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**AN ENFORCEMENT ACTION AGAINST DAN A. HUGHES, D.B.A. HUGHES, DAN A. COMPANY (OPERATOR NO. 411739) FOR VIOLATIONS OF STATEWIDE RULE 3.68(G) AND TEXAS NATURAL RESOURCES CODE ANN. § 85.166 ON THE SPINACH ELAINE UNIT (10149) LEASE, WELL NOS. A3, B2, B4, D1, D2, E2, AND F1, IN THE SPINACH (ELAINE) FIELD, IN ZAVALA COUNTY, TEXAS**

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**APPEARANCES**

**FOR MOVANT:**

Barbara Epstein, Staff Attorney

**MOVANT:**

Enforcement Section

**FOR RESPONDENT:**

Phillip Whitworth, Attorney  
Joe L. Johnson, Jr., Consulting Petroleum Engineer  
W.E. "Bubba" Horton, Production Administrator  
Ronald Stasny, General Manager

**RESPONDENT:**

Dan A. Hughes  
Dan A. Hughes  
Dan A. Hughes  
Dan A. Hughes

**PROCEDURAL HISTORY**

**Date of Request for Action:**

July 16, 2003

**Notice of Opportunity for Hearing:**

August 4, 2003

**Notice of Hearing:**

October 21, 2003

**Hearing Held:**

November 13, 2003

**Record Closed:**

November 13, 2003

**Heard By:**

Scott Petry, Hearings Examiner

**PFD Circulation Date:**

February 27, 2004

**STATEMENT OF THE CASE**

This was a Commission-called hearing on the recommendation of the Enforcement Section of the Office of General Counsel to determine the following:

1. Whether the respondent, Dan A. Hughes Company, produced oil from the Spinach Elaine Unit (10149) Lease (“subject lease”), Well Nos. A3, B2, B4, D1, D2, E2, and F1 (“subject wells”), in Zavala County, Texas, in violation of Statewide Rule 73 and TEX. NAT. RES. CODE ANN. § 85.166;
2. Whether the respondent should be assessed administrative penalties of not more than \$10,000 per violation committed regarding said lease and wells; and,
3. Whether any violations should be referred to the Office of the Attorney General for further civil action pursuant to TEX. NAT. RES. CODE ANN. § 81.0534.

Barbara Epstein, Staff Attorney, appeared at the hearing representing the Railroad Commission of Texas, Enforcement Section. Phillip “Flip” Whitworth appeared at the hearing and represented the respondent, Dan A. Hughes, doing business as Dan A. Hughes Company (hereinafter “respondent” or “Hughes”). The Enforcement Section's hearing file was admitted into evidence.

Enforcement recommends that an administrative penalty be assessed against Hughes in the amount of \$20,000. While the respondent admits that it produced while technically severed, it argues that the circumstances of this docket warrant a substantially reduced penalty or no penalty at all. The examiner adopts Enforcement’s recommendation regarding culpability but finds the proposed penalty to be excessive given the circumstances of the violations. The examiner instead recommends that Hughes be ordered to pay an administrative penalty in the amount of \$700.

### **STATUTORY AUTHORITY**

This docket’s violations concern Statewide Rule 73, which was amended effective October 28, 2003.<sup>1</sup> As the pleadings were mailed out before the effective date of October 28, 2003, and the alleged violations all occurred before that date, Enforcement pled the violations under the previous version of Statewide Rule 73 (16 T.A.C. § 3.68), which was adopted July 10, 2000.

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<sup>1</sup> Codified under 16 T.A.C. § 3.73.

Statewide Rule 73 states that the Commission may shut in and seal any well, and cancel any certificate of compliance if it appears that the operator has violated, or is violating, any statutes, rules, permits, or orders of the Commission. The rule further provides that when the Commission receives information indicating that operations are being conducted in violation of statutes, rules, permits or orders, the Commission shall send a notice letter to the operator directing the operator to correct the violation.

This letter shall state the facts or conduct alleged to warrant the shutting-in and sealing of the well(s) and the cancellation of the certificate of compliance. The rule further mandates that the letter shall give the operator an opportunity to show compliance with the statutes, rules, permits or orders. The letter shall be sent by registered or certified mail, and shall indicate the time within which compliance shall be demonstrated or achieved, and the time period allowed for the operator to achieve compliance shall not be less than 10 days from the date the notice letter is sent. TEX. NAT. RES. CODE ANN. §85.164 is substantially to the same effect, and requires that the notice letter give the operator an opportunity to show compliance.

