

COMMISSION CALLED HEARING TO GIVE BRICE POMYKAL AS REPRESENTATIVE OF THE ESTATE OF FRANK G. POMYKAL AN OPPORTUNITY TO SHOW CAUSE WHY THE ESTATE OF FRANK G. POMYKAL IS NOT LEGALLY REQUIRED TO PLUG WELL NOS. 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, AND 15, POMYKAL, JOE (10376) LEASE, BRENHAM FIELD, AUSTIN COUNTY, TEXAS

APPEARANCES:

FOR MOVANT:

Brice Pomykal
Mrs. Frank G. Pomykal

MOVANT:

Frank G. Pomykal
and Heirs

FOR INTERVENOR:

Christopher Hotchkiss
Ramon Fernandez, Jr.

INTERVENOR:

Enforcement Section
Railroad Commission of Texas

PROPOSAL FOR DECISION

PROCEDURAL HISTORY

DATE OF REQUEST FOR HEARING:

January 3, 2008

DATE OF NOTICE OF HEARING:

February 20, 2008

DATE OF HEARING:

April 7, 2008

HEARD BY:

James M. Doherty, Hearings
Examiner

DATE PFD CIRCULATED:

April 17, 2008

STATEMENT OF THE CASE

On December 5, 2007, the Houston District Office sent to Frank G. Pomykal a Notice to Operator and Request for State Funds relating to the Pomykal, Joe (10376) Lease, Well Nos. 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, and 15 ("subject wells"), Brenham Field, Austin County, Texas. This Notice advised the operator that the subject wells remained "delinquent inactive" wells under Texas Natural Resources Code §89.002(7) and in violation of Statewide Rule 14(b)(2). The Notice directed the operator to plug the wells and advised that the District Office was also recommending scheduling the wells for plugging with state funds. The Notice stated further that if the operator

believed that he was not legally required to plug the wells, he could request a hearing within 30 days, and in the absence of a timely request for hearing, the Commission could enter into a contract to plug the wells on or after the 31st day from the date of the Notice. The record operator of the subject wells, Frank G. Pomykal died on December 1, 2002. On January 3, 2008, Brice Pomykal, son of Frank G. Pomykal, responded to the District Office's Notice by requesting a hearing.

A hearing was held on April 7, 2008. Brice Pomykal and Mrs. Frank G. Pomykal appeared representing the operator and his heirs. Christopher Hotchkiss and Ramon Fernandez, Jr. appeared representing the Enforcement Section of the Office of General Counsel.

APPLICABLE LAW

Pursuant to Texas Natural Resources Code §89.043(a), if the Commission determines at a hearing under §89.041 that a well has not been properly plugged, the Commission, through its employees or through a person acting as an agent for the Commission, may plug the well if neither the operator or nonoperator can be found or neither the operator or nonoperator has assets with which to properly plug the well. Pursuant to §89.043(c), not later than the 30th day before the date the Commission enters into a contract to plug a delinquent inactive well, the Commission must send a notice by certified mail to the operator of the well at the address last reported on the operator's organization report directing the operator to plug the well and stating, among other things, that the Commission may plug the well and foreclose its statutory lien under §89.083 unless the operator requests a hearing. Pursuant to §89.043(c)(3), if the Commission plugs a well, it by order may require the operator to reimburse the Commission for the plugging costs or may request the attorney general to file suit against the operator to recover those costs.

DISCUSSION OF THE EVIDENCE

Matters Officially Noticed

The examiner has officially noticed the Commission's Master Inquiry, P-5 Financial Assurance Inquiry, On-Schedule Leases, Wells, Wellbores by Operator, P-4 Inquiry, Oil Proration Schedule, and Historical Oil Ledger databases which show the following: (1) Frank G. Pomykal was a sole proprietor; (2) the Form P-5 organization report of Frank G. Pomykal has been delinquent since September 1, 1999; (3) Frank G. Pomykal filed financial assurance in the amount of \$100 at the time of his last Form P-5 renewal on September 11, 1998; (4) Frank G. Pomykal is the record operator of the subject wells; (5) Frank G. Pomykal designated himself operator of the subject wells by filing a Form P-4 (Certificate of Compliance and Transportation Authority), approved on April 24, 1980; (6) the subject wells are more than 25 years old and inactive, and required H-15 tests (Test on an Inactive Well More than 25 Years Old) are delinquent; (7) no production has been reported to the Commission for the subject wells since April 1999; and (8) the subject wells have not been properly plugged.

Brice Pomykal

Frank G. Pomykal died intestate on December 1, 2002. It is not disputed that at the time of his death, Frank G. Pomykal was the record operator of the subject wells with the responsibility for compliance with Commission rules, including Statewide Rule 14(b)(2) relating to well plugging. Frank G. Pomykal died without a will, and his interest in the 25 acres of land where the subject wells are located passed immediately to his heirs.

The subject wells have remained inactive and not equipped with electricity to produce since the death of Frank G. Pomykal. Brice Pomykal objects to the plugging of the wells because he would like to produce them. He has made no previous effort to produce the wells since the death of his father because he was incarcerated for 2 ½ of the intervening years and did not have the money during the remainder of the time. No effort has been made by the heirs of Frank G. Pomykal to transfer the wells to Brice Pomykal or any other person.

