompanying Plugging Data Sheet made on December 15, 2014 demonstrate that the first plug was set on the Reeder B (25558) Lease, Well No. 1, with a calculated top of cement at 5871 feet.

12. A Commission District Office inspection report made on February 9, 2015 found no surface expression of Well No. B1. Although the well may be properly plugged, the Commission has not received a Form W-3 from the well plunger, Smith Pipe, indicating the number of plugs, the depths at which the plugs were set and the amount of cement used for each plug. Until the Form W-3 for the Reeder B (25558) Lease, Well No. B1 is received by the Commission, the Commission cannot presume the well has been properly plugged.

13. Respondent’s violation of Statewide Rule 17(a) is serious and a hazard to the public health and safety because wells that have pressure on the bradenhead may result in a discharge of oil and gas waste into ground water and contamination of surface or subsurface waters, thereby resulting in pollution.

14. A Commission District Office inspection report made on February 9, 2015, found four additional un-permitted discharges of oil and gas waste, which were violations of Statewide Rule 8(d)(1). The first additional area of oil-soaked soil is very small, 2 inches by 4 inches and 2 inches deep. The second area is 3 feet wide by 3 feet long and 2 inches deep. The third area is 6 feet wide by 14 feet long and 4 inches deep. The fourth area is 6 feet wide by 6 feet long and 4 inches deep. Disregarding the first area of pollution, 2 inches by 4 inches, as de minimis, the total area of additional un-permitted discharges is 129 square feet.
15. Yellowstone's violation of Statewide Rule 8(d)(1) is serious and a hazard to the public health and safety, in that unpermitted discharges of oil and gas waste can contaminate the land surface, affect the health of humans and animals, and may eventually be discharged to surface or subsurface waters, causing pollution.

16. Commission District Office inspection reports made on July 26, 2013; October 9, 2013 and October 29, 2013 indicate that Well B1 was not equipped with a visible bradenhead, or at least not a bradenhead accessible from the surface. By failing to equip the well with a bradenhead, Yellowstone violated Statewide Rule 17(a).

17. Respondent's violation of Statewide Rule 17(a) is serious and a hazard to the public health and safety because wells that have pressure on the bradenhead may result in a discharge of oil and gas waste into ground water and contamination of surface or subsurface waters, thereby resulting in pollution.

18. Respondent Yellowstone has no prior history of violations of Commission rules.

19. Respondent has acted in bad faith because it failed to correct the violations of Commission rules on the subject lease and failed to explain its inaction to the Commission.

20. A notation on the Commission Mainframe demonstrates that Yellowstone paid the administrative penalty, $12,520.00 requested in Enforcement's Original Complaint on September 22, 2014.

21. The estimated cost to plug the subject well is $35,000.00.

**CONCLUSIONS OF LAW**

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

2. All things necessary to the Commission attaining jurisdiction have occurred.

3. Yellowstone Petroleums Inc. is the operator of the Reeder B (25558) Lease, Well No. B1, Buffalo Springs, South (Ellen) Field, Clay County, Texas.

4. Yellowstone Petroleums Inc. has not plugged the Reeder B (25558) Lease, Well No. B1 and is in violation of Statewide Rules 14(b)(2) and 17(a) [16 TEX. ADMIN. CODE §§3.14(b)(2) and 3.17(a)].

5. Yellowstone Petroleums Inc. is in violation of Statewide Rule 8(d)(1) [16 TEX. ADMIN. CODE §8(d)(1)].

6. The documented violations committed by Yellowstone Petroleums Inc. constitute acts deemed serious and a hazard to the public health and safety within the meaning of Texas
Natural Resources Code §81.0531.

7. Yellowstone Petroleums Inc. did not demonstrate good faith within the meaning of Texas Natural Resources Code §81.0531.

RECOMMENDATION

The Examiner recommends that Yellowstone Petroleums Inc. be required to plug and place the Reeder B (25558) Lease, Well No. B1, Buffalo Springs, South (Ellen) Field, Clay County, Texas in compliance with all Commission rules and regulations and pay an administrative penalty of $12,520.00, plus $500.00 for its additional violations of Statewide Rule 8(d)(1), plus $0.50 per square foot for 129 square feet ($64.50), minus $12,520.00 previously paid, for a total administrative penalty of $564.50.

Respectfully submitted,

\[Signature\]

Marshall Enquist
Hearings Examiner
RAILROAD COMMISSION OF TEXAS
Oil and Gas Division
Compliance Section

District Office
INSPECTION REPORT

LEASE/ID 25558
DRILL PMT. NO. 
PLANT NO. 
PIT PMT. NO. 
PIPELINE PMT NO. 
OTHER 
LE DOCKET 
SFP CODE 
SFCU CODE 

TOTAL: UIC WELLS INS 
WELLS INS 
SITES INS 

|

Operator: Yellowstone Petroleum, Inc

Lease/Facility: Reeder "B"

Well No.: B1

County: Buffalo Springs, S. (Ellen)

Complaint No.: 

Complaiant Name: 

Directions: 

GPS Coordinates:  

Activities: 

A. Blowout Test  
B. Com. Surface Disp. Fac. (Sens)  
C. Com. Disposal Well  
D. Flare/Vent  
E. Disposal/Injection  
F. Drilling Rig  
G. Fire Hydrant  
H. H2S Compliance Inspect.  
I. H2S Incident Response Plan  
J. Hydrocarbon String  
K. Lease Inspection  
L. Mitigation  
M. Minor Permit  
N. Office  
O. Other  

Field Inspection Status: 

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Comments: 

Production Storage Facility - 33.514445, 98.153072 - 2 - 210 production tanks, 1 Hoz 3 phase separator tank 106990 10' 4 1/2 gauge, 1' 1" color cut 9' 3 1/2" crude, tank 106991 1' 8"n gauge, 4" kolor cut - 1' 4" crude - sign posted

Produced water storage facility - 33.514175, 98.153996 - 3 - 210 tanks - only 1 plumbed in, other 2 tanks have rust out holes - no sign - 2 gas powered water pumps (yellow dog pumps) running from the plumbed 210 produced water tank to the pump and to a 2" black poly pipe running north from storage facility - runs north to fence line. Tanks are leaking production fluid from the bottom or Tank # 1 up the stairway - contamination is 10'W X 6'6"L X 4" saturation and standing fluids. - NO PROGRESS

SWR 8

I certify this data is true and complete: 

Start: 60,588 15:00 0:00 (MIN)

End: 60,715 17:00

Attachment I

Yellowstone Petroleums Inc.
Oil & Gas Docket No. 09-0286756
Well # B1- 33.513252 - 98.156694 - Casing unfound - looks to have been plugged and cut off then covered - Unit, tubing, rods and other trash is still present - there are now 5 different areas of soil contamination around this well - # 2"W X 4"L X 2" saturation, # 2 3"W X 3"L X 2"D saturations, # 3 6"W X 14" L X 4" D saturation, 6"W X 6"L X 4"D saturations - SWR 8 X 5 - NEW VIOLATIONS