The rule and Tex. Nat. Res. Code Ann. § 85.166 provide that, upon notice from the Commission that a certificate of compliance has been canceled, it is unlawful for an operator to produce oil, gas, or geothermal resources until a new certificate of compliance has been issued by the Commission. Pursuant to Texas Natural Resources Code, § 85.3855, failure to comply with this subsection may subject the operator to a penalty of up to \$10,000 per violation.

Texas Natural Resources Code § 85.3855 also indicates that the penalty amount assessed must be based on: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation; (2) the economic harm to property or the environment caused by the violation; (3) the history of previous violations; (4) efforts to correct the violation; and, (5) any other matter that justice may require.

### **DISCUSSION OF THE EVIDENCE**

This docket concerns the respondent's production of approximately 55,627 barrels of oil and 13,542 mcf of casinghead gas from seven wells on the Spinach Elaine Unit (10149) lease during a

nineteen month period in which the subject lease's certificate of compliance was cancelled. Specifically, the certificate of compliance for the subject lease was cancelled on June 8, 2001 and, again, on August 17, 2001. The certificate of compliance was not reissued until March 26, 2003.

Commission records reflect that Hughes is a sole proprietorship performing oil and gas operations in the State of Texas. Official notice of Commission records indicates that the respondent maintains an "active" Form P-5 (Organization Report), which was renewed on January 29, 2004, and that Hughes filed a \$250,000 bond as financial assurance at the time of his last P-5 filing. The respondent was designated operator of the subject wells by a Commission Form P-4 transfer from Hughes Texas Petroleum with an effective date of March 1, 1988. Commission records report that additional Form P-4 changes were made for the subject lease with effective dates of October 24, 1997, January 15, 1999, May 3, 2002, and March 5, 2003. Commission records and the testimony of the respondent show that the respondent and its predecessor entities have not had any prior Commission enforcement orders entered against them.

#### **I. Enforcement's Position and Evidence**

In its case-in-chief, Enforcement alleges that the respondent received proper notices of two severances on the subject lease, but that it ignored Commission rules and produced the subject wells without reinstating its certificate of compliance. Enforcement offered Commission records to show that respondent was first notified of the excessive injection pressure on February 14, 2001, and that notices of intent to cancel the certificate of compliance and to sever the subject lease were sent to Hughes by certified mail on May 9, 2001, and July 18, 2001. The certified May 9, 2001, letter referenced violations of maximum allowed injection pressures for the 1999 to 2000 time period, and stated that the respondent was to reduce injection pressures or amend its permit to prevent the cancellation of its certificate of compliance. The certified July 18, 2001, letter referenced violations of injection pressures for the 2000 to 2001 time period, and also stated that the respondent must reduce injection pressures or amend its permit to prevent the cancellation of its certificate of compliance.

Both the May 9, 2001, and July 18, 2001, certified letters stated that violation of the maximum allowed injection pressure had to be resolved within 30 days or "the P-4 Certificate of Compliance will be canceled and a severance of pipeline or other carrier connection will be issued." As the violations were not resolved within the 30 day periods and the respondent did not request a hearing

as outlined in the notices, letters were sent out on June 8, 2001, and August 17, 2001, respectively, cancelling the P-4 certificate of compliance. The basis for the cancellation in both instances was that the respondent violated the pressure requirements of its injection authority that was granted to it on September 12, 1984, and that Hughes failed to bring the violation into compliance by either obtaining an amended permit for injection pressures or by reducing the injection pressure.

Specifically, the injection authority for the waterflood on the subject lease limited the maximum injection pressure for Well No. C1 to 1,900 psi. Enforcement submitted Commission records for the period of April 2000 to August 2001, showing that Hughes reported injection pressure for Well No. C1 on the subject lease ranging from approximately 1,950 psi to 2,090 psi per month. Further, the Forms H-10 (Annual Disposal/Injection Well Monitoring Report) offered by Enforcement show that the subject well exceeded the authorized pressure for every month from February 2001 to August 2001.

Enforcement also presented testimony from Rodney Viator, with the Commission's Environmental Services division, who testified that he had personal knowledge regarding some of the filings in this docket. Mr. Viator testified that the respondent should have reduced the pressure until any potential permit amendments were approved. Mr. Viator noted that he did not receive a written response from Hughes to his original February 14, 2001 letter, but that he had received correspondence from Mr. Horton on May 31, 2001 regarding the permit amendment process. On cross examination, Mr. Viator stated that if he had been informed of the ongoing efforts to correct the violation and to amend the permit, additional time would probably have been provided to Hughes.

