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OIL & GAS SECTION  
LEGAL DIVISION

# RAILROAD COMMISSION OF TEXAS

## OFFICE OF GENERAL COUNSEL

OIL AND GAS DOCKET NO. 10-0208856

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COMPLAINT OF CHAR-WILL CORPORATION, INC. AGAINST SANDRA ARKOMA AND  
WBD OIL & GAS COMPANY, MISSION (06994) LEASE, WELL NOS. 1MI, 5MI, AND 6MI,  
PANHANDLE MOORE COUNTY FIELD, MOORE COUNTY, TEXAS.

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APPEARANCES:

FOR RESPONDENT:

Travis Phillips (Attorney)  
Brandon Beasley  
Kevin Trautman

Jim Ray (Attorney)  
Dan G. Michael  
Douglas Ladd

FOR COMPLAINANT:

Ana Maria Marsland  
Mike McElroy  
Greg Cloud  
Jody Sheets  
Richard Lundy

RESPONDENT:

Sandra-Arkoma

WBD Oil Company

COMPLAINANT:

Char-Will Corporation

### PROPOSAL FOR DECISION

### PROCEDURAL HISTORY

DATE OF REQUEST FOR ACTION: May 11, 1995  
DATE CASE HEARD: June 26 and July 10, 1995  
HEARD BY: Jeffrey T. Pender, Hearings Examiner  
Doug Johnson, Technical Examiner  
PFD CIRCULATION DATE: January 3, 1996  
CURRENT STATUS: Protested

### STATEMENT OF THE CASE

On March 30, 1995, Char-Will Corporation ("Char-Will") filed a complaint against Sandra-Arkoma and WBD Oil and Gas Company ("WBD") to determine whether Well Nos. 1MI, 5MI and 6MI on the Mission Lease ("subject lease and wells") are in violation of Section 86.097 of the Texas Natural Resources Code and Oil Field Rule 1 of the Panhandle Field Rules prohibiting production from a gas-only zone from a well bore that is classified as an oil well. Char-Will also requests that the Commission make findings and assess penalties under Chapter 91 of the Natural Resources Code which prohibits knowingly filing false documents.

WBD and Sandra-Arkoma concede that documents containing inaccurate information concerning perforations were filed but that corrected forms were subsequently filed in good faith. The respondents also assert that selective interval testing is not the exclusive remedy for violations of Oil Field Rule No. 1. The respondents request that they be permitted to work over the subject wells to bring them into compliance. The wells are currently shut-in pending the results of this hearing.

### APPLICABLE LAW

No person in possession of or operating an oil well may produce from the oil well gas found in a horizon productive of gas only.  
**§86.097 Tex. Nat. Res. Code Ann. (Vernon 1993).**

Panhandle Field oil wells are restricted to completion in horizons bearing producible oil, production from said horizons to be capable of passing a gas-oil ratio cutoff of 100,000:1 on a 72 hour test of the isolated 50 foot interval below the top of perforations if no other Appendix One oil guideline is met. No person in possession of or operating an oil well may produce from the oil well gas found in a horizon productive of gas only.  
**Oil and Gas Docket No. 10-87,017 (Final Order-Oil Field Rule 1.) (1989).**

In determining whether [an operator] is producing gas or casinghead gas from the [oil wells] we must look at each completion in the brown dolomite and determine whether the production from that stratum, at that particular location, is sufficient to define it as an "oil stratum," i.e., a gas-oil ratio of 100,000 cubic feet of gas or less per barrel of oil. If it is an oil stratum, then the gas produced therefrom is casinghead gas..... To be "casinghead gas," the statute requires that it be "produced from the stratum with oil." By that language the legislature meant gas produced as a necessary incident to the production of oil.

Amarillo Oil v. Energy-Agri Products, 794 S.W.2d 20,25 (Tex. 1990).

A person is guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for not less than two years but not more than five years or by a

fine of not more than \$10,000 or by both if:

(1) he makes or subscribes any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;

**§91.143 Tex Nat. Res. Code Ann. (Vernons 1993).**

District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony.

**Tex. Rev. Civ. Stat. Ann. Art. 4.05 Jurisdiction of the Courts, Code of Criminal Procedure (Vernons 1995 pamphlet).**

An administrative agency can exercise only such authority as is conferred by law in clear and unmistakable terms; authority cannot be conferred by implication. Key Western Life Insurance Co. vs. State Board of Insurance, 163 Tex. 11, 350 S.W.2d 839 (1961); Board of Insurance Commissioners vs. Guardian Life Insurance Co., 142 Tex. 630, 180 S.W.2d 904 (1944).