Brice Pomykal is not an active Form P-5 operator. Formerly, he was owner of Co-Kal Oil Company, a Form P-5 operator, but Co-Kal's Form P-5 has been delinquent since March 1, 2002. The examiner has officially noticed from Commission enforcement case records that Co-Kal was the respondent in Oil & Gas Docket No. 03-0238498, wherein a Final Order was signed on January 24, 2006, ordering Co-Kal to plug or place into compliance 22 wells on two leases in Austin County and pay a penalty of \$42,000. This docket was referred to the attorney general who obtained a default judgment against Co-Kal for administrative penalties of \$42,000, civil penalties of \$35,270.40, and court costs of \$20,000. The violations found by the Commission in Oil & Gas Docket No. 03-0238498 remain unresolved, and Co-Kal and Brice Pomykal are subject to the restrictions of Texas Natural Resources Code §91.114. According to Brice Pomykal, Co-Kal declared bankruptcy five years ago.

EXAMINER'S OPINION

There is no dispute about the fact that Frank G. Pomykal is the record operator of the subject wells with the responsibility for plugging them pursuant to Texas Natural Resources Code §89.011 and Statewide Rule 14(b)(2). The subject wells are delinquent inactive wells in that they have been inactive for nine years, have not had plugging extensions since at least September 1, 1999, and have not been plugged as required by Statewide Rule 14(b)(2). Proper notice has been served on Frank G. Pomykal via certified mail directing that the subject wells be plugged pursuant to Texas Natural Resources Code §89.043(c) and advising that if the Commission plugs the wells, all well site equipment and hydrocarbons may be disposed of by the Commission pursuant to Texas Natural Resources Code §89.085 and the operator may be liable for administrative penalties and reimbursement of plugging costs. The heirs of Frank G. Pomykal have been afforded a hearing on the matter, and no proof has been made of any reason why the wells should not be plugged. The record operator cannot be found and has no assets with which to properly plug the wells within the meaning of Texas Natural Resources Code §89.043, because Frank G. Pomykal died on December 1, 2002. Accordingly, the Commission, through its employees or through a person acting as agent

for the Commission, may plug the subject wells pursuant to Texas Natural Resources Code §89.043.

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. At least ten days notice of the hearing in this docket was provided to all interested persons, including Brice Pomykal, the person who requested the hearing. Brice Pomykal and Mrs. Frank G. Pomykal appeared at the hearing and presented testimony.
2. Frank G. Pomykal, a sole proprietor, designated himself the operator of the Pomykal, Joe (10376) Lease, Well Nos. 1, 2, 3, 8, 9, 10, 11, 12, 13, 14, and 15 (“subject wells”), Brenham Field, Austin County, Texas, by filing a Form P-4 (Certificate of Compliance and Transportation Authority), approved on April 24, 1980.
3. Frank G. Pomykal died intestate on December 1, 2002.
4. The Form P-5 organization report of Frank G. Pomykal has been delinquent since September 1, 1999. Frank G. Pomykal filed financial assurance in the amount of \$100 at the time of his last Form P-5 renewal on September 11, 1998.
5. The subject wells have been inactive since April 1999, when the last production was reported to the Commission, have not had plugging extensions since at least September 1, 1999, and have not been plugged.
6. The subject wells are more than 25 years old and subject to the Form H-15 (Test on an Inactive Well More than 25 Years Old) testing requirements of Statewide Rule 14(b)(3). Required H-15 tests for the subject wells are delinquent.
7. The subject wells have been abandoned, and are likely to cause pollution of fresh water.
8. On December 5, 2007, the Houston District Office sent Frank G. Pomykal a Notice to Operator and Request for State Funds relating to the subject wells. This notice directed Frank G. Pomykal to plug the subject wells and advised that the District Office was also recommending scheduling the wells for plugging with state funds. The Notice also stated that if the Commission plugged the wells, all well site equipment and hydrocarbons could be disposed of by the Commission pursuant to Texas Natural Resources Code §89.085 and the operator could be liable for administrative penalties and reimbursement of plugging costs.

9. The December 5, 2007, Notice to Operator and Request for State Funds also stated that if the operator believed that he was not legally required to plug the wells, he could request a hearing within 30 days, and in the absence of a timely request for hearing, the Commission could enter into a contract to plug the wells on or after the 31st day from the date of the Notice.
10. Brice Pomykal requested a hearing in response to the Notice to Operator and Request for State Funds, and he and Mrs. Frank G. Pomykal appeared at the hearing in this docket for and in their capacity as heirs of Frank G. Pomykal.
11. No evidence was presented at the hearing establishing that Frank G. Pomykal is not legally required to plug the subject wells.
12. No evidence was presented at the hearing establishing that the subject wells should not be plugged as required by Statewide Rule 14(b)(2).
13. During the nine years the subject wells have been inactive, no attempt has been made to transfer the wells to another operator.
14. The record operator of the wells cannot be found and has no assets with which to properly plug the subject wells within the meaning of Texas Natural Resources Code §89.043.

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. The subject wells are in violation of Statewide Rule 14(b)(2) [Tex. R.R. Comm'n, 16 TEX. ADMIN. CODE §3.14(b)(2)].
4. Frank G. Pomykal is the operator legally required to plug the subject wells pursuant to Statewide Rule 14(b)(2) and Texas Natural Resources Code §89.011.
5. Pursuant to Texas Natural Resources Code §89.043, the Commission, through its employees or through a person acting as agent for the Commission, may plug the subject wells, foreclose its statutory lien under Texas Natural Resources Code §89.083, and, to the extent practicable, seek reimbursement from the operator of the wells.

RECOMMENDATION

The examiner recommends that all relief sought in this docket by Brice Pomykal, as representative of Frank G. Pomykal, be denied.

Respectfully submitted,

James M. Doherty
Hearings Examiner