Enforcement noted that on September 27, 2001, the Commission approved the respondent's requested amendment to the injection authority to increase the maximum allowed pressure from 1,900 psi to 1,975 psi. While Enforcement acknowledges that the injection pressures since September 2001 have been maintained within the permitted parameters, it also notes that the certificate of compliance remained cancelled due to the respondent's failure to pay the required \$100 reconnect fee. This reconnect fee was not paid until March 26, 2003.

Finally, Enforcement noted that respondent itself reported Well Nos. A3, B2, B4, D1, D2, E2, and F1 as producing wells for the nineteen month period that its certificate of compliance was cancelled. Enforcement argues that the gravity of the violations warrants the Commission assessing

a penalty of \$20,000 for the seven violations of Statewide Rule 73.

## **II. Respondent's Position and Evidence**

Hughes did not dispute the fact that it continued to produce oil from the subject lease after the June 8, 2001, and August 17, 2001, cancellations of the certificate of compliance. It does not dispute that its certificate of compliance was not reissued until March 26, 2003. Rather, the crux of the respondent's case was that it was taking active steps to fix the problem during and after the certificates of compliance were being cancelled, that it did not realize its certificate of compliance was still cancelled after the permit amendment had been approved, and that the facts of this case support either a substantially reduced penalty or no penalty at all. Respondent argues that this hearing resulted from an unintentional oversight regarding a minor \$100 reconnect fee and that this should be a mitigating factor.

Specifically, the respondent acknowledged that it did not submit the \$100 reconnect fee required under Texas Natural Resources Code § 85.167 until March 2003. Hughes claimed that the failure to pay the \$100 fee was inadvertent and that it was unaware that the lease did not have a valid certificate of compliance. Respondent further contended that it received "...monthly allowable supplements showing its Unit to be in good standing", and that it only found out that the lease was severed when it applied for a change of gatherer on March 3, 2003. As soon as it was advised by the Commission of the delinquent fee, it immediately paid the fee and the certificate of compliance was reinstated on March 26, 2003. Hughes argues that it has a long history of compliance and respect for Commission rules, and that this should also be considered a mitigating factor in any penalty imposed upon it.

### **Compliance History.**

The respondent presented testimony from its production manager, W. E. "Bubba" Horton, who testified that he had over 27 years of experience as the contact person for Hughes in regulatory matters, and that he had personal knowledge of the events detailed in this docket. According to Mr. Horton, and verified by Commission records, the respondent has "never had an enforcement problem before." Mr. Horton stated that he was personally responsible for the oversight in failing to pay the reconnect fee and that his oversight was certainly not intentional. While issues had arisen in the past with regard to different compliance matters, Mr. Horton stated that it was always his

practice and the practice of the respondent to work with the District Office to resolve any problems. Mr. Horton further stated that he was also involved in the successful efforts to have the injection permit amended.

**Amended Permit Pressure.**

According to the respondent, it received notification from the Commission on May 9, 2001, and July 18, 2001, that its certificate of compliance would be cancelled in 30 days unless it reduced its injection pressure or it applied for an amended permit. In correspondence from Mr. Horton to the Commission dated May 31, 2001, the respondent stated that it had "...lowered the injection pressure on this well, but no water could be injected into this well at its permitted injection pressure." Accordingly, respondent indicated that it would be pursuing an amended permit, but requested guidance on what was needed to actually amend the permit. The correspondence went on to say, "...please inform me as to what is required, and we will do it."

Respondent was subsequently contacted by Commission personnel on June 1, 2001, and was advised as to the requirements of the amendment process. In June 2001, the respondent hired outside services to obtain the names and addresses of affected surface owners in furtherance of the permit amendment application. Hughes asserted that this process was somewhat time consuming because the surface owners had changed and the employment of a landman was necessary to determine the identity of the proper owners. In June and July 2001, the respondent indicated that it was making concerted efforts to put together the technical data in furtherance of the application. Respondent testified that it applied for the amended permit on July 23, 2001, but that the certificate of compliance was severed on June 8, 2001 while it was in the process of putting together the proposed permit amendment. The amended permit was approved on September 27, 2001, and allowed an injection pressure of 1,975 psi. Respondent argued that it was making dilligent efforts to correct the violation during the time period that the certificate of compliance was being cancelled.