The Railroad Commission has no power to hold hearings and make findings except as incidental to its power to take official action. No authority is conferred upon the Commission to make findings in a vacuum or as a mere agent of a trial court. Foree v. Crown Petroleum Corp., 431 S.W.2d 312 (Tex. 1968).

The attorney general shall enforce the provisions of this title [Title 3, Texas Natural Resources Code] by injunction or other adequate remedy and as otherwise provided by law. **§81.054 Tex. Nat. Res. Code (Vernon 1993).**

### DISCUSSION OF THE EVIDENCE

Well Nos. 1MI, 5MI and 6MI on the Mission (06994) Lease in the Panhandle Moore County Field ("subject lease and wells") were drilled on a farmout to Sandra Arkoma from WBD Oil & Gas Co. ("WBD") in the early 1990's. WBD filed the initial Railroad Commission forms on behalf of Sandra Arkoma and operated the wells for Sandra Arkoma until October, 1994. It is undisputed that neither WBD nor Sandra Arkoma reported the highest sets of perforations in all three wells until at least a year and a half after the perforations were made. Though late, Sandra Arkoma voluntarily filed corrected reports on May 23, 1995 when the problem was brought to its attention by Mr. Dan Michael, a consulting geologist for Sandra Arkoma. None of the perforations in any of the subject wells are above +250' subsea.

Char-Will contends that the inaccurate and untimely filing of perforation locations was done knowingly on the part of WBD and/or Sandra Arkoma in order to gain advantage

over adjacent gas rights owners. Char-Will also contends that WBD and/or Sandra Arkoma falsified production reports to assure "oil-well" status. Though the evidence demonstrating when the various perforations were made and reported is clearly consistent with Char-Will's theory, the facts are also not inconsistent with WBD/Sandra Arkoma's theory of good faith error. Char-Will presented no evidence supporting its theory other than evidence of motive.

According to Sandra-Arkoma's P-1 filings, the Mission Lease produced at a calculated GOR (gas-oil ratio) of 106,744 in January, 1995 and 685,800 in March, 1995. From October, 1994 to March, 1995, the Lease produced at an average GOR of 70,186 in those months when it produced as a statutory oil well. In May and June, 1995, the district office witnessed several tests of the subject wells. Only the test conducted on May 11, 1995 yielded a GOR under 100,000:1. The other 12 test periods during May and June yielded GOR's in excess of 1,000,000:1 or "ALL GAS."

#### EXAMINERS' OPINION

##### COMPLIANCE STATUS OF THE MISSION LEASE

The examiners believe that the subject wells have produced in violation of Section 86.097 of the Texas Natural Resources Code and Oil Field Rule 1 of Oil & Gas Docket No. 10-87,017 which require that no person in possession of or operating an oil well may produce from the oil well, gas found in a horizon productive of gas only.

In any one well bore, it is not possible for all of the perforated intervals to produce at a GOR of less than 100,000:1 and the total well stream to have a GOR in excess of 100,000:1. Where the total well stream exceeds a GOR of 100,000:1, there must be at least one set of perforations producing from a "gas only" horizon (defined as a stratum producing at a GOR in excess of 100,000:1). Because the subject lease has produced at a GOR in excess of 100,000:1 for a good portion of its producing life, there must be at least one set of perforations in either the 1M, 5M or 6M well bore that is producing from a "gas only" horizon.

Accordingly, Sandra Arkoma should be ordered to place the subject wells in compliance with Section 86.097 of the Texas Natural Resources Code and Oil Field Rule 1 of the Panhandle Field Rules.. However, even if Sandra-Arkoma works over the wells and the individual well GOR's return to under 100,000:1, that doesn't mean that all of the separate perforations are, once again, producing only from "oil strata." This is so because a well previously producing at a GOR greater than 100,000:1 could produce at a GOR below 100,000:1 after work over if either:

1. The offending "gas only" zone or zones respond positively to the rework and return to producing as "oil strata"; or
2. Other zones already producing as "oil strata" are stimulated to produce greater volumes of oil thereby masking the gas contribution of the offending "gas only" zone or zones still producing to the well bore; or
3. The perforations into the "gas only" zones are intentionally or unintentionally blocked during the work over.

As the second option above demonstrates, without separately testing each zone, it is not possible to tell, for certain, whether a reworked well, though now producing at an overall GOR under 100,000:1, is producing from "oil strata" only. Selective interval testing comparable to that described in Guideline 3 of Oil & Gas Docket No. 10-87,017 is the only solution to the problem.