The respondent also argues that from February 2001 to the present, it officially exceeded this amended maximum pressure only once but that, in truth, the pressures were never really exceeded. The respondent presented testimony from Mr. Joe Johnson, Jr., who is a petroleum engineer with Stevens Engineering. Mr. Johnson was involved with the feasibility studies on the waterflood of the subject unit and designed the facilities used in the waterflood process. He testified that the pressure

readings submitted by the respondent were inaccurate and that the corrected readings would have shown a much lower pressure.

Mr. Johnson testified that the readings were inaccurate due to filter problems at the wellhead, where the filters were “blocking up”. The filters are located before the wellhead, and clogged filters cause the pressure readings, which were taken closer to the central pump station, to read higher than the true pressure at the wellhead. The filters were found to be plugged with iron sulfide and scale, and needed to be changed more often. Mr. Johnson testified that the filters are now changed more frequently than they were in 2001. Once the filters were changed and the pressure readings were taken closer to the actual wellhead, the readings showed an average difference of 300 to 400 psi. In essence, Mr. Johnson stated that the original pressure readings which initiated the severance problems were “phantom readings.”

**Waste.**

Additionally, the respondent points out that shutting in the production from the waterflood on the subject lease would have resulted in the waste of hydrocarbons. It was respondent’s assertion that Well No. C1 would not take water at the reduced injection pressure, and that any shutting in of the injection well may have resulted in the waterflood getting “ahead of the oil wall.” Had Hughes shut in the waterflood prematurely, respondent argues that substantial amounts of oil would have gone unrecovered. Respondent submitted correspondence and testimony from its petroleum engineer that, in his professional opinion, shutting in the injection wells “...would have caused irreparable damage to the waterflood system and would have resulted in a loss in oil production and in recoverable oil reserves.” Further, Hughes argues that shutting in the subject wells would have contradicted the Railroad Commission’s stated mission of protecting correlative rights and preventing the waste of hydrocarbons.

Accordingly, while the respondent admits that it produced oil while under severance, it argues that extenuating factors should mitigate the proposed penalty, if any. In addition to the extenuating factor of potential waste, the respondent argues that,

[s]urely Hughes should not be penalized for continuing to operate this secondary recovery unit when it may not have been in actual violation of its permit in view of its reporting practices, was in the process of amending its permit to alleviate any technical violation and was in compliance with the maximum pressure authorized by the permit

amendment even using the inflated pressures that were reported.

Finally, the respondent argues that the \$20,000 administrative penalty sought by Enforcement is disproportionate to the actual violations involved.

### **EXAMINER'S OPINION**

The main tenet of the respondent's case in chief is that extenuating factors should mitigate administrative penalties, if any. Hughes does not dispute that the subject wells produced while being technically severed. Rather, the respondent asks the Commission to look at the reasons behind the severance and its actions with regard to its attempted correction. Such a request comports with the statutory requirements of § 85.3855.

Texas Natural Resources Code § 85.3855 indicates that the assessed penalty amount must be based on several factors. These factors include: (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation; (2) the economic harm to property or the environment caused by the violation; (3) the history of previous violations; (4) efforts to correct the violation; and, (5) any other matter that justice may require.

#### ***Penalty Factors***

The evidence adduced at hearing indicates that the true seriousness of the underlying violation is minimal. The testimony of the respondent's petroleum engineer indicates that the true injection pressures were significantly lower than that which was originally reported and that the true pressures were well within the specifications of the original and amended permits. The evidence indicates that the respondent experienced the two fold problem of buildup in the filters and improper measurements taken at the central pump station instead of at the wellhead(s). The nature, circumstances, extent, and gravity of the underlying violation indicates that it has not worked injury to the property or the environment.

Further, this docket presents the unusual circumstance that the violations of Statewide Rule 73 may have *prevented* economic harm to the property in that a suspension of the waterflood injection may have caused irreparable damage to the waterflood project. The un rebutted testimony of respondent's petroleum engineer was that cessation of injection may have resulted in the water

getting ahead of the “oil wall” and that it was possible that the project would not have recovered its pressure. In other words, shutting off the injection wells may have created waste of hydrocarbons. While such a factor does not excuse the violation, it is something that qualifies as a mitigating factor. Additionally, given that the true pressures involved may not have violated the permitted or amended permit pressures, the facts of this docket do not support the premise that damage to the environment may have occurred.

Finally, the respondent’s impressive record of compliance with Commission rules and its efforts to fix the violations should mitigate the penalties involved in this docket. In addition to the respondent’s history of compliance, it remedied the discrepancy in injection pressures by achieving an amended permit and, later, by changing its methods of reading pressures. Indeed, it was attempting to amend the injection permit during the same time period that the severance was being issued and had been in contact with Commission personnel regarding the proposed permit amendment. Had the respondent responded to Environmental Services’ initial correspondence regarding injection pressures, the Commission’s own personnel indicated that it was highly likely that it would have given respondent additional time to resolve the injection problem.

### ***Standard Penalties***

Given that the respondent does not dispute that it violated Statewide Rule 73, a penalty is appropriate for the violations of Commission rules. However, an assessment of the *standard* penalties and the actual time out of compliance must also be examined. First, Enforcement requests that a penalty of \$20,000 be assessed for seven violations of Statewide Rule 73 for the nineteen months that the certificate of compliance was cancelled. This assessment essentially means that Enforcement is requesting a penalty of \$2,857.14 for each well which produced from July 1, 2001, to February 28, 2003.<sup>2</sup>

While Enforcement has requested a total penalty of \$20,000, it has not stated a basis for an enhancement of the penalty beyond that recommended in the standard penalty guidelines. According to the penalty guidelines, \$1,000 is the standard penalty for a violation under Texas Natural Resources Code § 85.3855, and a standard penalty for seven wells producing while severed

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<sup>2</sup>It is noted that the time period that the certificate of compliance was *cancelled* is actually June 8, 2001 to March 26, 2003. However, the time period of July 1, 2001, to February 28, 2003, is the time that the wells were *produced* while the certificate of compliance was cancelled. The record does not support or negate the finding that the production attributed to June 2001 and March 2003 could have happened during the few days in each of these months that the certificate of compliance was valid.

would total \$7,000. Enforcement did not make an argument or present facts suggesting that threatened or actual pollution, safety hazards, or the severity of the violations warrant an enhancement of these recommended penalty amounts.

On the contrary, it is the examiner's recommendation that the facts of this case, along with the factors considered under Texas Natural Resources Code § 85.3855, warrant a penalty that is less than the standard penalty assessment. The penalty guidelines are meant to promote consistency within penalties for violations of Commission rules, but the guidelines recognize that there are situations where individual facts, on a case-by-case basis, may warrant a lesser penalty. The examiner believes that this is one such situation.

Accordingly, the examiner recommends that the circumstances of this docket and the mitigating factors addressed under Texas Natural Resources Code § 85.3855 warrant a total administrative penalty of \$700. This figure reflects a reduced penalty of \$100 for each violation regarding production of the subject wells while the certificate of compliance on the subject lease was cancelled. Based on the record in this docket, the examiner also recommends adoption of the following Findings of Fact and Conclusions of Law:

#### **FINDINGS OF FACT**

1. Dan A. Hughes, d.b.a. Dan A. Hughes Company ("Hughes" or "respondent"), was given at least 10 days notice of this proceeding by certified mail, addressed to its most recent Form P-5 (Organization Report) address. The respondent's representatives appeared at the hearing and presented evidence.
2. Respondent is a sole proprietorship performing oil and gas operations in the State of Texas. The respondent maintains an "active" Form P-5 (Organization Report), which was renewed on January 29, 2004. Hughes filed a \$250,000 bond as financial assurance at the time of its last P-5 filing.
3. Hughes designated himself as operator of the Spinach Elaine Unit (10149) Lease ("subject lease") by filing a Commission Form P-4 (Producer's Transportation Authority and Certificate of Compliance), effective March 1, 1988. The subject lease is part of an active waterflood.
4. Hughes does not have any final orders entered against him or any of his affiliated entities.

5. Notices of intent to cancel the certificate of compliance were sent to Hughes by certified mail on May 9, 2001, and July 18, 2001.
  - A. The May 9, 2001, letter referenced violations of the maximum allowed injection pressures for the 1999 to 2000 time period, and directed Hughes to reduce injection pressures or amend its permit to prevent the cancellation of its certificate of compliance.
  - B. The July 18, 2001, letter referenced violations of injection pressures for the 2000 to 2001 time period, and stated that the violation had to be resolved within 30 days or “the P-4 Certificate of Compliance will be canceled and a severance of pipeline or other carrier connection will be issued.”
  - C. The basis for both impending severances was the respondent’s exceeding the injection pressure requirements of its injection authority that was granted on September 12, 1984.
    1. The original injection authority for the waterflood on the subject lease mandated that the maximum injection pressure at the surface was not to exceed 1,900 psi. From April 2000 to August 2001, the reported injection pressure ranged anywhere from 1,950 psi to 2,090 psi per month.
6. After the May 9, 2001, notification, the respondent initiated the process to have the permit amended.
  - A. On May 31, 2001, respondent requested additional clarification from the Commission on the process of amending the injection permit.
  - B. In June 2001, the respondent hired outside services to obtain the names and addresses of affected surface owners in furtherance of the permit amendment application. Respondent also gathered technical data in furtherance of the application.
  - C. On July 23, 2001, the respondent filed for the actual permit amendment.
  - D. The amended permit was approved on September 27, 2001, and allows an injection pressure of 1,975 psi.
7. Respondent’s certificate of compliance for the Spinach Elaine Unit (10149) Lease was cancelled