#### CHAR-WILL'S REQUEST FOR RELIEF UNDER SECTION 91.143

The complainant, Char-Will, requests that the Commission find that WBD and/or Sandra Arkoma "knowingly" filed false documents concerning the perforations in, and/or production from, the subject wells. Such acts are prohibited by Section 91.143 of the Texas Natural Resources Code which declares this practice to be a felony. The examiners believe that though the Commission has the statutory authority to make a finding that false documents were filed, it hasn't been granted the authority to find that the false filings were made "knowingly."

An administrative agency can exercise only such authority as is conferred by law in clear and unmistakable terms; authority cannot be conferred by implication. Key Western Life Insurance Co. vs. State Board of Insurance, 163 Tex. 11, 350 S.W.2d 839 (1961); Board of Insurance Commissioners vs. Guardian Life Insurance Co., 142 Tex. 630, 180 S.W.2d 904 (1944). The Railroad Commission has no power to hold hearings and make findings except as incidental to its power to take official action. No authority is conferred upon the Commission to make findings in a vacuum or as a mere agent of a trial court. Foree v. Crown Petroleum Corp., 431 S.W.2d 312 (Tex. 1968).

The examiners could find no provisions in the Texas Natural Resources Code and only two Commission Statewide Rules where the Commission is authorized to make a finding that an act was done "knowingly" as a prerequisite to exercising its power to take official action:

1. Rule 5(d)(2) - "knowingly filing a false statement" ...may subject a [drilling] permit to denial or revocation; and
2. Rule 8(d)(5)(A) - "knowingly" utilizing the services of...a carrier...a receiver... who

does not have a permit to transport oil and gas wastes... may result in the revocation of the generator, receiver or transporter's permit.

Because neither of these Rules are applicable to this case, the Commission is not authorized to make the requested findings and must deny Char-Will's request to do so. Only the district courts and criminal district courts have jurisdiction in criminal cases of the grade of felony such as those involving violations of Section 91.143 or violations of any other provisions of the Texas Natural Resources Code giving rise to criminal liability. Tex. Rev. Civ. Stat. Ann. Art. 4.05 (Vernons 1995 pamphlet).

#### FINDINGS OF FACT

1. Notice of the Commission-called hearing in Oil & Gas Docket No. 10-0208856 was sent by first class mail on May 26, 1995 to the P-5 address of Char-Will Corporation, Inc. ("Char-Will"), Sandra Arkoma, W.B.D. Oil and Gas Company ("WBD"), their attorneys and other interested and affected parties.
2. Sandra Arkoma drilled and perforated Well Nos 1MI, 5MI and 6MI on the Mission (06994) Lease, Panhandle Moore County Field, Moore County, Texas ("subject lease" and "subject wells"). WBD operated the subject lease and subject wells from the time the subject wells were completed in 1993 until October 1, 1994 when Sandra Arkoma became the operator of record.
3. There are perforations in the subject wells that are producing at GOR's in excess of 100,000:1:
  - a. Corrected production reports filed by Sandra Arkoma for the subject lease and wells for January and February, 1995, show a calculated GOR of 1,022,500:1 and 699,000:1, respectively.
  - b. The subject lease and subject wells produced no oil during a Commission-witnessed W-10 test conducted May 10, 1995.
  - c. Periodic inspection reports filed with the District Office for May and June 1995 showed the gas-oil ratios in excess of 100,000:1 for all but one inspection. Seven reports indicate that the subject wells were producing gas only.

#### CONCLUSIONS OF LAW

1. Proper notice of hearing was timely issued by the Railroad Commission to all appropriate persons legally entitled to notice.

2. All things necessary to the Commission attaining jurisdiction over the subject matter and the parties in this hearing have been performed.
3. The subject lease and subject wells are producing in violation of §86.097 of the Texas Natural Resources Code and Panhandle Oil Field Rule 1 (Oil and Gas Docket No. 10-87,017, 1989).

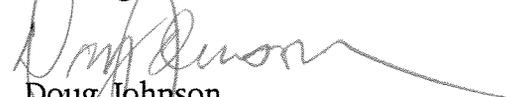
**RECOMMENDATION**

The examiner's recommend that the above findings and conclusions be adopted and that Sandra Arkoma be ordered to conduct selective interval testing in the subject wells and to place the subject wells in compliance.

Respectfully submitted,



Jeffrey T. Pender  
Hearings Examiner



Doug Johnson  
Technical Examiner

JTP/bjw