- on June 8, 2001 for violations which occurred during the 1999 to 2000 time period, and was severed again on August 17, 2001 for violations which occurred during the 2000 to 2001 time period.
8. Respondent's certificate of compliance was not reissued until March 26, 2003, when Hughes submitted the \$100 reconnect fee required under Texas Natural Resources Code §85.167.
  9. Respondent claimed that it did not know that its certificate of compliance was still cancelled until it applied for a change of gatherer on March 3, 2003. Commission records indicate that respondent made modifications and additional Form P-4 changes for the subject lease which were approved on October 24, 1997, January 15, 1999, May 3, 2002, and March 5, 2003. These modifications reflected, in part, various corporate name changes and changes of gatherers.
  10. Between at least July 1, 2001 and at least February 28, 2003, respondent operated the seven subject wells and produced approximately 55,627 barrels of oil and 13,542 mcf of casinghead gas on the subject lease while the subject lease's certificate of compliance was cancelled.
  11. The injection pressures reported to the Commission for the subject lease between 2000 and 2001 were inaccurate and were higher than the true injection pressures.
    - A. During this time period, the filters at the wellheads were "blocking up". The filters are located before the wellhead, and clogged filters caused the pressure readings to be higher than the true, actual injection pressure at the wellhead.
    - B. The pressure readings for the injection system were taken in close proximity to the central pump station instead of at the wellhead.
    - C. Once the filters were changed and the pressure readings were taken closer to the actual wellhead, the true readings showed an average difference of 300 to 400 psi less than the previously reported injection pressures.
  12. Shutting in injection in an ongoing waterflood may result in water getting "ahead of the oil wall." The premature shutting in of a waterflood could result in the loss of a substantial volume of hydrocarbons.
  13. Production of the subject wells without a valid certificate of compliance did not result in harm to property or the environment.

**CONCLUSIONS OF LAW**

1. Proper notice of hearing was timely issued by the Railroad Commission to Dan A. Hughes Company.
2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed or have occurred.
3. Hughes has been the operator responsible for compliance with Statewide Rule 73 [16 Tex. Admin. Code § 3.68] and Tex. Nat. Res. Code Ann. § 85.166 on the Spinach Elaine Unit (10149) Lease, in the Spinach (Elaine) Field, in Zavala County, Texas, since March 1, 1988.
4. On May 9, 2001 and July 18, 2001, the Commission gave proper notice to Hughes of the Commission's intent to cancel the certificate of compliance for the subject lease, and gave Hughes a proper opportunity to either correct the violation or request a hearing to contest the violation as required by Statewide Rule 73 and Texas Natural Resources Code § 85.164.
5. On June 8, 2001 and August 17, 2001, the Commission properly canceled the certificate of compliance for the subject lease, and gave Hughes proper notice thereof, pursuant to Statewide Rule 73 and Texas Natural Resources Code § 85.164.
6. From at least July 1, 2001, through February 28, 2003, respondent violated Statewide Rule 73 and Texas Natural Resources Code § 85.166 by producing approximately 55,627 barrels of oil and 13,542 mcf of casinghead gas on the subject lease without having a valid certificate of compliance.
7. Pursuant to Texas Natural Resources Code § 85.3855, the Commission may impose an administrative penalty against Dan A. Hughes Company in an amount not to exceed \$10,000 per violation of Texas Natural Resources Code § 85.166.
8. Hughes' violations of Statewide Rule 73 and Texas Natural Resources Code § 85.166 constitutes acts deemed serious within the meaning of Texas Natural Resources Code § 85.3855.

**RECOMMENDATION**

The examiner recommends that the above Findings of Fact and Conclusions of Law be adopted and that the attached orders be approved, requiring the operator, Dan A. Hughes Company, within 30 days from the date this order becomes final, to pay an administrative penalty of \$700.00.

Respectfully submitted,

Scott Petry  
Hearings Examiner